

**HABITAT CONSERVATION PLAN**  
**Stakeholder Advisory Committee**  
**Wednesday, September 21, 2005 3:00 – 5:00pm**  
**Arizona Game and Fish Department Meeting Room**  
**555 North Greasewood Road**  
**Tucson, Arizona 87545-3612**

**MEETING SUMMARY**

Attendees: Emily Brott (Sonoran Institute), Karen LaMartina, Carolyn Campbell, Fran LaSala (City of Tucson – Environmental Services), Lynn Hubbard (City of Tucson – Environmental Services), Bob Peterson (City of Tucson – Transportation), Lori Lustig, Blake Ashley and Chris Avery (City of Tucson – Attorney’s Office), Leslie Liberti (City of Tucson – City Manager’s Office), Jessica Lee (SWCA)

**1) Update on Recent TAC Meetings/Upcoming Meetings**

a. *Scheduled SAC Meetings:*

- **October 5**, 3-5 pm, @ AGFD. Tentative Topics: Southlands conservation strategies and implementation/funding options.
- **October 19**, 3-5 pm, @ AGFD. Tentative Topics: Preliminary Avra Valley strategies.
- **November 2**, 3-5 pm, @ AGFD. Tentative Topics: Continued discussion of Avra Valley strategies and initial recommendations for Santa Cruz River.
- **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.

b. *Scheduled TAC Meetings:*

- **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.

Leslie briefly went over the outline for the SAC for the next several months as well as gave an update on where the TAC is in the HCP process.

## 2) Old Business

### a. *Meeting Minutes – July 13, July 27, and August 17*

Leslie said that, at the August 17 meeting, the SAC members said they had problems opening the attachments with the August 17 meeting minutes. Carolyn noted that the July 13 meeting minutes were incorrectly dated. Leslie said that would be corrected and the SAC approved the July meeting minutes. Leslie said that the August 17 meeting minutes would be sent out soon.

### b. *Report on Action Items Identified in the Previous Stakeholder Advisory Committee Meeting* *- Status of Habitat Conservation Plan Funding Matrix*

Chris Avery said that he filled in the matrix of funding options to the extent possible. Leslie asked if the SAC had received the list of potential funding mechanism questions she gave to the City Attorney's Office. The SAC members said no. Leslie said she would send it out to the committee shortly. Leslie gave a brief overview of the five funding topics the City attorneys have been working on, which had several sub-questions. The first topic involved questions regarding if the funding tool is legally feasible. The second topic involved equity issues with each funding tool. The third topic involved questions about how money can be accrued in the City. The fourth topic involved what potential each funding tool has for success. The final topic attempts to define the long-term stability of the funding tool.

Leslie said she appreciates Chris Avery's effort on attempting to answer many of these funding questions. Chris said that he provided answers to many of the legal questions, but said that he was unable to answer all of them. Blake said that the City Attorney's office does not represent the SAC, thus they cannot give legal advice to the committee. He said, however, that the City could direct questions internally between City departments. He told the SAC that the meeting could not be an open-ended "Ask a lawyer" session. Chris said his job is to give the SAC as much public information as possible. Chris passed out the funding mechanism matrix he created and said it is fine if the summary is sent out electronically.

## 3) New Business

### a. *SAC Charter*

Leslie said the topic of revisiting the revised SAC charter came up at the joint SAC-TAC meeting September 6. She passed out copies of the revised SAC charter that had been approved, earlier this year. Leslie clarified the misunderstanding, saying that there is not a general HCP charter; rather there are separate charters for both the SAC and the TAC. She said that the charter language presented at the joint meeting was taken from the TAC charter, which is more focused, and she apologized that it was not clear at the September 6 meeting. Leslie said that the revised SAC charter had captured everyone's concerns at that time. Carolyn said she thinks the SAC should suggest that the TAC committee reevaluate their charter. Carolyn said that some of the points in the Sept. 6 discussion are not in the TAC charter. Leslie said they would bring up the discussion at

the next TAC meeting. Leslie asked if everyone was okay with the SAC charter as it was currently written. No one objected, but Carolyn asked that if the TAC makes any changes to their charter that the SAC be informed. Lynn asked about the specific role the charters play in the HCP. Leslie said that they frame the purpose of the two committees, the goals and recommendations that are expected, and what their areas of responsibilities are in the entire HCP process. Lynn asked why there is not an overall HCP charter. Fran asked if having an overall HCP charter was something the two committees might want to explore. Fran said that there are two groups working on a hypothetical common goal, but that there is not an official common goal, no unifying statement that would bring the HCP process into focus. Leslie said that in essence, the SAC charter is the overall charter. She said that the HCP is structured so that the TAC is making recommendations to the SAC, and then the SAC makes the final recommendations for the HCP. She said that the TAC provides expertise to the SAC, but that the SAC charter is the governing document. Carolyn said that she agreed with Leslie. Leslie said that maybe the relationship between the two committees is not as clear as it could be. Carolyn said that her biggest issue with the committee from the beginning is that the SAC has so many City members, and not enough citizen members. She finds it odd that approximately 50 percent of the SAC committee is composed of City members, when the SAC is supposed to make recommendations to the City. She said that she hoped to get more citizens involved.

