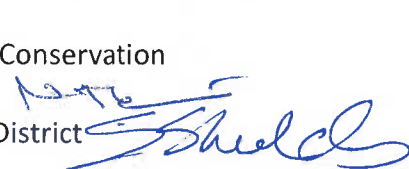


Date: March 21, 2018

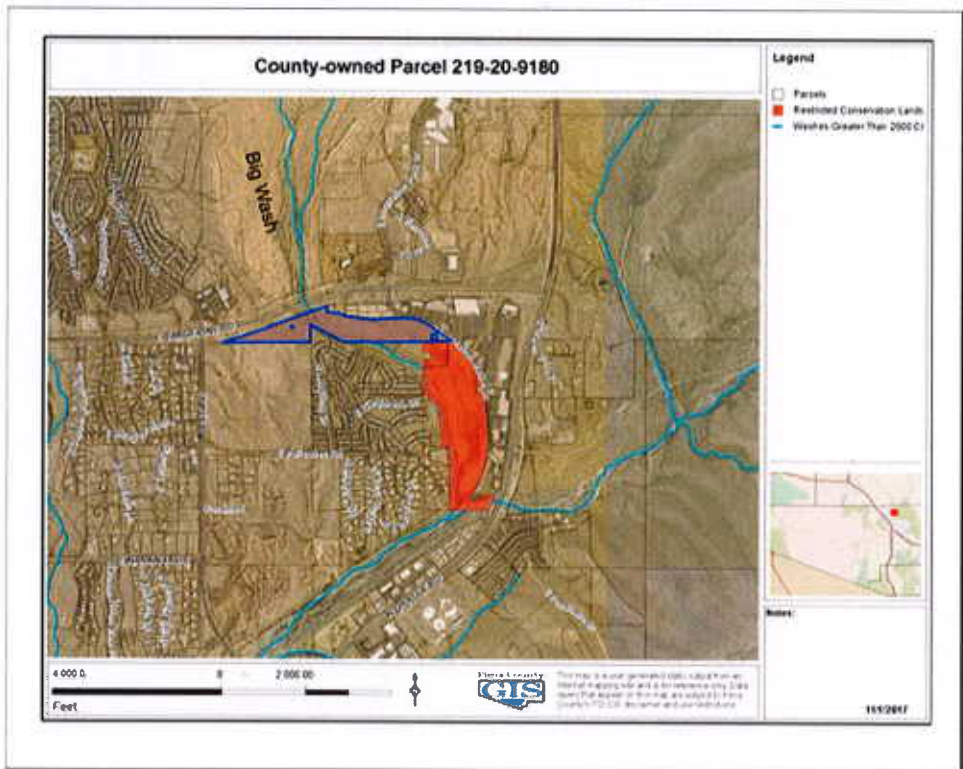
To: Carmine DeBonis, Deputy County Administrator

From: Linda Mayro, Director, Office of Sustainability and Conservation
Neil Konigsberg, Manager, Real Property Services
Suzanne Shields, Director, Regional Flood Control District



Re: Request to Release 1.2 acres of County-owned property at Tangerine Road and 1st Avenue from MSCP Restrictive Covenant

As you are aware, Mr. James Kai and other representatives of Capri Co. LLC are requesting to obtain a roadway access across County-owned property (Parcel No. 219-20-9180) to gain access from Tangerine Road into their planned development (Villages at Silverhawke) adjacent to the south. Pima County acquired parcel 219-20-9180 in 2002 pursuant to a Development Agreement with Stone Canyon, LLC. It is subject to the MSCP Master Restrictive Covenant established by the Board of Supervisors and the Regional Flood Control District Board of Directors in October 2016. This covenant expressly prohibits



the County from granting access for new roads on a restricted property. However, the covenant does allow for terms and restrictions to be amended, modified, or released but such changes cannot be executed without the approval of the U.S. Fish and Wildlife Service, the Beneficiary (Arizona Land and Water Trust), the Pima County Board of Supervisors, and the Pima County Flood Control District Board of Directors.

Figure 1. Parcel 219- 20-9180 subject to MSCP Master Restrictive Covenant.

Subsequent to direction from the County Administrator along with receipt of your concurrence in November 2017 (Attachment A), staff transmitted a report (See Attachment A) to the Service and the Arizona Land and Water Trust (ALWT) for their consideration to release 1.2 acres from the MSCP

To: C. DeBonis, Jr.

Re: Request to Release County-owned property at Tangerine Road and 1st Avenue from MSCP Restrictive Covenant

March 21, 2018

Page 2

Master Restrictive Covenant applicable to parcel 219-20-9180. The report thoroughly evaluates the effects of removing the restrictions from the 1.2 acres and finds that removing these restrictions will not compromise the County's ability to manage MSCP mitigation lands or diminish the biological or cultural resources values of the County's conservation land portfolio. The report concludes with a recommendation to release the 1.2 acres from all terms and restrictions of the MSCP Master Restrictive Covenant.

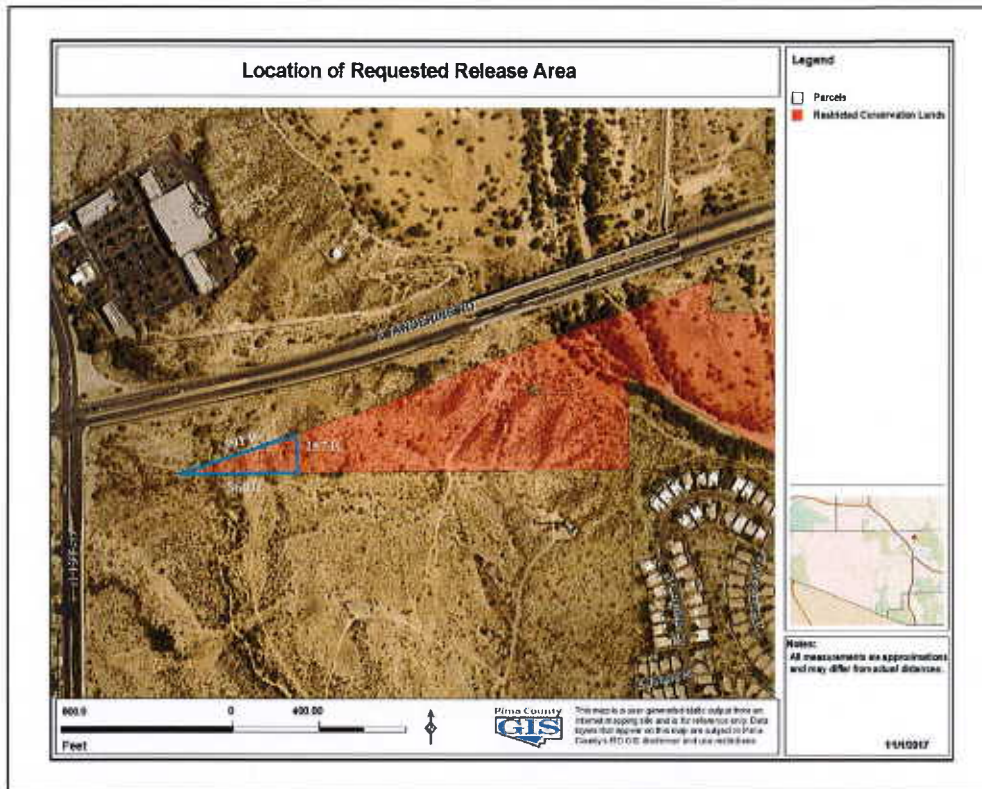


Figure 2. 1.2 acres requested for release from MSCP Master Restrictive Covenant.

In keeping with covenant requirements, both the Service and ALWT provided written concurrence with this recommendation. The Service responded on Feb. 6, 2018, via letter and ALWT's President signed the *Partial Release of Certain Real Property from the Site-Specific Agreement to Master Restrictive Covenant* (Attachment B).

In addition to obtaining the Service's and ALWT's concurrence, there are other elements that require action by the Board of Supervisors (Board) and the Regional Flood Control Board of Directors (Board of Directors) to execute the release of restrictions from these 1.2 acres. These elements are described below.

Request to Release 1.2 acres from the MSCP Master Restrictive Covenant

As previously mentioned, the Board and Board of Directors must, in addition to the Service and ALWT, independently approve changes to the MSCP Master Restrictive Covenant such as this request to release 1.2 acres. To facilitate their consideration, staff is placing this request on the April 17, 2018 agenda for separate action by the Board and the Board of Directors. It is ripe for the Board to consider the next element only in the circumstance where both the Board and the Board of Directors approve the request.

To: C. DeBonis, Jr.

Re: Request to Release County-owned property at Tangerine Road and 1st Avenue from MSCP Restrictive Covenant

March 21, 2018

Page 3

Exchange Agreement

If the request to release is approved, a real property transaction is necessary to provide the legal right to construct the desired roadway access County property, hence the Exchange Agreement. This is also being placed on the April 17, 2018 agenda for the Board's consideration. As the Board of Directors has no ownership interest in parcel 219-20-9180, this item is only being presented to the Board.

Staff believes it to be in the County's best interest to relinquish ownership of the 1.2 acres versus granting an access easement. About 0.6 acres of the eastern half of the 1.2 acres would be affected if an easement were granted. That would segregate the approximately ½-acre western tip from the remainder of parcel 219-20-9180. In that vestige state and its adjacency to Tangerine Rd, 1st Avenue, and the easement roadway, the western ½-acre would have little to no value for conservation or other County uses. Therefore, the Agreement is structured to facilitate conveyance of fee title to the 1.2 acres in exchange for receipt of a non-motorized recreational use easement (approximately 5.04 acres) across parcel 208-12-013D in northern Avra Valley. This easement is a crucial link in connecting portions of the Anza Trail along the Santa Cruz River in that area.

The Agreement also stipulates the payment of certain fees:

- Payment of \$30,000.00 to Pima County so the County can replace the lost conservation value of the 1.2 acres by securing other property with similar or better conservation value. These funds will be deposited in Special Revenue Fund CA-2938 which is solely for the acquisition of conservation land.
- Payment of \$1000.00 to Pima County to recover real property administrative expenses.
- Direct payment of \$1,500.00 to ALWT for administrative costs related to their review and approval of the request to release pursuant to County Contract #CT-SUS-17-117.

Recommendations:

1. Regional Flood Control Board of Directors move and approve the request to release 1.2 acres, a portion of parcel 219-20-9180, from the MSCP Master Restrictive Covenant with direction to staff to take all necessary steps to execute this approval.
2. Board of Supervisors move and approve the request to release 1.2 acres, a portion of parcel 219-20-9180, from the MSCP Master Restrictive Covenant with direction to staff to take all necessary steps to execute this approval.
3. Board of Supervisors move and approve acceptance of the Exchange Agreement with 5KG Investment Company, LLC, and Arizona Limited Liability Company.

To: C. DeBonis, Jr.

