



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT
1325 J STREET
SACRAMENTO CA 95814-2922
March 30, 2022

Office of Counsel

SUBJECT: Freedom of Information Act Request No. FA-22-0084; Copy of the Memorandum for Record (MFR) Implying the Need for an Environmental Impact Statement (EIS) Related to SPK-201800503, Lake Restoration Solutions Project Prepared by Leah Fisher of the United States Army Corps of Engineers (USACE)

Mr. Scott Peters
Lake Restoration Solutions, LLC
1280 S 1380 West, Unit #11
Orem, Utah 84058

Dear Mr. Peters:

On March 14, 2022, our office received your Freedom of Information Act (FOIA) request for copy of the MFR implying the need for an EIS related to SPK-201800503, Lake Restoration Solutions project prepared by Leah Fisher of the USACE.

For the purpose of assessing fees, I have classified you as a commercial requester under 32 C.F.R. § 518.85(b)(2)(i). The charge for providing the requested information is as follows:

Professional Search and Review; .5 hr. @ \$44 per hour \$22

Ms. Andrea Vaiasicca emailed you a payment request on March 29, 2022 and suspended further processing until we received confirmation of your payment. We received confirmation of your payment through <https://pay.gov> on the same day. Thank you.

As requested, a redacted copy of the MFR implying the need for an EIS related to SPK-201800503, Lake Restoration Solutions project prepared by Leah Fisher of the USACE is enclosed.

Although the bulk of the requested information has been provided. The information regarding the historic sites has been redacted in the MFR has been withheld in full pursuant to 5 U.S.C. 552(b)(3), generally known as "Exemption 3" of the FOIA. Exemption 3 incorporates the disclosure prohibitions referenced in other Federal statutes into the FOIA. The aforementioned information is protected in accordance with the non-disclosure clauses of the National Historic Preservation Act (16 USC 470w-3).

Also, names of Department of Defense (DoD) employees contained in the headers of e-mails and other similar lists of names within the records have been redacted pursuant to 5 U.S.C. § 552 (b)(6) of the Freedom of Information Act. In response to the

terrorist attacks on the United States in the fall of 2001, DoD revised its policies which implement the Freedom of Information Act. At that time, the decision was made to withhold lists of names of all DoD employees. The court upheld this policy decision stating, "The privacy interest protected by exemption six of the Freedom of Information Act encompasses not only the addresses, but also the names of federal employees." See Judicial Watch, Inc. v. United States, 84 Fed. Appx. 335 (4th Cir. (2004)).

Because your request has been partially denied, you are advised of your right to appeal this determination through this office to the Secretary of the Army (ATTN: General Counsel). Your appeal must be postmarked or electronically transmitted within 90 days of the date of this letter. The envelope containing the appeal should bear the notation "Freedom of Information Act Appeal" and should be sent to U.S. Army Corps of Engineers, Sacramento District, ATTN: CESPCK-OC, 1325 J Street, Room 1440, Sacramento, California 95814.

For any further assistance or to discuss any aspect of your request, you have the right to contact the U.S. Army Corps of Engineers FOIA Public Liaison. Additionally, you have the right to contact the Office of Government Information Services (OGIS) to inquire about FOIA mediation services they offer. Contact Information:

U.S. Army Corps of Engineers
FOIA Public Liaison
441 G. Street, NW
ATTN: CECC-L (Emily Green)
Washington, DC 20314-1000
Email: foia-liaison@usace.army.mil
Phone: 202-761-4791

Office of Government Information Services
National Archives and records Administration
8601 Adelphi Road-OGIS
College Park, MD 20740-6001
E-Mail: ogis@nara.gov
Phone: 202-741-5770 or
Toll Free: 877-684-6448

If you have any questions regarding the provided information, please contact Ms. Andrea Vaiasicca, FOIA Specialist, at the above letterhead address or by calling (916) 557-7204.

