

# HABITAT CONSERVATION ADVISORY COMMITTEE

for the Washington County Habitat Conservation Plan (HCP)

A **regular meeting** of the Habitat Conservation Advisory Committee (HCAC) was held at the Washington City Council Chambers on **JANUARY 24, 2012**.

Committee members present were:

Karl Wilson, Chairman	Mayors Association
Chris Blake, Vice Chairman	Environmental Organization
Larry Crist	U.S. Fish & Wildlife Service (USFWS)
Chris Hart	Local Development
Bob Sandberg	HCP Administrator
Marc Mortensen	Citizen-at-Large
Reed Harris	Utah Dept. of Natural Resources (UDNR)

Absent and Excused:

Jimmy Tyree	Bureau of Land Management (BLM)
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Also present were:

Amber Stocks	HCP
Cameron Rognan	HCP
Alan Gardner	County Commissioner
Ann McLuckie	Utah Division of Wildlife Resources (UDWR)
Mike Empey	Congressman Matheson's Office
Marreen Casper	Senator Orrin Hatch's Office
Ellen Schunk	Senator Mike Lee's Office
Lee Cabell	Horrocks Engineers
Eric Hansen	Utah Department of Transportation (UDOT)
Lisa Rutherford	Citizen
Paul Van Dam	Citizen
Jim Doyle	Citizen – ELT
Francoise Brito	Jim Doyle's Assistant
Eric Clarke	County Attorney
Judy Gubler	Ivins City
Dallin Gardner	Citizen
Steve Meisner	Virgin River Program
Jane Whalen	Citizens for Dixie's Future
Justin Neighbor	HCP

**1. CALL TO ORDER**

Chairman Karl Wilson noted that a quorum existed and called the meeting to order at 1:00 P.M. Chairman Wilson also noted that Marc Mortensen would be late.

**2. CONSENT AGENDA**

The Consent Agenda is a means of expediting routine matters which come before the committee for approval. The consent portion of the agenda is approved by one (1) non-debatable motion. If any member wishes to remove an item from the consent portion of the agenda, then that item becomes the first order of business on the regular agenda.

- a. **Approval of the agenda**
- b. **Review and approve minutes**
  - 1. October 25, 2011
- c. **Declaration of conflicts of interest**

Chris Hart declared his conflict of interest in item 5-b-1 of the agenda, as he is the Mayor of Ivins.

**MOTION** by Chris Blake to approve the consent agenda.

Seconded by Chris Hart.

Discussion: None.

Vote was taken: All voted aye.

Motion passed.

### 3. **PRESENTATIONS**

- a. **Jim Doyle – Rocky Mountain Ventures/ELT**

Chairman Wilson noted that Jim Doyle was not present. Bob Sandberg stated Mr. Doyle had requested to be part of the agenda. Bob sent Mr. Doyle information to inform him of the meeting along with the location, the address and the time. Chairman Wilson moved the agenda noting that, if Mr. Doyle arrived, the committee could re-address this agenda item.

### 4. **UTILITY AND DEVELOPMENT PROJECTS**

- a. **Red Hills Parkway**

Bob updated the HCAC stating that construction progress is ongoing. The project is on schedule and projects are being worked on aggressively. The temporary fencing was completed and any tortoises in the work area were moved to the Reserve side of the fence. Some permanent fencing has been reinstalled and all of the work seems to be going relatively well. The fence is a good quality fence. On the west end, it ties in to private property just off Bluff Street behind some houses. The fence work has been coordinated with the FWS.

- b. **UDOT/I-15, MP 0-16 Project (Lee Cabell)**

Bob explained that UDOT is in the early planning stages of a project on I-15 from the Arizona/UT state-line to milepost 16. The modification of Exit 16 may impact the Reserve. Lee Cabell, with Horrocks Engineers, passed out exhibit 4-b-1 showing a map of the I-15 project areas. Mr. Cabell noted that Horrocks Engineers is also doing the construction management oversight on the Red Hills Parkway expansion project.

Horrocks is cognizant of environmental issues. The parkway expansion project is on schedule and on budget at the current time.

Mr. Cabell explained the UDOT project for the I-15 corridor. A few years ago there was a corridor study project from milepost 0 to the Washington County line, looking at preliminary needs and assessments of the I-15 corridor. Recent outcomes of that initial study is the northbound truck climbing lane over the Black Ridge, the truck climbing lane from milepost 13 to 16, the Dixie Drive Interchange and other improvements that are being made at this time.

The next step is a focused environmental assessment for the corridor with a full NEPA, and an environmental document under the direction of Federal Highway Administration and UDOT. The status of this document is a draft. The environmental assessment will be released in a few months. The biological assessment, which has been coordinated with FWS, will be submitted this week to the FWS.

