



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
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Colorado Field Office  
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IN REPLY REFER TO:  
ES/CO: ES/LK-6-CO-03-F-005  
Permit Number: TE-064967-0  
Mail Stop 65412

FEB 27 2003

**FINDING OF NO SIGNIFICANT IMPACT  
FOR ISSUANCE OF AN INCIDENTAL TAKE PERMIT  
FOR THE PREBLE'S MEADOW JUMPING MOUSE  
TO THE BRIARGATE DEVELOPMENT,  
OWNED BY LA PLATA INVESTMENTS, LLC.  
EL PASO COUNTY, COLORADO**

The U.S. Fish and Wildlife Service (Service) is proposing to issue a section 10(a)(1)(B) permit under the Endangered Species Act of 1973 (16 U.S.C. 1531-1544, 87 Stat. 884), as amended (Act), to La Plata Investments, LLC. (the Applicant). The permit would authorize the incidental take of the federally threatened Preble's meadow jumping mouse (*Zapus hudsonius preblei*) (Preble's) in association with the construction of the Briargate Development. The entire development is located east of Interstate 25, within the northeast quadrant of the City of Colorado Springs, El Paso County, Colorado. The project boundary encompasses the upper North and South Forks of Pine Creek, as well as the upper reaches of Pine Creek proper, located in portions of Township 12 South, Range 66 West, W2 of Section 25, S2 and NE4 of Section 26, S2 of Section 27, SE4 of Section 28, NE4 of Section 33, N2 of Section 34, NW4 of Section 35, and NW4 NW4 of Section 36. The entire project area is approximately 2,180 acres in size. All of the aforementioned waterways ultimately drain into Monument Creek to the southwest of the proposed project area. This project includes residential, commercial, and light industrial development and associated roads, utilities, detention ponds, and a community park. The duration of the proposed permit is 30 years.

In assessing possible alternatives, the Service considered its statutory requirement pursuant to section 10(a)(1)(B) of the Act, whereby certain limitations are placed on the Service with respect to actions which may be undertaken. More specifically, section 10(a)(1)(B) of the Act requires that the Service issue a Permit when an Applicant's HCP satisfies the criteria established in section 10(a)(1)(B)(i-v)[issuance criteria]. The Service considered three alternatives which are provided in the Environmental Assessment (EA); the No Action Alternative, the Proposed Action, and Participation in a El Paso County Regional HCP. The Proposed Action involved issuance of an ITP and mitigation both on-site and off-site through preservation, enhancement, and restoration of Preble's habitat. Implementation of the Preferred Alternative is selected as the appropriate course of action since the Applicant's HCP meets the statutory requirements of the Act and is expected to provide conservation benefits to the Preble's, while meeting the needs of the affected landowner.

The EA evaluates the potential environmental effects associated with construction of the proposed development. Of the 2,180 acres in the project area, approximately 211 acres are classified as suitable Preble's habitat. Approximately 83.93 of that 211.03 acres will be impacted by development (temporary impacts to 26.38 acres and permanent impacts to 57.55 acres). Populations of Preble's are known to occur within the project boundaries. The Permit authorizes incidental take associated with disturbances that will occur with the completion of the proposed project. No other federally-listed threatened or endangered species occur on the property.

The Applicant has prepared a Habitat Conservation Plan (HCP) which describes minimization and mitigation measures to be implemented to reduce and offset the effects of the proposed project on Preble's and its habitat. The implementation of the HCP is intended to contribute to the conservation of Preble's. The primary mitigation measure of the HCP is preservation, enhancement, and restoration of habitat both on-site and off-site offset proposed impacts.

