



PIMA COUNTY

Sustainability, Conservation
& Historic Preservation

AGENDA MATERIAL
DATE 9/6/16 ITEM NO. RA 20
MEMORANDUM

Date: September 2, 2016

To: C.H. Huckelberry, County Administrator

From: Linda Mayro, Director 
Sherry Ruther, Environmental Planning Manager 

Re: Pima County Multi-species Conservation Plan and Section 10 Permit

This memo responds to your request to address some of the development sector's questions regarding the Section 10 Permit raised in meetings this week.

As you know, the development industry, including the Southern Arizona Home Builders Association (SAHBA) has been a long-standing stakeholder in the evolution and final outcome of Pima County's Multi-species Conservation Plan (MSCP) and the resulting Endangered Species Act Section 10 permit issued by the U.S. Fish and Wildlife Service (Service) on July 13, 2016.

Since 2009, development industry representatives have made their concerns and recommendations known through a variety of formats. Formal letters have been submitted; numerous staff and Industry-specific meetings were convened to review current issues and discuss coverage for development on private land; not to mention plenty of unplanned, but welcomed, phone conversations with staff.

We feel we have made very concerted efforts to address their concerns about the MSCP and Permit, and we feel that the final MSCP succeeds in satisfying development industry concerns, either outright or to the greatest extent possible. Based on our recent meeting with industry representatives to discuss these issues again, especially those relevant to SAHBA, we have prepared the following responses to the issues we heard.

1. Grandfathering of existing projects and entitled properties

- SAHBA Concern: Additional mitigation obligations will be placed on landowners when they choose to opt-in.

County Response: No additional mitigation obligations will be placed on projects in order to receive coverage.

- SAHBA Concern: Ordinances could be amended in the future to impose additional mitigation obligations if substitute mitigation lands are necessary.

County Response: The MSCP clearly shows it is the County, not private landowners that get coverage, that must substitute additional mitigation lands.

2. CLS requirements in Pima Prospers

- SAHBA Concern: The CLS map and requirements were not based on field inventory.
- County Response: The CLS map was developed using both field data and predictive modeling using the best science available to the expert teams and is based on needed habitat to support species, not species inventories.

3. Regulatory Relief from Table 4.1 in MSCP

- SAHBA Concern: County environmental ordinances were developed after the SDCP was initiated and they should be either eliminated or substantially modified.
- County Response: Most of the ordinances cited in Table 4.1 in the MSCP were enacted in the 1980s and 1990s before the SDCP was even an idea. These ordinances are cited in the MSCP as means to avoid, minimize and mitigate impacts, and they contribute to the overall strategy of the MSCP that has been approved by the Service in issuing the Section 10 Permit. That said, we have anticipated the possible need for future revisions as noted in Pima Prospects.

4. Streamlining Endangered Species Act Section 7 consultations

- SAHBA Concern: Federally-permitted projects are excluded from coverage.
- County Response: This has been addressed. Projects eligible for coverage that require a federal permit can still qualify for Section 10 permit coverage. The Army Corps of Engineers (Corps) programmatically consulted on future Section 404 regional general permits and nationwide permits within the permit area saving considerable time and money that would otherwise be required under Section 7 of the ESA. This means the MSCP can provide for species mitigation if the types of activities proposed in the 404 permit are covered under the MSCP. Developers electing coverage will be able to benefit from not having to submit detailed biological reports to the Corps. Streamlining of Section 7 is not available for individual Section 404 permits, but the agencies may, at their discretion, consider whether MSCP mitigation would satisfy species compensation requirements through a Section 7 consultation.
- SAHBA Concern: Want greater streamlining and programmatic consultations with other federal agencies that have oversight on land development projects (USFS, BLM, FEMA).

County Response: We agree this is desirable, and some discussion is underway. For the present, however, the Corps is the only federal agency that has engaged us in this effort.

5. Opt-in / Opt-out application

- SAHBA Concern: The County would not make opt-in available to those projects located outside the CLS or that received approvals prior to adoption of CLS.

County Response: All projects on private land in the county that require a site construction permit or certain building permits that involve grading of 14,000 square feet or more are now eligible. The project site does not need to be in an undeveloped state in order to be eligible to opt-in.

- SAHBA Concern: Projects that have already been issued a grading permit should still be able to seek coverage including landowners who currently hold site construction permits that have complied with the Conservation Lands System (CLS) and set aside large portions of their property to meet those requirements. Since CLS set-asides are preserved in order to support the County's Section 10 permit, a project that provides CLS set-asides should get coverage.

County Response: The County must have a direct authority over a project in order to extend Permit coverage to a private development project. The necessity for a direct authority is a Service requirement. Since it is the County's act of issuing the grading permit that satisfies the Service's requirement, coverage cannot be granted after issuance of the site construction or building permit that authorizes grading.

Projects that provide CLS set-asides do so to conform to Pima Prospects conservation guidelines, riparian mitigation requirements (Title 16.30), and the goals of the Sonoran Desert Conservation Plan. CLS set-asides are not required by the MSCP or the Section 10 permit.

6. "Federalization" of Pima County ordinances

- SAHBA Concern: The Service will influence the County's administration of those regulations and protocols listed in the MSCP (Chapter 4, Table 4.1) especially the SDCP, CLS, Riparian Ordinance, and Native Plant Preservation Ordinance; including these regulations and protocols in the MSCP precludes future amendment.

County Response: The MSCP and Section 10 permit describe a coordination process with the Service that must occur prior to making modifications to these regulations and protocols. This coordination process is to ensure the County is fully informed as to the ramifications of amending any of the regulations and protocols listed in the MSCP. This is no different than soliciting public input and stakeholder comment that is standard procedure when the County exercises its legislative authority. The County is absolutely not surrendering any of its legislative authority to implement any aspect of the MSCP and Section 10 permit including those regulations and protocols listed in the MSCP.

Most of the County's environmentally-related regulations, including Title 16.30 Riparian Protection and Mitigation Requirements (1998) and the Native Plant Preservation Ordinance (1994) pre-date the earliest conceptual discussions about a potential Section 10 permit. Each regulation was promulgated to address specific community issues and will continue to be interpreted, implemented, and amended according to the authorities delegated to Pima County by the State of Arizona.

We hope this helps summarize and respond to some of the discussion topics we heard. Staff fully expects to further engage the development community in discussions so they can see and realize the benefits of the MSCP Section 10 Permit for their industry.