



U.S. Department of the Interior
Bureau of Land Management

Record of Decision to Reconsider a Highway Right-of-Way Application, Washington County, Utah

DOI-BLM-UT-C030-2023-0038-EIS

December 2024



BLM Mission

It is the mission of the Bureau of Land Management to sustain the health, diversity, and productivity of public lands for the use and enjoyment of present and future generations.

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1 Introduction and Background

1.1 Introduction

This document constitutes the Bureau of Land Management's (BLM) Record of Decision (ROD or Decision) regarding the right-of-way (ROW) grant (UTU-93620) for the construction, operation, and maintenance of a multi-lane highway across the Red Cliffs National Conservation Area (NCA) in Washington County, Utah (Washington County or County) that was issued to the Utah Department of Transportation (UDOT) in 2021. The decision before the agency is whether to affirm, affirm with modifications, or terminate the ROW.

This Decision is made in accordance with Section 302 and Title V of the Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1732, 1761-72) and the Omnibus Public Land Management Act of 2009 (OPLMA) (Public Law 111-11 at Title I, Subtitle O, Sections 1974(a) and 1977, codified at 16 U.S.C. 460www).

This ROD memorializes the BLM's decision to terminate the ROW grant issued to UDOT on January 13, 2021, and to endorse the Red Hills Parkway Expressway alternative, which was analyzed in the November 2024 Final Supplemental Environmental Impact Statement (Final SEIS).

1.2 Background

On September 18, 2018, UDOT applied to the BLM for a ROW grant to construct a multi-lane, divided highway (referred to as the Northern Corridor) across the NCA. Washington County applied to the United States Fish and Wildlife Service (FWS) for an Incidental Take Permit (ITP) addressing species listed under the Endangered Species Act of 1973, as amended (ESA) (16 U.S.C. 1531 et seq.). The BLM and FWS, as co-lead agencies, prepared a Final Environmental Impact Statement (FEIS) to consider both applications.

The Red Cliffs NCA comprises approximately 73% of the original land base of the multi-jurisdictional Red Cliffs Desert Reserve (Reserve). Zones 1-5 of the Reserve, totaling approximately 62,000 acres, were established in 1996 through a partnership among Washington County, the FWS, the BLM, the State of Utah, and others, following the approval of Washington County's 1995 Habitat Conservation Plan (HCP) for the threatened Mojave desert tortoise by the FWS. The St. George Field Office ROD and Approved Resource Management Plan (RMP, 1999) changed the management of the public lands in the Reserve to emphasize the protection of Mojave desert habitat through restrictions on authorized land uses, including the granting of new ROWs, recreational activities, and livestock grazing.

Also in 1996, the FWS issued an ITP to Washington County for the take of Mojave desert tortoise incidental to covered activities in the County's permit area. As a result of the ITP and protective management of the Reserve's land base by its respective land managing agencies, development has been able to occur in tortoise habitat on non-Federal lands in the County. The ITP was issued for a term of 20 years and expired in 2016.

In its application to renew its ITP, as described in the Restated and Amended Habitat Conservation Plan for Washington County, Utah (October 2020), Washington County included a changed circumstance that would expand the Reserve by approximately 6,813 acres with a new sixth zone (Zone 6), if the BLM approved a ROW grant that crossed Zone 3 of the Reserve and the NCA and the FWS issued a Biological Opinion addressing incidental take of Mojave desert tortoise associated with the Northern Corridor.

In 2020, the BLM and the FWS released the *Final Environmental Impact Statement to Consider a Highway Right-of-Way, Amended Habitat Conservation Plan and Issuance of an Incidental Take Permit for the Mojave Desert Tortoise, and Proposed Resource Management Plan Amendments, Washington County, UT* (BLM 2020a). On January 13, 2021, the Secretary of the Interior signed a BLM ROD (BLM 2021) that approved the issuance of a grant to UDOT for a 1.9 mile long, 500 ft. wide ROW for the Northern Corridor across public lands in the NCA and amendments to the Red Cliffs NCA and St. George Field Office Resource Management Plans (RMPs). On that same date, the FWS signed a ROD granting Washington County an ITP for the Mojave desert tortoise (FWS 2021a). Since the Northern Corridor triggered the changed circumstance, Zone 6 was established under the terms of the ITP, which also retired the previously authorized, but unutilized, incidental take associated with the 3,341 acres of non-Federal lands located within its boundaries.

In response to these decisions, Conserve Southwest Utah, Conservation Lands Foundation, Center for Biological Diversity, Defenders of Wildlife, Southern Utah Wilderness Alliance, Wilderness Society, and WildEarth Guardians (collectively, Plaintiffs) filed a complaint in the United States District Court for the District of Columbia against the Department of the Interior on June 3, 2021. In August 2023, the United States and Plaintiffs entered into a Settlement Agreement that required the BLM and FWS to complete a supplemental EIS (SEIS); continue consultations pursuant to compliance with the National Historic Preservation Act (54 U.S.C. 100101 et. seq.) (NHPA); and issue a new ROW decision, updated Biological Opinion, incidental take statement, and ITP by November 2024, subject to any unforeseen delays.

On November 16, 2023, the court granted the United States' motion for voluntary remand of the 2021 decisions to the BLM and FWS for reconsideration. For the BLM, the court held that remand was appropriate because the agency identified substantial and legitimate concerns regarding its analysis under the National Environmental Policy Act (NEPA) related to the impacts that the 2020 wildfires may have had on the Mojave desert tortoise and its habitat. The court also agreed that remand was warranted so that BLM could cure legal errors under the NHPA. In accordance with BLM's motion, and the court's order granting voluntary remand, the Final SEIS supplemented the analysis in the FEIS regarding (1) the trend of increasing frequency and extent of wildfires in the Mojave Desert; (2) the rise of noxious weeds and invasive species in post-burn areas; and (3) the impacts that increased wildfires and noxious weeds and invasive species are having on the survival and recovery of the desert tortoise. The analysis also included those resources that warranted reconsideration, based on new information or changed conditions beyond what was presented in the FEIS, to better inform the agencies' review of granting UDOT's ROW. Title 40 of the Code of Federal Regulations (CFR) Section 1502.9(d)(1) states that a SEIS should be prepared if a major Federal action remains to occur and: (i) the agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii)

there are significant new circumstances or information relevant to concerns and bearing on the proposed action or its impacts.¹ The supplemental analysis tiers to and incorporates by reference all other information and analyses that were addressed in the FEIS.

The Final SEIS did not evaluate amendments to the Red Cliffs NCA RMP or the St. George Field Office RMP. However, consistent with the Settlement Agreement, because the 2024 decision on the ROW application differs from the 2021 ROW decision, the BLM will undertake land use planning amendments to reflect the 2024 decision. Until that additional planning is complete, BLM will not consider or reconsider a similar ROW application within the NCA.

2 Purpose and Need

The BLM's purpose and need for action is to determine whether the BLM will affirm, affirm with modifications, or terminate the ROW grant issued to UDOT in 2021.

The original purpose and need for preparation of the 2020 FEIS was based on UDOT's 2018 application for a ROW to construct a multi-lane, divided highway on BLM-administered lands within the NCA and overlapping Reserve, with the objective of reducing congestion, increasing capacity, and improving east-west mobility on arterial and interstate roadways between SR 18 and I-15 at milepost 13. The BLM was required to respond to UDOT's application for a ROW grant under Title V of FLPMA, BLM's ROW regulations, 43 CFR part 2800, and other applicable Federal laws. In the FEIS, the BLM considered the potential impacts of the proposed ROW (Alternative 3: UDOT Application alignment, as described in Chapter 2 of the FEIS) and reasonable alternatives.

Under OPLMA at Section 1977, the BLM is required to identify a Northern Corridor as part of a subsequent transportation management planning process. In 2016, as part of developing the NCA RMP, the BLM considered an alternative that included a Northern Corridor in the NCA. However, at that time, the BLM did not have a specific ROW application to consider as part of that planning process. Instead, the BLM relied on several conceptual alignments from the Dixie Metropolitan Planning Organization. The conceptual alignments represented Washington County's recommendations as a cooperating agency in the development of the 2016 RMP.

UDOT is seeking to meet the transportation demands of Washington County's anticipated continued growth through 2050. The County's current transportation infrastructure may not accommodate its projected growth, and it is trying to balance that future growth with the statutory and regulatory provisions governing the NCA and larger Reserve, and the protected plant and wildlife species for whom those lands provide important habitats.

3 Alternatives Analyzed

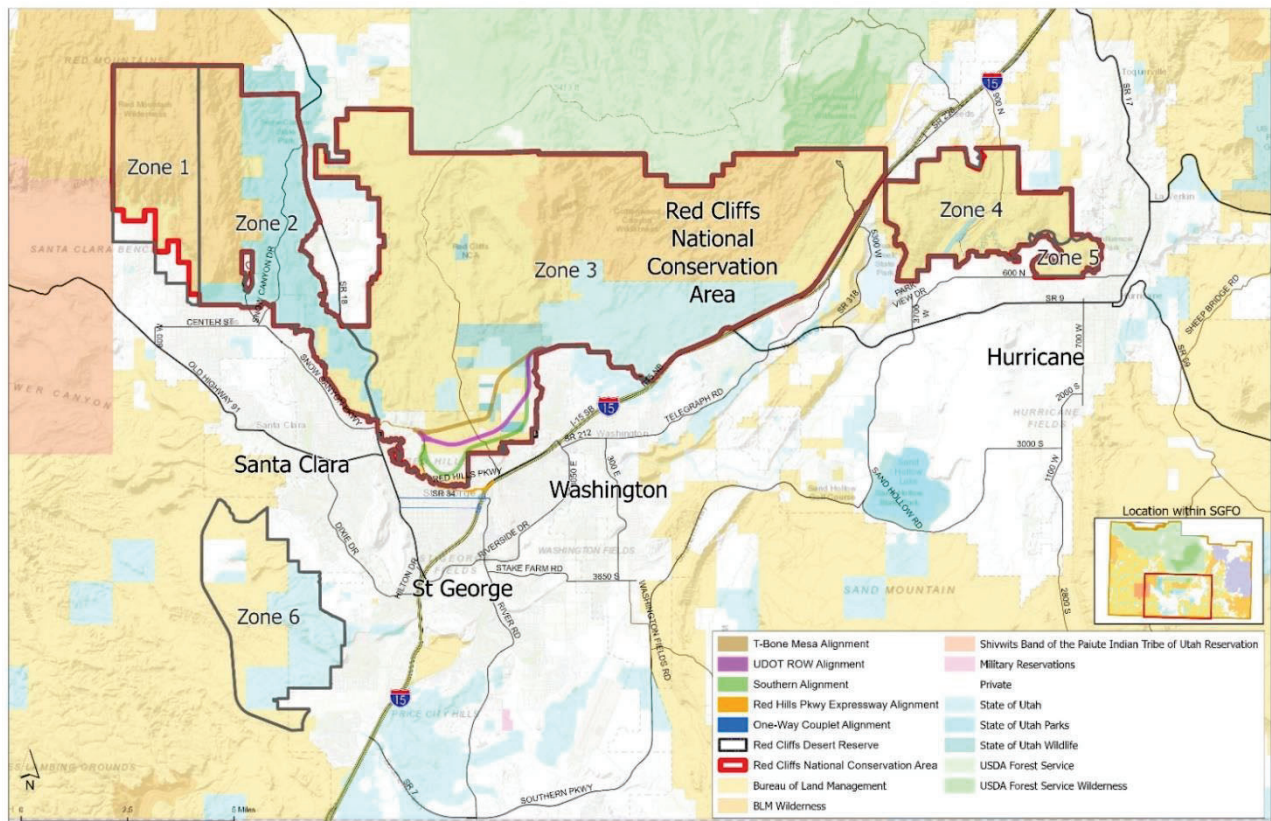
Considering and comparing alternatives, including the No Action alternative, helps to ensure that ultimate decisions concerning projects are well reasoned and consistent with national

¹ Because this project was initiated prior to the effective date of the new NEPA regulations, BLM relies on the language found in 40 CFR 1505.2(a)(2) as of September 14, 2020.

policy goals and objectives. The NEPA requires that an EIS include a discussion of a range of reasonable alternatives, including the No Action alternative, and the potential environmental consequences of implementing those alternatives. The term reasonable, as defined in NEPA regulations, is based on consideration of a project’s purpose, as well as technology, economics, and common sense.

To identify the alternatives evaluated in detail in the SEIS, the BLM considered multiple factors, including the range of alternatives analyzed in the 2020 FEIS (refer to Figure 1 below for Project Location Map and see Chapter 2, Alternatives, of the Final SEIS).

Figure 1. Project Location Map showing alternatives.



The agency also considered comments received during scoping for the SEIS, including those comments related to alternatives and factors that contributed to the alternatives screening process. The BLM worked with cooperating agencies to determine whether any new information since the publication of the 2020 FEIS warranted revisiting any of the alternatives previously eliminated from consideration, revising the action alternatives or evaluating new proposed alternatives in detail. The following alternatives were retained and carried forward for analysis in the SEIS: the UDOT ROW Alignment, which represents the No Action alternative, as the UDOT ROW grant was not vacated by the court order, and four other alternatives that were previously considered in detail in the 2020 FEIS. A new alternative that would terminate UDOT’s ROW grant was also analyzed in the SEIS.

3.1 UDOT Row Alignment (Affirm Current ROW Grant)

The UDOT ROW Alignment was the Proposed Action in the FEIS and was the selected alternative in the 2021 ROD. The BLM's decision to be made through the SEIS process is whether or not to affirm UDOT's ROW grant for the Northern Corridor across public lands in the NCA. This alternative would connect Green Springs Drive on the east to Red Hills Parkway on the west, just north of the Pioneer Hills trailhead parking area. The Northern Corridor highway would be approximately 4.5 miles long, approximately 1.9 miles of which would be across BLM-managed lands in the NCA.

Under this alternative, FWS would not amend Washington County's ITP for the take of desert tortoise. Zone 6, comprising 6,813 acres of occupied tortoise habitat, would remain as a zone of the Reserve, currently under protective management by its respective land managers.

3.2 T-Bone Mesa Alignment

The BLM would affirm UDOT's ROW grant across public lands in the NCA but show the T-Bone Mesa Alignment as the approved highway corridor. This alignment would connect Green Springs Drive on the east to Red Hills Parkway on the west, just north of the Pioneer Hills trailhead parking area. Under this alternative, the Northern Corridor would skirt the southern edge of T-Bone Mesa. The Northern Corridor would be approximately 4.2 miles long, 2.2 miles of which would be across public lands in the NCA.

Under this alternative, FWS would not amend Washington County's ITP for the take of desert tortoise. Zone 6, comprising 6,813 acres of occupied tortoise habitat, would remain as a zone of the Reserve, currently under protective management by its respective land managers.

3.3 Southern Alignment

The BLM would affirm the ROW grant to UDOT across public lands in the NCA but show the Southern Alignment as the approved highway corridor. Under this alternative, the alignment would connect Green Springs Drive on the east to Red Hills Parkway on the west, but the highway would be located closer to the southern boundary of the NCA than the UDOT ROW or the T-Bone Mesa alignment. The Southern Alignment would connect with the Red Hills Parkway, slightly encroaching on the Pioneer Hills trailhead parking area. The Northern Corridor would be approximately 5.5 miles long, approximately 1.5 miles of which would be across public lands in the NCA.

Under this alternative, FWS would not amend Washington County's ITP for the take of desert tortoise. Zone 6, comprising 6,813 acres of occupied tortoise habitat, would remain as a zone of the Reserve, currently under protective management by its respective land managers.

