

**BRINGING THE FORCES OF A COMMUNITY TO CONSENSUS:
A CASE STUDY OF THE CLARK COUNTY
DESERT CONSERVATION PROGRAM**

by

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ABSTRACT

In 1989 the Desert Tortoise was listed as an endangered species under the federal Endangered Species Act (ESA) of 1973. Since the Desert Tortoise inhabited the majority of land in Clark County, this listing presented significant concerns.

Clark County was encountering impressive growth and the ability to continue to develop vacant land was crucial. The federal government threatened to halt all development in Clark County if a compromise could not be reached. Clark County formed the Clark County Desert Conservation Program (DCP) and compiled an Implementation and Monitoring Committee (IMC) consisting of representatives of the cities, interest groups and other government entities. Under the administration of Clark County, this committee developed a consensus based process to solve the conflicts between continued development and Desert Tortoise conservation. This process was the most important factor contributing to the success of the Clark County DCP.

A mitigation fee was imposed on all new development in Clark County to fund the program. In 1997, members of the IMC used their unique consensus building public process to determine that it would be beneficial to broaden habitat protection to encompass other species in the area. The United States Fish & Wildlife Service (USFWS) had begun accepting pro-active habitat conservation plans (HCPs) where species could be protected and conserved prior to their listing. The IMC developed a Multiple Species Habitat Conservation Plan (MSHCP) which is awaiting an incidental take permit from the USFWS.

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**Bringing the Forces of a Community to Consensus:
A Case Study of The Clark County Desert Conservation Program**

CHAPTER 1: INTRODUCTION

Overview

In response to the listing of the Desert Tortoise under the federal Endangered Species Act of 1973, Clark County founded the Clark County Desert Conservation Program (DCP). The program was, and continues to be, managed through a consensus based process. This process is the most important component of the DCP.

Since the listing, Clark County and the DCP Implementation and Monitoring Committee IMC have been working diligently at meeting the needs of the community while implementing the conservation measures approved by the United States Fish and Wildlife Service (USFWS) to protect the Desert Tortoise and other species in Clark County.

The Clark County Desert Conservation Program is administered by Clark County, yet it is implemented and monitored by a public committee. This committee continues to learn and grow as a team. The consensus based process guiding this committee allows for input from all interested stakeholders and members of the public. Representatives on the committee include those from all federal, state and local land management agencies, interest groups, private land owners and various members of the public. The wide

diversity of representatives helps the committee make good and informed decisions that are in the best interest of most of the people. The committee works to promote a balance between environmental integrity and economic prosperity in Clark County.

The Beginning

The Las Vegas Valley experienced steady growth from the 1930s through the 1960s. In the 1960s, growth began to accelerate. In the 1980s, growth in the valley further accelerated. By 1997 between 3,000 and 6,000 new residents were moving to the valley every month. Appendix A outlines growth in the Las Vegas Valley over the past 70 years. Clark County enjoyed rapid growth with few hassles to disrupt the movement. However, on August 4, 1989, the Desert Tortoise was listed as an endangered species under the federal Endangered Species Act of 1973. This action threatened the economic prosperity and environmental integrity of Clark County. Because of this listing all future development in the valley was now in question. It is expected that by the year 2020, between 2.3 and 2.5 million people will live in the Las Vegas area (Clark County Department of Comprehensive Planning). The listing had the potential to drastically impact that prediction and harm Clark County's economic future. Appendix B shows and documents projected growth in the valley through the year 2020.

In response to the listing, the Clark County DCP (the program) and DCP IMC (the committee) were both formed to establish a plan that would allow for provide for protection and conservation of the Desert Tortoise and its habitat in the Las Vegas

Valley. The program emerged after the listing of the Desert Tortoise. The listing generated anger, fear and discontent in people that was loudly voiced through the local newspaper articles and calls to government officials. Litigation was first sought to combat the issue and when it failed, Clark County initiated the program. People that felt strongly about the issue and/or were affected by it came together to address the listing. They formed the IMC in 1989. Consensus building was not a term used in 1989 to describe the process. It took many years for the program to develop into one which was productive, accommodating, and consensus driven.

Concerned citizens of the Las Vegas community stepped forward to create the DCP IMC. Landowners feared the imposition of federal regulations, miners feared losing their livelihoods and environmentalists were concerned that the Desert Tortoise and other species receive maximum protection under the act. Those who “hold” a “stake” in the outcome are called stakeholders. These stakeholders participated in the process along with representatives from local land management agencies, incorporated areas of Clark County and the USFWS. Due to the diverse interests of the participants and the potential magnitude of the program, public participation was essential. Some members feared they would have insufficient power over decisions made by the IMC so they demanded a consensus driven process where decisions would not be made if any person strongly opposed it. Clark County, which was at the helm of the program, realized that any plans that did not have the full support of the committee would not have the full support of the group and would not succeed.

The IMC moved forward with the development and implementation of a Short-Term Habitat Conservation Plan (STHCP) in 1990 and a Long Term Desert Conservation Plan in 1995. These plans, outlining conservation measures for the mitigation of the Desert Tortoise, were approved by the USFWS. The plans and the implementation of the outlined conservation measures allowed development in Clark County to continue without federal interference.

Purpose

The purpose of this study is to demonstrate that consensus building is the key to the success of the Clark County DCP. This paper will explain and examine the process used by the Clark County DCP IMC in reaching consensus. The benefits and drawbacks of the consensus based process of the Clark County DCP will be addressed and this document will explain why it worked. This paper will explain why the existing public consensus process is critical to the success of the DCP and will discuss the evolution and outcomes of the process. A definition of consensus as used in a consensus based process will be given in this paper and the stakeholders and the interested participants will be discussed.

Throughout the years, many challenging issues pertaining to habitat conservation planning within Clark County have arisen and formidable decisions have been made by the committee as a whole on a consensus basis. This study will explain the culture, interaction and practices of this public environmental committee created under specific

circumstances for a given purpose. The specific circumstances are those resulting from the listing of the Desert Tortoise in 1989 by the USFWS (also referred to as the Service) threatening all development in Clark County, Nevada. The given purpose is compliance with the act which resulted in the development and implementation of a successful habitat conservation program which provides protection for the Desert Tortoise and ensures its survivability in the wild.

The Clark County Desert Conservation Program and the Clark County Desert Conservation Plan are both abbreviated with the acronym DCP. The "plan" generally refers to the tangible written document and the "program" refers to activities governed by the plan.

Chapter one introduces consensus building and public participation. It discusses the initiation and evolution of the DCP and defines the purposes of this paper. Chapter two attributes resources of this paper and chapter three discusses the researchers role. Chapter three will highlight the importance of such processes and associated drawbacks and pitfalls. Chapter four defines limitations and chapter five expands on the importance of this case study. Chapter six is a literature review highlighting litigation, political and consensus approaches to solving community problems. Chapter seven further discusses consensus building and its history. Chapter eight presents information that is important to the DCP yet not directly tied to consensus building. Chapter eight is very important in defining the complicated situations, issues and challenges of the DCP. It also documents the tortoise as a spiritual creature and an important animal throughout

history. Chapter nine overviews the process and the program. Chapter ten continues to define the DCP with relation to three essential components: the stakeholders, the administration of the program, and the duration of the program. And, chapter eleven summarized the paper.

This paper will explain why consensus building for the DCP is important. It will focus on the uniqueness of the Clark County DCP and correlate the consensus building component with the success of the program. The success of the DCP hinged on full public participation. Discussion will address particular factors that were present and available to the Clark County DCP. Some of those factors are the biology and distribution of the Desert Tortoise; availability of a funding mechanism, timing, the rate of growth in the Las Vegas Valley; the large amount of federally owned and managed lands in the valley; and a wide realm of interested participants. The analysis of this information will define why this consensus processes was successful.

Many factors are important to successful consensus building. Some of these factors include involving the affected parties (stakeholders), having a diverse base of participants, retaining an effective facilitator to oversee and direct the process, and having properly informed participants. If these key factors are not present, consensus will not result in the best decision.

CHAPTER 2: METHODOLOGY

This case study concerning the Clark County DCP will involve the gathering of information in the form of literature, interviews and observation. The Clark County DCP IMC is a citizen participatory group consisting of representatives from more than 30 entities and organizations. Although most representatives are local, some travel from Reno, California and Wyoming to participate in the process. This committee makes all major decisions pertaining to the Clark County DCP. The committee works on a consensus basis. There is no voting. The issues are discussed, argued and adapted until a consensus is reached. Due to conflicting needs, demands and ideas of the members, the committee has developed a unique forum. This forum is open to any member of the public and each and every proposal is evaluated similarly by the committee with uniform scrutiny.

This case study will examine the components of the committee. The data for this study will be based on the experiences of the individuals involved in the process of

implementing and monitoring the Clark County DCP and will also include pertinent information obtained from journal articles, books, lectures, and the Internet.

Intensive data was accumulated by conducting numerous formal and informal interviews from 1995 to 2000. Interviews occurred in person, on the phone, via internet and during meetings. The creation of this paper draws upon countless interviews, consultations, meetings, and conversations that occurred between the researcher and people involved in the program.

Information was also collected from meetings of the IMC and other related committees that were held between one and three times per month from 1995 to 2000. The researcher attended and participated in a majority of those meetings. When the researcher was unable to attend the scheduled meetings, she obtained and reviewed meeting documentation.

Information for this paper was obtained from the above listed sources as well as by reviewing various documents, observing committee meetings, examining the interpersonal relationships of members of the committee and accumulating personal experience related to the program.

CHAPTER 3: THE ROLE OF THE RESEARCHER

The researcher is a participant in the Clark County DCP as a Clark County employee. She has observed the interaction and actions of the committee members since September of 1995 and has heard re-enactments of the history of the committee on many occasions. The Clark County DCP IMC members often share controversial issues and the details of prior debates to explain current circumstances pertaining to the program. The researcher is a Clark County employee who has been employed for the purpose of assisting in the facilitation of the Clark County DCP process, ensuring the success of the plan and preserving the existence of the Section 10(a)1(B) permit. Since the DCP is administered by Clark County and the researcher is employed by the Clark County DCP, biases may exist in favor of the actions of Clark County and the DCP.

