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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 February 18, 2010



Meeting Summary

Community Advisory Committee Meeting 12, February 18, 2010, 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 February 18, 2010. These pages, together with the presentation slides and handouts, constitute the meeting record.

Meeting 12 Agenda

1. Opening and Introductions
2. Approval of Meeting Notes from the December 2009 CAC Meeting - Action Item
3. Overview of Avoidance, Minimization and Mitigation - Informational Item
4. Public Comment
5. Meeting Wrap Up and Closing

Appendix A - Meeting 12 Agenda

Appendix B - Overview of Avoidance, Minimization and Mitigation Presentation

1. Opening and Introductions

Ruth Nicholson, Lead Facilitator, opened the meeting at 2:32 p.m. She welcomed the participants, noted that a quorum was present and started the attendance sheet around the room. She informed the committee that Paul Larsen, Business/Small Business, was attending by phone. She welcomed the members of the public and reminded them to sign the public attendance sheet and indicate if they desired to make public comment.

2. Approval of the Meeting Notes From the December 2009 CAC Meeting - Action Item

Ruth asked the committee members if they had any clarifications, questions or revisions to the meeting summary. Mike Ford, City of Mesquite, clarified his comment that most of the HCPs in the country are private. Hermi Hiatt, a member of the public, called Marci's attention to an error on page 14 of the December summary. The desert tortoise was listed in 1989, not 1999.

Ruth asked if there were any other questions or clarifications. There were none and the notes were adopted



adding the changes above.

Ruth discussed the updated CAC meeting schedule handout in the committee's binders and reviewed the schedule with the committee. Jim Rathbun, Education, asked if there was a date for the August meeting. John replied that there was not a date at this time, but it would be e-mailed to the committee when it was set.

3. Overview of Avoidance, Minimization and Mitigation - Informational Item

Ruth introduced Eric Hawkins, Co-Facilitator, who reviewed the committee's draft guiding principle for mitigation:

Activities related to the mitigation of take should seek to:

- *Have a measureable impact on species and habitat conservation*
- *Promote efforts that demonstrate efficiency and value*
- *Improve our knowledge of local conditions*
- *Balance burdens among stakeholders and permittees*
- *Allow for/recognize the value of a variety of uses of land and resources*

Ruth noted that the handout included the committee's previous comments that were used as the basis for developing this principle and asked if there were any comments, questions or concerns. There were none.

Ruth introduced Sean Skaggs, Ebbin, Moser & Skaggs, LLP. Sean provided the committee an overview of avoidance, minimization and mitigation.

Sean reviewed the four goals for permit amendment:

1. *Address the acreage cap*
2. *Re-evaluate the list of covered species to refocus attention on those species most at risk and most directly impacted by take*
3. *Re-evaluate covered activities and overall conservation/mitigation strategy*
4. *Re-evaluate the structure and implementation of the permit and plan*

He then reviewed the elements of an HCP:

1. *Introduction and Background*
2. *Project Description*



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3. *Environmental Setting*
4. *Biological Impacts/Take Assessment*
5. *Conservation Strategy*
6. *Plan Implementation*
7. *Funding*
8. *NEPA Analysis*

Sean informed the committee that the discussion would focus on aspects of the conservation strategy. He pointed out that, among other things, a conservation strategy should include avoidance, minimization and mitigation measures and that Section 10 of the Endangered Species Act (ESA) requires that the impacts of take be “minimized and mitigated to the maximum extent practicable.”

Sean explained that the criterion of “maximum extent practicable” was not very well defined in either the ESA or the regulations. The ESA contains no definition of the concept, and the U.S. Fish and Wildlife Service (FWS) HCP handbook has no definition. He commented that the Clean Water Act, Section 404, has a practicability component and the U.S. Army Corps of Engineers has defined it as, “available and capable of being done after taking into consideration cost, existing technology and logistics.” He commented that the courts have found that this requirement does not simply mean just possible, it is also considered reasonably capable of being accomplished and must be tied to the project purpose. He provided the committee with the following guidance concerning the definition of maximum extent practicable:

1. *Is the mitigation scientifically and rationally related to the level and impact of taking?*
2. *Is the minimization and mitigation commensurate with the taking?*
3. *Does the mitigation address all covered species?*
4. *Practicable, as in “reasonably capable of being accomplished”*

