

# 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 **November 27, 2012**.

Committee members present were:

Chris Blake, Vice Chairman	Environmental Organization
Henry Maddux	Utah Dept. of Natural Resources (UDNR)
Larry Crist	U.S. Fish & Wildlife Service (USFWS)
Marc Mortensen	Citizen-at-Large
Bob Sandberg	HCP Administrator
Dawna Ferris-Rowley	Bureau of Land Management (BLM)
Chris Hart	Local Development

Absent and excused:

Karl Wilson, Chairman	Mayors Association
Jimmy Tyree	Bureau of Land Management (BLM)

Also present were:

Amber Stocks	Washington County HCP - Recorder
Cameron Rognan	Washington County HCP - Biologist
Alan Gardner	Washington County Commissioner
Tim Croissant	Technical Committee (TC) Chairman
Ann McLuckie	Utah Division of Wildlife Resources (UDWR)
Kristen Comella	Snow Canyon State Park (SCSP)
Nathan Brown	U.S. Fish & Wildlife Service (USFWS)
Mike Empey	Congressman Jim Matheson's Office
Marreen Casper	Senator Orrin Hatch's Office
Ellen Schunk	Congressman Jim Matheson's Office
Bill McMurrin	Virgin River Land Preservation Association
Kai Reed	Friends of Snow Canyon
Craig Shanklin	Friends of Snow Canyon
Diane Shanklin	Friends of Snow Canyon
Julian Banlow	Friends of Snow Canyon
Patricia Pilcher	Friends of Snow Canyon
Lisa Rutherford	Citizen
Paul VanDam	Citizen
Nina Fitzgerald	Citizen
Sandy Johnson	Citizen
Candida Bush	Citizen

**1. CALL TO ORDER**

Vice Chairman Chris Blake called the meeting to order at 1:00 p.m. noting that a quorum was present and Chairman Karl Wilson and Jimmy Tyree were excused.

**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 23, 2012
- c. Next Meeting Date**
  - 1. January 22, 2013
- d. Declaration of conflicts of interest**

As Mayor of Ivins City, Chris Hart declared his conflict of interest with agenda item 5-c. He will question the MOG mitigation ratio in regards to the Ivins Detention Dam. Vice Chairman Chris Blake declared his conflict of interest with agenda item 5-d as he serves on the board for the Virgin River Land Preservation Association.

**MOTION** by Marc Mortensen to approve the corrected minutes.  
Seconded by Larry Crist  
Discussion: None.  
Vote was taken: All voted aye.  
Motion passed.

**3. PRESENTATIONS**

- a. None**

**4. UTILITY AND DEVELOPMENT PROJECTS**

- a. None**

**5. GENERAL BUSINESS**

- a. Discussion and Possible Action on Fieldtrip to Snow Canyon State Park, Sand Dunes Restoration**

Christ Hart reviewed the HCAC's fieldtrip to the Snow Canyon State Park sand dunes and reported it was a worthwhile experience. There are essentially two dunes segregated by color. The one closest to the parking area is red and is a smaller area. The larger dune has whiter sand and is very well defined. The group walked around the

perimeter and saw that it is quite evident where the dune starts and ends. Chris Hart felt the vegetation should remain on the perimeter's slopes to reduce the movement of the dunes but also felt that the vegetation in the middle could be removed without having much impact.

Larry Crist added that the HCAC looked at the dunes because of the County Commissioner's proposal to restore the dunes to a larger area. The TC previously reviewed the proposal and suggested there could be vegetation management within the interior of the dunes to maintain the dune at its existing size. Larry also felt the vegetation can be removed within the interior of the main dune complex to improve them for the public. This would not affect desert tortoise habitat, especially if managed correctly. Additionally, Larry felt that expanding the dunes would not be appropriate for the desert tortoise and the HCP.

Henry Maddux felt that because the TC requested to remove the plants with hand tools, it would be nice for them to delineate which plants could be removed and which methods could be used. He felt that some of the vegetation should remain in order to preserve the dune. It would be good to remove the back side of the crown and the swell. Chris Hart clarified that the dunes have heavily vegetated peninsulas. From a recreation standpoint it wouldn't amount to a lot.

Commissioner Gardner responded that the commissioners are in agreement to remove vegetation within the interior of the dunes and they can be re-evaluated in a few years. Chris Hart said that access has vastly improved from Snow Canyon Drive. From the large parking lot people pass through a long vegetated area to reach the main dune.

