

Testimony of Carlos Braceras
Executive Director
Utah Department of Transportation
Before the U.S. House of Representatives Subcommittee on Federal Lands

Field Hearing: *“Empowering Local Voices and Stopping Federal Overreach to Improve the Management of Utah’s Public Lands”*

April 22, 2024

Introduction

Chairman, Ranking Member, Vice Chair, and distinguished members of the Federal Lands Subcommittee. My name is Carlos Braceras, and I am the Executive Director of the Utah Department of Transportation (UDOT). Speaking on behalf of the Utah Department of Transportation, we are very grateful to the members of the Utah Delegation for providing this opportunity to discuss the Northern Corridor project. Thank you for coming to the great state of Utah and for allowing me the opportunity to testify regarding the importance of the vital and necessary Northern Corridor transportation route in Washington County and the mandate that Congress set forth nearly 15 years ago directing the Bureau of Land Management (BLM) to identify a northern transportation alignment on lands managed by the BLM, which primarily consist of the Red Cliffs National Conservation Area. As you know, Washington County is an area within the State of Utah that is largely surrounded and landlocked by federal public lands, so we are acutely aware of the challenge this issue poses as we try to conduct transportation planning for our communities.

UDOT is the designated state agency responsible for transportation in the State of Utah. UDOT’s mission is to enhance the quality of life for Utahns through transportation. We do this by optimizing mobility, connecting communities, promoting a strong economy, and encouraging good health. We take these responsibilities seriously and understand the potential that each transportation project has to benefit and improve communities and the environment. Accordingly, UDOT expends significant time, energy, and effort to collaboratively work with local governments, including rural and metropolitan planning organizations, to understand and address local and regional transportation needs, perspectives, and concerns. As a state entity with delegated NEPA authority from the Federal Highway Administration, UDOT is keenly aware of the importance that the administrative and NEPA process play in the evaluation and consideration of any proposed project and land management decisions.

As a state governmental entity, we fastidiously abide by all laws and regulations relevant to our work, and we see it as equally important for the federal government to be held to the same standard. In this case, the federal government has a duty to comply with the Congressional directive under the Omnibus Public Lands Management Act, Pub. L. No. 111011, 123 Stat. 991,

1081-83 (2009) (OPLMA) as well as a duty to objectively carry out its National Environmental Policy Act (NEPA) review in accordance with applicable regulation and procedure.

Northern Corridor

The long-planned “Northern Corridor” is a proposed transportation corridor referred to by various names that connects the communities of Ivins, Santa Clara, and the western urbanized area of St. George to the west and Washington and Hurricane to the east between State Route 18 and Interstate 15. Connecting these communities requires crossing federal public lands. Because of the importance of this corridor, the northern transportation route connecting these endpoints has been on state or local transportation plans for more than 30 years. Since 2017, significant planning for development of this corridor has been undertaken as a result of current demand and forecasted population growth within Washington County. The Northern Corridor is a necessary highway infrastructure project to accommodate and support the increased growth and travel demands and reduce impacts to aging transportation infrastructure that was not designed for the capacity we now anticipate and the growing population now projected for Washington County.

Over the years, UDOT has prepared or funded, by itself or with other state and local entities, at least five different studies of alignments for the corridor, including the following:

- Red Hills Parkway State Route 18 (Bluff Street) to Industrial Road Development Assessment (2009 UDOT);
- Washington Parkway Cost/Benefit Study (Horrocks Engineers, 2011);
- Washington Parkway Study: Integration of East-West Transportation Needs with Conservation Objectives for Desert Tortoise in Washington County, Utah (Jacobs and Logan Simpson 2012);
- Washington County General Plan (amended 2012); and
- Dixie Metropolitan Planning Organization (DMPO) Regional Transportation Plan.

