

*Appendix B -*

*Section 4(f) Evaluation*

## APPENDIX B - FINAL SECTION 4(F) EVALUATION

This chapter addresses the requirements of Section 4(f) of the Department of Transportation Act of 1966. This chapter identifies Section 4(f) resources in the project study area, determines impacts to those resources, and identifies the recommended measures to minimize harm where necessary. This chapter also describes the coordination efforts made to address Section 4(f) issues and concerns.

There have been no changes to the Proposed Action that would necessitate re-visiting the identification or potential use of Section 4(f) properties since the publication of the Draft Section 4(f) evaluation. Since that time, the Joint Lead Agencies have identified the West Alternative, with Option B as the Preferred Alternative. The final 4(f) determination is provided at the end of this evaluation.

### B.1 REGULATORY SETTING

Section 4(f) of the Department of Transportation Act of 1966 (49 USC 303) applies to publicly owned parks, recreation areas, wildlife and waterfowl refuges, and publicly or privately owned significant historic properties. The requirements of Section 4(f) apply only to agencies within United States Department of Transportation (USDOT), i.e. the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and Federal Aviation Administration (FAA).

Section 4(f) prohibits USDOT agencies from approving the use of any Section 4(f) property for a transportation project, except as follows:

- First, the USDOT agency can approve the use of Section 4(f) land by making a determination that (1) there is no prudent and feasible alternative that would avoid the use of the Section 4(f) resource, and (2) the project includes all possible planning to minimize harm to that property.
- Second, the USDOT agency can approve the use of Section 4(f) property, by making a finding of *de minimis* impact for that property.

The option of making a finding of *de minimis* impact was created by an amendment to Section 4(f) in section 6009 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which was enacted in August 2005. Section 6009 also required the Section 4(f) regulations to be updated in order to provide greater clarity regarding the standards and procedures for determining whether there are "prudent and feasible" avoidance alternatives for a potential Section 4(f) use.

In response to SAFETEA-LU, FHWA proposed comprehensive changes to their Section 4(f) regulations. The revised regulations were issued on March 12, 2008. The new regulations are codified at 23 Code of Federal Regulations (CFR) Part 774. The new regulations that incorporate the *de minimis* requirement also include a new definition of "no prudent and feasible avoidance alternative" and a new definition of "all possible planning to minimize harm," as well as a list of factors to consider in determining which alternatives minimize overall harm.

The following sections provide information regarding each of the steps in the process for complying with Section 4(f):

- Identifying Section 4(f) resources;
- Determining whether there is a use of any Section 4(f) resource;
- Determining which of the uses, if any, are *de minimis*; and
- Identifying and evaluating avoidance and minimization alternatives for any uses that are not determined to be *de minimis*.

### **B.1.1 Historic Properties**

FHWA is responsible for determining which properties qualify as a Section 4(f) resource(s). Through its Section 4(f) regulations, FHWA has established that a historic property is considered significant - and therefore qualifies as a Section 4(f) resource - if the site is listed on, or is eligible for listing on, the National Register of Historic Places (NRHP). More detail regarding Section 106 of the NRHP and the consultation process is found in section 3.14 – Historic and Archaeological Resources, of the Draft EIS.

### **B.1.2 Parks, Recreation Areas, and Refuges**

Public lands that may be protected under Section 4(f) regulations as parks, recreation areas, and refuges, are identified as part of the National Environmental Policy Act (NEPA) process. In general, the boundaries of publicly owned parks, recreation areas, and refuges are well-established and can be readily identified. However, there are situations where the Section 4(f) status of publicly owned lands is unclear. For example, some publicly owned lands are managed for multiple uses or have no clear designation. In addition, there are some situations where privately owned lands are considered publicly owned for the purpose of Section 4(f), because the lands have been made available for public use under a lease or easement. Furthermore, publicly owned land can be considered a Section 4(f) resource if it is planned to be developed as a park, recreation area, or refuge. Where a judgment call is needed, FHWA makes this determination in consultation with the authority that has jurisdiction over the resource. The authority with jurisdiction is the public agency that owns or manages the property.

### **B.1.3 Uses of Section 4(f) Resources**

As found in 23 CFR 774.17, the regulations define three types of “uses” of Section 4(f) resources: use, temporary use, or constructive use. Each is discussed below.

- 1) Use occurs “when land is permanently incorporated into a transportation facility.”
- 2) Temporary use occurs “when there is a temporary occupancy of land that is adverse in terms of the statute’s preservation purpose as determined by the criteria in §774.13(d).” A temporary use occurs when a temporary impact is adverse in terms of the statute’s preservationist purposes. The FHWA regulations, 23 CFR 774.13(d), define five criteria that must be met to make a finding that a temporary occupancy is not a Section 4(f) use. These criteria are:
  - Duration must be temporary;

- Scope of work must be minor;
  - There must be no anticipated permanent adverse physical impacts nor interference with the activities or purpose of the resource;
  - The resource must be fully restored; and
  - There must be documented agreement between the appropriate federal, state, or local agencies having jurisdiction over the resource.
- 3) A constructive use (23 CFR 774.15) occurs when there is no direct use, but the project's proximity impacts - for example, noise or visual impacts - are "so severe that the protected activities, features, or attributes that qualify a resource for protection under Section 4(f) are substantially impaired." The regulations state that a substantial impairment occurs "only when the protected activities, features, or attributes of the resource are substantially diminished," according to 23 CFR 774.15(a). These regulations provide specific instructions and examples for determining whether a constructive use will occur.

FHWA is responsible for determining whether a project would result in the "use" of a Section 4(f) resource. This determination is made based on information developed during the NEPA process and considers input received from agencies with jurisdiction over the Section 4(f) resource.

#### **B.1.3.1 De Minimis Impacts**

If a project results in a use of a Section 4(f) resource, FHWA can approve that use by making a finding of "*de minimis* impact" (23 CFR 774.17). In making this determination, FHWA must consider any avoidance, minimization, mitigation, or enhancement measures that have been incorporated into the project.

For historic sites, FHWA's finding of *de minimis* impact requires the concurrence of the State Historic Preservation Officer (SHPO), who has jurisdiction over historic sites (including archeological sites that qualify for Section 4(f) protection), and must be developed in consultation with any consulting parties involved in the Section 106 process<sup>1</sup>. In general, a finding of *de minimis* impact requires a determination that the project will have "no adverse effect" on the protected activities, features, or attributes of the resource. SHPO is required to respond to FHWA/UDOT's Determination of Eligibility and Finding of Effect (DOE/FOE). The DOE/FOE documents SHPO's concurrence (or non-concurrence) on the eligibility of each historic resource and the level of impact. In addition, SHPO must be notified of FHWA's intent to make a *de minimis* finding on a historic property.

Further information regarding *de minimis* impact findings can be found in the FHWA guidance document titled *Guidance for Determining De Minimis Impacts to Section 4(f) Resources* (FHWA, 2005).

<sup>1</sup> See section 3.14 – Historic, Archaeological, and Paleontological Resources in Chapter 3 for a complete discussion on the Section 106 process.

The procedures for making *de minimis* impact determinations for parks, recreation areas, and refuges are slightly different from the procedures for making these determinations for historic sites. For parks, recreation areas, and refuges, FHWA's finding of *de minimis* impact requires the concurrence of the authority with jurisdiction over the resource, after the public has been given an opportunity to comment. The public comment opportunity generally is provided as part of the comment period on the NEPA document such as an Environmental Impact Statement.

#### **B.1.4 Avoidance and Minimization Alternatives**

If an alternative would use a Section 4(f) resource and the use is not *de minimis*, FHWA can approve that alternative only by determining that:

- 1) There is no prudent and feasible avoidance alternative. As stated in 23CFR 774.17, a feasible and project avoidance alternative "avoids using Section 4(f) property and does not cause other severe problems of a magnitude that substantially outweighs the importance of protecting the Section 4(f) property. In assessing the importance of protecting the Section 4(f) property, it is appropriate to consider the relative value of the resource to the preservation purpose of the statute".
- 2) The project includes all possible planning to minimize harm resulting from the use.

