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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

CITIZENS' COMMITTEE TO SAVE OUR
CANYONS, a non-profit organization,

Plaintiff,

v.

CARLOS BRACERAS, in his official
capacity as Executive Director of the Utah
Department of Transportation; UTAH
DEPARTMENT OF TRANSPORTATION;
RANDY MOORE, in his official capacity
as Chief of the United States Forest Service;
UNITED STATES FOREST SERVICE,

Defendants.

COMPLAINT

Case No.

INTRODUCTION

1. This case involves a fundamentally flawed and arbitrary process under the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321-4347, through which the Utah Department of Transportation (“UDOT”) authorized construction and operation of a gondola in

Little Cottonwood Canyon by selecting Gondola Alternative B (“the La Caille gondola”) in its June 29, 2023 Record of Decision (“ROD”).¹

2. Construction of this gondola would result in 22 massive gondola towers irreversibly scarring this spectacular canyon straddled by not one—but two—pristine Wilderness Areas that Congress designated for permanent protection under the Wilderness Act. UDOT authorized this project permanently effacing the canyon based on (1) an overly narrow range of alternatives studied in detail; (2) a highly irregular and arbitrary alternatives analysis in which UDOT gave a greenlight to its preferred project, despite having rejected other comparable alternatives on grounds that apply equally to the La Caille gondola and without any rational explanation for its inconsistent screening of alternatives; and (3) despite the fact that it had not taken a hard look at the cumulative effects on congestion of the proposed gondola alongside the future La Caille commercial development, the clearly foreseeable direct and indirect effects on recreational users of the canyon, or the direct and indirect effects on wilderness characteristics of two Wilderness Areas that would be located directly adjacent to the gondola.

3. At every step UDOT smoothed the path for the La Caille gondola—adding it after the screening process in a separate report (fashioned as an “addendum”) only after a private developer purchased the property and proposed the location to UDOT, and then carrying it forward for detailed study despite multiple glaring inconsistencies with its own previous screening of similar alternatives. UDOT also made more substantial changes—after the Draft

¹ Pursuant to a Memorandum of Understanding (“MOU”) executed in January 2017 and renewed in May 2022, the Federal Highway Administration (“FHWA”) assigned its federal environmental review responsibilities to UDOT, as well as the responsibility for issuing the applicable ROD at the conclusion of UDOT’s decisionmaking process.

Environmental Impact Statement (“DEIS”) was published—to dramatically increase the size of the La Caille parking structure for both La Caille alternatives from 1,500 to 2,500 (an increase of 67%) and also to dispense entirely with the use of mobility hubs and supporting bus service, thereby bringing more cars closer to the entrance of the canyon and, conveniently, to the parking structure adjacent to the new La Caille development. This last-minute change created *even more* inconsistency within UDOT’s own alternatives screening and analysis. And at the end of this convoluted and arbitrary alternatives analysis, UDOT approved the La Caille gondola in a configuration almost identical to a gondola proposal that was screened out in the first stages of the project for reasons that *equally* apply to the La Caille gondola or, at minimum, have never been adequately explained.

4. The arbitrary and highly irregular nature of UDOT’s NEPA process is only underscored by the fact that the private developer who proposed the La Caille gondola alternative to UDOT was in fact the former President of the State Senate, who was closely involved with state legislation authorizing and funding this project. This well-connected developer urged UDOT to take the alternative up for consideration and sought to obtain influential support from then Governor Herbert—all before the public even knew of the proposal. A number of state senators also apparently knew of the developer's proposal well before the proposal was made public or the public had any opportunity to consider or object to this proposal; several senators submitted letters to UDOT in July 2020 strongly supporting the proposal urged by their former senate colleague. Accordingly, by the time the public even learned that UDOT was considering this proposal, it already had formidable support from high-

powered, influential politicians and leaders, thus placing a thumb on the scale in favor of this project and obscuring the transparency and objectivity of UDOT's NEPA process.

5. UDOT's decision to authorize Gondola Alternative B starting at La Caille in Little Cottonwood Canyon violates NEPA, its implementing regulations, and the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701-706. It does so by failing to adequately consider a reasonable range of alternatives; by applying the alternatives screening criteria in an inconsistent and arbitrary manner; by neglecting to take a hard look at the cumulative impacts of the La Caille gondola and the planned La Caille development on congestion; and by neglecting to take a hard look at the direct and indirect impacts on recreation users in the canyon in UDOT's September 2022 Final Environmental Impact Statement ("FEIS").

6. In addition, because UDOT and the United States Forest Service ("USFS"), which administers much of the land on which this gondola would be built and cooperated in preparation of the EIS, failed to take a hard look at the impacts of this towering infrastructure on the wilderness character of the immediately adjacent Wilderness Areas and whether those impacts might degrade the values for which Congress designated these parcels as permanent Wilderness, UDOT and USFS have violated NEPA, its implementing regulations, and the APA.

7. Moreover, by failing to discharge its duty to preserve the wilderness character of the Twin Peaks Wilderness and Lone Peak Wilderness Areas, or to consider alternative means of achieving the project's purpose and need that would best preserve that character by avoiding and/or minimizing impacts to the wilderness characteristics and values of these Wilderness Areas, USFS has also violated the Wilderness Act, 16 U.S.C. §§ 1131-1136, and the APA.

JURISDICTION AND VENUE

8. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1346 (civil action against the United States), 23 U.S.C. § 327(d) (FHWA Surface transportation delivery program), and 5 U.S.C. § 702 (the APA).

9. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e) because the events or omissions giving rise to the claims occurred within this judicial district; UDOT and USFS each have offices in this district; the environmental impacts resulting from the Project will occur in and impact this district; and Plaintiff Save Our Canyons resides in this district.

10. This case is filed pursuant to DUCivR 7-4. It challenges the UDOT’s June 2023 ROD and UDOT’s September 2022 FEIS for Little Cottonwood Canyon. Pursuant to 23 U.S.C. § 327, “[a] State that assumes responsibility under subsection (a)(2) shall be solely responsible and solely liable for carrying out, in lieu of and without further approval of the Secretary, the responsibilities assumed under subsection (a)(2), until the program is terminated as provided in subsection (j)” and thus UDOT is the proper defendant for the legal violations described herein. 23 U.S.C. § 327(d).

11. This Court may grant the relief requested pursuant to 28 U.S.C. § 2201 (authorizing declaratory relief); 28 U.S.C. § 2202 (authorizing injunctive relief); and 5 U.S.C. §§ 701-706 (providing for judicial review of agency action under the APA, and identifying vacatur and remand of agency action as the default remedy).

PARTIES

12. Plaintiff CITZENS’ COMMITTEE TO SAVE OUR CANYONS is a grassroots 501(c)(3) nonprofit organization founded in 1972 in response to the threat of urbanization of the

Wasatch Mountains just outside of Salt Lake City and is dedicated to protecting the beauty and wildness of the Wasatch canyons, mountains, and foothills. Its mission is to protect the scenic views, open spaces, wildlife, and water quality of the Wasatch Range, along with promoting stewardship of and access to trails and recreation for the surrounding communities and visitors alike. Save Our Canyons works to promote conservation of these critical places through public education; advocacy; leading stewardship projects on trails and roadways; active involvement in planning processes at city, county, state, and federal levels; engagement with local government entities; and litigation.

13. Citizens' Committee to Save Our Canyons ("Save Our Canyons" or "SOC") has approximately 40,000 members and supporters, including many who live in Utah. The organization's members will be harmed by the La Caille gondola and will suffer aesthetic, recreational, scientific, and other injuries if the project is built as authorized by the UDOT's ROD. SOC's members use and enjoy Little Cottonwood Canyon and visit it regularly for activities such as hiking, climbing, birdwatching, and mountain biking. SOC's members also visit the adjacent Twin Peaks and Lone Peak Wilderness Areas for backcountry recreation—in fact, SOC itself was instrumental in securing wilderness designation for these priceless areas. SOC's members plan to continue visiting Little Cottonwood Canyon and its Wilderness Areas for these recreational activities—all of which would be substantially impaired or diminished by a massive gondola scarring the wildness and beauty of the canyon. For example, William Lockhart, a longtime SOC member, has been hiking, backcountry skiing, climbing, wildlife viewing, photographing, and exploring in Little Cottonwood Canyon frequently and extensively for decades and continues to engage in these activities, including in those parts of the canyon that

are within the Lone Peak and Twin Peaks Wilderness Areas. An essential element of Mr. Lockhart's experience as he engages in these activities is the natural and scenic setting provided by Little Cottonwood Canyon, and he would therefore be irreparably harmed by the loss and diminishment of the canyon's natural and scenic values caused by UDOT's decision construct a gondola through the heart of the canyon. The organization and its members are also harmed by UDOT's failure to follow the lawfully required procedures contained in NEPA and the APA.

14. In addition, Save Our Canyons is harmed by UDOT's actions because this decision frustrates the organization's ability to carry out one of its core missions to protect Little Cottonwood Canyon from harmful development and preserve it for the permanent use and enjoyment of the community living along the Wasatch Front. UDOT's actions also undermine Save Our Canyons' overall mission to protect the beauty and wildness of the Wasatch Range, which has required the organization—and will continue to require the organization—to spend significant organizational resources to counteract UDOT's unlawful actions in considering and approving this ill-advised and arbitrary project. Save Our Canyons has already been forced to shift substantial resources away from other organizational priorities such as working on legislation to better protect, steward, and manage the Wasatch and forging enduring partnerships and coalitions to rise to the challenges this cherished landscape is confronted with in the face of rapid population growth, increasing visitation, and the existential threat of climate change. Accordingly, the actions taken by UDOT have not only greatly impeded and frustrated Save Our Canyons' mission to protect Little Cottonwood Canyon from gondola infrastructure that will interfere with its members' use and enjoyment of the canyon and irreversibly alter this treasured landscape, but it has caused an immediate and continuing drain on Save Our Canyons' very

limited resources that could otherwise be used for the organization's other advocacy efforts to protect these mountains and canyons from other threats such as climate change and residential and commercial development in the region.

15. The injuries of Save Our Canyons and its members and supporters can be redressed by a ruling from this Court declaring the La Caille gondola project arbitrary and capricious; vacating the ROD and FEIS; and/or remanding these matters to UDOT for further consideration consistent with the federal laws applicable to this project.

16. Defendant CARLOS BRACERAS is the Executive Director of the Utah Department of Transportation and is directly responsible for the supervision, management, and control of the agency. Accordingly, he is responsible for overseeing UDOT's actions challenged in this lawsuit and is sued in his official capacity.

17. Defendant UTAH DEPARTMENT OF TRANSPORTATION prepared the ROD authorizing the La Caille gondola in Little Cottonwood Canyon and served as the lead agency in preparing the FEIS challenged in this action. Pursuant to 23 U.S.C. § 327(e) and an MOU between the parties, *see supra* note 1, FHWA assigned its responsibilities under NEPA and other federal environmental laws to UDOT. In turn, UDOT is "solely responsible and solely liable for carrying out, in lieu of and without further approval of the Secretary." 23 U.S.C. § 327(e).

18. Defendant RANDY MOORE, is the Chief of the United States Forest Service and is directly responsible for the supervision, management, and control of the agency. Accordingly, he is responsible for overseeing USFS's actions challenged in this lawsuit and is sued in his official capacity.

19. Defendant UNITED STATES FOREST SERVICE, is a cooperating agency in the preparation of the FEIS challenged in this action and stated that it “intends to use the EIS to make its decision for the [National Forest System] lands it administers.” 86 Fed. Reg. 21864 (Apr. 23, 2021). With respect to the lands and resources that USFS administers, the project’s impacts on those lands and resources, and the consideration of alternatives with lesser impacts to those lands and resources, USFS is responsible for those portions of the challenged FEIS and any decisions relying on the FEIS. In addition, USFS has an independent statutory duty to preserve the wilderness character of the Twin Peaks Wilderness and Lone Peak Wilderness Areas. Accordingly, USFS is responsible for that agency’s actions and analyses in connection with the project that involve USFS-administered lands or resources.

STATUTORY FRAMEWORK

A. The National Environmental Policy Act

20. Enacted in 1969, NEPA is the “basic national charter for protection of the environment.” 40 C.F.R. § 1500.1(a). Its purposes are to “help public officials make decisions that are based on understanding of environmental consequences, and to take actions that protect, restore, and enhance the environment,” and to “insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken.” *Id.* § 1500.1(b), (c).

