

Chapter 1

Purpose and Need for Action

1.1 Introduction

Clark County; the Cities of Las Vegas, North Las Vegas, Boulder City, Mesquite, and Henderson; and the Nevada Department of Transportation (Applicants) have prepared a Multiple Species Habitat Conservation Plan (MSHCP) and Environmental Impact Statement (EIS) for Clark County, Nevada. The MSHCP/EIS was prepared in cooperation with the Clark County Implementation and Monitoring Committee (I & M Committee), the United States Fish and Wildlife Service (USFWS), the Nevada Division of Wildlife (NDOW), the United States Bureau of Land Management (BLM), the United States National Park Service (NPS), the United States Forest Service (USFS), the U.S. Geological Survey Biological Resources Division (BRD), the United States Environmental Protection Agency (EPA), the University of Nevada, Las Vegas (UNLV), the University of Nevada, Reno (UNR), the Biological Resources Research Center at UNR (BRRC), the Nevada Natural Heritage Program (NNHP), the Nevada Division of Forestry (NDF), the Southern Nevada Water Authority (SNWA), and Utah State University (USU) (collectively, the Participants). The Draft MSHCP/EIS was prepared in accordance with the provisions of the Federal Endangered Species Act (ESA), the National Environmental Policy Act (NEPA).

The Applicants were responsible for preparation of the MSHCP while the USFWS has acted as lead agency responsible for managing the preparation of the EIS.

The MSHCP is intended under Section 10(a) of ESA to support the issuance, by the USFWS, of a permit or permits (Section 10(a) Permit) which would:

- Allow the “take” of threatened or endangered species resulting from otherwise lawful activities on non-Federal properties within the county; and
- Allow the “take” of threatened or endangered species that are currently unlisted but may become listed in the future.

The Federal actions contemplated to result from the process are the issuance of Section 10(a) Permits and possible modifications to the General Management Plan (GMP) of the NPS, the Resource Management Plan (RMP) of the BLM, and the Forest Plan (FP) of the USFS to assure consistency among the GMP, the RMP, the FP, and the MSHCP.

The MSHCP and the resultant Section 10(a) Permit are designed:

- To allow the incidental take of Covered Species, as hereinafter defined,
- To reduce the likelihood of the listing of additional species located in Clark County as threatened or endangered,
- To allow private, local municipal, and state landowners relief from having to process future permits for take of species covered in the plan that are listed under the ESA or protected by the State of Nevada,
- To provide Federal agencies and public land users streamlined review under Section 7 of ESA,
- To authorize Section 10(a)(1)(A) permits consistent with the MSHCP by letter from the USFWS (the applicant would submit resumes and protocols for surveys or activities), and
- To provide assurances that the take of ESA listed migratory birds named on the incidental take permit will not be in violation of the Migratory Bird Treaty Act, provided that the incidental take permit remains in effect.

This permit also constitutes a Special Purpose Permit under 50 *Code of Federal Regulations* (CFR) 21.27 for the take of ESA listed birds in the amount and/or number and subject to the terms and conditions specified herein. Any such take will not be in violation of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703-712). Unlisted birds that are covered by the MSHCP are not covered by the Special Purpose Permit and may be taken only if such take is not in violation of the Migratory Bird Treaty Act. This Special Purpose Permit will be valid for a period of three years from the effective date of the Section 10(a)(1)(B) Permit, provided that the permit also remains in effect for that period. The Special Purpose Permit will be renewed automatically, provided that Clark County continues to fulfill its obligations under the MSHCP and its Implementing Agreement. Each automatic renewal will be valid for the maximum time period allowed by 50 CFR 21.27 or its successor at the time of renewal.

The MSHCP and EIS are combined and presented under a single cover by Clark County on behalf of the Applicants and the USFWS to facilitate public understanding of the project and to expedite approval of Section 10(a) Permits. Expediting completion of the

MSHCP is intended to maximize prospects for long-term protection for habitats located in Clark County as well as the many species of plants and animals which inhabit those areas and to minimize economic disruption caused by listing of additional species by accomplishing early implementation of the terms of the MSHCP.

The MSHCP is an extension of the effort begun with the Clark County Desert Conservation Plan (DCP), which was prepared in response to the Federal listing of the desert tortoise as a threatened species. Whereas the DCP focused primarily on the conservation of the desert tortoise, the intent and purpose of the MSHCP is to establish a means to address the conservation needs of the entire range of biological resources within Clark County. The provisions of the DCP have been integrated into the MSHCP, and if approved by the USFWS, the MSHCP will supersede the provisions of the DCP.

