

SPECIFIC COMMENTS BY SECTION:

Ch. 2: Pima County MSCP Impacts

2.3 Activities Proposed for Coverage by PCMSCP

The activities described in this section should be revised and clarified to reflect comments below, and after a more thorough and complete analysis of activities that may result in take, will occur over the life of the permit and for which Pima County has some form of control.

2.4 Anticipated Incidental Take Levels of PCMSCP

Levels of take are expressed in percentages representing conservation goals for each species, and in terms of high and medium potential habitat and Priority Conservation Areas (PCAs) impacted (p. 2-45 – 2-46). As stated in our comments on Draft 1, landscape-scale habitat conservation may be sufficient for many of the covered species but is not likely to adequately conserve the rarest resources. As such, this is not a sufficient conservation strategy for those species which are extremely imperiled or have a limited range. According to the U.S. Fish and Wildlife Service' habitat conservation plan "five-point policy,"¹

...populations of a narrow endemic species that occur within a wider ranging habitat type may not be adequately covered by an HCP that depends solely on amount of habitat conserved in a broad general area and does not specify particular locations where the habitat for that species is conserved.

For these "Special Species", as we will refer to them in this document, take should be expressed in actual numbers of individual members of each species covered by the permit that expect to be taken. In addition, several species' habitat models have been revised since originally released. The take analyses should use the most current habitat models.

Edge effects of land conversion by development, capital improvement projects, and any linear developments such as roads and utility corridors must also be accounted for in any calculations of incidental take including both direct and indirect effects.

2.5.1 Direct Effects of PCMSCP on Conservation Land System (CLS)

The latest PCMSCP draft still fails to provide clear acreage numbers of anticipated development impacts in each category of the CLS over the life of plan. Tables meant to explain this concept - table 2.9, table 2.10, and table 2.11 - are entirely inconsistent with each other as well as the discussion on page 2-51, and provide no clear reference for the reader to each other or to the fundamental question of how much land will actually be developed in each CLS category and outside the CLS, and in each ten-year plan increment. For example, Table 2.9 is projected acres of future development in the *Planning Study Area including* State and Federal Lands, Table 2.11 is projected future development in *Permit Area excluding* state and federal lands, and Table 2.10 is potential conservation and new development under CLS guidelines within *Permit Area* (all emphases added). This is very confusing and needs to be clarified.

Furthermore, some CLS categories contain incorrect information, and some are omitted altogether from the discussion. For example, Table 2.9 shows only 604 acres of Important Riparian Area (IRA) undeveloped at buildout out of a total of 31,781 in the planning area including state and federal lands. Table 2.10 numbers are

¹ U.S. Department of Interior and Commerce's Final Addendum to the Handbook for Habitat Conservation Planning and Incidental Take Permitting Process (a.k.a. "five-point policy"). See 65 Fed. Reg. 35250-35252, June 1, 2000.

inconsistent with Table 2.9, and Table 2.11 has no number for undeveloped IRAs at buildout. All the tables in Chapter 2 should be reformatted for consistency and clarity and all calculations rechecked.

On August 30, 2005, the Science Technical Advisory Team adopted a new and expanded Priority Conservation Area for the Pima pineapple cactus, after an extensive review by a panel of scientific experts. The CLS should be reflect this change and incorporate the PCA. This should also be reflected in the next draft of the PCMSCP.

As well, there is a “Special Species Management Areas” description included in the PCMSCP (p. 3-5), yet this category does not show up on any map or chart which discusses CLS categories, conservation goals, or acres impacted. Critical Landscape Linkages are also not considered when projecting acres of future development and potential conservation. This should be addressed in the next PCMSCP draft.

While the County’s decision to exclude State Lands from the PCMSCP and take permit may be acceptable, the County’s estimates for future land development (and therefore mitigation land obligations) should be based on the concept embodied in Table 2.9, page 2-57, that State Land inside the unincorporated County will become subject to PCMSCP conservation commitments as these lands are sold to private owners for development and become subject to Pima County land use authority.

