



Consultants in Natural Resources and the Environment

Natural Resources Assessment Old Ranch Road Property 6170 Old Ranch Road El Paso County, Colorado

Prepared for—

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ERO Project #21_231

September 20, 2021

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Executive Summary

Land Resource Associates, LLC retained ERO Resources Corporation (ERO) to provide a natural resources assessment for the Old Ranch Road property at 6170 Old Ranch Road in El Paso County, Colorado (project area). ERO assessed the project area for potential wetlands and other waters of the U.S., threatened and endangered species habitat, and general wildlife use. Below is a summary of the resources found at the project area and recommendations or future actions necessary based on the current site conditions and federal, state, and local regulations.

The natural resources and associated regulations described in this report are valid as of the date of this report and may be relied upon for the specific use for which it was prepared by ERO under contract to Land Resource Associates, LLC. Because of their dynamic natures, site conditions and regulations should be reconfirmed by a qualified consultant before relying on this report for a use other than that for which ERO was contracted.

Wetlands and Other Waters of the U.S. – No wetlands or waters are shown on the U.S. Geological Survey (USGS) Falcon topographic quadrangle map or the USGS hydrography database as occurring in the project area. Additionally, no wetlands or waters were found in the project area during the 2021 site visit; therefore, no action is necessary.

Threatened and Endangered Species – The project area does not contain habitat for any federally listed threatened or endangered species. The southern half of the project area is in the Colorado Springs block clearance zone for Preble's meadow jumping mouse (Preble's), and a viable population of Preble's is unlikely to exist in the northern half of the project area because the project area lacks a water source and riparian shrub habitat. The project area is not conducive to the establishment of Ute ladies'-tresses orchid because no wetlands occur in the project area and the project area consists primarily of uplands dominated by introduced understory species.

Migratory Birds – No bird nests were observed during the 2021 site visit; however, trees, shrubs, and upland grasslands in the project area provide potential nesting habitat. The Denver Field Office of the U.S. Fish and Wildlife Service (2009) and Colorado Department of Transportation (2011) have identified the primary nesting season for migratory birds in eastern Colorado as occurring from April 1 to August 31. However, some birds, such as the red-tailed hawk and great horned owl, can nest as early as February or March. Because of variability in the breeding seasons of various bird species, ERO recommends a nest survey be conducted within one week prior to construction to determine if any active nests are present in the project area so they can be avoided. If active nests are found, any work that would destroy the nests should not be conducted until the birds have vacated the nests.

Other Wildlife – The project area is in the overall range of black-tailed prairie dog, olive-backed pocket mouse, Preble's, white-tailed jackrabbit, wild turkey, mule deer, white-tailed deer, pronghorn, mountain lion, black bear, Hernandez's short-horned lizard, prairie lizard, ornate box turtle, and various snakes; and Canada goose winter range; however, none of these species were observed during the 2021 site visit. No other sensitive species occur in the project area that would be significantly adversely affected by the proposed project. No designated wildlife corridors were mapped in the project area; however, mule deer, white-tailed deer, mountain lion, and black bear habitat, as well as a human conflict area for black bear, are shown as occurring in the project area (Natural Diversity Information Source 2021). Overall, surrounding and continuing development contributes to a decline in the number and diversity of wildlife species nearby and to a change in species composition.

**Natural Resources Assessment
Old Ranch Road Property
6170 Old Ranch Road
El Paso County, Colorado**

September 20, 2021

Introduction

Land Resource Associates, LLC retained ERO Resources Corporation (ERO) to provide a natural resources assessment for the Old Ranch Road property at 6170 Old Ranch Road in El Paso County, Colorado (project area; Figure 1). On September 3, 2021, Anna Hennage, a biologist with ERO, assessed the project area for natural resources (2021 site visit). During this assessment, activities included a review of potential wetlands and other waters of the U.S. (WOTUS), identification of potential federally threatened and endangered species habitat, and identification of other natural resources. This report provides information on existing site conditions and resources, as well as current regulatory guidelines related to those resources. ERO assumes the landowner is responsible for obtaining all federal, state, and local permits for construction of the project.

