

October 19, 2016

Mr. Drue DeBerry  
U.S. Fish and Wildlife Service  
Colorado Field Office  
Denver Federal Center (MS 65412)  
PO Box 25486  
Denver, Colorado 80225

Re: Threatened and Endangered Species Habitat Assessment – Falcon  
Marketplace, El Paso County, Colorado

Dear Mr. DeBerry:

On behalf of Hummel Investments, LLC (Client), ERO Resources Corporation (ERO) is requesting Technical Assistance regarding threatened and endangered species for a proposed development of the property northwest of the East Woodmen Road and Meridian Road intersection in El Paso County, Colorado (project area; Figure 1). The Client retained ERO as part of due diligence activities associated with development of the project area.

### **Federal Nexus**

The project area is northwest of the intersection of East Woodmen Road and Meridian Road in Falcon, Colorado (Figure 1). Two drainages associated with an unnamed tributary to Black Squirrel Creek and abutting potential wetlands occur in the project area where they join and flow south. On August 23, 2016, Van Truan, Chief of Southern Colorado Regulatory Branch of the U.S. Army Corps of Engineers, provided an Approved Jurisdictional Ruling determining that “the site contains no jurisdictional waters of the United States that are subject to regulation under Section 404 of the Clean Water Act” (Meier personal communication 2016); therefore, currently, no known federal nexus is associated with the project.

The Client retained ERO to assess the project area for the presence of habitat suitable for federally listed threatened, endangered, and candidate species.

### **Project Location**

The legal description of the project area is Section 1, Township 13 South, Range 65 West of the 6th Principal Meridian in El Paso County, Colorado (Figure 1). The UTM coordinates of the approximate center of the project area are 5337891mE, 4310487mN, Zone 13. The latitude/longitude of the project area is 38.94267°N/ 104.610104°W. The elevation of the project area is approximately 6,900 feet above sea level.

Denver  
1842 Clarkson St.  
Denver, CO 80218  
303.830.1188

Durango  
1015 ½ Main Avenue  
Durango, CO 81301  
970.422.2136

Hotchkiss  
P.O. Box 932  
161 South 2<sup>nd</sup> St.  
Hotchkiss, CO 81419  
970.872.3020

Idaho  
4001 East Main Street  
Emmett, ID 83617  
208.365.7684

## Project Description

The proposed project consists of constructing a subdivision of residential lots.

## Site Description

Falcon Marketplace is located northwest of the intersection of Woodmen Road and Meridian Road near Falcon in El Paso County, Colorado. Portions of the project area appear to have been previously disturbed. The project area consists of a mixture of uplands and potential wetlands. Uplands were observed within the northwestern and eastern portions of the project area and in an upland inclusion on a small hill near the southwest corner of the project area (Photos 1 and 2). Two drainages associated with an unnamed tributary of Black Squirrel Creek connect in and traverse the project area from north to south. Outside of the tributary, potential wetlands were established within lower elevation areas through the center and western portions of the project area.

The uplands within the project area consist of a mix of native and nonnative species including smooth brome (*Bromus inermis*), western wheatgrass (*Pascopyrum smithii*), spiderwort (*Tradescantia* sp.), crested wheatgrass (*Agropyron cristatum*), sand dropseed (*Sporobolus cryptandrus*), pricklypear cactus (*Opuntia* spp.), common mullein (*Verbascum thapsus*), cheatgrass (*Bromus tectorum*), and Canada thistle (*Cirsium arvense*) (Photos 1 and 2).

The potential wetlands within the project area are dominated by Baltic rush (*Juncus arcticus*). Other prevalent hydrophytic vegetation includes Emory's sedge (*Carex emoryi*), Nebraska sedge (*Carex nebrascensis*), common spikerush (*Eleocharis palustris*), and broadleaf cattail (*Typha latifolia*) (Photo 3). Along the upstream portions of the drainages, a few patches of sandbar willow sprouts (*Salix exigua*) and New Mexico locust (*Robinia neomexicana*) were observed (Photo 4). In the northern half of the project area, the western branch of the unnamed tributary consisted of a potential wetland dominated by Baltic rush with no defined channel bed or bank. The eastern branch of the unnamed tributary had a 1- to 5-foot-wide channel with very slow flowing water (Photo 5). Downstream of the confluence of the two drainages, the tributary channel dried up and was only observed intermittently (Photo 6).

A residence is located in the northeast corner of the project area. The project area is bordered by graded development to the west and south, and residential development to the north and east. Woodmen Road borders the south boundary of the project area and Meridian Road is along the east boundary.