Sean pointed out that the FWS HCP handbook includes that a two pronged test be used to determine if impacts have been minimized and mitigated to the maximum extent practicable:

1. *Review the adequacy of the minimization and mitigation program in terms of effects to the species*
2. *Determine whether it is the maximum that can be practically implemented by the applicant*

Sean then reviewed the major points of the Migratory Bird Treaty Act (MBTA) as it pertains to the MSHCP. He explained that activities that result in crushing of eggs and nests can violate the MBTA. He stated that as a matter of policy, applicants who obtain an ESA Section 10 permit are issued an MBTA permit



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for ESA listed migratory birds. He emphasized that the take authorization applies only to ESA listed birds. He commented that since the MBTA does not allow take of other migratory birds, avoidance must be emphasized.

Sean explained that avoidance involves taking actions to avoid impacts to covered species. In some cases this can involve moving projects. John cited a population of Las Vegas buckwheat at Tropicana and Decatur as an example of avoidance.

Sean pointed out that the current MSHCP includes minimal avoidance and minimization measures and explained that minimization involves taking actions to reduce impacts to covered species such as installing fencing to minimize road mortality. He explained that mitigation involves taking actions that can rectify or compensate for impacts to covered species or habitats. Sean commented that mitigation frequently takes the form of restoration. John pointed out that using goats to eat invasive species has been used as a restoration strategy on the Muddy River. Darren Wilson, Nevada Taxpayers Association, asked what species the goats were clearing. He stated that he assumed they were invasive plants. Ann Schrieber, Seniors, replied that the goats were eating knapweed, salt cedar and other invasive species along the Muddy River.

Jim asked if mitigation funds are used for avoidance and minimization. Sean replied that avoidance involves avoiding impacts to covered species and habitat and does not actually involve the use of plan funds, but mitigation fees can be used for minimization activities.

Mindy Unger-Wadkins, City of Henderson, asked if the focus of the current MSHCP was more on mitigation than avoidance. Sean replied that was correct. He stated that certain situations and circumstances might require micro-scale avoidance, such as avoiding nesting habitats during breeding season for the Southwestern willow flycatcher. Marci replied that Mindy was correct, noting that currently project proponents pay their fee; if they see a tortoise on-site, they are required to call the DCP, and it will pick it up.

Mike Ford, City of Mesquite, asked what will be different with the new HCP? He stated that for 20 years there have not been any avoidance measures required, and mitigation has been done on federal land. Marci responded that tortoise clearances were actually done early on in the program. This involved the developer hiring a biologist. The Nevada Department of Wildlife (NDOW) was also involved. She stated that one of the things DCP staff has struggled with is that while there are good reasons to amend the permit, when you do so, you open up the whole spectrum of possible avoidance, minimization and mitigation activities for negotiation. She commented that FWS has been very clear that it wishes to revisit on-site minimization. The FWS is considering collecting tortoises and putting them back in the wild via an



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augmentation program. There is still a lot of work to do on this, but the Permittees are going to have to find a more reasonable minimization and avoidance strategy.

Mike commented that it was useful to look at some statistics associated with the program. Development in Southern Nevada accounts for about 4% of the desert tortoise's range. Eighty-seven percent of Clark County is already in federal ownership, which leaves 13% of Clark County's land in private hands and available for development. He stated that avoidance is not really an option on these lands, so the question is, what needs to be done differently? He commented that the almost exclusive reliance on mitigation on federal lands in the current MSHCP has created some challenges, and he suggested that maybe a model like the Red Cliffs Desert in southern Utah would be appropriate.

Pat Foley, Banking/Finance, wanted to know what the number of tortoises brought in earlier was as compared to now. Marci commented that she could provide that data to the committee, but she thought it was estimated that about 3,800 tortoises would be collected and the actual number turned out to be less than 2,000. Marci reminded the committee that the purpose of today's discussion was to provide the committee with general information on avoidance and minimization; the next meeting would involve discussion of what an avoidance and minimization strategy could look like in Clark County. Pat commented that he was interested in the cost of the previous tortoise clearance program and that there must be some trade-off between costs and effects.