Re: Request to Release County-owned property at Tangerine Road and 1st Avenue from MSCP Restrictive Covenant

March 21, 2018

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Attachments

cc: Nanette Slusser, Assistant Deputy County Administrator for Public Works
Nicole Fyffe, Executive Assistant to County Administrator
Chris Cawein, Director, Natural Resources, Parks, and Recreation


ATTACHMENT A:

- 1) County Administrator Approval & Deputy County Administrator Consent
- 2) Staff Report - *Request to Release a Portion of County-owned Property from MSCP Restrictive Covenant – Silverhawke Access*

Date: November 17, 2017

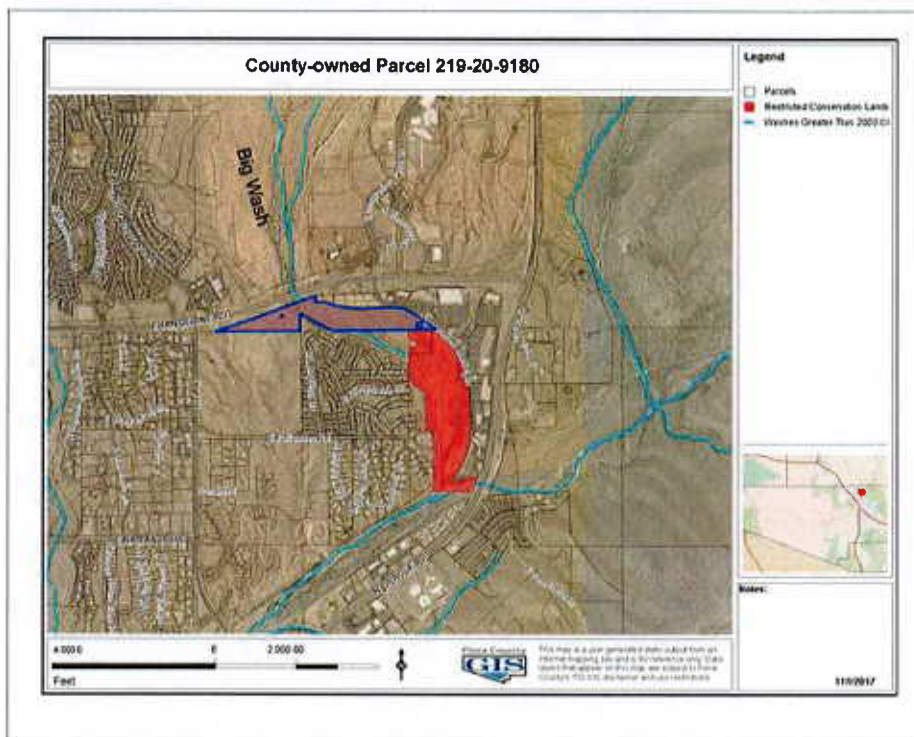
To: C.H. Huckelberry, County Administrator

Thru: Carmine DeBonis, Deputy County Administrator

From: Sherry Ruther, Environmental Planning Mgr, Office of Sustainability and Conservation 

Re: Request to use County-owned property at Tangerine Road and 1st Avenue

As you are aware, Mr. James Kai and other representatives of Capri Co. LLC are requesting to obtain a roadway access across County-owned property (Parcel No. 219-20-9180) to provide access from Tangerine Road into their planned development (Villages at Silverhawke) on the adjoining property to the south. Parcel 219-20-9180 is subject to the MSCP Master Restrictive Covenant established by the Board of Supervisors and the Regional Flood Control District Board of Directors in October 2016. This



covenant expressly prohibits the County from granting access for new roads on a restricted property. However, the covenant does allow for terms and restrictions to be amended, modified, or released but such changes cannot be executed without the approval of the U.S. Fish and Wildlife Service, the Beneficiary (Arizona Land and Water Trust), the Pima County Board of Supervisors, and the Pima County Flood Control District Board of Directors.

As documented in the attached report, staff thoroughly evaluated the requested access and finds the proponent's proposal will affect a small amount of acreage (1.2 acres) at the western edge of parcel 219-20-9180. Staff further observes that releasing those 1.2 acres from the terms and restrictions of the MSCP Master Restrictive Covenant, as the necessary precursor to allowing the roadway access, will not compromise the County's ability to manage MSCP mitigation lands or diminish the biological or cultural resources values of the County's conservation land portfolio. It concludes with a

To: C.H. Huckelberry

Re: Request to use County-owned property at Tangerine Road and 1st Avenue

November 17, 2017

Page 2

recommendation to release the 1.2 acres from all terms and restrictions of the MSCP Master Restrictive Covenant.

The proponent's payment of \$30,000 will allow the County to replace the conservation values associated with the 1.2 acres with other lands of similar or better conservation value. It will be placed in a special revenue fund designated specifically for conservation land acquisition. This amount reflects only the financial value of the 1.2 acres' conservation values and does not rely on an appraised value. Additionally, should the release of the 1.2 acres be approved, the proponent will be responsible for all costs associated with executing the release as well as subsequent real property transaction costs.

The report also provides the U.S. Fish and Wildlife Service, Arizona Land and Water Trust, the Pima County Board of Supervisors, and the Pima County Flood Control District Board of Directors with sufficient information to independently consider the request to release the 1.2 acres from the MSCP Master Restrictive Covenant. If all approve, any subsequent real property transactions regarding these 1.2 acres will follow separately and comply fully with all established Pima County Real Property Services rules, requirements, and procedures.

Staff also anticipates presenting a set of procedures to you in early 2018 that will standardize how we address future requests to allow uses on restricted properties that are prohibited under the MSCP and Conservation Master Restrictive Covenants.

Your signature will:

- indicate approval of staff's report and recommendations;
- direct staff to transmit the report and a request to release the 1.2 acres from the MSCP Master Restrictive Covenant to U.S. Fish and Wildlife Service and Arizona Land and Water Trust for their consideration;
- direct staff to present the request to release the 1.2 acres from the MSCP Master Restrictive Covenant to the Board of Supervisors and the Flood Control District Board of Directors subsequent to receipt of approvals from both the U.S. Fish and Wildlife Service and Arizona Land and Water Trust.

Concurrence:



Carmine DeBonis, Deputy County Administrator

12/22/17

Date

Approval:



C.H. Huckelberry, County Administrator

12/22/17

Date

To: C.H. Huckelberry

Re: Request to use County-owned property at Tangerine Road and 1st Avenue

November 17, 2017

Page 3

cc: Nanette Slusser, Assistant Deputy County Administrator for Public Works
Nicole Fyffe, Executive Assistant to County Administrator
Chris Cawein, Director, Natural Resources, Parks, and Recreation
Linda Mayro, Director, Office of Sustainability and Conservation
Neil Konigsberg, Manager, Real Property Services
Suzanne Shields, Director, Regional Flood Control District
Eric Shepp, Deputy Director, Regional Flood Control District

**Request to Release a Portion of County-owned Property from MSCP Restrictive
Covenant - Silverhawke Access**

Pima County Staff Report

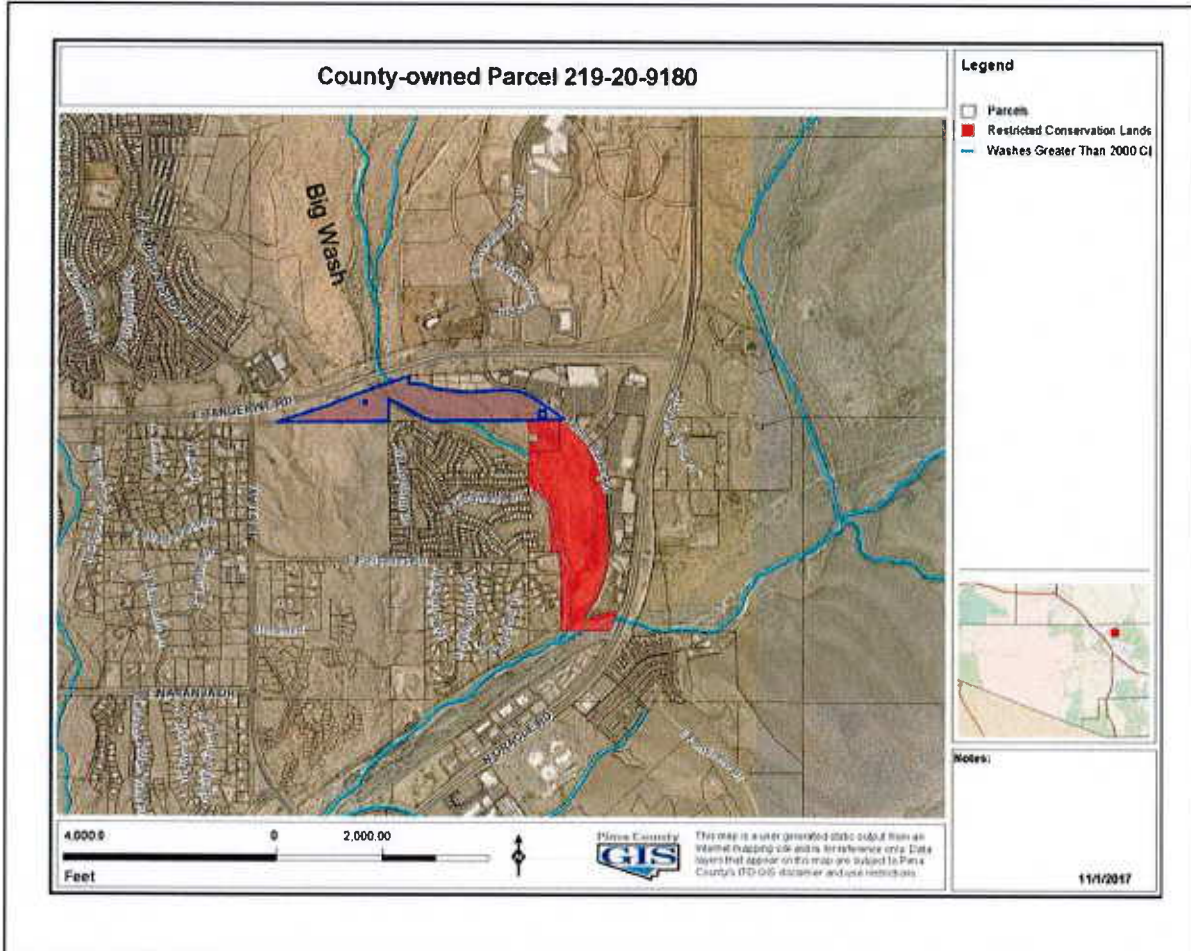
Prepared by Pima County Office of Sustainability & Conservation

November 16, 2017

Request to Release a Portion of County-owned Property from MSCP Restrictive Covenant Silverhawke Access

I. BACKGROUND

In October 2016, the Pima County Board of Supervisors and Pima County Flood Control District Board of Directors placed a Multi-Species Conservation Plan Master Restrictive Covenant (MSCP-MRC) over certain County-owned properties (*Attachment 1 – MSCP Master Restrictive Covenant*). This MSCP-MRC places restrictions and prohibitions on certain uses to ensure that conservation and mitigation obligations made to the U.S. Fish and Wildlife Service (“Service”) under the Multi-species Conservation Plan (“MSCP”) and Incidental Take Permit #TE84356A can be fulfilled. Specifically, the intent is to conserve Covered Species and their habitats, prevent landscape fragmentation, facilitate species establishment or recovery, and ensure restricted properties are preserved forever as natural open space for conservation purposes. Recordation of a Site Specific Agreement is necessary for a County-owned property to be a Restricted Property and therefore subject to the terms of the MSCP-MRC. On August 15, 2017, a Site Specific Agreement was recorded causing Parcel No. 219-20-9180 to become a Restricted Property and subject to the terms of the MSCP-MRC (*Attachment 2 – Site Specific Agreement*).

