

**Habitat Conservation Plan
for the
Issuance of an Incidental Take Permit
Under Section 10(a)(1)(B) of the
Endangered Species Act
for the
Maytag Trail**

Prepared by—
Douglas County (Applicant) and
ERO Resources Corporation (Consultant)

With assistance from—
Kathleen Linder, U.S. Fish and Wildlife Service

June 1999

Title Page

Lead Agency: U.S. Fish and Wildlife Service, Department of Interior

Legal Authority: Endangered Species Act of 1973, as amended,
Section 10(a), as implemented by
50 CFR 17.32(b)(1) and 17.22(b)(1)

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Introduction

Douglas County Open Space, hereinafter referred to as "Applicant," has applied to the U.S. Fish and Wildlife Service (Service) for a permit to allow the incidental take of Preble's meadow jumping mouse (*Zapus hudsonius preblei*), a species listed as threatened under the Endangered Species Act of 1973, as amended (ESA). The incidental take would be in the form of potential disturbance to and loss of habitat used by Preble's meadow jumping mouse (PMJM). The proposed action involves the construction of a soft-surfaced pedestrian and equestrian trail that crosses areas potentially used by PMJM. The property is located within Section 9, Township 9S, Range 67W in Douglas County, Colorado (Figure 1).

This habitat conservation plan (HCP) has been prepared in accordance with Section 10 of the ESA in support of the Incidental Take Permit application. The intent of the HCP is to minimize and mitigate the potential incidental take of PMJM. No other federally-listed species are known to be adversely affected by construction and use of the proposed trail.

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. Two alternatives have been identified: 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.

Background

In 1998, with assistance from the Colorado Division of Wildlife (DOW), the Conservation Fund, and Great Outdoors Colorado, the County (Applicant) acquired the

Maytag property for open space and conservation of PMJM (Attachment 1). 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 (Figure 1). 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 PMJM.

Douglas County (County) purchased the 150-acre Maytag property, with the assistance from DOW who holds a conservation easement on the property, primarily for the protection and preservation of the Preble's meadow jumping mouse and its habitat. From the time of purchase, the County and DOW envisioned and agreed to allow limited public access to a specified area of the property. Because the property was purchased with the intent of preserving Preble's habitat, the County has encouraged and facilitated DOW studies of the mouse on the property.

A series of trail alignments has been proposed, dating back to April 1998 as part of the conservation easement (see Attachment 1, Exhibit B, p. 1). The original alignment was subsequently revised, with each subsequent revision resulting in less trail development (Attachment 3). Prior to DOW tracking studies, it was assumed that PMJM was confined to the riparian habitat of the East Plum Creek flood plain and narrow portions of adjoining transitional and upland habitat. Preliminary trail design was based on these assumptions. The preliminary alignment was placed in upland habitats and was well removed from the riparian flood plain habitats, as is the proposed trail alignment (Attachments 1 and 3, and Photos 1 and 2).

As a result of DOW's studies during the summer of 1998, more information about the mouse's activities is known for this property. This information has allowed the County to work closely with DOW to delineate a trail that balances the mouse's use of the property with the objective of allowing some limited public access. However, constructing a trail to completely avoid the recently discovered extended mouse habitat on this property is not possible.

The Douglas County Open Space Program was created in 1994 with the passage of a $\frac{1}{6}$ of 1¢ sales tax. Through revenues generated by the tax, the County seeks to improve the quality of life for its residents by accomplishing conservation objectives that include—

- Preservation of important wildlife habitat and movement corridors;
- Perpetuation of the County's rural landscape and agricultural heritage;
- Creation of community buffers;
- Protection of scenic views, historic properties, and archaeological resources; and
- Enhancement of recreational opportunities.

The Open Space Program engages in a variety of efforts to further the conservation of natural resources and preservation of open space throughout the County including—

- Purchasing lands for their ecological, agricultural, historical, archaeological, scenic, and other open space values;
- Purchasing development rights (conservation easements) from landowners;
- Coordinating with other resource management agencies including the Colorado Division of Wildlife, the Colorado Division of Parks and Outdoor Recreation, the Douglas County Soil Conservation District, and Great Outdoors Colorado; and
- Providing conservation information to landowners and the public.

To date, the County and its partners have successfully preserved over 7,600 acres of land (Table 1).

Table 1. Lands preserved as open space by Douglas County and its partners.

Open Space Project	Acreage
Southdowns at Roxborough [†]	625 acres
Cherry Creek Trail/Pfeifer Property	7 acres
Lamb Spring Archaeological Site	35 acres
Jones Ranch Easement	39 acres
Anonymous Donation in Parker	80 acres
Prairie Canyon Ranch	676 acres
Greenland Townsite	15 acres
Cherokee Ranch	3,105 acres
Castle Rock Trail Project	25 acres
Southern Willow Creek Ranch [†]	590 acres
Christensen Ranch Easement [†]	313 acres
Allis Ranch	148 acres
Glendale Farm	160 acres
Maytag [†]	540 acres
Ramsour [†]	171 acres
Douglas Heights	1,075 acres
Total	7,604 acres

[†]These open space properties conserve habitat for Preble's meadow jumping mouse.

Purpose and Need

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 (Attachment 2). The trail would allow users to hike, bike, and ride horses.

Trails are an integrated component of Douglas County's multiple use and management philosophy for its open space. Other components include wildlife habitat conservation, recreation, and visual resource conservation, creation of community buffers, and conservation of agricultural and cultural resources.

Proposed Action

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. The proposed trail and associated facilities will consist of—

- A main trail 8 feet wide and about 5,820 feet long;
- Two trail loops 4 feet wide and about 3,030 feet long;
- A trail overlook encompassing about 0.25 acres;
- A trailhead consisting of about 1.4 acres.

The trail alignment and its associated facilities (Figure 2) 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. The trail and its associated facilities will be constructed by a contractor and volunteers.

Species of Concern

Preble's Meadow Jumping Mouse

Preble's meadow jumping mouse is known to occupy the riparian habitat associated with the historical flood plain of East Plum Creek, which flows through the Maytag Property. DOW studies indicate that PMJM also uses gulches east of the riparian habitat on the Maytag Property. The proposed trail will cross two of these gulches, which are tributary to East Plum Creek. Trail construction and use could result in the incidental take of PMJM and affect PMJM that inhabit the property in the following ways—

- Disturbance related to trail construction and use may discourage PMJM's use of the gulches and, thus, potentially lessen the habitat available for PMJM.
- The trail surface will not be vegetated, which will present an open area for mouse movement that could lead to increased predation.
- The trail could attract mouse predators.

PMJM is a nocturnal species. All trail construction will occur during the day when the mouse is inactive. Visitors will be informed that the trail is restricted to use during day light hours. The portions of the gulches proposed for direct disturbance by trail construction do not appear to be used by the mouse for nesting or hibernation; therefore, it is unlikely that trail construction will result in an incidental take of PMJM.

Other Federally-Listed Species

No other federally-listed, proposed, or candidate species occur on the Maytag Property. Therefore, the proposed project will not affect any proposed, or candidate species or their habitat.

Critical Habitat

Critical habitat has not been designated for PMJM. East Plum Creek and its associated habitat through the Maytag Property have been proposed as a mouse protection area (Fed. Reg. Vol. 63, No. 232, Dec. 3, 1998). The entire length of trail and all associated facilities occur in areas outside the proposed mouse protection area as delineated in the proposed rule.

Environmental Concerns

Geology and Soils

The soils within the trail corridor are primarily sandy loams (SCS, 1974). Most of the proposed project occurs on gently sloping land. The trail alignment has been selected to minimize potential erosion. The proposed project will affect about 7 acres of the site's 150 acres, or about 5 percent of the site. The small area of disturbance, topography, and measures taken to minimize erosion, reduce the potential for adverse effects to soils and geology.

Air and Water Quality

Water quality of the area should not be affected because ground-disturbing activities will not be conducted in East Plum Creek or its flood plain. Sediment barriers, such as silt fencing or hay bales, will be used at both gulch crossings to minimize any sediment associated with construction from reaching East Plum Creek.

Additionally, air quality will not be significantly affected because of the small construction area and limited duration of construction. Emissions from construction-related activities would be localized and limited to short periods of time.

Cultural Resources Concerns

No known cultural sites exist on the site; therefore, no impacts to cultural resources are anticipated.

Cumulative Effects

There will be no significant adverse cumulative effects to resources due to the small area of disturbance (about 7 acres) and short period of construction. The proposed trail will directly affect about 0.04 acres of gulches occasionally used by PMJM. Managing the property as open space will have cumulate beneficial effects for PMJM conservation, recreation, and conservation of the County's rural character.

Recreation in the area will increase with construction of the trail and its future linkage to the regional trail system. Trail usage and visitation of the Maytag property will result in habitat disturbance primarily from trampling of vegetation. However, increased visitation of the property also provides an opportunity to educate the public on PMJM conservation issues.

Adjacent Land Uses

The Maytag Property is bordered on the south by 171 acres of Douglas County open space, on the north by an inactive aggregate mining operation, on the west by Interstate 25, and on the east by the railroad. Immediately east of the railroad are 390 acres of private property preserved as open space through the applicant's use of a restrictive conservation easement.

Recreation and Visual Resources

The proposed project will enhance recreation in the area by introducing a soft surface trail. The small disturbance will be at-grade; therefore, effects to visual resources from the project will be minimal. Over the long term, existing visual resources will be conserved because the Maytag Property and adjoining areas to the east and south will be managed as County open space.

Indirect Effects

Potential indirect effects to PMJM could occur from visitors and their pets using the trail; however, these potential effects are likely to be negligible because trail use will be restricted to daylight hours when the mouse is inactive.

Conservation Measures and Habitat Conservation Procedures

Conservation Measures

As part of the proposed project, the applicant will implement the following measures to avoid or minimize potential adverse effects of the proposed project on PMJM and its habitat—

- Disturbance associated with trail construction will be the minimum necessary to construct the trail.
- Trail use will be restricted to hiking, biking, and horseback riding.
- Trail use will be restricted to day use.
- Domestic animals will be restricted to a leash.

The County proposes to develop interpretative information to educate the public about the mouse, its habitat, behavior, and open space uses that are compatible and incompatible with conservation of 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. These ongoing studies will provide valuable information as to how trails potentially affect mouse behavior and distribution. In 1998, DOW collected pre-trail construction data on mouse distribution on the Maytag Property. Similar studies in 1999 and subsequent years will aid scientists in determining potential effects of trails that bisect the gulch habitat used by the mouse.

Additionally, the applicant 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. Gambel oak is the common shrub within the gulches and slopes of the Maytag Property and, once established, will not need supplemental water.

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.

Maintenance, Monitoring, and Reporting

The applicant will maintain (water and replace) and monitor all plantings for three full growing seasons. At the end of each growing season, a brief letter report will be submitted to the Service describing the status of the plantings and any remedial work performed. This letter report will include photographs of the site. Any shrubs that have died will be replaced. Final success criteria for shrub plantings will be the establishment of shrubs for 2 growing seasons as follows –

- 20 Gambel oaks distributed along the banks of the south gulch east and west of the trail crossing, and
- 25 coyote willows planted in areas where debris and trash have been removed near the north gulch trail crossing.

Monitoring, maintenance, and reporting will continue until the success criteria are met. Additionally, the County will continue to coordinate and assist DOW in their studies on the Maytag and Ramsour Properties. Reports on DOW studies will be forwarded to the Service.

