Ivins City Staff Report
City Council Meeting 01/16/2020

Agenda Item: Discuss and consider approval of Memorandum of Understanding for Ivins City to be a Cooperating Agency in the preparation of the Environmental Impact Statement for the proposed Northern Corridor Highway Right-of-Way.

Submitted by: Charles R. Gillette, P.E. City Engineer

Recommended City Council Action:
Approve memorandum of understanding for Ivins City to be a cooperating agency in the preparation of the environmental impact statement for the proposed northern corridor highway right-of-way.

BACKGROUND:
Ivins City is very interested in the progress of the environmental impact statement for the proposed northern corridor highway right-of-way. The proposed corridor is needed to prevent serious congestion in the City of St George on Red Hills Parkway, Bluff Street and St George Boulevard. These corridors are heavily used by the residents of Ivins City.

FINDINGS AND ANALYSIS:
BLM has agreed to allow Ivins City and other communities to become cooperating agencies, this gives the City access to meetings, email correspondence, and priority in providing feedback on the process and documents.

SUPPORT MATERIALS:
- Proposed Memorandum of Understanding

FINANCIAL IMPACT:
Commitment of Staff Time

Respectfully Submitted: _____
Charles R. Gillette, P.E. City Engineer

Content Review: _____
Dale Coulam, City Manager

MEMORANDUM OF UNDERSTANDING

BLM-MOU-UT-C000-2020-001

United States Department of the Interior
Bureau of Land Management and United States Fish and Wildlife Service

and

Ivins City, Utah

BLM-MOU-UT-C000-2020-001

MEMORANDUM OF UNDERSTANDING

Between

THE U. S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, COLOR COUNTRY DISTRICT AND U.S. FISH AND WILDLIFE SERVICE, UTAH ECOLOGICAL SERVICES FIELD OFFICE

and

Ivins City, Utah

Concerning:

Preparation of an Environmental Impact Statement
for the proposed
Northern Corridor highway right-of-way, Incidental Take Permit for the threatened Mojave desert tortoise, and associated Resource Management Plan Amendments
in
Washington County, Utah.

I. INTRODUCTION

A. The National Environmental Policy Act (NEPA) was passed by Congress in 1969 and signed into law on January 1, 1970. This legislation encourages environmental protection and informed decision-making. It provides the means to carry out these goals by:

1. mandating that every Federal agency prepare a detailed statement of the effects of "major Federal actions significantly affecting the quality of the human environment,"
2. establishing the need for agencies to consider alternatives to those actions,
3. requiring the use of an interdisciplinary process in developing alternatives and analyzing environmental effects,
4. requiring that each agency consult with and obtain comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved, and
5. requiring that detailed statements and the comments and views of appropriate Federal, State, tribal, and local agencies be made available to the public.

B. The Council on Environmental Quality (CEQ) was established by the NEPA to formulate policies for implementation of the NEPA. CEQ regulations (40 CFR 1501.6) provide for and describe both lead and cooperating agency status, and emphasize agency cooperation early in the NEPA process. To this end, the Bureau of Land Management (BLM) and U.S. Fish and Wildlife Service (USFWS) invite Ivins City (CITY) through a letter dated November 27, 2019 to participate in development of this Environmental Impact Statement (EIS) relative to its expertise and/or jurisdictional responsibility of local land

use plans, policies, and controls for the area where the Northern Corridor highway right-of-way, Incidental Take Permit for the threatened Mojave desert tortoise, and associated Resource Management Plan amendments (Project) is located. This Memorandum of Understanding (MOU) is being developed as a result of the CITY's willingness to participate based on a letter sent by the CITY on December 20, 2019.

II. PURPOSE

The purpose of this MOU between the BLM, USFWS, and the CITY is to identify the CITY as a cooperating agency and establish the roles and responsibilities of the BLM, USFWS, and the CITY in the preparation of the EIS. The BLM, USFWS, and the CITY recognize the need to work together; to provide a basis for timely disposition of material issues or problems connected with the development of this EIS; and to achieve maximum efficiency for their respective agencies. This MOU will serve as a project-specific MOU for the Project EIS.

