MEMORANDUM

Date: December 11, 2013

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

From: C.H. Huckelberry
County Administrator

Re: **Multi-species Conservation Plan Update, Including Recent Listing Decisions**

This memorandum provides an update on the progress of the Multi-species Conservation Plan (MSCP) and outlines a tentative schedule for the release of the Final Environmental Impact Statement (EIS) and issuance of the Endangered Species Act (ESA) Section 10 Permit. The MSCP-Draft EIS was released in December 2012, and the public review period ended in March 2013. Since then, the US Fish and Wildlife Service (Service) and their consultant have analyzed public comments. County staff has worked with the Service to address those comments that pertain to the MSCP. The Final EIS, which is prepared by the Service, will contain the official federal responses to public comments.

Some of the County's responses to comments are highlighted below.

Overview of Comment Issues and County Response

1. Both EPA and private sector commenters are looking for improved coordination of federal activities between the Service and the US Army Corps of Engineers (Corps) to streamline one aspect of the Clean Water Act (CWA) Section 404 permit process. A programmatic consultation is proposed between the Corps and the Service to use the final MSCP as a means of getting agreement with the Service on species impacts of covered activities that would be authorized under a specified list of Nationwide and Regional General Permits that would be approved by the Corps. A programmatic consultation could expedite the step of the Corps' CWA Section 404 compliance process related to endangered species compliance for covered activities, including those of the private sector, that have been analyzed for effects through the MSCP-EIS process.
2. The Southern Arizona Home Builder's Association and others previously objected to an exclusion of covered activities that would require Section 7 consultations such as subdivision fill pads located in areas of the Corps' jurisdiction. Pima County has removed the exclusionary language from the MSCP to allow for more choices for the private sector and the potential benefits of additional streamlining with other federal agencies in the future.

3. The Regional Flood Control District (RFCD) has also established a new In-lieu Fee Program (ILFP) to streamline mitigation for projects under Section 404 of the CWA. One important issue that arose in public comment concerned the overlap between mitigation land committed through CWA Section 404 and land committed to species conservation through the MSCP. There are many acres of land that could be committed to CWA Section 404 mitigation through the RFCD's newly authorized ILFP. The degree to which the Service will acknowledge species mitigation benefits of these lands is generally known but remains subject to further review prior to release of the Final MSCP-EIS.
4. Another public comment concerned grazing. Pima County has provided additional information to the Service about grazing management on County-owned ranches to the Service for inclusion in the EIS.
5. A set of public comments related to the species models as described in a 2001 Priority Vulnerable Species Report. Except for the Tumamoc globeberry, specific habitat values used in the MSCP are based on a different and updated set of information, not the 2001 Priority Vulnerable Species models. This was explained in the Public Draft MSCP. Taken more broadly, the comment was related to the process the County used to develop and apply the Maeveen Marie Behan Conservation Lands System (CLS) as we implement the Sonoran Desert Conservation Plan (SDCP). Components of the SDCP have been implemented by a number of cooperating agencies, including Pima County, using their individual land-use authorities and should not be confused with federal endangered species compliance. Nothing in the MSCP would change the land-use authority of Pima County or other entities.
6. The foundation of the CLS is a combination of mapping the extent of certain landscape elements (e.g., springs, certain vegetation types and physical features), as well as models of species habitat that were based on the best available information. The inclusion of dozens of species and other bio-physical features of importance meant that even if a single species model was not entirely correct, when taken together, the overall reserve design effort was made more robust by using different approaches and redundancies.

