

Permit 10(a)



FEDERAL FISH AND WILDLIFE PERMIT

1. PERMITTEE

CLARK COUNTY MSHCP PERMITTEES
(SEE BOX C.1. BELOW)

2. AUTHORITY-STATUTES

16 USC 1539(A)
16 USC 703-712

REGULATIONS (Attached)

50 CFR 17.22
50 CFR 17.32
50 CFR 13
50 CFR 21.27

3. NUMBER

TE034927-0

4. RENEWABLE

YES
 NO

5. MAY COPY

YES
 NO

6. EFFECTIVE

1/9/01

7. EXPIRES

1/8/31

8. NAME AND TITLE OF PRINCIPAL OFFICER (If #1 is a business)

CYNTHIA J TRUELOVE
PLAN ADMINISTRATOR

9. TYPE OF PERMIT

THREATENED AND ENDANGERED SPECIES

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED

Non-Federal lands in Clark County, Nevada, for cities and Clark County; Nevada Department of Transportation activities in Clark, Nye, Lincoln, Mineral and Esmeralda counties, Nevada, south of the 38th parallel and below 5000 feet elevation.

11. CONDITIONS AND AUTHORIZATIONS:

A. GENERAL CONDITIONS SET OUT IN SUBPART D OF 50 CFR 13, AND SPECIFIC CONDITIONS CONTAINED IN FEDERAL REGULATIONS CITED IN BLOCK #2 ABOVE, ARE HEREBY MADE A PART OF THIS PERMIT. ALL ACTIVITIES AUTHORIZED HEREIN MUST BE CARRIED OUT IN ACCORD WITH AND FOR THE PURPOSES DESCRIBED IN THE APPLICATION SUBMITTED. CONTINUED VALIDITY, OR RENEWAL, OF THIS PERMIT IS SUBJECT TO COMPLETE AND TIMELY COMPLIANCE WITH ALL APPLICABLE CONDITIONS, INCLUDING THE FILING OF ALL REQUIRED INFORMATION AND REPORTS.

B. THE VALIDITY OF THIS PERMIT IS ALSO CONDITIONED UPON STRICT OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL OR OTHER FEDERAL LAW.

C. VALID FOR USE BY PERMITTEE NAMED ABOVE.

- C.1.
 - a. Clark County
500 S. Grand Central Parkway
Las Vegas, NV 89155
(702) 455-4181
 - b. City of Las Vegas
400 East Stewart
Las Vegas, NV 89101
(702) 229-6501
 - c. City of North Las Vegas
2200 Civic Center Drive
North Las Vegas, NV 89030
(702) 649-5811
 - d. City of Henderson
240 Water Street
Henderson, NV 89015
(702) 565-2488
 - e. City of Boulder City
900 Arizona Street
Boulder City, NV 89024
(702) 293-9282
 - f. City of Mesquite
11 E. Mesquite Blvd & Yucca
Mesquite, NV 89024
(702) 346-5295
 - g. Nevada Department of Transportation
1263 South Stewart Street
Carson City, NV 89712
(702) 689-5440

D. FURTHER CONDITIONS OF AUTHORIZATION ARE CONTAINED IN THE ATTACHED SPECIAL TERMS AND CONDITIONS.

ADDITIONAL CONDITIONS AND AUTHORIZATIONS ALSO APPLY

12. REPORTING REQUIREMENTS

ISSUED BY

Michael J. Spear

TITLE

MANAGER, CALIF/NEVADA OPERATIONS OFFICE

DATE

11/22/00

U.S. FISH AND WILDLIFE SERVICE, SACRAMENTO, CALIFORNIA
SPECIAL TERMS AND CONDITIONS FOR TE034927-0

- D. All sections of Title 50 Code of Federal Regulations, parts 13, 17.22, and 17.32 are conditions of this permit (Attachments 1).
- E. This permit is not effective until all of the parties have signed the Implementing Agreement.
- F. The authorization granted by this permit is subject to compliance with, and implementation of the Clark County Multiple Species Habitat Conservation Plan (MSHCP), and executed Implementing Agreement, both of which are hereby incorporated into the permit.
- G. The Permittees (Clark County, the cities of Las Vegas, North Las Vegas, Henderson, Boulder city, and Mesquite, and the Nevada Department of Transportation), and agents designated by the Permittees are authorized to take 78 species on the attached list of "Covered Species Subject to Incidental Take" to the extent that take of these species would otherwise be prohibited under section 9 of the Endangered Species Act of 1973, as amended (Act), and its implementing regulations, or pursuant to a rule promulgated under section 4(d) of the Act. For each Covered Species Subject to Incidental Take which is not listed as threatened or endangered under the Act, the section 10(a) permit will become effective with respect to such species concurrent with the listing of the species to the extent that their take is prohibited by the Act. Take must be incidental to otherwise lawful activities as described in the MSHCP, and as conditioned herein. The amount and nature of the take (e.g., harassment, or harm due to habitat loss) is described in the MSHCP for each species and clarified in permit conditions J and K for certain species.
- H. The Permittees shall carry out the minimization, mitigation, and monitoring measures specified in section 2.8 of the MSHCP, and as otherwise stated under the IA. Unless specifically modified by the MSHCP, the minimization, mitigation, and monitoring stated in sections 3C and 3D of the Clark County Desert Conservation Plan (DCP) (Permit PRT 801045) are incorporated by reference and shall remain in effect as written unless later modified through the MSHCP, its adaptive management program, or the Implementation Plan and Budget process.
- I. The Permittees shall ensure that a science-based Adaptive Management Process (AMP) is developed and implemented as specified in the MSHCP and IA. A Memorandum of Agreement will be developed within 9 months of the issuance of the permit among the signatories to the IA conducting conservation actions funded under the MSHCP, and Clark County, to ensure that any management or conservation action that may potentially affect the Covered Species are reviewed by AMP for their effectiveness in the conservation of the species and their habitats.

PERMIT CONDITIONS FOR TE034927-0, cont'd.

J. The Permittees, in cooperation with the AMP contractor and the Service, shall participate with the land management agencies in development and/or revision of conservation management plans that identify the management and monitoring actions needed for the following areas or Covered Species:

1. Low Elevation Uplands: a) Piute Eldorado Desert Wildlife Management Area (DWMA), b) Coyote Springs Valley DWMA, c) Mormon Mesa DWMA, d) Gold Butte DWMA, and e) catclaw habitats;
2. Desert Riparian Habitats: a) Muddy River riparian habitat, b) Virgin River riparian habitat, and c) Meadow Valley Wash riparian habitat;
3. Low Elevation Springs: a) amphibian and aquatic snail species and b) bats;
4. Low Elevation Plant Species.

The prioritization and schedule for completion of the management plans will be developed within 6 months of permit issuance.

K. The following conditions apply to covered avian species listed in section 2.1.6 of the MSHCP:

1. Take, with the exception of Peregrine falcon (*Falco peregrinus anatum*) and phainopepla (*Phainopepla nitens*), under this permit is conditioned upon the acquisition of private lands in desert riparian habitats along the Muddy and Virgin rivers, and Meadow Valley Wash. The total number and location of acres to be acquired within each watershed will be identified in the conservation management plan (I.2 above) through the AMP and agreed to by the Permittees, the land management agencies, and the Service.
2. No lethal take is authorized. Take of active nests is not permitted at any time.
3. This section 10(a) permit also constitutes a Special Purpose Permit under 50 CFR 21.27 for the take of those Covered Species Subject to Incidental Take which are listed as threatened or endangered under the Act, and which are also protected under the MBTA. Such Special Purpose Permit shall be valid for a period of 3 years from the effective date, provided the section 10(a) permit remains in effect for such period. Such Special Purpose Permit shall be renewed, provided that the Permittees and MSHCP Participants continue to fulfill their obligations under the MSHCP and IA. Each such renewal shall be valid for the maximum period of time allowed by 50 CFR 21.27 or its successor at the time of renewal.

PERMIT CONDITIONS FOR TE034927-0, cont'd.

L. Special restrictions apply to wetland species:

Incidental take of Covered Species due to mortality or habitat loss within U.S. Army Corps of Engineer's (Corps) jurisdictional wetlands is not authorized by this incidental take permit. Incidental take authorization for projects that affect such jurisdictional wetlands shall be authorized through future Section 7 consultations between the Service and the Corps under the Act, pursuant to section 404 of the Clean Water Act. Incidental take of wetland associated or dependent species outside of jurisdictional wetlands will be in accordance with the MSHCP and the IA.

M. Tortoise Translocation Program and other Handling Programs. The Permittees shall continue the desert tortoise translocation developed and implemented under the DCP, and described in section 2.8.3.8 of the MSHCP, for so long as desert tortoise translocation is in effect. On an annual basis, the Permittees must request, in writing, authorization for handling and moving tortoises under this program. Individuals who handle desert tortoises in association with the translocation program or other programs permitted under the MSHCP (as described in section 2.8 of the MSHCP) must be authorized in writing by the Service or be under the direct on-site supervision of authorized personnel. The Permittees will be responsible for quarterly inspection of the fence around the translocation site. In addition, during the tortoise active season (March 1 to October 31), fence inspection will be conducted within 72 hours of a major precipitation event (any rain event that would cause water to flow across the landscape causing soil erosion) and within 10 days during the desert tortoise inactive season (November 1 to February 28). All breaches shall be corrected within 72 hours during the active season and within 10 days during the inactive season.

N. Highway and Road Fencing. The Permittees will continue to retrofit, repair, and construct desert tortoise proof fencing along highways and roads within Clark County in accordance with section 2.8.3.7 of the MSHCP. Each biennial budget shall include the location, number of miles, and dollars allocated to fencing during the next biennium. The Permittees shall be responsible for quarterly inspection and repairs of the highway and road fences in accordance with the provisions identified in item L above when breaches are found.

O. Coyote Springs Valley. Pursuant to this permit only those conditions carried forward from the DCP for the take of desert tortoise will apply to the properties identified in the DCP and MSHCP as Aerojet, which is located in the Coyote Springs Valley.

P. Boulder City Conservation Easement. The Permittees shall ensure that any future development or use of the 85,000-acre conservation easement be consistent with the goals outlined in the DCP which are to protect and manage the desert tortoise and its habitat. Furthermore, the Permittees shall take measures necessary to ensure maintenance in

PERMIT CONDITIONS FOR TE034927-0, cont'd.

perpetuity, of connectivity for desert tortoise and other Covered Species, within the Boulder City Conservation Easement, including an adequate North-South corridor for the desert tortoise, as determined through the AMP.

Q. Monitoring and enforcement:

The Permittees must ensure that Service personnel are given appropriate access (as defined under 50 CFR 13.21(e)(2)) to monitor the Covered Species Subject to Incidental Take within the MSHCP planning area in perpetuity.

1. The Permittees must ensure that the Service's Southern Nevada Field Office (1510 North Decatur Boulevard, Las Vegas, Nevada, 89108, telephone 702-647-5230) or the Nevada Fish and Wildlife Office (1340 Financial Boulevard, Suite 234, Reno, Nevada 89502, telephone 775-861-6300) is contacted immediately regarding any violations of the MSHCP or this permit.
2. Upon finding dead, injured, or sick Covered Species associated with activities authorized under the Incidental Take Permit, the Permittees or designated agents must notify the Fish and Wildlife Service's Division of Law Enforcement at (702) 388-6380 within 5 working days.

R. All reporting for this permit shall be in compliance with sections 2.12.1 and 2.12.2 of the MSHCP. In addition, copies of all reports shall be submitted to the Field Supervisor, Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, Nevada 89502, and to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, 911 Northeast 11th Avenue, Portland, Oregon 97232.

S. A copy of this permit must be on file with each of the Permittees. Please refer to the permit number in all correspondence and reports concerning permit activities. Any questions you may have about this permit should be directed to the Field Supervisor, Nevada Fish and Wildlife Office, at 775-861-6300.

PERMIT CONDITIONS FOR TE034927-0, cont'd.

