

HABITAT CONSERVATION PLAN
Stakeholder Advisory Committee
Wednesday, August 17, 2005 3:00 – 5:00pm
Arizona Game and Fish Department Conference Room
555 North Greasewood Road
Tucson, Arizona 87545-3612

MEETING SUMMARY

Attendees: Cathy Blaush, Emily Brott, Carolyn Campbell, Lori Lustig, Sherry Barrett, Lynn Hubbard and Nancy Peterson (City of Tucson – Environmental Services), Greg Hess, Dennis Rule (City of Tucson – Tucson Water), Fran LaSala and Brooks Keenan (City of Tucson – Transportation), Leslie Liberti (SWCA), Jessica Lee (SWCA), Tina Lee (Council Administrative Assistant to City Council Member Carol West), Chris Avery and Blake Ashley (City of Tucson – Attorney’s Office)

1) Update on Recent TAC Meetings/Upcoming Meetings

a. Joint HCP meeting:

- **September 6**, 1-4 pm, @ AGFD. Tentative Topics: SAC and TAC report backs. Discuss questions posed at meeting.

b. Scheduled SAC Meetings:

- **September 21**, 3-5 pm, @ AGFD. Tentative Topics: Southlands conservation strategies and implementation/funding options.
- **October 5**, 3-5 pm, @ AGFD. Tentative Topics: Avra Valley conservation strategies and implementation/funding options.
- **October 19**, 3-5 pm, @ AGFD. Tentative Topics: Recommendations for Santa Cruz River.
- **November 2**, 3-5 pm, @ AGFD. Tentative Topics: Monitoring and Adaptive Management Program and implantation/funding options.
- **November 16**, 3-5 pm, @ AGFD. Tentative Topics: Monitoring and Adaptive Management Program and implementation/funding options; Next steps – beginning Phase 2 of the HCP process.

c. Scheduled TAC Meetings:

- **August 23**, 1-4 pm, @ AGFD. Tentative Topics: Tucson Water presentation; covered activities for Avra Valley; begin discussion of conservation strategies for Avra Valley species.
- **September 28**, 1-4 pm, @ AGFD. Tentative Topics: Southlands conservation strategies and implementation/funding options.
- **September 21**, 1-4 pm, @ AGFD. Tentative Topics: Southlands conservation strategies and implementation/funding options.
- **October 11**, 1-4 pm, @ AGFD. Tentative Topics: Recommendations for Santa Cruz River.
- **October 25**, 1-4 pm, @ AGFD. Tentative Topics: Monitoring and Adaptive Management Program; feedback from SAC on conservation program, especially funding and implementation issues.
- **November 15**, 1-4 pm, @ AGFD. Tentative Topics: Monitoring and Adaptive Management Program; feedback from SAC on conservation program, especially funding and implementation issues.

- **November 29**, 1-4 pm, @ AGFD. Tentative Topics: Next steps – beginning Phase 2 of the HCP process.

The SAC decided to cancel the August 31. Leslie said that the TAC also canceled the September 13 meeting now that the joint meeting was scheduled for September 6.

2) Old Business

a. Meeting Minutes – July 13 and May 27, 2005

Leslie said the joint meeting has been scheduled for September 6. Lori brought up the fact that Oct. 5 is a Jewish holiday and that she may not be able to make it, but could send an alternate. Leslie said that if anyone else has a conflict with Oct. 5 to let her know and that she would see if an alternate date could be arranged.

Sherry said she had a problem receiving the July 13 meeting minutes; approval of these minutes was therefore pushed back to the next SAC meeting. Leslie said she sent out the revised May 4 meeting minutes. Tucson Water is comfortable with the revised version. Leslie asked if anyone else had comments and whether the May 4 and May 27 meeting minutes could be approved as sent out. There were no comments and the revised May 4 and May 27 minutes were approved. Leslie said she would get Coral to resend out the July 13 meeting minutes.

b. Action Items from Previous Meeting

Leslie said that there were a lot of questions raised at previous meetings about funding options. She noted that two people from the City Attorney's Office (Blake and Chris) were on hand and were willing to answer any questions that they could.

c. Topics Held Over from Previous Meeting

No topics were held over from the previous meeting except the continued discussion of implementation and funding options.

3) New Business

a. Update on Conservation Strategies

Leslie gave an update on the TAC meetings. She said that the TAC has reached the point where they are talking about on-the-ground conservation strategies, and they will likely be developing a range of alternatives for conservation in the Southlands. She said that one of the major problems that the TAC is facing is that there are still a lot of unknowns, particularly with respect to the Pima pineapple cactus (PPC), so there is not a clear best approach to conservation in the Southlands.

