

Great Salt Lake Shorelands Preserve Federal Land Transfer

Final Environmental Assessment

May 2020



Photo courtesy of The Nature Conservancy

Utah Reclamation Mitigation
and Conservation Commission



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Chapter 1

Purpose and Need

Summary

The Great Salt Lake (GSL) Shorelands Preserve is located in Davis County, Utah along the east shore of the Great Salt Lake. Lands within the GSL Shorelands Preserve are owned by the Utah Reclamation Mitigation and Conservation Commission (Mitigation Commission), The Nature Conservancy in Utah (The Nature Conservancy), and other private parties. The Utah Department of Transportation (UDOT) is planning to construct the West Davis Corridor, which would traverse the east boundary of a portion of the GSL Shorelands Preserve. UDOT requires approximately 109.09 acres of property within the GSL Shorelands Preserve for construction and operation of the highway: 15.84 acres from the Mitigation Commission and 93.25 acres from The Nature Conservancy. The Mitigation Commission is proposing to transfer their entire ownership of properties and appurtenant water rights held within the GSL Shorelands Preserve to The Nature Conservancy, including the 15.84 acres needed by UDOT. The Nature Conservancy would subsequently convey up to 15.84 acres to UDOT, presumably along with the 93.25 acres already in their ownership. The Nature Conservancy would continue to manage the remainder of the properties formerly owned by the Mitigation Commission, approximately 1,281 acres, as part of the GSL Shorelands Preserve, subject to restrictions placed on the deed transferring the properties from the Mitigation Commission to The Nature Conservancy.

Background

The Mitigation Commission is a federal agency established by Congress with passage of the Central Utah Project Completion Act in 1992, P.L. 102-575 (CUPCA).¹ The Mitigation Commission's mission is to plan, fund and coordinate the environmental mitigation and conservation programs authorized by CUPCA. Section 306(a) of CUPCA authorizes the Mitigation Commission to develop and implement a Plan to preserve, rehabilitate and enhance wetlands around the Great Salt Lake. The Plan developed by the Mitigation Commission identified a vision for the Great Salt Lake (see side-bar below) and identified acquisition of land

¹ <https://www.govinfo.gov/content/pkg/STATUTE-106/pdf/STATUTE-106-Pg4600.pdf>

along its eastern and southern shores as one of the Mitigation Commission’s highest priorities. The Mitigation Commission recognized the impact urban encroachment and development would have on the ecological function and value of wetlands associated with the Great Salt Lake. The Mitigation Commission recognized that,

“Partnerships are the strategy to accomplish this, as the need is far too great for any one entity to accomplish.”

To implement this strategy, the Mitigation Commission developed a partnership with The Nature Conservancy whose core mission is,

“to conserve the lands and waters on which all life depends. Our vision is a world where the diversity of life thrives, and people act to conserve nature for its own sake and its ability to fulfill our needs and enrich our lives.”

The Nature Conservancy had already started acquiring critically important wetlands along the east shore of the Great Salt Lake in Layton and Kaysville, when they partnered with the Mitigation Commission in 1995. From 1995 to 2007, the Mitigation Commission acquired approximately 1,297 acres of land, which was intermixed with 2,896 acres of land acquired by The Nature Conservancy. Together, these properties are known as the GSL Shorelands Preserve, as shown on [Figure 1](#).

The West Davis Corridor

Population in Davis and Weber Counties is expected to grow by 65% by 2040. Traffic models show this growth would result in congestion and frequent traffic delays along the I-15 corridor if alternate transportation is not provided (UDOT 2018). UDOT and the Federal Highway Administration (FHWA) initiated a planning effort in 2010 to evaluate alternatives to address the projected transportation need. Over 50 alternatives were initially considered, and two alternatives were eventually carried forward for more detailed review and analysis in a Draft Environmental Impact Statement (EIS). The Draft EIS was released for public review and comment in 2013.

Mitigation Commission Vision

for the Great Salt Lake

2002 Mitigation and Conservation Plan

“A wetland and upland corridor owned by state, federal or local governments, private landowners or private organizations, along the shoreline of the Great Salt Lake has been preserved that allows dynamic fluctuations of lake level. Resident wildlife and migratory shorebirds in the Western Hemisphere and waterfowl in the Pacific Flyway are assured resting, feeding and nesting habitat during the normal lake fluctuations, as well as a buffer when the lake level fluctuates more extremely. Wetland hydrology is maintained in perpetuity and access for compatible recreation is available.

A commitment to preserve the ecological function and values of the GSL and associated wetlands exists among state and local governments, private landowners and private industry.

Diverse educational opportunities are available that promote general understanding of the complexity and value of the Great Salt Lake wetland ecosystem as well as public and political support for the Great Salt Lake’s wetland, wildlife and intrinsic values.”

Figure 1

Great Salt Lake and Associated Wetlands



- Elevation 4,191.4'
- Elevation 4,200'
- Elevation 4,211.6'

-  **GSL Associated Wetlands**
Adapted From National Wetland Inventory
-  **Solar Evaporation Ponds**

After consideration of public comment and evaluation of a third alternative proposed by Utahns For Better Transportation, UDOT and FHWA issued a Final EIS and Record of Decision in 2017.² The alignment selected by UDOT and FHWA for the West Davis Corridor traverses the eastern boundary of the GSL Shorelands Preserve, as shown in [Figure 2](#). Under the selected alternative, the four-lane divided highway with a 250-foot right-of-way width would directly impact approximately 13.33 acres of Mitigation Commission-owned property and approximately 44.12 acres of The Nature Conservancy-owned property, all of which lie directly within the footprint of the highway.³ The highway would also isolate remnant areas of Mitigation Commission and The Nature Conservancy properties located on the northeast side of the highway. These parcels would be separated from the rest of the GSL Shorelands Preserve by the highway and would be of limited value to wildlife.

Table 1 summarizes the property UDOT would need to purchase from the Mitigation Commission and The Nature Conservancy for the West Davis Corridor.

Table 1 Summary of Acreage Needed by UDOT for the West Davis Corridor from the Mitigation Commission and The Nature Conservancy			
	Direct Impact (acres)	Isolated Remnant Parcels	Total
Mitigation Commission	13.33	2.51	15.84
The Nature Conservancy	44.12	49.13	93.25
Total	57.45	51.64	109.09

UDOT produced a short YouTube video describing the West Davis Corridor that can be viewed at <https://www.youtube.com/embed/-raqFCGm-hA>.

Section 4(f) U.S. Department of Transportation Act

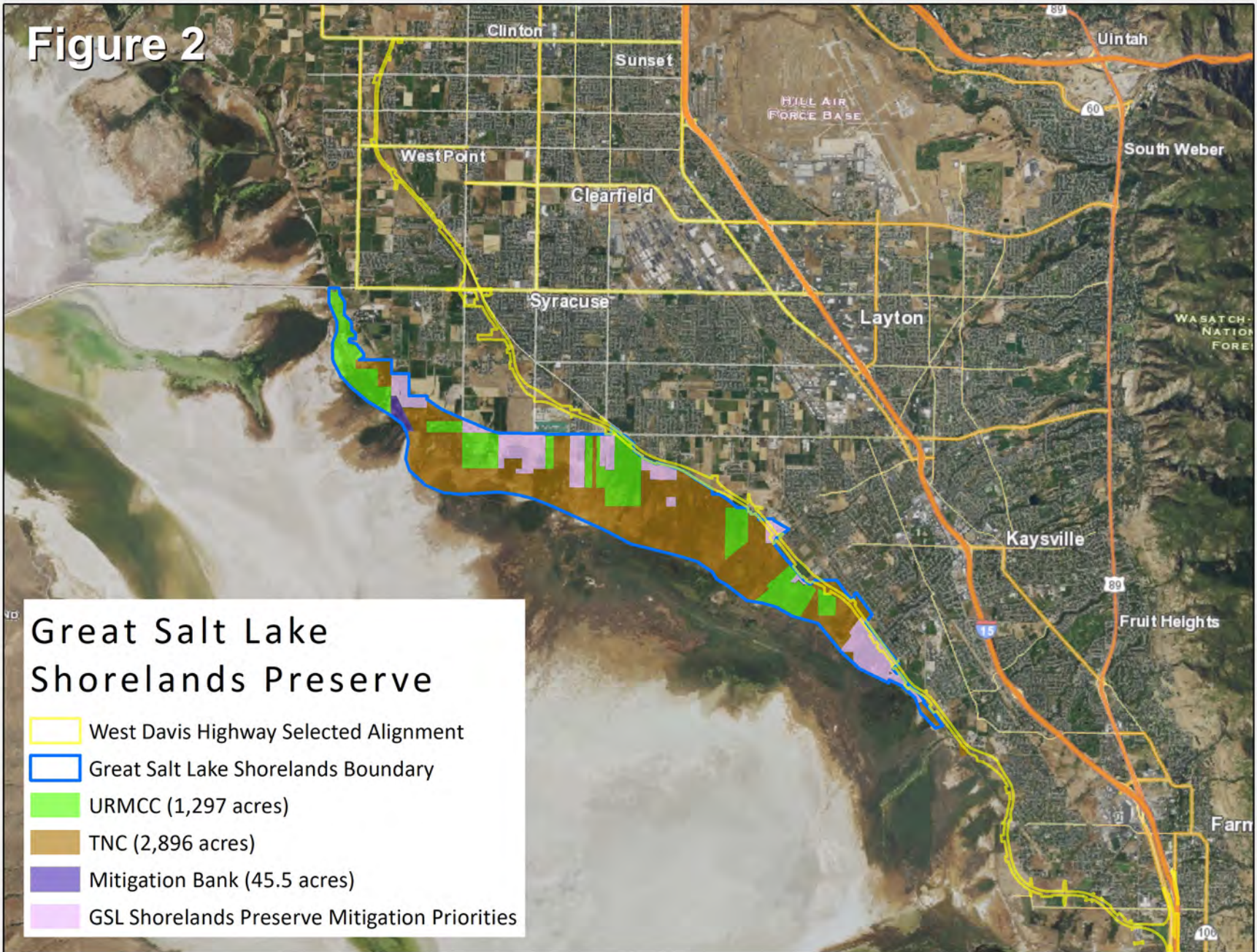
Section 4(f) of the U.S. Department of Transportation Act, which only applies to agencies within the U.S. Department of Transportation, including the FHWA, precludes the use of certain properties, referred to as 4(f) properties, in highway projects unless the impacts from the use of those properties are considered *de minimis* (minor).⁴ Section 4(f) resources are significant publicly owned parks, recreation areas, and wildlife and waterfowl refuges, and significant publicly or privately-owned historic properties. The Mitigation Commission’s property within the GSL Shorelands Preserve are considered 4(f) resources and are afforded protection under Section 4(f). In order for the Mitigation Commission’s properties to be used for the highway,

² http://www.udot.utah.gov/westdavis/documentation#final_eis

³ Federal lands are owned by the United States and administered by an agency of the Federal Government, such as the Mitigation Commission. For ease of discussion, this document refers to lands owned by the United States as being owned by the Mitigation Commission or as federal lands.

⁴ <https://www.transit.dot.gov/regulations-and-guidance/environmental-programs/section-4f-department-transportation-act>

Figure 2



the FHWA must determine that the impact of using those properties for the highway is *de minimis*.

Since the highway project's inception, the Mitigation Commission and The Nature Conservancy have maintained that the West Davis Corridor would severely compromise the integrity of the ecological values of the GSL Shorelands Preserve without adequate and appropriate mitigation. As such, the Mitigation Commission and The Nature Conservancy have been working closely with UDOT and FHWA since 2012 to identify measures that would provide sufficient mitigation so that the net impacts from the construction and operation of the highway on the GSL Shorelands Preserve would be considered *de minimis*.

Section 404 Clean Water Act

In addition to the impacts on 4(f) properties, the West Davis Corridor would impact wetlands regulated by the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act. Fifty-five and sixteen hundredths acres of waters of the United States, including fifty-one and thirty-four hundredths (51.34) acres of jurisdictional wetlands would be directly impacted by the highway, 3.1 acres of which occur within the GSL Shorelands Preserve.⁵ Additionally, the function and value of an additional 77.06 acres of wetlands that are within 300 feet of the highway would be diminished, along with approximately 840 linear feet of stream channel would also be impacted.

