

Creation of the Desert Reserve and HCP and no highway proposed in HCP

December 16, 2019

As far back as the late 70s, discussions about listing the Mojave desert tortoise (MDT) (*Gopherus agassizii*) as “endangered” were underway.¹ Then in the 80s and early 90s further discussions occurred about the “listing as threatened” which included populations in parts of Utah, Arizona, Nevada and California all are many of which were thought to be declining. In 1990, the U.S. Fish and Wildlife Service (USFWS) listed the MDT as threatened under the Endangered Species Act.²³

Washington County Utah contains some of the best MDT habitat.

Desert tortoise range



The range of the Mojave desert tortoise (*Gopherus agassizii*), which is federally listed as Threatened, is shown by the hatched area. The range of the Sonoran desert tortoise (*Gopherus morafkai*) is indicated by stippling.

The listing as threatened meant that Washington County was federally mandated by the USFS to deal with this listing. A Steering Committee was established in 1990 which included representatives from government agencies, livestock interests, environmental organizations, recreation interests, land developers, and landowners to formulate a plan.⁴ The Steering Committee was charged with creating a plan which would allow development (take of tortoises)

¹ Federal Register / Vol. 44, No. 237 / Friday, December 7, 1979 / Proposed Rules
https://ecos.fws.gov/docs/federal_register/fr368.pdf

² Federal Register / Vol. 45, No. 163 / Wednesday, August 20, 1980 / Rules and Regulations
https://ecos.fws.gov/docs/federal_register/fr460.pdf

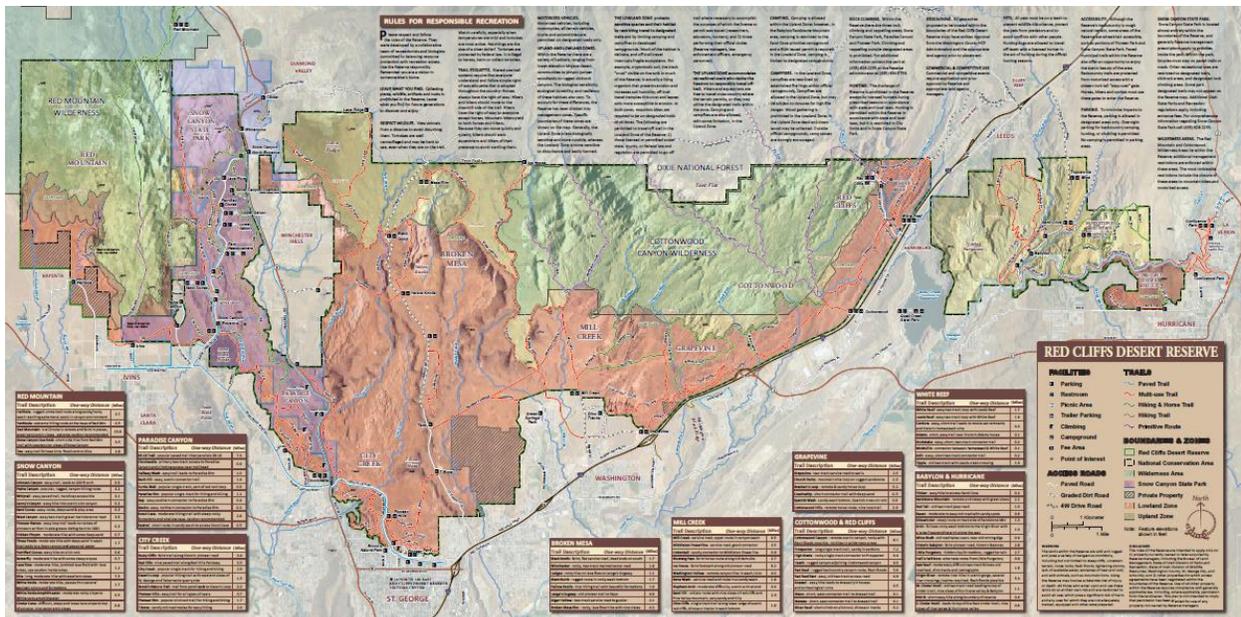
³ Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Mojave Population of the Desert Tortoise
https://ecos.fws.gov/docs/federal_register/fr1673.pdf

⁴ 1995 Habitat Conservation Plan, Washington County
<http://www.redcliffsdesertreserve.com/wp-content/uploads/2006/02/HCP-The-Plan-amended-11-3-09.pdf>

in desert tortoise habitat in fast-growing Washington County Cities, particularly St. George, while increasing the likelihood of recovery of this listed species. Proposed (and final take areas) included high densities of tortoises adjacent to the reserve which were sacrificed in the spirit of obtaining a County-wide solution that would protect the Reserve from development, including new roads such as highways.

