

**RECORD OF DECISION FOR THE
COYOTE SPRINGS INVESTMENT PLANNED DEVELOPMENT PROJECT
MULTIPLE-SPECIES HABITAT CONSERVATION PLAN
ENVIRONMENTAL IMPACT STATEMENT**

I. INTRODUCTION

This Record of Decision (ROD) was developed by the U.S. Fish and Wildlife Service (Service) in compliance with the agency decision-making requirements of the National Environmental Policy Act of 1969 (NEPA), as amended (40 CFR 1505.2). The purpose of this ROD is to document the Service's decision to issue an Incidental Take Permit (Permit) under section 10(a) of the Endangered Species Act of 1973, as amended (Act), based on the Coyote Springs Investment Multiple-Species Habitat Conservation Plan (CSI MSHCP). This ROD outlines the Service's decision and presents the rationale for that decision; identifies the alternatives considered in reaching the decision and identifies the environmentally preferred alternative; states whether all means to avoid and minimize environmental harm from implementation of the selected alternative have been adopted.

Documents used in the preparation of this document include: the CSI Planned Development Project Multiple-Species Habitat Conservation Plan (MSHCP) (Entrix et al. 2008a); the CSI MSHCP Implementing Agreement (IA) (Service 2008a); the CSI Environmental Impact Statement (EIS) (Entrix et al. 2008b); the CSI Planned Development Project Addendum to the EIS and MSHCP (Entrix et al. 2008c); and the Service's Intra-Service Biological Opinion (Service 2008b: File No. 84320-2008-F-0113). These documents are herein incorporated by reference.

II. PROJECT DESCRIPTION – PREFERRED ALTERNATIVE

Statutory Framework - Issuance of the Incidental Take Statement

Section 10 of the Act permits take (including harm, harassment, injury and/or mortality) of listed species incident to otherwise lawful activities provided the Applicant's activities "will not appreciably reduce the likelihood of the survival and recovery of the species in the wild" and the Applicant "minimizes and mitigates to the maximum extent practicable" the impact of take likely to result from its activities. In order to obtain such permission, the Applicant must submit a Habitat Conservation Plan (HCP) that, in judgment of the Service, meets these basic requirements as well as other criteria stated in section 10(a)(2)(B) of the Act, including the requirement to ensure that adequate funding for the HCP will be provided.

Under the Act and its implementing regulations, "take" of a listed species may arise from significant habitat modification that results in the actual injury or death to the species. The Applicant's Covered Activities (described below) would likely result in "take" of listed species. Therefore, the Applicant has the desire and need for a Permit from the Service.

Summary of the CSI MSHCP

The Applicant has submitted an application for a Permit under section 10(a)(1)(B) of the Act. The Applicant is requesting coverage under the Permit for five species: the threatened desert tortoise (*Gopherus agassizii*) (Mojave population), the endangered Moapa dace (*Moapa coriacea*), and three unlisted species, Virgin River chub (*Gila seminuda*) (Muddy River population), banded Gila monster (*Heloderma suspectum cintum*), and western burrowing owl (*Athene cunicularia hypugaea*) (Covered Species).

Of the five species for which the Applicant requested coverage under the Permit, the Service decided not to provide incidental take coverage for the Moapa dace and Virgin River chub, which occur 17 miles downstream of the project area. Because CSI would implement avoidance and minimization measures, reducing the level of effects to be negligible, potential effects to these species from Covered Activities (described below) would not reach the level that take would occur (Service 2008b). Subject to permit terms discussed below, the Permit would authorize the incidental take of the desert tortoise and for the banded Gila monster and western burrowing owl, in the event they become listed, on non-Federal and lease lands in Clark and Lincoln counties, Nevada.

The Permit would authorize incidental take of Covered Species on non-Federal lands in Clark and Lincoln counties. CSI plans to develop a new town on up to 21,454 acres of private lands in Lincoln County. Additionally, CSI proposes to manage 13,767 acres of lease lands in Clark and Lincoln counties as the Coyote Springs Investment Conservation Lands (CSICL). The private and lease lands (Covered Area) occupy most of the eastern portion of Coyote Spring Valley, straddling the Pahrangat Wash and the Kane Springs Wash. The Covered Area is located approximately 55 miles northeast of Las Vegas and bordered by the Delamar Mountains to the north, U.S. Highway 93 (US 93) to the west, the Coyote Springs Clark County project to the south, and the Meadow Valley Mountains to the east. The surrounding areas are primarily public lands managed by Bureau of Land Management (BLM) and the Service on the Desert National Wildlife Refuge.

Activities proposed to be covered under the Permit include residential, commercial and industrial development, recreational facilities, utility infrastructure, water supply infrastructure and management, flood control structure development and maintenance, and resource management features. A description of the Covered Activities and MSHCP conservation measures are presented below.

