

**HABITAT CONSERVATION ADVISORY COMMITTEE**  
Washington County Habitat Conservation Plan (HCP)  
February 26, 2008

The regular meeting of the Habitat Conservation Advisory Committee (HCAC) was held at the Washington City Council Chambers on February 26, 2008.

Committee Members present were:

Karl Wilson, Chairman	Mayors Association
Jim Crisp, Vice-Chair	Bureau of Land Management (BLM)
Marc Mortensen	Citizen at Large
Jeff Morby	Local Development
Bill Mader, Administrator	Washington County - HCP

Committee Members absent and excused were:

Larry Crist	U.S. Fish & Wildlife Service (USFWS)
Reed Harris	Utah Dept. of Natural Resources (UDNR)

Also present were:

Todd Christensen	Bureau of Land Management (BLM)
Tom Webster	Washington County - HCP
Ann McLuckie	Utah Div. of Wildlife Resources (UDWR)
Stacy Young	QRS Developers ( <i>The Trails</i> )
Dallin Gardner	ELT Properties
Allan Carter	ELT Properties
Alan Gardner	Washington County Commission
Brad Young, Recorder	Washington County – HCP

1. **CALL TO ORDER**

Chairman Karl Wilson noted that four Committee Members were present and a quorum did not exist. Chairman Wilson called the meeting to order at 1:07 PM and explained that presentations could be heard but no decisions made. He added that Member Larry Crist was available by phone if necessary.

2. **APPROVAL OF MINUTES**

Review and approval of the HCAC meeting minutes of January 22, 2008, will be tabled until there is a quorum.

### **3. PRESENTATIONS**

#### **a. Technical Committee Report – Assignment #010407 – Buckskin Wash Trail**

Ann McLuckie presented in behalf of the Technical Committee. She began by distributing a three-page document (Exhibit A-1 through A-3 – HCAC 022608). Ann referred to page 2 of the handout (Exhibit A-2 HCAC 022608) and explained Alternatives 1 and 2. She explained that Alternative 2 is preferred by the majority of the Technical Committee members. Ann added that there may be a third alternative but this requires a field trip to Buckskin Wash to thoroughly evaluate.

Jim Crisp complimented the Technical Committee for their hard work and perseverance.

There were no questions by the HCAC members.

#### **b. Technical Committee Report – Ash Creek boundary adjustment**

Ann McLuckie presented in behalf of the Technical Committee. She referred to page 3 of the Technical Committee report (Exhibit A-3 HCAC 022608) and explained that the Technical Committee supports the adjustment as shown and discussed. This minor adjustment is beneficial to the Reserve because it results in a small net gain of 1,341 sq. ft. and because it improves the Reserve boundary design (decreases area to edge ratio). The Technical Committee further recommends that the tortoise mesh be upgraded to the new mesh – 1” X 2”.

Jim Crisp asked about the specific properties involved. Ann displayed a map similar to Exhibit K TC – 021308. She explained and described the proposed exchanges.

Larry Crist was called and placed on speaker phone.

Ann continued her explanation of the proposed boundary change.

Jim Crisp asked Ann if the Hurricane City officials were fully aware and agreeable to the (land) exchanges. Ann wasn't certain. Bill Mader stated that Hurricane City has a representative on the Ash Creek Special Services District board. Chairman Wilson said that he also on that committee.

Jim Crisp explained that lands northerly of the bottom line of Section 28 are designated critical habitat and that BLM has not patented the land to the City as they have with some other lands. He said that he's going to check with Kathy Abbott about BLM's involvement in the exchange.

Chairman Wilson asked if there were any other questions or comments about the proposed boundary adjustment. There were none.

Amended agenda:

**c. Technical Committee Report – Brooks Nature Park (Cox Pond)**

Ann also made this presentation. She referred to page one of Technical Committee report (Exhibit A-1 HCAC 022608) and explained the Committee's recommendation. Marc Mortensen clarified that this pond is known as Cox Pond and the park is Brooks Nature Park, not to be confused with Skyline Pond.

