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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

SALT LAKE CITY CORPORATION;
SANDY CITY CORPORATION; and
METROPOLITAN WATER DISTRICT OF
SALT LAKE & SANDY,

Plaintiffs,

**PETITION FOR REVIEW OF AGENCY
ACTION**

Civil No. 2:23-cv-00893

Judge David Barlow

vs.

GLORIA M. SHEPHERD; IVAN
MARRERO; FEDERAL HIGHWAY
ADMINISTRATION; MARY
FARNSWORTH; UNITED STATES
FOREST SERVICE; CARLOS
BRACERAS; TERIANNE S. NEWELL;
UTAH DEPARTMENT OF
TRANSPORTATION,

Defendants.

INTRODUCTION

1. This case involves the Federal Defendants’ (as identified below in Paragraphs 21–28) failure to address the water resource and other environmental impacts of several proposed transportation improvements approved for implementation in Little Cottonwood Canyon, Utah, collectively named by the Federal Defendants as the “S.R. 210: Wasatch Boulevard through Town of Alta Project.”

2. At issue are the Federal Defendants’ uninformed and unlawful approvals of a system of enhanced bus service and tolling on State Road 210 (“S.R. 210”); physical improvements on S.R. 210, including road widening, trailhead improvements, avalanche mitigation systems, and parking changes; and construction of a gondola and supporting facilities to provide a non-road means of accessing the Alta and Snowbird ski resorts at the upper end of Little Cottonwood Canyon (collectively, the “Project”).

3. At certain times during the winter, S.R. 210 becomes a bottleneck. S.R. 210 backs up when there is too much traffic in and near Little Cottonwood Canyon going up to the ski resorts

and trailheads along the way, and/or when travel is disrupted by avalanche risk, avalanche control, and avalanches. Occasional traffic issues also arise at other times of the year.

4. The Federal Defendants describe the purpose of the project (“Project Purpose”) as “improve[ing] the transportation-related commuter, recreation, and tourism experiences for all users of S.R. 210 through transportation improvements that improve roadway safety, reliability, and mobility on S.R. 210.” *See* UTAH, UTAH DEP’T OF TRANSP., FINAL ENVIRONMENTAL IMPACT STATEMENT AND SECTIONS 4(F)/6(F) EVALUATION FOR LITTLE COTTONWOOD CANYON, S.R. 210: WASATCH BOULEVARD THROUGH THE TOWN OF ALTA IN COTTONWOOD HEIGHTS, SANDY, AND THE TOWN OF ALTA, SALT LAKE COUNTY, at 1-7 (Sept. 2022) [*hereinafter* FEIS].¹

5. The Federal Defendants have decided to spend over \$1 billion on the Project to attempt to solve the S.R. 210 transit issues and achieve the Project Purpose. The largest share of this money (>\$730 million) would be spent on the gondola. Collectively, the Project would not only attempt to debottleneck S.R. 210 during the periods when it presently backs up, but the Project would also increase overall summer and winter use throughout Little Cottonwood Canyon. Increased traffic in Little Cottonwood Canyon would have a large array of environmental impacts, including increased risks to water quality; increased demands on limited water supplies; visual, noise, and other impacts to wilderness and other protected properties throughout Little Cottonwood Canyon; increased traffic congestion and accompanying air quality reduction in the roadway network leading to the base of the canyon; cumulative impacts; and significant economic and environmental justice effects.

¹ The FEIS documents are available at *Little Cottonwood Canyon, Final EIS*, UTAH DEP’T OF TRANSP., <https://littlecottonwoodeis.udot.utah.gov/final-eis/> (last visited Dec. 8, 2023).

6. In essence, the Federal Defendants analyzed the S.R. 210 bottleneck and related transit issues in Little Cottonwood Canyon as if S.R. 210 was a regular road through a nondescript setting and the proposed improvements were run-of-the mill enhancements to that road. In fact, S.R. 210 is a narrow passage between federal wilderness areas, and the entirety of Little Cottonwood Canyon is a critical drinking water source protection area for the Salt Lake Metropolitan area. S.R. 210 is also interconnected with other local roads and facilities that are significantly impacted by modifications to S.R. 210. S.R. 210 only accounts for 54% of the traffic leading to Little Cottonwood Canyon. Notably, the EIS completely disregarded S.R. 209 and in essence ignored 46% of the traffic impacts the Project will bring. Federal Defendants in some cases diminished, and in other cases completely ignored, this critical context to the Project, in violation of the law.

7. This lawsuit challenges two agency actions taken in a Record of Decision (“ROD”) dated June 29, 2023, and published in the Federal Register on July 14, 2023, following the preparation of the FEIS. *See* UTAH, UTAH DEP’T OF TRANSP., RECORD OF DECISION: LITTLE COTTONWOOD CANYON, S.R. 210: WASATCH BOULEVARD THROUGH THE TOWN OF ALTA IN COTTONWOOD HEIGHTS, SANDY, AND THE TOWN OF ALTA, SALT LAKE COUNTY (June 2023) [*hereinafter* ROD];² *see also* Notice of Availability of the Record of Decision for the Little Cottonwood Canyon Project in Utah and Final Federal Agency Actions, 88 Fed. Reg. 45268 (Jul. 14, 2023). The first is the Federal Defendants’ decision to approve the collection of actions described as “Enhanced Bus Service Alternative.” The second is the Federal Defendants’ adoption of “Gondola Alternative B,” which commits the Federal Defendants to implement the gondola.

² The ROD documents are available at *Little Cottonwood Canyon, Record of Decision*, UTAH DEP’T OF TRANSP., <https://littlecottonwoodeis.udot.utah.gov/record-of-decision/> (last visited Dec. 8, 2023).

8. Plaintiffs also further challenge the decision of the Federal Defendant United States Forest Service (“USFS”) to rely on the FEIS in making future approvals related to the Project.

9. In the FEIS and in issuing the ROD, Federal Defendants made numerous legal and factual errors. These include:

- The erroneous conclusion that water resources are adequate and/or available for the increased usage of Little Cottonwood Canyon that the Project will cause;
- The erroneous conclusion that the Project and its impacts pose *de minimis* risks to water quality in Little Cottonwood Canyon, which is a critical drinking water supply source for the Salt Lake Metropolitan area;
- The failure to even evaluate the visual and noise impacts of the Project on the adjacent Twin Peaks and Lone Peak Wilderness Areas;
- The failure to evaluate, avoid, and mitigate Project impacts to other public resources in Little Cottonwood Canyon;
- The failure to adequately evaluate the greenhouse gas emissions caused by the Project or to evaluate in any way the effects of a changing climate on the need for and operation of the Project;
- The complete disregard for traffic impacts on S.R. 209 and, thereby, the failure to analyze the effects of the Project on existing and future congestion issues in Sandy City and neighboring communities directly intertwined with a proposed base station and parking garage at the mouth of Little Cottonwood Canyon;
- The failure to adequately consider the economic and environmental justice effects of the Project;

- The failure to evaluate the indirect and cumulative effects of the Project on nearby Big Cottonwood Canyon (another drinking water source protection area for the Salt Lake Metropolitan Area) and other nearby resources outside of Little Cottonwood Canyon; and,
- The failure to develop Gondola Alternative B in sufficient detail that the Federal Defendants could rationally select this alternative and other federal agencies could give required approvals.

10. In finalizing the EIS and issuing the ROD notwithstanding these errors, the Federal Defendants failed to comply with the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 *et seq.*—our nation’s charter for environmental protection—by failing to sufficiently analyze impacts of the Project. The impacts of the Project on water quality and quantity, the effects of climate change on the future need for and operation of the Project, the effects of the Project on adjacent federal wilderness areas, the impacts of the Project on congestion in and around Sandy City, the indirect and cumulative impacts of the Project on Big Cottonwood Canyon and other canyons in the area, and the environmental justice impacts of the Project were not analyzed or addressed consistent with NEPA. The Federal Defendants’ approval of Gondola Alternative B also was improper because it lacked details related to the costs, ownership, and operation of the gondola. Additionally, the analysis of gondola ridership versus driving in the canyon was not adequately developed sufficient for Federal Defendants to understand whether the gondola fits the Project Purpose.

11. Defendant USFS also failed to comply with substantive requirements of the Wilderness Act of 1964, 16 U.S.C. §§ 1131–1136 (the “Wilderness Act”), specifically Section 4(b), by adopting the analysis of Project in the FEIS without considering the impacts to the

wilderness character of the Twin Peaks and Lone Peak Wilderness Areas and without evaluating measures to avoid, reduce, or mitigate such impacts.

12. Federal Defendants failed to comply with Section 4(f) of the Transportation Act of 1966, Pub. L. 89-670, 80 Stat. 931 (1966) (codified as amended at 49 U.S.C. § 303 and 23 U.S.C. § 138), by failing to avoid and minimize impacts to sensitive public resources, specifically lands protected as a drinking water source and adjacent wilderness areas affected by the Project.

13. Accordingly, Federal Defendants' approvals in the ROD violated NEPA, the Wilderness Act, the Transportation Act of 1966, and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et seq.*

JURISDICTION AND VENUE

14. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 (federal question), 1346 (United States as a defendant), 1361 (officers as defendants), 2201 (declaratory relief), and 2202 (injunctive relief).

15. Plaintiffs' claims arise under the judicial review provision of the APA, 5 U.S.C. §§ 701–706.

16. An actual and present controversy exists between the parties within the meaning of the Declaratory Judgment Act, 28 U.S.C. § 2201.

17. Venue is proper in this judicial district under 28 U.S.C. § 1391 and 5 U.S.C. § 703 because the Project's affected areas lie entirely within the Central Division of the District of Utah and most of the acts and omissions giving rise to the Plaintiff's claims occurred in Salt Lake County, State of Utah.

PARTIES

18. Plaintiff Salt Lake City Corporation ("SLC") is a Utah municipality. SLC, acting by and through its Department of Public Utilities, is responsible for a wide array of public services

in the Salt Lake Metropolitan area, including but not limited to providing safe drinking water and water for other uses for more than 365,000 residents, businesses and commerce, institutions, the State Capitol, and regionally critical facilities, such as the intermountain region’s Level 1 Trauma Center hospital and the Huntsman Cancer Institute at the University of Utah. SLC is the largest retail water supplier in the State of Utah, serving water to the eastern portion of the growing Wasatch Front, including in Salt Lake City and portions of Millcreek City, Holladay City, Cottonwood Heights City, and other communities in Salt Lake County. *See Salt Lake City Public Utilities, Water Quality, SALT LAKE CITY* (last visited Dec. 7, 2023).³ The SLC drinking water system is comprised of a vast array of water infrastructure, including several water treatment plants and a large and complex water distribution system. This water infrastructure is designed around, and reliant on, the high quality of water within the canyon streams of the Central Wasatch Mountains, including Little Cottonwood Creek. SLC is regulated as a Public Water System pursuant to the federal and state Safe Drinking Water Acts. SLC also provides wastewater collection and treatment, stormwater collection and treatment, and flood control in Salt Lake City, and is regulated pursuant to the federal Clean Water Act and the Utah Water Quality Act. SLC holds the majority of the water rights in the Central Wasatch Mountains, including in the Little and Big Cottonwood watersheds, which are put to beneficial use across SLC’s service area in the Salt Lake Valley in accordance with Utah statutory requirements. SLC also has jurisdictional authority in the Central Wasatch Mountain watersheds, including in Little Cottonwood Canyon, to regulate activities to avoid pollution of these critical drinking water sources and to mitigate the risks of drinking water contamination and adverse public health impacts. SLC has, for the last 120

³ The Salt Lake City sources and service territory map can be accessed by clicking on the “Map of SLC Drinking Water Sources and Service Area” drop down at <https://www.slc.gov/utilities/water-quality/>.

plus years, proactively conducted watershed protection activities to ensure a reliable water supply and healthy environment. All development within these mountain watersheds is reliant on water supply permits obtained from SLC that allow the use of SLC's water rights. SLC, the Salt Lake City Mayor, and the Salt Lake City Council have established policies and ordinances that limit the use of SLC's water rights from these watersheds so that SLC will continue to have reliable and clean sources of water to serve its large water service area in the Salt Lake Valley.

