

# 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 **September 24, 2013**.

Committee members present were:

Karl Wilson, Chairman	Mayors Association
Chris Blake, Vice Chairman	Environmental Organization
Bob Sandberg	HCP Administrator
Henry Maddux	Utah Dept. of Natural Resources (UDNR)
Jimmy Tyree	Bureau of Land Management (BLM)
Chris Hart	Local Development

Absent and Excused:

Marc Mortensen	Citizen-at-Large
Larry Crist	U.S. Fish & Wildlife Service (USFWS)

Also present were:

Amber Stocks	Washington County HCP – Recorder
Cameron Rognan	Washington County HCP – Biologist
Alan Gardner	Washington County Commissioner
Jodi Borgeson	Washington County Attorney's Office
Ann McLuckie	Technical Committee Chairman (DWR)
Tim Croissant	Technical Committee (BLM)
Bob Brennan	Property owner in Reserve
Jim Raines	Bush and Gudgell
Eric Holt	JBR
Lisa Rutherford	Citizen
Paul VanDam	Citizen

## 1. **CALL TO ORDER**

Chairman Karl Wilson called the meeting to order at 1:00 p.m. noting that a quorum was present.

## 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 Agenda**
- b. **Review and Approve Regular Meeting Minutes**
  1. August 27, 2013
- c. **Next Meeting Date**
  1. October 22, 2013
- d. **Declaration of Conflicts of Interest**

Approved HCAC Meeting Minutes – September 24, 2013

**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. None

4. **UTILITY AND DEVELOPMENT PROJECTS**

a. None

5. **GENERAL BUSINESS**

a. **Property Exchange Proposal (Bob Brennan)**

Bob Brennan informed the HCAC that an agreement to initiate a land exchange is moving forward with the Utah BLM Director, Juan Palma. Mr. Palma's goal is to have an agreement in place before essential personnel in any of the involved agencies change. Mr. Brennan stated that Jim Raines, President of Bush and Gudgell (a local engineering, surveying and planning organization) would deliver a presentation.

Mr. Raines distributed exhibit 5-a-1 and gave a short history of the Reserve and the private land holdings that have been designated for acquisition. He explained that when a land exchange occurs, it doesn't generate money for the property owner. There has to be someone like Mr. Brennan who can develop the land and generate a profit. For most people a land exchange doesn't make sense but in Mr. Brennan's case it does.

The Red Cliffs Desert Reserve is the mitigation for the Incidental Take Permit held by the Washington County HCP. This mitigation allows the rest of the county to be developed. Without the Reserve, the basis of the HCP is somewhat flawed because the mitigation would be lost. Biologists indicate that Mr. Brennan's property has a high density of tortoises and is key tortoise habitat in the Reserve. Mr. Raines explained they have diligently addressed issues to take it out of the Reserve but from a biology standpoint it is too critical to take out. They have proceeded with the idea that the land needs to remain in the Reserve. If Mr. Brennan's property wasn't desert tortoise habitat and part of the Reserve, this spectacular area would be the prime real estate property in Washington County.

Recently, the Trust for Public Lands facilitated a \$4 million purchase of inholdings in the Reserve between Brennan and Carter and the BLM. Mr. Brennan sold 22.4 acres and donated 11.2 acres. His remaining acres for exchange are 756.39. At \$4 million a year, it will take a very long time to acquire all the inholdings. If land exchanges can be

accomplished with Mr. Brennan then it opens up the availability to purchase other inholdings when funding is available.

The proposed BLM lands to be exchanged with Mr. Brennan, subject to BLM agreements and NEPA (National Environmental Policy Act), are Long Valley (803 acres), Sand Hollow (1,210 acres), Warner Valley West (610 acres) and an optional Leeds parcel (890 acres).

The Long Valley parcel has been underway for awhile with environmental clearances, appraisals and other things. The 1,200 acres at Sand Hollow is the most controversial parcel. It does not have active recreational use but access to sand dunes and rock crawling is a big concern among recreationists. Mr. Brennan doesn't want to take away recreational opportunities so he has initiated meetings with recreation groups and eased a lot of their concerns. Some groups wonder if this exchange would be the start to loosing it all. In an attempt to quail those fears, Mr. Brennan met with the State Institutional Trust Lands Administration (SITLA) and has made tentative agreements to acquire the two blue squares (see exhibit 5-a-1, page 6) from SITLA which he would donate to the BLM or the State Park for continued recreation use.

