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Neva Connolly
Pima County OCSEP
3500 W. River Rd.
Tucson, AZ 85741

**Southern Arizona
Home Builders
Association**

2840 N. Country Club Road
Tucson, Arizona 85716
Phone: (520) 795-5114
Fax: (520) 326-8665
Web: www.sahba.org

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Dear Ms. Connolly,

Thank you for the opportunity to provide comments on the 5th Draft of the Multi-Species Conservation Plan. Pursuing this plan, and a USFWS Section 10 permit, is an important step for Pima County and the Sonoran Desert Conservation Plan. While recognizing the significance of this initiative, SAHBA and our members, have questions and comments on the impact this would have to our industry and private landowners.

In this letter, we've categorized our comments based on general and specific areas we would like to see addressed. We ask that the County continues to work through these issues with us, and any other issues brought forward stakeholders and the public, before formally submitting the Plan to the USFWS.

General Comments & Questions

- 1) This is a complex subject and a complex plan. We've also heard different interpretations of certain sections from different staff. We are concerned that the 5th draft is still too challenging for anyone but an HCP or conservation expert to understand. We are also concerned that there will be different interpretations amongst staff and ultimately how it is enforced. We do not think the plan should be "dumbed down" but it should be made clearer for the public, the development community and those enforcing it prior to submission to USFWS.
- 2) The Plan makes references to "facilitating economic expansion" and "economic health" which implies that there would be some benefit to the private sector. Can you please clarify how the MSCP and Section 10 Permit would benefit private landowners and the residential development community?
- 3) There are a number of references to new development-related ordinances, revisions to existing development-related ordinances, new construction standards and other regulations in the future in order to fulfill the obligation of the plan/permit. While these additions and/or changes may have merit, the lack of detail provides great uncertainty for the development community. We ask that any new development related regulation be incorporated as part of the plan only as an amendment at a later date after adequate stakeholder review and input.



- 4) The plan is unclear about the participation requirements for future projects, within the CLS, that have all of their entitlements.

For example, if I'm a landowner with 100 acres of IRA property within the CLS, and I have no need for Board action to bring my project to market, what will be required of me in order to comply with the CLS? Will the land development related activities that I perform on my property be covered by the Section 10 permit?

We ask that you clarify and add in a specific section about the requirements for entitled projects.

- 5) In theory, in order for the County to receive a Section 10 Permit, it must demonstrate that the conservation, management and monitoring components of the MSCP, at a minimum, offset any potential "incidental take." This is accomplished primarily through the existing requirements for development within the CLS. How does the MSCP ensure that the land development activities outside the CLS or on entitled projects within the CLS move forward and still keep the permit whole?
- 6) Species specific plans, that have not been provided to the public for comment, should be amended into the plan only after appropriate stakeholder input.
- 7) Land set-asides as part of the CLS should be done in a way to accommodate the developers ability to utilize remaining space. There is potential uncertainty, added costs, and diminution of land value if the possibility exists that the developable portion(s) of land, after set-aside, are "land locked" or otherwise inaccessible from existing roadways.
- 8) The MSCP does not have a voluntary participation provision that is typical of HCPs. In other words, the private sector has no option but to participate. Why is this the case? Would the County consider a mechanism whereby a landowner or developer could choose to "opt-in" or "opt-out" of coverage?
- 9) The Maps are not legible in the document. To the extent specific interpretations from the map need to be made to determine impacts, higher resolution maps are necessary.

Specific Questions

1.1 (p. 2), Second Sentence – "In addition to providing Pima County with incidental take protection under the ESA for covered species and permitted activities identified in the plan, the Pima MSCP also provides the framework for ESA compliance for other Federal and non-Federal participants throughout Pima County."

- Please define, and provide examples of, 'federal' and 'non-federal' participants.
- Also, why does the MSCP only provide a "framework" for other federal and non-federal participants? In other words, why wouldn't the same guarantees for incidental take protection be given to those participants as it seems to be given to the County?

1.1 (p. 2), Fourth Bullet, Describing HCP Requirements – “To develop “creative partnerships” between public and private sectors.”

- Can you provide an example of a “creative partnership”?

2.6 (p. 17), Covered Activities for the Pima County MSCP, Fourth Bullet – “Pima County’s issuance of land-use-related discretionary permits, including those for development, roadway construction, extension of wastewater treatment facilities, and installation of utilities;”

- Are the activities for which the permit is issued covered or only the County for issuing the permit? Please clarify.
- Our understanding is that issuance of land-use-related permit issuance is not discretionary, or a legislative action, but an administrative action. Please clarify.

