

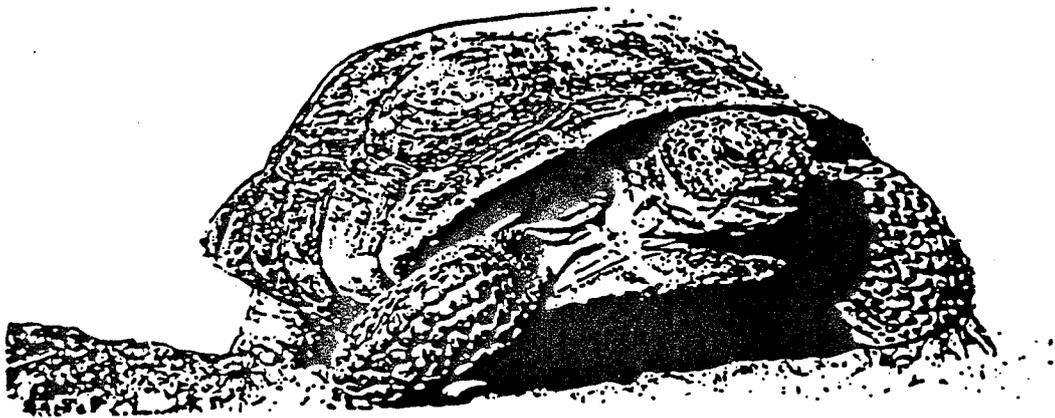
**WASHINGTON COUNTY, UTAH
DESERT TORTOISE INCIDENTAL TAKE PERMIT
APPLICATION/DOCUMENTS
Part IV**

**Final
Implementation Agreement
Habitat Conservation Plan
Washington County, Utah**

December 1995



IMPLEMENTATION AGREEMENT



**WASHINGTON COUNTY, UTAH
HABITAT CONSERVATION PLAN**

TABLE OF CONTENTS

I. DEFINITIONS	1
II. RECITALS	2
A. Listing	3
B. Habitat Conservation Plan	3
C. Interlocal Agreement	4
D. Issuance of Permit	4
E. Monitoring by USFWS	4
III. GENERAL TERMS	5
A. Incorporation of HCP	5
B. Cooperative Effort	5
C. Purposes	5
IV. ADMINISTRATION OF THE HCP	5
A. Washington County	5
B. HCP Administrator	5
C. HCP Biologist	6
D. Habitat Conservation Advisory Committee (HCAC)	6
E. Technical Committee (TC)	6
V. RESERVE ACQUISITION AND MANAGEMENT	6
A. Acquisition	7
B. Operation of the Reserve	8
C. Plans to be Prepared	9
D. HCP Funding Contributions	9
E. Purchase of Grazing Permits	9
F. Fencing	10
G. Law Enforcement	11
H. Education	11
I. Management of Taken Tortoises	11
J. Other Species Enhancement	11
K. Ordinances	12
L. Assurances	13
M. Development of Take Areas	13
N. Monitoring and Enforcement by County and Cities	13
O. Incremental Implementation of Take	13
P. Non-Signatory Properties	14
Q. Unforeseen Circumstances	15
R. Listing of Additional Species	15
S. Duration of Reserve	15

VI. FUNDING PROGRAM	15
A. Funding Sources	15
B. Interim Funding	15
C. Failure to Meet Funding Obligation	15
VII. OBLIGATIONS AND PROGRAMS OF THE PARTIES	16
A. County	16
B. Town of Ivins	17
C. UDNR	17
D. BLM	18
E. USFWS	18
VIII. REMEDIES AND ENFORCEMENT	19
A. Remedies in General	19
B. Section 10(a)(1)(B) Permit	19
C. Withdrawal from Agreement	21
D. Limitations and Extent of Enforceability	21
E. Enforceability by Cities	21
F. Enforcement by Other Persons	22
G. Notice of Action; Limitation of Actions	22
H. Amendments	23
IX. MISCELLANEOUS PROVISIONS	23
A. Successors and Assigns	23
B. Notices	23
C. Entire Agreement	24
D. Possible ESA Amendment	24
E. Attorney's Fees	24
F. Counterpart	24
G. Term of Agreement	24
H. Default	25
I. Elected Officials Not to Benefit	25
J. Availability of Funds	25
K. Exercise of Responsibility	25

THIS AGREEMENT is made and entered into as of the _____ day of _____, 1995, by and between the United States Fish and Wildlife Service (USFWS), the United States Bureau of Land Management (BLM), State of Utah (acting through the Utah Department of Natural Resources [UDNR]), Washington County (the County), and the City Ivins located within Washington County, Utah (collectively, the Cities).

For and in consideration of the mutual covenants and conditions contained herein, the parties hereto do hereby agree as follows:

I. DEFINITIONS

Terms defined and utilized in the HCP and the ESA shall have the same meaning when utilized in this Agreement, except as specifically noted.