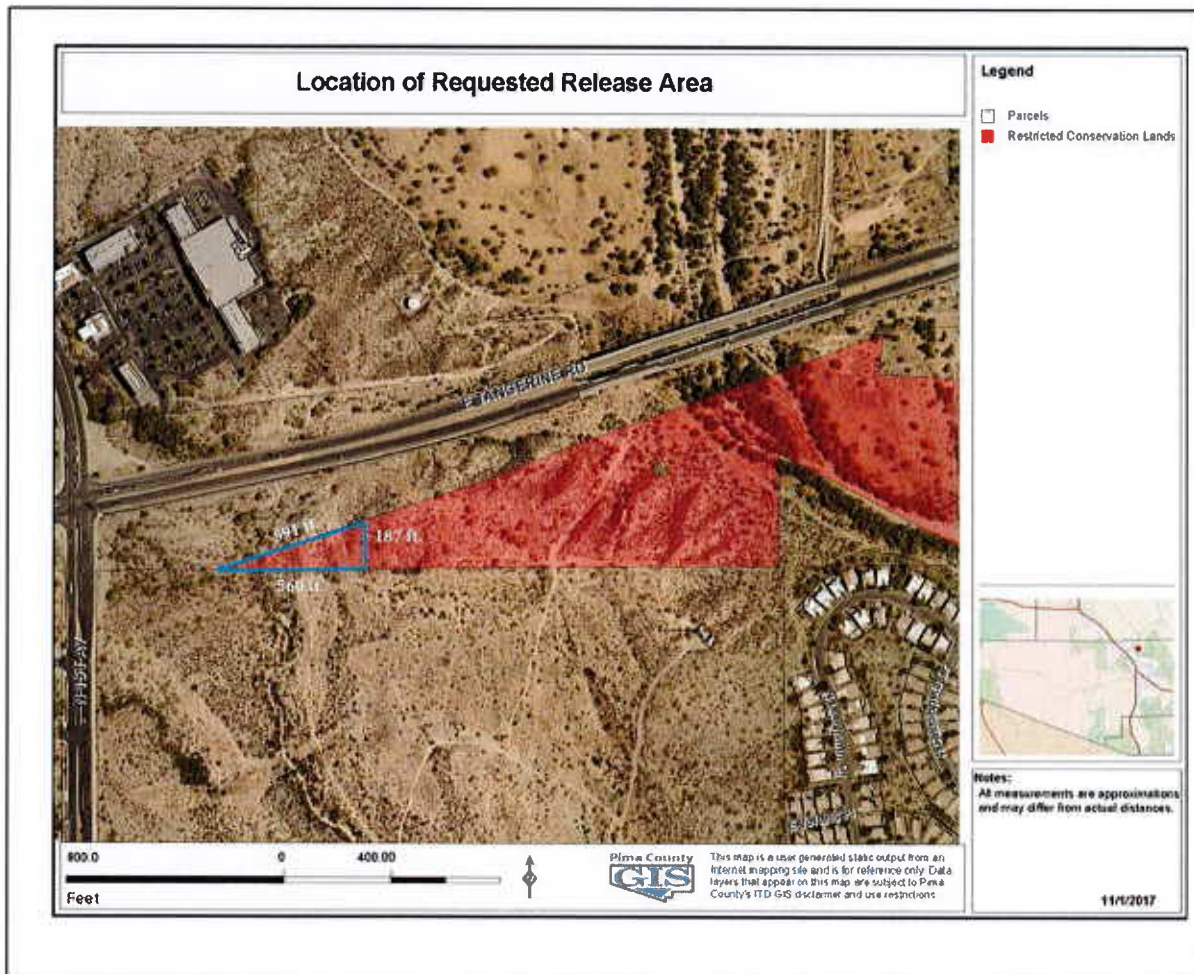


Request to Release a Portion of County-owned Property from MSCP Restrictive Covenant Silverhawk Access

The MSCP-MRC also includes provisions that allow terms to be amended, modified, or released as they relate to all Restricted Properties or only to an individual Restricted Property. Such changes require the approval of the U.S. Fish and Wildlife Service, the Beneficiary (Arizona Land and Water Trust), the Pima County Board of Supervisors, and the Pima County Flood Control District Board of Directors.

County Staff is requesting to change MSCP-MRC terms and restrictions as they relate to an individual Restricted Property, Parcel No. 219-20-9180 (approx. 53 acres). This request seeks to release 1.2 acres (Release Area) from all terms and restrictions of the MSCP-MRC. If approved, the request would reduce the size of the Restricted Property to approximately 51.8 acres and require execution of a partial release of the Site Specific Agreement to remove the 1.2 acres from MSCP-MRC terms and restrictions. Any subsequent real property transactions regarding these 1.2 acres will follow separately and comply fully with all established Pima County Real Property Services rules, requirements, and procedures.

This report is intended to provide the U.S. Fish and Wildlife Service, Arizona Land and Water Trust, the Pima County Board of Supervisors, and the Pima County Flood Control District Board of Directors with sufficient information to determine whether to approve the removal of MSCRP-MRC terms and restrictions from the 1.2-acre Release Area.

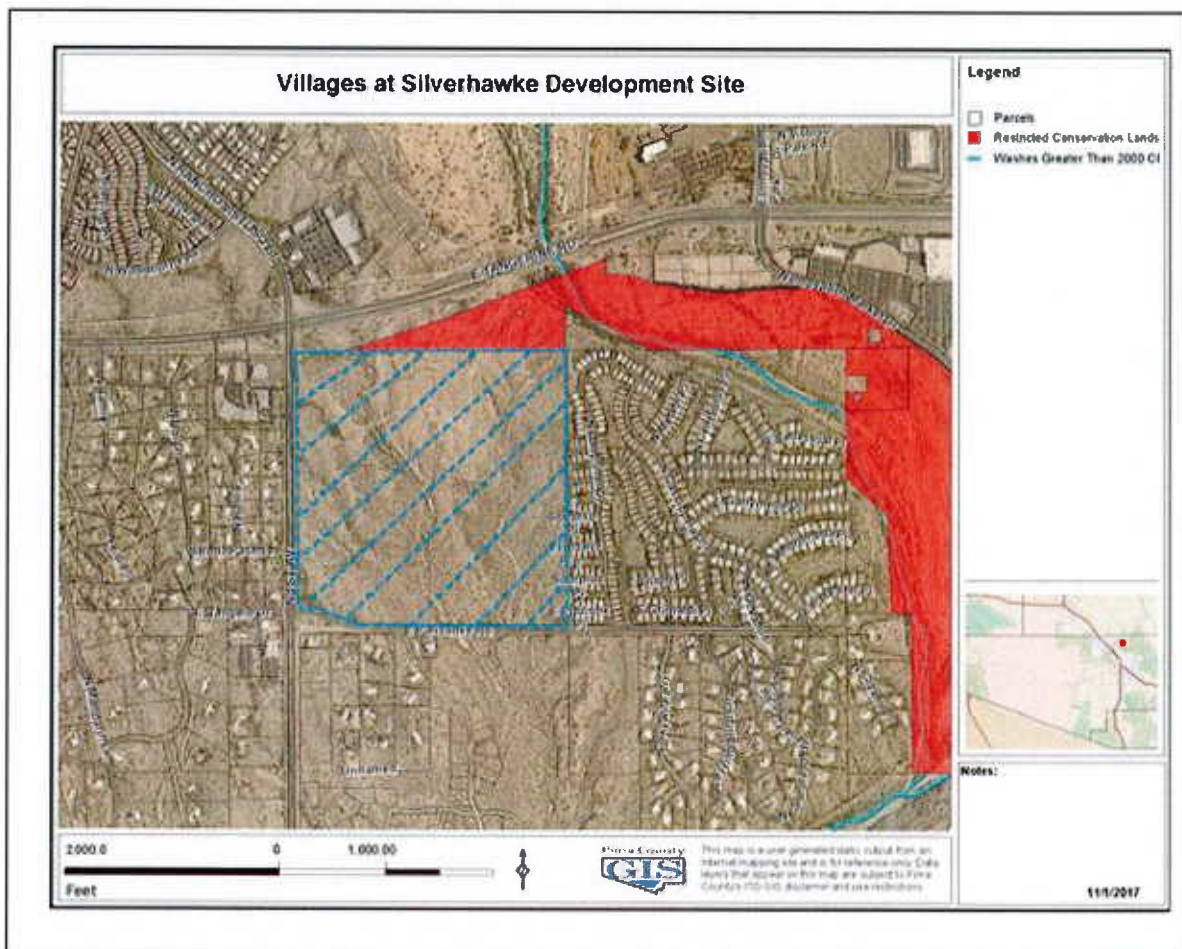


Request to Release a Portion of County-owned Property from MSCP Restrictive Covenant Silverhawke Access

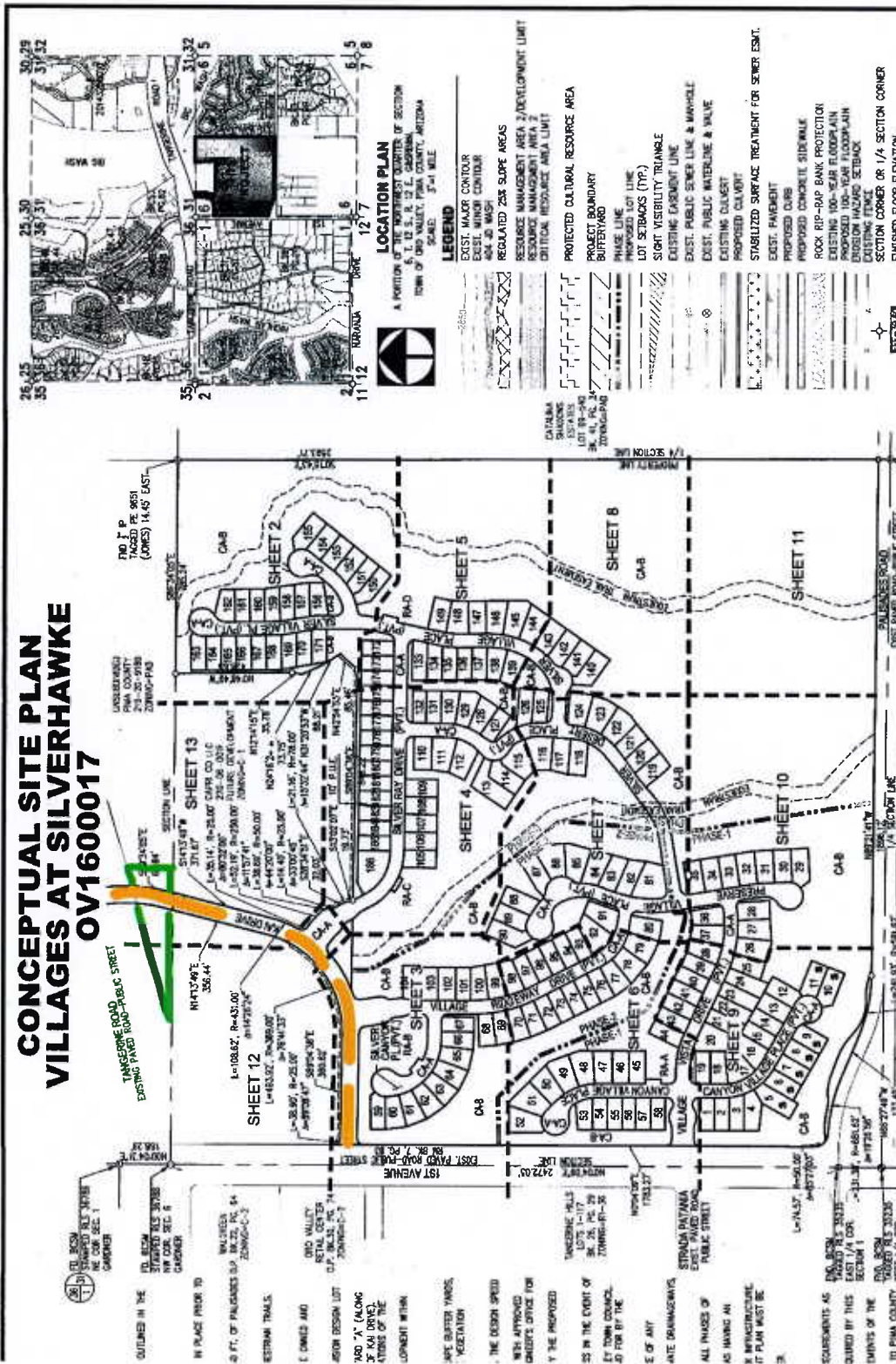
Reason for Request

The privately owned property immediately to the south of the Release Area is to be developed as a residential subdivision and commercial property (Villages at Silverhawke). This development lies within the Town of Oro Valley and is subject to the Town's land use authorities. Construction of a roadway across the Restricted Property is necessary to allow vehicular access from Tangerine Road into this development to address traffic concerns raised by the Town of Oro Valley.

