

## **Foreword/Introduction**

# Foreword/Introduction

## Introduction

This supplemental environmental impact statement/reevaluation (Supplemental EIS) serves as a supplement to the June 2000 *Legacy Parkway Final Environmental Impact Statement and Section 4(f), 6(f) Evaluation* (Final EIS) (FHWA-UT-EIS-98-02-F) (Federal Highway Administration et al. 2000), as required by the National Environmental Policy Act (NEPA). The Supplemental EIS incorporates the results of a comprehensive reevaluation of the Final EIS. In accordance with Federal Highway Administration (FHWA) NEPA regulations 23 Code of Federal Regulations (CFR) 771.129, the comprehensive reevaluation was used to determine whether any project information should be updated and revised as part of the Supplemental EIS process.

This Supplemental EIS also contains detailed information addressing issues identified in the court decision of the U.S. Court of Appeals for the Tenth Circuit (*Utahns for Better Transportation et al v. U.S. Department of Transportation et al.* [305 F.3d 1152 10<sup>th</sup> Cir. 2002]). The appellate court determined that the following specific issues were in need of further review.

- Alternative sequencing of the Shared Solution.
- Integration of Legacy Parkway with mass transit.
- Elimination of the Denver & Rio Grande (D&RG) regional alignment as a feasible alternative based on cost.
- Elimination of the D&RG regional alignment as a feasible alternative based on substantial impacts on existing development.
- Practicability of a narrower right-of-way.
- Impacts on wildlife.

FHWA and the U.S. Army Corps of Engineers (Corps) are the federal agencies with primary approval authority over the Utah Department of Transportation's (UDOT's) proposed Legacy Parkway project. FHWA and the Corps have prepared this Supplemental EIS as joint lead agencies. UDOT retained Jones & Stokes, an independent consulting firm based in California, to prepare the supplemental environmental impact statement (Supplemental EIS)/reevaluation under the direction of the federal lead agencies. The following sections describe the background and status of the proposed Legacy Parkway project; the purpose of the Supplemental EIS; the approach to preparing the Supplemental EIS, including

the public involvement and interagency coordination processes; the roles of the lead and responsible agencies and the required approvals and permits; and the organization of this document.

## **Background and Status of Legacy Parkway Project**

### **Shared Solution**

To address future transportation demands related to projected population growth in the North Corridor (northern Salt Lake County and Davis County), UDOT, the Utah Transit Authority (UTA), and the local communities have planned for a “Shared Solution” consisting of the following main components.

- Expansion of the mass transit system.
- Improvement and expansion of Interstate 15 (I-15).
- Construction of the proposed Legacy Parkway project.

Additional components of the Shared Solution include implementation of intelligent transportation systems (ITS), transportation systems management (TSM), and transportation demand management (TDM) measures. Components of the Shared Solution would be implemented over a 20 to 30 year timeframe. All these components are intended to meet the projected transportation demand in the North Corridor. More detailed descriptions of the North Corridor, the Shared Solution, and the purpose of and need for the proposed Legacy Parkway project are included in Chapter 1, *Purpose of and Need for Action*.

### **Final EIS and Preferred Alternative**

The Final EIS addressed one component of the Shared Solution, the Legacy Parkway project. The Preferred Alternative for the Legacy Parkway project, as described in the Final EIS, would be a four-lane, limited-access, divided highway in Salt Lake and Davis Counties, Utah, beginning at I-215 and 2100 North in Salt Lake City and extending northward approximately 22.5 kilometers (km) (14 miles [mi]) to the junction of I-15 and U.S. Highway 89 (US-89) near Farmington. The Final EIS Preferred Alternative would include a 100-meter (m) (328-foot [ft]) right-of-way, which included a multi-use trail for pedestrians, bicyclists, and equestrians parallel to the highway to link communities in the North Corridor.

### **Final EIS and Court Ruling**

FHWA, the Corps, and UDOT completed the Final EIS for the proposed Legacy Parkway project in June 2000. FHWA and the Corps issued separate Records of Decision (RODs) approving the Legacy Parkway project in October 2000 and January 2001, respectively. The Corps issued a Section 404 permit pursuant to the federal Clean Water Act (CWA), authorizing the fill of 46 hectares (ha) (114 acres [ac]) of wetlands resulting from construction of the proposed action.

