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# MEMORANDUM

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Date: July 6, 2012

To: Honorable Chairman and Members  
Pima County Board of Supervisors

From: C.H. Huckelberry  
County Administrator 

Re: **Multi-Species Conservation Plan Section 10 Permit and Avoidance and Minimization Measures by Public Works Departments**

The attached memorandum prepared by the Office of Sustainability and Conservation was recently forwarded by Deputy County Administrator John Bernal to the Public Works departments to update these departments on the status of the Multi-Species Conservation Plan (MSCP) and the County's Section 10 Permit application.

With substantial progress being made toward the issuance of a permit, the purpose of the memorandum is to provide County departments with background on the provisions of the Endangered Species Act (ESA), how these provisions might affect County capital improvement projects, the role of County Public Works departments in carrying out the MSCP, and the benefits of the Section 10 Permit.

Because the Board of Supervisors over the years adopted a variety of measures to protect and enhance the natural environment, Pima County also described in its Section 10 Permit application how impacts to species are already avoided and minimized through the use of existing environmentally-related County ordinances, policies, protocols, standards, guidelines and code provisions. To our credit, we comply with these local standards now, and our obligation under the Section 10 Permit will be to continue to implement these avoidance and minimization strategies without abrogating the rights of Pima County to alter those standards as necessary.

I encourage the Board to review the attached memorandum from the Office of Sustainability and Conservation, which thoroughly explains these issues and enumerates the obligations and benefits of the Section 10 Permit to County departments and the County as a whole.

CHH/mjk

Attachment

c: John Bernal, Deputy County Administrator for Public Works  
Nanette Slusser, Assistant County Administrator for Public Works  
Linda Mayo, Director, Office of Sustainability and Conservation



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# MEMORANDUM

## Public Works Administration

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DATE: June 25, 2012

TO: Directors, Public Works Departments

FROM:  John M. Bernal  
Deputy County Administrator

RE: **Multi-Species Conservation Plan (MSCP) Section 10 Permit and the Role of Public Works Departments**

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As work continues and progress is made by the U. S. Fish and Wildlife Service on the approval of our Endangered Species Act (ESA) Section 10 Permit application, it is important that the Public Works Departments understand both the benefits and obligations of the Section 10 Permit.

The Section 10 Permit has important benefits to your Departments and has been likened to an insurance policy that will protect the Public Works Departments against the significant risks of project delay, costs, and penalties resulting from impacts to listed threatened or endangered species that could result from the construction, maintenance and operation of County facilities and infrastructure. For years, County Administration has understood this problem, and we have lived with the risk while working with the community on ways to address it through the terms of a Section 10 permit that would address compliance for both public projects and private development.

In the application for the permit, Pima County also described how impacts to species are already avoided and minimized through the use of existing environmentally-related County ordinances, policies, protocols, standards, guidelines and code provisions. We comply with these local standards right now, and our obligation under the Section 10 Permit will be to continue implementing these avoidance and minimization strategies, without abrogating the rights of Pima County to alter those standards.

I therefore ask that you read the attached memorandum from the Office of Sustainability and Conservation (OSC) and avail yourselves and your respective compliance officers to discuss this in greater detail with the OSC staff. Your written comments are to be provided to OSC with a copy to me by July 30, 2012.

Attachment

Cc: C.H. Huckelberry, County Administrator  
Nanette Slusser, Assistant County Administrator  
Reid Spaulding, Facilities Management Department Director



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# Memorandum

## Office of Sustainability & Conservation

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**Date:** June 22, 2012

**To:** John Bernal – Deputy County Administrator, Public Works

**From:** Linda Mayro - Director, Office of Sustainability & Conservation 

**Subject:** **Review of Multi-Species Conservation Plan (MSCP) Section 10 Permit and Role of Public Works Departments**

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As you recall the MSCP is the County's and the Regional Flood Control District's (collectively – the County) co-application to the U.S. Fish and Wildlife Service (FWS) to secure an Incidental Take Permit (Permit) as allowed under Section 10 of the Endangered Species Act (ESA) for County capital improvement projects as well as certain private development activities. The Office of Sustainability and Conservation (OSC) is serving as the County's agent in coordinating with the FWS regarding the County's permit application and will oversee compliance with Section 10 Permit requirements upon its issuance.

In this capacity, we have recently re-engaged conversation with Public Works staff in order to identify those County department regulations and policies that would become Permit obligations. It appears that there is still some confusion about the role Public Works departments will play in implementing required elements of the Section 10 Permit and what specific benefits they will accrue through this Permit. With the anticipated release later this year of the Pima County MSCP and the Draft Environmental Impact Statement (DEIS) by the US Fish and Wildlife Service (FWS), this memo reviews the provisions of the Endangered Species Act (ESA) and reviews the role of County Public Works departments in carrying out the Multi-Species Conservation Plan (MSCP) and its benefits to the County as a whole.

I would also request that this memo and the attached table (*U.S. Fish and Wildlife Service Notification Will Be Required for Changes to These MSCP Avoidance and Minimization Measures*) be circulated to all Public Works departments for their review and comment. We would like to meet with Public Works Departments in the next few weeks to provide an update on the MSCP and to review the benefits and obligations of the Permit and to discuss any questions, comments or suggestions they may have.

### Background: Endangered Species Act Overview

The Endangered Species Act (ESA) of 1973, as amended, provides legal protection to those species listed as threatened or endangered under the auspices of the act and establishes penalties for the unauthorized take of any such listed species.

## MSCP Section 10 Permit

John Bernal, Deputy County Administrator for Public Works

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There are three particular sections of the ESA that are relevant to County departments and the discussion herein – Sections 7, 9, and 10.