*b. Implementation and Funding Options for the Habitat Conservation Plan*

Chris briefly explained how he approached the funding questions and how he tried to present the answers in the matrix. He said that he found many of the answers in the City's budget, fiscal year 2006, which is available at the City's website. He said that the first thing to note about the City budget is that there is never enough money to go around. He also said that the City's funding mechanism structure is limited.

Chris began reviewing answers to the funding questions by starting with property taxes. He said that there are two kinds of property taxes, primary and secondary. He said that both of them, due to their popularity, are highly regulated by the citizens. He said that for the primary property tax, the maximum that can be charged is \$1.75 per \$1,000 of assessed value. He said currently the City's primary property tax levy is set at about \$1.18, and that the secondary property tax levy is set at approximately \$0.80. He said that property taxes are limited by a 2 percent increase per year. He said that currently property taxes are a small part of the general fund budget. He said that money accrued from the primary property tax can be used by the City for almost anything public purpose. He said that the only way this can be changed (in order to dedicate the money to a particular purpose) is through an amendment in the City Charter. He said that State law, for instance the 2 percent increase per year, also restricts the City's levying ability. He said that the secondary property tax is basically used to pay off bonds that are usually created for capital improvements in the City. He said that the secondary tax rate is not capped by State statute at 2 percent, but that the City Charter limits both primary and secondary taxes to \$1.75 per \$1,000 of assessed value. He said that sales taxes are restricted geographically to within the City limits.

Chris continued going through the funding matrix by talking about bonding. He said that there are two kinds of bonds: revenue bonds and general bonds. He said that revenue bonds are usually from City departments such as Tucson Water, Parks and Recreation,

and Environmental Services. Those bonds are paid off by a specific revenue source within the City. He said that unless the committee can come up with a revenue source, he does not think that revenue bonds could fund an HCP; except for specific activities that could be funded through Environmental Services, Tucson Water construction activities, for example. Emily asked about financed through revenue sources and asked for some examples. Chris said that for golf, future golf revenues back the golf improvements. Emily asked what the primary property taxes could be used for. Chris said they go into the general fund and can be used for about anything. Lori said a bond could be created through community facilities district (CFD). Chris said he would go over CFDs later in his presentation. Carolyn said that something could be set up as an enterprise fund within the City. Carolyn said that anything could become an enterprise fund as long as people pay to do them. Chris said that AGFD and workers compensation program are examples of enterprise funds. He said that if an activity/organization has a stable revenue source, it could be operated as an enterprise fund rather than out of the general fund. Carolyn asked if the City Charter outlines how an entity can be set up as an enterprise fund. Chris said that the City sets up enterprise funds as part of its internal mandate where the City will issue a general revenue bond that will be paid by future revenue and not out of the general fund. Fran said that enterprise funds are usually set up internally within the City, but the fee has to go through a formal majority vote in mayor and council. He said that Environmental Services became an enterprise fund only two years ago.

Chris said that the Arizona Legislature has regulated how many general obligation funds a city can issue. He said that the Legislature takes the total secondary tax assessment value of the entire city (approximately \$2 billion for Tucson). He said that the City could issue up to 6 percent of the secondary assessed value of the City as general obligation bonds, which is approximately \$120 million. He said that right now, the City has outstanding bonds which take away from the City's overall bonding capacity. He said that in 2004, the City could only bond an additional \$70 million in general revenue bond moneys. He said there is another limitation with bonds in particular with water, sewer, parks and open space. He said that those bonds are capped at 20 percent of the assessed value (of the \$2 billion). He said that as for 2004, the City could have issued approximately another \$300 million dollars worth of bonds. But he said an additional limitation with general obligation bonds is that when investors look at the total bond obligations of the community, they do not just look at the City's bonds only, but rather at everything including all the CFDs, etc. He said that the investors look at the City in addition to the University of Arizona, Pima County, and the school districts. He said that when all of those bonds are considered, the lump sum is that the City is at approximately 15 percent of its 20 percent bonding capacity. He said that in fiscal year 2004, the total bonding capacity in the region was nearly 15 percent of the total assessed value. Carolyn asked why they do not look at the total assessed value. Chris said that a particular investment group is going to look at the total bond obligations because they will have to set an interest rate. He said that the open space bond passed in the County last year did not cut into the 20 percent limit of the City, but it did put a dent into the total bonding capacity of the region. This made the City less attractive to investors for a large-scale bond. Fran said that the way it was explained to him is it goes back to the homeowners' ability to pay these taxes, so investors and the City have to look at the entire pie to see if it is reasonable to expect them to pay. Chris said that the primary restriction on the City bonding ability is in the City Charter. He said that currently the City is has been assessed at approximately \$1.2 billion, thus could assess maybe another 50