Covered Activities

Covered Activities would include residential, commercial and industrial development, recreational facilities, utility infrastructure, water supply infrastructure and management, flood control structure development and maintenance, and resource management features.

a. Community Development

Construction of residential homes and villages, mixed-use urban villages, public buildings, hotel and resorts, and recreational, commercial and light industrial areas would occur on up to 21,454 acres of CSI private lands, also referred to as the "Development Area" in this document. CSI estimates that no more than 20,188 acres within the Development Area would be disturbed because some existing waters of the United States (WOUS) and upland buffer habitat would be protected (Entrix et al. 2008c). Community development activities also include landscaping activities on CSI private lands. Development would be phased over a number of years, which would include a limit of 2,000 acres of land disturbance per year for the first eight years. The phasing of the development also would be dependent on the availability of water to sustain it. Full build-out of the community would take 40 years. Residential areas would eventually cover approximately 65 to 80 percent of the Development Area and may eventually include 111,000 residential dwelling units, based on the density allowed under the Coyote Springs Development Agreement (County and CSI 2005).

Associated with the residential development would be the construction and maintenance of roadways for the town, including, but not limited to: rights-of-way, drainage facilities, roadway construction, utility installations and modifications, noise attenuation devices, bridging structures, lighting, traffic control equipment and signage, aesthetic improvements, and landscaping. Up to four bridges could be constructed to span the Pahrnagat Wash. CSI also may improve and maintain existing roads (US 93 and/or State Route 168 (SR 168)).

b. Recreation Facilities and Open Space

Recreational facilities would be constructed and maintained to serve future residents and visitors in the Development Area. Recreational facilities may include an amusement park, golf courses, parks, and sports fields. In addition, trails within the CSICL would be used for hiking, horseback riding, walking, and non-motorized biking. Educational kiosks would be constructed along trail heads and routes. It is anticipated that not more than 20 acres of habitat disturbance from construction of kiosks and new trails would occur in the CSICL.

c. Utility Infrastructure

Utilities and other infrastructure would be developed to serve the CSI development. Two or three electrical power substations and an underground electric power distribution system would be constructed to deliver electricity to the community. Two wastewater treatment plants and a sanitary sewer collection system would be installed within the Development Area to convey and treat sewage. Facilities for alternate sources of energy such as solar, natural gas, or propane also may be developed for the community. A reclaimed wastewater distribution system will be constructed and operated for the distribution and use of reclaimed wastewater within the Development Area for landscape and golf irrigation, construction water, and potentially groundwater recharge.

No landfills would be constructed within the Development Area. Construction debris would be delivered to the nearby private Class III landfill for disposal. For long-term trash disposal, trash transfer stations could be constructed to segregate and consolidate solid waste for shipment off-site to solid waste disposal facilities within Lincoln County.

d. Water Supply Infrastructure and Management

Production well sites would be located within the Development Area to develop permitted water rights within the Coyote Spring Basin. The total number of production wells that may be constructed is unknown at this time. Monitoring wells would be constructed, operated, and maintained throughout the Development Area.

On-site reservoirs would be constructed to store untreated water, to distribute treated water to the community, and to provide water for fire protection at certain elevations. These reservoirs would average three to four million gallons and could be aboveground or underground tanks. Initially, one raw water treatment plant would be constructed in the Development Area. A water delivery system, consisting of wells, pumps, motors, storage facilities, pipelines, telemetry, power lines and all related appurtenances would be constructed within the Development Area.

e. Flood Control Structures Development and Maintenance

CSI would develop integrated sub-regional stormwater control facilities to address both off-site alluvial fan stormwater that crosses the Development Area and on-site stormwater generated from within the Development Area. Flood storage and conveyance facilities would be constructed within the Development Area.

f. Resource Management Features

To minimize impacts to the desert tortoise, CSI and BLM would reconfigure the layout of the leased and private lands from the existing configuration in Lincoln County. Under the existing configuration, CSI lease lands are an island within the CSI private lands. The reconfigured layout would consolidate the private lands to the west and the lease lands adjacent to the BLM Areas of Critical Environmental Concern (ACEC) along the east side of the property. Therefore, habitat connectivity between the lease lands and the BLM ACECs would be maintained as tortoises and other wildlife would be able to move between these lands.

Subsequent to the land adjustment, this area, together with CSI conserved lands in Clark County, would be included in the CSICL. The CSICL would be managed for the conservation of the Covered Species. CSI and the Service, in coordination with BLM, would develop and implement a management plan that would address recreation trails, weed and fire management, restoration, law enforcement and litter management.

Management activities within the CSICL would be funded by mitigation fees collected by CSI as part of the MSHCP conservation strategy (as described below).

Conservation Measures

The CSI MSHCP includes a number of conservation measures to minimize and mitigate the effects of Covered Activities to Covered Species. Conservation measures could occur on lands within the Development Area, CSICL, or on Federal lands. Conservation measures can be categorized into three groups: avoidance, minimization, and mitigation. Avoidance measures avoid the potential effect. Minimization measures reduce the potential effect to lesser levels over time. Mitigation measures compensate for the potential effect after avoidance and minimization measures have been considered.