21. Congress enacted NEPA to, among other things, “encourage productive and enjoyable harmony between man and his environment” and to promote government efforts “that will prevent or eliminate damage to the environment.” 42 U.S.C. § 4321. NEPA imposes a duty on federal agencies to “use all practicable means . . . to restore and enhance the quality of the

human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment.” 40 C.F.R. § 1500.2(f).

22. The Council on Environmental Quality (“CEQ”)—an agency within the Executive Office of the President—has promulgated regulations implementing NEPA, *see* 40 C.F.R. §§ 1500-1508, which are “binding on all federal agencies.” *Id.* § 1500.3.²

23. To accomplish its underlying goals, NEPA requires federal agencies to prepare a “detailed statement”—i.e., an EIS—for all “major federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(c). An EIS must describe (1) “the environmental impact of the proposed action,” (2) “the adverse environmental effects which cannot be avoided,” and (3) “alternatives to the proposed action.” 42 U.S.C. § 4332(C)(i)-(iii). By definition, the environmental impacts that require analysis under NEPA are far broader than just those affecting the ecosystem itself; such effects include “ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health” impacts. 40 C.F.R. § 1508.8(b).

24. Each EIS must consider the underlying federal “purpose and need” for the proposed action, and “rigorously explore and objectively evaluate” the environmental impacts of “*all* reasonable alternatives” to the proposed action. 40 C.F.R. §§ 1502.13, 1502.14 (emphasis added). NEPA further provides that agencies “shall . . . study, develop, and describe appropriate

² Although the CEQ regulations have been revised multiple times, *see* 85 Fed. Reg. 43,304 (July 16, 2020); 87 Fed. Reg. 23,453 (Apr. 20, 2022), the new regulations do not apply to this case. In the FEIS, UDOT explains that because “[t]he initial Notice of Intent to develop the Little Cottonwood Canyon EIS was published in 2018, and the NEPA process has been ongoing since that time . . . UDOT is preparing this EIS based on CEQ’s previous implementing regulations, and all citations in this EIS are to the pre-revision version of the regulations.” FEIS at 1-1.

alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” 42 U.S.C. § 4332(E). An EIS “serve[s] as an action-forcing device” and must “provide full and fair discussion of significant environmental impacts and shall inform decision-makers and the public of the reasonable alternatives” to a proposed project. 40 C.F.R. § 1502.1. CEQ has deemed the alternatives analysis “the heart” of the NEPA process because it “present[s] the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public.” 40 C.F.R. § 1502.14.

25. In evaluating the alternatives of a proposed action, NEPA requires that agencies take a “hard look” at the effects of the proposed action as compared to all reasonable alternatives. *See* 40 C.F.R. §§ 1502.1, 1502.16. The EIS must assess the direct, indirect, and cumulative impacts of the proposed action on the environment, including adverse environmental effects that cannot be avoided, *id.* § 1508.25. Direct effects are those “caused by the action and occur at the same time and place,” while indirect effects are those “caused by the action” that occur “later in time or farther removed in distance, but are still reasonably foreseeable.” *Id.* § 1508.8. Cumulative impacts are those that result from the “incremental impact[s]” of the proposed action when added to the impacts of other past, present, and reasonably foreseeable future actions, whether undertaken by other federal agencies or private third parties. *Id.* § 1508.7. “Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” *Id.*

26. When an agency is evaluating a reasonably foreseeable significant adverse impact in an EIS “and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking.” 40 C.F.R. § 1502.22. Where such information is “essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information” in the EIS. *Id.* § 1502.22(a).

27. But where the relevant information cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known, the agency shall include within the [EIS]” the following information in its place: “[a] statement that such information is incomplete or unavailable”; a statement of the relevance of the incomplete or unavailable information”; “a summary of existing credible scientific evidence which is relevant” to the adverse impact; and “the agency’s evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community.” *Id.* at § 1502.22(b).

B. The Wilderness Act

28. The Wilderness Act of 1964 set forth “the policy of the Congress to secure for the American people of present and future generations the benefits of an enduring resource of wilderness.” 16 U.S.C. § 1131(a). In furtherance of this policy, the Act established the National Wilderness Preservation System “to be composed of federally owned areas designated by Congress as ‘wilderness areas.’” *Id.* These wilderness areas are to be “administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas [and] the preservation of their wilderness character.” *Id.*

29. Congress defined wilderness as “an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain.” *Id.* § 1131(c). More specifically, Congress defined a Wilderness Area as “an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions,” with the following characteristics: (1) it “generally appears to have been affected primarily by the forces of nature, with the imprint of man’s work substantially unnoticeable”; (2) it “has outstanding opportunities for solitude or a primitive and unconfined type of recreation”; (3) it “has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition”; and (4) it “may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.”

30. Federal agencies, in turn, are charged with a duty to protect and preserve this wilderness character: “[e]xcept as otherwise provided in this chapter, each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character.” 16 U.S.C. § 1133(b).

C. The Administrative Procedure Act

31. Because neither NEPA nor the Wilderness Act provides a cause of action, judicial review of these claims occurs under the APA. *See* 5 U.S.C. §§ 702, 704.

32. Under Section 706(2) of the APA, a reviewing court “shall” set aside agency actions, findings, or conclusions when they are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” or when they are adopted “without observance of

procedure required by law.” 5 U.S.C. § 706(2)(A), (D). An agency action is arbitrary and capricious if the agency “relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency,” or if the agency’s decision “is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Motor Vehicle Mfr. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

33. Pursuant to *Olenhouse v. Commodity Credit Corp.*, 42 F.3d 1560, 1580 (10th Cir. 1994), claims under the APA are to be treated as appeals and adjudicated through review of the administrative record.

FACTUAL BACKGROUND

A. Little Cottonwood Canyon and S.R. 210

34. Little Cottonwood Canyon lies in the Uinta-Wasatch-Cache National Forest, which abuts the eastern edge of the Salt Lake City metropolitan area. The canyon is home to two commercial ski resorts, Alta and Snowbird, and includes parts of two National Wilderness Areas: Twin Peaks Wilderness to the north and Lone Peak Wilderness to the south. FEIS at 1-5. Little Cottonwood Canyon also contains the White Pine Inventoried Roadless Area (“IRA”) and portions of the Twin Peaks and Lone Peak IRAs. *See* UDOT March 2023 Supplemental Information Report: Assessment of Roadless Area Conservation Rule for the Final EIS Alternatives.

35. Little Cottonwood Canyon is treasured by the local, national, and international community for its wealth of high-quality recreational opportunities, stunning vistas, and pristine waters. UDOT itself emphasized the high recreational value of Little Cottonwood Canyon:

Winter recreation activities include skiing at the resorts, backcountry skiing, snowshoeing, and ice climbing. In the summer, the resorts offer abundant recreation opportunities, and land administered by [USFS] is used extensively for hiking, cycling, rock climbing, fishing, camping, and picnicking. The canyon also supports habitat for native wildlife communities and native plants. Little Cottonwood Canyon receives about 2.1 million visitors per year.

FEIS at 1-5.

36. The canyon watershed is also essential to providing clean water to the broader Salt Lake community.

The canyon is also defined as a watershed area by the Salt Lake Valley Board of Health (Salt Lake Valley Health Department 2006). The purpose of the watershed area is to protect and promote health and promote conditions that contribute to preserving and protecting drinking water quality. The watershed provides water for Salt Lake City and numerous cities in eastern Salt Lake County.

FEIS at 1-5.

37. S.R. 210 is a “State Scenic Byway that is recognized for its views of dramatic mountain peaks and steep canyon walls.” *See* FEIS at 1-17. It is also the sole access road for Little Cottonwood Canyon:

Transportation into and out of Little Cottonwood Canyon is limited to S.R. 210, which parallels Little Cottonwood Creek for much of the canyon. Parking is provided at the resorts, at some trailheads, and at park-and-ride lots at the base of the canyon. The Utah Transit Authority (UTA) currently provides winter ski bus service from park-and-ride lots to the resorts and summer employee transit for workers at the resorts.

FEIS at 1-5.

38. The 13.62-mile highway is thus the primary link for communities in the north part of the Salt Lake Valley to access Little Cottonwood Canyon for both summer and winter recreation. S.R. 210 straddles the southeastern edge of the Salt Lake Valley before it enters the mouth of Little Cottonwood Canyon and proceeds up to the two resorts, Snowbird and Alta.

Major intersections along S.R. 210 include with S.R. 190/Fort Union Boulevard, Wasatch Boulevard, and S.R. 209 (before turning into the canyon). S.R. 210 also provides a direct connection with Interstate 215 (I-215) and serves as an important commuter road for southeast valley residents to access I-215 and employment centers throughout the Wasatch Front.

39. S.R. 210 is designated with different street names as it proceeds from Fort Union Boulevard into Little Cottonwood Canyon as follows: starting at Fort Union Boulevard S.R. 210 is called Wasatch Boulevard. At that point, Wasatch Boulevard continues southward and S.R. 210 turns and becomes North Little Cottonwood Road until its intersection with S.R. 209, at which point it is called North Little Cottonwood Canyon Road until it reaches the town of Alta. See FEIS at 1-3. This is illustrated by Figure S-1 at S-2 in the FEIS:



40. Heavy traffic from personal vehicles has plagued S.R. 210 for years, creating traffic congestion during winter peak travel periods, avalanche hazards, and traffic delays caused by the avalanche mitigation system, as well as limited parking at trailheads and ski areas leading to roadside parking.

B. FHWA Assignment of NEPA Authority to UDOT

41. UDOT conducted all of the federal environmental reviews for the Little Cottonwood Canyon / S.R. 210 project:

In accordance with the assignment MOU, UDOT is carrying out the environmental review process for the Little Cottonwood Canyon EIS in lieu of FHWA and serves as the lead agency in the NEPA process. By preparing this EIS, UDOT also preserves the ability to use federal-aid highway funding and obtain other FHWA approvals.

FEIS at S-1.

42. In January 2017, FHWA assigned its environmental review authority to UDOT through an MOU pursuant to 23 U.S.C. § 327. As the FEIS describes, “FHWA has assigned its responsibilities under NEPA and other federal environmental laws to UDOT for highway projects in Utah”; in turn, “UDOT is carrying out the environmental review process for the Little Cottonwood Canyon EIS in lieu of FHWA and serves as the lead agency in the NEPA process.” FEIS at 1-1. The MOU “does not change the roles and responsibilities of any other federal agency whose review or approval is required for the project”; “[b]y preparing this EIS, UDOT also preserves the ability to use federal-aid highway funding or obtain other FHWA approvals.” *Id.*³ This MOU was renewed on May 26, 2022 for a 5-year term and remains in effect.

³ 23 U.S.C. § 327(a)(2)(A) provides that “with the written agreement of the Secretary and a State, which may be in the form of a memorandum of understanding, the Secretary may assign,

43. Under the terms of the MOU, “FHWA assigns, and UDOT assumes, subject to the terms and conditions set forth in 23 U.S.C. 327 and this MOU, all of the USDOT Secretary's responsibilities for compliance with [NEPA] with respect to the highway projects specified under subpart 3.3,” including “[h]ighway projects within the State of Utah that are proposed to be funded with Title 23 funds or otherwise require FHWA approval, and that required preparation of an EIS or EA.” MOU at 3, 7. This assignment further includes “statutory provisions, regulations, executive orders, policies, and guidance related to the implementation of NEPA for highway projects . . . as applicable.” MOU at 3.

44. This assignment also extends to any environmental review under an extensive list of federal environmental laws and including Executive Orders relating to environmental and health impacts from highway projects: “FHWA assigns and UDOT assumes, subject to the terms and conditions set forth in 23 U.S.C. 327 and this MOU, all of the USDOT Secretary’s responsibilities for environmental review, reevaluation, consultation, or other action required or arising under the following Federal environmental laws with respect to the review or approval of the highway projects specified in subpart 3.3.” MOU at 4. Any FHWA environmental review responsibility not explicitly listed and assumed by UDOT “will remain the responsibility of FHWA unless the responsibility is added by written agreement of the parties.” MOU at 5.

