

# WASHINGTON COUNTY HABITAT CONSERVATION PLAN TECHNICAL COMMITTEE MEETING

A meeting of the Technical Committee of the HCP was held **February 9, 2012** in the Public Works conference room at the Washington County Administration Building, 197 E. Tabernacle, Saint George, Utah

Members present were:

Tim Croissant, Chairperson	Bureau of Land Management (BLM)
Ann McLuckie, Vice Chairperson	Utah Division of Wildlife Resources (UDWR)
Cameron Rognan	Wash Co. Habitat Conservation Plan (HCP)
Kristen Comella	Snow Canyon State Park (SCSP)
Renee Chi – through conference call	U.S. Fish and Wildlife Service (USFWS)

Absent and excused was:

Jeff Norton	Local Biologist
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Also present were:

Bob Sandberg	Washington County HCP Administrator
Amber Stocks	Washington County HCP Recorder
Nathan Brown	USFWS

## 1. CALL TO ORDER

Chairperson Tim Croissant noted there were at least four voting members present, a quorum existed and the meeting was called to order at 9:20 A.M. with Renee Chi attending via conference call.

## 2. APPROVAL OF MINUTES

### a. **January 12, 2012**

The following changes were made:

#### **Page 3, paragraph 2, sentence 5: changed,**

From: “The area will be watched closely. ~~If tortoises get into the burrows during the removal process, the HCP will fence around those burrows with tortoise mesh.~~”

To: “The area will be watched closely and the HCP will fence around those burrows with tortoise mesh during the construction period.”

#### **Page 5, paragraph 4, sentence 4: changed,**

From: “The access route will be used on an emergency basis and is already an existing road.”

To: “The access route will be used on an emergency basis and is already an existing access route.”

**Page 7, paragraph 5, sentence 4: changed and deleted,**

From: “The FWS tried to put language into the UPD that would keep ~~people~~ them on the hook in the BO, but it had to be reasonable.”

To: “The FWS tried to put language into the UDP that would keep them on the hook in the BO, but it had to be reasonable.”

**Page 9, paragraph 4, sentence 1: deleted,**

City of St. George, City of Washington, Washington County Commissioners, Five Counties Association, and UDOT

**Page 9, paragraph 4, sentence 2: changed,**

From: “Cameron and Bob ~~both~~ attended the meeting ~~and~~ encouraged them to get data from the Heritage Database to use as their basis of where tortoises are at.”

To: “Cameron and Bob from the HCP, Bruce Palmer and Kaye Nickelson from Logan Simpson Designs, and Tim Croissant from BLM attended the meeting. Cameron and Bob encouraged them to get data from the Heritage Database to use as their basis of where tortoises are at.”

**Page 10, paragraph 6: deleted.**

**Page 12, paragraph 6: added,**

From: “Bob stated this year is drier than last year and there may not be a need for goat grazing, however, a need becomes apparent...”

To: “Bob stated this year is drier than last year and there may not be a need for goat grazing, however, if a need becomes apparent...”

**MOTION** by Tim Croissant to approve the minutes as amended.

Seconded by Kristen Comella.

Discussion: None.

Vote was taken: All voted aye.

Motion passed.

**3. GENERAL BUSINESS**

**a. Fieldtrip to Red Hills Parkway Update**

Chairperson Croissant opened up the discussion, stating that the committee went on a field trip to look at several different areas including the potential access routes for utility corridors, discussed in the January 12, 2012 meeting. Cameron Rognan affirmed he will stay in contact with St. George representatives regarding the City Creek trail, the trail step-over, and mitigation at the old dump site (see agenda item 4).

Kristen Comella stated the access route will be used on an emergency basis. The City can save money by not installing a gate and follow the UDP for emergency access. Cameron explained that if the City puts in a gate it would allow access without compromising the Reserve fence. Ann added she would like some fact finding, to talk with individuals who were on the Utility Corridor Committee and find out the reason why the route was never identified and why there is no gate.

Tim stated a gate is not truly permanent, it can be taken out and replaced with fence later on. Bob stated a gate would maintain the integrity of the fence and would direct utility personnel to a specific access point. Cameron reminded the group that if there is an emergency, the City will find a way to get in. The HCP allows for the City to maintain their utilities; if they don't use the access road, something else will need to be approved. Bob explained where the fence will be moved to and further explained how it would be good for the City to plan on building a gate if it is allowed.

