



Conserve Southwest Utah Testimony on H.R. 5597
"Desert Tortoise Habitat Conservation Plan Expansion Act, Washington County, Utah."
To the Subcommittee on Federal Lands of the House Committee on Natural Resources
May 22, 2018

This testimony provides the historical and logical reasons [H. R. 5597](#) should not pass. It is presented in terms of a summary of the history, the proposed bill and our issues with it; and is then followed by the details providing the basis for our position.

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1. Summary

1.1 Introduction

Conserve Southwest Utah (CSU) appreciates this opportunity to submit testimony to the Federal Lands Subcommittee of the House Natural Resources Committee on this matter that is very dear to the citizens of Washington County and, due to the precedent-setting nature of this bill, of great importance to American citizens.

As a local grassroots conservation organization in Washington County we have over ten years of detailed experience with the subject of this bill. We have regularly attended Habitat Conservation Advisory Committee meetings (the committee that oversees the Habitat Conservation Plan (HCP) for the Red Cliffs Desert Reserve, most of which is now Red Cliffs National Conservation Area - RCNCA) and public meetings held by county elected officials and the BLM. We have met face-to-face with local elected officials and organized public forums in attempts to reach understanding and resolution. We organized citizen participation in the development of the 2007 “Vision Dixie” long-range county development concept, the 2009 Omnibus Public Lands Management Act (OPLMA), the 2016 Resource Management Plans (RMPs) for the two National Conservation Areas (NCAs), and testified in the 2016 field hearing for the Federal Lands subcommittee. Hundreds of us have spent thousands of volunteer hours achieving the protections that this bill would throw aside.

We have watched this effort to enable a highway through critical habitat evolve over these many years. Our testimony will provide background information and bring the subcommittee up to date on current efforts by Congressman Stewart and our county elected officials to force a road where one was never formerly planned and certainly never approved.

Thank you for your consideration of our thoughts and concerns on the matter under review today. Additionally, thank you for your service to this nation and its citizens. We look forward to a well-considered decision from this body.

1.2 Summary of H. R. 5597

The following describes our understanding of the bill. The sections of the bill are referenced in our issues in [1.5 Issues with H. R. 5597](#).

Section 1 provides a short title for the bill.

Section 2 provides definitions.

Section 3 describes the HCP Amendment directed by the bill.

3a states that the Department of Interior (DOI) must approve an HCP amendment and renew the permit in accordance with this and other applicable laws.

3b and c states that the county and the BLM will manage Zone 6 as they manage the other zones (to enhance the natural values of such lands, including wildlife habitat).

3d states RMP amendment requirements, addressing the HCP, recreation and easements.

3e and f defines “mitigation credits”, stating that Zone 6 can be used to mitigate damage in other zones, including the highway, and to mitigate “take” (tortoise harm or death) throughout the county.

3g states that the DOI must accept the amendment within a year.

3h states there are no other effects to the HCP.

Section 4 addresses RMP/NCA Adjustments, requiring the DOI to amend RMPs to incorporate this act, with coordination and cooperation of local governments.

Section 5 addresses the RCNCA, stating the existing Rights of Way (RoW) will remain in tack, provides for the highway, and disallows BLM from water rights.

Section 6 addresses the BDWNCA, stating that RoWs are not to be more restrictive than RCNCA, disallows the BLM from water rights, and preserves grazing rights.

1.3 Summary of Our Position

H. R. 5597 takes a tremendous leap backward for Washington County, Utah, by undermining the open, transparent citizen engagement that created the Red Cliffs Desert Reserve/National Conservation Area (Reserve/RCNCA) and the Beaver Dam Wash National Conservation Area (BDWNCA) many years ago. These sensitive habitats and scenic signature vistas of our area represent the best of the National Landscape Conservation System, the Endangered Species Act (ESA), and the National Environmental Policy Act (NEPA). The bill also takes a tremendous leap backward for the entire country by undermining the ESA and NEPA by basically giving control of listed species to a local government. To grant the provisions defined in H. R. 5597 would not only do irreparable damage to our local public lands but also undermine the foundation of these basic environmental protections across the entire country. There are appropriate processes in place to fairly address the county's issues, using scientific and proper alternatives analyses. The county has refused.

1.4 Background

Washington County and the City of St George in the far southwest corner of Utah is one of the fastest growing areas in the country. Over half the land in the county is federally-managed, including its signature landscape, a large section of rugged, red-rock canyon, plateau and mesa area immediately bordering the northern urban area. In the 1980s, after many years of study, the Mojave Desert tortoise was listed as "threatened" under the Endangered Species Act. A Habitat Conservation Plan (HCP) was adopted in 1990 to allow growth and economic development of 300,000 acres of habitat while protecting 62,000 acres of land, 45,000 of which is BLM-managed. The HCP, while offering permanent protection, requires periodic renewal every 20 years (it has now lapsed). A layer of permanent protection was added by the creation of the Red Cliffs National Conservation Area in the 2009 OPLMA. Public support for these protections has been very high at every step.



These protections presented a challenge not unlike many cities face: an area bordering an urban center that cannot be developed. Washington County's local governments welcomed the HCP elements that enabled growth and economic development to continue but have chaffed at those elements restricting development on the protected federally-managed public lands. Utah and Washington County have a long history of resisting federal influence, especially in public lands. The stage has been set for this end-run around public support for protections and around bi-partisan laws enacted to protect these lands.

