

**CITY OF TUCSON
HABITAT CONSERVATION PLAN
Stakeholder Advisory Committee
March 31, 2004 3:00 – 5:00 pm
U.S. Fish and Wildlife Service conference room**

Meeting Summary

Attendees: Sherry Barrett, Greg Hess, Nancy Zierenberg, Larry Marshall, Dennis Rule, Karen LaMartina, Marit Alanen (alternate for Arizona Game and Fish Department), Emily Brott (new SAC member for Sonoran Institute), Susan Shobe (alternate for Coalition for Sonoran Desert Protection), Ken Kingsley (SWCA), Leslie Liberti (SWCA), Michael Wyneken (City of Tucson, Planning), Joe Linville (City of Tucson, Development Services Department), Tricia Galen (City of Tucson, Development Services Department), Carol Clark (Aide to Kathleen Dunbar)

1. Update on TAC

Larry gave a brief overview of the Santa Cruz Valley National Heritage Area designation that was being south for a portion of the Santa Cruz River, extending from the U.S./Mexico border to the Pima/Pinal county line and comprising about 3,300 acres. He provided a handout on the effort and gave examples of other National Heritage Areas throughout the U.S. He also discussed the benefits to the region of have this designation, including qualifying for federal grant money.

Leslie provided an update on the work that the TAC has done to date. She said that habitat models have been completed for all but the Pima pineapple cactus and the burrowing owl, but it was likely that these two would also be completed prior to the next SAC meeting. The TAC has also begin discussing potential stressors and threats to the HCP target species. At the last TAC meeting, the group developed a fairly comprehensive list of potential concerns. The TAC will then identify, for each species, which set of stressors and threats are most relevant and significant.

2. Old Business

Michael asked if anyone had comments on the meeting minutes from March 2, 2005. He noted that Catherine had some edits that she would like to make. Ken said that there were some grammatical errors that needed to be addressed. No one else had comments.

3. New Business – Presentation by Joe Linwood and Tricia Galen on Tucson Environmental Ordinances

Tricia explained that the City's Land Use Code included 4 overlay zones related to environmental protection. The Scenic Corridor overlay applies to roads that provide ingress to or egress from the City and is intended to preserve views along these corridors. The Hillside overlay applies to areas with greater than 15 percent slope, primarily near the edges of the City. The Environmental Resource Zone (ERZ) and Watercourse, Amenities, Safety, and Habitat (WASH) designations provide protections

to identified watercourses throughout Tucson. Not all washes are designated as an ERZ or WASH watercourse and a wash is designated as one or the other, but not both. All four of these overlays have established areas (mapped) over which they apply. Areas not designated as part of these overlay regions do not have to comply with the requirements of the overlays.

One of the recent changes to the development review process is that, after July 2004, there is a public comment process that applicants must undergo. Applicants must meet with everyone within 300 feet of the proposed project area and only then can they submit plans and review application to the City. The review process for the overlays is separate from the general development review. The Scenic and Hillside overlays require a public comment process; as long as applicants are not proposing to encroach in washes, the ERZ and WASH do not require public comment.

Larry noted that washes tend to widen and shift during the rainy season and asked if and how these changes are considered. Tricia replied that the wash designation is applied to the 100-year floodplain plus a buffer on either side. Sherry noted that Hillside and Scenic Corridor overlays show up on maps, but wanted to know how ERZ and WASH applicability is determined. Tricia explained that the City's website shows which parcels are affected by either the WASH or ERZ.

Emily wanted to know what the differences were between the WASH and ERZ designations. Joe responded that the ERZ is intended to provide connections for wildlife areas outside of the City. The WASH designation is applied primarily in urban areas and is intended to protect remnants of riparian vegetation. Emily asked why some washes are designated and other weren't, and whether this meant that non-designated washes did not have riparian vegetation. Joe said that even the non-designated washes had riparian vegetation, the designations simply recognized that some washes are more sensitive than others. Ken explained that Bill Shaw's Wildlife Habitat Priorities (WHIP) map was used to identify the washes that connect to natural areas outside the City. These areas, referred to by Shaw as Class I wildlife habitat, was protected under the first version of the ERZ. The WHIP also identified two other classes of habitat, Class II areas that consist of good quality habitat, but have no connection to other natural areas, and Class III areas, which represent poorer quality habitat. Joe added that the WHIP map was also the basis for Pima County's riparian classification. The City also uses a 3 to 4 category riparian classification system, although it differs from the County's.