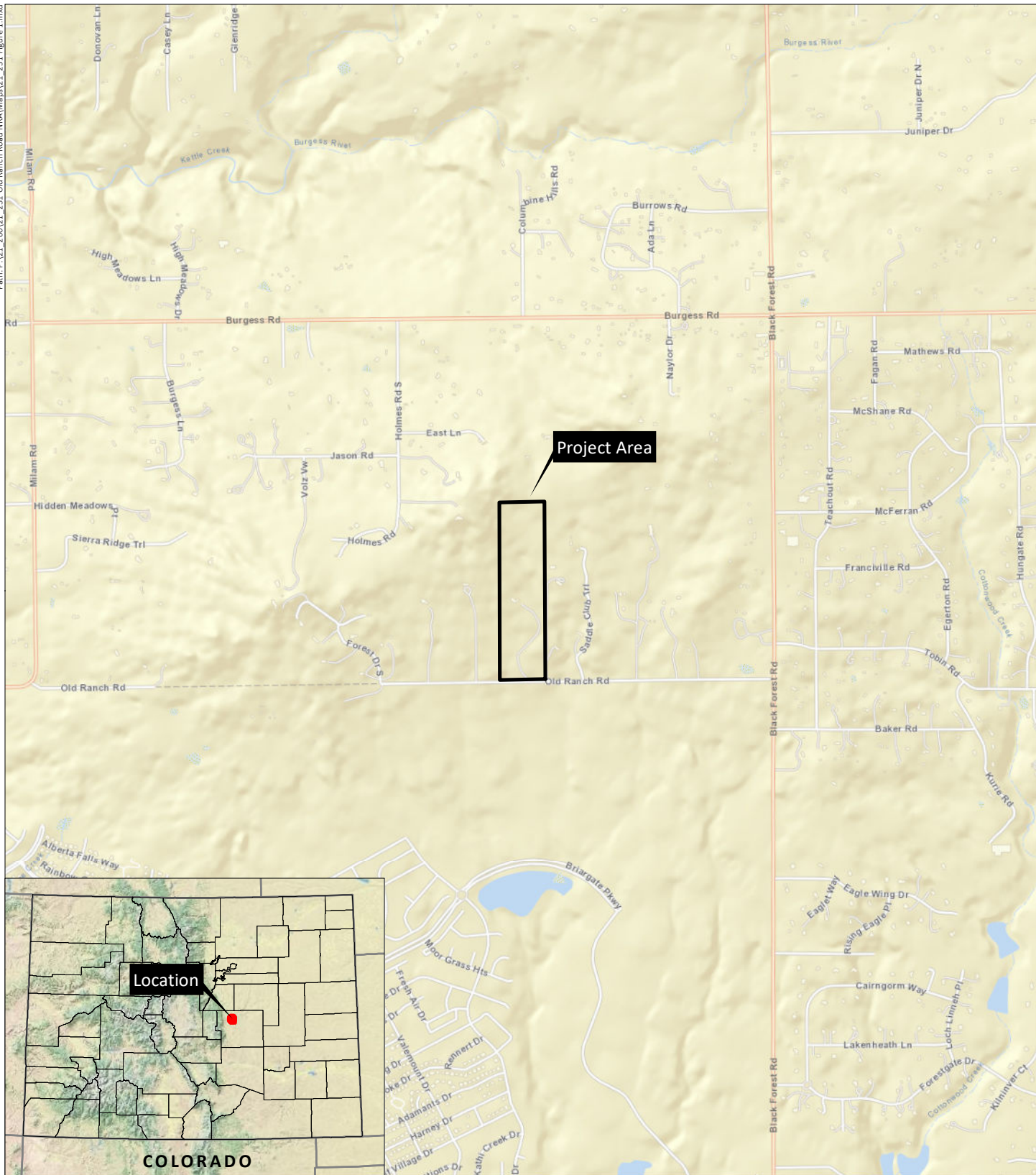
The natural resources and associated regulations described in this report are valid as of the date of this report and may be relied upon for the specific use for which it was prepared by ERO under contract to Land Resource Associates, LLC. Because of their dynamic natures, site conditions and regulations should be reconfirmed by a qualified consultant before relying on this report for a use other than that for which ERO was contracted.

