

CHAPTER 1 INTRODUCTION

1.1 Overview and Background

The Clark County Desert Conservation Program (DCP), acting as the program administrator for the Multiple Species Habitat Conservation Plan (MSHCP), has prepared a MSHCP Amendment on behalf of Clark County and the cities of Las Vegas, Henderson, North Las Vegas, Mesquite, and Boulder City (Permittees)¹.

Through a comprehensive conservation program, the MSHCP Amendment will ensure the conservation of the species covered by this plan (Covered Species) and the mitigation of impacts to Covered Species within Clark County. Completion of this plan will include implementation of a streamlined land use permitting process that addresses regulatory compliance issues. The MSHCP Amendment is intended to meet all requirements of the Endangered Species Act of 1973, as amended (16 United States Code §1531 et seq.) (ESA).

The U.S. Fish and Wildlife Service (USFWS) issued the current MSHCP incidental take permit (ITP) on January 9, 2001 (permit number TE034927-0). Implementation of the MSHCP since issuance of the ITP in 2001 has provided the Permittees with considerable experience and insight regarding potential improvements to the structure and implementation of the MSHCP which are addressed in this plan.

1.1.1 MSHCP Mission Statement

The Permittees have developed a statement of goals that has guided development of this plan. These goals include:

- Contribute to the recovery and ensure the long-term viability of Covered Species in the Plan Area by protecting and managing high quality and ecologically significant habitat.
- Facilitate planned development in exchange for payment of a development mitigation fee that creates a standardized and predictable permitting process without unforeseen mitigation obligations.
- Promote awareness and appreciation of the Plan Area's natural and cultural history and provide environmental education opportunities for the public.
- Meet all applicable regulations and policies of the ESA and USFWS.
- Addresses future environmental conditions through the implementation of monitoring and adaptive management.

1.1.2 Short-term Habitat Conservation Plan

On April 2, 1990, the Mojave population of the desert tortoise (*Gopherus agassizii*) was listed as threatened by the USFWS (USFWS 1990), bringing it under full protection of the ESA. The listing was based on concerns regarding the possible spread of an upper respiratory tract disease, loss of habitat to urban development and agriculture, potential degradation of habitat by grazing and off-highway vehicle (OHV) use, illegal collection, excessive predation of juvenile tortoises by common ravens, and other contributing factors (USFWS 1990). The April 1990 listing was preceded by an emergency listing of the tortoise as endangered on August 4, 1989 (USFWS

¹ Nevada Department of Transportation is a Permittee under the 2000 MSHCP, but has elected to not continue their participation as Permittee under the MSHCP Amendment, and will instead, seek incidental take coverage under individual permits.

1989). The desert tortoise is also categorized as “protected” pursuant to Nevada Revised Statute (NRS) 501.110 and Nevada Administrative Codes (NAC) 503.080 and 503.090.

Early in September 1989, Clark County, in cooperation with the other Permittees, took the lead on developing an application for an ITP pursuant to the provisions of Section 10(a)(1)(B) of the ESA. Shortly thereafter, the Permittees entered into an interlocal agreement wherein the Permittees agreed to fund the preparation of a Habitat Conservation Plan (HCP) to provide conservation measures for the desert tortoise. The HCP was prepared in support of obtaining a Section 10(a)(1)(B) permit which would allow the incidental take of desert tortoises (Clark County 1991). The interlocal agreement designated the County as the lead agency responsible for developing and implementing the compliance program. That plan was designated the Short-term Habitat Conservation Plan for the Desert Tortoise (Short-term HCP). On August 24, 1991, the Short-term HCP was approved and an ITP was issued (PRT 756260) for an initial term of three years. During this time, the Permittees agreed to continue working to develop appropriate additional conservation measures for the desert tortoise and to apply for a long-term permit with a term of 30 years.

1.1.3 Desert Conservation Plan (Long-term HCP)

Over the next several years, the Permittees continued to work on the long-term HCP for the desert tortoise (Clark County 1994). On or about August 5, 1995, the Desert Conservation Plan (Long-term HCP) was approved and a new ITP (PRT 801045) was issued by the USFWS to allow the incidental take of desert tortoises for a term of 30 years (USFWS 1995). In addition to providing funds to implement conservation measures for the desert tortoise, the Long-term HCP provided funds (up to \$250,000 per year) for conservation measures (primarily collection of data and inventories regarding species likely to be listed in the near future) for species other than the desert tortoise. However, neither that provision nor the ITP allowed the incidental take of species other than the desert tortoise.

Shortly after the listing of the desert tortoise, the USFWS issued a Biological Opinion (USFWS File NO. 1-5-91-F-112) analyzing the impacts of the disposal of up to 42,240 acres of Bureau of Land Management (BLM) administered land in southern Nevada. In April 1996, the USFWS updated the 1991 Biological Opinion to consider the impacts of BLM's disposal of an additional 125,000 acres (USFWS File No. 1-5-96-F-023). The 1996 Biological Opinion determined that most of the land within the Las Vegas Valley identified for disposal was highly fragmented and impacted, particularly the 4,000-acre exclusionary zone identified in the Long-term HCP, which the USFWS determined did not contain suitable habitat for the desert tortoise. Later in 1996, the BLM requested an amendment to the 1996 Biological Opinion to receive mitigation through the Section 10/HCP process from impacts to desert tortoise habitat resulting from disposal actions.

1.1.4 MSHCP

In May of 1996, the Permittees began discussing preparation of a multiple species habitat conservation plan and applying to the USFWS for one or more ITPs to allow the incidental take of species in addition to the desert tortoise. In August 1996, the Board of County Commissioners and the City Councils of the Permittees authorized the preparation of the Clark County MSHCP by means of an amendment to the existing interlocal agreement. In addition to amending the interlocal agreement to allow the expenditure of funds for species other than the desert tortoise, it was necessary to amend state law to allow the expenditure (NRS Section 244.386). The Nevada State Legislature passed the amendment in 1997.

