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**MSHCP Amendment
September 3, 2024**

Objective

Brief, consult, and obtain direction on MSHCP Amendment

- Foundational background
- Amendment objectives
- Proposed changes to the conservation strategy
- Next steps



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MSHCP Background and History



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Endangered Species Act

- **Endangered Species Act of 1973** – Provides a framework to conserve and protect endangered and threatened species and their habitats.
 - **Section 9** – Prohibits the incidental taking of listed species listed.
 - **Section 10** – Allows individuals to “take” a listed species in exchange for a habitat conservation plan. Applies only to non-federal actions.
- **Habitat Conservation Plan** - A required component of a permit application; describes the anticipated effects of proposed take and how these effects will be avoided, minimized, and mitigated.



Section 10 Permit History

Developers lose verdict to tortoises

By Mary Manning
SUN Staff Writer 12/14/89

The U.S. Court of Appeals upheld the emergency listing of the Mojave Desert tortoise Wednesday, denying a preliminary injunction sought by Nevada, Las Vegas and developers.

The 18-page decision said Interior Secretary Manuel Lujan Jr. acted properly to protect the tortoises vanishing from their homelands in Southern California, Southern Nevada and parts of Southern Utah by issuing the emergency listing Aug. 4.

"More troubling is appellants' contention that the secretary acted irrationally by including the Nevada portion of the Mojave population," the decision said.

Nevada, the city and developers claimed there was no proof that tortoises within the state suffered from an upper respiratory disease apparently cutting down populations in Southern California.

"Appellants face a heavy burden in establishing that the secretary acted irrationally by including Nevada but not including the Arizona Sonoran population in the listing," the decision said.

"Since the agencies have great discretion to treat a problem partially, we would not strike down the listing if it were a first step toward a complete solution, even if we thought it should have covered both the Mojave and Sonoran populations."

A District Court decision already denied the Nevada governments and developers relief. The Appeals Court reaffirmed that decision.

"So the tortoise has won," said Michael Bean of the Environmental Defense Fund, one of the organizations that petitioned the federal government to issue the emergency declaration. That emergency listing expires April 2, but the government is expected to ask for a permanent listing.

See TORTOISES, Page 4A

- August 4, 1989 – tortoise emergency listed by U.S. Fish and Wildlife Service as endangered; revised to threatened in 1990
- An immediate and total moratorium on all new construction

Tortoise delays building one year

□ Construction stopped by the endangered animal will stay on hold until January of 1991 at the soonest.

By Caryn Shetterly
Review-Journal

Construction on Las Vegas projects halted in August by the endangered desert tortoise will not resume for at least another year — and that deadline is optimistic, a committee learned Monday.

According to a schedule presented by an ecologist to the Clark County desert

tortoise steering committee, the federal permit needed to allow construction to begin again cannot be obtained until January 1991.

The permit would provide for removal of tortoises for research from some urban areas of the Las Vegas Valley in exchange for continued development.

The date could slip depending on how long the U.S. Fish and Wildlife Service takes to grant the permit — if at all. The service has 90 days to respond to a permit application, which Clark County intends to file in April. But the service can extend the response time another 90 days if it sees fit.

"We need to be creative in how we interpret these deadlines," said Paul Fromer, an ecologist with Regional Environmental Consultants, the San Diego firm that will write an Environmental Impact Statement on the proposed plan.

Recent discussions have indicated that Fish and Wildlife is willing to cede some desert tortoise habitat to development. The federal agency has already started discussions with some local developers, including Summa Corp., to allow continued building before the permit process is completed in order to settle a lawsuit filed by builders against the Department of the Interior.

The 1991 date, a seemingly distant one, is earlier than originally anticipated by private developers and government officials, who had thought they would be waiting at least two years for construction of housing, flood control and water distribution projects.

Terry Murphy, representative for the 750-member Southern Nevada Homebuilders Association, was pleased with, but wary of, the new deadline.