After years of coordination, planning and analysis, UDOT developed a Mitigation Plan ([Appendix 1](#)) that includes three measures as mitigation of anticipated impacts on the Mitigation Commission's 4(f) properties and on wetlands regulated by the Corps of Engineers under Section 404: land acquisition, water acquisition and endowment. The Mitigation Plan was developed in cooperation with the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, Mitigation Commission, Utah Division of Wildlife Resources, Utah Division of Water Rights and others. The Mitigation Plan identifies the acquisition by UDOT of 791 acres of property that are private in-holdings within the GSL Shorelands Preserve, which would subsequently be transferred to The Nature Conservancy to be managed in perpetuity as part of the GSL Shorelands Preserve as shown in [Figure 2](#). Water rights appurtenant to the acquired properties, and supplemental water rights in addition to those appurtenant to the acquired properties, sufficient to maintain the wetland function and values on the acquired properties would be acquired and transferred to The Nature Conservancy. UDOT would provide an endowment to The Nature Conservancy to ensure funding is provided to manage, protect and preserve the ecological values and functions on the mitigation properties into the future.

Based on the measures included in the Mitigation Plan, UDOT and the FHWA requested the Mitigation Commission's concurrence that the impacts of the West Davis Corridor on the GSL Shorelands Preserve would be *de minimis*. By letter dated June 14, 2017, the Mitigation

⁵ Table 14-32, page 14-99 of West Davis Corridor FEIS.

Commission concurred, that with the implementation of the Mitigation Plan, the impacts of the West Davis Corridor on Mitigation Commission 4(f) properties would be *de minimis* ([Appendix 2](#)).

Purpose and Need for the Project

CUPCA authorized the Mitigation Commission to acquire and dispose of real property and to enter into agreements with, among others, nonprofit conservation organizations such as The Nature Conservancy, to carry out the purposes of CUPCA. The Mitigation Commission’s term expires twenty years from the date the Central Utah Project is declared to be substantially complete by the Secretary of the Interior, an action which has not yet occurred (CUPCA 301(b)(2)).



Great Salt Lake Shorelands Preserve photo: Scott Irwin

Starting with the Mitigation Commission’s initial land acquisitions in the GSL Shorelands Preserve in 1995, the Mitigation Commission entered into a series of *interim* management agreements with The Nature Conservancy. The agreements provide authority for The Nature Conservancy to manage the federally-owned Mitigation Commission properties in concert with lands owned by The Nature Conservancy, as a seamless ecological unit. These agreements have and continue to provide funding to The Nature Conservancy to support habitat restoration,

protection and enhancement, water delivery, and other land management activities such as fencing and weed control. The Nature Conservancy has provided continued and uninterrupted management of the federally-owned properties since they were acquired by the Mitigation Commission. Because the Mitigation Commission's term expires, **there is a need** to determine *long-term* management and ownership of real property held by the Mitigation Commission, within the boundaries of the GSL Shorelands Preserve. If lands are still in ownership of the Mitigation Commission at the time of their termination, title to those lands would be transferred to the appropriate division within the Utah Department of Natural Resources (CUPCA 301(k)(2)).⁶

CUPCA requires the Mitigation Commission to develop a Mitigation and Conservation Plan every five years describing the actions they intend to take during the subsequent five-year period to implement the mitigation and conservation measures authorized by CUPCA. The Mitigation Commission's most recent Mitigation and Conservation Plan dated 2016 identified the need to,

"Transition from interim management agreements to permanent transfer of property to suitable entities to address immediate and long-term management needs of Commission-acquired properties" (Mitigation Commission 2016).⁷

The Act also requires the Mitigation Commission to submit an Annual Report to Congress and to the Governor of the State of Utah describing their accomplishments and upcoming actions planned for implementation. The most recent report for the period 2016-2018 identified the need and intent to,

"Transfer approximately 1,297 acres of Federally-owned property within the Great Salt Lake Shorelands Preserve to The Nature Conservancy in Utah for conservation in perpetuity" (Mitigation Commission 2018).

The Mitigation Commission's intent to transfer ownership of the federal land in the GSL Preserve to The Nature Conservancy and **UDOT's pending need** to acquire a portion of the Mitigation Commission's property, make determination of *long-term* management and ownership of Mitigation Commission properties within the Preserve ripe for consideration and action. By implementing these two actions concurrently, the series of real-estate transactions that would need to occur would be simplified and compensation from UDOT for the acquisition of the required properties for the highway would be made specifically available for uses on the GSL Shorelands preserve.

⁶ For properties owned by the Mitigation Commission that may be within the boundaries of other Federal agencies, those lands would be transferred to the Federal agency upon the Mitigation Commission's termination.

⁷ Section 301(h)(7) of CUPCA provides the Mitigation Commission the authority to acquire and dispose of real property and water rights through donation, sale or lease.

Purpose of This Document and Decisions to Be Made

The National Environmental Policy Act of 1969 (NEPA) requires all Federal Agencies to consider the environmental impacts of their proposed actions before they implement them. The environmental review requires agencies to consider the environmental effects, including impacts on social, cultural, and economic resources, as well as natural resources. The purpose of this document is to inform and disclose to the public and other interested agencies the environmental impacts of this proposed federal lands transfer and to provide an opportunity for interested agencies and the public to comment on the proposal. This Environmental Assessment (EA) fulfills the requirements of NEPA.

Scope of this Environmental Assessment

UDOT's Final EIS and ROD describe the impacts on the environment resulting from construction and operation of the West Davis Corridor, including conveyance to UDOT of 15.84 acres of property currently owned by the Mitigation Commission. This EA tiers off UDOT's Final EIS and does not reassess the impacts of that action. The scope of this EA is limited to the transfer of the Mitigation Commission's entire ownership of properties and appurtenant water rights within the GSL Shorelands Preserve to The Nature Conservancy and their *long-term* ownership and management of approximately 1,281 acres as part of the GSL Shorelands Preserve.

Decisions to be Made

Based on the analysis presented in the EA and comments from interested agencies and the public, the Mitigation Commission will decide:

- whether or not to convey any or all of their property and water rights within the GSL Shorelands Preserve to The Nature Conservancy

In addition, while UDOT's EIS and ROD analyzed the impacts of transferring the Mitigation Commission's 15.84 acres to UDOT, which won't be reassessed here, it also states that,

"These properties will be transferred out of federal ownership to State of Utah ownership. This process will require that [The MITIGATION COMMISSION] prepare its own decision document based on the analysis in the EIS regarding the transfer of property."

Therefore, the Mitigation Commission will also decide:

- if Mitigation Commission lands are transferred to The Nature Conservancy, whether or not to approve The Nature Conservancy to subsequently transfer up to 15.84 acres to UDOT or if not, whether or not to transfer the 15.84 acres directly to UDOT

Chapter 2

Description of Alternatives

Introduction

This Chapter describes two Action Alternatives and the No Action Alternative, which are briefly summarized in Table 2 below. Chapter 3 describes the affected environment and the environmental impacts of the alternatives.

Table 2 Summary of Alternatives	
Transfer to The Nature Conservancy (Proposed Action)	<ul style="list-style-type: none"> • The Mitigation Commission would convey ownership of approximately 1,297 acres of land and appurtenant water rights to The Nature Conservancy and would approve The Nature Conservancy to subsequently transfer up to a specified 15.84 acres of that amount to UDOT. • The Nature Conservancy would manage in perpetuity the remaining 1,281.19 acres as part of the GSL Shorelands Preserve subject to the protective restrictions to be incorporated into the conveyance deed.
Transfer to UDOT	<ul style="list-style-type: none"> • The Mitigation Commission would convey 15.84 acres to UDOT. The remaining 1,281.19 acres would remain in Federal ownership. • The Mitigation Commission would attempt to continue temporary agreements with The Nature Conservancy to manage the remaining properties as part of the GSL Shorelands Preserve on an <i>interim</i> basis. • Upon the Mitigation Commission’s termination, the 1,281.19 acres would be conveyed to the State of Utah Department of Natural Resources.
No Action	<ul style="list-style-type: none"> • The Mitigation Commission would not transfer any property to The Nature Conservancy or to UDOT. • The Mitigation Commission would attempt to continue to enter into temporary agreements with The Nature Conservancy to manage the 1,297 acres as part of the GSL Shorelands Preserve on an <i>interim</i> basis. • Upon the Mitigation Commission’s termination, the 1,297 acres would be conveyed to the State of Utah Department of Natural Resources. • UDOT would need to reformulate their plans for the West Davis Corridor that would not include the 15.84 acres of Mitigation Commission-owned property.

The Mitigation Commission's Executive Director may also choose to select a combination of the alternatives described above. For instance, the Mitigation Commission could decide to transfer 15.84 acres directly to UDOT and the remaining 1,281.19 acres to The Nature Conservancy. While this hybrid alternative, or others, is not specifically described in this chapter, the impacts are disclosed in Chapter 3 for each respective element of the hybrid alternative.

Transfer to The Nature Conservancy (The Proposed Action)

The Mitigation Commission and The Nature Conservancy have a shared vision of the Great Salt Lake and the need to protect some of the last remaining un-altered habitat along the east shore of the Great Salt Lake. The Mitigation Commission has worked in close partnership with The Nature Conservancy for the last quarter century to achieve this vision. The Mitigation Commission's ownership is an integral part of the GSL Shorelands Preserve, hence *long-term* management and ownership of the Mitigation Commission properties best resides with The Nature Conservancy.

Under the Proposed Action, a series of real-estate transactions would occur:

- The Mitigation Commission would transfer through donation all their federal ownership within the GSL Shorelands Preserve, approximately 1,297 acres and appurtenant water rights, to The Nature Conservancy. Deeds transferring the properties to The Nature Conservancy, except for the 15.84 acres needed by UDOT, would include language that limits future uses of the properties solely to those consistent with the goals and objectives of the GSL Shorelands Preserve. The deeds would be recorded with Davis County and would encumber the properties into the future. A draft transfer document is included as [Appendix 3](#).
- The Mitigation Commission would approve The Nature Conservancy to transfer up to the specified 15.84 of the 1,297 acres to UDOT and The Nature Conservancy would presumably also transfer up to 93.25 acres already under their ownership to UDOT for construction and operation of the West Davis Corridor.⁸ UDOT would compensate The Nature Conservancy for the fair market value of the highest and best use of the total 109.09 acres according to the provisions of the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and the Utah Relocation

⁸ The 15.84 acres needed by UDOT from the Mitigation Commission includes remnant parcels located on the northeast side of the highway (see Table 1). These parcels would be separated from the rest of the GSL Shorelands Preserve by the highway and would be of limited value to wildlife. It may be in the best interest of the GSL Shorelands Preserve for TNC to retain ownership of the remnant parcels to better control their ultimate disposition. Therefore, TNC would be authorized to transfer up to approximately 15.84 acres of property to UDOT or as little as approximately 13.33 acres, to account for TNC's retained ownership of the Mitigation Commission's remnant parcels. TNC would be authorized to retain or dispose of the remnant parcels in a way that is most advantageous to the GSL Shorelands Preserve.

Assistance Act, Utah Code, Section 57-12. The proceeds from the sale of the 15.84 acres would be utilized by The Nature Conservancy for use at the GSL Shorelands Preserve.

As required by the Mitigation Plan, UDOT would acquire approximately 791 acres of private property and appurtenant water rights that are inholdings with the GSL Shorelands Preserve as shown in [Figure 2](#).⁹ These properties would be transferred from UDOT to The Nature Conservancy. The deeds transferring the properties would include language that restricts future uses of the properties solely to those that are consistent with the goals and objectives of the Clean Water Act. A Declaration of Restrictions would be recorded against the parcels, a draft of which is included as [Appendix 4](#). The deeds would then be recorded with Davis County subject to the Declaration of Restrictions.

Underlying Need for the Project

Under the Transfer to The Nature Conservancy Alternative, the need to determine *long-term* management and ownership of Mitigation Commission-owned property within the boundaries of the GSL Shorelands Preserve would be resolved as well as the need to transfer 15.84 acres to UDOT for construction and operation of the West Davis Corridor.

Transfer to UDOT

The Mitigation Commission would convey 15.84 acres needed for construction and operation of the West Davis Corridor to UDOT. UDOT would compensate the Mitigation Commission for the fair market value of the highest and best use of the properties. The proceeds would be turned over to the General Treasury of the United States as miscellaneous revenues and used to fund other federal programs. The Mitigation Commission's 1,281.19 acres remaining in the GSL Shorelands Preserve would stay in Federal ownership and the Mitigation Commission would attempt to continue temporary agreements with The Nature Conservancy to manage these properties as part of the GSL Shorelands Preserve on an *interim* basis. If the 1,281.19 acres remain in Federal ownership upon the Mitigation Commission's termination, they would be conveyed to the State of Utah Department of Natural Resources.

Underlying Need for the Project

Under the Transfer to UDOT Alternative, the need to determine *long-term* management and ownership of Mitigation Commission owned property within the boundaries of the GSL Shorelands Preserve would not be met. The need to transfer 15.84 acres to UDOT for the construction and operation of the West Davis Corridor would be met.