The EA/HCP, which is incorporated herein by reference, proposes to minimize and mitigate these adverse effects associated with the expected take of Preble's. As outlined in the EA/HCP, mitigation for the Briargate development will have both on-site and off-site components (Table 11). A total of 289.48 acres of Preble's habitat, and an additional 69.14 acres of adjacent natural lands (which will act to protect and buffer the Preble's habitat), will be placed under a permanent deed restriction. The total lands under conservation will thus be 358.62 acres. On the proposed project site, 153.48 acres of Preble's habitat will be placed under the deed restriction, of which 10.9 acres will be enhanced and 26.38 acres will be restored. Off-site, at the Kettle Creek Preserve, a total of 186 acres will be placed under deed restriction, of which 136 acres of Preble's habitat will be enhanced. While the existing population within the Pine Creek drainage will be protected and maintained, this is, and will remain, an isolated population which does not contribute directly to the conservation goals contained in the draft Recovery Plan. The preservation and enhancement proposed for the Kettle Creek drainage, however, will provide a key piece to the overall strategy proposed by the draft Recovery Plan of protecting, maintaining, and managing a large population of Preble's within the Monument Creek watershed of the Arkansas River Basin. Consequently, this alternative provides a mechanism to direct mitigation to more important areas to Preble's recovery, while still maintaining the existing population in the Pine Creek Drainage.

Issuance of this Permit by the Service has been thoroughly coordinated with all interested and/or affected parties. Service policy requires that the public be notified of all HCPs and applications for incidental take received and provide the opportunity to comment on any subsequent NEPA documentation prepared. In this case, the Service published a Notice of Availability of the Draft Environmental Assessment and Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for the Briargate development in El Paso County, Colorado (EA/HCP), in the Federal Register on November 22, 2002 (Vol. 67 No. 226 FR 70453) and an extension of the public comment period for the EA/HCP on January 21, 2003 (Vol. 68 No. 13 FR 2792). Copies of the EA/HCP also were provided to interested parties. The Service received one comment letter regarding the proposed action during the public comment period. The responses to these comments are provided in this document.

The environmental effects of the proposed project on other aspects of the human environment such as geology and soils, hydrology, air quality, light, noise, traffic, aesthetics, land use and cultural resources were analyzed in the EA. A summary of these issues and impacts is included in the EA.

The Service had determined that this proposal does not constitute a major Federal Action significantly affecting the quality of the human environment under the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969 (as amended). As such, an environmental impact statement is not needed. This determination is based upon the following factors (40 CFR 1508.27):

1. Both beneficial and adverse effects have been considered and this action will not have a significant effect on the human environment. The issuance of the requested permit will only directly affect the federally listed species for which it authorizes take. The indirect effects of issuance of this permit is expected to be related to otherwise lawful land development activities.
2. The action will not have a significant effect on public health and safety. The issuance of this permit and the subsequent alteration of existing or potential Preble's habitat does not increase risk to public health and safety.
3. The project will not significantly affect any unique characteristics of the geographic area, such as the proximity to historic or cultural resources, wetlands, floodplains, wild and scenic rivers, or ecologically critical areas. Within the area affected by the proposed action, the Service is not aware of any unique characteristics that will be affected.
4. The effects on the quality of the human environment are not likely to be highly controversial since the location of the proposed project is within an area that has been targeted by El Paso County for development. The implementation of additional land preservation, enhancement, and management as mitigation for the authorized incidental take of listed species within the county is not expected to substantially change the quality of human life.
5. The actions do not involve highly uncertain, unique, or unknown environmental risks to the human environment. Land alteration is not expected to involve unknown risk to the human environment since extensive alteration currently exists within this area of the county and state.
6. The action in this decision will not establish a precedent for future actions with significant effects nor does it represent a decision in principle about a future consideration. The issuance of this permit does not establish a precedent since future projects that may require such permits must be evaluated independently by the Service. Decisions made in this action are consistent with other similar projects and the mitigation is in accordance with the guidelines developed by the Colorado Field Office for mitigation and conservation of the Preble's.
7. There will be no cumulatively significant impacts on the environment. The cumulative effects of the Proposed Action have been analyzed in the accompanying EA. Consideration

of other similar activities, past actions, and in foreseeable future actions concluded that the proposed action was not significant.