Sincerely,



A. L. Faustino
Initial Denial Authority
District Counsel

Enclosures



DEPARTMENT OF THE ARMY
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SACRAMENTO CA 95814-2922

CESPK-RD

10 March 2022

MEMORANDUM FOR RECORD

SUBJECT: Determination an Environmental Impact Statement (EIS) Needed for the Utah Lake Restoration Project (Regulatory Division SPK-2018-00503)

1. References:

a. CESPK-CO-R, Memorandum for Record: Traditional Navigable Waterways, Federally Navigable Determination for Utah Lake (SPK-2007-01601), dated November 9, 2007.

b. *Permit Application for Utah Lake Restoration Project*, prepared by Geosyntec Consultants for Lake Restoration Solutions, LLC., dated January 6, 2022.

2. Proposed Project and Location: An application for a Department of the Army permit for the subject project was received by this office on 6 January 2022. To construct the Utah Lake Restoration Project, Lake Restoration Solutions, LLC. (Applicant), proposes to dredge about 957 million cubic yards of sediment from Utah Lake and redeposit the material into 34 "containment areas" or islands within the lake, resulting in the discharge of approximately 18,000 acres of dredged and/or fill material into waters of the U.S. As one of the largest freshwater lakes in the Western U.S., Utah Lake is approximately 24 miles long and 13 miles wide at its widest point and has a surface area of approximately 95,500 acres. Of the 153,000-acre (239 square miles) project area, approximately 85,500 acres are open water, 26,500 acres are wetlands, and 41,000 acres are adjacent upland. Utah Lake is bounded by the city of Saratoga Springs and the Lake Mountains to the west; the cities of Lehi and American Fork to the north; the cities of Pleasant Grove, Lindon, Vineyard, Orem, Provo, and Springville to the east; and the city of Genola, agriculture land, and West Mountain to the south, in Utah County, Utah.

3. Jurisdictional Determination: On 9 November 2007, Utah Lake was determined to be a Traditional Navigable Water, as defined by 33 CFR 328 (SPK-2007-01601). On 6 January 2022, the applicant submitted an aquatic resource delineation which identified approximately 84,448 acres of open water (lake), 27,289 acres of freshwater wetland, 337 acres of open water (pond), 213 acres of riverine wetland, and 89 acres of forested wetland within an approximately 146,000-acre study area around Utah Lake. The applicant is requesting an aquatic resources delineation verification, which is currently being reviewed by the Corps.

4. Permit Authority: Section 404 of the Clean Water Act (33 USC 1344)

5. Project Elements Requiring a Permit:

a. Mechanical and/or hydraulic suction dredging approximately 957-million cubic yards of sediment from 62,400-acres of waters of the U.S. The specific methods for proposed dredging are currently unknown; therefore, the specific dredging activities requiring a permit are not yet known. A DA permit under Section 404 of the Clean Water Act may not be required for dredging resulting in *de minimis* discharges; however, for the purposes of this memo, we are assuming that all dredging activities would require a DA permit.

b. Discharging approximately 18,000 acres of sediment and/or imported fill material into waters of the U.S. to construct 34 containment areas, or “islands” within the lake, including beaches and other lake front areas.

c. Constructing residential, commercial, and institutional development on the islands, including associated infrastructure (e.g., causeways, bridges, utility lines, marinas, boat ramps and docks) to facilitate access to and development of the islands.

d. Restoring, enhancing, and establishing wetlands and other aquatic habitats, including riparian and shallow aquatic vegetation.

6. Scope of Analysis: We have utilized the factors listed in 33 CFR 325, Appendix B (7)(b)(2) to make the determination of Scope of Analysis under the National Environmental Policy Act (NEPA) for the subject project:

a. Factors:

(1) Whether or not the regulated activity comprises “merely a link” in a corridor type project (e.g., a transportation or utility transmission project): The proposed project is a single and complete project and is not “merely a link” in a corridor type project. However, there are linear/corridor type activities and effects to the human environment associated with the proposed project which will be considered in the evaluation of the overall project.