Traffic concerns surfaced in 2015 during the Town's consideration and approval of the rezoning application for this development and again as part of review and approval of the Villages at Silverhawke Conceptual Site Plan. Findings from a traffic impact analysis show that ingress and egress into the residential and future commercial development would result in an unacceptable level of service at the intersection of Kai Drive and 1st Avenue. To resolve these traffic impacts, Town Council imposed several mitigation measures in their approval of the Conceptual Site Plan on June 21, 2017. These mitigation measures include signaling the Kai Drive – 1st Avenue intersection and establishing a second point of ingress/egress off Tangerine Road to be located opposite the existing Oro Valley Retail Center's main entrance (access drive and Release Area are highlighted on the Conceptual Site Plan). According to Town staff, locating this second access point to align with the main entrance to the Oro Valley Retail Center provides the safest configuration.



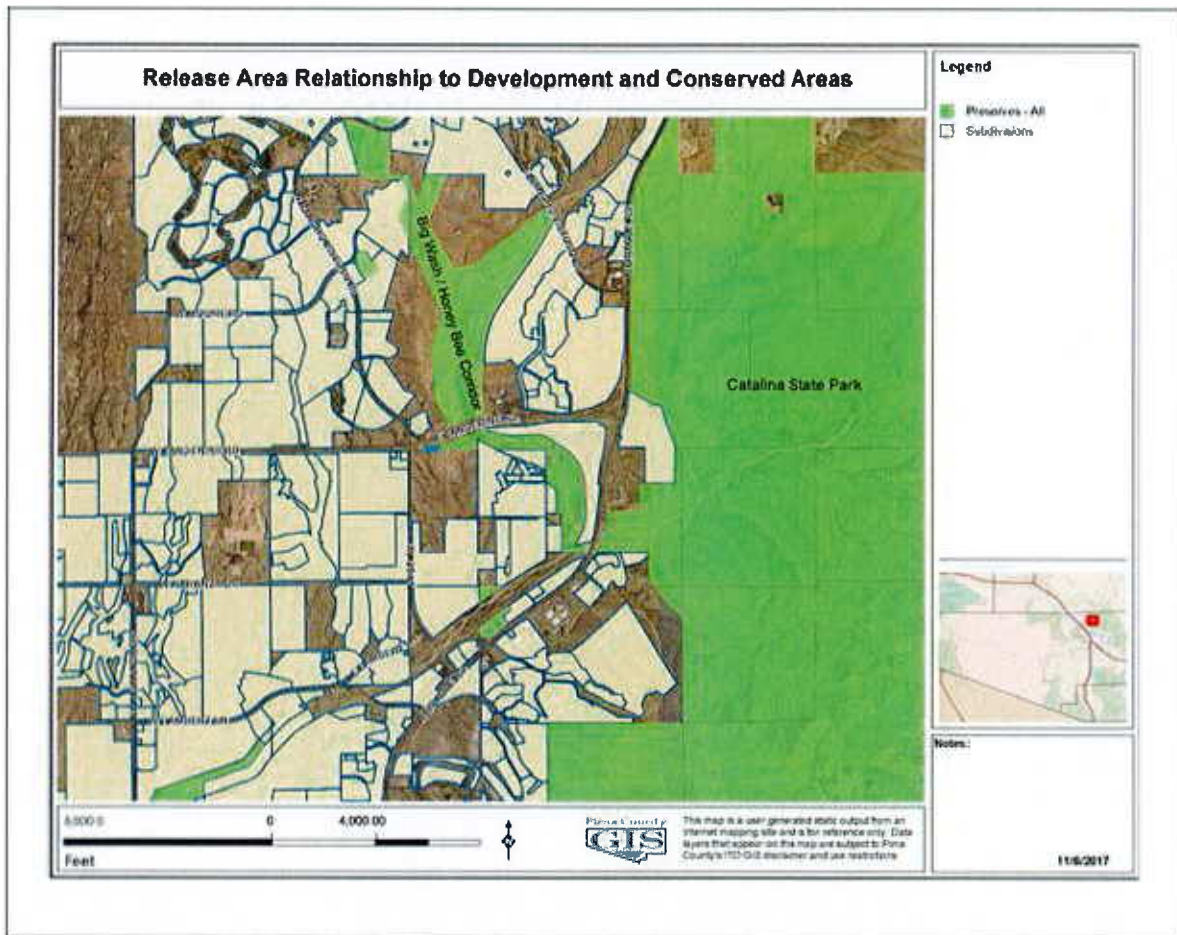
Request to Release a Portion of County-owned Property from MSCP Restrictive Covenant
Silverhawke Access



Request to Release a Portion of County-owned Property from MSCP Restrictive Covenant Silverhawke Access

II. THE RELEASE AREA

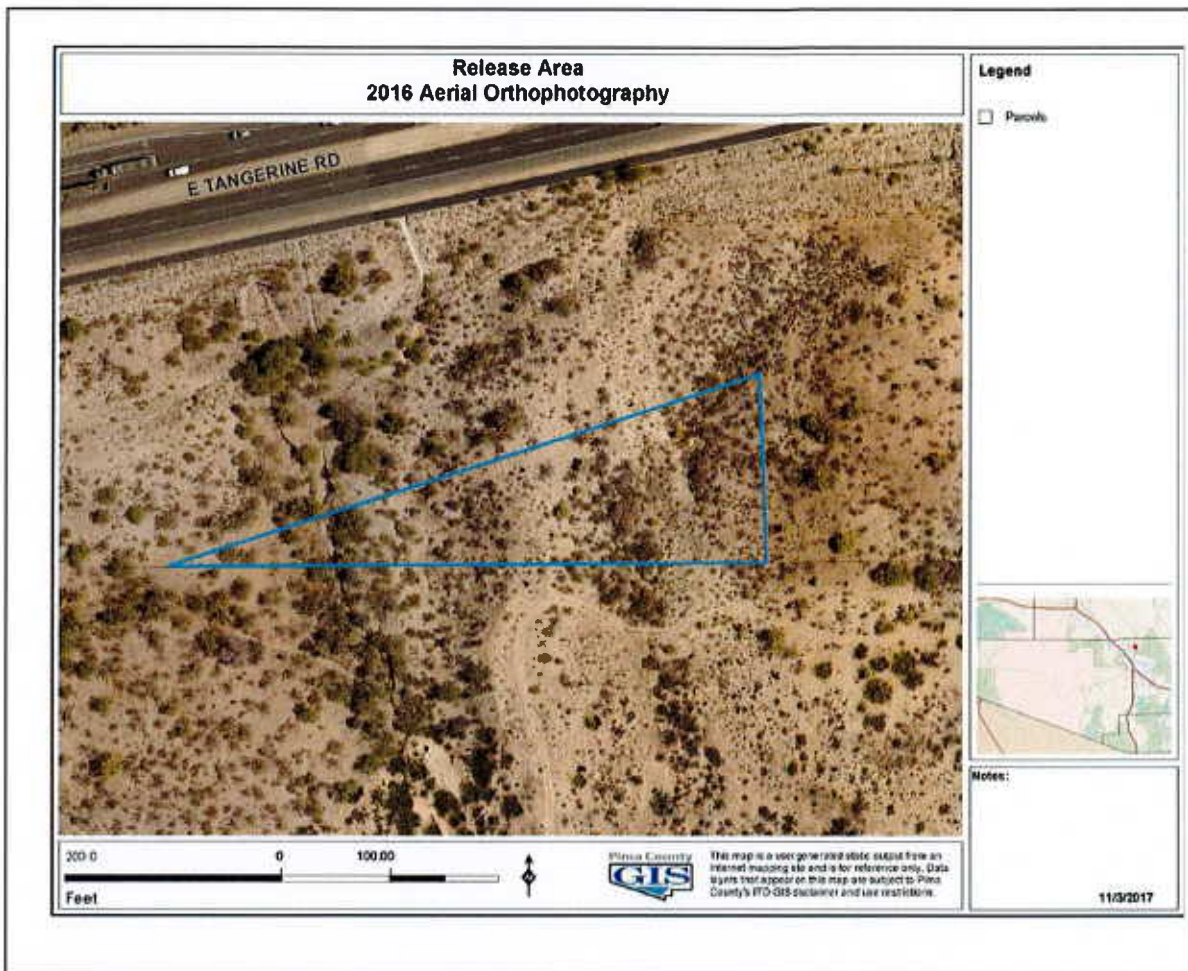
The Release Area generally falls within an area characterized by several distinct land uses – residential and commercial developments, transportation corridors (Tangerine Road, Oracle Road), and the natural open space of Big Wash/Honey Bee Biological Corridor.



With development of Villages at Silverhawke immediately to the south, the Release Area will be surrounded by urban and transportation development save for its connection to the conserved open space within the Restricted Property.

Eastern portions of the Release Area show evidence of previous ground disturbance. These areas appear to be experiencing regrowth of native shrubs and cacti. An erosion channel, consequences of runoff from Tangerine Road, is present in the western portion of the Release Area.

**Request to Release a Portion of County-owned Property from MSCP Restrictive Covenant
Silverhawke Access**



Sonoran Desert Conservation Plan Resources

Maeveen Marie Behan Conservation Lands System (CLS). The Release Area lies entirely within the CLS and carries a Multiple Use Management Area designation.

Vegetation. The Release Area is part of the Semi-desert Grassland Biotic Community and supports vegetation typical of a Sonoran Desert Scrub-Paloverde/Mixed Cacti community.

Landscape Connectivity. The Big Wash/Honey Bee Biological Corridor is one of the premier landscape connectivity features in the area facilitating wildlife movement between the Canada del Oro, Santa Catalina Mountains, and Tortolita Mountains. The Restricted Property is one of the several County-controlled open space parcels in the area that support the viability of the Big Wash/Honey Bee Biological Corridor. As a portion of the Restricted Property, the Release Area does contribute to the viability of the Big Wash/Honey Bee Biological Corridor but because it is located on the extreme western end of the Restricted Property, its direct contribution is muted.

Request to Release a Portion of County-owned Property from MSCP Restrictive Covenant Silverhawke Access

Cultural Resources. The Release Area falls within the Honey Bee Priority Archaeological Site Complex. This Site Complex is comprised of a group of villages of Hohokam settlements in the Canada del Oro Valley. This Site Complex is centered around the Honey Bee Village site and the Honey Bee Archaeological Preserve.

The Release Area was comprehensively surveyed for the presence of cultural resources; results are reported in *A Class III Cultural Resources Survey for a Proposed Access Road Southeast of Tangerine Road and North 1st Avenue, Oro Valley, Pima County, Arizona*, by Michael Cook, dated October 19, 2017. No cultural resources were identified. Pima County recommends a determination of “no historic properties affected” for any development of the subject property including release of restrictive covenants. This survey and recommendation provides for compliance with Section 106 of the National Historic Preservation Act and regulations at 36 CFR 800, and Pima County Board of Supervisors Policy C3.17.