In May 1998, the BLM finalized the Las Vegas Resource Management Plan (RMP). An RMP ensures that public lands under the jurisdiction of the BLM are managed in accordance with the intent of Congress as stated in the Federal Land Policy and Management Act (FLPMA) (43 USC 1701 et seq.), based on multiple use and sustained yield. The Las Vegas RMP included 16 different disposal boundaries throughout southern Nevada, including the Las Vegas Valley (BLM 1998). Shortly thereafter, Congress passed the Southern Nevada Public Land Management Act (SNPLMA), which outlined specific procedures for the disposal of BLM land in Clark County and directed that the proceeds be made available for a variety of projects and entities in Nevada, including the “development and implementation of the Clark County Multiple Species Habitat Conservation Plan.” The Las Vegas RMP and associated USFWS Biological Opinion concluded that impacts resulting from the disposal of BLM land authorized by the Las Vegas RMP and SNPLMA would be adequately minimized and mitigated through implementation of the Clark County MSHCP.

In November 2000, the Permittees completed the Clark County MSHCP for incidental take coverage of up to 145,000 acres of any “non-federal land, or land that may become non-federal” in Clark County. The determination of 145,000 acres was based in part on the amount of land available within the Las Vegas Valley disposal boundary as defined by SNPLMA. In February 2001, the USFWS issued an ITP for the take of 145,000 acres identified in the MSHCP (PRT TE034927-0), which superseded the permit for the Clark County Desert Conservation Plan (PRT 801045).

1.1.5 MSHCP Amendment

Roughly one year after the issuance of the ITP for the MSHCP, Congress passed the Clark County Conservation of Public Land and Natural Resources Act of 2002 (PL 107-282) which among other things, increased the Las Vegas Valley Disposal Boundary by roughly 22,000 acres. The legislation also resulted in changes to existing Wilderness Study Areas and Instant Study Areas that were included as part of the MSHCP reserve system. As a result of the changes in land use management and status, the BLM commissioned a “Management Change Analysis” for the MSHCP to determine whether there had been any “adverse effects” on species and/or habitat covered under the MSHCP. Based on a review of the findings and recommendations presented in the report, it was determined that no additional mitigation was required because of the changes.

In December 2004, the BLM released the *Las Vegas Valley Disposal Boundary Environmental Impact Statement* (Disposal EIS) to identify the environmental consequences of the disposal of BLM land within the established disposal boundary (BLM 2004). The BLM determined that “the disposal action and subsequent transfer of title do not have direct impacts because these administrative actions do not cause any change in the environment” and that any impacts associated with disposal actions “would occur subsequent to disposal.” The BLM anticipated that impacts to desert tortoise and Covered Species resulting from development of disposed BLM land would be minimized and mitigated through the Clark County MSHCP. In its 2004 Biological Opinion (USFWS File No. 1-5-96-F-023.R3), the USFWS determined that the land disposal action will “not reduce appreciably the likelihood of survival and recovery” of desert tortoise, in part because mitigation for impacts to desert tortoise and compliance with the ESA as a result of disposal actions will be provided through the Clark County MSHCP.

The expansion of the SNPLMA disposal boundary and rapid growth in Clark County increased concerns among many community stakeholders that the acreage cap of 145,000 acres would be insufficient to meet demands through the 30-year term of the permit and could result in a rapid “race-to-the-bottom” by developers trying to get projects built before the cap is reached. The 2005

Clark County Community Growth Task Force (Task Force) recognized that there was more land available in the SNPLMA disposal boundary than is allowable for development under the MSHCP cap. As a result, the Task Force recommended that the Permittees explore the option of increasing the MSHCP acreage restrictions to meet the amount of land available.

The following year, Clark County convened the 2006 DCP Advisory Committee to assist with developing recommendations for ongoing funding priorities, work plan and budget, major policy issues, and other implementation issues as appropriate. The DCP Advisory Committee met for eight months and recommended that the Permittees evaluate alternatives and develop recommendations for revising the MSHCP, ITP, and implementing agreement to more effectively balance the needs of growth and conservation in Clark County, including the following:

Modify the acreage cap to account for the gap between the amount of land available for development and the permitted amount under the ITP.

- Reassess the overall Conservation Strategy to determine whether mitigation should continue to be implemented on federal land.
- Reassess the Covered Species list and associated Covered Activities in the MSHCP.
- Review the implementation of the MSHCP to improve efficiency, accountability, and transparency.

Based on the recommendations of the Task Force and the DCP Advisory Committee, the Clark County Board of County Commissioners directed the DCP to pursue an amendment of the MSHCP and ITP in June 2007.

The DCP engaged in negotiations with USFWS and other stakeholder agencies to develop a proposed framework for the MSHCP Amendment that relies on conducting mitigation actions on a Reserve System consisting primarily of federal lands. Mitigation actions include enhanced conservation activities and habitat management.

The necessary land use designations to carry out the MSHCP Amendment Conservation Strategy on federal lands were established through the Southern Nevada Economic Development and Conservation Act (Act), which was introduced by Senator Cortez-Masto in March 2021 and signed into law on XXXXX. The Act defines Special Management Areas (SMAs) that are federal lands administered by BLM that will be collaboratively managed with the County as part of the Reserve System of the MSHCP Amendment. Each SMA is subject to long-term cooperative management agreements (CMAs) that are collaboratively developed and implemented between BLM and the County, with oversight from USFWS.

1.1.6 Environmental Impact Statement

Issuance of an ITP by the USFWS is a federal action requiring environmental review pursuant to the National Environmental Policy Act (NEPA). Early consultations among the USFWS and Clark County determined that preparation of an Environmental Impact Statement (EIS) would be needed to adequately assess the environmental consequences of approving the MSHCP Amendment and issuing an ITP. The primary purpose of an EIS document is to serve as an analysis and decision-making tool to ensure that the policies and goals defined in NEPA are incorporated into the ongoing programs and actions of the federal government. An EIS provides a full and reasoned discussion of the significant environmental impacts. In addition, it will inform decision makers and the public of the reasonable and feasible alternatives that were considered in an effort to avoid or minimize adverse impacts, or enhance the quality of the human

environment. An EIS is prepared for actions with a federal nexus if there is a “potential to significantly affect the quality of the human environment”.

The Council on Environmental Quality (CEQ) regulations require that “federal agencies shall make diligent efforts to involve the public in preparing and implementing their NEPA procedures.” There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process is termed scoping. As soon as practicable after its decision to prepare an EIS, and before the scoping process, the lead agency shall publish a Notice of Intent in the Federal Register. In addition, as part of the scoping process the lead agency shall invite the participation of affected federal, state, and local agencies, any affected Native American tribe, the proponent of the action, and other interested persons. The lead agency shall then determine the scope and the significant issues to be analyzed in depth in the EIS.

