



United States Department of the Interior

FISH AND WILDLIFE SERVICE
134 Union Boulevard
Lakewood, Colorado 80219



In Reply Refer to:
FWS/IR05/IR07/COFO

TAILS: 2021-I-0407

April 21, 2021

Tony Martinez, R.E.M.
Regulatory Project Manager
Southern Colorado Regulatory Branch
U.S. Army Corps of Engineers
201 W. 8th Street
Pueblo, Colorado 81003

Subject: Endangered Species Act section 7 consultation regarding the Tierra Ridge subdivision development northeast of Colorado Springs, Colorado

Dear Tony Martinez:

The U.S. Fish and Wildlife Service (Service) received your email of April 20, 2021, regarding the Tierra Ridge subdivision development proposal. Landowner Shay Miles (Miles) initiated communications with the Service on January 11, 2021, requesting technical assistance regarding the proposed ~~Tierra Ridge~~ subdivision and new homes construction (project) on 52.34 acres at 15630 Fox Creek Lane, Colorado Springs in El Paso County, Colorado.

Jeni Shay Farms

In representing Miles, Smith Environmental and Engineering (Smith) presented to the Service a habitat suitability assessment dated February 19, 2021. Along with subsequent communications, Miles and Smith had indicated that there was no need for a Clean Water Act Section 404 permit from the U.S. Army Corps of Engineers (Corps), thus there was no federal nexus to this project. Based on this understanding, the Service evaluated the project as described and concurred that the impacts resulting from the construction of the new residences, the access road, utility lines, and detention pond in the project area next to East Cherry Creek was unlikely to result in take of a listed species. However, in your April 20, 2021 email, you indicated a permit was required in this case, thus a federal nexus does exist. You also requested initiation of informal section 7 consultation under the Endangered Species Act (ESA), and concurrence with your determination that the proposed project may affect, but is not likely to adversely affect, the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) (Preble's mouse). The project site is located close to

INTERIOR REGION 5
MISSOURI BASIN

KANSAS, MONTANA*, NEBRASKA, NORTH DAKOTA,
SOUTH DAKOTA

*PARTIAL

INTERIOR REGION 7
UPPER COLORADO RIVER BASIN

COLORADO, NEW MEXICO, UTAH, WYOMING

wetlands and riparian vegetation that may support the Preble's mouse, listed as threatened under the ESA, as amended (16 U.S.C. 1531 *et seq.*). Our comments are provided in accordance with section 7 of the ESA. No critical habitat for these species occurs in the action area; therefore, none will be affected.

The project initially involves construction of a new road within a 60-foot-wide right-of-way (ROW) to access nine newly established residential lots. Four culverts will be installed under the access road. Each culvert will have a small riprap inlet and outlet pad. Gas and electric utilities will be located within a 10-foot-wide corridor adjacent to the road ROW. A 9,000-square foot detention pond will be installed near the northern terminus of the access road. The proposed action will permanently result in approximately 0.004 acre of permanent loss of palustrine scrub-shrub wetland, and 0.12 acre of temporary wetland impacts below the plane of the ordinary high water mark. Pond and road embankments will be restored following road construction, and the native grades will be restored upon completion of construction and seeded with native grass species. An 800-square foot emergency overflow spillway will be stabilized with riprap. Each residential lot will be limited to one residential dwelling, one barn, and a private driveway.

Smith's habitat suitability assessment indicates that the project area ranges from 7,520 to 7,450 feet in elevation, which is almost to the upper limit of known suitability for the Preble's mouse. The access road will cross the unnamed tributary to East Cherry Creek perpendicular to its flow line and result in minimal wetland and riparian habitat impacts. Project disturbance of well under one acre would be expected within and close to the riparian vegetation associated with East Cherry Creek and its proximate tributary. The remaining construction will be located outside of wetlands and surrounding floodplain areas which will be retained as no-build zones. The project area riparian habitat appears to be only marginally suitable for Preble's mice. East Cherry Creek trapping records indicate that the Preble's mouse has been captured approximately 4.3 miles downstream (north) of the project area where there is better habitat.

The Corps has agreed to implement appropriate conservation measures before, during, and after construction, thus decreasing the potential for injuring the Preble's mouse or its habitat. Thus, the Corps has determined the project may affect, but is not likely to adversely affect, the Preble's mouse.

Given the type of vegetation growing on the subject property and the lack of Preble's mouse occupancy records within the property, the Service concurs that the impacts resulting from the construction of the new residences, the access road, utility lines, and detention pond in the project area next to East Cherry Creek is not likely to adversely affect the Preble's mouse.

We appreciate your request for assistance and encourage you to contact us again if the scope of the project changes or new information indicates that the project may result in take of listed species.

Please reference TAILS project code 06E24000-2021-I-0407 when contacting our office about this letter. If we can be of any additional assistance, please contact George L. San Miguel of the Colorado Field Office by telephone at (303) 236-4752 or by email to george_sanmiguel@fws.gov.

Sincerely,

Liisa Niva
Colorado Ecological Services Office
Acting Field Supervisor