Alternatives Considered

No Action Alternative

The no action alternative consists of not constructing the trail and its associated facilities. This alternative would avoid any incidental take of PMJM on the Maytag Property. This alternative would not allow the applicant to use the property as originally intended for both PMJM conservation and as a regional trail connection (Attachment 1). The no action alternative — not building the Maytag Trail — would create a gap in the planned regional trail system from Chatfield Reservoir to the El Paso County line.

Trail Alignment Alternatives

A trail alignment was conceptually developed as part of the Maytag Property Conservation Easement in April 1998 (Attachment 1). The trail alignment was designed to be placed east of and out of the riparian area associated with East Plum Creek. In November 1998, the County worked with DOW to revise the trail alignment. At this time the trail extended south onto the Ramsour property, and had 4 loop trails. DOW requested several changes including postponement of the Ramsour segment pending further studies, redesigning the north loop to avoid areas used by PMJM along the north gulch and postponement of one of the loop trails on the Maytag segment (Attachment 2). The resulting trail alignment is about two-thirds the length of the original conceptual design.

Proposed Alternative

The proposed alternative would allow the applicant to meet its objective of acquiring the Maytag Property for open space to support the multiple uses of PMJM conservation, recreation, wildlife habitat, and conservation of visual resources. Continuation of the County's open space program and future acquisitions rely on the ability to fulfill the public's expectations of multiple purposes with open space acquisitions and managing the properties for multiple use.

As previously discussed, the preliminary trail alignment was revised with input from DOW staff and using DOW PMJM tracking information. The proposed trail alignment, trail head, and overlook occur in upland habitats on a bluff that is well elevated and distanced from the East Plum Creek flood plain except for two intermittent drainages that the alignment crosses (Figure 2). The proposed project minimizes potential effects to PMJM and its habitat while meeting the County's need for a north-south trail that provides a positive user experience. The proposed alternative would result in minimal impacts (Table 2).

Table 2. Areas disturbed by project features.

Feature	Length (feet)	Area of Disturbance (acres)		Assumptions
		Permanent [†]	Temporary [‡]	
Main Trail	5,817	1.07	1.07	Permanent = 8 ft. wide Temporary = 8 ft. wide
Trail Loops	3,031	0.28	0.28	Permanent = 4 ft. wide Temporary = 4 ft. wide
Total Trail	8,848	1.35	1.35	
Trail Head	—	1.40	0.14	Permanent = footprint Temporary = additional 10%
Overlook	—	0.23	—	
Two Trail Crossings of Gulches	100	0.018	0.018	Permanent = 8 ft. wide Temporary = 8 ft. wide

[†]Permanent effects are based on the footprint of the feature.

[‡]Temporary effects are associated with construction of the feature (e.g., on the main trail an additional temporary disturbance of up to 4 ft. on each side of the trail could occur).

The proposed trail alignment crosses two gulches that typically are dry (Photos 3, 4, and 5). The wooded riparian communities associated with the East Plum Creek flood plain do not extend up these gulches. The trail will cross the gulches at locations that are sparsely vegetated, so there will be minimal loss of vegetation. The area that would be affected by these crossings is—

Northern crossing = 0.009 acres (permanent) and 0.009 acres (temporary)
 Southern crossing = 0.009 acres (permanent) and 0.009 acres (temporary)

The north gulch crossing will be trail at grade. The south gulch crossing will either be trail at grade or a bridge. If a bridge is installed, it would be a pre-fabricated steel bridge with no supports within the gulch. The bridge would be about 50 feet long and 8 feet to 10 feet wide.

Except for the two gulch crossings, the trail alignment occurs solely in upland habitat that is well elevated above the East Plum Creek flood plain and riparian communities. The proposed trail alignment, trailhead, and overlook occur at least 300 feet from East Plum Creek, and on most occasions are substantially further than 300 feet from the creek (Figure 2). Recent studies by DOW (Shenk and Sivert 1999), indicate that the trail, trailhead, and overlook do not occur in areas used by PMJM for foraging as these facilities are located in areas outside of locations observed as being used by PMJM.

There is a slight risk that this alternative would result in the incidental take of an unknown number of PMJM due to construction or trail use. The mice that may be affected are those that use the two gulches proposed for crossing by the trail, and those that feed in areas that the trail passes through. There is about 10 acres of potentially suitable habitat for PMJM within the Maytag Property and additional potentially suitable riparian habitat adjoining the Maytag Property to the north and south. The proposed project will directly affect about 0.04 acres of tributary gulch habitat for the mouse. The project would not adversely affect the continued existence of the mouse on the property due to the small area of habitat affected.

Unforeseen or Extraordinary Circumstances

Unforeseen or extraordinary circumstances are defined as “changes in circumstances surrounding an HCP that were not or could not have been anticipated to occur by the HCP participants (landowner) or the Service, that result in a substantial and adverse change in the status of a covered species.” It may also be applied in the event that a natural event occurs such as a fire or flood. Consistent with the Department of Interior’s “No Surprises” policy, the Service will not require the County to provide additional mitigation measures in the event of unforeseen or extraordinary circumstances affecting Preble’s meadow jumping mouse.

This HCP does not authorize incidental take for any species other than the Preble’s meadow jumping mouse. In the event any other currently listed species, or species that is listed in the future, is impacted by implementation of this HCP, the County will consult with the Service and take appropriate action, as necessary, to comply with the Endangered Species Act.

Funding Availability

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.

Additional Measures and Concerns

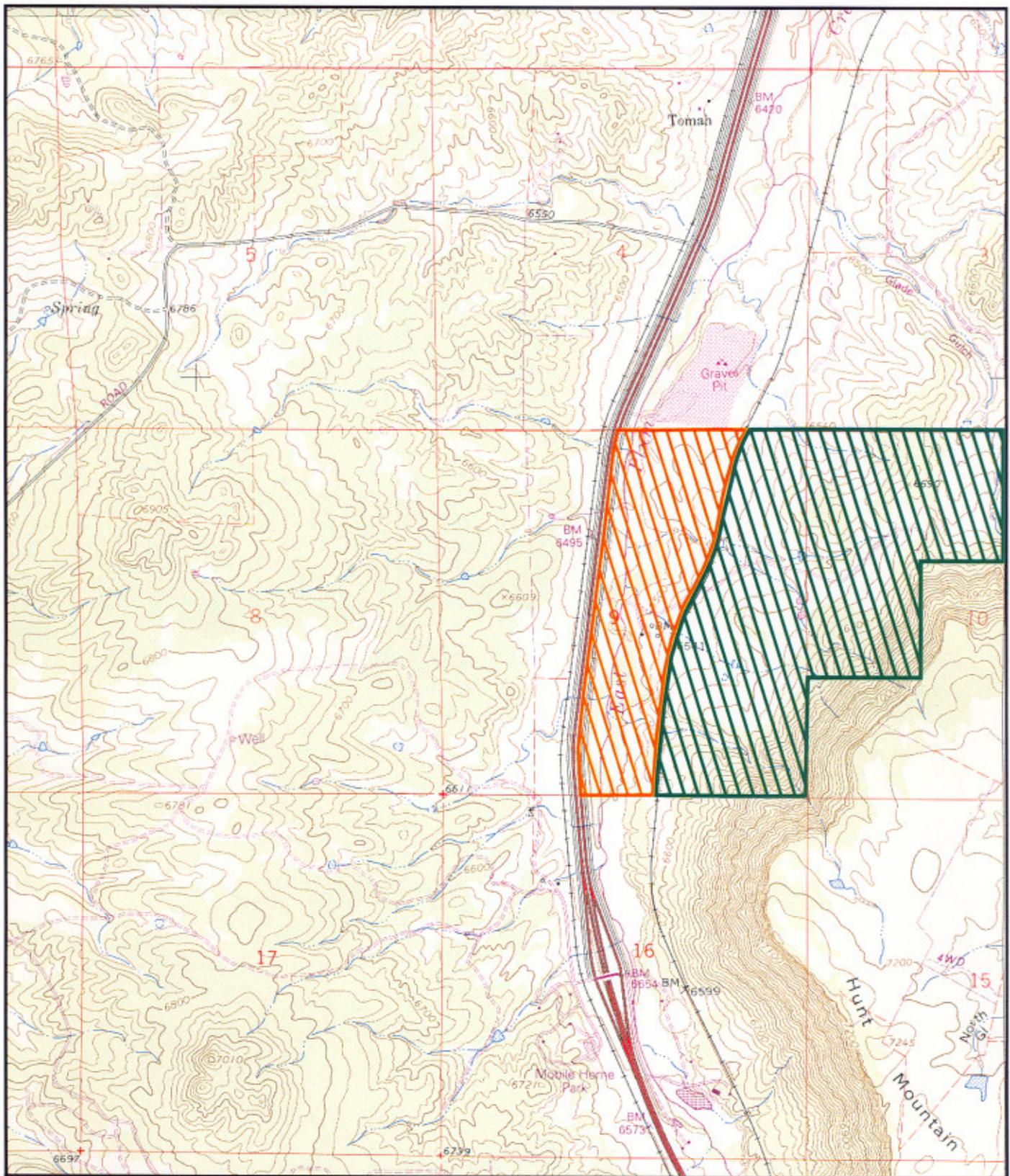
There are no additional measures or conditions being proposed under this HCP.

Literature Cited

Douglas County Master Plan (as revised). 1998.

Douglas County Soil Conservation Service. 1974. Soil Survey of Castle Rock Area, Colorado.

Shenk, Tanya M. and M.M. Sivert 1999. Movement Patterns of Preble's Meadow Jumping Mouse (*Zapus hudsonius preblei*) as they vary across time and space. Colorado Division of Wildlife Report.



ERO

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Douglas County owned
Maytag Property/DOW
Conservation Easement



Conservation Easement
Private Property

Figure 1
Site Location

Prepared for:

Maytag Trail Project

File:

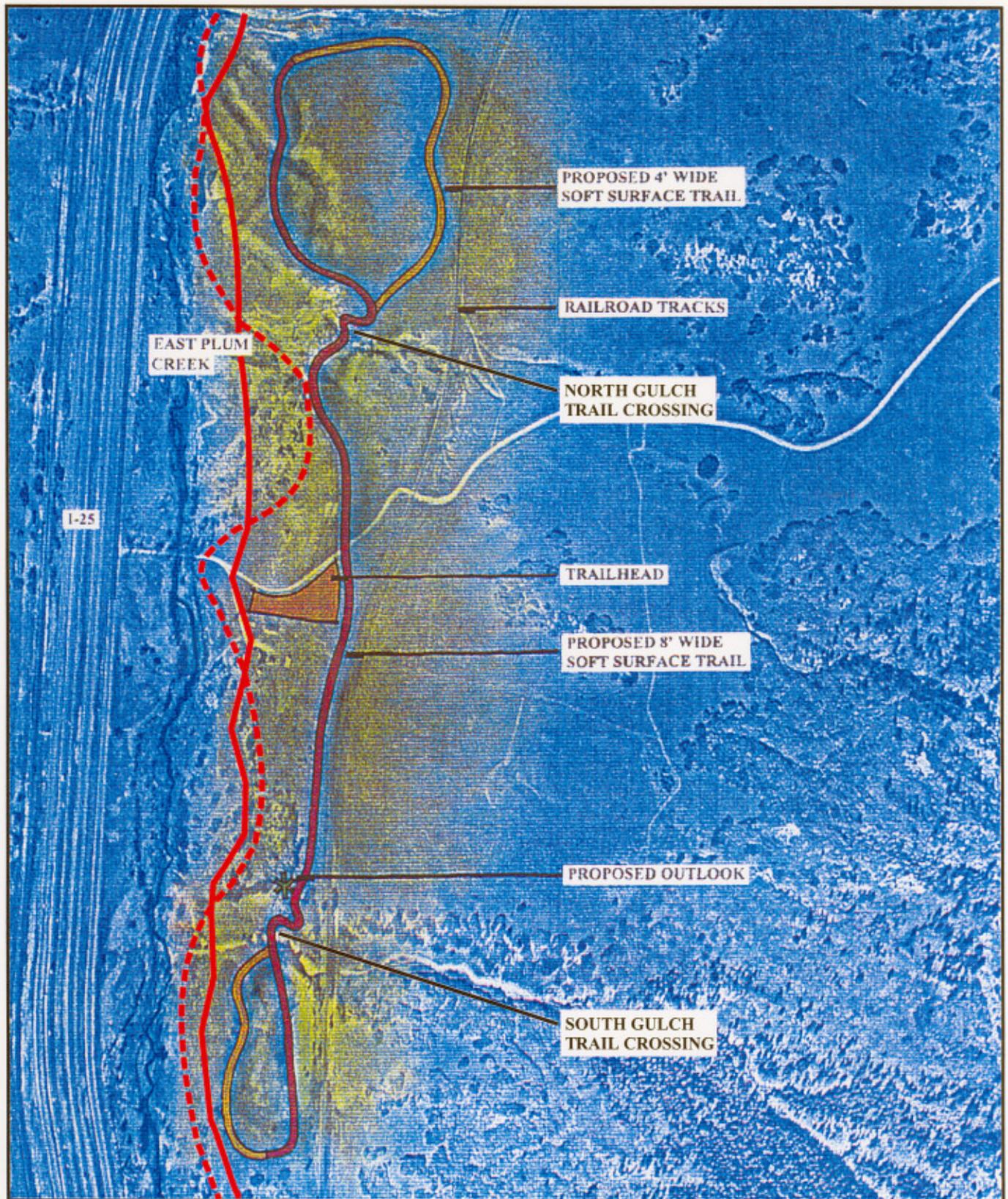
MaytagTrail.cdr

Date:

April 1999

1 inch = 2,000 Feet





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 Denver, CO 80218
 (303) 830-1188
 Fax: 830-1199

- Riparian community boundary associated with East Plum Creek
- 300 feet from East Plum Creek

Figure 2
 Maytag Trail Site Plan

Prepared for:
 Maytag Trail Project

File:
 Figure2.cdr

Date:
 May 1999

1 inch = 640 Feet



Attachments

Attachment 1: Maytag Property Conservation Easement

MAYTAG PROPERTY
DEED OF EASEMENT IN GROSS

NOTICE: THIS CONSERVATION EASEMENT HAS BEEN ACQUIRED WITH A GRANT FROM THE STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND. THIS DEED CONTAINS RESTRICTIONS ON THE USE AND DEVELOPMENT OF THE PROPERTY WHICH ARE INTENDED TO PROTECT ITS OPEN SPACE AND CONSERVATION VALUES. THE STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND HAS FOUND THAT THE ADOPTION OF THESE DEED RESTRICTIONS IS IN THE PUBLIC INTEREST.

THIS DEED OF EASEMENT IN GROSS, including a conservation easement, is made and entered into this 1st day of May, 1998, by and between the **BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS, STATE OF COLORADO** (hereinafter referred to as the "Grantor"), whose address is 100 Third Street, Castle Rock, Colorado 80104, and the **STATE OF COLORADO** acting by and through the **DEPARTMENT OF NATURAL RESOURCES** for the use and benefit of the **DIVISION OF WILDLIFE and WILDLIFE COMMISSION** (hereinafter referred to as the "Grantee" or the "State"), whose address is 6060 Broadway, Denver, Colorado 80216.

WITNESSETH THAT:

WHEREAS, Grantor is the sole owner in fee simple of certain real property approximately one hundred fifty (150) acres in size located in Douglas County, Colorado, more particularly described on Exhibit A, which is attached hereto and incorporated herein by this reference (hereinafter the "Property"); and

WHEREAS, included within the boundaries of the Property are the following areas: the "Building Envelope", the "Access Road", the "Riparian Zone", and the "Open Space Zone", all of which are depicted and/or described on Exhibit B, which is attached hereto and incorporated herein by this reference; and

WHEREAS, the Property remains in a substantially undisturbed, natural state and therefore has significant ecological, wildlife habitat, open space, aesthetic, scenic, visual, and recreational values; and

WHEREAS, the Property's natural, ecological, wildlife habitat, open space, aesthetic, scenic, visual, and recreational values are of great importance to Grantor, Grantee, the residents of Douglas County, and the People of the State of Colorado, and are worthy of preservation; and

WHEREAS, a particularly important wildlife habitat value of the Property in general, and the Riparian Zone in particular, is habitat for the Preble's Meadow Jumping Mouse (hereinafter "the Preble's Mouse"); and

WHEREAS, it is presently unclear whether the Preble's Mouse is a real subspecies of the species Meadow Jumping Mouse, but in any event it is currently rare within the State of Colorado and extremely worthy of habitat preservation efforts; and

WHEREAS, the Preble's Mouse has been identified as a species of concern in the Colorado-Interior Memorandum of Agreement concerning programs to manage Colorado's declining native species dated November 29, 1995, by and between the Secretary of Interior and the State of Colorado; and

WHEREAS, the Preble's Mouse has been identified by the United States Fish and Wildlife Service for action under the Endangered Species Act, 16 U.S.C. § 1531, et seq.; and

WHEREAS, it is the intention of the parties hereto that the Riparian Zone shall be primarily used as habitat for the Preble's Mouse, and that all other uses of the Riparian Zone shall be secondary thereto; and

WHEREAS, it is the intention of the parties hereto that the Open Space Zone, and to a lesser extent the Building Envelope, shall be primarily used for recreational and open space purposes, and that the wildlife habitat values of those areas shall be secondary thereto; and

WHEREAS, Grantor intends that the Property's natural, ecological, wildlife habitat, open space, aesthetic, scenic, visual, and recreational values, and in particular the Property's value as habitat for the Preble's Mouse, be preserved; and

WHEREAS, Grantor, as owner in fee simple of the Property, desires to identify and to assure the preservation in perpetuity of the Property's significant natural, ecological, wildlife, open space, aesthetic, scenic, visual, and recreational values, and in particular the Property's value as habitat for the Preble's Mouse; and

WHEREAS, the State of Colorado has recognized the importance of efforts to preserve land in a natural, scenic, or open condition, and for wildlife habitat uses consistent with the protection of open land having wholesome environmental quality, by the enactment of the Sections 38-30.5-101, et seq., Colorado Revised Statutes (hereinafter "C.R.S."), as amended; and

WHEREAS, the County of Douglas has recognized the importance of the preservation of fragile ecosystems, natural areas, scenic vistas, and wildlife habitats and corridors through its approval of Resolution No. R-994-062, and the subsequent citizen approval by election (effective January 1, 1995); and

WHEREAS, the Douglas County Parks, Trails and Open Space Master Plan identifies the Property as a high priority open space opportunity for the protection and preservation of community buffers, the view shed from I-25, and the high occurrence of physical natural resources; and

WHEREAS, The Conservation Fund, through its I-25 Conservation Corridor Plan, has identified the Property as a high priority for preservation as part of the I-25 View and Open Space Corridor; and

WHEREAS, The Conservation Fund, in furtherance of its I-25 Conservation Corridor Plan, intends to convey conservation easements, on property adjacent to the Property to the east, to the Douglas County Land Conservancy for scenic, visual, aesthetic and wildlife purposes; and

WHEREAS, The Conservation Fund previously owned the Property, and upon payment to it of \$200,000.00 (two hundred thousand dollars) by both Grantee and Grantor, for a total of \$400,000.00 (four hundred thousand dollars), conveyed the Property to Grantor subject to the contractual requirement that this Easement be conveyed by Grantor to Grantee; and

WHEREAS, the State Board of the Great Outdoors Colorado Trust Fund (hereinafter the "Board") agreed, in conjunction with other activities, to the expenditure of moneys from the Great Outdoors Colorado Trust Fund through the Division of Wildlife for funding of the entire amount for Grantee's payment; and

WHEREAS, Grantee, by acceptance of the grant made hereby, will forever honor the intentions of Grantor stated herein to preserve and protect in perpetuity the natural elements and the natural, ecological, wildlife habitat, open space, aesthetic, scenic, visual, and recreational values of the Property, subject to appropriations.

NOW, THEREFORE, for the consideration of \$200,000.00 (two hundred thousand dollars), paid to The Conservation Fund, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the mutual covenants, terms, conditions, restrictions, and requirements contained herein, which are based upon both the common law and Sections 38-30.5-101, et seq., C.R.S., as amended, Grantor does hereby grant, bargain, sell, and convey to Grantee a perpetual Easement in Gross and a perpetual Conservation Easement in Gross (hereinafter referred to as the "Easement") consisting of the rights hereinafter enumerated, over and across that certain real property, situated in Douglas County, Colorado, more particularly described above, subject to the terms and conditions set forth herein.

1. Purpose. It is the purpose of this Easement to preserve and protect in perpetuity the natural, ecological, wildlife habitat, open space, aesthetic, scenic, visual, and recreational values of the Property. In particular, it is the primary purpose of this Easement to foster management of the Riparian Zone and the wildlife habitat contained thereon in such a manner as best benefits the Preble's Mouse, with all other uses of the Riparian Zone being secondary thereto. Another purpose of this Easement is to foster management of the Open Space Zone and the Building Envelope in such a manner as best benefits recreational and open space uses as provided for herein, with the wildlife habitat values of those areas being secondary thereto.

2. Baseline Report. The parties acknowledge that a Baseline Documentation Report will be prepared, reviewed, and approved, by both Grantor and Grantee by December 31, 1998. The purpose of the Baseline Documentation Report is to establish the condition of the Property as

of the date first written above (the "Effective Date"). The Baseline Documentation Report shall be deemed to accurately represent the condition of the Property as of the Effective Date, and shall be filed with both Grantor and Grantee and by this reference made a part hereof. Approval by both Grantor and Grantee shall be by signed statement that shall then be made a part of the Report.

The parties further agree that in the event a controversy subsequently arises with respect to the condition of the Property as of the Effective Date or with compliance of any term or provision of this Easement, then the parties shall not be precluded from utilizing any other relevant or material documents, surveys, reports, and other information to determine the condition of the Property as of the Effective Date.

3. Affirmative Rights Conveyed. To accomplish the purpose of this Easement, the following rights are conveyed by this Easement to the Grantee, subject to the Grantee's available appropriations and personnel limits:

a. To study, identify, preserve, and protect in perpetuity, and to restore to its natural condition following damage, the natural, ecological, wildlife habitat, open space, scenic, visual, and aesthetic features and values of the Property, and in particular the values of the Riparian Zone as habitat for the Preble's Mouse in accordance with the terms of this Easement.

b. To enter upon and inspect the Property thoroughly in order to monitor compliance with and otherwise enforce the terms of this Easement.

c. To enter upon the Property by foot, and the Riparian Zone by both foot and off-road vehicle, and to perform work on the Riparian Zone by hand and with mechanical equipment, in order to manage the wildlife and the wildlife habitat of the Riparian Zone in a manner that is in the best interest for preservation of the Preble's Mouse when supported by scientific evidence. Grantee's management of the wildlife habitat of the Riparian Zone shall include, but shall not be limited to, the right to engage in (i) vegetation management, (ii) trapping, snaring, grazing, removing, and releasing animals, including specimens of the Preble's Mouse, (iii) limited surface earth work, including filling, excavating, and dredging, provided that any such work is in accordance with all applicable federal, state, and county statutory and regulatory requirements, (iv) diverting water and applying water to beneficial use, including irrigation and augmentation, provided that such diversions are in accordance with all applicable requirements of Colorado water law, and (v) constructing and maintaining fences or barriers on or around the Riparian Zone to control the movement of members of the public and animals. Grantee shall also have the right to restrict access by the public to the Riparian Zone by the adoption of appropriate regulation by the Colorado Wildlife Commission if such restriction is supported by scientific evidence. Exercise of Grantee's rights over the Riparian Zone shall only be undertaken after complying with the procedures established in Paragraph 4 herein.

d. To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement, or which may be reasonably expected to have a material adverse impact on values of the Property protected herein, particularly the primary value of the Riparian Zone as habitat for the Preble's Mouse, and to require the restoration of such areas or features of the Property that are materially damaged by any inconsistent activity or use.

e. To enforce the rights herein granted, by injunction if necessary, in a manner that will not unreasonably interfere with the proper uses being made of the Property at the time of such enforcement.

