



United States Department of the Interior

FISH AND WILDLIFE SERVICE

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IN REPLY REFER TO:

ES/CO: ES/LK-6-CO-04-F-008
Permit Number: TE-079424-0
Mail Stop 65412

FINDING OF NO SIGNIFICANT IMPACT FOR ISSUANCE OF AN INCIDENTAL TAKE PERMIT FOR THE PREBLE'S MEADOW JUMPING MOUSE FOR THE ELIZABETH CROSS ROADS PROPERTY ELBERT COUNTY, COLORADO

The U.S. Fish and Wildlife Service (Service) is proposing to issue a section 10(a)(1)(B) Incidental Take Permit (ITP) under the Endangered Species Act of 1973 (16 U.S.C. 1531-1544, 87 Stat. 884), as amended (Act), to Elizabeth Cross Roads, LLC (the Applicant). The ITP would authorize the incidental take of the federally-threatened Preble's meadow jumping mouse, *Zapus hudsonius preblei* (Preble's), in association with the construction and use of the proposed Elizabeth Cross Roads Business Park. This property is located in the SE 1/4 Section 7, Township 8 South, Range 64 West, in the Town of Elizabeth, Elbert, Colorado. The duration of the proposed ITP is 10 years from date of approval. The Environmental Assessment (EA) evaluates the potential environmental effects associated with the activities necessary for the Applicant to construct commercial parcels and associated utility line crossing of Running Creek. The total planning area for the proposed project is 20 acres, with approximately 2.8 acres of permanent impacts and 1.4 acres of temporary impacts to Preble's habitat. Populations of Preble's are known to occur along Running Creek adjacent to the property. 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 measures of the HCP are enhancement, restoration and the permanent protection of 5.3 acres of habitat under a conservation easement or deed restriction. To offset temporary impacts, 1.4 acres will be enhanced prior to construction by fencing to prevent grazing, and then will be restored with native vegetation on site. To offset 2.8 acres of permanent impacts, 3.9 acres will be preserved and enhanced through native shrub planting and native grass reseeding. The ITP authorizes a limited amount of incidental take associated with disturbances that will occur with the completion of the proposed project.

The Preferred Alternative was selected as the proposed action as it will allow the Applicant to develop portions of the property while providing a conservation plan that would preserve and enhance Preble's habitat along Running Creek.

Documents used in the preparation of this Finding of No Significant Impact (FONSI) include: the HCP and the EA for the HCP (ERO Resources 2003), the Biological Opinion on the Applicant's EA/HCP (Service 2004a), and the Findings and Recommendations for a portion of the Meadows Property activities (Service 2004b). All documents are incorporated by reference, as described in 40 CFR §1508.13.

The proposed ITP would authorize the incidental take of an unquantifiable number of Preble's due to the temporary loss of 1.4 acres and permanent loss of 2.8 acres, of upland habitat on the Elizabeth Cross Roads Property. These areas provide potential foraging, sheltering, nesting, and hibernating habitat for Preble's. The Service is unable to determine the specific number of individuals of Preble's that would be taken because of their small size, secretive nature, and the numbers of individuals present on a site may vary from season to season and year to year. Although take of individuals cannot be quantified, proper implementation of the HCP, which requires meeting identified performance standards, should ensure that Preble's will be maintained on the site.

The Service has determined that the permanent loss of 2.8 acres, and temporary disturbance of 1.4 acres of suitable habitat associated with issuance of the ITP to the Applicant would not compromise the status of Preble's or its recovery needs for several reasons. Impacts to habitat will be minimized as described in the detailed minimization measures and Best Management Practices in Section 8.1.4 of the EA/HCP; minimization measures include a restricted construction activity period to coincide with Preble's inactive period, and reduction in the size of the development. The total mitigation area of 5.3 acres, as described in detail in the EA/HCP, includes land that will be enhanced or restored and permanently protected as Preble's habitat. In addition to mitigation measures, the Applicant will include a comprehensive declaration of use restrictions (deed restriction or conservation easement) with provisions for habitat alterations to ensure that a buffer area to benefit Preble's will be created and protected. These measures should produce a net benefit to Preble's.

The EA considered environmental effects of the Preferred Alternative on other aspects of the human environment, such as geology and soils, land use, cultural resources, air quality, wetlands, water resources and water quality. A summary of these issues and impacts is included in the EA. The Service finds that the proposed issuance of a section 10(a)(1)(B) ITP for take of Preble's in association with development of the Elizabeth Cross Roads Property will not have a significant effect on the human environment for the following reasons:

1. The permanent loss of 2.8 acres, and temporary loss of 1.4 acres of potential habitat resulting from construction of the project will not jeopardize the survival or recovery of Preble's.