In the early 1990s and even earlier Washington County was one of the fastest-growing counties in the country.⁵ Listing the tortoise would curtail much-desired development. Contentious discussions resulted among developers, city governments, the county, ranchers, business interests, biologists and environmentalists.

In spite of this and after many difficult meetings between stakeholders, the county and impacted cities agreed to a Habitat Conservation Plan (HCP) which established the Reserve in 1996 (named Red Cliffs Desert Reserve in or around 1998) to protect the threatened MDT and other animal, fish and plant special status species so growth in Washington County could occur without additional restraint. The HCP also provided a template to preserve scenic hiking and horseback riding areas (and later mountain biking) for the general public. Washington County has the highest density of endangered, threatened, special status species in the state.⁶



A twenty-year HCP was developed to provide direction for the protection and management of the habitat as well as saving critical open space for public use (e.g. hiking and horseback riding etc.)⁷. Understanding what protections HCPs provide is important. Congress passed the Endangered Species Act in 1973 (ESA) recognizing that endangered and threatened species, both

⁵ Washington County

http://ucdp.utah.edu/t_county/washington-county/

⁶ County Lists of Utah's Federally Listed Threatened, Endangered, and Candidate Species

file:///C:/Users/Lisa/Documents/CDF-CSU/HCAC%20and%20HCP/Desert%20tortoise%20history/te_cnty.pdf

⁷ 1995 Habitat Conservation Plan, Washington County

<http://www.redcliffsdesertreserve.com/wp-content/uploads/2006/02/HCP-The-Plan-amended-11-3-09.pdf>

wildlife and plants, “are of esthetic, ecological, educational, historical, recreational, and scientific value.”⁸ Habitat Conservation Plans (HCPs) were established under section 10(a)(1)(B) of the ESA⁹ to provide for partnerships with non-Federal parties to conserve ecosystems ultimately contributing to their recovery. HCPs are planning documents that are required as part of an application for an *incidental permit*, which allows threatened or endangered species to be harmed or moved from one area to another for protection.

The HCP and Reserve were created and agreed to by representatives from the following governmental entities and organizations: Washington County, Snow Canyon State Park, Bureau of Land Management (BLM), USFWS, Utah Department of Natural Resources (UDNR), Utah Division of Wildlife Resources (UDWR), Utah School and Institutional Trust Lands Administration (SITLA), The Nature Conservancy (TNC), and the cities that were considered to have prime tortoise habitat: St. George, Washington City, Ivins, Hurricane, Santa Clara, Rockville, and Springdale.¹⁰ Even before the HCP was officially approved by USFWS several cities and towns signed interlocal agreements for the HCP (see Interlocal Agreement example at end of section). The towns and cities listed below that have interlocal agreements were obtained through the Red Cliffs Reserve office but may not include all:

1993	St. George
1993	Ivins
1993	Rockville
1993	Santa Clara
1993	Washington City
1994	Springdale
2006	LaVerkin
2006	Toquerville

Approximately 61,000 acres of prime tortoise habitat, just north of the city of St. George and adjacent to Snow Canyon State Park, was set aside along with other significant densities adjacent to Washington and Hurricane Cities, in exchange for more than 300,000 acres of land in the county that was freed for development.¹¹ Additionally, zone 4 of the Reserve was planned to be a translocation area where taken tortoises, considered healthy, could be released. The HCP provided direction for how the Reserve would be administered and allowed for access within the reserve for municipal water wells, power lines, and an electric substation. About 12,000 acres were established as “take” area outside the reserve meaning that development could occur there after the area was cleared of tortoises. This “incidental take permit” allowed for removal or accidental death of 1,169 tortoises on private property outside the Reserve as development on those lands occurred.