**b. Pioneer Park Structure Removal Update**

Bob stated there is no new information. The City anticipates having a contractor remove the structures sometime during February.

**c. Roads and Utilities: Red Hills Parkway and I-15/SR-9**

Cameron briefed the committee on the SR-9/ Bluff Street interchange. The HCP met with contractors recently to discuss the 2:1 slope where the road will encroach into the Reserve. Different possibilities for maintaining the slope were discussed along with maintenance access. The idea is to build the road in a way that it will need minimal to no maintenance; most maintenance will be inside the right-of-way. They are looking at different rip-rapping and putting boulders on the slope.

Bob mentioned the UDOT, I-15 project which will encroach into the Reserve at exit 16. Bob talked to an engineer who stated that Federal Highways would like a less steep curve and more of a cut. They understand the sensitivities of the area and the issues with encroaching on the Reserve with a need for mitigation. The engineer believes that Federal Highways can be convinced to have a steeper curve. Renee Chi stated she has not had communication with them in a month; however, they have had good communication in the past and she will keep in touch with them.

Cameron added that he recently attended the Travel Expo. There was a Southern Corridor booth at the expo. They showed a construction phase from the airport to the Washington Dam Road. Cameron went out to the area last spring to follow up on a JBR

report where they did a tortoise survey and some environmental work. There were very few tortoise reports but there are a couple of tortoises out there. Cameron will go again this spring and make sure no tortoises are in the way. Renee stated she has required that they follow FWS protocol for Zones of Influence surveys relative to that route. Bob added the engineers will begin work in the next 18 months.

**d. Toe Trail Update, Fencing Updates**

Cameron reported that at the last HCAC meeting, Judy Gubler withdrew Ivins' request to improve Toe Trail. Ivins will do a combination of Detention Dam and larger culverts.

**e. Eagar Mining Claims**

Chairman Croissant reported that the BLM went to the Eagar Mining Claim to receive a better idea of work that will be done. Mr. Eagar would like to drive a Suzuki Samurai on some utility roads in the Reserve in order to access bore holes that were drilled long ago. Mr. Eagar will lure a rod into the bore hole as far as possible, scrape the sides of the hole for material and test it for mineral content. Mr. Eagar feels he can do some shovel work and get to the part of a bore hole that has not collapsed. Some holes are fairly deep; a few may be 100 feet or more. This work is in compliance for his 2012 scope of work.

Mr. Eagar's long term plan would be commercial mining which would require a Plan of Operations. The BLM may not be able to require Mr. Eagar to do an annual plan for assessment if he moves beyond assessment to mine commercially.

The next phase the BLM is looking at is to determine the cost estimate for a Validity Assessment. A separate cost estimate for each claim will need to be done for roughly 12 claims. Bob explained it will not be an appraisal, but something that determines if there is value in the claim; to see if it holds a legitimate economic value.

The Validity Assessment would be tied into developing the Plan of Operations which would go through NEPA and Section 7 consultation. There could be two separate NEPA's and Section 7 phases. One for the Validity Assessment which they would need to drill rigs and the second would be for the Plan of Operations. The Validity Assessment is expensive; it would be tens of thousands of dollars for each claim.

In the short term, the BLM is looking at a way to provide access to Mr. Eagar in his Suzuki Samari to the site and find out the cost estimation for the Validity Assessment. Mr. Eagar will decide what he wants to do at that point. Mr. Eagar has pointed out that the BLM has bought grazing rights and private property in the Reserve yet has never made an effort to buy out their mining rights.

Ann asked if Mr. Eagar can drive on the Reserve roads because mining law allows him to do so. Chairman Croissant expressed that Russ (the BLM Geologist and Mining Engineer) said the BLM needs to provide access for Mr. Eagar. Tim added that mining

issues have not been addressed very well in the HCP. In the past, the BLM has treated mining activity as a Utility Protocol. Ann added that Mr. Eager has agreed to confine his work to winter months. The committee discussed the times when Mr. Eager would like to do work, who would monitor the area and access that will be provided. Mr. Eager was told that if he accessed his mining claim during the tortoise active period, he would have to follow the UDP protocol which is have a biological monitor on site.

