Appendix J

Realty Program Stipulations

J.0 Realty Program Stipulations

1) The Holder shall be responsible for weed control on disturbed areas within the limits of the right-of-way/lease area. The Holder is responsible for consultation with the Authorized Officer and/or local authorities for acceptable weed control methods within limits imposed in the grant stipulations.

2) Any cultural and/or paleontological resources (historic or prehistoric site or object) discovered by the Holder, or any person working on his behalf on public or Federal lands shall be immediately reported to the Authorized Officer. Holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the Authorized Officer. An evaluation of the discovery will be made by the Authorized Officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The Holder will be responsible for the cost of evaluation. Any decision regarding suitable mitigation measures will be made by the Authorized Officer after consulting with the Holder. Holder shall be responsible for the resultant mitigation costs.

3) Holder shall construct, maintain, operate and/or modify structures and facilities as directed by the Authorized Officer to protect and minimize adverse effects upon raptors and other wildlife.

4) Holder shall report wildlife fatalities, including raptor electrocutions that are discovered on or near project facilities.

5) Holder shall comply with all applicable local, state, and federal air, water, hazardous substance, solid waste, or other environmental laws and regulations, existing or hereafter enacted or promulgated. To the full extent permissible by law, the Holder agrees to indemnify and hold harmless, within the limits, if any, established by state law (as state law exists on the effective date of the right-of-way/lease), the United States against any liability arising from the Holder's use or occupancy of the right-of way/lease area, regardless of whether the Holder has actually developed or caused development to occur on the right-of-way/lease area, from the time of the issuance of this right-of-way/lease to the Holder, and during the term of this right-of-way/lease. This agreement to indemnify and hold harmless the United States against any liability shall apply without regard to whether the liability is caused by the Holder, its agents, contractors, or third parties. If the liability is caused by third parties, the Holder will pursue legal remedies against such third parties as if the Holder were the fee owner of the right-of-way/lease area.

   Notwithstanding any limits to the Holder's ability to indemnify and hold harmless the United States which may exist under state law, the Holder agrees to bear all responsibility (financial or other) for any and all liability or responsibility of any kind or nature assessed against the United States arising from the Holder's use or occupancy of the right-of way/lease area regardless of whether the Holder has actually developed or caused development to occur on the right-of-way/lease area from the time of the issuance of this right-of-way/lease to the Holder and during the term of this right-of-way/lease.

6) The Holder shall not violate applicable air standards or related facility siting standards established by or pursuant to applicable federal, state, or local laws or regulations. The

Holder shall be responsible for dust abatement within the limits of the right-of-way/lease area and is responsible for obtaining all necessary permits from appropriate authorities for acceptable dust abatement and control methods (e.g., water, chemicals). The Holder shall be solely responsible for all violations of any air quality permit, law or regulation, as a result of its action, inaction, use or occupancy of the right-of-way/lease area.

Notwithstanding whether a violation of any air quality permit, law or regulation results, the Holder will cooperate with the Authorized Officer in implementing and maintaining reasonable and appropriate dust control methods in conformance with law and appropriate to the circumstances at the sole cost of the Holder.

Prior to relinquishment, abandonment, or termination of this right-of-way/lease, the Holder shall apply reasonable and appropriate dust abatement and control measures to all disturbed areas. The abatement and measures shall be designed to be effective over the long-term (e.g., rock mulch or other means) and acceptable to the Authorized Officer.

7) No hazardous material, substance, or hazardous waste, (as these terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, *et seq*., or the Resource Conservation and Recovery Act, 42 U.S.C. 6901, *et seq*.) shall be used, produced, transported, released, disposed of, or stored within the right-of-way/lease area at any time by the Holder. The Holder shall immediately report any release of hazardous substances (leaks, spills, etc.) caused by the Holder or third parties in excess of the reportable quantity as required by federal, state, or local laws and regulations. A copy of any report required or requested by any federal, state or local government agency as a result of a reportable release or spill of any hazardous substances shall be furnished to the Authorized Officer concurrent with the filing of the reports to the involved federal, state or local government agency.

   The Holder shall immediately notify the Authorized Officer of any release of hazardous substances, toxic substances, or hazardous waste on or near the right-of-way/lease area potentially affecting the right-of-way/lease area of which the Holder is aware.

   As required by law, Holder shall have responsibility for and shall take all action(s) necessary to fully remediate and address the hazardous substance(s) on or emanating from the right-of way/lease area.

8) The right-of-way/lease area shall be maintained in a sanitary condition at all times. Waste materials at those sites shall be disposed of promptly at an approved waste disposal site. “Waste”, as used in this paragraph, shall mean all discarded matter of any kind.

9) Holder shall mark the exterior boundaries of the right-of-way/lease area with stake and/or lath at 100 to 200 foot intervals. The intervals may be varied at the time of staking at the discretion of the Authorized Officer. The tops of the stakes and/or laths will be painted and the laths flagged in a distinctive color as determined by the Holder. Holder shall maintain all boundary stakes and/or laths in place until final cleanup and restoration is completed.