Marci stated that ensuring appropriate trade-offs is the reason for requiring that a minimization and avoidance strategy have some long-term biological benefit for species. She stated that the Permittees have been working with FWS on this, and one thing they have been discussing is the concept of impact areas. The Permittees need to show FWS that the mitigation is commensurate with the impact. In the urban core of the Las Vegas valley, where there is no tortoise habitat, possibly only payment of a fee would be appropriate. Another impact zone might be the urban/wildland interface which does have some active habitat. In this zone, there could possibly be some sort of on-site avoidance and minimization. Marci commented that these types of things would be discussed at the next meeting. She stated that in terms of the cost of these efforts, the Permittees are currently working with the consultant team to develop some proposals for appropriate avoidance and minimization activities and will be submitting requests for information to local firms to determine how much these efforts might cost.

Pat asked if areas that contained higher concentrations of covered species were known. Marci responded that more is known now than in the past, and she felt that enough was known for the Permittees to develop an effective and appropriate avoidance and minimization strategy.



Mike commented that areas where covered species are more likely to occur are on federal land. He commented that he was troubled about the talk of avoidance since it is not practiced locally. He felt it was disingenuous to discuss this. He reminded the committee that Sean had pointed out that true avoidance meant project avoidance: either the project was moved or the land was set aside. Marci responded that it was true, avoidance was not currently being practiced. Mike felt that the parcel at Tropicana and Decatur was not a good example of avoidance since a lot had happened on that land. It was a former Bureau of Land Management (BLM) parcel in the urban core that has been chopped up. There had been power lines, flood control and OHV use on it for years.

Pat asked if there could be a trade-off, in other words, could other lands be set aside to compensate for the land that would be developed? Mike pointed out that was mitigation, not avoidance. Marci reminded the committee that the point of today's meeting was to highlight the fact that avoidance and minimization are required parts of an HCP. This is difficult to reconcile since not much avoidance and minimization is currently being done. However, what is currently being done in these areas is not likely to meet the issuance criteria for a new permit. She commented that every other HCP includes avoidance and minimization requirements.

Mindy asked if it had been determined that animals were actually being killed or are these measures just bureaucratic requirements. Marci responded that there are less than 50 wild tortoises a year are called in to the hotline which means either there are no tortoises left in Clark County or the HCP obligations are not being met. Mindy commented that it could also mean that most of the development is taking place in the urban core where there are no tortoises. Marci agreed that that is possible and is one of the reasons the Permittees are considering defining different impact areas.

Mike commented that Mesquite will also be affected by these changes. Marci responded that that was the kind of feedback the Permittees were looking for and pointed out that other areas such as Laughlin and Searchlight could also be affected. She stated that the Permittees were struggling with defining criteria for the urban boundary. She again reminded the committee that today's focus was educational.

Brian Nix, City of Boulder City, asked if it was possible to push back on the FWS concerning avoidance and minimization measures. Marci responded that developing the avoidance and minimization criteria would be a negotiation between the Permittees and FWS, but she wanted to highlight to the committee that pay-and-go will probably not be acceptable.

Scot Rutledge, Environmental/Conservation, commented that in the discussion of avoidance and minimization, he saw some logic behind expanding the acreage cap. If you need to do avoidance, more take acres would be needed to accommodate projects that needed to be moved. He also stated that if you



are developing in an area where there are no tortoises, the fee should be lower. This rewards the type of in-fill development that needs to be encouraged. He indicated this type of strategy could also apply to rural areas since they have their own urban core.

Allison Stephens asked for clarification on the term avoidance. She said she understood that avoidance involved moving an entire project, but she had heard from Marci that picking up tortoises was also avoidance. Sean responded that an example of avoidance is moving the project, or where the project did not use the whole site, sensitive areas are avoided. He pointed out that there is not a hard line between avoidance and minimization. Marci commented that she was thinking of avoidance as avoiding the killing of the animal.

Terry Murphy, Developer/Homebuilder, commented that she thought there were some things people were forgetting. The percentage of tortoise range in Clark County was well under 10%, and to get a take permit you must ensure that take does not reduce the likelihood of survival of the species in the wild. She stated that with the initial permit, the Permittees were clearly able to do that and she believes that may have been one of the reasons FWS did not require avoidance on the first permit. She also pointed out with respect to the presentation slide that discussed conservation on the Tejon Ranch, that there was a lot more than 240,000 acres of Mojave Desert around Las Vegas that would be preserved forever and that most of the conservation efforts that had taken place in this area were due to HCP requirements.