Local governments agreed to the HCP because it was more acceptable than consulting individually with the U.S. Fish and Wildlife Service (USFWS) on every development proposal in tortoise habitat. Due to this agreement, development and subsequent loss of desert tortoise habitat in most of Washington County was permitted to continue because the Red Cliffs Desert Reserve and the Red Cliffs National Conservation Area were permanently set aside and protected. The HCP process under the Endangered Species Act has generally worked well in Washington County up to this point and provides a win-win scenario, enabling growth and economic development and habitat protection. To build a highway through the designated critical protected area (Zone 3) now will encroach on the already limited desert tortoise habitat and violate the spirit and letter of the law agreed upon years ago. (See [Maps](#) in the References.)

H. R. 5597 is the latest installment of a series of actions by Washington County to force a highway through protected habitat. Their latest twist is to propose an addition to the HCP (Zone 6, an unconnected parcel of mostly BLM- and SITLA- managed land) as mitigation for damage done by the highway to tortoises and their habitat in the prime Zone 3 area of the Reserve/NCA. The proposal is presented by the county as a win-win-win: habitat and the tortoise win because the highway will do no harm and an expanded habitat is recognized; the people win because gridlock is eliminated, and the economy will not suffer. This is an erroneous characterization: it is actually a lose-lose-lose:

- Habitat will be significantly damaged (as evidenced by scientific consensus).
- Zone 6, even though it is already protected by the ESA, will decline (only superficial short-term protections are proposed and the Western Corridor highway will inflict the same damage as the proposed Northern Corridor highway).
- The Northern Corridor highway will not solve our traffic issues.
- The action to reverse the environmental protections will damage our economy rather than help it.

The public lands in Washington County contribute to our quality of life, providing areas for world class outdoor recreation, protecting water quality and clean air as well as providing wildlife habitat. CSU works to ensure the irreplaceable cultural, scenic, ecological and scientific values are protected and properly conserved. We hope that county, state and national leaders will work with us, too.



The Red Cliffs Desert Reserve/National Conservation Area

Looking at the area where the proposed Northern Corridor Highway would be built, through the prime habitat of the Mojave Desert tortoise, taken from the existing highway through the habitat, the Red Cliffs Parkway.

See [2.1 The History](#) for more details.

1.5 Issues with H. R. 5597

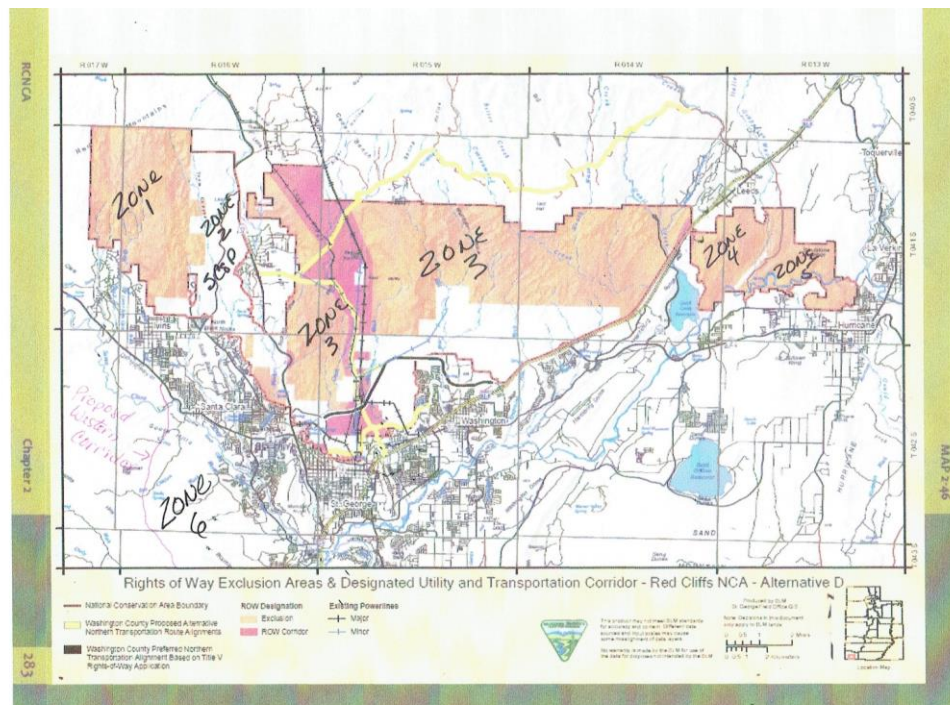
This section describes our major issues with the bill. A reference is provided for each issue to the pertinent section of the bill summarized in [1.2 Summary of H. R. 5597](#).

1. Highway incompatibility with protection

The purpose of the Reserve and NCA is to provide permanent habitat protection for the threatened Mohave Desert tortoise. The Reserve was a mitigation for the “take” (harm or death) of tortoises in habitat opened for growth and economic development. A highway must be prohibited as it would be counter to the purpose of the HCP and NCA. The ESA specifically prohibits a “take” via habitat destruction, and the highway would certainly do that. The county has argued ([Washington Parkway Study](#)) that a highway will not harm and may indeed enhance the habitat. This position is scientifically false (See [Desert Tortoise Council Report](#)) and has no support in the scientific community. The county will argue they were given assurances the highway would be allowed. This position is also false, as evidenced by meeting minutes of the county’s Habitat Conservation Advisory Committee (HCAC).

Ref: This issue pertains to the bill’s section 3a (which requires applicable laws to be followed, which state, in essence, that a highway is not allowed), b and c (which state that the NCA is to be managed to enhance the habitat, which a highway does not do), and section 5 (which directs the highway to be allowed).

Best map available to us, showing the 6 zones and the proposed highway (black line in middle)



2. Highway not needed (See [2.2 Transportation studies and modeling](#) for more details.)

There is no need for the highway – other solutions exist that have for some reason not been considered by our local governments, such as mass transit, zoning to avoid choke points, revisions to existing roads, additional interstate connections. The county has fixated on what they erroneously believe is the one and only solution. No independent or public review has been allowed.

