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Community Advisory Committee

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

Draft Meeting Summary for February 26, 2009



Meeting Summary

Community Advisory Committee Meeting One, 26 February 2009, 2:30 p.m.
Regional Transportation Commission Building, Room #108

The following pages contain a summary of the presentations and discussions from the Desert Conservation Program Community Advisory Committee (CAC) Meeting of 26 February 2009. These pages, together with the presentation slides and handouts, constitute the meeting record.

Meeting One Agenda

1. Welcome and Introductions
2. Introduction to the MSHCP and the Permit Amendment Project
3. Public Comment
4. Wrap Up and Closing
5. Adjourn

Appendix A-Meeting One Agenda

Appendix B-CAC Members

Appendix C-CAC Meeting Dates

Appendix D-Open Meeting Law Overview Presentation

Appendix E-MSHCP Overview Presentation

1. Welcome and Introductions

The meeting of the DCP Citizens Advisory Committee was called to order at 2:30 p.m., in the Regional Transportation Commission building, Room 108, Clark County, Nevada. Staff confirmed the meeting had been noticed in accordance with the Nevada Open Meeting Law, and was able to proceed.

Committee Members Present

1. Victor Caron, North Las Vegas
2. Gary Clinard, Off Highway Vehicles
3. Jane Feldman, Environmental
4. Patrick Foley, Banking/Finance
5. Mike Ford, Mesquite
6. Stan Hardy, Rural Community
7. Matt Heinhold, Gaming
8. Paul Larsen, Business/Small Business
9. Terry Murphy, Developer/Homebuilder



Committee Members Absent or Excused

1. Dave Garbarino, Union
2. Allan Spooner, Business/Small Business
3. Darren Wilson, Nevada Taxpayers Assoc.
4. Tribal Representative

Staff in Attendance

1. Jodi Bechtel
2. Marci Henson
3. Catherine Jorgenson
4. Ann Magliere
5. John Tennert

Others in Attendance

1. Brok Armantrout
2. Mauricia Baca
3. Stephanie Bruning
4. Nancy Hall
5. Michael Johnson
6. Jeri Krueger
7. Catherine Lorbeer
8. Elise McAllister
9. Launce Rake
10. Carrie Ronning
11. Roddy Shepard
12. Cheng Shih
13. Kalin Shroder

Following the introductions, Ruth reviewed the purpose of the meeting, the agenda, the charts around the room and the meeting ground rules. She then introduced the binders and discussed contents with the committee. Marci Henson, Plan Administrator for the Multiple Species Habitat Conservation Plan (MSHCP) and Desert Conservation Program, clarified that the date for the next Committee meeting was March 16.

John Tennert, MSHCP Permit Amendment Project Manager, clarified the role of Committee members appointed at the recommendation of the five municipal permittees. He pointed out that it was not the intent of those members that they formally represent the particular jurisdiction. Rather, the intent was to obtain broad geographic representation and provide the permittees an opportunity to participate in the development of the Committee. The individual jurisdictions are represented as permittees. Ruth discussed the importance of the members communicating with the interests they represent and reviewed the timeline for the Committee's work. She strongly encouraged the Committee members to stay informed on the work



of the committee as the timeline is ambitious and meeting agendas will not allocate time to bring members up to speed should they miss a meeting.

Mindy Unger-Wadkins, Henderson, asked how soon after meetings that minutes meeting would be available. Ruth responded that they would be posted on the website within two weeks. Ruth reviewed highlights of the Committee charter, including the importance of Committee members not characterizing other members' opinions in public and accurately describing the level of agreement of the Committee. She discussed the concept of consensus with the Committee.

Jane Feldman, Environment/Conservation, asked if consensus meant unanimity. Ruth responded that it did not and reviewed the three levels of consensus as outlined in the charter: 1) unanimity, 2) "I can live with it", and 3) some dissent but with broad Committee support. Ruth emphasized that whatever level of agreement might be reached, the process allowed for the inclusion of clarifying notes/dissenting opinions should people have specific concerns or disagreements. This means that whatever recommendations the Committee makes, they will accurately reflect the level of agreement associated with them.

Catherine Jorgensen, Clark County Assistant District Attorney, asked Ruth under what conditions an issue might come to a vote. Ruth commented that while financial issues that involved dispersal of public funds required a formal vote, she did not anticipate that the Committee would be making any financial recommendations involving a direct expenditure of public funds. Catherine asked if an instance of insufficient consensus would require a vote. Ruth responded that it would depend on whether the issue under discussion really needed to have some kind of agreement. The charter allows for a great deal of flexibility on this issue, and voting is listed as a back-up decision-making process.

Jane asked what period of time the Committee had been convened. Ruth directed her to the "Meeting Dates" tab in the Committee binders which contains the meeting schedule. The schedule runs through 2010, with two tentative dates following, should they be needed.

