



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS
ALBUQUERQUE DISTRICT
Southern Colorado Regulatory Office
200 S. Santa Fe Avenue, Suite 301
Pueblo, Colorado 81003

August 21, 2012

REPLY TO
ATTENTION OF

Regulatory Division

SUBJECT: Action No. SPA-2004-00017-SCO; ALLISON RANCH DEVELOPMENT-Permit Modification

Robert Leach
Ginger I, LLC
635 W. Corona Avenue, Suite 216
Pueblo, CO 81004

Mr. Leach:

We received your permit modification application dated November 19, 2012 requesting a changes to your Department of the Army permit for the discharge of dredged and fill material into waters of the United States for the Allison Ranch Development.

We have reviewed to application, have conducted Formal Section 7 Consultation with the U.S. Fish and Wildlife Service, and hereby approve your modification request. Action Number SPA-2004-00017-SCO is modified as follows:

1. Replace the project description on page one of your permit with: The project is to construct the Allison Ranch Development, consisting of residential and commercial properties, a school site, and associated infrastructure. This modification includes three drop structures in Black Squirrel Creek, ten on Middle Tributary, armoring outer bends of both creeks, trail and road crossings, utility crossings, and dam rehabilitation.
2. The project will be constructed as proposed in the Ecosystem Services LLC's Allison Ranch Biological assessment & Habitat Mitigation Plan dated January 2012, and Addendum to the Biological Assessment and Habitat Management Plan for the Allison Ranch project.

3. Replace "December 31, 2012 in General Condition 1 on page one of the permit with "December 31, 2017".

Revise special condition to read as follows:

1. The time limit for completing the work authorized ends on December 31, 2017. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from this office the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Add special condition to read as follows:

1. The permittee agrees to the mitigation for impacts to waters of the U.S., including wetlands, from construction activities will be conducted as described in the Ecosystem Services LLC's Allison Ranch Biological assessment & Habitat Mitigation Plan dated January 2012, and Addendum to the Biological Assessment and Habitat Management Plan for the Allison Ranch project. Mitigation for the proposed impacts to wetlands in both creeks. Any changes

or modifications to these plans must be approved in advanced by this office and the U.S. Fish & Wildlife Service (USFWS).

2. Permanent photographic points will be established and photos will be taken prior to construction. Photographs taken at these sites will be included in the yearly mitigation monitoring reports.
3. All terms and conditions and reporting requirements of the USFWS's Biological Opinion, dated August 6, 2012, shall be adhered to. Mitigation will be performed in accordance with the Ecosystem Services LLC's Allison Ranch Biological assessment & Habitat Mitigation Plan dated January 2012, and Addendum to the Biological Assessment and Habitat Management Plan for the Allison Ranch project.
4. Your responsibility to complete the required compensatory mitigation, as set forth in Special Condition 1 & 2, will not be considered fulfilled until you have demonstrated mitigation success and have received written verification from this office. Monitoring will be conducted for five years or until the mitigation has been deemed successful for both the wetlands and the Preble's meadow jumping mouse (Preble's).
5. You are required to submit an annual compensatory mitigation report for wetlands and the Preble's. The report will include all wetland mitigation construction; planting locations; weed control; successes and setbacks; and anything that might be pertinent to the mitigation. This report will include activities conducted; the approximate acreage of Preble's habitat permanently and temporarily affected; any problems encountered in implementing the terms and conditions; recommendations for modifying the stipulations to enhance the conservation of the Preble's; results of any biological surveys and sighting records; and other pertinent information. This report will be provided to the Corps and USFWS by December 1st each year for five years, or until mitigation has been determined successful by the Corps and USFWS.

Incidental Take Statement

Section 9 of the Endangered Species Act (Act) and Federal regulations pursuant to 4(d) of the Act prohibit the take of endangered and threatened species, respectively, without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. Harm is further defined by the USFWS to include significant habitat modification or degradation that results in death or injury to listed species by significant impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass is defined by the USFWS as an intentional or negligent act or omission that creates the likelihood of injury to listed wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering. Incidental take is defined as take that is

incidental to, and not the purpose of, the carrying out of otherwise lawful activity. Under terms of Section 7(b)(4) and Section 7(c)(2), taking that is incidental to and not intended as part of the agency action is not considered to be prohibited taking under the Act provided that such taking is in compliance with the terms and conditions of this Incidental Take Statement.

