

**Final Low Effect Habitat Conservation Plan for  
Gunnison Sage-grouse  
on the Gunnison Rising Annexation,  
City of Gunnison, Colorado**

Prepared for

**City of Gunnison  
Gunnison, Colorado 81230**

Prepared by

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## Table of Contents

EXECUTIVE SUMMARY .....	5
1.0 INTRODUCTION AND BACKGROUND .....	6
1.1 Overview/Background .....	6
1.2 Plan/Permit Area.....	13
1.3 Permit Holder/Permit Duration .....	16
1.4 Alternatives to the Taking .....	18
1.5 Coordination with Federal and State Agencies.....	19
1.6 Summary of Relevant Laws and Regulations .....	19
1.6.1 Federal Endangered Species Act.....	19
1.6.2 The Section 10(a)(1)(B) Process - Habitat Conservation Plan Requirements and Guidelines ...	21
1.6.3 National Environmental Policy Act .....	22
1.6.4 National Historic Preservation Act.....	22
2.0 PROJECT DESCRIPTION AND COVERED ACTIVITIES.....	23
2.1 Project Description.....	23
2.2 Covered Activities .....	24
3.0 COVERED SPECIES .....	25
3.1 Status and Distribution .....	25
3.1.1 Status .....	25
3.1.2 Distribution .....	26
3.2 Habitat Characteristics and Use.....	27
3.2.1 Breeding (Leks, Pre-laying Habitat, Nesting Habitat, and Early Brood-rearing Habitat): Mid-March to late June .....	28
3.2.2 Summer/Fall.....	28
3.2.3 Winter .....	28
3.3 Occurrence in Plan Area.....	28
4.0 ENVIRONMENTAL SETTING AND BIOLOGICAL RESOURCES.....	32
4.1 Environmental Setting .....	32
4.1.1 Existing Land Use .....	32
4.1.2 Climate .....	34
4.1.3 Topography/Geology .....	35
4.1.4 Hydrology.....	35
4.1.5 Water Quality/Quantity .....	35
4.2 Biological Resources.....	36
4.2.1 Wildlife .....	36
4.2.2 Vegetation.....	37

5.0 CONSERVATION PROGRAM .....	39
5.1 Biological Goals and Objectives .....	39
5.2 Measures to Avoid and Minimize Take.....	41
5.3 Measures to Mitigate the Unavoidable Take.....	45
5.4 Measures for Migratory Birds.....	47
5.5 Monitoring .....	48
5.5.1 Compliance Monitoring .....	48
5.5.2 Effectiveness Monitoring .....	48
5.6 Reporting.....	49
5.7 Adaptive Management Strategy .....	49
6.0 POTENTIAL BIOLOGICAL IMPACTS AND TAKE ASSESSMENT .....	50
6.1 Consequences of the Action .....	50
6.2 Anticipated Take of GuSG .....	52
6.3 Anticipated Impacts on Critical Habitat .....	52
6.4 Anticipated Impacts of the Taking of GuSG .....	56
6.5 Methods for Determining Habitat Quality and Amount of Take Outside of the Development Footprint .....	56
7.0 CHANGED AND UNFORESEEN CIRCUMSTANCES .....	59
7.1 Changed Circumstances .....	59
7.1.1 Fire .....	59
7.1.2 Invasive Plant Species .....	60
7.1.3 Climate Change .....	60
7.1.4 Newly Listed Species .....	61
7.2 Unforeseen Circumstances .....	62
8.0 FUNDING .....	63
9.0 PERMIT/HCP ADMINISTRATION.....	64
9.1 Amendments.....	64
9.1.1 Minor Amendments.....	64
9.1.2 All Other Amendments .....	65
9.2 Permit Renewal.....	66
10.0 TABLES/FIGURES/APPENDICES .....	67
10.1 List of Tables .....	67
10.2 List of Figures .....	67
10.3 List of Appendices .....	67
11.0 REFERENCES .....	68
11.1 Literature Cited .....	68

11.2 Personal Communications .....	70
11.3 List of Preparers .....	71
APPENDICES .....	72

## EXECUTIVE SUMMARY

This Low Effect Habitat Conservation Plan (HCP) for the Gunnison Rising Annexation Development (Gunnison Rising) has been prepared to accompany an application for an Endangered Species Act (ESA) section 10(a)(1)(B) permit for the potential incidental take of the federally threatened Gunnison Sage-grouse (*Centrocercus minimus*) (GuSG). The potential “take” is associated with the otherwise lawful construction of residential and commercial building development.

The Gunnison Rising Annexation into the City of Gunnison, Colorado (City), in December of 2009 was the culmination of a 3 year local process involving the City, Gunnison County (County), Colorado Parks and Wildlife (CPW), and the Gunnison Basin Sage-grouse Strategic Committee (GBSGSC). This property is adjacent to the City and within the Three-Mile Planning area that both the City and County acknowledge as the highest priority area to encourage development so it does not create a fragmented landscape. This development will convert approximately 637 acres of land currently used for haying and livestock grazing into residential, commercial mixed use, a business park, equestrian area, recreational resort, and open space. Conservation measures to avoid, minimize and mitigate the impacts of this proposed development have been completed by creating open space buffers to the north and the south of the City boundary from GuSG habitat and by relinquishment of grazing east of the development area.

The completion of the Gunnison Rising Annexation Agreement (City 2009) and the agreed-upon mitigation facilitated plans for the proposed development discussed in this HCP. However, in the fall of 2014 the U.S. Fish and Wildlife Service (FWS) published final rules that categorized GuSG as threatened (79 FR 69192) and designated critical habitat (79 FR 69312). The FWS included the Gunnison Rising Annexation within the City Limits as critical habitat, even with their involvement in this previous 3 year process. Listing of the GuSG has now necessitated obtaining a 10(a)(1)(B) permit for the project due to the potential to take the species.

This HCP contains:

- The permit location and duration.
- The project description and covered activities.
- Life History and Cycle of GuSG and their Seasonal Habitats.
- The Environmental Setting of this Low-Effect HCP.
- The amount of GuSG habitat that may be affected by the Covered Activities.
- The amount of incidental take of GuSG requested by the City of Gunnison in its application for a section 10(a)(1)(B) Incidental Take Permit.
- The biological goals and objectives of the Low-Effect HCP.
- The conservation measures implemented to avoid, minimize and mitigate the potential impacts of the authorized take of GuSG.
- The measures implemented to accomplish the mitigation completed to date.
- Adaptive management measures and how the Low-Effect HCP would accommodate changed and unforeseen circumstances.

## 1.0 INTRODUCTION AND BACKGROUND

This Low Effect Habitat Conservation Plan (HCP) for the Gunnison Rising Annexation Development (Gunnison Rising) has been prepared to accompany an application for an Endangered Species Act (ESA) section 10(a)(1)(B) Incidental Take Permit (ITP or Permit when referring to this HCP's specific Permit or area covered by the Permit (Permit Area)) for incidental take of the federally threatened Gunnison Sage-grouse (*Centrocercus minimus*) (GuSG). This HCP process initiated at the beginning of 2016 in the Grand Junction Field Office of the FWS. The incidental take is associated with the otherwise lawful construction of residential and commercial building development.

### 1.1 Overview/Background

Gunnison Valley Properties (GVP) plans to develop the Gunnison Rising property located in the eastern part of the City of Gunnison, Colorado (City). The City is centrally located in the State of Colorado and is on the Western Slope of the Continental Divide (Figure 1). The City sits at 7,703 feet in the Gunnison Basin and is surrounded by some of the highest peaks in the southern Rocky Mountains.

The HCP Plan Area (Plan Area) includes western and eastern parts. The Western Plan Area includes the proposed development area, an open space mitigation/buffer area to the north, and an open space buffer area to the south. The Eastern Plan Area is a mitigation area only and includes an area where grazing was relinquished on the Cabin-Alder Allotment. In 2006, the Development Area was purchased by GVP with the purpose of allowing for responsible urban growth in the Gunnison Basin. The development will convert approximately 637 acres of land currently being used for haying and grazing into residential, commercial mixed use, a business park, equestrian area, recreational resort and open space. The planner estimates that this development will proceed at a rate of about 20 to 50 acres every 5 years. However, it could proceed at a faster rate as some of the infrastructure gets put in place.

This HCP has been proposed to avoid, minimize, and mitigate, the potential "take" of GuSG within the Plan Area. The goal of this HCP is to assure that the proposed project does not reduce the potential for survival and recovery of the GuSG in the wild, as mandated by requirements of 50 CFR Part 17.22(b)(1)(iii). Many conservation measures to avoid, minimize and mitigate the impacts of this proposed development have already been completed. The creation of mitigation/open space buffers to the north and the south of the City boundary have already been put in place to help mitigate and reduce impacts to nearby leks as well as breeding (nesting/early brood-rearing) habitat, summer-fall (brood-rearing) habitat, and wintering areas. Relinquishment of cattle grazing in the Eastern Plan Area has also already been implemented to mitigate effects to GuSG.

There are currently three GuSG leks in the Tomichi Village Lek Area (Signal Peak, Signal Peak West, and Tomichi Village) located north and east of Gunnison Rising. All of the leks currently have an Unknown status (Nathan Seward, CPW, pers. comm. 2021). A lek is considered

Unknown for a given season if it did not meet the requirements for Active or Inactive during a given season or was not counted the appropriate number of count periods to determine its status. For example, a lek that had five males on one count and only one male on the other counts would be Unknown, as would a lek that was only counted once with no males observed. A lek that is Active in one season and Inactive during the next season would also have an official status of Unknown. Leks counts dating back to 2001, when all three leks started being counted, show High Male Counts (HMC) that range from a low of 0 to a high of 17; with low counts in all three leks occurring since 2015 (Nathan Seward, CPW, pers. comm. 2021). One of the main lek areas in the Gunnison Basin is the Chance Gulch Lek Area, located south of the Tomichi Creek State Wildlife Area (SWA), with 7 leks, and 3 of those being in Active lek status. HMC data over the same period have ranged from a low of 18 to a high of 102 making it one of the more productive population areas within the Gunnison Basin. The eastern part of the Cabin-Alder Allotment (Alder Creek side) has 6 leks; 3 active, 1 inactive, 1 unknown, and 1 historic. Lek count data from 2010-2021 shows that HMC ranges from 5 to 27 (Kathy Griffin, CPW, pers. comm. 2021).

