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Community Advisory Committee

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

Draft Meeting Summary for November 19, 2009



Meeting Summary

Community Advisory Committee Meeting 10, November 19, 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 (DCP) Community Advisory Committee (CAC) Meeting of November 19, 2009. These pages, together with the presentation slides and handouts, constitute the meeting record.

Meeting 10 Agenda

1. Opening and Introductions
2. Approval of Meeting Notes from the October 2009 CAC Meeting
3. CAC Recommendations on Take
4. CAC Recommendations on Covered Species
5. Public Comment
6. Meeting Wrap Up and Closing

Appendix A - Meeting 10 Agenda

Appendix B - CAC Recommendation on Take

Appendix C - Covered Species Options

Appendix D - Permittee Recommended Covered Species List

Appendix E - Covered Species Presentation

1. Opening and Introductions

Ruth Nicholson, Lead Facilitator, opened the meeting at 2:30 p.m. She requested the audience members who desired to give public comment sign up on the public comment sign-in sheet.

Ruth then reviewed the agenda for the meeting with the group and asked if there were any questions on the meeting objectives:

1. Refine and adopt a recommendation regarding take for an amended MSHCP
2. Finalize and adopt the Guiding Principles for the CAC's work on covered species
3. Begin discussions on the CAC's recommendation on covered species

There were no questions.



2. Approval of Meeting Notes from the October CAC Meeting

She asked the committee if it had any questions or comments on the October notes. Allison Stephens, City of North Las Vegas, commented that she had come in late to the last meeting and missed getting on the attendance sheet. Doug Huston, Meeting Documentation, stated he would revise the attendance list for the October summary to include Allison's name. Following this, the CAC approved the October summary by consensus.

3. CAC Recommendations On Take

Eric explained the plan for the discussion. The committee would review the proposed recommendation on take, discuss the remaining concerns and then check for consensus. He informed the committee of the three components of consensus:

1. I understand it
2. I can live with it
3. I can support it

He stated that the goal was to achieve agreement on the first two elements of consensus for the CAC recommendation on take. Agreement on the third component would come at the end of the CAC process when the committee reviews the totality of recommendations it had developed. He then reviewed the draft recommendation with the committee:

Following consideration and discussion, the committee finds the process used to develop the proposed take acreage recommendation to be logical, purposeful and consistent with the committee's guiding principle on take. The committee concludes this based on:

- *The recognition that the process considered historical and current conditions as well as plans and projected trends in Clark County, and*
- *Allows for a stable, long-term orderly development process in Clark County while considering species and habitats most likely to be affected by take.*

The committee acknowledges that concerns over development and the development process in Clark County exist and will consider additional recommendations to address these concerns as it develops recommendations on mitigation and implementation strategies for an amended MSHCP.



Eric then reviewed the concerns the group expressed at the last meeting:

- Not logical or reasonable since Permittees influence Bureau of Land Management (BLM) movement of boundaries.
- If the number of acres is too big, the mitigation package will be too big, i.e., bigger, more complicated, more expensive.
- The disposal boundary (and therefore the DCP) unnecessarily drives growth and development.
- I have concerns that the agencies driving growth are the same tasked with habitat and species conservation.
- The disposal boundary was set legislatively or administratively without reference to any regional, county or city growth plans. Willy nilly, it just grew.

Eric then reviewed the four questions that had been sent to the committee via e-mail the previous week for consideration with respect to the preceding concerns:

1. Does the proposed recommendation adequately address or acknowledge the existence of this concern or should it be modified?
2. Is this concern within the purview of this committee (can we develop recommended solutions that the Program Administrator can carry out)?
3. Is this concern more adequately addressed or discussed at a different point in the process (i.e., when developing recommendations for mitigation or implementation)?
4. What are the potential solutions to address this concern (what can we add to our recommendation to address this concern)?

Eric pointed out that three of the concerns dealt with disposal boundaries and growth, and asked if they should be discussed together. The committee agreed.

Eric reviewed the concern about the size of the take acreage and its effect on the mitigation package. Stan Hardy, Rural Community, asked if mitigation was required for all the acres proposed or just for those acres that are actually used. Marci Henson, DCP Plan Administrator, stated that the MSHCP must include plans to adequately mitigate for all the proposed acreage and that mitigation has to occur close in time to the take. Jane Feldman, Environmental Conservation, asked if, during the discussions on mitigation and implementation, the committee determined it needed to revisit the take recommendation, was that possible. Marci replied that it was.



Eric reviewed the concern about the agencies that are driving growth also being responsible for conservation. Brian Nix, City of Boulder City, stated he didn't know why this was a concern. Scot Rutledge, Environment/Conservation, asked what disproved that concern. Brian responded that it was clear the economy is what drives growth. Scot suggested changing the wording of the concern to "agencies that determine disposal boundaries are the same tasked with conservation." Mike Ford, City of Mesquite, commented that the disposal boundaries are changed by a public process. Ruth asked if the committee felt the take recommendation needed to address this concern or did it belong to some future discussion or was it outside the purview of the committee? Allison stated that there were aspects of the concern that were outside the purview of the committee. She suggested that the committee might want to recommend some outside entity periodically ensuring that conflicts of interest are not interfering with implementation of the HCP. Mindy Unger-Wadkins, City of Henderson, asked if Allison was suggesting creating a new agency or oversight group. Allison responded that she did not want to create a different oversight group; she wanted to ensure that someone looked at potential conflicts of interest periodically, such as a regular advisory committee. Eric asked Allison where her concerns would fit in the permit amendment categories. Allison responded that structure and implementation was the best location.