3.4 Red Hills Parkway Expressway

This alternative would convert an existing four-lane highway, the Red Hills Parkway, into a grade-separated expressway between Interstate 15 and Bluff Street. The UDOT ROW grant would be terminated. The City of St. George holds a highway ROW across 1,119 ft of public land in the NCA for the Red Hills Parkway. If the changes needed to convert the existing highway into an

expressway exceed the boundaries of the City's current ROW, the BLM would consider granting an amendment to that ROW, subject to all other applicable approvals, laws, and regulations. Based on preliminary conceptual engineering design, the major changes needed to make the Red Hills Parkway function as an expressway would occur on municipal and private lands; appropriate permits and approvals would be needed prior to implementation.

Under this alternative, the FWS would amend Washington County's ITP because the Northern Corridor changed circumstance would no longer be in place. Zone 6, comprising 6,813 acres of occupied tortoise habitat, would no longer be a zone of the Reserve. Special protections for desert tortoise and Federally listed native plants would no longer be in place on 3,341 acres of State, municipal, and private land in Zone 6.

3.5 St. George Boulevard/100 South One-way Couplet

The alternative is located outside the NCA, does not involve any lands managed by the BLM, and would have to be implemented by the City of St. George. Additional lanes would be added, and other changes made to two existing streets in the City, St. George Boulevard and 100 South, to convert them into a one-way couplet system between I-15 and Bluff Street. St. George Boulevard would only accommodate westbound traffic and 100 South only eastbound traffic and modifications would be made to intersections at cross streets. The UDOT would no longer hold the ROW grant for the Northern Corridor across the NCA.

Under this alternative, the FWS would amend Washington County's ITP because the Northern Corridor changed circumstance would no longer be in place. Zone 6, comprising 6,813 acres of occupied tortoise habitat, would no longer be a dis-contiguous zone of the Reserve. Special protections for desert tortoise and Federally listed native plants would no longer be in place on 3,341 acres of State, municipal, and private land in Zone 6.

3.6 Terminate UDOT's ROW

Under this alternative, the BLM would terminate UDOT's ROW grant for the Northern Corridor across the NCA. This alternative would have effects similar to those analyzed for the No Action alternative in the 2020 FEIS.

Under this alternative, the FWS would amend Washington County's ITP because the Northern Corridor changed circumstance would no longer be in place. Zone 6, comprising 6,813 acres of occupied tortoise habitat, would no longer be a zone of the Reserve. Special protections for desert tortoise and Federally- listed native plants would no longer be in place on 3,341 acres of State, municipal, and private land in Zone 6.

3.7 Environmentally Preferable Alternative

Regulations at 40 CFR 1505.2(b)² require that, in cases where an EIS has been prepared, the ROD must identify all alternatives that were considered, "specifying the alternative or

² The BLM is aware of the November 12, 2024, decision in *Marin Audubon Society v. Federal Aviation Administration*, No. 23-1067 (D.C. Cir. Nov. 12, 2024). To the extent that a court may conclude that the

alternatives considered environmentally preferable.” The environmentally preferable alternative is the alternative that will promote the national environmental policy, as expressed in NEPA’s Section 101, which states that “it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.” In the FEIS and Final SEIS, the BLM and FWS identified the range of impacts anticipated from each of the alternatives, based on relevant factors including ecological, social, economic, and technical considerations. Of the action alternatives considered in the FEIS and Final SEIS, the Red Hills Parkway Expressway best meets the BLM’s requirement to address all practicable means to promote the general welfare and avoid or minimize environmental harm and is, therefore, considered the agency’s environmentally preferable alternative.

The Red Hills Parkway Expressway alternative avoids or minimizes impacts on the resources that the NCA was designated by Congress to conserve, protect, and enhance. The current multi-lane highway crosses less than 1,200 ft. of the NCA and is under a ROW held by the City of St. George that encumbers 3.1 acres of public land. Implementing this alternative would have no impact on Federally listed native plants and no direct impacts on the threatened Mojave desert tortoise or its designated critical habitat in the NCA. Based on the current level of conceptual engineering design, the major changes needed to make the Red Hills Parkway function as an expressway would occur on municipal and private lands outside of the boundaries of the NCA.

This alternative would minimize impacts to the largest contiguous block of designated critical habitat for the Mojave desert tortoise in the NCA with the highest tortoise population density in the NCA. This alternative also avoids adverse effects to many historic and prehistoric period cultural resources in and near the NCA. Based on the current level of conceptual engineering design, this alternative could have greater socio-economic and environmental justice impacts on private property within the highway corridor than the three alternatives that are proposed to cross the NCA. These potential impacts may be eliminated by additional engineering design, or the impacts reduced through mitigation measures specifically developed to address these issues.

The selection of this alternative would result in the FWS amending Washington County’s ITP and the elimination of Reserve Zone 6. The special protections currently afforded to Mojave desert tortoise and Federally- listed plant species on 3,341 acres of non-Federal land in Zone 6 would be lost, as those acres would again be within the HCP take area and available for development.

Council on Environmental Quality (CEQ) regulations implementing NEPA are not judicially enforceable or binding on this agency action, the BLM has nonetheless elected to follow those regulations at 40 C.F.R. Parts 1500– 1508, in addition to the DOI’s procedures/regulations implementing NEPA at 43 CFR Part 46, to meet the agency’s obligations under NEPA, 42 U.S.C. §§ 4321 et seq.

4 Decision

Based on the analyses in the 2020 FEIS and 2024 Final SEIS of the UDOT ROW application and alternatives, consideration of public comments, consultations with Tribes and other Federal and state agencies, and a review of applicable Federal laws, regulations, and agency policies, it is the Department's decision to terminate the UDOT ROW grant issued on January 13, 2021, and to endorse the Red Hills Parkway Expressway alternative. The termination of the ROW grant is effective immediately.

4.1 Statutory and Regulatory Background

In considering whether to affirm, affirm with modifications, or terminate UDOT's ROW grant, the BLM must comply with applicable laws and regulations, as listed below.

4.1.1 Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 et seq.)

Section 302(a) of FLPMA states that public lands are to be managed "under principles of multiple use and sustained yield . . . except that where a tract of such public land has been dedicated to specific uses according to any other provision of law it shall be managed in accordance with such law." As discussed further in Section 4.1.2 of this ROD, Congress designated the NCA as part of OPLMA and dedicated the lands within the NCA to specific purposes. Through the analyses in the FEIS and Final SEIS, the BLM evaluated whether affirming, affirming with modifications, or terminating UDOT's ROW application was consistent with the statutory purposes and management prescriptions of the NCA.

4.1.2 Omnibus Public Land Management Act of 2009 (16 U.S.C. 460www; 123 STAT. 1089 (2009))

The NCA was designated by Congress through OPLMA with the identified purposes of the approximately 46,000-acre NCA being to conserve, protect, and enhance for the benefit and enjoyment of present and future generations the ecological, scenic, wildlife, recreational, cultural, historical, natural, educational, and scientific resources of the NCA and to protect each species that is located in the NCA and listed as a threatened or endangered species under the ESA. Section 1974 also stated that the NCA shall be managed by the Secretary of the Interior [through the BLM] and that the Secretary shall only allow uses of the NCA that the Secretary determines would further a purpose for which the NCA was designated.

Section 1977 of OPLMA further instructs the Secretary to develop a comprehensive travel management plan for the land managed by the BLM in Washington County, in accordance with FLPMA and "in consultation with appropriate Federal agencies, State, Tribal, and local governmental entities (including Washington County and St. George City, Utah), and the public, identify one or more alternatives for a northern transportation route in the County."

This Decision complies with both Sections 1974 and 1977 of OPLMA because it gives meaning to both sections, furthers the purposes of the NCA, and allows the BLM to identify and consider a northern transportation route in Washington County.

Since 2009, the BLM has endeavored to balance the competing instructions in Sections 1974 and 1977. Prior to approval in 2016, the BLM drafted the NCA RMP where it considered a conceptual northern corridor in one alternative, in response to a request from Washington County. However, the agency ultimately selected a different alternative that established a ROW avoidance area that could potentially accommodate a future northern corridor route. Under the 2016 approved RMP, an avoidance area is an area identified through resource management planning to be avoided, but that may be available for ROW location with special stipulations. The 2021 *Record of Decision and Approved Resource Management Plan Amendments for the Northern Corridor Right-of-Way, Red Cliffs National Conservation Area Resource Management Plan, and St. George Field Office Resource Management Plan* stated that, in 2016, the BLM explained to Congress that a “plain reading of the statute (OPLMA section 1977[b][2]) does not direct the BLM to approve or otherwise establish a transportation route through the Red Cliffs NCA. Instead, the Act prohibits such a route through the NCA unless it furthers one of the purposes for which the NCA was established.”

In 2018, the BLM received a specific ROW application from UDOT. To fully consider the ROW application, the BLM had to amend the 2016 Red Cliffs NCA RMP because the designated avoidance area did not accommodate UDOT’s proposed ROW. In 2021, the BLM amended the NCA RMP to “allow for a one-time exception” to the avoidance area criteria “to authorize the issuance of a Title V ROW for the Northern Corridor project.” After considering the ROW application and four other potential alignments, the agency approved UDOT’s proposed ROW alignment for the Northern Corridor and subsequently issued a ROW grant.

In the 2021 ROD, the agency explained that the selection of UDOT’s proposed alignment satisfied both sections of OPLMA. Under OPLMA at Section 1974(b)(2), the Secretary, through the BLM, “shall only allow uses of the [NCA] that the Secretary determines would further a purpose described in subsection (a)” (emphasis added). The 2021 ROD stated that the Northern Corridor would enhance the recreation, scenic, and educational purposes of the NCA by providing a new paved hike and bike path for recreation use and scenic views that would benefit certain members of the public. The BLM found that this path would also further the educational purpose of the NCA by including additional interpretive displays that inform the public about the natural and cultural resources of the NCA.

In the 2021 ROD, the agency also concluded that it had to read Sections 1974 and 1977 in harmony because a basic tenet of statutory construction requires the agency to give effect to all provisions in a statute so that no individual section is rendered superfluous. It determined that at the time Congress enacted OPLMA, the only BLM-managed lands located north of the city of St. George in Washington County were those lands in the NCA and assumed that Congress was aware of this fact. Thus, it construed Section 1977 to instruct the agency to identify and consider a ROW in the NCA and to permit it to authorize such a route through the NCA – even if it may impact some purposes that the NCA was designated to conserve and protect – because there was no other viable BLM-administered land that could reasonably support a ROW of this size or meet the applicant’s objective of reducing congestion, increasing traffic capacity, and improving east-west mobility in the greater St. George area.

4.1.3 Land and Water Conservation Fund Act (54 U.S.C. 200301 et seq.)

The Land and Water Conservation Fund Act of 1965 (LWCF) established a funding source to assist the Federal agencies and States in acquiring lands for recreation and conservation purposes. The LWCF Act has a Federal agency component (54 U.S.C. 200306) and a State and local government component (54 U.S.C. 200305), which have different uses and requirements. For Federal land management agencies like the BLM and FWS, the LWCF may be used to purchase non-Federal land to meet certain resource management objectives. Acquisition of non-Federal land in the NCA conforms to management goals and decisions from the 2016 NCA RMP that prioritizes the acquisition of inholdings comprising critical or occupied habitat for the Mojave desert tortoise.

For State and local governments, funds from the LWCF are allocated to a State for the planning, acquisition, and development of needed land and water for public outdoor recreation projects. Section 6(f)(3), as described in 36 CFR 59.3(a), is the cornerstone of Federal efforts that ensure Federal investments in State LWCF assistance are being maintained for public outdoor recreation use. Once land has been purchased or developed (partially or entirely) with LWCF assistance from the State side of the LWCF program, it cannot be wholly or partially converted to a use other than public outdoor recreation use(s) without the approval of the National Park Service.

As detailed in the FEIS at Section 3.16.2.4, the Red Hills Parkway ROW currently encumbers approximately 2 acres of land acquired with LWCF funds. Based on the currently available conceptual level of engineering design, the Red Hills Parkway Expressway alternative will encumber an additional 1.1 acres (0.2 acres on Federal LWCF land and 0.9 acres on State LWCF land) acquired with LWCF funding. This expansion onto the State LWCF land (in the City of St. George's Pioneer Park) will likely require additional mitigation, which would be overseen by the National Park Service. While additional facts and analysis may be required, the current Red Hills Parkway ROW was successfully expanded in 2011 and included the same Federal LWCF parcel.

In the 2021 ROD, BLM determined that encumbering Federal lands acquired with LWCF funds in the NCA is permissible so long as the primary purpose(s) for acquiring those lands (land tenure consolidation and wildlife habitat) remain fulfilled. See *Gifford Pinchot Task Force v. Perez*, 2014 WL 3019165, *10 (D. Ore. July 3, 2014). Given the relatively small acreage at issue, the more recent and competing statutes, and the fact that the necessary road improvements would not require additional direct impacts to tortoise habitat, BLM believes this alternative will not significantly undercut the purposes for which the LWCF funds were used.

4.1.4 National Historic Preservation Act (54 U.S.C. 306108)

The granting of a ROW for the Northern Corridor is a Federal undertaking that requires the BLM to comply with the provisions of Section 106 of the NHPA. Section 106, through its implementing regulations at 36 CFR 800, directs Federal agencies to consider the effects of their undertakings on historic properties (defined as resources listed to or eligible for listing to the National Register of Historic Places) and provide the State Historic Preservation Officer (SHPO), culturally affiliated Tribes, and other consulting parties an opportunity to comment on those undertakings.

When there will be adverse effects to historic properties, the agency must make binding commitments to avoid, minimize, or mitigate those effects in the ROD.

In the Settlement Agreement, the BLM agreed to complete its Section 106 consultation for the Northern Corridor undertaking. In satisfaction of this commitment, and recognizing that this project is a complex undertaking, the BLM has developed and executed a Programmatic Agreement (PA) with the Utah SHPO, Invited Signatories, and Concurring Parties, in accordance with 36 CFR 800.14(b)(3), following consultations with 14 Consulting Parties (see section 4.2.2 of the Final SEIS for details). A PA records the terms and conditions agreed upon to resolve the potential adverse effects of a complex undertaking or one in which the agency cannot fully determine how the particular undertaking may affect historic properties, or the location of historic properties and their significance and character, prior to approving the undertaking. Based on consultations with the Utah SHPO, a PA, rather than a Memorandum of Agreement, was determined to be the appropriate document for this undertaking because of uncertainties related to the potential development of non-Federal lands in Reserve Zone 6 that could result in adverse effects to historic properties. The PA lays out the framework that the Signatories and Invited Signatories will follow to comply with Section 106 after Zone 6 is removed from the Reserve. The endorsement of the Red Hills Parkway Expressway alternative is not an undertaking. However, should the City of St. George or assignee choose to amend its existing ROW to accommodate this alternative, that amendment would be an undertaking and would need to comply with Section 106 of the NHPA.

4.1.5 Endangered Species Act of 1973 (16 U.S.C. 1533(c)(1))

Section 7(a)(2) of the ESA requires that each Federal agency ensure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. If an agency's proposed action may affect listed species or designated critical habitat, consultation between that agency and the FWS is required. The ROW alternatives that cross the NCA are within designated critical habitat for the threatened Mojave desert tortoise. However, no additional consultation is required, at this time, because the decision to terminate the Northern Corridor ROW and endorse the Red Hills Parkway Expressway alternative will not result in any immediate impacts to either designated critical habitat or threatened or endangered species on Federal lands. Should the City of St. George, or assignee, choose to request an amendment to the existing Red Hills Parkway ROW, the BLM would initiate consultation with the FWS, as appropriate, at that time.

