#### Kofford, Kevin

From: Myers, Stephen

Sent: Thursday, March 30, 2023 2:21 PM

To: Kofford, Kevin

Subject: Fw: [EXTERNAL] RE: Request for Concurrence/Technical Assistance: Renehan Subdivision Project - El Paso County, Colorado

See clearance from USFWS below.

Stephen Myers, PWS | Environmental

Kimley-Horn

Direct: <u>813.556.6671</u> | Mobile: <u>813.765.8028</u> | www.kimley-horn.com

From: ColoradoES, FW6 < ColoradoES@fws.gov>

Sent: Thursday, March 30, 2023 1:22 PM

To: Myers, Stephen < Stephen. Myers@kimley-horn.com>

Subject: Re: [EXTERNAL] RE: Request for Concurrence/Technical Assistance: Renehan Subdivision Project - El Paso County, Colorado

Hello Stephen,

Thank you for contacting the U.S. Fish and Wildlife Service (Service). The Service has reviewed the Renehan Subdivision project and has no concerns with this project resulting in impacts to species listed as candidate, proposed, threatened, or endangered.

We appreciate your efforts to ensure the conservation of threatened and endangered species. Thank you for contacting us and please let me know if you have any further questions.

Sincerely,

**Emily Berchem** 

U.S. Fish and Wildlife Service Colorado Ecological Services Field Office 134 Union Blvd. Lakewood, CO 80228 From: Myers, Stephen < Stephen. Myers@kimley-horn.com>

Sent: Wednesday, March 29, 2023 5:08 PM To: ColoradoES, FW6 < ColoradoES@fws.gov>

Cc: Kofford, Kevin < Kevin.Kofford@kimley-horn.com>; Marchando, Alexis < Alexis.Marchando@kimley-horn.com>

Subject: [EXTERNAL] RE: Request for Concurrence/Technical Assistance: Renehan Subdivision Project - El Paso County, Colorado

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

#### Good afternoon,

I'm writing to follow up on the Request for Concurrence/Technical Assistance submitted on Feb 16, 2023. While not consultation is not required under Section 7 of the ESA, El Paso County is requiring a "no effect" determination from the USFWS in order to approve the plat for this parcel. We would greatly appreciate further coordination with USFWS regarding this project.

Thanks and have a great day, Stephen.

Stephen Myers, PWS | Environmental

Kimley-Horn | 2 North Nevada Avenue, Suite 900 | Colorado Springs, CO 80903

Direct: 719.581.7962 | Mobile: 813.765.8028 | www.kimley-horn.com

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Celebrating 15 years as one of FORTUNE's 100 Best Companies to Work For

From: Myers, Stephen

Sent: Thursday, February 16, 2023 6:18 PM

To: 'ColoradoES@fws.gov' <ColoradoES@fws.gov>

Cc: Kofford, Kevin < Kevin.Kofford@kimley-horn.com>; Marchando, Alexis < Alexis.Marchando@kimley-horn.com> Subject: Request for Concurrence/Technical Assistance: Renehan Subdivision Project - El Paso County, Colorado

To whom it may concern,

On behalf of Renehan Subdivision, I would like to submit the Threatened and Endangered Species Habitat Assessment for the Renehan Subdivision Project in El Paso County, Colorado. We respectfully request concurrence on the attached assessment in compliance with the Endangered Species Act. Should you determine

any disagreement with this assessment, please contact me at 813-556-6671 or <a href="mailto:stephen.myers@kimley-horn.com">stephen.myers@kimley-horn.com</a> within thirty (30) days of receipt of this letter to set up a web conference to go over the details of your findings and discuss project-related specifics.

Thank you and have a wonderful day, Stephen.