Brian commented that he did not understand the conflict of interest statement. He wanted to know what conflicts existed between what agencies. Scot responded that it was his impression that disposal boundaries were decided as a result of lobbying by municipalities legislatively. He commented that he wanted to know who drew the boundaries. Mike commented that most of the disposal boundaries were developed through a 10-year planning process that was open to the public. Scot asked who decides during the legislative process how the boundaries are changed and whether the BLM made those decisions.

Marci responded that there are two ways in which disposal boundaries are determined. The first is through a public planning process. The other is by Congressional action. She stated that Congressional action was responsible for the change in disposal boundaries once in the Las Vegas valley. This particular action included a small amount of disposal but also created 400,000 acres of new wilderness.

Scot asked if any municipalities had lobbied for the increase in the disposal boundaries. Mike replied that he was sure they had. Scot asked if it was then fair to say that at some point in the process, local governments lobbied for an increase in the disposal boundary size. Marci replied that many groups approach the Congressional delegation with requests for land and related issues. She stated that Clark County was a huge organization and conflicts exist. Her memory of this particular incident is that DCP did not get a map showing the proposed increase in disposal boundaries until it appeared in the legislation and noted that response from Clark County was that it was neutral on the proposal but that it did not make sense to increase the disposal boundary without also increasing the acreage for take. She commented that when the



Congressional delegation contacts an arm of local government and indicates it is considering an expansion of the disposal boundaries, the local agency really has no choice but to voice its support.

Brian commented that he was not sure any conflict truly existed. He stated that those who propose growth are not necessarily opposing conservation. Mindy commented that growth and conservation are not inherently in conflict. Marci stated that when Clark County is asked for support of a land bill, it is asked for support for the entire package, so, if you want to state that Clark County is lobbying for growth, you also have to give it credit for lobbying for wilderness. Scot commented that he did not want his perspective misrepresented; he just wanted people to acknowledge that there is an inherent conflict between planning for growth and conservation.

Allison reiterated that this particular concern jumped out at her and she was suggesting that the committee's recommendation on take address this. Marci suggested that the word "development" in the proposed recommendation be changed to "disposal boundary". The group agreed.

Jim Rathbun, Education, stated he still had a concern that the disposal boundaries being determined by an outside agency was not logical. It meant that take is determined by something that the Permittees have no control over. Eric asked Jim how he would change the recommendation to address that. Jim responded that he would remove the words logical and consistent from the recommendation. Brian stated he was confused by the comment. The process seemed very logical to him. Mindy commented that the committee was trying to build consensus and most of the people in the room agreed the process was logical. She suggested the committee move on. Marci asked if Jim was more comfortable with the proposed revision. Jim responded that he thought the committee was close and asked Eric to explain how it was changed. Eric reread the recommendation. Jim asked to add the phrase, "As to the disposal boundary's effect on development, we are concerned about the process for developing boundaries." Stan commented that boundaries are affected by the economy. Brian agreed that there was a split on this topic: some people believe that the boundaries drive development, others do not.

Ruth reminded the committee that there will be an opportunity to reexamine the CAC's recommendations in total towards the end of the committee's work and pointed out that the second part of this recommendation is a testament to that fact. She asked the committee if this recommendation was reflective enough of where the committee was that day. The committee reached consensus on the following recommendation:



Following consideration and discussion, the committee finds the process used to develop the take acreage recommendation to be logical, purposeful and consistent with the committee's guiding principle on take. The committee concludes this based on:

- *The recognition that the process considered historical and current conditions as well as plans and projected trends in Clark County, and*
- *Allows for a stable, long-term, orderly development process in Clark County while considering species and habitats most likely to be affected by take.*

The committee acknowledges that concerns over disposal boundaries and the process to set disposal boundaries in Clark County exist and will consider additional recommendations to address these concerns as it develops recommendations on mitigation and implementation strategies for an amended MSHCP.

(See also Appendix B for the committee's recommendation on take.)

4. CAC Recommendations on Covered Species

Ruth informed the committee that the next topic needing committee input was covered species. She explained that the plan for this meeting was to adopt the guiding principles for covered species and begin developing a recommendation. The goal for the meeting was to obtain enough data and feedback from committee members to allow the facilitation team to develop a draft covered species recommendation to present for discussion at the next CAC meeting.

Eric reviewed the draft guiding principles for covered species with the committee:

- The list of covered species should focus on those most likely to be impacted by take within the MSHCP boundary.
- Conserving and protecting species and habitats should be based on the best scientific knowledge available.

He asked the committee if it was comfortable with these statements as the covered species guiding principles. Mindy asked if the first guiding principle covered the elevation at which a species was found. Eric said that it did. The group accepted these statements as its guiding principles for covered species.

Ruth introduced Sonja Kokos, DCP Staff Biologist, and asked the committee to hold questions until after her presentation.



Sonja began by reviewing the process for determining which species would be covered under the amended permit for the committee.

- The draft species analysis was prepared by PBS&J and ICF Jones & Stokes.

The analysis evaluated all the species evaluated included in the current MSHCP (231) and an additional 106 species using the following criteria:

1. Range – Does the species occur in the area being considered?
2. Status – Is the species listed federally or by the state?
3. Impact – Will the species be impacted by the proposed covered activities?
4. Sufficient Data Available – Is there sufficient data on the species to make determinations as to its status and potential impacts?

Other factors considered by the Permittees included:

1. Potential to be listed in the future,
2. Umbrella species,
3. Cost of mitigation for the species,
4. No federal take prohibition for listed plants.

She pointed out that finalization of the covered species list will be an iterative process and will include public and scoping comments and input from the CAC, the U.S. Fish and Wildlife Service (FWS) and other agencies.