Many participants in the process and other associated individuals have credited the openness of the forum for the success of the plan. Clark County and the researcher acknowledge that the consensus building process used for the DCP has been the most critical element in developing and implementing a successful habitat conservation plan.

CHAPTER 4: DELIMITATIONS AND LIMITATIONS

Limitations of the study will be unshared personal and professional experiences of the individuals involved in the process. These individuals will mainly be members of the committee; however, may at times extend beyond members of the Clark County DCP IMC.

Delimitations will be information not recorded in the standard minutes and documents pertaining to the Clark County DCP. It was necessary to interview individuals regarding their experiences with the program and delimitations will also be those experiences individuals involved in the program did not wish to share, did not recall vividly or were unable to ensure were accurate.

CHAPTER 5: SIGNIFICANCE OF THE STUDY

Communities are often faced with challenges that affect a wide range of individuals within the community. How to resolve these issues in an amicable fashion with the maximum possible benefits to all is complicated. This study will provide insight on the process of resolving complicated matters by examining a specific committee and its operations. The specific committee, the Clark County DCP IMC, has developed a unique way of bringing all of the interested parties and affected stakeholders to the table and negotiating a problem until a consensus is reached. Most of the members have participated in the committee process since 1990. The members have developed unique trust in each other and have formed uniquely strong relationships. These relationships will be analyzed in this case study to provide insight to further understanding of the program's success. How did a committee with diverse interests and conflicting goals develop a unified program? Why did it succeed? These questions will be answered in this case study.

CHAPTER 6: LITERATURE REVIEW, PUBLIC PARTICIPATION

Public participation has been mushrooming since the 1960s. A variety of literature exists on various types of public participation and the successes and disappointments of public involvement. For this study, I will focus on types of public involvement used in habitat conservation planning pertaining to the federal ESA of 1973.

The literature pertaining to public participation is divided by the way community leaders differ in their handling of public opinions. This literature pertaining to citizen advisory groups and public participation covers three specific areas which will be categorized in this case study as: legal, political and consensus building. These three different avenues of addressing a public problem have many intertwining threads.

Litigation

Litigation is an expensive route to solve habitat conservation dilemmas. Public participation in this arena is minimal. Resources are spent debating who is right rather than accommodating for species and habitat loss. Environmentalists and developers often spend years struggling over whether species are near extinction, considerable habitat is actually being destroyed, and mitigation should occur. During this time, they often avoid or sidestep conservation and mitigation measures.

In 1994, the Amphitheater School District in Arizona purchased a 73 acre site in Tucson, Arizona for a new high school. In 1997, the USFWS listed the pygmy-owl as an

endangered species. The pygmy-owl was present on the school district's new site. Throughout 1997 and 1998, the school district made plans to develop the site and applied for a permit. The USFWS initiated a consultation which would assess the impacts of the proposed project. The school district withdrew its permit and began redesigning the project so that the impact to species and waterways would be reduced. In 1999 an environmental organization, the Defenders of Wildlife, filed a law suit seeking an injunction against the school district to prevent any building on the site. In 1999, the injunction was denied. As of December, 1999, the Amphitheater has not developed the site. Thousands of dollars have been spent in litigation and no measures to benefit the pigmy-owl have been taken. Furthermore, the school district has delayed the construction of a new high school causing overcrowding in other schools (Anderson, 1999). This example has not benefitted species and has hurt the community's expansion.

In the last decade, the legal route has been popular in California. Due to strict enforcement of the federal ESA combined with a stringent State of California ESA and the lack of a successful public forum in which to resolve these issues, landowners and interest groups have felt time and time again that they had no options but to sue the federal government and each other. The federal government responded, in many instances, by taking petitioners back to court on the same or similar issues. Some victories were won by the federal government and some by landowners and interest groups; however, the costs were very high: a loss of trust, intentional destruction of habitat and species and millions of dollars spent on litigation (U.C. Riverside, 1987).

In the Clark County habitat conservation planning process, litigation was attempted at the onset of the listing of the Desert Tortoise. The Southern Nevada Homebuilders Association, the City of Las Vegas, and the State of Nevada sued the Department of the Interior to have the Desert Tortoise de-listed. However, this method was attempted twice with no success and it was then obvious that the only viable alternative was to comply with the provisions of the ESA of 1973. Therefore, litigation was not pursued. Subsequently, other methods were explored and implemented (Reilly, 1998).

Litigation does not balance the interests of parties. It does not build a sense of community understanding among the parties or programs that will benefit the community. Litigation does result in some “wins” for species and some “wins” for citizens, but preservation of species and the rights of stakeholders are often put on hold while litigation ensues. Money that could be used to benefit species is spent on litigation.

Political

The term “political process” as used in this paper is a process where the parties lobby to persuade legislators to support and pass bills in favor of their cause. This approach builds anger, hostility and complicated power struggles. Charles Mathesian documents many accounts of bitter political struggles before the city councils of Atlanta, Dallas, Cedar Rapids, and Austin. Shouting, threatening and even murders have taken place as the result of political debates. He states that as a result of political struggles

“courtesy, respect and decorum have been replaced by a new ethic of hostility, antagonism and mistrust” (Mathesian, 1997).

The political process is one where the majority vote rules. A bill gets passed when it receives support of the majority of the body. Within a forum that makes decisions based on a vote, anywhere from 1 percent to 49 percent of the group may leave the table feeling cheated. If a participant feels cheated, “buy in” will not take place. “Buy-in” is when the participants of a group process are vested in the process and feel strongly about the issue. It occurs when the participants support the direction and actions of the group. “Buy-in” is very important to a habitat conservation planning process. Faith in the decisions and commitment to actions will not take place if “buy-in” is not present. Furthermore, relationships among group members may be harmed and the decision will not be supported by the entire group which rendered the decision. Political processes fall into this category where decisions are based on a vote. The legislative body “votes” on the issue. The outcome may not have “buy-in” from the majority of the community or the stakeholders.

Community decisions made on a vote basis are more likely to be opposed during the implementation of the action. In California, in the 1980's farmers were found burning fields to destroy any evidence of sensitive species rather than participate in habitat conservation plans that they did not support (University of California, Riverside, 1997).

Although the political forefront interfaces with other ways of bartering, some journal articles focus on the political challenges and political forces that pull citizen

participatory groups toward decisions. The political concept is one in which the parties struggle to have legislation passed in their favor. Often the wealthiest or most politically persuasive side will ultimately see their bills passed. Broad based benefits and species protection may not be realized in this process.

Consensus Building

The third approach, consensus building, is the focus of this case study. It is within a consensus based process that all opinions can be expressed, opposed, debated and argued freely. Consensus based and public participation processes are becoming a preferred way to settle disputes regarding environmental issues. “State officials recognize the need to enlist the cooperation of landowners, industries, and environmentalists in efforts to protect the environment and conserve natural resources” (Policy Consensus Initiative, 1999). Regarding public participation processes, “there is no cookie cutter approach to how to use them” (Policy Consensus Initiative, 1999). The right combination of circumstances, participants, issues and funding allow a consensus building process to be created to make informed decisions. “These approaches help ensure that the best available information is taken into account by all parties as part of the decision-making process” (Policy Consensus Initiative, 1999). Public consensus building has many monetary, political, environmental and personal benefits.

Citizen participatory groups require fundamental components to be successful. Some of those components are the same as components necessary for effective

interpersonal communication and primary human relationships. “In any relationship, if one party wins and another loses continually, the relationship will become adversarial and will ultimately deteriorate” (Lundy, 1992). Public participation processes are a type of relationship. All participants develop a unique relationship with the process and with each other. Within a public participation process, factors that contribute to healthy interpersonal relationships exist. These factors are:

- mutual trust and understanding
- agreed-upon expectations
- awareness of the potential benefits to each party
- commitments to make them work
- open feedback regarding feelings
- anticipation of ways to resolve any potential differences
(Lundy, 1992)

Many authors have identified, defined and elaborated upon various factors that are necessary for successful collaborative forums. Michael Winer and Karen Ray outlined and expanded upon “Nineteen factors influencing successful collaborations” which were originally identified by Mattessich, and Monsey (1992). This list of factors is categorized by factors related to: the environment, membership characteristics, process/structure, communication, purpose, and resources. Included in this list are factors such as history of collaboration, ability to compromise, shared vision, unique purpose and sufficient funds. These factors will be discussed more in Chapter 11 of this paper. See Appendix C for complete listing of these factors (Winer & Ray, 1997)

Some additional components deemed necessary for successful public participation processes include: motivations, problems, interests, relevant stakeholders, a community's

capacity to change and collaborative initiative (Chrislip & Larson, 1994). A consensus building process that does not possess a majority of these components will not ensue.

The goal of consensus building is to include all the stakeholders and balance those interests. It is further understood within such a process that “give and take” is an essential component for success. Ron Marlow is a member of the IMC. He stated that during the consensus process of the Clark County DCP, “everyone said ouch a little, but no one got hurt too bad” (Marlow, personal communication, 1997). Not everyone in a consensus process can have all their demands met. Most often, the participants focus on what they did not get rather than what they did receive. It is very important to keep sight of the overall gains. A goal of this type of process is to reach some sort of balance or equilibrium. The importance of balancing the interest of the stakeholders was noted by Steve Rigazio, vice president of finance and CFO for Nevada Power Company. During the process of restructuring Nevada Power and the passage of Senate Bill 438 in 1999, Mr. Rigazio stated “the challenge was to balance the interests of all parties--customers, shareholders, and employees--and I think we accomplished that” (Nevada Power, 1999).

Due to many factors including some circumstances that are uncontrollable, not all processes lend themselves to consensus building. “There is no ‘model’ collaborative process that will work on all issues in every community. There is no one right answer” (Chrislip & Larson, 1994).

Consensus processes have drawbacks and pitfalls. There are beneficial components which are thoroughly investigated in this paper. However, there are also

disadvantages. Public processes can be very expensive. The Southern Nevada Strategic Planning Authority was directed by the State of Nevada to convene during 1997 and 1998 for the purpose of solving problems attributed to growth and development. This required many resources including officials' time to develop proposals, attend meetings and discuss options. Some citizens and officials argued that the results were not worth the time and resources spent on the process (Anonymous, personal communication, 1998). Furthermore, some individuals may be "stepped on" while others advance through a consensus process. Consensus doesn't mean equal treatment. It means the participants convene until all are satisfied with the decisions at hand. Those individuals with fewer resources and less time available to participate will have less influence in the process. Throughout public processes, some interests may be advanced at the expense of others; there is always a weighing of costs vs. benefits when working with a group. The objectives must be determined beforehand to maximize benefits and minimize costs (Skjei, 1973).

