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## Community Advisory Committee

Regional Transportation Commission Building, Room 108  
600 South Grand Central Parkway, Las Vegas, Nevada 89155

Meeting Summary for June 11, 2009



## Meeting Summary

Community Advisory Committee Meeting Five, June 11, 2009, 2:30 p.m.  
Regional Transportation Commission Building, Room 108

The following pages contain a summary of the presentations and discussions from the Desert Conservation Program Community Advisory Committee (CAC) Meeting of June 11, 2009. These pages, together with the presentation slides and handouts, constitute the meeting record.

### Meeting Five Agenda

1. Opening and Introductions
2. Follow Up From May Field Trip
3. Process and Issuance Criteria for a Habitat Conservation Plan
4. Notice of Intent to Conduct Scoping Meetings (postponed to later meeting)
5. Public Comment
6. Approval of Meeting Notes from April and May 2009 CAC Meeting and Field Trip
7. Wrap Up and Closing
8. Adjourn

### Appendix A-Meeting Five Agenda

### Appendix B-HCP Process and Issuance Criteria Presentation

### Appendix C-Desert Tortoise Recovery Presentation

#### 1. Opening and Introductions

The meeting of the DCP Community Advisory Committee was called to order at 2:38 p.m. in the Regional Transportation Commission Building, Room 108, Clark County, Nevada. Staff confirmed the meeting had been noticed in accordance with the Nevada Open Meeting Law and was able to proceed.

#### **Committee Members Present**

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Jane Feldman, Environmental/Conservation  
Mike Ford, Mesquite  
Stan Hardy, Rural Community  
Matt Heinhold, Gaming  
Terry Murphy, Development/Builder  
Bryan Nix, Boulder City  
Joe Pantuso, Development/Builder  
Jim Rathbun, Education  
Scot Rutledge, Environmental/Conservation



Ann Schreiber, Senior  
Allan Spooner, Business/Small Business  
Marcia Turner, Education  
Mindy Unger-Wadkins, Henderson  
Tom Warden, Las Vegas  
Darren Wilson, Nevada Taxpayers Association

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**Staff in Attendance**

Jodi Bechtel  
Marci Henson  
Ann Magliere  
John Tennert  
Susan Wainscott

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**Others in Attendance**

Allison Stephens  
Roy Averill-Murray  
Jodi Brown  
Michael N. Johnson  
Jeri Krueger  
Catherine Lorbeer  
Bill Maher  
Rob Mrowka  
Par Rasmussen  
Sarah Rockwell  
Mark Silverstein  
Chris Tomlinson  
Darren Wilson  
Ian Zabarte  
Ruth Nicholson, Facilitator  
Eric Hawkins, Facilitator  
Doug Huston, Meeting Documentation

Ruth Nicholson, Lead Facilitator, opened the meeting at 2:38 p.m. She requested the CAC members introduce themselves. Eric Hawkins, Co-Facilitator, introduced the committee's two proposed members present in the audience and explained they were still awaiting formal appointment by the Clark County Board of County Commissioners (BCC).

Ruth started the check in sheet for the committee members around the room and invited CAC members to sign the thank you notes that had been prepared for the May CAC field trip presenters. She pointed out



the public sign in sheet and reminded members of the public there was a check box on the check in sheet if they were interested in speaking during the public comment period. She reviewed the agenda with the group and discussed the delays in publishing the Notice of Intent (NOI) which resulted in the cancellation of the associated item on this meeting's agenda.

## 2. May Field Trip Debrief

Eric discussed the feedback section of the agenda. He explained that the task was for each committee member to write on the post-it notes provided the answers to two questions:

- What did you learn on the field trip that surprised you or was new to you?
- How is this important to the work of the CAC?

Eric and Ruth posted the committees comments on the wall of the meeting room. Eric reviewed the notes with the committee. Ruth asked the committee if any of the responses needed clarification. There were no further comments or questions from the committee. Following this exercise, Eric reviewed the concept of guiding principles with the group and discussed the fact that the education phase of the committee's work was ending. He then invited the committee members to share their thoughts and observations about the field trip.