She reviewed the umbrella species concept:

- Unlisted but sensitive species occupy similar habitats to listed species and benefit from conservation and mitigation activities conducted for them

Sonja reviewed the rationale for covering plants:

- Even though take of federally listed plants is not prohibited on non-federal land, compliance with Nevada law may require a permit to take or disturb protected plants. Permittees currently propose to include plants if it provides compliance with Nevada state law.

She reviewed the rationale for aquatic species coverage:

- Draft analysis does not anticipate incidental take coverage will be needed for aquatic species as covered activities are not expected to impact aquatic species and other entities address aquatic species.



She emphasized that not covering a species does not leave it unprotected as federal agencies are required to protect and conserve species on federal lands.

Sonja reviewed the potential options for consideration by the committee including the Permittee's recommended covered species list. (See Appendixes C and D)

Ruth asked the committee members if they had any clarifying questions regarding the presentation.

Mindy asked why the relict leopard frog was being covered if the Permittees were not recommending covering aquatic species. Sonja responded that it fit the criteria in that it is likely to be listed in the future. Marci added that there was a proposal to introduce the frogs to private property. If the frog were to be listed and are not covered in the plan, means private landowners may need to negotiate their own individual take permits. Mindy asked if there was a way to add species to the list after the permit is issued. Marci replied there is not; a permit amendment would be needed.

Stan stated that there was a list of people involved in determining the covered species list. He asked if the CAC would have any impact on the covered species list. Marci replied that the Permittees are relying on the CAC to make recommendations which will be folded in with recommendations from other groups. FWS will determine if the criteria for a take permit have been met before issuing a permit.

Stan asked that, if after the committee was finished, would someone else be able to change the list? John replied potentially, but this committee's recommendation will carry a lot of weight. Marci commented that input from the committee is very important because we had to make a lot of judgment calls, and we need the community's reaction to our assumptions.

Brian noted that a consequence of not covering a particular species could be having to restart the amendment process all over again. He wanted to know what the cost/benefit analysis was to covering additional species. As he understood the discussion, the basis for the umbrella species concept was that there would be little marginal cost for mitigating for unlisted species covered incidentally by the umbrella species.

Patrick Foley, Banking/Finance, commented that the problem with covering lots of species is you have to do mitigation for them all, and this dilutes your mitigation efforts. Sonja commented that the cost of mitigation was part of the species evaluation. Marci commented that the Permittees have also been grappling with that question in relation to covering species that are not listed. The problem with not covering some of these species is they may be listed in the future, and the permit would have to be amended if they are not already covered.

Jane asked for clarification that there was no federal take prohibition for plants on non-federal land. Sonja replied that was true. Marci added that the State of Nevada requires permits for the take of some plants and that is why they are being considered for inclusion in this amendment. Jane asked if there was no



requirement for a permit for indirect impacts. Sonja replied that was also true. John commented that mitigation for indirect impacts can be required through the National Environmental Policy Act (NEPA) process. Jane asked why species above 4,000 feet were not recommended for coverage. Sonja replied that covered activities above 4,000 feet were expected to be limited. Terry Murphy, Developer/Homebuilder, commented that initially, this limit was based on the fact that tortoises do not occur above 4,000 feet. John clarified that if the amendment receives coverage above 4,000 feet, landowners above that elevation would need to get their own permits. Jane commented that she suspected that one reason it was attractive not to cover high elevation species is that managing high elevation species for the small amounts of take at those elevations is very expensive. She commented that high elevation species expected to be impacted by climate change. Marci reminded the group that species not proposed for amended coverage in the MSHCP will not go unprotected. She reminded the group that the U.S. Forest Service and other federal agencies have statutory and regulatory obligations for conserving habitat and species. Jane added that the Sierra Club's official position on HCPs is that it has concerns about the effectiveness of HCPs since the Sierra Club believes that HCPs create a false sense that species are being protected by the HCP.

Terry asked what the statement "All covered species will be subject to direct take (impact)" on the covered species option slide meant. Sonja explained that meant that all species included in the option will be directly impacted by the HCP's covered activities. Terry asked why that box was not checked under the status-quo column. Sonja explained that under that option, there were species that were affected only potentially indirectly by covered activities, such as Spring Mountain species.

Jim asked what it meant to be protected. Marci explained that it meant a species was on the state or federal protected list and a permit was needed for take that would involve that species. John added that it involved an assessment of the threats to that species. Jim asked for an explanation of the umbrella species concept. Sonja explained that means that conservation and mitigation actions for one species also benefits other species.

Ann questioned the failure to include threatened aquatic species in the Permittee recommended development list such as Coyote Springs were going to take place and there was no proof that this would not dry up the Muddy River and affect these species. Sonja explained that there were trigger points in the Muddy River Memorandum of Understanding (MOU) that would address this concern and that aquatic species are not being recommended for coverage by this MSHCP since it is strictly a terrestrial permit and is not anticipated to directly impact aquatic species. Ann replied that by allowing growth, the river is being affected. Sonja replied that the MOU is in place to deal with those effects. Ann disagreed. Mike commented that the MOU is much more rigorous, punitive and costly and will provide more protection than the MSHCP would. Marci agreed with Mike. Ann asked what it would hurt to include aquatic species on the list. Sonja replied that they do not meet the criteria for inclusion.



Allison asked if there would ever come a time when plants would have to be included. Sonja replied that they are included now. Allison commented that she had heard people talking about specific species and she wondered if the committee was going to discuss specific species. She stated that she thought the committee should focus on process and criteria, not specific species. Sonja replied that the goal of her presentation was to provide an introduction to the process of species selection for the MSHCP.

Ruth commented that the intention was for the committee to operate at the process level, but knowing that there were members who were very interested in the technical aspects, the detailed analysis was provided as a handout. She stated that if committee members had questions on the details of the analysis or about specific species, they should contact John or Marci. She commented that the facilitation team, in consultation with the DCP staff, had developed a set of key questions with respect to covered species for the committee's consideration.