- A. The term "Biological Opinion" means the biological opinion issued by USFWS as part of the Section 7 consultation under ESA for the Washington County Incidental Take Permit issuance on _____, 1995.
- B. The term "ESA" means the Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531-1543.
- C. The term "FLPMA" means the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701 *et seq.*
- D. The term "HCP" means the "Washington County Habitat Conservation Plan," dated December 1995, as approved by USFWS on _____, 1995.
- E. The term "Interstate Land Exchange" refers to a proposed private-federal land exchange between private landowners within the Reserve and the BLM involving public and private lands in at least two states.
- F. The term "Intrastate Land Exchange" refers to one or more proposed private-federal land exchanges between private landowners within the Reserve and the BLM involving public and private lands only in Utah.
- G. The term "Landowners" or "Landowner" means title holders or other persons or entities who own or have a right to acquire fee ownership of lands. In this context, the term "Landowner" does not refer to any Party.
- H. The term "Listed Species" means and refers to the: Mojave desert tortoise (*Gopherus agassizii*), peregrine falcon (*Falco peregrinus*), bald eagle (*Haliaeetus leucocephalus*), woundfin (*Plagopterus argentissimus*), Virgin River chub (*Gila robusta seminuda*), dwarf bear-claw poppy (*Arctomecon humilis*), Silver cholla cactus (*Cylindropuntia sileri*),

southwestern willow flycatcher (*Empidonax traillii extimus*) and Mexican spotted owl (*Strix occidentalis lucida*).

- I. The term "National Conservation Area" means an official designation of land made by the United States Congress.
- J. The term "Participating Cities" means those cities and towns which have signed an interlocal agreement with Washington County in conjunction with the HCP.
- K. The term "Party" means only a signatory to this Agreement.
- L. The term "Permit" means an incidental take permit issued pursuant to Section 10(a)(1)(B) of the ESA.
- M. The term "Reserve" means the lands designated pursuant to the HCP which would be reserved and managed for the benefit of the Mojave desert tortoise and dwarf bear poppy as well as associated desert species.
- N. The term "Species of Concern" means the species found in Washington County which were candidates or proposed for listing, on the Endangered Species List at the time of HCP submission, and any additional species which are described in the HCP.
- O. The term "Take Areas" means those areas identified in the HCP in which incidental take of the Mojave desert tortoise will be allowed.
- P. The term "Tortoise" means the Upper Virgin River Recovery Unit of the Mojave population of the desert tortoise (*Gopherus agassizii*).
- Q. The term "Unforeseen Circumstances" means an unforeseen and significant adverse change in:
 - i. The population of the tortoise throughout the Upper Virgin River Recovery Unit of the Mojave population;
 - ii. The population of another Listed Species for which the HCP has provided the basis for issuance of a permit under Section 10(a)(1)(B) of the ESA; or
 - iii. The habitat or natural resources of the Reserve lands which is likely to lead to a significant loss of the tortoise or another Listed Species throughout the Upper Virgin River Recovery Unit.

II. RECITALS

This Agreement is entered into based upon the following:

A. Listing

The tortoise was listed as a threatened species in a final rule making of USFWS on April 2, 1990, pursuant to the provisions of the ESA. Critical habitat for the tortoise was published in the Federal Register on February 8, 1994. Eight other Listed Species are found in the planning area addressed by the HCP.

B. Habitat Conservation Plan

Because of the potential conflict between the protection and conservation of the Listed Species and proposed or anticipated development activities within the HCP area, the parties hereto have participated in a planning process convened and directed by the County to develop an HCP, pursuant to the provisions of Section 10(a)(1)(B) of the ESA. The HCP proposes a cooperative Federal, State and local program of conservation for the tortoise and its habitat. In October, 1995, the County submitted the HCP to USFWS with a request that USFWS issue a permit to allow Tortoises to be incidentally taken within the permit Area.

The HCP is intended to provide for the continued existence and enhancement of the tortoise in the Upper Virgin River Recovery Unit, thereby providing a basis for the USFWS to issue the permit. The HCP may also provide for the continued existence and enhancement of other Listed Species and Species of Concern which occupy the same habitat. The HCP includes provisions for the establishment of public ownership of habitat and funding for the ongoing maintenance of such habitat. The HCP also provides for incidental take of habitat devoted to urban uses (including, among others, residential, commercial, industrial, and recreational uses).

Studies conducted by Federal land management personnel and consultants to the County, together with independent reviews by USFWS, have concluded in a biological opinion that the HCP will not jeopardize the continued existence of the tortoise and other listed species; that the HCP will, to the maximum extent practicable, mitigate and minimize the taking of the tortoise; that any such taking will be incidental; that the HCP promotes the long-term conservation of the tortoise; that any take contemplated hereby will not appreciably reduce the likelihood of the survival and recovery of the tortoise in the wild, and that the HCP will be implemented as discussed in greater detail below.

C. Interlocal Agreement

An Interlocal Agreement to implement the fee collection aspects of the HCP and agreeing to the terms and condition of the HCP has been prepared by Washington County and approved by the following municipalities: Hurricane, Ivins, Rockville, St. George, Santa Clara, Springdale, Virgin, and Washington.

D. Issuance of Permit

The USFWS will issue a permit concurrently with the execution of this Agreement in response to Washington County's application. Issuance of the permit is a condition precedent to the performance of this Agreement, which shall not become effective or binding upon any Party unless and until the permit has been issued. Preparatory to issuance of the permit, the USFWS will take action in accordance with applicable law and issuance of the permit will be based only upon finding, after appropriate opportunity for public comment and appropriate NEPA compliance, that:

1. Incidental Take

Any permitted taking of the subject listed species will be incidental to the carrying out of otherwise lawful activities; and,

2. Minimize and Mitigate

The HCP and this Implementation Agreement will, to the maximum extent practicable, minimize and mitigate the impacts of such incidental taking; and,

3. Adequate Funding

The funding sources identified and provided for herein will ensure that adequate funding for the HCP will be provided; and,

4. No Likely Jeopardy

Any permitted taking of the tortoise will not appreciably reduce the likelihood of the survival and recovery of the tortoise in the wild; and

5. Other Measures

Any other measures set forth in the HCP and required by the USFWS as being necessary or appropriate for the purposes of the HCP will be fulfilled.