45. The MOU makes clear that liability for this environmental review and any decisions resulting from it rests solely with UDOT: “As provided at 23 U.S.C. § 327(e), UDOT

and the State may assume, the responsibilities of the Secretary with respect to one or more highway projects within the State under [NEPA]”; in addition, “at the request of the State, the Secretary may also assign to the State, and the State may assume, the responsibilities of the Secretary with respect to 1 or more railroad, public transportation, or multimodal projects within the State under [NEPA].” *Id.* at § 327(a)(2)(B)(ii).

will be solely responsible and solely liable for carrying out all of the responsibilities it has assumed under this MOU, in lieu of and without further approval of the US DOT Secretary.” MOU at 7. Further, “[f]or purposes of carrying out the responsibilities assumed under this MOU, and subject to the limitations contained in 23 U.S.C. 327 and this MOU, UDOT will be deemed to be acting as FHWA with respect to the environmental review, consultation, and other action required under those responsibilities” and “[t]he FHWA and USDOT shall have no responsibility or liability for the performance of the responsibilities assumed by UDOT, including any decision or approval made by UDOT while participating in the Program.” MOU at 10.

46. 23 U.S.C. § 327(e) provides that “[a] State that assumes responsibility under subsection (a)(2) shall be solely responsible and solely liable for carrying out, in lieu of and without further approval of the Secretary, the responsibilities assumed under subsection (a)(2), until the program is terminated as provided in subsection (j).”

C. Initial Project Scoping and Comments

47. In 2017, the Utah state legislature passed Senate Bill 277 authorizing funding for transportation projects that “have a significant economic development impact associated with recreation and tourism within the state” and that “address significant needs for congestion mitigation”; the bill went into effect on July 1, 2017. FEIS at 1-6. The Utah Transportation Commission, an independent advisory committee within UDOT comprised of 7 commissioners appointed by the governor, was charged with prioritizing projects that would meet these objectives. The commission identified Little Cottonwood Canyon and S.R. 210 “as a top priority area because of its high recreation use and economic benefit from tourism to the state.” *Id.*

48. In 2018, UDOT initiated its environmental review of S.R. 210 in and near Little Cottonwood Canyon, which it called the State Route (S.R.) 210 Project (“S.R. 210 Project” or the “Little Cottonwood Canyon project”), for “proposed transportation improvements in and near Little Cottonwood Canyon in Salt Lake County, Utah.” 83 Fed. Reg. 10545 (Mar. 9, 2018). In the initial scoping notice published on March 9, 2018, UDOT explained that “transportation improvements are needed to address congestion, improve safety for all users, and enhance the availability of public transportation options in the canyon.” *Id.* To address these needs, UDOT proposed “to make operational improvements, introduce demand-management measures, and support efforts by transit providers to implement increased transit service in the project study area.” *Id.* The proposed project study area extended along S.R. 210 from its intersection with S.R. 190/Fort Union Boulevard in Cottonwood Heights, Utah, to the town of Alta. *Id.*

49. UDOT published a second scoping notice on March 4, 2019, to revise the scope of the analysis of the Little Cottonwood Canyon project to focus on, among other things, adding a No Action alternative and adding “[r]oadway improvements to SR–210 on Wasatch Boulevard from SR–190/ Fort Union Boulevard to North Little Cottonwood Canyon Road.” 84 Fed. Reg. 7967 (Mar. 5, 2019).

50. UDOT received over 1,500 comments during these two scoping periods alone. June 2020 Draft Alternatives Report at 6. Among these comments was a specific recommendation from Save our Canyons to consider a regional shuttle bus system, in conjunction with congestion pricing, to substantially reduce the number of personal vehicles entering Little Cottonwood Canyon. SOC Re-Scoping Comments on the Little Cottonwood Canyon Project (May 3, 2019). SOC urged UDOT consider a shuttle system of vans and buses in

order to “preserve[] the wilderness character and natural habitat of these canyons.” *Id.* at 9. SOC recommended specific program elements, including: year-round service, higher capacity during peak periods, and for “a series of park and ride lots to be developed throughout the Salt Lake Valley.” *Id.* By design, SOC’s proposal was inclusive of the broader Wasatch Front community: “[t]he shuttle system would be designed to provide service for all canyon visitors: resort skiers, dispersed users, hikers, resort employees, summer season visitors, and others.” *Id.*

51. SOC’s recommended alternative also accounted for the primary source of congestion along S.R. 210: resort traffic on weekends and holidays during the winter ski season. To address this, “[t]he shuttle system would provide express shuttle service to each ski resort from park and ride lots/transit hubs. Winter express shuttles for dispersed use would also be part of the system. These shuttles would provide transit to users from park and rides/transit hubs to winter trailheads. Similarly, in summer, shuttles would provide hikers express service from park and rides/transit hubs to trailheads.” *Id.* To further incentivize use of the shuttle system, SOC’s proposal also incorporated congestion pricing for private vehicles in the Cottonwood Canyons: “Congestion pricing in the Cottonwood Canyons could be implemented during peak traffic periods to reduce the number of private vehicles during peak use periods.” *Id.* at 10.

52. In their earlier December 2019 comments on the UDOT’s Draft Statement of Purpose and Need, Save Our Canyons also noted deficiencies in UDOT’s evaluation of tolling programs and urged the agency evaluate and quantify the implementation of tolls as a way to increase vehicular occupancy. *See* SOC December 2019 Comments at 9-10.

D. UDOT's Development of Alternatives

53. Following the initial NEPA scoping periods, UDOT developed a set of preliminary alternatives based on “previous studies, public and agency input during the scoping process, and local and regional land use and transportation plans.” UDOT Draft Alternatives Development and Screening Report (June 8, 2020) at 4 (hereinafter “June 2020 Draft Alternatives Report”). UDOT conducted a preliminary evaluation of those concepts and alternatives “to determine whether they would meet project objectives, are within the project study area, are technically feasible, and are UDOT operational improvements that are in process, or are small improvements that were considered within a larger alternative.” Any concepts not eliminated at this stage were “further defined and evaluated” in a second preliminary evaluation of concepts and alternatives “to determine whether each concept or alternative was feasible to be considered further in Level 1 screening.” June 2020 Draft Alternatives Report at 8.

54. The alternatives that emerged after preliminary screening were carried forward for Level 1 screening to “identify whether the alternative reasonably meets the purpose and need for the project.” June 2020 Report at 9. UDOT reiterated that its purpose was “reflected in one primary objective for S.R. 210: Substantially improve transportation related safety, reliability, and mobility on S.R. 210 from Fort Union Boulevard through the town of Alta for all users on S.R. 210.” June 2020 Draft Alternatives Report at 3.

55. In order to assess compatibility with the project's stated purpose and need, Level 1 screening focused on two Screening Criteria: improve mobility in 2050 and improve reliability and safety in 2050. The “improve mobility” screening criteria was measured by improved travel times (as compared to the No Action alternative in 2050); the ability to meet the peak-hour

average total person-demand on busy ski days in Little Cottonwood Canyon (defined as the 30th busiest hour in 2050, which was estimated to be 1,555 vehicles or about 3,260 people); reduce vehicle backups; and by 2050 “meet UDOT’s goal of level of service D in the weekday mornings and evenings peak periods on Wasatch Boulevard.” June 2020 Draft Alternatives Report at 9. The “improve safety” screening criteria was measured by reduced number of hours / days of avalanche delays, reduce avalanche hazard for roadway users, improve roadway safety at existing trailhead locations; reduce or eliminate traffic conflicts between motorized and non-motorized transportation modes; and reduce or eliminate roadside parking in the canyon. *Id.*

56. Initial alternatives that passed Level 1 screening were refined and advanced to Level 2 screening in order to identify those alternatives that were “practicable and reasonable and should be evaluated in detail in the EIS.” June 2020 Draft Alternatives Report at 10. Level 2 screening criteria focused on three general areas: (1) “[e]stimate the impacts of each alternative that passed Level 1 screening on key resources”; (2) “[e]valuate the alternatives for costs, logistical considerations, and technological feasibility”; and (3) “[d]etermine whether any of the alternatives would have substantially greater impacts or costs without having substantially greater benefits in meeting the purpose of and need for the project.” *Id.* In addition to costs and compatibility with local and regional plans and permitting requirements, UDOT looked at impacts to natural resources, parks, community facilities, any necessary acquisition of personal or business properties, Section 4(f) uses,⁴ and cultural resources. UDOT used the information

⁴ Section 4(f) of the Department of Transportation Act of 1966 (49 U.S.C. § 303) applies to publicly owned parks, recreation areas, and wildlife and waterfowl refuges and publicly or privately owned significant historic properties and prohibits any agency within the U.S. Department of Transportation, e.g. FHWA, from using any Section 4(f) land except when certain criteria are satisfied.

gathered during the Level 2 screening process to determine which alternatives to study in detail in the EIS.

57. UDOT began the alternatives screening process with “124 potential transportation solutions,” including those suggested by other government agencies and through public outreach. FEIS at 32-50. Despite this broad starting point, the Alternatives Report published in June 2020 recommended only three main alternatives to be carried forward for detailed study in the DEIS: two variations on enhanced bus service (one with road widening and one without) and what UDOT termed the “Gondola Alternative.” *See* June 2020 Draft Alternatives Report Table 4-1 at 110.

58. For each of these three main alternatives, UDOT included specific details focused on the Level 1 screening criteria of “Improve Mobility” and “Improve Reliability and Safety.” *Id.* The former criteria included specifics of any proposed changes to Wasatch Boulevard as well as the details of any new transportation service (bus or gondola) on S.R. 210 between Fort Union Boulevard and Alta. *Id.* The latter criteria included options with regard to avalanche mitigation, trailhead parking, and winter roadside parking. *Id.* Together, these myriad options were packaged into the three main alternatives—one gondola alternative and two bus alternatives.

59. Details of the Gondola Alternative included several selections under “Improve Mobility” for the stretch of S.R. 210 from Fort Union Boulevard to Alta, including the following:

- Winter gondola service starting at the gondola platform at the entrance of Little Cottonwood Canyon with stops at Snowbird ski resort and Alta ski resort only
- About 30 gondola cabins per hour
- About 1,050 people on gondolas in the peak hour
- 2,500-space parking structure at the gravel pit
- Enhanced bus service from the gravel pit to the gondola loading platform at the entrance of Little Cottonwood Canyon (there would be no parking at the gondola platform)

- Bus priority on Wasatch Boulevard
- Tolling or other management strategies such as no single-occupant vehicles during peak periods

June 2020 Draft Alternatives Report Table 4-1 at 110.

60. During its preliminary evaluation of concepts, and before settling at the specific Gondola Alternative detailed above, UDOT considered several different gondola alternatives, which it labeled as follows: Gondola 1, Gondola 2, Gondola 3A, Gondola 3B, Gondola 4A, and Gondola 4B. It evaluated each of these six alternatives based on Level 1 screening criteria, including travel time, capital cost, and operation and maintenance cost.

61. In addition, the gondola concepts were screened by what UDOT termed “additional feasibility criteria.” This included both feasibility criteria “pertaining to the purpose of the S.R. 210 Project (improved mobility and improved neighborhood access),” as well as additional feasibility criteria pertaining to “residential impacts and privacy issues, which are considerations that apply to gondolas in an urban environment.” June 2020 Draft Alternatives Report at 50. UDOT organized these additional feasibility criteria into the following categories: impacts to congestion, needed roadway improvements, residential impacts, and privacy impacts. UDOT noted that should any alternative be carried forward for detailed analysis, environmental impacts beyond these feasibility criteria would be applied in Level 2 screening. *Id.*

62. Gondola Alternative 1 incorporated expanded parking and a base station at the base of the canyon—in other words, all vehicles would drive to the mouth of Little Cottonwood Canyon and there would be no mobility hubs or expanded bus service to reduce the number of vehicles entering the canyon. Gondola Alternative 2 shifted the expanded parking and base

station slightly away from the mouth of Little Cottonwood Canyon to a site approximately 1 mile away from the canyon entrance.

63. Gondola Alternatives 3A and 3B both included expanded parking at a “mobility hub”—defined as a location where users can transfer from their personal vehicle to a bus—located at the gravel pit on the east side of Wasatch Boulevard between 6200 South and Fort Union Boulevard. June 2020 Draft Alternatives Report at 45, 60. Gondola Alternative 3A included “a complete gondola alignment from the gravel pit mobility hub to the entrance of the canyon and continuing to the resorts” with no bus service required, while Gondola Alternative 3B kept the gondola base station itself at the entrance of the canyon and included a bus trip from the gravel pit to the base station. *See* June 2020 Draft Alternatives Report at 48.