2.5.2 Direct Effects of PCMSCP on Priority Vulnerable Species (PVS)

The county should commit to conservation measures adequate to conserve all Priority Vulnerable Species to the point at which they meet STAT conservation goals and are eligible for coverage. The PCMSCP mentions that the current list of species proposed for coverage “may be modified after technical review” of the take analyses for each. (Section 2.2.6, p. 2-35) We recommend that the County commit to conservation activities that will be adequate to cover all 55 PVS under the PCMSCP permit. The species *Sonorella baboquivariensis depressa* on page 2-67 is an example of a Special Species which is not proposed for coverage (Sec. 2.5.2.3, p. 2-67), but should be, by limiting anticipated development within the known location, acquiring the site, and providing species-specific management and monitoring.

2.5.3 Indirect Effects of PCMSCP

The PCMSCP states that, “Indirect impacts will be addressed by development standards for projects and activities within or adjacent to CLS lands.” (p. 2-69) However, the development standards are not found anywhere in this document. These standards must be detailed prior to permit issuance.

2.5.4 Cumulative Effects of Other Activities on Covered Species

There is no mention in the Cumulative Impacts section (p. 2-69) of what the potential cumulative impacts to the landscape may be, where they may take place, and how they will be mitigated, within the Permit Area. This section is focused on cumulative impacts *on other jurisdictional planning efforts*. For example, Marana’s intention to prepare a HCP cannot be cited as an example of minimization of cumulative impacts on page 2-69, paragraph 2. Cumulative impacts and mitigation to those impacts within the Permit Area should be outlined in the next draft.

2.5.6 Effects on Critical Habitat

The PCMSCP states “...the PCMSCP supports the proposed pygmy-owl critical habitat Draft Recovery Plan Strategies” (p. 2-71) However, the maps found in this document do not yet reflect that special species management areas have been separately identified within Multiple Use Management Areas. While we understand that these areas have in fact been delineated in the most recent Board-adopted maps, the next draft should reflect that change, both in the maps and on various charts predicting percentages of acres impacted under each CLS category.

Ch. 3: Mitigation Programs and Standards

3.2 Design and Development Guidelines for CLS

The PCMSCP states that conservation through the development review process will be achieved through application of CLS guidelines and through development standards, regulations, or ordinances (p. 3-9). Estimates of amounts of land impacted and land conserved during the permit period through the development review process (Table 3.1, p. 3-2), are based on the assumption that the recommended CLS set-asides will be met for each management area (footnote on Table 3.1, p. 3-2).

However, in order for these estimates to be accurate, there must be consistent application of the CLS guidelines for all development which occurs within the CLS. Currently, CLS guidelines are discretionary, meaning the Board can choose to allow developments that do not meet the CLS guidelines. As well, the CLS guidelines only apply to those developments requiring approval from the Board, meaning that non-discretionary development activities are not subject to the guidelines.

While the list of tools such as development standards, regulations, or ordinances could potentially make the CLS set-asides applicable to all development activities, the lack of specificity regarding either the substance or the terms of application of such tools does not provide adequate assurance that the assumed conservation will actually be achieved for the CLS or individual species.

If the estimates for impacts and conservation are to be correct, and the CLS guidelines applied for all development occurring in the CLS, details are needed in regard to specific tools, including incentives, that will be used to apply CLS guidelines to all development activities within the CLS, as well as proposal and evaluation criteria for all proposed development (see additional comments on this under Sec. 3.2.3.3 below).

The county also references conservation activities undertaken by other jurisdictions as actions that could be credited toward their obligation (ref). Again, specific details, including assurances or other firm commitments from such jurisdictions that such activities will occur, are necessary in order to provide certainty that the conservation will occur and will result in a net benefit to the species covered under the PCMSCP.

If Pima County is basing coverage of species on whether or not conservation is likely to be achieved throughout the Planning Area rather than within the Permit Area, clear commitments from other jurisdictions that have authority over lands outside the Permit Area need to be included in the PCMSCP in order to ensure that such conservation will occur.