Stephen Myers, PWS | Environmental

Kimley-Horn | 2 North Nevada Avenue, Suite 900 | Colorado Springs, CO 80903

Direct: 719.581.7962 | Mobile: 813.765.8028 | www.kimley-horn.com

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Celebrating 15 years as one of FORTUNE's 100 Best Companies to Work For



February 16, 2023

Drue DeBerry, Colorado and Nebraska Field Supervisor U.S. Fish and Wildlife Service Colorado Field Office P.O. Box 25486
Denver Federal Center, (MS 65412)
Denver, CO 80225

Subject: Threatened and Endangered Species Habitat Assessment – Renehan Subdivision 5740 Burgess Road, Colorado Springs, El Paso County, Colorado 80908

Dear Mr. DeBerry:

Renehan Subdivision (Renehan) is submitting a subdivision application to El Paso County for its review and approval for the proposed subdivided lots located at 5740 Burgess Road, Colorado Springs, El Paso County, Colorado (*Figure 1 – Project Location Map, Figure 2 – USGS Map*). Renehan retained Kimley-Horn and Associates, Inc. (Kimley-Horn) to assess the project site for the presence of potential habitat for the federally threatened Preble's meadow jumping mouse (*Zapus hudsonius preblei*) and prepare this letter report to meet the requirements of El Paso County regarding compliance with the Endangered Species Act (ESA). Kimley-Horn, on behalf of Renehan, is requesting Technical Assistance from the U.S. Fish and Wildlife Service (USFWS) regarding the Preble's meadow jumping mouse.

#### **Project Location**

The project site is located at 5740 Burgess Road, Colorado Springs, CO 80908. The project site is in Section 13, Township 12 South, Range 66 West in El Paso County, Colorado (*Figure 1*). The center latitude/longitude of the project site is 39.001544N, -104.720994W. The average elevation of the project site is approximately 7,185 feet above sea level (ASL).

#### **Project Description**

The Project is anticipated to consist of the subdivision of the existing property into three individual lots to be used for single family residential. The property is currently zoned: Rural Residential (RR-5) allowing for 5 acre lots. The proposed development will include Lot 1 within the southern region of the project site of 8.62 acres, Lot 2 within the central/northeast region of the project site of 17.06 acres, and Lot 3 within the northwestern region of the project site of 8.69 acres. The site will also include a shared private driveway with access to Burgess Road and a no build wildlife easement within Lot 3 of 0.57 acres. A site plan for the proposed project is included in **Appendix A**.

#### **Site Description**

The project site consists of undeveloped land with an unimproved driveway running north along the western boundary of the site. The site is surrounded by residential lots with Kettle Creek flowing west approximately 200 feet north of the site and the Burgess River flowing west approximately 500 feet north of the site (*Figure 3 – Aquatic Resource Location Map*). Dominant vegetation includes mature and sapling lodgepole pine (*Pinus contorta*). Groundcover is low with small areas of western wheatgrass (*Pascopyrum smithii*) and Kentucky bluegrass (*Poa pratensis*). The project site is bound to the north by La Foret Conference and Retreat Center forested land, to the west and east by residential housing, and to the south by Burgess Road. The project site has remained undeveloped since the earliest aerial of 1985. Existing topography slopes from east to west and south to north. According to the National Wetland Inventory (NWI), no wetlands or surface waters occur on the project site. Representative photos of the site are included in **Appendix B**.

#### Threatened, Endangered, and Candidate Species and Critical Habitat

Kimley-Horn accessed the USFWS Information, Planning, and Conservation (IPAC) online system (http://ecos.fws.gov/ipac/) to determine if any federally listed species could potentially occur in the vicinity of the project site (**Appendix C**). A site visit was conducted by Kimley-Horn on January 9, 2023, to conduct a land survey and an assessment of potential listed species habitat. The following species are federally listed and were identified with the potential to occur within the vicinity of the project site (**Table 1**).

Table 1. Federally Listed, Proposed, and Candidate Species Known to or That May Occur within the Project Site in El Paso County, Colorado

Common Name	Scientific Name	<b>Federal Listing Status</b>	Habitat Preference		
Mammals					
Preble's meadow jumping mouse	Zapus hudsonius preblei	Threatened	Inhabits well developed riparian habitat with adjacent, undisturbed grassland communities, and a nearby water source (USFWS 2018).		