These avoidance and minimization findings are made with regard to each individual Section 4(f) resource that would be used by an alternative. For example, if an alternative uses land from several different parks and historic sites, the Section 4(f) evaluation considers avoidance and minimization options for each of those locations.

Section 4(f) guidance found in 23 CFR 774.3(c) states that, if FHWA determines that there are no prudent and feasible avoidance alternatives and the action includes all possible planning to minimize harm, it may approve an alternative that "causes the least overall harm in light of the statute's preservation purpose." Under 23 CFR 774.3(c), the "least overall harm" is determined by balancing the following factors:

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

For further information about Section 4(f) requirements, refer to the FHWA Section 4(f) regulations, which are contained in 23 CFR 774; the *FHWA Section 4(f) Policy Paper* (FHWA, 2005); and the *FHWA Guidance for Determining De Minimis Impacts to Section 4(f) Resources* (FHWA, 2005).

## **B.2 PROPOSED ACTION**

Two roadway alternatives, along with the No Build Alternative, were evaluated for the Midvalley Highway. The two roadway alternatives are shown in Figure 4-1 and Figure 4-2.

### **B.2.1 Midvalley Highway East Alternative (Options A and B)**

This alternative includes a four lane arterial between SR-36 and SR-112 and a four lane freeway between SR-112 and I-80 (see Figure 4-1). The arterial segment includes an intersection with SR-36 in the southern portion of the project study area and is located between the Union Pacific Railroad (UPRR) tracks and Utah Industrial Depot. The arterial segment is approximately 3.7 miles in length and would cross over the UPRR tracks via a new bridge. The arterial roadway transitions to a freeway between SR-112 and the future 1000 North roadway.

The freeway segment would extend between the future 1000 North roadway and I-80. Interchanges are planned at the future 1000 North roadway, the future Parkway (3400 North), SR-138, and a freeway-to-freeway interchange with I-80. Bridges would carry traffic over existing and planned roadways.

Two freeway alignment options are being evaluated as part of this alternative between the future 1000 North roadway and Erda Way. The alignments diverge near the future 1000 North roadway and join together just south of Erda Way. Option A is a more direct route and is approximately 8.5 miles in length. Option B continues further west along the Tooele City boundary and is approximately 8.8 miles in length.

### **B.2.2 Midvalley Highway West Alternative (Options A and B)**

This alternative includes a four lane arterial between SR-36 and SR-112 and a four lane freeway between SR-112 and I-80 (see Figure 4-2). The arterial segment includes an intersection with SR-36 in the southern portion of the project study area and is located between the UPRR tracks and Utah Industrial Depot. The arterial segment is approximately 3.7 miles in length and would cross over the UPRR tracks via a new bridge. The arterial roadway transitions to freeway between SR-112 and the future 1000 North roadway.

The freeway segment extends between the future 1000 North roadway and I-80. Interchanges are planned at the future 1000 North roadway, the future Parkway (3400 North), SR-138, and a freeway-to-freeway interchange with I-80. Bridges would carry traffic over existing and planned roadways.

Two freeway alignment options are being evaluated as part of this alternative between the future parkway (3400 North) and SR-138. The alignments diverge near the future parkway (3400 North) and join together just north of SR-138. Option A is approximately 8.7 miles in length and extends through the eastern edge of the LDS Church agricultural property; Golden Gardens subdivision is located directly east of Option A. Option B continues further west and would cross over Sheep Lane via a bridge. It would require the realignment of approximately 1.4 miles of SR-138. Option B is approximately 9.5 miles in length. The West Alternative with Option B is the Joint Lead Agencies' Preferred Alternative.