10) Holder shall conduct all activities associated with construction, operation, and termination of this right-of-way/lease within its authorized limits.

11) Holder shall maintain the right-of-way/lease in a safe, useable condition, as directed by the Authorized Officer. A regular maintenance program shall include, but is not limited to, soil stabilization.

12) Within 90 days of construction completion, the Holder shall provide the Authorized Officer (the Assistant Field Manager, Division of Lands) with data in a format compatible with the Bureau's Arc-Info Geographic Information System to accurately locate and identify the right-of-way/lease:

    Acceptable data formats are:

    - Corrected Global Positioning System files with sub-meter accuracy or better, in NAD 27 or NAD 83;
    - An AUTOCAD dxf file;
    - Or ARCInfo export files on a CD ROM, 100 mb ZIP disk or 1gb Jazz disk.

    Data may be submitted in any of the following formats:

    - ARCInfo export file;
    - On a 3.5 inch floppy disk in compressed or uncompressed format. Compressed or ZIPed data must include a copy of the UNZIP.EXE file on the disk.

    All data shall include metadata for each coverage, and conform to the Content Standards for Digital Geospatial Metadata Federal Geographic Data Committee standards. Contact Mr. Robert Taylor, GIS Coordinator at (702) 515-5051.

13) Holder shall protect all survey monuments found within the authorization area. Survey monuments include, but are not limited to, General Land Office and Bureau of Land Management Cadastral Survey Corners, reference corners, witness points, U.S. Coast and Geodetic Survey benchmarks and triangulation stations, military control monuments, and recognizable civil (both public and private) survey monuments. If any of the above are to be disturbed during operations, the holder shall secure the services of a Professional Land Surveyor or Bureau cadastral surveyor to perpetuate the disturbed monuments and references using surveying procedures found in the Manual of Instructions for the Survey of the Public Lands of the United States and Nevada Revised Statutes, Chapter 329, Perpetuation of Corners. The holder shall record such survey in the appropriate county and send a copy to the authorized officer. If the Bureau cadastral surveyors or other Federal surveyors are used to restore the disturbed survey monuments, the holder shall be responsible for the survey cost.

14) Between the periods of March 15 through July 30, surveys for nests of migratory birds shall be completed prior to surface disturbance. If any active nests are found, the area must be avoided until the young birds fledge. If disturbance in Riparian or at higher elevations is required, Holder shall consult with the Authorized officer prior to proceeding. Please contact a BLM Biologist at (702) 515-5000 for guidance.

15) Use of pesticides shall comply with the applicable Federal and state laws. Pesticides shall be used only in accordance with their registered uses and within limitations imposed by the Secretary of the Interior. Prior to the use of pesticides, the Holder shall obtain from

the Authorized Officer written approval of a plan showing the type and quantity of material to be used, pest(s) to be controlled, method of application, location of storage and disposal of containers and any other information deemed necessary by the Authorized Officer.

The plan shall be submitted no later than December 1 of any calendar year that covers the proposed activities for the next fiscal year.

Pesticides shall not be permanently stored on public lands authorized for use under this grant/permit.

16) Holder shall maintain copy of the authorization along with stipulations on construction site at all times.

17) The grant is issued subject to all valid existing rights.

18) Holder will comply with the terms and conditions of the Biological Opinion, File No. 1-5-96-F-23R.2 for the Las Vegas Valley, on file at the Bureau of Land Management, Las Vegas Field Office. In order to be exempt from the prohibitions of section 9 of the Endangered Species Act, BLM must comply with the following terms and conditions, which implement the reasonable and prudent measures described below. These terms and conditions are non-discretionary.

A. Although not required, applicants or project proponents may voluntarily choose to search for and remove tortoises from lands to be disturbed within the project [programmatic] area. However, such applicants or project proponents who choose to do voluntary search and removal shall contract or appoint a qualified individual to oversee the process. Only individuals trained to handle desert tortoises in accordance with USFWS approved guidelines shall be authorized to handle desert tortoises, unless they are in imminent danger. Currently, the USFWS approved handling guidelines are described in *Guidelines for Handling Desert Tortoises during Construction Projects* (Desert Tortoise Council 1994, revised 1999). For tortoise removals, the applicant shall make arrangements with the Clark County tortoise pick-up service at (702) 593-9027 at least 10 days prior to the commencement of tortoise collection. Tortoises shall not be placed on private lands or lands under management by an agency other than BLM without written permission of the landowner or agency.

B. If a tortoise is in imminent danger with immediate death or injury likely (such as from an approaching vehicle or equipment) and the tortoise has been given the opportunity to move but has withdrawn in its shell and is not moving, onsite personnel may capture the tortoise and place it in a clean unused cardboard box or similar container. The Clark County tortoise pick-up service will be notified immediately. The contained tortoise will be held in the shade or temperature-controlled environment until removed by the pick-up service.