The No Action Alternative

NEPA requires the No Action Alternative be considered in the environmental analysis process. The No Action Alternative describes events likely to occur if the Proposed Action were not

⁹ UDOT will also acquire an additional 320 acres of property near Farmington Bay Wildlife Management Area and transfer them to the Utah Division of Wildlife Resources as mitigation for impacts that would occur on their properties.

implemented. The No Action Alternative serves as a baseline against which to compare other alternatives.

Under the No Action Alternative, the Mitigation Commission would not transfer any property to The Nature Conservancy or to UDOT. The Mitigation Commission would attempt to continue temporary agreements with The Nature Conservancy to manage the 1,297 acres as part of the GSL Shorelands Preserve on an *interim* basis. If the 1,297 acres remain in Federal ownership upon the Mitigation Commission's termination, they would be conveyed to the State of Utah Department of Natural Resources and the State would determine how the properties would be managed. UDOT would need to reformulate the plans for the West Davis Corridor so that they do not include the 15.84 acres of Mitigation Commission-owned property.

Underlying Need for the Project

Under the No Action Alternative, the need to determine *long-term* management and ownership of Mitigation Commission owned property within the boundaries of the GSL Shorelands Preserve would not be met. In addition, the need to transfer 15.84 acres to UDOT needed for the construction and operation of the West Davis Corridor would not be met.

Chapter 3

Affected Environment

Introduction

The GSL Shorelands Preserve is located along the eastern shore of the Great Salt Lake, a remnant of the ancient Lake Bonneville. The Great Salt Lake supports a rich and dynamic biological system of regional, national, and global importance.

Having no outlet, the lake water varies in both elevation and salinity over time due to the combined effects of freshwater flowing in from three rivers (the Bear, Weber, and Jordan Rivers), numerous smaller river tributaries, precipitation, and groundwater and outflow generated by evaporation. The lake water also receives stormwater runoff and discharges from wastewater treatment plants in the area. This variation in water level influences the nutrient base and habitats for plants, invertebrates, reptiles, amphibians, mammals, and birds. The variation also creates a mosaic of habitats including wetlands (ranging from freshwater to hyper-saline playas), shorelines, and uplands.

The water level in the Great Salt Lake is dynamic, with seasonal variations of a few feet and historic variations of up to 20 feet. Recorded lows have occurred in 1963 and more recently in 2008 and 2010, with the most well-known highs in 1983 to 1986 when flooding caused hundreds of millions of dollars in damage to agriculture and infrastructure. Because of the very gradual elevation contours in the Great Salt Lake basin, small changes in lake level can drastically change the coverage of the lake. The natural fluctuations in lake level over time can cause dynamic shifts in soil salinity and wetness, which affect the types and locations of available habitats around the lake shore (Western Hemisphere Shorebird Reserve Network (WHSRN), no date).

Because of the variety and abundance of shorebirds at the Great Salt Lake, it is designated as a Hemispheric Site of Importance by the Western Hemisphere Shorebird Reserve Network (WHSRN, no date). Birds of regional, national, and international importance are drawn to its 15,000 square miles of water environment, remote islands, shoreline, and 400,000 acres of wetlands. An estimated 5 million birds representing 257 species rely on the lake for resident feeding and sanctuary, breeding, or migratory stopovers (WHSRN, no date). Similarly, the National Audubon Society has designated the Great Salt Lake area as an Important Bird Area.

A few studies have been conducted regarding the number of shorebirds that use the Great Salt Lake (Paul and Manning 2002). These studies suggest that high numbers of shorebirds use the lake for breeding and migration. A few one-day counts have been conducted for a few species, and these provide a base count from which to extrapolate and estimate total counts for these species.

For some species, such as the Wilson's phalarope (*Phalaropus tricolor*), the lake is a major staging area. A one-day aerial survey in July 1986 estimated a population of 387,000 Wilson's

phalaropes. On a single day in July 2001, the population of Wilson's phalaropes was estimated at 566,834. Numbers of red-necked phalarope (*Phalaropus lobatus*), the populations of which seem more variable, have been estimated as high as 240,000 on a single day. Recent ongoing studies suggest that at least 5,000 to 10,000 snowy plovers (*Charadrius alexandrinus*) nest on the alkaline flats surrounding the lake. The current estimates for breeding American avocets and black-necked stilts are 40,000 and 30,000, respectively, with peak lake-wide counts of 250,000 and 65,000, respectively (Paul and Manning 2002).

The Great Salt Lake is also important to many other bird species. Hundreds of thousands of eared grebes (*Podiceps nigricollis*) stage on the lake, fattening on the abundant brine shrimp. One of the world's largest populations (about 21,600) of white-faced ibis (*Plegadis chihi*) nests in the marshes along the east side of the lake.

The Great Salt Lake hosts the largest number of breeding California gulls (*Larus californicus*), including the world's largest recorded single colony. About 160,000 breeding adults have been documented in recent years. The American white pelican (*Pelecanus erythrorhynchos*) colony on Gunnison Island, where up to 20,000 breeding adults have been recorded, ranks in the top three populations in North America. Numerous other species depend on the lake, such as other species of gulls, waterfowl, herons, egrets, terns, raptors, and songbirds (Paul and Manning 2002).



White-faced ibis photo Alan Schmierer

Although the Great Salt Lake provides important habitat for wildlife, it has been extensively altered by human development along the lake's eastern shore. Wildlife habitat, wetlands, rivers, and the lake have been extensively altered as a result of urban and agricultural development during the past century. The wetlands adjacent to the Great Salt Lake have been extensively altered or lost, invasive species have been introduced, and many of the streams that flowed into the Great Salt Lake have been altered for use as water supplies, control of stormwater, agricultural uses, and urban development. The human disturbances have also resulted in more noise and light pollution near the eastern edge of the Great Salt Lake. Very few undisturbed habitats remain.

The GSL Shorelands Preserve is located in Davis County, Utah as shown in [Figure 2](#). Approximately 1,297 acres (25%) are owned by the Mitigation Commission, 2,896 acres (60%) owned by The Nature Conservancy and the remaining properties are privately owned. As previously described, The Nature Conservancy has been managing both The Nature

Conservancy and Mitigation Commission properties as an integrated ecological unit since they were first acquired. The GSL Shorelands Preserve includes some of the last remaining, functional wetland habitat along the east shore of the Great Salt Lake. Unlike many other waterfowl management areas managed by the State of Utah, the GSL Shorelands Preserve consists primarily of undiked, natural shoreline habitat, including marshes, mud flats, sloughs, and uplands, that is managed primarily for wildlife habitat.

The preserve is a composite of natural saline shoreline, freshwater pools and emergent marshes, wet meadows, adjacent uplands, and agricultural fields, all managed as an intact ecosystem to provide prime avian habitat for migrating, nesting, and foraging birds. In 2013, The Nature Conservancy conducted the *GSL Shorelands Bird Survey 2013* to demonstrate the richness and abundance of bird species that use the preserve as well as habitat use of the preserve during migration, nesting, and foraging. During the survey, The Nature Conservancy documented avian numbers of more than 30,000 individuals and 139 species from April through August 2013. The most abundant species were white-faced ibis (9,099), American avocet (3,099), red-winged blackbird (1,315), California gull (1,296), yellow-headed blackbird (1,290), and European starling (988).



American avocet photo Bob Roll

Chapter 4

Environmental Effects

As described in Table 2 in Chapter 2, the scope of the analysis of this EA **is limited** to the transfer of all of the Mitigation Commission's ownership in the GSL Shorelands Preserve, approximately 1,297 acres and appurtenant water rights, to The Nature Conservancy. The analysis of the environmental effects associated with the transfer of 15.84 acres to UDOT is described in UDOT's Final EIS and ROD.

Under the Proposed Action, The Nature Conservancy would continue to manage the Mitigation Commission's properties as they have for the last 23 years. Since the Proposed Action is essentially an administrative action as opposed to a physical action, there generally will not be any impacts on the environment resulting from the transfer of properties to The Nature Conservancy. The following is a list of resources which were considered in the analysis but for which no impacts would occur since management would remain unchanged.

Resources Considered

- Wetlands
- Wildlife
- Federally listed endangered animal species
- Public access and recreation
- Air quality
- Water rights, water supply, water quality
- Mosquito and weed control
- Vegetation and land use
- Climate change

Summary of Impacts

The Nature Conservancy would continue to manage the Mitigation Commission properties on a permanent basis rather than an *interim* basis as they have been for the past 23 years. Since management goals, objectives and actions remain the same, there are no anticipated impacts under the Proposed Action.

Environmental Effects on Other Resources

Federal law can provide a higher level of protection to some resources when held in Federal ownership compared to those resources held in private ownership. These federal protections would be lost with the transfer of the Mitigation Commission properties to The Nature Conservancy. Potential impacts on other resources are described below.

Cultural resources

Section 106 of the National Historic Preservation Act requires all Federal Agencies to identify the impacts their actions would have on cultural and historical resources. Section 106 defines the transfer, lease, or sale of property out of Federal ownership as an “adverse action” unless there are adequate and legally enforceable restrictions or conditions to ensure *long-term* preservation of the property's historic significance (36 CFR 800.5(a)(2)(vii)).¹⁰

Environmental Effects

The State of Utah has legally enforceable State statutes similar to those at the Federal level including:

- Utah Native American Graves Protection and Repatriation Act, Utah Code Annotated (UCA) 9-9-401 and subsequent sections;
- Rule 230-1 Ancient Human Remains on Nonfederal Lands That Are Not State Lands, UCA 9-8-309
- Utah State Antiquities Act UCA 9-8-301 to 9-8-308 and implementing rule, Protection of Paleontological Resources, UCA 79-3-508 UCA 9-8-404 (part of Title 9, Heritage, Arts, Libraries, and Cultural Development) UCA 9-8-404

The Mitigation Commission consulted with the State of Utah Historic Preservation Officer on November 18, 2019. SHPO believed the proposed deed restrictions in conjunction with State statutes, would provide the legally enforceable restrictions and conditions to ensure *long-term* preservation of the property's historic significance. The Mitigation Commission committed to work with The Nature Conservancy and the State of Utah Division of State History in developing the language that would be included in the deeds transferring the property to TNC.

Also, in accordance the regulations implementing Section 106 of the National Historic Preservation Act, the Mitigation Commission consulted with the Northwestern Band of the Shoshone Nation by letter dated December 3, 2019 (see Appendix 6), by phone on December 16 and 20, 2019, and via several emails between December 2019 and March 2020. The Mitigation Commission conferred with the Northwestern Band of the Shoshone Nation on March 19, 2020 and discussed measures that would be taken as part of the Proposed Action to provide continued protection of cultural resources once the properties are transferred out of Federal ownership to The Nature Conservancy (see April 7, 2020 letter to the Northwestern Band of the Shoshone Nation in Appendix 6).

¹⁰ <https://www.law.cornell.edu/cfr/text/36/800.5>

Endangered Plant Species

The Endangered Species Act of 1973 (ESA; 16 U.S.C. § 1531 et seq.) was enacted by Congress to protect critically imperiled species from extinction as a "*consequence of economic growth and development, untempered by adequate concern and conservation*".¹¹ The ESA was signed into law by President Richard Nixon on December 28, 1973. The U.S. Supreme Court found that the plain intent of Congress in enacting the ESA "*was to halt and reverse the trend toward species extinction, whatever the cost.*"¹² Section 9 of ESA prohibits the collection, malicious damage or destruction of endangered plants on Federal lands. Unlike animal species, these protections under ESA do not extend to Federally listed **plants** on private property. The transfer of federal property to The Nature Conservancy would therefore limit the protections afforded by ESA to federally listed plants.

Environmental Effects

There are no known federally listed plants or suitable habitat within the GSL Shorelands Preserve including those lands owned by the Mitigation Commission. Additionally, The Nature Conservancy's core mission "*is to conserve the lands and waters on which all life depends*". It is highly likely that The Nature Conservancy would do everything in their power to preserve, protect and enhance the habitat and conditions necessary for a listed plant to survive, if there were ever to be a listed plant identified within the GSL Shorelands Preserve. For these reasons, it is not anticipated that the transfer of federal ownership to The Nature Conservancy would result in any impacts to federally listed plants, even though the federal protections under ESA would be more limited under private ownership.