## City of Gunnison Gunnison Rising Boundary

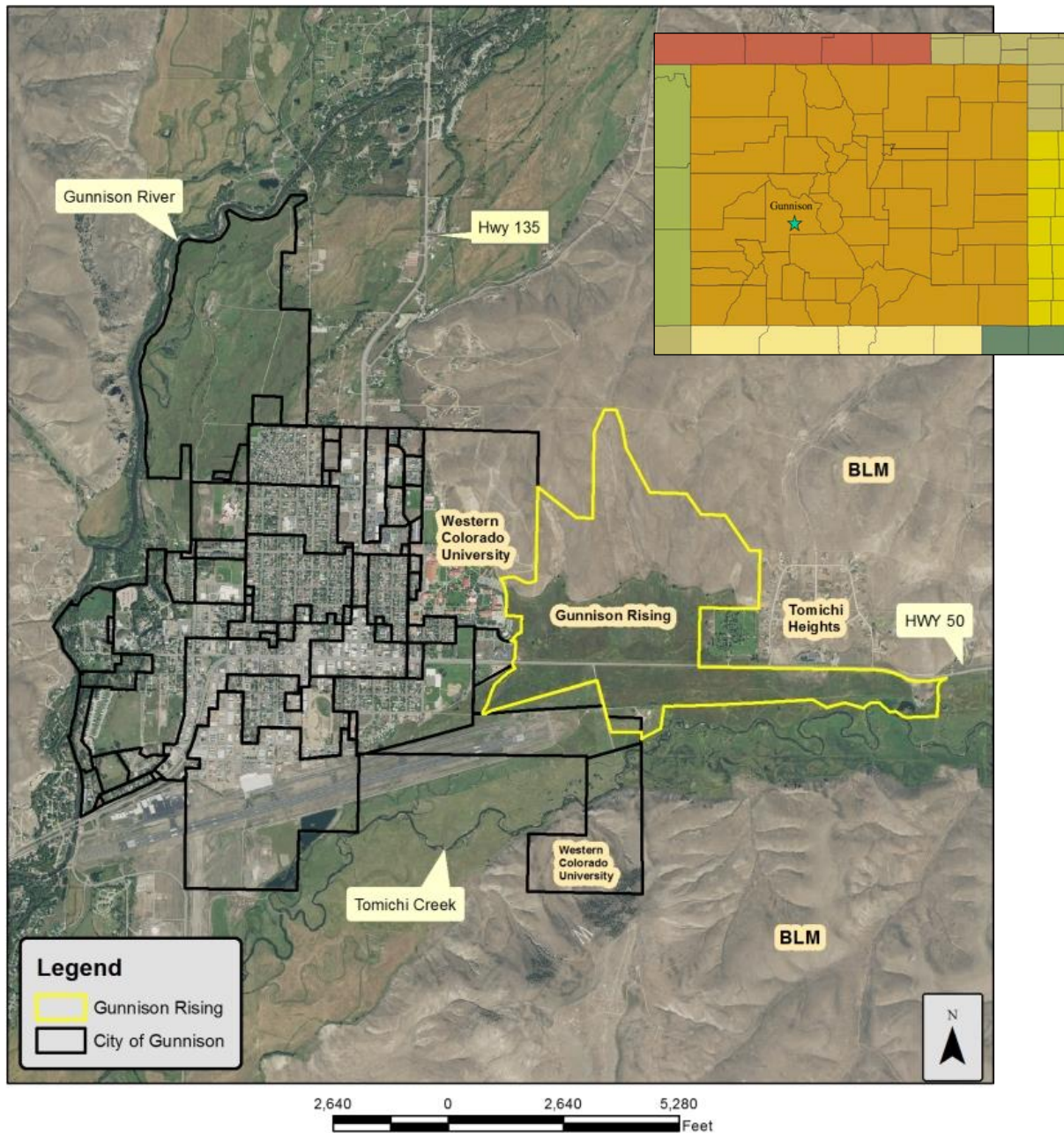
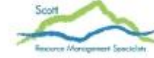


Figure 1: Gunnison Rising Boundary within the City of Gunnison and inset showing the location of Gunnison in Colorado.

Early in the 1990's concern about declining sage-grouse populations and habitat led to local conservation planning efforts through various local working groups. The Gunnison Basin had the first Local Working Group and completed their Gunnison Sage Grouse Conservation Plan for the Gunnison Basin (Local Plan) in 1997 (Gunnison Local Working Group (GLWG) 1997). Following the designation of the GuSG as a unique species (Young et al. 2000), the Gunnison



Basin Sage-grouse Strategic Committee (GBSGSC) was formed by the Gunnison County Board of County Commissioners (BOCC). Specific membership criteria were identified and representatives from the U.S. Bureau of Land Management (BLM), Colorado Parks and Wildlife (CPW), U.S. Natural Resources Conservation Service (NRCS), U.S. Forest Service (USFS), U.S. Fish and Wildlife Service (FWS), neighboring counties, the ranching community, the recreation community, and the public at large were appointed by the BOCC. Each member was required to be fully empowered to make recommendations and decisions on behalf of their nominating agency or organization without having to seek counsel from the appointing agency. The GBSGSC has been instrumental in developing various conservation strategies and management tools used to assist in land management decisions in the Gunnison Basin, including the development of the Habitat Prioritization Tool (HPT) a mapping tool based on NRCS Soil Surveys for the Gunnison Basin used to prioritize the potential habitat within GuSG occupied habitat (Gunnison County 2018; further described below in Sections 6.1 and 6.5).

In addition, federal and state resource management agencies completed the Gunnison Sage-grouse Rangewide Conservation Plan, April 2005 (RCP) (GSRSC 2005). The RCP has been the guiding document for GuSG management decisions since its inception. The RCP provides multiple, biologically proven conservation measures to avoid, minimize, and mitigate effects to sage grouse and these are the foundations of the development of Gunnison Rising. In concert with RCP conservation measures, local municipalities have encouraged development in and around urban centers to make more efficient use of existing infrastructure, create more immediate access to services and goods, and reduce the environmental impacts associated with exurban development.

As of the most recent U.S. Census, the City has a population of 5,867, with an annual growth rate of 1.3%. The City further serves as the county seat and is the active service area for most of Gunnison County. According to the Gunnison Community Analysis of 2015 (City 2015), the local economy is generally supported by tourism, construction, ranching, and Western Colorado University (WCU) (formerly Western State College and Western State Colorado University).

In 1997, the Planning and Zoning Commission first mapped an Urban Growth Boundary (UGB) for the City; it commonly gets referred to as the Three-Mile Plan Area (Figure 2) (City 1997; 2001). The Three Mile boundary is a standard measurement for the area that exists within three miles of the city limits. The Urban Growth Boundary (UGB) is identified by a mapped boundary, separating land that is urban or is planned to become urban, from that which is to remain rural. The UGB and Three-Mile boundaries have been revised by the Planning and Zoning Commission during their annual review of the City's Three Mile Plan. These amendments reflect changing conditions of the area including annexations, infrastructure extensions, and transportation system functions (City 2015, p. 19). It accounts for lands which may eventually seek to be annexed because of the feasibility of connecting to wastewater, domestic water, storm sewer and roadway utilities, providing public services (police, fire, etc.), and integrating compatible land uses with the existing urban core.

The purpose of an Urban Growth Boundary is to define specific geographic areas that can be efficiently serviced by existing or extended infrastructure facilities (roads, water, and wastewater) and public services (police, fire, etc.). Focusing development into an urban core increases service efficiencies, preserves open space and reduces automobile dependency.

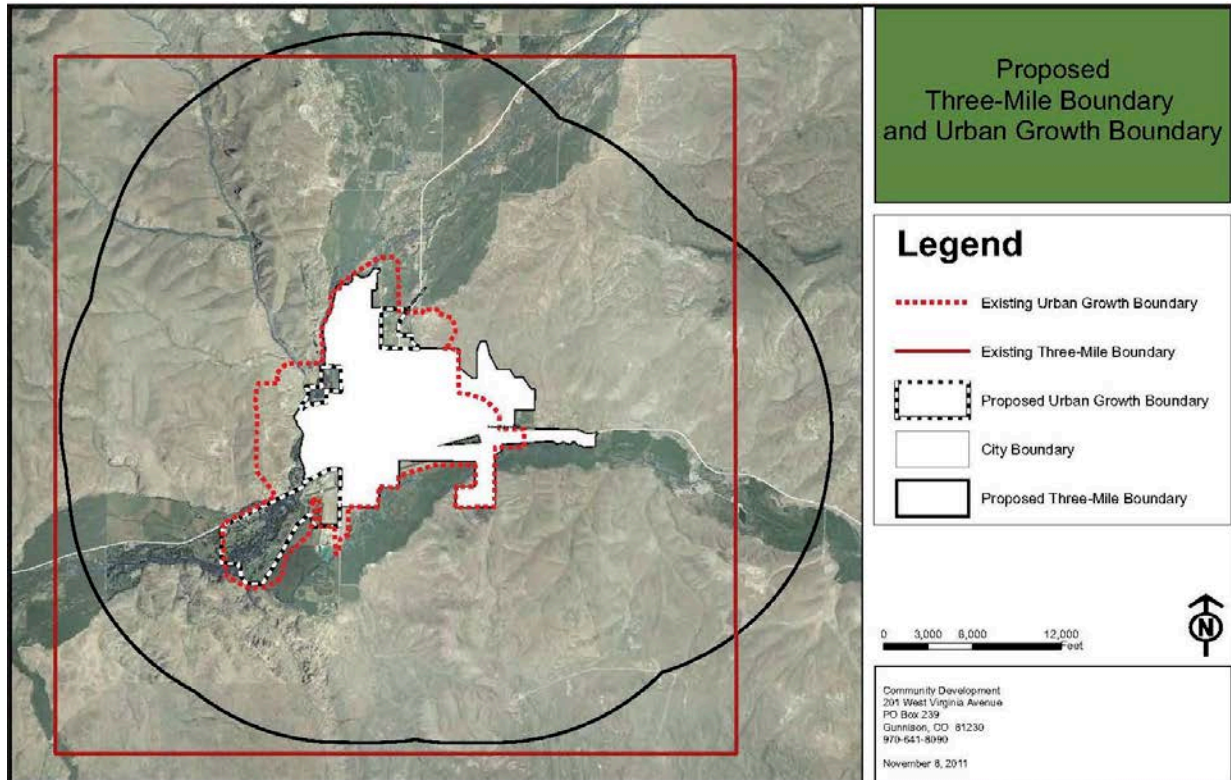


Figure 2: This depicts the Urban Growth Boundary within Three-Mile Boundary around the City. This is from page 19 of the City of Gunnison – Community Analysis, dated February 2015.