The key purpose of the MSHCP is to achieve a balance between:

- Long-term conservation and recovery of the diversity of natural habitats and native species of plants and animals that make up an important part of the natural heritage of Clark County; and
- The orderly and beneficial use of land in order to promote the economy, health, well-being, and custom and culture of the growing population of Clark County.

In addition, the MSHCP has been designed to:

- Provide substantial recovery and conservation benefits to species and ecosystems in Clark County;
- Maximize flexibility and available options in developing mitigation and conservation programs;
- Reduce the economic and logistical burden of these programs on individual landowners and state and Federal land managers by distributing their impacts in a fair and effective manner;
- Reduce uncoordinated decision making, which can result in incremental habitat loss and inefficient project review;
- Provide the Applicants with long-term planning assurances and increase the number of species for which assurances can be given;
- Bring a broad range of activities under the permit's legal protection;
- Reduce the regulatory burden of ESA compliance for all affected Participants.

Implementation of the conservation measures in the MSHCP is anticipated to be a cooperative effort among the Applicants and many of the Participants, including but not limited to the USFWS, the BLM, the USFS, the NPS, the Department of Defense (DOD), NDOW, NDF, and other Federal and state land managers and regulators.

Nothing in this document is intended to imply that private property rights, which are otherwise compensable under the U.S. Constitution or laws of the U.S. or the State of Nevada if appropriated by any local, state, or Federal authority, shall not be compensated. Any property owner whose rights have been appropriated is free to take appropriate action pursuant to the Constitution and laws of the U.S. and the State of Nevada. This applies to all I & M Committee, State, and Federal actions.

1.2 Purpose and Need for Action

1.2.1 Purposes of the MSHCP

Phase 1 of the MSHCP process is set forth in this document. The Applicants anticipate that they will submit additional phases or amendments to this document over the next several years and request coverage under the Section 10(a) Permit(s) as more information and data regarding Evaluation Species, defined hereinafter, are accumulated and analyzed. The MSHCP, when it is completed (that is, after additional phases or amendments are approved by the I & M Committee, the USFWS, the Board of County Commissioners, and the City Councils), is designed to address several key project purposes and related objectives, some of which will be addressed in the additional phases or amendments necessary to deal appropriately with all habitats and those species chosen by the Applicants to be covered by Section 10(a) Permit(s). These purposes and objectives focus on the need to:

- Undertake multiple-species, ecosystem-based planning for Clark County that would meet the statutory and regulatory requirements of ESA and NEPA and the requirements of the Region 1 Guidelines and policies.
- Develop a county-wide conservation strategy and management program in a manner that would provide an alternative to current single-species conservation efforts by formulating a regional plan that provides for multiple-species and ecosystem conservation and management.
- Provide for economic, recreational, and other uses meeting the social and economic needs of the residents of the county.

- Complete a conservation plan that addresses the ESA Section 10 criteria for all Covered Species and that treats all such Covered Species as though those species were listed for purposes of this plan, thereby providing for future incidental take of those species.
- Complete a conservation plan that, by addressing the habitat needs of the species covered by the MSHCP through protection and management of habitat, effectively mitigates future potential impacts on and assists in the recovery of a broad range of other species residing in all of the habitats located within the county.
- Provide a conservation strategy that, to the maximum extent practicable, builds upon and integrates the management and conservation plans, which currently exist and are being implemented by state and Federal land managers.
- Consistent with NEPA tiering provisions, the HCP provisions of ESA, and all other applicable laws, address all species and habitats for the effects of development and other lawful activities identified and anticipated in the MSHCP in a manner that may be used and relied upon in conjunction with subsequent environmental reviews.

1.2.2 Objectives of the MSHCP

- Avoidance of the necessity to list additional species in Clark County and the conservation and recovery of currently listed species.
- Assistance to Federal and state land and wildlife managers.
- Comprehensive and coordinated mitigation for species and habitat impacts as a substitute for project-by-project evaluation and mitigation.
- Provision for long-term protection of habitats and species on a regional basis with a focus on source population, reduction of threats and/or impacts on key conservation areas, and enhancement of connectivity between conservation areas.
- Protection of long-term habitat carrying capacity for species by, to the maximum extent practicable, avoiding, minimizing, and mitigating impacts and by assuring that any take allowed will not appreciably reduce the likelihood of the survival and recovery of species covered by the MSHCP.
- Identification and evaluation of the effectiveness of alternative and adaptive habitat management techniques over time and utilizing the Adaptive Management Process (AMP) set forth herein.

