

**FINDINGS AND RECOMMENDATIONS**  
**for the**  
**ISSUANCE OF AN ENDANGERED SPECIES ACT SECTION 10(A)(1)(B)**  
**INCIDENTAL TAKE PERMIT**  
**for the**  
**LOW EFFECT GUNNISON RISING ANNEXATION HABITAT**  
**CONSERVATION PLAN**

**U.S. FISH AND WILDLIFE SERVICE**  
**WESTERN COLORADO ECOLOGICAL SERVICES FIELD OFFICE**  
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## INTRODUCTION

### *Authorities*

We, the U.S. Fish and Wildlife Service (Service), received an application for an incidental take permit (Permit) for the Gunnison sage-grouse (*Centrocercus minimus*) (GUSG), which is listed as threatened under the Endangered Species Act (ESA). The Permit would authorize incidental take of GUSG from construction and development of the Gunnison Rising Annexation project (Project) authorized by the City of Gunnison (City) and carried out by the primary developer, Gunnison Valley Properties (GVP), as well as other potential commercial or individual developers. We reviewed the City's application for a permit under section 10(a)(1)(B) of the ESA (16 USC 1531 *et seq.*) and its implementing regulations for incidental take permits (50 CFR 17.22). The City's application included a required habitat conservation plan (HCP) (GVP et al. 2021, entire).

We also conducted an intra-Service consultation under section 7(a)(2) of the ESA (Service 2022a, entire), analyzing effects to listed species from the implementation of the approved HCP and issuance of the Permit for the Project. We complied with the National Environmental Policy Act (NEPA) (42 USC 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6; 43 CFR 46) for the proposed federal action of issuing an incidental take permit by preparing a Screening Form and Environmental Action Statement (EAS) (Service 2022b, entire). Due to low effects to the GUSG and the environment it was determined that an EAS documenting a categorical exclusion under NEPA was appropriate. We also analyzed and found our action to be in compliance with the Migratory Bird Treaty Act (16 USC 703-712), Bald and Golden Eagle Protection Act (16 USC 668), and National Historic Preservation Act (NHPA) (54 USC 470). A Programmatic Agreement under the NHPA was written to address potential impacts to cultural and historical properties (Service et al. 2021).

### *Project Description*

The 637-acre Gunnison Rising Annexation Project is a residential and commercial development within the city limits of Gunnison, Gunnison County, Colorado. Planned development zones are detailed in the Gunnison Rising Planned Unit Development (PUD) as follows: a. Single-Family Residential (0.26 dwelling units per acre), b. Residential (1-5 dwelling units per acre), c. Multi-Family "Residential Village" (5-12 dwelling units per acre), d. Commercial/Mixed use, e. RV Park and Camping, f. Government Campus, g. Events Center and Rodeo, h. Open Space and Parks (City 2020, entire).

The planned buildout and development for Gunnison Rising will occur at a rate of 20 to 50 acres every 5 years, moving from existing development on the western boundary toward the eastern boundary. The more southerly Phase I development area will be developed first, and Phase II (immediately north of Phase I) will be developed second (see Figure 5 in the HCP (GVP et al.

2021, p. 17)). U.S. Highway 50 divides Phase I and also divides the HCP's Western Plan area into a North Parcel and South Parcel (see Figures 4 and 5 in the HCP (GVP et al. 2021, pp. 14 and 17)). The Western Plan Area includes both the Project development area and conservation areas immediately to the north and south. The Eastern Plan Area (also known as the Cabin-Alder Allotment) is a U.S. Bureau of Land Management (BLM) grazing allotment where cattle were removed for mitigation.

Construction activities covered by the Permit (covered activities) are separated into two sections in the HCP (GVP et al. 2021, pp. 24-25) and are stated below.

Capital improvement projects include:

- Road construction and improvement
- Public water, sewer, and other utilities infrastructure
- Open space, parks and trails development
- Maintenance and repair of these improvements
- Other required infrastructure as dictated by City, State, Federal, etc.

Specific construction activities for the capital improvements and the residential and commercial buildings include:

- Preconstruction surveys
- Clearing, grubbing, grading, and other land disturbances
- Building activities including equipment use, traffic, supplies storage, noise disturbance, lighting disturbance, temporary fencing, and landscaping
- Any other construction activities as listed in the Gunnison Rising PUD (City 2020) and required by the City of Gunnison

Additional covered activities include any and all lawful anthropomorphic activities and influences associated with urban development such as private building maintenance, public infrastructure maintenance, increased pedestrian and vehicle traffic, law enforcement, municipal code enforcement, emergency services response, recreational activities, invasive weed control, and Permit compliance monitoring. Furthermore, covered activities include any activities prescribed by the HCP as part of the specific conservation plan, changed or unforeseen circumstances, and/or adaptive management strategies.

The incidental take coverage would be extended to development companies or individual builders through certificates of inclusion entered into through the City at the time of building permit applications.

The proposed Permit would be subject to the assurances provided under the "No Surprises" rule at 50 CFR 17.3, 17.22(b)(5) and 17.32(b)(5). Those assurances promise that the Service will not impose further commitments or restrictions on the Permittee(s) as long as the HCP is being properly implemented.

