MEMORANDUM

Date: October 17, 2012

To: The Honorable Chairman and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator

Re: **Critical Habitat for the Jaguar**

The Endangered Species Act (Act) authorizes the federal government to regulate activities affecting endangered and threatened species or their habitat, whether on public or private property. Once a species is listed under the Act, the US Fish and Wildlife Service (Service) is required to designate areas as 'Critical Habitat" for the species. Critical habitat is the area essential to the conservation of the species and may require special management considerations or protection.

The Service listed the jaguar as endangered in 1997, but it delayed Critical Habitat recommendations until August 17, 2012 when it proposed approximately 820,000 acres as Critical Habitat in southern Arizona and southwestern New Mexico (Figure 1). The proposal encompasses approximately 150,000 acres in Pima County consisting primarily of federal lands in the Baboquivari, Santa Rita and Whetstone Mountains. In the last 15 years, jaguar sightings have been confirmed in the Baboquivari and Whetstone Mountains. In 2011, there was an unconfirmed sighting of a jaguar in the Santa Rita Mountains, with an additional possible record reported earlier this month by the Arizona Game and Fish Department southeast of Tucson.

Critical Habitat Affects Section 7 of the Endangered Species Act

Critical habitat designations mean that federal agencies working within critical habitat would be required to use an additional standard of review during their Section 7 consultation process with the Service. In addition, having lines on a map provides clarity to the federal agencies as to where consultations are not needed. Designation of critical habitat would ensure that any action the federal government authorizes, funds or carries out will not likely result in the destruction or "adverse modification" of critical habitat. Critical habitat has no impact on private or public-sector projects unless there is a federal nexus by way of funding or a permit requiring the approval of a federal agency.

For those projects that have a federal nexus, the Service must determine whether the project will cause "destruction or adverse modification" of Critical Habitat. More simply,

they must determine whether the proposed project would diminish the value of Critical Habitat for both the survival and recovery of a listed species.

The Act itself does not define what constitutes adverse modification, so the Service must make that determination on a species-by-species basis. For the jaguar, the Service has proposed the types and extent of activities that would constitute adverse modification. Excerpted below is select text to give the Board a better understanding of their proposal:

> *"...Actions that could destroy or adversely modify jaguar critical habitat include those that would permanently sever connectivity to Mexico or within a critical habitat unit... At this time, we do not anticipate activities such as grazing, ranching operations, or limited recreational activity would have adverse effects to jaguar critical habitat, nor do we anticipate activities consistent with the stated goals or recovery actions of the Recovery Outline for the Jaguar (Jaguar Recovery Team 2012) or the future recovery plan for the species would constitute adverse modification."*

At present, Pima County has no significant ongoing or planned activities within proposed Critical Habitat of the jaguar that require federal authorizations, funding or permits. The principal activities in the area are ranching and recreational activities that are unlikely to sever the connection of jaguar habitat to Mexico. Pima County does own and manage ranch land in the Critical Habitat, which is a land use consistent with maintaining jaguar habitat. In summary, the proposal has little practical effect on Pima County's ongoing operations in the area or to the vast majority of other private sector activity in the area.

On the other hand, the adverse modification criterion for the jaguar will be particularly tricky for large-scale projects such as the Rosemont Mine, which has a federal nexus through the Forest Service and Army Corps of Engineers permitting processes. As part of this analysis, the Service will analyze "environmental baseline" and "effects of the action" with respect to the jaguar's proposed Critical Habitat. In the case of Rosemont and the jaguar, the proposed mine would destroy a large section of proposed Critical Habitat within the Whetstone Critical Habitat Unit (Figure 2).

Jaguar Critical Habitat and Its Relationship to the Multi-species Conservation Plan

Pima County has applied for a federal permit in the area of proposed critical habitat, namely the Multi-species Conservation Plan (MSCP) under Section 10 of the Act. The MSCP describes the next 30 years of County activities, as well as projected development via subdivision plats and homeowner ("Type 1") grading permits issued by the County. Because the jaguar is a listed species, the Service must evaluate the MSCP for adverse modification of jaguar Critical Habitat and for incidental take of the species. (Note that the standards for incidental take [covered by the MSCP] and adverse modification are

different). The Service will analyze effects on jaguar under Section 7, regardless of whether the jaguar is included as a covered species in the MSCP.