8. The action will not affect any site listed in, or eligible for listing in, the National Register of Historic Places, nor will it cause loss or destruction of significant scientific, cultural, or historic resources.
9. The Preble's will be adversely affected by the proposed action as indicated within the EA/HCP. The Service's intra-Service section 7 consultation concluded that the effects of issuance of the ITP will not appreciably reduce the likelihood of survival or recovery of the affected species in the wild. The Applicant's HCP contains provisions which sufficiently minimize and mitigate the impacts of issuing the ITP; the proposed take is incidental to an otherwise lawful activity; and the Applicant has ensured that adequate funding will be provided to implement the measures proposed in the submitted HCP.
10. The action will not threaten to lead to violations of Federal, State, or local laws imposed for the protection of the environment.
11. The validity of the Service's ITP is contingent upon the Applicant's compliance with the terms of the permit and all other laws and regulations under the control of State, local, and other Federal governmental entities. The Service is unaware of other indirect environmental impacts that may result from issuance of the Permit that are not regulated by State, local, and other Federal agencies.

#### Supporting References

Documents used in the preparation of this finding of no significant impact include: the HCP and the EA for the HCP (SWCA 2002), any and all written agreements between La Plata Investments, LLC and the Service, the biological opinion on the Briargate Development permit application (Service 2003a) and the recommendations and findings for the Briargate Development project (Service 2003b). All documents are incorporated by reference, as described in 40 CFR 1508.13.

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U.S. Fish and Wildlife Service  
Regional Director

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Date

**RELATED DOCUMENTS**

U.S. Fish and Wildlife Service, 2003a. Intra-Service Section 7 Consultation and Biological Opinion on Issuance of an Incidental Take Permit to La Plata Investments, LCC., for the Briargate Development located along Upper Pine Creek, Colorado Springs, El Pas County, Colorado. Colorado Field Office, Lakewood, Colorado.

U.S. Fish and Wildlife Service, 2003b. Findings and Recommendations on Issuance of an Incidental Take Permit for the Preble's Meadow Jumping Mouse to La Plata Investments, LCC., for the Briargate Development located along Upper Pine Creek, Colorado Springs, El Pas County, Colorado.

SWCA Environmental Consultants. 2002. Draft Environmental Assessment and Habitat Conservation Plan for the Briargate Development located along Upper Pine Creek, Colorado Springs, El Pas County, Colorado. 64 pp. plus exhibits and appendices.

## Response to Public Comments

During the Public Comment Period from 21 November 2002 to 20 February 2003, comments regarding the Draft EA/HCP were received from Earthjustice, Denver, Colorado (21 January, 2003). Responses to the comments are presented below.

**Comment 1 (p. 2, par. 2): “(S)ection 10 permits may not be issued when the activity being permitted is in violation of any other law. Prior phases of the Briargate Development were unauthorized under the ESA as well as the Clean Water Act and therefore violates these statutes.”**

**Response 1:** The USFWS has settled the civil penalty proceeding brought against La Plata Investments, LLC, for alleged take of the Preble’s and its habitat. A copy of the Settlement Agreement is available for review at the USFWS Colorado Field Office in Lakewood, Colorado. The civil penalty Settlement Agreement was negotiated with La Plata separately from the EA/HCP and was the result of a law enforcement investigation. Law Enforcement investigations are not conducted in a public forum and there is no requirement that the terms of such agreements be made public prior to their execution.

**Comment 2 (p. 3, par. 3): “The Briargate Project will not enhance or conserve the Preble’s Mouse... (it) will take the mouse and destroy its habitat within Pine Creek and recover no habitat within this drainage...(it) avoids no habitat and all mitigation activities will begin after the destruction of Mouse habitat.”**

**Response 2:** A total of 83.93 acres of Preble’s habitat will be impacted by the proposed project. Out of this total, 57.55 acre will be permanently and 26.38 will be temporarily impacted. Out of approximately 211 acres of existing mouse habitat, some of which is in moderate to poor condition, 10.9 acres will be enhanced and 153 acres will be preserved along the Pine Creek corridor within the project boundary. In addition, 19.14 acres of natural open space are being preserved adjacent to the PMJM habitat as a buffer to development. The Kettle Creek Preserve contributes 186 acres of preservation and enhancement to offset adverse impacts to the mouse from the proposed project.