### *Permit Area and Duration*

The Permit Area is a subset of the Western Plan Area and includes all areas where take of species covered by the Permit (covered species) will occur and would be authorized by the Permit. Specifically, the Permit Area includes the development footprint and immediately surrounding area in Phase II of the Project area (290 acres) that is suitable GUSG habitat. Phase I of the Project area has been determined to be a “No Take Area” that the Permit does not apply to because take would not occur there due to existing habitat alteration and disturbance and, therefore, GUSG do not utilize Phase I (see Figure 5 of the HCP (GVP et al. 2021, p. 17)). In addition to Phase II, a 1,000-foot disturbance zone to the north of Phase II (201 acres) and south of Phase I (106 acres) is included in the Permit Area (see Figure 5 of the HCP (GVP et al. 2021 p. 17)). The 1,000-foot disturbance zone is an area where GUSG use is not expected or will be reduced. In total the Permit Area is 597 acres.

The proposed permit duration is 20 years to provide coverage for take of the GUSG that may occur over that time period. Full buildout of the Project may take up to an estimated 64 years, but the Permit will initially be issued for 20 years to provide time to gather more information about GUSG in the Permit Area and determine if the HCP and described conservation measures will achieve the biological goals within the requested Permit duration. The Permit could be renewed if development or actions associated with the HCP are still ongoing after 20 years. The City will coordinate with the Service to renew (or amend) the Permit as needed.

### *Anticipated Effects to GUSG*

Effects to GUSG are anticipated from Project activities during construction and afterwards from human activity and are summarized below. Further details on the types and sources of take are described in section 6.1 of the HCP and in the Effects of the Action section of our Biological Opinion, which are herein incorporated by reference.

Effects to the GUSG include direct and functional loss of habitat, displacement, and the potential for individual mortality or injury. Noise and sight disturbances from construction, lighting, and human activities will result in changes to habitat utilization. Disturbance may also occur during implementation of management strategies and monitoring contained within the HCP. Effects to GUSG themselves are most likely to occur within the Western Plan Area Phase II development area and disturbance zones to the north and south within 1,000 feet of the development. It is anticipated that GUSG feeding, sheltering, and possibly nesting will be reduced on the Phase II development area and disturbance zone on the North Parcel Mitigation Area. However, once construction occurs at the north end of Phase I it is likely that GUSG will start to gradually cease using the Phase II area and once construction on Phase II commences it is anticipated that GUSG will not nest on Phase II. Thus, it is not expected that GUSG nests themselves will be taken.

Mortality or injury could occur to GUSG using or moving through Phase II, or Phase I, after construction commences. Mortality or injury could occur from collision with construction vehicles and large equipment during operation on the development site, during maintenance and

repair activities, or during commercial or personal transportation. There is also potential for collision from human activities such as recreational bike use of new trails connecting the Gunnison Rising development to the Contour Trail (though disturbance is a more likely result) and there could be mortality or injury from domestic pet interactions. We expect; however, that collision with construction vehicles, personal cars or bicycles would be extremely rare. Domestic pet interactions will be limited by leash requirements from March 15-May 15 and through signage encouraging trail users to keep pets on leashes through June 30<sup>th</sup>, which will minimize disturbance, injury, or mortality to nesting hens and young. With the leash requirements in place, we cannot say that mortality or injury from pet interaction is reasonably certain to occur, nor is mortality or injury reasonably certain to occur from collision. Some occasional disturbance could also occur from additional Gunnison Rising residents on the Signal Peak trails on the North Parcel Mitigation Area and the Eastern Plan Area but we are also not reasonably certain that take would occur from that use.

#### *Anticipated Effects to GUSG Critical Habitat*

There are 28,314 acres of occupied designated critical habitat in the Plan Area. Out of the 1522-acre Western Plan Area 1,358 acres is designated critical habitat. All of the Eastern Plan Area's 26,956 acres is designated critical habitat. Within the Western Plan Area's North Parcel, there are 687 acres of designated critical habitat (141 acres on Phase I, 286 acres on Phase II, and 260 acres on the North Parcel Mitigation Area). It should be noted that although Phase I (on the North and South Parcel) has been determined to be a "No Take Area" (see Figure 5 in the HCP) this only applies to take of the GUSG itself; take does not apply to critical habitat but critical habitat can still be affected by consequences of the action and is thus accounted for here. There is also 671 acres of critical habitat within the Western Plan Area's South Parcel (206 acres on Phase I and 465 acres on the South Parcel Open Space Buffer). Although the overall Western Plan Area is 1,522 acres, critical habitat was previously excluded from designation (79 FR 69312) on four acres within the Phase II development area because it was enrolled through a Certificate of Inclusion under the Candidate Conservation Agreement with Assurances (CCAA) for GUSG (Colorado Parks and Wildlife (CPW) 2006). Additionally, 160 acres was previously excluded from critical habitat designation within the North Parcel Mitigation Area because it has a CPW conservation easement on it for management of GUSG (79 FR 69312). Thus 1,522 acres minus the 164 acres of excluded critical habitat equals the 1,358 acres of critical habitat in the Western Plan Area (and 687 acres of critical habitat on the North Parcel + 671 acres on the South Parcel also adds up to 1,358 acres).

