



Environmental and Animal Defense

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**EL PASO COUNTY PLANNING COMMISSION ADDENDUM TO RESPONSE
AND COMMENT TO PROPOSED PUDSP-18-001- SUBMITTED 04-01-2019**

April 15, 2019

Submitted via Electronic Mail to kariparsons@elpasoco.com

Dear Planning Commissioners and Staff of El Paso County,

We submitted a response and comment to PUDSP-18-001 on April 1, 2019. This letter is meant to supplement that comment and response with additional information.

We still have several open Colorado Open Records Act and Freedom of Information Act Requests, including one with the El Paso County Planning Commission. Those requests for documents have not been fulfilled at the time of submission of this response and comment despite the requests being submitted on March 13, 2019.

Since our original response we have discovered additional issues with the proposed development that are included in this supplement. We have discovered additional issues not present in this comment and response and expect to find more; both of which may be included as a supplement to the Board of County Commissioners.

For the reasons described in our original response and those included in this supplement, rejection of the Phase 2 proposal as presented is the only reasonable solution. The Commission should choose only to approve changes to Phase 2 of Forest Lakes when: the applicant limits the proposal to no more than the originally proposed 131 lots; when the project is consistent with the Endangered Species Act and Clean Water Act; and consistent with state and local codes and plans including, but not limited to, guidance about fire safety, water scarcity, and flood issues.

Further Issues with Phase 2 Proposed Unit Development
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DISCUSSION

1. Lack of Meaningful Community Interaction

Certain concerns were brought to our attention and have arisen since the planning commission meeting on April 2, 2019 in response to statements made by the applicant.

Several community members have alleged that the community meetings that were hosted by the applicant were merely presentations of what *will* happen, rather than seeking any sort of meaningful community input. What is especially concerning is that, at one meeting in particular, a community member informed us that as she brought forth her concerns about the wildfire risk through anecdotal evidence of living through several past wildfire events, representatives of the applicant had the audacity to *laugh at her concerns* and dismiss them. This hardly is consistent with applicants' statements that they seriously considered the community members' ideas and concerns.

Further, the applicant presented "facts" to the planning commission on April 2, 2019 with questionable authenticity or without evidence.

Applicant had no or limited information related to public access for trails. When applicant was asked to factually support its statement that the trails within the development would provide connectivity to the larger National Forest Service network of trails, applicant was unable to do so. Applicant tried to state that there would be a small "parking lot" that would accommodate a few cars at the trail access, but the submitted PUD only shows a small bay or verge parking between 20-30' long that would be difficult to accommodate even 2 ultra-compact cars. Applicant eventually admitted that there would be almost no parking for public access and that it had not made any attempt to secure funding or even speak with the National Forest Service about creating a trail system that connected to the development.

Additionally, the applicant stated that the number of requested homes decreased from 231 to 180 due to a desire to increase open space per the community concern. This statement is dubious at best. The additional homes that were proposed along the north side of North Beaver Creek were determined to lie within a FEMA floodplain, and so were eliminated by necessity, contributing to the reduction to 180 plots. This information is present in applicant's own documents.

Furthermore, as mentioned above, there are still open FOIA and CORA requests, including one with El Paso County. The initial request was submitted on March 13, 2019. After some discussion regarding production of documents, El Paso County invoked the 7-business day production extension under CORA on April 4, 2019. Under that time line, documents are legally required to be produced on April 12, 2019. However, at this time the documents have not been produced for our review, and we were given an estimation that documents will *not* be produced by April 15, 2019, the day before the planning commission hearing. This significantly

inhibits the public's ability to make a fully educated response on the Forest Lakes Phase 2 proposal because there is limited knowledge of all aspects concerning this proposal.

Finally, the sequence of events at the April 2, 2019 planning commission meeting were questionable at best and antagonistic at worst. Admittedly, items on the agenda prior to the Forest Lakes hearing were lengthy; yet, the commission called for a recess and proceeded on the agenda as usual even without a commission member. When it came time to hear the Forest Lakes application, one commission member had to recuse himself and the applicant presented a lengthy argument. Mid-presentation, with incredibly short notice, the commission informed the public that the meeting was to end at 2:15 pm due to prior commitments of the commission and lack of quorum, and the commission expressed a desire to vote on the project within the remainder of the short time. The applicant then spent up the remainder of the time presenting, leaving no time for public comment and thus, the meeting was continued to April 16, 2019. Surely, knowing that there were a significant number of community members wishing to speak on the Forest Lakes application and knowing the time constraints and lack of quorum, the commission could have made the decision to save everyone's time and continue the hearing at an earlier point in the meeting. However, community members were very appreciative that one member of the commission took the time to speak with and apologized to community members for the process that occurred on April 2.

Community members also felt disrespected and frustrated about the closeness of commission staff with applicant, where the perception was that staff cared and was there for the applicant rather than the remaining community members.

We want to take this time to reiterate that the community members we are in contact with do not wish to *prohibit the development in its entirety*. However, they do feel ignored and disrespected even though they are presenting ideas in good faith to compromise with the applicant and do what is best for the community.

2. Clean Water Act

The Clean Water Act was implemented in order to “restore and maintain the chemical, physical, and biological integrity of the Nation's waters.”¹ The Clean Water Act regulates certain activities affecting the nation's navigable waters. There are two issues at play with this development: National Pollutant Discharge Elimination System Permits and Section 404 permits.

National Pollutant Discharge Elimination System permits (“NPDES permits”) are required for discharge into waters of the United States. The Forest Lakes Metro Water District, FRS ID: 110070147606, has been in noncompliance since October 2017, when a violation was identified.² In November 2017 and

¹ 33 U.S.C. § 1251 (emphasis added).

² See <https://echo.epa.gov/detailed-facility-report?fid=110070147606>

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through December 2018, the District has been in “significant” noncompliance for failure to submit reports. Compliance history for the first quarter of 2019 is not yet available per the Environmental Protection Agency (“EPA”). Additionally, the EPA identifies that the District is in the watershed of a federally protected species under the Endangered Species Act. Therefore, the considerations and opportunities for a consultation requirement are not limited to the Preble’s Meadow jumping mouse, but also the Greenback Cutthroat Trout, who is known to inhabit Bear Creek, and any impact this development would have on the trout’s viability as a species.

As detailed in our prior comment, there are several water features at issue that require permitting. At the April 2, 2019 meeting, applicant stated that they intend to seek permitting under a nationwide permit. “The regulations under the Clean Water Act create categories of nationwide permits that provide automatic authority to place fill material if certain conditions are met. 33 C.F.R. § 330.4. If the conditions are not met, the party must seek an individual permit through a public notice and hearing process.”³ Furthermore, a nationwide permit is only granted if dredge or fill material will cause *minimal adverse effects* on the environment.⁴ It is “automatic” because if a permittee qualifies, no application is needed before commencing the discharge activity. “The [U.S. Army] Corps [of Engineers] has the authority and duty, however, to ensure that parties seeking to proceed under a nationwide permit meet the requirements for such action.”⁵

Nationwide permits do not create a loophole against endangered species protection. “No activity is authorized by any NWP if that activity is likely to jeopardize the continued existence of a threatened or endangered species as listed or proposed for listing under the Federal Endangered Species Act (ESA), or to destroy or adversely modify the critical habitat of such species.”⁶ Furthermore,

Non-federal permittees shall notify the DE [District Engineer] if any Federally listed (or proposed for listing) endangered or threatened species or critical habitat might be affected *or is in the vicinity* of the project. In such cases, the prospective permittee will not begin work under authority of the NWP until notified by the district engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized. If the DE determines that the activity may affect any Federally listed species or critical habitat, the DE must initiate section 7 consultation in accordance with the ESA. In such cases, the DE may: **(i)** Initiate section 7 consultation and then, upon completion, authorize the activity under the NWP by adding, if

³ *Riverside Irrigation Dist. v. Andrews*, 758 F.2d 508, 511 (10th Cir. 1985)

⁴ See 33 U.S.C. §1344(e)(1).

⁵ *Id.*

⁶ 33 C.F.R. § 330.4

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appropriate, activity-specific conditions; or **(ii)** Prior to or concurrent with section 7 consultation, assert discretionary authority (see 33 CFR 330.4(e)) and require an individual permit (see 33 CFR 330.5(d)).⁷

The 10th Circuit has upheld the U.S. Army Corps of Engineer's ("Corps") duties and obligations under these provisions to consider not only the direct site-specific impacts, but also the downstream impacts of any dredge and fill activities.⁸ Non-federal permittees are held to the same standards as federal permittees, in that the mere fact that any impacts on discharge into navigable waters does not result "from direct federal action does not lessen the [party's] duty under § 7 [of the Endangered Species Act]." ⁹

Even under nationwide permits, "the Corps must consider the environmental impact of each act that it authorizes, both major *and minor*. In creating categories of nationwide permits, the Corps has 'acted' to authorize discharges. Thus, simply allowing a party to proceed under the nationwide permit is an action by the Corps triggering its obligation to consider environmental impacts." (emphasis added).¹⁰

Finally, the Administrative Procedure Act ("APA") provides a citizen suit checks-and-balances system on federal agencies and their responsibilities. Under the APA, "A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof."¹¹ Therefore, if the Corps were to act without consideration of the endangered species affected by the development, a citizen could bring a suit against the Corps for acting as "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."¹² Citizens may also seek an injunction against the agency action at issue to prevent the action from being fulfilled during the pendency of litigation.¹³

In sum, there is both an existing Clean Water Act violation of NPDES permitting as well as an impending, and litigable, Endangered Species Act consultation requirement that must consider direct, indirect, interdependent and cumulative impacts, both on site and downstream. The consultation must

⁷ See 33 C.F.R. 330.4. (emphasis added).

⁸ *Riverside Irrigation Dist. v. Andrews*, 758 F.2d 508, 512 (10th Cir. 1985)

⁹ *National Wildlife Federation v. Coleman*, 529 F.2d 359, 374 (5th Cir.1976).

¹⁰ *Riverside Irrigation Dist. v. Andrews*, 758 F.2d 508, 513 (10th Cir. 1985)

¹¹ 5 U.S.C. § 702.

¹² 5 U.S.C. § 706.

¹³ See generally 5 U.S.C. § 705.

consider these impacts of the development for at least two endangered species: the Preble's Meadow jumping mouse and the Greenback Cutthroat Trout. Thus, it is in the best interest of the applicant as well as the community to remedy the deficiencies of the application before the project is blocked in whole because of violations of federal law.

3. Endangered Species

a. Need for Consultation with Critical Habitat

Under the Endangered Species Act ("ESA"), the concept of critical habitat assumes significance for the protection of species through the operation of section 7, which requires all federal agencies to ensure that actions they fund, authorize, or carry out are not likely to either "jeopardize the continued existence of" a listed species or destroy or adversely modify critical habitat.¹⁴ To ensure compliance with these prohibitions, section 7 requires federal agencies to consult with the United States Fish and Wildlife Service ("FWS") or the National Marine Fisheries Service ("NMFS") to ensure that any agency action will not "jeopardize" or "result in the destruction or adverse modification" of critical habitat.¹⁵ No other regulatory constraints flow from an area's designation as critical habitat.¹⁶ The federal nexus can take a variety of forms including federal funding and issuance of a federal permit under, for example, section 404 of the Clean Water Act.

Federal agencies are required under the ESA to "insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary . . . to be critical."¹⁷ For section 7 to apply, an agency's action must

¹⁴ 16 U.S.C. § 1536(a)(2).

¹⁵ *Id.* § 1535(a)(2). Section 7 also imposes an obligation to confer with the Secretary for Federal Agency on actions that are likely to "result in the destruction or adverse modification of proposed critical habitat." 15 U.S.C. g 1535(a)(a). Unlike section 7 consultation, such conferences do not produce binding or mandatory constraints on the action in question.

¹⁶ Critical habitat may be "implicated under the taking prohibition in section 9. Section 9 makes it illegal for any person to "take" an endangered species. 15 U.S.C. § 1538(a) (1988). "Take" is defined by the Act to include "harm," *id.* § 1532(19), which FWS regulations define to include "significant habitat modification or degradation where it actually kills or injures wildlife." 50 C.F.R. § 17.3 (1993). Under these definitions, "taking" is tied to significant habitat modification regardless of whether or not the habitat is critical habitat. Nonetheless, as a practical matter, a court may attach greater import to a "taking" caused by habitat modifications to critical habitat. *See Pala v. Haw. Dep't of Land & Natural Res.*, 539 F.2d 495 (9th Cir. 1981); Pamela Baldwin, *The Role of Designation of Critical Habitat Under the Endangered Species Act (ESA)*, CRS Report for Congress, Aug. 27, 2004, available at <http://digital.library.unt.edu/govdocs/crs/permalink/meta-crs-10046:1> (see also *Babbitt v. Sweet Home Chapter of Cmty. for a Greater Or.*, 515 U.S. 587 (1995)).

¹⁷ 15 U.S.C. § 1536(a)(2).