The HCAC discussed clearing the vegetation from the main parking lot to the large dune structure. Marc Mortensen felt the trail should be widened from the main parking lot to the dune and proposed that the HCAC should look at it. It has become very narrow and fragmented. It would be nice to have a clear trail from the parking lot to the dune. Commissioner Gardner stated that widening the trail would be nice to help the wheelchair bound watch their children.

**MOTION** by Larry Crist to have the Technical Committee outline the areas specifically proposed for any vegetation removal on the interior core of the existing dune. Also, have the Technical Committee evaluate expansion or maintenance of the trail from both parking lots to the dune area.

Seconded by Chris Hart

Discussion: There should to be easy access to the dunes from both parking areas.

Vote was taken: All voted aye.

Motion passed.

**MOTION** by Larry Crist to approve expansion of the roadside parking lot.  
Seconded by Chris Hart.  
Discussion: None.  
Vote was taken: All voted aye.  
Motion passed.

Chris Blake expressed his appreciation to the Technical Committee for the work that they do.

### **b. Review and Possible Approval of 3<sup>rd</sup> Quarter HCP Report**

Chris Blake explained that the 3<sup>rd</sup> Quarter report was submitted to the HCAC last month for review. Henry Maddux asked Ann McLuckie about a study that was done on upper respiratory tract disease (URTD). Henry asked if the animals are always clean or if they have a background enzootic level. Ann replied that the micro plasma causing URTD in tortoises has evolved for thousands of years and it seems there is micro plasma present in populations. The more lethal strains can be problematic when captive or exotic animals are introduced to native populations. Henry explained that epizootic is when animals die from it and enzootic are the animals that have a background level of it in their immune system and can live with it.

**MOTION** by Chris Hart to approve the 3<sup>rd</sup> Quarter Report for 2012.  
Seconded by Henry Maddux.  
Discussion: None.  
Vote was taken: All voted aye.  
Motion passed.

### **c. Presentation and Discussion on the MOG Mitigation Ratio**

Nathan Brown with the FWS gave a presentation to the HCAC at Chris Hart's request. Nathan used Exhibit 5-c-1 and Exhibit 5-c-2 to explain Compensation for the Desert Tortoise using a document prepared by the Desert Tortoise Management Oversight Group (MOG).

The history of the MOG goes back 20 years when a group of independent scientists and the FWS got together and formed the MOG. Larry Crist explained that the MOG was formed for the whole Mojave Desert Tortoise recovery, not just for this unit. Nathan continued, the BLM in Arizona recognized a need to have consistency in dealing with projects impacting tortoises throughout all their offices along with the FWS and statewide wildlife agencies. The MOG got involved and put together the Compensation for the Desert Tortoise.

The goal of compensation is to make an action's result either neutral or net positive to

the species. Now that the Mojave Desert Tortoise has been listed on the endangered species list, the goal is recovery and to eventually have it de-listed. To reduce threats to the tortoise a system has been established. After impacts are evaluated, mitigation may or may not be necessary. The land that is lost can either be replaced or compensation would be needed for tortoise resource needs.

There are six recovery units for the desert tortoise. In this area we have the Upper Virgin River recovery unit which is the smallest unit and it also has the highest density of tortoises. The impacts on this recovery unit disproportionately affect the other five units.

All projects should focus on “minimization and avoidance” meaning that projects should be worked on during the in-active tortoise season (November-March). Clearances and surveys should be done ahead of time, tortoise fencing should be maintained, etc. All these things should be done on-site and around the action area before, during and after construction to minimize mitigation for lost habitat.

The MOG has been applied (for preauthorized impacts in the HCP and FWS Section 7 Consultation) to the Red Cliffs Desert Reserve for projects covered by the Utility Development Protocol i.e. approved roads, utility maintenance/development.

Nathan referred to page seven of the MOG document (exhibit 5-c-1). He explained that when a project is proposed in the Reserve, the TC goes through each factor (which is explained in this document) and assigns values to each one. The values are added together and the number produced will be between one and six. The range of possible mitigation ratios will be from 1:1 (one acre mitigated for one acre of permanent habitat loss) all the way up to 6:1.