⁸ Digest of Federal Resource Laws of Interest to the U.S. Fish and Wildlife Service - Endangered Species Act of 1973
<https://www.fws.gov/laws/lawsdigest/esact.html>

⁹ Endangered Species Act – Section 10
<https://www.fws.gov/endangered/laws-policies/section-10.html>

¹⁰ Interlocal agreement
<http://www.redcliffsdesertreserve.com/faq>

¹¹ Frequently Asked Questions about the Reserve
<http://www.redcliffsdesertreserve.com/faq>

Further, the HCP allowed for the expansion of Red Hills Parkway from two to four lanes within the Reserve. The expansion forced the relocation of 16 desert tortoises and destroyed some habitat in a dense, critical environment. This has been confused by local officials to mean that the NC was included in the HCP, *which it was not*; only the expansion of the Red Hills Parkway was included in the HCP and that is why there is *NO* mention of a NC in the HCP document which all the cities, agencies and the County *extensively* reviewed and agree to. The road which was expanded was an *existing* road – Skyline Drive – which is allowed by the HCP. In short, the proposed NC would be a new road (freeway), which is not currently allowed (nor was it ever planned to be in the reserve). The accuracy of these statements has been independently confirmed with the first Administrator, Dr. Bill Mader (pers. communication), who co-authored the HCP and signed the application for the USFWS take permit on December 7, 1995. Indeed, an excerpt from page 127 of the 1995 Habitat Conservation Plan states it most clearly: “The **largest block of habitat which will remain roadless is within Zone 3** of the reserve which is between the Cottonwood Road, Interstate 15, the Dixie National Forest, and Red Cliffs, an area of approximately 28,147 acres.” Grazing permits were also purchased by Dr. Mader on behalf of the Reserve in zone 3 to provide further protection because the area was considered so critical to recovery.

To understand what the HCP put forth here are a few "road" related excerpts from the HCP with **emphasis** added.

Within or adjacent to populated areas of Washington County, it is speculated that desert tortoise populations have declined due to **road kills**, predation by dogs, and degradation of habitat, but the extent of URTD (*Upper Respiratory Tract Disease*) in Washington County remains unclear.¹²

- Since many areas have recently experienced the increasing effects of human activity, such as livestock grazing, **roads**, OHV use, and other urban activities, the ecological value of the area has been reduced from its “pristine” condition.¹³
- Thus in reserved areas impacted by grazing, **roads**, OHV trails and other disturbances, enhancement can improve the chances for a species' survival in perpetuity.¹⁴
- Blocks of habitat that are **roadless** or otherwise inaccessible to humans are better than roaded and accessible habitat blocks.¹⁵
- The largest block of habitat which will remain **roadless** is within Zone 3 of the reserve which is between the Cottonwood Road, Interstate 15, the Dixie National Forest, and Red Cliffs, an area of approximately 28,147 acres. The next largest block is also within

¹² <http://www.redcliffsdesertreserve.com/wp-content/uploads/2006/02/HCP-The-Plan-amended-11-3-09.pdf> (page 14)

¹³ HCP (page 18)

¹⁴ HCP (page 21)

¹⁵ HCP (page 124)