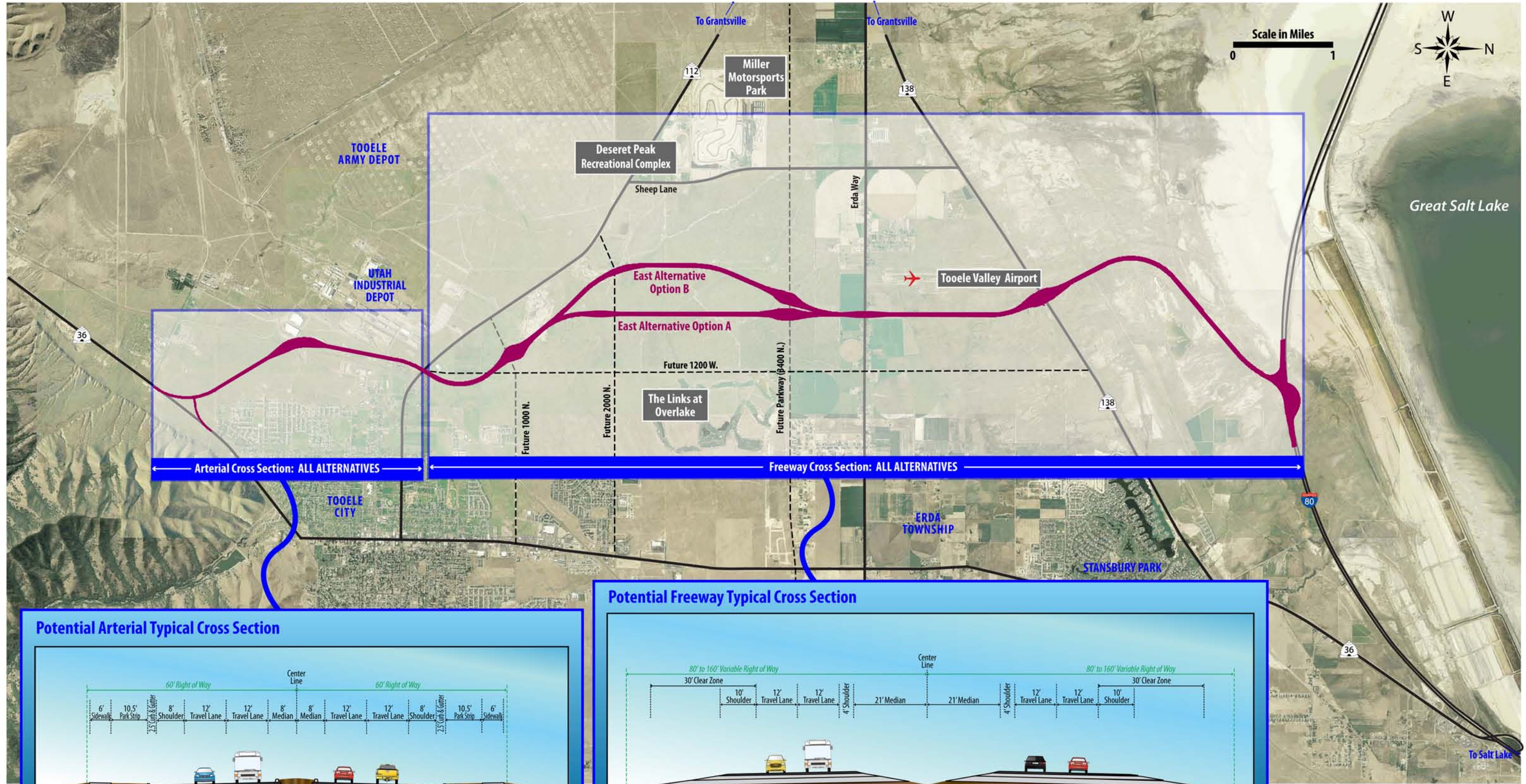


Figure 4-1  
Midvalley Highway East Alternative

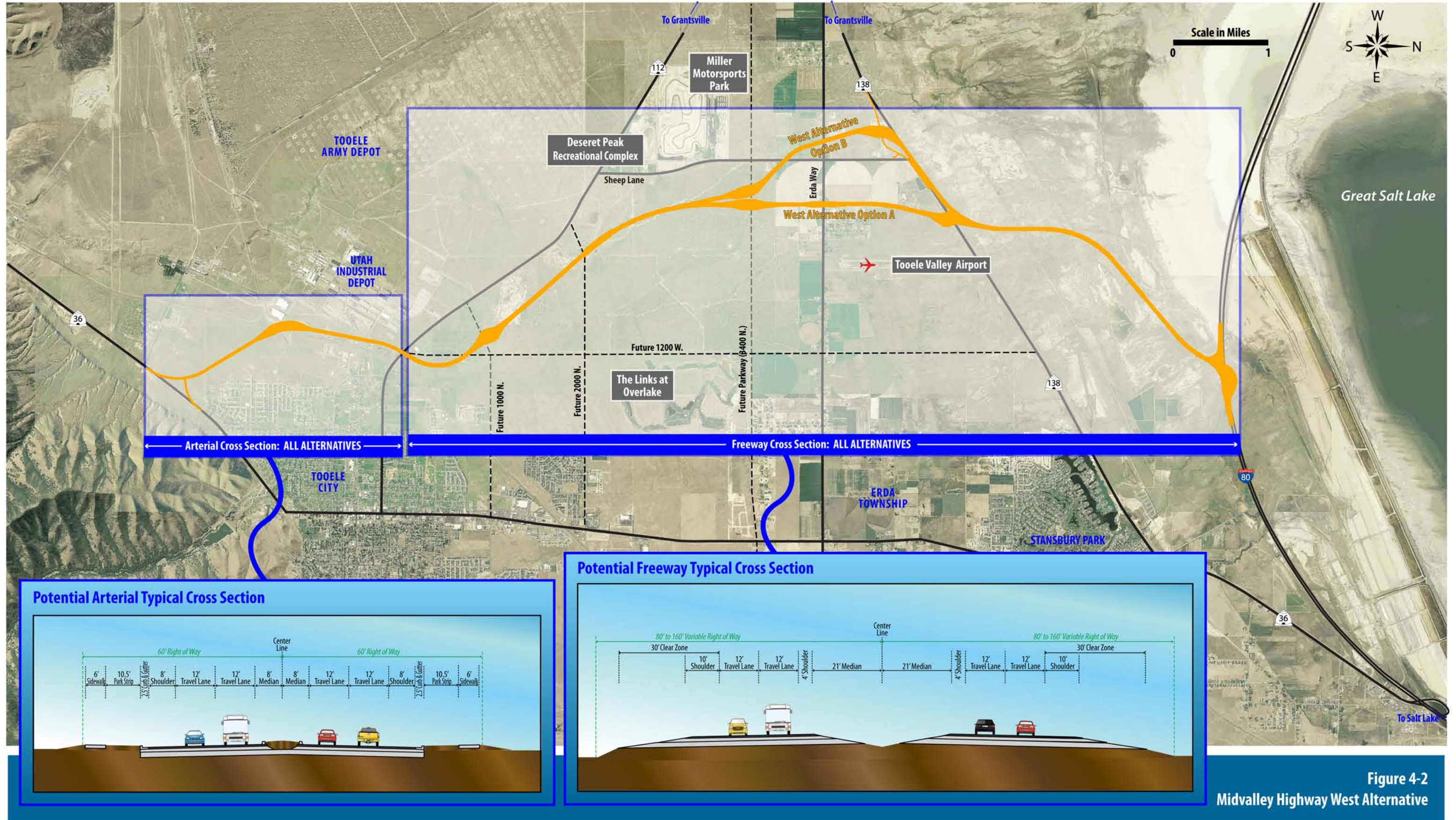


Figure 4-2  
Midvalley Highway West Alternative

### **B.3 IDENTIFICATION OF SECTION 4(F) RESOURCES**

This section discusses the Section 4(f) resources in the project study area that could be affected by the Midvalley Highway alternatives. The historic resources are discussed first, followed by public parks, recreation areas, and wildlife and waterfowl refuges. No archaeological resource (other than linear resources, i.e., railroad tracks and grades, canals, and abandoned roads) within the project study area qualifies for protection under Section 4(f).

#### **B.3.1 Historic Properties**

Historic properties for this project include houses, buildings, barns, farmsteads, and historic linear features, such as canals, roads, and railroads. Descriptions of these properties are found below and shown in Figure 4-3.

##### **B.3.1.1 Union Pacific Railroad/Lynndyl Cut-off (42TO1298)**

This historic railroad track is eligible for inclusion onto the NRHP under criterion A, B, C, and D. This dual track runs north-south through the project study area and is currently in use. One segment is located within the potential area of impacts; it is located directly east of the Utah Industrial Depot and is about 1,290 feet long. This railroad line is owned and operated by the Union Pacific Railroad (UPRR) and provides service to the Utah Industrial Depot, Tooele Army Depot, and U.S. Army Dugway Proving Ground.

##### **B.3.1.2 Western Pacific Railroad (42TO505)**

Historic railroad grade is eligible for inclusion onto the NRHP under criteria A. The tracks and rail ties no longer exist for this historic railroad grade. Four segments of this railroad grade were recorded.

- Segment 1 – This segment is located near the south end of the project near the Utah Industrial Depot and is shaped like a ½ horseshoe. The recorded segment is approximately 2,150 feet long.
- Segment 2 – This segment is located near Rogers Street in Tooele City. The southern terminus of this recorded segment is south of SR-112 and continues north to Rogers Street and the Midvalley Trailhead. It is approximately 4,300 feet in length.
- Segment 3 – This segment runs east-west and crosses at the Midvalley Highway East Alternative (Option A); approximately one mile north of SR-112. The property at segment 3 is owned by Tooele County and is the Midvalley Trail. The trailheads are located on Rogers Street and Sheep Lane. This segment is approximately 1,230 feet in length.
- Segment 4 – This segment runs east-west and is located 1,200 feet north of SR-112 and one mile east of Sheep Lane. The Midvalley Highway East Alternative (Option B) and the Midvalley Highway West Alternative (both options) cross this segment. The property is owned by Tooele County and used as a multi-use trail (Midvalley Trail). This segment is approximately 1,330 feet in length.

##### **B.3.1.3 Utah Western/Utah & Nevada Railroad (42TO1552)**

Historic railroad grade is eligible for inclusion into the NRHP under criterion A and B. The

tracks and rail ties no longer exist for this historic railroad grade. Originally, this railroad extended from within the Tooele Army Depot and continued northeast toward the Salt Lake Valley. Much of the railroad grade has been removed due to development in the area. Only one segment was found and recorded within the project study area. This segment is approximately 260 feet in length and is located north of SR-112.

#### **B.3.1.4 Lincoln Highway, 1913 Route (42TO1077)**

Historic road grade is eligible for inclusion into the NRHP under criterion A and C. This abandoned road served as a principal east-west route in the United States. The road bed measures approximately 20 feet wide and ranges in height between one and three feet above the natural ground surface. Vegetation now covers this abandoned roadway. These segments contribute to the overall eligibility of this historic property; other segments of the Lincoln Highway have been recorded in Tooele, Salt Lake, and Summit counties. Overall, these segments of the Lincoln Highway are considered in good condition maintaining integrity of location, design, materials, setting, workmanship, and feeling.

Within the project corridor, two segments of the Lincoln Highway were recorded as part of the Cultural Resources Inventory for this project.

- Segment 1 – This segment is located directly south of SR-138 and is approximately 2,410 feet long. It is located east of the Midvalley Highway East Alternative.
- Segment 2 – This segment is located directly north of SR-138 and east of the SR-138/Sheep Lane intersection. The segment is approximately 5,800 feet long. It would be crossed by the Midvalley Highway West Alternative (both options).

This highway crossed the U.S. between New York and San Francisco. Relatively large portions of the Lincoln Highway in Utah have not been adversely impacted and retain good overall integrity. Approximately 146 miles of the Lincoln Highway in Utah remains relatively undisturbed and maintains good overall integrity. The majority of these intact segments are located in western and central Utah. Also the segments documented as part of the Tooele Midvalley project are part of the Salt Lake City to Orr's Ranch route, which was abandoned in 1919 and is not considered part of the main route.