Eric reviewed the questions:

1. Where is direct take most likely to occur and what species are most likely to be impacted?
2. The concept and desirability (or not) of using umbrella species.
3. The concept and desirability of covering species that may be listed in the future.
4. Whether or not aquatic species should be covered.
5. Whether or not plants should be covered.

Mike commented that for the first time a very methodical process based on this committee's guiding principles had been used to develop a recommendation. He stated that he was of the opinion that the Permittees had done a masterful job.

Ann commented that she thought the covered species list was written in stone, and no matter what anyone said, it was not going to change. Marci disagreed and asked why the Permittees would go to the trouble of bringing a variety of options to the committee if that were the case.

Ruth suggested that the committee go around the room and get everyone's reaction. Terry commented that she thought the analysis was very good but she was interested in why the Permittees felt the need to redo the analysis. Mike commented that the previous list was so large that the money was spread too thin to be effective. Ann asked how much was spent on the previous list. Marci commented that the total was \$88 Million of which only \$7 Million was spent on the tortoise. Ann asked where the rest of the money went. Marci replied that the committee had been provided with a chart of where the money had been spent for the last MSHCP. She commented that there was a lot of frustration as to what those expenditures had actually accomplished.



Jane commented that there had been lots of controversy in environmental circles about HCPs. Some would argue that HCPs do not protect species; the best protection would be not to allow any take of threatened species. She commented that narrowing the list down to those species most at risk makes the most sense to her. She stated that she noticed that it appeared that there were only two unlisted species on the list that were likely to be listed in the future, the burrowing owl and the gila monster. She asked if that was a correct interpretation. John replied that no, for any unlisted species on the covered species list there was a determination that it could be listed in the future. Jane continued, stating that the thing that gives her pause is the pros and cons of listing the plants. She stated that she would continue to research this topic.

Allison commented that she liked the Permittee recommended list. She stated that she was of the opinion that more species could be covered to provide more insurance, but she did not want to go overboard.

Terry commented that she thought the umbrella species concept was logical. She asked if there was any evidence that activities undertaken for the umbrella species had benefited the species covered under the umbrella. Marci replied that no one knows and the reason for that is the way the program has been implemented to date. Terry stated that she tends to agree with Allison with the caveat that things could not continue to be done as they have been in the past. She stated that depending on the cost per acre, if remaining where we are significantly drives that cost up, she wants to reserve the right to reevaluate the covered species list. John added that the umbrella species concept is not just an assessment of impact, but also where take will occur. He stated that species covered under the tortoise umbrella for example could impact the possibility for take should they be listed in the future.

Tom Warden, City of Las Vegas, commented that he agreed with the thought that results are important. He stated the committee was making this decision in a void as a result. He stated that he agreed that the umbrella species concept was important and that this was a collaborative effort and needed to involve compromise. He stated that he was comfortable with the direction the Permittees were taking on this issue.

Mike also stated that he believed the Permittees followed a logical process consistent with the committee's guiding principles.

Stan commented that this was not his strong suit, but it seemed to him that as we protect a given species we protect everything around it, so he would tend to have less coverage. He stated that Marci's comment that we do not know much has little concern for him. He stated that he does not have an opinion right now as he still feels he does not have enough information. Ann stated that she had already given her opinion. She stated that she would protect her valley. She would fight if she considered that damage was going to be done to her valley.



Mindy commented that she wanted to take all this in for a little longer. She stated that she was comfortable with the criteria and assumptions but had some questions concerning the plants. She stated she felt like the Permittees had pared back the original 78 species only to add plants. She commented that the list is down to 24 species and still the primary species are not getting adequate coverage. She stated that this whole process started with the tortoise and the need to get something off the threatened list. She noted that efforts so far had not made a difference and commented that she was afraid that people will be paying for this and covering these species for centuries. She stated that getting species off the threatened or endangered lists should be a goal, and she wondered if adding plants and other species was helping to achieve that goal.

She stated that this was an opportunity to fix the problem such that we do not go through another 20 years and wonder what has been accomplished.

She noted that she wanted to look at this issue a little further. She was a little worried about the plants, adding species to the list and spending that money when we should be concentrating on getting things off the endangered or threatened lists. Scot stated that he had no comments.

Joe Pantuso, Developer/Homebuilder, stated that he thought the list was well focused and scientifically based. He commented that as the committee considers budget matters in the future, he recommends that there be no increases in fees. Mindy agreed with Joe.

Brian commented that he had no particular concerns with the Permittee's recommended list of species. He stated that it should stay focused and narrow. He was concerned that after all these years no one could show any results. He commented that his biggest concern was that listing these species would disrupt people's ability to develop their private land. He commented that he supported the concept of not raising fees.

Pat commented that he was also struggling with the inclusion of plants and thought the committee needed to talk about it some more. He commented that everyone was concerned about measuring success and that was difficult. He stated that the covered species list needed to allow people to develop their private lands and that was why he was concerned about adding plants. He stated that since there was little knowledge of the effects of these efforts it was important to cover as many species as possible. He stated the umbrella species concept was good. He stated that the other side of the coin was the cost of mitigation. He wanted to know what benefits had been derived and commented that it was a big concern of his that the program not keep throwing dollar after dollar into this process without seeing a clear benefit.

Jim asked how much the species analysis had cost. Marci replied she did not have that information with her. Jim stated that he thought including plants was necessary since they are associated species. He stated



he thought the list was fairly good. He commented that he would look at some of the species that are still under evaluation.