Ref: This issue pertains to the underlying presumption of the bill that the highway is needed.

3. **Zone 6 not mitigation** (See [2.3 Environmental Concerns](#) for more details)

The addition of Zone 6, a discontinuous area containing a segment of tortoise habitat, cannot be accepted as mitigation for a highway through the Reserve's original prime Zone 3 habitat for several reasons:

- (a) By law a highway cannot be mitigated.
- (b) Some of proposed Zone 6 is not habitat, and even the best habitat in Zone 6 is not comparable for mitigation of prime habitat in Zone 3 where the proposed highway would be located.
- (c) The proposed Zone 6 habitat area will be in danger from the planned Western Corridor highway.
- (d) The proposed Zone 6 habitat area is already protected by the ESA and NEPA.
- (e) The existing Reserve/NCA, including Zone 3, is itself a mitigation for the habitat destruction throughout Washington County. That leaves the proposed Zone 6 "a mitigation for a mitigation", which should not be allowed.
- (f) It is also proposed that Zone 6 be used as a "land bank" for further damage to the current Reserve/NCA habitat and other listed species throughout the county. This concept is invalid: damage to one protected habitat cannot be balanced by another protected habitat.

Ref: This issue pertains to bill's section 3e, which declares how Zone 6 is to be used for mitigation of damage in Zone 3 and elsewhere in the county.

4. **Local government usurping federal authority**

There is still some property to develop in tortoise habitat within the county, and since the prior HCP is expired, the county needs to renew it and its "take" permit (to harm or kill tortoises). This bill, and the HCP amendment it directs the BLM to approve, allows the county to usurp the US Fish and Wildlife Service (USFWS) responsibilities and issue the "TAKE PERMIT RENEWAL" for 25 years. The Endangered Species Act (ESA) prohibits the "take" of listed species through direct harm or habitat destruction, which this highway certainly does. However, the ESA allows a "take" if there is an approved HCP. Therefore, the county needs to renew the HCP and the take permit to allow continued development, and this bill is their vehicle to circumvent the ESA to get this unneeded highway at the same time, in exchange for the Zone 6 habitat that is already protected and not a viable mitigation.

Ref: This issue pertains to bill's section 4, which in ambiguous language puts the county in control of habitat impact decisions over the judgment of the BLM and USFWS, allowing existing laws (OPLMA, ESA, NEPA) to be ignored.

5. **Fiscal irresponsibility**

\$60-100 million dollars have been spent on buying land inside the reserve, with more expense pending. For 20 years BLM has traded their land outside the reserve for the private land inside the reserve. Fish and Wildlife grants for millions of dollars have been spent on buying land inside the HCP to preserve tortoise habitat. H. R. 5597 undermines the basic purpose of these expenditures.

Ref: This issue pertains to the assumption that any bill should support fiscally-responsible actions.

6. Setting a bad national precedent

Even more significant than the localized issues above are the nation-wide, multi-state issues of completely undermining the basic concepts and processes of the ESA and NEPA. Nowhere in the country is a local government allowed this authority to decide “take” and mitigation requirements. Any local government could use this bill as a precedent to remove protections for threatened or endangered species.

Ref: This issue pertains to the bill’s sections 3, 4, 5 and 6, which when implemented for Washington County, Utah, would open the same considerations for any county in any state.

7. Redundant/confusing/misleading elements in the bill

There are many detailed issues with the bill. A number of them stem for misinterpretations county officials had with the Resource Management Plan (RMP). These misinterpretations were cleared up in a number of meetings with the BLM and it was agreed that the RMP was correct, yet these issues are again brought up in this bill, as if they had not been resolved. They should be removed from the bill.

The title of the bill is misleading, implying that the primary purpose is to expand and enhance the habitat for threatened or endangered species in Washington County. Its real purpose is to direct a highway to be built through prime sensitive habitat for a listed species, and to upset federal control of environmental protections.

Ref: This issue pertains to the bill’s sections 1, 5 and 6, which each have elements that are redundant to elements already in the approved Resource Management Plans (RMPs) for the NCAs or are redundant/confusing (see section [2.4 Detailed Issues with H. R. 5597](#) for details).

8. Lack of Public Engagement (See [2.1 The History](#), specially [2.1.8 Public process](#) below for details.)

The listing of the Mojave Desert tortoise and the creation of the HCP, the OPLMA, the NCAs and the RMPs all had many opportunities for public engagement and input which had significant impact on the end products. By contrast, H. R. 5597 had almost no opportunity for public engagement or input. It was developed in private and in a hurry. Our local elected officials are the first to complain about federal government actions that do not allow local engagement, and yet they foster that very action. Perhaps they think local engagement only applies to those with elected status and not their constituencies. The development of this bill is a very poor example of an open and transparent process.

Ref: This issue pertains to the assumption that any bill should have adequate public engagement opportunities in an open and transparent manner.

2. The Details

2.1 The History

The historical background in Washington County of the Mojave Desert tortoise, the protections afforded it and the public engagement processes used to grant the protections are presented below.

2.1.1 Washington County: growth and the tortoise

Washington County, in the southwest corner of Utah, was a quiet area of slow growth until the advent of affordable air conditioning for homes and cars and until I-15 was completed between Salt Lake City and Los Angeles. This made the area tolerable in the heat of summer and accessible year around. Thanks to its climate and its environment based in the scenic vistas of protected, federally-managed public lands, it was discovered as a tourist and outdoor recreation mecca. There was not much need for transportation planning, and “ring roads”. And it started to grow. The Mojave Desert tortoise was long known to be in danger in the early-1980s, but it was not an issue until the growth started. When it was listed as a threatened species, with plenty of warning and communication, the growth was just starting to build, and the listing threatened the growth.