19. Plaintiff Sandy City Corporation ("Sandy City") is a Utah Municipality. Sandy City is responsible for a wide array of public services in the Sandy metropolitan area, including but not limited to transportation, traffic enforcement, and public safety to and from Little Cottonwood Canyon on public roads in Sandy City. In addition, Sandy City, through its Department of Public Utilities, provides safe drinking water and water for other uses for more than 100,000 residents, businesses and commerce, institutions, and critical facilities. Sandy City water rights constitute between 30% and 46% of the Little Cottonwood Creek surface flow, depending on creek flow rates. At times, Little Cottonwood Creek water meets the majority of Sandy City's needs. Little Cottonwood Creek surface water reaches Sandy City homes, business, and public facilities within a very short time span—at times within 4 to 8 hours—which underscores the need to protect the Little Cottonwood Creek watershed from pollution so that public health is protected. Sandy City's Little Cottonwood Creek water is treated at, and delivered from, the Little Cottonwood Water Treatment Plant ("LCWTP"). Sandy City is regulated as a Public Water System pursuant to the federal and state Safe Drinking Water Acts. Sandy City also provides stormwater collection, treatment, and flood control, and is regulated pursuant to the federal Clean Water Act and the Utah Water Quality Act. Sandy City has shared source watershed protection jurisdiction over Little Cottonwood Canyon, to regulate activities to avoid pollution or degradation of these critical

sources of drinking water. Sandy City supports and relies upon its partners, including SLC and Metropolitan Water District of Salt Lake & Sandy (“MWDSLS”) for active watershed management and source protection of Little Cottonwood Canyon.

20. Plaintiff MWDSLS is a Metropolitan Water District, a form of Special District, governed by Utah Code Title 17B, Chapters 1 and 2a, particularly Title 17B, Chapter 2a, Part 6. MWDSLS is an independent political subdivision of the State of Utah. MWDSLS provides an on-demand, supplemental, wholesale, treated water supply to its two member cities, SLC and Sandy City. On average MWDSLS provides approximately half of the Sandy City water supply, and approximately one third of the SLC water supply. MWDSLS’s water makes up a significant and critical portion of the water supply for approximately 450,000 Salt Lake County residents and supplies redundancy and resiliency to over a million users in the metropolitan area. MWDSLS built, owns, and operates the LCWTP where it collects, treats, and delivers a wholesale water supply for SLC and Sandy. The LCWTP is located at the mouth of Little Cottonwood Canyon. It is the facility where Little Cottonwood water is treated and delivered to the public. Its water treatment operations are directly affected by the activities, conditions, and water supply of Little Cottonwood Canyon.

21. Defendant Gloria M. Shepherd is sued in her official capacity as the Executive Director the Federal Highway Administration (“FHWA”). In this capacity she is responsible for overseeing all federal highway and street programs.

22. Defendant Ivan Marrero is sued in his official capacity as the Division Administrator for the Utah Division of the FHWA. In this capacity he is responsible for overseeing federal highway and road projects within the state of Utah, including the Project at issue here.

23. Defendant United States FHWA is a Federal agency within the United States Department of Transportation that is directly responsible for carrying out the Department's obligations under statutes and regulations governing federally funded transportation projects, including compliance with NEPA, the Transportation Act of 1966, and the Wilderness Act.

24. Defendant Mary Farnsworth is sued in her official capacity as the Regional Forester for the USFS Intermountain Region.

25. Defendant USFS is a federal agency within the United States Department of Agriculture that is directly responsible for carrying out the Department's obligations to comply with NEPA and the Wilderness Act for lands under its jurisdiction, including lands in the Uinta-Wasatch-Cache National Forest.

26. Defendant Carlos Braceras is sued in his official capacity as the Executive Director of the Utah Department of Transportation ("UDOT"). In this capacity, he is responsible for administration, operations, and activities of UDOT.

27. Defendant Terianne S. Newell is sued in her official capacity as Deputy Director of UDOT. In this capacity, she is responsible for implementing responsibilities delegated by the FHWA to UDOT with respect to the Project, including signing the ROD that is the subject of this Petition.

28. Defendant UDOT is a Utah State Agency that has been delegated responsibilities of the FHWA with respect to the Project, including evaluating whether certain activities are categorically excluded from the requirements of NEPA and implementation of the NEPA review process for surface transportation projects within the state of Utah pursuant to 23 U.S.C. §§ 326 and 327 and Utah Code § 72-6-120. Pursuant to Utah Code § 72-1-207, the State of Utah has

waived its Eleventh Amendment sovereign immunity with respect to this work generally, and the Project in particular.

LEGAL BACKGROUND

I. The Federal Transportation Project Process

29. The Project is asserted by UDOT and FHWA to be a federally funded highway project.

30. Federal law imposes extensive procedural requirements on federally funded highway projects. *See generally* 23 U.S.C. §§ 101–611.

31. Project proponents must provide the Secretary of Transportation with sufficient information for the Secretary to evaluate the Project. *Id.* § 109(a). Federal law also allows relevant authorities to agree on funding and power sharing, *id.* § 109(b)–(c); requires proponents and regulators to assess (among other things) reliability and value during the planning and design phase, *see, e.g., id.* § 106(e)–(f); and generally imposes oversight, reporting, and other obligations on project proponents and participants, *see id.* § 106(f)–(j); *see also, e.g., id.* §§ 107, 114, 116 (imposing other requirements on federally funded highway projects).

32. Federal law requires compliance with NEPA before construction of a federal highway project begins. *See generally id.* § 139.

33. Federal law also requires that the Secretary of Transportation identify and involve other stakeholders and develop a coordination plan to ensure compliance for projects for which NEPA requires an environmental impact statement. *Id.*

34. Federal statutes additionally permit federal authorities to “assign” (and allows states to “assume”) “the responsibilities of the Secretary [of Transportation] with respect to one or more highway projects within the State under [NEPA].” 23 U.S.C. § 327(a)(2)(A).

35. Such responsibilities may include “all or part of the responsibilities of the Secretary for environmental review, consultation, or other action required under any Federal environmental law pertaining to the review or approval of a project.” *Id.* § 327(a)(2)(B)(ii).

36. If a state assumes the Secretary of Transportation’s responsibilities under NEPA, federal law requires that the state follow “the same procedural and substantive requirements as would apply if that responsibility were carried out by the Secretary.” *Id.* § 327(a)(2)(C).

37. UDOT has ratified a memorandum of understanding with the Department of Transportation in which UDOT has assumed the Department of Transportation’s responsibilities under NEPA. *See generally* Mem. of Understanding Between Fed. Highway Admin. & Utah Dep’t of Transp. Concerning State of Utah’s Participation in the Surface Transp. Project Delivery Program Pursuant to 23 U.S.C. 327, Fed. Highway Admin. & Utah Dep’t Transp. (Jan. 17, 2017), as amended and updated on May 26, 2022.⁴ Consequently, UDOT is responsible for ensuring that the Project complies with NEPA, and UDOT is a “federal defendant” for purposes of judicial review of the Project under the Administrative Procedure Act.

II. The National Environmental Policy Act

38. NEPA establishes a national policy to “encourage productive and enjoyable harmony between man and his environment” and to “promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man.” 42 U.S.C. § 4321.

39. Pursuant to NEPA, the White House Council on Environmental Quality (“CEQ”) oversees other federal agencies’ implementation of NEPA, including by issuing regulations and other guidance addressing NEPA procedures and prescribing, among other things, what must be

⁴ https://drive.google.com/file/d/12Jna5-hBJOQIcIqJ4sFLV0_JRSp_LmKF/view (last visited Dec. 7, 2023).

included in an environmental impact statement. *See* NEPA Title II, 42 U.S.C. §§4342–4344; 40 C.F.R. Parts 1500–1508. CEQ’s NEPA regulations, which were first promulgated in 1978 and have since been updated periodically, are binding on all federal agencies. *See* 40 C.F.R. §1500.3(a); *see also generally* 43 Fed. Reg. 25230 (June 9, 1978). However, many federal agencies, such as the FHWA, may and have adopted their own NEPA regulations to “supplement” the CEQ NEPA regulations. *See* 23 C.F.R. Part 771; *see also* 40 C.F.R. §1500.6.

40. NEPA aims to achieve these goals by requiring federal agencies to identify and take a “hard look” at the environmental impacts of their proposed actions and consider a reasonable range of alternatives before taking, authorizing, or funding “major Federal actions significantly affecting the quality of the human environment.” *See Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989) (citing 42 U.S.C. § 4332(C)). Specifically, NEPA and its regulations require that, when a federal agency plans to undertake, authorize, or fund an action that will likely “significantly affect[] the quality of the human environment,” it must prepare a detailed environmental impact statement. 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1501.3. The EIS must detail:

(i) the environmental impact of the proposed action, (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented, (iii) alternatives to the proposed action, (iv) the relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity, and (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

42 U.S.C. § 4332(2)(C); *see also* 40 C.F.R. Part 1502. It must also discuss “[p]ossible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local land use plans, policies and controls for the area concern,” “[m]eans to mitigate adverse environmental impacts,” and “[n]atural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.” 40 C.F.R. § 1502.15(a).

41. The scope of the “environmental effects,” or “environmental consequences,” that must be evaluated in an EIS includes “changes to the human environment from the proposed action or alternatives that are reasonably foreseeable,” and the “direct effects,” “indirect effects,” and “cumulative effects” of the same. *See* 40 C.F.R. § 1508.1(g). Notwithstanding various temporary changes in the regulations, the inclusion of indirect and cumulative effects has long been a part of the CEQ’s NEPA regulations. *See* 43 Fed. Reg. 25230, 25244 (June 9, 1978) (defining “cumulative impact” in § 1508.7, and “effects” in § 1508.8 as including “indirect effects, which are caused by the action and are later in time or farther removed in distances, but are still reasonably foreseeable” and “may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems”). Likewise, the United States Supreme Court has long held that NEPA requires taking a “hard look” at all environmental effects, including indirect effects. *See Marsh v. Oregon Nat. Res. Council*, 490 U.S. 360, 373–74 (1989); *see also Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976) (holding, even before adoption of the 1978 regulations, that NEPA requires consideration of “cumulative or synergistic environmental impacts[s]”). Further, NEPA regulations promulgated by FHWA have, since their 1987 inception, included analyses of cumulative effects as part of NEPA analyses, even during and after regulatory changes made during the last presidential administration. *See* 52 Fed. Reg. 32660 (Aug. 28, 1987); 83 Fed. Reg. 54480 (Oct. 29, 2018).

42. “Cumulative effects” are:

effects on the environment that result from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.

See 40 C.F.R. § 1508.1(g)(3). In addition, the definition of “effects” includes

ecological . . . , aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effects will be beneficial.

See 40 C.F.R. § 1508.1(g)(4). Among the various types of indirect and cumulative impacts that must be considered, “[t]he impact of [greenhouse gas] emissions on climate change is precisely the kind of [] impacts analysis that NEPA requires agencies to conduct.” *Diné Citizens Against Ruining Our Env't v. Haaland*, 59 F.4th 1016, 1035 (10th Cir. 2023) (citation omitted). Relatedly, “NEPA [also] requires an evaluation of the impact of climate change on a project.” See *AquAlliance v. United States Bureau of Reclamation*, 287 F. Supp. 3d 969, 1028 (E.D. Cal. 2018).

43. Prior to and during the development of an EIS, NEPA requires a robust public engagement, comment, response, and revision process. At the outset, the lead agency for a project works with the public to determine the scope of the project, alternatives, and the environmental review by publishing in the Federal Register a Notice of Intent to Prepare an EIS (“NOI”), which describes the proposed action’s purpose and need, preliminary description, alternatives to be considered, and expected impacts, and invites public comments on environmental issues. See 40 C.F.R. § 1501.9(d), (e). An agency may “not define the project so narrowly that it foreclose[s] a reasonable consideration of alternatives.” *Davis v. Mineta*, 302 F.3d 1104, 1119 (10th Cir. 2002) (overruled on other grounds by *Dine Citizens Against Ruining Our Env't v. Jewell*, 839 F.3d 1276, 1281–82 (10th Cir. 2016)).

44. After public scoping comments, the lead agency prepares a Draft EIS that analyzes direct, indirect, and cumulative impacts of the proposed action and alternatives. See 40 C.F.R. § 1502.9. The agency publishes the Draft EIS in the Federal Register and invites public comment.

See 40 C.F.R. Part 1503. The agency must consider, respond to, and, as appropriate, revise the Draft EIS before issuing a Final EIS and ROD. See 40 C.F.R. § 1503.4.

45. NEPA “requires agencies preparing environmental impact statements to consider and respond to the comments of other agencies,” and while the lead federal agencies need not agree with those comments, “it is also true that a reviewing court may properly be skeptical as to whether an EIS’s conclusions have a substantial basis in fact if the responsible agency has apparently ignored the conflicting views of other agencies having pertinent expertise.” *Davis*, 302 F.3d at 1123 (citations and internal quotation marks omitted). This concern is heightened when the commenting agency is also a cooperating agency in the NEPA process.

III. The Wilderness Act

46. The Federal Wilderness Act, specifically Section 4(b), mandates that the wilderness character of any federally designated wilderness area be preserved and that wilderness areas “shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use.” See 16 U.S.C § 1133(b).

47. The duty to ensure compliance with Wilderness Act requirements falls upon all federal agencies and their agents acting in and around wilderness areas, but it is specifically also the responsibility of the federal agency managing the surface of the wilderness areas—in this case, the USFS.