Fish and Wildlife Service Permit TE034927-0
Covered Species Subject to Incidental Take

Reptiles and Amphibians

1. Desert tortoise, *Gopherus agassizii*
2. Glossy snake, *Arizona elegans*
3. Banded gecko, *Coleonyx variegatus*
4. Sidewinder, *Crotalus cerastes*
5. Speckled rattlesnake, *Crotalus mitchelli*
6. Mojave green rattlesnake, *Crotalus scutulatus scutulatus*
7. Great Basin collared lizard, *Crotaphytus insularis bicintores*
8. Desert iguana, *Dipsosaurus dorsalis*
9. Western red-tailed skink, *Eumeces gilberti rubricaudatus*
10. Large-spotted leopard lizard, *Gambelia wislizenii wislizenii*
11. California (common) king snake, *Lampropeltis getula californiae*
12. Western leaf-nosed snake, *Phyllorhynchus decurtatus*
13. Western long-nosed snake, *Rhinocheilus lecontei lecontei*
14. Sonoran lyre snake, *Trimorphodon biscutatus lambda*
15. Relict leopard frog, *Rana onca*

Birds

16. Southwestern willow flycatcher, *Empidonax traillii extimus*
17. American peregrine falcon, *Falco peregrinus anatum*
18. Yellow-billed cuckoo, *Coccyzus americanus*
19. Blue grosbeak, *Guiraca caerulea*
20. Phainopepla, *Phainopepla nitens*
21. Summer tanager, *Piranga rubra*
22. Vermillion flycatcher, *Pyrocephalus rubinus*
23. Arizona Bell's vireo, *Vireo bellii arizoniae*

Mammals

24. Silver-haired bat, *Lasionycteris noctivagans*
25. Long-eared myotis, *Myotis evotis*
26. Long-legged myotis, *Myotis volans*
27. Palmer's chipmunk, *Tamias palmeri*

PERMIT CONDITIONS FOR TE034927-0, cont'd.

Insects

28. Spring Mountains acastus checkerspot, *Chlosyne acastus robusta*
29. Dark blue butterfly, *Euphilotes enoptes purpurea*
30. Morland's checkerspot butterfly, *Euphydryas anicia morandi*
31. Spring Mountains comma skipper, *Hesperia comma mojavensis*
32. Spring Mountains icarioides blue, *Icaricia icarioides austinorum*
33. Mt. Charleston blue butterfly, *Icaricia shasta charlestonensis*
34. Nevada admiral, *Limenitus weidemeyerii nevadae*
35. Carole's silverspot butterfly, *Speyeria zerene carolae*

Crustaceans

36. Spring Mountains springsnail, *Pyrgulopsis deaconi*
37. Southeast Nevada springsnail, *Pyrgulopsis turbatrix*

Plants

38. Blue Diamond cholla, *Opuntia whipplei* var. *multigeniculata*
39. Rough angelica, *Angelica scabrida*
40. Sticky ringstem, *Anulocaulis leisolenus*
41. Charleston pussytoes, *Antennaria soliceps*
42. Las Vegas bearpoppy, *Arctomecon californica*
43. White bearpoppy, *Arctomecon merriamii*
44. Rosy King sandwort, *Arenaria kingii* ssp. *rosea*
45. Clokey milkvetch, *Astragalus aequalis*
46. Threecorner milkvetch, *Astragalus geyeri* var. *triquetrus*
47. Clokey eggvetch, *Astragalus oophorus* var. *clokeyanus*
48. Spring Mountain milkvetch, *Astragalus remotus*
49. Alkali mariposa lily, *Calochortus striatus*
50. Clokey paintbrush, *Castilleja martinii* var. *clokeyi*
51. Clokey thistle, *Cirsium clokeyi*
52. Jaeger whitlowgrass, *Draba jaegeri*
53. Charleston draba, *Draba paucifructa*
54. Inch high flebane, *Erigeron uncialis* ssp. *conjugans*
55. Forked buckwheat, *Eriogonum bifurcatum*
56. Sticky buckwheat, *Eriogonum viscidulum*
57. Clokey greasebush, *Glossopetalon clokeyi*
58. Smooth pungent greasebush, *Glossopetalon pungens* var. *glabra*
59. Pungent dwarf greasebush, *Glossopetalon pungens* var. *pungens*
60. Red Rock Canyon aster, *Ionactis caelestis*
61. Hidden ivesia, *Ivesia cryptocaulis*

PERMIT CONDITIONS FOR TE034927-0, cont'd.

62. Jaegar ivesia, *Ivesia jaegeri*
63. Hitchcock bladderpod, *Lesquerella hitchcockii*
64. Charleston pinewood lousewort, *Pedicularis semibarbata* var. *charlestonensis*
65. White-margined beardtongue, *Penstemon albomarginatus*
66. Charleston beardtongue, *Penstemon leiophyllus* var. *keckii*
67. Jaegar beardtongue, *Penstemon thompsonae* var. *jaegeri*
68. Parish's phacelia, *Phacelia parishii*
69. Clokey mountain sage, *Salvia dorrii* var. *clokeyi*
70. Clokey catchfly, *Silene clokeyi*
71. Charleston tansy, *Sphaeromeria compacta*
72. Charleston kittentails, *Synthyris ranunculina*
73. Charleston grounddaisy, *Townsendia jonesii* var. *tumulosa*
74. Limestone violet, *Viola purpurea* var. *charlestonensis*
75. *Anacolia menziesii*
76. *Claopodium whippleanum*
77. *Dicranoweisia crispula*
78. *Syntrichia princeps*

IMPLEMENTING AGREEMENT

CLARK COUNTY

***MULTIPLE SPECIES HABITAT
CONSERVATION PLAN***

November, 2000

TABLE OF CONTENTS

1. RECITALS - 1 -
 1.01 HISTORICAL BACKGROUND - 1 -
 1.02 THE PROCESS - 2 -
 1.03 COMPREHENSIVE PLAN - 2 -
 1.04 IMPORTANCE OF ADAPTIVE MANAGEMENT - 3 -
 1.05 CONDITIONS FOR PERMITS - 3 -
 1.06 UNLISTED SPECIES - 3 -
 1.07 SUBMITTAL OF APPLICATION - 4 -
 1.08 LEGAL REQUIREMENTS - 4 -
 1.09 FEDERAL LEGAL AUTHORITY - 4 -
 1.10 INTEGRATION OF DCP AND MSHCP - 6 -
 1.11 COOPERATIVE EFFORT - 8 -

2. PURPOSES - 8 -
 2.01 ASSURE IMPLEMENTATION - 8 -
 2.02 DESCRIBE REMEDIES AND RECOURSE - 8 -
 2.03 PROVIDE ASSURANCES TO THE APPLICANTS - 9 -

3. TERMS, DEFINITIONS AND ACRONYMS USED - 9 -
 3.01 SAME AS MSHCP AND ESA - 9 -
 3.02 COVERED ACTIVITIES - 9 -

4. TERM - 9 -
 4.01. STATED TERM - 9 -
 4.02. PERMANENCE OF CONSERVED HABITAT - 10 -

5. MSHCP PLAN AREA - 10 -
 5.01. CLARK COUNTY - 10 -
 5.02 NDOT - 10 -

6. INTEGRATION OF THE DCP AND PERMIT 801045 - 11 -
 6.01. INTEGRATION AND SEVERABILITY - 11 -

7. SPECIES - 11 -
 7.01 SPECIES REVIEWED AND ANALYZED - 11 -
 7.02. COVERED BUT CURRENTLY UNLISTED SPECIES - 12 -
 7.03 ADDITIONS TO COVERED SPECIES LIST - 12 -

8. THREATS, STRESSORS AND CONSERVATION MEASURES - 12 -
 8.01 THREATS AND STRESSORS - 12 -

8.02	<u>CONSERVATION MEASURES</u>	- 13 -
8.03	<u>MODIFICATIONS AND CHANGED CIRCUMSTANCES</u>	- 13 -
8.04	<u>IMPLEMENTATION PLAN AND BUDGET PROCESS</u>	- 13 -
8.05	<u>AGREEMENT</u>	- 13 -
9.	MANAGEMENT AREAS	- 13 -
9.01.	<u>CATEGORIES</u>	- 13 -
9.02.	<u>AGREEMENT</u>	- 14 -
9.03	<u>SIGNIFICANT MODIFICATIONS</u>	- 14 -
9.04	<u>ACTIONS PRIOR TO MODIFICATION</u>	- 15 -
9.05	<u>SECTIONS 7 CONSIDERATIONS</u>	- 15 -
10.	EFFECTS OF INCIDENTAL TAKE ON COVERED SPECIES	- 15 -
10.01	<u>EFFECTS</u>	- 15 -
10.02	<u>AGREEMENT</u>	- 16 -
11.	RESPONSIBILITIES OF THE PARTIES	- 16 -
11.01	<u>GENERAL STATEMENT</u>	- 16 -
11.02	<u>THE COUNTY AND THE CITIES</u>	- 16 -
11.03	<u>UNITED STATES FOREST SERVICE</u>	- 18 -
11.04	<u>UNITED STATES FISH AND WILDLIFE SERVICE</u>	- 19 -
11.05.	<u>THE UNITED STATES BUREAU OF LAND MANAGEMENT</u>	- 21 -
11.06	<u>THE UNITED STATES NATIONAL PARK SERVICE</u>	- 21 -
11.07	<u>THE STATE OF NEVADA: THE NEVADA DIVISION OF WILDLIFE..</u>	- 22 -
11.08.	<u>THE STATE OF NEVADA: THE NEVADA DIVISION OF TRANSPORTATION</u>	- 23 -
11.09.	<u>THE STATE OF NEVADA: THE NEVADA DIVISION OF STATE PARKS</u>	- 24 -
11.10	<u>THE STATE OF NEVADA: THE NEVADA DIVISION OF FORESTRY</u>	- 25 -
11.11	<u>ADDITIONAL STATE AND FEDERAL AGENCY COMMITMENTS</u>	- 25 -
11.12	<u>AGREEMENT</u>	- 26 -
12.	FINANCIAL ASSURANCES	- 26 -
12.01	<u>THE COUNTY AND THE CITIES</u>	- 26 -
12.02	<u>ALL STATE AGENCIES</u>	- 28 -
12.03	<u>ALL FEDERAL AGENCIES:</u>	- 29 -
12.04	<u>THE SERVICE</u>	- 29 -
12.05	<u>AGREEMENT</u>	- 30 -
13.	CHANGED CIRCUMSTANCES AND UNFORESEEN CIRCUMSTANCES	- 30 -
13.01	<u>DEFINITIONS</u>	- 30 -
13.02.	<u>CHANGED CIRCUMSTANCES</u>	- 30 -

13.03	<u>UNFORESEEN CIRCUMSTANCES</u>	- 31 -
13.04	<u>AGREEMENT</u>	- 32 -
14.	CLARIFICATIONS, MINOR ADMINISTRATIVE AMENDMENTS AND AMENDMENTS	- 33 -
14.01	<u>CLARIFICATIONS</u>	- 33 -
14.02	<u>MINOR ADMINISTRATIVE AMENDMENTS</u>	- 33 -
14.03	<u>PROCEDURE FOR CLARIFICATIONS AND MINOR ADMINISTRATIVE AMENDMENTS</u>	- 33 -
14.04	<u>AMENDMENTS</u>	- 34 -
15.	IMPLEMENTATION OF THE MSHCP	- 34 -
15.01	<u>MINIMIZATION, MITIGATION AND MONITORING</u>	- 34 -
15.02	<u>OVERALL ADMINISTRATION, PLANNING, BUDGETS AND REPORTING</u>	- 34 -
16.	REMEDIES AND ENFORCEMENT	- 34 -
16.01	<u>REMEDIES IN GENERAL</u>	- 34 -
16.02	<u>NO MONETARY DAMAGES</u>	- 35 -
16.03	<u>RESPONSIBILITY OF THE UNITED STATES</u>	- 35 -
16.04	<u>INJUNCTIVE AND TEMPORARY RELIEF</u>	- 35 -
16.05	<u>AUTHORITY OF COUNTY AND CITIES</u>	- 35 -
16.06	<u>SEVERABILITY</u>	- 36 -
16.07	<u>SUSPENSION OR REVOCATION OF THE PERMIT</u>	- 36 -
16.08	<u>LIMITATIONS AND EXTENT OF ENFORCEABILITY</u>	- 36 -
16.09	<u>LAND USE REGULATIONS</u>	- 37 -
16.10	<u>SECTION 7</u>	- 37 -
17.	FINDINGS AND ISSUANCE OF PERMITS	- 37 -
17.01	<u>FINDINGS</u>	- 37 -
17.02	<u>ISSUANCE OF PERMIT</u>	- 38 -
17.03	<u>MIGRATORY BIRD TREATY ACT</u>	- 38 -
18.	MISCELLANEOUS PROVISIONS	- 39 -
18.01	<u>NO PARTNERSHIP</u>	- 39 -
18.02	<u>SUCCESSORS AND ASSIGNS; ANNEXATIONS, ACQUISITIONS AND INCORPORATION</u>	- 39 -
18.03	<u>NOTICE</u>	- 40 -
18.04	<u>ENTIRE AGREEMENT</u>	- 41 -
18.05	<u>ATTORNEYS' FEES</u>	- 41 -
18.06	<u>ELECTED OFFICIALS NOT TO BENEFIT</u>	- 42 -
18.07	<u>AVAILABILITY OF FUNDS</u>	- 42 -
18.08	<u>DUPLICATE ORIGINALS</u>	- 42 -
18.09	<u>NEVADA LAW</u>	- 43 -

**CLARK COUNTY MULTIPLE SPECIES HABITAT
CONSERVATION
IMPLEMENTING AGREEMENT**

This Clark County Multiple Species Habitat Conservation Plan Implementation Agreement (Agreement) is made and entered into this ___ day of November, 2000 by and among the United States Fish and Wildlife Service (Service), the United States Bureau of Land Management (BLM), the United States Forest Service (USFS), the United States National Park Service (NPS), the Nevada Division of Wildlife (NDOW), the Nevada Division of Forestry (NDF), the Nevada Division of State Parks (NDSP), the Nevada Department of Transportation (NDOT), Clark County, Nevada (County), and the cities of Las Vegas, North Las Vegas, Boulder City, Henderson and Mesquite (collectively, Cities). The County, the Cities and NDOT may hereinafter be referred to collectively as Applicants or Permittees.

