

9. IMPLEMENTATION AND ADMINISTRATION

This chapter describes the structure, roles, rules, and processes governing implementation and administration of the Clark County Multiple Species Habitat Conservation Plan (MSHCP) Amendment (MSHCP Amendment). Implementation of the MSHCP Amendment will begin upon execution of the Implementing Agreement (IA; Appendix X) and issuance of the Section 10(a)(1)(B) incidental take permit (ITP) and adoption of local implementing ordinances.

9.1 Implementation Structure

9.1.1 Permittees

The entities that receive incidental take authorization for activities covered under the MSHCP Amendment are referred to collectively as the “Permittees.” The Permittees are Clark County, Boulder City, City of Henderson, City of Las Vegas, City of Mesquite, and City of North Las Vegas. Permittees will be responsible for ensuring Covered Activities under their land use authorities are in compliance with the MSHCP Amendment and ITP and shall ensure all local land use ordinances are consistent with the MSHCP Amendment. Permittees shall submit to the DCP at the frequency described in the interlocal agreement a summary of Covered Activities proposed including location and number of acres to be disturbed or developed for reporting of take as described below in Section 9.6.2.

9.1.2 Executive Committee

The Executive Committee will consist of representatives appointed by each of the Permittees. Each Executive Committee member has authority to speak on behalf of their respective organization. The members and terms of the Executive Committee will be documented in an interlocal agreement between the Permittees. The Executive Committee is the established forum for the Plan Administrator to provide regular updates to the Permittees on implementation of the MSHCP Amendment and ITP, to review financial expenditures, and to discuss significant issues requiring input from Permittees (such as a major amendment or litigation).

9.1.3 Plan Administrator

The Desert Conservation Program (DCP) currently administers the program. A different entity could serve this role in the future if the Permittees and Executive Committee agree, and the change is formalized through an interlocal agreement and notification to the USFWS.

The DCP will employ a Program Administrator to lead implementation and administration. The Program Administrator will report to the Plan Administrator and will be responsible for implementation, coordination, oversight and reporting, and other standard administrative activities to carry out the MSHCP Amendment on a daily basis. Responsibilities of the Program Administrator include ensuring that the Conservation Strategy and Mitigation and Adaptive Management Program (MAMP) are effectively implemented, as well as work planning, budgeting, reporting, and public outreach.

Detailed Roles and Responsibilities for the DCP:

1. Maintain administrative capacity, including office space and qualified staff, and oversee contractors.
2. Establish and manage budgets and oversee expenditures in accordance with the Budget Preparation process described below.

3. Contract and coordinate with the Science Advisor Panel.
4. Coordinate as the primary link with stakeholders and the public:
 - a. Coordinate with Permittees to ensure compliance with the newly approved MSHCP Amendment and ITP, and the updated terms of both the ITP and the IA.
 - b. Coordinate with USFWS for compliance reporting as described below in Section 9.6.2 and as needed to ensure proper implementation of the MSHCP Amendment.
 - c. Coordinate with the Nevada Department of Wildlife (NDOW) and Nevada Division of Forestry (NDF) as needed for species information and management.
 - d. Coordinate with the Bureau of Land Management (BLM) as described in the IA and Conservation Strategy to ensure proper management of BLM-managed lands within the Reserve System.
 - e. Coordinate with the community through a public outreach program to raise awareness of and support for the MSHCP Amendment and Reserve System as described in the Conservation Strategy and hold annual symposia to provide updates on the MSHCP Amendment implementation.
5. Consult with the Office of the District Attorney for advice, counsel, and defense of the newly approved MSHCP Amendment against legal challenges.
6. Oversee and manage Plan Amendments.
7. Implement the Conservation Strategy as described in Chapter 6, including:
 - a. Ensure implementation of impact avoidance and minimization measures;
 - b. Manage the Reserve System including land or easement acquisition, oversee habitat restoration planning and implementation, coordination with the BLM to complete the Resource Management Plan revisions and Cooperative Management Agreements (CMAs) as described in the IA, and conduct species and habitat monitoring;
 - c. Identify needs for adaptive management actions and implement as needed; and
 - d. Maintain the monitoring data as described in Chapter 6.
8. Collect MSHCP Amendment disturbance fees.
9. Manage the MSHCP Fund.
10. Implement measures to respond to Changed Circumstances.
11. Ensure regulatory compliance.
 - a. Maintain permits and authorizations.
 - b. Prepare and submit all compliance reporting as described in Section 9.6.2 including:
 - i. Track take of species and species habitat.
 - ii. Track habitat conserved, restored, or enhanced in the Reserve System.

