



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Mountain-Prairie Region

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SEP 13 1996

### Memorandum

To: Field Supervisor, Ecological Services, Salt Lake City, Utah

From: Assistant Regional Director, Ecological Services, Region 6 *Jack Webster*

Subject: Intra-Service Endangered Species Act Section 7 Consultation for Issuance of ESA Section 10(a)(1)(B) Utah Prairie Dog Incidental Take Permit to Connel Gower Construction, Inc.

This biological opinion was prepared at the request of the Utah Field Office of the Fish and Wildlife Service as required by the Endangered Species Act of 1973, as amended for proposed issuance of an ESA section 10(a)(1)(B) incidental take permit for Utah Prairie Dog (*Cynomys parvidens*) associated with development of an industrial complex within 63 acres of privately-owned land in Cedar City, Iron County, Utah. The Federal action is issuance of an incidental take permit by the Service. This biological opinion has been prepared by the Service in accordance with section 7 of the ESA (16 USC 1531, *et seq.*) and Interagency Cooperation Regulations (50 CFR 402).

The Utah Prairie Dog is a species federally listed as threatened and occurs in and around the area of impact of the proposed project. This biological opinion addresses impacts of the proposal to this species and was prepared using information contained in the incidental take permit application prepared by Connel Gower Construction, Inc. (the Applicant) and their consultant. Additional information was obtained from existing Service files.

### BIOLOGICAL OPINION

It is the Service's biological opinion that the proposed issuance of this incidental take permit is not likely to jeopardize the continued existence of Utah Prairie Dog. No critical habitat has been designated for this species; therefore, no critical habitat will be destroyed or adversely modified by this project.

### PROJECT DESCRIPTION

The Applicant is planning to develop an approximately 63-acre industrial park on private property within Cedar City, Iron County, Utah. The property is located on 63 acres within the SW 1/4 of SW 1/4 of section 3, SE 1/4 of SE 1/4 of section 4, N 1/2 of NE 1/4 of section 9, and NW 1/4 of NW 1/4 of section 10, Township 36 South, Range 11 West, Salt Lake Base and Meridian, as

more fully described in, and shown in Figure 1 of, the associated Habitat Conservation Plan. The privately-owned property is zoned as industrial within city limits and agricultural outside city limits. The proposed project is privately funded and includes development of streets, parking areas, and drainage facilities as well as installation of associated infrastructure such as natural gas, sewer, water, power, and phone services in preparation for construction of commercial and industrial buildings and facilities. When in place, these services will facilitate the Applicant's sale of various-sized lots for construction of commercial and/or industrial facilities.

Four years of past surveys and recent observations in the area indicate that up to 106 prairie dogs, including juveniles, could occur within the area to be affected by construction activities. This number is intended to be a high estimate, however, that assumes the highest reproductive rate (6 young per female with all females reproducing) along with zero mortality of individuals observed, nor of their offspring.

According to the Implementation Agreement and the conditions of the Section 10(a) incidental take permit, the applicant commits to the following measures to avoid or minimize impacts to the Utah prairie dog: 1) trapping and relocation; 2) pre-construction education program; and 3) scheduling trapping and construction to avoid hibernation periods.

The Utah Prairie Dog Recovery Plan (U.S. Fish and Wildlife Service 1991) calls for establishment of prairie dog colonies on public lands which can be managed to maximize colony persistence. An multi-party Recovery Implementation Committee has recommended developing public lands sites where, over the next 5 years, research can be conducted on factors affecting colony success. Utah Prairie Dogs removed from private land such as the Applicant's site can be used in designated colony sites to obtain information about translocation methods and success, habitat requirements, and physiological condition. The Utah Division of Wildlife Resources will remove the prairie dogs from within the project area to an approved public lands translocation site. Upon completion of trapping, the Division will bill the Applicant \$75.00 for each animal trapped and removed.

A pre-construction education program will be conducted for project employees to explain the status of the species and measures to be taken to avoid "take" of animals that might stray into the construction area.

Trapping and relocation of Utah Prairie Dogs will take place during the period of April-September, when this species is active. Once all prairie dogs are removed according to the incidental take permit, construction can commence and continue through completion.