4. Management for the Preble's Mouse. Grantee's management of the wildlife habitat of the Riparian Zone shall be for the primary purpose of supporting, maintaining, and increasing the Preble's Mouse, to which the following shall apply:

a. Management of the Riparian Zone's wildlife habitat shall be based to the fullest extent practicable on the best-available scientific information regarding the Preble's Mouse and its habitat needs, subject to available appropriations and personnel limits.

b. To the greatest extent possible, management of the Riparian Zone's wildlife habitat shall be a joint and cooperative effort between Grantee and Grantor. Grantee and Grantor shall endeavor to frequently consult with each other regarding management of the Riparian Zone's habitat, and whenever possible memorialize their agreements in the Management Plan to be developed pursuant to Paragraph 9 herein. But if such cooperative agreements are unachievable, or if Grantee wishes to deviate from the Management Plan concerning management of the Riparian Zone and Grantor does not concur with such deviation, then the following procedures shall apply:

(i) Prior to undertaking any affirmative activity on the Riparian Zone that is of a nature not previously undertaken or is not provided for in the Management Plan, and that is intended to modify or manipulate the wildlife habitat located thereon, Grantee shall provide written notice of the proposed action to Grantor in accordance with Paragraph 29 herein ("Grantee's Notice"). Grantee's Notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit Grantor to make an informed judgment as to its impact on the natural, ecological, open space, and specifically the scenic, visual, and aesthetic values of the Property and Grantor's retained property interest in the Open Space Zone and the Building Envelope. Grantee's Notice shall also attempt as best as possible to explain why the proposed action is believed by the Grantee to benefit the Preble's Mouse and state the best-available scientific information in support. Grantee's

Notice shall be given not less than thirty (30) days prior to the date when Grantee intends to undertake the activity in question.

(ii) If Grantor does not respond within thirty (30) days of receipt of Grantee's Notice, Grantee may proceed with the proposed activity immediately. But, if Grantor objects to all or part of the proposed activity, or has an alternative proposal, written notice of said objection or alternative ("Grantor's Response") shall be provided to Grantee within thirty (30) days of receipt of Grantee's Notice in accordance with Paragraph 29 herein. Grantor's Response shall attempt as best as possible to explain the basis for Grantor's objection, and if an alternative is proposed, shall describe the nature, scope, design, location, timetable and any other material aspect of the alternative proposal in sufficient detail to permit Grantee to make an informed judgment regarding its merits

(iii) Grantee shall in good faith, and in conjunction with the best-available scientific information regarding the Preble's Mouse and Grantee's personnel and funding limitations, consider Grantor's Response.

(iv) Following Grantee's consideration of Grantor's Response, written notice of Grantee's determination concerning Grantor's Response shall be provided to Grantor in accordance with Paragraph 29 herein not less than thirty (30) days before undertaking the activity in question. Following such notice, Grantor may thereafter take whatever action it deems appropriate concerning the proposed activity, including the exercise of its enforcement rights pursuant to this Easement, which includes taking appropriate legal action. Judicial review of any dispute between the parties regarding management of the habitat on the Riparian Zone shall be based upon the best-available scientific information regarding the Preble's Mouse.

5. Rights Retained. Except as expressly provided herein, Grantor retains exclusive access to and use of the Property, and all right, title, and interest in and to all mineral, water, mining, and other similar rights related to or appurtenant to the Property. In particular, Grantor specifically retains (i) all right, title, and interest in and to all tributary, not non-tributary, and non-tributary water, water rights, and related interests in, on, under, or appurtenant to the land; and (ii) all right, title, and interest to subsurface oil, gas, sand, gravel, aggregate, and other minerals; provided, however, that exploration for, and extraction of any water, minerals, or other material shall be undertaken in a manner consistent with the terms of this Easement.

6. Grantor's Permitted Uses and Practices. Use of the Riparian Zone by Grantor under this Easement shall be primarily for the preservation of wildlife habitat, enjoyment of passive open space, and any other use expressly described herein. Use of the Open Space Zone by Grantor under this Easement shall be primarily for recreational and open space purposes, as well as enjoyment of the Property's natural, ecological, wildlife habitat, aesthetic, scenic and visual values, and any other use expressly described herein. The following uses and practices,

though not an exhaustive recital of consistent uses and practices, are permitted under this Easement. These practices are not to be precluded, prevented, or limited by this Easement:

- a. To construct, maintain, and repair a picnic area, trailhead area, restroom facilities, fences and a parking area, each to be located solely within the area depicted and/or described on Exhibit B as the Building Envelope. Fencing constructed in the Building Envelope shall be visually in keeping with the rural agricultural nature of the Property.
- b. To maintain and repair existing roads, bridges, utilities, and other existing improvements on the Property. In the event of destruction, deterioration, or obsolescence of any of said, roads, bridges, and utilities, Grantor may replace and reasonably enlarge the same with comparable equivalents of similar size, function, capacity, and location for the uses permitted herein. Moreover, as for utilities, all new utilities shall be located underground, while all replacement utilities shall be located underground to the extent financially feasible for Grantor. Fencing may be constructed and maintained as provided in Paragraph 8.o. For purposes of this Easement, "comparable equivalents" shall include those necessary to provide adequate public access to the Open Space Zone and to provide access for or utility service to not only the existing one (1) single family residential structure on the Property, but also one (1) existing single family residence and up to two (2) other single family residences that might be constructed to the east of the Property.
- c. To maintain and repair existing structures located within the Building Envelope. In the event of destruction, deterioration, or obsolescence of any of said structures, Grantor may replace and enlarge the same with comparable equivalents, provided, however, that no enlargement shall increase the size of any individual structure more than one hundred fifty percent (150%) of its size as of the Effective Date. All structures shall be maintained or constructed in a style which is similar to the existing rural agricultural style of the structures on the Property.
- d. To occupy and use the existing single family residential structure located within the Building Envelope for residential, public, or office purposes, and to use the existing out-buildings for storage, support services, maintenance equipment, and any other use permitted under the terms of this Easement.
- e. To control noxious weeds on the Property by use of agri-chemicals or biological controls, but only using those amounts and at a frequency of application necessary to accomplish reasonable control, and only to the extent that such use is not deemed harmful to the Preble's Mouse. For purposes of this Easement, "noxious weeds" shall be those undesirable plant species designated to be "noxious weeds" pursuant to the Colorado Noxious Weed Act, § 35-5.5-101, et seq., C.R.S., as amended or as may be amended (including, without limitation, any

amendments to such statute, or under any similar statute which is subsequently enacted).

f. To utilize the Property for hunting by Grantor, its licensees, invitees, and assigns, provided that said hunting is in compliance with all applicable laws and regulations and does not otherwise conflict with management of the Property as habitat for the Preble's Mouse.

g. To allow public pedestrian, equestrian, and bicycle recreational access to and across the Open Space Zone and the Building Envelope, provided that such public use is in a manner consistent with the terms and purpose of this Easement. In particular, Grantor shall be entitled to construct one (1) recreational trail, including reasonable trail extensions, for use by non-motorized recreation, including pedestrians, bicyclists, and equestrians. The exact location of the recreational trail, along with other aspects of Grantor's recreational use of the Open Space Zone and the Building Envelope, shall be determined at a later date by the Management Plan provided for herein; provided, however, that the trail shall be allowed to cross East Plum Creek no more than once, which right shall also include the right to construct an appropriate bridge for such crossing.

h. To maintain and replace a subsurface Individual Sewage Disposal System (a/k/a septic tank) as may be necessary to service the existing residential structure, provided that such system may only be used to treat waste water generated on-site.

i. To pump and transport ground water through, on, or across the Property and to maintain, re-drill and replace the infrastructure necessary to accomplish the pumping and transporting of ground water; provided, however, that no such infrastructure shall be placed on the surface of the Property unless located within the Building Envelope or the Open Space Zone.

j. To allow motorized public access to the Building Envelope and the property to the east via the Access Road from the western boundary of the Property.

7. Recreational and Open Space Use. The following shall apply to Grantor's use of the Open Space Zone and Building Envelope for recreation:

a. Management of recreational activities within the Open Space Zone and the Building Envelope shall be primarily for the purpose of a recreational trail and associated support facilities, such as a picnic area, trailhead area, restroom facilities, fences and a parking area. Other types of intensive recreational facilities, as that term is defined in Paragraph 8.s. herein, are prohibited.

b. To the greatest extent possible, management of the Open Space Zone and the Building Envelope for recreation shall be a joint and cooperative effort

between Grantee and Grantor. Grantee and Grantor shall endeavor to frequently consult with each other regarding use of the Open Space Zone and the Building Envelope for recreation, and whenever possible memorialize their agreements in the Management Plan to be developed pursuant to Paragraph 9 herein. But if such cooperative agreements are unachievable, or if Grantor wishes to deviate from the Management Plan concerning management of the recreational activities on the Open Space Zone and the Building Envelope and Grantee does not agree with such deviation, then the following procedures shall apply.

(i) Prior to undertaking any affirmative recreational activity on the Open Space Zone or the Building Envelope that is of a nature not previously undertaken or is not provided for in the Management Plan, Grantor shall provide written notice to Grantee describing the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its impact on the habitat of the Preble's Mouse ("Grantor's Notice"). Grantor's Notice shall be given not less than thirty (30) days prior to the date when Grantor intends to commence the proposed activity, and shall be given in accordance with Paragraph 29 herein.

(ii) If Grantee does not respond within thirty (30) days of receipt of Grantor's Notice, Grantor may proceed with the proposed activity. But, if Grantee objects to the proposed activity, written notice of said objection shall be given to Grantor within thirty (30) days of receipt of Grantor's Notice in accordance with Paragraph 29 herein ("Grantee's Response"). Grantee's Response shall attempt as best as possible to explain the basis for Grantee's objection, and shall include an alternative proposal.

(iii) Grantor shall in good faith, and in consideration of the primary use of the Riparian Zone as habitat for the Preble's Mouse and the requirements of this Easement, consider Grantee's Response.

(iv) Following Grantor's consideration of Grantee's Response, written notice of Grantor's determination concerning Grantee's Response shall be provided to Grantee in accordance with Paragraph 29 herein not less than thirty (30) days before the commencement of the proposed activity. Following such notice, Grantee may thereafter take whatever action it deems appropriate concerning the proposed action, including the exercise of its enforcement rights pursuant to this Easement, which includes taking appropriate legal action. Judicial review of any dispute between the parties regarding recreation activities shall be based upon all of the provisions of this Easement.

8. Prohibited Uses and Practices. The following uses and practices, though not an exhaustive recital of inconsistent uses or practices, are inconsistent with the purposes of this Easement and shall be prohibited by either Grantor or Grantee upon or within the Property.