#### **Endangered Species Act Compliance**

Preble's meadow jumping mouse is a nocturnal mouse that occupies the eastern edges of the Front Range in Colorado. Habitat for Preble's is typically comprised of well-developed riparian vegetation with adjacent, relatively undisturbed grassland communities and a nearby water source (USFWS 2018). Preble's riparian habitats are close to creeks, typically within the 100-year floodplain, and feature dense, multi-story horizontal cover of shrubs and trees with an understory of forbs and grasses. Upland habitats are usually immediately adjacent to the riparian habitats or within 300 feet of the 100-year floodplain. The USFWS has designated critical habitat, as well a block clearance area for this species. Block clearance areas are portions of land where Preble's meadow jumping mouse ESA precautions are no longer necessary. The project site is outside of the Colorado Springs block clearance by approximately one (1) mile to the north and not located within critical habitat. No positive trapping results for the Preble's meadow jumping mouse have been documented within the project site (CNHP 2019) or nearby vicinity. Seven (7) trapping surveys along Kettle Creek and the Burgess River within three (3) miles of the project site have also yielded negative results. No suitable habitat is present within the project site and the species was not observed during the site visit on January 9, 2022.

#### **Determination of the Effects from the Proposed Project**

#### Rationale for Excluding the Project Site as Potential Preble's Meadow Jumping Mouse Habitat

The proposed project is not anticipated to impact Preble's meadow jumping mouse habitat for the following reasons:

- Lack of Suitable Habitat: The project site lacks the well-developed, riparian vegetation, which
  typically includes a dense combination of grasses, forbs and shrubs, that Preble's meadow jumping
  mouse require.
- **Project Site is Not Identified as Critical Habitat:** The project site does not contain designated critical habitat for Preble's meadow jumping mouse and no positive trapping results have been documented within three (3) miles of the project site.

Given the above information, it is unlikely the project site supports a population of Preble's meadow jumping mouse or that the continued existence of this species would be adversely affected by the proposed project. It is anticipated that the proposed project will have *no effect* on Preble's meadow jumping mouse.

#### Conclusion

Kimley-Horn, on behalf of Renehan respectfully requests concurrence on this determination in compliance with the ESA. Should you determine any disagreement with this assessment, please contact me at 719-581-7962 or stephen.myers@kimley-horn.com within thirty (30) days of receipt of this letter to set up a web conference to go over the details of your findings and discuss project-related specifics.

Thank you for your time and consideration.

Sincerely,

Stephen Myers, PWS

**Environmental Scientist** 

Kimley-Horn and Associates, Inc.

Cc: Kevin Kofford (Kevin.Kofford@kimley-horn.com)

#### References

CNHP, 2022. *Colorado Conservation Data Explorer (CODEX)*. Available at https://codex.cnhp.colostate.edu/content/map.

USFWS. 2021. PMJM Trap Results Updated June 2021. Sourced from request to USFWS Biologist George San Miguel.

USFWS. 2018. Recovery Plan - Preble's Meadow Jumping Mouse (*Zapus hudsonius preblei*). Available at: https://ecos.fws.gov/docs/recovery\_plan/Final\_Draftpreblesrecoveryplan\_10032018\_signed.pdf