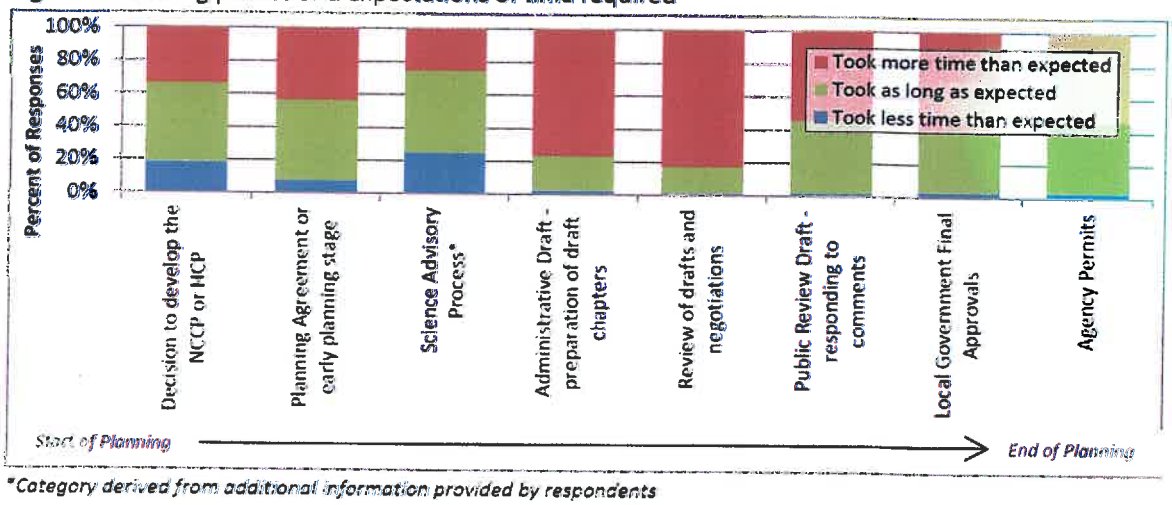
MSCP Timeline

Our process continues to move forward, but it has been delayed this past year by the Service's inability to review and respond in the face of competing demands, which include the Biological Opinion for the Rosemont mine, new Endangered Species listing decisions (see Page 3), and the most recent government shutdown.

Recent surveys show that inconsistent federal staffing and slow responses to difficult issues have been attributed to delays in habitat conservation plans (HCPs) elsewhere in the

US. It is typical for HCPs to take more time than estimated to develop and implement. Figure 1 below shows responses from 181 HCP participants in California who were asked whether the time required to complete a planning phase was more or less than expected. Virtually all the later phases took more time than expected.

Figure 1. Planning phases and expectations of time required



*Category derived from additional information provided by respondents

While the SDCP was initiated in 1998 to address the conservation of natural and cultural resources as well as working ranches, the MSCP/EIS application for incidental take was not submitted to the Service until December 2010, in part to provide multiple public reviews prior to the official federal reviews. The Draft EIS was developed by the Service and released in December 2012, and the Service is likely to issue the Final EIS and the County's revised MSCP in spring 2014. The Service's decision on the scope and breadth of the proposed incidental take permit under Section 10(a) of the Endangered Species Act will be known at that time. The actual permit would then be written by the Service, and it is anticipated that it would go to the Pima County Board of Supervisors and the Pima County Regional Flood Control District Board of Directors in summer 2014 for approval.

<u>Staff Continue to Move Forward on MSCP-related Activities</u>

While Pima County awaits federal responses, staff has worked on internal procedures to collect and manage data collected under the ecological monitoring program, to track the location and extent of impacts from capital improvements, and to process applications for private-lands coverage. We continue to gain knowledge about the distribution of species and their habitats through inventories and surveys on County mitigation lands, and to work with partners on species protection and restoration. For example, Pima County completed renovation of a large stock tank on the Sands Ranch; this tank will contain breeding

populations of the Chiricahua leopard frog. Frogs will be transferred to the pond after the MSCP is finalized.

The Accela planning process has provided an important opportunity to define the monitoring program's database requirements, functionalities, and tools for Pima County Information Technology (IT). Through this rigorous and in-depth process, IT, Office of Sustainability and Conservation (OSC), and other departments have gained a better idea of how, where, and by what means data will be collected, in addition to how the monitoring data will interface with other County database needs. The planning process has also afforded the opportunity to standardize common data elements and ways of data collection across departments, and to coordinate the procedure for granting private lands coverage under the MSCP with the Development Services Department.

Recent ESA Listing Decisions about Species Found in Pima County

In March of 2011, the Service settled a lawsuit brought by environmental groups to review 251 candidate species over a 6-year period to determine whether or not the species warranted protection under the ESA. The lawsuit was filed because the Service has been slow to make final rulings on a number of species, including many that occur in Pima County. It is now two years into implementation of this agreement and the Service has issued a number of important decisions about species in Pima County. Below are decisions that have made since the County issued the latest draft of the MSCP in December 2012.