Notably, Washington County has grown from a community of 13,669 in 1970 to its current population of approximately 189,500 people. According to the U.S. Census Bureau, in the past 35 years, the St. George area has grown by more than 400 percent. Based on this explosive growth, the existing transportation network between S.R. 18 and I-15 is not adequate to meet future (2050) east-west travel demand in the northeastern and northwestern areas of St. George. A northern transportation route for the rapidly growing area is necessary to reduce traffic congestion, substantial delays and idling, which is also expected to improve air quality. In addition to improving east-west mobility on arterial and interstate roadways, the highway is necessary to reduce traffic volumes on key corridors such as Bluff Street, Red Hills Parkway, and St. George Boulevard that are currently congested and are expected to experience worse

congestion in the future as the Washington County population grows and the associated east-west travel demand increases.

The Northern Corridor will fulfill a necessary transportation need identified decades ago that UDOT has planned for, studied, and invested millions of dollars to develop. It has done so working in close cooperation with the DMPO (the agency responsible for regional transportation planning in Washington County); Washington County; the City of St. George; Washington City; the City of Ivins; the City of Santa Clara; the City of Hurricane; and other communities in the St. George and Hurricane urbanized area.

Omnibus Public Lands Management Act (OPLMA)

Nearly 15 years ago, in creating the Red Cliffs National Conservation Area, Congress, state and local officials, and conservation groups recognized the challenges in balancing management and conservation values with local and regional growth of the surrounding community in Washington County. To meet this challenge, Congress reached a compromise in enacting OPLMA in 2009 with twin aims focused on balancing conservation with regional transportation needs based on growing community needs. In this legislation Congress recognized the need for a northern corridor transportation route over federal public lands because the only BLM-managed lands north of the City of St. George in Washington County were in the Red Cliffs National Conservation Area as shown on the maps in Attachment A, which were included in the statute.

In recognition of this circumstance, in enacting OPLMA, Congress expressly directed the Secretary of the Interior to meet the following mandates:

- (1) OPLMA Section 1974 Mandate: manage the National Conservation Area in a manner that conserves, protects, and enhances (1) the resources the ecological, scenic, wildlife, recreational, cultural, historical, natural, educational, and scientific resources of the National Conservation Area for the benefit and enjoyment of present and future generations; and (2) to protect each species that is located in the National Conservation Area and listed as a threatened or endangered species under the Endangered Species Act. OPLMA § 1974(e); and
- (2) OPLMA Section 1977 Mandate: within three years of its passage (2012), develop a comprehensive travel management plan to provide the public a marked network of roads and trails with signs and maps over lands managed by the BLM and lands under management by the U.S. Forest Service in Washington County, in consultation with appropriate Federal agencies and State, tribal, and local governmental entities. Congress further directed that the travel management plan should:
 - promote enhanced recreation and general access opportunities;

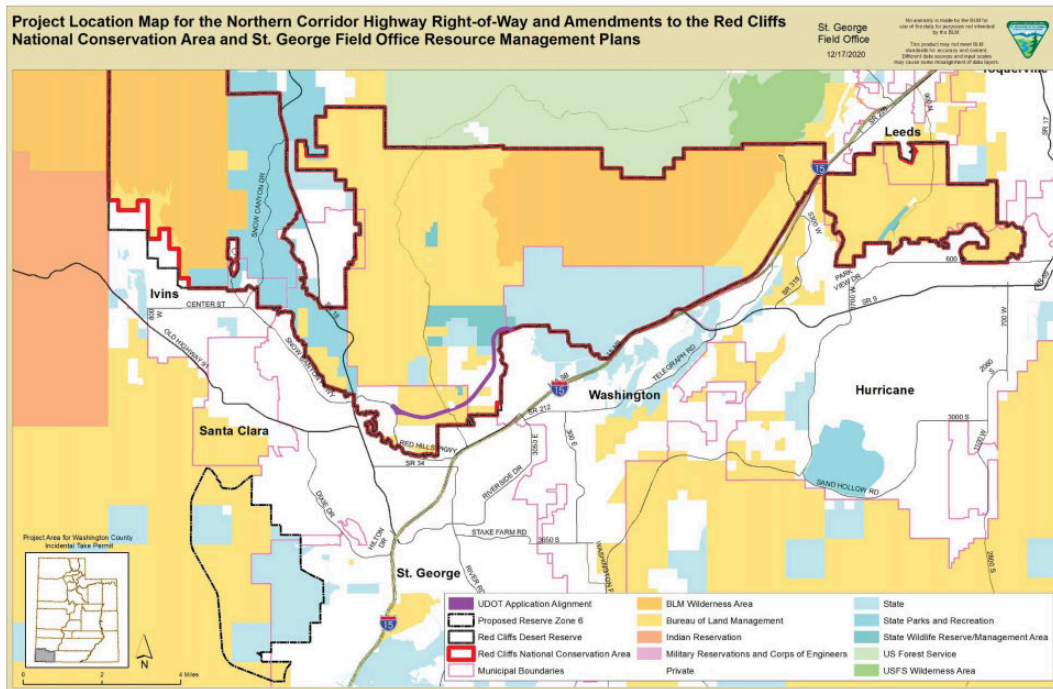
- help reduce in the County growing conflicts arising from interactions between motorized recreation and important resource values on public lands;
- promote citizen-based opportunities for monitoring and stewardship of trails and trail system management;
- support law enforcement officials in promoting compliance with off-highway vehicle laws and deterring abuses of public land; and
- identify 1 or more alternatives for a northern transportation route in the County.