Nancy asked whether non-designated washes had any protections. Tricia explained that buildings cannot be placed in the floodplain, regardless of whether a wash is designated. Ken added that all washes are also subject to Section 404 requirements under the Clean Water Act, which is permitted by the Army Corps of Engineers. Joe noted that the City has regulatory authority to restrict development within floodplains. Larry asked whether there were any regulations that prevented redevelopment within floodplains. Joe replied that any building requires a floodplain use permit, whether it is a new or a replacement building.

Leslie asked what number or percentage of washes were designated under ERZ or WASH. Joe said that both types of designated washes are distributed throughout the City. Ken added that the majority of washes within the City are protected by one or the other designation. Michael noted that the one exception is the Southlands and the

Houghton Area Master Plan (HAMP); designations have been proposed for these two areas but are not yet approved. Sherry asked how long they had been proposed. Michael replied that the washes designations for these two areas have been proposed for 3 or 4 years. Sherry suggested that the HCP might provide the impetus for getting these designations approved. Michael added that the City can still require buffers on non-designated washes as part of a rezone application.

Emily asked how all of these various regulations worked together. Tricia explained that the local regulations do not supercede federal regulations. Emily asked whether floodplain regulations were federal. Tricia replied that Federal Emergency Management Administration (FEMA) regulations are federal, but the City also has its own floodplain ordinance. Sherry asked if FEMA grants permits and Tricia said that they do.

Tricia provided more detail on the application and review process. After an application is submitted, review of the proposed project is done in-house. When it is determined that the application meets City code, a 20-day public comment period is initiated. As part of this comment period, letters are sent to every landowner within 300 feet of the project site and the site itself is posted. After the comment period closes, the City's Development Services Department makes a decision regarding the application and a letter of approval or denial is sent to the applicant. At that point, there is an appeal period during which the applicant can appeal the City's decision. Michael noted that there are multiple levels of review going on simultaneously by different people. Susan wanted to know if this meant that separate people develop a compliance report for different issues, such as the ERZ and floodplain. This is the case. Tricia said that decisions made regarding the 4 overlays are appeal-able. Many other decision are not appeal-able and are simply an issue of whether or not the proposed project meets code, for example zoning or floodplain decisions. Sherry asked what happens if a proposed project is encroaching on multiple resources, for example a wash and a steep hillside. Tricia explained that all 4 overlays must be addressed individually, but they can all be dealt with in a single application and a single public meeting.

Emily asked why Houghton Road is considered a scenic corridor, particularly if the ordinance is intended to preserve viewsheds. Michael replied that Houghton was added to the overlay recently and there was already a lot of development along the road. Tricia added that existing development at the time of designation is considered non-conforming. For example, Civano Phase I was developed prior to the Houghton Road designation and does not have to meet the overlay requirements. Civano Phases II and III will have to conform.

Ken asked about the requirements of the Scenic Corridor overlay. Tricia explained that the overlay requires a 30-foot natural buffer, a setback width of 3 times building heights, height limits on buildings closer to the road, reserve 20 percent of the street frontage as open corridors, and a color palate.

Tricia provided additional detail in the Hillside overlay. This overlay encourages people to stay off steep slopes. It also requires buildings to be in earth tones, limits grading to the building pads, and imposes more stringent revegetation requirements. Sherry asked if the Hillside overlay applied only to certain sizes of developments. Tricia responded that it applies to any development within the designated overlay area. Sherry wanted to know what would happen if an entire property is 15 percent slope and whether there

were any exceptions to the overlay requirements in this case. Tricia explained that the guidelines are based on the average cross slope of a property. The average cross slope can be reduced if the applicant agrees to set aside areas with extreme slopes. Marit wondered whether the guidelines applied when the parcel consisted of a flat mountaintop. Tricia said that it depended on the slope of the entire parcel; if there is little slope, then someone could build without the overlay restrictions.