Subsequent to the issuance of the RODs, Utahns for Better Transportation (UBT), the Sierra Club, and the Mayor of Salt Lake City (litigants) filed a lawsuit in federal district court challenging the adequacy of the Final EIS and the issuance of the Section 404 permit. The federal district court upheld both federal agencies’ RODs in August 2001. In September 2001, the litigants filed a motion for injunctive relief with the federal court; the federal court denied the motion in October 2001. The litigants then filed an appeal

for injunctive relief with the U.S. Court of Appeals for the Tenth Circuit in November 2001. Later in November 2001, the appellate court granted a temporary injunction pending the resolution of appeals. In September 2002, the appellate court issued an opinion affirming in part and remanding in part the district court's decision to uphold the RODs and Section 404 permit. The appellate court ruled in favor of FHWA and the Corps on the majority of the issues, but it ruled that the Final EIS was arbitrary and capricious in the following areas, based on NEPA requirements.

- Elimination of the D&RG regional alignment as a feasible alternative based on cost.
- Elimination of the D&RG regional alignment as a feasible alternative based on substantial impacts on existing development.
- Practicability of a narrower right-of-way.
- Alternative sequencing of the Shared Solution.
- Integration of Legacy Parkway and mass transit construction plans.
- Impacts on wildlife.

The appellate court also ruled that the Corps' issuance of the Section 404 permit was arbitrary and capricious on the following grounds.

- Insufficient information to determine whether the D&RG regional alignment was a practicable alternative.
- Insufficient information to determine whether a narrower median was a practicable alternative.
- Insufficient information to determine whether a right-of-way without a future utility corridor or berm was a practicable alternative.
- Insufficient information on the impacts on wildlife.

As a result of the appellate court decision, all construction work on Legacy Parkway has been halted, with the following exceptions: right-of-way acquisition, design work, certain activities related to the implementation of the Legacy Nature Preserve mitigation sites, and construction activities associated with the upgrade of the Park Lane (formerly Burke Lane) interchange in Farmington. This work has continued consistent with an agreement of the parties as entered by the court. In April 2003, FHWA and the Corps issued a notice of intent to prepare a Supplemental EIS.

Table 1 below provides key dates and events in the history of the Legacy Parkway project.

**Table 1** Legacy Parkway Project History

Date	Event
March 1997	FHWA issues a notice of intent to prepare an EIS for Legacy-West Davis Highway.
1998	Governor Leavitt changes the name from Legacy-West Davis Highway to Legacy Parkway. Legacy Parkway Nature Preserve concept is unveiled.
September 1998	FHWA publishes the Draft EIS.
June 2000	FHWA files Final EIS for Legacy Parkway.
October 2000	FHWA issues its ROD approving Legacy Parkway.
December 2000	UDOT awards design and construction contract, pending Section 404 permit and notice to proceed.
January 2001	Corps issues its ROD and Section 404 permit. UDOT issues notice to proceed to the contractor to begin limited work. Lawsuits are filed in the federal district court challenging the issuance of the permit and ROD.
April 2001	Plaintiffs and UDOT enter into agreement to limit construction activities to certain locations until August 2001.
May 2001	Construction begins in the north interchange area, particularly Park Lane (formerly Burke Lane), the Burke (Park) Lane extension west of I-15, and the intersection of the Burke (Park) Lane overpasses with I-15 and US-89.
August 2001	Heavy construction begins throughout the Legacy Parkway project area. Federal district court dismisses the plaintiffs' lawsuit, ruling in favor of UDOT and the federal lead agencies.
September 2001	Plaintiffs file a motion of injunctive relief with the federal district court.
October 2001	Federal district court denies the plaintiffs' motion for injunctive relief.
November 2001	Plaintiffs file an appeal for injunctive relief with the appellate court. Tenth Circuit grants a temporary injunction pending resolution of appeals. Construction is put on hold pending the outcome of the appeal. Through the court, UDOT and the Plaintiffs agree on a stipulation to allow certain activities to continue. These activities include design work and right-of-way acquisition as well as work at Burke (Park) Lane in the north interchange.
March 2002	Tenth Circuit hears arguments on the Legacy Parkway case.
September 2002	Tenth Circuit publishes its ruling—affirming in part, reversing in part, and remanding the federal district court decision—finding that the Final EIS is inadequate and that issuance of the Section 404 permit was arbitrary and capricious.
April 2003	FHWA and the Corps, as joint lead agencies, issue a notice of intent to prepare a Supplemental EIS.

## **Purpose of this Draft Supplemental Environmental Impact Statement**

The Legacy Parkway Draft Supplemental EIS is designed to meet the following requirements.

- Provide additional studies, as directed by the appellate court.
- Follow NEPA requirements regarding the preparation of a supplemental EIS.
- Follow FHWA-specific NEPA requirements regarding conducting a reevaluation of a final EIS.
- Follow Corps' Clean Water Act requirements for consideration of a Section 404 permit.