Matt Heinhold, Gaming Industry, commented that what he learned could also be placed under the "importance to the CAC's work" category. He was surprised at how many things are funded by the DCP and that many people did not understand how many goals and objectives there were in this program. He stated that he was concerned that control over spending was not as good as it should be. Mindy Unger-Wadkins, City of Henderson, agreed with Matt and commented that the spending needed to be more tightly focused and the committee needed to question the need for having species other than the desert tortoise in the MSHCP.

Matt commented that the other thing that stood out to him was that green energy also presents negative environmental consequences. He was surprised at how much area the solar farms took up. Terry commented further that alternative energy was a national and local priority and wondered how that would impact the group's efforts to extend the term of the permit and expand the take number.

Stan Hardy, Rural Community, asked what the group was supposed to do with this information what the committee's role in the process. He stated that the legal obligation was to the desert tortoise and that the 400 acres taken up by the solar plant looked like a lot of acres, but compared to the state of Nevada it was not. He also wanted to know what the economic return on those 400 acres related to solar energy



development. Marci Henson, Plan Administrator, replied that the role of the committee was tasked with providing input and recommendations to the Board of County Commissioners and the Permittees regarding permit amendment. She explained that during the education phase, Clark County had discussed where it had done well in the previous program and also where it had not done well. She stated that chief among the Permittees' priorities was to reevaluate the species list and she committed to bring a list of species to the committee for its feedback.

Alan Spooner, Business/Small Business, asked if Clark County's take number accounted for take in other parts of the desert tortoise's range. Marci replied that we are concerned only with our area. She stated that the Fish and Wildlife Service (FWS) looks at a species range-wide. She commented that Clark County would be bringing to the committee information as to how Clark County compares to the other portions of the desert tortoise's range.

Marci stated that from a staff perspective, it was invaluable to get out into the field and to interact with a group of people new to the process with new perspectives. She commented that it was a reminder for her as to how this program could be misunderstood and how important it was to be able to account for the money spent and the actions taken.

Ruth asked the group to respond to the second question – how what you learned is important to the permit amendment.

Mike Ford, City of Mesquite, commented that the trip and the discussions validated his assumptions as to what the committee needed to be doing. He stated that the committee needed to do an honest assessment of the acreage cap and a streamlining of the covered species. Darren Wilson, Nevada Taxpayers Association, commented that the actual threat to a species and the amount of take needed should be determined by a true count of the species. Mindy stated that she did not understand how the original MSHCP grew from just the desert tortoise to 78 species. She stated that there are other plans in place that cover a lot of those other species and she was perplexed as to why we were duplicating plans.

Stan commented that he thought we ended up with all the covered species because everyone has their pet species. He questioned what actual damage the race track had done to the desert and wanted to know how much income it brought to the community. He questioned whether the committee was just supposed to make sure the permit amendment was successful and the maximum number of acres of take was approved. He stated he did not see the benefit to himself or the species of the current process since most everything in Clark County was already protected to some degree, adding that he had seen hundreds of tortoises in the wild and wanted to know if there was an actual population number that would result in de-listing of the desert tortoise. He stated that he felt people would always find some reason to prevent



residents from using an area.

Marcia Turner, Education, commented that she found the comments on solar energy impacts interesting and suggested that an important piece of the committee's work would be to understand the benefits vs. the impacts of various activities. Ann Schreiber, Seniors, stated that she felt it was important to have some science behind the mitigation plans.

Terry stated that in terms of informing the process, it will be important to know what we have learned given the length of time we have been working on this problem and the money spent. We will need to know what recovery looks like, in particular, how many individuals would be required to de-list the tortoise, what lessons we have learned and what we still need to learn. She also stated it would be important to know how effective current efforts had been.

Marci commented that this program started when the desert tortoise was listed and development stopped. She commented that there was no clear information as to exactly how many desert tortoises there are across its range and whether the population is increasing or decreasing.

