

Key Definitions

(“The Endangered Species Act of 1973,” as amended through 1988 (16 USC 1531-1544, and the Implementing Agreement of the SLCHCP)

Terms Defined in Endangered Species Act. Terms used in this Agreement and specifically defined in the Endangered Species Act (ESA) or in regulations adopted by the USFWS under the ESA have the same meaning as in the ESA and those implementing regulations, unless this Agreement expressly provides otherwise.

“Changed Circumstances” means changes in circumstances affecting a Covered Species or the geographic area covered by the SLCHCP that can reasonably be anticipated by the Parties to the SLCHCP and that can reasonably be planned for in the SLCHCP. Changed circumstances and the remedial responses to those circumstances are described in Section 8.3.1 of the SLCHCP. Changed circumstances are not unforeseen circumstances. [3.4 -Implementing Agreement SLCHCP]

The terms "**Conserve**," "**Conserving**," and "**Conservation**," “mean to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.”

“Covered Activities” means certain activities carried out by each of the Permittees on Covered Lands (described below and in the SLCHCP) that may result in incidental take of Covered Species. Covered Activities means the following activities as specifically described in Section 4.0 of the SLCHCP: [Implementing Agreement SLCHCP]

- Land development and maintenance activities
 - Utility and infrastructure development and maintenance activities
 - Flood control activities
 - Roadway construction and maintenance activities
 - Union Pacific Railroad activities
 - Conversion of agricultural and livestock lands to developable land
 - Conversion of grazing land to irrigated and/or cultivated agricultural land
- [3.5 -Implementing Agreement SLCHCP]

The Covered Lands specifically exclude State Park land, those lands owned or leased by Coyote Springs Investment, LLC, the landfill owned and operated by the City of Mesquite within the Lincoln County Land Act (LCLA) land area and certain other privately-owned lands, all totaling approximately 49,070 acres within Southeastern Lincoln County.

“Covered Lands” or “Covered Area” means the non-Federal lands (approximately 30,674 acres) upon which the Permits authorize incidental take of Covered Species as well as the Federal and non-Federal lands within Southeastern Lincoln County to which the HCP's conservation and mitigation measures will be applied. Covered Lands on which incidental take of the Covered Species is expected to occur include:

- LCLA land
- Meadow Valley Industrial Park site
- Alamo Industrial Park site and Community Expansion area
- BLM lands identified for disposal within the Covered Area (includes the 640-acre Section 36 disposal parcel and lands in the vicinity of the town of Alamo)
- Lincoln County roads and rights-of-way
- Union Pacific Railroad land and rights-of-way
- City of Caliente property
- Other privately-owned lands along the Meadow Valley Wash within Southeastern Lincoln County where the landowners become Third Party Participants pursuant to IA Section 8.0 of the Lincoln County HCP

“Covered Species” means the following species, each of which the SLCHCP addresses in a manner sufficient to meet all of the criteria for issuing an incidental take permit under ESA § 10(a) (1)(B):

- Desert tortoise (*Gopherus agassizi*)
- Southwestern willow flycatcher (*Empidonax traillii extimus*)

"Critical habitat" for a threatened or endangered species means:

- The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of the Endangered Species Act (ESA), on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and
- Specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the ESA, upon a determination by the Secretary that such areas are essential for the conservation of the species.

"Endangered Species" means any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the Class *Insecta* determined by the Secretary to constitute a pest whose protection under the provisions of this Act would present an overwhelming and overriding risk to man.

“Endangered Species Act.”(ESA). The ESA provides the means to conserve ecosystems upon which endangered species and threatened species are dependent. It provides a program for the conservation of listed endangered species and threatened species.

“Permit” or “Permits” means the incidental take permit(s) issued by the USFWS to each of the Permittees pursuant to Section 10(a)(1)(B) of the ESA for take incidental to Covered Activities on the Covered Lands within Southeastern Lincoln County, as it may be amended from time to time.

“Permittees” means Lincoln County, the City of Caliente and UPRR.

“SLCHCP” means the Southeastern Lincoln County Habitat Conservation Plan prepared by the Permittees.

“Take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in such contact any listed Covered Species. Harm means an act that actually kills or injures a member of a Covered Species, including an act that causes significant habitat modification or degradation where it actually kills or injures a member of a Covered Species by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

“Third Party Participants” are those entities subject to the jurisdiction or legal control of one of the Permittees and that qualify for and receive take authorization from either one of the three Permittees pursuant to 50 C.F.R. §§ 13.25(d) or (e). Under certain circumstances described in Section 8.0 of this Agreement, Third Party Participants seeking take authorization must sign a Participation Agreement with the Permitted entity before any such take authorization is extended.

“Threatened Species” means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

“Unforeseen Circumstances” means changes in circumstances affecting a species or geographic area covered by a conservation plan that could not reasonably have been anticipated by plan developers and the USFWS at the time of the conservation plan’s negotiation and development, and that result in a substantial and adverse change in the status of the Covered Species. For purposes of this Agreement and the SLCHCP, all changes in circumstances that are not designated Changed circumstances under SLCHCP Section 8.3.1 are considered not reasonably foreseeable and, therefore, if they occur are unforeseen circumstances. Unforeseen circumstances are further described and addressed in Section 8.3.2 of the SLCHCP.

“Unlisted Species” means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is not listed as endangered or threatened under the ESA.