The afore mentioned Certificate of Inclusion was with WCU, so despite allowing for removal of the four acres for the Gunnison Rising development, WCU now owns the 420-acre North Parcel Mitigation Area and there is a commitment to keep the Mitigation Area as open space (Ford, pers. comm. 2020). We expect the commitment to be maintained but, if not, we will collaborate with the permittee (the City) and WCU to discuss the issue, and evaluate the status of the HCP

Permit if necessary. Additionally, we will work with WCU to modify their Certificate of Inclusion to remove the four acres from the CI.

Regarding anticipated effects to critical habitat on the North Parcel, all of Phase I (141 acres) is anticipated to be affected by the development and all of Phase II, except 4 acres of excluded critical habitat (286 acres), is anticipated to be affected. In addition, adjacent to the Phase II development area on the North Parcel Mitigation Area there is a 1,000-foot disturbance zone, as established by the HPT (Gunnison County 2018), where the covered activities could reduce the value of critical habitat (197 acres). This is true particularly in closer proximity to the proposed development (see sections 6.1, 6.5, and Figure 11 in the HCP (GVP et al. 2021, p. 58 for additional HPT description, or see the HPT itself (Gunnison County 2018, entire)). While the disturbance zone area equals 201 acres, there are approximately 4 acres that overlap with the critical habitat exclusion on WCU-CPW's 160-acre Conservation Easement ((79 FR 69312) resulting in 197 acres of critical habitat in the disturbance zone (to be clear, these 4 acres are different than the 4 acres excluded via the WCU Certificate of Inclusion). Therefore, the 141 acres on Phase I, the 286 acres on Phase II, and the 197 acres in the disturbance zone results in a total of 624 acres of occupied critical habitat that will be wholly or partially affected from Gunnison Rising on the North Parcel (see Figures 4 and 5 in the HCP (GVP et al. 2021, pp. 14, 17)).

For anticipated effects to critical habitat on the South Parcel, there are 206 acres of critical habitat that are within the Phase I development area (see Figure 5 in the HCP). In addition, there are 94 acres south of the planned development area but north of Tomichi Creek (on the South Parcel Open Space Buffer/Tomichi Creek State Wildlife Area (SWA)) that is non-functional GUSG habitat due to existing disturbances such as U.S. Highway 50 and other disturbances (Seward, pers. comm. 2019; see Figure 5 in the HCP) resulting in 300 acres of critical habitat within the "No Take Area" on the South Parcel (see Figure 5 in the HCP). Furthermore, 106 acres is within the 1,000-foot HPT disturbance zone south of Tomichi Creek where critical habitat value may be reduced, particularly in closer proximity to the proposed development. Therefore, in total the South Parcel contains 406 acres of occupied critical habitat (300 + 106) wholly or partially affected from Gunnison Rising.

On the South Parcel Open Space Buffer there are 265 acres of critical habitat that will not be impacted by Gunnison Rising (465 total - 106 disturbance zone - 94 nonfunctional habitat). There are 63 acres of critical habitat in the North Parcel Mitigation Area that will not be impacted by Gunnison Rising (420 total - 197 disturbance zone - 160 excluded critical habitat). The 26,956 acres of critical habitat in the Eastern Plan Area will also not be impacted by Gunnison Rising and will provide benefits to GUSG. Benefit to critical habitat in the Eastern Plan Area is anticipated to result from a 15 percent reduction of grazing (356 Animal Unit months (AUMs)), which will improve habitat condition for GUSG (BLM 2011; de Valois, pers. comm. 2021). An AUM is one cow and one calf pair grazing for one month. The intent of the

15 percent AUM reduction in 2011 was to ensure that the vegetation (upland and riparian grasses and forbs) would not be over utilized. The value of not over utilizing these communities is to: 1) retain sufficient "stubble" height on grasses and forbs in upland and riparian areas to hide GUSG nests and small chicks, 2) maintain the health and diversity of grasses and forbs so that they are not replaced with other species (other shrubs, or noxious weeds) that do not provide the cover/chick food/insect habitat GUSG need, and 3) maintain sufficient vegetation along riparian corridors to stabilize streambanks/catch sediment to prevent erosion and loss of wet meadow habitat (BLM 2011; de Valois, pers. comm. 2021).

In summary, out of the 1,522 acres that make up the Western Plan Area, 164 of those acres were excluded from critical habitat leaving 1,358 acres of critical habitat in the Western Plan Area. Out of the 1,358 acres, 1,030 acres of occupied critical habitat are anticipated to be wholly or partially affected by Gunnison Rising (624 acres North Parcel; 406 acres South Parcel) and 328 acres (63 North Parcel and 265 acres South Parcel) are anticipated to have no impacts from Gunnison Rising and to provide habitat benefits to GUSG into the future. Additionally, the reduced level of grazing within the 26,956-acre Eastern Plan Area is anticipated to have no impacts to GUSG critical habitat other than to facilitate enhancement of the habitat. Our biological opinion concludes that the Gunnison Rising development will not destroy or adversely modify GUSG critical habitat and will not appreciably diminish the value of critical habitat as a whole for the conservation of the species (Service 2022a, p. 19).