C. BLM has established an exclusionary zone within the project Sec. 7 programmatic area, which is identified as having a low probability for desert tortoises to occur. Desert tortoise surveys, removal efforts, and remuneration fees will not be required for projects within the exclusionary zone.

D. Payment of $660 per acre, as indexed for inflation, shall be required for projects occurring outside of the exclusionary zone prior to issuance of the lease, permit, or other BLM authorization, with the following exceptions:
R&PP leases would be issued prior to payment of remuneration fees. Payment of fees on R&PP leases shall be deferred until immediately prior to surface disturbance. If the R&PP project consists of phased development of the lease area, fees shall be paid for each phase immediately prior to surface disturbance. Likewise, road rights-of-way issued to local governments (e.g., Clark County, cities of Las Vegas, North Las Vegas, Henderson, Mesquite, and Boulder City) may be issued before payment of fees. If payment of remuneration fees is postponed for any project, the applicant must submit a request for a Notice to Proceed before surface disturbance. The applicant shall provide BLM with proof of payment of the required remuneration fees before BLM issues the Notice to Proceed. Both of these actions shall occur prior to surface disturbance. A Notice to Proceed shall be issued for each segment as payment is made.

- Because mining plans of operation are phased in over a number of years, remuneration fees shall be paid for each phase immediately prior to surface disturbance.
- Projects impacting less than 0.25 acres will not be assessed a remuneration fee.
- Mineral material sales will be charged a fee of 25 cents per yard up to the equivalent of $550.00 per acre of disturbance.

E. An assessment of $660, as indexed for inflation, will be applied for each acre of surface disturbance with the exceptions described in letter D above. This rate will be indexed for inflation based on the Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) on January 31st of each year. The next adjustment shall occur on January 31, 2004, and will become effective March 1, 2004. Fees assessed or collected for projects covered under this biological opinion after January 31st of each year will be adjusted based on the CPI-U. Information on the CPI-U can be found on the Internet at: http://stats.bls.gov/news.release/cpi.nws.htm

F. The payment shall be accompanied by the *Section 7 Fee Payment Form* (attachment), and completed by the payee. Payment shall be by certified check or money order payable to Clark County (or other administrator named by the USFWS), and delivered to:

Clark County
Department of Comprehensive Planning
Attn: Sandra Helvey
500 South Grand Central Parkway, Third Floor
Las Vegas, Nevada 89155-1712

G. Remuneration fees will be used to fund management actions that are expected to provide a direct and indirect benefit to the desert tortoise over time. Actions may involve: habitat acquisition, population or habitat enhancement or protection, research that increases our knowledge of desert tortoise biology, habitat requirements or factors affecting habitat attributes, reducing loss of individual animals, documenting the species current status and trend and preserving distinct population attributes or any other action described in the Management Oversight report entitled *Compensation for the Desert Tortoise* (Hastey et al. 1991) or the Desert Tortoise Recovery Plan (USFWS 1994).

If the applicant or project proponent desires, tortoises encountered during construction may be moved out of harms way to adjacent habitat in accordance with USFWS approved protocol described in Term and Condition 1 above. If adjacent habitat is not available, arrangements must be made with the Clark County pick-up service for disposition of collected tortoises.

H. All necessary information sheets and forms shall be completed by BLM prior to authorizing specific actions (See Attachment A). These forms will be modified as necessary with the USFWS concurrence.

I. BLM will keep an up-to-date log of all actions taken under this consultation, including acreage affected, voluntary survey and removal activities (including reported number of desert tortoises injured, killed, or removed from the project site), and fees paid for each project. BLM will continue to provide the above information to the Las Vegas USFWS office on an annual basis. Information will be cumulative throughout the life of this consultation.

Attachment A

SECTION 7 FEE PAYMENT FORM
****PAYMENT CANNOT BE ACCEPTED WITHOUT FORM****
Entire form is to be completed by project proponent

Biological Opinion File Number: _____
U.S. Fish and Wildlife Service Office that Issued the Opinion:
Nevada Fish and Wildlife Office, Reno, Nevada
Species: Desert tortoise (*Gopherus agassizii*)
Project:
_____
Amount of Payment Received: $_____
Total Payment Required: $_____
Date of Receipt: _____
Check or Money Order Number: _____
Number of Acres to be Disturbed: _____
Project Proponent: _____
Telephone Number: _____
Authorizing Agencies: _____
Make checks payable to: Clark County Treasurer
Deliver check to: Clark County Desert Conservation Program
c/o Dept. of Air Quality and Environmental Management
Clark County Government Center
500 So. Grand Central Parkway, first floor (front counter)
Las Vegas, Nevada 89106
(Contact: Sandy Helvey at (702) 455-5821)

If you have questions, you may call the Southern Nevada Field Office of the U.S. Fish and Wildlife Service at (702) 515-5230.
Revised 6/16/04

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