To ensure that the Draft Supplemental EIS satisfies all relevant legal requirements, this document addresses the specific issues of concern identified by the appellate court, updates any new significant project information identified during the reevaluation, satisfies NEPA requirements associated with preparing a supplemental environmental document, and presents new and updated information for the Corps to use in its review of the Section 404 permit for the Legacy Parkway project. Each of these requirements is described below.

### **Additional Analysis Required by Tenth Circuit Court**

As described in the previous section, *Background and Status of Legacy Parkway Project*, the appellate court directed FHWA and the Corps to address several specific issues. The lead agencies reviewed all available information and conducted additional studies related to the issues identified by the court decision. The results of these studies are documented in the administrative record and in five technical memoranda, and are incorporated in this Supplemental EIS.

### **NEPA Requirements**

NEPA regulations (40 CFR 1502.9 [c][1]) require a federal agency to prepare a supplemental EIS if:

- the agency makes substantial changes in the proposed action that are relevant to environmental concerns; or
- significant new circumstances or information relevant to environmental concerns have a bearing on the proposed action or its impacts.

FHWA regulations (23 CFR 771.129) are similar. The Supplemental EIS process also reflects significant new circumstances and information related to the proposed action that have changed since publication of the Final EIS. These new circumstances and information include any physical or environmental changes to the proposed action or mitigation, compliance with new or revised applicable environmental regulations, and any necessary revisions to the analysis of impacts based on the best current scientific methodology. A supplemental EIS, therefore, typically does not restate information presented in a final EIS, but rather incorporates unchanged information by reference to the final EIS.

## Reevaluation of the Final EIS

Under the FHWA agency-specific NEPA regulations (23 CFR 771.129), FHWA is required to prepare a written evaluation of a final EIS whenever major events to advance a proposed action have not occurred within 3 years of approval of the final EIS. In the case of the Legacy Parkway project, a reevaluation was conducted because continued construction of the project was halted as a result of the appellate court decision, and over 3 years have passed since FHWA filed the Legacy Parkway Final EIS. The primary purpose of the reevaluation process is to determine whether any changes in the project; changes in the existing physical or regulatory environment, including project design, concept and scope; or changes in the affected environment, impact analysis, and proposed mitigation measures would result in the need to update technical information in the final EIS.

Typically, FHWA uses a reevaluation process to determine whether an existing EIS is valid or a supplemental EIS is required. In this case, however, the appellate court decision required the preparation of additional studies, which led to FHWA and the Corps' decision to prepare this Supplemental EIS for the proposed action. The reevaluation process, therefore, was not used to decide whether a supplemental EIS should be prepared. Rather, it was used to assess whether issues in addition to those addressed by the court ruling warranted attention in the Supplemental EIS given the time that had passed since the Final EIS. Therefore, the results of both the reevaluation and the analyses required by the court ruling comprise this Supplemental EIS, and this document serves as both the Supplemental EIS and the reevaluation report. Pursuant to NEPA and FHWA's regulation (23 CFR 771.129), this document is subject to the same distribution and public review requirements as the previously published Draft and Final EIS (23 CFR 771.130 [d]).

## Review of the Section 404 Clean Water Act Permit Decision

The Corps issued a Section 404 permit for the Final EIS Preferred Alternative with its ROD in January 2001. As a result of analyses conducted for this Draft Supplemental EIS, UDOT has since reduced the width of the right-of-way of its proposed action. Therefore, concurrent with the release of this Draft Supplemental EIS, UDOT is applying for a modification to its Section 404 permit. The Corps intends to evaluate the request to modify the Section 404 permit based on the updated and additional information presented in the Draft Supplemental EIS. A detailed description of the Corps' responsibilities under the CWA is included in the section below titled *Lead Agencies and Required Permits and Approvals*.

## Approach to Preparing the Draft Supplemental Environmental Impact Statement

The approach to preparing the Draft Supplemental EIS included the following main components, which occurred concurrently and in coordination with each other.

- Independent technical review of the Legacy Parkway Final EIS, supporting technical studies, and relevant parts of the administrative record to identify the need for updated information, studies, or analysis as required by FHWA NEPA reevaluation requirements (23 CFR 771.129).
- Analysis of the limited deficiencies identified by the appellate court with regard to the Final EIS and Section 404 permit (documented in five technical memoranda and the administrative record) to develop information necessary to support the Supplemental EIS process.

- Comprehensive public participation process.
- Coordination and consultation with cooperating agencies and other federal, state, and local agencies.

Each of these key components of the Supplemental EIS approach is described below.