Currently the entire property is Master Planned for commercial and residential development. With the construction of Powers Boulevard nearby, the value of this property as a development site is increasing. In section 7.3.4, the HCP describes minimization and avoidance through alteration of the original 2000 Master Plan for the Briargate Development. This alteration resulted in the reduction of impacts to PMJM habitat by 74 acres. Additionally, a 1998 Agreement with the City of Colorado Springs deeded approximately 109 acres to be used as a Community Park (CPC MPA 98-0007). In the proposed project, the useable park area was reduced to 29.5 acres (of which only 13 acres will have an impact upon mouse habitat).

There is no obligation for the Applicant to begin mitigation prior to receipt of the Incidental Take Permit. Once the Permit is received, the Applicant may begin construction and will begin the mitigation measures as described in section 7.3.6 of the EA/HCP.

**Comment 3 (p. 3, par 3): “(T)here is no evidence that the Briargate HCP will assist in recovery of the Mouse”.**

**Response 3:** The USFWS’s Final Addendum to the HCP Handbook (65 Fed. Reg. 35243) states that “Under section 10 of the ESA, we do not explicitly require an HCP to recover listed species or contribute to the recovery objectives outlined in a recovery plan, but do not intend to permit activities that would preclude recovery. This approach reflects the intent of the section 10(a)(1)(B) incidental take permit process to provide for authorization of incidental take, not to mandate recovery.”

**Comment 4 (p. 4, par. 1): “Based on the Briargate HCP, there is no attempt to avoid and minimize [impacts to] Mouse habitat along Pine Creek”.**

**Response 4:** Please see response to Comment 2.

**Comment 5 (p. 4, par. 1): “The alternative analysis does not consider a development project, in whole or in part, that avoids Mouse habitat.”**

**Response 5:** Prior to the listing of the mouse in June 1998, the proposed Master Plan described a community of residential, commercial, and public open space development designed around the existing golf course, the proposed Powers Boulevard, and drainage ways of Pine Creek. Many of the originally proposed impacts were within what is now considered mouse habitat. Some of this plan was even constructed before the listing of the mouse occurred. Once the mouse was listed, the existing master plan was revamped to take into account the new concerns of avoiding, minimizing, and mitigation impacts to the mouse and its habitat. Results of the change in the Master Plan are presented as Alternative 2 in the EA/HCP (page 22).

As stated in Section 1.0 of the EA/HCP, approximately 46% of the entire project is already disturbed and partially developed, some of which is in PMJM habitat. An example of this is the golf course that was developed adjacent to Pine Creek in the mid-1980s and the residential development along the north side of Pine Creek developed in late 1997. Thus, it is impossible to analyze a project with no impacts to mouse habitat since some of the project was developed prior to the listing of the mouse.

**Comment 6 (p. 4, par. 1): There appears to be no reason why the 13 acres deeded to the City of Colorado Springs for a region park could not avoid impacts to mouse habitat by placing the playing fields elsewhere.**

**Response 6:** Please see response to Comment 2.

**Comment 7 (p. 4, par. 1): “(T)he mitigation proposal, including reclaiming sites “temporarily impacted” and conserving a known Mouse population along Kettle Creek, lacks support as**

**there is no evidence that similar mitigation has successfully protected and conserved the Mouse”.**

**Response 7:** The mitigation proposed in this EA/HCP was negotiated with the USFWS and is based upon similar mitigation plans that have already been approved. The Plan calls for monitoring, and continued mitigation efforts, until such time as success criteria are achieved. By ensuring that the standards of success are met, mitigation will be successful through preserving, enhancing, and restoring PMJM habitat.