#### Attachments:

Figure 1 – Project Location Map

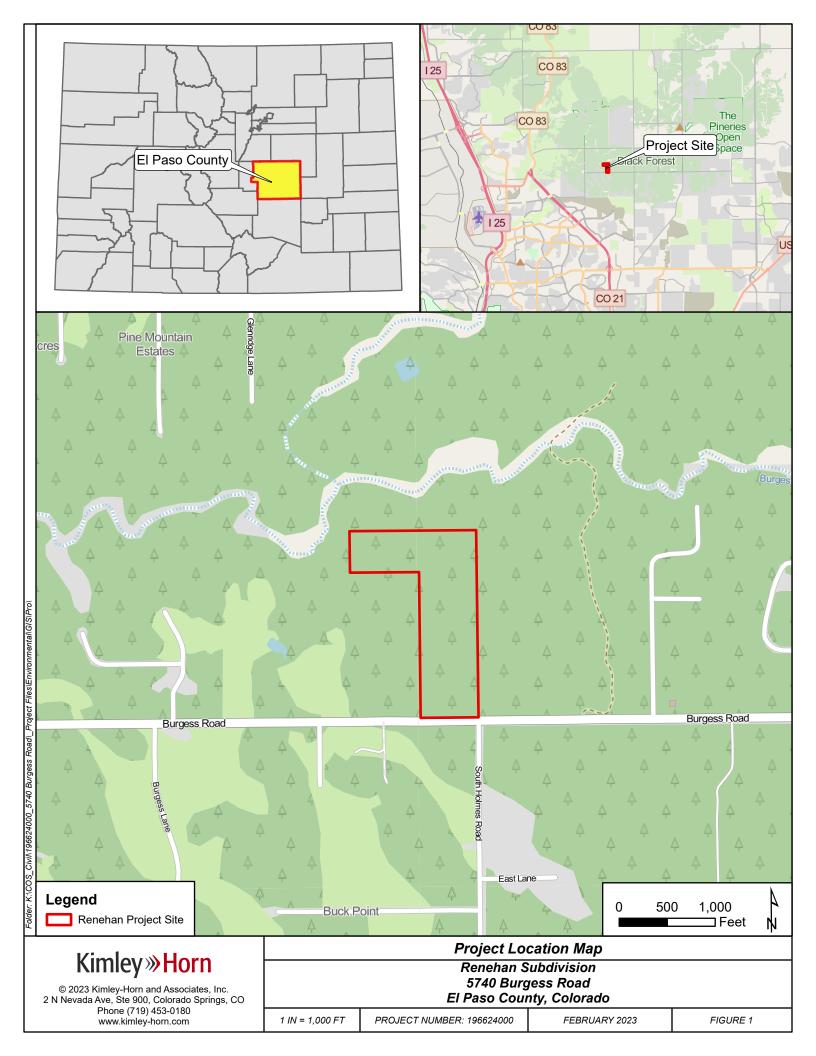
Figure 2 – USGS Map

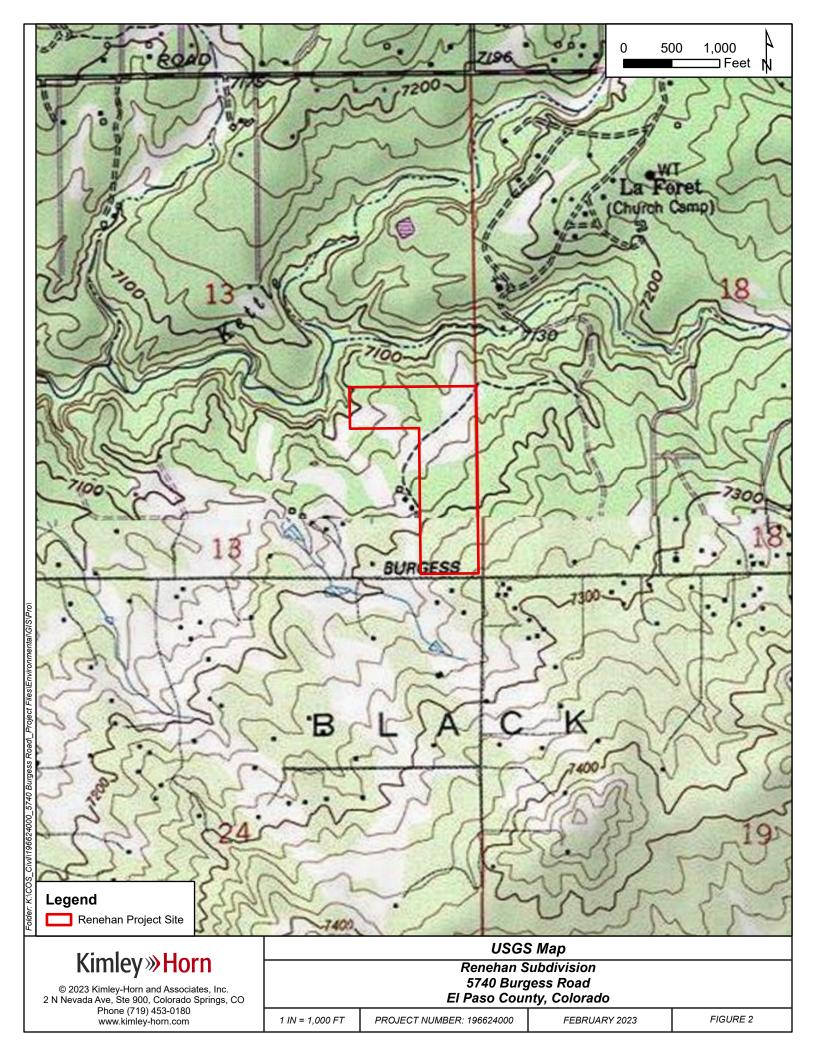
Figure 3 – Aquatic Resource Location Map