## **Independent Technical Review and Reevaluation of the Final EIS**

The independent technical review, part of the reevaluation process of the Final EIS, focused on determining the current validity of all the information presented in the Final EIS, including any environmental impacts that had not previously been identified or for which there was new information available. Jones and Stokes performed the independent technical review and provided a written evaluation to the lead agencies. The technical review of the Final EIS focused on determining whether:

- the proposed action and alternatives were substantially different or have changed from the Final EIS to the Supplemental EIS;
- the affected environment has changed, resulting in different or additional project impacts from the Final EIS to the Supplemental EIS;
- relevant regulations or laws have changed since publication of the Final EIS, resulting in new requirements that were not previously addressed;
- mitigation measures or other environmental commitments have changed; or
- the appellate court decision would result in a change to project alternatives, environmental impacts, and/or required mitigation measures, as described above.

The results of the technical review were used to develop recommendations on what technical information and analyses in the Final EIS needed to be updated and included in the Supplemental EIS to document the results of the reevaluation process. The results of the technical review/reevaluation process are documented in Chapters 1, 3, and 4 of this Draft Supplemental EIS.

An important aspect of the reevaluation was the use of an updated travel demand model developed and maintained by the Wasatch Front Regional Council (WFRC). Specifically, the Final EIS used a January 2000 version of the WFRC travel demand model, whereas the Draft Supplemental EIS and associated technical memoranda are based on version 3.2, which was developed in fall 2003 and revised in early 2004. Information derived from the updated model affected many of the technical analyses presented in this document, as well as the measures of effectiveness tied to the purpose and need for the proposed action and the analysis specific to the selection and screening of project alternatives.

The new travel demand model has several major differences compared to the 1999 version, which resulted in changes in the travel demand forecasts and traffic-based impact analyses. For example, the new model has been updated to incorporate new demographic data, based on the 2000 Census; the demographics in the old model were based on the 1990 Census. Additionally, the new model has an improved mode choice module that calculates the transit versus automobile mode split as part of the model output.

The version of the WFRC travel model used for the Supplemental EIS analysis also includes feedback loops that inform trip distribution of congested highway travel times resulting from assignment. Feedback to trip distribution accounts for the fact that, as highway travel times increase due to congestion, travelers shorten and/or direct their trips to avoid congestion points. A similar feedback mechanism affects mode choice, reflecting the extent to which travelers take highway congestion into account when deciding between driving and using transit. These factors influence the total number of automobile trips at any location that experiences congestion. The earlier version of the WFRC model used in the Final EIS included a very preliminary set of feedback capabilities, which have been refined in the current model.

## Technical Memoranda Prepared to Address Issues Identified by Tenth Circuit Court

Five technical memoranda were developed to address the following concerns.

- Right-of-way issues, including discussion of the utility corridor, berm, and median widths (*Legacy Parkway Technical Memorandum: Right-of-Way Issues*).
- Additional information about the D&RG regional alignment discussed in the Final EIS (*Legacy Parkway Technical Memorandum: Denver & Rio Grande Corridor Evaluation*).
- Integration of the proposed Legacy Parkway with mass transit (*Legacy Parkway Technical Memorandum: Integration of Mass Transit with Legacy Parkway*).
- Alternative sequencing of certain projects that comprise the Shared Solution (*Legacy Parkway Technical Memorandum: Sequencing of the North Corridor Shared Solution*).
- Impacts of the proposed action on wildlife (*Legacy Parkway Wildlife Impacts Analysis Technical Memorandum*).

A description of the approach used for the analysis in each technical memorandum is summarized in Chapter 2, *Tenth Circuit Court Ruling Analysis*, of this document. The results of these analyses presented in the technical memoranda and administrative record were incorporated with the results of the reevaluation of the Final EIS and integrated together to develop this Draft Supplemental EIS.

## Public Participation and Review

NEPA regulations (40 CFR 1501.7) and FHWA regulations (23 CFR 771.123[b]) require an early and open “scoping” process as part of the preparation of an EIS. *Scoping* is the process by which lead agencies solicit input from the public and interested agencies on the nature and extent of the actions, alternatives, and impacts to be addressed in the EIS, and on the methods by which they will be evaluated. Although NEPA does not require a formal scoping process for a supplemental EIS, the lead agencies decided to execute a comprehensive public scoping process for the Legacy Parkway Supplemental EIS because of the complexity of the issues, as well as the interest in and controversy surrounding the project.

The following sections describe the formal scoping period and scoping report, community planning and information committee meetings, small group meetings, and public review of the Draft Supplemental EIS.