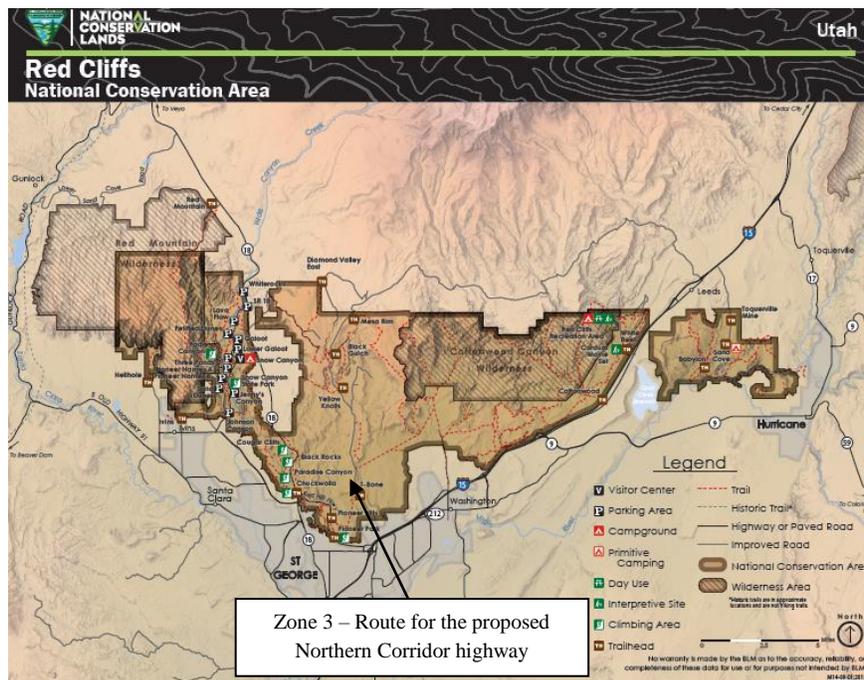
Zone 3, and it is between Highway 18 and the Cottonwood Road north of Skyline Drive, an area of approximately 10,155 acres.¹⁶

Zone 3 noted above is the specific zone through which local leaders currently are planning their preferred route. To understand this better, some details about the reserve's zones are helpful. From the original 1995 HCP:

The proposed reserve is divided into five zones based on management goals.¹⁷

- The five zones are described, parcel information is identified, and management recommendations are illustrated in the following paragraphs, figures, and tables. In all management zones, free-roaming dogs or feral animals would not be allowed in any of the reserve areas.¹⁸
- Zone 3 covers the area from Highway 18 on the west to Interstate 15 on the east.¹⁹
- This area entails 38,541 acres, of which 23,571 are managed by the BLM and 9,927 are managed by the Division of State Lands and Forestry.²⁰

In 2009 as part of the Omnibus Public Land Management Act (OPLMA)²¹, the Red Cliffs National Conservation Area was established. The RCNCA covers 45,000 acres of the original 61,000-acre Red Cliffs Desert Reserve. When RCNCA was established by OPLMA the HCP's management protocols included management in the new RCNCA.



¹⁶ HCP (page 127)

¹⁷ HCP (page 27)

¹⁸ HCP (page 27)

¹⁹ HCP (page 32)

²⁰ HCP (page 32)

²¹ <https://www.congress.gov/bill/111th-congress/senate-bill/22>

INTERLOCAL AGREEMENT

COPY

(29)
HCP
agreed

AGREEMENT made this 9th day of December, 1993, by and between Washington County, a political subdivision of the State of Utah and the City of St. George, a Utah municipal corporation.

R E C I T A L S :

WHEREAS, pursuant to the Federal Endangered Species Act, many threatened and endangered species have been identified in Washington County; and

WHEREAS, there is a potential habitat of such species in most areas of Washington County; and

WHEREAS, the City of St. George is located in an area where endangered species, and in particular, the desert tortoise, may have habitat; and

WHEREAS, the Washington County Commission has established a Habitat Conservation Plan Steering Committee to prepare and present a Habitat Conservation Plan ("HCP") to the Federal Fish & Wildlife Service which the parties believe will provide for the preservation of the desert tortoise and other endangered species, while at the same time allowing development to go forward; and

WHEREAS, the parties desire to establish a mechanism to support the HCP by resolution of conflicts which occur between various resources of the community and provisions of the Endangered Species Act ("ESA");

NOW, THEREFORE, in consideration of the mutual covenants made herein, the parties agree as follows:

1. The Habitat Conservation Plan Steering Committee has or will establish a HCP for Washington County. The HCP has been or will be submitted to the Federal Fish & Wildlife Service with a request for adoption by it. Certain funding has been obtained in order to finance the preparation and implementation of the HCP; however, it is necessary that additional substantial funding be secured on a regular basis in order to finance ongoing efforts to comply with the Plan or other provisions of the ESA. Accordingly, the City of St. George agrees to participate in the funding by collecting, in connection with the issuance of a final subdivision plat (for any form of subdivision, including condominium and planned unit development), the sum of \$250 per acre, to be remitted to Washington County for use in connection with the Plan and related Endangered Species issues. Further, the City of St. George agrees to seek the adoption of an ordinance collecting an additional fee with the issuance of each building permit of a new residential, commercial or industrial structure equivalent to .02% of the estimated construction cost of the work to be performed under the permit. The form of ordinance the City of St. George will seek to adopt at a public meeting is attached hereto as Exhibit "A".