cents per \$1,000 dollars assessed value, then they would hit the limit. Carolyn said that the limit is on the investor's side. Chris said that right now the City has a charter limitation that it can only issue general obligation bonds covered by the secondary property tax. Chris said that the history of the City is that it has always had a low property tax rate, and that these charter amendments were set in 1968-1969.

Chris continued the presentation with sales taxes, which he said is the primary source of revenue for the City. He said that the City has the authority to levy sales taxes by its charter and State law, and that the revenue can be used for any municipal purpose. He said that sales tax revenues go to the City's general fund and can be spent by mayor and council on an annual basis. He said there are some things that cannot be taxed by State law such as food, natural gas, Internet, etc. He said that according to the City charter, the business privilege tax is capped at 2 percent, and that the City is currently at that cap. He said the charter would have to be amended if the City wanted to increase that. He said that two years ago the council explored a rental tax, but that the community shot down the idea. Chris said that the City capped business privilege taxes at 2 percent. He said that multiple transaction taxes can be proposed, but they have not been successful in the councils. He said the franchise taxes are what the City charges in its public right-of-ways, and are assessed for utility companies such as Tucson Electric Power (TEP), Southwest Gas Company, the cable companies, Internet providers, phone providers, etc. He said that these are typically long-term contracts between the City and the utility companies. He said that the only way the franchise taxes can be changed is when the contracts come up for renewal.

Chris continued his presentation by talking about improvement districts and CFDs. He said that both districts are mechanisms that were established by State law. He said that the primary difference between the two is that improvement districts can only pay for capital improvements. He said it would be difficult to construe improvement districts to be used for parks and/or open space. He said that one type of improvement district can be used for "additional services" which include policing, fire, etc. He said that CFDs are available for a wider variety for improvements, including parks and open space. He said they are limited to assessing 60 percent of the secondary assessed value for the properties within the CFDs. He said that consent of at least 25 percent of landowners within a CFD is required, but sometimes it is 50 percent. He said there are different ways CFDs can be created, but in the Southlands it would have to be created by Arizona State Lands Department (ASLD) or the future landowners. Emily asked if the 25 percent refers to the people who own 25 percent of the assessed value owners, or if it is 25 percent of the total landowners. Chris said that it depends, but that usually the State legislature requires a broad agreement. He said that in all cases, a significant proportion of the landowners have granted permission to create a CFD. He said that individuals/organizations that are exempt from taxes could opt out, like ASLD. Lori said CFDs accrue money from annual payments. Chris said that is true, but they are also financing the amount of debt. Fran asked if CFDs run a specific amount of time. Chris said that once it is financed and completed, a CFD ends. Leslie asked if CFDs could be expanded over time. Chris said he does not know the answer to that. He said that the boundaries of the CFD and the known value of the improvements/open space have to be specified at the beginning. Lori said that if a CFD is going to be created in the Southlands, the goal is to create it sometime between when ASLD disposes the land and when there are still only a few landowners. Carolyn said that generally CFDs are created before there are residents in order to build infrastructure. Chris said that

developers often create a CFD before the land is subdivided, then the developer is not paying for these improvements. Carolyn asked that if after a CFD is created, do people who move into the district in the future have to pay part of the fee. Chris said yes.

Chris continued the presentation by talking about certificates of participation with a bond. Chris said that certificates of participation are a quasi-private financing mechanism to finance large-scale infrastructure. He said that most recently, the City used this tool to finance the new parking garage. He said that the City is issued a loan against the parking garage (or other public improvement), and the City promises to make payments for the improvement every year. He said that it has to be paid every year so that future mayor and councils are not bound to large debt. But, he said that if the City stopped making payments, the investor would be granted title of the public improvement. He said that this funding tool is similar to a typical mortgage. He said that this wouldn't work for funding the HCP unless the City would be building some infrastructure that some investor would want to acquire in the future. He said there is not really a long-term assurance because mayor and council would have to approve the certificate every year. He said that certificates of participation is funding tool that was developed by the developing industry.

