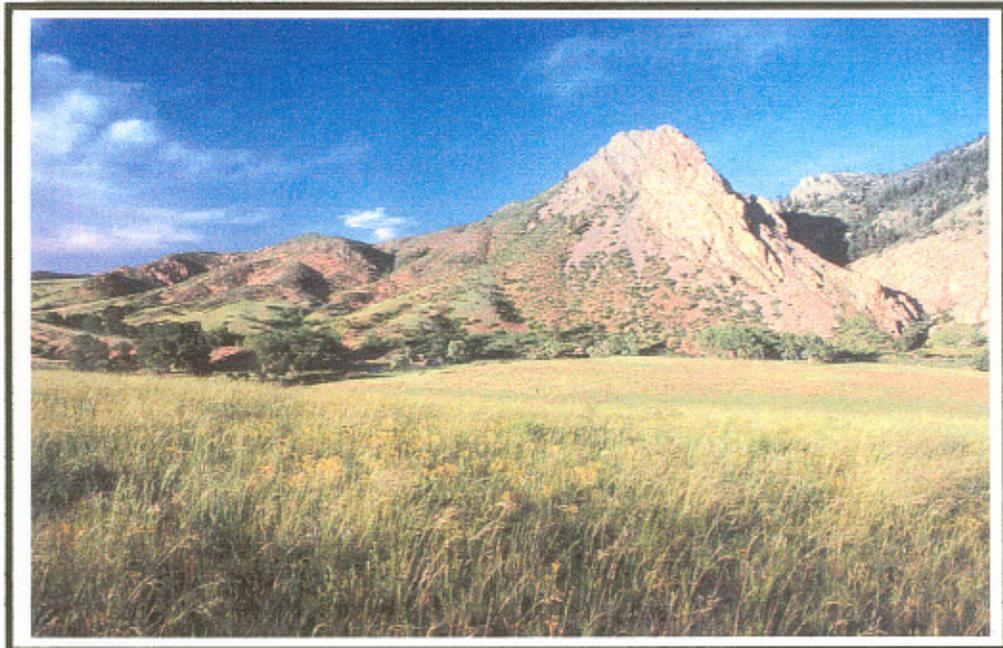




FINAL
Environmental Assessment/Habitat Conservation Plan
For Issuance of an Endangered Species section 10(a)(1)(B) Permit
For the Incidental Take of
Preble's Meadow Jumping Mouse (*Zapus hudsonius preblei*)
at Eagle's Nest Open Space, Larimer County, CO



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I. Introduction

The 755-acre Eagle's Nest Open Space (ENOS) is part of a greater vision for the Laramie Foothills identified in the 2001 Larimer County Open Lands Master Plan to protect natural, visual, open space and agricultural values. ENOS was acquired in January 2001 with the specific intent to protect the native vegetation, rock outcrops, and wildlife habitat, while providing outdoor recreational opportunities and continued grazing practices.

The overall management objectives for ENOS are to:

- Protect, manage, and enhance natural, geologic, cultural, and visual resources including maintaining and promoting healthy ecosystems and their processes;
- Provide and promote safe, enjoyable outdoor recreation opportunities while minimizing detrimental impacts upon natural, geologic, cultural, and visual resources;
- Provide educational opportunities regarding the values of the surrounding natural, geologic, cultural, and visual resources and the importance of responsible use and stewardship of the land;
- Provide for sustainable continued cattle grazing practices that are part of the western heritage in the Laramie Foothills and at on ENOS.

The Preble's meadow jumping mouse, *Zapus hudsonius preblei* (PMJM), was listed as threatened under the United States Fish and Wildlife Service (USFWS) Endangered Species Act (ESA) in 1998. The PMJM is known to occur along the North Fork of the Cache la Poudre River, one mile of which runs through ENOS. Section 9 of the ESA prohibits the "take" of any fish or wildlife species listed under the ESA as threatened or endangered. Take is defined as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." Take is also defined as any action that may indirectly injure or kill a species via modification or degradation of habitat.

A. Purpose

The purpose of this document is to request the issuance of an Endangered Species Act (ESA) section 10(a)(1)(B) Permit for the incidental take of the PMJM for ENOS to cover activities associated with development of the trail and river access area and on-going management of the property.

The purpose and need for the permit is to ensure that incidental take resulting from the proposed activities at ENOS will be minimized and mitigated to the maximum extent practicable and will not appreciably reduce the likelihood of the survival and recovery of this species in the wild. This Habitat Conservation Plan (HCP) is designed to ensure the continued existence and aid in the recovery of the PMJM while allowing for the limited,

incidental take of the species during development and on-going management activities at ENOS.

B. Applicant/Permittee

The activities will be conducted by the Larimer County Parks and Open Lands Department requesting the permit. The Applicant is a public land management agency with experience in natural resource management and planning.

C. Location and Boundary of HCP Area

ENOS is located in the Laramie Foothills area of Larimer County, just south of the Red Feather Lakes Road (CR 74) along the N. Fork of the Poudre River. Portions of the property lie within sections 3, 4, 9, and 10 of R70W, T9N and section 34, R70W, T10N. The boundary to be covered by the HCP includes the property boundaries for ENOS as shown on *Figure 1: Eagle's Nest Open Space Property Location and Adjacent Land Use*.

D. Permit Duration

The duration of the permit for incidental take at ENOS will be thirty (30) years from the date of issuance. After the expiration of this permit, any "take" within the geographic boundaries requires reauthorization. However, should additional open space lands be acquired in the future adjacent to ENOS, this HCP may be amended to include those lands as necessary.

E. Covered Species

The wildlife and plant species covered by this HCP include the Preble's meadow jumping mouse, Colorado butterfly plant (*Gaura neomexicana* ssp. *Coloradoensis*) and Ute ladies'-tresses (*Spiranthes diluvialis*), all of which are listed as threatened by the USFWS. While no trapping has been conducted at ENOS to determine the absence or presence of the PMJM, the species is known to occur along the N. Fork of the Poudre River and would most likely be present at ENOS if the riparian vegetation were in better condition. Suitable PMJM habitat is described as "well-developed plains riparian vegetation with relatively undisturbed grassland and a water source in close proximity" (Armstrong et al., 1997). If the riparian zone were in improved condition, it is possible that the PMJM would be found on-site.

Although potential suitable habitat exists for butterfly plant and Ute ladies'-tresses, to date, no documented occurrences of these two species have been made at ENOS or Livermore Area. A contracted botanist from the Colorado Natural Heritage Program (CNHP) conducted a site visit August 14 and 15, 2001 and no occurrences of either plant species were found (*see Exhibit A: CNHP Report on ENOS*). Due to the need to conduct the accurate protocol for survey of these two species when the plants are flowering (August and September) a survey at this time is not available. We propose as part of this HCP that the CNHP will be contracted to conduct the survey protocol for these two plant species at ENOS during the flowering seasons over a 3-year period (2003-2005) (See Section C: Proposed Activities). The terms and conditions of this HCP

will ensure adequate protection of the habitat of these species from impacts and will provide appropriate mitigation for any potential take.

II. Description of the Potentially Affected Environment

A. Natural Resources

1. Vegetation

Vegetation types present at ENOS include foothills grasslands complex, mountain mahogany (*Cercocarpus montanus*) shrublands, ponderosa pine (*Pinus ponderosa*) woodlands and riparian areas (see **Table 1 Dominant Plant Species Identified at Eagle's Nest Open Space**). The property has a biodiversity rank by the Colorado Natural Heritage Program (CNHP) of B3, or high biodiversity significance, because the site supports a globally rare foothills riparian woodland plant community and riparian shrubland community (see **Figure 2: Current Natural and Cultural Resources at Eagle's Nest Open Space**).

Foothills Grassland Complex

The foothills grassland complex comprises approximately 50% of the property. Primarily the grasslands are found in the flatter portions of the property and in patches of the rolling foothills. The grassland complex consists of a variety of grass and forb species including needle-and-thread (*Stipa comata*), big bluestem (*Andropogon gerardii*), blue grama (*Bouteloua gracilis*), buffalo grass (*Buchloe dactyloides*), green needlegrass (*Stipa viridula*), pussytoes (*Antennaria rosea*), spike fescue (*Festuca* sp.), sheep fescue (*Festuca saximontana*), oatgrass (*Danthonia spicata*), prickly-pear cactus (*Opuntia macrorhiza*), prickly poppy (*Argemone polyanthemos*), bee plant (*Cleome serrulata*), blazing star (*Liatrus punctata*), buckwheat (*Eriogonum effusum*), timothy (*Phleum pratense*), great basin wildrye (*Elymus* sp.), Kentucky bluegrass (*Poa pratensis*), fringed sage (*Artemisia frigida*), scurfpea (*Psoralea tenuiflora*), western wheatgrass (*Agropyron smithii*), and coneflower (*Ratibida columnifera*).

Mountain Mahogany Shrubland

Mountain mahogany (*Cercocarpus montanus*) shrublands occur in portions of ENOS with moderately steep slopes and shallow soils. While this shrubland community is dominated by mountain mahogany it also includes other shrub species such as skunkbrush (*Rhus trilobata*), currant (*Ribes* sp.), and rabbitbrush (*Crysothamnus nauseosus*). The herbaceous understory consists of various grass and forb species including green needlegrass, western wheatgrass, needle-and-thread, Indian ricegrass (*Oryzopsis hymenoides*), broom snakeweed (*Gutierrezia sarothrae*), fringed sage, blue grama, yucca (*Yucca glauca*), prickly-pear cactus, and side-oats grama (*Bouteloua curtipendula*), among others. In many portions of the shrubland areas, cheatgrass (*Bromus tectorum*) has become the dominant grass species.

Ponderosa Pine Woodlands

The rock outcrops on the property and west facing hillslopes are predominantly vegetated with ponderosa pine, Rocky Mountain juniper (*Juniperus scopulorum*) and Douglas fir

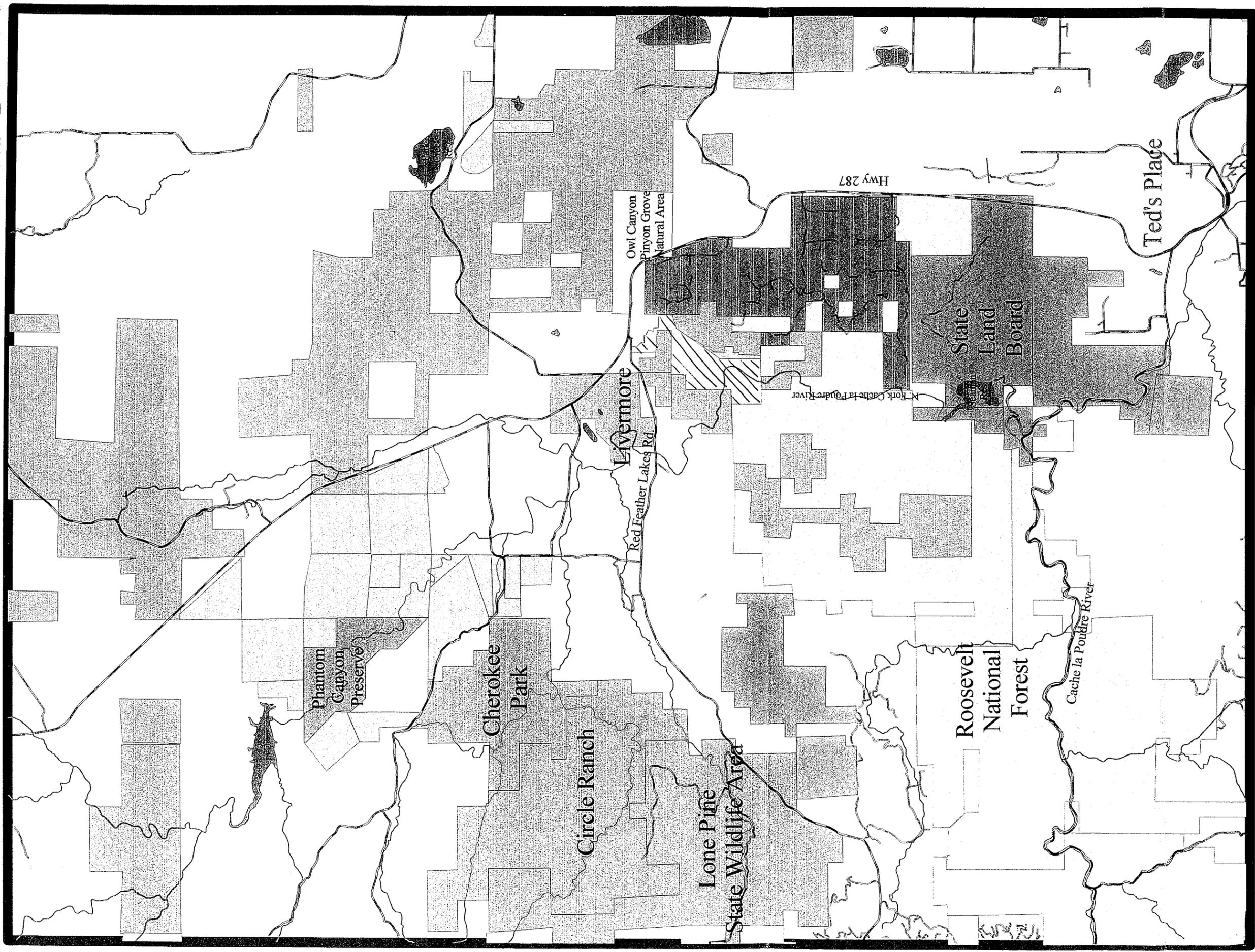
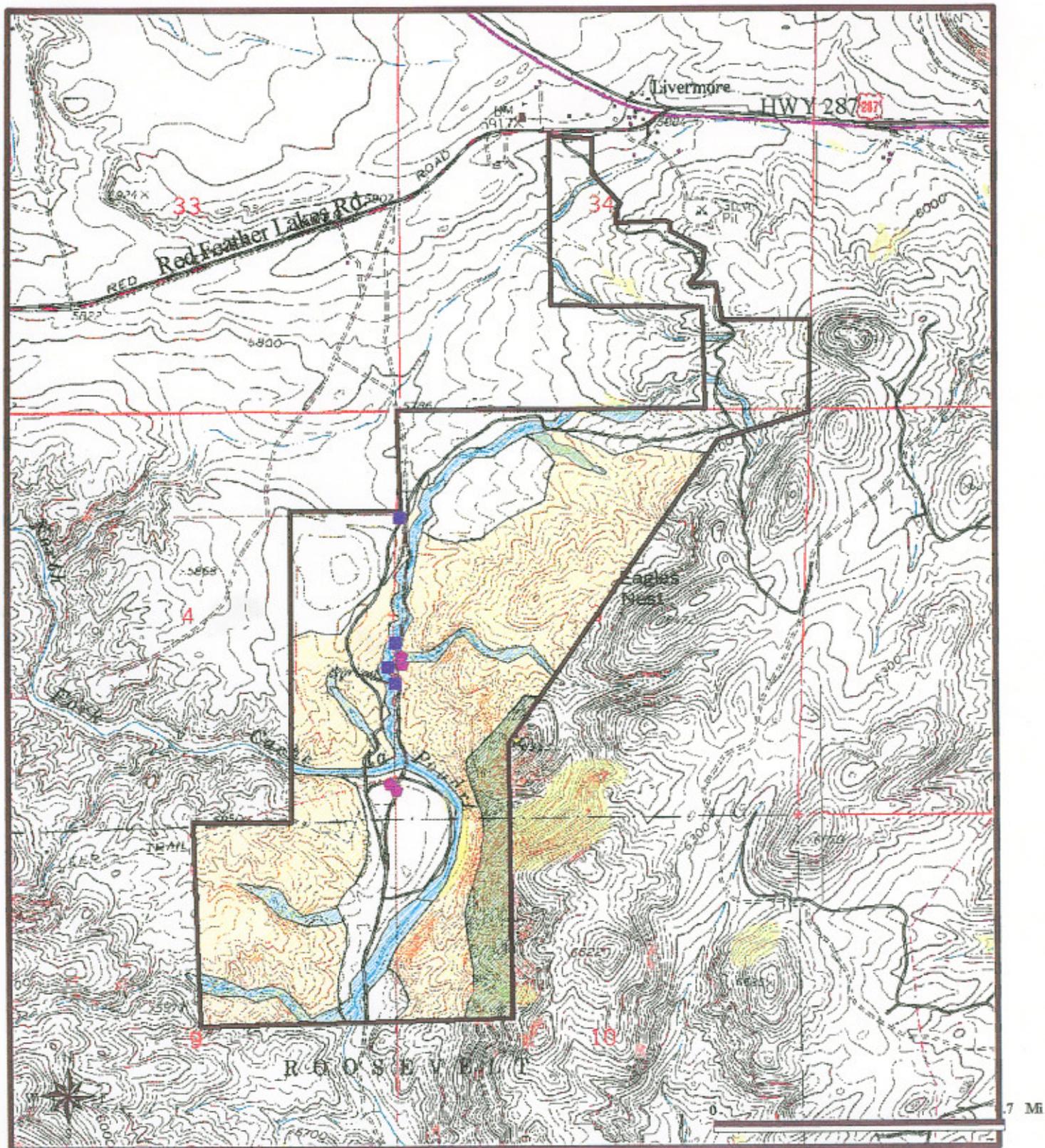


Figure 1: Eagle's Nest Open Space Property Location and Adjacent Land Use

Land Protection Status	Private Land Ownership	Other Elements
Eagle's Nest Open Space	Large Private Ownership	Open Water
Conservation Easements	35-Acre Development	Rivers
USFS	N. Colorado Water Conservancy District	Roads
State Land Board		
Colorado Division of Wildlife		
Colorado Natural Areas Program		
Ft. Collins Natural Area		
Nature Conservancy		





**Figure 2:
Eagle's Nest
Open Space
Natural and
Cultural Resources**

Natural Resource Values

-  Foothills Grassland Complex
-  Mountain Mahogany Shrubland Community
-  Riparian, Foothills Riparian Woodland, and Riparian Shrubland Community
-  Ponderosa Pine Woodlands/Rock Outcrop
-  Golden Eagle Nest

Other Elements

-  Roads
-  Eagle's Nest Open Space
-  Historic Building Sites
-  Corrals

(*Pseudotsuga menziesii*) with an understory of mountain mahogany, waxflower (*Jamesia americana*), bluebunch wheatgrass (*Pseudoroegneria spicata*), among other grass and forb species. While not yet identified specifically on ENOS, the rock outcrops provide potential habitat for the globally rare Larimer aletes (*Aletes humilis*) and the state rare Rocky Mountain cinquefoil (*Potentilla rupincola*).

Riparian Areas

Approximately one mile of the N. Fork of the Poudre River runs through ENOS and comprises the predominant riparian area on the property. In addition, there are four small drainages mainly fed by springs and many intermittent arroyos on the property.

Dominant riparian tree and shrub species include wild plum (*Prunus americana*), sandbar willow (*Salix exigua*), plains cottonwood (*Populus deltoides*), chokecherry (*Prunus virginiana*), peachleaf willow (*Salix amygdaloides*), bluestem willow (*Salix irrorata*), skunkbrush (*Rhus trilobata*), snowberry (*Symphoricarpos oreophilus*), cottonwood (*Populus acuminata*), and narrowleaf cottonwood (*Populus angustifolia*). Dominant understory in the riparian areas include Kentucky bluegrass, needle-and-thread, western wheatgrass, lupine (*Lupinus argenteus*), sticky geranium (*Geranium caespitosum*), field horsetail (*Equisetum arvense*), poison ivy (*Toxicodendron rydbergii*), Brickellia (*Brickellia* sp.), native thistle (*Cirsium canescens*), and field mint (*Mentha arvensis*).

Rare Vegetation and Plant Communities

ENOS has been ranked by the CNHP as "B3," or a site with highly significant biodiversity. Adjacent to ENOS, the Laramie Foothills Site has been ranked by CNHP as "B2" or a very highly significant biodiversity site (Kettler, 1996). Specifically at ENOS, two elemental occurrences are present: narrowleaf cottonwood/bluestem willow (*Populus angustifolia/Salix irrorata*) and skunkbush (*Rhus trilobata*). Of particular interest, in many of the smaller drainages on the property, skunkbush is the predominant shrub species, comprising over 95% of the shrub cover. Both of these occurrences are considered to be rare globally and statewide, indicating there are less than 20 documented global or statewide occurrences. While not yet identified specifically on ENOS, the rock outcrops provide potential habitat for the globally rare Larimer aletes (*Aletes humilis*) and the state rare Rocky Mountain cinquefoil (*Potentilla rupincola*). Wet or mesic areas at ENOS have the potential to support the Colorado butterfly plant and Ute ladies'-tresses, both are listed as threatened by the USFWS, but have not been found on the site.

Exotic Plants and Noxious Weeds

Some exotic plants have become established as a result of historic land uses including grazing and introductions from surrounding areas. Known exotics at ENOS include cheatgrass (*Bromus tectorum*), two bromes (*Bromus japonicus* and *Bromus inermis*), crested wheatgrass (*Agropyron cristatum*), field bindweed (*Convolvulus arvensis*), mullein (*Verbascum thapsus*), Canada thistle (*Cirsium arvense*), musk thistle (*Carduus nutans*), leafy spurge (*Euphorbia esula*), dalmation toadflax (*Linaria genistifolia*), hoary cress (*Cardaria draba*), and houndstongue (*Cynoglossum officinale*). While all of these exotics are actively monitored and controlled by the Open Lands Program, Canada thistle, musk thistle, leafy spurge, and dalmation toadflax are regulated by Larimer County.

2. *Wildlife*

ENOS supports a variety of wildlife including mountain lion (*Felis concolor*), coyote (*Canis latrans*), mule deer (*Odocoileus hemionus*), white-tail deer (*Odocoileus virginianus*), black bear (*Ursus americanus*), occasional American elk (*Cervus elaphus*), rabbit (*Sylvilagus nuttallii*), skunk (*Spilogale gracilis*), rattlesnakes (*Crotalus* spp.), various toads and lizards, etc. The area is included in a large regional mule deer migration and winter concentration area that extends from Wyoming down into Boulder County.

ENOS protects high rock outcrops that are nest sites and winter foraging locations for hunting and perching raptors including prairie falcons, ferruginous hawks, red-tailed hawks, great-horned owls, bald eagles and golden eagles. Three golden eagle nest sites exist on the open space/conservation easement lands, although only one is ever occupied each year. Golden eagles have been nesting at ENOS for over a century. The general nesting period for golden eagles begins February 1st through July 15th when the young fledge. Several small drainages and the North Fork of the Poudre River provide rich riparian habitat for a variety of birds. Some of the bird species found at ENOS include canyon wren, cliff swallow, rufous-sided towhee, meadowlark, pigeon, lesser goldfinch, chipping sparrow, oriole, American dipper, yellow warbler, killdeer, kingfisher, mountain chickadee and other migrant species common to the foothills.

The North Fork of the Poudre River supports several native fish including the rare Iowa darter (*Etheostoma exile*), Johnny darter, white sucker, chubs and long-nosed dace. These native species are tolerant of the fluctuating seasonal flows in the N. Fork.

Another important wildlife asset to ENOS is its geographic location adjacent to Arapaho-Roosevelt National Forest. The portion of the forest that abuts the property is considered a sensitive wildlife area, particularly as large game wintering range (Revision of the Land & Resource Management Plan for the Arapaho-Roosevelt National Forest and Pawnee National Grasslands, 1997). The connectivity of ENOS to USFS lands ensures large, contiguous lands for wildlife, especially for those species that require large territories.

3. *Threatened or Endangered Species*

The riparian area along the North Fork of the Poudre River has the potential to support PMJM. While trapping has not been completed at ENOS to verify the presence of the PMJM, this HCP addresses the potential habitat value present. The Colorado butterfly plant and Ute ladies'-tresses orchid also have potential habitat on the site.