Mr. Cabell enlightened the HCAC on some anticipated UDOT projects for the I-15 corridors between milepost 0-16 over the next 30 years. These projects include a third general purpose travel lane in each direction on I-15, completion of the Southern Parkway to Hurricane, roundabout interchanges in Bloomington will be replaced with a single-point interchange, auxiliary lanes will be added to both sides of I-15 between the Dixie Drive interchange and the Bloomington interchange (milepost 4), bridges will be replaced over the Virgin River, milepost 8 interchange will be reconstructed into a diverging-diamond-style configuration, there will be an underpass connecting the two frontage roads on each side of I-15 between milepost 8 and 10, minor changes will be occurring at milepost 10, the horizontal curve between milepost 13 and 16 will be flattened out, and improvements will be made on the I-15/SR-9 interchange.

The improvement to SR-9 interchange (exit 16) relates to the Reserve. The proposed improvements will keep the same style of interchange and expand the ramps to accommodate multiple lanes. A safety feature will be implemented on the ramps to increase the speed from 25-mph to 30-mph with the exits scooted further back to accommodate deceleration. These improvements will require replacement of the I-15 bridges over SR-9.

Horrocks Engineers is cognizant of the environmental concerns of this area. There will be several culturally significant sites to avoid and minimize impacts and deal with paleontological resources and artifacts that will need to be maintained.

The map on exhibit 4-b-1 shows two areas at the top of the figure in green, with a little bit of black, as areas that would encroach into the Reserve. The areas in black show where cut and fill lines from widening the ramps would touch down. The total impact is about .22 acres. Horrocks has been working with the FWS and the biological assessment to look at mitigation ratios. Horrocks proposes to follow the same mitigation ratios in terms of 5:1 for impacts to areas of critical habitat in the Reserve. Mitigation applied to areas separate from the Reserve would most likely be a 10:1 ratio.

This is the only spot the project will go outside UDOT's available right-of-way. On some adjacent side streets, like the milepost 10 interchange, there is some right-of-way required. The bulk of improvements fall within UDOT's existing right-of-way.

Several spots are being cleared along the corridor for detention basins and drainage facilities. UDOT likes to take a worst-case scenario approach and clear several areas along the corridor, both inside and outside the area. This gives flexibility so that when the design is complete, UDOT won't have to environmentally re-address those areas. No right-of-way acquisition will occur until the design is complete and UDOT has determined which spots are needed for detention basins. There will not be any areas identified or cleared within the Reserve for detention basins. UDOT has been developing mitigation commitments and agreements with FWS in accordance with Section 7 requirements. When the final footprint of design comes they will be covered and NEPA should be finished in 2012.

The corridor projects are set up in phases. The SR-9 interchange is something UDOT would like to address in the near future. They don't have any particular funding identified but the plan is to start initial improvements within five to ten years, depending on funding availability. Some of the first improvements could be to add at least one more lane to the ramps and get the bridge done.

Reed Harris asked if FWS will identify mitigation areas. Mr. Cabell stated that Renee Chi, with FWS, has been working with the HCP biologist and others to identify mitigation areas in deciding what will be appropriate.

### **3. PRESENTATIONS**

#### **a. Jim Doyle – Rocky Mountain Ventures/ELT**

Chairman Wilson acknowledged that Jim Doyle had arrived and invited him to address the HCAC. Jim Doyle, along with Françoise Brito, made a power-point presentation shown as exhibit 3-a-1. Ms. Brito began by reading from the power-point. On page seven Ms. Brito commented that exchange, and acquisition of land through exchange, was foreseen as the appropriate mechanism for going forward with the Reserve. She then continued reading.

On page 12 Ms. Brito commented that the HCAC must be a little tired of hearing the same explanations for a lack of movement forward. She added it would be important to look at the HCP and see what kind of amendment could be made to get the process of acquiring all the inholdings done. She then added the taxes that were assessed on the ELT property, even though they were under agreements with Washington County, were entered into so that different land exchanges could be carried through. Washington County agreed to set the responsibility to hold back taxes. This was when ELT was forced into bankruptcy, because they were noticed by the County, and in order to

protect ELT, Mr. Doyle had to go through Chapter 11 bankruptcy. She then finished reading page 12.

Mr. Doyle stated he filed a Chapter 11 proceeding for one reason, because Washington County, Utah breached a contract he has with the County. The County was going to sell the land in a main sale. Mr. Doyle stated that since then he has had to petition his land, because of ongoing interest rates, to the individuals he had to borrow money from in the interim. Mr. Doyle stated he now has zero creditors and he is still in bankruptcy and will remain there until this situation is resolved because now it gives him the opportunity if he needs, to bring interested parties to the table to cover what this has cost him for the last 30 years.