2.1.2 HCP and Reserve Purpose

In 1990, the U.S. Fish and Wildlife Service listed the Mojave Desert tortoise as threatened under the Endangered Species Act. This would have impeded development on private and state lands in the county. In 1995, local officials signed an agreement to establish a Habitat Conservation Plan (HCP) to protect habitat of the tortoise by establishing a Reserve, named the Red Cliffs Desert Reserve. The U.S. Fish and Wildlife Service issued a Section 10 incidental take permit which allowed for the loss of approximately 1,100 desert tortoises and 12,000 acres of desert tortoise habitat during land development over the next 20 years. In trade, 300,000 acres of private and state land were released for growth and economic development.

HCPs are developed to reduce the regulatory burden on private and state landowners while addressing the habitat needs of listed species. The HCP gave economic certainty to be able to develop those lands outside the Reserve. Washington County and this Reserve, have some of the highest density of endangered, threatened and special status species in Utah. The only road improvement mentioned in the HCP was to improve the Red Hills Parkway, which was done. New roads were not allowed.

1993 Steering Committee meeting minutes make no mention of a needed highway corridor. Habitat Conservation Advisory Committee meeting minutes from 1996-1998 when the Reserve was first being established make only one cursory reference to a road through the Reserve with no details. All other references pertain to existing roads.

2.1.3 Washington County Growth & Conservation Act 2006

In 2006 Senator Robert Bennett and Congressman Jim Matheson together with Washington County commissioners created the Washington County Growth & Conservation Act of 2006, which dealt mainly with the designation of wilderness areas, but also contained a provision for a Northern Corridor. This was the bill that spawned the creation of Citizens for Dixie’s Future (now CSU). Citizen opposition to the road and BLM land disposal was strong and resulted in a public process named Vision Dixie that involved nearly 3,000 county citizens, an effort we believe the county thought would bolster their position. It did not. Although the process revealed strong support for a good transportation network it did not clearly support a road through the Reserve. Habitat Conservation Advisory Committee (HCAC) meeting minutes in 2006 when the Washington County Growth & Conservation Act was being developed reveal the road was clearly rejected by a majority of committee members.

Washington County citizens have repeatedly voiced the opinion that this amazing area deserves protection by rejecting the 2006 Lands Bill and supporting our local Vision Dixie process in

2007 that preferred protection of sensitive and scenic public lands such as those now enacted as NCAs. Vision Dixie's Principle 3 states, "Guard our 'Signature' Scenic Landscapes."

2.1.4 Omnibus Public Lands Bill 2009

The Bennett/Matheson bill languished until 2008 when it was revived for inclusion in an omnibus bill. In Subtitle O in the Omnibus Public Lands Management Act (OPLMA) of 2009 there is a provision for BLM to do a comprehensive Travel and Transportation Management Plan, in accordance with the Federal Land Policy and Management Act (FLPMA); the Secretary of Interior in consultation *with appropriate Federal agencies*, state, tribal, and local government entities (including the County and St George, Utah), *and the public*, identify one or more alternatives for a northern transportation route in the County. The language in that bill does not, by any reasonable interpretation, require the Northern Corridor to be built: it required the identification of options to be considered for a northern transportation route in the County, in consultation with agencies, local entities, the state, tribes, and the public in development of the BLM's Travel Management Plan. These routes were to then be reviewed in accordance with federal environmental law for suitability. The Lands Bill does not require BLM to designate a northern transportation route in the Transportation Management Plan.

Not long before the 2008 version of the Washington County Land Bill was finalized as part of the 2009 OPLMA, Citizens for Dixie's Future (now Conserve Southwest Utah) was contacted by Representative Jim Matheson's aide to discuss support for the latest version, and was assured the highway was not included. Bill sponsor Senator Robert Bennett's April 22, 2008 on S.2834 hearing comment makes it clear: "Congressman Matheson and I have made significant changes to the previous proposal. We have permanently protected large amounts of biologically significant public land in Washington County, including additional wilderness and a new national conservation area. We have removed the designations for the Lake Powell Pipeline Corridor and the Northern Corridor that bisected the Red Cliffs Desert Reserve." (p.8 of testimony)

2.1.5 Red Cliffs NCA creation

In 2009, the Red Cliffs National Conservation Area (NCA) was established by U.S. Congress (Public Law 111-11), adding a layer of permanent protection to the Red Cliffs Desert Reserve Mojave Desert tortoise habitat. In 2015, the draft Resource Management Plan (RMP), which further studied and rejected a highway through the NCA, was released for public comment, causing much distress to county leaders. BLM was following laws set up by Congress to protect this habitat.

44,725 acres within the 61,000-acre Red Cliffs Desert Reserve were designated as NCA. Here is what is clearly stated in Section 1974 of the OPLMA concerning the NCA and its purpose. The purpose of the NCA is "to conserve, protect, and enhance for the benefit and enjoyment of present and future generations the ecological, scenic, wildlife, recreational, cultural, historical, natural, educational, and scientific resources of the National Conservation Area; and to protect each species that is located in the NCA and listed as a threatened or endangered species on the list of threatened species or the list of endangered species published under section 4(c)(1) of the ESP of 1973." Once the NCA was created, work began on the Resource Management Plan and the Travel Management Plan with this "purpose" as the driving force for the BLM's decision making.

2.1.6 County challenge

Our current local elected representatives today want to rescind the county's past agreements, which protected the publicly-managed habitat in the Reserve in exchange for ease of development of 300,000 acres of habitat in privately- and state-held lands. This agreement included disallowing a highway through the protected lands. Now that those lands are mostly developed, our representatives seem to think renegeing on the agreement is an honorable course of action, so they have encouraged our federal elected officials to undermine the prior federal laws to allow a highway by proposing this new legislation in congress.

