

**Lincoln County Multiple Species Habitat Conservation Plan
How Can It affect You?**

Developers, Federal Agencies and Consultants have convinced our County Commissioners and others that we HAVE TO HAVE this plan. The fact is the plan will make participating and non-participating land owners take special measures on their land that the Endangered Species Act would not have required. The Endangered Species Act says only that you shall not harm or kill the endangered species.

RESPONSIBILITY FOR NET BENEFIT. A Habitat Conservation plan with the USFWS and Lincoln County can require that there will be a "net conservation benefit" such as increased habitat to the targeted species. Although proponents admit it is not possible for every land owner to provide net benefit, it is currently unclear as to whether every participant is required to show a net benefit to the listed species or how that requirement can be met and measured.

WILDLIFE MANAGEMENT PLAN If a wildlife management plan is required for participation in the HCP it would catalog and mandate the baseline responsibilities of every land owner, record land management agreements and require annual assessment of progress in management for endangered species.

DILUTION OF BASELINE HABITAT: Baseline habitat for every covered species would be mapped and inventoried on every participants (volunteer) property and would have to be maintained for the life of the agreement (currently 25 years). The delineated baseline would include all habitat "suitable for use by the species" regardless of whether or not those species currently or actually inhabit these areas.

KINDS OF PROPERTY RESTRICTIONS: Land use management restrictions can be placed on every participant property. Restrictions such as: no tree cutting, brush clearing, fence construction, fencepost cutting, grazing, browsing, stocking levels of range, feeding and pesticide applications and some kinds of property use like mowing meadows and other uses during all or certain months of each year.

COSTS OF PROPERTY RESTRICTIONS: Restrictions on land use and how a property owner manages his/her land identified in most plans suggest strongly that all property management costs for participants will increase significantly (change of types of pest control, changes in ability to hay or not to hay, graze or not to graze etc.)

EXTENT OF PROPERTY RESTRICTIONS: Proponents don't want to discuss the extent of property restrictions. The fact is if we enter into a plan it will be **MORE RESTRICTIVE** than the Endangered Species Act. The Endangered Species Act only requires that there be no take (actual death or injury to the species). SO, with the plan you will have more restrictions than without it.

INCREASE IN PROPERTY RESTRICTIONS: An HCP is more restrictive than the Endangered Species Act because property use and management restrictions are required outside of the baseline habitat. The Endangered Species Act DOES NOT require this.

NON-COVERED AND NEWLY-LISTED SPECIES: Everything you are told by the proponents about an HCP makes it appear that participants (volunteers) are protected from the event of occupation of their property by non-covered listed species and newly listed species, but only if that occupation occurs as a direct result of the land owner's actions under the agreement they entered in to (such as creating new habitat or enhancing current habitat). The land owner is not otherwise protected. Under an HCP, however, it is unclear whether participants are protected under any circumstances by the occupation of their property by non-covered or newly listed species.

LIMITATIONS ON REGULATORY CERTAINTY: The current argument for an HCP is that it's benefit is "regulatory certainty", that no further habitat restrictions would be imposed on a participant's land. The US Fish and Wildlife Service, however, indicate that this only applies to those portions of the land which are proactively managed for the improvement of endangered species habitat. In other words, even though a landowner has signed on with the HCP, he would remain subject to enforcement of habitat regulations under the ESA on those portions of the property NOT proactively managed to attract endangered species. This would appear to include areas where species may be attracted by natural vegetation on the land or natural changes in that vegetation.

THE NEW ROLE OF LINCOLN COUNTY: While this HCP is supposed to be designed to reduce the involvement by the federal government in implementing ESA regulations in Lincoln County, it is more likely to expose Lincoln County landowners to increased

federal involvement by establishing Lincoln County as the monitoring, regulatory and co-enforcement agent for the federal ESA regulations

ENFORCEMENT: For the same reason, enforcement of federal ESA regulations can be expected to increase significantly on both participant AND non-participant lands

ACCESS TO PRIVATE PROPERTY: Participants will experience a major increase in access to their property by ESA regulatory agents if the County Commissioners sign an Habitat Conservation Plan Agreement.