4. *Hydrology and Wetlands*

The steep slopes and folding land forms within ENOS act to drain surface runoff towards many small drainages and arroyos and ultimately the North Fork of the Cache la Poudre River. Given the semi-arid climate, these arroyos generally carry intermittent flows most common during the spring snowmelt period and after heavy rain events. There are at least four springs on the property which feed drainages. A shallow pond in the northwest corner of the property fills for most of the spring and into the summer providing water

and habitat for wildlife. Per the wetland criteria established in the 1987 U.S. Army Corps of Engineers *Wetland Delineation Manual* (Environmental Laboratory 1987), no wetlands are present at ENOS.

5. *Geology/Soils*

ENOS includes spectacular rock outcrops, rugged terrain and rolling foothill topography. The elevation varies from approximately 5,640-6,350 feet, the highest point on the property being Eagle's Nest Rock at 6,353 feet. Eagle's Nest Rock is comprised of Precambrian-age Silver Plume granite, a medium-grained granite that is found interspersed in rock outcrops throughout the property. The majority of the underlying geology and exposed rock outcrops on the site is the Precambrian-age Sherman Granite, a coarse-grained pink granite. The predominant geology in the northern portion of the property is the Fountain Formation, composed mainly of medium to coarse-grained arkosic sandstone, conglomerate, with minor siltstones and shales and thin limestone. The North Fork of the Poudre River is comprised of quaternary alluvium or unconsolidated deposits of silt, sand, and gravel including colluvium along sides of valleys and at heads of tributary drainages. The North Fork Fault bisects ENOS north to south and along the river (Braddock 1988).

Based on the *Soil Survey of Larimer County Area, Colorado* by the USDA-SCS (1980), the two major soil associations are:

Wetmore-Boyle-Rock

Shallow, nearly level to steep, well drained to excessively drained gravelly sandy loams that formed in materials weathered from granite and rock outcrop; on mountainsides.

Haploborolls-Boyle-Ratake

Shallow to deep, nearly level to very steep, well drained to excessively drained mainly loams, sandy loams, gravelly sandy loams or channery loams formed in materials weathered from granite and schist; on mountainsides.

6. *Land Use*

Current land uses include livestock grazing and management, weed control and fence repair. Historically, cattle have been allowed to graze within the riparian zone year-round and therefore the vegetation within the river corridor is currently in a degraded condition. In 2002, the ENOS Resource Management Plan was adopted (available upon request to the applicant) and proposed future implementation measures for the open space include continued livestock grazing in accordance with a grazing plan developed in collaboration with the Natural Resource Conservation Service (NRCS) (***Exhibit B: Grazing Plan for ENOS***), weed control, fence repair as well as passive, non-motorized outdoor recreational activities. Any lessee or grazing tenant for ENOS will adhere to the adopted grazing plan.

Existing structures on the property include a bridge over the N. Fork of the Poudre River that is in poor condition and in danger of falling off an abutment, three loafing sheds along a drainage north of the river and several roadways (see ***Figure 2*** for existing

structures). There are several existing unpaved roads on the property that provide access for the current rancher and an adjacent rancher who has an easement to pass through Eagle's Nest to access his southern pasture.

7. *Cultural Resources*

The Laramie Foothills and ENOS are also rich in human culture. Native Americans used the region for at least 9,000 years. By the late 1800's, ranching was the primary land use. The Laramie Foothills have been traversed by the Cherokee Trail and Overland Trail, and now by U.S. Highway 287. The property has supported long-time ranching traditions and the historic working landscape of the Laramie Foothills. Homesteaded by Catherine L. Chaffee (1887) as Eagle Cliff Ranch, it was the site of the first meeting of the Livermore Women's Club in August 1896. The Livermore Woman's Club erected a commemorative flagstone at the base of Eagle's Nest Rock in October 1996 to document the 100-year anniversary of this event. A few of the many owners of ENOS were Frank K. Atkins, John and George Nightingale, James Rosebuck, Ruth Casey, Paul Nauta, Duane McMurry, Thomas and Betsy Grainger and Robert Avis. The property sold from Thomas Grainger to Robert Avis in 1995.

According to the Colorado Historical Society following a search of the Colorado Inventory of Cultural Resources, no sites were located on ENOS (see *Exhibit C: Colorado Historical Society Inventory of Cultural Resources*). The three cultural sites identified by Larimer County Open Lands Program on the property will not be impacted by the proposed action. The trail has been located to minimize visitor contact with the homestead foundation and the Livermore Women's Club Plaque.

8. *Air Quality*

There are no known concerns about air quality in the vicinity of the trail/river access area project. With development of a trailhead to access this area and more predominately due to developments in the surrounding area some increased detriment to air quality in the area will occur with increased vehicle traffic. A large percentage of surrounding lands are protected as open space and will not contribute to air quality decline and currently have no air quality concerns know by the Applicant.

9. *Water Resources and Water Quality*

The project is in the North Fork of the Cache la Poudre river riparian area and there are known water quality issues within this waterway include sediment inputs from cattle grazing and roadways within the riparian zone and associated tributary drainages. The proposed projects at ENOS would include fencing cattle from the riparian area, removing loafing sheds and roads that are within tributaries of the river to reduce sediment inputs.

B. Environmental Assessment

Based upon a Phase I Environmental Assessment of the property, there are no environmental hazards associated with ENOS (Terracon, 2001). Historically, this property has been used as rangeland and shows no signs of dumping or other hazardous waste activity.

III. Alternatives Including the Proposed Action

A. Alternative 1: Proposed (Preferred) Action

The proposed action involves the construction of a soft or natural-surfaced hiking and equestrian trail that is partially located along an existing access road that crosses the North Fork of the Poudre River and creation of a 0.07-acre horse tie area and 2.5-acre seasonal river access area on a disturbed site on the north side of the river upstream and downstream of the bridge (*See Figures 3 and 4: Eagle's Nest Open Space Conservation Zone and Potential Impacts*). The portion of the river access area east of the bridge would be open to the public from mid-July through January 31st to coincide with the least sensitive PMJM activity and golden eagle nesting periods. The proposed trail and river access area are components of the ENOS Resource Management Plan (November 2002). Both the trail and access area would allow open space users the opportunity to hike, ride horses, access the river for fishing, wildlife watch, picnic, photograph, experience a foothills ecosystem and enjoy educational opportunities at ENOS. Incidental take would be in the form of potential disturbance to and loss of habitat used by PMJM.

The proposed action requires the issuance of a permit under section 10(a)(1)(B) of the Endangered Species Act to authorize the incidental take of the PMJM during the trail construction and on-going management of ENOS. This HCP has been developed as part of the proposed alternative for the incidental taking of the mouse and is designed to provide coverage under the ESA for activities at ENOS.

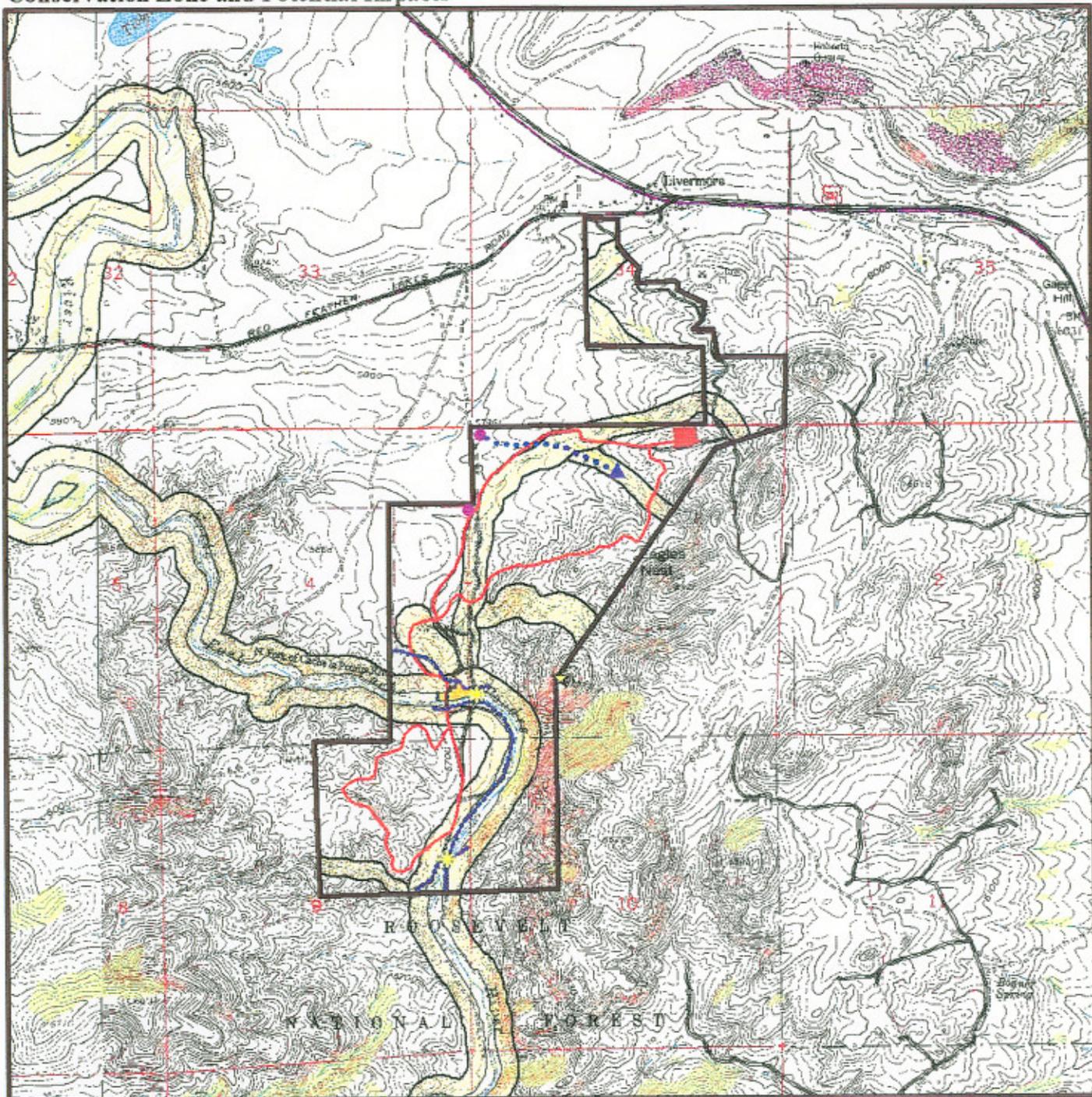
For purposes of this HCP, the conservation zone is defined as the area within 300 feet of the 100-year floodplain on either side of the North Fork of the Poudre River and 300 feet either side of its tributary drainages totaling approximately 264 acres at ENOS (*See Figure 3*). The proposed action will allow for the incidental take of PMJM by permitting the trail to be constructed (in part on an already existing road) crossing the conservation zone, allowing visitors seasonal access to the river in the vicinity of the bridge and temporary impacts due to the replacement of the existing bridge across the river and spring development.

The trail alignment and location of the river access area were located in coordination with Colorado Division of Wildlife (CDOW) (see *Exhibit D: Letter from Jerry Craig, DOW Raptor Biologist*). Construction of the trail portions that are not already on the existing road and allowance of a horse tie area and river access area near the bridge will permanently impact a total of approximately 2.78 acres of habitat. Temporary impacts to the conservation zone are estimated at 0.65 acres as a result of localized disturbance to replace the existing bridge and develop one spring on the property to allow a watering site for cattle to protect the riparian area within the drainage.

The total acreage impacted as a result of the proposed trail and associated facilities within the conservation zone will be:

- Trail in Poudre River Conservation Zone: 3 ft. wide trail, 990 ft. long = (0.07 acres permanent impact)
(note: there is an additional 823 feet/.06 acres of trail through the conservation zone)

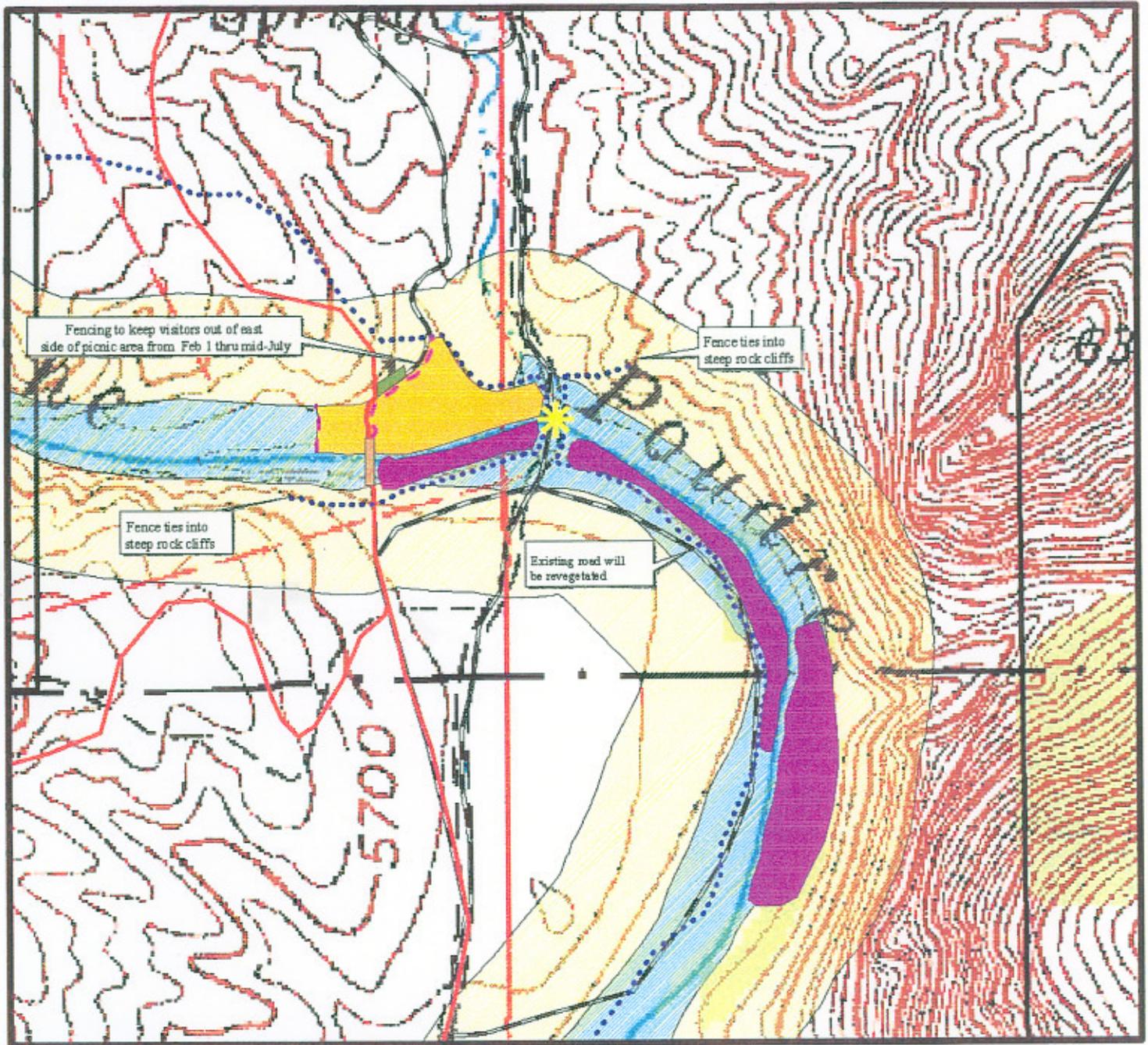
Figure 3: Proposed Alternative - Eagle's Nest Open Space Conservation Zone and Potential Impacts



- Eagle's Nest Open Space
- Trailhead
- Natural Surface Trail
- Picnic/Angler Access Area
- Horse tie area
- Bridge
- Fencing
- Water Gaps
- 300 Foot Buffer to Floodplain
- 100-Year Floodplain
- Golden Eagle Nest
- Roads
- Potential Alternative Loafing Shed/Corral Locations
- Spring Development Site



Figure 4: Proposed Alternative Eagle's Nest Open Space Potential Impacts and Mitigation Area- Close Up Map



-  Eagle's Nest Open Space
-  Trail
-  Picnic/Angler Access Area
-  Horse Tie Area
-  Bridge
-  100-Year Floodplain
-  300-Foot Floodplain Buffer
-  Access Road

-  Picnic/Angler Area Fencing
-  Water Gaps
-  Cattle Fencing
-  Mitigation Area for Shrub Re-Growth/Planting (5 acres)

0

0.2 Miles



however it is not included in the impact acreage as it will be located on an existing access road)

- Trail in tributary Conservation Zones: 3 ft. wide trail, 1992 ft. long = (0.14 acres permanent impact)
(note: there is an additional 1,040 feet/0.07 acres of trail through the conservation zone however it is not included in the impact acreage as it will be located on an existing access road)
- River access area (2.5 acres permanent impact)
- Horse tie-up area (0.07 acres permanent impact)
- Replacement of the existing bridge (0.15 acres = temporary impact)
- Spring development (to provide water to cattle outside drainage) (0.5 acres = temporary impact)

Critical habitat for PMJM was finalized on June 23, 2003 in the Federal Register, Vol. 68, No. 120, 37324. The designation of critical habitat on the North Fork of the Cache la Poudre River at the project site defined the width of critical habitat as the distance outward of 140 meters (459 feet) on each side of the stream. The proposed action will impact 2.78 acres of the 264 acres of designated critical habitat in the conservation zone.

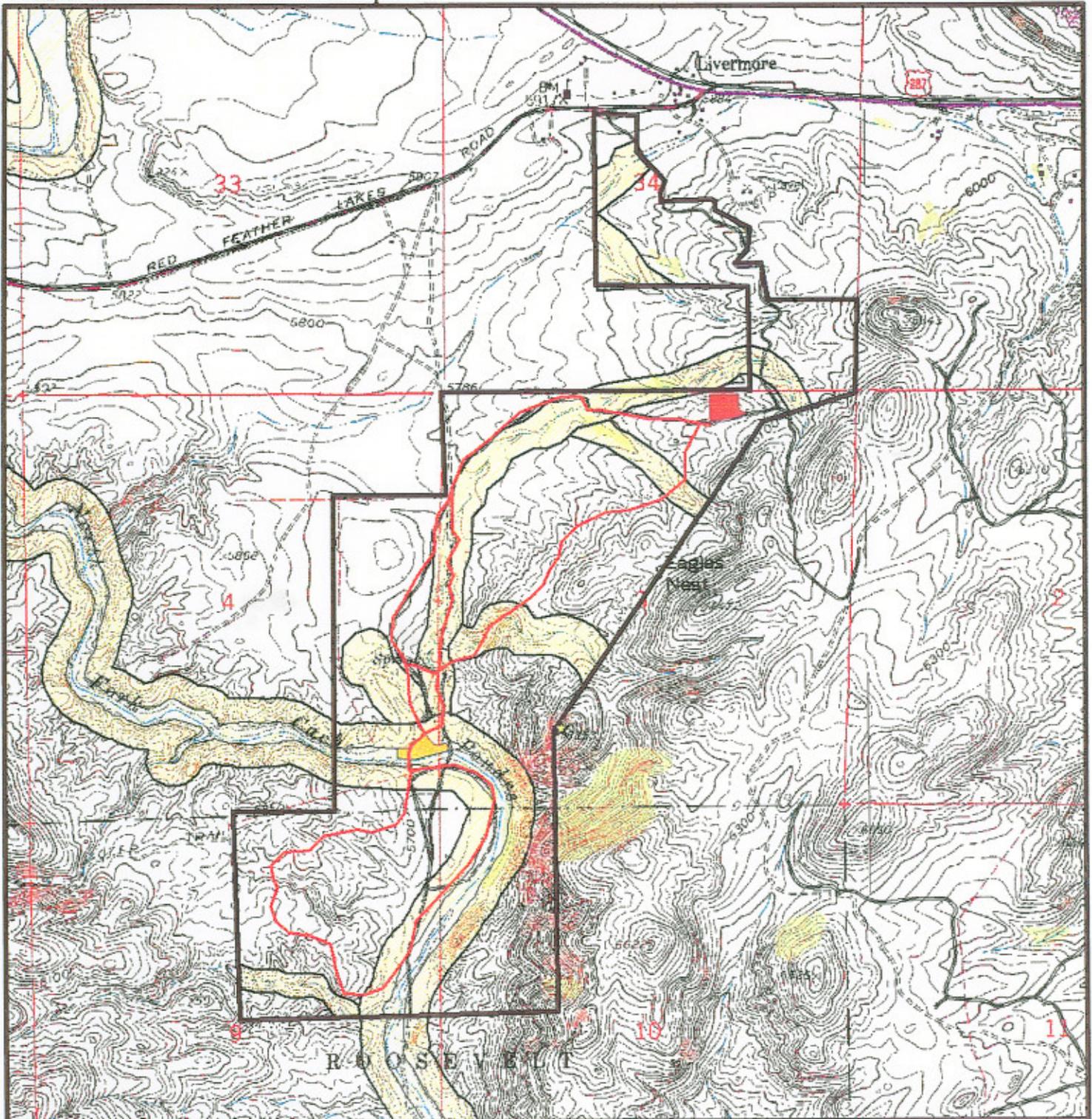
B. Alternative 2: Intensive Recreation Alternative

A more intensive recreation scenario was envisioned for ENOS that includes the above mentioned facilities plus a nine-mile trail network and a river access area without seasonal closures or fencing (see *Figure 5: Intensive Recreation Alternative*). This alternative does not include fencing cattle from the riparian area or development of springs to reduce cattle impacts to spring water sources. Upland vegetation would have been impacted at a higher level than the preferred alternative due to higher density trails. Riparian vegetation would be greater impacted as one of the trail alignments would have followed a road leading into the N. Fork of the Poudre River, rather than this road being revegetated as per the preferred alternative. There would be a greater impact to vegetation, wildlife, and threatened and endangered species by this alternative due to additional trails and potential for wildlife disturbance. There would be no difference to hydrology and wetlands, geology and soils, land use, cultural resources, air quality and water quality than the preferred alternative. This alternative was not selected because of the greater potential for impacts to PMJM and nesting golden eagles.

C. Alternative 3: No Action Alternative

The no action alternative consists of not constructing the trail and associated facilities. This alternative would avoid any incidental take of the PMJM on the ENOS. This alternative would also have no direct impact to vegetation, wildlife, threatened and endangered species, hydrology and wetlands, geology and soils, land use, cultural resources, air quality or water quality. This alternative would not allow Larimer County to use the property as originally intended both for PMJM conservation and for passive outdoor recreation. The alternative to take no action and therefore avoid all take was rejected because one of the driving factors to expend open space sales tax dollars to

Figure 5: HCP Intensive Recreation Alternative Conservation Zone and Potential Impacts



-  Eagle's Nest Open Space
-  Trailhead
-  Natural Surface Trail
-  Picnic/Angler Access Area
-  Horse Tie Area
-  Bridge
-  300 Foot Buffer to Floodplain
-  100-year Floodplain
-  Golden Eagle Nest
-  Roads



0 0.5 Miles

purchase ENOS was to provide outdoor recreational opportunities including access to and across the N. Fork of the Poudre River and its' tributaries. Finally, important management goals at ENOS include promoting and enhancing wildlife habitat, conservation planning and public education. All three of these management goals could not be achieved with the No Action Alternative.

D. Alternative 4: Alternate Open Space Location

Larimer County could look for an alternate site for an open space property for development as a public access/passive recreation area. This alternative was rejected because ENOS was specifically purchased for open space because of its' high habitat value along the N. Fork of the Poudre River, the potential to protect this important habitat including the PMJM, and the potential to combine protection of the property with public education and recreational opportunities. In the Laramie Foothills, much of the land is considered within areas that support habitat for the PMJM and one of the best means to protecting these lands is via open space acquisition or conservation easements. This alternative would have no impact on vegetation, wildlife, threatened and endangered species, hydrology and wetlands, geology and soils, land use, cultural resources, air or water quality.

