

UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION

Finding of No Significant Impact Great Salt Lake Shorelands Preserve Federal Land Transfer

May 2020

DECISION

Upon review of the Environmental Assessment (EA) and in careful consideration of public comment and in coordination with other interested partners, I have selected the Proposed Action, Land Transfer to the Nature Conservancy (hereafter referred to as the Selected Alternative). Under the Selected Alternative, the Mitigation Commission would convey ownership of approximately 1,297 acres of lands and appurtenant water rights to The Nature Conservancy (TNC). TNC will be authorized to subsequently transfer up to a specified 15.84 acres to the Utah Department of Transportation (UDOT) for their use on the West Davis Highway Corridor. TNC would manage in perpetuity the remaining 1,281.19 acres as part of the GSL Shorelands Preserve, subject to the protective restrictions to be incorporated into the conveyance deed.¹

BACKGROUND

The Mitigation Commission is a federal agency established by Congress with passage of the Central Utah Project Completion Act in 1992, P.L. 102-575 (CUPCA).² The Mitigation Commission's mission is to plan, fund and coordinate the environmental mitigation and conservation programs authorized by CUPCA. Section 306(a) of CUPCA authorizes the Mitigation Commission to develop and implement a Plan to preserve, rehabilitate and enhance wetlands around the Great Salt Lake. Section 301(h) of CUPCA authorizes the Mitigation Commission to dispose of its acquired lands by donation. The Plan developed by the Mitigation Commission identified acquisition of land along the eastern and southern shores of

¹ All acreages described in this document are approximate. The actual acreage transferred to The Nature Conservancy and subsequently to UDOT will depend upon recorded deeds, legal surveys and final design of the West Davis Corridor.

² <https://www.govinfo.gov/content/pkg/STATUTE-106/pdf/STATUTE-106-Pg4600.pdf>

the Great Salt Lake as one of the Mitigation Commission’s highest priorities. The Mitigation Commission recognized the impact urban encroachment and development would have on the ecological function and value of wetlands associated with the Great Salt Lake and that protection, through land acquisition, was essential. From 1995 to 2007, the Mitigation Commission acquired approximately 1,297 acres of land, which was intermixed with 2,896 acres of land owned by The Nature Conservancy, who was also acquiring property along the east shore of the Great Salt Lake as a preservation strategy. Together, these properties are known as the GSL Shorelands Preserve, as shown on [Figure 1](#).

The West Davis Corridor

UDOT and the Federal Highway Administration (FHWA) initiated a planning effort in 2010 to evaluate alternatives to address the projected transportation need in Davis and Weber Counties which show population to grow by 65% by 2040 and result in congestion and significant traffic delays along the I-15 corridor. UDOT and FHWA initially considered over 50 alternatives to address the problem. Two alternatives were eventually carried forward for more detailed review and analysis in a Draft Environmental Impact Statement (EIS) released for public review and comment in 2013. The Final EIS was issued in 2017. The alignment selected by UDOT and FHWA in their Record of Decision for the West Davis Corridor traverses the eastern boundary of the GSL Shorelands Preserve, as shown in [Figure 2](#). Under the selected alternative, the four-lane divided highway with a 250-foot right-of-way width would directly impact approximately 13.33 acres of Mitigation Commission-owned property and approximately 44.12 acres of The Nature Conservancy-owned property, all of which lie directly within the footprint of the highway.³ The highway would also isolate areas of Mitigation Commission and The Nature Conservancy properties located on the northeast side of the highway. These parcels would not be in the footprint of the highway but would be separated from the rest of the GSL Shorelands Preserve by the highway and would be of limited value to wildlife.

