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The Honorable Chairman Richard Elias,
And Members of the Pima County Board of Supervisors
Tucson, Arizona 85701

Re: Tortolita Mountain Park (TMP) / Public Access

Dear Honorable Chairman Richard Elias, and Members of the Board of Supervisors:

It has come to my attention that County officials have, and possibly still are, in [discussions with Marana](#) Town officials regarding [Marana's interests](#) in facilitating the Saguaro Ranch developer's desires for Pima County to abandon the public's rights to the existing Leef Easement in exchange for an alternate pedestrian trail access to TMP; as previously proposed by the developer. The negotiations, appear to indicate Marana and Pima County will cover all responsibilities on behalf of the developer in creating the alternate trail access, including, but not limited to: *Construction of the alternate trail between the trailhead staging area and the southern boundary of Tortolita Mountain Park; Fencing; Design and construction of the trailhead facility; cost for acquiring any necessary easements, land use permits, or right of way from Arizona State land Department for any portions of the alternate trail between the trailhead and the park that may need to be sited on Arizona state land Department property, along with any associated cost such as cultural resources surveys, etc..* The financial costs would be covered by additional public funds and resources.

As a Pima County taxpayer, I am writing to express how concerned I am to hear Pima County officials and/or elected representatives are involved or willingly cooperating with Marana officials to give away existing full access into the TMP; owned by Pima County taxpayers, in the guise of an exchange. Moreover, that governmental officials should expect the public to pay for the opportunity of having our access given away.

This is an access the Pima County Attorney opined in a written opinion; requested by County Administrator, that no legal impediments to the County's use of the Leef Easement exists, "***Pima County has the legal right to use the Leef Easement for public vehicular access to the Leef Property, provided the traffic burden is no greater than what would have been expected had the Leef Property been developed.***"

And, which according to a 2003 Memo from S. Anderson, Senior Planner, Pima County Natural Resources, says "***the existing access [Leef Easement] is sufficient to provide 180 vehicular trip to Pima County parks property per day, and would be utilized for that purpose if agreement on an alternate access arrangement is not ultimately reached.***" With numerous documents from various Pima County officials stating the "existing access (Leef Easement) is a "superior and preferred public access." Based on available data it does not appear likely the access would exceed 180 vehicular trips a day.

And now along comes Marana with one million dollars of public funds that were intended for a Town "Regional Recreational Facility." But Marana has not come to the table simply to expedite or carry out the County's planned access to TMP. Nor, are they working to donate access to the park that does not already exist. To the contrary! The public already owns legal rights to use the Leef Easement, a road located in the eastern portion of the Saguaro Ranch development that provides vehicular access directly into TMP; which the Saguaro Ranch developer is opposed to. The Leef Easement is deeded legal access to property Pima County purchased from the Leef family in 1998, through the 1997 open space bond program specifically to facilitate public access into the TMP.

Marana's involvement is to obtain a Trail Development Agreement; which does not exist, that will ultimately legally bind the County to implement the developers alternate trail access proposal as official public access to the TMP in exchange for the County's abandoning public rights/use to the Leef Easement. An agreement the developer and his attorneys have attempted to obtain to no avail, since 2002. And, in November 2007 their proposal was met with significant public opposition, and was [rejected by the Pima County BOS, 4-1](#).

Marana recently voted to abandon a recorded public easement through Saguaro Ranch's west side which not only resulted in a [lawsuit against the Town](#), it fell short of providing the developer with the privacy/exclusivity he has claimed and is desperately trying to acquire. The developer also requires that Pima County abandons public rights to the Leef Easement through the eastern portion of the development [in hopes of avoiding serious legal and financial problems regarding charges of fraud and misrepresentation filed against him due to claims the development was private and exclusive when court documents indicate he knew otherwise].

Abandoning public's rights to the Leef Easement is not an issue Pima County BOS should be unfamiliar with.

In 2007, the Board was asked to prevent what appeared to be an agreement; as outline in a September 17, 2007 Memo, which appeared to indicate the Pima County Administrator intended to exchange a portion of this easement that could provide public vehicular access directly into TMP for a parking lot/trail head and a 1.4 mile foot trail to TMP. It was felt that not only were those actions not the best available access for the public, but there were legal issues as well.