Mr. Doyle explained that he moved to St. George in 1980 and spent a lot of money for ten years designing a huge project. It was the best ten years of his life. The last 22 years have been the worst 22 years of his life. Mr. Doyle lives in Washington D.C. and has to remain there until this is brought to a conclusion. He stated he tried to work something out with the County and failed miserably. He tried to get the County to file a motion in the bankruptcy court to have the judge rule his lands have been taken and that Mr. Doyle has no interest in it. He even asked to have the County to file an amicus brief and maybe even have the HCAC file an amicus brief in support of the taking. Mr. Doyle received a letter from the County Attorney who said that an amicus brief is not in the County's best interest. Mr. Doyle added it seems like it would be in everybody's best interest. If this land was ruled a taking, with private landowners being bought out, this ball-game is over. Instead, we go to the Justice Department and go to the Jury Fund to get paid. That's what this is all about, getting paid.

Mr. Doyle stated right now he is going to find a way to get this in front of the judge. He reported that he has presented the County with flow charts showing that two things happened: 1) the judge ruling on the taking, and 2) the judge ruling on the valuation process. Mr. Doyle has been made the representative of ELT in the bankruptcy court, his plan of re-organization has been approved and he is going forward with both charges. He stated it is that simple, it is a taking and a valuation. Mr. Doyle added that he has no interest in the County in that regard and will proceed on his own.

Reed asked Mr. Doyle if he represents ELT. Mr. Doyle confirmed he is 95.6% of ELT and his children are the remainder. Reed inquired to Mr. Doyle's relationship with the other partners. Mr. Doyle indicated they are no longer partners; Mr. Brennan, Mr. Carter, and SITLA were given major portions of Mr. Doyle's land. Reed verified with Mr. Doyle that he represents the remaining portion of all the land, which is now 273 acres. Mr. Doyle added that incidentally the County decided the taxes due on SITLA's land would be forgiven; they did not forgive Mr. Doyle's taxes as they are under contract to forgive. Mr. Doyle stated that none of the entitlements were transferred to Mr. Brennan or Mr. Carter. Reed explained, as he originally envisioned, the land was all called the Doyle property. Mr. Doyle affirmed it was actually called Rocky Mountain Venture. Reed then clarified that it became ELT and Mr. Doyle said that is correct. Mr. Doyle stated ELT is down to 273 acres.

Ms. Brito continued the presentation. She reported that Mr. Doyle had at least 100 offers for exchange. All of these undertakings had to be restarted on each project only for them to be aborted. Mr. Doyle explained this came about because there was a Deputy Secretary, Alan Mentz, who came up with the idea of a 'Super Exchange' where there were 7,500 acres in Las Vegas, 11,000 in Mesquite (Mesquite land had very little value per acre), and 600 acres in Laughlin, Nevada. Mr. Doyle further explained he went into contract with the County and the Department of the Interior to exchange those lands. He went to Las Vegas and met with the Nevada Department of Transportation, the Cities, the County, and Senator Reed (who was against the exchange but is now an ally). After three years of very expensive planning, Mr. Doyle had Paradise Canyon under contract and everybody on the Steering Committee swore they (the Reserve) would never go west. Mr. Doyle entered into the contract thinking he still had two projects left in St. George, but no, he had to go west of Highway 18. The HCP got approved and everybody ran from Las Vegas, Mesquite, and Laughlin. Then Mr. Doyle was told if he could find any land that the BLM and the state of Utah owns, any of the land would be traded. Mr. Doyle stated he spent fortunes on helicopters and personally walked over two million acres of land. He identified those lands and when President Clinton identified the Escalante National Monument, all the Utah Land was no longer available for trade. Mr. Doyle then found 30,000 acres to settle in New Mexico and Arizona along with support from BLM land managers. They negotiated with governors and state managers and got it very close to exchanging. At the last minute the Department of the Interior pulled out.

Mr. Doyle went to Puerto Rico for a piece and also went to Florida for the only piece in Florida the BLM owns, which was 400 acres. Mr. Doyle stated that if anybody in this room thinks there is going to be a successful land exchange, it isn't going to happen. If anybody thinks under this environment there is going to be Land and Water Conservation Fund money, it isn't going to happen. There is one way this is going to happen. That is to have the judge rule that the land has been taken. They can rule the land has been taken just because it has taken so long. Eight years really upsets a federal judge. This has been 22 years and Mr. Doyle reported he is headed to Washington D.C. with this case.