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

Mitigation Commission Vision

for the Great Salt Lake

2002 Mitigation and Conservation Plan

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

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

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

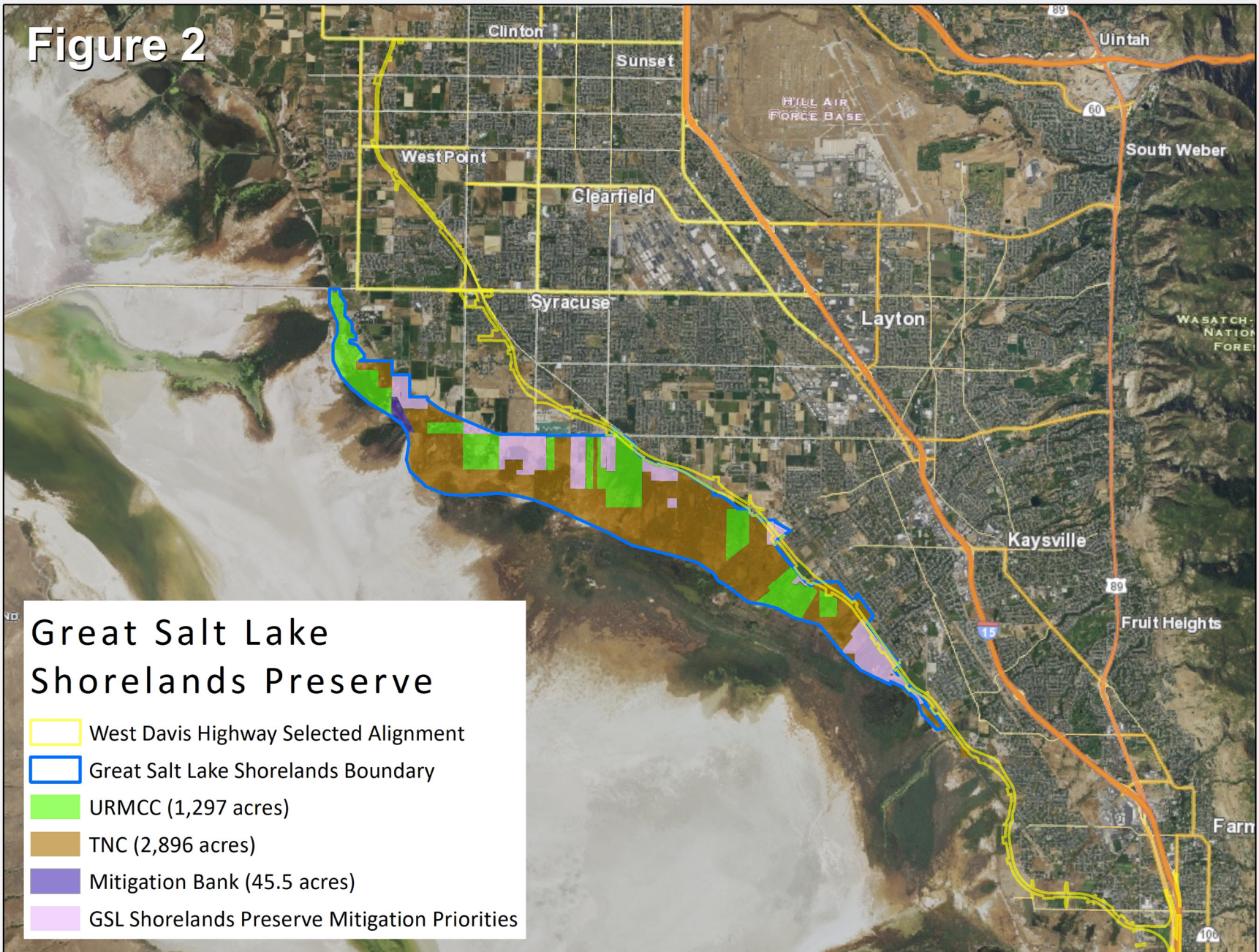
³ Federal lands are owned by the United States and administered by an agency of the Federal Government, such as the Mitigation Commission. For ease of discussion, this document refers to lands owned by the United States as being owned by the Mitigation Commission or as federal lands.

Figure 1

Great Salt Lake and Associated Wetlands



Figure 2



Great Salt Lake Shorelands Preserve

- West Davis Highway Selected Alignment
- Great Salt Lake Shorelands Boundary
- URMCC (1,297 acres)
- TNC (2,896 acres)
- Mitigation Bank (45.5 acres)
- GSL Shorelands Preserve Mitigation Priorities

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

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

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

Section 404 Clean Water Act

In addition to the impacts on 4(f) properties, the West Davis Corridor would impact wetlands regulated by the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act. Fifty-five and sixteen hundredths acres of waters of the United States, including fifty-one and thirty-four hundredths (51.34) acres of jurisdictional wetlands would be directly impacted by the highway, 3.1 acres of which occur within the GSL Shorelands Preserve.⁵