Section 9 has a broad application and makes it illegal for anyone or any entity to “take” any species subject to protection under the ESA without receipt of permission from the FWS; *take* is defined as harm, harass, kill, hunt, shoot, collect, trap, pursue, or capture.

Section 7 defines the process that all federal agencies must use to obtain ‘permission’ to take listed species. It requires all federal agencies to consult with the FWS to ensure that any action it authorizes will not jeopardize the continued existence of any threatened or endangered species. It also requires the FWS to issue an opinion as to whether the agency’s action will jeopardize or adversely affect the listed species. Most frequently, these consultations (e.g., Section 7 Consultations) result in the FWS issuing a biological opinion that sets forth those terms and conditions with which the federal agency must comply in order to minimize impacts to listed species.

Public Works Departments are likely most familiar with this aspect of the ESA as their activities frequently require a 404 Clean Water Act permit from the U.S. Army Corps of Engineers (ACOE). In such instances, the ACOE is mandated to consult with the FWS. This consultation typically concludes with the FWS requiring the ACOE to condition the issuance of their 404 permit with a set of actions that the County, as the recipient of the 404 permit, must implement to avoid, minimize, and mitigate impacts to listed species and ensure compliance with the ESA. The consultation process and the ‘permission’ to take a listed species granted by the FWS through federal permits like the ACOE’s 404 permit only extends as far as the scope of the federal permit which may, or may not, encompass the entire geographic boundary of any given County project.

Section 10 affords a process available exclusively to non-federal entities (including private individuals and political subdivisions of a state) through which they may receive ‘permission’ to incidentally take a threatened or endangered species while engaged in otherwise lawful activities. This process results in what is commonly referred to as a Section 10 Incidental Take Permit, or Section 10 Permit. The non-federal entity must initiate the application for a Section 10 Permit and is required to submit a conservation plan that among other things specifies the impacts that will result from the take as well as what steps will be taken and what funding will be available to avoid, minimize, and mitigate the impacts.

The FWS will issue a Section 10 Permit only if it finds:

- the take will be incidental to otherwise legal activities;
- efforts to avoid, minimize, and mitigate impacts will be implemented to the maximum extent practicable (this requirement will be discussed in greater detail in the following section);
- there is adequate funding to implement the conservation plan;
- the identified impacts will not compromise the survival and recovery of the listed species.

These are the key criteria that the County MSCP must meet if the County is to receive a Section 10 Permit that exempts the County from penalties of taking a listed species resulting from construction, maintenance, and operation of County facilities and infrastructure.

There are two crucial points to make here that have significant implications for County projects:

1. First, unauthorized take of a listed species can occur per Section 9 on County projects where (1) there is no need for a federal permit or other federal nexus, and (2) where the boundaries of the project lie outside the limits of the federal permit.

*Example of unauthorized take outside the limits of a federal permit-* The incident in 2000 along Thornydale Road where Department of Transportation (DOT) roadway improvements resulted in unauthorized take of the cactus ferruginous pygmy-owl is an example of the latter. The DOT did have 404 permits that through Section 7 Consultation gave protection against impacting the owl where impacts occurred within the ACOE's jurisdictional area of the washes; however, impacts to the owl also occurred outside the area covered by the ACOE's 404 permit. It was these impacts for which the County created unauthorized take and subject to Section 9 consequences.

2. Second, there is a hidden liability because there is no pre-existing, mandatory regulatory process to compel any Public Works Department to address take of listed species on a project where no federal permit exists. With no regulatory 'checkpoint' to address the non-federal aspects of a project, departments are unaware of their potential to violate the ESA under Section 9.

### Impact Avoidance, Minimization, and Mitigation Measures

There is currently a common perception that because mitigation obligations under the Section 10 Permit will require protection of County-controlled open space and floodprone lands to offset impacts resulting from County construction, maintenance, and operation activities, there would no longer be any need for Public Works Departments to continue implementation of any existing environmentally-related County ordinances, policies, protocols, standards, guidelines, and code provisions that avoid or minimize impacts. This is simply not the case.

First, implementation of our existing environmentally-related County ordinances, policies, protocols, standards, guidelines, and code provisions are more related to the Sonoran Desert Conservation Plan and the County's long-standing conservation sensibilities. These policies exist outside the federal regulatory process and do not constitute "permission" by the FWS to take a threatened or endangered species.

Second, as cited above, the FWS can not issue a Section 10 Permit without adequate demonstration that impacts have been "avoided, minimized, and mitigated" to the maximum extent practicable.

It is critical to understand how the FWS defines these impact strategies. Actions such as the implementation of our existing environmentally-related County ordinances, policies, protocols, standards, guidelines, and code provisions are (for purposes of the Section 10 Permit application) considered to be avoidance and minimization measures. Furthermore, the FWS

considers *mitigation* to be those measures that are taken to address or compensate for those impacts which remain after such avoidance and minimization measures have been applied. Mitigation for the purposes of our Section 10 Permit is the perpetual protection and management of County-controlled open space and floodprone lands. It is not sufficient to rely on mitigation as the only strategy -- the County must also demonstrate to the FWS that it has effective avoidance and minimization strategies to implement as well.

#### Key County Avoidance and Minimization Provisions

A review of these strategies has identified only a few, very limited number of specific provisions within our existing environmentally-related County ordinances, policies, protocols, standards, guidelines, and code provisions that are used by County Public Works departments which are critical to implement Section 10 Permit avoidance and minimization measures. The attached table (*U.S. Fish and Wildlife Service Notification Required for Changes to These Avoidance and Minimization Measures*) is a compilation of these specific provisions.