Section 4(f) of the U.S. Department of Transportation Act Protection

As described in Chapter 1, Section 4(f) of the U.S. Department of Transportation Act, precludes the use of certain properties, referred to as 4(f) properties, for use in highway projects unless the impacts from the use of those properties are considered to be *de minimis*. Section 4(f) resources are significant **publicly** owned parks, recreation areas, and wildlife and waterfowl refuges, and significant publicly or privately-owned historic properties. Being federally owned, the Mitigation Commission's properties are considered 4(f) properties. Once transferred to The Nature Conservancy, those properties would be privately owned and would likely not be considered 4(f) properties by the Federal Highway Administration and the legal protections provided to the properties by the DOT Act would be lost.

Environmental Effects

The deeds transferring the properties to The Nature Conservancy would include language that limits the use of those properties to ecological conservation, unless otherwise approved by the Mitigation Commission or its successors. Regardless of their status as 4(f) properties, the Mitigation Commission would not authorize use of the former federal property for use in a

¹¹ <https://www.law.cornell.edu/uscode/text/16/1531>

¹² http://apps.americanbar.org/abastore/products/books/abstracts/5350237%20exec%20summary_abs.pdf

highway project unless the Commission determined the impacts of such use to be *de minimus*. Similarly, the mitigation properties acquired by UDOT and transferred to The Nature Conservancy will include restrictive covenants that would not allow for construction of a highway on the properties. Because of the restrictive covenants on both the Mitigation Commission properties and UDOT Mitigation properties, the potential loss of 4(f) status would not likely result in any increased risk of impacts from construction of a new highway within the GSL Shorelands Preserve.

Socio-economics

The Federal government is exempt from paying property taxes on Federally-owned properties. To help offset the loss of property tax revenues that would otherwise have been paid to counties if federally-owned property were in private ownership, counties receive Payments In Lieu of Taxes (PILT) from the United States.¹³ The formula used to compute PILT payments is contained in the PILT Act and is based on population, revenue sharing payments, and the amount of Federal land within an affected county. PILT payments are in addition to other Federal payments to states, such as oil and gas leasing, livestock grazing, and timber harvesting. Davis County received \$97,673 from the Federal government through the PILT program in 2018. Of this amount, approximately \$3,401 was for the 1,297 acres owned by the Mitigation Commission within the GSL Shorelands.

Environmental Effects

Under the Proposed Action approximately 1,297 acres of Mitigation Commission-owned property and appurtenant water rights would be transferred to The Nature Conservancy, who would then transfer approximately up to 15.84 acres to UDOT. The remaining 1,281.19 acres would be subject to property taxes from Davis County. The Nature Conservancy would likely petition the County to tax the properties under the Davis County Farmland Assessment Act (also referred to as the Greenbelt Act).¹⁴ The Greenbelt Act allows for agricultural properties to be assessed at a lower rate than other developable properties. This unique method of assessment is vital to agriculture operations in close proximity to expanding urban areas, where taxing agricultural property at market value could make agricultural operations economically prohibitive. Greenbelt assessments vary depending upon the class of land being assessed. If the 1,281.19 acres were assessed as grazing lands or non-productive lands under the Greenbelt program, then the tax assessment would be approximately \$6,575.80 annually. Therefore, under the Proposed Action there would be a net increase in revenues collected by Davis County amounting to approximately \$3,174.80 annually (increased greenbelt revenues– Reduced PILT payments = \$3,174.80).

¹³ <https://www.doi.gov/pilt>

¹⁴ <http://www.daviscountyutah.gov/assessor/greenbelt>

Chapter 5

Consultation and Coordination

The United State Department of the Interior Central Utah Project Completion Act Office is a Cooperating Agency on this project.¹⁵ The Mitigation Commission also consulted with The Nature Conservancy, UDOT, and the U.S. Army Corps of Engineers in the preparation of this EA.

The Draft EA was sent out to 90 individuals and organizations for review and comment in August 2019 as summarized in Appendix 5. Six comment letters were received in response to the solicitation for comments which are summarized in Table 3. Copies of the comments letters with responses to comments are attached as Appendix 6.

In accordance with the regulations implementing Section 106 of the National Historic Preservation Act, 36 CFR 800.3, the Mitigation Commission consulted with the Utah Division of State History, State Historic Preservation Office on September 11, 2019. The State Historic Preservation Officer is supportive of the proposed measures to be included in the deeds transferring properties to TNC as they would provide legally enforceable measures that would protect cultural resources. The measures are State Statutes which mirror Federal statutes protecting historic resources. The State Historic Preservation Officer requested that the Mitigation Commission and TNC continue to coordinate with their office in developing the specific language to be included in the transfer document.

Also, in accordance the regulations implementing Section 106 of the National Historic Preservation Act, the Mitigation Commission consulted with the Northwestern Band of the Shoshone Nation by letter dated December 3, 2019 (see Appendix 6), by phone on December 16 and 20, 2019, and via several emails between December 2019 and March 2020. The Mitigation Commission conferred with the Northwestern Band of the Shoshone Nation via WebEx on March 19, 2020 and discussed measures that would be taken as part of the Selected Action to provide continued protection of cultural resources once the properties are transferred out of Federal ownership to The Nature Conservancy (see April 7, 2020 letter to the Northwestern Band of the Shoshone Nation in Appendix 6).

Table 3	
Summary of Comment Letters on Draft EA	
Great Salt Lake Audubon	Support transfer of the property to TNC as opposed to the property transferring to the State of Utah Department of Natural Resources. GSLA does not concur with our <i>deminimis</i> determination and thought the Mitigation Commission could have done more to stop this alignment of the West Davis Highway.
Tracey Aviary	Concurred with our analysis of impacts and that there would be few if any on the ground changes since TNC would continue to manage the property as they have

¹⁵ The Department of the Interior Central Utah Project Completion Act Office has associated authorities and responsibilities related to the Central Utah Project program and has accepted a request to be a Cooperating Agency as provided in CEQ 1501.6.

	for the last 24 years. They specifically noted that their comments and concerns did not address the impacts of the construction and operation of the West Davis Corridor recognizing this was outside the scope of the EA.
Northwestern Band of the Shoshone	Claimed that the lands proposed for transfer were “ <i>within the Tribe’s aboriginal lands and ceded territory</i> ” and requested the Mitigation Commission enter into consultation prior to any transfer to TNC or UDOT.
Hopi Tribe	The Hopi Tribe claims cultural affiliation to the project area. They are supportive of the project because of our continued consultation with SHPO and that legally enforceable restrictions or conditions to ensure long-term preservation of the property’s historic significance will be included in the deed transferring the properties to TNC.
Syracuse City	Concerned that existing public access points across Mitigation Commission properties would be at risk in TNC ownership. Concerned that trail alignment presently being discussed between Syracuse City, Mitigation Commission and TNC may be put at risk when no long in Federal ownership. Have requested that a public entity be provided the opportunity to purchase access across the property prior to transfer to TNC to ensure continued public access.
Davis County	Concurred with the comments submitted by Syracuse City.

List of Appendices, Tables and Figures

Figure 1 GSL Shorelands Preserve Location Map

Figure 2 GSL Shorelands Preserve Area Map

Appendix 1 West Davis Corridor Mitigation Plan

Appendix 2 Mitigation Commission’s 4(f) Letter of Concurrence

Appendix 3 Draft Quit Claim Deed Mitigation Commission to The Nature Conservancy

Appendix 4 Declaration of Restrictions

Appendix 5 Draft EA Distribution List

Appendix 6 Comment Letters on Draft EA and Responses

Table 1 Summary of Acreage Needed by UDOT for the West Davis Corridor from the Mitigation Commission and The Nature Conservancy

Table 2 Summary of Alternatives

Table 3 Summary of Comments on Draft EA

Appendix 1

Draft Wildlife Mitigation Plan

A Draft Wildlife Mitigation Plan is 525 pages in length and 113 MB in size and can be downloaded [at this link](#).

Appendix 2

Mitigation Commission's 4(f) Letter of Concurrence

20190306 Determination June 14, 2017



Utah Reclamation Mitigation & Conservation Commission
230 South 500 East Suite 230 Salt Lake City, UT 84102-2045
Phone: (801) 524-3146 – Fax: (801) 524-3148

COMMISSIONERS
Brad T. Barber, Chair
Gene Shawcroft
MITIGATION COMMISSION
OFFICIAL FILE COPY

CODE	INITIALS
Mc-07	Ma [Signature]
	2.1.4.17
CLASSIFICATION #	ENV-6.00
PROJECT #	GSALT 3580
FOLDER #	1344791
CONTROL #	

June 14, 2017

Mr. Randy Jeffries
Utah Department of Transportation
466 North 900 West
Kaysville, UT 8403 7

Subject: Section 4(f) Determination, West Davis Highway Corridor Project
June 14, 2017

Dear Mr. Jeffries:

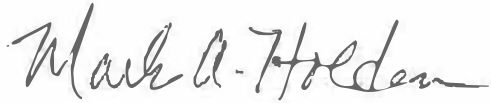
I have reviewed your June 13, 2017 letter requesting our concurrence with the Federal Highway Administration's and Utah Department of Transportation's (UDOT's) Section 4(f) *de minimis* finding for the effects of the West Davis Highway Corridor Project (the WDC) on lands owned by the United States and administered as a wildlife refuge area by the Utah Reclamation Mitigation and Conservation Commission (Mitigation Commission).

As you are well aware, the Mitigation Commission has been working in cooperation with The Nature Conservancy (TNC) since the mid-1990's to acquire and preserve the properties within the Great Salt Lake Shorelands Preserve. The federal acquisitions are intermixed with those of TNC and together these properties represent a connected ecological unit that preserves and protects some of the most critical wetland and supporting upland habitat along the east shore of the Great Salt Lake. The June 13, 2017 letter explains the specifics of the mitigation plan that has been developed over many months of discussion. The Mitigation Commission has evaluated the anticipated impacts of the WDC on its Section 4(f)-eligible properties and evaluated the existing and potential habitat values and resources that would be provided by the mitigation plan. We believe these mitigation measures provide a comprehensive and holistic approach that would fit well within the Great Salt Lake Shorelands Preserve. I believe that implementation of these measures would result in a *de minimis* impact on the Mitigation Commission's Section 4(f) properties and concur with your 4(f) finding. The June 13, 2017 letter with my signature of concurrence is enclosed.

I appreciate the efforts that UDOT and the Federal Highway Administration have devoted to this matter and look forward to working with both entities to resolve any remaining issues or details

that may arise as the WDC moves forward. Please feel free to contact me if you wish to have further discussion.

Sincerely,

A handwritten signature in black ink that reads "Mark A. Holden". The signature is written in a cursive style with a long horizontal flourish at the end.

Mark A. Holden
Executive Director

cc: Federal Highway Administration, Utah Office
The Nature Conservancy, Utah
Commissioners

Appendix 3

Draft Quit Claim Deed Mitigation Commission to The Nature Conservancy

Record in Davis County

Please return recorded copy to:

Contract No. MC-_____

**Utah Reclamation Mitigation and
Conservation Commissions
230 S. 500 East, #230
Salt Lake City, UT 84102**

Parcel Tax ID#s:

QUITCLAIM DEED

THE UNITED STATES OF AMERICA, and its assigns, hereinafter styled the United States, acting through such officer as is authorized therefor by the Utah Reclamation Mitigation and Conservation Commission, its successors and assigns, hereinafter the MITIGATION COMMISSION or "the United States", pursuant to the Reclamation Act of June 17, 1902 (32 Stat. 388), the Act of April 11, 1956 (43 U.S.C. 620, et seq.), and acts amendatory thereof or supplementary thereto, especially Section 301(h)(7) of the Reclamation Projects Authorization and Adjustment Act of 1992 (P.L. 102-575), as amended, all of which acts are commonly known and referred to as Reclamation Laws, does hereby grant, transfer, quitclaim, and convey unto THE NATURE CONSERVANCY, County of Salt Lake, State of Utah, its successors, and assigns, without any express or implied warranties, special, general, or otherwise, all the right, title, and interest of the UNITED STATES in and to the following described lands in Davis County, State of Utah, as subject to reservations made herein, to wit:

See Exhibit A attached hereto and made a part hereof for complete legal descriptions.

Together with all appurtenances thereto belonging or in anywise appertaining, including without limitation the land, water and water rights, permits, hereditaments, easements, incidents and appurtenances belonging thereto or used in connection therewith.

Subject to coal, oil, gas, and other minerals reserved to or outstanding in the United States or third parties as of the date of this deed; also subject to rights-of-way for roads, railroads, telephone lines, transmission lines, ditches, conduits, or pipelines on, over, or across said lands in existence on such date.

This deed is not intended nor shall it be construed or interpreted to abandon or relinquish rights by the UNITED STATES to exercise a reserved easement in the future under provisions of the Act of August 30, 1890.