4.1.6 Public Lands Rule

On June 10, 2024, the BLM's Conservation and Landscape Health final rule (also referred to as the "Public Lands Rule") (89 FR 40308 (May 9, 2024)) took effect. The rule supports ecosystem health and resilience and recognizes conservation as an important component of public lands management. Among other provisions, the Public Lands Rule seeks to prevent permanent impairment of ecosystem resilience and unnecessary or undue degradation of public lands in the course of BLM management actions and decisions (43 CFR 6102.5).

The rule defines ecosystem resilience as “the capacity of ecosystems (e.g., old-growth forests and woodlands, sagebrush core areas) to maintain or regain their fundamental composition, structure, and function (including maintaining habitat connectivity and providing ecosystem services) when affected by disturbances such as drought, wildfire, and nonnative invasive species” (43 CFR 6101.4(d)). The rule does not prohibit land uses that may impair ecosystem resilience, but rather encourages avoidance as a general matter and requires an explanation if impairment cannot be avoided (43 CFR 6102.5(b)(1) and (b)(8)). Under the rule, land managers “must consider available watershed condition assessments and existing land health assessments, evaluations, and determinations in the course of decision-making processes for all program areas.” (*Id.* at 6103.1.2(c)).

The NCA is located at the convergence of three ecoregions—the Mojave Desert, Great Basin, and Colorado Plateau—placing it within an ecologically rich and diverse transition zone. It is primarily dominated by various vegetation types that were collectively described as the Desert Scrub group in the FEIS and Final SEIS. Vegetation communities in the Desert Scrub group range from a few shrubs, sparsely distributed over mostly bare ground to a moderately dense cover of evergreen or drought-tolerant deciduous shrubs, like creosote bush, white bursage, Mormon tea, and blackbrush, species that are adapted to arid environments and low precipitation regimes. Under natural conditions, the bare ground interspaces between individual plants in these vegetation communities naturally limit the spread of wildfires. But, when fires occur, the community does not recover quickly, due to the slow growth rate of many of the native plant species.

In conformance with the 1999 St. George Field Office RMP decisions, the public lands in tortoise habitat in the Reserve (later the NCA), were no longer available for livestock grazing after 1999 and the BLM did not continue to conduct rangeland health studies or collect vegetation monitoring data on those public lands after that time. Because 25 years have passed since the last rangeland health studies were conducted, the best available data on land health conditions for the NCA include The Nature Conservancy’s 2011 Landscape Conservation Forecasting process (TNC 2011), the Assessment, Inventory, and Monitoring (AIM) data collection and analysis (Jacobs 2020 b) in 2020 and again in 2024 (BLM 2024), and the 2024 habitat restoration monitoring by the Utah Division of Wildlife Resources (UDWR 2024). These data and analyses are included in the 2020 FEIS and/or the 2024 Final SEIS. The analysis in the FEIS and Final SEIS relied upon these studies and evaluations in considering each of the alternatives. The BLM also reviewed older land health assessments for lands within the NCA and Zone 6 and determined that they did not further the agency’s understanding of present land health condition. These earlier studies predated an extended drought period in 2001-2002, catastrophic wildfires in 2005 and 2006 that burned thousands of acres in the NCA, and the post-fire proliferation of exotic invasive grasses that have altered native vegetation communities and degraded habitat quality for many species of wildlife, including the threatened Mojave desert tortoise.

As disclosed in the FEIS and Final SEIS, the vegetation communities within the proposed Northern Corridor alignments in the NCA now include exotic invasive annual grasses (e.g., cheatgrass, red brome, and Mediterranean/split grass), and exotic forbs, such as African and black mustard, as a dominant understory. Where these faster-growing non-native species dominate the understory, native species are unable to successfully re-establish. The

proliferation of these fire-prone species within the interspaces of the native vegetation communities has changed the fire regime, both in relation to fire growth potential and frequency, resulting in a burn-reburn cycle that alters the composition of the native vegetation communities and can, over time, convert them to exotic invasive grasslands. Such grasslands provide poor quality habitat for many wildlife species, including the Mojave desert tortoise that requires shrubs for shade and cover and vegetative diversity for adequate nutrition.

The FWS designated 10,072 square miles (6,446,200 acres) as critical habitat for the Mojave desert tortoise in 1994 (59 Federal Register 5820), distributed across 12 critical habitat units including the Upper Virgin River Recovery Unit (UVRU) that covers portions of Washington County. Designated critical habitat within the UVRU totals 54,600 acres, which is less than 1% of the total acreage of designated critical habitat for the species, range wide. However, this relatively small amount of critical habitat includes a Mojave desert tortoise population that is the highest across the species' range. Within the UVRU, Mojave desert tortoise population density is highest in the NCA and overlapping Reserve, especially in areas of unburned habitat, such as where the Northern Corridor alternatives are located. Despite their high tortoise densities, the small geographic size of the NCA and Reserve (and that of the UVRU) increases the vulnerability of the tortoise population to multiple natural and human-caused threats. Although the population in the NCA and Reserve is considered relatively stable, more than 25 years of monitoring by the Utah Division of Wildlife Resources have documented a localized decline of adult tortoise densities in the area of the NCA that is identified as Zone 3 of the Reserve, where the Northern Corridor is proposed to be constructed and operated. The BLM's termination of the ROW grant and endorsement of the Red Hills Parkway Expressway alternative would prevent further loss and fragmentation of the important habitat within the NCA and Reserve Zone 3 for the threatened Mojave desert tortoise and other wildlife species.

The endorsement of the Red Hills Parkway Expressway alternative would result in the FWS amending Washington County's ITP and the elimination of Zone 6 as a zone of the Reserve. Zone 6 represents a large and contiguous block of habitat in Washington County that provides habitat for the largest known sub-population of tortoises that would otherwise be subject to take on non-Federal lands under the ITP issued by the FWS. Surveys conducted in 2022 in Zone 6 found tortoise densities approximately 10% higher than the 2017 surveys, with 736 desert tortoises counted. These data indicate that Zone 6 supports a relatively large and dense population of tortoises within the UVRU.

The special protections currently afforded to listed species on 3,441 acres of non-Federal land in Zone 6 would be lost, as those acres would again be within the HCP take area and available for potential future development. However, over half of Zone 6, approximately 3,471 acres, is BLM-administered public land. Of that total, 2,345 acres are within the Red Bluff Area of Critical Environmental Concern (ACEC) and managed to protect habitat for the dwarf bear-poppy, an endangered native plant endemic to Washington County. Habitat protection measures include restrictions on land uses that have the potential to disturb the fragile, gypsum-rich soils in which the dwarf-bear poppy grows. The public lands outside the ACEC in Zone 6 are managed under the objectives and decisions in the St. George Field Office RMP, as amended in 2021, and any future developments would be subject to appropriate conservation measures, through consultation with the FWS.

In sum, terminating the UDOT ROW grant and endorsing the Red Hills Parkway Expressway comport with the direction in the Public Lands Rule that the BLM consider opportunities to improve, and avoid making decisions that will permanently impair, ecosystem resilience. The ecological conditions of the lands encumbered by the current UDOT ROW grant are vulnerable to a variety of threats, especially wildfires that could further alter native vegetation communities that comprise habitat critical for the survival of at-risk species, including the Mojave desert tortoise. The Red Hills Parkway Expressway alternative aims to minimize degradation of the ecosystems within the NCA and overlapping Zone 3 of the Reserve, thereby protecting habitat quality within one of the most critical areas for the Mojave desert tortoise and other species. This effort ensures that the Northern Corridor will not further contribute to interference with the natural processes needed to maintain or regain ecosystem resilience.

4.2 Management Considerations and Rationale for the Decision

In accordance with the Settlement Agreement and the November 16, 2023 court order granting the motion for voluntary remand, the BLM has addressed the legal deficiencies in the prior FEIS and Decision through the preparation of the SEIS and fulfilled its consultation requirements under Section 106 of the NHPA. In particular, the SEIS fully analyzed the impacts of the increased frequency and extent of wildfires, the proliferation of noxious weeds and invasive species in post-burn areas of the NCA, and the effects of these environmental factors on the survival of the Mojave desert tortoise, when considered in concert with the construction, operation, and maintenance of a Northern Corridor highway across the NCA. It has also fulfilled its obligations under Section 106 of the NHPA by executing a Programmatic Agreement (PA) with the Utah State Historic Preservation Officer.

As discussed in 4.1, the BLM applied facts from the analyses in the FEIS and Final SEIS and other considerations, including input from the public and various stakeholders, to the governing statutes to reach its decision to terminate the previously issued UDOT ROW grant and endorse the Red Hills Parkway Expressway alternative.

In instances where a ROW is issued contrary to the law in effect at that time, the Department may terminate an issued ROW because of the pre-existing legal defect. Here, the BLM previously identified substantial and legitimate concerns with the 2020 FEIS because that analysis lacked sufficient consideration of impacts associated with the 2020 wildfires, which further informed its review of the potential impacts of the ROW. It also determined that the ROW was issued contrary to the requirements of the NHPA. Moreover, as discussed in greater detail in Sections 4.1.2 and 4.2.1, Congress enumerated the purposes of the NCA and expressly prohibited any uses within the NCA that do not further one of those purposes. Therefore, the Department is terminating the previously issued ROW grant in light of the impacts of that ROW on Mojave desert tortoise, its designated critical habitat, and historic properties, and the BLM's determination that the ROW is inconsistent with the specific legal direction provided in OPLMA for management of the NCA.

The Department reads Sections 1974 and 1977 together to give effect to all provisions in the statute and ensure that no individual section is rendered superfluous. At the time Congress enacted OPLMA, the only BLM-managed lands located north of the city of St. George in

Washington County were those lands in the NCA. Read in that context, the BLM construes Section 1977 to instruct the agency to identify and consider a ROW in the NCA and to permit it to authorize such a route through the NCA – even if it may impact some purposes that the NCA was designated to conserve and protect – because there is no other viable BLM-administered land that can reasonably support a ROW of this size or meet the applicant’s objective of reducing congestion, increasing capacity, and improving east-west mobility in the greater St. George area. However, harmonizing the direction in the two sections requires BLM to authorize a route for the ROW that minimizes impacts on the values of the NCA. In other words, if there is more than one viable route alternative (as there is in this case), BLM must select the one that minimizes impacts on the NCA resources to be protected.

Therefore, the Department is endorsing the Red Hills Parkway Expressway alternative because it meets the statutory criteria of Section 1977, which includes identifying a northern transportation route in the County. While it is not a newly established ROW across public lands, this alternative crosses public lands in the NCA and, as discussed in the Traffic Analysis Memorandum in Appendix D of the Final SEIS, is well-suited to address the traffic needs of Washington County without substantially impacting the Mojave desert tortoise, its designated critical habitat, important historical and cultural sites, or other NCA resources.

4.2.1 Compatibility Determination

As discussed in Section 1.2 of the Final SEIS, the BLM must comply with the Congressional directives in OPLMA at Title I, Subtitle O, Section 1974.

The statutorily defined purposes of the NCA are to conserve, protect, and enhance for the benefit of present and future generations the ecological, scenic, wildlife, recreational, cultural, historical, natural, educational, and scientific resources of the public lands and to protect listed species located within the NCA (OPLMA Section 1974(a)). Congress also directed the Secretary of the Interior [through the BLM] to manage the NCA in a manner that conserves, protects, and enhances its resources and to only allow uses that would further a purpose for which it was designated. (*Id.* at 1974(e)). Under the 2023 Settlement Agreement, BLM agreed to make a compatibility determination to ensure that the decision is compatible with law, regulation, and policy for the NCA. This includes BLM Manual 6220 – National Monuments, National Conservation Areas, and Similar Designations as well as the National Monument, National Conservation Areas, and Similar Designations Compatibility Analysis Framework. Under Manual 6220 at 1-6 at (C)(1):

Site-specific activities in Monuments and NCAs will be managed in a manner that is compatible with the protection of the objects and values for which these areas were designated. Multiple uses may be allowed to the extent they are consistent with the applicable designating authority, other applicable laws, and with the applicable land use plan.

Any decision approving a proposed action “must document how the activity is consistent with the...designating legislation.” (*Id.* at (C)(3)).

Terminating the UDOT ROW grant would comply with OPLMA's mandate that the NCA lands be managed to conserve, protect, and enhance their ecological, scenic, wildlife, cultural, and natural resources, as the Northern Corridor highway would not be constructed across 1.9 miles of the NCA. Direct impacts resulting from the construction and operation of the highway would be avoided, conserving and protecting 275 acres of native vegetation from damage or destruction. This alternative would minimize the threat of wildfires in an unburned area of the NCA, as a multi-lane highway would not be constructed and operated across currently intact native vegetation communities and high-quality habitat for wildlife. Terminating the UDOT ROW would also protect the scenic resources of the NCA, as a new and highly visible linear man-made feature would not be constructed across what is today a natural, undeveloped landscape.

Adverse effects to as many as eight historic properties in the NCA that could result from construction and maintenance of the UDOT ROW alignment would be avoided by the termination of the UDOT ROW grant. This Decision conserves and protects prehistoric sites that are considered sacred to Tribes that claim cultural affiliation to southwestern Utah. It would be compatible with the protection of the cultural and historic resources of the NCA, as specifically identified in the designating legislation (OPLMA Section 174(a)).

One of the purposes specifically defined in OPLMA for management of the NCA is to protect each species that is listed as a threatened or endangered species under the ESA. On April 2, 1990, the FWS determined the Mojave population of the desert tortoise is threatened, pursuant to the ESA (55 Federal Register 12178). Critical habitat for Mojave desert tortoise was designated on February 8, 1994 (59 Federal Register 5820), which included a majority of the approximately 46,000 acres that comprise the NCA.

Terminating the UDOT ROW grant would comply with OPLMA's mandate to protect the threatened Mojave desert tortoise and its designated critical habitat in the NCA, as the Northern Corridor highway would not be constructed across 1.9 miles of public land in the NCA. Tortoise injuries and mortalities, particularly among juveniles that are more difficult to detect and remove from construction zones, would not occur during highway construction, operation, and maintenance. No tortoise would be translocated away from the highway corridor or be displaced from its current home range in high quality, unburned habitat that currently supports a high tortoise density. Approximately 275 acres of designated critical tortoise habitat would not be permanently lost to the construction of the highway within the UDOT ROW alignment. Terminating the UDOT ROW would prevent the fragmentation of more than 2,300 acres of critical tortoise habitat in the NCA.

Affirming the UDOT ROW grant or affirming it with modifications to select the T-Bone Mesa or Southern Alignments would not comply with OPLMA's mandate that NCA management focus on the conservation, protection, and enhancement of threatened and endangered species that occur in the NCA. Tortoise mortalities, translocation away from home ranges, critical habitat loss, degradation, and fragmentation would contribute to the observed trend of declining tortoise numbers in some areas of the NCA. A wildfire burn-reburn cycle characterized by shortened fire return intervals and large, more catastrophic fires, when coupled with the impacts associated with the Northern Corridor highway being constructed and operated across the NCA,

could impact the tortoise numbers in specific areas of the NCA and impede the recovery of this threatened species in the NCA, Reserve and UVVRU.