Even though the continued implementation of these provisions is crucial to our Section 10 Permit, it is very likely that sometime over the next 30 years (the expected duration of the Section 10 Permit) there will be a need to modify one or more of these provisions. Staff has anticipated such a situation and has worked with the FWS to develop a process through which the County can pursue modifications. At the time when a modification is proposed, the County will be obligated under terms of the Section 10 Permit to seek the FWS's review and comment. Within 45 calendar days of receipt, the FWS will advise whether the proposed modification will require amending the Section 10 Permit, or whether the proposed modification will have no effect on our Permit status. Once we receive the FWS' assessment, the County, as the deciding authority, can make a final decision on whether to execute the proposed changes, revise the proposed modification in consultation with USFWS, or to not proceed with the modification.

Modification or any other adjustment to any aspect of an existing environmentally-related County ordinance, policy, protocol, standard, guideline, or code provision which is not listed on the attached table lies outside the purview of the Section 10 Permit and will not require any review by the FWS.

#### Section 10 Permit Benefits to Public Works Departments

The Section 10 Permit is essentially an insurance policy that provides, either solely or as companion to a Section 7 Consultation, complete protection against the unintended take of a threatened or endangered species that could result from the construction, maintenance, and operation of County facilities and infrastructure under Section 9. Furthermore, the cost of gaining access to this insurance policy is being born by the entire County as opposed to being left to individual County departments with limited project budgets or to individual property owners and developers to fund this insurance coverage.

The Permit will cover both currently listed species as well as certain species that are likely to be listed in the future. The value of this insurance coverage will increase overtime as more species will, inevitably, come under the protection of the ESA. At present, the FWS



**MSCP Section 10 Permit**

**John Bernal, Deputy County Administrator for Public Works**

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submitted to the U.S. District Court for the District of Columbia, a multi-year endangered species listing work plan to systematically review more than 250 species to determine if they should be added to the Federal Lists of Endangered and Threatened Wildlife and Plants. Of these, 22 species are thought to occur in the state of Arizona, including the Sonoran desert tortoise and the re-listing of the cactus ferruginous pygmy-owl – both of which would have profound ramifications for public and private development in Pima County.

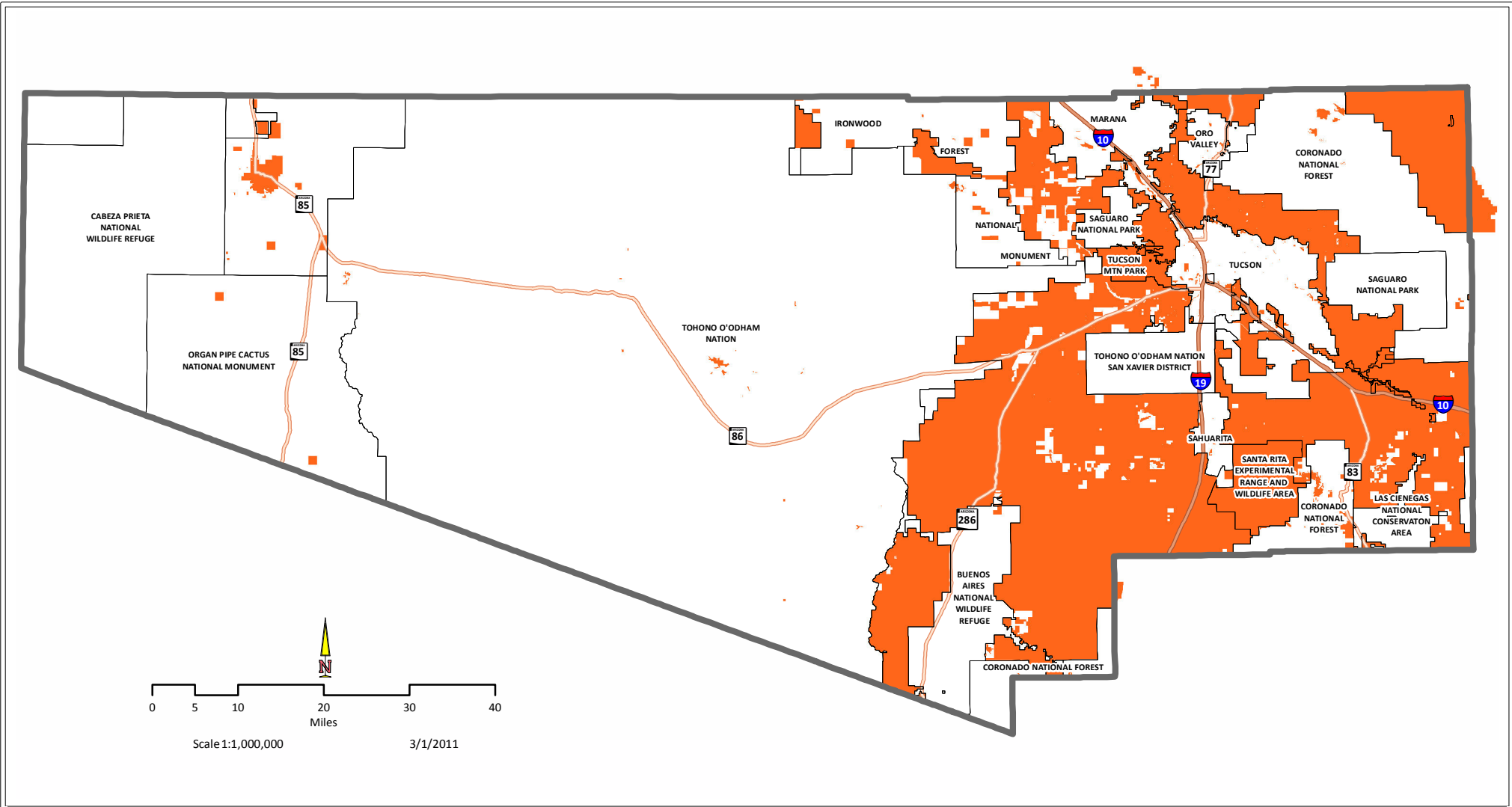
Situations like the 2000 Thornydale Road improvement project where extended time delays and significant financial costs are the consequences of after-the-fact ESA compliance with Section 9 will be averted; thereby removing uncertainty and unplanned costs from project implementation.