Several efforts have been made to try and force this road in the past. In 2013 an application for a right-of-way (ROW) that would have authorized construction, operation and maintenance of the four-lane highway through public land was made by the county. The case was set aside and remanded to BLM for further action.

Senator Orrin Hatch introduced a bill in the senate May 2017, directing BLM to scrap its excellent RMP that took 4 years of study and offered many opportunities for public comment. This is because the RMP does not allow a four-lane highway through the reserve. This bill has not gone to committee and sits in congress.

Representative Chris Stewart's 2017 bill H.R. 2423 (*Washington County, Utah, Public Lands Management Implementation Act. To implement certain measures relating to management of Washington County, Utah required by Public Law 111-11*) claimed the highway was in the Public Law 111-11. That is untrue and the title of bill is very deceptive. It was not in the 2009 bill and in fact was deleted from the bill by Utah's Senator Bennett in 2008 as shown in April 2008 Congressional testimony mentioned above. Rep. Stewart's bill passed a house committee, but never went to floor vote of the full house and it never allowed public comment before it was introduced.

Now the county has again enlisted the help of Congressman Stewart to run H.R. 5597 that adds a section of SITLA and BLM land known as Zone 6 as theoretical mitigation for the highway in Zone 3.

2.1.7 HCP renewal

In 2016 the twenty-year HCP came up for renewal. At this point, the county is operating under the old HCP that has been extended by the USFWS while the county works in "good faith" to renew the permit. The Washington County Commission needs to renew the HCP because there are still private and state lands that could be developed in county. However, they also want to amend the HCP renewal to allow the highway in legislatively-protected prime habitat - Zone 3 – in exchange for less-desirable habitat in the proposed Zone 6 that also has a proposed major highway on its western border. This concept is the basis for Rep. Stewart's new bill, *Desert Tortoise Habitat Conservation Expansion Act*.

The county commissioners asked all the cities to pass a resolution to support the bill. But legislative language of the bill had not at that time been disclosed to the public and they told CSU the bill's text would be disclosed after introduction in congress. In essence, Washington County's town and city leaders were being asked, it appeared, to support that about which they had few if any details.

Many questions remain. What is the proposed budget for managing Zone 6, who would pay for this management, and would there be a long-term funding commitment sufficient to provide

the required high level of public education, resource monitoring, and law enforcement to ensure that the Zone 6 mitigation objectives are actually achieved

2.1.8 Public process

Until the last couple of years, the Reserve/NCA RMP process seemed very open and transparent. The HCP and Reserve creation process was very open and public and had large engagement in the community. The HCP steering committee had members from federal and local government, U.S. Fish and Wildlife Service, environmental organizations, mayors, developers, and more. The meetings were open to the public and members of the audience were allowed to make public comments. However, in spite of the Northern Corridor being reputed to have been such an important matter and in plans for decades, early meetings (January and February 1993) made no mention of this critical infrastructure so necessary in the minds of current leaders for Washington County's future. However, Ron Thompson, Washington County's water manager, did mention in the first Steering Committee meeting that 1993 had been a banner year for growth and developers were losing money due to the hold up in HCP planning. So, it was clear the area was growing rapidly and yet no mention of the road.

The Reserve was established and all seemed to be going well. Then during the early days of the Washington County Growth & Conservation Act of 2006, which gave rise to the very Vision Dixie process mentioned earlier (ref [2.1.3 Washington County Growth & Conservation Act 2006](#)). After that, with modification of the 2006 bill and passage in 2009 established the NCAs, providing direction to the BLM for their Resource Management Plan, the public felt comfortable that the road issue had been somewhat settled.

The RMP public process began in June 2010 with open houses for public involvement in the process. 269 members of the public and representatives from federal agencies, as well as state and local governments attended. In 2015, the public was invited to comment on the draft RMP which was finalized by the BLM's Record of Decision (ROD) in December 2016, which has led us to this challenge by Congressman Stewart and county leaders to overturn the ROD regarding the road and some other matters.

In 1993, meeting minutes show that the HCP Steering Committee became the Habitat Conservation Advisory Committee (HCAC). The HCAC has held open meetings during which the public has been allowed to make comment and share their thoughts and concerns. In early 2015 the issue of HCP renewal came up since the 20-year permit would expire in 2016. From then until 2017 the HCAC conducted open work meetings focused on the renewal process.

In 2017 things changed. The Washington County commissioners decided to take the renewal process under their wing and started holding closed meetings to discuss the Northern Corridor issue. The result of those meetings was their plan to expand the Reserve by adding the proposed Zone 6 to be used as mitigation for the building of the Northern Corridor, resulting in the bill before us today. This process has been the antithesis of the previous open and transparent efforts to engage the public and account for their input.

In March of this year, the county presented its idea to the citizens of Washington County and asked local city and town leaders to support the county's efforts to expand the Reserve and build the highway. The county's meeting was well attended but that meeting, and a St. George meeting, revealed much opposition to the road and pitted recreationists against conservationists. By adding Zone 6, a heavily recreated area, to the H.R. 5597 bill, with the threat that if not added recreational activities might be stopped due to development, leaders effectively set up a red

herring. Zone 6 state land had not been developed for many years, apparently due to soil and geological issues, but it was enough to scare the recreational community into thinking they needed to support the Northern Corridor to get their Zone 6.

The 2017 county effort that led to this bill did not provide the public process citizens needed on this important matter. CSU has asked federal and local leaders to please support the prior agreements understood by constituents to have been made in good faith. We've asked they support an open and transparent decision-making process, environmental protection as our brand, economic development with, not instead of, environmental protections, a transportation vision for the future rather than an unneeded highway. All of these elements support a well-balanced quality of life for Washington County's constituents.

