

# HABITAT CONSERVATION ADVISORY COMMITTEE

for the Washington County Habitat Conservation Plan (HCP)

A **work meeting** of the Habitat Conservation Advisory Committee (HCAC) was held at the Washington County Administration Conference Room on **January 22, 2013**.

Committee members present were:

|                            |  |
|----------------------------|--|
| Karl Wilson, Chairman      | Mayors Association                     |
| 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:

|             |                                 |
|-------------|---------------------------------|
| 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    |

## 1. **CALL TO ORDER**

Chairman Wilson called the meeting to order at 10:10 a.m. noting that a quorum was present.

## 2. **DISCUSSION ITEM**

### a. **Mitigation Ratio (MOG) Discussion**

Chris Hart expressed that the Technical Committee (TC) did a great job explaining the MOG mitigation ratio, in the November 27, 2012 HCAC meeting. As Mayor of Ivins he has further concerns that the mitigation ratios are extreme and he wanted to discuss a reasonable exchange. He also understands that the MOG ratio was designed to benefit tortoises. A concern he has is that the MOG ratio seems to lack a provision (given the fact that the entire Reserve is category one) that shows a benefit of different qualities of habitat that may be provided for mitigation. When the Reserve was created there was privately owned land within the Reserve and it was required to provide fair market compensation to the land owner for their property. After going through the HCP, there doesn't seem to be any reference to compensation being tied to the MOG ratio.

Bob Sandberg affirmed that the HCP does not state that mitigation has to be tied to the MOG compensation ratio. The MOG does say that if an HCP provides for a different

compensation rate, then that can hold. The Washington County HCP doesn't have its own compensation ratio.

Chris Hart asked if the HCAC can look at these ratios and determine if they are reasonable and perhaps establish a mitigation package unique to the Reserve. If so, the HCAC should review it. He added that there may not be a single member of the committee who agrees with him that these ratios are extreme. He gave an example of Ivins providing five acres for every one acre that was consumed by the detention dam and the mitigating property was only 300 yards away. Visually there is no difference in the quality of habitat. He felt that it comes across as a "takings" which people have gone to great lengths to avoid in the HCP.

Larry Crist explained that the MOG ratio was an attempt by the USFWS and the Desert Tortoise Management Oversight Group to establish a consistent way to apply mitigation across the range. Bob added that the BLM accepted it as a result of the range-wide, tortoise management plan. This HCP implies that the MOG document is the standard tool to use. Bob read from page ten of the MOG document (exhibit 2-a-1):

#### COMPENSATION IN SPECIAL SITUATIONS

Although all BLM offices that manage tortoise habitat will normally use the standard compensation process as described above, there will be instances when it need not be used. Deviation from the standard may be appropriate:

1. When unusual circumstances - - such as the size of project area or a cooperative relationship with a local government - - warrant determination of compensation amounts through some other means. Examples of unusual circumstances include the proposed Fort Irwin expansion (potential transfer of 250,000 acres) and the Las Vegas Valley land developments (development of land within an exploding metropolitan area); or

2. When a tortoise management plan (such as a Habitat Management Plan, Recovery Plan, or a Habitat Conservation Plan) has been prepared for an area and the plan includes a determination of compensation amounts through some means other than the standard process.

Henry added that this allowed HCPs to come up with their own mitigation. When there isn't specific mitigation assigned, the MOG ratio has been used.

Chris Hart stated that the HCP has permitted uses for the land such as utility corridors, roads and so on. The penalizing character of this MOG mitigation ratio shows that these uses have been acknowledged and it has been recognized that they are going to take place within the HCP. UDOT projects involving the Reserve carry a burden to everyone who pays state tax.

Larry stated that the FWS looks at impacts and makes sure they are fully mitigated. The HCP has always been held to a high standard because the Reserve is mitigation for other development in the county.

Chairman Wilson expressed that he has a hard time classifying the whole 62,000 acres of the Reserve as “type one” category when only 32,000 acres is actually “type one” habitat. If there is “type one” equivalent property close to St. George that someone is willing to put into the Reserve, the HCAC should have some say in recommending it to the County Commissioners as a different mitigation option. We may be able to increase the viability of the habitat by accepting mitigation property if it’s better than what is being mitigated for. The HCP is stubbing its toe if it doesn’t consider if it’s improving the habitat through some of its exchanges.