Population growth descriptions from the 1880's boom portrayed a transient community with approximately 8,000 City residents and 40,000 people residing in the County. However, the hard rock mining bust (late 1880s) was followed by an agrarian economic dominance, and slow population growth trends occurred through the middle of the 20th Century. The following 2 tables help to show Gunnison's need for additional housing development now and into the future (City 2015, p. 9).

<b>Table 1: Projected Population Growth Rates for all of Gunnison County (City of Gunnison Community Analysis, Feb 2015)</b>						
July 2010	July 2015	July 2020	July 2025	July 2030	July 2035	July 2040
15,324	15,507	17,987	19,217	20,273	21,222	22,107

Table 2 provides the number of developed and vacant (undeveloped) parcels within various areas of the County (Gunnison County 2012). Gunnison Rising is approximately 637 acres and has the potential to add 1500 residential parcels to the City of Gunnison on top of the (total parcels) figure shown in the last row of Table 2. Saguache County makes up 25% of the land

area within the Gunnison Basin population, but due to scattered private land use patterns there are no population centers with none expected through 2040.

<b>Table 2: Existing Residential Parcels in Gunnison County and City of Gunnison (Gunnison County 2012 Land Use Analysis).</b>							
<b>Areas</b>	<b>Developed Parcels</b>	<b>% of Total Developed Parcels</b>	<b>Vacant Parcels</b>	<b>% of Total Vacant Parcels</b>	<b>Total Parcels</b>	<b>% Developed of Total Parcels</b>	<b>% Vacant of Total Parcels</b>
<b><u>Gunnison County</u></b>	<b><u>10,414</u></b>	<b><u>100%</u></b>	<b><u>5,684</u></b>	<b><u>100%</u></b>	<b><u>16,098</u></b>	<b><u>65%</u></b>	<b><u>35%</u></b>
3 Mile - Gunnison	2,859	27%	331	6%	3,190	90%	10%
Gunnison UGB	2,123	20%	269	5%	2,392	89%	11%
City of Gunnison	1,567	15%	165	3%	1,732	90%	10%

The following quotation from the 2012 Land Use Analysis applies to Table 2 above and shows the Gunnison Basin's commitment to the management and conservation of GuSG into the future.

*"Based on this information, areas adjacent to existing population centers or areas that can be feasibly included into existing water and sanitation districts are appropriate for higher residential densities. In areas outside population centers we recommend that the County work to strengthen incentive based policies and programs for reduced density. This may include increased funding for conservation easement programs, modifications to current density transfer regulations, more effective use of clustering to reduce density in key areas, and continued support for the Ranchland Process.*

*These recommendations align with new findings associated with Gunnison Sage-grouse conservation. The sage-grouse subcommittee's recently completed Habitat Prioritization Tool (HPT) provides assistance to ongoing parcel specific habitat assessments and the BLM has begun work to incorporate it into their management plans.*

*Additionally, the tool also provides a means to estimate compliance with the Gunnison Sage-grouse Rangewide Conservation Plan (RCP). The analysis within the document provides a reasonable assessment that Gunnison County can meet the goals of the RCP via current regulations and a strengthened effort to conserve land in key high priority habitat areas. It also shows that the RCP goals can be met without protecting the relatively small amount of priority habitat located within designation population centers.*

*In addition, Gunnison County should propose to the USFWS that development within the City of Gunnison Three-Mile Plan be excluded from strict consideration of priority habitat due to the proximity to existing urban development. The County will still employ standard mitigation measures as practical in these areas, but with the realization that some habitat will be*

*removed. Given the analysis in this document that shows sufficient habitat exists elsewhere to meet the 90% requirement from the Rangewide Plan, it is clear that directing growth within the City of Gunnison Three-Mile Plan best minimizes disturbance to sage-grouse, especially if development within the Three-Mile Plan contributes to conservation efforts further from urban areas.”*

Conservation efforts, such as the UGB and the Three-Mile Plan along with the use of the HPT through Gunnison Counties permitting process, within the Gunnison Basin strive to maintain 90% of seasonally important habitat identified as one of two alternatives in Objective 1 in the “Habitat Protection from Permanent Loss” section from the RCP (GSRSC 2005, p. 223). Objective 1 from this section of the RCP states: *“Maintain 90% of seasonally important habitats (combined public and private, as mapped) within each population, by protecting the necessary proportion of those private lands that are at risk of development from conversion to unsuitable housing densities (see “Spatially Explicit Analysis of Impacts of Additional Housing Units”, pg. 154, and Appendix F). If seasonally important habitats are not mapped for a given population, the objective is to maintain 90% of those vegetation communities within occupied habitat that are likely used by GUSG (for discussion of these communities see “Model Development”, pg. 186).”*

The original Annexation Agreement for Gunnison Rising has gone through a Conceptual Planning process with involvement of the City, the County, WCU and GVP. The result of this 8 month process was a shared vision and new Concept Plan for Gunnison Rising (Figure 3). This combined effort was an attempt to plan for the future housing needs of Gunnison. As part of the process to finalize this new development concept for Gunnison Rising a new Planned Unit Development (PUD) has gone through the City Planning process and was approved by City Council July 2021 (City 2021).

Definition of what a PUD is and does follows (City 2017, pp. 2-2 and 2-3).

1. A Planned Unit Development (PUD) is a land area such that varying land uses and innovative design and layout of the development provide significant benefits to both the developer and the City over those land use patterns developed and regulated under conventional zoning districts and development standards. Such benefits include the provision of open space for the benefit of the residents and other users, the conservation of natural landscape features, provision of affordable housing, employment opportunities, variety in land use patterns and more efficient provision of services and utilities.
2. In a PUD, the various land use elements are designed so that they interrelate cohesively with each other; therefore, strict application of standard zone district regulations becomes unnecessary, instead other specific development and design requirements are included in the PUD. The boundary between the PUD and adjacent zone districts requires particular attention to ensure that land use patterns are compatible. To enable a more thorough analysis of a PUD, more information is required about the proposal than would be required if development were being pursued within conventional zoning districts.
3. The approval of a PUD constitutes a Zoning Amendment as described in Section 10 of the Land Development Code (LDC) (City 2014) and is established by rezoning an area in an existing zone district to a PUD zone or by initial zoning of newly annexed territory to PUD zoning.

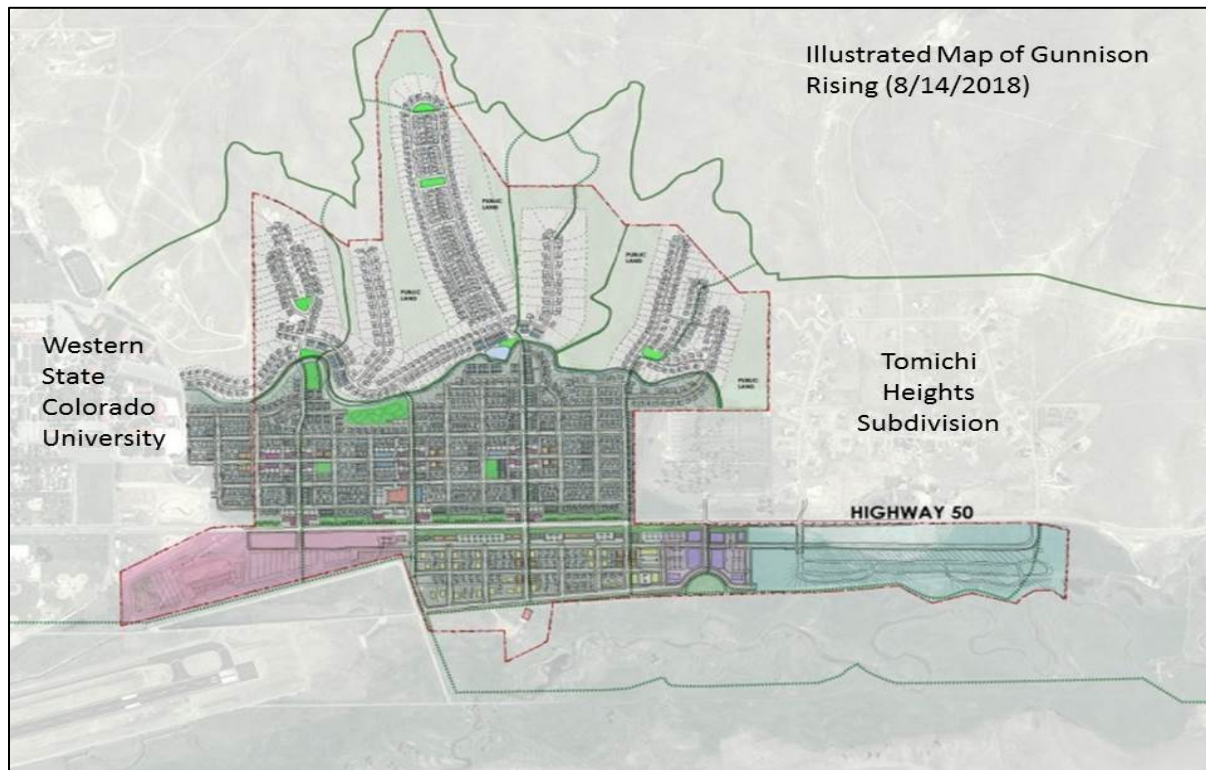


Figure 3: The August 2018 planning effort put forth by the City of Gunnison, Gunnison County, Western Colorado University, and Gunnison Valley Properties.

