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**Save Our Canyons v. Utah  
Dept. of Transportation**

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*State Records Committee Meeting  
April 8, 2021  
Hearing 2021-08*

Hello and thanks for your time today. My name is Carl Fisher and I'm the executive director of SOC.



Save Our Canyons: Dedicated to protecting the wildness and beauty of the Wasatch Mountains

Save Our Canyons is a 501c3 non profit organization founded in 1972. Our mission is to protect the wildness and beauty of the Wasatch Mountains. We work with people, businesses, schools, communities and a variety of governmental entities in pursuit of our mission. One central and critical objective of our organization is protecting the Water resources that make life possible to nearly 85% of Utah's population, in the second driest state in the country.

## Researched Values of the Wasatch Mountains

- ❖ Watershed
- ❖ Preservation
- ❖ Wilderness
- ❖ Protect
- ❖ Keep it wild
- ❖ **Development**



The Central Wasatch Mountains here in Salt Lake County, provide substantial water resources for the population, and have a strong nexus to both public health and quality of life. The “Keep it Pure” initiative, demonstrates the strong local governmental ethos of the resource, for example. Our organization has participated in and commissioned several researched efforts to understand the values of this resource to our community, to its users and visitors. A 2015 study by Utah State University, noted the following positive values... and one negating value that threatens the former.

## LCC EIS strikes at core of SOC's mission

- ❖ Impacts to stream and riparian zones
- ❖ Induced visitation
- ❖ Displacement of recreational uses and wildlife
- ❖ Commercialization
- ❖ Enhanced wildfire risk
- ❖ Water quality impacts
- ❖ Visual and scenic impairment



UDOT's project directly impacts the geography and values which are at the core of SOC's mission, including but not limited to the following. Local land and watershed managers concur with a number of our concerns and obtaining more information about these affects to this place, not to mention the financial costs to downstream water users is a primary consideration for our records request, so that we may work with the public, agencies and UDOT, to mitigate, or better, avoid impacts to these critical watersheds and regional amenities.

## Background on GRAMA request

- ❖ Little Cottonwood Canyon EIS (LCC EIS)
- ❖ NEPA process - Environmental Impact Statement (EIS)
- ❖ Freedom of Information Act (FOIA) relevance to NEPA
- ❖ FHWA/UDOT MOU



I'd like to take a moment to provide a little more background about our request.

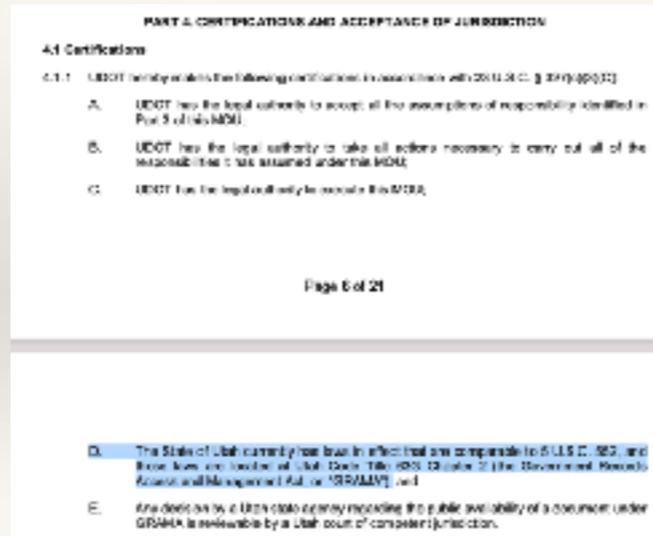
Because of the potential harm to the environment from the LCC project, and because there was a commitment of federal resources to the project, a federal law called the National Environmental Policy Act, or "NEPA," requires there to be an environmental study, called an environmental impact statement, or "EIS." The EIS looks at the different ways the project might be carried out and their potential environmental effects.

NEPA also requires that the public be allowed to participate in the EIS process. In order to do this effectively, public interest organizations like SOC commonly use the Federal Freedom of Information Act to get documents about the project to help them prepare comments that they submit to the agency. The Freedom of Information Act is often critical for organizations like SOC to participate in EIS processes effectively.

Ordinarily, it would be the federal agency—in this case the FHWA—that conducts this EIS, but UDOT sought and received permission to do it on the federal government's behalf.

As part of this grant of authority to UDOT, FHWA and UDOT signed a Memorandum of Understanding that ensures that UDOT will carry out the EIS.

# FHWA-UDOT MOU



- ❖ FHWA - UDOT MOU underscores importance of public records disclosure laws in NEPA processes
- ❖ And the comparable state law to FOIA is GRAMA

Because UDOT is not subject to the federal FOIA law, but because FHWA still needed to ensure the availability of agency records critical for the public involvement NEPA requires, an explicit condition for the grant of federal authority to UDOT set forth in the MOU was that UDOT would provide records in accord with the state's records-disclosure law, GRAMA.