The Natural Resource Conservation Service (NRCS) has mapped the soils within the project area as Blakeland-Fluvaquentic Haplaquolls soils and Columbine gravelly sandy loam soils (U.S. Department of Agriculture, NRCS 2016). Blakeland-Fluvaquentic Haplaquolls soils typically consist of loamy sand between 0 and 27 inches on 1 to 9 percent slopes and are found on flats and hills. Columbine gravelly sandy loam soils are typically found along fans, floodplains, and fan terraces and typically consist of gravelly sandy loam from the ground surface to a depth up to 60 inches.

### Endangered Species Act (ESA) Compliance

On July 2, 2016, Courtney Swenson, a biologist with ERO, assessed the project area (2016 site visit) for suitable habitat for federally listed threatened and endangered species protected under the ESA of 1973, as amended (16 U.S.C. 1531 et seq.). The project area does not fall within U.S. Fish and Wildlife Service (Service) habitat or survey guidelines for the majority of the species listed by the Service as potentially occurring in El Paso County (Table 1).

**Table 1. Federally threatened, endangered, and candidate species potentially found in El Paso County or potentially affected by projects in El Paso County.**

Common Name	Scientific Name	Status*	Habitat	Potential Effect on Species
<b>Mammals</b>				
Black-footed ferret	<i>Mustela nigripes</i>	EXPN, XN	Prairie and grassland ranging from midwestern to western U.S.	No effect, habitat not present
North American wolverine	<i>Gulo gulo luscus</i>	P	Deep, persistent, and reliable spring snow cover	No effect, habitat not present
Preble's meadow jumping mouse	<i>Zapus hudsonius preblei</i>	T	Shrub riparian / wet meadows	No effect, in block clearance area
<b>Birds</b>				
Interior least tern**	<i>Sterna antillarum athalassos</i>	E	Sandy/pebble beaches on lakes, reservoirs, and rivers	No effect, not in Platte River Basin
Mexican spotted owl	<i>Strix occidentalis</i>	T	Closed canopy forests in steep canyons	No effect, no habitat present
Piping plover**	<i>Charadrius melodus</i>	T	Sandy lakeshore beaches and river sandbars	No effect, not in Platte River Basin
Whooping crane**	<i>Grus americana</i>	E	Mudflats around reservoirs and in agricultural areas	No effect, not in Platte River Basin
<b>Fish</b>				
Arkansas darter	<i>Etheostoma cragini</i>	C	Clear waters, low current with sandy bottoms, abundant aquatic vegetation	No, project area lacks flows and there is no continuous surface water connection to the Arkansas River
Greenback cutthroat trout	<i>Oncorhynchus clarki stomias</i>	T	Cold, clear, oxygenated streams of moderate gradient	No effect, no habitat present

Common Name	Scientific Name	Status*	Habitat	Potential Effect on Species
Pallid sturgeon**	<i>Scaphirhynchus albus</i>	E	Large, turbid, free-flowing rivers with a strong current and gravel or sandy substrate	No effect, not in Platte River Basin
<b>Plants</b>				
Ute ladies'-tresses orchid	<i>Spiranthes diluvialis</i>	T	Moist to wet alluvial meadows, floodplains of perennial streams, and around springs and lakes below 6,500 feet	No habitat present – above species' elevation range
Western prairie fringed orchid**	<i>Platanthera praeclara</i>	T	Moist to wet tallgrass prairies and sedge meadows, mostly in relatively undisturbed grasslands	No effect, not in Platte River Basin

\*T = Federally Threatened; E = Federally Endangered; C = Federal Candidate; P = Federal Proposed; EXPN, XN = Experimental Non-Essential Population.

\*\*Water depletions in the North Platte, South Platte, and Laramie River basins may affect the species and/or critical habitat in downstream reaches in other counties or states.

Source: Service 2016.

The interior least tern, piping plover, whooping crane, pallid sturgeon, and western prairie fringed orchid are species affected by water depletions from the South Platte River. The project area is not within the Platte River Basin and there would be no depletions of the Platte River. The proposed project would not directly affect the black-footed ferret, North American wolverine, or Mexican spotted owl because of the lack of potentially suitable habitat in the project area. The project area is within the Preble's meadow jumping mouse (Preble's) Colorado Springs block clearance area, within which Preble's is assumed to be absent (Service 2012). The project area would not likely support the Arkansas darter because the darter is not known to occur in Black Squirrel Creek or its tributaries within the Arkansas River Basin and the project area consists of only small pooled areas, which lack the flows required by the species to disperse. The greenback cutthroat trout is primarily a high-elevation species, and the project area is outside the range of this species. ERO determined that the project area is not conducive to the establishment of Ute ladies'-tresses orchid (*Spiranthes diluvialis* or ULTO) and differs from the criteria of the Service's November 1992 (Service 1992) *Interim Survey Requirements for Spiranthes diluvialis* because the project area is above the elevation range and occurs outside of the 100-year floodplain of Fountain Creek.