Multi-Species Conservation Plan Resources

Mitigation Status. Even though the Release Area is subject to the MSCP-MRC and is part of the land portfolio the County intends to use to mitigate impacts from MSCP Covered Activities, none of the mitigation credits potentially generated by the 1.2 acres have been allocated.

Covered Species. The Release Area falls within Priority Conservation Areas (PCA) for those certain Covered Species as identified in Table 1. Maintaining a 1:1 ratio of Covered Species-specific PCA acreage within allocated mitigation lands to PCA acreage impacted by development is a key indicator of the quality of allocated MSCP mitigation land.

Ecological Monitoring. None of the monitoring locations that the County will use to monitor individual MSCP Covered Species or habitat and vegetation communities occur within or in close proximity to the Release Area.

**Request to Release a Portion of County-owned Property from MSCP Restrictive Covenant
Silverhawke Access**

Table 1. Release Area and MSCP Covered Species Priority Conservation Areas

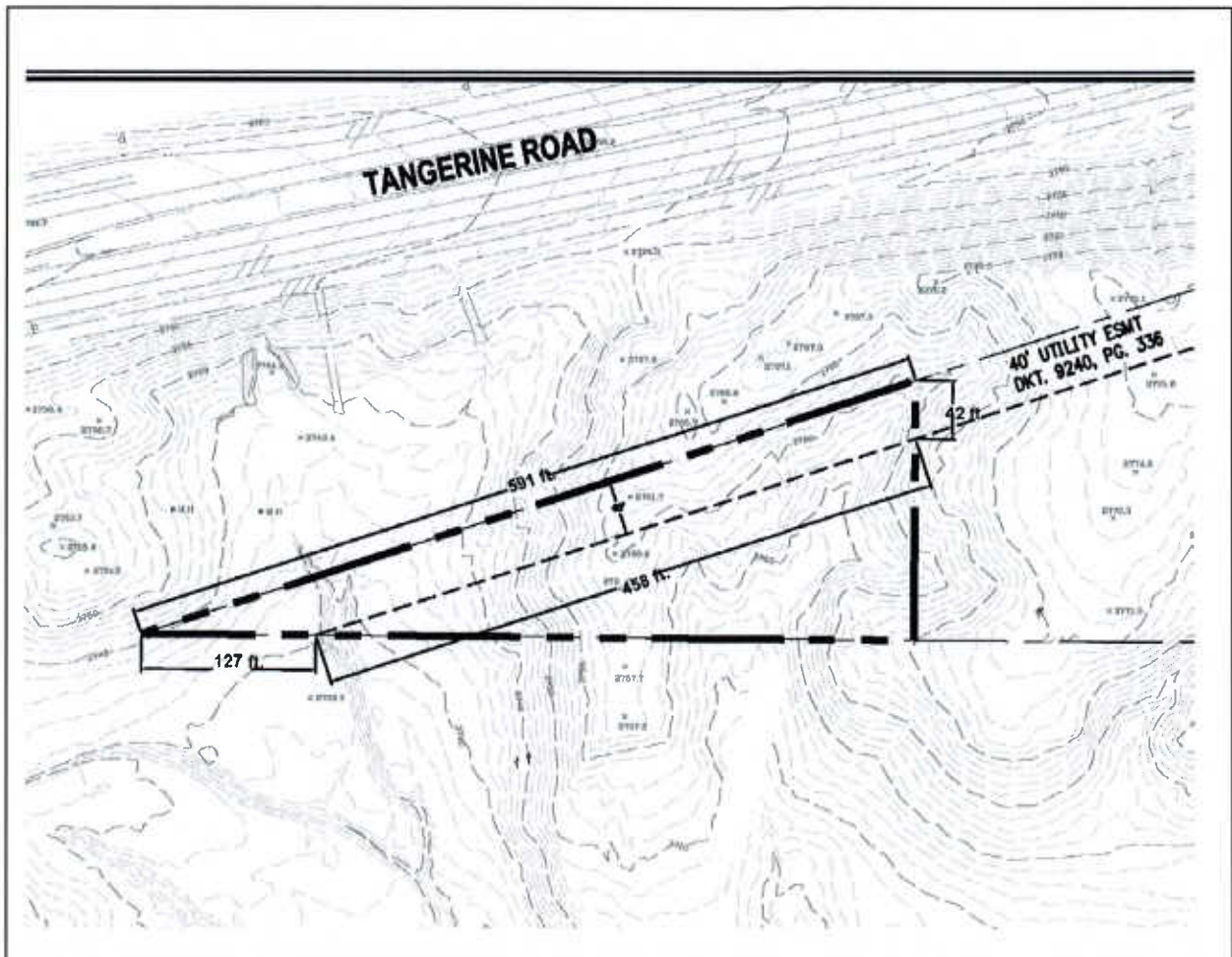
Taxon	Common name	Scientific name	Priority Conservation Area (Y/N)
Plants	Pima pineapple cactus	Coryphantha scheeri var. robustispina	N
	Needle-spined pineapple cactus	Echinomastus erectocentrus var. erectocentrus	N
	Huachuca water umbel	Lilaeopsis schaffneriana ssp. recurva	N
	Tumamoc globeberry	Tumamoca macdougallii	Y ¹
Mammals	Mexican long-tongued bat	Choeronycteris mexicana	N
	Western red bat	Lasiurus blossevillii	N
	Western yellow bat	Lasiurus xanthinus	N
	Lesser long-nosed bat	Leptonycteris curasoae yerbabuena	N
	California leaf-nosed bat	Macrotus californicus	N
	Pale Townsend's big-eared bat	Corynorhinus townsendii pallascens	N
	Merriam's mouse	Peromyscus merriami	N
Birds	Western burrowing owl	Athene cucularia hypugaea	N
	Cactus ferruginous pygmy-owl	Glaucidium brasilianum cactorum	Y
	Rufous-winged sparrow	Aimophila carpalis	Y
	Swainson's hawk	Buteo swainsoni	N
	Yellow-billed cuckoo	Coccyzus americanus ^b	N
	Southwestern willow flycatcher	Empidonax traillii extimus	N
	Abert's towhee	Melospiza aberti	N
Fishes	Arizona Bell's vireo	Vireo bellii arizonae	N
	Longfin dace	Agosia chrysogaster	N
	Desert sucker	Catostomus clarki	N
	Sonora sucker	Catostomus insignis	N
	Gila chub	Gila intermedia	N
Amphibians	Gila topminnow	Poeciliopsis occidentalis occidentalis	N
	Chiricahua leopard frog	Lithobates chiricahuensis	N
Reptiles	Lowland leopard frog	Lithobates yavapaiensis	N
	Desert box turtle	Terrapene ornata luteola	N
	Sonoran desert tortoise	Gopherus morafkai	N ¹
	Tucson shovel-nosed snake	Chionactis occipitalis klauberi	N
	Northern Mexican gartersnake	Thamnophis eques megalops	N
	Giant spotted whiptail	Aspidoscelis stictogramma	N
Invertebrates	Groundsnake (valley form)	Sonora semiannulata	N
	San Xavier talussnail	Sonorella eremita	N ¹
	Black Mountain/Papago talussnail	Sonorella ambigua	N ¹
	Total Wreck talussnail	Sonorella imperatrix	N ¹
	Empire Mountain talussnail	Sonorella imperialis	N ¹
	Sonoran talussnail	Sonorella magdalensis syn. tumamocensis	N ¹
	Santa Rita talussnail	Sonorella walkeri	N ¹
	Pungent talussnail	Sonorella odorata	N ¹
	Posta Quemada talussnail	Sonorella rinconensis	N ¹
	Santa Catalina talussnail subspecies	Sonorella sabinoensis buehmanensis	N ¹
	Santa Catalina talussnail subspecies	Sonorella sabinoensis tucsonica	N ¹
	Las Guijas talussnail	Sonorella sitiens sitiens	N ¹
Tortolita talussnail	Sonorella tortilita	N ¹	

¹ Based on Habitat Models; No PCA available for this species.

Request to Release a Portion of County-owned Property from MSCP Restrictive Covenant Silverhawke Access

Property Encumbrances

In addition to the MSCP-MRC and the Site Specific Agreement, the Release Area is subject to only one other encumbrance. A 40 ft. utility easement granted in 1992 to the State of Arizona Department of Transportation runs parallel to the northern boundary of the Release Area. (*Attachment 3 - Utility Easement*). This easement is for utilities and appurtenant facilities and applies to approximately 30% of the Release Area.



Replacement of Conservation Values

If this request to release 1.2 acres from the terms and restrictions of the MSCP-MRC is granted, the County will replace those 1.2 acres with other lands having similar or better conservation value. In this case, the County will receive payment of \$30,000.00 to enable the County's future acquisition of Replacement Open Space.

To determine the payment amount, staff applied a formula using the average cost/acre estimated to replace MSCP land (\$5000/ac), the acreage of the Release Area (1.2 acres), and a multiplier based on MSCP mitigation ratios to account for the loss of potential MSCP mitigation land (5). This formula

Request to Release a Portion of County-owned Property from MSCP Restrictive Covenant Silverhawke Access

reflects only the financial worth of the conservation values of the Release Area. It is independent from and does not rely upon any appraised real property value of the Release Area.

$(\$5000/\text{acre to replace MSCP land}) \times (\text{Release Area } 1.2 \text{ acres}) \times (\text{MSCP multiplier of } 5)$

The \$30,000.00 will be placed in a Special Revenue Fund and may only be expended to acquire suitable open space property that contributes to the value of the County's conservation land portfolio.

III. IMPACTS OF REQUESTED RELEASE

Removing the terms and restrictions of the MSCP-MRC from the 1.2-acre Release Area will not compromise the stated objectives of the MSCP-MRC to manage allocated mitigation lands "... to prioritize conservation of Covered Species and their habitats, prevent landscape fragmentation, and support species establishment or recovery." Neither will it diminish the biological or cultural resources values of the County's conservation land portfolio. Furthermore, removing MSCP-MRC restrictions from the Release Area will not substantially affect the County's ability to designate and maintain mitigation lands as required by the MSCP and Incidental Take Permit #TE84356A. These findings are based on the following:

- Removing the protective status from 1.2 acres at the edge of the Restricted Property will not noticeably alter:
 - CLS or vegetative resources of the residual Restricted Property or other conserved open space properties in the area.
 - viability of the Big Wash/Honey Bee Biological Corridor to facilitate wildlife movement.
 - applicability of the existing Arizona Department of Transportation utility easement.
- No cultural resources occur on the Release Area.
- The Release Area has not been allocated as MSCP mitigation; no MSCP allocated mitigation credits are at risk.
- Reducing the potential acreage of PCAs for Tumamoc globeberry, cactus ferruginous pygmy-owl, or rufus-winged sparrow by 1.2 acres will not adversely affect the County's ability to maintain a 1:1 ratio of PCA acreage within allocated mitigation lands to PCA acreage impacted by development for any of these three Covered Species.
- No MSCP Ecological Monitoring locations are in the Release Area; no MSCP monitoring data is at risk.
- The \$30,000 payment for Replacement Open Space will allow the County to secure other open space land with equal or better conservation value to compensate for removing the Release Area from the County's conservation and future MSCP mitigation land portfolio.

IV. RECOMMENDATION

County staff recommends complete removal of all MSCP-MRC terms and restrictions from the 1.2-acre Release Area.