Ruth then asked Eric to review the binders with the group. Eric explained the plan for handling meeting documents through a Committee website. Eric then reviewed the website instructions with the Committee. Ruth asked if a member of the public could access the committee Web site. Eric said yes and gave the committee the username and password for the site. The user name is **CAC Member** and the password is **cac09**.

Jim Rathbun, Education, wanted to know if committee members had access to each others' e-mail addresses. John Tennert responded that the committee list did not contain members' e-mail addresses, because of open meeting law considerations and that Catherine would have some important information on this subject later in the meeting.



Catherine reviewed the state open meetings law with the committee and explained that a quorum for this committee would be 11 people. She emphasized the concept of serial communications, in particular the fact that e-mail and informal, social discussions of issues could constitute serial communications and therefore be illegal. She asked the committee members to be sensitive to these issues. She also commented that if an item is not on the meeting agenda, the committee cannot deliberate on it. She used public comment as an example: if the public asks that the committee consider an issue, it must be placed on the agenda before it can do so.

Ruth pointed out that the meetings are being audio recorded and Doug Huston, facilitation team document manager, was taking typewritten notes.

Catherine also discussed ethics issues with the committee and emphasized conflicting interests and avoiding the perception of impropriety. She recommended that if a committee member discovers a conflict of interest on an issue, he or she should inform Marci and a decision as to the appropriate course of action will be made.

Ruth invited the members of the audience to sign up for public comment if they desired to speak later in the meeting and passed the sign up sheet around.

1. Introduction to the MSHCP and Permit Amendment Project

John informed the committee that the first three or four committee meetings will be educational and will culminate in a field trip in May. He also informed the committee that the binders contained a glossary for its use. John then presented an overview of the MSHCP and Permit Amendment Project.

History

John emphasized that the Desert Conservation Program (DCP) has been an exercise in practical adaptive management and had been in a continuous process of implementation. Marcia Turner, Education, wanted to know who the permitting agency was for the program. Marci replied that the U.S. Fish and Wildlife Service (FWS) issues the permit. John commented that the local jurisdictions were the permittees. The permittees are:

1. City of Las Vegas
2. City of North Las Vegas
3. City of Henderson
4. City of Mesquite
5. City of Boulder City



6. Nevada Department of Transportation
7. Clark County

Section 9

John discussed the definition of take with the committee:

“Harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct”. John pointed out that this applies to habitat modification as well.

Section 10

John pointed out that Section 10 allows the Secretary of the Interior to issue incidental take permits, with the FWS being responsible to ensure compliance. He emphasized that the take must be incidental to the action or process, not the purpose of the process.

Habitat Conservation Plan (HCP)

John informed the committee that over the last 20 years, the county has developed three HCPs and associated with those are three different permits.

Desert Conservation Program

John explained that the MSHCP provides regional compliance with federal Endangered Species Act for non-federal entities without requiring project by project consultation with the FWS. Without the MSHCP, each person or entity desiring to take an action would become an individual permittee, develop a project specific habitat conservation plan and a separate incidental take permit.

Scott Rutledge asked where the current permit acreage cap of 145,000 acres came from. John and Marci pointed out that Terry Murphy, the Developer/Homebuilder representative on the committee had been the MSHCP Plan Administrator for Clark County when this process started. Terry stated that the acreage estimate for the current permit had been arrived at based on a planning exercise that attempted to estimate the amount of development that would occur over the next 30 years. She stated that it had also been based on the original Southern Nevada Public Lands Management Act (SNPLMA) disposal boundary. Jane mentioned that there were some areas not covered by the HCP. An example would be the upper Las Vegas Wash. John pointed out that the reason the wash was not covered is that no take was occurring there. The HCP does not apply unless take is projected to occur. Jim Rathbun wanted to know if the take ever changed. John stated that it had not happened as far as he knew.



Funding

John reviewed the funding sources for the MSHCP. Scott asked how much money had been spent to date. John explained that approximately \$77 million had been spent or budgeted since 1999. Marcia asked if SNPLMA and Section 10 funds were separate funds. John replied they were. Scott asked if the fees and other funds were sufficient to meet permit requirements. John replied that the funds were more than enough and that the permittees had gone way beyond the minimum requirements. John pointed out that this money is spent on many different types of projects and gave some examples. He also pointed out some of the accomplishments of the program.

Scott Rutledge wanted to know where he could get a list of the 604 conservation actions that are listed in the MSHCP. Marci replied that Clark County would post them on the website to the committee members with a link to the list. Due to the time limitations of this meeting, Ruth suggested that the remainder of John's presentation be moved to the next meeting.

Public Comment

Carrie Ronning of the Bureau of Land Management (BLM) commented that she wanted to make two points: the wilderness study redesignation project was funded by BLM, not Clark County, and that the study was done in partnership with Clark County. Jerry Kruger, FWS, stated that she wanted to make the general comment that John did an excellent job describing a very complex situation. He sounded like he had to study for months.

Meeting Wrap Up and Closing

Ruth asked Eric to introduce the group to the concept of developing the group's guiding principles. This process will occur over a number of meetings. These guiding principles will include basic assumptions, important program parameters, and principles for developing recommendations.

