

Great Salt Lake Shorelands Preserve Federal Land Transfer

Draft Environmental Assessment

August 2019



Photo courtesy of The Nature Conservancy

Utah Reclamation Mitigation
and Conservation Commission



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Chapter 1

Purpose and Need

Summary

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

Background

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

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

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

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

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

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

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

The West Davis Corridor

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

Mitigation Commission Vision

for the Great Salt Lake

2002 Mitigation and Conservation Plan

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

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

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

Figure 1

Great Salt Lake and Associated Wetlands



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

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

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

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

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

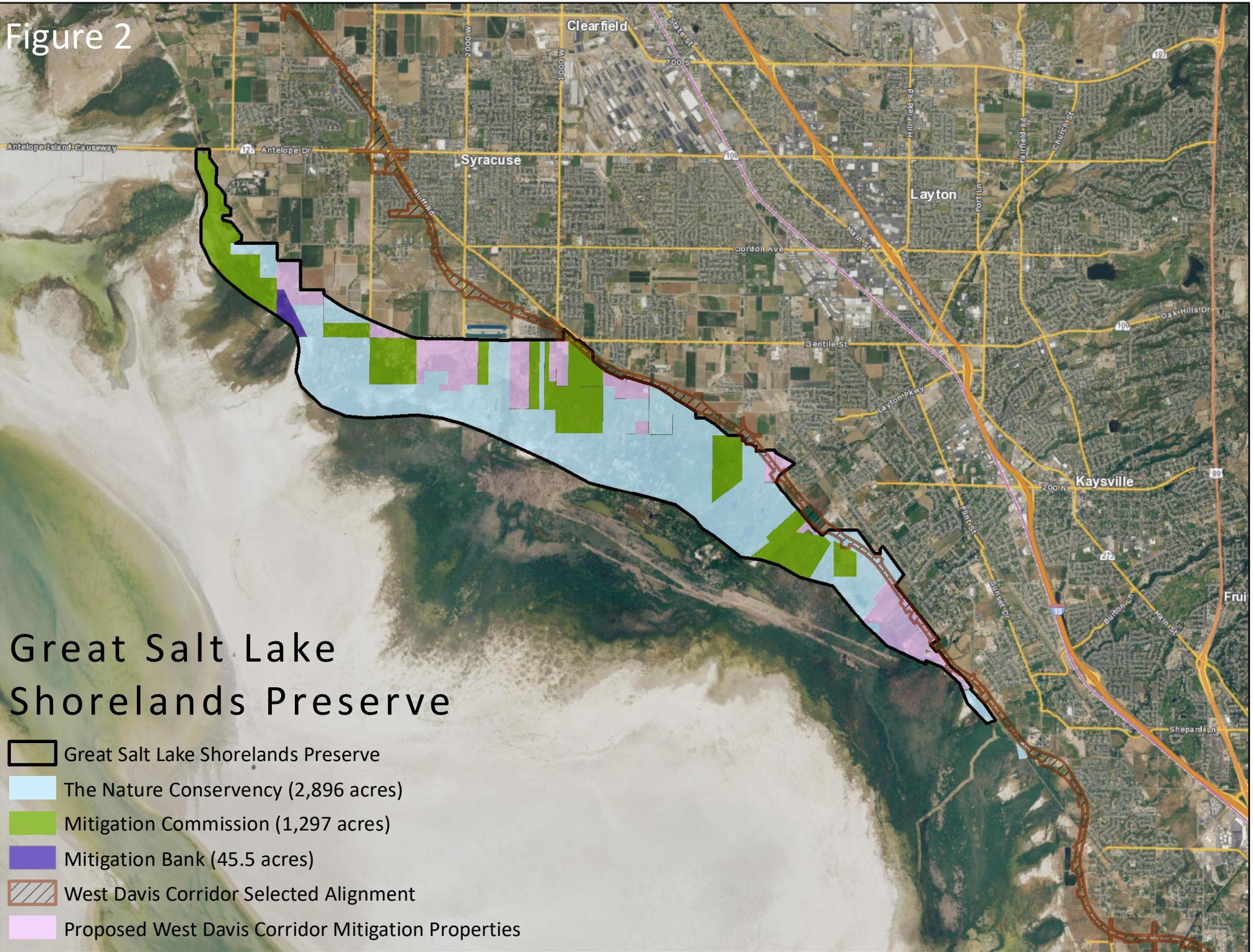
Section 4(f) of the U.S. Department of Transportation Act, which only applies to agencies within the U.S. Department of Transportation, including the FHWA, precludes the use of certain properties, referred to as 4(f) properties, in highway projects unless the impacts from the use of those properties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