Project Area Location

The project area is in Section 19, Township 12 South, Range 65 West of the 6th Principal Meridian in El Paso County, Colorado (Figure 1). The UTM coordinates for the approximate center of the project area are 524842mE, 4315424mN, Zone 13 North. The longitude/latitude of the project area is 104.713181°W/38.987456°N. The elevation of the project area is approximately 7,300 feet above sea level. Photo points of the project area are shown on Figure 2, and the photo log is in Appendix A.

Project Area Description

The project area is bounded by Old Ranch Road and undeveloped land to the south, and private property with undeveloped land and residential buildings to the north, east, and west.



Old Ranch Road Property

Section 19, T12S, R65W; 6th PM

UTM NAD 83: Zone 13N; 524842mE, 4315424mN

Longitude 104.713181°W, Latitude 38.987456°N

USGS Falcon NW, CO Quadrangle

El Paso County, Colorado

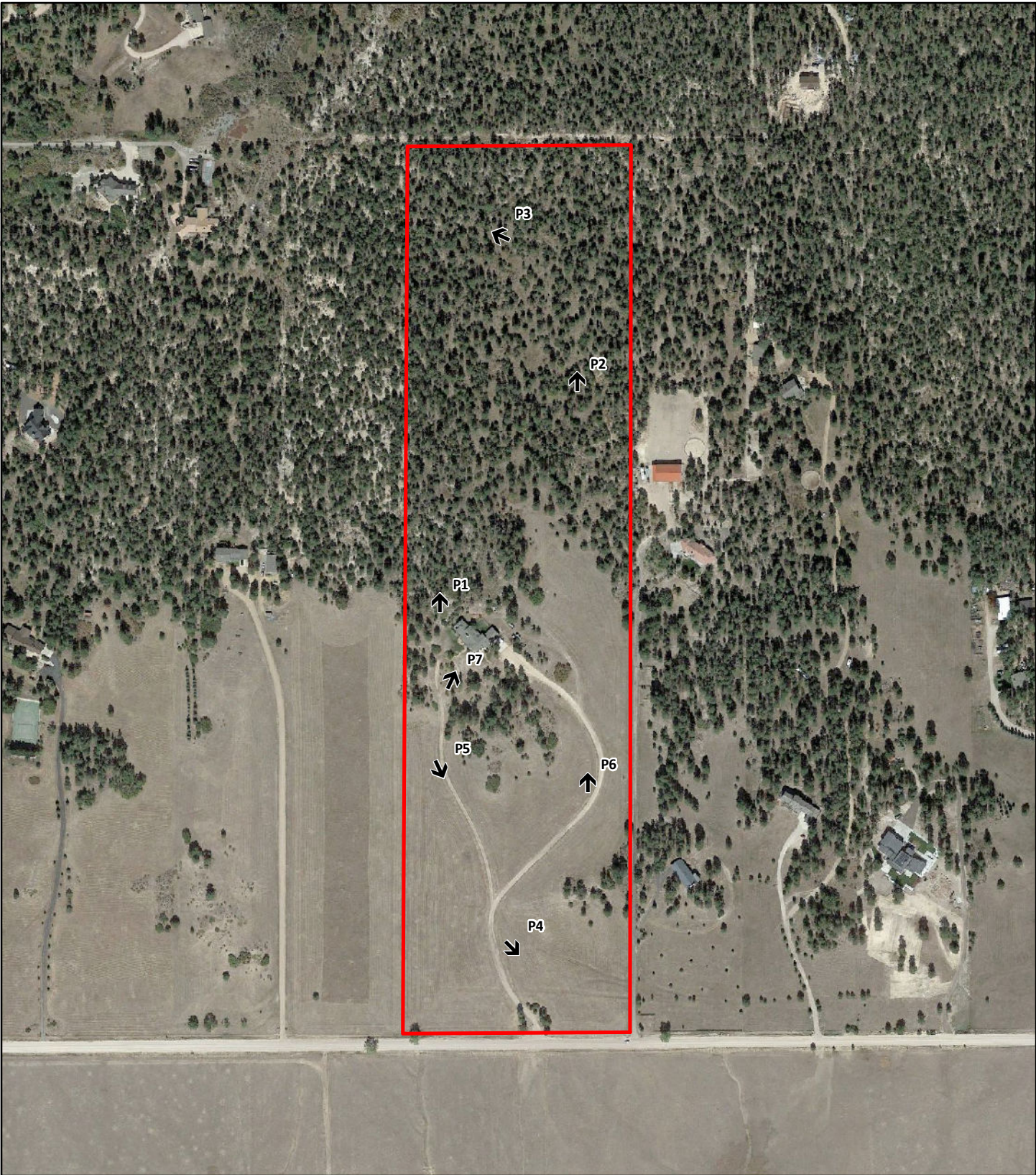
0 1,000 2,000
Feet



Figure 1 Vicinity Map

Prepared for: Land Resource
Associates, LLC
File: 21_231 Figure 1.mxd (WH)
September 14, 2021

ERO
ERO Resources Corp.



Old Ranch Road Property

- ➔ Photo Point
- Project Area

Image Source: Google© Earth, October 6, 2019

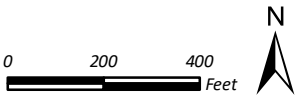


Figure 2
Existing Conditions

Prepared for: Land Resource
Associates, LLC
File: 21_231 Figure 2.mxd (WH)
September 14, 2021



The project area contains two primary vegetation communities: a ponderosa pine community in the northern part and a mixed native grassland in the southern part. The ponderosa pine community consists primarily of western wormwood (*Artemisia scoparia*), hairy false goldenaster (*Heterotheca villosa*), and common bearberry (*Arctostaphylos uva-ursi*); as well as mountain mahogany (*Cercocarpus* sp.), Woods' rose (*Rosa woodsii*), and common snowberry (*Symphoricarpos albus*) shrubs; and Gambel oak (*Quercus gambelii*) and ponderosa pine (*Pinus ponderosa*) trees (Photos 1 through 3). The mixed native grassland consists primarily of upland meadows dominated by upland native and nonnative grassland species such as smooth