## ***Formal Scoping Period and Scoping Report***

Because of the complexity of the issues and the interest in and controversy surrounding the project, FHWA, the Corps, and UDOT implemented a formal scoping process. Specific input was solicited from the public and regulatory community on the nature and extent of the proposed action, proposed action alternatives, potential impacts resulting from implementation of the proposed action, and the methodology used to evaluate and assess the impacts. The formal scoping process for the Supplemental EIS began with the publication of the notice of intent (NOI) in the Federal Register on April 1, 2003. Early and continuing public involvement opportunities have been provided, including:

- **Open House Public Meeting.** An open house was held on April 17, 2003 to provide an opportunity for the public to talk directly with FHWA, the Corps, UDOT, and UTA staff regarding the court injunction, the status of the project, the Legacy Nature Preserve, and the Supplemental EIS process. The public was also given the opportunity to provide written comments on the project at the open house. A court reporter was available at the open house to take oral comments from the public on the project.
- **Focus Group Meetings.** Four meetings were held, two on April 28 and two on April 29, 2003, to provide a forum for discussion of the specific issues identified by the appellate court. Agenda topics included the D&RG alternative alignment, a narrower right-of-way for the Legacy Parkway, sequencing of the Shared Solution, integration of Legacy Parkway and mass transit, and wildlife impacts.
- **Legacy Parkway Hotline.** A 24-hour telephone hotline (telephone number 801/951-1039) was established to provide updated project and schedule information as well as an additional opportunity to comment on issues relevant to the Supplemental EIS analysis.

A scoping report was published in August 2003 summarizing written and oral comments received during the formal scoping period. The report is available for review on the Corps' web site (<http://www.spk.usace.army.mil/projects/regulatory/legacyparkway/index.html>) and UDOT's web site ([http://www.udot.utah.gov/legacy/legacy\\_SEIS\\_Summary.htm](http://www.udot.utah.gov/legacy/legacy_SEIS_Summary.htm)).

## ***Community Planning and Information Committee Meetings***

At the Legacy Parkway public scoping meetings held in April 2003, environmental groups and city officials expressed a desire to be more involved in the Legacy Parkway Supplemental EIS process. In response to that request, FHWA and the Corps hosted a series of community planning information committee (CPIC) meetings to provide a public forum for environmental groups and city officials to offer input. The series included four CPIC meetings and one meeting of a CPIC subcommittee. The comments of participants in the four CPIC meetings were summarized in minutes distributed to the participants.

Representatives of local jurisdictions, non-governmental organizations (including the plaintiffs), and cooperating agencies participated in the CPIC meetings. At the request of the plaintiffs, Utahns for Better Transportation, et al., the U.S. Institute for Environmental Conflict Resolution (USIECR) contacted the lead agencies to offer a conflict resolution process. The lead agencies agreed to use a facilitator on the USIECR roster to facilitate the CPIC meetings. CPIC meetings 2, 3, and 4 were facilitated by the USIECR facilitator, who was hired using public funds.

The CPIC meetings focused on collecting and sharing information critical to completing the five technical memoranda necessary to address the appellate court's concerns (see Chapter 2, *Tenth Circuit Court Ruling Analysis*). The CPIC had the following three primary goals.

1. Provide a vehicle for the federal agencies to gather and share information relevant to the development of the Draft Supplemental EIS and agency decision making.
2. Afford an opportunity for CPIC members to share ideas about information they want to see in the Draft Supplemental EIS and how to analyze that information.
3. Present updates on the I-15 expansion project, another component of the Shared Solution.

Below is a summary of the topics discussed at each CPIC meeting.

### **CPIC Meeting 1, July 10, 2003**

The first meeting focused on potential Legacy Parkway alignment options within the D&RG regional corridor, the potential for a narrower right-of-way, and the inclusion of a trail within the proposed right-of-way.

### **CPIC Meeting 2, September 10, 2003**

The second meeting focused on the sequencing of the Shared Solution and integration of mass transit with the proposed action. The group discussed the methodology proposed for analyzing potential transit scenarios, including selection of potential transit enhancements. The discussion was followed by a question-and-answer period.

### **CPIC Subcommittee Meeting, October 7, 2003**

In response to comments received during CPIC meeting 2 (September 2003) and to ensure that the transit-oriented development (TOD) opportunities used for the sequencing and integration analysis accurately reflected local planning efforts, a subcommittee meeting was convened in October 2003. During this meeting, participants were asked to review proposed TOD opportunities and compare them to local general plans to determine potential feasibility. The information received during this meeting was used to develop robust transit scenarios that supported current and projected land use. The robust transit scenarios were used in both the integration and sequencing analyses.