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be “affirmative.” An agency that is merely providing advice¹⁸ or declining to act in a certain way¹⁹ is generally not engaging in agency action subject to section 7. Additionally, agency action must also be within the decision-making authority of an agency and unconstrained by any earlier agency commitments for the consultation requirements of section 7 to apply.²⁰

Whenever a nonfederal entity seeks a license or permit to proceed with a project or activity, compliance with section 7(a)(2) is almost always implicated. For example, when an applicant applies for a dredge and fill permit under Clean Water Act section 404,²¹ the U.S. Army Corps of Engineers must notify FWS of such application if there are listed or proposed listed species in the “action area.”²²

A federal action agency²³ may begin its process of complying with its duties under section 7(a)(2) by developing a biological assessment (“BA”) for its proposed action.²⁴ Under ESA section 7(d),²⁵ once consultation is initiated, neither federal agencies nor permit applicants may make any “irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate subsection (a)(2) of this section.” The intent of section 7(d) is essentially to “prevent incidents such as the more than \$50 million loss at Tellico Dam as a result of *TVA v. Hill*.”²⁶ The limitations imposed by section 7(d) remain in force during the consultation process and continue until the requirements of section 7(a)(2) are satisfied. If reinitiation of consultation occurs, the prohibition on further commitment of irreversible or irretrievable resources resumes and may block any further agency action until consultation is complete.²⁷

Only if the BA finds that a proposed federal action will “not affect,” or “is not likely to adversely affect” (“NLAA”) any listed species or designated critical habitat and the consulting Service concurs in writing with the NLAA finding, the section 7 consultation process is concluded.

When a federal agency determines, through a BA or other review, that its action is likely to adversely affect a listed species, the agency submits to FWS a request for formal consultation. During formal consultation FWS and the agency share information about the proposed project and the species likely to be affected. Formal consultation may last up to 90 days, after which FWS will prepare a

¹⁸ *Marbled Murrelet v. Babbitt*, 83 F.3d 1058 (9th Cir.1996).

¹⁹ *Int'l Ctr. For Tech. Assessment v. Thompson*, 421 F. Supp.2d 1(D.D.C.2005).

²⁰ *W. Watersheds Project v. Matejko*, 458 F.3d 1099,71.08 (9th Cir. 2005).

²¹ 33 U.S.C. § 1344.

²² “Action area” is defined by regulation to mean “all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action.” 50 C.F.R. § 402.02.

²³ The term “action agency” refers to the federal agency charged with Section 7 compliance, typically the permitting agency. Sometimes the term “consulting agency” is used to refer to FWS.

²⁴ 16 U.S.C. § 1536(c).

²⁵ 16 U.S.C. § 1536(d).

²⁶ *Nat'l Wildlife Fed'n v. Nat'l Park Serv.*, 669 F. Supp. 384, 390 (D. Wyo. 1987).

²⁷ *Sierra Club v. Marsh*, 816 F.2d 1376, 1389 (9th Cir. 1987).

biological opinion on whether the proposed activity will *jeopardize* the continued existence of a listed species. FWS has 45 days after completion of formal consultation to write the opinion.

In making a determination on whether an action will result in jeopardy, FWS begins by looking at the current status of the species, or "baseline." Added to the baseline are the various effects – direct, indirect, interrelated, and interdependent – of the proposed Federal action. FWS also examines the cumulative effects of other non-Federal actions that may occur in the action area, including state, tribal, local, or private activities that are reasonably certain to occur in the project area. The standard for establishing jeopardy is whether an action can reasonably be expected to appreciably reduce “the likelihood of both the survival and recovery of a listed species in the wild.”²⁸ Thus, in determining jeopardy, an agency must assess whether, given the many factors affecting the species, the proposed federal action is likely to inhibit the species ability to survive and recover. The Ninth Circuit has recently explained that pursuant to federal regulation,²⁹ the agencies must consider the impacts of the proposed action on both the survival and recovery of the listed species.³⁰ Thus, even if an agency's action will not result in extinction, that action may still be forbidden by the ESA if it diminishes a species' ability to recover.

If the BA, or more detailed Biological Opinion, results in a jeopardy finding, the consulting service recommends "reasonable and prudent alternatives" to the proposed action that FWS believes will prevent a potential section 7(a)(2) violation.³¹

Even if a proposed action is not likely to jeopardize a listed species, FWS may conclude that the proposed action will nonetheless result in the adverse modification or destruction of critical habitat. Adverse modification or destruction of critical habitat is defined as "a direct or indirect alteration that appreciably diminishes the value of the critical habitat for both the survival and recovery of a listed species."³² The critical habitat for listed species consists of those areas occupied by the species, at the time of listing, that contain physical or biological features essential to the conservation of the species or unoccupied areas so designated.³³ These "constituent elements" include:

1. Space for individual and population growth, and for normal behavior;

²⁸ 50 C.F.R. § 402.02.

²⁹ *Id.*

³⁰ *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 481 F.3d 1224, 1238-39 (9th Cir. 2007).

³¹ 16 U.S.C. § 1536(6)(3)(A).

³² 50 C.F.R. § 402.02; *but see Gifford Pinchot Task Force v. FWS*, 378 F.3d 1059 (9th Cir. 2004)

(holding the regulatory definition of "destruction or adverse modification" impermissible under the ESA because section 7 requires analysis of impacts that would appreciably diminish the value of critical habitat for the survival or recovery of a listed species). *See also Nat'l Wildlife Fed'n v. NMFS*, 481 F.3d 1224, 1237 (9th Cir. 2007)(extending *Gifford Pinchot* to jeopardy analysis).

³³ 16 U.S.C. § 1532(5)(A).

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2. Food, water, air, light, and minerals or other nutritional or physiological requirements;
3. Cover or shelter;
4. Sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally,
5. Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.³⁴

b. Consultation will be triggered

Applicants in their request for a concurrence letter state the need for a permit under Section 404 of the Clean Water Act due to the North Beaver Creek crossings for impacts to waters of the United States resulting from the stream crossings that are required for the vast majority of Phase 2 of the Forest Lakes Development. That permit will trigger Section 7 consultation with FWS because the permit is a discretionary federal action. Even if the applicant believes they qualify for or attempts to secure a nationwide permit, as detailed above, “no activity is authorized by any NWP if that activity is likely to jeopardize the continued existence of a threatened or endangered species as listed or proposed for listing under the ESA, or to destroy or adversely modify the critical habitat of such species.” Therefore, both the U.S. Army Corps of Engineers and FWS must make a determination that the permit “is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary . . . to be critical.”

The current concurrence by FWS and statements by CORE Consultants rely entirely on the idea that because the development is located outside of designated critical habitat it cannot result in adverse effects to the Preble’s Meadow jumping mouse.

The 2002 letter from FWS makes clear, however, that “actions outside of the floodplain plus 300 feet may result in secondary impacts the Preble’s and its habitat.” In its letter dated April 5, 2001, FWS also acknowledges the significance of actions outside of critical habitat that can result in “significant modification of Preble’s habitat downstream (for example, through alteration of existing flow regimes, or sedimentation) may be subject to provisions of the ESA,” and that FWS was “particularly interested in how stormwater runoff will be addressed.”

Not a single impact analysis from the applicant was ever conducted or submitted to federal agencies that demonstrates how the indirect, interrelated, and interdependent or cumulative impacts may affect the critical habitat of the Preble’s Meadow jumping mouse, or other endangered species, such as the Greenback Cutthroat Trout.

³⁴ 50 C.F.R. § 424.12(6).

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Applicant also fails to make an analysis or demonstrate that the development will not inhibit the recovery of a listed species in the wild. However, the impacts addressed below do demonstrate the likelihood that the development will diminish the Preble's Meadow jumping mouse's ability to recover and thus still may be forbidden even if the development did not jeopardize the species' continued survival.

Finally, the FWS determination fails to consider these other impacts in making its concurrence with applicants' submission as their letter states that the concurrence is "[b]ased on the information [applicant] provided." As applicant provided none of the details discussed below, FWS concurrence that the development is not likely to result in "take" of the Preble's Meadow jumping mouse, is an unreliable representation of the likely impacts to the Preble's Meadow jumping mouse and its habitat. The FWS concurrence also fails to address the development's impacts of the species' ability to recover; thus it is incomplete and inconsistent with the statutory provisions of the Endangered Species Act.

c. Impacts that may result in jeopardy finding for Preble's Meadow jumping mouse

Noxious Weed Control

There is no suitably specific plan to control noxious weeds in the Preble's Meadow jumping mouse habitat. FWS has already acknowledged that habitat was mowed over inappropriately as a method of noxious weed control. In the Noxious Weed Management Plan dated November 16, 2018, the management during construction includes herbicide application with no discussion of potential runoff into critical habitat. Post-construction, the management is left to the discretion of the HOA. The report states, "[i]t is anticipated that the landscaped areas of the Project, including private lots, will require seasonal noxious weed treatment and maintenance for the life of the Project... However, noxious weed populations may persist on the Project's periphery. It shall be the HOA's responsibility to identify and treat any persistent noxious weed populations on the Project." Leaving the discretion of appropriate and safe management to a Homeowners' Association is hardly a responsible means of ensuring that critical habitat is protected.

Additionally, there is no analysis on the potential impact of homeowners and their actions. There is no discussion on limitations that will be implemented against certain invasive and noxious plants once homeowners begin inhabiting the development. Invasive and noxious plants can encroach upon the habitat, displace native plant species, form monocultures of vegetation, and negatively impact cover and food for the Preble's Meadow jumping mouse. However, the control of noxious and invasive plants may entail large-scale removal of vegetation and mechanical mowing, which also may impact the Preble's Meadow jumping mouse and has already been acknowledged to have happen in the development area. The

application of pesticides and herbicides may also affect the Preble's Meadow jumping mouse.³⁵

Hydrologic Changes

There are several aspects of the proposed plan that will or have the potential to affect the local hydrology, which in turn will affect mouse habitat. Riparian ecosystems are created through the interconnectedness of surface water dynamics, groundwater, and river channel processes.

There already are plans to utilize a large amount of the water supply and there are existing wells on private property surrounding the development. Increase in water utilization will likely impact the groundwater resources and availability. Depletion of groundwater affects mouse habitat by replacing riparian vegetation with xeric plant communities; thus, the conversion of habitat from mesic, shrub-dominated systems to drier grass- or forb-dominated systems makes the habitat less suitable for the Preble's Meadow jumping mouse.³⁶

Site specific hydrologic changes to the riparian areas are also likely to occur because of the diversion of stormwaters into public treatment sewer systems that would have ordinarily contributed to vegetative growth and water supply for the outlying riparian and grass areas. Further, flood control measures designed to protect homes and infrastructure also impact the natural floodplain cycle critical to the riparian and grassland ecosystems.

Changes in local hydrology can alter the channel structure, riparian vegetation, and valley floor landforms in mouse habitat.³⁷ One of the more prevalent changes in hydrology that can negatively impact mouse habitat is excessively high and excessively low runoff cycles in watersheds with increased areas of paved or hardened surfaces.³⁸ New development with the creation of paved roads, sidewalks, and other pedestrian and automobile accommodations will change the runoff cycles, as this space is currently undeveloped.

The drainage report reflects the likelihood of these impacts and acknowledges that "there may be the need for localized drainageway improvements should long-term degradation of the drainageway banks or inverts occur." The report also details the hydrologic soil groups and their runoff potentials where nearly all of the development is classified as having soils of group classification D, or: "soils having a very slow infiltration rate (high runoff potential.)" Applicant acknowledged the issues present in runoff that would drain from homes along the critical habitat boundary. This runoff could contain pesticides, high nitrogen or phosphorus contents from fertilizers, or other pollutants that would be likely to impact native riparian vegetation in addition to changing the existing hydrologic features.

³⁵ See <https://www.fws.gov/mountain-prairie/es/species/mammals/preble/PreblesMeadowJumpingMouseRecoveryPlan.pdf>

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

The addition of climate change effects on local storm and weather patterns could also exacerbate the impacts of the development through more frequent or intense weather patterns that create worse cycles of excessively high and low runoff cycles into local watersheds.

Thus, hydrologic changes do constitute a threat to Preble's Meadow jumping mouse populations.

Fragmentation of Habitat

Development undoubtedly affects habitat through fragmentation. As populations become fragmented and separated by human-constructed barriers and interferences, it becomes more difficult for the species to persist. Loss of genetic diversity, unpredictability in environmental quality, and unpredictability in population demographics all affect the overall habitat. The recovery plan for the Preble's Meadow jumping mouse indicates that "on a landscape scale, maintenance of dispersal corridors linking patches of Preble's Meadow jumping mouse habitat may be critical to the subspecies' conservation."³⁹ Trail systems, such as the ones proposed, "can impact the Preble's Meadow jumping mouse by modifying its habitat, nesting sites, and food resources and upland areas."⁴⁰ Both humans and pets using critical habitat for recreational purposes may alter mouse activity and feeding patterns.

Predation

Increasing human populations near mouse habitat may also result in an increased level of predation by common wildlife that regularly come to inhabit urban and suburban areas, such as striped skunks, raccoons, red foxes, and domestic and feral cats. Cats are a particular concern because they hunt regardless of their desire to eat their prey.⁴¹ Therefore, this is a likely impact that will burden the populations of mice present near the development site.

Human Disruption

Construction of both the development and trails may have significant impacts on the Preble's Meadow jumping mouse and its habitat. Dust and other airborne particulates may degrade or otherwise pollute habitat where stormwater runoff during grading and initial construction may also cause excessively high or low runoff into riparian areas. Similarly, construction of trails if not prohibited during breeding and nesting seasons for the Preble's Meadow jumping mouse may disrupt crucial behavioral patterns.