## 1.2 Plan/Permit Area

The Gunnison Rising Plan Area totals approximately 28,478 acres in two land areas. The first area of land (Western Plan Area) includes 1,522 acres and encompasses 637 acres of the proposed Gunnison Rising development area north and south of U.S. Highway 50, a 420-acre parcel donated by GVP to WCU (which contains a 160-acre Conservation Easement (CE) held by CPW), and a 465-acre parcel that is now Tomichi Creek SWA (Figure 4). The 420-acre parcel to the north of the development and the 465-acre parcel to the south of the development provide open space buffers against disturbance from the development. The northern parcel is considered a mitigation area for this HCP but the southern parcel is not (see particularly section 5.2 below for further discussion). The second area of land (Eastern Plan Area) is 26,956 acres and is a grazing allotment managed by the BLM where cattle were removed for mitigation (Figure 9).

Of the 637 acres of planned development, 347 acres have already been impacted directly or indirectly by haying, Highway 50, Tomichi Heights subdivision (also called Tomichi Village), the Gunnison Cemetery, the City of Gunnison, and the Gunnison County Airport to the extent that those 347 acres have been determined to have little to no chance of GuSG utilizing the acres. Consequently, the 347 acres (141 acres on the North Parcel and 206 acres on the South Parcel of Gunnison Rising) have been determined to be a “No Take” area (an area where take will not occur because there are no GUSG there to be taken) and are not included in the ITP area



(Figure 5) (Terry Ireland, U.S. Fish and Wildlife Service, pers. comm. 2019). The “No Take” area will be developed first and is thus considered Phase I of the development.

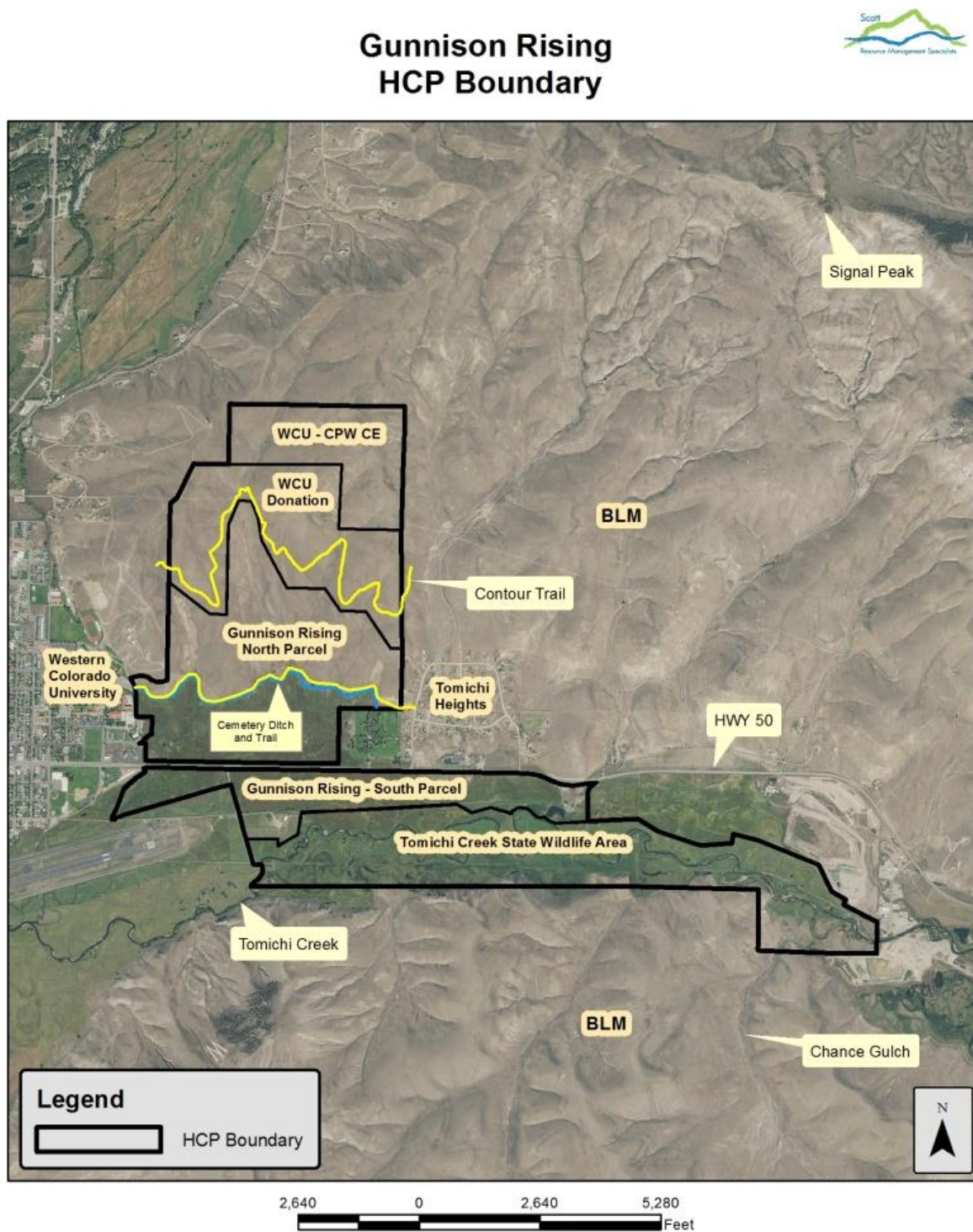


Figure 4: This map represents the Overall Habitat Conservation Planning Area with subdivision based on the historic Annexation planning that helped to achieve the Tomichi Creek SWA, and the Donation of land to WCU, which includes the 160-acre Conservation Easement (CE).

The ITP area within the City Boundary on the North Parcel of Gunnison Rising consists of the 290-acre development immediately north of the “No Take” area (with the ITP’s southern boundary following a contour 165 feet below the Cemetery ditch). The 290 acres will likely be developed after the “No Take” area and is thus considered Phase II. In addition, there are 201 acres north of the City Boundary/Phase II development area (on WCU property) included under the ITP where incidental take of GuSG is reasonably certain to occur (see section 6.0 below for further discussion). The entire 206 acres within the City Boundary on the South Parcel of Gunnison Rising is part of the “No Take”/Phase I development area (Figure 5). There are an additional 94 acres of “No Take” area south of the City Boundary (which will not be developed) on Tomichi Creek SWA. In addition, there are 106 acres included under the ITP where incidental take of GuSG is reasonably certain to occur on Tomichi Creek State Wildlife Area as a result of development (Figure 5) (see section 6.0 below for further discussion).

Public land, administered by the BLM, abuts the 1522-acre Plan/Permit Area to the north, northeast and south and constitutes the 26,956-acre area where cattle were removed. The western boundary of the 1522-acre Plan/Permit Area on the north side of Highway 50 abuts WCU and other existing commercial uses, and the western boundary south of Highway 50 abuts the Gunnison-Crested Butte Regional Airport and the Pioneer Museum. Existing land uses that abut the Plan/Permit Area to the east include the Gunnison Cemetery and the Tomichi Heights subdivision residential and commercial area north of U.S. Highway 50 and agricultural hay meadows and industrial gravel pits south of U.S. Highway 50 (Figure 5).

As GVP worked with partners from the City, County, CPW and the GBSGSC to implement the Gunnison Rising Annexation one of the main goals was to keep development pressure close to the City and away from higher priority GuSG habitat in the Gunnison Basin.

The following legal descriptions describe that land owned by GVP and adjacent parcels that were included in the HCP because they were integral to the development of Gunnison Rising. The four parcels owned by WCU and their Foundation are integral to Gunnison Rising because they provide the gateway into Gunnison Rising from the eastern edge of the City and they abut the University. The first 3 parcels were donated to the WCU Foundation by GVP, and the 4-acre lot is owned by WCU and provides road access north of the Cemetery Ditch into Gunnison Rising. The one parcel owned by Varra is surrounded by all of the parcels and fronts on Highway 50 and is considered part of the overall Gunnison Rising development plan.

The Legal for the 637-acre Development Area is as follows:

#### GVP

- TRACT IN PT SE4SW4. SEC 30. PT S2N2. PT SW4NW4NW4. PT NE4NW4. PT N2S2. SW4SE4. PT SE4SW4. SEC 31 50N1E TOTAL 388.519 AC #611266
- TRACT A GUNNISON RISING SUBDIVISION NO 1 PLAT #610833
- TRACT IN PART OF NW4NE4. PART OF N2NW4. SEC 5, PART OF N2NE4. PART OF NW4NW4NE4. PART OF LOTS 3 & 4. SEC 6 49N1E TOTAL 166.43 AC #611266
- PT OF E2NW4NE4, & W2NE4NE4, SEC 5 49N1E 17.304 ACRES B498 P828 829 B718 P23 #590107

- 16.54 AC IN NE4NE4. SEC 1 49N1W #611266
- 6.47 AC IN LOT 3. 3.93 AC IN SE4NW4. SEC 6 49N1E #611266

#### WCU

- E2S2S2NE4SE4. E2N2N2SE4SE4. SEC 36 50N1W #617653
- W 6.88 AC OF TRACT B WILSON SUBDIVISION (SEC 36) #617653
- 1.83 AC IN NE4SE4SE4 SEC 36 50N1W #617653
- 4 AC Lot directly North of Parcel #617653

#### Varra

- E 5.2 AC OF TRACT B WILSON SUBDIVISION (SEC 31) #618344 #639737

### 1.3 Permit Holder/Permit Duration

The City will be the Permit holder and requests an ITP with a duration of 20 years. This timeframe will provide enough time to evaluate and assess how this development might impact GuSG. It will provide time to gather more information about GuSG in the Permit Area and see if the HCP and described conservation measures will achieve the biological goals within the requested Permit duration. If all of the project development sites have not been developed before the Permit expires, the City may wish to renew the Permit to continue ongoing actions or to provide for those sites that have not been developed. The ITP is for the area of impacts to GuSG and their habitat and it will likely be some of the last of Gunnison Rising to see development. Areas within the “No Take” area on either side of Highway 50 will be developed first.