Legal issues raised included that only the Pima County BOS could exchange property owned by Pima County, but that the Board had not taken any action to that end. And although there is no indication the Board is currently considering exchanging the Leef Easement, there are concerns that the claims made by Marana and the Saguaro Ranch developer might be enough to allow a misguided belief that there is a trail development agreement between the County and the Saguaro Ranch developer. However, unless the County has recently signed a Trail Development Agreement with Marana/Saguaro Ranch, there is no such agreement. The County is not obligated to abandon the Leef Easement. The County is not a party to Marana's Pre-Annexation Agreement nor any other agreement with the developer. Moreover, Pima County is not bound by Marana's actions, nor could Marana's actions grant County staff authority to sell or exchange the Leef Easement.

Additionally, the easement is "property." Therefore, IF, the Pima County BOS were inclined to take actions to "exchange" the access, Arizona law requires the Board to obtain an appraisal for the County owned property, and only exchange it for property that is at least 90% as valuable as the property to be given up. Additionally, IF, the Board chose to sell real property at public auction on 30 days, they still are required to obtain an appraisal and cannot set the bid price at less than 90% of the appraised value.

However, an issue that might be of greater concern and significance might be a key legal issue raised by attorney, J. Hinderaker, in 2007 when he notified the Board that Arizona law says the County can only use the easement it has to access the property that came with the easement; I.e., the Leef Property. Thus, if the County proceeds with the exchange, it will not even be able to use what remains of the easement to access the parking lot/trailhead provided by Saguaro Ranch- effectively giving up any access to TMP that the County acquired when it purchased the Leef Property. Stating that, "the law is clear that an easement appurtenant to a parcel of land, the dominant parcel, may not be used to benefit another parcel of land to which the easement is not appurtenant, even though the parcels are adjacent and under common ownership."

His legal opinion was, "IF, the County chose to abandon the upper portion of the Leef Easement, it will render the Leef Property valueless and Pima County will receive in exchange a parking lot and trailhead that Arizona law will not allow it to access via what remains of the Leef Easement." And, since the County's stated purpose for purchasing the Leef Property was to secure access into the TMP, it would make no sense for the County to proceed even if it were acquiring better access through the contemplated exchange with Saguaro Ranch.

Therefore, why would the County be involved in a Trail Development Agreement or an IGA with Marana or Saguaro Ranch for an alternate access when it would be at the detriment of valuable full public access?

Pima County must be proactive in protecting, even creating public recreational resources and public access, if for no other reason than outdoor recreation is a very important aspect of our community and lifestyles. Pima County: Oro Valley, Marana and the City of Tucson, are all part of an environmentally dependent economy. People live and visit this area, in large part, because of our year round outdoor lifestyles. Recreational opportunities and full access to public lands is a major part of that attraction, allowing residents and visitors the opportunity of experiencing the Sonoran desert landscape and incredible wildlife.

Generally speaking, tourism in Southern Arizona generates roughly 2 billion dollars in revenue to the local economy, and upwards of 40 thousand jobs in hospitality alone- all or most of that is dependent on our mountains and deserts natural environment as the back drop to those benefits/opportunities. However, in today's economy, we must be even more vigilant in protecting and creating local opportunities & attractions.

To hear Pima County officials might be negotiating - without the general public's knowledge - with Marana officials to give-away public rights to a full access easement that provides direct access into TMP, in exchange for a developers limited and inferior, alternate pedestrian trail access, would be a betrayal of public trust and fair and open representation/public function. That outrage is only compounded when reading that the negotiations might also include the expectation that the developers alternate trail access will now be facilitated and paid for by using additional public funds & resources.