Tom Warden, City of Las Vegas, commented that it would be appropriate for this committee to be doing this work even if nothing were going on. He stated that the program is so large and complex that it needs to be reassessed periodically. Jane Feldman, Environmental/Conservation, commented that she was concerned that mitigation actions for take in the valley were occurring on federal lands where there was no control over what actually took place. She also reminded the committee that there were two species listed under the Endangered Species Act (ESA) - the desert tortoise and the Southwestern willow flycatcher.

### **3. Process and Issuance Criteria for a Habitat Conservation Plan (HCP)**

Ruth explained to the group that this was the last big piece of educational information. Following this presentation, the committee would begin discussing and debating issues. She stated that during the educational phase of the committee's work she had been striving to ensure Clark County acted as a neutral purveyor of information, but in this upcoming phase, Clark County representatives would interact as participants on the committee and would participate fully in the discussions and debates.

Ruth invited Jeri Krueger, FWS, to review the process for issuance of a habitat conservation plan (HCP). She asked the group to hold substantive questions until Jeri had finished her presentation.

Jeri then gave her presentation on the issuance criteria and process for an HCP:

She noted that in order to be approved by FWS, an HCP must:



- Describe the impact of the taking;
- Steps to minimize or mitigate the impacts of take;
- Describe any alternatives to the taking and why they are not being used;
- Other measures as may be required.

She discussed the “No Surprises” rule, noting that this policy prevents FWS from adding other requirements after the HCP has been issued, for any unforeseen circumstances. She discussed the concepts of changed circumstances and unforeseen circumstances, noting that changed circumstances involve anticipated future changes which can reasonably be anticipated and addressed in the habitat conservation plan whereas unforeseen circumstances result are those outcomes that cannot be foreseen. The permittees are required to fund changes to the HCP due to changed circumstances whereas FWS cannot require additional mitigation for changes resulting from unforeseen circumstances.

Jeri then described biological opinion and its requirements as they relate to approving an HCP. A biological opinion is a requirement of Section 7 (a) 2 of the ESA which requires federal agencies to ensure that their actions will not jeopardize listed species or adversely affect critical habitat. The issuance of an incidental take permit is a federal action that requires compliance with Section 7 and thus the development of a biological opinion.

She described the issuance criteria of an incidental take permit:

- The taking will be incidental;
- The applicant will minimize and mitigate the impacts of the taking to the maximum extent practicable;
- There is adequate funding for the plan;
- The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.

After Jeri’s presentation was finished, Ruth invited Roy Averill-Murray, FWS Desert Tortoise Recovery Office, to present information. Given the short time remaining in the meeting, Terry asked if it was possible to have Roy come back at a future meeting. Roy replied that could be arranged.

Roy gave his presentation on Desert Tortoise recovery, and began by discussing the range of the desert tortoise across the southwest with the group.



He informed the group that the latest recovery strategy would be out later this year.

He listed the six strategic goals outlined in the draft revised recovery plan for the desert tortoise:

- 1. Develop partnerships**
- 2. Protect populations and habitat**
- 3. Augment depleted populations**
- 4. Monitor progress**
- 5. Conduct applied research and modeling**
- 6. Implement the adaptive management program**

Roy commented that monitoring of local, small populations has occurred over the last 20 years and that locally populations have indisputably declined. He stated that the current status of the desert tortoise from a range-wide perspective is not known with certainty; the current monitoring program has only been in progress since 2001 and his office only took over the monitoring program in 2007.

After Roy's brief presentation, Ruth informed the group that they had eight minutes for questions and suggested that the facilitation team could collect questions, which would be provided to FWS to answer at the next meeting. Terry asked if the committee could e-mail questions. Ruth stated that they could be e-mailed to John.