Gary Clinard, Off Highway Vehicles, commented that the mitigation expenditures of the past appear to be drying up given the dramatic slowdown in development. He was interested in knowing what the Clark County's budget plans were in this case and how much money it had in reserve for this program. He commented that he did not think Clark County could continue to spend in excess of the minimum required amounts, and should be required to save for the future like other government agencies. Terry pointed out that the other side of that coin was that take had stopped too. Jane pointed out that development was



hard to forecast and suggested that be one of the group's guiding principles.

Eric suggested that what the group needs to remember is this is a long term program. Marcia asked what programs needed to be maintained and where the money is going to come from for these programs since development has slowed considerably. Scott wanted to know how much of the original 145,000 acres had not been developed. John replied that about 68,000 acres remained. Jane commented that the committee had a decision to make about how long the permit period should be. Maybe, 30 years was not necessary.

Mike Ford, Mesquite, commented that he thought significant development was going to take place on public land, in particular solar, wind and geothermal energy projects. Eric suggested that a guiding principle might be that the characteristics of take might change. Scott commented that he wouldn't rule out development on private land holdings. Mike was curious what lands Scott was referring to. Scott replied he was thinking of small landholders. Mike was skeptical that this land existed.

Patrick Foley, Banking/Finance, wanted to know how development was tracking with the original predictions. Marci replied that it was very close to what had been projected; but the timing of the development was not what had been anticipated. The group had a brief discussion on energy development on federal lands, where that would be, and whether that would be under Section 10 or Section 7 of the Endangered Species Act.

As a wrap-up, Ruth reminded staff that they had agreed to send out the link to the 604 conservation actions within the week. Eric informed the Committee that if they took their binders with them, the facilitation team would have new materials to give to them for their binders at the next meeting. If they left their binders behind, the binders would contain the new handouts at the meeting.

Marci thanked the committee members for their time and participation.

The meeting was adjourned at 4:33 p.m.



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Meeting 1 Flipcharts

26 February 2009

Notes:

These represent transcriptions of the various flipcharts posted around the room during the meeting.

Agenda ¹

- Opening and Convening
- Intro to MSHCP and Permit Amendment
- Public Comment
- Wrap Up and Closing
- Adjourn at 4:30 p.m.

Introductions ²

- What is your name?
- What interest do you represent at the CAC table?
- Where do you work?

Your Objectives ³

- To orient the CAC on the framework for its activities
- To provide an overview of the MSHCP and the permit amendment process

Mission ⁴

- CAC Purpose:
 - To provide recommendations to the Permittee governing bodies on amendment and implementation of the MSHCP



Meeting 1 Flipcharts

26 February 2009

Notes:

CAC Charter

- Purpose
- Membership
- Roles & Responsibilities
 - Members
 - Group
- Decision Making
- Facilitation Team

Ground Rules

- The Basics:
 - Start & End on Time
 - All Opinions Welcome
 - Silence Electronics
- Process Helpers
 - Disagree Without Being Disagreeable
 - Give Us the Facts
 - Stay on Target

Action Items

- DCP Staff to send a link to CAC with information on all 604 conservation actions within one week

Guiding Principles

- Current economic slowdown (less take at the moment)
- Take has been at faster than originally projected
- Difficult to forecast take
- Character of take could change dramatically



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Meeting 1 Flipcharts

26 February 2009

Notes:

These are paraphrases of questions asked by committee members during the meeting, and a list of the action items generated during the meeting.

Key Questions ⁹

- Past cash flow has dried up due to the current economic situation and fewer BLM sales. What is a pessimistic budget scenario for fewer funds?
- What are the programs you have to maintain if the \$ are not coming in (Section 10 and SNPLMA)
- How much land of 145,000 has not yet been developed - about 68,000
- Who issues the permit? - USFWS
- Chain of command? - Permittees (and landowners) - DCP - USFWS

More Key Questions ¹⁰

- How many acres to date? - 68,000
- Where did original number of 145,000 acres come from? - best estimate
- Example of property outside Clark County MSHCP - LV Wash.
- What about when property with "take" (or associated mitigation) changes purpose? - Land is deeded to an agency for management
- How much \$ spent? - \$77.3 Million
- Seperate from Co. Gen. fund? - Yes
- Are we spending the necessary \$4 Million per year? - and then some

More Key Questions ¹¹

- Development is moving faster than anticipated.
- Can we get a list of all conservation projects? - to be sent to the CAC



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Appendix A



AGENDA

Desert Conservation Program Community Advisory Committee Meeting County Of Clark, State Of Nevada

NOTICE IS HEREBY GIVEN that a meeting of the Clark County Multiple Species Habitat Conservation Plan (MSHCP) Desert Conservation Program Community Advisory Committee (DCP-CAC) has been called and will be held on: Thursday, February 26, 2009, beginning at 2:30 p.m. at the Regional Transportation Commission Building, 600 Grand Central Pkwy, Room 108, Las Vegas, Nevada. Below is an agenda of all items scheduled to be considered. Unless otherwise stated, items may be taken out of the order presented on the agenda.