Bob explained the BLM thought these were patented mining claims. He added that perhaps the BLM didn't realize these are legitimate mining claims because there have been personnel changes and responsibility changes in the BLM over time. At one time all the mining claims were filed in the state office, not the local office. Bob surmised that Zone 4 was an area the HCP planned to put the "take" animals since there were few tortoises in the area. The tortoises were relocated and now there are animals which have reproduced, creating natural progeny.

Tim stated that some BLM maps show mining claims overlapping around the Winchester area and near White Reef. He explained that part of the complication is the BLM maps. One map shows areas with tortoise sightings on it, which would be an utter disaster if it were an active mining claim. Another map is like a hand written map showing actual mining claims in a much smaller area; this map is not digitized in GIS.

Renee inquired if the hand written map is the accurate map. Tim stated that Russ acknowledged it is accurate even though it's not electronic and doesn't have much reference on it. Nathan Brown stated that someone needs to go on the ground and take GPS points. Tim recognizes that mining is a core part of the BLM and also that this map has not been entered electronically.

Bob stated there should be a description somewhere because mining claims are specific. Tim added that if Mr. Eager wants to do a Plan of Operations, the BLM should probably digitize the map. Cameron added they should make sure the map they use will have the most up-to-date tortoise sightings on it. The Heritage Database does not reflect all of the current tortoise signs that have been posted.

Kristen asked if Mr. Eager will abandon his claims if he doesn't find value. Kristen wondered if this is an issue that could come back in 10-20 years and if so, perhaps the BLM could look into buying it. Tim agreed and stated the Eager's have found valuable samples in the past. The Validity Assessment doesn't close the door if the claim is not valid. The Eager's could come up with a different mining plan, prices could change and it could become profitable in the future.

Mr. Eager claims that if the BLM places restrictions on him, and if the restrictions and presence of the Reserve and the NCA prevent him from developing the mine (giving him no way to legitimately exploit it), he believes the government "took" it from him without compensation. He believes this to be illegal.

Renee stated the access is not blocked; however, the FWS and the BLM will work very

carefully and closely with him. This action is on BLM lands, and from an endangered species perspective, FWS needs to analyze the impacts to critical habitat and desert tortoise and may require additional avoidance and/or mitigation measures. The FWS very infrequently puts up barriers stating there is no way to do something. If there are ways to minimize impacts, usually the FWS will work with the issue. Obviously this is in a super sensitive area; however, the FWS never stated the claims weren't valid.

Tim stated in the HCP it says that in Zone 4, mining will be allowed. The HCP is very vague on mining issues and a person can interpret it in many ways. Renee stated it will need to go through Section 7 consultation because of the mining impacts, even though mining is allowed in the HCP. Other projects have followed the UDP; if it's on BLM land or if there is federal nexus with money or something else, the FWS will require consultation. The FWS is sensitive, realizing that Mr. Eagar is probably not familiar with Section 7 consultation. Chairman Croissant will write up Mr. Eagar's current plan for 2012 assessment work and send it to Renee.

#### **f. Fire Season Preparations**

Chairman Croissant stated it would be good to think about preparing for this year's fire season. There shouldn't be as much new cheat grass coming up; however, last year's crop is still around. Ann mentioned it would be good to move forward with goat grazing like last year. Chairman Croissant is working on an Environmental Assessment (EA) so that he has the ability to spray weeds. Bob added there needs to be enough growth from the cheat grass so the goats can maintain nutrition levels. Chairman Croissant stated as long as goats are controlled with their temporary electric fences and people are with them the whole time, the goats may go beyond the Cottonwood Road fence if deemed necessary.

Ann felt that in order to justify trampling the goats would incur, the other side of the fence would need to have a significant amount of weeds. When goats trample, they stir seeds up and encourage bigger crops the next year. Ann supports having the goats within the right-of-way, but once the goats get beyond that point there is an obligation to have them come yearly until the seed source is gone.

Once the EA is complete, it will apply to Cottonwood Road, Red Cliffs Campground, Babylon and other utility access roads. Chairman Croissant is considering including the Beaver Dam Wash National Conservation Area (NCA) in the EA and plans on using ATV's or trucks with spray booms, hand sprayers, and other necessary means to spray.