(2) Whether there are aspects of the upland facility in the immediate vicinity of the regulated activity which affect the location and configuration of the regulated activity: There are no existing upland facilities in the immediate area that would affect the location and configuration of the regulated activity. Proposed activities include construction of residential, commercial, and institutional development and associated infrastructure (e.g., causeways, bridges, utility lines, marinas, boat ramps and docks) to facilitate access to and development of the islands.

(3) The extent to which the entire project will be within Corps jurisdiction: The entire project, including proposed upland development and associated infrastructure on the created islands, is expected to occur within the Corps jurisdiction because Utah Lake has been determined to be a traditional navigable water of the U.S. Proposed activities include dredging an estimated 957-million cubic yards of nutrient-loaded sediment from the lake bottom and re-depositing the sediment into 34 constructed “containment areas” within the lake, creating developable islands, including estuary and recreation only islands, totaling approximately 18,000 acres.

(4) The extent of cumulative federal control and responsibility: The proposed project involves restoration of Utah Lake, which would be both privately funded by the applicant, Lake Restoration Solutions, LLC., and publicly funded by the State of Utah, in accordance with the Utah Lake Restoration Act (House Bill 272). There is no federal funding, assistance, or direction involved. The State of Utah owns the bed of Utah Lake, which is sovereign State lands administered by the Utah Division of Forestry, Fire and State Lands. Federal land in the area of analysis includes approximately 9,747 acres of land administered by the U.S. Bureau of Land Management (USBLM) and 647 acres of land administered by the U.S. Bureau of Reclamation (USBR). In addition, we have considered if any federal agencies are required to take federal action under the following laws:

i. Fish and Wildlife Coordination Act (16 U.S.C. 661, et seq.): The U.S. Fish and Wildlife Service (USFWS), Mountain-Prairie Region, has authority over the subject site with regards to the Fish and Wildlife Coordination Act.

ii. National Historic Preservation Act of 1966 (U.S.C. 470 et seq.): The State of Utah's Department of Cultural & Community Engagement, Division of State History, State Historic Preservation Officer (SHPO) has authority over the subject site with regards to the National Historic Preservation Act.

(b) (3) (B)

iii. Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.): The USFWS, Mountain-Prairie Region, has authority over the subject site with regards to the Endangered Species Act. Based upon information provided by the applicant, two federally listed wildlife species and one federally listed plant species have that potential to occur in the subject site: Western, yellow-billed cuckoo (*Coccyzus americanus*), June sucker (*Chasmistes liorus*), and Ute ladies'-tresses (*Spiranthes diluvialis*). Habitat for western, yellow-billed cuckoo occurs in riparian, woodland, and open water areas and habitat for Ute ladies'-tresses occurs in wetland areas surrounding the site; all of which may be directly and indirectly affected by the proposed action. June sucker occurs strictly in open water habitat, which will be directly affected by the proposed action. Therefore, the USFWS will have Federal control and responsibility over approximately 85,500 acres of open water June sucker habitat and potentially 26,500 acres of wetland and/or riparian habitat for cuckoo bird and Ute ladies'-tresses within the study area.

iv. Executive Order (EO) 11990, Protection of Wetlands, (42 U.S.C. 4321 91977): The Corps has Federal control and responsibility over 26,500 acres of wetlands within the study area with regards to EO 11990.

v. Executive Order (EO) 13175, Consultation with Indian Tribes, Alaska Natives, and Native Hawaiians: The Corps has Federal control and responsibility over the subject site with regards to EO 13175.

vi. Executive Order 11998, Floodplain Management: The Corps has Federal control and responsibility over the subject site with regards to EO 11998.

vii. Other: No other federal approval or authorization is required for construction of the proposed project. The United States Environmental Protection Agency, USFWS, USBR, and USBLM have advised that they are not involved in the proposed project and will not be providing any federal funding or have any control over the operations of the proposed project.