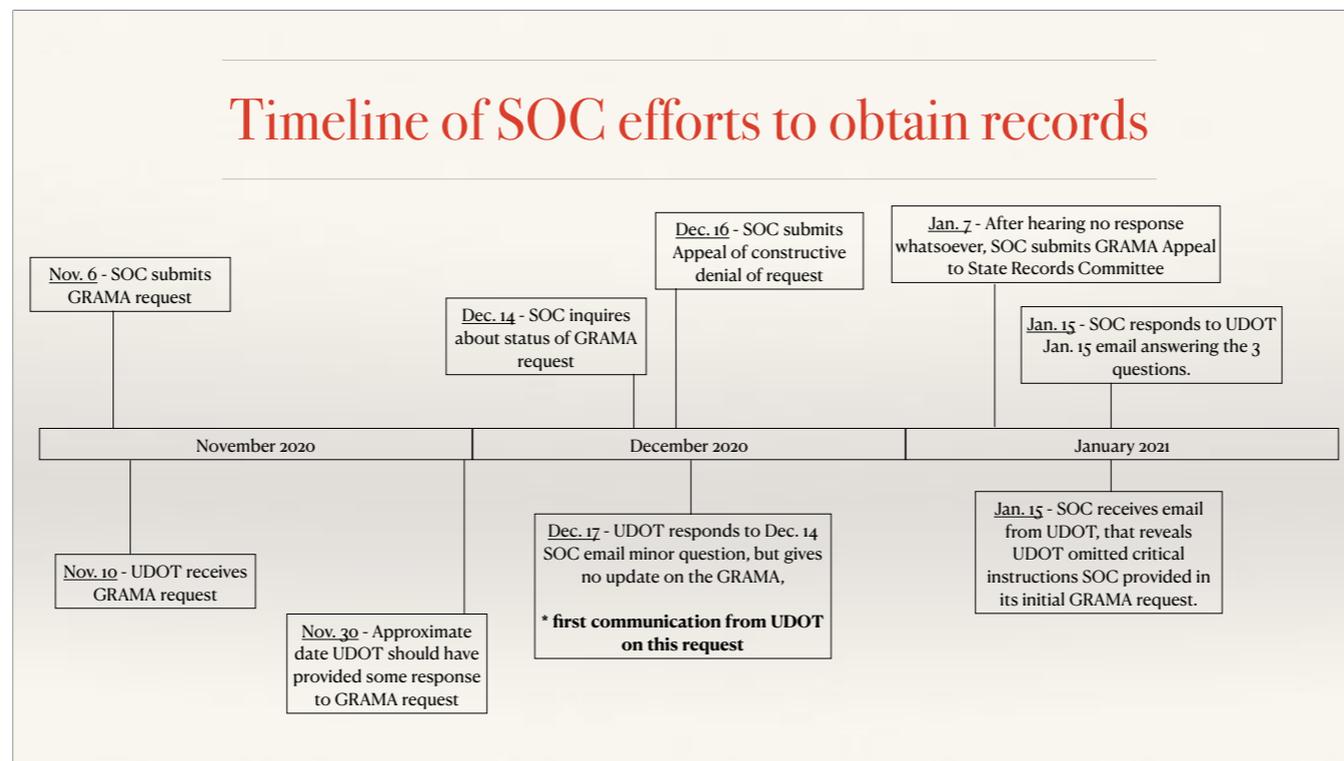
Thus, exercising our rights under GRAMA rather than FOIA, we submitted our request to UDOT.

# UDOT EIS Process Timeline



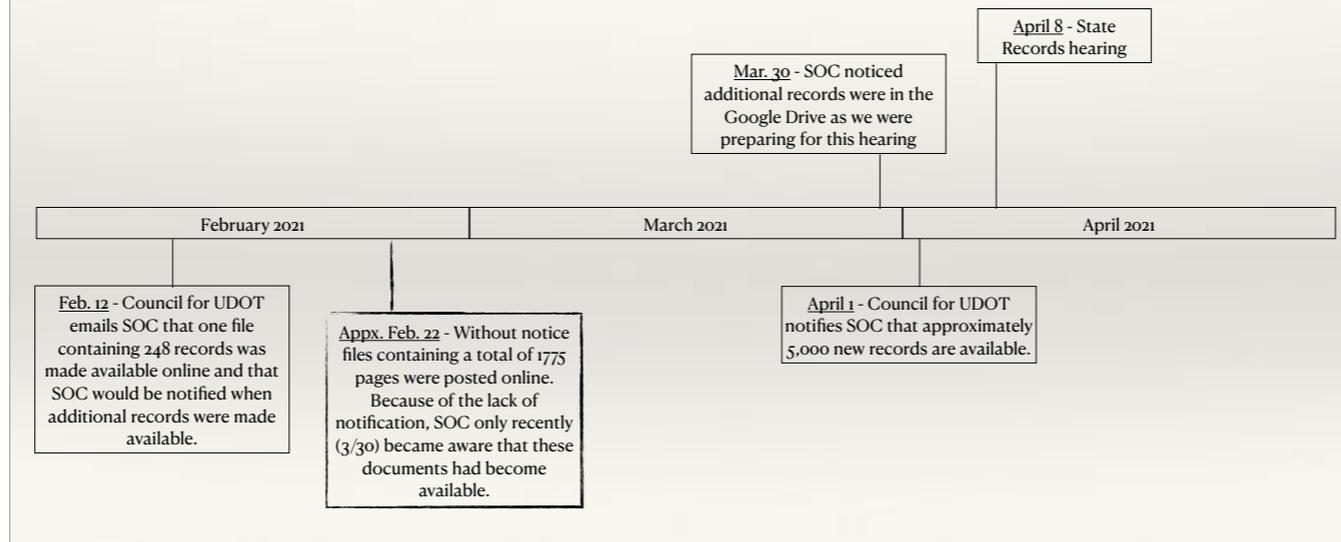
Throughout the EIS process there are several opportunities for public engagement. One of the most critical and substantive portions for engagement in an EIS is between the Development of Alternatives and the release of a Draft EIS. It is in this period where agencies, federal, state and local engage with the Federally Responsible agency — UDOT in this instance — makes their decision and the justification for their decision. This is a small but important window and our ability comprehend records and make additional requests has been completely and totally harmed.