Increased human access and use of trails in the riparian area are also likely to lead to disturbances to mouse habitat that can result from trampling of vegetation and disturbances to nesting sites.

³⁹ *Id.* (citing Shenk 1998).

⁴⁰ *Id.*

⁴¹ *Id.* (citing Adamec 1976).

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Finally, increased human habitation of the area can increase, among other pollutants, noise and light pollution. Each can have significant impacts on the behaviors of nocturnal animals, which includes the Preble's Meadow jumping mouse. Disruption from light pollution especially impedes environmental qualities that animals depend on for survival.⁴²

d. Questions About Accuracy of Applicant's Critical Habitat Boundary

Applicant represented on the April 2, 2019 meeting that maps it presented to the planning commission included critical habitat boundaries drawn by the FWS. We had previously included a map that showed a change in demarcation of the critical habitat between applicant's 2001 and current submission using the following map we created using applicant's documents.

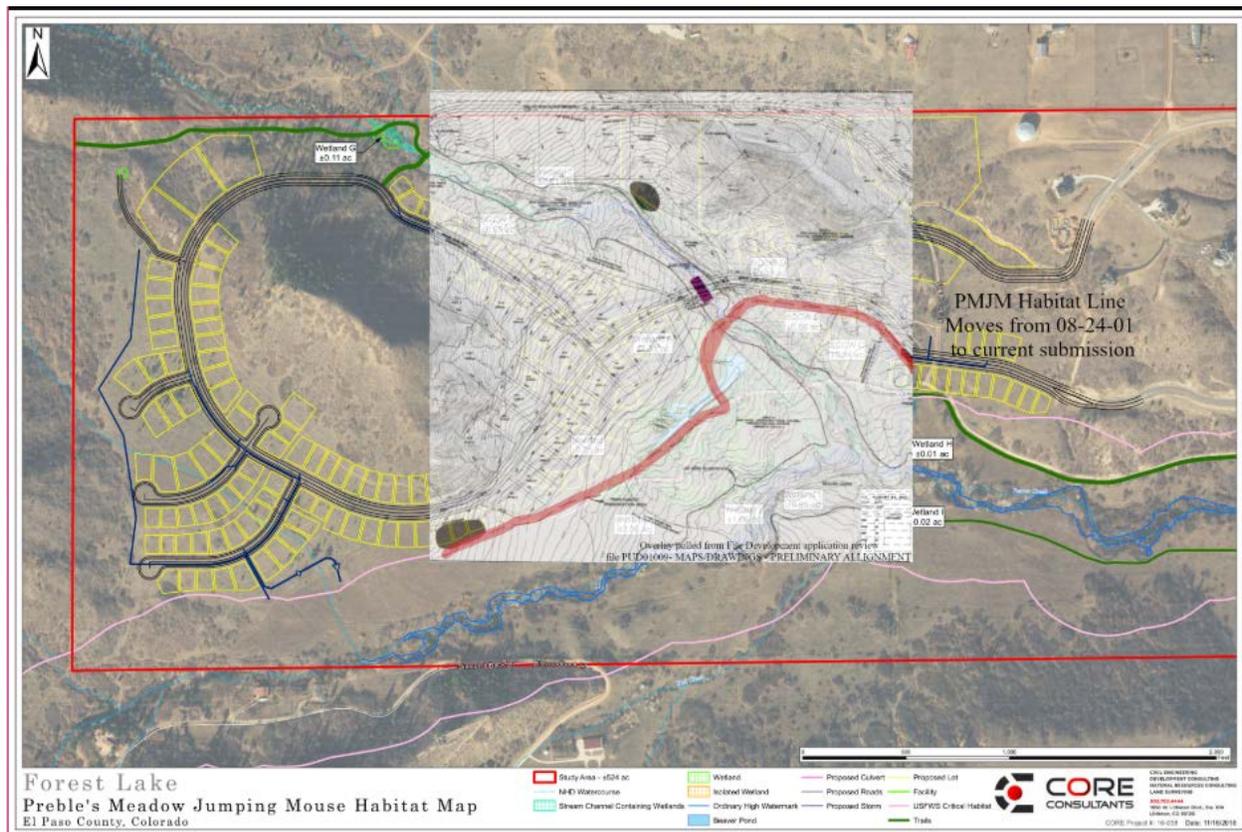


Figure 1. Critical Habitat Boundary – Larger version attached

We included this map to show the change between 2001 and 2018, but more importantly to show how areas applicant intends to develop were considered

⁴² See generally; Animals Need the Dark available at https://www.nps.gov/articles/nocturnal_earthnight.htm

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important habitat for the Preble's Meadow jumping mouse even if the area wasn't designated as critical habitat by the federal government.

However, since the previous planning commission meeting on April 2, 2019, we have gained access to the GIS shapefiles published by FWS and available at <https://ecos.fws.gov/ecp/report/table/critical-habitat.html>.

We have included the base photos without the FWS shapefile overlay to show the habitat and features present under the critical habitat area.



Figure 2. Google Earth Photo of Proposed Development Site – Larger version attached



Figure 3. Google Earth Photo of Proposed Development Site with FWS Critical Habitat Shapefile– Larger version attached

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We compared the FWS published critical habitat and delineated critical habitat with the lines present in applicant's documents prepared by CORE Consultants. In order to compare, we labeled distinctive features that are present along the critical habitat line with numbers between 1-9 in both applicant's document and using an image generated from Google Earth Pro with FWS's critical habitat shapefile (a method by which FWS publishes critical habitat maps.)

When comparing where the critical habitat line is drawn relative to these features a discrepancy appears between applicant's submission and the one provided by FWS.

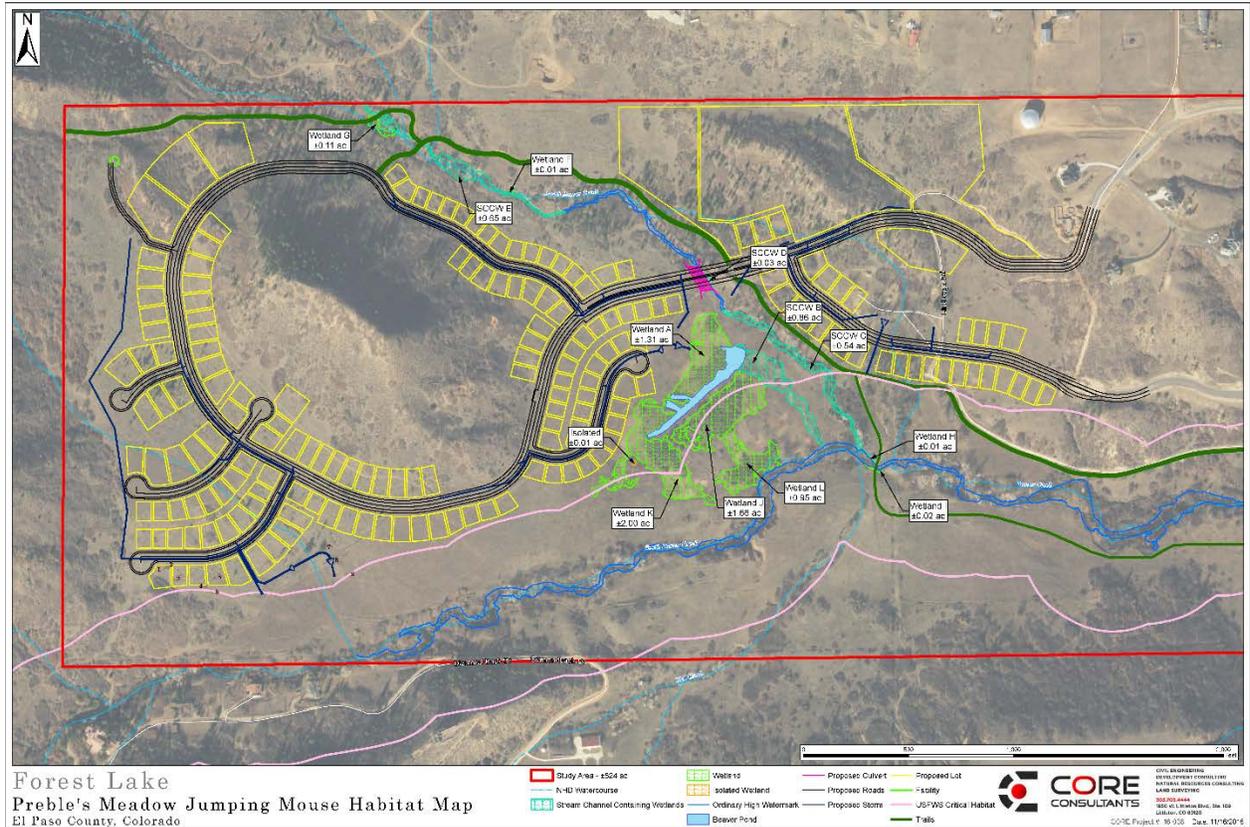


Figure 4 CORE. Critical Habitat Boundary - Features Labeled – Larger version attached

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Figure 5 ZOOMED in CORE. Critical Habitat Boundary - Features Labeled



Figure 6 ZOOMED in Google Earth Photo of Proposed Development Site - Features Labeled – Larger version attached



Figure 7 ZOOMED in Google Earth Photo of Proposed Development Site with Critical Habitat Shapefile - Features Labeled – Larger version attached

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While the general shape and position of the critical habitat line in the FWS shapefile is very similar to applicant's documents, it is very apparent that applicant's critical habitat line is south of what is labeled as Feature 4 and 9 in Figure 5 (applicant's document.) However, the critical habitat line published by FWS appears significantly north of Features 4 and 9 as shown in Figure 7. We have estimated that there is a difference of roughly 30 feet between the critical habitat lines published by FWS and applicant's documents relative to the Features labeled in the southwestern portion of the proposed development.

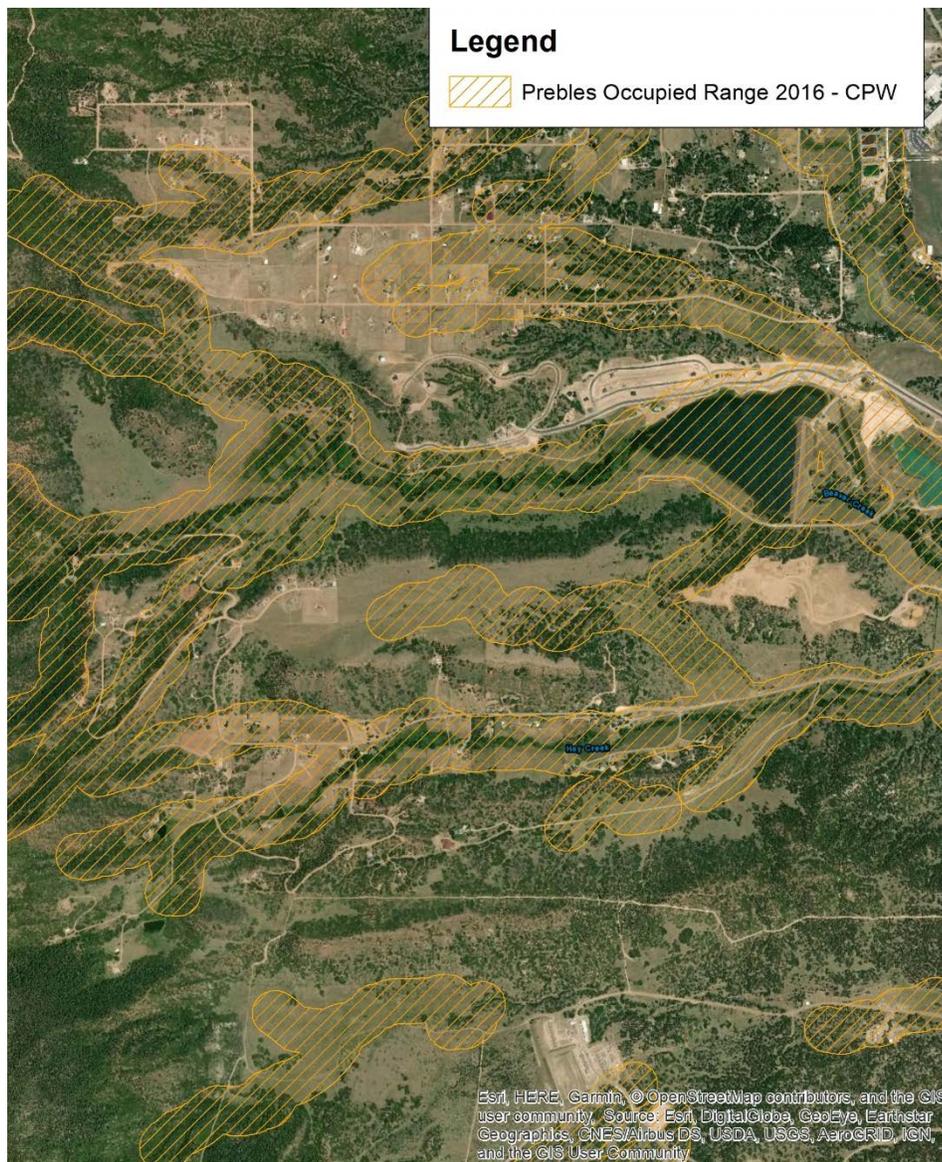


Figure 8 Preble's Meadow jumping mouse Occupied Habitat Map—Larger version attached

Furthermore, data provided by Colorado Parks and Wildlife on the occupied habitat of the Preble's Meadow jumping mouse shows that the mouse's range is

much more significant than that of the critical habitat. Noted in Figure 8 above, there are huge portions of occupied habitat that are not designated as critical habitat. As stated previously, critical habitat is only one part of the protective measures of the ESA: and section 9 prohibitions of “take” apply outside critical habitat designations.