Leslie said that the TAC has been discussing the best way to identify and prioritize sensitive areas in the Southlands. There are a number of different ways you can look at it and there are different perspectives within the committee, so it has not been an easy decision. She said that the direction the TAC is going is to develop two alternatives approaches. The first alternative assumes that PPC will not be mitigated in the Southlands, thus requiring the City to deal with them off-site, which would be mainly

through land acquisition. She said the second alternative is to sit down with the cactus experts and ask what the PPC mitigation would look like if they were all preserved on-site. The third alternative is to have the cactus committee come up with some criterion or mitigation concepts that would allow the City to come up with an in-between option; this would allow some on-site mitigation while evaluating how that would affect off-site mitigation.

Leslie said that with the alternative that assumes mitigating off-site, there are two focuses in that discussion. The first emphasizes preserving hydraulic function of one or more entire watersheds. There are a number of fairly linear watersheds that run east to west in the Southlands. She said the idea is if we protect an entire watershed, we can preserve the functionality of the system. This means that most of the open space would be focused in the southern portion of the Southlands, leaving only the existing wash protections (ERZ Ordinance) in the northern portion of the planning area. She said this would result in a more urban-type environment in the northern portion of the Southlands, transitioning into less intense development and recreation amenities adjacent to the preserved open space. She said the second perspective is to protect the entire riparian habitat in the Southlands based on a revised Harris riparian map. She said that this option would result in open space scattered throughout the Southlands. Leslie said that she hopes that by the end of September the TAC will have a better idea of what these two alternatives will look like and will be able to send preliminary conservation strategies to the SAC.

Sherry had a question about the alternatives Leslie mentioned and how PPC will be mitigated. Leslie said those alternatives are assuming that most of the PPC mitigation will be off-site. She said that the TAC feels that they don't have the expertise to make decisions about the mitigation of the PPC, so they have opted to have the cactus experts (Mima Falk, Marc Baker, Chris McDonald, etc.) make recommendations about PPC mitigation.

Carolyn asked if there was an alternative that was being looked at that is a mix of on-site and off-site PPC mitigation. Leslie said there will be a mixed alternative, but said the TAC has not yet worked on such an alternative. Leslie said that the TAC would have to figure out how to transition between the two because, the reality is that mitigation won't be 100 percent on-site or off-site.

Carolyn asked if the cacti group would be charged with answering questions that the TAC has identified. Leslie said that the cactus experts would be meeting independently of the TAC to come up with an alternative on their own that would say, "If you were going to mitigate completely on-site this is what you would have to do." Leslie said they would also address other issues including what habitat needs to be preserved, what patch size is needed, and what connectivity will need to look like. She said that those are all issues that the TAC doesn't feel they can tackle in-depth. She said that the cacti experts would present their recommendations to the TAC. She said that the two groups would then have a discussion to finalize the alternatives. Leslie reminded the SAC that this is all preliminary, and that while she thinks this is where the TAC is going, things of course could change when new information is identified.

Carolyn said that the PPC topic might be good to discuss at a joint HCP meeting. Leslie responded that she didn't think this would give the cacti subcommittee enough time to do it by September 6, but it could be covered at a later date.

Sherry asked if there is an agenda for the joint meeting yet. Leslie said that an agenda has not yet been developed yet. She said that she is waiting to see what comes out of the discussion today as well as at the next week's TAC meeting. Leslie said that unlike the last joint meeting where two presentations were given, this one would be a time for updates on where both committees are going. Leslie asked if there is another group the SAC would like to hear from at the joint meeting or any particular topics that the SAC would like to see covered. Nancy asked if Leslie could give an update at the joint meeting on the outstanding issues that need to be resolved, where they are at in the HCP process, their timelines, and other issues including public outreach. Leslie said that if anyone else had requests for agenda items or groups they would like to get more information from to let her know as soon as possible.

b. Implementation and Funding Options

Group Discussion

Leslie said she pulled together some information on the funding/implementation tools that were discussed at the last SAC meeting. She noted that, fortunately, the SAC has the City Attorney's office present to answer any questions. She said one thought is for the SAC to go through the tools and create a chart that lists the basic issues associated with each tool, such as their strengths and weaknesses. Leslie passed out an informational packet detailing the sales tax/transfer taxes that are applied in Pima County. She said that sales taxes are complex because there are different business codes and various types of sales that are taxed differently. She said that, for example, the hotel bed tax is on top of the state 5.6 percent sales tax and the City's 2.0 percent sales tax. On the handout, Leslie listed the various sale tax rates for the State, County and City, and compared the numbers with Marana, Sahuarita, and Avra Valley.