The Applicant will mitigate for the permanent loss of Utah Prairie Dog habitat by paying a mitigation fee as specified in the Implementation Agreement of \$450.00 per acre at a 2:1 ratio to the Utah Prairie Dog Conservation Fund, Account Number 96-219, maintained by the National Fish and Wildlife Foundation. This fund has been established for management and enhancement of Utah Prairie Dog habitat on public lands and implementation of other actions required for recovery of the species. The total mitigation fee of \$56,700.00

will be paid incrementally, prior to commencement of construction of a parcel of land within the 63-acre industrial complex, as outlined in more detail in the associated Habitat Conservation Plan and its Implementation Agreement. The fee is based on approximate costs for enhancement methods which could include sagebrush chaining, mowing, brushbeating, chemical treatment, disking, plowing, reseeding, interseeding, and/or burning, and approximate costs for implementing the suite of recovery actions outlined in the Interim Conservation Strategy and existing Recovery Plan.

#### BASIS FOR OPINION

##### Utah Prairie Dog

The Utah Prairie Dog is the western-most member of the genus *Cynomys*. The species' range, which is limited to the southwestern quarter of Utah, is the most restricted of all prairie dog species in the United States. As could best be ascertained by Collier (1975), the species' distribution was much broader prior to control programs and in the past, extended across the desert almost to the Nevada-Utah State line. At one time, the species occupied about 700 sections in 10 areas of southwestern Utah. The total species distribution was estimated to be 95,000 animals prior to control programs in the 1920s (Turner 1979).

By the 1960s, distribution of the Utah Prairie Dog was greatly reduced due to disease (plague), poisoning, drought, and human-related habitat alteration resulting from cultivation and poor grazing practices. Studies by Collier and Spillett (1972) indicated that the Utah Prairie Dog had declined or been eliminated from major portions of its estimated historical range. By 1972, they estimated 3,300 Utah Prairie Dogs existed in 37 separate prairie dog colonies. It appeared from this estimate that the Utah Prairie Dog would be extinct by the year 2000 (Collier and Spillett 1973).

The Utah Prairie Dog presently occurs in principal concentrations in only three areas: the Awapa Plateau along the East Fork of the Sevier River, eastern Iron County, and a few colonies existing in isolated mountain and desert valleys (Pizzimenti and Collier 1975, Hasenyager 1983). The Utah Prairie Dog was listed as an endangered species on June 4, 1973 (38 FR 14678), pursuant to the Endangered Species Conservation Act of 1969.

It appears that the decreasing trend in numbers may have stabilized since 1972 (Heggen and Hasenyager 1977), though numbers have vacillated greatly (McDonald 1993). Total population numbers have been as high as 7,400 in the 1989 spring census count (Coffeen 1989). In 1994 the spring count (which counts only adult animals) was only approximately 3,700 animals, largely due to poor range conditions and disease factors (McDonald 1993). Work by Crocker-Bedford (1975) indicates that only 40 to 60 percent of the total prairie dog species is aboveground at one time, thus "census" counts actually underestimate the total number of adult animals.

The reestablishment of Utah Prairie Dog populations on public lands has been identified in the Recovery Plan for this species (U.S. Fish and Wildlife Service 1991) as necessary to ensure the continued existence of the species.

Thus, in 1972, the Division initiated a translocation program to move animals from private agricultural lands to areas of historical occupancy on public lands. Over a 20-year period from 1972 to 1992, roughly 16,700 dogs were translocated to public land sites (McDonald 1993).

Despite limited survival of translocated animals, the number of active colonies on public land increased from 11 to 36 between 1976 and 1992 (McDonald 1993). Increase in the number of active colonies on public land is probably attributable to a combination of factors including the translocation program, natural increases at existing sites, and discovery of previously unrecorded colonies.

