

**Dixie MPO
CONCEPT REPORT
FY 2017 - 2018**

PROJECT INFORMATION

- A. PROJECT TITLE:
Washington Parkway
- B. DESCRIPTION:
Pre-Construction activities and Construction of two lanes of Washington Parkway.
- C. LOCATION
Washington Parkway from Exit 13 to Green Springs.
- D. SPONSOR: Washington City
- E. COST ESTIMATE: \$ \$6.75 Million ESTIMATE DATE: Fall of 2022
Explain: The project will start as funding becomes available.
- F. FUNDS APPLYING FOR (check all that apply):
☒ Small Urban, ☒ Other (list Federal, State)
☐ FTA 5307, ☐ 5309, ☐ 5310, or ☐ 5311
- G. PROJECT MANAGEMENT
a. Contact Person: Michael D. Shaw
b. Phone Number: 435-656-6317
c. Mobile Phone: 435-680-1623
d. Fax Number: 435-656-6375
e. E-mail Address: mshaw@washingtontcity.org
- H. INCLUSION IN LONG-RANGE PLAN (LRP)
a. IS THE PROJECT IN THE LONG RANGE PLAN YES
Explain: It has been for sometime and a known vital corridor for the region.
- I. IS THE PROJECT NEW, AN IMPOROVEMENT, EXPANSION OR REHABILITATION
TO AN EXISTING SYSTEM? Explain: This will be new construction.
- J. WHAT ARE THE PHYSICAL ASPECTS OF THIS PROJECT?
1. Road:
a. Facility Design elements New segment of a regionally significant
110' Major Arterial roadway.
b. ADT n/a
c. LOS Unknown

- d. Functional Class 110' Major Arterial
- e. Design Speed 50 MPH
- f. Accident Rate n/a
- g. Other n/a

2. Transit:

- a. Rolling Stock Specification n/a
- b. Facility Design n/a
- c. Usage n/a

3. Pedestrian/Bicycle/Trail:

- a. Facility Design There are trail easements on either side of the road per the approved cross section.
- b. Usage n/a

4. Park & Ride

- a. Facility Design n/a
- b. Usage n/a

- K. Please provide plans, sketches, aerials or designs with this concept report to assist in the evaluation of this project. Yes
- L. How will the facility, system or equipment be maintained when completed and open for service? All maintenance will be provided by Washington City.

ADT = Average Daily Traffic

LOS = Level of Service A thru F

Accident Rate = per million vehicles miles traveled or million vehicles entering

RESPOND TO THE FOLLOWING FOR ANY PROJECT:

PROJECT TITLE: Washington Parkway

1. Describe how the project is consistent with local plans: It is identified in the Washington City Transportation Master Plan.
2. To what extent is the project Regionally Significant? It is a vital northern corridor for the region in moving east-west traffic and providing congestion relief for the various interchanges and major corridors.
3. Purpose and Need
 - A. Describe the need for the project: This corridor will provide another route for all of Green Springs residents to and from I-15 and downtown Washington, and in the future will be a vital east-west corridor connection from Washington City to St. George, Santa Clara, Ivins and Highway 18.
 - B. Describe the purpose of the project: In the near future to relive pressure off of Exit 10 intersections, in the long term getting regional traffic east and west via this corridor.
4. Is there any right-of-way or property purchase required? Yes Explain? Washington City is in the process of acquiring all necessary ROW for this Corridor
5. Is there any utility work or utility impacts? Unknown Indicate who will do the work and who will pay for it. Any utility work will be done by Washington City
6. To what extent will access management be improved by this project? Washington City's access management plan will be utilized for this project.
7. To what extent will this project improve transportation system Safety? This project will alleviate traffic on Exit 10 interchange improving current traffic flows and when the full corridor is complete improve traffic flows throughout the region.
8. Describe how this project will improve the existing transportation system as it relates to the following:
 - a. Mobility It creates a vital route for local and non local traffic to move freely east to west from Exit 13 off I-15 to highway 18 in St. George.
 - b. Inter-connectivity It will serve as the major corridor for all regional east to west traffic on the northern end of the region.
 - c. Circulation It will circulate local Green Springs traffic and all east to west traffic from Interchange 13 to highway 18.
 - d. Facility Usage Anticipated use is immediate once the corridor is complete.
 - e. Level of Service LOS should improve on exit 10 interchange.
 - f. Environment An Environmental Study will need to be completed.



WASHINGTON CITY

Washington Parkway

Map Prepared:
October 24, 2017

IT/CIS Department
111 North 100 East
Washington City, UT 84780
(435) 656-6300

**23 U.S.C. § 326 CE Assignment MOU
FHWA, Utah Division and the Utah Department of Transportation**

**THIRD RENEWED MEMORANDUM OF UNDERSTANDING
between
Federal Highway Administration, Utah Division
and the
Utah Department of Transportation**

State Assumption of Responsibility for Categorical Exclusions

THIS THIRD RENEWED MEMORANDUM OF UNDERSTANDING (“MOU”) made and entered into 23rd day of June, 2017, by and between the FEDERAL HIGHWAY ADMINISTRATION, UNITED STATES DEPARTMENT OF TRANSPORTATION (“FHWA”) and the STATE of Utah, acting by and through its DEPARTMENT OF TRANSPORTATION (“State”), hereby provides as follows:

WITNESSETH:

Whereas, Section 326 of amended Chapter 3 of Title 23, United States Code (23 U.S.C. § 326) allows the Secretary of the United States Department of Transportation (“DOT Secretary”), to assign, and a State to assume, responsibility for determining whether certain designated activities are included within classes of action that are categorically excluded from requirements for environmental assessments or environmental impact statements pursuant to regulations promulgated by the Council on Environmental Quality under part 1500 of title 40, Code of Federal Regulations (“CFR”) (as in effect on October 1, 2003); and

Whereas, if a State assumes such responsibility for making categorical exclusion (“CE”) determinations under the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq. (“NEPA”), the DOT Secretary also may assign and the State may assume all or part of certain Federal responsibilities for environmental review, consultation, or other related actions required; and

Whereas, on July 1, 2008, the FHWA and the State executed a MOU assigning responsibilities to the State pursuant to 23 U.S.C. 326 for a three-year period, expiring on July 1, 2011 (“Original Section 326 MOU”); and

Whereas, on July 1, 2011, the FHWA and the State executed a new MOU assigning responsibilities to the State pursuant to 23 U.S.C. 326 for an additional three-year period, expiring on July 1, 2014 (“First Renewed Section 326 MOU”);

Whereas, on June 30, 2014 the FHWA and the State executed a new MOU assigning responsibilities to the State pursuant to 23 U.S.C. 326 for an additional three-year period, expiring on June 30, 2017 (“Second Renewed Section 326 MOU”);

Whereas, on July 6, 2012, the Moving Ahead for Progress in the 21st Century Act (P.L.112-141) was enacted, and it became effective on October 1, 2012;

23 U.S.C. § 326 CE Assignment MOU
FHWA, Utah Division and the Utah Department of Transportation

Whereas, Section 1312 of MAP-21 amended 23 U.S.C. § 326 to (1) preserve the ability of States assuming responsibility to engage in project delivery methods that are otherwise permissible for highway projects, (2) allow States to terminate their participation in the program at any time by providing the DOT Secretary with a notice no later than 90 days before such termination, and (3) allow States that assume DOT responsibilities to use funds apportioned to the State under section 23 U.S.C. § 104(b)(2) for reasonable attorney's fees directly attributable to eligible activities associated with the project;

Whereas, on December 4, 2015, the Fixing America's Surface Transportation Act (P.L. 114-94) was enacted, and it became effective October 1, 2015; and

Whereas, on January 17, 2017, the FHWA and the State executed a new MOU assigning certain responsibilities to the State under the Surface Transportation Project Delivery Program, 23 U.S.C. § 327 ("Section 327 MOU"), which is separate from and does not supersede the assignment of authority for CEs under the Section 326 MOU;

Whereas, the Section 327 MOU expressly assigns FHWA's responsibilities for NEPA and certain other environmental laws to UDOT with respect to specified "highway projects," including among others: "[h]ighway projects qualifying for CEs within the State of Utah that are proposed to be funded with Title 23 funds or that otherwise require FHWA approvals, and that do not qualify for assignment of responsibilities pursuant to the Section 326 MOU";

Whereas, FHWA and the State seek to extend the existing assignment of responsibilities to the State for an additional three-year period, pursuant to a new MOU ("Third Renewed Section 326 MOU" or "MOU");

Whereas, on May 17, 2017, the FHWA published a notice of the availability of the proposed Third Renewed Section 326 MOU in the Federal Register and provided a thirty (30) day opportunity for comment in the USDOT Docket Management System FHWA-2017-0009; and

Whereas, on May 17, 2017, the State published the proposed a notice of availability of the Third Renewed Section 326 MOU on its website at <http://www.udot.utah.gov/go/environmental> and provided a 30-day opportunity for comment and

Whereas, the State and FHWA have considered the comments received on the Third Renewed Section 326 MOU; and

Whereas, the DOT Secretary, acting by and through FHWA, has determined that specific designated activities are CEs and that it will assign specific responsibilities with respect to CEs to the State in accordance with this MOU; and

Whereas, the State wishes to assume such Federal agency responsibilities in accordance with this MOU and applicable law;

Now, therefore, FHWA and the State agree as follows:

23 U.S.C. § 326 CE Assignment MOU
FHWA, Utah Division and the Utah Department of Transportation

STIPULATIONS

I. CATEGORICAL EXCLUSION RESPONSIBILITIES ASSIGNED TO THE STATE BY FHWA

- A. For the projects covered by this MOU, FHWA hereby assigns, and the State hereby assumes, subject to the terms and conditions set forth in 23 U.S.C. § 326 and this MOU, the responsibility for determining whether a proposed Federal-aid action is within a category of action that has been designated as a CE by the DOT Secretary, as specified in Stipulation I(B), and meets the definition of a CE as provided in 40 CFR 1508.4 (as in effect on October 1, 2003) and 23 CFR 771.117. This assignment applies only to projects for which the Utah Department of Transportation is the direct recipient of Federal-aid highway program funding or is the project sponsor or cosponsor for a project requiring approval by the FHWA-Utah Division Office. This assignment does not apply to responsibilities carried out by other modal administrations of the US Department of Transportation (USDOT) or the Office of the Secretary.
- B. This assignment pertains only to the designated activities described in this Stipulation I(B).
 - 1. The assignment includes the following:
 - a. Activities listed in 23 CFR 771.117 (c);
 - b. The example activities listed in 23 CFR 771.117(d)
 - 2. Any activities added through FHWA rulemaking to those listed in 23 CFR 771.117(c) or example activities listed in 23 CFR 771.117(d) after the date of the execution of this MOU.
- C. This MOU transfers to the State all responsibility for processing the CEs designated in Stipulation I(B) of this MOU, including any necessary CE approval actions. The State shall process all proposed projects that are CE candidates (CE projects), and any required reevaluations of CEs under 23 CFR 771.129 for all CE projects not completed prior to the date of this MOU, in accordance with the provisions of this MOU. With respect to matters covered by and subject to the terms of this MOU, this MOU supersedes any existing programmatic agreement that is solely between the State and FHWA concerning CEs.
- D. The State, when acting pursuant to 23 U.S.C. § 326 and this MOU, holds assigned authority to make environmental decisions and commitments pertaining to only the individual proposed projects and activities within the scope of 23 U.S.C. § 326 and this MOU. No action by the State shall bind FHWA to future action of any kind. No determination or agreement made by

23 U.S.C. § 326 CE Assignment MOU
FHWA, Utah Division and the Utah Department of Transportation

the State with respect to mitigation or other activities shall constitute a precedent for future determinations, agreements, or actions in the Federal-aid highway program unless FHWA consents, in writing, to such commitment.

II. OTHER FHWA RESPONSIBILITIES ASSIGNED TO THE STATE AND RESPONSIBILITIES RESERVED BY FHWA

- A. For projects covered by this MOU, FHWA hereby assigns, and the State hereby assumes, the following FHWA responsibilities for environmental review, consultation, or other related actions required under Federal laws and Executive Orders applicable to CE projects: See Appendix A for a description of the environmental responsibilities assigned to the State by the FHWA for proposed projects subject to this MOU. This assignment includes the transfer to the State of the obligation to fulfill the assigned environmental responsibilities associated with any proposed projects meeting the criteria in Stipulation I(B) that were determined to be CEs prior to the effective date of this MOU but the project has not been completed. Such projects are included in the term “proposed projects” in this MOU.
- B. The FHWA reserves any responsibility for any environmental review, consultation, or other related action that is not expressly assigned under this MOU, including:
 - 1. All government-to-government consultation with Indian tribes as defined in 36 CFR 800.16(m). Notice from the State to an Indian tribe advising the Indian tribe of a proposed activity is not considered “government-to-government consultation” within the meaning of this MOU. If the State adequately resolves any project-specific Indian tribe issues or concerns, then FHWA’s role in the environmental process shall be limited to carrying out the government-to-government consultation process. If FHWA determines through consultation with an Indian tribe, or an Indian tribe indicates to FHWA, that the proposed resolution of tribal issues or concerns by the State is not adequate, then Stipulation III(C) applies. This MOU is not intended to abrogate, or prevent future entry into, any written agreement among the State, FHWA, and an Indian tribe under which the tribe agrees to permit the State to administer government-to-government consultation activities for FHWA. However, such agreements are administrative in nature and do not relieve FHWA of its legal responsibility for government-to-government consultation.
 - 2. The State and FHWA will develop and document procedures for carrying out FHWA responsibilities retained by FHWA under Stipulation II(B), including how any FHWA decisions will be communicated to the State for inclusion in the State's decision-making under Stipulations I and II(A). The procedures will ensure that:

23 U.S.C. § 326 CE Assignment MOU
FHWA, Utah Division and the Utah Department of Transportation

- a. The State provides to FHWA any information necessary in order for FHWA to carry out its consultation, evaluation, or decision-making for Stipulation II(B) activities;
 - b. The FHWA provides the State with a documented decision and any related information used for Stipulation II(B) decisions and needed by the State in order for the State to evaluate the project and make its decision whether the project qualifies as a CE; and
 - c. As part of any request for FHWA authorization for funding or other action, the State will provide to FHWA evidence that the CE processing and any other environmental responsibilities assigned under this agreement have been completed in accordance with this MOU.
- C. The State agrees that its execution of environmental review, reevaluation, consultation, and other related responsibilities for CEs assigned under this MOU are subject to the same existing and future procedural and substantive requirements as if those responsibilities were carried out by FHWA. This includes, but is not limited to the responsibilities of FHWA under interagency agreements such as programmatic agreements, memoranda of understanding, memoranda of agreement, and other similar documents that relate to the environmental review process for CE projects. If such interagency agreements are between the State and FHWA only, then the assignment occurs automatically upon the signing of this MOU for projects covered by this MOU. If the interagency agreement involves signatories other than FHWA and the State, then FHWA and the State will work to obtain any necessary consents or amendments. Such actions include:
 - 1. Consulting with the other parties to obtain written consent to the continuation of the interagency agreement in its existing form, but with the substitution through assignment of the State for FHWA with respect to interagency agreement provisions applicable to CE projects;
 - 2. Negotiating with the other parties to amend the interagency agreement as needed so that the interagency agreement continues but that the State assumes FHWA's responsibilities with respect to CE projects.
 - 3. If a third party does not agree to the assignment or amendment of the interagency agreement, then to the extent permitted by applicable law and regulation, the State must carry out the assigned environmental review, consultation, or other related activity in accordance with applicable laws and regulations but without the benefit of the provisions of the interagency agreement.

23 U.S.C. § 326 CE Assignment MOU
FHWA, Utah Division and the Utah Department of Transportation

- D. The State shall carry out the assigned consultation, review and coordination activities in a timely and proactive manner. The State shall make all reasonable and good faith efforts to identify and resolve conflicts with Federal agencies, State and local agencies, Indian tribes as defined in 36 CFR 800.16(m), and the public during the consultation and review process.

III. ACTIONS, CONDITIONS, OR DETERMINATIONS THAT EXCLUDE DESIGNATED ACTIVITIES FROM ASSIGNMENT OF RESPONSIBILITIES

- A. Notwithstanding any other provision of this MOU, any activity that does not satisfy the criteria for the CE categories described in Stipulation I(B) is **excluded** from this assignment. Exclusion also may occur at any time during the environmental process if the State determines that the project fails to meet the CE criteria or falls within Stipulation III(D). The provisions of Stipulation IV(C) apply to such cases.
- B. Because the State assumes responsibility for environmental processing of the CEs designated in this MOU, FHWA no longer will be responsible for conducting the environmental review, consultation or other related actions assigned under this MOU (see Stipulation XI). However, in furtherance of its stewardship and oversight responsibilities, FHWA will evaluate the State's environmental processing of any project if FHWA has any reason to believe that the State's performance with respect to the project does not satisfy the terms and conditions of this MOU. The scope of the evaluation will be commensurate with the potential problem. If FHWA subsequently determines that the State's performance does not satisfy the terms and conditions of this MOU, then FHWA will take action to resolve the problem. Such action may include action to facilitate the State's compliance with the MOU, or action to exclude the project from assignment under this MOU. The provisions of Stipulation X(A)-X(E) apply to such FHWA-initiated exclusion.
- C. If a project-related concern or issue is raised in the coordination of project review with an Indian tribe, as defined in 36 CFR 800.16(m), and either the Indian tribe or FHWA determines that the issue or concern will not be satisfactorily resolved by the State, then FHWA may reassume responsibility for processing the project or an individual responsibility assumed by the State. The FHWA shall notify the State that the project will be excluded from this MOU. The provisions of Stipulation X(A)-X(E) apply to such FHWA-initiated exclusion.

23 U.S.C. § 326 CE Assignment MOU
FHWA, Utah Division and the Utah Department of Transportation

IV. STATE PERFORMANCE REQUIREMENTS

- A. **Compliance with governing laws, regulations and MOU.** The State shall make all determinations under this MOU in accordance with **23 CFR 771.117(a) and (b) and succeeding regulations.** All actions by the State in carrying out its responsibilities under this MOU shall comply with, and be consistent with, the coordination provisions of Stipulation II and all applicable Federal laws, regulations, Executive Orders, policies, and guidance. The State also shall comply with State and local laws to the extent applicable.
1. Failure to meet the requirements of Stipulation IV(A) is grounds for a decision by FHWA to terminate this MOU pursuant to Stipulation IX(A) if FHWA determines, after good-faith consultation with the State, that there is an irreconcilable material conflict between a provision of State law, regulation, policy, or guidance and applicable Federal law, regulation, policy, or guidance, and FHWA reasonably determines that such conflict is preventing the State from meeting its Stipulation IV(A) obligations. The grounds for such decision may include, but are not limited to, the mere existence of the conflict (i.e., on its face) and/or the effect of the conflict on the State's decision(s) on proposed CE project(s) (i.e., as applied).
 2. Official DOT and FHWA formal guidance and policies relating to environmental review matters are posted online at FHWA's website or sent to the State electronically or in hard copy.
 3. After the effective date of this MOU, the FHWA will use its best efforts to ensure that any new or revised FHWA policies and guidance that are final and applicable to the State's performance under this MOU are communicated to the State within 10 days of issuance. Delivery may be accomplished by e-mail, mail, by publication in the *Federal Register*, or by means of a publicly available online posting including at the sites noted above. If communicated to the State by e-mail or mail, such material may be sent either to the party specified in this MOU to receive notices, or to the Utah Department of Transportation Director of Environmental Services.
 4. In the event that a new or revised FHWA policy or guidance is not made available to the State as described in the preceding paragraph, and if the State had no actual knowledge of such policy or guidance, then a failure by the State to comply with such Federal policy or guidance will not be a basis for termination under this MOU.
 5. The State will work with all other appropriate Federal agencies concerning the laws, guidance, and policies relating to any Federal laws that such other agencies administer.

23 U.S.C. § 326 CE Assignment MOU
FHWA, Utah Division and the Utah Department of Transportation

6. In order to minimize the likelihood of a conflict as described in Stipulation IV(A)(1) above, after the effective date of this MOU the State will use its best efforts to ensure that any proposed new or revised State laws, regulations, policies, or guidance that are applicable to the State's performance under this MOU are communicated to FHWA for review and comment before they become final. Delivery may be accomplished by e-mail, mail, or personal delivery. If communicated to FHWA by e-mail or mail, such material may be sent to the party specified in this MOU to receive notices for FHWA.

B. Processing projects assigned under the MOU: State identification, documentation, and review of effects. For projects and other activities assigned under Stipulations I(A)-(B) that the State determines are included in the classes of CE assigned to the State under this MOU, the State shall:

1. Maintain the process to identify and review the environmental effects of the proposed project.
2. Carry out the other environmental responsibilities that are assigned under this MOU, as necessary or appropriate for the activity;
3. Document in the project file the CE findings and completion of all applicable FHWA responsibilities assigned under Stipulations I and II;
4. For CEs other than those designated in 23 CFR 771.117(c), carry out a review of proposed CE determinations, including consideration of the environmental analysis and project file documentation, prior to the States' approval of the CE determination. The process shall include, at a minimum, review of the documentation and proposed determination by a competent reviewer who is not a preparer of the CE documentation.
5. Document its approval of the determination using, at a minimum, the printed name, title, and date of the State official approving the determination; and
6. Include the following determination statement when documenting the CE findings: "The State has determined that this project has no significant impact(s) on the environment and that there are no unusual circumstances as described in 23 CFR 771.117(b). As such, the project is categorically excluded from the requirements to prepare an environmental assessment or environmental impact statement under NEPA. The State has been assigned, and hereby certifies that it has carried out, the responsibility to make this determination pursuant to 23 U.S.C. § 326 and a Memorandum of Understanding dated June 23, 2017, executed between FHWA and the State."

23 U.S.C. § 326 CE Assignment MOU
FHWA, Utah Division and the Utah Department of Transportation

7. Document in the project file the specific categorically excluded activity, the CE finding, including the determination that the project has no significant impact(s) on the environment, **there are no unusual circumstances** (23 CFR 771.117(b)), and completion of all applicable FHWA responsibilities assigned under Stipulations I and II.
- C. Excluded projects: determination and documentation. For projects that are candidates for CE classification but that the State determines should be excluded from processing under this assignment, the State shall:
1. Document the exclusion findings in the project file, including the reason for the finding; and
 2. Proceed with documentation and review of the project under the appropriate NEPA procedures in accordance with the Section 327 MOU.
- D. Required State resources, qualifications, expertise, standards, and training.
1. The State must maintain adequate organizational and staff capability and expertise to effectively carry out the responsibilities assigned to it under this MOU. This includes, without limitation:
 - a. Using appropriate technical and managerial expertise to perform the functions required under this MOU and applicable laws, regulations, policy, and guidance;
 - b. Devoting adequate financial and staff resources to carry out the responsibilities assumed by the State; and
 - c. Demonstrating, in a consistent manner, the capacity to perform the State's responsibilities under the MOU and applicable Federal law.
 2. The State agrees that it shall maintain on its staff or through consultant services all of the environmental and other technical expertise needed to carry out its responsibilities under this MOU and 23 U.S.C. § 326. Without limiting the foregoing, when carrying out the requirements of Section 106 of the National Historic Preservation Act, as amended, the State shall comply with 36 CFR 800.2(a)(1). All actions that involve the identification, evaluation, analysis, recording, treatment, monitoring, or disposition of historic properties, or that involve the reporting or documentation of such actions in the form of reports, forms, or other records, shall be carried out by or under the direct supervision of a person or persons who meet the Secretary of the Interior's Professional Qualifications Standards (published at 48 FR 44738-44739). The State shall ensure that all documentation required under 36 CFR 800.11 is reviewed and approved by a staff member or consultant who meets the Professional Qualifications Standards.

23 U.S.C. § 326 CE Assignment MOU
FHWA, Utah Division and the Utah Department of Transportation

E. State quality control.

1. The State agrees to carry out regular quality control activities to ensure that its CE determinations are made in accordance with applicable law and this MOU (to view the State's environmental policy and manual visit <http://www.udot.utah.gov/go/environmental>).
2. At a minimum, the State shall monitor its processes relating to project determinations, environmental analysis, and project file documentation, and check for errors and omissions. The State shall take corrective action as needed. The State shall document its quality control activities and any needed corrective actions taken.
3. If the State implements training to meet the capability requirements of this MOU or as a corrective action, the State shall be responsible for the training. The State shall provide notice of the training to FHWA.

F. MOU performance monitoring and quality assurance. The FHWA and the State shall cooperate in monitoring performance under this MOU and each party shall modify its practices as needed to assure quality performance by the State and FHWA. Monitoring will include consideration of the technical competency and organizational capacity of the State, as well as the State's performance of its CE processing functions. Performance considerations will include, without limitation, the quality and consistency of the State's project determinations, adequacy and capability of the resources applied by the State, and the quality and consistency of the State's administration of its responsibilities under this MOU. In support of the monitoring efforts:

1. The State shall submit to FHWA a list of the CE determinations and Section 4(f) determinations that the State approved during the previous 12 months (January 1 through December 31), within 30 business days after the end of each semi-annual reporting period. Such reduction in reporting frequency, and any revocation of such reduction by FHWA, shall not be deemed an amendment under Stipulation VIII.
2. The State, at its discretion, may develop a voluntary self-assessment report summarizing its performance under this MOU. The report will identify any areas where improvement is needed and what measures the State is taking to implement those improvements. The report will include actions taken by the State as part of its quality control efforts under stipulation IV(E). Following submission of the report to the FHWA (electronically or in hard copy, the State shall schedule a follow-up meeting with the FHWA at which the parties will discuss the report, the State's performance of this MOU, and the FHWA's monitoring activities.

23 U.S.C. § 326 CE Assignment MOU
FHWA, Utah Division and the Utah Department of Transportation

3. The State shall maintain electronic and paper project records and general administrative records pertaining to its MOU responsibilities and the projects processed hereunder. The records shall be available for inspection by FHWA at any time during normal business hours. The State shall provide FHWA with copies of any documents FHWA may request. The State shall retain those records, including all letters and comments received from governmental agencies, the public, and others about the performance of activities assigned under this MOU, for a period of no less than 3 years after completion of project construction. This 3-year retention provision does not relieve the State of its project or program recordkeeping responsibilities under 2 CFR 200.333-200.337 or any other applicable laws, regulations, or policies.
4. The State shall ensure that project records are available to the public consistent with requirements applicable to Federal agencies under 5 U.S.C. § 552 (the Freedom of Information Act (FOIA), as amended in 2002) and NEPA.
5. The FHWA periodically shall review the State's records and may interview State staff to evaluate the State's performance under this MOU. Such reviews will occur no less than every 15 months, and may be coordinated with the review of the State's report under Stipulation IV(F)(2). The FHWA anticipates that, under normal circumstances, its evaluation of the State's performance will be based on a modified version of a typical FHWA CE process review (FHWA guidance on how monitoring should occur is available at <http://www.fhwa.dot.gov/hep/6004stateassumpt.htm>). Modifications to the CE process review will include incorporation of measures specific to the responsibilities assigned to the State pursuant to 23 U.S.C. § 326, and will include performance measurements of quality and time. However, FHWA reserves the right to determine in its sole discretion the frequency, scope, and procedures used for monitoring activities. The State, by its execution of this MOU acknowledges that it is familiar with FHWA CE Process Review procedures and with the expected modifications that will be adopted for the purpose of monitoring the State's MOU performance.
6. Nothing in this Stipulation shall prevent FHWA from undertaking other monitoring actions, including audits, with respect to the State's performance of the MOU. The FHWA, in its sole discretion, may require the State to perform such other quality assurance activities, including other types of monitoring, as may be reasonably required to ensure compliance with this MOU, 23 U.S.C. § 326, and other applicable Federal laws and regulations. Such requirement shall not be deemed an amendment under Stipulation VIII.
7. The State agrees to cooperate with FHWA in all quality assurance activities.

23 U.S.C. § 326 CE Assignment MOU
FHWA, Utah Division and the Utah Department of Transportation

- G. State liability. The State agrees that it is solely responsible and solely liable for complying with and carrying out this MOU, for the performance of all assigned responsibilities as provided by applicable law and for any decisions, actions, or approvals by the State, per 23 U.S.C. § 326(b)(2). The FHWA shall have no responsibility or liability for the performance of responsibilities assigned to the State, including without limitation any decision or approval made by the State. Where the State exercises any assigned authority on a proposed project which FHWA determined to be a CE prior to the July 1, 2008, execution of the Original Section 326 MOU, the State assumes sole environmental review responsibility and liability for any subsequent substantive environmental review action it takes on that project.

II. Litigation.

1. Nothing in this MOU affects the United States Department of Justice's (hereinafter "USDOJ") authority to litigate claims, including the authority to approve a settlement on behalf of the United States if either FHWA or another agency of the United States is named in such litigation, or if the United States intervenes. In the event FHWA or any other Federal agency is named in litigation related to matters under this MOU, or the United States intervenes in the litigation, UDOT agrees to coordinate with FHWA and any USDOJ or Federal agency attorneys in the defense of that action.
2. UDOT shall defend all claims brought against UDOT in connection with its discharge of any responsibility assumed under this MOU. In the event of litigation, UDOT shall provide qualified and competent legal counsel, including outside counsel if necessary. UDOT shall provide the defense at its own expense, subject to 23 U.S.C. 326(f) concerning Federal-aid participation in attorney's fees for outside counsel hired by UDOT. UDOT shall be responsible for opposing party's attorney's fees and court costs if a court awards those costs to an opposing party, or in the event those costs are part of a settlement agreement.
3. UDOT will notify the FHWA's Utah Division Office and USDOJ's Assistant Attorney General for the Environment and Natural Resources Division, within seven (7) calendar days of UDOT's Legal Division's receipt of service of process of any complaint, concerning discharge of any responsibility assumed under this MOU. UDOT's notification to the FHWA and USDOJ shall be made prior to its response to the complaint. In addition, UDOT shall notify FHWA's Utah Division Office within seven (7) calendar days of receipt of any notice of intent to sue concerning its discharge of any responsibility assumed under this MOU.

23 U.S.C. § 326 CE Assignment MOU
FHWA, Utah Division and the Utah Department of Transportation

4. UDOT will provide FHWA's Utah Division Office and USDOJ copies of any motions, pleadings briefs, or other such documents filed in any case concerning its discharge of any responsibility assumed under this MOU. UDOT will provide such copies to the FHWA and DOJ within seven (7) calendar days of service of any document, or in the case of any documents filed by or on behalf of UDOT, within seven (7) calendar days of the date of filing.
5. UDOT will notify the FHWA's Utah Division Office and USDOJ prior to settling any lawsuit, in whole or in part, and shall provide the FHWA and USDOJ with a reasonable amount of time of at least ten (10) calendar days, to be extended, if feasible based on the context of the lawsuit, up to a maximum of thirty (30) total calendar days, to review and comment on the proposed settlement. UDOT will not execute any settlement agreement until:
(1) FHWA and USDOJ have provided comments on the proposed settlement;
(2) FHWA and USDOJ have indicated that they will not provide comments on the proposed settlement; or
(3) the review period has expired, whichever occurs first.
6. Within seven (7) calendar days of receipt by UDOT, UDOT will provide notice to FHWA's Division Office and USDOJ of any court decision on the merits, judgment, and notice of appeal arising out of or relating to the responsibilities UDOT has assumed under this MOU. UDOT shall notify FHWA's Utah Division Office and USDOJ within five (5) days of filing a notice of appeal of a court decision. UDOT shall confer with FHWA and USDOJ regarding the appeal at least forty-five (45) days before filing an appeal brief in the case.
7. UDOT's notification to FHWA and USDOJ in subparts IV(G)(3)-(6) shall be made by electronic mail to FHWA_assignment_lit@dot.gov and NRSDOT.enrd@doj.gov, unless otherwise specified by FHWA and USDOJ. For copies of motions, pleadings, briefs, and other documents filed in a case, as identified in subpart IV(G)(4), UDOT may opt to either send the materials to the email addresses identified above, send hardcopies to the mail address below, or add to the distribution list in the court's electronic filing system (e.g., PACER) the following two email addresses:
FHWA_assignment_lit@dot.gov and efile_nrs.enrd@usdoj.gov. FHWA and USDOJ's comments under subparts IV(G)(5)-(6) shall be made by electronic mail to nepa_assignment@utah.gov unless otherwise specified by UDOT. In the event that regular mail is determined necessary, mail should be sent by overnight mail service to:

23 U.S.C. § 326 CE Assignment MOU
FHWA, Utah Division and the Utah Department of Transportation

For USDOJ: Assistant Attorney General for the Environment and Natural Resources Division at 950 Pennsylvania Avenue, NW, Room 2143, Washington, DC 20530.

For FHWA: Division Administrator, FHWA Utah Division, 2520 West 4700 South, Suite 9, Salt Lake City, UT 84129.

For UDOT: Director of Environmental Services, Utah Department of Transportation, 4501 South 2700 West, Salt Lake City, UT 84119.

- I. Federal Register. While the MOU is in effect, if any CE project or program documents are required to be published in the *Federal Register*, such as a notice of final agency action under 23 U.S.C. § 139(l), the State shall transmit such document to the FHWA's Division Office and the FHWA will publish such document in the *Federal Register* on behalf of the State. The State is responsible for the expenses associated with the publishing of such documents in the *Federal Register*, in accordance with guidance issued by the FHWA.
- J. Participation in Resource Agency Reports. The State agrees to provide data and information requested by the FHWA Office of Project Development and Environmental Review and resource agencies for the preparation of national reports to the extent that the information relates to determinations, findings, and proceedings associated with projects processed under this MOU. Such reports include but are not limited to:
 - 1. Archeology Report requested by the National Park Service;
 - 2. Endangered Species Act Expenditure Reports requested by the United States Fish and Wildlife Service and the National Marine Fisheries Service;
 - 3. NEPA Litigation Reports requested by the Council on Environmental Quality; and
 - 4. Environmental Conflict Resolution reports requested by the Council on Environmental Quality.

V. STATE CERTIFICATIONS AND ACCEPTANCE OF JURISDICTION

- A. The State hereby certifies that it has the necessary legal authority and the capacity to:
 - 1. Accept the assignment under this MOU;
 - 2. Carry out all of the responsibilities assigned to the State; and
 - 3. Agree to and perform all terms and conditions of the assignment as contained in this MOU and in 23 U.S.C. § 326.

23 U.S.C. § 326 CE Assignment MOU
FHWA, Utah Division and the Utah Department of Transportation

- B. The State consents to and accepts the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the USDOT Secretary that the State assumes under this MOU and 23 U.S.C. § 326. The State understands and agrees that this consent constitutes a waiver of the State's immunity under the Eleventh Amendment to the U.S. Constitution for the limited purposes of addressing the compliance, discharge, and enforcement of matters arising out of this MOU and carrying out the USDOT Secretary's responsibilities that that State assumes pursuant to this MOU and 23 U.S.C. § 326. This consent to Federal court jurisdiction shall remain valid after termination of the MOU, or re-assumption of the USDOT Secretary's responsibilities by the FHWA, for any act or omission by the State relating to its compliance, discharge, or enforcement of any responsibility under this MOU or 23 U.S.C. § 326. A valid, binding, and sufficient waiver of the State's sovereign immunity must be in effect at all times that the State acts under the authority of this MOU.

As provided by Utah Code § 72-1-207, Utah waives its immunity under the Eleventh Amendment. If this waiver is withdrawn then the State's authority to participate in this MOU will end and this MOU will terminate automatically subject to applicable survival and transitional provisions of this MOU.

- C. In accordance with 23 U.S.C. § 326(e), the State agrees that it shall be deemed to be a Federal agency for the purposes of the Federal law(s) under which the State exercises any responsibilities pursuant to this MOU and 23 U.S.C. § 326.
- D. The State may not assign or delegate its rights or responsibilities under this MOU to any other agency, political subdivision, or entity, or to any private individual or entity. Without limiting the foregoing, the State understands and agrees that it must retain the environmental decision-making responsibilities assigned to it under this MOU and may not assign or delegate such decision-making responsibilities to consultants or others.
- E. With respect to the public availability of any document or record under the terms of this MOU or the State's open records law, Utah Code § 63G-2-101, et seq., the State certifies that the laws of the State provide that any decision regarding the release or public availability of a document or record may be legally challenged or reviewed in the courts of the State.
- F. The State certifies that the persons signing this MOU is duly authorized to do so and has the legal authority to:
1. Waive the State's Eleventh Amendment rights pursuant to the authority in Utah Code § 72-1-207.
 2. Consent to Federal court jurisdiction as specified above;
 3. Enter into this MOU on behalf of the State;

23 U.S.C. § 326 CE Assignment MOU
FHWA, Utah Division and the Utah Department of Transportation

4. Make the certifications set forth in this MOU; and
 5. Bind the State to the terms and conditions contained in this MOU.
- G. The Utah State Attorney General, by signing this MOU, certifies that the foregoing is true and that upon execution of this MOU the certifications, terms, and conditions of the MOU will be legally binding and enforceable obligations of the State. A copy of the opinion letter required under Utah Code § 72-1-207(5)(b)(ii) is attached to this MOU as Appendix C.

VI. PUBLIC NOTICE AND COMMENT

- A. The execution of this MOU, and of any amendment or renewal, requires prior public notice and an opportunity for comment.
- B. The State shall publish notice of the availability of this MOU, and any proposed amendment or renewal, for public review and comment and information regarding access to the USDOT Docket Management System on its website.
- C. The FHWA Division Office shall publish in the Federal Register a notice of availability of this MOU and any proposed amendment or renewal of this MOU, for public review and a thirty (30) day comment period. The notice will expressly request comments on any types of activities proposed for assignment under Stipulation I(B), and will include a statement of the public availability of supporting documentation for any assignment under Stipulation I(B). The notice also must advise the public about how to learn about FHWA's final decision on the proposed MOU, including how to obtain a copy of any resulting final MOU. The FHWA will establish a docket in the USDOT Docket Management System to receive comments.
- D. The State and the FHWA shall consider comments provided by the respondents to the public notices before finalizing the MOU, or any proposed amendment or renewal agreement. Upon completion of the decision-making process, the FHWA shall publish a notice in the *Federal Register* that announces the agency's decision and the execution of the MOU. The notice also will inform the public of the availability in the USDOT Docket Management System of a brief summary of the results of the decision-making process and a copy of any final MOU executed by the State and the FHWA, whether initial, amended, or renewed. The notice also will advise where the final MOU is available on the State's website.
- E. The State agrees that at all times that this MOU is in effect, the State will post on its website (<http://www.udot.utah.gov/go/environmental>) a notice of the availability to the public, upon request, of copies of the State's annual reports of CE determinations prepared pursuant to Stipulation IV(E)(1), any of State's

23 U.S.C. § 326 CE Assignment MOU
FHWA, Utah Division and the Utah Department of Transportation

performance reports prepared pursuant to Stipulation IV(F)(2), and the FHWA performance monitoring reports prepared pursuant to Stipulation IV(F)(5). The FHWA will arrange for the posting of a similar notice on the FHWA's website or create a link from the FHWA's site to the State's site.

VII. INITIAL TERM AND RENEWAL

- A. This MOU shall have a term of three (3) years, beginning on the date of the last signature.
- B. This MOU is renewable for additional terms of three (3) years each if the State requests renewal and the FHWA determines that the State has satisfactorily carried out the provisions of this MOU. In considering any renewal of this MOU, the FHWA will evaluate the effectiveness of the MOU and its overall impact on the environmental review process. The FHWA may decide not to renew the MOU if the FHWA determines that the operation of the MOU has substantial adverse effects on the environmental review process. Such evaluation may include consideration of any effects from the assumption by the State of only some, but less than all, of the FHWA's environmental review, consultation, or other related responsibilities as listed in Stipulation II.
- C. At least six (6) months prior to the end of the initial term and of any renewed term of this MOU, the State and the FHWA shall meet to discuss the results of the monitoring and consider any amendments to this MOU. This meeting may be combined with a meeting to discuss performance under the monitoring provisions in Stipulation IV(F)(2) and (F)(5) of this MOU.
- D. If the parties do not renew the MOU, then it shall expire at the end of the term then in effect. The provisions of Stipulation X(A)(4), and X(C)-(E) shall apply.

VIII. AMENDMENTS

- A. Any party to this MOU may request that it be amended, or administratively modified to reflect non-substantive changes, whereupon the parties shall consult to consider such an amendment. Public notice and comment is not required for the parties to agree to a technical non-substantive change.
- B. If, after the required public notice and comment, the parties agree to amend the MOU, then the FHWA and the State may execute an amendment with new signatures and dates of the signatures. The term of the MOU shall remain unchanged unless otherwise expressly stated in the amended MOU. Any amendment that extends the term of the MOU shall be treated as a renewal and the FHWA must make the determinations required for a renewal under Stipulation VII.

23 U.S.C. § 326 CE Assignment MOU
FHWA, Utah Division and the Utah Department of Transportation

IX. TERMINATION

A. Termination by the FHWA

1. As provided at 23 U.S.C. 326(d)(1), FHWA may terminate UDOT's participation in the Program, in whole or in part, at any time subject to the procedural requirements in 23 U.S.C. 326 and subpart IX(A)(2) below, if:
 - a. FHWA determines that the State is not adequately carrying out the responsibilities assigned to the State under this MOU;
 - b. FHWA provides to UDOT a written notification of its determination;
 - c. FHWA provides UDOT a period of at least 120 calendar days to take corrective action to comply with this MOU;
 - d. If requested by the Governor of the State, FHWA provides a detailed description of each responsibility in need of corrective action regarding any inadequacy identified by FHWA; and
 - e. After the notification and after the expiration of the 120-day period provided under this provision, UDOT fails to take satisfactory corrective action as determined by FHWA.
2. Failure to adequately carry out the responsibilities may include, but not be limited to:
 - a. Persistent neglect of, or noncompliance with, any Federal laws, regulations, and policies;
 - b. Failure to cooperate with FHWA in conducting an audit or any oversight or monitoring activity;
 - c. Failure to secure or maintain adequate personnel and financial resources to carry out the responsibilities assumed;
 - d. Substantial noncompliance with this MOU; or
 - e. Persistent failure to adequately consult, coordinate, and/or take the concerns of other Federal agencies, as well as SHPOs, into account in carrying out the responsibilities assumed.
3. If FHWA terminates one or more of UDOT's responsibilities under this MOU in accordance with 23 U.S.C. 326, FHWA shall provide written notice of that termination to UDOT, and such notice that specify the date on which the termination becomes effective. Upon that effective date, any responsibilities identified to be terminated in the notice that have been assumed by UDOT of this MOU will transfer to FHWA.

23 U.S.C. § 326 CE Assignment MOU
FHWA, Utah Division and the Utah Department of Transportation

B. Termination by UDOT

1. UDOT may terminate its participation in the Program, in whole or in part, at any time by providing to FHWA a notice at least ninety (90) calendar days prior to the date that UDOT seeks to terminate its participation in this Program, and subject to such terms and conditions as FHWA may provide.
2. The Utah Legislature and Governor may, at any time, terminate UDOT's authority granted to participate in this Program. In the event, FHWA and UDOT will develop a plan to transition the responsibilities that UDOT has assumed back to FHWA so as to minimize disruption to projects, minimize confusion to the public, and minimize burdens to other affected Federal, State, and local agencies. The plan will be approved by both FHWA and UDOT.
3. Any such withdrawal of assignment which FHWA and UDOT have agreed to under a transition plan will not be subject to the procedures or limitations provided for in subpart IX of this MOU and will be valid as agreed to in the transition plan.

C. Validity of UDOT Actions

1. Any environmental approvals made by UDOT pursuant to the responsibilities UDOT has assumed under this MOU will remain valid after termination of UDOT's participation in the Program or withdrawal of assignment by FHWA. As among the USDOT Secretary, FHWA and UDOT, UDOT will remain solely liable and solely responsible for any environmental approvals it makes pursuant to any of the responsibilities it has assumed while participating in the Program.

X. PROCEDURES FOR TERMINATION AND FHWA-INITIATED PROJECT EXCLUSIONS

- A. Except as provided in Stipulation X(B) below, the process for termination under Stipulation IX(A)-IX(B), and for exclusion of a project from the MOU assignment by the FHWA under Stipulation III(B)-III(C), is as follows:
1. The party wishing to initiate the termination or exclusion shall provide to the other party a written notice of intent. The notice should identify the proposed action and explain the reason(s) for the proposed action.
 2. Following the notice, the parties shall have a 30-day period during which the FHWA and the State shall consult on amendments or other actions that would avoid termination or exclusion. By agreement, the parties may extend this consultation period, provided that such extension may not exceed the term of the MOU.

23 U.S.C. § 326 CE Assignment MOU
FHWA, Utah Division and the Utah Department of Transportation

3. Following the consultation period, any termination or exclusion by FHWA shall be effective as of a date thirty (30) days after the date of either a post-consultation agreement between the State and FHWA or the date of the State's receipt of a FHWA notice of final determination of termination or exclusion. In the event of termination initiated by the State, the termination shall be effective 90 days after the date of FHWA's receipt of the State's termination notice. All responsibilities covered by the termination or exclusion shall revert to the FHWA as of that effective date.
 4. In the event of termination or exclusion, the State and the FHWA agree to cooperate to make the transfer of responsibilities back to the FHWA effective in as orderly and administratively efficient manner as possible. The State will promptly provide FHWA any documents, records and other project-related material needed for FHWA to proceed with processing any affected project. Appropriate NEPA procedures, including those under any applicable programmatic CE agreement, shall apply to the subsequent processing of projects.
- B. The FHWA, in its sole discretion, may exclude a project from this MOU pursuant to Stipulation III(B)-III(C), without the 30-day consultation or final notice periods, if the FHWA determines that:
1. The State is not performing in accordance with this assignment; and
 2. Extreme conditions exist that justify immediate exclusion or termination and transfer back to the FHWA of the responsibilities covered by the exclusion or termination.
 3. In such cases, the FHWA shall notify the State in writing of its determination and action, and specify the reasons for the action.
- C. The State's liability for its acts and omissions under this MOU, and the provisions of Stipulation V, shall survive the MOU. This survival clause includes, without limitation, the provisions of Stipulations IV(G)-IV(H) relating to liability and litigation.
- D. Exclusion actions, and any decision not to renew, do not require public notice and comment.
- E. Termination or other action by the FHWA in accordance with the provisions of this MOU does not limit or otherwise affect the FHWA's ability to seek any other remedy or to take action under other provisions of applicable law, including without limitation any appropriate remedies as provided in 23 CFR 1.36.

23 U.S.C. § 326 CE Assignment MOU
FHWA, Utah Division and the Utah Department of Transportation

XI. STATE EXECUTION OF ASSIGNED RESPONSIBILITIES WITHOUT FHWA INVOLVEMENT

A. The FHWA will not provide any project-level assistance to the State in carrying out any of the responsibilities assigned under this MOU. “Project-level assistance” includes advice, consultation, or document review with respect to the discharge of such responsibility for a particular highway project. However, “project-level assistance” does not include discussions concerning issues addressed in prior projects, legal interpretations of any applicable law contained in titles 23 or 49 of the United States Code, legal interpretations of any FHWA or USDOT regulation, or interpretations of FHWA or USDOT policies or guidance. If a need for project-level assistance is identified as a result of the government-to-government consultation process described in Stipulation II(B)(1), then the FHWA shall reassume responsibility for the project as provided in Stipulation III(C).

B. The FHWA will not intervene, broker, act as intermediary, or be otherwise involved in any issue involving the State’s consultation or coordination with another Federal, State, or local agency with respect to the State’s discharge of any of the responsibilities the State has assumed under this MOU for any particular highway project. However, the FHWA holds both monitoring and quality assurance obligations under this MOU and general oversight and stewardship obligations under the Federal-aid Highway Program. In furtherance of those obligations, the FHWA occasionally may elect to attend meetings between the State and other Federal agencies. In rare or extreme circumstances and based on its observations, the FHWA may submit comments to the State and the other Federal agency if the FHWA determines such comment is necessary and in the Federal interest because:

1. The FHWA reasonably believes that the State is not in compliance with this MOU; or
2. The FHWA determines that an issue between the State and the other Federal agency has broad or unique policy implications for the administration of the national Federal-aid Highway Program.

23 U.S.C. § 326 CE Assignment MOU
FHWA, Utah Division and the Utah Department of Transportation

XII. NOTICES

Any notice to either party may be given electronically so long as a paper original of the notice also is delivered to the party. The effective date of the notice shall be the date of delivery of the paper original. Paper notices shall be delivered as follows:

State of Utah:

UDOT Executive Director
4501 South 2700 West – 1st Floor
Salt Lake City, UT 84129

Federal Highway Administration:

Division Administrator
2520 West 4700 South Suite 9A
Salt Lake City, UT 84129-1847

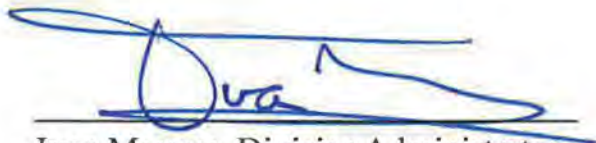
U.S. Department of Justice:

Office of the Assistant Attorney General
Environment and Natural Resources Division
950 Pennsylvania Avenue, NW
Room 2143
Washington, D.C. 20530

23 U.S.C. § 326 CE Assignment MOU
FHWA, Utah Division and the Utah Department of Transportation

Execution of this MOU and implementation of its terms by the State formally evidence that the parties have reviewed this MOU and determined that it complies with the laws, regulations and policies applicable to the FHWA and the State. Accordingly, this MOU is approved and is effective upon the date of the last signature below.