She said that all of the jurisdictions, except for the City of South Tucson, do have a bed tax on hotel rooms. Leslie passed out another information sheet that listed the various bed tax rates for Arizona communities. Leslie did a very rough calculation of how much a 25-cent increase in the bed tax might bring into the City, amounting to approximately 3.5 million dollars. Sherry asked how tied to the economy is this 25 cent increase would be. Leslie said the reality is that these sales taxes are very economy driven. Sherry said she wonders that what the City's tax revenues were after September 11 because it would likely be a good example of a worse case economic scenario. Emily pointed out that the actual revenue listed for 2005 was a typo, and that number was corrected. Leslie said a bed tax is added by a community onto the existing City, County, and State taxes. Carolyn asked about the bed tax in Pima County and if it applied only to unincorporated Pima County. Leslie said yes.

Chris questioned the fact that the State sales tax was listed as 5.5 percent on the information sheet, when he believes it is 5.6 percent. Leslie said both sources she looked at listed the State sales tax as 5.5 percent. Chris said that there must be a number missing because the State sales tax is 5.6 percent. Chris said that you take the State sales tax because the City doesn't charge a sales tax on hotel beds; rather they use a bed tax that is 6 percent, not the 2 percent. He said thus the total tax rate for hotel lodging is 11.6 percent, plus one dollar. Sherry pointed out that Tucson already has the highest bed tax of all the other jurisdictions listed on the sheet and asked if there is a maximum value the bed tax could be. Chris said no. Fran said there was a maximum value in a sense, referring to market forces. He said that conventional businesses have razor thin margins, and if a bed tax gets too high, the hotels in that jurisdiction could lose

business. Leslie said an interesting point is that while the City has the highest bed tax, overall, they do not have the highest overall sales tax when comparing to other jurisdictions.

Carolyn asked if there is statutory limit on what the City can spend the City sales tax on. Chris said that most sales tax revenue would go into the City's general fund. He said there are some limitations on how the general fund money can be spent; generally the question is if it would be for a public purpose or not. He thinks it would be permissible to use general fund moneys to pay for conservation under an HCP. He said that there is a provision in Arizona statutes called the "gift clause" that prohibits the City from spending general fund money on private functions and/or institutions. He said it is always difficult to make those calls regarding whether a cause is a private function or not. He said that, in terms of HCP planning, he would imagine that most of the things that need funding would be permissible to be funded through the general fund. He said that it is difficult to dedicate general fund money to specific uses due to provisions in the City Charter. He said that it is virtually impossible for the current Mayor and Council to bind the hands of the subsequent Mayor and Council about how the general fund moneys are to be spent. He said that it might be possible to get a sales tax increase, but to make sure that Mayor and Council spend that money in a particular way in the future is difficult. He noted that part of the legal issues about how you implement an HCP is how you provide your assurances to USFWS that there will be money available to fund the HCP.

Sherry asked if general fund money could be spent outside the City, for instance funding the off-site mitigation of PPC. Chris said money must be spent for a public purpose, but that it could be spent outside the jurisdiction assuming that funding for the HCP was proven to be for a public purpose.

Leslie passed out another informational sheet that details State and local retail tax rates so the SAC can compare the various retail taxes Pima County has to other state counties. Leslie pointed out that, for example, Pima County has a surcharge on rental cars and RVs. On the back of the sheet, it lists the different types of fee/use taxes that counties can levy. Leslie said that this information is important not only for comparison and to generate ideas, but because there may need to be coordination of funding between the City and the County. Lori asked Chris what a jail tax is. He said that it is an example of a tax voted for by an initiative process that is dedicated to paying for a particular thing/process until it is completed. He said the recently failed 4-cent sales tax to pay for City roadway construction project is an example of this. He said that, for example, Maricopa County has a half-cent sales tax to fund their freeway construction and to pay for the new Phoenix Cardinal stadium. He said that in Flagstaff, there was a similar initiative to pay for a jail. Chris said that these taxes are dedicated funding sources, like in Pima County the rental car tax pays for the baseball stadium. Sherry said that some of these, such as the rental car tax, are more like user fees. Chris said yes. Carolyn asked if it is possible to have a City sales tax that has a dedicated purpose without binding future Mayor and Councils, such as the proposed sales tax for transportation. Chris said that the sales tax percentage that the City sales has set at 2 percent, but if it is increased and that money is sent into the general fund, it is not possible to bind the hands of Mayor and Council with respect to how it is spent. But, he said, if you go to voters to enact a dedicated funding source that is allocated to be spent in certain areas, future mayors and councils could still spend it differently. He said the way he understands it, a road tax could be passed with a plan that says how the tax will be spent on roads, but it is something like bonding where the major and council in future

can redirect the funding away from the original intent, and spend it on roadways somewhere else. Chris said that the ability for voters to bind future mayors and councils is different than current Mayor and Councils binding future mayors and councils. Carolyn said the difference is the Mayor and Council voting for a new tax verses it being approved by the voters. Chris confirmed that is true. Leslie noted that the City does not have a rental car or RV surcharge like Pima County.

