



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
Colorado Field Office
755 Parfet Street, Suite 361
Lakewood, Colorado 80215

IN REPLY REFER TO:

FEB 27 2003

ES/CO: ES/LK-6-CO-03-F-005

Permit Number: TE-064967-0

Mail Stop 65412

Memorandum

To: Regional Director, Region 6
Lakewood, Colorado

From: Assistant Regional Director, Ecological Services, Region 6
Lakewood, Colorado

Subject: Findings and Recommendations on Issuance of an Incidental Take Permit for the Preble's meadow jumping mouse to La Plata Investments, LLC, for the Briargate Development, El Paso County, Colorado (**TE-064967-0**)

I. DESCRIPTION OF PROPOSAL

La Plata Investments, LLC (the Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for a permit to authorize incidental take of the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) (Preble's) in accordance with section 10(a) of the Endangered Species Act of 1973, as amended (Act). The Applicant has prepared a combination Environmental Assessment and Habitat Conservation Plan (EA/HCP), which has been submitted in support of their permit application.

The proposed action involves the development of commercial/retail and residential building sites within the general vicinity of the upper Pine Creek watershed. 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.

The Briargate Development project is surrounded by the drainage divide between Pine Creek and Kettle Creek on the north, the drainage divide between Pine Creek and Cottonwood Creek on the south, the Applicant's property boundary on the east, and by Chapel Hills Drive on the west. The incidental take would be in the form of permanent loss of 57.55 acres, and temporary disturbance to an additional 26.38 acres, of habitat used by Preble's.

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.

The Biological Goal of the EA/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 Trust for Public Lands to provide for the long-term management of the Kettle Creek Preserve. The EA/HCP also details success and compliance monitoring criteria.

Analysis of Effects

The effects of the proposed action on Preble's are fully analyzed in the Service's Biological Opinion for the proposed action, herein incorporated by reference. Implementation of the proposed project would result in the permanent loss of 57.55 acres, and temporary disturbance to an additional 26.38 acres, of habitat used by Preble's.

II. PUBLIC REVIEW

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).

The Service received one comment letter regarding the proposed action during the public comment period. A response to comments was prepared and is attached to the Finding of No Significant Impact, incorporated herein by reference.

III. INCIDENTAL TAKE PERMIT CRITERIA - ANALYSIS AND FINDINGS

1. The taking of Preble's will be incidental.

The taking of Preble's will be incidental to the otherwise lawful activity of commercial, industrial, and residential development.

2. The Applicant will, to the maximum extent practicable, minimize and mitigate the impact of taking Preble's.

The EA/HCP contains measures to minimize and mitigate impacts to Preble's that would occur under the permit, and is incorporated by reference.

3. The Applicant will ensure adequate funding for the HCP and provisions to deal with unforeseen circumstances will be provided.

The Applicant will cover any cost necessary to reach mitigation success as defined in the EA/HCP. The Applicant has provided a Letter of Credit to guarantee completion and success of the mitigation efforts (Appendix E of the EA/HCP).

4. The taking will not appreciably reduce the likelihood that the species will survive and recover in the wild.

Approval of the proposed permit has been reviewed by the Service under section 7 of the Act. In the biological opinion, which is incorporated by reference, the Service concluded that issuance of the incidental take permit to the Applicant would not likely jeopardize the continued existence of Preble's.

5. Other measures, as required by the Director of the Service, have been met.

The HCP incorporates all elements determined by the Service to be necessary for approval of the HCP and issuance of the permit.

6. Alternatives

Three alternatives have been identified in the proposed EA/HCP: 1) the no action, 2) the proposed alternative, and 3) participation in the El Paso County Regional HCP. The EA/HCP details these alternatives as well as the reason the proposed alternative was chosen and the other two alternatives were rejected as infeasible.

IV. GENERAL CRITERIA AND DISQUALIFYING FACTORS - ANALYSIS AND FINDINGS

The Service has no evidence that the permit should be denied on the basis of the criteria and conditions set forth in 50 CFR 13.21(b)-(c). The Applicant has met the criteria for the issuance of the permit and does not have any disqualifying factor that would prevent the permit from being issued under current regulations.

V. RECOMMENDATIONS ON PERMIT ISSUANCE

Based on the foregoing findings with respect to the proposed action, I recommend issuance of a permit to authorize incidental taking of the Preble's meadow jumping mouse by the Applicant in accordance with the EA/HCP.

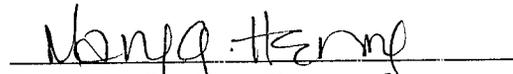


Field Supervisor
Colorado Field Office

2-27-03

Date

Concur:



Assistant Regional Director for
Ecological Services

2/27/03

Date