9.1.4 MSHCP Fund

All costs associated with MSHCP Amendment implementation and fulfilling roles and responsibilities described above shall be borne by the fund (MSHCP Fund) established to implement the MSHCP Amendment, or by funds made available through Southern Nevada Public Land Management Act (SNPLMA) and other sources. As described in Chapter 8 Financial Assurances, the MSHCP Fund can accept funding from a variety of sources and is not limited to

funds from disturbance fees. Additional funding sources may include County charitable license plate program or grants, and/or ESA section 6 funds. MSHCP Fund monies from the existing MSHCP will be carried over to the MSHCP Amendment.

9.1.5 Budget Preparation

Under direction of the Plan Administrator, the Program Administrator will prepare an annual budget. The Program Administrator may solicit funding recommendations from the Executive Committee, USFWS, BLM, and NDF, or other agencies as appropriate. The annual budget will be presented to USFWS and approved by the Board of County Commissioners prior to implementation.

9.1.6 Science Advisor Panel

The Science Advisor Panel is contracted by the DCP to ensure that the MSHCP Amendment is designed and implemented consistent with the best available scientific information and to provide independent scientific review of MSHCP Amendment actions and decisions. The panel will be involved in the MAMP through review of technical documents, building scientific capacity and resources for the MAMP, and providing a review of adaptive management recommendations.

9.1.7 Wildlife Agencies

USFWS is the permitting agency pursuant to the ESA and implementing regulations (citation). USFWS will ensure that implementation is consistent with regulatory authorizations issued pursuant to the MSHCP Amendment, providing input on implementation to the Executive Committee and DCP. USFWS retains the responsibility for overseeing and enforcing the terms and conditions of these regulatory authorizations, and for modifying, suspending, or revoking them as needed. USFWS Las Vegas Field Office oversees implementation and coordination with the DCP, with USFWS Regional Office involvement and direction as necessary. USFWS will:

1. Participate in the Budget Preparation.
2. Review and approve MSHCP Amendment monitoring protocols.
3. Review and approve any modifications to the Avoidance and Minimization Measures described in Chapter 6.
4. Be signatory to the IA for the MSHCP Amendment and comply with all agreed upon roles and responsibilities.
5. Be signatory to CMAs for federal lands in the Reserve System and comply with all agreed upon roles and responsibilities.
6. Coordinate with DCP on adaptive management actions.

Although NDOW is not a permitting agency, NDOW is included as a wildlife agency for its cooperative role in implementation of the MSHCP Amendment. NDOW will be signatory to the IA for the MSHCP Amendment and comply with all agreed upon roles and responsibilities. NDOW will:

1. Coordinate with the DCP on Covered Wildlife Species survey and occupancy data within the Plan Area, or data outside the Plan Area that may affect the proper functioning of the MSHCP Amendment.
2. Participate in the review of annual budget or funding recommendations as needed.
3. Alert the DCP to disease outbreaks or other significant disease information with potential harm to Covered Wildlife Species populations such as documentation of a potential new disease threat.

9.1.8 Land Management Agencies

BLM will be signatory to the IA for the MSHCP Amendment and comply with all agreed upon roles and responsibilities. BLM will collaborate with USFWS and the DCP to develop and implement CMAs for each of the Special Management Area (SMA) Reserve Units of the Reserve System to enable cooperative management of BLM-administered lands that are part of the Reserve System.

9.2 Implementing Agreement

The IA (**Appendix X**), signed by the Permittees, USFWS, BLM, NDF and NDOW (the Parties), governs administration and implementation of the MSHCP Amendment. The IA ensures the cooperative implementation of the MSHCP Amendment by the Parties, describes remedies and recourse available should any party fail to perform its obligations set forth in the IA, and provides legal and procedural assurances to the Permittees.