E. Monitoring by USFWS

After issuance of the permit, the USFWS will monitor the implementation thereof, including, but not limited to the management, maintenance and monitoring of the Reserve in order to ensure compliance with the permit, the HCP and this Agreement. In addition, the USFWS shall, to the maximum extent possible, ensure the availability of its staff to cooperate with and provide technical and research assistance to the parties.

III. GENERAL TERMS

A. Incorporation of HCP

The HCP and each of its terms are intended to be, and by this reference are, incorporated herein. In the event of any direct contradiction between the terms of this Agreement and the HCP, the terms of this Agreement shall control. In all other cases, the terms of this Agreement and the terms of the HCP shall be interpreted to be supplementary to each other.

B. Cooperative Effort

In order that the legal requirements set forth in this Agreement are fulfilled, each of the parties to this Agreement shall perform the tasks set forth herein. This Agreement thus implements the cooperative Federal, State and local program of conservation for the tortoise, other Listed Species and Species which may benefit under the HCP.

C. Purposes

The purposes of this Agreement are:

1. To assure the implementation of each of the terms of the HCP.
2. To specify the obligations, responsibilities and tasks assigned to each of the parties pursuant to the terms of the HCP.
3. To provide remedies and recourse should any Party fail to perform its obligations, responsibilities and tasks as set forth in this Agreement.

IV. ADMINISTRATION OF THE HCP

The administration of the HCP shall be conducted in accordance with its terms, as follows:

A. Washington County

Washington County will administer the HCP. For details, see Chapter 6.0, starting on page 103, of the HCP.

B. HCP Administrator

The HCP administrator will be employed by Washington County to administer the HCP under County authority. For details, see page 103 in HCP.

C. HCP Biologist

See page 105 in HCP.

D. Habitat Conservation Advisory Committee (HCAC)

See pages 105-106 in HCP.

E. Technical Committee (TC)

See page 106 in HCP.

V. RESERVE ACQUISITION AND MANAGEMENT

A. Acquisition

Acquisition of Reserve lands will be facilitated by the County. Landowners have been consulted throughout the HCP process and have been encouraged to participate in these land exchanges. In the event they do not, the HCP will have no legal effect on their property and will place no restrictions on use of their property within the Reserve. However, such lands will not receive the benefits of the permit and non-participating entities owning land within the Reserve will remain subject to Section 9 enforcement provisions of the ESA.

Four methods have been identified for creation of the Reserve: (1) consolidation of lands through exchanges, (2) purchase of lands by Land and Water Conservation Fund (L&WCF), (3) purchase of conservation easements, and (4) donations.

Properties to be acquired for the Reserve have been identified by legal description, tax assessor number, current landowner, and approximate acreage in Tables 3.2 - 3.6 (pages 29, 31-32, 36-39, 41, and 45) in the HCP. This section briefly explains the methods by which these properties will be acquired.

1. Exchange

a. State School Trust Lands - BLM Land Exchange

This exchange is described on page 24 of the HCP. A Memorandum of Understanding (MOU) between the State of Utah and BLM to guide the exchange of lands within the proposed Reserve boundaries for BLM lands elsewhere in the State of Utah has been signed.

b. Private Lands - BLM Land Exchange (Interstate and Intrastate Land Exchanges)

The interstate and intrastate land exchanges are described on page 24 of the HCP.

2. Land and Water Conservation Fund Purchase

Some funds appropriated for the L&WCF have been made available for land acquisition for the Reserve in FY 1995. The owners of lands constituting tortoise habitat of a nature which would justify the use of L&WCF for acquisition have been identified.

3. Conservation Easements

Should acquisition or exchange of certain lands within the proposed Reserve prove to be unnecessary or infeasible, the County will seek to acquire conservation easements or other protective mechanisms, creating the required protection for Reserve lands without fee simple acquisition of those lands. Such conservation easements preferably in perpetuity are acceptable for fulfillment of the permit, granted in perpetuity or for so long as such protection is required by the ESA, whichever is less.

4. Donation

Donation of Reserve lands by landowners is acceptable to help accomplish Reserve acquisition goals.

5. Facilitation of Acquisition

The HCP has established a fund of \$1,000,000 to be used for the facilitation of acquisition of Reserve lands. These funds will be disbursed by the HCP administrator, based on recommendations by the HCAC, and upon approval by the County.

6. Reports

The County will report on acquisition activities in quarterly and annual reports. USFWS will annually evaluate the level of progress toward total Reserve acquisition. Five years following permit issuance, USFWS will make a determination whether adequate progress toward Reserve acquisition has been made. If the level of progress is determined to be inadequate, then USFWS will enter into discussions with the County and the HCAC to consider Reserve acquisition alternatives.

B. Operation of the Reserve

Reserve management and monitoring are discussed on pages 99-100 in the HCP.

The Reserve has been divided into five zones, as detailed in Chapter 3 of the HCP. The management responsibility for each of these zones is proposed to be as follows:

<u>Zone</u>	<u>Management Agency</u>
Zone 1	Town of Ivins/BLM
Zone 2	State Parks/Town of Ivins/BLM
Zone 3	BLM
Zone 4	BLM
Zone 5	BLM

Each Party listed above will manage the lands owned or otherwise controlled by it within the Reserve consistent with the HCP and this Agreement.