## Timeline of SOC efforts to obtain records



The next two slides are a timeline of important dates and communications between Save Our Canyons and UDOT. It is important to note that the entire time the draft alternatives have been released, our request has gone un-responded to. So much time has elapsed that we were unable to fit it on one slide... for a response period that should have taken 10 days.

## Timeline of SOC efforts to obtain records



Nearly 150 days... over 5 months have elapsed without formal or complete response.

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## Redactions, withholdings, & incomplete response

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- ❖ Documents provided contain substantial redactions, 357 that were fully redacted and 35 that were very nearly 100% redacted
- ❖ The Bates page numbering also suggests that an additional 395 pages were fully withheld, rather than redacted
- ❖ SOC has never received the notice to which it is entitled under 63G-2-205(2), which requires, *inter alia*, that any denial be accompanied by a description of the records or portions of the records not disclosed and a citation to the statutory or other authority support the denial.

Here are a suite of issues with UDOT responses that have been partially received.

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## No explanation for denial

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- ❖ SOC was never provided with the notice required under 63G-2-205(2) thus has been denied the fair opportunity to evaluate the denials or to challenge the basis by which any documents or portions of documents were determined to be protected.
- ❖ Committee please review the exhibits in SOC's April 4 letter.

Save Our Canyons has never received an explanation or citations about what documents were protected. You can see a few examples of the information provided as exhibits in our April 4 letter to you.



FHWA - UDOT MOU as redacted



FHWA - UDOT MOU as found on UDOT's website  
<https://udot.utah.gov/connect/about-us/program-development-group/environmental-division/>

Here is one of those documents, which is the MOU that equates GRAMA to FOIA, that I showed you earlier.

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## Summary

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- ❖ SOC has been prejudiced by UDOT's failure to respond to SOC's initial request and subsequent inquiries, both formal and informal.
- ❖ It appears UDOT was most responsive to SRC hearings, rather than our adherence to the GRAMA law, hoping we'd fumble thereby not having to provide us records.
- ❖ UDOT's LCC project has enormous and unprecedented implications for the most critical and central mission of SOC.
- ❖ Not receiving documents or complete response for nearly 150 days since our initial request has:
  - ❖ Harmed SOC's participation in the NEPA process
  - ❖ SOC has been unable to inform and engage our membership and partners, aiding their involvement in a complex legal process
  - ❖ SOC could not develop a basis for challenging any documents it believes were wrongly withheld
  - ❖ For documents we did receive, we could not interpret those in the context of others subsequently obtained through appeal or additional requests
- ❖ **While UDOT has continuously delayed on the GRAMA process, the EIS process has been moving along, harming our engagement.**

Summarize a few things in this presentation, specifically how our and our membership's engagement has been harmed in this EIS process.

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## Remedies

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- ❖ For five months, UDOT has disregarded its obligation to provide a timely response.
- ❖ When UDOT has provided records, it has redacted them without explaining what they were or why they were redacted.
- ❖ Where redacted documents can be identified despite redaction and despite UDOT's failure to identify them, UDOT made those redactions unlawfully
- ❖ Because UDOT has so consistently demonstrated an unwillingness to conform to its GRAMA obligations, SOC asks that the Committee review all responsive records not already fully provided and make lawful judgments as to whether SOC should be provided access to these records.

Here are a few remedies, that address some of the ways we've been harmed, at least as it pertains to the release of public information.

read slide.

Additionally, we would like to do what we intended which is to be able to review all of the documents we are entitled to and to submit a follow up request. We would like to ask the Committee to seek a commitment from UDOT on this matter.



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Thank you for your attention to this matter!

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