Jeff Morby asked about signage. Ann said that Lynne Scott said that there are already some City signs in the area and Lynne recommends consistency with those signs. Tom Webster added that there will be cost sharing with the City (St. George) and HCP administration.

Chairman Wilson noted that action by the HCAC is necessary but because this item was not on the published agenda, it needs to be added to a future agenda.

**4. UTILITY DEVELOPMENT AND PROJECT REVIEWS**

No discussion items.

**5. GENERAL BUSINESS**

**a. Annual elections**

For the position of Chairman:

**NOMINATION and ELECTION:** Jim Crisp nominated Karl Wilson as Chairman. Seconded by Jeff Morby. Jim Crisp moved to close the nominations. A vote was taken to elect Karl Wilson as the Chairman. All voted aye and Karl Wilson was unanimously elected.

For the position of Vice-Chairman:

**NOMINATION and MOTION:** Marc Mortensen nominated Jeff Morby. Jeff Morby nominated Marc Mortensen. Bill Mader proposed that, because one position on the committee was vacant and Jim Crisp's replacement was not yet serving on the committee, the nominations be tabled until next meeting. Seconded by Jim Crisp. There was no discussion, vote was taken and the motion was unanimously passed.

**b. Review/Approval of Technical Committee Buckskin Wash recommendation**

**MOTION** by Jeff Morby to table the decision until the third possible alternative can be reviewed and evaluated by the Technical Committee. Seconded by Marc Mortensen. There was no discussion, vote was taken and the motion was unanimously passed.

**c. Review/Approval of boundary change near Hurricane regarding the Ash Creek Special Service sewer line**

Jim Crisp wanted to make sure that the City of Hurricane is fully aware of and agreeable to the land exchange. And he expressed concern about clear title(s) to the parcels involved. Bill said that he understood the property coming into the Reserve would not be BLM land but instead a RP&P piece. Jim said that it needs to be verified.

Jim explained that there was a land exchange with the City of Hurricane in 1996 in which BLM acquired East Cinder Knoll and conveyed to the City lands underneath the golf course which were intended to be turned around by the City and sold to the adjoining developer who had a development agreement with the City. Jim added that if in fact those are patented RP&P lands, then there is no reason not to just include them as part of the Reserve. On the other had the lands may need to be purchased. He said more research is necessary and that he'd check with Kathy Abbott.

Chairman Wilson said that the HCAC could go ahead and approve subject to resolution of the ownership issues and approval by all parties.

Jeff Morby asked about the fencing. Bill explained that he has talked with the Ash Creek Special Service District and there is a tentative agreement between them and HCP to split the cost of putting up the tortoise mesh. March clarified that the fence would be tortoise mesh only and not the range fence. Bill explained that the fence is right along the golf course and there is a great view vista, and the objective is to keep tortoises out of harm's way. Bill added that a low-profile fence will be adequate.

Ann reiterated that the Technical Committee recommends that the fence be consistent with what the USF&WS recommends in their fencing plan, this includes the range fence. Bill said that it is his understanding that a 1" X 2" tortoise mesh only is appropriate. Ann said that she'll check to be sure it is consistent with the TC report.

Jeff said that it is important to keep the views and the low-profile fence is preferred. Bill added that even if someone wanted to cross the range fence, the steepness of the slope would stop them.

**MOTION** by Jim Crisp to approve the boundary change subject to resolving the property title and fencing issues. Seconded by Jeff Morby. There was no discussion, vote was taken and the motion was unanimously passed.

**d. Initiatives to acquire ELT properties**

Bill explained that he has spoken with Bob Brennan and that Bob feels some frustration, as does Allen (Carter), and that Bob is working to try to partition out his share of the Doyle property acreage. If he is successful then he will attempt to make his own separate land exchange deal. Jeff asked if that petition was through the court, and would that then come back to the HCAC? Bill explained that if there was a land exchange deal then it would have to come back through this (HCAC) process. Bill added that when he talked with Selma Sierra, she is trying to requisition resources that would assist in future land exchanges.