#### *Anticipated Level of Take Covered by the Permit*

The Service anticipates that up to four GUSG could be taken as a result of the proposed action as described in the section 6.2 of the HCP (GVP et al. 2021, p. 52) and in the Effects of the Action /Effects to GUSG and Incidental Take Statement sections of the Biological Opinion (Service 2022a, pp. 17, 21). The incidental take is expected to be in the form of harm through significant disruption to feeding, sheltering, and possibly nesting.

#### *Conservation Measures*

Sections 5.2 and 5.3 of HCP provides several measures to avoid, minimize, and mitigate the impacts of anticipated take of the GUSG. These measures are addressed in detail below in the section on *HCP Specifies Steps to Minimize and Mitigate Impacts of the Take* of this Findings document.

#### *Monitoring and Reporting*

Section 5.5 of the HCP provides details on the plans for compliance and effectiveness monitoring. Compliance monitoring will include the following:

1. The number of building applications and amount of land altered by development each year,
2. The number of certificates of inclusion signed by developers or individual landowners (should be same number as number of building applications),



3. The type and amount of covered activities implemented annually,
4. The number and location of educational signs regarding disturbance minimization measures placed at access points near both the North Parcel Mitigation Area and the South Parcel Open Space Buffer,
5. Adaptive management changes implemented,
6. Changed or unforeseen circumstances that arose and how they were addressed,
7. Funding expenditures,
8. Description of minor or major amendments,
9. Description of any take that occurred for GUSG (includes cause of take, form of take, take amount, location of take and time of day, and deposition of dead or injured individuals),
10. Any Migratory bird protection conservation measures that are implemented,
11. Violations of pet restrictions.

Effectiveness monitoring will include the following:

1. Use by GUSG in the Permit Area (the 290-acre development area) for a 5-year period starting in 2020 utilizing:
  - a. Pellet count transects,
  - b. GUSG visual sighting transects. This information will help to document the use by and impacts to GUSG during the buildout of Gunnison Rising and may lead to some Adaptive Management Strategies to address those impacts.
2. Review of CPW Annual Lek Count Information for the Tomichi Village Lek Area,
3. Any radio-telemetry data that might have been done by BLM/CPW on adjacent property to help provide information on potential GUSG use and management actions for the North Parcel Mitigation Area and Eastern Plan Area (Cabin-Alder Allotment).

Section 5.6 of the HCP provides details on reporting and includes the following:

The City will prepare and provide an Annual HCP Report (Report) to the Service for the duration of the twenty-year Permit. The Report will be supplied by December 31<sup>st</sup> to the Service and the City will meet with the Service prior to March 1<sup>st</sup> (prior to the next building season) to discuss whether conservation measures are being met and what measures to implement to meet goals and objectives of the HCP.

Annual Reports to the Service will include:

- GIS mapping showing what development/construction activities have occurred in Gunnison Rising and the number of Building permit applications taken within the Permit Area.
- A brief summary or list of project activities accomplished during the reporting year (e.g., this includes development/construction activities, and other covered activities).
- Project impacts (e.g., number of acres graded, number of buildings constructed, etc.).
- Educational and signage activities implemented during the year.
- Description of all adaptive management changes to this conservation plan by reporting period, including a very brief summary of the actions.

- Description of any changed or unforeseen circumstances that occurred and how they were dealt with.
- Funding expenditures, balance, and accrual.
- Description of any minor or major amendments.
- An update of the CPW Annual Lek count data for the Signal Peak Lek Area.
- A report of monitoring for GUSG sign or activity within the Permit Area.
- Description of any take that occurred for GUSG (includes cause of take, form of take, take amount, location of take and time of day, and deposition of dead or injured individuals).
- Any Radio-telemetry data that might have been done by BLM/CPW on adjacent property to help provide information on future use of WCU donation area especially in light of approved trails through WCU and on BLM.
- Any Migratory bird protection conservation measures that are implemented.

All reporting documents will be provided to the Service with copies retained by the Service.

## **PUBLIC INVOLVEMENT**

In accordance with NEPA, we published a notice of availability of the draft EAS and draft HCP on May 7, 2021 (86 FR 24656) and requested public comments on those draft documents.

## **SECTION 10(a)(2)(A) HABITAT CONSERVATION PLAN REQUIREMENTS – ANALYSIS AND FINDINGS**

Section 10(a)(2)(A) of the ESA specifically mandates that no permit may be issued by the Secretary of the Interior, through the Service, authorizing any taking referred to in paragraph (1)(B) unless the applicant submits to the Secretary a conservation plan that specifies: (i) the impact which will likely result from such taking; (ii) the steps the applicant will take to minimize and mitigate such impacts; (iii) what alternative actions to such taking were considered and the reasons why such alternatives are not being utilized; and (iv) such other measures as the Secretary may require as being necessary or appropriate for the purposes of the HCP. We find the HCP to be complete and in accordance with ESA section 10(a)(2)(A) application requirements as supported below.