When a citizen participatory group is working within a collaborative setting, the costs, benefits, objectives and desired results are often determined by the group, which can create bonding among the members early in the process. Bryson & Crosby determined that the process of searching for solutions in forums results in added benefits such as avoiding usual organizational tendencies, learning patterns of practice and re-conceptualizing which is necessary for major changes (Bryson & Crosby, 1992).

The consensus building model requires a new way of thinking, adapting and making decisions. It requires understanding the essential components that are necessary for successful collaborative processes, the existence of many of those components and the ability to implement the process. “Collaboration is a process that gets people to work together in new ways. The process does not end but spawns new collaborative ventures. Collaboration becomes a continuing phenomenon with a wide range of results that empower people and systems to change” (Winer & Ray, 1996).

There are a multitude of benefits of collaboration and public consensus processes. “These approaches help ensure that the best available information is taken into account by all parties, in part because working relationships develop, resulting in better communication” (Policy Consensus Initiative, 1999). Consensus building has been recognized by Clark County as the best way to solve environmental disputes. It has been used since 1990 for the development and implementation of the DCP. Consensus building, its essential components, and the uniqueness of the Clark County DCP will be explored in this case study.

Synopsis of Literature Review

The three approaches addressed in the previous literature review have intertwining threads. These common threads are: relationships, communication, research, practices, consistency, individual values and needs, public education, perceptions, opinions, efficiency, trust and power struggles. Litigation and political

approaches have some successful products but lend to affiliated negative consequences.

The approach of consensus building attempts to maximize the positive results by including the public in the decision making process.

However, consensus building has its limitations. It cannot be implemented in all situations and it is not always supported. Furthermore, the process is sometimes criticized as being time consuming and expensive with no guarantee that an ultimate agreement will be reached (Porter & Salvesen, 1995).

CHAPTER 7: PUBLIC CONSENSUS BUILDING

History of Consensus Building

Team building, cooperation, collaboration, community participation and consensus building are phrases that have been coined and widely used within the last decade. All these terms refer to people working together to solve common problems that they may be unable to solve individually. These terms involve various degrees of formality and cooperation (Reilly, 2000). “*Collaboration* has become the new buzz word!...True collaboration means doing things very differently than we’ve done them before” (Winer & Ray, 1996). Collaboration brings people together and uses member participation to find solutions and solve problems. This is in contrast to prior practices of making community decisions among a small group of representatives.

Earlier in American history, the public often struggled to have a voice in government decisions. American government subsequently evolved with many checks and balances intended to control the power of the officials. The people of the United States did not have significant input in governmental decision making until the late 1900s.

In the late 1800s, many governmental entities of America attempted to be fair to the people through structure and control. Public participation during this time was not a concern. The people of the United States were struggling for education, better wages, fair working conditions and adequate housing. The majority of Americans were not

directly involved in government decision making. They did not have extensive education, time or interest at the turn of the century to be overly involved in public processes. Furthermore, since communication devices were few and had limited capabilities, regularly involving the public in governmental decisions was an insurmountable task in the late 1800s. However, government did function very well within the confines of bureaucracy and the technological infancy of the times. “With their hierarchical authority and functional specialization, they made possible the efficient undertaking of large, complex tasks” (Osborne & Gaebler, 1992).

Prior to the turn of the twentieth century, bureaucratic government became abused. Immigration was high and the population was increasing very quickly. Bureaucrats learned that they had the power to make deals with people that could benefit them personally as well as professionally. Among other barter, they traded immigrant votes for favors. Public opposition to this abuse of power resulted in the progressive movement around the time of the turn of the twentieth century. The progressive reform created a system that was inundated with rules (Osborne & Gaebler, 1992).

“The progressives created civil service systems, with written exams, lockstep pay scales, and protection from arbitrary hiring or dismissal . . . they split up management functions, took appointments to important offices away from mayors and governors, created separately elected clerks, judges, even sheriffs . . . In making it difficult to steal the public’s money, we made it impossible to *manage* the public’s money” (Osborne & Gaebler, 1992).

Government processes became similar to a spider web with all their restrictions. In the early 1900s, decisions pertaining to community actions were sometimes made by

high-ranking officials and at other times they were conjugated from government policies and restrictions with minimum influence from citizens.

Governmental leaders maintained most of the control over decision making processes throughout most of the twentieth century. In the 1960s and 1970s, town boards and community groups evolved and began to vote on issues. Open meeting laws were established. These laws provided for public participation. However, in most cases, the majority vote ruled leaving many people unsatisfied. Making decisions based on a vote seemed to be the best way for members of a community to decide on an issue. This process left some participants displeased with the process and outcomes. If a person opposed a specific action, and the action was approved over his or her objection, the person was not likely to support the resulting outcome.

Public participation throughout the establishment of the United States has seen many changes. Due to the changing economics, the onset of wars and the overall condition of the Country, many people in America spent their time concentrating on issues other than government. Their own survival and well being was often very challenging and being involved in government decisions took a back seat. The people of America matured as government in America evolved. The needs and capabilities of government progressed as the people progressed with increased education levels and expanded skills. The move toward increased desire to participate in government decisions was inevitable.

The Importance of Public Participation

In the last decade of the twentieth century, American government began to respond to citizen concerns and community needs in a very different way. Public participation and consensus building has become very important to the development of American government.

“City management professionals have identified four changes that have occurred over the past 10 years in their roles, responsibilities, and values. First, community building has become part of the city management professional’s role and responsibility. Second, managers are increasingly expected to facilitate participation and representation, and to develop partnerships. Third, there is less adherence to the council-manager plan as the ‘one best form’ of government. And last, the manager’s internal administrative role has become more process oriented. At a time when the value of government is being questioned, these changes provide direction for strengthening the local government professional’s legitimacy in the eyes of citizens.” (Nalbandian, 1999)

Public participation has become a necessary component of government decisions affecting the community. The future of professional administrators will involve community building and collective processes (Nalbandian, 1999).

Support for public participation is not limited to governmental processes. In the last decade it has been found within many organizations. Johns Hopkins University

advertises “partnership and collaboration have become the watchwords of progress in widely divergent fields in recent years, but nowhere are they more important than in the solution of public problems” (Johns Hopkins University, 1999). Other organizations advertise with terms such as: teamwork; partners; and cooperation.

Public participation and community involvement is crucial to the success of the Clark County DCP. In a recent national study, the Clark County DCP/HCP was ranked number one in stakeholder satisfaction. “The Clark County HCP for the Desert Tortoise effectively managed several aspects of public participation. As a result, the HCP enjoys wide support in this growing area of Nevada . . . Participant continuity also facilitated the success of the HCP by building trust and understanding” (Anderson & Yaffee, 1998). The study concludes that satisfied stakeholders, such as those in the Clark County DCP, are more likely to adhere to a plan that protects affected species and balances public and private interests. (Anderson & Yaffee, 1998)

Drawbacks and Pitfalls

Developing, implementing and adhering to a public participation process is extremely challenging. A public process involves participation from many different individuals who have various motives, needs, and purposes. People often respond to events with different attitudes and emotions. Group members may express opposing concerns and threaten to stifle the process. Working within a public committee requires

patience. Continual adjustments must be made in response to new members, changing events or new information.

Managing a consensus based process is exceptionally difficult. The individuals involved in the process and the governments making the laws also have many different aspirations pertaining to species conservation. Having the ability to allow many different desires to be voiced and worked into the solutions can make or break the process.

Consensus has its limitations and must be defined in each particular situation. “Consensus isn’t right for every team” (Dee, 1995). When dealing with a large, vested public group, such as the Clark County DCP, consensus does not mean 100% agreement on every issue. Sometimes people may disagree on minor issues that are not critical to the overall process. In these instances, absolute consensus is not necessary. Paul Selzer, facilitator of the Clark County DCP IMC has extensive experience working with HCPs and public processes. He stated, “the secret to consensus is not reaching consensus on every issue, but on the main issues” (Anderson & Yaffe, 1998; Selzer, personal communication, 1998). For the DCP, the main issues were defined by Clark County with the oversight of Mr. Selzer. Although local officials and the County Commissioners were concerned about the issues, they allowed the committee to function under these consensus based terms because it was essential that a solution for the Desert Tortoise be developed that was supported by the stakeholders, the participants and the community at large.

Since the “main issues” needed consensus, general agreement about what the “main issues” were needed to be established among the committee. It was obvious during discussions that participants passionately opposed some actions and would take recourse against the program or Clark County if full consensus was not reached; these were the main issues. For other issues, though, participants stated that they disagreed, yet, agreed to consensus. Consensus in this arena helps achieve an elevated comfort level for all the participants. As a result of this process, participants support the decisions and actions of the program.

Another drawback is that a citizen participatory group may behave in a variety of ways. A groups may be in complete agreement or it may possess as many different responses as there are participants. Participants may also respond in an imbalanced fashion, where a majority of the group opposes an issue and a minority approves. One person may be angry and hostile while others may be calm and patient, or visa versa. Members of a group carry different perceptions and views. They also have a variety of learned responses. Group behavior is often unpredictable, increasing the challenges of a public participation process.

Sometimes consensus building works, but does not bring about the “best” solution. “Consensus helps build team unity and trust. But consensus isn’t necessarily the means for finding the *best* answer” (Dee, 1995). This risk must not be overlooked by the facilitator of this type of process. Public participation processes do not fail or succeed because of the participants’ behavior. They fail or succeed depending on a variety of

factors. One of the most important factors is the handling of the group by a non-biased facilitator. Facilitators or community leaders handle participation differently.

The process is not a simple one. It requires a capacity to understand that the “main” issues change over time. It also requires an ability to respond to those changing demands in a rational fashion. Citizen participatory groups often experience discord within the group. The facilitators, and the participants, of the process sometimes view these discrepancies as hindrances to the process. However, it is these differences that pressure the committee to “think out of the box” and ask “what if?” It is the inclusion of differing opinions in the process that brings forth cultivated solutions. It brings about solutions that will be amicable to the most people with maximum community support. Ideally, the solutions will maximally benefit all sides.