Attachment 1

Pima County MSCP Mitigation Land - Master Restrictive Covenant

F. ANN RODRIGUEZ, RECORDER
Recorded By: LW
DEPUTY RECORDER
41

PCREA
PIMA CO REAL PROPERTY SERVICES
PICKUP



SEQUENCE: 20163130354
NO. PAGES: 104
COV 11/08/2016
14:53:01
PICK UP
AMOUNT PAID: \$0.00

WHEN RECORDED RETURN TO:
PIMA COUNTY REAL PROPERTY SERVICES
ATTN.: MICHAEL D. STOFKO
201 N. STONE, 6TH FLOOR
TUCSON, AZ 85701-1215

**DOCUMENT TITLE: MASTER RESTRICTIVE COVENANT FOR PIMA
COUNTY MSCP MITIGATION LAND**

ARS Section 11-1134 is inapplicable.

**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; (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 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

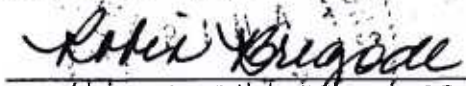
The Parties have executed this MSCP Master Covenant by their duly authorized representatives.

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


Chair, Board of Supervisors

OCT 18 2016
Date

ATTEST:


Robin Brigode, Clerk of Board of Supervisors

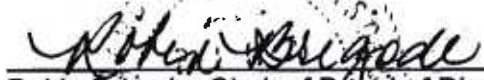
OCT 18 2016
Date

DISTRICT: The Pima County Regional Flood Control District


Chair, Board of Directors

OCT 18 2016
Date

ATTEST:


Robin Brigode, Clerk of Board of Directors

OCT 18 2016
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

Attachment 2

Site Specific Agreement to Master Restrictive Covenant

F. ANN RODRIGUEZ, RECORDER
Recorded By: RMS
DEPUTY RECORDER
4977

PCREA
PIMA CO REAL PROPERTY SERVICES
PICKUP



SEQUENCE: 20172270452
NO. PAGES: 6
COV 08/15/2017
13:28:22
PICK UP
AMOUNT PAID: \$0.00

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
(Pima County MSCP Mitigation Land)**

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 October 18, 2016, and recorded November 8, 2016, in in the records of the Pima County Recorder in Sequence No. 20163130354 (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: [Signature]
Manager, Real Property Services

5-17-17
Date

DISTRICT: Regional Flood Control District

By: [Signature]
Director, Regional Flood Control District

7/24/17
Date

BENEFICIARY: The Arizona Land and Water Trust, Inc.

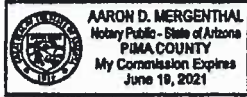
By: [Signature]
Its: President

8/11/17
Date

EXEMPTION: A.R.S. § 11-1134.A.3.	PCGPR Mitigation: Sec 10 <input checked="" type="checkbox"/> ; ILF <input type="checkbox"/> ; Sec 7 <input type="checkbox"/> ; CLS <input type="checkbox"/> ; Other <input type="checkbox"/>		
Agent: MDS	File: E-0019	Activity:	P <input type="checkbox"/> De <input type="checkbox"/> Do <input type="checkbox"/> E <input type="checkbox"/>

STATE OF ARIZONA)
) ss
COUNTY OF PIMA)

This instrument was acknowledged before me this 18th day of July
2017 by Neil J. Konigsberg.

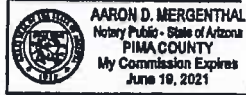


A. D. Mergenthal
Notary Public

My Commission Expires:

STATE OF ARIZONA)
) ss
COUNTY OF PIMA)

This instrument was acknowledged before me this 24th day of July
2017 by Suzanne Shields.

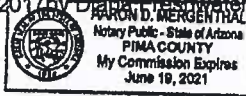


A. D. Mergenthal
Notary Public

My Commission Expires:

STATE OF ARIZONA)
) ss
COUNTY OF PIMA)

This instrument was acknowledged before me this 14th day of August
2017 by ~~Neil J. Konigsberg~~



A. D. Mergenthal
Notary Public

My Commission Expires:



LEGAL DESCRIPTION
RANCHO VISTOSO
NEIGHBORHOOD 4
BIG WASH & OPEN SPACE

Honey Bee Biological Corridor

That portion of Sections 31 and 32, Township 11 South, Range 14 East, and Section 5, Township 12 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona, described as follows:

BEGINNING at the Southeast corner of said Section 31;

THENCE N 89°36'25" W, along the South line of the Southeast Quarter (SE 1/4) of said Section 31, a distance of 1,841.94 feet;

THENCE N 63°06'06" W, 896.29 feet;

THENCE S 00°05'43" W, 400.00 feet, to the South Quarter (S 1/4) of said Section 31;

THENCE N 89°36'25" W, along the South line of the Southwest Quarter (SW 1/4) of Section 31, a distance of 2,082.75 feet, to the Southerly right-of-way line of Tangerine Road;

THENCE N 71°55'35" E, along said right-of-way line 1,017.69 feet;

THENCE N 68°31'30" E, along said right-of-way line 426.96 feet;

THENCE N 72°33'15" E, along said right-of-way line 1,172.56 feet;

THENCE S 07°18'35" W, 148.35 feet;

THENCE S 86°29'54" E, 278.45 feet;

THENCE S 66°22'57" E, 198.10 feet;

THENCE S 82°26'34" E, 646.56 feet;

THENCE N 86°00'41" E, 488.98 feet;

THENCE N 89°36'12" E, 370.67 feet;

THENCE S 81°18'06" E, 46.80 feet to a point of curvature of a tangent curve concave to the South,

1100400000



THENCE Easterly along the arc of said curve, to the right, having a radius of 835.00 feet and a central angle of 25°37'53" for an arc distance of 373.54 feet to a point of tangency;

THENCE S 55°40'13" E , 759.92 feet to a point of curvature of a tangent curve concave to the Southwest;

THENCE Southeasterly along the arc of said curve, to the right, having a radius of 1,710.00 feet and a central angle of 52°22'07" for an arc distance of 1,562.95 feet to a point of tangency;

THENCE S 03°18'06" E, a distance of 844.12 feet to a point on the arc of a non-tangent curve concave to the West, a radial line of said curve through said point having a bearing of N 85°19'02" E;

THENCE Southerly along the arc of said curve, to the right, having a radius of 2,200.00 feet and a central angle of 41°42'01" for an arc distance of 1,601.17 feet to a point of reverse curvature of a tangent curve concave to the Northwest;

THENCE Southerly and Easterly along the arc of said curve, to the left, having a radius of 40.00 feet and a central angle of 155°38'29" for an arc distance of 108.66 feet to a point of reverse curvature of a tangent curve concave to the South;

THENCE Easterly along the arc of said curve, to the right, having a radius of 1,225.00 feet and a central angle of 27°30'40" for an arc distance of 588.20 feet to a point on the arc of a non-tangent curve concave to the Northwest, being the Westerly right-of-way line of Tucson-Florence Highway, a radial line of said curve through said point having a bearing of S 70°36'21" E;

THENCE Southwesterly along said right-of-way line and the arc of said curve, to the right, having a radius of 3,669.72 feet and a central angle of 06°40'53" for an arc distance of 427.93 feet to a non-tangent line;

THENCE N 89°29'35" W, 924.90 feet;

THENCE N 00°03'53" W, 1,314.37 feet;

THENCE N 00°06'21" E, 170.00 feet;

THENCE N 89°35'03" W, 190.00 feet;

THENCE N 01°54'45" W, 900.00 feet;

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E

The
WLB
Group

THENCE N 46°57'17" W, 516.76 feet, to the West line of the Northwest Quarter (NW 1/4) of said Section 5;

THENCE N 00°06'20" E, along said West line 825.99 feet;

THENCE S 89°53'40" E, 190.00 feet;

THENCE N 00°06'20" E, 150.00 feet;

THENCE N 89°53'40" W, 190.00 feet, to the West line of said Northwest Quarter (NW 1/4) of said Section 5;

THENCE N 00°06'20" E, along said West line 250.00 feet to the POINT OF BEGINNING.

EXCEPT: A parcel (well site) recorded in Docket 10285, Page 281, of records.

Containing a net area of 148.13 acres, more or less.

Prepared By.

THE WLB GROUP, INC.

Jack A Buchanan
JAB:teg



1100400000

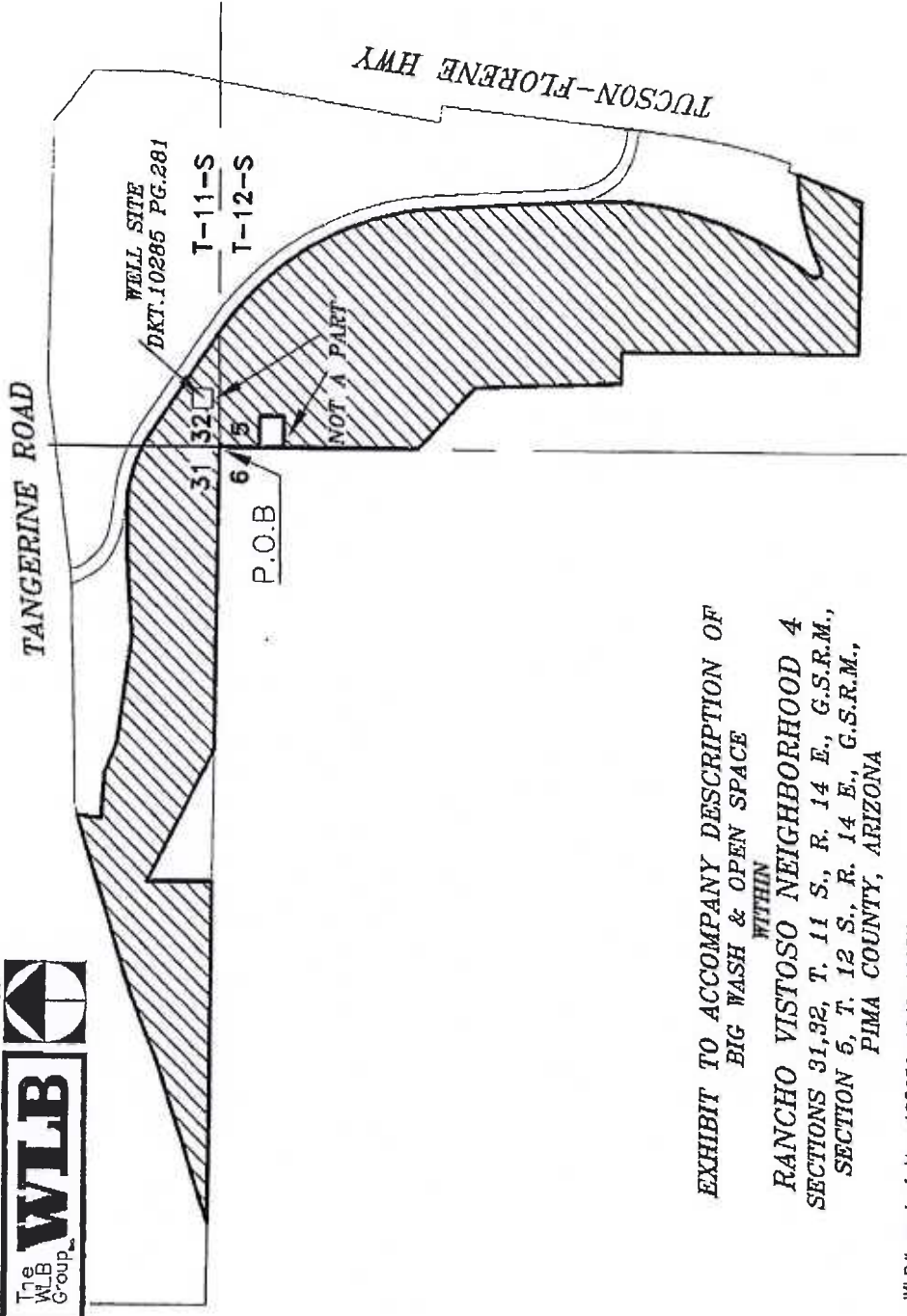


EXHIBIT TO ACCOMPANY DESCRIPTION OF
 BIG WASH & OPEN SPACE
 WITHIN
 RANCHO VISTOSO NEIGHBORHOOD 4
 SECTIONS 31, 32, T. 11 S., R. 14 E., G.S.R.M.,
 SECTION 5, T. 12 S., R. 14 E., G.S.R.M.,
 PIMA COUNTY, ARIZONA