Mindy asked if there was a direct correlation between the plants covered and the species covered. She stated she understood these plants were picked for reasons other than they support desert tortoise. She asked if the plants could support other species. Sonja replied that was correct, the plants were picked because they are in the impact area, but there was no data to support a relationship between these plants and specific species.

Scot stated that he wanted to be sure climate change impacts to the environment were being considered.

Ruth stated the next meeting would be focused on discussing covered species in more detail. The facilitation team will draft a recommendation for the committee's consideration. She asked the committee members to indicate who would be attending the December meeting. The total number of committee members who said they would be at the December meeting to 11. In order for the committee to take action, it needs a quorum of at least 11 members present.

5. Public Comment

Rob Mrowka, Center for Biological Diversity, stated that John's handouts included the statement that existing planning documents had been used to develop the proposed take number and that is true. What John may not have known is that some of those planning documents propose development outside of existing disposal boundaries. So, in a way, the DCP and the take permit are driving growth by sending a signal to Congress and the community that we already plan on expanding our boundaries. The land bills that Mike referred to have had very little public input and no NEPA coverage. They are about closed door sessions between Congress and lobbyists, including Clark County's lobbyist, and as a result we get debacles such as putting the Upper Las Vegas Wash into the disposal boundaries, which we are now trying to fix.

With respect to covered species, the process that Sonja outlined is a good process if you have a blank sheet of paper in your hands. Unfortunately, that is not the case. What about those species that are covered under the current MSHCP and have been dropped under this process? There are about 600 or so mitigation measures that represent promises between the federal agencies and the Permittees, that in exchange for funding for projects, the federal agencies will do work on public lands in return for the FWS granting 145,000 acres of take. That is an explicit financial, moral, and biological imperative that needs to be addressed. If you orphan these species by not including them in the new MSHCP, there needs to be some mechanism for continued maintenance and conservation of these species. They were put up in exchange for take, and you've already taken about 80,000 acres based on the promise that for 30 years, these species would be cared for. Yes, the federal agencies do have mandates for species protection and land



management but they have bought into this idea about the HCP through implementation agreements and so to back away from these species is ethically reprehensible.

At this point, Ruth reminded Rob that his time was up. Hermi Hiatt informed Ruth that Rob could have one of her three minutes for her public comment.

Rob continued by stating that upper elevation species are still affected by growth via indirect effects. You can orphan them, but since we have already sustained 80,000 acres of growth, what will their fate be? He stated that he would like to thank Mindy for bringing up a couple of points. One of them is about the level of uncertainty in climate change. He stated he realized this would be a future discussion, but this is exactly why a 50-year permit is unreasonable. He believes the Permittees should be looking at a period of time that can be foreseen such as 10 years. He stated he also appreciated Mindy's support of conservation and mitigation in the HCP leading to delisting of species as that is directly opposite of what Marci and Clark County staff have been pushing. He told the committee not to be dismayed at spending \$88 million and not seeing results as you are dealing with natural systems. He made the process point that this public comment process is exclusionary. The public should be allowed to comment after every agenda item.

Hermi Hiatt commented that as a botany person the Permittee recommended list includes a lot more plants than were in the federal register. She stated that the 4,000 foot limit stinks and that she has seen tortoises above this level. She commented that if she reads this situation correctly, it should be an EIS amendment, and EISs must consider indirect effects. People who build their houses in the valley go into the mountains, so there must be some mitigation for these species. She commented that the Nevada Department of Forestry does not always do what it should with respect to rare plants, and if these plants are not covered in this amendment people may be forced to get them federally listed.

Cris Tomlinson, Nevada Department of Wildlife, stated that he wanted to make a couple of points. He stated that protected species are covered by state statute. If you take a protected bird there is a fine. He stated that we need to get better at effective monitoring. Monitoring is hard for tortoises, but there are much better programs for birds. There is some good data for birds. He stated that for other species surrogate indicators may need to be used. He commented that he would like to see Clark County continue to fund the Great Basin Bird Observatory. He stated that his last point concerned implementation of the Conservation Management Strategy (CMS) plans. He commented that there were a lot of these plans on the shelf that needed to be implemented.

He stated that some of the plans are BLM responsibilities, but they are on the ground conservation actions. Brian asked if they were mitigation activities. Cris replied that they were.



6. Meeting Wrap Up and Closing

Marci commented that staff is available for answering questions. She stated that it was important to be prepared for the next CAC meeting and encouraged the committee members to contact them between this meeting and the next.

The meeting was adjourned at 4:35 p.m.



Attendance

Committee Members Present

Jane Feldman, Environmental/Conservation
Patrick Foley, Banking/Finance
Mike Ford, City of Mesquite
Stan Hardy, Rural Community
Matt Heinhold, Gaming Industry
Terry Murphy, Developer/Homebuilder
Bryan Nix, City of Boulder City
Joe Pantuso, Developer/Homebuilder
Jim Rathbun, Education
Scot Rutledge, Environmental/Conservation
Ann Schreiber, Senior
Allison Stephens, City of North Las Vegas
Mindy Unger-Wadkins, City of Henderson
Tom Warden, City of Las Vegas

Clark County Staff

Jodi Bechtel
Marci Henson
Sonja Kokos
Ann Magliere
John Tennert

Others In Attendance

Paul Andricopulous
Ken Freeman
Hermi Hiatt
Jeri Krueger
Rob Mrowka
Alison Pruett
Mark Silverstein
Cris Tomlinson
Ian Zabarte
Eric Hawkins (Facilitation Team)
Doug Huston (Facilitation Team)
Ruth Nicholson (Facilitation Team)



Flipcharts

Notes:

Agenda

1. Opening and Introductions
2. Adopt October CAC Meeting Notes
3. CAC Recommendation On Take
4. CAC Recommendations On Covered Species
5. Public Comment
6. Wrap Up and Adjourn

Goals

1. To adopt October CAC meeting notes
2. To adopt the CAC recommendation on take
3. Begin discussion on covered species

Mission

The Desert Conservation Program (DCP) Community Advisory Committee (CAC) will provide recommendations to the Permittees on amendment of the Clark County Multiple Species Habitat Conservation Plan.