2. Revenues received in the manner provided herein shall be reported and submitted to Washington County on a quarterly basis, as provided in Exhibit "A".

3. Washington County agrees to continue with its efforts through the Steering Committee to have the HCP adopted and, at an

appropriate point, to establish a permanent Endangered Species Planning Board to oversee implementation of the HCP, as it may be adopted, subject to the approval of the Washington County Commission.

4. The parties hereto further understand that the fees provided for herein are based upon estimates of future needs of the HCP and related expenses of compliance with the ESA, together with estimates of future growth of the County. Should these elements or needs change, the parties agree to meet from time to time to assess and evaluate such financial needs with the understanding that changes in the funding formula as provided for in the ordinance referred to above may be sought through mutual agreement and appropriate public hearing. The parties agree to deal with each other in good faith to provide the necessary funding to complete the HCP, it being understood that without the required funding the HCP and other Endangered Species efforts may fail.

5. Washington County has passed an ordinance mandating a funding mechanism for all land subdivided, and/or building permit fees in unincorporated areas, identical to that set forth in Par. 1 hereof. The parties understand that all cities and towns in Washington County affected by the Endangered Species Act will be asked to participate in this program, and Washington County agrees to provide its best efforts to obtain the cooperation of the other cities and towns in support of the HCP.

6. The parties understand that the HCP shall stay in effect for a period of twenty (20) years after the date of its adoption.

In the event that the HCP shall be dissolved for any reason and funding remains in the HCP, and there is no further need for funds in connection with the HCP, the same shall be returned to the cities and towns in the same proportion in which the funds were given in the last fiscal year prior to the dissolution of the HCP.

7. Each city and town executing an Interlocal Agreement of this type agrees to abide by the terms and conditions of the HCP, particularly where property within the municipality is directly affected, and they agree to work through the Endangered Species Advisory Board and the Washington County Commission to ensure that each such party satisfactorily assists in propagation of the desert tortoise species, as well as all other threatened or endangered species covered by the HCP. Each city and town agrees to require developers whose property borders the Habitat Conservation Plan Preserve to build appropriate fences/walls as may be approved by the HCP to assist in protecting species protected under the HCP.

8. Each city and town in the County has reviewed a copy of the proposed HCP and hereby agrees to support it as being necessary and appropriate for the benefit of its citizens, and each city and town further agrees to notify the Division of Fish & Wildlife and other appropriate agencies of their support.

9. The parties hereto further acknowledge that inasmuch as the HCP has not been formally accepted by the Division of Fish & Wildlife, and inasmuch as it is possible that such acceptance will not be forthcoming, or requirements will be placed on the Plan as a condition of obtaining approval which are unacceptable, the funds

to be generated through this program may be retained pending further negotiation and/or litigation with the goal of arriving at an acceptable HCP that meets the needs of both the parties hereto and the requirements of the Division of Fish & Wildlife. In such event funds may be expended for the employment of outside consultants or legal counsel if such expenditure is approved by all parties who may be affected through having executed agreements of this type. Notwithstanding the above, in the event that there shall be negotiation and changes required from time to time in order to arrive at an acceptable plan, each city and town in Washington County agrees to abide by the decision of the Washington County Commission after receipt of recommendation from the Habitat Conservation Plan Steering Committee, or Endangered Species Planning Board (as the case may be), provided representation on such boards includes an elected official recommended to the Commission by the Washington County Mayor's Association and a citizen-at-large from the affected community in Washington County having the largest population and recommended by the governing body of such community. Washington County agrees that all funds received hereunder shall be held in trust for use in the manner provided herein, with the Washington County Commission to have oversight responsibility for formation of committees and boards, administration of the HCP, and the collection and disbursement of funds hereunder.

DATED this 9th day of December, 1993.