Nathan gave an example of a project that is currently underway. He explained that the TC evaluated the project and came up with a 5.5:1 ratio, meaning that the project proponent will need to purchase 5.5 acres of habitat adjacent to the Reserve for the one acre of permanent loss they will be taking away from the Reserve. The 5.5 acre addition will need to be protected in perpetuity.

Marc Mortensen asked if there is a map showing the assigned categories of habitat. Ann McLuckie answered the BLM has a map. In 1990 a group of biologists assigned categories to areas, giving them a predetermined value. The whole Reserve has been determined critical habitat and pre-assigned category one, giving it a value of three. Dawna Ferris-Rowley added the BLM developed these categories after the tortoise was listed as endangered but prior to the FWS’s designation of critical habitat in 1994.

Marc questioned if the old Turkey Farm which does not have a high tortoise population is still being assigned a category one. Ann responded yes and added that all critical habitat is designated category one. Nathan reiterated that in 1994 54,000 acres was congressionally designated as critical habitat. Ann added that out of the 54,000 acres designated, only 32,000 acres are considered tortoise habitat. The critical habitat is not

necessarily equal to the Reserve boundaries. Bob stated that the higher elevation upland zone is not designated as critical habitat. Ann continued that zone 4 is part of the upland zone but is lower in elevation and is tortoise habitat.

Chris Hart asked if a mitigated property could potentially be category one, two, or three. Kristen Comella gave a state park example where there was impact to certain property purchased with federal dollars and the value of the mitigated habitat had to be equal or higher. There has never been a time where a lower quality of habitat could be exchanged.

Chris Hart referred to the Ivins proposal of exchanging their land within the Reserve for an improvement on an existing trail 300 yards away. Chris Hart assumed that the value of habitat is roughly the same. Ann explained the trail would be a major incursion into the Reserve and would impact awesome tortoise habitat. Chris Hart said the point is that there is mitigation ground essentially equivalent in terms of habitat. It seems that at the very least there will always be three acres needed for each one acre that is being taken. When the Reserve was established, every privately owned acre had to be purchased. As a city official who is being required to provide ten acres for the use of two acres that is already owned by the city, feels like the ground is being acquired as a "taking". Chris Hart has read the MOG several times and understands it but suggested there is a portion that comes across as arbitrary. It would be helpful to have the rationale very clearly outlined so that the party providing mitigation can understand how it is being done.

Ann reiterated that projects need to benefit tortoises so that they can eventually be delisted. Chris Hart stated that the detention dam restricts the flow into a very narrow channel and prevents a major flood from proceeding down the wash. He asked how this is not a benefit to tortoise habitat. Ann responded that tortoises have always existed in washes and they have behaviors which allow them to exist in flood events. They will continue to exist whether there is a detention dam or not. He asked if preventing a large volume of water from expanding into tortoise habitat is not a benefit to tortoises and Ann said that is correct. Chris Hart felt troubled and requested to have the TC present to the HCAC very clearly how they come up with their mitigation ratio every time that mitigation is required. He would like the HCAC to have the opportunity to review it and see if they are in agreement.

Bob added his interpretation that the MOG was set up to be a deterrent against development in tortoise habitat. The idea is to try to recover the species. The Reserve was set aside as mitigation for development of all the other property in tortoise habitat outside of the Reserve in Washington County (with the exception of Beaver Dam Slope). The objective is to not have any development that is negative to the tortoise inside the Reserve. With the Ivins detention dam being inside the Reserve it is an incursion and a detriment to desert tortoise. The ratios are set up to make up as much as possible for the negative effects so that we don't have a net loss, so that we have an improvement and hopefully recover the tortoise.

Nathan wrapped up his presentation and stated that the Desert Tortoise Recovery Office supports the use of this MOG document. The FWS uses a similar process with many different species. They are all aimed at recovery and to eliminate threats. One of the big threats here is urban growth and development. The MOG is our defense to remove those threats so that when we go to delist the species we can show how these threats have been addressed and show that there is no more pressure against it.

Tortoise populations increase slowly and their improvement is much slower than other species. Even though their density here is higher, they're not as high as a lot of other species. They need a significant amount of ground, are long lived, may not reproduce every year and their survivorship is low. Each year the chance for the species to improve is low. Throughout the range, all states are either using the MOG or something similar.