**Comment 8 (p. 4, par. 2): “FWS cannot determine whether the Briargate project will not appreciably reduce the likelihood of Mouse recovery...FWS has yet to develop a Mouse Recovery Plan”.**

**Response 8:** As stated in Response 3, the USFWS does not explicitly require an HCP to recover listed species or contribute to the recovery objectives outlined in a recovery plan. However, we do encourage Applicants to “develop HCPs that produce a net positive effect on a species”. USFWS “can use recovery goals to frame the biological goals and objectives...Recovery Plans are also used as sources for possible minimization and mitigation measures for the HCP...If a Recovery Plan is not available, we must rely upon other available sources of biological information to encourage the development of HCPs that would aid in a species’ recovery” (USFWS’s Final Addendum to the HCP Handbook, 65 Fed. Reg. 35243). The Service believes that the Plan adequately addresses this issuance criterion and has prepared a Statement of Findings as a part of the processing documents for this Incidental Take Permit (incorporated herein by reference).

**Comment 9 (p.4, par. 3): “There is no guarantee of funding and the necessary amount of the annual appropriation is not identified. The Letter of Credit has been promised but not provided and the amount is also not disclosed.”**

**Response 9:** The Applicant has provided a Letter of Credit from a federally chartered FDIC insured bank (Appendix E) for the amount of \$970,000. This amount ensures that adequate funding is available until success is achieved. The exact amount of annual appropriations will be determined once the ITP is issued and the Applicant has had the opportunity to go out to bid the get the most competitive price for the mitigation work.

**Comment 10 (p. 4, par. 3): “The HCP provides that an endowment (129,000) will be established to provide for the management of the Kettle Creek Preserve, but does not explain whether this amount is sufficient.”**

**Response 10:** The proposed endowment of \$129,567.00 for management of the Kettle Creek Preserve was determined by The Trust For Public Lands based upon what would be needed for “Stewardship and Defense of the Kettle Creek Preserve”. TPL utilized a formula that they have used in the past to make the amount determination. That formula is shown in Appendix C of the EA/HCP (see also Section 7.3.2.4).

**Comment 11 (p. 5, par. 2): “(T)he Briargate HCP must include a clear, enforceable, mechanism for monitoring compliance – funded by the permit applicant as part of the HCP implementation. Part of the compliance monitoring process should include a free flow of information to the interested public as well as the agency.”**

**Response 11:** Mitigation measures will be monitored on an annual basis to track and ensure that constant strides toward the standards of success are being taken. As stated in the EA/HCP, results of the monitoring will be submitted to USFWS annually for review. Monitoring will continue until the success criteria defined in Section 7.3.3 are achieved. The mitigation monitoring reports will be available to the public for review through the USFWS, Colorado Field Office.

**Comment 12 (p. 5, par. 3): “Additional and more comprehensive surveys should be preformed to determine the presence of the Mouse within the Project Area.”**

**Response 12:** Pine Creek within the project area has been surveyed four times since 1997. The first survey, in 1997, identified PMJM below (west of) Chapel Hills Drive. No mice were captured above (east of) Chapel Hills Drive during this survey effort. In 1999, additional surveys identified PMJM at the lower extremes of the North and South Forks of Pine Creek. Surveys of the upper reaches of the two forks in 2000 also did not find presence of PMJM. In 2001, additional surveys identified PMJM near the proposed Powers Boulevard crossing of the North Fork of Pine Creek. Based on these 4 separate PMJM survey over a 5-year period, the information about PMJM presence and its distribution along Pine Creek is considered to be scientifically adequate. Please also see Section 3.3.1.1 for more information regarding PMJM status within the Pine Creek watershed.

**Comment 13 (p. 5, par. 3): “There is no discussion of the quality of the habitat, whether the Mouse occupies these areas, or the role the to-be-destroyed habitat plays in the Mouse’s life history.”**

**Response 13:** The quality of the habitat along the main fork of Pine Creek is of relatively good quality and in a healthy state with the exception of an area in the close proximity of the golf course. This area was described in section 3.1.2 of the draft EA/HCP. Water is found throughout this reach year-round. PMJM were first identified in this area in 1997, and it is anticipated that future impacts proposed for this area will not change the quality of the habitat, the distribution of the PMJM, or use by PMJM.