A couple of years ago Mr. Brennan and Mr. Raines looked at all the BLM properties in the area to see what might be available for exchange. There are very few BLM parcels that have development potential within Mr. Brennan's lifetime. The reason the Sand Hollow parcel is so important is because it has some value.

This exchange process has been funded entirely by Mr. Brennan so far. This exchange will preserve the Red Cliffs Desert Reserve. The benefit of the HCP has been given to the Red Cliffs Desert Reserve, Washington County, participating cities, and land owners in the County. This benefit has been given while private lands have been restricted, controlled and managed by the County and the HCAC. The BLM understands it is their responsibility to acquire the private inholdings with assistance from Washington County HCP and the HCAC.

Mr. Rains expressed it is their firm belief that this proposal will not cover the full amount of Mr. Brennan's property. Mr. Brennan has agreed to exchange all that he has in the Reserve for these proposed parcels. If the land values are not equal, he will donate the balance up to 25% (which could be a \$20-\$26 million donation).

In order to complete the HCP's obligations, Mr. Brennan asks that 1) The County work with him on the back taxes that have been charged for his inholdings; 2) All previous agreements will become null and void and will be superseded by this agreement; 3) The County will participate and provide representation to complete the land exchange; 4) The County will provide a consultant, Mr. James Raines, to act as a liaison and to assist the BLM in the land exchanges and 5) The County will coordinate to resolve the duties and responsibilities of each party (see exhibit 5-a-1, page 10).

The Red Cliffs Desert Reserve was set aside in 1996 to act as a balance so that all other properties in the County could be developed. Those properties outside the Reserve are charged an impact fee of \$250 an acre when developed for subdivisions, condominiums, town homes, or planned unit developments. Mr. Brennan requests exemption from the impact fee on the exchanged properties to help offset the use of the Brennan lands by the Red Cliffs Desert Reserve since 1996 or before.

Mr. Raines asked that a sum of up to \$1,000,000 be provided by the HCAC to help facilitate the land exchange. The one million dollar reference is taken from section two of the HCP plan where there was one million dollars set aside in 1996 to help with acquisition of properties. With the sequestration and federal budgets, it is difficult for the BLM to pay for a \$2,000 appraisal. Lastly, Mr. Raines asked the HCAC to provide all required technical assistance and support required to complete the proposed land exchanges.

Mr. Raines discussed that the basis of the proposed Land Exchange is that all parties must be willing to contribute resources in order to preserve the Washington County HCP and the Red Cliffs Desert Reserve. The resolution of the largest parcel of land within the Reserve will require each party to make financial commitments and sacrifices.

Brennan Holdings offer to donate up to 25% of its property represents based on recent appraisals \$20 million to \$26 million in value. Brennan Holdings willingness to accept land exchanges that in and of themselves do not generate funds without Brennan Holdings spending considerable time and money to plan, entitle, develop and eventually sell the lands acquired under the exchange is a unique opportunity to preserve the HCP.

To date Brennan Holdings has funded the research, mapping and evaluation of the possible BLM lands to be exchanged. This work has included the identification of issues related to each property as well as meetings with stakeholders and user groups. During these meetings a major concern was voiced by users of the Sand Hollow Recreation Area. While the property Brennan Holdings is proposing for exchange is not actively used for recreational off-road uses, the users have expressed a concern with the preservation of the rest of the Sand Hollow area. Brennan Holdings has secured a tentative agreement with the State Institutional Trust Lands Administration (SITLA) to acquire 1,200 acres of SITLA property located in a key recreational off-road area and donate this land to the BLM or State Parks for the preservation of the Sand Hollow riding area.

No other party to this proposed land exchange is contributing more or is accepting the risk that Brennan Holdings, LLC is willing to accept. If this proposed land exchange cannot be agreed to and completed then we see little hope in preserving the Red Cliffs Desert Reserve and the Washington County HCP. Mr. Raines expressed his own opinion as one who makes his living based on the growth and development in the

county, that this proposal from Mr. Brennan is a very good deal. Mr. Brennan is a unique individual and is in a unique position to offer the County something that nobody else will. After 17 years, here is an opportunity to get this done. With the approaching renewal of the HCP and without something like this exchange, the permit obligations may not be met.

Jimmy Tyree reported the BLM has the Memorandum of Understanding (MOU) from Brennan and although the BLM cannot sign the MOU in its condition, they feel there are some good points. The next step is being able to agree steps that need to be taken and how to have it solidified for years to come. The BLM has been moving forward with the Long Valley parcel for quite some time. There are a few issues on that parcel, such as finding tortoises, that presents a unique situation. The BLM will continue to work with the FWS.