CONFIDENTIALITY: State notwithstanding, participant landowners are at risk of losing the confidentiality of the biological information in their wildlife management plans to the courts and environmental litigants through the civil suit provisions of the ESA. Lenders, life companies, public utilities and other entities may also require disclosure of participation in an HCP for the purpose of identifying encumbrances against the lands. Conflict between Lincoln County's role as the protector of resident confidentiality, and being co-enforcer of federal endangered species law, can therefore be anticipated. This makes the County share the "black hat" with the U.S. Fish and Wildlife Service.

CHANGES IN THE MANAGEMENT PLAN: HCPs normally state that participating landowners will only be subject to one set of guidelines during the life of the agreement. Annual review of the wildlife management plan is required, however, suggesting the potential for substantial modifications. The other risk is environmental groups who now have access to the biological information on your land can sue to increase restrictions, scope and intensity of management for endangered species on your private property.

LITIGATION AND CHANGES RULES OF ENGAGEMENT: ESA-related legislation, regulations and litigation are inevitable during the life of the agreement, and they WILL affect how an HCP is administered in practice. Historically, these have almost always increased the stringency of ESA regulatory controls. Participant landowners may therefore be faced with increasingly stringent property use and management restrictions over the life of the Habitat Conservation agreement.

IMPACT ON NON-TARGET LAND OWNERS: The plan will affect two groups of non-target landowners: Adjacent and nearby owners, and every landowner that pays property taxes IN the county of participation. For these property owners, no matter what they are told, participation is NOT VOLUNTARY. Property use, management, and values impacts to adjacent and nearby landowners are potentially significant. Litigation for damages against willing participants, increased friction between neighbors, and landowner right to know actions could be anticipated.

IMPACT ON PROPERTY VALUES: The appraisal industry standard requires that environmental encumbrances such as endangered species habitat and conservation easements be considered in the appraisal. Few appraisers take habitat into account. Delineated habitat and well-defined property use and management restrictions that are required under an HCP, however, could contribute to the devaluation of some participant property collateral by effectively making it compulsory for appraisers and lenders to factor in endangered species into the appraisal and loan approval process.

IMPACT ON TAXES: To the extent that participant landowners may reduce property taxes through the sale or lease of easements and similar encumbrances, tax levels can be expected to increase for the remaining landowners in the county. Reduced property values could also significantly reduce tax revenues generated from some of the participant properties.

PERMIT TRANSFER AT SALE OF LAND: It is unknown if participation in the HCP will run with the land as a deed restriction.

LANDOWNER SITUATION AT THE END OF THE AGREEMENT: At the end of the agreement, landowners will be left with clearly defined and cataloged endangered species habitat, the risk of immediate recolonization of any habitat they created above the baseline, legal liability for every listed species above and below the baseline, and no further protections against the spread of listed species outside of the baseline on their property.

SUMMARY: Habitat Conservation Plans have some potentials of advantages in participation by reduced regulatory risk for certain individuals, lower participation costs for landowners interested in participating, and easier access to certain incentive programs. All these benefits however, can be obtained through existing state and federal programs.

Disadvantages of participation include inventory and documentation of rare species habitat on their land, greater property use and management restrictions, higher property management and development costs, annual access to their property by regulatory

agents monitoring their land use and management; increased regulatory enforcement of federal Endangered Species Act provisions; higher risk of litigation under civil suit provisions under the Endangered Species Act by environmental groups and by other landowners; and possible decrease in property values.

CONSERVATION AGREEMENT: If there is a Conservation Agreement portion of the plan claiming to provide protection against future listings of rare plants or animals for the landowners who voluntarily agree to enhance and protect habitat. In exchange, property use and management restrictions for those species are frozen at the level established in an agreement. However, under the Endangered Species Act land owners are under NO obligation to protect listed plants or unlisted candidate species.