Leslie passed out another informational sheet that gave details about property taxes for City of Tucson. She said at the previous meeting, the SAC discussed the City's ability to levy property taxes under State law. She said that the first line on the handout gave the total revenues that could be generated if the City was levying under the maximum allowable primary property tax levy under State law, which is 10 percent of the assessed value (\$10 for every \$100 of assessed value, which is 1 percent of the full cash value). She said the next line shows the actual revenues generated in 2004. Leslie said the problem however is that the City Charter has stricter limits on the property tax levy than the State law. Under the City Charter, instead of being able to levy \$10 for every \$100 of assessed value, the limit is only \$1.75 for every \$100. She said that currently the levy is set at \$1.1847. She noted that this is what Michael was referring to at the last meeting when he said that the City is fairly close to their levy limit. Leslie said she did a ballpark calculation based on the current assessed value for the city, that if the City did raise the levy to the \$1.75 cap, only an additional \$14 million would be generated. She said, in other words, there is not a lot of taxing ability left under the City Charter as it is currently written.

Leslie talked about the property tax levying ability in Pima County, and that they are limited only by the State cap of 10 percent of the assessed value for their primary tax. She said there is no cap for the second tax value. She pointed out that Pima County has some property taxes that go into the general fund, but others that are dedicated such as the levy for fire departments, libraries, debt service, and schools. Leslie also included information on community facility districts (CFDs). She said there is one in Marana for which the levy is set at approximately \$2.80 per \$100 of the assessed value, with a projection of approximately \$8,000 total revenue generated next year.

Emily asked why the City Charter has limited the property tax levy so heavily, and notes that it is more than 5 times less than what the County can levy. Chris said he doesn't know why City Charter was written that way, but he said that usually counties rely on property tax revenues to fund their operations, while cities usually rely on sales taxes. He said that the interesting thing about Pima County is that a certain percentage of the county is urbanized, so the County is trying to provide urban services to the Foothills on a tax system that is really not designed to provide that level of services. He said this is always a budget issue for the County to figure out how to fund this. He said there are not very many counties in the state that have to figure out how to fund a road like the new Sunrise/Swan Road improvements.

Chris said that Pima County is at a point where they cannot pass any new increases in property taxes and have it go to residential, because they are at the limit. Chris said that any new property tax increases are only going on the backs of commercial landowners because they are not limited by the 10 percent cap, like residential property taxes are. Leslie said that is an important clarification because the property tax rate on commercial properties is completely different than residential because of the assessment ratios that allowed under State law. Leslie said for residential the cap is at 10 percent of assessed

value, but in some cases the commercial levy cap is up to 25 percent. Leslie said the property tax levy for vacant land and agriculture is approximately 16 percent. Chris said that it is his understanding that Pima County is at the 10 percent residential property tax cap. Greg asked if the school district taxes are included in the cap. Chris said yes, school district taxes add into that, so Pima County is trying to float between the school district property tax assessments, which are going to take priority within the cap. Thus any additional revenues the County gets is from commercial assessments.

Greg wanted to know what would happen with the increase in property values. Chris said that you could get more money without raising property taxes, but rather by increasing the assessment values. Chris said that he read in an article that the price of a medium home in Phoenix increased 47 percent from July 1, 2004 to July 1, 2005.

Fran said that people would have to vote to tax themselves for conservation, so that way it could be a dedicated source of funding so that the Mayor and Council would not be bound in the future. He said Scottsdale has done this a couple times. Chris said that he is not sure; he thinks voters can vote for a funding source, but not a particular allocation of those funds. Leslie said that raising taxes is not a popular thing right now. Leslie said because people complain that Pima County has high taxes, she wanted to do a comparison between Pima County and some of the other counties. Leslie said she could not do a direct comparison because the only way to do it is to go zip code, by zip code, which would have been very time consuming. Leslie asked the SAC if anyone else had a sense of how much higher the Pima County taxes were than other counties. Someone said they believe Pima County is approximately about a third higher than any other county. Leslie said that as property taxes increases, it could result pushing development towards other nearby counties (Pinal, Santa Cruz, Cochise). Leslie also said this revenue stream is tied to the health of the economy, and that while we are doing well now because property values are going up, many people feel that this will not last and that it is a bubble that is going to burst. She said it is not as firm as an amount as one might initially think.