The County has sought the support of the State of Utah, BLM and the Utah Congressional Delegation for designating the Reserve, or those portions managed by BLM as public lands, as a National Conservation Area (NCA) to be managed by the BLM. The BLM will have no management authority over private, State Park lands, or State School Trust lands within the Reserve boundary.

C. Plans to be Prepared

The following plans will be prepared following permit issuance:

Agency	Plan	Time Frame	Funding
County	Interpretation and Education Plan	2 yrs	County
USFWS	Tortoise Translocation Plan	5 yrs*	USFWS
UDWR	Tortoise Monitoring Plan	2 yrs	County/ State
UDPR	Tortoise Management Plan (Snow Canyon)	2 yrs	County/ State
BLM	Dixie Resource Area RMP	2 yrs	County/BLM
BLM	Dixie Resource Area Activity Level Plan	5 yrs	County/BLM
Washington Co. Water District	Virgin River Conservation & Habitat Management Plan	18 mos	Water District

* 6 Months after completion of study

D. HCP Funding Contributions

The HCP will provide interim funding to the BLM for Reserve planning and management in ten semi-annual installments of \$25,000, for a total of \$250,000 over five years. These funds will be disbursed for five years, with payments starting within 90 days of permit issuance, and continuing every six months thereafter, for a total of 10 payments over five years.

The HCP will provide \$50,000 to UDNR to help fund the development of its tortoise management plan and associated management activities. These funds will be disbursed semi-annually over two years, with payments starting within 90 days of permit issuance, and continuing every six months thereafter, for a total of 4 payments over two years.

E. Purchase of Grazing Permits

The grazing purchase program is described on page 100 of the HCP.

F. Fencing

Three types of fencing barriers are envisioned per the HCP (pages 93-94). The first is a barrier which keeps human activities and pets out and keeps tortoises in. Approximately 26 miles of this type of barrier will be installed by the parties stated in the following areas where geographic features are not adequate barriers.

<u>Party Responsible</u>	<u>Fence Location</u>
Landowner/Developer	Ivins through Padre Canyon to Snow Canyon Road, on the southern Reserve line
Landowner/Developer	Paradise Canyon: both northern and southern Reserve lines
Landowner/Developer	Winchester Hills: southern and eastern portions, where cliffs would not prevent incursion into the Reserve from the west by humans and pets
Landowner/Developer	Middleton to the North Washington Reserve line
Landowner/Developer	North Washington Reserve line
Landowner/Developer	Eastern Reserve boundary at property line west of Red Cliffs Rd

The second type of barrier would be a tortoise proof fence, which would be constructed along roughly 19 miles in areas where geographic features are not adequate, as follows:

<u>Party Responsible</u>	<u>Fence Location</u>
Landowner/Developer	Reserve boundary from Snow Canyon Road to Paradise Canyon
City of St. George	Skyline Drive (north side)
FHWA/UDOT	Utah Highway 18 (both sides)
FHWA/UDOT	West side of Interstate 15

As BLM acquires non-federal lands in the HCP area along SR-18, it will coordinate with UDOT to ensure a right of way width between 200 and 300 feet to facilitate desert tortoise protection with fencing. The third type of fence would be a range fence to protect endangered plant areas, totalling about 26 miles, in areas shown on Figure 5.1 in the HCP.

Vehicle barriers are proposed for the following locations:

<u>Party Responsible</u>	<u>Vehicle Barrier Location</u>
UDNR	Gate to remain on dirt road to St. George well site off Snow Canyon Road
St. George City	Gate roads off of Skyline Drive, east of U-18, which provide utility access
Washington City	Gate two utility access roads off the north end of the North Washington Reserve line
UDOT	Gate road off I-15, heading west, about 1.5 miles south of the Red Cliffs Road
County	Cottonwood Road will either be gated where it crosses the northern and southern boundary of the Reserve, or it will be fenced.

Maintenance of tortoise fences will be conducted by the agency or landowner responsible for their construction. Inspection of fences will be the responsibility of the County.

G. Law Enforcement

Law Enforcement is discussed on pages 94 and 97 in the HCP. Funds from the HCP will be disbursed quarterly to the BLM and UDNR in February, May, August, and November, for a period of five years. Funding for law enforcement will be initiated between 90 and 180 days following permit issuance.

UDNR and BLM law enforcement positions will be new positions over and above existing manpower levels and be stationed in St. George due to need for timely response to HCP issues. They will be responsible for enforcement of HCP Reserve regulations, and all laws and regulations (local, State, and Federal) which pertain to the protection and conservation of threatened, endangered, candidate, and Utah sensitive species and their habitats. Specific duties, assignments, and responsibilities of these positions will be outlined in annual work plans submitted by the respective agency to Washington County through the HCAC. Similarly, summary reports will be provided annually by these two agencies to Washington County. Law enforcement personnel will be required to document all work on daily activity logs and bi-weekly time sheets or time and activity sheets. Personnel in the new UDNR and BLM enforcement positions will be required to devote at least 66 percent of their annual work load to enforcement related to the Washington County HCP. The remaining 34 percent of each agency's enforcement responsibilities may be accomplished by additional law enforcement personnel from the agency during periods of peak activity.