Mr. Doyle explained on page 15 that the County was obligated to provide a full time facilitator, Milo McCowan. Milo did a wonderful job but only worked 60 days. He moved to Washington D.C. and hired a firm, using \$69,000 out of Mr. Doyle's money for a down payment. Milo left and Mr. Doyle ended up paying the firm an additional \$360,000. When the exchanges all fell apart the firm was no longer needed. Mr. Doyle reiterated the County had a two month facilitator; the County was to pay for County Commission travel, legislative legal fees, and facilitator salaries.

Marc Mortensen arrived at 2:50

Ms. Brito continued to read on page 15 of the power-point, commenting that whether or not Washington County has the right to wave taxes for the state of Utah or whether the

County needed to petition the state to rollback that tax, that is the way the contract was executed. Mr. Doyle added that the County has since cut a deal with Mr. Brennan, Mr. Carter, and SITLA; even though it had a tax debt on it, it was forgiven. Ms. Brito stated they were notified by the County Attorney's office that if Mr. Doyle or Ms. Brito requests documents in the future, they would need to file a GRAMA request for each individual request. Mr. Doyle stated that any requests, including meeting minutes will need to go through GRAMA, the Freedom of Information Act. He stated it is irresponsible and cruel.

Mr. Doyle requested that the HCAC considers, invokes, reaches out and spends \$2.5 million that are reserve funds on ELT property so he can afford to move forward. Ms. Brito continued reading page 17 and commented this should have triggered a reassessment of the HCP, the way the original budget was made because obviously other land owners have been able to have their properties apply under the protection of this law. Mr. Doyle added that legislation had no slang conversations, which is very critical for laws being passed. Mr. Doyle explained, if there are sidebar comments then they go with the bill and are passed with the bill. If anybody has concerns with the bill and they let it pass, they follow a colloquy. None of that is done. This bill has to be interpreted word for word like this says because there is no circumstance that it can be read any other way. Mr. Doyle read Section 309 on page 19 and stated they have never offered to acquire. The straight intent of this document in a court gets rid of all nonsense and Mr. Doyle added that it has not been very easy for him.

Ms. Brito read page 18-20. Mr. Doyle commented on the HCAC minutes from the October 25, 2011 meeting, item 5-b. In the minutes, Mr. Hart asked Mr. Sandberg about the Brennan and Carter exchange. Mr. Doyle stated he doesn't think anybody was trying to hoodwink anybody but it's hugely inaccurate. This bankruptcy has never slowed down anything. In fact, if anything, it would have speeded things up. Mr. Doyle stated he should have filed an action earlier, a motion to compel. There has never been anything coming from the Department of the Interior, or from anybody. Land and Water Conservation Fund money is a myth and will not happen. The minutes stated a lot happened in the early years. Mr. Doyle clarified that a lot happened in the years up to the signing of the final HCP. After that, almost nothing has happened. Obviously SITLA has had things happen, trades have been going on, but this 'super exchange' never had a chance to start with. It was a 'bait and switch'. Mr. Doyle wanted to clear up the minutes, stating that anything that could have been offered should have been offered. He added that Jim Crisp, with no solicitations from Mr. Doyle, notified the court that he would close within 60-90 days. It never closed, and it will never close. They will end up selling and keeping the money.

If anybody feels any of this information is inaccurate he would like them to get a hold of him. He would like to have somebody to talk to on the HCAC committee and somebody designated from the County Commissioners so he doesn't have to go all over the world all the time. The trips are expensive and normally not very productive.

## **5. GENERAL BUSINESS**

**a. 2012 Meeting Schedule**

Bob Sandberg showed exhibit 5-a-1, which has both the HCAC and Technical Committee (TC) proposed meeting dates for 2012.

**MOTION** by Reed Harris to approve the schedule with cancelation of the December meeting.

Seconded by Chris Hart.

Discussion: None.

Vote was taken: All voted aye.

**b. Update on Ivins City Detention Basin and Toe Trail**

Judy Gubler addressed the HCAC and explained that the Detention Basin Dam is the preferred engineering alternative for water management and storm drainage in Ivins City. Some have called it an “engineering wonder”, being aesthetically unpalatable and economically unfeasible. Ivins came to a point where a decision needed to be made due to a project on Center Street which would include the second best alternative. Ivins approached the HCAC about abandoning the Detention Basin and trade the property for a trail. Ivins understood the preferred trail was a raised trail and began to feel it wasn’t as feasible as originally conceived.

Judy continued, Ivins will proceed with the Detention Basin which the city council and the mayor feel is the best alternative to solve the downstream drainage. Ivins met with the state engineer’s office and with their own city engineers. They conducted hydrology studies and have come up with a less imposing alternative. The dam height will be lower, the footprint will be less, the environmental impact will be less and it will manage storm drain problems in Ivins City. It will also protect habitat and downstream properties.