IV. Analysis of Impacts of the Preferred Alternative

The proposed alternative is the environmentally preferred alternative.

A. On Site Impacts

1. Vegetation

The proposed activities will directly impact a total of approximately 3.43 acres (2.78 acres permanent impact; 0.65 acres temporary impact) of vegetation within the conservation zones. While some native species exist within the area proposed for the river access area, trail, and bridge replacement, most vegetation is highly disturbed by past management practices prior to acquisition of the site as open space. Specifically, much of the proposed conservation zone has been overgrazed, many non-native species are present (specifically pasture grasses and noxious weeds), and the river banks have been eroded and in places denuded of vegetation. Recreation will increase in this area due to construction of the trail and opening of the property to the public and there is potential that trail and river access area usage could result in on-site habitat disturbance primarily from trampled vegetation. One action that will be taken to reduce this possible impact will be to define and clearly mark the trail and install fencing along areas that may appear to have off-trail use problems. Another action will be to fence the river access area to confine users to that site and allow for seasonal closure (February 1 through mid-July) of this area to minimize impacts to sensitive species. A notable benefit to increased visitation of the property is that it provides an opportunity to educate the public on PMJM conservation issues.

2. Wildlife

The trail and river access area were located to minimize the amount of area impacting wildlife and in conjunction with the Colorado Division of Wildlife to minimize impacts

to nesting golden eagles. By requiring the public to remain on the designated trail and restricting access seasonally to the river access area, the majority of the open space will be left relatively undisturbed by visitors. In particular, by allowing access only to a small zone along the river, the impacts to the riparian zone will be limited to this small area and the majority of the riparian zone will be relatively undisturbed. The time period by which access would be restricted into the riparian zone also protects the American dipper during its' breeding season. The majority of the property will remain in its natural state and in fact, is expected to provide increased wildlife habitat through the protection measures to be implemented.

3. Threatened or Endangered Species

The total area within the conservation zone expected to be impacted is 3.43 acres. Since ENOS has potential habitat for the PMJM that is currently in a degraded state, it is expected that restoration and habitat enhancement measures will provide significant overall benefit to PMJM that outweigh these impacts.

4. Geology/Soils

No significant geologic alterations are anticipated from the proposed project. As an open space property, the land is protected from development, mining activities, and rock climbing will not be an allowed use on the site. The soils within the trail corridor are primarily Boyle Gravelly Sandy Loam and Farnuf-Boyle Rock Outcrop Complex (SCS 1980) and the trail has been aligned to minimize potential erosion. The proposed project will impact 3.43 acres (2.78 acres permanent impact; 0.65 acres temporary impact) within the Conservation Zones which is only 1.25% of the entire protected conservation zones acreage (264 acres) on ENOS. The small area of disturbance, topography and measures taken to minimize erosion, reduce the potential for adverse impacts to soils and geology.

5. Wetlands/Water Resources

Surface and groundwater resources should only be improved by the proposed actions. By fencing the cattle out of the riparian area and revegetating portions of the uplands, the amount of sediment and fecal input to the river should be reduced. The proposed riparian restoration work at ENOS should far outweigh the potential impervious surface created by allowing use at the river access area east of the bridge or the temporary impacts of replacing the bridge.

6. Land Use

The current and historic land use of the property was primarily agricultural and specifically livestock grazing and will continue per the grazing plan. An overall benefit will occur to land use because the grazing per the plan will be better than the current grazing practices in place for the property. The proposed actions are appropriate based on County zoning regulations of the area and by introducing passive, non-motorized public access, there should be little impact. The proposed action is part of the overall protection of ENOS, which in so being keeps this property from adding to the conversion of undeveloped land in Larimer County.

7. Cultural Resources

No impacts are expected due to lack of cultural resources as identified in the Colorado Inventory of Cultural Resources and the associated report written by archaeologist, Jeffrey L. Eighmy (see *Exhibit C: Colorado Historical Society Inventory of Cultural Resources*).

8. Air and Water Quality Impacts

Water quality of the area should not be affected because ground-disturbing activities will be carried out to ensure that no sediment inputs into the river are made. Sediment barriers such as silt fencing or hay bales will be used during the bridge replacement and trail building activities will be carried out by Parks and Open Lands Trail Crew professionals, by hand, to ensure no sediment is input to the river.

Air quality will not be significantly affected because of the small construction area and limited duration of construction activities. Emissions from construction related activities would be localized and limited to short time periods and only during bridge construction. The trail would be built by hand so no heavy equipment would be used.

B. Off-site Impacts

1. Vegetation

No off-site impacts to vegetation are expected to occur.

2. Wildlife

As a result of the proposed riparian area improvements it is expected that wildlife from off-site will benefit and prefer those areas at ENOS with improved habitat values.

3. Threatened or Endangered Species

No off-site impacts to threatened or endangered species are expected to occur.

4. Geology/Soils

No off-site impacts to geology or soils are expected to occur.

5. Wetlands/Water Resources

No off-site wetlands, surface or groundwater impacts are expected to occur due to the proposed action.

6. Land Use

No significant alterations to existing or proposed land uses are expected to occur as a result of the proposed action. Due to improved grazing per the grazing plan sediment inputs will be reduced off-site as well.

7. Cultural Resources

No off-site impacts are expected to occur

8. Air and Water Quality Impacts

No significant air or water quality impacts are expected to occur off-site.

C. Cumulative Impacts Analysis

Managing the property as open space will have cumulative benefits for PMJM conservation, recreation and conservation of the County's rural character in the Laramie Foothills area.

1. Vegetation

As the proposed action would result in disturbance of only 3.43 acres of vegetation, and protection of approximately 264 acres with enhancement or mitigation of 7 acres of vegetation with plantings along the riparian area of the North Forks as well as the entire ENOS being protected from future impacts, no cumulative impacts to vegetation are expected to occur. As a county open space area, vegetation will be cumulatively enhanced in the Livermore Area.

2. Wildlife

Due to the proposed riparian area wildlife habitat improvements it is expected that there will be a cumulative benefit to wildlife.

3. Threatened or Endangered Species

The proposed action will contribute to the cumulative impact of "take" of PMJM and/or their potential habitat in the region. However, this proposed action and other activities being proposed for incidental take in the Livermore Area will be required to have appropriate compensation measures in place and thus the cumulative impact will not be significant.

4. Geology/Soils

No cumulative impacts to geology or soils are expected to occur.

5. Wetlands/Water Resources

No cumulative impacts to wetland or other water resources are expected to occur.

6. Land Use

The proposed action contributes to the protection of this land as open space and therefore prevents the future conversion to other land uses. No cumulative impacts are anticipated. Open space protection represents a positive contribution, or net gain, to the protection of historic land use in this area.

7. Cultural Resources

There are no impacts to cultural resources as a result of this project and therefore, no cumulative impacts are anticipated.

8. Air and Water Quality Impacts

Since this property is protected as open space by Larimer County no significant cumulative impacts on air or water quality are anticipated to occur.

V. Habitat Conservation Plan

The intent of this HCP is to minimize and mitigate any potential incidental and temporary take of PMJM resulting from this project. The HCP is being prepared in accordance with section 10 of the ESA. The trail alignment presented in this HCP is the result of extensive efforts to minimize impacts to sensitive habitat and utilize previously disturbed areas and existing infrastructures as much as possible. It fulfills multiple-use objectives outline for this property in the Resource Management Plan for ENOS and in the 2001 Larimer County Open Lands Master Plan. Any future potential for Larimer County to acquire more open space for habitat protection will depend on the continued fulfillment of public expectations for this program and their support for future elective tax programs to fund them.

A. Description of Plan Area

ENOS is located in the Laramie Foothills region of Larimer County in northern Colorado. The Open Space encompasses 755 acres of rolling foothills and steep slopes and includes approximately 1-mile of the North Fork of the Poudre River. The elevation ranges from approximately 5,640-6,350 feet, the highest point on the property being Eagle's Nest Rock at 6,353 feet. The property predominately consists of mountain mahogany shrublands and foothills grasslands with a small area dominated by open ponderosa pine forests on the steeper slopes. There is one main intermittent drainage that is fed by several smaller drainages on the property, all which flow predominately during rainstorm events, two of which have springs. These drainages are predominately vegetated with skunkbush (*Rhus trilobata*).

Current and historic land use of the property has been for cattle and livestock grazing purposes. The riparian vegetation along the N. Fork of the Poudre River has been significantly degraded from grazing activities and the river has widened due to bank erosion. Larimer County Open Lands Program is dedicated to the conservation of natural resources and native wildlife species. ENOS has been designated for wildlife habitat protection, and agricultural and limited, passive recreational activities. Agricultural use will be livestock grazing in conjunction with a grazing management plan developed in partnership between Larimer County and the NRCS. Passive recreational use will be limited to hiking and horseback riding during daytime hours only and on designated trails. Fishing will be allowed from within stream only and upstream of the existing bridge during February 1 – mid May. Larimer County has a comprehensive set of regulations in place for recreational use on Parks and Open Lands properties including provisions for protecting wildlife. Dogs will only be allowed on leash.

B. Species Habitat Requirements

1. Preble's Meadow Jumping Mouse Habitat Requirements

(Excerpted in part from Fitzgerald, et al., 1994)

The Preble's meadow jumping mouse (PMJM) is a small rodent and subspecies of the meadow jumping mouse (*Zapus hudsonius*). The PMJM is native to the Rocky Mountains – Great Plains interface and is only found in southeast Wyoming and eastern Colorado (including Larimer, Elbert, Boulder, Denver, Jefferson, Douglas, El Paso,

Adams, Arapahoe and Weld counties). The PMJM is small with large hindlegs, and has a body length of 8-9 inches, 60% of which is its tail. The PMJM's active periods are primarily at night and from mid-May through mid-September. Breeding takes place predominately during the PMJM active months from early June to mid-August and hibernation period is mid- Sept to mid-May.

Typical PMJM habitat consists of "well-developed plains riparian vegetation with relatively undisturbed grassland and a water source in close proximity" (Armstrong et al., 1997). PMJM predominately feed on fruit, fungi and insects and store great amounts of fat reserves in preparation for hibernation. PMJM use a burrow and nest for shelter constructed of grasses, leaves and woody materials.

2. Colorado Butterfly Plant Habitat Requirements

(Excerpted from the USFWS 2000b listing package)

The Colorado Butterfly Plant was listed as threatened by the USFWS in November 2000. All known populations are within southeastern Wyoming, western Nebraska, and north-central Colorado. This perennial, early successional herb lives vegetatively for several years, bears fruit once and dies. It has one to a few reddish, hairy stems ranging from 2-3 feet tall. Lower leaves are 2-6 inches long, lance-shaped and have smooth or wavy-toothed margins, while the stem leaves are smaller and less in number. Flowers are ¼- ½ inch long and arranged in branched, elongate patterns above the leaves. They have white petals that turn pink to red with age. The butterfly plant bears a hard, nut-like fruit. This plant occurs on subirrigated, alluvial soils on floodplains and drainage bottoms in areas with elevations ranging from 5,000-6,400 ft. These plants are mainly found in low depressions or along bends in meandering stream channels a short distance upslope of the actual channel and where there is not overly dense vegetation. In the absence of occasional disturbance (such as periodic flooding) the plant's habitat can become choked out by dense growth of willows, grasses, exotics such as Canada thistle, etc. which prevent new seedling establishment.

3. Ute Ladies'-Tresses Habitat Requirements

Ute ladies'-tresses was listed as threatened by the USFWS in 1992. Populations have been recorded in mesic riparian meadows in relict tallgrass prairie near Boulder Creek (Boulder, CO), mesic riparian meadows along Clear Creek (Jefferson County, CO), mesic riparian meadows in the Colorado River drainage of eastern Utah, and in riparian, lake and spring-side wet or mesic meadows in eastern Great Basin of western Utah and Nevada. The plant is a perennial, terrestrial orchid with 8-20 inch tall stems lined with narrow leaves. The flowers are small, white and clustered into a spike arrangement at the top of the stem. The species is characterized by whitish, stout, gaping at the mouth flowers. Ute ladies'-tresses blooms typically from late July through August. The species occurs in moist soils in relatively low elevation riparian meadows where vegetation is open and not overly dense or overgrazed.

C. Proposed Activities

The following activities are proposed to be implemented in 2003 in accordance with the Resource Management Plan for ENOS within the conservation zone (see *Figures 2 and 3*):

- Replacement of the existing bridge that spans the N. Fork of the Poudre River with a more visually appropriate and safer bridge (0.08 acre temporary impact).
Replacement of the bridge would take place between mid-August and the end of February to avoid the American dipper nesting season if dippers are present during the bridge removal year.
- Creation and seasonal use (mid-July through January) of a 2.5-acre river access area in the vicinity of the bridge (permanent impact). Fencing will be installed along the trail on the west side of this area to keep visitors out during the closure period. Fencing will also be installed along the far west portion of this access area to keep visitors from accessing the riparian area upstream of the site.
- Creation of a horse tie-up area (0.07 acres permanent impact)
- Continued cattle grazing in accordance with a grazing management plan (*Exhibit B Grazing Plan for Eagle's Nest Open Space*)
- Removal of three existing loafing sheds that are within the conservation zone to outside PMJM habitat.
- Installation of fencing for livestock at a range of 20-60 feet back (depending on the presence of riparian vegetation) from the banks of the river to keep livestock from over-utilizing the riparian area (temporary impact).
- Fenced, and rock surfaced, 30 ft. wide water gaps for livestock will be installed at existing road crossings at their current width to allow cattle to access isolated portions of the river for watering and to cross the river when necessary, but will keep cattle from accessing the majority of the riparian zone. These water gaps will not involve removal of vegetation as they will be on existing roadways.
- Development of the spring in the northeast corner of section 3 to minimize cattle use of the drainage area while providing available water for livestock use outside of PMJM habitat. This action involves creating a water holding area that is fenced off from cattle and from which water is piped outside the PMJM habitat zone. This action will benefit PMJM by reducing cattle impacts to the riparian zone while still leaving water for vegetation and wildlife use (0.4 acre temporary effect).
- Piping of spring water to designated corral/loafing shed area outside of conservation zones (0.1 acre temporary impact).
- Building a natural surfaced 3 foot wide trail that in 6 locations crosses through the conservation zones (for the majority of the distance in the vicinity of the N. Fork of the Poudre River on an existing access road) (0.21 acres permanent impact).
- Use of the open space by the general public for passive, non-motorized, low-impact, open space recreation including hiking, horseback riding, wildlife viewing, fishing, and limited hunting in coordination with the CDOW.
- Control of noxious or invasive weeds via mechanical, biological and chemical means in accordance with the Larimer County Parks and Open Lands Integrated Pest Management Plan (1999).

- Noxious weeds will be managed using integrated weed management methods and is an important component for maintaining grassland and riparian ecosystem health to allow native vegetation to recover on its own. While weed control will not be part of the mitigation, weed control will be an additional benefit to PMJM habitat. Any incidental take associated with weed control activities pursuant to this HCP is covered by the proposed Incidental Take Permit.
- Routine patrol by ranger, other staff and lessee for purposes of patrol, maintenance, monitoring or customary management of livestock via horse, truck or other vehicle on established roads and trails.
- Education, research and interpretation activities.
- Future completion of in-stream habitat restoration and bank stabilization projects to restore the river to its natural flow regime and improve the fish habitat in coordination with the CDOW. Prior to initiation of river restoration projects, all applicable permits, approval and clearance from the U.S. Army Corps of Engineers would be obtained and a restoration plan would be submitted for USFWS approval.
- Revegetation of approximately 1 mile of existing roadway with native seed mix (see *Exhibit E: Native Seed Mix for Eagle's Nest Open Space*).
- Re-surfacing of existing roads within their current width on the property that will be used partially as trails to minimize erosion and damage due to high clay content. Surfacing material would be crusher fines that match the color of the surrounding soils on site. Using existing roadways as trails will take advantage of existing disturbed areas and minimize impacts to intact vegetation.
- Emergency activities that may arise and require immediate attention including replacement, maintenance or repair of affected structures or access to the conservation zone in response to an emergency situation related to a natural event, the public, lessee or livestock.
- Larimer County would be willing to work with the USFWS or CDOW to allow research if requested on ENOS.
- Habitat management including inventories, surveys and studies of habitats and species (including live trapping of PMJM and other species), and restoration and revegetation (including seeding, planting and mowing) of upland and riparian areas. Habitat management may also include prescribed burning outside of PMJM habitat, cattle grazing in concert with the approved grazing plan, forestry practices necessary only for disease control or visitor safety and weed and pest management.
- Revegetation of lands that are disturbed throughout the property using a native seed mix developed in conjunction with the Natural Resources Conservation Service Contract CNHP to conduct surveys for the Colorado butterfly plant and Ute ladies' tresses during the flowering seasons over a 3-year period (2004-2006).

While several of the above activities planned for management of ENOS will impact the conservation zone, many of them will also be significant improvements to the conservation zone and therefore provide improved habitat and mitigation for the proposed development and management activities.

Protected as open space by the Larimer County Open Lands Program, the focus of activities to take place at ENOS by their very nature will aim to avoid impact to species

and their habitats. The protection and enhancement of wildlife habitat is one of the primary goals of the protection and management of ENOS.

The proposed activities will impact only a very small acreage and the proposed mitigation and habitat improvements will greatly improve the conservation zone that was degraded by previous land uses. As part of the proposed action, the following mitigation measures are proposed to minimize the potential take described above and assure that the proposed actions will not reduce the potential for survival of the PMJM in the wild.

Any mitigation projects would be paid for by Larimer County via the Help Preserve Open Spaces Sales Tax dollars, of which dollars have been set aside for land management activities.

D. Mitigation and Minimization Plan

1. Avoidance Measures

Larimer County Parks and Open Lands Department (Applicant) is dedicated to the conservation of natural resources and native wildlife species. The majority of acquired riparian habitat is permanently protected from development and further degradation.

As much as possible management and development activities will be conducted to avoid impacts to PMJM and the conservation zone. Avoidance tactics may include timing of activities to coincide with PMJM inactivity, hours the property would be open to the public and fencing. Trail building activities would be completed during the periods of mid-September thru mid-May to avoid the PMJM active foraging periods. The open space would only be open to the public during dawn to dusk to avoid high PMJM activity periods. Some trails will be located along existing roadways to minimize additional vegetation disturbance. Smooth wire or wooden rail fencing and appropriate signs would be constructed to keep visitors out of the portion of the river access area east of the bridge from February 1st through mid-July to reduce impact to the golden eagles during their peak sensitive period and to PMJM for a portion of the peak sensitive period. Fencing would also be installed along the riparian area to keep cattle from loafing or over utilizing the riparian area. Fencing will also be installed at the farthest west boundary of the river access area to keep visitors from accessing and thus creating social trails upstream from this point. Development of the spring will keep cattle from concentrating at the spring and minimize their impact on riparian vegetation.

Avoidance of activity in the conservation zone may not be practical under certain instances, such as when completing in-stream habitat improvements and restoration activities on the North Fork, installing fencing to keep cattle from the North Fork riparian area, installing water gaps to allow cattle to water at limited locations, emergency or natural disaster mitigation activities, and so forth.

2. Mitigation Measures

In the event avoidance measures cannot be implemented to avoid the taking of PMJM habitat, mitigation measures will be enacted.

Conservation of Existing Habitat

ENOS is currently protected as open space via the Larimer County Open Lands Program. As a result of the land being protected from development, PMJM, PMJM habitat and other wildlife habitat are being significantly conserved in this reach of the N. Fork of the Poudre River. A deed restriction exists on all of Eagle's Nest Open Space and is held jointly by Great Outdoors Colorado and the Legacy Land Trust as a result of Great Outdoors Colorado monies being granted to Larimer County in part towards the purchase of the open space. This deed restriction is referenced here in this document (see ***Exhibit F: Declaration of Covenants, Conditions and Restrictions for Eagle's Nest Open Space***).

Habitat Improvement

The majority of the riparian zone will be managed for PMJM conservation. Habitat restoration and enhancement will be at a minimum ratio of 1.5:1; that is, for every acre of habitat impacted, 1.5 acres will be mitigated. There are approximately 264 acres of available PMJM habitat on ENOS. Of these acres only 2.78 acres (or 1%) will be permanently affected by this project. The reseeding and planting proposed to be completed at ENOS will encompass approximately 7 acres of habitat within the conservation zone along the North Fork of the Poudre that will serve as mitigated acreage. Habitat improvements would include, but are not limited to:

- Fencing off portions of the N. Fork riparian area to year-round cattle grazing. With the approval of the Service, a limited amount of prescriptive grazing within the fenced corridor may be allowed under prescriptive management plans for noxious weed control.
- Minimizing management activities within the conservation zone during mid-May to mid-September.
- Leaving seed heads of forbs, annuals and perennials to facilitate late-season foraging habitat.
- Restricting human access to only the north side of the river to improve connectivity of habitat along the south side riparian area.
- Planting native shrubs (via bundles or cuttings as available) in the fall and spring where regrowth does not meet 60% total aerial shrub cover in the 5-acre mitigation area (see **Figure 4**) (including wild plum (*Prunus americana*), sandbar willow (*Salix exigua*), chokecherry (*Prunus virginiana*), bluestem willow (*Salix irrorata*), skunkbrush (*Rhus trilobata*), and snowberry (*Symphoricarpos albus*) and seeding the mitigation areas with native species per the approved native seed mix (see **Exhibit E**). Seeding will occur along existing road along the N. Fork, in disturbed areas due to the bridge replacement and spring development and in the 5-acre mitigation area shown on **Figure 4**. Shrubs would be planted in the 5-acre mitigation area shown on **Figure 4** following determination of regrowth once cattle grazing is excluded from the riparian area. The goal will be to achieve a total aerial cover of 60% via regrowth or plantings as necessary.

Larimer County will monitor all aspects of the proposed restoration, enhancement, and mitigation plan to ensure project completion and success.

Trail and bridge construction mitigation measures

- Trail construction within the conservation zone will be completed by Larimer County Trail Crew professionals who will be well informed as to the reasons for and importance of limiting impacts to vegetated habitat. These staff persons have had experience in other open space areas of minimizing or avoiding impacts while completing trail construction and maintenance in sensitive sites.
- Trail construction and development of associated facilities, including replacement of the existing bridge will be conducted during daylight hours and between the timeframe of mid-September through mid-May when the PMJM is inactive.
- Larimer County staff will monitor the extent of habitat impacted to ensure that it does not exceed the authorized acreage specified in this HCP and allowed per the Incidental Take Permit.
- Larimer County staff will supervise at all times the bridge replacement work or any other work that may be done by contractors.
- Areas of temporary impact as a result of the bridge replacement and spring development will be reseeded with the approved seed mix.

Trail use and river access area restrictions

- Impacts will be further minimized by restrictions on the use of the trail. Public trail access will be limited to hiking and horseback riding only, day use only, and leashed pets only.
- The river access area east of the bridge will be closed off with fencing (smooth wire or wooden rail) and signed seasonally from February 1st through mid-July to coincide with the most sensitive PMJM activity and golden eagle nesting periods. The westernmost boundary of the river access area (west of the bridge) will be fenced as well to keep visitors from accessing the riparian area upstream from this point and creating social trails.

Education

Larimer County Parks and Open Lands Department has an active education program with volunteer naturalists who educate the public about natural, cultural and social history on Parks and Open Lands properties. Educating open space visitors to the importance of habitat improvement, the PMJM and associated habitat, and riparian areas through posted and printed materials, interpretive programs and through community efforts to complete habitat improvement projects will be integral in the recovery effort. Additionally, via public access, ENOS provides a demonstration site to area landowners who may be contemplating habitat improvement projects for the PMJM on their private lands.

3. Funding of Mitigation Activities

The Applicant is committed to providing the necessary funding to ensure mitigation success as defined in section V.G. All mitigation activities at ENOS will be funded through the County's ¼ cent Help Preserve Open Spaces Sales Tax revenues. This sales tax funding is guaranteed through 2018.