brome (*Bromus inermis*), rubber rabbitbrush (*Ericameria nauseosa*), blue grama (*Bouteloua gracilis*), western wheatgrass (*Pascopyrum smithii*), crested wheatgrass (*Agropyron cristatum*), sand dropseed (*Sporobolus cryptandrus*), sagebrush (*Artemisia frigida*), yucca (*Yucca angustissima*), and prickly pear (*Opuntia phaeacantha*) (Photos 4 through 6). Canada thistle (*Cirsium arvense*), a Colorado List B noxious weed, occurs throughout both vegetation communities in the project area. Much of the upland meadows was mowed in the southern part of the project area at the time of the 2021 site visit. In addition, two driveways occur in the southern part of the project area that lead to a residential property in the center of the project area (Photos 5 through 7).

Wetlands and Other Waters of the U.S.

Background

The Clean Water Act (CWA) protects the chemical, physical, and biological quality of WOTUS. The U.S. Army Corps of Engineers' (Corps) Regulatory Program administers and enforces Section 404 of the CWA. Under Section 404, a Corps permit is required for the discharge of dredged or fill material into wetlands and other WOTUS (streams, ponds, and other waterbodies). On June 22, 2020, the Environmental Protection Agency (EPA) and Corps' Navigable Waters Protection Rule (NWPR) to define "waters of the United States" became effective in 49 states and in all U.S. territories. A preliminary injunction was granted for Colorado. On March 2, 2021, the United States Court of Appeals for the 10th Circuit vacated the stay on the NWPR in Colorado, thereby ruling the NWPR effective in Colorado. After April 23, 2021, jurisdiction of wetlands and other potential WOTUS in Colorado was to be determined using the NWPR. However, on August 30, 2021, the Arizona District Court remanded and vacated the NWPR. This ruling applies nationwide. Given ongoing uncertainty, interpretation of WOTUS in this report is provided for both the NWPR and for rules in place prior to recent decisions rescinding, remanding, and vacating the "2015 rules" and the NWPR. These rules are referred to as "pre-2015 rules" for simplicity.