Judy requested that the HCAC pull the previous request to look at the trail alternative. Judy thanked the HCAC and the TC, especially Kristen Comella and Bob Sandberg for the work and consideration that has been done. Judy has received information that the alternative is indeed feasible and Ivins has verbal approval with intent to start construction within the next building season.

Reed apologized that the HCAC was unable to make the trade happen between the detention property and the improved trail. Chris Hart, the Ivins City Mayor, expressed appreciation to Reed, Kristen, and others who made valiant efforts to try and make it work. Chris reassured the board that Ivins was genuine in their approach and Ivins believes that restraints of regulation, both of federal and state, and the complications of engineering through a difficult environment are the result. As things drew to a conclusion, it became apparent that costs were going to become insurmountable. Funding sources are not readily available and in fairness to the city of Ivins, it felt as



though things were not going to happen in an appropriate time.

**c. MOU and Scopes of Work 2012**

Bob Sandberg showed exhibit 5-c-1 to the committee, a cooperative agreement between Washington County and the UDWR for 2012. The agreement covers three scopes of work. One is for the annual tortoise monitoring and report, another is the partial funding of the Southwest Willow Flycatcher (SWWFC) Nesting Success along the Virgin River, and the third is the possible need for additional systematic clearances on property adjacent to the Reserve.

Bob explained that typically the HCP brings the agreement and the scopes of work to the HCAC, giving the HCAC opportunity to recommend it to the Washington County Commission for approval.

Larry asked if these scopes of work represent similar levels of work in previous years. Bob answered that the tortoise monitoring is the same. SWWFC is a reduction; in 2010 the HCP initially invested \$15,000. In 2011 the UDWR requested \$10,000, and they are now asking for \$5,000 for 2012. The systematic clearance for 2012 is \$10,000 which is the same as it was in 2011. In 2011 clearances were not needed or funded. Once again, Bob doesn't anticipate the HCP will need to spend that kind of money on clearances as the HCP staff will be able to do similar work in 2011. The HCP can use assistance from DWR and HCP staff to clear areas adjacent to the Reserve.

Bob mentioned the HCP staff has looked at several areas near the Hurricane Wal-Mart. Some of it is in take area and some is not. There are tortoises in the area and HCP staff would like to clear the area in anticipation of development.

**MOTION** by Chris Blake to approve the discussion of the MOU with DWR for 2012.

Seconded by Marc Mortensen.

Discussion: None.

Vote was taken: All voted aye.

Motion passed.

**d. RIT Participation**

Bob mentioned that the HCP staff has received invitation from the FWS to serve on the Recovery Implementation Team (RIT) of the Upper Virgin River. Bob also received an invitation to serve on the Utah/Arizona workgroup of the North East Mojave RIT. Larry reported the Recovery Office is in the process of sending invitations. The FWS felt it important that this HCP represents the entirety of the recovery unit~~y~~; however, it will be well represented on the RIT. Tim Croissant reported that he and Dawna have both been invited to serve on the RITs.

Larry asked what level of participation the HCAC would like to see on the RIT's along with good representation from the technical committee. Chris Blake suggested there be

a position available on the board in behalf of the whole HCAC with someone who gets an assignment to go. Most HCAC members do not work in this profession; this is a volunteer job which makes it difficult to commit to go to a lot of meetings.

Ann mentioned the invitation states it will be a two to five year commitment with two or three meetings per year. Larry stated he will contact the Desert Tortoise Recovery Office and talk with a spokesman to see how they feel about having an open position for someone to attend RIT meetings or if they would be requesting a specific person.

Reed stated he felt the RIT will be adequately represented and would like to know who will decide policy and how it will be implemented. Sometimes there has to be policy decisions made, especially related to a County and a HCP. Larry explained the RIT will exist primarily to provide recommendations to regional directors of the FWS on recovery goals, numbers, and whatever the director needs input on. Sometimes there will be policy implementations. Chris Hart suggested having the TC representatives come to the HCAC for policy interpretation. Bob concurred and expressed the need to have the HCAC, the TC, the HCP, and the Upper Virgin River recovery unit mesh together and march in the same direction.

Larry stated the HCAC has strong representation from the HCP on this RIT. If there are concerns, another HCAC member can be put on the team. At any point, any HCAC member will be welcome to attend any of the meetings. The technical team members can notify members of the HCAC of upcoming issues that would benefit from having a board member attend. Chris Hart suggested having the technical committee include the activities of the RIT as part of their monthly report to the HCAC. Larry stated that in the future if the HCAC feels it appropriate to have specific representation from the HCAC, the board can move in that direction.