CHAPTER 8: THE DESERT CONSERVATION PROGRAM

The Clark County DCP has many facets. While the public participation element is by far the most crucial to its ongoing success, there are many other components that make up the program and contribute its complexity. Components of the program that are not directly related to consensus building are the history of the turtle and its role in society, the biological importance of the tortoise, and legal protection of the reptile in the United States and Nevada. Other critical components are the development and history of the DCP, the funding of the program through a mitigation fee and the overall process.

The Desert Tortoise

The tortoise, which is a type of turtle, has existed on this earth for an estimated 20 million years (Cunningham & Saigo, 1997). There are many diverse species of turtles throughout the world. Some turtles exist primarily on land and some primarily in the water.

Turtles have been very important throughout history. The interesting markings on their shells have caused them to be considered a symbol of good luck and fortune. Taoism honors the animal and names the markings “*Lo-shu* on the back of a turtle” (Fischer-Schreiber, 1996). This hexagram marking on the turtle is one of “the two magical diagrams by which Confucianism explains the origin of the *Book of Change(s)*” (Fischer-Schreiber, 1996). Feng Shui recommends keeping a turtle in the north corner of

your office or home to bring good luck. “This humble reptile is regarded as a very auspicious celestial creature believed to be imbued with strong protective powers” (Too, 1999).

The turtles that live on land are referred to as tortoises as well as turtles. From the extremely large Galapagos tortoises in the Galapagos Islands in Ecuador to the Gopherus tortoises of North America, land tortoises have also played an important part in history. The Galapagos tortoises were often captured by sailors in the late 1800s and early 1900s. These tortoises can weigh up to 600 lbs. They were captured and placed on ships where they were able to live without food or water for up to a year. This provided sailors with a fresh source of food for a very long time at sea. (Marlow, personal communication,1997)

A smaller genus, the Gopherus tortoises are found throughout the United States. They were also once consumed for food, especially during times of climatic hardship. Tortoises were more likely to survive dry summers and long winters leaving them as a source of food when other animals like rabbits or foxes were difficult to find and capture. Their ability to survive during difficult times also causes them to be heavily predated upon, by larger animals, during times of drought.

The Gopherus species, is found primarily in Utah, Arizona, California, New Mexico and Nevada. Gopherus agassizii is the Desert Tortoise referred to in this study. It hatches from a soft leather like egg and grows to be eight to 15 inches in length at maturity. Its life expectancy is about 85 years but some can live to be more than 100 years old. “This reptile spends much of its life in underground burrows to escape the

harsh summer heat and winter cold” (Legislative Council Bureau, 1999). Very well adapted to the Mojave desert, this animal is equipped with short and powerful rear legs and convex front legs for digging. The top of its mouth is similar to that of a bird’s beak. It does not have teeth, nor can it climb out of its shell as sometimes shown in cartoons. The top of the shell is called the carapace and the tortoise’s internal organs are underneath its carapace. The backbone of the Desert Tortoise is incorporated into its shell. The Desert Tortoise is not equipped with sweat glands and it is unable to cool itself by sweating. Therefore, hiding in burrows or finding shelter to dodge the heat is essential to the existence of the Desert Tortoise. The inability to sweat also makes tortoises sensitive to imbalances of minerals such as salt and potassium in their systems.

Tortoises hibernate in the winter and are active from approximately February to October depending on weather conditions. They are able to store water for long periods of time and can actually convert their urine back to usable fluid for their systems in times of drought. Tortoises roam, eat and drink in the early morning and early evening hours when temperatures are low. They return to their burrows or find a cool area during the hot afternoon hours. The tortoise must escape the heat to survive. On a very hot day, it can die within an hour if it cannot escape the direct sun and the heat. Therefore, it must be near a burrow or a shady, cool area at all times. Burrows are shallow, only a few feet below the soil surface, but “can be as long as 30 feet from opening to end” (Aylward, 1998). This is especially a problem for tortoises if people venture into the

desert and unknowingly destroy a burrow. If a tortoise cannot find a cool place, or dig a burrow quickly, it will die from the heat.

The habitat of the tortoise is very large. It spans five states and millions of acres. The rapid human development across the southwestern United States infringed upon the Desert Tortoises' habitat. Due to the invasion of people, disease and drought, by the 1980s, tortoise populations became "scattered and fragmented" (Reilly, 1998).

Legal Protection of the Desert Tortoise

The Desert Tortoise has benefitted from many laws directed toward the animal over the past 60 years. Legal Protection began with its listing by the State of Nevada in 1943. Under section 3053.89a, it became "unlawful to catch or kill the Desert Tortoise or terrestrial turtle in the State of Nevada" (NCL, 1950; Aylward, 1998). The Nevada Compiled Laws (NCL) also attached penalties of \$50.00 to \$500.00, and/or incarceration per infraction. Therefore, penalties could be incurred for each tortoise caught or killed. In 1951, the Nevada Revised Statutes (NRS) replaced the NCL. The state protection for the Desert Tortoise remained the same but was now coded as NRS 503.600.

The protection of the Desert Tortoise became the responsibility of the Nevada Division of Wildlife (NDOW) in 1969 when the state legislature authorized the NDOW to "classify and protect 'endangered' and 'threatened' species in Nevada. On July 7, 1969, the Desert Tortoise was classified as a 'threatened' species," and subsequently NRS 503.584 was added to protect the Desert Tortoise (Aylward, 1998). In

1981, the state legislature noticed that there were two laws on the books protecting the Desert Tortoise. Therefore, NRS 503.600 was repealed leaving only NRS 503.584 in place to protect the Desert Tortoise.

The laws enacted by the State of Nevada provided very little protection for the Desert Tortoise. The NDOW had the authority to impose punishments for collecting or killing a tortoise; however, this was rarely done. Law enforcement available to enforce this law was sparse. Furthermore, no additional funding mechanism was in place to protect the species. Most people in the Las Vegas Valley were not aware of the law and there were many grey areas. Many people found tortoises in wild areas and unknowingly took them home and made them pets. Additionally, people had tortoises that were reproducing in captivity and carrying Upper Respiratory Tract Disease (URTD). Once they could no longer care for their tortoises, they would release them into the desert threatening the health and existence of wild tortoises. Punishment for these offenses was rarely pursued. Development continued in Clark County at unprecedented rates, destroying tortoises and habitat every day. Tortoise populations appeared to be declining quickly with no programs in place to protect the species.

On August 4, 1989, the Desert Tortoise was listed as endangered by the USFWS. The USFWS listed the species in response to the following factors identified as contributing to the dwindling tortoise population: illegal collection, vandalism, disease, release of captive tortoises and spread of disease, attacks by domestic and feral dogs, abnormally high predation by ravens (due to increases in raven populations from feeding

on exposed garbage), agricultural development, urban growth, landfills, livestock grazing, road construction, irresponsible off-road travel, railroads, utility lines, exploration and development of geothermal oil and gas resources, mineral exploration and development, and military activities (Clark County Desert Conservation Program, 1995). Since the tortoise is referred to as an “indicator” species by the USFWS, the dwindling number of tortoises indicated that many species that lived in the Mojave Desert ecosystem may have also been in trouble. The Endangered Species Act attempts to provide protection for all species that may have been in danger of dwindling health including humans. Therefore, when a population of tortoises experiences a rapid decline in health and population, the environment may also be becoming dangerous for other life, including people.

The listing of the Desert Tortoise meant that an entirely new stage was set for Clark County. Clark County was primarily affected because it was prime habitat for Desert Tortoises. No longer could development in the Las Vegas Valley continue freely. The “take” of any Desert Tortoise could now result in fines and/or imprisonment. “Take” is defined as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct against a protected species” (USFWS, 1988). Any action resulting in the injury of a tortoise or its habitat could result in prosecution. “Violations are punishable by fines of up to \$25,000 and jail terms up to six months.” (Clark County, 1995).

The Desert Tortoise listing was reduced to a category of threatened on April 2, 1990. This reduction in the severity of the listing did not reduce the requirements of the ESA. Clark County was required to provide mitigation for the Desert Tortoise if development in the valley was to continue. Subsequently, a short-term plan accompanied by a short-term permit and later a long-term plan accompanied by a long-term permit were developed and approved for the protection of the Desert Tortoise. This allowed Clark County incidental take of the Desert Tortoise. Therefore, take was allowed in the process of performing an otherwise legal activity. Development could continue where developers paid a mitigation fee of \$550 per acre. Development in Clark County would continue, the tortoise finally had a program in place to ensure its survivability in the wild, and a funding mechanism was in place.

The Desert Tortoise has received protection through various state and federal laws in Nevada. The legal protection of the Desert Tortoise in Nevada is graphed in Appendix D.

History of The Desert Conservation Program

In 1980s, some individuals, scientists and environmental group representatives became concerned that wild populations of Desert Tortoises were quickly declining. While no one knew exactly how many tortoises existed in the wild, some people believed that whatever numbers existed were rapidly dwindling. In 1989, environmental groups filed a lawsuit against the USFWS. They claimed that the federal government was not

properly enforcing the ESA of 1973 and was allowing Desert Tortoise populations to veer toward extinction. The issue that raised the biggest concern for the livelihood of the tortoise was the rate of development in the Las Vegas Valley. Almost every acre of land that was developed resulted in an acre lost of tortoise habitat. The ESA grants authority to the United States Department of the Interior to require protection for species that appear to be in danger due to rapid loss of habitat. “Man can threaten the existence of a species of plants and animals in any of a number of ways, by excessive use, by unrestricted trade, by pollution or by other destruction of their habitat or range. The most significant of those has proven also to be the most difficult to control: the destruction of critical habitat” (Merchant Marine and Fisheries, 1973). It is not necessary for the federal government to obtain scientific proof that a species is in danger of extinction prior to listing it under the provisions of the act.

The tortoise is classified by the USFWS as an indicator species. An indicator species is one that indicates trends in other species populations. The dwindling number of tortoises indicated that the entire Mojave Desert ecosystem was possibly in trouble. The environmental groups requested the emergency listing of the Desert Tortoise under the federal ESA of 1973.