III. AUTHORITY

A. The authority of the BLM and USFWS to enter into and engage in the activities described within this MOU include, but are not limited to:

1. National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

B. Regulations implementing the above authority:

1. Council on Environmental Quality regulations (40 CFR 1501 *et seq.*); and
2. Bureau of Land Management planning regulations (43 CFR, Part 46 *et seq.*).

C. The authorities of the CITY to enter into and engage in the activities described within this MOU include, but are not limited to:

1. National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).
2. Utah Code, Title 11, Chapter 13, Interlocal Cooperation

D. This agreement is not intended to limit any Federal or State laws, rules, or regulations. This agreement is not intended to give any agency or entity additional authority beyond current laws, rules or regulations.

IV. PROCEDURES

A. The BLM maintains responsibility for the administration and management of public lands. The BLM and USFWS will be joint lead agencies in the NEPA process as described by Federal Regulations 40 C.F.R. § 1501.5; 1508.16; and 43 C.F.R. 46.220(c). As joint lead agencies, the BLM and USFWS will rely on the final EIS, drafted pursuant to NEPA, as a basis for deciding whether to approve the Proposed Action or one of the alternatives analyzed in the EIS in the agencies' decision documents.

V. The CITY agrees to become a cooperating agency in the NEPA process as described by Federal Regulations 40 CFR 1501.6; 1508.5; and 43 C.F.R. 46.225.

VI. Both Parties agree to:

1. Meet as needed on mutually agreed upon dates to review and evaluate the implementation of current conditions and trends concerning the intent and functioning of this MOU. This meeting will also serve as a coordination session to determine immediate and future timing requirements and the general programming of cooperative actions as related to the EIS.
2. Adhere to the applicable laws and regulations of the United States, the regulations of the BLM and USFWS, and the laws and regulations of the State of Utah.
3. Cooperate in apprising each other, as far in advance as possible, of any related actions or problems that might affect the EIS and documentation process or that might affect either party.
4. Cooperate in the development and review of any operating guidelines or agreements between the CITY or the BLM, USFWS, and other entities involved in the EIS which might affect the writing of the EIS.
5. Any agency participating in this MOU can opt out of participating in the Project EIS by letter or email from the signing authority or designated agent with a 30-day notice.

VII. RESPONSIBILITIES

A. BLM and USFWS Responsibilities:

1. Ensure that the CITY has an opportunity to review and comment on the EIS and related documents and reports within its identified areas of expertise. If necessary, BLM and USFWS may withhold certain documents from general circulation based on their proprietary nature or other Privacy Act concerns.
2. Coordinate the exchange of information among the Parties and the EIS contractor and its subcontractors who will be preparing the EIS. This will include the Plan of Development and reviewed and previously accepted baseline studies as references for the analysis.
3. Invite the CITY, along with other Cooperating Agencies, to attend meetings with Federal, State, Native American, regional and local agencies, and other groups as appropriate to discuss the alternatives, expected public impacts, and mitigation.
4. Provide regular verbal and/or written progress updates of the NEPA review to the CITY along with the other Cooperating Agencies.
5. Obtain and consider input from the CITY on the inclusion or deletion of information in the NEPA process in areas of the CITY's jurisdiction or special expertise.
6. Review and consider the CITY's proposed alternatives, mitigation, or other relevant requests to determine if they should be carried forward into analysis in the EIS in accordance with 40 CFR 1501.6(a) and 43 C.F.R. 46.230. The BLM and USFWS will request additional clarification from the CITY regarding the requests if necessary for full consideration. The BLM and USFWS will notify the CITY verbally or in writing of changes to the alternatives, preferred alternative, methods, or mitigation measures.