"I would be thrilled to death if we were granted an incidental take permit by January 1991, but the preliminary discussions I've had indicate it would be 12

Please see TORTOISE/4A

4A/Las Vegas Review-Journal/Tuesday, December 5, 1989



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Section 10 Permit History

- Clark County has applied for and received three Section 10 incidental take permits since 1991:
 - 1991 – Short-Term Habitat Conservation Plan
 - Covered 1 Species: Desert tortoise
 - 1995 – Desert Conservation Plan
 - Covered 1 Species: Desert tortoise
 - 2001 – Multiple Species Habitat Conservation Plan (MSHCP)
 - Covers 78 Species





Current MSHCP and Status



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Current MSHCP



The Desert Conservation Program serves as the Administrator of the Clark County MSHCP and incidental take permit.

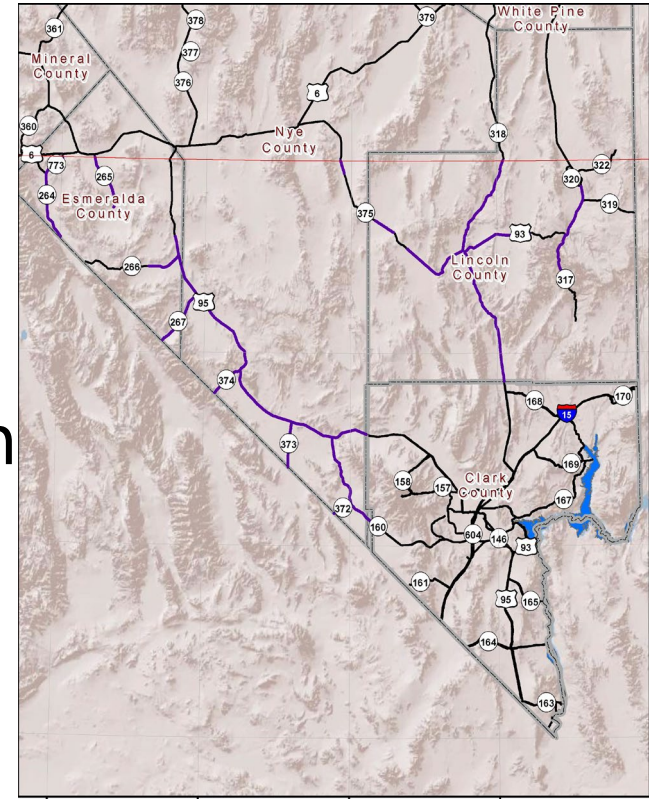
Permittees:

- City of Las Vegas
- City of North Las Vegas
- City of Henderson
- City of Mesquite
- City of Boulder City
- Clark County
- NDOT