On August 4, 1989, the Secretary of the Interior listed the Desert Tortoise as an endangered species under the ESA using an emergency listing classification. Species listed under an emergency listing must be listed as endangered. Although there was extensive debate throughout the Las Vegas community about whether the animal was

actually in danger of extinction, the action had been taken. Certain criteria had to be met if any more development was to continue. This seemingly small action of the federal government threw Clark County into a “red alert.” Since the Desert Tortoise occupied and needed the type of habitat that covered the vast majority of area within Clark County, any new development was viewed to have negative impacts on the species.

“Clark County and the City of Las Vegas were forced to stop work on various public facilities, and new housing developments were put on hold, resulting in millions of dollars being tied up in construction commitments” (Riley, 1998). The federal government threatened to halt all development within Clark County.

Clark County was experiencing unprecedented growth and the ability to continue to develop on the land inhabited by the Desert Tortoise was crucial for continued growth and economic development in Clark County. The Southern Nevada Homebuilders Association, the City of Las Vegas and the State of Nevada sought relief through litigation while Clark County scrambled to meet the requirements of the listing. On April 2, 1990, the listing of the Desert Tortoise was reduced to a threatened species. While this classification placed the Desert Tortoise farther from extinction, it still required the same protection.

The emergency listing of the Desert Tortoise threatened the livelihood and activities of many individuals with vastly different interests. Homebuilders, miners, ranchers, environmentalists, recreational enthusiasts and government representatives all came together to resolve the issue at hand: provide the federal government assurances

that the Desert Tortoise would be protected. The different individuals formed the Clark DCP IMC under the direction and administration of Clark County to address and resolve the problem.

The IMC developed the Short-Term Habitat Conservation Plan (STHCP). On July 24, 1991, the USFWS issued Clark County and the Cities of Las Vegas, North Las Vegas, Boulder City, Henderson and the Nevada Department of Transportation a short-term incidental take permit (PRT-7556260) in conjunction with the implementation of the STHCP. The STHCP and the accompanying permit allowed Clark County incidental take of the Desert Tortoise in exchange for implementation of conservation measures to protect the species. Incidental take allowed developers to “take” the species while performing otherwise lawful activities. For example, permitted development is a lawful activity, and any harm caused to a tortoise during development was allowed by the federal government. Clark County had a special permit that allowed development to continue. However, under the short-term permit, developers were required to survey land prior to development and remove any tortoises reducing the possibility of harming or killing tortoises. To fund the program and the conservation measures, a \$250 per acre mitigation fee was collected on all new development within Clark County. The fee was approved by the USFWS and the Clark County Board of Commissioners with the support of the IMC.

The short-term permit was issued for three years and it also received a one year extension expanding its term to four years. Within that time, Clark County and the IMC

developed a long-term DCP which provided long-term conservation and protection for the Desert Tortoise. On July 1, 1995, the USFWS issued Clark County and the cities of Las Vegas, North Las Vegas, Boulder City, Henderson, Mesquite and the Nevada Department of Transportation a long-term incidental take permit (PRT-801045) under section 10(a)1(B) of the ESA. This provided Clark County incidental take of the Desert Tortoise for 30 years if Clark County remained in compliance with the permit and implemented the conservation actions of the DCP. The accompanying DCP, compiled by the IMC and independent consultants, replaced the STHCP. The mitigation fee was raised to \$550 per acre for all new development within Clark County. This long-term permit was approved by the Clark County Board of Commissioners along with other supporting legal documents that obligated the cosignatories to comply with the Clark County's administration of the DCP and the imposition of the fee. Supporting legal documents included:

- An Interlocal Agreement between Clark County and the cities of Las Vegas, North Las Vegas, Henderson, Boulder City and Mesquite to implement and fund the Desert Conservation Plan.
- An Implementation Agreement between Clark County and the cities of Las Vegas, North Las Vegas, Henderson, Boulder City and Mesquite, and the Bureau of Land Management, National Park Service, Nevada Division of Wildlife, Nevada Department of Transportation, and the U.S. Fish and Wildlife Service, for the purpose of implementing the Desert Conservation Plan.
- A Clark County ordinance
- An ordinance for each city

Clark County and the IMC have continued to implement and monitor the conservation measures of the DCP. However, conservation and protections of a species

is not as simple as following a list of rules. Throughout the 1990s, and the life of the two plans, many suggestions have been voiced, issues have been raised, solutions have been reached and disagreements have ensued.

Habitat conservation planning is not simple and adding public consensus participation can be viewed as adding gasoline to a fire. However, Clark County has valued the input from all parties realizing the process has created some frustrations, yet, the wide range of input has made a successful program where the community supports the program.

The Mitigation Fee

The collection of the mitigation fee was a controversial stumbling block. It was important for the conservation of the Desert Tortoise and its habitat. The mitigation fee provides money which is used for the preservation of species, habitats and ecosystems within Clark County. It is also used to fund a variety of studies on species, habitats, conservation and the environmental health of the valley. Furthermore, it provides information and documentation that is beneficial to other communities experiencing similar challenges.

The Desert Conservation Plan mitigation fee is predictable. It is a one time fee of \$550 charged on all private lands in Clark County. No correlation to behavior exists. There is little incentive to change the behavior based on the tax. If a person pays the fee, he or she is free to develop on the land and perform any otherwise lawful activity without

any threat of being charged more. If a Desert Tortoise is harmed or killed while performing a lawful activity in accordance with the permit, the property owner is protected against any other action. Exceptions are unlawful activities such as shooting, driving off trails or intentional harming of a Desert Tortoise. In that event, a person can be cited, fined and/or imprisoned for such actions. These penalties are enforced by the United States Fish and Wildlife Service.

The mitigation fees collected for the Clark County Desert Conservation Program are collected from developers to conserve species, habitats and ecosystems. The cost is passed from developer to homeowner. The fee is fair because without the Desert Conservation Plan, development would not be allowed in Clark County. Those who pay the fees benefit by being granted development privileges in the Las Vegas Valley.

There is no redistribution of the fees to land owners. Distribution of the mitigation fees are in the form of research, supplies, and services that will ensure the livelihood of the tortoise in the wild. Much of the funding goes towards professional services such as the building of tortoise proof fencing to reduce tortoise mortality along roadways, veterinary services for injured tortoises, research on tortoise survivability, shelter services to temporarily house displaced tortoises, and translocation programs to translocate collected tortoise back into the wild.

The collection of this mitigation fee and implementation of the Desert Conservation Plan in accordance with the Section 10(a)1(B) permit issued by the United

States Fish and Wildlife Service directly allows for development within Clark County to continue along with economic growth and economic stability.

CHAPTER 9: THE PROCESS AND THE PROGRAM

The process began in August of 1989 after the listing of the Desert Tortoise. Immediately, rumors surged and tension arose. Stakeholders feared their land would be taken for the sake of the Desert Tortoise and desert users suspected their outdoor privileges would suffer. The Las Vegas Valley was experiencing rapid growth and the listing threatened to halt development and stifle the local economy. Clark County and the interested parties were in a frenzy. They had to think and act quickly to avoid negative impacts of the listing. The expansion of development and the decline of tortoise habitat had been occurring for decades. Human impacts were affecting the species for many years. A variety of concerns needed addressing. Research on the tortoise and its habitat was needed yet there was no system or funding source to address these needs. With the help of community leaders, stakeholders and land management representatives, the County moved forward with the creation of a Desert Conservation Program and the imposition of a development fee to fund the program.

Preservation of the environment is important for a number of reasons that people often don't realize. The rapid decline of a species is an indication that the environment in which humans are living is declining and making our living conditions unhealthy. The preservation of species, habitats and ecosystems protects our own existence. And, since people have a high regard for natural historical sites and landmarks, preserving the environment also preserves many of these locations. Additionally, people need and

desire the products of the environment. Plants for harvesting, undestroyed land for viewing and desert roads for hiking, climbing or driving are a few of the activities considered within habitat conservation plans.

On September 19, 1989, the Clark County Board of Commissioners approved agenda item #50 which created the Desert Conservation Program (Attachment E). In conjunction with the creation of the program was the formation of the DCP IMC. Environmental concerns and stakeholders rights had also been ensuing for years. Many conflicts existed. They were based on land use, conservation, funding and expenditures. Some of the conflicts were:

- Leaving roads and trails open for recreational use vs. closing roads
- Purchasing grazing allotments for Desert Tortoise preservation vs. continuing to allow grazing
- Imposing a fee on new development vs. other funding options
- Funding research vs. funding conservation

These issues caused the affected parties to be faced with a huge dilemma: how to resolve these conflicts, and satisfy the requirements of the federal ESA. The stakeholders and other interested parties came together to resolve this dilemma.

Clark County became the program administrator and began developing a plan for the protection of the Desert Tortoise that would comply with the requirements of the federal ESA and ensure continued growth in the Las Vegas Valley. Citizens, organization leaders and agency representatives came together to form the IMC. Some committee members were upset, angry and hostile. They intensely cared about their own interests and were there to represent those interests. The IMC began battling the issues

while seeking resolution to many problems. These battles caused the committee to harbor enemies in some instances and allies in others. At the onset of the program, some of the battles were based on “why do we have to conserve this species?” As the program evolved, the battles became over “who will participate, contribute, sacrifice, pay?”

The group dynamics originally involved anger, hostility and hatred but later evolved into one where individuals understood each other, made compromises and developed friendships. The committee used available information, knowledge and resources to change over time. A once reactive and struggling group became a pro-active and successful committee.

CHAPTER 10: ANALYSIS OF THE PROCESS

The Clark County DCP developed with a strong focus on consensus building. Many components contributed to the development of the Clark County DCP public consensus based process. The most significant factors are the stakeholders, the program administration and the duration of the process. These factors will be discussed in detail to further explain the consensus process of the Clark County DCP.

The Stakeholders

“We didn’t all come over here in the same ship, but here we are in the same boat. Unknown” (Lundy, 1992). The stakeholders of the DCP did not arrive at the table via the same ship, but they were all at the same table, in essence, in the same boat. The boat was that of compliance with the Endangered Species Act. The stakeholders were all challenged to defend their own needs and comply with the Act.