The NWPR outlines four categories of WOTUS: (1) territorial seas and traditionally navigable waters (TNWs); (2) tributaries; (3) lakes, ponds, and impoundments of jurisdictional waters; and (4) adjacent wetlands. Under the NWPR, tributaries include perennial and intermittent rivers and streams that contribute surface flow to TNWs in a typical year. Ditches are to be considered tributaries only where they satisfy the flow conditions of the perennial and intermittent tributary definition and either were constructed in or relocate a tributary or were constructed in an adjacent wetland and contribute perennial or intermittent flow to a TNW in a typical year (EPA 2020). Adjacent wetlands are generally defined under the NWPR as those physically touching other jurisdictional waters; separated from a

WOTUS by only a natural berm, bank, or dune; inundated by flooding from a WOTUS; or wetlands that are physically separated by certain artificial structures so long as the structure allows for a direct hydrologic surface connection between the wetlands and the jurisdictional water in a typical year.

Site Conditions and Regulations

During the 2021 site visit, ERO surveyed the project area for wetlands, streambeds, and open waters; however, a jurisdictional wetland delineation following Corps guidelines was not needed and was not conducted during this assessment. Prior to the 2021 site visit, ERO reviewed U.S. Geological Survey (USGS) quadrangle topographic maps and aerial photography to identify mapped streams and areas of open water that could indicate wetlands or WOTUS. ERO also reviewed the proximity and potential surface water connection of wetlands to known jurisdictional WOTUS using aerial photo interpretation, landowner information, and information from the 2021 site visit.

Recommendations

No wetlands or waters are shown on the USGS Falcon topographic quadrangle map or the USGS hydrography database as occurring in the project area. Additionally, no wetlands or waters were found in the project area during the 2021 site visit; therefore, no action is necessary.

Threatened, Endangered, and Candidate Species

ERO assessed the project area for potential habitat for threatened, endangered, and candidate species under the Endangered Species Act (ESA). Federally threatened and endangered species are protected under the ESA of 1973, as amended (16 United States Code (U.S.C.) 1531 et seq.). Significant adverse effects on a federally listed species or its habitat require consultation with the U.S. Fish and Wildlife Service (Service) under Section 7 or 10 of the ESA. The Service lists several threatened and endangered species with potential habitat in the project area, or that would be potentially affected by projects in the project area (Table 1).

Table 1. Federally threatened, endangered, and candidate species potentially found in the project area or potentially affected by projects in the project area.

Common Name	Scientific Name	Status*	Habitat	Habitat Present or Potential to be Affected by Project?
Mammals				
Preble's meadow jumping mouse	<i>Zapus hudsonius preblei</i>	T	Shrub riparian/wet meadows	No
Birds				
Eastern black rail	<i>Laterallus jamaicensis ssp. jamaicensis</i>	T	Brackish and freshwater marshes	No
Piping plover**	<i>Charadrius melodus</i>	T	Sandy lakeshore beaches and river sandbars	No habitat and no depletions anticipated
Whooping crane**	<i>Grus americana</i>	E	Mudflats around reservoirs and in agricultural areas	No habitat and no depletions anticipated
Fish				
Greenback cutthroat trout	<i>Oncorhynchus clarki stomias</i>	T	Clear, swift-flowing mountain streams with cover such as overhanging banks and vegetation and mountain lakes	No
Pallid sturgeon**	<i>Scaphirhynchus albus</i>	E	Large, turbid, free-flowing rivers with a strong current and gravel or sandy substrate	No habitat and no depletions anticipated
Plants				
Ute ladies'-tresses orchid	<i>Spiranthes diluvialis</i>	T	Moist to wet alluvial meadows, floodplains of perennial streams, and around springs and lakes below 7,800 feet in elevation	No
Western prairie fringed orchid**	<i>Platanthera praeclara</i>	T	Moist to wet prairies and meadows	No habitat and no depletions anticipated

*T = Federally Threatened Species, E = Federally Endangered Species.

**Water depletions in the Arkansas River may affect the species and/or critical habitat in downstream reaches in other counties or states.

Source: Service 2021.

The proposed project would not directly affect the eastern black rail or greenback cutthroat trout because of the lack of habitat in the project area and because all known populations of the eastern black rail occur in southeastern Colorado, outside of the project area.