1. RECITALS

1.01 HISTORICAL BACKGROUND:

A. In March of 1990, the desert tortoise was listed as a threatened species pursuant to the provisions of the Endangered Species Act (ESA). Pursuant to the provisions of Section 10(a)(1)(B) of the ESA, the County and the Cities, through a community based Steering Committee, later designated the Implementation and Monitoring Committee (IMC), prepared a Short Term Habitat Conservation Plan ("STHCP") and, on January 15, 1991, submitted it to the Service with a request that the Service issue a permit to allow tortoises to be incidentally taken within certain locations within the County.

B. On July 24, 1991, the Service issued its permit ("PRT-756260") which allowed the

incidental take of tortoises pursuant to the terms of the STHCP. PRT-756260 terminated on or about August 1, 1995.

C. Immediately upon receipt of PRT-756260, the County and the Cities, through the IMC, began work to prepare a long term habitat conservation plan which would be the basis for a long term incidental take Permit for the desert tortoise. The plan was designated the Clark County Desert Conservation Plan (DCP).

D. On or about August 1, 1995, the DCP was approved and a new Section 10(a) permit was issued by the Service (PRT 801045) to allow the incidental take of desert tortoises for a term of 30 years.

E. On or about May 1, 1996, the IMC began discussing the possibility of preparing another Habitat Conservation Plan which would provide adequate conservation to support a Section 10(a) Permit for the desert tortoise as well as a broad range of species and all habitats located within Clark County. In August of 1996, after additional study, the County and the Cities authorized the preparation of the Clark County Multiple Species Habitat Conservation Plan, (MSHCP).

1.02 THE PROCESS. The IMC, the Applicants and each of the other Parties hereto have reviewed and approved the terms of the MSHCP. The MSHCP proposes a cooperative federal, state and local program of conservation for all ecosystems located within Clark County to benefit a broad range of species as set forth in the MSHCP. The MSHCP is the product of lengthy study, debate and negotiations among private development interests, mining, ranching and recreation interests, environmental and conservation groups as well as Federal, State and local governmental entities.

1.03 COMPREHENSIVE PLAN. The MSHCP is a comprehensive, long-term habitat conservation plan for the Covered Species which addresses multiple species needs and the preservation of the natural communities upon which the Covered Species rely. The MSHCP addresses the potential impacts of urban growth, natural habitat loss and endangerment to species

and creates a plan to minimize and mitigate for the loss of Covered Species and their habitats due to the direct and indirect impacts of future development of both federal and nonfederal lands within the Plan Area to the maximum extent practicable.

1.04 IMPORTANCE OF ADAPTIVE MANAGEMENT: The Adaptive Management Program (AMP) designed and proposed to be implemented, as set forth in Section 11.02 A hereof, is one of the most important elements of the MSHCP. The initial conservation measures proposed to be funded by the MSHCP, together with existing management policies and activities of public land managers, are sufficient to conserve the Covered Species and their habitats within Clark County and to meet the requirements of Section 10(a) of the Endangered Species Act. However, given the number of Covered Species, the paucity of data and information regarding some species for which coverage may be sought in the future, the variety of habitats found within Clark County, the rapid growth of Clark County which will, in the future, increase pressures upon the natural resources of the County, and budget limitations of both land managers and the MSHCP, the science based AMP which will provide guidance and suggestions to the Service, land managers and the Clark County Implementation and Monitoring Committee (IMC) regarding monitoring, research, management practices and budget priorities is a keystone element of the MSHCP. In addition to any other obligation undertaken hereunder, execution of this Agreement by each of the Parties constitutes its commitment to fully cooperate with, to participate in and to seriously consider implementation of measures suggested by the AMP, as more particularly set forth in Section 2.8.2 of the MSHCP.

1.05 CONDITIONS FOR PERMITS. The MSHCP establishes the conditions under which the Permittees, for the benefit of themselves and of public and private landowners within their jurisdictional boundaries, will receive from the Service certain long term permits, authorizations and assurances to allow the incidental taking of the Covered Species incidental to otherwise lawful activities and land uses.

1.06 UNLISTED SPECIES. In addition to dealing with Covered Species which are listed as Threatened or Endangered or Proposed for such listing, the Permits and authorizations sought by

the Applicants will address those Covered Species which are not presently listed or proposed for listing, even though the take of unlisted species is not prohibited. The purposes of treating such unlisted Covered Species the same as listed Covered Species include protecting such unlisted species and their habitat to prevent such species from ever being in danger of becoming extinct and providing certainty regarding how the subsequent listing of such species may affect future permitting and mitigation requirements. In addition, the preservation of natural habitats and wildlife will significantly enhance the quality of life in southern Nevada and preserve and set aside lands for the future use and enjoyment of its residents and visitors.

1.07 SUBMITTAL OF APPLICATION. On or about November 1, 1999, the County, the Cities and NDOT submitted their application for an incidental take permit pursuant to the provisions of Section 10(a)(1)(B) of the ESA ("MSHCP Permit) to permit the incidental take of over 79 species as more particularly identified in the MSHCP (Covered Species). The MSHCP was included as a part of the application.

1.08 LEGAL REQUIREMENTS. In order to fulfill the requirements which will allow the Service to issue the MSHCP Permit, the MSHCP sets forth measures that are intended to assure that any take occurring will be incidental; that the impacts of the take will, to the maximum extent practicable be minimized and mitigated; that adequate funding for the provisions of the MSHCP will be provided; and that the take will not appreciably reduce the likelihood of the survival and recovery of the Covered Species in the wild. It also includes measures which have been suggested by the Service as being necessary or appropriate for purposes of the MSHCP.

1.09 FEDERAL LEGAL AUTHORITY. The Service enters into this Agreement pursuant to the ESA, the Fish and Wildlife Coordination Act (16 U.S.C. 661-666c), and the Fish and Wildlife Act of 1956 (16 U.S.C.742(f), et.seq.). Section 10(a)(1)(B) of the ESA (16 U.S.C.1539(a)(1)(B)), expressly authorizes the Service to issue a Section 10(a) Permit to allow the Incidental Take of species listed as threatened or endangered under the terms of the ESA. The legislative history of Section 10(a)(1)(B) clearly indicates that Congress also contemplated that the Service may, should

and would approve Habitat Conservation Plans that protect unlisted species as if they were listed under the ESA, and that in doing so the Service would provide Incidental Take assurances for such unlisted species. Relevant excerpts from such legislative history includes the following:

“The Committee intends that the Secretary may utilize this provision [regarding habitat conservation plans] to approve conservation plans which provide long-term commitments regarding the conservation of listed as well as unlisted species and long-term assurances to the proponent of the conservation plan that the terms of the plan will be adhered to and that further mitigation requirements will only be imposed in accordance with the terms of the plan. In the event that an unlisted species addressed in an approved conservation plan is subsequently listed pursuant to the Act, no further mitigation requirements should be imposed if the conservation plan addressed the conservation of the species and its habitat as if the species were listed pursuant to the Act.

It is also recognized that circumstances and information may change over time and that the original plan might need to be revised. To address this situation, the Committee expects that any plan approved for a long-term permit will contain a procedure by which the parties will deal with unforeseen circumstances.” H.R. Rep. No. 97-835, 97th Cong., 2d Session 30-31 (1982) (Conference Report on 1982 Amendments to the ESA).

The Service routinely approves habitat conservation plans that address and provide coverage for both listed and unlisted species.

Regulations adopted by the Service to implement Section 10 (50 CFR 17.22 et.seq.) and the recently adopted “Assurances Rule” (50 CFR 17.2 and 17.22 et.seq; 63 FR 8859) are further expressions of the intent of the Service to implement the intent of Congress regarding both listed and unlisted species. Under the Assurances Rule, if HCP’s protect identified unlisted species as if they were listed, the Service will not seek additional mitigation that requires the expenditure of money or land set asides from the plan proponents. The Assurances Rule also assures plan proponents that if an approved HCP is properly implemented, the Service will not seek additional land or financial

compensation if "unforeseen" circumstances should later arise with respect to either listed or unlisted species.

The Solicitor's Office of the US Department of Interior has reviewed the Assurances Rule as described above and integrated into this Agreement and has determined that the Rule and its application to this Agreement and the MSHCP is authorized under the ESA, including the provisions and legislative history set forth hereinabove.

1.10 INTEGRATION OF DCP AND MSHCP.

A. Relevant terms of the DCP have been incorporated into the terms of the MSHCP, and except as hereinafter provided, the MSHCP is intended to supersede and replace the terms of the DCP. The MSHCP and each of its terms are intended to be, and by this reference are, incorporated herein. In the event of any direct contradiction between the terms of the DCP and the MSHCP, the MSHCP shall control.

B. At the time the Permittees, the IMC and the Service first determined that they would develop the MSHCP, it was necessary to decide whether the DCP and the MSHCP would remain separate conservation plans with separate permits or whether the DCP and the MSHCP would be integrated and, based on the principles of Adaptive Management, be administered as one plan to benefit all of the ecosystems and species proposed to be conserved and covered by both plans. Because integration of the two plans and the consistent application of the principles of adaptive management would provide greater flexibility with respect to conservation measures and dealing with threats and stressors to species and habitats over time, the parties decided that it would be better to integrate the two plans and rely upon one permit issued by the Service. The Parties recognized and acknowledged that implementation of the Adaptive Management provisions of the MSHCP may result, in any given biennium, in more or less money being expended for the conservation of the desert tortoise than that contemplated and mandated by the DCP and its Permit. Because of the importance to the economy of Clark County to insure that the ability to

incidentally take desert tortoises will not be jeopardized, at all times during the term of the MSHCP and the Permit issued pursuant thereto, the terms, conditions, provisions and authorization to incidentally take desert tortoises shall be severable from the balance of the MSHCP and the Permit issued pursuant thereto, and in the event, for any reason, except for failure to comply with biennial budget and implementation plan as it affects desert tortoises, the MSHCP or its Permit is terminated or suspended, the portion of the MSHCP affecting desert tortoises shall not be affected thereby; and further, approval by the Service of the biennial budget and implementation plan, as hereinafter set forth, shall, *ipso facto*, constitute a determination by the Service that the biennial budget and implementation plan mitigates and minimizes the effects upon the desert tortoise to the maximum extent practicable and that the effects of such incidental take will not appreciably reduce the likelihood of the survival and recovery of that species in the wild. In the event that the Service finds that the conservation measures proposed for the desert tortoise during any biennium make it impossible for it to approve the biennial budget and implementation plan, it shall inform the IMC and shall recommend specific modifications to the biennial budget and implementation plan which would allow the Service to approve it. Furthermore, in the event that the MSHCP or its Permit is terminated or suspended so that conservation of and incidental take authorization for the other species covered hereunder ceases, conservation of and authorization for the incidental take of desert tortoises shall not be affected thereby, and the minimization, mitigation and monitoring measures set forth in the DCP and its Permit shall thereafter be the minimization, mitigation and monitoring measures required for continuing coverage of the desert tortoise pursuant hereto. Thereafter, failure to comply with the provisions of the DCP and PRT 801045 shall be grounds for suspension or termination of the MSHCP Permit with respect to desert tortoises.