Mindy stated that it was surprising to her that the current method was not going to be acceptable. She commented that as a result of the current method a lot of habitat had been conserved. She was concerned that the new HCP would create an unwanted bureaucracy. She reminded the committee that one of its principles was to keep the permit simple, and these new requirements will not be simple.

Jane Feldman, Environmental/Conservation, commented that if the Permittees will have to consider avoidance, it will be important to know where the affected species are. She cautioned against just assuming that the urban core was empty. She suggested that riparian areas needed to be considered and areas where there was a meeting of habitat edges. She stated she thought there should be a way to determine where seeps and washes are in southern Nevada.

Stan Hardy, Rural Community, stated that he agreed with Terry and Jane. He commented that this was a very large county but only a small part had been developed. Mitigation and avoidance are accomplished by the fact that the vast majority of Clark County is undeveloped. He commented that Jane's comment made a lot of sense; if development is to take place, it should take place where there is minimal impact to covered species. He also agreed with Mindy; keep things very simple.



Matt Heinhold, Gaming Industry, agreed that as a developer, simple is good. He commented that the current plan is good and about as simple as it gets. He stated that if the acreage cap is not expanded, that will not stop development, but if a regional program like this HCP is not in place, it will be much harder to do. He commented that even though the requirements will change some with the new HCP, development will still be much simpler with it in place. He suggested that people compare development in Las Vegas with development in California, where an HCP like this is not in place.

Tom Warden, City of Las Vegas, commented that the word simple keeps being used, but another important attribute of this permit needs to be practical. The HCP needs to be practical for development. Ann commented that she thought a concrete plant was being built out by Moapa, and they did tortoise clearances. She also suggested that there were a lot of wind generators that want to be on BLM land, and they should be checked into since they would have a large impact.

Scot asked if it was within the committee's charter to designate go/no-go areas for development. Ruth asked if Scot was considering developing criteria for these areas. Scott replied that no, he was thinking of designating geographic areas. John responded that as staff, he felt this was not something the committee can or would want to do.

Sean stated that it had been interesting to see how much emphasis had been placed on avoidance by the committee. He felt that this may have happened because the term avoidance is used in describing all the conservation measures. They are referred to as Avoidance and Minimization Measures (AMM). In reality, the statute refers to "minimization and mitigation." In a regional HCP, the goal is to establish a meaningful reserve system, not to designate parcels to be avoided. He commented that he would expect avoidance to be a very limited component of the plan.

Scot asked if the committee could legally designate avoidance areas. Mindy responded that it would engender a lot of legal problems. Scot replied that he was talking about public lands that had not been disposed of yet.

Pat commented that he was concerned about having to conduct avoidance activities on small parcels in the valley. He stated he did not want to see a repeat of the Decatur and Tropicana situation as it could result in a very fragmented situation with a lot of useless land.

Mike stated that the committee had had a lot of presentations about the amount of land available for development, but he did not think the committee could get down to planning at that micro level. Marci explained that as the Permittees have worked on the issues of avoidance, minimization and mitigation, they have discovered that for the majority of the species on the covered species list, it is not biologically necessary to designate specific areas as avoidance areas.



Terry reminded the committee that if it were not for the community's desire to engage in incidental take, a permit would not be needed. To get the permit, the issuance criteria need to be met. Once that is satisfied, a biological opinion will be written. This will determine if development is likely to jeopardize the species. If there is a "no jeopardy" determination, the permit may be approved. There will be small pockets of species that are being proposed for take, but still the overwhelming majority of land will not be taken.

Darren Wilson, Nevada Taxpayers Association, stated that he remembered the FWS presentation from last fall. He wanted to know why reintroducing the species using all the tortoises that had been collected was not being considered. Marci responded that Darren shared some of the frustrations that the Permittees have. She commented that the FWS has plans for those tortoises. FWS would like to see tortoise populations augmented and it wants to identify areas where tortoises can be reintroduced. Darren replied that only a very small population is affected by increasing the acres of take to 215,000. Marci responded that minimization will be done on site. Consideration will be given to clearing tortoises on areas where it is necessary and if the cleared tortoises will contribute to some long-term biological goal. Darren commented that a lot of money is spent to care for warehoused tortoises, and if the FWS is going to talk about avoidance it needs to include some conservation discussions also.