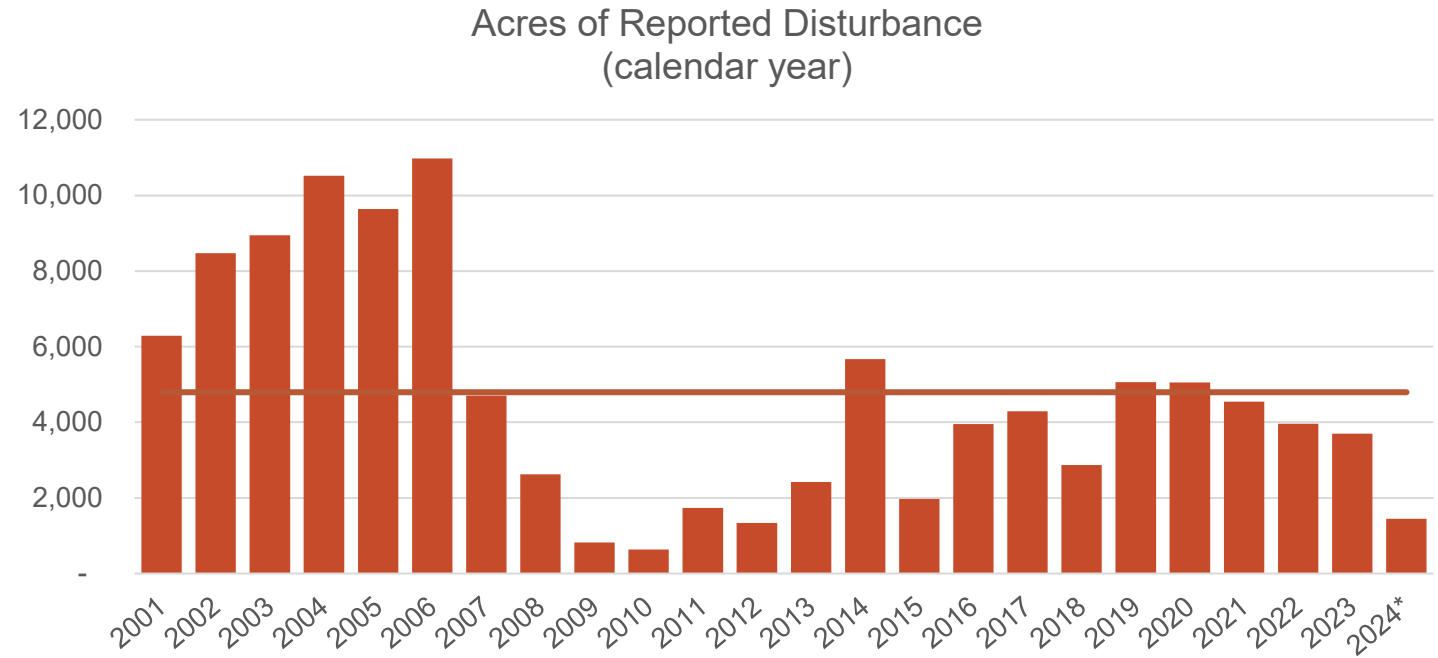
Current MSHCP

- Authorizes up to 145,000 acres of Take
- Covers all non-federal land in Clark County and NDOT ROWs within tortoise habitat
 - Including BLM disposal lands
- 30-year permit effective February 2001
- Developers pay a \$550 per-acre disturbance fee to opt-in to the plan
- Fee is used to fund the conservation actions described in the MSHCP



MSHCP Status

- 126,931 acres reported disturbance
- 87.5% of authorized Take
- Average ~4,800 acres of disturbance/year



Total acres reported in this chart do not include acres of municipal development, which were exempt from the payment of mitigation fees through January 2010. Total number of acres of municipal development that were exempted from mitigation fee payment is 15,000 acres.

* Partial year data.



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MSHCP Status

- Will expire in January 2031, or when authorized Take is exhausted
- Approximately 18,000 acres of authorized Take remain under the current permit
 - With an annual average rate of development of 4,800 acres, this Take authorization is anticipated to run out in 3 to 5 years.