E. Determination of Anticipated Take Levels

The total protected acreage of land within the conservation zone (100 year floodplain plus 300 feet either side of the N. Fork of the Poudre River and 300 ft either side of intermittent drainages) is 264 acres. The total number of acres within this conservation zone that will be impacted by and mitigated for each of the proposed activities are as follows:

Proposed Impacted Acreage

Permanent Impact	Acres (notes)
River access area	2.5
Horse tie-up area	0.07
Trail (near Poudre River)	0.07 (note: an additional 0.06 acres of trail will follow the existing road that already exists within the conservation zone along the Poudre River)
Trail (thru tributaries)	0.14 (note: an additional 0.07 acres of trail will be on existing road)
Total Permanent Impact	2.78 acres or 1% of the conservation zones

Proposed Temporary Impact Acreage

Temporary Impact	Acres (notes)
Bridge replacement	0.15
Spring development	0.5
Total Temporary Impact	0.65 or 0.25% of conservation zone

Proposed Mitigated Acreage for Permanent and Temporary Impacts

Mitigation	Acres
Revegetation of road along N. Fork (2900 ft long x 15 ft. wide)	1.0
Shrub plantings	5.0
Revegetation of disturbed areas due to bridge replacement and spring development.	1.0
Total Mitigated/Enhanced Acreage	7.0 (ratio=2.5 acres mitigated:1.0 acre impact)

Protected Acreage

Protected Habitat	Acres
Total Protected Preble's Habitat	264.0

As on-going agricultural activities and weed control are covered under the 4(d) rule, we propose that these activities (continued cattle grazing and weed control) not require mitigation. Livestock will be fenced out of the North Fork riparian area with fencing set back at a distance ranging between 20-60 ft. (depending on presence of riparian vegetation) along the river. Livestock will have only limited controlled access to the river at specified fenced water gaps and grazing will be managed in accordance with NRCS recommendations for ENOS.

F. Monitoring

The USFWS will be responsible for compliance monitoring of this HCP, Larimer County will be responsible for supplying all necessary information to the USFWS. The goal of the monitoring of the mitigation efforts will be to determine that the habitat improvement and revegetation efforts are successful. To measure the success of habitat improvement and revegetation efforts:

- The USFWS will be provided with photographs from designated photopoints depicting the site condition prior to and following trail construction, bridge replacement, fencing and other activities in the vicinity of the North Fork of the Poudre River. Photographs will also be taken to show existing loafing sheds and roads prior to revegetation of those areas (see *Exhibit G: Baseline Photos Prior to Implementation of Activities at Eagle's Nest Open Space*).
- All mitigation projects will be monitored annually, and a monitoring report documenting the status of the project will be submitted to the USFWS, including associated photographs annually at the end of the calendar year. Monitoring will extend for 5 growing seasons following each mitigation activity or until determined jointly by the USFWS and Larimer County that the mitigation effort was successful.
- Monitoring plots (1-m² frames) will be established along the North Fork of the Poudre River and in drainages where seeding has occurred to monitor vegetation by recording the percent by cover of vertical projection of vegetation types within the plot frame. The goal of vegetation monitoring will be to allow a means for monitoring reseeding success. Permanent locations of monitoring plots will be determined before revegetation begins and submitted for Service review and approval.
- Transects for line intercept monitoring of shrub aerial cover will be placed along the N. Fork in the 5-acre mitigation area to ensure a 60% aerial cover is achieved via regrowth or planting.
- Throughout the term length of this HCP the USFWS may access the property with County Staff to visit and inspect the mitigation effort and insure compliance with the HCP.

G. Criteria for Measurable Success

Success will be achieved when:

- Upland re-seeded areas are greater than 60% native forb and graminoid species.
- Shrub total aerial cover in mitigated areas will be 60%.
- Planted shrubs have a 60% survival rate after the first year. If there is greater than a 40% loss in the first year, additional shrubs will be planted.

H. Unforeseeable Events

Should changes to the environmental baseline in the case of a natural event, such as a flood or fire, occur to this property, Larimer County Parks and Open Lands Department will continue mitigation efforts until success criteria have been achieved. This may include measure such as replanting vegetation from initial mitigation efforts lost to flood or fire prior to achieving the determined success level. Should other unforeseen circumstances occur that prevent us from achieving the accepted success criteria within the time agreed upon, Larimer County Parks and Open Lands will negotiate with the USFWS to determine alternate mitigation measures. In the event that other listed species are subsequently found on this property during the term of this HCP, the USFWS will be contacted and appropriate actions to amend this HCP to comply with the ESA will be taken.

I. Amendment Procedure

1. Amendments to Development Plans

Upon written request from the Applicant, local land use regulator agencies (authorized by law to have jurisdiction) may approve amendments to the development plan for the property as long as the amendments do not cause additional disturbance, degradation, destruction, or take of any PMJM or other federally listed threatened or endangered species.

2. Amendments to the HCP

Minor amendments such as routine administrative revisions, changes to the operation and management plan that do not diminish the level or means of mitigation may be necessary. Some examples of minor amendments include property boundary or survey changes, corrections in land ownership, property description, monitoring or reporting protocols, boundaries to the mitigation area, etc. Minor amendments may not cause a net loss of mitigation area, alter the effectiveness of the HCP, or alter the terms of the Proposed Permit. Upon written request of the Applicant, the USFWS is authorized to approve minor amendment to the HCP as long as the amendments do not conflict with the primary purpose of this HCP.

3. All Other Amendments

All other amendments will be considered amendments to the Proposed Permit and will be subject to procedural requirements dictated by federal law.

Bibliography

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EXHIBIT A
Colorado Natural Heritage Program Report

**Colorado Natural Heritage Program
Eagles Nest Open Space Report**

Biodiversity Rank: B3 (High Biodiversity Significance)

The Eagles Nest site supports a globally rare foothills riparian woodland plant community and riparian shrubland plant community.

Protection Urgency Rank: P5 (No threat or special opportunity)

The site is owned by Larimer County and will eventually be opened for public access.

Management Urgency Rank: M2 (No current threats, may need in future)

The site is heavily infested with several exotic and noxious weeds. The North Fork of Poudre River within the site requires restoration for bank stabilization.

Location: Two air miles south of Livermore, CO

U.S.G.S. quadrangle: Livermore Quadrangle

Legal Description: T10N R70W Sections 34: T9N R70W Sections 4,3,9,10

Size: approx. 1,000 acres

Elevation: 5,900 feet to 5,660

General Description: Eagles Nest site is located within the Laramie foothills in Larimer County, Colorado. The area is located within the North Fork of the Poudre River watershed. Steep, rocky outcrops are located on the western portion. A Golden eagle (*Aquila chrysaetos*) and two Prairie falcons (*Falco mexicanus*) were observed utilizing these outcrops. The Colorado Division of Wildlife has documented a Golden eagle nest within the crags estimated at least 100 years old. The vegetated portions of the outcrops are dominated by ponderosa pine (*Pinus ponderosa*), Rocky Mountain juniper (*Juniperus scopulorum*) and Douglas fir (*Pseudotsiga menziesii*) with mountain mahogany (*Cercocarpus montanus*) and waxflower (*Jamesia americana*) and bluebunch wheatgrass (*Pseudoroegneria spicata*). The outcrops are potential habitat for the globally rare Larimer aletes (*Aletes humilis*) and the state rare Rocky Mountain cinquefoil (*Potentilla rupicola*). A cursory search for these plants was performed on August 14, 2001 with negative results. A more thorough search is recommended.

The foothills below the outcrops are dominated by mountain mahogany. The herbaceous understory was once dominated by needle and thread grass (*Stipa comata*), but has now been invaded by cheatgrass (*Bromus tectorum*). The gulleys or drainages throughout the area support stands of skunkbrush (*Rhus trilobata*) with rabbitbrush (*Chrysothamnus nauseosus*) and chokecherry (*Prunus virginiana*). These drainages experienced a flash flood on August 10, 2001. Large debris and sediment deposits were observed during the evaluation. The foothills are interspersed with 'fingers' of grasslands that are dominated by needle and thread grass (*Stipa comata*) with blue grama (*Bouteloua gracilis*). These areas did not have a high cover of weeds (cover was typically less than 20% on the average).

The valley floor or grassland is dominated by cheatgrass (up to 100% cover in places) with western wheatgrass (*Pascopyrum smithii*). The following forbs (1-10% cover) were also documented: snakeweed (*Gutierrezia sarothrae*), fringed sage (*Artemisia frigida*), beeplant (*Cleome serrulata*), native thistle (*Cirsium canescens*), blazing star (*Nuttalia multiflora*), buckwheat (*Eriogonum effusum*), scurf pea (*Psoralidium tenuiflorum*), dalea (*Dalea purpurea*), prickly pear cactus (*Opuntia polyacantha*), ball cactus (*Pediocactus simpsonii*), and wild tarragon (*Oligosporus dracunculus*).

The North Fork of the Poudre River has remnant stands of narrowleaf and plains cottonwood (*Populus angustifolia* and *Populus deltoides* ssp. *monilifera*) with peachleaf willow (*Salix amygdaloides*) and sandbar willow (*Salix exigua*). The hydrology has been altered by a dam located upstream. Additionally, there has been grazing pressure on the riparian area for the past 100 years that has resulted in low cover of woody vegetation and bank destabilization.

Weeds documented within this site include: dalmation toadflax (*Linaria dalmatica*), houndstongue (*Cynoglossum officinale*), leafy spurge (*Euphorbia esula*), mullein (*Verbascum thapsus*), musk thistle (*Cardus nutans*) and cheatgrass (*Bromus tectorum*).

Biodiversity Rank Justification: The Eagles Nest site supports a good occurrence of the only known or documented occurrence of a globally rare (less than 20 documented global occurrences) foothills riparian woodland community in Larimer County and a fair occurrence of the only known or documented occurrence of a globally rare (less than 20 documented global occurrences) riparian shrubland known along the eastern slope of Colorado and within Larimer County.

Natural Heritage elements at the Eagles Nest site.

Element	Common Name	Global Rank	State Rank	Federal Status	State Status	Federal Sens.	*EO Rank
<i>Populus angustifolia/Salix irrota</i>	Foothills riparian forest	G2?	S2				B (Good)
<i>Rhus trilobata</i>	Riparian shrubland	G2	S2				C (Fair)

*EO = Element Occurrence

EXHIBIT B
Grazing Plan for Eagle's Nest Open Space

EXHIBIT B: Grazing Plan for Eagle's Nest Open Space

Larimer County Parks and Open Lands has developed a grazing policy for implementing grazing leases on selected properties managed by Parks and Open Lands. Grazing will be utilized as a management tool where it complements other resources (fire hazard reduction, selected plant species enhancement and weed control), is an historic use that maintains an ongoing tradition and is an economic factor in the community.

The policy culminates in a grazing lease document that will provide the flexibility to be applied to a variety of properties with provisions designed to address the predominant management focus. Natural resource protection will always be the dominant value, but other issues, such as public access and recreation may shape each lease.

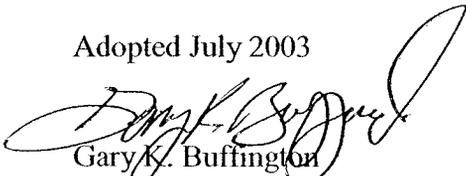
Tied to the grazing lease will be an annual grazing plan drafted in conjunction with the grazing tenant. The grazing plan will establish such components as stocking rates, season of use, pasture rotation and duration of use in each grazing unit.

Parks and Open Lands will establish grazing levels based on recommendations by the Natural Resource Conservation Service (NRCS). When properties are identified as potential grazing areas the NRCS will evaluate the average forage production, calculate the lower-end, optimum annual Animal Unit Equivalent (AUE) capacity, determine a rest duration schedule based on the types of grasses and soils, and suggest a rotation timetable.

The NRCS founds the capacity level on a 50% utilization of the available forage for an average year. The remaining 50% are allocated to wildlife use, soil stabilization and trampling. Parks and Open Lands then adjusts the capacity and other components according to intensity of management, precipitation, kind of livestock, and facility placement (i.e. fence location). Season of use and pasture availability may also depend on wildlife utilization patterns and seasons, recreation concentration, and historic dry and wet seasons. Additionally, environmentally sensitive areas may be seasonally eliminated from grazing, eliminated altogether from grazing, or possible impacts may be mitigated by other methods. Priority will be given to protecting water sources, water quality and associated riparian vegetation.

County revenue from grazing is not a factor driving grazing policy. However, economic viability for the tenant is necessary for the program to function, and may require flexibility in pasture management and augmentation through support facilities and practices. The natural resource cost benefit will be evaluated annually to determine desirability of continued grazing.

Adopted July 2003



Gary K. Buffington
Director, Larimer County Parks and Open Lands

**2003/2004 GRAZING PLAN
EAGLE'S NEST OPEN SPACE**

1. Introduction

The 2004 Grazing Plan (Grazing Plan) establishes a prescription for grazing on the Larimer County property known as Eagle's Nest Open Space (Property) from November 1, 2003 to December 31, 2004. The Grazing Plan shall be jointly drafted by Larimer County Parks and Open Lands (Landlord) and the Tenant named in the Grazing Lease Agreement for the Property. Both Landlord and Tenant agree to implement grazing management according to the Grazing Plan by their signatures on the Grazing Lease Agreement.

The goal, objectives and implementation of the Grazing Plan shall be guided by the Resource and Implementation Plan for Eagle's Nest Open Space (November 2002), recommendations by the Natural Resources Conservation Service (NRCS), the Grazing Lease Agreement, and the Larimer County Parks and Open Lands Regulations.

2. Goal

To preserve and maintain native plant communities, protect rare plant and wildlife species, and restore native vegetation in suitable areas.

3. Objective

Use managed grazing to promote vegetative health and vigor, and reduce fire danger.

4. Existing Conditions

- a. The Property is approximately 755 acres (approximately 585 acres of grazing land).
- b. There are currently 4 pastures:
 - North Pasture-105 acres
 - North Middle Pasture-180 acres
 - South Middle Pasture-140 acres
 - South Pasture-160 acres
- c. Fences (See map, Exhibit A, for pasture and property fences, and gate locations)
- d. Corrals: There is a working corral at the north end of the South Middle Pasture.
- e. Sheds: There are three loafing sheds in the bottom of the main drainage north of the river in the South Pasture.
- f. Water (See map Exhibit A, for locations)
 - The North Pasture has a small water detention area in a drainage for wet season stock watering.
 - The North Middle Pasture has a one primary, year-round spring and several seasonal springs. There is a primary spring just off the Property that might serve this pasture.
 - The South Middle Pasture has a primary, year-round spring and stock watering access on the North Fork of the Poudre River.
 - The South Pasture has stock watering access on the North Fork of the Poudre River.

- g. Forage: In 2002 the NRCS evaluated the soils and vegetation, and estimated average annual useable forage production for the Property at 239,714 lbs., which would support 195 AUMs (Animal Unit Months-see Exhibit C) in an average year.

5. Facilities Management Steps For 2003

- a. Fences
- Landlord shall schedule immediate and long-term fence repairs recommended by the Tenant.
 - The Landlord shall construct a fence, according to Provisions stated in Subsection 24.e. of the Contract to Buy and Sell Real Estate dated December 26, 2000, at the northeast corner of the Middle Pasture to create a barrier to livestock between the Property and the Tenant's private property.
 - In the northeast corner of the Middle Pasture the Landlord shall construct a fence around the trailhead facilities and trailhead parking area to exclude livestock grazing.
 - Landlord shall present to the Tenant plans to construct fences in 2003 for the purpose of keeping livestock out of the North Fork of the Poudre River riparian corridor. Access points will be located at appropriate points for livestock watering. This fence will create two pastures, the South Middle Pasture and the South Pasture, from the previous configuration of the South Pasture, and on November 1, 2003 grazing rotation will reflect utilization of the additional pasture.
- b. Corral
- In order to more effectively separate grazing and recreation use of the Property the Landlord shall relocate the existing corral approximately ¼ mile north of the current location. Tenant shall have an opportunity to recommend design changes to the corral.
 - The corral will be designed to function as a supplemental feeding location.
 - The Landlord shall develop a year-round, frost-free watering system for the corral and the two adjacent pastures.
 - The Landlord shall relocated the fence dividing the North and South Middle Pastures to intersect the corral to provide livestock access from either or both pastures.
- c. Sheds
- The Landlord shall eliminate the three loafing sheds in the South Pasture. If the Tenant prefers one of the three sheds shall be moved to a location adjacent to the corral.
 - If the Tenant prefers a pen shall be constructed by the Landlord outside the shed and connected to the corral.
- d. Water Development
- Landlord shall present to the Tenant plans for developing a spring in the northwest quarter of Section 3 with an associated water pipeline to a year-round, frost-free livestock watering tank at the corral.
 - Livestock watering shall be accessible at the corral, and from the North and South Middle Pastures.

6. Facilities Management Steps For 2004

a. Fences

- Landlord shall schedule immediate and long-term fence repairs recommended by the Tenant.

7. Pasture Management Steps For 2003

a. The NRCS prescribed number of AUMs for a 14-month period in a normal year is 228 AUMs. The Landlord will allow up to 240 AUMs during the 14-month period of this Grazing Plan to accommodate the transition from private management to County management. However, due to the severe, negative impact of two years of drought on forage health and production, close monitoring of the forage will be necessary through the end of 2003 and throughout 2004. The Landlord reserves the right to increase or decrease the number of AUMs, depending on the forage conditions.

- An analysis of the forage utilization in 2003 and 2004, and on the amount of precipitation before December 31, 2003, will determine allowed AUMs for the 2005 grazing season.
- The NRCS recommends 30 days of continuous rest between use of each pasture from September 1st to July 1st. Pastures grazed between July 1st and September 1st will be rested for 60 days between use.

b. Supplemental feeding of livestock shall only be permitted in the corral. The locations and the manner of containment for salt, minerals and concentrated protein in block form placed on the Property shall be agreed upon by the Tenant and the Landlord, and locations shall be noted on the attached map (Exhibit A).

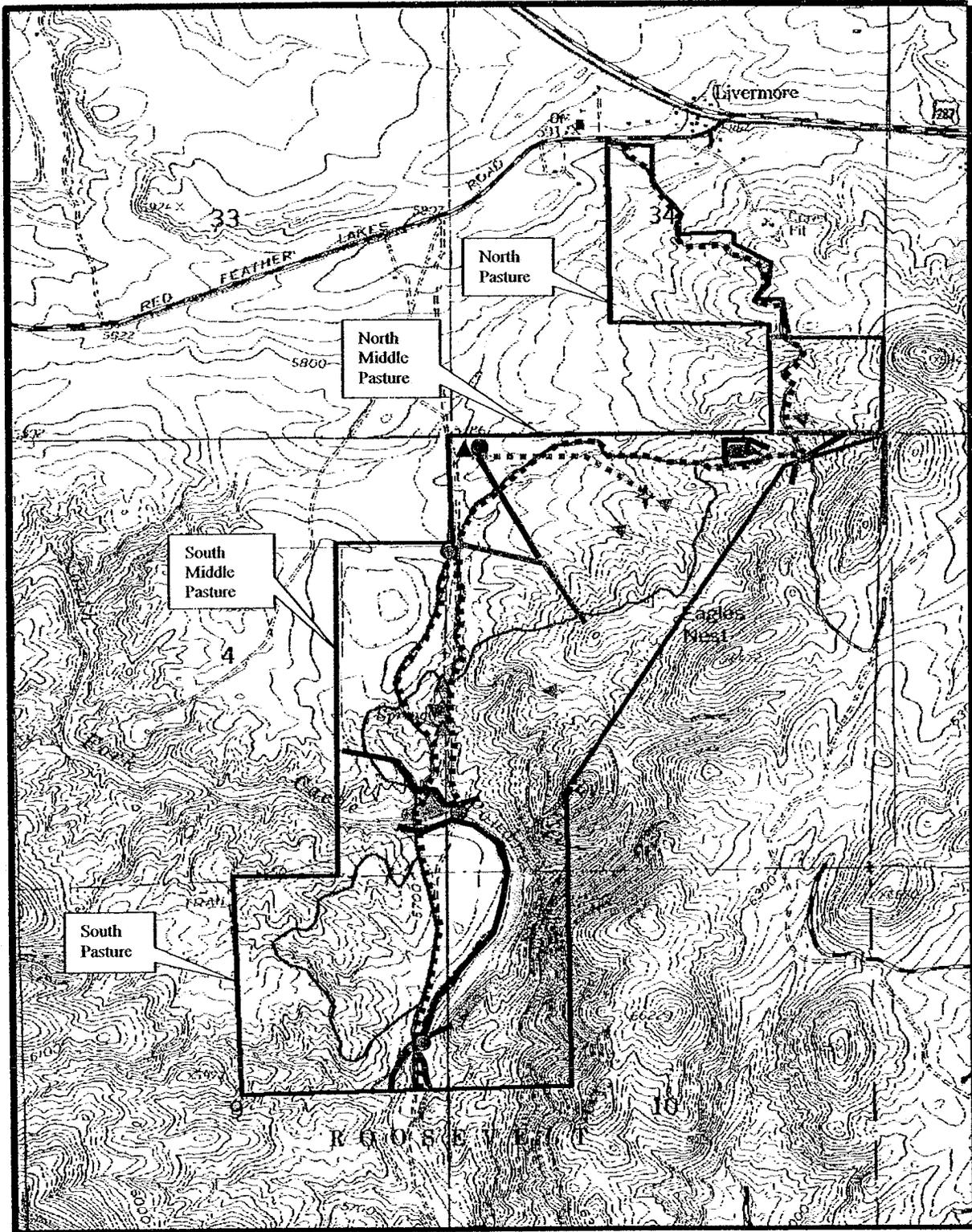
c. A grazing schedule shall depend on the Tenant's intended number and class of livestock to be grazed and the period of grazing. The Landlord gives the following example of a grazing schedule for November 1, 2003 through December 31, 2004:

Pasture	Date In	Livestock # & Class	Date Out	Moved to?	AUMs
South	11/1/03	20 pairs or 22 cows	12/1/03	S. Middle	20
S. Middle	12/1/03	20 pairs or 22 cows	2/1/04	N. Middle	40
N. Middle	2/1/04	20 pairs or 22 cows	4/1/04	Home	40
South	6/1/04	20 pairs or 22 cows	7/1/04	North	20
North	7/1/04	20 pairs or 22 cows	8/1/04	N. Middle	20
N. Middle	8/1/04	20 pairs or 22 cows	9/1/04	S. Middle	20
S. Middle	9/1/04	20 pairs or 22 cows	10/1/04	North	20
North	10/1/04	20 pairs or 22 cows	11/1/04	South	20
South	11/1/04	20 pairs or 22 cows	12/1/04	S. Middle	20
S. Middle	12/1/04	20 pairs or 22 cows	12/31/04	See 2005 Plan	20
				TOTAL AUMs	240

8. Grazing Fees

Tenant shall pay the Landlord grazing fees in the amount of \$8.91 per AUM. If the Tenant grazes the Property at the prescribed level of 240 AUMs the total amount due for 2003/2004 would be \$2138.84. One-third of that amount, or \$712.80, would be due by December 31, 2003, and the balance would be due on the later of December 31, 2004 or 30 days after the Tenant receives the Final Accounting from the Landlord. Tenant shall receive a Bill for Collection 30 days prior to each date on which grazing fees are due.

Eagle's Nest Open Space Grazing Plan Map



- | | | | |
|----------------------------|------------------------|----------------------------------|--|
| Existing Pasture Fences | Springs and Catchments | Existing Sheds | |
| Fences Construction. 2003 | Spring Development | Proposed Shed Relocation | |
| Existing Corral | Water Pipeline | Trail Head & Trail | |
| Proposed Corral Relocation | Water Gaps | Ranch Roads | |
| | | Eagle's Nest Open Space Boundary | |

EXHIBIT C
Colorado Historical Society
Colorado Inventory of Cultural Resources

July 28, 2003

Ms. Meegan Flenniken
Open Lands Resource Specialist
Parks and Open Lands Department
Larimer County
Administrative Offices
1800 S. County Rd 31
Loveland, CO 80537
mflenniken@larimer.org

Dear Ms. Flenniken:

Enclosed is a report on the archaeological reconnaissance that I conducted on the Eagle's Nest Open Space, located near Livermore, CO.