Allan Carter spoke next. He began by quoting four lines from the Habitat Conservation Plan. Mr. Carter said that acquisition of Reserve lands will be facilitated by the County. Then he quoted from the HCP,

**Section 3.2 - ACQUISITION STRATEGY**

“... Landowners have been consulted throughout the HCP process and have been encouraged to participate in these land exchanges. In the event they do not, the HCP will have no legal effect on their property and the HCP will place no restrictions on land use within the reserve. However, such lands will not participate in the benefits and protections inherent in an incidental take permit issued as a part of this HCP, and therefore the landowner will be subject to the Section 9 . . .”

Mr. Carter said that since six months ago when they approached the Committee about the possibility of hiring somebody to specifically work to acquire the lands and manage the Section 6 monies for exchange, proposals, donations or purchases of conservation easements, they haven't received any encouragement from the County or the Committee. They have met with Randy Massey who is doing some consulting work. Mr. Carter delivered a three-page document to the Committee (Exhibit B-1 through B-3 HCAC 022608). Page one (B-1) is a letter, page two (B-2) is a spreadsheet and page three (B-3) is Randy Massey's name, address and contact phone numbers.

Mr. Carter explained bullet #1 on page 1 (Exhibit B-1). He urged the County, through the HCAC, to hire a professional consultant, such as Mr. Massey as to facilitate a land exchange. The end objective is a 'super land exchange' to resolve the issue of Mr. Doyle's property. Mr. Carter proposed using BLM lands, NOT included in the Washington County Land Bill. Mr. Carter suggested using Category II lands. He explained that Mr. Massey's job would be to start the process of identifying and evaluating possible lands for exchange. He said that a list could be compiled, the Environmental Assessment completed and the report written in six months to a year. Cost of that, at \$100.00 per hour, would be between \$35,000.00 and \$60,000.00 – which is cheaper than a full-time employee.

Mr. Carter continued by explaining bullet #2 on page 1. They wish full access to all information available regarding location of any tortoises on the Jim Doyle property. They are investigating the possibility that some of that land may not necessarily be tortoise habitat. He reminded the HCAC that 30% of the overall Doyle/Carter lands have thus far been purchased and that 70% remain. He added that neither he nor Mr. Brennan wish to 'take on Jim Doyle until we know that we have a direction to go.' Mr. Carter explained that he wants to segregate his property interests from Mr. Doyle's when Mr. Brennan does the same. He believes that the bankruptcy court will do that for them.

Jim Crisp made some observations. First, that segregating the properties by ownership will simplify the process. And, that working with him (Mr. Carter) and Bob Brennan would be easier than working with all of the owners and all of the properties. Mr. Carter said that Bob Brennan is in the predicament of a financial tax burden and that if he is not paid but given land, then he is deemed to have been fully compensated. Mr. Carter went on to explain how if Bob Brennan is partially compensated then he deemed to have been fully paid and then must pay tax of the fully compensated amount – even though he wasn't.

Jim Crisp told Mr. Carter that a 'super exchange', even done in increments will take a very long time. Mr. Carter said that Mr. Massey estimated the process could take two or three years if everything went smoothly. Jim noted that there hasn't been a land exchange in the last five years that went smoothly and that two or three years was very optimistic. He explained that you cannot put a time on such a project – that it must be, "event-based" .Jim added that the federal process is very cumbersome – "like herding cats to a table."

Jim continued by explaining that the land bill (Washington County Land Act) could result in as much as \$200 million. Acquisition of the ELT properties would be priority #1. This is more likely than a 'super exchange'. Mr. Carter said that they had thought about waiting to see about the mortality of the land bill. Jim said that doing parallel options (supporting the land bill and pursuing a 'super exchange') is something that they may want to think about.

Jim added that he is aware that Senator Bennett's office is trying to push the land bill by trying to gain support of various special interest groups as well as a majority of the committees in the Hill, but is a difficult process to negotiate and navigate.