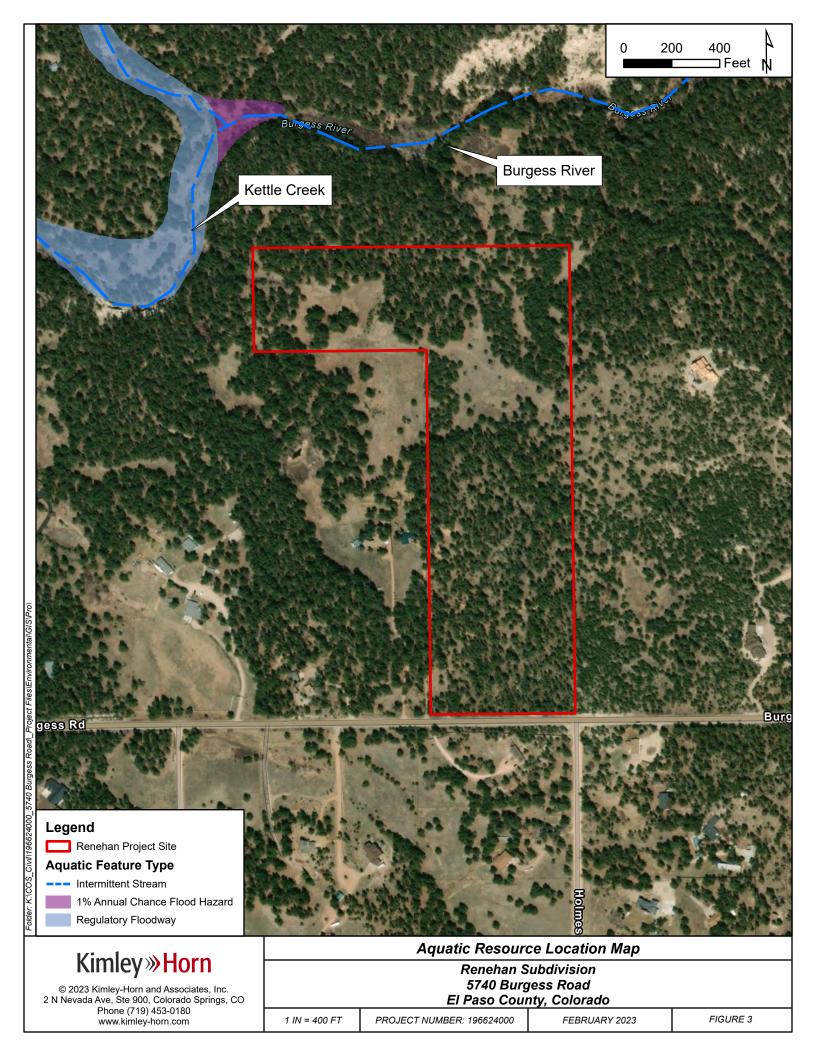
Appendix A – Proposed Site Plan

Appendix B – Representative Site Photos

Appendix C – IPAC Report







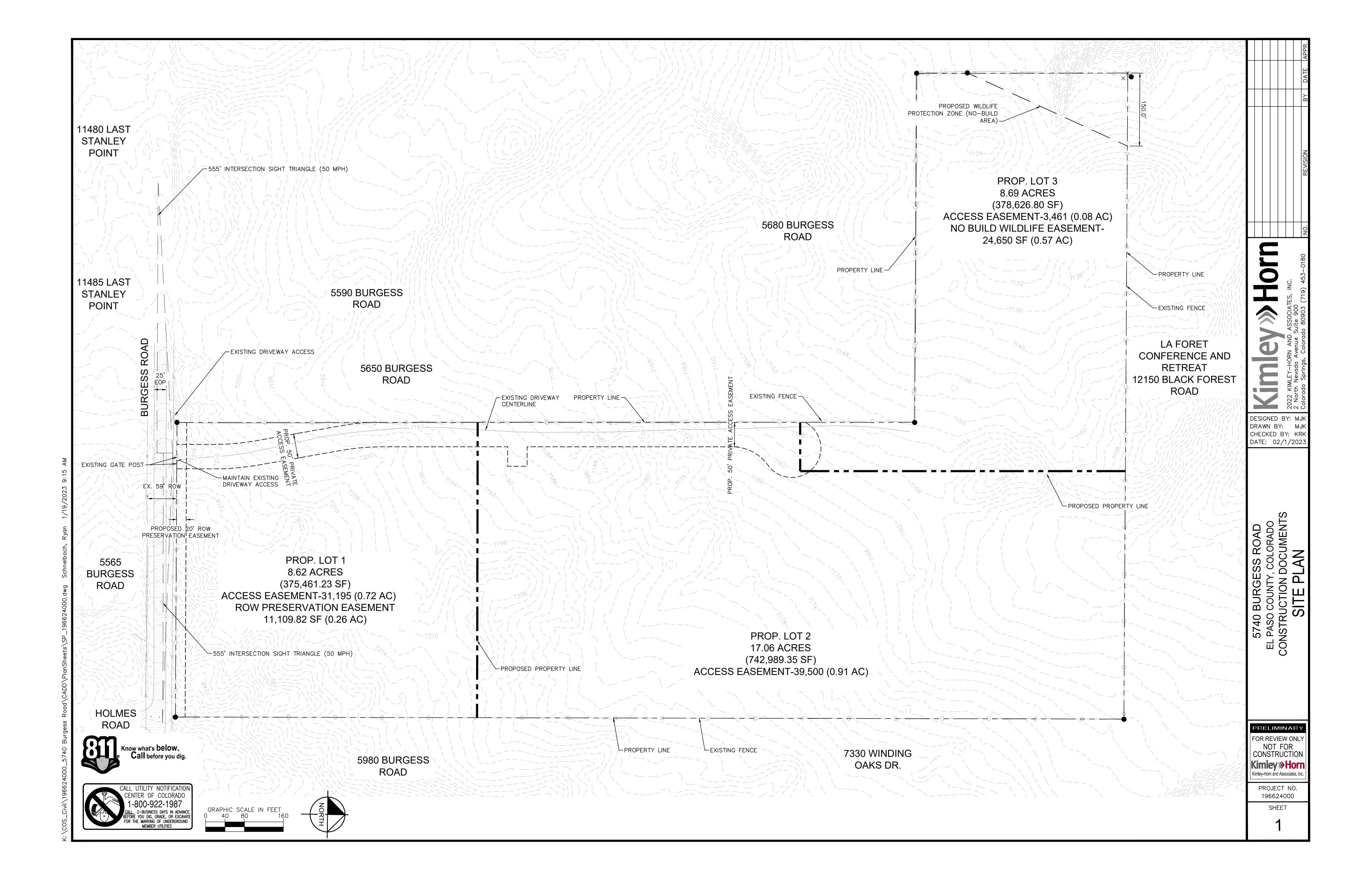




Photo 1 – Drainageway in Northwest Corner of Site, Facing West (No-Build Easement)



Photo 2 – Drainageway in Northwest Corner of Site, Facing West (No-Build Easement)