If you have any further questions, please feel free to contact me.

Sincerely,

Jeffrey L. Eighmy
Professor
jeff.eighmy@colostate.edu

*Archaeological Survey
Of the
Eagle's Nest Open Space,
Larimer County, CO*

**By Jeffrey L. Eighmy
Archaeologist
Department of Anthropology, CSU, Ft. Collins, CO 80523**

On Tuesday, July 16th, 2002, I conducted a surface archaeological survey of the upland portions of the Eagle's Nest Open Space, located near Livermore, CO southwest of the junction of Colorado Highway 287 and the Red Feathers Road. The main purpose of the survey was to give the staff of the Parks and Open Lands Department some idea of potential archaeological resources located on the property. The Parks and Open Lands Department was interested in this information for two reasons. The Department wanted to avoid adverse impact on important cultural resources if they existed on the property and the Department might want to develop interpretative initiatives associated with historic and prehistoric remains that might exist on the property.

The results of the survey of this property are as follows:

1. The North Fork of the Poudre River runs through the property; so, undoubtedly, there has been prehistoric use of the area. Our survey efforts concentrated on the upland areas, away from the North Fork. Ground cover along the creek was heavy and the Parks and Open Lands Department is mainly interested in uplands areas where it intends to direct public access to the property. We (Jerry White and Meegan Flenniken of P&OL Department, and myself) conducted an irregular walking survey over the hills west of the North Fork. (The area covered was within a box defined by a NW corner at UTM 13478536E; 134512605N and a SE corner at 134509577N; 13480019E) Using "site pattern recognition", we investigated the most likely spots for prehistoric use, concentrating our attention on any exposed areas. No prehistoric occupation prior to 19th and 20th century ranching activity was noted during this casual survey.
2. We talked to the previous landowner, Robert Avis, and to the Eagle's Nest Ranch ranch manager, Gail Wares. Neither was aware of any significant, prehistoric resources (like lithic scatters or tipi rings) on the property.
3. On a low terrace on the west side of the North Fork, we were able to relocate the foundation of a 19th/20th century structure. Based on the presence of numerous historic artifacts associated with ranching and farming, the structure is probably part of an early ranch. I believe it is part of the Peters Ranch which established in 1896. At a location approximately 100 meters to the north of this foundation, the Livermore Women's Club 1896 has erected a small marker commemorating this early ranch since it was the location of the first meeting of the Livermore Women's Club. Parks and Open Land Department

personnel are aware of at least one other homestead, the Nauta Homestead, on this property, of which remains only a small concrete piece of foundation.

Recommendation

The survey of the upland areas to the west of the North Fork did not locate any prehistoric occupations or isolated cultural artifacts. I recommend that the Parks and Open Lands Department continue with its plans to open the area up to recreational use by the public. I do not think that a more thorough and systematic survey will locate any significant prehistoric resources (beyond a few isolated finds) in the area. However, careful monitoring should accompany ground-disturbing activities (like trail building). The Peters Homestead should be protected and it could provide an interesting interpretative focus for public education on the early ranching activities in the Livermore area.

**COLORADO HISTORICAL SOCIETY
Office of Archaeology and Historic Preservation
1300 Broadway Denver, Colorado 80203**

28 October, 2002

Meegan Flenniken
Larimer County Parks and Open Lands Department
1800 South County Rd. 31
Loveland, CO 80537

At your request, the office of Archaeology and Historic Preservation has conducted a search of the Colorado Inventory of Cultural Resources for the following locations:

PM	TOWNSHIP	RANGE	SECTION	
6 th	10N	70W	34	
6 th	9N	70W	3	
6 th	9N	70W	E SE 4 and SE NE 4	
6 th	9N	70W	NE 9	
6 th	9N	70W	W NW 10	From map provided.

No site(s) and 3 survey(s) were located in the designated area(s).

If information on sites in the project area was found, detailed information follows the summary. If no sites or districts were found, but surveys are known to have been conducted in the project area, survey information follows the summary. We do not have complete information on surveys conducted in Colorado, and our site files cannot be considered complete because most of the state has not been surveyed for cultural resources. There is the possibility that as yet unidentified cultural resources exist within the proposed impact area.

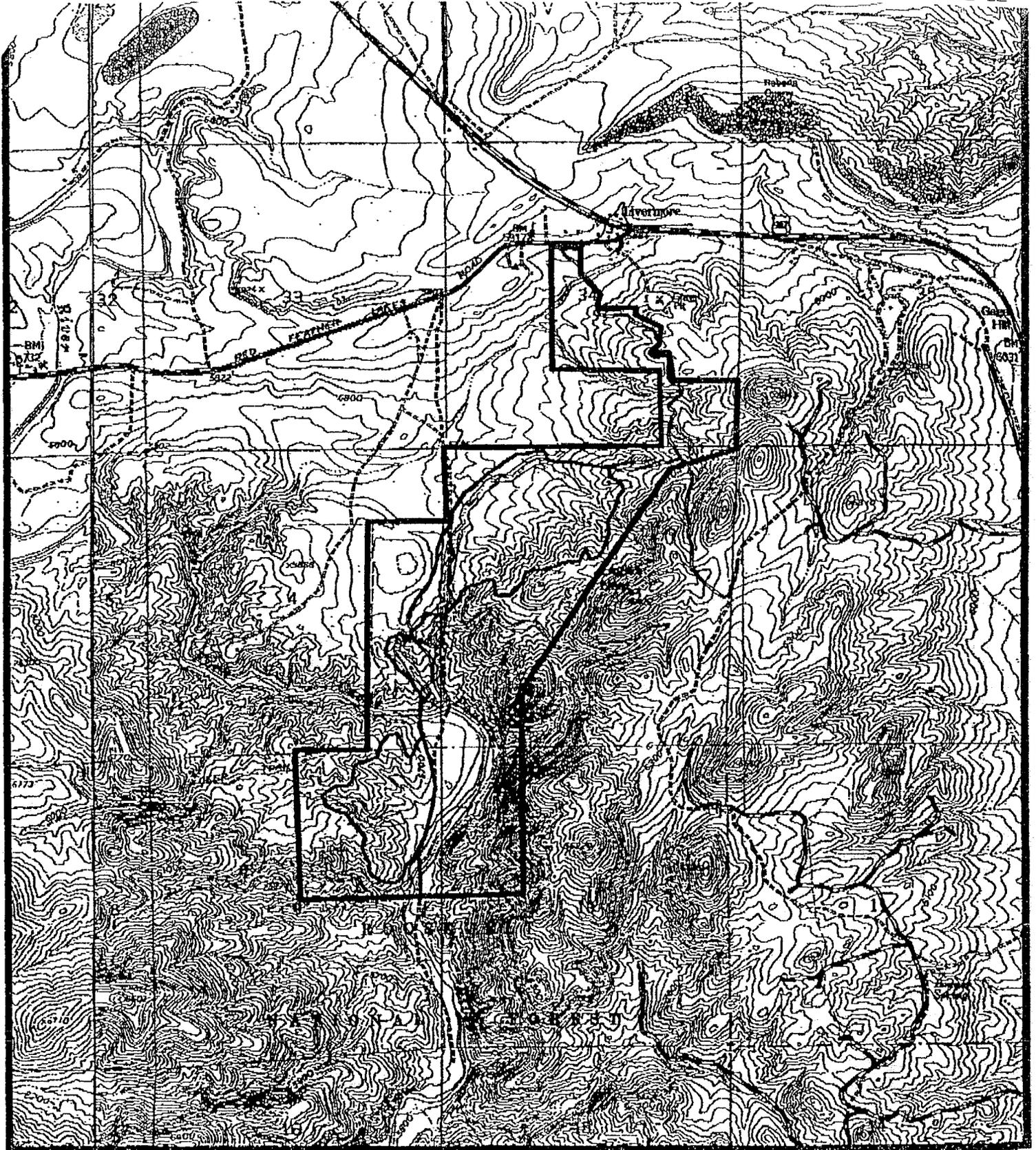
Therefore, in the event there is Federal or State involvement, we recommend that a professional survey be conducted to identify any cultural resources in the project area which are eligible to be listed in the National Register of Historic Places. We look forward to consulting with you regarding the effect of the proposed project on any eligible cultural resource in accordance with the Advisory Council on Historic Preservation Procedures and the Preservation and Protection of Historic and Cultural Resources (36 CFR 8). Please provide this office with the results of the cultural resource survey for our review of professional adequacy and compliance with regulations.

If you have any questions, please contact the Office of Archaeology and Historic Preservation at (303) 866-3395 or 3392.

Thank you for your interest in Colorado's cultural heritage.

Susan M. Collins
Deputy State Historic Preservation Officer for Archaeology

*Information regarding significant archaeological resources is excluded from the Freedom of Information Act. Therefore, legal locations of these resources must not be included in documents for public distribution.

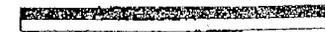


**Figure 3:
Eagle's Nest
Open Space
Management Map**

-  Eagle's Nest Open Space
-  Eagle's Nest Trail System
-  Roads
-  Trailhead/Parking Area
-  Riparian Areas
-  River Recreation Site
-  Golden Eagle Nest Site



0 0.7 Miles



COLORADO HISTORICAL SOCIETY
OFFICE OF ARCHAEOLOGY AND HISTORIC PRESERVATION
SURVEY REPORT

SURVEY ID: LR.CM.R2

SURVEY NAME: 120 ACRES AND ACCESS NEAR LIVERMORE, COLORADO

PROCEDURE: LINEAR (APPROX. 1340 METERS) AND ONE BLOCK

COUNTY: Larimer

LEAD AGENCY: Division of Minerals & Geology (Mined Land Reclamation)

INSTITUTION: Paragon Archaeological Consultants, Inc.

AUTHOR: VELASQUEZ, STEPHANIE G

DOCUMENT: A CLASS III CULTURAL RESOURCE SURVEY OF 120 ACRES & ACCESS NEAR LIVERMORE,
COLORADO *→ means walked entire area*

<u>METHOD</u>	<u>COMPLETED</u>	<u>TOTAL ACRES</u>
CLASS III	03/03/1998	
<u>REMARKS</u>		
TWO NEWLY RECORDED PREHISTORIC ISOLATED FINDS		156.000
<u>SITE(S) IF(S)</u>		
0 2		

→ found in the area but not on EN

*** LOCATION INFORMATION ***

MAPS

LIVERMORE

<u>P.M.</u>	<u>TWNSHP</u>	<u>RANGE</u>	<u>SEC</u>	
6TH	T10N	R70W	S26	S SW
6TH	T10N	R70W	S27	SE SE
6TH	T10N	R70W	S34	E NE NW NW
	N NW	NE NW		
	E NE	NW		
<u>UTM</u>				

COLORADO HISTORICAL SOCIETY
OFFICE OF ARCHAEOLOGY AND HISTORIC PRESERVATION
SURVEY REPORT

SURVEY ID: LR.E.R2
SURVEY NAME: CULTURAL RESOURCE INVESTIGATIONS--IN STAGE ONE AREAS OF THE BASIN STUDY
EXTENSION, CACHE LA POUFRE WATER AND POWER PROJECT, LARIMER COUNTY, COLORADO
PROCEDURE: LARGE BLOCK

COUNTY: Larimer
LEAD AGENCY: Department of Energy
INSTITUTION: Centennial Archaeology

AUTHOR: GRANT, MARCUS P., CHRISTIAN J.
ZIER AND ROBERT G. ROSENBERG

DOCUMENT: CULTURAL RESOURCE INVESTIGATIONS IN STAGE ONE AREAS OF THE BASIN STUDY
EXTENSION, CACHE LA POUFRE WATER AND POWER PROJECT, LARIMER COUNTY, COLORADO

<u>METHOD</u>	<u>COMPLETED</u>
CLASS III	10/06/1987
	02/01/2002

<u>REMARKS</u>	<u>TOTAL ACRES</u>
10 NEWLY RECORDED PREHISTORIC SITES, 20 NEWLY RECORDED HISTORIC SITES, 18 PREHISTORIC IFS TCM	6390.000
<u>SITE(S) IF(S)</u>	
30 18	

*** LOCATION INFORMATION ***

MAPS

LIVERMORE
POUDRE PARK
LAPORTE

P.M.	TWN	RANGE	SEC	CORNER
6TH	T9N	R70W	S9	SE
6TH	T9N	R70W	S10	SW
6TH	T9N	R70W	S15	NW
W SW				
6TH	T9N	R70W	S16	E
6TH	T9N	R70W	S21	
6TH	T9N	R70W	S22	SW
6TH	T9N	R70W	S27	NW
6TH	T9N	R70W	S28	
6TH	T9N	R70W	S29	E
6TH	T9N	R70W	S31	S
6TH	T9N	R70W	S32	
6TH	T9N	R70W	S33	
6TH	T9N	R70W	S34	W
6TH	T8N	R70W	S3	W SW SW
6TH	T8N	R70W	S4	
6TH	T8N	R70W	S5	
6TH	T8N	R70W	S6	
6TH	T8N	R71W	S1	
6TH	T8N	R71W	S8	E EDGE E

COLORADO HISTORICAL SOCIETY
OFFICE OF ARCHAEOLOGY AND HISTORIC PRESERVATION
SURVEY REPORT

6TH T8N R71W S9
6TH T8N R71W S10 W EDGE
6TH T8N R71W S16 N

UTM

13;4 80 613ME; 45 12 072MN
13;4 81 063ME; 45 12 108MN
13;4 81 387ME; 45 10 974MN
13;4 81 639ME; 45 05 686MN
13;4 80 398ME; 45 01 710MN
13;4 79 282ME; 45 01 764MN
13;4 78 761ME; 45 03 851MN
13;4 74 911ME; 45 03 563MN
13;4 74 569ME; 45 04 067MN
13;4 74 821ME; 45 04 462MN
13;4 76 440ME; 45 05 794MN
13;4 78 527ME; 45 07 197MN
13;4 79 642ME; 45 11 082MN
13;4 80 613ME; 45 12 090MN

COLORADO HISTORICAL SOCIETY
OFFICE OF ARCHAEOLOGY AND HISTORIC PRESERVATION
SURVEY REPORT

SURVEY ID: LR.FS.R52SURVEY NAME: GREYROCK GRAZING ALLOTMENTPROCEDURE: BLOCKCOUNTY: LarimerLEAD AGENCY: Department of Housing and Urban Development - Denver
Arapaho & Roosevelt National ForestsINSTITUTION: Medicine Bow Arapaho Roosevelt Routt National ForestsAUTHOR: WILLARD, PAULDOCUMENT: A CLASS II CULTURAL RESOURCE INVENTORY FOR THE GREYROCK GRAZING ALLOTMENT

<u>METHOD</u>	<u>COMPLETED</u>	
CLASS II	07/09/1997	
<u>REMARKS</u>		<u>TOTAL ACRES</u>
		202.000

SITE(S) IF(S)

1 1

*** LOCATION INFORMATION ***MAPS

POUDRE PARK

LAPORTE

LIVERMORE

LIVERMORE MOUNTAIN

P.M.	TWN	RANG	SEC
6TH	T8N	R71W	S1
6TH	T8N	R70W	S6
6TH	T9N	R71W	S12
6TH	T9N	R71W	S13
6TH	T9N	R71W	S24
6TH	T9N	R71W	S25
6TH	T9N	R71	S36
6TH	T9N	R70W	S7
6TH	T9N	R70W	S8
6TH	T9N	R70W	S9
6TH	T9N	R70W	S10
6TH	T9N	R70W	S14
6TH	T9N	R70W	S14
6TH	T9N	R70W	S15
6TH	T9N	R70W	S15
6TH	T9N	R70W	S16
6TH	T9N	R70W	S17
6TH	T9N	R70W	S18
6TH	T9N	R70W	S19
6TH	T9N	R70W	S20
6TH	T9N	R70W	S21
6TH	T9N	R70W	S22
6TH	T9N	R70W	S23

FILE: SURVEY LIST: LKENNEDY.MEEGAN.SY

COLORADO HISTORICAL SOCIETY
OFFICE OF ARCHAEOLOGY AND HISTORIC PRESERVATION
SURVEY REPORT

6TH	T9N	R70W	S28
6TH	T9N	R70W	S29
6TH	T9N	R70W	S30
6TH	T9N	R70W	S31
6TH	T9N	R70W	S32
6TH	T9N	R70W	S33

UTM

EXHIBIT D
Colorado Division of Wildlife Letter

STATE OF COLORADO
Bill Owens, Governor
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WILDLIFE

AN EQUAL OPPORTUNITY EMPLOYER
Russell George, Director
6060 Broadway
Denver, Colorado 80216
Telephone: (303) 297-1192

Gerald R. Craig
317 W. Prospect
Fort Collins, Colorado 80526
Telephone: (970) 472-4307 FAX: (970)472-4457



May 1, 2003

Meegan Flenniken
Larimer County
Parks and Open Lands
1800 S. County Rd. 31
Loveland, CO 80537

Dear Meegan:

As you are aware, I served as member of the technical advisory committee for the management plan for Eagle's Nest Open Space. Following a field visit to the open space in 2002, I provided recommendations for placement of the trailhead, trail and picnic area to minimize impacts to nesting golden eagles. In particular, I believe the trail location and closure of the picnic area during the most sensitive nesting period should minimize any adverse impacts to the eagles. I understand that these recommendations have been incorporated into the final management plan.

The Eagle's Nest Open Space had been proposed for 35-acre development. If it were not for the protection of this site as open space, the long-term protection of the nesting golden eagles and other wildlife in this area would be at risk. Although these protective measures are minimal distances, they can easily be amended as required in the future.

My experience in working with Larimer County Parks and Open Lands Department is that good education, patrol and management are key in efforts in balancing recreation with wildlife protection. The Division of Wildlife supports Larimer County's efforts in land protection and provision of a quality outdoor experience for visitors while maintaining the integrity of the local ecosystem.

Sincerely,

A handwritten signature in cursive script that reads "Jerry Craig".

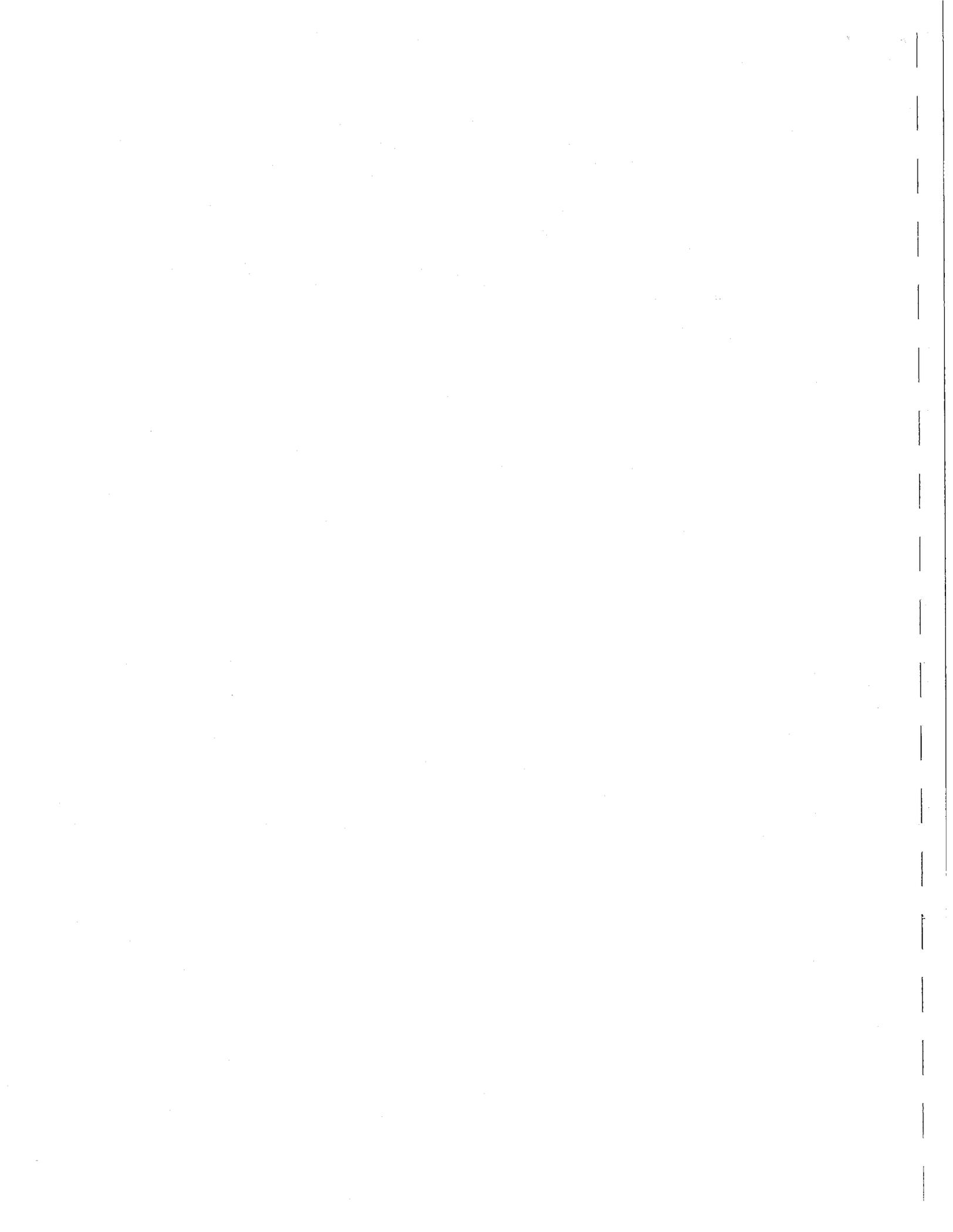
Gerald R. Craig
State Raptor Biologist

EXHIBIT E
Native Seed Mix for Eagle's Nest Open Space

The following native seed mix for ENOS was developed in partnership with the Natural Resources Conservation Service, located out of the Ft. Collins office. The prescribed seeding rate is 50# per acre.

Plant Species	Percent Composition in Seed Mix
Big Bluestem	10
Blue Grama	10
Bluebunch Wheatgrass	10
Indian Ricegrass	10
Little Bluestem	10
Sheep Fescue	10
Sideoats Grama	10
Slender Wheatgrass	10
Thickspike Wheatgrass	10
Western Wheatgrass	10

EXHIBIT F
Deed Restriction for Eagle's Nest Open Space



DRAFT

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS**
Eagle's Nest Open Space

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

RECITALS

A. Larimer County, Colorado ("Declarant") is the fee simple title holder of that specific parcel of real property located in Larimer County, Colorado, consisting of approximately 755 acres, legally described on Exhibit A attached hereto and incorporated herein by this reference (the "Property").

B. Declarant intends to subject the Property to this Declaration of Covenants, Conditions and Restrictions (the "Declaration") to preserve and protect in perpetuity the natural, scenic, agricultural, open space, wildlife habitat, and passive outdoor recreational values (collectively the "Conservation Values") of the Property, which are of great importance to the area residents, the people of Larimer County, and the people of the State of Colorado. In particular, the Property provides protection for: 1) important wildlife habitat; 2) native plant communities; 3) rare and imperiled species including the federally listed Preble's meadow jumping mouse ("Mouse"); 4) one mile of an undeveloped portion of the North Fork of the Poudre River; and 5) vistas of a virtually unaltered landscape.

C. Declarant will hereinafter convey the Property subject to this Declaration.

D. The Property is part of the Laramie Foothills, an important natural resource area identified in the 2001 Larimer County Open Lands Master Plan. Declarant intends to operate and manage the Property as stated herein consistent with the protection of the Conservation Values of the Property.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held and (if all or any part is sold in the future) conveyed subject to the following covenants, conditions, restrictions, uses, and obligations, all of which are declared and agreed to be burdens running with the land for the protection of the Conservation Values of the Property.