OPLMA §§ 1977(b).

Despite the clear federal direction and Section 1977 mandate, it has been fifteen years since OPLMA was passed. We are nearly twelve years beyond the statutory deadline for BLM to identify a northern transportation route in cooperation with the affected state and local entities that require it, yet, the BLM has yet to seriously consider a comprehensive travel management plan. BLM's actions over the last several years continue to undermine any measurable progress in meeting BLM's Section 1977 obligations under OPLMA at best. At worst, BLM's actions demonstrate noncompliance and disregard of the law and BLM's statutory requirements.

UDOT Right-of-Way

Based on a combination of the directive under OPLMA, prior local and regional planning and needs, and current demand and forecasted population growth within the county, which will continue to outstrip the capacity of the transportation network, UDOT proactively submitted an application to the BLM for a right-of-way for a four-lane highway that includes a paved hike and bike path, and will be 4.5 miles long, with 1.9 miles crossing federal lands in the Red Cliffs National Conservation Area as shown in purple below:



A-1

Record of Decision and Approved Resource Management Plan Amendments for the Northern Corridor Right-of-way, Red Cliffs National Conservation Area RMP, and St. George Field Office RMP

After completing the NEPA process and consultation under Section 7 of the Endangered Species Act, on January 15, 2021, BLM issued a Record of Decision approving a right-of-way subject to specified mitigation measures. In issuing this decision, BLM determined that granting the right-of-way was consistent with the legislative instructions under both Sections 1974 and 1977 of OPLMA.

UDOT Mitigation Commitments and Northern Corridor “Changed Circumstance”

As you are aware, this area is also home to the Mojave Desert Tortoise. Washington County currently manages conservation of Mojave Desert Tortoise in the Upper Virgin River Recovery Unit and development on 12,264 acres of non-Federal lands in Washington County under an Habitat Conservation Plan (HCP). In collaboration with BLM and other HCP partners, the HCP originally created the approximately 62,000 acres Red Cliffs Desert Reserve (Reserve) aimed to protect a significant block of desert tortoise habitat in Washington County. Currently, the Reserve is segmented into five management zones separated by topographical and human barriers. Reserve Zones 1, 2, and 3 are north of the cities of Ivins, St. George, and Washington and west of Interstate 15. Reserve Zones 4 and 5 are north of the city of Hurricane, south of Leeds, and east of I-15.

In issuing the Northern Corridor right-of-way, the U.S. Fish and Wildlife Service determined that the project impacts would not appreciably affect either the survival or recovery of Mojave Desert Tortoise finding that the proposed UDOT mitigation measures would be more protective and beneficial to desert tortoise and the environment.

As part of the proposed application and issuance of the Northern Corridor right-of-way and Washington County's proposed application for renewal of its incidental take permit and amendment of its HCP, UDOT in collaboration with Washington County agreed to and coordinated mitigation measures targeted to offset impacts to the Mojave Desert Tortoise from the proposed highway which would be located in Reserve Zone 3. This included nearly 14 pages of mitigation measures, including specific Northern Corridor design features, including exclusionary tortoise fencing, shade structures, and passageways to provide effective mitigation against potential habitat fragmentation and connectivity issues for Mojave Desert Tortoise, and additional monitoring.