The stakeholders involved in the Clark County DCP process were originally drawn to the program out of fear. Some had heard horror stories of the federal government closing land and unjustly imposing restrictions to preserve endangered species in other areas of the country. Some of the stakeholders that came to the table over time were landowners, miners, ranchers, recreational land users, the Southern Nevada Homebuilders Association and the Las Vegas Valley Water District as well as federal, state and local government representatives. The stakeholders joined the process

because they each had a need and the program offered hope that the stakeholders might be able to choose their options rather than the government mandating conservation actions. Each stakeholder believed that the Clark County DCP was the best option available, or they would not have been at the table. The stakeholders were committed to the creation and existence of the Clark County DCP. The same principle remains true today: the stakeholders must feel that the Clark County DCP process is their best option or they will discontinue participation.

Although the debates were hostile at the onset, the participants were determined to make the program successful. Stakeholders compromised money, land use rights and political footing in lieu of assurances of other land use rights, species protection and continued ability to develop in Clark County.

The Administration

The administration of the Clark County DCP and the facilitation of the IMC are as two fundamental components of the process that act together. The IMC has thrived on the stability, consistency and impartiality offered by Clark County, the administrator of the Clark County DCP. The facilitator, Paul Selzer was chosen to further reduce any biases Clark County may have had. Paul Selzer has been involved in the Clark County DCP since 1989 and has extensive experience working with the federal ESA and western habitat conservation plans. His education and experience both within and outside the realms of the Clark County DCP have aided in his ability to successfully facilitate the

committee. Very importantly, a facilitator must be trusted by the committee members. Furthermore, "Collaboration needs a different kind of leadership; it needs leaders who can safeguard the process, facilitate interaction, and patiently deal with high levels of frustration" (Chrislip & Larson, 1994). This description accurately describes Paul Selzer, facilitator of the Clark County DCP IMC. The central administration and facilitation of the Clark County DCP have provided an additional cornerstone for the programs' success.

The Duration

The habitat conservation issues did not instantly evolve and could not be quickly fixed. The third fundamental component of the Clark County DCP is time. Due to federal laws and regulations, the minimum amount of time it could take to demonstrate recovery of a species (therefore allowing the USFWS to remove the species from its endangered or threatened listing) is five years. The stakeholders and administrator would be bound to their agreements for at least five years. The duration of the program will now continue at least until the year 2025. The 30-year incidental take permit became effective August 1, 1995. It is expected that by 2001 a new permit will be issued to Clark County extending the period to at least 2030. The long duration of the program has compelled participants to stand by their choices, concessions and decisions. The members are accountable for their actions for a long period of time. The federal government has the ability to cancel the 30-year permit if the specified conditions fail to

be met. If the 30-year permit were to be canceled by the federal government, all guarantees of the Clark County DCP would cease and the stakeholders would return to the stage set in 1989.

The Clark County DCP is a long-term program. It took many years to establish the terms of the DCP consensus process and the terms of the DCP. Conserving species is an endless task. The duration of the program requires long-term commitments from the people and agencies involved.

Results of The Process

The components discussed helped build and stabilize the Clark County DCP. They build the foundation required for balanced decisions to be made. Many committee members have stated throughout the years that this balanced and somewhat elaborate process of decision making is not always efficient and certainly not logical. However, the process is completely open, fair and realistic.

Clark County and the IMC have realized that actions do not occur without effects. Effects may be beneficial and detrimental at the same time. An example is when the IMC agreed to fencing roads to reduce tortoise mortality. High traffic roads near desert areas that were densely populated with tortoises significantly impacted the livelihood of tortoises (BRRC & UNR, 1996). The effects of this action were increased expenditures on tortoise proof fencing and a long-term need to maintain those fences. Furthermore, access to desert roads was reduced in some instances. While the impacts to other desert

wildlife is estimated to be minimal, the full effects of this type of fencing is still unknown.

The consensus based process has enabled the process to fully evaluate decisions. People with a variety of knowledge and expectations evaluate all aspects of the program. Conservation, recreational and financial aspects are all discussed and analyzed. Decisions are made in the best interest of the stakeholders. The DCP process also continues to evaluate actions for effectiveness, appropriateness, conservation benefits and drawbacks. The direction of the program and expenditure of funds changes over time as the needs of the community, the species and the stakeholders change.

Clark County has since moved forward towards the development of the Clark County Multiple Species Habitat Conservation Plan (MSHCP). Ideally this plan will secure a 30 year incidental take permit for over 80 species in the area. While not all of the species covered in the plan are listed by the USFWS as threatened or endangered, the plan will still provide protection for them. This plan will further ensure that no additional federal ESA restrictions are imposed on Clark County. The only requirements of the participants will be outlined in the MSHCP. This new plan will provide coverage for species if they were to become listed and prevent the likelihood of future species listings.

Due to public participation in the DCP process, the IMC agreed to move towards stronger protection of multiple species in Clark County. This direction differs from the one taken in 1989 after the initial listing of the Desert Tortoise. The direction of the

Clark County Desert Conservation Program in 1989 was towards protection of one specie; however, other species could receive benefits if they were linked to the Desert Tortoise. Since 1995 the IMC has been working towards the protection of multiple species using a pro-active, ecosystem based approach. The IMC is developing a Multiple Species Habitat Conservation Plan (MSHCP) to protect various species in Clark County.

The MSHCP has two primary functions: 1. To reduce the likelihood of additional species being listed as threatened or endangered in the future, and 2. To ensure Clark County incidental take protection of the species that are included in the plan, if they should become listed by the Secretary of the Interior. Adaptive Management will provide a means of evaluating and recommending future conservation measures based on the successes of past actions. The new plan will cover 5 million square acres of land in Clark County.

The entire process however, is not without challenges. In March of 1998, environmental groups including the Sierra Club gathered together and petitioned the creation of the MSHCP. While these groups had always been invited to participate in the process they choose not to participate. Instead, they bombarded the media with accusations that the DCP process was not fair and that the MSHCP would only conserve species, not recover them. Since then, the groups have decided to join the process, as they realized it was the best alternative. The Clark County Board of Commissioners and members of the Clark County DCP saw once again that throughout all the success of the program, some unfavorable and unpredictable circumstances can surface at any time.

CHAPTER 11: SUMMARY

The Clark County Desert Conservation Program has used consensus building to evolve into a successful program. The program is successful because it balances species needs with human desires. Consensus building through open public participation has been the fundamental component ensuring the success of this program.

Due to the stakeholders' involvement in the process, the administration of the program and the duration of the program, the Clark County DCP is a success. It was exemplified for being the nation's most public habitat conservation process (Anderson & Yaffe, 1998). The accomplishments of the DCP are the development of the short-term and long-term habitat conservation plans, subsequent approval by the USFWS, and the issuance of incidental take permits. The Clark County DCP is a model program that has withstood many changes and has endured more than a decade of changes, controversy, criticism and various challenges.

The DCP model is one where all people are welcome to attend and participate. All issues are handled in a similar fashion: presentation of issue, evaluation of its relationship to the DCP, discussion of the issue, analysis of the issue, research of the issue by Clark County, and eventually a consensus based decision. Additionally, the DCP operates with an Adaptive Management Program (AMP) component. This ingrained program records activities of the DCP, evaluates their effectiveness and

recommends future actions for the DCP. All decisions that are made within the confines of the program are under continual review through the AMP process.

The DCP model includes fundamental components that contribute to its success. While many authors exhaustively define factors that are important to collaboration, the basic components are having a central purpose, a broad based membership, a clear structure, an open process, and sufficient resources (Reilly, 2000). The Clark County DCP had its own components critical to its success. The following components existed for the DCP and were important to the success of the program: 1) the listing of the Desert Tortoise occurred at a critical time when Las Vegas was growing fast solving the problem was critical to continued development and economic growth; 2) there was no other viable option when the litigation failed; 3) the biology and distribution of the Desert Tortoise caused the listing to effect five million square acres of land in the Las Vegas Valley; 4) since Clark County consists of approximately 91% federal land, the conservation of the tortoise were feasible; 5) a reasonable funding mechanism was built into the program at it onset; 6) the best alternative for the stakeholders was to participate in the DCP process; and 7) successes were realized in the form of approved HCPs and incidental take permits.

The DCP model has survived many years and has withstood many changes. Replacements of governmental leaders have occurred including Clark County Board of Commissioner members, the Clark County Manager, Clark County Assistant Managers, the State of Nevada Governor, and legislative members. The DCP IMC has seen changes

in its membership and in the interests of the members. In 1990, land managers, miners, agriculture representatives, off road vehicle enthusiasts and homebuilders frequently voiced their concerns. In 2000, off road vehicle enthusiasts and land managers still regularly participate in the process as well as wildlife specialists, environmentalists and a very vocal commercial collector. This different balance of interests and powers within the IMC requires the DCP to be flexible and adaptable in its planning, conservation actions, and implementation and evaluation of the program.