Jimmy continued, for the other exchange parcels the BLM is going to put together a package with some sort of agreement with Mr. Brennan. We would like to see how much of this we can take care of all at once so that we don't leave Mr. Brennan hanging. It's going to take some work over the next few weeks while we come up with a proposal. We are looking at what Mr. Brennan has proposed and what the BLM needs to do procedure wise and that sort of thing. We are trying to create a document that we can all sign.

Mr. Raines expressed his appreciation to the BLM as this is not an easy process. Mr. Brennan has been working diligently and has spent quite a bit of money over the last couple of years to get us to this point. Mr. Raines applauded Mr. Brennan for getting this done. Jimmy, Shered Mullins and Mr. Palma have been very good to work while trying to get this thing done.

Chris Hart asked what additional properties are yet to be acquired. Bob Sandberg answered there is still Alan Carter, James Doyle, SITLA, and some smaller pieces throughout the Reserve such as Sullivan (by Grapevine), Turkey Farm, and Zone 4 (Babylon area) which has 40 acres in one parcel and five acres in another, and 11 acres at Middleton that is owned by the Virgin River Land Preservation Association.

Henry Maddux asked at what point the BLM anticipates needing funding from the HCAC for appraisals. Jimmy answered the BLM is already working towards that and will probably need funding by Christmas or the first part of next year. The BLM is currently working on other appraisals. Until we know from appraisals what we're dealing with then it's hard to say what is in play. Based on what UDOT paid for the southern parkway which goes through the center of the Long Valley parcel, mitigation could be up to \$500,000. That work is going to take a few months before it can be solidified. Chris Blake asked if the HCAC will need to amend the proposed budget that has been sent to the County. Bob Sandberg and Mr. Raines discussed the proposal request which includes having Washington County provide a paid consultant (James Raines) to act as

a liaison. Mr. Raines stated this would be a separate cost from the \$1 million that the HCAC might pay for environmental work, archeological work, appraisals, and so forth. Bob Sandberg stated there is money in the recommended budget to the County Commission of approximately \$100,000 that could be used towards these purposes. If the costs go above \$100,000 then the proposed budget will need to be amended by the HCAC.

Henry asked if the amount of impact fees they would like to have exempted has been calculated. Mr. Raines stated that if all the exchanged acreage is developed, impact fees on 3,000 acres would be \$750,000.

Mr. Brennan explained he was a lender of this property over 17 years ago and acquired the property three years ago. There is so much bureaucracy involved that it makes it real difficult. He has tried to come up with innovative solutions to get this done and recognizes there are other inholdings besides his own. Mr. Brennan gave Mr. Doyle 274 acres during the bankruptcy settling. Mr. Doyle is currently filing a lawsuit against the County and the BLM regarding his inholdings. Mr. Brennan is hoping at some point he can help resolve the inholdings with Mr. Doyle. He has talked with Mr. Carter about his property which is currently valued at \$24 million and Mr. Brennan may have a way to bring the value down between \$8-10 million. Mr. Carter is currently working on an exchange with the Water District for 1,000 acres which will leave his remaining property at around \$3-4 million. If Mr. Carter doesn't get paid all that is required within the next two years then Mr. Brennan will buy the remaining property from him so that Mr. Carter is totally resolved and the HCAC can take care of Mr. Brennan as time goes on.

Mr. Brennan's property has been appraised at \$110 million (if purchasing small parcels one at a time) which is the reason he donated one third in the recent transaction. This donation brought the price down from \$140,000 an acre to about \$93,000 an acre.

The proposed exchange properties may be appraised around \$35 million. After Mr. Brennan exchanges his inholdings for \$35 million of exchange property, he will donate the rest (up to 25%). The BLM now has the potential of getting \$35 million of exchange property and the remainder of Mr. Brennan's inholdings. In addition, 1,200 acres at Sand Hollow will be bought from SITLA and donated. Mr. Brennan added he is not willing to file a law suit and will give this the best shot he can. He has done a lot of compromising and if this exchange doesn't happen he will probably pull the property out of the Reserve which will not only cause him more pain but the whole County will feel pain as well. Mr. Brennan feels very confident that this plan will take care of Mr. Carter and himself. The HCAC needs to determine how important it is and nobody will be able to get away with being totally happy; everybody needs to compromise. Mr. Brennan expressed that the County Commission probably won't be able to relieve him of the 5% annual tax assessed on his property. He added that the HCP has over \$4 million in their bank account. Mr. Brennan stated that some of this money needs to be kept for administration of the HCP; however, without acquiring these inholdings, the Reserve

could potentially be gone.