The following list summarizes the avoidance and minimization measures for desert tortoises, banded Gila monsters and western burrowing owls (detailed discussion of measures are found in Chapter 6 of the MSHCP and Section IV of this document):

- Land development area surveys, clearance and translocation
- Best Management Practices for construction, operations and maintenance activities
 - General site measures
 - Ground disturbance activities
 - Sediment and erosion control
 - Water quality
 - Fire conservation measures
 - Trash management
 - Conservation education
 - Pet management
- Temporary and permanent desert tortoise exclusion fencing
- Weed Management Plan
- Reconfiguration of CSI private lands and lease lands in Lincoln County

The following list summarizes the mitigation measures for desert tortoises, banded Gila monsters and western burrowing owls (detailed discussion of mitigation measures are found in Chapter 6 of the MSHCP and Section IV of this document):

- Collection of mitigation fees of \$800 per acre of disturbance and an additional fee of \$750,000 for use in recovery and research efforts
 - Desert tortoise head-starting program
 - Desert tortoise translocation program
 - Fire ecology and post-fire habitat restoration
 - Invasive species management
 - Habitat modeling for banded Gila monster
 - Surveys for western burrowing owls

- Permanent conservation of 7,548 acres
- Designation of the 13,767-acre CSICL (including the 7,548 acres)
- Management and restoration of CSICL for the conservation of the Covered Species

Adaptive Management

An adaptive management plan (AMP) would be implemented for the length of the Permit (refer to Chapter 9 of the MSHCP for a detailed discussion on the AMP). The AMP would monitor the effectiveness of conservation actions and management prescriptions in meeting established biological goals, recommend alternative actions to pursue in the event that the goals are not being met, and incorporate any other information, including third-party scientific research, that has bearing on how best to meet the biological goals.

The phased approach to development (including up to 2,000 acres of disturbance per year for the first eight years) would ensure that for the first eight years, there would be effectiveness monitoring of implementation of the proposed avoidance, minimization, and conservation measures for the Covered Species in the CSI MSHCP.

Recommendations for alternative conservation actions could be made and implemented through the AMP if necessary.

Activities Not Covered in the Permit

Groundwater withdrawal is not a Covered Activity in the CSI MSHCP. However, groundwater withdrawals and their effects to the Moapa dace are subject to evaluation under separate biological opinions for several groundwater development projects, and any appropriate incidental take would be authorized through those biological opinions when issued, or under section 10 (a)(1)(B) if these actions did not involve a Federal agency.

Term of the Permit

The Permit would be in effect for 40 years. The Applicant is requesting the 40-year permit term to accommodate the length of time anticipated to reach the full build-out of CSI private lands.

Other Federal Actions Included in the Preferred Alternative

The U.S. Army Corps of Engineers (Corps) has proposed to approve issuance of a Clean Water Act section 404 permit for the proposed CSI Development Area and BLM utility corridor (for detention basins) located in Lincoln County, Nevada. The project would consist of altering and placing fill material in approximately 34 acres of unnamed jurisdictional ephemeral washes located within the project area. The potentially affected WOUS are west-east running dry desert washes subject to infrequent surface flows during large precipitation events. These washes drain into Pahrnagat Wash, a large north-south running ephemeral drainage and tributary to the Muddy River in large storm

events (100 year events). Within the Development Area, about 30 acres of WOUS would be avoided, and 64 acres of WOUS in the Development Area and BLM utility corridor would be restored (Entrix et al. 2008c).

In addition to the Corps' proposed issuance of a section 404 permit, BLM, at the request of the Service for the benefit of the desert tortoise and other species, proposes to reconfigure the layout of CSI's private and lease lands from its existing land ownership in Lincoln County. BLM also would decide whether or not to issue a right-of-way for the construction of flood storage and conveyance facilities in the BLM utility corridor west of US 93 in Lincoln County. These detention basins and associated ditches would support the proposed CSI development and could affect up to 244 acres within the BLM utility corridor. Refer to Section 3 in the EIS (Entrix et al. 2008b) for more information on the proposed detention basins.

III. ALTERNATIVES CONSIDERED

In addition to the Preferred Alternative described above, we considered a No Action Alternative and Alternative 1, the issuance of a permit associated with an alternative conservation strategy that would allow immediate development of a larger portion of the CSI lands without the phased approach.

No Action

Under the No Action Alternative, a Permit under section 10(a)(1)(B) of the Act would not be issued for MSHCP Covered Species. The existing land configuration of CSI private and lease lands would be maintained. Lease lands (7,548 acres) would remain an island within the privately-owned lands. The lands leased by CSI from BLM would be available for the full suite of activities authorized in the Land Lease Agreement (Appendix G in the MSHCP). Actions that could result in take of listed species on non-Federal lands would be prohibited under section 9 of the Act, and if undertaken by Federal permitting agencies or within Federal lands, would be reviewed individually under section 7 of the Act by the Service. If the Applicant chose to sell their private lands, individual private land owners whose actions could affect the desert tortoise would be required to prepare a habitat conservation plan and apply for an individual section 10(a)(1)(B) Permit. Individual permits would lack the oversight, coordination, and funding mechanism provided in the CSI MSHCP. In addition, the AMP would not be developed and implemented under the No Action Alternative.