FEDERAL HIGHWAY ADMINISTRATION


Ivan Marrero, Division Administrator
Federal Highway Administration

June 23, 2017
Date

STATE OF UTAH


Carlos Braceras, Executive Director
Utah Department of Transportation

June 23, 2017
Date


Sean Reyes, Attorney General
State of Utah

6/22/17
Date

**23 U.S.C. § 326 CE Assignment MOU
FHWA, Utah Division and the Utah Department of Transportation**

Appendix A

List of FHWA Responsibilities Assigned

Air Quality

Clean Air Act (CAA), 42 U.S.C. 7401–7671q. *Determinations for project-level conformity if required for the project.*

Noise

Noise Control Act of 1972, 42 U.S.C. §§ 4901-4918
Compliance with the noise regulations in 23 CFR 772

Wildlife

Section 7 of the Endangered Species Act of 1973, 16 U.S.C. 1531–1544, and Section 1536
Fish and Wildlife Coordination Act, 16 U.S.C. 661–667d
Migratory Bird Treaty Act, 16 U.S.C. 703–712

Historic and Cultural Resources

Section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470(f) et seq.¹
Section 4(f) of the Department of Transportation Act of 1966, 23 U.S.C. 138 and 49 U.S.C. 303; 23 CFR Part 774
Archeological and Historic Preservation Act of 1966, as amended, 16 U.S.C. 469–469(c)
Title 54, Chapter 3125—Preservation of Historical and Archeological Data, 54 U.S.C. §§ 312501-312508
Native American Grave Protection and Repatriation Act (NAGPRA), 25 U.S.C. §§ 3001–3013; 18 U.S.C. 1170

Social and Economic Impacts

American Indian Religious Freedom Act, 42 U.S.C. 1996¹
Farmland Protection Policy Act (FPPA), 7 U.S.C. 4201–4209

Water Resources and Wetlands

Clean Water Act, 33 U.S.C. 1251–1377
Section 404
Section 401
Section 319
Coastal Barrier Resources Act, 16 U.S.C. 3501–3510
Coastal Zone Management Act, 16 U.S.C. 1451–1465
Safe Drinking Water Act (SDWA), 42 U.S.C. 300f–300j–6
Rivers and Harbors Act of 1899, 33 U.S.C. 403
Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287
Emergency Wetlands Resources Act, 16 U.S.C. 3921, 3931
TEA-21 Wetlands Mitigation, 23 U.S.C. 103(b)(6)(m), 133 (b)(11)
Flood Disaster Protection Act, 42 U.S.C. 4001–4128
Wetlands Mitigation, 23 U.S.C. §§ 119(g), 133(b)(14)

23 U.S.C. § 326 CE Assignment MOU
FHWA, Utah Division and the Utah Department of Transportation

FHWA wetland and natural habitat mitigation regulations, 23 C.F.R. part 777

Parklands

Section 4(f) of the Department of Transportation Act of 1966, 23 U.S.C. 138 and 49 U.S.C. 303; and 23 CFR 774

Land and Water Conservation Fund (LWCF), 16 U.S.C. 4601-4 (known as Section 6(f))

Hazardous Materials

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601-9675

Superfund Amendments and Reauthorization Act of 1986 (SARA)

Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901-6992k

Land

Landscaping and Scenic Enhancement (Wildflowers), 23 U.S.C. 319

Executive Orders Relating to Highway Projects

E.O. 11990, Protection of Wetlands

E.O. 11988, Floodplain Management (except approving design standards and determinations that a significant encroachment is the only practicable alternative under 23 C.F.R. sections 650.113 and 650.115)

E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations

E.O. 13007, Indian Sacred Sites¹

E.O. 13175, Consultation and Coordination with Indian Tribal Governments¹

E.O. 13112, Invasive Species

FHWA-Specific

Planning and Environmental Linkages, 23 U.S.C. § 168, with the exception of those FHWA responsibilities associated with 23 U.S.C. §§ 134 and 135

Programmatic Mitigation Plans, 23 U.S.C. § 169 with the exception of those FHWA responsibilities associated with 23 U.S.C. §§ 134 and 135

Note:

¹Under these laws and Executive Orders, FHWA will retain responsibility for conducting formal government-to-government consultations with federally recognized Indian tribes. UDOT will continue to handle routine consultations with the tribes and understands that a tribe has the right to direct consultation with FHWA upon request. UDOT may also assist FHWA with formal consultations, with the consent of a tribe, but FHWA remains responsible that this consultation occurs.

**23 U.S.C. § 326 CE Assignment MOU
FHWA, Utah Division and the Utah Department of Transportation**

Appendix B

List of UDOT Programmatic Agreements/Memoranda of Understanding

Statewide Agreements

Memorandum of Agreement between the State of Utah Department of Transportation, the United States Department of Transportation Federal Highway Administration Utah Division, and the United States Department of Interior Fish and Wildlife Service Utah Field Office for Streamlining of Informal Section 7 Consultation under the Federal Endangered Species Act of 1973, as Amended

Signatories to Agreement: USFWS, FHWA, UDOT Director

Effective Date: August 30, 2005

Memorandum of Understanding Between the Utah Department of Transportation and the Utah Geological Survey Concerning Agency Responsibilities Pursuant to U.C.A. 63-73-19.

Signatories to Agreement: UGS Director, UDOT Deputy Director

Effective Date: February 12, 1998

Memorandum of Understanding Between the Utah Department of Transportation and the Utah State Historic Preservation Office Concerning State Funded Minor Highway Improvements and Structure Maintenance Activities and Agency Responsibilities Pursuant to U.C.A. 9-8-404

Signatories to Agreement: SHPO, UDOT Director

Effective Date: June 16, 2004

Programmatic Agreement among the Federal Highway Administration, the Utah State Historic Preservation Officer, and the Utah Department of Transportation Regarding Compliance with Section 106 of the National Historic Preservation Act, as it Pertains to the Administration of the Federal-Aid Highway Program in Utah.

Signatories to Agreement: SHPO, ACHP, FHWA, USACE, UDOT

Effective Date: April 16, 2007, amended June 3, 2013.

**23 U.S.C. § 326 CE Assignment MOU
FHWA, Utah Division and the Utah Department of Transportation**

Appendix C

**Utah Attorney General Letter
Dated June 27, 2014**

STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL



SEAN D. REYES
ATTORNEY GENERAL

SPENCER E. AUSTIN
Chief Criminal Deputy

PARKER DOUGLAS
General Counsel & Chief of Staff

BRIDGET K. ROMANO
Solicitor General

BRIAN L. TARBET
Chief Civil Deputy

June 27, 2014

Mr. Jeffrey F. Paniati
Executive Director
Federal Highway Administration (HOA-3)
1200 New Jersey Avenue, S.E.
Washington, DC 20590

Mr. Gregory Nadeau
Deputy Administrator
Federal Highway Administration (HOA-2)
1200 New Jersey Avenue, S.E.
Washington, DC 20590

Mr. Ivan Marrero
Utah Division Administrator
Federal Highway Administration
2520 West 4700 South, STE 9A
Salt Lake City, UT 84129-1847

RE: Waiver of Immunity and Memorandum of Understanding
23 USC §326

Dear Messrs. Paniati, Nadeau and Marrero:

The Utah Department of Transportation (UDOT) is entering into a 23 USC 326 Categorical Exclusion (CE) Assignment and Second Renewed Memorandum of Understanding (MOU) with the Federal Highway Administration. Pursuant to that MOU, the Utah Attorney General is required to provide an opinion letter that the MOU is legally binding upon the State, and that the State of Utah effectively waives its 11th Amendment Immunity and consents to suits arising out the Department's responsibilities assumed through 23 USC §326 and the resulting MOU. The purpose of this letter is to provide that necessary assurance.

The Utah Legislature has expressly determined that "the State waives its immunity under the 11th Amendment of the United States Constitution and consents to suit in a federal court for lawsuits

23 U.S.C. § 326 CE Assignment MOU
FHWA, Utah Division and the Utah Department of Transportation

June 27, 2014
Page Two of Two

arising out of the Department's compliance, discharge, or enforcement of responsibilities assumed pursuant to 23 USC Sec. 326." See UCA §72-1-207(5)(a).

This waiver of immunity is effective where: 1) the Department executes a MOU accepting federal court jurisdiction as required by 23 USC §326(c); 2) the act of omission that is the subject of the lawsuit arises out of the obligations imposed by 23 USC §326; 3) the MOU is in effect when the act of omission that is the subject of the federal lawsuit occurs; and 4) an opinion letter by the Attorney General certifies that the MOU and waiver of 11th Amendment Immunity are valid and binding upon the State. See UCA §72-1-207(5)(b).

The 11th Amendment states: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." *U.S. Constitution, Amendment XI*. The Supreme Court has instructed that, "although by its terms the Amendment applies only to suit against a state by citizens of another state, our cases have extended the Amendment's applicability to suit by citizens against their own States." *University of Alabama v. Garret*, 531 U.S. 356, 362 (2001). The ultimate protection granted by the amendment is that non-consenting states may not be sued by private interests in federal court, absent a clear waiver of immunity by the state. *Edelman v. Jordan*, 415 U.S. 651, 663 (1974). A state can effectively waive its 11th Amendment immunity by the "express language" of a state statute. *V-1 Oil v. Utah Department of Public Safety*, 131 F.3d 1415, 1421 (10th Cir. 1997).

In this instance, pursuant to the "express language" found in UCA §72-1-207(5), the State of Utah has waived its 11th Amendment protection because the State is acting pursuant to assumed responsibilities arising from 23 USC §326. In the opinion of the Utah Attorney General's Office, under the circumstances presented in this case, this 11th Amendment waiver is valid, enforceable, and legally binding upon the State of Utah. Likewise, the MOU signed by UDOT's Executive Director or his designee constitutes a valid and legally binding obligation upon the State.

We believe this opinion meets the certification requirements necessary for the CE grant of authority to the State of Utah. We appreciate the opportunity to work together on this matter.

Sincerely,



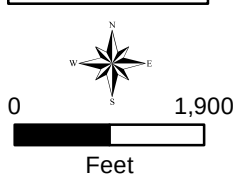
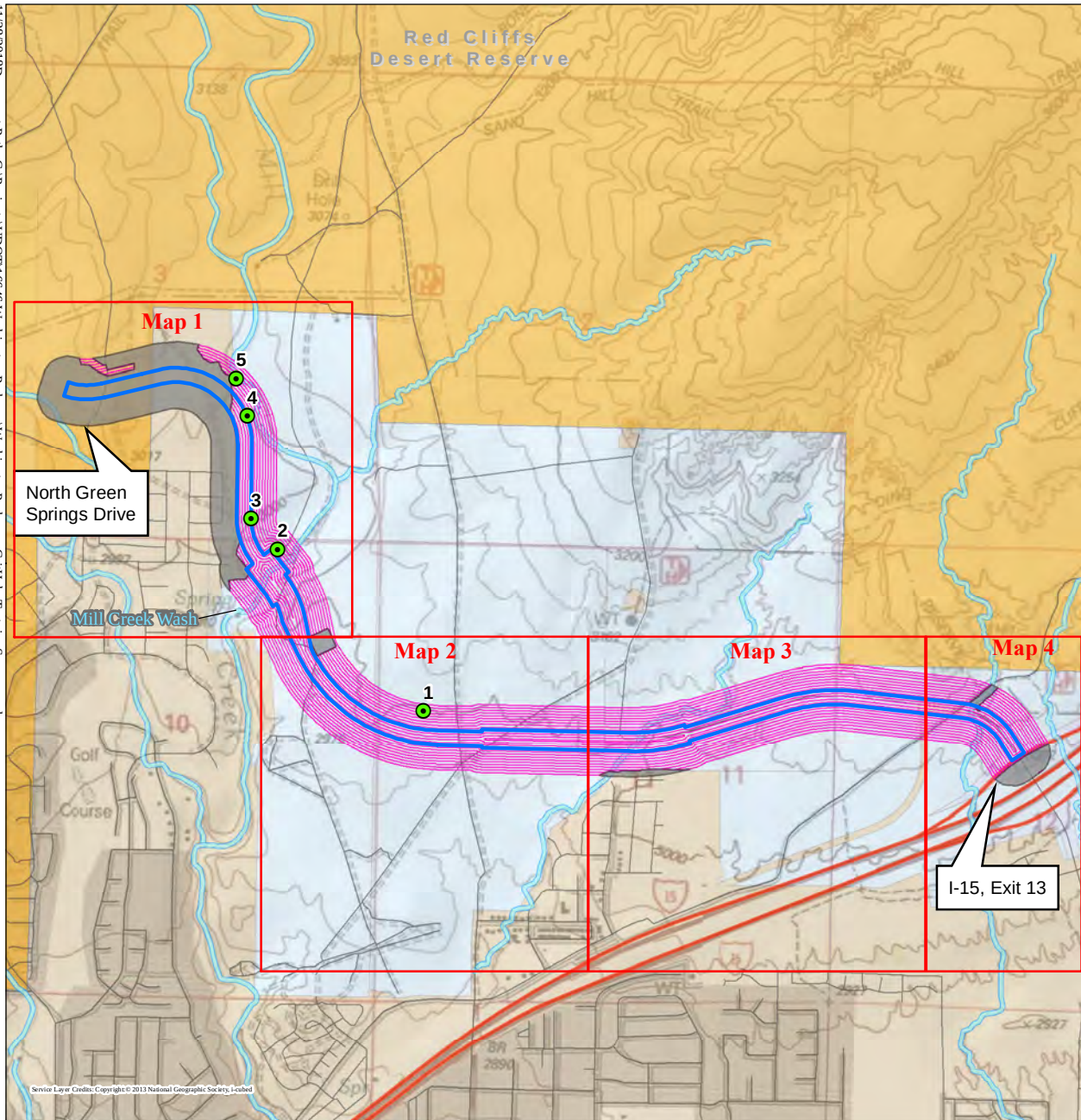
Sean D. Reyes
Utah Attorney General

From: [Matt Howard](#)
To: hilary_whitcomb@fws.gov
Subject: [EXTERNAL] Desert tortoise impacts on proposed Washington Parkway
Date: Tuesday, December 11, 2018 9:15:43 AM
Attachments: [WashingtonParkway_CritHab_USFWS_Tortoise_Survey_Map.pdf](#)

Hi Hilary,
We're working with Washington City on the attached project. I'd like to have a chat with you about it when you get a chance.

--

-Matt Howard
Natural Resource Manager
Utah Department of Transportation
Office: 801-965-4038
Cell: 435-255-1956
mattrhoward@utah.gov



Legend

- | | |
|-----------|--------------------|
| Burrow | Areas Not Surveyed |
| Work Area | Private |
| Transect | SITLA |
| Streams | UDOT |
| Highway | UDWR |
| Roads | |

Critical Habitat

- | |
|------------------------|
| Mojave Desert tortoise |
|------------------------|

Mojave Desert Tortoise Survey – November 2018

*Washington Parkway;
Green Springs Dr.
to I-15 Exit 13*



From: [Whitcomb, Hilary](#)
To: [Matt Howard](#)
Subject: Re: [EXTERNAL] Desert tortoise impacts on proposed Washington Parkway
Date: Wednesday, December 12, 2018 9:49:23 AM

Sure, that would be great. Thanks!

On Wed, Dec 12, 2018 at 7:30 AM Matt Howard <matthoward@utah.gov> wrote:
I could talk tomorrow (Thursday) at 2. Would you like me to send a meeting invite?

On Tue, Dec 11, 2018 at 4:56 PM Whitcomb, Hilary <hilary_whitcomb@fws.gov> wrote:
Hi Matt,

Sure thing. I'm available Thursday afternoon or Friday afternoon this week. 1 pm or later.
Would either of those days work for you?

Thanks,
Hilary

On Tue, Dec 11, 2018 at 9:15 AM Matt Howard <matthoward@utah.gov> wrote:
Hi Hilary,
We're working with Washington City on the attached project. I'd like to have a chat with
you about it when you get a chance.

--

-Matt Howard
Natural Resource Manager
Utah Department of Transportation
Office: 801-965-4038
Cell: 435-255-1956
matthoward@utah.gov

--

Hilary Whitcomb
Fish & Wildlife Biologist
Direct Line (385) 285-7930
Main Office (801) 975-3330
<https://www.fws.gov/utahfieldoffice/index.php> (surveyor requirements, trainings, outreach, etc.)

--

-Matt Howard
Natural Resource Manager
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--

Hilary Whitcomb
Fish & Wildlife Biologist

Direct Line (385) 285-7930

Main Office (801) 975-3330

<https://www.fws.gov/utahfieldoffice/index.php> (surveyor requirements, trainings, outreach, etc.)

From: [Google Calendar](#) on behalf of matthoward@utah.gov
To: hilary_whitcomb@fws.gov
Subject: Washington Parkway Desert Tortoise discussion
Start: Thursday, December 13, 2018 2:00:00 PM
End: Thursday, December 13, 2018 3:00:00 PM
Attachments: [invite.ics](#)

more details » <<https://www.google.com/calendar/event?action=VIEW&eid=MGowMWxpG5yCTd2ODlwCTVpajNtdGs2YzlgGlsYXJ5X3doaXRjb211QGZ3cy5nb3Y&stok=MjAjbWF0dHJ0b3dhcmRadXRhaC5nb3Y0MmYwOTYzY2U2YTg5ZmU3ZjQxMmlxZDVlOTkwYmM4NGZhMjJ0OGly&ctz=America%2FDenver&hl=en&es=1>>

Washington Parkway Desert Tortoise discussion

Office phone: 801-965-4038
When
Thu Dec 13, 2018 2pm – 3pm Mountain Time - Denver
Calendar
hilary_whitcomb@fws.gov
Who
• matthoward@utah.gov
- organizer
• hilary_whitcomb@fws.gov

Going (hilary_whitcomb@fws.gov)?
Yes <<https://www.google.com/calendar/event?action=RESPOND&eid=MGowMWxpG5yCTd2ODlwCTVpajNtdGs2YzlgGlsYXJ5X3doaXRjb211QGZ3cy5nb3Y&stok=MjAjbWF0dHJ0b3dhcmRadXRhaC5nb3Y0MmYwOTYzY2U2YTg5ZmU3ZjQxMmlxZDVlOTkwYmM4NGZhMjJ0OGly&ctz=America%2FDenver&hl=en&es=1>>
-
Maybe <<https://www.google.com/calendar/event?action=RESPOND&eid=MGowMWxpG5yCTd2ODlwCTVpajNtdGs2YzlgGlsYXJ5X3doaXRjb211QGZ3cy5nb3Y&stok=MjAjbWF0dHJ0b3dhcmRadXRhaC5nb3Y0MmYwOTYzY2U2YTg5ZmU3ZjQxMmlxZDVlOTkwYmM4NGZhMjJ0OGly&ctz=America%2FDenver&hl=en&es=1>>
-
No <<https://www.google.com/calendar/event?action=RESPOND&eid=MGowMWxpG5yCTd2ODlwCTVpajNtdGs2YzlgGlsYXJ5X3doaXRjb211QGZ3cy5nb3Y&stok=MjAjbWF0dHJ0b3dhcmRadXRhaC5nb3Y0MmYwOTYzY2U2YTg5ZmU3ZjQxMmlxZDVlOTkwYmM4NGZhMjJ0OGly&ctz=America%2FDenver&hl=en&es=1>>
more options » <<https://www.google.com/calendar/event?action=VIEW&eid=MGowMWxpG5yCTd2ODlwCTVpajNtdGs2YzlgGlsYXJ5X3doaXRjb211QGZ3cy5nb3Y&stok=MjAjbWF0dHJ0b3dhcmRadXRhaC5nb3Y0MmYwOTYzY2U2YTg5ZmU3ZjQxMmlxZDVlOTkwYmM4NGZhMjJ0OGly&ctz=America%2FDenver&hl=en&es=1>>

Invitation from Google Calendar <<https://www.google.com/calendar/>>

You are receiving this email at the account hilary_whitcomb@fws.gov because you are subscribed for invitations on calendar hilary_whitcomb@fws.gov.

To stop receiving these emails, please log in to <https://www.google.com/calendar/> and change your notification settings for this calendar.

Forwarding this invitation could allow any recipient to modify your RSVP response. Learn More <<https://support.google.com/calendar/answer/37135#forwarding>> .

From: [Google Calendar](#) on behalf of kmanwill@utah.gov
To: hilary_whitcomb@fws.gov; larry_crist@fws.gov; kmanwill@utah.gov; brandonweston@utah.gov
Subject: [EXTERNAL] Washington Parkway
Date: Thursday, January 3, 2019 10:02:24 AM

Join by phone
+1 224-337-3134 PIN: 481 478#
More phone numbers

Washington Parkway

Discuss the existing take permit and Washington Cities roadway from I-15 to Green Springs.

When Thu Jan 3, 2019 10am – 11am Mountain Time - Denver

Joining info meet.google.com/fbg-goud-hvg

Or dial: +1 224-337-3134 PIN: 481478# [More phone numbers](#)

Who

- kmanwill@utah.gov - organizer
- larry_crist@fws.gov
- brandonweston@utah.gov
- hilary_whitcomb@fws.gov

From: [Kim Manwill](#)
To: [Whitcomb, Hilary](#)
Cc: [Larry Crist](#); [Brandon Weston](#); [Naomi Kisen](#)
Subject: [EXTERNAL] PIN 16646; Washington Parkway - Green Springs to I-15, Request for Informal Section 7 consultation
Date: Wednesday, January 30, 2019 3:12:14 PM
Attachments: [North Washington 5-27-10 \(1\).pdf](#)
[Washington Parkway DT Survey Report_20181211 \(1\).pdf](#)

Hilary,

As we discussed by phone, attached are the two Tortoise studies provided to me.

Also, to clarify UDOT involvement on the Local government project is that we are functioning as oversight for the MPO funds that are a portion of the overall local and state funds that will be applied to the project. It provides UDOT the opportunity to ensure the quality of the roadway for the projected traffic.

UDOT's involvement does not change Washington City's planned Scope, Scale or impacts for the City's existing right-of-way. Only the quality and standards for which the road is built.

Therefore, it is the Project Team's recommendation, that we proceed with an informal Section 7 consultation, for the CatX. Based on the information provided by the HCP and Washington city we feel that we are at low risk during construction.

Thanks
Kim

Kim B. Manwill | *Project Director, R4*
708 South 100 West | Richfield, UT 84701
Phone: [435-896-0733](tel:435-896-0733) | kmanwill@utah.gov



DESERT TORTOISE SURVEY REPORT

Washington Parkway; Green Springs Drive to Interstate 15 Exit 13
Washington County, Utah

UDOT Project No.: F-R499(326)
PIN 16646

Prepared for:
Project Engineering Consultants, Ltd.
640 East 700 South, Suite 204
St. George, Utah 84770

For Submittal to:
Red Cliffs Desert Reserve
10 North 100 East
St. George, Utah 84770

Prepared by:
Transcon Environmental, Inc.
444 South Main Street, Suite A6
Cedar City, Utah 84720



December 2018

TABLE OF CONTENTS

Introduction.....	1
Project Description and Location.....	1
Survey Methods	4
Survey Results	4
Habitat.....	4
Species	7
Discussion	7
References.....	8

LIST OF FIGURES

Figure 1	Project overview map	3
Figure 2	Desert tortoise critical habitat map	6

LIST OF APPENDICES

Appendix A	Desert Tortoise Survey Maps and Photographs
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INTRODUCTION

The Utah Department of Transportation (UDOT) and the City of Washington have initiated a Categorical Exclusion for the proposed extension to Washington Parkway from North Green Spring Drive to Interstate 15 (I-15) Exit 13 in Washington County, Utah on Utah School and Institutional Trust Lands and private lands.

Project Engineering Consultants contracted Transcon Environmental, Inc. (Transcon) to assess the entire 2.75-mile alignment (Project area) for potential impacts to natural resources, including species protected under the Endangered Species Act (ESA), Utah state-listed sensitive species, and avian species protected under the Migratory Bird Treaty Act and Bald and Golden Eagle Protection Act (i.e., special status species). A Biological Assessment is being prepared in accordance with the ESA of 1973, as amended. Section 7 of the ESA requires that, through consultation with the U.S. Fish and Wildlife Service (USFWS), federal agencies ensure their actions are not likely to jeopardize the continued existence of any species listed as threatened or endangered or result in the destruction or adverse modification of their critical habitat.

The only listed species identified as likely to occur within the action area is the threatened Mojave desert tortoise (*Gopherus agassizii*; desert tortoise). In preparation for potential Section 7 consultation, Transcon biologists conducted USFWS protocol presence/absence surveys for desert tortoise within the action area of the proposed Project. This Desert Tortoise Survey Report was prepared to summarize the methodology and results of those surveys.

PROJECT DESCRIPTION AND LOCATION

Washington City, in cooperation with UDOT, proposes to use federal funds to extend Washington Parkway from North Green Spring Drive to I-15 Exit 13 in Washington County, Utah. The proposed Project area of potential effect (APE) would extend for approximately 2.75 miles, be generally 166 feet wide (83 feet to either side of the roadway centerline), and be located within the existing Washington City right-of-way (ROW) and easements. The primary roadway improvements within the middle 2.10 miles of the APE will include a single lane in each direction, a landscaped median, drainage crossings, street lighting, signage, and drainage detention facilities. A portion of the ROW has been graded for the installation of an existing water pipeline and powerline, but there remains a significant amount of grading needed to construct the roadway. All work and staging areas will be located within the Project ROW, easements, and other cleared areas.

Approximately 0.39 mile at the west end of the proposed APE has already been developed and graded in preparation for paving by an adjacent, ongoing private housing development project. It is anticipated that this area would only require paving, and no new ground disturbance would be necessary. Approximately 0.26 mile at the east end of the proposed APE consists of an existing paved road, and proposed improvements would consist of minor signing and paint striping changes to conform with the new roadway. No significant ground disturbing activities are anticipated in this area.

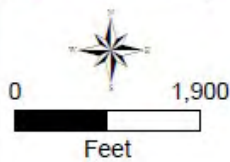
Extending Washington Parkway would include the following activities:

- Grading and compaction of the roadbed and shoulders
- Cut and fill slopes
- Paving of the roadway
- Installation of culverts, headwalls, curbs, signage, lighting, and landscaping
- Implementation of Best Management Practices to minimize or prevent construction materials and debris, including water used in construction, from entering ephemeral streams

- Use of construction equipment, which may include but not be limited to paving machines, dump trucks, graders, scrapers, bulldozers, track hoes, water trucks, compactors, ready-mix trucks, and generators

Construction of the parkway is proposed to occur from July 2019 to December 2019.

The proposed Project area extends from the I-15 and Washington Parkway interchange northwest to connect with the existing northern terminus of North Green Spring Drive, in Washington City (**Figure 1**). The Project area is located in Washington City, central Washington County, Utah in Sections 3 and 4 and 10-12, Township 42 South, Range 15 West, Salt Lake Baseline and Meridian on the St. George, Utah 7.5-minute U.S. Geological Survey topographical map (USGS 2014).



Legend

- Project Area
- Streams
- Highway
- Private
- SITLA
- UDOT
- UDWR

Project Overview

*Washington Parkway;
Green Springs Drive
to I-15 Exit 13*

Figure 1



SURVEY METHODS

Prior to conducting field surveys, a desktop habitat analysis was conducted to identify federally-listed species protected under the ESA, state-listed species, and associated habitats which may occur within the proposed Project area. Transcon contacted the Utah Division of Wildlife Resources Utah Natural Heritage Program (UNHP) office to obtain information on documented occurrences of special status species proximal to the Project area.

Following the Pre-project Field Survey for Potential Desert Tortoise Habitat (USFWS 2017), Transcon biologists conducted presence/absence surveys for desert tortoise within all suitable habitat in the action area from November 12 to November 14, 2018. One-hundred percent survey coverage was accomplished in all accessible areas using 10-meter-wide belt transects that were surveyed within the action area, comprised of the proposed Project APE and a 300-foot-wide buffer surround the APE. Based on prior USFWS approval, transects were oriented along the length, rather than across the width, of the 2.75-mile-long alignment.

Transects were not surveyed in areas of unsuitable habitat, including riparian areas and highly developed areas such as residential developments, the Green Springs Golf Course, the electrical substation, and paved roads/highways (**Figure 2**). Accessible habitat fragments in these locations were checked as appropriate to ensure full coverage, though tortoise occupancy would be unlikely in association with high levels of habitat fragmentation and anthropogenic disturbance/activity. Aerial imagery does not reflect the current extent of development in the Project vicinity.

SURVEY RESULTS

Habitat

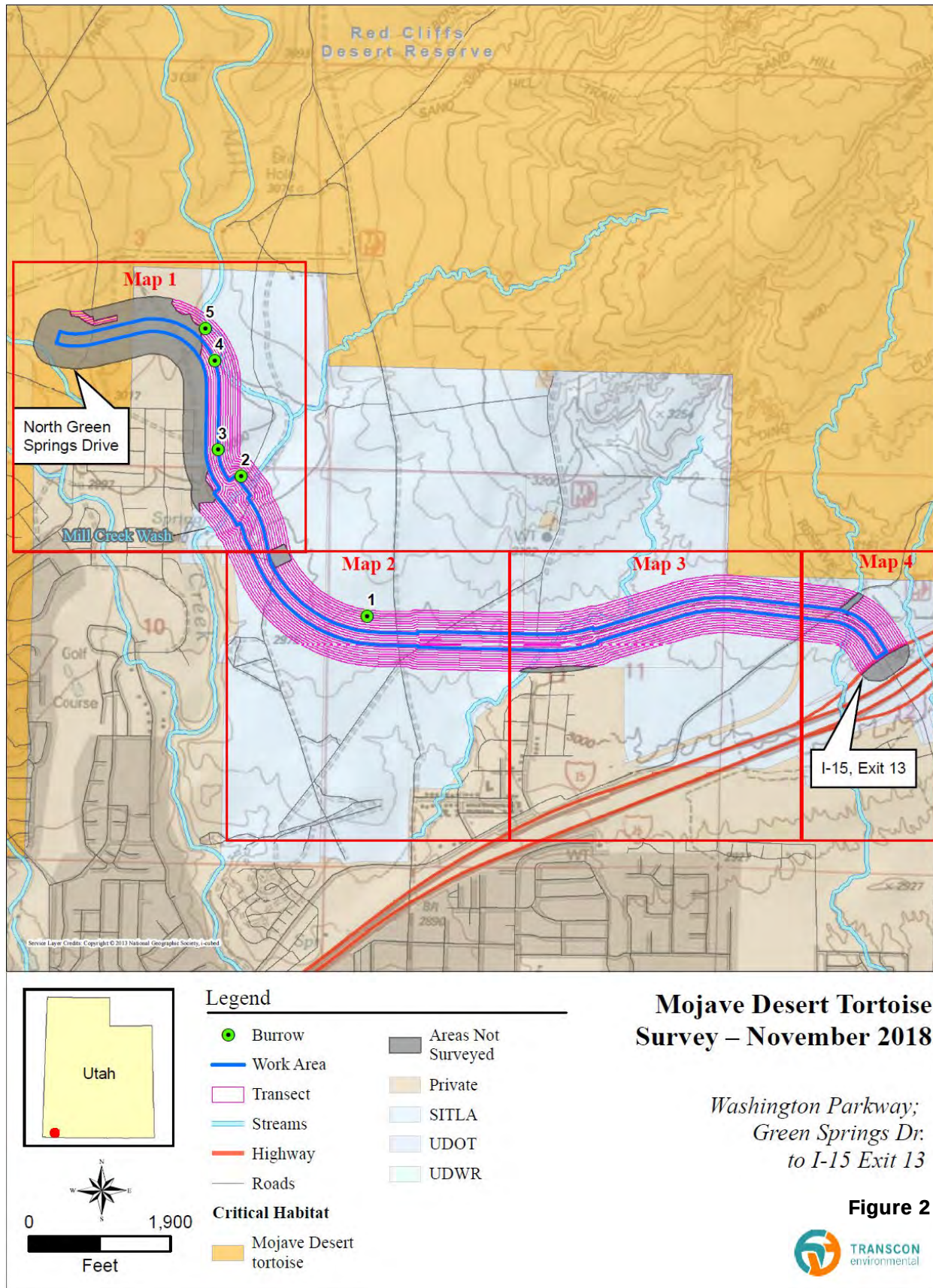
Desktop review of the proposed Project area revealed that the proposed ROW is located within the Upper Virgin River Recovery Unit, as designated by the Revised Recovery Plan for the Desert Tortoise (USFWS 2011). A very small portion of the action area (approximately 0.02 acre) extends into desert tortoise designated critical habitat near the eastern end of the proposed Project area. The western terminus of the Project area and associated action area extend into the boundaries of desert tortoise designated critical habitat for approximately 0.20 mile (**Figure 2**). The UNHP database contains records of recent occurrence of desert tortoise within 0.5 mile of the Project area.

Upon field verification of the desktop review, it was determined that the action area traverses through portions of relatively intact Sonora-Mojave Creosote Bush-White Bursage Desert Scrub, habitat typical for desert tortoise. The action area provides sufficient areas with friable soils that are firm enough to support burrows and nests. Vegetation in the action area is suitable for providing desert tortoises protection from predators and temperature extremes. Portions of intact habitat within the action area are fragmented by paved highways, utility corridors, and residential and recreational development, bringing vehicle and pedestrian traffic to the area. The action area ranges in elevation between approximately 2,934 feet (894 meters) above sea level (asl) to 3,124 feet (952 meters) asl.

Ongoing residential development, and the subsequent conversion of suitable desert tortoise habitat to unsuitable desert tortoise habitat, is occurring near the west and south-central portions of the Project alignment. Additional developed or disturbed areas located within or adjacent to the Project area include an empty, graded lot located between I-15 and East Buena Vista Boulevard (listed for sale, approximately 6 acres of which is located within the action area); paved roads and highways near the eastern and western termini; roadside parking and recreational activity associated with the Grapevine Trailhead near the eastern terminus; an electrical substation; multiple overhead powerlines; a water pipeline; the Green Springs Golf

Course; and a network of off-highway vehicle trails/dirt roads. During field surveys, high baseline levels of anthropogenic disturbance, mainly from active construction and recreational use, were noted. Unleashed domestic dogs, which are potential predators for the desert tortoise, were observed, and canine scat and tracks were noted throughout the entirety of the action area. Proliferation of non-native plants was observed in areas where disturbance has occurred or is ongoing.

The portion of the proposed Project area occurring within designated critical habitat at the western end of the Project area has been heavily disturbed or destroyed during ongoing urbanization and construction of paved roads, and lacked any primary constituent elements of critical habitat at the time of survey. Detailed panel maps associated with **Figure 2** and photographs from the field are included in **Appendix A**.



Species

No desert tortoises were observed in the action area during surveys. Five unoccupied burrows were recorded which displayed potential to support tortoise occupancy (**Figure 2; Appendix A, Maps 1 and 2**). Burrows were numbered based on their locations from east to west along the action area. A description of each potential burrow located during surveys is included below:

- **Burrow 1:** This burrow is located within creosote bush scrub habitat near the base of a creosote bush. This burrow displays the characteristic half-moon shape and adequate size to support an adult tortoise (**Appendix A, Photos 18 to 19**). This burrow was unoccupied at the time of survey.
- **Burrow 2:** This burrow is located on the rocky slope of Mill Creek wash beneath a rock ledge. At more than 12 inches wide, it is large enough to accommodate adult tortoises, as well as other burrowing mammals (**Appendix A, Photos 20 to 21**). This burrow may be used by a variety of wildlife, as displayed by the diversity of tracks inside the burrow. The burrow was noted as being deep, and the surveyor could not see to the back of the burrow during inspection.
- **Burrow 3:** This burrow is located at the base of a creosote bush near the proposed Project APE boundary. It measured approximately 5 inches wide and could potentially accommodate a juvenile tortoise (**Appendix A, Photos 22 to 23**). This burrow was unoccupied at the time of survey.
- **Burrow 4:** This burrow is located on the rocky slope of a dry wash and was dug out in sand beneath a rock/boulder. The opening was recorded as approximately 3 to 5 inches wide and could potentially accommodate a juvenile tortoise (**Appendix A, Photo 24**). This burrow is located near the proposed Project APE boundary. This burrow was unoccupied at the time of survey.
- **Burrow 5:** This burrow is located on the rocky slope of a dry wash and was dug out in sand beneath a rock ledge (**Appendix A, Photo 25**). This burrow was unoccupied at the time of survey.

All potential burrows observations occurred on the north side of the action area. No other signs of desert tortoise (e.g., scat, tracks) were observed near any of the burrows or within the action area. Geospatial data for each burrow location was compiled in a shapefile to accompany this report.

DISCUSSION

A total of five burrows which could accommodate desert tortoise were documented within the proposed Project action area during USFWS protocol desert tortoise surveys. No burrows were located within the proposed Project APE; however, two of the burrows are located near the proposed Project APE boundary. No live tortoises were observed during surveys, and no additional tortoise sign (e.g., scat, tracks) were observed nearby any of the potential burrows.

REFERENCES

- United States Fish and Wildlife Service (USFWS). 2011. Revised Recovery Plan for the Mojave Population of the Desert Tortoise (*Gopherus agassizii*). U.S. Fish and Wildlife Service, Pacific Southwest Region. Sacramento, California. 222 pp.
- _____. 2017. Preparing for any Action that may Occur Within the Range of the Mojave Desert Tortoise (*Gopherus agassizii*). Version: August 31, 2017. URL: https://www.fws.gov/nevada/desert_tortoise/documents/manuals/Mojave%20Desert%20Tortoise_Pre-project%20Survey%20Protocol_2017.pdf
- United States Geological Service (USGS). 2014. The National Map, U.S. Topo. Accessed November 20, 2018. URL: <https://viewer.nationalmap.gov/basic/?basemap=b1&category=ustopo&title=US%20Topo%20Download>

APPENDIX A

DESERT TORTOISE SURVEY MAPS AND PHOTOGRAPHS



Photo 1. View east across the I-15 Exit 13 entrance ramp. This portion of the action area was not surveyed due to high fragmentation and disturbance.



Photo 2. View east from the south side of the Project area, showing graded lot and adjacent habitat.



Photo 3. View of the tortoise fencing at the boundary of the Red Cliffs Desert Reserve within the Project action area.



Photo 4. View of riparian habitat along wash at the eastern end of the action area near the Grapevine Trailhead classified as unsuitable desert tortoise habitat.



Photo 5. View west along the existing dirt road through the Project area, showing creosote scrub habitat in the foreground and housing developments in the background. Off-road vehicle parking and an unleashed domestic dog are included on the left side of the frame.



Photo 6. View east along Washington Parkway/Buena Vista Boulevard, showing unpaved roadside parking associated with the Grapevine Trailhead on the left side of the road.



Photo 7. Representation of creosote scrub habitat within the action area, looking north from the east side of the Project area.



Photo 8. View east along the existing dirt road in the Project area, providing representation of off-road parking areas and widened disturbance areas within the Project area.



Photo 9. View west along the existing dirt road in the Project area showing representative Creosote Bush-White Bursage Scrub habitat in the foreground, and housing developments in the background.



Photo 10. Representation of high-quality Creosote Bush Scrub habitat within the action area.



Photo 11. View of disturbed habitat on the north side of the electrical substation. This area is dominated by Russian thistle (*Salsola tragus*).



Photo 12. View of the electrical substation in the central portion of the Project area, looking west. This area is highly disturbed.



Photo 13. View northeast from the south side of Mill Creek wash. Private residential development is visible in the background, on top of the slope.



Photo 14. View north along existing dirt road, showing private residential development on the left side of the frame.



Photo 15. Representation of ongoing residential development occurring at the western terminus of the Project area.



Photo 16. Representation of ongoing residential development occurring at the western terminus of the Project area.



Photo 17. Representation of ongoing residential development occurring at the western terminus of the Project area.



Photo 18. Burrow 1 located within Creosote Bush Scrub habitat near the base of a creosote bush. This burrow displays the characteristic half-moon shape and adequate size to support an adult tortoise. The burrow was unoccupied at the time of survey.



Photo 19. Close up view of Burrow 1.



Photo 20. Burrow 2 is located on the rocky slope of Mill Creek wash beneath a rock ledge. At more than 12 inches wide, it is large enough to accommodate adult tortoises as well as other burrowing mammals. This burrow may be used by a variety of wildlife, as displayed by the diversity of tracks inside the burrow. The burrow was noted as being deep, and the surveyor could not see to the back of the burrow during inspection.



Photo 21. Close-up view of Burrow 2.



Photo 22. Burrow 3 is located at the base of creosote bush near the proposed Project APE boundary. It measured approximately 5 inches wide and could potentially accommodate a juvenile tortoise. This burrow was unoccupied at the time of survey.



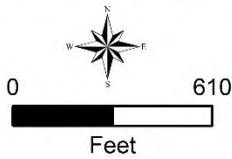
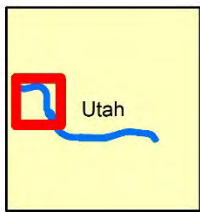
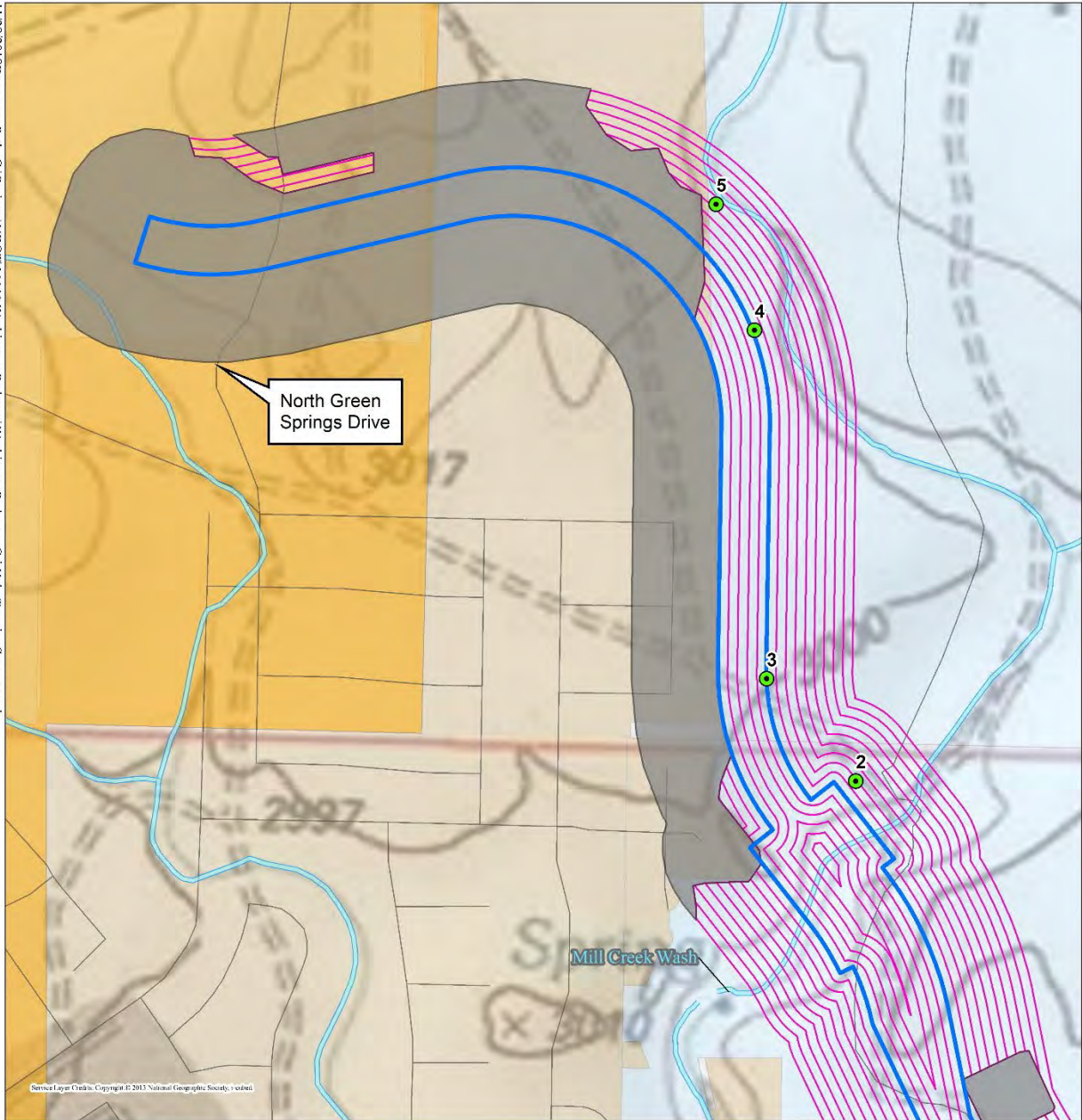
Photo 23. Close up view of Burrow 3.



Photo 24. Burrow 4 is located on the rocky slope of a dry wash and was dug out in sand beneath a rock/boulder. The opening was recorded as approximately 3 to 5 inches wide and could potentially accommodate a juvenile tortoise. This burrow is located near the proposed Project APE boundary. This burrow was unoccupied at the time of survey.



Photo 25. Burrow 5 is located on the rocky slope of a dry wash and was dug out in sand beneath a rock ledge. This burrow was unoccupied at the time of survey.



Legend

- Burrow
- Work Area
- ▨ Transect
- Streams
- Roads
- Areas Not Surveyed
- Private
- SITLA
- UDWR

Critical Habitat

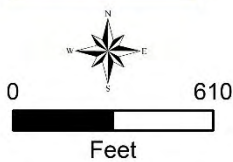
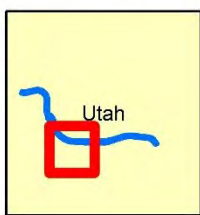
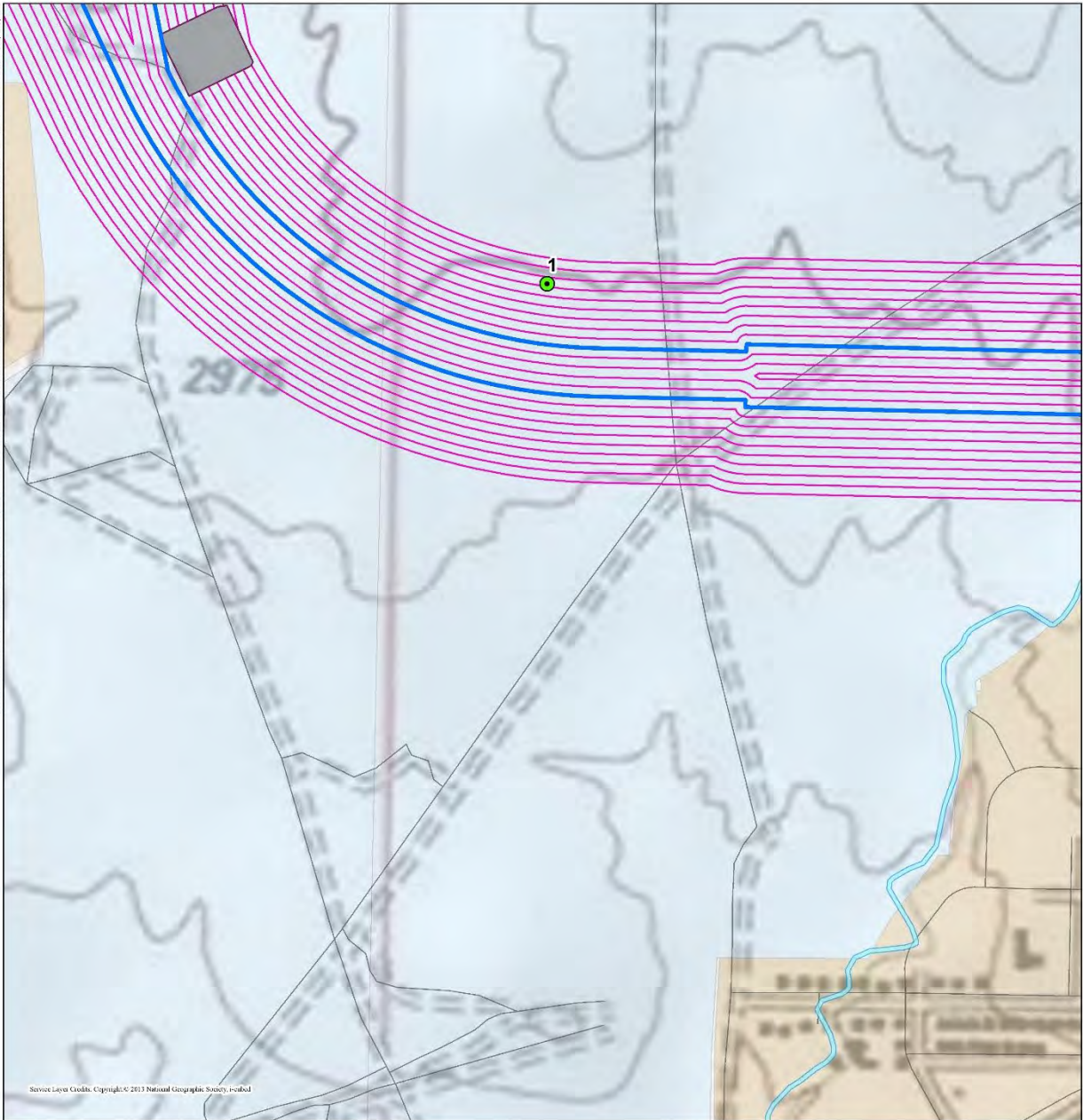
- Mojave Desert tortoise

Mojave Desert Tortoise Survey – November 2018

*Washington Parkway;
Green Springs Dr.
to I-15 Exit 13*

Map 1 of 4





Legend

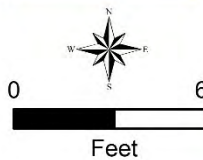
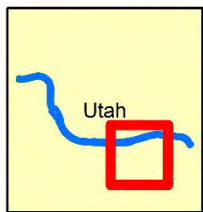
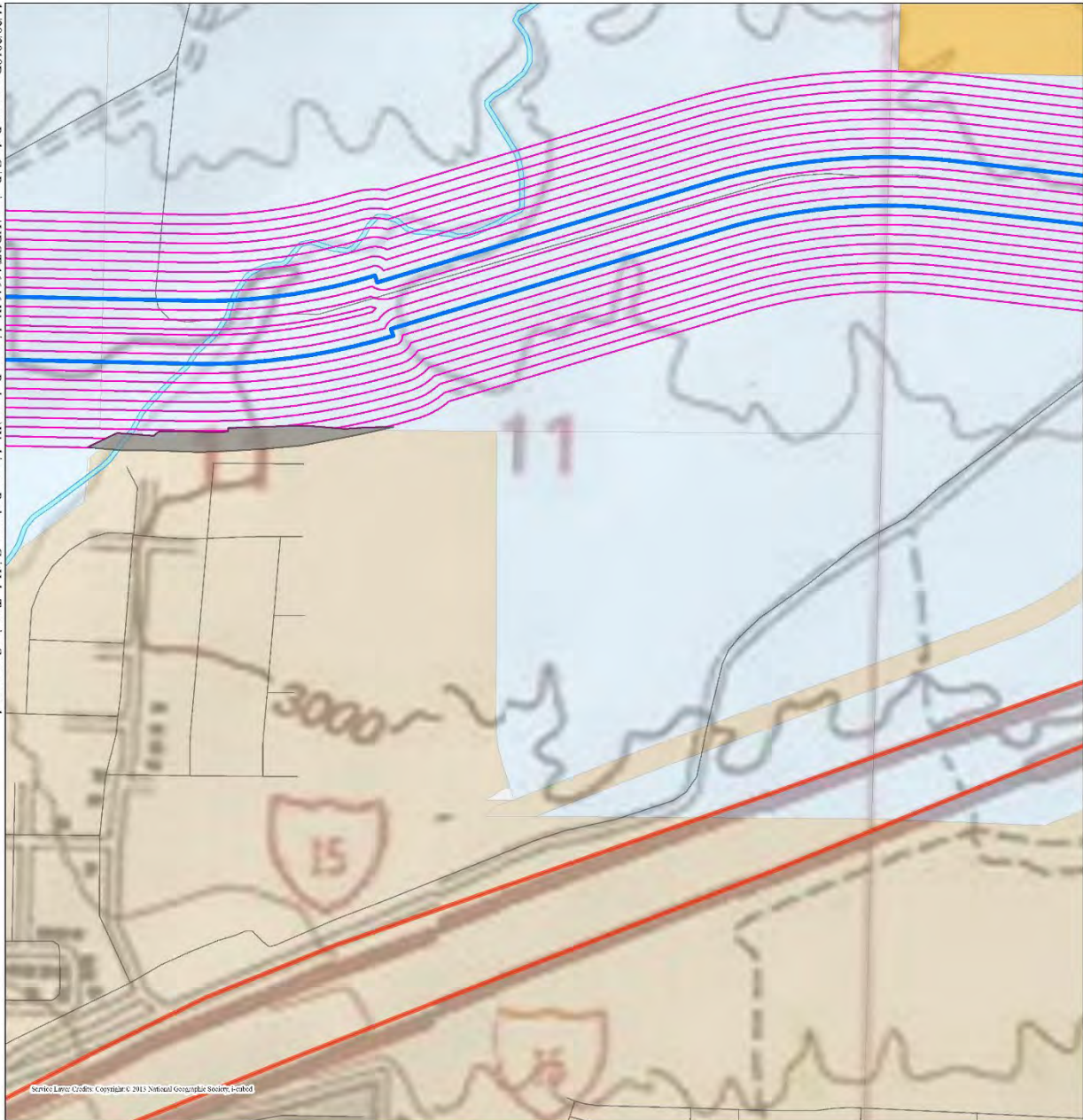
- Burrow
- Work Area
- Transect
- Streams
- Roads
- Areas Not Surveyed
- Private
- SITLA

Mojave Desert Tortoise Survey – November 2018

*Washington Parkway;
Green Springs Dr.
to I-15 Exit 13*

Map 2 of 4





Legend

- Work Area
- Transect
- Streams
- Highway
- Roads
- Areas Not Surveyed
- Private
- SITLA
- Mojave Desert tortoise

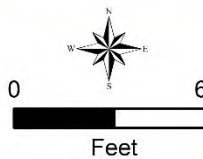
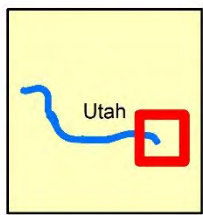
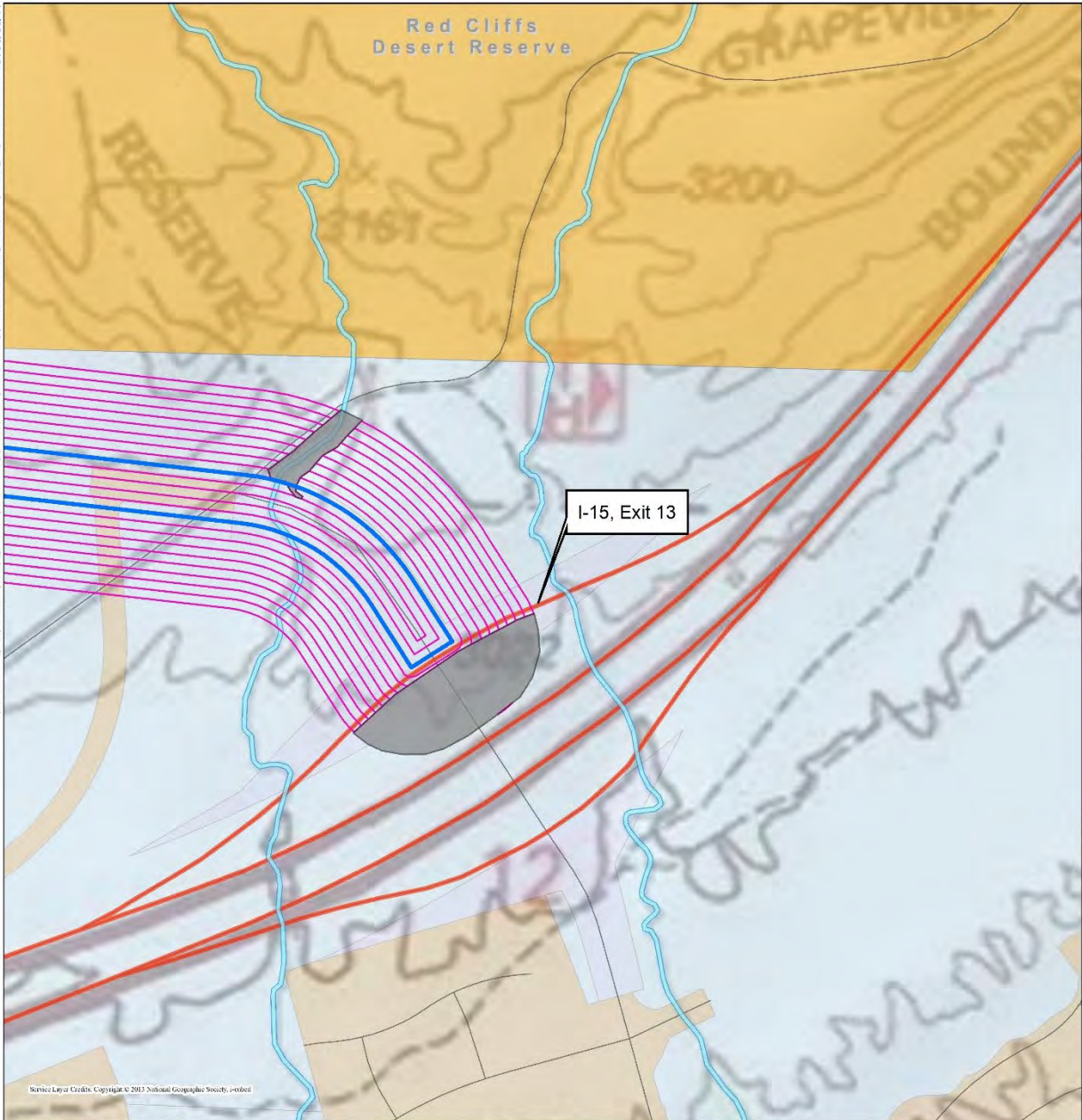
Critical Habitat

Mojave Desert Tortoise Survey – November 2018

*Washington Parkway;
Green Springs Dr.
to I-15 Exit 13*

Map 3 of 4





Legend

- | | |
|-----------|--------------------|
| Work Area | Areas Not Surveyed |
| Transect | Private |
| Streams | SITLA |
| Highway | UDOT |
| Roads | |

Critical Habitat

- | | |
|--|------------------------|
| | Mojave Desert tortoise |
|--|------------------------|

Mojave Desert Tortoise Survey – November 2018

*Washington Parkway;
Green Springs Dr.
to I-15 Exit 13*

Map 4 of 4



Field Report

Date: May 27, 2010

From: A. McLuckie, A. Bianco, J. Borden, B. Cox, R. Dobbs, L. Dreger, C. Edwards, P. Liens, J. Lundquist, M. Lubejko, K. Nelson, D. Reynolds, M. Schijf, M. Sullivan

RE: North Washington Incidental Take Area

All remaining undeveloped areas within the North Washington incidental take area were cleared for desert tortoises during the spring 2010 tortoise activity period. The entire area was surveyed by field personnel walking parallel lines searching all areas for desert tortoise and their sign (scat, sheltersites, shell remains). Zone of influence transects were not conducted as the entire take area was either fenced or adjacent to a developed area (e.g., housing development, interstate, etc.).