2.6.1 (p. 18), Land Development – “Development includes all activities and projects for which Pima County has discretionary authority to issue permits and approvals for covered activities or contracts, both inside and outside of the CLS.”

- Our understanding is that issuance of land-use-related permit issuance is not discretionary, or a legislative action, but an administrative action. Please clarify.
- Would a landowner with entitled lands within the CLS be required to comply with the CLS if he were issued a land-use-related permit? If not, would the activities for which the permit is issued be covered by the Section 10 permit?

2.6.6 (p. 23) Enhancement and Restoration Actions, Final Sentence – “If necessary, a Certificate of Inclusion Program would be developed for neighbors.”

- What would be the purpose of such a program? What would be the process for participation and administration?

2.7 (p. 30), Second Paragraph - “...Pima County will revisit the growth projections and adjust the mitigation required at the end of Permit Phase I and II, to ensure adequate mitigation for continuance of the Section 10 permit.”

- When will this occur and what is the process for review and public input?

2.9 (p. 33), First Paragraph – “Indirect effects to individual covered species and natural resources within conserved lands are most likely to be associated with various aspects of development-related activities including: increased illumination; greater potential for wildlife to encounter vehicle traffic; modification of ambient noise levels; changes in water-use patterns; air pollution; human activities; and introduction of free-roaming pets, feral dogs/cats, and invasive species into areas where they do not presently occur.”

- This section is unclear. What is the term “associated with various aspects of development-related activities” referring to? Is the association with the land development activities directly or is this intending to reference activities that are a “result of” development? If it’s the actual development related activities, aren’t those covered under

the Section 10 permit and therefore not an indirect effect? If it were intending to be a reference to the activities that are a “result of” development, wouldn’t any or all of these things be possible even in the absence of land development?

2.9 (p. 33), First Paragraph – “To minimize the potential adverse impacts to identifiable indirect effects, Pima County will, to the extent practicable, create and apply development and construction standards to private and Pima County projects.”

- New development and construction standards could have enormous implications for the private sector yet this sentence is very vague. First, how are “development” and “construction” of public and private projects “indirect” effects? Aren’t they covered activities for which the MSCP is intended to allow for and therefore not need to be further regulated? Second, how and at what point will these standards be formulated and what will be the process for stakeholder input?
- See point #3 in the first section of general comments

3.1 (p. 35), Mitigation and the CLS, First and Second Bullets – 1) “Mitigate approximately 35,700 acres of impacts within the CLS with approximately 97,000 acres within the CLS in Pima County or in adjacent counties;” and 2) “Mitigate approximately 31,000 acres of impacts outside the CLS with approximately 145,000 acres within the CLS.”

- Why are the impacts for development outside of the CLS being mitigated at a higher ratio than those within the CLS?
- What are the obligations for the developers/landowners with projects outside of the CLS to comply with the MSCP?
- If the development activities outside of the CLS are being mitigated for with open-space acquisitions, how will that tracking process or “book keeping” occur?

3.2 (P. 38), Mitigation Mechanisms, First Bullet (in reference to protection of mitigation lands) – “Dedication/donation (transfer of ownership) of set-asides to Pima County with recordation of a conservation easement;”

- The process for working with private developers to achieve this must be clarified.

3.2.4.2 (P. 44), Regulatory Mechanisms, Second Paragraph – “Pima County will, as necessary, evaluate existing County code ordinances and regulatory mechanisms and revise them as appropriate or create new requirements to maintain the values of conserved lands.”

- See point #3 in the first section of general comments

3.2.4.4 (p. 45) Procedure to Demonstrate Compliance with CLS Guidelines and Design Criteria, First Sentence – “Applications for land-use changes requiring approval by the Board of Supervisors shall include information that provides: 1) mapped and descriptive documentation of the natural resources of the area applicable to the site; 2) mapped and descriptive explanations as to what extent natural resource disturbance will occur, if at all, and how actual conservation

will occur as part of the development; and 3) measures to eradicate and/or manage invasive species within the area.”

- Are these three (3) requirements new or are they already in place? If they are new, can you please provide additional guidelines or details in order for private parties to fully accommodate the request?