Alternative 1

With Alternative 1, the Service would issue a Permit to CSI based on a regional habitat conservation plan. This plan would be similar to the CSI MSHCP, with three exceptions: 1) a larger development area; 2) a smaller conservation area; and 3) immediate build-out.

The changes in developed and conserved acreage would be due to different land use on the 7,548 acres of lease lands in Lincoln County. With this alternative, urban and

commercial development would be allowed on the CSI lease lands, increasing the total acreage of development to 29,002 acres and as a result, take of Covered Species and its habitat. Because this area is proposed to be included in the CSICL, this change would also reduce the amount of conserved lands that could be used as mitigation.

The timing of the Covered Activities would also be different with this alternative. Instead of phased development with annual limits, all lands would be available for development immediately upon permit issuance.

IV. PUBLIC INVOLVEMENT

A Notice of Intent (NOI) to prepare an EIS and begin public scoping was published in the Federal Register on December 4, 2001 (66 FR 63065). During the 60-day comment period, six letters were received commenting on impacts to species, consistency with other land use plans, scope of analysis and alternatives to be considered. A second NOI was published on September 12, 2006 (71 FR 53704) to inform the public that the Covered Area had been adjusted to exclude CSI private lands in Clark County. Public scoping meetings were held in Alamo, Nevada and Moapa, Nevada on September 26, and 27, 2006, respectively. A third NOI was published November 2, 2006 (71 FR 64555) to correct contact information and to extend the comment period. Letters were received from 11 different organizations or individuals commenting on resources to be analyzed, potential mitigation measures, and scope of analysis.

A Notice of Availability (NOA) for the draft CSI MSHCP, IA, and EIS was published in the Federal Register on November 2, 2007 (72 FR 62254). After a 60-day comment period, comments were received from seventeen different agencies, organizations and individuals. Comments were provided: project purpose and need; range of alternatives; impacts to species, WOUS, groundwater, cultural resources, recreation, wilderness, socioeconomics; and adequacy of conservation measures. A discussion of comments received on the draft CSI MSHCP, IA, and EIS with responses is included in the final EIS (Appendix Q).

The NOA for the final CSI MSHCP, IA and EIS was published in the Federal Register on September 12, 2008 (72 FR 53001). The 30-day comment period ended on October 14, 2008. Comments were received from five different agencies, organizations and individuals. The Service considered all comments, and specific responses to individual comments are in our administrative file for this project and are available upon request. The following is a summary of key issues raised in the public comments, and our corresponding responses.

1. Issue: The Purpose and Need fail to justify the need for the Coyote Springs Development in Lincoln County.

Response: The Federal Action being analyzed in the EIS is the issuance of an incidental take statement. The need for the action is CSI's application for a

take permit, as triggered by their proposed development project. The purpose of the Service's proposed action is to protect and conserve the Covered Species and their habitats in light of the CSI application for an incidental take permit.

2. Issue: The alternatives in the final EIS are flawed, and the final EIS fails to analyze a reasonable range of alternatives as required by the National Environmental Policy Act (NEPA).

Response: The alternatives presented in the final EIS represent the culmination of a comprehensive, cooperative planning effort that has, to date, spanned over 7 years, and involved several interested agencies/parties and the evaluation of a number of on-site alternatives. The Service, CSI, and the BLM signed a Memorandum of Agreement (MOA) on March 31, 2001 to establish an HCP under section 10(a)(1)(B) of the Act. The MOA also directed CSI to establish an Executive Committee, a Technical Steering Committee (TSC), and a Biological Advisory subcommittee. The Executive Committee was comprised of one representative each from the Service, BLM, and CSI. The Executive Committee has met several times throughout the development of the MSHCP. It should also be noted that the U.S. Environmental Protection Agency (EPA), although not a signatory on the above MOA or a committee member was briefed on the actions of the committee. In addition, the EPA attended various interagency site meetings. The TSC convened for its first meeting in October 2001. The TSC included representatives from the Service, Nevada Department of Wildlife (NDOW), BLM, Lincoln County Board of Commissioners, Clark County Department of Comprehensive Planning, Southern Nevada Water Authority, U.S. Geological Survey's Water and Biological Resources Disciplines, Moapa Town Advisory Board, Red Rock Audubon Society, and the Sierra Club. This comprehensive planning effort resulted in the evaluation of several on-site development alternatives. The full range of alternatives considered, and then dismissed are explained in Section 3.4 and Appendix L in the final EIS. The purchase of the CSI private lands by the Federal government was not evaluated as an alternative because there was no willing seller.

3. Issue: The term of the MSHCP and incidental take permit is too long and should be shortened and tied to a new phasing alternative which is based on adaptive management and monitoring of impacts from groundwater withdrawals.