Helpful Hints

Future Topics:

- Mitigation
 - If take too big - mitigation package too big
- Implementation Structure
 - Agencies that determine disposal boundaries same tasked with conservation
 - Not reasonable, permittees influence BLM
 - Different group to address conflicts of interest



Flipcharts

Notes:

Next Meeting

December 10, 2009
Refine and adopt CAC recommendation on covered species

Notes

- Relict Leopard Frog - amphibious, possibility of re-introduction on private land
- Unlisted species - can we include later if listed?
 - must be on permit list or this process must be repeated
- How much influence does CAC have on covered species list?
 - Important to Prog. Admin
 - Final decision with FWS

Notes

- Risks/benefits of including or not including species.
- 15 on slide 4 should be 106. What is the cushion?
- No requirement for take of plants on non-fed land
 - Correct
 - This plan for private land

Notes

- No species above 4,000 feet?
 - Correct, unlikely to be part of MSHCP boundary
 - Own HCP required
 - Cost is extremely high
 - USFS has reqt to manage and conserve in those areas.
- Covered species directly impacted by take



Flipcharts

Notes:

Notes

- What does protected mean?
 - State term
 - May require permit to disturb (plants)
 - Refer to last page of 23 page hand out
- Umbrella species?
 - Mitigating for the umbrella species benefits other species

Notes

- Aquatic Species
 - Covered by other programs
 - This MSHCP is terrestrial
 - Other programs more protective/comprehensive
- Will time come when plants must be included?
 - Would require change to ESA
 - Not likely

Notes

- Our level of scrutiny/role
 - Species by species or criteria?
 - Evaluate process/criteria

Round-Robin Notes

- Cover as many as possible at this point - too many "I don't know's"
- Including plants protects whole ecosystem
- Struggling with inclusion of plants
- Need to protect Moapa Valley
- Listing of plants causes pause
- Need to really consider plants
- List must allow development to occur while ensuring species protected



Flipcharts

Notes:

Round-Robin Notes

- Mechanism to evaluate effectiveness
- Phainopepla - is there a need to protect?
- Mitigation must be targeted at those species we really want to protect
- Keep list focused - do things that benefit species
- Spend the dollars properly
 - Evaluation mechanism needed
- Consider climate change impacts - be mindful in relation to covered species

Round-Robin Notes

- Making decisions in a void, need more info on results
- Do these species support one another?
- Must have better mitigation that accomplishes something measurable
- Comfortable with current proposed list
- Are we making it easier to list species in future programs because we list it here?
- Narrowing to species at highest risk makes sense

Round-Robin Notes

- Like Permittee recommendation on species
- Umbrella species seems logical - will it make a difference?
- Umbrella species good
- Logical process follows guiding principle
- Like umbrella species covering one will benefit all species
- How do we get some of these off the list? (by fixing something)

Round-Robin Notes

- Ok with the list (concerned with future increases in cost)
- Need way to prove benefit of our efforts
- Concerned with economic impact of our effort on growth/development



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Appendix A



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 (CAC) has been called and will be held on Thursday, November 19, 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.

1. **Opening and Introductions**

2. **Approval of Meeting Notes from the October 2009 CAC meeting - Action Item**

3. **CAC Recommendations on Take - Action Item**

Goal: • To refine and adopt recommendation regarding take for an amended MSHCP

4. **CAC Recommendations on Covered Species - Action Item**

Goals: • To finalize and adopt the Guiding Principle for the CAC's work on covered species
• To begin discussions on the CAC recommendation on covered species

5. **Public Comment**

No action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action will be taken. Speakers are asked to sign in to speak. Speakers are asked to introduce themselves with their name and affiliation, if any, before speaking. Each speaker will be limited to three minutes.

6. **Meeting Wrap Up and Closing**

Goals: • To recap meeting results and identify follow-up activities
• To outline agenda topics for the next meeting on December 10, 2009

7. **Adjourn**

continued on next page



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Committee members are asked to remain at the meeting until adjournment so that items requiring action are able to be heard as needed. Reasonable efforts will be made to assist and accommodate physically handicapped persons desiring to attend the meeting. Please call Ann Magliere at (702) 455-3536 in advance so that arrangements may be conveniently made.

MDH:am

Dated: November 12, 2009

The above notice/agenda of a meeting of the Multiple Species Habitat Conservation Plan Desert Conservation Program Advisory Committee scheduled for Thursday, November 19, 2009, at 2:30 p.m. was posted on or before the third working day before the meeting per Open Meeting Law requirements at the following locations:

Clark County Government Center Lobby
Clark County 3rd Street Building Lobby
Clark County Courthouse Annex
Laughlin Government Center
Sahara West Library

Las Vegas Library
Paradise Community Center
Winchester Community Center
Searchlight Community Center



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Appendix B

Recommendation #1: Acreage Cap (Take)

- Following consideration and discussion, the Committee finds the process used to develop the proposed take acreage recommendation to be logical, purposeful and consistent with the Committee's guiding principle on take. *(below)* The Committee concludes this based on:
 - The recognition that the process considered historical and current conditions as well as plans and projected trends in Clark County, and
 - Allows for a stable, long-term orderly development process in Clark County while considering species and habitats most likely to be affected by take.
- The Committee acknowledges that concerns over development and the development process in Clark County exist and will consider additional recommendations to address these concerns as it develops recommendations on mitigation and implementation strategies for an amended MSHCP.