TO HAVE AND TO HOLD SO LONG AS:

- 1) In accordance with the _____ 2019 Environmental Assessment and Finding of No Significant Impacts issued by the MITIGATION COMMISSION, THE NATURE CONSERVANCY protects, conserves and manages the property herein conveyed as a valuable element of the natural habitat of the Great Salt Lake ecosystem, recognized by the MITIGATION COMMISSION and THE NATURE CONSERVANCY as the Great Salt Lake Shorelands Preserve; and the Great Salt Lake Shorelands Preserve provides significant wildlife habitat, ecological, scenic, aesthetic and open space values, including flora, fauna, and soils; and the maintenance of such natural habitat helps support wildlife populations.
- 2) THE NATURE CONSERVANCY, its successors, and assigns, shall not transfer, grant or convey any interest whatsoever in, to, and over any part of the above-described land without the prior consent, in writing, of the MITIGATION COMMISSION. The MITIGATION COMMISSION hereby consents and approves THE NATURE CONSERVANCY to convey 15.84 acres, **as described in Exhibit B attached hereto and made a part hereof**, to the State of Utah, Department of Transportation for use in the West Davis Corridor highway project, provided that any revenue generated by the conveyance of such 15.84 acres shall be retained by THE NATURE CONSERVANCY for use for the Great Salt Lake Shorelands Preserve, without seeking additional written approval.
- 3) In accordance with 36 CFR 800.5(a)(2)(vii), THE NATURE CONSERVANCY shall comply with the requirement of UCA 9-8-404 which provides sufficient continued protection of cultural and historical resources which may be found on the property.
- 4) In accordance with the Utah Noxious Weed Act (UCA-4-17), Administrative Rule 68-9, and the Salt Lake County Noxious Weed List, THE NATURE CONSERVANCY shall use best management practices to control noxious weeds on the above-described land.
- 5) In accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 6), the Utah Pesticide Control Act (UCA-4-14), and Administrative Rule 68-7, THE NATURE CONSERVANCY shall not use any banned or severely restricted chemicals and shall comply with all applicable pesticide applicator certification requirements, label instructions, and best practices when transporting, storing, handling, disposing of, and using herbicides to control weeds on this property.
- 6) In accordance with the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703-712) and current guidelines published by the U.S. Fish and Wildlife Service's Utah Ecological Services Field Office, THE NATURE CONSERVANCY shall avoid disturbing active nests of any of the 1,026 bird species (50 CFR 10.13) protected by the Act. THE NATURE CONSERVANCY shall inspect trees for active nests prior to any trimming or removal and, to the extent possible, shall avoid conducting habitat-altering projects during peak breeding season from April through August.
- 7) In the event that at any time in the future THE NATURE CONSERVANCY determines that any of the land or appurtenant rights described above is no longer needed for the purposes for which it was intended as described above, the lands and appurtenant rights shall revert to the MITIGATION COMMISSION its successors or

assigns. Such reversion back to the MITIGATION COMMISSION shall be confirmed by a recordable document that is agreeable to both the MITIGATION COMMISSION and THE NATURE CONSERVANCY.

- 8) In the event the MITIGATION COMMISSION determines that there is any violation or breach of the conditions or restrictions herein contained by THE NATURE CONSERVANCY, whether caused by legal or other inability to perform said conditions or restrictions, or otherwise, the MITIGATION COMMISSION shall give THE NATURE CONSERVANCY written notice of such and THE NATURE CONSERVANCY shall have a minimum of ninety (90) days, or any longer period that the parties subsequently agree, to correct the same. In the event that said violation or breach of conditions or restrictions cannot be corrected by THE NATURE CONSERVANCY within such (90) day period, or other period agreed upon, THE NATURE CONSERVANCY shall forfeit any and all right, title, and interest in only those lands and appurtenant rights in question, and such lands and appurtenant rights shall revert to the MITIGATION COMMISSION, its successors, or assigns. Such reversion back to the MITIGATION COMMISSION shall be confirmed by a recordable document that is agreeable to both the MITIGATION COMMISSION and THE NATURE CONSERVANCY.

The disposing federal agency is the UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION.

WITNESS the hand of said MITIGATION COMMISSION this ____ day of _____ A.D., 2019.

UNITED STATES OF AMERICA

By: _____
Mark A. Holden, Executive Director
Utah Reclamation Mitigation and
Conservation Commission
Grantor

APPROVED

By: _____

Name: _____
Office of the Regional Solicitor

ACKNOWLEDGMENT

State of Utah)
)
County of Salt Lake)

On the _____ day of _____, 2019, personally appeared before me Mark Holden, the signer of the foregoing Quitclaim Deed, who duly acknowledged to me that he/she is the Executive Director, Utah Reclamation Mitigation and Conservation Commission, and that he/she executed the same for and on behalf of the United States of America, and acknowledged the same to be the act and deed of the United States of America.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by official seal the day and year first above written.

(SEAL)

Notary Public in and for the
State of
Residing at
My commission expires: _____

Appendix 4

Declaration of Restrictions

WHEN RECORDED RETURN TO:

USACE Utah Regulatory Office
Attention: _____
533 West 2600 South, Suite 150
Bountiful, Utah 84010

THIS SPACE FOR RECORDER'S USE ONLY

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS (hereafter the "Declaration") is made as of _____, 20____, by the Utah Department of Transportation (hereafter "Declarant").

WHEREAS Declarant is the owner of certain real property located in Davis County, Utah (hereafter the "Preserve Area"), described and shown in Exhibit "A" attached hereto and incorporated herein; *and*

WHEREAS Declarant intends to protect the Preserve Area as wildlife habitat and a wetland preserve, to be so held in perpetuity and in compliance with land use restrictions imposed by Department of the Army Section 404 Permit No. SPK-2007-01985 (hereafter the "Permit") attached hereto as Exhibit B, issued to the Declarant by the Army Corps of Engineers Utah Regulatory Office (hereafter the "Corps") in connection with Declarant's proposed project to construct a transportation artery called the West Davis Corridor; *and*

WHEREAS the *West Davis Corridor Mitigation Plan* (hereafter the "Plan") is incorporated into the Permit, making all of the Plan's obligations and restrictions affecting ownership, use and management of the Preserve Area enforceable requirements of the Permit; *and*

WHEREAS the Declaration shall not be construed to impose restrictions or conditions on the Preserve Area additional to those provided for in the Permit; *and*

WHEREAS the Preserve Area consists of both jurisdictional wetland features and associated natural upland areas, as defined by the Regulatory Division of the Corps; *and*

WHEREAS the Declaration benefits both signatories hereto, their successors and assigns, as well as the public, by helping to preserve and maintain in perpetuity the wetland and upland open space, drainage, and wildlife habitat of the Preserve Area in a healthy natural condition,

NOW, THEREFORE, the Declarant declares as follows:

1. Purpose. The purpose of the Declaration is to protect in perpetuity the Preserve Area, a compensatory mitigation site under federal law, in accordance with the terms of the Permit, ensuring that its natural condition is preserved, enhanced, or restored through the activities authorized in the Permit; through conservation of its value, character, and ecological and hydrological integrity; through conservation and protection of its animal and plant populations; and through prevention of any use or activity that would impair or interfere with its environmental value, except as provided hereunder, and as authorized in the Permit.

2. Prohibition on future DA permits. The Preserve Area shall not be made the subject of a future Individual or General Department of the Army (DA) permit for fill, or any plan of development, except for the purpose of enhancing or restoring its natural habitat in compliance with the terms set forth herein.

3. Covenant Running with the Land. In consideration of the benefits obtained by the Declarant from the Permit and other valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Declarant does hereby covenant and agree to restrict, and does by this instrument restrict, management and use of the Preserve Area to conform to the limitations contained herein and in the Plan, and affirms that the Declaration is a covenant running with the land.

4. Prohibited Activities. Unless authorized in the Plan, or authorized in writing by the Corps to preserve, maintain, repair, prevent fire, or enhance the Preserve Area, the following activities within the Preserve Area are prohibited:

- a) Discharge of any dredged or fill material;
- b) Plowing or commercial cultivation;
- c) Planting of nuisance, exotic, or non-native plants that are not beneficial to wildlife;

- d) Grazing, feeding, penning of livestock, or commercial or recreational uses of livestock;
- e) Dumping, disposal, storage or placement of any equipment, soil, trash, refuse, rubbish, or other waste material;
- f) Leveling, grading or landscaping;
- g) Destruction or removal of any native tree, shrub or other vegetation, except that Declarant, its successors and assigns, may use prescribed fire as a vegetation management technique, in conformance with local, state and federal law;
- h) Operation of motorized vehicles away from established roads and trails, unless off-road access is necessary to conduct authorized activities;
- i) Construction of buildings or roads, erection of billboards or signs (except for “No Trespass” signs) or other advertising, installation of utility lines, grading of trails, or construction of benches;
- j) Discharge of untreated stormwater into the Preserve Area; Declarant shall only accept into the Preserve Area stormwater or other discharge water from adjoining properties that has received primary treatment (i.e. detention to settle out suspended solids, filtration through vegetated strips, oil/water separation, or similar methods to ensure that any stormwater discharged into or onto the Preserve Area meets applicable local, state and federal standards.
- k) Exploration for or extraction of oil or gas, mining of any kind;
- l) Excavation, dredging, or removal of sand, loam, peat, gravel, rock, soil or other materials;
- m) Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation;
- n) Commercial recreation, including but not limited to commercial fishing, hunting, camping or trapping;
- o) Subdivision of the Preserve Area for any purpose; conveyance of the Preserve Area must include all real property described and shown on Exhibit A hereto (exclusive of a conveyance arising from an action in eminent domain);

5. Not an Offer to Dedicate: No Rights of Public Use. The provisions of the Declaration do not constitute an offer for public use. This instrument does not constitute an irrevocable offer to dedicate.

6. Rights of the Corps. Declarant hereby grants to the Corps the right to enforce the terms and conditions of the Declaration. The Corps' forbearance in the event of any breach of the terms of the Declaration by the Declarant shall not be construed to be a waiver of such term, or of any subsequent breach of the same, or any other term of the Declaration. No delay or omission by the Corps in the exercise of any right or remedy upon any breach by Declarant shall impair such right or remedy, or be construed as a waiver. Without obligation to enforce the provisions of the Declaration, the Declarant hereby grants to the Corps the following rights of enforcement:

- a) The right to take action to preserve and protect the environmental value of the Preserve Area;
- b) The right to prevent any activity within the Preserve Area that is inconsistent with the purpose and terms of the Permit or the Declaration, and to require the Declarant to restore at Declarant's expense any areas or features of the Preserve Area that may be damaged, degraded or altered by a prohibited activity or use;
- c) The right to enter upon and inspect the Preserve Area in a reasonable manner and at reasonable times with prior notice to determine whether Declarant, or its successors or assigns, is complying with the covenants and prohibitions contained in the Declaration and the Permit; and
- d) The right to proceed at law or in equity to enforce the provisions of the Permit or the Declaration, to require restoration of damage to the Preserve Area, or prevent the occurrence of any of the prohibited activities set forth herein.

7. Enforcement Procedure. In the event of violation of the terms and conditions hereof, the Declarant or the Corps shall give written notice to the other, and the alleged violator shall have the right to cease or to cure the violation without penalty. If the party in violation does not cease or cure the violation within sixty (60) days after receipt of written notice, the terms and conditions herein may be enforced by the Declarant or the Corps by suit for injunctive relief or for other appropriate remedy in equity or at law; provided, however, that no violation shall resort in a forfeiture or reversion of title. If, however, such violation is of a nature or character that it is not reasonably susceptible to being ceased or cured within the initial sixty (60) day period, the party in violation shall have a reasonable period beyond the initial sixty (60) day period in which to cease or

cure such violation, provided the party in violation has commenced to cease or cure such violation within the initial sixty (60) day period and diligently prosecutes the same to completion. Venue for such suit shall be in Davis County, Utah, unless agreed otherwise by the parties. These remedies are in addition to any other remedy, fine, or penalty that may be applicable under Code of Federal Regulations Title 33, Sections 320-332.

8. Notice to the Corps. The Declarant, its successors and assigns, shall provide the Corps at least ninety (90) days advance written notice before taking any action to convey title to the Preserve Area, or any real property interest therein, or before taking any action that could void, modify, amend, alter, release, or revoke the Declaration.