Because of the improved status of the species and the overwhelming increases seen on private lands in the Cedar and Parowan Valleys, where Utah Prairie Dog numbers climbed from a census count of 627 in 1976 to a spring census count of 3,699 animals in 1982 causing severe crop damage, the Division petitioned the Service to remove the Utah Prairie Dog from the U.S. List of Endangered and Threatened Wildlife. Upon reviewing all pertinent biological data, the Service determined that the Utah Prairie Dog was not then in danger of extinction and published the Final Rule reclassifying the species to threatened on May 29, 1984 (49 FR 22330).

#### EFFECTS OF THE PROPOSED ACTION

The proposed action would result in the permanent loss of 63 acres of Utah Prairie Dog habitat. Over the life of the proposed 20-year permit, up to 106 Utah Prairie Dogs may be translocated to a public lands colony where they will contribute to knowledge of translocation needs and techniques. Any translocation of Utah Prairie Dogs will be consistent with Service-approved study design in accordance with the Utah Prairie Dog Interim Conservation Strategy and/or the Utah Prairie Dog Recovery Plan.

The Service believes the impacts described above will not jeopardize the continued existence of the Utah prairie dog. This finding is based on commitments made by the Applicant, the U.S. Bureau of Land Management, and the Division in the associated Implementation Agreement.

#### CUMULATIVE EFFECTS

Cumulative effects are those effects of future non-Federal (State, local government, or private) activities on endangered and threatened species or critical habitat that are reasonably certain to occur during the course of the Federal activity subject to consultation. Future Federal actions are subject to the consultation requirements established in section 7 of the ESA and, therefore, are not considered cumulative to the proposed action. The proposed project area is within the city limits of Cedar City, Utah, and is surrounded by agriculture, commercial businesses, and industrial property. It is anticipated that over time the surrounding area will be developed such that there will be no viable Utah Prairie Dog colonies in the vicinity of the project area. Consequently, implementation of the Utah Prairie Dog Recovery Plan and the associated Interim Conservation Strategy are essential to ensuring long-term survival of the species.

## INCIDENTAL TAKE

Section 9 of the ESA, as amended, prohibits any taking (to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or attempt to engage in any such conduct) of listed species of fish or wildlife without special exemption. Harm is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering. Harass is defined as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering. Incidental take is any take of listed animal species that results from, but is not the purpose of, carrying out an otherwise lawful activity conducted by the Federal agency or applicant. Under terms of section 7(b)(4) and 7(o)(2) of the ESA, taking that is incidental to and not intended as part of the agency action is not considered a prohibited taking provided that such taking is in compliance with this incidental take statement. This biological opinion does not authorize any take of Utah Prairie Dogs that is not incidental to the construction within the project area.

The proposed action under review in this consultation is directed toward the incidental taking of Utah Prairie Dog habitat and is a permitted activity under Service authorities. The Service anticipates that Utah Prairie Dogs occurring in the 63-acre project area would be incidentally taken as a result of this proposed action. Incidental take would be expected to include direct mortality from construction activities.

The measures described below are non-discretionary, and must be undertaken by the applicant, as appropriate, in order for the exemption in ESA section 7(o)(2) to apply.

### Reasonable and Prudent Measures

The Service believes that the following reasonable and prudent measures are necessary and appropriate to minimize the incidental taking authorized by this biological opinion:

1. Measures shall be implemented to prevent Utah Prairie Dogs from being killed or harmed by any project-related activity.
2. Measures shall be implemented to minimize habitat loss, degradation, and fragmentation of Utah Prairie Dog habitat.

### Terms and Conditions

In order to be exempt from the prohibitions of section 9 of the ESA, Connel Gower Construction, Inc., the Applicant, must ensure that the construction and operation of its 63-acre industrial complex in Cedar City, Utah, complies with the following terms and conditions, which implement the reasonable and prudent measures described above. If the Applicant fails to comply with any of the Reasonable and Prudent Measures or Terms and Conditions of this biological

opinion, construction activities on the project shall be suspended until such time that the Applicant is in compliance with these Terms and Conditions.