Additionally, Washington County's Amended HCP expressly included a Northern Corridor "changed circumstance" that addresses effects of the highway to the HCP conservation program if a right-of-way is issued. A significant part of the Northern Corridor changed circumstance in the Amended HCP is to establish, administer, and manage expansion of the Reserve to include a new Reserve Zone 6 of approximately 6,813 acres (nearly an 11 percent expansion). This new Reserve Zone 6 would result in benefits and uplift to Mojave Desert Tortoise, and its habitat, including additional commitments by UDOT, BLM, and the State of Utah School and Institutional Trust Lands Administration (SITLA), and Utah Department of Natural Resources (UDNR), aimed at offsite habitat restoration after the 2020 wildfires, and acquisition of state and private lands, would further protect the subpopulation Mojave Desert Tortoise in the Upper Virgin River Recovery Unit such as:

- Reserve Administration: The County will provide additional funding for up to three full time HCP support staff, including an Outreach Coordinator, Field Technician, and Administrative Assistant.
- Reserve Land Acquisition: The County will fund the acquisition of approximately 450 acres of SITLA-owned lands within proposed Reserve Zone 6 prior to the start of construction of the Northern Corridor.
- Reserve Fencing: The County will install fencing along the eastern parts of the Reserve Zone 6 boundary and along the Navajo Road corridor to prevent motorized access outside the road right-of-way; and other fencing to enhance protections for listed plant species within Reserve Zone 6.
- Law Enforcement: The County will provide additional funding for Washington County Sheriff Deputy patrols within the Reserve.

- Community Education and Outreach: The County will provide additional funding for education and outreach efforts that may include videos, advertising, handouts, community engagement, contractor training, and volunteer coordination.
- Grazing Permit Acquisition and Retirement: The County and the HCP Partners¹ will coordinate with the holders of active grazing permits applicable to Reserve Zone 6 and negotiate the acquisition of such grazing permits from willing sellers.
- Development Protocols: The County and the HCP Partners will subject the allowed uses of Reserve Zone 6 to the applicable provisions of the Development Protocols. The County will provide additional funds to support the application of Development Protocols associated with the proposed Reserve Zone 6.
- Recreation Management: The County, the BLM, and the other HCP Partners agree to reduce the total mileage of designated recreation access routes within Reserve Zone 6 to approximately 50 miles of primarily nonmotorized trails—a two-thirds reduction in the total mileage of existing trails. The County and the HCP Partners will amend the Public Use Plan to create a final trail plan that implements the targeted level of trail reduction within Reserve Zone 6. The County will act within its discretion to complete these Public Use Plan amendments within the first 5 years after this Changed Circumstance is triggered. The County also commits to funding recreation management activities within Reserve Zone 6, such as the installation of signs, trail maintenance or enhancement, parking improvements, and similar actions.
- Reserve Habitat and Fire Management: The County will provide additional funds to support the management of SITLA-owned lands in Reserve Zone 6 and financial support for HCP Partners with long-term management responsibilities associated with the proposed Reserve Zone 6.
- Monitoring and Adaptive Management Planning: The County and the HCP Partners will expand the biological monitoring program to include Reserve Zone 6. To support this expansion, the County will provide additional funding for baseline Reserve population monitoring and special topic monitoring for use by UDWR or another qualified contractor.
- Retire Previously Authorized Reserve Zone 6 Take: Retire the previously authorized, but unutilized, incidental take associated with the 3,341 acres of non-federal lands within Reserve Zone 6. The retirement of previously authorized incidental take creates a conservation benefit separate from the uplift from the establishment and management of Reserve Zone 6.

¹ The “HCP Partners” include the U.S. Fish and Wildlife Service, BLM, UDNR, SITLA, Washington County, and Ivins City.