Nancy asked if Leslie knew how much funding the HCP will need. Leslie said the SAC wanted to have a discussion to see what funding mechanisms were feasible, what the scale of the revenue stream coming from various sources is, and what the equity was in terms of who is paying and who is benefiting, so when the TAC gives their recommendations, the SAC could jump right in to figuring out the cost of the program and how to fund it. She said that the TAC is just getting into it, trying to figure out how to mitigate the impacts of the planning area. So until the TAC gets their recommendations firmed up, the SAC doesn't really have any basis for even estimating the costs. Nancy asked if Leslie thought the best way would be to build an endowment then sort of let the HCP live off of that. Leslie said yes, but that it is difficult because you have to come up with the source of funding up front. But, the benefits are that it gives the funding mechanism more stability and assurances that you are going to have an adequate funding over the long-term. Chris said he is not sure if is possible to do endowments. He said the City does generate some revenue from investment income, but he thinks that the return the City is getting is pretty low, down around 4 percent. Fran said that cities are now limited by law on what they can invest in since the Orange County incident. He said there are now laws limiting what cities can invest in so they don't go bankrupt. Carolyn said the idea would be to start building up a pot of money so eventually the project could live off of the interest. Brooks asked Sherry if she knows of any examples of successful HCP funding projects. Sherry said that this is an area that USFWS has

traditionally been attacked for not knowing enough or doing very well, so they are trying to figure it out on how to do an HCP right. She said that San Diego is looking at the same bankruptcy problem right now. Carolyn said that there are many examples of HCPs where they just don't have enough money for management and monitoring. Leslie said the only HCP that has done really well, beyond their expectations is the Clark County HCP. Leslie said they have something like a \$2 million dollar pot of money. She said that county is lucky because of the development boom; the developers were willing to pay the heavy mitigation fee. Leslie said there has even been talk of stopping the mitigation fee because they have raised so much money. She said that this is an example that funding an HCP is possible under the right circumstances, but she is not sure if Tucson has the right circumstances or not. Sherry also said Clark County made money from selling some BLM land.

Carolyn said that Pima County has been concerned about having money trickling in to pay for management and monitoring. They would like to build an endowment as fast as possible, and when it is sufficient, eliminate the mitigation fees. She said that they have been unsuccessful in finding a way that doesn't violate State statute that would allow them to do that. Leslie said that to do this Pima County has discussed the possibility of establishing a non-profit organization in order to have an endowment that could fund both the land acquisition and management and monitoring. She said that government agencies do not qualify as non-profit organizations, so there would have to be an organization clearly divorced from being part of the department or the jurisdiction in order to be able to have non-profit status. Leslie said the problem is then transferring the assets the jurisdiction has raised to the non-profit organization. Carolyn said the problem is with the State gift clause law, because public monies would be transferred to a private entity. Leslie said she is not sure how the County's problem might apply to the City. Fran asked Leslie if Marana has come up with a funding strategy for their HCP. Leslie said they have come up with some funding pieces, but they haven't come up with a complete strategy, in part because their main focus relies on coordinating with the Arizona State Land Department (ASLD). Marana is trying to acquire a lot of the land for their HCP through land use planning and development density transfers on State Trust lands. She said the discussions have not been going quickly. Until that gets ironed out, they cannot finalize their HCP. Leslie said that Marana has been talking about a rooftop fee, which is assessed in the east part of the Town to fund management and monitoring. Sherry asked if that fee is considered an exaction. Leslie said that exactions are typically part of a development agreement. She said exactions don't really work for an HCP because they are decided on a case-by-case basis, and may not provide the assurances USFWS requires. Sherry noted that if the developers don't pay the fee, then the jurisdiction risks losing their permit. She said that the only assurances USFWS have, that if the developers don't pay the fee, then the jurisdiction has to take it from their general fund. She said that is the only assurances they have, that if the developer hasn't done it up to the year on date, then you have either done it to exaction or come up to the general fund. Leslie asked that if there is a policy saying the jurisdiction would make up the difference, we could do exactions in a regional agreement. Sherry said that she thinks so. Sherry said we would have to have annual revenue goals and if the developers weren't meeting them, the permit would be voided.

Chris said that he has done some initial analysis regarding the non-profit issue in the City. He said that because of the powers the City has as a municipal corporation, there really isn't any advantage from a contribution or tax point of view to setting up a separate non-profit corporation. He said for the County, it might make sense, but that the City

essentially has more power than the Arizona Corporation Commission can even grant to a non-profit corporation. He said that contributions to the City would be tax exempt for private parties that were paying exactions. The City also has the authority to acquire land, and to acquire land by condemnation, which non-profit corporations do not have the authority to do. He said that as a charter municipality and a municipal corporation, the City has a wide variety of powers and abilities that are substantially more than those of a non-profit. He said that, while it might be legal to set up a non-profit corporation, there really isn't any practical reason why you would want to do that.