Response: The MSHCP does include phasing of development over a number of years, which would include a limit of 2,000 acres of disturbance per year for the first eight years. Water supply will be obtained in phases during the course of development, a typical process for developing a community and its associated water right entitlement. An application was made for a 40-year permit, because that is the length of time anticipated to reach the full build-out

of the CSI private lands. Less development or a delayed timeframe for implementation of this project could occur if water sources are not available.

In addition, the phased approach to development would ensure that for the first eight years, there would be effectiveness monitoring of implementation of the proposed avoidance, minimization, and adaptive management in conservation measures for the Covered Species in the CSI MSHCP. Recommendations for alternative conservation actions could be made and implemented through the AMP if necessary.

The Service does not consider groundwater withdrawals for the CSI development in Lincoln County as a Covered Activity under the MSHCP. Groundwater withdrawals for the CSI development is being phased and will be evaluated in separate NEPA documents and biological opinions for several groundwater projects (including infrastructure) because these projects include development and transport of not only groundwater for the CSI development, but also groundwater for other developments and entities.

4. Issue: The climate change discussion on groundwater is general, and did not address specific impacts or mitigations for addressing them.

Response: The final EIS uses the best available published scientific literature to evaluate cumulative effects of groundwater projects within the project area. The EIS also includes a detailed table on past, present, and foreseeable groundwater basin projects within the area and presents existing MOAs and stipulations that would address potential cumulative impacts to the Muddy River system and carbonate aquifer from associated projects through monitoring and adaptive management.

As described in the EIS, the CSI development will occur over time and the water supply will be obtained in phases during the course of development. Therefore, all water that is ultimately delivered to the project will be subject to the State Engineer's approval, and full NEPA compliance and section 7 consultations. Any groundwater withdrawals used for the CSI development that would not involve a Federal agency, would require CSI to seek coverage for the activity under section 10(a)(1)(B) of the Act or amendment of this Permit for water developed in Lincoln County in the Coyote Spring Valley hydrographic basin. These processes would provide stipulations, similar to approved groundwater development projects in the cumulative analysis area in the EIS, which include monitoring, management, and mitigation plans for groundwater resources and listed species. NEPA and section 7 analyses consider current resource baseline information, including climate change. Therefore, any specific impacts and mitigation actions for climate change would be addressed during these processes.

5. Issue: The final EIS and MSHCP define the “Covered Area” and the species affected far too narrowly. There is no rational basis for excluding many of the listed species and state-protected species.

Response: The boundaries of the Covered Area were determined based on all areas within the Applicant’s project, land use area, or jurisdiction within which any permit or planned activities likely to result in incidental take are expected to occur (Service and NMFS 1996).

Appendix S in the final EIS details the Covered Species selection process. During initial consultation, the Service indicated to the Applicant that the project had the potential to affect five federally listed and/or candidate species: the threatened desert tortoise (Mojave population), threatened Moapa dace, endangered Yuma clapper rail (*Rallus longirostris*), endangered Southwestern willow flycatcher (*Empidonax traillii extimus*), and candidate Yellow-billed cuckoo (*Coccyzus americanus*). With the exception of the cuckoo, an HCP would be required by the Service if incidental take were to occur prior to commencement of project activities. All five of these species were considered in the MSHCP, and it was determined that the Covered Activities would only adversely affect the desert tortoise.

While HCPs are developed for federally listed species, the inclusion of proposed, candidate, or non-listed species in an HCP is voluntary and the decision is with the Applicant. Following discussions of the Biological Advisory Committee, a decision was made by the Applicant to include unlisted species, the banded Gila monster, western burrowing owl, and the Virgin River chub (Muddy River population).

6. Issue: The conservation measures in the MSHCP are inadequate and incomplete. The HCP should ensure that the taking authorized will not appreciably reduce the likelihood of survival and recovery of Covered Species. The mitigation measures and conservation measures adopted as part of the MSHCP must significantly contribute to the conservation and recovery of the listed species.

Response: We agree that issuance of a section 10 permit must not “appreciably reduce” the likelihood of the survival and recovery of listed species in the wild. However, Federal regulations and the Service’s HCP policies do not require an HCP to recover listed species, or to contribute to recovery plan objectives. This reflects the fact that HCPs were designed by Congress to authorize incidental take (Service and NMFS 1996). Contribution to recovery is often an integral product of an HCP, but it is not an explicit statutory requirement (Service and NMFS 1996).

As discussed in Section IV of this document, the Service has determined that the MSHCP has minimized and mitigated impacts to the maximum extent

practicable. Also refer to the Biological Opinion on the Issuance of a Section 10(a)(1)(B) Incidental Take Permit to Coyote Springs Investment Development, LLC for a Multiple-Species Habitat Conservation Plan in Lincoln County, Nevada for our analysis on effects to Covered Species (Service 2008b).