Representative Site Photos – January 9, 2023

Renehan Subdivision 5740 Burgess Road El Paso Cunty, Colorado

Appendix B

FEBRUARY 2023 Scale: NTS





# United States Department of the Interior



#### FISH AND WILDLIFE SERVICE

Colorado Ecological Services Field Office Denver Federal Center P.O. Box 25486 Denver, CO 80225-0486

Phone: (303) 236-4773 Fax: (303) 236-4005

In Reply Refer To: February 16, 2023

Project Code: 2023-0046049

Project Name: Renehan Subdivision

Subject: List of threatened and endangered species that may occur in your proposed project

location or may be affected by your proposed project

#### To Whom It May Concern:

The enclosed species list identifies threatened, endangered, proposed and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the ECOS-IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list.

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Under sections 7(a)(1) and 7(a)(2) of the Act and its implementing regulations (50 CFR 402 *et seq.*), Federal agencies are required to utilize their authorities to carry out programs for the conservation of threatened and endangered species and to determine whether projects may affect threatened and endangered species and/or designated critical habitat.

A Biological Assessment is required for construction projects (or other undertakings having similar physical impacts) that are major Federal actions significantly affecting the quality of the human environment as defined in the National Environmental Policy Act (42 U.S.C. 4332(2)

(c)). For projects other than major construction activities, the Service suggests that a biological evaluation similar to a Biological Assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. Recommended contents of a Biological Assessment are described at 50 CFR 402.12.

If a Federal agency determines, based on the Biological Assessment or biological evaluation, that listed species and/or designated critical habitat may be affected by the proposed project, the agency is required to consult with the Service pursuant to 50 CFR 402. In addition, the Service recommends that candidate species, proposed species and proposed critical habitat be addressed within the consultation. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found in the "Endangered Species Consultation Handbook" at:

http://www.fws.gov/endangered/esa-library/pdf/TOC-GLOS.PDF

**Migratory Birds**: In addition to responsibilities to protect threatened and endangered species under the Endangered Species Act (ESA), there are additional responsibilities under the Migratory Bird Treaty Act (MBTA) and the Bald and Golden Eagle Protection Act (BGEPA) to protect native birds from project-related impacts. Any activity, intentional or unintentional, resulting in take of migratory birds, including eagles, is prohibited unless otherwise permitted by the U.S. Fish and Wildlife Service (50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)). For more information regarding these Acts see https://www.fws.gov/birds/policies-and-regulations.php.

The MBTA has no provision for allowing take of migratory birds that may be unintentionally killed or injured by otherwise lawful activities. It is the responsibility of the project proponent to comply with these Acts by identifying potential impacts to migratory birds and eagles within applicable NEPA documents (when there is a federal nexus) or a Bird/Eagle Conservation Plan (when there is no federal nexus). Proponents should implement conservation measures to avoid or minimize the production of project-related stressors or minimize the exposure of birds and their resources to the project-related stressors. For more information on avian stressors and recommended conservation measures see https://www.fws.gov/birds/bird-enthusiasts/threats-to-birds.php.

In addition to MBTA and BGEPA, Executive Order 13186: *Responsibilities of Federal Agencies to Protect Migratory Birds*, obligates all Federal agencies that engage in or authorize activities that might affect migratory birds, to minimize those effects and encourage conservation measures that will improve bird populations. Executive Order 13186 provides for the protection of both migratory birds and migratory bird habitat. For information regarding the implementation of Executive Order 13186, please visit https://www.fws.gov/birds/policies-and-regulations/executive-orders/e0-13186.php.

We appreciate your concern for threatened and endangered species. The Service encourages Federal agencies to include conservation of threatened and endangered species into their project planning to further the purposes of the Act. Please include the Consultation Code in the header of this letter with any request for consultation or correspondence about your project that you submit to our office.

Attachment	(~)	١.
Attachment	S	١.