1. *Purpose.* The purpose of this Declaration is to preserve and protect in perpetuity the Conservation Values of the Property and to implement the Deed restrictions. It is acknowledged

and agreed that active recreational uses of the Property, including but not limited to playgrounds, ball fields, golf courses, and motorized vehicular uses are inconsistent with the Conservation Values. It is further acknowledged that passive recreational uses of the Property identified herein or approved in the Approved Land Management Plan (defined below) may be consistent with the Conservation Values of the Property. An additional purpose of this declaration is to in part preserve the property as habitat for the Mouse, as described in the Environmental Assessment/Habitat Conservation Plan with the US Fish and Wildlife Service, but to also permit the open space uses intended by the County.

2. ***Prohibited Acts.*** Declarant shall not perform, nor allow others over whom they have reasonable means of control to perform, any act on or affecting the Property that is inconsistent with the covenants below. In consideration of the State Board of the Great Outdoors Colorado Trust Fund (the "Board") providing a grant to assist Declarant in its acquisition of the Property and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, Declarant hereby authorizes the Board and the Legacy Land Trust, a Colorado non-profit corporation ("Land Trust") to enforce this Declaration in the manner described below. Declarant, Land Trust and the Board understand and agree that nothing in this Declaration relieves or replaces any obligation or restriction on the use of the Property imposed by applicable law.

3. ***Approved Land Management Plan.*** The Property shall be operated and managed in accordance with the *Resource Management Plan for Eagle's Nest Open Space* prepared by Declarant, approved by the Board and Land Trust, and subsequently adopted by Declarant. Such plan shall be designated the "Approved Management Plan" and shall be updated every ten years and submitted to Land Trust and the Board for approval as set forth herein. Pursuant to Paragraph 4 below, Declarant shall submit to both the Board and Land Trust the proposed updated land management plan for their review. The Land Trust shall review the proposed land management plan and make recommendations to the Board, which shall have authority to approve or disapprove the proposed land management plan. The Board's review of the proposed land management plan shall be limited to a determination of whether the proposed land management plan would have a material adverse impact on the Conservation Values. If the Board, after consultation with Land Trust and Declarant, determines that an item contained in the proposed land management plan would have a material adverse impact on the Conservation Values, the Board shall notify Declarant of its determination and thereafter Declarant shall revise the proposed land management plan in accordance with the Board's action. Declarant shall conduct an internal review of the Approved Land Management Plan every five years and provide the Board and the Land Trust with a copy of any modification as a result of such review.

4. ***Approval Process for Permitted Actions.*** Declarant is not required to notify the Board or obtain the Board's permission before taking actions permitted under this Declaration except where this Declaration specifies that Declarant must obtain the Board's permission. In those circumstances where this Declaration specifies that the Board's permission is required, Declarant shall notify the Board in writing to seek such permission. The Board shall have 45 days to

review and comment on any submittal made by Declarant under this Declaration (or to request additional information prior to issuing a more formal response). If the Board fails to respond to the submittal within the 45-day period, the submittal shall be deemed approved. If the Board requests additional information within the initial 45-day period, Declarant shall endeavor to provide the requested information in a timely fashion. Upon receipt of the requested information, the Board shall thereafter have an additional 30 days to respond to the submittal. If the Board fails to respond within the additional 30-day period, the submittal shall be deemed approved.

5. **Restrictions.** In the event the construction or reconstruction of a building, structure or other improvement is expressly authorized hereunder or under the Approved Land Management Plan, then the prior written consent of Land Trust and the Board shall not be required before such construction or reconstruction, although the Board and the Land Trust shall be notified in advance of the construction or reconstruction in order to update their records. Declarant shall provide a copy of its intended capital improvements related to the Property on an annual basis. No further Board approval is required unless the capital improvements are not contemplated by the Approved Land Management Plan. Except as expressly authorized in this Declaration, the Approved Land Management Plan, or the Environmental Assessment/Habitat Conservation Plan, the following restrictions apply to all portions of the Property:

- a. **Construction of Buildings and Other Structures.** The construction or reconstruction of any building or other structure or improvement is prohibited, except: (i) those existing on the date of this Declaration as referenced in the Baseline Inventory (as hereafter defined), so long as there is no material change to the use, location, appearance or size of such building, structure or improvement; (ii) those authorized below, and (iii) those identified on the Approved Land Management Plan.
- b. **Fences.** The construction or reconstruction of fences is prohibited, except that Declarant may repair or replace existing fences (as reflected in the Baseline Inventory) and new fences may be built if needed to protect the Conservation Values of the Property, for purposes of reasonable and customary management of livestock and wildlife, for separation of ownership and uses, and for public trail use and related uses.
- c. **Subdivision.** Any division or subdivision of title to the Property, whether by physical or legal process is prohibited without the prior written approval of the Board and the Land Trust.
- d. **Timber Harvesting.** Trees may be cut to manage the forest, to control fire hazard, to control insects and disease, to control invasive non-native species, to prevent personal injury and property damage, for approved development on the Property, and for other reasons that are consistent with sound forest health and wildlife management practices. Dead trees may be cut and removed for any purpose. Commercial timber harvesting on the Property is prohibited unless done in accordance with a forest management plan specifically designed to ensure good

forest health and fire hazard control and unless the proposed timbering activities are consistent with the Approved Land Management Plan.

e. **Mining.** The mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel, or any other mineral substance is prohibited, except for minimal extraction as may be needed for trail construction and public safety.

f. **Paving and Road and Trail Construction.** Except for the roads, parking areas, trails and similar improvements contained in the Approved Land Management Plan, no portion of the Property shall be paved or otherwise covered with concrete, asphalt, or any other paving material, nor shall any road or trail be constructed on the Property (collectively referred to as "Paving").

g. **Trash.** The dumping or uncontained accumulation of any kind of trash or refuse on the Property by Declarant is prohibited.

h. **Commercial or Industrial Activity.** No commercial or industrial uses shall be allowed on the Property, except for those activities and uses contemplated in the Approved Land Management Plan, provided that such uses do not substantially impair or diminish the Conservation Values of the Property, as determined by the Board.

i. **Water Rights.** Declarant shall not transfer, encumber, lease, sell or otherwise separate water rights necessary and sufficient to maintain and improve the Conservation Values of the Property from title to the Property itself. Declarant shall retain and reserve the right to use water rights sufficient to maintain and improve the Conservation Values of the Property. This paragraph shall not apply to water rights acquired after the date these restrictions go of record.

j. **Signage or Billboards.** The display or placement of commercial signs, billboards, awnings, or advertisements on the Property is prohibited, except for appropriate and customary ranch or pasture identification signs, "for sale" or "for lease" signs alerting the public to the availability of the Property for purchase or lease, "no trespassing" signs, signs informing the public of ownership status, and signs appropriate for public use areas on the Property, including without limitation, trailhead, trail, and environmental education signs, and signs describing regulations applicable to the Property. No signs shall materially adversely affect the Conservation Values of the Property.

6. **Allowed Uses.** The Declarant retains the right to perform any act not specifically prohibited or limited by this Declaration and which is otherwise consistent with the preservation of the Conservation Values of the Property, including but not limited to continued agriculture/farming practices, public use of trails and scenic pullout, granting utility easements where appropriate, and utilizing the area for wildlife habitat.

It is specifically acknowledged and agreed that the work necessary to complete the restoration and enhancement of the Property for Mouse habitat as described in the Habitat Conservation Plan under "Mitigation" is consistent with the purpose of these Restrictive Covenants.

7. **Enforcement.** For purposes of this paragraph, the Board and Land Trust may hereafter be collectively referred to as "Reviewer." The Board and Land Trust, either individually or collectively, shall have the right to enter the Property for the purpose of inspecting for violations. The Board and Land Trust, either individually or collectively, shall have the right to prevent, correct or require correction of violations of the terms and provisions of this Declaration. Activities of the Declarant consistent with the Approved Land Management Plan will not be considered violations. If Reviewer finds what it believes is a violation, either the Board or Land Trust shall immediately notify Declarant in writing of the nature of the alleged violation. Upon receipt of this written notice, Declarant shall either (a) restore the Property to its condition prior to the violation; or (b) provide a written explanation to Reviewer of the reason why the activity is not a violation. If the condition described in clause (b) above occurs, the parties agree to meet as soon as possible to resolve this difference. If a resolution of this difference cannot be achieved at the meeting, the parties may meet with a mutually acceptable mediator to attempt to resolve the dispute. Declarant shall discontinue any activity, which could increase or expand the alleged violation during the mediation process. Should mediation fail to resolve the dispute, the Reviewer may, in its discretion, take appropriate legal or equitable action, including injunctive relief, to stop the alleged violation, temporarily or permanently, or to restore the Property to its condition prior to the alleged violation. In any legal or equitable action, the court may award costs and attorney fees to the prevailing party. Declarant shall not be liable for acts of third parties over whom Declarant has no supervision obligation or reasonable control. When, in Reviewer's opinion, an ongoing or imminent violation could irreversibly diminish or impair the Conservation Values, Reviewer may in its discretion, take appropriate legal action, without first proceeding with the mediation process.

8. **Written Updates.** The Declarant shall provide the Land Trust with an annual written update in draft form for the Land Trust's review. Such update shall be provided to the Land Trust no later than August 31st of each calendar year. After review of the draft update and at the Land Trust's request, but no more frequently than once a year, Declarant will arrange and conduct with the Land Trust a joint inspection of the property for the purpose of monitoring Declarant's compliance with the purposes of this project as funded by the Board, this Declaration and the Approved Management Plan. After said review and joint inspection, if any, the Declarant and the Land Trust shall jointly revise said update to incorporate any changes agreed upon by both parties. The final version of said written update shall be signed by an appropriate official of both the Declarant and the Land Trust verifying that the property is being managed and maintained consistent with the purpose of the project as funded by the Board, the terms of this Declaration, and the Approved Land Management Plan. Declarant shall provide a finalized and executed copy of said annual written update to the Land Trust and the Board.

9. **Baseline Inventory.** The parties acknowledge that an inventory of baseline data (the "Baseline Inventory") relating to the Property will be completed and incorporated into the *Resource Management Plan for the Eagle's Nest Open Space* and furnished by Declarant to the Board and Land Trust. The parties acknowledge that this collection of baseline data contains an accurate representation of the condition of the Property (including but not limited to the improvements located thereon) and the natural resources associated with the Property as of the date of the execution of the Declaration. Notwithstanding the foregoing, in the event of a controversy arising with respect to the nature of the biological and/or physical condition of the Property, the parties shall not be foreclosed from using any and all other relevant or material documents, surveys, reports and other information to assist in the resolution of that controversy.

10. **Costs and Liabilities.** Neither the Board nor the Land Trust shall have any responsibilities or shall bear any costs or liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property. Declarant shall have responsibility for weed control and eradication, and shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Declarant.

11. **Permitted Exceptions.** This Declaration is subject to those interests, easements, covenants and conditions attached hereto as Exhibit B and incorporated herein by this reference, and such other easements as may subsequently be granted by Declarant, which Declarant is hereby expressly authorized to convey, provided that no such easement shall be conveyed if determined by Declarant, the Board or the Land Trust to be inconsistent with the then-approved Land Management Plan, or to substantially impair the Conservation Values of the Property, and subject to the written consent of the Board and the Land Trust, which shall not be unreasonably withheld and which shall be granted or denied within forty-five (45) days of written request for approval.

12. **Notices.** Any notice, demand, request, consent, approval, or communication that a party desires or is required to give shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed to the addresses listed in this Declaration as follows:

If to the Board:

Executive Director
State Board of the Great Outdoors Colorado Trust Fund
1600 Broadway, Suite 1650
Denver, CO 80202

If to Declarant:

Open Lands Manager
Larimer County Parks and Open Lands
1800 South County Road 31
Loveland, CO 80537

If to the Land Trust:

Executive Director
Legacy Land Trust
236 Linden Street
Fort Collins, CO 80524

or to such other address as a party from time to time shall designate by written notice to the other.

13. ***Waiver of Certain Defenses.*** Declarant hereby waives any defense of laches, estoppel, or prescription, including any defenses available under C.R.S. § 38-41-119. In no event shall an action be brought more than two years after the Reviewer knew or should have known of the alleged violation.

14. ***Acts Beyond Declarant's Control.*** Nothing contained in this Declaration shall be construed to entitle the Board or Land Trust to bring any action against Declarant for any injury to or change in the Property resulting from causes beyond Declarant's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Declarant under emergency conditions to prevent, abate, or mitigate significant injury to the Property or immediate threat to public health or safety resulting from such causes.

15. ***Access.*** The general public shall have the access to the Property consistent with Approved Land Management Plan.

16. ***Hold Harmless.*** To the extent permitted by law, and without waiving the defenses and limitations of liability provided by the Colorado Government Immunity Act as now in place or hereafter amended, Declarant shall hold harmless, indemnify, and defend The Board, the Land Trust, and their members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause when the indemnified party performs a duty under this Declaration, unless and only to the extent the negligence or other wrongful conduct of any of the Indemnified Parties was a proximate cause; (2) the obligations specified in Paragraph 10, Cost and Liabilities, herein; and (3) the presence or release of hazardous or toxic substances on, under or about the Property, unless caused or released by the Indemnified Parties. For the purpose of this paragraph, hazardous or toxic substances shall mean any hazardous or toxic substance, which is regulated under any federal, state or local law.

17. **Extinguishment.** If circumstances arise in the future which render the purpose of this Declaration impossible to accomplish, this Declaration may only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. Each party shall promptly notify the other when it first learns of such circumstances, and shall, in addition, notify the State Board of the Great Outdoors Colorado Trust Fund (the "Board") and the Land Trust of such circumstances. The amount of the proceeds to which Declarant shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Colorado law at the time, in accordance with paragraph 18 below. In the event of condemnation or termination, the Board shall be entitled to receive 32% of the net proceeds of condemnation or sale of the Property.

18. **Condemnation.** If the Property is in whole or in part subject to exercise of eminent domain authority or other legal proceedings, or if this Declaration is otherwise terminated by legal proceedings or otherwise, Declarant may enter into an agreement to convey that portion of the Property subject to the same, as reasonably required thereby, and the Board shall be entitled to receive that portion of the net proceeds of condemnation or sale of the Property which is equal to a fraction, the numerator of which is the Board's grant and the denominator of which is the acquisition price for the Property, except those proceeds attributable to improvements located on the Property and constructed subsequent to this Declaration.

19. **Recordation.** Declarant shall record this Declaration in a timely fashion in the records of the Clerk and Recorder of Larimer County, and may re-record it at any time as may be required.

20. **No Merger.** No merger of the provisions of this Declaration with the fee simple title to the Property shall occur now or in the future, unless the signatories to this Declaration and the Board, expressly so state and agree in writing.

21. **Assignment.** This Declaration is transferable, but The Board and Land Trust may assign their rights and obligations under this Declaration 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, (b) authorized to acquire and hold conservation easements under Colorado law, and (c) approved as a transferee by the State Board of the Great Outdoors Colorado Trust Fund. As a condition of such transfer, The Board and Land Trust shall require that the conservation purposes that this grant is intended to advance continue to be carried out. The Board shall have the right to require the Land Trust to assign its rights and obligations under this Declaration to a different organization if the Land Trust ceases to exist or for any reason fails or refuses to enforce the terms and provisions of this Declaration.

22. **Subsequent Transfers.** Declarant agrees to incorporate the terms of this Declaration in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Declarant further agrees to give written notice to the Board and Land Trust of the transfer of any interest at least 20 days prior to

the date of such transfer. The failure of Declarant to perform any act required by this Section shall not impair the validity of this Declaration or limit its enforceability in any way.

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

24. **Successors.** The terms of this Declaration shall be binding upon and inure to the benefit of the parties hereto and their representatives, heirs, successors, and assigns, and shall run with the land in perpetuity.

25. **Amendments.** If the circumstances arise under which an amendment to or modification of this instrument would be appropriate, Declarant, the Board, and the Land Trust 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, including without limitation, C.R.S. §38-30.5-101 et seq. Any amendment must be consistent with the conservation purposes of this instrument and may not affect its perpetual duration. This Declaration may only be amended by a written agreement, which is approved in advance in writing by the Board, and which is signed by the Declarant and the Land Trust, which document is recorded in the records of the Clerk and Recorder of Larimer County.

26. **Severability.** Any provision of this Declaration invalidated in any manner whatsoever shall not be deemed to impair or affect in any manner the validity, enforcement, or effect of the remainder of this Declaration and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

27. **Termination of the Board.** In the event that Article XXVII of the Colorado Constitution, which established the State Board of the Great Outdoors 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 State of Colorado Department of Natural Resources or its successor.

28. **Interpretation.** The parties intend that this Declaration be an enforceable covenant running with the land, and the terms, conditions, and restrictions shall be interpreted, to the extent reasonable, to be consistent with the Declarant's authority under Article 7, Title 29, Colorado Revised Statutes. Nothing contained herein shall be construed as a waiver or limitation of the Declarant's authority provided under Article 7, Title 29, Colorado Revised Statutes, or any police power authorization contained in the Colorado Constitution, City Charter or State Statute.

29. **Controlling Law.** The interpretation and performance of this Declaration shall be governed by the laws of the State of Colorado.

30. *Entire Agreement.* This instrument sets forth the entire agreement of the parties with respect to the Declaration and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Declaration, all of which are merged herein.

IN WITNESS WHEREOF, the Declarant has executed this Declaration on

_____.

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF LARIMER,
COLORADO

ATTEST:

Date: _____

Deputy Clerk of the Board

By: _____
Chairperson

APPROVED AS TO FORM:

By: _____
County Attorney

STATE OF COLORADO)
)ss
COUNTY OF LARIMER)

Subscribed and sworn to before me this ____ day of _____, 2003, by
_____, Chairperson, Board of Commissioners of Larimer County,
Colorado.

Witness my hand and official seal.

My commission expires: _____.

Notary Public

LEGACY LAND TRUST
ATTEST:

Date: _____

Title

By: _____
Executive Director

STATE OF COLORADO)
)ss
COUNTY OF LARIMER)

Subscribed and sworn to before me this _____ day of _____, 2003, by
_____, Executive Director, Legacy Land Trust.

Witness my hand and official seal.
My commission expires: _____.

Notary Public

EXHIBIT A
Legal Description
Eagle's Nest Open Space

Parcel 1:

That portion of Section 34, Township 10 North Range 70 West of the 6th P.M., County of Larimer, State of Colorado more particularly described as follows:

Considering the West line of the Northwest Quarter of Section 34, Township 10 North, Range 70 West of the 6th P.M., as monumented by a ¾ " diameter rebar with a 2" diameter aluminum cap. P.L.S. 25372 at the Northwest corner of said Section 32 and by a ¾" diameter rebar with a 2" diameter aluminum cap. P.L.S. 5028 at the West Quarter corner of said Section 34 to bear an assumed bearing of South 01 degrees 15 minutes 13 seconds West with all bearings contained herein relative thereto.

BEGINNING at the Southeast corner of said Section 34; thence along the South line of the Southeast Quarter of said Section North 89 degrees 48 minutes 02 seconds West 1,312.26 feet to the Southwest corner of the Southeast Quarter of the Southeast Quarter of said Section 34;

thence along the West line of said Southeast Quarter of the Southeast quarter North 00 degrees 50 minutes 58 seconds East 1,296.83 feet to the Southeast corner of the Northwest Quarter of the Southeast Quarter of said Section 34;

thence along the South line of said Northwest Quarter of the Southeast Quarter North 89 degrees 12 minutes 18 seconds West 1,319.87 feet to the Southeast corner of the Northeast Quarter of the Southwest Quarter of said Section 34;

thence along the South line of said Northeast Quarter of the Southwest Quarter North 89 degrees 15 minutes 26 seconds West 607.77 feet to a point being 714.29 feet Easterly from the Southwest corner of said Northeast Quarter of the Southwest Quarter of said Section;

thence along a line parallel with an existing fence North 00 degrees 31 minutes 51 seconds East 2,186.43 feet to the south right of way line of Larimer County Road 74E;

thence along said right of way line South 89 degrees 59 minutes 56 seconds East 419.58 feet to the Northwest corner of that certain parcel described in Book 1714 at Page 884 records of said County;

thence along the West line of said parcel South 05 degrees 18 minutes 05 seconds East 332.65 feet to the Southwest corner of said parcel;

thence continuing South 05 degrees 18 minutes 05 seconds East 228.26 feet to the centerline of a sixty foot wide easement for ingress and egress;

thence along said centerline the following twenty one courses:

South 31 degrees 38 minutes 41 seconds East 29.96 feet;

thence South 42 degrees 00 minutes 58 seconds East 142.31 feet;

thence South 45 degrees 42 minutes 32 seconds East 138.42 feet;

thence South 27 degrees 09 minutes 39 seconds East 83.08 feet;

thence South 00 degrees 50 minutes 10 seconds East 92.15 feet

thence South 02 degrees 15 minutes 05 seconds East 88.52 feet;

thence South 00 degrees 21 minutes 35 seconds West 84.59 feet

thence South 08 degrees 35 minutes 05 seconds West 82.95 feet;

thence South 65 degrees 30 minutes 09 seconds East 144.05 feet;

thence North 81 degrees 12 minutes 25 seconds East 210.20 feet;

thence North 83 degrees 54 minutes 41 seconds East 87.39 feet;

thence South 71 degrees 16 minutes 44 seconds East 78.72 feet;

thence South 44 degrees 36 minutes 48 seconds East 59.99 feet;

thence South 18 degrees 58 minutes 52 seconds East 77.54 feet;
thence South 65 degrees 43 minutes 31 seconds East 70.01 feet;
thence South 83 degrees 15 minutes 17 seconds East 80.37 feet;
thence South 62 degrees 27 minutes 20 seconds East 125.56 feet;
thence South 70 degrees 05 minutes 42 seconds East 74.66 feet;
thence South 61 degrees 09 minutes 06 seconds East 73.99 feet;
thence South 46 degrees 41 minutes 46 seconds East 60.47 feet;
thence South 22 degrees 44 minutes 59 seconds East 161.85 feet to the end of said centerline;
thence South 26 degrees 41 minutes 23 seconds West 36.67 feet;
thence South 26 degrees 41 minutes 23 seconds West 228.84 feet;
thence North 83 degrees 59 minutes 06 seconds East 329.70 feet;
thence South 00 degrees 45 minutes 29 seconds West 432.51 feet
thence South 89 degrees 48 minutes 02 seconds East 1,245.99 feet to the East line of the Southeast Quarter of said Section 34;
thence along said East line South 01 degrees 11 minutes 34 seconds West 1,159.25 feet more or less to the Point of Beginning.

County of Larimer, State of Colorado.

TOGETHER WITH:

A 60.00 foot wide strip of land located in Section 34, Township 10 North, Range 70 West of the 6th P.M., County of Larimer, State of Colorado, more particularly described as follows:

The sidelines of said strip of land lie 30.00 feet on each side of, as measured at right angles to, and parallel with the following described centerline. The sidelines of said strip of land shall be prolonged or foreshortened so as to begin on the South right of way line of Larimer County Road 74 E and so as to terminate on a line bearing South 25 ° 41' 23" West and North 26 ° 41' 23" East and passing through the point of terminus of said strip of land.

Considering the West line of the Northwest Quarter of Section 34, Township 10 North, Range 70 West of the 6th P.M. as monumented by a ¾" diameter rebar with a 2" diameter aluminum cap, P.L.S. 25372 at the Northwest corner of said Section 34 and by a ¾" diameter rebar with a 2" diameter aluminum cap, P.L.S. 5028 at the West Quarter corner of said Section 34 to bear an assumed bearing of South 01° 15' 13" West with all bearings contained herein relative thereto.