The Notice of Intent to prepare an EIS for the MSHCP Amendment was published in the Federal Register, Volume 74, Number 188 on September 30, 2009 (USFWS 2009). The Notice of Intent contained a brief description of the proposed action, the locations, dates, and times of the public scoping meetings, mailing addresses for submittal of written comments, and the deadline for submittal of comments. Legal notices and classified advertisements were published in Clark County newspapers announcing the locations, dates, and times for the Draft EIS public scoping meetings. The newspaper advertisements also contained a brief description of the Proposed Action and the mailing address for submittal of written comments. Additionally, USFWS mailed "Dear Interested Party" letters to individuals and organizations that have previously expressed an interest in the MSHCP or in USFWS-proposed actions.

The USFWS hosted four public scoping meetings to provide the public an opportunity to learn about the proposed Amendment and to provide comments. The scoping meetings were held on October 19, 21, 22, and 26, 2009, in Las Vegas, Searchlight, Henderson and Moapa, respectively. The meetings allowed attendees the opportunity to provide comments regarding issues of concern and the alternatives that should be discussed in the EIS. Forty-six members of the public attended the scoping meetings and 28 individual comment letters were received from agencies, organizations, and private citizens. An Administrative Draft EIS was prepared but a public Draft EIS was never released.

[Placeholder for update following 2009 NOI]

A new NOI was issued by the USFWS on [Date].

The draft EIS was completed [Date].

1.2 Purpose and Need

The MSHCP Amendment will provide for improvements in implementation of the MSHCP based on lessons learned while also extending incidental take coverage to lands subject to disposal and development that are not currently covered under the MSHCP.

The MSHCP Amendment will help advance a number of regional environmental and economic objectives. By identifying priority areas for conservation and other areas for future development, the MSHCP Amendment will provide much needed certainty to the land use and development process and help achieve a sensible balance between natural resource conservation and economic growth in the region.

Specifically, the overall objectives of the Amendment are to:

- Obtain coverage for acres that are not currently permitted for take in Clark County. There are approximately 215,000 acres of undeveloped land within existing disposal boundaries that are not covered for take under the existing permit. Absent a permit amendment, individual landowners will be required to develop individual Habitat Conservation Plans (HCPs) and obtain individual permits.
- Revise the number of species covered by the MSHCP to focus on those species most at risk. The Permittees have re-evaluated the list of Covered Species in order to more effectively administer the conservation actions and to refocus attention on those species most at risk and most directly impacted by Covered Activities.
- Revise the Conservation Strategy to improve mitigation effectiveness and accountability. The Conservation Strategy has been revised to mitigate for the increased levels of habitat disturbance and to provide greater transparency and accountability for mitigation accomplishments.
- Restructure the MSHCP to improve efficiency and reduce bureaucracy. In an independent review of MSHCP program management, potential conflict of interest issues and other management inefficiencies were identified. To address these issues, the implementation structure of program management has been re-evaluated.
- Increase the Permit Term to 50 years. Increasing the Permit Term to 50 years would provide the Permittees with long-term assurances and also preclude the need to prepare a new MSHCP and ITP application sooner.

1.3 MSHCP Amendment Plan Area

The MSHCP Amendment Plan Area includes all of Clark County below 4,000 feet in elevation and excluding Department of Defense lands, with one exception: the Stump Springs SMA includes some areas above 4,000 feet. Clark County is located in the southernmost tip of Nevada. It is bordered on the north by Lincoln County, Nevada; on the east by Mojave County, Arizona; on the southwest by San Bernardino and Inyo counties, California; and on the west by Nye County, Nevada, as shown in Figure 1-1. The MSHCP Amendment will provide coverage under Section 10(a) for Covered Species on non-federal lands and land that may become non-federal in the Plan Area. The MSHCP Amendment will not provide for incidental take on federal lands or resulting from federal actions on non-federal lands. Clark County covers approximately 5,159,540 acres (8,062 square miles), or about 7 percent of the state's total area; the Plan Area encompasses 3,623,892 acres (5,930 square miles), or about 70 percent of the County. Figure 1-2 shows the location of potentially developable lands in the Plan Area by land ownership. Figure 1-3 depicts the potentially developable lands relative to the Reserve System. The potentially developable lands comprise all undeveloped lands under private, County, and state ownership, and federal lands planned for disposal and transfer to private or public entities for development.

1.4 Covered Species

Covered Species are covered by the MSHCP Amendment and the ITP. In the case of this MSHCP Amendment, the Covered Species include unlisted species that may become listed in the future. Covered Species are discussed in detail in Chapter 3 of this MSHCP Amendment, but are listed here for reference:

Covered Plants

- Sticky ringstem (*Anulocaulis leiosolenus* var. *leiosolenus*)
- Las Vegas bearpoppy (*Arctomecon californica*)

- Threecorner milkvetch (*Astragalus geyeri* var. *triquetras*)
- Alkali mariposa lily (*Calochortus striatus*)
- Blue Diamond cholla (*Cylindropuntia multigeniculata*)
- Silverleaf sunray (*Enceliopsis argophylla*)
- Pahrump Valley buckwheat (*Eriogonum bifurcatum*)
- Las Vegas buckwheat (*Eriogonum corymbosum* var. *nilesii*)
- Sticky buckwheat (*Eriogonum viscidulum*)
- White-margined beardtongue (*Penstemon albomarginatus*)
- Parish phacelia (*Phacelia parishii*)
- St. George blue-eyed grass (*Sisyrinchium radicum*)
- Joshua tree (*Yucca brevifolia*)

Reptiles

- Desert tortoise (*Gopherus agassizii*)
- Banded Gila monster (*Heloderma suspectum*)