Note that large portions of the development site where homes are to be built occur in occupied habitat, which, unsurprisingly, follows the North Beaver Creek north of the mesa. In short, a large majority of the proposed development is in marked occupied habitat. There are no documents in applicant’s submission that indicate any consideration of this data, analysis of impacts on these areas, or how disruption of this occupied habitat will impact critical habitat or the recovery of the species.

FWS was not provided with this information nor considered it in its concurrence letter. With such a large area noted as occupied, there is a greater likelihood that the Preble’s Meadow jumping mouse will be significantly, and detrimentally, impacted by this development. This information informs and increases the probability that federal agencies and courts will determine that the development will jeopardize the mouse’s survival or recovery and exposes the PUD to increased likelihood of liability under the ESA.

4. The Conservation Easement Option as a Solution

As food for thought, we would like both the planning commission and the applicant to consider conservation easements as a means to avoid complications affecting protected species and to enhance the beauty and intrinsic value of the property. Conservation easements along the critical habitat and affected wetlands are advantageous for all involved and can minimize the financial impacts to the applicant for prioritizing the environment. A conservation easement is a voluntary legal agreement that permanently preserves land for certain public benefits, such as scenic or agricultural open space, natural habitat, recreational areas, or historical sites. Federal law allows taxpayers to claim an income tax deduction for the charitable donation of qualifying conservation easements. An income tax deduction reduces the amount of income that is taxed, thereby reducing the amount of tax owed. Colorado has offered a state income tax credit for the donation of conservation easements since 2000. To claim the Colorado conservation easement income tax credit, qualifying taxpayers must donate their land as a perpetual conservation easement to a qualified holder, have the land appraised, and receive a tax credit certificate from the Division of Real Estate certifying eligibility and the amount of the tax credit that may be claimed. There are several such organizations in the state that work with landowners to set up conservation easements.

As of 2017, El Paso County has fewer acres in conservation easements than all surrounding counties apart from Douglas County, with Pueblo County having

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the most acres in conservation easements.⁴³ Creating acres of conservation easements is a solid middle ground between building out plots and structures that may seriously impact critical habitat and navigable waters and total elimination of those plots; the plots will be conserved, species and the environment will be protected, applicant can still recoup some financial benefit in tax benefits, and the county will improve its status for conservation within the state.

Conclusion

As detailed in this supplemental comment and our initial response, there are several issues that should necessitate the denial of the Phase 2 proposal:

1. Fire Safety Issues
2. Water Scarcity Issues
3. Flood Safety
4. Pollution Impacts
5. Impacts Native Wildlife
6. Violations of the Endangered Species Act: Federally Threatened Species
7. Violations of the Clean Water Act
8. Lack of Meaningful Community Interaction
9. Conservation Easement Option as a Solution

For each of these reasons described above the Planning Commission should not approve the proposed PUDSP-18-001. The commission should urge the applicant to modify the plan to mitigate the issues described above before it reconsiders applicant's proposal.

Thank you for the opportunity to comment on this planned unit development proposal.

Sincerely,



Alexa Carreno, Esq.
Environmental and Animal Defense
501 S. Cherry St, Ste 1100
Denver, CO 80246



Jeremy McKay, Esq.
Environmental and Animal Defense
501 S. Cherry St, Ste 1100
Denver, CO 80246

⁴³ See

https://leg.colorado.gov/sites/default/files/conservation_easement_program_ip_memo_6052017.pdf

Attached Documents:

1. Comment Letter Submitted on April 1, 2019
 2. Letter from local resident Daniel Irey in opposition to the development.
 3. Endangered Species Act and Clean Water Act Concerns Map
 4. Critical Habitat Boundary Map (Figure 1)
 5. Google Earth Photo of Proposed Development Site (Figure 2)
 6. Google Earth Photo of Proposed Development Site with FWS Critical Habitat Shapefile (Figure 3)
 7. CORE. Critical Habitat Boundary - Features Labeled (Figure 4)
 8. Google Earth Photo of Proposed Development Site - Features Labeled (Figure 6)
 9. Google Earth Photo of Proposed Development Site with Critical Habitat Shapefile - Features Labeled (Figure 7)
 10. Preble's Meadow jumping mouse Occupied Habitat Map (Figure 8)
 11. Updated screen capture of a Change.Org Petition documenting public opposition to the development, *original available at* <https://www.change.org/p/stop-the-over-development-threatening-the-pike-national-forest-monument-co>
 12. Screen Capture of Clean Water Act Violations– Forest Lakes Metro District, *original available at* <https://echo.epa.gov/detailed-facility-report?fid=110070147606#pane3110070147606>
-

EL PASO COUNTY



COMMISSIONERS:
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 LONGINOS GONZALEZ, JR. (VICE-CHAIR)

COLORADO

HOLLY WILLIAMS
 STAN VANDERWERF
 CAMI BREMER

PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT
 CRAIG DOSSEY, EXECUTIVE DIRECTOR

March 12, 2019

This letter is to inform you of the following petition which has been submitted to El Paso County:

PUDSP-18-001

PARSONS

**PLANNED UNIT DEVELOPMENT/PRELIMINARY PLAN
 FOREST LAKES PHASE II**

A request by FLRD, No. 2, LLC, for approval of a map amendment (rezoning) of 287 acres from PUD (Planned Unit Development) to PUD (Planned Unit Development) and approval of a preliminary plan for 180 single-family residential lots. The property is located north of Hay Creek Road, south of Doolittle Road, and west of Old Denver Highway. (Parcel No. 71000-00-433) (Commissioner District 1) (Kari Parsons)

Type of Hearing: **Quasi-Judicial**

| | | |
|--|----------|------------|
| | X | |
| For | Against | No Opinion |
| Comments: <u>See attached letter and attachments</u> | | |

(FOR ADDITIONAL COMMENTS, PLEASE ATTACH ANOTHER SHEET.)

- **This item is scheduled to be heard by the El Paso County Planning Commission on April 2, 2019.** The meeting begins at 9:00 a.m. and will be conducted in the Second Floor Hearing Room of the Pikes Peak Regional Development Center, 2880 International Circle, Colorado Springs.
- **The item will also be heard by the El Paso County Board of County Commissioners on April 23, 2019.** The meeting begins at 9:00 a.m. and will be conducted in the Centennial Hall Auditorium, 200 South Cascade Avenue, Colorado Springs.
- The date and order when this item will be considered can be obtained by calling the Planning and Community Development Department or through El Paso County's Web site (www.elpasoco.com). Actions taken by the El Paso County Board of County Commissioners are posted on the internet following the meeting.
- The online submittal portal can be found at: www.epcdevplanreview.com
- The Staff Report for this Agenda item can be found at: <https://planningdevelopment.elpasoco.com/el-paso-county-planning-commission/planning-commission-2019-hearings/>

Your response will be a matter of public record and available to the applicant prior to the hearing. You are welcome to appear in person at the hearing to further express your opinion on this petition. If we can be of any assistance, please call 719-520-6300.

Sincerely,



Kari Parsons, Planner II

Your Name: Alexa Carreno

Address: 501 S. Cherry St, Ste 1100 Denver CO 80246

Property Location: _____

Phone 312 758 7383



2880 INTERNATIONAL CIRCLE, SUITE 110
 PHONE: (719) 520-6300



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 FAX: (719) 520-6695

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Copy Mailed 3/18/19



Environmental and Animal Defense

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EL PASO COUNTY PLANNING COMMISSION RESPONSE AND COMMENT TO PROPOSED PUDSP-18-001

April 1, 2019

Submitted via Electronic Mail to kariparsons@elpasoco.com

Dear Planning Commissioners and Staff of El Paso County,

We are a Colorado-based nonprofit that focuses on environmental conservation and protecting animals. Residents of the El Paso County community who live near this proposed development reached out to us to investigate the Forest Lakes Phase 2 project proposal due to their many concerns.

We currently have several open Colorado Open Records Act and Freedom of Information Act Requests, including one with the El Paso County Planning Commission. Those requests for documents had not been fulfilled at the time the Planning Commission issued its notice of a hearing on PUDSP-18-001, and we continue to await pending documents from the above referenced requests.

Even with limited time and while waiting on multiple state and federal government agencies to produce public records, we have discovered multiple issues present with the proposed development site, both legal and logistic, that should preclude approval of the Forest Lakes Phase 2 project proposal by the Planning Commission.

For the reasons set forth below, rejection or a continuance to allow the applicant to make changes to the Phase 2 proposal as presented are the only reasonable solutions. The Commission should choose only to approve a new Phase 2 proposal when: the applicant limits the proposal to no more than the originally proposed 131 lots; when the project is consistent with the Endangered Species Act; and consistent with state and local codes and plans including concerns about fire safety, water scarcity, and flood issues.



Project Background

The Forest Lakes subdivision was part of the 1,367-acre High Meadow Sketch Plan that was approved in 1984. The Board of County Commissioners approved the Forest Lakes PUD (PUD-01-009) and preliminary plan (SP-01-019) on February 26, 2002. The overall lots for the project were totaled at 467 including all phases. At that time, the Phase 2 aspect of the project included a proposed 131 homes.¹

In 2017, the Phase 2 proposal skyrocketed to 231 homes, a difference of 100 homes between proposals, which resulted in significant backlash from the local community and debris flow concerns from the Colorado Geologic Survey. The 2018 plan, while still facing significant challenges from neighbors, made changes to the proposed lot layout, street configuration, grading and culvert design, and took into account recommendations of “Debris Flow Analysis” requested by the Colorado Geologic Survey, which reduced the number of lots initially to 199 and ultimately to the 180 lots” as proposed.²

The current 2019 Phase 2 proposal appears largely the same in design as the 2018 proposal, with requests for PUD modifications in excess of the ordinances for flag lots, lots area and dimensions, mid-block crossings, roadway terminations for cul-de-sac length, and water quality capture volume requirements.

The applicant Classic Homes requests approval of the PUD Development Plan and approval of the PUD Development Plan as a Preliminary Plan, in addition to a finding of water sufficiency for water quality, dependability and quantity.

Summary of Issues

Phase 2 DOES NOT meet the PUD Zoning District Requirements

The Land Development Code of El Paso County requires that, among other factors:

- The proposed development is in compliance with the requirements of this Code and all applicable statutory provisions and will not otherwise be detrimental to the health, safety, or welfare of the present or future inhabitants of El Paso County;
- The subject property is suitable for the intended uses and the use is compatible with both the existing and allowed land uses on the neighboring properties, will be in harmony and responsive with the character of the surrounding area and natural environment, and will not have a negative impact upon the existing and future development of the surrounding area;

¹ See 2017 Letter of Intent.

² See 2018 Letter of Intent.

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- Areas with unique or significant historical, cultural, recreational, aesthetic or natural features are preserved and incorporated into the design of the project;
- The proposed development will not overburden the capacities of existing or planned roads, utilities and other public facilities (e.g. fire protection, police protection, emergency services, and water and sanitation), and the required public services and facilities will be provided to support the development when needed;
- The proposed development would be a benefit through the provision of interconnected open space, conservation of environmental features, aesthetic features and harmonious design, and energy efficient site design;

See Section 4.2.6 and Section 7.2.1 of the El Paso County Land Development Code (2019).

The proposed development will be detrimental to the health, safety, and welfare of the present and future inhabitants of El Paso County, due to, among other reasons, a significant fire risk as well as the risk of water scarcity.

The proposed development is not in harmony and responsive with the character of the surrounding area and natural environment. It will have a negative impact on the surrounding area. This development significantly alters the natural environment, affecting wildlife and existing homeowners.

The proposed development will not preserve aesthetic and natural features. In fact, the proposed trail system disturbs and cuts through protected critical habitat for an endangered species, the Preble's Meadow Jumping Mouse.

The proposed development will overburden utilities and public facilities. Among these overburdens is the risk of water scarcity and fire response.

The proposed development is not a benefit through the provision of interconnected open space, conservation of environmental features, or aesthetic features and harmonious design. Apart from affecting native endangered and non-endangered wildlife, fire risk, and water scarcity issues, this development will inevitably affect the air quality, bring about noise pollution, and create light pollution in an existing dark sky area.

Each of these concerns are addressed in detail below. For these reasons, the Planning Commission should reject the Phase 2 proposal.