48. As part of the impacts analysis under NEPA, the specific impacts to the wilderness character of affected wilderness areas must be analyzed. See *Izaak Walton League of Am. v. Kimbell*, 516 F. Supp. 2d 982, 987–90 (D. Minn. 2007); *Greater Yellowstone Coal. v. United States Forest Serv.*, 12 F. Supp. 3d 1268, 1275–79 (D. Idaho 2014).

49. The Utah Wilderness Act of 1984, 98 P.L. 428, 98 Stat. 1657, is the federal legislation by which Congress designated many federal lands in Utah as wilderness areas,

including the Twin Peaks Wilderness area at issue here, which abuts the UDOT-managed road up Little Cottonwood Canyon, over which the gondola would run.

50. Section 303 of the Utah Wilderness Act states that “[t]he fact that nonwilderness activities or uses can be seen or heard from areas within the wilderness shall not, *of itself*, preclude such activities or uses up to the boundary of the wilderness area.” *Id.* (emphasis added) (“Buffer Zone Provision”). Notably, the Endangered American Wilderness Act of 1978, Pub. L. 95-237, 92 Stat. 40 (1978), which created the Lone Peak Wilderness Area, does not contain the Buffer Zone Provision.

51. Many state Wilderness Acts have similar language precluding the establishment of buffer zones, including Nevada, Washington, and Wyoming. *See* Nevada Wilderness Protection Act of 1989, Pub. L. No. 101-195, § 7, 103 Stat. 1784, 1787–88 (1989) (“Congress does not intend that the designation of wilderness areas in the State of Nevada implies the creation of protective perimeters or buffer zones around each wilderness area.”); Washington State Wilderness Act of 1984, Pub. L. No. 98-339, § 9, 98 Stat. 299, 305 (1984) (same); Wyoming Wilderness Act of 1984, Pub. L. No. 98-550, § 504, 98 Stat. 2807, 2813 (1984) (same).

52. Where it applies, the analysis of impact to wilderness areas under NEPA is not precluded by the inclusion of a Buffer Zone Provision in a state’s Wilderness Act. Indeed, courts have held that there is a duty under the Wilderness Act to examine the impacts of activities outside of the boundaries of a wilderness area that may affect the wilderness, and any Buffer Zone Provision is limited to its express terms. *See Izaak Walton League*, 516 F. Supp. 2d at 987–90; *Greater Yellowstone Coalition*, 12 F. Supp. 3d at 1275–79. As a result, federal agencies analyzing proposed projects adjacent to wilderness areas must consider the noise and visual impacts, along

with other impacts, of the proposals on the wilderness, and make reasoned judgments as to the extent such impacts can be avoided, reduced, or mitigated.

IV. The Transportation Act of 1966

53. The Transportation Act of 1966 effectuates the Federal Government’s policy that “special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges and historic sites.” 49 U.S.C. § 303(a).

54. Consequently, Section 4(f) of the Transportation Act of 1966, as amended, provides that if a transportation program or project “requir[es] the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge . . . , or land of an historic site” and the property is “of national, State, or local significance,” the project may only proceed if “there is no prudent and feasible alternative,” and “the program or project includes all possible planning to minimize harm to the [property] . . . resulting from the use.” *Id.* § 303(c).

55. Courts take a broad view of what constitutes Section 4(f)-protected land, in part due to the Transportation Act’s explicit policy “that special effort should be made to preserve the natural beauty of the countryside” and other protected properties. *Stewart Park & Res. Coal., Inc. v. Slater*, 352 F.3d 545, 555 (2d Cir. 2003).

56. Similarly, courts “broadly” construe “use” under the Transportation Act, *see Honolulutraffic.com v. Fed. Transit Admin.*, 742 F.3d 1222, 1227 (9th Cir. 2014), and regulations make clear that use may be “constructive” as well as overtly physical, *see* 23 C.F.R. § 774.17.

57. The most common type of use occurs when “land is permanently incorporated into a transportation facility.” *Id.*

58. “Constructive use,” however, occurs when “the transportation project does not incorporate land from a Section 4(f) property, but the project’s proximity impacts are so severe

that the protected activities, features, or attributes that qualify the property for protection under Section 4(f) are substantially impaired.” *See* 23 C.F.R. § 774.15(a).

59. The government must evaluate constructive use in light of: (1) “the current activities, features, or attributes of the property which qualify for protection under Section 4(f) and which may be sensitive to proximity impacts”; (2) the net “proximity impacts of the proposed project” accounting for any mitigation; and (3) “[c]onsultation on the foregoing identification and analysis, with the official(s) with jurisdiction over the Section 4(f) property.” *Id.* § 774.15(d).

60. Regulations *presume* constructive use when “[t]he proximity of the proposed project substantially impairs esthetic features or attributes of a property protected by Section 4(f), where such features or attributes are considered important contributing elements to the value of the property,” among other things. *Id.* § 774.15(e).

61. The government may not “use” Section 4(f) property, physically or constructively, if there is a “reasonable and prudent alternative.” 49 U.S.C. § 303(c). And even if no reasonable and prudent alternative exists, the government may only pursue the alternative that “causes the least harm.” 23 C.F.R. § 774.17.

62. In ascertaining the alternative that “causes the least harm,” the government must consider:

- (i) [t]he ability to mitigate adverse impacts to each Section 4(f) property (including any measures that result in benefits to the property);
- (ii) [t]he relative severity of the remaining harm, after mitigation, to the protected activities, attributes, or features that qualify each Section 4(f) property for protection;
- (iii) [t]he relative significance of each Section 4(f) property;
- (iv) [t]he views of the official(s) with jurisdiction over each Section 4(f) property;
- (v) [t]he degree to which each alternative meets the purpose and need for the project;
- (vi) [a]fter reasonable mitigation, the magnitude of any adverse impacts to resources not protected by Section 4(f); and
- (vii) [s]ubstantial differences in costs among the alternatives.

23 C.F.R. § 774.3(c)(1).

63. The Transportation Act does exempt certain uses from its requirements, but only if that use is *de minimis*. 49 U.S.C. § 303(d).

64. 63. A use is *de minimis* only if the use will have no adverse effect on the protected properties at issue. *Id.*

V. Environmental Justice

65. In 1994, President Clinton signed Executive Order 12898, requiring that

each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States.

Exec. Order No. 12,898, § 1–101, 59 Fed. Reg. 7629 (Feb. 16, 1994) (“EO 12898”). EO 12898 is still in effect today.

66. The Department of Transportation and FHWA have likewise long imposed environmental justice obligations upon themselves, pursuant to EO 12898.

67. In 2011, the FHWA issued a Memorandum providing guidance on Environmental Justice and NEPA, which directs that FHWA NEPA documents should include: “a discussion of major proactive efforts to ensure meaningful opportunities for public participation including activities to increase low-income and minority participation;” “the views of the affected population(s) about the project and any proposed mitigation;” “what steps are being taken to resolve any controversy that exists;” and “the degree to which the affected groups of minority and/or low-income populations have been involved in the decision-making process related to the alternative selection, impact analysis and mitigation.” *See* Memorandum, Guidance on Environmental Justice and NEPA, U.S. Dep’t of Trans’n, Fed. Highway Admin. (Dec. 16, 2011).⁵

⁵ https://www.environment.fhwa.dot.gov/env_topics/ej/guidance_ejustice-nepa.aspx (last visited December 7, 2023).

68. In 2012, the FHWA issued Order 6640.23A, which established policies and procedures for FHWA to use in complying with EO 12898. *See* U.S. Fed. Highway Admin., FHWA Order 6640.23A, FHWA Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (June 14, 2012) [hereinafter FHWA Order 6640.23A].⁶ These include directing the FHWA to evaluate “whether a particular program, policy, or activity will have disproportionately high and adverse effects on minority and low-income populations,” and “take into account mitigation and enhancement measures and potential offsetting benefits to the affected minority and/or low-income populations.” *See id.*

69. In May 2021, the Department of Transportation issued Order 5610.2(c), the Final Department of Transportation Environmental Justice Order, which is an update to its earlier Environmental Justice Order (Departmental Order 5610.2(a)), which was published on April 15, 1997. *See* U.S. Fed. Highway Admin., FHWA Order 6640.23A, FHWA Actions to Address Environmental Justice in Minority Populations and Low -Income Populations (June 14, 2012) [hereinafter FHWA Order 6640.23A].⁷ The 2021 Order states that “[c]ompliance with Executive Order 12898 is an ongoing [Department of Transportation] responsibility” and declares that it is the Department of Transportation’s “policy to administer and monitor its operations and decision-making to ensure that nondiscrimination and the prevention of disproportionately high and adverse effects are an integral part of its programs, policies, and activities.” *Id.*

⁶http://www.fhwa.dot.gov/legregs/directives/orders/664023a.cfm?_gl=1*4ymg6c*_ga*MTEyOTgyMTg3MC4xNjk1ODQ2Njg3*_ga_VW1SFWJKBB*MTcwMTgxOTgzNy4xMi4xLjE3MDE4MjAyNzAuMC4wLjA (last visited Dec. 7, 2023).

⁷http://www.fhwa.dot.gov/legregs/directives/orders/664023a.cfm?_gl=1*4ymg6c*_ga*MTEyOTgyMTg3MC4xNjk1ODQ2Njg3*_ga_VW1SFWJKBB*MTcwMTgxOTgzNy4xMi4xLjE3MDE4MjAyNzAuMC4wLjA (last visited Dec. 7, 2023).

70. While EO 12898 and the FHWA and Department of Transportation orders do not in and of themselves create private rights of action, courts allow “challenges to environmental-justice analyses under NEPA and the APA.” *See Standing Rock Sioux Tribe v. U.S. Army Corps of Eng’rs*, 255 F. Supp. 3d 101, 136 (D.D.C. 2017) (citing *Cmtys. Against Runway Expansion, Inc. v. F.A.A.*, 355 F.3d 678, 689 (D.C. Cir. 2004)) (holding that an environmental justice claim was “properly before this court because it arises under NEPA and the APA” and is “properly subject to arbitrary and capricious review under the APA”), *aff’d in part, rev’d in part, Standing Rock Sioux Tribe v. U.S. Army Corps of Eng’rs*, 985 F.3d 1032, 1039 (D.C. Cir. 2021) (affirming the district court’s finding that the Army Corps’ NEPA analysis was inadequate and must be remanded and the pipeline easement at issue must be vacated, but reversing the district court’s order to shut down and empty the pipeline pending a new EIS). A federal agency’s environmental justice analysis must be something more robust than a “bare bones conclusion.” *Id.* at 138–40 (holding that it was arbitrary and capricious for the Army Corps to use a 0.5 mile buffer for its environmental justice analysis in an [environmental assessment] and to only consider the environmental justice impacts caused by the proposed Project’s construction while ignoring certain environmental justice impacts (oil spill) that might occur during operations).

VI. The Administrative Procedure Act

71. The APA provides a right to judicial review for any “person suffering legal wrong because of agency action.” 5 U.S.C. § 702. Actions that are reviewable under the APA include final agency actions “for which there is no other adequate remedy in a court.” 5 U.S.C. § 704.

72. Under the APA, a reviewing court shall “hold unlawful and set aside agency action . . . found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

FACTUAL BACKGROUND

I. Congestion in Little Cottonwood Canyon

73. Little Cottonwood Canyon is in the Uinta-Wasatch-Cache National Forest and is home to two internationally recognized ski resorts, Alta and Snowbird, as well as two National Wilderness Areas, Twin Peaks Wilderness to the north and Lone Peak Wilderness to the south. The canyon is used extensively for outdoor recreation and also supports habitat for native wildlife communities and native plants. Little Cottonwood Canyon receives about 2.1 million visitors per year. *See* FEIS, at 1-5. Transportation in and out of Little Cottonwood Canyon is limited to S.R. 210. S.R. 210 in the canyon is supplied by three primary feeder roads: (1) S.R. 210 from the north, carrying approximately 54% of the volume before it turns east into the canyon; (2) S.R. 209, carrying 40% from the south until S.R. 209 merges with S.R. 210; and (3) Wasatch Boulevard, carrying another 6% from the south. Several smaller surface streets in Sandy City come into play as travelers seek to find the moment-to-moment best option among the three feeder roads.

74. Parking in Little Cottonwood Canyon is provided at the two ski resorts, at certain trailheads, and at the park-and-ride lots at the base of the canyon. Limited parking in designated areas has resulted in roadside parking in various areas throughout the canyon.

75. Users of S.R. 210 experience decreased mobility in winter during the morning and afternoon peak travel periods related to visits to the ski resorts. Winter peak periods are tied to the opening and closing times of the ski areas.