Another real, but not yet realized, benefit rests on the outcome of on-going conversation with the ACOE to have the County's Section 10 Permit fulfill the avoidance, minimization, and mitigation requirements of the ACOE's mandatory Section 7 Consultation with the FWS. If successful, the time and financial investment necessary to get an approved 404 permit would be drastically reduced.

Given that Public Works Departments will directly benefit from the Section 10 Permit and their need to be aware of and have input into the nature of their role in implementation is crucial, it is imperative to have their critical review of the attached table (*U.S. Fish and Wildlife Service Notification Required for Changes to These Avoidance and Minimization Measures*). In order to keep the MSCP timeline with the FWS moving forward, I would request that you forward this memo and table on to all Public Works Departments so that they can review these provisions and provide comments back to my office by July 30, 2012, at the latest.

We intend to arrange informational exchanges with individual departments within the next two weeks. Julia Fonseca and Sherry Ruther will be coordinating this effort in consultation with Joanne Homer, and we are available to answer questions or provide additional information as you may require.

C     Nanette Slusser, Assistant County Administrator, Public Works  
       Joanne Homer, Program Manager, CIP Office  
       Julia Fonseca, Environmental Planning Manager, OSC  
       Sherry Ruther, Environmental Planning Manager, OSC



Scale 1:1,000,000 3/1/2011

- Section 10 Permit Area
- Administrative Boundary

**Figure 1.1**  
**Pima County Section 10 Permit Area**



U. S. Fish and Wildlife Service Notification Will Be Required for Changes to These Pima County and MSCP Avoidance and Minimization Measures

Common name of the Applicable Source Document	Entity to which Controlling Document Applies	Entity that 'Owns' Controlling Document	MSCP Rationale	Pima County Controlling Document	Modifications That Will Trigger USFWS Notification	Relevant Sections of Pima County Controlling Document (Section/Chapter citations may change over time subsequent to Document modifications.)
<b>Weed Ordinance</b>	Private Sector	Pima County DEQ	Supports control and eradication of exotic, invasive plant species.	<b>Pima County Code Chapter 7.33 - Removal of Rubbish, Trash, Weeds, Filth and Debris</b>	Remove buffelgrass from definition of 'weed'	<b>7.33.010.A.4.</b> - "Weed" includes any species of plant that is listed in Arizona Administrative Code R3-4-244, including Pennisetum ciliare (L.) Link-Buffelgrass (Ord. No. 2008-117, § 1 (part), 2009)
					Remove requirement for property owners or occupants to remove buffelgrass from their property and contiguous areas.	<b>7.33.020 - Removal.</b> The owner, lessee or occupant of property shall remove all rubbish, trash, weeds, filth, debris, and dilapidated buildings that constitute a hazard to public health and safety from the property and contiguous areas. (Ord. No. 2008-117, § 1 (part), 2009)
<b>Riparian habitat "ordinance"</b>	Private Sector; Public Sector	Pima County RFCD	Conserves riparian resources and requires mitigation for unavoidable impacts.	<b>Pima County Code Chapter 16.33 - Watercourse &amp; Riparian Habitat Protection &amp; Mitigation Requirements</b>	Amend the entities whose actions are subject to this regulation <b>OR</b> the types of permits that are subject to this regulation	<b>16.30.030 - Applicability.</b> This chapter shall apply to all properties within unincorporated Pima County that contain riparian habitat, as delineated on riparian habitat maps adopted by the board. This chapter shall apply to the county, the district, and to all parties acting on behalf of the district and county. This chapter shall apply to individual building permits, including grading permits issued by the county, and land development permits associated with subdivisions and development plans. All requirements of this chapter shall apply to regulated hydriparian, mesoriparian, important riparian areas, and, xeroriparian Classes A, B, C, and D habitat. (Ord. 2005 FC-2 § 2 (part), 2005; Ord. 1999 FC-1 § 1 (part), 1999; Ord. 1998 FC-1 Section 3, 1998; Ord. 1994 FC-2 (part), 1994; Ord. 1988 FC-2 Art. 10 (C), 1988)
					Amend the criteria used to evaluate the effectiveness of mitigation.	<b>16.30.060 - Review Process.</b> The application and any proposed mitigation plan shall be evaluated by the effectiveness in: A. Avoiding the impact; B. Minimizing the impact; C. Rectifying the impact; D. Reducing or eliminating the impact over time; and E. Compensating for the impact. (Ord. 2005 FC-2 § 2 (part), 2005; Ord. 1999-FC-1 § 1 (part) 1999; Ord. 1994 FC-2 (part), 1994; Ord. 1988 FC-2 Art. 10 (F), 1988)
					Amend Riparian Classification Maps	<b>16.30.080.A</b> - Riparian classification maps shall be adopted by resolution of the board and shall detail on a parcel level, the general location of riparian habitat and important riparian areas subject to the requirements of this chapter. (Ord. 2010-FC5 § 1 (part), 2010; Ord. 2005 FC-2 § 2 (part), 2005; Ord. 1999 FC-1 § 1 (part), 1999; Ord. 1995 FC-1 §§ 1, 2, 1995)
<b>Encroachment standard</b>	Private Sector; Public Sector	Pima County RFCD	Minimizes alteration of flow velocity in the floodplain. Massive changes in velocity can adversely alter habitat (bank stability, vegetation density and types, availability of water) for many covered species	<b>16.26 - Floodway Fringe Area Requirements</b>	Weaken thresholds for the one-tenth of a foot base flood level; <b>OR</b> the ten percent flood velocity; <b>OR</b> one fps.	<b>16.26.020 - Conditions applicable to all uses.</b> <b>C.</b> No encroachment may increase the base flood level more than one-tenth of a foot or increase flood velocities more than ten percent or one fps, whichever is less, at any property line, except when it can be demonstrated that the post-development velocity is not an erosive velocity. The velocity subject to this standard may be the overbank velocity, the channel velocity, or both, as appropriate based on the type of development and its location within the floodplain. (Ord. 2010-FC5 § 1 (part), 2010; Ord. 2005 FC-2 § 2 (part), 2005; Ord. 1999 FC-1 § 1 (part), 1999; Ord. 1988 FC-2 Art. 9 (B) (part), 1988)
<b>Erosion hazard setback</b>	Private Sector; Public Sector	Pima County RFCD	Minimizes alteration of areas adjacent to channel banks and encourages leaving banks natural, which reduce impacts to habitat for a variety of covered species, including tortoise	<b>Pima County Code 16.28 - Erosion Hazard Areas and Building Setbacks</b>	Amend the default setback distances from major and minor watercourses	<b>16.28.020 - Setbacks near major watercourses.</b> <b>B.</b> Along natural channels where no unusual conditions exist (such as a pronounced channel curvature), the default building setback for erosion hazard protection shall be:  1. A distance of five hundred feet along the Santa Cruz River, Rillito Creek, Pantano Wash, Tanque Verde Creek, San Pedro River, and the Canada del Oro Wash;  2. A distance of two hundred fifty feet along major watercourses with base flood peak discharges greater than ten thousand cfs;  3. A distance of one hundred feet along all major watercourses with base flood peak discharges of ten thousand cfs or less, but more than five thousand cfs; and  4. A distance of seventy-five feet along all other major watercourses with base flood peak discharges of five thousand cfs or less, but more than or equal to two thousand cfs. (Ord. 2010-FC5 § 1 (part), 2010; Ord. 2005 FC-2 § 2 (part), 2005; Ord. 1999 FC-1 § 1 (part), 1999; Ord. 1988 FC-2 Art. 12 (A), 1988).