Chris Hart pointed out that creating a detention dam in Ivins does benefit tortoises from flash floods. In the last HCAC meeting, Ann McLuckie with the DWR stated that the detention dam does not provide any benefit to tortoises because they have survived flash floods for thousands of years. Chris Hart felt that her statement was wrong because individual tortoises have been killed from flash floods. Although the species as a whole have survived flash flood events, fires and human incursion into their habitat, individual tortoises have been killed from these events.

There has been consideration given for a northern corridor through the Reserve. Part of the study for the corridor suggests a fire break benefit to tortoises. About half of the habitat has been destroyed by fire, in part because of the policies in place which delayed the firefighter’s access to those fires. There is reason to call into question some of the fundamental ways that we look at things and we do need to analyze the potential benefits. Larry stated he is willing to negotiate a different mitigation option that specifically benefits tortoises but the standard would still be held to benefit tortoises and cover the impacts.

Henry added that the MOG ratio helps with inconsistencies in case by case projects and Marc Mortensen stated that a lot of times consistencies can be counterproductive. He asked about a reclassification of the acres that are not tortoise habitat. Chairman Wilson agreed and felt that some type of credit should be given for prime habitat that could be added to the Reserve. Henry added that developing a mitigation document specific to the Reserve and getting people to agree on it would be a difficult thing.

Larry explained that the regional office is supportive of extending the current HCP with some modifications. He suggested putting efforts into extending the HCP rather than doing something else because the HCP permit will expire in three years. Bob expressed that the commissioners are concerned about the HCP expiring and want to know what they can do to help.

Bob asked what would happen in the interim if the new HCP permit takes longer to complete than three years. Larry explained there is a mechanism that can be applied if

the HCP is in the process of negotiating. It would allow the HCP to continue under the existing terms. The FWS doesn't have any staff to work on the HCP's renewal even though it's a high priority. An extension document can be made that would take us through the end of using up the entire *take* that was issued in the original permit. This would buy us some additional years to get the new HCP done. There is a lot of legality and a higher standard for the new HCP's. Larry stated he would rather modify the current HCP rather than create a new one.

Dawna Ferris-Rowley said there is a lot that needs to be done to reflect current situations in the Reserve such as the NCA, in-holdings and change in habitat quality. The Steering Committee looked at what land tract was available and right now one of the main drivers is to acquire the private in-holdings.

Chris Blake arrived at 10:40 a.m.

Larry suggested inviting Amelia Orton-Palmer, a member of the regional FWS office, to St. George for a meeting to discuss how to get started on extending the HCP. Amelia is an HCP expert and could give recommendations on amending and extending the HCP.

Commissioner Gardner arrived at 10:45 a.m.

Chris Hart brought the conversation back to the MOG document. He felt that there are missing elements that needs to happen so that the FWS will certify a benefit of habitat. If one acre is being replaced with two, it's a benefit. A five to one or six to one ratio seems extreme. There isn't even a possibility to go to a category two or three. There is a potential for better ground to be provided for mitigation but because the whole Reserve is classified as a category one, there is no benefit derived.

If something is defined in the HCP as a permitted use, it is a recognition that it will need to occur in the Reserve. Is it right then for the mitigation ratio to be so punitive if it is defined as a permitted use? The time to address this will be during creation of the HCP extension. We owe it to the citizens of our county and state to review it.

Larry said these MOG ratios are not out of line with what is being done in the country and is not necessarily punitive. It takes into account the loss of the habitat over time. It also takes into consideration that often times mitigation is not successful. Chris Hart added that there is no way to get to a 2:1 or a 3:1. It's automatically a 4:1 or more.

Cameron Rognan stated that the TC reviews a lot of the mitigation. He agreed that habitat across the Reserve is not all equal. Perhaps the TC can take a closer look at the habitat and if there is a project with low to medium density of habitat being replaced with a higher density of habitat, then perhaps it could be justified. The TC committee could put in writing the justification for any mitigation ratio that deviated from the established MOG document. The TC would also require approval from the FWS as a

member of the TC. If better habitat is being replaced, he doesn't see the need for a 6:1 ratio.

Dawna mentioned that habitat acquisition is not the only option for mitigation. There is also habitat enhancement, population enhancement, education, research studies and monitoring.