76. Concerns related to safety also exist for S.R. 210, resulting from avalanche hazards and traffic delays caused by avalanche mitigation work. Road closures for avalanche mitigation can cause travel delays in the canyon, which in turn can cause traffic to back up to the neighborhoods at the entrance of the canyon. This is of particular sensitivity as it relates to emergency response, as response times can be delayed in urgent situations due to the congestion.

77. Prior to the initiation of the NEPA process, UDOT, the Utah Transit Authority, and other agencies and organizations conducted studies on traffic, parking, transit use, and avalanche impacts within Little Cottonwood Canyon and along S.R. 210 as part of the Mountain Accord. The Mountain Accord brought together various interests to create a sustainable plan for preserving the Central Wasatch Mountains, inclusive of short- and long-term transportation recommendations.

78. The general recommendations from the Mountain Accord process included increasing transit service in winter and summer, formalizing parking to designated areas, making improvements for avalanche safety, improving bicycle and pedestrian facilities, making operational traffic improvements, and considering tolling. UDOT considered these recommendations as it developed a preliminary purpose of and need for the S.R. 210 project. Nothing comparable to Gondola Alternative B is included in the Mountain Accord.

79. UDOT also considered the Wasatch Front Regional Council's ("WFRC") 2015–2040 Wasatch Front Regional Transportation Plan, the Cottonwood Heights General Plan, and the Wasatch Boulevard Master Plan, all of which identified needs for transportation improvements in the area.

80. In 2017, the Utah legislature passed Senate Bill 277, *Highway General Obligation Bonds Authorization*, which included 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.” FEIS, at 1-6. The Utah Transportation Commission—the group charged with prioritizing projects—identified Little Cottonwood Canyon as a top-priority area due to its high recreation use and economic benefit from tourism to the state.

81. With authorization under Senate Bill 277 and in anticipation of receiving substantial federal funding, UDOT initiated the NEPA process to identify and evaluate alternatives to improve transportation for S.R. 210 and near Little Cottonwood Canyon.

II. Environmental Resources in Little Cottonwood Canyon

82. Little Cottonwood Canyon is located in the Central Wasatch Mountains, which have long been an environmental oasis above an arid valley with a now-booming metropolis. Little Cottonwood Canyon is home to towering, largely undisturbed mountains; the forests of the Uinta-Wasatch-Cache National Forest; the Twin Peaks Wilderness and Lone Peak Wilderness areas; diverse native vegetation; native wildlife and their habitat; and an array of water resources and riparian areas, including reservoirs, lakes, ponds, wetlands, and Little Cottonwood Creek and its tributaries—a protected drinking water source for the valley below.

83. The Little Cottonwood Creek watershed, along with the nearby Big Cottonwood Canyon, City Creek Canyon, and Parleys Canyon watersheds, is a congressionally designated source of the drinking water supply managed by SLC, and SLC is regulated as a Public Water System pursuant to the federal and state Safe Drinking Water Acts. *See* Salt Lake City Dep't of Pub. Util., Little Cottonwood Canyon Draft Environmental Impact Statement Salt Lake City Comments, Comment ID 13339, at 4 (Aug. 30, 2021) [hereinafter SLC DEIS Comment Letter]; *see also* Salt Lake City Dep't of Pub. Util., Salt Lake City Comments for the FINAL Little Cottonwood Canyon Environmental Impact Statement (August 2022), Comment ID 38624, at 2 (Oct. 17, 2022) [hereinafter SLC FEIS Comment Letter].⁸ Approximately 60% of the drinking

⁸ UTAH DEP'T OF TRANSP., RECORD OF DECISION: LITTLE COTTONWOOD CANYON, S.R. 210: WASATCH BOULEVARD THROUGH THE TOWN OF ALTA IN COTTONWOOD HEIGHTS, SANDY, AND THE TOWN OF ALTA, SALT LAKE COUNTY, APP'X A3: REPRODUCTION OF MAILED COMMENTS RECEIVED AS EMAIL ATTACHMENTS, at A3-256 (June 2023), <https://littlecottonwoodeis.udot.utah.gov/wp-content/uploads/2023/07/LCC-ROD-AppA3.pdf>

water supply managed by SLC comes from these four canyons. *See Drinking Water 101, SALT LAKE CITY PUBLIC UTILITIES.*⁹ In addition, SLC holds the majority of the water rights in the Central Wasatch Mountains, including approximately 70% of water rights to Little Cottonwood Creek. *See SLC DEIS Comment Letter*, at 2 (Aug. 30, 2021). The other approximately 30% of Little Cottonwood Creek water rights are held by Sandy City. *Id.*

84. Little Cottonwood Canyon plays a unique role in the delivery of water throughout the Salt Lake Metropolitan Area, because Little Cottonwood Creek water is gravity-fed directly into the LCWTP, which supplies water throughout much of the Salt Lake Valley without the need for pressurization. This makes Little Cottonwood Creek water especially valuable for system-wide redundancy, resiliency, and rapid response.

85. Effective and efficient operation of Plaintiffs' drinking water infrastructure, and the protection of public health, is reliant on the high incoming quality of water from within the canyon streams, including Little Cottonwood Creek. Because of the high quality of the source waters, water from near the tops of the canyons reaches the end-users' taps in less than 24 hours, with minimal treatment needed as compared to many of our nation's drinking water supplies. *See Drinking Water 101, SALT LAKE CITY PUBLIC UTILITIES; see also SLC FEIS Comment Letter*, at 2. This rapid delivery from source to user is highly valuable to efficient water supply management, but it also means Plaintiffs' water infrastructure operators have less time to detect and respond to variations in water quality that might compromise human health and welfare. *Id.*

86. As a drinking water source, Little Cottonwood Canyon is no ordinary watershed. It is subject to an array of federal and state drinking water regulatory standards and protections for drinking water that go above and beyond Clean Water Act regulations for non-drinking uses of

⁹ <https://www.slc.gov/utilities/watershed/> (last visited Dec. 8, 2023).

waters, pursuant to the Utah Safe Drinking Water Act and the federal Safe Drinking Water Act. These laws and regulations impose numeric standards for specific contaminants of concern to protect human health, as well as narrative standards or aesthetic quality standards for drinking water, and anti-degradation standards to protect high-quality water. *See generally* UTAH ADMIN. CODE r. 309-200 (Utah drinking water standards), r. 317-2 (standards for quality for waters of the State); *see also* FEIS, at 12-1–12-9. As the operator of a Public Water System, SLC is responsible for protecting Little Cottonwood as a source of drinking water supply, and SLC has extra-jurisdictional authority in the Central Wasatch Mountain watersheds, including in Little Cottonwood Canyon, to regulate activities to avoid pollution of these critical sources of drinking water. *See* UTAH ADMIN. CODE § 10-8-15; UTAH CODE r. 309-600-12. Part of this state-imposed responsibility includes developing and implementing a drinking water source protection plan, which plan must (and does) identify sources of contamination, include drinking water source protection zones around drinking water sources, and designate types of new construction projects that are restricted within zones of protection. *See generally* UTAH ADMIN. CODE r. 309-605 (Utah drinking water source protection rules); *see also* FEIS, at 12-1–12-9. The same is true for SLC’s other drinking water sources, such as Big Cottonwood Canyon. *See* FEIS, at 12-4.

87. Pursuant to these obligations, SLC ordinances set standards and conditions for water use; make certain acts unlawful (such as swimming or bathing in waters within Little Cottonwood, and generally bringing dogs into the canyon); and restrict certain activities such as dog ownership and disposal of garbage and sewage for canyon residents. *See* Salt Lake City Ordinance 17.04 (Watershed Areas).¹⁰

¹⁰ https://codelibrary.amlegal.com/codes/saltlakecityut/latest/saltlakecity_ut/0-0-0-57639 (last visited Dec. 8, 2023).

88. The Salt Lake Valley Health Department similarly (and jointly) regulates activities, uses, and occupancy within protected watersheds, including Little Cottonwood. *See* Salt Lake Valley Health Department Health Regulation 14 (Watershed Regulations).¹¹

89. Stringent local source water protection ordinances and regulations are implemented in other parts of the country, although the specific forms vary according to the specific needs of the region.¹² Indeed, many jurisdictions prohibit all human use of watershed protection areas out of concern for protecting the purity of drinking water resources. In that respect, the users of Little Cottonwood and other area canyons have been fortunate that, to date, Plaintiffs have been able to allow multiple uses of these resources while simultaneously maintaining water supplies and quality. This has required constant vigilance.

90. In addition to these local and state drinking water source protections, the USFS also bears responsibility for watershed protections. Because Little Cottonwood Canyon is a critical and protected drinking water source, the USFS's primary management goal for Little Cottonwood Canyon is protection of the long-term culinary water supply, and Congress has directed the USFS to administer the designated watersheds in cooperation with SLC for the purpose of storing, conserving, and protecting drinking water from pollution. *See* U.S. FOREST SERVICE, REVISED FOREST PLAN WASATCH-CACHE NATIONAL FOREST (Feb. 2003);¹³ *see also* FEIS, at 12-1–12-3 and 12-45–12-50.

¹¹ <https://slco.org/globalassets/1-site-files/health/regs/watershed.pdf> (last visited Dec. 8, 2023).

¹² *See Basic information about Source Water Protection*, U.S. ENV'T'L PROT. AGENCY (last updated March 14, 2023), <https://www.epa.gov/sourcewaterprotection/basic-information-about-source-water-protection> (last visited Dec. 7, 2023) (providing examples of source water protections measures).

¹³ https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5347083.pdf (last visited Dec. 8, 2023).

91. The most significant risks to the water resources in Little Cottonwood and nearby watersheds include overuse and increasing development of the watershed, which are greatly exacerbated by the impacts of climate change, including drought and wildfire. *See SLC FEIS Comment Letter*, at 1. The reliance on current and future water supplies by 450,000 people underscores the critical need for careful evaluation of any potential impacts of the proposed Project on the water resources.

92. Little Cottonwood Canyon already receives more than 2 million visitors and 1 million vehicle trips per year and is utilized year-round. *See FEIS*, at 20-3. Winter visitors enjoy skiing at the two resorts and dispersed throughout the backcountry, snowshoeing, and ice climbing. Summer visitors enjoy hiking, cycling, rock climbing, fishing, camping, picnicking, and scenic driving. *See id.* The number of visitors and the amount of development in Little Cottonwood Canyon is likely to grow as a result of the proposed gondola.

93. All development within these mountain watersheds is reliant on water supply permits obtained from SLC that allow the use of SLC's water rights. Because of SLC's significant water rights holdings in Little Cottonwood Canyon, it is the primary provider of raw water in the canyon through contracts with the resorts and the Town of Alta. SLC cannot expand the quantity or geographic areas associated with these contracts, and there are no additional water rights that can be developed. *See SLC DEIS Comment Letter*, at 5; *see also* Salt Lake City Ordinance 17.04.020.

94. In addition to being a protected drinking water source, Little Cottonwood Canyon is home to two federally designated National Wilderness Areas—the Lone Peak Wilderness (30,088 acres) and the Twin Peaks Wilderness (11,796 acres)—that are destinations for many hikers, backcountry skiers, rock climbers, fishers, mountaineers, and outdoor enthusiasts seeking

the solitude of the wilderness. These two wilderness areas contain rugged terrain, complex geology with exposed granite rocky ridges, picturesque high-mountain lakes and reservoirs, a mix of open cirques and dense forests, high peaks soaring above 11,000 feet, and breathtaking views.¹⁴ As with other USFS wilderness areas, the Lone Peak and Twin Peaks Wilderness Areas are generally closed to motor vehicles, mechanized equipment, hang gliders, and bicycles in order to preserve and protect the physical and aesthetic environment, in addition to the above-discussed drinking watershed protections enforced by SLC and others. Importantly, the statutes creating the two wilderness areas *did* create limited exceptions for motorized access and otherwise-prohibited facilities as might be necessary to preserve and protect these areas as drinking water sources. *See, e.g.*, Section 2(i) of the Endangered American Wilderness Act of 1987.

III. Development of the Project

A. Scoping and Development of Purpose and Need

95. On March 9, 2018, the FHWA, on behalf of UDOT, published a NOI to prepare an EIS for proposed transportation improvements in and near Little Cottonwood Canyon. 83 Fed. Reg. 10545 (Mar. 9, 2018).

96. In response to scoping comments received and by defining the purpose of and need for improvements to S.R. 210, the FHWA, on behalf of UDOT, published a revised NOI in 2019. 84 Fed. Reg. 7967 (Mar. 5, 2019). UDOT revised the scope of the EIS to include: (1) taking no action; (2) adopting one or more alternatives involving multiple, combined actions, including Transportation System Management, enhancing safety and improving mobility through avalanche

¹⁴ *See Lone Peak Wilderness Area*, U.S. FOREST SERVICE, https://www.fs.usda.gov/detail/uwcnf/about-forest/districts/?cid=fsem_035453 (last visited Dec. 7, 2023); *see Twin Peaks Wilderness Area*, U.S. FOREST SERVICE, https://www.fs.usda.gov/detail/uwcnf/about-forest/districts/?cid=fsem_035482 (last visited Dec. 7, 2023).

mitigation, improving designated parking at existing trailheads, and/or road improvements to S.R. 210 on Wasatch Boulevard; or (3) other alternatives if identified during the EIS process.