Allison agreed with the idea of reintroducing tortoises into the wild. She also stated that the committee's purpose was to provide recommendations for the HCP and she felt that mapping out areas was not appropriate. However, she felt that the committee should consider developing criteria for avoidance. She stated she agreed with Stan in that only a small portion of Clark County was being developed, and that was a measure of conservation.

Tom commented that Mike gave a good description of what this is all about. He wanted to know why it could not be assumed that adequate mitigation had already taken place since a large area of Clark County would not be developed. He stated that he was confused by what "the rules have changed" means. He wanted to know if that meant that we must have some kind of avoidance measures in the MSHCP or the permit would not be issued. Sean responded that the statute requires Permittees to minimize and mitigate to the maximum extent practicable. It's not clear if that means you have to do both separately or if some kind of combination is allowed. Some avoidance may appear on a very micro level such as forbidding take of a bird for which an MBTA take permit was not received, but avoidance will likely not be a major part of the amended permit.

Jim asked if the recovery area was a mitigation aspect. Marci asked for clarification of this question, and Jim explained that he was discussing the area the collected tortoises are sent to. Marci agreed that the



tortoise recovery area could be considered a mitigation aspect. Jim asked if the translocation area could be considered a minimization aspect. Sean replied that it could be considered a conservation area. Marci responded that the translocation area was a multiple-use area under BLM management, and it has a unique status in the HCP.

Jim asked if the translocation area corresponded to an area he remembered reading about in the newspaper years ago that was to be set aside as a preserve for collected tortoises. Terry responded that the Desert Tortoise Conservation Center was established as part of the settlement of a lawsuit which resulted in the issuance of a scientific take permit. This scientific take permit resulted in tortoises taken from very specific sites being sent to the site for research purposes.

Gary Clinard, Off-Highway Vehicles, stated that he was on a commission overseeing the wild-horse population and one thing he found curious was that he had never heard any discussion of whether tortoise density was high or low. He suggested that a practical thing to do would be to use the tortoises in the relocation area to repopulate areas where the density of tortoises was low.

Scott informed the committee that he had drawn a chart to help himself understand the relationship between various aspects of the HCP. He pointed out that mitigation is the most expensive strategy, although it is less expensive in Clark County since mitigation is conducted on public lands. Minimization is less expensive than mitigation, and avoidance basically does not cost anything. In terms of land needed, avoidance requires the most land, minimization is middle-of-the-road, and mitigation requires the least amount of land but more money. Sean commented that, in general, the idea that minimization can reduce your mitigation costs is correct. If you can minimize your impacts, you do not have to do as much mitigation. However, he pointed out that there are times when minimization can be expensive such as seasonal restrictions on take. Scott continued that he was thinking of this in relationship to moving forward, that less acreage requires less mitigation and higher fees helps pay for that mitigation. You do not have to worry about selling land to buy more land.

Ann Magliere, DCP Staff, distributed a handout on various possible minimization and mitigation measures. John cautioned the committee not to consider this as any kind of proposal and explained that it was a compilation of various minimization and mitigation activities from other HCPs. At the next meeting, the committee would discuss the exercise the Permittees went through to identify those processes that met the committee's guiding principles and the Permittee's principles of being biologically meaningful and cost effective. Ruth informed the committee that this was background information for the next CAC meeting, but the committee would not be going through it line by line. John informed the committee members that if they had any questions, they could e-mail him.



4. Public Comment

Hermi Hiatt, a botanist, commented that in some cases avoidance is a good way to avoid things. She stated she was talking specifically about the Las Vegas buckwheat for two reasons. She commented that she would not want to build a house on top of Las Vegas buckwheat habitat as she would be worried about subsidence. It is very bad soil. She thought that the Tropicana and Decatur parcel was a good example to avoid the buckwheat since the flood channel does not have any buckwheat as it does not have those specific soils. They can easily build a flood control area there. She stated that she did walk the entire 80-acre area, except for dodging about 10 homeless camps, where the parking lot was proposed and where the buckwheat is. That area can easily be avoided, and the park or parking lot built somewhere else. She suggested that avoidance still be considered as a strategy for the HCP.