Carolyn said the conversation started because USFWS needs to see lands protected in perpetuity, so that would require putting up conservation easements on the land. Chris said the City has the power to establish conservation easements. Sherry said that it depends on who is going to manage and monitor those lands. Carolyn said that the City could not enforce conservation easements on the land that they own. Chris said that is not true, the City can put covenant/restrictions on land that they own, and those covenants would restrict against what the City on subsequent parties can do with the land. Sherry asked if subsequent Mayor and Councils could change that covenant. Chris said he thinks an easement for limited purposes could be put on City-owned land that couldn't be undone by future Mayor and Councils except in cases of a superior public purpose. If the City had to condemn out an easement with a mitigation area for a roadway, they could do that, but he thinks an HCP could be written that requires the City to place a similar size easement on a piece of land with similar biological values in exchange for the loss of mitigation land. He said there is nothing that could be done on private land that the City cannot do on City-owned land. He said a conservation easement could be put on land owned by a non-profit corporation and the City could still condemn a right-of-way. He said from a real property point of view, the City can put easements on its own land and it can develop policy in respect to management of its own land, like what has been done in Avra Valley. He said that he thinks he could argue, although he cannot argue from a USFWS point-of-view, that sufficient assurances can be provided that the land will be used in the manner agreed to in a permit. Sherry said that the question they always face is if easements are only as good as their enforcement. She said that is why there is always a third party involved, because no entity can enforce itself. Sherry said that USFWS is looking beyond the 30-year permit into perpetuity, because we don't want them to be sold for profit and developed in year 31. So if there is a conservation easement that on City-owned mitigation land, how is it enforced? Chris said that essentially the City is putting a restriction on the land that cannot be undone, except through use of the City's condemnation power for a higher public purpose. Sherry said she would need to better understand the definition of a higher public purpose then. Blake said that the City's primary condemnation authority is for rights-of-ways, that is kind of the ultimate public benefit you get from any police power condemnation authority. Secondly he said, you have condemnation authority for City property, in terms of parks and recreation, police and fire stations, and similar types of public uses. Now, there is also the question as to what extent can cities use their condemnation authority for redevelopment or private party redevelopment. Chris said that there has never, in 500 years of common law, been any real restrictions of the ability of governments to condemn out all kinds of privately- and publicly-held land for this hierarchies of uses which basically culminates in right-of-way. Sherry asked if what Chris is saying is that a 501c3 non-profit corporation could have an easement and the City can condemn out a right-of-way on it. Chris thinks that a City easement on City lands is going to be as effective against any intrusion from any other party as if a 501c3 non-profit corporation holds the easement. Sherry said there is a case in Sierra Vista where a

third party is enforcing conservation easements there. Sherry wanted to know if the City Development Services would know where the conservation easements are when they approve development permits. She wanted to know what mechanism exists where the development plan goes through the process to identify whether a conservation easement is present on the proposed project. Chris said that traditional instruments are recorded then made available to any subsequent developer or purchaser of the land. Whether the party decides to ignore the enforcement rights is a slightly different issue. Leslie felt that it would just be a matter of putting a process in place to ensure that any conservation easements are identified during the development review process.

Fran said that he thinks the question is over who is ultimately responsible to ensure the easement isn't developed. Chris said that a covenant/restriction on land is typically self-enforced, but that you could put a covenant on the land to bind the hands of any subsequent owners regarding what they can do on the land. He said that an easement is a different instrument, because it essentially gives another party the right to do something on your land.

Fran asked whether, from a regulatory standpoint, USFWS could accept an HCP that is, for all practical purposes, monitored by the landowner. Chris said that USFWS could get nothing better unless the deed was given to USFWS. Chris said that if a developer wants to build in an ERZ protected wash, his plan would be denied. If he goes out and builds in the wash anyway, it then becomes an enforceability issue that has to be dealt with after the fact. Chris suggested developing an HCP that deals with after-the-fact enforcement and adaptive management.

Fran asked if there is any way to put a condition on a permit that extends past the life of the permit. Sherry said that they have used implementation agreements in the past, which gets into contractual law. She said that the permit is signed by the landowner (permittee) saying that they pledge to follow the agreement beyond the length of the permit. Lori said she has a difficult time getting her mind around the concept of tying land up in perpetuity. Chris noted that a covenant lasts forever.