Birds

- Golden eagle (*Aquila chrysaetos*)
- Western burrowing owl (*Athene cunicularia hypugaea*)
- Yellow-billed cuckoo (*Coccyzus americanus*)
- Gilded flicker (*Colaptes chrysoides*)
- Southwestern willow flycatcher (*Empidonax traillii extimus*)
- Loggerhead shrike (*Lanius ludovicianus*)
- Yuma Ridgway's rail (*Rallus obsoletus yumanensis*)
- Bendire's thrasher (*Toxostoma bendirei*)
- LeConte's thrasher (*Toxostoma lecontei*)
- Arizona Bell's vireo (*Vireo bellii arizonae*)

Mammals

- Desert pocket mouse (*Chaetodipus penicillatus*)
- Townsend's big-eared bat (*Corynorhinus townsendii*)
- Spotted bat (*Euderma maculatum*)

Invertebrates

- Mojave poppy bee (*Perdita meconis*)
- Monarch butterfly (*Danaus plexippus*)

1.5 Covered Activities

Covered Activities are activities that will be conducted by Permittees for which take is authorized in the ITP. Covered Activities are described in detail in Chapter 2 of this MSHCP Amendment and include the following categories and types:

New Covered Activities:

- New residential, industrial and commercial structures
- Public and private infrastructure
- Renewable energy
- Agricultural conversion and new facilities
- Recreational facilities and use
- Emergency activities

Ongoing and Existing Activities:

- Operation and maintenance of infrastructure
- Recreational facilities
- Extractive uses
- Habitat management
- Education and interpretation
- Ongoing agricultural activities

Covered Activities inside the Reserve System:

- Reserve System management, monitoring and scientific research activities
- Emergency, safety and police services
- Infrastructure maintenance
- Emergency repairs
- Public access and recreation
- Collection of flora and fauna

1.6 Permit Duration

The USFWS considers several factors in determining the term of an ITP. The agencies, for instance, take into account the expected duration of the activities proposed for coverage and the anticipated positive and negative effects on Covered Species that will likely occur during the course of the plan. The agencies also factor in the level of scientific and commercial data underlying the proposed operating conservation program, the length of time necessary to implement and achieve the benefits of the operating conservation program, and the extent to which the program incorporates adaptive management strategies. The duration of the permit to be issued pursuant to the Permittees is anticipated to be 50 years. The ITP term is based on the projected timeframe for buildout to occur consistent with the plan's participants planning processes. Based on the difficulty of predicting trends in urban development, a 50-year permit is believed to be reasonable and necessary to provide sufficient time to implement the plan and to fund and implement the Conservation Strategy.

A summary of major local planning documents and their respective time horizons is provided in Table 1-1. Urban development consistent with County and City General Plans accounts for a majority of the take that will occur from Covered Activities addressed under the MSHCP Amendment. The Permittees predict that the Plan Area contains enough land to support at least 50 years of urban development.

- Clark County, Nevada has a population of approximately 2.3 million and is approximately 8,000 square miles in size.

- Mesquite, Nevada (Clark County) is 80 miles northeast of Las Vegas, has a population of approximately 20,470, and is approximately 32 square miles in size.
- Henderson, Nevada (Clark County) is the second largest city in Nevada, is 16 miles southeast of Las Vegas, has a population of 317,610, and is approximately 107 square miles in size.
- Boulder City, Nevada, (Clark County) is approximately 26 miles southeast of Las Vegas has a population of approximately 15,840, and is approximately 208 square miles in size.
- Las Vegas, Nevada (Clark County) is the largest city in Nevada, has a population of approximately 641,900, and is approximately 135 square miles in size.
- North Las Vegas, Nevada (Clark County), is immediately north of Las Vegas, has a population of approximately 262,530, and is approximately 101 square miles in size.

Table 1-1. Local planning documents and planning horizons incorporated into development of the MSHCP Amendment.

Planning Document	Date completed/adopted	Planning Horizon
Clark County Comprehensive Master Plan	1983, updated October 2021	20 years, Living
City of Mesquite Master Plan	May 2009, updated February 2021	Living
Boulder City Master Plan	December 2003, updated February 2015	20 years
City of Henderson Comprehensive Plan	May 2017	20 years
City of Las Vegas 2050 Master Plan	July 2021	30 years
City of North Las Vegas Comprehensive Master Plan	November 2006, most recently amended August 2020	20 years

Timelines for funding and completing potential capital improvement and infrastructure projects often extend for decades. A Permit Term that allows for the completion of Covered Activities that are associated with construction of planned capital improvement and infrastructure projects, such as water delivery and water treatment facilities and flood control structures will likely take more than four decades to fund and complete. A longer Permit Term is necessary to anticipate and adequately mitigate the impacts of these projects on the Covered Species.

Recurring maintenance activities are expected to continue in perpetuity; consequently, take authorization for these activities is needed for the extended period. These recurring Covered Activities might affect the Covered Species throughout the proposed 50-year Permit Term. For example, road maintenance performed by the plan participants occurs each year on an ongoing schedule. Maintenance on rural roads might affect habitat for many Covered Species. Similarly, recurring maintenance on flood control and storm drainage facilities are covered in this and might affect Covered Species for the duration of the Permit Term.

A 50-year Permit Term is also necessary to develop and fund the Reserve System and to develop and implement adaptive management of the Conservation Strategy and monitoring programs. Monitoring and assuring the success of habitat re-establishment/establishment actions is expected to take a significant portion of the Permit Term. Therefore, a 50-year Permit Term is necessary to complete these actions and to leave sufficient time for monitoring the effectiveness of these actions before the Permit Term ends. A 50-year Permit Term also allows sufficient time to generate the necessary funding for MSHCP Amendment implementation.

The MSHCP Amendment will be funded by development fees collected when Covered Activities are implemented consistent with the approved plan. Many of the plan's Covered Activities will not occur for decades and a 50-year Permit Term provides the time necessary to ensure adequate funding to implement the Conservation Strategy.

Based on the implementation horizon for Covered Activities, the recurring operation and maintenance activities, the need to acquire lands and develop a successful Reserve System, and the need for adequate funding, the Permittees have determined that a 50-year Permit Term would best address regulatory and biological considerations.

In summary, the 50-year Permit Term provides sufficient time to accomplish the following critical elements of the MSHCP Amendment:

- Fully implement the current general plans of the cities and the county;
- Fully implement the capital and infrastructure projects that are covered by the plan;
- Implement the ongoing maintenance activities;
- Allow sufficient time to implement the Conservation Strategy;
- Secure all necessary funding for MSHCP Amendment implementation during the Permit Term and secure funds during the Permit Term to fund the Conservation Strategy in perpetuity;
- Develop an effective Reserve System maintenance, monitoring, and adaptive management program that will be implemented in perpetuity.