- a. Changing, disturbing, altering, or impairing the natural, ecological, wildlife habitat, open space, scenic, visual and aesthetic features and values within and upon the Property, and in particular the Property's value as habitat for the Preble's Mouse, except as otherwise provided herein.
- b. Dividing, subdividing, partitioning or de facto subdividing the Property into two or more parcels, separate interests or interests in common.
- c. Establishing or operating any commercial or industrial uses. However, nothing shall prohibit Grantor from using the Building Envelope for small gatherings and events for which Grantor may charge a fee, provided that limitations on such events shall be as determined in the Management Plan.
- d. Constructing, placing, or erecting any signs or billboards, except those necessary for public safety and information regarding ownership, management, and interpretation of the Property, including, but not limited to, information regarding the Preble's Mouse or any historic value of the Property.
- e. Except as otherwise provided elsewhere in this Easement regarding the Building Envelope, constructing, placing, or erecting any new or additional structures or facilities, including, but not limited to, buildings, houses, offices, trailers, camping accommodations, permanent tent facilities, temporary living quarters of any sort, quonset huts, mobile homes, storage sheds and sport fields, public and private rest rooms, and picnic tables and enclosures.
- f. Establishing or operating any feedlot. A "feedlot" shall be defined for purposes of this Easement as a permanently constructed confined area or facility which is used for the purpose of engaging in the business of receiving and feeding livestock.
- g. Building, constructing, or developing any new or additional roads, bridges, trails, or parking lots, except of a size, in the locations, and for the uses expressly permitted herein by other provisions of this Easement.
- h. Filling, excavating, or dredging the surface of the Property, or mining, drilling, or exploring for or extracting ground water, minerals, oil, gas, or other hydrocarbons, soils, sand, gravel, rock, or other materials on or below the surface of the Property, except (i) that such materials may be removed from beneath the surface of the Property if access is obtained by means other than going through, on, or across the surface of the Property, and (ii) as otherwise provided for in Paragraph 6.i. herein.

- i. Disposing, dumping, discarding, leaving, accumulating, treating, burning, incinerating, reclaiming, recycling, storing, abandoning, or otherwise depositing any waste-like material, trash, litter, ashes, garbage, junk, or solid or liquid waste, hazardous or otherwise. Grantor shall promptly remove any trash or refuse generated by Grantor's activities from the Property. Trash generated on the Building Envelope shall be stored and regularly removed in a commercially reasonable manner.
- j. Cutting, removing, or unnecessarily damaging any plants or vegetation, including the taking or harvesting of timber, standing or downed, except for (i) the control of noxious weeds by Grantor pursuant to Paragraph 6.e. herein; (ii) the construction of recreational facilities by Grantor pursuant to the terms of this Easement; and (iii) to protect the health and safety of the public; and except for that performed by Grantee for management of the Riparian Zone pursuant to Paragraphs 3 and 4 herein.
- k. Engaging in agricultural practices, including, but not limited to, the cultivation and harvesting of plants or crops, except for one (1) vegetable garden that shall not exceed four hundred (400) square feet in size, nor be located farther than thirty (30) yards from the existing residence.
- l. Grazing, pasturing, or otherwise keeping livestock or animals, including domestic cats, except for that performed by Grantee for management of the Riparian Zone pursuant to Paragraphs 3 and 4 herein.
- m. Intentionally disturbing, harassing, or bothering any fish, animal, or wildlife, and in particular the Preble's Mouse, except for that performed by Grantee for management of the Riparian Zone pursuant to Paragraphs 3 and 4 herein, and except as required for management by Grantor in the Open Space Zone, and the Building Envelope.
- n. Intentionally undertaking or implementing any activity, action or use detrimental or adverse to the retention and conservation of soil.
- o. Reconstructing any existing fence or barrier, or erecting any new fence or barrier, unless such fence or barrier is no higher than forty eight (48) inches with no more than four (4) strands of wire. Under no circumstances may sheeptight or woven wire fencing be used. This provision shall not apply to any fences or barriers constructed within the Building Envelope.
- p. Intentionally introducing or releasing any fish, animal, or plant, except for that performed by the Grantee for management of the Riparian Zone pursuant to Paragraphs 3 and 4 herein.

q. Operating off-road motor vehicles, except as required for administration and supervision of the Open Space Zone, Building Envelope, and Riparian Zone.

r. Operating and flying remote-controlled airplanes.

s. Developing and using facilities for purposes of intensive recreational activities. "Intensive recreational activities" shall be defined for purposes of this Easement as those recreational activities that concentrate people in a relatively confined area for significant periods of time. Examples of facilities intended for intensive recreational activities that are prohibited by this Easement include, but are not limited to, athletic and sport fields, playgrounds, group and individual picnic facilities, campgrounds, and outdoor amphitheaters. Uses permitted within the Building Envelope pursuant to Paragraph 6.a. herein shall not be considered intensive recreation facilities.

9. Management Plan for Use of the Property. The parties agree that a detailed Management Plan for the Property shall be prepared, reviewed and approved, and periodically re-reviewed and approved, by both the Grantor and the Grantee. The purpose of the Management Plan shall be to further the management of the Property consistent with the terms of this Easement. Development of the Management Plan shall be consensual between the Grantor and Grantee, and shall conform to the requirement of this Easement. Any specific disagreements between the Parties regarding management of the Riparian Zone, the Open Space Zone, and the Building Envelope shall be handled pursuant to Paragraphs 4 and 7 herein.

10. Credit for Habitat and Species Conservation. If the Secretary of Interior lists the Preble's Mouse as threatened or endangered under the federal Endangered Species Act, 16 U.S.C. §1531 et seq., or if the U.S. Fish and Wildlife Service or Grantee implements a candidate conservation agreement or other habitat protection plan for such species without such listing, Grantor shall receive sole credit for the protection which this Easement affords the Property and the Preble's Mouse in any habitat conservation plan, reasonable and prudent alternative, or other requirement to mitigate Grantor's activities which could affect the Preble's Mouse on the Property or elsewhere.

11. Game Damage Waiver. Commensurate with Grantor's intent that the Property be protected for the use of wildlife, Grantor hereby waives on its behalf, and on behalf of its successors and assigns, any claims for payment or reimbursement for damage caused to the Property as enumerated in § 33-3-101, et seq., C.R.S., as amended or as may be amended (including, without limitation, any amendments to such statute, or under any similar statute which is subsequently enacted).

12. Grantor and Grantee Liability Exposure. Notwithstanding any other provision of this Easement to the contrary, no term or condition of this Easement shall be construed or interpreted as a waiver, either expressed or implied, of any of the immunities, rights, benefits, or protection provided to Grantor and Grantee under the Colorado Governmental Immunity Act, §§ 24-10-101, et seq. C.R.S., as amended or as may be amended (including, without limitation,

any amendments to such statute, or under any similar statute which is subsequently enacted). The parties hereto understand and agree that liability for claims for injuries to persons or property arising out of the negligence of the State of Colorado, its departments, institutions, agencies, board, officials, and employees is controlled and limited by the provisions of §§ 24-10-101, et seq., C.R.S., as amended or as may be amended, and §§ 24-30-1501, et seq., C.R.S., as amended or as may be amended. Any provision of this Easement, whether or not incorporated herein by reference, shall be controlled, limited, and otherwise modified so as to limit any liability of Grantor and Grantee to the above-cited laws.

13. Costs and Taxes. Grantor, its successors and assigns, shall bear all cost of operation, upkeep, and maintenance of the Property, except for those activities undertaken by the Grantee pursuant to its authority under this Easement and Grantee's management of the wildlife habitat. In particular, Grantor shall bear all cost of controlling noxious weeds and all cost of the maintenance of existing perimeter fences and the existing road and bridge. Grantor, its successors and assigns, shall pay any and all real property taxes and assessments levied by competent authority on the Property, and Grantee shall not be required to make payments in lieu of taxes, as might otherwise be required pursuant to § 30-25-301, et seq., C.R.S., as amended or as may be amended (including, without limitation, any amendments to such statute, or under any similar statute which is subsequently enacted).

14. Access. Nothing contained herein shall be construed as affording Grantee the right to allow the public physical access to any portion of the land subject to this Easement. Nothing in this Easement shall be construed to preclude Grantor's right to grant limited access to third parties across the Property, provided that such access is allowed in a reasonable manner that does not result in degradation and/or disturbance of the Property's natural, ecological, wildlife habitat, open space, scenic, and aesthetic values, and in particular the Property's value as habitat for the Preble's Mouse; provided, however, that Grantor shall have the right to permit the Public to access the Open Space Zone and the Building Envelope by use of the Access Road and the recreational trail. However, the Public may be excluded from the Riparian Zone by the Grantee, provided that the requirements of Paragraph 3.c. herein have been satisfied.

15. Assignment of Grantee's Interest. This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is (a) a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and (b) authorized to acquire and hold conservation easements under Colorado law. Prior to Grantee transferring this Easement, Grantee must give twenty (20) days notice to Grantor of the entity to which Grantee intends to transfer the Easement. Grantor shall have the right to object to the entity selected and supply alternative entities for consideration. As a condition of such transfer, Grantee shall require the transferee to expressly agree, in writing, to carry out and uphold the conservation purposes of this Easement and otherwise assume all of the obligations and liabilities of Grantee set forth herein or created hereby. After such transfer, Grantee shall have no further obligations or liability under this Easement.

16. Grant in Perpetuity. The Easement herein granted shall be a burden upon and shall run with the Property in perpetuity and shall bind Grantor, its successors and assigns forever.

17. Waiver of Certain Defenses. Grantor hereby waives any defense of laches, estoppel, or prescription.

18. Change in Circumstances. The fact that any use of the Property that is expressly prohibited by this Easement, or any other use as determined to be inconsistent with the purpose of this Easement, may become greatly more economically valuable than permitted uses, or that neighboring properties may in the future be put entirely to uses that are not permitted hereunder, has been considered by Grantor in granting this Easement. It is Grantor's belief that any such changes will increase the benefit to the public of the continuation of this Easement, and it is the intent of both Grantor and Grantee that any changes should not be assumed to be circumstances justifying the extinguishment or termination of this Easement. In addition, the inability to carry on any or all of the permitted uses, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment. Moreover, none of the following shall be grounds for the termination or extinguishment of this Easement: (1) the disappearance of specimens of the Preble's Mouse from the Property; (2) the scientific conclusion that the Preble's Mouse is not a real subspecies of the species Meadow Jumping Mouse; (3) a decision of the U.S. Fish and Wildlife Service not to list the Preble's Mouse as a threatened or endangered species; (4) the removal of the Preble's Mouse from such a list; (5) a decision by the State of Colorado that the Preble's Mouse is no longer a species of State concern; or (6) the believed extinction of the Preble's Mouse as a species (assuming, arguendo, that it is a separate species). However, the occurrence of items (1), (2), (5) or (6) above may be grounds for Grantee, in consultation with Grantor, to alter its management of the wildlife habitat of the Riparian Zone for the benefit of other wildlife species, and may be grounds for Grantor to request an amendment of the Easement pursuant to Paragraph 27 herein.