Phase 2 DOES NOT meet the Preliminary Plan Submittal Requirements

For a PUD proposal to be considered for preliminary plan submission approval, the Land Development Code of El Paso County requires that, among other factors:

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- A sufficient water supply has been acquired in terms of quantity, quality, and dependability for the type of subdivision proposed, as determined in accordance with the standards set forth in the water supply standards [C.R.S. §30-28-133(6)(a)] and the requirements of Chapter 8 of this Code;
- Incorporating identified environmentally sensitive areas, including but not limited to, wetlands and wildlife corridors, into the design;
- The proposed subdivision is in general conformance with the goals, objectives, and policies of the Master Plan;

See Chapters 7 and 8 of the El Paso County Land Development Code (2019).

The proposed development's water supply security is questionable in the face of increased consumption, drought, and climate change.

The proposed development's consideration of environmentally sensitive areas is inadequate and harms the native ecosystem by eliminating wildlife corridors and infringing upon Preble's Meadow Jumping Mouse designated critical habitat.

The proposed development is not in general conformance with the goals, objectives, and policies of the Master Plan, namely the El Paso County Policy Plan, and the Tri-Lakes Comprehensive Plan (2002).

The El Paso County Plan

The El Paso County Plan prioritizes preserving the environment. The County itself admits that there is an influx of people moving to El Paso County and that "harmony with nature can only exist if adequate plans are made to ensure its sustainability." The County acknowledges that there is a visible haze over much of the county that was not present before 1980, which is caused in part by "increased fuel exhaust, geological dust and smoke from wood burning appliances." The County also acknowledges the impact of noise pollution.

Furthermore, the County Plan prioritizes the preservation and enhancement of "the region's unique flora and fauna." The County expounds upon the impacts of development on wildlife species, citing that "wildlife must compete for smaller and fewer territories as more land area is occupied by development," displacement of riparian and wetlands by development, as well as encounters with predators.

Finally, the County Plan prioritizes the preservation and enhancement of "significant natural landscapes and features." The County acknowledges that "many large ranches, which once made up much of the County, have been transformed into 35 acre and smaller residential exurban subdivisions," such as the one proposed in Phase 2 of the Forest Lakes development.

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Phase 2 build-out of a 180-home proposal of the larger Forest Lakes subdivision is not in keeping with this advancing these policy points and will only contribute to these concerns.³

The Tri-Lakes Comprehensive Plan

One of the mission statements of the Tri-Lakes Comprehensive Plan is “to accommodate growth that preserves and enhances the natural environment, character, history, and visual beauty of the Tri-Lakes Area.” High density housing developments such as Phase 2 of Forest Lakes is not in keeping with that goal. This development will negatively impact wildlife and the surrounding ecosystems.

The County acknowledges that “Tri-Lakes is also considered a transitional zone for flora and fauna” and that habitats range from the sub-alpine to semi-arid systems, allowing for a variety of wildlife to thrive, including the Preble’s Meadow Jumping Mouse. This development will negatively impact all wildlife in the area, including the Preble’s Meadow Jumping Mouse.

The County acknowledges that “as growth and development occur along the Front Range, wild land fire potential can become a significant liability to residents, wildlife, and firefighters,” and that the risk in this area varies. One of the ways in which the County aimed to minimize fire risk was to establish “a minimum of 30’ wide ‘defensible space’ around building structures.” However, approving a high-density and close-quartered housing development needlessly puts hundreds of future homeowners, as well as existing homeowners in the area, at risk as there will be more fuel for a fire to spread rapidly, with potentially lethal effects.

While the County operates under a “market driven philosophy” in evaluating proposed developments, it must not do so at the expense of the natural environment, native ecosystems, or the peace and enjoyment of existing and future homeowners.⁴

Each of these concerns are addressed in detail below. For these reasons, the Planning Commission should reject the Phase 2 proposal.

Ultimately, if the Planning Commission does not reject the Phase 2 proposal in whole, it should issue a continuance of Classic Homes’ request for 180 homes and allow the applicant to correct the deficiencies of its application, including limiting

³ See generally <http://adm2.elpasoco.com/Planning/Policy-plan/page7.htm>

⁴ See generally <https://planningdevelopment.elpasoco.com/wp-content/uploads/ResourcesReference/MasterPlan/Tri-Lakes-Comprehensive-Plan-2000.pdf>

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its proposal to no more than the originally proposed 131 home limit, to be redesigned with the presently found concerns in mind.

Detriments of the Phase 2 Proposed Project**Contents**

1. Fire
2. Water Scarcity
3. Flood
4. Pollution
5. Native Wildlife
6. Endangered Species Act: Federally Threatened Species
7. Clean Water Act

Discussion**1. Fire**

The threat of wildfire is the harsh reality of the Phase 2 proposed development and surrounding homes. Per the Tri-Lakes Monument Fire Protection District's March 19, 2019 and October 30, 2018 comment letters, "the area and acreage within the Forest Lakes Subdivision is frequented by fire events as recently as the 2002 Spaatz Fire that started on the ranch and consumed over 67 acres while taxing the response of local resources even with a *rapid 4-minute response*" (emphasis added). If over 67 acres can be destroyed within the time it takes the fire department to reach the site, this can certainly cause fatalities and injury, as well as property damage, in a high-density subdivision such as the one in the Phase 2 proposal. While there is a low rating for wildfire in the meadow, the severe rating applies to wildfire in the brush, "which is where most of the homes are being constructed in Phase 2."

The Fire Marshal also states that this development will be constructed within "the severe hazard rated areas" of that district. In no uncertain terms, the Fire Marsal clearly states that "[t]he community will experience wildfire again as has been demonstrated numerous times over the last 20 plus years."

Further details projecting wildlife impacts are elaborated upon in the 2003 Wildfire Hazard Evaluation Report, which was revised in 2018. It predicts that a wildfire will "spread quickly, at a rate in excess of 1432 feet per hour, or 23 feet per minute. Flame lengths will range from 2 to 2 ½ feet. The probability of fuels igniting in advance of the fire front is 100%. In the fifteen minutes that it may take for the fire to be noticed, reported to the fire department's dispatch office and for the arrival of the initial attach force, the fire could have traveled over 350 feet and be approximately 1.6 acres in size. . ." The fire will accelerate as it travels, with the

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potential to grow to 3 acres in size and move at a rate of 35 feet per minute. These predictions are based on “normal” weather; however, the recent history of drought has made conditions increasingly dangerous. Conditions also will only continue to worsen as the effects of climate change increase in this region.

It is inevitable that this proposed development will experience wildfires, with risk of a severe fire cutting through a large swath of acreage destroying numerous homes with the potential for fatality. It is simply irresponsible for the Planning Commission to approve such a dangerous development.

2. Water Scarcity

The Forest Lakes development is served by the Forest Lakes Metropolitan District. The water source for this district is sourced from both non-renewable groundwater and surface water. While the 2017 Forest Lakes Metropolitan District Water Supply Plan and Wastewater Report, revised in 2018, characterizes the water source as “strong and reliable,” the report does not once mention effects of drought.

As it stands, the available water rights provide a net 724.14 annual acre-feet of water after relinquishments for augmentation, non-300 year demands, and evaporative losses. The study projects the annual water demand to total 166.30 annual acre-feet.

Simply stated, the doctrine of prior appropriation comes with a “use it or lose it” policy. Regardless of the fact that the estimates by this survey places water usage at nearly 600 acre-feet below the appropriated rights, there is a significant incentive for the Forest Lakes Metropolitan District to use all of its allotted water rights, seriously harming the health of the aquifer and surface waters. This is even after the fact of providing stream augmentations of approximately 50 acre-feet.

Additionally, the massive use of water for this development will detrimentally impact neighboring homes. There is growing concern that personal residential wells will run dry as prior appropriation runs its course, drought worsens, and the longstanding existing community members will be left with no water.

Finally, the effects of climate change must also be considered. Acre-feet and water availability may look “strong” on paper, but the reality must also be considered. 2018 presented drought conditions in the state, with snowpack at a deficit.⁵ While 2019 is a “good year” thus far, given the past 3 years of data it must be considered an anomaly. Since 2000, Colorado has been progressing through cyclical drought cycles, cycles which last years.⁶ Cycles of drought will only become more frequent as the effects of climate change become more apparent within the state. Therefore, the

⁵ See <https://www.wcc.nrcs.usda.gov/ftpref/states/co/charts/basinplotstate19.gif>

⁶ See <https://www.drought.gov/drought/states/colorado>

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Planning Commission must take these concerns into account and reject the Phase 2 proposal.

3. Flood

The Debris Flow Analysis completed in August 2018 evaluates the 231-lot plan and demonstrates that certain plots of land will be flooded. The lots that remain in the current 181-lot plan along the North Beaver Creek were found to encroach into the 100-year storm event debris and mudflow. These lots need to be replatted or mitigation measures must be taken. As currently planned, these lots will be damaged by a 100-year storm event. As such, it is irresponsible for the Planning Commission to approve the development as planned.

4. Pollution

With development comes increased pollution. The Traffic Impact Study does not evaluate impacts on air quality, noise pollution, or light pollution; however, it is important to consider these effects. The County recognizes in its own Policy Plan that there is a haze above the County. Increased development and traffic will only contribute to the existing air pollution, leading to greater visibility issues and potential health issues related to poor air quality, such as asthma.⁷

Furthermore, there will undoubtedly be increased noise pollution and light pollution. The area as it currently stands is a relatively rural area, occupied by a limited number of homeowners. Additional traffic will create noise pollution, affecting wildlife and human use and enjoyment in the area. Furthermore, lighting from homes, cars, street lights, and street lamps, will create light pollution which will affect wildlife, particularly nocturnal species, and human use and enjoyment of the area. Therefore, the Planning Commission should reject the Phase 2 proposal.

5. Native Wildlife

There are hundreds of species of wildlife that will be affected by this development project. This section will not include federally-protected endangered or threatened species, which are discussed below.

The November 16, 2018 Impact Identification Report identifies seasonal concentrations of elk, mule deer, and white-tailed deer. These species are at risk for negative interactions with humans, including but not limited to automobile accidents, urban hunting, and damaging private property. These species are not traditional urban wildlife species, such as squirrels and raccoons, which are accustomed to life among humans. These species will face significant stressors from high-density development and inevitable human encounters. Furthermore, as

⁷ See <https://www.aafa.org/air-pollution-smog-asthma/>

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grazing herbivores, these species' food sources will be eliminated by the development. The presence of high-density development may even affect certain species' migration patterns through the total elimination of current habitat.

There is also an increased potential to attract black bear to the development due to trash foraging. Negative encounters between humans and black bears are well documented along the Front Range as far east as Parker.⁸ These encounters will only increase and be exacerbated by a 180-home development in Phase 2. The existing homeowners and community are accustomed to life among the native wildlife in the existing rural area. With the potential for over 720 new residents (calculated at 4 per household) in the area in Phase 2 alone, the chances for wildlife encounters greatly increase.

Additionally, there are many species of birds that inhabit and migrate to or from the area. The Impact Identification Report identifies 19 migratory bird species, including 15 potential breeding species. These species are protected under the Migratory Bird Treaty Act which prohibits pursuing, hunting, taking, capturing, killing, these species or any attempt to do so. Increased human population inevitably increases the risk for disturbing these federally protected species, which is punishable criminally through jail time and fines.⁹

Therefore, it is in the best interest of both the native wildlife and the public for the Planning Commission to reject this proposed Phase 2 high-density housing proposal.

6. Endangered Species Act

There as many as four species impacted by this development protected by the Endangered Species Act: the Preble's Meadow Jumping Mouse, the Greenback Cutthroat Trout, the Mexican Spotted Owl, and the Ute Ladies'-Tresses.

The Endangered Species Act was enacted "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved."¹⁰ An "endangered species" is "any species which is in danger of extinction throughout all or a significant portion of its range."¹¹ A "threatened

⁸ See <https://www.denverpost.com/2018/09/03/bear-westminster-colorado-backyard/>; <https://www.kktv.com/content/news/Black-bears-push-into-Colorado-Springs-before-hibernation-494022131.html>; <https://www.wkbw.com/news/national/video-black-bear-wanders-around-hotel-lobby-in-colorado>; <https://www.denverpost.com/2018/07/26/black-bear-in-parker/>;

⁹ See 16 U.S.C. § 707.

¹⁰ 16 U.S.C. § 1531.

¹¹ 16 U.S.C. § 1532.

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species” is “any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.”¹² Concurrent with a designation threatened of endangered, the Secretary of the Interior then has the authority to designate critical habitat for a species.¹³ Endangered and threatened species are not allowed for “take,” which is defined as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.”¹⁴ Furthermore, each federal agency has the duty to consult with either the United States Fish and Wildlife Service (“FWS”) or the National Marine Fisheries Service to ensure that “any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the” critical destruction or adverse modification of habitat without an exemption, otherwise known as a Section 7 consultation.¹⁵ Finally, there is a provision for citizen suits to uphold the integrity of the Act.¹⁶

Each of the species, hereinafter discussed, have not undergone a formal Section 7 consultation as, based on the provided documents, it has not been triggered. The documents include only letters from the FWS opining on the possibility of adverse effects within the critical habitat and possibility for “take” based upon the documents provided by Classic Homes. However, the application for a dredge-and-fill permit under the Clean Water Act (“Section 404 permit”) for at least two roadways that are planned to cross waterways in the planned Phase 2, and other parts of the development including grading and construction, will trigger the Section 7 consultation requirement under the Endangered Species Act. Nevertheless, it is clear from the development plans that this project will harm the viability of these federally protected species; therefore, the Planning Commission should reject the Phase 2 proposal as submitted.