The Red Hills Parkway Expressway alternative avoids or minimizes impacts on the resources that the NCA was designated by Congress to conserve, protect, and enhance, including its ecological, scenic, wildlife, cultural, and historical resources. The current multi-lane highway crosses less than 1,200 feet of the NCA and is under a ROW grant held by the City of St. George that encumbers 3.1 acres of public land. The FEIS and Final SEIS analyzed the resources related to each of the values for which the NCA was designated, based on the conceptual level of engineering design that was provided for the FEIS. The analysis concluded there would be few, if any, impacts on the ecological, wildlife, or natural resources in the NCA, as the major modifications needed to the roadway are currently shown to be occurring primarily on the private and municipal lands along the highway, not on the public lands of NCA. Once the BLM has received an application for an amendment to the existing ROW and final engineering design plans for the expressway, the analysis of impacts on the NCA resources would be reviewed and the proposal modified, as needed.

The Red Hills Parkway Expressway alternative would result in no designated critical tortoise habitat being lost or fragmented in the NCA. No adult tortoises would need to be translocated from within the ROW corridor under this alternative, as the ROW through the NCA and the NCA/Reserve boundaries are fenced with a specific type of buried wire mesh fence that prevents tortoise from getting onto the roadway. An estimated three adult tortoises could experience indirect effects as a result of this alternative. The primary indirect effect would be tortoise behavioral disturbances related to an increase in vehicle vibrations and noise within a “road effect zone” in habitat adjacent to the expressway. Vehicle noise and vibrations can increase female tortoise energy expenditures, reduce burrow use, affect juvenile tortoise size in habitats adjacent to roads, and impact tortoise abundance. (See Chapter 3.5 of the FEIS and Final SEIS for additional details).

This alternative would also not result in any direct impacts from the ROW on any other wildlife species or native plant species that are listed under the protections of the ESA, or their critical habitats, as they do not occur within the Red Hills Parkway ROW corridor. Of the alternatives considered in the Final SEIS that are within the jurisdiction of the BLM, endorsing the Red Hills Parkway Expressway alternative would best meet the Congressional directive in OPLMA to protect each species that is a threatened or endangered species under the ESA.

The BLM concluded, based on preliminary conceptual engineering design for the Red Hills Parkway Expressway and the Visual Analysis provided in Section 1.3 of the FEIS, that the new interchanges and intersection structures at 200 East and 1000 East would be visible and would affect the views looking from southern portions of the NCA to the south and east. However, no new impacts to the scenic resources of the NCA itself are anticipated, as the modifications to the Red Hills Parkway within the NCA are shown to be limited to repaving and restriping of the existing roadway. Likewise, recreationalists on the Owens Loop trail, and at other vantage points in the southern portion of the NCA, could see the flyovers and new intersections in the distance, but these visual changes would be unlikely to negatively impact the visitor experiences in the NCA, and there would be no direct or indirect impacts on any of the trails in the NCA.

No archeological sites or features have been documented on or near the 3.1 acres of public land in the NCA that are within the existing ROW held by the City of St. George. The Red Hills Parkway Expressway would, therefore, have no impacts on cultural or historical resources within the NCA. Implementation of the Red Hills Parkway Expressway is compatible with the conservation and resource protection mandate of OPLMA, since it would not impact any cultural or historic resources in the NCA.

As shown in the preliminary conceptual engineering design plans, the major changes needed to make the Red Hills Parkway function as an expressway would occur on municipal and private lands outside of the boundaries of the NCA. The FEIS and Final SEIS demonstrate that there would be, at most, minimal effects to the ecological, scenic, wildlife, cultural, historical, recreational, natural, educational and scientific resources of the NCA.

Therefore, implementation of the Red Hills Parkway Expressway is compatible with the Congressional mandate to manage the Red Cliffs NCA to conserve, protect, and enhance the purposes for which it was designated. If the City of St. George, or its assignee, chooses to proceed with development of the Red Hills Parkway Expressway, any construction within the NCA would likely occur within the fenced boundary of the existing ROW, eliminating the potential for direct impacts to undeveloped wildlife habitat and minimizing the potential for accelerated soil erosion and the introduction or spread of noxious weeds and exotic invasive species. As disclosed in the FEIS and Final SEIS, when compared to the UDOT ROW, T-Bone Mesa, and Southern Alignments, implementation of the Red Hills Parkway Expressway alternative would result in no direct impacts on native vegetation communities, soils, or wildlife habitats in the NCA.

For these reasons, the BLM determines that terminating the Northern Corridor ROW and endorsing the Red Hills Parkway Expressway alternative are compatible with the NCA's designating legislation.

4.2.2 Impacts to Reserve Zone 6

This Decision recognizes that the Northern Corridor was proposed to be located within the Reserve established in 1996 through a partnership among Washington County, the FWS, the BLM, and others, in connection with the FWS's approval of the 1995 HCP for the threatened Mojave desert tortoise. As a joint lead agency for preparation of the FEIS and Final SEIS, the FWS is a key partner in the BLM's consideration of the Northern Corridor ROW application. As a result of the 2021 ROW grant that crossed Zone 3 of the Reserve, the Northern Corridor changed circumstance, as outlined in Section 9.1.1 of the Amended HCP, was implemented to expand the Reserve to include the 6,813-acre Zone 6, a zone that is geographically separate from the rest of the Reserve. This zone comprises a large and contiguous block of habitat in Washington County that includes the largest known sub-population of tortoises, outside of Zones 1-5.

Over half of Zone 6, approximately 3,471 acres, is comprised of BLM-administered public lands that are managed under the objectives and decisions in the St. George Field Office RMP, as amended in 2021. Additionally, approximately one-third of the BLM-administered portion of Zone 6 (2,345 acres) has enhanced protections related to its designation as the Red Bluff ACEC, which was established to preserve habitat for the dwarf bear poppy. Any future development

on these lands would be required to conform to the RMP decisions in place at the time and appropriate conservation measures would be established through consultation with the FWS for any specific proposals.

A decision by the FWS to amend the Washington County ITP would allow Covered Activities to occur on the remaining non-Federal acreage within Zone 6, approximately 3,341 acres. Covered Activities include certain otherwise lawful, non-Federal activities that are reasonably certain to take one or more tortoise individuals from the UVRU population and for which authorization for such take is provided by the ITP. Under the Development Protocols in the Washington County HCP, tortoises directly impacted by development would be translocated to the Reserve. Section 6.3.2.4 of the HCP states that “the translocation program has created a significant conservation benefit and substantially minimized the impact of the authorized take to an extent not contemplated in the 1995 HCP. Translocation preserves the life and reproductive potential of many Mojave desert tortoises removed from areas subject to Covered Activities, thereby minimizing the impact of authorized take.”

4.2.3 Summary of Changes between the Draft SEIS and the Final SEIS

Additional data became available after publication of the Draft SEIS that was incorporated into the analyses in the Final SEIS, including AIM vegetation data for the three ROW alternatives that cross the NCA, corrected boundaries for two LWCF-acquired parcels, and updated traffic modeling results for each ROW alternative. Additional environmental justice concerns, primarily for the ROW alternatives that would reconfigure existing roadways, were identified and an outreach plan to Environmental Justice communities was implemented by the BLM and included in Appendix E in the Final SEIS. Information received as a result of the outreach plan was included in Sections 3.10 and 3.11 of the Final SEIS. No changes to the alternatives and no new resources were analyzed between the Draft SEIS and the Final SEIS.

The Draft SEIS at Section 3.9.1 stated that the BLM would resolve adverse effects to historic properties through the development of a Memorandum of Agreement (MOA), in consultation with the Utah SHPO, Tribes and other parties. Further consultations with the Utah SHPO following the publication of the Draft SEIS determined that a PA would be a more appropriate agreement document for the Northern Corridor undertaking. The BLM developed the PA with Consulting Parties, with the details on that process described above in Section 4.1.4. and below in Section 5.2.3 of this ROD.

Substantive public comments and ongoing agency coordination also resulted in several changes in Chapter 3 from the Draft SEIS to the Final SEIS. The BLM and FWS responded to substantive comments and made appropriate revisions in the Final SEIS or explained why a comment did not warrant a change, as documented in Appendix F of the Final SEIS.

5 Public Involvement, Consultation, and Coordination

5.1 Public Involvement

The scoping period for the SEIS began with the publication of the Notice of Intent (NOI) in the *Federal Register* on November 16, 2023, and was extended through December 28, 2023. During

the scoping process, the BLM and FWS sought public and agency comments to identify issues to be addressed in the SEIS. A public scoping meeting was held on December 6, 2023, at the Dixie Convention Center in St. George. In total, 8,993 submissions were received from the public during the scoping period. Information about the scoping meeting, comments received, and comment analysis can be found in the Final Northern Corridor SEIS Scoping Report available on the BLM's ePlanning website.³

The BLM and FWS published the Notice of Availability (NOA) for the Draft SEIS in the *Federal Register* on May 10, 2024, signaling the start of a 45-day public comment period, originally scheduled to end on June 24, 2024. An updated traffic analysis for the Northern Corridor was released by the Dixie Metropolitan Planning Organization on June 20, 2024 (see Appendix D of the Final SEIS for updated traffic analysis). A report of the field results of the BLM's updated vegetation monitoring for the three proposed Northern Corridor alignments wholly within the NCA was also released on June 20, 2024. Both of these reports were made available on the BLM's ePlanning site on June 21, 2024, and the public comment period was extended to July 9, 2024, to allow the public more time for review of the updated traffic analysis and vegetation monitoring report. This extension resulted in a 60-day public comment period on the Draft SEIS.

The BLM and FWS hosted a public "open house" style meeting on June 4, 2024, between 5:00 and 7:00 p.m. at the Dixie Convention Center in St. George, Utah to provide an overview of the Draft SEIS and answer questions from the public. The public was notified of these meetings through media releases, social media postings, and the project website. The materials presented at the meeting were posted on the BLM's ePlanning website.

Comments on the Draft SEIS were accepted through ePlanning, USPS mail to the BLM St. George Field Office, and comment forms provided at the public open house meeting. The BLM and FWS reviewed and considered all comments received on the Draft SEIS. In total, 4,255 submissions were received from the public during the comment period. The BLM and FWS responded to substantive comments and modified the Final SEIS, as appropriate, based on public comments; all substantive comments and responses were incorporated into the Final SEIS and included as Appendix F. An outreach plan to Environmental Justice communities was developed and implemented by the BLM, as part of public outreach activities during the SEIS process (see Appendix E of the Final SEIS). Information received as a result of the outreach plan has been included in Sections 3.10 and 3.11 of the Final SEIS.

The BLM and FWS published the NOA for the Final SEIS in the *Federal Register* on November 8, 2024 which initiated a 30-day availability period for the Final SEIS. The NOA and Final SEIS were posted on the ePlanning project website. The public was notified of the publication through media releases and social media sites. Notification emails were sent to the project email list, which has been continually updated throughout the SEIS process.

Although the 30-day availability period for the Final SEIS is not a formal comment period, the BLM and FWS received 169 submissions from the public. A majority of the submissions expressed support for selecting an alternative for the Northern Corridor highway that would not

³ <https://ow.ly/pgkG50Q7AyR>

result in the 3,341 acres of non-Federal land in Zone 6 being removed from the Reserve and being available for development. Commentors noted that the non-Federal lands provide outstanding recreation opportunities that would be lost if the lands were developed and are also important habitat for the desert tortoise and Federally-listed native plants.

The Dixie Metropolitan Planning Organization submitted a comment related to the Red Hills Parkway Expressway, the BLM's preferred alternative. This comment indicated that the 2024 traffic study for this alternative was incomplete, because of time constraints related to the SEIS process; that the conceptual engineering design for this alternative had not been updated from that shown in the Final EIS; and that certain costs were not included in the 2024 Cost Analysis. The methods, assumptions, and limitations of the Traffic Analysis and Cost Analysis were previously shared with the BLM and FWS, through Memoranda prepared by Horrocks Engineering Group and transmitted to the Dixie Metropolitan Planning Organization, for each of the analyses in June of 2024 and are disclosed in the Final SEIS.

A letter from UDOT requested that a comment period be offered on the Red Hills Parkway Expressway, the BLM's identified preferred alternative, and again raised concerns about the technical feasibility of this alternative. The State of Utah's Public Lands Policy Coordinating Office also submitted a comment, requesting reconsideration of all of the alternatives, including the agencies' preferred alternative, and identified concerns related to that alternative.

Prior to executing this ROD, the BLM reviewed all of the submissions to determine if they included significant new information or identified changed circumstances relevant to environmental concerns that bear upon the proposed action, consistent with 40 CFR 1502.9(c)(1)(ii)⁴. The BLM determined that none of the submissions contained significant new information beyond what was addressed in the Final SEIS, nor did they raise new issues, based on changed circumstances.

5.2 Consultation and Coordination

5.2.1 Cooperating Agencies

Federal regulations direct the BLM and FWS to invite eligible Federal agencies, State and local governments, and Federally recognized Tribes to participate as cooperating agencies during the preparation of the SEIS. The entities listed in Table 1 accepted invitations to participate as cooperating agencies in this process. The BLM and FWS met with the cooperating agencies through virtual meetings held in 2024, on February 15, March 22, May 1, August 9, and August 28, to review the following and discuss other topics of concern:

- Issues raised during scoping.
- Alternatives developed for consideration in the Draft SEIS.
- Public comments on the Draft SEIS.
- Preliminary portions of the Final SEIS.

Table 1. Cooperating Agencies

⁴ 40 CFR 1502.9(d)(1)(ii) as of September 14, 2020.

Cooperating Agencies
City of Hurricane
City of Ivins
City of St. George
Dixie Metropolitan Planning Organization
Paiute Indian Tribe of Utah*
Santa Clara City
Shivwits Band of Paiutes
State of Utah – Public Lands Policy Coordinating Office
Utah Department of Environmental Quality
Utah Trust Lands Administration
Washington City

* The Paiute Indian Tribe of Utah represented the Indian Peaks, Cedar, Koosharem, and Kanosh Bands of Paiutes.

5.2.2 Tribal Consultation

Federal law requires that the BLM and the FWS consult with Tribes during the NEPA process. For a description of the government-to-government tribal consultation efforts that were conducted, the reader is referred to Section 4.2.3 of the FEIS and to Section 4.2.3 of the Final SEIS.

At the start of the SEIS process in October 2023, the BLM and FWS reinitiated government-to-government consultations with the Hopi Tribe, Kaibab Band of Paiute Indians, the Las Vegas Paiute Tribe, the Moapa Band of Paiute Indians, the Navajo Nation, the Paiute Indian Tribe of Utah (including the Indian Peaks Band of Paiutes, the Cedar Band of Paiutes, the Shivwits Band of Paiutes, the Koosharem Band of Paiutes, and the Kanosh Band of Paiutes), the San Juan Southern Paiute Tribe, the Pueblo of Zuni, and the Chemehuevi Indian Tribe.

The BLM met with the Paiute Indian Tribe of Utah’s Chairwoman and Cultural Resource Manager on December 6, 2023; they expressed interest in having the Tribe become a cooperating agency for the project, informed the BLM that the project area is important to the Southern Paiute, that the tortoise is a sacred animal that they do not want removed from their homes, and that there is an important spring and waterfall that may be within the project area. The Paiute Indian Tribe of Utah also submitted a letter, dated February 8, 2024, to the BLM and FWS, supporting the request of the Shivwits Band of Paiute to be cooperating agency for the Northern Corridor SEIS. The Band formally requested cooperating agency status through letters to the BLM and FWS dated February 28, 2024. The Paiute Indian Tribe and the Shivwits Band were invited by the agencies to be cooperating agencies, signed Memoranda of Understanding with the BLM, and participated in the development of the SEIS. The Navajo Nation indicated that it had no concerns about the project and responses were not received from the other Tribes that were consulted at the start of the SEIS process.