#### **B.3.1.5 Ezra Taft Canal (42TO3279)**

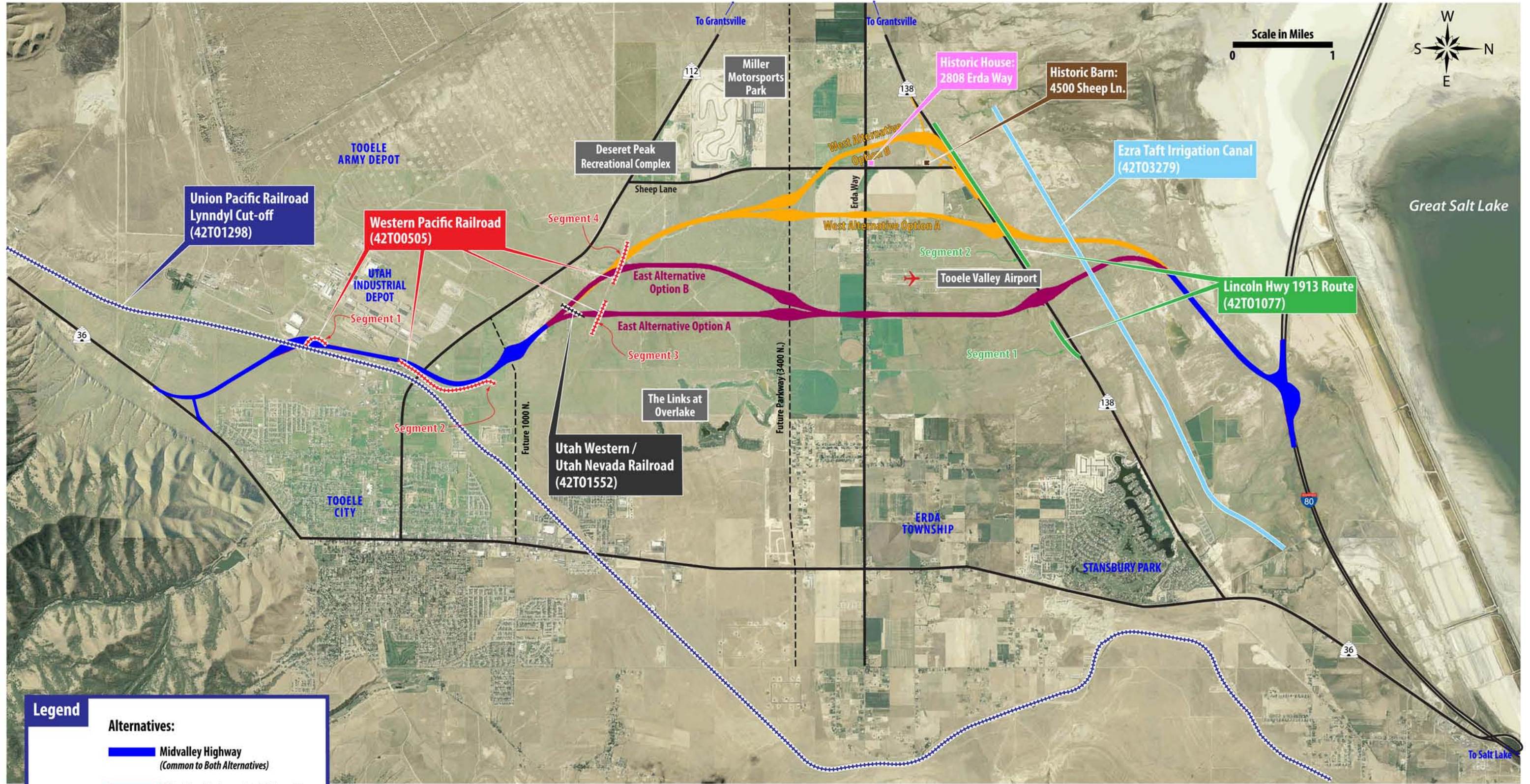
Historic irrigation canal is eligible for inclusion into the NRHP under criterion A and B. This historic canal is located north of SR-138 and originates at Six Mile Creek. The canal flows northeast to Mill Pond Spring near the Benson Grist Mill. The Ezra Taft Canal is about 4.7 miles in length and has earthen banks. It is about 30 feet wide from bank to bank and about 13 feet deep. Both Midvalley Highway alternatives would cross this historic canal.

#### **B.3.1.6 2808 Erda Way**

This historic house is a single dwelling structure located on the northwest quadrant of Sheep Lane and Erda Way. This historic property was constructed in 1963 and is considered a Post WW II architectural style and a ranch type structure.

#### **B.3.1.7 4500 Sheep Lane (approximate)**

This historic property was is a barn and animal pens located on the west side of Sheep Lane. The date of its construction is unknown.



**Legend**

**Alternatives:**

- Midvalley Highway  
*(Common to Both Alternatives)*
- Midvalley Highway East Alternative
- Midvalley Highway West Alternative

Figure 4-3  
Historic Resources



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### **B.3.2 Public Parks, Recreation Areas, and Wildlife and Waterfowl Refuges**

Section 4(f) applies to publicly owned parks, recreation areas, and wildlife and waterfowl refuges including those that are planned on publicly owned property. The information regarding parks and recreation areas was obtained from reviewing the *Tooele County General Plan* and *Tooele City General Plan*. In addition, meetings with city and county planning departments were held to determine the extent of existing and planned parks, trails, and other recreational resources within the project study area. The publicly owned (existing and planned) parks and recreation areas located within or in close proximity to the Midvalley Highway alternatives are shown in Figure 4-4.

Several other planned trails are located within the project study area for the Midvalley Highway (see Figure 3.6-1 in Chapter 3 of the Draft EIS). These facilities are planned within future or existing rights-of-way for roads or other linear features. In cases where the facilities are within the roadway right-of-way, these trails will function as part of the roadway (sidewalk or shoulder); they are not solely for recreational uses.

The March 1, 2005, *FHWA Section 4(f) Policy Paper* (FHWA, 2005) addresses whether trails on highway rights-of-way, which are designated as recreation trails, are subject to the requirements of Section 4(f). The guidance states that “if the trail is simply described as occupying the right-of-way of the highway and is not limited to any specific location within the right-of-way, a use of land would not occur...” as long as the alignment would not substantially impair the continuity of the trail.

The existing and proposed trails and bicycle facilities are listed in section 3.6 –Pedestrians and Bicyclists Considerations. None of the existing or planned facilities qualify as a Section 4(f) resource because they are all on land that is privately owned (except as noted in the discussion below). Also, the existing and planned bicycle facilities along roads are not solely for recreation and will be used as part of the overall transportation system in Tooele Valley. No further Section 4(f) identification is required for existing or planned trails and bicycle facilities in Tooele Valley.

Also, the Links at Overlake (golf course) and the Lakepoint Wetlands (wildlife and waterfowl refuge) were evaluated as potential Section 4(f) resources. The Links at Overlake is privately owned and therefore not considered a Section 4(f) resource. The Lakepoint Wetlands property is currently owned by Kennecott Utah Copper Corporation. As part of the mitigation for a wetlands area in Salt Lake County, ownership of the Lakepoint Wetlands site is planned to transfer from KUCC to the Nature Conservancy sometime in the future. The timing of this land ownership transfer is unknown. The Nature Conservancy is a private, not for profit organization and therefore this site is not subject of Section 4(f) protection.