Blake said the word perpetuity relates to conveying a timeline, and he does not think it is an obstacle. Lori said in some respects, aren't we doing that here with a conservation easement? Blake said you would be creating a burden on the property owner and the benefit goes somewhere else, historically it has been another property owner. For example, if one has a spring on their property that runs off into another property, the landowner with the spring has the burden to make sure that the flow from the spring doesn't decrease. Thus, the benefit goes to the other property owner. Blake said that in this case it is the beneficiary who enforces the burdened property owner. But he said for a conservation easement, it is the public at large who is the beneficiary. Blake said that Sherry's question is that if the public at large is the beneficiary, then who enforces that conservation easement. Blake said he doesn't exactly know the answer to the question, but it might be that anyone could bring a civil suit against the City to enforce the conservation easement. Chris said that in order to enforce the code, you might be able to prove standing. He said in the case of the conservation easement, it would be almost any member of the public. He said that environmental groups are famous for proving standing in court. Sherry wanted to know that beyond it being enforced by the courts, how would the City Development Services be alerted when they try to approve a piece of development.

Chris said except for atomic installations, there really is any land held by anybody, except the federal government, that aren't subject to some kind of superior claim from another government entity. But what we can do is get as good as you are going to get. Sherry agreed, and said at least get it to the point where, except for a government agency, no one could plop down a house because someone forgot about the conservation easement. Chris said that is definitely possible by putting a conservation easement on City land.

Lori said that she would think that if there is a case of rezoning, the City would give out a notice to the neighboring landowners. She said you could add in a layer that requires giving notice to other landowners that would be affected by this. Lori said that the no one is going to have a problem with "our guys" (developers affiliated with SAHBA) because they know how they are bound and where they are putting their developments and all that is included in the plans before they even get to Development Services. Lori said who you should be worried about is the individual landowners who go out and buy a couple of acres to put their dream home on, then get told they aren't allowed to do that. Chris said that he really believes the new GIS software will make a whole world of difference in opening up the information. He said that you are going to basically create an HCP by protected properties and mitigation layer that will go down on properties within the HCP and this information will be available to any interested property owner with Internet access. Chris said that instead of having a covenant enforced by a few people in the know, instead you have restrictions that are going to be observed by anyone interested in Sonoran Desert protection and wildlife issues.

Brooks said that it seems that getting the money will a bigger problem than creating the conservation easements/covenants. Carolyn said that the ongoing monitoring and management is where it is difficult to get or keep enough money.

Leslie passed out several additional informational handouts. The first page shows the number and value of residential and commercial City building permits over the last 10 years. Leslie said she got the information straight from the City's budget plan. Sherry asked why the number of permits have gone down of the last few years. Lori said it is a whole other conversation, but the reality is that they are going down, but because the values have gone up, the City has not been losing any money. Lori said that the peak year for residential permits was 1997 and now it is the lowest that it has ever been. Lori said, except for the HAMP and Southlands where there are large tracks of developable land, she doesn't predict the trend will reverse itself. Carolyn asked then if the fees need to be raised. Lori said that it couldn't be done because it will raise the cost of the homes too much; that brings up the topic of affordable housing because people move where they can afford to live. Lori said people are buying houses now where, 5-10 years ago, you did not think people wanted to live. Lori said that she heard that at Tres Pueblos, a development that is going in at Bilby and Tucson, they already have 75 reservations for homes and they are not ready to sell yet. Lori noted that development is located near the airport in the industrial side of town. Lori again said that the HAMP and Southlands is going to help, but whatever gets set aside for conservation will take away from where they can build. Leslie said this information is just another piece to the puzzle because that the SAC had considered doing an impact or development fee.

Leslie said the first page also shows retail sales. There was some discussion about how this is calculated.