On March 28, 2024, government-to-government letters were sent to the same 14 Tribes inviting them to participate as Consulting Parties in the development of an agreement document that would serve as a binding commitment to resolve adverse effects that could result from the

agency's decision. The Paiute Indian Tribe of Utah, the Shivwits Band of Paiute, and the Navajo Nation accepted the invitation to participate as Consulting Parties in that agreement process.

On April 24, 2024, emails and hard copy letters were sent to 14 Tribes notifying them that the Draft SEIS would be published on May 3, 2024, initiating a public comment period, and providing links to the ePlanning site where comments were to be posted. An update was sent on May 2, 2024, alerting recipients of a delay in the publication date of the Draft SEIS and informing them that the public comment period would begin one week later on May 10, 2024. The Shivwits Band of Paiutes sent a comment letter during the public review of the Draft SEIS, indicating that the Band was supportive of the Northern Corridor being constructed within the UDOT ROW alignment; no other Tribe provided comments on the Draft SEIS.

5.2.3 National Historic Preservation Act Section 106 Consultation

During the preparation of the FEIS and the Final SEIS, the BLM and the FWS have separately and jointly consulted with the Utah SHPO and Tribes regarding efforts to identify cultural resources, evaluate them for NRHP eligibility (36 CFR 800.4), and assess effects of the project on historic properties by applying the criteria of adverse effect (36 CFR 800.5). The BLM also consulted with representatives of the Utah Trust Lands Administration and Utah Division of Wildlife Resources who agreed to have BLM serve as the lead agency for consultations to satisfy the requirements under Section 106 of the NHPA and State agency compliance requirements under Utah Code Annotated 9-8a-404 for those portions of the project area located on state lands. The FWS consultation process culminated in the development and execution of a PA in December 2020 to resolve future, but presently unknown, effects of the FWS's issuance of an ITP to Washington County. This Decision does not change the implementation of the FWS PA. For a detailed review of Section 106 consultation efforts, refer to Section 4.2.2 of the FEIS and Section 4.2.2 of the Final SEIS.

To resolve adverse effects to historic properties through the Section 106 process, the BLM consulted with the Utah SHPO, culturally affiliated Tribes and other Federal and State agencies with involvement in the undertaking, representatives of local governments, the project proponents, and organizations and individuals with a demonstrated interest in the undertaking. To satisfy its Section 106 consultation requirements for this complex undertaking, the BLM, in consultation with the Utah SHPO and 14 Consulting Parties, developed and executed a PA in accordance with 36 CFR 800.14 (b). The Advisory Council on Historic Preservation (ACHP) was notified that a PA was being prepared for this project but declined to participate in the process. A PA is a binding document that records the terms and conditions agreed upon to resolve the potential adverse effects of a complex undertaking or where the agency cannot fully determine how a particular undertaking may affect historic properties or the location of historic properties and their significance and character prior to approving a project. The PA identifies the framework and stipulations that the BLM and SHPO, as Signatories to the PA, and Invited Signatories, will follow to resolve the effects of the undertaking on historic properties and comply with the Section 106 of the NHPA.

The stipulations of the PA also require that consultations be conducted with Tribes to determine if the project has the potential for the inadvertent discovery of human remains or cultural items

as defined under 42 CFR 10.2. If so, the BLM will consult with them on the development of a Plan of Action, in accordance with the Native American Graves Protection and Repatriation Act. The Plan of Action will outline protocols for the protection and treatment of human remains or cultural items that may be inadvertently discovered on Federal lands during project construction, and if necessary, outline protocols for the protection and treatment of human remains or cultural items that may be inadvertently discovered during archeological date recovery testing or excavation.

5.2.4 Endangered Species Act Section 7 Consultation

Section 7(a)(2) of the ESA requires that each Federal agency ensure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. If an action agency determines a proposed action may affect listed species or designated critical habitat, consultation between that agency and the FWS is required under Section 7 of the ESA.

The FWS considered Washington County's request for an ITP through Section 10 of the ESA as they conduct otherwise legal activities located in Washington County, Utah. As a part of this process, the FWS completed an intra-agency Section 7 consultation regarding the potential effects of issuing an ITP to Washington County and found that the action, as proposed, was not likely to jeopardize the continued existence of the desert tortoise, Holmgren milkvetch, Shivwits milkvetch, dwarf bear-poppy, Siler pincushion cactus, Gierisch mallow, or Fickeisen plains cactus or result in the adverse modification of critical habitat for desert tortoise, Holmgren milkvetch, Shivwits milkvetch, Gierisch mallow, or Fickeisen plains cactus (FWS 2021c). A Biological Opinion for the Amended Washington County Habitat Conservation Plan was issued on January 12, 2021.

The FWS completed an inter-agency Section 7 consultation with the BLM regarding the potential effects of BLM's issuance of the Northern Corridor ROW to UDOT. The BLM submitted a Biological Assessment to the FWS to initiate the formal Section 7 consultation process on September 23, 2020. A Biological Opinion for the Northern Corridor Highway Project was issued on January 12, 2021. The Biological Opinion addressed three BLM actions: 1) Issuance of a ROW to UDOT to construct a road through the NCA; 2) Amendment of the NCA RMP to allow for a ROW in the NCA; and 3) Amendment of the St. George Field Office RMP to facilitate the expansion of the Reserve to change management prescriptions on 3,471 acres of BLM-administered land within the 6,813-acre Zone 6 to offset the effects of the Northern Corridor ROW within the Reserve.

As part of the Settlement Agreement, the BLM requested that the FWS rescind its Biological Opinion pending reconsideration of the ROW. On March 8, 2024, the FWS issued an Amended Biological Opinion. The amended Biological Opinion only considers the amendments to the NCA and St. George Field Office RMPs for effects to the Mojave desert tortoise and designated critical tortoise habitat. It did not address, as the original Biological Opinion had, issuance of the Northern Corridor ROW grant. The FWS stated that subsequent affirmation, or affirmation with modifications, of a ROW grant would require additional Section 7 consultation.

6 Final Agency Action

I approve this Record of Decision to terminate the previously issued ROW grant across BLM-managed lands in the Red Cliffs National Conservation Area, as described herein.

My approval constitutes the final decision of the Department of the Interior and, in accordance with the regulations at 43 CFR 4.410(a)(3), is not subject to appeal under Departmental regulations at 43 CFR Part 4.



Laura Daniel-Davis
Acting Deputy Secretary of the Interior

DEC 19 2024

Date

7 References

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- Bureau of Land Management (BLM). 2021. Record of Decision and Approved Resource Management Plan Amendments for the Northern Corridor Right-of-way, Red Cliffs National Conservation Area Resource Management Plan, and St. George Field Office Resource Management Plan. Available at <https://eplanning.blm.gov/eplanning-ui/project/1502103/570>.
- Bureau of Land Management (BLM). 2022b. Environmental Justice Implementation. Instruction Memorandum. IM2022-059. <https://www.blm.gov/policy/im2022-059>.
- Bureau of Land Management (BLM) 2024. Red Cliffs National Conservation Area Northern Corridor Project Assessment, Inventory, and Monitoring Report. Utah State office, U.S. Bureau of Land Management, Salt Lake City, Utah.
- Fish and Wildlife Service (FWS). 2021a. Record of Decision. Proposed Issuance of an Endangered Species Action Section 10(a)(1)(B) Incidental Take Permit to Washington County regarding the Implementation of the Amended Habitat Conservation Plan for the Threatened Mojave desert tortoise in Southwestern Utah. Available at <https://eplanning.blm.gov/eplanning-ui/project/1502103/570>.
- Jacobs Engineering Group, Inc. (Jacobs). 2020a. Northern Corridor Highway Alternatives Development Report. October 2020.
- Jacobs Engineering Group, Inc. (Jacobs). 2020b. Vegetation Survey Technical Report. May 2020.
- The Nature Conservancy (TNC). 2011. Landscape Conservation Forecasting for Washington County's National Conservation Areas. Report to the St. George Field Office, Bureau of Land Management.
- Utah Division of Wildlife Resources (UDWR). 2024b. Washington County Field Office (WCFO) Annual Report: Washington County Habitat Conservation Plan. January 18, 2024.

APPENDIX A: Programmatic Agreement

**PROGRAMMATIC AGREEMENT
BETWEEN THE
THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND
MANAGEMENT SAINT GEORGE FIELD OFFICE,
AND
THE UTAH STATE HISTORIC PRESERVATION OFFICER,
REGARDING THE
NORTHERN CORRIDOR HIGHWAY PROJECT, WASHINGTON COUNTY, UTAH**

WHEREAS, in 2018 the Utah Department of Transportation (UDOT) applied for a right-of way grant (ROW) from the Bureau of Land Management’s St George Field Office (BLM) to construct the Northern Corridor highway (the Project) in the Red Cliffs National Conservation Area (NCA). The Project was analyzed through an Environmental Impact Statement (EIS) that was completed in 2020 and a Record of Decision (ROD) was signed by the Secretary of the Interior on January 13, 2021. The ROD approved the issuance of a ROW grant to UDOT for the highway alignment shown in its application that crosses the NCA and the BLM immediately issued the ROW grant; and

WHEREAS, pursuant to a Settlement Agreement (No. 1:21-CU-01506-ABJ) and the order granting the request for voluntary remand issued by the U.S. District Court for the District of Columbia on November 16, 2023, the BLM must now reconsider the issuance of a ROW grant for the UDOT Alignment, as well as other alternatives, in a Supplemental EIS (SEIS) for the Project (see Project History in Appendix A); and

WHEREAS, the Draft SEIS considered six alternatives: the UDOT ROW Alignment, the T-Bone Mesa Alignment, the Southern Alignment, the Red Hills Parkway Expressway, the St. George Boulevard/100 South One-Way Couplet, and the Terminate UDOT’s ROW alternative (see Map in Appendix C); and

WHEREAS, the BLM’s decision in the SEIS ROD will be to affirm UDOT’s ROW grant, affirm with modifications to select the T-Bone Mesa Alignment or the Southern Alignment, or terminate the ROW grant. The BLM does not have jurisdiction to implement the One-Way Couplet alternative, as there are no public lands involved with that alternative. The BLM has limited jurisdiction to support implementation of the Red Hills Parkway Expressway alternative because it can consider the approval of an amendment to the existing highway ROW grant held by the City of St. George for the Parkway across approximately 1,200 feet of public land in the NCA, if proposed changes to the existing highway needed to make it function as an expressway exceed the boundaries of the current ROW; and

WHEREAS, the BLM’s decision to affirm, affirm with modifications, or terminate UDOT’s ROW is an undertaking, as defined in 36 Code of Federal Regulations (CFR) § 800.16(y), and is subject to the requirements of Section 106 of the National Historic Preservation Act (54 U.S.C. § 100101 *et seq.*) (NHPA); and

WHEREAS, the BLM, in consultation with the Utah State Historic Preservation Officer (SHPO), has defined the Area of Potential Effects (APE) for the UDOT ROW Alignment as a 4.5 mile long by 700 ft wide corridor. The APE for the T-Bone Mesa Alignment was defined as a 4.2 mile long by 700 ft wide corridor. The APE for the Southern Alignment was defined as a 5.6 mile long by 700 ft wide corridor (see Map in Appendix C); and

WHEREAS, the BLM has made a reasonable and good faith effort to identify historic properties (sites eligible for or listed on the National Register of Historic Places) within the UDOT ROW, T-Bone Mesa, and Southern Alignment APEs, including literature reviews and Class III archaeological surveys

(U20ST0150). Tribal input was solicited through consultations to identify sacred sites or areas of traditional cultural importance within these APEs; and

WHEREAS, based on these identification efforts and preliminary conceptual engineering design, the BLM has determined that affirming the UDOT ROW Alignment or modifying the ROW grant to select the T-Bone Mesa Alignment or Southern Alignment would result in a finding of an “adverse effect” to historic properties within the APEs of all three alignments. Pursuant to 36 CFR Part § 800.5, the BLM has consulted with the Utah SHPO on these findings of adverse effect, received concurrence with its determinations, and is executing this Programmatic Agreement (Agreement) to resolve adverse effects as directed in 36 CFR § 800.6; and

WHEREAS, an archaeological and a structural APE were defined for the Red Hills Parkway Expressway alternative. The archaeological APE was defined as a 200 ft-wide corridor (existing roadway plus 50 ft buffer on either side) for additional Class III surveys and site re-visits, to provide adequate coverage for the proposed changes to the roadway. The structural APE for the identification and evaluation of historic structures was defined as one legal parcel in width along the existing roadway (see Map in Appendix C); and

WHEREAS, efforts were made to identify archaeological and structural historic properties within the Red Hills Parkway Expressway APE including literature reviews, Class III surveys (U20ST0150), Tribal consultation to identify sacred sites or areas of traditional cultural importance, and a Selective Reconnaissance Level Survey for Historic Structures. Two historic properties were identified through these efforts; and

WHEREAS, the One-Way Couplet alternative involves St. George Boulevard and 100 South, in the City of St. George. The APE for the identification and evaluation of historic structures was defined as one legal parcel in width along both sides of these streets (see Map in Appendix C); and

WHEREAS, efforts were made to identify historic properties within the One-Way Couplet APE including a Selective Reconnaissance Level Survey for Historic Structures and 63 historic properties were identified; and

WHEREAS, if the BLM terminates UDOT’s ROW grant, without selecting either the T-Bone Mesa Alignment or the Southern Alignment, the U.S. Fish and Wildlife Service (FWS) would amend Washington County’s Incidental Take Permit (ITP) and Zone 6 would no longer be managed as part of the Reserve (see Map in Appendix C and descriptions of past identification efforts and identified historic properties in Appendix B). The ITP amendment would identify the non-Federal lands (State, County, Municipal, and Private) in Zone 6 as being within the County’s Incidental Take Area, allowing land development and other covered activities that may adversely affect historic properties to occur on those non-Federal lands; and

WHEREAS, the termination of UDOT’s ROW grant, and the subsequent amendment to the ITP that allows development on non-Federal lands in Zone 6, may result in effects to historic properties in Zone 6 on non-Federal lands and effects to these properties cannot be fully determined prior to approval of the undertaking. The BLM intends to pursue phased identification and evaluation pursuant to 36 CFR § 800.4(b)(2) and the BLM, in consultation with the SHPO, developed this Agreement pursuant to 36 CFR § 800.14(b)(1)(ii) and 800.14(b)(3); and

WHEREAS, the Utah School and Institutional Trust Lands Administration (TLA) is the agency responsible for authorizing activities on TLA-administered land and it is subject to Utah Code Annotated (UCA) § 9-8a-404 and U. A. C. R850-60 and may to engage in activities authorized by the ITP on TLA

lands. However, the TLA does not waive its independent state statutory jurisdiction to make final decisions concerning its lands, and is not bound in its leasing or other approval authority by actions taken, or determination made concerning Federal lands and has, therefore, been invited by the BLM to be an Invited Signatory to this Agreement; and

WHEREAS, UDOT holds the ROW grant issued by the BLM in 2021. If this ROW is affirmed or affirmed with modifications, UDOT will bear financial responsibility for the execution of this Agreement and, as a state agency, has a responsibility to comply with UCA § 9-8a-404. UDOT participated in the development of this Agreement and intends to comply with the applicable stipulations in this Agreement. However, UDOT does not waive its independent state statutory jurisdiction to make final decisions concerning its lands, and is not bound in its leasing or other approval authority by actions taken, or determination made concerning Federal lands and has, therefore, been invited to be an Invited Signatory to this Agreement; and