19. Enforcement. Grantee and Grantor shall have the right to prevent and correct, or require correction, of violations of the terms and purposes of this Easement. Grantee may enter the Property for the purpose of monitoring this Easement and inspecting for violations. If Grantee finds what it reasonably believes is a violation, Grantee shall immediately notify Grantor and the State Board of the Great Outdoors Colorado Trust Fund in writing of the nature of the alleged violation. Upon receipt of this written notice, Grantor shall either (a) restore the Property to its condition prior to the violation; or (b) provide a written explanation to Grantee why the alleged violation should be permitted. If the condition described in clause (b) above occurs, both parties agree to meet as soon as possible to resolve this difference. If a resolution of this difference cannot be achieved at the meeting, both parties agree to meet with a mutually acceptable mediator to attempt to resolve the dispute. When, in Grantee's reasonable opinion, an ongoing or imminent violation could irreversibly diminish or impair the natural, ecological, wildlife habitat, open space, aesthetic, scenic, and recreational values of the Property, Grantee may, in its sole discretion, take appropriate legal action. Further, should mediation fail to resolve the dispute, Grantee may, in its sole discretion, take appropriate legal action. If a court with jurisdiction determines that a violation is imminent, exists, or has occurred, Grantee may obtain an injunction to stop it, temporarily or permanently. A court may also issue an injunction to require

Grantor to restore the Property to its condition prior to the violation. If Grantee violates this Easement, Grantor may take appropriate legal action to prevent further violation and correct any past violations.

20. Division of Proceeds Between the Grantor and Grantee. The rights of Grantee created by this Easement constitute a real property interest vested in Grantee. In the event of condemnation of the Property or extinguishment of the Easement, the values of Grantee's and Grantor's interests shall be computed as follows:

a. If all or any portion of the Property is being sought by an entity that has the power of condemnation, the fair market value of the Property as if unencumbered by this Easement shall be determined by the court in the condemnation proceeding, or by the agreement of Grantor, Grantee, and the condemning entity.

b. If all or any portion of the Easement is being extinguished, the fair market value of the Property as if unencumbered by this Easement shall be determined by the agreement of Grantor and Grantee, but if the parties cannot agree, by an appraisal completed by a mutually acceptable licensed appraiser.

c. Once the fair market value of the Property as if unencumbered by this Easement has been established pursuant to the above, the value of Grantor's and Grantee's respective interests in the Property shall be a percent of the fair market value of the Property as if unencumbered by this Easement as follows:

Grantor's interest shall be fifty percent (50%).

Grantee's interest shall be fifty percent (50%).

21. Division of Proceeds Between Grantee and the Board. From the amount of proceeds determined pursuant to Paragraph 20 herein, as payable to the Grantee, the Board shall be entitled to receive one hundred percent (100%), which is the percentage of the purchase price of this Easement that is representative of the amount of the grant from the Board used for acquisition.

22. Condemnation. If the Easement is taken, in whole or in part, by exercise of the power of eminent domain, or if the Easement is extinguished or terminated, Grantee shall be entitled to compensation for the value of its interest, in accordance with applicable law, as determined pursuant to Paragraph 20 herein. The Board shall be entitled to compensation from Grantee in an amount as determined in accordance with Paragraph 21 herein.

23. Acts Beyond A Party's Control. Nothing contained in this Easement shall be construed to entitle a party to bring any action against the other party for any injury to or change in the Property resulting from causes beyond the parties' control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by a party under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

24. Subsequent Transfers. Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to the Grantee of the transfer of any interest at least twenty (20) days prior to the date of such transfer, except for leases of the existing residence. The failure of Grantor to perform any act required by this Paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

25. Easement Agreement and Covenants. Grantor and Grantee each agree to abide by the terms of the Easement Agreement and Covenants dated February 18, 1998, and recorded at Reception No. 9812673, Book 1516, Page 0424.

26. Recordation. Grantee shall record this instrument in timely fashion in the official records of Douglas County, Colorado, and may re-record it at any time as may be required to preserve its rights in this Easement.

27. Amendment. If the circumstances arise under which an amendment to or modification of this instrument would be appropriate, Grantor and Grantee are free to jointly amend this instrument; provided that no amendment shall be allowed that will affect the qualifications of this instrument under any applicable laws; and provided, further, that the prior written approval of the Board shall be required. Any amendment must be consistent with the conservation purposes of this instrument and may not affect its perpetual duration. Any amendment must be in writing, signed and notarized by both parties and the Board, and recorded in the records of the Clerk and Recorder of Douglas County, Colorado.

28. Miscellaneous.

a. Application to Successors. The terms "Grantor" and "Grantee," wherever used herein, and any pronouns used in place thereof, shall mean and include the above-named Grantor and its successors and assigns, and the above-named Grantee and its successors and assigns.

b. Severability. If any provisions of this Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Deed of Easement in Gross and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

c. Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Colorado.

d. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of § 38-30.5-101,

et seq., C.R.S. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

e. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Paragraph 27 herein. No provision of the Management Plan shall alter or amend this instrument unless contained in an amendment that complies with Paragraph 27 herein.

f. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

g. Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns and shall continue as a servitude running in perpetuity with the Property.

h. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

i. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

j. Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

k. Joint Obligation. The obligations imposed by this Easement upon Grantor and Grantee shall be joint and several.

l. Termination of the Board. In the event that Article XXVII of the Colorado Constitution, which established the State Board of the Great Outdoor Colorado Trust Fund, is amended or repealed to terminate the Board or merge the Board into another entity, the rights and obligations of the Board hereunder shall be assigned to and assumed by such other entity as provided by law, but in the absence of such direction, by the Colorado Department of Natural Resources or its successor. It is the intention of the parties that the interest of the Board not be

merged into the interest of the State in this Easement, and that the interest of the Board should be maintained as a separate and enforceable interest absent the recording of an instrument executed by or on behalf of the Board which expressly terminate the interest of the Board.

m. No Third Party Rights. This instrument creates no enforcement or other rights in persons or entities not parties to this Easement.

29. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give under this Easement shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows or to such other address as either party from time to time shall designate by written notice to the other.

To the Grantor: Board of County Commissioners
c/o Brooke Fox
Douglas County
100 Third Street
Castle Rock, Colorado 80104

with a copy to: Sydney Macy
The Conservation Fund
1942 Broadway, #323
Boulder, Colorado 80302

To Grantee: Real Estate Unit
Colorado Division of Wildlife
6060 Broadway
Denver, Colorado 80216

With a copy to: Area 5 Wildlife Manager
N.E. Region
Colorado Division of Wildlife
6060 Broadway
Denver, CO 80216

To the Board: Executive Director
State Board of the Great Outdoors Colorado
Trust Fund
303 E. 17th Avenue, Suite 900
Denver, CO 80203

TO HAVE AND TO HOLD unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, the Grantor has executed this Deed of Easement In Gross as of the date first set forth above.

GRANTOR:

**THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DOUGLAS, COLORADO**

BY: 
JAMES R. SULLIVAN, Chairman
Date: 4/29/98

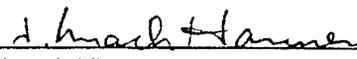
ATTEST:


WANDA W. BAILEY
Deputy Clerk
Date: 4/29/98

APPROVED AS TO CONTENT:


for Michael D. Maag
County Manager
Date: 4/29/98

APPROVED AS TO FORM:


J. Mark Hannen
County Attorney
Date: 4/29/98

STATE OF COLORADO)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me the day of 29th day of April 1998, by JAMES R. SULLIVAN, Chairman, The Board of County Commissioners of the County of Douglas, Colorado acting on behalf of Douglas County, Colorado, Grantor.

(Seal)



Cindy L. Hancock
NOTARY PUBLIC

100 Third Street
Address

Castle Rock, CO 80104
Address

My Commission Expires:

11/23/98

ACCEPTED:

STATE OF COLORADO

Roy Romer, Governor

By Linda L. Cleveland

Title Chief Administrator

Division of Wildlife for
Executive Director of the
Department of Natural Resources
And on behalf of the
Colorado Wildlife Commission

STATE OF COLORADO)

) ss.

COUNTY OF Adams)

The foregoing instrument was acknowledged before me the 30th day of
April 1998, by Bruce L. McCloskey

acting on behalf of the State of Colorado, Department of Natural Resources, benefiting the
Division of Wildlife and Wildlife Commission, Grantor.

Witness my hand and official seal.



Linda L. Cleveland
NOTARY PUBLIC

6060 Broadway
Address

Denver Co 80216
Address

My commission expires Jan. 22, 2002.

EXHIBIT A

to the Maytag Property Deed of Easement in Gross

A tract of land situated in Section 9, Township 9 South, Range 67 West of the 6th Principal Meridian, Douglas County, Colorado, more particularly described as follows:

Beginning at the southwest corner of the Southeast 1/4 of Section 9 and considering the south line of the Southeast 1/4 of Section 9 to bear South 89° 33' 00" East with all bearings contained herein relative thereto;

Thence South 89° 33' 00" East along said south line a distance of 419.22 feet to the west right-of-way line of the Denver Rio Grande Railroad;

Thence along the said west right-of-way line for the next fifteen (15) courses:

1. Thence North 05° 40' 52" East a distance of 1560.46 feet;
2. Thence North 06° 51' 14" East a distance of 303.01 feet;
3. Thence Northeasterly along the arc of a curve to the right a distance of 717.40 feet, said curve has a radius of 2737.24 feet, a central angle of 15° 01' 00" and a chord that bears North 16° 41' 22" East a distance of 715.35 feet;
4. Thence North 26° 31' 31" East a distance of 303.01 feet;
5. Thence North 27° 41' 52" East a distance of 102.50 feet;
6. Thence North 26° 38' 10" East a distance of 297.16 feet;
7. Thence Northeasterly along the arc of a curve to the left a distance of 665.87 feet, said curve has a radius of 2634.15 feet, a central angle of 14° 29' 00" and a chord that bears North 17° 15' 22" East a distance of 664.09 feet;
8. Thence North 07° 52' 35" East a distance of 98.24 feet to the east line of the West 1/2 of the Northeast 1/4 of Section 9;
9. Thence North 00° 16' 12" East along said east line a distance of 40.79 feet to the northeast corner of the Southwest 1/4 of the Northeast 1/4 of Section 9;
10. Thence South 89° 24' 30" East along the south line of the North 1/2 of the Northeast 1/4 of Section 9, a distance 5.44 feet;
11. Thence North 07° 52' 35" East a distance of 157.81 feet;
12. Thence North 06° 48' 52" East a distance of 99.80 feet;
13. Thence North 07° 58' 13" East a distance of 302.97 feet;
14. Thence Northeasterly along the arc of a curve to the right a distance of 555.45 feet, said curve has a radius of 2542.59 feet, a central angle of 12° 31' 00" and a chord that bears North 16° 31' 22" East a distance of 554.34 feet;

15. Thence North $25^{\circ} 04' 31''$ East a distance of 248.01 feet to the north line of the Northeast 1/4 of Section 9;

Thence North $89^{\circ} 21' 38''$ West along said north line a distance of 1620.98 feet to the east right-of-way line of Interstate 25;

Thence along said east right-of-way line for the next four (4) courses:

1. Thence South $13^{\circ} 37' 23''$ West a distance of 462.03 feet;
2. Thence South $07^{\circ} 20' 52''$ West a distance of 3943.80 feet to a point of curve;
3. Thence Southwesterly along the arc of a curve to the left a distance of 586.27 feet, said curve has a radius of 2655.00 feet and a central angle of $12^{\circ} 39' 07''$ to a point of tangent;
4. Thence South $05^{\circ} 18' 15''$ East along said tangent a distance of 316.71 feet to the south line of the Southwest 1/4 of Section 9;

Thence South $89^{\circ} 33' 00''$ East along said south line a distance of 529.45 feet to the point of beginning.