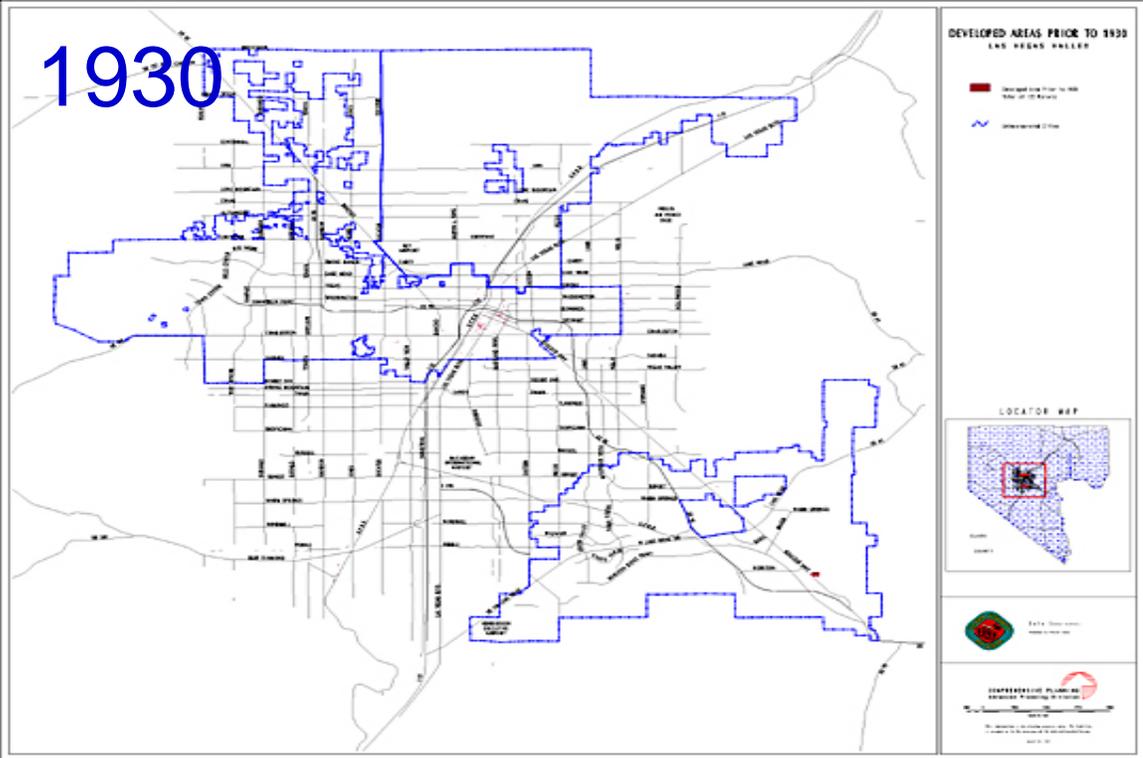
The DCP has withstood the test of time. An absence or alteration of the factors discussed in this paper, especially in the early stages of the program would have likely deterred the program or nullified its existence. For example, if litigation would have been successful, no DCP for the Desert Tortoise would have been created (Reilly, 2000).

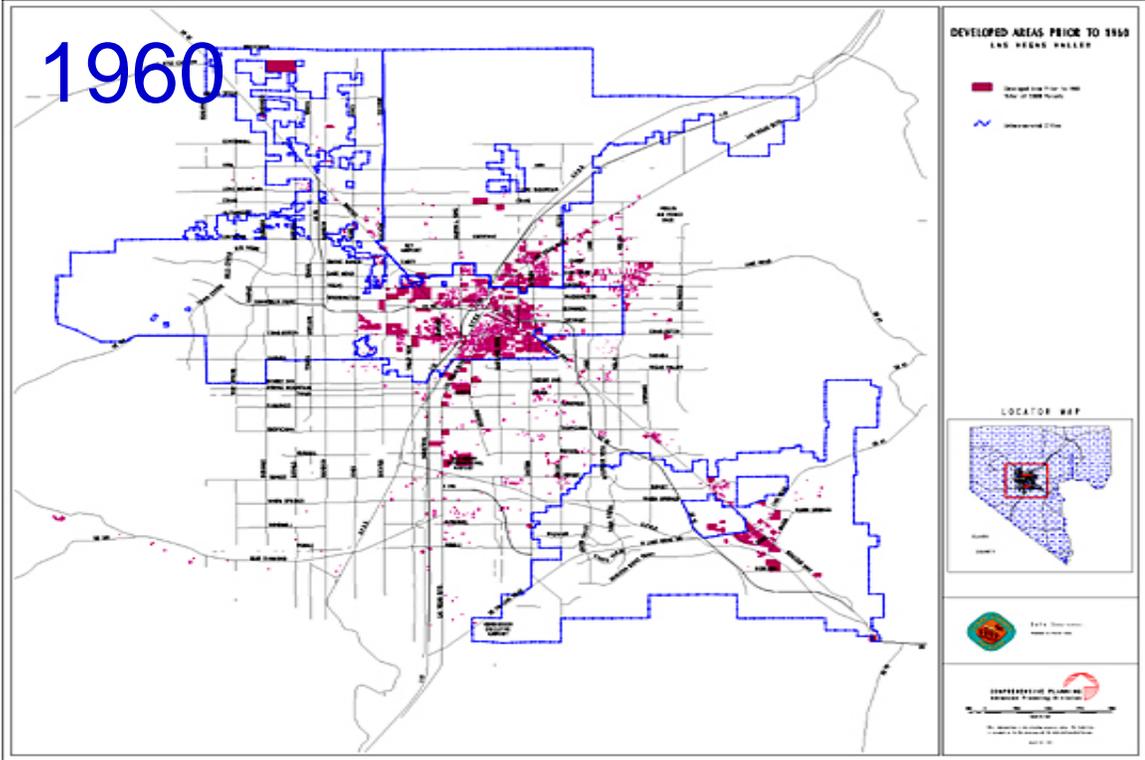
The program continues to operate at the direction of the IMC. This forum ensures that the maximum input is obtained and major concerns are addressed prior to an important decision being made. This DCP model of collaboration and consensus building has worked like no other process in the Country (Anderson & Yaffe, 1998).

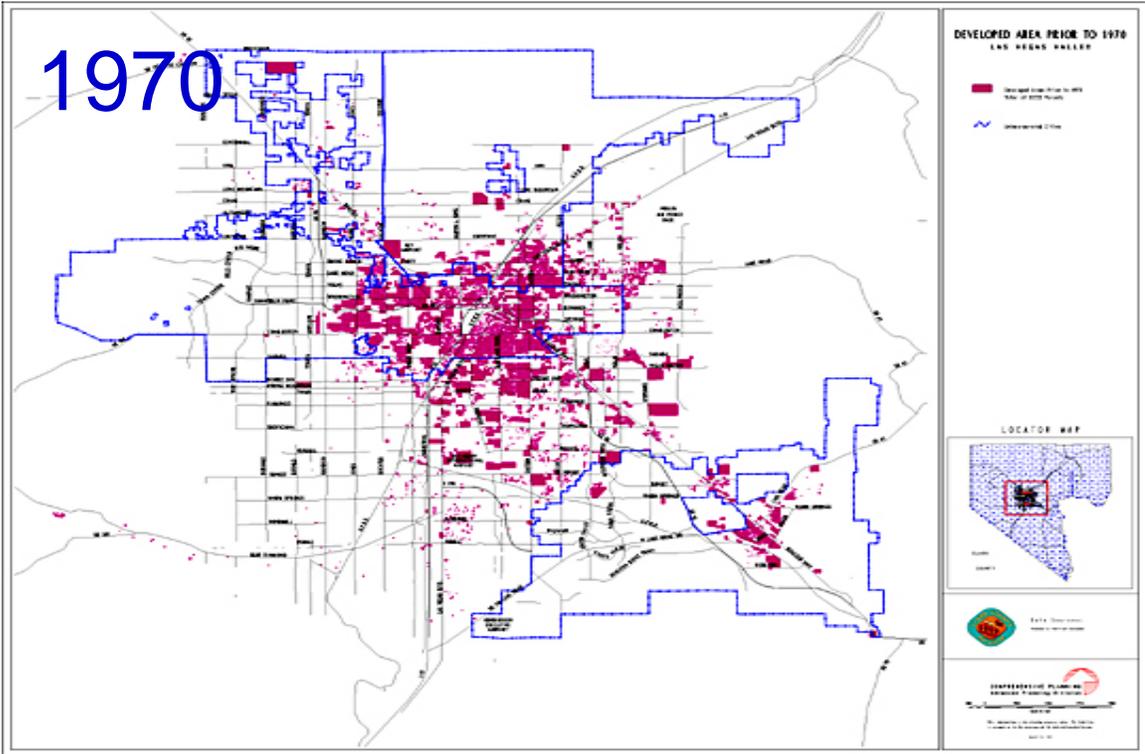
Working together as citizens, participants, and/or stakeholders provided the Clark County DCP a way to solve a critical problem. While sacrifices of time and resources were made by the participants without any guarantee that an agreement would ultimately be reached (Reilly, 2000), the DCP did produce great results. Clark County continued to develop without federal interference, species and habitats were conserved and recreational use of the desert was protected.

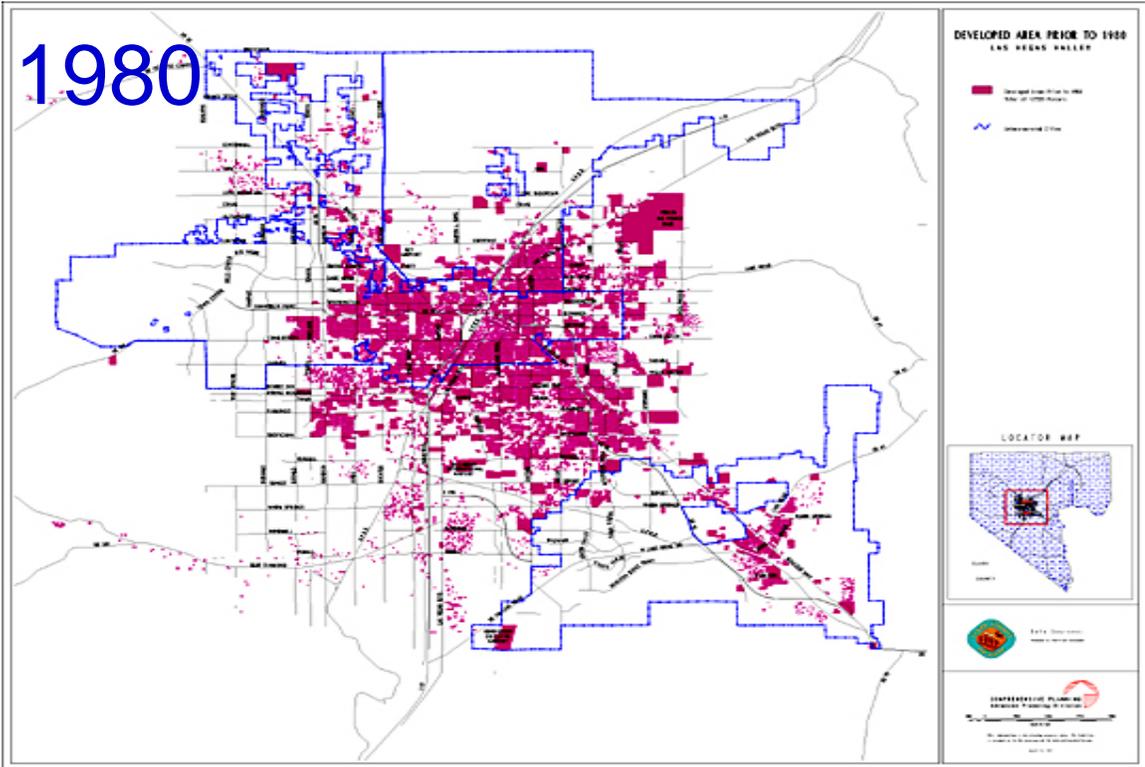
“Coming together is a beginning; keeping together is progress; and working together is success. Henry Ford” (Lundy, 1992).