In order to renew the ITP, the City will notify the FWS in writing and submit a renewal request at least 30 days prior to Permit expiration (50 CFR 13.22). The City understands that the FWS will review the conservation program; the benefits accrued to, and the status of the GuSG upon receipt of the renewal request. The City also understands that the FWS will consider the best science available at that time and complete any additional analyses needed to comply with applicable laws or regulations when processing a renewal request. Minor or technical changes or updates may be incorporated into a renewed Permit. Substantive changes may require additional analysis, amendments, or the issuance of a new Permit. Permit renewals, amendments, and other changes are described more fully later in this document.



# Gunnison Rising HCP No Take and Impact Acres

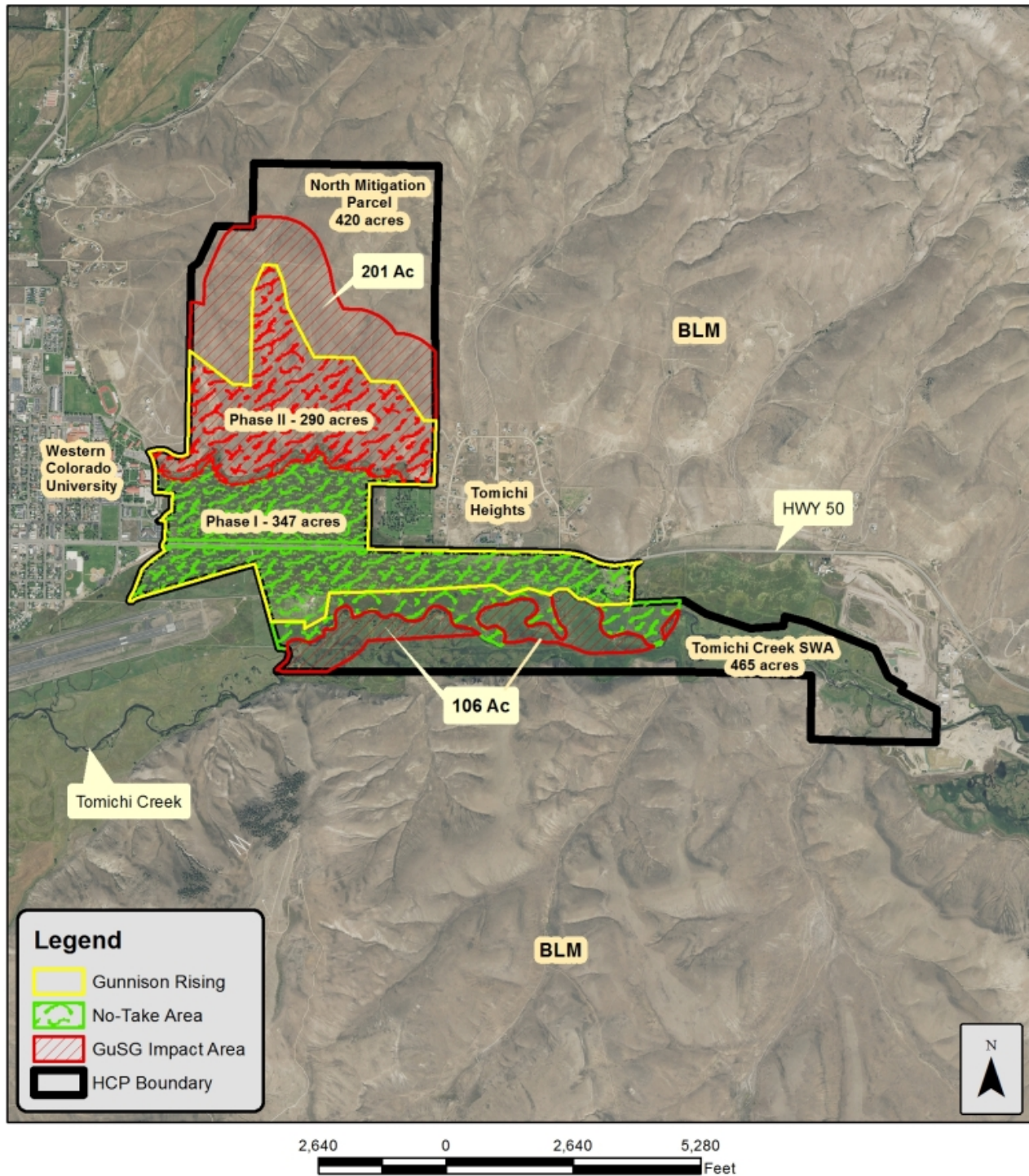


Figure 5: This map depicts the area of “No Take” and the Impact Acres for Gunnison Rising. It represents the areas of impacts to GuSG and their habitat.

## 1.4 Alternatives to the Taking

With the finalization and completion of the Gunnison Rising Annexation Agreement (City 2009) it was estimated to just be a matter of timing and funding before this development would proceed. However, in 2014 the FWS published final rules that categorized GuSG as threatened (79 FR 69192) and designated critical habitat (79 FR 69312). The FWS designated the Gunnison Rising Annexation as critical habitat, which is within the City of Gunnison boundary, even with FWS personnel sitting in on this 3-year process and the City commenting on the fact that Gunnison Rising had been through a stringent process with those involved in GuSG management in the Gunnison Basin. Nevertheless, the listing of the GuSG necessitated this HCP and consideration of an associated ITP from FWS.

Section 10 of the ESA and its regulations require that an HCP describes actions the applicant considered as alternatives to the take that would result from the proposed action and the reasons why they are not using those alternatives.

The preferred alternative is the approval of this HCP and issuance of an ITP authorizing the activities and programs described in the Gunnison Rising HCP. Gunnison Rising has been through over 8 years of government processes ( the initial 3 years leading up to annexation and now over 5 years in the development of this HCP) to try and get final approval to move forward.

Early in 2018, Gunnison Valley Properties (GVP), the owners of Gunnison Rising, decided it was time to take a fresh look at the master plan for Gunnison Rising. A valley-wide vision, called One Valley Prosperity, had just been completed and Gunnison residents were thinking big about their future. The time was right for a new vision for Gunnison Rising also.

GVP had a strong desire to produce a new, forward-thinking plan in partnership with local leaders from the City, County and WCU. Leadership at the City, County and WCU recognized this as a unique opportunity to help shape the long-term future of their community. They unanimously agreed to partner on a joint Conceptual Planning process, including contributing towards a portion of the planning costs.

The Project Partners, as the 4-party group was called, met over 8 months to define shared project goals and development priorities, identify major catalyst projects, and strategize on overcoming obstacles. A Concept Plan was approved is a summary of that shared effort and vision. The Concept Plan informed the next phase of work in which GVP finished going through the formal City process to update the Planned Unit Development (PUD) for Gunnison Rising which was approved by City Council July 2021 (City 2021). The Concept Plan also provided input into the City's Comprehensive Planning process.

Some of the shared goals for Gunnison Rising were:

- A logical and smart plan for Gunnison's future growth
- Walkable neighborhoods with safe streets, trails and parks in all directions
- Housing for locals, newcomers and the WCU community
- Strong connections to and integration with downtown and WCU

- Preserved ridge lines for trails, open space and lookout points
- A Maker District to support local entrepreneurs and business growth
- A year-round events center with conference space and the possibility of a new and expanded
- rodeo grounds to showcase Gunnison’s cultural heritage
- A multi-agency government office campus

A “No Action” Alternative will not meet the future needs of the City or the current landowner (GVP). As stated above 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.

## **1.5 Coordination with Federal and State Agencies**

Coordination with Federal and State Agencies has been a priority since the inception of the proposed Gunnison Rising annexation/development. Prior to the 2014 GuSG listing decision and critical habitat designation, coordination efforts between GVP, the City, the County, CPW, and FWS, BLM, USFS (as members of the GBSGSC), among others, resulted in avoidance, minimization, and mitigation measures prior to approval of the final Gunnison Rising PUD and annexation. These efforts were further reviewed by the FWS after the GuSG listing and coordination between the City, FWS, and GVP continues with the goal of approval and execution of the Gunnison Rising Habitat Conservation Plan.

## **1.6 Summary of Relevant Laws and Regulations**

### **1.6.1 Federal Endangered Species Act**

Section 9 of the ESA and Federal regulation pursuant to section 4(d) of the ESA 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 to attempt to engage in any such conduct. Harm is further defined by the FWS to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass is defined by the FWS as intentional or negligent actions that create the likelihood of injury to listed species by annoying them to such an extent as to significantly disrupt normal behavioral 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 an otherwise lawful activity.

Individuals and State and local agencies proposing an action that is expected to result in the take of federally listed species are encouraged to apply for an incidental take permit under section 10(a)(1)(B) of the ESA to be in compliance with the law. Such permits are issued by the FWS when take is not the intention of and is incidental to otherwise legal activities. An application for an incidental take permit must be accompanied by a habitat conservation plan,

commonly referred to as an HCP. The regulatory standard under section 10(a)(1)(B) of the ESA is that the effects of authorized incidental take must be minimized and mitigated to the maximum extent practicable. Under section 10(a)(1)(B) of the ESA, a proposed project also must not appreciably reduce the likelihood of the survival and recovery of the species in the wild, and adequate funding for a plan to minimize and mitigate impacts must be ensured.

Section 7 of the ESA requires Federal agencies to ensure that their actions, including issuing permits, do not jeopardize the continued existence of listed species or destroy or adversely modify listed species' critical habitat. "Jeopardize the continued existence of..." pursuant to 50 CFR 402.2, means to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species. Issuance of an incidental take permit under section 10(a)(1)(B) of the ESA by the FWS is a Federal action subject to section 7 of the ESA. As a Federal agency issuing a discretionary permit, the FWS is required to consult with itself (i.e., conduct an intra-Service consultation). Delivery of the HCP and a section 10(a)(1)(B) permit application initiates the section 7 consultation process within the FWS.