Fourteen field days were spent from April 13 to May 13 surveying for tortoise sign. The Utah Division of Wildlife Resources spent approximately 56 person field days (450.5 hrs) completing the clearance while Washington County spent 8.5 person (68 hrs) field days. The number of field workers searching per day ranged from three to nine. The acres cleared over the entire effort were calculated, using ArcView 3.2, at 1,162.5 acres.

The clearance area was composed mainly of creosote, blackbrush and sand sage dominated plant communities. Plant diversity was high throughout the clearance area and included white bursage, wolfberry, pepper grass, snake weed, Mormon tea, opuntia species, yuccas, and big galleta grass. The area was relatively flat with the exception of a major rocky wash, referred to as Mill Creek, that bisected the take area vertically, and rocky outcrops on the eastern portion of the property.

Tortoise sign was minimal. The majority of sign was observed in the north portions of the survey area and within the main wash that bisected the incidental takes area. One adult male tortoise was observed in a deep sandstone den within Mill Creek wash. The tortoise was first observed on April 16th but was unable to be retrieved until April 26. The tortoise was not placed into the Reserve because it was determined to be Elisa positive. Twelve burrows were observed on the flats outside of the major wash, two which were considered deep and potentially active. One deep soil burrow was completely dug out and three scats were observed within the burrow. One deep den was too rocky to dig so sticks were placed at the entrance to determine if an animal was using the shelter. In addition, one tortoise scute and two old bleached scats were observed.

Although the majority of the site was considered tortoise habitat, only one pass was completed as no recent evidence of tortoises were found. Two passes, conducted during different tortoise activity periods, were completed in Mill Creek where the live tortoise was observed.

Weather was unseasonably cool and mild during the field effort. Surface temperature highs ranged from 14.1°C to 36.1°C (57.4°F to 96.9°F) and ambient highs ranged from 16.6°C to 32.9°C (61.9°F to 91.2°F). Cloud cover ranged from 0% to 80% while humidity ranged from 15.2 to 50% during the surveys. One hole in the tortoise fence was observed near the Dino tracks trailhead. Several gaps under the tortoise mesh were observed just west of the northern water tank. Other reptile species observed included chuckwalla, desert horned lizard, desert spiny lizard, leopard lizard, side-blotched lizard, western banded gecko, western whiptail, zebra-tailed lizard, coachwhip, and gopher snake. Mammals observed included kangaroo rat, pack rat, black-tailed jackrabbit, and desert cottontail.

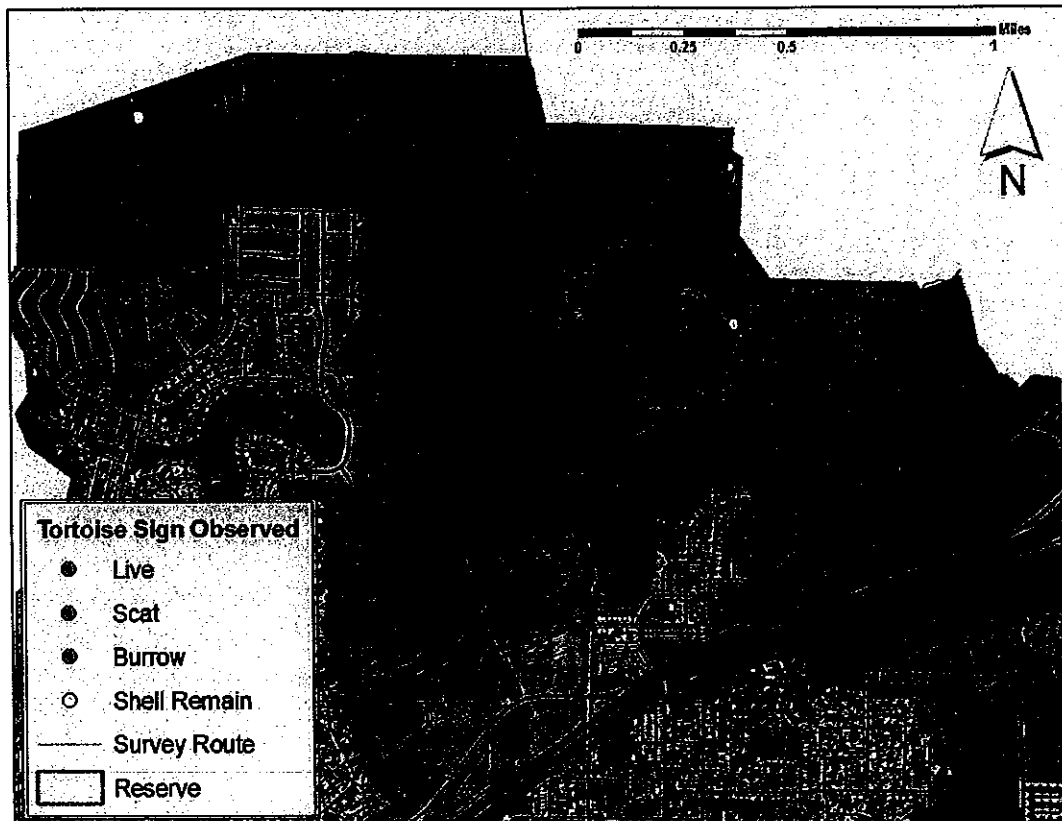


Figure 1. Survey route location and tortoise sign observed within the North Washington incidental take area, April 13 to May 13, 2010, Washington County.

Table. Field effort including field days, dates, personnel, and total hours spent surveying the North Washington incidental take area for desert tortoises.

Date	UDWR		Washington County	
	Personnel	Total Hours ¹	Personnel	Total Hours ¹
April 13	A. Bianco L. Dreger P. Lien A. McLuckie	20.0	C. Rognan	5.0
April 14	P. Liens A. McLuckie D. Reynolds M. Sullivan	20.0	C. Rognan J. Neighbor	8.0
April 15	L. Dreger M. Lubejko A. McLuckie M. Sullivan	32.0	J. Neighbor	3.0
April 16	D. Reynolds M. Schijf	16.0	C. Rognan	8.0
April 19	L. Dreger A. McLuckie P. Lien	21.0	C. Rognan	3.5
April 20	A. Bianco P. Lien M. Sullivan	28.5	C. Rognan	8.0
April 26	C. Edwards A. McLuckie K. Nelson M. Sullivan	30.0	C. Rognan	8.0
April 27	A. Bianco R. Dobbs L. Dreger C. Edwards P. Lien M. Lubjecko K. Nelson M. Sullivan	64.0	C. Rognan	3.5
April 28	A. Bianco M. Lubejko P. Lien A. McLuckie K. Nelson M. Sullivan	39.0	C. Rognan	3.5
May 3	J. Borden R. Dobbs L. Dreger	35.0		0

Date	UDWR		Washington County	
	Personnel	Total Hours ¹	Personnel	Total Hours ¹
	C. Edwards K. Nelson A. McLuckie M. Sullivan			
May 4	J. Borden B. Cox A. McLuckie K. Nelson	24.0	B. Sandberg	2.5
May 5	J. Borden L. Dreger P. Lien K. Nelson M. Sullivan	40.0		0
May 12	L. Dreger P. Lien K. Nelson	24.0	C. Rognan	8.0
May 13	J. Borden B. Cox J. Lundquist A. McLuckie K. Nelson M. Sullivan	57.0	C. Rognan	7.0
Total Hrs		450.5		68

¹Total hours includes travel time to transect (approximately 1.5 hr per person per day).

Form C

Tortoise Search/Removal
Completed by Washington County
(Two passes minimum)

Landowner: SITL + others Number of tortoises removed: 1

Location description: Take Area 5

Field surveys: 13 days 4/13/2010 - 5/13/2010 (see attached field report)

Date: _____ AM or PM: _____ Field workers: _____

Date: _____ AM or PM: _____ Field workers: _____

Date: _____ AM or PM: _____ Field workers: _____

Description of tortoises removed:

Date: 4/28/10 Sex: M MCL: 285 Health: Good, but late emergence from den tested positive for URTD

Epoxy tag #: 602 File #: 3057 Time to TCF: 1 day

Date: _____ Sex: _____ MCL: _____ Health: _____

Epoxy tag #: _____ File #: _____ Time to TCF: _____

Date: _____ Sex: _____ MCL: _____ Health: _____

Epoxy tag #: _____ File #: _____ Time to TCF: _____

Date: _____ Sex: _____ MCL: _____ Health: _____

Epoxy tag #: _____ File #: _____ Time to TCF: _____

Date: _____ Sex: _____ MCL: _____ Health: _____

Epoxy tag #: _____ File #: _____ Time to TCF: _____

Comments/Notes

See attached field report for more details.

HCP

Date

UDWR

Date

Tortoise Search/Removal
Completed by Washington County
(Two passes minimum)

Landowner: SITLA + others Number of tortoises removed: 1

Location description: Take Area 5

Field surveys: 13 days 4/13/2010 - 5/13/2010 (see attached field report)

Date: _____ AM or PM: _____ Field workers: _____

Date: _____ AM or PM: _____ Field workers: _____

Date: _____ AM or PM: _____ Field workers: _____

Description of tortoises removed:

Date: 4/28/10 Sex: M MCL: 285 Health: Good, but late emergence from den tested positive for URTD

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Date: _____ Sex: _____ MCL: _____ Health: _____

Epoxy tag #: _____ File #: _____ Time to TCF: _____

Date: _____ Sex: _____ MCL: _____ Health: _____

Epoxy tag #: _____ File #: _____ Time to TCF: _____

Date: _____ Sex: _____ MCL: _____ Health: _____

Epoxy tag #: _____ File #: _____ Time to TCF: _____

Date: _____ Sex: _____ MCL: _____ Health: _____

Epoxy tag #: _____ File #: _____ Time to TCF: _____

Comments/Notes

See attached field report for more details.

HCP

Date

UDWR

Date

DISTANCE SAMPLING: RED CLIFFS DESERT RESERVE

Transect # NA

Site: Upper Mill Creek Cleavage File # 3057 ^{#TAB} 602
 UTM (X): 276222 Status: Original capture Recapture / Radioed
 UTM (Y): 4115575 Sex: Male Female / Nonreproductive (<180mm)
 Elevation: 96m GPS Error+: _____ Date (mm/dd/yy): 01/28/10 Time: 11:40
 Temp¹ (°C) @ 1m: 7.0 ground: _____ Observers: #1 Cameron #2 _____
 Wind²: 20 mph Humidity: 19 % Rogman
 Cloud Cover³ (% Type): 5%

Behavior⁴: Resting at edge of burrow. This tortoise was fenced in a few weeks earlier,

Location⁵: _____ m N/E/S/W of transect line; _____ m N/E/S/W from NE/SE/SW/SE corner

Immediate Substrate (within one meter of tortoise), CIRCLE AT LEAST ONE PER LINE:

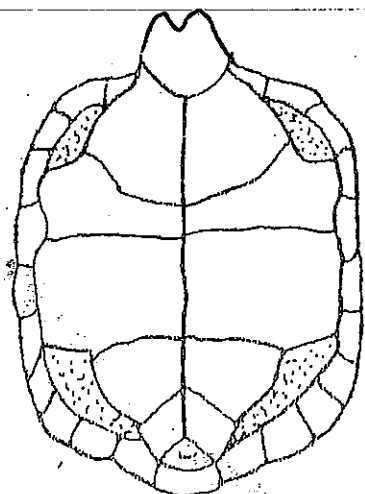
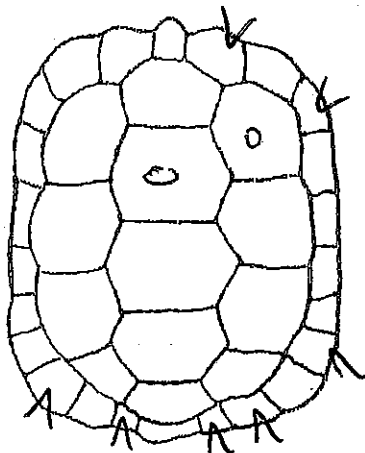
Sandstone / Basalt / Dunes / Small Wash / Large Wash / Desert Pavement

Bedrock (>12 in) / Boulder (6-12 in) / Cobble (2-6 in) / Gravel (<2 in) / Sand

Dominant Vegetation: Creosote / Blackbrush / Bursage / Sand Sage / Desert Almond / Four Wing Saltbush / Wolfberry / Other: _____

Cryptobiotic soil present: Yes / No

Draw notches, gular, injuries, anomalies, and depressions on diagram!!!



MCL 285
 M3-4 (seam) 194
 M7-8 (seam) 219
 Anomalies (L/R) M _____ C _____
 Shell Wear Class⁶ 5
 Photo: No / Yes Photo # _____
 Voided No / Yes

(if yes) Color: _____ Insolubles: Yes / No

URTD: Yes No

Health (circle one per group):

EYES: clear / sunken / discharge / swollen

NARES: clear / damp or wet / exudate present /
 bubbles present / one nare occluded /
 both nares occluded

MOUTH: clear / discharge / dirt on mouth /
 green on mouth

BREATHING: smooth / wheezing / clicking /
 rasping

Shell Disease: _____

Injuries: _____

Parasites: _____

Notes: Tortoise still hibernating in den during clearance 2 weeks ago. It was fenced in and removed from the den after waking up.

From: [Whitcomb, Hilary](#)
To: [Kim Manwill](#)
Subject: Re: [EXTERNAL] PIN 16646; Washington Parkway - Green Springs to I-15, Request for Informal Section 7 consultation
Date: Monday, March 4, 2019 2:15:45 PM

Hi Kim,

I never received this - did you send to my office? I can try and track it down, if so. Thanks much,

Hilary

On Thu, Feb 7, 2019 at 11:59 AM Whitcomb, Hilary <hilary_whitcomb@fws.gov> wrote:
Ok great! Thanks for the heads up, I'll keep my eyes out for it.

Thanks much,
Hilary

On Wed, Feb 6, 2019 at 1:36 PM Kim Manwill <kmanwill@utah.gov> wrote:
Hello Hilary,

You should be receiving the package this week.

Have a great day.

Kim

Kim B. Manwill | Project Director, R4
708 South 100 West | Richfield, UT 84701
Phone: [435-896-0733](tel:435-896-0733) | kmanwill@utah.gov



On Fri, Feb 1, 2019 at 4:05 PM Whitcomb, Hilary <hilary_whitcomb@fws.gov> wrote:
Thanks Kim, these were very helpful.

When do you anticipate sending a request for consultation package?

Thanks again and have a good weekend :)
~Hilary

On Wed, Jan 30, 2019 at 3:12 PM Kim Manwill <kmanwill@utah.gov> wrote:
Hilary,

As we discussed by phone, attached are the two Tortoise studies provided to me.

Also, to clarify UDOT involvement on the Local government project is that we are functioning as oversight for the MPO funds that are a portion of the overall local and state funds that will be applied to the project. It provides UDOT the opportunity to

ensure the quality of the roadway for the projected traffic.

UDOT's involvement does not change Washington City's planned Scope, Scale or impacts for the City's existing right-of-way. Only the quality and standards for which the road is built.

Therefore, it is the Project Team's recommendation, that we proceed with an informal Section 7 consultation, for the CatX. Based on the information provided by the HCP and Washington city we feel that we are at low risk during construction.

Thanks
Kim

Kim B. Manwill | *Project Director, R4*
708 South 100 West | Richfield, UT 84701
Phone: [435-896-0733](tel:435-896-0733) | kmanwill@utah.gov



--

Hilary Whitcomb

Fish & Wildlife Biologist

Direct Line (385) 285-7930

Main Office (801) 975-3330

<https://www.fws.gov/utahfieldoffice/index.php> (surveyor requirements, trainings, outreach, etc.)

--

Hilary Whitcomb

Fish & Wildlife Biologist

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--

Hilary Whitcomb

Fish & Wildlife Biologist

Direct Line (385) 285-7930

Main Office (801) 975-3330

<https://www.fws.gov/utahfieldoffice/index.php> (surveyor requirements, trainings, outreach, etc.)

From: [Crist, Larry](#)
To: [FW6 UtahFieldOfficeESA](#)
Subject: Fwd: [EXTERNAL] Informal Consultation Request: Washington Parkway Extension from North Green Spring Drive to I-15
Date: Wednesday, May 1, 2019 8:49:31 AM
Attachments: [Final BA Washington Parkway Extension 20190412.pdf](#)
[Washington Parkway USFWS Letter.pdf](#)

Larry Crist
Utah Field Supervisor
U.S. Fish and Wildlife Service
Ecological Services Office
2369 West Orton Circle, Suite 50
West Valley City, UT 84119

Main Office: 801-975-3330
Direct Line: 385 -285-7912 (NEW NUMBER)
Fax: 801-975-3331

----- Forwarded message -----

From: **Matt Howard** <matthoward@utah.gov>
Date: Tue, Apr 30, 2019 at 2:00 PM
Subject: [EXTERNAL] Informal Consultation Request: Washington Parkway Extension from North Green Spring Drive to I-15
To: <Larry_Crist@fws.gov>
Cc: Naomi Kisen <nkisen@utah.gov>, Whitcomb, Hilary <hilary_whitcomb@fws.gov>, Brian Parker <bparker@transcon.com>

Larry,

UDOT is requesting informal consultation under Section 7(a)(2) of the Endangered Species Act for the proposed extension of Washington Parkway in Washington County, UT. Attachments to this email include the Biological Assessment and UDOT's letter requesting USFWS concurrence that the proposed action is Not Likely to Adversely Affect Mojave desert tortoise.

Thank you for your review and assistance in this process.

--

-Matt Howard
Natural Resource Manager
Utah Department of Transportation
Office: 801-965-4038
Cell: 435-255-1956
matthoward@utah.gov



State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

DEPARTMENT OF TRANSPORTATION

CARLOS M. BRACERAS, P.E.
Executive Director

JASON E. DAVIS, P.E.
Deputy Director of Engineering and Operations

TERIANNE S. NEWELL, P.E.
Deputy Director of Planning and Investment

April 30, 2019

Larry Crist
Field Supervisor, Utah Ecological Services Field Office
US Fish and Wildlife Service, Utah Field Office
2369 Orton Circle, Suite 50
West Valley City, Utah 84119

RE: Request for Concurrence with the Utah Department of Transportation's Determination that the Proposed Extension to Washington Parkway is Not Likely to Adversely Affect Mojave Desert Tortoise

Dear Mr. Crist

The Utah Department of Transportation (UDOT) presents its Biological Assessment (BA) of the Washington Parkway project for your office's consideration. The BA has been prepared to comply with Section 7 of the Endangered Species Act of 1973 (ESA), as amended, and to support the Categorical Exclusion (CatEx) UDOT is preparing for the Washington Parkway Project. With this letter, we are requesting the U.S. Fish and Wildlife Service's (FWS) concurrence with UDOT's determination that the proposed project is not likely to adversely affect Mojave desert tortoise.

Washington County, in cooperation with UDOT, proposes to extend Washington Parkway from North Green Spring Drive to I-15 Exit 13 in Washington County, Utah. For analysis of special status species, the action area for this project with regards to Mojave desert tortoise and sensitive plant species is comprised of a 300-foot buffer surrounding the approximately 2.75 miles from the I-15 and Washington Parkway interchange and north to connect with the existing northern terminus of North Green Spring Drive in Washington City. For avian species, a 0.5 mile buffer was analyzed, and a 0.25-mile downstream buffer was evaluated for aquatic species.

UDOT evaluated the potential impacts of the preferred alternatives to ten species identified by the information for Planning and Consultation (IPAC) system. These species are California condor (*Gymnogyps californianus*), Mexican spotted owl (*Strix occidentalis lucida*), southwestern willow flycatcher (*Coccyzus americanus*), woundfin (*Plagopterus argentissimus*), Virgin River chub (*Gila seminuda*), Shiwits milkvetch (*Astragalus ampullarioides*), Holmgren milkvetch (*Astragalus holmgreniorum*), dwarf bear-poppy (*Arctomecon humilis*), Jones cycladenia (*Cycladenia humilis* var. *jonesii*), and Mojave desert tortoise (*Gopherus agassizii*). In the attached BA, UDOT finds that Mojave desert tortoise suitable habitat and Critical Habitat are present in the Action Area and that impacts to Mojave



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Deputy Director of Engineering and Operations

TERIANNE S. NEWELL, P.E.
Deputy Director of Planning and Investment

desert tortoise and its Critical Habitat would be discountable. UDOT concludes that the project "may affect, but is not likely to adversely affect" Mojave desert tortoise. UDOT has determined the remaining species, along with their designated critical habitats, are not present in the Action Area. For these species, UDOT has determined that the proposed project would have "no effect".

For your additional information, UDOT is preparing the CatEx in accordance with the National Environmental Policy Act (NEPA) and under a Memorandum of Understanding (MOU) with the Federal Highway Administration (FHWA). Under this MOU, UDOT has been assigned FHWA's responsibilities for compliance with the requirements of Section 7 of the Endangered Species Act as part of the environmental review process for local government projects in Utah. UDOT anticipates issuing a CatEx in 2019.

Should you have any questions about this letter of the Biological Assessment, please contact me, Matt Howard, at 801.965.4038 or via email at matthoward@utah.gov.

Best regards,

A handwritten signature in blue ink that reads "Matt Howard".

Matt Howard
Natural Resource Manager
Utah Department of Transportation

Enclosures: Washington Parkway Biological Assessment

CC via Email: Hilary Whitcomb (FWS)
Naomi Kisen (UDOT)
Brian Parker (UDOT Consultant)

BIOLOGICAL ASSESSMENT

Washington Parkway; Green Springs Drive to Interstate 15 Exit 13
Washington City, Washington County, Utah

UDOT Project No.: F-R499(326)

PIN 16646

Prepared for:

Utah Department of Transportation
Region 4
210 West 800 South
Richfield, Utah 84701

For Submittal to:

U.S. Fish and Wildlife Service
Utah Ecological Services Field Office
2369 West Orton Circle
West Valley City, Utah 84119

Prepared by:

Transcon Environmental, Inc.
444 South Main Street, Suite A6
Cedar City, Utah 84720
801-649-5141



April 2019

TABLE OF CONTENTS

I.	Introduction.....	1
II.	Description of the Proposed Action.....	1
	Project Location.....	2
III.	Action Area.....	2
IV.	Affected Environment.....	2
	Geology.....	3
	Vegetation and Soils	3
	Aquatic Resources	3
V.	Species and Critical Habitat Considered.....	3
	Federally-listed Species	4
VI.	Effects Analysis	7
	Mojave Desert Tortoise.....	7
	Conservation Measures.....	8
VII.	Determination of Effects.....	9
	Federally-listed Species	10
VIII.	References.....	11

LIST OF APPENDICES

Appendix A	Project Area Maps
Appendix B	Project Area and Desert Tortoise Survey Photographs
Appendix C	UDWR Natural Heritage Program Letter and Red Cliffs Desert Reserve Email Correspondence
Appendix D	Threatened and Endangered Species Table
Appendix E	Overview Map of North Washington Take Area (Take Area 5)
Appendix F	USFWS Desert Tortoise Pre-Project Survey Data Sheets

I. INTRODUCTION

The Utah Department of Transportation (UDOT) and the City of Washington have initiated a Categorical Exclusion for the proposed extension to Washington Parkway from North Green Spring Drive to Interstate 15 (I-15) Exit 13 (Project) in Washington County, Utah on Utah School and Institutional Trust Lands and private lands.

This Biological Assessment was prepared in accordance with the Endangered Species Act (ESA) of 1973, as amended. Section 7 of the ESA requires that, through consultation with the U.S. Fish and Wildlife Service (USFWS), federal agencies ensure their actions are not likely to jeopardize the continued existence of any species listed as threatened or endangered or result in the destruction or adverse modification of their critical habitat.

II. DESCRIPTION OF THE PROPOSED ACTION

Washington City, in cooperation with UDOT, proposes to use federal funds to extend Washington Parkway from North Green Spring Drive to I-15 Exit 13 in Washington County, Utah. The proposed Project area would extend for approximately 2.75 miles, would be generally 166 feet wide (83 feet to either side of the roadway centerline), and would be located within the existing Washington City right-of-way (ROW) and easements. The primary roadway improvements within the middle 2.1 miles of the Project area would include a single lane in each direction, a landscaped median, drainage crossings, street lighting, signage, and drainage detention facilities. A portion of the ROW has been graded for the installation of an existing water pipeline and powerline, but there remains an additional amount of grading needed to construct the roadway. All work and staging areas will be located within the Project ROW, easements, and other cleared areas.

Approximately 0.39 mile of the west end of the proposed Project ROW has already been developed and graded in preparation for paving by an adjacent, ongoing private housing development project. It is anticipated that this area would only require paving, and no new ground disturbance would be necessary. Approximately 0.26 mile of the east end of the proposed Project ROW consists of an existing paved road. Proposed improvements would consist of minor signing and paint striping changes to conform to the new roadway. No significant ground disturbing activities are anticipated in this area.

Extending Washington Parkway would include the following activities:

- Grading and compaction of the roadbed and shoulders;
- Cut and fill slopes;
- Paving of the roadway;
- Installation of culverts, headwalls, curb, signage, lighting, and landscaping;
- Implementation of Best Management Practices (BMPs) to minimize or prevent construction materials and debris, including water used in construction, from entering ephemeral streams; and
- Use of construction equipment, which may include, but not be limited to, paving machines, dump trucks, graders, scrapers, bulldozers, track hoes, water trucks, compactors, ready-mix trucks, and generators.

Construction of the parkway is proposed to begin in fall 2019 and is anticipated to last approximately 6 months.

Project Location

The proposed Project area extends for approximately 2.75 miles from the I-15 and Washington Parkway interchange and north to connect with the existing northern terminus of North Green Spring Drive in Washington City (**Appendix A, Map 1**). The Project area is located south of the Red Cliffs Desert Reserve (Reserve) in Washington City, central Washington County, Utah, in Sections 3 and 4 and 10 to 12, Township 42 South, Range 15 West, Salt Lake Baseline and Meridian on the Saint George, Utah 7.5-minute U.S. Geological Survey topographical map (USGS 2014).

III. ACTION AREA

The action area is defined as the area that could be directly or indirectly affected by a federal action (50 CFR 402.02). The action area includes the Project footprint where all permanent and temporary areas of ground disturbance would occur, plus additional species-specific buffers that extend beyond the Project footprint. These buffers were determined based on anticipated levels of construction proposed to occur within the Project footprint (i.e., the immediately impacted area), as well as activities that may cause impacts extending beyond the footprint (e.g., ground vibrations produced by vehicles and heavy equipment, noise, dust, and increased levels of human presence, etc.). For analysis of special status species, the action area for this Project includes a 0.5-mile buffer around the Project area for avian species, a 0.25-mile downstream buffer for aquatic species, and a 300-foot buffer around the Project area for Mojave desert tortoise (desert tortoise) (*Gopherus agassizii*) and sensitive plant species (**Appendix A, Map 2**). Determination of action area buffer distances follows recommendations from the USFWS guidelines for raptor protection (Romin and Muck 2002), USFWS Utah Field Office guidelines for botanical inventories and monitoring (USFWS 2011a), and desert tortoise pre-project survey protocol (USFWS 2018a). Construction-related impacts are not expected to extend beyond these buffers, considering that habitats within or adjacent to the Project area are subjected to existing levels of anthropogenic disturbance.

IV. AFFECTED ENVIRONMENT

The Project is located within the Creosote Bush-Dominated Basins of the Mojave Basin and Range ecoregion of southern Utah. Elevations within the action area range from approximately 2,934 (894 meters) feet above sea level (asl) in the area of the Mill Creek crossing to 3,124 (952 meters) feet asl at the east and west ends of the Project area.

The proposed ROW roughly follows the alignment of an existing unpaved access road devoid of any significant vegetation (**Appendix B, Photo 1**). Terrain adjacent to the existing road is largely undisturbed, although a number of off-highway vehicle (OHV) trails intersect the proposed ROW and surrounding habitat (**Appendix B, Photo 2**). A powerline crosses the ROW approximately 0.9 mile west of the I-15/Washington Parkway interchange. A second powerline intersects the ROW from the south approximately 0.35 mile further west and parallels the southwest edge of the proposed ROW for approximately 0.75 mile north. A previously disturbed water pipeline ROW intersects the proposed Project area approximately 0.55 mile from the northern terminus at North Green Spring Drive. The north/south-trending portion of the proposed extension is adjacent to residential development on the west side. Elsewhere along the proposed extension, recreational and residential developments occur, primarily on the south and west sides of the proposed ROW (**Appendix B, Photos 3 to 7**). Land to the north and east of the proposed ROW is largely undisturbed, ranges from flat to rolling terrain, and is intersected in many areas by dry washes (**Appendix B, Photo 8**).

Geology

The proposed Project area would traverse the following geologic formations: Kayenta Formation, Older alluvial-fan deposits, River and stream deposits, Alluvial and eolian deposits, Navajo Sandstone, Old River and Stream Deposits, and Eolian Sand Deposits (UGS 2018).

Vegetation and Soils

The proposed Project crosses entirely through the Sonora-Mojave Creosote Bush-White Bursage Desert Scrub Ecological System (USGS 2011). With the exception of residential developments, OHV trails, and existing substation, and powerlines, vegetation outside of the ROW, particularly to the north, is intact. Species observed within or adjacent to the ROW were characteristic of this ecological system.

Dominant native vegetation within the Project area includes creosote (*Larrea tridentata*), white bursage (*Ambrosia dumosa*), sand sagebrush (*Artemisia filifolia*), Mormon tea (*Ephedra viridis*), blackbrush (*Coleogyne ramosissima*), rabbitbrush (*Chrysothamnus* spp., *Ericameria nauseosa*), brittlebrush (*Encelia* spp.), broom snakeweed (*Gutierrezia sarothrae*), shadscale saltbush (*Atriplex confertifolia*), banana yucca (*Yucca baccata*), buckhorn cholla (*Cylindropuntia acanthocarpa*), prickly pear cactus (*Opuntia* spp.), desert needlegrass (*Stipa speciosa*), sand dropseed (*Sporobolus cryptandrus*), galleta grass (*Hilaria* spp.), low woollygrass (*Dasyochloa pulchella*), desert globemallow (*Sphaeralcea ambigua*), desert marigold (*Baileya multiradiata*), desert trumpet (*Eriogonum inflatum*), honey mesquite (*Prosopis juliflora*), willow (*Salix* spp.), and Fremont cottonwood trees (*Populus fremontii*).

Dominant non-native species observed in the field included cheatgrass (*Bromus tectorum*), Russian thistle (*Salsola tragus*), redstem filaree (*Erodium cicutarium*), halogeton (*Halogeton glomeratus*), and tamarisk (*Tamarix ramosissima*).

Two soil types, Eroded land-Shalet complex warm (Eb) and Harrisburg fine sandy loam (HbC) with 1 to 5 percent slopes make up over 84 percent of soils traversed by the Project (NRCS 2018). The Eb extends continuously about 1.15 miles west from I-15. HbC occurs in four locations, with the two largest areas on the north/south termini of the proposed extension. The remaining soil types—Pintura loamy fine sand, Pintura-Toquerville complex, and Winkel gravelly fine sandy loam—occur in smaller, interspersed locations in the Project area.

Aquatic Resources

The USFWS Wetlands Inventory Mapper (USFWS 2018b) identified aquatic resource features within the action area. One named intermittent stream, Mill Creek, crosses the western end of the proposed extension and has potential to drain several valleys located north of the proposed ROW during rain events. Two other unnamed ephemeral streams cross the proposed ROW: one near the center of the alignment and the second about 0.17 mile from the I-15/Washington Parkway interchange.

V. SPECIES AND CRITICAL HABITAT CONSIDERED

Federally-listed species protected under the ESA that may occur within or near the Project area were identified using information obtained from the USFWS Information for Planning and Conservation (IPaC) tool (USFWS 2018c). The Utah Division of Wildlife Resources (UDWR) Utah Natural Heritage Program (UNHP) office was contacted to obtain additional information on documented occurrences of federally-protected and Utah state-sensitive species near the Project area; a letter from the UNHP is included in **Appendix C**.

The only listed species identified as likely to occur in the action area is the threatened desert tortoise. In addition to desert tortoise, the IPaC site identified the following federally-listed species that may occur within the Project area: California condor (*Gymnogyps californianus*), Mexican spotted owl (*Strix occidentalis lucida*), southwestern willow flycatcher (*Empidonax traillii*), western yellow-billed cuckoo (*Coccyzus americanus*), woundfin (*Plagopterus argentissimus*), Virgin River chub (*Gila seminuda*), Shiwits milkvetch (*Astragalus ampullarioides*), Holmgren milkvetch (*Astragalus holmgreniorum*), dwarf bear-poppy (*Arctomecon humilis*), and Jones cycladenia (*Cycladenia humilis* var. *jonesii*).

Further analysis of habitat requirements and known ranges of these species determined that there is no suitable habitat in the action area for any of the above species, except for desert tortoise. Species with preferred habitat and known ranges different than those associated with the action area were eliminated from further consideration. Federally-listed species for which there would be no effect and that did not require detailed analysis are addressed in **Appendix D**.

Following USFWS pre-project survey protocol (USFWS 2018a), Transcon Environmental (Transcon) biologists conducted presence/absence surveys for desert tortoise within the action area from November 12 to November 14, 2018. During these surveys, Transcon biologists also documented vegetation and wildlife habitat, and assessed habitat for potentially occurring species within the action area.

Federally-listed Species

Mojave Desert Tortoise

Status

The Mojave population of the desert tortoise was listed as threatened on April 2, 1990. Critical habitat was designated, and a recovery plan was published in 1994 (USFWS 1994) and updated in 2011 (USFWS 2011b). Six recovery units were established that encompass the entire range of the desert tortoise. The vast majority of threats to the desert tortoise or its habitat are associated with human land uses. The loss or degradation of these habitats to urbanization or other landscape-modifying activities place the desert tortoise at increased risk of extirpation. Because desert tortoises occupy large home ranges, the long-term persistence of extensive, non-fragmented habitats is essential for the species' survival. Threats identified in the 1994 Recovery Plan formed the basis for listing the desert tortoise as a threatened species; these threats continue to affect the species today (USFWS 2011b). In addition to impacts from human land uses, desert tortoise populations can harbor several pathogens causing potentially fatal upper respiratory tract disease, the most common of which is *Mycoplasma agassizii* (*M. agassizii*) (Sandmeier 2009). Desert tortoises can be tested for presence of *M. agassizii*-specific antibodies using an enzyme-linked immunosorbent assay (ELISA).

A recent analysis of population trends in adult desert tortoises from 1999 through 2014 in the five recovery units showed an overall decrease of 37 percent from the estimated 2004 population of 336,393 adults to approximately 212,343 in 2014 (Allison and McLuckie 2018). In addition, the proportion of juveniles recorded in surveys decreased every year after 2007. Within the Upper Virgin River Recovery Unit, the estimated population of adults decreased 24 percent during this time from 13,226 to 10,010. Only the Northeastern Mojave Recovery Unit showed density increases in adults, but densities in this Recovery Unit are the lowest of the six recovery units. Due to known but unquantified large-scale habitat conversions resulting from military exercises, renewable energy development, and catastrophic wildfire, as well as many smaller habitat conversions and habitat degradation, the 2014 abundance estimates totaling 212,343 adults are considered maximum estimates. One anticipated effect of habitat loss is reduction in demographic connections to neighboring populations, leading to decreasing resilience of local desert tortoise populations (Allison and McLuckie 2018).

Habitat Characteristics

Throughout most of the Mojave Desert, tortoises occur most commonly on gently sloping terrain with sandy-gravel soils where sparse cover of low-growing shrubs allows for the establishment of herbaceous plants. Soils must be friable enough for digging of burrows but firm enough so that burrows do not collapse. Typical habitat for the desert tortoise in the Mojave Desert has been characterized as creosote bush scrub in association with white bursage below 5,500 feet (1,677 meters) where precipitation ranges from 2 to 8 inches and the diversity of perennial plants and production of ephemeral plants is high (USFWS 2011b, Allison and McLuckie 2018).

This Project area is located within the Upper Virgin River Recovery Unit, as designated by the Revised Recovery Plan for the Desert Tortoise (USFWS 2011b). This Recovery Unit is located at the extreme northeastern edge of the species range. Desert tortoises located within this Recovery Unit often live in a complex topography consisting of canyons, mesas, sand dunes, and sandstone outcrops where vegetation is a transitional mixture of sagebrush scrub, creosote bush scrub, blackbrush scrub, and sandy soil communities. Tortoises found within this Recovery Unit often use sandstone and lava caves instead of burrows, travel to sand dunes for laying eggs, and use other habitats for foraging (USFWS 2011b).

Designated Critical Habitat

Desert tortoise designated critical habitat occurs in the action area east and west of the Project area (**Appendix A, Map 3**). The vast majority of desert tortoise designated critical habitat in Utah is located within the boundaries of the Reserve, north of St. George and Washington City. The Reserve is included within the Upper Virgin Recovery Unit (USFWS 2011b).

Specific physical and biological features of critical habitat listed in the recently published desert tortoise rangewide status update (USFWS 2018d) include:

- Sufficient space to support viable populations and to provide for movement, dispersal, and gene flow;
- Sufficient quality and quantity of forage species and the proper soil conditions to provide for the growth of these species;
- Suitable substrates for burrowing, nesting, and overwintering;
- Burrows, caliche caves, and other shelter sites;
- Sufficient vegetation for shelter from temperature extremes and predators; and
- Habitat protected from disturbance and human-caused mortality (the Reserve boundary is delineated with tortoise-proof fencing along the northern and eastern reaches of the action area).

Environmental Baseline

The Project area and action area are located entirely within the North Washington Incidental Take Area (Take Area 5) identified in Washington County's Habitat Conservation Plan (HCP) (see map in **Appendix E**). Ten Incidental Take Areas were designated in the HCP (Washington County Commission 1995; effective February 22, 1996) in which the take of desert tortoise was permitted. Proposed activities identified in Washington County needing an incidental take permit for desert tortoise include those associated with growth and development, mining, road building, and utility corridors. Incidental take areas outside of the Red Cliffs National Conservation Area were designated in the HCP as identified desert tortoise habitat where incidental take was most likely to occur in Washington County. An incidental take permit is a permit issued under Section 10 of the ESA to non-federal entities undertaking otherwise lawful projects that might result in the take of listed species.

The UNHP database (**Appendix C**) includes recent records of occurrence for desert tortoise within 0.5 mile of the Project area. In 2010, UDWR biologists conducted desert tortoise surveys to clear (to capture and relocate desert tortoises to approved translocation areas, as provided for in the HCP) Take Area 5 in order to facilitate development of the area (email correspondence, Rognan 2018) (**Appendix C**). Surveys yielded minimal sign of tortoise; sign that was observed was found mostly near the Reserve boundary (McLuckie et al. 2010). Surveyors removed only one adult desert tortoise in Mill Creek, north of where the action area of the Project is currently located. This adult was not relocated because it was ELISA-positive for presence of *M. agassizii*. Follow-up surveys of Take Area 5 conducted by Reserve biologists have not resulted in the detection or relocation of other desert tortoises.

The proposed Project area occurs within and adjacent to designated critical habitat for desert tortoise. The western terminus of the proposed Project area extends into desert tortoise critical habitat delineated outside of the boundaries of the Reserve for approximately 0.2 mile. The Project area does not extend into the boundaries of the Reserve; however, portions of the action area extend into the Reserve at the eastern and western ends of the proposed Project area and the southern boundaries of the Reserve are as close as approximately 0.04 mile from the proposed Project area near the east end (**Appendix B, Photo 9**).

The action area traverses through portions of relatively intact Sonora-Mojave Creosotebush-White Bursage Desert Scrub habitat typical for desert tortoise (**Appendix B, Photos 10 and 11**). The action area provides sufficient areas with friable soils that are firm enough to support burrows and nests. Vegetation in the action area is suitable for providing desert tortoises protection from predators and temperature extremes.

Portions of intact habitat within the action area are fragmented by paved highways, utility corridors, and residential and recreational development, bringing vehicle and pedestrian traffic to the area (**Appendix B, Photos 12 to 16**). Ongoing residential development, and the subsequent conversion of suitable tortoise habitat to unsuitable tortoise habitat, is occurring near the west and south-central portions of the Project area. Additional developed or disturbed areas located within or adjacent to the Project area include an empty, graded lot located between I-15 and East Buena Vista Boulevard (listed for sale, approximately 6 acres of which occurs within the action area), paved roads and highways near the eastern and western termini, roadside parking and recreational activity associated with the Grapevine Trailhead near the eastern terminus, an electrical substation, multiple overhead powerlines, a water pipeline, the Green Spring Golf Course, and a network of OHV trails/dirt roads. During field surveys, high baseline levels of anthropogenic disturbance, mainly from active construction areas and recreational use, were noted. Unleashed domestic dogs, which are potential predators for desert tortoise, were observed, and canine scat and tracks were noted throughout the entirety of the action area. Proliferation of non-native plants was observed in areas where disturbance has occurred or is ongoing.

See **Appendix B** for desert tortoise habitat photographs within the Project area.

Survey Methods

Following the pre-project field survey for potential desert tortoise habitat (USFWS 2018a), Transcon biologists conducted presence/absence surveys for desert tortoise within all suitable habitat in the action area from November 12 to November 14, 2018. One-hundred percent survey coverage was accomplished in all accessible areas using 10-meter-wide belt transects that were surveyed within the action area, comprised of the Project area and a 300-foot-wide buffer surrounding the Project area (**Appendix A, Maps 4 to 8**). Based on prior USFWS approval, transects were oriented along the length, rather than across the width, of the 2.75-mile-long Project ROW.

Transects were not surveyed in areas of unsuitable habitat, including riparian areas and highly developed areas such as residential developments, the Green Spring Golf Course, the substation, and paved

roads/highways (**Appendix B, Photo 17**). Accessible habitat fragments in these locations were surveyed as appropriate to ensure full coverage, though tortoise occupancy would be unlikely in association with high levels of habitat fragmentation and anthropogenic disturbance/activity. Aerial imagery does not reflect the current extent of development in the Project vicinity. All data collected during surveys were recorded on USFWS Desert Tortoise Pre-Project Survey Data Sheets and are located in **Appendix F**.

Survey Results

No desert tortoises were observed in the action area during surveys. Five unoccupied burrows that displayed potential to support tortoise occupancy were recorded (**Appendix A, Maps 5 and 6; Appendix B, Photos 18 to 25**). Of the five potential burrows located during surveys:

- Two burrows large enough for adult tortoises to occupy were located beneath rock ledges.
- Two burrows were located beneath creosote bushes with smaller openings that could support juvenile tortoise occupancy in addition to a variety of smaller burrowing mammals.
- One burrow displaying the characteristic half-moon shape and adequate size to support an adult tortoise was located in an open sandy area near the base of a creosote bush.

All potential burrow observations occurred on the north side of the action area. No other signs of desert tortoise (e.g., scat, tracks) were observed near any of the burrows or within the action area. Photographs and descriptions of survey observations were provided to Red Cliffs Desert Reserve Biologist Cameron Rognan. Following review, Mr. Rognan concurred that these burrows were only potential and could not conclusively be attributed to desert tortoise due to the lack of definitive tortoise sign (email correspondence, Rognan 2018).

All specific physical and biological features of critical habitat were observed near the eastern terminus where the action area occurs within designated critical habitat. Both western ends of both the Project and action areas extend into designated critical habitat as it is delineated; however, this habitat has been heavily disturbed or removed during ongoing urbanization and construction of paved roads and lacked any of the physical and biological features of critical habitat at the time of survey.

VI. EFFECTS ANALYSIS

Mojave Desert Tortoise

Species

Direct Effects

No direct effects to desert tortoise species are anticipated to occur as a result of the proposed Project. Suitable desert tortoise habitat consisting of native shrubs, forbs, cacti, and friable soils suitable for burrowing that could provide suitable forage and shelter from temperature extremes and predators is present within much of the Project area and would be permanently removed. The broad expanse of relatively undisturbed vegetation north of the proposed Project area combined with the close proximity of occupied designated critical habitat increases the potential for desert tortoise to occur within the action area. However, 2018 protocol surveys conducted by Transcon biologists did not detect tortoise species or fresh sign within the action area of the Project. Five potential burrows were discovered but could not be definitively identified as tortoise burrows due to the lack of associated sign. Surveys conducted in 2010 by the UDWR and Reserve biologists resulted in the discovery of only one tortoise in Mill Creek north and outside of the action area, and subsequent follow-up surveys conducted since have not resulted in the detection of any more tortoises (McLuckie et al. 2010). Additionally, the Reserve, where tortoises are known to occur, is separated from the Project by tortoise-proof fencing, preventing tortoises within the Reserve from traveling into the Project area. Therefore, it is not expected that desert tortoises would be

found with the Project area during construction of the proposed Project, and thus, the species would not be directly impacted by implementation of the proposed Project.

