



BOARD OF SUPERVISORS AGENDA ITEM REPORT

Requested Board Meeting Date: October 18, 2016

Title: Four Master Restrictive Covenants between Pima County ("County") and Pima County Flood Control District ("District") setting forth procedures for encumbering certain County and District-owned open space lands with Restrictive Covenants to ensure that all future discretionary uses of the affected lands are compatible with the purposes for which those lands were acquired. E-0019

Introduction/Background:

The Endangered Species Act Section 10(a)(1)(B) permit ("Section 10 Permit") for the Pima County Multi-Species Conservation Plan requires perpetual legal protection of open space lands that will be used to compensate for impacts caused by County and private sector activities under the Section 10 Permit. The four Master Restrictive Covenants are intended to provide that legal protection to the subject lands. Each of the four Master Restrictive Covenants will cover one of the following categories of lands: 1) County-owned MSCP lands; 2) County-owned Conservation Lands; 3) District-owned MSCP lands; and 4) District-owned Conservation Lands.

Discussion:

Attachments A and B list and map, respectively, those lands that County and District intend to protect as mitigation lands under the Section 10 permit. Collectively, these lands comprise part of the mitigation bank against which future development, both public and private, will draw to mitigate effects to endangered species. Both Restrictive Covenants encumbering County-owned lands will name District as grantee. Those encumbering District-owned lands will name County as Grantee. All four Master Restrictive Covenants will name Arizona Land and Water Trust ("ALWT") as third party beneficiary giving ALWT the right and power to enforce the terms of the Restrictive Covenants. The Covenants do not provide a property right upon ALWT. Individual Restrictive Covenants will subsequently be recorded encumbering particular lands falling under the auspices of one of the four referenced categories of the subject Master Restrictive Covenants.

Conclusion:

The foregoing process provides the legal mechanism by which County and District can effect the purpose for which the Section 10 Permit was applied for and obtained. Additional open space lands not eligible for Section 10 mitigation will also be encumbered to provide future land managers with an enduring reference for compatible uses. These lands were acquired via purchase or donation for conservation and the enjoyment of their natural and cultural resource values, but as time passes, the origins and intended purposes of those lands may be forgotten without some type of restriction that runs with the land.

Recommendation:

County and District staff recommend that their respective Boards approved the Four Master Restrictive Covenants in order to meet and comply with the legal requirements of the Section 10 permit, and provide a reference for future management decisions.

Fiscal Impact:

No fiscal impact due to approval of the Restrictive Covenants. Service Agreements between County and ALWT and District and ALWT to effectuate the role of ALWT as third-party beneficiary, are also being presented to the Board contemporaneously, but separately, and are contingent upon County and District approval of the subject Restrictive Covenants. If the Restrictive Covenants are approved, then County and District Boards will be asked to approve funding for the Service Agreements under separate agenda items. The Service Agreements will fund Arizona Land and Water Trust, in its capacity as the third-party beneficiary, to review biennial inspection records and enforce the terms, if necessary.

Board of Supervisor District:

- 1 2 3 4 5 All
-

Department: Real Property Services Telephone: _____

Department Director Signature/Date: 

Deputy County Administrator Signature/Date:  10/12/16

County Administrator Signature/Date:  10/12/16



MEMORANDUM

REAL PROPERTY SERVICES

201 N. Stone Avenue, Sixth Floor, Tucson, Arizona 85701-1215

(520) 740-6667 FAX (520) 740-6763

To: Robin Brigode
Clerk, Board of Supervisors

From: Michael D. Stofko
Special Projects

Subject:

Date: October 11, 2016

Four Master Covenants between Pima County and Pima County Flood Control District.

Robin—

By this Memo, I am requesting that a fully-executed original of each of the 4 Master Covenants be sent back to my attention (or just have someone give me a call when it is ready and someone from Real Property will pick it up). Each of these will need to be separately recorded with the Office of the Pima County Recorder once approved and executed by the Board.

Thanks very much, Robin.

Michael D. Stofko, Special Projects

**Master Restrictive Covenant for
Pima County Conservation Land**

This Master Restrictive Covenant (“**Conservation Land Master Covenant**”) is entered into by Pima County, a political subdivision of the State of Arizona (“**County**”), the Pima County Regional Flood Control District, a political taxing subdivision of the State of Arizona (“**District**”), and the Arizona Land and Water Trust, Inc., an Arizona nonprofit corporation (“**Beneficiary**”) (County, District, and Beneficiary being collectively the “**Parties**”).

1. Background and Purpose

1.1. The County owns the real property listed in Exhibit A (the “**Restricted Property**” or “**Restricted Properties**”), provided that the Restricted Properties shall not include the following: (i) the property currently subject to a Cooperative Management Agreement dated 8-17-2015 for the operation of facilities within Colossal Cave Mountain Park (the “Colossal Cave Property”); (ii) the property subject to a Lease dated 7-1-2003 for the property known as “Old Tucson” and operated as a Western-Frontier recreational and amusement area (the “Old Tucson Property”); and (iii) the property subject to a Cooperative Management Agreement dated 10-1-2003 for the operation of the Arizona-Sonora Desert Museum (the “Desert Museum Property”). A map identifying the Restricted Property is attached hereto as Exhibit B. Individual maps of each of the Restricted Properties are attached hereto as Exhibit C. The Restricted Property contains significant undisturbed natural open space that the County wishes to preserve and protect against future use or development in a manner inconsistent with the terms of this Conservation Land Master Covenant and the purposes for which the property was originally required, except for any pre-existing uses as shown on imagery by Pictometry or Pima Association of Governments dated 2015 or 2016, whichever is more recent (the “**Pre-existing Uses**”).

1.2. The Parties intend that this Conservation Land Master Covenant assure that the Restricted Properties will be forever preserved as natural open space for the Conservation Land of natural habitat for wildlife, flood hazard reduction and natural recharge, the protection of cultural resources, and the scenic, recreational and educational enjoyment of the general public (collectively the “Conservation Values”).

2. Recording of Site Specific Restrictive Covenants

2.1. The Parties intend that a site specific agreement (“**Site Specific Agreement**”) be recorded for each individual property listed on Exhibit A and depicted on Exhibits B and C. The Site Specific Agreement shall be in the form of Exhibit D attached hereto. The Parties intend that each Site Specific Agreement incorporate all of the terms and conditions contained in this Conservation Land Master Covenant. Each Site Specific Agreement will contain the legal description of the referenced property, and recordation of a Site Specific Agreement will subject the real property described therein to the terms

of this Conservation Land Master Covenant and cause such property to be a Restricted Property.

2.2. County hereby delegates to the County Administrator or his designee the authority to sign each of the Site Specific Agreements on behalf of County. District hereby delegates to the General Manager of the District or his designee the Authority to sign each of the Site Specific Agreements on behalf of District.

3. **Nature of Conservation Land Master Covenant**

3.1. This Conservation Land Master Covenant runs with each Restricted Property and binds the County and its successors and assigns.

3.2. This Conservation Land Master Covenant remains in perpetuity with respect to each Restricted Property, unless released by written consent of County, District, and Beneficiary. Any release will specify if it relates to a specific Restricted Property or to this Master Agreement and, therefore, all the Restricted Properties.

3.3. The uses of the Restricted Properties prohibited by this Conservation Land Master Covenant remain in effect notwithstanding any future annexation of all, or any portion, of a specific Restricted Property by a municipality.

3.4. This Conservation Land Master Covenant may not be amended or modified except upon written agreement of County, District, and Beneficiary.

3.5. This Conservation Land Master Covenant may be enforced by District or Beneficiary as provided in Section 9 below.

4. **The Restrictions.** Except as provided in Section 5 of this Conservation Land Master Covenant, the following uses of the Restricted Properties are prohibited (collectively the "**Restrictions**"):

4.1. Development of the Restricted Properties, including subdividing or lot splitting of a Restricted Property;

4.2. Construction or placement of new or additional buildings or structures on a Restricted Property, unless the construction supports the purposes for which the Restricted Property was originally intended including any adopted master plan, and does not degrade the Restricted Property's values as expressed in the purpose statement;

4.3. Alteration of the ground surface or natural vegetation, except as may be needed for ranch, range improvement, or trail-based recreational uses;

4.4. Impoundment, diversion or alteration of any natural watercourse unless for watershed enhancement to improve species habitat or to maintain a Restricted Property's natural and cultural values;

4.5. Development of, or the granting of, access, rights-of-way or easements for new roads or new utilities, including telecommunications facilities, except where County has no discretion to prohibit the activity;

4.6. Filling, excavation, dredging, mining, drilling, exploration, or extraction of minerals, hydrocarbons, soils, sand, gravel, rock or other materials on or below the surface of the Restricted Property, except where County has no discretion to prohibit the activity;

4.7. Storage, accumulation or disposal of hazardous materials, trash, garbage, solid waste or other unsightly material on the Restricted Property;

4.8. Introduction of non-native fish or amphibians or other non-native animals to or from catchments, tanks, springs or creeks. Other non-native species that might adversely affect the natural and cultural values are also prohibited except for the purposes of supporting existing ranching operations or recreational activities;

4.9. Storage and use of biocides and chemical fertilizers except for residential, public park and agricultural purposes. Aerial application of biocide or other chemicals is prohibited except where County and District concur that it is an appropriate and necessary management technique to promote the recovery and re-establishment of native species, to reduce threats to ecosystem structure and function, or to protect public health, safety and welfare;

4.10. Pumping of water from existing diversions for purposes other than on-site residential, wildlife, recreational, habitat enhancement and agricultural uses associated with livestock grazing on the Restricted Property. Increases in the pumped amounts of surface or subsurface water as allowed by the Arizona Department of Water Resources are not permitted without joint approval from the County and District;

4.11. Installation of underground storage tanks for petroleum or other polluting substances, except for already existing or permitted septic tanks;

4.12. Confinement of livestock, except for the purposes of publically-oriented agricultural operations, if any, where animals are permanently located in enclosures and the majority of their feed supplied from outside sources. This includes feeder cattle, dairy, pig, poultry and exotic animal farm operations;

4.13. Commercial enterprises inconsistent with the Objectives, excluding farming and ranching. The County and District may jointly approve commercial enterprises, other than farming or ranching, that provide for ecotourism or wildlife-related recreation provided that it is consistent with the Objectives and does not degrade the Restricted Property's natural and cultural values;

4.14. Residential use for mobile homes, travel trailers, tent trailers, self-propelled recreational vehicles and like structures or vehicles, except as permitted by County Park

Rules or as needed to support the protection or enhancement of the Restricted Property's natural and cultural values;

4.15. Paving of roads using asphalt or concrete except where required by County ordinance;

4.16. Any modification of the topography of the Restricted Property through the placement of soil, dredging spoils, or other material, except for those uses permitted under this document, or to reduce soil erosion or to protect public health, safety and welfare;

4.17. Off-road vehicular travel except to facilitate permitted activities on the Restricted Property; and

4.18. Removal of natural, mineral, or cultural resources that is not authorized by County.

5. Exceptions to Restrictions. Notwithstanding any other provision of this Conservation Land Master Covenant, the following uses of the Restricted Properties are not prohibited:

5.1. Any use of the Restricted Property which the County Board of Supervisors determines, based on clear and convincing evidence presented to said Board, is necessary to address the public health, safety or welfare;

5.2. Any Pre-existing Use of the Restricted Property;

5.3. Any use of the Restricted Property expressly permitted by a contract in effect between the County and a third party as of the date this Conservation Land Master Covenant is recorded; and

5.4. Any use of any Restricted Property that is contiguous to either the Colossal Cave Property, the Old Tucson Property, or the Desert Museum Property (each of which is an "Operator Property") provided that (i) the use is consistent with the current use and purpose of the contiguous Operator Property, as provided in the respective lease or cooperative management agreement, (ii) the County Board of Supervisors has approved the use; (iii) the use is consistent with any Master Plan for the Restricted Property approved by the County's Board of Supervisors; and (iv) District and County will use their best efforts to minimize any impact the use may have on the Conservation Values of the Restricted Property.

6. Obligations of County

6.1. County, through its employees, agents and contractors, retains all responsibilities and will bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Restricted Properties. County remains solely

responsible for obtaining any applicable governmental permits and approvals for any activity or use undertaken on the Restricted Properties. All such activity shall comply with all applicable Federal, state, and local laws, regulations, and requirements. The parties acknowledge that Beneficiary has no legal ownership interest in the Restricted Properties. To the extent allowable by law, County will indemnify, defend and hold harmless Beneficiary from any claims, demands, and causes of action in law or equity arising out of or related to the use of the Restricted Properties by County or any third parties. This indemnity will not extend to any claim, demand or cause of action relating to any negligence on the part of Beneficiary in the performance of its obligations under this Conservation Land Master Covenant.

6.2. County, through its employees, agents and contractors, at County's expense, will conduct an inspection of the Restricted Properties at least biennially to determine if there are any violations of the Restrictions. The inspection will be completed by either examination of aerial photographs or by physical inspections with onsite photographs taken at the time of the inspections. The County will prepare and deliver copies of biennial reports ("Reports") of its inspections, which reports will describe the then current condition of the Restricted Properties inspected and note any violations of the Restrictions. Copies of the Reports will be provided to District and Beneficiary upon completion, and in no event later than October 15 of each biennial reporting year. County will maintain the Reports as County records in accordance with Arizona state law.

6.3. County shall report any violations of the terms of this Conservation Land Master Covenant to District and Beneficiary within 2 working days of County discovery and confirmation of any such violation. For purposes of this Section 6.3, the determination of what shall constitute a reportable violation of this Conservation Land Master Covenant shall be at County's reasonable discretion. However, County's determination of what is reportable pursuant to this Section 6.3 will not limit District or Beneficiary's right to enforce this Conservation Land Master Covenant as provided for in Sections 7, 8, and 9 of this Conservation Land Master Covenant.