### Other Sensitive Species

In addition to species listed as threatened or endangered, ERO assessed the project area for potential habitat and the presence of species protected by the Migratory Bird Treaty Act (MBTA). Migratory birds, as well as their eggs and active nests, are protected under the MBTA. Migratory bird habitat typically includes trees and shrubs, but upland grasslands also are used for nesting. No nests were observed during the 2016 site visit. The Client would comply with the MBTA by constructing the project or clearing any vegetation outside of the breeding season (during the winter months). If the construction schedule does not allow vegetation removal or construction outside of the breeding season, a nest survey would be conducted prior to vegetation removal.

### Conclusions

There is no suitable habitat for threatened or endangered species in the project area. Therefore, the proposed development of the property would likely have no effect on species listed by the Service as potentially being present in El Paso County. Based on this habitat assessment, ERO, on behalf of the Client, requests that the Service confirm that no further consultation under the ESA is required. Attached are surveyor qualifications, figures, and photos of the project area. After you review this information, ERO would appreciate a written determination of this request.

Please call if you need additional information or have any questions. I look forward to hearing from you.

Sincerely,



Courtney Swenson  
Biologist

Attachments

cc: Steve Meier – Hummel Investments, LLC

### References

- U.S. Department of Agriculture, Natural Resource Conservation Service (NRCS). 2016. Web Soil Survey. Available at: <http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>. Last accessed: June 20, 2016.
- U.S. Fish and Wildlife Service (Service). 1992. Interim Survey Requirements for *Spiranthes diluvialis*.
- U.S. Fish and Wildlife Service (Service). 2012. Preble's Meadow Jumping Mouse Block Clearance Map: Colorado Springs. Available at: <[http://www.fws.gov/mountain-prairie/species/mammals/preble/BLOCK\\_CLEARANCE/2-82012\\_CO\\_Springs\\_Prebles\\_Block\\_Clearance\\_Map\\_USFWS\\_REDUCED.pdf](http://www.fws.gov/mountain-prairie/species/mammals/preble/BLOCK_CLEARANCE/2-82012_CO_Springs_Prebles_Block_Clearance_Map_USFWS_REDUCED.pdf)>. Last accessed: July 8, 2016.

U.S. Fish and Wildlife Service (Service). 2016. Endangered, Threatened, Proposed and Candidate Species. Available at: <http://ecos.fws.gov/ipac/>. Last accessed: July 8, 2016.