2.2 Transportation studies and modeling

Studies do not support need for the road. In 2007, UDOT's study of ideas for a Northern Corridor dealt with the county's preferred route (Red Hills Parkway to I-15 at MP 13) in a chapter titled: "Alternatives Considered but Eliminated from Further Consideration." There it was stated that the Northern Corridor Alternative would not meet the objective of minimizing impacts to the reserve. The City of St. George, UDOT, and FHWA determined that the anticipated implementation challenges and potential environmental effects, as previously described, would be substantial and thereby eliminated the Northern Corridor Alternative from further consideration. Of course, that was before this new idea of adding a Zone 6 to provide mitigation for the highway acres used, but the addition of Zone 6 does not eliminate the environmental issues considered in the transportation report.

The 2011 Washington Parkway Cost/Benefit Study and the 2015-2040 Regional Transportation Plan revealed the road would not relieve traffic congestion on other busy roads. As noted, the road had been eliminated from further consideration in UDOT's 2007 study. Options to deal with ever-increasing traffic in Washington County have been suggested but ignored. HCAC 2006 meeting minutes include a suggestion by committee members to consider a further-north, outside the Reserve/NCA option, which local elected officials have rejected.

There is already a highway, Red Hills Parkway, which goes across the NCA and was included in the HCP. There are alternatives for a highway that would by-pass the NCA that have not been properly considered. The data used to back up the model used to determine the need for this highway has not been opened to public scrutiny although CSU has asked for that data.

In a 2012 letter from our organization to the Utah Department of Transportation regarding "Comments on the Proposed UDOT Feasibility Study For A Northern Corridor Parkway Through the Red Cliffs Desert Reserve" CSU stated that if UDOT proceeds to study the feasibility of a Northern Corridor route, we suggested that it should look at more than just traffic needs and projections and take into consideration the reasons why in 2006 seven members of the Habitat Conservation Advisory Committee voted unanimously against allowing the Northern Corridor.

The reason for that 2006 highway rejection by the HCAC – a road bisecting Zone 3 would cause irreparable harm – is still reasonable today as we consider H.R. 5597's suggested changes to mitigate for the highway's acceptance.

Washington County officials assert that the UDOT study, 2012 Washington Parkway Study, done by UDOT's biologist showed that culverts could be installed to "actually help" the tortoise

population. It has not been established that culverts would help. If the road is built, there will be no “undoing” it. In fact, the Desert Tortoise Council has challenged UDOT’s biological study with their own biology. So, it’s one biologist and his study, for which he was paid by the state and could provide questionable findings given that it’s not an “independent” study, against a group whose mission is to support the well-being of the Mojave Desert tortoise.

The proposed Northern Corridor highway’s purpose is to alleviate traffic around two I-15 exits by taking traffic around them, through the Reserve, connecting the next exit north to a new intersection on the existing highway that bisects the Reserve (as was approved by the original HCP), basically moving the congestion point. It is very unclear if this proposal has any real utility. There has been no known technical or public review of the traffic model indicating this change makes any significant difference. It is likely that the model merely extrapolated existing traffic on existing roads, with no other improvements made, and no consideration of significant mass transit or the retirement/tourist demographic. Our elected officials (our county commissioners, city councils and Congressman Stewart) have described this road as “essential” to Washington County, yet they have not supplied any definition of that label or evidence that it is true. It is doubtful that they know what alternatives to bisecting the protected habitat could address the same traffic concerns. Dictating this highway as the solution is not justified.

There is a need for alternative ways to carry the ever-increasing traffic in Washington County. A more robust transit system seems to be on the horizon. CSU has made several suggestions that have not been considered:

- Run the Travel Demand Models with the Northern Corridor excluded from the assumptions to study other singular or combinational options to meet our transportation needs.
- Include more robust multimodal transportation projections in the modeling (expanded transit, Active Transportation, circulator trolleys, vanpools, future light rail).
- Modify General Plans from the political subdivisions to project desired future land use and destinations rather than relying on current plans that are constantly changing with rezoning approvals, and often need updating to reflect the rapid pace of development in the County.
- Complete the Southern Parkway as a through-traffic bypass route.
- Remove or drastically modify I-15 through Washington City and downtown St. George in order to reconnect as many surface streets as possible in the congested core of the metro area.
- Give incentives to industrial and distribution businesses in the old industrial park by the Middleton Tunnel to move to the Fort Pierce Industrial Park to eliminate much of the heavy truck traffic using Exit 8-St George Boulevard and Exit 10-Green Springs.
- Ask Intermountain Health Care to give DRMC employees transit passes and start van pools for shift workers to reduce automobile traffic. (DSU has led the way by partnering with SunTran transit system on free transit passes for students with a valid DSU student ID.)

2.3 Environmental Concerns

H.R. 5597 would force construction of the Northern Corridor/Washington Parkway highway in violation of an existing Habitat Conservation Plan (HCP) established under the Endangered Species Act (ESA), the Omnibus Public Lands Management Act (OPLMA), and the Bureau of Land Management (BLM) Red Cliffs National Conservation Area (NCA) Resource Management Plan.

It would establish a national precedent for a county superseding an existing HCP and two BLM NCA Resource Management Plans (Red Cliffs and Beaver Dam Wash) through Congressional legislation. This precedent would undermine the integrity of HCPs under the ESA and BLM plans around the nation because it would invite similar Congressional attacks. If Washington County Utah can do it, so could other cities and counties elsewhere.