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

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

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

Figure 2



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

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

Section 404 Clean Water Act

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

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

Based on the measures included in the Mitigation Plan, UDOT and the FHWA requested the Mitigation Commission's concurrence that the impacts of the West Davis Corridor on the GSL

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

Shorelands Preserve would be *de minimis*. By letter dated June 14, 2017, the Mitigation Commission concurred, that with the implementation of the Mitigation Plan, the impacts of the West Davis Corridor on Mitigation Commission 4(f) properties would be *de minimis* ([Appendix 2](#)).

Purpose and Need for the Project

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



Great Salt Lake Shorelands Preserve photo: Scott Irwin

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

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

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

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

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

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

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

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

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

Purpose of This Document and Decisions to Be Made

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

Scope of this Environmental Assessment

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

Decisions to be Made

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

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

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

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

Therefore, the Mitigation Commission will also decide:

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

Chapter 2

Description of Alternatives

Introduction

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

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

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

Transfer to The Nature Conservancy (The Proposed Action)

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

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

- The Mitigation Commission would transfer through donation all their federal ownership within the GSL Shorelands Preserve, approximately 1,297 acres and appurtenant water rights, to The Nature Conservancy. Deeds transferring the properties to The Nature Conservancy, except for the 15.84 acres needed by UDOT, would include language that limits future uses of the properties solely to those consistent with the goals and objectives of the GSL Shorelands Preserve Management Plan ([Appendix 3](#)). The deeds would be recorded with Davis County and would encumber the properties into the future. A draft transfer document is included as [Appendix 4](#).
- The Mitigation Commission would approve The Nature Conservancy to transfer a specified 15.84 of the 1,297 acres to UDOT and The Nature Conservancy would presumably also transfer 93.25 acres already under their ownership to UDOT for construction and operation of the West Davis Corridor. UDOT would compensate The Nature Conservancy for the fair market value of the highest and best use of the total 109.09 acres according to the provisions of the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and the Utah Relocation Assistance Act, Utah Code, Section 57-12. The proceeds from the sale of the 15.84 acres would be utilized by The Nature Conservancy for management of the GSL Shorelands Preserve.
- As required by the Mitigation Plan, UDOT would acquire approximately 791 acres of private property and appurtenant water rights that are inholdings with the GSL Shorelands Preserve as shown in [Figure 2](#).⁸ These properties would be transferred from

⁸ UDOT will also acquire an additional 320 acres of property near Farmington Bay Wildlife Management Area and transfer them to the Utah Division of Wildlife Resources as mitigation for impacts that would occur on their properties.

UDOT to The Nature Conservancy. The deeds transferring the properties would include language that restricts future uses of the properties solely to those that are consistent with the goals and objectives of the Clean Water Act. A Declaration of Restrictions would be recorded against the parcels, a draft of which is included as [Appendix 5](#). The deeds would then be recorded with Davis County subject to the Declaration of Restrictions.

Underlying Need for the Project

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

Transfer to UDOT

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

Underlying Need for the Project

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

The No Action Alternative

NEPA requires the No Action Alternative be considered in the environmental analysis process. The No Action Alternative describes events likely to occur if the Proposed Action were not implemented. The No Action Alternative serves as a baseline against which to compare other alternatives.

Under the No Action Alternative, the Mitigation Commission would not transfer any property to The Nature Conservancy or to UDOT. The Mitigation Commission would attempt to continue temporary agreements with The Nature Conservancy to manage the 1,297 acres as part of the GSL Shorelands Preserve on an *interim* basis. If the 1,297 acres remain in Federal ownership

upon the Mitigation Commission's termination, they would be conveyed to the State of Utah Department of Natural Resources and the State would determine how the properties would be managed. UDOT would need to reformulate the plans for the West Davis Corridor so that they do not include the 15.84 acres of Mitigation Commission-owned property.