The USFWS anticipates that the proposed action may result in incidental take of the Preble's through direct take (through direct killing during construction) or through temporary loss of habitat that supports the Preble's life functions. Take of Preble's will be difficult to detect because of their small size and hibernation underground. In addition take could occur, through the USFWS believe that it is unlikely, though the loss of food, cover, and other essential habitat elements associated with a adverse impact to a maximum of 27.91 acres of delineated Preble's habitat and 78.73 acres of designated critical habitat. The USFWS estimate a maximum take of 16 Preble's. Incidental take may also occur through secondary effects to Preble's and its habitat, although such take is not expected.

In the Biological Opinion, the USFWS determined that this level of anticipated take is not likely to result in jeopardy to the species.

Reasonable and Prudent Measures

1. The areas of construction activities will be monitored to ensure no additional Preble's habitat will be unintentionally impacted.
2. The applicant will insure that Best Management Practices will be designed to ensure minimal take of Preble's are implemented and successful.
3. An permittee will ensure monitoring of all of the proposed onsite restoration and enhancement to assure the project completion and success.

Terms and Conditions

1. The applicant shall ensure that the proposed Conservation Measures (outlined above and detailed in the USFWS Biological Opinion (BA) and Addendum), as further refined by these terms and conditions, are formally adopted and implemented.
2. Detailed engineering and site plans of utility and stormwater design features, including designs to limit runoff from impervious surfaces and encourage infiltration (using practices such as disconnecting impervious surfaces, and enhancing percolation through vegetated buffers and swales), will be forwarded to the Corps and USFWS for 30-day review and concurrence prior to implementation.

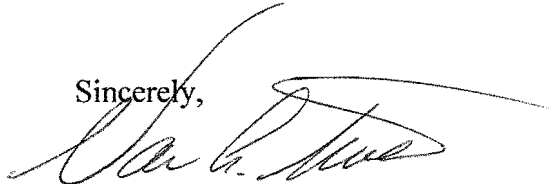
3. Final mitigation plans including grading and planting plans, identification of the type of adjacent land use (trails, setback areas, schoolyard), setback width and existing vegetation, a fencing and signage plan, and weed control measures consistent with State and county requirements will be forwarded to the Corps and USFWS for 30-day review and concurrence prior to implementation.
4. During the project, Preble's habitat adjacent to work areas and not designated for construction, (or creation, enhancement, or restoration) shall be fenced with silt fencing or another appropriate barrier to prevent inadvertent impacts to habitat outside the construction footprint.
5. The permittee or their agent will hold a pre-construction meeting with contractors, during which all environmental provisions and restrictions will be reviewed.
6. The permittee or their agent will designate a qualified environmental manager to be onsite during the early phase of the proposed work and periodically thereafter to inform workers of permit conditions, monitor construction, and assure that habitat avoidance and conservation measures are implemented.
7. Implementation of habitat restoration and enhancement will be supervised by a qualified individual experienced in reclamation and habitat restoration.
8. Unless specified in the project proposal or otherwise approved by the USFWS and the Corps, all temporary disturbed Preble's habitat will be stabilized and replanted, and all enhancement plantings initiated, at the latest duration in the fall of the growing season following completion of the appropriate phase of construction.
9. All areas temporally disturbed areas and compensatory mitigation areas are revegetated with native vegetation to the following specifications.
 - a. At least 80% of planted trees and shrubs are established and growing without showing signs of stress or continued need for irrigation or fertilization.
 - b. Desirable herbaceous cover on seeded areas will equal to at least 80% of that in undisturbed control areas nearby.
 - c. Weeds will be controlled in habitat creation, restoration, and conservation areas. Weed control will be considered successful if 0% of Colorado Noxious Weed Act (C.R.S. 35-5.5-101 through 119) List A species and less than 10% of Category B and C species (combined) are found in overall plant cover from transects and plot data.

10. The permittee shall provide an annual monitoring report that will include a description of work conducted, habitat creation, enhancement, restoration, and conservation areas. Monitoring will extend for at least five years following planting, or until such time as the Corps and USFWS determine that revegetation has been successfully completed. Monitoring reports will be due to the USFWS and Corps by December 1 each year.
11. In the unlikely event that a Preble's is encountered (dead, injured, or hibernating) during construction activities, the Colorado Field Office of the USFWS shall be contacted immediately at (303) 236-4773.

This modification is effective immediately. All other terms and conditions of the original permit remain in full force and effect.

If you have any questions concerning this letter, please contact me at 719-543-6915 or by e-mail at Van.A.Truan@usace.army.mil.

Sincerely,

A handwritten signature in black ink, appearing to read 'Van A. Truan', with a long, sweeping horizontal line extending to the right.

Van Truan
Chief, Southern Colorado
Regulatory Branch