Habitat along the North Fork is of medium quality. As described in the HCP (see Section 3.1), while the drainage has an established riparian corridor, it is largely made up of exotic plant species. Water in the drainage is ephemeral and with the recent drought, no flowing water has been observed in the channel since early spring 2002. Initial surveys identified no PMJM in this reach. In 1999, five mice were identified near the stormwater detention pond at the lower end of the drainage. Although surveyed numerous times in the past, it wasn’t until 2001 that PMJM were identified in the upper portions of the reach. Currently, construction of Powers Boulevard over the North Fork is proceeding under a section 7 consultation with the Federal Highways Administration dated 16 July, 2002.

The South Fork does not exhibit the same characteristics as the North Fork. Riparian vegetation taller than two feet is scarce along the entire drainage and in some instances is non-existent. Farther up the drainage, the marginal habitat continues to decrease in quality until you reach the head of the drainage which is created by a head-cutting action. Within this upper portion of the South Fork, no PMJM habitat is found and the stream is characterized as a “cut-bank channel,” with the stream banks sloughing into the channel. Water throughout this channel is typically ephemeral, although standing water can be found year-round in the small stock ponds found along the way. PMJM have only been identified at the very lower extremes of the channel, near an existing wetland and detention pond.

**Comment 14 (p. 5, par. 4): The mitigation plan and related documents should undergo an independent peer review”.**

**Response 14:** The USFWS’s Final Addendum to the HCP Handbook (65 Fed. Reg. 35243) “encourages the use of peer-review for an HCP. An applicant, with guidance from the [USFWS], may seek independent scientific review of specific sections of an HCP and its operating conservation strategy to ensure the use of the best scientific information for HCP development”. However, neither the ESA and its implementing regulations, nor the USFWS’s guidelines and policies, obligate the applicant to conduct additional peer-review beyond the requirement for public comments and in the case of this project, the USFWS did not believe that peer-review was necessary.

**Comment 15 (p. 5, par. 5): “The HCP suggests that in exchange for the complete destruction of 84 acres, 242 acres will be conserved.”**

**Response 15:** Table 11 of the EA/HCP summarizes the impacts of the proposed actions. These impacts consists of 57.55 acres of permanent loss and 26.38 acres of temporary loss. Mitigation to offset these impacts includes over 358 acres of deed restricted preservation, of which 196.90 acres will be enhanced.

**Comment 16 (p. 5, par. 5): “The connection between the management actions proposed – i.e. noxious weed control, fencing, reseeding – and conserving the Preble’s Mouse is not described. The HCP assumes without analysis these actions will be successful.”**

**Response 16:** Currently, the Kettle Creek property is fenced and horse grazing has been removed. However, the fencing that exists is in poor condition and is inadequate in prohibiting human access into the property. By installing new fence and signing the perimeter, human access and use of the property will be significantly decreased, thus reducing the potential impact to the mouse and its habitat. The Applicant is permanently preserving this property and ensuring that all potential future development impacts are removed.

Due to past management practices on the property, there are many areas of noxious weed infestation and erosion. Although the mouse has been identified as utilizing areas of noxious weed infestation, it is unclear what the importance of these areas are, or whether the reduction of weed density/distribution would better provide for their life history requirements. However, if left uncontrolled, noxious weeds could spread over the entire property and those properties adjacent,

decreasing the value of the native habitat. By providing a natural and native setting, the Applicant is improving/enhancing the habitat for the mouse.

The EA/HCP establishes clear and measurable standards of success (described in Section 7.3.3). The Applicant is required to achieve these standards in order to satisfy the Permit's terms and conditions, thus ensuring success. Monitoring and mitigation efforts will continue until success criteria are achieved.