Indirect Effects

Indirect effects to desert tortoise, including increased levels of human presence, noise and fugitive dust, could occur as a result of the proposed Project, largely during grading, widening, paving, and landscaping. These effects would be temporary and potential impacts would be minimized through implementation of appropriate conservation measures identified in Section II. Indirect effects to species also include the reduced amount of available habitat resulting from the permanent removal of suitable habitat located within the Project area. Construction of the proposed paved roadway would create an impervious surface up to 166 feet wide that would inhibit regrowth of native vegetation and prevent tortoise burrowing should tortoises ever inhabit that Project area. Indirect effects associated with future, long-term use of the new road include potential increases in vehicle-related desert tortoise injury or mortality. The finished road extension would serve as a barrier to movement of a number of species, permanently dividing a section of desert habitat into areas north and south of the extension and narrowing the buffer of undeveloped land south of the Reserve and north of Washington City. However, as tortoises have not been observed within or near the action area since 2010 and are not expected to inhabit the Project area and as extensive suitable desert tortoise habitat located north of the Project area would remain unaffected by implementation of the Project, potential indirect effects to species would be minimal.

Designated Critical Habitat

Direct Effects

Approximately 4 acres near the western terminus of the proposed ROW are located within desert tortoise designated critical habitat. This portion of the proposed Project area is currently heavily disturbed, is being removed through residential and other roadway development, and lacks any of the specific physical and biological features required of a critical habitat designation. Therefore, no direct impacts are expected to result from implementation of the proposed action.

Indirect Effects

Indirect effects to designated critical habitat located within the action area may include increased levels of fugitive dust during construction activities. However, these effects would be temporary and potential impacts would be minimized through implementation of appropriate conservation measures identified in Section II.

Conservation Measures

The following conservation measures would be implemented to avoid or minimize impacts to all federally-listed and candidate species and their habitat:

- During Project activities, vehicle parking and material stockpiles would be located in previously disturbed and/or environmentally cleared areas.
- To minimize potential for the spread of invasive weeds and soil erosion, UDOT would comply with UDOT Special Provision 02924s, Invasive Weed Control and Standard Specification 01571, Temporary Environmental Controls.
- Fueling of machinery would occur at least 100 feet from wetlands and aquatic areas.
- Fill materials would be obtained from a validated clean source.
- A seed mix including native species will be used to vegetate temporarily disturbed areas.
- Implementation of protective measures specified in the Stormwater Pollution Prevention Plan (SWPPP) would provide erosion and sediment control and minimize or avoid accidental spills of

hazardous materials. A project Spill Prevention and Countermeasures (SPCC) Plan would be developed and followed during construction. This plan would identify riparian zones and drainages and outline conservation measures to ensure protection. UDOT would implement a plan to identify and protect sensitive resources through applicable conservation measures.

- A desert tortoise pre-Project clearance survey would be conducted within the ROW and a 300-foot buffer on either side of the ROW immediately prior to surface disturbance.
- Desert tortoise training would be provided by a qualified tortoise biologist to all on-site Project personnel prior to initiation of construction activities; the training would inform Project personnel of federal protections for the species, take avoidance measures (e.g., low speeds, checking under vehicles, etc.), and protocol if desert tortoise or sign of desert tortoise are encountered.
- To prevent entrapment of tortoises during construction, all open pits or trenches would be monitored throughout the construction day.
- The underside of any parked vehicles and equipment will be checked for tortoises prior to moving the vehicle or equipment.
- Excavated holes more than 2 feet deep will be covered at the close of each day or outfitted with one or more escape ramps. Alternatively, fencing may be erected around open pits or trenches. At the beginning of the construction day and before pits or trenches are filled, they will be inspected for trapped animals. If any animals are found, they would be moved out of harm's way by a qualified biologist approved by the USFWS.
- If desert tortoise or other threatened or endangered wildlife species are encountered in the Project area during construction, the individual species will not be approached or handled and all nearby Project activities will be halted. The Red Cliffs Desert Reserve will be notified, and construction activities will not be reinitiated until the tortoise has been removed or has left the Project area on its own.
- A Field Contact Representative (FCR) will be responsible for overseeing compliance with protections for federally-listed species. The FCR will have the authority to halt activities that are in violation of the applicant-committed measures. The FCR will also halt non-emergency Project activities that may endanger a federally-listed species. The FCR will authorize work resumption only after the hazards are removed, the species is no longer at risk, or the individual is moved out of harm's way by an authorized biologist approved by the USFWS.
- Any Project-related inadvertent death or injury of desert tortoise or other listed species would immediately be reported to the USFWS, Red Cliffs Desert Reserve, and other appropriate agencies.

VII. DETERMINATION OF EFFECTS

The determination of effect of the proposed action on federally protected resources and associated rationale are presented below. **Table 1** presents a summary of determinations for each species of concern within the action area and its critical habitat, if applicable.

TABLE 1 EFFECT DETERMINATIONS OF SPECIAL-STATUS SPECIES AND CRITICAL HABITAT		
Species	Species Effect Determination	Designated Critical Habitat Effect Determination
Mojave desert tortoise	May affect, but is not likely to adversely affect	May affect, but is not likely to adversely affect

Federally-listed Species

Mojave Desert Tortoise

Species

A determination of *may affect, but is not likely to adversely affect* has been concluded for the following reasons:

- Direct impacts to suitable desert tortoise habitat within the Project area are anticipated, including increased removal of vegetation and paving or grading of friable soils suitable for burrowing, converting suitable habitat into unsuitable habitat.
- Short-term, indirect impacts to desert tortoises include increased levels of human presence, noise, and fugitive dust during construction of the proposed Project.
- Potential long-term, indirect impacts to desert tortoises include increased anthropogenic disturbance associated with public use of a new paved road and subsequent increases in vehicle-related injury or mortality.
- Within the Project area, Project-related surface disturbance would result in potential decreases in foraging success due to increased rates of erosion, fugitive dust, and proliferation of non-native plants.
- No tortoise or fresh sign were observed during pre-construction presence/absence surveys, and only limited presence and sign have been observed during previous surveys conducted in the area since 2010.
- Suitable habitat within the Reserve, where tortoises are known to occur, is separated from the Project area by tortoise-proof fencing.

Designated Critical Habitat

A determination of *may affect, but is not likely to adversely affect* has been concluded for the following reasons:

- No direct impacts to designated critical habitat still exhibiting the specific physical and biological features of critical habitat as outlined in the 2018 USFWS status update (USFWS 2018d) are anticipated.
- Potential indirect impacts to designated critical habitat including, increased fugitive dust during construction activities, would be minimized through implementation of appropriate BMPs.

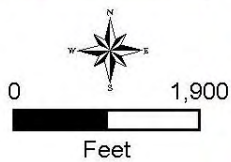
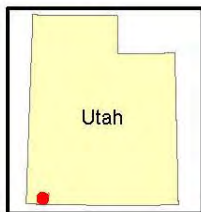
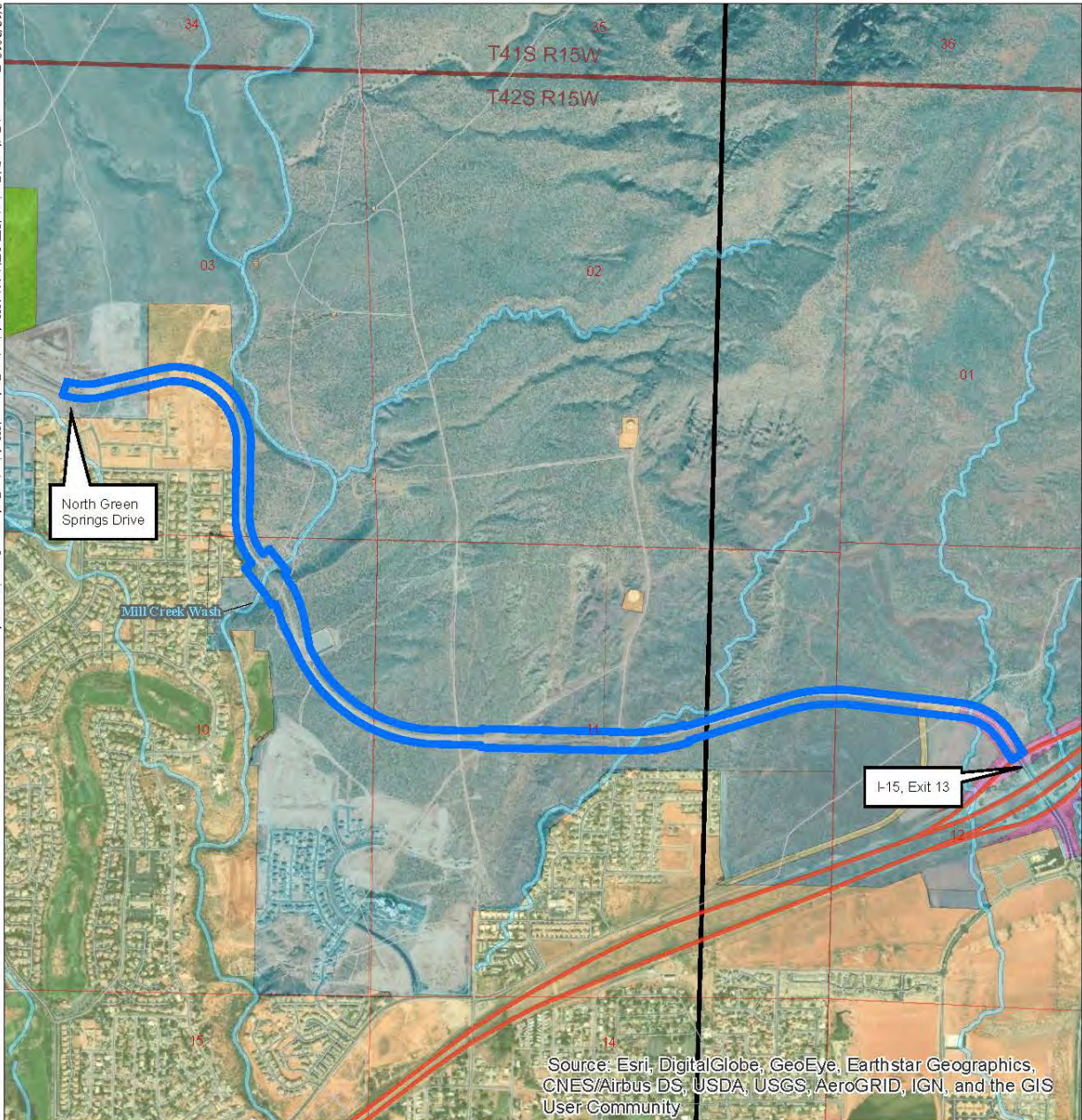
VIII. REFERENCES

- Allison, Linda J., and Ann M. McLuckie. 2018. Population trends in Mojave desert tortoises (*Gopherus agassizii*). *Herpetological Conservation and Biology* 13(2): 433-452.
- McLuckie, A., A. Bianco, J. Borde, B. Cox, R. Dobbs, L. Dreger, C. Edwards, P. Liens, J. Lundquist, M. Lubejko, K. Nelson, D. Reynolds, M. Schifff, and M. Sullivan. 2010. *Field Report for Surveys Conducted in North Washington Incidental Take Area*.
- Natural Resource Conservation Science (NRCS). 2018. Web Soil Survey. Accessed November 20, 2018. <http://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx>.
- Rognan, Cameron. 2018. Email Correspondence Regarding Desert Tortoise Surveys of Take Area 5.
- Romin, L., and J. Muck. 2002. Utah Field Office Guidelines for Raptor Protection from Human and Land Use Disturbances. U.S. Fish and Wildlife Service, Utah Field Office. Salt Lake City, Utah
- Sandmeier, F.C. 2009. Immunology and disease in the Mojave desert tortoise (*Gopherus agassizii*). Dissertation, University of Nevada, Reno.
- United States Fish and Wildlife Service (USFWS). 1994. Desert Tortoise (Mojave Population) Recovery Plan. U.S. Fish and Wildlife Service, Portland, Oregon.
- _____. 1995. Virgin River Fishes Recovery Plan. U.S. Fish and Wildlife Service Region 6. Denver, Colorado.
- _____. 1996. Endangered and Threatened Wildlife and Plants Establishment of a Nonessential Experimental Population of California Condors in Northern Arizona; Final Rule. Federal Register, 10 16, 1996: 54044-54060.
- _____. 2011a. U.S. Fish and Wildlife Service Utah Field Office Guidelines for Conducting and Reporting Botanical Inventories and Monitoring of Federally-Listed, Proposed and Candidate Plants. Version: August 31, 2011. <https://www.fws.gov/utahfieldoffice/Documents/Plants/USFWS%20Utah%20Plant%20Survey%20Guidelines%20Final.pdf>
- _____. 2011b. Revised Recovery Plan for the Mojave Population of the Desert Tortoise (*Gopherus agassizii*). U.S. Fish and Wildlife Service, Pacific Southwest Region. Sacramento, California.
- _____. 2013a. Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Southwestern Willow Flycatcher. Federal Register. Vol. 78, No. 2. January 3, 2013. <https://www.gpo.gov/fdsys/pkg/FR-2013-01-03/pdf/2012-30634.pdf>.
- _____. 2013b. Dwarf Bear-Poppy Fact Sheet. 2013. https://www.fws.gov/mountain-prairie/factsheets/Dwarf%20Bear%20Poppy%20Fact%20Sheet_061913.pdf.
- _____. 2018a. Preparing for any Action that may Occur Within the Range of the Mojave Desert Tortoise (*Gopherus agassizii*). Version: October 26, 2018. https://www.fws.gov/nevada/desert_tortoise/documents/manuals/Mojave%20Desert%20Tortoise_Pre-project%20Survey%20Protocol_2018.pdf

- _____. 2018b. National Wetlands Inventory (NWI) Wetlands Mapper. <http://fws.gov/wetlands/Data/Mapper.html>.
- _____. 2018c. U.S. Fish and Wildlife Service Information, Planning, and Conservation System (IPaC). Environmental Conservation Online System (ECOS). <http://ecos.fws.gov/ipac/getting>.
- _____. 2018d. Status of the Desert Tortoise and its Critical Habitat. July 5, 2018. https://www.fws.gov/nevada/desert_tortoise/documents/misc/Status_of_the_Species-DT_February_9_2012.pdf
- United States Geological Service (USGS). 2011. Gap Analysis Program, 20160513, GAP/LANDFIRE National Terrestrial Ecosystems: U.S. Geological Survey. Accessed November 20, 2018. <https://doi.org/10.5066/F7ZS2TM0>
- _____. 2014. The National Map, U.S. Topo. Accessed November 20, 2018. <https://viewer.nationalmap.gov/basic/?basemap=b1&category=ustopo&title=US%20Topo%20Download>
- Utah Geological Survey (UGS). 2018. Geologic Maps Data Viewer. URL: <https://geology.utah.gov/>

APPENDIX A

PROJECT AREA MAPS



Legend

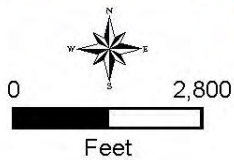
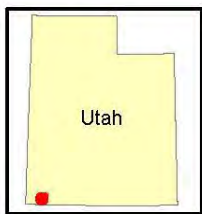
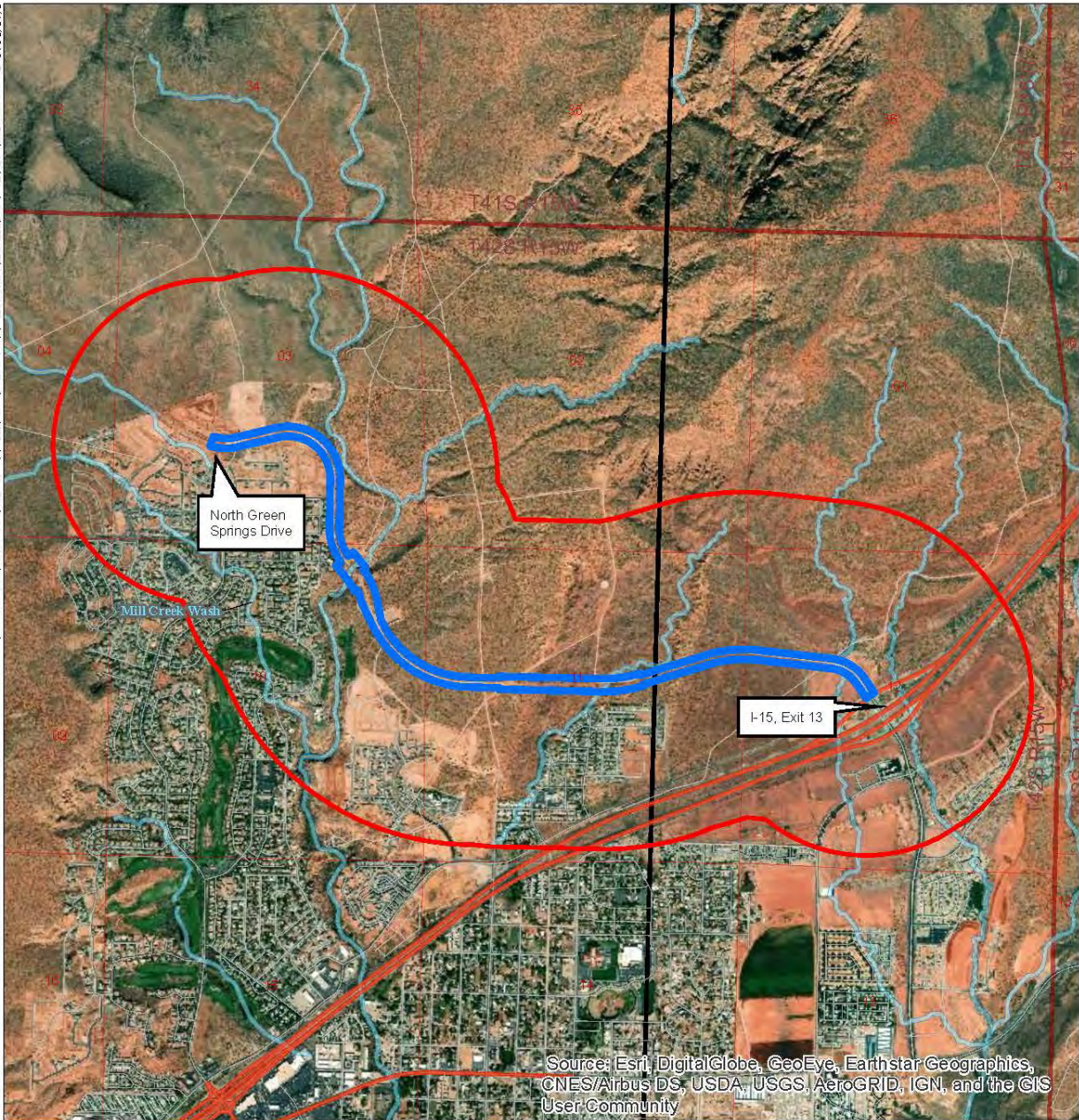
- Project Area
- Streams
- Highway
- Private
- SITLA
- UDOT
- UDWR

Project Overview

*Washington Parkway;
Green Springs Drive
to I-15 Exit 13*

Map 1 of 8





Legend

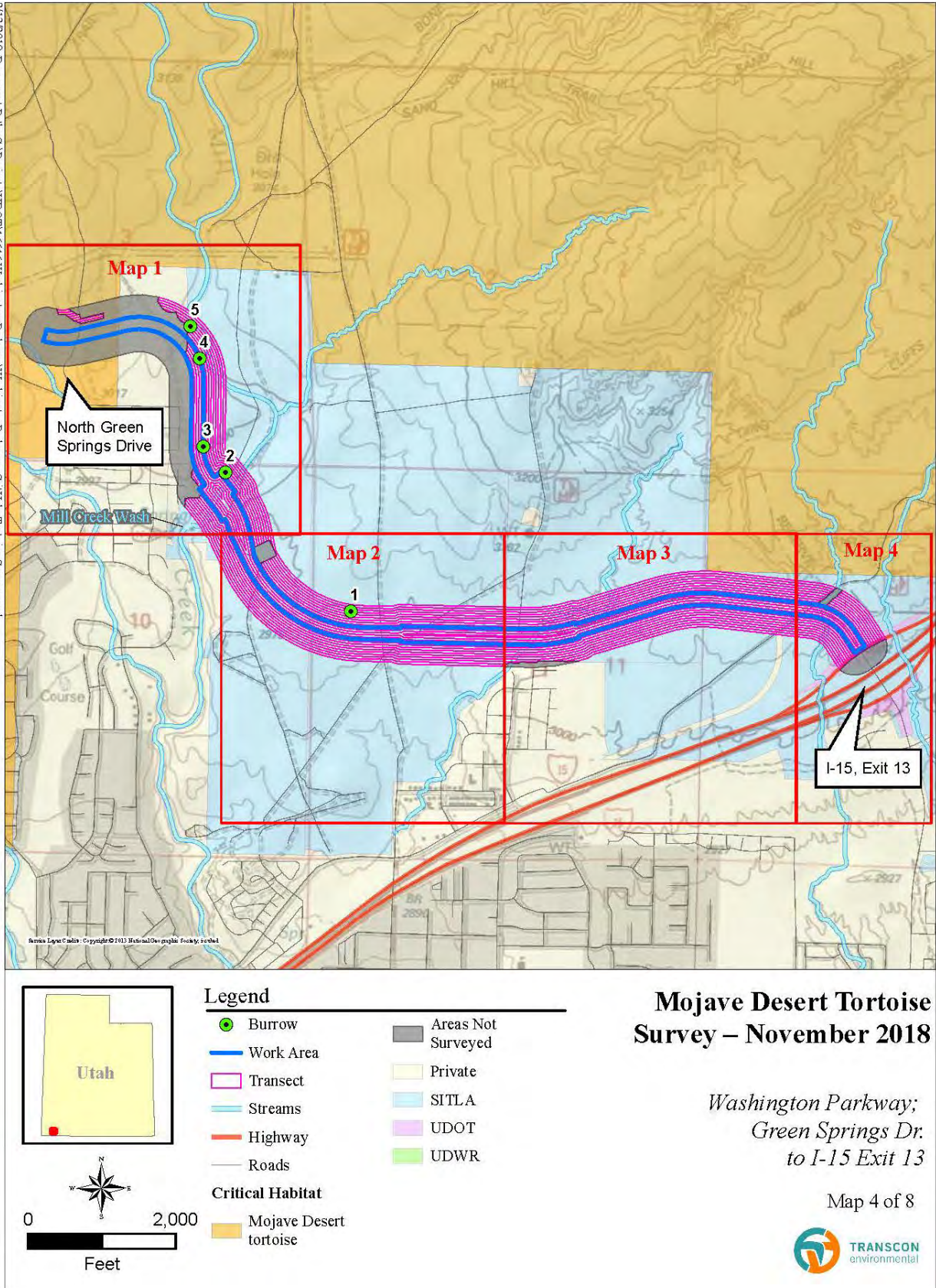
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- Highway
- Action Area

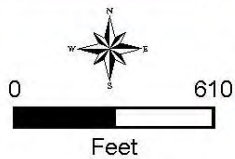
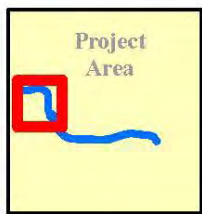
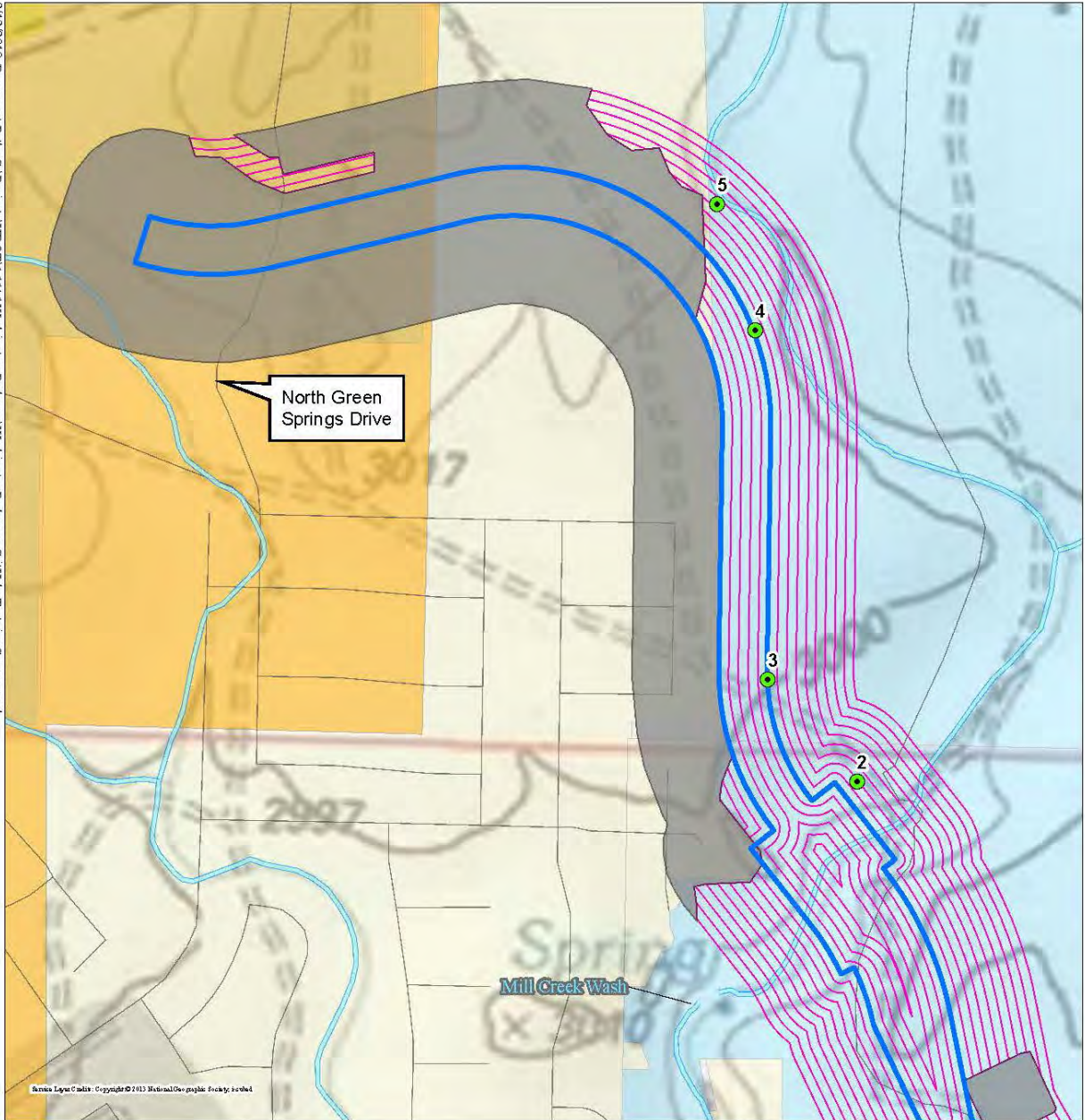
Project Action Area

*Washington Parkway;
Green Springs Drive
to I-15 Exit 13*

Map 2 of 8







Legend

- Burrow
- Work Area
- Transect
- Streams
- Roads
- Areas Not Surveyed
- Private
- SITLA
- UDWR

Critical Habitat

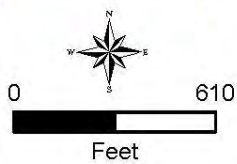
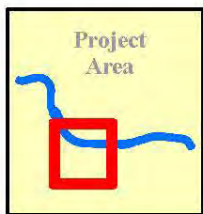
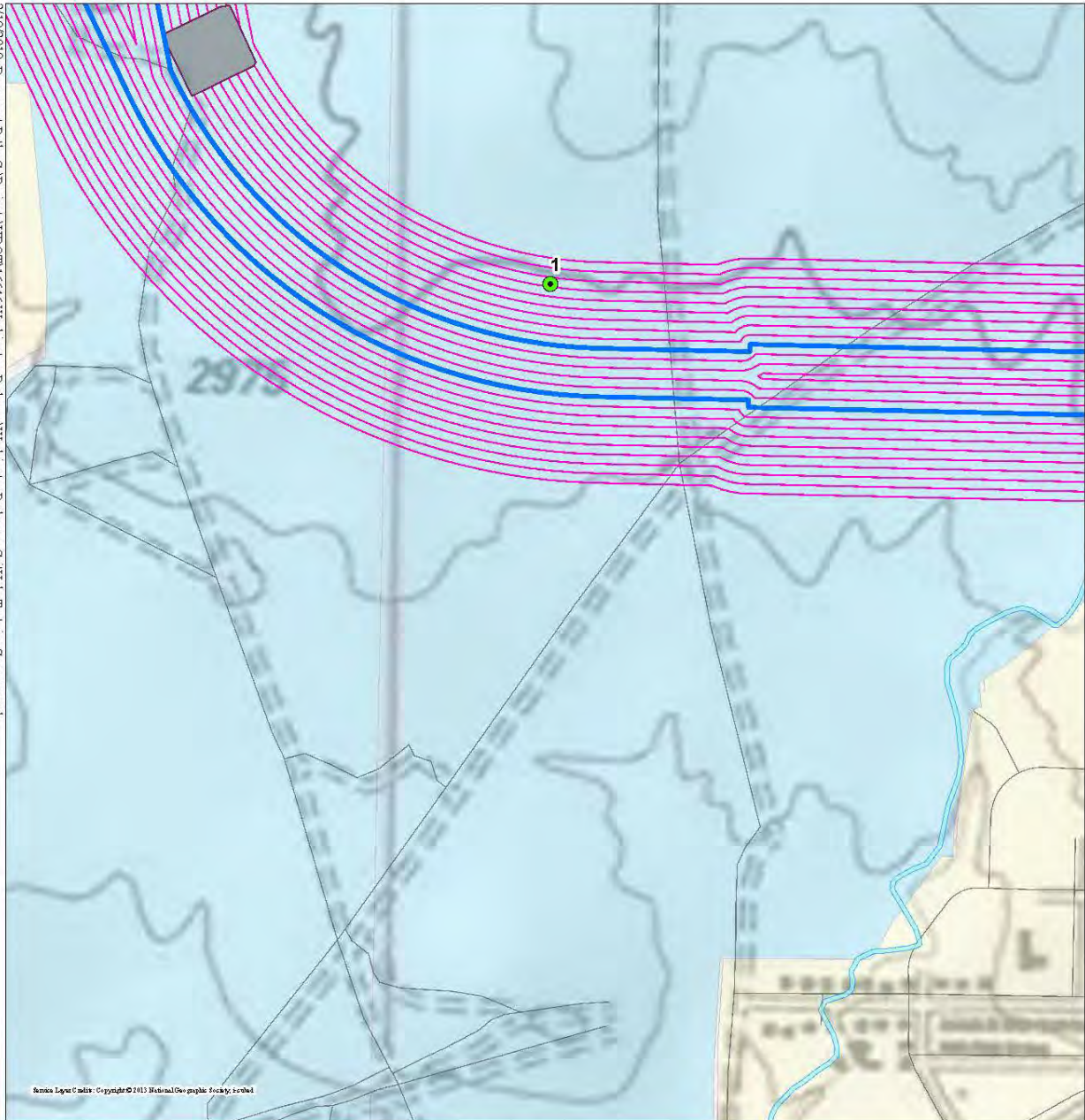
- Mojave Desert tortoise

Mojave Desert Tortoise Survey – November 2018

*Washington Parkway;
Green Springs Dr.
to I-15 Exit 13*

Map 5 of 8





Legend

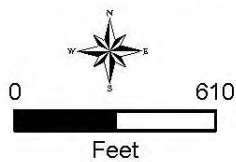
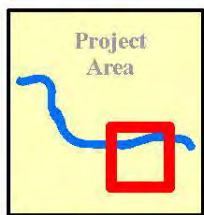
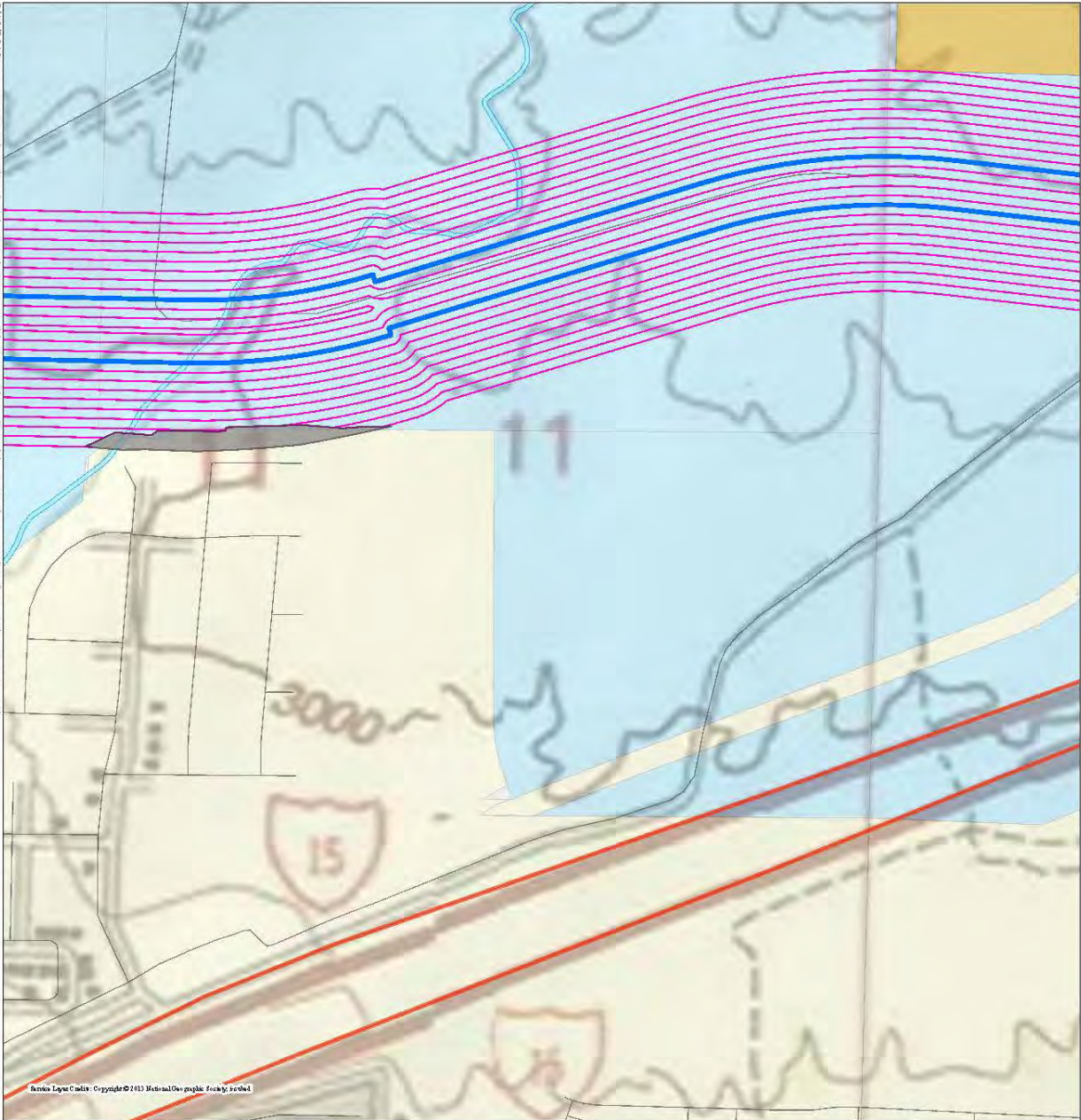
- Burrow
- Work Area
- Transect
- Streams
- Roads
- Areas Not Surveyed
- Private
- SITLA

Mojave Desert Tortoise Survey – November 2018

*Washington Parkway;
Green Springs Dr.
to I-15 Exit 13*

Map 6 of 8





Legend

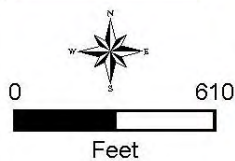
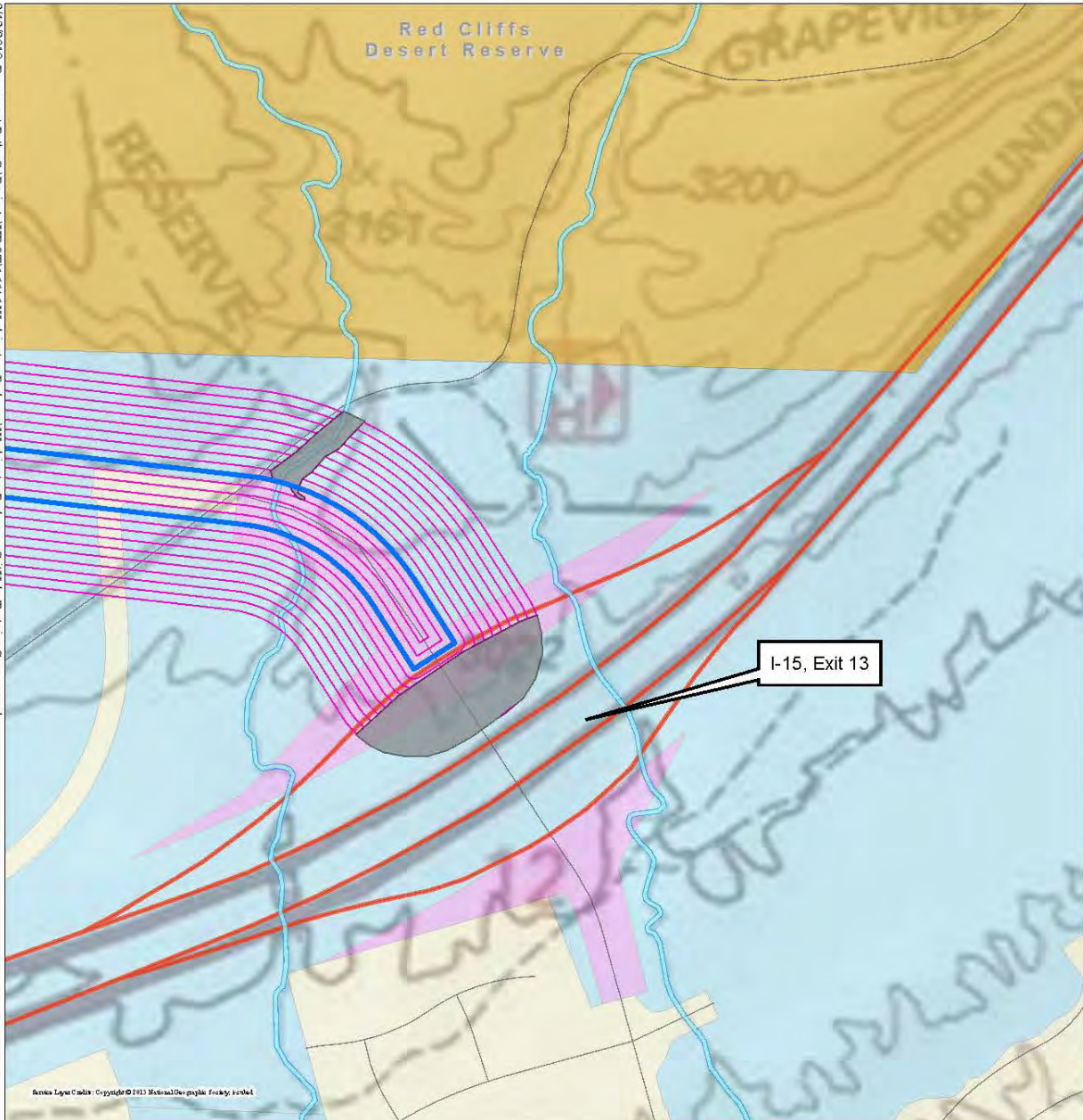
Work Area	Critical Habitat
Transect	Mojave Desert tortoise
Streams	Areas Not Surveyed
Highway	Private
Roads	SITLA

Mojave Desert Tortoise Survey – November 2018

*Washington Parkway;
Green Springs Dr.
to I-15 Exit 13*

Map 7 of 8





Legend

- Work Area
- Transect
- Streams
- Highway
- Roads
- Areas Not Surveyed
- Private
- SITLA
- UDOT

Critical Habitat

- Mojave Desert tortoise

Mojave Desert Tortoise Survey – November 2018

*Washington Parkway;
Green Springs Dr.
to I-15 Exit 13*

Map 8 of 8



APPENDIX B

PROJECT AREA AND DESERT TORTOISE SURVEY PHOTOGRAPHS



Photo 1. View east along the existing dirt road in the Project area, providing representation of off-road parking areas and widened disturbance areas within the Project area.



Photo 2. View west along the existing dirt road through the Project area, showing creosote scrub habitat in the foreground and housing developments in the background. Off-road vehicle parking and an unleashed domestic dog are included on the left side of the frame.



Photo 3. View north along existing dirt road, showing private residential development on the left side of the frame.



Photo 4. Representation of ongoing residential development occurring at the western terminus of the Project area.



Photo 5. Representation of ongoing residential development occurring at the western terminus of the Project area.



Photo 6. Representation of ongoing residential development occurring at the western terminus of the Project area.



Photo 7. View northeast from the south side of Mill Creek wash. Private residential development is visible in the background on top of the slope.



Photo 8. Representation of creosote scrub habitat within the action area, looking north from the east side of the Project area.



Photo 9. View of the tortoise fencing at the boundary of the Red Cliffs Desert Reserve within the action area.



Photo 10. View west along the existing dirt road in the Project area showing representative creosote bush-white bursage scrub habitat in the foreground and housing developments in the background.



Photo 11. Representation of high-quality creosote bush scrub habitat within the action area.



Photo 12. View east along Washington Parkway/Buena Vista Boulevard, showing unpaved roadside parking associated with the Grapevine Trailhead on the left side of the road.



Photo 13. View east across the I-15 Exit 13 entrance ramp. This portion of the action area was not surveyed due to high fragmentation and disturbance.



Photo 14. View east from the south side of the Project area, showing graded lot and adjacent habitat.



Photo 15. View of disturbed habitat on the north side of the electrical substation. This area is dominated by Russian thistle (*Salsola tragus*).



Photo 16. View of the electrical substation in the central portion of the Project area, looking west. This area is highly disturbed.



Photo 17. View of riparian habitat along wash at the eastern end of the action area near the Grapevine Trailhead, classified as unsuitable desert tortoise habitat.



Photo 18. Burrow 1 located within creosote bush scrub habitat near the base of a creosote bush. This burrow displays the characteristic half-moon shape and adequate size to support an adult tortoise. The burrow was unoccupied at the time of survey.



Photo 19. Burrow 1 located within creosote bush scrub habitat near the base of a creosote bush. This burrow displays the characteristic half-moon shape and adequate size to support an adult tortoise. The burrow was unoccupied at the time of survey.



Photo 20. Burrow 2 is located on the rocky slope of Mill Creek wash beneath a rock ledge. At more than 12 inches wide, it is large enough to accommodate adult tortoises as well as other burrowing mammals.



Photo 21. Close up photo of Burrow 2. This burrow may be used by a variety of wildlife, as displayed by the diversity of tracks inside the burrow. The burrow was noted as being deep, and the surveyor could not see to the back of the burrow during inspection.



Photo 22. Burrow 3 is located at the base of creosote bush near the proposed Project area boundary. It measured approximately 5 inches wide and could potentially accommodate a juvenile tortoise. This burrow was unoccupied at the time of survey.



Photo 23. Close up photo of Burrow 3 beneath creosote bush.



Photo 24. Burrow 4 is located on the rocky slope of a dry wash and was dug out in sand beneath a rock/boulder. The opening was recorded as approximately 3 to 5 inches wide and could potentially accommodate a juvenile tortoise. This burrow is located near the proposed Project area boundary. This burrow was unoccupied at the time of survey.



Photo 25. Burrow 5 is located on the rocky slope of a dry wash and was dug out in sand beneath a rock ledge. This burrow was unoccupied at the time of survey.

APPENDIX C

UDWR NATURAL HERITAGE PROGRAM LETTER AND RED CLIFFS DESERT RESERVE EMAIL CORRESPONDENCE



GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Wildlife Resources

MICHAEL D. FOWLKS
Division Director

October 26, 2018

Brian Parker
Transcon Environmental
1745 South Alma School Road, Suite 220
Phoenix, AZ 85210

Subject: Species of Concern Near the Washington Parkway Extension Project

Dear Brian Parker:

I am writing in response to your email dated October 22, 2018 regarding information on species of special concern proximal to the proposed Washington Parkway Extension Project located on Washington Parkway from Interstate 15 to Green Springs Drive in Washington, Utah.

Within a ½-mile radius of the project area noted above, the Utah Division of Wildlife Resources (UDWR) has recent records of occurrence for common chuckwalla, Mojave desert tortoise, sidewinder, western banded gecko and zebra-tailed lizard. In addition, within a two-mile radius there are recent records of occurrence for Arizona toad and Gila monster, and historical records of occurrence desert springsnail, relict leopard frog and spotted bat. All of the aforementioned species are included on the Utah Sensitive Species List.

The information provided in this letter is based on data existing in the Utah Division of Wildlife Resources' central database at the time of the request. It should not be regarded as a final statement on the occurrence of any species on or near the designated site, nor should it be considered a substitute for on-the-ground biological surveys. Moreover, because the Utah Division of Wildlife Resources' central database is continually updated, and because data requests are evaluated for the specific type of proposed action, any given response is only appropriate for its respective request.

In addition to the information you requested, other significant wildlife values might also be present on the designated site. Please contact UDWR's assistant habitat manager for the southern region, Rhett Boswell, at (435) 865-6112 if you have any questions.

Please contact our office at (801) 538-4759 if you require further assistance.

Sincerely,

Sarah Lindsey
Information Manager
Utah Natural Heritage Program

cc: Rhett Boswell
Gary Bezzant

1594 West North Temple, Suite 2110, PO Box 146301, Salt Lake City, UT 84114-6301
telephone (801) 538-4700 • facsimile (801) 538-4709 • TTY (801) 538-7458 • www.wildlife.utah.gov



From: **Cameron Rognan** <Cameron.Rognan@washco.utah.gov>

Date: Thu, Dec 20, 2018 at 11:52 AM

Subject:

To: Eric Hansen <erichansen@utah.gov>

Cc: Palmer, Bruce <Bruce.Palmer@jacobs.com>

Eric and Bruce,

Here is the field report associated with the UDWR/HCP survey and clearance of the Washington City take area. This clearance included all of the Washington Parkway alignment outside of the Reserve. We only found 1 tortoise and it was in Mill Creek wash closer to Green Springs and near the Reserve boundary. Utah Division of Wildlife Resources organized this clearance and signed off on it to facilitate immediate development of this take area. We have returned a few times for follow up surveys (for Brio and some utility lines), but we still haven't found or removed any more tortoises as a result of those follow up surveys.

I reviewed the Transcon report. From looking at the photos, only burrow #1 looked characteristically like a tortoise burrow to me. I think it was appropriate that the report classified these all as "potential" burrows. It's hard to know for sure unless you have tracks, scat or lots of other sign nearby. It was too difficult to see the burrows in the creosote bush to comment, but there are a lot of critters that like to burrow in the bushes and under large rocks like they found near Mill Creek. The lack of tortoise scat and definitive tortoise sign was consistent with what we found in 2010. I'm not sure if it's worth adding to your report or not, but I did find and remove a Russian tortoise this spring from this road. It was probably less than 100 m from burrow #1, somewhere near the intersection with Main St. It may or may not have been responsible for your burrow listed as detection #1, but you can decide if it's worth adding to your report.

In your discussions with Hilary, please let her know that we (HCP) would be happy to check out those burrows from Transcon's report and remove any tortoises found as the project proceeds. We are trying to keep tortoises off this property since it has already been cleared. The County's take permit should already cover all of the associated take of these tortoises and habitat so I am curious how your Section 7 consultation will play out. We have assisted FWS in other projects that had federal funding tied to them. Typically they have asked us to do a survey/clearance or provide documentation of prior release forms, and/or a letter from us. After that I don't know what else goes into the Section 7 consultation though. Hilary should already have a copy of our 2010 report, but feel free to send it to her if she needs it.

Thanks

Cameron

Cameron Rognan

Washington County HCP Administrator

cameron.rognan@washco.utah.gov

Office: (435) 256-6310

Cell: (435) 705-4431

APPENDIX D

THREATENED AND ENDANGERED SPECIES TABLE

TABLE D-1
HABITAT SUITABILITY ASSESSMENT FOR FEDERALLY-LISTED SPECIES WITH A “NO EFFECT” DETERMINATION

Species	Status*	Known to Occur Within the Project Area	Habitat Assessment and Determination of Effect
California condor (<i>Gymnogyps californianus</i>)	E, EX	No	This species roosts in snags; tall, open-branched trees; and on cliffs. It nests in scrubby chaparral or forested montane regions. An experimental population inhabits an area near Zion National Park. All individuals within this population are closely monitored by biologists working on the species recovery. California condors are designated by federal regulation (61 CFR 54044, October 16, 1996) as a 10(j) non-essential experimental population with no designated habitat in southern Utah and northern Arizona. California condors from the experimental population area frequently forage away from the Vermillion Cliffs of Arizona into southwestern Utah, including Washington County, though most California condor use occurs east of the Project area near Zion National Park; no nests, roosts, or other special use areas for condors have been identified in the action area.
Mexican spotted owl (<i>Strix occidentalis lucida</i>)	T	No	In Utah, this species inhabits steep-walled canyons that provide an abundant prey base and uses caves or crevices for nesting and roosting. No suitable nesting or foraging habitat is present within the action area. The nearest designated critical habitat for this species is located approximately 13 miles northeast of the action area.
Southwestern willow flycatcher (<i>Empidonax traillii extimus</i>)	E	No	This species breeds in relatively dense tracts of cottonwood, willow, and tamarisk in riparian and shrub communities below approximately 8,500 feet asl. No suitable nesting or foraging habitat is present within the action area. The nearest designated critical habitat for this species is located along the Virgin River approximately 1.1 mile south of the action area.