The piping plover, whooping crane, pallid sturgeon, and western prairie fringed orchid are species that are affected by depletions to the Platte River system. The project area is in the Arkansas River Basin and, based on ERO's knowledge of the types of activities likely to be implemented as part of the development of the project area, there would be no depletions to the Platte River.

Suitable habitat for Preble's meadow jumping mouse (Preble's) and Ute ladies'-tresses orchid (ULTO) is not present in the project area. The project area lacks the wetland/riparian habitat required for Preble's

and ULTO. Because of the lack of habitat, no further action is necessary regarding federally threatened and endangered species.

Other Species of Concern

Raptors and Migratory Birds

Migratory birds, as well as their eggs and nests, are protected under the Migratory Bird Treaty Act (MBTA). The MBTA does not contain any prohibition that applies to the destruction of a bird nest alone (without birds or eggs), provided that no possession occurs during the destruction. While destruction of a nest by itself is not prohibited under the MBTA, nest destruction that results in the unpermitted take of migratory birds or their eggs is illegal and fully prosecutable under the MBTA (Service 2003). The regulatory definition of a take means to pursue, hunt, shoot, wound, kill, trap, capture, or collect; or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect (50 Code of Federal Regulations 10.12).

Under the MBTA, the Service may issue nest depredation permits, which allow a permittee to remove an active nest. The Service, however, issues few permits and only under specific circumstances, usually related to human health and safety. Obtaining a nest depredation permit is unlikely and involves a process that takes, at a minimum, 8 to 12 weeks. The best way to avoid a violation of the MBTA is to remove vegetation outside of the active breeding season, which typically falls between March and August, depending on the species. MBTA enforcement actions are typically the result of a concerned member of the community reporting a violation.

Colorado Parks and Wildlife maintains a leadership role with respect to raptor management in Colorado; however, the primary authority for the regulation of take and the ultimate jurisdiction for most of these species rests with the Service under the MBTA and the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668c).

Potential Habitat and Effects

A wide variety of bird species use different habitat types in the project area for shelter, breeding, wintering, and foraging at various times during the year. Upland grasslands, trees, and shrubs in and adjacent to the project area are potential nesting habitat for migratory birds. ERO did not observe any active or inactive migratory bird nests, including potential raptor nests, in or within ¼ mile of the project area during the 2021 site visit.

Recommendations

Although no nests were observed during the 2021 site visit, ground-nesting bird and arboreal nests are difficult to detect and may be present in the grasslands and trees in the project area. To avoid destruction of potential migratory bird nests, vegetation removal should be conducted outside of the April 1 through August 31 breeding season.

Both the Denver Field Office of the Service (2009) and the Colorado Department of Transportation (2011) have identified the primary nesting season for migratory birds in eastern Colorado as occurring from April 1 through August 31. However, a few species such as bald eagles, great horned owls, and red-tailed hawks can nest as early as December (eagles) or late February (owls and red-tailed hawks). Because of variability in the breeding seasons, ERO recommends that a nest survey be conducted within one week prior to construction to determine if any active nests are present in the project area so that they can be avoided. Additional nest surveys during the nesting season may also be warranted to identify active nesting species that may present additional development timing restrictions (e.g., eagles or red-tailed hawks).

If active nests are identified in or near the project area, activities that would directly affect the nests should be restricted. Habitat-disturbing activities (e.g., tree removal, grading, scraping, and grubbing) should be conducted during the nonbreeding season to avoid disturbing active nests, or to avoid a “take” of the migratory bird nests in the project area. Nests can be removed during the September 1 through March 31 nonbreeding season to preclude future nesting and avoid violations of the MBTA. There is no process for removing nests during the nonbreeding season; however, nests may not be collected under MBTA regulations. If the construction schedule does not allow vegetation removal outside of the breeding season, a nest survey should be conducted immediately prior to vegetation removal to determine if the nests are active and by which species. If active nests are found, any work that would destroy the nests or cause the birds to abandon young in the nest could not be conducted until the birds have vacated the nests.

Other Wildlife

No prairie dog colonies were observed in the project area during the 2021 site visit. The project area and neighboring undeveloped area provide habitat for a variety of small mammals such as cottontail rabbits (*Sylvilagus* sp.), deer mice (*Peromyscus* sp.), voles (*Microtus* sp.), and pocket gophers (*Geomyidae* sp.). Grassland habitat likely provides breeding habitat for numerous ground-nesting prairie bird species, and the trees in the project area likely provide nesting habitat for birds.