To assess impacts of the project considered under a 10(a)(1)(B) permit through section 7 an action area must first be established. "Action area" is defined as "all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action" (50 CFR 402.02).

An environmental baseline must also be determined in the section 7 intra-Service consultation. An updated definition of environmental baseline was recently determined by the FWS and National Oceanic and Atmospheric Administration (the Services) (84 FR 44976) and is promulgated in (50 CFR 402.02) as follows: "The environmental baseline refers to the condition of the listed species or its designated critical habitat in the action area, without the consequences to the listed species or designated critical habitat caused by the proposed action. The environmental baseline includes the past and present impacts of all Federal, State, or private actions and other human activities in the action area, the anticipated impacts of all proposed Federal projects in the action area that have already undergone formal or early section 7 consultation, and the impact of State or private actions which are contemporaneous with the consultation in process. The consequences to listed species or designated critical habitat from ongoing agency activities or existing agency facilities that are not within the agency's discretion to modify are part of the environmental baseline."

The FWS must also consider the cumulative effects on listed species. Cumulative effects "...are those effects of future State or private activities, not involving Federal activities that are reasonably certain to occur within the action area of the Federal action subject to consultation" (50 CFR 402.02). This definition applies only to section 7 analyses and should not be confused with the use of the term "cumulative impact" in the National Environmental Policy Act (NEPA) or other environmental laws.



The “effects of the action” must be added to the environmental baseline and cumulative effects to help determine the effects of the project (e.g. this HCP) on the listed species or critical habitat within the action area. An updated definition of “effects of the action” has also recently been determined by the Services (84 FR 44976) and is promulgated in 50 CFR 402.02. The Services proposed to revise the definition of “effects of the action” in a manner that simplified the definition by collapsing the terms “direct,” “indirect,” “interrelated,” and “interdependent” and by applying a two-part test of “but for” and “reasonably certain to occur.” Thus both direct and indirect anticipated incidental take of a listed species is captured by the new definition as are interrelated and interdependent actions, which are a result of the project that could cause further incidental take of a listed species or affect a species’ critical habitat. Effects of the action are thus now defined as “... all consequences to listed species or critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action. A consequence is caused by the proposed action if it would not occur but for the proposed action and it is reasonably certain to occur. Effects of the action may occur later in time and may include consequences occurring outside the immediate area involved in the action.” Description of “but for” and “reasonably certain to occur” standards are also described in the new regulations (84 FR 44976) and promulgated in section 50 CFR 402.17 “Other Provisions”.

Lastly, the definition of destruction or adverse modification of critical habitat has been updated in the new regulations (84 FR 44976) and promulgated in 50 CFR 402.02. “Destruction or adverse modification” is defined as “... a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species.” The phrase “as a whole” has been added to recognize that our analysis of the final destruction or adverse modification determination is made at the rangewide scale of critical habitat.

For the Gunnison Rising development, when the effects of the action in the action area are added to the environmental baseline and cumulative effects, and the rangewide status of the affected species is considered, the FWS can evaluate in the section 7 consultation whether the proposed development and minimization and mitigation measures under the HCP will jeopardize the continued existence of the listed species affected by the development/HCP and whether the proposed development will destroy or adversely modify critical habitat.

#### **1.6.2 The Section 10(a)(1)(B) Process - Habitat Conservation Plan Requirements and Guidelines**

The Section 10(a)(1)(B) process for obtaining an incidental take permit has three primary phases: (1) the HCP development phase; (2) the formal permit processing phase; and (3) the post-issuance phase.

During the HCP development phase, the project applicant prepares a plan that integrates the proposed project or activity with the protection of listed species. An HCP submitted in support of an incidental take permit application must include the following information:

- impacts likely to result from the proposed taking of the species for which permit coverage is requested;

- measures that will be implemented to monitor, minimize, and mitigate impacts; funding that will be made available to undertake such measures; and procedures to deal with unforeseen circumstances;
- alternative actions considered that would not result in take; and additional measures the FWS may require as necessary or appropriate for purposes of the plan.

The HCP development phase concludes and the permit processing phase begins when a complete application package is submitted to the appropriate permit-issuing office. A complete application package consists of 1) an HCP, 2) an Implementing Agreement (IA) if applicable, 3) a permit application, and 4) a \$100 fee from the applicant. The FWS must also publish a Notice of Availability of the HCP package in the Federal Register to allow for public comment. The FWS also prepares an Intra-Service Section 7 Biological Opinion; and prepare a Set of Findings, which evaluates the Section 10(a)(1)(B) permit application in the context of permit issuance criteria (see below). An Environmental Action Statement, Environmental Assessment, or Environmental Impact Statement serves as the FWS's record of compliance with NEPA. A Section 10(a)(1)(B) incidental take permit is granted upon a determination by the FWS that all requirements for permit issuance have been met. Statutory criteria for issuance of the permit specify that:

- the taking will be incidental;
- the impacts of incidental take will be minimized and mitigated to the maximum extent practicable;
- adequate funding for the HCP and procedures to handle unforeseen circumstances will be provided;
- the taking will not appreciably reduce the likelihood of survival and recovery of the species in the wild;
- the applicant will provide additional measures that the FWS requires as being necessary or appropriate; and
- the FWS has received assurances, as may be required, that the HCP will be implemented.

During the post-issuance phase, the permittee and other responsible entities implement the HCP, and the FWS monitors the permittee's compliance with the HCP as well as the long-term progress and success of the HCP.

### **1.6.3 National Environmental Policy Act**

The purpose of NEPA is two-fold: to ensure that Federal agencies examine environmental impacts of their actions (in this case deciding whether to issue an incidental take permit) and to utilize public participation. NEPA serves as an analytical tool on direct, indirect, and cumulative impacts of the proposed project alternatives to help the FWS decide whether to issue an incidental take permit. NEPA analysis must be done by the FWS for each HCP as part of the incidental take permit application process.

### **1.6.4 National Historic Preservation Act**

Section 106 of the National Historic Preservation Act of 1966, as amended (16 USC § 40 et seq.), requires Federal agencies to take into account the effects of their proposed actions on

properties eligible for inclusion in the National Register of Historic Places. “Properties” are defined as “cultural resources,” which includes prehistoric and historic sites, buildings, and structures that are listed or eligible for listing in the National Register of Historic Places. An undertaking is defined as a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency; including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; those requiring a Federal permit, license or approval; and those subject to state or local regulation administered pursuant to a delegation or approval by a Federal agency. The issuance of an ITP is an undertaking subject to compliance with Section 106 of the National Historic Preservation Act (NHPA).

An initial cultural resource report was conducted in 2008 and was updated in 2020 (Cooper et al. 2020). The current area of potential effect (APE) for Gunnison Rising has been divided into Phase I, which covers 347 acres and coincides with the “No Take” area, and Phase II which covers the remaining 290 acres of the HCP (Figure 5). Development within Phase I will likely commence within 1 to 3 years after the HCP is approved. No cultural or historic sites are eligible for placement on the National Register of Historic Places within Phase I (Cooper et al. 2020). Phase II development will occur after a re-evaluation of cultural resource sites within that area has been completed (and after Phase I development commences). A Programmatic Agreement under section 106 of the NHPA describing processes of the cultural resource survey and stipulations for measures to be carried out on Phase I, Phase II, and the open space buffers/mitigation area will be completed as part of the HCP package prior to issuance of the ITP. No development within Phase II will be allowed without clearance under Section 106 of the NHPA from the lead federal agency, the FWS, in coordination with cooperating agencies (such as the City, History Colorado (a.k.a. the State Historic Preservation Officer [SHPO]), tribal governments, etc.). Any modifications to the APE, whether Phase I or Phase II, will be reviewed under Section 106 prior to any earth moving. Modifications could include utility lines, facilities, and access roads. The FWS will consult with the SHPO and tribal governments as a part of the review process for each phase (meaning, a cultural resource field survey, report, and site forms will be reviewed by the FWS and consultation/review of these documents will be conducted by SHPO and the tribes).

## **2.0 PROJECT DESCRIPTION AND COVERED ACTIVITIES**

### **2.1 Project Description**

Gunnison Rising is a 637 acre, master-planned, mixed-use community, within the easternmost boundary of the city limits of Gunnison, Colorado (See Figure 1). Gunnison Rising is zoned as a PUD. The City of Gunnison Land Development Code explains a PUD as: *“...a land area such that varying land uses and innovative design and layout of the development provide significant benefits to both the developer and the City over those land use patterns developed and regulated under conventional zoning districts and development standards. Such benefits include the provision of open space for the benefit of the residents and other users, the conservation of*

*natural landscape features, provision of affordable housing, employment opportunities, variety in land use patterns and more efficient provision of services and utilities,”* (City 2014). Specific emphasis is placed upon the integration of land uses and utilities and street corridor extensions in relation to the existing city urban core (City 2015). The PUD shall be developed only according to the approved and recorded zoning plan and development plan and all supporting data (City 2020). With the development of the new concept plan for Gunnison Rising, a new PUD has been developed to match that planning effort and contain similar planned zones to the current PUD.

The current planned zones detailed in the Gunnison Rising PUD are 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.

The planned buildout and development for Gunnison Rising will occur at a rate of 20 to 50 acres every 5 years moving from current development on the west toward the eastern boundary. The new PUD acknowledges that this development will occur in a phased manner. The Gunnison Rising PUD contains land that could develop over several decades. The land uses anticipated within the PUD are many and varied. In large, complex PUDs such as this, it is not possible to know exactly where, when and how development will occur (Section 2.5 Development Phasing, City 2020).

Long-term and community-based planning to direct growth and development to appropriate areas, along with compensations for restrictions on developments in important areas, are the most efficient way to accomplish conservation. Maintaining sustainable rural economies (where traditional land uses compatible with sage-grouse are profitable) can significantly reduce threats associated with subdivisions (GSRSC 2005, Pg. 150). Gunnison Rising is the Gunnison Basin’s attempt to do the right kind of development for the long-term population growth in the Gunnison Basin and for GuSG conservation.