6.4. The parties acknowledge that Beneficiary has no legal ownership interest in the Restricted Properties, and it is the parties' intent that the Beneficiary not undertake any responsibility or liability with respect to the Restricted Properties, other than liability related to Beneficiary's negligence ("Beneficiary's Negligence"), as more specifically limited below. Therefore, County agrees:

6.4.1. County (as indemnifying party) shall indemnify, defend and hold harmless, Beneficiary and its officers, directors, employees, agents, affiliates, successors and permitted assigns (collectively, "**Indemnified Party**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, that are incurred by Indemnified Party (collectively, "**Losses**"), arising out of or related to any third-party claim alleging:

6.4.1.1. breach or non-fulfillment of any provision of this Agreement by County, District, or County or District's personnel;

6.4.1.2. any negligent or more culpable act or omission of County, District, or County or District's personnel (including any reckless or willful misconduct) in connection with the performance of County, District, or County or District's personnel under this Agreement;

6.4.1.3. any bodily injury, death of any person or damage to real or tangible personal property caused by the negligent or more culpable acts or omissions of County, District, or County or District's personnel (including any reckless or willful misconduct);

6.4.1.4. any failure by County, District, or County or District's personnel to comply with any applicable federal, state or local laws, regulations or codes, including any failure related to their performance under this Agreement; or

6.4.1.5. any claim by any third party asserting a failure of Beneficiary to enforce Beneficiary's rights, or perform Beneficiary's duties, under this Agreement. County's obligation to indemnify Beneficiary against third party claims related to any failure of Beneficiary perform Beneficiary's duties, under this Agreement will not preclude County from replacing Beneficiary as provided in Section 8.5. Replacement of Beneficiary will be County's sole remedy for Beneficiary's breach of its obligations under this Agreement.

6.4.2. Beneficiary must give notice to County (a "**Claim Notice**") of any claim filed which may give rise to a Losses. Indemnified Party's failure to provide a Claim Notice does not relieve County of any liability, but in no event shall County be liable for any Losses that result directly from a delay in providing a Claim Notice, which delay materially prejudices the defense of the claim. County's duty to defend applies immediately after receiving a Claim Notice.

6.4.3. County may select legal counsel to represent Beneficiary in any action for which County has an obligation to indemnify, defend and hold harmless Beneficiary, and County shall pay all costs, attorney fees, and Losses.

6.4.4. County shall give prompt written notice to Beneficiary of any proposed settlement of a claim that is indemnifiable under this Agreement. County may settle or compromise any claim without Beneficiary's consent, so long as Beneficiary is not responsible for paying any Losses.

7. Obligations of District

7.1. District shall review any and all reports on potential violations of the Restrictions provided by County to District as required by this Conservation Land Master Covenant, at District's expense.

7.2. If the event of any action that may constitute a violation of the terms of this Conservation Land Master Covenant, District shall determine, in its reasonable discretion, whether to take any action to enforce the terms of this Conservation Land Master Covenant.

7.3. In the event that County desires to take action with respect to the Restricted Properties that may constitute a violation of this Conservation Land Master Covenant, County will obtain District's prior approval of such action, and District shall respond to any such request from County in a timely manner.

7.4. District and County will advise Beneficiary in writing of any non-privileged communications between County and District with regard to the matters referred to in Sections 7.2 and 7.3. District and County will also provide Beneficiary with copies of any written communications, in whatever form, between District and County with regard to the matters referred to in Sections 7.2 and 7.3.

8. Obligations of Beneficiary

8.1. Beneficiary shall review any and all reports provided by County to Beneficiary as required by this Conservation Land Master Covenant, at County's expense. County shall compensate Beneficiary for performing its actions under this Section 8.1 on a time and materials basis, pursuant to the terms of professional services contract entered into between County and Beneficiary (the "Services Agreement"). In the event (i) County and Beneficiary cannot agree upon the Services Agreement; (ii) the Services Agreement is terminated, for any reason; (ii) County fails to timely pay Beneficiary under the Services Agreement; or (iii) County materially breaches any other term of the Services Agreement, then Beneficiary will have the right to terminate its obligations under this Conservation Land Master Covenant by providing County and District ten days prior written notice.

8.2. If the event of any action that may constitute a violation of the terms of this Conservation Land Master Covenant, Beneficiary shall determine, in its reasonable discretion, whether to take any action to enforce the terms of this Conservation Land Master Covenant. Beneficiary shall be reimbursed for any expenses incurred by Beneficiary to enforce this Master Agreement in accordance with the Services Agreement.

8.3. In the event that County desires to take action with respect to a Restricted Property that may constitute a violation of this Conservation Land Master Covenant, County will obtain Beneficiary's prior approval of such action, and Beneficiary shall respond to any such request from County in a timely manner. Beneficiary shall be compensated for any services performed in response to any such request in accordance with the Services Agreement.

8.4. In the event Beneficiary is no longer able to perform its obligations under this Conservation Land Master Covenant, or no longer desires to serve as Beneficiary, then Beneficiary shall provide not less than sixty (60) days' notice to County. Beneficiary may

designate a replacement Beneficiary subject to County's approval. In the event Beneficiary does not designate a replacement Beneficiary within 45 days' after delivery of the notice, then County will be solely responsible to designate a replacement Beneficiary. Beneficiary's resignation shall be effective sixty (60) days after the delivery of the notice by Beneficiary to County.

9. District and Beneficiary's Right To Enforce.

9.1. District and/or Beneficiary (for purposes of this Section 9, collectively or individually the "**Enforcing Party**") may enforce this Conservation Land Master Covenant against the County and its successors and assigns.

9.2. If the Enforcing Party has reason to believe that a violation of the Restrictions may have occurred, the Enforcing Party has the right to enter upon the Restricted Properties. The Enforcing Party must provide at least two (2) business days' notice to County prior to entering upon a Restricted Property.

9.3. The Enforcing Party shall hold County harmless from liability for any injuries to its employees or agents occurring on a Restricted Property in the course of its duties pursuant to this Conservation Land Master Covenant which are not directly or indirectly the result of acts, omissions, or the negligence of County, or County's employees, agents, successors and assigns.

9.4. If the Enforcing Party determines that there is a breach of the terms of the Restrictions, the Enforcing Party may, but is not obligated to, enforce the terms of this Conservation Land Master Covenant as provided in this Section 9. When evaluating any possible breach or enforcement action, the Enforcing Party will have the right to consult experts (e.g., biologists, engineers, etc.) to assist it in determining both whether or not there is a violation and appropriate remedial action, provided that the cost of any such experts is subject to the maximum dollar limitation in the Services Agreement. Beneficiary will be reimbursed by County for any such expenses in accordance with the Services Agreement.

9.5. Prior to any enforcement action by the Enforcing Party, the Enforcing Party must give written notice to County of such breach (the "**Notice of Breach**") and demand corrective action sufficient to cure the breach and, where the breach involves injury to a Restricted Property resulting from any activity inconsistent with the purpose of this Conservation Land Master Covenant, to restore the portion of the Restricted Property so injured.

9.6. If (i) under circumstances where an alleged breach can be cured within a 30 day period, County fails to cure an alleged breach within 30 days after receipt of the Notice of Breach, or (ii) under circumstances where an alleged breach cannot reasonably be cured within a 30 day period, County fails to begin curing such breach within the 30 day period, or County fails to continue diligently to cure such breach until finally cured, the Enforcing Party may in any such event bring an action at law or equity to enforce the

terms of this Conservation Land Master Covenant or to enjoin the breach by temporary or permanent injunction, and to recover any damages caused by the breach of the terms of this Conservation Land Master Covenant or injury to any protected uses, including damages for any loss, and to require the restoration of any Restricted Property to the condition that existed prior to the injury.

9.7. In the event any action, suit or proceeding at law or in equity is instituted with respect to this Conservation Land Master Covenant, the Enforcing Party shall be entitled to reasonable attorneys' fees, expenses and court costs incurred if it is the prevailing party.

9.8. Nothing contained in this Conservation Land Master Covenant can be construed to entitle the Enforcing Party to bring any action against the County for any injury to or change in the Restricted Property resulting from causes beyond the County's control including unforeseeable acts of trespassers, fire, flood, storm, drought, pests, natural earth movement, vegetative disease, or resulting from any action taken by the County under emergency conditions to prevent, abate or mitigate significant injury to any Restricted Property resulting from such causes.

10. General Provisions

10.1. The laws and regulations of the State of Arizona govern this Conservation Land Master Covenant. Any action relating to this Conservation Land Master Covenant must be brought in a court of the State of Arizona in Pima County.

10.2. Unless the context requires otherwise, the term "including" means "including but not limited to".

10.3. Each provision of this Conservation Land Master Covenant stands alone, and any provision of this Conservation Land Master Covenant found to be prohibited by law is ineffective only to the extent of such prohibition without invalidating the remainder of this Conservation Land Master Covenant.

10.4. This instrument sets forth the entire Agreement of the County, District and Beneficiary with respect to this Conservation Land Master Covenant.

10.5. Any notice given under this Conservation Land Master Covenant must be in writing and served by delivery or by certified mail upon the other Parties as follows:

If to County: Office of Sustainability and Conservation Land
Attn: Director
Pima County Public Works
201 N Stone Ave., 6th FL
Tucson, Arizona 85701

If to District: Regional Flood Control District
Attn: Director
Pima Works Building
201 N Stone Ave., 9th FL
Tucson, Arizona 85701

If to Beneficiary: The Arizona Land and Water Trust
Attn: Diana Freshwater, President
3127 N. Cherry Ave.
Tucson, Arizona 85719

The Parties have executed this Conservation Land Master Covenant by their duly authorized representatives.

COUNTY: PIMA COUNTY, a political subdivision of the State of Arizona:

Chair, Board of Supervisors

Date

ATTEST:

Robin Brigode, Clerk of Board of Supervisors

Date

DISTRICT: The Pima County Regional Flood Control District

Chair, Board of Directors

Date

ATTEST:

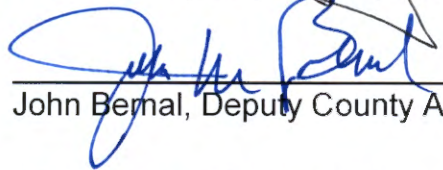
Robin Brigode, Clerk of Board of Directors

Date

APPROVED AS TO CONTENT:

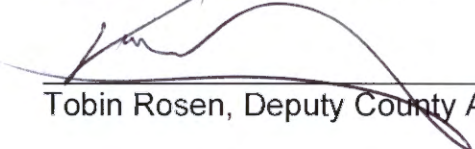


Neil J. Konigsberg, Manager, Real Property Services



John Bernal, Deputy County Administrator, Public Works

APPROVED AS TO FORM:



10/10/16

Tobin Rosen, Deputy County Attorney

BENEFICIARY: The Arizona Land and Water Trust, Inc.



Diana Freshwater, President

10/11/16

Date

EXHIBIT A

Conservation Land Restrictive Covenants: Pima County Owner & Grantor; FCD Receives Covenant

Property	APN	Acres	Map ID
AJO	401010120	265.6	2
CANOA RANCH	30469046A	86.6	3
CANOA RANCH	304690450	52.3	3
CANOA RANCH	304690440	60.5	3
CANOA RANCH	304690430	33.3	3
CANOA RANCH	304690420	49.8	3
CIENEGA CORRIDOR	306010170	639.1	4
CIENEGA CORRIDOR	30601015E	454.1	4
CIENEGA CORRIDOR	30601016A	435.7	4
CIENEGA CORRIDOR	30601015E	8.7	4
CIENEGA CORRIDOR	306010570	153.0	4
COLOSSAL CAVE MOUNTAIN PARK	30601028B	125.2	5
COLOSSAL CAVE MOUNTAIN PARK	306010290	308.8	5
COLOSSAL CAVE MOUNTAIN PARK	30601001C	307.1	5
COLOSSAL CAVE MOUNTAIN PARK	30601004B	158.6	5
COLOSSAL CAVE MOUNTAIN PARK	30601001A	151.5	5
COLOSSAL CAVE MOUNTAIN PARK	30601001B	157.7	5
COLOSSAL CAVE MOUNTAIN PARK	30601031B	46.4	5
COLOSSAL CAVE MOUNTAIN PARK	30601012A	140.4	5
COLOSSAL CAVE MOUNTAIN PARK	306020050	119.0	5
COLOSSAL CAVE MOUNTAIN PARK	306020020	117.9	5
COLOSSAL CAVE MOUNTAIN PARK	30601004A	154.7	5
DIAMOND BELL RANCH	301704020	3.4	6
HONEY BEE VILLAGE ARCHAEOLOGICAL PR	219544630	12.7	7
LORDS RANCH	208370060	200.0	8
LORDS RANCH	20837012A	40.2	8
LORDS RANCH	20837008B	39.8	8
LORDS RANCH	208370050	120.0	8
LORDS RANCH	208370130	39.3	8
LORDS RANCH	208370090	38.8	8
LORDS RANCH	208370100	38.5	8
LORDS RANCH	20837008A	6.3	8
LORDS RANCH	208370180	38.9	8
LORDS RANCH	208370170	19.2	8
LORDS RANCH	208370160	19.7	8
LORDS RANCH	208370140	19.6	8
LORDS RANCH	208370150	18.5	8
LOS MORTEROS	22603038E	11.4	9
LOS MORTEROS	22605014A	0.7	9
LOS MORTEROS	22605013A	0.5	9
LOS MORTEROS	22605011A	0.5	9
LOS MORTEROS	22605012A	0.6	9