WLB# Project No. 185050-A042-1003X
 3-7-2002 N:\185050\NEIGH4\EXBT-OPEN-SPACE.DWG
 1-01-15 4 01 00 1-1

Attachment 3

Arizona Department of Transportation – Utility Easement

RECORDED BY: JEB
DEPUTY RECORDER
2012 RD15



DOCKET: 9240
PAGE: 336
NO. OF PAGES: 4
SEQUENCE: 92028975
EASMNT 03/05/92
08:00:00
PICKUP
AMOUNT PAID \$ 6.00

TLATI
LAWYERS TITLE

450 W PASEO REDONDO
TUCSON AZ 85701

ARIZONA DEPARTMENT OF TRANSPORTATION

UTILITY EASEMENT

In consideration of One Dollar and NO/100 (\$1.00) the receipt of which is hereby acknowledged, **WGI, INC.**, an Arizona corporation, formerly known as **WOLFSWINKEL GROUP, INC.**, an Arizona corporation, the **GRANTOR** does hereby grant and convey to the **STATE OF ARIZONA**, by and through its Department of Transportation and its successors and assigns, the **GRANTEE**, an easement for utilities and appurtenant facilities upon, across, over and under the surface of the following described land.

TRACT NO. 1:

Those portions of the South half (S $\frac{1}{2}$) of Section 31 and of the Southwest quarter (SW $\frac{1}{4}$), the Northwest quarter of the Southeast quarter (NW $\frac{1}{4}$ SE $\frac{1}{4}$) and the Southwest quarter of the Northeast quarter (SW $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 32, Township 11 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona, which lie within a 40.00 foot strip of land, the South line of which is coincident with the proposed northerly right of way line of Tangerine Road and described as follows:

Commencing at the Southwest corner of Section 31;

thence North 0° 01' 11" West, along the West line of said Section 31, 457.59 feet to the point of beginning on the proposed northerly right of way line;

thence along said proposed right of way line, the following nineteen (19) courses:

- 1) North 84° 46' 30" East 66.30 feet to a point on the existing East right of way line of Rancho Vistoso Boulevard;
- 2) from a Local Tangent Bearing of North 7° 25' 39" West along said East right of way line, being a curve to the Left, having a radius of 1075.00 feet, a length of 14.33 feet;
- 3) North 83° 03' 47" East 724.76 feet;
- 4) South 6° 56' 13" East 10.00 feet;

(continued)

PROJECT: 483-701 SECTION: 1st Ave. - U.S. 89 PARCEL: 10-659
989 PM 000 H0757 03R Tangerine Rd. 229137 UE
MS: 8-23-91, 3294E/1

9240 336

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IN WITNESS WHEREOF this instrument is executed this 7th day of October, 1991.

_____ J. F. Eddings

NOTARY CERTIFICATION

CAPACITY CLAIMED BY SIGNER(S)

X INDIVIDUAL(S) _____ ATTORNEY-IN-FACT _____ TRUSTEE(S)
X CORPORATE _____ PARTNERSHIP _____ GOVERNMENT OFFICER(S) _____ OTHER

ENTITY(IES) REPRESENTED

TITLE OF SIGNER(S)

STATE OF Arizona)
COUNTY OF Maricopa) ss.

On October 7 19 91 before me, Ray S. F. [Signature]

the undersigned officer, personally appeared J. F. Eddings
President of [Signature]

_____ personally known -OR- _____ proved to me to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity on behalf of which the person(s) acted, executed the instrument.

IN WITNESS, my hand and official seal.

Ray S. F. [Signature]
Signature

My commission expires
My Commission Expires June 13 1997

Approved by the Director of the Arizona Department of Transportation

2-12, 1992

Accepted: STATE OF ARIZONA

2-18, 1992
By R. B. [Signature]
Right of Way Manager

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UNIV

- 5) North 93° 03' 47" East 639.70 feet;
- 6) North 72° 33' 15" East 1850.92 feet;
- 7) North 17° 26' 45" West 10.00 feet;
- 8) North 69° 52' 47" East 794.97 feet;
- 9) along a curve to the Right, having a radius of 500.00 feet, a length of 159.13 feet;
- 10) from a Local Tangent Bearing of North 88° 06' 52" East along a curve to the Right, having a radius of 3969.72 feet, a length of 252.85 feet;
- 11) North 89° 48' 13" East 197.60 feet;
- 12) South 81° 55' 32" East 1212.04 feet;
- 13) South 89° 30' 06" East 100.00 feet;
- 14) along a curve to the Left, having a radius of 1933.48 feet, a length of 436.61 feet;
- 15) North 77° 33' 36" East 800.01 feet;
- 16) North 63° 52' 21" East 590.00 feet;
- 17) North 33° 52' 21" East 760.00 feet;
- 18) North 18° 52' 21" East 410.00 feet;
- 19) North 7° 22' 21" East 1091.65 feet to the point of ending on the existing West right of way line of U. S. Highway 89.

TRACT NO. 2:

Those portions of the South half (S½) of Section 31 and of the Southwest quarter (SW¼) Section 32, Township 11 South, Range 14 East and of Lot 3 and the Southeast quarter of the Northwest quarter (SE¼ NW¼) of Section 5, Township 12 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona, which lie within a 40.00 foot strip of land, the North line of which is coincident with the proposed southerly right of way line of Tangerine Road and described as follows:

Beginning at a point on the South line of said Section 31, which point is South 89° 36' 32" East 500.55 feet from the Southwest corner of Section 31;

thence along said proposed southerly right of way line the following nine (9) courses:

(continued)

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- 1) North 71° 55' 35" East 1017.70 feet;
- 2) North 68° 31' 26" East 426.96 feet;
- 3) North 72° 33' 15" East 1235.69 feet;
- 4) North 88° 33' 15" East 1357.98 feet;
- 5) North 82° 29' 54" East 1219.14 feet;
- 6) South 89° 30' 06" East 1582.65 feet;
- 7) South 51° 30' 36" East 395.00 feet;
- 8) South 0° 00' 06" East 465.00 feet;
- 9) South 9° 59' 54" West 1701.50 feet to the point of ending.



TOGETHER WITH the right to operate, repair, maintain, replace, and remove lines and appurtenant facilities from said premises; to add to or alter said lines and/or facilities at any reasonable time, and to trim or remove any trees or shrubs that in the judgment of the **GRANTEE** may interfere with the construction or endanger the operation of said lines and/or facilities, with access to said easement and egress therefrom to permit normal operations of the **GRANTEE** in connection with said lines and/or facilities, and to permit the installation of fixtures, conduits or cables of any other company within the boundaries of this easement.

GRANTOR shall not erect or construct or permit to be erected or constructed any building or other structure or drill any well within the limits of said easement; nor shall **GRANTOR** plant or permit to be planted any trees within the limits of said easement without the prior written consent of the **GRANTEE**; provided, however, **GRANTOR** shall have the right to construct and erect fences within the limits of said easement in a manner which will not unreasonably interfere with the Grantee's right of access to its lines and/or facilities.

By accepting this easement, the **GRANTEE** agrees to exercise reasonable care to avoid damage to said premises and all property that may at any time be thereon.

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ATTACHMENT B

ATTACHMENT B:

- 1) U.S. Fish & Wildlife Service - Concurrence Letter
- 2) Arizona Land & Water Trust - Affirmation of Concurrence



United States Department of the Interior

Fish and Wildlife Service Arizona Ecological Services Office

9828 North 31st Avenue
Phoenix, Arizona 85051

Telephone: (602) 242-0210 Fax: (602) 242-2513



AESO/SE
02EAAZ00-2018-TA-0372

February 6, 2018

Ms. Sherry Ruther
Office of Sustainability & Conservation
Pima County
201 North Stone Avenue, 6th Floor
Tucson, Arizona 85701

Dear Ms. Ruther:

Thank you for your December 27, 2018 request for input related to the request to release a portion of Pima County-owned property from the Multi-Species Conservation Plan (MSCP) restrictive covenants that are related to the incidental take permit issued to Pima County (County) by the U.S. Fish and Wildlife Service (Service). We have reviewed the information you provided and have the following comments regarding this action.

Owners of the property immediately south of parcel 219-20-9180 have approached the County about establishing a roadway through the far western tip of the County's property to gain access to their future development, but covenant restrictions related to the MSCP and the associated incidental take permit do not allow for the establishment of a new access road. However, the covenant does allow for terms and restrictions to be amended, modified, or released. Such changes cannot be executed without the prior approval of the Service, the Beneficiary (Arizona Land and Water Trust), the Pima County Board of Supervisors, and the Pima County Flood Control District Board of Directors. You provided a Staff Report in your December 27, 2017 correspondence that outlined the details and values of the proposed action and the property involved. We have reviewed this information.

The Service concurs with your staff report and the conclusions expressed therein. We find that the release of this small portion of the subject property will not affect the covered resources of the MSCP, nor will it affect Pima County's ability to comply with the MSCP and associated incidental take permit. Therefore, we concur with your recommendation to release the 1.2 acres described of all terms and restrictions of the Master Restrictive Covenant associated with the MSCP.

If you have any questions regarding our comments, or need any additional information, please contact Scott Richardson at (520) 670-6150 (x 242). Thank you for your consideration of endangered species.

Ms. Sherry Ruther

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Sincerely,

A handwritten signature in black ink, appearing to read "Steven L. Spangle". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Steven L. Spangle
Field Supervisor

cc (electronic copy):

Arizona Land and Water Trust, Tucson, Arizona (Attn: Diana Freshwater)
Assistant Field Supervisor, Fish and Wildlife Service, Tucson, AZ
Field Supervisor, Fish and Wildlife Service, Phoenix, AZ

C:\Users\scottrichardson\Documents\SDCP-PCMSCP\Pima County.MSCP.Request to release property from MRC.sr.2_6_18.doc

WHEN RECORDED DELIVER TO:

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

**PARTIAL RELEASE OF CERTAIN REAL PROPERTY FROM THE SITE-SPECIFIC
AGREEMENT TO MASTER RESTRICTIVE COVENANT**
(A Portion of Pima County MSCP Mitigation Land)

The undersigned hereby release that certain Site-Specific Agreement to Master Restrictive Covenant recorded on August 15, 2017, as Instrument Number 20172270452 in the Pima County Recorder's Office, only as against the following described real property:

See legal descriptions and depiction maps attached hereto, collectively as Exhibit A.

This partial release does not release any other portions of Pima County MSCP Mitigation Lands or Non-MSCP mitigation lands from any restrictive covenants recorded against such properties.

Approved by:

COUNTY: Pima County

By: _____
Manager, Real Property Services

Date: _____

COPY

DISTRICT: Pima County Regional Flood Control District

By: _____
Director, Regional Flood Control District

Date: _____

BENEFICIARY: Arizona Land and Water Trust, Inc.