H.R. 5597 proposes the addition of a new Zone 6 to the existing HCP-established Red Cliffs Desert (Tortoise) Reserve as mitigation for construction of the Northern Corridor/Washington Parkway through the core Reserve Zone 3 even though there are many unanswered questions and issues about the feasibility and desirability of doing so. These include:

- a) Where will the future proposed Western Corridor highway be located in relation to Zone 6 and could this highway undermine the promised level of mitigation?
- b) Are existing and proposed future high levels of public recreational use (including OHV uses) compatible with effective tortoise conservation and mitigation?
- c) What is the proposed budget for managing Zone 6, who would pay for this management, and would there be a long-term funding commitment sufficient to provide the required high level of public education, resource monitoring, and law enforcement to ensure that the Zone 6 mitigation objectives are actually achieved?
- d) Since the tortoises in Zone 6 are already protected under the ESA and existing HCP, and much of the area is within an existing BLM Area of Critical Environmental Concern (ACEC), how would adding Zone 6 to the Reserve substantially increase tangible tortoise protection to effectively mitigate for the loss and fragmentation of tortoise habitat in the core Reserve Zone 3?
- e) How would the substantial Utah state lands in Zone 6 be acquired or exchanged so that they would not be available for future land sales and private development?
- f) Are existing and proposed future high levels of public use (grazing, mountain biking, ATV riding, target shooting and other activities) compatible with effective tortoise conservation and mitigation? Biological studies including those done by the Utah Division of Wildlife Resources indicate that human activity in these areas is problematic. The 2013 Desert Tortoise Monitoring Report by the Utah Department of Natural Resources states, "Although the tortoise decline is primarily attributed to a combination of drought, disease, and wildfires, other threats such as habitat degradation (e.g., recreation), direct take of animals, and predation (e.g., domestic dogs, ravens) likely play a role in the decline of tortoises within the Red Cliffs Desert Reserve."
- g) Since the tortoises in Zone 6 are already protected under the ESA and existing HCP, and much of the area is within an existing BLM Area of Critical Environmental Concern (ACEC), how would adding Zone 6 to the Reserve substantially increase tangible tortoise protection to effectively mitigate for the loss and fragmentation of tortoise habitat in the core Reserve Zone 3?

Tortoises will be disturbed or removed from their home territory to enable highway construction. Any that are missed may be killed during construction. The Northern Corridor construction is planned for two phases (two-lane followed by a later four-lane). This means the habitat and tortoises would be disturbed not once, but twice.

Tortoise densities in the proposed Zone 6 are being used to justify its inclusion in the Reserve. A 2017 population density report by HCP administration revealed a density of 22 per square kilometer in Zone 6; 70% were adult tortoises. That density is not as high as the density counted in Zone 3 in 1999 of 27 per square kilometer before drought and fires took a toll. Given the

reproductive life (13 to 20 years to reach sexual maturity) and general life span (50-80 years) of the desert tortoise, Zone 6 must have had tortoises when the Reserve was first established. It could certainly be included now, but not at the expense of the prime habitat in Zone 3.

Road culverts proposed in the 2012 UDOT Washington Parkway Study to help make a Northern Corridor feasible are not proven to protect. Culverts were referenced in the study as a way of enabling tortoise mobility, protecting tortoises from being struck by traffic, and providing temporary shelters. But the report also points out the problems. Some culverts, "...often develop barriers to wildlife movements, such as debris piles or erosion grade change when regular maintenance is not completed." Also, a potential problem for slow moving tortoises is the chance of rushing water during a heavy rainfall entering a culvert where a tortoise may be.

From 2016 Status of Desert Tortoises in the Red Cliffs Desert Reserve by Utah Department of Natural Resources, Division of Wildlife Resources:

- Primary use of culverts is for shelter/shade, not as a movement corridor
- Increased human use detected at culverts (e.g., illegal activity)

It is an inaccurate claim that this highway will not damage the habitat that a bipartisan Congress protected with the ESA and OPLMA, including the Red Cliffs NCA. Tunnels do not work for tortoise travel; road noise, air and trash pollution stress them as does too much fencing. Fencing, while required to keep tortoises off the highway, also can cause them to wander along the fence and become heat-exhausted. While roads provide a fire break, roads in general are the cause of fires from human behavior. If there is clear scientific evidence stating that these conditions do not present serious issue, it should be publicly reviewed and understood, because there is plenty stating the opposite. Peer review is necessary.

2.4 Detailed Issues with H.R. 5597

There are several confusing, ambiguous and what appears to be unnecessary references in the bill. Many statements in the bill are presented as new provisions but in fact are already defined in the RMPs. Our local elected officials had some misinterpretations of the RMP which were subsequently clarified in their discussions with the BLM. These references and provisions imply a lack of maturity in the draft. Some examples:

Sec. 3b – Zone 6 management

The bill says that "Zone 6 shall be managed by Washington County as part of and in conformity with the provisions of the Desert Tortoise Habitat Conservation Plan, Washington County, Utah." However, the provisions of the HCP show that Zone 2 and Zone 3 are managed differently from each other, with different activities allowed in Zone 2 and 3. H.R. 5597 does not make clear how the county will manage Zone 6 "in conformity." It isn't clear which activities will be allowed in which area of Zone 6. The statement lacks clarity.

Sec. 3e – Land bank

What does using Zone 6 as a "land bank" infer? The original purpose of Zone 6 was to provide land to be used as mitigation for building the Northern Corridor/Washington Parkway through Zone 3 of the existing Reserve/NCA. This "land bank" language makes it appear that the nearly 7,000 acres of land in a Zone 6 could be used to mitigate any development in the existing Reserve/NCA zones. If tortoise densities are as high in Zone 6 as reported by the county, and the area is being set aside as a new zone to protect the population, how then can the area also be used as a "land bank" to serve as mitigation in other areas? The bill needs to be much more specific.