**e. TNC Fencing Report**

TNC fencing report is shown in Exhibit 5-e-1. Bob explained that there was money the HCAC allocated to the Nature Conservancy to help fund fencing around the White Dome area Nature Reserve. The exhibit shows a report of what was accomplished with funding. The HCAC allowed them additional time to expend those funds and allowed them to expend about \$5,000 that was left over to use for other maintenance work.

**f. Land Acquisition Efforts**

Bob reported that no lands have been acquired in the last month. Work has been ongoing as far as positioning the BLM to accomplish land acquisition. The BLM has been working with the Trust for Public Lands to gain support for Land and Water Conservation funding, which would allow them to purchase some inholdings.

**g. Request for Letter of Support from TPL**

Exhibit 5-g-1 is the proposed letter of support to the State Director of the BLM, letting

him know of the HCAC's support of their efforts to acquire Land and Water Conservation funding to help purchase inholdings.

Chris Hart asked if Mr. Doyle's property fits in the context of this funding. Bob stated it probably could. As Bob understands, the Trust for Public Lands received agreements with Mr. Brennan and Mr. Carter. Bob presumed they have not made any agreements with Mr. Doyle. This letter is in support of obtaining Land and Water Conservation funds that could apply to any of the inholdings but it is somewhat specific to agreements with Mr. Brennan and Mr. Carter which is probably where it would go if they get it.

**MOTION** by Marc Mortensen to have Chairman Wilson sign the letter of support.

Seconded by Reed Harris.

Discussion: None.

Vote was taken: All voted aye.

Motion passed.

#### **h. Planning Update (J. Tyree)**

Bob stated the BLM has been working with a fence contractor. They have had issues and concerns with the contractor and are currently meeting to get everything in the contract and move forward. Tim Croissant stated the contractor will need to replace most of their staff. The BLM will be meeting and coordinating with the new staff.

#### **i. Technical Committee Report (T. Croissant)**

Bob explained that the TC voted during their last meeting and changed chairmanship. Tim Croissant is the chairman for 2012. Tim reported discussions the TC had during their January meeting such as the removal of structures in Pioneer Park. Marc mentioned that he has had conversation with Century Link about the microwave screens in Pioneer Park. Century Link does not recall having any further use for their structure as it is outdated technology. Marc is working on including that as part of the demolition project. The goal is to remove all structures, towers and powerlines associated with the red hill. Those who have those structures have other suitable locations for their equipment. St. George City wants to clean up the area to make it look as pristine as possible and restore it back to its natural state.

Marc continued, the area is a sensitive tortoise area and the City has requested proposals for removal and will meet on site with interested contractors. Bob will attend that meeting. The city wants to accomplish removal during the tortoise dormant season and have it done by the second week in March at the latest. Tim reported that the technical committee discussed working with whoever does the removals, to keep impacts small and get it done without non-targeted impacts.

The TC discussed the Toe Trail; however, it does not need to be talked about any more due to Ivins City pulling their request during 5-b of this agenda. The TC discussed the

Red Hills Parkway expansion project. Ann McLuckie and Cameron Rognan have checked on the temporary fences to make sure the relocated tortoises don't get back to the areas they could previously access. The TC conversed about re-routing a small portion of one of the utility access roads to avoid conflict with the City Creek trail.

The TC talked about the Cottonwood Road fence as well. The BLM had some difficulty with the contractor fulfilling the contract. He caused more ground disturbance than was anticipated and in some places the fence is not up to specifications. He is making less money than he would have had he fulfilled the whole contract. As far as ground damage, the BLM is looking at treating it as a fuel's management issue through reseeding with native vegetation and applying herbicides to keep the Cheat Grass and Russian Thistle from taking over. The BLM has discussed retrofitting the fence to specifications, but it depends on how the planning process goes. The fence has built up quite a bit of tumble weed and the BLM is looking at removing them and burning through their fuels management process.

The TC discussed the 2012 TC meeting schedule with a tentative December date along with RIT invitations, the I-15 corridor, and the Eagar and Terry mining claim. The Eagar's have mining claims that predate the establishment of the HCP. They have been working with the BLM to do assessment work on their claim. They will remove material and take it off site to look for the presence of gold, silver, and other minerals. They cannot use commercial sized trucks but can use every day pickups, picks, shovels, and wheelbarrows. Even a jack hammer is not allowed. If they decide to do commercial mining, they will need to submit a plan of operations, do NEPA, section 7 and everything else. The BLM will work during the inactive season to find the routes they can use, clear the routes, clear the site, and be onsite if needed.

Chris Hart questioned Tim about the process the TC goes through to determine mitigating properly when there is a request such as improving the Toe trail. Chris Hart inquired to what the science is behind the determination. On the surface it sounds arbitrary and given that Chris Hart has been placed on the HCAC to represent the local development community, he felt it was a fair question and would like to know the source.