Property	APN	Acres	Map ID
LOS MORTEROS	22605015A	0.7	9
LOS MORTEROS	22605010A	0.5	9
LOS MORTEROS	22605009A	0.5	9
LOS MORTEROS	22605058A	0.9	9
LOS MORTEROS	22605016A	0.7	9
LOS MORTEROS	22605059A	0.6	9
LOS MORTEROS	22605060A	0.4	9
LOS MORTEROS	22605017A	0.5	9
LOS MORTEROS	22605057A	0.4	9
LOS MORTEROS	226050740	0.4	9
LOS MORTEROS	226050750	0.4	9
LOS MORTEROS	226050760	0.4	9
LOS MORTEROS	226050770	0.4	9
LOS MORTEROS	226050780	0.4	9
LOS MORTEROS	226050400	0.4	9
LOS MORTEROS	226050390	0.4	9
LOS MORTEROS	226050380	0.4	9
LOS MORTEROS	22605152B	0.4	9
LOS MORTEROS	22605152A	0.4	9
LOS MORTEROS	22605152C	0.4	9
OLD HAYHOOK RANCH	30124002A	162.4	11
OLD HAYHOOK RANCH	30124004A	505.3	11
OLD HAYHOOK RANCH	30124003A	170.8	11
TORTOLITA MOUNTAIN PARK	219010020	644.3	12
TORTOLITA MOUNTAIN PARK	219030030	118.0	12
TORTOLITA MOUNTAIN PARK	219070030	20.0	12
TORTOLITA MOUNTAIN PARK	219070020	29.9	12
TORTOLITA MOUNTAIN PARK	219070010	30.1	12
TORTOLITA MOUNTAIN PARK	218010010	629.4	12
TORTOLITA MOUNTAIN PARK	219030070	526.6	12
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TORTOLITA MOUNTAIN PARK	21901008F	481.4	12
TORTOLITA MOUNTAIN PARK	21901008E	160.8	12
TREEHOUSE	223010030	6.3	13
TUCSON MOUNTAIN PARK	21101001H	10.8	14
TUCSON MOUNTAIN PARK	21101001D	308.8	14
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TUCSON MOUNTAIN PARK	21101001G	90.5	14
TUCSON MOUNTAIN PARK	21101001F	46.7	14
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TUCSON MOUNTAIN PARK	214140310	18.4	14
TUCSON MOUNTAIN PARK	212090070	15.1	14
TUCSON MOUNTAIN PARK	212080080	336.5	14
TUCSON MOUNTAIN PARK	21209003A	453.8	14
TUCSON MOUNTAIN PARK	21209011A	171.1	14
TUCSON MOUNTAIN PARK	21209009A	159.6	14

Property	APN	Acres	Map ID
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TUCSON MOUNTAIN PARK	212090060	16.1	14
TUCSON MOUNTAIN PARK	212090080	29.6	14
TUCSON MOUNTAIN PARK	21209009A	12.8	14
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TUCSON MOUNTAIN PARK	21209009B	163.8	14
TUCSON MOUNTAIN PARK	21209003B	158.1	14
TUCSON MOUNTAIN PARK	21209009B	21.6	14
TUCSON MOUNTAIN PARK	21209011B	70.4	14
TUCSON MOUNTAIN PARK	212090100	57.4	14
TUCSON MOUNTAIN PARK	212090100	28.7	14
TUCSON MOUNTAIN PARK	212090070	0.1	14
TUCSON MOUNTAIN PARK	212090070	0.8	14
TUCSON MOUNTAIN PARK	21209016F	1,086.6	14
TUCSON MOUNTAIN PARK	21209013B	36.2	14
TUCSON MOUNTAIN PARK	21209016F	43.8	14
TUCSON MOUNTAIN PARK	21209016D	79.4	14
TUCSON MOUNTAIN PARK	212090150	64.9	14
TUCSON MOUNTAIN PARK	212090140	10.0	14
TUCSON MOUNTAIN PARK	21209016D	67.8	14
TUCSON MOUNTAIN PARK	212090120	6.0	14
TUCSON MOUNTAIN PARK	212090120	7.2	14
TUCSON MOUNTAIN PARK	21209013A	35.5	14
TUCSON MOUNTAIN PARK	21209013B	1.9	14
TUCSON MOUNTAIN PARK	21209016D	4.2	14
TUCSON MOUNTAIN PARK	212090150	3.6	14
TUCSON MOUNTAIN PARK	21209016F	73.3	14
TUCSON MOUNTAIN PARK	21209016E	29.3	14
TUCSON MOUNTAIN PARK	21209016E	8.9	14
TUCSON MOUNTAIN PARK	21209016F	15.0	14
TUCSON MOUNTAIN PARK	21209016F	1.5	14
TUCSON MOUNTAIN PARK	21209018A	168.3	14
TUCSON MOUNTAIN PARK	21209018A	991.5	14
TUCSON MOUNTAIN PARK	212090230	640.8	14
TUCSON MOUNTAIN PARK	212090210	639.5	14
TUCSON MOUNTAIN PARK	212090220	13.6	14
TUCSON MOUNTAIN PARK	212090200	40.2	14
TUCSON MOUNTAIN PARK	21209018B	443.6	14
TUCSON MOUNTAIN PARK	212090240	36.0	14
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TUCSON MOUNTAIN PARK	212090240	49.0	14
TUCSON MOUNTAIN PARK	212090240	0.1	14
TUCSON MOUNTAIN PARK	212090240	392.0	14
TUCSON MOUNTAIN PARK	212090170	597.7	14
TUCSON MOUNTAIN PARK	212090190	321.9	14
TUCSON MOUNTAIN PARK	212090270	120.0	14

Property	APN	Acres	Map ID
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TUCSON MOUNTAIN PARK	212090250	91.0	14
TUCSON MOUNTAIN PARK	212090280	5.7	14
TUCSON MOUNTAIN PARK	21453007B	13.2	14
TUCSON MOUNTAIN PARK	21206073P	19.1	14
TUCSON MOUNTAIN PARK	21206073D	5.8	14
TUCSON MOUNTAIN PARK	21206073Q	18.2	14
TUCSON MOUNTAIN PARK	21206074B	1.2	14
TUCSON MOUNTAIN PARK	21206073R	20.3	14
TUCSON MOUNTAIN PARK	212060980	39.2	14
TUCSON MOUNTAIN PARK	21201001C	213.7	14
TUCSON MOUNTAIN PARK	21204003F	39.4	14
TUCSON MOUNTAIN PARK	21209016B	137.5	14
TUCSON MOUNTAIN PARK	21209016B	21.2	14
TUCSON MOUNTAIN PARK	212090170	36.8	14
TUCSON MOUNTAIN PARK	212100010	84.1	14
TUCSON MOUNTAIN PARK	212110210	3.9	14
TUCSON MOUNTAIN PARK	212100110	201.9	14
TUCSON MOUNTAIN PARK	212100070	4.0	14
TUCSON MOUNTAIN PARK	212110200	1.9	14
TUCSON MOUNTAIN PARK	212110240	0.8	14
TUCSON MOUNTAIN PARK	21211025A	2.4	14
TUCSON MOUNTAIN PARK	11628001D	161.0	14
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TUCSON MOUNTAIN PARK	116280030	38.7	14
TUCSON MOUNTAIN PARK	116280040	76.7	14
TUCSON MOUNTAIN PARK	11628001F	99.5	14
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TUCSON MOUNTAIN PARK	21215013A	290.0	14
TUCSON MOUNTAIN PARK	212140040	323.9	14
TUCSON MOUNTAIN PARK	212140030	78.1	14
TUCSON MOUNTAIN PARK	212160200	81.4	14
TUCSON MOUNTAIN PARK	21216032A	68.3	14
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TUCSON MOUNTAIN PARK	21219001A	200.7	14
TUCSON MOUNTAIN PARK	21219001C	5.0	14
TUCSON MOUNTAIN PARK	21219001D	15.3	14
TUCSON MOUNTAIN PARK	212190020	20.1	14
TUCSON MOUNTAIN PARK	212190030	78.8	14
TUCSON MOUNTAIN PARK	21219007A	119.9	14
TUCSON MOUNTAIN PARK	212190060	80.7	14

Property	APN	Acres	Map ID
TUCSON MOUNTAIN PARK	21219007B	35.6	14
TUCSON MOUNTAIN PARK	21219009B	40.7	14
TUCSON MOUNTAIN PARK	21219009A	10.4	14
TUCSON MOUNTAIN PARK	212190050	5.2	14
TUCSON MOUNTAIN PARK	118010090	273.2	14
TUCSON MOUNTAIN PARK	212200010	76.7	14
TUCSON MOUNTAIN PARK	212200020	50.8	14
TUCSON MOUNTAIN PARK	212200040	77.5	14
TUCSON MOUNTAIN PARK	212190080	1.4	14
TUCSON MOUNTAIN PARK	21219009A	6.7	14
TUCSON MOUNTAIN PARK	212190050	2.3	14
TUCSON MOUNTAIN PARK	21101001J	35.9	14
TUCSON MOUNTAIN PARK	21452040D	19.9	14
TUCSON MOUNTAIN PARK	21453007A	26.1	14
TUCSON MOUNTAIN PARK	21453017A	14.1	14
TUCSON MOUNTAIN PARK	21206073J	37.6	14
TUCSON MOUNTAIN PARK	21206073N	19.5	14
TUCSON MOUNTAIN PARK	21206074D	8.8	14
TUCSON MOUNTAIN PARK	212140020	196.3	14
TUCSON MOUNTAIN PARK	212140010	42.1	14
TUCSON MOUNTAIN PARK	119310240	317.8	14
TUCSON MOUNTAIN PARK	119281550	243.2	14
TUCSON MOUNTAIN PARK	211210010	596.2	14
TUCSON MOUNTAIN PARK	212100100	3.6	14
TUCSON MOUNTAIN PARK	212100060	3.7	14
TUCSON MOUNTAIN PARK	21211026A	76.8	14
TUCSON MOUNTAIN PARK	212100050	3.9	14
TUCSON MOUNTAIN PARK	212100090	3.7	14
TUCSON MOUNTAIN PARK	21206073C	3.7	14
TUCSON MOUNTAIN PARK	212090040	16.3	14
TUCSON MOUNTAIN PARK	214520410	39.5	14
TUCSON MOUNTAIN PARK	21452040B	40.0	14
TUCSON MOUNTAIN PARK	21215013A	29.5	14
TUCSON MOUNTAIN PARK	211220110	648.5	14
TUCSON MOUNTAIN PARK	21210004B	3.4	14
TUCSON MOUNTAIN PARK	21210004C	3.4	14
TUCSON MOUNTAIN PARK	21208007D	335.3	14
TUCSON MOUNTAIN PARK	21204003K	254.4	14
TUCSON MOUNTAIN PARK	214140260	14.5	14
TUCSON MOUNTAIN PARK	21209013A	518.0	14
TUCSON MOUNTAIN PARK	212110510	5.0	14
TUCSON MOUNTAIN PARK	211020010	312.7	14
TUCSON MOUNTAIN PARK	211210020	48.4	14
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TUCSON MOUNTAIN PARK	212100080	3.9	14
TUCSON MOUNTAIN PARK	21210004D	3.6	14

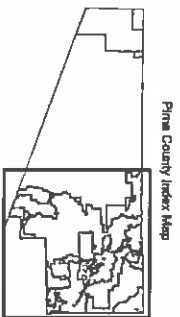
Property	APN	Acres	Map ID
TUCSON MOUNTAIN PARK	11608010F	19.6	14
TUCSON MOUNTAIN PARK	11608010E	80.2	14
TUCSON MOUNTAIN PARK	116080120	40.0	14
TUCSON MOUNTAIN PARK	21209016C	321.4	14
TUCSON MOUNTAIN PARK	118010100	160.0	14
TUCSON MOUNTAIN PARK	11932022B	478.0	14
TUCSON MOUNTAIN PARK	211030020	18.7	14
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EXHIBIT B
Conservation Land
Restrictive Covenants:
Pima County Owner & Grantor,
FCD Receives Covenant

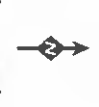

Subject Parcels
(26,609 acres)

See Exhibit A for key to property IDs.

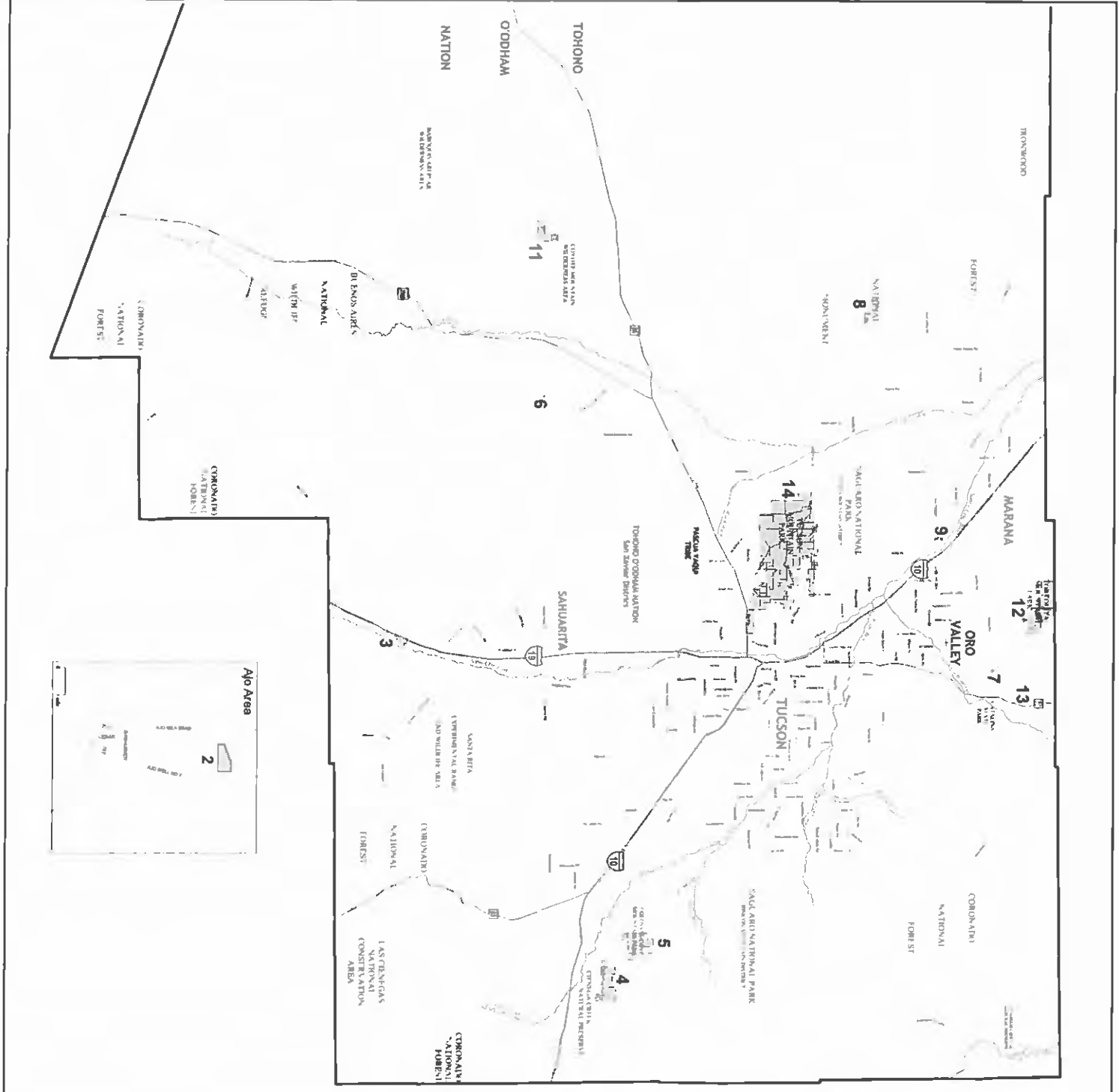
See Exhibit C for parcel detail maps.