Beginning at the Southeast corner of said Section 34; thence along the South line of the Southeast Quarter of said Section North 89° 48' 02" West 1312.26 feet to the Southwest corner of the Southeast Quarter of the Southeast Quarter of said Section 34; thence along the West line of said Southeast Quarter of the Southeast Quarter North 00° 50' 58" East 1296.83 feet to the Southeast corner of the Northwest Quarter of the Southeast Quarter of said Section 34; thence along the South line of said Northwest Quarter of the Southeast Quarter North 89° 12' 18" West 1319.87 feet to the Southeast corner of the Northeast Quarter of the Southwest Quarter of said Section 34; thence along the South line of said Northeast Quarter of the Southwest Quarter North 89° 15' 26" West 607.77 to a point being 714.29 feet Easterly from the Southwest corner of said Northeast Quarter of the Southwest Quarter of said Section; thence along a line parallel with an existing fence North 00° 31' 51" East 2186.43 feet to the South right of way line of Larimer County Road 74E; thence along said right of way line South 89° 59' 56" East 30.00 feet to the TRUE POINT OF BEGINNING on said centerline; thence along said centerline the following twenty six courses:
South 00° 31' 51" West 105.87 feet; thence South 32° 22' 36" East 125.42 feet;
Thence South 65° 08' 51" East 206.79 feet; thence South 51° 07' 01" East 70.15 feet
Thence South 31° 38' 41" East 253.47 feet; thence South 31° 38' 41" East 29.96 feet; thence South 42° 00' 58" East 142.31 feet thence South 45° 42' 32" East 138.42 feet; thence South 27° 09' 39" East 83.08 feet; thence South 00° 50' 10" East 92.15 feet; thence South 02° 15' 05" East 88.52 feet; thence South 00° 21' 35" West 84.59 feet; thence South 08° 35' 05" West 82.95 feet; thence South 65° 30' 09" East 144.05 feet; thence North 81° 12' 25" East

210.20 feet; thence North 83° 54' 41" East 87.39 feet; thence South 71° 16' 44" East 78.72 feet; thence South 44° 36' 48" East 59.99 feet; thence South 18° 58' 52" East 77.54 feet; thence South 65° 43' 31" East 70.01 feet; thence South 83° 15' 17" East 80.37 feet; thence South 62° 27' 20" East 125.56 feet; thence South 70° 05' 42" East 74.66 feet; thence South 61° 09' 06" East 73.99 feet; thence South 46° 41' 46" East 60.47 feet; thence South 22° 44' 59" East 161.85 feet to the POINT OF TERMINUS of said centerline.

Parcel 2: All that land in N ½ of N ½ of Section 3, Township 9 North, Range 70 West of the 6th P.M., Larimer County, Colorado, lying West and North of a line that commences at the Northeast corner of said Section 3, the true point and beginning, and with the East line of said Section 3 bearing North and South and all bearings herein relative thereto, thence S 75° 50' 22.26" W a distance of 1,133.3 ft., thence S 49° 21' 26.76" W a distance of 149.5 ft., and thence S 34° 24' 20.57" W a distance of 1,150.0 ft., more or less, to the terminus at the South Boundary of the N ½ N ½ of said Section 3.

Parcel 3: All in Township 9 North, Range 70 West of the 6th P.M., Larimer County, Colorado:

Section 4: SE ¼ of NE ¼; and E ½ of SE ¼

Section 9: NE ¼

Sections 3 and 10: All that land in the S ½ and the S ½ N ½ of Section 3 and NW ¼ of Section 10 lying West of a line that commences at the Northeast corner of said Section 3, the East boundary of said Section 3 bearing North and South and all bearings herein relative thereto, S 75° 50' 22.26" W a distance of 1,133.3 ft., and thence S 49° 21' 26.76" W a distance of 149.5 ft, and thence S 34° 24' 20.57" West a distance of 1,150.0 ft., more or less, to the South line of the N ½ N ½ of said Section 3, the true point of beginning, thence S 34° 24' 20.57" W a distance of 3,948.7 feet, and thence S 02° 32' 32.24" E a distance of 3,398.0 ft., more or less, to the terminus at the S boundary of the NW ¼ of said Section 10.

EXHIBIT B
Exceptions From Coverage
Eagle's Nest Open Space

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes and Assessments not certified to the Treasurer's Office.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.
3. Easements, or claims of easements, not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, and any facts, which a correct survey and inspection of the land would disclose, and which are not shown by the public records.
5. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
6. All taxes and assessments for the year 2001 and subsequent years, a lien, but not yet due or payable.
7. Any water rights or claims or title to water, in, on or under the land.
8. The right of proprietor of a vein or lode to extract or remove his ore should the same be found to penetrate or intersect the premises thereby granted as reserved in United States patent recorded March 15, 1918 in Book 238 at Page 573; and any and all assignments thereof or interest therein.
9. Right of way for ditches and canals constructed by the authority of the United States, as reserved in United States Patent recorded April 17, 1920 in Book 264 at Page 573.
10. An undivided 1% interest in all oil, gas and other minerals as reserved by Nora Staley in Deed recorded October 7, 1926 in Book 533 at Page 551, and any and all assignments thereof or interests therein.
11. An undivided 1% interest in all oil, gas and other minerals as reserved by Stewart C. Case in Deed recorded November 14, 1939 in Book 704 at Page 431, and any and all assignments thereof or interests therein.
12. An easement for an electric transmission or distribution line or system and incidental purposes granted to Poudre Valley Rural Electric Association by the instrument

- recorded June 5, 1972 in Book 1506 at Page 936.
13. An easement for an electric transmission or distribution line or system and incidental purposes granted to Poudre Valley Rural Electric Association by the instrument recorded June 5, 1972 in Book 1506 at Page 437.
 14. An easement for an electric transmission or distribution line or system and incidental purposes granted to Poudre Valley Rural Electric Association by the instrument recorded October 18, 1974 in Book 1621 at Page 855.
 15. An easement for an electric transmission or distribution line or system and incidental purposes granted to Poudre Valley Rural Electric Association by the instrument recorded February 9, 1981 in Book 2101 at Page 1309.
 16. An easement for an electric transmission or distribution line or system and incidental purposes granted to Poudre Valley Rural Electric Association by the instrument recorded September 15, 1977 in Book 1798 at Page 966.
 17. Rights of way, easements and notes as contained on Exemption Map recorded October 17, 1980 in Book 2079 at Page 91.
 18. Rights of way, easements and notes as contained on Exemption Plat recorded October 18, 1984 in Book 2294 at Page 851.
 19. Terms, conditions, provisions, agreements and obligations contained in the Special Review Findings and Resolution Concerning the Petition of Livermore Fire Department recorded November 26, 1991 at Reception No. 91059339.
 20. An easement for telecommunication facilities and incidental purposes granted to US West Communications, Inc. by the instrument recorded March 3, 1993 at Reception No. 93013624.
 21. An easement for utilities and incidental purposes granted to Poudre Valley Rural Electric Association by the instrument recorded December 2, 1997 at Reception No. 97080087.
 22. An easement for utilities and incidental purposes granted to Poudre Valley Rural Electric Association by the instrument recorded December 2, 1997 at Reception No. 97080088.
 23. Lease dated February 1, 1992, between Albert Hodgson as Lessor, and Livermore Fire Department, Inc., Lessee, and any amendments thereto.
 24. Right of way for County Road 74E as the same presently exists.

25. Rights or claims of adjacent property owners under the doctrine of "adverse possession", including, but not limited to, encroachments of the property onto adjoining property and/or encroachment of adjoining property onto the property (including but not limited to, fence encroachment shown by survey of Edward L. Berlier dated November 15, 1996, File No. 8042-03-0001).
26. Covenants, conditions and restrictions, which do not include a forfeiture or reverter clause, set forth in the deed recorded December 2, 1997 at Reception No. 97080086.
27. Grant and Reservation of Easements as contained in Warranty Deed recorded December 2, 1997 at Reception No. 97080086.

NOTE: Exceptions 8 through 27 affect Parcel I only.

28. The right of proprietor of a vein or lode to extract or remove his ore should the same be found to penetrate or intersect the premises thereby granted as reserved in United States patent recorded April 23, 1889 in Book 32 at Page 124; and any and all assignments thereof or interest therein. (Affects the SW1/4 of the SW1/4 of 3-9-70; the SE1/4 of the SE1/4 of 4-9-70 and the West ½ of the NW1/4 of 10-9-70.)
29. Reservations by the Union Pacific Railroad Company of (1) oil, coal and other minerals underlying the land, (2) the exclusive right to prospect for, mine and remove oil, coal and other minerals, and (3) the right of ingress and egress and regress to prospect for, mine and remove oil, coal and other minerals, all as contained in Deed recorded April 25, 1906 in Book 150 at Page 64, and any and all assignments thereof or interests therein. (Affects the N1/2 and the SE1/4 of (3-9-70).)
30. Right of way for ditches and canals constructed by the authority of the United States, as reserved in United States Patent recorded August 18, 1925 in Book 361 at Page 396. (Affects the N1/2 of the SW1/4; SE1/4 of the SW1/4 of Section 3-9-70; the NE1/4 of the SE1/4; SE1/4 of the NE1/4 of Section 4-9-70; the NE1/4 of the NW1/4, the NW1/4 of the NE1/4 and the SE1/4 of the NW1/4 of 10-9-70.)
31. The right of proprietor of a vein or lode to extract or remove his ore should the same be found to penetrate or intersect the premises thereby granted as reserved in United States patent recorded June 20, 1972 in Book 1508 at Page 604; and any and all assignments thereof or interest therein. (Affects the NE1/4 of 9-9-70.)
32. Right of way for ditches and canals constructed by the authority of the United States, as reserved in United States Patent recorded June 20, 1972 in Book 1508 at Page 604. (Affects the NE1/4 of 9-9-70.)
33. Existing easement to adjacent property owner for ingress and egress to adjacent land South and West of the property as evidenced by Deed from Robert D. Kelce and Diane R. Kelce to R.D. Kelce and Co., recorded February 19, 1974 in Book 1589 at Page 649. (Affects the SW1/4 of 3-9-70; SE1/4 of the NE1/4 and the E1/2 of the

SE1/4 of 4-9-70; the NE1/4 of 9-9-70; the NW1/4 and the NW1/4 of the NE1/4 of 10-9-70.)

34. An easement for an electric line or system and incidental purposes granted to Poudre Valley Rural Electric Association by the instrument recorded December 11, 1980 in Book 2091 at Page 490. (Affects the N1/2 of the SE1/4 of 3-9-70.)
35. Easement and right of way for vehicular access purposes reserved by Nicholas F. Chenoweth in Warranty Deed recorded February 10, 1983 in Book 2206 at Page 815. (Affects the NE1/4 of 9-9-70; and the W1/2 of the NW1/4 and the W1/2 of E1/2 of the NW1/4 of 10-9-70; the W1/2 of the SW1/4 of 3-9-70; and the SE1/4 of the NE1/4 and the E1/2 of the SE1/4 of 4-9-70.)
36. Terms, conditions, provisions, agreements and obligations specified under the Fishing Agreement by and between Nicholas F. Chenoweth and Thomas P. Grainger recorded June 7, 1984 in Book 2275 at Page 1362. (Affects the W1/2 of the SW1/4 and the E1/2 of the SW1/4 of 3-9-70; SE1/4 of the NE1/4 and the E1/2 of the SE1/4 of 4-9-70.)
37. Reservation of a non-exclusive perpetual road easement and grant of easement as contained in Deed recorded September 4, 1984 in Book 2288 at Page 406. (Affects the N1/2 of the SE1/4 of 3-9-70.)
38. Terms, conditions, provisions, agreements and obligations specified under the Grant of Easement by and between Duane Allen McMurry and Thomas P. Grainger recorded April 15, 1986 at Reception No. 86018813. (Affects Section 4-9-70.)
39. Terms, conditions, provisions, agreements and obligations specified under the Grant of Easement by and between Duane Allen McMurry and Thomas P. Grainger recorded April 15, 1986 at Reception No. 86018814. (Affects Section 4-9-70 and other lands.)
40. Terms, conditions, provisions, agreements and obligations specified under the Grant of Easement by and between Duane Allen McMurry and Thomas P. Grainger recorded April 15, 1986 at Reception No. 86018814. (Affects Section 4-9-70.)
41. Terms, conditions, provisions, agreements and obligations contained in the Bargain and Sale Deed recorded November 2, 1992 at Reception No. 92069157.
42. Terms, conditions, provisions, agreements and obligations specified under the Deed of Conservation Easement by and between Eagle's Nest of Colorado, L.L.C., a Missouri limited liability company, d/b/a Eagle's Nest of America, L.L.C. and Larimer County recorded December 26, 2000 at Reception No. 2000087422.
43. Any rights, interest or easements in favor of the United States, the State of Colorado or the Public, which exists or are claimed to exist in and over the present and past

bed, banks or waters of the North Fork of the Cache La Poudre River. (Affects the NE1/4 of Section 9-9-70 and the NW1/4 of Section 10-9-70.)

44. Any increase or decrease in the area of the land and any adverse claim to any portion of the land which has been created by or caused by accretion or reliction, whether natural or artificial; and the effect of the gain or loss of area by accretion or reliction upon the marketability of the title of the land. (Affects the NE1/4 of Section 9-9-70 and the NW1/4 of Section 10-9-70.)

NOTE: Exceptions 28 through 43 affects Parcels 2 and 3.

Terms, conditions, provisions, agreements and obligations contained in the Dedication and Grant of Right-of-Way and Easement recorded January 11, 2001 at Reception No. 2001002699.

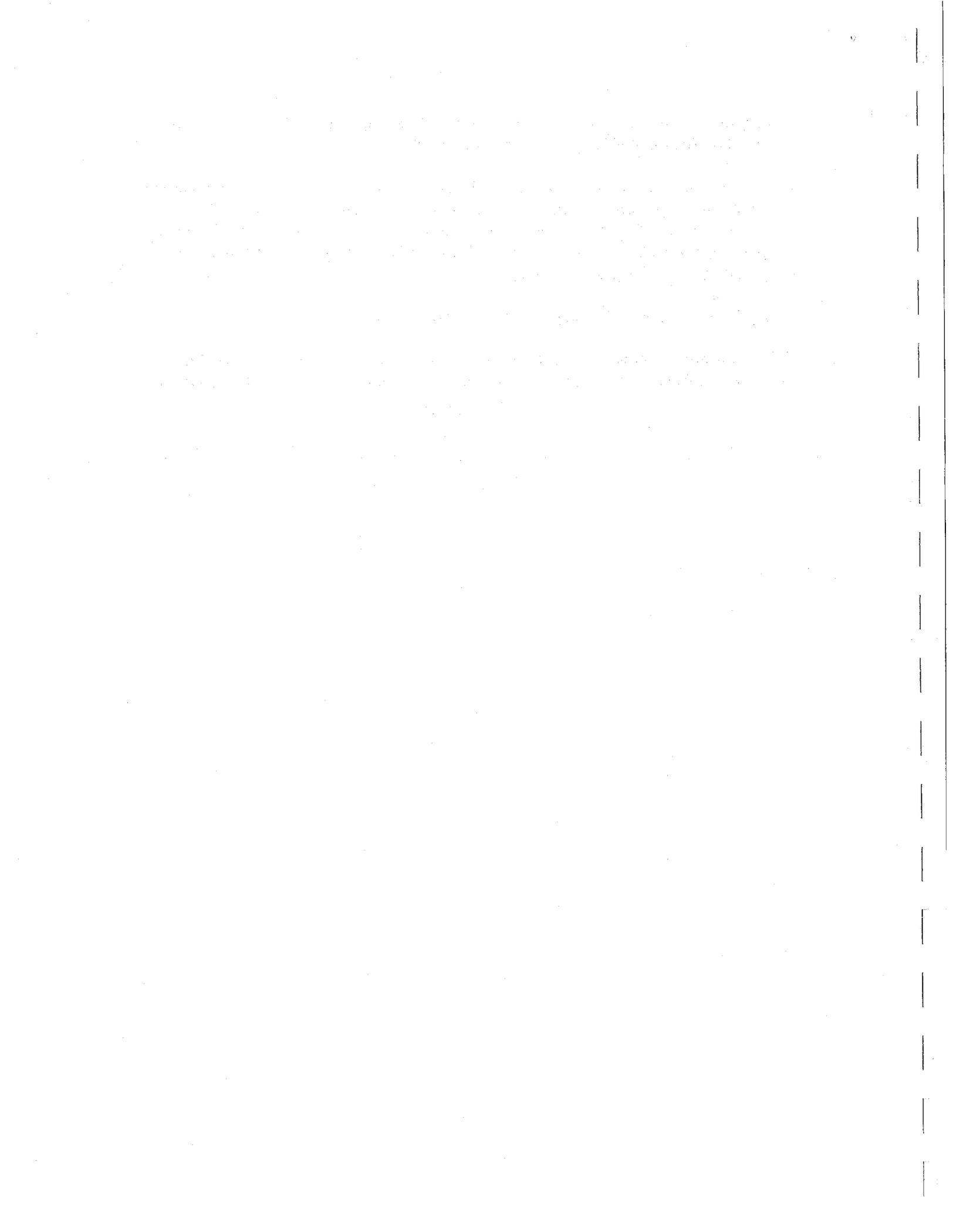
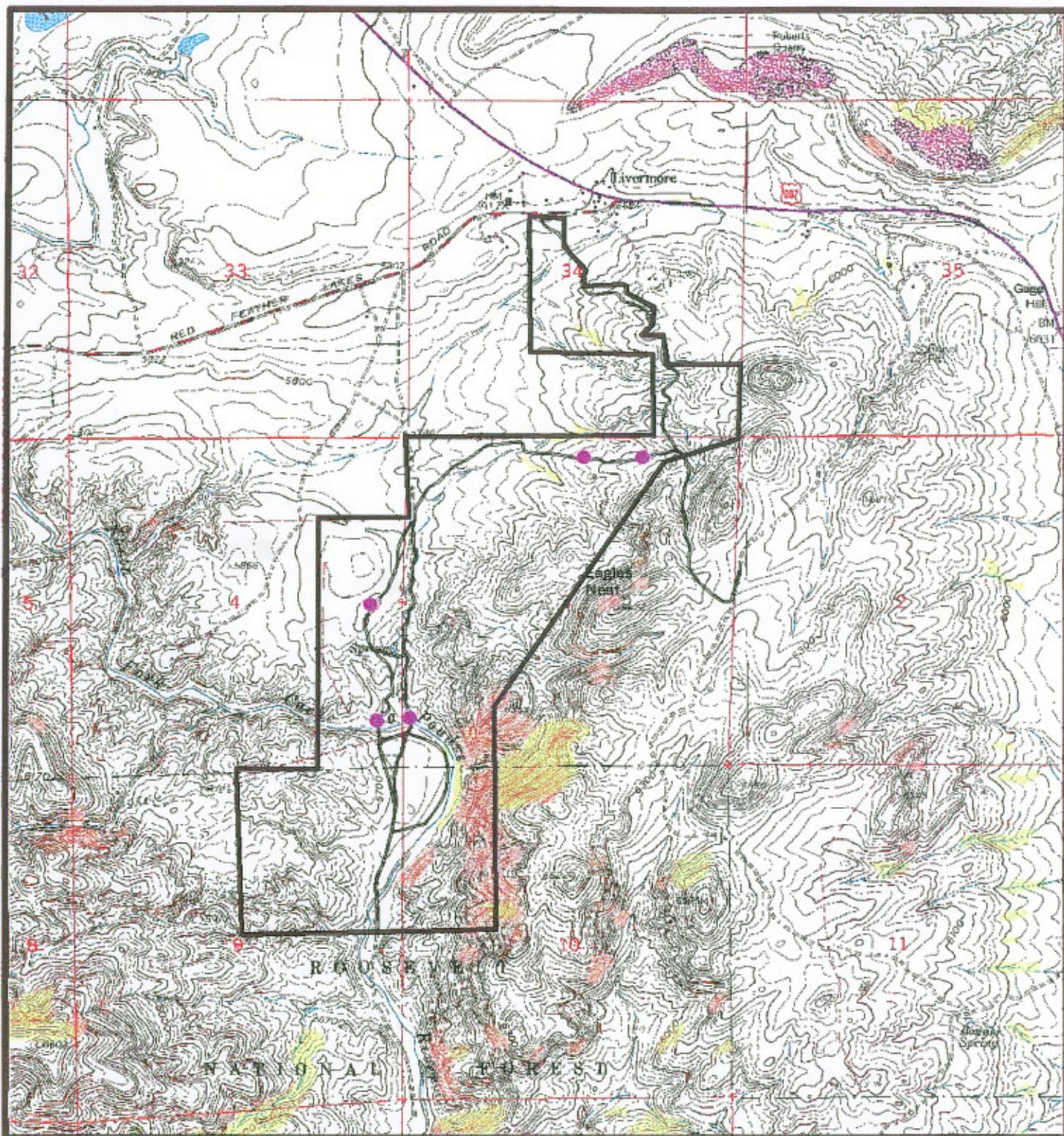


EXHIBIT G
Baseline Photos Prior to Implementation of Activities at Eagle's Nest Open Space

**EXHIBIT G: Eagle's Nest Open Space
Habitat Conservation Plan Baseline Photos**



Legend

-  Photopoints
-  Eagle's Nest Open Space Boundary
-  Existing Roads



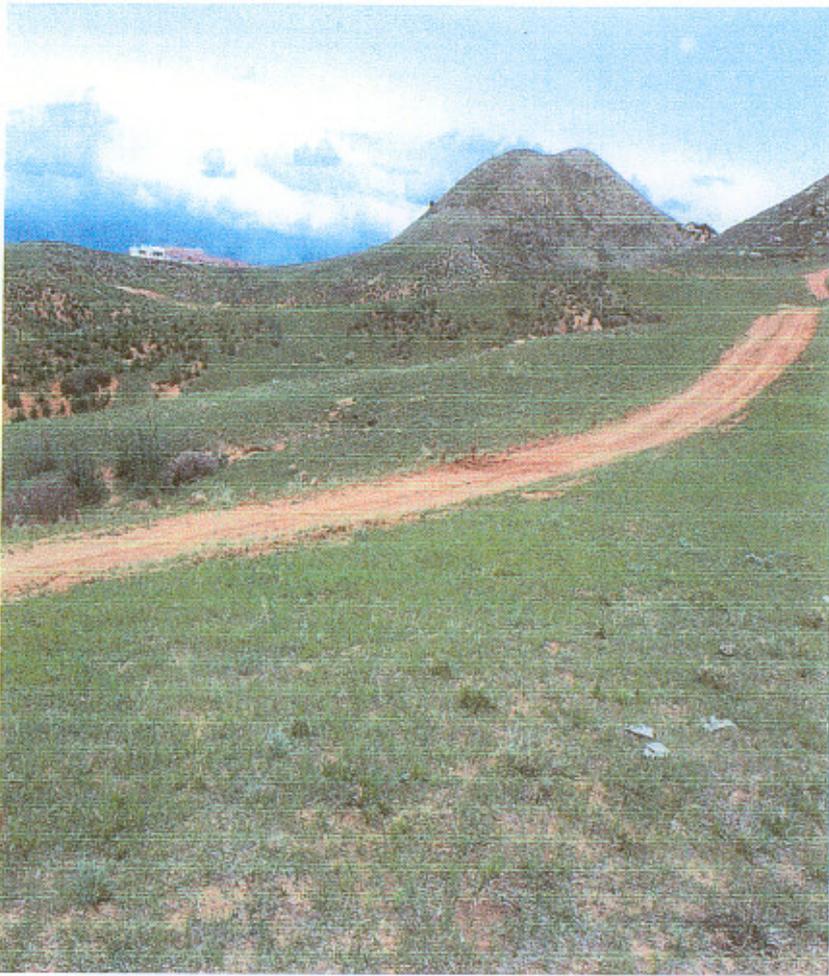


Photo 1: View to north of entry road and future trailhead location on flat bench to left downhill of road.



Photo 2: View to south of future trailhead location on flat bench in foreground, below roadway.