Joe asked about what the HCP planning process was meant to accomplish. Michael explained that there are two advisory groups; the Technical Advisory Committee is comprised of scientists and the Stakeholder Advisory Committee makes policy and implementation recommendations. The purpose of this discussion on environmental ordinances is so that the SAC know what tools are currently available to the City, so that when the TAC makes conservation recommendations to the SAC, the SAC can make informed implementation recommendations. The TAC has identified a list of species to consider for inclusion in the HCP and is developing a set of goals and objectives for protecting each species. The City is working on refining a list and description of the types of projects to be covered in the HCP. After assessing the potential impacts of these covered activities, the TAC will develop strategies to address these impacts. Once the TAC has made strategy recommendations, the SAC will decide how to make the overall conservation program work. Michael noted that the SAC needs a sense of whether new tools are needed or if existing ordinances need to be revised. He added that he wasn't sure that the Scenic Corridor or Hillside overlays really applied to the Southlands. Joe said that there are lots of floodplain areas in the Southlands, so the ERZ and WASH overlays are important to consider.

Sherry asked if City ordinances apply to the City. Joe replied that City ordinances only apply within the City, they do not apply to City-owned lands in unincorporated Pima County. Michael noted that if the City wants variances from the ordinances for City projects, then it has to go to the City Manager. Joe wondered whether the City was subject to County regulations. Dennis said that the primary regulatory issue for City-owned lands is the federal regulations, such as Section 404. He did not think that the County could legally enforce County ordinances on City-owned land. Michael added that public works are typically permissible in most zoning designations, but this was something that needed to be clarified with the City attorney's office. Susan noted that this is especially important to clarify since Pima County is finalizing their HCP and is intending to cover public works projects. Tricia said that Pima County has the same 4 overlays and when lands are annexed by the City they keep the equivalent designations and zoning as was applied in the County. Sherry noted that the County has a new riparian map that can be used as a tool for designating new ERZ washes in the Southlands or for any new annexations by the City. Michael said that this Section 10 permit will only cover areas currently within the City; future annexations would have to be dealt with in a separate HCP.

Greg asked if the County's HCP covers all unincorporated lands and whether that coverage would still apply even if the lands were annexed. Sherry replied that the County was not covering state trust lands. Dennis stated that the Arizona State Land Department (ASLD) cannot functionally do an HCP. Sherry agreed and said that while ASLD sells the land, they do not have control over the ultimate use of the land. Michael added that ASLD is somewhat philosophically opposed to HCPs because they are perceived as reducing the value of the land. Greg felt that HCPs actually increased the

value of the land because they provide for ESA coverage. Sherry and Michael agreed. Sherry noted that there would at least be a timing benefit, with shorter permitting times resulting from the ESA coverage. Michael added that ASLD models cannot consider HCP information. Nancy asked about leased state trust land. Sherry it is harder to demonstrate take as a result of actions on leased land.

Leslie asked Karen to provide an update on the status of Arizona Department of Environmental Quality (ADEQ). ADEQ's legislative authority will expire this year and there had been a move to not renew the authority. Whether ADEQ's authority is renewed is an important issue because, if the agency is disbanded, the stormwater program reverts back to the federal government and EPA permits, unlike those granted by the state, require consultation with USFWS. Karen said that the State Senate ended up passing a 10-year sunset, but that the House approved only a 2-year sunset. The authority extension will depend on what happens when the issue goes back to the Senate. Susan thought that the state agencies typically had a 1-year sunset provision. Dennis responded that the sunset period is typically 10 years because there is such a substantial review process required for reauthorization. Karen wasn't sure what spurred the dissatisfaction over the agency. Sherry said that ADEQ was perceived as too rigid and that they were not basing permits on science.