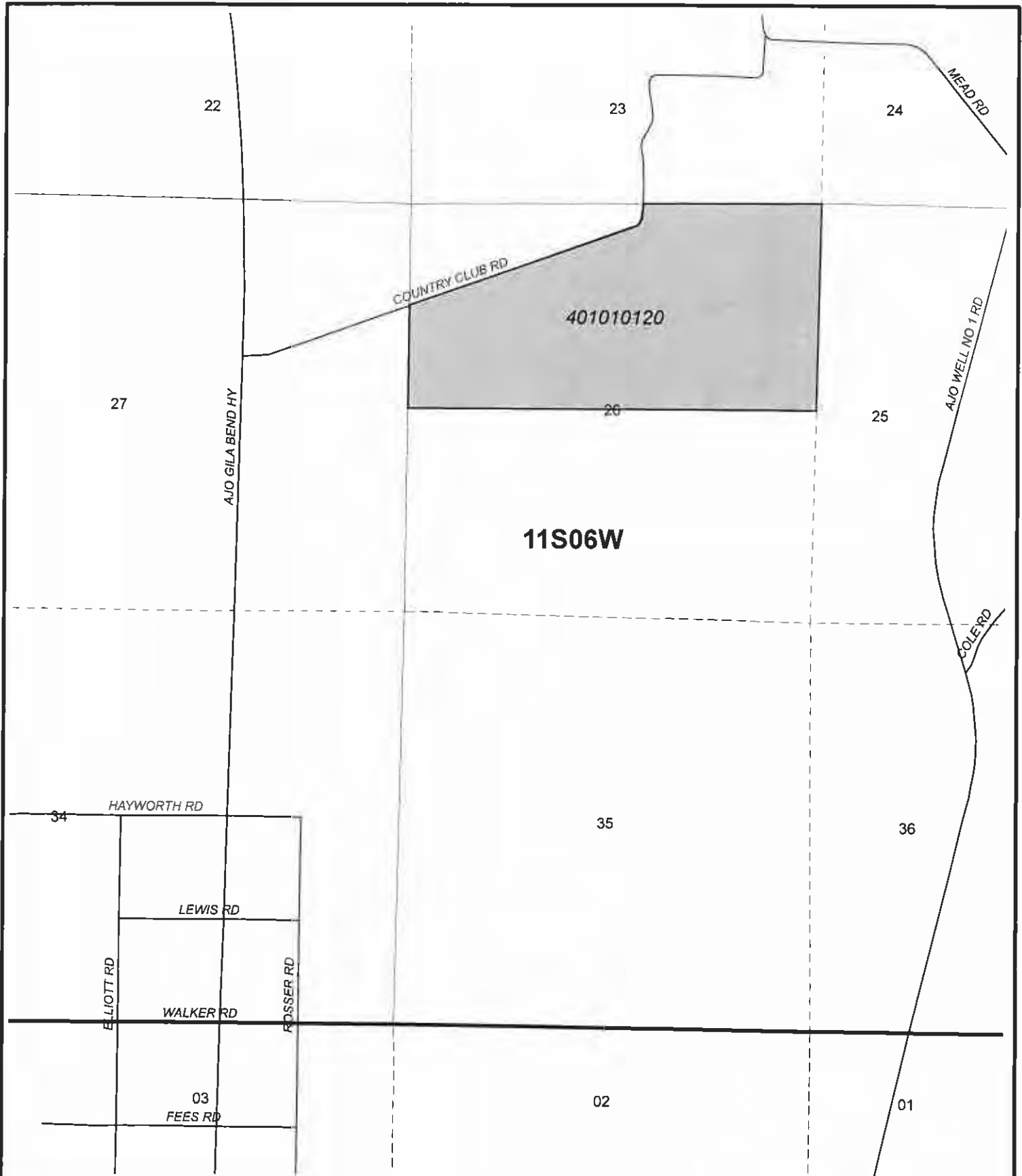


This document is prepared on the basis of the "as shown" information provided and does not constitute a warranty of accuracy. The County is not responsible for errors or omissions in this document. The County is not responsible for any consequences arising from the use of this information. The County is not responsible for any damages, including consequential damages, arising from the use of this information. The County is not responsible for any claims, including consequential claims, arising from the use of this information. The County is not responsible for any claims, including consequential claims, arising from the use of this information.



10/10/2016



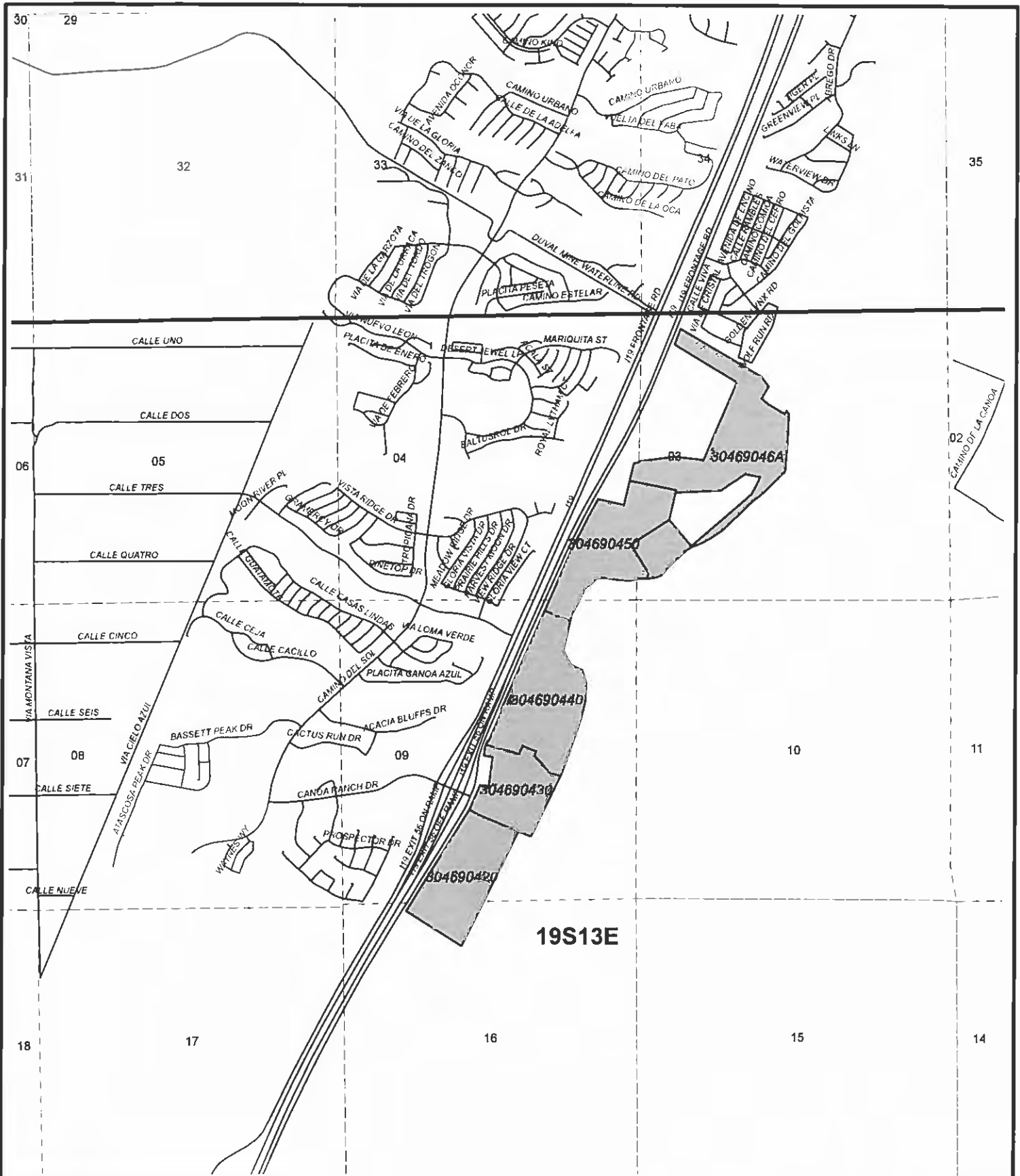


Conservation Land
Restrictive Covenants:
Pima County Owner & Grantor;
FCD Receives Covenant

EXHIBIT C



Ajo (2)



Conservation Land
Restrictive Covenants:
Pima County Owner & Grantor;
FCD Receives Covenant

EXHIBIT C



0 1,000 ft

 Canoa Ranch (3)

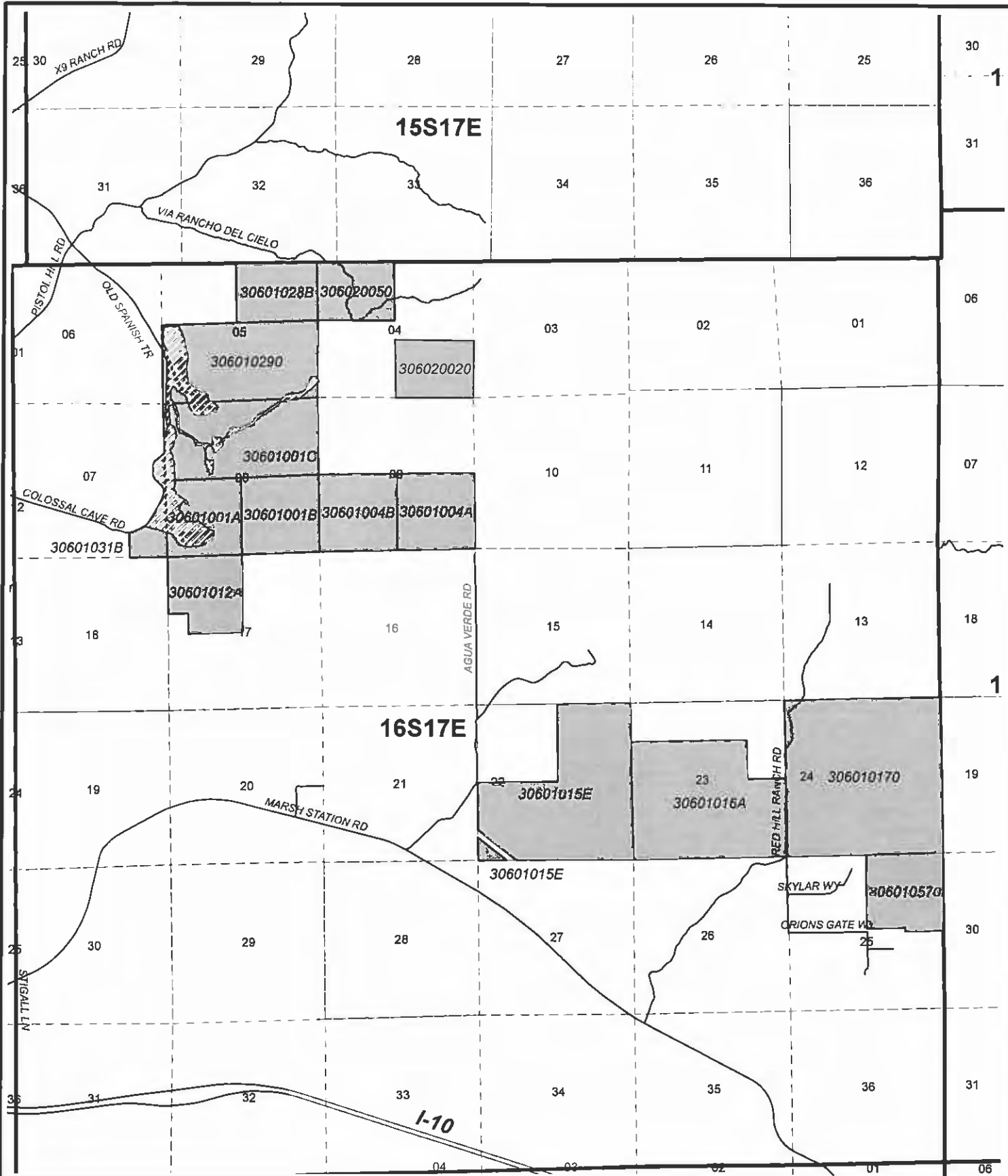
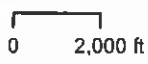