2:30

1. Opening and Introductions

- Goals:**
- To introduce meeting participants
 - To review the purpose and goals of the CAC
 - To review the key elements of the CAC charter
 - To review key elements of the Nevada Open Meeting Law and conflict of interest rules applicable to the CAC
 - To introduce the Web site that will be supporting the CAC's work

3:45

2. Introduction to the MSHCP and the Permit Amendment Project

- Goals:**
- To provide an overview of the MSHCP and its implementation
 - To provide an overview of the permit amendment process

4:15

3. Public Comment

4:20

4. Meeting Wrap-Up and Closing

- Goals:**
- To recap meeting results and identify follow-up activities
 - To introduce the Committee to the concept of "Guiding Principles" for future meetings
 - To outline the agenda topics and desired results for the March 16, 2009, CAC meeting
 - To invite participant feedback on the meeting

4:30

5. Adjourn

continued on next page



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

MDH:am

Dated: February 19, 2009 10:49 AM

AFFIDAVIT OF POSTING

The above notice/agenda of a meeting of the Multiple Species Habitat Conservation Plan Desert Conservation Program Community Advisory Committee scheduled for Thursday, February 26, 2009, at 2:30 p.m. was posted on or before the third working day before the meeting per Open Meeting Law requirements at the following locations:

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

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



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Appendix B



Community Advisory Committee Members

This Committee will be composed of a diverse base of stakeholders from throughout Clark County who, in turn, represent large groups of citizens interested in or impacted by our amendment to the MSHCP. Every effort has been made to ensure that the various demographic aspects of our community are represented. This will result in a total of 21 stakeholders working together on this Committee and listed below:

Name	Representing
Victor Caron	North Las Vegas
Gary Clinard	Off Highway Vehicle
Jane Feldman	Environmental/Conservation
Patrick Foley	Banking/Finance
Mike Ford	Mesquite
Dave Garbarino	Union
Stan Hardy	Rural Community
Matt Heinhold	Gaming Industry
Paul Larsen	Business/Small Business
Terry Murphy	Developer/Homebuilder
Bryan Nix	Boulder City
Joe Pantuso	Developer/Homebuilder
Jim Rathbun	Education
Scot Rutledge	Environmental/Conservation
Ann Schreiber	Senior
Allan Spooner	Business/Small Business
Marcia Turner	Education
Mindy Unger-Wadkins	Henderson
Tom Warden	Las Vegas
Darren Wilson	Nevada Taxpayers Association
TBD	Tribal Representative



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Appendix C



Community Advisory Committee Meeting Dates

Committee meetings will be held from 2:30 p.m. to 4:30 p.m. at the Regional Transportation Commission Building, 600 Grand Central Pkwy, Room 108, Las Vegas, Nevada (except meeting #4, which is scheduled to be conducted as a Saturday field trip). The scheduled meeting dates are listed below:

Meeting	Date
Meeting #1	Thursday, February 26, 2009
Meeting #2	Monday, March 16, 2009
Meeting #3	Wednesday, April 15, 2009
Meeting #4	Saturday, May 16, 2009*
Meeting #5	Thursday, June 11, 2009
Meeting #6	Thursday, July 16, 2009
Meeting #7	Thursday, August 13, 2009
Meeting #8	Thursday, September 17, 2009
Meeting #9	Thursday, October 22, 2009
Meeting #10	Thursday, November 19, 2009
Meeting #11	Thursday, December 10, 2009
Meeting #12	Thursday, January 14, 2010
Meeting #13 (if necessary)	Thursday, February 18, 2010
Meeting #14 (if necessary)	TBD

* This meeting is scheduled to be conducted as a field trip.



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Appendix D

INTRODUCTION TO THE OPEN MEETING LAW

Adapted from a presentation by Neil A. Rombardo
Senior Deputy Attorney General

Presented by
Catherine Jorgenson
District Attorney's Office
Civil Division

What is the Open Meeting Law

- ✦ Open Meeting Law is located in NRS Chapter 241.
- ✦ NRS 241.010 sets forth a declaration from the legislature as follows:
 - ✦ The Legislature finds and declares that all public bodies exist to aid in the conduct of the people's business.
 - ✦ It is the intent of the law that their **actions** be taken openly and that their **deliberations** be conducted openly

Application of the Open Meeting Law

- ✦ The Open Meeting Law applies to "Public Bodies" as defined in NRS 241.015(3)

Elements of the Definition of a "Public Body" in NRS 241.015(3)

- ✦ Any administrative, advisory, executive or legislative body of the state or local government
- ✦ Which **expends** or **disburses** or is supported in whole or in part by **tax revenue**
- ✦ Or which **advises** or **makes recommendations** to any entity which expends or disburses or is supported in whole or in part by tax revenue
- ✦ Includes any board, commission, committee, subcommittee or other subsidiary thereof

What is a Meeting of a Public Body?

