

## Las Vegas Buckwheat Hearing Minutes

November 11, 2008

Pursuant to a Notice Of Intent to Act Upon A Regulation the Nevada Division of Forestry (NDF) conducted a Public Hearing November 4, 2008 to solicit input and comments from all interested persons regarding the potential adoption of regulations that pertain to Chapter 527 of the Nevada Administrative Code, specifically the inclusion of the Las Vegas Buckwheat (*Eriogonum corymbosum* var. *nilesii*) on the list of fully protected species of native flora (NRS 527.270)

Thirteen individuals signed the attendance sheet

Rob Mrowka	Center for Biological Diversity
Mike Majewski	City of North Las Vegas
Sharon Powers	North Las Vegas Chamber of Commerce
John Tennart	Clark County Desert Conservation Program
Fred Edwards	US Fish and Wildlife Service
MSgt. Carolyn Urdiales	Nellis Air Force Base
Bob Turner	Nellis Air Force Base
Ann Bedlion	Nellis Air Force base
Bruce Palmer	Logan Simpson Design Inc.
Cheng Shih	City of Las Vegas
George Garcia	GC Garcia Inc.
Jan Schwietzer	City of North Las Vegas
John Ramous	NAIOP

Rich Harvey, Resource Program Coordinator with NDF moderated the hearing. Matt Koepnick, Resource Management Officer with NDF was also present.

General discussion on the rationale or impetus behind the proposal to list the Las Vegas buckwheat. A previous proposal and hearing resulted in a Decision Notice dated December 15, 2005 in which the State Forester cited "significant conservation efforts" initiated by federal, state, county and city partners and "on the ground conservation practices" in his decision not to include the Las Vegas buckwheat on the list of fully protected species of native flora at that time.

NDF outlined broad concerns that one of the conceptual foundations of species conservation in the Las Vegas Valley, that threatened, endangered and rare species are safe and/or protected on federally managed lands had been called into question by recent activity and actions. The Clark County Multi Species Habitat Conservation Plan (MSHCP), a multi agency agreement for species conservation, was also based on the premise that species on federal lands were protected and allowed take, loss and disturbance on private property, with mitigation.

More discussion focused on the question of what, specifically, had occurred that was causing NDF's, and others, concern that rare species, including the Las Vegas buckwheat, were not adequately protected on federal lands. The basic response, from several sources, was a concern developing from the apparent failure of Nellis Air Force Base (Department of Defense) to comply with the provisions of a Conditional Permit for construction activity in protected species habitat, and the Nellis Air Force Base contention that State law pertaining to threatened and endangered species did not apply to, or obligate, Nellis Air Force Base.

There were several questions, and comments, posed regarding the scientific data sources that were being used by NDF and the State Forester. Specifically mentioned were population data and genetic data. There were also questions relating to the weight the State Forester was giving to specific data or information and what assumptions (if any) was he making. NDF facilitated a discussion of the various research efforts, papers, and other data that was available on the species and agreed to publish on the NDF website the materials they would be using in the analysis of the Las Vegas buckwheat and its status relative to NRS 527.270

The discussion moved to the listing process, with many suggesting that without adequate time to review the data presented by the State Forester they did not feel comfortable commenting or responding to the question of whether listing the Las Vegas buckwheat was warranted. Others felt that the evidence was overwhelming, questioned why the process was continuing, and requested an immediate decision. There were also concerns expressed that without resolution to the Nellis Air Force Base /NDF Permit issue there was not sufficient information or justification to proceed in either direction.

Several attendees questioned the value of State-listed species, given that a federal agency was in violation of a State issued permit. Attendees wanted to know what would be gained by listing new species if the federal agency continued to ignore State law, and would the State then unfairly punish the private land owners whose land holdings contain a relatively insignificant portion of the known Las Vegas buckwheat populations, but who be clearly be obligated by the new listing. It was suggested that if Nellis Air Force Base is correct, and the State has no authority for species protection on lands they own

or control, and a significant portion of the Las Vegas buckwheat resides there, shouldn't the US Fish and Wildlife Service be listing the species.

Several individuals commented on the Small Business Impact Statement prepared for the proposed regulation. They were concerned that the State's "reasonable mitigation" measures for private lands with Las Vegas buckwheat present, was not sufficiently defined and they wanted the State to provide more specifics.

The hearing included formal statements from several individuals, and many additional submitted written comments. They were collected as part of the hearing record and posted to the NDF website as public comment on the proposed regulation. The hearing ended with a commitment by NDF to hold an additional "stakeholder" meeting in Las Vegas, prior to any decision on the species.