### *HCP Specifies the Impacts from the Taking*

Section 6.1 of the HCP describes the rationale and sources of anticipated take from the Project. Section 6.2 calculates the amount of take of GUSG anticipated based on the amount of habitat proposed to be disturbed. Section 6.3 describes the impacts to critical habitat. Section 6.4 specifies the impacts of the take to GUSG.

The form of take will be “harm,” as defined by the ESA, from habitat loss resulting from consequences of the action. With GUSG being mobile and using large areas of habitat, the amount of habitat loss compared to the average acres needed for each GUSG is the primary way to calculate the take of individual GUSG. Consequently, population estimates based on lek counts in the Gunnison Basin, as described in section 3.1 of the HCP, were used in combination

with the expected amount of habitat loss from the Project to calculate the take of GUSG (4 birds in total). Section 6.4 assesses the impact to the species as a whole that will likely result from the anticipated take of GUSG. The Project will not impact the long-term persistence of GUSG because the 4 individuals anticipated to be taken represent only 0.11 percent of the estimated GUSG in the Gunnison Basin and, as described in the biological opinion for the Project, is only 0.09 percent of GUSG rangewide.

#### *HCP Specifies Steps to Minimize and Mitigate Impacts of the Take*

Section 5 of the HCP specifies steps to minimize and mitigate impacts of the take. Section 5.1 describes two overarching biological goals and the objectives to achieve those goals. The goals are to 1) maintain higher quality and more productive GUSG habitat within the Gunnison Basin Population and 2) minimize impacts from development on GUSG. The HCP's conservation plan further stipulates several measures to minimize and mitigate the impacts of the anticipated take of GUSG.

#### Measures to Minimize and Mitigate the Impacts of the Take

The minimization and mitigation measures that have been or will be implemented by GVP and the City were designed to meet the objectives for goals 1 and 2 of the HCP's conservation plan (section 5.1). The objectives of Goal 1 are: 1a) The City of Gunnison will utilize the Gunnison Rising Annexation Area as part of the future buildout and expansion of the community to alleviate development pressures outside the city limits on GUSG habitat over the next 64-year potential life of this project; 1b) GVP will create open space buffers adjacent to the City of Gunnison that avoid, minimize and mitigate the development of Gunnison Rising to help maintain GUSG habitat outside the city limits. The creation of open space buffers to the north (420 acres) and the south (465 acres) of the city boundary have been put in place to help reduce impacts to the Tomichi Village and Chance Gulch lek areas and offset consequences of the development (637 acres).

The objectives of Goal 2 are: 2a) Through the City building permit process developers and individuals will receive educational materials related to the City's Permit Boundary and the need to implement seasonal construction guidelines during the breeding season (March 15 to May 15) in order to help lessen the impacts to GUSG on surrounding habitat; 2b) Partner with WCU, BLM, CPW, and Gunnison County on recreation management within adjacent City boundaries through signage and education efforts so that those impacts will be minimal to GUSG. These efforts will be ongoing as new trailheads are put in place and new residents begin to occupy the Permit area.

#### Measures to Minimize the Impact of the Take

The minimization measures are listed below, and details of each measure are described in section 5.2 of the HCP, which is herein incorporated by reference.

- Development adjacent to the city minimizes the chance for GUSG habitat fragmentation elsewhere in the Gunnison Basin.
- Build-out of the development may take up to 64 years and disturbance from first building in the “No Take Area” (Phase I) will minimize potential take of GUSG by removing habitat near developed areas and slowly expanding development over time.
- The City already has minimization measures in place that will be applied to Gunnison Rising. These include 1) Limits of Disturbance standards that are designed to avoid visual impact, provide erosion control and prevention, preserve native vegetation and other natural site conditions, prevent wildfire and flood events, and account for wildlife habitat (City 2014); 2) Management practices that focus on eradication, containment and suppression of noxious weeds (City 2019); 3) Recreation policies that minimize impacts to GUSG on existing trails through timing restrictions both within Gunnison Rising and on adjacent public land. This is particularly relevant to the Signal Peak Trail System that includes the existing Contour Trail, Cemetery Ditch Trail, and Rasta Gulch Trail that already go through the Gunnison Rising development area and the North Parcel Mitigation Area (BLM 2018).
- Daily and seasonal building restrictions to reduce impacts to GUSG (that will be described in each certificate of inclusion (see Appendix B of the HCP)). No construction activity will be permitted from sunset to 9:00 AM from March 15th to May 15th of each year.
- Pet handling restrictions to minimize impacts to GUSG. All pets will be leashed from March 15th to May 15<sup>th</sup>. Additionally, it will be strongly encouraged that pets are leashed from May 15th to June 30th.
- Placement of educational signs regarding GUSG and disturbance minimization measures (e.g., pets on leash March 15th to June 30th) at access points near the North Parcel Mitigation Area.
- The Plan Area was reduced in size. The 465-acre South Parcel Open Space Buffer was originally part of the development plan but was converted to an open space buffer through sale of 249 acres under appraised value to the Bureau of Reclamation (who conveyed it to CPW) and through sale of 216 acres under appraised value to CPW, who now manages the entire 465 acres as the Tomichi Creek SWA.