7. Determination of Scope: Based on the factors above, we have determined the scope of analysis under NEPA is the entire Utah Lake, including adjacent wetlands, that may be directly or indirectly affected by the proposed project. Additionally, the scope of analysis may further expand to include offsite disposal and/or borrow areas identified by the applicant to accomplish the proposed project, specifically to those areas where the applicant proposes to borrow or import clean fill material to create beaches and waterfront/lake access areas. Currently, the scope of analysis only includes the applicant's proposed 153,000-acre project site, which contains an estimated 85,500 acres of open water, 26,500 acres of wetlands, and 41,000 acres of adjacent upland. Based upon the information provided by the applicant, the Corps and the USFWS appear to have a similar, if not the same, size scope over the proposed project. The entirety of the proposed action, including the proposed development and associated infrastructure on the islands, is included in the Corps scope of analysis. The Corps will be the lead federal agency for compliance with NEPA associated with the processing of a Department of the Army permit for the proposed action.

8. EIS Determination: We have determined the proposed project has the potential to significantly affect the human environment. Therefore, an EIS is necessary to ensure compliance with NEPA.

a. Potentially affected environment: The potentially affected environment includes those effects within the proposed action area as described in section 7, including those effects that are caused by the action, and that occur later in time and/or further in distance. The area of the affected environment may vary depending on the resource(s) being affected, with possible effects to larger areas such as a watershed, air basin, political boundary, socioeconomic boundary, etc.

b. Degree of the effects:

I. Based on information provided by the applicant, we've determined that the proposed activity has the potential to result in both short- and long-term effects to aesthetics; agricultural resources; aquatic resources and wetlands; biological resources; climate change; cultural resources; floodplains; geology, soils, and minerals; hazardous wastes and materials; hydrology and water quality; land use, ownership, and planning; navigation, shore erosion, and accretion; noise; parks and recreation; paleontological resources; public services; socioeconomics; traffic and transportation; utilities and service systems; and water supply, conservation, and water rights.

II. Based on information provided by the applicant, we've determined that the proposed activity has the potential to result in both beneficial and/or adverse effects to the resource areas identified in 8.b.i.

III. Based on information provided by the applicant, we've determined that the proposed activity, specifically dredging for navigational purposes, has the potential to result in beneficial effects to public health and safety. The proposed action, including short- and long-term dredging operations, may result in adverse effects to public health and safety, specifically air, noise, and water.