## **2.2 Covered Activities**

Activities covered include any lawful activities carried out, or authorized, by the City of Gunnison in the Plan/Permit Area (see Section 1.2 Plan/Permit Area). These activities include residential, commercial, and industrial development, and the associated capital improvements required for these types of development. These activities will undoubtedly eliminate and fragment GuSG habitat within Gunnison Rising leading to consequences to GuSG. 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.



Construction activities within the Permit Area include:

- Preconstruction surveys
- Clearing, grubbing, grading, and other land disturbance activities necessary to construct buildings, parks, utilities, roads, trails, and all other associated infrastructure
- Active 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 and required by the City of Gunnison

Additional impacts from long-term 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. Additional 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.

### 3.0 COVERED SPECIES

#### Gunnison Sage-Grouse (*Centrocercus minimus*; GuSG)

The Gunnison Sage-grouse is a distinct sage-grouse species found south of the Colorado River in isolated areas of western Colorado and southeastern Utah. Sage-grouse are a lek-mating species and males have specific strutting displays and vocalizations to attract potential mating females. Male and females are sexually dimorphic with females approximately 1/3 smaller than males. As early as the 1970's, evidence began to mount that the sage-grouse found within the Gunnison Basin had distinct physical and behavioral differences from sage-grouse found in other parts of the range. Research continued and in 2000, a paper (Young et al. 2000) was published recognizing Gunnison sage-grouse as a species distinct from the greater sage-grouse (*Centrocercus urophasianus*).

### 3.1 Status and Distribution

#### 3.1.1 Status

On November 20, 2014, the FWS published its final decision and determined the status of the GuSG to be threatened under the ESA, (79 FR 69192), and designated approximately 1,621,008 acres of critical habitat in nine southwestern Colorado counties and two counties in southeastern Utah, (79 FR 69312).

### 3.1.2 Distribution

Due to widespread loss of sagebrush habitat preceding scientific study and the extirpation of the species from areas where no useful zoological record or specimens have been produced, determination of the historic range of the GuSG has been problematic (GSRSC 2005). After reviewing potential historic GuSG habitat based on past interpretations of distribution data, museum specimens, locations for published observations, information on habitat use, and distribution of general habitat types, Schroeder's Distribution of Sage-Grouse in North America (Schroeder et al. 2004) determined that the potential historic range of GuSG occurred in northeastern Arizona, southeastern Utah, northwestern New Mexico, and southwestern Colorado. However, only a portion of this range would have been occupied at any given time. This historic range determination was further modified by the Rangewide Steering Committee in the RCP based on additional information and is reflected in the Current and Historical GuSG range map, Figure 3, (GSRSC 2005, p. 33).

Both historic and current GuSG distribution closely matches the distribution of sagebrush habitats. Currently, GuSG are found occupying approximately 3,795 km<sup>2</sup> in southwestern Colorado and southeastern Utah in seven isolated populations: San Miguel Basin, Monticello-Dove Creek, Piñon Mesa, Crawford, Cerro Summit-Cimarron-Sims Mesa, Poncha Pass, and Gunnison. The largest of these populations is the Gunnison Basin population which contains almost 87% of all GuSG. This population is considered relatively stable and population estimates are based on annual lek counts and derived from the formula presented in the RCP (GSRSC 2005, pp. 44-45).

A population with a long-term average of 3,000 breeding birds could expect normal fluctuations between 1,730 and 5,280 breeding birds, based on analysis of long-term trends in high counts of males on leks in North Park ("Analysis: GUSG Population Size in Relation to the Amount of Available Habitat", pg. 186 GSRSC 2005). The CPW Lek Count information for GuSG in the Gunnison Basin in 2018 (CPW 2018) shows the 3 year moving average population to be 3,076 with the last official Lek Count in 2016 having the population at 4,553 birds. Lek count data from 1995 to 2018 range from a low in the 3 year moving average in 1995 of 2,202 to a high in 2006 of 5,205 birds (Table 3).

**Table 3:** Gunnison Sage-grouse Population Estimates. This Table utilizes the population calculation methodology outlined in the 2005 Gunnison Sage-grouse Rangewide Conservation Plan - Summary of population data from Gunnison sage-grouse lek counts in the Gunnison Basin, 1995–2018. HMC = high male count, HFC = high female count, male population estimate = HMC/.53, female population estimate = (male population estimate) x (1.6), population estimate = male + female population estimates (CPW 2018).

Year	HMC	% Δ in Males	Est. Male Population*	Relationship to Target Level(836)**	HFC	Est. Female Population	Population Estimate
1995	449	n/a	847	above	n/a	1,355	2,202
1996	587	30.7	1,108	above	n/a	1,773	2,881
1997	645	9.88	1,217	above	n/a	1,947	3,164
1998	706	n/a	1,332	above	203	2,131	3,463
1999	723	2.4	1,364	above	230	2,183	3,547
2000	636	-12	1,200	above	179	1,920	3,120
2001	712	11.9	1,343	above	154	2,149	3,492
2002	617	-13.3	1,164	above	216	1,863	3,027
2003	500	-19	943	above	156	1,509	2,452
2004	498	-0.4	940	above	66	1,503	2,443
2005***	971	92.4	1,832	above	193	2,931	4,763
2006	1,061	9.3	2,002	above	165	3,203	5,205
2007	941	-11.3	1,775	above	148	2,840	4,615
2008	748	-20.5	1,411	above	197	2,258	3,669
2009	778	4.0	1,468	above	215	2,349	3,817
2010	745	-4.2	1,406	above	227	2,250	3,656
2011	763	2.4	1,440	above	233	2,304	3,744
2012	832	9.0	1,570	above	138	2,512	4,082
2013	848	1.9	1,600	above	236	2,560	4,160
2014	811	-4.4	1,530	above	239	2,448	3,978
2015	974	20.1	1,838	above	175	2,941	4,779
2016	928	-4.7	1,751	above	235	2,802	4,553
2017****	758	-18.3	1,430	above	254	2,288	3,718
2018****	627	-17.3	1,183	above	233	1,893	3,076

\*Rounded prior to determining female population estimate

\*\*Target level is modeled population capability for males in occupied, vacant, and potential sage-grouse habitat in the Gunnison basin from the 2005 Gunnison Sage-grouse Rangewide Conservation Plan

\*\*\* includes count for Big Mesa lek in 2005 to present

\*\*\*\* does not include count for newly discovered Denny's lek

## 3.2 Habitat Characteristics and Use

GuSG are a sagebrush obligate species that require large expanses of interconnected sagebrush habitats. This species is reliant on sagebrush to provide both food and cover throughout the year; however, GuSG are known to use a variety of habitats seasonally including various

riparian areas and agricultural lands that support native grasses and forbs. Use of these habitats is dependent on close proximity of appropriate sagebrush habitats. The RCP defines and separates GuSG habitat requirements into three seasonal categories for management purposes: breeding, summer/fall, and winter.

### **3.2.1 Breeding (Leks, Pre-laying Habitat, Nesting Habitat, and Early Brood-rearing Habitat): Mid-March to late June**

In the spring, typically between mid-March and the end of May, GuSG males will begin to establish territories and initiate strutting displays on traditional breeding areas known as leks. Leks are typically open sites that have good visibility and acoustic qualities that aid in attracting females to the area and, specifically, to the displaying male. Generally, leks are located adjacent to available nesting habitat and areas used for feeding, roosting, and escape. Nest sites are located at the base of a live sage brush and are small, shallow, depressions lined with various vegetation and feathers. Specific vegetation characteristics found around nesting sites thought to contribute to nesting success are used and outlined in the RCP management guidelines and based on percent shrub cover, average shrub height, percent grass cover, and grass height. Average clutch size is approximately seven and average hatch occurs within 28 days of the last egg laid (Young et al. 1994).

### **3.2.2 Summer/Fall**

Chick and juvenile survival is closely correlated with adequate cover and appropriate food availability. Chicks up to three weeks are dependent primarily on insects. From four to eight weeks, 70% of their diet switches to plant material, 15% of which is sagebrush. During this time, females with chicks will move to areas that have a high succulent forb component and a healthy insect population, such as wet meadows, edges of agricultural hay meadows (up to 165 feet from the edge of adjacent sagebrush communities (GLWG 1997, Pg. 13)) or other mesic, riparian habitat, to support the dietary needs of the brood. Typically, males and females without broods will follow this same pattern of habitat use but are not as dependent on the wet meadow type habitat as forbs and sagebrush still constitute the majority of their diet although insects are consumed by adults when available. In the fall, broods and adults will commonly flock together and begin to move from riparian habitat to areas that have a higher sagebrush component. Fringed sagebrush often serves as a transitional food as GuSG shift from a summer/fall to winter diet.

### **3.2.3 Winter**

Winter habitat use is triggered by winter weather events and, therefore, seasonal movement to these habitats can be highly variable. During this time, GuSG depend exclusively on sagebrush for both food and cover. In the Gunnison Basin population, research has shown that most winter feeding activity occurs in drainages and on slopes with south or west facing aspects.

## **3.3 Occurrence in Plan Area**

As part of the original mitigation negotiations for the Gunnison Rising PUD, GVP commissioned a GuSG habitat assessment for the area within the annexation deemed as potential sage-grouse habitat. This assessment was completed by Gunnison Valley Environmental Services (GVES) in 2007 (GVES 2007). Vegetation community types were assessed to determine the quality and

quantity of potential GuSG seasonal habitats and compared to minimum vegetation structural guidelines from the RCP. In addition riparian habitat and the north edge of the existing irrigated hayfield was assessed as potential habitat according to the Local Plan. Summation of vegetation community types and potential GuSG habitat will be addressed in Chapter 4 of this HCP. The following is a summary of GuSG occurrence found during this assessment and pertains to Figure 6 below.

- Three piles of GuSG scat were observed in the extreme northern portion of the North Parcel assessment area. This area has since been set aside for mitigation in a 160-acre CE administered by CPW.
- A female GuSG with five chicks was observed by subcontractors for GVES on May 12, 2007, immediately south of the Cemetery Ditch in the irrigated hay meadow near the sagebrush and riparian interface.

