



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
Colorado Field Office
755 Parfet Street, Suite 361
Lakewood, Colorado 80215

IN REPLY REFER TO:

ES/CO: ES/LK-6-CO-03-F-032
Permit Number: TE-073390-0
Mail Stop 65412

DEC 12 2007

Memorandum

To: Regional Director, Region 6
Lakewood, Colorado

From: Assistant Regional Director, Ecological Services, Region 6
Lakewood, Colorado *RAW*

Subject: Findings and Recommendations on Issuance of an Incidental Take Permit for the Preble's meadow jumping mouse to the Struthers Ranch Development, LLC for the Struthers Ranch Property in El Paso County, Colorado (TE-073390-0)

I. DESCRIPTION OF PROPOSAL

Struthers Ranch Development 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 residential lots and commercial property on the Struthers Ranch Property near the Town of Monument, El Paso County, Colorado. The property encompasses approximately 107 acres, comprised of riparian habitat along Black Forest Creek and upland grassland. The permitted activity will impact a total of 15.24 acres permanently and 1.13 acres temporarily of known occupied Preble's habitat during construction. 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 residential and commercial development construction identifies specific mitigation measures that would enhance, restore and create a combination of both riparian and upland habitat required by Preble's. The biological goals and objectives of the proposed mitigation plan for enhancement, restoration and creation activities are (1) to provide as much or more habitat for the Preble's mouse as the amount of potential habitat to be taken 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. Residential and commercial development construction activities will permanently impact a total of 15.24 acres and temporarily impact 1.13 acres of Preble's habitat. Total mitigation acreage of 35.49 acres includes restoration, enhancement, or creation of habitat in riparian and upland areas.

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 Struthers Ranch Property in El Paso County, Colorado, Colorado, in the Federal Register (Vol. 68 No. 128 FR 39962) on July 3, 2003. Publication of the notice initiated a 60-day comment period, which closed on September 2, 2003.

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 residential lots, commercial development, and associated infrastructure on the 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 reach mitigation success as defined in the EA/HCP. A signed and finalized placement of Bond will be received by the Service's Colorado Field Office prior to any construction or disturbance of any kind.

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 Incidental Take Permit to the Applicants would not likely jeopardize the continued existence of Preble's and is not likely to destroy or adversely modify critical habitat.

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.

This Permit is conditional on a signed and finalized Deed of Sale for the subject property, as described in Section 1.2 of the EA/HCP, and a signed and finalized Deed Restriction for the subject property, as described in Section 6.6.9.3 of the EA/HCP, and a signed and finalized placement of Bond, as described in Section 6.6.9.5 of the EA/HCP submitted to the Service's Colorado Field Office within ninety (90) days of Notice of Issuance in the Federal Register. If all documents are not signed within that time frame, the Permit will become temporarily inactive until such time as a suitable alternative measure(s) are agreed to by the Service or such documents are finalized. No construction or disturbance of any kind, temporary or permanent, will be allowed on the subject property until such documents are received and approved by the Service.

6. Alternatives

Four alternatives have been identified in the proposed EA/HCP: 1) no action, 2) preferred (proposed) alternative, 3) alternate development plan, 4) participation in the regional HCP. The EA/HCP details these alternatives as well as the reason the proposed alternative was chosen and the other three 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, I recommend issuance of a Permit to authorize incidental taking of the Preble's by the Applicant in accordance with the HCP.

Asan C. Juvik
Field Supervisor
Colorado Field Office

12/11/03
Date

Concur:

P. R. R.
Assistant Regional Director for
Ecological Services

12/12/03
Date