



United States Department of the Interior



FISH AND WILDLIFE SERVICE Mountain-Prairie Region

IN REPLY REFER TO:

FWS/R6

ES

LK-6-CO-04-F-008

Permit #TE-079424-0

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STREET LOCATION:

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September 21, 2004

Memorandum

To: Regional Director, Region 6

From: Assistant Regional Director, Ecological Services, Region 6

Subject: Findings and Recommendations on Issuance of an Incidental Take Permit for the Preble's Meadow Jumping Mouse to the Elizabeth Cross Roads, LLC for the Elizabeth Cross Roads Property in Elbert County, Colorado (TE-079424-0)

I. DESCRIPTION OF PROPOSAL

Elizabeth Cross Roads, 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 construction and use of the Elizabeth Cross Roads Property and associated utility line construction for commercial development within the Town of Elizabeth, Elbert County, Colorado. The total project area encompasses approximately 20 acres, consisting of riparian habitat along Running Creek and adjacent upland grassland. The permitted activity will impact a total of 4.2 acres of known occupied Preble's habitat during construction and use-- 2.8 acres will be permanently impacted and 1.4 acres will be temporarily impacted. The incidental take would be in the form of potential disturbance to, and loss of, habitat used by Preble's.

The EA/HCP, which is incorporated herein by reference, proposes to minimize and mitigate adverse effects associated with any expected take of Preble's. As outlined in the EA/HCP, the total mitigation requirements for the commercial buildings, landscaping, road, water line crossing of Running Creek, and detention pond construction identifies specific mitigation measures and Best Management Practices that would enhance, restore, and permanently protect a

combination of both riparian and upland habitat required by Preble's. The biological goals and objectives of the proposed mitigation plan for enhancement activities are--(1) to provide as much or more habitat for the Preble's than the amount of potential habitat to be taken, temporarily and permanently, by the proposed project, and (2) to ensure population viability by maintaining habitat contiguity. 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. The commercial buildings, landscaping, road, water line crossing of Running Creek, and detention pond construction activities will permanently impact a total of 2.8 acres and temporarily impact 1.4 acres of Preble's habitat. The total mitigation acreage of 5.3 acres includes both riparian and upland areas and includes 1.4 acres of enhancement prior to construction through fencing to eliminate grazing, and an additional 3.9 acres of enhancement through native shrub planting and native grass seeding.

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 Elizabeth Cross Roads Property in Elbert County, Colorado, in the Federal Register (68 FR 70028) on December 16, 2003. Publication of the notice initiated a 60-day comment period, which closed on February 17, 2004.

The Service did not receive any comment letters regarding the proposed action during the public comment period.

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 development, construction, and occupation of commercial buildings and associated infrastructure, development of a road, a water line crossing, landscaping, and detention pond on the subject property.

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 shall 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 implement the EA/HCP and reach mitigation success as defined in the EA/HCP, as described in Section 8.5 of the EA/HCP.

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

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 Permit to the Applicants would not likely jeopardize the continued existence of Preble's and would not likely destroy or adversely modify critical habitat as none was designated for the subject property area.

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.

Alternatives

Five alternatives have been identified in the proposed EA/HCP--1) preferred [proposed] alternative; 2) develop site without avoidance of Preble's habitat; 3) develop site with no impacts to Preble's habitat; 4) participation in the regional HCP; 5) no action. The EA/HCP details these alternatives as well as the reason the proposed alternative was chosen and the other four 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, the Service recommends issuance of a section 10(a)(1)(B) incidental take permit number TE-079424-0 to authorize incidental taking of the Preble's by the Applicant in accordance with the EA/HCP.

Osac Jim
Field Supervisor
Colorado Field Office

August 23, 2004
Date

Concur: Bar
~~ACTING~~ Assistant Regional Director for
Ecological Services

9/21/04
Date