2. The proposed mitigation measures are consistent with recovery of Preble's and are adequate to compensate for the loss of habitat and loss of individual Preble's.
3. The impact upon populations of native species, including sensitive species, will be minimal due to the relatively small area subject to disturbance within the total subject property.
4. Minimal or no impacts will result to other listed species, other wildlife, wetlands, geology and soils, land use, cultural resources, air quality, and water resources and water quality as the result of the Project onsite, offsite, or cumulatively.

The Service analyzed the effects of the issuance of a section 10(a)1(B) incidental take permit (the proposed action) and four additional alternatives in the EA: (1) develop site without avoidance of Preble's habitat; (2) develop site with no impacts to Preble's habitat; (3) participation in the regional HCP; (4) no action. The proposed project alternative involves issuance of a section 10(a)(1)(B) incidental take permit. The Service did not select the alternatives to the proposed action for the following reasons. The development of the site as originally planned without avoidance of Preble's habitat would have resulted in greater impacts to Preble's habitat on the subject property. The development of the commercial parcels on the site outside Preble's habitat would still result in impacts to Preble's habitat from the construction of the utility line across the riparian corridor and would not be economically feasible to the Applicant. The participation in the Elbert County Regional Habitat Conservation Plan alternative was considered non-practicable because it is unknown when the Regional HCP will be approved or if it will address the proposed project. The no-action alternative would mean that the proposed development project would be abandoned and an ITP application would not be processed. This alternative would not eliminate the need for future development along the creek and would not restore already impacted areas or enhance and protect Preble's habitat along Running Creek (as with the proposed action).

Because it successfully balances environmental impacts with benefits to the community, the Service chose the Preferred Alternative of the EA. Although permanent loss of 2.8 acres, and temporary disturbance of 1.4 acres, could result, 5.3 acres of Preble's habitat will be enhanced, restored and permanently protected under this alternative. Through the conservation measures described in the HCP, currently degraded habitat would be improved. The proposed alternative would also allow the Applicant to provide additional commercial development and water service for a county experiencing rapid population growth.

The FONSI and issuance of the ITP are conditional on the successful enhancement of 1.4 acres onsite by fencing to prevent grazing, as described in Section 8.1.1 of the EA/HCP, and the submission of a signed and executed Declaration of Use Restrictions (deed restriction or conservation easement), as described in Appendix G of the EA/HCP, to the Service's Colorado Field Office prior to development or temporary disturbance of any portion of the subject property. No construction or disturbance of any kind, temporary or permanent, will be allowed on the subject property until success is achieved in the enhancement area and the abovementioned document is received and approved by the Service.

On December 16, 2003 the Service issued a notice of availability in the *Federal Register* (Vol. 68, No. 241 FR 70028) announcing the receipt of the ITP application from the Applicant and the availability of the HCP and EA for public review. A 60-day public comment and review period was open until February 17, 2004. The HCP and EA were available at, or could be requested through, the Colorado Field Office of the Service. The HCP and EA were also distributed to individuals and organizations on a mailing list maintained by the Service. Copies of the mailing list and administrative record are on file at the Colorado Field Office. The Service did not receive any comments during the public comment period. Following final action on the permit application, the Service will publish a notice of permit decision in the *Federal Register*.

Based on my review and evaluation of the enclosed EA and HCP and other supporting documentation, I have determined that issuance of a section 10(a)(1)(B) permit TE-079424-0 to the Applicant for take of the federally-threatened Preble's from development of the Elizabeth Cross Roads Property in Elbert County, State of Colorado, is not a major Federal Action which would significantly affect the quality of the human environment within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969. Accordingly, preparation of an environmental impact statement on the proposed action is not required. Therefore, an environmental impact statement will not be prepared.



U.S. Fish and Wildlife Service
Regional Director

ACTING



Date

RELATED DOCUMENTS:

ERO Resources Corporation. 2003. *Environmental Assessment/Habitat Conservation Plan for the Issuance of an Incidental Take Permit Under Section 10(a)(1)(B) of the Endangered Species Act for the Elizabeth Cross Roads Property*. September 2, 2003.

U.S. Fish and Wildlife Service, 2004a. Intra-Service Section 7 Consultation and Biological Opinion on Issuance of an Incidental Take Permit to Elizabeth Cross Roads, LLC, Colorado Field Office, Lakewood, Colorado.

U.S. Fish and Wildlife Service, 2004b. Findings and Recommendations on Issuance of an Incidental Take Permit for the Preble's Meadow Jumping Mouse to Elizabeth Cross Roads, LLC for the Elizabeth Cross Roads Property in Elbert County, Colorado.