Mike stated that the recovery program gets to the heart of what the committee needs to understand, and the committee needs a more expansive conversation on this subject than it has had so far. Mindy agreed with Mike, commenting that she wants to know what went wrong in previous years and why, after 20 years, there are still recovery issues. Mike stated that he wanted to talk about where the local populations that have been monitored are and what FWS is observing in the field. Tom asked if this monitoring encompasses the Mojave Desert and the Sonoran Desert. Scot asked if the effects of climate change were being considered and if predictive models exist and are being used.

Marci commented that the areas shown on Roy's slides are all the same species and yet only the Mojave population of the desert tortoise is listed (as opposed to the Sonoran population, which has recently been proposed for listing). She asked if other portions of the range were being considered. Roy commented that there was some genetic work going on that may split the various population areas into distinct species.

Marci commented that Clark County currently spends roughly \$1.3 million per field season as its contribution to range-wide desert tortoise monitoring, and stated Clark County's concern regarding





effectiveness of the methodology. She stated that this money could be used to do something on the ground locally, and she was very interested in what the total cost of the range-wide monitoring was and who was contributing.

Jane stated that she had heard the argument already that we did not need to be careful in Nevada since there are also desert tortoises in California. She stated that she did not want to live in an impoverished environment and wanted people to be able to live in a thriving desert in Southern Nevada.

Jim Rathbun, Education, commented that he had read in some documents that there were agreed upon procedures for tortoise monitoring, but he had heard differently at Lake Mead during the May tour. Roy replied that since 2001, minor adjustments and refinements had been made to the monitoring protocols but the data gathered are still comparable.

Ruth commented that she was hearing a desire on the part of the committee to devote a substantial amount of time to continuing this discussion. She stated that the facilitation team would be happy to collect any comments committee members had today or comments could be emailed to John. Mindy voiced a concern that with the NOI on the next meeting agenda there would not be time to have this discussion then. Ruth commented that she did not know whether the NOI would be ready by next meeting.

Matt suggested that an hour be added to the next meeting to accommodate this discussion. Ruth asked if that hour would be at the beginning or the end of the meeting. The committee decided to add an hour to the beginning of the meeting to discuss desert tortoise monitoring and recovery. The July 16 CAC meeting will begin at 1:30 p.m. and end at 4:30 p.m.

Ruth confirmed the date of the next meeting as July 16, 2009.

## **7. Public Comment**

Ian Zabarte of the Moapa Band of the Paiute Tribe introduced himself as the environmental coordinator for the Moapa Band of Paiutes.

## **8. Approval of Meeting Notes from April and May 2009 CAC Meeting and Field Trip**

Eric asked committee members if they had any questions, comments or suggested changes concerning the meeting summaries from April and May. There were no questions or comments and the committee approved the April and May summaries by consensus.

## **9. Wrap Up and Closing/Adjourn**

The meeting was adjourned at 4:22 p.m.



## Flipcharts

Notes:

### Agenda

1. Opening
2. May Field Trip
3. Process and Issuance Criteria for an HCP
4. Public Comment
5. Approval of Meeting Notes from April and May
6. Wrap Up and Closing

### Objectives

1. To Debrief the May CAC Field Trip
2. To Learn About Issuance Criteria for an HCP
3. To Approve CAC Meeting Notes From April and May

### Parking Lot

1. For Fish and Wildlife - Is there a predetermined order for take between Permittees?

### Action Items

- Who?  
CAC to John Tennert
- What?  
Questions for Fish and Wildlife
- When?  
Following the July meeting



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## Flipcharts

### Notes:

#### Field Trip Feedback

What Did You Learn?

1. Habitat impact of solar plants
2. We may be spending \$ on programs not tracked
3. Solar installations will result in take
4. The extent of the potential impact from solar fields
5. Extent to which federal agencies are underfunded

#### Field Trip Feedback

What Did You Learn?

6. A lot of desert to preserve
7. Land area is vast
8. The conservation area is very large
9. Large landscape involved
10. Important - Las Vegas valley small part of (or not part of) viable habitat
11. Low lake level very visible

#### Field Trip Feedback

What Did You Learn?