WHEREAS, UCA § 9-8a-404 and agency-specific rules under this statute contain legally enforceable restrictions or conditions to ensure that effects to historic properties are taken into account and that efforts are made to avoid, minimize and/or mitigate adverse effects; and

WHEREAS, on January 31, 2024, the BLM invited the Advisory Council on Historic Preservation (ACHP) to participate in Section 106 consultation and the drafting of this Agreement in accordance with Component 5.b.(3) of the *Programmatic Agreement Among The Bureau Of Land Management, The Advisory Council On Historic Preservation, And The National Conference Of State Historic Preservation Officers Regarding The Manner In Which The BLM Will Meet Its Responsibilities Under The National Historic Preservation Act, 2012* (as extended in 2024) (National PA). On February 12, 2024, the ACHP declined to participate in the consultation pursuant to Component 5.d. of the National PA and 36 CFR § 800.6(a)(1)(iii). On July 19, 2024, the BLM invited the ACHP to participate in drafting this Agreement in accordance with Component 5.c. of the National PA and in a letter dated August 02, 2024, the ACHP informed the BLM that its participation was premature, and it encouraged the BLM to continue consulting with the SHPO. On August 26, 2024, the ACHP declined to participate in this Agreement. However, the ACHP reserved the right to participate in the future if circumstances change to meet the criteria outlined in 36 CFR § 800 Appendix A; and

WHEREAS, on April 1, 2024, the BLM invited the Hopi Tribe, the Navajo Nation, the Paiute Indian Tribe of Utah (including the Indian Peaks, Cedar, Shivwits, Koosharem, and Kanosh Bands), the Kaibab Band of Paiute Indians, the Las Vegas Paiute Tribe, the Moapa Band of Paiute Indians, the San Juan Southern Paiute Tribe, the Chemehuevi Indian Tribe, and the Pueblo of Zuni to consult regarding the development of this Agreement, and will continue to consult with these interested Tribes throughout the implementation of this Agreement; and

WHEREAS, the BLM has invited the following agencies and organizations with a demonstrated interest in the undertaking to consult and participate in the development of this Agreement including: the Utah Public Lands Policy Coordinating Office, Utah Division of Wildlife Resources, Washington County, the City of Hurricane, the City of St. George, the City of Santa Clara, the Washington County Historical Society, Conserve Southwest Utah, the Utah Statewide Archaeological Society, the Utah Professional Archaeological Council, Utah Rock Art Research Association, His Family Matters, LLC and the Church of Jesus Christ of Latter-day Saints' Church History Department; and

WHEREAS, the Paiute Indian Tribe of Utah, the Shivwits Band of Paiutes, Utah Public Lands Policy Coordinating Office, Washington County, the City of St. George, and Conserve Southwest Utah, have participated in the development of this Agreement and were invited to be Concurring Parties; and

NOW, THEREFORE, the Signatories and Invited Signatories to this Agreement agree that the proposed undertaking shall be implemented in accordance with the following stipulations to take into account the effects of the undertaking on historic properties and comply with Section 106 of the NHPA.

DEFINITIONS

Unless otherwise noted, the terms used in this Agreement are consistent with the definitions found in the NHPA (54 U.S.C. § 300301–21), applicable regulations (36 CFR § 60.3 and § 800.16), and BLM Manual Section 8100—The Foundations for Managing Cultural Resources.

STIPULATIONS

The Signatories and Invited Signatories shall ensure that the following measures are carried out:

I. Tribal Consultation and Coordination with the Native American Graves Protection and Repatriation Act and Inadvertent Discoveries on Federal and Non-Federal Lands

- a. The BLM will continue to consult with interested Tribes pursuant to 36 CFR § 800.2(c)(2). In addition, the BLM will coordinate consultation in accordance with the Native American Graves Protection and Repatriation Act (25 U.S.C. § 3001 *et seq.*) (NAGPRA). This consultation will assess the need for and the possible development of a Plan of Action (POA) in accordance with NAGPRA as directed in 42 CFR § 10.4(b). The BLM will consult with Tribes to determine if planned activities occurring on Federally-administered lands have the potential for the inadvertent discovery of human remains or cultural items, as defined under 42 CFR § 10.2, and, if so, the BLM will consult with Tribes on the development of POA. If requested, the BLM will meet with the appropriate Tribal official(s) in the development of a POA. The POA will outline protocols for the protection and treatment of human remains or cultural items which may be inadvertently discovered on Federal lands during project construction and, if necessary, outline protocols for inadvertent discoveries which may occur during data recovery testing or excavation. A NAGPRA POA would only apply to Federally-administered lands.
- b. If human remains are inadvertently discovered on non-Federal land, they will be subject to the requirements of UCA §9-8a-309, §9-9-403, and §76-9-704(3). Pursuant to UCA §76-9-704, and regardless of land ownership, a person who fails to report the finding of a dead human body in any stage of decomposition, including ancient human remains, to local law enforcement may be charged with a Class B misdemeanor.

II. Affirm UDOT's ROW Alignment or Affirm with Modifications

If the BLM affirms the UDOT ROW or modifies the UDOT ROW to encompass the T-Bone Mesa or Southern Alignment, the BLM, other Signatories, and Invited Signatories shall ensure the following stipulations are carried out to minimize and mitigate effects to historic properties:

UDOT will submit a Plan of Development (POD) to the BLM after the highway and associated facilities have been designed to a level where adverse effects to historic properties can be fully evaluated. The BLM will review the POD and based on existing identification efforts, determine if it is necessary to update the finding of effects. If necessary, the BLM will consult with the SHPO on the change to the findings. If the finding is an adverse effect to historic properties, UDOT, or a consultant hired by UDOT, will initiate and coordinate meetings to fulfill Stipulations II.a.-e. below to avoid, minimize and mitigate effects to historic properties. UDOT will coordinate and fund the preparation of an Historic Properties Treatment Plan (Treatment Plan), and the implementation of all treatments agreed to as part of the Treatment Plan.

- a. The Treatment Plan will outline the measures that will occur to avoid, minimize, and/or mitigate effects to the historic properties located in the selected ROW alignment.
 - i. If the UDOT ROW Alignment is affirmed and the highway and associated facilities cannot be designed to avoid or minimize effects to historic properties, a Treatment Plan will address adverse effects. Based on preliminary engineering designs, eight historic properties will be affected (42WS4388, 42WS5848, 42WS5858, 42WS5867, 42WS5868, 42WS6362, 42WS6363, and 42WS6366) which include the historic Cottonwood Pipeline, two historic utility lines, an historic sandstone retaining wall that may be related to the Cottonwood Pipeline, one multi-component artifact scatter, two prehistoric artifact scatters, and one prehistoric petroglyph panel with an associated multi-component artifact scatter.
 - ii. If the T-Bone Mesa Alignment is selected and the highway and associated facilities cannot be designed to avoid or minimize effects to historic properties, a Treatment Plan will address adverse effects. Based on preliminary engineering designs, six historic properties will be affected (42WS4388, 42WS5848, 42WS5850, 42WS5866, 42WS5867, 42WS6368) including the historic Cottonwood Pipeline, two historic utility lines, one multi-component artifact scatter, one prehistoric artifact scatter, and one prehistoric lithic quarry.
 - iii. If the Southern Alignment is selected and the highway and associated facilities cannot be designed to avoid or minimize effects to historic properties, a Treatment Plan will address adverse effects. Based on preliminary engineering designs, five historic properties will be affected (42WS4388, 42WS5867, 42WS6362, 42WS6366, 42WS6367), including the historic Cottonwood Pipeline, one historic utility line, two prehistoric artifact scatters and one prehistoric petroglyph panel with an associated multi-component artifact scatter.
- b. The Treatment Plan will be developed in consultation with consulting parties and will include measures to avoid, minimize and mitigate the adverse effects that may result from the alignment that is selected. The Treatment Plan may include avoidance and minimization measures such as flagging, and/or archaeological and Tribal monitors. Mitigation efforts may include a possible mix of additional site documentation, ethnographies, oral histories, historic contexts, Historic American Engineering Record documentation, LiDAR and/or photogrammetry, education and interpretive materials like signage or video, but should discourage the use of destructive data recovery measures, and archaeological excavation.
- c. The Treatment Plan will include a discovery plan that is consistent with 36 CFR § 800.13 for any previously unidentified surface or sub-surface archeological or historic artifacts, features, or sites. If a POA is prepared, the discovery plan will be consistent with the actions outlined in the POA. If the Treatment Plan includes data recovery testing or excavation, the BLM will continue consultation with interested Indian Tribes to ensure that the POA required under NAGPRA and Stipulation I adequately address any planned data recovery prior to BLM issuing a permit under the Archaeological Resources Protection Act (16 U.S.C. § 470aa *et seq.*) (ARPA).
- d. All site forms, reports, Treatment Plan and deliverables, or other products that are produced as part of the treatments to satisfy the terms of this Agreement, shall be submitted as a draft to the BLM, to be disseminated, as appropriate, for consulting parties

to review. Parties will have 30 days to review and comment on the draft deliverables. Agency and other consulting party comments will be incorporated, as appropriate, and, once approved by the BLM, a final draft will be submitted to the SHPO for comment.

- e. The BLM will issue a Notice to Proceed for the construction of the Northern Corridor only after fieldwork associated with identification or treatments in the ROW is complete, and all Signatories agree that no further fieldwork is required.

III. Terminate UDOT's ROW, Red Hills Parkway Expressway, and One-Way Couplet

If the BLM terminates UDOT's ROW grant, it may also endorse either the Red Hills Parkway Expressway or the One-Way Couplet alternative, and the U.S. Fish and Wildlife Service would amend Washington County's Incidental Take Permit to remove Zone 6 from management as part of the Reserve. Non-Federal lands in this Zone would be available for future development actions by non-Federal entities. The Signatories and Invited Signatories will ensure that the following measures will be carried out to identify historic properties and minimize and mitigate adverse effects to historic properties:

a. Proceed with the Red Hills Parkway Expressway

If the City of St. George or its assignee moves forward with the development of the Red Hills Parkway Expressway with an amendment to the City of St. George's existing ROW for the Red Hills Parkway, the BLM, other Signatories, and Invited Signatories shall ensure the following stipulations are met and carried out:

- i. Based on the final engineering design, the BLM will determine if additional efforts are needed to identify and evaluate effects to historic properties. If additional identification efforts are needed, the BLM will review the APE in consultation with the SHPO and additional identification efforts, including Class III survey and consultation with interested Tribes and other consulting parties, will be conducted and the BLM will make a finding of effect in consultation with the SHPO.
- ii. The BLM will work with the City of St. George or its assignee to minimize effects to the two historic properties (42WS4388, the Cottonwood Pipeline and 42WS4989, the Temple Spring water infrastructure and tank) that have been identified within the Red Hills Parkway Expressway APE, as well as any additional historic properties, such as 42WS4990 (the Sugarloaf/Dixie Rock) that are determined to be affected. Minimization efforts may include, but are not limited to, the use of flagging, archaeological monitors, or Tribal monitors for sites associated with Indigenous peoples.
- iii. If the BLM determines that adverse effects to historic properties cannot be avoided or minimized, the BLM will work with the City of St. George or its assignee to develop a Treatment Plan in the manner described under Stipulation II.b-d of this Agreement.

b. Proceed with the One-Way Couplet

If development of the One-Way Couplet proceeds, the City of St. George may wish to consider the BLM's efforts to identify historic properties, design changes, and other special considerations to minimize effects to the historic properties that were identified. The BLM does not have jurisdiction to ensure that adverse effects to these properties will

be avoided and/or minimized in the final engineering design, nor does the BLM have a nexus to ensure that a Treatment Plan would be developed.

c. Zone 6 Procedures for the Identification of Historic Properties, Determining Findings of Effect, and the Minimization or Mitigation of Adverse Effects

If BLM terminates UDOT's ROW grant, Zone 6 would be removed from management under the Reserve and the non-Federal lands would be added to Washington County's Incidental Take Area. As a result, there may be an effect to an unknown number of historic properties on non-Federal lands in Zone 6 if development occurs (see Appendix B for more detail). The BLM, TLA, and UDOT shall ensure that the following stipulations are executed to take into account effects to historic properties:

i. Procedures for Identifying and Addressing Effects to Historic Properties on BLM Administered Lands Located in Zone 6

The BLM administers 3,471 acres of the 6,813 acres in Zone 6, of which 2,345 acres are within the Red Bluff Area of Critical Environmental Concern, managed to protect the endangered dwarf bearclaw poppy. The agency is not considering any authorized actions that may affect historic properties on BLM-administered lands within Zone 6 occurring as the result of this undertaking. The BLM would continue to manage these lands in a manner that would provide for avoidance and minimization of effects to identified and unidentified historic properties. Any undertakings on BLM-administered lands within Zone 6 would conform with the St. George Field Office Resource Management Plan, as amended, the *State Protocol Agreement Between The Bureau of Land Management and the Utah State Historic Preservation Office, 2020* (the Utah BLM Protocol), and/or the *Programmatic Agreement Between The Advisory Council on Historic Preservation, The Bureau of Land Management – Utah, The Utah State Historic Preservation Office, and School and Institutional Trust Lands Administration Regarding National Historic Preservation Responsibilities for Small-Scale Undertakings, 2019* (SS PA). The BLM will consider and minimize future indirect effects that may occur on BLM administered lands as the result of actions on adjacent non-Federal lands through the use of fencing and/or site monitoring. If the BLM installs ground disturbing minimization measures such as fencing, the BLM shall consider this as an undertaking and proceed with identification efforts as outlined under the Utah Protocol and the SS PA. If the BLM installs interpretive signage in the Bearclaw Poppy Trailhead, the trailhead has been subject to archaeological survey and no historic properties would be affected by this action.

ii. Procedures for Identifying and Addressing Effects to Historic Properties on State and County Lands

The State (TLA and UDOT) administer a total of approximately 2,837 acres in Zone 6. If the TLA or UDOT proceed with development of their lands in Zone 6, they shall proceed according to the requirements of UCA § 9-8a-404 and any applicable regulations, which contains legally enforceable restrictions and conditions that require the identification and evaluation of historic properties, the assessment of effects, and the resolution of adverse effects to historic properties.

Washington County owns 450 acres in Zone 6 that was acquired from TLA and is subject to deed restrictions which require the County to seek approval from TLA

before taking actions on the property that would constitute an undertaking as defined in UCA § 9-8a-404, including ground disturbing activities.

iii. Procedures for Identifying and Addressing Effects to Historic Properties on Private Lands

Approximately 54 acres in Zone 6 are owned by two private landowners and the City of St. George. Some of these lands have been subject to past identification efforts and no historic properties have been identified. For those lands that have not been previously surveyed, the BLM will request permission from the landowner to conduct a Class III Survey. If granted permission, the BLM will proceed according to the Utah BLM Protocol and/or the SS PA.

If historic properties are identified, the BLM has no authority to require private landowners or the City of St. George to avoid or minimize effects to historic properties. The BLM will mitigate for the potential loss of historic properties through the development of two interpretive signs to be placed on BLM-administered public lands, as described below under Stipulation III.c.iii.A. and B. of this Agreement.

