



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Ecological Services  
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Lakewood, Colorado 80215



ES/GJ-6-CO-99-F-026

OCT 6 1999

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ES/CO:  
Mail Stop 65412

### Memorandum

To: Regional Director, Region 6  
Lakewood, Colorado

From: Geographic Assistant Regional Director, Region 6  
Lakewood, Colorado

Subject: Findings and Recommendations on Issuance of an Incidental Take Permit for the Preble's meadow jumping mouse to Douglas County for construction of a recreational trail on the Maytag Property, Douglas County, Colorado (PRT-TE018090)

### I. DESCRIPTION OF PROPOSAL

Douglas County 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 Habitat Conservation Plan (HCP), which has been submitted in support of their permit application.

The proposed action involves the construction of a soft-surfaced pedestrian and equestrian trail that crosses areas potentially used by Preble's. The property is located within Section 9, Township 9S, Range 67W in Douglas County, Colorado. The proposed trail is a component of the Parks, Trails, and Open Space Master Plan for Douglas County (as revised in 1998). The Maytag segment is a component of the East Plum Creek Regional Trail that, when completed, will connect Chatfield State Park with El Paso County and the Santa Fe Trail. The trail would allow users to hike, bike, and ride horses. The incidental take would be in the form of potential disturbance to and loss of habitat used by Preble's.

In 1998, with assistance from the Colorado Division of Wildlife (DOW), the Conservation Fund, and Great Outdoors Colorado, Douglas County acquired the Maytag property for open space and conservation of PMJM. The County owns 150 acres in fee (Maytag Property). Another 390

acres of the property is in private ownership and protected by a conservation easement. Prior to County acquisition, the Maytag property was a working ranch and managed for livestock production. East Plum Creek flows through the property and supports a healthy woody riparian community. The property covers about 150 acres, of which 10 acres comprise East Plum Creek and its associated riparian habitats. These riparian habitats are dominated by a mix of peachleaf willow, coyote willow, golden willow, and scattered cottonwoods. Portions of the flood plain contain abandoned channels that currently support wetlands typically dominated by reed canarygrass. Based on studies performed by the Colorado Division of Wildlife (DOW), and encouraged and supported by Douglas County Open Space, it was determined that the riparian habitat of the Maytag Property was occupied by Preble's.

The 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 HCP, a series of trail alignments have been proposed, dating back to April 1998 as part of the conservation easement owned by Douglas County. The original alignment was subsequently revised, with each subsequent revision resulting in less trail development. The proposed HCP will allow for the incidental take of PMJM by permitting the trail to be constructed across two gulches that are most likely periodically used by the mouse as potential movement corridors from the riparian habitats of East Plum Creek to the adjoining tributary gulches. Construction of each trail crossing will result in about 0.009 acres of gulch habitat loss and 0.009 acres of temporary effects to the habitat associated with localized disturbance (0.018 acre disturbance on each gulch crossing leads to a total impact of 0.036 acre within potential Preble's habitat). The proposed trail and associated facilities will consist of the following activities outside of Preble's habitat: (1) a main trail 8 feet wide and about 5,820 feet long; (2) two trail loops 4 feet wide and about 3,030 feet long; (3) a trail overlook encompassing about 0.25 acres; and (4) a trailhead consisting of about 1.4 acres. The trail alignment and its associated facilities were located in coordination with DOW. The trail surface will be soft (crusher fines or crushed recycled concrete) or native surface as appropriate for the trail segment considering use and drainage.

From the time of purchase, Douglas County and DOW envisioned that there would be limited public access to the property. Potential adverse impacts to Preble's have been minimized by proposing a series of alternative trail alignments, dating back to April 1998 as part of the conservation easement on the property with the resulting trail alignment about two-thirds the length of the original conceptual design. The siting of the trail avoids impacts to the maximum extent possible. The trail alignment, trailhead and overlook occur entirely in upland habitats on a bluff that is well elevated and distanced from the East Plum Creek riparian flood plain, except for the unavoidable crossing of two gulches that run perpendicular to the creek. The entire length of trail and all of its associated features are sited outside of the mouse protection area as delineated pursuant to the current the Service's proposed 4(d) Rule. The trail has been also designed to cross the gulches at locations that are sparsely vegetated, so there will be minimal loss of vegetation. Impacts are further minimized by restrictions proposed on use of the trail (limited to hiking, biking and horseback riding, day use only, leashed pets only, etc.). The County also proposes to develop interpretative information to educate the public about Preble's, its habitat,

behavior, and open space uses that are compatible and incompatible with conservation of the mouse. Additionally, the County will continue to provide in-kind services for DOW researchers who are studying mouse behavior and distribution on the Maytag Property and adjoining Ramsour Property.