12. Mojave is extremely challenging environment
13. Massive size of solar power facilities
14. Perspective on cost vs. benefit
15. Impacts of renewable energy development - "solar"
16. Disparity of actions - i.e., BC vs. NPS
17. No one is counting how many turtles

#### Field Trip Feedback

What Did You Learn?

18. Tortoises do not use the same nest twice
19. Different habitats require unique mitigation strategies
20. Recognition of extensive desert ecosystem
21. Boulder City conservation officer great asset



## Flipcharts

### Notes:

#### Field Trip Feedback

What Did You Learn?

22. NPS doesn't think they have/should do much for the tortoise
23. Connected with other CAC members
24. Too many goals that are not prioritized
25. Challenges are complex - so are potential solutions
26. Tortoises are hard to spot

#### Field Trip Feedback

What Did You Learn?

27. Dollars are being spent with no requirement/link to success of the problem
28. The goal is to improve the otherwise outcome
29. A lot of tortoise fencing
30. Cannot protect all things (overlap)

#### Field Trip Feedback

How Is This Important to The Work of The CAC?

1. Because we want to do things that work
2. Important to visualize the areas we want to protect
3. Important to focus resources for future spending
4. Get to spend quality time bonding as a group



## Flipcharts

### Notes:

### Notes

Honest reassessment of cap  
Evaluate number of covered species  
Lay of the land has changed  
    Solar replacing urban development  
Need info on how many tortoises out there  
and how to help  
Why are we covering 78 species?  
    Is there overlap with other programs  
    Our charge is the Desert Tortoise

### Notes

People have "pet" species  
What real impact does OHV have?  
    There are also benefits  
Our actions must really have an impact  
Fine balance between conservation and land  
use  
Must be science behind mitigation - drought,  
solar

### Notes

Lots of \$ spent - 20 years of Desert Tortoise  
conservation  
    What have we learned?  
    What do we still need to know?  
    What's necessary for recovery?  
How do we do what we need/want to do  
while still protecting species?  
    How many Desert Tortoises out there?  
    Are they increasing or decreasing?

### Notes

Need to focus on Desert Tortoise  
Program is huge/complex - appropriate that  
we're here to reassess  
    Necessary/timely  
    Rush to solar/green power  
    Drought  
Concerned about evaluating covered activities  
    Who is controlling the land - county/fed-  
    eral



## Flipcharts

Notes:

### Notes

Two species:  
Desert Tortoise  
Southwest Willow Flycatcher  
How are current factors affecting  
Southwest Willow Flycatcher?

### Notes

Where is monitoring taking place?  
What level of monitoring?  
Quality of life here in Las Vegas valley  
regardless of habitat in other places  
Protocols for monitoring - do they really  
exist?



# Appendix A Meeting 5 Agenda

## AGENDA

### Desert Conservation Program Community Advisory Committee Meeting County Of Clark, State Of Nevada

NOTICE IS HEREBY GIVEN that a meeting of the Desert Conservation Program Community Advisory Committee (DCP-CAC) has been called and will be held on: Thursday, June 11, 2009, beginning at 2:30 p.m. at the Regional Transportation Commission Building, 600 Grand Central Pkwy, Room 108, Las Vegas, Nevada. Below is an agenda of all items scheduled to be considered. Unless otherwise stated, items may be taken out of the order presented on the agenda at the discretion of the chairperson.