Preble’s Meadow Jumping Mouse

As of July 10, 2018, FWS, relying upon documentation provided by Classic Homes’ consultants, stated that, “[b]ased on the information you provided and FWS’ understanding of the project, local conditions, and current information, we agree with your determination that ‘take’ of the Preble’s meadow jumping mouse, which is protected under the Endangered Species Act (Act) as amended (16 USC 1531 et seq.), from the project is not reasonably certain to occur because all proposed

¹² 16 U.S.C. § 1532.

¹³ 16 U.S.C. § 1533.

¹⁴ 16 U.S.C. § 1532.

¹⁵ 16 U.S.C. § 1536.

¹⁶ 16 U.S.C. § 1540.

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development will be located more than 300 feet from the 100-year floodplain.” As of December 17, 2018, FWS has refused to comment on any updated plan proposal.



Figure 1 - Preble's Meadow Jumping Mouse (U.S. Fish and Wildlife Service)

There is significant cause for concern given the circumstances surrounding the Preble's Meadow Jumping Mouse, including the concern that any communication between Classic Homes and FWS was inadequate in the Service's review of the information at stake.

First, there has been a significant redrawing of the critical habitat line between 2001 and present day without any sort of explanation or citation.

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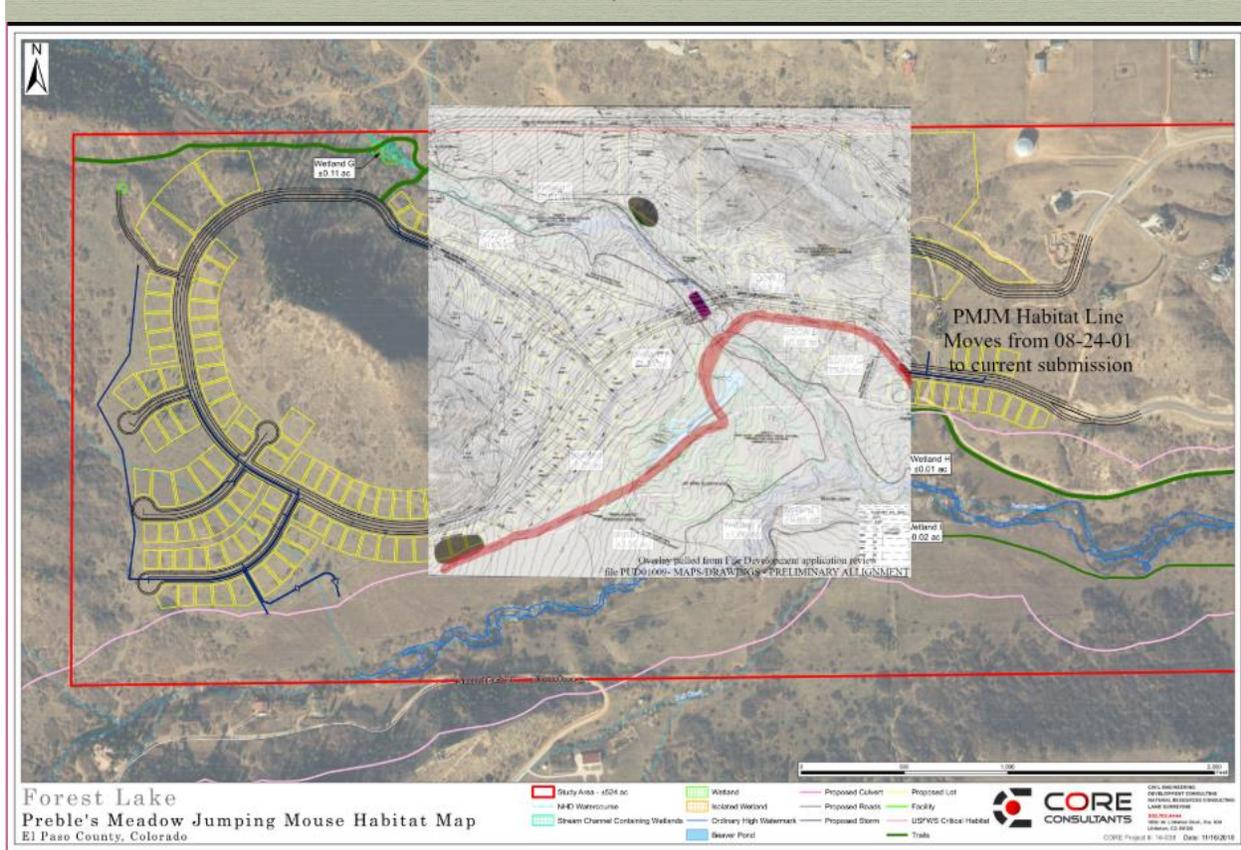


Figure 2. Critical Habitat Boundary – Larger version attached

As noted in the abovementioned map overlay created by Environmental and Animal Defense, the critical habitat line has moved significantly southwards concerning the lower portion of North Beaver Creek. The curvature of the planned road has changed as well. Where there once was critical habitat, there are now homes planned. Planning and FWS documents do not reference this change in habitat designation boundary at all, suggesting Classic Homes has redrawn this boundary with the intention of fitting homes to the east of the proposed culvert. This change also seems unnoticed by FWS, which makes reliance upon any clearance provided by FWS regarding Preble's Meadow Jumping Mouse critical habitat unreasonable.

Additionally, the applicant's current planning documents show planned grading into the critical habitat zone, which is also unreferenced by the applicant and FWS clearance letters.

Environmental and Animal Defense

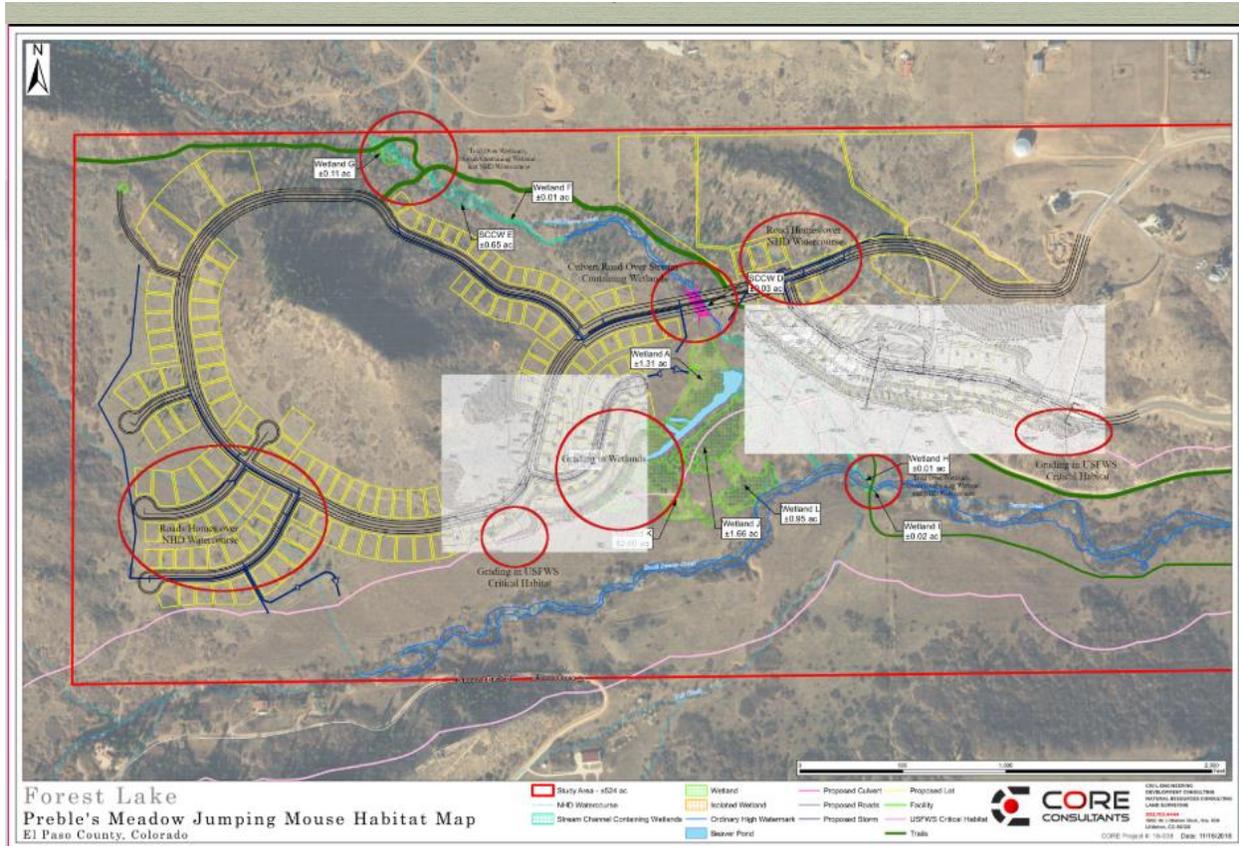


Figure 3 - ESA and CWA Concerns - Larger version attached

As the above map overlay created by Environmental and Animal Defense shows, there are at least two points in which proposed grading will cut into the Preble's Meadow Jumping Mouse critical habitat zone. The close proximity of homes to the critical habitat boundary presumably create the necessity of grading into the critical habitat zone.

Furthermore, the FWS states in its *Revised Critical Habitat for the Preble's Meadow Jumping Mouse in Colorado* "while critical habitat will not extend outward to all areas used by individual mice over time, we believe that these corridors of critical habitat ranging from 722 ft (220 m) to 918 ft (280 m) in width (plus the river or stream width) will support the full range of PCEs [primary constituent elements] essential for conservation of PMJM [Preble's Meadow Jumping Mouse] populations in these reaches, and should help protect the PMJM and its habitat from secondary impacts of nearby disturbance."¹⁷ This acknowledges that there is still a potential for take in homeowners' property, putting construction operations and even future

¹⁷ See <https://www.fws.gov/mountain-prairie/es/species/mammals/preble/CRITICAL%20HABITAT/12142010TempFR.pdf>

Environmental and Animal Defense

residents at risk for prosecution and subject to suit under the Endangered Species Act for unlawful take.

Greenback Cutthroat Trout

The Greenback Cutthroat Trout is a federally listed threatened species and the Colorado state fish. The Impact Identification Report states that it is “unlikely” that there is an occurrence of Greenback Cutthroat Trout based on a 2012 study by Metcalf et al. and that the species was limited to Bear Creek. However, Bear Creek is hydrologically connected to Monument Creek, which feeds into Beaver Creek and the lakes at Forest Lakes. Community members of the existing homes believe they have anecdotally seen Greenback Cutthroat Trout in the creeks in that region. It is scientifically believed that the Bear Creek population of this trout is the only viable wild population.¹⁸



Figure 4 - Greenback Cutthroat Trout (U.S. Fish and Wildlife Service)

There is admittedly no critical habitat designated for the Greenback Cutthroat Trout, which is currently listed as threatened. However, development should proceed with extreme caution, particularly due to the singular population and potential for uplisting of this rare fish.

Mexican Spotted Owl

The Mexican Spotted Owl is a federally listed threatened species. The Impact Identification Report states that designated critical habitat is over 10 miles away and there is no habitat connectivity between the sites. However, development plans and future residents should take extreme caution when considering the close

¹⁸ See <https://www.rmfi.org/projects/bear-creek-watershed>

Environmental and Animal Defense

proximity to critical habitat and the potential for take should individual birds travel outside of the critical habitat zone.



Figure 5 - Mexican Spotted Owl (U.S. Fish and Wildlife Service)

Ute Ladies-Tresses

The Ute Ladies-Tresses orchid is a federally listed threatened species. The Impact Identification Report states that it is possible that this species will occur within the Phase 2 proposal area. This orchid is likely to occur perennially near Beaver Creek adjacent to the floodplain.



Figure 6 - Ute Ladies-Tresses Orchid (U.S. Fish and Wildlife Service)

Environmental and Animal Defense

While there is no designated critical habitat for this species, the likelihood of its perennial occurrence should give developers and future residents extreme caution when proceeding in order to avoid violations of the Endangered Species Act.

7. Clean Water Act

The Clean Water Act was implemented in order to “restore and *maintain* the chemical, physical, and biological integrity of the Nation's waters.” 33 U.S.C. 1251 (emphasis added). The Clean Water Act regulates certain activities affecting the nation’s navigable waters. Dredging and filling activities require a permit from the Army Corps of Engineers before any material may be discharged into navigable waters. There is also a citizen suit provision of the Act to further the purposes of the Act.¹⁹

Section 404 Permitting

As the above Figure 2 demonstrates, the navigable waters at issue in Phase 2 are Hell Creek, North Beaver Creek and South Beaver Creek and their resulting wetlands. There are multiple issues affecting these waters of the United States, including:

- A proposed culvert/road over a stream containing wetlands in the center of the proposed Phase 2 project.
- A proposed trail to go through wetlands, a stream containing wetlands, and an NHD watercourse at the north end of the proposed Phase 2 project.
- A proposed trail to go through wetlands, a stream containing wetlands, and an NHD water course in the center of the proposed Phase 2 project.
- Grading into wetlands at the center of the proposed Phase 2 project. This includes at least 8 affected homes.
- A large section of homes in the southwest corner of the proposed Phase 2 that will interfere with an NHD watercourse. At least 6 proposed homes directly interfere with that watercourse.
- At least 2 proposed homes directly interfering with another NHD watercourse in northeast corner of the proposed Phase 2 project.