Commissioner Alan Gardner thanked Mr. Brennan and Mr. Raines for their presentation. He explained that when the HCP was signed, one of the County's responsibilities was to help facilitate exchanges, purchases, or whatever needed to happen to acquire the property in the Reserve. The County Commission is willing and anxious to help that happen and the properties that have been identified could have appraisals started on them tomorrow to help move things along. The BLM has a lot going on and doesn't have the staff to get everything done. Commissioner Gardner expressed that those things that can be contracted to a third party should begin immediately and the commission is more than happy to pay for those appraisals and other things that are necessary to move this along as fast as possible. Ideally they would like to see the exchanges complete within a year's time. The County is very concerned about making these exchanges happen, especially now that we are coming to the end of our HCP permit and there is still a lot of property to be acquired.

Chris Blake asked if the HCAC can have a work meeting during the month if it becomes obvious that the budget needs to be amended. Commissioner Gardner explained that budgets can be amended and if there arises a need to amend the budget, it can be done! The HCAC talked about the \$100,000 that is in the 2013 budget and an additional \$100,000 that is in the 2014 proposed budget which can be used for these purposes.

Chris Hart stated that \$1 million is an easy number to look at and understand. He asked if there is an actual basis in that or just an expectation. Mr. Raines answered that preliminary environmental proposal and standards has been given. There is an idea of mitigation costs for the Long Valley parcel but not the other parcels. The big unknown is the mitigation on the Sand Hollow parcel. \$1 million dollars may not be enough to cover everything but it can help with appraisals, environmental studies and other things. \$1 million dollars is not an excessive amount, if anything it will be short. Chris Hart felt this million dollar reference is probably an amount Mr. Brennan feels the county is capable of expending.

Mr. Brennan stated he's not sure that the BLM is expecting the HCAC to pay for everything, including all the mitigation. We just have to get into this thing and figure it out. Mr. Brennan is willing to donate millions for this cause and is hoping others are willing to donate as well. Mr. Brennan doesn't know what the HCAC's budget is but reiterated it is very important for the County and the HCAC to help out with this huge problem and it shouldn't be just the BLM's problem.

**b. Land acquisition update (Jimmy Tyree & Bob Sandberg)**

Jimmy Tyree stated the land acquisition report was covered in agenda item 5-a. Bob Sandberg reported on the Section 6 grant received by the County from the FWS. The

HCP has received additional guidance from DWR real estate personnel and the FWS staff on what needs to be done to move forward. The HCP is continuing to pursue the grant so that more private property from the Reserve can be put into public ownership.

**c. Technical Committee Report (Ann McLuckie)**

Ann McLuckie reported that the Technical Committee (TC) visited many sites along Cottonwood Road to address the fuel load along the fence line. Adjacent to the burn areas there was substantial amounts of large tumbleweeds stacked along the fence. In some areas, the tumbleweeds were waist high. The presence of this tumbleweed reduces the effectiveness of Cottonwood Road as a fuel break. If all the green tumbleweed were removed there would still remain tumbleweed along the fence line. In an effort to resolve this issue, the TC identified some actions to pursue. Cameron Rognan will work with the BLM to remove the tumbleweed along the fence before June 2014 using a combination of prison crews, a compactor, and burning tumbleweed on site. We will continue with targeted grazing and add experimental areas of chemical treatments within the right-of-way. The TC will look at the effectiveness and the cost of the different options. The BLM will pursue an environmental assessment for chemically treating other specific areas in the Reserve. These methods will be a combination of aerial treatment and ground crews. Tim Croissant will keep the BLM fire crews informed and briefed of this issue.

The DWR obtained funding from a state wildlife grant to purchase ten remote digital cameras and monitor five culverts along the Red Hills Parkway. The DWR will use these cameras to determine if the animals (specifically tortoises) use the culverts and to determine if they are being used as movement corridors. The cameras will be set up and monitored by March, 2014. Ann will work with a culvert monitoring expert from Utah State University to oversee the project and to make sure the right equipment is purchased and set up properly. There is enough funding for one year but the DWR hopes to get more funding and stretch it out for two years.

**d. Draft Reserve Visitor Map**

Bob Sandberg reported that exhibit 5-d-1 is a rough draft map of work Cameron Rognan has been doing with County GIS staff to identify the various access points and trails for the Reserve. This comes in response to the fact that the visitor map will run out sometime this year. The BLM is working on a map but have many other priorities and things to do. Cameron added that the printed map will have a lot of information and rules printed on it. The colors will be toned down and it will be similar to the map we have right now.