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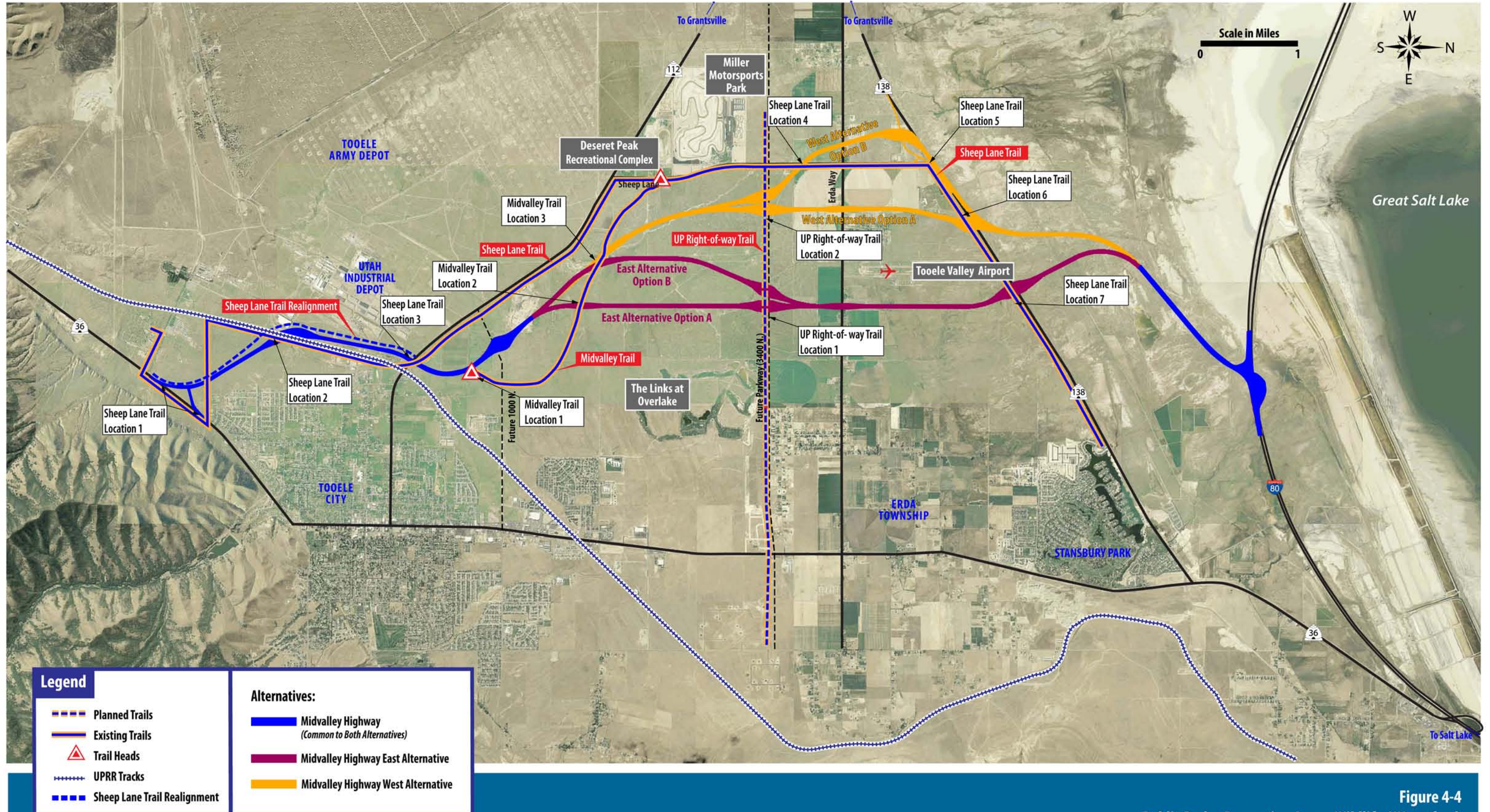


Figure 4-4  
Public Parks, Recreation Areas, Wildlife / Waterfowl



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### **B.3.2.1 Sheep Lane Trail**

This existing mixed-use trail extends from near the Tooele Army Depot entrance, located between Tooele City and Stockton City, to a planned park within the Stansbury Park development. The Sheep Lane Trail follows along SR-36, the UPRR tracks, SR-112, Sheep Lane, and SR-138. This trail is shown on the *Tooele Valley Trails Master Plan* (Tooele County, 2007) as an existing mixed-use trail. Tooele County has stated that they own easements along the Sheep Lane Trail route. Seven locations are crossed by the Midvalley Highway alternatives:

- Location 1 – This location is at the SR-36 intersection with the Midvalley Highway. The trail would be crossed by both alternatives.
- Location 2 – This location is at the UPRR tracks just east of the Utah Industrial Depot and would be crossed by both alternatives.
- Location 3 – This location is near the SR-112 intersection with the Midvalley Highway alternatives and would be crossed by both alternatives.
- Location 4 – This location is on Sheep Lane and would be crossed by the Midvalley Highway West Option B.
- Location 5 – This location is on SR-138 where the Midvalley Highway West Option B crosses and would require the realignment of SR-138.
- Location 6 – This location is at the SR-138 interchange area for the Midvalley Highway West Option A.
- Location 7 – This location is at the SR-138 interchange area for the Midvalley Highway East Alternative.

### **B.3.2.2 Midvalley Trail**

This existing mixed-use trail is approximately 3.3 miles long and runs along the abandoned Western Pacific Railroad grade. This trail extends between two trailheads: the southeastern trailhead is located on Rogers Street; the other is on Sheep Lane east of the Deseret Peak Recreational Complex. This trail is shown on the *Tooele Valley Trails Master Plan* (Tooele County, 2007) as an existing mixed-use trail. The Midvalley Trail is gravel and open to off-highway vehicles, motorcycles, mountain bikes, horses, and foot travel. Tooele County owns the right-of-way for this trail. In June of 2008, signage was added at the trailheads and along the trail itself. Three locations are crossed by the Midvalley Highway alternatives:

- Location 1 – This location is at the Rogers Street trailhead for this trail (both alternatives).
- Location 2 – This location would be crossed by the Midvalley Highway East Option A Alternative.
- Location 3 – This location would be crossed by the Midvalley Highway East Option B and Midvalley Highway West Alternative (Option A and B).

### **B.3.2.3 Deseret Peak Recreational Complex**

This recreational facility contains a number of amenities including museums, miniature golf course, BMX track, motocross/ATV tracks, aquatic center, indoor and outdoor arenas, softball complex, archery park, horse stables, and equestrian race track. The Deseret Peak

Recreational Complex is owned and operated by Tooele County and regularly hosts recreational events. It is located on the northwest quadrant of the SR-112 and Sheep Lane intersection.

### **B.3.2.1 UP Right-of-way Trail**

This east-west planned trail will follow along an unused UPRR right-of-way which has been purchased by Tooele County. The UPRR right-of-way is approximately 200 feet wide and is planned as an arterial roadway (future parkway on 3400 North) between Droubay Road and Grantsville City limits. In association with the road, a trail would be constructed. This trail is shown on the *Tooele Valley Trails Master Plan* (Tooele County, 2007) as a planned motorized trail. Two locations are crossed by the Midvalley Highway alternatives:

- Location 1 – This location would be crossed by the Midvalley Highway East Alternative (both options).
- Location 2 – This location would be crossed by the Midvalley Highway West Alternative (both options).

## **B.4 USE OF SECTION 4(F) RESOURCES**

This section evaluates the potential for a “use” of the Section 4(f) resources by any of the Midvalley Highway alternatives being considered for the project. The discussion of the impact analysis is divided into two sections: a discussion of historic properties and a discussion of parks and recreation areas. Within each of the sections, the discussion is organized by alternative. For each Section 4(f) resource, this chapter makes one of the following findings:

- No use;
- Use, *de minimis*; and
- Use, non-*de minimis*.

A finding of “No use” was made when an alternative avoided any direct physical impact on a Section 4(f) property and there would be no constructive or temporary occupancy. For historic properties, this Section 4(f) finding of “No use” corresponds to a finding of “no effect” or “no historic properties affected” for the Section 106 process.

A finding of “Use, *de minimis*” was made when an alternative involved a direct physical impact on a Section 4(f) resource but no adverse effect on the significant qualities of the resource. For example, this finding was made when an alternative would place a new crossing over a historic canal or railroad track. For historic properties, this Section 4(f) finding of “Use, *de minimis*” corresponds to a finding of “no adverse effect” for the Section 106 process.

The Utah SHPO has entered into an agreement with UDOT and FHWA regarding Section 4(f) and *de minimis* impact. A copy of this Programmatic Agreement is found in Appendix A of the DEIS. This agreement states that, “for historic properties, a finding of *de minimis* impact on a historic site may be made by the FHWA when Section 106 consultation results in the written concurrence of the SHPO with determination of ‘no adverse effect’ or ‘no historic properties affected’.” As documented in Chapter 3 of the Draft EIS, a Determination of Eligibility/Finding of Effect has been approved by the SHPO which documents the Section

106 effect for each eligible historic property. A copy of the Determination of Eligibility/Finding of Effect (DOE/FOE) is found in Appendix A of the DEIS. A copy of the DOE/FOE covering West Alternative, Option B is in Appendix C of this FEIS.