There are no provided documents indicating that Classic Homes is in the process of seeking Section 404 permits for any of these aspects, although the Impact Identification Report advises Classic Homes to do so. Most, if not all, of these abovementioned aspects will require dredging and filling, thus triggering the need for a Section 404 Permit.

NPDES Permitting

¹⁹ 33 U.S.C. 1365

Environmental and Animal Defense

National Pollutant Discharge Elimination System permits (“NPDES permits”) are required for discharge into waters of the United States. There are no documents provided discussing any NPDES permits for discharge from point sources into the affected waters of the United States, although there is mention of three point source drainage ways in the November 2018 Drainage Report. These permits are necessary to remain in compliance with the Clean Water Act.

Therefore, due to the lack of Section 404 permits and NPDES permits for this Phase 2 proposal, the Planning Commission should reject the plan.

Conclusion

There are several issues that should necessitate the denial of the Phase 2 proposal:

1. Fire
2. Water Scarcity
3. Flood
4. Pollution
5. Native Wildlife
6. Endangered Species Act: Federally Threatened Species
7. Clean Water Act

Should this Planning Commission not outright reject the Phase 2 proposal, it should require the modification of the proposal, and issue a continuance of the hearing. The continuance should urge the applicant to modify the plan to mitigate the issues described above and reduce the number of homes to no more than the originally submitted 131 homes.

Thank you for the opportunity to comment on this project proposal.

Sincerely,



Alexa Carreno, Esq.
Environmental and Animal Defense
501 S. Cherry St, Ste 1100
Denver, CO 80246



Jeremy McKay, Esq.
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Denver, CO 80246

Environmental and Animal Defense

Attached Documents:

1. Letter from local resident Daniel Irey in opposition to the development.
 2. Endangered Species Act and Clean Water Act Concerns Map (Figure 1)
 3. Full resolution Critical Habitat Boundary Map (Figure 2)
 4. A screen capture of a Change.Org Petition documenting public opposition to the development, *original available at* <https://www.change.org/p/stop-the-over-development-threatening-the-pike-national-forest-monument-co>
-

My name is Daniel Irely. I live at 4585 Diamondback Drive. My family has lived in Colorado for over 60 years! I am against Phase 2 as it is presently proposed. High density cluster homes do not belong in this area and everyone knows it. I feel our government officials should listen to the property owners who will have to live with the decisions our county planners and commissioners make now. They will be long gone and we, the surrounding homeowners, will be stuck living and dealing with this poorly planned, over developed and damaging to our environment development.

We feel the additional 49 homes proposed do not fit in this once very rural area. We wonder how much more profit the developers will make on these. And, is making this extra profit really worth disturbing the quiet enjoyment of so many others?

This Change.org Petition on the website below has 978 signatures as of 3-28-2019: All AGAINST the Forest Lakes Development.

I would like this petition to be part of the documentation against the Phase 2 development.

<https://www.change.org/p/stop-the-over-development-threatening-the-pike-national-forest-monument-co>

In addition to protecting the environment, the main legitimate concerns of the citizens are:

1. Wildlife- The wildlife here will be harmed and will suffer the most from the overpopulation of this area. This is the biggest tragedy of this development and one that can be easily avoided. It is our duty to protect those who cannot speak for themselves. We should plan smart for developments that will not only be great for the residents but keep our wildlife healthy and thriving. How do you plan on containing property owner's pets and children from entering and damaging the PMJM protected habitat as well as South Beaver Creek and the beaver ponds? Will the bears, mountain lions, coyote's and bobcats etc. now be shot and killed if they wander from the forest onto Forest Lakes land lured by the smell of people's trash cans? How do you plan on preventing such things from happening?
2. Fire Danger- Not only is there higher threat of fires due to overpopulation, but safe egress will be difficult at best if a fire comes down from the foothills or from Forest Lakes. It's likely a fire could be started from a Forest Lakes careless homeowner setting off fireworks. Diamondback Drive residents would be trapped. How are Forest Lakes and our county officials going to guarantee us that we won't be trapped and killed by a wildfire even though the fire department has signed off on this development? This is a likely scenario and

should be taken very seriously. We should learn from what happened in past wildfires and take precautions before, not after, another disaster happens.

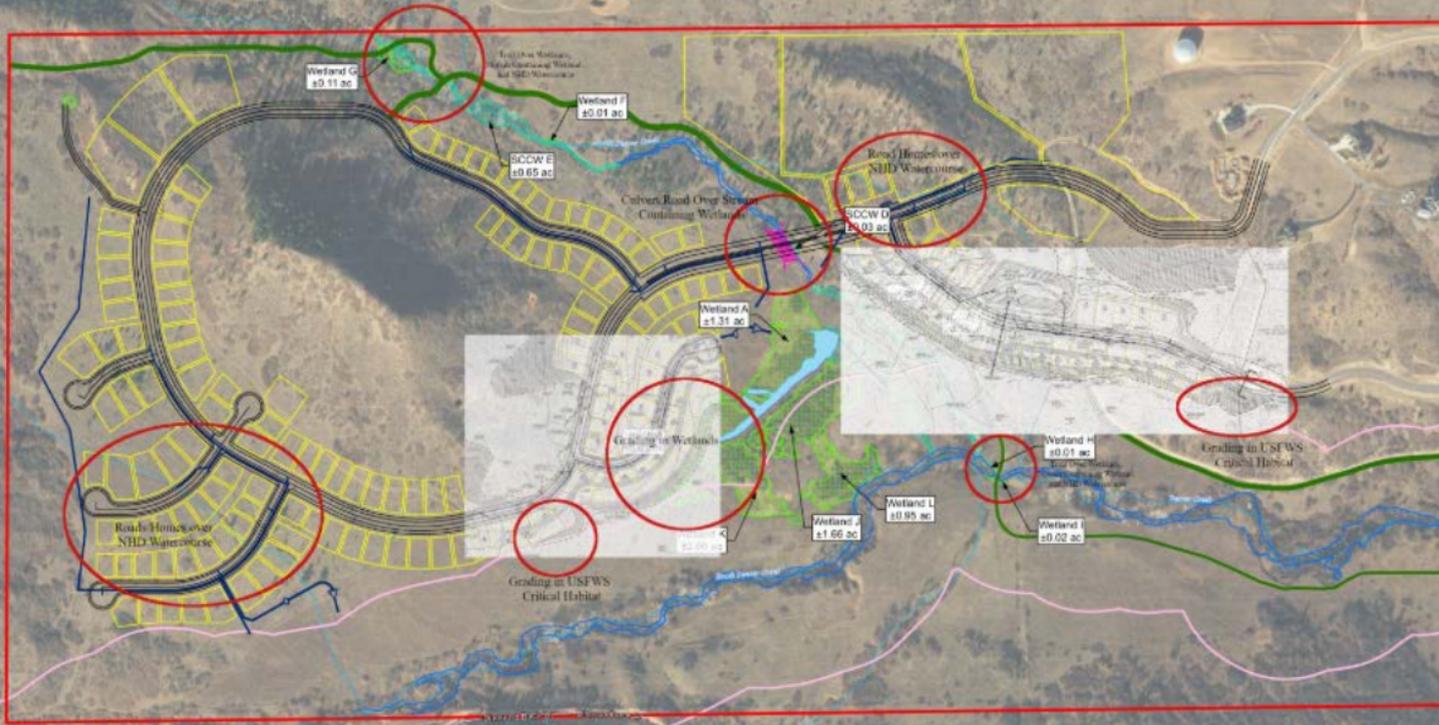
3. Water – We feel there won't be enough ground water to sustain this many homes as well as the surrounding homes' wells into the future. We understand they have a water treatment plant and can drill more wells and claim now it's not a problem, but will Forest Lakes guarantee our wells won't run dry in the future from their overbuilding now? Are they so sure of this that they would be willing to put up a bond that would pay adjoining property owners for their properties or drill them a new well should it actually happen? 180 new homes next door, all suddenly watering their lawns all summer seems to be a huge unnecessary waste of a valuable resource.
4. Chemical runoff from landscaping polluting the creeks. Yards will be fertilized, and weed killer will be used by many homeowners in Forest Lakes. How are Forest Lakes authorities and the county officials going to control all that pollution running down all those driveways and streets towards our properties' wells and the now pristine South Beaver Creek? Those few small retention ponds will not capture all that runoff. Endangered Species; Fish like the Greenback Cutthroat Trout, animals like the Preble's Meadow Jumping Mouse and many other wildlife will be harmed and/or killed.
5. Light pollution- Will there be and who will enforce the covenants for outside lighting of the homes in Forest Lakes? We are concerned about the possibility of motion flood lights pointed at us and the forest just because homeowners are afraid that a coyote or mountain lion will eat their dog or cat. How long will it take to get issues of covenant violations enforced and corrected?
6. Noise pollution- Same concerns and even more as light pollution. Could a covenant be added for a 2 dog limit per house for homes in Phase 2? Will there be and who will enforce the covenants for excessive noise coming from the homes in Forest Lakes?

I believe our local county and elected government officials have a tough job, we hold them accountable for any irresponsible decisions they make while employed by the taxpayers that will negatively affect our lifestyle, our right to quiet enjoyment and our property values for decades to come. I am urging all government officials involved in this decision-making process to listen to the people for whom you are working: area residents and the nearly one thousand Change.org petitioners that have stated: "NO, government officials, this is not right for us, do not over develop Forest Lakes!".

Someday everyone will have to answer for their actions! Our children and their children will have to bear the burden for the decisions we make today.

There is a quote that seems to fit in this circumstance, "**Do what is right, not what is easy!**" So please; do what we all know is the right thing and keep the Forest Lakes Phase 2 to the original

2002 approved plan of a more tolerable 131 lots- not 180 lots that includes high density cluster homes that (to reference Policy 6.1.11) are **not** *functionally or aesthetically integrated within the context of the adjoining properties and uses.*

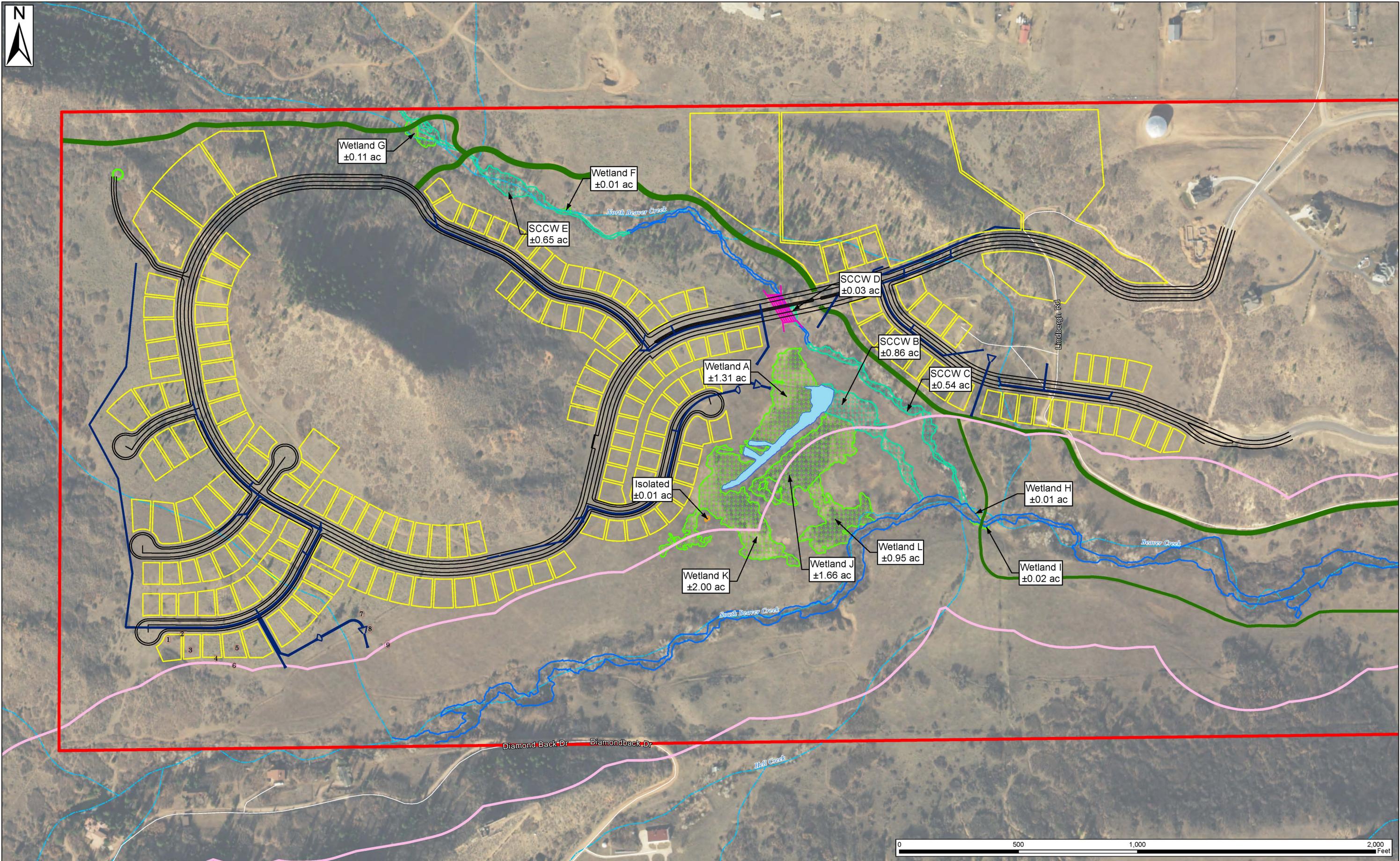


Forest Lake
Preble's Meadow Jumping Mouse Habitat Map
 El Paso County, Colorado

| | | | |
|------------------------------------|-------------------------|------------------|------------------------|
| Study Area - ±204 ac | Wetland | Proposed Culvert | Proposed Lot |
| NHD Watercourse | Inhabited Wetland | Proposed Roads | Facility |
| Stream Channel Containing Wetlands | Ordinary High Watermark | Proposed Storm | USFWS Critical Habitat |
| Beaver Pond | | Trails | |