Underlying Need for the Project

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

Chapter 3

Affected Environment

Introduction

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

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

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

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

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

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

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

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



white-faced ibis

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

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

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

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

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



American avocet photo Bob Roll

Chapter 4

Environmental Effects

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

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

Resources Considered

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

Summary of Impacts

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

Environmental Effects on Other Resources

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

Cultural resources

Section 106 of the National Historic Preservation Act requires all Federal Agencies to identify the impacts their actions would have on cultural and historical resources. Section 106 defines the transfer, lease, or sale of property out of Federal ownership as an “adverse action” unless there are adequate and legally enforceable restrictions or conditions to ensure *long-term* preservation of the property's historic significance (36 CFR 800.5(a)(2)(vii)).⁹

Environmental Effects

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

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

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

Endangered Plant Species

The Endangered Species Act of 1973 (ESA; 16 U.S.C. § 1531 et seq.) was enacted by Congress to protect critically imperiled species from extinction as a "*consequence of economic growth and development, untempered by adequate concern and conservation*".¹⁰ The ESA was signed into law by President Richard Nixon on December 28, 1973. The U.S. Supreme Court found that the plain intent of Congress in enacting the ESA "*was to halt and reverse the trend toward species extinction, whatever the cost.*"¹¹ Section 9 of ESA prohibits the collection, malicious damage or destruction of endangered plants on Federal lands. Unlike animal species, these protections under ESA do not extend to Federally listed **plants** on private property. The transfer of federal property to The Nature Conservancy would therefore limit the protections afforded by ESA to federally listed plants.

⁹ <https://www.law.cornell.edu/cfr/text/36/800.5>

¹⁰ <https://www.law.cornell.edu/uscode/text/16/1531>

¹¹ http://apps.americanbar.org/abastore/products/books/abstracts/5350237%20exec%20summary_abs.pdf

Environmental Effects

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

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

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

Environmental Effects

The deeds transferring the properties to The Nature Conservancy would include language that limits the use of those properties to ecological conservation, unless otherwise approved by the Mitigation Commission or its successors. Regardless of their status as 4(f) properties, the Mitigation Commission would not authorize use of the former federal property for use in a highway project unless the Commission determined the impacts of such use to be *de minimus*. Similarly, the mitigation properties acquired by UDOT and transferred to The Nature Conservancy will include restrictive covenants that would not allow for construction of a highway on the properties. Because of the restrictive covenants on both the Mitigation Commission properties and UDOT Mitigation properties, the potential loss of 4(f) status would not likely result in any increased risk of impacts from construction of a new highway within the GSL Shorelands Preserve.

Socio-economics

The Federal government is exempt from paying property taxes on Federally-owned properties. To help offset the loss of property tax revenues that would otherwise have been paid to counties if federally-owned property were in private ownership, counties receive Payments In Lieu of Taxes (PILT) from the United States.¹² The formula used to compute PILT payments is contained in the PILT Act and is based on population, revenue sharing payments, and the amount of Federal land within an affected county. PILT payments are in addition to other

¹² <https://www.doi.gov/pilt>

Federal payments to states, such as oil and gas leasing, livestock grazing, and timber harvesting. Davis County received \$97,673 from the Federal government through the PILT program in 2018. Of this amount, approximately \$3,401 was for the 1,297 acres owned by the Mitigation Commission within the GSL Shorelands.

Environmental Effects

Under the Proposed Action approximately 1,297 acres of Mitigation Commission-owned property and appurtenant water rights would be transferred to The Nature Conservancy, who would then transfer approximately 15.84 acres to UDOT. The remaining 1,281.19 acres would be subject to property taxes from Davis County. The Nature Conservancy would likely petition the County to tax the properties under the Davis County Farmland Assessment Act (also referred to as the Greenbelt Act).¹³ The Greenbelt Act allows for agricultural properties to be assessed at a lower rate than other developable properties. This unique method of assessment is vital to agriculture operations in close proximity to expanding urban areas, where taxing agricultural property at market value could make agricultural operations economically prohibitive. Greenbelt assessments vary depending upon the class of land being assessed. If the 1,281.19 acres were assessed as grazing lands or non-productive lands under the Greenbelt program, then the tax assessment would be approximately \$6,575.80 annually. Therefore, under the Proposed Action there would be a net increase in revenues collected by Davis County amounting to approximately \$3,174.80 annually (increased greenbelt revenues– Reduced PILT payments = \$3,174.80).

¹³ <http://www.daviscountyutah.gov/assessor/greenbelt>

Chapter 5

Consultation and Coordination

The United State Department of the Interior Central Utah Project Completion Act Office is a Cooperating Agency on this project.¹⁴ The Mitigation Commission also consulted with The Nature Conservancy, UDOT, and the U.S. Army Corps of Engineers in the preparation of this EA.

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¹⁴ The Department of the Interior Central Utah Project Completion Act Office has associated authorities and responsibilities related to the Central Utah Project program and has accepted a request to be a Cooperating Agency as provided in CEQ 1501.6.