7. Review and consider each inconsistency or possible conflict with the CITY's applicable plans, policies, and controls, as documented by the CITY in writing. The BLM and USFWS will consider potential methods for resolving the identified conflicts to the extent practicable in accordance with 40 CFR 1502.16, 40 CFR 1506.2, 43 C.F.R. 46.155, and other applicable laws and regulations.

VIII. CITY Responsibilities:

1. Participate as a Cooperating Agency in the document review and preparation of the EIS as specified in applicable laws and regulations and described in the BLM's *A Desk Guide to Cooperating* Agency *Relationships and Coordination with Intergovernmental Partners.*
2. Participate in communications regarding the NEPA review of the project, including, but not limited to, conference calls, meetings, and emails, particularly when such communication concerns the CITY's jurisdiction or special expertise. When appropriate, send a representative(s) to attend project related meetings scheduled by the BLM and USFWS (this could include public meetings for scoping or the Draft EIS).
3. Provide guidance and expertise in reviewing and establishing baseline information and potential impacts concerning items of the CITY's jurisdiction or special expertise including transportation, environmental justice, socioeconomics, and CITY plans, policies, controls, regulations, and laws. Where appropriate for baseline studies that have already been deemed complete by the BLM or USFWS, optionally review and provide comments or supplementary information that will be added to the project record and considered in preparation of the EIS.
4. Provide written comments on the Preliminary Draft EIS with regard to any inconsistencies or possible conflicts with the CITY's plans or other policies and controls.
5. Provide written comments on EISs, other related documents, and proposed mitigation, for which review and comments are requested by the BLM, within the established project schedule. The CITY has the ability to provide comments on other documents and they will be added to the record and considered throughout the process.
6. To the maximum extent allowed under Utah Government Records Access and Management Act and other related laws, maintain the confidentiality of the documents and deliberations during the period prior to public release by the BLM or USFWS of any project related work products, including, but not limited to drafts, proprietary information, the plan of development, sensitive resource data and locations, baseline reports, and other NEPA-related documents.
7. Identify a point of contact (POC) and alternate POC to act on the CITY's behalf to coordinate comments and input throughout the NEPA process.
8. Funding for the CITY's participation in the Project EIS development process will be the responsibility of the CITY.

IX. BLM, USFWS, and CITY Joint Responsibilities:

1. The BLM will have the lead responsibility in maintaining the administrative record; however, the USFWS and the CITY share the responsibility with the BLM for ensuring that documents related to the CITY's participation in the process are complete and accurate.
2. Resolve inconsistencies and conflict, where possible, early in the process prior to and at the Preliminary EIS stage through working towards consensus and enhanced coordination and cooperation in accordance with, but not limited to, 43 CFR 46.110, the January 30, 2002 CEQ Memorandum for the Heads of Federal Agencies, *Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act*, and the BLM's *A Desk Guide to Cooperating Agency Relationships and Coordination with Intergovernmental Partners.*
3. Parties to this MOU will have access to all information relevant to the fulfillment of their responsibilities under this agreement. Data provided pursuant to this agreement may contain proprietary BLM, USFWS, or CITY information. All records or information requested of either party by the other will be reviewed by the releasing party prior to release. To the extent permissible under law, any recipient of proprietary information agrees not to disclose, transmit, or otherwise divulge this information without prior approval from the releasing party. Any breach of this provision may result in termination of this MOU.

X. ADMINISTRATION

A. It is mutually agreed and understood by all parties that:

1. Nothing in this MOU will be construed as affecting the authorities of the participants or as binding beyond their respective authorities, or to obligate the BLM, USFWS, or the CITY to any current or future expenditure in advance of the availability of appropriations from Congress for such expenditures. Nor does this agreement obligate the BLM, USFWS, or CITY to spend funds on any particular project or purpose, even if funds are available.
2. Any information furnished to the BLM, USFWS, or CITY during and related to the EIS process may be subject to the Freedom of Information Act (5 U.S.C. 552), Utah Government Records Access and Management Act, or other laws and regulations.
3. This MOU in no way restricts the BLM, USFWS, or CITY from participating in similar activities with other public or private agencies, organizations, and individuals, or from accepting contributions and donations for activities related to the preparation of the Project EIS.
4. Nothing in this MOU shall obligate the BLM, USFWS, or CITY to obligate or transfer any funds. Specific work projects or activities that involve the transfer of funds, services, or property among the various agencies and offices of the BLM, USFWS, and CITY require execution of separate agreements and would be contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory authority. This MOU does not provide such authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations.