64. Gondola Alternatives 4A and 4B mirrored 3A and 3B except that the mobility hub with expanded parking would be located at 9400 South and Highland Drive. Gondola Alternative 4A would include a complete gondola alignment from the mobility hub, whereas Gondola Alternative 4B would require bus service from the mobility hub to a gondola base station located at the entrance to the canyon. *See* June 2020 Draft Alternatives Report at 48.

65. Each of these gondola alternatives were compared on the basis of costs (capital and annual operating and maintenance), travel time, as well as the additional feasibility criteria (impacts on traffic congestion, needed roadway improvements, residential impacts, and privacy concerns). After Level 1 screening, all but Gondola 3B were permanently eliminated from further consideration.

66. In terms of impacts to congestion, UDOT determined that “Gondola Alternatives 1 and 2 would not change the existing travel patterns and would result in high volumes of traffic

at the entrance of Little Cottonwood Canyon, so they are rated as having a high impact for this comparison criterion.” June 2020 Draft Alternatives Report at 50. “In contrast, Gondola Alternative 3 would keep traffic near the existing interstate (I-215), near higher-capacity existing roads, and next to existing commercial areas, and is therefore rated as having a low impact in terms of causing traffic congestion.” *Id.*

67. Regarding needed roadway improvements in order to provide priority travel for buses and mobility hub infrastructure, “Gondola Alternatives 3A and 3B are rated as having a low impact for this criterion because existing infrastructure near the gravel pit mobility hub can accommodate the expected traffic, and planned improvements to Wasatch Boulevard will help bus travel.” June 2020 Draft Alternatives Report at 50. “Gondola Alternatives 1 and 2 are rated as having medium impacts because some roadway improvements would be needed near the parking garage in this more-residential area.” *Id.* “Gondola Alternative 4B would require significant improvements from 9400 South and Highland Drive to the entrance of Little Cottonwood Canyon in order to maximize bus travel times”; “[t]herefore, Gondola Alternative 4B is rated as having a high impact for this criterion.” *Id.*

68. The Gondola alternatives that maintained the base station at the base of the canyon (Gondola Alternatives 1, 3B and 4B) were rated as having low residential impacts, Gondola Alternative 2 with the base station 1 mile away from the canyon entrance was rated medium, and the Gondola alternatives with alignments in urban segments (Gondola Alternatives 3A and 4A) were rated as having high residential impacts. *See id.*

69. With respect to the feasibility criterion regarding privacy, UDOT explained that privacy would be a substantial concern any gondola alternative:

This criterion looks at the general number of homes that would be adjacent to the gondola alignment within view of gondola riders in the gondola cabin. Because the cabins would be elevated 100 to 200 feet in the air, privacy would be a concern for residents beyond the areas immediately adjacent to the gondola alignment. There is a large amount of residential development along Wasatch Boulevard and 9400 South. Like the residential impacts criterion, a low impact is assigned for this criterion for alternatives that have gondola alignments in the canyon segment only (Gondola Alternatives 1, 3B, and 4B), and a high impact is assigned for alternatives that have gondola alignments in the urban segments Gondola Alternatives 3A and 4A). *For the alternatives in which the base station is located away from the entrance of Little Cottonwood Canyon, UDOT expects the public to strongly oppose these alternatives due to these privacy concerns.*

June 2020 Draft Alternatives Report at 50 (emphasis added).

70. Ultimately, Gondola Alternatives 1 and 2 were eliminated for similar reasons. First, UDOT explained that “one of the purposes of improving mobility on S.R. 210 is to reduce traffic impacts to residential areas along S.R. 210 and S.R. 209 at the entrance to Little Cottonwood Canyon.” June 2020 Draft Alternatives Report at 52. “Gondola Alternatives 1 and 2 would focus traffic on S.R. 210 and S.R. 209.” *Id.* “These alternatives were eliminated from further study because the traffic congestion with these alternatives would be similar to existing traffic conditions, which focus peak-hour traffic to the entrance of Little Cottonwood Canyon in residential areas and restrict residents’ ability to access their homes during peak ski periods.” *Id.*

71. Gondola Alternatives 1 and 2 also both raised residential impacts: both “would include building a 2,500-car multistory parking structure in a residential area, and a parking structure which would not be compatible with existing residential land uses.” June 2020 Draft Alternatives Report at 52. UDOT emphasized that, in addition, “Gondola Alternative 2 would further cause privacy concerns since the gondola corridor would be near existing homes along S.R. 210 near the entrance to the canyon.” June 2020 Draft Alternatives Report at 52. For these reasons, “Gondola Alternatives 1 and 2 were not carried forward for Level 1 screening.” *Id.*

72. The two alternatives (Gondola Alternatives 3A and 4A) with a complete gondola alignment from a mobility hub, rather than starting at the entrance of the canyon, were eliminated from further consideration due to having the “highest capital cost, high impacts to residential properties, and most privacy concerns.” June 2020 Draft Alternatives Report at 52.

73. Ultimately, “UDOT selected Gondola Alternative 3B because it would have the second-lowest overall capital cost, the fewest impacts to traffic and residential properties, and less privacy concerns. “June 2020 Draft Alternatives Report at 52. “Although Gondola Alternative 4B would have a similar travel time, cost, and impacts as Gondola Alternative 3B, the parking area would be located about 3.5 miles from I-15 and about 6 miles from I-215 and would require canyon users to travel on Wasatch Boulevard or 9400 South.” *Id.* “This route could create more traffic congestion, whereas a parking area at the gravel pit would be about 1 mile from I-215, which would result in a faster travel time because about 60% of traffic in Little Cottonwood Canyon uses I-215 and S.R. 210 to access the canyon.” *Id.* “Gondola Alternative 4B would also need more roadway improvements to prioritize buses.” *Id.*

74. In the end, the only gondola alternative carried forward involved gondola service starting at the base of the canyon, a large 2,500-space parking garage at the gravel pit mobility hub, and enhanced bus service to bring riders from the gravel pit to the gondola loading platform. The alternative also included unspecified “tolling or other management strategies” to reduce use of personal vehicles, but did not analyze or develop these strategies further.

75. UDOT conducted a similar preliminary evaluation of potential transit or mobility hubs. UDOT reviewed 14 potential locations to serve as a mobility hub for Little Cottonwood

Canyon before selecting both the gravel pit and 9400 South/Highland Drive as the two preferred sites. *See* June 2020 Draft Alternatives Report at 60.

76. One such mobility hub location considered and eliminated during UDOT's preliminary screening was located at 3662 North Little Cottonwood Canyon Road—described as “vacant land between two residential developments about 0.8 mile west of S.R. 210/S.R. 209 intersection.” June 2020 Draft Alternatives Report App. H at 4. The proposed site at 3662 North Little Cottonwood Canyon Road was eliminated because the “[l]ocation would cause congestion on Wasatch Boulevard during peak use times in a residential area similar to current conditions.” June 2020 Draft Alternatives Report at 61. In addition, this “[l]and is between two residential subdivisions which would *not be compatible with parking structure.*” *Id.* (emphasis added).

77. Ultimately, the June 2020 Draft Alternatives Screening Report recommended a total of three primary alternatives to be carried forward: Enhanced Bus Service, Enhanced Bus Service with winter bus only peak-period lanes, and the Gondola Alternative (Gondola Alternative 3B). The two Enhanced Bus Service alternatives both included 2,500 new parking spaces divided evenly between two mobility hubs: one at the gravel pit and one at 9400 South and Highland Drive. The Gondola Alternative, tracking Alternative 3B, included a gondola base station at the entrance of Little Cottonwood Canyon serviced by enhanced bus service from a 2,500-space parking structure at the gravel pit. *See* June 2020 Draft Alternatives Report at iv, Table 4-1 at 110. Public comment on the report ran from the publication date of June 8, 2020 to July 10, 2020.

E. November 2020 Alternatives Addendum

78. After publishing the June 2020 Draft Alternatives Screening Report, UDOT held three public meetings, received around 6,500 individual comments, and held numerous group and council meetings before the July 10, 2020 comment deadline. UDOT disclosed a list of group and council meetings held during the comment period for the June report. *See* November 2020 Addendum at 5.

79. In response to the Environmental Protection Agency’s comments on the June Report, UDOT added a “No Action” alternative: “For the no-action conditions in 2050, UDOT used a socioeconomic forecast for 2050 and assumed that all funded transit and roadway projects in the Wasatch Front Regional Council’s (WFRC) 2019 to 2050 *Wasatch Front Regional Transportation Plan* (RTP) would be in place, except for improvements to S.R. 210.” November 2020 Addendum at 5.

80. In addition, UDOT considered 18 additional alternatives for improved mobility along S.R. 210—including several variations on the Gondola Alternative and a refined version of a Cog Rail alternative that had been eliminated during preliminary screening in the June 2020 Report. *See* November 2020 Addendum at 7-8. Two of these additional alternatives were added to the list of primary alternatives carried forward into the DEIS for detailed study. Notably, the two new alternatives added are based out of the La Caille private development site.

81. The first of the added alternatives, Gondola Alternative B starting at La Caille, “was proposed by a private developer.” November 2020 Addendum at 12. It would “include a gondola base station just east of the La Caille restaurant at 9565 S. Wasatch Boulevard.” *Id.* The base station “would be located at a proposed development south of North Little Cottonwood

Road, about 0.75 mile northwest of the S.R. 209/S.R. 210 intersection (Figure 4-1).” *Id.* The alternative would include a 1,500-vehicle parking structure, which is about 1,000 parking spaces fewer than needed for a gondola alternative; therefore, this alternative also includes parking structures at the gravel pit (600 spaces) and the 9400 South/Highland Drive park-and-ride (400 spaces) with bus service to the gondola base station.” *Id.* “The bus system would be used when the parking structure at the gondola base station reaches capacity.” *Id.*

82. During its preliminary evaluation of the La Caille Gondola, UDOT explained that it conducted traffic analysis modeling based on a 1,500-space vehicle parking structure on S.R. 210 about 0.75 northwest of the Little Cottonwood Canyon entrance. It also incorporated a new traffic modification not previously considered for Gondola Alternative 2 in the June 2020 Report: the use of two southbound travel lanes on S.R. 210 past the intersection of Wasatch Boulevard and North Little Cottonwood Road south to the La Caille gondola base station. *See* November 2020 Addendum at 15.

83. With this new modification, UDOT’s analysis determined that “traffic would operate at acceptable levels of congestion . . . on both Wasatch Boulevard and North Little Cottonwood Road during the morning peak travel period” and “[t]he gondola alternative at La Caille would not increase vehicle backup lengths from the intersection of S.R. 210 and S.R. 209.” November 2020 Addendum at 15. “In addition, there would be no vehicle backup from the Little Cottonwood Canyon that extends to the La Caille base station.” *Id.* “Because the gondola alternative at La Caille would not cause unacceptable travel delays on S.R. 210, it was carried forward into Level 1 screening.” *Id.*

84. Among the other new alternatives it screened in the Addendum, UDOT also reevaluated the previously eliminated Gondola Alternative 2 (with expanded parking and a base station 1 mile from the entrance of the canyon) in response to “numerous comments that UDOT should evaluate a gondola alternative that did not require bus service to the base station (had direct personal vehicle access) and that UDOT should re-evaluate Gondola Alternative 2 and conduct a more detailed evaluation of traffic and privacy concerns.” November 2020 Addendum at 16 (referring to this alternative as the Gondola at Wasatch Boulevard and North Little Cottonwood Road, but noting that [t]his alternative is the same as Gondola Alternative 2, Expanded Parking and Base Station”). Upon “reviewing the site conditions,” however, “UDOT found that the site was not technically feasible because the parking structure would be located on the Wasatch Fault.” *Id.* UDOT explained that “[v]ertical displacement at the site could severely affect the proposed parking structure and gondola base station.” *Id.* “In addition, with the La Caille base station (Gondola at La Caille Alternative), there is now a gondola alternative that provides a substantial amount of parking at a gondola base station.” *Id.* “For these reasons, this site [Gondola alternative 2] was eliminated from further consideration”—a second time. *Id.*

85. In addition, UDOT also took a second look at a cog rail system—which had been previously eliminated in the June 2020 Draft Alternatives Report. Noting that in the June 2020 Screening Report UDOT had looked only at electric light rail vehicles and not diesel-electric-powered systems, “as a result of comments on the June 8 Report, UDOT evaluated using diesel-electric power for the cog rail system.” November 2020 Addendum at 21. After considering and rejected multiple possible alignments, UDOT stated that “[b]ased on additional evaluation conducted since the release of that report, UDOT determined that a cog rail station could be

located at the same location as proposed for the gondola station at La Caille.” November 2020 Addendum at 27. “The 1,500-space parking structure and improvements to North Little Cottonwood Road as proposed for the gondola station at La Caille could be used with a cog rail station located on the east side of S.R. 210.” *Id.* UDOT then summarily concluded, without specific explanation, that “[i]n light of the additional information, analysis, refinements, and considerations described above, UDOT determined that a Cog Rail at La Caille Alternative would be carried forward to Level 1 screening.” *Id.* at 30.