Jeff Morby asked for some clarification on Item #2 (#2 of Exhibit B-1). He asked Bill about the possibility of adjusting the boundary to exclude the ELT properties. Bill explained that the idea of removing the properties from the Reserve is fraught with huge legal issues and is not practical. He added that is entirely fair for Mr. Carter to get the information as it will improve his understanding of why removing the properties is not likely. Bill added that early in the formation of the HCP there were studies and surveys about tortoise populations and habitat and it was determined that it was critical habitat.

Bill suggested that the HCAC may wish to make an assignment to the TC to review the data and literature relative to the properties and come back and make a report on it.

Larry Crist was on speaker phone and disadvantaged because he did not have the Exhibit (B-1 through B-3) to see for himself. Jim Crisp explained the Exhibit, summarized Item #1 and read Item #2 to Larry over the phone. Larry said that taking the land out of the Reserve is not likely but is willing to talk about it. Jim and Larry agreed that providing the information as requested in Item #2 is very valid.

Jeff posed his second question to Allan (Carter) and Dallin (Gardner). He asked them what standing do they have regarding the property – are they making this request in behalf of Mr. Doyle or in behalf of themselves? Mr. Carter replied that he is making the request as a landholder and explained that he owns one-half interest in 393 acres. He added that Dallin is making the request as a manager of some of Mr. Brennan's interests in the area, and is a security interest holder. Mr. Carter added that he (Dallin Gardner) would be an owner except that Jim Doyle filed bankruptcy before he could foreclose on the land. Jeff Morby asked Mr. Carter, as he is making this request of the County through them (HCAC), is Jim Doyle aware of this and is he comfortable with it? Mr. Carter replied that it depends if you catch him (Doyle) on a sober day or not. Mr. Carter added that Doyle has told them that they can pretty much do anything they need to do.

Mr. Carter complained that he has been given conflicting information over the years. He added that the HCP leaves it open that they (a landowner) may opt out if they are willing to be subject to Section 9. Mr. Carter explained that they are aware that the tortoise population has declined in the last few years due to drought and fires and that it is possible that the habitat has changed so much that it no longer supports tortoises. He wants the information so he can find out. Ann McLuckie said that the Division (of Wildlife Resources) has published reports on tortoise populations and that she can get them to him. Jeff added that the HCAC Quarterly reports also have some detailed information.

Jeff asked Mr. Carter if these requests (Items #1 & #2 in Exhibit B-1) have been made to the County? Alan Gardner said that they (Allan Carter & Dallin Gardner) met with them (County Commissioners) a few weeks ago regarding the funding of Randy Massey and they (Commissioners) are in support of spending HCP dollars to try to get this issue resolved.

Mr. Carter explained that he is also concerned about his land because there are and may be new developments adjacent to the ELT properties that are and may impede the only reasonable access to his land, which further complicates his land use. Again, he claimed that his land has been '*taken*'.

Jim Crist asked Ann about the most comprehensive data available for the tortoise population. Ann said that the reports are cumulative and the most recent would be the best. She said the final 2007 report should be done by March.

Bill summarized that the most authoritative report would be from the State because the HCP pays the State to monitor tortoises inside the Reserve.

Mr. Carter stressed that he wants to make sure there is some compensations, either through the WCLB or Section 6 – or some other method. He argued that the boundaries were not drawn strictly on biological data or topographical lines. Mr. Carter emphasized that the playing field must be level and that he needs the requested information to make sure that it is.

Bill asked Mr. Carter if he has identified target acres (for a land exchange) – they have not. Mr. Carter added that there are alternatives for resolution which include: 1) exchange, 2) land and water conservation, 3) conservation easement donation (which is funding), and 4) doing something different with the land – switching with SITLA, taking land out of the Reserve, or getting a permit to build low-density homes.