5. This MOU is not intended to and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.
6. Conflicts between the participants concerning procedures under this MOU which cannot be resolved at the operational/staff level will be referred to successively higher levels as necessary for resolution.
7. Upon request by either of the parties, each party shall review this MOU to ensure that it continues to reflect the appropriate understandings and procedures to provide for current needs and capabilities and adherence to the Public Laws.
8. The terms of this MOU may be renegotiated at any time at the initiative of either party after providing a 30-day notice to the other party. Such changes will be in the form of an amendment and will become effective upon signature by the MOU participants. Any party may terminate their involvement under this MOU upon providing a 30-day written notice of such termination to the other parties. The Federal Government's liability shall be governed by the provisions of the Federal Tort Claims Act (28 U.S.C. 2671-80). The parties shall operate in conformance with the Code of Federal Regulations and the United States Code.
9. The participants shall comply with all Federal Statutes relating to nondiscrimination. These include but are not limited to: a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color, handicap, or national origin; b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §1681-16783, and §1685-1686), which prohibits discrimination on the basis of sex.
10. Unless otherwise provided, this agreement is not intended to supersede provisions of other agreements between both parties, in whole or in part, unless there is a conflict between the two agreements. This MOU is limited to the preparation of the Project EIS.

XI. APPENDICES

Any Appendices attached hereto are incorporated and made a part of this MOU and each shall be effective until modified or superseded. An appendix may be amended in writing upon mutual agreement of the Parties.

XII. APPROVALS

This MOU will become effective upon the last date of signature and shall remain in effect through: (A) Completion of the NEPA decision document; or (B) upon thirty days (30) advance written termination notice by the CITY, USFWS, or the BLM.

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
COLOR COUNTRY DISTRICT

By: _____ _____
Ahmed Mohsen — Date
Title: District Manager
Address: Color Country District
176 East D.L. Sargent Drive
Cedar City, Utah 84721

U.S. DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE
UTAH ECOLOGICAL SERVICES FIELD OFFICE

By: _____ _____
Laura Romin — Date
Title: Acting Field Supervisor
Address: Utah Ecological Services Field Office
2369 Orton Circle, Suite 50
West Valley City, Utah 84119

IVINS CITY, UTAH

By: _____ _____
Chris Hart — Date
Title: Mayor
Address: Ivins City
55 N Main Street
Ivins, UT 84738

APPENDIX 1

BLM, USFWS, and CITY EIS CONTACTS

	Primary Points of Contact	Alternate Points of Contact
BUREAU OF LAND MANAGEMENT		
Name	Keith Rigtrup	Gloria Tibbetts
Title	Field Manager	Planning & Environmental Coordinator
Phone	(435) 688-3201	(435) 865-3063
Email	krigtrup@blm.gov	gtibbetts@blm.gov
U.S. FISH AND WILDLIFE SERVICE		
Name	Laura Romin	Hilary Whitcomb
Title	Deputy Field Supervisor	Fish & Wildlife Biologist
Phone	(801) 975-3330, ext. 61924	(801) 975-3330
Email	laura_romin@fws.gov	hilary_whitcomb@fws.gov
IVINS CITY		
Name	Chuck Gillette	Tom Jorgensen
Title	Public Works Director & City Engineer	Asst. Public Works Director of Admin.
Phone	(435) 634-0689 (office) (435) 668-9909 (cell)	(435) 634-0689 (office)
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