TABLE D-1
HABITAT SUITABILITY ASSESSMENT FOR FEDERALLY-LISTED SPECIES WITH A “NO EFFECT” DETERMINATION

Species	Status*	Known to Occur Within the Project Area	Habitat Assessment and Determination of Effect
Woundfin (<i>Plagopterus argentissimus</i>)	E	No	This small (4 inches), rare species of minnow is restricted to the Virgin River system from La Verkin Hot Springs near the lower portion of La Verkin Creek and the Virgin River confluence, downstream to Lake Mead, Nevada. It inhabits shallow, turbid, fast-flowing water with warm temperatures. No suitable habitat exists within the action area. The nearest designated critical habitat for this species is located within the Virgin River approximately 1.3 miles south of the action area. Appropriate sediment and erosion control BMPs would prevent Project-related impacts to aquatic habitat. Project activities are not anticipated to affect aquatic species or habitat.
Virgin River chub (<i>Gila seminuda</i>)	E	No	This rare species of minnow only occurs in the mainstream Virgin River system of southwestern Utah from La Verkin Hot Springs near the lower portion of La Verkin Creek and the Virgin River confluence, downstream to the Mesquite Diversion in northwest Arizona. It inhabits deeper, fast-flowing water with temperatures below 86 degrees Fahrenheit. No suitable habitat exists within the action area. The nearest designated critical habitat for this species is located within the Virgin River approximately 1.3 miles south of the action area. Appropriate sediment and erosion control BMPs would prevent Project-related impacts to aquatic habitat. Project activities are not anticipated to affect aquatic species or habitat.
Shivwits milkvetch (<i>Astragalus ampullarioides</i>)	E	No	This rare plant is endemic to Washington County, Utah at elevations from 2,860 to 3,661 feet asl. It occurs primarily on unstable clay soils on gently sloping outcrops of the Petrified Forest member of the Chinle Formation in warm desert shrub and pinyon-juniper communities. It blooms yellow-white flowers late April to early June. No suitable soils or habitat exist within the action area. The nearest designated critical habitat for this species is located approximately 2.2 miles east of the action area.

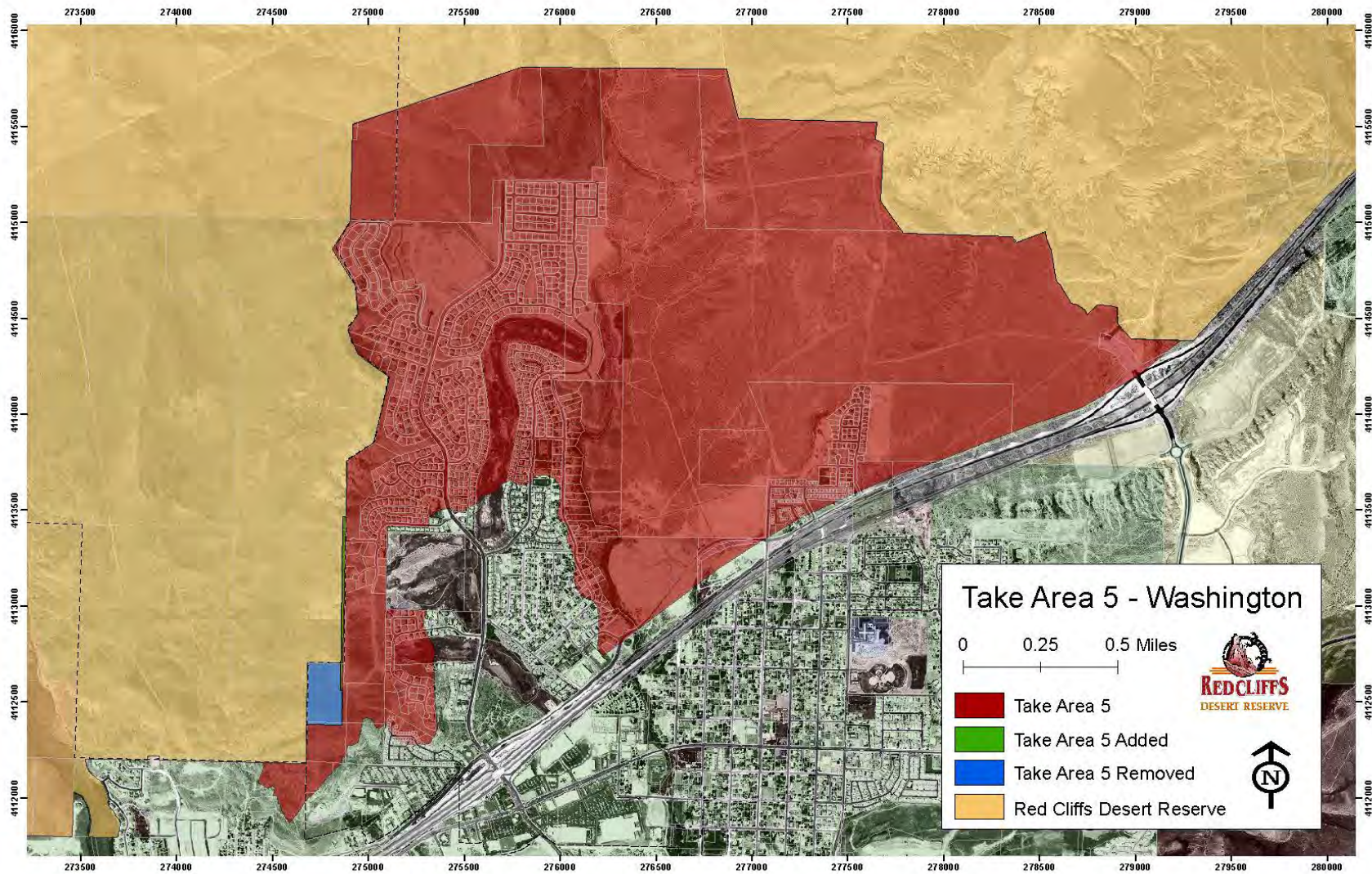
TABLE D-1
HABITAT SUITABILITY ASSESSMENT FOR FEDERALLY-LISTED SPECIES WITH A “NO EFFECT” DETERMINATION

Species	Status*	Known to Occur Within the Project Area	Habitat Assessment and Determination of Effect
Holmgren milkvetch (<i>Astragalus holmgreniorum</i>)	E	No	This rare plant occurs within warm desert shrub communities at elevations from 2,641 to 2,998 feet asl within shallow, sparsely vegetated soils derived primarily from the Virgin limestone member and Upper Red member of the Moenkopi Formation. There are 6 known populations of Holmgren milkvetch, all located within 10 miles of St. George, Utah. Three of the populations are located in Washington County, Utah and the other two are found along the border of Washington County, Utah and Mojave County, Arizona. It blooms pinkish-purple flowers with white-tipped wings from April to May. No suitable soils or habitat exist within the action area. The nearest designated critical habitat for this species is located approximately 2.7 miles southeast of the action area.
Dwarf bear-poppy (<i>Arctomecon humilis</i>)	E	No	This rare plant occurs within warm desert shrub communities at elevations from 2,700 to 3,300 feet with most known populations occurring between 2,800 and 3,000 feet asl. It grows on purple-hued, gypsiferous clay soils derived from various geologic members the Moenkopi Formation, most notably the Shnabkaib. No suitable soils or habitat exist within the action area. Critical habitat has not been designated for this species.
Jones cycladenia (<i>Cycladenia humilis</i> var. <i>jonesii</i>)	T	No	This small member of the Dogbane family (4 to 6 inches tall) is a long-lived herbaceous perennial found in mixed desert scrub, juniper, or wild buckwheat-Mormon tea plant communities. It has wide-oval or elliptical leaves and produces pink or rose-colored trumpet flowers that bloom from mid-April to early June. It occurs solely on gypsiferous, saline soils of Cutler, Summerville, and Chinle geologic formations within elevations ranging from 4,390 feet up to 6,000 feet asl. No suitable soils or habitat exist within the action area, and the species is not known to occur within Washington County, Utah. Critical habitat has not been designated for this species.

TABLE D-1 HABITAT SUITABILITY ASSESSMENT FOR FEDERALLY-LISTED SPECIES WITH A “NO EFFECT” DETERMINATION			
Species	Status*	Known to Occur Within the Project Area	Habitat Assessment and Determination of Effect
*Note: USFWS categories: Endangered (E)—Taxa in danger of extinction throughout all or a significant portion of its range; Threatened (T)/Proposed Threatened (PT)—Taxa likely to become endangered within the foreseeable future throughout all or a significant portion of its range; Experimental (EX)—Species considered to be experimental and non-essential in its designated use areas Sources: USFWS 1995, 1996, 2013a, 2013b, 2018c, USFWS database [http://ecos.fws.gov/tess_public/countySearch!speciesByCountyReport.action?fips=49017], and UDWR Conservation Data Center [http://dwrcdc.nr.utah.gov/ucdc/default.asp])			

APPENDIX E

OVERVIEW MAP OF NORTH WASHINGTON TAKE AREA (TAKE AREA 5)



APPENDIX F

USFWS DESERT TORTOISE SURVEY PRE-PROJECT SURVEY DATA SHEETS

USFWS DESERT TORTOISE PRE-PROJECT SURVEY DATA SHEET

Please submit completed copies of all datasheets and a shapefile of the sampled area to the action agency and local USFWS office within 30-days of survey completion

Date of survey: 11/12/2018 Survey biologist(s): Kathy Stark, Chelsa Daystar, Miranda Castillo
(day, month, year) (name, email, and phone number)

Site description: Washington Parkway
(project name and size, general location)

County: Washington Quad: _____ Location: _____
(UTM coordinates, lat-long, and/or TRS, map datum)

Circle one: 100% coverage or Sampling Area size to be surveyed: _____ Transect #: _____ Transect length: _____

GPS Start-point: 12 S 0276714 4114397 Start time: 0912 am/pm
(easting, northing, elevation in meters)

GPS End-point: same as start point End time: 1700 am/pm
(easting, northing, elevation in meters)

Start Temp: 1.7 °C End Temp: 13 °C

Live Tortoises

Detection number	GPS location Easting Northing		Time	Tortoise location (in burrow: all of tortoise beneath plane of burrow opening, or not in burrow)	Approx MCL ≥180 mm? (Yes, No or Unknown)	Existing tag # and color, if present
1						
2						
3						
4						
5						
6						
7						
8						

Tortoise Sign (burrows, scats, carcasses, etc)

Detection number	GPS location Easting Northing		Type of sign (burrows, scats, carcass, etc)	Description and comments
1	<u>12S 0276294</u>	<u>4115050</u>	<u>potential burrow</u>	<u>under creosote, small, 4-5"</u>
2	<u>12S 0276279</u>	<u>4115415</u>	<u>Potential burrow</u>	<u>in sand under rock. 3-5" wide, juvenile-sized.</u>
3	<u>12S 0276415</u>	<u>4114864</u>	<u>potential burrow</u>	<u>sand under rock - under boulder (deep) <12" wide</u> <u>can't see to back of burrow</u>
4				
5				
6				
7				
8				

Version: August 31, 2017

Page: 1 of 3

Transect number: _____

USFWS DESERT TORTOISE PRE-PROJECT SURVEY DATA SHEET

Please submit completed copies of all datasheets and a shapefile of the sampled area to the action agency and local USFWS office within 30-days of survey completion

Date of survey: 11/13/2018 Survey biologist(s): Brian Parker, Miranda Castillo, Katy Stark
(day, month, year) (name, email, and phone number)

Site description: Washington Parkway
(project name and size; general location)

County: Washington Quad: _____ Location: _____
(UTM coordinates, lat-long, and/or TRS; map datum)

Circle one: 100% coverage or Sampling Area size to be surveyed: _____ Transect #: _____ Transect length: _____

GPS Start-point: 12S 0270700 4114396 Start time: 0843 am/pm
(easting, northing, elevation in meters)

GPS End-point: SAME AS START End time: 1615 am/pm
(easting, northing, elevation in meters)

Start Temp: 1 °C 34F End Temp: 14 °C

Live Tortoises

Detection number	GPS location Easting Northing		Time	Tortoise location (in burrow: all of tortoise beneath plane of burrow opening, or not in burrow)	Approx MCL ≥180 mm? (Yes, No or Unknown)	Existing tag # and color, if present
1						
2						
3						
4						
5						
6						
7						
8						

Tortoise Sign (burrows, scats, carcasses, etc)

Detection number	GPS location Easting Northing		Type of sign (burrows, scats, carcass, etc)	Description and comments
1	<u>12S 0276900</u>	<u>4114370</u>	<u>burrow (empty)</u>	<u>burrow is the right shape/size - empty, no other sign</u>
2	<u>12S 0276239</u>	<u>4115548</u>	<u>potential burrow</u>	<u>burrow dug out under rock - on hill - no other sign</u>
3				
4				
5				
6				
7				
8				

Version: August 31, 2017

Page: 2 of 3
 Transect number: _____

USFWS DESERT TORTOISE PRE-PROJECT SURVEY DATA SHEET

Please submit completed copies of all datasheets and a shapefile of the sampled area to the action agency and local USFWS office within 30-days of survey completion

Date of survey: 11/14/2018 Survey biologist(s): Katy Stark, Miranda Castillo
(day, month, year) (name, email, and phone number)

Site description: Washington Parkway
(project name and size; general location)

County: Washington Quad: _____ Location: _____
(UTM coordinates, lat-long, and/or TRS; map datum)

Circle one: 100% coverage or Sampling Area size to be surveyed: _____ Transect #: _____ Transect length: _____

GPS Start-point: 125 0278677 4114396 Start time: 0812 am/pm
(easting, northing, elevation in meters)

GPS End-point: Same as start End time: 1600 am/pm
(easting, northing, elevation in meters)

Start Temp: 5.5 °C 42F End Temp: 14 °C 57F

Live Tortoises

Detection number	GPS location Easting Northing		Time	Tortoise location (in burrow: all of tortoise beneath plane of burrow opening, or not in burrow)	Approx MCL ≥180 mm? (Yes, No or Unknown)	Existing tag # and color, if present
1						
2						
3						
4						
5						
6						
7						
8						

Tortoise Sign (burrows, scats, carcasses, etc)

Detection number	GPS location Easting Northing		Type of sign (burrows, scats, carcass, etc)	Description and comments
1				
2				
3				
4				
5				
6				
7				
8				

From: [Whitcomb, Hilary](#)
To: [Kim Manwill](#)
Subject: Re: [EXTERNAL] Informal Consultation Request: Washington Parkway Extension from North Green Spring Drive to I-15
Date: Wednesday, May 1, 2019 2:14:13 PM

Thank you for the clarification!

On Wed, May 1, 2019 at 1:12 PM Kim Manwill <kmanwill@utah.gov> wrote:

Hilary,

Our plan was to proceed with a CE for a Washington City project, requesting informal consultation as indicated by Matt. The project will be built to the cities standards. UDOT is not applying any funds to the project. Therefore, the city is down sizing the finished pavement at this time to a two lane local street. They are preparing the plans & specification to advertise accordingly.

Let me know if you have any clarifying questions.

Thanks

Kim

Kim B. Manwill | *Project Director, R4*
708 South 100 West | Richfield, UT 84701
Phone: [435-896-0733](tel:435-896-0733) | kmanwill@utah.gov



On Wed, May 1, 2019 at 11:04 AM Whitcomb, Hilary <hilary_whitcomb@fws.gov> wrote:
Hey Kim,

Since we just talked about this last week and this seems like a total 180, I just wanted to make sure with you that you guys are wanting to consult on this project. My understanding from our conversation is that after speaking with our office and your solicitors, UDOT was withdrawing this project. There was concern from both about this project's interrelated nature with one of the proposed, but definitely not finalized, Northern Corridor alternatives. And so there was also some concern about this being predecisional? Let me know if I'm not remembering correctly. Our phones are down, so will have to suffice with email for now..

On Tue, Apr 30, 2019 at 2:00 PM Matt Howard <matthoward@utah.gov> wrote:
Larry,

UDOT is requesting informal consultation under Section 7(a)(2) of the Endangered Species Act for the proposed extension of Washington Parkway in Washington County, UT. Attachments to this email include the Biological Assessment and UDOT's letter

requesting USFWS concurrence that the proposed action is Not Likely to Adversely Affect Mojave desert tortoise.

Thank you for your review and assistance in this process.

--

-Matt Howard
Natural Resource Manager
Utah Department of Transportation
Office: 801-965-4038
Cell: 435-255-1956
matthoward@utah.gov

--

Hilary Whitcomb

Fish & Wildlife Biologist

Direct Line (385) 285-7930

Main Office (801) 975-3330

<https://www.fws.gov/utahfieldoffice/index.php> (surveyor requirements, trainings, outreach, etc.)

--

Hilary Whitcomb

Fish & Wildlife Biologist

Direct Line (385) 285-7930

Main Office (801) 975-3330

<https://www.fws.gov/utahfieldoffice/index.php> (surveyor requirements, trainings, outreach, etc.)

From: [Whitcomb, Hilary](#)
To: [Sarah Thomas](#)
Subject: Re: [EXTERNAL] Section 7 consult
Date: Wednesday, May 15, 2019 10:55:49 AM
Attachments: [Washington Parkway USFWS Letter 20190514.pdf](#)
[Final BA_Washington Parkway Extension_20190430.pdf](#)

Hey Sarah,

The consultation request letter and BA from UDOT are attached.

They have prepared their Biological Assessment (BA), which is attached. We would prepare the Biological Opinion (BO) for a formal consultation or a written concurrence letter for an informal consultation. Formal consultations fall under, "may affect, likely to adversely affect", while informal consultations fall under, "may affect, *not* likely to adversely affect".

They have concluded their project "may affect, but is not likely to adversely affect" the Mojave desert tortoise. We are in the process of evaluating their BA.

On Tue, May 14, 2019 at 4:35 PM Sarah Thomas <sarah@conserveswu.org> wrote:

Hi Hilary,

Thanks for your reply!

Would it be possible to see a copy of the CatEx consultation request?

Has UDOT prepared a BO already, and would it be possible to get a copy?

And do you know if UDOT has made an ESA determination yet on whether the Washington Parkway would adversely affect the tortoise?

Thanks,

Sarah

Sarah Thomas

Land Program Manager / SUNCLF Director

sarah@conserveswu.org

mobile 435-590-8172

Conserve Southwest Utah

[321 North Mall Drive, B202](#)

St. George, Utah 84790

On Tue, May 14, 2019 at 11:42 AM Whitcomb, Hilary <hilary_whitcomb@fws.gov> wrote:

Hi Sarah,

I did shave the side of my head :)

The appendices seem to refer to figures in the original HCP - take area maps are scattered throughout (figure 4.2 through 4.11) and I wonder if the UDP is referring to figure 3.7 for the utility maps. I would ask Cameron - let me know what you find out!

We did receive the CatEx consultation request from UDOT. I don't have an expected timeframe for it right now

Hope this helps!
Hilary

On Mon, May 6, 2019 at 11:18 AM Sarah Thomas <sarah@conserveswu.org> wrote:
Hi Hilary,

I hope you're doing well! I think I was sitting behind you at the last HCAC meeting (did you get a cool new hair cut?), but didn't get the chance to talk because of an appointment right after. I'm sorry I missed you, because I was hoping to ask a couple questions:

1- Were you able to find Appendix B from the Utility Development Protocols? (pp. 16-23)

2- Do you know where things are with the Section 7 Consultation for the Washington Parkway? (MP 13 to Reserve Boundary). After attending an open house on the Washington Pkwy. last winter, I learned that the Fed. Highways Administration is trying to push for a CE for this section of highway.

Has the Section 7 consultation happened and/or do you have an expected time frame for it?

Any info. you could share on this would be much appreciated,
Thanks,
Sarah
Sarah Thomas
Land Program Manager / SUNCLF Director
sarah@conserveswu.org
mobile 435-590-8172

Conserve Southwest Utah
[321 North Mall Drive](#), B202
St. George, Utah 84790

--

Hilary Whitcomb
Fish & Wildlife Biologist
Direct Line (385) 285-7930
Main Office (801) 975-3330
<https://www.fws.gov/utahfieldoffice/index.php> (surveyor requirements, trainings, outreach, etc.)

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State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

DEPARTMENT OF TRANSPORTATION

CARLOS M. BRACERAS, P.E.
Executive Director

JASON E. DAVIS, P.E.
Deputy Director of Engineering and Operations

TERIANNE S. NEWELL, P.E.
Deputy Director of Planning and Investment

April 30, 2019

Larry Crist
Field Supervisor, Utah Ecological Services Field Office
US Fish and Wildlife Service, Utah Field Office
2369 Orton Circle, Suite 50
West Valley City, Utah 84119

RE: Request for Concurrence with the Utah Department of Transportation's Determination that the Proposed Extension to Washington Parkway is Not Likely to Adversely Affect Mojave Desert Tortoise

Dear Mr. Crist

The Utah Department of Transportation (UDOT) presents its Biological Assessment (BA) of the Washington Parkway project for your office's consideration. The BA has been prepared to comply with Section 7 of the Endangered Species Act of 1973 (ESA), as amended, and to support the Categorical Exclusion (CatEx) UDOT is preparing for the Washington Parkway Project. With this letter, we are requesting the U.S. Fish and Wildlife Service's (FWS) concurrence with UDOT's determination that the proposed project is not likely to adversely affect Mojave desert tortoise.

Washington County, in cooperation with UDOT, proposes to extend Washington Parkway from North Green Spring Drive to I-15 Exit 13 in Washington County, Utah. For analysis of special status species, the action area for this project with regards to Mojave desert tortoise and sensitive plant species is comprised of a 300-foot buffer surrounding the approximately 2.75 miles from the I-15 and Washington Parkway interchange and north to connect with the existing northern terminus of North Green Spring Drive in Washington City. For avian species, a 0.5 mile buffer was analyzed, and a 0.25-mile downstream buffer was evaluated for aquatic species.

UDOT evaluated the potential impacts of the preferred alternatives to ten species identified by the information for Planning and Consultation (IPAC) system. These species are California condor (*Gymnogyps californianus*), Mexican spotted owl (*Strix occidentalis lucida*), southwestern willow flycatcher (*Coccyzus americanus*), woundfin (*Plagopterus argentissimus*), Virgin River chub (*Gila seminuda*), Shiwits milkvetch (*Astragalus ampullarioides*), Holmgren milkvetch (*Astragalus holmgreniorum*), dwarf bear-poppy (*Arctomecon humilis*), Jones cycladenia (*Cycladenia humilis* var. *jonesii*), and Mojave desert tortoise (*Gopherus agassizii*). In the attached BA, UDOT finds that Mojave desert tortoise suitable habitat and Critical Habitat are present in the Action Area and that impacts to Mojave



State of Utah

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desert tortoise and its Critical Habitat would be discountable. UDOT concludes that the project "may affect, but is not likely to adversely affect" Mojave desert tortoise. UDOT has determined the remaining species, along with their designated critical habitats, are not present in the Action Area. For these species, UDOT has determined that the proposed project would have "no effect".

For your additional information, UDOT is preparing the CatEx in accordance with the National Environmental Policy Act (NEPA) and under a Memorandum of Understanding (MOU) with the Federal Highway Administration (FHWA). Under this MOU, UDOT has been assigned FHWA's responsibilities for compliance with the requirements of Section 7 of the Endangered Species Act as part of the environmental review process for local government projects in Utah. UDOT anticipates issuing a CatEx in 2019.

Should you have any questions about this letter of the Biological Assessment, please contact me, Matt Howard, at 801.965.4038 or via email at matthoward@utah.gov.

Best regards,

A handwritten signature in blue ink that reads "Matt Howard".

Matt Howard
Natural Resource Manager
Utah Department of Transportation

Enclosures: Washington Parkway Biological Assessment

CC via Email: Hilary Whitcomb (FWS)
Naomi Kisen (UDOT)
Brian Parker (UDOT Consultant)

BIOLOGICAL ASSESSMENT

Washington Parkway; Green Springs Drive to Interstate 15 Exit 13
Washington City, Washington County, Utah

UDOT Project No.: F-R499(326)

PIN 16646

Prepared for:

Utah Department of Transportation
Region 4
210 West 800 South
Richfield, Utah 84701

For Submittal to:

U.S. Fish and Wildlife Service
Utah Ecological Services Field Office
2369 West Orton Circle
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Prepared by:

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April 2019

TABLE OF CONTENTS

I.	Introduction.....	1
II.	Description of the Proposed Action.....	1
	Project Location.....	2
III.	Action Area.....	2
IV.	Affected Environment.....	2
	Geology.....	3
	Vegetation and Soils	3
	Aquatic Resources	3
V.	Species and Critical Habitat Considered.....	3
	Federally-listed Species	4
VI.	Effects Analysis	7
	Mojave Desert Tortoise.....	7
	Conservation Measures.....	8
VII.	Determination of Effects.....	9
	Federally-listed Species	10
VIII.	References.....	11

LIST OF APPENDICES

Appendix A	Project Area Maps
Appendix B	Project Area and Desert Tortoise Survey Photographs
Appendix C	UDWR Natural Heritage Program Letter and Red Cliffs Desert Reserve Email Correspondence
Appendix D	Threatened and Endangered Species Table
Appendix E	Overview Map of North Washington Take Area (Take Area 5)
Appendix F	USFWS Desert Tortoise Pre-Project Survey Data Sheets

I. INTRODUCTION

The Utah Department of Transportation (UDOT) and the City of Washington have initiated a Categorical Exclusion for the proposed extension to Washington Parkway from North Green Spring Drive to Interstate 15 (I-15) Exit 13 (Project) in Washington County, Utah on Utah School and Institutional Trust Lands and private lands.

This Biological Assessment was prepared in accordance with the Endangered Species Act (ESA) of 1973, as amended. Section 7 of the ESA requires that, through consultation with the U.S. Fish and Wildlife Service (USFWS), federal agencies ensure their actions are not likely to jeopardize the continued existence of any species listed as threatened or endangered or result in the destruction or adverse modification of their critical habitat.

II. DESCRIPTION OF THE PROPOSED ACTION

Washington City, in cooperation with UDOT, proposes to use federal funds to extend Washington Parkway from North Green Spring Drive to I-15 Exit 13 in Washington County, Utah. The proposed Project area would extend for approximately 2.75 miles, would be generally 166 feet wide (83 feet to either side of the roadway centerline), and would be located within the existing Washington City right-of-way (ROW) and easements. The primary roadway improvements within the middle 2.1 miles of the Project area would include a single lane in each direction, a landscaped median, drainage crossings, street lighting, signage, and drainage detention facilities. A portion of the ROW has been graded for the installation of an existing water pipeline and powerline, but there remains an additional amount of grading needed to construct the roadway. All work and staging areas will be located within the Project ROW, easements, and other cleared areas.

Approximately 0.39 mile of the west end of the proposed Project ROW has already been developed and graded in preparation for paving by an adjacent, ongoing private housing development project. It is anticipated that this area would only require paving, and no new ground disturbance would be necessary. Approximately 0.26 mile of the east end of the proposed Project ROW consists of an existing paved road. Proposed improvements would consist of minor signing and paint striping changes to conform to the new roadway. No significant ground disturbing activities are anticipated in this area.

Extending Washington Parkway would include the following activities:

- Grading and compaction of the roadbed and shoulders;
- Cut and fill slopes;
- Paving of the roadway;
- Installation of culverts, headwalls, curb, signage, lighting, and landscaping;
- Implementation of Best Management Practices (BMPs) to minimize or prevent construction materials and debris, including water used in construction, from entering ephemeral streams; and
- Use of construction equipment, which may include, but not be limited to, paving machines, dump trucks, graders, scrapers, bulldozers, track hoes, water trucks, compactors, ready-mix trucks, and generators.

Construction of the parkway is proposed to begin in fall 2019 and is anticipated to last approximately 6 months.

Project Location

The proposed Project area extends for approximately 2.75 miles from the I-15 and Washington Parkway interchange and north to connect with the existing northern terminus of North Green Spring Drive in Washington City (**Appendix A, Map 1**). The Project area is located south of the Red Cliffs Desert Reserve (Reserve) in Washington City, central Washington County, Utah, in Sections 3 and 4 and 10 to 12, Township 42 South, Range 15 West, Salt Lake Baseline and Meridian on the Saint George, Utah 7.5-minute U.S. Geological Survey topographical map (USGS 2014).

III. ACTION AREA

The action area is defined as the area that could be directly or indirectly affected by a federal action (50 CFR 402.02). The action area includes the Project footprint where all permanent and temporary areas of ground disturbance would occur, plus additional species-specific buffers that extend beyond the Project footprint. These buffers were determined based on anticipated levels of construction proposed to occur within the Project footprint (i.e., the immediately impacted area), as well as activities that may cause impacts extending beyond the footprint (e.g., ground vibrations produced by vehicles and heavy equipment, noise, dust, and increased levels of human presence, etc.). For analysis of special status species, the action area for this Project includes a 0.5-mile buffer around the Project area for avian species, a 0.25-mile downstream buffer for aquatic species, and a 300-foot buffer around the Project area for Mojave desert tortoise (desert tortoise) (*Gopherus agassizii*) and sensitive plant species (**Appendix A, Map 2**). Determination of action area buffer distances follows recommendations from the USFWS guidelines for raptor protection (Romin and Muck 2002), USFWS Utah Field Office guidelines for botanical inventories and monitoring (USFWS 2011a), and desert tortoise pre-project survey protocol (USFWS 2018a). Construction-related impacts are not expected to extend beyond these buffers, considering that habitats within or adjacent to the Project area are subjected to existing levels of anthropogenic disturbance.

IV. AFFECTED ENVIRONMENT

The Project is located within the Creosote Bush-Dominated Basins of the Mojave Basin and Range ecoregion of southern Utah. Elevations within the action area range from approximately 2,934 (894 meters) feet above sea level (asl) in the area of the Mill Creek crossing to 3,124 (952 meters) feet asl at the east and west ends of the Project area.

The proposed ROW roughly follows the alignment of an existing unpaved access road devoid of any significant vegetation (**Appendix B, Photo 1**). Terrain adjacent to the existing road is largely undisturbed, although a number of off-highway vehicle (OHV) trails intersect the proposed ROW and surrounding habitat (**Appendix B, Photo 2**). A powerline crosses the ROW approximately 0.9 mile west of the I-15/Washington Parkway interchange. A second powerline intersects the ROW from the south approximately 0.35 mile further west and parallels the southwest edge of the proposed ROW for approximately 0.75 mile north. A previously disturbed water pipeline ROW intersects the proposed Project area approximately 0.55 mile from the northern terminus at North Green Spring Drive. The north/south-trending portion of the proposed extension is adjacent to residential development on the west side. Elsewhere along the proposed extension, recreational and residential developments occur, primarily on the south and west sides of the proposed ROW (**Appendix B, Photos 3 to 7**). Land to the north and east of the proposed ROW is largely undisturbed, ranges from flat to rolling terrain, and is intersected in many areas by dry washes (**Appendix B, Photo 8**).

Geology

The proposed Project area would traverse the following geologic formations: Kayenta Formation, Older alluvial-fan deposits, River and stream deposits, Alluvial and eolian deposits, Navajo Sandstone, Old River and Stream Deposits, and Eolian Sand Deposits (UGS 2018).

Vegetation and Soils

The proposed Project crosses entirely through the Sonora-Mojave Creosote Bush-White Bursage Desert Scrub Ecological System (USGS 2011). With the exception of residential developments, OHV trails, and existing substation, and powerlines, vegetation outside of the ROW, particularly to the north, is intact. Species observed within or adjacent to the ROW were characteristic of this ecological system.

Dominant native vegetation within the Project area includes creosote (*Larrea tridentata*), white bursage (*Ambrosia dumosa*), sand sagebrush (*Artemisia filifolia*), Mormon tea (*Ephedra viridis*), blackbrush (*Coleogyne ramosissima*), rabbitbrush (*Chrysothamnus* spp., *Ericameria nauseosa*), brittlebrush (*Encelia* spp.), broom snakeweed (*Gutierrezia sarothrae*), shadscale saltbush (*Atriplex confertifolia*), banana yucca (*Yucca baccata*), buckhorn cholla (*Cylindropuntia acanthocarpa*), prickly pear cactus (*Opuntia* spp.), desert needlegrass (*Stipa speciosa*), sand dropseed (*Sporobolus cryptandrus*), galleta grass (*Hilaria* spp.), low woollygrass (*Dasyochloa pulchella*), desert globemallow (*Sphaeralcea ambigua*), desert marigold (*Baileya multiradiata*), desert trumpet (*Eriogonum inflatum*), honey mesquite (*Prosopis juliflora*), willow (*Salix* spp.), and Fremont cottonwood trees (*Populus fremontii*).

Dominant non-native species observed in the field included cheatgrass (*Bromus tectorum*), Russian thistle (*Salsola tragus*), redstem filaree (*Erodium cicutarium*), halogeton (*Halogeton glomeratus*), and tamarisk (*Tamarix ramosissima*).

Two soil types, Eroded land-Shalet complex warm (Eb) and Harrisburg fine sandy loam (HbC) with 1 to 5 percent slopes make up over 84 percent of soils traversed by the Project (NRCS 2018). The Eb extends continuously about 1.15 miles west from I-15. HbC occurs in four locations, with the two largest areas on the north/south termini of the proposed extension. The remaining soil types—Pintura loamy fine sand, Pintura-Toquerville complex, and Winkel gravelly fine sandy loam—occur in smaller, interspersed locations in the Project area.

Aquatic Resources

The USFWS Wetlands Inventory Mapper (USFWS 2018b) identified aquatic resource features within the action area. One named intermittent stream, Mill Creek, crosses the western end of the proposed extension and has potential to drain several valleys located north of the proposed ROW during rain events. Two other unnamed ephemeral streams cross the proposed ROW: one near the center of the alignment and the second about 0.17 mile from the I-15/Washington Parkway interchange.

V. SPECIES AND CRITICAL HABITAT CONSIDERED

Federally-listed species protected under the ESA that may occur within or near the Project area were identified using information obtained from the USFWS Information for Planning and Conservation (IPaC) tool (USFWS 2018c). The Utah Division of Wildlife Resources (UDWR) Utah Natural Heritage Program (UNHP) office was contacted to obtain additional information on documented occurrences of federally-protected and Utah state-sensitive species near the Project area; a letter from the UNHP is included in **Appendix C**.

The only listed species identified as likely to occur in the action area is the threatened desert tortoise. In addition to desert tortoise, the IPaC site identified the following federally-listed species that may occur within the Project area: California condor (*Gymnogyps californianus*), Mexican spotted owl (*Strix occidentalis lucida*), southwestern willow flycatcher (*Empidonax traillii*), western yellow-billed cuckoo (*Coccyzus americanus*), woundfin (*Plagopterus argentissimus*), Virgin River chub (*Gila seminuda*), Shiwits milkvetch (*Astragalus ampullarioides*), Holmgren milkvetch (*Astragalus holmgreniorum*), dwarf bear-poppy (*Arctomecon humilis*), and Jones cycladenia (*Cycladenia humilis* var. *jonesii*).

Further analysis of habitat requirements and known ranges of these species determined that there is no suitable habitat in the action area for any of the above species, except for desert tortoise. Species with preferred habitat and known ranges different than those associated with the action area were eliminated from further consideration. Federally-listed species for which there would be no effect and that did not require detailed analysis are addressed in **Appendix D**.

Following USFWS pre-project survey protocol (USFWS 2018a), Transcon Environmental (Transcon) biologists conducted presence/absence surveys for desert tortoise within the action area from November 12 to November 14, 2018. During these surveys, Transcon biologists also documented vegetation and wildlife habitat, and assessed habitat for potentially occurring species within the action area.

Federally-listed Species

Mojave Desert Tortoise

Status

The Mojave population of the desert tortoise was listed as threatened on April 2, 1990. Critical habitat was designated, and a recovery plan was published in 1994 (USFWS 1994) and updated in 2011 (USFWS 2011b). Six recovery units were established that encompass the entire range of the desert tortoise. The vast majority of threats to the desert tortoise or its habitat are associated with human land uses. The loss or degradation of these habitats to urbanization or other landscape-modifying activities place the desert tortoise at increased risk of extirpation. Because desert tortoises occupy large home ranges, the long-term persistence of extensive, non-fragmented habitats is essential for the species' survival. Threats identified in the 1994 Recovery Plan formed the basis for listing the desert tortoise as a threatened species; these threats continue to affect the species today (USFWS 2011b). In addition to impacts from human land uses, desert tortoise populations can harbor several pathogens causing potentially fatal upper respiratory tract disease, the most common of which is *Mycoplasma agassizii* (*M. agassizii*) (Sandmeier 2009). Desert tortoises can be tested for presence of *M. agassizii*-specific antibodies using an enzyme-linked immunosorbent assay (ELISA).

A recent analysis of population trends in adult desert tortoises from 1999 through 2014 in the five recovery units showed an overall decrease of 37 percent from the estimated 2004 population of 336,393 adults to approximately 212,343 in 2014 (Allison and McLuckie 2018). In addition, the proportion of juveniles recorded in surveys decreased every year after 2007. Within the Upper Virgin River Recovery Unit, the estimated population of adults decreased 24 percent during this time from 13,226 to 10,010. Only the Northeastern Mojave Recovery Unit showed density increases in adults, but densities in this Recovery Unit are the lowest of the six recovery units. Due to known but unquantified large-scale habitat conversions resulting from military exercises, renewable energy development, and catastrophic wildfire, as well as many smaller habitat conversions and habitat degradation, the 2014 abundance estimates totaling 212,343 adults are considered maximum estimates. One anticipated effect of habitat loss is reduction in demographic connections to neighboring populations, leading to decreasing resilience of local desert tortoise populations (Allison and McLuckie 2018).

Habitat Characteristics

Throughout most of the Mojave Desert, tortoises occur most commonly on gently sloping terrain with sandy-gravel soils where sparse cover of low-growing shrubs allows for the establishment of herbaceous plants. Soils must be friable enough for digging of burrows but firm enough so that burrows do not collapse. Typical habitat for the desert tortoise in the Mojave Desert has been characterized as creosote bush scrub in association with white bursage below 5,500 feet (1,677 meters) where precipitation ranges from 2 to 8 inches and the diversity of perennial plants and production of ephemeral plants is high (USFWS 2011b, Allison and McLuckie 2018).

This Project area is located within the Upper Virgin River Recovery Unit, as designated by the Revised Recovery Plan for the Desert Tortoise (USFWS 2011b). This Recovery Unit is located at the extreme northeastern edge of the species range. Desert tortoises located within this Recovery Unit often live in a complex topography consisting of canyons, mesas, sand dunes, and sandstone outcrops where vegetation is a transitional mixture of sagebrush scrub, creosote bush scrub, blackbrush scrub, and sandy soil communities. Tortoises found within this Recovery Unit often use sandstone and lava caves instead of burrows, travel to sand dunes for laying eggs, and use other habitats for foraging (USFWS 2011b).

Designated Critical Habitat

Desert tortoise designated critical habitat occurs in the action area east and west of the Project area (**Appendix A, Map 3**). The vast majority of desert tortoise designated critical habitat in Utah is located within the boundaries of the Reserve, north of St. George and Washington City. The Reserve is included within the Upper Virgin Recovery Unit (USFWS 2011b).

Specific physical and biological features of critical habitat listed in the recently published desert tortoise rangewide status update (USFWS 2018d) include:

- Sufficient space to support viable populations and to provide for movement, dispersal, and gene flow;
- Sufficient quality and quantity of forage species and the proper soil conditions to provide for the growth of these species;
- Suitable substrates for burrowing, nesting, and overwintering;
- Burrows, caliche caves, and other shelter sites;
- Sufficient vegetation for shelter from temperature extremes and predators; and
- Habitat protected from disturbance and human-caused mortality (the Reserve boundary is delineated with tortoise-proof fencing along the northern and eastern reaches of the action area).

Environmental Baseline

The Project area and action area are located entirely within the North Washington Incidental Take Area (Take Area 5) identified in Washington County's Habitat Conservation Plan (HCP) (see map in **Appendix E**). Ten Incidental Take Areas were designated in the HCP (Washington County Commission 1995; effective February 22, 1996) in which the take of desert tortoise was permitted. Proposed activities identified in Washington County needing an incidental take permit for desert tortoise include those associated with growth and development, mining, road building, and utility corridors. Incidental take areas outside of the Red Cliffs National Conservation Area were designated in the HCP as identified desert tortoise habitat where incidental take was most likely to occur in Washington County. An incidental take permit is a permit issued under Section 10 of the ESA to non-federal entities undertaking otherwise lawful projects that might result in the take of listed species.

The UNHP database (**Appendix C**) includes recent records of occurrence for desert tortoise within 0.5 mile of the Project area. In 2010, UDWR biologists conducted desert tortoise surveys to clear (to capture and relocate desert tortoises to approved translocation areas, as provided for in the HCP) Take Area 5 in order to facilitate development of the area (email correspondence, Rognan 2018) (**Appendix C**). Surveys yielded minimal sign of tortoise; sign that was observed was found mostly near the Reserve boundary (McLuckie et al. 2010). Surveyors removed only one adult desert tortoise in Mill Creek, north of where the action area of the Project is currently located. This adult was not relocated because it was ELISA-positive for presence of *M. agassizii*. Follow-up surveys of Take Area 5 conducted by Reserve biologists have not resulted in the detection or relocation of other desert tortoises.

The proposed Project area occurs within and adjacent to designated critical habitat for desert tortoise. The western terminus of the proposed Project area extends into desert tortoise critical habitat delineated outside of the boundaries of the Reserve for approximately 0.2 mile. The Project area does not extend into the boundaries of the Reserve; however, portions of the action area extend into the Reserve at the eastern and western ends of the proposed Project area and the southern boundaries of the Reserve are as close as approximately 0.04 mile from the proposed Project area near the east end (**Appendix B, Photo 9**).

The action area traverses through portions of relatively intact Sonora-Mojave Creosotebush-White Bursage Desert Scrub habitat typical for desert tortoise (**Appendix B, Photos 10 and 11**). The action area provides sufficient areas with friable soils that are firm enough to support burrows and nests. Vegetation in the action area is suitable for providing desert tortoises protection from predators and temperature extremes.

Portions of intact habitat within the action area are fragmented by paved highways, utility corridors, and residential and recreational development, bringing vehicle and pedestrian traffic to the area (**Appendix B, Photos 12 to 16**). Ongoing residential development, and the subsequent conversion of suitable tortoise habitat to unsuitable tortoise habitat, is occurring near the west and south-central portions of the Project area. Additional developed or disturbed areas located within or adjacent to the Project area include an empty, graded lot located between I-15 and East Buena Vista Boulevard (listed for sale, approximately 6 acres of which occurs within the action area), paved roads and highways near the eastern and western termini, roadside parking and recreational activity associated with the Grapevine Trailhead near the eastern terminus, an electrical substation, multiple overhead powerlines, a water pipeline, the Green Spring Golf Course, and a network of OHV trails/dirt roads. During field surveys, high baseline levels of anthropogenic disturbance, mainly from active construction areas and recreational use, were noted. Unleashed domestic dogs, which are potential predators for desert tortoise, were observed, and canine scat and tracks were noted throughout the entirety of the action area. Proliferation of non-native plants was observed in areas where disturbance has occurred or is ongoing.

See **Appendix B** for desert tortoise habitat photographs within the Project area.

Survey Methods

Following the pre-project field survey for potential desert tortoise habitat (USFWS 2018a), Transcon biologists conducted presence/absence surveys for desert tortoise within all suitable habitat in the action area from November 12 to November 14, 2018. One-hundred percent survey coverage was accomplished in all accessible areas using 10-meter-wide belt transects that were surveyed within the action area, comprised of the Project area and a 300-foot-wide buffer surrounding the Project area (**Appendix A, Maps 4 to 8**). Based on prior USFWS approval, transects were oriented along the length, rather than across the width, of the 2.75-mile-long Project ROW.

Transects were not surveyed in areas of unsuitable habitat, including riparian areas and highly developed areas such as residential developments, the Green Spring Golf Course, the substation, and paved

roads/highways (**Appendix B, Photo 17**). Accessible habitat fragments in these locations were surveyed as appropriate to ensure full coverage, though tortoise occupancy would be unlikely in association with high levels of habitat fragmentation and anthropogenic disturbance/activity. Aerial imagery does not reflect the current extent of development in the Project vicinity. All data collected during surveys were recorded on USFWS Desert Tortoise Pre-Project Survey Data Sheets and are located in **Appendix F**.

Survey Results

No desert tortoises were observed in the action area during surveys. Five unoccupied burrows that displayed potential to support tortoise occupancy were recorded (**Appendix A, Maps 5 and 6; Appendix B, Photos 18 to 25**). Of the five potential burrows located during surveys:

- Two burrows large enough for adult tortoises to occupy were located beneath rock ledges.
- Two burrows were located beneath creosote bushes with smaller openings that could support juvenile tortoise occupancy in addition to a variety of smaller burrowing mammals.
- One burrow displaying the characteristic half-moon shape and adequate size to support an adult tortoise was located in an open sandy area near the base of a creosote bush.

All potential burrow observations occurred on the north side of the action area. No other signs of desert tortoise (e.g., scat, tracks) were observed near any of the burrows or within the action area. Photographs and descriptions of survey observations were provided to Red Cliffs Desert Reserve Biologist Cameron Rognan. Following review, Mr. Rognan concurred that these burrows were only potential and could not conclusively be attributed to desert tortoise due to the lack of definitive tortoise sign (email correspondence, Rognan 2018).

All specific physical and biological features of critical habitat were observed near the eastern terminus where the action area occurs within designated critical habitat. Both western ends of both the Project and action areas extend into designated critical habitat as it is delineated; however, this habitat has been heavily disturbed or removed during ongoing urbanization and construction of paved roads and lacked any of the physical and biological features of critical habitat at the time of survey.

VI. EFFECTS ANALYSIS

Mojave Desert Tortoise

Species

Direct Effects

No direct effects to desert tortoise species are anticipated to occur as a result of the proposed Project. Suitable desert tortoise habitat consisting of native shrubs, forbs, cacti, and friable soils suitable for burrowing that could provide suitable forage and shelter from temperature extremes and predators is present within much of the Project area and would be permanently removed. The broad expanse of relatively undisturbed vegetation north of the proposed Project area combined with the close proximity of occupied designated critical habitat increases the potential for desert tortoise to occur within the action area. However, 2018 protocol surveys conducted by Transcon biologists did not detect tortoise species or fresh sign within the action area of the Project. Five potential burrows were discovered but could not be definitively identified as tortoise burrows due to the lack of associated sign. Surveys conducted in 2010 by the UDWR and Reserve biologists resulted in the discovery of only one tortoise in Mill Creek north and outside of the action area, and subsequent follow-up surveys conducted since have not resulted in the detection of any more tortoises (McLuckie et al. 2010). Additionally, the Reserve, where tortoises are known to occur, is separated from the Project by tortoise-proof fencing, preventing tortoises within the Reserve from traveling into the Project area. Therefore, it is not expected that desert tortoises would be

found with the Project area during construction of the proposed Project, and thus, the species would not be directly impacted by implementation of the proposed Project.

Indirect Effects

Indirect effects to desert tortoise, including increased levels of human presence, noise and fugitive dust, could occur as a result of the proposed Project, largely during grading, widening, paving, and landscaping. These effects would be temporary and potential impacts would be minimized through implementation of appropriate conservation measures identified in Section II. Indirect effects to species also include the reduced amount of available habitat resulting from the permanent removal of suitable habitat located within the Project area. Construction of the proposed paved roadway would create an impervious surface up to 166 feet wide that would inhibit regrowth of native vegetation and prevent tortoise burrowing should tortoises ever inhabit that Project area. Indirect effects associated with future, long-term use of the new road include potential increases in vehicle-related desert tortoise injury or mortality. The finished road extension would serve as a barrier to movement of a number of species, permanently dividing a section of desert habitat into areas north and south of the extension and narrowing the buffer of undeveloped land south of the Reserve and north of Washington City. However, as tortoises have not been observed within or near the action area since 2010 and are not expected to inhabit the Project area and as extensive suitable desert tortoise habitat located north of the Project area would remain unaffected by implementation of the Project, potential indirect effects to species would be minimal.

Designated Critical Habitat

Direct Effects

Approximately 4 acres near the western terminus of the proposed ROW are located within desert tortoise designated critical habitat. This portion of the proposed Project area is currently heavily disturbed, is being removed through residential and other roadway development, and lacks any of the specific physical and biological features required of a critical habitat designation. Therefore, no direct impacts are expected to result from implementation of the proposed action.

Indirect Effects

Indirect effects to designated critical habitat located within the action area may include increased levels of fugitive dust during construction activities. However, these effects would be temporary and potential impacts would be minimized through implementation of appropriate conservation measures identified in Section II.

Conservation Measures

The following conservation measures would be implemented to avoid or minimize impacts to all federally-listed and candidate species and their habitat:

- During Project activities, vehicle parking and material stockpiles would be located in previously disturbed and/or environmentally cleared areas.
- To minimize potential for the spread of invasive weeds and soil erosion, UDOT would comply with UDOT Special Provision 02924s, Invasive Weed Control and Standard Specification 01571, Temporary Environmental Controls.
- Fueling of machinery would occur at least 100 feet from wetlands and aquatic areas.
- Fill materials would be obtained from a validated clean source.
- A seed mix including native species will be used to vegetate temporarily disturbed areas.
- Implementation of protective measures specified in the Stormwater Pollution Prevention Plan (SWPPP) would provide erosion and sediment control and minimize or avoid accidental spills of

hazardous materials. A project Spill Prevention and Countermeasures (SPCC) Plan would be developed and followed during construction. This plan would identify riparian zones and drainages and outline conservation measures to ensure protection. UDOT would implement a plan to identify and protect sensitive resources through applicable conservation measures.

- A desert tortoise pre-Project clearance survey would be conducted within the ROW and a 300-foot buffer on either side of the ROW immediately prior to surface disturbance.
- Desert tortoise training would be provided by a qualified tortoise biologist to all on-site Project personnel prior to initiation of construction activities; the training would inform Project personnel of federal protections for the species, take avoidance measures (e.g., low speeds, checking under vehicles, etc.), and protocol if desert tortoise or sign of desert tortoise are encountered.
- To prevent entrapment of tortoises during construction, all open pits or trenches would be monitored throughout the construction day.
- The underside of any parked vehicles and equipment will be checked for tortoises prior to moving the vehicle or equipment.
- Excavated holes more than 2 feet deep will be covered at the close of each day or outfitted with one or more escape ramps. Alternatively, fencing may be erected around open pits or trenches. At the beginning of the construction day and before pits or trenches are filled, they will be inspected for trapped animals. If any animals are found, they would be moved out of harm's way by a qualified biologist approved by the USFWS.
- If desert tortoise or other threatened or endangered wildlife species are encountered in the Project area during construction, the individual species will not be approached or handled and all nearby Project activities will be halted. The Red Cliffs Desert Reserve will be notified, and construction activities will not be reinitiated until the tortoise has been removed or has left the Project area on its own.
- A Field Contact Representative (FCR) will be responsible for overseeing compliance with protections for federally-listed species. The FCR will have the authority to halt activities that are in violation of the applicant-committed measures. The FCR will also halt non-emergency Project activities that may endanger a federally-listed species. The FCR will authorize work resumption only after the hazards are removed, the species is no longer at risk, or the individual is moved out of harm's way by an authorized biologist approved by the USFWS.
- Any Project-related inadvertent death or injury of desert tortoise or other listed species would immediately be reported to the USFWS, Red Cliffs Desert Reserve, and other appropriate agencies.