If the BLM cannot get landowner consent to conduct a Class III Survey, the BLM will proceed with the measures outlined above under Stipulation III.c.iii.A. and B. of this document.

- A. The BLM will work with the Paiute Indian Tribe of Utah, Shivwits Band of Paiutes, and other interested Tribes to develop an interpretive sign that will be placed at the Bearclaw Poppy Trailhead, located in Zone 6. The sign will describe past indigenous uses of the area and include a generalized description of the archaeological record resulting from those uses.
- B. The BLM will consult with interested parties, such as the City of St. George, Washington County, and/or the Washington County Historical Society, in the development of an interpretive sign to be placed at a trailhead in the NCA. The sign will describe historic water use and historic water conveyance features in that area.

IV. Professional Qualifications and Archaeological Permitting

- a. The BLM will ensure that archaeological work undertaken by the BLM as part of this Agreement will be completed by BLM staff who meet the qualifications established by the Office of Personnel Management for a GS-0193 professional series archaeologist (BLM Archaeologist). Archaeological consultants working on BLM-administered lands to satisfy the Stipulations of this Agreement are required to work under a valid BLM Cultural Resource Use Permit.
- b. The BLM acknowledges that archaeological survey and excavation projects conducted on lands owned or controlled by the State of Utah, its political subdivisions, or the TLA are subject to the professional qualification and permitting requirements found in UCA § 9-8a-305 and UCA § R654-1.

V. Duration

This Agreement will expire if its terms are not carried out within 20 years from the date of its execution. Prior to that time, the BLM may consult with the other Signatories and Invited Signatories to reconsider the terms of the Agreement and amend it in accordance with Stipulation X (Amendments) below.

VI. Post Review Discoveries for Federal Undertakings

- a.** If a Treatment Plan has been developed, the discovery will proceed according to the Treatment Plan and, if a POA is developed, the BLM shall ensure that the POA has been followed.
- b.** If a Treatment Plan has not been developed, and cultural resources are discovered after construction has begun, the BLM shall ensure that if a POA has been developed, the discovery will proceed as follows:
 - i.** Construction activities will be halted, and a 30-meter buffer will be set up around the perimeter of the discovery.
 - ii.** Within 48 hours of the discovery, the BLM or agency official with jurisdiction over the discovery area will determine if activities may continue or be modified to minimize potential impacts. The agency official will proceed with identification efforts consistent with 36 CFR § 800.4 and make efforts to avoid or minimize adverse effects. If effects cannot be avoided or minimized, the agency official will develop a treatment plan pursuant to Stipulation II.b.-d. of this agreement.
 - iii.** If there will be no adverse effect to historic properties, the BLM will notify interested Tribes and the SHPO of the finding. The SHPO will respond within 48 hours of the notification. If the agency official does not receive comments within 48 hours, construction in the area may resume.

VII. Monitoring and Reporting

The BLM will report the status of the BLM obligations documented in this Agreement in a digital letter report transmitted annually to all other Signatories, Invited Signatories, and Concurring Parties for the duration of this PA. After the receipt of the BLM letter report, Consulting Parties may request a conference call among parties to consider suggestions for possible modifications or amendments to this Agreement.

VIII. Confidentiality of Historic Property Information

The parties to this Agreement acknowledge that historic properties covered by this Agreement are subject to the provisions of Section 304 of the NHPA relating to the nondisclosure of sensitive information about the location, character, and ownership of a historic property, including historic properties of traditional religious and cultural importance to Tribes, and having so acknowledged, will ensure that all actions and documentation prescribed by this Agreement are consistent with the Act. In addition, Section 9 of the ARPA requires withholding information about the nature and location of archaeological resources and the BLM will withhold information accordingly. If BLM and SHPO determine that it is necessary to share sensitive information, the BLM may require data sharing agreements with parties interested in obtaining sensitive information.

IX. Dispute Resolution

Should any Signatory, Invited Signatory or Concurring Party to this Agreement object to actions proposed or the manner in which the terms of this Agreement are implemented, they will provide written notice to the BLM, and the BLM will determine if the objection should be considered, prior to contacting consulting parties. If the BLM determines that the request should be considered, the BLM will consult with the objecting party, and other consulting parties to resolve the dispute.

If, after consulting with the objecting party and other consulting parties to resolve the dispute, the BLM determines that the objection cannot be resolved within 30 calendar days, the BLM will forward all documentation relevant to the dispute to the ACHP. The BLM shall allow the ACHP 30 days after receiving adequate documentation to provide its advice on the resolution of the objection. Prior to reaching a final decision on the dispute, the BLM shall prepare a response that takes into account any timely advice or comments regarding the dispute from the ACHP, Signatories, Invited Signatories, and Concurring Parties, and provide them with a copy of this response. The BLM will then proceed according to this final decision.

If the ACHP does not provide advice regarding the dispute within the 30-day period, the BLM may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the BLM shall prepare a response that takes into account any timely comments regarding the dispute from Signatories, Invited Signatories, and Concurring Parties to the Agreement and provide them and the ACHP with a copy of such written response.

X. Amendments

This Agreement may be amended when such an amendment is agreed to in writing by all Signatories. The amendment will be effective on the date a copy is signed by all the Signatories and is filed with the ACHP.

XI. Termination

If a Signatory to this Agreement determines that its terms will not or cannot be carried out, that party shall immediately consult with the other Signatories to attempt to develop an amendment per Stipulation X. If, within 30 days (or another time period agreed to by all Signatories), an amendment cannot be reached, any Signatory may terminate the Agreement upon written notification to the other Signatories.


XII. Execution

Execution of this Agreement by the BLM and the SHPO, and implementation of its terms, evidence that the BLM has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

SIGNATORIES:

Bureau of Land Management


**GREGORY
SHEEHAN**

 Digitally signed by GREGORY
SHEEHAN
Date: 2024.10.11 10:27:53
-06'00'

Date 10/11/2024

Gregory Sheehan, State Director

Utah State Historic Preservation Office

 Date 11/1/24
Dr. Chris Merritt, State Historic Preservation Officer

INVITED SIGNATORIES

Utah Department of Transportation

_____ Date
Kirk Thornock, UDOT Region 4 Director

Utah School and Institutional Trust Lands Administration

_____ Date
Name, Title

CONCURRING PARTIES

Paiute Indian Tribe of Utah

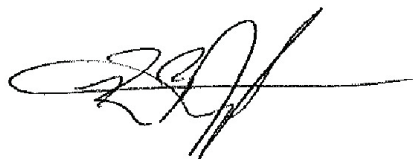
_____ Date
Name, Title

Shivwits Band of Paiutes

Carmen Clark

Carmen Clark, Acting Chair 10/17/2024 Date
Name, Title

Utah Public Lands Policy Coordinating Office

A handwritten signature in black ink, appearing to read 'Redge B. Johnson', written over a horizontal line.

Redge B. Johnson
Director

10/16/2024

Washington County

_____ Date
Name, Title

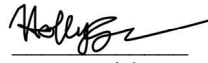
City of St. George

Michael Randall Mayor Date 10/7/24
Name, Title

Attest: Christina Fernandez
Christina Fernandez, City Recorder



Conserve Southwest Utah



Name, Title

Date

10/23/2024

Holly Snow Canada, Executive Director

APPENDIX A: Project Background and History

On September 4, 2018, UDOT applied for a ROW grant for the Northern Corridor Highway Project on BLM-managed land within the Red Cliffs National Conservation Area (NCA). The 45,000-acre Red Cliffs NCA was established through the passage of the Omnibus Public Land Management Act of 2009 (OPLMA) (16 U.S.C. § 460www). The Congressionally defined purposes of the NCA are to conserve, protect, and enhance for the benefit of present and future generations the ecological, scenic, wildlife, recreational, cultural, historical, natural, educational, and scientific resources of the NCA and to protect each species that is listed as a threatened or endangered species under the ESA. The NCA's designating statute directs the Secretary of the Interior to manage the NCA [through the BLM] in a manner that conserves, protects, and enhances its resources and to only allow uses that would further a purpose for which it was designated. In 2016, the BLM approved a Red Cliffs NCA Resource Management Plan for the NCA that included management goals, objectives, and decisions that were consistent with the designation purposes, authorized uses, and other direction from OPLMA specific to this NCA.

OPLMA at Section 1977(b)(2) addresses the development a comprehensive travel management plan for the land managed by the BLM in Washington County and directs that “in developing the travel management plan, the Secretary shall—(A) in consultation with appropriate Federal agencies, State, Tribal, and local governmental entities (including Washington County and St. George City, Utah), and the public, identify 1 or more alternatives for a northern transportation route in the County.” In its ROW application, UDOT described the proposed highway as a multi-lane divided highway that would be constructed in phases, based on traffic demand. The stated need for the new highway was based on current and projected growth in the greater St. George metropolitan area and its purpose to provide increased transportation network capacity for east-west travel between Interstate 1-15 and State Route 18. To construct the highway, UDOT would also need to obtain easements for the non-Federal lands in the overlapping and larger Red Cliffs Desert Reserve. Prior to the NCA's designation, the Red Cliffs Desert Reserve was established for the protection of the Mojave desert tortoise and 61,000 acres of its habitat as part of the 1995 Washington County Habitat Conservation Plan (HCP). In 2015, pursuant to Section 10(a)(1)(B) of the ESA, Washington County applied to renew and amend its HCP and associated ITP. The restated and amended HCP described the Northern Corridor highway as a potential changed circumstance, which would be fully offset with the addition of a new discontinuous sixth zone to the Red Cliffs Desert Reserve (Reserve Zone 6) as the primary conservation strategy.

During 2019 and 2020, in compliance with the National Environmental Policy Act (NEPA), the BLM and FWS prepared an Environmental Impact Statement (EIS) to analyze the environmental impacts associated with UDOT's ROW application and reasonable alternatives. To consider this application, the BLM needed to also consider amending the Red Cliffs NCA and St. George Field Office Resource Management Plans (RMPs). On January 13, 2021, the Secretary of the Interior signed a Record of Decision (ROD) that approved UDOT's ROW application and approved the amendments to the RMPs. The decision approving the ROW was effective immediately and the BLM issued UDOT a ROW grant for its application alignment on the same day. Also on January 13, 2021, the FWS Regional Director for Interior Regions 5 and 7 signed a ROD approving the issuance of an ITP to Washington County. The FWS issued the ITP to Washington County. Because BLM approved the UDOT ROW application, the changed circumstance was triggered, and Zone 6 was formally added to the Reserve.

On June 3, 2021, seven organizations (collectively, the Plaintiffs) filed an initial complaint in the United States District Court for the District of Columbia. Among other claims, the Plaintiffs alleged the BLM's ROW decision violated both NEPA and the NHPA. The Plaintiffs stated, in part, that the Final EIS did not fully address the changed circumstances of wildfire in the region and the impacts it may have on the threatened Mojave desert tortoise, critical tortoise habitat, and the spread of invasive annual grasses. The Plaintiffs also alleged that the BLM failed to comply with the consultation requirements under Section

106 of the NHPA. On July 27, 2021, the Plaintiffs amended their complaint to include the FWS and additional claims related to NEPA and the Endangered Species Act (ESA).

During the litigation, the United States and the Plaintiffs reached an out-of-court Settlement Agreement that committed the BLM and FWS to complete a Supplemental EIS (SEIS) with RODs to be signed by November of 2024, subject to unforeseen delays, and the BLM was to complete NHPA consultations (as necessary). The Settlement Agreement was signed on August 30, 2023. Prior to executing that agreement, the United States moved for the voluntary remand and partial vacatur of BLM's and the FWS's 2021 decisions. On November 16, 2023, the United States District Court Order, supported by a Memorandum Opinion, granted the request for voluntary remand of the 2021 decisions to the BLM and FWS for reconsideration but denied the request of vacatur of the ROW grant.

The BLM and the FWS are now jointly preparing a SEIS to further consider the effects of granting UDOT a highway ROW through the NCA. As no new alignments for the Northern Corridor highway were identified during scoping for the SEIS in November-December of 2023, the five alternative alignments that were previously considered in detail are being carried forward for analysis in the SEIS, As well as an alternative that would terminate UDOT's ROW grant, which is the equivalent of the "no action" alternative in the 2020 Final EIS.

The UDOT ROW alignment is proposed as a 4.5 mile long by 500 ft wide corridor that would include 1.9 miles on public lands managed by the BLM, 0.24 miles on TLA, 0.77 miles on UDWR, 1.04 miles on County owned land, and 5.24 feet on private property. The T-Bone Mesa alignment was proposed as a 4.2 mile long by 500 ft wide corridor that included 2.2 miles on public lands, 0.03 miles on TLA land, 1.245 miles on UDWR, 0.06 miles on County-owned land, and 0.41 miles on private property. The Southern alignment was defined as a 5.6 mile long by 500 ft wide corridor that included 1.5 miles on public lands, 0.24 miles on TLA, 1.04 miles on UDWR, 0.59 miles on County-owned land, 1.55 miles on municipal lands held by the City of St George, 0.13 miles on municipal land held by Hurricane City, and 0.12 miles on private property. For the Red Hills Parkway Expressway, the existing roadway crosses 0.22 miles on public lands, 0.03 miles on TLA, 0.11 miles on State Parks, 3.06 miles on the City of St George, and 0.62 miles on private property.

The Draft SEIS was released for a public review and comment on May 10, 2024, but and did not declare an agency preferred alternative. A Final SEIS will be released in the fall of 2024 and a ROD must be signed by November 2024, subject to any unforeseen delays, to comply with the Settlement Agreement. The decision will either affirm, affirm with modifications, or terminate UDOT's ROW grant. The FWS's ROD will decide whether to amend Washington County's ITP so that it reflects the BLM's reconsideration of UDOT's ROW.

The BLM is not considering amendments to the Red Cliffs NCA RMP or the St. George Field Office RMP in the SEIS. If the BLM's 2024 decision differs from the 2021 ROW decision, the BLM will undertake additional land use planning to reflect the 2024 decision. Until that additional planning is complete, BLM will not consider or reconsider a similar ROW application for a highway in the NCA.

APPENDIX B: Identification Efforts and Historic Properties Located in Zone 6

Zone 6 of the Red Cliffs Desert Reserve is a 6,813-acre parcel located in Washington County Utah, west of the City of St. George. Lands in Zone 6 are managed and owned by the BLM, TLA, UDOT, Washington County, the City of St. George, and two private landowners (see Appendix C). Approximately 1,621 acres (23.8%) of the land in Zone 6 has been subject to archaeological surveys. These surveys have resulted in the identification of 15 historic properties, 8 sites that were not evaluated for National Register eligibility, and 11 sites that were determined to be ineligible for the National Register.

The BLM administers over 50% of Zone 6 (3,471 acres), and 2,345 acres of which are within the Red Bluff Area of Critical Environmental Concern (ACEC). The ACEC is managed to protect the endangered dwarf bearclaw poppy through restrictions on land uses, such as utilities development, roads, and other uses that require rights-of-way. The public lands of the ACEC and Zone 6 are to be retained in Federal ownership, which means they cannot be sold or exchanged for development. Non-motorized recreation uses in the ACEC are limited to the designated and largely fenced trail system, while motorized travel is limited to existing roads, until travel management is completed. Once a Travel Management Plan is approved, motorized vehicle travel will be limited to designated roads. The BLM is not considering any authorized actions on BLM-managed lands in Zone 6 associated with this undertaking. The public lands will continue to be managed in conformance with the objectives and decisions in the St. George Field Office RMP.