Since publication of the Service's Critical Habitat proposal, staff has discussed the host of MSCP activities that could contribute to the adverse modification of jaguar Critical Habitat with the Service. Based on this conversation, staff believes it is *highly unlikely* that any action contemplated in the MSCP would result in adverse modification. To further clarify this issue, staff recently met with Service staff to discuss the jaguar. Based on Staff review and supported by the recent discussion with Service staff, it is unlikely development activity under the Section 10 permit will lead to a decision of Adverse Modification.

Because Pima County's future activities described in the MSCP are unlikely to hurt, harm or harass a jaguar, Pima County has never included the jaguar for incidental take under the County's MSCP. Pima County's dialogue with stakeholders and the Service regarding this species has spanned over a decade, so a little history is in order.

Early in the development of the MSCP, the County convened the Science and Technical Advisory Team (STAT) to consider which species might be incidentally "taken" by urban development (primarily capital improvements of Pima County and land development permitted by Pima County). The STAT considered all listed species historically thought to occur in Pima County, including the jaguar (*Determining Vulnerable Species within Pima County, AZ, November 1999*). During this deliberation, sightings and rumors of jaguars in Pima County were noted; and while Pima County and STAT understood the potential for jaguars to continue to occur in Pima County, the potential for incidental or direct lethal take was deemed remote. In addition to STAT, a diverse group of stakeholders—called the Steering Committee—also weighed the question of which species to include in the Section 10 permit. Their 2003 recommendation did not include the jaguar.

Subsequently, Pima County staff has periodically evaluated the potential for incidental take of jaguar in light of the potential for County-permitted activities to have some influence on take of a given species. The 2004 draft of the MSCP, and the drafts that followed, did not propose incidental take coverage for the jaguar. Even with the inclusion of ranch management activities starting with the 2009 Draft MSCP, staff still continues to find that the potential for incidental or lethal take of jaguar to be extremely remote.

At no time has staff or the STAT recommended Pima County's incidental take authorization include jaguar.

That being said, the MSCP should benefit the jaguar. When County ranches are committed as mitigation for the impacts of the activities covered in the MSCP, Pima County will

permanently protect the deeded ranch lands we own via a conservation easement that would prevent future development from occurring on these lands.

What's Next?

Pima County intends to address its endangered species obligations by urging the Service to act on our proposal for an incidental take permit, which will by necessity include a Section 7 consultation on effects relating to the jaguar.

The Service will accept public comments on the proposal to list Critical Habitat for the jaguar until October 19, 2012. Pima County will comment, as discussed above and as already disclosed to the Service in our MSCP.

As part of their analysis of the effects of formalizing jaguar Critical Habitat, the Service will conduct an economic analysis to determine the costs of designating habitat, thereby allowing decision makers to balance the cost of a designation against its biological value. Public comment will be taken on the economic analysis separately from the current comment period for the proposed designated Critical Habitat. Pima County will offer information relating to the economic analysis.

If litigation ensues after critical habitat designation, it will not remove the obligations for federal agencies to protect the jaguar as an endangered species.

Summary

The proposal for jaguar Critical Habitat has little practical effect on Pima County's ongoing operations in the area or to the vast majority of other private sector activity in the area. In addition, based on staff review and supported by the recent discussion with Service staff, it is unlikely development activity under the County's proposed Section 10 permit and MSCP will lead to a decision of Adverse Modification to Critical Habitat. In fact, our ranch conservation activities under the permit and MSCP will benefit the jaguar.

CHH/mjk

Attachments

c: Nicole Fyffe, Executive Assistant to the County Administrator
Julia Fonseca, Environmental Planning Manager, Office of Conservation and Sustainability