### **CPIC Meeting 3, November 5, 2003**

The third meeting focused on the preliminary results of the integration and sequencing analyses. The meeting included a presentation of two robust transit scenarios, which were developed using different combinations of the transit enhancements presented at the September 2003 CPIC meeting. The methodology used to develop the robust transit scenarios was discussed, followed by a question-and-answer period.

### **CPIC Meeting 4, November 6, 2003**

The fourth and final meeting focused on the proposed methodology that would be used to evaluate potential wildlife impacts resulting from implementation of the proposed action. The agenda for this meeting was created in response to specific requests by the non-governmental organizations and interested individuals. Experts involved in the technical work discussed various elements of the analysis

as it related to the specific information requested. Each discussion topic was followed by a question-and-answer period.

### ***Small Group Meetings***

The lead agencies agreed to meet with individuals, organizations, and other interested parties as requested or on an as-needed basis. Specifically, FHWA, the Corps, and UDOT attended the following meetings.

- The federal lead agencies and the applicant met with representatives of UBT and their consultants in December 2002, April 2003, August 2003, October 2003, and January 2004. Transit and transit-related issues were the main topic of these meetings.
- The Davis County Council of Governments invited the federal lead agencies and the applicant to attend a meeting in May 2003. FHWA and the applicant attended the meeting, updating the Council of Governments members on the Supplemental EIS process.
- UDOT individually interviewed local community planners from five different cities and Davis County in July 2003. The interviews were intended to identify specific localized impacts of the potential Legacy Parkway alignment options within the D&RG regional corridor, the potential for a narrower right-of-way, and the inclusion of a trail within the proposed right-of-way.
- The Corps and UDOT invited CPIC members to attend a presentation providing an overview on the approach to the wildlife analysis in August 2003. FHWA did not participate in this meeting.
- The federal lead agencies met with representatives of UBT, Future Moves, and the Sierra Club in July 2004 to update them on the status of the traffic modeling and environmental review process.

### ***Public Review of Draft Supplemental EIS***

This Draft Supplemental EIS is being circulated for public review and comment for 60 days. In conjunction with the public review and comment period, a public hearing on the Draft Supplemental EIS and Section 404 permit will be held. A mailer will be sent out with the time, date, and location of that hearing. A notice will be published in the local newspaper prior to the hearing date. Details of the public hearing will also be recorded on the Legacy Parkway hotline.

## **Interagency Consultation and Coordination**

### ***Cooperating Agency Meetings***

To facilitate interagency participation in the preparation of the Draft Supplemental EIS, the U.S. Environmental Protection Agency (EPA), Federal Transit Administration (FTA), and U.S. Fish and Wildlife Service (USFWS) agreed to serve as cooperating agencies (sometimes referred to as “partners”) for the Draft Supplemental EIS. EPA, FTA, and USFWS are responsible for providing early and timely input to the federal lead agencies on the Draft Supplemental EIS and associated technical memoranda at regularly scheduled meetings. Individual agency roles are described below. A partnering meeting was held in February 2003 to initiate the Draft Supplemental EIS process, and the lead agencies have met with these agencies throughout the development of the technical review and technical memoranda. Cooperating agency meetings were held in April, May, June, August, and September 2003, and in January, March, and May 2004. The meetings focused on gathering agency input on public participation

efforts, gaining consensus on the technical approach to the Draft Supplemental EIS, and discussing agency concerns.

### **U.S. Environmental Protection Agency**

The statement of responsibilities (SOR) signed by EPA, FHWA, and the Corps sets forth EPA's responsibilities as a cooperating agency. These responsibilities include providing technical review and comment during preparation of the Draft Supplemental EIS on all environmental impacts of the proposed action and on any NEPA issues pursuant to EPA's Clean Air Act (CAA) Section 309 authorities, participating in development of mitigation measures considered for the Draft Supplemental EIS for impacts on wetlands and water quality, and reviewing and commenting on the Final Supplemental EIS in accordance with Section 309 of the CAA.

In addition to participating in the technical work described above, EPA attended the public meetings during the formal scoping period in April 2003 and the CPIC meetings in September and November 2003. At the request of the federal lead agencies, EPA also attended meetings with FHWA, the Corps, and UDOT engineers and biologists in June, October, August, and November 2003, and May 2004, during the development of the wildlife impacts analysis.

### **U.S. Fish and Wildlife Service**

USFWS agreed to perform the following responsibilities (U.S. Fish and Wildlife Service May 20, 2003): consult on relevant technical studies; review project information and results; express USFWS views on subjects within its jurisdiction or expertise; participate in joint public involvement activities; and identify Draft Supplemental EIS content necessary to discharge USFWS' NEPA responsibilities and other requirements regarding jurisdictional approvals, permits, licenses, and or clearances.