C. In the event of any direct contradiction between the terms of the MSHCP and this Agreement, the terms of this Agreement shall control. In all other cases, the terms of this Agreement and the terms of the MSHCP shall be interpreted to be supplementary to each other. References to specific sections of the MSHCP herein indicate the sections of the MSHCP wherein a specific topic is discussed. However, the references are not intended to be exclusive, and a

specific topic may be discussed in other sections of the MSHCP which have not been specifically referenced. All sections and provisions of the MSHCP shall be utilized to interpret the terms of this Agreement, whether or not specifically referenced herein.

1.11 COOPERATIVE EFFORT. In order that each of the legal requirements of the ESA are fulfilled, each of the Parties to this Agreement must perform certain specific tasks as more particularly set forth in the MSHCP. The MSHCP thus describes a cooperative Federal, State and local program of conservation for the habitats and species located within Clark County.

NOW THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties do hereby agree as follows:

2. PURPOSES

The general purpose of this Agreement and the MSHCP is to provide for the long-term reconciliation of development within the MSHCP Plan Area, as hereinafter set forth, with the conservation and protection of the Covered Species. In order to provide this reconciliation the specific purposes of this Agreement are:

2.01 ASSURE IMPLEMENTATION: To assure the implementation of each of the terms of the MSHCP by means of a contractual commitment by each of the Parties to completely fulfill and faithfully perform the obligations, responsibilities and tasks assigned to it pursuant to the terms of the MSHCP, including without limitation, the financial commitments and undertakings committed to by the Applicants; subject however, to the provisions of Section 18.07 hereof; and,

2.02 DESCRIBE REMEDIES AND RECOURSE: To describe remedies and recourse should any party fail to perform its obligations, responsibilities and tasks as set forth in this Agreement; and,

2.03 PROVIDE ASSURANCES TO THE APPLICANTS: To provide assurances to the Applicants and non-federal landowners participating in the MSHCP that:

A. Compliance with the terms of this Agreement and the MSHCP constitutes compliance with the provisions of the ESA and applicable and relevant laws of the State of Nevada; and,

B. Implementation of this Agreement and the MSHCP will adequately provide for the conservation and protection of the Covered Species and their habitat in the Plan Area; and,

C. As long as the terms of the MSHCP and the MSHCP Permit issued pursuant to it are properly implemented, no additional land restrictions or financial compensation for the Covered Species will be required, without the written consent of non-federal landowners, in the event of unforeseen circumstances, as more particularly set forth hereinafter.

3. TERMS, DEFINITIONS AND ACRONYMS USED

3.01 SAME AS MSHCP AND ESA. Terms, definitions and acronyms utilized in the MSHCP and/or the ESA shall have the same meaning when utilized in this Agreement, except as specifically noted.

3.02. COVERED ACTIVITIES. Activities proposed to be covered by any Section 10(a) permit issued in reliance hereon shall include all otherwise lawful activities which occur upon nonfederal property, including but not limited to those activities set forth in Section 2.3.2.2 of the MSHCP; provided, however, that activities which are otherwise lawful and which occur upon nonfederal property, but which result in the take of Covered Species upon federal property are not Covered Activities.

4. TERM

4.01. STATED TERM. As further described in Section 2.4.1 of the MSHCP, this Agreement shall become effective on the date that the Service issues the MSHCP Permit requested in the MSHCP

and shall remain in full force and effect for a period of thirty (30) years.

4.02. PERMANENCE OF CONSERVED HABITAT. Notwithstanding the stated term of this Agreement, the Parties agree and recognize that once species have been taken and habitats disturbed pursuant to the MSHCP, the take of species and habitat modification will be permanent. It is therefore the intention of the Parties that the provisions of the MSHCP and of this Agreement regarding the establishment and maintenance of habitat by the BLM, USFS, NPS, NDF, , NDOW, NDSP and the Service shall likewise, to the extent permitted by law, be permanent and extend beyond the term of this Agreement. Likewise, as more particularly set forth in Section 2.9.2 of the MSHCP, any funds remaining in the MSHCP Endowment Fund at the end of the Stated Term of the MSHCP shall continue to be expended solely and exclusively for the conservation of species and habitats.

5. MSHCP PLAN AREA

5.01. CLARK COUNTY: As further described in Section 2.3 and Section 2.4 of the MSHCP, the Plan Area includes all of Clark County and its cities, and the MSHCP Permit will allow the incidental take of Covered Species resulting from all Covered Activities upon all nonfederally owned property located within that County and its cities.

5.02 NDOT: As further described in Section 2.3 and Section 2.4 of the MSHCP, the Plan Area also includes NDOT rights of way (including material sites) below 5,000 feet in elevation, south of the 38th parallel in Nye, Lincoln, Mineral and Esmeralda Counties, all of which are located within the State of Nevada. The MSHCP Permit allows NDOT to incidentally take desert tortoises upon its rights of way within the Plan Area located outside of Clark County, but no other Covered Species except within Clark County.

6. INTEGRATION OF THE DCP AND PERMIT 801045

6.01. INTEGRATION AND SEVERABILITY: Section 2.2.4.3 of the MSHCP provides that immediately upon the approval of the MSHCP and the issuance of the MSHCP permit, the terms of the DCP and Permit 801045 would be suspended; provided, however, that if for any reason the MSHCP permit were suspended, revoked or terminated, the terms of the DCP and Permit 801045 would immediately be reinstated and the parties would thereafter again be bound by the terms of both the DCP and Permit 801045. However, subsequent to the preparation and approval of the MSHCP, it was determined that the suspension and reinstatement provisions as set forth in the MSHCP might not be authorized by existing regulations. Therefore, as more particularly set forth in Section 1.10.B. hereof, in order to gain the benefits of integrating the DCP and the MSHCP, while at the same time assuring that the integration of the two plans will not jeopardize the incidental take coverage provided by the DCP and its permit by virtue of implementing conservation measures suggested by the adaptive management provisions of the MSHCP, but not contained within the DCP, the terms, conditions, provisions and authorization to incidentally take desert tortoises shall at all times during the term of the MSHCP be and remain severable from the balance of the MSHCP and the Permit issued pursuant thereto

7. SPECIES

7.01 SPECIES REVIEWED AND ANALYZED: As further described in Section 2.4.2.4, Section 2.5, Section 2.6, Tables 2-5, 2-6 and 2-7, and Volumes II and III of the MSHCP, species reviewed and analyzed in the MSHCP are categorized as:

A. Covered Species, as set forth in Table 2-5 of the MSHCP, for which the MSHCP Permit will allow incidental take resulting from all Covered Activities conducted within Clark County. Covered Species include species which are currently listed as well as species which are not currently listed. Covered Species which are not currently listed have been treated by the MSHCP as if they have been listed.

B. Evaluation Species, as set forth in Table 2-6 of the MSHCP, for which additional information is required or for which sufficient management prescriptions have not been defined to support an application for a MSHCP Permit pursuant to Section 10(a) of the ESA at the present time. The MSHCP provides a process to move species designated as Evaluation Species to the Covered Species list by acquiring additional data and information regarding those species and the identification of conservation measures which will allow coverage pursuant to Section 10(a).

C. Watch List Species, as set forth in Table 2-7 of the MSHCP, which are those species for which adequate information is not available to assess their current status or that are not considered to be at risk during the planning horizon the MSHCP. The MSHCP contemplates that as more information is gathered, Watch List species may be moved to the Evaluation Species List or the Covered Species List.

7.02. COVERED BUT CURRENTLY UNLISTED SPECIES: As further described in Section 2.11.2 of the MSHCP, in the event a Covered but currently unlisted species is listed in the future, such species shall, without any further action on the part of the Applicants, be covered pursuant to the terms of the Section 10(a) Permit.

7.03 ADDITIONS TO COVERED SPECIES LIST: As further described in Section 2.11.3 of the MSHCP, in the event the Applicants wish to move a species from the Evaluation Species List to the Covered Species List and include it in the MSHCP Permit, it shall amend the MSHCP and request an amendment to the MSHCP Permit from the Service, which such amendment shall be supported by sufficient data and evidence to meet the requirements of a Section 10(a) Permit.

8. THREATS, STRESSORS AND CONSERVATION MEASURES

8.01 THREATS AND STRESSORS: As further described in Section 2.4.2.6, Section 2.5 and Volumes II and III of the MSHCP, the Parties agree that the MSHCP has adequately described known, reasonably foreseen or alleged threats and stressors which affect both species and their

habitats within Clark County.

8.02 CONSERVATION MEASURES: As further described in Section 2.4.2.6, Section 2.8, and Volumes II and III of the MSHCP, the Parties agree that the MSHCP has adequately described known conservation measures which currently appear to adequately address the known, reasonably foreseen or alleged threats and stressors.

8.03 MODIFICATIONS AND CHANGED CIRCUMSTANCES: As further described in Section 2.8.2 and 2.10, the MSHCP contemplates that the list of threats and stressors as well as conservation measures adequate to deal with those threats and stressors may be modified from time to time as a result of the Adaptive Management Plan (AMP) process and the process for dealing with Changed and Unforeseen Circumstances.

8.04 IMPLEMENTATION PLAN AND BUDGET PROCESS. As further described in Section 2.11.2, in the event, as a result of the AMP or additional information gathered by the IMC, it desires to modify the list of threats and stressors or modify the list of conservation measures, such proposed modifications shall be submitted to the Service and be processed as part of the Implementation Plan and Budget (IPB) process.

8.05 AGREEMENT. The parties agree that the threats and stressors (known or reasonably foreseeable) set forth in the MSHCP are those factors which negatively impact or likely could negatively impact the Covered Species and that the conservation measures set forth in Section 2.8 hereof fully meets and fulfills the requirements of the ESA and relevant laws of the state of Nevada with respect to the Covered Species and their respective habitats.

9. MANAGEMENT AREAS

9.01. CATEGORIES: As further described in Section 2.4.2.7, Section 2.5 and Volumes II and III of the MSHCP, all lands within Clark County have been categorized as one of the following:

A. Intensively Managed Areas (IMAs) which are areas within the County in which management is oriented primarily toward actions that reduce or eliminate potential threats and stressors to species and habitats.

B. Less Intensively Managed Areas (LIMAs) which are areas within the County upon which management generally limits the range of uses allowed to primarily recreational uses, and which augment the habitats located within IMAs, provide buffers between IMAs and areas of more intensive use, and provide corridors between IMAs.

C. Multiple Use Managed Areas (MUMAs) which are areas within the County upon which human utilization may be intense, but which nevertheless continue to support significant areas of undisturbed habitat. MUMAs provide connectivity between populations of species in IMAs and LIMAs, provide additional habitat for species, provide buffer areas between IMAs and LIMAs and areas of more intensive use and provide connectivity between IMAs and LIMAs.

D. Unmanaged Areas (UMAs) which are areas on which human activities predominate and which incidentally may support populations of some species. All privately owned lands have been designated as UMAs.

9.02. AGREEMENT: The Parties agree that current management, as augmented by the minimization, mitigation and monitoring provisions of Section 2.8 of the MSHCP and this Agreement, within IMAs, LIMAs and MUMAs are sufficient to assure that the incidental take of the Covered Species will not appreciably reduce the likelihood of the survival and recovery of the Covered Species in the wild.

9.03 SIGNIFICANT MODIFICATIONS: Notwithstanding the provisions of Section 9.02 hereof, the Parties agree that in the event of any change in size or location of IMAs, LIMAs or MUMAs or a modification of management actions or activities permitted within those areas which are significantly different from those set forth in the MSHCP, substantial adverse impacts upon habitats

and Covered Species could occur which might significantly reduce the likelihood of the survival and recovery of one or more Covered Species in the wild. Any such change which has a significant adverse impact upon the likelihood of the survival and recovery of the species in the wild may be grounds for the suspension, termination or revocation of all or a portion of the MSHCP Permit pursuant to the provisions of Section 16.07 of this Agreement.

9.04 ACTIONS PRIOR TO MODIFICATION: State and Federal land managers agree that, prior to any significant change of size or location of IMAs, LIMAs or MUMAs or a significant modification of management actions or activities permitted within those areas, different from those set forth in the MSHCP and existing management plans adopted by the land managers, they shall consider the likely effects on the habitats and Covered Species and the MSHCP Permit, shall report to the IMC and the Service the exact nature and extent of such proposed modification and receive and consider input from the IMC and the Service.

9.05 SECTIONS 7 CONSIDERATIONS: The Service agrees that it shall consider the effects of any proposed modification to the size or location of IMAs, LIMA's or MUMAs upon the terms of the MSHCP Permit in any Section 7 consultation which may be instituted to consider such modification.