I Agree, Because...

- 215,000 is fine
- Logical process that took a variety of relevant factors into consideration
- 215,000 acres is less than 1% of tortoise habitat
- It makes sense to cover (at least) the acres within the BLM's disposal boundary. Logical, purposeful and consistent with Guiding Principle
- 215,000 is a good number to bring perspective to the process
- I agree given that the acreage was ultimately decided prior to the CAC
- I agree with - not too low or high
- I agree with total current count of planned development and that of future take!
- Good number, good process, move on to the next step
- This gives Las Vegas and surrounding areas room for development used or not used, no matter!
- It recognizes what development plans have already been developed by southern Nevada agencies. These plans are developed through multiple layers of vetting and discussion at public meetings and consider myriad planning issues. This committee simply recognizes the existence of these plans
- It's logical, it's reasonable
- I agree with the process...because it takes into account both the historical development and the projections and several involved agencies
- The four factors are comprehensive enough to capture the diverse concerns of this CAC

Concerns...

- If the number of acres is too big, the mitigation package will be too big, i.e., bigger, more complicated, more expensive
- The disposal boundary (and therefore the DCP) unnecessarily drives growth and development
- The disposal boundary was set legislatively or administratively without reference to any regional, county, or city growth plans. Willy Nilly, it just grew
- Not logical or reasonable - since permittees influence BLM movement of boundaries
- I have concerns that the agencies driving growth are the same tasked with habitat/species conservation

- Guiding Principle **One**: The acres of take need to have a logical, purposeful basis that seeks to balance the following factors:
 - Economics
 - Equity
 - Species and habitat conservation
 - Quality of life



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Appendix C

- Option 1 - Desert tortoise
- Option 2 - Listed species
- Option 3 - Status quo
- Option 4 - Permittees recommendation
- Option 5 - Permittees recommendation; excluding plants

Table 1. Summary Matrix of Covered Species Options

11/19/2009

Criteria and Assumptions	Desert tortoise only	Listed species only	Permittee recommended without plants	Permittee recommended	Status quo
Species occurs within Clark County (Range)	X	X	X	X	X
Includes federal or state listed/candidate species (Status)	X	X	X	X	X
All covered species will be subject to direct take (Impact)	X	X	X	X	
Species analysis based on the best available scientific information (Sufficient data)	X	X	X	X	X
Includes only those unlisted species that overlap with listed species			X	X	
Includes unlisted species that are likely to become listed in the future			X	X	X
Includes plant species				X	X
Number of species	1	5	7*	15*	78

* An additional 9 species require further evaluation to determine whether a recommendation to include as covered species can be made.



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Appendix D

Species Recommended for Coverage under the Amended MSHCP

-DRAFT 11/19/2009-

Common Name	Scientific Name	Current Federal Status	Current State Status
Birds			
Western burrowing owl	<i>Athene cunicularia hypugea</i>		
Yellow-billed cuckoo	<i>Coccyzus americanus</i>	Candidate	Sensitive
Southwestern willow flycatcher	<i>Empidonax traillii extimus</i>	Endangered	Endangered
Yuma clapper rail	<i>Rallus longirostrus yumanensis</i>	Endangered	Endangered
Amphibians			
Relict leopard frog	<i>Rana onca</i>	Candidate	Protected
Reptiles			
Desert tortoise	<i>Gopherus agassizii</i>	Threatened	Threatened
Banded Gila monster	<i>Heloderma suspectum cinctum</i>		Protected
Vascular Plants			
Sticky ringstem	<i>Anulocalis leiosolenus</i>		
Las Vegas bearpoppy	<i>Arctomecon californica</i>		Critically Endangered
Threecorner milkvetch	<i>Astragalus geyeri</i> var. <i>triquetrus</i>		Critically Endangered
Forked (Pahrump Valley) buckwheat	<i>Eriogonum bifurcatum</i>		
Las Vegas Valley buckwheat	<i>Eriogonum corymbosum</i> var. <i>nilesii</i>	Candidate	
Sticky buckwheat	<i>Eriogonum viscidulum</i>		Critically Endangered
White-margined beardtongue	<i>Penstemon albomarginatus</i>		
Parish's phacelia	<i>Phacelia parishii</i>		
Species requiring further analysis			
Arizona bell's vireo	<i>Vireo bellii</i>		Protected
Phainopepla	<i>Phainopepla nitens</i>		Protected
Summer tanager	<i>Piranga rubra</i>		Protected
Vermillion flycatcher	<i>Pyrocephalus rubinus</i>		Protected
Desert pocket mouse	<i>Chaetodipus penicillatus sobrinus</i>		
Desert kangaroo rat	<i>Dipodomys deserti</i>		
Spotted bat	<i>Euderma maculatum</i>		Threatened
Townsend's big-eared bat	<i>Corynorhinus townsendii pallescens</i>		Sensitive
Yellow two-tone beardtongue	<i>Penstemon bicolor</i> ssp. <i>bicolor</i>		



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Appendix E



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Community Advisory Committee

November 19, 2009



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Introduction

- Independent Covered Species Analysis
- Additional Considerations
- Covered Species Options
- Permittee Recommended Covered Species List
- Discussion



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Species Analysis


- Draft species analysis was prepared by PBS&J and Jones & Stokes
 - Thomas McGill, PhD, Genetics, Ecology and Biology
 - David Zippin, PhD, Biology and Ecology



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Species Analysis


- Draft species analysis filtered all species included in the MSHCP (231) and an additional 15 species using the following criteria:
 - Range
 - Status
 - Impact
 - Sufficient data available