3.2.3 Site Design Criteria

The PCMSCP states, “Pima County will *require* on-site conservation by projects subject to Board of Supervisors (BOS) discretionary actions (e.g., rezoning, subdivision plats, development plans, conditional use permits, etc.) that occur within the CLS... Pima County will achieve on-site conservation by complying with *ordinances* and CLS guidelines that define the *required* percentage of conservation.” (p. 3-8 – 3-9, emphases added) Pima County must explain how, in absence of any information regarding development standards, regulations, or applicable ordinances, conservation is going to be required through the use of the current CLS guidelines, which are not mandated. The county should also provide a complete list of BOS discretionary actions which are subject to the CLS guidelines, and any forthcoming regulations or ordinances which will be forthcoming.

Section 3.2.3.2, “Design Criteria for Linkages and Corridors,” should have citations for the criteria with provisions for research, monitoring and management that will lead to revised and new designs based on site, landscape, and species-specific parameters and new information. Furthermore, the suggestion in bullet 9 that all

roads "...that cross corridors should have "10-foot high fencing..." should be removed, as barrier fencing and crossing design will depend on site, landscape, and species-specific parameters.

Section 3.2.3.3, "Procedure to Demonstrate Compliance with CLS Guidelines and Design Criteria," must be fleshed out significantly in order to be adequate for permit issuance. Proposal and evaluation criteria for all proposed development, including site analysis and design criteria that addresses both landscape and species-specific values, should include specific information regarding avoidance of PCAs, Special Species and Special Elements; minimization of direct and indirect effects, such as those listed on page 3-9; mitigation and restoration efforts, including how lands will be conserved in perpetuity and who will be managing those lands; and management and monitoring plans for conserved lands.

3.3 CLS Acquisitions and Conservation Easements

Pima County commits to record conservation easements on any conserved land credited towards PCMSCP conservation obligations (page 3-15) yet does not appear to address provision of necessary, permanent protective management and monitoring of the same conserved land, or related necessary funding. These issues should be addressed in the final PCMSCP prior to permit issuance.

The PCMSCP states, "Acquisitions will mitigate projects that occur outside of CLS and those projects inside the CLS that are not longer subject to BOS discretion." (p. 3-14) However, it is unclear what amount of non-discretionary CLS development is expected to occur, so there are no assurances that this mitigation will be adequate. Moreover, some of the lands included on Table 3.3 do not meet the standards for mitigation lands. For example, the Sweetwater parcel was not in fact identified as a Habitat Protection Priority, but instead were purchased as Community Open Space under the 2004 open space bond program and do not qualify as mitigation lands under the PCMSCP. This list should be revised to include only those lands approved by FWS as lands suitable for use as mitigation lands under the PCMSCP.

3.4 Pima County Regional Flood Control District Riparian Habitat Programs:

The county should ensure conservation of Pima County Regional Flood Control District acquired riparian habitat by recording conservation easements or other protective mechanisms, specifying time-line benchmarks for preparing and updating management plans for these conserved lands (page 3-20), and providing an outline of the content of those plans. The same should be provided for any other County-controlled conserved land (per discussion on page 4-4). Furthermore, the PCMSCP should be revised to specifically state that county-controlled conserved land will not be counted towards PCMSCP mitigation requirements until management plans are prepared and implementation funding sources are established.

The county should provide the number of acres of lands that are classified as Important Riparian Areas within acquired reserves that meet the standard for mitigation under the PCMSCP. As well, tables 3.4 and 3.5 (p. 3-19) should be completed outlining the parcel information and total acreages of these lands.

As with table 3.3, table 3.6 (p. 3-22) includes restoration, rehabilitation and enhancement projects that may or may not qualify for mitigation credit under the PCMSCP. This list will be reviewed by FWS to determine which of these can be counted towards the county's total mitigation obligation under the PCMSCP, and will subsequently need to be revised by the county if necessary, prior to permit issuance.

The monitoring program outlined in section 3.4.5 (p. 3-22) includes very few specifics. The county must provide details regarding the monitoring program of the Flood Control District in order to ensure it meets the standards required under the PCMSCP for permit issuance.