- Cottonwood Road Tortoise Passages: The County and the HCP Partners will provide technical assistance and funding to support the design, construction, maintenance, and/or monitoring of tortoise passages in Washington County, with an emphasis on creating connectivity across Cottonwood Road in Reserve Zone 3.

The new Reserve Zone 6 would represent a large and contiguous block of habitat in Washington County outside the current Reserve that would protect the largest known sub-population of tortoises that would otherwise be subject to take under Washington County's incidental take permit. However, with issuance of the Northern Corridor right-of-way, these lands would be permanently protected providing significant benefits to Mojave Desert Tortoise and their habitat.

Federal Agency Post-Decisional Actions

After the change in presidential administrations, however, the Project was litigated and BLM settled with the Project's opponents (many of whom were organizations not based in Utah) rather than standing behind the agency's decision. It has given no sign that it intends to fulfill the transportation-related mandates under OPLMA. [Moreover, BLM and the U.S. Fish and Wildlife Service have unilaterally taken further action to undermine the issuance of the UDOT Northern Corridor right-of-way by (1) refusing to enter into a Memorandum of Agreement to complete Section 106 consultation under the National Historic Preservation Act for nearly 4 years, which process BLM proposed and then declined to defend, and (2) voluntarily withdrawing and amending the supporting Biological Opinion issued to complete the Section 7 consultation process under the Endangered Species Act. Despite withdrawal of the Biological Opinion and pending reconsideration of the original right-of-way grant, BLM has continued to act as though the Northern Corridor "changed circumstance" has been triggered, pressuring state and local agencies to expend time, effort, and money toward implementing the mitigation required under the changed circumstance. Because such land use management changes were completed as part of a project level application and amendment, it is not proper nor within the province of BLM to change aspects of a project application for implementation; and notably, without input from the project proponent. To the extent BLM seeks to complete broad land use management planning for the area, federal statute and regulations expressly set forth the procedures and requirements to complete such an amendment, and BLM should be required to follow that process.

In our experience, the local BLM office has historically engaged in a very positive manner with UDOT. But when it comes to this Project, BLM has declined to engage with the project proponents and stakeholders, including UDOT and the entities most affected by any decisions or further review under NEPA. Instead, it appears that BLM, at the highest levels, has selectively engaged with its preferred constituents in meetings, discussions, and agreements behind closed doors, then acted unilaterally to effectuate those backroom decisions. In such meetings, BLM has intentionally not provided UDOT a seat at the table and withheld information from UDOT. Those actions do not reflect the behavior of a good neighbor vis-a-vis adjacent landowners, nor a

government that respects the sovereign interests of its state and municipal counterparts. Such actions are not reflective of good government, nor consistent with good land use management practices and procedures.

UDOT's mission is to serve the interests of Utah residents, and as a result, the prejudice from delaying the road is not solely to UDOT but to those residents. To date, UDOT has expended over \$8.5 million in the Northern Corridor project, of which \$7 million was paid to support the BLM's initial NEPA process to evaluate UDOT's application for a right-of-way grant over federal public lands, and the other over \$1.5 million was committed to design and engineering work required after the right-of-way was issued by BLM.

Conclusion

UDOT has expended considerable resources completing the environmental impact studies and navigating the federal approval processes, and it has committed millions of dollars to implementation of the Northern Corridor project. The Project was approved through that process in an effort to proactively encourage BLM to meet its OPLMA obligations.

Our experience with the Northern Corridor demonstrates the Administration's unfortunate tendency to act as though the federal agencies were the only landowner; to ignore important needs related to transportation planning; and to exclude state and local counterparts from planning processes that will accomplish the needs of those who actually live in the affected area. The delay and failure of the BLM to comply with and effectuate that Congressional mandate should not be the basis to thwart state and local efforts to meet and comply with those requirements and expectations. Postponement or outright prevention of the Northern Corridor project significantly increases the costs of providing the road's intended benefits at the expense of Utah's taxpayers. In addition to monetary costs, such delay imposes non-fiscal costs on UDOT and the Utah residents it serves by depriving them of the benefits of mobility and safety in their transportation system and inhibits implementation of local and regional transportation plans.