97. In October 2019, UDOT released its Draft Purpose and Need Chapter, defining the purpose of and need for the S.R. 210 Project. UT DEP'T OF TRANSP., DRAFT PURPOSE AND NEED CHAPTER – LITTLE COTTONWOOD CANYON ENVIRONMENTAL IMPACT STATEMENT, WASATCH BOULEVARD TO ALTA, (Oct. 30, 2019).¹⁵ Simultaneously, UDOT released a Draft Alternatives Development and Screening Methodology and Preliminary Concept Report, describing the alternatives development and screening process to be used for the Little Cottonwood EIS. UT DEP'T OF TRANSP., DRAFT ALTERNATIVES DEVELOPMENT AND SCREENING METHODOLOGY AND PRELIMINARY CONCEPT REPORT – LITTLE COTTONWOOD CANYON ENVIRONMENTAL IMPACT STATEMENT, WASATCH BOULEVARD TO ALTA (Oct. 30, 2019).¹⁶

98. Based on the comments received, UDOT prepared a revised Draft Purpose and Need Chapter. UT DEP'T OF TRANSP., DRAFT PURPOSE AND NEED CHAPTER – LITTLE COTTONWOOD CANYON ENVIRONMENTAL IMPACT STATEMENT, WASATCH BOULEVARD TO ALTA, (May 4, 2020) [hereinafter “2020 Draft Purpose and Need Chapter”].¹⁷ UDOT also released a revised Draft Alternatives Development and Screening Methodology and Preliminary Concept Report, identifying two new alternatives. UT DEP'T OF TRANSP., DRAFT ALTERNATIVES DEVELOPMENT AND SCREENING METHODOLOGY AND PRELIMINARY CONCEPT REPORT – LITTLE

¹⁵ <https://littlecottonwoodeis.udot.utah.gov/wp-content/uploads/2020/05/Little-Cottonwood-EIS-Chapter-1-Purpose-and-Need-4-Nov-19.pdf> (last visited Dec. 8, 2023).

¹⁶ <https://littlecottonwoodeis.udot.utah.gov/wp-content/uploads/2020/05/Little-Cottonwood-EIS-Screening-Methodology-Report-4-Nov-19.pdf> (last visited Dec. 8, 2023).

¹⁷ https://littlecottonwoodeis.udot.utah.gov/wp-content/uploads/2020/05/Little_Cottonwood_EIS_Chapter_1_Purpose_and_Need_May_2020.pdf (last visited Dec. 8, 2023).

COTTONWOOD CANYON ENVIRONMENTAL IMPACT STATEMENT, WASATCH BOULEVARD TO ALTA, (May 4, 2020).¹⁸

99. In this 2020 Draft Purpose and Need Chapter, UDOT described the purpose of the Project as follows: to “improve the transportation-related commuter, recreation, and tourism experiences for *all users* of S.R. 210 through transportation improvements that improve roadway safety, reliability, and mobility on S.R. 210.” *See* UTAH DEP’T OF TRANSP., DRAFT ENVIRONMENTAL IMPACT STATEMENT AND SECTIONS 4(F)/6(F) EVALUATION FOR LITTLE COTTONWOOD CANYON, S.R. 210: WASATCH BOULEVARD THROUGH THE TOWN OF ALTA IN COTTONWOOD HEIGHTS, SANDY, AND THE TOWN OF ALTA, SALT LAKE COUNTY, at 1-9 (June 2021) (emphasis added) [hereinafter Draft EIS or DEIS].¹⁹ However, UDOT then went on to explain that the needs for the Project generally relate to decreased mobility during wintertime travel to and from the ski areas, safety concerns associated with avalanche mitigation, and limited parking at trailheads and ski areas, which does not match up with the Project Purpose to improve tourism experiences for “all users of S.R. 210” but instead focuses only on wintertime ski uses in Little Cottonwood Canyon. *See id.* at 1-10.

B. Plaintiffs’ Participation in the Project Analysis

100. As a municipality with jurisdiction in the area of the Project, SLC agreed to be a cooperating agency for the NEPA process. *See* 40 C.F.R. § 1501.8(a). As a cooperating agency, SLC engaged in the NEPA process as soon as was practicable and provided comments during each stage of the NEPA process.

¹⁸https://littlecottonwoodeis.udot.utah.gov/wp-content/uploads/2020/05/Little_Cottonwood-EIS_Screening_Methodology_Report_May_2020.pdf (last visited Dec. 8, 2023).

¹⁹ The DEIS documents are available at *Little Cottonwood Canyon, Draft EIS*, UTAH DEP’T OF TRANSP., <https://littlecottonwoodeis.udot.utah.gov/draft-eis/> (last visited Dec. 8, 2023).

101. All of the Plaintiffs provided comments during the scoping period and on the Purpose and Need and Draft Alternatives and Screening Methodology documents. *See Salt Lake City Department of Public Utilities Scoping Comments for the Little Cottonwood Canyon Environmental Impact Statement* (May 4, 2018), Comment ID 435; *Salt Lake City Department of Public Utilities Comments on Notice of Intent to Revise Scope of the Little Cottonwood EIS* (June 14, 2019), Comment ID 730; *Salt Lake City Department of Public Utilities Comments for the Little Cottonwood Canyon EIS Draft Purpose and Need and Draft Alternatives and Screening Methodology* (Dec. 13, 2019), Comment ID 316; *Metropolitan Water District of Salt Lake & Sandy Comments for the Little Cottonwood Canyon EIS Draft Purpose and Need and Draft Alternatives Screening Methodology* (Dec. 13, 2019), Comment ID 4510; *Sandy City Public Utilities Comment Letter* (July 8, 2020), Comment ID 5036; *Salt Lake City Comments Draft Alternatives Development and Screening Report, Little Cottonwood Canyon Environmental Impact Statement SR 210 – Wasatch Boulevard to Alta, June 8, 2020* (July 3, 2020), Comment ID 2547.

102. Plaintiffs' comments in the early stages requested that protection of the drinking water supply be included in the Project's Purpose and Need statement. Plaintiffs contended that this would align with the history of public land management strategy in the region, current land use plans, and current permitting that guides the water quality stewardship in Little Cottonwood Canyon. SLC also requested recognition of its legal jurisdiction and regulatory obligations to state and federal agencies as a Public Water Supplier.

103. SLC requested that the Level 1 Screening Criteria for the development of the alternatives include protection of drinking water sources and impacts to the federal Safe Drinking Water Act and the state of Utah Safe Drinking Water Act. SLC also requested that impacts on the

federal Clean Water Act be elevated to the Level 1 Screening Criteria, and include analysis of impacts against other sections of the Clean Water Act in addition to Section 404.

104. In developing alternatives, SLC asked that UDOT include in the screening criteria impacts of project alternatives on SLC's ability to put its water rights to beneficial use. Plaintiffs additionally asked that UDOT include analysis of whether alternatives would impact current water infrastructure. SLC noted that impacts to water quality could result in direct and indirect impacts to the integrity of water infrastructure, which could lead to significant costs to the public if such infrastructure were degraded.

105. SLC consistently voiced concerns about alternatives impacting the operations and management of the watershed. Increased access and use and changes in recreational use and land use patterns will have a significant impact to the management of the watershed. SLC requested that the EIS process analyze whether and how the alternatives will impact visitation and recreation demand.

106. SLC also submitted a number of comments recommending that the impacts of climate change on the natural environment and recreational use of the area be analyzed and considered as part of the development of long-term transportation and transit solutions. SLC noted that climate models demonstrate a possible rise in the rain and snow elevation and a corresponding rise in minimum snowpack elevations during the timeline of the Project, which could impact the existing winter peak strain on mobility within Little Cottonwood Canyon.

107. Because the models indicate that the Wasatch watershed can expect a drier future with reduced streamflow, which reduced flows will inevitably impact water quality, SLC again emphasized in its comments that water resources and supply should be elevated to a primary, not secondary, purpose.

108. With respect to the specific alternatives being developed, SLC again raised concerns about how each alternative would impact water supply and water quality, inclusive of stormwater impacts, impacts from spills, ecological and riparian impacts from use of snow sheds, and impacts from the construction necessary of each of the alternatives.

109. The Draft EIS was released in June 2021.

110. The primary alternatives carried forward for detailed study in the Draft EIS included the No-Action Alternative, the Enhanced Bus Service Alternative, the Enhanced Bus Service in Peak-period Shoulder Lane Alternative, Gondola Alternative A (Starting at Canyon Entrance), Gondola Alternative B (Starting at La Caille), and the Cog Rail Alternative (Starting at La Caille). Sub-alternatives considered included improvements to Wasatch Boulevard, mobility hubs, avalanche mitigation, trailhead parking, and no winter parking.

111. Plaintiffs submitted letters containing comments on the Draft EIS in August 2021. *See* SLC DEIS Comment Letter, *supra*; *Metropolitan Water District of Salt Lake & Sandy Comments for the Little Cottonwood Canyon Draft EIS* (August 30, 2021), Comment ID 13338; *Sandy City Administration Comment Letter* (Sept. 3, 2021), Comment ID 13316.

112. SLC noted concern that the preferred alternatives did not fit the stated purpose. Specifically, the alternatives selected for detailed study do not stop in areas other than the ski resorts, and they do not address safety, reliability, and mobility for all users. Rather, they only focus on a select group of users: skiers and snowboarders using the Alta and Snowbird ski resorts.

113. SLC also commented that the problems the preferred alternatives seek to solve are too narrowly defined and limit the range of alternatives for consideration. SLC urged a more holistic approach to solve problems and address impacts not only within Little Cottonwood Canyon, but also in the adjacent canyons and areas. SLC requested that the Purpose and Need

Chapter reflect the need to solve the issue of limited parking at trailheads and ski resorts and to resolve decreased mobility along Wasatch Boulevard and in adjacent neighborhoods.

114. SLC voiced concern that the analysis of the two preferred alternatives did not incorporate summer impacts to the watershed, as summer use is outside the purpose and need and scope of the Project, and requested that the cumulative, direct, and indirect impacts stemming from the summer use of the preferred alternatives be analyzed.

115. As in comments submitted during the earlier stages of environmental review, Plaintiffs again noted their jurisdiction and legal requirements to provide clean, safe water to the public, and identified concerns that such jurisdictional oversight and legal requirements were not sufficiently taken into account in the analysis of the preferred alternatives in the Draft EIS.

116. Plaintiffs commented that the Draft EIS did not thoroughly address connected actions of the preferred alternatives and therefore fail to meet the rigor of the NEPA process.

117. Plaintiffs also commented that the Draft EIS did not thoroughly analyze direct, indirect, or cumulative impacts of the preferred alternatives. SLC raised concerns that the Draft EIS did not address the limited water resources available within Little Cottonwood Canyon to handle increased capacity, nor did it acknowledge SLC's obligations associated with those resources.

118. Plaintiffs again raised a number of comments relating to the availability of water resources and impacts to water quality, citing SLC's legal jurisdiction and authority to manage waters within the watershed and Plaintiffs' legal requirements to provide clean, safe water to the public. MWDSLS and Sandy City supported and echoed all SLC's concerns regarding drinking water quality and quantity.

119. In addition, Sandy City highlighted the need for the Federal Defendants to examine the traffic impacts of the Project on S.R. 209, Wasatch Boulevard, and Sandy City neighborhood streets. Sandy City observed that the Federal Defendants were focused only on the 54% of the traffic that travels on S.R. 210, thus ignoring the 46% of the volume that currently travels S.R. 209 and Wasatch Boulevard as well as the interrelationships among the various local roads within Sandy City jurisdiction.

IV. The Final Little Cottonwood Canyon EIS and Record of Decision

120. On August 31, 2022, UDOT released the FEIS for the Project.

121. The selected Gondola Alternative B Alternative would require significant new and imposing physical infrastructure through the entire length of Little Cottonwood Canyon. The gondola component alone would require over 8.5 miles of cable with the construction of 22 gondola towers, ranging from 131 to 262 feet tall. FEIS, at 2-107. The Gondola Alternative B option also requires the construction of a base station, one station at each of the ski resort stops, and two angle stations—one sited at the Little Cottonwood Canyon park-and-ride lot at the entrance to Little Cottonwood Canyon, and a second sited adjacent to S.R. 210, west of the Tanners Flat Campground. FEIS, at 2-104. The gondola would move approximately 30 gondola cabins per hour, with an assumed capacity of approximately 35 people per cabin. FEIS, at 2-89.