All Parties involved in implementation of the MSHCP Amendment are responsible for working together to ensure efficient and effective implementation of the MSHCP Amendment and will work in good faith to resolve any issues that may arise during implementation. The Parties will notify and negotiate in accordance with the informal dispute resolution process described in the IA (Section 8.A), unless another resolution process is agreed upon or one party has initiated administrative proceedings or suit in federal court. If any issues cannot be resolved through negotiations, the Parties will consider non-binding mediation and other alternative dispute resolution (ADR) processes in accordance with the ADR policies of the Eight Judicial District Court of Clark County.

9.3 Local Implementing Ordinances

The Permittees will each adopt ordinances, as necessary, to ensure implementation of the MSHCP Amendment in accordance with the MSHCP Amendment, IA, and ITP. The ordinances may reference the ITP, IA, MSHCP Amendment, and the local jurisdiction's obligations under the MSHCP Amendment. Permittees will commit in an interlocal agreement to developing ordinance language that is consistent and similar to that of other Permittees' ordinances.

9.4 Receiving Take Authorization

Participation in the MSHCP Amendment by private property owners is voluntary and initiated with an application for take authorization (Land Disturbance Form) submitted by a property owner or project proponent. As part of the grading permit process, the applicant will submit a Land Disturbance Form with appropriate fee payment. Each of the Permittees will be responsible for the review and approval process for project applications within their jurisdiction. If a Permittee determines that the project proponent has complied with the terms of the MSHCP Amendment, primarily by submitting the required fees and including and implementing all appropriate avoidance and minimization measures, then upon receipt of the fees, the Permittee will grant take authorization to the property owner or project proponent.

Project proponents of Covered Activities that are not subject to the grading permit process can apply for a Participation Agreement/Certificate of Inclusion, to be processed by the DCP. The Participation Agreement/Certificate of Inclusion provides incidental take coverage under the MSHCP Amendment/ITP with a commitment, enforceable by the DCP and the USFWS, to abide by the applicable provisions and terms of the MSHCP Amendment/ITP. Once accepted, the project proponent is considered a Certificate holder. A standardized Participation Agreement/Certificate of Inclusion application form will be made available on the DCP website.

Project proponents will submit the completed form to the DCP for review and approval. A Participation Agreement/ Certificate of Inclusion will require payment of MSHCP Amendment fees. Approved parties cannot extend their take coverage to third-party project proponents or any other entity wishing to implement an MSHCP Covered Activity.

9.4.1 Non-compliance

The DCP may suspend or revoke a Participation Agreement/Certificate of Inclusion for any participant that fails to comply with its terms and conditions or with ITP avoidance measures. The DCP will notify participant of non-compliance(s). If after 30 days the notified participant has not corrected the non-compliance(s), DCP will notify USFWS, who will determine whether the participant has engaged in an unauthorized taking of a listed species. If the DCP and USFWS determine that it is necessary to revoke or suspend take authorization or a Participation Agreement/Certificate of Inclusion, DCP will notify the participant explaining the grounds for the suspension or revocation. This notification may describe any additional actions that the approved party can take to maintain the permits, if applicable. The Permittees will not be deemed out of compliance for failure of another property owner or project proponent (such as a Certificate holder) to comply with its MSHCP Amendment/ITP obligations.

9.5 Migratory Birds

The Migratory Bird Treaty Act of 1918 (MBTA; 16 U.S. Government Code [USC] 703-712), as amended, prohibits non-permitted taking, killing, or possessing migratory birds or any parts, nests, or eggs of such birds. This MSHCP Amendment and associated ITP also constitutes a Special Purpose Permit (50 CFR 21.95) for take of bird Covered Species listed under the federal Endangered Species Act (ESA) as described in the MSHCP Amendment and ITP.

The Bald and Golden Eagle Protection Act of 1940 (BGEPA; 16 U.S. Government Code [USC] 668-668d), as amended, prohibits the non-permitted take, killing and commerce of bald or golden eagles, including possessing their parts, feathers, nests, or eggs. No take of golden eagle (*Aquila chrysaetos*) is anticipated, and the MSHCP and ITP do not constitute a Bald and Golden Eagle Act permit. Any take of ESA-listed birds except for golden eagle, will not be a violation of the MBTA. Should any of the bird Covered Species become listed under the ESA during the term of the ITP, the ITP would also constitute a Special Purpose Permit under the MBTA for those species. The Conservation Strategy will also provide a significant benefit to the migratory bird resources, a requirement of the Special Purpose Permit. Compliance with the MSHCP Amendment is consistent with MBTA Special Purpose Permit requirements.