- Identification and evaluation of habitats with significant potential for enhancement and restoration.
- Provisions for appropriate development and economic growth within the county compatible with the MSHCP and the needs of the residents of the county.
- Identification of equitable and effective funding and implementing mechanisms adequate to implement recommended actions and achieve the objectives set forth in the MSHCP.
- Early involvement of interested agencies, landowners, managers, and other stakeholders in advance of proposals for specific conservation strategies in an effort to minimize conflicts and delays and facilitate appropriate public and private development.

1.2.3 Goals and Objectives of Phase 1 of the MSHCP

This document is Phase 1 of the MSHCP. The goals and objectives of Phase 1 do not include funding for specific conservation measures for all species of concern located within Clark County nor do those goals and objectives include securing permit(s) for all such species. Rather, this document is intended to meet the specific goals and objectives set forth hereinafter and to prepare the Applicants and Participants for future phases of the MSHCP which will deal with more difficult issues and habitat- and species-related problems. Preparation of Phase 1 has allowed the Applicants and Participants to review the landscape which makes up Clark County, to better understand the relationship among the various ecosystems within the county, to determine which species inhabit those ecoregions, to determine stressors and threats applicable to each ecoregion and species, to review existing rules and regulations in place to address and reduce the effects of such stressors and threats, and to make preliminary determinations regarding conservation measures which might be funded to allow the USFWS to issue permit(s) for the species covered hereunder. The primary emphasis of Phase 1 will be to fund measures which further conservation goals for Covered Species. The specific goals and objectives of this Phase 1 of the MSHCP are:

- **Methodology:** To develop and to adopt a biologically sound methodology to be used to analyze the status of habitats and species within Clark County.
- **Species and Habitats:** To identify all habitats and species of concern located within Clark County; to collect and present an encyclopedic and complete database of existing data and information regarding those species and habitats; to identify gaps in database coverage and information; and to prioritize conservation actions regarding

those species and objectives to best serve the interests of the residents of Clark County.

- GIS: To develop an accurate geographic information system (GIS) of management areas within Clark County and to present such information in a form that can be utilized for current and future phases of the MSHCP. It is hoped that this information will be used by policy makers, land managers, regulators, and researchers; to insure to the maximum extent practicable compatibility with standard database formats and to utilize consistent ecosystem/community classifications with other regional ecosystem-based planning efforts in the Southwest.
- Library of Laws, Rules, and Regulations: To collect a complete library of all state, Federal, and local laws, regulations, and management plans, policies, and programs currently in effect which affect conservation planning and implementation within Clark County and to assure that such information is available to the public.
- AMP: To develop, reach agreement upon, and propose measures to implement a long-term adaptive management and monitoring program which may be useful and informative to policy makers, landowners, and land managers in reaching land use, development, and conservation decisions in the future.
- Stressors and Threats: To identify and agree upon alleged stressors and threats to species and habitats within Clark County.
- Analyze Laws, Rules, and Regulations: To review and analyze existing laws, regulations, management plans, policies, and programs to determine whether such laws, regulations, management plans, policies, and programs appear to be sufficient to deal with the stressors and threats to the habitats and species.
- Conservation Measures: To identify apparent or proposed additional conservation and recovery measures not provided for under current laws, regulations, management plans, policies, and programs for analysis, taking into consideration conflicting economic, social, and cultural needs and private property rights of the residents of Clark County, the Constitution, and local, state, and Federal laws.
- Stakeholders: To identify additional stakeholders, participants, and partners who could be affected by or are likely to be interested in apparent or proposed additional conservation measures and to invite those who are interested to participate in this and future phases of the MSHCP process.
- Implementation Plan: To agree upon and adopt plans to implement conservation measures which reduce the likelihood of future listings in the County which meet the

legal requirements for incidental take permits and which will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.