Purpose and Need for the Project

CUPCA authorized the Mitigation Commission to acquire and dispose of real property and to enter into agreements with, among others, nonprofit conservation organizations such as The Nature Conservancy, to carry out the purposes of CUPCA. The Mitigation Commission’s term expires twenty years from the date the Central Utah Project is declared to be substantially complete by the Secretary of the Interior, an action which has not yet occurred (CUPCA 301(b)(2)). Starting with the Mitigation Commission’s initial land acquisitions in the GSL Shorelands Preserve in 1995, the Mitigation Commission entered into a series of *interim* management agreements with The Nature Conservancy. The agreements provide authority for The Nature Conservancy to manage the federally-owned Mitigation Commission properties in concert with lands owned by The Nature Conservancy, as a seamless ecological unit. These agreements have and continue to provide funding to The Nature Conservancy to support habitat

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

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

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

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

SELECTED ALTERNATIVE

Under the Selected Alternative, the Mitigation Commission will convey ownership of approximately 1,297 acres of land and appurtenant water rights in the GSL Shorelands Preserve to The Nature Conservancy and authorize them to transfer up to a specified 15.84 acres needed by UDOT for use on the West Davis Corridor. The transfer of the Federal property to the Nature Conservancy meets the need to determine long-term management and ownership of the Mitigation Commission-owned properties in the GSL Shorelands Preserve and also addresses UDOT and FHWA's need to secure ownership of approximately 15.84 acres of the Federal property needed for the West Davis Corridor.

The Selected Alternative would be implemented through a series of real-estate transactions. The Mitigation Commission will transfer through donation their federal ownership within the GSL Shorelands Preserve to The Nature Conservancy and authorize The Nature Conservancy to transfer up to 15.84 acres of the properties needed for the West Davis Corridor to UDOT. The deeds transferring the property to The Nature Conservancy would be recorded in Davis County and would contain conditions that limit uses of the property to those consistent with the goals and objectives of the GSL Shorelands Preserve Management Plan, excluding the 15.84 acres to be transferred to UDOT. UDOT would compensate The Nature Conservancy for the fair market value of the highest and best use of the up to 15.84 acres according to the provisions of the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and the Utah Relocation Assistance Act, Utah Code, Section 57-12. The proceeds of the sale or exchange of the 15.84 acres would be used for the GSL Shorelands Preserve.

UDOT would acquire approximately 791 acres of private property and appurtenant water rights that are inholdings within the GSL Shorelands Preserve, as required by their Mitigation Plan. The acquired properties would be transferred to The Nature Conservancy and managed as part of the GSL Shorelands Preserve. The deeds transferring the property to The Nature Conservancy would be recorded with a

Declaration of Restrictions, limiting future uses of the properties to those consistent with the goals and objectives of the Clean Water Act.

REASON FOR THE DECISION

I have selected the Proposed Action for implementation because it best addresses our need to identify an entity who can best provide long-term management of the 1,297 acres of Mitigation Commission owned properties consistent with the purposes for which they were acquired. The Nature Conservancy has provided continued and uninterrupted management of the properties since they were acquired by the Mitigation Commission starting in 1995. The federally owned properties are intermixed with The Nature Conservancy's 2,896 acres, and the properties have been managed together as a single ecological unit. The Mitigation Commission and The Nature Conservancy share a common vision of the Great Salt Lake and the need to protect some of the last remaining un-altered habitat along the east shore of the Great Salt Lake. The Mitigation Commission has worked in close partnership with The Nature Conservancy for the last quarter century to achieve this vision. The Mitigation Commission's acquired lands have been an integral part of the GSL Shorelands Preserve, hence *long-term* management and ownership of the Mitigation Commission properties best resides with The Nature Conservancy.

The Nature Conservancy meets and exceeds standards established by the Mitigation Commission in its Rule for developing and implementing mitigation and conservation plans and projects, for long-term ownership and management.⁶ The Nature Conservancy has demonstrated shared vision, fiscal accountability, management capability, and assurance of long-term ownership and management for the public purposes for which the lands were acquired, as will be outlined on the deed transferring the properties from the Mitigation Commission to The Nature Conservancy.