U. S. Fish and Wildlife Service Notification Will Be Required for Changes to These Pima County and MSCP Avoidance and Minimization Measures

Common name of the Applicable Source Document	Entity to which Controlling Document Applies	Entity that 'Owns' Controlling Document	MSCP Rationale	Pima County Controlling Document	Modifications That Will Trigger USFWS Notification	Relevant Sections of Pima County Controlling Document (Section/Chapter citations may change over time subsequent to Document modifications.)																																						
					Amend the default base flood peak discharge thresholds for major and minor watercourses <b>OR</b> amend the list of major watercourses that are identified by name.	<p><b>16.28.030 - Setbacks from minor watercourses.</b>  <b>A.</b> For minor natural washes with a base flood peak discharge of less than two thousand cfs, the following building setbacks shall be required:</p> <ol style="list-style-type: none"> <li>1. A distance of fifty feet for watercourses with base flood peak discharges of less than two thousand cfs, but more than five hundred cfs;</li> <li>2. A distance of twenty-five feet for watercourses with base flood peak discharges of five hundred cfs to one hundred cfs;</li> <li>3. Alternative safe limits for erosion setbacks approved in writing by the chief engineer based on an acceptable engineering study prepared and sealed by an Arizona registered civil engineer. However, at no time shall a setback of less than twenty-five feet from the top of channel bank be permitted in order to provide for reasonable access and stability of nearby structure foundations, except as allowed pursuant to subsection B of this section.  <i>(Ord. 2010-FC5 § 1 (part), 2010; Ord. 2005 FC-2 § 2 (part), 2005; Ord. 1999-FC-1 §§ 1 (part) 1999; Ord. 1988-FC2 Art. 12 (B), 1988)</i></li> </ol>																																						
<b>HDZ / Protected peaks and ridges</b>	Private Sector	Pima County DSD	Minimizes development on slopes that provide habitat for tortoise, talus snails, and other covered species.	<b>Pima County Code 18.61 - Hillside Development Overlay Zone</b>	Weaken the fifteen percent minimum slope that triggers compliance with Chapter 18.61	<p><b>18.61.030 - Applicability.</b>  <b>A.</b> Applicable Lands.</p> <ol style="list-style-type: none"> <li>1. This chapter applies to any land parcel, lot, or project site containing slopes of fifteen percent (15%) or greater, which are both longer than fifty feet (50') when measured in any horizontal direction and higher than seven and one-half feet (7.5') when measured vertically.  <i>(Ord. 2003-17 § 1 (part), 2003; Ord. 2000-52 § 1 (part), 2000)</i></li> </ol>																																						
					Amend the types of development that are prohibited	<p><b>18.61.030 - Applicability.</b>  <b>B.</b> Prohibited Development.</p> <ol style="list-style-type: none"> <li>1. A rezoning to TR, RVC, CB1, CB2, CPI, CI1, CI2 or CI3 zone is not permitted on a land parcel, lot, or project site having an average cross slope of fifteen percent (15%) or greater.</li> <li>2. Nonresidential conditional uses (refer to Chapter 18.97) within a rural or residential zone are not permitted on land parcels, lots or project sites having average cross slopes of fifteen percent (15%) or greater.</li> <li>3. A rezoning for residential uses with overall densities greater than 1.20 residences per acre is not permitted on land parcels with an average cross slope greater than fifteen percent (15%) prior to the exclusion of any natural area.  <i>(Ord. 2003-17 § 1 (part), 2003; Ord. 2000-52 § 1 (part), 2000)</i></li> </ol>																																						
					Amend the Average Area (acres) per Dwelling Unit (density) for projects or parcels with average cross slopes of fifteen percent or greater	<p><b>Table 18.61.052-1</b>  Average Cross Slope (%) / Average Area (acres) per Dwelling Unit (density)</p> <table> <tbody> <tr><td>15</td><td>1.0</td></tr> <tr><td>16</td><td>1.12</td></tr> <tr><td>17</td><td>1.25</td></tr> <tr><td>18</td><td>1.37</td></tr> <tr><td>19</td><td>1.5</td></tr> <tr><td>20</td><td>2.0</td></tr> <tr><td>21</td><td>2.25</td></tr> <tr><td>22</td><td>2.5</td></tr> <tr><td>23</td><td>3.5</td></tr> <tr><td>24</td><td>4.5</td></tr> <tr><td>25</td><td>6.0</td></tr> <tr><td>26</td><td>7.0</td></tr> <tr><td>27</td><td>8.6</td></tr> <tr><td>28</td><td>10.4</td></tr> <tr><td>29</td><td>12.8</td></tr> <tr><td>30</td><td>16.0</td></tr> <tr><td>31</td><td>23.5</td></tr> <tr><td>32</td><td>31.0</td></tr> <tr><td>33 and greater</td><td>36.0</td></tr> </tbody> </table> <p><i>(Ord. 2001-22 § 2, 2001; Ord. 2000-52 § 1 (part), 2000)</i></p>	15	1.0	16	1.12	17	1.25	18	1.37	19	1.5	20	2.0	21	2.25	22	2.5	23	3.5	24	4.5	25	6.0	26	7.0	27	8.6	28	10.4	29	12.8	30	16.0	31	23.5	32	31.0	33 and greater	36.0
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U. S. Fish and Wildlife Service Notification Will Be Required for Changes to These Pima County and MSCP Avoidance and Minimization Measures