#### Measures to Mitigate the Impact of the Take

The mitigation measures are listed below, and details of each measure are described in section 5.3 of the HCP, which is herein incorporated by reference.

- A 420-acre North Parcel Mitigation Area was donated to WCU, which has stated that they will keep as open space (Ford, pers. comm. 2020). Included in that acreage are 160 acres that are under a CPW CE for management of GUSG where a number of GUSG have been observed. The area provides habitat for GUSG as well as provides an open space buffer between development and GUSG further north and east. As mentioned under the *Anticipated Effects to GUSG Critical Habitat* section, WCU is allowing four acres of land to be developed by Gunnison Rising that they have in a Certificate of Inclusion under the CCAA for GUSG (CPW 2006). However, WCU now owns the 420-acre North Parcel Mitigation Area and there is a commitment to keep the Mitigation Area as open space (Ford, pers. comm. 2020). We expect the commitment to be maintained but, if not, we will collaborate with the permittee (the City) and WCU to discuss the issue, and evaluate the status of the HCP Permit if necessary. Additionally, we will coordinate with WCU to remove the four acres from their Certificate of Inclusion.
- Cattle (356 AUMs) were voluntarily relinquished in 2009 from a 14,725-acre BLM grazing allotment (Cabin Creek Allotment) for GUSG conservation, which was later made official by BLM (BLM 2011). The allotment was also combined in 2011 with an adjacent allotment (Alder Creek Allotment) so remaining permittees' cattle could be dispersed amongst the now 26,956-acre Cabin-Alder Allotment. The 356 AUMs equate to a 15 percent reduction of cattle allowing the BLM to meet GUSG management objectives on the combined allotment. The permitted AUMs cannot be increased without entering a new planning process for the Cabin-Alder Allotment. The AUM limit and management afforded through the current Environmental Assessment and Finding of No Significant Impact (BLM 2011) is expected to be maintained but, if not, we will collaborate with the permittee (the City) and BLM to discuss the issue, and evaluate the status of the HCP Permit if necessary.

#### *Alternatives to the Take and Reasons Not Used*

Section 1.4 of the HCP describes the alternative to the take anticipated under the City's proposed Project and HCP.

#### No-take Alternative

Under this alternative, the City would not permit construction of the Project and, therefore, no take of GUSG would occur. This alternative would not require an HCP or Permit. However, this alternative will not meet the future needs of the City or the current landowner (GVP).

Gunnison Rising has been through many years of planning as a means to assure there is room for future growth while not creating potential loss of better quality GUSG outside of the City Limits of Gunnison.

## **SECTION 10(a)(1)(B) INCIDENTAL TAKE PERMIT ISSUANCE CRITERIA – ANALYSIS AND FINDINGS**

Section 10(a)(2)(B) of the ESA requires the following criteria to be met before the Service may issue an incidental take permit. If these criteria are met and there are no disqualifying factors, we must issue the incidental take permit (ESA section 10(a)(2)(B)(v)). The Service’s findings and recommendations document must provide the rationale and results of the analyses used to determine if the applicant and HCP meet all permit issuance criteria.

### *The taking will be incidental*

Take of GUSG will be incidental to the otherwise lawful activities associated with the construction, repairs, and maintenance for the Project. As described above in *Anticipated Effects to GUSG* of this Findings document, all anticipated forms of take are unintentional and not the purpose of the covered activities.

### *The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking*

The statutory standard of minimizing and mitigating the impacts of the take “to the maximum extent practicable” under ESA section 10(a)(2)(B)(ii) will always be met if it is demonstrated that the impacts of the taking will be fully offset by implementation of the measures in the HCP (U.S. Fish and Wildlife Service and National Marine Fisheries Service 2016). The Service has determined that the HCP’s conservation strategy and the City’s fulfillment of protection of mitigation habitat will, to the maximum extent practicable, minimize and mitigate the impacts of the anticipated take of GUSG from the Project. We anticipate that construction of the Project will result in the maximum loss of 597 acres of GUSG habitat due to development and human disturbance equating to the take of four GUSG over the life of the permit. To keep take of GUSG as low as possible, the City and GVP has, and will, implement several minimization measures, as described above and in further detail in section 5.2 of the HCP. One minimization measure is the current management and conservation of the 465-acre South Parcel Open Space Buffer/Tomichi Creek SWA, which will benefit primarily brood-rearing habitat (feeding and sheltering) for GUSG. To offset the impacts of the take from the loss of habitat, the HCP commits to conserve more acres of higher-quality habitat on the North Parcel Mitigation Area versus the Phase II development area (420 acres with 88 percent Tier 1 GUSG habitat in the North Parcel Mitigation Area versus 290 acres of 77 percent Tier 1 GUSG habitat in Phase II) as described in section 5.3 of the HCP. Additionally, the removal of GVP’s 356 AUMs of cattle on the Cabin-Alder Allotment will allow the BLM to manage the 26,956-acre allotment to meet GUSG habitat objectives (BLM 2011; de Valois, pers. comm. 2021). BLM does not intend to reissue GVP’s permit (de Valois, pers. comm. 2020).