The decision to transfer, by donation, the acquired properties to The Nature Conservancy, with preauthorization to convey up to 15.84 acres of the donated property to UDOT for their use on the West Davis Highway, requires some explanation. The Mitigation Commission has consistently maintained since the West Davis Highway was originally proposed, that the only way the Mitigation Commission could support a *de minimis* decision by FHWA was if the GSL Shorelands Preserve would be left in a better position after the project than it was before. This requirement is supported by the Section 4(f) status previously discussed. The Mitigation Commission steadfastly promoted the position that impacts of the proposed highway not be evaluated in the context of only the 15.84 acres needed for the highway footprint, nor even in the context of the Mitigation Commission's 1,297 acres alone; but as a single, functional ecological unit comprising lands owned by The Nature Conservancy as well. The Mitigation Commission concluded this could only be accomplished if all the remaining private properties within the GSL Shorelands Preserve were acquired and transferred to The Nature Conservancy; if water rights in sufficient quantities to support wetland function were also acquired and transferred to TNC; and if an endowment were provided to ensure sufficient financial resources were available to fund future management activities associated with the management of the acquired inholdings. UDOT's Wildlife Mitigation Plan commits to fulfill those requirements. Transfer of 1,297 acres to The Nature Conservancy with authorization to convey up to 15.84 acres to UDOT will occur once the Mitigation

⁶ 43 CFR Part 10005. POLICIES AND PROCEDURES FOR DEVELOPING AND IMPLEMENTING THE COMMISSION'S MITIGATION AND CONSERVATION PLAN

Commission is satisfied that legally enforceable contracts and agreements are in place to fulfill these commitments.

The Mitigation Commission also independently conducted a Habitat Equivalency Analysis (HEA) of the West Davis Highway’s potential impacts on wildlife within the GSL Shorelands Preserve. The purpose of the HEA was to compare the reduction in habitat values on the GSL Shorelands Preserve resulting from construction and operation of the West Davis Highway to the habitat values that would be gained through acquisition, habitat restoration and preservation of the private inholdings within the GSL Shorelands Preserve. The HEA accounted for the reduction in habitat value that would also occur on these mitigation properties because of their proximity to the West Davis Highway. The HEA supported the conclusion that acquisition, protection and restoration of the remaining inholdings within the GSL Shorelands Preserve would offset the habitat losses within the preserve resulting from the West Davis Highway. Based on the mitigation commitments made by UDOT and our own independent analysis of habitat losses and gains, the Mitigation Commission concurred with the Federal Highway Administration’s and UDOT’s Section 4(f) *de minimis* finding.

The Selected Alternative is consistent with the Mitigation Commission’s most recent Mitigation and Conservation Plan dated 2016, which identified the need to...

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

PUBLIC INVOLVEMENT

One of the primary purposes of NEPA is for Federal Agencies to inform and involve the public and other Federal, State, and local entities of the likely environmental impacts of their proposed actions. A Draft EA was sent to approximately 90 organizations, governmental agencies and individuals in August 2019 for review and comment. The distribution of the Draft EA is summarized in Appendix 5 of the Final EA.

Six (6) comment letters were received in response to the Draft EA. Comments on the Draft EA are summarized in the following table. Copies of the individual comment letters annotated with responses to comments are included as Appendix 6 of the Final EA. Several comments addressed issues more germane to the Final EIS and Record of Decision by FHWA and UDOT regarding the West Davis Corridor project.

Summary of Comment Letters on Draft EA	
Great Salt Lake Audubon	Support transfer of the property to TNC. GSLA does not concur with the <i>de minimis</i> determination and thought the Mitigation Commission could have done more to stop this alignment of the West Davis Highway.
Tracey Aviary	Concurred with our analysis of impacts and that there would be few on-the-ground changes since TNC would continue to manage the property as they have for the last 24 years. They specifically noted that their comments and concerns did not address the impacts of the construction and operation of the West Davis Corridor recognizing this was outside the scope of the EA.
Northwestern Band of the Shoshone	Claimed that the lands proposed for transfer were <i>“within the Tribe’s aboriginal lands and ceded territory”</i> and requested the Mitigation Commission enter into consultation prior to any transfer to TNC or UDOT.

Summary of Comment Letters on Draft EA	
Hopi Tribe	The Hopi Tribe claims cultural affiliation to the project area. They are supportive of the project because of our continued consultation with SHPO and that legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance will be included in the deed transferring the properties to TNC.
Syracuse City	Concerned that existing public access points across Mitigation Commission properties would be at risk in TNC ownership. Concerned that a trail alignment presently being discussed between Syracuse City, the Mitigation Commission and TNC may be put at risk when no longer in Federal ownership. Have requested that a public entity be provided the opportunity to purchase access across the property prior to transfer to TNC to ensure continued public access.
Davis County	Concurred with the comments submitted by Syracuse City.