Bill commented that it would require a motion from the HCAC to the Commission and then their approval to hire a consultant. Bill then talked about the process for removing 1,300 acres from the Reserve. It would require 1) a formal amendment to the permit, 2) getting into ‘take’ acres, 3) dollar values, 4) incremental take, and 5) habitat mitigation – done on a ratio. Bill explained that it is a high-risk process that will likely be challenged. It will be a very hard, very long process. Bill added that he feels that the idea of organizing a super exchange has merit, but there are significant hurdles. Mr. Carter stressed that he doesn’t want to wait for the land bill because it may not pass and then they’ve wasted valuable time.

Jeff Morby said that hiring a consultant makes sense and to have the County do it, not the HCAC and that it would be better that a Randy Massey work with the County and the landowners.



**MOTION** by Jeff Morby and seconded by Jim Crisp to recommend to the Washington County Commissioners that they consider hiring a professional consultant to initially review, organize and facilitate the opportunities for a super land exchange regarding the Doyle (ELT) property.

Chairman Wilson called for discussion.

Jim Crisp rephrased to:

- Hire a qualified consultant immediately to begin active work with HCP staff, BLM and other parties to evaluate a possible super land exchange and finalize acquisition of the entire ELT properties.

- Randy Massey is recognized as a potential individual who may be available and who has the technical background to accomplish the initial paperwork.

Jeff Morby clarified:

- Timing of the hiring is important, depending on a couple of issues, the Washington County Land Act being one of them.

- The County Commissioners may analyze when that hiring was appropriate.

Bill Mader emphasized two points:

- The hiring monies would not be released until after it is sure that the Bill will fail, and

- A demonstration is needed that the consultant is dealing with the people who own title to the property.

Jeff Morby amended the Motion to include:

- The part-time consultant will be hired by and for the County,

- The hiring funds must be budget compliant.

A vote was taken and the Motion was unanimously passed.

**e. Status of Red Hills Parkway Expansion**

Bill Mader told the Committee that progress is continuing and that he is not aware of any show stoppers. Marc and Larry agreed.

**f. Discussion of the results of the 'take' meeting**

Bill related the meeting of January 25, 2008. He said that the objective was to bring some historical clarity as to how the partners (in the HCP) had conducted clearances in the past and to match that (process) with what the HCP says. The process has improved because early on there was uncertainty about the process and how to overcome significant obstacles. The process is much more efficient now and involves more teamwork. Bill added that Renee Chi took some minutes, and she is going to draft some wording for the HCAC for a minor amendment to clarify the clearance procedures.

Larry Crist added a brief comment via speakerphone that was audible to the members but is inaudible on the recording.

**g. Land Acquisition Report**

Jim Crisp told the Committee that the Kent Frei (land) exchange is on track but there are still some obstacles. The second issue involves SITLA land on T-Bone Mesa and the astragalus<sup>1</sup> plants. Jim added that the Department of Justice may not accept the title offered by SITLA and that a local title company may be used. Larry Crist offered a brief comment audible only to the members.

**h. Approve the Quarterly Report – 4<sup>th</sup> quarter 2007**

The report was submitted at last month's meeting. Jeff Morby asked about an encroachment and trespass issue on the Reserve. He wondered if the issue had been resolved. Bill explained that it involved the Jacksons east of Leeds, but he was uncertain of the status of the issue. Jim said that there are some legal issues and that a survey may be required, which may result in a minor boundary adjustment. The survey is going on now and the issue hasn't been forgotten. It is in the NW corner of Zone 4.

<p><b>MOTION</b> by Marc Mortensen and seconded by Jim Crisp to approve and accept the Quarterly Report. There was no discussion. A vote was taken and the motion was unanimously passed.</p>
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**i. Administrator's Report**

Bill reported on *The Cliffs* trespass issue. The area is in Zone 3 directly north of *The Cliffs* subdivision. The resolution reached is: 1) Snow Canyon Development, Inc. will donate ~14.65 acres of property, which was an island of property inside the Reserve, to State Parks, and relating to the trespass, they will donate 0.65 acres along Johnson Wash. Both the USF&WS and UDWR have signed off on this agreement and there are maps available. Once this is finalized he will come back to the HCAC with a minor boundary change. Jim Crisp commented that boundary changes are quite important at this time because after a NCA designation they will be very difficult.