9.6 Conservation Strategy

The Reserve System serves as the primary means of mitigating the impacts of the Covered Activities on the Covered Species within the Plan Area. Most of the Reserve System consists of BLM-owned and administered land that is managed in collaboration with the Permittees through CMAs. The Southern Nevada Economic Development and Conservation Act (SNEDCA) formally defines the SMAs to be included in the Reserve System as Reserve Units.

The Habitat Quality Index, as described in Chapters 5 and 6, was used to make habitat quality assessments and calculate the Qualified Acreage of Covered Species habitat for each Reserve Unit for mitigation planning purposes. The restoration crediting methodology as described in Chapter 6, will be used to calculate mitigation credit per acre as restoration and enhancement actions are implemented and pre-defined success criteria are achieved.

9.6.1 Reserve Acquisition Process

For the Reserve System outside of federally managed lands, the DCP will acquire properties within the Plan Area for inclusion in the Reserve System by fee title or conservation easement, generally according to the process and steps listed below. Selection criteria for property acquisition will be based on the Biological Goals and Objectives (BGOs), habitat quality indices and mitigation needs as determined by the DCP, in coordination with USFWS. Acquisition will proceed in accordance with applicable law and County procedures and policies. Acquired property may be formally held by Clark County through DCP or other County departments. A complete description of property acquisition criteria and process is available in the Riparian Reserves Management Plan (RRMP), Section 1.1.1, Expansion Criteria, and in Appendix B of the RRMP.

- 1) DCP will determine landowner interest, or a landowner may contact DCP to determine DCP interest
- 2) DCP evaluates property according to the Acquisition Selection Criteria detailed in the RRMP
- 3) DCP ranks property (or conservation easement) acquisitions according to priority criteria
- 4) The County's Department of Real Property Management (RPM)¹ appraises the property
- 5) RPM submits to the County's Long-Range Planning (LRP) committee² for review and approval to send a conditional offer letter to the property owner
- 6) RPM sends landowner offer letter (contingent on appraisal, title report, property inspection, and BCC approval)
- 7) Owner accepts offer (escrow clock begins, **must be closed within 150 days**)
- 8) RPM orders title report
- 9) DCP examine access, leases, encumbrances, etc. and assess compatibility with Reserve System management
- 10) RPM orders appraisal(s)
- 11) RPM submits to LRP to approve purchase prior to consideration by the Board of County Commissioners (BCC)
- 12) RPM/DCP prepare easement document (if conservation easement) or deed (if acquisition)
- 13) RPM records easement or deed to be held by the DCP
- 14) RPM submits to the BCC for approval
- 15) DCP amends RRMP to include newly acquired property.

Land will only be acquired from willing sellers. At no time will the DCP seek to use condemnation or eminent domain to require landowners to sell their property for the purposes of the MSHCP Amendment. Project proponents may propose a land dedication for inclusion in the Reserve System in lieu of paying the MSHCP Amendment fee. The DCP will determine whether the proposed land dedication satisfies the mitigation requirements of the Covered Activity and whether it is consistent with the BGOs and the Conservation Strategy. Gifts of land that satisfy these criteria, as determined by the DCP, can be adopted into the Reserve System; those that do

¹ RPM provides assistance to DCP throughout the acquisition process, and on other related property matters such as acquiring easements, ensuring that DCP follows County and state requirements for property acquisition.

² LRP is an internal County committee consisting of senior management staff from RPM, Assistant County Managers and the County Manager.

not can be sold and the proceeds utilized for the Conservation Strategy, with BCC approval and in accordance with applicable law. Methodology for this determination will be developed in consultation with the Science Advisor Panel and land dedications will be reported in the Annual Compliance Report. The proposal may include restoration and enhancement plans, and a conservation easement, in addition to land dedication. This land dedication provision is likely to apply primarily or entirely to riparian lands as the Reserve System already contains sufficient land area in other ecosystems to satisfy the mitigation requirements. Offers from individuals or other entities to gift land for inclusion in the Reserve System may be accepted by the DCP.