122. In October 2022, the Plaintiffs submitted comments on the FEIS, reiterating the same concerns they had expressed in prior comments. *See* SLC FEIS Comment Letter, *supra*; Metropolitan Water District of Salt Lake & Sandy Comments for the Little Cottonwood Canyon Final EIS (October 17, 2022), Comment ID 35705; Sandy City Administration Comment on Little Cottonwood Final EIS (Oct. 17, 2022), Comment ID 38628. Namely, Plaintiffs expressed concerns that the FEIS lacks adequate and accurate analysis of: water supply; water quality; impacts on

adjacent wilderness; climate change impacts; the traffic issues associated with S.R. 209 Wasatch Boulevard, Sandy City neighborhood streets; and cumulative and indirect impacts.

123. On July 14, 2023, UDOT published a Notice of Availability of the Record of Decision for Little Cottonwood Canyon Project in Utah and Final Federal Agency Actions. *See* 88 Fed. Reg. 45268 (July 14, 2023).

124. Appendix A of the ROD contains responses to public comments on the FEIS. These responses and the ROD itself fail to meaningfully address the deficiencies in the FEIS that the Plaintiffs pointed out in their October 2022 comment letters and prior comment letters.

125. In the FEIS, UDOT maintained the same statement of purpose and need as developed in the 2020 Draft Purpose and Need Chapter. *See* FEIS, at 1-7, 1-8. The purpose of improving mobility for “all users” is not met by the combined selection of Enhanced Bus Service and Gondola Alternative B, because a gondola that only stops at the two ski resorts in Little Cottonwood Canyon completely ignores uses in the canyon that do not involve skiing, and does nothing to improve summer time traffic concerns at trailheads and climbing locations. In fact, the Enhanced Bus Service implementation would cease as soon as the gondola is constructed, making the likelihood of serving other uses even more remote. *See* ROD at 88. These issues were raised in comments throughout the process and dismissed by the Federal Defendants.

126. Additionally, by approving implementation of the Gondola Alternative B as a solution to the stated purpose and need, Federal Defendants did not and could not analyze whether the Enhanced Bus Service alternative alone could satisfy the purpose and need without the gondola. In fact, the gondola may just lead to increased overall use of the canyon, without reducing cars on the road, thereby exacerbating all of the impacts of the Project set forth in more detail herein. The Federal Defendants cannot estimate the inducement of using the gondola instead of

driving on S.R. 210 without explaining the economics of the interplay between a toll on the road and the cost of riding the gondola. It may be the case that riding the gondola will be so cost prohibitive that it only serves the highest economic class of users in the canyon, and therefore does very little to nothing to improve overall mobility in the canyon.

127. By narrowly defining the Purpose and Need Statement throughout the process, the Federal Defendants selected an alternative that does not meet the stated purpose—to improve mobility for all users. The Gondola Alternative B is simply not developed enough to meet any reasonable purpose, let alone the Project Purpose, when the analysis lacks details such as cost of riding, the impact of tolls, and development of incentives to eliminate cars on the road.

A. Errors and Lack of Analysis of Water Supply Impacts.

128. The Final EIS is largely silent about the ways in which the Project would require additional water resources within Little Cottonwood Canyon. The FEIS failed to acknowledge the limitations to additional future water demand in the canyon because the ski resorts and other water users in Little Cottonwood Canyon do not have their own water rights. The FEIS did not adequately identify SLC as the holder of the water rights that are relied upon by the ski resorts, and it therefore neglected to connect that induced usage and growth pressures associated with the Project would naturally increase water demand, ultimately impacting the water resources available to the public served by SLC.

129. UDOT relied on a single statement from a representative of Salt Lake County Service Area #3, which manages drinking water and sewer usage for Snowbird Ski Resort in Little Cottonwood Canyon. The representative's statement provided that "contracted water use is 34% of the total available amount, and sewer use is about 6%," and therefore, the representative believed that there is enough water and sewer capacity to accommodate increased use associated with the primary alternatives. FEIS, at 32-202. This statement was specific only to Snowbird Ski

Resort needing to expand facilities to support an increased number of users. It was not a commentary on the adequacy of supply generally in Little Cottonwood Canyon. Yet, UDOT relied on this statement to determine that the preferred alternative would not cause impacts to available water supply. In addition, the statement fails to reflect that the sole water source for Salt Lake County Service Area #3 is provided by SLC under an interruptible water supply agreement that is based on the water rights SLC holds. Per the agreement, SLC may reduce the amount of water available in times of water shortage affecting the SLC water service area. Per Salt Lake City ordinance, SLC is prohibited from expanding the amount of water and geographical boundary associated with the water supply agreement between SLC and Salt Lake County Service Area #3.

130. The FEIS failed to identify water resource impacts specific to Alta Ski Resort. Alta Ski Resort has its own surplus water supply agreement with SLC with a ceiling established for water use that, per SLC ordinance and policy, cannot be exceeded. Furthermore, as SLC pointed out in exchanges with UDOT, the Service Area #3 representative was not knowledgeable about current water constraints or increased water needs associated with the Project. These comments by SLC were ignored by UDOT.

131. The FEIS did not give any consideration to year-round increased water needs throughout the rest of Little Cottonwood Canyon, such as at the enhanced trailheads, including those needs for fire suppression, bathrooms, or culinary sources of water. The FEIS also did not evaluate the water necessary for fire suppression at the snow sheds other than to say that UDOT would work with SLC to supply such water. Water resources may not be available to support additional new infrastructure and increased visitation due to physical and legal limitations of the resource. As previously noted, SLC holds most of the water rights in the Little Cottonwood Creek watershed and, because water in this area is already a limited resource and SLC policies prohibit

expanding the quantity or geographic area associated with these water rights, there are no additional water rights that can be developed.

132. The FEIS did not evaluate how growth in the canyon caused by the Project would create additional demand for water and interfere with the needs of the current and future needs of the public within SLC's water service area.

B. Lack of Analysis of Water Quality Impacts from the Project.

133. The FEIS dismissed concerns about water quality, characterizing such impacts as *de minimis*. FEIS, at 12-36. The FEIS does not appear to have considered how an impact that is *de minimis* in the context of an ordinary watershed is potentially much more significant in the context of a drinking water source protection area. The SLC watershed area within Little Cottonwood Canyon is protected under federal law, state law, and municipal ordinance. Impacts to this area are more significant and should be given more weight.

134. The FEIS relies on use of a water quality model called the Stochastic Empirical Loading and Dilution Model, developed by the U.S. Geological Survey in cooperation with the FHWA, to estimate the effects of the Project alternatives on the water quality of Little Cottonwood Creek. This model relies on stormwater quality data from roadways, *i.e.* run-off water from pavement, and is therefore more appropriate for use when evaluating roadway water quality impacts. It is not designed to evaluate water quality impacts from other types of construction, including construction of a gondola.

135. The modeling inputs and screening criteria relied upon in the FEIS are not tailored to the special requirements of drinking water source protection in the watershed. Moreover, this model does not take into account the proximity of the proposed infrastructure to Little Cottonwood Creek or potential wetlands. The modeling relied upon in the FEIS is insufficient to adequately analyze the potential water quality impacts for the Project.

136. The FEIS does not analyze other foreseeable potential impacts to water quality, such as spills, accidents, or concentration of new industrialized uses in and around Little Cottonwood Creek. In response to related comments, UDOT stated that the “gondola systems are not anticipated to generate pollutants,” and in response to Plaintiffs’ concerns, secondary containment with leak-detection monitors has been included for the fuel storage necessary for the gondola’s backup power generators. FEIS, at 32-174.

137. The La Caille base terminal is a component of the Preferred Alternative selected. Due to its location, the terminal would direct a significant amount of commercial and private automobile traffic near the intake of the MWDSLs water treatment plant that treats Little Cottonwood Creek water for SLC’s and Sandy City’s water service areas. Siting a commercial-style development in this area near the intake could impact the quality of the water being treated, affecting the water treatment processes and the ability of the plant to deliver safe drinking water.

138. The FEIS does not satisfactorily analyze these concerns. It relies only on the Stochastic Empirical Loading and Dilution Model results to support the conclusion that the modeling found “*de minimis* differences between the No-Action Alternative and the five primary action alternatives” and thus, “any alternative should not affect treatment processes or . . . [the] ability to deliver safe drinking water.” FEIS, at 32-174. However, the water quality monitoring focused solely on run-off from S.R. 210 and did not consider the increased traffic in and around the gondola base station.

C. Lack of Analysis of Impacts of Project on Adjacent Wilderness

139. The FEIS does not include any analysis of visual and noise impacts of the Project on the adjacent Twin Peaks and Lone Peak Wilderness Areas. In omitting such evaluation, the Federal Defendants relied on the Buffer Zone Provision of the Utah Wilderness Act of 1984.

140. The fact that the Utah Wilderness Act states that activities outside of a wilderness area cannot be precluded on the basis of impacts observed within the wilderness area does not in turn mean that such impacts cannot be considered, or can be ignored, by a project proponent during the NEPA process. The Utah Wilderness Act does not exempt actions affecting wilderness from NEPA review.

141. In addition, by its plain terms the Buffer Zone Provision only prohibits visual and noise impacts from being the *sole* reason for *rejecting* boundary area activities or uses. It does not exempt agencies from analyzing such impacts altogether, from rejecting projects that, as here, have visual impacts in combination with other impacts, or from considering measures to mitigate visual and noise impacts in project design and implementation.

142. The Federal Defendants were capable of evaluating the visual and noise impacts of the Project where they chose to. The FEIS notes that the key observation point (“KOP”) selection process did include a review of KOP locations along certain trails adjacent to these wilderness areas, including Red Pine Trail, in order to assess impacts on views from the USFS managed trails. FEIS, at 17-8. In reliance on their misinterpretation of the Buffer Zone Provision (and apparent misunderstanding that the Buffer Zone Provision even applies to the Lone Peak Wilderness), the Federal Defendants conducted no similar analysis for the Twin Peaks or Lone Peak Wilderness Areas.

143. Importantly, on April 23, 2021, the USFS published a notice in the Federal Register stating that “[t]he Forest Service intends to use the EIS to make its decision for the NFS lands it administers.” 86 Fed. Reg. 21683, 21684 (Apr. 23, 2021). The USFS further stated that,

[a]s stated in all three NOIs, the project may require FHWA to appropriate NFS lands and transfer such lands to the UDOT, which would be in the form of a non-exclusive right-of-way for highway purposes. UDOT will make a decision for project activities on lands

that will be appropriated by FHWA at the time of implementation of those activities. A Forest Service decision will apply to project activities, if any, that occur on NFS lands that are not appropriated by FHWA at the time of implementation of those activities.

Id. at 21683–84.

144. The FEIS identifies the following approvals that may be needed from the USFS:

- Federal Land Right-of-way Transfer (Federal Highway Administration and USDA Forest Service);
- Easement and/or Special-use Permit (USDA Forest Service);
- Forest Plan Amendment (USDA Forest Service); and
- Contract for Removal of Merchantable Timber (USDA Forest Service)

FEIS, at S-29.

145. The USFS did not object to or contest the erroneous interpretations of the Buffer Zone Provision articulated in the FEIS.

D. Lack of Analysis of Climate Change Impacts of the Project and On the Project

146. The FEIS fails to analyze the Project’s climate change impacts. It also fails to analyze the impacts that a changing climate will have on the Project that will, in turn, impact the surrounding environment and communities.

147. The FEIS contains no mention of climate change or drought in its water resources section, nor its ecosystem resources chapter, nor its indirect effects chapter, nor mitigation measures chapter, and no substantive discussion of climate change in the cumulative impacts section.

148. The FEIS does contain, within the Air Quality chapter, a brief quantitative comparison of the greenhouse gas (“GHG”) emissions expected to result from the Project as compared to each alternative. *See* FEIS, at 10-26. But the FEIS fails to analyze and cursorily

dismisses the climate impacts of these emissions of the Project, stating that it is too “difficult to isolate and understand the impacts of GHG emissions for a particular transportation project.” *See id.* The FEIS additionally states that carbon dioxide-equivalent (“CO₂e”) “emissions are expected to be marginally lower for bus service compared to gondola service, and CO₂e emissions with both the bus service and gondola service are expected to be lower than with the cog rail service.” *Id.* The FEIS also puts CO₂e emissions for each of the alternatives into purported “context” by stating that the estimated emissions “are far below EPA’s mandatory reporting threshold for stationary sources . . . and far below EPA’s threshold to trigger permitting requirements for major stationary sources.” *Id.* EPA reporting thresholds for *stationary* sources have no bearing on transportation emissions, nor obligations under NEPA to analyze a project’s environmental impacts, including greenhouse gas emissions and climate change impacts. Such comparative analysis shows only that there are other large sources of emissions; it does not support a conclusion that the Project’s emissions are inconsequential.