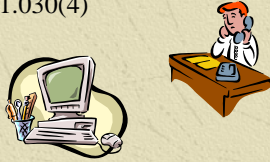
- ✦ NRS 241.015(2)(a)(1) Provides a Basic Definition for a Meeting
- ✦ (a) Except as otherwise provided in paragraph (b) means:
 - ◆ (1) The **gathering** of members of a public body at which a **quorum** is presented to deliberate toward a decision or to take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.

Definition of Meeting Continued... NRS 241.015(2)(a) Also Provides

- ✦ Any **series** of gatherings of members of a public body at which:
 - ◆ (I) Less than a quorum is present at any individual gathering;
 - ◆ (II) The members of the public body attending one or more of the gatherings collectively constitute a quorum; and
 - ◆ (III) The series of gatherings was held with the specific intent to avoid the provisions of this chapter.

Remember!

- ✦ Electronic communication must not be used to circumvent the spirit or letter of the Open Meeting Law
- ✦ NRS 241.030(4)



HOT TOPIC

- ✦ The Nevada Supreme Court stated that in the absence of a quorum, members of a public body can privately discuss public issues or even lobby votes. However, if a quorum is present, or is gathered by a serial electronic communications, the body must deliberate and actually vote on the matter in public. *Del Papa v. Board of Regents*, 114 Nev. 388 (1998).
- ✦ If a member of a public body sends out an e-mail to a quorum of the public body has supervision, control, jurisdiction or advisory power over, is it a violation?

YES!!

WHY?

Answer

- ✦ The e-mail went out to a quorum of the public body, and as a result, it was no longer a private discussion between individual members of the public body but deliberation by a quorum of the public body.
- ✦ Lesson – Avoid e-mail to discuss issues the public body will take action on in the future.
- ✦ Do not respond to the entire body or each other.
- ✦ It is the beginning of deliberations to send the e-mail saying let's do this...
- ✦ You may send an individual to each member but cannot respond to all or it is seen as deliberating in a quorum over e-mail.

What is a Quorum?

- ✦ A "Quorum" has been defined by NRS 241.015(4) as meaning:
 - ◆ A simple majority of the constituent membership of a public body or another proportion established by law
 - ◆ Or specific statute

Social Function

- ✦ Not always a meeting
- ✦ At a social function if the members do **not deliberate** toward a decision or take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.
- ✦ NRS 241.015(2)(b)(1)

What is “Action”?

- ✦ In short, action is:
 - ◆ Any decision or consensus
 - ◆ Any commitment or promise
 - Includes serial communications that may also constitute meetings
 - NRS 241.015(1)(a) and (b)
 - Ethics rule requires voting of public body.

Action Also Includes

- ✦ If a public body has a member who is not an elected official, an affirmative vote taken by a majority of the members present during a meeting of the public body
 - ◆ NRS 241.015(1)(c)

Issues Involving Abstention

- ✦ Review
 - ◆ NRS 241.0355
 - ◆ County Ethics Policy
 - Conflicting interest
 - Disclosure of potential conflicts
 - Abstention
 - ◆ Abstention can effect the quorum to act and the number of votes necessary to act on a matter

What is an “Agenda”?

- ✦ In short, an agenda is:
 - ◆ A list of items to discuss and act on
 - ◆ Clear and complete
 - ◆ NOT vague
 - ◆ Actually gives notice to the general public
 - NRS 241.020

Agenda Also Includes

- ✦ The time, place and location of the meeting
- ✦ A list of locations where the notice has been posted
- ✦ Must clearly indicate action items
- ✦ Should include a statement for additional assistance for physically handicapped
- ✦ Must have a public comment period
- ✦ NRS 241.020

Posting the Agenda – NRS 241.020(3)

- ✦ At office
- ✦ Three other public places
- ✦ On internet (if maintain website) NRS 241.020(4)
- ✦ Three full working days before meeting
 - ◆ Example: For a Tuesday meeting, must post by 9:00am on the previous Thursday
 - Agenda must be timely given to persons who request it

Materials Available to the Public

- ✦ Agenda
- ✦ Agenda back-up material
 - ◆ Before the meeting, over the counter at the office
 - ◆ On the day of the meeting
 - ◆ Upon being available to the “public body” back-up material must be made available to the public.
 - ◆ Confidential support material must relate to proprietary information under NRS 332.025, and does not need to be disclosed to the public.

Minutes of Public Meetings

- ✦ Minutes:
 - ◆ **A meeting must be audio recorded or transcribed by a certified court reporter**
 - ◆ Must have written minutes
 - ◆ Written minutes or audio must be available within 30 working days after the meeting
 - ◆ Written minutes must be retained for five years & audio recordings for one year

Comments Made During a Meeting

- ✦ A statement “made by a member of the public body during the course of a public meeting is absolutely privileged and does not impose liability for defamation or constitute a ground for recovery in a civil action.”
- ✦ “A witness who is testifying before a public body is absolutely privileged to publish defamatory matter as part of a public meeting, except that it is unlawful to misrepresent any fact knowingly when testifying before a public body.”