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

**1. HCP revenues and expenditures report**



Bob reported on the revenues and expenditures report (exhibit 5-e-1). Revenue is up about \$60,000 from last year at this same time. Currently the expenses are more than the revenue but the graph (exhibit 5-e-2) shows that last year ended up about even. So far 2013 is ahead of 2012 and by the end of the year we should have more revenues than expenses unless we have big expenses come up.

## **2. Ivins dike maintenance scoping**

The city of Ivins is undergoing a scoping process on their flood control dikes. They have some maintenance work to make sure they meet safety standards. They have a consultant that will pull some meetings together to discuss what their proposal will entail and what the scope of their work might be.

## **3. Tortoise care agreement with DWR**

The DWR is putting together a scope of work to be put with the memorandum of understanding (MOU) for tortoise monitoring. This scope of work will address the tortoise adoption program and the ability for people to take their adopted tortoises to the vet. As soon as we get that scope of work the HCAC will be able to review it and see if it resolves concerns.

## **4. ARS restoration study plot update**

Agricultural Research Services has been to St. George to analyze their study plot at Turkey Farm and to do some work controlling the tumbleweeds on their plot. They have seeded and planted container stock to see how it compares in success and establishment to what was done last spring.

## **5. Children's museum donations**

The HCP donated some display animals (rabbit, turtle, tarantula, and scorpion) for the children's museum to put in their desert discovery room. The museum has been working with Cameron Rognan on videos and photographs to use in the museum.

## **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.)**

Lisa Rutherford commented she has been following the Reserve private inholdings for many years and would like to see the inholdings resolved as she realizes how important they are for the Reserve. However, with the road considerations that have been given through the Reserve, one of which could go right by the private inholdings, it makes Lisa wonder how important that land really is. In keeping up with this land deal and history for a long time Lisa felt that Mr. Doyle and most likely Mr. Brennan were both well aware

of the listing of the tortoises in the 1990's. She understands their concerns but feels they were both speculators and with that comes some risk.

She expressed some of her concerns with the Sand Hollow exchange. She remembers the lightning rods the Washington County land bills of 2006 and 2009 were for the OHV community when that community felt their interests were being threatened. If they see their very popular Sand Mountain area being targeted by developers, a hornets' nest might be stirred up. If Mr. Brennan is successful in exchanging for land at Sand Mountain then Jim Doyle might also want to exchange his land for some of that same area. Lisa wonders if any developers who go out there will keep with the current OHV activities. She feels that Bob Brennan and others would want to create up-scale developments, given the area and the amenities there. Would the people who buy there want loud OHV activities nearby? Are we trading one problem for another? On April 12, 2013 Jack Johnston with Utah 4-Wheel Drive Association wrote an article in the Deseret News which read:

Sand Hollow just might answer the question of whether Utah would be better off managing public lands instead of the federal government. It is rumored that Washington County supervisors are negotiating a 1,300 acre land swap in the Sand Hollow area with the Bureau of Land Management behind closed doors with little or no public input. This stinks of the deal made over the Red Rock legislation that closed many off-road trails. It will be interesting to see what public input is allowed. The problem as I see it is Washington County, not the state or federal government, because they are the ones rumored to be pushing the deal.

Mr. Brennan's representative stated that he is an off road enthusiast himself and has had conversations with the OHV community and they've come to an understanding. They may have come to some agreement but their details were not provided. Mr. Brennan noted that he's working with SITLA to provide an OHV area with some of SITLA's property to help appease the OHV recreationalists. The SITLA land acquisition at Sand Hollow may not pan out, and that agreement should be tied to any land exchange before it's approved and finalized to ensure it happens.

Mr. Brennan's representative has asked the HCAC to approve \$1 million for studies and other matters required for the exchange. \$1 million seems like a lot of money for this land exchange considering that roughly \$24 million has been spent over many years for the Lake Powell Pipeline studies, a much larger project.

Mr. Brennan noted other parcels of interest are being considered. I hope those or other options can replace the Sand Mountain option. Lisa would like the HCAC to consider these thoughts.

## **7. OTHER BUSINESS**

The group discussed holding a work meeting if the need arises.

**8. ADJOURN**

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

Seconded by Jimmy Tyree

Discussion: None.

Vote was taken: All voted aye.

Motion passed.

The meeting was adjourned at 2:10 p.m.  
Minutes prepared by Amber Stocks.