Rob Mrowka, Center for Biological Diversity, agreed with Hermi concerning the Tropicana and Decatur parcel in that flood control is a good example of avoidance. He stated that he wanted to bring up that during discussions of land and the percentage of tortoise habitat that is here, you need to keep in mind one thing and that is that tortoises and people like the same type of land, and that is flat land. So, when you look at the percentage of Clark County that is tortoise habitat, it is much smaller than the total county area. This means you have to compare net acres as opposed to gross acres. He commented that he thought the figures that were being thrown around before as percentages were based on gross acres.

Carrie Ronning, BLM, stated that she was the MSHCP coordinator and wanted to make two clarification points as she felt it would help set the stage for the committee's next meeting. She also had one suggestion.

She stated that the committee had been talking about the tortoise translocation site earlier and that it was important to know that it is a 40-square-mile area that has tortoise fence around it to hold in an experimental population of tortoises. This experimental population is being used to find out whether relocation of tortoises works and whether pet tortoises can learn to survive on their own in the wild. She stated that it had not been adequately funded over time so not as much information was gathered as could have been. Another purpose of the translocation center is to take tortoises from the relocation center that did not have immune markers.

Concerning the reserve system and protected acres she commented that some of the statements got a little confused. Acres that were identified in the HCP as intensively managed can have disturbance. Rights-of-way for power lines can be issued, in some areas communication sites can be approved, gravel pits, highways, and widening of roads can be done. So, those areas are not protected like a national park or



conservation area or monument. They are locally determined Areas of Critical Environmental Concern where the purposes of the area take priority over other requests. If those requests are still compatible with the primary purpose of the area, BLM can issue a permit. She explained that it is important that when people are looking at those areas, they go to BLM's Web site and look at the Record of Decision from the 1998 Resource Management Plan. She commented that the types of activities that can take place in these areas are very site specific. She emphasized that these decisions were local decisions, not legislative decisions. She stated that, for example, if the tortoise was delisted and the area did not need to be protected for the tortoise, the classification and restrictions could be removed.

Finally, with regards to the minimization measures table, Carrie commented that the Clark County Flood Control District uses these measures under Section 7 of the ESA and it could provide information about which ones were cost effective and which were expensive with little benefit.

Ruth asked if there were any other members of the public who would like to speak. There were none.

Mindy asked if the data mentioned by Carrie regarding the minimization measures could be provided to the committee. Marci responded that she would check with the flood control district.

5. Meeting Wrap Up and Closing

Ruth thanked Sean for coming and reminded the committee that its next meeting was March 18th at 2:30 p.m. in the Regional Transportation Commission Building, room 108.

The meeting adjourned at 4:32 p.m.



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Attendance

Committee Members Present	Clark County Staff	Others In Attendance
Gary Clinard, Off Highway Vehicles	Jodi Bechtel	Hermi Hiatt
Jane Feldman, Environmental/Conservation	Marci Henson	Michael N. Johnson
Patrick Foley, Banking/Finance	Ann Magliere	Jeri Krueger
Mike Ford, City of Mesquite	John Tennert	Ken MacDonald
Stan Hardy, Rural Community		Rob Mrowka
Matt Heinhold, Gaming Industry		Carolyn Ronning
Darren Wilson, Nevada Taxpayers Assn.		Mark Silverstein
Terry Murphy, Developer/Homebuilder		Paul Yadro
Bryan Nix, Boulder City		Eric Hawkins (Facilitation Team)
Joe Pantuso, Developer/Homebuilder		Doug Huston (Facilitation Team)
Jim Rathbun, Education		Ruth Nicholson (Facilitation Team)
Scot Rutledge, Environmental/Conservation		Sean Skaggs, (DCP Legal Counsel)
Ann Schreiber, Senior		
Allison Stephens, City of North Las Vegas		
Mindy Unger-Wadkins, City of Henderson		
Tom Warden, City of Las Vegas		
Paul Larsen, Business/Small Business (by phone)		



Flipcharts

Notes:

Agenda

1. Opening and Introductions
2. Adopt December CAC Meeting Notes
3. Overview of Avoidance, Minimization and Mitigation
4. Public Comment
5. Wrap Up and Closing

Notes

- Avoidance example: parcel on corner of Trop and Decatur
 - LV buckwheat exists
 - Design around
- Can mitigation funding be used for avoidance and minimization?
 - Avoidance - not really applicable
 - Minimization - yes
- Current MSHCP has little in the way of avoidance