This easement could provide full access to 80,000 +/- acres of public lands throughout the Tortolita Mountain range, but is at risk of being given away in the guise of an "exchange?" An exchange which would prohibit large populations of Pima County residents and visitor who are elderly or who have disabilities from being able to enjoy the park, or for some, even reaching its boundaries. This is not an exchange. This would be a give-away of valuable public assets and resources. The value of a full vehicular public access easement directly into the TMP is far greater than the pedestrian trail proposed by Saguaro Ranch/Marana. Both, Marana and Saguaro Ranch know the abandonment of the Leef Easement would do nothing but work a windfall for the developer and the expense of the Pima County taxpayers.

For 20+ years Pima County taxpayers have invested in a mountain preserve when, to date, we only have one foot path; approx 8 miles from it's boundaries, located in Marana, and yet, when faced with the potential of losing a full access easement directly into the park, the only explanation planning officials can provide regarding the County's reluctance to exercise the public's rights to use the Leef Easement is that "they have planned the access as "secondary" rather than a "primary?" That does not seem logical nor prudent to the investment and purpose for which the Leef Property was purchased or intended to serve. IF, planning officials can plan access one way, then they can certainly amend or plan it another....

With so much at stake, perhaps there is no better time for the planning process to adapt to the opinions of the Pima County Administrator, when he said - "***the planning process for both expansion of the Park and trail access continues to evolve and change as new circumstances, concerns, preferences, and priorities are incorporated.***" - Call it whatever you want, but circumstances, concerns, preferences and priorities are, again, knocking at your door. Pima County taxpayers want the access we paid for. Quite simply - we want that access to our public lands, NOW.

Prior to the developers annexation into Marana he was negotiating with Pima County for development approvals. Much of the land the developer was seeking development approvals for was property located within unincorporated Pima County designated as TMP expansion boundaries, adopted by the Pima County BOS in 1997. In an effort to help mitigate the impact development approvals for the Saguaro Ranch development and Guest Ranch/Resort would have to the park and it's expansion, the County requested the developer pay \$1 million dollars in impact fees to facilitate the acquisition of additional open space for TMP. These funds were never paid in full, but what ever portion was paid was not intended to sell public access, nor guarantee privacy/exclusivity. What ever agreements the developer claims he has, they are not with the County.

The legal opinion by the County Attorney, combined with the Saguaro Ranch's developers continual delays and failure to fulfill his obligations in his Pre Annexation Agreement with Marana, I think, should reasonably allow Pima County to finally make public access to public lands it's priority. Esp., when the County has no obligation to abandoning the Leaf Easement, and to do so may endanger public access all together.

Therefore, IF, Pima County has funds and resources to provide trail development for the Saguaro Ranch developer as requested by Marana, Pima County should instead use those funds and resources to improve the already publicly owned *full* access though the Leaf Easement, rather than continuing to invest money in the public's name that they refuse to allow the public to use or access.

Marana told the public the County had no planned access to the TMP in the western portion of Saguaro Ranch and that their abandonment's would in no way affect planned access to TMP. However, when Marana voted to abandon the recorded public easement they did so with the knowledge that a [designated trail existed](#). Tortolita Foothills Trail - a "Designated" Master Plan-listed trail - an important regional connector trail vital in providing southern continuity to the County's Master Planned Trail System; through the development, and that without cooperation with the County the abandonment's could sever, thereby preventing any public access to the western portion of Pima County's Master Planned Trail System. Which they chose to ignore, and are now trying to conceal in the guise "taking the lead" on behalf of the developer to do what the County could not do.

Marana's actions have caused years of planning and community involvement in the creation of Eastern Pima County Master Planned Trail System to potentially be erased. With all due respect, for Pima County to now be involved with Marana in their attempt to give away the only full/vehicular access to TMP to provide a [bankrupt] developer privacy and exclusivity that never existed, would be nothing short of malfeasance and a betrayal of the taxpayers trust. Please, don't let that happen. The public has no debt to Marana or their developer. The taxpayers of Pima County should in no way be held responsible for facilitating the Saguaro Ranch developer with privacy and exclusivity that never existed. This developer has been allowed to stall the process far too long. We ask that you, our elected representatives, please advocate on behalf of the taxpayers of Pima County and our ability to use the vehicular access we paid for to reach our public lands.

Respectfully,
Theresa (Tracy) Chamberlain