**Comment 17 (p. 6, par 1): “A baseline survey for the Mouse should be performed so that management actions can be evaluated.”**

**Response 17:** The comment seems to assume that mouse population numbers must be assessed in order to determine the amount of take and the ability of the management actions to offset adverse impacts. The HCP handbook states that “take levels can be expressed in the HCP in one of two ways: (1) in terms of the number of animals to be “killed, harmed, or harassed” if those numbers are known or can be determined; or (2) in terms of the habitat acres or other appropriate habitat units...to be affected generally or because of a specified activity, in cases where the specific number of individuals is unknown or indeterminable.” The Service anticipates that incidental take of Preble's through direct killing, harm, or harassment would be difficult to detect due to their small size and secretive nature. However, the level of take can be anticipated by the loss of food, cover, and other essential habitat elements. The success of management actions will be defined in terms of changes in the baseline of the habitat as defined by the success criteria (Section 7.3.3).

**Comment 18 (p. 6, par. 1): “The HCP contemplates temporary impacts of 23 acres due to construction activities and states those areas will be immediately replanted. However, if the Mouse occupies such construction areas, simply replanting the area cannot constitute adequate mitigation.”**

**Response 18:** Although those areas temporarily impacted (26.38 acres) will be immediately revegetated and will be required to meet the defined success criteria, the ratio for replacement is at 1.5 :1, thus compensating for the loss of value through time. Therefore, the USFWS considers this adequate mitigation to offset adverse temporal impacts.

**Comment 19 (p. 6, par. 1): “(T)he deed restriction prohibits activities ‘that would adversely impact PMJM habitat’. Not only should the deed restriction prohibit all activities in these parcels, but the standard (adversely impact) is too high”.**

**Response 19:** The deed restriction language has been changed to reflect the primary purpose and restrict all activities on the parcel that would adversely affect the biological value of the parcel for the mouse (see Appendix D).

**Comment 20 (p. 6, par. 2): “(T)he status of the Kettle Creek Reserve is unclear....it appears this area already receives some protection or is not under threat of development or other harmful use. The HCP does not identify the owner of this property”.**

**Response 20:** The Kettle Creek Preserve is property currently owned by the Applicant. As the owner, the Applicant will apply the deed restriction and ultimately turn over the deed to a new non-profit organization for long-term management (upon approval of the USFWS). Without this restriction, the property is Master Planned for development due to its prime location to the proposed Powers Boulevard extension. If developed, the estimated value of the property is over \$2.0 million. By giving up the ability to develop the property, the Applicant is protecting it in perpetuity for the specific benefit of the mouse.

The deed restriction that will be placed on the property will allow for no development within the preserve boundary. However, as stated in Section 7.3.2.3, there are currently existing utility line easement agreements in place across the preserve allowing for the future access into the preserve for the purpose of maintaining, repairing, and operation of the existing structures.

**Comment 21 (p. 6, par. 2): “(I)t seems like this parcel [Kettle Creek Preserve] will be considered as part of the mitigation package for the upcoming El Paso County Regional HCP.”**

**Response 21:** This comment appears to refer to the language on page 51 of the draft EA/HCP that the Kettle Creek parcel could help “maintain the county’s conservation goals to be defined by the upcoming El Paso County RHCP”. The purpose of this statement was simply to point out the this parcel would be valuable to the overall conservation goals required by any future county HCP.

**Comment 22 (p. 6, par. 3): “The Briargate HCP purports to include goals and objectives; indeed, there is a section of the HCP entitlement Goals and Objectives. However, the HCP simply identifies mitigation ratios and a description of the mitigation plan. There are no goals or objectives”.**

**Response 22:** The order in which this section of the EA/HCP was written has been revised for clarification. The language has been modified to read:

The Biological Goal of this HCP is to provide for the long-term conservation of the PMJM on Pine and Kettle Creeks while allowing the Applicant to carry out otherwise lawful activities on private property. The Biological Objectives to achieve this goal are: (1) enhancement and restoration of existing PMJM habitat along the North Fork of Pine Creek; (2) protection of the existing habitat found within all three areas in the Pine Creek drainage by placing deed restrictions on the remaining PMJM habitat; (3) enhancement/restoration, enhancement, preservation, and long-term protection of the occupied PMJM habitat identified on Kettle Creek; and (4) provide an endowment to TPL to provide for the long-term management of the Kettle Creek Preserve.