1.7 Alternatives to the Taking

Section 10 of the ESA and its regulations require that an HCP describe actions considered as alternatives to the take that would result from the proposed action and the reasons why they are not using those alternatives. The EIS includes an analysis of alternative actions that describe a range of development scenarios and also provides a range of species conservation alternatives. The focus of the alternatives analysis is to identify the reasonable and feasible alternative that meets the purpose and need of the project and provides the conservation outcome commensurate with the impacts.

[Placeholder: To be updated with summary of EIS alternatives analysis once completed in 2022.]

1.8 Coordination with Federal and State Agencies

Given the scope and complexity of amending a large, regional HCP and its potential to affect numerous agencies and stakeholder groups, developing a diverse base of participants was critical. However, bringing all conceivable decision-makers and stakeholders together as one group would be administratively unwieldy and would not accurately reflect the scope of each participant's role in the process. As a result, the DCP, in cooperation with the Permittees, established an informal structure for permit amendment consisting of various teams and working groups necessary for the development of the MSHCP Amendment. This structure included

regular meetings with the Permittees, USFWS, BLM, and the formation of a Community Advisory Committee to provide recommendations to the Board of County Commissioners and the Permittees on issues relevant to the permit amendment process.

A focal point of the amendment process, the Community Advisory Committee met over two years to discuss various topics related to the HCP planning process, consider technical data or other options, and develop recommendations for consideration by the Board of County Commissioners and the Permittee governing boards. The Board of County Commissioners appointed the Community Advisory Committee on February 3, 2009 using the following categories:

- Nevada Taxpayers Association (1)
- Gaming Industry (1)
- Homebuilder (1)
- OHV (1)
- Rural community (2)
- Banking (1)
- Business (1)
- Developer (1)
- Education (1)
- Small Business (1)
- Senior (1)
- Union (1)
- Environmental (2)
- Tribal representative (1)
- Southern Nevada residents (5)

Topics discussed and debated by the Community Advisory Committee included take, Covered Species, mitigation and Conservation Strategy, and implementation strategies. The DCP administered the Community Advisory Committee, which in turn coordinated any technical and administrative support to the Community Advisory Committee from staff, Permittees, USFWS, and BLM as needed. A consensus approach was used by the Community Advisory Committee to develop its recommendations, and neutral facilitation services were used to ensure the committee meetings remained focused and productive.

As of this MSHCP Amendment the Community Advisory Committee disbanded and the DCP continued to meet regularly with Permittees, USFWS and BLM.

The DCP coordinated with the USFWS and BLM throughout the development of the MSHCP Amendment to ensure alignment with agency regulations and policies. An Implementing Agreement that defines the roles and responsibilities of DCP, USFWS and BLM for implementation of the MSHCP Amendment was signed by all three entities on [Date]. USFWS, DCP and BLM also have agreed to collaborate in the development of cooperative management agreements (CMAs) which dictate management and funding requirements for each of the special management areas (SMAs). As part of the MSHCP Conservation Strategy, DCP is managing BLM-administered federal lands within the Reserve System (i.e. the SMAs) in collaboration with BLM and with oversight from USFWS.

1.9 Summary of Relevant Laws and Regulations

1.9.1 Federal Endangered Species Act

The ESA has three major components relevant to the MSHCP Amendment. These include the section 7 requirement that federal agencies ensure, in consultation with the federal fish and wildlife agencies, that their actions are not likely to jeopardize the continued existence of species or result in adverse modification or destruction of critical habitat; the Section 9 prohibition against the “taking” of listed species; and the section 10 provisions that provide for the permitting of non-federal entities for the incidental take of listed species.

Section 7 of the ESA provides that each federal agency must ensure, in consultation with the Secretary of Interior or Commerce, that any actions authorized, funded, or carried out by the agency are not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat (16 USC § 1536(a)(2)). Section 7 requires federal agencies to engage in formal consultation with the USFWS for any proposed actions that are likely to adversely affect listed species. A biological opinion is issued by the USFWS at the completion of formal consultation. The biological opinion can conclude that the project as proposed is either likely or not likely to jeopardize the continued existence of the species. If the biological opinion concludes “no jeopardy,” the action can proceed as proposed. If the biological opinion concludes “jeopardy,” the USFWS will identify “reasonable and prudent alternatives” to the proposed action that would avoid jeopardizing the species. Included in the biological opinion is an incidental take statement that authorizes a specified level of take anticipated to result from the proposed action. The incidental take statement contains “reasonable and prudent measures” that are designed to minimize the level of incidental take and that must be implemented as a condition of the take authorization (50 Code of Federal Regulations (CFR) § 402.14(i)(5)).

Section 9(a)(1)(B) of the ESA prohibits the take by any person of any endangered fish or wildlife species and the take of threatened fish or wildlife species. The ESA prohibits the take of any listed threatened fish or wildlife species in violation of any regulation promulgated by the USFWS. “Take” is defined broadly to mean harass, harm, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct (16 USC § 1532). “Harm” is defined by regulation to mean an act which actually kills or injures wildlife, including those activities that cause significant habitat modification or degradation resulting in the killing or injuring of wildlife by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering (50 CFR § 17.3). The take prohibitions of the ESA apply unless take is otherwise specifically authorized or permitted pursuant to the provisions of section 7 or section 10 of the ESA. The protections for listed plant species under the ESA are more limited than for fish and wildlife².

Section 10 of the ESA specifically addresses the authorization for take by non-federal entities through the development of an HCP. For those actions for which no federal nexus exists, private individuals, corporations, state and local government agencies, and other non-federal entities who wish to conduct otherwise lawful activities that may incidentally take a listed species must first

² Section 9(a)(2)(B) of the ESA prohibits removal, possession, or malicious damage or destruction of endangered plants in areas under federal jurisdiction, as well as actions that remove, cut, dig up, damage, or destroy endangered plants in areas outside of federal jurisdiction in violation of any state law or regulation, including state criminal trespass law. Protection for threatened plant species is limited to areas under federal jurisdiction. 50 CFR § 17.71(a). The ESA section 7(a)(2) prohibition against jeopardy applies to plants, wildlife, and fish equally, and USFWS and NMFS may not issue a section 10(a)(1)(B) permit if the issuance of that permit would result in jeopardy to any listed species.

obtain a section 10 ITP from the USFWS. The non-federal entity is required to develop an HCP as part of the permit application process.