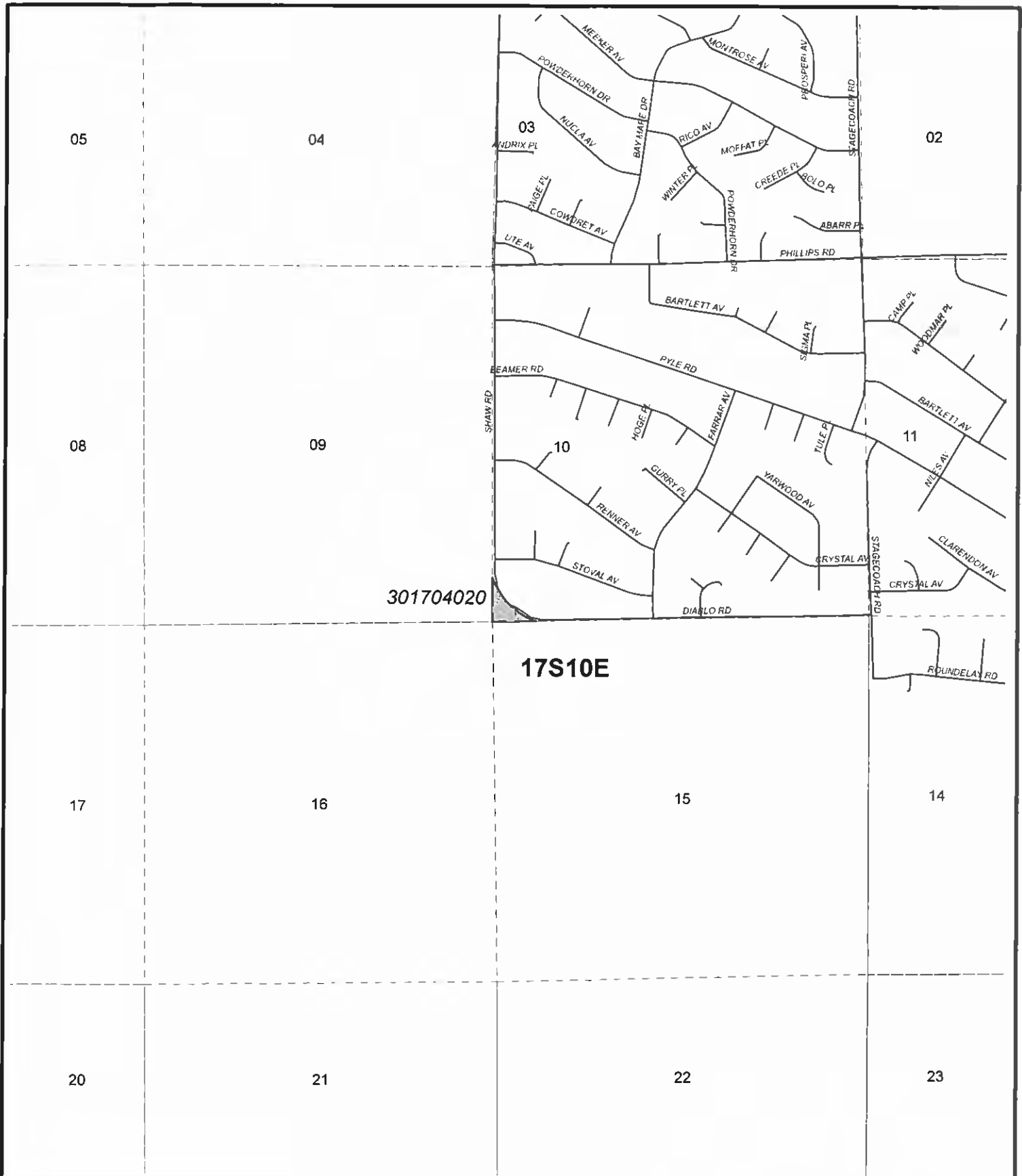


EXHIBIT C



**Conservation Land
Restrictive Covenants:
Pima County Owner & Grantor;
FCD Receives Covenant**

 Cienega Corridor (4)
 Colossal Cave Mountain Park (5)
No leased property is encumbered.
Leased property is shown as white hatch.

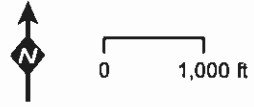


301704020

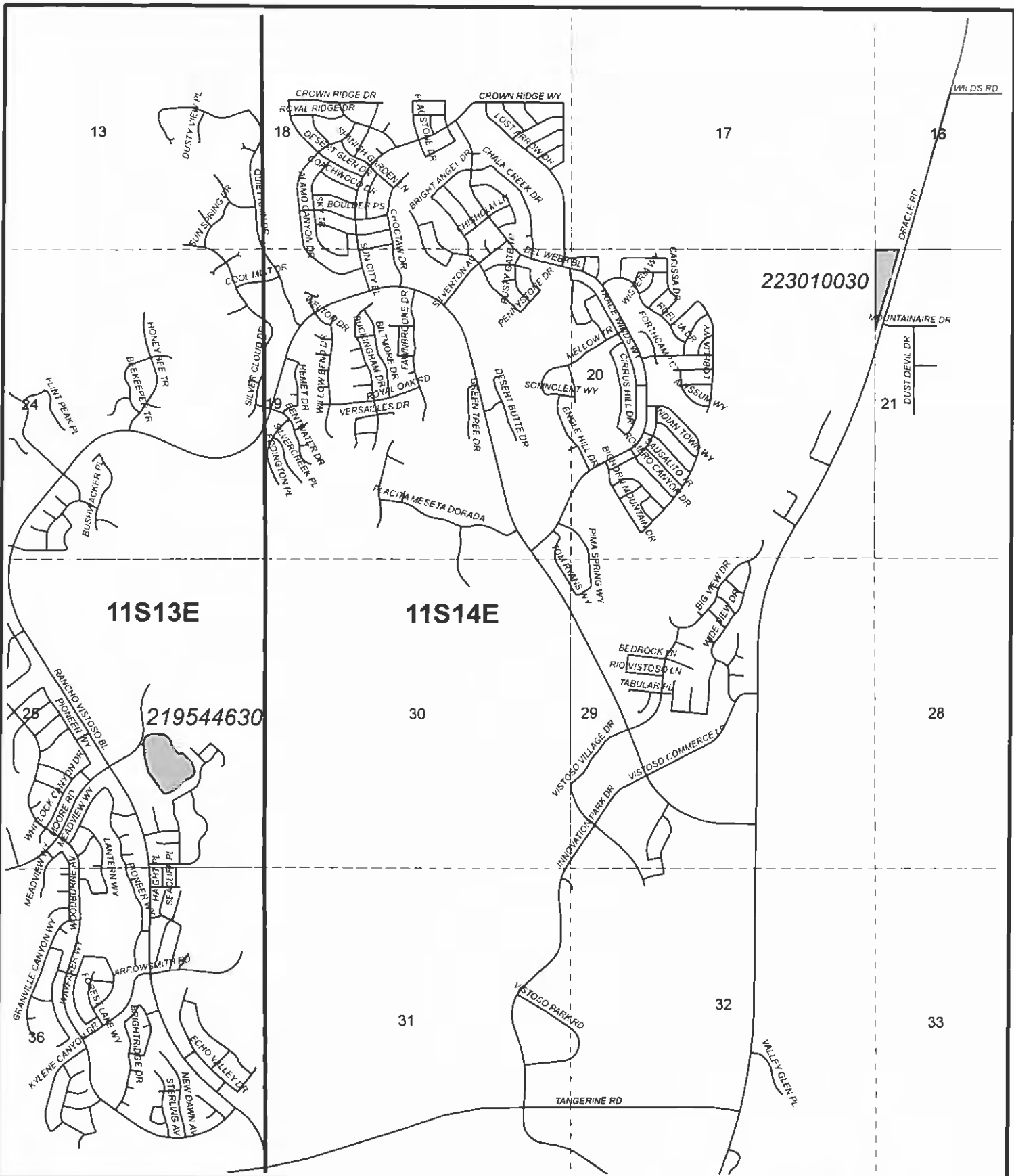
17S10E

**Conservation Land
Restrictive Covenants:
Pima County Owner & Grantor;
FCD Receives Covenant**

EXHIBIT C



 **Daimond Bell Ranch (6)**



Conservation Land
Restrictive Covenants:
Pima County Owner & Grantor;
FCD Receives Covenant

EXHIBIT C



Honey Bee Village (7)
Treehouse (13)

32

33

34

35

05

04

03

02

AGUA DULCE RANCH RD

208370060

208370050

20837008E

20837012A

08

09

10

11

208370090

208370130

208370100

208370140

208370150

208370160

208370170

208370180

20837008A

13S09E

17

16

15

14

20

21

22

23

Conservation Land
Restrictive Covenants:
Pima County Owner & Grantor;
FCD Receives Covenant

EXHIBIT C



0 1,000 ft



Lords Ranch (8)

12S12E

17

16

20

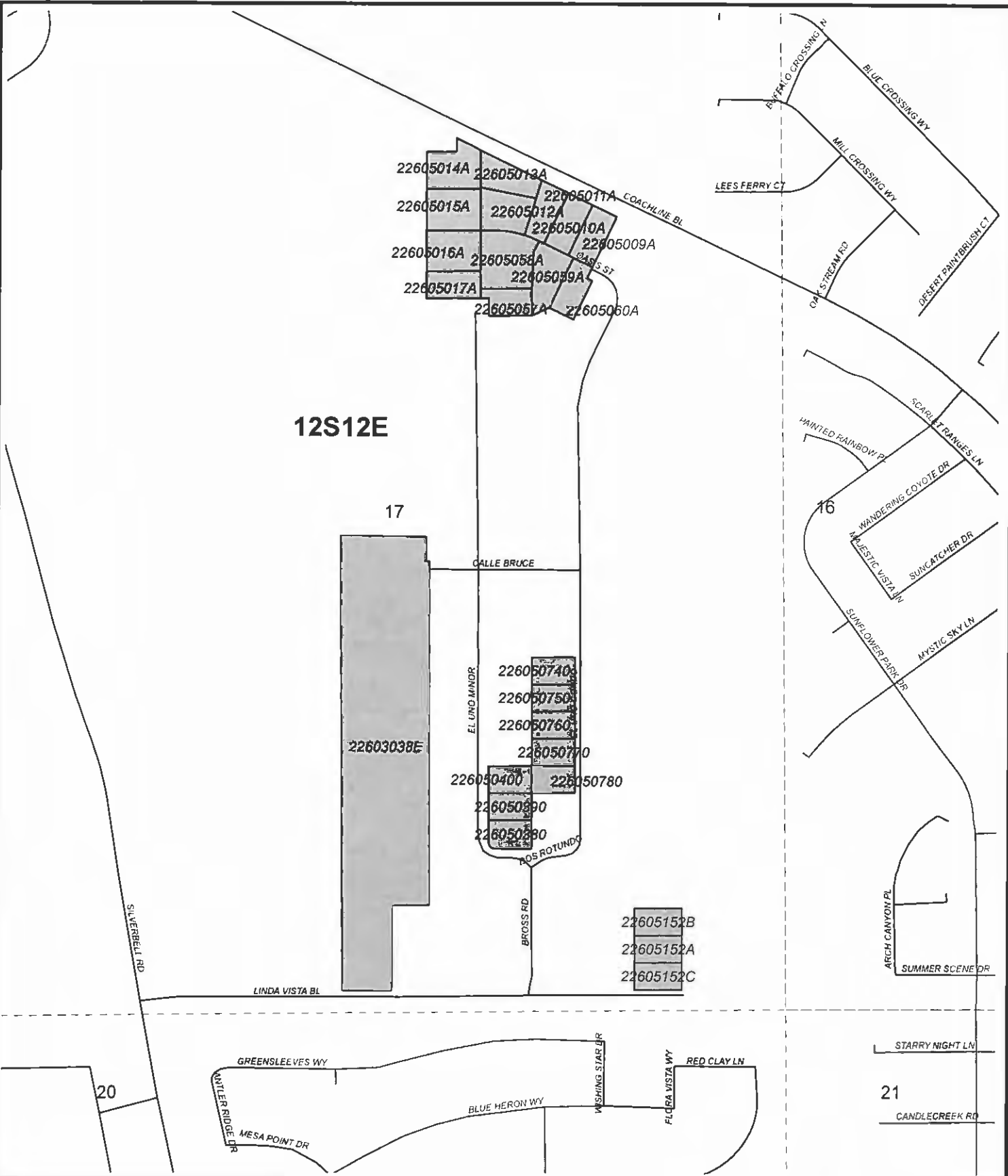
21

22605014A 22605013A
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 22605057A 22605060A

22603038E

226050740
 226050750
 226050760
 226050770
 226050400 226050780
 226050890
 226050880

22605152B
 22605152A
 22605152C



Conservation Land
 Restrictive Covenants:
 Pima County Owner & Grantor;
 FCD Receives Covenant