H. Education

See page 97 in the HCP.

I. Management of Taken Tortoises

Translocation is discussed on pages 97-98 in the HCP. Major responsibilities and tasks are as follows:

<u>Task</u>	<u>Responsible Party</u>
Notification to HCP administrator, prior to subdivision grading, that site will be graded.	Land Owner
Scheduling of survey and tortoise removal, if done by County.	HCP Biologist
Alternative list of consultants made available to landowner for tortoise survey.	HCP Biologist and/or Administrator
Standardized survey forms to document survey results.	HCP Biologist and/or Administrator
Survey audit.	UDNR
Removal of tortoises from property.	HCP Biologist/Administrator or Consultant retained by the Landowner
Temporary tortoise care for translocation research (1-5 yrs).	HCP Biologist and/or Administrator
Receipt, health tests, and translocation of tortoises (1-5 yrs).	USFWS/Research
Management of taken tortoises (6-20 yrs).	HCP Biologist and/or Administrator

J. Other Species Enhancement

See pages 100-102 in the HCP.

K. Ordinances

The following ordinances have been or will be enacted by the County for areas within its jurisdiction to implement the management objectives identified in the HCP:

<u>Ordinance</u>	<u>Purpose</u>
Leash Law	To require that all dogs must be on leash within the Reserve and in areas adjacent to the Reserve.
Firearms	To prevent the discharge of firearms within the Reserve except during regulated hunting seasons.
Development Code	To require density restrictions, native vegetation, and open space within Zone 1 of the Reserve in Ivins.
Fencing/Walls	To require that developers establish fences/walls as specified in the HCP at the boundary between their property and the Reserve.
Vehicle Speed	To minimize probability of vehicle strike of tortoise on the Tuacahn and Cottonwood Roads.
Off-Road Vehicles	To prevent the use of off-road vehicles within the Reserve.

The County will exercise its best efforts to ensure that such ordinances are also adjusted by each participating city.

L. Assurances

A primary purpose of this Agreement is to provide for the long-term reconciliation of the concerns of the parties regarding the protection and enhancement of the tortoise and the present and prospective urban uses within the area (including but not limited to residential, commercial, industrial and public service uses), by providing for the Reserve and the take areas, resulting in the issuance of the permit.

The participating cities have entered into agreements with the County which require that they and each of them will pay or arrange for the payment of significant sums of money over time and to convey substantial and valuable parcels of real property in order to establish, fund, and maintain the HCP implemented by this agreement so as to provide a legal basis for issuance by USFWS of the permit. This agreement does not create, deny, or abridge any claim or cause of action which the cities or any of them may assert against any Party hereto.

The USFWS and BLM intend to fulfill their responsibilities as set forth in this Agreement completely and expeditiously. Both BLM and USFWS will, to the maximum extent practicable, allocate sufficient staff and financial resources as may be necessary to accomplish these goals as required herein. USFWS shall include in annual budget requests sufficient funds to fulfill its obligations under this Agreement and the HCP. BLM shall likewise include in annual budget requests sufficient funds to fulfill its obligations under this Agreement and the HCP.

Based upon the performances and commitments specified in this Agreement and the HCP, USFWS will issue a permit as provided by 16 U.S.C. 1539 and 50 C.F.R. 17.22. The permit will be issued based upon the best scientific information currently available to USFWS, and will constitute compliance by the County, participating cities, and the landowners whose property is included in the HCP, with all provisions of the ESA. Except as provided under Section VIII.B.2, no further mitigation or compensation shall be required of any Landowner or participating city who has complied with requirements set forth under this Agreement or parties (if different from permit applicants) with respect to the "take areas" to provide for the conservation, protection, or enhancement of the tortoise.

M. Development of Take Areas

1. Specific Duties

a. Survey and Removal

Survey and removal requirements are detailed on pages 110, 113, and 115 of the HCP for incidental take areas and on page 115 of the HCP for potential habitat areas.

b. Reporting

Reporting requirements are detailed on page 113 of the HCP.

N. Monitoring and Enforcement by County

The County shall monitor compliance by the participating cities with the obligations set forth in this Agreement and in the HCP with respect to the lands over which the participating cities have jurisdiction and shall strictly enforce the terms of Section VI.C.2., below.

O. Incremental Implementation of Take

Lands will be released for take as lands are acquired for the Reserve and/or mitigation monies are expended. Incidental take will be allowed according to the schedule presented in Table 2, based on expenditures in various categories and acquisition of certain Reserve habitats. Release of an acre of incidental take will result from expenditures from \$1,000 to \$10,000 depending on the activity funded (see Table 2). For habitat acquisition, an acre of take will be released for every 2.3 acres acquired within the Reserve.

Pro rata acreage will be considered released for take the day the County issues a check in support of any of the expenditures shown in Table 2 and the day Reserve acreage is legally acquired. The County will determine the specific areas selected for any given take.

Table 2.

Incremental Implementation Release Schedule.

<u>Increment Per Acre Released</u>	<u>Category</u>	<u>Total Budget</u>	<u>Total Acres Released</u>
\$1,000	Law Enforcement	\$650,000	650
	Habitat Acquisition	\$1,000,000	1,000
	Fencing	\$500,000	500
	Monitoring	\$1,000,000	1,000
	Habitat Acquisition for Other Species	*	*
	HCP Biologist	\$760,000	760
\$5,000	Grazing Permits	\$175,000	35
	Education	\$500,000	100
	Translocation	\$240,000	48
\$10,000	Reserve and HCP Administration	\$1,780,000	178
Acquisition of 2.3 acres	Preserve Lands	18,428 acres	<u>7,993</u>
Total Released for Incidental Take			12,264

* If habitat is acquired for other species, it is possible that the number of acres which could be released under this incremental implementation schedule could exceed the number allowed under the HCP. It should be made clear that the only way the number of acres released for incidental take would exceed the number requested in the permit would be by amendment.