10. EFFECTS OF INCIDENTAL TAKE ON COVERED SPECIES

10.01 EFFECTS: As more particularly set forth in Volume I of the MSHCP, Sections 2.4.1, 2.6, 2.7, Table 2-5, Chapter 4 and Volumes II and III, issuance of a Section 10(a) Permit and relevant permits from NDF and NDOW will allow the incidental take of Covered Species primarily as the result of the disturbance of up to 145,000 acres of nonfederal land within the Permit Area. However, measures to minimize mitigate and monitor as set forth in Section 2.8 will contribute to the recovery of listed species, reduce the likelihood of the necessity to list Covered Species which are currently unlisted and provide protection and conservation benefits to Evaluation and Watch List Species

which share habitat with Covered Species.

10.02 AGREEMENT: The Parties agree that the incidental take of Covered Species associated with the disturbance of no more than 145,000 acres of nonfederally owned land within the Permit Area during the Stated Term of the MSHCP Permit will not appreciably reduce the likelihood of the survival and recovery of the Covered Species in the wild.

11. RESPONSIBILITIES OF THE PARTIES

11.01 GENERAL STATEMENT: In order to minimize, mitigate and monitor the impacts of incidental take, the Parties each agree that they shall undertake the tasks, responsibilities and obligations set forth hereinafter. The parties agree that while the specific obligations set forth hereinafter may remain in effect throughout the Stated Term of the MSHCP, funding for each specific measure may increase or decrease during each biennial period with the approval of the IMC, the Service and the BCC pursuant to the IPB process as more particularly set forth in Section 2.12 of the MSHCP and that additional and different obligations and conservation measures may be undertaken by the Parties and funded by Clark County as a result of the Adaptive Management Program (AMP) and IPB process to more effectively provide for the conservation of Covered Species.

11.02 THE COUNTY AND THE CITIES: The County and the Cities shall:

A. As more particularly provided in Section 2.8.2 and 2.8.3.10 of the MSHCP, establish a science based Adaptive Management Program (AMP).

B. As further described in Section 2.8.3.1 of the MSHCP, adopt and keep in effect ordinances which: i) impose a \$550 per acre development fee on all nonfederal lands within Clark County which are disturbed and which disturbance requires a permit issued by the County or the Cities, and ii) grant subpermits to take Covered Species to those who comply with the ordinances,

the MSHCP and the Permit. Such ordinances shall be in substantially the same form as adopted by Clark County in Chapter 28.46 of the Clark County Code.

C. As further described in Section 2.8.3.2 and Section 2.9 of the MSHCP, expend \$2.05 million dollars annually (\$4.1 million dollars biennially) on conservation measures for the Desert tortoise and other Covered Species and Evaluation Species approved by the IMC, the Service and the Clark County Board of County Commissioners (BCC) through and including June 30, 2005 and \$1.750 million dollars annually (\$3.5 million dollars biennially) during the remainder of the Stated Term, adjusted biennially to reflect cost of living adjustments, not to exceed 4% per annum, and credits for expenditures in excess of those required during earlier biennial periods. The index to be used in calculating the cost of living adjustments shall be U.S. City Average published by the United States Bureau of Labor Statistics, and the base month shall be June, 1999.

D. As further described in Section 2.8.3.3 of the MSHCP, administer the MSHCP utilizing the IMC, a Program Administrator and staff at levels approved by the IMC, the Service and BCC.

E. As further described in Section 2.8.3.4 of the MSHCP, establish an active Public Information and Education program through its Public Information and Education Committee (PIE).

F. As further described in Section 2.8.3.5 of the MSHCP, make funds available to purchase and exchange grazing allotments and other interests in real property and water with the advice and consent of the IMC, the Service and the BCC.

G. As further described in Section 2.8.3.6 of the MSHCP, make funds available to maintain and manage grazing allotments, land and water rights which it has acquired.

H. As further described in Section 2.8.3.7 of the MSHCP, continue their program of installing linear barriers along selected and prioritized highways and roads within Clark County to

protect desert tortoises and other species from the effects of roads and highways.

I. As further described in Section 2.8.3.8 of the MSHCP, continue their program of translocating desert tortoises.

J. Continue their program of participating in the Las Vegas Bearpoppy Memorandum of Agreement, and in particular, assist in setting aside Bearpoppy habitat located at the North Las Vegas Airport, the North Well Field owned by the Southern Nevada Water Authority and Nellis Air Force Base.

K. As further described in Section 2.8.3.9 of the MSHCP, participate in and provide funding assistance to local habitat restoration and enhancement projects, with the advice and consent of the IMC, the Service and the BCC.

L. As further described in Section 2.8.3.2 of the MSHCP, augment but not replace federal and state land manager budgets to allow those managers to more fully or quickly implement conservation measures set forth in Sections 2.8.4 through 2.8.9 of the MSHCP.

11.03 UNITED STATES FOREST SERVICE: The USFS shall:

A. As further described in Section 2.8.4.1 of the MSHCP, institute and/or continue a Public Information and Education program in cooperation with the PIE.

B. As further described in Section 2.8.4.2 of the MSHCP, cooperate with and participate in research programs dealing with the habitats and species of Clark County.

C. As further described in Section 2.8.4.3 of the MSHCP, institute and/or continue a program to inventory habitats and species within its jurisdiction within Clark County.

D. As further described in Section 2.8.4.4 of the MSHCP, institute and/or continue a program to monitor habitats and species within its jurisdiction within Clark County.

E. As further described in Section 2.8.4.5 of the MSHCP, institute and/or continue a program to protect habitats and species within its jurisdiction within Clark County.

F. As further described in Section 2.8.4.6 of the MSHCP, institute and/or continue a program to restore and enhance habitats within its jurisdiction within Clark County.

G. As further described in Section 2.8.4.7 of the MSHCP, institute and/or continue land use policies and actions to protect habitats and species within its jurisdiction within Clark County.

11.04 UNITED STATES FISH AND WILDLIFE SERVICE: The Service shall:

A. As further described in Section 2.8.5.1 of the MSHCP, institute and/or continue a Public Information and Education program in cooperation with the PIE.

B. As further described in Section 2.8.5.2 of the MSHCP, institute and/ or continue a research program dealing with the habitats and species of Clark County.

C. As further described in Section 2.8.5.3 of the MSHCP, institute and/or continue a program to inventory habitats and species within its jurisdiction within Clark County.

D. As further described in Section 2.8.5.4 of the MSHCP, institute and/or continue a program to monitor habitats and species within its jurisdiction within Clark County.

E. As further described in Section 2.8.5.5 of the MSHCP, institute and/or continue a program to protect habitats and species within its jurisdiction within Clark County.

F. As further described in Section 2.8.5.6 of the MSHCP, institute and/or continue a program to restore and enhance habitats within its jurisdiction within Clark County.

G. As further described in Section 2.8.5.7 of the MSHCP, institute and/or continue land use policies and actions which protect habitats and species within its jurisdiction within Clark County.

H. As further described in Section 2.10.9.2 of the MSHCP, utilize and take into consideration the terms of the MSHCP, the AMP and IPB in any biological opinion or incidental take statement issued by it as required by Section 7 of the ESA.

I. As further described in Section 2.10.9.3, inform the IMC, in writing, of any proposal to list any Covered (but currently unlisted), Evaluation or Watch List Species which it considers may be in need of specific conservation measures in order to prevent listing in the future. In addition, to the extent permitted by law, the Service will consider the MSHCP, the AMP and the IPB process and conservation actions undertaken pursuant thereto prior to listing or proposing to list any species within the County. In the event of the listing of any Evaluation or Watch List Species, it shall meet and confer with the County to determine why conservation measures undertaken within the County have been insufficient to avoid the listing, and what specific measures must be undertaken before such species may be included as a Covered Species.

J. At anytime it considers the designation of Critical Habitat or the preparation of a Recovery Plan for any species located within Clark County, it shall notify the IMC of its intention, and shall enter into a dialogue with the County and the IMC regarding the proposed designation or preparation. To the extent permitted by law and appropriate under the circumstances, it shall include a representative or representatives of the IMC on any Recovery Team appointed to prepare a Recovery Plan.

11.05. THE UNITED STATES BUREAU OF LAND MANAGEMENT: The BLM shall:

- A. As further described in Section 2.8.6.1 of the MSHCP, institute and/or continue a Public Information and Education program in cooperation with the PIE.
- B. As further described in Section 2.8.6.2 of the MSHCP, institute and/ or continue a research program dealing with the habitats and species of Clark County.
- C. As further described in Section 2.8.6.3 of the MSHCP, institute and/or continue a program to inventory habitats and species within its jurisdiction within Clark County.
- D. As further described in Section 2.8.6.4 of the MSHCP, institute and/or continue a program to monitor habitats and species within its jurisdiction within Clark County.
- E. As further described in Section 2.8.6.5 of the MSHCP, institute and/or continue a program to protect habitats and species within its jurisdiction within Clark County.
- F. As further described in Section 2.8.6.6 of the MSHCP, institute and/or continue a program to restore and enhance habitats within its jurisdiction within Clark County.
- G. As further described in Section 2.8.6.7 of the MSHCP, institute and/or continue land use policies and actions to protect habitats and species within its jurisdiction within Clark County.
- H. As further described in Section 2.8.6.7 (BLM 212), consider the adoption of a rural roads and OHV policy consistent with the proposal set forth in that section.

11.06 THE UNITED STATES NATIONAL PARK SERVICE: The NPS shall:

- A. As further described in Section 2.8.7.1 of the MSHCP, institute and/or continue a

Public Information and Education program in cooperation with the PIE.

B. As further described in Section 2.8.7.2 of the MSHCP, institute and/ or continue a research program dealing with the habitats and species of Clark County.

C. As further described in Section 2.8.7.3 of the MSHCP, institute and/or continue a program to inventory habitats and species within its jurisdiction within Clark County.

D. As further described in Section 2.8.7.4 of the MSHCP, institute and/or continue a program to monitor habitats and species within its jurisdiction within Clark County.

E. As further described in Section 2.8.7.5 of the MSHCP, institute and/or continue a program to protect habitats and species within its jurisdiction within Clark County.

F. As further described in Section 2.8.7.6 of the MSHCP, institute and/or continue a program to restore and enhance habitats within its jurisdiction within Clark County.

G. As further described in Section 2.8.7.7 of the MSHCP, institute and/or continue land use policies and actions to protect habitats and species within its jurisdiction within Clark County.

11.07 THE STATE OF NEVADA: THE NEVADA DIVISION OF WILDLIFE: NDOW shall:

A. As further described in Section 2.8.9.1(a) of the MSHCP, institute and/or continue a Public Information and Education program in cooperation with the PIE.

B. As further described in Section 2.8.9.1(b) of the MSHCP, institute and/ or continue a research program dealing with the habitats and species of Clark County.

C. As further described in Section 2.8.9.1(d) of the MSHCP, institute and/or continue a program to inventory habitats and species within its jurisdiction within Clark County.

D. As further described in Section 2.8.9.1(c) of the MSHCP, institute and/or continue a program to monitor habitats and species within its jurisdiction within Clark County.

E. As further described in Section 2.8.9.1(e) of the MSHCP, institute and/or continue a program to protect habitats and species within its jurisdiction within Clark County.

F. As further described in Section 2.8.9.1(f) of the MSHCP, institute and/or continue a program to restore and enhance habitats within its jurisdiction within Clark County.

G. As further described in Section 2.8.9.1(g) of the MSHCP, institute and/or continue land use policies and actions to protect habitats and species within its jurisdiction within Clark County.

11.08. THE STATE OF NEVADA: THE NEVADA DIVISION OF TRANSPORTATION:
NDOT shall:

A. As further described in Section 2.8.9.2(a) of the MSHCP, institute and/or continue a Public Information and Education program in cooperation with the PIE.

B. As further described in Section 2.8.9.2(b) of the MSHCP, institute and/or continue a research program dealing with the habitats and species of Clark County.

C. As further described in Section 2.8.9.2(c) of the MSHCP, institute and/or continue a program to inventory habitats and species within its jurisdiction within Clark County.

D. As further described in Section 2.8.9.2(d) of the MSHCP, institute and/or continue a program to monitor habitats and species within its jurisdiction within Clark County.

E. As further described in Section 2.8.9.2(e) of the MSHCP, institute and/or continue a program to protect habitats and species within its jurisdiction within Clark County.