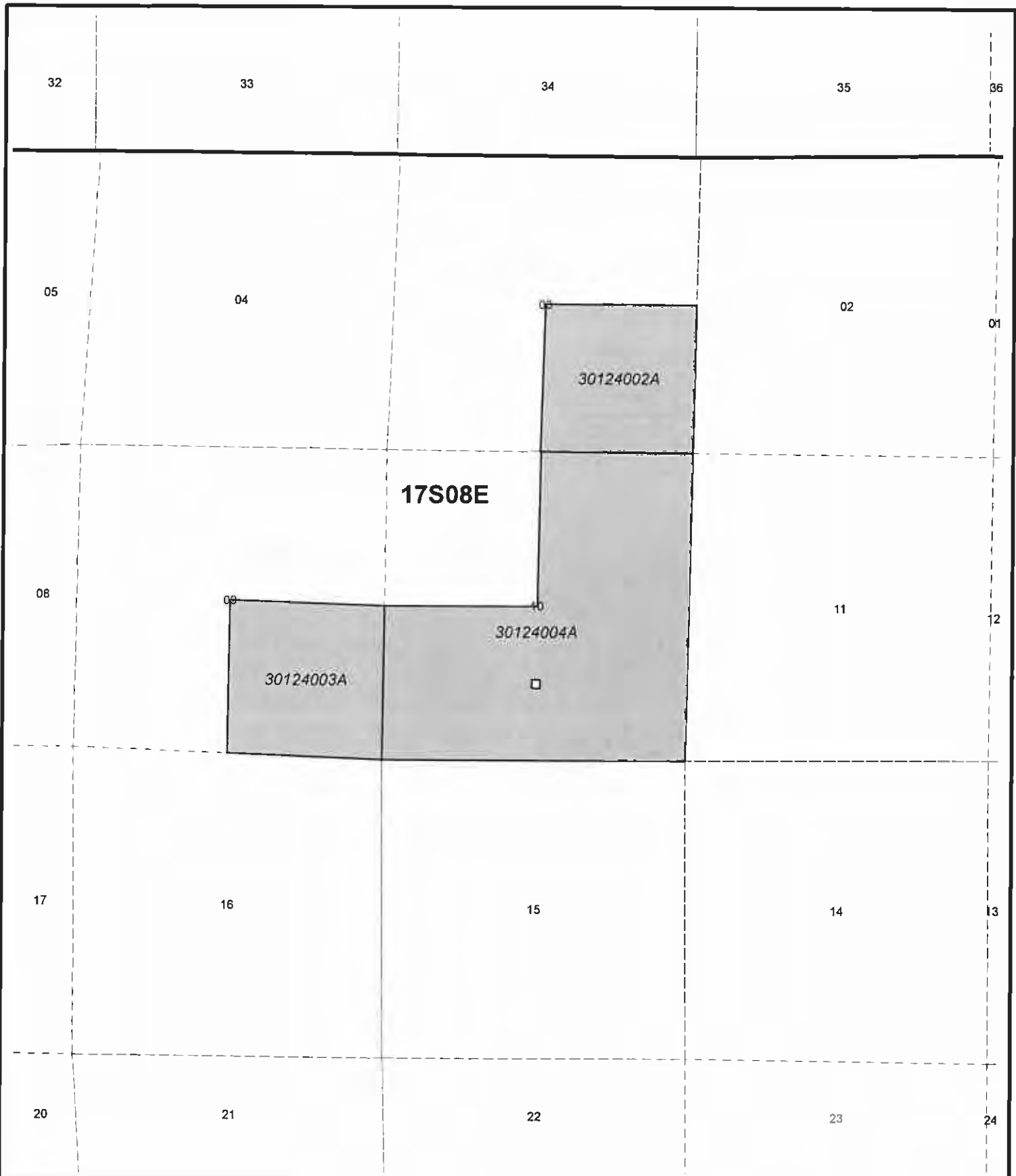
EXHIBIT C



0 250 ft



Los Morteros (9)



**Conservation Land
Restrictive Covenants:
Pima County Owner & Grantor;
FCD Receives Covenant**

EXHIBIT C

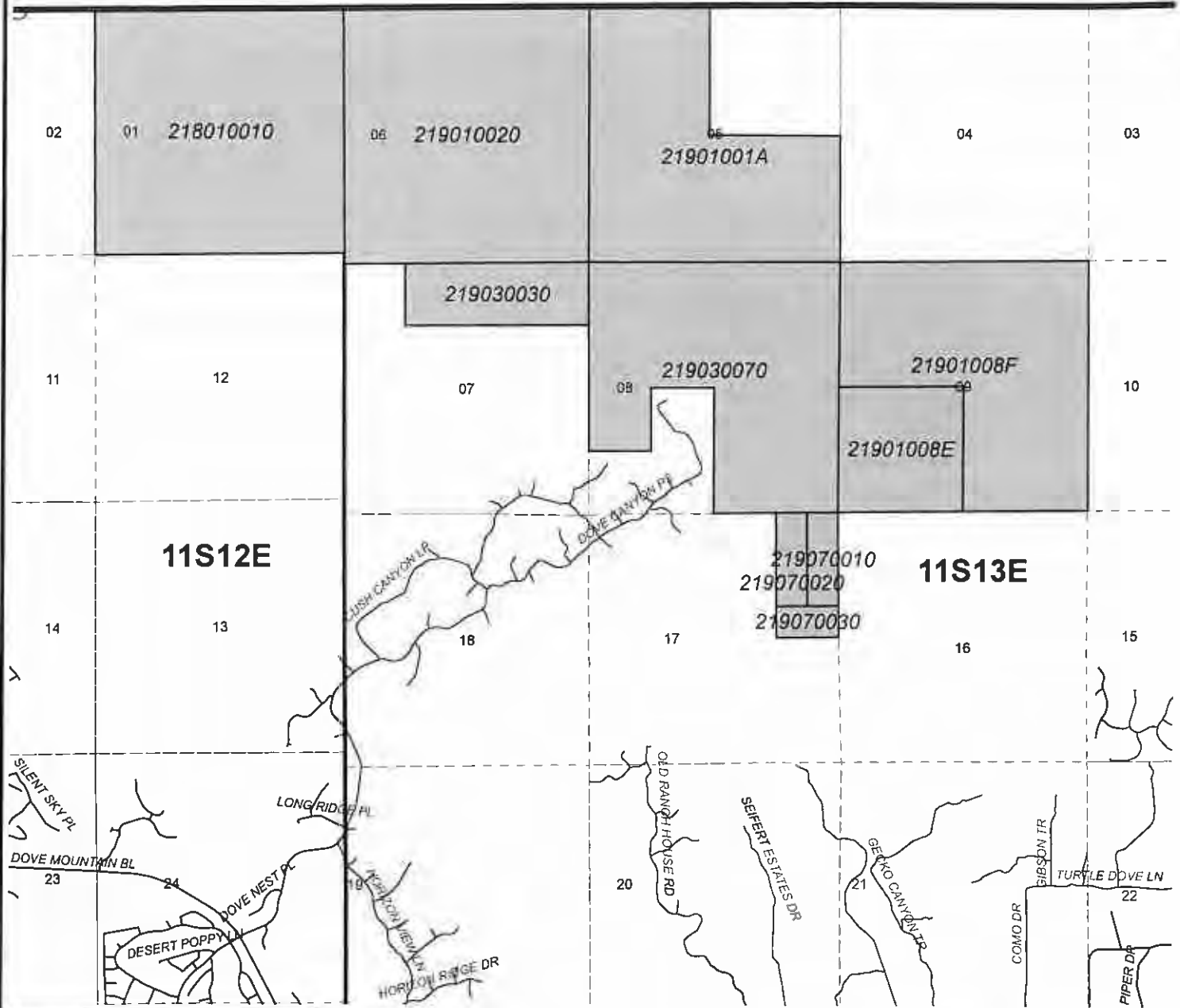


0 1,000 ft



Old Hayhook Ranch (11)

Pinal Co.

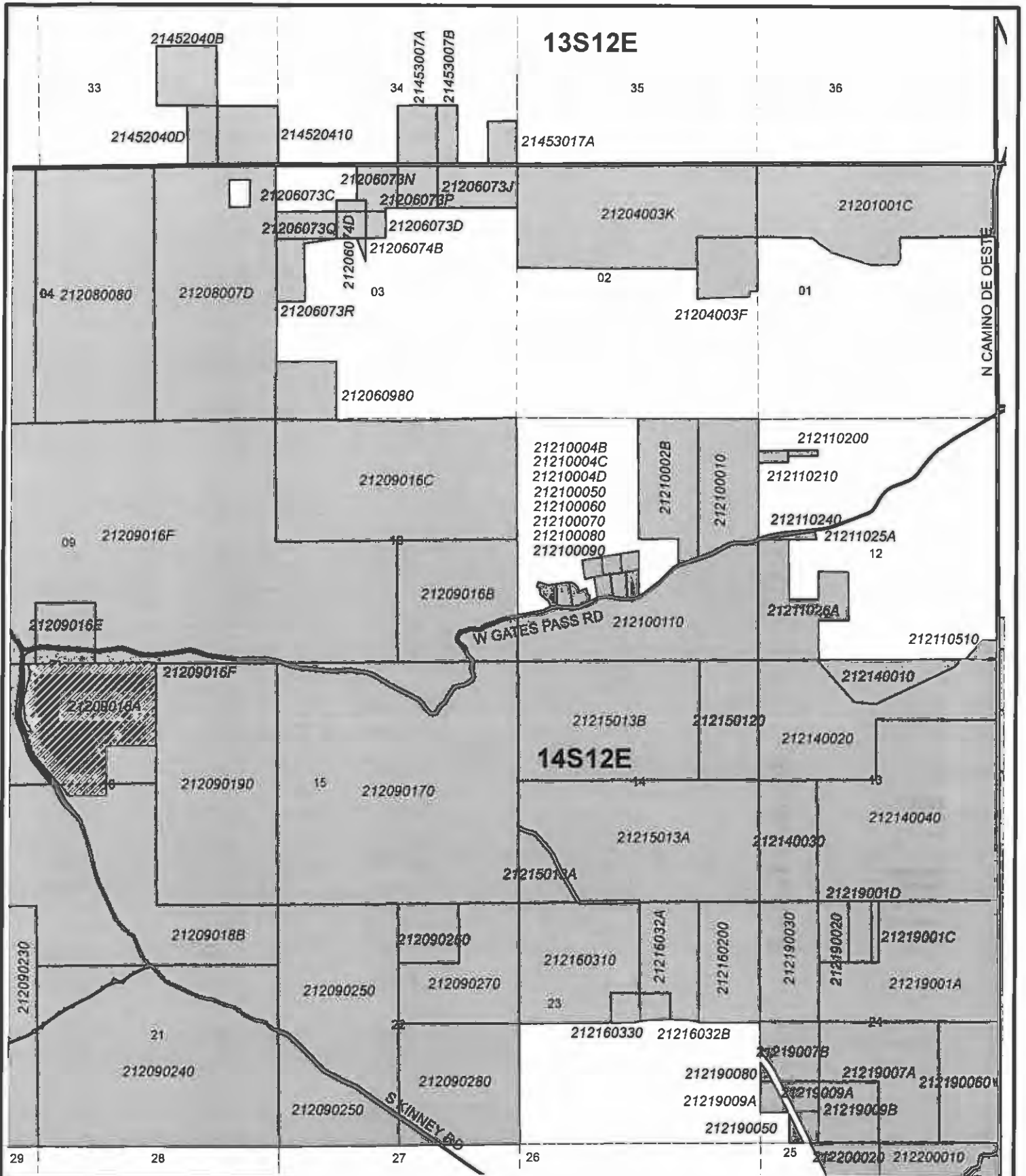


Conservation Land
Restrictive Covenants:
Pima County Owner & Grantor;
FCD Receives Covenant

EXHIBIT C




Tortolita Mountain Park (12)



Conservation Land
Restrictive Covenants:
Pima County Owner & Grantor;
FCD Receives Covenant

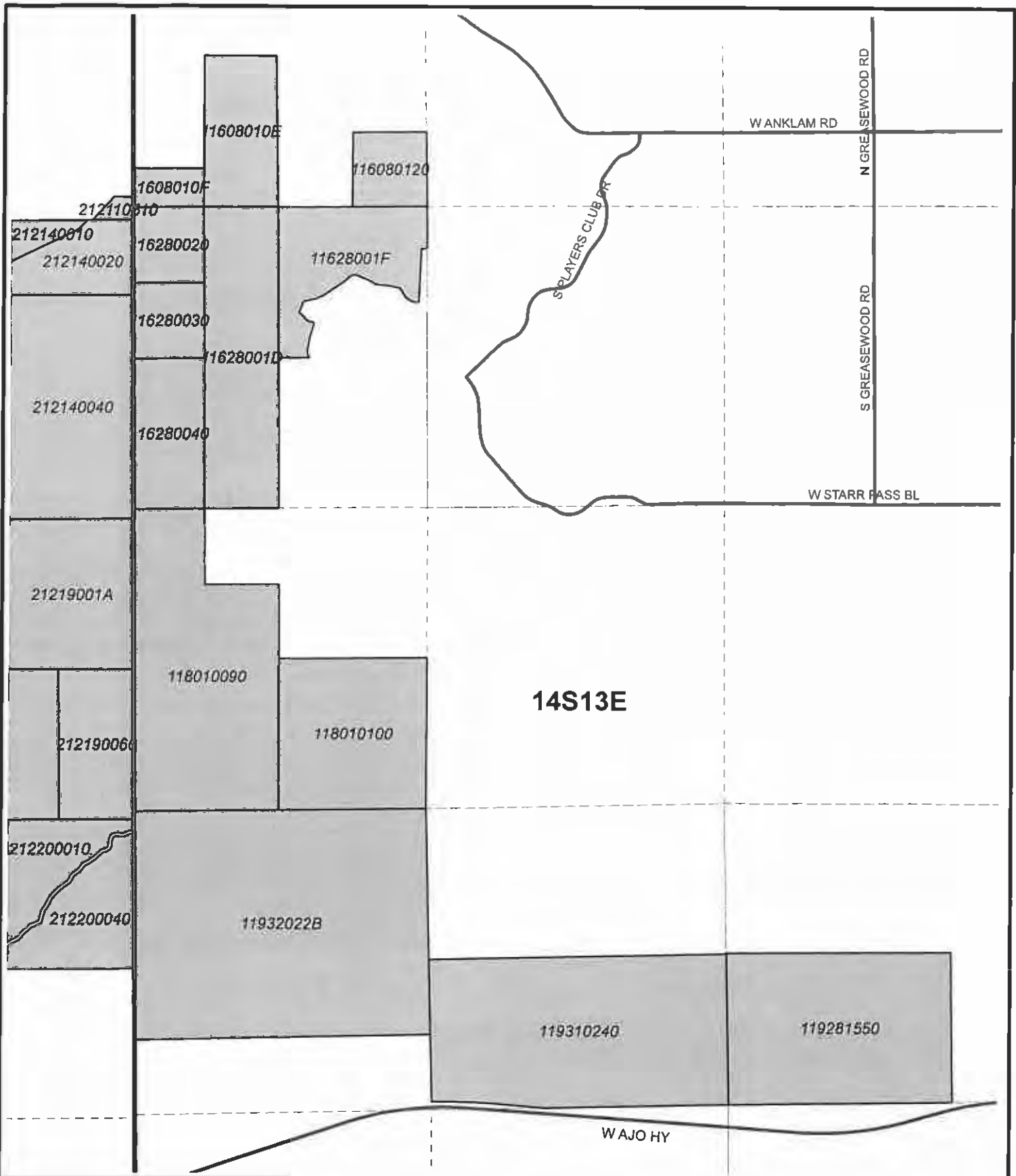
EXHIBIT C



0 1,500 ft

 Tucson Mountain Park (14)

No leased property is encumbered.
Leased property is shown as white hatch.