Jaguar Proposed Designated Critical Habitat in Pima County

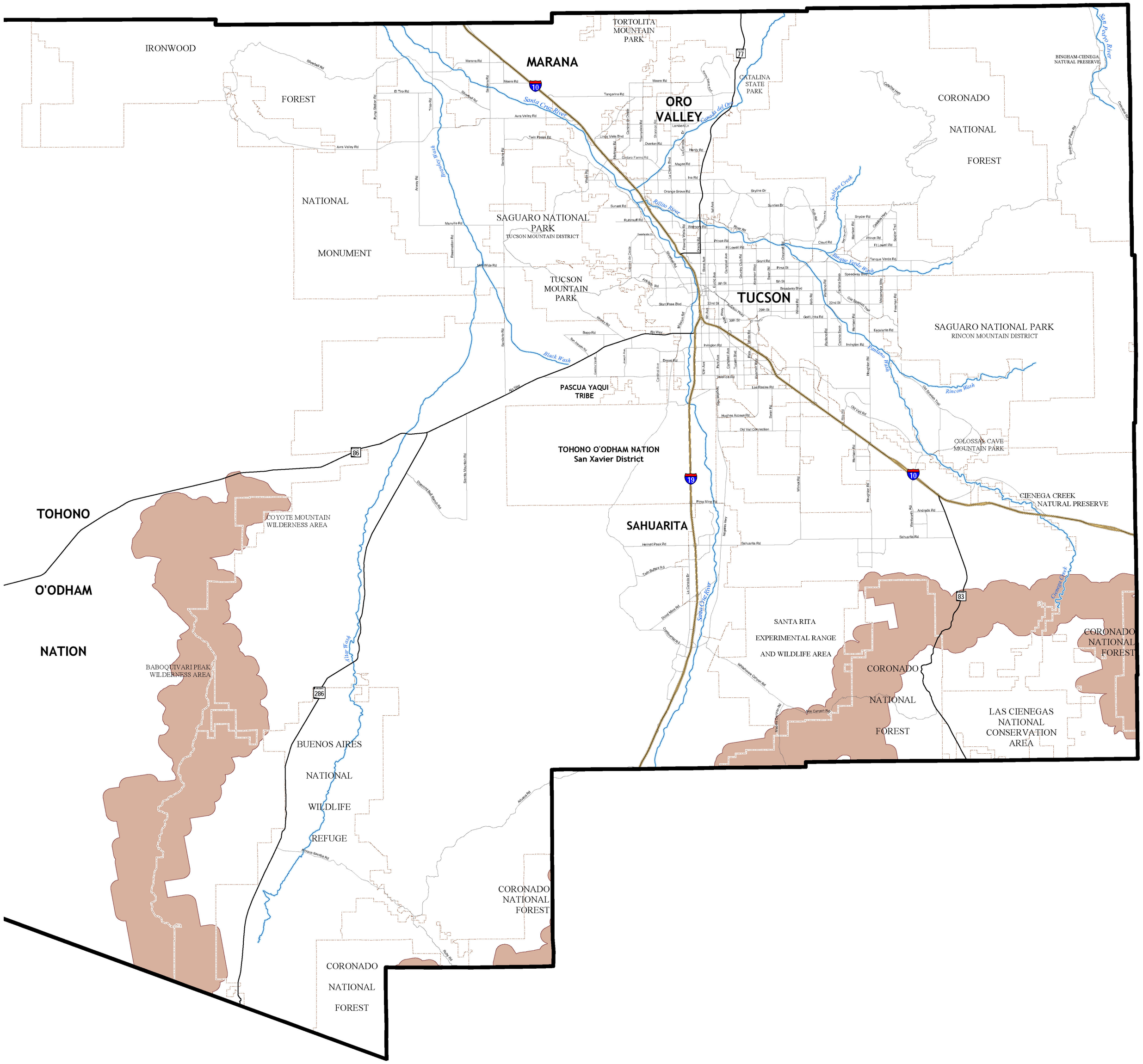
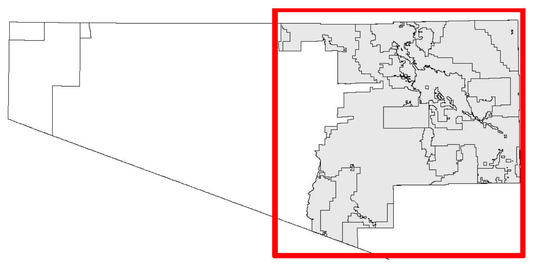


FIGURE 1

Jaguar DCH
(247,890 acres)

Pima County Index Map



Index Map Scale 1:1,500,000 for Arch E Print

The information depicted on this display is the result of digital analyses performed on a variety of databases provided and maintained by several governmental agencies. The accuracy of the information presented is limited to the collective accuracy of these databases on the date of the analysis. Pima County Information Technology Department Geographic Information Systems makes no claims regarding the accuracy of the information depicted herein.This product is subject to the GIS Division Disclaimer and Use Restrictions.