9.6.2 *Stay Ahead Provisions for Riparian Habitats*

The MSHCP Amendment is designed to provide Reserve System lands as mitigation for impacts of Covered Activities. Mitigation is assessed using the habitat quality assessments and restoration crediting methodology described in Chapters 5 and 6 and is tracked relative to impacts by ecosystem type. The Stay Ahead Provision requires that mitigation be implemented before or concurrent with and commensurate with impacts within each ecosystem type. For most ecosystem types, the mitigation land is available within the Reserve System at the start of implementation of the MSHCP Amendment and prior to anticipated impacts. However, mitigation on riparian lands will require acquisitions and conservation easements during implementation, as well as restoration and enhancement of lands already within the Reserve System. The riparian Reserve System will be managed such that lands are brought into the Reserve System or restored at a pace that stays ahead of or concurrent with impacts to riparian habitat such that taking “will not appreciably reduce the likelihood of the survival and recovery of any Covered Species in the wild” (ESA Section 10(a)(2)(B)(iv)).

The DCP will be monitoring compliance with the Stay Ahead Provision. If the DCP determines the Stay Ahead Provision is not being met or is at risk of not being in compliance, the following process and steps will be taken:

- A mitigation deficit of 5% shall be allowed for any ecosystem type. This will provide limited flexibility for meeting the Stay Ahead Provision’ mitigation assessment.
- If a mitigation deficit exceeding the 5% allowance occurs, the DCP will meet with Permittees and USFWS. The DCP may freeze further take authorizations, to determine strategies for coming into compliance with the Stay Ahead Provision.
- A list of potential actions that can be taken by Permittees to regain compliance should be provided to Permittees. Example actions that can potentially be taken include delay further approval of Covered Activities within the ecosystem type that is in mitigation deficit until pending land acquisition agreements are closed; speed delivery from funding sources or partnerships to increase land acquisition; increase outreach to landowners to improve land acquisition; and require project proponents to provide land within the ecosystem type that is in mitigation deficit for the Reserve System in lieu of fees. Covered Activities within the ecosystem type in mitigation deficit may still be approved during the freeze or pause in authorizations if project proponents provide land in lieu of fees that is determined suitable for the Reserve System.
- The freeze of authorizations for Covered Activities and/or acceptance of fee payments will be removed once the DCP and USFWS determine the risk of non-compliance with the Stay Ahead Provision has been eliminated.

9.6.3 *Conservation Easements*

Voluntary, permanent conservation easements on private lands may be used to satisfy mitigation requirements, particularly for the riparian Reserve System. Entities such as the Permittees or land

trusts may serve as the easement holder, but the DCP must be granted the right of enforcement of the easement and access for monitoring. Where the DCP is the easement holder, it cannot also implement enforcement; if a third party is required for enforcement, DCP will serve as the enforcing party and a separate entity will serve as the easement holder. Conservation easements may be purchased from a private party and placed on the land that remains in ownership of the private party, or on Permittee-owned land that is part of the Reserve System. Guidelines and requirements for conservation easements will be set by the DCP, which will define easements as perpetual and voluntary, describe the role of the easement holder outline the contents of an easement and otherwise describe easement characteristics and definitions.

9.6.4 Pre-MSHCP Amendment Reserve System Lands

In order to maintain the Stay Ahead Provision, some lands within the Riparian Reserve System have been enrolled prior to MSHCP Amendment implementation or “pre-permit.” These pre-permit Reserve System lands are owned in fee title by Clark County. There are two types of pre-permit Reserve System lands, those where the purchase was recorded as mitigation under the current MSHCP but no restoration or enhancement activities have occurred, and those which were purchased but not recorded as mitigation under the current MSHCP and intended to build the MSHCP Amendment Reserve System ahead of implementation. Both types of pre-permit Reserve System lands will be included and managed as part of the Reserve System; however, for the former, only restoration and enhancement activities occurring after implementation of the MSHCP Amendment will be recorded as mitigation for the MSHCP Amendment. For the latter, acquisition, restoration, and enhancement will be recorded as mitigation under the MSHCP Amendment. The categorization details for each pre-permit type are described in Chapter 6, [Section 6.X.X](#).