LANDOWNER REIMBURSEMENT: In the event that a Conservation agreement is terminated by a landowner, the landowner may be required to reimburse Lincoln County for the expenses incurred at the time of termination of the agreement. There is NO reciprocal requirement to reimburse the landowners if the county exits the agreement.

SUMMARY: THE CONSERVATION AGREEMENT: Proponers say that the major advantage of a conservation agreement is to help document, inventory and catalog the geographical distribution of the target species with a view towards assisting. It offers no land owner protection with respect to plants, since federally listed plants are not protected on private property.

Disadvantages include an inventory of rare plant or animal habitat on your property; greater property use and management restrictions; higher property management and development costs; annual access to your property by regulatory agents monitoring land uses and management; increased regulatory enforcement of federal Endangered Species Act regulations; higher risk of litigation under civil suit provisions of the Endangered Species Act by environmental groups and other landowners; and possible decreases in your property values.

Currently the plan is in Phase 1, which goes from just above Caliente to the state line in the east, and down the meadow Valley Wash to the county line. The other phases will be implemented in the rest of the county as well, so this does impact every land owner.

The Lincoln County Private Property Protection Act

Summary

The Lincoln County, Nevada Private Property Protection Act is designed to ensure property owner rights as established under the 5th Amendment to the United States Constitution through the establishment of reasonable standards for takings and a method of relief for landowners whose rights have been taken by excess regulation. Key components of the bill include: a definition of regulatory takings, governmental compensations for property rights infringement, inverse condemnation procedures, regulatory rollback procedures, legal challenges and tax adjustments.

Whereas the citizens of Lincoln County have deep concerns about the protection of their private property in the event of the adoption of a Multiple Species Habitat Conservation Plan, and

Whereas signing of a Multiple Species Habitat Conservation Plan by the Lincoln County Commissioners automatically gives access to private property to Federal Agencies, their contractors, non-government organizations and potentially other private groups that aren't welcome on private property normally, and

Whereas it is our belief that signing of a Multiple Species Habitat Conservation Plan will violate or nullify the protections for Lincoln County citizens of the Fifth amendment of the Constitution, and

Whereas the County Commissioners are elected to protect our private property rights as the closest level of government to the CITIZENS, and should be the best means of defense from an overbearing federal or state government, and

Whereas signing of the Multiple Species Habitat Conservation Plan compromises the County Commission's ability to defend our private property rights when they become co-enforcers of the Endangered Species Act, thereby allowing the following:

Allows the inventory and mapping of rare and endangered species on private property.

Provides the new regulatory agency/ USFWS annual access to private property for the purpose of monitoring property uses and management.

Subjects the private property to increased regulatory enforcement

Increases property use and management restrictions

Increases property management and development costs.

Increases the risk of litigation under the civil suit provisions of the Endangered Species Act by environmental groups, and litigation by adjacent and nearby landowners

Possibly reduces property values

NOW THEREFORE BE IT RESOLVED It is the desire that the following Act be made into an ordinance to defend Private property rights, and be it further

RESOLVED It shall now be a requirement of Lincoln County Code that any, federal agency, state agency, special interest group or their contractors or consultants, or any other person or persons wish to access any Lincoln County Private Citizen's property that the said federal agency, state agency, special interest group or their contractors or consultants, or any other person or persons must first gain written permission from the land owner, and be it further

RESOLVED that those federal agency, state agency, special interest group or their contractors or consultants, or any other

person or persons wishing to gain access to private property are required to first obtain a permit from the Lincoln County Commissioners which contains the names, titles and organizations of every individual wanting access to the property along with the exact purpose of the visit, date and time of proposed entry and exit and exact location of visit, and be it further