7. Issue: The MSHCP must be consistent with all available recovery plans, and move beyond the status quo to actively improve the conservation status of all listed species covered by the MSHCP. The MSHCP allows for the loss of thousands of acres of desert tortoise critical habitat in direct contradiction to the recovery plan which calls for reserve level protection of this habitat.

Response: The CSI MSHCP includes conservation measures that are consistent with recovery actions described in the Draft Revised Desert Tortoise Recovery Plan (Service 2008c). For example, the MSHCP includes an inter-organizational executive committee to provide oversight and coordinate implementation of the conservation measures; permanent protection of 13,767 acres of desert tortoise habitat; prohibition on pet desert tortoises within the development; establishment of environmental education programs; provision for law enforcement in the CSICL, and if necessary on adjacent Federal lands through the AMP process; prohibition of OHV use within the CSICL except for limited access on existing routes by State or Federal agencies; installation of tortoise barriers around the development; and funds for head-starting and translocation programs described in the recovery plan.

The Draft Revised Desert Tortoise Recovery Plan calls for protection of desert tortoise habitat within conservation areas (which includes ACECs and critical habitat) with no net loss until tortoise population viability is ensured. However, the recovery plan also states that this criteria does not apply generally to private lands, given the vast amount of desert tortoise habitat already under Federal management. Therefore, based on the above the Service asserts that the CSI MSHCP's mitigation plan is consistent with the recovery plan.

8. Issue: Translocation of tortoises is not a sufficient mitigation measure.

Response: The Service's Desert Tortoise Recovery Office will direct the translocation of CSI tortoises to pre-selected sites. Although the efficacy of translocation itself has been questioned over the years, recent studies have shown initial success in translocation to be high (Nussear 2004, Field et al. 2007). Based on these studies and recommendations from desert tortoise biologists, translocation of tortoises has been identified as a recovery tool and included in the Draft Revised Desert Tortoise Recovery Plan (Service 2008c). The updated recovery plan maintains that an augmentation strategy would be developed. As part of this strategy, locally depleted or extirpated populations,

particularly within desert tortoise conservation areas, will be identified. Translocation of tortoises removed from CSI private lands would be done as part of the larger augmentation strategy that is being developed under the recovery plan. Translocation along with head-starting efforts would be used to augment depleted tortoise populations in conjunction with habitat restoration and management. We agree that translocation in and of itself would not be full mitigation for CSI. In addition to translocation, other mitigation and conservation measures would be implemented as described in Section 3.2.2.3.3 of the MSHCP.

9. Issue: Further monitoring and management is needed in the CSICL before it can be considered adequate mitigation.

Response: The CSICL is habitat for Covered Species and would be permanently protected, monitored and managed for their conservation. The CSICL would preserve the north-south habitat linkage between the Kane Springs ACEC and Mormon Mesa ACEC. Any activities such as trail use within the CSICL would be subject to approval by the Technical Advisory Committee (TAC) (see CSI MSHCP 8.1.3 for definition of TAC). The Service has determined that the protection of the CSICL together with other conservation measures identified in the MSHCP provide adequate mitigation.

10. Issue: The final EIS fails to adequately analyze the direct, indirect, and cumulative impacts of the MSHCP on the environment.

Response: Section 5 of the EIS, Environmental Consequences discusses at length direct, indirect, and cumulative impacts from the CSI development. The Service believes the EIS provides a meaningful discussion on the environmental consequences as a result of issuance of the incidental take permit.

11. Issue: The HCP's reliance on the "No Surprises" policy violates section 7 and 10 of the Act.

Response: The "No Surprises" rule has been in continuous litigation since its inception, however the Service's policy still stands and remains part of the incidental take permit.

12. Issue: The baseline data for Covered Species and species not covered under the MSHCP is inadequate.

Response: Updated baseline information for the desert tortoise has been included in the final EIS. No accepted survey protocol for the banded Gila monster has been developed, therefore species presence is based on habitat characteristics. Prior to ground disturbance, surveys would be conducted for the western burrowing owl based on recent developed methodology for this

species (USGS 2007). Baseline information on species not covered in the MSHCP and that occur within the project area is also provided. Refer to Chapter 3 of the MSHCP and Section 4 of the EIS for information on species status.

13. Issue: The Service improperly divides the analysis of the impacts from this project in Lincoln County between the CSI lands affected in Clark County.

Response: The Service analyzed the CSI development project in Clark County separately from the proposed project because 1) impacts from private lands owned by CSI in Clark County were covered under the Clark County MSHCP which was permitted in 2001, thus there was no need to develop a HCP for those lands and 2) the Clark County project had an existing water supply. Also, the development of CSI private lands in Clark County was not dependent on the development of CSI lands in Lincoln County. Thus, the CSI development in Clark County was treated as a stand-alone project.

The Service has included past projects, including the CSI development in Clark County, in establishing an updated environmental baseline and species status in the effects analysis in the EIS and Intra-Service Biological Opinion for this project.

14. Issue: The Service should include point-by-point responses of all public comments received on the draft EIS and the Service's responses in the final EIS.