**Comment 23 (p. 6, par. 3): “(T)he success standards are limited to plant growth, as opposed to Mouse populations successfully surviving”.**

**Response 23:** Please see response to Comment 17.

**Comment 24 (p. 6, par. 3): “The HCP fails to indicate how the mitigation plan on Kettle Creek will benefit the Mouse. There are no recovery goals such as population density targets or population growth rates. The HCP also fails to describe how the proposed conservation measures will maintain existing populations. Furthermore, simply protecting habitat for the Mouse does not account for edge effects from additional development and other factors, such as lack of water, which adversely impact populations.”**

**Response 24:** By preserving the Kettle Creek property and by placing a permanent deed restriction on it, the area, its high density of PMJM, and good quality habitat will be preserved in perpetuity. Without these measures, this area could be developed for commercial uses.

One overall benefit to the mouse from the preservation of Kettle Creek and the endowment that will accompany the deed transfer is that a new non-profit organization is being developed for the sole purpose of managing PMJM habitat. This non-profit would accept land donated by private landowners who do not want, or are not prepared for, the responsibility of long-term management of PMJM habitat. Without such an organization, there might be no group willing to oversee the long-term management and monitoring of PMJM on such properties.

By implementing the proposed mitigation measures, the Applicant will not only improve many areas of existing habitat, but they will preserve a total of 358.62 acres of PMJM habitat that might otherwise be lost. As stated previously, proposed mitigation measures for the Kettle Creek area will preserve the habitat for a high-density population of PMJM. Additionally, mitigation measures along Pine Creek will improve the existing low quality habitat, thus providing better habitat for the PMJM suspected of surviving along the creek. By enhancing the existing habitat with native grasses and shrubs, and controlling noxious weeds, the Applicant is increasing the overall value of the remaining habitat, thereby reducing the adverse effects as a result of adjacent development.

The commenter is correct in stating that the lack of water can adversely impact the mouse. With the current drought that the region is experiencing, both the North and South Forks of Pine Creek have had little water in them since early 2002. Future prospects for additional precipitation is unclear. With the construction of the proposed development, there will be an increase in surface water flows making its way into the upper Pine Creek watershed by way of stormwater detention ponds. This increase in water will help with the long-term survival of the riparian habitat needed by the mouse for survival.

Regarding the absence of “recovery goals such as population density targets or population growth rates” please refer to the Response to Comment 17.

**Comment 25 (p. 7, par. 1): “Section 7(a)(2) of the ESA requires FWS to undergo an intra-Service consultation on the incidental take permit...”**

**Response 25:** As part of the Incidental Take Permit processing documents, the USFWS has prepared an intra-Service Biological Opinion (BO), which is incorporated herein by reference. In the BO, the USFWS has evaluated direct, indirect, and cumulative effects to the mouse.

**Comment 26 (p. 7, par. 1): “...Briargate was involved in past activities that illegally resulted in ‘taking’ the Mouse. Those activities must be fully disclosed and considered in a Biological Opinion in the proposed permit”.**

**Response 26:** Please see Response to Comment 1.

**Comment 27 (p. 7, par. 3): “Accordingly, because there are significant impacts associated with the proposed incidental take permit, an environmental impact statement is required.”**

**Response 27:** The definition of “significance” under the NEPA, is related to impacts to the human environment. The Council for Environmental Quality Regulations on NEPA states that the definition of “significance” requires considerations of both context and intensity. The USFWS does not believe that either the context or intensity of the proposed project rises to the level of significant. The USFWS has prepared a Finding Of No Significant Impact (FONSI) as a part of our NEPA compliance for the processing of the proposed Incidental Take Permit, which is incorporated herein by reference.

Date: 2/27/03

Mary G. Kemp  
Regional Director, Region 6  
U.S. Fish and Wildlife Service