F. As further described in Section 2.8.9.2(f) of the MSHCP, institute and/or continue a program to restore and enhance habitats within its jurisdiction within Clark County.

G. As further described in Section 2.8.9.2(g) of the MSHCP, institute and/or continue land use policies and actions to protect habitats and species within its jurisdiction within Clark County.

H. As further described in Section 2.8.3.1, pay a fee in the amount of \$550 per acre of land it disturbs outside of IMAs and LIMAs.

11.09. THE STATE OF NEVADA: THE NEVADA DIVISION OF STATE PARKS: NDSP shall:

A. As further described in Section 2.8.9.3(a) of the MSHCP, institute and/or continue a Public Information and Education program in cooperation with the PIE.

B. As further described in Section 2.8.9.3(b) of the MSHCP, institute and/or continue a program to protect habitats and species within its jurisdiction within Clark County.

C. As further described in Section 2.8.9.1(c) of the MSHCP, institute and/or continue a program to restore and enhance habitats within its jurisdiction within Clark County.

D. As further described in Section 2.8.9.1(d) of the MSHCP, institute and/or continue

land use policies and actions to protect habitats and species within its jurisdiction within Clark County.

11.10 THE STATE OF NEVADA: THE NEVADA DIVISION OF FORESTRY: NDF shall:

A. As further described in Section 2.8.9.4(a) of the MSHCP, institute and/or continue a program to protect habitats and species within its jurisdiction within Clark County.

B. Issue its Master Permit to Clark County to allow individual owners of private property the right to incidentally take the plant commonly known as the Las Vegas Bear Poppy upon compliance with the terms of the MSHCP.

11.11 ADDITIONAL STATE AND FEDERAL AGENCY COMMITMENTS: As further described in Section 2.10.9.1 of the MSHCP, each State and Federal Agency which is a party to this Agreement shall:

A. Include in its annual budget request adequate funding to allow the agency to operate, manage, maintain and monitor its lands pursuant to the terms of this Agreement and the MSHCP, and to allow it to fulfill its obligations to protect ecosystems, habitats and species consistent with statutory obligations imposed by Congress and the Legislature and to actively cooperate with and provide technical assistance to the IMC.

B. Not allow or use funds received from the MSHCP to be substituted for funds which it would otherwise receive from the State or Federal budget process and shall use MSHCP funds solely to augment, and not replace, its appropriated funds.

C. Not take into account any MSHCP funds paid or expected to be paid in allocating available funds among its various offices and departments, nor move or redirect its own funds from budget categories established to implement conservation measures, plans or policies to other budget

categories.

D. Provide annual reports to the IMC and the Service of its allocation of appropriated funds to conservation measures and personnel within Clark County and the State of Nevada, in order that it may be determined whether each such Agency is in compliance with the provisions of subparagraphs A through C hereof.

E. Fully cooperate with and participate in the AMP process undertaken by Clark County pursuant to the provisions of the MSHCP. Cooperation and participation shall include, without limitation, meeting with AMP contractors, providing access to lands managed by the agency, including the issuance of such permits or authorizations which may be required (consistent with its management plans and regulations), providing data and information which it has accumulated, providing future data in a format mutually agreed upon by Clark County and the agency to allow a database to be established through the AMP process which will be available to the agency, all parties to this Agreement and the public and seriously considering evidence and suggestions for modifications to management policies and actions made by the AMP.

11.12 AGREEMENT. The Parties agree that the measures set forth in Sections 11.1 through 11.11 hereof minimize and mitigate the effects of incidental take of Covered Species to the maximum extent practicable.

12. FINANCIAL ASSURANCES

12.01 THE COUNTY AND THE CITIES.

A. Mitigation Fee Ordinance. As further described in Sections 2.8.3.1 and 2.9.2, shall keep in full force and effect, during the term of this Agreement, a Multiple Species Mitigation Fee Ordinance in substantially the same form as set forth in the Clark County Code, Title 28, Chapter 46, ("Mitigation Fee Ordinance") which shall impose a fee of five hundred fifty (\$550) dollars per

acre for each acre of land proposed to be disturbed within its jurisdiction, and for which it otherwise issues permits. Funds derived from the imposition of this mitigation fee shall be utilized to fund each of the provisions of the MSHCP.

B. Delivery to County. As further described in Section 2.8.3.1 of the MSHCP, shall cause all mitigation fees collected by each City and the County to be delivered to the County on a monthly basis pursuant to the terms of an Interlocal Agreement, which fees and interest thereon shall be expended by the County to fulfill the terms of the MSHCP.

C. Application to All Land Disturbances. As further described in Section 2.9.2 of the MSHCP and the Mitigation Fee Ordinance, shall cause the Mitigation Fee Ordinance to apply to all instances of land disturbance occurring upon land located within Clark County and for which the Cities and the County otherwise issue permits. However, land disturbance by any local government, agency or department, the State of Nevada or its departments, which are not signatory to this Agreement and which do not require local grading or building permits or who for any other reason are not subject to regulation by the County or the Cities shall not be covered by the MSHCP, the MSHCP Permit, or this Agreement unless the entity or agency proposing to thus disturb the land has entered into an interlocal agreement or cooperative agreement permitted by Nevada law with the County, wherein such local government, agency or department agrees to be bound by the provisions of this Agreement, the MSHCP and the MSHCP Permit.

D. Credit For Section 7 Payments. Shall cause its Mitigation Fee Ordinance to provide that in the event a landowner has previously paid a fee to a Federal Land Manager or to any other entity in Clark County as designated by the Service for effects upon Covered Species pursuant to Section 7, such landowner shall receive a credit in the amount of the fees actually paid, but in no event shall the credit exceed the amount of the mitigation fee imposed by the Mitigation Fee Ordinance. No credit shall be given for non-monetary measures which may be required pursuant any Biological Opinion issued by the Service.

E. Additional Funding: As further described in Section 2.9.3 of the MSHCP, shall seek additional funding from private, local, state and federal sources, including but not limited to funds generated from the Southern Nevada Public Lands Management Act (PLMA). The County shall, in its IPB report and budget request, report to the Service and the IMC, the amount all funds generated from additional funding sources, including but not limited to PLMA funds received and the utilization of those funds during the previous two year period.

F. Endowment Fund. Shall continue to maintain the Clark County Multiple Species Habitat Conservation Plan Endowment Fund ("Endowment Fund") which Clark County shall administer and invest in accordance with the laws of the State of Nevada and make disbursements consistent with approved Biennial Implementation Plan and Budget (IPB), as more particularly set forth in Section 2.12.1 of the MSHCP. The following funds shall be retained or deposited into the Endowment Fund:

1. All mitigation fees collected pursuant to the DCP, less the amount of expenditures paid to date.
2. All mitigation fees collected pursuant to the terms of the MSHCP, including payments from NDOT.
3. All interest and earnings which accrue as a result of the investment of the Endowment Fund.
4. All additional funds received from local, state or federal sources.

12.02 ALL STATE AGENCIES:

A. Section 6 Funds. Those state agencies which are entitled to seek funding pursuant to Section 6 of the ESA shall actively apply for and seek funds from the United States of America available pursuant to the provisions of Section 6 of the ESA, to be utilized to foster, promote and facilitate implementation of the terms and goals of the MSHCP.

B. Budget Requests. Shall include in their annual budget request adequate dedicated and earmarked funding to allow each of them to fully operate, manage, maintain and monitor the lands administered by them within Clark County pursuant to the terms of the MSHCP, to fulfill their obligations to protect habitats and species consistent with statutory obligations imposed by law and to actively participate on the IMC. The Parties specifically agree that funds collected by Clark County pursuant to the terms of the MSHCP and paid to a state agency are not intended to be substituted for monies which would otherwise be allocated to the state agencies to fulfill statutory obligations to protect the Covered Species, but are intended to supplement those funds.

12.03 ALL FEDERAL AGENCIES:

A. Budget Requests: Shall include in their annual federal budget request adequate funding to allow each of them to operate, manage, maintain and monitor the lands administered by them within Clark county pursuant to the terms of the MSHCP, to fulfill their obligations to protect habitats and species consistent with statutory obligations imposed by law and to actively participate on the IMC. The Parties specifically agree that funds collected by Clark County pursuant to the terms of the MSHCP and paid to a federal agency are not intended to be substituted for monies which would otherwise be allocated to the federal agencies to fulfill statutory obligations to protect the Covered Species, but are intended to supplement those funds.

B. Southern Nevada Public Lands Management Act (PLMA) Funds: Shall work cooperatively with Clark County pursuant to the terms of that certain Memorandum of Understanding entered into among the BLM, USFS, NPS, Service, FWS-Refuges, the Biological Resources Research Center at the University of Nevada, Reno and the County, dated as of May 1, 2000 with respect to the relationship of the PLMA and the continued development of the MSHCP.

12.04 THE SERVICE:

A. Section 7 Expenditures. Shall coordinate and cooperate with the IMC with respect to the expenditure of fees paid as a result of authorization of incidental take of Covered Species pursuant

to Section 7 of the ESA in order to avoid duplication of effort and to ensure the efficient utilization of those funds to achieve the goals and objectives of the MSHCP.

12.05 AGREEMENT: The Parties agree that the provisions set forth in Sections 12.01 through Section 12.04 ensure that adequate funding for the MSHCP will be provided.

13. CHANGED CIRCUMSTANCES AND UNFORESEEN CIRCUMSTANCES

13.01 DEFINITIONS:

A. The terms "Changed Circumstances" and "Unforeseen Circumstances" means Changed or Unforeseen Circumstances as defined in the Habitat Conservation Plan Assurances ("No Surprises") Rule promulgated by the Service. (Federal Register 63 (35), February 23, 1998). Any modification of circumstances not reviewed and analyzed in the MSHCP as a Changed Circumstance (including reasonably foreseen Threats and Stressors as set forth in Volumes II and III of the MSHCP) shall be considered to be an Unforeseen Circumstance.

B. As more particularly set forth in Section 2.8.2 of the MSHCP, the term "Adaptive Management Plan" (AMP) shall mean the scientifically based flexible and iterative approach to long-term management of biotic resources that is directed over time by the results of ongoing monitoring activities and other information. Biological management techniques and specific objects will be regularly evaluated in light of monitoring results and other new information. These periodic evaluations will be used over time to adapt both the management objectives and techniques to better achieve overall management goals resulting in the conservation of both habitats and species.

13.02. CHANGED CIRCUMSTANCES: As further described in Section 2.10.5 of the MSHCP, upon the occurrence of any Changed Circumstance, including the occurrence of any reasonably foreseeable Threat or Stressor set forth in Volumes II and III of the MSHCP, Clark County and the appropriate state and federal agencies will conduct an expedited analysis of the potential effects of

the Changed Circumstances for the purpose of development of appropriate management responses for the species, habitats or key areas impacted by any such Changed Circumstances. If additional conservation and mitigation measures are deemed necessary to respond to Changed Circumstances, the appropriate local, state or federal party to this Agreement shall implement the measures specified in the MSHCP, but only those measures and no others, and in any event, within the financial constraints and financial assurances set forth in the MSHCP.

13.03 UNFORESEEN CIRCUMSTANCES:

A. As further described in Section 2.10.3 of the MSHCP, upon any preliminary determination by the Service that an Unforeseen Circumstance has occurred, it shall immediately provide written notice to the Applicants and the IMC of its preliminary determination; shall give each Applicant and the IMC the opportunity to submit information to the Service and the IMC regarding the determination; shall participate in any public hearing or hearings established and conducted by the IMC regarding the alleged Unforeseen Circumstance; shall have the burden of establishing that an Unforeseen Circumstance has occurred; and, shall make written findings which are clearly documented and based upon reliable technical information regarding the status and habitat requirements of the species involved in the Unforeseen Circumstance, which findings shall be in writing and transmitted to the IMC within a reasonable period of time.

B. As further described in Section 2.10.7 of the MSHCP, if, at the conclusion of the process described in subparagraph A hereof, the Service determines that an Unforeseen Circumstance has occurred, and that additional conservation measures are required to address such circumstances which are not contemplated or capable of implementation by the AMP and other provisions of the MSHCP, and provided that the Applicants are properly implementing the terms of the MSHCP, any proposed additional conservation measures shall fit, to the maximum extent possible, within the terms of the MSHCP and its AMP. Additional conservation measures shall not involve the payment of additional compensation by the Applicants or private landowners or apply to parcels of land where incidental take is permitted pursuant to the provisions of the MSHCP

and this Agreement.

