

## ARIZONA HERITAGE FUND

### I. Overview

Between 1990 and 2000, the State of Arizona's population grew by approximately 40 percent, the second fastest in the nation. Arizona holds four of the 100 fastest growing counties in the country, most with population growth rates well above 50 percent. In the face of growth and development pressures, Arizona has established various programs to protect and conserve open space, including the Heritage Fund Program and the Growing Smarter Grant Program.<sup>1,2</sup>

Arizonans voted in 1990 to establish the Heritage Fund, which sets aside up to \$20 million in state lottery revenues annually for parks, trails, and natural areas, historic preservation, and various wildlife conservation activities.<sup>3</sup> The allotted \$20 million is divided equally between two state agencies: the Arizona State Parks Department (AZSPD) and the Arizona Game and Fish Commission (AZGFD). AZSPD's funds are allocated for a variety of activities, including land acquisition and development of facilities for outdoor recreation. AZGFD's funds support wildlife habitat acquisition and sensitive species habitat enhancement and inventory.<sup>4</sup> This review focuses on AZGFD's land acquisition activities under the Heritage Fund. Since the establishment of the Heritage Fund (1990 to 2005), AZGFD has acquired more than 12,000 acres of wildlife habitat across the state.<sup>5</sup>

AZGFD's Heritage Fund Program has a broad authority to prioritize land acquisition based on sensitive habitat and is currently drafting a prioritization strategy that utilizes this authority. With the goal of identifying sensitive species and habitats before they become federally threatened or endangered, the strategy will incorporate a broader approach to the identification of significant habitats. The process will take into account habitats identified by The Nature Conservancy's Eco-regional Plans, as well as Arizona's wildlife action plan (formerly known as the Comprehensive Wildlife Conservation Strategy).

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<sup>1</sup> The Arizona Preserve Initiative or Growing Smarter Program, approved by state vote in 1998, outlines a process to preserve areas currently designated as State Trust Land. The process describes how a state or local government, business, state land lessee, or group of citizens can petition to have a parcel of land reclassified as land for conservation and then buy it at a public auction. For more information on the Growing Smarter Grants Program, see: Arizona State Parks Department, *Growing Smarter Grant Program*, at <http://www.pr.state.az.us/partnerships/growingsmarter/growing.html> (last visited April 20, 2005); or Trust for Public Land, *Funding Profile: Arizona*, at [http://www.tpl.org/tier3\\_cdl.cfm?content\\_item\\_id=873&folder\\_id=706](http://www.tpl.org/tier3_cdl.cfm?content_item_id=873&folder_id=706) (last visited April 20, 2005).

<sup>2</sup> Trust for Public Land, *supra* note 1.

<sup>3</sup> Arizona Game and Fish Department, *Heritage Fund Program*, at [http://www.azgfd.org/w\\_c/heritage\\_program.shtml](http://www.azgfd.org/w_c/heritage_program.shtml) (last visited April 20, 2005).

<sup>4</sup> Trust for Public Land, *supra* note 1.

<sup>5</sup> Telephone Interview with Gene Sturla, Conservation Section Supervisor, Arizona Game and Fish Department (March 9, 2005).

## II. The Arizona Game and Fish Heritage Fund Program

The Arizona Game and Fish Heritage Fund Program, as defined under the Arizona Revised Statutes, is designed to support public access, protection of sensitive habitat, habitat evaluation, urban wildlife and urban wildlife habitat, and environmental education.<sup>6</sup> The statute specifies that 60 percent of the program's funding (a maximum of \$10 million, funded by revenues from the state's lottery) can be used toward the protection of sensitive species. Of that amount, 40 percent may go towards the acquisition of "sensitive habitat utilized by endangered, threatened, and candidate species."<sup>7</sup> The AZGFD, operating with a staff composed largely of biologists and ecologists, administers the fund, and the Arizona Game and Fish Heritage Fund Public Advisory Committee serves in an advisory capacity. The committee consists of one chairman (the AZGFD Commissioner) and 15 members, including two members from each of the AZGFD's six regions, two representatives of the statewide perspective, and one representative of the national perspective. Members are appointed by the AZGFD and serve three-year terms.<sup>8</sup>

### *Program Funding*

Though a maximum of \$10 million may be allocated annually, that level of funding has not occurred in most years. The average annual deposit for fiscal years 2000 to 2005 was \$8.93 million, with the maximum amount of \$10 million awarded only once in fiscal year 2005. The amount expended since the program's inception in 1990 totals \$116.6 million, including expenditures and transfer match for federal funding. As specified in the statute, 24 percent of the total annual funding allocated to the program may go toward open space acquisition for the protection of habitat (i.e., a maximum of \$2.4 million, if the full \$10 million has been conferred).<sup>9</sup> In actuality, about \$17.5 million, or 15 percent of the total expenditure, has been spent on open space acquisition over the life of the program.<sup>10,11</sup>

## III. Land Protection Strategies

### *Land Protection Tools*

The AZGFD Heritage Fund Program utilizes multiple open space protection tools, including fee title acquisition, conservation easements, and leases.<sup>12</sup> The program also administers a grant

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<sup>6</sup> ARIZ. REV. STAT. tit. 17-298.