A finding of “Use, non-*de minimis*” was not made for any of the historic, public parks, recreational areas or wetland/wildlife refuge resources. None of the Midvalley Highway alternatives would have a direct physical impact on Section 4(f) resources that would cause an adverse effect on the significant qualities of the resource. Therefore, no Avoidance Analysis is required for the Midvalley Highway project.

#### B.4.1 Historic Properties

No historic property would have a Section 4(f) ‘Use, non-*de minimis*’ as defined above. Table B-1 lists the historic properties that are considered a ‘no use’ or a ‘use, *de minimis*’ by the Midvalley Highway alternatives. This table is divided by alternative and indicates the type of Section 4(f) use, the Section 106 effect, and a description of the use.

TABLE B-1, USE OF NRHP-ELIGIBLE HISTORIC PROPERTIES

| Historic Property<br>(Site number)                          | Type of<br>Section 4(f)<br>Use<br>(Section 106<br>effect) | Description of Use  |
|---|---|---|
| <b>Midvalley Highway East Alternative (Options A and B)</b> |   |   |
| Union Pacific<br>Railroad/Lynndyl Cut-<br>off<br>(42TO1298) | Use, <i>de<br/>minimis</i><br><br>(No Adverse<br>Effect)  | <p>The Midvalley Highway East Alternative (both options) would crossover approximately 150 linear feet of these railroad tracks via a new bridge. This use is considered a <i>de minimis</i>.</p> <p>The Union Pacific Railroad/Lynndyl Cut-off runs through the entire length of Tooele County and is more than 60 miles in length. These tracks are still utilized today. The use to this historic property by the Midvalley Highway East Alternative is minor in comparison to the overall length of this railroad track. The use would be less than 1% of the total length.</p> <p>The overall historic integrity of this site would not be altered by this alternative. None of the features or attributes that qualify this historic property as NRHP eligible would be used by this alternative.</p> |

TABLE B-1, USE OF NRHP-ELIGIBLE HISTORIC PROPERTIES

| Historic Property<br>(Site number)                   | Type of<br>Section 4(f)<br>Use<br>(Section 106<br>effect) | Description of Use  |
|--|---|---|
| Western Pacific<br>Railroad<br>(42TO505)             | Use, <i>de<br/>minimis</i><br><br>(No Adverse<br>Effect)  | <p>The Midvalley Highway East Alternative would use a portion of these abandoned railroad tracks. Below is a description of the use (considered <i>de minimis</i>) by segment.</p> <ul style="list-style-type: none"> <li>• Segment 1 (both Options) – Approximately 946 linear feet would be removed at this location.</li> <li>• Segment 2 (both Options) – Approximately 2,336 linear feet would be removed at this location.</li> <li>• Segment 3 (Option A) – Approximately 391 linear feet would be spanned by a new bridge crossing over the Midvalley Trail.</li> <li>• Segment 4 (Option B) – Approximately 501 linear feet would be spanned by a new bridge crossing over the Midvalley Trail.</li> </ul> <p>In total, 3,673 for Option A and 3,783 linear feet for Option B are considered a use, <i>de minimis</i> of the Western Pacific Railroad. As discussed, the use is in multiple locations and segments 3 and 4 would be spanned by a new bridge for the Midvalley Trail. Almost 12 miles of the abandoned Western Pacific Railroad grade have either been recorded as part of cultural resources survey or is visible on the project aerial photography. The impact to this historic property is approximately 6% of its total length and is considered <i>de minimis</i>.</p> <p>The overall historic integrity of this site would not be altered by this alternative. None of the features or attributes that qualify this historic property as NRHP eligible would be used by this alternative.</p> |
| Utah Western/Utah &<br>Nevada Railroad<br>(42TO1552) | Use, <i>de<br/>minimis</i><br><br>(No Adverse<br>Effect)  | <p>The Midvalley Highway East Alternative would use these abandoned railroad tracks. Option A would use approximately 394 linear feet and Option B would use about 218 linear feet.</p> <p>Approximately 8,400 linear feet of this abandoned railroad grade has been recorded as part of cultural resource surveys or is visible on the project aerial photography. The use from the Midvalley Highway East Alternative would represent between 3% and 5% of this length depending on option.</p> <p>The overall historic integrity of this site would not be altered by this alternative. None of the features or attributes that qualify this historic property as NRHP eligible would be used by this alternative.</p>   |
| Lincoln Highway, 1913<br>Route<br>(42TO1077)         | No use.<br>(No Effect)                                    | The Midvalley Highway East Alternative would not use this abandoned road.   |

TABLE B-1, USE OF NRHP-ELIGIBLE HISTORIC PROPERTIES

| Historic Property<br>(Site number)                          | Type of<br>Section 4(f)<br>Use<br>(Section 106<br>effect) | Description of Use  |
|---|---|---|
| Ezra Taft Canal<br>(42TO3279)                               | Use, <i>de minimis</i><br><br>(No Adverse Effect)         | <p>The Midvalley Highway East Alternative would use approximately 250 linear feet for a new culvert or bridge crossing of this canal. This is considered a use, <i>de minimis</i>.</p> <p>About 25,000 linear feet of this canal has either been recorded by cultural resource surveys or is visible in project aerial photography. The impact represents less than 1% of this length.</p> <p>The overall historic integrity of this site would not be altered by this alternative. None of the features or attributes that qualify this historic property as NRHP eligible would be used by this alternative.</p>  |
| 2808 Erda Way   | No use.   | The Midvalley Highway East Alternative would not use this historic property.  |
| 4500 Sheep Lane   | No use.   | The Midvalley Highway East Alternative would not use this historic property.  |
| <b>Midvalley Highway West Alternative (Options A and B)</b> |   |   |
| Union Pacific Railroad/Lynndyl Cut-off<br>(42TO1298)        | Use, <i>de minimis</i><br><br>(No Adverse Effect)         | <p>The Midvalley Highway West Alternative (both options) would crossover approximately 150 linear feet of these railroad tracks via a new bridge. This use is considered <i>de minimis</i>.</p> <p>The Union Pacific Railroad/Lynndyl Cut-off runs through the entire length of Tooele County and is more than 60 miles in length. These tracks are still utilized today. The use to this historic property by the Midvalley Highway West Alternative is minor in comparison to the overall length of this railroad track. The use would be less than 1% of the total length.</p> <p>The overall historic integrity of this site would not be altered by this alternative. None of the features or attributes that qualify this historic property as NRHP eligible would be used by this alternative.</p> |

TABLE B-1, USE OF NRHP-ELIGIBLE HISTORIC PROPERTIES

| Historic Property<br>(Site number)                   | Type of<br>Section 4(f)<br>Use<br>(Section 106<br>effect) | Description of Use  |
|--|---|---|
| Western Pacific<br>Railroad<br>(42TO505)             | Use, <i>de<br/>minimis</i><br><br>(No Adverse<br>Effect)  | <p>The Midvalley Highway West Alternative would cross over three of the four segments of these abandoned railroad tracks. Below is a description of the use (considered <i>de minimis</i>) by segment.</p> <ul style="list-style-type: none"> <li>• Segment 1(both options) – Approximately 946 linear feet would be removed at this location.</li> <li>• Segment 2 (both options) – Approximately 2,336 linear feet would be removed at this location.</li> <li>• Segment 4(both options) – Approximately 612 linear feet would be impacted at this location of this alternative. However, this location is on the existing Midvalley Trail which would be spanned by this alternative.</li> </ul> <p>In total, approximately 3,894 linear feet of these abandoned railroad tracks would be used by the Midvalley Highway West Alternative. However, the impacts are in multiple locations and one would be spanned for the Midvalley Trail.</p> <p>More than 63,000 linear feet of the abandoned Western Pacific Railroad grade have either been recorded as part of cultural resources survey or is visible on the aerial photography. The impact to this historic property is less than 6% of its total length.</p> <p>The overall historic integrity of this site would not be altered by this alternative. None of the features or attributes that qualify this historic property as NRHP eligible would be used by this alternative.</p> |
| Utah Western/Utah &<br>Nevada Railroad<br>(42TO1552) | Use, <i>de<br/>minimis</i><br><br>(No Adverse<br>Effect)  | <p>The Midvalley Highway West Alternative would impact these abandoned railroad tracks. Approximately 190 linear feet would be used by this alternative. This use is considered a <i>de minimis</i>.</p> <p>Approximately 8,400 linear feet of this abandoned railroad grade has been recorded as part of cultural resource surveys or is visible on the project aerial photography. The impact from the Midvalley Highway West Alternative would represent less than 2% of this length.</p> <p>The overall historic integrity of this site would not be altered by this alternative. None of the features or attributes that qualify this historic property as NRHP eligible would be used by this alternative.</p>  |