C. Prior to undertaking or attempting to impose any action or conservation measure, it shall consider all practical alternatives to the proposed conservation measures, including but not limited to land purchase and exchange programs, additional public education, translocation programs, propagation programs and acquisition of conservation easements and adopt only that action or conservation measure which would have the least effect upon the economy and lifestyle of the residents of Clark County while at the same time addressing the Unforeseen Circumstance and the survival and recovery of the affected species and its habitat. The purpose of this provision is to recognize that Congress intended, even in the event of unforeseen and extraordinary circumstances that additional mitigation requirement, even if undertaken by federal agencies should not adversely impact a Section 10 Permittee or private landowner which has fully implemented the requirements undertaken by it pursuant to an approved plan, such as the MSHCP.

D. Clark County agrees that in the event of Unforeseen Circumstances, it shall cooperate with and assist the federal government, within the budget and scope of the MSHCP, to deal with such circumstances.

E. The Service represents and agrees that if additional mitigation is required in order to meet ESA standards in the event of Unforeseen Circumstances, the Service has the authority pursuant to federal law and regulations, including Sections 5,6 and 10 of the ESA, but subject to appropriated funds, to provide such mitigation so that no further land or funds beyond that required by the MSHCP and this Agreement will be required on the part of the Permittees or private landowners.

13.04 AGREEMENT: The Parties agree that the provisions of this Section 13, adequately define and provide for Changed and Unforeseen Circumstances.

14. CLARIFICATIONS, MINOR ADMINISTRATIVE AMENDMENTS AND AMENDMENTS

14.01 CLARIFICATIONS. As more particularly set forth in Section 2.11.1 of the MSHCP, Clarifications are written understandings between the Service and Clark County regarding administration of the MSHCP process and to add specificity to the meaning and intent of language contained in the MSHCP, this Agreement and the MSHCP Permit (together, Plan Documents). Clarifications may not change the provisions of any of those documents, nor modify the obligation of any party without the written consent of that party, but merely clarify and make more precise the mutual understanding of the Service and Clark County regarding those provisions.

14.02 MINOR ADMINISTRATIVE AMENDMENTS. As more particularly set forth in Section 2.11.1 of the MSHCP, Minor Administrative Amendments (MAA) to the MSHCP and this Agreement are amendments which make no substantive changes to any of the provisions of the Plan Documents, and do not require an amendment to the MSHCP Permit, but which may be necessary or convenient, over time, to more fully represent the overall intent of Clark County and the Service and facilitate the implementation of the MSHCP.

14.03 PROCEDURE FOR CLARIFICATIONS AND MINOR ADMINISTRATIVE AMENDMENTS. A request for a Clarification shall be in writing and may be instituted by either the Service or the IMC. Upon receipt, a response shall be provided within 30 days by the recipient. Upon agreement, the Clarification shall become effective immediately. MAA's to the MSHCP may only be initiated by the IMC and an application therefor shall be in writing and describe the proposed amendment, an explanation of why the amendment is necessary or desirable and an explanation of why the IMC believes the effects of the proposal are not significantly different from those described in the original MSHCP. The Service shall respond to the request within 30 days after receipt and if they concur shall authorize the MAA. Upon approval by the Service, the MAA shall become effective immediately. The County shall notify all Parties of any Clarification or MAA within thirty (30) days.

14.04 AMENDMENTS. As more particularly set forth in Section 2.11.3 of the MSHCP, and except as provided in Sections 14.01 through 14.04 of this Agreement, none of the Plan Documents may be amended or modified in any way without the written approval of all signatories to this Agreement, including without limitation, the Service and the BCC. All amendments shall be processed in accordance with the provisions of the ESA and regulations at 50 CFR Parts 13 & 17 and shall be subject to appropriate environmental review pursuant to the provisions of NEPA.

15. IMPLEMENTATION OF THE MSHCP

15.01 MINIMIZATION, MITIGATION AND MONITORING. Each of the Parties to this Agreement has committed to undertake and shall be responsible for the specific minimization, mitigation, monitoring and funding responsibilities pursuant to the provisions hereof and Sections 2.8 and 2.9 of the MSHCP.

15.02 OVERALL ADMINISTRATION, PLANNING, BUDGETS AND REPORTING. Clark County shall be responsible of the overall administration, planning budgeting and reporting process, with the cooperation of the Parties to this Agreement as more particularly set forth in Section 2.12 of the MSHCP.

16. REMEDIES AND ENFORCEMENT

16.01 REMEDIES IN GENERAL. Except as set forth hereinafter, each of the Parties hereto shall have all of the remedies otherwise available in equity (including specific performance and injunctive relief) and at law to enforce the terms of this Agreement and the MSHCP Permit and to seek remedies and compensation for any breach hereof, consistent with and subject to the provisions of the following sections.

16.02 NO MONETARY DAMAGES: No party shall be liable in monetary damages to any party or other person for any breach of this Agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement or any other cause of action arising from this Agreement. Notwithstanding the foregoing:

A. Retain Liability. All parties shall retain whatever liability they would possess for their present and future acts or failure to act without the existence of this Agreement.

B. Land Owner Liability. All parties shall retain whatever liability they possess as owners of interests in land.

16.03 RESPONSIBILITY OF THE UNITED STATES: Nothing herein contained is intended to limit the authority or responsibility of the United States government to invoke the penalties or otherwise fulfill its responsibilities under the ESA.

16.04 INJUNCTIVE AND TEMPORARY RELIEF. The Parties acknowledge that the Covered Species are unique and that the loss thereof would result in irreparable damage to the environment and that therefore injunctive and temporary relief may be appropriate in certain instances involving a breach of this Agreement.

16.05 AUTHORITY OF COUNTY AND CITIES: The Cities and the County shall, by ordinance, require compliance with the MSHCP, this Agreement and the MSHCP Permit by all persons, firms or entities located within the County that engage in Covered Activities. The Cities and the County shall enforce the terms of the MSHCP, this Agreement, the MSHCP Permit and any related ordinances. The Cities and the County shall revoke, terminate or suspend the right of any person, firm or entity to enjoy or have the benefit, right or privileges under the MSHCP Permit by terminating or suspending subpermits or building, grading or surface mining permits or development approvals which allow the disturbance of land in the event the mitigation fee has not been paid or in the event any other term or condition of this Agreement, the MSHCP, the

MSHCP Permit or the ordinances have not been complied with. In the event any City or County shall terminate or suspend any such subpermit or authorization, it shall promptly notify the Service, NDOW and NDF, in writing of such termination or suspension and shall set forth in writing the basis for such termination or suspension.

16.06 SEVERABILITY. The violation of the MSHCP Permit by a landowner or by any Permittee with respect to any one or more particular parcels of land or portions thereof within the jurisdiction of any such Permittee shall not adversely affect or be attributed to nor shall it result in a loss or diminution of any right, privilege or benefit hereunder of any other Permittee or landowner.

16.07 SUSPENSION OR REVOCATION OF THE PERMIT: The Section 10 (a) Permit shall not be suspended or revoked except in conformance with the provisions of 50 CFR 13.27 through 13.29. As more particularly set forth in Section 2.12.1.7, in addition to all other matters which may be grounds to terminate or suspend the Section 10(a) Permit, disapproval of the budget or any portion thereof deemed essential by the Service may be grounds to suspend or terminate the Permit.

16.08 LIMITATIONS AND EXTENT OF ENFORCEABILITY:

A. It is acknowledged that the purpose of this Agreement is to set forth the obligations and rights of the Parties hereto with respect to the MSHCP and to provide for the conservation of the Covered Species and the minimization, mitigation and compensatory measures required in connection with incidental taking of the Covered Species in the course of Covered Activities within the Plan Area. Accordingly, except as otherwise required by law, no further minimization, mitigation or compensation for the conservation of the Covered Species will be required by any party hereto or the owner of any non-Federally owned land within Clark County.

B. In the event of unforeseen circumstances with regard to any Covered Species, no additional land restrictions or financial compensation shall be required from the County, the Cities, or any non-Federal land owner covered by the MSHCP Permit, without their written consent.

16.09 LAND USE REGULATIONS: Except as otherwise specifically provided herein, nothing herein contained shall be deemed to limit the power of the Cities and the County to regulate the use of lands within their respective jurisdictions subject to such other limitations as may apply to such power under the Constitution and laws of the United States and the State of Nevada.

16.10 SECTION 7: Nothing in this Agreement is intended to apply to any activity that is governed by the provisions of Section 7 of the ESA. Notwithstanding the foregoing, the Service shall cause measures that result from authorization of incidental take pursuant to Section 7 of the ESA ("Section 7") to be consistent with the minimization and mitigation measures required herein; provided, however that nothing herein contained is intended to prohibit or proscribe the Service from requiring minimization and mitigation in excess of that provided for herein should the circumstances so warrant. For example only, in the event NDOT proposes new or expanded roads within IMAs or LIMAs, it is anticipated that Section 7 requirements may substantially differ from the minimization and mitigation requirements set forth herein.

17. FINDINGS AND ISSUANCE OF PERMITS

17.01 FINDINGS. Upon finding, after opportunity for public comment with respect to the MSHCP Permit application and the MSHCP, that:

- A. The taking of Covered Species as a result of the activities described in the MSHCP will be incidental to an otherwise lawful activity; and,
- B. The minimization and mitigation measures of the MSHCP, to the maximum extent practicable, minimize and mitigate the impacts of the taking of the Covered Species; and,
- C. This Agreement assures the funding required to implement the minimization and mitigation measures specified in Section 2.8 of the MSHCP; and,

D. This Agreement and the MSHCP provide adequate procedures for addressing Changed and Unforeseen Circumstances; and,

E. The incidental take of Covered Species, as contemplated in the MSHCP and as provided in this Agreement will not appreciably reduce the likelihood of the survival and recovery of those species in the wild; and,

F. All measures required by the Service as necessary or appropriate for purposes of the MSHCP and the Section 10(a) Permit have been provided for in the MSHCP as implemented by this Agreement; and,

G. No assurances other than those set forth in the MSHCP and this Agreement are necessary to ensure that the MSHCP and this Agreement will be implemented; the Service shall issue the MSHCP Permit(s) allowing incidental take of the Covered Species to Applicants.

17.02 ISSUANCE OF PERMIT. Based upon the findings set forth in Section 17.01 hereof, the Secretary, through the Service, is fully authorized to and, concurrent with the execution of this Agreement, shall issue a Section 10(a) Permit as requested by the application and the MSHCP filed by the Applicants to allow the incidental take of Covered Species as a result of Covered Activities occurring within the Plan Area during the term of this Agreement and the Permit.

17.03 MIGRATORY BIRD TREATY ACT.

A. The Section 10(a) Permit issued pursuant to the MSHCP and this Agreement which allows the incidental take of any listed species or any unlisted Covered Species shall, when such permit is effective as to such species also constitute a Special Purpose Permit pursuant to 50 CFR 21.27 to allow the take of species covered by such permit. Any such take shall not be in violation of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703-12). Such Special Purpose

Permit shall be valid for a period of three years from its effective date, provided the Section 10(a) Permit remains in effect for such period and for such species, subject to renewal as provided in paragraph (B).

B. Any Special Purpose Permit as described in this section shall be automatically renewed, provided that the Permittees remain in compliance with the terms of this Agreement. Each such renewal shall be valid for a period of three years, provided the Section 10(a) Permit remains in effect for such period and for such species.

18. MISCELLANEOUS PROVISIONS

18.01 NO PARTNERSHIP. Except as otherwise expressly set forth herein, neither this Agreement nor the MSHCP shall make or be deemed to make any party to this Agreement the agent for or the partner of any other party.

18.02 SUCCESSORS AND ASSIGNS; ANNEXATIONS, ACQUISITIONS AND INCORPORATION

A. This Agreement, and each of its covenants and conditions shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns.

B. In the event the County, the City or any person, firm or entity acquires property from the Federal government, the land so acquired, with the exception of lands acquired within any LIMA or IMA, shall thereafter be subject to and the beneficiary of the terms of the Permit. Lands acquired within any LIMA or IMA may be subject to and the beneficiary of the terms of the Permit, but only on such terms and conditions as may be determined by the Service as necessary to offset the adverse impacts, if any, of such acquisition and development.

C. In the event any city incorporates subsequent to the date hereof, such city shall

succeed to the rights and obligations of the County pursuant to the MSHCP Permit, the MSHCP and this Agreement with respect to the land thus incorporated, provided that such city has adopted a Mitigation Fee Ordinance, executed an Interlocal Agreement in substantially the same form that has been adopted by the County and the Cities, and has executed a written Contract, approved by the Service, wherein it agrees to be bound by the terms and conditions of this Agreement.