Notes

- Current program "avoidance" is phone call if tortoise is found on site
- What should we do differently in this amendment
- Early program included site inspections/site clearing
 - Caused difficulty in implementation (delays)
- Days of pay fee and move on are limited - per FWS

Notes

- Avoidance difficult due to small amount of private land ownership in Clark County
- Option - Reserve management system like southern Utah
- How effective original system of inspection/collection
 - Difficult to say
 - Current options need to be effective



Flipcharts

Notes:

Notes

- Option: Zones of impact
 - Highly urban
 - Urban/wild interface
 - Outer boundary
 - Mitigation strategy for each
- Avoidance needs to mean moving the project, not removal of species
- Avoidance and minimization now a required part of HCP
 - Not likely to get new permit w/o some element

Notes

- Do we know that we are impacting (killing)
 - Low level of response on hot-line
 - Urban core plays a part
- Concern about rural areas bearing burden of Las Vegas development via zones or avoidance
- Are we required to comply/include avoidance in plan?
 - Looking for middle ground

Notes

- Would avoidance require expansion of cap?
- Rural areas have their own urban core - may need to consider types/location of development
- Confusion about avoidance
 - Leave the site
 - Avoid sensitive areas on a site
 - A continuum

Notes

- % of tortoise habitat in CC < 10%. Must ask ourselves if mitigation efforts benefit species
- Concern about creating bureaucracy we have to live with - might not need - keep it simple
- In order to avoid we need to know where species truly are - not always outside urban core
 - Solutions may be simple



Flipcharts

Notes:

Notes

- Simple system works. NV development comparatively simple even if we add some elements to our plan
- Practical perhaps more appropriate word than simple
- Some de facto avoidance already occurs
- Alternative energy projects must be evaluated b/c of their significant impacts

Notes

- Do we have/can we create the zones we've been talking about on a map?
- Regional plans more typically look at avoidance or preserve areas that are most logical
- Plans need to be a balanced mix of avoidance, minimization and mitigation
- Avoidance difficult on small parcels
- Difficult to identify "biologically necessary"

Notes

- Previous efforts have identified strata/classifications of land - IMA/LIMA/UMA/MUMA - we just need to revisit what's been done
- Our process is to ID potential take request, biological opinion follows
- We are taking tortoises from around the valley and CC - why aren't we putting them in other areas?
- FWS would like to translocate
 - hoops to jump through first

Notes

- Some of this could/should be built into the plan
- Instead of maps, recommendation on criteria for which areas to preserve/create zones
- Haven't we already accomplished avoidance by the small % of land developed?
- DTCC - what is it?
 - Research facility
 - Precursor to short term HCP



Flipcharts

Notes:

Notes

- Other land “preserves” created in short term HCP
- Density/balance of tortoise populations should be evaluated
- Proper minimization reduces cost/need for mitigation - in general



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Appendix A
Meeting 12 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 (CAC) has been called and will be held on Thursday, February 18, 2010, 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 December 2009 CAC meeting - Action Item**
3. **Overview of Avoidance, Minimization and Mitigation - Informational Item**
 - Goal:** • To begin discussions regarding mitigation required for an amended MSHCP
4. **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.
5. **Meeting Wrap Up and Closing**
 - Goals:** • To recap meeting results and identify follow-up activities
 - To outline agenda topics for the next meeting
6. **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: February 10, 2010

The above notice/agenda of a meeting of the Multiple Species Habitat Conservation Plan Desert Conservation Program Advisory Committee scheduled for Thursday, February 18, 2010, 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 Community Center
Sahara West Library

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



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Appendix B

Overview of Avoidance, Minimization and Mitigation



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Overview of Avoidance, Minimization and Mitigation
February 18, 2009



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Permit Amendment Purpose.