1. Opening and introductions  
Goals:
  - To introduce meeting participants
  - To review the purpose and goals of the CAC
  - To answer any follow-up questions from the previous CAC meeting
2. Follow-up from May Field Trip  
Goals:
  - To discuss observations and lessons from the May CAC field trip
3. Process and Issuance Criteria for a Habitat Conservation Plan  
Goals:
  - To learn about the issuance criteria and process the U.S. Fish and Wildlife Service uses to approve a habitat conservation plan and issue an incidental take permit
4. Notice of Intent to Conduct Scoping Meetings  
Goals:
  - To provide the key elements of the Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for permit amendment and the schedule and purpose for upcoming scoping meetings
5. Public Comment
6. Approval of Meeting Notes from April and May 2009 CAC meeting and field trip
7. Meeting Wrap-Up and Closing  
Goals:
  - To recap meeting results and identify follow-up activities
  - To review "Guiding Principles" for future meetings
  - To outline the agenda topics and desired results for the July 16, 2009
  - To invite participant feedback on the meeting
8. Adjourn



# Appendix B HCP Process and Issuance Criteria

## Objectives

- Review the basic elements of HCPs
- Discuss role of the FWS in HCP development
- Explain relationship of the Section 10(a)(1)(B) process to Section 7 and NEPA

## Basic Elements of an HCP

ESA Regulations – 50 CFR 17.22 & 17.32

HCP must specify:

- The impact of the taking;
- Steps to monitor, minimize, and mitigate impacts, funding to implement such steps, and procedures to deal with unforeseen circumstances
- Alternative actions to the taking and the reasons why they are not being utilized; and
- Other measures required by the Director as being necessary or appropriate

## Basic Elements of an HCP

Five Point Policy  
(65 FR 35242, June 1, 2000)

- Biological goals and objectives
- Monitoring
- Adaptive management
- Permit duration – how to decide
- Public participation – comment periods

## Basic Elements of an HCP

No Surprises Rule

- Policy issued in 1994  
\* found in the 1996 HCP Handbook
- Final rule 1998  
\* 63 FR 8859  
\* 50 CFR 17.22(b)(5), 17.32(b)(5)
- FWS will not require additional land, water, or financial compensation or additional restrictions, other than those provided for in the HCP

## Basic Elements of an HCP

No Surprises Rule (cont.)

Changed Circumstances

- Future changes that are anticipated, planned for, and described in the HCP
  - \* Flood, drought, invasive species, disease ...
- May require additional mitigation measures (response), as described in HCP
- Response is funded by Permittee(s)

## Basic Elements of an HCP

No Surprises Rule (cont.)

Unforeseen Circumstances

- Changes that were not anticipated and result in substantial, adverse change in species status
- FWS has burden to demonstrate circumstance exists
- Federal government pays for remedy
- Government or private entity can take additional actions

## Basic Elements of an HCP

No Surprises Rule (cont.)

Unforeseen Circumstances

- Changes that were not anticipated and result in substantial, adverse change in species status
- FWS has burden to demonstrate circumstance exists
- Federal government pays for remedy
- Government or private entity can take additional actions

## FWS Roles and Responsibilities

Conservation Planner, Technical Advisor and Regulator:

- Solve multiple threats to multiple species all at one time
- Biological issues
- Integration of Section 7 issues into HCP
  - \* To avoid jeopardy and adverse modification of critical habitat
- Permit requirements
- Permitting process (NEPA, etc.)
- Implementation
- Compliance

## FWS Roles and Responsibilities

Permitting Process

- Ensure application package is complete
- Review and comment on draft documents
- Publish Federal Register notices, distribute HCP/EIS/IA for public comment
- Respond to public comments on HCP/EIS/IA
- Prepare BO, Findings Statement, ROD
- Permit issuance

## The Biological Opinion

Required under Section 7 of the ESA

Section 7(a)(2):

Federal agencies shall insure that their actions are not likely to jeopardize listed species, or adversely modify critical habitat.