Common name of the Applicable Source Document	Entity to which Controlling Document Applies	Entity that 'Owns' Controlling Document	MSCP Rationale	Pima County Controlling Document	Modifications That Will Trigger USFWS Notification	Relevant Sections of Pima County Controlling Document (Section/Chapter citations may change over time subsequent to Document modifications.)
Native Plant Preservation Ordinance (NPPO)	Private Sector	Pima County DSD	Encourages preservation in-place and requires mitigation for unavoidable impacts. Directly contributes to the conservation of Covered Plant Species (Pima pineapple cactus, needle-spined pineapple cactus, and Huachuca water umbel) and conserves saguaro and ironwood that are habitat components for other Covered Species including cactus ferruginous pygmy-owl, Mexican long-tongued bat, lesser long-nosed bat, and rufous-winged sparrow.	<b>Pima County Code 18.72 - Native Plant Preservation Ordinance</b>	Remove Pima pineapple cactus, needle-spined pineapple cactus, Huachuca water umbel, saguaro, or ironwood from list of species regulated by 18.72	<b>Table 18.72.040-1:</b> Protected Native Plants <b>Table 18.72.040-1B:</b> Arizona Safeguarded Species (Ord. 1998-39 § 1 (part), 1998)
					Amends the applicability criteria	<b>18.72.050 - Applicability and Exceptions.</b> <b>A.</b> Applicability. Except as provided in paragraph B below, the requirements of this chapter apply to all development for which any of the following conditions apply:  1. On sites for which a grading plan is required or the total area covered by all grading permits is fourteen thousand (14,000) square feet or more;  2. On sites for which approval of a development plan or subdivision plat is required and for which a tentative plat or development plan is first submitted: a. After the effective date of this chapter; or b. Prior to the effective date of this chapter and for which a final plat or development plan is not approved within one (1) year of the effective date of this chapter.  3. On sites with a subdivision plat or development plan that was approved more than one (1) year prior to the effective date of this chapter and for which permitted on-site infrastructure construction for at least one (1) of the following major site improvement categories has not commenced prior to the effective date of this chapter and has not been completed within one (1) year of the effective date of this chapter: a. Mass grading and drainage improvements; b. Water or sewer mains or treatment facilities; or c. Major streets.  (Ord. 1998-39 § 1 (part), 1998)
					Amends mitigation ratios for Pima pineapple cactus, needle-spined pineapple cactus, Huachuca water umbel, saguaro, or ironwood	<b>Table 18.72.090-1:</b> Preservation Requirements & Preservation Credits
<b>Conservation Lands System (CLS)</b>	Private Sector; Public Sector	Pima County DSD	Used to determine the mitigation ratio necessary to off-set development impacts and informs the selection of Mitigation Lands.	<b>Pima County Comprehensive Plan - Regional Plan Policy 6B1 - Environmental Element</b>	Amend the Conservation Lands System Policies or Map	Conservation Lands System Policies and Map as Adopted in <b>Resolution No. 2006-39</b>
			Yields Natural Open Space on Private Property that will be used for Mitigation Land			