<sup>7</sup> *Id.*

<sup>8</sup> Arizona Game and Fish Department, *Heritage Fund Public Advisory Committee*, at [http://www.azgfd.org/w\\_c/heritage\\_hpac.shtml](http://www.azgfd.org/w_c/heritage_hpac.shtml) (last visited April 20, 2005).

<sup>9</sup> ARIZ. REV. STAT. tit. 17-298.

<sup>10</sup> The discrepancy in percentage expended on land acquisition is due to a 'sweeping' of funds in FY2003. At that time, the Heritage Fund was 'swept' by the Arizona legislature, whereby \$9.8 million of prior years' unspent dollars from the acquisition subprogram were used to balance the state budget. If these funds had been used for acquisition, expenditure on land acquisition would total 24 percent of total program expenditure.

<sup>11</sup> Email from Ty Gray, Heritage Fund Administrator, Arizona Game and Fish Department, to Roxanne Thomas, Science and Policy Analyst, Environmental Law Institute (March 16, 2005, 18:12:00 EST) (on file with author).

<sup>12</sup> AZGFD is currently considering strategies that more effectively address which tools to utilize for land acquisition. In the early stages of development, the strategy is planned to address considerations such as: appropriate method of protection (i.e. acquisition, conservation easements, stewardship, short- and long-term leases); water rights purchases; acquisition partner organizations (e.g. The Nature Conservancy, Trust for Public Land, private entities, government agencies); management and stewardship costs; and landowner involvement, among other factors.

program for the conservation of sensitive wildlife and sensitive wildlife habitat, authorized under the same legislation.<sup>13</sup> However, grants focus on research, education and outreach, and increasing public access, and are rarely awarded for the purpose of open space acquisition.<sup>14</sup>

### ***Prioritizing Land Acquisition***

Statutory language specifies that land should be acquired for the protection of “sensitive habitat utilized by endangered, threatened, and candidate species.”<sup>15</sup> However, a 2002 audit of the program by the state recommended that a process be developed for “evaluating and prioritizing parcels for future acquisitions.”<sup>16</sup> In response, the AZGFD is currently developing a land prioritization process intended to increase the efficiency and effectiveness of long-term conservation planning by identifying and prioritizing significant habitats and habitats that benefit species of greatest conservation need. The methodology is being developed primarily by the AZGFD regions with oversight provided by the AZGFD’s headquarter Habitat Branch, and will utilize data and plans from a variety of sources, including The Nature Conservancy (TNC) and AZSPD. AZGFD envisions a final process that incorporates geographic information systems (GIS), the state’s Heritage Data Management System (HDMS),<sup>17</sup> and other relevant technologies.<sup>18</sup>

Criteria under consideration for inclusion in the prioritization process, currently in a draft phase, include the following: location and sensitivity of habitats; location and imminence of threats to habitats; location of species of greatest wildlife concern; species diversity; quantified habitat value for mitigation purposes; surrounding development; natural wildlife corridors; proximity or adjacency to AZGFD lands and/or state and federal public lands; critical habitat; TNC’s Eco-Regional delineation; grazing, access, and water-related issues; proximity to existing roads and power lines; biological factors of species, communities and habitats (such as distribution patterns, population size and status, degree and types of existing threats, ecological fragility, recoverability, and taxonomy); management needs of species, communities, and habitats; feasibility; degree of existing protection; and other entities currently involved in research or management of the land.<sup>19</sup>

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Memorandum from the AZGFD Habitat Branch to the AZGFD Yuma Regional Office (Feb. 10, 2005) (on file with author).

<sup>13</sup> ARIZ. REV. STAT. tit. 17-298.

<sup>14</sup> Telephone Interview with Robin Beck, Heritage Grants Coordinator, Arizona Game and Fish Department (March 2005).

<sup>15</sup> ARIZ. REV. STAT. tit. 17-298.

<sup>16</sup> STATE OF ARIZONA OFFICE OF THE AUDITOR GENERAL - PERFORMANCE AUDIT DIVISION, STATE PARKS BOARD - HERITAGE FUND, Report No. 02-04 (July 2002).

<sup>17</sup> HDMS comprises Arizona’s natural heritage program. It is an integrated data management system of maps, computer files, and paper files that is used to identify elements of concern in Arizona and consolidate information about their distribution and status throughout the state. Information comes from published and unpublished reports and data collected by cooperating agencies, museum and herbarium collections, the scientific and academic communities, and many other sources. Data includes the location of species of concern and habitats, the ecological status of species, and the biology of state species. See: Arizona Game and Fish Department, *What is the Arizona HDMS?*, at [http://www.gf.state.az.us/w\\_c/edits/hdms\\_what\\_is.shtml](http://www.gf.state.az.us/w_c/edits/hdms_what_is.shtml) (last visited April 20, 2005).