The MSHCP Amendment is intended to meet all regulatory requirements necessary for the USFWS to issue a section 10 ITP to allow incidental take of proposed Covered Species that are listed under the ESA because of Covered Activities undertaken by the Permittees.

1.9.1.1 Compliance with the 2016 Habitat Conservation Planning and Incidental Take Permit Processing Handbook

In December 2016, the USFWS and National Marine Fisheries Service (NMFS) published the Habitat Conservation Planning and Incidental Take Permit Processing Handbook (Handbook) to present the current standards, best practices and guidance for HCP development and implementation. The Handbook includes information on the purpose and evolution of the HCP program and related laws and regulations. It provides an overview of the HCP planning process and addresses key questions about the application process and communication with federal and state agencies and other stakeholders. Additionally, the Handbook explains requirements and recommendations pertaining to Covered Activities, Covered Species, Plan Area, Take Calculations, Conservation Strategy and Monitoring and Adaptive Management.

This MSHCP Amendment was developed to align with the requirements and recommendations of the Handbook. Additionally, USFWS was engaged throughout the development of the MSHCP Amendment to ensure that criteria in the Handbook were being met.

1.9.2 National Environmental Policy Act

The purpose of NEPA is to ensure that federal agencies consider the environmental impacts of their actions and decisions (42 USC § 4371 et seq.). NEPA requires that the federal government use all practicable means and measures to protect environmental values and makes environmental protection a part of the mandate of every federal agency and department. To accomplish this goal, NEPA establishes a process and approach to analysis to identify the environmental impacts associated with proposed federal actions that significantly affect the quality of the human environment. The permitting of the MSHCP Amendment by USFWS under section 10(a)(1)(B) constitutes a federal action subject to NEPA.

1.9.3 Federal Land Policy Management Act

FLPMA directs the Secretary of the Interior to develop, maintain, and, where appropriate, revise plans for the use of public lands. Furthermore, the Code of Federal Regulations requires all resource management authorizations and actions to conform to an approved land use plan. Where a proposed action does not conform but warrants further consideration, the land use plan may be amended. Plan amendments require compliance with NEPA and must comply with the public involvement, interagency coordination, and consistency requirements of federal planning regulations. FLPMA also requires the Secretary to report to Congress any management decision or action that excludes one or more principal land uses for two or more years on 100,000 acres or more of public lands. In addition, any permanent exclusion of principal uses of public lands on 100,000 acres or more must be approved in a land use plan.

1.9.4 Southern Nevada Economic Development and Conservation Act (SNEDCA)

SNEDCA was introduced by Senator Cortez-Masto in March 2021 and signed into law [Date]. The law provides for conservation or transfer of land in Nevada. SNEDCA establishes nine SMAs on

federal BLM-administered lands to provide for the conservation and recovery of natural habitats and native species covered by the MSHCP Amendment and to mitigate the impacts of Covered Activities under the ITP. The SMAs will be collaboratively managed by DCP and BLM in accordance with CMAs, the Federal Land Policy and Management Act, and the Las Vegas Resource Management Plan. The act also defines restrictions and prohibited land uses for the SMAs.

1.9.5 Nevada Revised Statutes

In 1969, revision of a Nevada Revised Statute expanded the state's requirement to classify wildlife; reptile classification became either protected or unprotected. Currently, protected species may be further classified as sensitive, threatened, or endangered. Policies and regulations necessary to the preservation, protection, management, and restoration of wildlife and habitat are established by the Nevada Board of Wildlife Commissioners through adoption of rules and regulations as set forth in the Nevada Administrative Code.

The desert tortoise has been classified as protected since 1969 (NRS 501.110) and is further classified as threatened (NAC 503.080) with protective regulations primarily afforded in NACs 503.090 and 503.093. Six plant species occurring in Clark County are listed as critically endangered by the State of Nevada (NRS 527.270, 527.050). These include the Las Vegas bearpoppy (*Arctomecon californica*), threecorner milkvetch (*Astragalus geyeri* var. *triquetrus*), halfring milkvetch (*Astragalus mohavensis* var. *hemigyryus*), unusual catseye (*Cryptantha insolita*), sticky buckwheat (*Eriogonum viscidulum*), and Blue Diamond cholla (*Cylindropuntia multigeniculata*). As such, "no member of its kind may be removed or destroyed at any time by any means except under special permit issued by the state forester." The Nevada Division of Forestry also regulates the collection of cactus and yucca through permit requirements under NRS 527.070.

Early in the HCP planning process, the County and the Cities decided that the most practical, efficient, and fair way of providing long-term financing for the HCP would be the imposition of a development fee on development of property in Clark County, payable when developed and subject to permitting by Clark County. However, the laws of the state of Nevada did not authorize the imposition of such a fee. Therefore, during the 1991 session of the Nevada State Legislature, Clark County proposed an addition to Chapter 244 of the NRS, which would allow such an imposition.

On May 10, 1991, the legislature passed NRS 244.386, which allowed the imposition of development fees to be utilized exclusively for the conservation of "species or subspecies of wildlife that has been declared endangered or threatened pursuant to the Federal Endangered Species Act." During the 1995 and 1997 sessions of the legislature, NRS Section 244.386 was further amended to provide that the development fee could be imposed and expended upon conservation measures affecting any and all species "which have been determined by a committee, appointed by the board of county commissioners, to be likely to have a significant impact upon the economy and lifestyles of the residents of the county, if listed as threatened or endangered." This allowed the preparation and implementation of the MSHCP and this MSHCP Amendment, which addresses both listed and currently unlisted species.

1.9.6 Local Ordinances

The Permittees will approve the MSHCP Amendment prior to its submittal to the USFWS. In addition, Clark County and the five Cities applying for the section 10(a)(1)(B) permit will adopt ordinances that facilitate the implementation of the MSHCP, including the imposition of a

mitigation fee of \$550 per gross acre for development permits for all non-federal property located within Clark County. Property owners will be required to complete a land disturbance report prior to the issuance of a development permit.