- **Coordination:** To formalize intra-agency and intra-county coordination of local land use and zoning plans, of regional strategic planning goals, with the Federal land exchange process, and with the Public Lands Management Act, to ensure consistency and complementarity of both short- and long-term activities with the goals and objectives of the MSHCP.
- **Listed Species:** To identify those listed species for which current conservation plans, policies, and programs appear adequate or for which additional conservation and recovery measures have been identified and are generally agreed upon and which can be assisted by financial contributions from Clark County.
- **Species Not Currently Listed:** To identify those species which are likely to be listed in the near future and which, if listed, are likely to have a significant economic or social impact upon the residents of Clark County; to identify conservation measures which are likely to substantially reduce the likelihood of such listing and to result in the conservation and recovery thereof; to commit to the implementation of such conservation measures; and to secure incidental take permits should such species be listed in the future that would become effective upon the listing of such species (Prelisting Agreement).
- **Permits and Agreements:** To apply for and secure Section 10(a) Permits which will allow the incidental take of the Covered Species.
- **Prioritize Evaluation Species:** To identify and prioritize those species and habitats which should be addressed in future phases of the Clark County Multiple Species Habitat Conservation Plan.
- **Measurable Biological Objectives:** To identify measurable biological objectives consistent with the overall goal of no net unmitigated loss or fragmentation of habitat and to maintain stable or increasing populations of Covered Species in Intensively Managed Areas and Less Intensively Managed Areas.

1.2.4 Goals and Objectives of Subsequent Phases of the MSHCP

Subsequent phases of the MSHCP may address conservation needs of species and ecosystems within Clark County that are not proposed for coverage by the MSHCP. Some of these needs have been anticipated through the identification and prioritization of species needing further evaluation as to their potential for inclusion in the MSHCP. Phase 2 may

provide for the development of additional information and/or management actions that will allow inclusion of Evaluation or Watch List Species under the incidental take provisions of the MSHCP. Additionally, Phase 2 may provide the framework for comprehensive watershed-based management planning to deal with the complex issue of the aquatic associated species, habitats, and land uses in the Muddy and Virgin Rivers and Las Vegas Wash.

1.2.5 Purposes of the Federal Action

1.2.5.1 USFWS

The purpose of the proposed Federal action by the USFWS is the issuance of a permit or permits authorized pursuant to Section 10(a) of the ESA that would authorize the incidental take of Covered Species on non-Federal lands within Clark County, Nevada, for a term of 30 years. The USFWS is to determine whether, and under what conditions, the 30-year Section 10 Permit(s) proposed by the Applicants meet the requirements of ESA and to assure that Covered Species are protected and conserved.

1.2.5.2 BLM, NPS, and USFS

The purpose of the Federal actions on the part of the BLM, NPS, and USFS is to make the provisions of the BLM RMP, NPS GMP, and USFS GMP and Memorandum of Understanding (MOU) consistent, to the maximum extent possible, with the provisions of the MSHCP.

1.2.6 Need for the Federal Action

1.2.6.1 USFWS

The need for the proposed Federal action on the part of the USFWS is to (1) conserve listed and unlisted species and their habitats and (2) ensure compliance with the Endangered Species Act and other Federal laws and regulations.

1.2.6.2 BLM, NPS, and USFS

The need for the proposed Federal actions by BLM, NPS, and USFS is, to the maximum extent possible, to make the provisions of the BLM RMP, NPS GMP, and USFS GMP and MOU consistent with the MSHCP in order to encourage or provide incentives for (but not mandate) those Federal agencies to implement the suggested conservation measures set forth in the MSHCP.

1.2.7 Benefits of the Proposed Federal Actions

The benefit to Clark County and other non-Federal plan Applicants as well as Participants is the likelihood that the need to list additional species within Clark County could be significantly reduced and the assurance that otherwise lawful activities on non-Federal lands within the plan area could be undertaken without the need for individual review under ESA.

The benefit to Federal land managers and to those who use Federal lands (e.g., recreational users, sports enthusiasts, holders of grazing leases) is the likelihood that the need to list additional species could be avoided, thus making consultation with the USFWS pursuant to Section 7 unnecessary, and that existing Section 7 requirements could be streamlined by Federal land managers acting consistently within the provisions of the MSHCP.

1.3 Decisions Required

Before issuing a 30-year incidental take permit for each of the Covered Species, the USFWS must affirmatively answer each of the following questions as required by Section 10(a) of the ESA:

- Is the proposed take incidental to an otherwise lawful activity?
- Are the impacts of the proposed take minimized and mitigated to the maximum extent practicable?
- Has the applicant ensured that adequate funding will be provided to implement the measures proposed in the HCP?
- Is the proposed take such that it will not appreciably reduce the likelihood of the survival and recovery of the species in the wild?
- Are there any other measures that should be required as a condition of the permit?