Photo 3: Two, of the three, existing corrals located in the drainage along existing roadway (corrals will be removed or relocated and road revegetated with native seed mix).

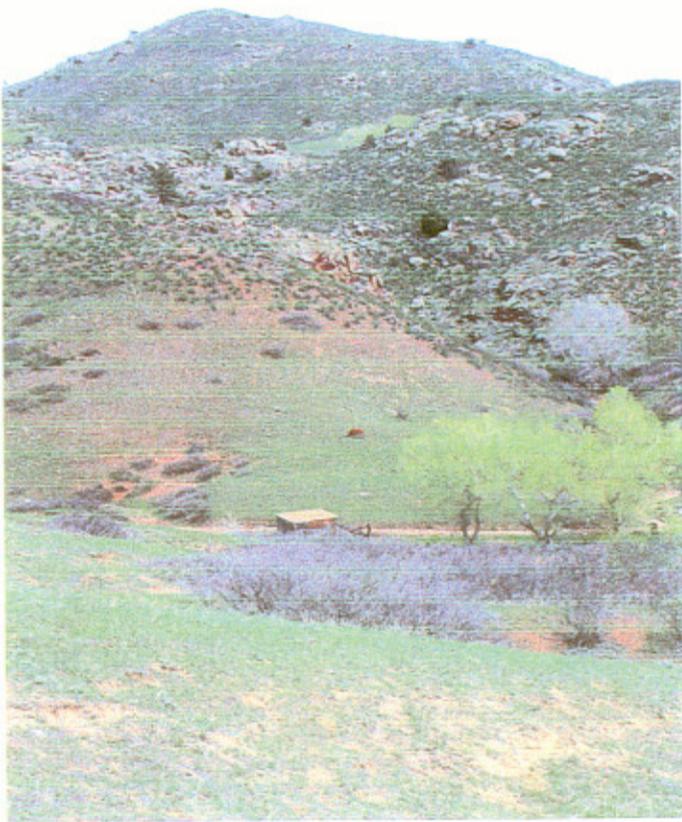


Photo 4: Third, of the three existing corrals located in the drainage along an existing roadway. All corrals will either be removed or relocated out of drainage and road revegetated.



Photo 5: Existing bridge across N. Fork of the Poudre River. Bridge needs to be replaced and would cause temporary impacts to approximately .15 acres.



Photo 6: Existing bridge and deterioration of south abutment - bridge is in danger of collapse.



Photo 7: River access area to west of bridge. Fencing will be installed along west edge of this area.



Photo 8: Seasonal river access area east of the bridge. Fencing will be installed along boundaries of this area to keep visitors out from February 1st through mid-July.

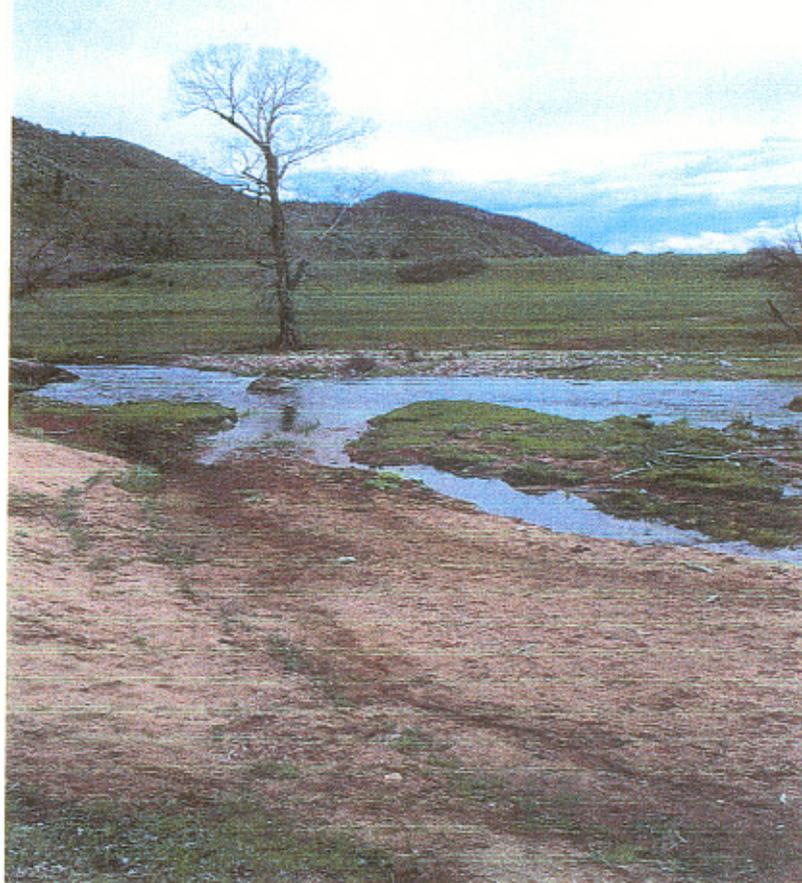


Photo 9: Location of future northern water gap along existing road that crosses the river - will be a rock surface and fenced (including fencing along riparian area) to allow livestock to access isolated portions of the river for water and crossing, but limit access to the majority of the riparian zone.



Photo 10: An existing roadway along drainage; approximately 1 mile of existing roads (those that will not be maintained for the trail or for emergency and maintenance purposes) will be revegetated.

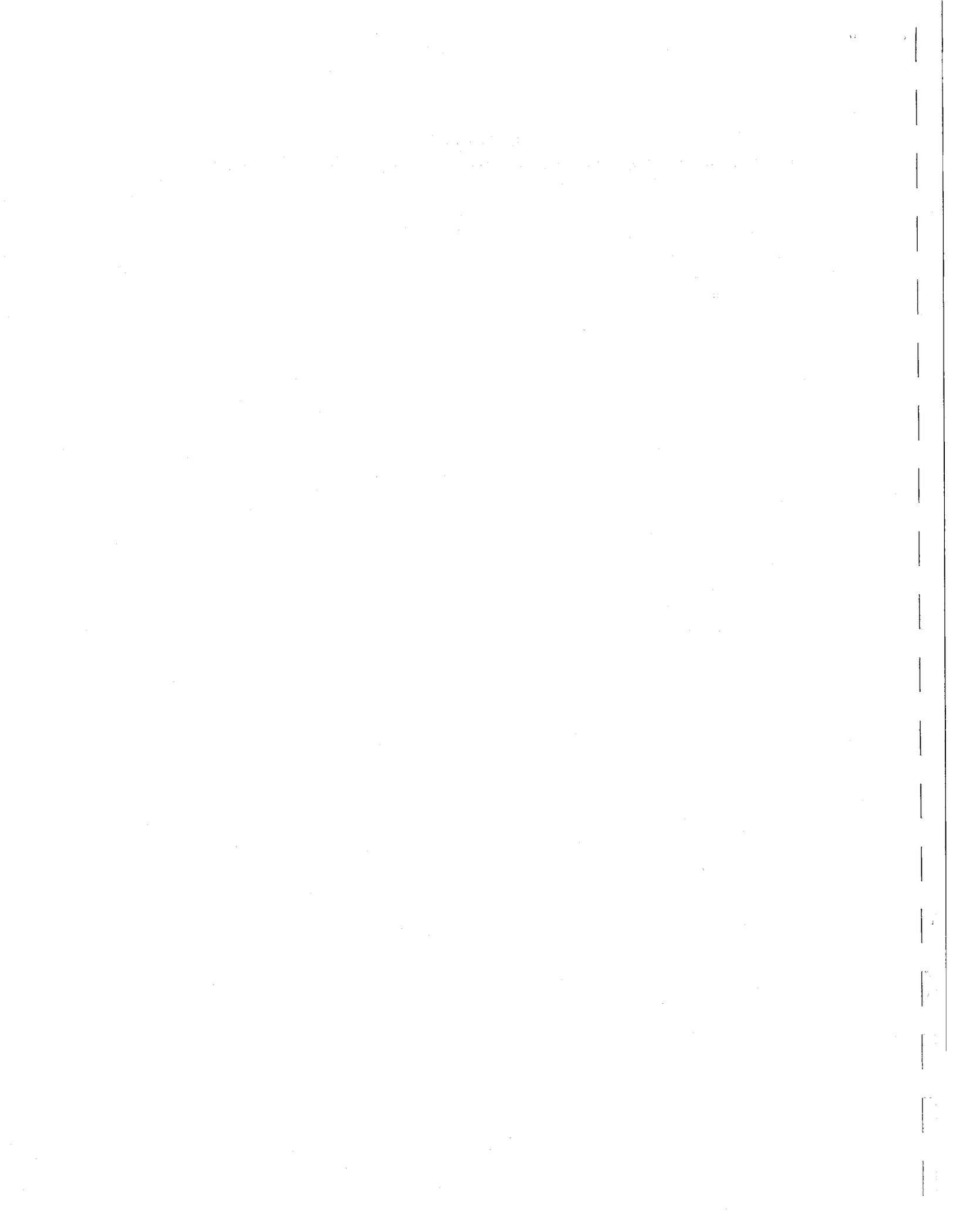


EXHIBIT H
Legal Description of Eagle's Nest Open Space

Legal Description
Eagle's Nest Open Space

Parcel 1:

That portion of Section 34, Township 10 North Range 70 West of the 6th P.M., County of Larimer, State of Colorado more particularly described as follows:

Considering the West line of the Northwest Quarter of Section 34, Township 10 North, Range 70 West of the 6th P.M., as monumented by a $\frac{3}{4}$ " diameter rebar with a 2" diameter aluminum cap. P.L.S. 25372 at the Northwest corner of said Section 32 and by a $\frac{3}{4}$ " diameter rebar with a 2" diameter aluminum cap. P.L.S. 5028 at the West Quarter corner of said Section 34 to bear an assumed bearing of South 01 degrees 15 minutes 13 seconds West with all bearings contained herein relative thereto.

BEGINNING at the Southeast corner of said Section 34; thence along the South line of the Southeast Quarter of said Section North 89 degrees 48 minutes 02 seconds West 1,312.26 feet to the Southwest corner of the Southeast Quarter of the Southeast Quarter of said Section 34;

thence along the West line of said Southeast Quarter of the Southeast quarter North 00 degrees 50 minutes 58 seconds East 1,296.83 feet to the Southeast corner of the Northwest Quarter of the Southeast Quarter of said Section 34;

thence along the South line of said Northwest Quarter of the Southeast Quarter North 89 degrees 12 minutes 18 seconds West 1,319.87 feet to the Southeast corner of the Northeast Quarter of the Southwest Quarter of said Section 34;

thence along the South line of said Northeast Quarter of the Southwest Quarter North 89 degrees 15 minutes 26 seconds West 607.77 feet to a point being 714.29 feet Easterly from the Southwest corner of said Northeast Quarter of the Southwest Quarter of said Section;

thence along a line parallel with an existing fence North 00 degrees 31 minutes 51 seconds East 2,186.43 feet to the south right of way line of Larimer County Road 74E;

thence along said right of way line South 89 degrees 59 minutes 56 seconds East 419.58 feet to the Northwest corner of that certain parcel described in Book 1714 at Page 884 records of said County;

thence along the West line of said parcel South 05 degrees 18 minutes 05 seconds East 332.65 feet to the Southwest corner of said parcel;

thence continuing South 05 degrees 18 minutes 05 seconds East 228.26 feet to the centerline of a sixty foot wide easement for ingress and egress;

thence along said centerline the following twenty one courses:

South 31 degrees 38 minutes 41 seconds East 29.96 feet;

thence South 42 degrees 00 minutes 58 seconds East 142.31 feet;

thence South 45 degrees 42 minutes 32 seconds East 138.42 feet;

thence South 27 degrees 09 minutes 39 seconds East 83.08 feet;

thence South 00 degrees 50 minutes 10 seconds East 92.15 feet

thence South 02 degrees 15 minutes 05 seconds East 88.52 feet;

thence South 00 degrees 21 minutes 35 seconds West 84.59 feet

thence South 08 degrees 35 minutes 05 seconds West 82.95 feet;

thence South 65 degrees 30 minutes 09 seconds East 144.05 feet;
thence North 81 degrees 12 minutes 25 seconds East 210.20 feet;
thence North 83 degrees 54 minutes 41 seconds East 87.39 feet;
thence South 71 degrees 16 minutes 44 seconds East 78.72 feet;
thence South 44 degrees 36 minutes 48 seconds East 59.99 feet;
thence South 18 degrees 58 minutes 52 seconds East 77.54 feet;
thence South 65 degrees 43 minutes 31 seconds East 70.01 feet;
thence South 83 degrees 15 minutes 17 seconds East 80.37 feet;
thence South 62 degrees 27 minutes 20 seconds East 125.56 feet;
thence South 70 degrees 05 minutes 42 seconds East 74.66 feet;
thence South 61 degrees 09 minutes 06 seconds East 73.99 feet;
thence South 46 degrees 41 minutes 46 seconds East 60.47 feet;
thence South 22 degrees 44 minutes 59 seconds East 161.85 feet to the end of said centerline;
thence South 26 degrees 41 minutes 23 seconds West 36.67 feet;
thence South 26 degrees 41 minutes 23 seconds West 228.84 feet;
thence North 83 degrees 59 minutes 06 seconds East 329.70 feet;
thence South 00 degrees 45 minutes 29 seconds West 432.51 feet
thence South 89 degrees 48 minutes 02 seconds East 1,245.99 feet to the East line of the Southeast Quarter of said Section 34;
thence along said East line South 01 degrees 11 minutes 34 seconds West 1,159.25 feet more or less to the Point of Beginning.

County of Larimer, State of Colorado.

TOGETHER WITH:

A 60.00 foot wide strip of land located in Section 34, Township 10 North, Range 70 West of the 6th P.M., County of Larimer, State of Colorado, more particularly described as follows:

The sidelines of said strip of land lie 30.00 feet on each side of, as measured at right angles to, and parallel with the following described centerline. The sidelines of said strip of land shall be prolonged or foreshortened so as to begin on the South right of way line of Larimer County Road 74 E and so as to terminate on a line bearing South 25 ° 41' 23" West and North 26 ° 41' 23" East and passing through the point of terminus of said strip of land.

Considering the West line of the Northwest Quarter of Section 34, Township 10 North, Range 70 West of the 6th P.M. as monumented by a ¾" diameter rebar with a 2" diameter aluminum cap, P.L.S. 25372 at the Northwest corner of said Section 34 and by a ¾" diameter rebar with a 2" diameter aluminum cap, P.L.S. 5028 at the West Quarter corner of said Section 34 to bear an assumed bearing of South 01° 15' 13" West with all bearings contained herein relative thereto.

Beginning at the Southeast corner of said Section 34; thence along the South line of the Southeast Quarter of said Section North 89° 48' 02" West 1312.26 feet to the Southwest

corner of the Southeast Quarter of the Southeast Quarter of said Section 34; thence along the West line of said Southeast Quarter of the Southeast Quarter North 00° 50' 58" East 1296.83 feet to the Southeast corner of the Northwest Quarter of the Southeast Quarter of said Section 34; thence along the South line of said Northwest Quarter of the Southeast Quarter North 89° 12' 18" West 1319.87 feet to the Southeast corner of the Northeast Quarter of the Southwest Quarter of said Section 34; thence along the South line of said Northeast Quarter of the Southwest Quarter North 89° 15' 26" West 607.77 to a point being 714.29 feet Easterly from the Southwest corner of said Northeast Quarter of the Southwest Quarter of said Section; thence along a line parallel with an existing fence North 00° 31' 51" East 2186.43 feet to the South right of way line of Larimer County Road 74E; thence along said right of way line South 89° 59' 56" East 30.00 feet to the TRUE POINT OF BEGINNING on said centerline; thence along said centerline the following twenty six courses:

South 00° 31' 51" West 105.87 feet; thence South 32° 22' 36" East 125.42 feet; Thence South 65° 08' 51" East 206.79 feet; thence South 51° 07' 01" East 70.15 feet Thence South 31° 38' 41" East 253.47 feet; thence South 31° 38' 41" East 29.96 feet; thence South 42° 00' 58" East 142.31 feet thence South 45° 42' 32" East 138.42 feet; thence South 27° 09' 39" East 83.08 feet; thence South 00° 50' 10" East 92.15 feet; thence South 02° 15' 05" East 88.52 feet; thence South 00° 21' 35" West 84.59 feet; thence South 08° 35' 05" West 82.95 feet; thence South 65° 30' 09" East 144.05 feet; thence North 81° 12' 25" East 210.20 feet; thence North 83° 54' 41" East 87.39 feet; thence South 71° 16' 44" East 78.72 feet; thence South 44° 36' 48" East 59.99 feet; thence South 18° 58' 52" East 77.54 feet; thence South 65° 43' 31" East 70.01 feet; thence South 83° 15' 17" East 80.37 feet; thence South 62° 27' 20" East 125.56 feet; thence South 70° 05' 42" East 74.66 feet; thence South 61° 09' 06" East 73.99 feet; thence South 46° 41' 46" East 60.47 feet; thence South 22° 44' 59" East 161.85 feet to the POINT OF TERMINUS of said centerline.

Parcel 2: All that land in N ½ of N ½ of Section 3, Township 9 North, Range 70 West of the 6th P.M., Larimer County, Colorado, lying West and North of a line that commences at the Northeast corner of said Section 3, the true point and beginning, and with the East line of said Section 3 bearing North and South and all bearings herein relative thereto, thence S 75° 50' 22.26" W a distance of 1,133.3 ft., thence S 49° 21' 26.76" W a distance of 149.5 ft., and thence S 34° 24' 20.57" W a distance of 1,150.0 ft., more or less, to the terminus at the South Boundary of the N ½ N ½ of said Section 3.

Parcel 3: All in Township 9 North, Range 70 West of the 6th P.M., Larimer County, Colorado:

Section 4: SE ¼ of NE ¼; and E ½ of SE ¼

Section 9: NE ¼

Sections 3 and 10: All that land in the S ½ and the S ½ N ½ of Section 3 and NW ¼ of Section 10 lying West of a line that commences at the Northeast corner of said Section 3, the East boundary of said Section 3 bearing North and South and all bearings herein relative thereto, S 75° 50' 22.26" W a distance of 1,133.3 ft., and thence S 49° 21' 26.76" W a distance of 149.5 ft, and thence S 34° 24' 20.57" West a distance of 1,150.0 ft., more or less, to the South line of the N ½ N ½ of said Section 3, the true point of beginning,

thence S 34° 24' 20.57" W a distance of 3,948.7 feet, and thence S 02° 32' 32.24" E a distance of 3,398.0 ft., more or less, to the terminus at the S boundary of the NW ¼ of said Section 10.

Table 1: Dominant Plant Species Identified at Eagle's Nest Open Space

Grasses	
Crested Wheatgrass	<i>Agropyron cristatum</i>
Needle-and-Thread	<i>Stipa comata</i>
Green Needlegrass	<i>Stipa viridula</i>
Blue Grama	<i>Bouteloua gracilis</i>
Buffalo Grass	<i>Buchloe dactyloides</i>
Mountain Muhly	<i>Muhlenbergia montana</i>
New Mexico Feathergrass	<i>Stipa neomexicana</i>
Foxtail	<i>Alopecurus pratensis</i>
Little Bluestem	<i>Schizachyrium scoparium</i>
Side-oats Grama	<i>Bouteloua curtipendula</i>
Indian Ricegrass	<i>Oryzopsis hymenoides</i>
Three-awn	<i>Aristida purpurea</i>
Junegrass	<i>Koeleria macrantha</i>
Western Wheatgrass	<i>Agropyron smithii</i>
Kentucky Bluegrass	<i>Poa pratensis</i>
Canada Bluegrass	<i>Poa compressa</i>
Big Bluestem	<i>Andropogon gerardii</i>
Sedges	
Sun Sedge	<i>Carex stenophylla</i>
Shrubs	
Mountain Mahogany	<i>Cercocarpus montanus</i>
Skunkbrush	<i>Rhus trilobata</i>
Hawthorn	<i>Crataegus macranthra</i>
Wax Currant	<i>Ribes cereum</i>
Rabbitbush	<i>Chrysothamnus nauseosus</i>
Wild Plum	<i>Prunus americana</i>
Chokecherry	<i>Prunus virginiana</i>
Snowberry	<i>Symphoricarpos oreophilus</i>
Snakeweed	<i>Gutierrezia sarothrae</i>
Trees	
Ponderosa Pine	<i>Pinus ponderosa</i>
Plains Cottonwood	<i>Populus sargentii</i>
Succulents	
Prickly Pear Cactus	<i>Opuntia macrorhiza</i>
Nipple Cactus	<i>Coryphantha missouriensis</i>
Cactus sp.	<i>Opuntia polyacantha</i>
Forbs	
Violet	<i>Viola purpurea</i>
Violet	<i>Viola nuttalli</i>
Salsify	<i>Tragopogon dubius</i>
Silver Sage	<i>Artemisia frigida</i>
Yucca	<i>Yucca glauca</i>
Sunflower spp.	<i>Helianthus spp.</i>
Globemallow	<i>Sphaeralcea coccinea</i>
Locoweed	<i>Astragalus sp.</i>

Prairie Sage	<i>Artemisia ludoviciana</i>
Scurfpea	<i>Psoralea tenuiflora</i>
Mountain Bladderpod	<i>Lesquerella montana</i>
Nailwort	<i>Paronychia jamesii</i>
Shorts Milkvetch	<i>Astragalus shortianus</i>
Drummond Milkvetch	<i>Astragalus drummondii</i>
Geyer Larkspur	<i>Delphinium geyeri</i>
Nuttall Larkspur	<i>Delphinium nuttallianum</i>
Salt and Pepper	<i>Lernaeum orientale</i>
Sand Lily	<i>Leucocrinum montanum</i>
Wild Blue Flax	<i>Adenolinum lewisii</i>
Wild Onion	<i>Allium textile</i>
Western Wallflower	<i>Erysimum asperum</i>
Skull Cap	<i>Scutellaria sp.</i>
Blue Mustard	<i>Brassica elongata</i>
Woods Rose	<i>Rosa woodsii</i>
Pinnate Tansymustard	<i>Descurainia pinnata</i>
Alyssum	<i>Alyssum parviflorum</i>
Fringed Sage	<i>Artemisia frigida</i>
False Dandelion	<i>Nothocalais undulata</i>
Golden Smoke	<i>Corydalis aurea</i>
Mouse Ear	<i>Cerastium strictum</i>
Groundsel	<i>Senecio fendleri</i>
Rocky Mountain Spurge	<i>Euphorbia robusta</i>
Wild Geranium	<i>Geranium caespitosum</i>
Carolina Whitlowgrass	<i>Draba reptans</i>
Wormwood	<i>Artemisia filifolia</i>
Bluebells	<i>Mertensia lanceolata</i>
Puccoon	<i>Lithospermum incisum</i>
Western Wallflower	<i>Erysimum asperum</i>
Evening Primrose	<i>Oenothera brachycarpa</i>
Poison Ivy	<i>Toxicodendron rydbergii</i>
Alumroot	<i>Heuchera parviflora</i>
Death Camas	<i>Toxicoscordion venenosum</i>
Bahia	<i>Bahia dissecta</i>
Prickly Poppy	<i>Argemone sp.</i>
Pussytoes	<i>Antennaria rosea</i>
Yarrow	<i>Achillea lanulosa</i>
Non-natives	
Mullein	<i>Verbascum thapsus</i>
Dandelion	<i>Taraxacum officinale</i>
Ragweed	<i>Ambrosia trifida</i>
Redstem Filaree	<i>Erodium cicutarium</i>
Whitlow Wart	<i>Draba nemerosa</i>
Gumweed	<i>Grindelia squarrosa</i>
Bindweed	<i>Fallopia convolvulus</i>
Blue Mustard	<i>Chorispora tenella</i>
Jim Hill Mustard	<i>Sisymbrium altissimum</i>

Cheatgrass	<i>Bromus tectorum</i>
Smooth Brome	<i>Bromus inermis</i>
Japanese Brome	<i>Bromus japonicus</i>