3.5 Species-Specific Mitigation

As the current take analysis indicates, the “Special Species” referred to earlier in these comments will need additional conservation above and beyond CLS landscape-level protections in order to be adequately conserved. However, the additional special directives provided in Section 3.5 are too vague to “ensure that certain vulnerable species are adequately conserved under the PCMSCP,” (p. 3-23) as the PCMSCP asserts. The PCMSCP must provide specific details as to how conservation of these Special Species will occur, including:

- Identification of specific necessary habitat areas to be acquired or otherwise conserved for each Special Species, with benchmarks corresponding to take over time;
- Establishment of binding land use regulations above and beyond those for CLS, whereby impacts to Special Species may only be authorized for public health and safety projects, to provide a minimum economically viable land use, or a biologically superior alternative; and
- Special Species-specific management and monitoring measures necessary for area-specific protective management and monitoring plans.

The Cactus ferruginous pygmy-owl provides a fitting illustration of why, in some cases, a focus on landscape-scale habitat conservation measures falls short of what is necessary to provide for conservation of the rarest species. In his introductory memo, Pima County Administrator Chuck Huckelberry provides clear rationale for supporting large landscape, lower cost acquisitions (p. 5), and this has generally been the strategy taken by the county when determining which land acquisitions move forward. However, it will be necessary for the county to acquire and conserve smaller - and more costly - parcels of habitat in the northwest Tucson portion of Pima County if the county’s pygmy-owl population is to be adequately protected.

In his February 2005 memo to the Science Technical Advisory Team, Fish and Wildlife Service biologist Scott Richardson states:

“It is important for you to understand that northwest Tucson is a very important location with regard to the recovery and conservation of the pygmy-owl...I believe that northwest Tucson is still the central link in the pygmy-owl population chain that provides support and the opportunity for occupancy of the historical pygmy-owl range to the north...”

“There are certainly challenges involved when considering pygmy-owl conservation in northwest Tucson, but that is where many of the impacts to the species occur and that is where we should be striving to maintain the important pygmy-owl population values. We simply cannot expect to conserve the pygmy-owl only in places where it is easy.”

Because of the severely imperiled status of the pygmy-owl, additional conservation mechanisms, including protection of existing pygmy-owls and essential habitat located in this region, will need to occur in order to meet the requirements necessary to gain PCMSCP coverage for this species.

3.6 Invasive Species Mitigation

The PCMSCP states that “the Government Working Group will develop a comprehensive strategy to monitor and manage problem species.” (p. 3-25) However, it is unclear how this interagency collaboration will meet the specific obligations that Pima County will have to address this issue, particularly on lands set-aside as mitigation. The PCMSCP must outline what the county’s “comprehensive strategy” is, and how exactly problem species will be monitored and managed on mitigation lands in order to qualify for permit issuance.

3.7.1 Recovery Mandate vs. Enhancement

The PCMSCP states, “While Section 10 does not mandate recovery, the USFWS will not permit activities that preclude recovery of covered and/or listed species. The ESA does not explicitly require the PCMSCP to recover

species or contribute to the objectives identified by adopted Recovery Plans...” (p.3-26) This is untrue. The entire Endangered Species Act mandates recovery of those species afforded its protection; therefore, so does every section of the Act. Specifically, the Act states, “The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section.” (16 U.S.C. 1531(b))

Furthermore, the term “conservation” is defined in the Act as meaning, “to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this act are no longer necessary,” (16 U.S.C. 1532(3)) i.e., the species is *recovered* and removed from the list of endangered and threatened species. Finally, the issue of conservation being synonymous recovery was affirmed by *Sierra Club v. U.S. Fish and Wildlife Svs. 245 S.3d 434 (4th Circuit)*

3.7.2 Recovery Plans and Goals

If recovery plans are going to be used “as the basis for identifying minimization and mitigation measures...for information on appropriate management strategies, and for identifying monitoring needs and protocols” (p. 3-27) as stated in the PCMSCP, it is not adequate to merely state that this information is outlined elsewhere. These measures, strategies needs and protocols must be specifically outlined in the PCMSCP for each species.