## The Biological Opinion

Section 7 and Section 10 are Intersecting Processes –

Issuance of a section 10(a)(1)(B) permit is a Federal action subject to compliance with section 7(a)(2)



## The Biological Opinion





- FWS must conduct Intra-Service consultation on our action: Permit Issuance
- FWS must be held to the same consultation standards that other Federal agencies are required to meet under section 7







# Appendix B HCP Process and Issuance Criteria

<p><b>The Biological Opinion</b></p> <ul style="list-style-type: none"> <li>Section 7 consultation is FWS responsibility, not the applicant.</li> <li>However, applicant should consider section 7(a)(2) during development of the HCP (to ensure no jeopardy or adverse modification of critical habitat)</li> <li>If jeopardy or adverse modification, we CANNOT issue the permit.</li> <li>FWS policy to provide technical assistance for avoiding jeopardy/adverse mod during development of HCP</li> </ul>	<p><b>The Findings Statement</b></p> <p><b>FWS Regulatory Permit Issuance Criteria CFR 17.22, 17.32 (b)(2)</b></p> <p>The taking will be incidental</p> <p>The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking</p> <p>The applicant will ensure adequate funding for the plan and provide procedures to deal with unforeseen circumstances</p> <p>The taking will not appreciably reduce the likelihood of survival and recovery of the species in the wild</p> <p>Applicant will ensure that other measures FWS may require will be provided</p> <p>FWS has received assurances that the HCP will be implemented</p>	<p><b>The Findings Statement</b></p> <p><b>Purpose of the Findings Statement</b></p> <p>Provide a written rationale for FWS conclusions about whether to issue a permit</p> <p>Shows the public and the courts the logic path FWS used to reach its decision</p> 	<p><b>The Findings Statement</b></p> <p><b>Issuance Criteria Findings</b></p> <p>The taking will be incidental</p> <p>The takings are incidental to, and not the purpose of, otherwise lawful activities</p> <p>Consider the role of state and local laws in "otherwise lawful"</p> 												
<p><b>The Findings Statement</b></p> <p><b>Issuance Criteria Findings (cont.)</b></p> <p>The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of the taking</p> <p>Summarize species status range wide and on covered lands</p> <p>Define amount of take and the impacts likely to result from that level of take</p> <p>Explain from a biological or conservation perspective why (or not) the mitigation and minimization is adequate for the level and impact of take</p> <p>Thorough consideration and articulation of "alternatives to take" will help support "maximum extent practicable"</p>	<p><b>Basic Elements of an HCP</b></p> <p><b>No Surprises Rule (cont.)</b></p> <p><b>Unforeseen Circumstances</b></p> <ul style="list-style-type: none"> <li>Changes that were not anticipated and result in substantial, adverse change in species status</li> <li>FWS has burden to demonstrate circumstance exists</li> <li>Federal government pays for remedy</li> <li>Government or private entity can take additional actions</li> </ul>	<p><b>The Findings Statement</b></p> <p><b>Issuance Criteria Findings (cont.)</b></p> <p>The taking will not appreciably reduce the likelihood of survival and recovery of the species in the wild</p> <p>Summarize the biological opinion conclusions for jeopardy and adverse modification of critical habitat</p> 	<p><b>The Findings Statement</b></p> <p><b>Issuance Criteria Findings (cont.)</b></p> <p>Applicant will ensure that other measures FWS may require will be implemented</p> <p>Examples:</p> <ul style="list-style-type: none"> <li>Implementation Agreement</li> <li>Agreements with other parties or participants in the plan (e.g., NGO holds easement, manages reserve, cooperative management agreements, lease agreements, etc.)</li> </ul>												
<p><b>The Findings Statement</b></p> <p><b>Issuance Criteria Findings (cont.)</b></p> <p>FWS has received assurances that the HCP will be implemented</p> <p>Examples:</p> <ul style="list-style-type: none"> <li>Applicant(s) sign the Implementing Agreement</li> <li>Applicant(s) authority to implement HCP and enforce terms of the permit</li> </ul> 	<p><b>The NEPA Document</b></p> <p><b>National Environmental Policy Act</b></p> <p>Passed in 1969</p> <p>Requires federal agencies to examine environmental impacts of actions and utilize public participation</p> <p>Disclose impacts and describe mitigation</p>	<p><b>The NEPA Document</b></p> <p><b>National Environmental Policy Act</b></p> <p>Relationship to Section 10(a)(1)(B)</p> <p>Section 10 permit = Federal action subject to NEPA</p> <p>NEPA document for HCP is FWS responsibility, but request applicant assistance in preparing</p> <p>Must analyze impacts on all elements of the human and natural environment affected by all the alternative actions</p> <p>Section 10 - only effects to the covered species are addressed [HCP is applicant's document]</p>	<p><b>The NEPA Document</b></p> <p><b>Difference Between HCPs and NEPA</b></p> <table border="1"> <thead> <tr> <th></th> <th>HCP</th> <th>NEPA</th> </tr> </thead> <tbody> <tr> <td>Focus of Impacts Analysis</td> <td>Covered species</td> <td>All elements of human and natural environment affected by alternatives</td> </tr> <tr> <td>Alternatives Considered</td> <td>Alternatives to take of the covered species</td> <td>All reasonable alternatives</td> </tr> <tr> <td>Minimization and Mitigation</td> <td>Describe steps to minimize and mitigate take of covered species</td> <td>Describe steps to minimize and mitigate impacts to all environmental elements</td> </tr> </tbody> </table>		HCP	NEPA	Focus of Impacts Analysis	Covered species	All elements of human and natural environment affected by alternatives	Alternatives Considered	Alternatives to take of the covered species	All reasonable alternatives	Minimization and Mitigation	Describe steps to minimize and mitigate take of covered species	Describe steps to minimize and mitigate impacts to all environmental elements
	HCP	NEPA													
Focus of Impacts Analysis	Covered species	All elements of human and natural environment affected by alternatives													
Alternatives Considered	Alternatives to take of the covered species	All reasonable alternatives													
Minimization and Mitigation	Describe steps to minimize and mitigate take of covered species	Describe steps to minimize and mitigate impacts to all environmental elements													