Larry stated there is a range of ratios the FWS typically looks at and it is kind of all over the place. A number of factors are looked at and it can be a little bit subjective. Like the value of the habitat that is being impacted and what it will be replaced with. Another factor looked at is the density of tortoises in one area compared to where it will be mitigated. Larry explained that often, impacts that are mitigated close at hand can be more valuable and can often be done at a lower ratio than mitigating in further locations that don't affect the population which the mitigation is for.

Cameron stated the TC used a specific document, the Management Oversight Group (MOG) document which is like a flow chart guiding through the process. Cameron added he can supply the HCAC with the document. Bob stated the basis for this comes out of the Desert Tortoise Recovery Plan and it helps to identify the habitat. In this

case, there is habitat inside the Reserve which carries quite a lot of weight. If habitat is going to be impacted which has been set aside to not be developed, then it ends up being a higher ratio.

Chris stated that as Ivins looked at the trail and the detention dam, there was an area of coverage that needed to be mitigated and the mitigated property is probably 100-300 yards away. Chris Hart felt there is something about it that sounds illogical and he would like to understand the process. Bob added another factor it depends on whether there are permanent impacts, or temporary impacts. There may be side slopes or construction access to be rehabilitated and each act has different mitigation ratios.

**j. Administrator's Report (B. Sandberg)**

**1. HCP revenues and expenditures report**

Exhibit 5-j-1 is a preliminary report of HCP revenues and expenditures. The county clerk auditor's office is still finalizing the December amounts. At this point in the preliminary report, the HCP has overspent revenues nearly \$194,000; this could be \$200,000 when the report is finalized. Expenditures are under what was anticipated could be spent by roughly \$100,000. Bob reiterated the HCP did not overspend the budget; the HCP overspent the revenue received.

**2. HCP budget and impact fees**

Exhibit 5-j-2 is also preliminary as the full amount of impact fees has not been included in the report. Bob reported that 2009-2011 has been the lowest years of impact fee collections since the HCP was created in 1996. The exhibit also shows what has been done with expenses. Impact fees are going up slightly. The amount on line 2011 and 2012 are preliminary amounts. Depending on what the revenue does in 2012 and how well the HCP stays within the approved budget, there is potential to overspend the revenue again in 2012. The top contributors in impact fees are 1-St. George, 2-Washington, 3-Hurricane, and 4-Ivins.

**3. Submit 4<sup>th</sup> quarter report 2011**

Exhibit 5-j-3 is the HCP 4<sup>th</sup> quarter report for 2011. Bob requested the HCAC look through the report and consider approving the report at the next HCAC meeting.

**4. Submit annual report 2011**

Exhibit 5-j-4 is the HCP annual report for 2011. Bob requested the HCAC look through the report and consider approving the report at the next HCAC meeting.

**5. HCAC member terms and elections**

Bob mentioned that Marc Mortensen, Chris Blake, and Karl Wilson's terms will expire in

February. Bob expressed the need for St. George City, the Environmental Organization, and the Mayor's Association to bring a letter of nomination to the County Commission for appointment. Marc was appointed February 2006, Karl was appointed January 2007, and Chris Blake was appointed February 2008.

## **6. Ken Anderson property update**

Bob updated the HCAC on the property appraisal of the Ken Anderson property. Bill McMurrin of the Virgin River Land Preservation Association (VRLPA) met with some people from the FDIC. The FDIC is interested in turning the lands they hold into cash. The VRLPA has been working on funding to make an offer on the property. Bob stated he doesn't see the HCP in a position to need to come up with money for an appraisal. It sounds like acquisition could be moving forward.

## **6. PUBLIC COMMENT & REQUEST FOR FUTURE AGENDA ITEMS**

This item is reserved for items not listed on this agenda. No action may be taken on a matter raised under this agenda item. (Three minutes per person.)

Chairman Wilson invited the public to comment or request future agenda items. Lisa Rutherford addressed the HCAC in regards to Jim Doyle's presentation. Lisa stated the presentation had a lot of information to digest and was difficult to read on the screen. It also contained a lot of new information. Lisa stated it was fair to present some history. Lisa became interested in the Doyle situation when it was included in the 2006 lands bill where Mr. Doyle was trying to get restitution for his property. It was ultimately removed from the lands bill. Lisa stated she has been following the situation and learning as much as she can and feels it is convoluted.