The TLA holds approximately 2,767 acres in Zone 6. Of these acres, 432 acres or slightly more than 15%, have been archaeologically surveyed to identify historic properties. The results of these surveys are listed below in Table 1. Any future undertakings on TLA lands would be subject to UCA 9-8a-404.

The UDOT owns 70 acres in Zone 6 that it acquired to mitigate the loss of endangered native plant habitat resulting from the construction of the Southern Parkway highway project. Should there be undertakings proposed on these mitigation lands, they would be subject to UCA 9-8a-404.

Washington County owns 450 acres (T42S, R16W, Sec 32) that were acquired from TLA and are covered by Deed Restrictions for Cultural, Archaeological, Paleontological and Antiquities Resources. These restrictions require the County to manage the lands for conservation, obtain TLA permission for sale, lease, or conveyance of the land, and for any actions that would constitute an undertaking. Undertakings must comply with the Utah Antiquities Act, UCA 9-8-301 et. seq. and Utah Code 9-8-404 et. seq. (see SITLA Certificate of Sale, No. 27022 to Washington County). A small-scale Class III inventory (less than 50 acres) has been completed on the County parcel, and no archaeological sites were identified.

The City of St. George owns 2.3 acres of land divided into two parcels (1.44 and .86 acres). The larger parcel has been archaeologically surveyed and the smaller parcel has been partially surveyed; no archaeological sites were identified.

Two private landowners own land within Zone 6; one with a 40-acre parcel and the other with two parcels of approximately 4.3 acres and 8.4 acres in size. A small area of the 40-acre parcel has been archaeologically surveyed and no sites were identified. The 4.3-acre private parcel was completely surveyed, and no sites were located. The 8.4-acre parcel has also been surveyed and a lithic scatter was documented that is partially on TLA land. This site was evaluated as not being eligible for National Register listing.

Table 1: Summary of Survey and Sites in Zone 6 by Land Status

Land Status	Total No. of Sites	Prehistoric	Historic	Eligible	Unevaluated	Not Eligible
BLM	23	23	0	11	7	5
TLA	11	7	4	4	1	6
Private	0	1 (also on TLA)	0	0	0	1 (also on TLA)
Total	34	30	4	15	8	11

In summary, as described in Table 2, 24 archaeological surveys have been completed between 1975 and 2017, which have accounted for over 23.8% of the 6,812 acres in Zone 6 to be subject to Section 106 identification efforts. These survey efforts resulted in the identification of 34 archaeological sites, 15 of which are historic properties, 8 are unevaluated, and 11 have been determined ineligible for the NRHP. Thirty of the sites are precolonial (“prehistoric”) and the remaining four are historic period. Table 3 lists the sites, a brief description, eligibility determinations, and land status. Much of Zone 6 is characterized by the prevalence of gypsum rich soils that support dwarf bearclaw poppy habitat and very little other vegetation. When wet, these soils turn to thick mud which may have limited past human use and occupation. Based on previous identification efforts, overall site density is expected to be low, and most sites would be expected to occur in areas with rock outcrops and cliff faces.

Table 2: Archaeological Surveys Completed in Zone 6

Project Number	Project Title
U75DA0009	Archeological Reconnaissance along the Proposed Coal-Slurry Pipeline Corridor from Alton, Utah to Dry Lake, Nevada
053-288	Virgin River Inventory, Atkinville Section
U86BC0015, 053-403	An Archaeological Survey of a Proposed 345 KV Powerline Corridor in Southwest Washington County, Utah
U87BC0136	An Archaeological Inventory of the St George Wastewater Treatment Facility, in Washington County, Utah
053-480	Sewer Plant Temp Road Etc.
053-515	Gravel Area Vic. Atkinville #2
U90BL0691, 053-569	Red Bluff Protective Fence
U94BL0510, 053-853	Desert Tortoise Exchange Tract 1
U95BL0831	Desert Tortoise Exchange Tract 65
U99BL0467	Green Valley Mountain Bike Trail
U00BL0056	City of St George Water Tank and Pipeline
U00BL0745	Curly Hollow Poppy Fence
U03UM0136	Montezuma at Bloomington Sale Parcel, Washington County, Utah
U04HQ0795	An Archaeological Survey of Approximately 167 acres in the West Southgate Ridge Project Area, Washington County, Utah
U07HO0244	A Cultural Resource Inventory of the Rio Virgin Bloomington to Beaver Dam Fiber-Optic Corridor, Mohave County, Arizona and Washington County, Utah
U08HO0046	A Cultural Resource Inventory of the St George RC Model Plane Airport, Washington County, Utah
U08HO0294	A Cultural Resource Inventory of the Rio Virgin/Qwest Fiber-optic Building Site, Washington County, Utah

U09BL0013	Protective Fencing Projects for the SCRR
U09HQ0008	Archaeological Survey of Approx. 640 acres in the Tonaquint Project Area
U10LI0939	A Class III Cultural Resources Inventory of 5,718 Acres for the Comprehensive Travel and Transportation Management Plan, St George Field Office, Bureau of Land Management, Washington County, Utah
U11HO0051	A Cultural Resource Inventory of the St George RC Model Airplane Airport Expansion, Washington County, Utah
U12BL0566	Technical Report Addressing the Effects to Cultural Properties on Public Lands Related to 10 Year Term Grazing Permit Renewals for Apex Slope, Box Canyon, Curly Hollow, and River Allotments, Washington County, Utah
U17HO1042	A Cultural Resource Inventory of the Bear Claw Poppy Road and Navajo Road Parking Easements, Washington County, Utah
U17ST1018	Cultural Resources Survey for the Washington County Comprehensive Travel and Transportation Management Plan, Utah

Table 3: Archaeological Sites Documented in Zone 6

Site Number	Site Type	Eligibility	Land Status
42WS0485	Lithic Scatter w/ possible Structure Outlines	Undetermined	SITLA
42WS0486	Prehistoric Structural	Undetermined	BLM
42WS0487	Lithic Scatter	Undetermined	BLM
42WS1675	Prehistoric Structural	Eligible	BLM
42WS1676	Lithic Scatter	Not Eligible	BLM
42WS2906	Lithic Scatter	Not Eligible	BLM
42WS2923	Rock Shelter	Eligible	BLM
42WS2936	Mano & Hammerstone	Not Eligible	BLM
42WS2937	Rock Shelter, Paiute	Eligible	BLM
42WS2938	Rock Shelter	Eligible	BLM
42WS2939	Rock Shelter	Eligible	BLM
42WS2940	Rock Shelter	Eligible	BLM
42WS2941	Rock Shelter	Eligible	BLM
42WS2942	Rock Shelter	Undetermined	BLM
42WS2943	Rock Shelter	Undetermined	BLM
42WS2944	Rock Shelter w/ Wall	Eligible	BLM
42WS2945	Rocks Piled on a Sheltered Ledge	Undetermined	BLM
42WS2946	Bedrock Metate & Rock Shelter	Not Eligible	BLM
42WS2947	Rock Shelter	Eligible	BLM
42WS2948	Rock Shelter	Eligible	BLM
42WS2949	Rock Shelter	Undetermined	BLM
42WS2950	Rock Shelter	Eligible	BLM
42WS2951	Rock Shelter	Undetermined	BLM
42WS4482	Historic Rock Wall	Not Eligible	TLA
42WS5032	Old Mormon Road/Old Southern Road	Eligible	TLA
42WS5042	Lithic Scatter	Not Eligible	TLA
42WS5182	Lithic Scatter	Not Eligible	TLA & private

42WS5184	Prehistoric Artifact Scatter	Not Eligible	TLA
42WS5185	Rock Shelter & Prehistoric Artifact Scatter	Eligible	TLA
42WS5186	Prehistoric Artifact Scatter	Eligible	TLA
42WS5187	Prehistoric Artifact Scatter	Eligible	TLA
42WS5188	Historic Rock Wall	Not Eligible	TLA
42WS5189	Boulder w/ Historic Signature	Not Eligible	TLA
42WS5513	Lithic Scatter	Not Eligible	BLM

APPENDIX C: Maps

Figure 1: Project Area

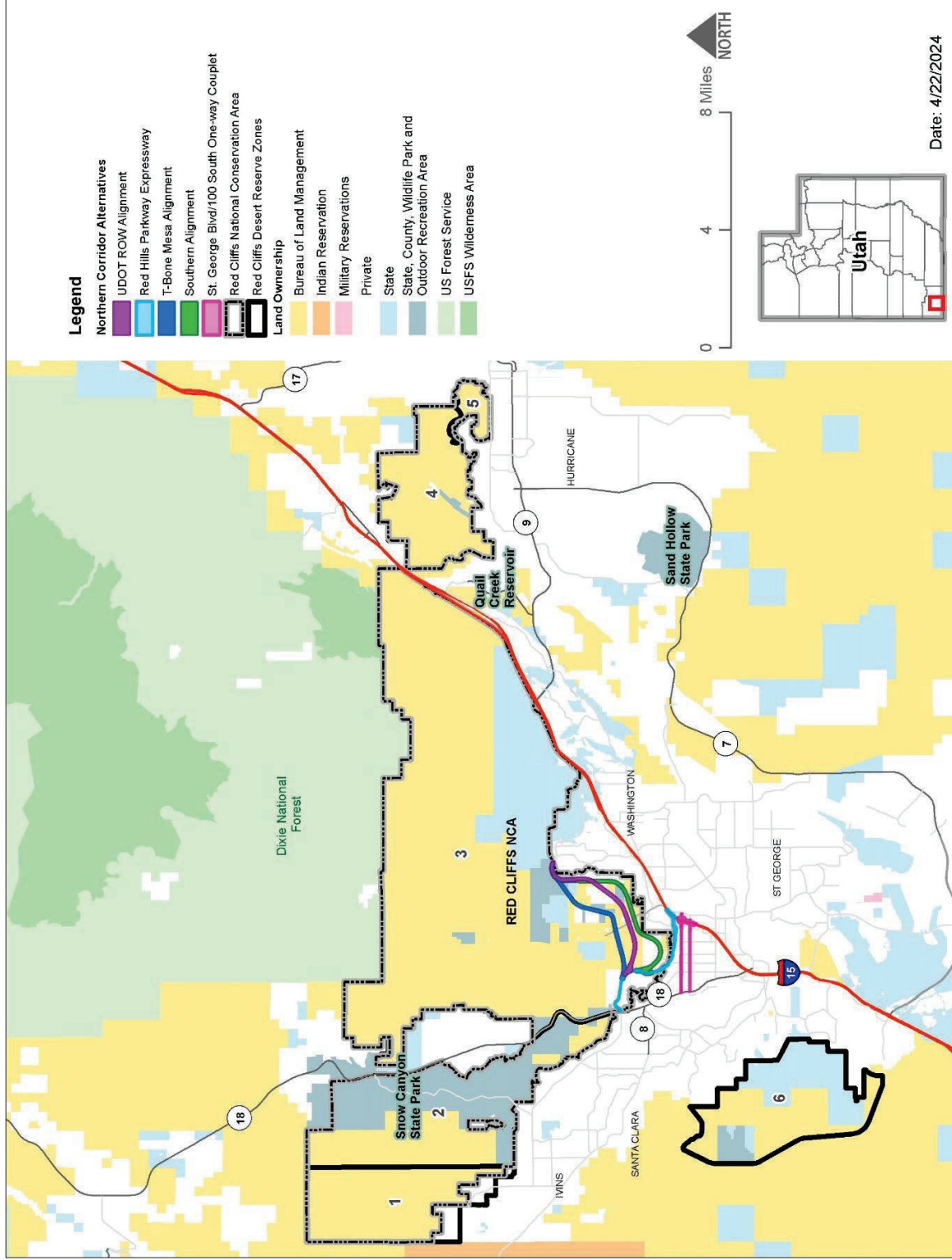


Figure 2: Alternatives

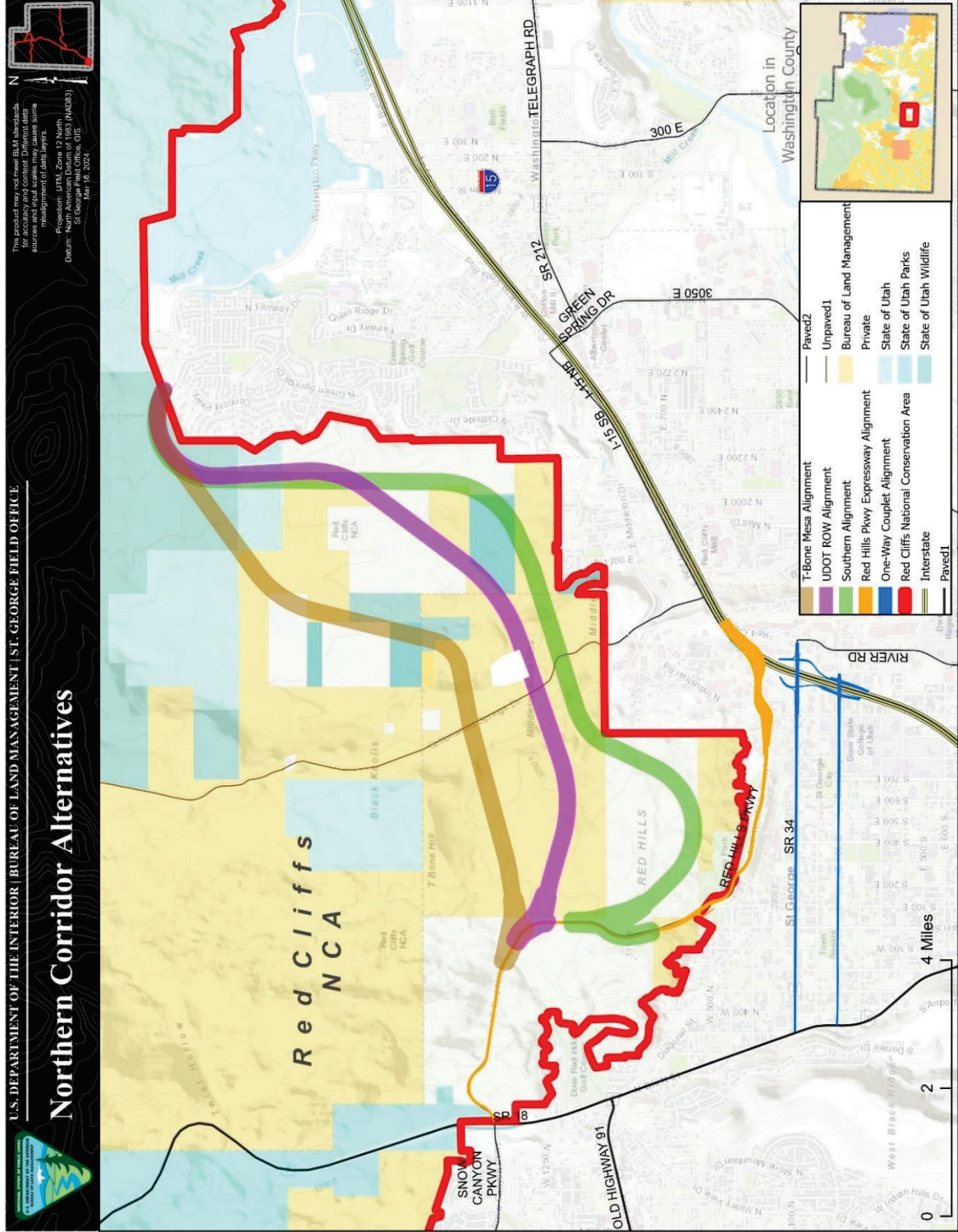


Figure 3: Areas of Potential Effects