9. Successors and Assigns Bound. Declarant hereby agrees and acknowledges that the Preserve Area shall be held, sold, conveyed, owned and used subject to the terms, conditions and obligations contained in the Declaration. Such terms, conditions and obligations are a burden and restriction in perpetuity on the use of the Preserve Area. The provisions of the Declaration are enforceable as equitable servitudes and conditions, restrictions and covenants running with the land, and shall be binding on the Declarant and upon each and all of its respective heirs, devisees, successors and assigns, officers, directors, employees, agents, representatives, executors, trustees, successor trustees, beneficiaries and administrators, and upon future owners of the Preserve Area and each of them.

10. Modification. After recording, these restrictive covenants may only be amended under exceptional circumstances by a recorded document signed by the Declarant, or a successor or assign, and by the Corps, in the Corps' sole discretion, with no obligation to do so.

11. Notice of Conservation Restrictions in Other Permit Applications. Any permit application, or request for certification or modification sought by the Declarant, its successors or assigns, which may affect the Preserve Area made to any governmental entity with authority over wetlands or other waters of the United States shall expressly reference and include a copy (with the recording stamp) of the Declaration.

12. Eminent Domain. If any part of the Preserve Area is taken by exercise of the power of eminent domain, so as to terminate the covenants contained in the Declaration, in whole or in part, the Declarant shall notify the Corps in writing of such proceedings upon first notice to Declarant, so that the Corps may provide the condemnor, and the court overseeing the action, an accurate estimate of the cost of replacing in-kind the ecological units and the conservation functions, services and values of the mitigation provided by the Preserve Area, and Declarant shall expend all funds received in compensation of said conservation functions, services and values to obtain comparable mitigation at an alternate location approved by the Corps.

Options for compensation of damages to Waters of the United States occasioned by an eminent domain taking of all or any part of the Preserve Area may include (1) re-recording of the Corps' Sacramento District model conservation restrictions, including the covenants set forth herein, by the new owner / condemnor, thereby preserving the Waters of the United States and their upland buffers in the Preserve Area, without adverse impact; or (2) payment of funds sufficient for the acquisition and protection of alternative real property in the same hydrologic watershed providing equivalent conservation functions, services and values of wetlands, streams, creeks, shorelines, or other Waters of the United States and their buffers; or (3) payment of funds to purchase conservation mitigation credits from an authorized wetland/stream mitigation bank in the same hydrologic watershed sufficient to replace the conservation mitigation functions, services and values of the wetlands, streams, creeks, shorelines, or other waters of the United States and their buffers lost by the taking; or (4) payment of funds to an in-lieu fee mitigation wetlands/streams trust account approved by the Corps in an amount sufficient to purchase and protect alternative real property in the same hydrologic watershed providing the equivalent mitigation conservation functions, services and values as the Preserve Area; or (5) acquisition of any other aquatic conservation mitigation as may be approved by the Corps in appropriate proportion to compensate the taking and in compliance with regulations and requirements in place at the time of the action.

In the event of a taking of all or a portion of the Preserve Area through the exercise of the power of eminent domain and a loss of aquatic resources protected under the Clean Water Act, or Rivers and Harbors Act, any failure of the proponent to provide adequate and appropriate damages in the form of compensatory mitigation, as described herein and as determined by the Corps through application of its Section 404 Clean Water Act and Rivers and Harbors Act regulations and procedures, shall cause the Corps to refer the matter to the United States Department of Justice for legal action.

14. Severability. The provisions of the Declaration are severable and the violation of any of the provisions of this Declaration by a Court shall not affect any of the other provisions which shall remain in full force and effect.

DECLARANT:

Date: _____

By: _____

Its _____

STATE OF UTAH

County of _____

On _____, before me,

_____,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

Personally _____ appeared

Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory

evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature of Notary Public

EXHIBIT A – MAP OF “PRESERVE AREA”

DRAFT

Appendix 5

Draft EA Distribution List

Appendix 5

Great Salt Lake Shoreland Preserve - Federal Land Transfer Draft Environmental Assessment Distribution List

Name	Organization	Type
Council Member - Dave Adams	Kaysville	City
Council Member - Michelle Barber	Kaysville	City
Council Member - Stroh DeCaire	Kaysville	City
Council Member - Jake Garn	Kaysville	City
Council Member - Larry Page	Kaysville	City
Curtis Randall	Kaysville	City
Cody Thompson	Kaysville	City
Josh Belnap	Kaysville	City
Logan Barker	Kaysville	City
Mayor - Katie Witt	Kaysville	City
Shayne Scott	Kaysville	City
City Manager - Alex R. Jensen	Layton	City
Alan McKean	Layton	City
Ashley Thoman	Layton	City
Council Member - Bruce Davis	Layton	City
Council Member - Joyce F. Brown	Layton	City
JoEllen Grandy	Layton	City
Council Member - Joy Petro	Layton	City
Lon Crowell	Layton	City
Ryan Bankhead	Layton	City
Council Member - J. Scott Carter	Layton	City
Mayor - Scott Freitag	Layton	City
Steve Jackson	Layton	City
Tim Watkins	Layton	City
Council Member - Tom Day	Layton	City
Brian Bloemen	Syracuse	City
City Manager - Brody Bovero	Syracuse	City
Council Member - Corinne Bolduc	Syracuse	City
Council Member - Dave Maughan	Syracuse	City
Council Member - Doug Peterson	Syracuse	City
Jordan Savage	Syracuse	City
Council Member - Jordan Savage	Syracuse	City
Kresta Robinson	Syracuse	City
Council Member - Lisa W. Bingham	Syracuse	City
Syracuse Mayor - Mike Gailey	Syracuse	City
Noah Steele	Syracuse	City
Robert Whiteley	Syracuse	City
Royce Davies	Syracuse	City
Steve Marshall	Syracuse	City
Congressman Bishop	Congressman Bishop	Congressional
Alyson Heyrend	Congressman McAdams	Congressional
Matt Anderson	Senator Romney	Congressional
Chris Brown	TNC	Cooperator

Dave Livermore	TNC	Cooperator
Elizabeth Kitchens	TNC	Cooperator
Kara Butterfield	TNC	Cooperator
Chair - P Bret Millburn	Davis County	County
Bill Bunch	EPA	Federal
Tanya Code	EPA	Federal
Brad Barber	URMCC	Federal
Gene Shawcroft	URMCC	Federal
Mike Fowlks	URMCC	Federal
Bob Morgan	URMCC	Federal
Reed Murray	U.S. Department of the Interior	Federal
Russ Findlay	U.S. Department of the Interior	Federal
Channa Vyfvinkel	URMCC	Federal
Diane Simmons	URMCC	Federal
Isabelle Simmons	URMCC	Federal
Kim Embley	URMCC	Federal
Mark Holden	URMCC	Federal
Melissa Stamp	URMCC	Federal
Maureen Wilson	URMCC	Federal
Mata Lolofie	URMCC	Federal
Richard Mingo	URMCC	Federal
Matt Wilson	USACE	Federal
Rick Baxter	USBR	Federal
Amy Defreese	USFWS	Federal
Suncrest Meadows	Kaysville	HOA Contacts
Kay Creek Estates	Kaysville	HOA Contacts
Schick Farms	Kaysville	HOA Contacts
Island View Ridge - Devin Henninger	Layton	HOA Contacts
Kershaw Estates - Karen Van Weerd	Layton	HOA Contacts
Still Water - Nate Myers	Syracuse	HOA Contacts
Kevin Kilpatrick	HDR	Interested
Michael Weland	Interested	Interested
Ella Sorensen	Audubon	NGO
Gen Green	Friends of Great Salt Lake	NGO
Lynn Defreitas	Friends of Great Salt Lake	NGO
Heather Dove	Great Salt Lake Audubon	NGO
Cooper Farr	Tracy Aviary	NGO
Rex Harris	UDOT	State
Randy Jefferies	UDOT	State
Mike Canning	UDWR	State
Bill James	Utah Division of Wildlife Resources	State
Pam Kramer	Utah Division of Wildlife Resources	State
Jamie Barnes	Utah Forestry Fire and State Lands	State
Laura Ault	Utah Forestry Fire and State Lands	State
Chris Merritt	Utah State Historical Preservation Office	State
Toby Hooker	Utah Water Quality	State
Jason Jones	Utah Water Rights	State

Appendix 6

Comments and Responses on Draft Environmental Assessment

A Draft EA was sent to approximately 90 organizations, governmental agencies and individuals in August 2019 for review and comment. Six (6) comment letters were received in response to the Draft EA. The comment letters were converted to Word documents, annotated with responses which are shown in green colored italic text and then converted back to pdf. The comment letters annotated with responses are included in this Appendix.



Annotated With

Response to Comments

September 23, 2019

RE: Great Salt Lake Audubon Comments:
Great Salt Lake Shorelands Preserve Federal Land Transfer Draft Environmental Assessment Utah Reclamation Mitigation and Conservation Commission

From: Heather Dove, President Great Salt Lake Audubon

Great Salt Lake Audubon (GSLA) welcomes this opportunity to comment on the August 2019 Great Salt Lake Shorelands Preserve Federal Land Transfer.

Since 1912 GSLA has been a leader in conservation issues impacting Utah. Currently GSLA represents approximately 1,200 Utahns who are dedicated to protecting and enhancing habitat for wild birds, animals and plants, and to maintaining healthy and diverse environments for wildlife and people throughout the state. Our volunteer organization strives to meet our mission through volunteer opportunities, seminars, educational field trips, urban riparian restoration and informative general meetings with guest presenters. We also support state and local conservation efforts.

GSLA supports the Preferred Alternative of conveyance of any or all Utah Reclamation Mitigation and Conservation Commission (URMCC) property and associated water rights within the GSL Shorelands Preserve to The Nature Conservancy for management in perpetuity and the subsequent transfer by The Nature Conservancy of 15.84 acres to the Utah Department of Transportation (UDOT).

Response: Thank for your comment indicating Great Salt Lake Audubon supports the transfer of Federal lands to The Nature Conservancy (TNC) and the subsequent transfer of up to 15.84 acres from TNC to the Utah Department of Transportation (UDOT) for use as part of the West Davis Highway (WDH). The final alignment selected by the Federal Highway Administration (FHWA) and UDOT for the WDH requires 13.33 acres of Mitigation Commission land for the WDH corridor. Approximately 2.51 acres east of the WDH corridor would be severed from the remainder located west of the WDH alignment, thereby substantially reducing its value as wetlands/wildlife habitat. Together, those amounts represent the land that would be transferred to TNC with approval to convey some or all of those lands, up to 15.84 acres, to UDOT. The TNC may retain some or all of the severed property east of the WDH corridor.

GSLA supports this alternative as the State of Utah has neither the will nor the resources to adequately manage this critical habitat. Under State ownership it would most likely be conveyed to the highest bidder in the near future. **However, GSLA supports the Preferred Alternative under protest as this property transfer is the lesser of evils associated with the construction of the West Davis Highway, which in itself causes irreparable harm to the habitats that adjoin the east side of Great Salt Lake (GSL).**

This land conveyance is in accordance with the Mitigation Commission Vision for the Great Salt Lake 2002 Mitigation and Conservation Plan in response to the construction of the Legacy Highway:

“A wetland corridor owned by the state, federal or local governments, private landowners or private organizations, along the shoreline of the Great Salt Lake has been preserved that allows dynamic fluctuation of lake level. Resident wildlife and migratory shorebirds in the Western Hemisphere and waterfowl in the Pacific Flyway are assured resting, feeding and nesting habitat during the normal lake fluctuations, as well as a buffer when the lake level fluctuates more extremely. Wetland hydrology is maintained in perpetuity and access for compatible recreation is available.

A commitment to preserve the ecological function and values of the GSL and associated wetlands exists among state and local governments, private landowners and private industry.

Diverse educational opportunities are available that promote general understanding of the complexity and value of the Great Salt Lake wetland ecosystem as well as public and political support for the Great Salt Lake’s wetland, wildlife and intrinsic values.”

***Response:** Please also refer to the most recent iteration of the Mitigation Commission’s annual report and plan available on our website www.mitigationcommission.gov.*

However, the question does need to be asked, that given URMCC’s mission and leverage why was URMCC not more vocal in stopping this alignment of the West Davis Highway?