N

0 5 miles

Pima County GIS

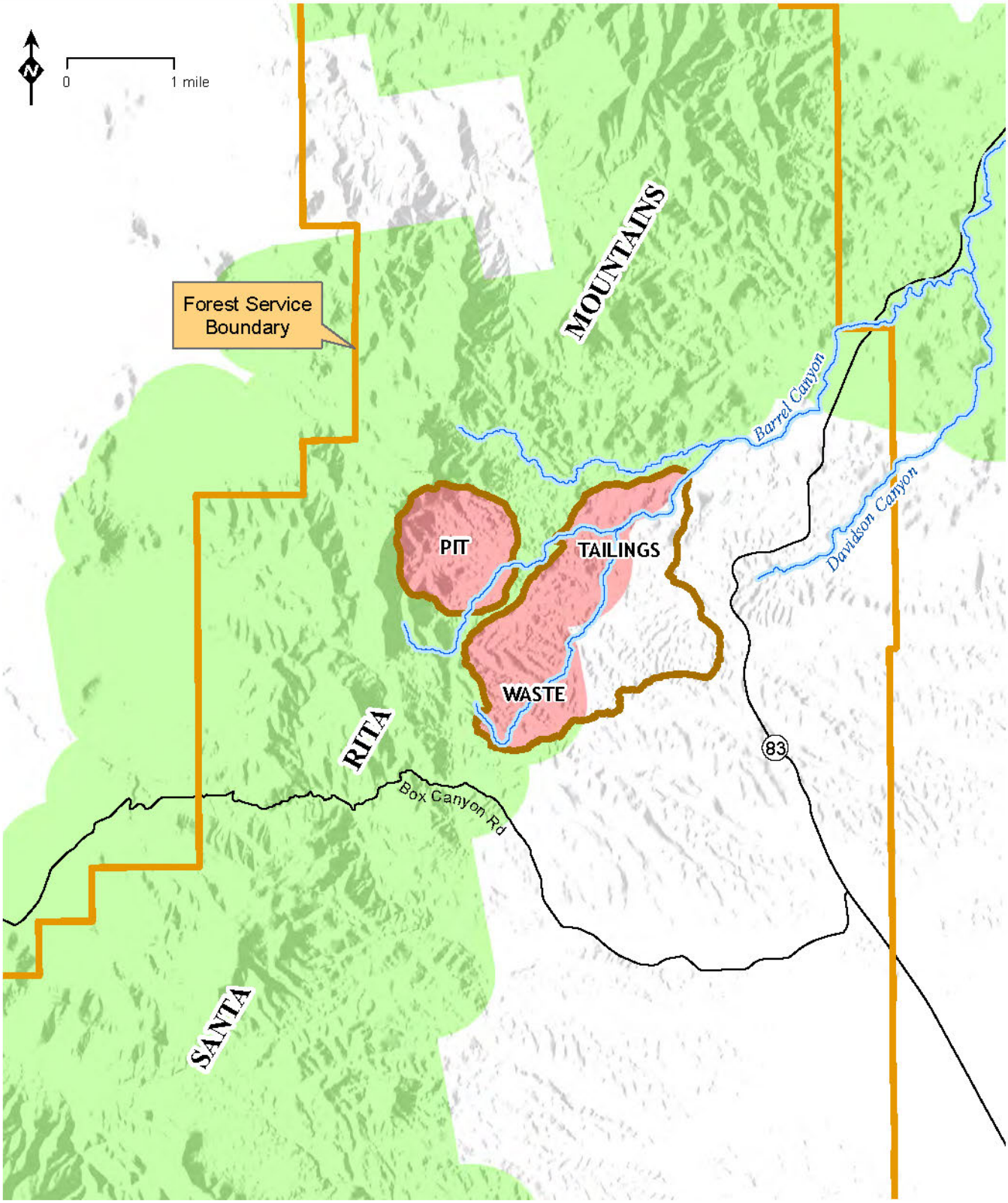
GEOGRAPHIC INFORMATION SYSTEMS

Pima County Information Technology Dept.
201 North Stone Avenue - 9th Floor
Tucson, Arizona 85701-1207
(520)740-6670 - FAX:(520)798-3429

THE SEAL OF PIMA COUNTY ARIZONA

9/25/2012

\\gislib\specproj\jfonseca\osc04951\mxds\pc_jag2.mxd ml



Rosemont Barrel Alternative & Jaguar Proposed Designated Critical Habitat

Critical Habitat in Mine Footprint (2060 acres)

Critical Habitat

The information depicted on this display is the result of digital analyses performed on a variety of databases provided and maintained by several governmental agencies. The accuracy of the information presented is limited to the collective accuracy of these databases on the date of the analysis. Pima County Information Technology Department Geographic Information Systems makes no claims regarding the accuracy of the information depicted herein. This product is subject to the GIS Division Disclaimer and Use Restrictions.

GEOGRAPHIC INFORMATION SYSTEMS

Pima County Information Technology Dept.
201 North Stone Avenue - 9th Floor
Tucson, Arizona 85701-1207
(520) 740-6970 - FAX (520) 798-3429

FIGURE 2