Chris said that some of the funding questions were outside the boundaries what he could give advice about. He said that land use attorneys would be better resources. He said that the U.S. Supreme Court just ruled that a municipality could condemn anything they want for any reason but that they will have to pay for it. He said that if the City needs to condemn land, even if outside the City limits, it can but it has to pay at least fair market values for that property. He said that the condemnation values are usually awarded at about 15-20 percent above the market rate.

He said voting districts are outside his ability to comment. He said based on the City's own police power, the City can zone environmentally sensitive lands; but the actual shape that they can take is out of scope of his discussion.

Chris continued his presentation by talking about impact fees. He said State law created this funding mechanism. He said the actual language of the statute is "development impact fees can be imposed by a municipality for any necessary public services created by development." He said that the courts have upheld a case out of Maricopa County that a city cannot use impact fees to pay for schools. He said this limits additional municipal services. He said that in all cases, the impact fee has to bear a reasonable relationship to the benefits that are created by the fee. He said an impact fee in the Southlands must be for a narrowly defined municipal purpose and that it must bear a reasonable benefit to those paying the fee. He said that there has been a substantial amount of litigation over impact fees, typically led by the homeowner associations. He said that the development of an impact fee is a long, complex process, and has to be carefully done it will likely be challenged in court.

He said if look at the list of questions, he has not addressed the equity issues of any of the funding tools specifically. He said that equity issues for sales and property taxes are explicit and applied generally. He said that in general the money will accrue and be spent by the City Council on annual bases. He said that with bonds, the money accrues quickly, but is paid off over the long term. He said that in terms of similar proposals being considered, he said that there is the half-cent transportation tax. Generally, this tax is

difficult to pass although Maricopa County has managed to do it to fund freeways. He said that when the City's tax levies are compared to other jurisdictions, it is clear that due to charter restrictions the City has relatively lower taxes. He said that Pima County rates are high, but the City's are low compared to other cities.

He said that are different hurdles that have to be overcome for different revenue tools. For example, with taxes, the money can be spent on anything, but the procedural requirements to get them passed are fairly substantial. He said for fees, they are relatively easy to enact, but the difficulty is that they can only be spent on things that show a reasonable cost/benefit relationship.

On the topic of how different moneys can be held, he said there is a substantial amount of money in the general fund. He said that some of the money from fees would go into a special revenue funds. He said he does not know how the City can spend money on non-profits. He said that transferring fee revenue to a non –municipal organization would be difficult. He said that a city gets approximately 30 percent of revenue from the state shared revenue.

Leslie said that the SAC has been working on funding options while the TAC has been working on conservation recommendations. Leslie said that since the TAC may have preliminary recommendations at next meeting for the Southlands, she asked the SAC members what they wanted to do at this point. Carolyn asked if it would be possible to calculate how much the TAC conservation recommendations will cost in the Southlands. Leslie responded that because there are many unknowns still, she does not think it will be possible to make any calculations at this point. Karen asked if a preliminary draft HCP needs detailed cost estimates. Leslie said that this version of the draft HCP is more of an administrative type of draft, mainly for AGFD and USFWS to see forward progress. She said that both HCP committees needs to identify critical issues that need to be addressed in Phase II. Fran noted that funding will make or break the HCP process and that creative funding options will be essential for success. Carolyn noted that the HCP would be more equitable if the entire planning area encompassed the entire City limits, rather than being focused on three separate planning areas. Fran said it is important that the TAC is grounded in some sort of reality. Lynn asked if funding was a requirement in an HCP application. Leslie responded that funding must be discussed in the HCP plan because it is what will help provide assurances to USFWS. Leslie said at the end of the year, the next steps would be to decide on where to go and how to fill in the gaps identified that are needed to finalize the HCP. Emily suggested that the gaps in the funding matrix that Chris was not able to provide could be something the SAC could work on answering in the future. She asked Chris about the various taxes he didn't go over in his presentation including use taxes, industry taxes, business transaction taxes, and real estate transfer taxes. Chris said that currently there are not any enacted in the City and that in order to enact one the mayor and council would have to vote for it. He also said that those tax moneys would be accrued in the general fund, thus it would be very difficult to provide assurances to USFWS. Emily suggested that maybe the SAC should focus on learning more about CFDs. Carolyn clarified that CFDs would only be appropriate for the Southlands. Carolyn asked City bed taxes because the County has just raised their bed tax. She said that in the County the bed tax has very limited use for funding the Sonoran Desert Conservation Plan. Chris said he does not know the limitations on a bed tax for the City. He said he does know that a municipality cannot

charge a rental car tax for example. Chris said that the City did try in 2004 to pass an additional 2 percent rental tax, which was not popular with the citizens.

**4) Call to the public**

No members of the public were present.

**5) Next steps/Future Meetings**

Leslie said that the TAC is scheduled to come up with draft recommendations for the Southlands at their next meeting.