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Site Analysis	Private Sector	Pima County DSD	Provides on-site information for biological resources that informs configuration of high-value natural open space set-asides that may be used as Mitigation Lands. Natural open space that conserves on-site biological resources benefits Covered Species including cactus ferruginous pygmy-owl, Mexican long-tongued bat, lesser long-nosed bat, and rufous-winged sparrow.	<b>Pima County Rezoning Application and Site Analysis Requirements</b> - July 2, 1985 (as amended March 16, 2010)	Remove the requirement to survey for Pima pineapple cactus when the project site falls within Priority Conservation Area for these 2 species.	<b>Site Analysis - Part 1: Site Inventory. I-D.</b> 3. If all or a portion of the site falls within the Priority Conservation Area for the Pima pineapple cactus, as displayed on Sonoran Desert Conservation Plan (SDCP) MapGuide, conduct a survey for that species. Staff will allow this information to be carried over for future Native Plant Preservation Plan submittals for up to five years provided that the survey shall be conducted by an entity qualified to perform biological surveys, and performed according to the most recent protocol approved by the US Fish & Wildlife Service. The property owner may request an extension of the five-year time limit at the time of a request for a time extension of the approved rezoning. The property owner must provide written justification for the extension with the application for the time extension and the Planning Director or his/her designee will review the request on a case-by-case basis at the time of application for a time extension. Existing survey data can be used provided that the surveys were conducted no more than one year prior to the initial submittal of the rezoning application. Summarize survey results and map approximate locations of any Pima pineapple cactus found. (If cacti are found, as a courtesy, please provide this information to the Arizona Game & Fish Department's Heritage Data Management System.)
					Remove the requirement to survey for needle-spined pineapple cactus when the project site falls within Priority Conservation Area for these 2 species.	<b>Site Analysis - Part 1: Site Inventory. I-D.</b> 4. If all or a portion of the site falls within the Priority Conservation Area for the needle-spined pineapple cactus, as displayed on Sonoran Desert Conservation Plan (SDCP) MapGuide, conduct a survey for that species. Staff will allow this information to be carried over for future Native Plant Preservation Plan submittals for up to five years provided that the survey shall be conducted by an entity qualified to perform biological surveys. The property owner may request an extension of the five-year time limit at the time of a request for a time extension of the approved rezoning. The property owner must provide written justification for the extension with the application for the time extension and staff will review the request on a case-by-case basis at the time of application for a time extension. Existing survey data can be used provided that the surveys were conducted no more than one year prior to the initial submittal of the rezoning application. Summarize survey results and map approximate locations of any needle-spined pineapple cactus found. (If cacti are found, as a courtesy, please provide this information to the Arizona Game & Fish Department's Heritage Data Management System.)
					Remove the requirement to inventory or sample survey for saguaro and ironwood	<b>Site Analysis - Part 1: Site Inventory. I-D.</b> 7. Inventory and map all saguaros (grouped into two size classes: ≤6 feet and >6 feet tall) and ironwood trees that occur on site, if any. Sampling may be appropriate for certain properties, pending staff approval. Staff will allow an inventory (not a sampling) of individual ironwood trees and saguaros to be carried over for future Native Plant Preservation Plan submittals for up to five years. The property owner may request an extension of the five-year time limit at the time of a request for a time extension of the approved rezoning. The property owner must provide written justification for the extension with the application for the time extension and staff will review the request on a case-by-case basis at the time of application for a time extension.
					Amend the list of hydrological characteristics that must be mapped	<b>Site Analysis - Part 1: Site Inventory. I-C.</b> 4. Describe and map the characteristics of the on-site hydrology. Include all of the following, if applicable: a. 100-year floodplains with a discharge greater than or equal to 100 cfs, with justification for these delineations; b. Sheet-flooding areas with their average depths; c. Federally-mapped floodways and floodplains; d. Peak discharges both entering and leaving the site for 100-year events which exceed 100 cfs, with justification for the values provided. e. All mapped, regulated riparian habitat classifications adopted by the 2005 Floodplain and Erosion Hazard Management Ordinance amendment; and provide acreages. f. Existing drainage infrastructure (i.e. culverts, basins, etc). g. Any lakes, ponds, wetlands, springs, or other source(s) of perennial surface water. h. Erosion hazard setbacks, as required by the Floodplain and Erosion Hazard Management Ordinance; also include a description of the methodology used to determine them, and provide the data in an appendix.