**Conservation Land
 Restrictive Covenants:
 Pima County Owner & Grantor;
 FCD Receives Covenant**

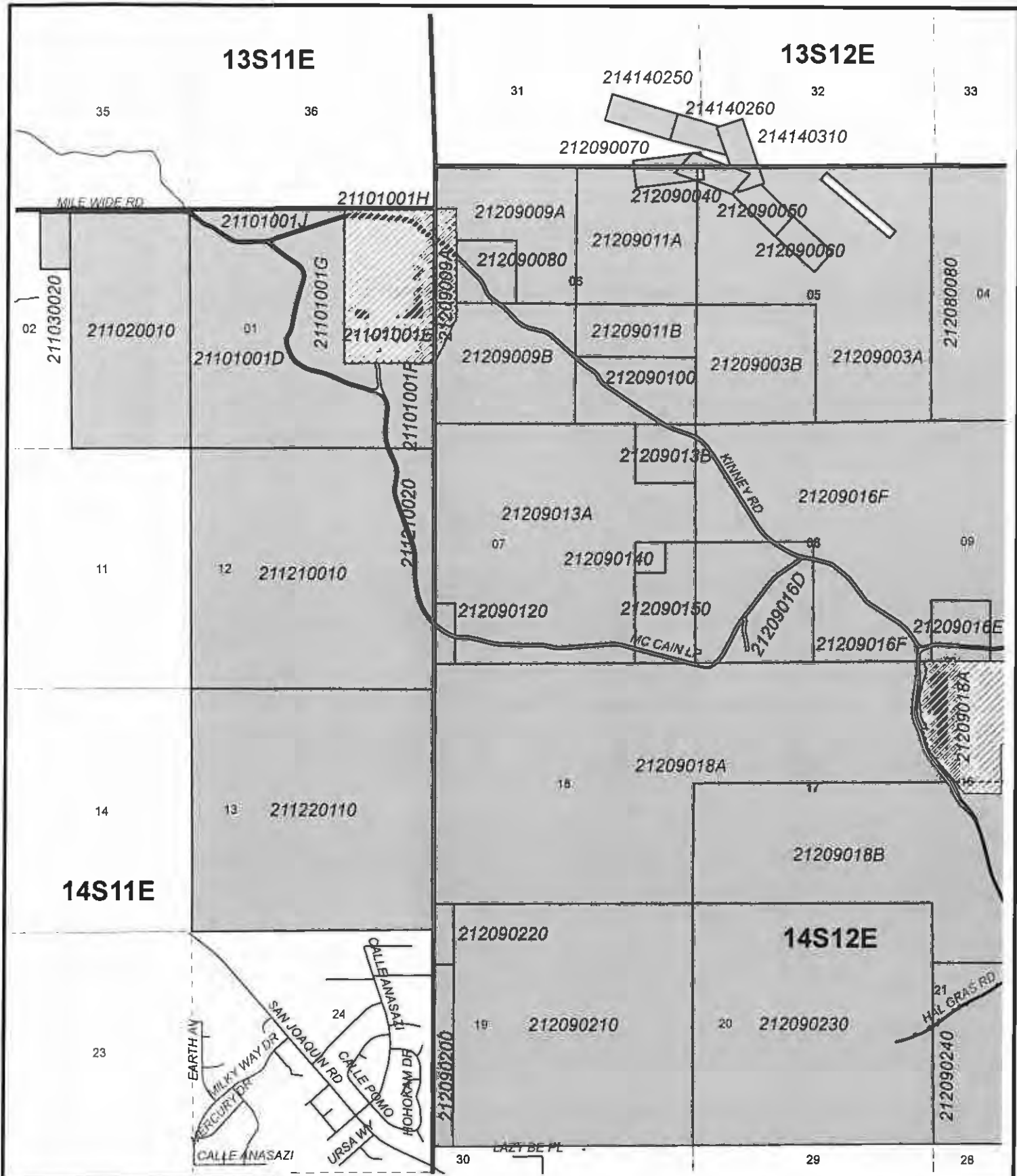
EXHIBIT C



0 1,000 ft



Tucson Mountain Park (14)



**Conservation Land
Restrictive Covenants:
Pima County Owner & Grantor;
FCD Receives Covenant**

EXHIBIT C



0 1,500 ft



Tucson Mountain Park (14)

No leased property is encumbered.
Leased property is shown as white hatch.

**Master Restrictive Covenant for
Pima County MSCP Mitigation Land**

This Master Restrictive Covenant ("**MSCP Master Covenant**") is entered into by Pima County, a political subdivision of the State of Arizona ("**County**"), the Pima County Regional Flood Control District, a political taxing subdivision of the State of Arizona ("**District**"), and the Arizona Land and Water Trust, Inc., an Arizona nonprofit corporation ("**Beneficiary**") (County, District, and Beneficiary being collectively the "**Parties**").

1. Background and Purpose

1.1. The United States Fish and Wildlife Service issued permit #TE84356A to County (the "**Permit**") for the incidental take of threatened and endangered species caused by specific, lawful activities within Pima County. To direct the mitigation of these incidental takes and ensure compliance with the permit, the County has established its Multi-Species Conservation Plan ("**MSCP**"). The objectives of the MSCP (the "**Objectives**") include managing mitigation lands to prioritize conservation of Covered Species and their habitats, prevent landscape fragmentation, and support species establishment or recovery.

1.2. The County owns the real property listed in Exhibit A (the "**Restricted Property**" or "**Restricted Properties**"). A map identifying the Restricted Property is attached hereto as Exhibit B. Individual maps of each of the Restricted Properties are attached hereto as Exhibit C. The Restricted Property contains significant undisturbed natural open space that the County wishes to preserve and protect for the mitigation of incidental take covered by the County's incidental take permit.

1.3. The Parties intend this MSCP Master Covenant to prohibit uses of the Restricted Properties that would impair or interfere with the mitigation efforts of the County, except for any pre-existing uses as shown on imagery by Pictometry or Pima Association of Governments dated 2015 or 2016, whichever is more recent (the "**Pre-existing Uses**").

1.4. The Parties intend that this MSCP Master Covenant assure that the Restricted Properties will be forever preserved as natural open space for the conservation of natural habitat for wildlife, the protection of rare and unique native plants and animals and the scenic enjoyment of the general public.

2. Recording of Site Specific Restrictive Covenants

2.1. The Parties intend that a site specific agreement ("**Site Specific Agreement**") be recorded for each individual property listed on Exhibit A and depicted on Exhibits B and C. The Site Specific Agreement shall be in the form of Exhibit D attached hereto. The Parties intend that each Site Specific Agreement incorporate all of the terms and conditions contained in this MSCP Master Covenant. Each Site Specific Agreement will contain the legal description of the referenced property, and recordation of a Site

Specific Agreement will subject the real property described therein to the terms of this MSCP Master Covenant and cause such property to be a Restricted Property.

2.2. County hereby delegates to the County Administrator or his designee the authority to sign each of the Site Specific Agreements on behalf of County. District hereby delegates to the General Manager of the District or his designee the Authority to sign each of the Site Specific Agreements on behalf of District.

3. **Nature of MSCP Master Covenant**

3.1. This MSCP Master Covenant runs with each Restricted Property and binds the County and its successors and assigns.

3.2. This MSCP Master Covenant remains in perpetuity with respect to each Restricted Property, unless released by written consent of County, District, and Beneficiary, with the written concurrence of the U. S. Fish & Wildlife Service. Any release will specify if it relates to a specific Restricted Property or to this Master Agreement and, therefore, all the Restricted Properties.

3.3. The uses of the Restricted Properties prohibited by this MSCP Master Covenant remain in effect notwithstanding any future annexation of all, or any portion, of a specific Restricted Property by a municipality.

3.4. This MSCP Master Covenant may not be amended or modified except upon written agreement of County, District, and Beneficiary, and written concurrence from the U.S. Fish and Wildlife Service.

3.5. This MSCP Master Covenant may be enforced by District or Beneficiary as provided in Section 9 below.

4. **The Restrictions.** Except as provided in Section 5 of this MSCP Master Covenant, the following uses of the Restricted Properties are prohibited (collectively the "**Restrictions**"):

4.1. Development of the Restricted Properties, including subdividing or lot splitting of a Restricted Property;

4.2. Construction or placement of new or additional buildings or structures on a Restricted Property, unless the construction supports the purposes for which the Restricted Property was originally intended including any adopted master plan, and does not degrade the Restricted Property's values as expressed in the purpose statement;

4.3. Alteration of the ground surface or natural vegetation, except as may be needed for ranch, range improvement, or trail-based recreational uses, and only if such alterations are consistent with other provisions of the Multi-species Conservation Plan;

4.4. Impoundment, diversion or alteration of any natural watercourse unless for watershed enhancement to improve species habitat or to maintain a Restricted Property's mitigation values;

4.5. Development of, or the granting of, access, rights-of-way or easements for new roads or new utilities, including telecommunications facilities, except where County has no discretion to prohibit the activity;

4.6. Filling, excavation, dredging, mining, drilling, exploration, or extraction of minerals, hydrocarbons, soils, sand, gravel, rock or other materials on or below the surface of the Restricted Property, except where County has no discretion to prohibit the activity;

4.7. Storage, accumulation or disposal of hazardous materials, trash, garbage, solid waste or other unsightly material on the Restricted Property;

4.8. Introduction of non-native fish or amphibians or other non-native animals to or from catchments, tanks, springs or creeks. Other non-native species that might adversely affect the mitigation of permitted activities are also prohibited except for the purposes of supporting existing ranching operations, if any, and limited to those areas identified that have historically been devoted to the growing of such species, as shown on 2015 or 2016 aerial photographs;

4.9. Storage and use of biocides and chemical fertilizers except for residential and agricultural purposes. Aerial application of biocide or other chemicals is prohibited except where County and District concur that it is an appropriate and necessary management technique to promote the recovery and re-establishment of native species, to reduce threats to ecosystem structure and function, or to protect public health, safety and welfare;

4.10. Pumping of water from existing diversions for purposes other than on-site residential, wildlife, recreational, habitat enhancement and agricultural uses associated with livestock grazing on the Restricted Property. Increases in the pumped amounts of surface or subsurface water as allowed by the Arizona Department of Water Resources are not permitted without joint approval from the County and District and concurrence from the U.S. Fish and Wildlife Service;

4.11. Installation of underground storage tanks for petroleum or other polluting substances, except for already existing or permitted septic tanks;

4.12. Confinement of livestock where animals are permanently located in enclosures and the majority of their feed supplied from outside sources. This includes feeder cattle, dairy, pig, poultry and exotic animal farm operations;

4.13. Commercial enterprises inconsistent with the Objectives, excluding farming and ranching. The County and District may jointly approve commercial enterprises, other

than farming or ranching, that provide for ecotourism or wildlife-related recreation provided that it is consistent with the Objectives and does not degrade the Restricted Property's mitigation value;

4.14. Residential use for mobile homes, travel trailers, tent trailers, self-propelled recreational vehicles and like structures or vehicles, except temporary use as permitted by County Park Rules or reasonable use as needed to support the protection or enhancement of the Restricted Property's mitigation value;

4.15. Paving of roads using asphalt or concrete except where required by County ordinance;

4.16. Any modification of the topography of the Restricted Property through the placement of soil, dredging spoils, or other material, except for those uses permitted under this document, or to reduce soil erosion or to protect public health, safety and welfare;

4.17. Severance of water rights appurtenant to the Restricted Property including the transfer, encumbrance, lease and sale of water rights;

4.18. Off-road vehicular travel except to facilitate permitted activities on the Restricted Property; and

4.19. Removal of natural, mineral, or cultural resources that is not authorized by County.

5. Exceptions to Restrictions. Notwithstanding any other provision of this MSCP Master Covenant, the following uses of the Restricted Properties are not prohibited:

5.1. Any use of the Restricted Property which the County Board of Supervisors in its reasonable discretion determines is necessary to retain, restore, or enhance the mitigation of incidental take covered by the Permit;

5.2. Any Pre-existing Use of the Restricted Property;

5.3. Any use of the Restricted Property expressly permitted by a contract in effect between the County and a third party as of the date this MSCP Master Covenant is recorded; and

5.4. Any use of the Restricted Property which the County Board of Supervisors determines, based on clear and convincing evidence presented to said Board, is necessary to protect the public health, safety or welfare.