After reviewing the MSHCP and responding to these questions as required by ESA, the USFWS may issue a permit conditioned on implementation of the MSHCP submitted by the applicant; issue a permit conditioned on implementation of the submitted MSHCP together with other measures specified by the USFWS; or deny the permit application.

1.3.1 U.S. Fish and Wildlife Service

The USFWS must conduct an internal consultation under Section 7 of the ESA to ensure that actions relative to the Clark County MSHCP incidental take Section 10(a) Permit will not jeopardize the continued existence of threatened, endangered, or Covered Species or result in destruction or adverse modification of designated critical habitat.

The MSHCP also proposes to include unlisted species as Covered Species under its provisions. Unlisted species, to be included as a Covered Species and to receive the benefit of assurances under the USFWS's "No Surprises" policy, must be treated as if they were listed pursuant to ESA and be adequately addressed in the MSHCP to meet the criteria for issuance of Section 10(a) Permit(s). In addition to meeting the criteria listed above for listed species, the USFWS must find that the provisions set forth in the MSHCP would not significantly contribute to the subsequent need to elevate an unlisted Covered Species to candidate or emergency listing status (USFWS Guidelines, August, 1995).

The USFWS must also comply with the National Environmental Policy Act of 1969, which requires Federal agencies to evaluate the effects of their proposed actions on the human environment.

1.3.2 Amendment to the Lake Mead National Recreation Area (NRA) General Management Plan

In order to implement the MSHCP on the Lake Mead National Recreation Area, the General Management Plan for the Lake Mead NRA needs to be amended to include the following Designation of Environmental Protection Subzones, Designation of Historic/ Archeological Zone, and Approved Road System Changes.

- The Desert Wildlife Management Area would be listed as a Natural Zone, Environmental Protection Subzone, which overlies or replaces a number of subzones listed in Table 7 and mapped on page 21 of Volume 1 of the GMP.
- The Historic/Archeological Zone would be expanded to include all the area in the Spirit Mountain/Avi Kwa Ame Traditional Cultural Property and surrounding areas. These areas include GMP designated areas 3 and 4 (natural environment subzone), 5 (environmental protection subzone), and 6 (outstanding natural feature subzone). This area emphasizes preservation, protection, and interpretation of cultural resources and their settings.

- As stated in the GMP, vehicle use in the recreation area is restricted to paved and NPS designated approved roads.

With these changes, the Lake Mead NRA GMP will be consistent with the conservation actions in the MSHCP as needed to protect and conserve the Covered Species.

The decision to amend the Lake Mead NRA GMP will be a non-significant amendment to the current GMP. This will be a NPS decision, regardless of the decision made by the USFWS to issue the 10(a) permit and allow the implementation of the MSHCP. Consultation is required with the State Historic Preservation Officer and any Federally recognized tribes culturally associated with the area prior to any management action in these areas.

1.4 NEPA Responsibilities

This document is being prepared as Phase 1 of a Multiple Species Habitat Conservation Plan in support of an application for a Section 10(a) Permit pursuant to the provisions of Section 10(a) of the ESA. It is anticipated that additional phases of the MSHCP will follow after additional data collection and conservation information has been accumulated sufficient to move species from the category of Evaluation Species to the category of Covered Species as those terms are defined hereinafter. It will also serve as an Environmental Impact Statement as part of the public process followed by the U.S. Fish and Wildlife Service in making their determination regarding whether to issue permit(s) as required by NEPA.

The EIS will also be used as a programmatic document to analyze the addition of Evaluation Species to the species that are covered under the MSHCP. The preparation of this document follows the guidelines in the Endangered Species Habitat Conservation Planning Handbook (USFWS 1996) and the NEPA Reference Handbook (USFWS 1999). Finally, it may serve as a NEPA document as part of the public process followed by the BLM, USFS, and NPS or other Federal agencies, as appropriate, to assist those Federal agencies in making a determination whether or not to make the provisions of the BLM RMP, NPS GMP, and USFS GMP and MOU consistent, to the maximum extent possible, with the provisions of the MSHCP.

This EIS has been prepared in compliance with NEPA to identify and evaluate the potential impacts of the proposed USFWS action. Issuance of the Section 10(a) Permit(s), as proposed, will require that the Applicants, as well as many of the state and Federal land managers, enter into an Implementation Agreement with the USFWS regarding implementation of the MSHCP. No other formal Federal, state, or local permits or approvals are required prior to the USFWS's decision.