Sec. 5a(1) – Red Cliffs NCA

Why is the size of the NCA referenced? Is it thought or planned to be modified?

Sec. 5a(2) – Red Cliffs NCA

The required map is not supplied in the bill. When CSU placed a call to the BLM office on May 15, we were told the map had just been received and was very unclear and not well done. This is a critical element for our review.

Sec. 5b – Red Cliffs NCA

This section references a 150-foot-wide utility corridor from centerline of SR18, but this easement already exists. Why is it stated in this new bill?

Sec. 5d – Red Cliffs NCA

This section states that the BLM shall not obtain additional water rights. This appears to be an erroneous provision. If there are sellers who are willing to sell water rights in RCNCA why should that be restricted? Although the City of St. George and the county want to control this water, if a seller is willing to sell and the city and county are not willing to purchase the right, then the BLM should be able to do so. That's free market, right?

Sec. 6d – Beaver Dam Wash NCA

This section states that grazing rights shall be preserved. Science, rather than congressional decree, should define the status of grazing rights. The Beaver Dam Wash has traditionally been over-grazed to the point of damage.

2.5 Public Opinion

Public opinion polls, 2010 to 2018, reveal support for the Reserve/NCA and opposition to the Northern Corridor/WP.

- A September 2010 poll in Washington County's local Spectrum newspaper showed lack of support for a road through the Reserve: over 60% of those polled opposed the road. Although 447 respondents may not seem a huge group, each respondent in the 64.4% who opposed a road through the Reserve represents others who did not or could not respond. In our small county, it actually represents a fairly substantial response. Most polls don't seem to get more than a couple of hundred respondents. In fact, with Utah having one of the lowest voter turnout, perhaps the fact that 447 participated shows how important citizens take this issue and are willing to take their time to respond.
- A 2015 local poll (963 votes) conducted by a local Washington County paper to determine popular support for or against the "county's preferred" Northern Corridor route across prime NCA habitat showed that 63% of those participating in the poll did not support the road (<http://suindependent.com/poll-northern-corridor/>).
- Public comments provided at the 2018 Transportation Expo held in February show 75% oppose the road and 25% support. That is the same level of support in another recent online poll – 75% against, 25% for (<http://suindependent.com/poll-northern-corridor-washington-parkway-constructed/>). So, although Congressman Stewart and county leaders assert there's much support for the road, informal local polls reveal otherwise.
- The March 28, 2018 Open House held by our county commissioners provided an opportunity for written public comment on the concepts defined in H. R. 5597. The county has not released any information on these comments, but casual conversations with attendees indicate the vast majority was opposed.

2.6 Quality of Life, Economic Impacts and the Branding

The county argues that the highway is needed for the economic development of the area. However, our public lands, including the Red Cliffs NCA, are the economic engine of our area. The reasons people choose to live and recreate in Washington County is the quality of life

provided by these lands. Our climate and environment are the foundation of that quality. Our economic base is outdoor recreation, tourism, and retirement living, and the support structure for it (health care, construction, goods and services). Even our high-tech dreams and the major research university it would require, will rely on corporate image and recruitment based on environmental quality.

This economic base must be symbolized by a brand of environmental protection, not environment destruction. Utah, especially southern Utah, has some of the most spectacular environment of any place on Earth, yet Utah, and Washington County is building a reputation of anti-environmentalism. Continued environmental disregard will have a large-scale, long-term negative impact. Our economic base and our brand should represent protecting the environment. These protections are the foundation of our economic, physical and psychological well-being. This highway is a giant step in the wrong direction in terms of the identity we should be building.

References

- H. R. 5597 and proposed HCP amendment
<https://www.govtrack.us/congress/bills/115/hr5597/text>
<http://conserveswu.org/wp-content/uploads/HCP-Amendment-3-22-18.pdf>
- Prior hearing testimony
<http://conserveswu.org/wp-content/uploads/Van-Dam-Paul-public-hearing-testimony-Jan-22-2016-.pdf>
- Desert Tortoise Council findings - highway impact on tortoise habitat
<http://conserveswu.org/wp-content/uploads/Desert-Council-Stewart-letter-May-16-2018.pdf>

Maps

- Proposed Northern Corridor highway through existing Reserve Zone 3
<http://conserveswu.org/wp-content/uploads/Northern-Corridor-map-2018.pdf>
- Proposed Western Corridor highway through proposed Reserve Zone 6
<http://conserveswu.org/wp-content/uploads/Western-proposed-highway-map.pdf>
- Proposed Zone 6
<http://conserveswu.org/wp-content/uploads/ZONE-6.pdf>
- Various options for Northern Corridor (blue is the proposed)
<http://conserveswu.org/wp-content/uploads/HCP-Northern-Corridor-map-BLM.pdf>

Acronyms and Definitions

ACEC	Area of Critical Environmental Concern
BDWNCA	Beaver Dam Wash NCA
BLM	Bureau of Land Management
CSU	Conserve Southwest Utah
DOI	Department of Interior
ESA	Endangered Species Act
FHWA	Federal Highway Administration
FLPMA	Federal Land Policy and Management Act
HCAC	Habitat Conservation Advisory Committee
HCP	Habitat Conservation Plan
NC, WP	Northern Corridor, Washington Parkway
NCA	National Conservation Area
NEPA	National Environmental Protection Act
OPLMA	Omnibus Public Lands Management Act (2009)
RCDR	Red Cliffs Desert Reserve
RCNCA	Red Cliffs NCA
RMP	Resource Management Plan
RoW	Right of Way
Take	Authority granted to harm or kill a listed species
UDOT	Utah Department of Transportation
USFWS	US Fish and Wildlife Service