9.7 Monitoring and Reporting

9.7.1 Monitoring and Adaptive Management Plan

Adaptive management is an approach to addressing uncertainty in natural resources management (USFWS 2016). The process entails identifying areas of uncertainty, exploring alternative approaches to meeting management objectives, implementing alternatives, monitoring to learn about the outcomes of management actions, and using results to update knowledge and make further adjustments to management actions as needed (DOI 2009). As such, the adaptive management process relies on the monitoring results and iteratively shapes the monitoring approach, which is why these two elements of the Conservation Strategy are presented together in this section.

The MAMP is an integral component of the MSHCP’s Conservation Strategy. Data collected and analyzed through the MAMP provides information on the Permittees’ compliance with their incidental take permit, progress towards achieving the BGOs, the conservation program’s effectiveness at minimizing and mitigating impacts, and whether adjustments are needed to improve the Conservation Strategy through adaptive management (USFWS 2016). Additionally, the MAMP is designed to assess the status of Covered Species, natural communities, and ecosystem processes within the Plan Area. Each component of monitoring is designed with purpose and to inform MSHCP Amendment management decisions.

Monitoring data will be collected by either DCP staff or external contractors. Specific details on data collection methods will be determined at the beginning of the monitoring effort. Future modifications to the monitoring methods should be made if necessary in consultation with DCP staff and the independent Science Advisor Panel to ensure continuity of monitoring results.

All data will be stored by the DCP and will be available to Permittees and USFWS. The analysis of monitoring results for reporting purposes can occur at any time, but at a minimum will be annual for habitat conversion or other incidental take measurements and every five to ten years as part of the Adaptive Management Report for other analyses to serve as a benchmark for conservation progress and to inform progress towards achieving BGOs, as further described in Chapter 6, Section 6.4.2.

The Adaptive Management Evaluation process occurs every ten years and the Adaptive Management Action process is implemented as necessary actions or changes are identified, based on the evaluation. The Adaptive Management Action process continues until actions have proven successful in resolving or improving upon an issue. It may be necessary to modify or increase the frequency of monitoring efforts pertaining to the action, as needed.

Within each ten-year evaluation period, annual reports and analysis of monitoring data can occur at any time. The Adaptive Management Reports capture the findings of the Science Advisor Panel's review of recent MSHCP Amendment projects, reports and datasets. The Science Advisor Panel analyzes land use trends, habitat loss, the effectiveness of management actions towards meeting BGOs, and population trends and ecosystem health. Recommendations are made for DCP implementation, to improve elements of the MSHCP Amendment. More in-depth analysis occurs as part of the Adaptive Management Evaluation process including quantification and reporting focused on progress towards the achievement of BGOs.

Constructive involvement with USFWS, land managers or land management agencies, state agencies such as NDOW and NDF, researchers involved with Covered Species, and biological consultants or other biologists conducting surveys and management activities is critical to the success of both the monitoring and adaptive management portions of this plan. These stakeholders may have insight into species ecology, strengths and weaknesses of existing monitoring methods, or emerging monitoring methods. These stakeholders may also prove invaluable in the adaptive management process, particularly if the adaptive management action process must be initiated. They can identify causes of problems and potential projects and solutions to remedy undesired conditions of species and their habitats. DCP will incorporate stakeholder involvement as warranted and where it can to improve the overall quality and effectiveness of the MAMP.

9.7.2 Reporting

The DCP will prepare an Annual Progress Report to be submitted to USFWS for permit compliance documentation, summarizing the previous year's activities and all activities that have been implemented since ITP issuance, including the acreage of impacts to each ecosystem type, acreage of impacts to modeled habitat quantification assessments, information on direct harm or mortality of individuals of each Covered Species, acreage of modeled habitat quantification assessments protected under the MSHCP Amendment, Reserve land management actions implemented, monitoring results, adaptive management protocols implemented that year, and habitat re-establishment/establishment activities. Details regarding the content of the annual report are provided in Chapter 6, Section 6.5.1, Annual Progress Reports.

In addition to the Annual Progress Reports, the DCP will host an Annual Project Symposium for the public. The Symposium will provide the public with progress summaries of the MSHCP Amendment including any amendments or modifications and presentations of projects funded by the MSHCP Amendment including monitoring or other research topics. The purpose of the public Symposium will be to foster data sharing, collaboration, and stakeholder and public engagement.