Violations

- ✦ Action taken in violation of the Open Meeting Law is void – NRS 241.036
- ✦ Attorney General’s Office has primary jurisdiction to enforce NRS chapter 241
- ✦ Attorney General’s Office investigates complaints for allegations of violations of the Open Meeting Law

Contact Information

Catherine Jorgenson
District Attorney’s Office, Civil Division
- Phone (702) 455-4761
- Fax (702) 382-5178



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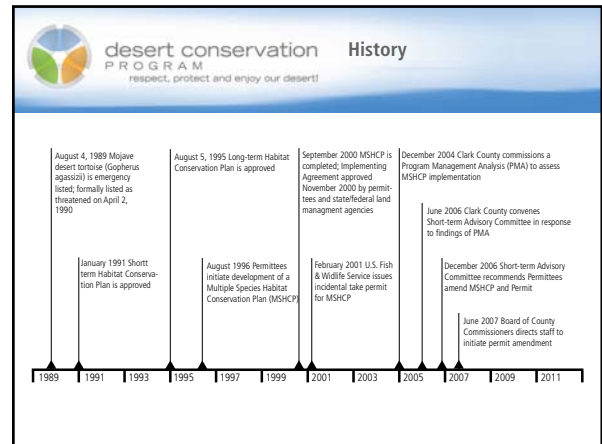

Appendix E



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**Community Advisory Committee
Meeting #1**

February 26, 2009






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Endangered Species Act

Findings and purpose:

- "...various species of fish, wildlife and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation"
- "...to provide a means whereby the ecosystems upon which threatened and endangered species depend may be conserved to provide a program for the conservation of such species"



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Endangered Species Act

Section 9

- "...it is unlawful for any person to...take any endangered species within the United States or the territorial sea of the United States"

What is "take"?

- "Harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct"
- Applies to habitat modification as well



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Endangered Species Act

Section 7

- Defines obligations of federal agencies with respect to endangered species compliance

Section 10

- Allows the Secretary of Interior (through the U.S. Fish and Wildlife Service) to issue permits to take federally listed endangered/threatened species if activities are otherwise lawful
- Referred to as an Incidental Take Permit



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Habitat Conservation Plans

- Created to reduce conflicts between endangered species and economic activities
- Available to private landowners, corporations, tribal governments, state and local governments and other non-federal landowners
- HCP is submitted by an applicant with an application for an incidental take permit
- Describes the projected effects of the proposed taking and how those impacts will be minimized, mitigated and funded



Applicants requesting an ITP must develop a conservation plan that:

- Outlines the impacts of the take
- Develops measures to minimize and mitigate take
- Describes alternatives to take
- Other measures required by the Secretary



To approve an HCP and issue an ITP, the U.S. Fish and Wildlife Service must demonstrate that:

- The taking is incidental
- The applicant will, to the maximum extent practicable, minimize and mitigate the take
- The applicant will ensure adequate funding for the implementation of the HCP
- The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild



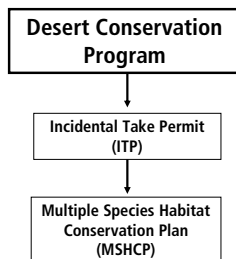
The Desert Conservation Program serves as the Administrator of the MSHCP and incidental take permit on behalf of the "Permittees":

- City of Las Vegas
- City of North Las Vegas
- City of Henderson
- City of Mesquite
- City of Boulder City
- Clark County
- Nevada Department of Transportation (NDOT)



The Desert Conservation Program provides:

- Compliance with the federal Endangered Species Act through a Section 10(a)(1)(B) incidental take permit
- Implementation of the Clark County Multiple Species Habitat Conservation Plan (MSHCP)
- Provides regional compliance for non-federal ESA compliance without requiring project-by-project consultation with FWS



The MSHCP and Permit cover:

- Non-federal (private, municipal, state) lands in Clark County, and
- NDOT activities in areas within Clark, Nye, Lincoln, Mineral and Esmeralda Counties south of the 38th parallel and below 5,000 feet in elevation



- 30-year permit effective February 2001
- Take cannot exceed 145,000 acres
- Permittees collect a \$550 per acre disturbance fee to fund implementation
- Relies on a reserve system where the MSHCP achieves conservation by augmenting existing funding/conservation on federal lands



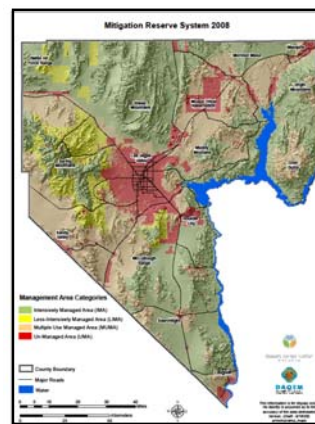
- 78 Covered species
Two are federally listed species (desert tortoise and Southwestern willow flycatcher)
- 102 Evaluation species
- 51 Watch list species