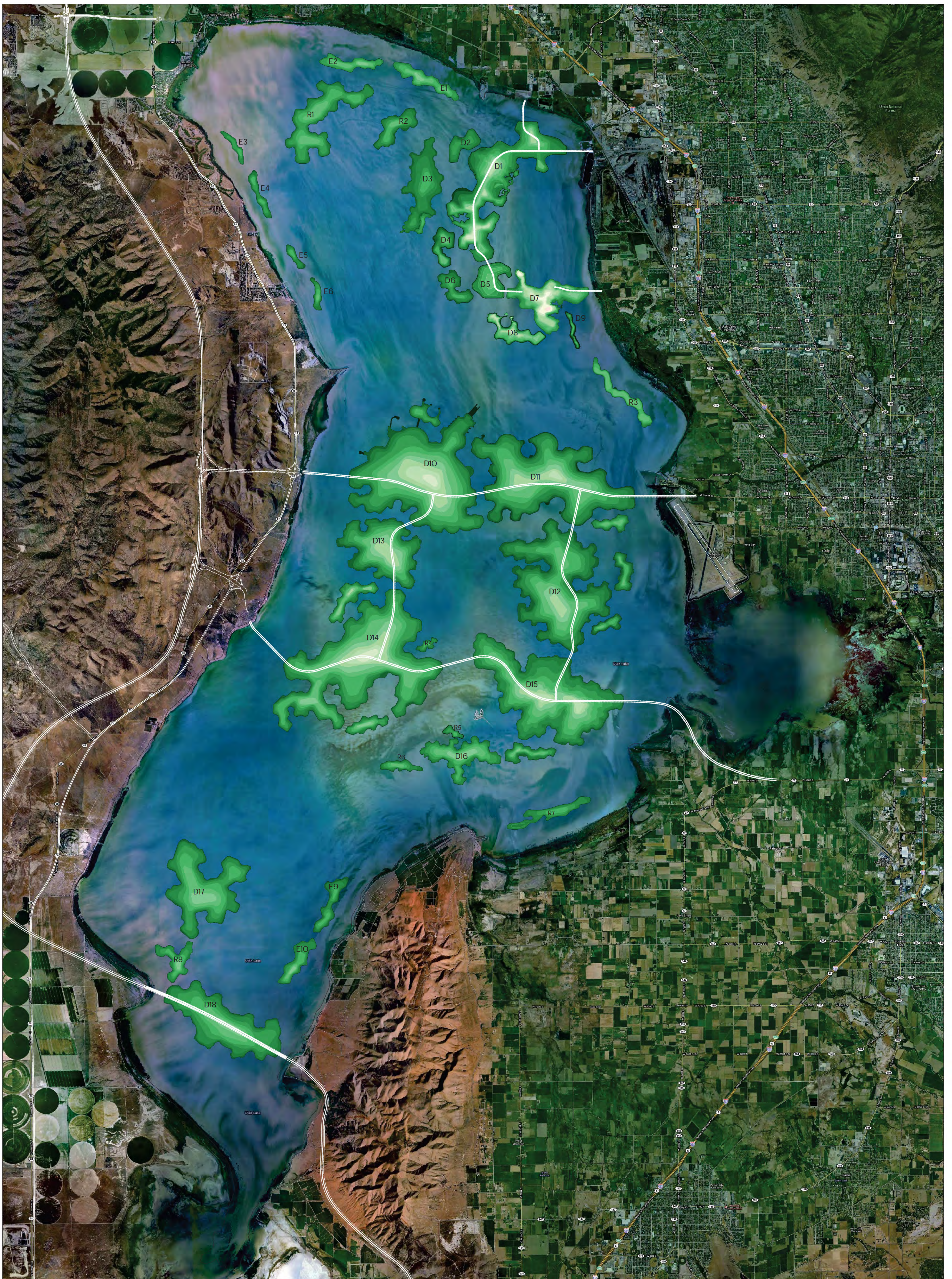
IV. Due to the size, complexity, and nature of the proposed action, including the degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks, we have determined that the proposed action has the potential to violate Federal, State, Tribal, or local laws protecting air, water, land, and tribal resources.

9. Summary: Because the proposed project has the potential to result in significant impacts to the resource areas identified in 8.b.i; including waters of the United States, federally listed as threatened species, and historic properties, we have determined the preparation of an EIS is necessary to ensure compliance with NEPA. Other significant issues may be further identified during the EIS process. A letter will be sent to the applicant, identifying the need to prepare an EIS, and requesting the applicant provide a Statement of Qualifications for three (3) qualified third-party contractors to prepare the EIS, and letters will be sent to all federal, state, local agencies and tribes that have jurisdiction by law or special expertise with respect to the environmental impacts involved in the proposed project, requesting they be a cooperating agency on the preparation of the EIS.

(b) (6)

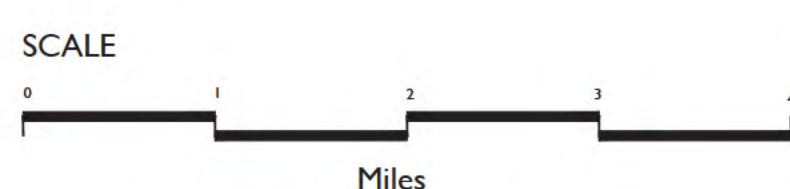
Chief, Regulatory Division

Encl



Legend

4490 ft. Compromise Level	4510 ft.	4530 ft.	4550 ft.
4495 ft.	4515 ft.	4535 ft.	4555 ft.
4500 ft.	4520 ft.	4540 ft.	4560 ft.
4505 ft.	4525 ft.	4545 ft.	4565 ft.



UTAH LAKE
RESTORATION PROJECT

Preliminary Plan
CONTAINMENT AREA LAYOUT

LAKE
RESTORATION
SOLUTIONS

December 2021

Figure
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