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Covered Species

- Other factors considered by the Permittees:
 - Potential to become listed in the future
 - Umbrella species
 - Cost of mitigation for species
 - No federal take prohibition for listed plants
- Finalization of the covered species list will be an iterative process and requires consideration of public and scoping comments, and input from the CAC, FWS and other regulatory agencies



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Future Listing

- FWS recommends including unlisted species that are likely to be listed
- Covering unlisted species provides Permittees protection under "No Surprises"



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Future Listing

- Assessment of what is likely to be listed is based on
 - Best available scientific information
 - Professional judgment
 - Knowledge of future listing packages
 - Input from regulatory agencies
- Further assessment will be needed to determine if the cost of including unlisted species outweighs benefits



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Umbrella Species

Many unlisted but sensitive species occupy similar habitat to listed species that require a permit:

Desert tortoise: <ul style="list-style-type: none"> - Banded Gila monster - Western burrowing owl - Desert pocket mouse - Desert kangaroo rat 	Southwestern willow flycatcher, Yellow-billed cuckoo, Yuma clapper rail: <ul style="list-style-type: none"> - Phainopepla - Arizona bell's vireo - Summer tanager
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Umbrella Species

- Covering these species may enhance Permittees protection under the FWS "No Surprises" policy
- Further assessment will be needed to determine if including additional species under the umbrella of listed species is warranted and cost effective

desert conservation PROGRAM Plant Species
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- Take of federally listed plants is not prohibited on non-federal land; does not require a federal take permit
- Compliance with Nevada law/regulations may require application for a permit to take or disturb protected plants and/or their habitats (ex. Las Vegas bearpoppy)
- Permittees propose to include plants only if it provides compliance with Nevada state law
- Further assessment will be needed to determine if the cost of including plant species is warranted

desert conservation PROGRAM Aquatic Species
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- Draft Analysis does not anticipate incidental take coverage will be needed for aquatic species
 - Proposed covered activities are not anticipated to impact aquatic species
 - Other entities address ESA and other environmental compliance issues related to aquatic species in Clark County (such as the Virgin River Habitat Conservation and Recovery Program, Muddy River Memorandum of Agreement)

desert conservation PROGRAM Other Considerations
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- Reducing the covered species list DOES NOT eliminate protection for species not covered
- FWS analyzes and permits the take, not the underlying activity
- Environmental analysis will evaluate direct, indirect and cumulative impacts to all species and ecosystems
 - Must be caused by the action (take) and reasonably certain to occur
- Whether the listing of a species would require an incidental take permit for covered activities to continue

desert conservation PROGRAM Covered Species Options
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Criteria and Assumptions	Desert tortoise only	Listed species only	Permittee recommended without plants	Permittee recommended	Status quo
Species occur within Clark County (Range)	X	X	X	X	X
Includes federal or state (sensitive/candidate species) (Status)	X	X	X	X	X
All covered species will be subject to (Species take Impact)	X	X	X	X	X
Species analysis based on the best available scientific information (Sufficient data)	X	X	X	X	X
Includes only those listed species that overlap with listed species			X	X	
Includes sensitive species that are likely to become listed in the future			X	X	X
Includes plant species				X	X
Number of species	1	5	7*	15*	78

*An additional 5 species require further evaluation to determine whether a recommendation to include as covered species can be made.

Permittees Recommended Covered Species List

Common Name	Scientific Name	Current Federal Status	Current State Status
Birds			
Western Gull	<i>Larus californicus</i>	Candidate	Sensitive
California Gull	<i>Larus californicus</i>	Candidate	Endangered
California Towhee	<i>Peucaea arizonae</i>	Candidate	Endangered
White-throated Sparrow	<i>Spizella breweri</i>	Candidate	Endangered
Amphibians			
Red-tailed Frog	<i>Rana sintoni</i>	Candidate	Protected
Reptiles			
Spotted Tail Scorpion	<i>Scorpius arizonae</i>	Threatened	Threatened
Spotted Tail Scorpion	<i>Heterometrus scaber</i>	Threatened	Protected
Vascular Plants			
Black Cholla	<i>Yucca elaeagnifolia</i>		
Las Vegas Bearpoppy	<i>Argemone californica</i>		Critically Endangered
Prickly Pear Cholla	<i>Cylindropuntia echinocarpa</i>		Critically Endangered
Las Vegas Yucca	<i>Yucca elaeagnifolia</i>		Candidate
Las Vegas Yucca	<i>Yucca elaeagnifolia</i>		Candidate
Black Cholla	<i>Yucca elaeagnifolia</i>		Critically Endangered
Las Vegas Yucca	<i>Yucca elaeagnifolia</i>		Candidate
Las Vegas Yucca	<i>Yucca elaeagnifolia</i>		Candidate
Species requiring further analysis			
Yucca elaeagnifolia	<i>Yucca elaeagnifolia</i>		Threatened
Yucca elaeagnifolia	<i>Yucca elaeagnifolia</i>		Threatened
Yucca elaeagnifolia	<i>Yucca elaeagnifolia</i>		Threatened
Yucca elaeagnifolia	<i>Yucca elaeagnifolia</i>		Threatened
Yucca elaeagnifolia	<i>Yucca elaeagnifolia</i>		Threatened
Yucca elaeagnifolia	<i>Yucca elaeagnifolia</i>		Threatened
Yucca elaeagnifolia	<i>Yucca elaeagnifolia</i>		Threatened
Yucca elaeagnifolia	<i>Yucca elaeagnifolia</i>		Threatened
Yucca elaeagnifolia	<i>Yucca elaeagnifolia</i>		Threatened
Yucca elaeagnifolia	<i>Yucca elaeagnifolia</i>		Threatened

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Questions?