UDOT plans on mowing the right-of-way along I-15 and SR-18. Kristen stated this is a great year to get into a preventative mode rather than a reactive mode. Chairman Croissant stated he noticed in the draft EA that November is a good time to spray cheat grass. Bob agreed and stated the cheat grass has probably germinated already.

Bob wants to coordinate with all fire suppression and management entities, the BLM, the State, the Cities, and others; to give an understanding of the urgency to respond to

fires in the Reserve. In 2011 there were four human caused fires in the Reserve. In 2012 Tim will be a Red Card resource advisor along with Steve (BLM) and possibly the BLM Range Specialist.

#### **g. Land Acquisition Update**

Chairman Croissant asked for updates on land acquisition. Bob reported the HCAC signed a letter in support of BLM's Land and Water Conservation Funds (LWCF). The County Commission signed a letter supporting these funds and the FWS is writing a letter in support of this funding. The Trust for Public Land has met with the Utah State Director and expressed their willingness to help. There may be a good chance that LWCF will be received.

At the last HCAC meeting James Doyle gave a presentation. Mr. Doyle seems to be pushing on the "taking of property" issue, requesting \$2.5 million from the Washington County HCP. The Trust for Public Land contacted him after his presentation and asked if he is willing to sell the remainder of his property for \$2.5 million. Mr. Doyle indicated that is not his intent with the \$2.5 million. Bob reported that Mr. Brennan made it clear he is tired from his 16 years with this issue. Mr. Brennan felt the HCP Administrator, the County, and the BLM are not doing the job necessary and there needs to be progress. During the Doyle bankruptcy, the judge divided ELT land between Mr. Doyle, Mr. Brennan, Mr. Carter, and SITLA.

SITLA is not pushing hard to be bought out or have an exchange yet. However, when the HCP contacted them about putting trails on the BLM map through their property, they didn't want it done. SITLA indicated they also want effort made to get them out of the Reserve. SITLA has around 5,000 acres in the Reserve and the BLM doesn't have the ability to trade 5,000 acres out appropriately.

The HCAC and the County Commission feel concerned and would like the Doyle property purchase to remain as a high priority. Property owners remind us that they are not allowed to develop their land, yet the County is charging property tax. Bob is under the impression that there is a state statute which says the County cannot waive the property tax. The County has made agreements with many of the private land owners to postpone the majority of the tax burden until the land is sold.

Renee stated these property owners can do their own HCP. Bob replied they are waiting to see what happens with the latest LWCF. If there is progress to purchase their land, they may be satisfied, if not, they may come to the FWS to create their own HCP. Once the President's budget is released, the LWCF will know whether money will come to Utah to help purchase the ELT lands.

#### **4. OTHER BUSINESS**

This discussion is a continuation of agenda item 3-a.

Renee Chi asked if an area has been identified for mitigation in regards to the Red Hills Parkway for temporary impacts. Ann stated that several polygons were discussed during the field trip. The TC decided upon the dump east of Cottonwood Road in an area which sits southwest of the Middleton Wash area. The area is near great tortoise habitat but it needs desperate help, being a field of cheat grass. Renee stated the area may be suitable, but it may have been used for other mitigation. Renee recalled that the old dump area had been used for mitigation by the substation expansion project. If the restoration approach is different from before, it would be a good idea to figure out what has been ineffective in the past.

Cameron stated that Chairman Croissant brought up the possibility of watering at that location with a water line close by, increasing the chance of success. The water line belongs to St. George. There is a fire hydrant at the trailhead on the opposite side of the road. Restoration would include a pre-emergent spray, then seeding. Bob suggested having containerized plants and shrubs like those that were planted recently by DWR. The committee shortly discussed other mitigation areas.

**MOTION** by Kristen Comella to approve the City Dump location as the preferred Red Hills reclamation site.  
Seconded by Cameron Rognan.  
Discussion: None.  
Vote was taken: All voted aye.

## 5. **NEXT MEETING DATES**

### a. **Thursday March 8, 2012**

The County Conference Room is unavailable for the March meeting. The committee will meet at the DWR office.

## 6. **ADJOURN**

**MOTION** by Cameron Rognan to adjourn the meeting.  
Seconded by Kristen Comella.  
Discussion: None.  
Vote was taken: All voted aye.  
Motion passed.

The meeting was adjourned at 12:03 P.M.  
 Minutes prepared by Amber Stocks.