APPENDIX A: GROWTH IN THE LAS VEGAS VALLEY, 1930-1999

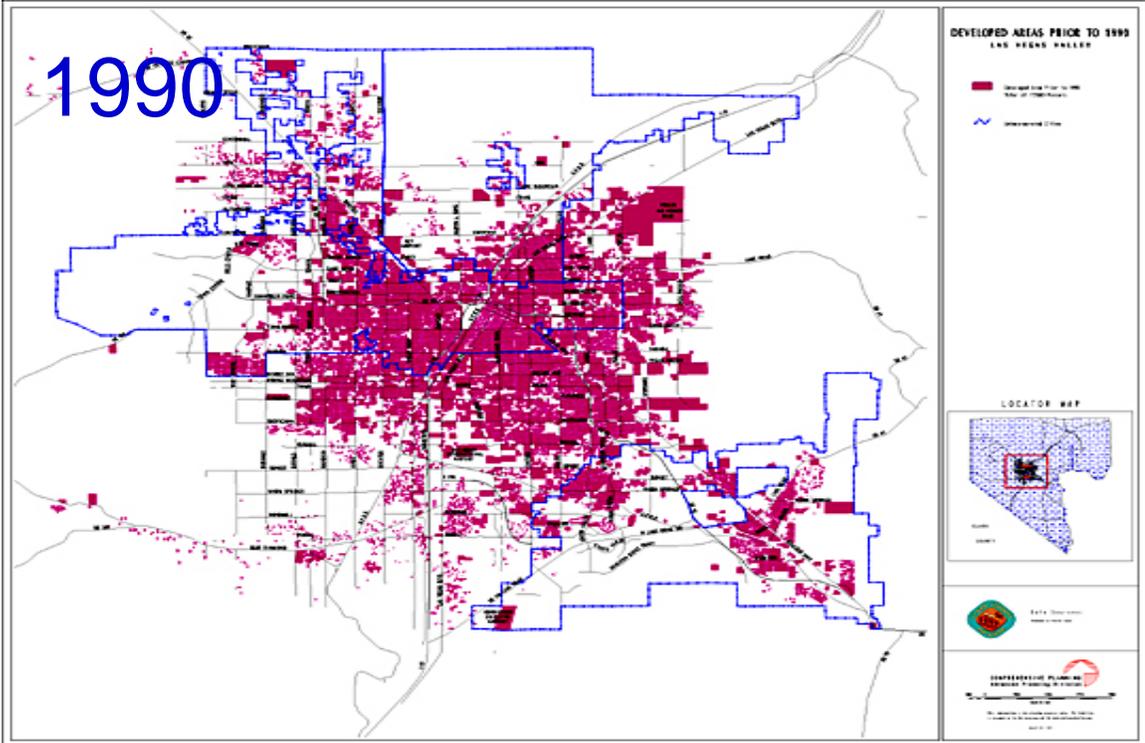


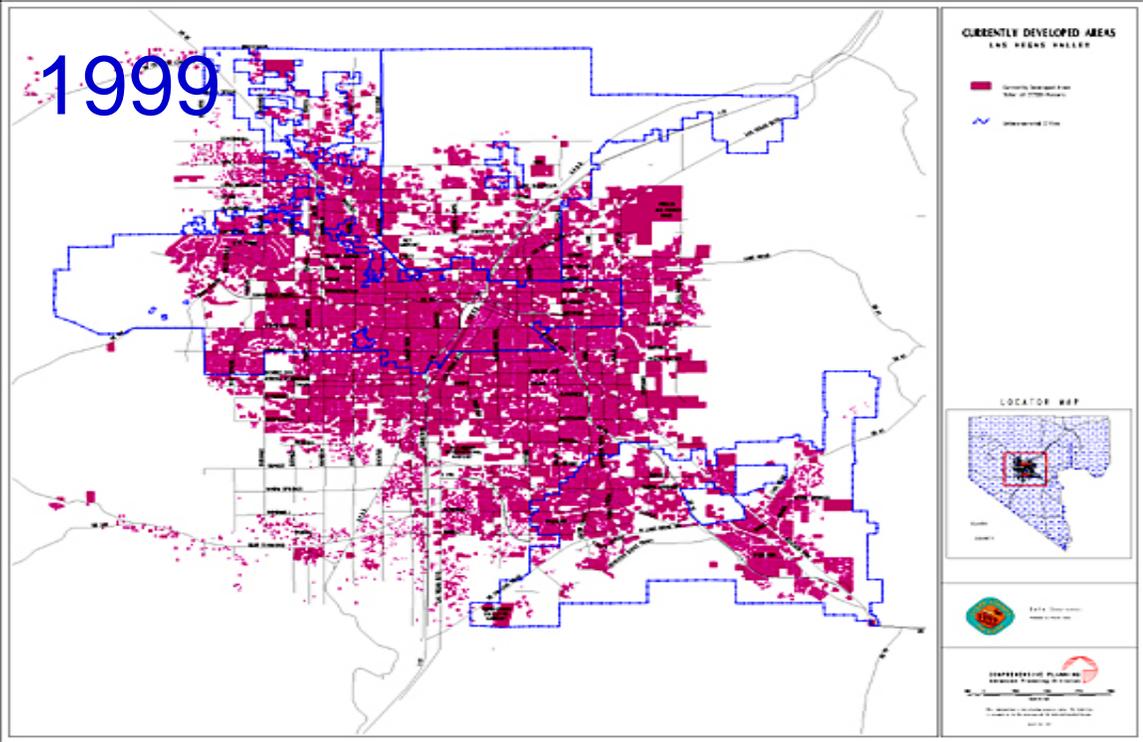






APPENDIX B: PROJECTED GROWTH IN THE LAS VEGAS VALLEY





**APPENDIX C: NINETEEN FACTORS INFLUENCING SUCCESSFUL
COLLABORATIONS**

Factors Related to the ENVIRONMENT

1. History of collaboration or cooperation in the community
2. Collaborative group seen as a leader in the community
3. Political/social climate favorable

Factors Related to MEMBERSHIP CHARACTERISTICS

4. Mutual respect, understanding, and trust
5. Appropriate cross-section of members
6. Members see collaboration as in their self-interest
7. Ability to compromise

Factors Related to PROCESS/STRUCTURE

8. Members share a stake in both process and outcome
9. Multiple layers of decision making
10. Flexibility
11. Development of clear roles and policy guidelines
12. Adaptability

Factors Related to COMMUNICATION

13. Open and frequent communication
14. Established informal and formal communication links

Factors Related to PURPOSE

15. Concrete, attainable goals and objectives
16. Shared vision
17. Unique purpose

Factors Related to RESOURCES

18. Sufficient funds
19. Skilled convener

Winer, M. & Ray, K. (May, 1996, p. 138)

APPENDIX D: LEGAL PROTECTION OF THE DESERT TORTOISE IN NEVADA

(APPENDIX NOT AVAILABLE)

**APPENDIX E: CLARK COUNTY BOARD OF COMMISSIONERS AGENDA ITEM
ESTABLISHING A DESERT TORTOISE PROGRAM**

(APPENDIX NOT AVAILABLE)

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GLOSSARY

AMP Adaptive Management Program - A process by which information from monitoring and research provides information that allows for adjustments in management activities to make them effective and efficient.

BLM Bureau of Land Management, United States Department of the Interior

BRRC
Biological Resource Research Center

Conserve/Conservation

Use of methods and procedures necessary to bring an endangered or threatened species to a point which measures of the federal Endangered Species Act are no longer necessary. Such methods include: research, law enforcement, habitat maintenance, and in some instances may include regulated taking. (USFWS, 1973)

DCP Desert Conservation Plan/Program - The plan under which the incidental take permit for the Desert Tortoise has been issued to Clark County. DCP also used to define the Desert Conservation Program which is the program which administers the plan.

Endangered Species

Any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of the ESA would present an overwhelming and overriding risk to man. (USFWS, 1973)

ESA Endangered Species Act of 1973 - Approved as amended through the 100th Congress. The purpose of the act is to provide protection and conservation of threatened and endangered species.

HCP Habitat Conservation Plan - A plan approved under Section 10(a) of the federal Endangered Species Act to mitigate “take.”

IMC

Implementation & Monitoring Committee - The committee established under the Desert Conservation Program to implement and monitor the conservation measures defined in the plan. The committee consists of all stakeholders and is

open to members of the public. The committee makes decisions regarding expenditure of DCP funds and priorities of conservation actions.

Incidental Take

Take of a species in the act of performing an otherwise lawful activity such as grading or mining.

Incidental Take Permit

Permit issued to an entity entitling them to take an endangered or threatened species in exchange for conservation of that species.

MSHCP

Multiple Species Habitat Conservation Plan - A habitat conservation plan which covers several species.

NAC Nevada Administrative Code

NCL Nevada Compiled Laws

NDOW

Nevada Division of Wildlife -Division of the State of Nevada responsible for classifying and protecting state listed species.

NRS Nevada Revised Statutes

OHV Off Highway Vehicle - A recreational vehicle for transportation and recreation on unpaved roads.

STHCP

Short-Term Habitat Conservation Plan - Plan prepared in response to the listing of a species to secure continued development while awaiting further action by the Secretary of the Interior, or while awaiting approval of an Habitat Conservation Plan.

Species

“A population of morphologically similar organisms that can reproduce sexually among themselves but that cannot produce fertile offspring when mated with other organisms” (Cunningham & Saigo, 1997).

Take To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

Threatened Species

Any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. (USFWS, 1973)

UNR and UNLV

The University of Nevada, Reno and the University of Nevada, Las Vegas.
Universities under the University and Community College System of Nevada (CCSN)

URTD Upper Respiratory Tract Disease

A respiratory disease found only in tortoises. It is highly contagious and 100% fatal to tortoises.