TABLE B-1, USE OF NRHP-ELIGIBLE HISTORIC PROPERTIES

| Historic Property<br>(Site number)           | Type of<br>Section 4(f)<br>Use<br>(Section 106<br>effect) | Description of Use  |
|--|---|---|
| Lincoln Highway, 1913<br>Route<br>(42TO1077) | Use, <i>de minimis</i><br><br>(No Adverse<br>Effect)      | <p>The Midvalley Highway West Option A would use approximately 750 linear feet. The Midvalley Highway West Option B would use approximately 5,215 linear feet.</p> <p>This highway crossed the U.S. between New York and San Francisco. Relatively large portions of the Lincoln Highway in Utah have not been adversely impacted and retain good overall integrity. Approximately 146 miles of the Lincoln Highway in Utah remains relatively undisturbed and maintains good overall integrity. The majority of these intact segments are located in western and central Utah. Also the segments documented as part of the Tooele Midvalley project are part of the Salt Lake City to Orr's Ranch route, which was abandoned in 1919 and is not considered part of the main Route.</p> <p>Therefore, the overall historic integrity of this site would not be altered by this alternative.</p> |
| Ezra Taft Canal<br>(42TO3279)                | Use, <i>de minimis</i><br><br>(No Adverse<br>Effect)      | <p>The Midvalley Highway West Alternative would use approximately 290 linear feet for a new culvert or bridge crossing of this canal. This is considered a use, <i>de minimis</i>.</p> <p>About 25,000 linear feet of this canal has either been recorded by cultural resource surveys or is visible in project aerial photography. The impact represents approximately 1% of this length.</p> <p>The overall historic integrity of this site would not be altered by this alternative. None of the features or attributes that qualify this historic property as NRHP eligible would be used by this alternative.</p>  |
| 2808 Erda Way                                | No use.   | The Midvalley Highway West Alternative would not use this historic property.  |
| 4500 Sheep Lane                              | No use.   | The Midvalley Highway West Alternative would not use this historic property.  |

#### B.4.2 Public Parks, Recreation Areas, and Wildlife and Waterfowl Refuges

Table B-2 lists the public parks and recreation areas used by the Midvalley Highway East Alternative (both options) and the Midvalley Highway West Alternative (both options). The table also indicates the type of Section 4(f) use. There are no publicly owned wildlife and waterfowl refuges.

TABLE B-2, USE OF PUBLIC PARKS, RECREATION AREAS AND WILDLIFE AND WATERFOWL REFUGES

| Public Park and Recreation Area                             | Section 4(f) Use       | Description of Use  |
|---|------------------------|---|
| <b>Midvalley Highway East Alternative (Options A and B)</b> |                        |   |
| Sheep Lane Trail (existing)                                 | Use, <i>de minimis</i> | <p>The Midvalley Highway East Alternative (Options A and B) would cross this existing trail in four locations. Each is discussed below:</p> <ul style="list-style-type: none"> <li>• Location 1 (both options) – This location is near the SR-36 intersection with this trail. The roadway would cross over the trail at-grade. Initial discussions with Tooele County indicate that this trail could be realigned to follow along the proposed Midvalley Highway between SR-36 and SR-112. The Midvalley Highway through this location would be an arterial roadway; a multi-use trail could be realigned along with this arterial (see Figure 4-4). Once the trail reached the SR-112 intersection it could be routed onto its original alignment.</li> <li>• Location 2 (both options) – This location is at the UPRR crossing just east of the Utah Industrial Depot. Initial discussions with Tooele County indicate that this trail could be realigned to follow along the proposed Midvalley Highway between SR-36 and SR-112. The Midvalley Highway through this location would be an arterial roadway; a multi-use trail could be realigned along with this arterial (see Figure 4-4). The trail could cross over these tracks on the same bridge that the Midvalley Highway would use. Once the trail reached the SR-112 intersection it could be routed onto its original alignment.</li> <li>• Location 3 (both options) – This location is adjacent to the north side of SR-112. The Midvalley Highway would cross this trail at-grade. The trail crossing would be incorporated into the intersection.</li> <li>• Location 7 (both options) – This location is adjacent to the south side of SR-138. A new bridge would be constructed as part of the Midvalley Highway East Alternative and SR-138 interchange. The bridge would span this existing trail.</li> </ul> <p>The use of this trail system is considered minor and would not affect its continuity or its intended function. This trail is owned and maintained by Tooele County.</p> |

TABLE B-2, USE OF PUBLIC PARKS, RECREATION AREAS AND WILDLIFE AND WATERFOWL REFUGES

| Public Park and Recreation Area   | Section 4(f) Use       | Description of Use  |
|-----------------------------------|------------------------|---|
| Midvalley Trail (existing)        | Use, <i>de minimis</i> | <p>The Midvalley Highway East Alternative would cross this existing trail in three locations. Each is discussed below:</p> <ul style="list-style-type: none"> <li>• Location 1 (both Options) – This location is near the Rogers Street trailhead. This alternative would require a portion or all of this trailhead to be relocated.</li> <li>• Location 2 (Option A) – This location would be crossed by Option A of the Midvalley Highway East Alternative. A new bridge/culvert would be constructed to allow the continuation of this existing trail.</li> <li>• Location 3 (Option B) – This location would be crossed by Option B of the Midvalley Highway East Alternative. A new bridge/culvert would be constructed to allow the continuation of this existing trail.</li> </ul> <p>The use of this trail system is considered minor and would not affect its continuity or its intended function. This trail is owned and maintained by Tooele County.</p> |
| Deseret Peak Recreational Complex | No use                 | This alternative will not impact this recreational facility.  |
| UP Right-of-way Trail (planned)   | Use, <i>de minimis</i> | The Midvalley Highway East Alternative (Options A and B) would cross this planned trail. A new bridge would be constructed as part of this alternative and the future Parkway (3400 North) interchange. The bridge would span this planned trail. The use of this planned trail is considered minor and would not affect its continuity. The right-of-way of this planned trail is owned by Tooele County.  |

