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**CERTIFIED MAIL / SIGNATURE REQUIRED**

February 17, 2009

Mr. Chuck Huckelberry  
Pima County Administrator  
130 W. Congress, 10<sup>th</sup> Floor  
Tucson, Arizona 85701

***Re: Comments on 5<sup>th</sup> Draft of the Pima County Multi-Species Conservation Plan and a time-line for final public process and completion***

Dear Mr. Huckelberry,

These comments, submitted on behalf of Mr. James K. Chilton, Jr., Susan E. Chilton, James K. Chilton, III and Chilton Ranch, LLC (including other properties owned by Jim and Sue Chilton in the Arivaca area), pertain to the 5<sup>th</sup> draft of the Pima County Multi-Species Conservation Plan and to the time line for final public process and completion. After thoroughly reviewing this draft and time line, it appears that the issuance of this draft is premature, and that the draft itself is fundamentally flawed.

First, the issuance of this draft is premature because its riparian management strategy and requirements are as yet unfinished and have not been released for public review. Without such public review, it is inaccurate to state, as your cover letter does, that submitting a further form of this draft MSCP to the Fish & Wildlife Service – including, presumably, this currently unfinished riparian management strategy and requirements that the public had no opportunity to review or comment on beforehand – will ensure that the County has the best plan possible and one that is understood and accepted by the community.

To the contrary, this approach will only insure that you do not have the best plan possible or one that is either understood or accepted by the community of rural, private property owners. We therefore urge you to correct this deficiency by releasing a draft of the plan's riparian management strategy and its requirements for necessary public review,

comment and redrafting *prior to* submitting the final draft of the MSCP to the Fish & Wildlife Service for review.

Once the final draft has been prepared, every property owner impacted in any way should receive a mailing that promotes open transparency and clearly defines how the MSCP and the critical term "important riparian area" will affect the use and value of their properties. Government based on the consent of the governed, fairness, transparency and openness requires no less.

Second, and equally warranting of correction before submission of the final draft of the MSCP to the Fish & Wildlife Service, are the many instances of inaccurate "important riparian area" (IRA) mapping for various, privately-owned properties. Despite the fact that a map is obviously not the territory it depicts, this draft nevertheless attempts to represent its IRA maps (many of which are currently substantially inaccurate) as if they actually are the territories they depict by according them ultimate authority for IRA identification and ordinance enforcement purposes at the exclusion of verification of their accuracy by examination of actual on-the-ground conditions.

Because this approach is as indefensible as it is arbitrary and capricious, we strongly urge the County to require the ground-truthing of all IRA maps depicting and delineating IRA occurrences on privately owned rural lands before those maps are allowed to become operative by Pima County for ordinance enforcement, land use law, or other regulatory purpose. Such ground-truthing must be conducted in the presence of and in close cooperation with the private land owner to determine whether the IRAs depicted on the County's maps are, in fact, reasonably accurate and, if not, to ensure that they are adjusted to reasonably reflect on-the-ground conditions as determined by actual ground-truthing before becoming operative.

Third, and separate from the issue raised in the preceding, use of a multi-species conservation plan, ordinance and/or IRA maps (land use law) as proposed by Pima County to reduce existing rights to use, divide, sell or possess privately owned real property, which thereby reduces the fair market value of that property, entitles the property owner to just compensation for the difference in market value from Pima County under Arizona law. (See: A.R.S. Title 12, Chapt. 8, Art. 2.1, Secs. 1134(A) and 1136(1)). Here, the market values of many Chilton properties would be substantially reduced by Pima County's use of this MSCP, enactment of accompanying ordinances and conjunctive enforcement of such by use of important riparian area maps, as land use law, to reduce existing rights to use, divide, sell or possess private real property. Because such actions would reduce the fair market value of these properties, just compensation for the difference would be required and expected from Pima County under current Arizona law.

Fourth, the proposed MSCP is overly broad by its application to rural areas of Pima County. This is so because the vast majority of all properties located in rural areas of Pima County are either government owned or held in trust for the Tohono O'Odham by the federal government, and are therefore already safe from the type and scale of

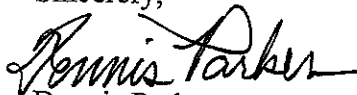
development that this MSCP is supposedly meant to address and mitigate for. That scale of development potential exists almost exclusively at lower Sonoran Desert elevations, in or near incorporated cities, such as those found in the Tucson metropolitan area, where almost all of Pima County's rapidly growing population of more than 1 million people actually resides. It does not exist in rural Pima County.

Fifth, as taxpayers, the Arivaca Chilton family objects to the millions of dollars being spent by the County and the U.S. Fish and Wildlife Service to shift the burden of responsibility for mitigation of large development projects from those responsible for and profiting by them to Pima County's rural landowners. Why should rural property owners like the Chiltons face effective confiscation of the use and value of their property for the private benefit of land developers in other parts of the County? In addition, why should the Chiltons have to forego historic and previously zoned land uses on their private property because Pima County's development community properly needs to mitigate for the environmental effects of its projects? This approach is certainly not just and its legality is questionable. It also appears to be an approach designed by the County to complete an end-run around the intentions of Arizona's appropriately irate voters in passing the "Kelo-inspired" just compensation for regulatory takings requirement.

Sixth, and finally, the Chiltons and their predecessors have grazed their livestock in areas that have been identified on maps as IRAs for more than 300 years now. At one of the early Board of Supervisors meetings on the Sonoran Desert Conservation Plan, Mr. Chilton was assured by the entire Board of Supervisors that grazing and its concomitant requirements for watering sites and ranch management facilities would be an appropriate continuing land use and would not be subject to County regulation or new restrictions on their private property. Mr. Chilton wants to be assured that the Board of Supervisors has not reversed or "qualified into irrelevance" its prior, publicly-made commitments.

Thank you for the opportunity to provide these comments on the 5<sup>th</sup> draft of the Pima County Multi-Species Conservation Plan.

Sincerely,



Dennis Parker,

Attorney at Law,

Representing the Chiltons and Chilton Ranch, LLC, and Arivaca area property owned by the Chiltons that is held in corporations or trust accounts

cc: Jim Chilton