*The applicant will ensure that adequate funding for the conservation plan and procedures to deal with unforeseen circumstances will be provided*

The Service has determined that adequate funding is ensured for the City/GVP to fully implement the HCP and procedures are in place to deal with unforeseen circumstances. Section 8 of the HCP provides details on the funding mechanisms the City/GVP will use to ensure adequate funding for costs related to the implementation of the HCP.

GVP has already donated the North Parcel Mitigation Area to WCU for a donation tax credit valued at \$1,730,000. GVP also sold land to the Bureau of Reclamation and CPW under appraised value to create the South Parcel Open Space Buffer at a loss of \$2,403,772 to GVP. GVP will also be responsible for funding transect monitoring annually for five years (\$7,500 total) to determine GUSG use in the 290-acre Phase II area to document the use by and impacts to GUSG during the buildout of Gunnison Rising which may lead to some Adaptive Management Strategies to address those impacts.

The City will pay for staffing costs and office expenses to collect effectiveness monitoring information (besides the transect monitoring), to create GIS maps, to process building permit applications and associated certificates of inclusion for the builders, to create and install educational signs, and to ensure and track HCP compliance. The City will also provide staff time for writing and submitting annual reports and for attending annual implementation meetings. The estimated \$1,100 annual cost for these activities will be paid by the City's Planning Department budget that comes from the City's general budget fund.

Unforeseen circumstances are changes in circumstances that affect a species or geographic area covered by an HCP, were not or could not be anticipated, and result in a substantial and adverse change in the status of a covered species (50 CFR 17.3). Changed circumstances are changes that affect a species or geographical area covered by an HCP, the applicant and Service can reasonably anticipate and can be planned for during development of the HCP (50 CFR 17.3). To the extent these changed circumstances are provided for in the HCP's operating program, the permittee is required to implement the appropriate measures identified in the HCP to respond to the changed circumstances. The "No Surprises" rule, codified at 50 CFR 17.22(b)(5), provides assurances to permittees that, as long as a permittee is properly implementing the HCP and the permit, the Service will not require any additional commitment of land, water, or financial compensation for species that are adequately covered, nor will it impose additional restrictions on the use of land, water, or other natural resources beyond those specified in the HCP without the consent of the permittee. The "No Surprises" assurances apply to only species adequately covered in the HCP and when changed or unforeseen circumstances occur.

Section 7.1 of the HCP identifies several changed circumstances, including fire, incursion of invasive plants, climate change, and newly listed species. The HCP describes provisions to address the identified changed circumstances.

Changes in circumstances not identified as a changed circumstance in Section 7.1 of the HCP and that substantially alter the status of GUSG are considered unforeseen circumstances. In the

event that unforeseen circumstances occur, the Service would notify the City to coordinate potential procedures to address them.

*The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild*

The Service finds that the taking to be authorized under the proposed permit will not appreciably reduce the likelihood of the survival and recovery of GUSG in the wild. The ESA's legislative history establishes the intent of Congress that this issuance criterion be identical to a finding of "no jeopardy" pursuant to section 7(a)(2) of the ESA and its implementing regulations (50 CFR 402.02). Consequently, the Service reviewed the HCP in accordance with ESA section 7 procedures and determined in its Biological Opinion, herein incorporated by reference, that the GUSG would not be jeopardized by the issuance of the permit and implementation of the HCP. The Service further found that critical habitat would not be adversely modified because there's a small percentage of occupied GUSG critical habitat (1030 acres) that is being affected in the action area compared to the amount of occupied and unoccupied critical habitat rangewide (0.07 percent) and even in the Gunnison Basin (0.17 percent).

All GUSG habitat impacts will be more than fully offset with the implementation of the minimization measures, permanent protection of the 420-acre North Parcel Mitigation Area, and management of the 26,956-acre BLM Cabin-Alder Allotment.

We estimate that 4 GUSG will be taken due to the Project during the anticipated 20-year Permit. This is only 0.11 percent of the long-term mean Gunnison Basin Population and 0.09 percent of long-term mean rangewide population. We expect take from the Project to be in the form of harm from habitat loss and disturbance within the Permit Area. With little impact to the Gunnison Basin Population of GUSG, we do not expect there would be any appreciable effect on the rangewide population. Therefore, the take that would be covered by the Permit would not affect the species' long-term persistence within its current range.

Based on the analyses and rationale in the Biological Opinion, the Service determined that the described change to the GUSG's reproduction, abundance, or distribution from issuance of the Permit is not likely to reduce appreciably the likelihood of both the survival and recovery of the species in the wild (Service 2022a, p. 19).

*Other measures, required by the Director of the Service, have been met and the Service has received necessary assurances that the HCP will be implemented*

The Service finds that the HCP incorporates all the elements we determined necessary for its approval and issuance of the Permit. No other measures are necessary for the issuance of the Permit under the HCP. The Service finds that the HCP, combined with the Permit conditions, provides the necessary assurances the HCP will be implemented.