To implement Reasonable and Prudent Measure number 1 the following Terms and Conditions shall be implemented, including strategies for avoidance or minimization of impacts already committed to by the applicant:

- a) Connel Gower Construction, Inc. shall designate an individual as a representative who will be responsible for overseeing compliance with terms and conditions contained in this biological opinion, and providing coordination with the Service. The representative will have the authority to halt activities of construction equipment which may be in violation of these Terms and Conditions.
- b) The Applicant will conduct or provide for a pre-construction education program for project employees to explain the special status of the species and measures to be taken to avoid "take" of animals that might stray into the construction area. They shall be advised of the definition of "take" and the potential penalties for taking a species federally listed under the ESA.
- c) No project-related personnel shall be permitted to have firearms or pets in their possession while on the project site. The rules on firearms and pets will be explained at the preconstruction conference and will be posted at the site.
- d) All Utah Prairie Dogs within the construction site will be trapped and translocated to an approved public lands translocation site by the Division during the April-September time period when prairie dogs are active. Upon completion of trapping, the Division will bill the Applicant \$75.00 for each animal trapped and removed. The Applicant will submit payment to the Division within 30 days.
- e) Development and operation of the project site will be initiated within 48 hours of completion of Utah Prairie Dog trapping in order to avoid recolonization by animals.
- f) Construction and maintenance vehicles shall not exceed a speed of 10 miles per hour in occupied Utah Prairie Dog habitat.

To implement Reasonable and Prudent Measure number 2 the following Terms and Conditions shall be implemented in addition to the Mitigative Strategies already committed to by the Applicant:

- a) Connel Gower Construction, Inc. will mitigate for the permanent loss of 63 acres of Utah Prairie Dog habitat by providing funding to the National Fish and Wildlife Foundation to enhance public lands designated for Utah Prairie Dog management and implement recovery actions for the species. Connel Gower Construction, Inc. will transfer \$56,700.00 to the National Fish and Wildlife Foundation for this purpose upon development of parcels as outlined in the associated Habitat Conservation Plan.

- b) The area authorized for construction activities shall be marked clearly. All construction and maintenance vehicles shall stay within the designated construction area in prairie dog colonies. Overnight parking and storage of equipment and materials shall be in previously disturbed areas (i.e., lacking vegetation). If previously disturbed areas are not available, other areas shall be cleared by an on-site biologist prior to use.

The reasonable and prudent measures, with their implementing terms and conditions, are designed to minimize incidental take through direct mortality of Utah Prairie Dogs that might otherwise result from the proposed action. With implementation of these measures the Service believes that no more than 106 Utah prairie dogs will be incidentally taken through direct mortality during construction activities over the period of the proposed 20-year permit. For conservative estimation, this figure is based on an average of the low (53) and high (158) estimates of total Utah Prairie Dog numbers on the project site, based on the last 4 years' survey data, and includes the anticipated translocation of eight animals during the 1996 translocation season. This incidental take number allows for translocation to approved sites as a first priority for displaced animals each year for the life of the permit. That is, when animals from the project are required for implementation of the Utah Prairie Dog Recovery Plan and/or Interim Conservation Strategy, they will be translocated from the project area as appropriate. Incidental take of displaced animals (e.g., direct mortality, injury, etc.) is anticipated only after the maximum number of animals has been translocated from the project site each year. This figure for direct take includes those animals which may prove very difficult, if not impossible, to trap and thus translocate.

If, during the course of this action, the allowed level of incidental take is exceeded, such incidental take represents new information requiring review of the reasonable and prudent measures. If the take limit is met, Connel Gower Construction, Inc. must immediately provide an explanation of the causes of the taking and review with the Service the need for possible modification of the reasonable and prudent measures.

#### CONCLUSION

This concludes formal consultation on the development and operation of a 63-acre industrial complex by Connel Gower Construction, Inc. in Cedar City, Iron County, Utah. As required by 50 CFR 402.16, reinitiation of formal consultation is required if: 1) the amount or extent of incidental take is exceeded, 2) new information reveals effects of the agency action that may impact listed species or critical habitat in a manner or to an extent not considered in this biological opinion, 3) the agency action is subsequently modified in a manner that causes an effect to a listed species or critical habitat that was not considered in this biological opinion, or 4) a new species is listed or critical habitat designated that may be affected by the action.

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