**Site Information**

**Location:** Section 1, Township 13 South, Range 65 West; 6<sup>th</sup> Principal Meridian.

**Elevation:** Approximately 6,900 feet above sea level.

**Latitude/Longitude:** 38.94267°N/104.610104°W.

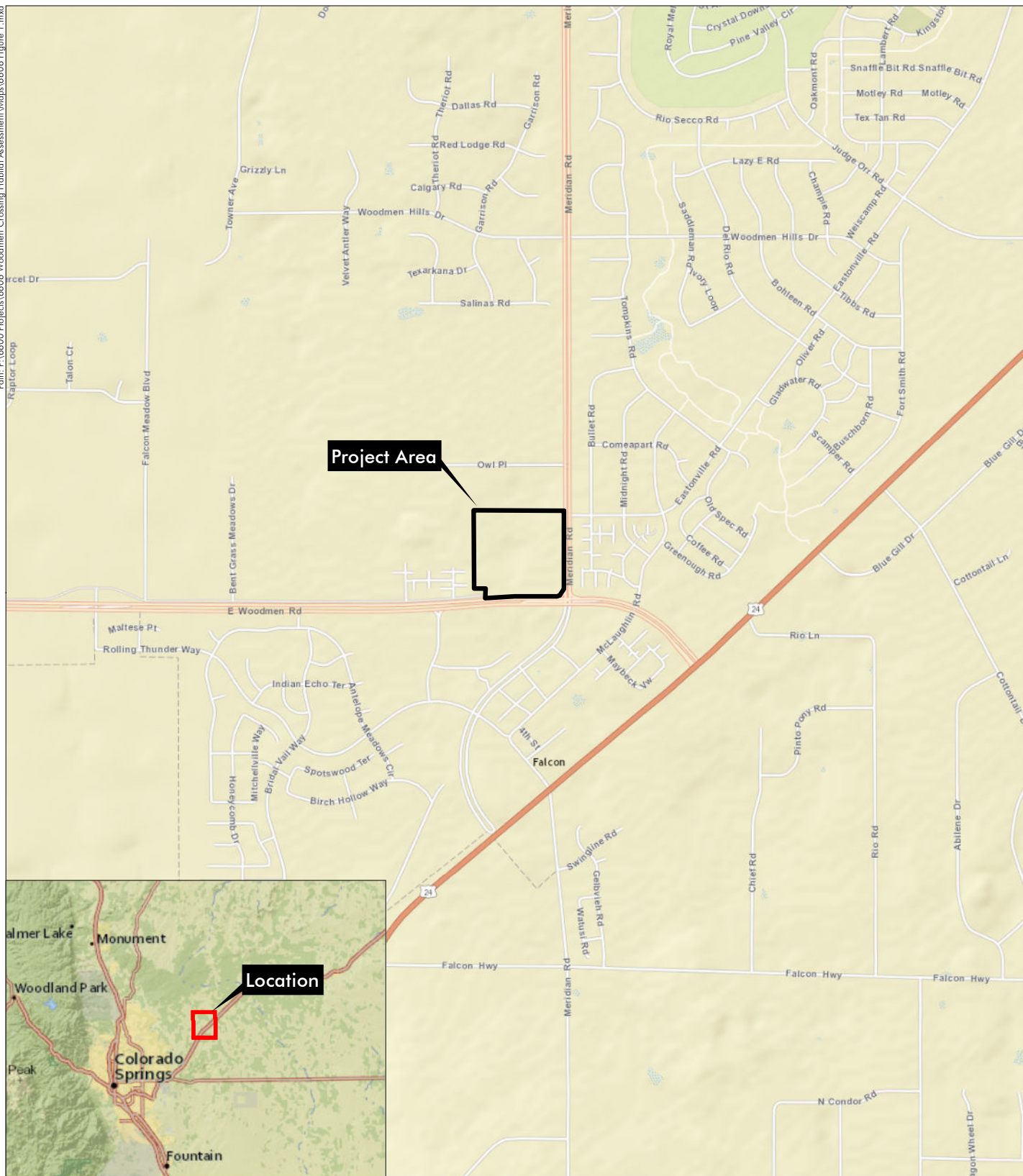
**UTM Coordinates:** 5337891mE, 4310487mN; Zone 13N.

**Soils:** Blakeland-Fluvaquentic Haplaquolls soils, Columbine gravelly sandy loam soils.

**Site Hydrology:** Unnamed tributary to Black Squirrel Creek, intermittent stream.

**Qualifications of Surveyors**

Qualifications of Courtney Swenson are available upon request. Courtney Swenson has a B.S. in biology from the University of Colorado at Boulder. Courtney has more than three years of experience performing Preble's habitat assessments. Courtney is familiar with Preble's survey guidelines and has been trained in Preble's identification. Courtney also has more than four years' experience conducting biological inventories and biographical mapping. Courtney is familiar with *Spiranthes diluvialis* survey guidelines and has viewed *Spiranthes* in the field.



## Falcon Marketplace

Section 1, T13S, R65W; 6th PM

UTM NAD 83: Zone 13N; 5337891mE, 4310487mN

Latitude, Longitude: 38.94267°N, 104.610104°W

USGS Falcon, CO Quadrangle

El Paso County, Colorado

## Figure 1 Vicinity Map

Prepared for: Hummel Investments, LLC  
File: 6606 Figure 1.mxd (WH)  
October 19, 2016

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ERO Resources Corp.



## Falcon Marketplace

- ➔ Photo Point
- - - Stream
- ▭ Potential Wetland
- ▭ Project Area

Image Source: USDA NAIP, 2015

0 150 300  
feet



## Figure 2 Existing Conditions

Prepared for: Hummel Investments, LLC  
File: 6606 Figure 2.mxd (WH)  
October 19, 2016

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**PHOTO LOG**  
**FALCON MARKETPLACE**  
**EL PASO COUNTY, COLORADO**  
**JULY 2, 2016**



**Photo 1** - Overview of the eastern portion of the project area consisting of uplands.  
View is to the northeast.



**Photo 2** - Upland area on a hill in the southeastern portion of the project area.  
View is to the northeast.

**PHOTO LOG**  
**FALCON MARKETPLACE**  
**EL PASO COUNTY, COLORADO**  
**JULY 2, 2016**



**Photo 3** - Potential wetlands within the project area dominated by Baltic rush and several other hydrophytic herbaceous species. View is to the west.



**Photo 4** - Patches of willow sprouts and New Mexico locust shrubs observed along the unnamed tributary. View is to the southwest.

**PHOTO LOG**  
**FALCON MARKETPLACE**  
**EL PASO COUNTY, COLORADO**  
**JULY 2, 2016**



**Photo 5** - Overview of the upstream end of the eastern branch of the unnamed tributary. View is to the southwest.



**Photo 6** - Overview of the unnamed tributary channel downstream of the confluence of the two drainages in the project area. View is to the southwest.