TABLE B-2, USE OF PUBLIC PARKS, RECREATION AREAS AND WILDLIFE AND WATERFOWL REFUGES BY ALTERNATIVE

| Public Park and Recreation Area                             | Section 4(f) Use       | Description of Use  |
|---|------------------------|---|
| <b>Midvalley Highway West Alternative (Options A and B)</b> |                        |   |
| Sheep Lane Trail (existing)                                 | Use, <i>de minimis</i> | <p>The Midvalley Highway West Alternative would cross this existing trail in six locations. Each is discussed below:</p> <ul style="list-style-type: none"> <li>• Location 1 (both options) – This location is near the SR-36 intersection with this trail. The roadway would cross over the trail at-grade. Initial discussions with Tooele County indicate that this trail could be realigned to follow along the proposed Midvalley Highway between SR-36 and SR-112. The Midvalley Highway through this location would be an arterial roadway; a multi-use trail could be realigned along with this arterial (see Figure 4-4). Once the trail reached the SR-112 intersection it could be routed onto its original alignment.</li> <li>• Location 2 (both options) – This location is at the UPRR crossing just east of the Utah Industrial Depot. Initial discussions with Tooele County indicate that this trail could be realigned to follow along the proposed Midvalley Highway between SR-36 and SR-112. The Midvalley Highway through this location would be an arterial roadway; a multi-use trail could be realigned along with this arterial (see Figure 4-4). The trail could cross over these tracks on the same bridge that the Midvalley Highway would use. Once the trail reached the SR-112 intersection it could be routed onto its original alignment.</li> <li>• Location 3 (both options) – This location is adjacent to north side of SR-112. The Midvalley Highway would cross this trail at-grade. The trail crossing would be incorporated with the intersection.</li> <li>• Location 4 (Option B) – This location would be crossed by the Midvalley Highway West Option B where it crosses Sheep Lane via a new bridge.</li> <li>• Location 5 (Option B) – This location is on SR-138 where the Midvalley Highway West Option B would require the realignment of approximately 4,400 feet of this trail. SR-138 would require realignment for this option which would require the realignment of the Sheep Lane trail.</li> <li>• Location 6 (Option A) – The Midvalley Highway West Alternative (Option A) would cross over the existing Sheep Lane Trail near SR-138 (see Figure 4-4). This alternative includes an interchange at SR-138 which would require a bridge. The trail could be spanned by the new bridge for the SR-138 intersection.</li> </ul> <p>The use of this trail system is considered minor and would not affect its continuity or its intended function. This trail is owned and maintained by Tooele County which is a joint lead agency on this project. The county has been a key member with the development of alternatives for this project.</p> |

TABLE B-2, USE OF PUBLIC PARKS, RECREATION AREAS AND WILDLIFE AND WATERFOWL REFUGES BY ALTERNATIVE

| Public Park and Recreation Area   | Section 4(f) Use       | Description of Use   |
|-----------------------------------|------------------------|--|
| Midvalley Trail (existing)        | Use, <i>de minimis</i> | <p>The Midvalley Highway West Alternative would cross this existing trail in two locations. Each is discussed below:</p> <ul style="list-style-type: none"> <li>Location 1 (both options) – This location is near the Rogers Street trailhead. This alternative would require a portion of this trailhead to be relocated.</li> <li>Location 3 (both options) – This location would be crossed by the Midvalley Highway West Alternative. A new bridge/culvert would be constructed to allow the continuation of this existing trail.</li> </ul> <p>The use of this trail system is considered minor and would not affect its continuity or its intended function. This trail is owned and maintained by Tooele County which is a joint lead agency on this project. The county has been a key member with the development of alternatives for this project.</p> |
| Deseret Peak Recreational Complex | No use                 | This alternative will not impact this recreational facility.   |
| UP Right-of-way Trail (planned)   | Use, <i>de minimis</i> | <p>The Midvalley Highway West Alternative (both options) would cross this planned trail. A new bridge would be constructed as part of this alternative and future Parkway (3400 North) interchange. The bridge would span this planned trail. The use of this planned trail is considered minor and would not affect its continuity.</p> <p>The right-of-way of this planned trail is owned by Tooele County which is a joint lead agency on this project. The county has been a key member with the development of alternatives for this project.</p>   |

### B.4.3 Summary of Uses to Section 4(f) Resources

Table B-3 summarizes the uses by alternative to the historic properties and recreational resources in the project study area.

TABLE B-3, SUMMARY OF USE TO SECTION 4(F) RESOURCES

|                               | Alternatives           |          |                        |          |
|-------------------------------|------------------------|----------|------------------------|----------|
|                               | Midvalley Highway East |          | Midvalley Highway West |          |
|                               | Option A               | Option B | Option A               | Option B |
| <b>Historic Properties</b>    |                        |          |                        |          |
| Use, <i>de minimis</i>        | 4                      | 4        | 5                      | 5        |
| Use, non- <i>de minimis</i>   | 0                      | 0        | 0                      | 0        |
| <b>Recreational Resources</b> |                        |          |                        |          |
| Use, <i>de minimis</i>        | 3                      | 3        | 3                      | 3        |
| Use, non- <i>de minimis</i>   | 0                      | 0        | 0                      | 0        |

## **B.5 AVOIDANCE ANALYSIS**

No Avoidance Analysis is required, since all of the Section 4(f) uses are considered a “Use, *de minimis*”. An Avoidance Analysis would be required if the Midvalley Highway project had a Use, non-*de minimis*.

## **B.6 MEASURES TO MINIMIZE HARM**

According to FHWA Section 4(f) regulations, a *de minimis* impact determination under Section 774.3(b) "subsumes the requirement for all possible planning to minimize harm by reducing the impacts on the Section 4(f) property to a *de minimis* level." Therefore, the requirement for minimization of harm has been met with regard to all the Section 4(f) resources for which findings of *de minimis* impact have been made.

## **B.7 COORDINATION**

This section discusses the coordination efforts between FHWA and UDOT and the various agencies with jurisdiction over Section 4(f) resources. Coordination efforts between FHWA, UDOT, and SHPO are on-going and have included discussions about effects and impacts on Section 4(f) resources resulting from the Midvalley Highway project. SHPO concurred with the FHWA's findings in two DOE/FOE's, one on May 12, 2009 (Appendix A of the DEIS) and one on October 19<sup>th</sup> 2009 (Appendix C of this FEIS).

As part of the Section 106 process and regulations, coordination has included correspondence by FHWA and Native American tribes that may have cultural and historical interests in the project study area. The tribes were contacted via letter and included the Uintah and Ouray Ute Indian Reservation, Skull Valley Band of Goshutes, Confederated Tribes of Goshute Reservation, Northwestern Band of Shoshone Nation, Shoshone-Bannock Tribes of Fort Hall Reservation, and the Paiute Indian Tribe of Utah. No response has been received from these tribes.

Coordination efforts have also included Tooele City, Tooele County, Tooele County Parks and Recreation, Erda Township officials, the U.S. Fish and Wildlife Service, the Nature Conservancy, and the Kennecott Utah Copper Corporation. Meetings have occurred with these agencies throughout the course of this Draft EIS

Public open houses were held on June 13, 2007, September 27, 2007, and October 16, 2008. In addition, a public hearing was held on September 22, 2009. At these meetings, members of the public were invited to review the project and to make recommendations, or to discuss concerns with project personnel. For a complete discussion of coordination efforts for this project, see Chapter 5 of the Draft EIS.

## B.8 SECTION 4(F) DETERMINATION

Based on the above analysis, FHWA makes the following determination with regard to the alternatives considered for the Midvalley Highway project. The Midvalley Highway East Alternative (both options) would have a total of seven uses, all *de minimis*. The Midvalley Highway West Alternative (both options) would have eight uses, all *de minimis*. The Joint Lead Agencies have identified the West Alternative, with Option B as the Preferred Alternative.

### B.8.1 Midvalley Highway East Alternative (Option A and B)

This alternative would have use, *de minimis* on the following Section 4(f) resources:

#### Historic Properties

- Union Pacific Railroad/Lynndyl Cut-off (42TO1298)
- Western Pacific Railroad (42TO505)
- Utah Western/Utah & Nevada Railroad (42TO1552)
- Ezra Taft Canal (42TO3279)

#### Recreational Resources

- Sheep Lane Trail
- Midvalley Trail
- UP Right-of-way Trail (planned)

### B.8.2 Midvalley Highway West Alternative (Option A and B)

This alternative would have use, *de minimis* on the following Section 4(f) resources:

#### Historic Properties

- Union Pacific Railroad/Lynndyl Cut-off (42TO1298)
- Western Pacific Railroad (42TO505)
- Utah Western/Utah & Nevada Railroad (42TO1552)
- Lincoln Highway, 1913 Route (42TO1077)
- Ezra Taft Canal (42TO3279)

#### Recreational Resources

- Sheep Lane Trail
- Midvalley Trail
- UP Right-of-way Trail (planned)

These resources are located within Tooele Valley, Tooele County, Utah. FHWA has determined that the proposed project includes all possible planning to minimize harm to the historic properties and recreational resources listed above from such use. All uses are considered *de minimis*.



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