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Future of the MSHCP



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MSHCP Amendment

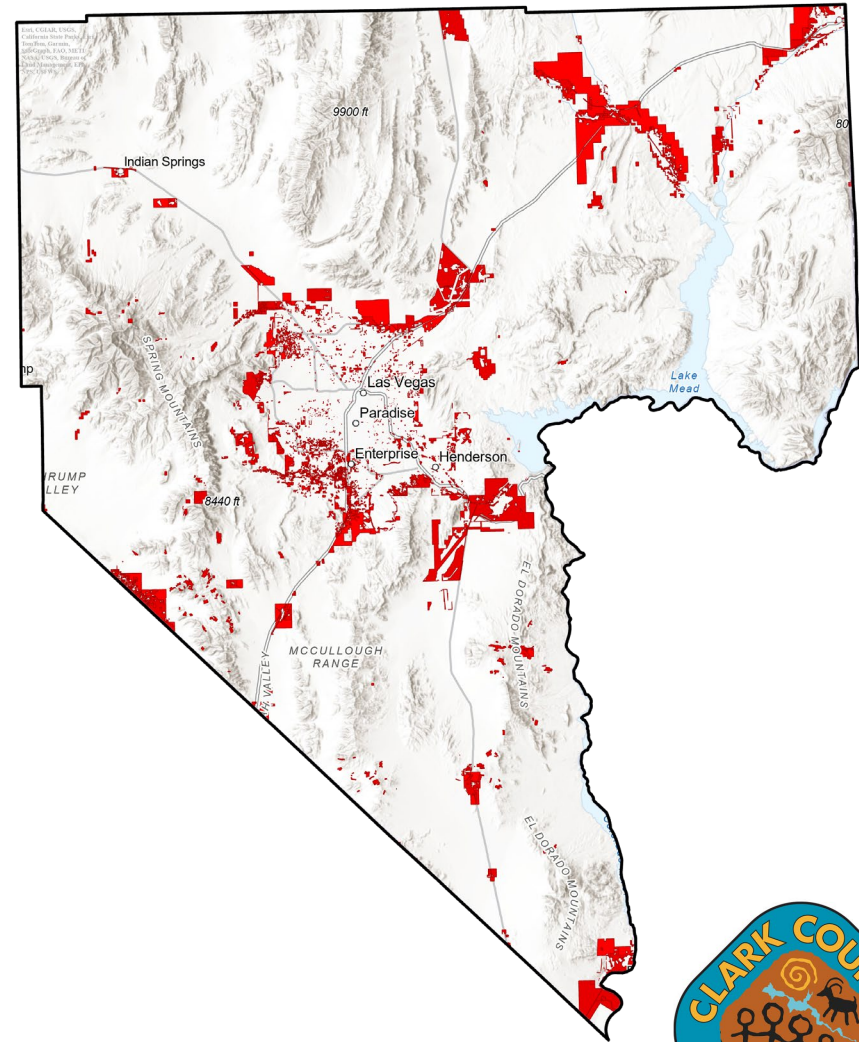
- Absent a regional permit, developers would have to pursue individual project-level permits
- In 2007 the Board of County Commissioners directed staff to initiate an amendment to the MSHCP and incidental take permit
- Staff have been actively working on the application package in consultation with the U.S. Fish and Wildlife Service



MSHCP Amendment

Objectives:

- Address the acreage gap
 - Only 18,000 acres remain under the current permit
 - Tule Springs legislation authorized another 22,650 acres of take through amendment
 - Legislation could make another 25,000 available for development
 - 152,783 acres of disposal, undeveloped private land



MSHCP Amendment

Objectives (continued)

- Re-evaluate the list of covered species to focus attention on those species most at risk and most directly impacted by take
- Re-evaluate covered activities and overall conservation/mitigation strategy
- Re-evaluate the structure and implementation of the plan



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Proposed Conservation Strategy



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Components of the Conservation Strategy

Avoidance, Minimization, and Mitigation Measures

- Required components of a habitat conservation plan application
 - Avoidance measures – implemented prior to construction (e.g., removal of wildlife from project site)
 - Minimization measures – implemented during project activities (e.g. lighting standards meant to minimize impacts to wildlife)
 - Mitigation measures – occur apart, and separate from, project activities (e.g., establish and manage conservation areas where species can persist)
- Measures must increase under a new permit
 - Avoidance, minimization, and mitigation measures in place today will not be approved again (regulations and policies have changed since 2001)



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Avoidance and Minimization (AMMs)

Some examples of new AMMs:

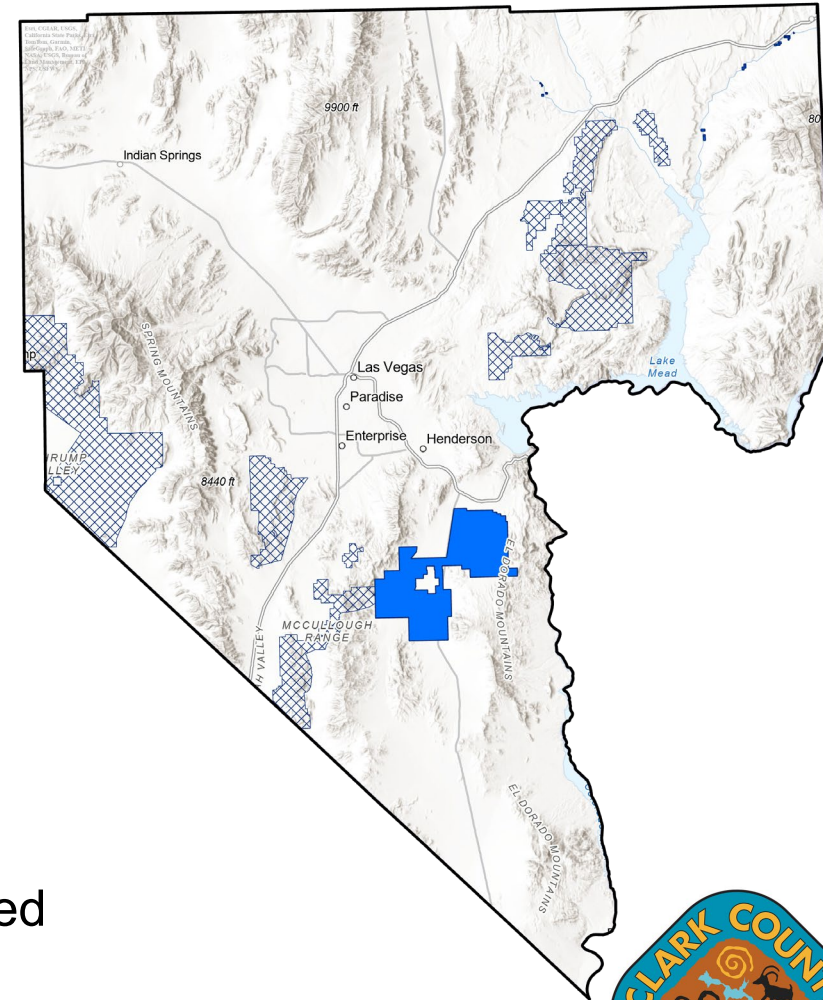
- Adoption of project design measures and urban-wildlife interface design standards into development code
- Desert tortoise clearance surveys within suitable habitat
- Burrowing owl clearance surveys within suitable habitat
- Seed collection of rare plants and for restoration materials



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Mitigation Measures

- Relies on designation of a Reserve System
 - Reserve System would largely consist of BLM-administered land and some private property
 - Managed for the conservation and recovery of species covered by the MSHCP
 - Law enforcement
 - Weed surveys and treatments
 - Fencing, signage, and other habitat protective measures
 - Route designation
 - Restoration of unauthorized activities and closed routes
 - Species and habitat monitoring



Funding

- A per-acre fee increase, or other assured revenue source, will be necessary
- Permittees will be required to demonstrate that they can fully fund the entire plan and that revenue sources are guaranteed
- This is a permit issuance criterion – without a funding guarantee, U.S. Fish and Wildlife Service will not approve the application.
- Case law has made this clear



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Opting In is Voluntary

The MSHCP Amendment will be voluntary

- Developers can opt-in to the Plan by paying the fee
 - OR -
- Developers can pursue and negotiate an individual permit



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Next Steps



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Next Steps

- Draft MSHCP Amendment application is nearing completion
 - Additional data collection activities and data analyses are underway to finalize the draft
 - Chapters are being reviewed by Permittees and the U.S. Fish and Wildlife Service
 - Continue to pursue legislation to designate the Reserve System
- U.S. Fish and Wildlife Service must complete an Environmental Impact Statement (EIS) before a new permit can be issued
 - Minimum of 2 years to complete



Time is of the Essence

- Likely only have 3 to 5 years before permitted acres are exhausted
- EIS will require 2 years to complete
- Must have some buffer should there be litigation (common with HCPs)



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Recommended Next Step

- Due to proposed changes to the conservation strategy, the MSHCP Amendment has the potential to affect numerous agencies, interests, and stakeholder groups
- Staff recommends kicking off a stakeholder engagement process
 - Inform interested/affected parties of the proposed plan and receive feedback
 - Summarize feedback in a report; present report to BCC for direction
 - Incorporate feedback into the final revisions
 - Submit application package to U.S. Fish and Wildlife Service





Questions?



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