Chris Hart thanked Nathan for his presentation. Bob added that the Technical Committee brings the mitigation ratio to the HCAC before assigning a project. In regards to the Ivins Detention Dam, it has been around for a long time. It has been through the process, going through the HCAC for approval and the Biological Opinion has been made. Marc agreed with Chris Hart and felt it would be helpful to have each individual project presented to the HCAC so that everyone can understand how the ratio is arrived. Ann responded it should be in the TC's meeting minutes and Bob replied the TC can outline their recommendation in table form to show how the number is arrived.

#### **d. Confluence Park Property Discussion (Chris Blake)**

Vice chairman Chris Blake explained that the Land Trust is putting together a package to acquire a parcel for Confluence Park which has recently become available for purchase. Exhibit 5-d-1 shows how funding for the different Confluence Park parcels were acquired.

Bill McMurrin, chairman of the Virgin River Land Preservation Association, addressed the HCAC. The Land Trust board would like continued support from the HCAC for this parcel which is around 180 acres. It has always been in the vision for Confluence Park and has been negotiated with Mr. Anderson for over ten years but is now owned by Cache Valley Bank. In 2010 the HCAC funded a survey and an appraisal. The last appraisal was done about six months ago and we aren't sure if it will meet federal requirements.

Without this piece the Park is not complete and bank officials have agreed that they want to see this parcel in the Park. They have been very positive and the board feels it will be a bargain sale. If the HCAC continues to support section six money for this, it would help a long way with match money. There is also a chance the HCP may need to help with this purchase. The HCP has been a partner in purchasing the other parcels as well. The Conservation Fund has agreed to buy out the bank and loan out the money which would give us time to raise the money to repay them. They've done this

on two other Confluence Park parcels as well. There are some upfront costs that will need to be covered, the biggest would be an update of the appraisal. The board is hoping that the HCAC can recommend to the county to help with these costs.

Chris Blake added the bank is one of the few banks that pays income tax and they are allowed to use the same appraisals when taking the tax credit. Because of this they are able to give a donation by reducing the purchase price. The chance of using the bank's appraisal is not good. There is no reason for the Land Trust to buy the property and hold onto it, it needs to be in the hands of the cities and the county. In the past the Land Trust brought together various partners. Once the land was purchased the ownership went to the County and the conservation easement went to the Department of Natural Resources.

Bob explained that the HCP has a provision in it which allows a portion of the collected impact fees to be used to benefit other species. The Virgin River tributaries along with the sensitive fish species and the Southwest Willow Flycatcher would be benefited by the Park holding this property in a natural state so that there aren't developments and impacts detrimental to them. The 2013 budget has an amount allocated to fund other species.

Bill continued, the best case scenario would be to have the HCP help with updating the appraisal. The bank has a big enough tax deduction that they can hopefully reduce the cost enough that section six money could cover all of it. Bill continued that in order to give the Conservation Fund comfort that they will be repaid they would like to have the HCAC's help and support with an application for section six money.

Larry Crist added that section six money is federal aid from the FWS to the states for endangered species. Larry would be supportive of the purchase if the benefits to the listed species can be shown and if the state matches the federal portion given. A clear case will need to be shown describing how this would benefit the species. Sometimes it's hard if only one little piece of a parcel is benefiting a species. Federal money has been declining so it would need to be a strong argument.

Bob explained that Ash Creek flows through the property; it holds the confluence of Ash Creek and the Virgin River and it expands to the west. On the south and west it ties in to the Reserve, BLM lands and the NCA. There is another piece of private property between it and the BLM near Sandstone Mountain in Zone four of the Reserve.

Larry said that any time an argument can be made showing that a parcel will complete a cohesive landscape unit, it strengthens the case. Henry added that the HCP has always collected money to support other species and Confluence Park is a great way to meet that obligation of the HCP.



**e. Discussion and Possible Action on USFWS Grant Opportunities**

Bob Sandberg reported the application deadline for FWS grants is January 14, 2013 which is before the next HCAC meeting. Bob asked if the HCP staff should pursue this grant. There is a possibility to compete regionally and nationally for the money available to help acquire in-holdings from ELT, Brennan, Carter and SITLA. Section six money requires a match from the state. Bob explained the HCAC should do everything possible to try and help facilitate acquisition of in-holdings which are so important to the Reserve to acquire.