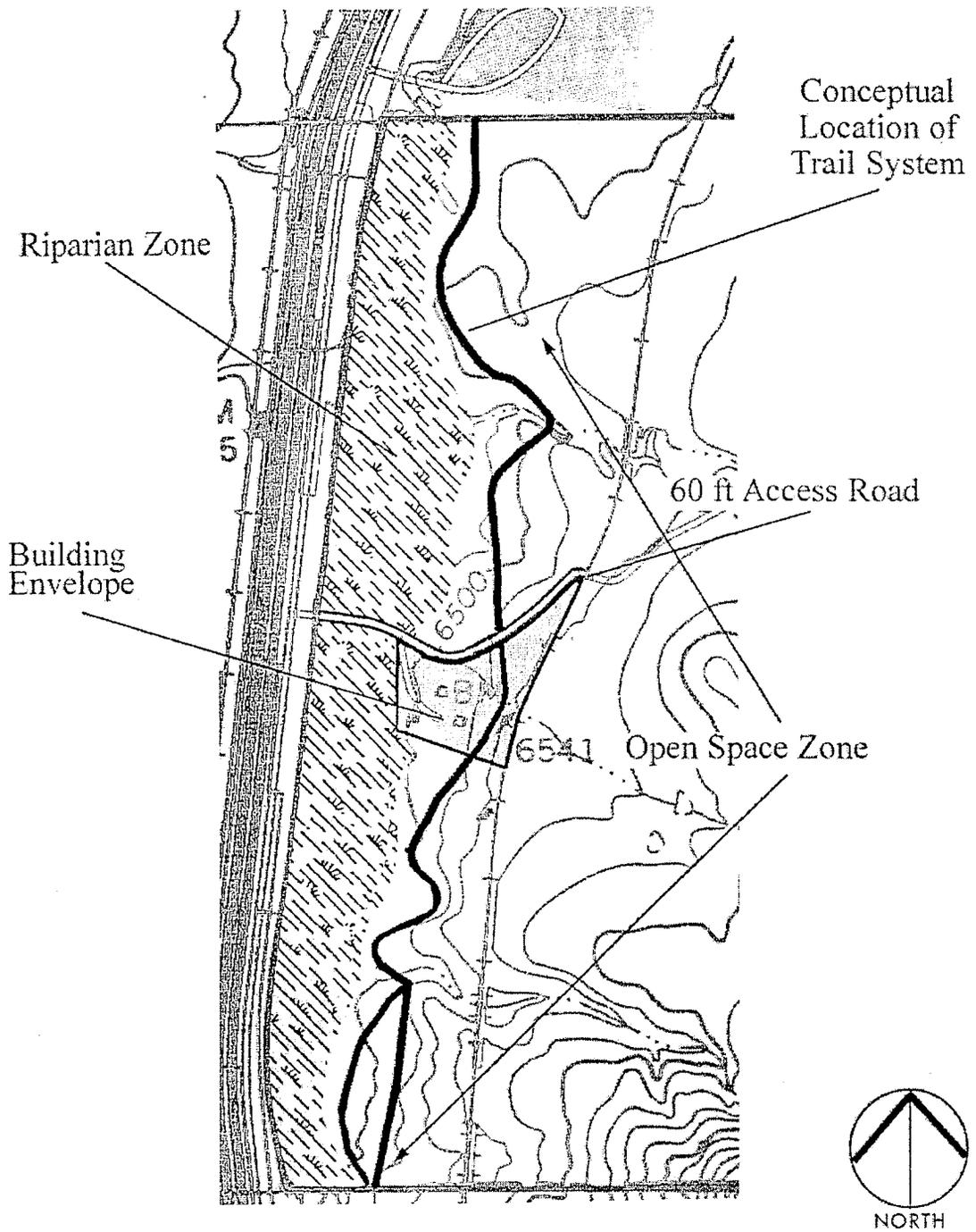


EXHIBIT B, PAGE 1

Maytag Property
 Douglas County, CO
 April 29, 1998

OPEN SPACE ZONE

BUILDING ENVELOPE

RIPARIAN ZONE

EXHIBIT B, PAGE 2

MAYTAG PROPERTY

Douglas County

April 30, 1998

ONE INCH ON THE MAP REPRESENTS 400 FEET ON THE GROUND



Attachment 2: Douglas County Parks and Trails Plan

DOUGLAS COUNTY PARKS AND TRAILS PLAN

DOUGLAS COUNTY TRAIL SYSTEM

- | | | |
|-----------------|-----------------|---|
| EXISTING | PROPOSED | |
| | | TRAIL HEAD |
| | | BELOW GRADE CROSSING |
| | | REGIONAL TRAIL (paved with adjacent soft surface) |
| | | REGIONAL TRAIL (soft surface) |
| | | MULTI-USE GRAVEL ROAD |
| | | PAVED SHOULDER BICYCLE ROUTE |
| | | PEDESTRIAN ONLY TRAIL |
| | | AMERICA DISCOVERY TRAIL |
| | | POTENTIAL TRAIL CONNECTION TO NATIONAL FOREST (location to be determined at a future date) |
| | | CONNECTION TO ADJACENT COUNTIES |

COUNTY PARKS AND OPEN SPACE

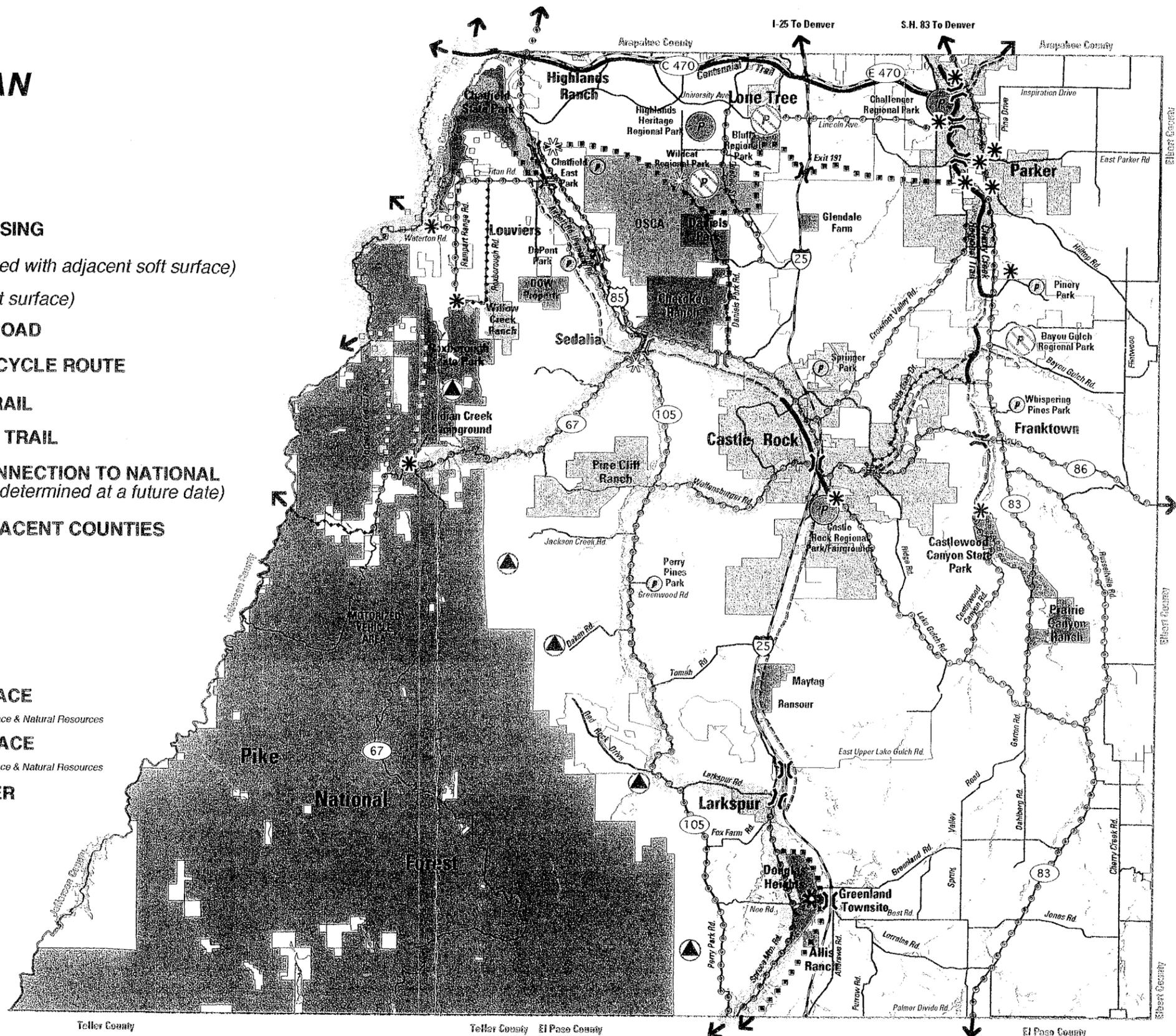
- | | | |
|-----------------|-----------------|--|
| EXISTING | PROPOSED | |
| | | REGIONAL PARKS |
| | | OTHER PARKS |
| | | PRESERVED OPEN SPACE
<i>Does not indicate public access</i>
<i>For information call Douglas County Open Space & Natural Resources</i> |
| | | CONSERVED OPEN SPACE
<i>Does not indicate public access</i>
<i>For information call Douglas County Open Space & Natural Resources</i> |
| | | STATE PARKS / DENVER MOUNTAIN PARK |
| | | PIKE NATIONAL FOREST |

Disclaimer:
This information has been mapped at a general planning scale
and is not recommended for site specific use.
Pike National Forest is not included in the resource analysis.