P. Non-Signatory Properties

It is recognized that certain properties may become covered by this Agreement and the Federal permit issued contemporaneously with the approval of this Agreement, the owners of which are not signatories hereto. The parties shall facilitate the development of these properties consistent with the ESA by allowing them to be included within the permit and the funding mechanisms as provided for herein. Notwithstanding any other provision of this Agreement, any such property or property owner shall not be bound by any funding requirement established pursuant to this Agreement unless such property owner voluntarily so elects at the time approval for subdivision or other development approval of that property is sought. A property owner who seeks any discretionary development approval will be required to agree as a condition of such approval to participate in the funding mechanism established pursuant to this Agreement in order to receive the benefits conferred by the permit. Such property owners may elect to be excluded from the permit and be covered by otherwise applicable law, including the prohibition against takings of listed species as provided in the ESA.

Q. Unforeseen Circumstances

In response to unforeseen circumstances, any Party to the Implementation Agreement may request the HCAC to meet to discuss appropriate amendments to the HCP.

R. Listing of Additional Species

Should species identified as proposed or candidate species be listed pursuant to the ESA subsequent to this Agreement, the USFWS will evaluate the HCP as it exists at the time of the subsequent listings to determine whether or not the HCP would support the issuance of permits under Section 10(a) of the ESA for those species.

S. Duration of Reserve

Irrespective of the length of the permit granted by the USFWS, the parties recognize that once Tortoises have been taken and their habitat modified within the permit area by development of the take areas as authorized in the permit, the take and habitat modification will be permanent. Therefore, lands which have been placed in the Reserve prior to any termination or modification of this Agreement or the HCP shall remain in protected status so long as such protection is necessary to meet the requirements of the ESA.

VI. FUNDING PROGRAM

A. Funding Sources

Funding sources are described on pages 108-110 of the HCP.

B. Interim Funding

Interim sources of funding or loans will be sought by the parties to provide start-up monies:

C. Failure to Meet Funding Obligation

1. County

In the event that the County is unable to meet all or part of its funding obligation, the County will enter into discussions with USFWS to discuss feasible alternatives which can accomplish the requirements as stated in the HCP. In the event that funding cannot continue at committed levels, then an amendment procedure may be initiated. In the event that the County cannot continue to make payments as specified in the HCP or worked out through an amendment procedure, then the County's obligation to make payments required above shall terminate and the County shall thereafter have no obligation to make further payments and the USFWS may initiate action under Section VIII.B.2 of this Agreement.

2. Participating Cities

If any Participating City fails to meet its funding obligation as set forth in the Interlocal Agreement, fails to enact the ordinances specified in Section V.K, above, or fails to issue and enforce stop orders immediately upon determination that there has been grading without following established protocols, and that City is unable to provide a satisfactory solution, the City shall lose its benefits under the Permit. In the event of and upon the commencement of any new proceedings or the revival of any prior proceeding for development approvals with respect to any area for which rights and benefits under the permit have been forfeited under this paragraph, the City seeking such approvals shall, as a condition precedent to the commencement or revival of such proceedings, be required to pay to the County all amounts which would have been paid (but which were not paid) by the City prior to such time, but for the prior abandonment, and shall thereafter continue to be required to pay to the County the amounts payable as provided in the HCP.

VII. OBLIGATIONS AND PROGRAMS OF THE PARTIES

All parties to this Agreement shall participate in an annual HCP Implementation Review Meeting and encourage public input at that time. The meetings shall begin one year from the date of issuance of the permit. Additionally, the parties to this Agreement shall have the following obligations and responsibilities:

A. County

The County shall:

1. Use its best efforts to ensure that the private and State school and institutional trust lands within the Reserve are acquired and ownership of title or rights are acquired and transferred to the BLM or UDNR as appropriate.
2. Assist in the implementation and observation of this Agreement with respect to the Take Areas as provided in Section V.M.
3. Participate in the funding program as provided in Section VI.
4. Generally use and exercise the rights and authority available to them in furthering the purposes of and assuring compliance with the terms of this Agreement.
5. Comply with and enforce the conditions of the permit.
6. Issue and enforce stop work orders within its jurisdictional boundaries immediately upon notice of any grading outside the grading boundaries as shown on an approved grading plan. The County may exercise this authority based upon the agreement, its police

power, the permit, or any contractual agreements with the Cities or developers to enforce the HCP and the conditions of the permit.

7. Make available to USFWS pertinent records relating to expended funds for HCP implementation.
8. The parties recognize that the County requires broad discretion in the operation of the HCP and listing the above obligations is not intended to restrict that discretion.
9. Organize the annual HCP Implementation Review Meeting.