***Response:** The Mitigation Commission is not a regulatory agency, and unlike other Federal agencies involved in the WDH planning process we have no jurisdiction, for example, over migratory birds (e.g. U.S. Fish and Wildlife Service), wetlands (e.g. U.S. Army Corps of Engineers) or overarching Clean Water Act (e.g. U.S. Environmental Protection Agency). The Mitigation Commission participated in planning for the WDH as a landowner, although a special-status landowner due to provisions under Section 4(f) of the Department of Transportation Act of 1966 (Pub. L. 89-670, 80 Stat. 931) because several alternative alignments of the WDH would require use of property owned by the United States and administered by the Mitigation Commission within the GSLSP boundary.*

The Mitigation Commission was never in a position to stop the WDH. UDOT did make some alignment shifts for example in the West Layton area that reduced the amount of federal land needed. The WDH project would not have been stopped by further minor adjustments of that nature. From the standpoint of Section 4(f) application to the WDH project, eliminating all federal lands from the WDH project would have removed the Mitigation Commission’s standing under the Section 4(f) rules and would have removed the Mitigation Commission from the proceedings other than as an interested public entity. As the Mitigation Commission has no regulatory authority over highways or the affected wetlands and wildlife resources that GSLA, TNC, the Mitigation Commission and others care so deeply about, the Mitigation Commission only had a de facto regulatory function due to its land being directly required for construction of the WDH. It was in the best interests of protecting as much of the wetlands and wildlife habitat potentially affected by WDH that the Mitigation Commission remained involved as a Section 4(f) land administrator and insisted on equal compensatory mitigation all lands within the GSLSP including those owned by TNC.

The West Davis Highway is unnecessary (no expected use at full capacity within 65 years [UDOT assessment]); it was championed by Davis County property developers who are also members of the State Legislature who stand to gain significant financial rewards by its construction; and its construction based on seriously flawed UDOT traffic modeling data. It was essentially rammed down the throats of Davis County citizens by those in power who have significant advantage and by pitting Davis County communities against each other; the old divide and conquer strategy.

Now, habitat that has been carefully managed is to be transferred to UDOT to construct an unnecessary highway along the eastern shore of the GSL. Not only does the Highway compromise the ecological integrity of GSL Shorelands Preserve, but all the lands that lie in the highway's path that were undeveloped and were to remain undeveloped, such as the Glover Pond area and the former Buffalo Ranch. Not to mention that this highway will share a common border with Farmington Bay which provides critical habitat to migratory birds and waterfowl. Regardless of the transfer of URMCC lands to The Nature Conservancy, given the location of this highway and environmental impact, **there is simply no de minimis**. Additionally, given UDOT's past history, GSLA finds it hard to believe that sufficient funding will be endowed to restore habitat on private inholdings and URMCC lands that require restoration.

It is unconscionable that a new highway is to be constructed at a time when North American bird populations are significantly diminished (Science; September 2019) due to habitat loss and climate change; that causes further destruction of critical habitat in the GSL Western Hemispheric Shorebird Reserve Network (WHSRN), a distinction afforded to only seven areas in the lower 48 states (Manomet 2013); that imperils one of the Nation's largest populations of wintering Bald Eagles (Farmington Bay); that further compromises wetlands; and that contributes to climate change.

Response: *Your comments regarding the WDH are noted.*

Regarding your comment that "there is simply no de minimis" we respond as follows. The Mitigation Commission has maintained since the WDH was originally proposed, that the only way we would approve the use of conservation properties was if, at the end of the day, the GSLSP was left in a better position after the project than it was before. The Mitigation Commission, TNC, and others worked extensively with UDOT and FHWA to avoid, reduce and compensate adequately for impacts of the WDH on the GSLSP.

The Wetlands and Wildlife Mitigation Plan committed by UDOT and required by the Section 404 Clean Water Act permit for WDH helps consolidate the patchwork of ownership within the GSLSP and protects these properties from future development, the impacts of which would compromise the integrity of the entire GSLSP. I believe, at the end of the day, the GSLSP will be left in a better position because of the Mitigation Commission's involvement in the planning process and insistence that all lands within the GSLSP be treated to the same standard as the Mitigation Commission's Section 4(f) lands. The Mitigation Commission concluded that acquisition, protection and restoration of the remaining inholdings within the GSLSP would offset the habitat losses within the GSLSP resulting from the WDH. For this and the other reasons outlined in the June 13, 2017 letter from UDOT the Mitigation Commission concurred with the FHWA's and UDOT's Section 4(f) de minimis finding. Further information may be found in UDOT's Final EIS.¹

As clarification, UDOT and FHWA are required by the Section 404, Clean Water Act permit from the U.S. Army Corps of Engineers to perform the habitat preservation, restoration and enhancement on properties UDOT will acquire and to demonstrate those commitments have been achieved prior to turning ownership and management over to TNC. An endowment will support future operations and management of the transferred lands.

¹ http://www.udot.utah.gov/westdavis/documentation#final_eis

Hopefully the little habitat that is left can be adequately restored and managed by the Nature Conservancy for the benefit of all.

Sincerely,

A handwritten signature in black ink that reads "Heather Dove". The signature is written in a cursive, flowing style.

Heather Dove
President, Great Salt Lake Audubon



**Annotated With
Response to Comments**

Timothy L. Nuvangyaoma
CHAIRMAN

Clark W. Tenakhongva
VICE-CHAIRMAN

MITIGATION COMMISSION
OFFICIAL FILE COPY
CLASSIFICATION _____
PROJECT _____
FOLDER _____ CONTROL _____

SEP 12 2019

September 5, 2019

Mark A. Holden, Executive Director
Attention: Richard Mingo
Utah Reclamation Mitigation & Conservation Commission
230 South 500 East Suite #230
Salt Lake City, Utah 84102

CODE	INITIALS
mc-01	THA
MC-05	

Re: Draft Environmental Assessment: Transfer of 1,297 Acres of U.S.–Owned Lands Administered by the Mitigation Commission within the Great Salt Lake Shorelands Preserve to The Nature Conservancy

Dear Mr. Holden,

Thank you for your correspondence dated August 27, 2019, regarding a Draft Environmental Assessment for the transfer of 1,297 acres of U.S.–Owned Lands administered by the Mitigation Commission within the Great Salt Lake Shorelands Preserve to The Nature Conservancy.

The Hopi Tribe claims cultural affiliation to earlier identifiable cultural groups in Utah, including the Fremont cultural group. The Hopi Cultural Preservation Office supports the identification and avoidance of our ancestral sites and Traditional Cultural Properties, and we consider the archaeological sites of our ancestors to be “footprints” and Traditional Cultural Properties. Therefore, we appreciate the Utah Reclamation Mitigation & Conservation Commission’s continuing solicitation of our input and your efforts to address our concerns.

We support this proposal because “the Mitigation Commission and The Nature Conservancy would coordinate with the State of Utah Division of State History to include language in the deeds transferring property out of Federal ownership that, in conjunction with State statues, would provide legally enforceable restrictions or conditions to ensure *long-term* preservation of the property's historic significance.”

Response: Thank you for your comments. The Mitigation Commission will continue to work with the State of Utah Historic Preservation Officer to ensure deeds transferring the property out of Federal ownership will include legally enforceable restrictions or conditions to ensure long-term preservation of the property’s historic significance.

Should you have any questions or need additional information, please contact Terry Morgart at the Hopi Cultural Preservation Office at 928-734-3619 or tmorgart@hopi.n.n.u. Thank you again for your consideration.

Respectfully,

Stewart B. Koyiyumptewa, Program Manager
Hopi Cultural Preservation Office

xc: Utah State Historic Preservation Office



**ECHO HAWK
& OLSEN**

MARK A. ECHO HAWK
MARK@ECHOHAWK.COM

505 PERSHING AVE., STE. 100
PO BOX 6119
POCATELLO, ID 83205-6119
208.478.1624
208.478.1670 FAX
WWW.ECHOHAWK.COM

September 30, 2019

***Annotated
With
Response to
Comments***

Mr. Richard Mingo
Utah Reclamation Mitigation and
Conservation Commission
230 S. 500 E. Ste. #230
Salt Lake City, UT 84102
rmingo@usbr.gov

Re: Proposed Transfer of 1,297 Acres within the Great Salt Lake Shorelands Preserve to The Nature Conservancy and Proposed Authorization of Transfer of 15.84 acres to the Utah Department of Transportation / Tribal Objection

Dear Richard:

The Northwestern Band of the Shoshone Nation (Tribe) is in receipt of the Utah Reclamation Mitigation & Conservation Commission's (Mitigation Commission) draft Environmental Assessment regarding the proposed transfer of 1,297 acres of United States-owned lands (Subject Lands) administered by the Mitigation Commission within the great Salt Lake Shorelands Preserve to The Nature Conservancy (TNC). The Tribe understands that along with the proposed transfer to TNC, the Mitigation Commission is considering whether to authorize TNC to transfer 15.84 acres of property (West Davis Land) to the Utah Department of Transportation (UDOT) for the construction and operation of the West Davis Corridor. Echo Hawk & Olsen represents the Tribe and provides this written notice of the Tribe's initial objection to the transfer of any of the Subject Lands, and objection to any authorization of TNC to transfer the West Davis Land to UDOT.

The Tribe would like to consult with the Mitigation Commission directly before a final decision is made regarding whether the transfer to TNC and authorization for transfer to UDOT is decided. Additionally, the Tribe requests formal consultation with the Mitigation Commission

and UDOT on this matter prior to any decisions or action.

Response: The Mitigation Commission conferred with the Northwestern Band of the Shoshone Nation via WebEx on March 19, 2020 and discussed measures that would be taken as part of the Selected Action to provide continued protection of cultural resources once the properties are transferred out of Federal ownership to The Nature Conservancy (see April 7, 2020 letter to the Northwestern Band of the Shoshone Nation in this Appendix). UDOT participated in the March 19th meeting.

The Subject Lands are within the Tribe's aboriginal lands and ceded territory. The Tribe's aboriginal title interest and Tribe's present cultural and traditional interests in the area supported by three related, Congressionally-ratified Treaties should be considered by the Mitigation Commission.

Response: Measures that would be taken as part of the Selected Action to provide continued protection of the Tribe's cultural interests are outlined in the FONSI, EA, letters to the Tribe and were discussed in our March 19th consultation meeting.

The Mitigation Commission should entertain a long-term lease to the Tribe for uses consistent with the National Historic Landmark.

Response: This comment was also discussed during our March 19th consultation meeting and a long-term lease to the Tribe was not deemed necessary.

The Tribe is also exploring the protections offered by Traditional Cultural Property status of the site and surrounding federal surplus lands, so the area can be included in the National Register of Historic Places.

Response: Thank you for your comment.

The Subject Lands are associated with the cultural practices, traditions, beliefs, and social institutions of the Tribe's traditional community. The Tribe constitutes a traditional community because it has beliefs, customs and practices that have continued over time and help define the traditions of the Tribe. The Tribe is preparing to provide information regarding traditional land boundaries and the related narrative of cultural importance for the area.

Response: Thank you for your comment.

The Mitigation Commission should also give consideration to the Tribe's ethnographic, cultural, and traditional, interests in the Subject Lands, and in maintaining the area in a manner that is consistent with the Subject Lands' National Historic Landmark status. As you may know, the Tribe is investing significant resources to construct an interpretive center for the Bear River Massacre Site, which is supported by the State of Utah.

Response: Thank you for your comment.

Thank you for giving meaningful consideration to the Tribe's concerns. I welcome the opportunity to talk or meet at your convenience.

Sincerely,



Mark A. Echo Hawk

MAE/cs

Cc: NWBSN Tribal Council

April 7, 2020

Chairman Darren B. Parry
Northwestern Band of Shoshone Nation
707 N Main Street
Brigham City, UT 84302

Subject: Great Salt Lake Shorelands Preserve Final Environmental Assessment;
Consultation with Northwestern Band of Shoshone Nation

Honorable Chairman Parry:

On September 30, 2019, I received a letter from Mr. Echo Hawk on behalf of the Northwestern Band of Shoshone Nation requesting formal consultation with the Mitigation Commission regarding the proposed transfer of 1,297 acres of United States-acquired lands to The Nature Conservancy (TNC) as part of the Great Salt Lake Shorelands Preserve as described in the Draft Federal Land Transfer Environmental Assessment. On December 3, 2019 I responded via letter to you, accepting the request for consultation.

Following several emails and phone discussions with you, a consultation meeting was scheduled. On Thursday March 19, 2020, the Mitigation Commission conferred with Mr. Jason Walker of the Northwestern Band of the Shoshone Nation to discuss the Great Salt Lake Shorelands Preserve Federal Land Transfer Environmental Assessment. At Mr. Echo Hawk's request, also participating were Mr. Randy Jeffries and Ms. Liz Robinson of the Utah Department of Transportation (UDOT). Due to concerns with COVID-19, our consultation meeting was held via WebEx. Ms. Patty Timbimboo-Madsen was unable to participate due to technical difficulties she experienced.