Douglas County
Parks, Trails, and Open Space Master Plan Update

SHAPINS
ASSOCIATES

MADE 17 1998 SCALE 0 1 Mile

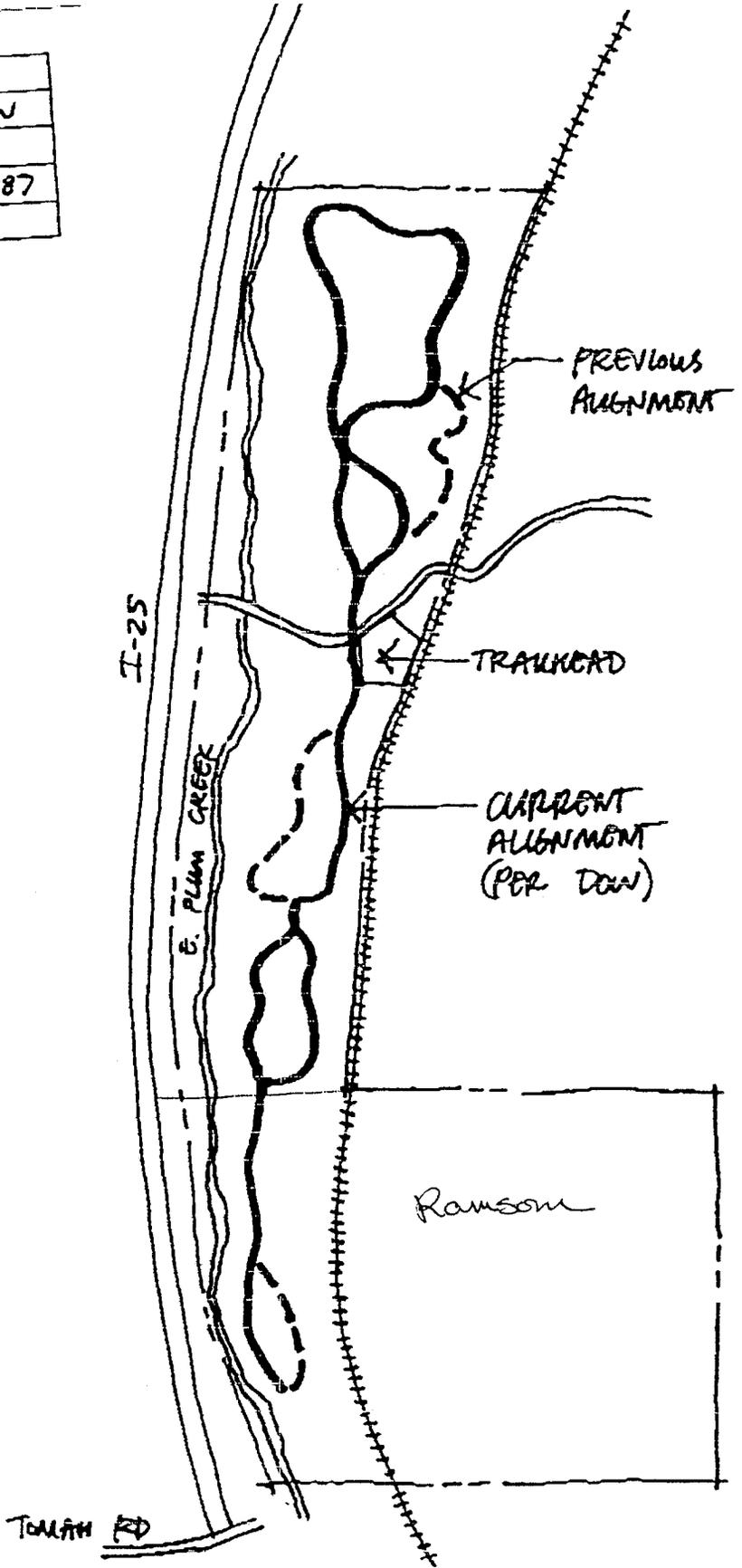


I-25 To Colorado Springs

S.H. 83 To Colorado Springs
Fox Run Regional Park

Attachment 3: Preliminary Trail Alignments

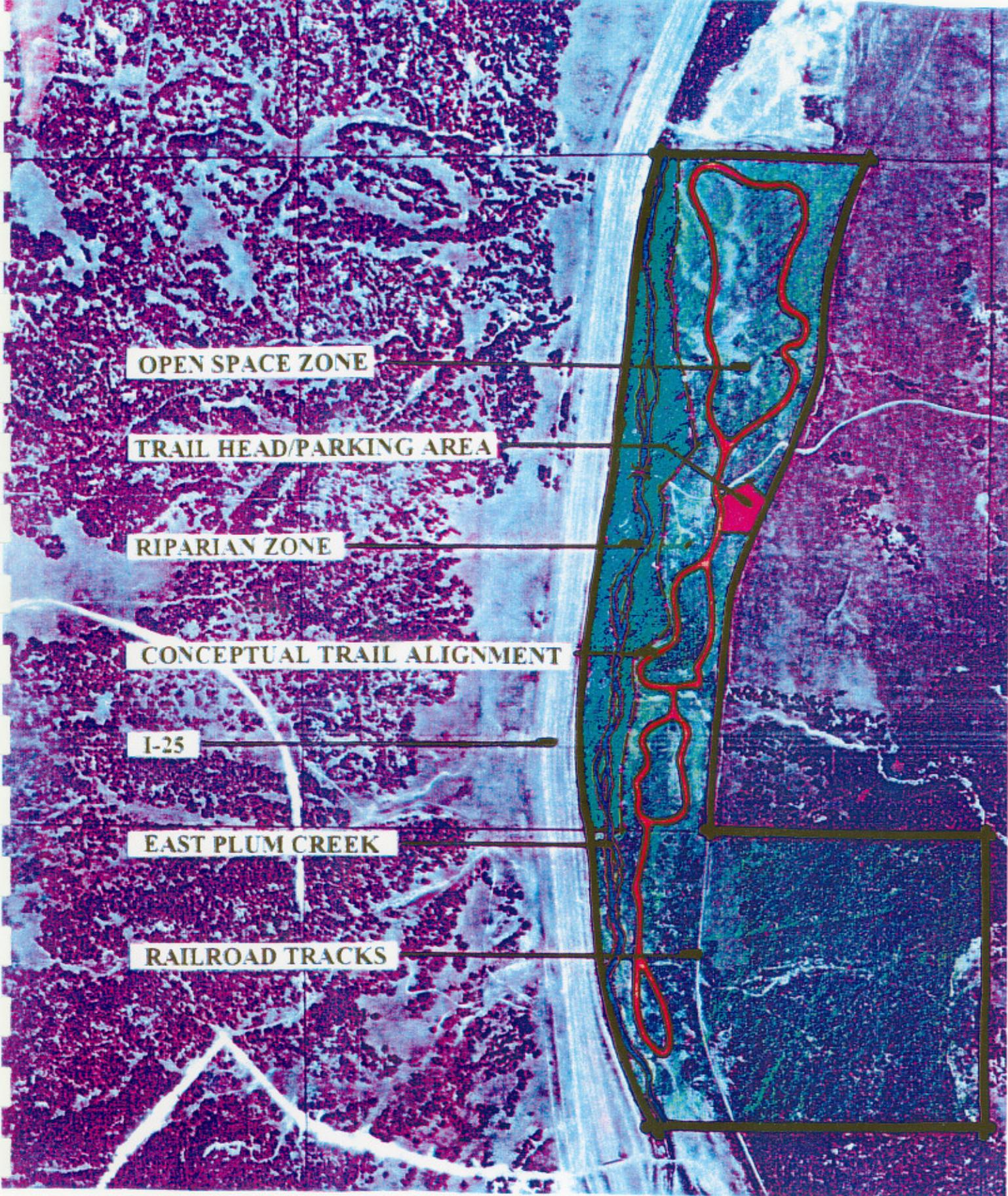
Post-It® Fax Note	7671	Date	11-24	# of pages	1
To	BROOKE FOX	From	DEAN PEARSON		
Co./Dept.	Doub. Co.	Co.	MDL		
Phone #		Phone #	303-571-5787		
Fax #	303-688-1293	Fax #			



MAYTAG/RANSOM OPEN SPACE
DOUGLAS CO., CO.



11-24-98 MDG:INC



CONCEPTUAL TRAIL ALIGNMENT PLAN
MAYTAG RAMSOUR OPEN SPACE

JULY 1, 1998

SCALE 1" = 100'



PREPARED BY
MDG INC
130 SANTA FE DRIVE
DENVER, COLORADO 80202
303.733.8907 FAX 303.733.8799

Photos



**Photo 1: Trail alignment looking north (arrow indicates alignment).
Trail alignment is east of riparian vegetation in old meander of East Plum Creek.**



**Photo 2: Portions of the East Plum Creek riparian corridor are well separated from
the adjoining uplands by steep slopes.
The trail would occur on the uplands further east (right) than shown in this photo.**

PROPOSED MAYTAG TRAIL ALIGNMENT
PHOTO LOG
JANUARY 28, 1999



Photo 3: Northern dry gulch trail crossing looking east.



Photo 4: Northern dry gulch trail crossing looking west.

PROPOSED MAYTAG TRAIL ALIGNMENT
PHOTO LOG
JANUARY 28, 1999

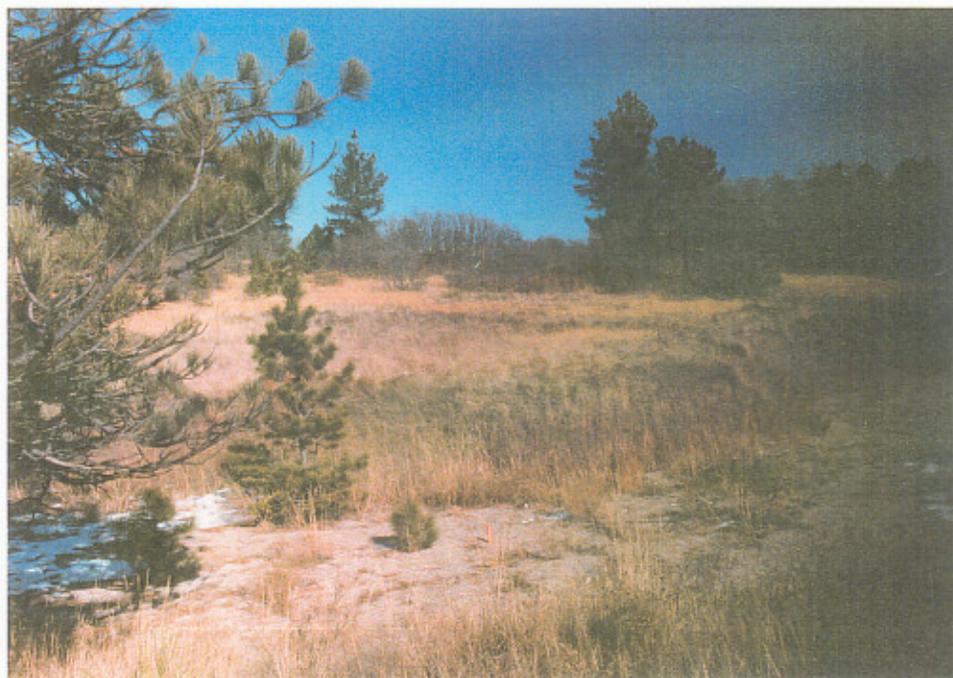


Photo 5: Southern dry gulch trail crossing.

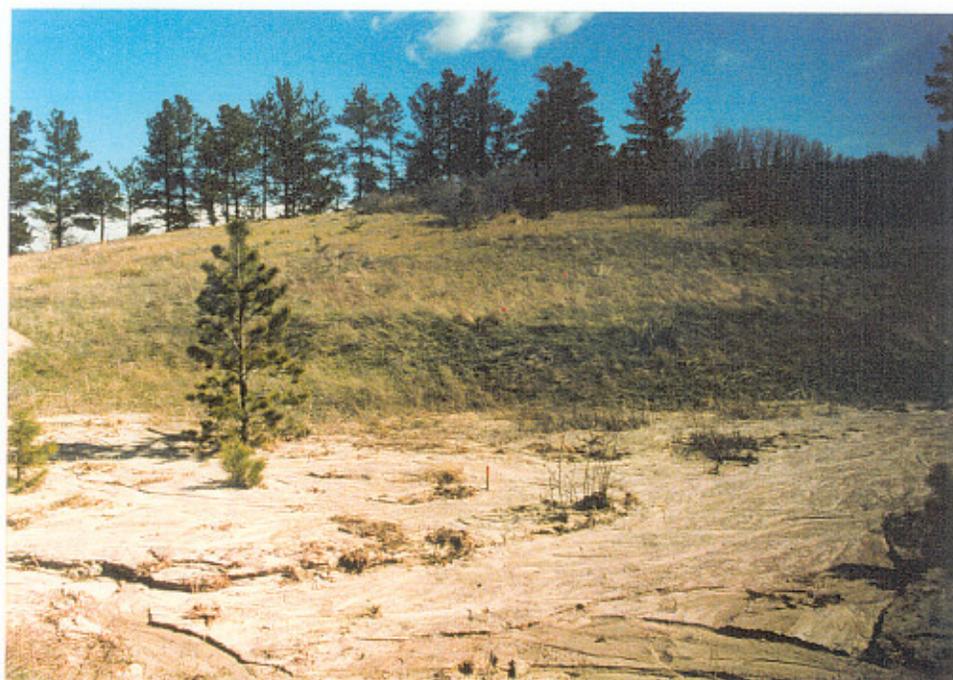


Photo 6: Southern dry gulch trail crossing in May 1999; note increase in sediment and lack of vegetation.