18.03 NOTICE. Any notice permitted or required by this Agreement shall be delivered personally to the persons set forth below or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested and addressed as follows or at such other address which any Party may from time notify each of the other Parties, in writing:

Clark County
Attn: County Manager
500 S. Grand Central Parkway
Las Vegas, NV 89155-8270

City of Las Vegas
Attn: City Manager
400 East Stewart
Las Vegas, NV 89101

City of North Las Vegas
Attn: City Manager
2200 Civic Center Drive
North Las Vegas, NV 89030

City of Henderson
Attn: City Manager
240 Water Street
Henderson, NV 89015

City of Boulder City
Attn: City Manager
900 Arizona Street
Boulder City, NV 89005

City of Mesquite
Attn: City Manager
P.O. Box 69
Mesquite, NV 89024

U. S. Fish and Wildlife Service
Attn: Deputy Manager
CA/NV Operations Office
2810 Cottage Way, Rm W-2606
Sacramento, CA 95825

U. S. Fish and Wildlife Service
Attn: Field Supervisor
1340 Financial Blvd., Suite 234
Reno, NV 89502

National Park Service
Attn: Superintendent
601 Nevada Highway
Boulder City, NV 89005

United States Bureau of Land Management
Attn: District Manager
4765 Vegas Drive
Las Vegas, NV 89108

United States Bureau of Land Management	Nevada Division of Wildlife
Attn: State Director	Attn: Area Manager
P.O. Box 12000	4747 West Vegas Drive
Reno, NV 89520-0006	State Mailroom Complex
	Las Vegas, NV 89158

Nevada Division of Wildlife
 Attn: Director
 P. O. Box 10678
 Reno, NV 89510

Nevada Department of Transportation
 Chief, Environmental Services Division
 1263 South Stewart Street
 Carson City, NV 89712

United States Forest Service
 Attn: Office Supervisor
 1500 N. Decatur Avenue # 01
 Las Vegas, NV 89108

Nevada Division of State Parks
 4747 W. Vegas Drive
 Las Vegas, NV 89108-2315

Nevada Division of Forestry
 4747 W. Vegas Drive
 Las Vegas, NV 89158

18.04 ENTIRE AGREEMENT. This Agreement supersedes any and all other Agreements, either oral or in writing between the Parties hereto with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters, and each Party acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by any other party or anyone acting on behalf of any party which are not embodied herein.

18.05 ATTORNEYS' FEES. If any action at law or equity, including any action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, all parties to the litigation shall bear their own attorney's fees and costs. Notwithstanding the foregoing, attorneys' fees and costs recoverable against the United States, however, shall be governed by applicable Federal law.

18.06 ELECTED OFFICIALS NOT TO BENEFIT. No member of or delegate to Congress or Federal Resident Commissioner, shall be entitled to any share or part of this Agreement, or to any benefit that may arise from it.

18.07 AVAILABILITY OF FUNDS. Implementation of this Agreement by any of the Parties is subject to the availability of appropriated funds; The financial obligations of the County and the Cities are not general obligations of those entities and shall be paid solely from the Endowment Fund and other funding sources as identified in the MSHCP. This instrument is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the parties to this instrument will be handled in accordance with applicable laws, regulations and procedures including those for government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This document does not provide such authority. Specifically, this instrument does not establish authority for noncompetitive award to the cooperator of any contract or other agreement. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition.

18.08 DUPLICATE ORIGINALS. This Agreement may be executed in any number of duplicate originals. A complete original of this Agreement shall be maintained in the official records of each of the Parties hereto.

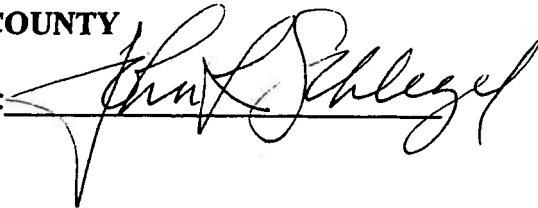
18.09 NEVADA LAW. The laws of the state of Nevada shall govern the construction and interpretation of this agreement.

THIS AGREEMENT HAS BEEN EXECUTED ON THE DAY SET BY EACH SIGNATURE ATTACHED HERETO AND SHALL BECOME EFFECTIVE ON THE DAY AND YEAR FIRST ABOVE WRITTEN.

DATE: 11.08.00

CLARK COUNTY

BY:



DATE: _____

CITY OF LAS VEGAS

BY: _____

DATE: _____

CITY OF NORTH LAS VEGAS

BY: _____

DATE: _____

CITY OF HENDERSON

BY: _____

DATE: _____

CITY OF BOULDER CITY

BY: _____

18.09 NEVADA LAW. The laws of the state of Nevada shall govern the construction and interpretation of this agreement.

THIS AGREEMENT HAS BEEN EXECUTED ON THE DAY SET BY EACH SIGNATURE ATTACHED HERETO AND SHALL BECOME EFFECTIVE ON THE DAY AND YEAR FIRST ABOVE WRITTEN.

DATE: _____

CLARK COUNTY

BY: _____

DATE: _____

CITY OF LAS VEGAS

BY: 

ATTEST:


BARBARA JO RONEMUS, City Clerk

APPROVED AS TO FORM:

Valsted 12-22-00

DATE: _____

CITY OF NORTH LAS VEGAS

BY: _____

DATE: _____

CITY OF HENDERSON

BY: _____

DATE: _____

CITY OF BOULDER CITY

BY: _____

18.09 NEVADA LAW. The laws of the state of Nevada shall govern the construction and interpretation of this agreement.

THIS AGREEMENT HAS BEEN EXECUTED ON THE DAY SET BY EACH SIGNATURE ATTACHED HERETO AND SHALL BECOME EFFECTIVE ON THE DAY AND YEAR FIRST ABOVE WRITTEN.

DATE: _____

CLARK COUNTY

BY: _____

DATE: _____

CITY OF LAS VEGAS

BY: _____

DATE: _____

CITY OF NORTH LAS VEGAS

BY: _____

DATE: _____

CITY OF HENDERSON

BY: _____

DATE: 11/14/00

CITY OF BOULDER CITY

BY: Robert S. Ferraro
Robert S. Ferraro, Mayor

BY: Vicki G. Mayes
Vicki G. Mayes, City Clerk

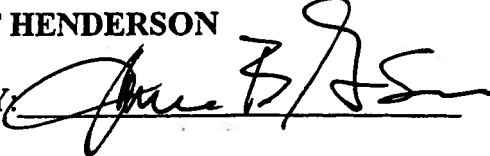
18.09 NEVADA LAW. The laws of the state of Nevada shall govern the construction and interpretation of this agreement.

~~THIS AGREEMENT HAS BEEN EXECUTED ON THE DAY SET BY EACH SIGNATURE ATTACHED HERETO AND SHALL BECOME EFFECTIVE ON THE DAY AND YEAR FIRST ABOVE WRITTEN.~~

DATE: _____ CLARK COUNTY
BY: _____

DATE: _____ CITY OF LAS VEGAS
BY: _____

DATE: _____ CITY OF NORTH LAS VEGAS
BY: _____

DATE: _____ CITY OF HENDERSON
BY:  _____

DATE: _____ CITY OF BOULDER CITY
BY: _____

18.09 NEVADA LAW. The laws of the state of Nevada shall govern the construction and interpretation of this agreement.

~~THIS AGREEMENT HAS BEEN EXECUTED ON THE DAY SET BY EACH SIGNATURE ATTACHED HERETO AND SHALL BECOME EFFECTIVE ON THE DAY AND YEAR FIRST ABOVE WRITTEN.~~

DATE: _____

CLARK COUNTY

BY: _____

DATE: _____

CITY OF LAS VEGAS

BY: _____

DATE: August 16, 2000

CITY OF NORTH LAS VEGAS

BY: 

ATTEST: Michael L. Montandon, Mayor


Eileen M. Sevigny, CMC, City Clerk

DATE: _____

CITY OF HENDERSON

BY: _____

DATE: _____

CITY OF BOULDER CITY

BY: _____

DATE: 12/13/00

CITY OF MESQUITE

BY: Raymond A. Montgomery

DATE: _____

U.S. FISH & WILDLIFE SERVICE

BY: _____

DATE: _____

NATIONAL PARK SERVICE

BY: _____

DATE: _____

U.S. BUREAU OF LAND MANAGEMENT

BY: _____

DATE: _____

U.S. DEPARTMENT OF INTERIOR

BY: _____

DATE: _____

U.S. FOREST SERVICE

BY: _____

DATE: _____

NEVADA DIVISION OF WILDLIFE

BY: _____

DATE: _____

NEVADA DEPARTMENT OF TRANSPORTATION

BY: _____

DATE: _____

CITY OF MESQUITE

BY: _____

DATE: _____

U.S. FISH & WILDLIFE SERVICE

BY: _____

DATE: 12/1/00

NATIONAL PARK SERVICE

BY: *William T. Robinson*

DATE: _____

U.S. BUREAU OF LAND MANAGEMENT

BY: _____

DATE: _____

U.S. DEPARTMENT OF INTERIOR

BY: _____

DATE: _____

U.S. FOREST SERVICE

BY: _____

DATE: _____

NEVADA DIVISION OF WILDLIFE

BY: _____

DATE: _____

NEVADA DEPARTMENT OF TRANSPORTATION

BY: _____

DATE: _____

CITY OF MESQUITE

BY: _____

DATE: _____

U.S. FISH AND WILDLIFE SERVICE

BY:  _____

DATE: _____

NATIONAL PARK SERVICE

BY: _____

DATE: _____

U.S. BUREAU OF LAND MANAGEMENT

BY: _____

DATE: _____

U.S. FOREST SERVICE

BY: _____

DATE: _____

NEVADA DIVISION OF WILDLIFE

BY: _____

DATE: _____

NEVADA DEPARTMENT OF TRANSPORTATION

BY: _____

DATE: _____

CITY OF MESQUITE

BY: _____

DATE: _____

U.S. FISH & WILDLIFE SERVICE

BY: _____

DATE: _____

NATIONAL PARK SERVICE

BY: _____

DATE: 12-1-2000

U.S. BUREAU OF LAND MANAGEMENT

BY: Mark T. Hoese

DATE: _____

U.S. DEPARTMENT OF INTERIOR

BY: _____

DATE: _____

U.S. FOREST SERVICE

BY: _____

DATE: _____

NEVADA DIVISION OF WILDLIFE

BY: _____

DATE: _____

NEVADA DEPARTMENT OF TRANSPORTATION

BY: _____

DATE: _____

CITY OF MESQUITE

BY: _____

DATE: _____

U.S. FISH & WILDLIFE SERVICE

BY: _____

DATE: _____

NATIONAL PARK SERVICE

BY: _____

DATE: _____

U.S. BUREAU OF LAND MANAGEMENT

BY: _____

DATE: _____

U.S. DEPARTMENT OF INTERIOR

BY: _____

DATE: Jan 9, 2001

U.S. FOREST SERVICE

BY: Karen Shimamoto

DATE: _____

NEVADA DIVISION OF WILDLIFE

BY: _____

DATE: _____

NEVADA DEPARTMENT OF TRANSPORTATION

BY: _____

DATE: _____

CITY OF MESQUITE

BY: _____

DATE: _____

U.S. FISH & WILDLIFE SERVICE

BY: _____

DATE: _____

NATIONAL PARK SERVICE

BY: _____

DATE: _____

U.S. BUREAU OF LAND MANAGEMENT

BY: _____

DATE: _____

U.S. DEPARTMENT OF INTERIOR

BY: _____

DATE: _____

U.S. FOREST SERVICE

BY: _____

DATE: 12-21-00

NEVADA DIVISION OF WILDLIFE

BY: Larry R. Gremforth

DATE: _____

NEVADA DEPARTMENT OF TRANSPORTATION

BY: _____

DATE: _____

CITY OF MESQUITE

BY: _____

DATE: _____

U.S. FISH & WILDLIFE SERVICE

BY: _____

DATE: _____

NATIONAL PARK SERVICE

BY: _____

DATE: _____

U.S. BUREAU OF LAND MANAGEMENT

BY: _____

DATE: _____

U.S. DEPARTMENT OF INTERIOR

BY: _____

DATE: _____

U.S. FOREST SERVICE

BY: _____

DATE: _____

NEVADA DIVISION OF WILDLIFE

BY: _____

DATE: _____

NEVADA DEPARTMENT OF TRANSPORTATION

BY: 