6. Obligations of County

6.1. County, through its employees, agents and contractors, retains all responsibilities and will bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Restricted Properties. County remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use undertaken on the Restricted Properties. All such activity shall comply with all applicable Federal, state, and local laws, regulations, and requirements.

6.2. County, through its employees, agents and contractors, at County's expense, will conduct an inspection of the Restricted Properties at least biennially to determine if there are any violations of the Restrictions. The inspection will be completed by either examination of aerial photographs or by physical inspections with onsite photographs taken at the time of the inspections. The County will prepare and deliver copies of biennial reports ("Reports") of its inspections, which reports will describe the then current condition of the Restricted Properties inspected and note any violations of the Restrictions. Copies of the Reports will be provided to District and Beneficiary upon completion, and in no event later than October 15 of each biennial reporting year. County will maintain the Reports as County records in accordance with Arizona state law.

6.3. County shall report any violations of the terms of this MSCP Master Covenant to District and Beneficiary within 2 working days of County discovery and confirmation of any such violation. For purposes of this Section 6.3, the determination of what shall constitute a reportable violation of this MSCP Master Covenant shall be at County's reasonable discretion. However, County's determination of what is reportable pursuant to this Section 6.3 will not limit District or Beneficiary's right to enforce this MSCP Master Covenant as provided for in Sections 7, 8, and 9 of this MSCP Master Covenant.

6.4. The parties acknowledge that Beneficiary has no legal ownership interest in the Restricted Properties, and it is the parties' intent that the Beneficiary not undertake any responsibility or liability with respect to the Restricted Properties, other than liability related to Beneficiary's negligence ("Beneficiary's Negligence"), as more specifically limited below. Therefore, County agrees:

6.4.1. County (as indemnifying party) shall indemnify, defend and hold harmless, Beneficiary and its officers, directors, employees, agents, affiliates, successors and permitted assigns (collectively, "**Indemnified Party**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, that are incurred by Indemnified Party (collectively, "**Losses**"), arising out of or related to any third-party claim alleging:

6.4.1.1. breach or non-fulfillment of any provision of this Agreement by County, District, or County or District's personnel;

6.4.1.2. any negligent or more culpable act or omission of County, District, or County or District's personnel (including any reckless or willful misconduct) in connection with the performance of County, District, or County or District's personnel under this Agreement;

6.4.1.3. any bodily injury, death of any person or damage to real or tangible personal property caused by the negligent or more culpable acts or omissions of County, District, or County or District's personnel (including any reckless or willful misconduct);

6.4.1.4. any failure by County, District, or County or District's personnel to comply with any applicable federal, state or local laws, regulations or codes, including any failure related to their performance under this Agreement; or

6.4.1.5. any claim by any third party asserting a failure of Beneficiary to enforce Beneficiary's rights, or perform Beneficiary's duties, under this Agreement. County's obligation to indemnify Beneficiary against third party claims related to any failure of Beneficiary perform Beneficiary's duties, under this Agreement will not preclude County from replacing Beneficiary as provided in Section 8.5. Replacement of Beneficiary will be County's sole remedy for Beneficiary's breach of its obligations under this Agreement.

6.4.2. Beneficiary must give notice to County (a "**Claim Notice**") of any claim filed which may give rise to a Losses. Indemnified Party's failure to provide a Claim Notice does not relieve County of any liability, but in no event shall County be liable for any Losses that result directly from a delay in providing a Claim Notice, which delay materially prejudices the defense of the claim. County's duty to defend applies immediately after receiving a Claim Notice.

6.4.3. County may select legal counsel to represent Beneficiary in any action for which County has an obligation to indemnify, defend and hold harmless Beneficiary, and County shall pay all costs, attorney fees, and Losses.

6.4.4. County shall give prompt written notice to Beneficiary of any proposed settlement of a claim that is indemnifiable under this Agreement. County may settle or compromise any claim without Beneficiary's consent, so long as Beneficiary is not responsible for paying any Losses.

7. Obligations of District

7.1. District shall review any and all reports on potential violations of the Restrictions provided by County to District as required by this MSCP Master Covenant, at District's expense.

7.2. If the event of any action that may constitute a violation of the terms of this MSCP Master Covenant, District shall determine, in its reasonable discretion, whether to take any action to enforce the terms of this MSCP Master Covenant.

7.3. In the event that County desires to take action with respect to the Restricted Properties that may constitute a violation of this MSCP Master Covenant, County will obtain District's prior approval of such action, and District shall respond to any such request from County in a timely manner.

7.4. District and County will advise Beneficiary in writing of any non-privileged communications between County and District with regard to the matters referred to in Sections 7.2 and 7.3. District and County will also provide Beneficiary with copies of any written communications, in whatever form, between District and County with regard to the matters referred to in Sections 7.2 and 7.3.

8. Obligations of Beneficiary

8.1. Beneficiary shall review any and all reports provided by County to Beneficiary as required by this MSCP Master Covenant, at County's expense. County shall compensate Beneficiary for performing its actions under this Section 8.1 on a time and materials basis, pursuant to the terms of professional services contract entered into between County and Beneficiary (the "Services Agreement"). In the event (i) County and Beneficiary cannot agree upon the Services Agreement; (ii) the Services Agreement is terminated, for any reason; (iii) County fails to timely pay Beneficiary under the Services Agreement; or (iv) County materially breaches any other term of the Services Agreement, then Beneficiary will have the right to terminate its obligations under this MSCP Master Covenant by providing County and District ten days prior written notice.

8.2. If the event of any action that may constitute a violation of the terms of this MSCP Master Covenant, Beneficiary shall determine, in its reasonable discretion, whether to take any action to enforce the terms of this MSCP Master Covenant. Beneficiary shall be reimbursed for any expenses incurred by Beneficiary to enforce this Master Agreement in accordance with the Services Agreement.

8.3. In the event that County desires to take action with respect to a Restricted Property that may constitute a violation of this MSCP Master Covenant, County will obtain Beneficiary's prior approval of such action, and Beneficiary shall respond to any such request from County in a timely manner. Beneficiary shall be compensated for any services performed in response to any such request in accordance with the Services Agreement.

8.4. In the event Beneficiary is no longer able to perform its obligations under this MSCP Master Covenant, or no longer desires to serve as Beneficiary, then Beneficiary shall provide not less than sixty (60) days' notice to County. Beneficiary may designate a replacement Beneficiary subject to County's approval. In the event Beneficiary does not designate a replacement Beneficiary within 45 days' after delivery of the notice, then

County will be solely responsible to designate a replacement Beneficiary. Beneficiary's resignation shall be effective sixty (60) days after the delivery of the notice by Beneficiary to County.

8.5. County's sole remedy for Beneficiary's failure to perform Beneficiary's obligations under this Agreement will be to terminate the Services Agreement and replace Beneficiary with a new party who will fill the role of Beneficiary. County will be solely responsible to designate a replacement Beneficiary in such event.

9. District and Beneficiary's Right To Enforce.

9.1. District and/or Beneficiary (for purposes of this Section 9, collectively or individually the "**Enforcing Party**") may enforce this MSCP Master Covenant against the County and its successors and assigns.

9.2. If the Enforcing Party has reason to believe that a violation of the Restrictions may have occurred, the Enforcing Party has the right to enter upon the Restricted Properties. The Enforcing Party must provide at least two (2) business days' notice to County prior to entering upon a Restricted Property.

9.3. The Enforcing Party shall hold County harmless from liability for any injuries to its employees or agents occurring on a Restricted Property in the course of its duties pursuant to this MSCP Master Covenant which are not directly or indirectly the result of acts, omissions, or the negligence of County, or County's employees, agents, successors and assigns.

9.4. If the Enforcing Party determines that there is a breach of the terms of the Restrictions, the Enforcing Party may, but is not obligated to, enforce the terms of this MSCP Master Covenant as provided in this Section 9. When evaluating any possible breach or enforcement action, the Enforcing Party will have the right to consult experts (e.g., biologists, engineers, etc.) to assist it in determining both whether or not there is a violation and appropriate remedial action, provided that the cost of any such experts is subject to the maximum dollar limitation in the Services Agreement. Beneficiary will be reimbursed by County for any such expenses in accordance with the Services Agreement.

9.5. Prior to any enforcement action by the Enforcing Party, the Enforcing Party must give written notice to County of such breach (the "**Notice of Breach**") and demand corrective action sufficient to cure the breach and, where the breach involves injury to a Restricted Property resulting from any activity inconsistent with the purpose of this MSCP Master Covenant, to restore the portion of the Restricted Property so injured.

9.6. If (i) under circumstances where an alleged breach can be cured within a 30 day period, County fails to cure an alleged breach within 30 days after receipt of the Notice of Breach, or (ii) under circumstances where an alleged breach cannot reasonably be cured within a 30 day period, County fails to begin curing such breach within the 30 day

period, or County fails to continue diligently to cure such breach until finally cured, the Enforcing Party may in any such event bring an action at law or equity to enforce the terms of this MSCP Master Covenant or to enjoin the breach by temporary or permanent injunction, and to recover any damages caused by the breach of the terms of this MSCP Master Covenant or injury to any protected uses or mitigation, including damages for any loss, and to require the restoration of any Restricted Property to the condition that existed prior to the injury.

9.7. In the event any action, suit or proceeding at law or in equity is instituted with respect to this MSCP Master Covenant, the Enforcing Party shall be entitled to reasonable attorneys' fees, expenses and court costs incurred if it is the prevailing party.

9.8. Nothing contained in this MSCP Master Covenant can be construed to entitle the Enforcing Party to bring any action against the County for any injury to or change in the Restricted Property resulting from causes beyond the County's control including unforeseeable acts of trespassers, fire, flood, storm, drought, pests, natural earth movement, vegetative disease, or resulting from any action taken by the County under emergency conditions to prevent, abate or mitigate significant injury to any Restricted Property resulting from such causes.

10. General Provisions

10.1. The laws and regulations of the State of Arizona govern this MSCP Master Covenant. Any action relating to this MSCP Master Covenant must be brought in a court of the State of Arizona in Pima County.

10.2. Unless the context requires otherwise, the term "including" means "including but not limited to".

10.3. Each provision of this MSCP Master Covenant stands alone, and any provision of this MSCP Master Covenant found to be prohibited by law is ineffective only to the extent of such prohibition without invalidating the remainder of this MSCP Master Covenant.

10.4. This instrument sets forth the entire Agreement of the County, District and Beneficiary with respect to this MSCP Master Covenant.

10.5. Any notice given under this MSCP Master Covenant must be in writing and served by delivery or by certified mail upon the other Parties as follows:

If to County: Office of Sustainability and Conservation
Attn: Director
Pima County Public Works
201 N Stone Ave., 6th FL
Tucson, Arizona 85701

If to District: Regional Flood Control District
Attn: Director
Pima Works Building
201 N Stone Ave., 9th FL
Tucson, Arizona 85701

If to Beneficiary: The Arizona Land and Water Trust
Attn: Diana Freshwater, President
3127 N. Cherry Ave.
Tucson, Arizona 85719

The Parties have executed this MSCP Master Covenant by their duly authorized representatives.

COUNTY: PIMA COUNTY, a political subdivision of the State of Arizona:

Chair, Board of Supervisors

Date

ATTEST:

Robin Brigode, Clerk of Board of Supervisors

Date

DISTRICT: The Pima County Regional Flood Control District

Chair, Board of Directors

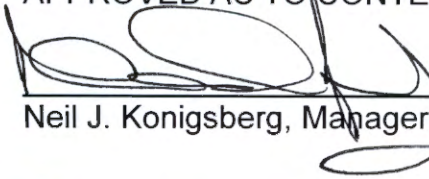
Date

ATTEST:

Robin Brigode, Clerk of Board of Directors

Date

APPROVED AS TO CONTENT:



Neil J. Konigsberg, Manager, Real Property Services



John Bernal, Deputy County Administrator, Public Works

APPROVED AS TO FORM:

 10/10/16

Tobin Rosen, Deputy County Attorney

BENEFICIARY: The Arizona Land and Water Trust, Inc.



Diana Freshwater, President

10/11/16

Date

EXHIBIT D

When Recorded, Please Return to:

Pima County Real Property Services
201 N Stone Ave, 6th Floor
Tucson, AZ 85701-1215

SITE-SPECIFIC AGREEMENT TO MASTER RESTRICTIVE COVENANT

1. **Parties; Effective Date.** This Site-Specific Agreement ("SSA") is entered into by and between PIMA COUNTY, a body politic and corporate of the State of Arizona ("**County**"), the PIMA COUNTY REGIONAL FLOOD CONTROL DISTRICT, a political taxing subdivision of the State of Arizona ("**District**"), and the Arizona Land and Water Trust, Inc. an Arizona nonprofit corporation ("**Beneficiary**") (County, District, and Beneficiary being collectively the "**Parties**"). This SSA shall be effective on day it is signed by the Parties (the "Effective Date").

2. **Incorporation of Master Agreement** This SSA incorporates all definitions, terms and conditions of that certain Master Restrictive Covenant for County MSCP Mitigation Land between the Parties, dated _____, and recorded _____, 2016, in in the records of the Pima County Recorder in Sequence No. _____ (the "**Master Covenant**").

3. **Site-Specific Property.**

3.1. The property subject to this SSA is legally described on **Exhibit A** to this SSA (the "**Site-Specific Property**").

3.2. The Site-Specific Property is subject to all of the terms and conditions of the Master Covenant.

COUNTY: PIMA COUNTY

By: _____
Its: _____

Date

DISTRICT: Regional Flood Control District

By: _____
Its: _____

Date

BENEFICIARY: The Arizona Land and Water Trust, Inc.

By: _____
Its: _____

Date

EXEMPTION: A.R.S. § 11-1134.A.3.	PCGPR Mitigation: Sec 10 [] ; ILF [] ; Sec 7 [] ; CLS [] ; Other []		
Agent: MDS	File: E-0019	Activity:	P [] Do [] Do [] E []