Leslie said the next page shows a table of bonding information. Leslie said there is also a limit on the bonding ability of the City. Leslie noted that the table containing the legal debt margins shows the total assessed value for 2004 within the City, and the debt limitation for the 6 percent and 20 percent bond. Leslie said it is the 20 percent bond that covers open space. The table also shows what the City has in bonded debt and defines the legal margin. Sherry asked about the 20 percent bonding for open space and if that is part of the Pima County bond or something else. Leslie said they are the two bonding categories. Chris said the City could only GO bond to 6 percent. Carolyn asked if that is a standing number and Chris said the City could only bond 6 percent of the assessed value. Chris said the 20 percent is set for specific purposes. Chris said that the City already has budget-binding debt from both the 1995 bond and the recent Tucson Water bond. He said that until the City retires some bonds that are already outstanding, we could only issue \$63 million dollars in general obligation (GO) bonds and \$295 million dollars in other bonds. Chris said that the Pima County bonds do not affect the bonding capacity of the City. Carolyn asked if a CFD is a district going out to bond. Leslie said a district does have the ability to get bonds. Carolyn asked if CFDs have their own bonding limit, or if it is part of the City. Chris said that a CFD has its own bonding authority. Carolyn asked about limits a CFD would have to its assessed value. Chris said that a CFD is set within the assessed valuation of the properties and it is not subject to the same limitations as the general debt bonding limitations. Carolyn said that it is her understanding that a CFD could be large, like the size of the City. Lori said that she thinks a certain number of votes are needed to set up a CFD. Chris said that he thinks this must be possible hypothetically, but usually when a CFD is set up it needs the approval of more than 50 percent of the property owners. He said that the CFD essentially says that we are going to provide a discrete benefit (sidewalks, streetlights, sewer infrastructure, etc.), and even these are typically hard to get. Carolyn said it is similar to a bond election. From a practical point of view, Chris says he knows of only a few CFDs that are approved by "the public." Generally, he says a CFD deal will be cut with only one or two large landowners who own more than 50 percent of the assessed valuation. CFDs are an attractive tool to use on the land before it is subdivided. But, Chris said from a practical point of view, that once a parcel gets subdivided it is almost impossible to get the approval. He said the City could come in and put a land developer on the hook for the streets, sidewalks and water constructions within the CFD, but typically it is a much more difficult process to get a CFD approved once the public is informed. Brooks said he has some experience with CFDs, and he agrees with what Chris said. He has seen developers do flood control work through CFDs in order to get the land approved for development. Carolyn said it is different to ask people to approve a CFD for streetlights or sidewalks, than it is to ask them to approve for parks and open space. Carolyn said she brought up her question because she has heard the City Manager talk about CFDs with respect to the HCP. She said from this discussion it seems that we are all benefiting from the open space, so instead of having three CFDs for the three planning areas, the cost should be spread out. She said that this discussion is tailored around using the CFD mechanism for something that it wasn't really designed to do. She asked if it could be possible to have a City-wide CFD that would be paying for either acquisition or even managing and monitoring. Chris said that this is a question they need to look at further within the City Attorney's Office and that is the question; to what extent can a CFD be used to acquire open space. He said that it is clear that a CFD funding mechanism can be used to build the necessary infrastructure. Chris said there is no ready answer yet if you can use CFDs to build parks, even playing fields. He said that it is entirely another question if you can use a CFD to acquire land and not build on it. Lori said that in the Southlands and HAMP, where the huge tracks of land still

exist, landowners can come together and agree to a CFD to put in x, y, and z. Lori said she is not sure if a CFD can be used to protect Fantasy Island bicycle park. Sherry asked if the CFD money be used outside the district. Chris said no. He said if you think about it from a conceptual point of view, CFDs are designed to get around the free rider problem you get into with the large-scale infrastructure projects. He said that essentially what a CFD is designed to get those people interested in having a particular kind of improvement and to have them pay for it in a coherent fashion. He said a CFD draws lines on a map saying that within this area there is going to be a discrete benefit, not so much the community as a whole, that is why we are going to have the people who will benefit in this area pay for it. He said it is a way for local-level funding to provide infrastructure where no community-wide support is needed, nor will the entire community have to pay. Dennis said that on a larger scale it works when you originally have a couple landowners that create a CFD, then in a sense, pass the cost to future landowners after they divide the parcels. Lori said another benefit of a CFD is that it is billed per year, so there isn't a large up front cost. Chris said that it does make sense to use CFDs to provide for the community infrastructure, for instance with HAMP. He said that it is easy to draw a line on the map and show what infrastructure is going to come into the area and who is going to benefit from it. He believes CFDs in this sense will also work for the Southlands. He said in the Southlands, there is no infrastructure there now, so it is very easy to see who will benefit from it and these is essentially only one landowner, ASLD, who will eventually parcel out the land in large pieces to those who are interested in developing it. He said, from a HCP point of view, a CFD could play some limited role, especially in the undeveloped areas. He said that it is probably less likely that it would be a mechanism for the entire region. Chris said it wouldn't be a good option for the greater community to try to do.

Leslie said the last handout shows the changes in the property tax rate over time, and gets at why it is so complicated. Leslie said while the City only charges \$1.1847, there are other components of what actually gets charged to residents. Leslie passed out another handout of the valuation of property for taxing purposes in Arizona.

Leslie said that it seems that all these lines of discussion are coming back to the fact that not just one funding mechanism is going to work, and she stressed that many tools are going to be needed. Carolyn agreed, but she wants to know which ones aren't going to work at all from the beginning.

4) Call to the public

No call to the public was made.

5) Next steps/Future Meetings

Leslie said that the SAC has scheduled two meetings per months through November, but wondered if the SAC really has the need to meet again before the joint meeting September 6. The SAC agreed to wait until the joint meeting to meet again. She said that the August 31 SAC meeting was cancelled. Leslie said that she will work on getting more questions answered about funding tools with the help of the City Attorney's Office and put together a chart with the funding options and their strengths/weaknesses and equity issues.