149. The FEIS also asserts that “[a]ll of the action alternatives would have lower CO₂e emissions than the No-Action Alternative, resulting in a reduction in GHG emissions.” *Id.* This assertion fails to square with the FEIS’s acknowledgment that a potential indirect effect of the Project is that it will simply push travelers to “visit other ski resorts that are not accessed via roads with restrictions,” primarily S.R. 190 in Big Cottonwood Canyon, and that this “could increase congestion” on S.R. 190 and down-canyon roads leading to S.R. 190. *See id.* at 20-9, 20-20–20-23. This effective acknowledgement that the Project may shift cars and associated emissions from one road to another undercuts the conclusion that the Project lowers GHG emissions.

150. Further, the FEIS’s financial modeling fails to adequately project the pricing of gondola tickets, which is an essential factor in determining how well-utilized the gondola will be

as compared to personal vehicles. As noted in SLC's FEIS Comment letter, the cost of the gondola is likely underestimated, given inflation and supply chain issues, and the per person price of a roundtrip gondola ticket would likely have an influence on whether the capacity of 1,000 people per hour would be achieved. Without a pricing structure modeled to determine feasibility, it is unclear if the selected option would substantially increase mobility within the Project area. *See* SLC FEIS Comment Letter, at 3. Therefore, any conclusions that build off unsubstantiated assumptions about gondola utilization are likewise unsubstantiated, including the FEIS's conclusions about the Project's emissions.

151. The FEIS also fails to analyze the impacts that a changing climate will have on the Project that will, in turn, impact the surrounding environment and communities. For example, the FEIS fails to analyze how more extreme weather events in the future that may cause flooding, avalanches, or fires that could damage the Project's infrastructure and how that damaged infrastructure may damage the surrounding environment. Nor does the FEIS consider how climate change may impact the Project and its "affected environment" such that the proposed project no longer serves its intended purpose. To the extent that a warmer climate reduces snowfall and/or the duration of the skiing season, the need for the Project may be correspondingly reduced. Congestion issues may be resolvable with the Enhanced Bus Service Alternative alone, eliminating the need or cost-justification for the gondola. The FEIS does not consider these issues in any way.

152. The FEIS is likewise silent about how drought and climate change may impact water supply for the Project and the region's drinking water. The Project may be severely impacted if there is insufficient water to support current levels of use of Little Cottonwood Canyon, much less increased use induced by the Project. In addition, insufficient or overdrawn quantities of water can significantly impact water quality. *See* SLC FEIS Comment Letter, at 1–2; *see also* PUD No.

I v. Wash. Dep't of Ecology, 511 U.S. 700, 719 (1994) (recognizing that “water quantity is closely related to water quality”). Therefore, any water quality analysis of the FEIS is incomplete without examining water quantity and without examining the potential for diminishing and impaired water resources under a changing climate.

E. Failure to Address Traffic and Other Impacts of the Project on S.R. 209, Wasatch Boulevard, and Sandy City Neighborhoods.

153. Sandy City observed in comments on both the Draft EIS and FEIS that the Federal Defendants were directing all their analysis and Project design to address 54% of the traffic flow into the canyon. Sandy City also noted that the Project would include a 2,500 stall parking structure in Sandy City in a geographically, geologically, and environmentally constrained location, and the structure would likely have significant unstudied impacts on usage of and impacts from traffic on S.R. 209, Wasatch Boulevard, and Sandy City neighborhoods. In multiple meetings with Sandy City, UDOT’s general response was to assert that issues on S.R. 209, Wasatch Boulevard, and Sandy City neighborhoods would be addressed in unspecified future transportation projects.

154. Aside from the inadequacy of deferring *resolution* of such issues to an undetermined future, the FEIS lacks any analysis of the immediate *impacts* of the Project on those roads and neighborhoods. The FEIS thus omits discussion of clear direct and indirect impacts of the Project in the immediate Project area. The EIS recommended widening S.R. 210 to a five-lane cross-section from Big Cottonwood Canyon to the proposed gondola base station. It did not analyze S.R. 209 nor propose any needed improvements. Given that a five-lane cross section is recommended for 54% of the projected trips, it is problematic not to analyze the infrastructure needed for the other 46% of traffic entering the canyon. In spot locations from Highland Drive to the mouth of Little Cottonwood Canyon, S.R. 209 is currently two lanes at its narrowest cross-section. There are multiple horizontal and vertical curves that need to be analyzed for safety and

improvement, and frontage improvements for pedestrian safety and storm water drainage are needed

F. Lack of Analysis of Induced Impacts in Big Cottonwood Canyon and Neighborhoods at the Mouth of the Both Canyons.

155. As SLC pointed out in its FEIS Comments and Draft EIS comments, visitation and transportation in the tri-Canyon area of Millcreek Canyon, Big Cottonwood Canyon, and Little Cottonwood Canyon is inherently linked, and changes in one canyon will have impacts to visitation and transportation in the others. *See* SLC FEIS Comment Letter, at 2; SLC DEIS Comment Letter, at 3, 5–6. The FEIS fails to adequately analyze the impacts that the Project would cause on the other canyons and surrounding neighborhoods, particularly with respect to traffic, safety, water quality, air quality, and GHG emissions.

156. As noted, the FEIS acknowledges that a potential indirect effect of the Project is that it will simply push travelers to “visit other ski resorts that are not accessed via roads with restrictions,” primarily into S.R. 190 in Big Cottonwood Canyon. Rather than analyze the impacts of such a shift, the FEIS summarily concludes that “UDOT would likely implement a toll or a ban on single-occupant vehicles on [S.R. 190] as well, so both S.R. 190 and S.R. 210 would have similar congestion-management policies.” *See* FEIS, at 20-9.

157. This discussion of Big Cottonwood Canyon is deficient for multiple reasons. First, it is speculative to assert that UDOT “would likely” implement a toll or single-occupant-vehicles ban in S.R. 190. Even if UDOT did implement those measures, the FEIS does not explain or analyze the associated air quality and GHG impacts. The FEIS effectively acknowledges that Project may simply shift cars around from one road to another in the region, rather than reducing vehicle miles travelled, and it fails to account for this in calculating associated vehicle air emissions and GHG emissions. This undercuts the accuracy of the FEIS’s conclusion that “[a]ll of the action

alternatives would have lower CO₂e emissions than the No-Action Alternative, resulting in a reduction in GHG emissions.” *See id.*, at 10-26.

158. Second, the FEIS also fails to analyze how shifting cars from Little Cottonwood Canyon into Big Cottonwood Canyon will impact water quality. SLC’s Big Cottonwood Water Treatment Plant sits at the mouth of Big Cottonwood Canyon. Big Cottonwood, like Little Cottonwood, is a protected source of drinking water. As such, any degradation of the Big Cottonwood watershed has serious implications for the quality of the drinking water managed by Plaintiffs, the legal obligations that Plaintiffs must meet, and the costs involved in drinking water treatment that will be borne by ratepayers, similar to impacts on the quality of the Little Cottonwood watershed.

159. Third, the FEIS fails to sufficiently consider that the Project will require visitors of Little Cottonwood Canyon to drive through neighborhoods at the base of the canyon to reach transit modules. This gap in analysis fails to meet the part of the Project’s purpose and need that identifies the need to also solve the issue of decreased mobility on Wasatch Boulevard resulting from canyon commuter traffic.

G. Lack of Analysis of Environmental Justice Impacts.

160. The FEIS and ROD tout the economic benefits of the Project while failing to analyze many of the induced costs or the disproportionate impacts of the costs that will be borne by disadvantaged communities who are unable to enjoy any direct benefits the gondola might provide. *See* SLC FEIS Comment Letter, at 4.

161. The gondola is projected to cost \$730 million. The ROD and FEIS fail to explain how this will be paid for. Further, the gondola is designed for riders to access two high-cost ski resorts at the top of Little Cottonwood Canyon, with no stops along the canyon until it reaches the resorts. Therefore, the gondola does not directly address mobility, access, safety, or reliable

transportation for all users; it is primarily designed for a select group of users accessing the two high-cost ski resorts. *See* SLC DEIS Comment Letter, at 3. Moreover, the ROD and FEIS also fail to analyze how much the cost might be for a ticket to ride the gondola. *See* SLC FEIS Comment Letters, at 3. So, to the extent that any members of the public wish to ride the gondola for the scenic experience or to access the top of Little Cottonwood Canyon without purchasing a ski resort ticket, there is no analysis of whether a gondola ticket is within the economic reach of many members of the public, particularly economically disadvantaged families.

162. To the extent any significant share of the \$730 million in gondola costs will be borne by the general public, the possibility that such cost could be shouldered equally by economically disadvantaged communities within the Salt Lake Valley (through tax initiatives, car registration fees, or bonds) creates an unjustified and disproportionate impact on such communities who may never be able to take advantage of the gondola.

163. Further, as noted in SLC's FEIS comment letter, the FEIS and ROD fail to analyze indirect costs related to water resource and quality protections that would need to increase due to construction, operation, and increased recreation impacts. *See* SLC FEIS Comment Letter, at 3–4. These costs would likely become the burden of the public and SLC water rate-payers, which will disproportionately burden economically disadvantaged communities. For instance, SLC actively funds USFS summer seasonal staff, Unified Police Department Canyon Patrol staff, and nonprofit partner staff, which provides a cumulative positive impact on mitigating the impacts of recreation on drinking water source quality in the watershed. SLC also funds restroom capital and operation and maintenance (“O&M”) projects and the abatement of noxious weeds within Little Cottonwood Canyon. *See id.* While the FEIS includes the costs of the gondola's direct O&M costs, it fails to include the additional costs to entities that bear the impacts and associated costs of increased

recreation management needs and drinking water protection. The FEIS should have, but did not, analyze the extent to which costs such as increased cost to treat public drinking water due to increased pollution may disproportionately impact low-income communities.

164. The FEIS does contain a cursory analysis of environmental justice impacts, but it too narrowly defines the geographic scope and types of impacts examined in such analysis, as pointed out in SLC's FEIS Comment Letter. *See id.*, at 4. The FEIS's environmental justice impact analysis area is focused on an area within 0.25 miles of S.R. 210 from Fort Union Boulevard to the town of Alta and includes proposed mobility hubs at the gravel pit and the park-and-ride lot at 9400 South and Highland Drive. *See* FEIS Section 5.1. Although the FEIS analyzes the environmental justice impact on communities within this limited geographic area, it does not analyze the equity and fairness impacts on all communities who will bear the burden of the direct and indirect costs of the gondola and higher drinking water costs.

H. Inadequate Analysis of Transportation Act Section 4(f) Properties and Omission of Properties from Section 4(f) Protection.

165. The Forest Service and UDOT determined that numerous properties qualified as Section 4(f) properties, including the Alpenbock Loop Trail, Alpenbock Spur Trail, and Grit Mill Connector Trail, and the Little Cottonwood Canyon Climbing Historic District. *See* FEIS, at, at 26-26–26-57.

166. In summary fashion, UDOT determined that the Project's impacts with respect to each of these properties would be *de minimis*. *Id.*

167. Numerous commenters protested UDOT's analysis with respect to these properties, *see, e.g.*, FEIS at 32-73, 32-131–32-133, 32-215–32-217, but UDOT dismissed these concerns without meaningful analysis or support in the record.

168. In addition, UDOT did not evaluate whether the Twin Peaks or Lone Peak Wilderness Areas, or areas designated for protection as drinking water sources, qualified for protection under Section 4(f), and therefore did not evaluate whether the constructive and actual uses of these properties by the Project posed greater than *de minimis* impacts, triggering the statutory obligation to avoid, minimize, and mitigate impacts.

CLAIMS FOR RELIEF

First Claim for Relief

Violation of NEPA and the APA: Failure to Take a Hard Look at the Water Supply Impacts of the Project

169. Each and every allegation set forth in this complaint is incorporated herein by reference.

170. NEPA requires federal agencies to take a hard look at the direct, indirect, and cumulative environmental consequences of their actions. *See* 42 U.S.C. § 4332; 40 C.F.R. § 1508.1(g). NEPA regulations expressly require examination of impacts on “[n]atural or depletable resource requirements and conservation potential of various alternatives and mitigation measures,” as well as “[p]ossible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local land use plans, policies and controls for the area concern.” 40 C.F.R. § 1502.15(a). Thus, pursuant to NEPA, Federal Defendants were required to take a hard look at direct, indirect, and cumulative impacts of authorizing the Project on the critically protected watershed of Little Cottonwood Canyon. 40 C.F.R. § 1508.25(c).

171. The Project, individually and when combined with other past, present, and reasonably foreseeable future actions, has potentially significant direct, indirect, and cumulative impacts to the availability and quality of the water supply within the entire watershed. In spite of this, Federal Defendants did not adequately analyze impacts to the water supply in the area associated with the Project. Instead, Federal Defendants relied on a single statement related to

water use and sewer use at Snowbird Ski Resort, inflating that to declare that all water supply concerns throughout the entirety of Little Cottonwood Canyon would be satisfied.