Every 10 years, a more detailed analysis of the compliance and effectiveness monitoring of the Conservation Strategy will be conducted and reported. This will be a report separate from the Annual Progress Report. Information to be included in the 10-Year Monitoring Report is detailed in Chapter 6, Section 6.5.3.

9.8 Renewals, Modifications and Amendments

Permittees are seeking take authorization from the USFWS for a term of 50 years. Prior to the ITP's expiration, the Permittees may apply for renewal, allowing for ample time for review and processing of the renewal application.

During the ITP's 50-year term, administrative revisions and updates, minor modifications, and substantive amendments to the MSHCP Amendment may be necessary. MSHCP Amendment modifications can be requested by a Permittee or USFWS at any time but are not anticipated to occur on a regular basis. Requests for modification must be made in accordance with USFWS regulations and the IA. There are three types of modifications: administrative revisions (Section 9.8.1), minor modifications (Section 9.8.2), and formal amendments (Section 9.8.3). The modifications are defined below and examples of each are provided.

9.8.1 Administrative Revisions

Administrative revisions are minor, non-substantive changes or updates that do not require modification or amendment of the MSHCP Amendment or trigger a new National Environmental Policy Act (NEPA) analysis. Administrative revisions do not require approval from the USFWS. Administrative changes will be made in writing, documented by the DCP, and summarized in each annual report. The Plan Administrator will make the final determination as to whether a change is an administrative revision or a minor modification. Examples of administrative revisions include:

- Clerical corrections including land ownership records and in maps and exhibits
- Adaptive management changes developed through and consistent with the MAMP (Chapter 6)
- Changes in day-to-day management of the Reserve System
- Adjustments to monitoring designs and protocols to be consistent with current USFWS protocols
- Various administrative activities with no substantial effect to the MSHCP Amendment

9.8.2 Minor Modifications

Minor modifications are more substantial than administrative revisions but are not expected to result in changes to the scale or scope of the MSHCP Amendment or Covered Activities. Minor modifications should not adversely affect the impact assessments, level of take, or Conservation Strategy and should not adversely affect the ability of the DCP to achieve the Conservation Strategy commitments of the MSHCP Amendment. Minor modifications may be proposed by any Permittee, through the Plan Administrator, or by the USFWS. Minor modifications can be made at any time and will not require a formal amendment to the MSHCP Amendment, nor will they trigger new NEPA analysis, Section 7 review, or additional public notice. Minor modifications, however, do require formal correspondence with USFWS.

The minor modification proposal must detail the nature of the proposed modification, provide a rationale for why it would not change the impact analysis, and describe how it would be consistent with the Conservation Strategy. The party in receipt of the minor modification proposal (DCP or USFWS) will use reasonable efforts to respond to proposed modifications within 30 days of receipt

of such notice. Proposed minor modifications will become effective within 30 days upon the other parties' written approval. If the party in receipt of the minor modification proposal determines that the proposal lacks specific information, the party may request additional information to evaluate the request. If the receiving party is the USFWS, the agency may deny the modification. If the USFWS denies the modification, the agency will provide an explanation for the denial to the proposing Permittee. The denial recipient may submit comments in response within 60 days of denial notification. Minor modifications include changes to incorporate new information, technical advances, and other circumstances, including:

- Changes to the impact area that do not require increased take authorization
- Updates to vegetation and species occurrence maps consistent with expectations of the Conservation Strategy or as a result of implementation of the MAMP
- Other minor changes beyond the scope of administrative revisions, but not requiring a formal amendment

9.8.3 *Formal Amendments*

Formal amendments are revisions to the MSHCP Amendment that are more substantial than an administrative or minor modification. These are expected to occur rarely if at all. A formal amendment requires a corresponding amendment to the ITP. Amendments may be proposed by any of the Permittees through the Plan Administrator. Amendments to the MSHCP Amendment and the ITP will follow the Section 10 Endangered Species Act formal review process including a NEPA review, Federal Register notices, a new internal Section 7 consultation with USFWS, and will result in new findings prepared by USFWS. The appropriate documentation for NEPA compliance will be based upon the amendment proposal, and a new scoping process could be determined necessary. Examples of changes that would require a formal amendment include:

- Changes to the Plan Area boundary that could allow or result in additional incidental take of a Covered Species or habitat, or that could cause permitted take amounts to be exceeded
- Changes to Covered Species
- Changes to Covered Activities that could result in additional impacts not considered in the previous impact analysis or not already covered by the ITP
- Changes to the level of or a different form of take
- Significant changes to the Conservation Strategy including mitigation measures
- Substantive changes to implementation schedules
- Changes to funding that affect ability of a Permittee to implement the MSHCP Amendment
- Addition of a Permittee to the MSHCP Amendment

Upon agreement of Permittees and after approval by the BCC, USFWS will be consulted to determine the need for an amendment. If USFWS concurs that a formal amendment is appropriate and warranted, DCP may request an amendment by submitting a formal application to USFWS. The DCP will prepare a proposal detailing the purpose and nature of the proposed amendment, assessment of impacts, alternatives, additional conservation measures, and any documentation needed to process it, including any required environmental studies to support NEPA analyses. The DCP will submit the proposed amendment to the USFWS. Amendments must be approved by all Permittees. If additional scoping is deemed appropriate and necessary, USFWS will publish a Notice of Intent (NOI) in the Federal Register to initiate the scoping process. Upon submission of a completed application package, USFWS will publish a notice of the

application in the Federal Register, initiating the NEPA and MSHCP amendment review process. After a public comment period, USFWS may approve or deny the ITP amendment application.

9.9 Permit Suspension or Revocation

The USFWS Regional Office has the ability, in accordance with applicable federal law, to suspend or revoke all or part of the ITP in the event that any of the Permittees are out of compliance with the MSHCP Amendment, the IA (Appendix XX), or the ITP. Revocation or suspension of the ITP for a non-compliant Permittee will not impact ITP coverage for compliant Permittees. If continuation of Covered Activities will appreciably reduce the likelihood of the survival and recovery of the species in the wild, USFWS can suspend or revoke the Permit (50 CFR 13.27 and 13.28). As discussed in Section 9.2 above and in the IA, the USFWS and Permittees will meet to remedy non-compliance with stated MSHCP Amendment goals and objectives or to resolve differences. If the USFWS should determine that permit revocation or suspension is necessary, it will notify the DCP and Permittees. The notification will explain the rationale for the suspension or revocation, and, where applicable, will provide any additional actions that the Permittees can take to maintain the ITP.

If the ITP is revoked, the Permittees have the obligation to fulfill all outstanding mitigation requirements, including management and monitoring of the Reserve System in perpetuity, for any take that occurred prior to the revocation. For example, if the Permittees are behind on compliance with the stay-ahead provision for land acquisition or restoration, they will be required to meet this obligation. See the IA (Appendix XX) for additional details.

9.10 Near-Term Implementation Actions and Deadlines

Near-term implementation actions, milestones and deadlines for the MSHCP Amendment are listed in Table 9.1 below:

Table 9.1. MSHCP Near-term Implementation Actions, Milestones and Deadlines

Action/ Milestone/ Deadline	Responsible Party	Timeframe
Review and identify essential sediment sources for threecorner milkvetch and sticky buckwheat	DCP	Within first year of issuance of the ITP
Final covered species long-term monitoring protocols/methods	DCP	Within 18 months of issuance of the ITP
Weed Management Plan	DCP	Within first 2 years of issuance of the ITP
Develop Connectivity Management Plan	DCP	Within first 3 years of issuance of the ITP
Early Detection Rapid Response Program	DCP	Within first 3 years of issuance of the ITP
Final IA for joint management and long-term protection of the SMAs	DCP, BLM, USFWS	Within 1 year of enactment of Southern Nevada Economic Development and Conservation Act (SNEDCA)
Final CMAs for joint management of each SMA	DCP, BLM, USFWS	Within 1 year of issuance of the ITP
Revise Las Vegas Valley Resource Management Plan to be consistent with the IA and Special Management Area CMAs	BLM	Within 2 years of issuance of the ITP

References

[DOI] Department of Interior. 2009. Department of the Interior Adaptive Management Technical Guide. Available at, <https://www2.usgs.gov/sdc/doc/DOI-%20Adaptive%20ManagementTechGuide.pdf>

[USFWS] U.S. Fish and Wildlife Service and National Marine Fisheries Service. 2016. Habitat Conservation Plan and Incidental Take Permit Processing Handbook.