The MSHCP classifies lands county-wide by 4 categories of management:

- Intensively Managed Areas
- Less Intensively Managed Areas
- Multiple Use Management Areas
- Unmanaged Areas (non-federal)

Federal agencies have tremendous influence over implementation of the MSHCP

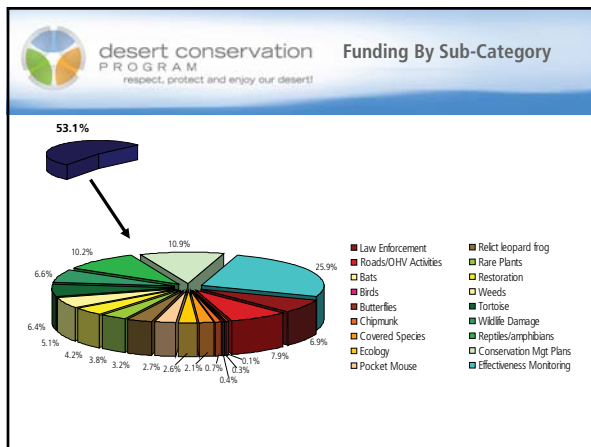
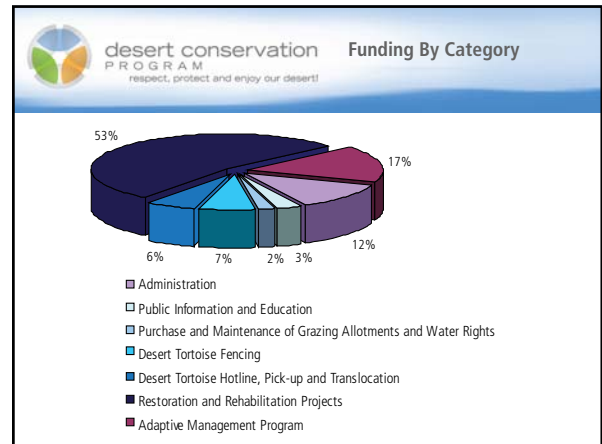
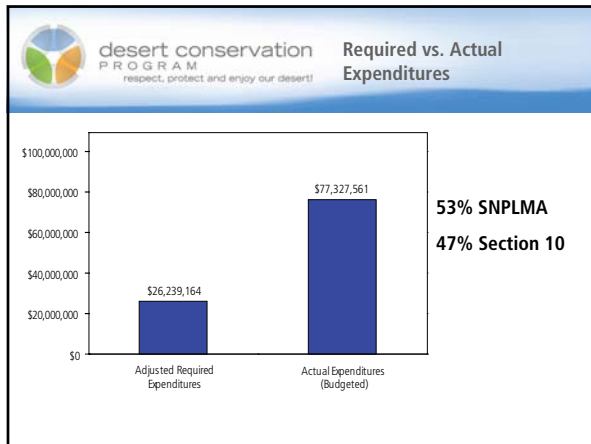


- Required to spend a minimum of approximately \$4 million per biennium to implement conservation actions
- Two funding sources:
 - Section 10 mitigation fees
 - SNPLMA



- Public Information and Education
- Research
- Inventory
- Monitoring
- Protective Measures
- Restoration and Enhancement
- Land Use Policies and Actions





- Accomplishments**
- Since 1999, DCP has authorized 285 conservation projects totaling more than \$77 million
 - Roughly equivalent to \$1,000 per acre disturbed
 - Implemented 459 of the 604 conservation actions identified in the MSHCP
 - Have initiated or completed all of the 22 conditions specifically identified in the permit (four of which are ongoing policies)

- Accomplishments**
- Managed an 85,000-acre conservation easement in Eldorado Valley
 - Constructed more than 300 miles of desert tortoise fencing (roughly 1.6 million linear feet) at a cost of more than \$5.9 million
 - Transferred more than 10,000 desert tortoises to the Desert Tortoise Conservation Center and Holding Facility
 - Translocated more than 4,000 desert tortoises to the Large-Scale Translocation Site in Ivanpah Valley


- Accomplishments**
- Retired more than 1.9 million acres of grazing allotments and associated water rights
 - Spent more than \$6 million for law enforcement and resource protection on federal land - Roughly 30 FTEs (assuming \$200,000/year)
 - Spent approximately \$3 million to survey, close and/or restore illegal OHV roads on federal land
 - Purchased more than 100 acres of riparian habitat


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Accomplishments

- Identification, assessment, restoration and monitoring of desert tortoise habitat
- Invasive plant management
- Habitat restoration along the Las Vegas Wash
- Habitat restoration and management of Knapweed and Tamarisk on the Muddy River




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Accomplishments

- Received more than 36,200 entries for the Mojave Max Emergence Contest
- Presented to more than 10,000 Clark County School District students via Mojave Max assemblies
- Developed media and PSAs to educate broad community about the purpose and value of the program
- Participate in numerous regional community outreach and education programs and events