Response: Under the NEPA Regulations: Section 1503.4(b), all substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement whether or not the comments are thought to merit individual discussion by the agency in the text of the statement. Further, the CEQ "40 most asked questions" guidance states: If a number of comments are identical or very similar, agencies may group the comment and prepare a single response for each group.

In the final EIS, we follow the above regulation and guidance, and present the substantive and reoccurring comments from the public that we received during the comment period, as well as our responses on 35 pages in Appendix Q. In addition, we state in the final EIS on page 6-2 that individual comments and specific responses to individual comments are available upon request from the Service.

15. Issue: Concerns were raised about the assurance of successful implementation of the MHSCP.

Response: It is the Service's commitment to work with CSI towards the

successful implementation of the MSHCP, including all provisions included in the IA and Permit. CSI has committed to fully fund the CSI MSHCP.

16. Issue: The final EIS does not provide information on how 70,000 acre feet per year (afy) of groundwater will be supplied to the proposed project or an analysis of the environmental impacts as a result of acquiring this water.

Response: The water supply for full build-out of the CSI development may come from a variety of sources, including potential transfer of certificated rights or new appropriations in other hydrographic basins in the area. With the exception of the 1,000 afy acquired through the Kane Springs Groundwater Development Project (GWD) and the 3,000 afy anticipated to be provided from Cave, Dry Lake, and Delamar valleys, such transfers or new appropriations have not yet been approved by the Nevada State Engineer, and the specific quantity and source basins cannot be reasonably forecast at this time. Potential hydrologic impacts of transferred and new water rights, and potential terrestrial impacts from associated conveyance infrastructure would be subject to future environmental analysis and section 7 consultation, either added to GWD projects identified in the EIS or through separate GWD projects. If, in the future, CSI is granted water rights from the State Engineer for pending applications in the Lincoln County portions of the Coyote Springs Hydrographic Basin, and if there is no Federal nexus, CSI would be required to analyze the impacts and seek take authorization through an amendment to their section 10(a) Permit.

17. Issue: No mitigation credit should be attributed to BLM's ACECs without adequate BLM budget and staff to effectively manage the ACECs.

Response: This issue is addressed in the IA. In the IA, it states: "To the extent BLM staff participate in any mitigation, monitoring and adaptive management activities, the permittee shall enter into a cost recovery agreement with BLM providing BLM reimbursement for the expenses incurred as a result of such participation. The permittee acknowledges that BLM will not encumber base funding to ensure the implementation or success of the HCP."

18. Issue: Road crossing designs for the Pahrnatag Wash and tributaries should be clarified.

Response: The road crossings on the Pahrnatag Wash and tributaries will be consistent with the July 28, 2008, letter from Huffman-Broadway Group on behalf of the Applicant to EPA. Box culverts will not be used in the crossing design for the preserved Pahrnatag Wash and preserved tributaries to the Wash. Road crossings within the Pahrnatag Wash will be elevated on concrete bridge abutments with no bridge abutments or piers being placed within the active channel of the Wash. Tributaries/WOUS would be over-

crossed by structures that span the incised wash of the protected and preserved WOUS.

19. Issue: The Service, BLM, CSI, Lincoln County Water District, Vidler Water Company and other cooperating agencies should commit to the development of a regional groundwater framework.

Response: The Service and CSI have and will continue to work with BLM, Lincoln County Water District, Southern Nevada Water Authority, Moapa Valley Water District, Moapa Band of Paiutes, and the State Engineer to develop a regional groundwater monitoring and management plan to ensure that water supply development decisions and actions achieve a reliable and enduring water supply for both human users and the environment.

20. Issue: A tiered rate structure for water pricing should be implemented for the CSI development.

Response: The Lincoln County Water District is in the process of developing service rules and it is anticipated that a tiered rate structure will be incorporated into the rules.

21. Issue: Desert tortoise habitat fragmentation impacts should be assessed and mitigated.

Response: Habitat fragmentation would occur within the Mormon Mesa critical habitat unit (CHU) as a result of issuance of the Permit. However, habitat fragmentation would be minimized by: (1) reconfiguring the CSI private and lease lands in Lincoln County, as the ACECs established for desert tortoise conservation would remain adjacent to the CSICL; (2) locating the Development Area adjacent to existing sources of habitat fragmentation (i.e. US 93 and Kane Springs Road), instead of being surrounded by undeveloped lands on all sides; (3) phasing development which includes a limit of 2,000 acres disturbance per year; and (4) clearing land for development from the south to north, thus preventing a leap-frog approach to development during the 40-year build-out.

After the completion of the CSI development, habitat fragmentation would mostly likely occur due to recreational activity on surrounding lands which would likely increase with the greatest and most frequent impacts likely occurring close to the development. Through the MSHCP conservation measures described below, in particular restoration and management of the CSICL for Covered Species, restrictions on OHV use, conservation education, law enforcement, and weed, trash, and pet management, indirect impacts from habitat fragmentation would be minimized and mitigated.