172. The Federal Defendants failed to take a hard look at the direct, indirect, and cumulative impacts to water supplies associated with the Project. As a result, their decisions to selecting the Enhanced Bus Service Alternative and Gondola Alternative B were “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” in violation of NEPA and the APA. 5 U.S.C. §§ 706(1), (2)(A).

Second Claim for Relief
Violation of NEPA and the APA: Failure to Take a Hard Look at the Water Quality Impacts of the Project

173. Each and every allegation set forth in this complaint is incorporated herein by reference.

174. NEPA obligates federal agencies to prepare an EIS for “major federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). Whether a proposed action “significantly” impacts the environment is determined by considering “context and intensity.” 40 C.F.R. § 1508.27.

175. In concluding that the water quality impacts of the Project would be insignificant, the Federal Defendants used an inapplicable model and failed to adequately consider the special protections applicable in Little Cottonwood Canyon and special sensitivity necessary for protecting a public water supply.

176. Because the Federal Defendants failed to take a hard look at the direct, indirect, and cumulative impacts to water quality associated with the Project, their decision in selecting the Enhanced Bus Service Alternative and Gondola Alternative B were “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” in violation of NEPA and the APA. 5 U.S.C. §§ 706(1), (2)(A).

Third Claim for Relief

Violation of NEPA and the APA: Failure to Take a Hard Look at the Impacts of the Project on Wilderness Areas in Little Cottonwood Canyon

177. Each and every allegation set forth in this complaint is incorporated herein by reference.

178. NEPA has, since its inception, required federal agencies to take a hard look at the environmental consequences of their actions, including the direct, indirect, and cumulative impacts of the Project. *See* 42 U.S.C. § 4332; 40 C.F.R. § 1508.1(g); 43 Fed. Reg. at 25244; *Marsh*, 490 U.S. at 371–74; *Kleppe*, 427 U.S. at 410; *see also* 52 Fed. Reg. 32660 (FHWA NEPA regulations); 83 Fed. Reg. 54480 (same). This includes a hard look at impacts to nearby wilderness areas. *Izaak Walton League*, 516 F. Supp. 2d at 987–90; *Greater Yellowstone Coalition*, 12 F. Supp. 3d at 1275–79.

179. Relying on misinterpretations of the applicability and scope of Buffer Zone Provision in Section 303 of the Utah Wilderness Act, the Federal Defendants did not analyze any impacts of the Project on the surrounding Twin Peaks and Lone Peak Wilderness Areas. Indeed no analysis was performed to understand the visual impacts of the gondola or the noise impacts of the gondola, including additional noise from the significant increase in users of the canyon.

180. The Federal Defendants’ failure to engage in the analysis of impacts on the Wilderness Areas is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” and is, therefore, in violation of the NEPA regulations and the APA. 5 U.S.C. §§ 706(1), (2)(A).

Fourth Claim for Relief

Violation of NEPA and the APA: Failure to Take a Hard Look at the Impacts of the Project on Climate Change and the Impacts of Climate Change on the Project

181. Each and every allegation set forth in this complaint is incorporated herein by reference.

182. Among the various types of indirect and cumulative impacts that must be considered, “[t]he impact of [GHG] emissions on climate change is precisely the kind of [] impacts analysis that NEPA requires agencies to conduct.” *Diné Citizens Against Ruining Our Env’t*, 59 F.4th at 1035 (citation omitted). Relatedly, “NEPA [also] requires an evaluation of the impact of climate change on a project.” *See AquAlliance*, 287 F. Supp. 3d at 1028.

183. The FEIS fails to substantively and adequately analyze the Project’s climate change impacts. It also fails to analyze the impacts that a changing climate will have on the Project that will, in turn, impact the surrounding environment and communities.

184. These failures were “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” in violation of NEPA and the APA. 5 U.S.C. §§ 706(1), (2)(A).

Fifth Claim for Relief

Violation of NEPA and the APA: Failure to Take a Hard Look at Effects of the Project on S.R. 209, Wasatch Boulevard, adjoining Sandy City Local Streets

185. Each and every allegation set forth in this complaint is incorporated herein by reference.

186. The Federal Defendants failed to analyze the impacts of the Project on S.R. 209, Wasatch Boulevard, and Sandy City neighborhood streets, notwithstanding the fact that these arterial and surface streets carry nearly half the traffic entering Little Cottonwood Canyon. The Federal Defendants also failed to analyze the impacts of important Project infrastructure, such as the proposed 2,500 stall parking structure in Sandy City, on these roads and the surrounding Sandy City neighborhoods.

187. By excluding meaningful analysis of the direct and indirect traffic and other effects of the Project on S.R. 209, Wasatch Boulevard and Sandy City neighborhoods, the FEIS and ROD

are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” in violation of NEPA regulations and the APA. 5 U.S.C. §§ 706(1), (2)(A).

Sixth Claim for Relief

Violation of NEPA and the APA: Failure to Take a Hard Look at the Cumulative Effects of the Project on Big Cottonwood Canyon and Other Resources

188. Each and every allegation set forth in this complaint is incorporated herein by reference.

189. The Federal Defendants make brief references to potential ripple effects of the Project on Big Cottonwood Canyon and other adjacent areas, but the FEIS fails to include serious analysis. This lack of analysis is problematic under NEPA because, as the FEIS itself alludes, there is little doubt that the Project will affect usage of Big Cottonwood Canyon and other nearby canyons.

190. By excluding meaningful analysis of effects on Big Cottonwood Canyon, other canyons, and affected communities, the FEIS skews the overall Project impacts, making the environmental consequences and indirect effects analysis “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” in violation of NEPA regulations and the APA. 5 U.S.C. §§ 706(1), (2)(A).

Seventh Claim for Relief

Violation of NEPA and the APA: Unlawful Approval of Project that Does Not Fit the Purpose and Need of the Proposed Action

191. Each and every allegation set forth in this complaint is incorporated herein by reference.

192. Under NEPA, an agency must consider any reasonable alternative that meets the Project Purpose and Need, and may “not define the project so narrowly that it foreclose[s] a reasonable consideration of alternatives.” *Davis*, 302 F.3d at 1119.

193. The Federal Defendants failed to consider the potential that the congestion issues and mobility needs in Little Cottonwood Canyon could be satisfied sufficiently by the Enhanced Bus Service Alternative as proposed, modified, and/or improved, particularly in light of the many environmental issues created by the gondola, and by the effects of a changing climate on Little Cottonwood Canyon.

194. Furthermore, the Federal Defendants inappropriately narrowed the needs of the Project to focus on wintertime traffic issues related to visiting the ski resorts in Little Cottonwood Canyon, thereby failing to achieve the stated purpose of the Project, which was to enhance mobility for all canyon users.

195. The selection of the preferred alternative cannot be justified to fit the purpose and need given the uncertainties around the cost of riding the gondola or the cost of the toll on S.R. 210 and whether either of those actions will induce changed behavior to improve mobility in Little Cottonwood Canyon.

196. By excluding meaningful analysis of the ability of the Enhanced Bus Service Alternative and variations thereof to satisfy the Project Purpose and Need without the gondola, the Federal Defendants' approval of the Project was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," in violation of NEPA and the APA. 5 U.S.C. §§ 706(1), (2)(A).

Eighth Claim for Relief
Violation of NEPA and the APA: Failure to Take a Hard Look at the Environmental Justice Impacts of the Project

197. Each and every allegation set forth in this complaint is incorporated herein by reference.

198. Under Executive Order 12898, the FHWA Memorandum Guidance on Environmental Justice and NEPA, FHWA Order 6640.23A and U.S. DOT issued Order 5610.2(c)

and its predecessors, the FHWA is required to analyze “whether a particular program, policy, or activity will have disproportionately high and adverse effects on minority and low-income populations,” and “take into account mitigation and enhancement measures and potential offsetting benefits to the affected minority and/or low-income populations.” *See* FHWA Order 6640.23A. The agency must also ensure that “prevention of disproportionately high and adverse effects are an integral part of its programs, policies, and activities.” U.S. DOT Order 5610.2C. And the agency must ensure and document meaningful opportunities for public participation for environmental justice communities.

199. The FEIS and ROD promote the economic benefits of the gondola while failing to analyze many of the induced costs and disproportionate impacts of the costs that will be borne by disadvantaged communities who are unable to enjoy any direct benefits the gondola might provide. As discussed, the FEIS and ROD fail to analyze the price of a gondola ticket and whether such price might be affordable to low-income communities to be able to enjoy the benefits of riding the gondola. The FEIS and ROD fail to analyze the cost of the gondola as well as induced increased costs of water quality treatment, which are likely to be borne by the public and water ratepayers, or how such increased costs will disproportionately impact low-income communities.

200. UDOT’s environmental justice analysis is an impermissible “bare bones conclusion.” *See Standing Rock Sioux Tribe*, 255 F. Supp. 3d at 138–40. This renders the ROD “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” in violation of NEPA and the APA. 5 U.S.C. §§ 706(1), (2)(A).

Ninth Claim for Relief
Violation of Wilderness Act and the APA: Failure to Analyze and Mitigate the Effects of the Project on Adjacent Wilderness Areas

201. Each and every allegation set forth in this complaint is incorporated herein by reference.

202. In addition to its NEPA obligations, the USFS has a substantive duty to protect Wilderness Areas within its jurisdiction from degradation.

203. Nevertheless, the USFS has decided to rely on the FEIS and its erroneous interpretation of the Buffer Zone Provision in omitting consideration of visual and noise impacts that the Project will inflict on the Twin Peaks and Lone Peak Wilderness Areas.

204. Although the USFS has not yet made specific approvals for the Project, and has further stated that future USFS approvals for the Project must comply with NEPA, the USFS's adoption of the FEIS is a final agency action currently subject to judicial review under the APA. This is because the erroneous interpretation of the Buffer Zone Provision is a question of law that is not dependent on the future details of specific Project authorizations that may, or may not, be sought from the USFS. The USFS duty to protect the Wilderness Areas exists affirmatively and independently of whether and what specific additional USFS authorizations are sought. In fact, the potential that USFS authorizations may *not* be sought from the USFS, notwithstanding the impacts of the Project on the Wilderness Areas, coupled with the December 11, 2023 deadline for challenges to the FEIS and ROD, compels a conclusion that the USFS's reliance on erroneous interpretation of the Buffer Zone Provision is presently reviewable.

205. USFS's adoption of the erroneous interpretation of the Buffer Zone Provision has led, or will lead, to its failure to discharge its affirmative duties under the Wilderness Act of 1964, and is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," in violation of the Wilderness Act and the APA. 5 U.S.C. §§ 706(1), (2)(A).

Tenth Claim for Relief
**Violation of the Transportation Act and the APA: Failure to Analyze, Reduce, and Avoid
the Effects of the Project on Protected Public Lands**

206. Each and every allegation set forth in this complaint is incorporated herein by reference.

207. The FEIS is deficient because it impermissibly excludes Section 4(f)-eligible properties, including adjacent wilderness areas, the Uinta-Wasatch-Cache National Forest, and lands protected as drinking water supply sources from its Section 4(f) analyses.

208. Beyond failing to include all eligible properties in its Section-4(f) analysis, the analysis UDOT *did* conduct is deficient.

209. Specifically, UDOT’s determination that the Project would impose “no adverse impact” or a “de minimis impact” on certain properties—including but not limited to the Little Cottonwood Historic Climbing District and the Alpenbock Trail/Grit Mill Climbing Opportunities—was conclusory and failed to adequately analyze the Project’s impacts.

210. By excluding meaningful analysis of Section 4(f)-eligible properties from the avoidance, minimization, and mitigation requirements of Section 4(f), the FEIS and ROD for the Project are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” in violation of NEPA and the APA, 5 U.S.C. §§ 706(1), (2)(A), and violate the substantive requirements of Section 4(f) of the Transportation Act of 1966.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Declare that Federal Defendants violated NEPA in authorizing the Project;
- B. Declare that the USFS has violated the Wilderness Act of 1964 in relying on the FEIS;
- C. Declare that Federal Defendants violated the Transportation Act of 1966 in authorizing the Project;
- D. Vacate and remand the ROD and Federal Defendants’ approvals of the Project;
- E. Enjoin the Federal Defendants from taking any further action to implement the Project or authorize any additional component of the Project until it prepares a

supplemental EIS and new ROD that comply with NEPA, the Wilderness Act of 1964, the Transportation Act of 1966, and the APA.

- F. Grant Plaintiffs their costs of litigation including reasonable attorneys' fees; and
- G. Grant Plaintiffs such additional and further relief as the Court deems just and proper.

DATED this 11th day of December, 2023.

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