I provided an overview of the Mitigation Commission and summarized the proposed plan to transfer 1,297 acres of United States-owned property to The Nature Conservancy to be managed as part of the Great Salt Lake Shorelands Preserve. The Mitigation Commission would also authorize The Nature Conservancy to subsequently transfer up to 15.84 of those acres to UDOT for their use on the West Davis Corridor Project. In addition, UDOT would acquire approximately 791 acres of privately held inholdings within the preserve boundaries and transfer them to The Nature Conservancy for wetlands and wildlife mitigation and conservation purposes. We discussed measures that would be taken as part of the proposed action to provide continued protection of cultural resources once they are transferred out of Federal ownership to The Nature Conservancy. In particular, several State of Utah statues paralleling those at the Federal level which would be required of The Nature Conservancy were reviewed including:

- Utah Code Annotated (UCA) Title 9, Heritage, Arts, Libraries, and Cultural Development, Chapters 8 and 9; esp. UCA 9-8-301 et seq., 9-8-401 et seq. regarding antiquities;

- Utah Native American Graves Protection and Repatriation Act, Utah Code Annotated (UCA) 9-9-401 and subsequent sections; and
- Rule 230-1 Ancient Human Remains on Nonfederal Lands That Are Not State Lands, UCA 9-8-309;
- Utah State Antiquities Act, UCA 9-8-301 to 9-8-308 and implementing rule; Protection of Paleontological Resources, UCA 79-3-508;
- Parts of UCA Title 79, Part 3 regarding paleontological resources.

Mr. Walker indicated that because the project area was within or near the Northwestern Band of the Shoshone Nation's aboriginal territory, the Tribe was concerned if there would be impacts to resources important to the Northwestern Band of the Shoshone Tribe. Mr. Walker asked UDOT if they were planning to have a cultural resource monitor on-site during construction of the highway. Mr. Walker mentioned especially concern regarding how any human remains, if any were discovered during the project, would be handled. Mr. Jefferies indicated that monitors would be on-site during construction and that a treatment plan had been developed to guide actions in the event of a discovery. Mr. Walker was satisfied with UDOT's response.

Mr. Walker indicated that his area of responsibility was generally north of the Utah-Idaho border and that Ms. Patty Timbimboo-Madsen was responsible for areas south of the border. Mr. Walker indicated he would convey his summary of the discussions to Ms. Timbimboo-Madsen and she would inform us if she felt further discussion was needed. Subsequently Mr. Richard Mingo of my staff reached out to Ms. Timbimboo-Madsen via email and asked her to contact him if further consultation was needed. As we have not had a response, we conclude that consultation has been completed, and formal consultation is therefore closed.

We appreciated the opportunity to consult with representatives of the Northwestern Band of the Shoshone Nation regarding this project and will keep you advised of our progress as we move to completing the Final Environmental Assessment.

If you have any questions or concerns, please contact me at the letterhead address and phone number, or Mr. Richard Mingo at (801) 524-3168.

Sincerely,

Mark A. Holden
Executive Director

cc: U.S. Department of the Interior, Central Utah Project Completion Act Office
U.S. Department of the Interior, Office of the Solicitor



Utah Reclamation Mitigation & Conservation Commission
230 South 500 East Suite 230 Salt Lake City, UT 84102-2045
Phone: (801) 524-3146 – Fax: (801) 524-3148

COMMISSIONERS
Brad T. Barber, Chair
Gene Shawcroft
Robert L. Morgan

December 3, 2019

Chairman Darren B. Parry
Northwestern Band of Shoshone Nation
707 N Main Street
Brigham City, UT 84302

Subject: Proposed Transfer of 1,297 acres within the Great Salt Lake Shorelands Preserve to The Nature Conservancy and Proposed Authorization of Transfer of 15.84 acres to the Utah Department of Transportation/Tribal Objection; Comment on Draft Environmental Assessment

Honorable Chairman Parry:

We received the letter sent by Mark Echo Hawk on behalf of the Northwestern Band of Shoshone Nation (Tribe). Mr. Echo Hawk relayed the Tribe's concerns regarding the proposed transfer of 1,297 acres of United States-acquired lands to The Nature Conservancy (TNC) as part of the Great Salt Lake Shorelands Preserve. The letter from Mr. Echo Hawk requested formal consultation with the Mitigation Commission and with the Utah Department of Transportation (UDOT). We have no authority to respond to your request on behalf of UDOT, but we did forward a copy of your letter to them. We would be honored to meet with your Tribal Historic Preservation Officer or any other representative you may designate to discuss your interests and concerns.

We also take this opportunity to provide some clarification on the scope and details of the proposed transfer. We understand the significance and cultural richness of the Great Salt Lake and its environs to several Native American Tribes. Under a proposed transfer of the lands to TNC, the archaeological, and traditional and cultural interests of the properties would be protected by restrictions in the deed transferring the properties to TNC. Among those restrictions, TNC would need to comply with State of Utah statutes that provide legally enforceable restrictions on land use similar to those at the Federal level including:

- Utah Code Annotated (UCA) Title 9, Heritage, Arts, Libraries, and Cultural Development, Chapters 8 and 9; esp. UCA 9-8-301 et seq., 9-8-401 et seq. regarding antiquities; and
- Utah Native American Graves Protection and Repatriation Act, Utah Code Annotated (UCA) 9-9-401 and subsequent sections; and

- Rule 230-1 Ancient Human Remains on Nonfederal Lands That Are Not State Lands, UCA 9-8-309; and
- Utah State Antiquities Act, UCA 9-8-301 to 9-8-308 and implementing rule;
- Protection of Paleontological Resources, UCA 79-3-508; and
- Parts of UCA Title 79, Part 3 regarding paleontological resources.

The properties proposed for transfer to TNC are not surplus Federal lands. Congress specifically authorized the Mitigation Commission to preserve, rehabilitate and enhance wetlands around the Great Salt Lake under the Central Utah Project Completion Act, P.L. 102-575, as amended. To accomplish this and other responsibilities, the Mitigation Commission is authorized to acquire real property and to convey real property to other entities, including non-profit organizations, to carry out its statutory responsibilities. TNC has been a strong ally and partner in accomplishing our authorized mission to preserve, rehabilitate and enhance wetlands around the Great Salt Lake. We believe the long-term goals and objectives for the properties would best be met by transferring the properties to TNC and ensuring the lands continue to meet federally-defined purposes.

If you have any questions or concerns or to schedule a meeting, please contact Richard Mingo at (801) 524-3168.

Sincerely,



Mark A. Holden
Executive Director

cc: Mark Echo Hawk, Attorney, Echo Hawk & Olsen
U.S. Department of the Interior, Central Utah Project Completion Act Office
U.S. Department of the Interior, Office of the Solicitor



Mingo, Richard <rmingo@usbr.gov>

Annotated With Response to Comments

[EXTERNAL]

1 message

Noah Steele <nsteele@syracuseut.com>

Tue, Oct 15, 2019 at 4:56 PM

To: "rmingo@usbr.gov" <rmingo@usbr.gov>

Cc: "Holden, Mark" <mholden@usbr.gov>, "Jeremy Shaw (jeremyshaw@utah.gov)" <jeremyshaw@utah.gov>, "Anderson, Matt (Romney)" <matt_anderson@romney.senate.gov>, Jeff Oyler <joyler@co.davis.ut.us>, Kent Andersen <kenta@co.davis.ut.us>

Richard/Mark,

Thank you for the opportunity to comment on the draft E.A. The city is concerned that if the land is turned over to The Nature Conservancy that existing and potential future access points to the property will not be preserved. Residents of the city and of the region have been using this property for many years for duck hunting, hiking, bird watching, and other similar recreational activities. Our hope is that the seasonal 'Gailey access' maintained by the UDWR is preserved unchanged.

***Response:** There are three public access points that provide the public access across the GSL Shorelands Preserve. These access areas are typically open to the public during the waterfowl hunting season and closed otherwise. The Gailey access which you refer to in your comment letter is owned in fee by the Utah Department of Natural Resources, Division of Wildlife Resources. UDWR and TNC work together to manage the Gailey access site which is typically open during the hunting season but closed otherwise.*

The other two access points are located north and south of the Gailey access. The south site is accessed from a parking area off Weaver Lane. This site provides public access to the only areas open for hunting within the GSL Shorelands Preserve which occur on lands owned by TNC. The north access site is accessed from a parking lot located just off Antelope Drive. This site provides public access across approximately 300 feet of land owned by the Mitigation Commission to access State of Utah, Division of Forestry Fire and State Lands.

The city is also planning a 'Shoreline trail' that is anticipated to cross a portion of the property to be dedicated to TNC. The city is in the process of negotiating an easement for the trail. The city is not opposed to the dedication of the land to TNC so long as access for recreation is not discontinued and an opportunity to finalize trail easements and/or potential purchase/trade for all or portions of the property is available prior to turning the property over. Our request is to provide an opportunity for governmental agencies to purchase the land prior to dedication to TNC. Agencies such as the Utah State Parks, Davis County, or Syracuse City, or a partnership between them should have the opportunity as public entities to acquire access right to the properties for the overall greater good prior to turning it over to a private entity.

***Response:** Unlike other Federal land management agencies who have multiple use mandates (Forest Service and Bureau of Land Management for example), the Mitigation Commission's mission is more narrowly confined to the protection, restoration and enhancement of ecological systems in order to mitigate for the construction and operation of Federal water projects in Utah (see pages 1 and 2 of the Environmental Assessment for a more thorough discussion). Recreational opportunities that are compatible with these underlying objectives are consistent with our vision for the GSL Shorelands Preserve but remain secondary to the value of function of the ecological system.*

Since the release of the Draft EA, the Mitigation Commission and The Nature Conservancy have met with Syracuse City and tentatively identified a trail alignment on the Federal properties in which Syracuse City could construct a trail. Syracuse City is in the process of having the alignment surveyed and legally described.

Thanks,

Noah Steele
Syracuse City
Community and Economic Development Director
801-614-9672

[EXTERNAL] Re:

Annotated With Response to Comments

[Jeff Oyler <joyler@co.davis.ut.us>](mailto:joyler@co.davis.ut.us)

Fri 10/18/2019 10:32 AM

To: Noah Steele <nsteele@syracuseut.com>

Cc: Mingo, Richard G <RMingo@usbr.gov>; Holden, Mark A <MHolden@usbr.gov>; Jeremy Shaw (jeremyshaw@utah.gov) <jeremyshaw@utah.gov>; Anderson, Matt (Romney) <matt_anderson@romney.senate.gov>; Kent Andersen <kenta@co.davis.ut.us>

I want to echo what Noah is saying here. TNC has a habit of locking their property to public access. Case in point, the Legacy Preserve, purchased by UDOT (Utah tax payers) now owned by TNC, and the public is locked out. This should not be happening. It doesn't need to be a public free for all, but having trail access and being able to cross the properties for recreational purposes should be allowed. Davis County supports the "Shoreline Trail" concept and would like to see that developed.

Thanks,
Jeff Oyler
Davis County

Response: Please see responses to Syracuse City's comments.

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Jeff Oyler
Planning Manager
Davis County
joyler@daviscountyutah.gov
801-451-3279



Tracy Aviary
589 East 1300 South
Salt Lake City, UT 84105

September 28, 2019

Annotated With Response to Comments

Mr. Richard Mingo
Utah Reclamation Mitigation and Conservation Commission
230 S. 500 E. Suite #230
Salt Lake City, Utah 84102

Re: Commends on Draft Environmental Assessment for the Great Salt Lake Shorelands
Preserve Federal Land Transfer

Dear Mr. Mingo,

Tracy Aviary appreciates the opportunity to submit comments on the Draft Environmental Assessment (EA) for the Great Salt Lake Shorelands Preserve Federal Land Transfer.

Tracy Aviary, the oldest and largest public aviary in the U.S., is a cultural landmark and recognized leader in avian conservation. We implement a number of bird and habitat monitoring projects along the Jordan River each year with the help of community scientists.

The Great Salt Lake Shorelands Preserve is located within an extremely important region for birds and other wildlife. Long-term management is essential to maintain the quality of habitat within the preserve, especially as the area faces encroaching development and decreasing water levels. Given that the proposed action enables The Nature Conservancy to continue managing the property as they have for the last 23 years, it appears that the EA is correct in the conclusion that no impacts would occur for many federal resources such as wetlands, wildlife, and endangered species (page 15). The summary of potential impacts to other resources also appears to be sufficient (pages 15-18).

Response: Thank you for your review and comments.

Please note that our comments here do not address any potential negative impacts of the transfer of lands to UDOT, and the construction or operation West Davis Corridor, as that is outside the scope of the analysis provided in the Environmental Assessment.

Response: Comment noted.

Sincerely,

Cooper Farr
Director of Conservation
Tracy Aviary
589 East 1300 South
Salt Lake City, UT
84105