# Appendix B HCP Process and Issuance Criteria

**The NEPA Document**

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**Cumulative Effects  
Difference Between ESA and NEPA**

ESA, Section 7 – 50 CFR 402.02:

Effects of future State and private activities that are reasonably certain to occur within the action area of the consultation

No Federal activities considered

\* Will be considered under future section 7 consultation


**The NEPA Document**

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**Cumulative Effects  
Difference Between ESA and NEPA**

EPA – 40 CFR 1508.7:

Incremental impact of actions when added to past, present, and reasonably foreseeable future actions, regardless of agency or person



**The NEPA Document**

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**HCP and EIS  
Public Review Process**

Three Federal Register notices required:

- Notice of Intent – scoping (30 days)
- Notice of Availability of Draft (90 days)
- Notice of Availability of Final (30 days)

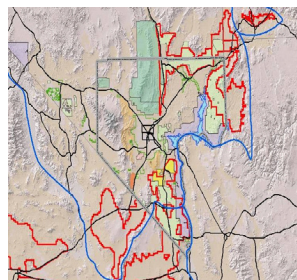
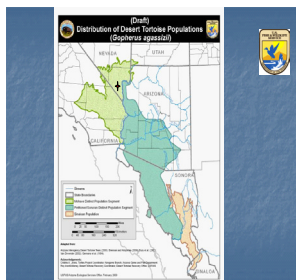
Following with EPA initiates draft and final public comment periods.

QUESTIONS?





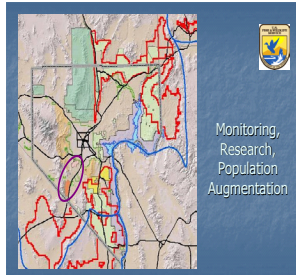
# Appendix C Desert Tortoise Recovery



### Recovery Strategy

- U.S. Fish & Wildlife Service
- Develop partnerships
- Protect populations & habitat
- Augment depleted populations
- Monitor progress
- Conduct applied research & modeling
- Implement adaptive management program

Protect Populations and Habitat



### FWS-SDZ Cooperative Agreement, March 2009

### Partnerships/ Adaptive Management

- Recovery Implementation Teams
- Recovery Action Plans
- Spatial Decision Support System
- Recovery database