Mitigation measures, such as establishment of additional shrub habitat, have been designed specifically to mitigate any remaining unavoidable impacts to the mouse at these crossings. Douglas County proposes to establish shrub habitat that will provide cover for the mouse within the gulches that adjoin the trail. Twenty Gambel oaks, 5 gallon container size, will be planted at the south gulch trail crossing to provide additional cover for the mouse as well as potential nesting habitat and food sources. Shrubs also will be planted at the north gulch trail crossing. At this site, existing trash, debris, and earth piles will be removed by Douglas County from the perimeter of a small depression and wetland area that currently supports willows along portions of its perimeter. The area from which trash is removed will be adjusted to match the grade of the adjacent depression. Twenty-five coyote willows, one gallon container size, will be planted in areas where trash heaps now occur. At DOW's request, plantings at the north gulch trail crossing will be delayed one season. DOW plans to focus their post-trail construction mouse distribution studies on the north portion of the Maytag Property and would like a season without planting followed by a season with planting to observe any differences in mouse behavior and distribution.

#### Analysis of Effects

The effects of the proposed action on Preble's are fully analyzed in the Service's Biological Opinion (US Fish and Wildlife Service 1999) for the proposed action, herein incorporated by reference. Implementation of the project will result in a loss of 0.009 acres of gulch habitat and 0.009 acres of temporary effects to the habitat associated with localized disturbance for each gulch crossing. Therefore, construction of the two trail crossings will result in a total impact of 0.036 acre within potential Preble's habitat.

## II. PUBLIC REVIEW

The Service published a Notice of Receipt of the Permit Application and Habitat Conservation Plan to Allow the Incidental Take of the Preble's meadow jumping mouse, for the Maytag Property, Douglas County, Colorado, in the Federal Register on June 3, 1999. Publication of the notice initiated a 30-day comment period, which closed on July 6, 1999.

The Service received one comment letter regarding the proposed action. The law firm of Trout and Raley, on behalf of Douglas County, chose to produce a detailed response to this comment letter. The Service accepts the responses by the County as supporting the basis for issuance of an Incidental Take Permit.

### 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 recreational trail development.
2. Douglas County will, to the maximum extent practicable, minimize and mitigate the impact of taking Preble's.

The HCP contains measures to minimize and mitigate impacts to Preble's that would occur under the permit. The County has agreed to implement the following measures to minimize and mitigate impacts that may result from incidental take of the mouse: (1) coordination with the DOW to design and align the trail to minimize potential impacts to the mouse; (2) 20 gambel oaks (south gulch crossing) and 25 coyote willows (north gulch crossing) will be planted where the trail crosses mouse habitat to provide additional cover in the vicinity of the trail; (3) the County will provide in-kind services to the CDOW to assist them in determining the effects of the trail on the mouse; (4) the riparian areas of the property will be managed for mouse conservation; and (5) trail use and construction will be limited to daylight hours when the mouse is inactive.

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

The applicant has ensured that the anticipated funding required to accomplish the plan and to address any unforeseen circumstances will be provided. The County will provide the funding necessary for the completion of the activities and conservation measures required under this HCP. Due to the short term (3 years) of this HCP, long-term funding assurances will not be required. The Applicant or its contractor will monitor the HCP and prepare an annual report on the progress of habitat improvement measures for three growing seasons, or until success criteria are met.

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

Approval of Douglas County's permit has been reviewed by the Service under Section 7 of the Act. In the Biological Opinion, which is attached hereto and incorporated by reference, the Service concluded that issuance of the incidental take permit to Douglas County 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

Two alternatives have been identified in the proposed HCP: 1) the Proposed Action (construction of the pedestrian path); and 2) No Action. However, the Applicant undertook a series of trail alignment designs to minimize potential adverse effects to PMJM. The "No Action" alternative would not meet the intended purpose of the project and therefore was deemed 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 Douglas County in accordance with the HCP.

  
 Field Supervisor  
 Colorado Field Office

9-3-99  
 Date

Concur: \_\_\_\_\_  
 Geographic Assistant Regional Director

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10/6/99  
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