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Community Participation and Mitigation Ordinance	Pima County DOT	Pima County DOT	Provides an opportunity for public to comment on roadway projects before the course of action has been decided. Ensures mitigation measures for environmentally sensitive areas are addresses for major roadway projects.	Pima County Code 10.56 - Community Participation and Mitigation	Amend the definition of 'Major Projects' or alter applicability of 10.56 to Major Projects	<b>10.56.020 - Applicability.</b> A. Major projects. This chapter shall apply to proposed major roadway projects, including environmentally sensitive roadway projects, constructed by Pima County. This chapter shall be a policy statement and guide for proposed major roadway improvement projects and environmentally sensitive roadway projects constructed jointly by Pima County and other agencies or jurisdictions. For purposes of this chapter, the term "major roadway" means a roadway depicted on the Pima County Major Streets and Scenic Routes Plan and which is classified and functions as an arterial roadway. The term "environmentally sensitive roadway" refers to a transportation project within or crossing environmentally sensitive lands as determined by certain Sonoran Desert Conservation Plan conservation land system categories and/or designation as a Scenic and/or Historic Route, and/or location within or crossing a High or Moderate Archaeological Sensitivity Zone or a Priority Cultural Resource, as described in the Pima County Roadway Design Manual. (Ord. 2006-31 § 1 (part), 2006; Ord. 1992-69 § 2, 1992)
					Remove the requirement that Environmental Effects be considered for each project.	<b>10.56.030 - General considerations.</b> A. Environmental Effects. Effects of the proposed project on the environment, including but not limited to noise, air quality and wildlife. (Ord. 2006-31 § 1 (part), 2006; Ord. 1992-69 § 3, 1992)
					Remove the requirement to identify potential adverse environmental impacts of proposed project and to provide recommendations for mitigation measures that would minimize adverse impacts.	<b>10.56.070 - Environmental assessment and mitigation report.</b> B. The environmental assessment and mitigation report shall identify adverse impacts of the proposed project and shall provide recommendations for mitigation measures which may be undertaken to minimize the adverse impacts. The environmental assessment and mitigation report shall contain the information specified in the Pima County Roadway Design Manual. (Ord. 2006-31 § 1 (part), 2006; Ord. 1992-69 § 4.4, 1992)
					Amend the requirement for mitigation to include measures that avoid the impact, minimize the impact, rectify the impact, reduce the impact, or compensate for the impact. L	<b>10.56.240 - Mitigation measures.</b> General and specific impact mitigation measures as approved by the Board of Supervisors as a result of the public hearing on the environmental assessment and mitigation report shall be utilized to mitigate adverse impacts of each major roadway project. Mitigation includes measures to (1) avoid the impact altogether by not taking a certain action or selected elements of a proposed action, (2) minimize impacts by limiting the degree or magnitude of the action and its implementation, (3) rectify the impact by repairing, rehabilitating or restoring the affected environment, (4) reduce or eliminate the impact over time by preservation and maintenance activities during the life of the action, or (5) compensate for the impact by replacing or providing substitute resources or environments. The following mitigation measures shall be implemented for each major roadway project covered by this chapter: (Ord. 2006-31 § 1 (part), 2006; Ord. 1992-69 § 7.1, 1992)
					Amend the list of environmental mitigation measures that are to be implemented for each major roadway project covered by 10.56.	<b>10.56.240 - Mitigation measures.</b> A. Environmental. 1. Preservation of Environmentally or Ecologically Sensitive Areas. Where possible, the location of major roadway projects shall avoid areas of significant environmental and ecological sensitivity. Where major roadway projects are adjacent to areas of unique environmental or ecological sensitivity, acquisition in fee simple, acquisition of development rights, or conservation easements may be proposed by the appropriate environmental assessment and mitigation report (see Item 5 below for additional requirements). 2. Landscaping. All medians and right-of-way areas on major roadway projects shall be landscaped with drought-resistant, low pollinating, preferably native plants. Plant species shall be listed as permissible pursuant to the landscaping requirements of the Pima County zoning code. The landscaping theme of each major roadway project shall be compatible with the native landscape through which the roadway passes. Installation of landscaping shall begin not later than six months after the formal completion date of the roadway project. 3. Dust Abatement. Curbs or paved roadway shoulders shall be provided adjacent to through traffic lanes to minimize air borne dust generated by vehicular traffic. 4. Scenic Route Designations. A visual impact analysis shall be included in any environmental assessment and mitigation report prepared for improvements on major roadway projects designated as scenic routes. 5. Environmentally Sensitive Roadways. Roadways are defined as Environmentally Sensitive Roadways (ESR) if they are located within or cross (a) unique ecologically or culturally sensitive lands as determined by the Sonoran Desert Conservation Plan, (b) or (c) if the roadways are identified as Historic or Scenic Routes. Projects that are defined as ESR shall be designed and constructed to minimize disturbance to the area resources. Additional environmental resource assessment and mitigation procedures are required as defined in the Pima County Roadway Design Manual.



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Environmentally Sensitive Roadway Design (ESRD)	Pima County DOT	Pima County DOT	The ESR Design Guidelines provide roadway design specifications that will minimize or mitigate impacts to environmentally sensitive lands.	Chapter 4 - Pima County Department of Transportation Roadway Design Manual 3rd Edition, 2010	Amend the definition of an Environmentally Sensitive Roadway	Section 4.2 - Environmentally Sensitive Lands and Roadway Designation
					Amend the process to identify biological resources and evaluate the impacts from proposed roadway projects	Section 4.4 - Biological Resource Process
					Modification of treatments/mitigation Options to be considered if impacts to Biological Resources within Environmentally Sensitive Roadway can not be avoided	Section 4.7 - Mitigation Tools; Biological Resource Conservation Treatments/Mitigation Options
					Modify the list of plant species that are to be inventoried within the project area to be disturbed	July 6, 2010 Update to Appendix 4D - Step 1. B.
					Modify the mitigation requirements for trees and saguaros	July 6, 2010 Update to Appendix 4D - Step 1. C. & D.
Design and Construction Guidelines for Public Gravity or Pressure Sewers	Pima County DOT	Pima County DOT	Minimizes impacts to washes due to placement of sewers	Design and Construction Guidelines for Public Gravity or Pressure Sewers - Standard Detail A-3	Modify part 1b of Design and Construction Guidelines for Public Gravity or Pressure Sewers (Standard Detail A-3) to eliminate or reduce the avoidance of washes or wash environments	Detail No. WWM A-3: 1.b. The location of sewers in the following areas/circumstances shall be avoided unless specific approval is obtained from Pima County Wastewater Management on case-by-case basis: 1) across, through and between lots; 2) within or along a wash or wash environment; 3) crossing a wash outside of a road right of way; 4) within a common area; 5) within easements areas undisturbed by development. <a href="http://www.pima.gov/wwm/eng/stdet/pdf/wwma3.pdf">http://www.pima.gov/wwm/eng/stdet/pdf/wwma3.pdf</a>
Those that apply to natural resource parks, not urban parks	Private Sector	Pima County NRPR				