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

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

SUMMARY OF MITIGATION MEASURES

The transfer of land from the Mitigation Commission to the Nature Conservancy is in essence an administrative action; there generally will not be impacts on the environment resulting from the transfer. However, the following measures will be taken to ensure the long-term management of the GSL Shoreland Preserve.

The Mitigation Commission and The Nature Conservancy will coordinate with the State of Utah Division of State History to include language in the deeds transferring property out of Federal ownership to provide legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance in conjunction with State statutes.

Deed restrictions would also limit future uses of the properties transferred to The Nature Conservancy to those uses that are consistent with the management objectives of the GSL Shorelands Preserve, excluding the 15.84 acres for which The Nature Conservancy is herein authorized to convey to UDOT for their use on the West Davis Highway. The Nature Conservancy is authorized to execute the transfer to

UDOT only when legally enforceable commitments have been made to ensure the transfer of approximately 791 acres of private inholdings to The Nature Conservancy, associated water rights and an endowment in addition to the fair market value of the 15.84 acres in accordance with the provisions of the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and the Utah Relocation Assistance Act, Utah Code, Section 57-12.

FINDING OF NO SIGNIFICANT IMPACT

After considering the environmental effects described in the Environmental Assessment and in consideration of the required Mitigation Measures and Best Management Practices, I have determined that the Proposed Action will not have a significant effect on the quality of the human environment considering the context and intensity of impacts (40 CFR 1508.27). Thus, an Environmental Impact Statement will not be prepared. The decision is based on the following:

1. *The impacts of this project are not considered to be significant upon the human environment, either by society as a whole or to the affected region, interests and locality.*
2. *There will be no significant effects on the public health and safety.*
3. *There will be no significant effects on the unique characteristics of the area. This action will have no detrimental effects on prime farmland, rangeland, floodplains or wetlands.*
4. *The effects on the quality of the human environment are not likely to be highly controversial. There is no known scientific controversy over the impacts of the project.*
5. *Based on the effects analysis, there are no effects which may be highly uncertain or involve unique or unknown risks.*
6. *The action would not set a precedent of future actions other than those described and analyzed in the Environmental Assessment.*
7. *The cumulative impacts of the project are not significant.*
8. *The action will have no significant adverse effect on districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places.*
9. *The action will not adversely affect any endangered or threatened species or habitat that have been determined to be critical under the Endangered Species act of 1973. No Federally listed Endangered Species occur in the project area.*
10. *The action will not violate Federal, State, and local laws or requirements for the protection of the environment. Applicable laws and regulations were considered. The action is consistent with the Mitigation Commission's Mitigation and Conservation Plan and the purposes for which these properties were acquired.*

FINDINGS REQUIRED BY OTHER RELEVANT LAWS AND REGULATIONS

This decision complies with Executive Order 13186 - Responsibilities Of Federal Agencies To Protect Migratory Birds. This Executive Order requires Federal Agencies to describe the effects of their actions on migratory birds, with an emphasis on species of concern, in the environmental analyses required by NEPA. Proposed, Threatened and Endangered Species and State of Utah Sensitive Species are described starting on page 8 of the Final Environmental Assessment. There will be no adverse effects to these species.

This decision complies with Executive Order 13112 - Invasive Species. This Executive Order directs that federal agencies not authorize activities which would increase the spread of invasive species. Disturbed surfaces would be replanted with an appropriate seed mix to control the spread of noxious weeds.

This decision complies with Executive Order 12898 - Environmental Justice. In general, there would be no disproportional environmental effects on minority and low-income populations as a result of this project. The project however may displace a small number of indigent and transient individuals who are known to trespass on the property on occasion.

This decision complies with Executive Order 3215 - Indian Trust Assets. There are no Indian trust assets associated with the project and therefore none affected by the Proposed Action.

IMPLEMENTATION DATE

This action may be implemented at any time upon my signature of this document.

FURTHER INFORMATION

For further information please contact Isabelle Simmons, Natural Resource Specialist, Utah Reclamation Mitigation and Conservation Commission, 230 South 500 East #230, Salt Lake City, Utah 84102, isimmons@usbr.gov, 801-524-3169.

Recommended by: _____
Richard Mingo, Planning Coordinator

Approved by: _____
Mark A. Holden, Executive Director