VII. DETERMINATION OF EFFECTS

The determination of effect of the proposed action on federally protected resources and associated rationale are presented below. **Table 1** presents a summary of determinations for each species of concern within the action area and its critical habitat, if applicable.

TABLE 1 EFFECT DETERMINATIONS OF SPECIAL-STATUS SPECIES AND CRITICAL HABITAT		
Species	Species Effect Determination	Designated Critical Habitat Effect Determination
Mojave desert tortoise	May affect, but is not likely to adversely affect	May affect, but is not likely to adversely affect

Federally-listed Species

Mojave Desert Tortoise

Species

A determination of *may affect, but is not likely to adversely affect* has been concluded for the following reasons:

- Direct impacts to suitable desert tortoise habitat within the Project area are anticipated, including increased removal of vegetation and paving or grading of friable soils suitable for burrowing, converting suitable habitat into unsuitable habitat.
- Short-term, indirect impacts to desert tortoises include increased levels of human presence, noise, and fugitive dust during construction of the proposed Project.
- Potential long-term, indirect impacts to desert tortoises include increased anthropogenic disturbance associated with public use of a new paved road and subsequent increases in vehicle-related injury or mortality.
- Within the Project area, Project-related surface disturbance would result in potential decreases in foraging success due to increased rates of erosion, fugitive dust, and proliferation of non-native plants.
- No tortoise or fresh sign were observed during pre-construction presence/absence surveys, and only limited presence and sign have been observed during previous surveys conducted in the area since 2010.
- Suitable habitat within the Reserve, where tortoises are known to occur, is separated from the Project area by tortoise-proof fencing.

Designated Critical Habitat

A determination of *may affect, but is not likely to adversely affect* has been concluded for the following reasons:

- No direct impacts to designated critical habitat still exhibiting the specific physical and biological features of critical habitat as outlined in the 2018 USFWS status update (USFWS 2018d) are anticipated.
- Potential indirect impacts to designated critical habitat including, increased fugitive dust during construction activities, would be minimized through implementation of appropriate BMPs.

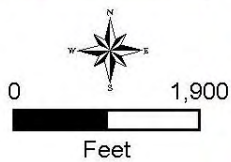
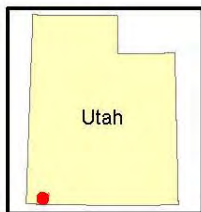
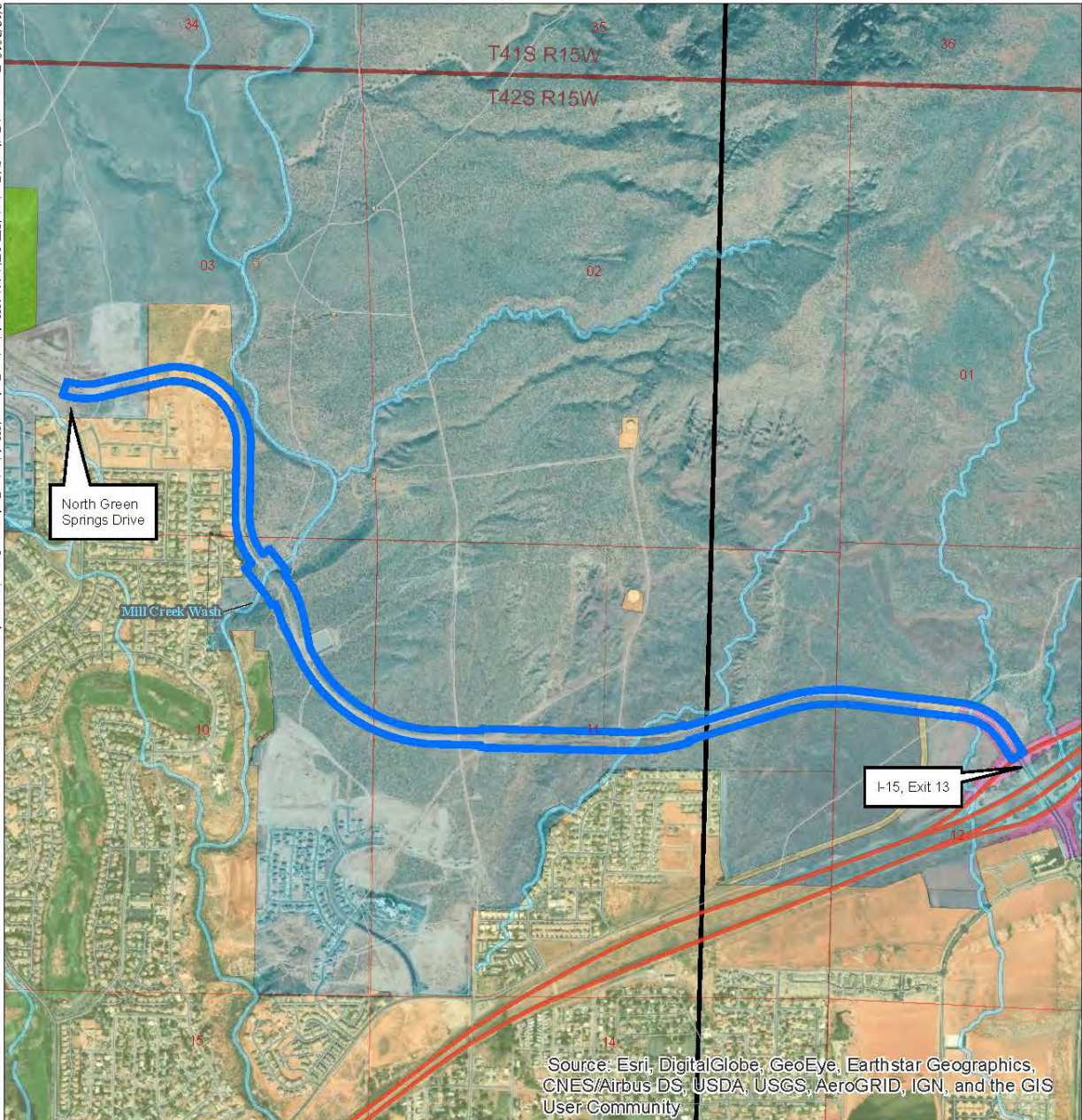
VIII. REFERENCES

- Allison, Linda J., and Ann M. McLuckie. 2018. Population trends in Mojave desert tortoises (*Gopherus agassizii*). *Herpetological Conservation and Biology* 13(2): 433-452.
- McLuckie, A., A. Bianco, J. Borde, B. Cox, R. Dobbs, L. Dreger, C. Edwards, P. Liens, J. Lundquist, M. Lubejko, K. Nelson, D. Reynolds, M. Schifff, and M. Sullivan. 2010. *Field Report for Surveys Conducted in North Washington Incidental Take Area*.
- Natural Resource Conservation Science (NRCS). 2018. Web Soil Survey. Accessed November 20, 2018. <http://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx>.
- Rognan, Cameron. 2018. Email Correspondence Regarding Desert Tortoise Surveys of Take Area 5.
- Romin, L., and J. Muck. 2002. Utah Field Office Guidelines for Raptor Protection from Human and Land Use Disturbances. U.S. Fish and Wildlife Service, Utah Field Office. Salt Lake City, Utah
- Sandmeier, F.C. 2009. Immunology and disease in the Mojave desert tortoise (*Gopherus agassizii*). Dissertation, University of Nevada, Reno.
- United States Fish and Wildlife Service (USFWS). 1994. Desert Tortoise (Mojave Population) Recovery Plan. U.S. Fish and Wildlife Service, Portland, Oregon.
- _____. 1995. Virgin River Fishes Recovery Plan. U.S. Fish and Wildlife Service Region 6. Denver, Colorado.
- _____. 1996. Endangered and Threatened Wildlife and Plants Establishment of a Nonessential Experimental Population of California Condors in Northern Arizona; Final Rule. Federal Register, 10 16, 1996: 54044-54060.
- _____. 2011a. U.S. Fish and Wildlife Service Utah Field Office Guidelines for Conducting and Reporting Botanical Inventories and Monitoring of Federally-Listed, Proposed and Candidate Plants. Version: August 31, 2011. <https://www.fws.gov/utahfieldoffice/Documents/Plants/USFWS%20Utah%20Plant%20Survey%20Guidelines%20Final.pdf>
- _____. 2011b. Revised Recovery Plan for the Mojave Population of the Desert Tortoise (*Gopherus agassizii*). U.S. Fish and Wildlife Service, Pacific Southwest Region. Sacramento, California.
- _____. 2013a. Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Southwestern Willow Flycatcher. Federal Register. Vol. 78, No. 2. January 3, 2013. <https://www.gpo.gov/fdsys/pkg/FR-2013-01-03/pdf/2012-30634.pdf>.
- _____. 2013b. Dwarf Bear-Poppy Fact Sheet. 2013. https://www.fws.gov/mountain-prairie/factsheets/Dwarf%20Bear%20Poppy%20Fact%20Sheet_061913.pdf.
- _____. 2018a. Preparing for any Action that may Occur Within the Range of the Mojave Desert Tortoise (*Gopherus agassizii*). Version: October 26, 2018. https://www.fws.gov/nevada/desert_tortoise/documents/manuals/Mojave%20Desert%20Tortoise_Pre-project%20Survey%20Protocol_2018.pdf

- _____. 2018b. National Wetlands Inventory (NWI) Wetlands Mapper. <http://fws.gov/wetlands/Data/Mapper.html>.
- _____. 2018c. U.S. Fish and Wildlife Service Information, Planning, and Conservation System (IPaC). Environmental Conservation Online System (ECOS). <http://ecos.fws.gov/ipac/getting>.
- _____. 2018d. Status of the Desert Tortoise and its Critical Habitat. July 5, 2018. https://www.fws.gov/nevada/desert_tortoise/documents/misc/Status_of_the_Species-DT_February_9_2012.pdf
- United States Geological Service (USGS). 2011. Gap Analysis Program, 20160513, GAP/LANDFIRE National Terrestrial Ecosystems: U.S. Geological Survey. Accessed November 20, 2018. <https://doi.org/10.5066/F7ZS2TM0>
- _____. 2014. The National Map, U.S. Topo. Accessed November 20, 2018. <https://viewer.nationalmap.gov/basic/?basemap=b1&category=ustopo&title=US%20Topo%20Download>
- Utah Geological Survey (UGS). 2018. Geologic Maps Data Viewer. URL: <https://geology.utah.gov/>

APPENDIX A

PROJECT AREA MAPS



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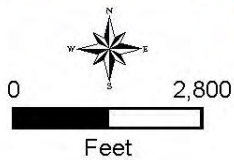
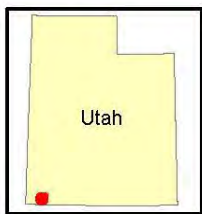
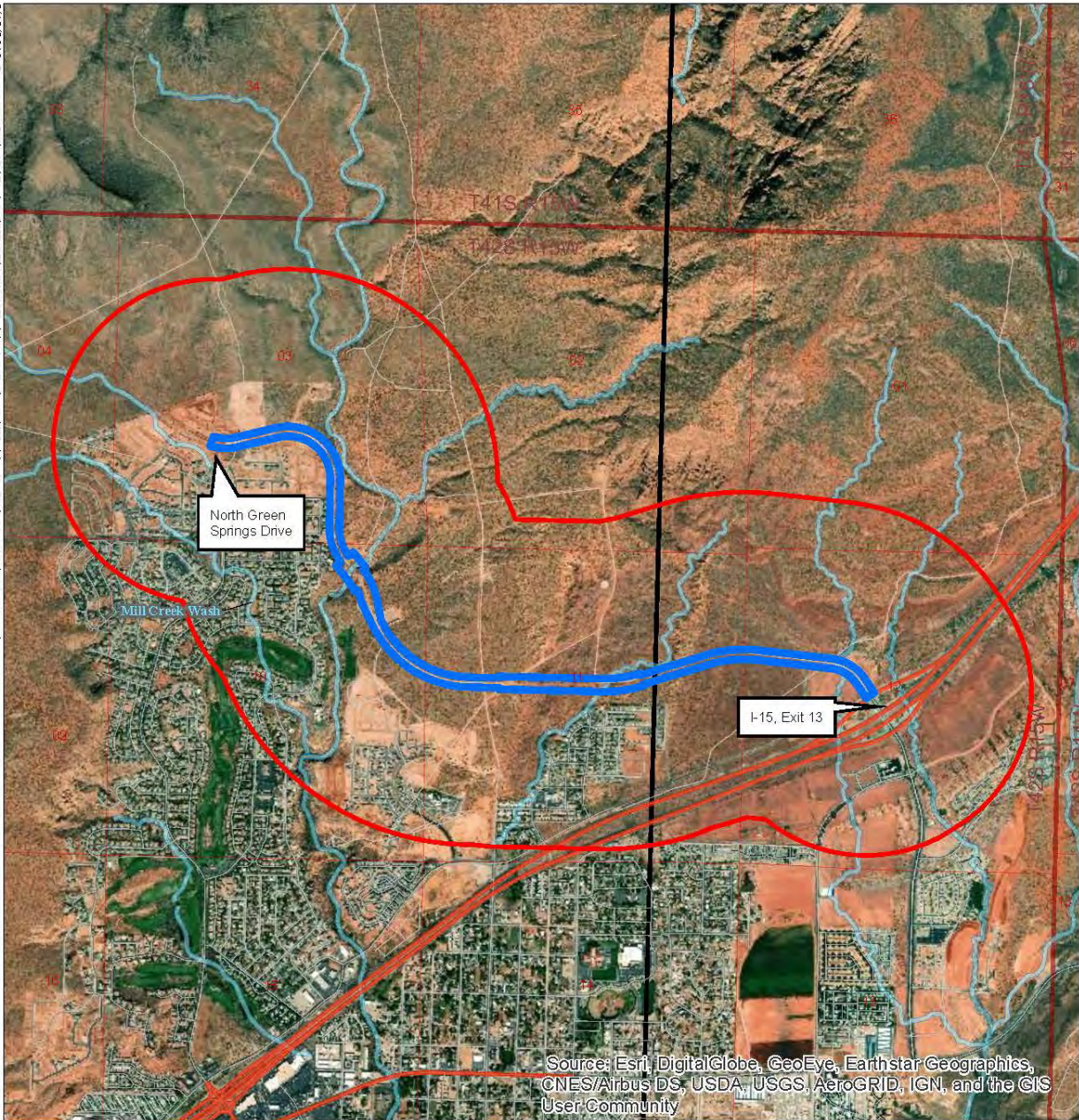
- Project Area
- Streams
- Highway
- Private
- SITLA
- UDOT
- UDWR

Project Overview

*Washington Parkway;
Green Springs Drive
to I-15 Exit 13*

Map 1 of 8





Legend

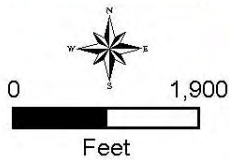
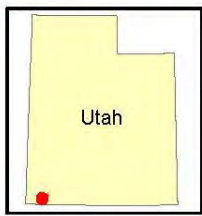
- Project Area
- Streams
- Highway
- Action Area

Project Action Area

*Washington Parkway;
Green Springs Drive
to I-15 Exit 13*

Map 2 of 8





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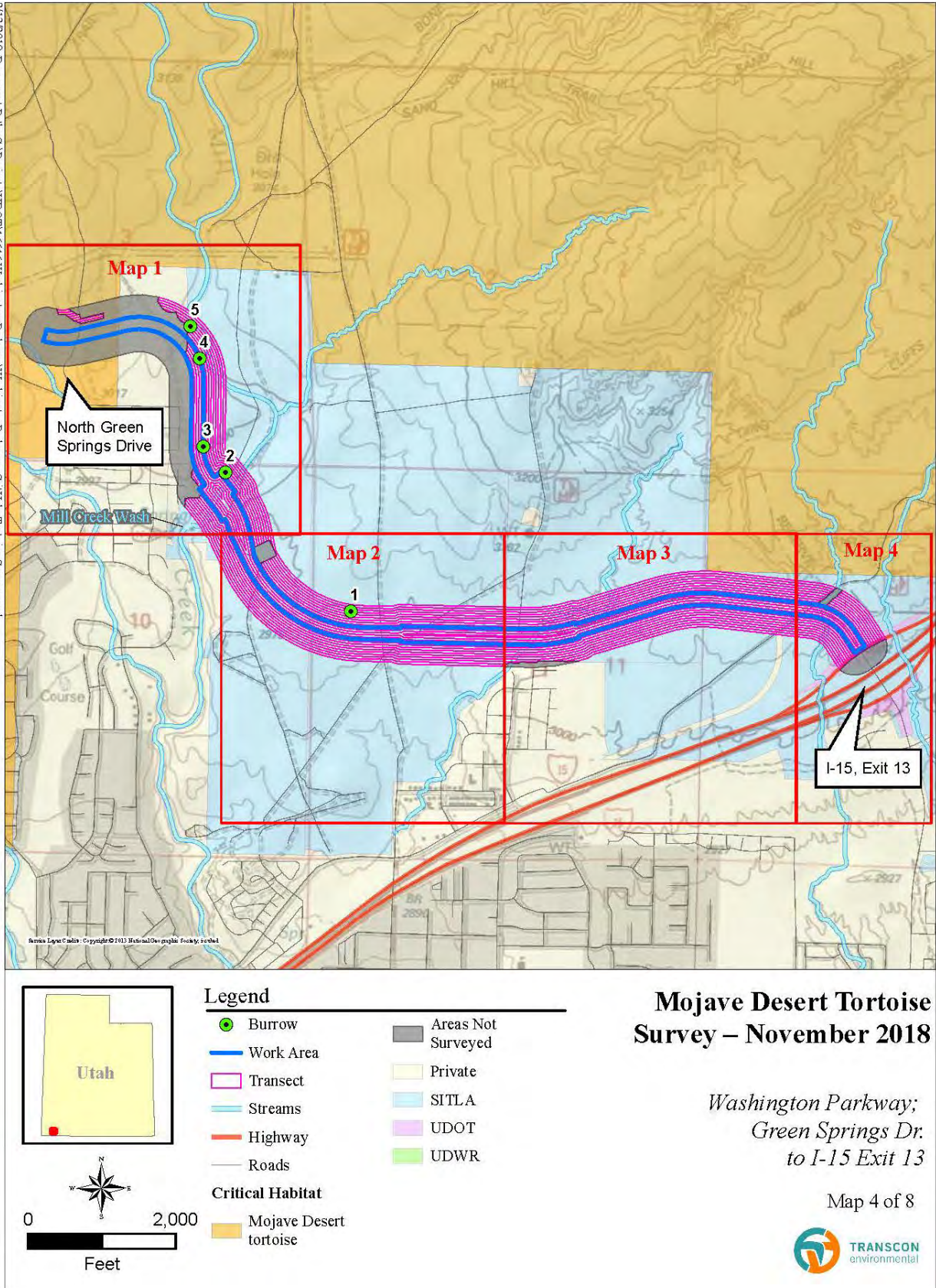
- Work Area
- Streams
- Highway
- Roads
- Mojave Desert tortoise

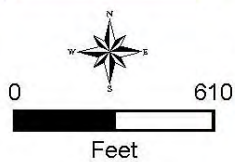
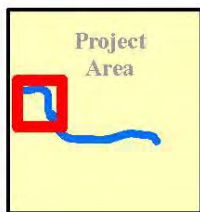
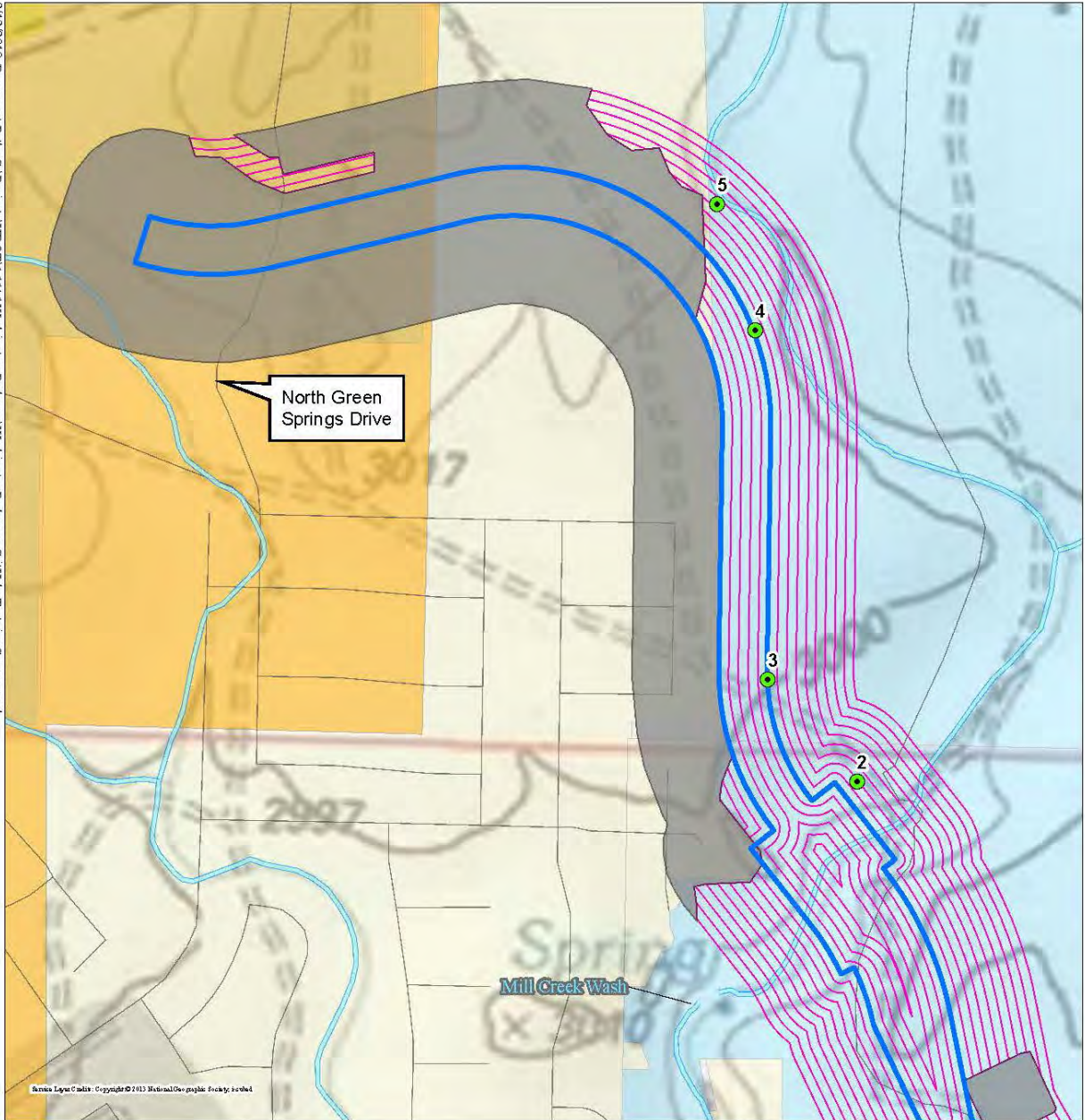
Critical Habitat for USFWS Threatened and Endangered Species

*Washington Parkway;
Green Springs Drive to
I-15 Exit 13*

Map 3 of 8







Legend

- Burrow
- Work Area
- Transect
- Streams
- Roads
- Areas Not Surveyed
- Private
- SITLA
- UDWR

Critical Habitat

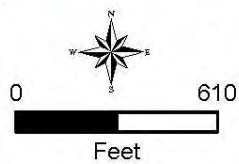
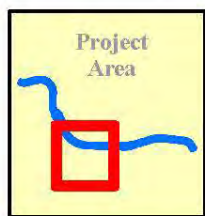
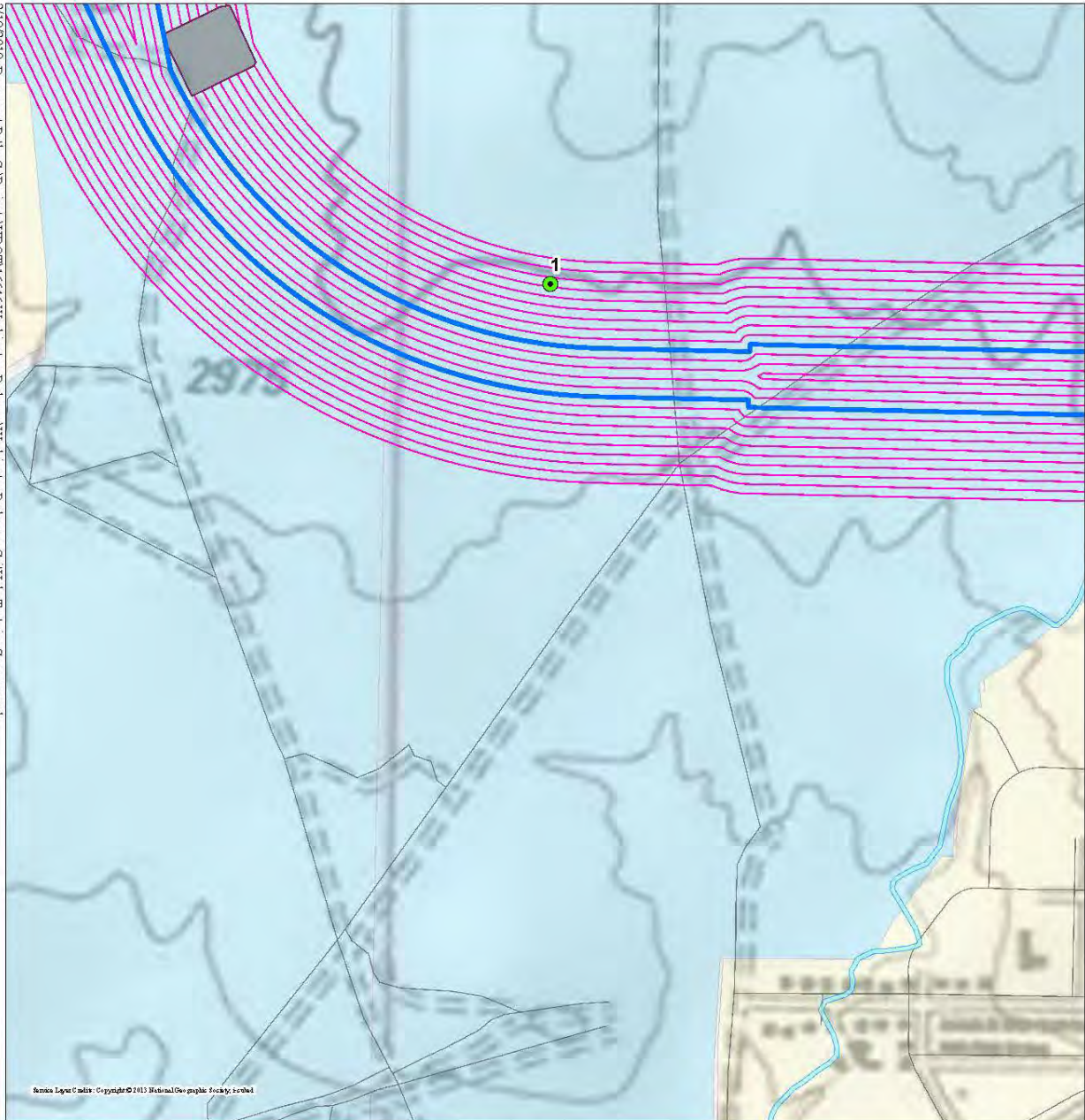
- Mojave Desert tortoise

Mojave Desert Tortoise Survey – November 2018

*Washington Parkway;
Green Springs Dr.
to I-15 Exit 13*

Map 5 of 8





Legend

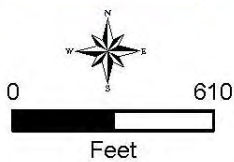
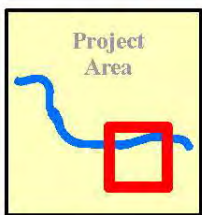
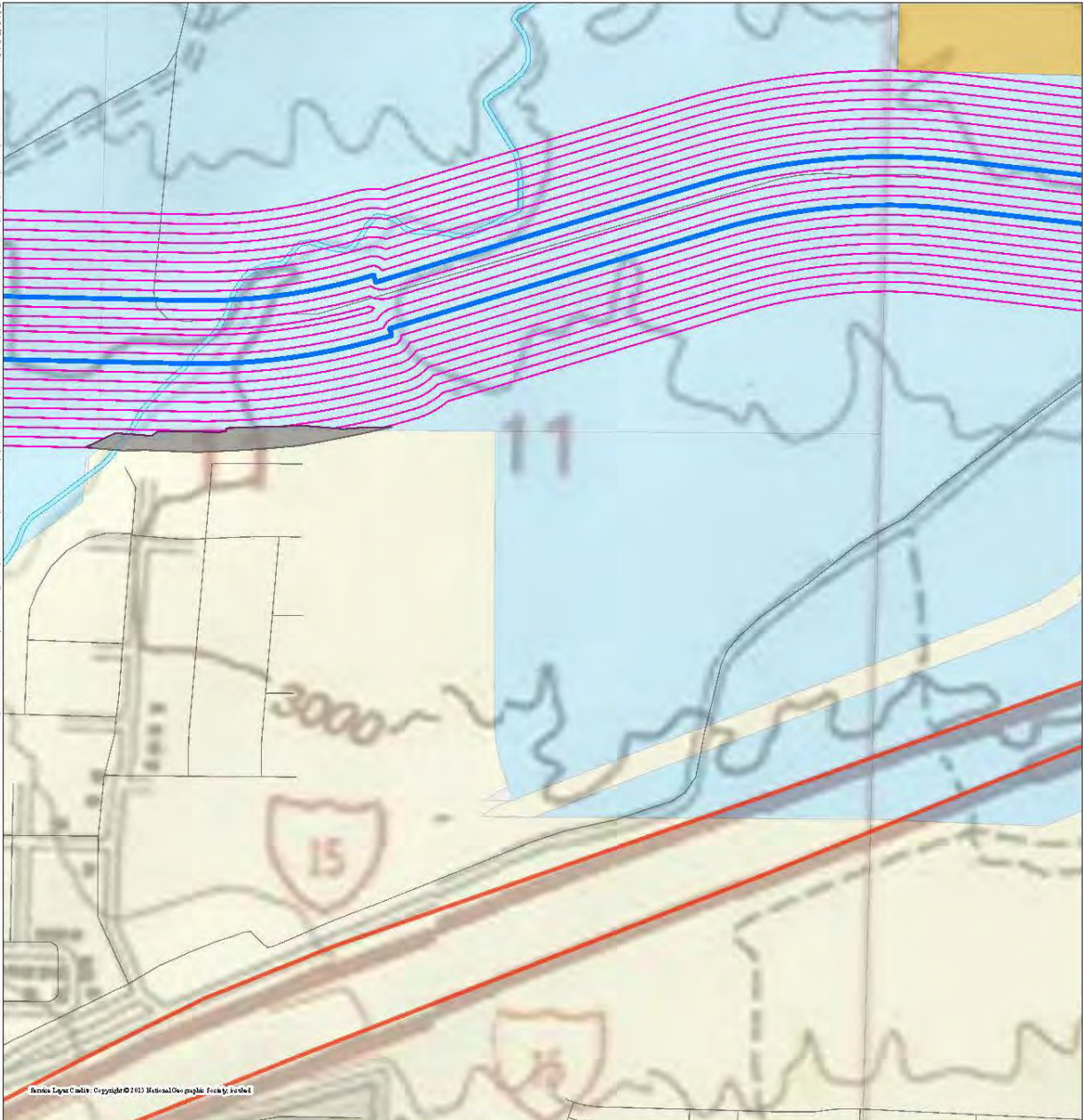
- Burrow
- Work Area
- Transect
- Streams
- Roads
- Areas Not Surveyed
- Private
- SITLA

Mojave Desert Tortoise Survey – November 2018

*Washington Parkway;
Green Springs Dr.
to I-15 Exit 13*

Map 6 of 8





Legend

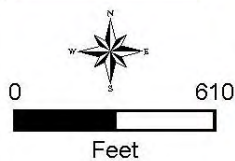
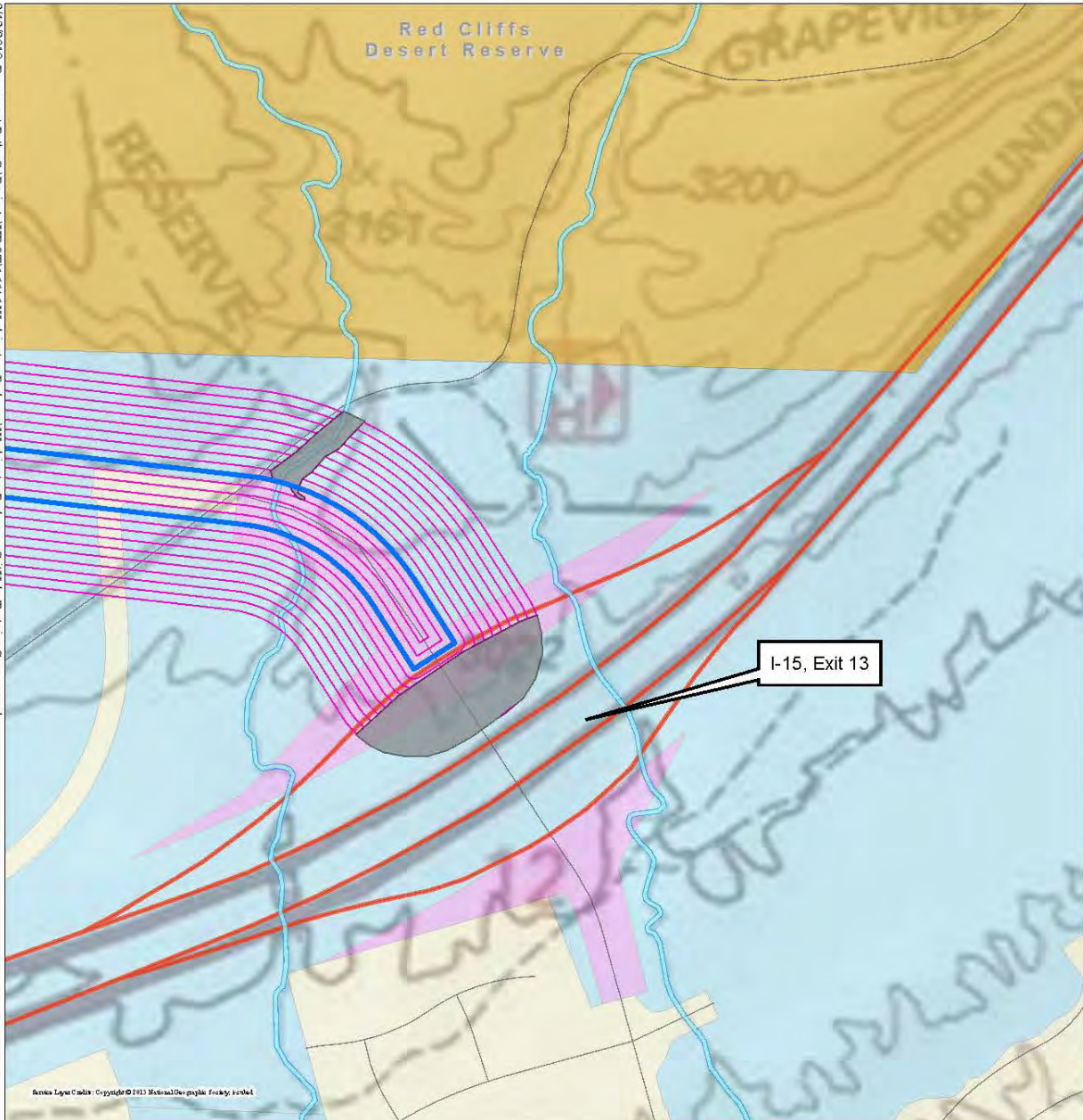
Work Area	Critical Habitat
Transect	Mojave Desert tortoise
Streams	Areas Not Surveyed
Highway	Private
Roads	SITLA

Mojave Desert Tortoise Survey – November 2018

*Washington Parkway;
Green Springs Dr.
to I-15 Exit 13*

Map 7 of 8





Legend

- Work Area
- Transect
- Streams
- Highway
- Roads
- Areas Not Surveyed
- Private
- SITLA
- UDOT

Critical Habitat

- Mojave Desert tortoise

Mojave Desert Tortoise Survey – November 2018

*Washington Parkway;
Green Springs Dr.
to I-15 Exit 13*

Map 8 of 8



APPENDIX B

PROJECT AREA AND DESERT TORTOISE SURVEY PHOTOGRAPHS



Photo 1. View east along the existing dirt road in the Project area, providing representation of off-road parking areas and widened disturbance areas within the Project area.



Photo 2. View west along the existing dirt road through the Project area, showing creosote scrub habitat in the foreground and housing developments in the background. Off-road vehicle parking and an unleashed domestic dog are included on the left side of the frame.



Photo 3. View north along existing dirt road, showing private residential development on the left side of the frame.



Photo 4. Representation of ongoing residential development occurring at the western terminus of the Project area.



Photo 5. Representation of ongoing residential development occurring at the western terminus of the Project area.



Photo 6. Representation of ongoing residential development occurring at the western terminus of the Project area.



Photo 7. View northeast from the south side of Mill Creek wash. Private residential development is visible in the background on top of the slope.



Photo 8. Representation of creosote scrub habitat within the action area, looking north from the east side of the Project area.



Photo 9. View of the tortoise fencing at the boundary of the Red Cliffs Desert Reserve within the action area.



Photo 10. View west along the existing dirt road in the Project area showing representative creosote bush-white bursage scrub habitat in the foreground and housing developments in the background.



Photo 11. Representation of high-quality creosote bush scrub habitat within the action area.



Photo 12. View east along Washington Parkway/Buena Vista Boulevard, showing unpaved roadside parking associated with the Grapevine Trailhead on the left side of the road.



Photo 13. View east across the I-15 Exit 13 entrance ramp. This portion of the action area was not surveyed due to high fragmentation and disturbance.



Photo 14. View east from the south side of the Project area, showing graded lot and adjacent habitat.



Photo 15. View of disturbed habitat on the north side of the electrical substation. This area is dominated by Russian thistle (*Salsola tragus*).



Photo 16. View of the electrical substation in the central portion of the Project area, looking west. This area is highly disturbed.



Photo 17. View of riparian habitat along wash at the eastern end of the action area near the Grapevine Trailhead, classified as unsuitable desert tortoise habitat.



Photo 18. Burrow 1 located within creosote bush scrub habitat near the base of a creosote bush. This burrow displays the characteristic half-moon shape and adequate size to support an adult tortoise. The burrow was unoccupied at the time of survey.



Photo 19. Burrow 1 located within creosote bush scrub habitat near the base of a creosote bush. This burrow displays the characteristic half-moon shape and adequate size to support an adult tortoise. The burrow was unoccupied at the time of survey.



Photo 20. Burrow 2 is located on the rocky slope of Mill Creek wash beneath a rock ledge. At more than 12 inches wide, it is large enough to accommodate adult tortoises as well as other burrowing mammals.



Photo 21. Close up photo of Burrow 2. This burrow may be used by a variety of wildlife, as displayed by the diversity of tracks inside the burrow. The burrow was noted as being deep, and the surveyor could not see to the back of the burrow during inspection.



Photo 22. Burrow 3 is located at the base of creosote bush near the proposed Project area boundary. It measured approximately 5 inches wide and could potentially accommodate a juvenile tortoise. This burrow was unoccupied at the time of survey.



Photo 23. Close up photo of Burrow 3 beneath creosote bush.



Photo 24. Burrow 4 is located on the rocky slope of a dry wash and was dug out in sand beneath a rock/boulder. The opening was recorded as approximately 3 to 5 inches wide and could potentially accommodate a juvenile tortoise. This burrow is located near the proposed Project area boundary. This burrow was unoccupied at the time of survey.



Photo 25. Burrow 5 is located on the rocky slope of a dry wash and was dug out in sand beneath a rock ledge. This burrow was unoccupied at the time of survey.

APPENDIX C

UDWR NATURAL HERITAGE PROGRAM LETTER AND RED CLIFFS DESERT RESERVE EMAIL CORRESPONDENCE



GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Wildlife Resources

MICHAEL D. FOWLKS
Division Director

October 26, 2018

Brian Parker
Transcon Environmental
1745 South Alma School Road, Suite 220
Phoenix, AZ 85210

Subject: Species of Concern Near the Washington Parkway Extension Project

Dear Brian Parker:

I am writing in response to your email dated October 22, 2018 regarding information on species of special concern proximal to the proposed Washington Parkway Extension Project located on Washington Parkway from Interstate 15 to Green Springs Drive in Washington, Utah.

Within a ½-mile radius of the project area noted above, the Utah Division of Wildlife Resources (UDWR) has recent records of occurrence for common chuckwalla, Mojave desert tortoise, sidewinder, western banded gecko and zebra-tailed lizard. In addition, within a two-mile radius there are recent records of occurrence for Arizona toad and Gila monster, and historical records of occurrence desert springsnail, relict leopard frog and spotted bat. All of the aforementioned species are included on the Utah Sensitive Species List.

The information provided in this letter is based on data existing in the Utah Division of Wildlife Resources' central database at the time of the request. It should not be regarded as a final statement on the occurrence of any species on or near the designated site, nor should it be considered a substitute for on-the-ground biological surveys. Moreover, because the Utah Division of Wildlife Resources' central database is continually updated, and because data requests are evaluated for the specific type of proposed action, any given response is only appropriate for its respective request.

In addition to the information you requested, other significant wildlife values might also be present on the designated site. Please contact UDWR's assistant habitat manager for the southern region, Rhett Boswell, at (435) 865-6112 if you have any questions.

Please contact our office at (801) 538-4759 if you require further assistance.

Sincerely,

Sarah Lindsey
Information Manager
Utah Natural Heritage Program

cc: Rhett Boswell
Gary Bezzant

1594 West North Temple, Suite 2110, PO Box 146301, Salt Lake City, UT 84114-6301
telephone (801) 538-4700 • facsimile (801) 538-4709 • TTY (801) 538-7458 • www.wildlife.utah.gov



From: **Cameron Rognan** <Cameron.Rognan@washco.utah.gov>

Date: Thu, Dec 20, 2018 at 11:52 AM

Subject:

To: Eric Hansen <erichansen@utah.gov>

Cc: Palmer, Bruce <Bruce.Palmer@jacobs.com>

Eric and Bruce,

Here is the field report associated with the UDWR/HCP survey and clearance of the Washington City take area. This clearance included all of the Washington Parkway alignment outside of the Reserve. We only found 1 tortoise and it was in Mill Creek wash closer to Green Springs and near the Reserve boundary. Utah Division of Wildlife Resources organized this clearance and signed off on it to facilitate immediate development of this take area. We have returned a few times for follow up surveys (for Brio and some utility lines), but we still haven't found or removed any more tortoises as a result of those follow up surveys.

I reviewed the Transcon report. From looking at the photos, only burrow #1 looked characteristically like a tortoise burrow to me. I think it was appropriate that the report classified these all as "potential" burrows. It's hard to know for sure unless you have tracks, scat or lots of other sign nearby. It was too difficult to see the burrows in the creosote bush to comment, but there are a lot of critters that like to burrow in the bushes and under large rocks like they found near Mill Creek. The lack of tortoise scat and definitive tortoise sign was consistent with what we found in 2010. I'm not sure if it's worth adding to your report or not, but I did find and remove a Russian tortoise this spring from this road. It was probably less than 100 m from burrow #1, somewhere near the intersection with Main St. It may or may not have been responsible for your burrow listed as detection #1, but you can decide if it's worth adding to your report.

In your discussions with Hilary, please let her know that we (HCP) would be happy to check out those burrows from Transcon's report and remove any tortoises found as the project proceeds. We are trying to keep tortoises off this property since it has already been cleared. The County's take permit should already cover all of the associated take of these tortoises and habitat so I am curious how your Section 7 consultation will play out. We have assisted FWS in other projects that had federal funding tied to them. Typically they have asked us to do a survey/clearance or provide documentation of prior release forms, and/or a letter from us. After that I don't know what else goes into the Section 7 consultation though. Hilary should already have a copy of our 2010 report, but feel free to send it to her if she needs it.

Thanks

Cameron

Cameron Rognan

Washington County HCP Administrator

cameron.rognan@washco.utah.gov

Office: (435) 256-6310

Cell: (435) 705-4431

APPENDIX D

THREATENED AND ENDANGERED SPECIES TABLE

TABLE D-1
HABITAT SUITABILITY ASSESSMENT FOR FEDERALLY-LISTED SPECIES WITH A “NO EFFECT” DETERMINATION

Species	Status*	Known to Occur Within the Project Area	Habitat Assessment and Determination of Effect
California condor (<i>Gymnogyps californianus</i>)	E, EX	No	This species roosts in snags; tall, open-branched trees; and on cliffs. It nests in scrubby chaparral or forested montane regions. An experimental population inhabits an area near Zion National Park. All individuals within this population are closely monitored by biologists working on the species recovery. California condors are designated by federal regulation (61 CFR 54044, October 16, 1996) as a 10(j) non-essential experimental population with no designated habitat in southern Utah and northern Arizona. California condors from the experimental population area frequently forage away from the Vermillion Cliffs of Arizona into southwestern Utah, including Washington County, though most California condor use occurs east of the Project area near Zion National Park; no nests, roosts, or other special use areas for condors have been identified in the action area.
Mexican spotted owl (<i>Strix occidentalis lucida</i>)	T	No	In Utah, this species inhabits steep-walled canyons that provide an abundant prey base and uses caves or crevices for nesting and roosting. No suitable nesting or foraging habitat is present within the action area. The nearest designated critical habitat for this species is located approximately 13 miles northeast of the action area.
Southwestern willow flycatcher (<i>Empidonax traillii extimus</i>)	E	No	This species breeds in relatively dense tracts of cottonwood, willow, and tamarisk in riparian and shrub communities below approximately 8,500 feet asl. No suitable nesting or foraging habitat is present within the action area. The nearest designated critical habitat for this species is located along the Virgin River approximately 1.1 mile south of the action area.

TABLE D-1
HABITAT SUITABILITY ASSESSMENT FOR FEDERALLY-LISTED SPECIES WITH A “NO EFFECT” DETERMINATION

Species	Status*	Known to Occur Within the Project Area	Habitat Assessment and Determination of Effect
Woundfin (<i>Plagopterus argentissimus</i>)	E	No	This small (4 inches), rare species of minnow is restricted to the Virgin River system from La Verkin Hot Springs near the lower portion of La Verkin Creek and the Virgin River confluence, downstream to Lake Mead, Nevada. It inhabits shallow, turbid, fast-flowing water with warm temperatures. No suitable habitat exists within the action area. The nearest designated critical habitat for this species is located within the Virgin River approximately 1.3 miles south of the action area. Appropriate sediment and erosion control BMPs would prevent Project-related impacts to aquatic habitat. Project activities are not anticipated to affect aquatic species or habitat.
Virgin River chub (<i>Gila seminuda</i>)	E	No	This rare species of minnow only occurs in the mainstream Virgin River system of southwestern Utah from La Verkin Hot Springs near the lower portion of La Verkin Creek and the Virgin River confluence, downstream to the Mesquite Diversion in northwest Arizona. It inhabits deeper, fast-flowing water with temperatures below 86 degrees Fahrenheit. No suitable habitat exists within the action area. The nearest designated critical habitat for this species is located within the Virgin River approximately 1.3 miles south of the action area. Appropriate sediment and erosion control BMPs would prevent Project-related impacts to aquatic habitat. Project activities are not anticipated to affect aquatic species or habitat.
Shivwits milkvetch (<i>Astragalus ampullarioides</i>)	E	No	This rare plant is endemic to Washington County, Utah at elevations from 2,860 to 3,661 feet asl. It occurs primarily on unstable clay soils on gently sloping outcrops of the Petrified Forest member of the Chinle Formation in warm desert shrub and pinyon-juniper communities. It blooms yellow-white flowers late April to early June. No suitable soils or habitat exist within the action area. The nearest designated critical habitat for this species is located approximately 2.2 miles east of the action area.

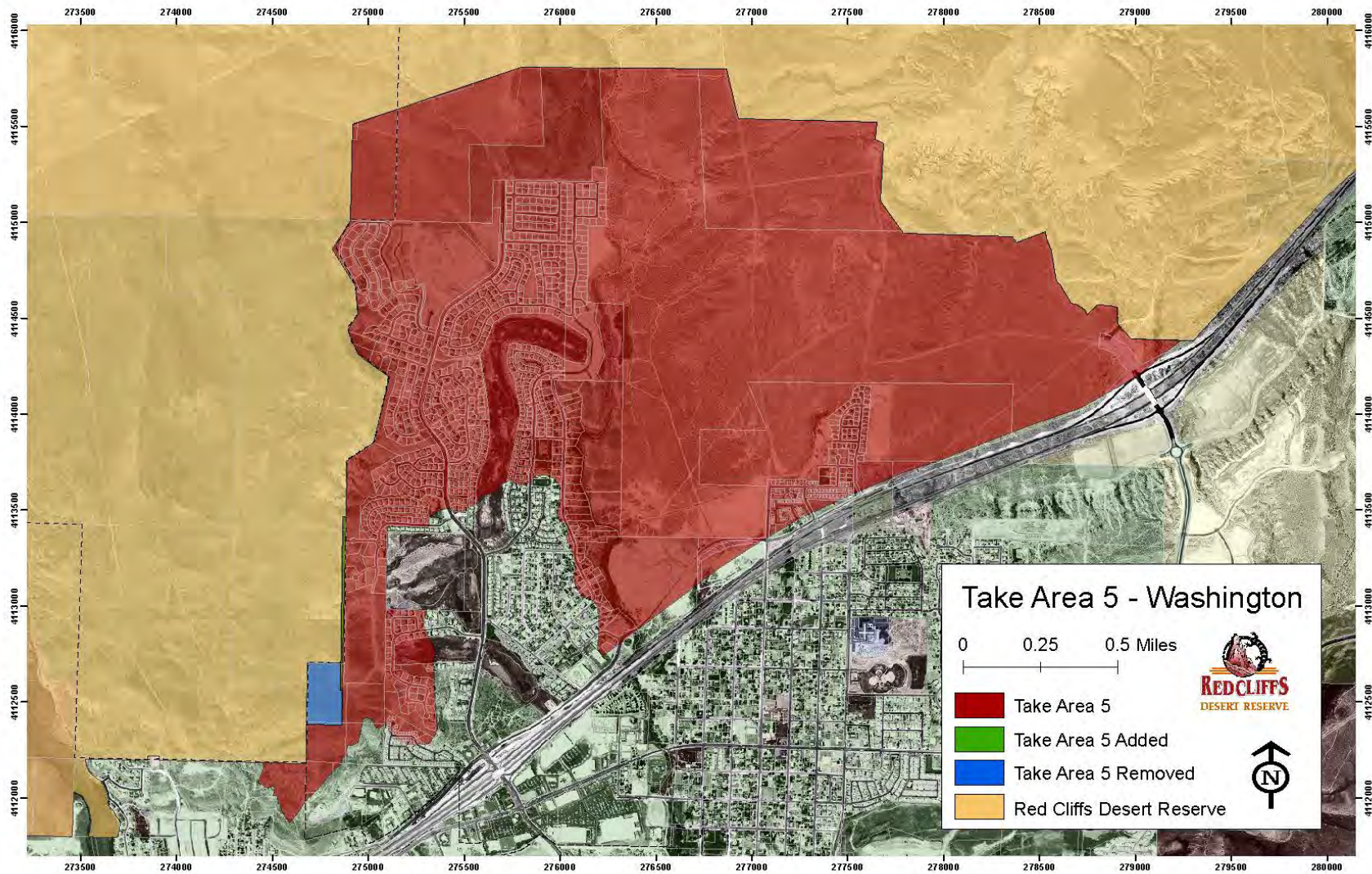
TABLE D-1
HABITAT SUITABILITY ASSESSMENT FOR FEDERALLY-LISTED SPECIES WITH A “NO EFFECT” DETERMINATION

Species	Status*	Known to Occur Within the Project Area	Habitat Assessment and Determination of Effect
Holmgren milkvetch (<i>Astragalus holmgreniorum</i>)	E	No	This rare plant occurs within warm desert shrub communities at elevations from 2,641 to 2,998 feet asl within shallow, sparsely vegetated soils derived primarily from the Virgin limestone member and Upper Red member of the Moenkopi Formation. There are 6 known populations of Holmgren milkvetch, all located within 10 miles of St. George, Utah. Three of the populations are located in Washington County, Utah and the other two are found along the border of Washington County, Utah and Mojave County, Arizona. It blooms pinkish-purple flowers with white-tipped wings from April to May. No suitable soils or habitat exist within the action area. The nearest designated critical habitat for this species is located approximately 2.7 miles southeast of the action area.
Dwarf bear-poppy (<i>Arctomecon humilis</i>)	E	No	This rare plant occurs within warm desert shrub communities at elevations from 2,700 to 3,300 feet with most known populations occurring between 2,800 and 3,000 feet asl. It grows on purple-hued, gypsiferous clay soils derived from various geologic members the Moenkopi Formation, most notably the Shnabkaib. No suitable soils or habitat exist within the action area. Critical habitat has not been designated for this species.
Jones cycladenia (<i>Cycladenia humilis</i> var. <i>jonesii</i>)	T	No	This small member of the Dogbane family (4 to 6 inches tall) is a long-lived herbaceous perennial found in mixed desert scrub, juniper, or wild buckwheat-Mormon tea plant communities. It has wide-oval or elliptical leaves and produces pink or rose-colored trumpet flowers that bloom from mid-April to early June. It occurs solely on gypsiferous, saline soils of Cutler, Summerville, and Chinle geologic formations within elevations ranging from 4,390 feet up to 6,000 feet asl. No suitable soils or habitat exist within the action area, and the species is not known to occur within Washington County, Utah. Critical habitat has not been designated for this species.