86. Both new primary alternatives incorporated a new 1,500-space parking structure at La Caille (whether gondola base station or cog rail station) with an additional 1,000 spaces split among the gravel pit and 9400 South mobility hubs with the enhanced bus service support. This parking structure would be adjacent to the future La Caille Center and Villages Development—a commercial development sprawling over 37.5 acres and including, but not limited to, new restaurants, shops, and a boutique hotel, in addition to a possible ice rink. *See* FEIS at 21-31.

87. In the end, UDOT elected to carry forward for detailed analysis the original three primary alternatives plus the two newer alternatives centered around the private La Caille development in the DEIS, for a total of five alternatives—two alternatives focused on enhanced bus service, two gondola alternatives, and a cog rail alternative.

F. Draft Environmental Impact Statement

88. UDOT released its DEIS on June 25, 2021 and later released a Revised DEIS Chapter 26 – Section 4(f) and 6(f) Evaluation, on Dec. 10, 2021.

89. In the DEIS, UDOT explained that the three primary alternatives initially advanced out of the June 2020 screening process—the two Enhanced Bus Service alternatives and the Gondola Alternative—had been “further refined based on comments provided during the comment period for that report.” DEIS at 2-32. Changes included: “additional analysis regarding electric buses, adding snow sheds to the gondola alternatives, operating the gondola during the summer, and adding the 9400 South/Highland Drive park-and-ride lot to the gondola alternatives.” *Id.*

90. As a result of this refinement, the Gondola Alternative carried forward from the June 2020 Alternatives Screening process—now referred to as “Gondola Alternative A” (starting at the canyon entrance)—would no longer rely solely on the gravel pit mobility hub, but rather would include “2,500 new parking spaces divided between two mobility hubs at the gravel pit and 9400 South and Highland Drive” and “[e]nhanced bus service from the mobility hubs to the gondola base station at the entrance of Little Cottonwood Canyon (there would be no parking at the base station),” like the two Enhanced Bus Service alternatives. DEIS at 2-32. As such, all three primary alternatives carried forward from the original June 2020 screening process would now incorporate 2,500 new parking spaces divided among the two selected mobility hubs.

91. In addition, in order to mitigate congestion related to the two *new* primary alternatives added in the November 2020 Addendum—Gondola Alternative B starting at La Caille and the Cog Rail Alternative at La Caille—UDOT introduced several new traffic improvements on S.R. 210. *See* DEIS at 2-87, 2-101 (describing identical traffic improvements for the La Caille gondola and Cog Rail alternatives, respectively). “To improve traffic circulation on S.R. 210 to and from the base station, UDOT would make several improvements to S.R. 210,”

including: “[t]wo southbound travel lanes from Wasatch Boulevard would continue to the base station with the right lane becoming the dedicated access to the base station”; “[t]he access would enter into the second level of the parking structure”; “[t]he extra lane would require a stormwater detention basin (Figure 2.6-26)”; “[a] northbound exit ramp from the parking structure under S.R. 210 would connect to the east side of S.R. 210”; and “[a] signalized intersection would be constructed on S.R. 210 at the base station.” *Id.*

92. For its detailed study of these five primary alternatives, UDOT developed preliminary engineering and cost estimates for each alternative and ultimately identified two primary Preferred Alternatives to carry forward to additional public input: “[f]or the Draft EIS, UDOT has narrowed down the five primary alternatives to the two primary alternatives that it considers preferable at this time”; “[a] purpose of identifying these two primary Preferred Alternatives is to seek public input that can be considered in making a final selection of one of the primary alternatives in the Record of Decision for the S.R. 210 Project.” DEIS at 1-121. The Enhanced Bus Service in Peak-period Shoulder Lane Alternative was selected as the primary Preferred Alternative in the Draft EIS for providing the best overall mobility and Gondola Alternative B (starting at La Caille) was selected as the primary Preferred Alternative in the Draft EIS for providing the best overall reliability. *Id.*

93. In addition to this alternatives analysis, the DEIS purported to address the cumulative impacts of each alternative in conjunction with past, present, and other reasonably foreseeable future actions. While the DEIS did identify the future La Caille commercial development as a future project and briefly noted that it “would increase traffic on Wasatch Boulevard and North Little Cottonwood Road,” DEIS at 21-13, that was the extent of its

“analysis.” UDOT presented no discussion and no quantitative analysis of the combined traffic impacts of these two large developments, despite the fact that they will each bring significant volumes of traffic to an area less than a mile from the entrance to the canyon and despite the fact that mitigating congestion near the canyon is a central purpose of this project. Nor was there any discussion about whether the combined effects of these two projects on congestion would undermine the ability of the project’s to satisfy the stated purpose and need.

94. The DEIS also contained a discussion of community and property impacts—including, among other resources: neighborhood and community cohesion; quality of life: and recreation resources. In this discussion, UDOT disclosed that the La Caille gondola would have significant impacts on nearby residences:

The Gondola Alternative B base station and alignment [starting at La Caille] would be *adjacent to several residential developments*. The natural views that residents have would be disrupted by the gondola infrastructure. With the gondola passing near their houses, *residents would feel an intrusion and loss of privacy from gondola riders looking down onto their yards and homes*. For many residents, the impact would be in direct conflict with their reason for living near the entrance to Little Cottonwood Canyon. The Gondola Alternative B base station would be adjacent to existing residential developments. The increased traffic to the base station as well the operation (noise and view) of the gondola system could *reduce the quality of life of some residents since it would disrupt the natural setting of the area and its rural nature*. However, some residents who recreate in Little Cottonwood Canyon might see the location as a benefit because they would live within walking distance of the station.

DEIS at 4-44 (emphases added).

95. With regard to impacts to recreation resources, the DEIS included only a passing mention that “some recreation users might see the gondola as a negative visual impact, reducing the quality of their recreation experience.” DEIS at 4-41. UDOT noted that “some people who are using the Alpenbock Loop Trail, using other trails, climbing in the lower canyon, or

otherwise recreating in Little Cottonwood Canyon might feel that the gondola system (towers and cabins) detracts from their views of the scenic Little Cottonwood Canyon”; “[t]he negative impact to the viewshed might be considered by some recreationists as a reduced outdoor recreation experience.” *Id.* at 4-42. The DEIS did not attempt to develop a quantitative or qualitative measure of this reasonably foreseeable adverse impact to recreation resources.

96. UDOT’s discussion of indirect impacts on recreation focused only on the potential impacts increased summer visitation *at the resorts*. UDOT determined that “summer operation of the gondola could increase summer visitation by about 198 people per day” but dismisses any potential impact; UDOT stated that the increased visitation would “provide an indirect economic benefit to the resorts” and “[a]ssuming that the 198 users per day would be spread throughout the day, trail use would not increase substantially enough to detract from users’ outdoor recreation experience at the resorts.” DEIS at 20-18 (discussing Gondola Alternative A). This discussion applied equally to both gondola alternatives: “The indirect effects of Gondola Alternative B would be the same as those of Gondola Alternative A except for the potential to induce development around the gondola base station at La Caille.” *Id.* at 20-19.

97. The DEIS contained no discussion of any indirect impacts on recreation from the gondola infrastructure itself or for non-resort users. *Id.*

98. Lastly, the only discussion in the DEIS of potential impacts to the Wilderness Areas directly adjacent to the proposed gondola relates to how USFS will manage the potential for *increased visitation*: “[USFS] acknowledges that, in the future, management might be needed to limit resource impacts from user visitation. The *Forest Plan* states that such management

options could include, but are not limited to, use capacity analysis, allowed use limits and quotas, permit systems, designated camp sites, wilderness management plans, and/or amendments to the *Forest Plan* (USDA Forest Service 2018).” DEIS at 20-10. There was no discussion whatsoever of the direct and indirect impact of the gondola infrastructure itself on the wilderness character that USFS is charged with preserving.

G. Comments on the Draft EIS

99. Plaintiff Save Our Canyons has consistently supported lower-cost solutions that utilize existing infrastructure, such as carpool incentives (ex. occupancy-based tolling), year-round enhanced bus service with stops at multiple locations and more frequent service at peak times, enforcement of the traction law, and mandatory parking reservations at ski resorts. Early in the scoping process, SOC urged UDOT to consider regional solutions including a detailed regional shuttle bus system coupled with congestion pricing. *See* May 2019 Re-Scoping Comments at 9-11, *see also supra* ¶¶ 50-51.

100. In its comments on the DEIS, SOC again objected to UDOT’s failure “to look at anything outside of the S.R. 210 roadway corridor”; “[s]uggestions and proposals submitted to UDOT throughout this process focused on getting people off of Wasatch Blvd, S.R. 210, the Alta Bypass Road prior to their arrival on these routes were deemed to be out of scope rather than incorporated into the process.” SOC September 2021 DEIS Comment Letter at 2 (hereinafter “DEIS Comments”). “The visitation, thus the congestion, experienced in the project’s focus originates well outside the project area.” *Id.* at 3. Converting these visitors to transit riders, well before they come into the project area, and not building anything in a critical natural environment and watershed would have met the stated purpose,” *id.* at 3, but all such concepts

were eliminated during preliminary screening. Each of the alternatives carried forward for detailed study—despite using different means of transportation (bus, gondola, cog rail)—all shared the same emphasis on bringing private vehicles to large parking lots in or near the canyon entrance (either the two mobility hubs or the La Caille development).

101. SOC also noted UDOT’s failure to fully evaluate tolling as an alternative to meet the project’s stated purpose, i.e. determine achievable ridership levels or otherwise conduct a quantitative analysis for its potential for addressing congestion: “Tolling is nominally identified as a component of the preferred alternatives, but in fact it plays no actual role in any alternative. If it were an actual component of a transportation alternative, the DEIS would necessarily attribute some amount of ridership capacity to it, which is obviously fundamental to determining what the ridership levels of the other transportation components need to be to meet overall transportation needs.” DEIS Comments at 10.

102. SOC also voiced its strong objection to the elevation of Gondola Alternative B starting at La Caille for detailed study, noting that this alternative was carried forward for despite suffering functionally identical flaws and feasibility concerns as two other alternatives eliminated during UDOT’s preliminary screening process. SOC noted that both gondola alternative 2 and a mobility hub at 3662 North Little Cottonwood Canyon Road were rejected over congestion concerns during preliminary screening: “UDOT also considered a ‘mobility hub’ including 1500 parking spaces at what UDOT refers to as 3662 North Little Cottonwood [Canyon] Road” but that “[t]his mobility hub location was also rejected because it would have a ‘high impact’ on congestion.” DEIS Comments at 11-12. SOC was deeply troubled that “[i]n an ‘Addendum’ to the June Report five months later, despite having clearly (and correctly) made

the determination that a parking/transit node on SR 210 at or near the base of the canyon would not meet the project's purpose and need, UDOT revived the idea of putting such a facility at this location, this time in a form of the La Caille gondola base and 1,500-car parking facility." *Id.*

103. Finally, SOC made clear that the gondola infrastructure in particular poses a substantial threat to "the values, the opportunity, and the existence of many recreational opportunities in Little Cottonwood Canyon" and "[e]xpanding infrastructure, roads and even worse, gondola towers, is at cross purposes and erodes the fundamental purpose for why visitors come to these canyons." DEIS Comments at 3-4.