Henry Maddux stated that the state match would affect him, as he works for the Department of Natural Resources. He asked how much is hoped for. Bob tried to be optimistic and said he'd like to get as much as possible, with a potential to get between \$4 and \$6 million. Henry replied that a 10% match on \$6 million would be \$600,000 and the state doesn't have that much to match. Larry Crist added that section six proposals fair better when there is a higher match. They've gone as low as a 10% match but the higher you can match, the more likely you are to get the proposal. We've dealt with section six proposals in the past where the state didn't directly provide the money. If someone else provides match to the state, that can be used. The HCP could donate some funding to the state for the match. Bob said appraisal costs are part of the match.

Henry said in the last few years, region wide, the FWS has not given above \$5 million. Larry added that now days most funding is going to multi-species HCP's. Henry stated that the application can ask for more and they can give less. Bob's opinion is to get something and move forward. Anything that can be done to move it forward would be good on our part and for the integrity of the Reserve. One of the provisions in the HCP is to use funding as facilitation for acquisition. This is also part of the HCP budget.

Larry mentioned he has had conversations with SITLA on their in-holdings which will probably become a legislative fix rather than us being able to buy it out part by part.

**MOTION** by Chris Hart to authorize Bob Sandberg and Henry Maddux to proceed with an application of \$5-\$6 million, implicit in that is the commitment to provide funding for appraisals when and if it is required.

Seconded by Marc Mortensen.

Discussion: None.

Vote was taken: All voted aye.

Motion passed.

**f. Discussion and Possible Action on 2013 Meeting Schedule**

Bob Sandberg showed exhibit 5-f-1, a proposed meeting date schedule for 2013.

**MOTION** by Marc Mortensen to accept the dates as proposed.  
**Seconded** by Chris Hart.  
**Discussion**: None.  
**Vote was taken**: All voted aye.  
**Motion passed**.

**g. Technical Committee Report (Tim Croissant)**

Tim Croissant reported that the Technical Committee (TC) met and discussed the Snow Canyon sand dunes. They reviewed the dunes a second time with the Public Use Plan and the HCP and are still lacking historic data of the dunes. The TC briefly discussed the MOG ratio, to make sure everyone understood what the HCAC was looking for in the presentation that was given during this meeting today. The Recovery Implementation Meeting is scheduled for December 12<sup>th</sup> and 13<sup>th</sup> and will replace the December TC meeting. The TC briefly looked at a study that was recently done for transportation needs in Washington County. Bob Sandberg stated he will try to find access to the report so that the HCAC and the TC can look at it.

**h. Administrator's Report (Bob Sandberg)**

**1. HCP revenues and expenditures report**

Bob Sandberg shared exhibit 5-h-1 with the HCAC. The reports show that more funds have been brought in than have been expended due to an increase in impact fee collections.

**2. SR-18 bike path**

Bob made the HCAC aware that UDOT is putting in a bike path along SR-18 from the Ledges up to the Diamond Valley intersection. UDOT requested assistance from the HCP staff to look for tortoises in the area and none were found. UDOT asked if the HCP would accept *take* on that portion of the highway project. The HCP coordinated with the FWS and has agreed to accept the proposal with the idea that there will be minimal to no *take* at all. There won't be *take* of habitat but there may be accidental *take* of a tortoise incidental to the construction.

**3. Ivins Detention Dam**

Bob Sandberg stated the Ivins Detention Dam is moving forward. HCP and DWR staff have cleared the area and collapsed burrows in anticipation of the construction which will start next week. JBR was hired as the consultants and tortoise monitors. The contractor understands what needs to be done. Nathan Brown thanked the Ivins Engineer, Chuck Gillette, for being proactive and doing such a good job.

#### 4. **Preliminary budget approval**

The County Commission preliminarily approved the 2013 HCP budget. They will make their final decision on December 4, 2012.

#### 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.)

Vice Chairman Blake invited the public to comment or request future agenda items. No one came forward and the chairman moved the agenda.

#### 7. **OTHER BUSINESS**

Commissioner Gardner mentioned this was Mike Empey and Marreen Casper's last meeting and he appreciates them for their support.

#### 8. **ADJOURN**

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

Seconded by Marc Mortensen.

Discussion: None.

Vote was taken: All voted aye.

Motion passed.

The meeting was adjourned at 2:40 p.m.  
Minutes prepared by Amber Stocks.