1) *Yellow-billed Cuckoo*

The most recent decision by the Service was to issue a proposed rule to list the western population of the yellow-billed cuckoo (*Coccyzus americanus*) as a threatened distinct population segment under the ESA. The listing will affect populations of yellow-billed cuckoos in Pima County, where this secretive species inhabits riparian areas such as at the Cienega Creek Natural Preserve.

This listing is not a surprise. As early as 2000, the Service issued a ruling that ESA protection for the species was warranted but "precluded by higher priorities". In anticipation of the proposed listing, Pima County added the yellow-billed cuckoo to the MSCP. The recent decision does not change anything about the County's MSCP application.

Pima County has commented on the proposed listing. Among the data we provided to the Service are results of OSC's survey for the species at the Cienega Creek Natural Preserve in July 2013. These surveys found from 11 to 14 individuals. Cuckoos have been observed in other County Preserves, including the A7 Ranch and Buehman Canyon.

Periodic monitoring of select populations within the preserve system is a monitoring element of the MSCP.

2) *Jaguar Critical Habitat*

The jaguar was listed as an endangered species in 1997, but a proposed decision on critical habitat was not made until August 2012. Minor revisions to critical habitat were made in July 2013; and more recently, the public comment period on that revision closed in September 2013. 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 came to the conclusion that it is *highly unlikely* any action contemplated in the MSCP would result in adverse modification as currently proposed in the Federal Register. The MSCP does not and cannot cover or address many of the activities that would be most likely to adversely modify critical habitat (e.g. mining and construction or expansion of state highways). 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. The Service will analyze effects on jaguar under Section 7, regardless of whether the jaguar is included as a covered species in the MSCP.

3) *Acuña Cactus*

The acuña cactus occurs in western Pima County and nearby western Pinal and Maricopa Counties. It was proposed for listing as an Endangered Species in 2012; and after a public comment period on the listing decision and proposed critical habitat, both were finalized in September 2013 with only minor changes. A portion of critical habitat for the acuña cactus is found in and around the developed area of Ajo, but the majority of the critical habitat in that area is owned by a mining corporation. Given these facts, there is little to no chance that activities that would be covered under the MSCP would harm this species. As a result of this, Pima County decided not to cover the acuña cactus under the MSCP.

4) *Mexican Gartersnake*

The Mexican gartersnake, a species being proposed for coverage under the MSCP, was proposed for listing as a threatened species in July 2013. Critical habitat was also proposed in July 2013. This semi-aquatic species has seen a significant decline as a result of habitat loss and predation by non-native, invasive species. It was historically found in aquatic and riparian areas throughout Arizona, but its current distribution is significantly diminished from its historical range. Pima County and other land managers in southern Arizona have considered the Mexican gartersnake as deserving of conservation attention. Our RFCD funded surveys for the species at the Cienega Creek Preserve in 2004, and the

Bureau of Land Management recently funded surveys at Las Cienegas National Conservation Area. The last sighting of the Mexican gartersnake at the Cienega Creek Natural Preserve was in 2004.

The recent decision by the Service to designate the Mexican gartersnake as threatened will not impact the County's MSCP, since the County has long anticipated this decision.

5) *Rosemont Talussnail*

Contrary to these other rulings, the Service determined in March 2013 that the Rosemont talussnail does not warrant protection under the ESA. The ruling went on to challenge the validity of the species' designation and suggested that the Rosemont talussnail was misnamed and is, in fact, the Santa Rita talussnail.

The County's MSCP will cover 12 species and subspecies of talussnails, but the Rosemont talussnail is not proposed for coverage. Talussnails live most of their lives underground in talus deposits, which are found on steep hillsides. Talussnail species are very localized in their distribution, so loss of even one small patch of habitat could have lasting negative impacts on a species.

Final Thoughts on Species Listings

The aforementioned listing decisions have been just in the last year. A number of other species are likely to be listed here in Pima County, including the desert tortoise. These listing decisions affirm the County's need to obtain the MSCP. Without an incidental take permit, the County and the private sector development community would be required to consult with the Service on an ever-increasing list of species through the Section 7 process, where the rules are subject to change and mitigation requirements are identified on a project-by-project basis with no certainty of proceeding.

CHH/mjk

c: Linda Mayro, Director, Sustainability and Conservation
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