H. Final Environmental Impact Statement

104. Despite SOC's comments and overwhelming public opposition to a gondola in Little Cottonwood Canyon, UDOT made very few changes in the FEIS, which it published in September 2022. The five primary alternatives considered for detailed study remained the same: two enhanced bus service alternatives, two gondola alternatives, and one cog rail alternative. FEIS at 2-45-2-46.

105. UDOT did, however, make several substantial changes to the two primary alternatives located at the La Caille development—Gondola Alternative B and the Cog Rail Alternative—both expanding the size of the parking structure at La Caille and making additional roadway changes to mitigate congestion.

106. First, after the DEIS was published, UDOT opted to dramatically increase the size of the parking structure for both of the alternatives centered around the planned La Caille development. "To improve travel times and user convenience, UDOT increased the number of parking spaces at the gondola and cog rail base stations from 1,500 to 2,500." FEIS at S-29. In a

July 2022 memo evaluating whether or not this and other changes required UDOT to complete a supplemental EIS, *see* FEIS App. 2H at 2, UDOT described the new, larger parking structure. The larger parking building would require about two additional levels and therefore “would be taller and more visible to area residents and users of S.R. 210.” *Id.* UDOT nonetheless determined that this taller building would “not result in a new significant visual impact” because the Draft EIS had already determined that the parking structure would have a “high level of visual impact”—the highest impact rating. *Id.* at 2-3.

107. Second, with the larger parking structure, UDOT also decided to entirely eliminate the use of the mobility hubs and enhanced bus service. With the additional parking spaces, there would be no need for mobility hubs at the gravel pit or at 9400 South and Highland Drive. All users would drive directly to the base station without needing to take a bus from a mobility hub. FEIS at S-29-S-30. In other words, all personal vehicles (up to 2,500 vehicles) would now park at the La Caille development.

108. Lastly, “[t]o facilitate better traffic movement to the 2,500-space parking structure, UDOT also added a new one-way access road from Wasatch Boulevard to the design after the Draft EIS was released.” FEIS at S-29-S-30.

109. In its FEIS, UDOT selected Gondola Alternative B as its preferred alternative, along with “with phased implementation of components of the Enhanced Bus Service Alternative pending funding and construction of Gondola Alternative B.” FEIS at 2-136. UDOT stated that it “based the decision regarding the preferred primary alternative primarily on Gondola Alternative B providing the best overall reliability,” along with other additional benefits that were also factors in the agency’s decision. *Id.* at 2-136-2-137.

110. “Overall, UDOT believes that Gondola Alternative B best meets the project purpose of improving reliability because it can operate independently of S.R. 210 and avoid delays related to snow removal, avalanche removal, and traffic.” FEIS at 2-137. “In addition, UDOT believes that having a 2,500-space parking structure at the gondola base station would make Gondola Alternative B an attractive option to using personal vehicles.” *Id.* “During congested traffic times related to snow and avalanche removal, the considerably faster gondola service would likely provide an incentive for people to switch from personal vehicles to the gondola service.” *Id.* UDOT recognized that “Gondola Alternative B would have the highest visual impacts of the primary action alternatives.” FEIS at 2-137.

111. Turning to its impacts analysis, the FEIS carried over the same inadequate discussion of cumulative impacts from the DEIS. UDOT made a passing reference to the planned La Caille development in its discussion of cumulative impacts, noting again only that it “would increase traffic on Wasatch Boulevard and North Little Cottonwood Road.” FEIS at 21-13. But UDOT made no attempt to study, analyze, or quantify this highly foreseeable additive impact, despite the fact that concern over roadway congestion is one of the primary purposes behind the entire project.

112. The FEIS’s treatment of residential and privacy impacts was also carried over from the DEIS, largely the same but with a slightly greater emphasis on the intrusive structure and lighting from the parking building. *See* FEIS at 4-45-4-46 (compare *supra* ¶ 94).

The Gondola Alternative B base station and alignment [starting at La Caille] would be *adjacent to residential developments*. The natural views that residents have would be disrupted by the gondola infrastructure. With the gondola passing near their houses, *residents would feel an intrusion and loss of privacy from gondola riders looking down onto their yards and homes*. For many residents, the impact would be in direct conflict with their reason for living near the entrance to Little

Cottonwood Canyon. The Gondola Alternative B base station including the parking structure and new access roads would be adjacent to existing residential developments. The increased traffic to the base station as well the operation (noise and view) of the gondola system could reduce the quality of life of some residents since it would disrupt the natural setting of the area and its rural nature. *The parking structure would place a large building with security lighting in a rural residential area which would disrupt the rural nature of nearby residences and disrupt the rural quality of life they enjoy.* However, some residents who recreate in Little Cottonwood Canyon might see the location as a benefit because they would live within walking distance of the station.

FEIS at 4-46 (emphases added).

113. With regard to recreation, UDOT noted the importance of recreation in Little Cottonwood Canyon: “The substantial recreation opportunities in Little Cottonwood Canyon and its proximity to a large metropolitan area generate about 1.2 million vehicle trips into the canyon per year, which carry about 2.1 million visitors.” FEIS at 1-17. “Visitation into the canyon is equally distributed between winter and summer uses, with winter use more focused on peak ski weekends and holidays and summer use occurring throughout the season (Mountain Accord 2015a).” *Id.* “Given that the populations of Salt Lake and Utah Counties are expected to grow by 36% and 108%, respectively, through 2050, the number of travelers into Little Cottonwood Canyon will also increase.” *Id.*

114. UDOT pointed in its FEIS to Senate Bill 277 as “indicative of the State’s interest in supporting growth in this sector by reducing congestion on roads and improving access to and the user experience in recreation and tourist areas.” FEIS at 1-17. The FEIS noted that “[r]eliable and convenient access to Utah’s recreation areas supports the tourism industry and the leisure and hospitality sector of the economy.” *Id.* “The traffic issues in Big and Little Cottonwood Canyons have implications beyond inconvenience to travelers, impacts such as potential economic impacts to the ski industry.” *Id.*

115. Despite the obvious importance of summer recreation in the canyon, the FEIS carried over the same inadequate discussion of impacts on recreation resources from the DEIS: UDOT included only a passing mention that some “recreation users might see the gondola as a negative visual impact, reducing the quality of their recreation experience.” FEIS at 4-42. And, “some people who are using the Alpenbock Loop Trail, using other trails, climbing in the lower canyon, or otherwise recreating in Little Cottonwood Canyon might feel that the gondola system (towers and cabins) detracts from their views of the scenic Little Cottonwood Canyon, which to some users is the primary reason for visiting the canyon.” *Id.* The FEIS did not attempt to develop a quantitative or qualitative measure of this reasonably foreseeable adverse impact to recreation resources or recreational users of the canyon, let alone determine how the effects on recreation might have secondary impacts on tourism and socioeconomic support in local communities.

116. UDOT’s discussion of indirect impacts on recreation in the FEIS once again focused largely on the potential impacts increased summer visitation *at the resorts*. UDOT determined that “summer operation of the gondola could increase summer visitation by about 198 people per day,” but stated that the increased visitation would “provide an indirect economic benefit to the resorts” and “[a]ssuming that the 198 users per day would be spread throughout the day, trail use would not increase substantially enough to detract from users’ outdoor recreation experience at the resorts.” FEIS at 20-18 (discussing Gondola Alternative A). UDOT applied this cursory assumption to both gondola alternatives: “The indirect effects of Gondola Alternative B would be the same as those of Gondola Alternative A except for the potential to induce development around the gondola base station at La Caille.” *Id.* at 20-19.

117. The FEIS added a single, perfunctory paragraph addressing indirect impacts on recreation from the gondola infrastructure itself for non-resort users:

Some recreation users might find that the gondola infrastructure detracts from their recreation experience in Little Cottonwood Canyon and instead use other nearby canyons, thereby increasing use of those canyons or recreation areas. *It is not possible to predict the number of recreationists who might no longer visit Little Cottonwood Canyon because of the gondola infrastructure.* However, it is possible that users might go to other areas along the Wasatch Front, thereby increasing use of those areas and causing additional degradation of the areas from the additional use.

FEIS at 20-19 (emphasis added). Nowhere in the FEIS does UDOT attempt to identify the scale of this reasonably foreseeable impact or explain why it is unable to obtain this relevant information.

118. Like the DEIS, the only mention of impacts to Wilderness Areas in the FEIS is limited to USFS management of increased visitation. *See* FEIS at 20-10. There is no discussion of the clearly foreseeable direct and indirect effects that a massive gondola cutting through the viewshed will have on the wilderness character, solitude, and unique values of these lands, which Congress protected in perpetuity as areas “where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain.” 16 U.S.C. § 1131(c) (defining “wilderness”).

I. Response to Comments on the DEIS

119. In response to comments that UDOT failed to consider a reasonable range of alternatives and bring forward even one alternative for detailed study that did not involve large numbers of personal vehicles converging at or in the vicinity of the entrance of the canyon, UDOT’s simply repeated that the agency did “evaluate[] numerous alternatives to solve the transportation problem on S.R. 210 that would occur outside the roadway corridor,” but they

were all eliminated during preliminary screening. FEIS at 32-17. UDOT defended the range of alternatives as follows: “The project purpose did not predetermine outcome to a highway-based solution”; “[t]he project purpose was to improve mobility, safety, and reliability on S.R. 210 and was not focused on any specific alternative or transportation mode.” FEIS at 32-17. “Based on the project purpose, UDOT evaluated about 124 alternatives during the EIS process, including transit options that required no roadway improvements.” *Id.*

120. UDOT also defended its decision to belatedly consider the La Caille gondola alternative and to carry it forward for detailed study despite having screened out other alternatives over almost identical congestion concerns and residential and privacy impacts. UDOT characterized SOC’s concerns as follows: “*Save Our Canyons commented that UDOT revived Gondola Alternative B that failed to pass screening in the June 2020 screening report because of political pressure*”; “[t]hey stated that the alternative failed because of mobility concerns around the parking of the base station.” FEIS at 32-60. In response to this comment, UDOT provided the following justification:

UDOT eliminated parking areas near 3662 North Little Cottonwood Road because of traffic concerns. *This alternative did not consider any improvements to S.R. 210 to mitigate the traffic impacts.* During the NEPA process, a stakeholder can suggest an alternative, and UDOT must consider that alternative. A gondola alternative was suggested to UDOT at La Caille that also included traffic-mitigation measures on North Little Cottonwood Road. NEPA requires UDOT to evaluate that alternative. UDOT reviewed the alternative and conducted an independent analysis of the traffic mitigation. UDOT found that, with improvements to North Little Cottonwood Road, such an alternative would not cause substantial traffic congestion around the gondola base station. *UDOT also went back and looked at the alternative at 3662 North Little Cottonwood Road and how it would perform with traffic mitigation.* UDOT found that 3662 North Little Cottonwood Road would perform slightly better to reduce traffic congestion than an alternative at La Caille; however, UDOT also investigated geotechnical issues at the site and found that the area had a high potential for an earthquake rupture fault at the site and thus eliminated the alternative from further consideration. All of the

information is included in the Draft Alternatives Development and Screening Report Addendum, which demonstrates that the process regarding why this alternative was brought back into consideration was available for public review and comment.

FEIS Ch. 32 at 32-60 (emphasis added).

121. Given that the location of the 3662 North Little Cottonwood Canyon Road proposed mobility site is by all indications effectively at the same location as the proposed La Caille site,⁵ it is inexplicable that UDOT provides no explanation as to why a fault with a “high potential for an earthquake rupture fault” at that location would pose no threat to the La Caille site just 0.25 miles away. The mobility hub location at 3662 North Little Cottonwood Canyon Road is described as “vacant land between two residential developments about 0.8 mile west of S.R. 210/S.R. 209 intersection.” June 2020 Draft Alternatives Report App. H at 4. Meanwhile, the location of the La Caille gondola base station is described as being “about 0.75 mile northwest of the S.R. 209/S.R. 210 intersection.” FEIS at 2-27. Thus, it is clear that these locations are extremely close to each other, if not in virtually the same parcel. Either way, they are certainly close enough to require UDOT to explain why an earthquake fault line poses an unmanageable risk to a parking structure at one site, but is not problematic at the other.