TABLE D-1 HABITAT SUITABILITY ASSESSMENT FOR FEDERALLY-LISTED SPECIES WITH A “NO EFFECT” DETERMINATION			
Species	Status*	Known to Occur Within the Project Area	Habitat Assessment and Determination of Effect
*Note: USFWS categories: Endangered (E)—Taxa in danger of extinction throughout all or a significant portion of its range; Threatened (T)/Proposed Threatened (PT)—Taxa likely to become endangered within the foreseeable future throughout all or a significant portion of its range; Experimental (EX)—Species considered to be experimental and non-essential in its designated use areas Sources: USFWS 1995, 1996, 2013a, 2013b, 2018c, USFWS database [http://ecos.fws.gov/tess_public/countySearch!speciesByCountyReport.action?fips=49017], and UDWR Conservation Data Center [http://dwrcdc.nr.utah.gov/ucdc/default.asp])			

APPENDIX E

OVERVIEW MAP OF NORTH WASHINGTON TAKE AREA (TAKE AREA 5)



APPENDIX F

USFWS DESERT TORTOISE SURVEY PRE-PROJECT SURVEY DATA SHEETS

USFWS DESERT TORTOISE PRE-PROJECT SURVEY DATA SHEET

Please submit completed copies of all datasheets and a shapefile of the sampled area to the action agency and local USFWS office within 30-days of survey completion

Date of survey: 11/12/2018 Survey biologist(s): Kathy Stark, Chelsa Daystar, Miranda Castillo
(day, month, year) (name, email, and phone number)

Site description: Washington Parkway
(project name and size, general location)

County: Washington Quad: _____ Location: _____
(UTM coordinates, lat-long, and/or TRS, map datum)

Circle one: 100% coverage or Sampling Area size to be surveyed: _____ Transect #: _____ Transect length: _____

GPS Start-point: 12 S 0276714 4114397 Start time: 0912 am/pm
(easting, northing, elevation in meters)

GPS End-point: same as start point End time: 1700 am/pm
(easting, northing, elevation in meters)

Start Temp: 1.7 °C End Temp: 13 °C

Live Tortoises

Detection number	GPS location Easting Northing		Time	Tortoise location (in burrow: all of tortoise beneath plane of burrow opening, or not in burrow)	Approx MCL ≥180 mm? (Yes, No or Unknown)	Existing tag # and color, if present
1						
2						
3						
4						
5						
6						
7						
8						

Tortoise Sign (burrows, scats, carcasses, etc)

Detection number	GPS location Easting Northing		Type of sign (burrows, scats, carcass, etc)	Description and comments
1	<u>12S 0276294</u>	<u>4115050</u>	<u>potential burrow</u>	<u>under creosote, small, 4-5"</u>
2	<u>12S 0276279</u>	<u>4115415</u>	<u>Potential burrow</u>	<u>in sand under rock. 3-5" wide, juvenile-sized.</u>
3	<u>12S 0276415</u>	<u>4114864</u>	<u>potential burrow</u>	<u>sand under rock - under boulder (deep) <12" wide can't see to back of burrow</u>
4				
5				
6				
7				
8				

Version: August 31, 2017

Page: 1 of 3

Transect number: _____

USFWS DESERT TORTOISE PRE-PROJECT SURVEY DATA SHEET

Please submit completed copies of all datasheets and a shapefile of the sampled area to the action agency and local USFWS office within 30-days of survey completion

Date of survey: 11/13/2018 Survey biologist(s): Brian Parker, Miranda Castillo, Katy Stark
(day, month, year) (name, email, and phone number)

Site description: Washington Parkway
(project name and size; general location)

County: Washington Quad: _____ Location: _____
(UTM coordinates, lat-long, and/or TRS; map datum)

Circle one: 100% coverage or Sampling Area size to be surveyed: _____ Transect #: _____ Transect length: _____

GPS Start-point: 12S 0270700 4114396 Start time: 0843 am/pm
(easting, northing, elevation in meters)

GPS End-point: SAME AS START End time: 1615 am/pm
(easting, northing, elevation in meters)

Start Temp: 1 °C 34F End Temp: 14 °C

Live Tortoises

Detection number	GPS location Easting Northing		Time	Tortoise location (in burrow: all of tortoise beneath plane of burrow opening, or not in burrow)	Approx MCL ≥180 mm? (Yes, No or Unknown)	Existing tag # and color, if present
1						
2						
3						
4						
5						
6						
7						
8						

Tortoise Sign (burrows, scats, carcasses, etc)

Detection number	GPS location Easting Northing		Type of sign (burrows, scats, carcass, etc)	Description and comments
1	<u>12S 0276900</u>	<u>4114370</u>	<u>burrow (empty)</u>	<u>burrow is the right shape/size - empty, no other sign</u>
2	<u>12S 0276239</u>	<u>4115548</u>	<u>potential burrow</u>	<u>burrow dug out under rock - on hill - no other sign</u>
3				
4				
5				
6				
7				
8				

Version: August 31, 2017

Page: 2 of 3
 Transect number: _____

USFWS DESERT TORTOISE PRE-PROJECT SURVEY DATA SHEET

Please submit completed copies of all datasheets and a shapefile of the sampled area to the action agency and local USFWS office within 30-days of survey completion

Date of survey: 11/14/2018 Survey biologist(s): Katy Stark, Miranda Castillo
(day, month, year) (name, email, and phone number)

Site description: Washington Parkway
(project name and size; general location)

County: Washington Quad: _____ Location: _____
(UTM coordinates, lat-long, and/or TRS; map datum)

Circle one: 100% coverage or Sampling Area size to be surveyed: _____ Transect #: _____ Transect length: _____

GPS Start-point: 125 0278677 4114396 Start time: 0812 am/pm
(easting, northing, elevation in meters)

GPS End-point: Same as start End time: 1600 am/pm
(easting, northing, elevation in meters)

Start Temp: 5.5 °C 42F End Temp: 14 °C 57F

Live Tortoises

Detection number	GPS location Easting Northing		Time	Tortoise location (in burrow: all of tortoise beneath plane of burrow opening, or not in burrow)	Approx MCL ≥180 mm? (Yes, No or Unknown)	Existing tag # and color, if present
1						
2						
3						
4						
5						
6						
7						
8						

Tortoise Sign (burrows, scats, carcasses, etc)

Detection number	GPS location Easting Northing		Type of sign (burrows, scats, carcass, etc)	Description and comments
1				
2				
3				
4				
5				
6				
7				
8				

From: [Crist, Larry](#)
To: [Romin, Laura](#)
Cc: [Hilary Whitcomb](#)
Subject: Re: Draft email to UDOT & FHWA re: Washington Parkway
Date: Wednesday, May 15, 2019 12:58:10 PM

I had a similar response when I looked at it. I would prefer to outline the issue rather simply then talk about it. Too much detail in the email might have them circling the wagons and being defensive from the outset rather than discussing it thoughtfully.

Larry Crist
Utah Field Supervisor
U.S. Fish and Wildlife Service
Ecological Services Office
2369 West Orton Circle, Suite 50
West Valley City, UT 84119

Main Office: 801-975-3330
Direct Line: 385 -285-7912 (NEW NUMBER)
Fax: 801-975-3331

On Wed, May 15, 2019 at 12:50 PM Romin, Laura <laura_romin@fws.gov> wrote:

Hilary, Larry - I really like the wording of Kim's first sentence. I am not sure about including all of the regulation jargon as she did here - I usually prefer to keep emails short and to the point - if we are still concerned following our meeting, then I think the specific regulation language is appropriate for a letter. Your thoughts?

Laura

Laura Romin, Deputy Field Supervisor
U.S. Fish and Wildlife Service
Utah Ecological Services Field Office
2369 W. Orton Circle
West Valley City, Utah 84119
ph: 801-975-3330, ext. 61924
cell: 801-554-7660

----- Forwarded message -----

From: **Smith, Kimberly** <kimberly_smith@fws.gov>
Date: Wed, May 15, 2019 at 11:16 AM
Subject: Re: Draft email to UDOT & FHWA re: Washington Parkway
To: Whitcomb, Hilary <hilary_whitcomb@fws.gov>
Cc: Maria Boroja <maria_boroja@fws.gov>, Doug Laye <doug_laye@fws.gov>, Laura Romin <laura_romin@fws.gov>, Orton-Palmer, Amelia <amelia_orton-palmer@fws.gov>, Paul Abate <paul_abate@fws.gov>, Larry Crist <larry_crist@fws.gov>

A suggestion.

Replace bullets 3 and 4 with the following.

It is unclear how the proposed Northern Corridor highway relates to the proposed project or how the construction of this project will affect the selection of a reasonable range of alternatives for the Northern Corridor draft environmental impact statement. We request additional information on the effects of the proposed project. ESA section 7 consultation regulations define effects of the action as the direct and indirect effects of an action on the species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action that will be added to the environmental baseline. Indirect effects are those that are caused by the proposed action and are later in time, but still are reasonably certain to occur. Interrelated actions are those that are part of a larger action and depend on the larger action for their justification. Interdependent actions are those that have no independent utility apart from the action under consideration” (50 CFR 402.02).

Kim

On Wed, May 15, 2019 at 9:40 AM Whitcomb, Hilary <hilary_whitcomb@fws.gov> wrote:
Hi all,

Please see the attached email and send me your comments at your earliest convenience.

--

Hilary Whitcomb

Fish & Wildlife Biologist

Direct Line (385) 285-7930

Main Office (801) 975-3330

<https://www.fws.gov/utahfieldoffice/index.php> (surveyor requirements, trainings, outreach, etc.)

--

Kimberly Smith

Fish and Wildlife Biologist

Branch of Landscape Conservation & Restoration

US Fish & Wildlife Service - Mountain-Prairie Region

PO Box 25486 - DFC

Denver, CO 80225

303 236 4347 (p)

Kimberly_Smith@fws.gov

[R6 Energy Google Site](#)

From: [Whitcomb, Hilary](#)
To: [Smith, Kimberly](#)
Cc: [Maria Boroja](#); [Doug Laye](#); [Laura Romin](#); [Orton-Palmer, Amelia](#); [Paul Abate](#); [Larry Crist](#)
Subject: Re: Draft email to UDOT & FHWA re: Washington Parkway
Date: Wednesday, May 15, 2019 3:24:57 PM
Attachments: [Draft email Response to request for concurrence on Washington Parkway_LR_KS.docx](#)

Please see the attached for the draft email with Kim's first sentence replacing bullets 3 and 4. Larry and Laura felt they would prefer to keep the details out of that bullet, and see how our conversation goes.

On Wed, May 15, 2019 at 11:16 AM Smith, Kimberly <kimberly_smith@fws.gov> wrote:
A suggestion.

Replace bullets 3 and 4 with the following.

It is unclear how the proposed Northern Corridor highway relates to the proposed project or how the construction of this project will affect the selection of a reasonable range of alternatives for the Northern Corridor draft environmental impact statement. We request additional information on the effects of the proposed project. ESA section 7 consultation regulations define effects of the action as the direct and indirect effects of an action on the species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action that will be added to the environmental baseline. Indirect effects are those that are caused by the proposed action and are later in time, but still are reasonably certain to occur. Interrelated actions are those that are part of a larger action and depend on the larger action for their justification. Interdependent actions are those that have no independent utility apart from the action under consideration" (50 CFR 402.02).

Kim

On Wed, May 15, 2019 at 9:40 AM Whitcomb, Hilary <hilary_whitcomb@fws.gov> wrote:
Hi all,

Please see the attached email and send me your comments at your earliest convenience.

--

Hilary Whitcomb

Fish & Wildlife Biologist

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--

Kimberly Smith
Fish and Wildlife Biologist

Branch of Landscape Conservation & Restoration
US Fish & Wildlife Service - Mountain-Prairie Region
PO Box 25486 - DFC
Denver, CO 80225
303 236 4347 (p)
Kimberly_Smith@fws.gov

[R6 Energy Google Site](#)

--

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<https://www.fws.gov/utahfieldoffice/index.php> (surveyor requirements, trainings, outreach, etc.)

Email to be sent to UDOT and FHWA (will update BLM during our next call).

Hi Matt,

We received your BA with request for concurrence on the Washington Parkway Project (Project). This Project would connect Interstate 15 to North Green Springs Drive in Washington City, Utah. We cannot provide our concurrence at this time for the following reasons:

1. The federal nexus of this Project is unclear – personal and email correspondence with Utah Department of Transportation (UDOT) staff have indicated that no federal funds would be used, while the BA states federal funds will be used. We would like to clarify FHWA's role in this consultation.
2. It is unclear which Categorical Exclusion UDOT is using for this Project.
3. It is unclear how the proposed Northern Corridor highway relates to the proposed Project or how the construction of this Project will affect the selection of a reasonable range of alternatives for the Northern Corridor draft environmental impact statement.

~~It is unclear if the Project is interrelated with the proposed Northern Corridor highway (Northern Corridor; i.e., has independent utility).~~

~~4. It is unclear if the Project is interdependent with the proposed Northern Corridor. We would be concerned if the construction of this Project could influence the selection of suitable route alternatives for the proposed Northern Corridor.~~

We would like to schedule a meeting to discuss these concerns with you and FHWA at your earliest convenience.

Formatted: Normal, No bullets or numbering

From: [Whitcomb, Hilary](#)
Cc: [Laura Romin](#); [Paul Abate](#); [Larry Crist](#)
Subject: Re: Draft email to UDOT & FHWA re: Washington Parkway
Date: Wednesday, May 15, 2019 4:34:53 PM
Attachments: [Draft email Response to request for concurrence on Washington Parkway_LR_KS_HW.docx](#)

Laura spoke with Maria, who said it's our call on how much language to include. We liked Kim's sentence but wanted to highlight regs language. I kept it extremely simple. See attached.

On Wed, May 15, 2019 at 3:24 PM Whitcomb, Hilary <hilary_whitcomb@fws.gov> wrote:
Please see the attached for the draft email with Kim's first sentence replacing bullets 3 and 4. Larry and Laura felt they would prefer to keep the details out of that bullet, and see how our conversation goes.

On Wed, May 15, 2019 at 11:16 AM Smith, Kimberly <kimberly_smith@fws.gov> wrote:
A suggestion.

Replace bullets 3 and 4 with the following.

It is unclear how the proposed Northern Corridor highway relates to the proposed project or how the construction of this project will affect the selection of a reasonable range of alternatives for the Northern Corridor draft environmental impact statement. We request additional information on the effects of the proposed project. ESA section 7 consultation regulations define effects of the action as the direct and indirect effects of an action on the species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action that will be added to the environmental baseline. Indirect effects are those that are caused by the proposed action and are later in time, but still are reasonably certain to occur. Interrelated actions are those that are part of a larger action and depend on the larger action for their justification. Interdependent actions are those that have no independent utility apart from the action under consideration" (50 CFR 402.02).

Kim

On Wed, May 15, 2019 at 9:40 AM Whitcomb, Hilary <hilary_whitcomb@fws.gov> wrote:

Hi all,

Please see the attached email and send me your comments at your earliest convenience.

--

Hilary Whitcomb

Fish & Wildlife Biologist

Direct Line (385) 285-7930

Main Office (801) 975-3330

<https://www.fws.gov/utahfieldoffice/index.php> (surveyor requirements, trainings, outreach, etc.)

--

Kimberly Smith
Fish and Wildlife Biologist
Branch of Landscape Conservation & Restoration
US Fish & Wildlife Service - Mountain-Prairie Region
PO Box 25486 - DFC
Denver, CO 80225
303 236 4347 (p)
Kimberly_Smith@fws.gov

[R6 Energy Google Site](#)

--

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<https://www.fws.gov/utahfieldoffice/index.php> (surveyor requirements, trainings, outreach, etc.)

--

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<https://www.fws.gov/utahfieldoffice/index.php> (surveyor requirements, trainings, outreach, etc.)

Email to be sent to UDOT and FHWA (will update BLM during our next call).

Hi Matt,

We received your BA with request for concurrence on the Washington Parkway Project (Project). This Project would connect Interstate 15 to North Green Springs Drive in Washington City, Utah. We cannot provide our concurrence at this time for the following reasons:

1. The federal nexus of this Project is unclear – personal and email correspondence with Utah Department of Transportation (UDOT) staff have indicated that no federal funds would be used, while the BA states federal funds will be used. We would like to clarify FHWA's role in this consultation.
2. It is unclear which Categorical Exclusion UDOT is using for this Project.
3. It is unclear how the proposed Northern Corridor highway (Northern Corridor) relates to the proposed Project (i.e., independent utility) or how the construction of this Project will affect the selection of a reasonable range of alternatives for the Northern Corridor draft environmental impact statement (i.e., interdependent actions).

We would like to schedule a meeting to discuss these concerns with you and FHWA at your earliest convenience.

From: [Doug Laye](#)
To: [Laura Romin](#)
Cc: [Hilary Whitcomb](#); [Maria Boroja](#); [Kimberly Smith](#); [Amelia Orton-Palmer](#); [Paul Abate](#); [Larry Crist](#)
Subject: RE: Draft email to UDOT & FHWA re: Washington Parkway
Date: Thursday, May 16, 2019 8:07:01 AM

I would defer to Maria and others on NEPA, but wonder if other general NEPA items we might mention would be relationship to the other project, purpose and need, etc. Anything that we feel we would benefit from a clearer understanding of. Having one or two other items in the NEPA basket, would probably more clearly indicate that we're not very clear on the proposed project and it's broader place in all the other moving parts.

From: Romin, Laura <laura_romin@fws.gov>
Sent: Thursday, May 16, 2019 7:57 AM
To: Doug Laye <doug_laye@fws.gov>
Cc: Hilary Whitcomb <hilary_whitcomb@fws.gov>; Maria Boroja <maria_boroja@fws.gov>; Kimberly Smith <kimberly_smith@fws.gov>; Amelia Orton-Palmer <amelia_orton-palmer@fws.gov>; Paul Abate <paul_abate@fws.gov>; Larry Crist <larry_crist@fws.gov>
Subject: Re: Draft email to UDOT & FHWA re: Washington Parkway

Hi Doug - I agree that the Cat x is a NEPA, not section 7 issue - are there other points you think we should make in that NEPA bullet?

Thanks

Laura

Laura Romin, Deputy Field Supervisor
U.S. Fish and Wildlife Service
Utah Ecological Services Field Office
2369 W. Orton Circle
West Valley City, Utah 84119
ph: 801-975-3330, ext. 61924
cell: 801-554-7660

On Thu, May 16, 2019 at 6:58 AM Doug Laye <doug_laye@fws.gov> wrote:

Hilary, I suggest separating bullet two into a different topic (NEPA) sentence regarding other topics. Currently it reads like the issue with the Cat X is part of our rationale for not being able to concur. Because the Cat x is a NEPA issue it is not part of the 7(a)(2) process or determination.
doug

From: Whitcomb, Hilary <hilary_whitcomb@fws.gov>
Sent: Wednesday, May 15, 2019 9:40 AM
To: Maria Boroja <maria_boroja@fws.gov>; Doug Laye <doug_laye@fws.gov>; Kimberly Smith

<kimberly_smith@fws.gov>

Cc: Laura Romin <laura_roman@fws.gov>; Orton-Palmer, Amelia <amelia_orton-palmer@fws.gov>; Paul Abate <paul_abate@fws.gov>; Larry Crist <larry_crist@fws.gov>

Subject: Draft email to UDOT & FHWA re: Washington Parkway

Hi all,

Please see the attached email and send me your comments at your earliest convenience.

--

Hilary Whitcomb

Fish & Wildlife Biologist

Direct Line (385) 285-7930

Main Office (801) 975-3330

<https://www.fws.gov/utahfieldoffice/index.php> (surveyor requirements, trainings, outreach, etc.)

From: [Crist, Larry](#)
To: mattrhoward@utah.gov
Cc: [Naomi Kisen](#); kmanwill@utah.gov; Ivan.Marrero@dot.gov; Brigitte.Mandel@dot.gov; bparker@transcon.com; Bryan.Dillon@dot.gov; [Laura Romin](#); [hilary whitcomb](#); [Paul Abate](#)
Bcc: [Maria Boroja](#); [Doug Lave](#); [Kimberly Smith](#)
Subject: Request for Concurrence Washington County Parkway Project
Date: Thursday, May 16, 2019 10:30:24 AM

Hi Matt,

We received your BA with request for concurrence on the Washington Parkway Project (Parkway Project). The Parkway Project as we understand it would connect Interstate 15 to North Green Springs Drive in Washington City, Utah. We have some questions and would like to discuss them with you in order to properly evaluate this project. Items we would like to clarify with you include:

1. The federal nexus of this Parkway Project is unclear – Based on previous communications with Utah Department of Transportation (UDOT), our understanding was that no federal funds were involved, while the BA states federal funds will be used. The Parkway Project also connects to I-15. We would like to clarify FHWA's role in this consultation.
2. It is unclear how the proposed Northern Corridor highway relates to the proposed Parkway Project or if the construction of the Parkway Project will affect the selection of a reasonable range of alternatives for the Northern Corridor draft environmental impact statement. ESA section 7 consultation regulations require an analysis of the direct and indirect effects of an action, including effects of any interrelated or interdependent actions (50 CFR 402.02).
3. Please indicate which Categorical Exclusion UDOT is using for this Project. It is also unclear if this action is possibly connected to the Northern Corridor Project under NEPA.

We would like to schedule a meeting to discuss our questions with you and FHWA at your earliest convenience. Please let me know your availability and if you have questions contact me at 801-975-3330.

Thanks and look forward to talking with you.

Larry Crist
Utah Field Supervisor
U.S. Fish and Wildlife Service
Ecological Services Office
2369 West Orton Circle, Suite 50
West Valley City, UT 84119

Main Office: 801-975-3330
Direct Line: 385 -285-7912 (NEW NUMBER)
Fax: 801-975-3331

From: [Naomi Kisen](#)
To: [Larry Crist](#)
Cc: [Ritamay Reyna](#); [Matt Howard](#); [Kim Manwill](#); [hilary whitcomb](#)
Subject: [EXTERNAL] Re: Informal Consultation Request: Washington Parkway Extension from North Green Spring Drive to I-15
Date: Wednesday, June 5, 2019 1:08:32 PM
Attachments: [Request for Update on Washington Parkway_06052019.pdf](#)

Hello Larry,

UDOT is requesting an update on its request for concurrence with its finding for the Washington Parkway project. Please see the attached letter for your information.

Sincerely,

Naomi

On Tue, Apr 30, 2019 at 1:57 PM Matt Howard <matthoward@utah.gov> wrote:

Larry,

UDOT is requesting informal consultation under Section 7(a)(2) of the Endangered Species Act for the proposed extension of Washington Parkway in Washington County, UT. Attachments to this email include the Biological Assessment and UDOT's letter requesting USFWS concurrence that the proposed action is Not Likely to Adversely Affect Mojave desert tortoise.

Thank you for your review and assistance in this process.

--

-Matt Howard
Natural Resource Manager
Utah Department of Transportation
Office: 801-965-4038
Cell: 435-255-1956
matthoward@utah.gov

--

[Naomi Kisen](#)
Environmental Program Manager
Utah Department of Transportation
Office: 801.965.4005 I Cell: 385.226.7614



State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

DEPARTMENT OF TRANSPORTATION

CARLOS M. BRACERAS, P.E.
Executive Director

JASON E. DAVIS, P.E.
Deputy Director of Engineering and Operations

TERIANNE S. NEWELL, P.E.
Deputy Director of Planning and Investment

June 5, 2019

Larry Crist
Field Supervisor, Utah Ecological Services Field Office
US Fish and Wildlife Service, Utah Field Office
2369 Orton Circle, Suite 50
West Valley City, Utah 84119

RE: Update on Request for FWS Concurrence with the Utah Department of Transportation's Determination that the Proposed Extension to Washington Parkway is Not Likely to Adversely Affect Mojave Desert Tortoise

Dear Mr. Crist:

UDOT respectfully requests an update regarding the April 30, 2019 submission of its biological assessment for the Washington Parkway project and request for concurrence with its Not Likely to Adversely Affect finding for the project. Please respond to us as to whether or not you concur with the findings of the biological assessment of the project per the requirements of 50 C.F.R. § 402.12(j).

If an in-person meeting would be useful to advance this process, please contact me at 801.965.4006 or via email at nkisen@utah.gov by Monday, June 10th to arrange a meeting at every necessary party's earliest convenience.

Sincerely,

Naomi Kisen
Environmental Program Manager
Utah Department of Transportation

CC via Email: Hilary Whitcomb (FWS)
RitaMay Reyna (FWS)
Matt Howard (UDOT)
Kim Manwill (UDOT)

From: [Mandel, Brigitte \(FHWA\)](#)
To: [Crist, Larry](#)
Cc: [Matt Howard](#); [Woolford, Edward \(FHWA\)](#); [Kim Manwill](#); [Marrero, Ivan \(FHWA\)](#); [Dillon, Bryan \(FHWA\)](#); [Laura Romin](#); [hilary whitcomb](#); [Paul Abate](#); [Naomi Kisen](#)
Subject: RE: [EXTERNAL] Re: Request for Concurrence Washington County Parkway Project
Date: Tuesday, June 11, 2019 2:41:59 PM

Hello Larry,

Thank you for including Ivan and I on your recent email. I wanted to clarify FHWA's role in ESA Section 7 consultations with regard to the Washington County Parkway Project (Parkway Project). Pursuant to the provisions of 23 USC 326 and a June 23, 2017 MOU between FHWA and UDOT, all environmental decision-making for the Parkway Project has been assigned to UDOT, including consultation under Section 7. Under the statute, UDOT is "solely responsible" for complying with Section 7 on the Parkway Project. See 23 USC 326(b)(2). Consequently, FHWA has no role in the consultation process for this project.

Best regards,

Brigitte A. Mandel
Assistant Division Administrator
FHWA Utah Division
801-955-3502

From: Crist, Larry [mailto:larry_crist@fws.gov]
Sent: Tuesday, June 11, 2019 12:49 PM
To: Naomi Kisen <nkisen@utah.gov>
Cc: Matt Howard <matthoward@utah.gov>; Kim Manwill <kmanwill@utah.gov>; Marrero, Ivan (FHWA) <Ivan.Marrero@dot.gov>; Mandel, Brigitte (FHWA) <brigitte.mandel@dot.gov>; Dillon, Bryan (FHWA) <bryan.dillon@dot.gov>; Laura Romin <laura_romin@fws.gov>; hilary whitcomb <hilary_whitcomb@fws.gov>; Paul Abate <paul_abate@fws.gov>
Subject: Re: [EXTERNAL] Re: Request for Concurrence Washington County Parkway Project

Hi Naomi,

Sorry its taken awhile to get back to you but I would like to take you up on your offer to discuss the Washington County Parkway project with UDOT and FHWA. We would be happy to come by your offices when we find an appropriate time.

Thanks!

Larry Crist
Utah Field Supervisor
U.S. Fish and Wildlife Service
Ecological Services Office
2369 West Orton Circle, Suite 50
West Valley City, UT 84119

Main Office: 801-975-3330
Direct Line: 385 -285-7912 (NEW NUMBER)
Fax: 801-975-3331

On Fri, May 17, 2019 at 12:38 PM Naomi Kisen <nkisen@utah.gov> wrote:

Hello Larry,

Thank you for your questions and request for clarification. UDOT's responses are below in [blue](#). As mentioned in our response to question 1, FHWA does not have a direct role in this project; however if you would like to discuss our responses UDOT would be happy to do so.

Sincerely,

Naomi

1. The federal nexus of this Parkway Project is unclear – Based on previous communications with Utah Department of Transportation (UDOT), our understanding was that no federal funds were involved, while the BA states federal funds will be used. The Parkway Project also connects to I-15. We would like to clarify FHWA's role in this consultation.

[Federal funding for this project has been allocated through the Dixie MPO. This project would extend Washington Parkway from its current terminus northwest of I-15 at the intersection of existing Washington Parkway with Buena Vista Boulevard, to the community of Green Springs. It does not require modification of the existing Interchange at I-15 and does not require a new connection to I-15. As UDOT is conducting this evaluation under the 23 U.S.C § 326 MOU which assigned the State of Utah responsibility for making categorical exclusion determinations under NEPA, FHWA does not have a direct role in this project.](#)

2. It is unclear how the proposed Northern Corridor highway relates to the proposed Parkway Project or if the construction of the Parkway Project will affect the selection of a reasonable range of alternatives for the Northern Corridor draft environmental impact statement. ESA section 7 consultation regulations require an analysis of the direct and indirect effects of an action, including effects of any interrelated or interdependent actions (50 CFR 402.02).

[The community of Green Springs is only accessible by Green Springs Drive. This results in traffic congestion and potential safety hazards. The purpose of the Washington Parkway project is to reduce congestion and improve local connectivity and safety by providing a secondary access to the Green Springs community. It would provide an alternative route into and out of the Green Springs community in the event of a road obstruction and an additional route connecting to I-15 which would help alleviate congestion along Green Springs Drive, specifically at the I-15 Exit 10, Red Cliffs Drive and Red Hills Parkway intersections. The proposed project improvements are specific to the needs described](#)

above and do not require additional improvements to be reasonable and effective in accomplishing their purpose.

3. Please indicate which Categorical Exclusion UDOT is using for this Project. It is also unclear if this action is possibly connected to the Northern Corridor Project under NEPA.

This project qualifies as a categorical exclusion under 23 CFR § 771.117(c)(23), federally funded projects that receive less than \$5,000,000 (as adjusted annually). As noted in our response above, the improvements proposed by this project would address safety and accessibility needs independent of any other improvements that may be proposed in the area.

--

Naomi Kisen

Environmental Program Manager

Utah Department of Transportation

Office: 801.965.4005 | Cell: 385.226.7614

From: [Abate, Paul](#)
To: [Romin, Laura](#)
Cc: [Whitcomb, Hilary](#); [Larry Crist](#)
Subject: Re: [EXTERNAL] Re: Request for Concurrence Washington County Parkway Project
Date: Wednesday, June 12, 2019 10:24:58 AM

9 am monday works for me.

Paul Abate
Supervisory Fish and Wildlife Biologist
US Fish and Wildlife Service, Utah Field Office
2369 West Orton Circle, Suite 50
West Valley City, Utah 84119

paul_abate@fws.gov
Main Office: 801-975-3330
Direct Line: 385-285-7907 (NEW NUMBER)
Fax: 801-975-3331

On Wed, Jun 12, 2019 at 10:19 AM Romin, Laura <laura_romin@fws.gov> wrote:

I can do 9:00 Monday.

Laura Romin, Deputy Field Supervisor
U.S. Fish and Wildlife Service
Utah Ecological Services Field Office
2369 W. Orton Circle
West Valley City, Utah 84119
ph: 801-975-3330, ext. 61924
cell: 801-554-7660

On Wed, Jun 12, 2019 at 10:17 AM Whitcomb, Hilary <hilary_whitcomb@fws.gov> wrote:

I'm available either of those times - would prefer 9 am Monday

On Tue, Jun 11, 2019 at 5:01 PM Naomi Kisen <nkisen@utah.gov> wrote:

Hi Larry,

Thank you for your willingness to meet with us. If you are available to meet next Monday between 9-10 am or Tuesday between 8-9 am, Kim Manwill will be in Salt Lake and will attend in person. We are also available to meet on Thursday the 20th between 11 am and 12 pm; Kim would need to join via video call however. I realize these are limited options; if FWS is not available during these times please provide some options that would work for you.

Sincerely,

Naomi

On Tue, Jun 11, 2019 at 2:41 PM Mandel, Brigitte (FHWA) <brigitte.mandel@dot.gov> wrote:

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Assistant Division Administrator

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Thanks!

Larry Crist

Utah Field Supervisor

U.S. Fish and Wildlife Service

Ecological Services Office

2369 West Orton Circle, Suite 50

West Valley City, UT 84119

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This project qualifies as a categorical exclusion under 23 CFR § 771.117(c) (23), federally funded projects that receive less than \$5,000,000 (as adjusted annually). As noted in our response above, the improvements proposed by this project would address safety and accessibility needs independent of any other improvements that may be proposed in the area.

--

Naomi Kisen

Environmental Program Manager

Utah Department of Transportation

Office: 801.965.4005 I Cell: 385.226.7614

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Naomi Kisen

Environmental Program Manager

Utah Department of Transportation

Office: 801.965.4005 I Cell: 385.226.7614

--

Hilary Whitcomb

Fish & Wildlife Biologist

Direct Line (385) 285-7930

Main Office (801) 975-3330

<https://www.fws.gov/utahfieldoffice/index.php> (surveyor requirements, trainings, outreach, etc.)

From: [Richard Spotts](#)
To: [Richard Spotts](#)
Subject: [EXTERNAL] FYI - Spectrum LTE re: Northern Corridor and Washington Parkway extension
Date: Wednesday, June 12, 2019 10:35:40 AM

FYI - You may find the Spectrum LTE below of interest.

<https://www.thespectrum.com/story/opinion/2019/06/12/letters-editor-june-12/1422370001/>

On the 'Northern Corridor'

UDOT and some local officials are trying to sneakily advance the controversial Northern Corridor highway through the Red Cliffs Tortoise Reserve and BLM Red Cliffs National Conservation Area. They are using an inadequate environmental analysis to push construction of the Washington Parkway extension that is planned to directly link to the Northern Corridor. This extension would parallel the Reserve and NCA boundaries and harm threatened Mojave desert tortoises and other wildlife species. Potentially less-damaging alternative alignments and cumulative adverse impacts are not being considered. Shame on those officials for their attempts to bootstrap the Northern Corridor and avoid meaningful scrutiny and public awareness.

Carolyn Borg

St. George

From: [Naomi Kisen](#)
To: [Larry Crist](#); [hilary whitcomb](#); [Abate, Paul](#); [Romin, Laura](#); [Kim Manwill](#); [Brandon Weston](#); [Matt Howard](#)
Subject: [EXTERNAL] Summary of yesterday's Washington Parkway discussion topics
Date: Tuesday, June 18, 2019 10:49:03 AM

Hi Larry, Hilary and Paul:

Below is a summary of the main topics discussed at yesterday's meeting regarding the extension of Washington Parkway. Please let me know if edits, additions or clarifications are desired.

Thank you,

Naomi

- 1) Appropriate Use of FHWA Categorical Exclusion as defined by 23 CFR § 771.117.
 - a. Project receives less than \$5,000,000 of federal funds, as adjusted annually (FHWA Categorical Exclusion (c)(23)).
 - b. Project does not involve unusual circumstances:
 - i. Project would not result in significant environmental resources because it has minimal to no effect on environmental resources (e.g. threatened and endangered species and their critical habitat, aquatic resources/waters of the US, air quality, etc...).
 - ii. Project would not result in significant controversy on environmental grounds; extending potential for controversy associated with other projects to this project requires the presumption of false or inaccurate information regarding this project's need, purpose and impacts.
 - iii. Project would not result in impacts to resources protected by Section 4(f) requirements or Section 106 of the National Historic Preservation Act.
 - iii. Project would comply with Federal, State, and local laws related to the environmental aspects of the action.
- 2) Washington Parkway has independent utility; there are no interdependent or interrelated actions.
 - a. The Washington Parkway project is needed, and thus justified, to reduce congestion and improve connectivity and safety for people traveling to and from the Green Springs community. These needs would be met by the Parkway as proposed independent of the Northern Transportation Corridor; the Corridor is not required to address these needs in full or in part.
 - b. Although the Parkway has been previously been presented in planning documents a contiguous to the Northern Transportation Corridor, it is capable of functioning properly, being usable and addressing the transportation need (reducing congestion, improving connectivity and safety for Green Springs) independent of any other improvement. It is would be reasonable to build the Washington Parkway extension even if no additional transportation improvements are made in the area.
 - c. The extension of Washington Parkway extension has been planned by Washington City since 2002, prior to the Omnibus Public Land Management Act of 2009 which required the identification of a northern transportation route.

3) The extension of Washington Parkway does not limit the range of alternatives for the Northern Transportation Corridor.

a. Washington Parkway would be a two lane local road that ties into the residential street system on the eastside of the Green Springs Community. To connect to the Northern Transportation Corridor, access would need to be provided through or around the residential area. Additionally, the Northern Transportation Corridor is planned as a four lane regional facility that has an appreciably greater overall width. Major reconstruction and widening of the Washington Parkway extension would be required to make it compatible with the facility planned for the Northern Transportation Corridor.

b. As NEPA requires all reasonable alternatives (i.e. a full spectrum of alternatives) be analyzed and compared in an EIS, the extension of Washington Parkway would not preclude from consideration alternatives that tie in at other locations, alternatives that follow varying alignments and alternatives that do not include the creation of a new transportation corridor.

--

[Naomi Kisen](#)

Environmental Program Manager

Utah Department of Transportation

[Office: 801.965.4005](#) | [Cell: 385.226.7614](#)



ADVOCATES for the WEST
PO BOX 1612 | BOISE, ID 83701
ADVOCATESWEST.ORG | 208.342.7024

VIA ELECTRONIC MAIL ONLY

June 18, 2019

Carlos Braceras, Executive Director
Utah Department of Transportation
4501 South 2700 West
Salt Lake City, Utah 84114-1265
cbraceras@utah.gov

Re: Washington Parkway Extension Categorical Exclusion

Dear Mr. Braceras:

The undersigned conservation organizations, including Conserve Southwest Utah, Conservation Lands Foundation, Southern Utah Wilderness Alliance and The Wilderness Society (Conservation Groups) are concerned with and hereby oppose the Utah Department of Transportation's (UDOT) efforts to expedite, permit, and approve through the use of a Categorical Exclusion the construction of the 2.75-mile Washington Parkway Extension from I-15 to North Green Spring Drive in St George, Utah. Instead, the Conservation Groups demand UDOT assess in one Environmental Impact Statement the ecological, historic, and cultural impacts of the Washington Parkway Extension together with the impacts of the proposed Northern Corridor Highway, which is a related highway project immediately to the west of the Washington Parkway Extension. In addition, the Conservation Groups request to be promptly notified of any and all UDOT actions, activities, updates, and opportunities for public engagement in the decision-making process for the Washington Parkway Extension.

Conserve Southwest Utah (CSU) is a grassroots coalition of nearly 2,000 local citizens committed to protecting the natural resources and quality of life in Washington County, Utah through direct advocacy of conservation and of Smart Growth policies that enable conservation, for the benefit of present and future generations. CSU promotes a vision of vibrant, compact communities, anchored in the high-tech, tourism, and outdoor recreation industries, which prioritize conservation and stewardship of land, air, and water resources for the long-term sustainability of both these natural resources and the communities.

Conservation Lands Foundation (CLF) is a non-profit conservation organization created to promote environmental conservation through assisting the National Landscape Conservation System (also known as the National Conservation Lands) and preserving open space and wilderness. CLF is the only non-profit in the country specifically dedicated to establishing and

safeguarding the National Conservation Lands. To fulfill its organizational purpose, CLF works to protect, restore, and expand the National Conservation Lands through education, advocacy, and partnership. In advancing its organizational purpose, CLF has played a significant and critical role in expanding the National Conservation Lands and establishing strong conservation policy, including within the Red Cliffs NCA.

The Southern Utah Wilderness Alliance (SUWA) has a long-standing interest in the management of lands in Utah and regularly participates in the decision-making process for land use plans and site-specific proposals around the state. SUWA members and staff enjoy a myriad of activities on Utah wildlands, including hiking, biking, nature viewing, photography, and quiet contemplation in the solitude offered by wild place. SUWA is particularly interested in decisions directly or indirectly affecting lands included in the Utah Wilderness Coalition's (UWC's) wilderness proposal—America's Red Rock Wilderness Act—and in impacts on designated Wilderness, wilderness-quality lands, and BLM-managed National Conservation Lands, including the Red Cliffs NCA.

The mission of the Wilderness Society (TWS) is to protect Wilderness and inspire Americans to care for our wild places. TWS's goal is to ensure that future generations will enjoy the clean air and water, wildlife, natural beauty, opportunities for recreation, and spiritual renewal that pristine forests, rivers, deserts, and mountains provide. Since 1935, TWS has worked to protect wilderness-quality lands across the United States, and the Wilderness Society played an active and important role in the creation and protection of the Red Cliffs National Conservation Areas and surrounding lands.

Conservation Groups are heavily invested in the creation, stewardship, and protection of the Red Cliffs National Conservation Area (NCA)—and the overlapping Red Cliffs Desert Reserve—and have dedicated thousands of hours to protecting the fragile desert resources with the NCA. Conservation Groups have also actively opposed federal and state actions that may harm these public lands and wildlife habitats, including, for example, opposing Washington County's administrative challenge to the final Record of Decision for the Red Cliffs NCA.

Conservation Groups are concerned that UDOT appears prepared to approve the construction of the Washington Parkway Extension through the use of a Categorical Exclusions, and without first adhering to the statutory requirements of the Endangered Species Act, 16 U.S.C. §§ 1531 *et seq.* (ESA), the National Environmental Policy Act, 43 U.S.C. §§ 4321 *et seq.* (NEPA), the Federal Lands Policy and Management Act, 43 U.S.C. §§ 1701 *et seq.* (FLPMA), the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.* (CWA), the National Historic Preservation Act, 54 U.S.C. §§ 300101 *et seq.* (NHPA), and Section 4(f) of the Department of Transportation Act of 1966, 16 U.S.C. § 470f (Section 4(f)).

It appears that UDOT is relying on three memoranda of understanding in preparing and leading environmental and cultural resource compliance efforts under the ESA, NEPA, FLPMA, CWA, NHPA, and Section 4(f). *See* Third Renewed Memorandum of Understanding Between Federal Highway Administration, Utah Division and the Utah Department of Transportation (June 23, 2017); Memorandum of Understanding Between the Federal Highway Administration and the

Utah Department of Transportation Concerning State of Utah's Participation in the Surface Transportation Project Delivery Program Pursuant to 23 U.S.C. § 327 (January 5, 2017); Third Amended Programmatic Agreement Among the Federal Highway Administration, the Utah State Historic Preservation Officer, the Advisory Council on Historic Preservation, the United States Army Corps of Engineers, Sacramento District, and the Utah Department of Transportation Regarding Section 106 Implementation for Federal-Aid Transportation Projects in the State of Utah (July 6, 2017). Each MOU requires UDOT to adhere to the substantive and procedural requirements of federal law, however, including the public engagement requirements of ESA, NEPA, FLPMA, CWA, NHPA, and Section 4(f).

Accordingly, Conservation Groups request to be notified of any actions, activities, decisions, and updates related to the Washington County Extension as required under ESA, NEPA, FLPMA, CWA, NHPA, and Section 4(f), including the commencement of the NHPA Section 106 and Section 4(f) processes. Please include with this notification copies of all relevant documents, as they are made publicly available. In addition, Conservation Groups specifically request to be notified of any and all public comment and/or public involvement opportunities under NEPA, ESA, FLPMA, CWA, NHPA, and Section 4(f) including public comment and involvement opportunities required under 36 C.F.R. § 800.3(e) and UDOT's public involvement procedures. Conservation Groups also hereby request that UDOT grant each group so-called "consulting party" status under 36 C.F.R. § 800.3(e).

Please provide notice of any such document, record, or opportunity for public involvement and comment, preferably in electronic format, to each conservation groups at the addresses listed at the end of this letter.

Furthermore, please note that Conservation Groups strongly object to UDOT's use of a Categorical Exclusion (CE) to approve the construction of the Washington Parkway Extension. Federal Highway Administration regulations prohibit the reliance on a CE for this project, particularly because a CE is prohibited for actions with significant impacts on the environment, travel patterns, planned growth, land use, or natural and recreational resources. 23 C.F.R. § 771.117. The Washington Parkway Extension will have all of these significant environmental impacts, and, therefore, involves unusual and extraordinary circumstances that require UDOT to conduct further environmental analysis. Indeed, the Dixie Metropolitan Planning Organization (Dixie MPO) acknowledged that this extension "is a vital northern corridor for the region in moving east-west traffic and providing congestion relief" in the area. Dixie MPO, Concept Report FY 2017–2018, at 3; *see also id.* (noting this new roadway will be a "vital route for local and non local traffic to move freely east to west" in St George).

In some circumstances, a CE may be appropriate for minor projects in developed areas or modernization/repair efforts with minimal new effects. The proposed Washington Parkway Extension project will construct a major new highway segment through a rugged natural area. It will require extensive grading and compaction of a wide corridor, cutting and filling slopes, modification of Mojave desert tortoise designated Critical Habitat, relocating existing powerlines, and crossing three intermittent and ephemeral streams — including one wash — that drain several valleys immediately to the north. *See id.* at 1 (referring to the proposal to construct

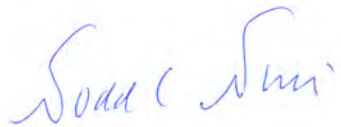
the Washington Parkway Extension as “new construction” to build a “regionally significant 110 [foot] Major Arterial roadway.”)

Moreover, it appears that UDOT is purposefully and improperly segmenting the Washington Parkway Extension from the NEPA analysis for the Northern Corridor. Again, Dixie MPO noted and acknowledged that the Washington Parkway Extension will be one “segment” of a “regionally significant” Northern Corridor expressway, which “in the future will be a vital east-west corridor connection from Washington City to St. George, Santa Clara, Ivins and Highway 18.” *Id.* at 1, 3. NEPA prohibits UDOT’s from “segment[ing]” the connected Washington Parkway Extension and the Northern Corridor to minimize the potential environmental consequences, however, thus short-circuiting UDOT’s NEPA review. *See* 40 C.F.R. § 1502.4(a) (requiring closely related proposals to be analyzed together); 23 C.F.R. § 771.111(f). Because of the interrelated nature of the Washington Parkway Extension and the Northern Corridor, UDOT must assess the full impact of both of these projects in a single Environmental Impact Statement.

On June 10, 2019, Conserve Southwest Utah organized a drone overflight of the Washington Parkway Extension route, footage of which can be viewed [here](#). As this video shows, the construction of the proposed extension will require substantial resources and will have very significant impacts on the public lands, waters, and wildlife habitat in the area. Indeed, based on the complexity of the landscape, together with the breadth and scope of the new Washington Parkway Extension, UDOT may not rely on a Categorical Exclusion to sidestep its NEPA obligations.

We look forward to hearing from you in the near future. Please feel free to contact with any questions or concerns that you may have. Thank you.

Sincerely,

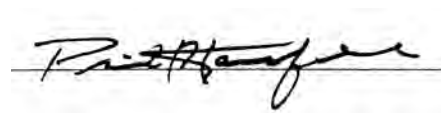


Todd C. Tucci
Senior Attorney
ADVOCATES FOR THE WEST
1320 W Franklin Street
Boise, ID 83702
208.342.7024 x202
ttucci@advocateswest.org

On behalf of Conserve Southwest Utah



Danielle Murray
Senior Legal and Policy Director
Conservation Lands Foundation
835 E 2nd Ave, #314
Durango, CO 81301
970.247.0807x102
danielle@conservationlands.org



Phil Hanceford
Conservation Director
The Wilderness Society
1660 Wynkoop Street, Suite 850
Denver, CO 80202
303.225.4636
phil_hanceford@twc.org



Kya Marienfeld
Wildlands Attorney
Southern Utah Wilderness Alliance
P.O. Box 968
Moab, UT 84532
435.259.5440
kya@suwa.org

Letter from Conservation Groups to C. Braceras

June 18, 2019

Page 6 of 6

cc: Tom Butine, Board President, CSU board@conserveswu.org
Sarah Thomas, CSU sarah@conserveswu.org
Matt Howard, Natural Resources Manager, UDOT matthoward@utah.gov
Eric Hansen, Environmental Manager, UDOT, Region 4 erichansen@utah.gov
Naomi Kisen, NEPA Program Manager/Natural Resources, UDOT nkisen@utah.gov
Larry Crist, Field Supervisor, USFWS, Larry_Crist@fws.gov
Hilary Whitcomb, Wildlife Biologist, USFWS, Hilary_Whitcomb@fws.gov
Ed Roberson, State Director, BLM eroberson@blm.gov
Ivan Marrero, Utah Division Administrator, USDOT-FHWA Ivan.Marrero@dot.gov
Michael Jewell, Chief, Regulatory Division, ACOE Michael.s.jewell.@usace.army.mil

From: [Randee Sanders](#)
To: [Bette Arial](#); [Cameron Rognan](#); [Chris Blake](#); [Chris Hart](#); [Chris Keleher](#); [Dawna Ferris-Rowley](#); [John Bramall](#); [Larry Crist](#)
Subject: [EXTERNAL] HCAC draft minutes 6-25-19
Date: Friday, June 21, 2019 9:15:53 AM
Attachments: [image001.png](#)
[052819_HCAC_Draft_Minutes.docx](#)

Good morning,

Attached is the draft minutes from last month's meeting. Feel welcome to preview them before next Tuesday. As a reminder the luncheon/work meeting will begin at 11:00 am in the Conference Room in the Washington County Admin building. We will have a catered lunch. Let me know if you have any questions or if I can help in any way.