3.7.3 Recovery by Cooperation with Private Landowners

Safe Harbor Agreements are not authorized under a Multi-Species Habitat Conservation, as asserted by the PCMSCP (p. 3-27), and cannot be authorized or issued by the County. Any Safe Harbor agreements proposed by non-federal partners who wish to participate in conservation and recovery efforts on their private property in the county must work directly with FWS on those agreements.

3.8 Mitigation Compliance

The required site analysis described under #1 in this section (p. 3-28) should also include an analysis of the Special Species present on lands proposed for development.

All of the county’s past land acquisitions seem to be included in the acquisition acreages given under #4. These numbers need to be adjusted so that they only include those acquisitions that are determined by FWS to qualify for mitigation credit. The mitigation ratio used in these calculations must also be expressed and justified, and must be consistent STAT recommendations.

3.8.2 – Mitigation Monitoring and Reporting

Management is an important part of mitigation, yet it is not mentioned in this section.

3.8.3 Mitigation Enforcement

Currently, Pima County does not have in place the authority to “enforce compliance with mitigation programs, by adhering to and enforcing CLS development guidelines and design criteria, ordinances, building permit requirements, and other regulations.” (p. 3-29) Current CLS guidelines and design criteria are discretionary, not mandatory, and currently there are no relevant “ordinances, building permit requirements, [or] other regulations” evidenced in the PCMSCP. Therefore, there is currently no mitigation enforcement in place, something that is necessary prior to permit issuance.

Ch. 4: Monitoring and Adaptive Management

An important component of conservation, which is essential to the success of the PCMSCP, is the management and monitoring of conserved lands. This section provides an inadequate level of detail regarding how management and monitoring will take place. In order to receive credit for lands conserved prior to the permit application, the final PCMSCP should contain detailed overarching, area and species-specific plans for all conserved lands to be counted toward the permit, including those administered under the Regional Flood Control District, that provide for:

- Development, review, and revision of management and monitoring plans by the Science Technical Advisory Team
- Assured funding for management and monitoring activities
- Identification of an appropriate management entity for conserved lands. We concur with the Regional Plan Policies for the CLS, adopted by the County on 6-21-05, that states that, “residents, or associations of residents, of a development may not serve as the sole administrator or enforcement entity of management of those areas,” however the appropriate entity must be identified.
- Specific conservation measures necessary for Special Species and/or Special Elements
- Fire management
- Prevention, removal, and/or management of invasive species
- Prevention, removal, and/or management of harmful land uses (e.g., ORV use, illegal dumping, grazing) and edge effects (e.g., lighting, noise, litter, etc.)
- Public access and recreation, where appropriate
- Timeline for completion of management and monitoring plans

In addition, a process for creating management and monitoring plans for lands conserved in the future under the PCMSCP should be detailed, with clear specification that acquisition will not be credited toward the permit until such plans are completed

Ch. 5: Changed Circumstances, Unforeseen Circumstances, No Surprises, and Other Federal Commitments

The tables accompanying this chapter appear comprehensive, however some of the scenarios in Table 5.1 “Changed Circumstances” are occurring now and should not be classified as a potential, and some of the medium priorities should be high priority. In addition, some of the scenarios in Table 5.2 “Unforeseen Circumstances” are foreseeable and should be moved to Changed Circumstance. Specifically, our suggested changes are:

Table 5.1, 1st page, remove Non-Native Aquatic Species scenario and discuss it in Chapter 4.

Table 5.1, pages 4-7, move first seven and ninth medium priority scenarios to high priority.

Table 5.2, 1st page, move mining scenario to Table 5.1

Table 5.2, 2nd page move declining tortoise populations to Table 5.1

Ch. 6: Implementation

6.5 – Funding Mechanisms and Commitments

The PCMSCP states, “Funding for land acquisition will be shared between public and private sectors with no more than 50 percent of the funding coming from affected private landowners and not less than 50 percent coming from publicly funded sources.” (p. 6-10) To date, the public funding for this plan has exceeded \$100 million through the 2004 Open Space Bond program and other sources. There is however, no identified mechanism that provides private funding from “affected private landowners.” The County must identify how it plans to meet the commitment for private funding, and what mechanism will be used to ensure that an adequate level of private funding is provided.