B. Town of Ivins

The Town of Ivins shall:

1. Cooperate with the County in the operation and administration of the Reserve as provided in Section V.
2. Assist in the implementation and observation of this Agreement with respect to the Take Areas as provided in Section V.M.
3. Participate in the funding program as provided in Section VI.
4. Generally use and exercise the rights and authority available to it in furthering the purposes of and assuring compliance with the terms of this Agreement.
5. Comply with and enforce the conditions of the permit and the terms of this Agreement within its jurisdictional boundaries. That enforcement authority includes the issuance of stop work orders.
6. Issue and enforce a stop work order immediately upon its determination that there has been grading outside the grading boundaries as shown on the recorded plat. The Town may exercise this authority based upon the agreement, the police power, the permit, or any contractual agreements with developers to enforce the HCP and the conditions of the permit.

C. UDNR

Subject to the availability of funds and personnel, UDNR will coordinate its endangered species program with this HCP to include, among other things, the following:

1. Cooperate in the preparation and publication of public information brochures.

2. Generally use and exercise the rights and authority available to it in furthering the purposes of and assuring compliance with the terms of this Agreement
3. Provide expertise for consideration of and programs for the Species of Concern and coordinate monitoring of the Reserve.
4. Make available to the County, ESA Section 6 monies received from USFWS.
5. Participate in the TC and HCAC.
6. Participate in management of relevant areas of Zone 2 of the Reserve.
7. Conduct periodic audits of surveys and removals.
8. Issue permits for tortoise surveys and removals to qualified individuals.
9. Coordinate monitoring of the Reserve and make available ESA Section 6 monies received from the USFWS.

D. BLM

The BLM will hold primary responsibility for the management of Zones 3, 4, and 5 of the Reserve. as follows:

1. As signatories to an MOU with the State, they will carry out their agreement to exchange BLM lands outside of the Reserve for State lands within the Reserve.
2. As parties to the interstate land exchange and individual Landowner exchanges, they will work to gain title subject to FLPMA.
3. Assist with law enforcement, fencing and other duties as detailed in this Agreement and in the HCP.
4. Manage Zones 3, 4, and 5 of the Reserve, and participate in the management of relevant portions of Zone 2 of the Reserve.

E. USFWS

1. The USFWS will conduct translocation research of tortoises removed from Take Areas in accordance with the HCP and make available pertinent records related to expended funds so the County can plan for possible relocation needs in years 6-20.
2. The USFWS will conduct an annual review of the translocation project and provide these results to the County for comment.

3. The USFWS will, to the maximum extent possible, ensure the availability of staff to cooperate with and provide technical assistance to issue necessary permits for County in its administration of the HCP.

VIII. REMEDIES AND ENFORCEMENT

A. Remedies in General

Each of the parties hereto shall have all of the remedies available in equity (including specific performance and injunctive relief) and at law to enforce the terms of this Agreement, and to seek remedies and compensation for any breach of this Agreement.

B. Section 10(a)(1)(B) Permit

1. Authority of County

The County shall not have the right or authority to terminate or suspend the permit, except that the County shall have the right to revoke, terminate or suspend a participating City's right to enjoy or have the benefit, rights and privileges under the permit if a City does not comply with the terms and conditions of this Agreement, whether or not the City is a signatory there to. The County shall promptly notify USFWS in writing of any action which would provide the basis for such revocation, termination or suspension.

2. Permit Revocation, Termination, and Suspension

a. Suspension

- i. The USFWS may suspend the permit for any material violation of the permit or this Agreement as follows.
- ii. The USFWS shall not suspend the permit without first: (a) requesting the County to take appropriate remedial or enforcement action; and (b) providing to the County notice in writing of the facts or conduct which may warrant the suspension and a reasonable opportunity to demonstrate or achieve compliance with the permit and this Agreement.
- iii. Any suspension under this subsection 3(a) shall be lifted immediately upon the reasonable determination by the USFWS that the violation(s) has been effectively redressed. As soon as possible, but no later than 30 working days, after any suspension under this subsection, the USFWS shall consult with the County concerning actions to be taken to effectively redress the violation(s) that necessitated the suspension. At the conclusion of such consultations, the USFWS shall make a determination of the actions necessary to effectively redress the violation(s). In making this determination, the USFWS shall consider the

conservation needs of the species concerned and any comments or recommendations received during the consultations. As soon as possible, but no later than 30 working days, after conclusion of the consultations, the USFWS shall transmit to the County written notice of the USFWS determination of the actions necessary to effectively redress the violation(s). Upon performance of the necessary actions specified by the USFWS in its written notice, the USFWS shall immediately lift the suspension.

- iv. It is the intent of the parties that in the event of any suspension of the permit, all parties shall act expeditiously to cooperate to lift any suspension of the permit to carry out the objectives of this Agreement. Notwithstanding any provision of this subsection VIII.B.2.a, no suspension of the permit, or the rights, benefits or privileges of the permit shall extend beyond a period of 180 days, unless the USFWS makes the determinations required by subsection VIII.B.2.b below.

b. Revocation or Termination

- i. The USFWS shall not revoke or terminate the permit for a violation of the permit or this Agreement unless the USFWS determines that such violation: (a) involves an unauthorized taking of a tortoise; and (b) has significantly and adversely affected such species throughout the Upper Virgin River Recovery Unit; and (c) cannot be effectively redressed by other remedial or enforcement action, including remedies resulting from the process specified in subsection VIII.B.2.a.
- ii. The USFWS shall not revoke or terminate the permit without first: (a) requesting the County to take appropriate remedial or enforcement action; and (b) providing to the County notice in writing of the facts or conduct which may warrant the revocation or termination and a reasonable opportunity (but not less than 60 days) to demonstrate or achieve compliance with the permit and this Agreement.
- iii. In the event that the USFWS revokes or terminates the permit or the rights, benefits or privileges of the permit, the County shall be relieved from any and all obligations to provide further mitigation or compensation as provided in this Agreement, including, but not limited to, any funding or lands.

c. Severability

Subject to the provisions of subsections VIII.B.2.a and VIII.B.2.b, suspension, revocation or termination of the permit (or any rights, benefits or privileges of the permit) in regard to a particular management Zone or City shall not result in suspension, revocation or termination of the permit or affect the benefits, rights or privileges of any other City or Zone.

d. Emergency Action

Should the permit expire or terminate for any reason, the County will continue to be authorized to take emergency action, in response to an actual or threatened disaster, to protect human health or safety. To the extent possible, such actions should be consistent with the HCP.