See you next Tuesday!



Randee Sanders

Administrative Assistant
Habitat Conservation Plan

p: (435) 256-6313

a: 10 N 100 E, St. George, UT 84770

e: randee.sanders@washco.utah.gov

HABITAT CONSERVATION ADVISORY COMMITTEE

for the Washington County Habitat Conservation Plan (HCP)

A **regular meeting** of the Habitat Conservation Advisory Committee (HCAC) was held Washington County Commission Chambers on **May 28, 2019.**

Committee members present were:

Chris Blake, Chairman
John Bramall, Vice Chair
Chris Hart
Chris Keleher
Laura Romin (representing Larry Crist)
Dawna Ferris-Rowley

Environmental Organization
Mayors Association
Local Development
Utah Dept. of Natural Resources (UDNR)
U.S. Fish & Wildlife Service (USFWS)
Bureau of Land Management (BLM)

Absent and Excused:

Larry Crist
Bette Arial

U.S. Fish & Wildlife Service (USFWS)
Citizen-at-Large

Also present were:

Cameron Rognan
Mike Schiif
Randee Sanders
Lisa Rutherford
Sarah Thomas
Chris Gorzalski
Amanda Aurora
Hilary Whitcomb
Sandy Johnson
Richard Spotts
Briget Eastep
Mike Melton
Dennis Parker
Mori Kessler
Reid Persing
Angie Fellows
Loretta Markham
Nocholette Eisinger
Adam Heyder
Lura Snow
Larry Cazier
Dan Glassett
Bruce Palmer
Henrie Walton
Callie Goff
Katy Peterson

HCP Administrator
Washington County HCP Biologist
Washington County HCP Recorder
Conserve Southwest Utah
Conserve Southwest Utah
Great Old Broads for Wilderness
SWCA
U.S. Fish & Wildlife Service (TC Committee)
Conserve Southwest Utah
Citizen
Southern Utah University
FFSL
Citizen
St. George News
SWCA
Jacobs
Jacobs
Rock Canyon
FFSL
Washington County HCP Outreach Coordinator
Washington County HCP Trail Steward
Washington County HCP Trail Steward
Jacobs
U.S. Senate
Bureau of Land Management
Citizen

Present via conference line:
None

1. CALL TO ORDER

Chairman Chris Blake called the meeting to order at 1:00 p.m. noting that a quorum was present.

2. CONSENT AGENDA

The Consent Agenda is a means of expediting routine matters which come before the committee for approval. The consent portion of the agenda is approved by one (1) non-debatable motion. If any member wishes to remove an item from the consent portion of the agenda, then that item becomes the first order of business on the regular agenda.

a. Approval of Agenda

b. Review and Approve Regular and Work Meeting Minutes

1. April 23, 2019

c. Next Meeting Date

1. June 25, 2019

MOTION by: Chris Hart
Seconded by: Dawna Ferris-Rowley
Discussion: To approve the Consent Agenda.
Vote was taken: All voted aye.
Motion passed.

3. DECLARATION OF CONFLICTS OF INTEREST

Mayor Chris Hart stated he would have a conflict of interest on anything pertaining to Ivins City.

4. PRESENTATIONS

a. Recreation impact monitoring – Briget Eastep

Briget Eastep, from Southern Utah University, shared a PowerPoint presentation about recreation impact monitoring that had been done within the reserve this past October. She and her crew hiked City Creek, Mill Creek, and Grapevine areas; stopping every $\frac{1}{4}$ mile for interval data, and recording visual disturbance impacts. Her findings show that Pioneer Hills, Pioneer Rim, and Brook's Nature trails had the most visual disturbances since 2015. However, many other trails had the same or less visual disturbances since 2015. Desired conditions being met that she had observed included; camping restrictions being followed,

climbing restricted to designated areas, no human waste or litter/trash, motorized vehicles on designated roads only, no evidence of paintball activities, and no target shooting evidence. Desired conditions that she had observed as not being met included; every trail having off trail impacts, social trails found (excluding Black Knolls, Rusty Cliffs and Sand Hill) to view points and attractions, unauthorized access points in Pioneer Park area, and human caused plant destruction along impact area.

Briget Eastep would like to continue to assess an area each fall, and analyze visual disturbance point data with BLM's social trail data. She would also like to partnership with IIC, and utilize the Urban Ranger Program with her efforts.

Dawna Ferris-Rowley asked how Briget interfaces with the Technical Committee, and Cameron Rognan answered that the Technical Committee had previously set up a schedule, and they have been following that schedule.

b. HCP outreach quarterly update – Lura Snow

Lura Snow, Washington County HCP's new Outreach Coordinator, shared a presentation to show what has been going on with the outreach program for the 1st quarter of 2019. She reported that 15 presentations to 652 people occurred during the 1st quarter, which was an increase of 3 presentations and reaching approximately 22 additional people compared to last year. Additionally, HCP staff assisted Lava Ridge Intermediate students in their efforts to get the Gila Monster listed as Utah's state reptile. Red Cliffs Desert Reserve's social media presence also increased during the 1st quarter. Facebook went from 748 likes at the end of December to 925 likes by the end of March. Likewise, Instagram followers increased from 67 to 249. Lura Snow reported that she will be continuing with the annual Summer Program in the Visitor Center with a weekly story time, craft, and video for kids.

5. UTILITY AND DEVELOPMENT PROJECTS

a. Ivins City Detention Basins

Cameron Rognan reported that this project is continuing at a low-level with a few loose ends to tie up before the project is finished. It should be completed any day now.

b. Washington City Wells

Cameron Rognan reported that issues arose for this project, but the wells are completely contained and fenced in, so impacts should be minimal to the tortoises.

6. SURVEYS AND CLEARANCES

None.

7. GENERAL BUSINESS

a. Discussion and possible action on recreation impact monitoring

Briget Eastep will continue with the program, and will coordinate with Mike Schijf on future monitoring and identifying locations for recreation management or trail improvements.

b. Discussion and possible action on HCP outreach efforts

Mayor Chris Hart asked if we shouldn't consider changing the messaging on our radio ads. Cameron Rognan informed him that the HCP recently discontinued its contract with the radio station. Should the HCP decide to advertise on the radio again, the messaging would be changed to emphasize the importance of being a steward and leaving no trace.

Chris Hart suggested the HCP consider putting up fliers in hotels to reach those who come to recreate over the weekend. Lura Snow said she has looked into a few options already and will try to implement something in that regard.

c. Discussion and possible action on the Habitat Management Plan

Cameron Rognan invited the committee to share feedback on the Habitat Management Plan during the meeting, or they could choose to email him any comments later. No feedback was given, but Chris Hart said that he would be sending Cameron Rognan his comments.

d. HCP renewal update – Jacobs / SWCA

Amanda Aurora from SWCA shared a presentation regarding the HCP renewal. She gave an overview of the schedule with the Notice of Intent due on August 23rd 2019, and the goal to have the renewal done by September 2020. Amanda Aurora told the committee that they can expect the amended HCP to preserve the "Grand Deal" and basic structure of the 1995 HCP. However, the metrics for take and impacts will be re-calibrated based on updated science. Washington Parkway will be addressed in the renewal as part of the parallel federal actions by BLM. It will also address Zone 6 as an expansion of the HCP's program, contingent on approval of the Washington Parkway.

It was decided that the committee would meet at 11:00 am, rather than 11:30 am, for their next lunch meeting in June to review the draft. In July more time may be needed for a work meeting after the regular meeting.

e. Land acquisition update – Dawna / Cameron

Dawna Ferris-Rowley said that the Brennan appraisal has been received by the BLM, and they have been reviewing it and plan to formally accept the terms by the end of this week. They will be able to share it with other interested parties at that point.

Cameron Rognan stated that the HCP and the State have submitted an application for section 6 funds. The cap of two million dollars has been removed, so more was requested. Cameron Rognan said that he is hopeful to get the full amount applied for since there was such a substantial contribution from Mr. Brennan and the County.

f. Fire conditions update – State Forestry and Fire

Mike Melton, area Fire Management Officer, gave a presentation on the predicted fire conditions for the upcoming season. There has been a substantial increase in precipitation due to the El Niño. Although June is anticipated to have a lower than normal chance for fires, July will be above normal, and Mike Melton was not willing to say where August will go yet. It will be important to be proactive this season.

g. Discussion and possible action on fire management

Mike Melton said that, should fires occur, the UT Division of Forestry, Fire & State Lands (FFSL) plans to be aggressive with aircraft, etc. Burn permits are available until June 1st, then fire restrictions will go into force. It would be difficult to restrict the use of firearms, which would require concurrence from the Sheriff and County Commissions offices.

h. Consideration of 1st Quarter 2019 report

MOTION by: Chris Hart
Seconded by: Dawna Ferris-Rowley
Discussion: To accept the 1st Quarter report.
Vote was taken: All voted aye.
Motion passed.

i. TC Report – Hilary Whitcomb

Hilary Whitcomb from the U.S. Fish and Wildlife read the TC report handout that Mike Schijf had prepared for the meeting. General business for the TC included reviewing messaging for the citizen science app, and working on a raven management plan. TC member reports included issues with dogs off leash, removal of invasive Sahara mustard, and tracking utility development or related projects in the reserve that may cause habitat disturbances.

Dawna Ferris-Rowley was asked if the BLM has an expedited procedure in place to assist with the raven issue. She answered saying that the Resource Management Plan requires a developed targeted Predator Control Plan to be in place, with a list of reasonable alternatives. She said that the BLM does not have the staff to start such a plan, but an option the HCP could consider would be to use funds for contracting to have a Predator Control Plan with supporting NEPA done. The BLM would work with the HCP to create a Statement of Work that can be used by the County to contract with an Environmental Services Contractor to put together that kind of a plan.

j. HCP Administrator's Report

1. Raven management

Cameron Rognan stated that reports of predation of tortoises by ravens keep coming in. The raven population is expanding at a rapid rate; it is currently 1,500-2,500% of what is normal for the Mohave Desert. This is why the HCP is pursuing the option of egg oiling, not only to curb raven numbers, but also because tortoise hatchlings are targeted even more when the ravens are nesting and there are extra mouths to feed.

2. Give Your Land a Hand

Cameron Rognan shared that the HCP participated by helping to facilitate a cleanup project on Navajo Drive that was coordinated by Dominion Energy. During the cleanup event there were three tortoise sightings in that area of Zone 6.

3. Dogs off leash update

Cameron Rognan gave an update that additional signs have been ordered and will be posted on trails where there are the most issues with dogs off leash.

8. PUBLIC COMMENT

This item is reserved for items not listed on this agenda. No action may be taken on a matter raised under this agenda item (three minutes per person).

Richard Spotts shared three points with the committee. First, tourism's rebranding initiative "Greater Zion" and the impacts of increased recreation use within the reserve as a result of it. He hopes for better messaging to dovetail the impact of this initiative. Secondly, he suggested the committee look into Desert Tortoise Council's abbreviated abstracts for the last few years which document that the BLM in CA has already done an assessment for raven control and could possibly be used to expedite the research and work in the reserve so we are not reinventing the wheel. He believes that the raven problem is getting worse and

we need to be proactive in addressing the issue. Third, he is concerned about the Washington Parkway. He said that right now UDOT is trying to finalize a categorical exclusion under a federal highway exclusion, and he is concerned about the impacts it would have on the Mojave Desert Tortoise and its habitat.

Lisa Rutherford recommended that the HCP include messaging on social media platforms that include the issue of dogs being off leash. Additionally, she suggested signage be posted within the NCA that fires are not permitted.

Sarah Thomas from Conserve Southwest Utah read a statement where she asked for consideration on how the Northern Corridor and creation of Zone 6 will affect tortoise habitat. She asked the HCAC to renew an HCP plan that meets the conservation and recovery goals which support the tortoise and our larger community.

Chris Gorzalski shared that while hiking Lange's Dugway she noticed signs laying on ground that need to be reinstalled. She also noticed that the signage in that area states that campfires are not permitted in lowland zone and suggested clarification to include all zones.

9. MEMBER REPORTS & REQUEST FOR FUTURE AGENDA ITEMS

John Bramall gave a report on inquiries he has received from judges regarding citations for dogs off leash. John Bramall said that he told them that the HCAC has tried to educate the public and be proactive, and urged the judges to be "tough on them so word will get around".

John Bramall also reported that he has spoken with Jim Doyle, and found that he is motivated to make a deal. Jim Doyle would be willing to have a work meeting with the HCAC to discuss this possibility and work something out.

Dawna Ferris-Rowley shared that John Kellam, NCA Biologist, has been doing a systematic study of Gila Monsters. The smallest recorded Gila Monster among observations in Utah, measuring 10.1 inches, was recently found.

10. ADJOURN

MOTION by: Chris Hart

Seconded by: John Bramall

Discussion: To adjourn the meeting.

Vote was taken: All voted aye.

Motion passed.

The meeting was adjourned at 2:37 p.m.
Minutes prepared by Randee Sanders.

From: [Richard Spotts](#)
To: [Rigtrup, Keith](#)
Cc: [Dawna Ferris](#); [John Kellam](#); [Stephanie Trujillo](#); [Dean Cox](#); [Eric Clarke](#); [Cameron Rognan](#); [Mike Schijf](#); [Rande Sanders](#); [lura.snow@washco.utah.gov](#); [Chris Hart](#); [Chris Blake](#); [Chris Keleher](#); [John Bramall](#); [Larry Crist](#); [laura_romin@fws.gov](#); [Whitcomb, Hilary](#); [Flo Gardipee](#); [Glen Knowles](#); [Averill-Murray, Roy](#); [Ann McLuckie](#); [ehansen@udot.gov](#); [Woolford, Edward \(FHWA\)](#); [tricks@pec.us.com](#); [Amanda Aurora](#); [Loretta.Markham@jacobs.com](#); [Bruce Palmer](#)
Subject: [EXTERNAL] UDOT "Northern Corridor" right-of-way application to BLM and likely "connected actions" requiring contemporaneous and comprehensive NEPA analysis
Date: Friday, July 5, 2019 11:55:19 AM

July 5, 2019

Keith Rigtrup
Field Manager
Saint George Field Office
U.S. Bureau of Land Management
345 E. Riverside Drive
Saint George UT 84770
(Sent via email to: krigtrup@blm.gov)

RE: UDOT "Northern Corridor" right-of-way application to BLM and likely "connected actions" requiring contemporaneous and comprehensive NEPA analysis

Dear Mr. Rigtrup:

I am writing to you as the official BLM Point of Contact (POC) for the above-referenced UDOT application and associated National Environmental Policy Act (NEPA) analysis.

Please carefully consider my following comments and include them in the appropriate project file/administrative record. I believe that these comments are relevant in terms of your preparing the upcoming Notice of Intent (NOI) which, when published, will begin the formal scoping public comment period.

As you know, the NEPA regulation, under the heading "Scope", at 40 CFR 1508.25 (a)(1) states:

"(a) Actions (other than unconnected single actions) which may be:

(1) Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:

(i) Automatically trigger other actions which may require environmental impact statements.

(ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.

(iii) Are interdependent parts of a larger action and depend on the larger action for their justification."

As you also know from our previous email exchange, I believe that the proposed Washington Parkway extension project, now being considered for approval by UDOT under a FHWA categorical exclusion, is a "connected action" that should be considered as part of the overall Northern Corridor NEPA analysis. The proponents of this extension project have made it clear that this project is intended to directly link to the Northern Corridor to provide a major east-west transportation route in the county. **There now appear to be additional proposed road and highway projects that are also likely to be "connected actions" to the Northern Corridor.**

The Dixie Metropolitan Planning Organization (DMPO) recently released their 2019-2050 Regional Transportation Plan (RTP) for a public comment period ending August 3rd. **In the table below, please note the numbered projects (far left column) in this RTP that overtly or factually are connected to the Northern Corridor.**

68	UDOT	4.6	Northern Corridor Phase 1 (First 2 Lanes)	New Construction	58,000,000
74	UDOT	5	Northern Corridor (BLM ROW Application Support)	Environmental/ROW	4,800,000
81	SG	0.5	New Interchange at West end of Northern Corridor	Widen/Reconstruct	26,000,000
82	UDOT	7.2	Northern Corridor -Phase 2 (Second 2 Lanes)	New Construction	46,800,000
97	SG	3.0	Cottonwood Springs Dr from Red Hills Pkwy to Washington Parkway	New Construction	8,640,000
73	W	3	Washington Parkway (Green Springs to I-15 Exit 13)	Widening/New Const.	4,600,000
105	W	0.6	Main Street from I-15 Frontage Road to Washington Parkway	New Construction	2,103,000

There may be additional proposed projects that are not in this RTP but may be on plans for Washington City or other municipalities in the county. For example, there may be future phases of the Washington Parkway extension or roads that would connect to it, perhaps including to access a new Exit 11 on Interstate 15.

I realize that the RTP has a disclaimer that these projects are not yet finalized and they would be subject to future NEPA analysis. However, there is sufficient detail now to determine their likely connection to the Northern Corridor, and dividing up projects in various phases seems like a way to improperly "segment" NEPA analysis. Indeed, these RTP connected proposed projects need and deserve a comprehensive NEPA analysis, not only to evaluate feasible transportation alternatives at a more suitable scale, but also to adequately capture potential cumulative effects and mitigation measures.

Please let me know if you concur that these proposed projects are likely "connected actions" vis-a-vis the Northern Corridor NEPA analysis, and, if not, your reasoning for that conclusion. Please also let me know if you have any questions about my comments.

Thank you very much for your consideration.

Sincerely,

Richard Spotts

255 North 2790 East
Saint George UT 84790
raspotts2@gmail.com

cc: Interested parties



State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

DEPARTMENT OF TRANSPORTATION

CARLOS M. BRACERAS, P.E.
Executive Director

SHANE M. MARSHALL, P.E.
Deputy Director of Engineering and Operations

TERIANNE S. NEWELL, P.E.
Deputy Director of Planning and Investment

Rick Torgerson, UDOT Region 4 Director
210 West 800 South
Richfield, UT 84701

September 4, 2018

Keith Rigtrup, Field Office Manager
Bureau of Land Management, St. George Field Office
345 East Riverside Drive
St. George, Utah 84790

RE: Northern Corridor Application for Grant of Right-of-Way

Dear Mr. Rigtrup:

The Utah Department of Transportation (UDOT), in association with Washington County, is submitting for your consideration and action a Standard Form 299 (SF-299) Application for Transportation and Utility Systems and Facilities on Federal Lands for a new highway referred to as the Northern Corridor. The Northern Corridor would cross federal, Utah School and Institutional Trust Lands Administration, State of Utah, and private lands in Washington County. The roadway would be approximately 5 miles in length, depending on the final alignment. Approximately 1.7 miles of this 5-mile-long road would cross public lands. As currently envisioned, the roadway would connect the Washington Parkway from near the community of Green Springs to the existing Red Hills Parkway (refer to map attached to the SF-299). The federal lands crossed by the roadway are administered by the Bureau of Land Management (BLM) and contained within the Red Cliffs National Conservation Area (NCA). An amendment to the BLM's Resource Management Plan for the Red Cliffs NCA may be necessary for the BLM to issue the requested right-of-way grant.

The Northern Corridor is needed to respond to current and anticipated growth occurring throughout Washington County; to this end a road connecting Interstate 15 and State Route 18 north of St. George has been on local transportation plans for more than 30 years. Washington County has grown from a community of 13,669 in 1970 to 138,115 in 2010. A majority of this growth occurred between 1990 and 2010 and projections forecast that growth will continue into the future. As the population grows, traffic models for St. George and the surrounding communities predict traffic demand is expected to exceed capacity on portions of St. George Boulevard, Bluff Street, and Interstate 15 by 2040. Without additional capacity, the transportation network will experience substantial delays and congestion.

Washington County, UDOT, the Dixie Metropolitan Planning Organization (MPO), and local municipalities have pursued improvements to the transportation system that would add capacity without requiring a right-of-way from the BLM through the Red Cliffs NCA. These improvements have included but are not limited to capacity

improvements to Skyline Drive (Red Hills Parkway), Bluff Street, and St. George Boulevard. The land adjacent to these streets is heavily developed with commercial and residential uses; widening these streets to accommodate future traffic would have serious community impacts.

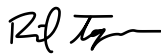
In preparation of the SF-299, representatives from UDOT and Washington County have met with representatives from the BLM and Washington County Habitat Conservation Plan (HCP) to understand the potential concerns associated with the Northern Corridor. These meetings have included discussions regarding potential highway alignments resulting in the development of a preliminary roadway alignment that would meet transportation needs while minimizing other resource impacts. That alignment is the subject of this application, though UDOT, Washington County, and the Dixie MPO continue to evaluate other potentially feasible alternatives and roadway alignments. UDOT understands that documentation of the alternatives considered and the reason for certain alternatives being carried forward or dismissed from further consideration will be required, and that other alignments or refinements to this alignment may be considered during the National Environmental Policy Act (NEPA) review process.

The enclosed preliminary SF-299 is submitted to initiate the process for granting right-of-way across the BLM-administered lands in the Red Cliffs NCA. UDOT understands that BLM's regulations for processing right-of-way applications at 43 CFR 2804 require that UDOT develop and submit to BLM a Plan of Development to support the right-of-way application. Staff from the BLM and UDOT are currently coordinating to determine the necessary contents and format for the Plan of Development. UDOT will submit a preliminary Plan of Development under separate cover as this documentation is developed.

At this time, UDOT requests that the BLM coordinate to determine (1) the level of NEPA documentation needed for the BLM to grant a right-of-way, (2) the scope of any amendment to the Red Cliffs NCA and BLM St. George Field Office Resource Management Plans that may be necessary for BLM to issue a right-of-way grant, (3) the appropriate content and format for the Plan of Development, and (4) any other supporting information, resource surveys, or additional support the BLM would need to process the application. UDOT expects to submit a revised SF-299 and revise the Plan of Development as additional project design and other types of information become available throughout the project development and NEPA review process.

UDOT and Washington County look forward to collaborating with you and your staff on the Northern Corridor.

Sincerely,



Rick Torgerson, Region Director
Utah Department of Transportation, Region 4

cc: Ahmed Mosen, BLM Color Country District Manager
Edwin Robersen, BLM Utah State Director
Kim Manwill, Project Manager, Utah Department of Transportation
Brandon Weston, Environmental Services Director, Utah Department of Transportation
Dean Cox, Washington County Commissioner

UDOT Region 4, Northern Corridor

Attachment to Standard Form 299 (05/2009), Application for Transportation and Utility Systems and Facilities on Federal Lands.

The following text is overflow from the SF-299.

7. Project description, continued.

(a) BLM lands crossed by the proposed right-of-way would include the following:

Salt Lake Meridian, Utah

T. 42 S., R. 15 W.,

sec. 17, NE1/4, SE1/4, and SW1/4;

sec. 18, SE1/4, and SW1/4.

(d) The right-of-way would be used for a state highway and related structures. The right-of-way request is for a 30-year term with right of renewal.

(e) The road would be used year-round.

(f) N/A

(g) The duration and timing of construction including construction phases would be determined during the design and planning process.

(h) Temporary work areas, if needed, would be identified during the design and NEPA/environmental review process.

8. The proposed route being considered at this time is shown on Map 1 - Northern Corridor Proposed Alignment.

9. Applications for all required state and local permits will be submitted after the BLM review and approval process, as appropriate.

13. a. Describe other reasonable alternative routes and modes considered.

UDOT, Washington County, the Dixie Metropolitan Planning Organization, and other local government entities have spent many years studying current and projected future east-west travel demand in Washington County, including potential solutions to meet this projected demand. These organizations have studied solutions including other possible alignments for the Northern Corridor and alternatives that would not involve the construction of a new highway across BLM-administered lands.

Five preliminary alternatives to the proposed alignment are currently being evaluated by UDOT, additional alternatives may be developed during this evaluation. The preliminary alternatives are shown on Map 2 - Northern Corridor Alternatives. UDOT is in the process of evaluating the preliminary alternatives, including, developing criteria to evaluate how well each would meet UDOT's purpose and need for the roadway, as well as various



environmental and other considerations. UDOT anticipates that BLM will be involved in this evaluation process and that additional information about the alternative routes considered will be developed during the environmental review process.

b. Why were these alternatives not selected?

UDOT understands that alternatives to UDOT's proposal will be considered in the environmental review and public involvement process. In general, alternatives that would not require a right-of-way across BLM-administered lands were not selected because these alternatives would not meet projected future travel demand. Other possible highway alignments that would cross BLM-administered lands were not selected as being preferred for this application because conversations with the BLM and Washington County Habitat Conservation Plan (HCP) indicated that these alignments were likely to have higher impacts on the threatened Mojave desert tortoise (*Gopherus agassizii*), the species' habitat, and other sensitive resources.

c. Give an explanation as to why it is necessary to cross Federal Lands.

Washington County, the Dixie Metropolitan Planning Organization (MPO), and local municipalities have pursued improvements to the east-west transportation system in Washington County that would add capacity without requiring a right-of-way from the BLM. These improvements have included but are not limited to capacity improvements to Skyline Drive (Red Hills Parkway), Bluff Street, and St. George Boulevard. The land adjacent to these streets is heavily developed with commercial and residential uses; widening these streets to accommodate future travel demand would have serious community impacts.

15. Provide statement of need for project, including the economic feasibility and items such as: (a) cost of proposal (construction, operation, and maintenance); (b) estimated cost of next best alternative; and (c) expected public benefits.

The Northern Corridor is needed to respond to current and anticipated growth occurring throughout Washington County; to this end a road connecting Interstate 15 and State Route 18 north of St. George has been on local transportation plans for more than 30 years. Washington County has grown from a community of 13,669 in 1970 to 138,115 in 2010. A majority of this growth occurred between 1990 and 2010, and projections forecast that growth will continue into the future. As the population grows, traffic models for St. George and the surrounding communities predict that traffic demand is expected to exceed capacity on portions of St. George Boulevard, Bluff Street, and Interstate 15 by 2040. Without additional capacity, the transportation network will experience substantial delays and congestion.

- a) The cost of the project, based on estimates included in the Washington Parkway Cost/Benefit Study, ranged from approximately \$35,000,000 to \$107,000,000, depending on the alternative considered. The anticipated cost of the proposed alignment and alternatives would be evaluated further during the design and NEPA/environmental review process.
- b) See a).
- c) Anticipated public benefits are primarily associated with future traffic delay reductions.



Other possible public benefits associated with traffic delay reductions could include accident reductions, improved air quality, and economic growth. The public benefits would be further evaluated during the NEPA/environmental review process.

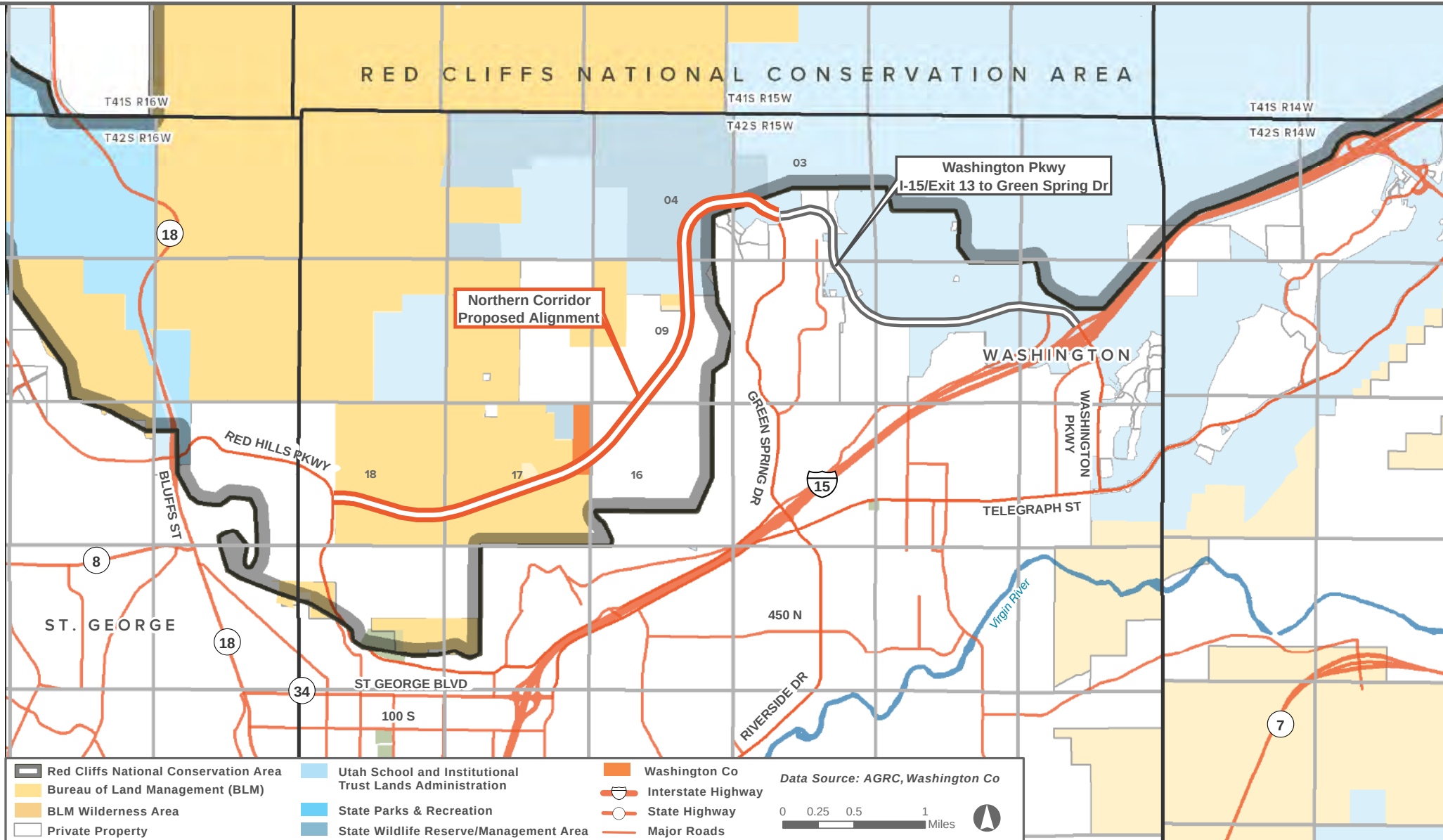
17. Describe likely environmental effects that the proposed project will have on: (a) air quality; (b) visual impact; (c) surface and ground water quality and quantity; (d) the control or structural change on any stream or other body of water; (e) existing noise levels; and (f) the surface of the land, including vegetation, permafrost, soil, and soil stability.

The Northern Corridor would be located in the congressionally designated Red Cliffs National Conservation Area and may affect the resources located in this area, as well as the surrounding communities. In general, these resources may include but would not be limited to air quality, visual resources, surface and ground water quality and quantity, cultural resources, noise, vegetation, and other resources. The environmental effects of the project would be analyzed and disclosed during the NEPA process. Where necessary, mitigation measures would be developed to minimize potential adverse environmental impacts on natural, human, and cultural resources. These measures will be included in the Plan of Development for the Project.

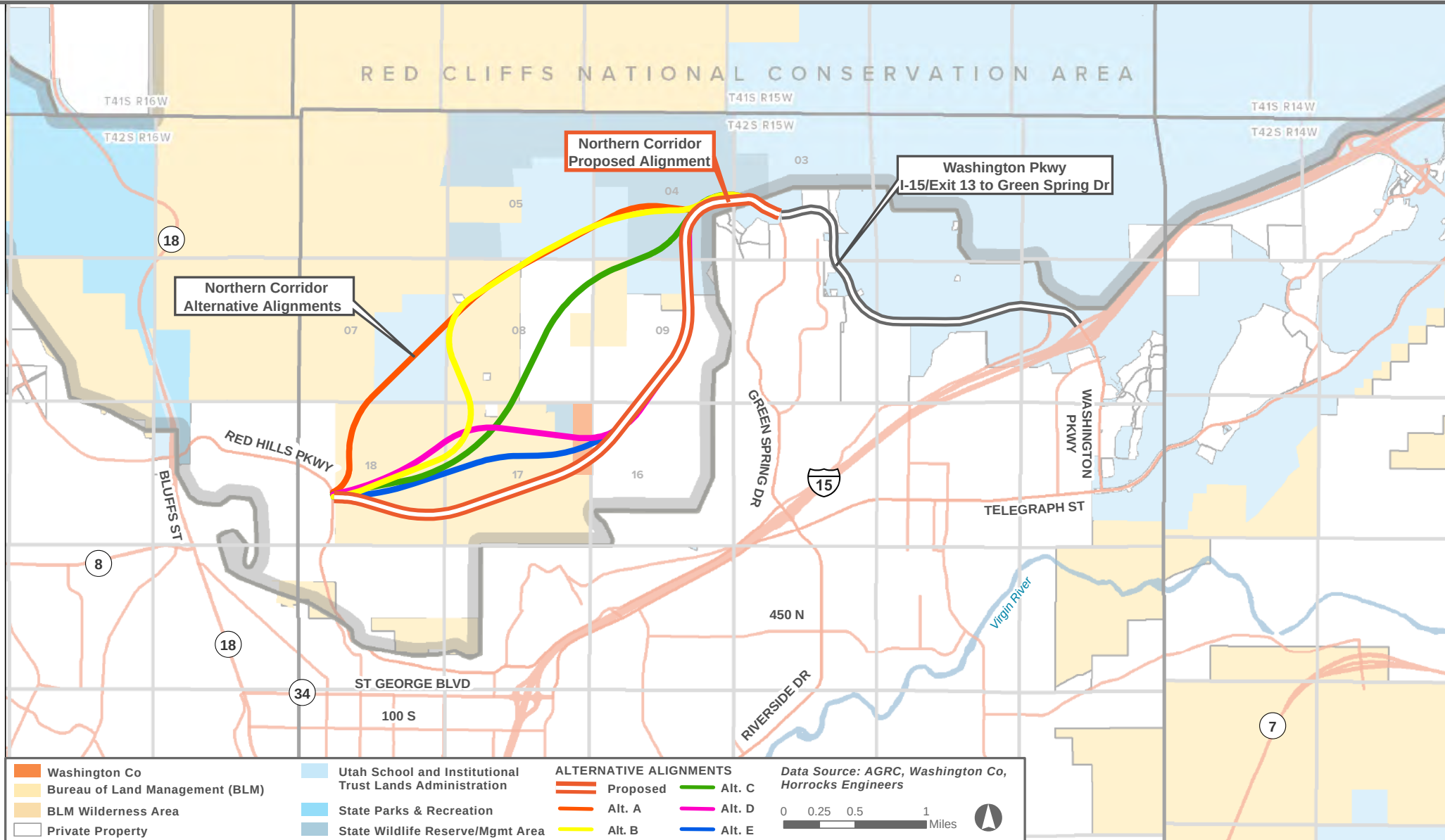
18. Describe the probable effects that the proposed project will have on (a) populations of fish, plant life, wildlife, and marine life, including threatened and endangered species; and (b) marine mammals, including hunting, capturing, collecting, or killing these animals.

The Northern Corridor would be located in the congressionally designated Red Cliffs National Conservation Area; this area is also the Red Cliffs Desert Reserve, which was designated as a component of the development of the Washington County HCP. Wildlife and wildlife habitats, including the Mojave desert tortoise, Mojave desert tortoise designated critical habitat, and potential habitat for plant species listed under the Endangered Species Act are present in the areas crossed by the proposed Northern Corridor. The environmental effects of the project on these resources would be analyzed and disclosed during the NEPA process. UDOT recognizes that coordination with the HCP and U.S. Fish and Wildlife Service will be necessary to evaluate project effects and determine appropriate mitigation. Where necessary, mitigation measures would be developed to minimize potential adverse environmental impacts on natural, human, and cultural resources. These measures will be included in the Plan of Development for the Project.

MAP 1. NORTHERN CORRIDOR PROPOSED ALIGNMENT



MAP 2. NORTHERN CORRIDOR ALTERNATIVE ALIGNMENTS



APPLICATION FOR TRANSPORTATION AND
UTILITY SYSTEMS AND FACILITIES
ON FEDERAL LANDS

FORM APPROVED
OMB Control Number: 0596-0082
Expiration Date: 8/31/2020

FOR AGENCY USE ONLY

NOTE: Before completing and filing the application, the applicant should completely review this package and schedule a preapplication meeting with representatives of the agency responsible for processing the application. Each agency may have specific and unique requirements to be met in preparing and processing the application. Many times, with the help of the agency representative, the application can be completed at the preapplication meeting.

Application Number

Date Filed

1. Name and address of applicant (*include zip code*)

Rick Torgerson, Region Director
UDOT, Region 4
210 West 800 South
Richfield, UT 84701

2. Name, title, and address of authorized agent if
different from item 1 (*include zip code*)

Kim Manwill, Project Manager
UDOT, Region 4
5340 West 200 South
Hurricane, UT 84737

3. Telephone (*with area code*)

Applicant
(435) 893-4799

Authorized Agent
(435) 896-0733

4. As applicant are you? (*check one*)

- a. ☐ Individual
b. ☐ Corporation*
c. ☐ Partnership/Association*
d. ☐ State Government/State Agency
e. ☐ Local Government
f. ☐ Federal Agency

* If checked, complete supplemental page

5. Specify what application is for: (*check one*)

- a. ☐ New authorization
b. ☐ Renewing existing authorization number
c. ☐ Amend existing authorization number
d. ☐ Assign existing authorization number
e. ☐ Existing use for which no authorization has been received *
f. ☐ Other*

* If checked, provide details under item 7

6. If an individual, or partnership, are you a citizen(s) of the United States? ☐ Yes ☐ No

7. Project description (describe in detail): (a) Type of system or facility, (*e.g., canal, pipeline, road*); (b) related structures and facilities; (c) physical specifications (*Length, width, grading, etc.*); (d) term of years needed; (e) time of year of use or operation; (f) Volume or amount of product to be transported; (g) duration and timing of construction; and (h) temporary work areas needed for construction (*Attach additional sheets, if additional space is needed.*)

(a) The application is for a right-of-way for the construction and operation of a new highway, referred to as the Northern Corridor, and associated infrastructure. The Northern Corridor would provide a new east-west transportation connection between the Washington Parkway near Green Springs and Red Hills Parkway. A legal description is provided in the Attachment. The highway would likely be constructed in phases to meet projected travel demand.

(b) Related structures and facilities would be determined by UDOT and other stakeholders during the design and environmental review process. Related structures and facilities may include bridges or culverts; sidewalk; curb and gutter; landscaping; new or upgraded signals at intersections; and a separate paved pedestrian/bike trail. At a future date, other agencies or utilities may seek to co-locate utilities including water, power, and sewer with the highway alignment.

(c) The requested right-of-way would be 300-feet wide except in areas where terrain or alignment require a wider right-of-way. Approximately 1.7 miles of the 5-mile-long road would be on BLM-administered lands, depending on the final design and alignment selected. As currently envisioned, the facility at full build out would be a four-lane divided highway with two 12-foot-wide travel lanes in each direction, an unpaved center median, and clear zones that meet current UDOT standards. Additional details would be provided during the design and environmental review process. See Attachment for additional details.

8. Attach a map covering area and show location of project proposal

9. State or Local government approval: ☐ Attached ☐ Applied for ☐ Not Required

10. Nonreturnable application fee: ☐ Attached ☐ Not required

11. Does project cross international boundary or affect international waterways? ☐ Yes ☐ No (*if "yes," indicate on map*)

12. Give statement of your technical and financial capability to construct, operate, maintain, and terminate system for which authorization is being requested.

UDOT oversees administration, construction, and maintenance of all state roads, highways, and interstates within the State of Utah. In fulfilling these duties, UDOT is responsible for maintaining over 5,900 miles of roadway and manages an annual budget of approximately 1 billion dollars. UDOT is technically and financially capable of constructing, operating, and maintaining the Northern Corridor.

13a. Describe other reasonable alternative routes and modes considered.

See Attachment.

b. Why were these alternatives not selected?

See Attachment.

c. Give explanation as to why it is necessary to cross Federal Lands.

See Attachment.

14. List authorizations and pending applications filed for similar projects which may provide information to the authorizing agency. (*Specify number, date, code, or name*)

N/A

15. Provide statement of need for project, including the economic feasibility and items such as: (a) cost of proposal (construction, operation, and maintenance); (b) estimated cost of next best alternative; and (c) expected public benefits.

See Attachment.

16. Describe probable effects on the population in the area, including the social and economic aspects, and the rural lifestyles.

The possible effects of the project on the local population, including social and economic aspects, would be evaluated and described during the NEPA/environmental review process.

17. Describe likely environmental effects that the proposed project will have on: (a) air quality; (b) visual impact; (c) surface and ground water quality and quantity; (d) the control or structural change on any stream or other body of water; (e) existing noise levels; and (f) the surface of the land, including vegetation, permafrost, soil, and soil stability.

See Attachment.

18. Describe the probable effects that the proposed project will have on (a) populations of fish, plantlife, wildlife, and marine life, including threatened and endangered species; and (b) marine mammals, including hunting, capturing, collecting, or killing these animals.

See Attachment.

19. State whether any hazardous material, as defined in this paragraph, will be used, produced, transported or stored on or within the right-of-way or any of the right-of-way facilities, or used in the construction, operation, maintenance or termination of the right-of-way or any of its facilities. "Hazardous material" means any substance, pollutant or contaminant that is listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq., and its regulations. The definition of hazardous substances under CERCLA includes any "hazardous waste" as defined in the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6901 et seq., and its regulations. The term hazardous materials also includes any nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq. The term does not include petroleum, including crude oil or any fraction thereof that is not otherwise specifically listed or designated as a hazardous substance under CERCLA Section 101(14), 42 U.S.C. 9601(14), nor does the term include natural gas.

Any hazardous materials as listed under CERCLA that would be used, stored, or transported within the right-of-way would be handled according to all pertinent regulations. A list of potential CERCLA-listed hazardous materials to be used, stored, or transported during the project would be developed during the environmental review process.

20. Name all the Department(s)/Agency(ies) where this application is being filed.

Bureau of Land Management, St. George Field Office

I HEREBY CERTIFY, That I am of legal age and authorized to do business in the State and that I have personally examined the information contained in the application and believe that the information submitted is correct to the best of my knowledge.

Signature of Applicant



Date

Sept 11, 2018

Title 18, U.S.C. Section 1001, makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious, or fraudulent statements or representations as to any matter within its jurisdiction.

GENERAL INFORMATION
ALASKA NATIONAL INTEREST LANDS

This application will be used when applying for a right-of-way, permit, license, lease, or certificate for the use of Federal lands which lie within conservation system units and National Recreation or Conservation Areas as defined in the Alaska National Interest Lands Conservation Act. Conservation system units include the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, National Trails System, National Wilderness Preservation System, and National Forest Monuments.

Transportation and utility systems and facility uses for which the application may be used are:

1. Canals, ditches, flumes, laterals, pipes, pipelines, tunnels, and other systems for the transportation of water.
2. Pipelines and other systems for the transportation of liquids other than water, including oil, natural gas, synthetic liquid and gaseous fuels, and any refined product produced therefrom.
3. Pipelines, slurry and emulsion systems, and conveyor belts for transportation of solid materials.
4. Systems for the transmission and distribution of electric energy.
5. Systems for transmission or reception of radio, television, telephone, telegraph, and other electronic signals, and other means of communications.
6. Improved right-of-way for snow machines, air cushion vehicles, and all-terrain vehicles.
7. Roads, highways, railroads, tunnels, tramways, airports, landing strips, docks, and other systems of general transportation.

This application must be filed simultaneously with each Federal department or agency requiring authorization to establish and operate your proposal.

In Alaska, the following agencies will help the applicant file an application and identify the other agencies the applicant should contact and possibly file with:

Department of Agriculture
Regional Forester, Forest Service (USFS)
P.O. Box 21628
Juneau, Alaska 99802-1628
Telephone: (907) 586-7847 (or a local Forest Service Office)

Department of the Interior
Bureau of Indian Affairs (BIA)
Alaska Regional Office
709 West 9th Street
Juneau, Alaska 99802
Telephone: (907) 586-7177

Department of the Interior
Alaska State Office
Bureau of Land Management
222 West 7th Avenue #13
Anchorage, Alaska 99513
Public Room: 907-271-5960
FAX: 907-271-3684
(or a local BLM Office)

U.S. Fish & Wildlife Service (FWS)
Office of the Regional Director
1011 East Tudor Road
Anchorage, Alaska 99503
Telephone: (907) 786-3440

National Park Service (NPS)
Alaska Regional Office
240 West 5th Avenue
Anchorage, Alaska 99501
Telephone: (907) 644-3510

Note - Filings with any Interior agency may be filed with any office noted above or with the Office of the Secretary of the Interior, Regional Environmental Officer, P.O. Box 120, 1675 C Street, Anchorage, Alaska 99513.

Department of Transportation
Federal Aviation Administration
Alaska Region AAL-4, 222 West 7th Ave., Box 14
Anchorage, Alaska 99513-7587
Telephone: (907) 271-5285

NOTE - The Department of Transportation has established the above central filing point for agencies within that Department. Affected agencies are: Federal Aviation Administration (FAA), Coast Guard (USCG), Federal Highway Administration (FHWA), Federal Railroad Administration (FRA).

OTHER THAN ALASKA NATIONAL INTEREST LANDS

Use of this form is not limited to National Interest Conservation Lands of Alaska.

Individual department/agencies may authorize the use of this form by applicants for transportation and utility systems and facilities on other Federal lands outside those areas described above.

For proposals located outside of Alaska, applications will be filed at the local agency office or at a location specified by the responsible Federal agency.

SPECIFIC INSTRUCTIONS
(Items not listed are self-explanatory)

- 7 Attach preliminary site and facility construction plans. The responsible agency will provide instructions whenever specific plans are required.
- 8 Generally, the map must show the section(s), township(s), and range(s) within which the project is to be located. Show the proposed location of the project on the map as accurately as possible. Some agencies require detailed survey maps. The responsible agency will provide additional instructions.
- 9, 10, and 12 The responsible agency will provide additional instructions.
- 13 Providing information on alternate routes and modes in as much detail as possible, discussing why certain routes or modes were rejected and why it is necessary to cross Federal lands will assist the agency(ies) in processing your application and reaching a final decision. Include only reasonable alternate routes and modes as related to current technology and economics.
- 14 The responsible agency will provide instructions.
- 15 Generally, a simple statement of the purpose of the proposal will be sufficient. However, major proposals located in critical or sensitive areas may require a full analysis with additional specific information. The responsible agency will provide additional instructions.
- 16 through 19 Providing this information with as much detail as possible will assist the Federal agency(ies) in processing the application and reaching a decision. When completing these items, you should use a sound judgment in furnishing relevant information. For example, if the project is not near a stream or other body of water, do not address this subject. The responsible agency will provide additional instructions.

Application must be signed by the applicant or applicant's authorized representative.

EFFECT OF NOT PROVIDING INFORMATION: Disclosure of the information is voluntary. If all the information is not provided, the application may be rejected.

DATA COLLECTION STATEMENT

The Federal agencies collect this information from applicants requesting right-of-way, permit, license, lease, or certification for the use of Federal lands. The Federal agencies use this information to evaluate the applicant's proposal. The public is obligated to submit this form if they wish to obtain permission to use Federal lands.

SUPPLEMENTAL

NOTE: The responsible agency(ies) will provide instructions	CHECK APPROPRIATE BLOCK	
I - PRIVATE CORPORATIONS	ATTACHED	FILED*
a. Articles of Incorporation	☐	☐
b. Corporation Bylaws	☐	☐
c. A certification from the State showing the corporation is in good standing and is entitled to operate within the State	☐	☐
d. Copy of resolution authorizing filing	☐	☐
e. The name and address of each shareholder owning 3 percent or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote and the name and address of each affiliate of the entity together with, in the case of an affiliate controlled by the entity, the number of shares and the percentage of any class of voting stock of that affiliate owned, directly or indirectly, by that entity, and in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, directly or indirectly, by the affiliate.	☐	☐
f. If application is for an oil or gas pipeline, describe any related right-of-way or temporary use permit applications, and identify previous applications.	☐	☐
g. If application is for an oil and gas pipeline, identify all Federal lands by agency impacted by proposal.	☐	☐
II - PUBLIC CORPORATIONS		
a. Copy of law forming corporation	☐	☐
b. Proof of organization	☐	☐
c. Copy of Bylaws	☐	☐
d. Copy of resolution authorizing filing	☐	☐
e. If application is for an oil or gas pipeline, provide information required by item "I - f" and "I - g" above.	☐	☐
III - PARTNERSHIP OR OTHER UNINCORPORATED ENTITY		
a. Articles of association, if any	☐	☐
b. If one partner is authorized to sign, resolution authorizing action is	☐	☐
c. Name and address of each participant, partner, association, or other	☐	☐
d. If application is for an oil or gas pipeline, provide information required by item "I - f" and "I - g" above.	☐	☐

*If the required information is already filed with the agency processing this application and is current, check block entitled "Filed." Provide the file identification information (e.g., number, date, code, name). If not on file or current, attach the requested information.

NOTICES

Note: This applies to the Department of Agriculture/Forest Service (FS)

This information is needed by the Forest Service to evaluate the requests to use National Forest System lands and manage those lands to protect natural resources, administer the use, and ensure public health and safety. This information is required to obtain or retain a benefit. The authority for that requirement is provided by the Organic Act of 1897 and the Federal Land Policy and Management Act of 1976, which authorize the secretary of Agriculture to promulgate rules and regulations for authorizing and managing National Forest System lands. These statutes, along with the Term Permit Act, National Forest Ski Area Permit Act, Granger-Thye Act, Mineral Leasing Act, Alaska Term Permit Act, Act of September 3, 1954, Wilderness Act, National Forest Roads and Trails Act, Act of November 16, 1973, Archeological Resources Protection Act, and Alaska National Interest Lands Conservation Act, authorize the Secretary of Agriculture to issue authorizations or the use and occupancy of National Forest System lands. The Secretary of Agriculture's regulations at 36 CFR Part 251, Subpart B, establish procedures for issuing those authorizations.

BURDEN AND NONDISCRIMINATION STATEMENTS

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0082. The time required to complete this information collection is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free (866) 632-9992 (voice). TDD users can contact USDA through local relay or the Federal relay at (800) 877-8339 (TDD) or (866) 377-8642 (relay voice). USDA is an equal opportunity provider and employer.

The Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552) govern the confidentiality to be provided for information received by the Forest Service.