Bill also reported that in the last few months he has met informally with the mayors of the participating cities. The meetings have been very productive, useful and enjoyable. Bill was asked if the Town of Virgin is a participant – they are not.

Amended agenda: **APPROVAL OF MINUTES**

Chairman Wilson noted that because Larry Crist is participating by phone, the minutes of January 22, 2008, can be reviewed and approved.

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<sup>1</sup> **Astragalus** (*As-tráá-ga-lus*) is a large genus of about 2,000 species of herbs and small shrubs, belonging to the legume family (*Fabaceae*, subfamily *Faboideae*). The genus is native to temperate regions of the Northern Hemisphere. Common names include milk-vetch (most species) and goat's-thorn (*A. gummifera*, *A. tragacanthus*). Some pale-flowered vetches are similar in appearance, but vetches are more vine-like.

The following changes or corrections were made:

**(page 7, paragraph 1):** changed,

From: “Briefing by Bill Mader. She (?) said that she is trying to facilitate funding for the land acquisition. Jim Crisp added that she has been talking with some folks but the atmosphere for land acquisition is not favorable. He added that the federal bureaucracies in Washington D.C. must be dealt with, and that there are other competing interests, but ELT has priority due to the habitat conservation necessity. Jim explained that the Washington County Land Bill is proceeding.”

To: “Briefing by Bill Mader. Selma Sierra said that she is trying to facilitate funding for the land acquisition. Jim Crisp added that she has been talking with some folks but the conditions for land acquisition through land exchange are not favorable. He added that the federal bureaucracies in Washington D.C. must be dealt with, and that there are other national competing interests, but ELT has local priority due to the habitat conservation necessity. Jim explained that the Washington County Land Bill is proceeding which would provide a substantial source of funding.”

**(page 7, paragraph 3):** changed,

From: “Mr. Dallin Gardner explained that Mr. Brannon is becoming more of a property owner due to the debt, and as such, has certain rights. Bill referred to (Senator) Ted Stevens and stressed that another Ted Stevens is needed. Jim Crisp said that federal policies in Washington D.C. and the disharmony between the democrats and republicans has slowed the process, and then there’s the money issue. He added that we need to wait on the next administration – 2009 at least.”

To: “Mr. Dallin Gardner explained that Mr. Brannon is becoming more of a property owner due to the debt, and as such, has certain rights. Bill referred to Ted Stevenson, former BLM project lead in Salt Lake City, and stressed that another Ted Stevenson is needed.”

**(page 7, paragraph 6, sentence 4):** changed,

From: “Jim Crisp explained that, due to federal requirements, a sale is much better than an exchange.”

To: “Jim Crisp explained that, due to federal requirements, a purchase is much better than an exchange.”

<p><b>MOTION</b> by Marc Mortensen and seconded by Jim Crisp to approve the minutes as corrected. There was no discussion. A vote was taken and the motion was unanimously passed.</p>
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6. **OTHER BUSINESS**

- a. Bill Mader presented a framed Red Cliffs Desert Reserve poster and gift card to Jim Crisp for his years of dedicated service and devotion to the working partnership and to the HCAC. Jim is retiring from BLM and will be pursuing other interests and ambitions.
- b. Ann McLuckie advised the committee of an article in the February edition of the *St. George Magazine*. The article was about 'Fluffy' the Mojave desert tortoise being held as a pet. 'Fluffy' is seven years old and therefore illegally possessed. The UDWR enforcement officers are investigating. Meanwhile, Ann suggests that the HCAC write a letter requesting retraction and correction of the article. Jim Crisp suggested that a full and complete article be written about the Reserve.

7. **ADJOURN**

**MOTION** by Jim Crisp and seconded by Marc Mortensen to adjourn.  
There was no discussion. A vote was taken and the motion was unanimously passed.

Larry Crist had stayed on the phone the entire time.

The meeting adjourned at 2:41 PM.

Minutes prepared by Brad Young.