Sherry asked if the City had a Native Plant Preservation Ordinance (NPPO). Joe said that the City does, but the species list is not as comprehensive as the County's. Sherry noted that there were problems with Pima County's ordinance as it applies to listed species. She suggested that the NPPOs could be streamlined in areas designated for development and beefed-up in areas to be preserved. Joe said that the NPPO was adopted in March 1997 and the City had not had many native plant preservation plans come in to date. Dennis said that Pima pineapple cactus (PPC) were found in the Southlands and Avra Valley, but wanted to know if they could occur in the HAMP. Sherry thought this was too far to the north. Ken said that finding a PPC at the south end of the HAMP wouldn't be too much of a surprise. Sherry's concern was that transplanting of PPC may save individual plants, but it is not a conservation action because there is no protection of habitat. Michael thought that the NPPO species list may need to be reviewed.

Michael asked Joe what changes he would recommend to improve the current ordinances. Joe thought a higher level of planning was needed to help enforce the wash ordinances. He was also concerned that there needed to be more clarification in the area plans regarding the level of protection desired for riparian areas. Currently, the intent of the wash ordinances is 'no net loss' of riparian habitat. Leslie asked if a technical guidance document would be helpful for Development Services staff in making decisions regarding environmental impacts of projects. Joe said that there is public input in the review process, but it would be helpful to have reliable partners to review the plans for environmental impacts. Susan added that this guidance could be a set of triggers that tell when a project needs more careful review with respect to potential environmental impacts. Sherry noted that the USFWS Tucson Office does receive plans for review from Pima County's and Town of Marana's Development Services Departments. Michael suggested that more specific guidelines would help reviewers. Sherry wondered whether it would make more sense to use ordinance or to draw up a schematic for guidance. Michael wasn't sure that schematics could portray as fine-grained of information as would be needed for this guidance.

Tricia added that better guidance in the area plans would be fine, but these plans only apply to projects if there is a rezoning involved. Michael agreed and said that ordinances apply regardless of whether or not a rezoning is required. He also noted that most of the Southlands is zoned SR-1. Tricia said that this was good because most developments will require rezoning and the City can include rezoning conditions that require consideration of washes, even if the washes are not designated.

Greg wanted to know what USFWS looks for in terms of protection for the PPC. He also asked if the NPPO was enough. Sherry explained that most people want to move the cacti because they occupy uplands, the exact opposite of riparian habitat. USFWS encourages developers to protect PPC off-site. Sherry said that she would like to see the City contribute to the Pima County plan to mitigate what will be an almost 100 percent loss of PPC habitat in the Southlands. Greg asked if it was possible to create habitat. Sherry said that no one knows how to create habitat for the PPC. She added that even at the 3:1 mitigation ratio, that is still a 25 percent loss of habitat. When plants are moved, they are considered ecologically dead. The cactus also does not do well at higher densities.

Tricia was also concerned that even when areas are preserved 'in perpetuity', over time people encroach into those areas and the City does not find out until the damage is done. Michael said that this is one of the reasons why planning large areas, e.g. the HAMP, is such a good approach. The natural undisturbed open space, in this situation, can be identified at a large-scale and then can be publicly owned. One way to preserve this undisturbed open space is to incorporate it into a natural stormwater system. Michael noted that the NPPO still allows people to completely rearrange all of the vegetation on site. Tricia agreed and added that the plants ended up getting 'preserved' in people's backyards. Michael also pointed out that the City has not had much success in the past with enforcing CC&Rs (conditions, covenants, and restrictions).

Sherry remarked that the Southlands is not currently covered by the environmental-related ordinances and the ordinances did not apply in Avra Valley. Michael clarified that the ordinances would apply in the Southlands; there just were no overlay areas designated as yet. Sherry asked if the Santa Cruz River was designated under either ERZ or WASH. Joe replied that it was not designated because it is managed by Pima County Flood Control District.

4. Call to the Public

No members of the public were present.

5. Next Meetings

The next SAC meetings will be held May 4 and May 26, both from 3-5pm at the Arizona Game and Fish Department offices.

The SAC requested more detailed information on the Southlands at this meeting, including mapped potential habitat, ordinance and zoning designations, and specifics on ordinance requirements.