1. Address acreage cap
2. Re-evaluate the list of covered species to refocus attention on those species most at risk and most directly impacted by take
3. Re-evaluate covered activities and overall conservation/ mitigation strategy
4. Re-evaluate structure and implementation of the permit and plan

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Elements of a HCP

1. Introduction and Background
2. Project Description
3. Environmental Setting
4. Biological Impacts/Take Assessment
5. Conservation Strategy
6. Plan Implementation
7. Funding
8. NEPA Analysis



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Conservation Strategy

In developing a conservation strategy, the following criteria will be used to evaluate specific conservation measures:

1. FWS Recommended/Required
2. Biologically Necessary and Purposeful
3. Practical
4. Measurable Effect/Impact
5. Cost Effective




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Conservation Strategy

A conservation strategy should include the following:

1. Biological goals and objectives
2. Avoidance, minimization and mitigation measures
3. Monitoring of efforts related to avoidance, minimization and mitigation
4. Performance/success criteria
5. Adaptive management strategy
6. Reporting requirements for FWS



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Conservation Strategy

Section 10(a)(2)(A) of the ESA:

- HCP must specify steps to minimize and mitigate the impact of the taking

Section 10(a)(2)(B) of the ESA:

- FWS will approve HCPs if the impacts of the take are minimized and mitigated to the maximum extent practicable




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Maximum Extent Practicable

What constitutes "maximum extent practicable"?

- Is the mitigation scientifically and rationally related to the level and impact of taking?
- Is the minimization and mitigation commensurate with the taking?
- Does the mitigation address all covered species?
- Practicable as "reasonably capable of being accomplished"




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Maximum Extent Practicable

HCP Handbook suggests two part analysis:

- First, the Service should review the adequacy of the minimization and mitigation program in terms of effects to the species
- Second, the Service should determine whether it is the maximum that can be practically implemented by the applicant



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Maximum Extent Practicable

- If the impacts of the taking are not entirely compensated or the adequacy of the mitigation program is a "close call," the Service must demonstrate in the record that the proposed mitigation program is the maximum that "can be reasonably required of the applicant" without jeopardizing the project
- Proportionality can be addressed in the HCP's effects analysis and conservation strategy
- Practicability as: (a) cost, (b) technology, and (c) logistics in light of the project purpose

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Migratory Bird Treaty Act

- Migratory Bird Treaty Act (MBTA) implements four international treaties for the conservation and management of bird species that may migrate through more than one country
- Makes it unlawful to take, possess, buy, sell, purchase, or barter any migratory bird listed in 50 CFR Part 10, including feathers or other parts, nests, eggs, or products, except as allowed by implementing regulations

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Migratory Bird Treaty Act

- As a matter of policy, applicants who obtain an ESA Section 10(a) permit generally are also issued an MBTA permit for ESA-listed migratory birds that are HCP Covered Species



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Migratory Bird Treaty Act

HCP Handbook the Service will insert to include the following language into any permit concerning the incidental take of ESA-listed migratory birds:

"This permit also constitutes a Special Purpose Permit...for the take of [species' common and scientific names; species must be ESA-listed, and may not include the bald eagle] in the amount and/or number and subject to the terms and conditions specified herein. Any such take will not be in violation of Migratory Bird Treaty Act of 1918..."

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Avoidance and Minimization

Avoidance:

- What actions can be taken to avoid the impact to covered species and/or habitat?
- Ex: Relocate project facilities

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Avoidance and Minimization

Minimization:

- What actions can be taken to reduce the impact to covered species and/or habitat?
- Example: Fencing to minimize road fatalities



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Avoidance and Minimization

- Avoidance and minimization are typically required elements of HCPs
- Can reduce cost of overall conservation strategy (impacts that are avoided do not need to be mitigated)
- Current HCP includes minimal avoidance and minimization for covered species

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Mitigation

What actions can be taken to rectify or compensate for the impact to covered species and/or habitat?

- Ex: Rectify impacts by restoring and revegetating disturbed areas (such as powerline developments)
- Ex: Compensate for impacts by setting aside or acquiring equivalent habitat for covered species (such as mitigation banks or conservation easements)

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Mitigation

Mitigation is required for impacts that cannot be avoided or minimized and are typically more expensive than avoidance and minimization



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Mitigation



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Mitigation

"Conservation on a staggering scale" at Tejon: More than 240,000 acres near Grapevine will be saved from development forever"
San Francisco Chronicle, May 9, 2008



The map displays the Tejon area with various colored regions. A legend on the right side of the map includes categories such as 'Conservation Area', 'Development', and 'Other'. The map shows a large green area representing the conservation zone, with yellow and orange areas indicating development zones. A scale bar and north arrow are also present.

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Questions?