Official Species List

02/16/2023

# **Official Species List**

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

Colorado Ecological Services Field Office Denver Federal Center P.O. Box 25486 Denver, CO 80225-0486 (303) 236-4773

## **Project Summary**

Project Code: 2023-0046049

Project Name: Renehan Subdivision
Project Type: Residential Construction

Project Description: 5740 Burgess Road, El Paso County, Colorado

**Project Location:** 

Approximate location of the project can be viewed in Google Maps: <a href="https://www.google.com/maps/@39.0010847,-104.72054686236487,14z">https://www.google.com/maps/@39.0010847,-104.72054686236487,14z</a>



Counties: El Paso County, Colorado

### **Endangered Species Act Species**

There is a total of 8 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species. Note that 3 of these species should be considered only under certain conditions.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries<sup>1</sup>, as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

NOAA Fisheries, also known as the National Marine Fisheries Service (NMFS), is an
office of the National Oceanic and Atmospheric Administration within the Department of
Commerce.

#### **Mammals**

NAME STATUS

#### Gray Wolf *Canis lupus*

Endangered

Population: U.S.A.: All of AL, AR, CA, CO, CT, DE, FL, GA, IA, IN, IL, KS, KY, LA, MA, MD, ME, MI, MO, MS, NC, ND, NE, NH, NJ, NV, NY, OH, OK, PA, RI, SC, SD, TN, TX, VA,

VT, WI, and WV; and portions of AZ, NM, OR, UT, and WA. Mexico.

There is **final** critical habitat for this species.

This species only needs to be considered under the following conditions:

Lone, dispersing gray wolves may be present throughout the state of Colorado. If your
activity includes a predator management program, please consider this species in your
environmental review.

Species profile: https://ecos.fws.gov/ecp/species/4488

#### Preble's Meadow Jumping Mouse Zapus hudsonius preblei

Threatened

There is **final** critical habitat for this species. Your location does not overlap the critical habitat.

Species profile: <a href="https://ecos.fws.gov/ecp/species/4090">https://ecos.fws.gov/ecp/species/4090</a>

General project design guidelines:

https://ipac.ecosphere.fws.gov/project/5CCBUTTWANGMXHOELNCEVXX6LE/documents/generated/6861.pdf

#### **Birds**

NAME STATUS

#### Eastern Black Rail Laterallus jamaicensis ssp. jamaicensis

Threatened

No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/10477">https://ecos.fws.gov/ecp/species/10477</a>

#### Piping Plover Charadrius melodus

Threatened

Population: [Atlantic Coast and Northern Great Plains populations] - Wherever found, except those areas where listed as endangered.

There is **final** critical habitat for this species. Your location does not overlap the critical habitat.

This species only needs to be considered under the following conditions:

 Project includes water-related activities and/or use in the N. Platte, S. Platte, and Laramie River Basins which may affect listed species in Nebraska.

Species profile: https://ecos.fws.gov/ecp/species/6039

#### **Fishes**

NAME STATUS

#### Greenback Cutthroat Trout Oncorhynchus clarkii stomias

Threatened

No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/2775">https://ecos.fws.gov/ecp/species/2775</a>

#### Pallid Sturgeon Scaphirhynchus albus

Endangered

No critical habitat has been designated for this species.

This species only needs to be considered under the following conditions:

 Project includes water-related activities and/or use in the N. Platte, S. Platte, and Laramie River Basins which may affect listed species in Nebraska.

Species profile: https://ecos.fws.gov/ecp/species/7162

#### **Insects**

NAME STATUS

#### Monarch Butterfly Danaus plexippus

Candidate

No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/9743">https://ecos.fws.gov/ecp/species/9743</a>

### **Flowering Plants**

NAME STATUS

#### Ute Ladies'-tresses Spiranthes diluvialis

Threatened

No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/2159">https://ecos.fws.gov/ecp/species/2159</a>

#### **Critical habitats**

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.

### **IPaC User Contact Information**

Agency: Kimley-Horn & Associates, Inc.

Name: Alexis Marchando

Address: 2 N Nevada Ave, Suite 900

City: Colorado Springs

State: CO Zip: 80903

Email alexis.marchando@kimley-horn.com

Phone: 7192995093