By: DR [Signature]
Its, President

Date: 2/15/18

STATE OF ARIZONA)
) ss
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this _____ of _____,
2017 by Neil J. Konigsberg, on behalf of Pima County.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
) ss
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this _____ of _____,
2017 by Suzanne Shields, on behalf of Pima County Regional Flood Control District.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
) ss
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this 15 of February,
2017 by Diana Freshwater, on behalf of Arizona Land and Water Trust, Inc.

Charisma R Marsh-Pursell

Notary Public

My Commission Expires:

9-1-2019



October 5, 2017

WLB No. 1820523-G-003

W:\LEGALS\182053\Villages at Silver Hawk Western Triangle.doc



**LEGAL DESCRIPTION
THE VILLAGES AT SILVERHAWKE
TANGERINE CONNECTION: WESTERN TRIANGLE**

A portion of that certain parcel as described in Docket 11864, Page 756, Pima County records, lying within Section 31, Township 11 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona, more particularly described as follows:

COMMENCING at the South quarter corner of said section 31 from which the Northwest corner of said Section 31 bears N 89°34'05" W (basis of bearings), a distance of 2583.45 feet;

THENCE N 89°34'05" W, along the South line of the Southwest quarter of said Section 31; a distance of 1698.04 feet to the **POINT OF BEGINNING**;

THENCE continue N 89°34'05" W, continuing along said South line, a distance of 384.71 feet to the Southerly right-of-way line of Tangerine Road;

THENCE N 71°57'55" E, along said Southerly right-of-way line, a distance of 405.59 feet;

THENCE leaving said Southerly right-way-line, S 00°25'55" W, a distance of 128.47 feet to the **POINT OF BEGINNING**.

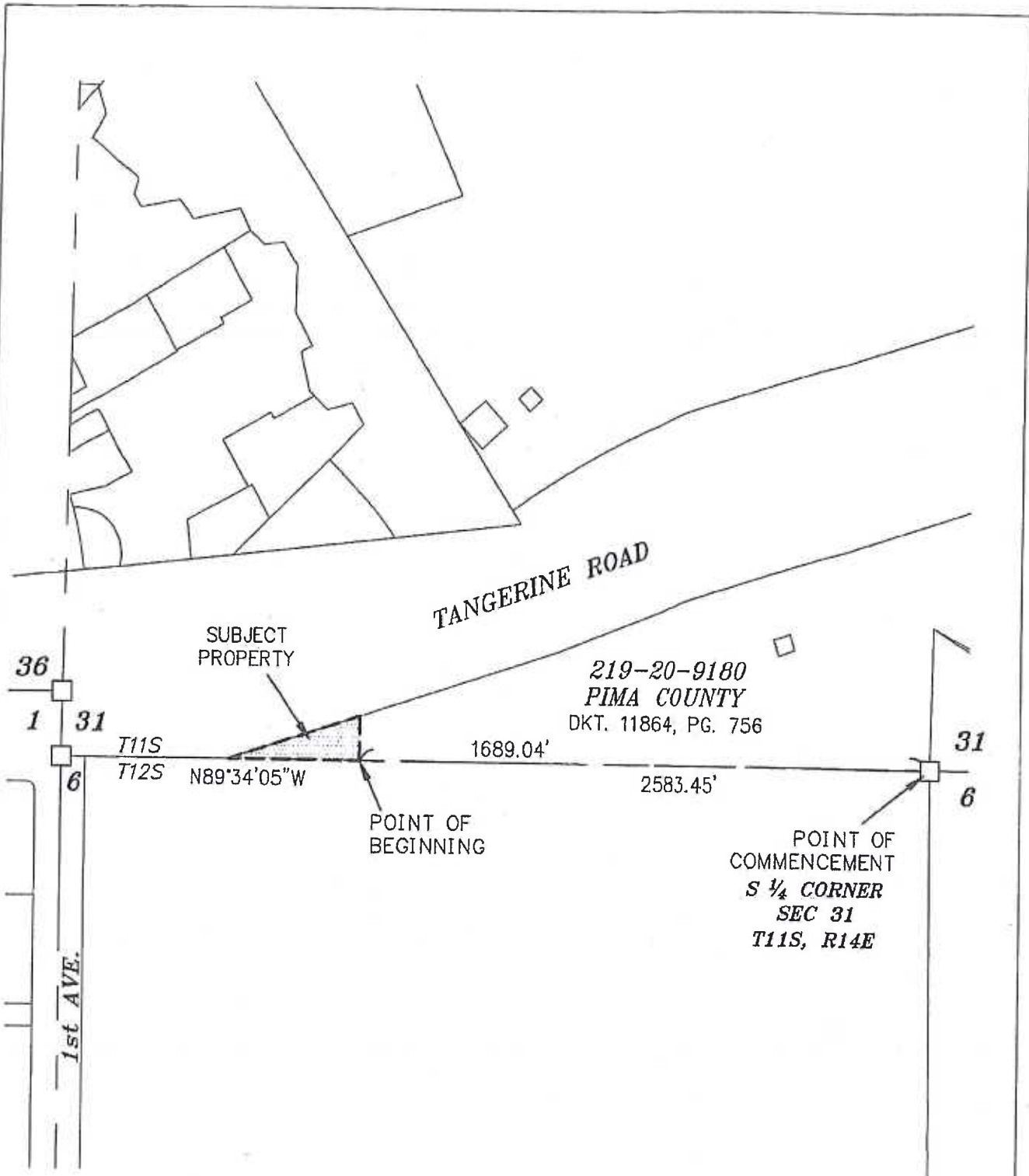
CONTAINING: 24,712 square feet or 0.5673 acres of land, more or less.

Prepared by:
THE WLB GROUP, INC

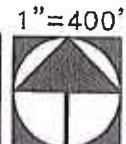
Peter D. Cote, RLS 44121



EXPIRES 3-31-2018



**EXHIBIT TO ACCOMPANY DESCRIPTION OF
 TANGERINE CONNECTION
 WESTERN TRIANGLE
 SECTION 31, T-11S, R-14E, G.S.R.M.,
 PIMA COUNTY, ARIZONA**





**LEGAL DESCRIPTION
THE VILLAGES AT SILVERHAWKE
TANGERINE CONNECTION: ACCESS PARCEL**

A portion of that certain parcel as described in Docket 11864, Page 756, Pima County records, lying within Section 31, Township 11 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona, more particularly described as follows:

COMMENCING at the South quarter corner of said section 31 from which the Northwest corner of said Section 31 bears N 89°34'05" W (basis of bearings), a distance of 2583.45 feet;

THENCE N 89°34'05" W, along the South line of the Southwest quarter of said Section 31; a distance of 1522.14 feet to the **POINT OF BEGINNING**;

THENCE continue N 89°34'05" W, continuing along said South line, a distance of 175.90 feet to the Southerly right-of-way line of Tangerine Road;

THENCE N 00°25'55" E, a distance of 128.47 feet to the Southerly right-of-way line of Tangerine Road;

THENCE N 71°57'55" E, along said Southerly right-of-way line, a distance of 185.45 feet;

THENCE leaving said Southerly right-way-line, S 00°25'55" W, a distance of 187.21 feet to the **POINT OF BEGINNING**.

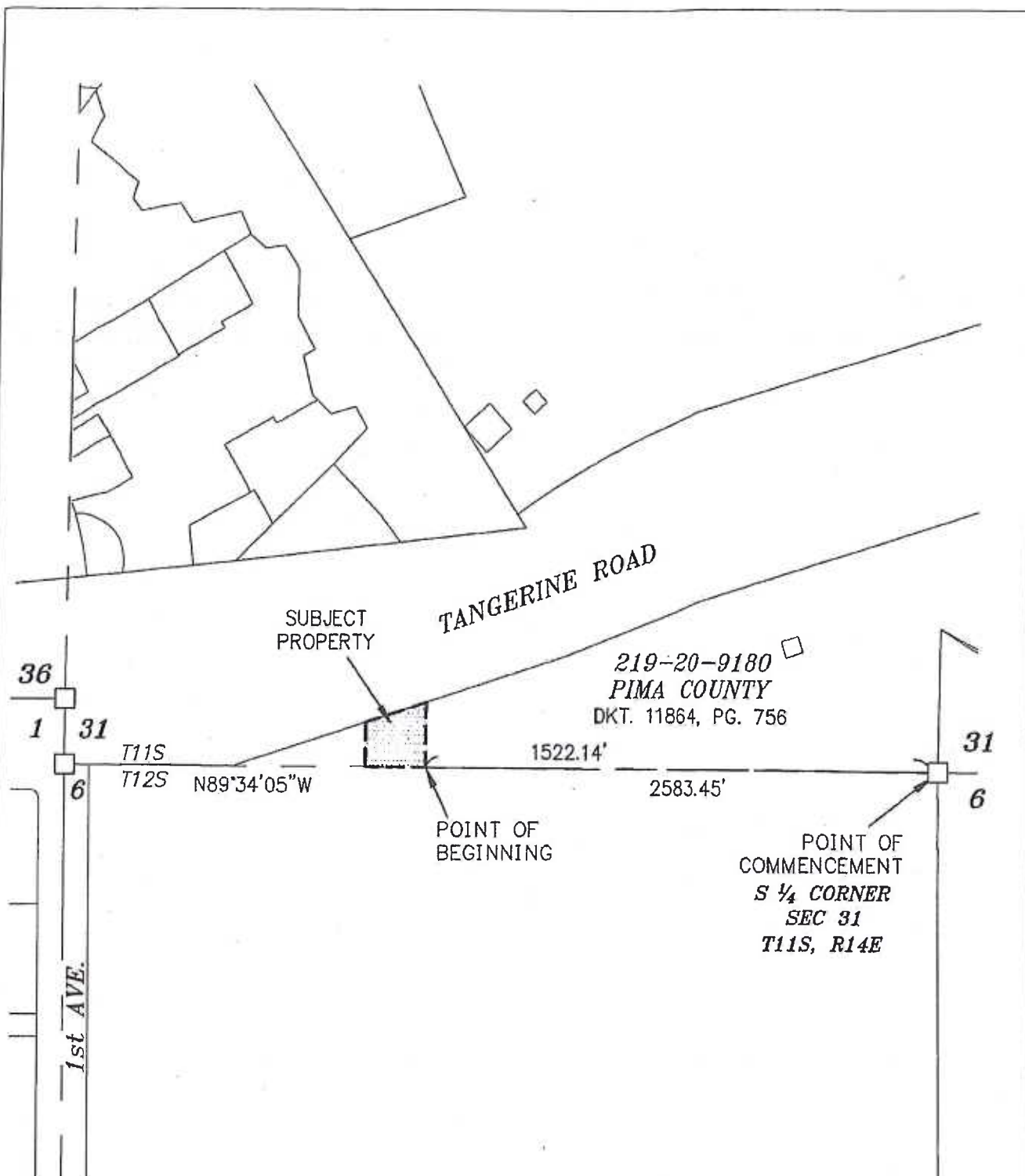
CONTAINING: 27,765 square feet or 0.6374 acres of land, more or less.

Prepared by:
THE WLB GROUP, INC

Peter D. Cote, RLS 44121



EXPIRES 3-31-2018



**EXHIBIT TO ACCOMPANY DESCRIPTION OF
TANGERINE CONNECTION
ACCESS PARCEL
SECTION 31, T-11S, R-14E, G.S.R.M.,
PIMA COUNTY, ARIZONA**

The WLB Group **WLB** 1"=400'

WLB No. 182053-G-003-0103

Q:\182053\J-006 - Villages at Silverhawke\10 Survey\Parcel Acquisition exhibit.dwg