C. Withdrawal from Agreement

In the event that prior to the grading of any portion of its Take Area, a Party, participating City, or landowner is unable to develop or authorize development of portions of such Take Area as a consequence of (i) this Agreement or any portion hereof or any agreement provided for hereunder being determined to be invalid or unenforceable, or (ii) the imposition of any further requirements, regulations or restrictions, over and above those provided for in this Agreement, within or with respect to a Take Area for the protection or conservation of any species, in addition to any other remedy which it may possess, the County shall have the right upon written notice to the other parties to withdraw from this Agreement and to thereupon be released from any and all further liabilities or obligations hereunder.

D. Limitations and Extent of Enforceability

This Agreement provides for the conservation of the tortoise (and, as a result, other species which share its habitat) through the mitigation and compensatory measures provided. Accordingly, to the extent permitted by law, no further mitigation or compensation for the conservation of the tortoise will be required by any Party.

Nothing herein contained shall be deemed to limit the power of the County and the participating Cities to regulate the use of the lands subject hereto for any purposes in accordance with the Constitution and laws of the United States or the State of Utah, except as specifically agreed to herein.

Notwithstanding the terms of this Agreement, any person may take endangered wildlife in defense of his or her own life or the lives of others. The County or any participating City may take emergency action in response to an actual or threatened disaster. To the extent possible, such actions should be consistent with the HCP.

Nothing herein is intended to limit the authority of the United States Government to invoke the penalties provided for in the ESA. The USFWS has, however, reasonably determined that compliance with the terms of this Agreement shall constitute compliance with the ESA, thus avoiding invocation of such penalties.

E. Enforceability by Cities

It is acknowledged and agreed by the parties hereto that any assurances and commitments

United States Bureau of Land Management
Attention:

Utah Department of Natural Resources
Attention:

Washington County
Attention:

C. Entire Agreement

This agreement supersedes any and all other agreements either oral or in writing, between the parties hereto with respect to the subject matter hereof and contains all of the covenants and agreements between the parties with respect to said matter, and each Party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any Party, or anyone acting on behalf of any Party, which are not embodied herein, and that no other agreement, statement or promise not contained herein shall be valid or binding, except the Interlocal agreement between Washington County and the Town of Ivins dated November 11, 1993.

D. Possible ESA Amendment

Should the ESA be amended in a manner that calls into question the authority or obligations of any Party to this Agreement, the parties shall enter into negotiations to amend this Agreement as soon as practicable after the effective date of such amendment. If no agreement is reached, any Party may, upon written notice to the other parties, withdraw from this Agreement and thereupon be released from any and all further liabilities or obligations hereunder.

E. Attorneys' Fees

If any action at law or in equity, including any action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, all parties to the litigation shall bear their own attorneys' fees and costs, except that attorneys' fees and costs against the United States shall be governed by applicable Federal law, including the Equal Access to Justice Act (28 U.S.C. §2412).

F. Counterpart

This agreement may be executed in any number of counterparts. A complete original copy of this Agreement with all counterparts signature pages attached thereto and all amendments thereto shall be maintained in the official records of Washington County.

G. Term of Agreement

The term of this Agreement shall commence and this Agreement shall take effect upon the execution and delivery of this Agreement by USFWS, BLM, UDNR, the County, and the Cities and the issuance of the permit and shall continue in effect until terminated in writing by all parties.

H. Default

Except as specifically provided for herein, a default by any Party in an obligation set forth herein shall not result in, or be the basis for, the termination or rescission of this Agreement.

I. Elected Officials Not to Benefit

No member of or delegate to Congress shall be entitled to any share or part of this Agreement or to any benefit that may arise from it.

J. Availability of Funds

Implementation of this Agreement shall be subject to the availability of appropriated funds.

K. Exercise of Responsibility

All parties will carry out their responsibilities under this Agreement expeditiously and carefully. The County will request the enactment of appropriate ordinances by non-signatory cities to effectuate the purposes of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above and agree to abide by its terms.

TOWN OF IVINS

Dated:

Feb 23 1996

By:


Mayor

STATE OF UTAH (Acting by and through the UTAH DEPARTMENT OF NATURAL RESOURCES)

Dated:

Feb 23 1996

By:

Howard J. Ritzke, Sp. Dir DNR

UNITED STATES BUREAU OF LAND MANAGEMENT

Dated: 23 FEB 96

By: *A. William Lamb*

UNITED STATES FISH AND WILDLIFE SERVICE

Dated: 23 Feb 1996

By: *Ralph O. Morynwick*

WASHINGTON COUNTY

Dated: 2-23-96

By: *Gary W. Aldred*