In addition to participating in the technical work described above, USFWS attended the public meetings during the formal scoping period in April 2003 and the CPIC meetings in September and November 2003. At the request of the federal lead agencies, USFWS also attended meetings with FHWA, the Corps, and UDOT engineers and biologists in June, October, August, and November 2003, and May 2004, during the development of the wildlife impacts analysis.

### **Federal Transit Administration**

As one of eleven modal administrations in the U.S. Department of Transportation, FTA is responsible for assisting transit agencies. Specific to this Draft Supplemental EIS process, FTA provided early focused review of information developed for the technical memoranda and other information related to the Draft Supplemental EIS pertaining to public transportation, including transit. FTA released the *Weber County to Salt Lake Commuter Rail Project: Draft Environmental Impact Statement and 4(f) Evaluation* for public review between April 30, 2004 and June 15, 2004. FTA coordinated with FHWA and the Corps on information concerning commuter rail transit for use in the analysis for this Draft Supplemental EIS.

In addition to the cooperating agency meetings, FTA attended the formal scoping period public meetings in April 2003.

### **State, Regional, and Local Agencies**

To ensure that the issues and impacts were adequately addressed and to promote interagency cooperation, the following state, regional and local agencies participated in the preparation of information for the Draft Supplemental EIS.

## State Agencies

### ***Utah Department of Natural Resources, Division of Wildlife Resources***

The mission of the Utah Department of Natural Resources (UDNR), Division of Wildlife Resources is to ensure the future of protected wildlife for its intrinsic, scientific, educational, and recreational values through protection, propagation, management, conservation and distribution throughout the State of Utah. (UDNR Division of Wildlife Resources 2002.) UDNR Division of Wildlife Resources participated in multiple meetings with FHWA, the Corps, and UDOT engineers and biologists throughout the Draft Supplemental EIS process to provide early focused review of and recommendation on specific scientific aspects of data and methods used to complete the wildlife impacts analysis, and on the results of the analyses as they were completed. These meetings were held in June, October, August, and November 2003, and May 2004. UDNR also attended meetings during the formal scoping period and the CPIC meeting in November 2004.

### ***Additional State Agencies***

During the course of preparation of technical information and permitting for this Draft Supplemental EIS, the following state agencies were consulted.

- Department of Environmental Quality, Division of Air Quality.
- Department of Natural Resources, Division of Water Rights.

## Regional Agencies

### ***Utah Transit Authority***

As an important partner in the development of the Shared Solution, UTA participated in multiple meetings throughout the Draft Supplemental EIS process, including open house and focus group meetings in April 2003, meetings in May, June, July, August, September, October and December 2003 to develop information for the technical memoranda and other information related to the Draft Supplemental EIS, CPIC meetings in September and November 2003, and cooperating agency meetings in April, May, June, and September 2003. In addition, UTA provided applicable information concerning commuter rail transit use and the proposed Weber County to Salt Lake Commuter Rail project for use in the analysis for this Draft Supplemental EIS.

### ***Wasatch Front Regional Council***

The WFRC participated in multiple meetings held throughout the Draft Supplemental EIS process including open house and focus group meetings held in April, 2003, meetings held to develop information for the technical memoranda and other information related to the Draft Supplemental EIS held in May, June, July, August, September, October and December of 2003 and CPIC meetings held in July, October, September and November 2003. In addition, as described in the *Independent Technical Review and Reevaluation of the Final EIS*, WFRC provided an updated travel demand model for the analysis for this Draft Supplemental EIS.

## Local Jurisdictions

### ***Cities and Counties***

Local jurisdictions that participated in the CPIC meetings described above included the Cities of North Salt Lake, Woods Cross, Bountiful, West Bountiful, Centerville, Farmington, Kaysville, and Fruit Heights. Salt Lake and Davis Counties also participated in the CPIC meetings. Community planners from the Cities of Woods Cross, North Salt Lake, Farmington, Centerville, and West Bountiful, and Davis County were individually interviewed to identify specific, localized impacts associated with potential alignments within the D&RG corridor in July 2003.

Salt Lake City and Envision Utah were invited to participate in the CPIC meetings but declined the invitation.

During the formal scoping period, comment letters were received from the Davis County Council of Governments and Davis County Commission. After the formal scoping period, comment letters were received from the Davis County Commission, Davis County Council of Governments, City of Centerville, City of Woods Cross, and City of Bountiful.