## **GENERAL CRITERIA AND DISQUALIFYING FACTORS – ANALYSIS AND FINDINGS**

We have no evidence that the City's Permit application should be denied on the basis of the criteria and conditions set forth in the regulations for General Permit Requirements (50 CFR 13.21 (b) –(c)). The applicant has met all the criteria for issuance of the Permit and does not have any disqualifying factors that would prevent the Permit from being issued under current regulations.

## **RECOMMENDATIONS ON PERMIT ISSUANCE**

Based on the foregoing findings with respect to the proposed action, I recommend the issuance of the Permit to the City of Gunnison, in accordance with the HCP.

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Nicole Alt  
Colorado Ecological Services Supervisor  
U.S. Fish and Wildlife Service  
Lakewood, Colorado

August 8, 2022

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Date

## LITERATURE CITED

- City of Gunnison (City). 2014. Land Development Code with Revisions June 2017. Available at:  
<http://www.gunnisonco.gov/Comm%20Dev/Land%20Development%20Code%20July%202017%20Revisions.pdf>
- City of Gunnison (City). 2019. Municipal Code. Adopted at Special Election July 10, 1962, updated through 2019. Available at: <https://www.codepublishing.com/CO/Gunnison/>
- City of Gunnison (City). 2020. Gunnison Rising PUD Development Standards - Amended 2020. Available at: <http://www.gunnisonco.gov/>
- Colorado Parks and Wildlife (CPW). 2006. Candidate Conservation Agreement with Assurances for Gunnison Sage-grouse (*Centrocercus minimus*) between Colorado Division of Wildlife and the U.S. Fish and Wildlife Service. Dated 15 July 2006.
- Gunnison County. 2018. Habitat Prioritization Tool Documentation – revised 2018. Available at: [https://www.gunnisoncounty.org/DocumentCenter/View/8705/HabitatPrioritizationTool\\_2018-Update\\_Approved](https://www.gunnisoncounty.org/DocumentCenter/View/8705/HabitatPrioritizationTool_2018-Update_Approved)
- Gunnison Valley Properties (GVP), Rocky Mountain Resource Management Services (RMRMS), and Scott Resource Management Specialist (SRMS). 2021. Low Effect Habitat Conservation Plan for Gunnison Sage-grouse on the Gunnison Rising Annexation, City of Gunnison, Colorado. 74 pp.
- U.S. Bureau of Land Management (BLM). 2011. Environmental assessment and Finding of No Significant Impact for the Cabin Creek Common Allotment #16301 and Alder Creek Common Allotment #16302 Livestock Grazing Management. 46 pp. + FONSI.
- U.S. Bureau of Land Management (BLM). 2018. Decision record for the environmental assessment of the Signal Peak Trail System. DOI-BLM-CO-F070-2017-0012-EA. 6 pp.
- U.S. Fish and Wildlife Service (Service). 2022a. Biological Opinion on the U.S. Fish and Service’s Proposed Issuance of an Incidental Take Permit for the Federally Threatened Gunnison Sage-grouse (*Centrocercus minimus*) Associated with the Low Effect Gunnison Rising Annexation Habitat Conservation Plan. 28 pp.
- U.S. Fish and Wildlife Service (Service). 2022b. Screening Form Low-Effect Incidental Take Permit Determination and National Environmental Policy Act (NEPA) Environmental Action Statement for the Gunnison Rising Annexation Low-effect HCP. 15 pp.
- U.S. Fish and Wildlife Service (Service), Colorado State Historic Preservation Officer, the City of Gunnison, and Gunnison Valley Properties. 2021. Programmatic agreement among the U.S. Fish and Wildlife Service: Interior Regions 5 and 7, the Colorado State Historic Preservation Officer, the City of Gunnison, and Gunnison Valley Properties regarding the construction of the Gunnison Rising Project, Gunnison County, Colorado. 10 pp.

U.S. Fish and Wildlife Service and National Marine Fisheries Service. 2016. Habitat Conservation Planning and Incidental Take Permit Processing Handbook. 405 pp.  
*Available at:* [https://www.fws.gov/endangered/esa-library/pdf/HCP\\_Handbook.pdf](https://www.fws.gov/endangered/esa-library/pdf/HCP_Handbook.pdf).

### **Personal Communications**

de Valois, Tara. 2020. U.S. Department of Interior Bureau of Land Management. Email titled “Gunnison Rising” regarding Bratton BLM grazing permit relinquishment (8.31.2020; 9:08 AM) via John Scott (8.31.2020; 9:26 AM).

de Valois, Tara. 2021. Email titled “AUMs removed on Cabin Crk/Alder Crk Allotment” (7.6.2021; 6:34 PM).

Ford, Sherry. 2020. Western Colorado University. Email titled “WCU contact” regarding no ground disturbing activities on the WCU mitigation property (1.14.2020; 11:53 AM).

Seward, Nathan. 2019. Email titled “Gunn Rising” (4.30.2019; 12:30 PM).