⁵ UDOT is referring to the mobility hub located at 3662 North Little Cottonwood *Canyon* Road by referencing that “UDOT eliminated parking areas near 3662 North Little Cottonwood Road because of traffic concerns.” See June 2020 Draft Alternatives Report at 61. However, it appears that UDOT inadvertently left out the word “Canyon” from the road name. Without “Canyon” in the road name, the address 3662 North Little Cottonwood Road pulls up inconsistent map results in online searches, particularly with the added complication of the road name changing along S.R. 210 from North Little Cottonwood Road to North Little Cottonwood *Canyon* Road. Nonetheless, it is clear that UDOT’s response relates to its elimination of the potential mobility hub location at 3662 North Little Cottonwood Canyon Road. In that case, the location it speaks of is extremely close to the site of the propose La Caille base station.

122. In addition, as it did in the FEIS itself, *see* FEIS at 4-46, UDOT again acknowledges the substantial residential and privacy impacts resulting from Gondola Alternative B at La Caille:

Gondola Alternative B base station and alignment would be adjacent to several residential developments. The gondola alternatives would not pass directly over any homes. The natural views that residents have would be disrupted by the gondola infrastructure. With the gondola cabins passing overhead near their houses, residents would feel an intrusion and loss of privacy from gondola riders looking down onto their yards and homes. For many residents, the impact would be in direct conflict with their reason for living near the entrance to Little Cottonwood Canyon. UDOT would not compensate homeowners for implementation of a gondola system near their homes.

FEIS at 32-133. Similarly:

The Gondola Alternative B base station would be adjacent to existing residential developments. The increased traffic to the base station as well the operation (noise and view) of the gondola system could reduce the quality of life of some residents since it would disrupt the natural setting of the area and its rural nature.

Id. at 32-137.

123. Yet there is no explanation in the FEIS or UDOT's response to comments as to why Gondola Alternative B at La Caille, which clearly also sits near residential developments and in light of the agency's own detailed admission will cause substantial residential and privacy impacts, would not similarly be problematic and "incompatible" as gondola alternative 2 and the proposed mobility hub at 3662 North Little Cottonwood Canyon Road that were eliminated for this very reason. Gondola alternative 2 is only approximately 0.25 miles away from the proposed La Caille site,⁶ and was eliminated because, among other reasons, it "would include building a

⁶ From the same starting point—the entrance to the canyon—the La Caille gondola site is 0.75 miles away and gondola alternative 2 site is 1 mile away. *See* DEIS at 2-12 (Gondola alternative 2 located "1 mile from the entrance to the canyon immediately south of the Wasatch Boulevard and North Little Cottonwood Road intersection on the west side of S.R. 210"); *id.* at 2-87 ("The

2,500-car multistory parking structure in a residential area, and a parking structure which would not be compatible with existing residential land uses.” June 2020 Draft Alternatives Report at 52. UDOT emphasized that, in addition, “Gondola Alternative 2 would further cause privacy concerns since the gondola corridor would be near existing homes along S.R. 210 near the entrance to the canyon.” *Id.* Similarly, the mobility hub at 3662 is in effectively the same location as the proposed La Caille base station, *see supra* note 5, but was eliminated because the “[l]and is between two residential subdivisions which would *not be compatible with parking structure.*” June 2020 Draft Alternatives Report at 61 (emphasis added).

124. The full extent of UDOT’s comments on the cumulative impacts of the La Caille gondola in conjunction with other future developments, including the La Caille Center and Villages development, was simply to direct the commenters back to the FEIS. *See* FEIS at 32-211. But as demonstrated above, the FEIS itself contained no discussion or analysis of the combined impact on traffic from construction of the gondola and the new commercial development both at La Caille. *See supra* at ¶ 111.

125. There was also no meaningful response to SOC’s concerns about the impacts of gondola infrastructure on non-resort recreation users. Despite acknowledging that “[a]n indirect effect of infrastructure improvements could be users no longer wanting to visit Little Cottonwood Canyon and going to other recreation areas,” UDOT claimed that “[i]t is not possible to predict the number of users who would no longer visit Little Cottonwood Canyon and where they would choose to recreate instead”; “UDOT is improving trailhead parking to improve

base station for Gondola Alternative B would be located about 0.75 mile northwest of the entrance to Little Cottonwood Canyon.”); *id.* at Fig. 2.6-27 at 2-89 (showing the La Caille base station along S.R. 210).

safety”; and “[i]t is likely that the improvements would further deter users from Little Cottonwood Canyon.” FEIS at 32-205; *see also id.* at 20-19 (“It is not possible to predict the number of recreationists who might no longer visit Little Cottonwood Canyon because of the gondola infrastructure.”). This information that UDOT failed to furnish—let alone explain why it could not reasonably obtain such information— is not only relevant, but essential to a meaningful comparison of the Little Cottonwood Canyon alternatives. Without this information, the public (and UDOT) cannot fully understand and evaluate how the proposed action and alternatives to it will impact visitor use of the Little Cottonwood Canyon, affect recreational activities and locations of those activities inside or outside the canyon, and result in secondary impacts on tourism and socioeconomic effects in local communities.

126. With regard to the impact on the adjacent Twin Peaks and Lone Peak Wilderness Areas, UDOT’s response was to wear blinders and suggest that because the gondola towers themselves will not be within the wilderness boundaries, it need not analyze the foreseeable impacts to the very values that led Congress to designate these unique areas as Wilderness Areas in the first instance:

The proposed gondola alignments would not directly impact any designated wilderness areas. Avoidance of impacts to the Twin Peaks and Lone Peak Wilderness Areas from activities adjacent to the wilderness areas are not required. In accordance with Section 303 of the Utah Wilderness Act of 1984 (Public Law 98-428), these wilderness areas were not intended to create buffers to preclude non-wilderness activities beyond their boundaries.

FEIS at 32-127.

127. Likewise, the FEIS refused to even consider the visual impacts on views from the two adjacent wilderness areas:

Views from the Twin Peaks and Lone Peak Wilderness Areas were not specifically assessed in this analysis in accordance with Section 303 of the Utah Wilderness Act of 1984 (Public Law 98-428). This section clarifies that the creation of these wilderness areas was not intended to create buffers to preclude non-wilderness activities beyond their boundaries.

FEIS at 32-90.

J. Comments on the Final EIS

128. In response to UDOT’s FEIS, SOC reiterated its concern with the lack of regional-based solutions and the unduly narrow focus on the S.R. 210 corridor. “Getting the majority of [canyon] visitors on transit nearer their origins (homes/hotels) will remove significant traffic from the system, most notably the project area, before it even becomes a problem”; “[e]ncouraging these populations to drive and park, along routes that are seeing commuter congestion according to the EIS, makes a bad situation even worse.” SOC FEIS Comment Letter (October 17, 2022) at 8-9. “Looking at micro transit opportunities and or simply improved bus service focused on better regional connectivity will help people get to work and to our canyons without being reliant upon a vehicle.” *Id.* at 9.

129. SOC also repeated its objection to UDOT’s decision to belatedly bring forward, without rational or adequate explanation, Gondola Alternative B starting at La Caille. SOC pointed out that UDOT’s decision was made even more problematic by the fact that—after publishing the DEIS—it decided to entirely remove mobility hubs and bus service for the La Caille gondola and instead expand the parking structure to 2,500 spaces, which would require adding two additional levels to the parking structure and compound the already substantial adverse visual impact. *See* SOC FEIS Comment Letter (October 17, 2022); FEIS App. 2H at 2. As a result, the La Caille gondola became even *more* like the gondola alternative 2 UDOT

eliminated during preliminary screening because, in addition to its incompatibility with the residential area, it would concentrate traffic on S.R. 210, contribute to congestion, and thus not meet the project purpose.

K. 2023 Record of Decision

130. UDOT published the ROD for the S.R. 210: Wasatch Boulevard through Town of Alta Project on June 29, 2023 and officially selected Gondola Alternative B as the selected primary alternative, along with several sub-alternatives and certain components of the Enhanced Bus Service Alternative. ROD at 2.

131. UDOT announced that the project would be constructed in three phases. “Phase 1 will consist of Improved and Increased Bus Service (similar to the bus service described under the Enhanced Bus Service Alternative but smaller in scale to meet the demands associated with earlier years of operation), a mobility hub at the gravel pit (as described under the Enhanced Bus Service Alternative), and bus stops at the Snowbird and Alta ski resorts (as described under the Enhanced Bus Service Alternative).” ROD at 2-3. In order to induce users to take advantage of the bus service, “tolling will be implemented to coincide with the start of the bus service in Phase 1” and the No Winter Parking Alternative would be implemented once the bus service is operational and would continue even after completion of the gondola. *Id.*

132. “Phase 2 will involve constructing the Snow Sheds with Realigned Road Alternative, the Wasatch Boulevard Sub-alternative, and the Trailhead Improvements and No S.R. 210 Roadside Parking within ¼ Mile of Trailheads Alternative” and would “depend on available funding.” ROD at 3. Gondola construction, including the supporting infrastructure

(base station parking and its access roads), would not occur until Phase 3 and would also “depend on available funding.” *Id.*

133. Once the gondola is complete, however, there would be no bus service or mobility hub. “Once the gondola is operational, bus service would cease, and any repurposing of the mobility hub at the gravel pit would be evaluated.” ROD at 44.

L. Responses to Comments on the FEIS

134. UDOT again defended its limited range of alternatives: “The needs assessment study area used in the EIS did not restrict UDOT from considering alternatives outside this area”; “UDOT did consider alternatives, such as a train or a gondola from Park City and a regional bus service, outside the needs assessment study area.” ROD App. A at A-7. In other words, UDOT was not prevented from considering regional alternatives; it just decided to eliminate them all.

135. And, once again, UDOT responded to SOC’s concern that, in UDOT’s words, it “revived Gondola Alternative B that failed to pass screening in the June 2020 screening report because of political pressure. . . . [after] the alternative failed because of mobility concerns around the parking of the base station.” ROD App. A at A-17. This time, however, UDOT attempted to justify its decision to incorporate the new traffic mitigation for the La Caille gondola, asserting that it went back and applied the traffic mitigation to *gondola alternative 2*:

UDOT re-evaluated gondola alternative 2 with the similar roadway improvements and found that it would perform slightly better at reducing traffic congestion than the alternative with a base station at La Caille. However, UDOT also investigated geotechnical issues at the location of the base station for gondola alternative 2 and found that the area had a high potential for an earthquake rupture fault at the site and thus eliminated the alternative from further consideration. For more information, see Section 4.2.2.2.6, Gondola at Wasatch Boulevard and North Little Cottonwood Road, of the Draft Alternatives Development and Screening Report Addendum.

ROD RTC at A-17.

136. UDOT's response, therefore, raises two serious concerns. First, UDOT offered no explanation for the inconsistency with the explanation it offered in the FEIS Responses to Comments, in which UDOT offered the *exact same justification*, but as to a different location—the 3662 North Little Cottonwood Canyon Rd mobility hub site, *see supra* ¶ 120—that it gives in this instance for the gondola alternative 2 site. Although the two locations are close to one another, it is at best confusing and at worst misleading to assert that additional investigation was first done for the 3662 North Little Cottonwood Canyon Road mobility hub location, and then change tack and assert that the additional investigation and discovery of the earthquake threat actually occurred at the gondola alternative 2 location.

137. Second, the referenced section of the November 2020 Addendum—Section 4.2.2.2.6, Gondola at Wasatch Boulevard and North Little Cottonwood Road—first states that “[t]his alternative is the same as Gondola Alternative 2, Expanded Parking and Base Station 1 Mile from Entrance of Canyon, in the June 8 Report.” Nov 2020 Addendum at 16. UDOT then goes on to explain that, on reviewing the site conditions, “UDOT found that the site was not technically feasible because the parking structure would be located on the Wasatch Fault.” *Id.* Specifically, “[t]here is evidence that multiple seismic events having magnitudes of 6.5 to 7.5 have occurred repeatedly along this segment of the Wasatch Fault” and “[a]t the time of the 2002 study, it was estimated that there was a 16% probability of a magnitude 7 seismic event within the next 100 years.” *Id.* The site was therefore eliminated from consideration because “[v]ertical displacement at the site could severely affect the proposed parking structure and gondola base

station.” *Id.* In other words, the November 2020 Addendum itself revealed a serious earthquake risk at the gondola alternative 2 site.