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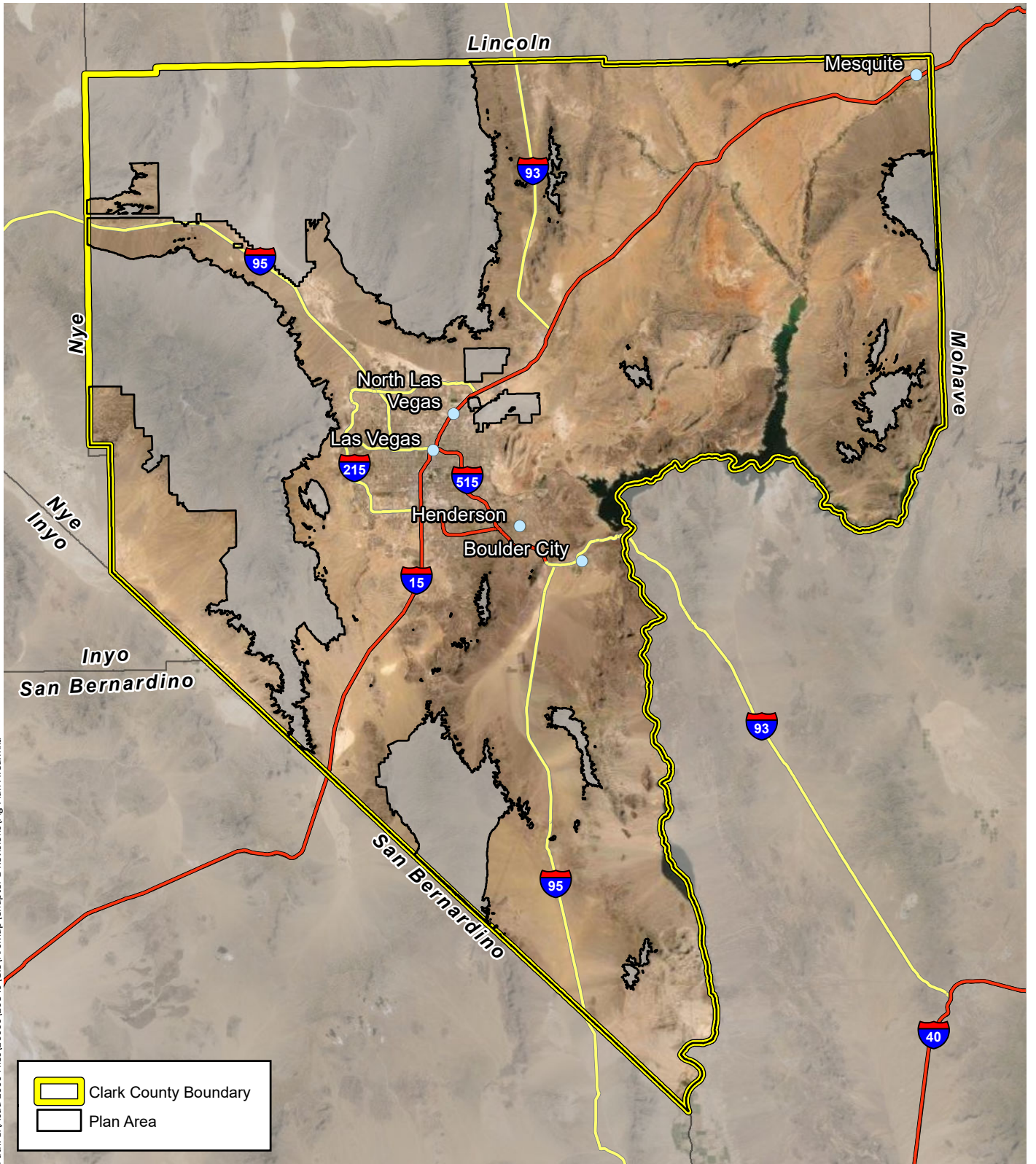
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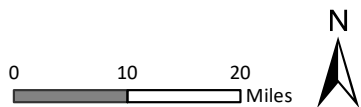


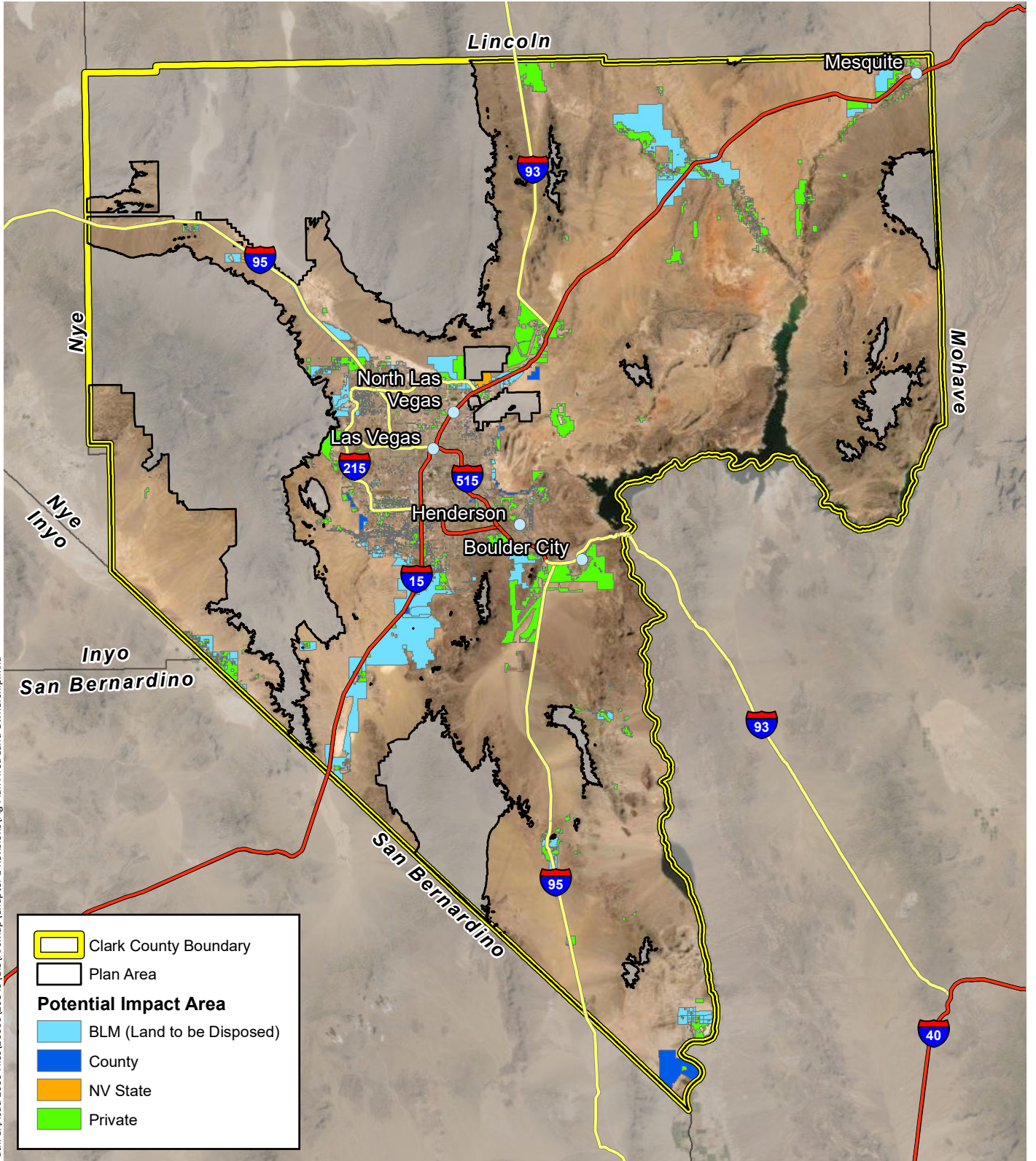
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Sources: Vivid Maxar 9/29/2020, WRA | Prepared By: czumwalt, 10/27/2021