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Accomplishments


Funded and/or participated in the completion of the following conservation planning documents:

- Piute Eldorado DWMA Conservation Management Strategy
- Gold Butte DWMA Conservation Management Strategy
- Mormon Mesa DWMA Conservation Management Strategy
- Coyote Springs DWMA Conservation Management Strategy
- Mesquite-Acacia Conservation Management Strategy
- Low Elevation Plants (9) Conservation Management Strategy
- Upper Muddy River Integrated Science Assessment
- Wilderness Study Area Re-designation within Clark County
- Virgin River Conservation Management Assessment (ongoing)
- Spring Mountains Landscape Assessment (ongoing)


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Program Management Analysis

- Program's mission has dramatically changed
 - Development vs. implementation
 - Scale, size and complexity
- Conflicts of interest existed throughout the program
- Confusion among staff and stakeholders about roles and responsibilities, policies and procedures
- Need for business process re-engineering
- Staffing analysis and management plan implementation



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Program Management Analysis

The Program Management Analysis recommended that Clark County and the Permittees:

- Reconstitute the advisory committee process
- Develop more transparent business processes
- Develop and implement a staffing analysis and management plan

The Program Management Analysis also made recommendations that can only be addressed through permit amendment.


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MSHCP Amendment



On June 19, 2007, the Board of County Commissioners directed staff to initiate permit and plan amendment process based on:

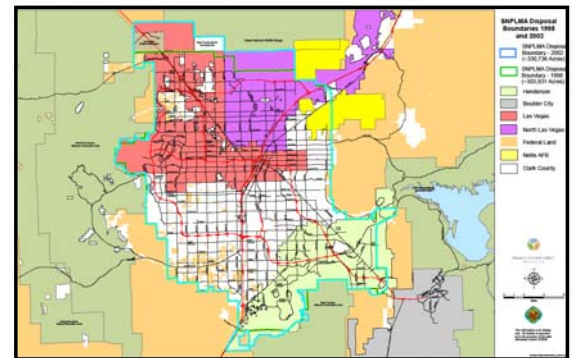
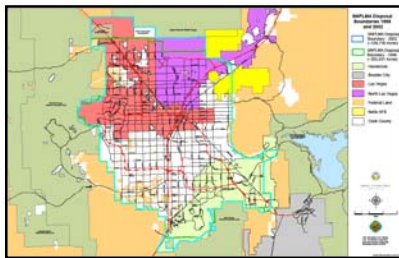
- A recommendation from the 2005 Southern Nevada Growth Task Force to address the acreage cap
- The 2006 DCP Advisory Committee recommendation to pursue permit amendment as a high priority
- Nationwide, large, regional, multi-party, MSHCPs are being reassessed



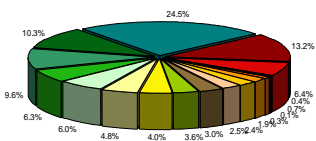
- Address acreage cap
- Re-evaluate the list of covered species to refocus attention on those species most at risk and most directly impacted by take
- Re-evaluate covered activities and overall conservation/mitigation strategy
- Re-evaluate structure and implementation of the permit and plan



There are approximately 95,000 acres of undeveloped land in Clark County that are not currently covered for take.



- Many at-risk species are short-changed as a result of the large number of species currently covered in the MSHCP
- Refocus mitigation on those species most at-risk



- Review options for reducing permittees' dependence on federal land for mitigation
- Re-structure MSHCP to more closely mirror traditional HCPs
- Provide the permittees greater control over mitigation





Failure to amend the MSHCP and Permit may result in one or more of the following results:

- "Race to the bottom"
- Project-by-project compliance
- Non-compliance with Permit
- Ineffective mitigation
- Unsustainable land-use planning



Who is involved?

- Permittees (applicant)
- U.S. Fish and Wildlife Service (regulator)
- Community Advisory Committee (stakeholders)
- Bureau of Land Management
- Consultants
 - Nicholson Facilitation & Associates, LLC (facilitation)
 - Ebbin, Moser + Skaggs, LLP (outside counsel)
 - PBS&J (biological/environmental analysis)



Stakeholder Groups

- | | |
|-----------------------------------|--------------------------------|
| •Environmental (2) | •Business/Small Business (2) |
| •Developer/Homebuilder (2) | •Rural community (1) |
| •Education (2) | •Senior (1) |
| •Gaming (1) | •Tribal representative (1) |
| •Off-Highway Vehicle (1) | •Union (1) |
| •Banking/Finance (1) | •Southern Nevada residents (5) |
| •Nevada Taxpayers Association (1) | |



- February 2009 – First CAC meeting
- May 2009 – NEPA Scoping
- May 2010 – Final CAC recommendations report
- June 2010 – Draft MSHCP/EIS
- January 2011 – Amended MSHCP and Incidental Take Permit



Questions?