138. Given that the location of the gondola alternative 2 alternative is only approximately 0.25 miles away from the proposed La Caille site,⁷ it is inexplicable that UDOT provides no explanation as to why a fault with a “high rupture potential”—indeed, a 16% chance of a magnitude 7 earthquake—is a dealbreaker for the gondola alternative 2 warranting its elimination from consideration, but poses no threat to the La Caille site just 0.25 miles away. Even in the unlikely event there is a reasonable geotechnical explanation for this glaring inconsistency, UDOT was required to provide it—especially in light of the human health and safety concerns inherent in a human-carrying gondola project sited on or near a major fault line.

139. Likewise, given that both the gondola alternative 2 and mobility hub alternatives—both either extremely close to the La Caille site (0.25 miles in the case of gondola alternative 2) or at roughly the same location as La Caille (in the case of the 3662 North Little Cottonwood Canyon Road mobility hub)—were screened out for residential and privacy concerns, UDOT did not provide or attempt to provide any explanation for why the same residential and privacy impacts would not render the La Caille site similarly incompatible with

⁷ From the same starting point—the entrance to the canyon—the La Caille gondola site is 0.75 miles away and gondola alternative 2 site is 1 mile away. *See* DEIS at 2-12 (Gondola alternative 2 located “1 mile from the entrance to the canyon immediately south of the Wasatch Boulevard and North Little Cottonwood Road intersection on the west side of S.R. 210”); *id.* at 2-87 (“The base station for Gondola Alternative B would be located about 0.75 mile northwest of the entrance to Little Cottonwood Canyon.”); *id.* at Fig. 2.6-27 at 2-89 (showing the La Caille base station along S.R. 210). Even with some slight discrepancy in the distance between these two locations, it is undeniable that they are extremely close to each other and certainly close enough to require UDOT to explain why an earthquake fault line poses a risk to a parking structure at one site, but not the other.

the surrounding residential area. Indeed, UDOT itself emphasized the extensive residential and privacy impacts from the La Caille gondola. *See* FEIS at 4-46.

140. In fact, having expanded the parking structure to 2,500 spaces and eliminated bus service and the use of mobility hubs entirely, Gondola Alternative B at La Caille now *even more* closely resembles the gondola alternative 2 that UDOT eliminated during preliminary screening due to significant residential and privacy impacts. In the June 2020 Alternatives Screening report, UDOT specifically stated that gondola alternative 2 would require a 2,500-space parking facility to be built near a residential area and concluded this was “not compatible with existing residential land uses.” *See* June 2020 Report at 52. And yet that is almost *exactly* what UDOT has now selected in its ROD via the La Caille gondola. UDOT offered no explanation, let alone a rational one, for this important contradiction at the core of this decisionmaking process.

M. Political Pressure on UDOT’s Arbitrary NEPA Process

141. As UDOT explained when it suddenly brought forward new gondola alternatives a mere five months after completing its full preliminary screening process, Gondola Alternative B starting at La Caille, “was proposed by a private developer.” November 2020 Addendum at 12.

142. In response to allegations that its decision to introduce this new concept was made under political pressure, UDOT argued it was obligated to consider the La Caille proposal: “During the NEPA process, a stakeholder can suggest an alternative, and UDOT must consider that alternative.” FEIS at 32-60. “A gondola alternative was suggested to UDOT at La Caille that also included traffic-mitigation measures on North Little Cottonwood Road. NEPA requires UDOT to evaluate that alternative.” *Id.*

143. UDOT did not disclose, however, that this “private developer” was actually a group of politically-connected business partners including Wayne Niederhauser, the former President of the Utah State Senate, and Chris McCandless, a Sandy City Councilman and the former Chair of the Central Wasatch Commission. Mr. Niederhauser and Mr. McCandless, as founding members of the real estate development firm, CW Management, used a subsidiary of their firm, Quail Run Development LLC, to purchase the land at the mouth of Little Cottonwood Canyon where they plan to build out the La Caille Center and Villages development. They then proposed to UDOT to have the La Caille gondola base station and (the now much larger) 2,500-space parking structure lie adjacent to their new development. Incidentally, the cog rail alternative resurrected by UDOT in the November 2020 Addendum and carried forward, would also have been located at La Caille, adjacent to the development owned by Mr. Niederhauser.

144. Mr. Niederhauser was very familiar with the potential for future transportation projects in Little Cottonwood Canyon. While in the Senate, Mr. Niederhauser worked closely on S.B. 277, co-sponsoring the bill that authorized \$100 million in funding for transportation projects, *including Little Cottonwood Canyon*. As the FEIS explains, “[w]ith authorization from Senate Bill 277, [UDOT] initiated an [EIS] process to identify and evaluate transportation improvement alternatives for State Route (S.R.) 210 in and near Little Cottonwood Canyon.” Indeed, the majority of those \$100 million in funds—\$66 million—were directed to Little Cottonwood Canyon, after the Utah Transportation Commission identified the canyon and S.R. 210 “as a top priority area.” FEIS at 1-6.

145. On June 3, 2020—on the eve of the June 2020 Draft Alternatives Screening Report was published a few days later—Mr. Niederhauser and Mr. McCandless met personally

with Defendant Braceras (i.e., the Executive Director of UDOT, who serves at the Governor’s pleasure) to “deliver[] him a hard copy” of the La Caille gondola proposal and later emailed a “cover letter with [their] findings” to Josh Van Jura, UDOT Trails and Group Director and Little Cottonwood EIS Project Manager. *See* Attachment 1 (email chain regarding meeting and containing La Caille proposal). It is evident from the email chain that Mr. Braceras himself later forwarded the email containing the final La Caille gondola proposal and cover letter to then Deputy Directors Terry Anne Newell and Jason Davis. *Id.* Despite identifying two other group meetings that occurred before the official opening of the comment period on the June Report (both occurring on June 4, 2020, *see* November 2020 Addendum at 2), UDOT did *not* list this meeting with Mr. Niederhauser and Mr. McCandless.

146. After urging UDOT to select the La Caille gondola alternative, Mr. Niederhauser and his partners reached out to the Governor to solicit his support for the La Caille gondola. Emails to the Governor’s Chief of Staff Justin Harding sent on July 7, 2020 show Mr. Niederhauser urging the Governor to show public support of the La Caille gondola alternative before the end of the comment period on the June 2020 Alternatives Screening report—set to close on July 10, 2020. Mr. Niederhauser went so far as to draft a letter “that can be modified to meet the Governor’s style and content” and included an additional document listing “some ideas that could be inserted into the letter.” *See* Attachment 2 (email chain soliciting the Governor’s support). Mr. Niederhauser closed by asking: “Would you see if the Governor is willing to submit a letter of support specifically for the gondola at the La Caille Station?” *Id.* Mr. Harding and Gordon Larsen, then Director of Policy to Governor Gary R. Herbet, relayed this request to Mr. Braceras, who serves the Governor, to which Mr. Braceras replied that it would be awkward

to have the governor weigh in “since UDOT is the decisionmaker” and Mr. Larsen responded: “Yeah, that’s fair. I suppose we can just let you know the Governor’s preference.” *Id.*

147. At the same time—between July 8 and July 10, 2020, in the last few days of the comment period on the June 2020 Alternatives report—several Utah State Senators submitted comments specifically in favor of the La Caille gondola, *even though the La Caille gondola alternative was not even in the June 2020 report or yet known to the public*. This included current President of the Utah State Senate, Senator J. Stuart Adams; then Senator, now Lieutenant Governor, Deidre Henderson; and Senator Kirk Cullimore, among other senators. *See* Attachment 3 (letters from Utah legislators urging selection of the La Caille gondola alternative).

148. Even USFS observed this significant campaign of political pressure on UDOT’s decisionmaking process, noting in an internal email that UDOT resurrected the cog rail alternative—also at the La Caille development—“due to industry and political pressure.” *See* Attachment 4 (email between USFS’s UDOT Liaison Lance Kovel and District Ranger Bekee Hotze). The rail alternative had been screened out initially due in part to impacts to a number of Section 4(f) resources but, like the La Caille gondola, a modified cog rail alternative at La Caille was surprisingly resurrected in the November 2020 Addendum and carried it through to the DEIS.

149. In the end, not surprisingly, UDOT selected the La Caille gondola—for which UDOT received tremendous pressure to approve from powerful, well-connected politicians and other individuals even before the public knew this alternative had been proposed—as its preferred alternative and approved it in its June 2023 ROD. UDOT even cited the economic gain that will accrue to Mr. Niederhauser and his business partners, as owners of the La Caille

development, and others as a *benefit* of selecting the La Caille gondola: “the location of the gondola base station adjacent to the La Caille Center and Villages development could provide an economic benefit to the proposed hotels, shops, and restaurants.” FEIS at 20-19.

PLAINTIFF’S CLAIMS FOR RELIEF

Claim 1: UDOT’s Violations of NEPA and the APA

150. Plaintiff hereby incorporates Paragraphs 1-149 by reference.

151. By only analyzing in detail action alternatives that would require more than one thousand personal vehicles daily to drive and park at or near the base of Little Cottonwood Canyon and screening out all project concepts outside the limited S.R. 210 study area, including the regional shuttle bus systems suggested by Plaintiff and others, UDOT arbitrarily refused to examine other reasonable means of meeting the project’s purpose and need in violation of NEPA, its implementing regulations, and the APA.

152. By applying its Level 1 screening criteria and other feasibility factors inconsistently and arbitrarily, and by failing to provide a reasoned explanation for treating otherwise similar alternatives differently, UDOT arbitrarily selected Gondola Alternative B (starting at La Caille) in violation of NEPA, its implementing regulations, and the APA.

153. By failing to take a hard look at the cumulative impacts on congestion from the La Caille gondola combined with the future La Caille Center and Villages development, both of which would bring additional personal vehicle traffic to the canyon (at odds with the project’s stated purpose and need), UDOT violated NEPA, its implementing regulations, and the APA.

154. By failing to take a hard look at the indirect and direct impacts on recreation, visitor use of the canyon, and secondary impacts on tourism and socioeconomic interests in the affected region, UDOT violated NEPA, its implementing regulations, and the APA.

155. By failing to develop and apply a quantitative or qualitative measure of the reasonably foreseeable adverse impacts to recreation resources, including well-established visitor use surveying or other methodological approaches, and by failing to explain why it could not obtain such information that is essential to a reasoned choice among alternatives, UDOT violated NEPA, its implementing regulations, and the APA.

156. For all of these reasons, UDOT's actions and omissions violate NEPA, its implementing regulations, and the APA. Plaintiff is harmed by these violations in the manner described in paragraphs 13-14.

Claim 2: UDOT's and USFS's Violations of NEPA and the APA

157. Plaintiff hereby incorporates Paragraphs 1-149 by reference.

158. By failing to adequately consider the direct and indirect effects on wilderness characteristics within the Twin Peaks Wilderness and Lone Peak Wilderness Areas, and/or by failing to consider project alternatives specifically to avoid or minimize those impacts, UDOT and USFS have violated NEPA, its implementing regulations, and the APA.

Claim 3: USFS Violation of the Wilderness Act and the APA

159. Plaintiff hereby incorporates Paragraphs 1-149 by reference.

160. By failing to preserve, or even consider the best means of preserving, the wilderness characteristics of the Twin Peaks Wilderness and Lone Peak Wilderness Areas, simply because the gondola infrastructure itself is outside the Wilderness Area boundary

(although still on land administered by USFS), USFS has violated the Wilderness Act and the APA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment for Plaintiff ordering the following relief:

1. Declaring that UDOT and USFS have violated NEPA and its implementing regulations and also have acted arbitrarily, capriciously, and contrary to law under the APA;
2. Declaring that USFS has violated the Wilderness Act and also has acted arbitrarily, capriciously, and contrary to law under the APA;
3. Setting aside UDOT's June 2023 ROD and the September 2022 FEIS prepared by both UDOT and USFS, and remanding those matters to UDOT and USFS for further consideration consistent with applicable federal law;
4. Enjoining UDOT and USFS from taking any further actions in furtherance of this project until the UDOT has fully complied with federal law;
5. Awarding Plaintiff its costs of litigation, including reasonable expert fees and attorneys' fees, pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 and 23 U.S.C. § 327(m), and/or any other applicable provision of law; and
6. Granting Plaintiff such further relief as may be necessary and appropriate or as the Court deems just and proper.

Respectfully submitted,

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