Chris Hart asked if other benefits besides adding to the habitat may be provided by something that is going to take place in the Reserve such as how the Ivins Detention Dam provides a benefit to tortoises in flash floods. Bob said it could be a combination of the options Dawna had mentioned. The cost would have to equal the ratio unless it is stated why the MOG ratio was deviated from. Some projects have been ongoing for so long that the mitigation ratios were decided many years ago.

Creating a mitigation document acceptable to the FWS would take awhile but it could possibly just be modification to the MOG document. Larry stated he will contact Amelia and find out if she can come for a meeting to discuss the renewal or extension of the HCP permit.

#### **b. HCP Budget**

Chairman Wilson explained that the budget over the last few years has been static. The TC reviews the HCP Budget and sends recommendations to the HCAC who then passes on their recommendation to the County Commission for approval.

Bob Sandberg stated that exhibit 2-b-2 shows impact fees from 2000-2012 (2012 is lacking all 4<sup>th</sup> quarter impact fees received). The graph shows that in 2004-2007 a reserve was built up in the bank. In later years this reserve has been used when expenses exceeded revenues. In 2005-2006 the HCP was able to do some expensive work for things such as fire rehabilitation and the faux rock in the Visitor Center.

Exhibit 2-b-3 shows an un-audited amount of what was spent through the end of December 2012. Bob explained exhibit 2-b-1 which shows the 2013 HCP budget. The bottom line budget amount for 2013 is the same as it was for 2012. He explained that the commission tasked the HCP to come up with a budget that would allow work to be done. They also wanted a contingency category with an amount that might be helpful if the right situation arrived and more money needed to be spent.

Henry Maddux asked about the contingency for fencing. Bob explained the contingency funds will not be used unless it is approved by the HCAC and county commissioners first. The amount that is not spent during the year rolls over to the next year and interest accrues on the reserve amount. The HCP has a cooperative agreement and scopes of work with the DWR. One of those scopes of work is for systematic clearances and includes labor and fencing costs. The idea is to perform pre-clearances in advance of development that is likely to occur in a specific area. The area can

always be checked again once a developer is ready to begin their work in that cleared area. The scope of work has five years worth of fencing work and most of that has been done with the exception of zone four in the Babylon area. Bob explained that it would cost a lot of money and a lot of those unfenced areas don't have tortoises in them. The committee talked about the boundary in zone four that isn't fenced. Some areas would be difficult to maintain the fence's integrity because of the terrain. Cameron Rognan added that currently, when maintenance is required, the old 1 x 1 tortoise mesh is replaced with new standard tortoise mesh.

Larry Crist recalled that several years ago law enforcement was increased in the Reserve and asked how it has worked out. Bob replied the presence of law enforcement has increased. For the money that has been spent on law enforcement, a full-time position couldn't be hired. We're not sure a full-time position would give as much presence as what has been done with multiple law enforcement personnel. There are quarterly law enforcement meetings and the County Sheriff provides reports of contacts, warnings and citations issued on a monthly and annual basis. An evaluation of the law enforcement program has not been done.

One thing that has been evaluated yearly is Human Impact Monitoring and Tortoise Monitoring has been evaluated every other year. Larry felt it would be a good idea to have a periodic evaluation of everything that is ongoing. Does it meet the needs of the HCP and does it need to be adjusted? Dawna added that Pam Foti has been doing the Human Impact Monitoring every year and her information has been very useful. She has been excellent with the suggestions that have been given to her.

Henry asked about the contingency for tortoise blood testing. Bob replied that the accountants combined blood testing with tortoise care in the revenues and expenditures summary, so the figures differ between the budget document and the tracking document. It is always unknown how many tortoises will be at the Temporary Care Facility during the year and how many will need to be blood tested.

Henry also asked about the contract access point. Bob explained that in order to keep the budget flat he had to drop an amount somewhere. The HCP has wanted to improve the Grapevine trailhead, to help people get off the freeway at Exit 13 and find their way to a trailhead on SITLA property. SITLA is unhappy that they still have in-holdings in the Reserve and are uninterested in assisting with the access point at this time.

Bob further explained that some older items have been kept on the chart of accounts in order to keep them in the accounting system so that we can go back and evaluate past transactions.

Chairman Wilson explained that there are always opportunities in the HCAC meetings to discuss the budget. Commissioner Gardner added that the county is going to give all the employees a two percent raise. The departments will pull those amounts out of their budgets. Raises have not occurred in the last four years.

3. **ADJOURN**

The meeting was adjourned at 11:37 a.m.  
Minutes prepared by Amber Stocks.