RESOLVED that failure of any said federal agency, state agency, special interest group or their contractors or consultants, or any other person or persons to obtain a permit with the county and a contract with the land owner will be prosecuted for trespassing plus, and be it further

RESOLVED that said federal agency, state agency, special interest group or their contractors or consultants, or any other person or persons shall obtain and sign a contract for access to private property with the property owner which will be permission in writing and recorded in the Lincoln County Recorder's office before a permit is issued, and be it further

RESOLVED that said federal agency, state agency, special interest group or their contractors or consultants, or any other person or persons, shall first post a \$10,000 bond with the County Treasurer for the permit. And be it further

RESOLVED that said federal agency, state agency, special interest group or their contractors or consultants, or any other person or persons shall refrain from disclosure of any oral, written, or pictorial or any other means of information gathering that took place while gaining access to private property, and if they do disclose any information or data in any form including but not limited to oral, written, pictorial or other means they shall be liable for \$10,000 **personally for each disclosure to each entity, agency or non-governmental organization and be it further**

RESOLVED that if any federal agency, state agency, special interest group or their contractors or consultants, or any other person or persons' disclosure triggers actions or events, penalties, levy's, fines or in any way causes harm or expense to the owner it is their personal burden, not the landowners to prove that such actions and events were not caused by federal or state agency, special interest group or their contractors or consultants or any other person or persons own actions. And be it further

RESOLVED that if any disclosure occurs said federal agency, state agency, special interest group or their contractors or consultants, or any other person or persons, shall agree to pay the land owner \$10,000 for EACH instance of disclosure plus all court costs, attorney fees and interest at the rate of 18% per annum since the date of breach of the access contract. And

FINALLY IT IS RESOLVED by the undersigned CITIZENS that the Lincoln County Commissioners shall adopt as many measures as necessary and at their disposal to defend, protect and carry out their Constitutional duties to protect us and our Private Property as their Citizens from harm resulting from their signing Multiple Species Habitat Conservation Plan.

Joni Cornell Name P.O. Box 634 Alamo, NV 89001 Address

Hart Cornell Name P.O. Box 634 Alamo, NV 89001 Address

Debbie Hewitt Name P.O. 633 ALAMO, NV 89001 Address

Myrtle Jane Dunham Name P.O. 635 Alamo, NV 89001 Address

Peter Hewitt Name P.O. 633 ALAMO, NV 89001 Address

Name	Address
Jennifer M. Gormley	P.O. 235 Alamo, NU 89001
Dina Scarbro	Box 402 Alamo, NU 89001
_____	Box 402 Alamo, NU 89001
Annie Connet	Box 442 Alamo, NU 89001
_____	Box 442 Alamo, NU 89001
_____	P.O. Box 415 Alamo, NU 89001
M. Larkin	P.O. Box 415 Alamo, NU 89001
Brian A. Hoff	HCR 61 Box 106 Hiko, NU 89017 #2 old shop Lane
Leanne W. Hoff	HCR 61 Box 106 Hiko, NU 89017
Mark J. Hight	P.O. Box 504 89001
Lorrie Smedley	PO Box 599 89001
Bill Hardy	43 W. Broadway 89001
Dorothy Connell	Box 644 Alamo 89001
_____	Box 644 Alamo 89001
_____	Box 304 Alamo, NU 89001
_____	Capital. Alamo, NU 89001

Name

Address

Gay Council

1000 W. Main, Rt. 1, 84501

Name

Address

Name

Address

COPY

NO. **116909**

FILED AND RECORDED AT REQUEST OF
JIM LOGAN

SEPTEMBER 5, 2001

AT 03 11:00 A.M. IN CLERK'S OFFICE

IN BOOK 158 OFFICIAL

RECORDS PAGE 121

COUNTY CLERK

LESLIE BOUCHER

COUNTY RECORDER

BY Teresa Louera, DEPUTY

BOOK **158** PAGE **127**

H 3