3.4 (p. 46) Recovery Plans and Goals – “Some of the Pima County MSCP covered species will have a Recovery Plan (draft or final) promulgated by the USFWS:”

- When will these plans be available for public review?
- Please explain why the USFWS and not the County will be creating these plans.
- See point #6 in general comments found above.

3.5.1 (p. 47) Tiered Structure for Riparian and Aquatic Species Management Plan – “Pima County will develop a Riparian and Aquatic Species Management Plan within the first two years of the permit issuance.”

- See point #6 in general comments found above.

3.6 (p. 50) Mitigation Compliance, #6 – Pima County will require a more rigorous site analysis of lands in the CDLS that are proposed for development.

- County staff is, or has been, working on a revised site analysis checklist. Is this in reference to that ordinance?
- See point #3 in general comments found above.

3.6 (p. 50) Mitigation Compliance, #7 - Pima County will establish thresholds for incidental take based on the amount of conservation and development that is projected to be achieved during the life of the permit.

- It would be helpful to cite where the thresholds are found.

3.7.2 (p. 51) Unlisted Species – “Assurances will be given for those species that are adequately covered by the MSCP, pursuant to the ‘No Surprises Policy.’”

- To whom will these assurances be given?
- What will those assurances be?
- Are there any guarantees for those assurances from USFWS?

3.8.1 (p. 52) Permit Phase 1, Last Sentence – “Regulatory changes will focus on amending existing ordinances to better ensure that development-related projects avoid, minimize, or mitigate impacts to potentially affected biological resources.”

- Is this a reference to the ordinance changes mentioned the plan? Will the County include in the MSCP a comprehensive list of what ordinances are subject to amendment during Phase 1?
- See point #3 in general comments found above.

3.9 (p. 53) Amendments, First Sentence – “Amendments to the Pima County MSCP may be sought if there is unanimous agreement by all Implementation Agreement signatories.”

- Who will be the signatories?

3.9 (p. 53) Amendments, Second Sentence – “Amendments may be either major or minor as determined by USFWS.”

- Are there defined parameters for each type of amendment? If so, could those be included in the MSCP?

4.1.2 (p. 56) Restoration and Enhancement – “...ecological restoration will be employed to improve selected site-specific conditions.”

- Please clarify the intent of this and how it would work.

4.1.2.1 (p. 56) Riparian Restoration – “Some riparian restoration projects require a supplementary water source, including from effluent and reclaimed water sources, to support the types of facultative or obligate riparian vegetation plant communities that may no longer occur on the site.”

- The value and cost of water will undoubtedly rise in Pima County. Effluent is, and will continue to be, valuable not only to the environment but also the public. Will the county be seeking input from the public for determining dedicated future uses of effluent, beyond groundwater replenishment, such as riparian restoration projects?

4.4 (P.66) Management Plan Development – “Pima County and RFCDD will develop site-specific management plan or update existing management plans for most properties >100 acres.”

- Are similar plans already utilized?
- Are the plans for public or private properties? If private, how will the County and RFCDD work with the landowners?

Monitoring

5.1 (P.68) Compliance Monitoring

5.2 (P.69) Effectiveness Monitoring

5.2.1 (P.69) Species-level Monitoring

5.2.2 (P.70) Habitat-based Monitoring

5.2.4 (P. 74) Threats

5.2.5 Climate Monitoring

- Will monitoring occur on private lands or residential developments? If so, which types, what lands and what is the process for working with the landowner?

Table 6.1 (p. 89) Changed Circumstances

- What are the criteria by which priorities were measured?
- How will the different circumstances be monitored, gauged, and responses triggered?
- The listing of, and responses to, “urbanization causes further desiccation of other groundwater dependent riparian systems” is a significant concern to the development community. We ask for further explanation or assurances or that this circumstance is removed.

7.4.4 Impact Fees – Pima County will pursue and support state legislation granting counties the statutory authority to impose open space impact fees.

- SAHBA opposes possible open-space and MSCP related impact fees. We ask that this option be removed. We would be willing to work with the County to advocate for other funding sources.

Appendix E (p. 167) Pima Pineapple Cactus – Special Conditions, Management and Monitoring Directives

- SAHBA is concerned about the process of completing the MSCP concurrently with revising ordinances related to the PPC. We are also concerned with a 90% conservation goal for this species and it’s impact on the development community.

If you have any questions regarding the content of this letter, contact me at 795-5114 or david@sahba.org.

Cordially,



David Godlewski
Government Liaison, SAHBA