Lisa stated that Mr. Doyle was a speculator and definitions she has read of a speculator state that someone does something in hopes of gaining something. She added it is not a sure thing. Lisa stated that a little bit of history is sometimes useful to refresh memories for purposes of including this in the meeting minutes. Lisa offered comments that are part of public record from testimony in 2001 during the House Bill 880 hearing. Lisa commented from the hearing, "Mr. Doyle began leasing the land from the state of Utah in 1983 and bought it from the state in 1990. Mr. Doyle was the beneficiary of a preferential sale by the state of Utah that was later declared illegal. Mr. Doyle did not make a down payment to the state on his land purchase until June 1990, well after the tortoise was first listed. Because the original preferential sale was later declared illegal he reached a settlement with the state, requiring that he pay the state a percentage of his proceeds from selling or exchanging land. State of Utah stands to benefit mightily by the inflated federal price tag on this land. Mr. Doyle was not able to present clear title of the land until 1997 so it was not until that year that the BLM began negotiating with him over the land value."

Lisa stated from what she has learned, Mr. Doyle was leasing the property from 1983 until when he bought it in 1990. It seems he should have known what was going on with that property and have an understanding that the tortoise was going to be listed. It

all seems very odd that he is feeling so put upon about this whole thing. Lisa's understanding is that he was offered \$28 million for his land years ago. He paid about \$330 an acre to start with. That seems like a nice return on an investment to a lot of people now days that have lost money.

As a tax payer Lisa feels concerned about this. Lisa stated she doesn't care for taxing agencies to misuse tax money and doesn't care for private individuals to try to misuse tax money if that's where these funds are ultimately going to come from. Lisa wants to make sure that there is a proper history on this.

When Lisa attended the October 2009 meeting, Mr. Brennan indicated that a three year old investment appraisal had put the land at about \$142 million and now it was down to \$70 million, which was a lot more than \$28 million. Lisa also understands Mr. Doyle has been offered \$50 million at one time. All the information that Mr. Doyle presented today is very interesting and well worth looking at. Lisa added she feels it is important to remember the history on this land and the fact that it has been very suspect for many years and hopes that as we move forward, reasonable decisions are made and those who are supporting Mr. Doyle's efforts will give careful consideration to what he did in the first place to get into this position.

The property may be critical to the habitat and needs to be secured but for a fair price. What is interesting is that the property is very near the proposed Northern Corridor. Lisa finds it interesting that the County will argue that this land is important to buy because it is critical to the habitat but then they will also support the idea of a Northern Corridor, bisecting the Reserve.

Reed commented he was interested in Mr. Doyle's presentation. Reed's history goes back from when the HCP first came about and Mr. Doyle's property was at the center of that. This property is the heart of the Reserve and it is essential that the full property (Mr. Brennan's, Mr. Carter's, and Mr. Doyle's) be acquired. This should be a priority and the HCAC should work with the BLM to acquire the land as fast as possible in whatever way possible whether it is through exchanges or Land and Water Conservation fund or some other way. Reed continued, it is his impression that Mr. Doyle has been made several offers, none of which were good enough and they were all based on appraisals at that time.

Reed stated it might be beneficial to have a work meeting to focus on what the real story is. The HCAC received Mr. Doyle's impression of what that story is today and what he would like to do. Reed would like to look over the history and asked Bob to get that history, which may be a major undertaking. Reed would like to have the committee act appropriately with legal understanding of responsibility.

The HCAC concurred with Reed's suggestion. Chairman Wilson reported that when Bob told him Mr. Doyle wanted to be on the agenda, the topic was unknown and all the committee could do was assume the topic. A typical presentation is 15 minutes and the board allowed him 35 minutes without interrupting so he could get that all out. Karl also

asked for suggestion on the full story.

Commissioner Alan Gardner suggested inviting Dallin Gardner to the work meeting. In the early 1990's Commissioner Gardner saw design layouts for the area, with engineering done for subdivisions and golf courses. There was a lot of money that was put into doing some of those things.

Reed stated there has been a lot of discussion on how to acquire private properties such as the Turkey Farm. SITLA has probably the largest amount of land to be acquired and they've acquiesced to not push acquisition and allow the other property to be taken first. Reed was under the impression that the ELT property was agreed to be set upon as the last property to buy because it was so big and land values were going up so fast. Alan stated he doesn't think that was the case. There have been numerous appraisals and those involved couldn't come to an agreement. A lot of the offer values are hearsay but they weren't able to come to agreement on some of the appraisals.

**7. OTHER BUSINESS**

**a. Next Meeting Date, February 28, 2012**

**8. ADJOURN**

**MOTION** by Chris Hart to adjourn the meeting.

Seconded by Larry Crist.

Discussion: None.

Vote was taken: All voted aye.

Motion passed.

The meeting was adjourned at 2:18 p.m.  
Minutes prepared by Amber Stocks.