## **Lead Agencies and Required Permits and Approvals**

As discussed earlier, FHWA and the Corps are the two federal lead agencies responsible for preparing the Draft Supplemental EIS and will comply with all applicable laws. UDOT is the project applicant and proponent of the Legacy Parkway project. Pursuant to 23 CFR 771.105(b), FHWA will ensure that alternative courses of action are evaluated and decisions are made in the best overall public interest based on a balanced consideration of the need for safe and efficient transportation; the social, economic, and environmental impacts of the proposed transportation improvement; and national, state and local environmental protection goals. Based on the information presented in the Draft Supplemental EIS, FHWA will make a decision on the request to connect the proposed action to I-215 and I-15. Once the Final Supplemental EIS is filed, FHWA will publish an ROD on the proposed action.

The Corps is responsible for ensuring compliance with NEPA (40 CFR 1500–1508) and the CWA (33 CFR 320–330 and 40 CFR 230). Section 404 of the CWA prohibits the placement of dredged or fill material into waters of the U.S., including wetlands, without first obtaining authorization from the Corps. In reviewing UDOT's request for a permit modification, among other important standards, the Corps will ensure that the proposed action is the least environmentally damaging practicable alternative relative to the aquatic ecosystem, does not significantly degrade aquatic resources, complies with the applicable requirements of other statutes, and is not contrary to the public interest. Additionally, the Corps cannot issue a permit for a project if there is a practicable alternative to the proposal that has less adverse impact on the aquatic ecosystem, as long as that alternative does not have other significant adverse environmental consequences. *Practicable* is defined as “available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.” The Corps will require UDOT to demonstrate that it has taken steps to avoid wetland impacts where practicable, minimize potential impacts on wetlands, and provide compensation for any remaining unavoidable impacts. Once the Final Supplemental EIS is filed, the Corps will make a decision on the request for modification to UDOT's permit and prepare an ROD explaining how the permit decision was made.

As the project proponent, UDOT is responsible for supporting the lead agencies by providing technical information as necessary to help the lead agencies fulfill their objectives in developing the Draft Supplemental EIS and providing a project that complies with regulatory requirements of the CWA. While

Legacy Parkway is a fully state-funded project, it requires authorization from FHWA for connection to the interstate highway system and permit from the Corps to fill wetlands and waters of the U.S. At the same time, UDOT, as a state agency, is charged with meeting the transportation demands of travelers on Utah roadways and working to maintain the quality of life enjoyed by Utah citizens. As part of designing and implementing the project, UDOT endorses a context-sensitive solution that addresses transportation needs as well as safety concerns and scenic and environmental community values.

UDOT has prepared an application for modification to the CWA Section 404 permit. Alternative E is the alternative for which UDOT is seeking approval from the Corps under Section 404. The introduction to Chapter 1 and Section 3.4 of Chapter 3 describe the roadway features of the project that is the subject of UDOT's application for a Section 404 permit modification. In addition, UDOT has included in its application the mitigation that it is requesting that the Corps consider in its evaluation. The mitigation includes a preserve of approximately 850 ha (2,100 ac), and is an updated version of the mitigation that was included in the ROD for the Final EIS Preferred Alternative. UDOT is willing to provide the same level of mitigation, even though Alternative E, which has a reduced right-of-way width compared to the Final EIS Preferred Alternative, would result in fewer wetlands impacts. See Section 3.6, *Land Acquired to Date*, and Section 4.12, *Wetlands*, for a more detailed discussion of the Legacy Nature Preserve proposed mitigation. A complete detailed description of UDOT's proposed Legacy Nature Preserve is included in the modified Section 404 permit application.

## **Organization of Draft Supplemental Environmental Impact Statement**

The organization of this Draft Supplemental EIS generally follows that of the June 2000 Final EIS (FHWA-UT-EIS-98-02-F). The Draft Supplemental EIS is organized in the following chapters.

- Foreword/Introduction
- Summary
- Chapter 1 *Purpose of and Need for Action*
- Chapter 2 *Tenth Circuit Court Ruling Analysis*
- Chapter 3 *Alternatives*
- Chapter 4 *Supplemental Environmental Analysis*
- Chapter 5 *Draft Sections 4(f) and 6(f) Evaluation*
- Chapter 6 *List of Preparers*
- Chapter 7 *Distribution*
- Chapter 8 *References*
- Acronyms and Abbreviations
- Index

- Technical Appendices
  - Appendix A *Consultation and Coordination*
  - Appendix B *Travel Demand Technical Appendix*
  - Appendix C *Noise Technical Appendix*
  - Appendix D *Wetlands Technical Appendix*