<sup>18</sup> AZGFD Habitat Branch, *supra* note 12.

<sup>19</sup> *Id.*

### ***Protection in Perpetuity***

Legislation authorizing the Heritage Fund Program's land acquisition activities also outlines conditions under which lands protected through the program may be sold. According to the statute, AZGFD may dispose of lands acquired for the protection of threatened, endangered, or candidate species when the species of concern "no longer qualifies as an endangered, threatened, or candidate species."<sup>20</sup> Disposal may include conservation easements and fee simple transfers with associated instruments of protection and must adhere to guidelines established for the disposal of state-owned land. In addition, disposal must include a written agreement between the AZGFD and the purchaser outlining management actions to ensure proper maintenance<sup>21</sup> of the species of concern.<sup>22</sup> However, this disposal authority has never been utilized in the history of the program because, to date, no sensitive species have been downlisted.<sup>23</sup>

The Heritage Voter Initiative Statute also authorizes discretionary funding for the stewardship of lands protected under the Heritage Fund Program.<sup>24</sup> Management that addresses the needs of species of concern or other native species as they occur on these lands may include maintenance of habitat, selective control of nonnative species, maintenance of genetic viability, monitoring of populations and habitats, coordinating conservation activities, funding conservation actions, assessing conservation progress, and operations and maintenance activities for stewardship of properties acquired or otherwise protected with Heritage funds.<sup>25</sup>

In December 2004, AZGFD released a report analyzing current maintenance and operation efforts. The report recommends the development and adoption of long-term maintenance and operation strategies for the state, including: the development of a Lands Conservation Management Plan; the identification of essential restoration needs for properties early in the acquisition process (thus establishing those costs as part of the cost of the acquisition and reducing their impact on base operational budgets); the allocation of resources based on an annual, statewide lands management planning and evaluation program meeting; and ongoing evaluation and use of alternative funding sources. The recommendations are meant to increase the efficiency and effectiveness long-term management funding and activities by improving the determination of property management objectives, the identification and prioritization of support requirements (e.g. staffing, administrative oversight, equipment, and baseline budgeting), and the allocation of traditional and other eligible funding sources.<sup>26</sup>

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<sup>20</sup> ARIZ. REV. STAT. tit. 17-298.

<sup>21</sup> Management actions can include "maintenance of habitat, selective control of nonnative species, maintenance of genetic viability, monitoring of populations and habitat, coordinating conservation activities, funding conservation actions and assessing conservation progress." ARIZ. REV. STAT. tit. 17-298.

<sup>22</sup> ARIZ. REV. STAT. tit. 17-298.

<sup>23</sup> Sturla, *supra* note 5.

<sup>24</sup> ARIZ. REV. STAT. tit. 17-298.

<sup>25</sup> Telephone Interview by Elizabeth Seegar with Richard Maze, Arizona Game and Fish Department (June 12, 2003).

<sup>26</sup> ARIZONA GAME AND FISH DEPARTMENT, WILDLIFE AREA OPERATION AND MAINTENANCE TEAM REPORT (2004).

#### **IV. State Wildlife Action Plan**

The Arizona Game and Fish Department developed and submitted the state's wildlife action plan—a 10-year vision for managing Arizona's fish, wildlife and natural habitats—in 2005. Arizona's wildlife action plan (formerly known as the Comprehensive State Wildlife Strategy) addresses the full array of wildlife, but focuses on identifying and managing the species of greatest conservation need. The plan takes a landscape level approach to identifying habitats and wildlife conservation needs. The effort involves the ongoing input from and partnerships with a variety of stakeholders, including sportsman and recreational groups, conservation organizations, special interest groups, Native American tribes, county and municipal governments, and the general public.

AZGFD's Heritage Fund Program has monitored the development of the plan closely in order to see how its findings might apply to the development of the land acquisition prioritization process. While the process will not duplicate the efforts of the wildlife action plan, it will likely incorporate portions of its findings. Heritage Fund Program staff have met with the AZGFD staff responsible for plan development and intend to work cooperatively in developing a land protection strategy that includes the prioritization of habitat identified in the plan for species of greatest conservation need.<sup>27</sup>

#### **V. Summary**

Authorized by Arizona statutes, AZGFD's Heritage Fund Program conserves open space primarily to protect habitat involving species of concern, e.g. threatened, endangered, and candidate fish and wildlife species.<sup>28</sup> The statute also provides broad authorization to identify sensitive lands for acquisition. The program is in the process of developing strategies both to prioritize land for these purposes and to manage lands and waters in perpetuity. Arizona's wildlife action plan will be integrated into the development of both strategies.

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<sup>27</sup> Email from Gene Sturla, Conservation Section Supervisor, Arizona Game and Fish Department, to Roxanne Thomas, Science and Policy Analyst, Environmental Law Institute (Nov. 4, 2005, 10:47:00 EST) (on file with author).

<sup>28</sup> ARIZ. REV. STAT. tit. 17-298.