CIVIL ENGINEERING
 DEVELOPMENT CONSULTING
 INFRASTRUCTURE CONSULTING
 LAND SURVEYING
 10000 JONES
 1000 W. University Blvd., Suite 100
 Colorado, CO 80102



Forest Lake
Preble's Meadow Jumping Mouse Habitat Map
 El Paso County, Colorado

- Study Area - ±524 ac
- NHD Watercourse
- Stream Channel Containing Wetlands
- Wetland
- Isolated Wetland
- Beaver Pond
- Proposed Culvert
- Proposed Roads
- Proposed Storm
- Proposed Lot
- Facility
- USFWS Critical Habitat
- Trails

CORE
CONSULTANTS

CIVIL ENGINEERING
 DEVELOPMENT CONSULTING
 NATURAL RESOURCES CONSULTING
 LAND SURVEYING

303.703.4444
 1950 W. Littleton Blvd., Ste. 109
 Littleton, CO 80120

CORE Project #: 16-038 Date: 11/16/2018



Google Earth

© 2018 Google

1999

Imagery Date: 6/9/2017 39°03'36.51" N 104°54'21.92" W elev 7071 ft eye alt 12273 ft



Google Earth



Google Earth



Google Earth



Legend

 Prebles Occupied Range 2016 - CPW

Esri, HERE, Garmin, © OpenStreetMap contributors, and the GIS user community, Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

SAVE THE PIKE NATIONAL FOREST!!!



Gaye Murdoch Meddalena started this petition to Representative Doug Lamborn and 12 others

Help save the land adjacent to the [Pike National Forest](#), at the base of the foothills in [Monument, Colorado](#). A mass home development partnership, Classic Homes and N.E.S. Inc., Land Development / Architects, are pushing another high density housing development. They are ignorantly moving forward with this development, violating the [Tri Lakes Comprehensive Plan of 2000](#) (lots were zoned RR3 and RR5).

In addition, the environmental effects of a house can reach far beyond its immediate site, leading to biodiversity declines and biotic homogenization. Thus, housing growth both within protected areas (i.e., on private inholdings) and in their immediate vicinity has direct negative effects ([National Academy of Sciences](#)).

Such development and accompanying landscape fragmentation pose substantial challenges for the management and conservation of the ecosystem services and amenity resources of National Forest System lands, including access by the public. Research such as this can help planners, managers, and communities consider the impacts of local land use decisions ([US Department of Agriculture](#)).

This property is a vast stretch of land that is home to Elk, the **endangered** Preble Jumping Mouse, Bear, Mountain Lion, Deer, Coyote, and Migrating Birds. If developed, the dramatic effects will be felt by all residents and visitors to the Pike National Forest. This type of development will alter the beauty and the reason that people choose to live/visit Colorado.

Equally as important as the wildlife are the water supply and eminent fire danger:

Water Supply

Water is a Colorado relic, which is leading El Paso County down a road to families without water. Many developers are touting that they have enough water, for these mass developments, because it says so on paper. We live in the marginal zone and thus we will lose water prior to the other areas who live over the deeper parts of the aquifers. Of course in the Forest Lake plan, there is alternate source of water, but it will come at a steep cost.

FACT: Forest Lakes is built on a premise that it would be a "renewal water resource development". The reservoirs would supply water for 467 homes in the final build out. The wells in place would only be used to supplement any potable water required by homes if the reservoirs could not maintain enough water. How can this be guaranteed when it has not been tested?

FACT: Residents of Forest Lakes were sold properties with the implied promise that the lake was for beautification and recreation only. Current residents were told recently that it could go dry, but they had enough well water to keep the lake at an acceptable level and if not they could drill more wells.

FACT: To date the reservoir at Forest lake has not been used supply potable water to any of the existing homes. Per the 1986 contract with Colorado Springs, the renewable water source is being supplied by 660 af of return flow water which was purchased from Las Vegas Wastewater Treatment Facility (located down stream in Colorado Springs). But in this contract there is a stipulation that if the flow from the creek drops below 5 cfs that Forest Lakes would have to pay for the water or supplement it from the existing wells. It has not been proven to date that this plan will work.

FACT: Drilling more wells into the deeper aquifers is expensive and the need to treat the water is expensive. Water to fill the lakes is lost to evaporation and to seepage that is not addressed. In addition, more wells in close proximity will decrease the amount of water from surrounding wells.

FACT: In 2002 a plan was put forth and passed for the development called Forest Lakes... Many people fought this large development. The aquifers are being depleted and less development is far better for those who have no other means of water, except from existing private wells. It is wrong to penalize the current residents for wanting to protect a very precious resource.

Wild Fire Danger

After lengthy conversation with the [Tri Lakes Fire Department District](#), Chief Truty, the ONLY involvement the fire department has with the developer is in proposing road widths and exits. The Tri Lakes Fire Department District doesn't even have ability to request fire hydrants, locations, or volume of flow.

Additionally, but with no authority, the Tri County Fire Chief is VERY concerned about the urban wild-land interface, and the proximity of the newly proposed houses to the forest/ forest service land.

Currently, the expected response time is 7-10 minutes in this development... **IF** the response team is **NOT** on a prior call. The Tri Lakes Fire Department District is quite understaffed for the expanse and growing population of the district. The Tri Lakes Fire Department District paid Denver-based BBC Researching & Consulting about \$10,000 to prepare a study, which was presented to commissioners. The report suggests charging builders \$777 for each new single-family home and \$0.24 per square foot of commercial development. The study attempted to determine what it costs the districts to serve each home and business. The commissioners voted against this proposal.

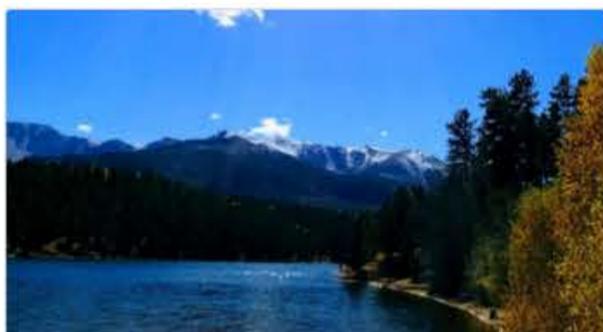
Sign this petition now... Save the Pike National Forest!



Start a petition of your own
This petition starter stood up and took action.
Will you do the same?

Start a petition

Updates



April 16 El Paso County Planning Commission Meeting!!!

The El Paso County Planning Commission began hearing comments on the Forest Lakes Phase 2 development in their meeting last Tuesday.



Gaye Murdoch Meddalena
3 days ago

1,000 supporters

1 week ago

Gaye Murdoch Meddalena started this petition

1 year ago

1,103 have signed. Let's get to 1,500!



 Amy Davis signed 4 hours ago

 Jen Pratt signed 10 hours ago

First name:

Last name:

Email:

Denver, 80234
United States

Display my name and comment on this petition

[Sign this petition](#)

By signing, you accept Change.org's [Terms of Service](#) and [Privacy Policy](#), and agree to receive occasional emails about campaigns on Change.org. You can unsubscribe at any time.

Facility Summary



FOREST LAKES METRO DISTRICT WWTF
2621 FOREST LAKES DR, MONUMENT, CO 80132
FRS ID: 110070147606
EPA Region: 08
Latitude: 39.06074
Longitude: -104.89135
Locational Data Source: FRS
Industry: Special Trade Contractors
Indian Country: N

Related Reports

- CWA Pollutant Loading Report
CWA Effluent Charts
CWA Effluent Limit Exceedances Report
View Envirofacts Reports

Enforcement and Compliance Summary

Table with 11 columns: Statute, Insp (5 Years), Date of Last Inspection, Compliance Status, Qtrs with NC (of 12), Qtrs with Significant Violation, Informal Enforcement Actions (5 years), Formal Enforcement Actions (5 years), Penalties from Formal Enforcement Actions (5 years), EPA Cases (5 years), Penalties from EPA Cases (5 years). Row 1: CWA, 3, 01/10/2019, Significant/Category I Noncompliance, 5, 4, --, --, --, --, --.

Regulatory Information

Clean Air Act (CAA): No Information
Clean Water Act (CWA): Minor, Permit Admin Continued (COG076102)
Resource Conservation and Recovery Act (RCRA): No Information
Safe Drinking Water Act (SDWA): No Information

Other Regulatory Reports

Air Emissions Inventory (EIS): No Information
Greenhouse Gas Emissions (eGGRT): No Information
Toxic Releases (TRI): No Information
Compliance and Emissions Data Reporting Interface (CEDRI): No Information

Go To Enforcement/Compliance Details

Known Data Problems

Facility/System Characteristics

Facility/System Characteristics

Table with 10 columns: System, Statute, Identifier, Universe, Status, Areas, Permit Expiration Date, Indian Country, Latitude, Longitude. Rows for FRS and ICP.

Facility Address

Table with 4 columns: System, Statute, Identifier, Facility Name, Facility Address. Rows for FRS and ICP.

Facility SIC Codes

Table with 4 columns: System, Identifier, SIC Code, SIC Description. Row: ICP, COG076102, 1799, Special Trade Contractors.

Facility NAICS Codes

Table with 4 columns: System, Identifier, NAICS Code, NAICS Description. Note: No data records returned.

Facility Tribe Information

Table with 4 columns: Reservation Name, Tribe Name, EPA Tribal ID, Distance to Tribe (miles). Note: No data records returned.

Enforcement and Compliance

Compliance Monitoring History (5 years)

Table with 7 columns: Statute, Source ID, System, Inspection Type, Lead Agency, Date, Finding (if applicable). Rows for CWA inspections.

Entries in italics are not considered inspections in official counts.

Compliance Summary Data

Table with 6 columns: Statute, Source ID, Current SNC/HPV, Current As Of, Qtrs with NC (of 12), Data Last Refreshed. Row: CWA, COG076102, Yes, 12/31/2018, 5, 04/05/2019.

Three-Year Compliance History by Quarter

Download Data

Large table with 15 columns: Statute, Program/Pollutant/Violation Type, QTR 1-13, Facility-Level Status, Quarterly Noncompliance Report History, Pollutant, Disch Point, Freq, Late or Missing Discharge Monitoring Report (DMR) Measurements.

Informal Enforcement Actions (5 Years)

Table with 6 columns: Statute, System, Source ID, Type of Action, Lead Agency, Date. Note: No data records returned.

Formal Enforcement Actions (5 Years)

Table with 15 columns: Statute, System, Law/Section, Source ID, Action Type, Case No., Lead Agency, Case Name, Issued/Filed Date, Settlements/Actions, Settlement/Action Date, Federal Penalty, State/Local Penalty, SEP Cost, Comp Action Cost. Note: No data records returned.

Environmental Conditions

Water Quality

Table with 10 columns: Permit ID, Combined Sewer System?, Number of CSO Outfalls, 12-Digit WBD HUC (RAD), WBD Subwatershed Name (RAD), State Waterbody Name (ICIS), Impaired Waters, Impaired Class, Causes of Impairment(s) by Group(s), Watershed with ESA-listed Aquatic Species?.

Waterbody Designated Uses

Table with 8 columns: Reach Code, Waterbody Name, Exceptional Use, Recreational Use, Aquatic Life Use, Shellfish Use, Beach Closure Within Last Year, Beach Closure Within Last Two Years.

Air Quality

Table with 3 columns: Nonattainment Area?, Pollutant(s), Applicable Nonattainment Standard(s). Rows for Ozone, Lead, Particulate Matter, Carbon Monoxide, Nitrogen Dioxide, Sulfur Dioxide.

Pollutants

Toxics Release Inventory History of Reported Chemicals Released in Pounds per Year at Site

Table with 8 columns: TRI Facility ID, Year, Total Air Emissions, Surface Water Discharges, Off-Site Transfers to POTWs, Underground Injections, Releases to Land, Total On-site Releases, Total Off-site Releases. Note: No data records returned.

Toxics Release Inventory Total Releases and Transfers in Pounds by Chemical and Year

Table with 2 columns: Chemical Name, (empty cell).