Figure 1-1. Plan Area

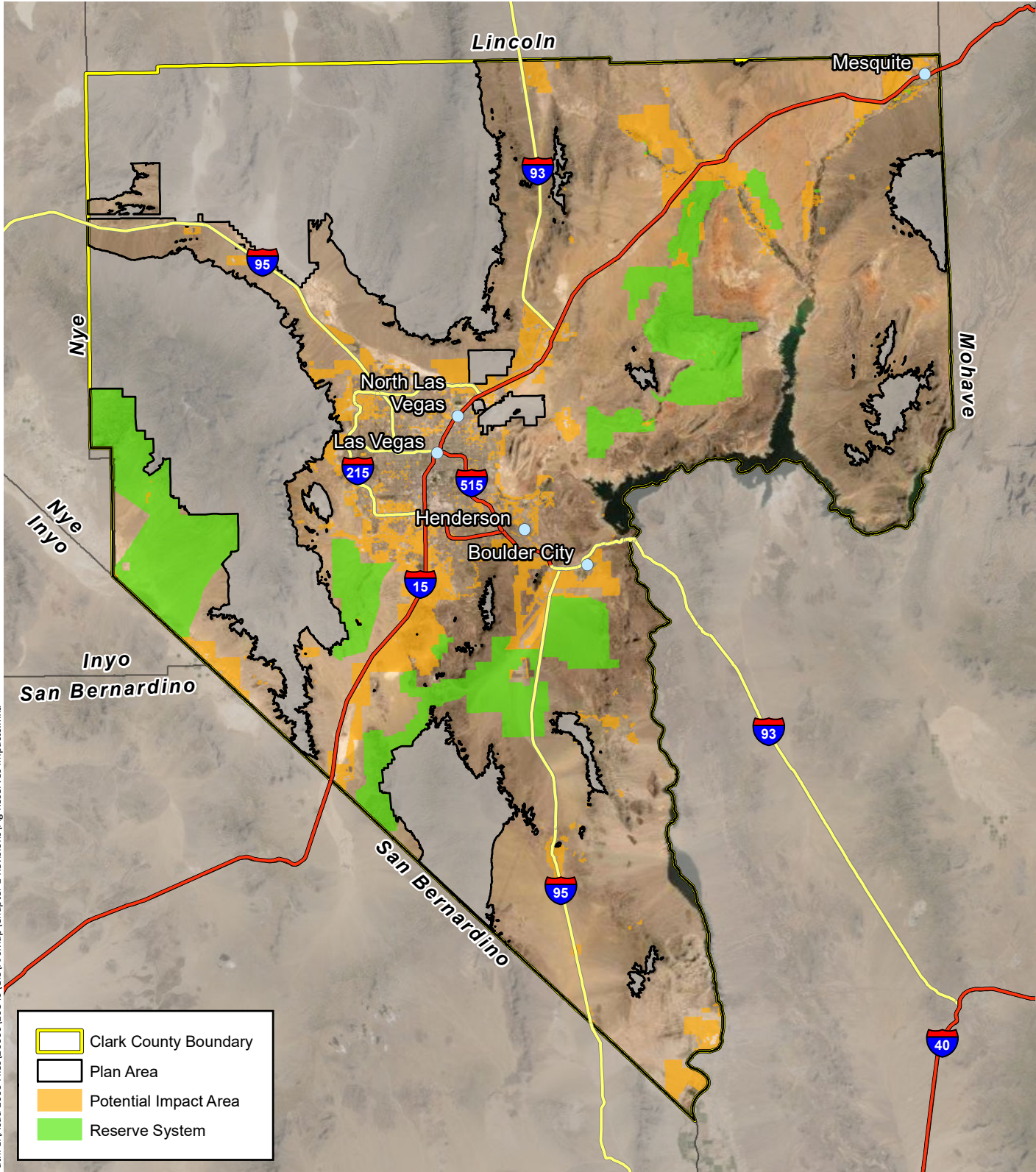
Clark County MSHCP Amendment
Clark County, Nevada





Sources: Vivid Maxar 9/29/2020, WRA | Prepared By: czumwalt, 10/27/2021

Figure 1-2. Land Ownership within the Potential Impact Area



Sources: Vivid Maxar 9/29/2020, WRA | Prepared By: czumwalt, 10/27/2021

Figure 1-3. Potential Impact Area and Reserve System