22. Issue: Bighorn sheep movement corridors should be protected through a public awareness and protection program.

Response: The Applicant will implement a public awareness and education program. Currently, the Applicant is providing NDOW the use of their lease lands in Clark County for wildlife guzzlers. NDOW may move the guzzlers to the bench area of the Meadow Valley Range, as bighorn sheep occur most frequently at higher elevations. The Service and Applicant will continue to work closely with NDOW on development of a bighorn sheep program for the CSI community.

23. Issue: The Applicant should consider increasing the percentage of high density housing and reduce the overall project footprint.

Response: Because no public transportation services exist between the CSI development and the closest city, Las Vegas, 55 miles from the development, there have been concerns regarding the increase in traffic on US 93 and resulting impacts to air quality. The Applicant's intent is to develop a self-sustaining community within their private lands, which would decrease the likelihood of exterior trips (and minimize effects to air quality) between the CSI development and Las Vegas. A self-sustaining development would include non-residential land uses, such as business, commercial, industrial, and public land uses. Approximately 10 percent of the land available for residential development would be used for high density housing (see Table 3-2 in the EIS). Increasing the percentage of high density housing would be considered by the Applicant, but would be dependent on the housing market and may be constrained by the topography of the areas included in the residential land use zone.

Increasing the percentage of high density housing would not reduce the project footprint. It is important to note that since the publication of the draft EIS, the Applicant has reduced the project footprint (see Addendum to the EIS and MSHCP; Entrix et al. 2008c).

24. Issue: A commitment should be made to maximize the use of solar energy for on-site energy production.

Response: Solar energy production is a Covered Activity in the MSHCP. The Applicant encourages its use, and anticipates there will be on-site solar energy production.

V. DECISION

The Service has selected the Preferred Alternative for their action: issuance of a section 10(a)(1)(B) permit to CSI based on the implementation of the CSI MSHCP and supported by the IA. The Preferred Alternative is the most effective alternative at meeting the Applicant's needs for the permitting of Covered Activities while maximizing the conservation of Covered Species. Implementation of the MSHCP will occur over the next 40 years and will be guided by the IA and the adaptive management plan.

This ROD does not make a determination on issuance of a 404 permit. The Corps will make a determination on issuance of the 404 permit under a separate NEPA finding. Similarly, after review of the proposed reconfiguration of CSI lease and private lands and CSI's right-of-way application for the proposed detention basins, BLM will make a determination under a separate NEPA finding.

VI. FACTORS CONSIDERED IN MAKING THE DECISION

In reaching this decision, the Service reviewed and considered the impacts to the environment detailed in Section 5 of the EIS, the impacts to the Covered Species described in Chapter 5, 7 and 10 of the MSHCP, and the commitments made in Chapters 6 and 8 of the MSHCP and the IA. We evaluated this alternative relative to all applicable laws, regulations and policies, in particular the Act and permit issuance regulations. We also considered relevant issues, concerns and opportunities presented by agencies, organizations and individuals throughout the MSHCP planning process, including comments made on the draft and final EIS. For the following reasons, the Preferred Alternative was selected for implementation:

The No Action Alternative would result in no Permit being issued by the Service and no development occurring as currently planned for CSI lands. While this alternative would result in no impact to the environment in the short term, it is not clear what the long term impacts would be as the land would likely be sold and developed under alternate development plans. The establishment and management of the CSICL and its associated benefits to Covered Species would also not occur with this alternative.

The Preferred Alternative would have a smaller development area (21,454 acres) when compared to Alternative 1 (29,002 acres). This smaller amount of development would result in lower levels of impact to biological resources, hydrological resources (including WOUS), air quality, traffic, noise, cultural resources, visual resources, and recreation. Because of the smaller development area, the socioeconomic benefit of the project would be less than Alternative 1.

The Preferred Alternative would have a lesser impact to listed species and includes a larger conservation area than Alternative 1. With the Preferred Alternative, 7,548 acres of leased lands would be conserved in perpetuity to benefit desert tortoise, banded Gila monster and western burrowing owl. The boundary of this conservation area would be

adjusted to about 6,219 acres of previously conserved lands and to create the 13,767-acre CSICL. Mitigation funds collected from development activities would be used to conduct research that would benefit plan implementation and recovery efforts and to implement recovery actions such as habitat restoration, and tortoise head-starting and translocation programs.

The Preferred alternative meets permit issuance criteria as required by section 10(a)(2)(B) of the Act and implementing regulations (50 CFR 13.22 and 17.22). Additionally, the Service has prepared an Intra-Service Biological Opinion, dated October 22, 2008, on the Preferred Alternative and found that it would not jeopardize the threatened desert tortoise or the banded Gila monster and western burrowing owl, if they were to become listed. The Service has also adopted Findings on the proposed Permit dated October 24, 2008. In accordance with the Service's section 7 Biological Opinion, Findings, and this ROD the Service has decided to issue a Permit to the Applicant for a term of 40 years.

OCT 24 2008

Date



Deputy Regional Director
California Nevada Region

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