



United States Department of the Interior

FISH AND WILDLIFE SERVICE

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FINDING OF NO SIGNIFICANT IMPACT FOR ISSUANCE OF AN INCIDENTAL TAKE PERMIT FOR THE PREBLE'S MEADOW JUMPING MOUSE TO ROBERT L. HIER AND H.R. GANNON CASTLE ROCK, 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 Robert L. Hier and H.R. Gannon (the Applicants). 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 two proposed projects, Brookside Office Park (Office Park) and Brookside Business Center (Business Center). The projects (Projects) are located in portions of Sections 11, 14, 15, and 23 of Township 8 South, Range 67 West, 6th Principal Meridian, Town of Castle Rock, Douglas County, State of Colorado. The duration of the proposed permit is 11 years. The Environmental Assessment (EA) evaluates the potential environmental effects of the construction of the proposed 7.28 acre Projects. The entire area of the Projects is considered Preble's habitat.

The Applicants have 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. Primary components of the HCP are the proposed restoration and enhancement of vegetation both onsite and on adjacent offsite land. These mitigation activities total 24.29 acres, and they consist of planting willows and native grasses and removing knapweed. The permit also would authorize a limited amount of incidental take associated with any disturbances associated with the construction and development of the Projects.

Documents used in the preparation of this finding of no significant impact include: the combined EA/HCP (U.S. Fish and Wildlife Service 1999a), any and all written agreements between Hier and the Service (Brownstein Hyatt Farber & Strickland, P.C. 1999), the biological opinion on the Hier permit application (U.S. Fish and Wildlife Service 1999b), and the recommendations and findings for the Hier project (U.S. Fish and Wildlife Service 1999c). All documents are incorporated by reference, as described in 40 CFR 1508.13.

The proposed permit would authorize the incidental take of an unquantifiable number of Preble's within the 7.28 acre proposed project sites primarily by reducing the quantity of upland foraging habitat available. All construction activities will take place in upland areas during the day. Because Preble's are nocturnal and they most frequently use riparian areas, no direct incidental take is anticipated. Although indirect take of individuals cannot be quantified, proper implementation of the HCP, which enhances the most crucial component of Preble's habitat (riparian area), should ensure that Preble's will be maintained on the property.

The Applicants have proposed mitigation to offset the loss of upland Preble's habitat primarily by enhancing the riparian habitat occurring on the property. Riparian habitat is the most critical and limiting component of Preble's habitat. Approximately 3 times as much area of riparian habitat will be enhanced in the "enhancement area" as upland removed in construction of the Projects. In addition, native grasses will be planted and exotic weeds removed in the "restoration area." These mitigation measures are described in detail in the combined EA/HCP. These measures should produce a net benefit to Preble's.

The environmental effects of the proposed Projects on other aspects of the human environment, such as vegetation, wildlife, wetlands, geology and soils, land use, cultural resources, air quality, water resources and water quality were analyzed in the EA.

The Service finds that the proposed issuance of an Endangered Species Act section 10(a)(1)(B) permit for take of the Preble's meadow jumping mouse in association with the Projects will not have a significant effect on the human environment for the following reasons:

1. The 7.28 acres of upland that will be lost to development will offset by 24.29 acres of enhancement and restoration, primarily of the more critical riparian area. Thus, the Projects will not jeopardize the survival or recovery of Preble's, and the mitigation will likely produce a net benefit.
2. 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 Projects 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 three alternatives in the EA: the selection of an alternate site alternative, the modification of site design and layout alternative, and the no action alternative. The alternate site alternative involves finding another site to develop the Projects that would result in no or lesser take of Preble's. The alternate site design alternative involves altering the layout of the Projects within the same properties to reduce take of Preble's. The no action alternative would mean that no development occurs and no application for an incidental take permit would be processed.

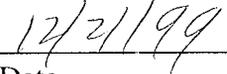
The Service did not select the alternatives to the proposed action for the following reasons. The alternate site alternative was not practical or desirable because there are few commercial sites available in Castle Rock and fewer that are not within potential Preble's habitat. In addition, the Office Park is located in an active commercial area, and most of the vegetation on the site has been impacted since the early 1980's. Using an alternate site could result in a more pristine site being impacted. Moreover, the site's proximity to areas that can be enhanced to the benefit of Preble's create an opportunity to actually increase quantity and quality of habitat. The alternative site layout alternative is not practical because the entire property is potential Preble's habitat. Therefore, the development could not be moved to a different portion of the property to avoid take. Alternative site layouts were considered to minimize the area of disturbance, but no layout could be designed that would appreciably reduce the area to be impacted by the proposed alternative. A number of factors limit reducing the size of the development including: roads, parking, utilities, access, and other constraints imposed by the Town of Castle Rock. The no action alternative is not viable because under an existing Agreement (Brownstein, Hatt, Farber & Strickland, P.C. 1999), the Service agreed to the proposed action if the proposed mitigation met the agreed-upon mitigation ratios and was otherwise satisfactory. These criteria are satisfied by the HCP. In addition, given the expenses already incurred by the Applicants for development of the Property, the Applicants will suffer tremendous losses if forced to hold the Property.

The Service published a notice of availability of the combined EA/HCP for the issuance of an incidental take permit for the proposed action in the *Federal Register* on October 5, 1999. The notice initiated a 30-day comment period. Copies of the EA/HCP also were provided to interested parties. The Service received no comments on the proposed action during the public comment period.

Based my review and evaluation of the enclosed Environmental Assessment and Habitat Conservation Plan and other supporting documentation, I have determined that issuance of Endangered Species Act section 10(a)(1)(B) permit TE-017353 to the Applicants for take of the federally threatened Preble's meadow jumping mouse associated with the proposed Office Park and Business Center in City of Castle Rock, Douglas 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



 Date

RELATED DOCUMENTS

- Brownstein, Hatt, Farber & Strickland, P.C. 1999. Agreement between U.S. Fish and Wildlife Service and Hier and Co. Denver, Colorado. 4 pages.
- U.S. Fish and Wildlife Service. 1999a. Draft Environmental Assessment/Habitat Conservation Plan for issuance of an endangered species act section 10(A)(1)(B) permit for the incidental take of the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) for construction and development of an office park and business center on 7.28 acres on portions of sections 11, 14, 15, and 23 of township 8 South, range 67 West, 6th principal meridian, town of Castle Rock, Douglas County, State of Colorado. Prepared by Western Environment and Ecology, Inc., and Brownstein, Hyatt & Farber, P.C., for U.S. Fish and Wildlife Service, Lakewood, Colorado. 56 pages.
- U.S. Fish and Wildlife Service. 1999b. Intra-Service section 7 consultation and biological opinion on issuance of an incidental take permit to R.L. Hier and H.R. Gannon for development of the Brookside Office Park and the Brookside Business Center, Douglas County, Colorado (ES/GJ-6-CO-99-F-035). Colorado Field Office, Lakewood, Colorado. 8 pages.
- U.S. Fish and Wildlife Service. 1999c. Findings and Recommendations on issuance of an incidental take permit for the Preble's meadow jumping mouse to R.L. Hier and H.R. Gannon for development of the Brookside Office Park and the Brookside Business Center, Douglas County, Colorado (PRT-TE017353). 4 pages.