The project area is in the overall range of black-tailed prairie dog (*Cynomys ludovicianus*), olive-backed pocket mouse (*Perognathus fasciatus*), Preble’s (*Zapus hudsonius preblei*), white-tailed jackrabbit (*Lepus townsendii*), wild turkey (*Meleagris gallopavo*), mule deer (*Odocoileus hemionus*), white-tailed deer (*Odocoileus virginianus*), pronghorn (*Antilocapra americana*), mountain lion (*Puma concolor*), black bear (*Ursus americanus*), Hernandez’s short-horned lizard (*Phrynosoma hernandesi*), prairie lizard (*Sceloporus undulates*), ornate box turtle (*Terrapene ornata ornata*), many-lined skink (*Plestiodon multivirgatus*), bullsnake (*Pituophis catenifer sayi*), milksnake (*Lampropeltis triangulum*), plains gartersnake (*Thamnophis radix*), prairie rattlesnake (*Crotalus viridis*), western rattlesnake (*Crotalus atrox*), six-lined racerunner (*Aspidoscelis sexlineata*), smooth greensnake (*Opheodrys vernalis*), and terrestrial gartersnake (*Thamnophis elegans*); and Canada goose (*Branta canadensis*) winter range (Natural Diversity Information Source (NDIS) 2021). During the 2021 site visit, none of these species were observed in the project area. No designated wildlife corridors were mapped in the project area;

however, mule deer, white-tailed deer, mountain lion, and black bear habitat, as well as a human conflict area for black bear, are shown as occurring in the project area (NDIS 2021).

The project area contains high-quality habitat that provides open space and shelter for a variety of species. Overall, surrounding and continuing development contributes to a decline in the number and diversity of wildlife species nearby and to a change in species composition to favor species that adapt better to human disturbance.

References

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<https://www.codot.gov/programs/environmental/wildlife/guidelines/BirdspecCDOTbio.pdf/view>.
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<https://ndismaps.nrel.colostate.edu/index.html?app=HuntingAtlas>. Last accessed September 14, 2021.
- U.S. Environmental Protection Agency (EPA). 2020. The Navigable Waters Protection Rule: Definition of “Waters of the United States”: Final Rule. Federal Register 85 FR 2225, pp. 22250-22342. June 22.
- U.S. Fish and Wildlife Service (Service). 2003. Migratory Bird Permit Memorandum. April 15.
- U.S. Fish and Wildlife Service (Service). 2009. Personal communication between Pete Plage (U.S. Fish and Wildlife Service) and ERO Resources Corporation.
- U.S. Fish and Wildlife Service (Service). 2021. Endangered, Threatened, Proposed and Candidate Species, Colorado Counties. <http://ecos.fws.gov/ipac/>. Last accessed September 14, 2021.

PHOTO LOG
OLD RANCH ROAD PROPERTY
EL PASO COUNTY, COLORADO
SEPTEMBER 3, 2021



Photo 1 - Overview of ponderosa pine community in the western part of the project area. View is to the north.



Photo 2 - Overview of ponderosa pine community in the eastern part of the project area. View is to the north.

PHOTO LOG
OLD RANCH ROAD PROPERTY
EL PASO COUNTY, COLORADO
SEPTEMBER 3, 2021



Photo 3 - Overview of ponderosa pine community in the northwestern part of the project area.
View is to the northwest.



Photo 4 - Overview of upland meadows in the southeastern part of the project area. View is to the southeast.

PHOTO LOG
OLD RANCH ROAD PROPERTY
EL PASO COUNTY, COLORADO
SEPTEMBER 3, 2021



Photo 5 - Overview of upland meadows and driveway in the central part of the project area.
View is to the southeast.



Photo 6 - Overview of upland meadows and driveway in the eastern part of the project area.
View is to the north.

PHOTO LOG
OLD RANCH ROAD PROPERTY
EL PASO COUNTY, COLORADO
SEPTEMBER 3, 2021



Photo 7 - Overview of residential property in the central part of the project area. View is to the northeast.