Since the 2007 Habitat Assessment for Gunnison Rising North there has not been any further documentation of GuSG in the proposed development area on the property. However, CPW has additional radio-telemetry locations within the 160-acre WCU CE on the north and within the Tomichi Creek SWA on the south (Figure 7). The 26,956-acre Cabin-Alder Allotment was not surveyed. However, the eastern part of the grazing allotment (Alder Creek) has 6 leks; 3 active, 1 inactive, 1 unknown, and 1 historic.

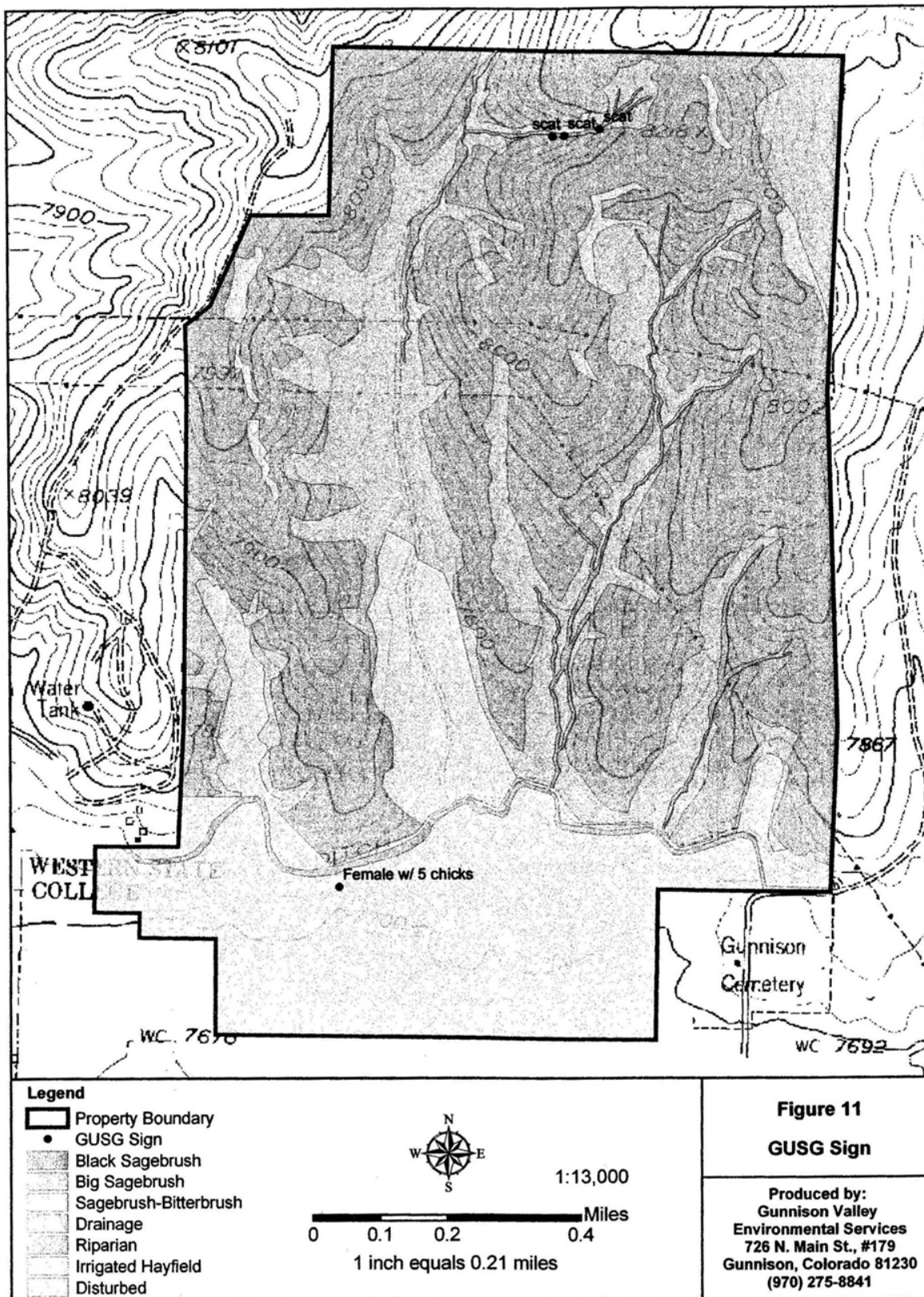


Figure 6: Map from 2007 habitat assessment showing GuSG sign and bird observations.



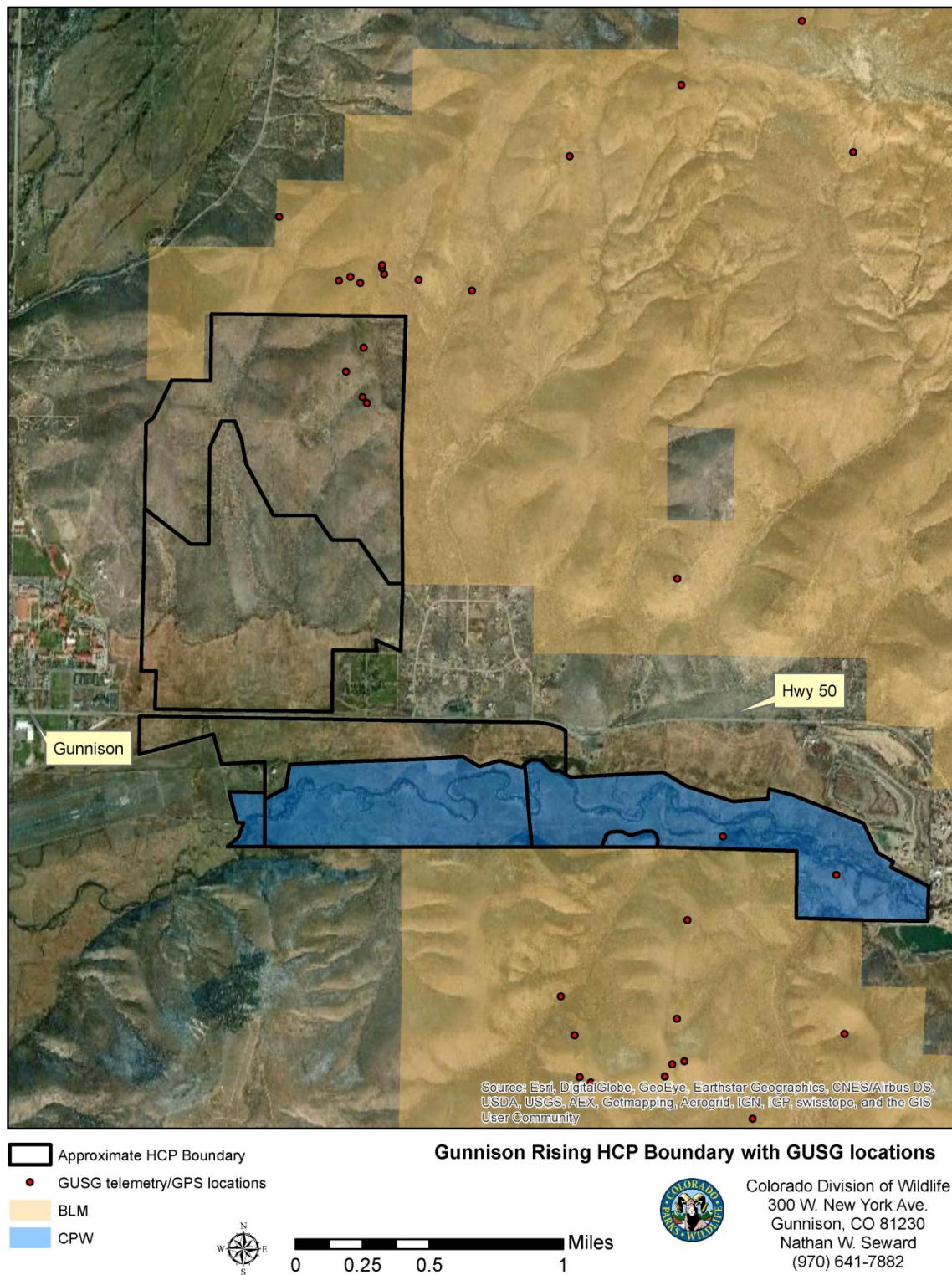


Figure 7 : This map was created Feb. 22, 2019, the telemetry grouse locations are from CPW monitoring that occurred between 2005 and 2010 as part of a demographics study and the GPS locations are from Oct. 2016 through Feb. of 2017.

## 4.0 ENVIRONMENTAL SETTING AND BIOLOGICAL RESOURCES

### 4.1 Environmental Setting

The Upper Gunnison Basin is a xeric, montane, ecosystem located high in the Rocky Mountains, west of the Continental Divide and relatively central in the State of Colorado. This 3580 square mile basin ranges in elevation from 7,500 ft. to over 14,000 ft. While a few natural passes exist into the basin, there is no outlet lower than 8700 ft. except to the west through the Black Canyon of the Gunnison, which extends 2200 ft. in depth at its deepest point and is thought to act as a natural filter to the movement of various species into and out of the basin. No other large mountain valley in the region is enclosed by such high elevation passes and this may contribute to the unusual species found in the Upper Gunnison Basin.

The 1,522-acre Western Plan Area encompasses varied vegetative habitats commonly found in the Gunnison Basin, including sagebrush habitats and irrigated hay meadows. Elevation in the Plan Area ranges from approximately 7,700 to 8,200 feet and includes areas north and south of U.S. Highway 50 that are individually referred to as Gunnison Rising North and Gunnison Rising South Parcels. Historically, the entire area was primarily used for agricultural purposes including, livestock grazing, haying, winter feeding and spring calving grounds. In addition, with previous owner's permission, trails located on the land have long been utilized by Gunnison residents for hiking, running, biking, and other recreational uses.

The 26,956-acre Eastern Plan Area's (Cabin-Alder Allotment) upland vegetation is primarily sagebrush-grass, with scattered pockets of aspen and serviceberry (BLM 2011). Riparian vegetation is a mix of graminoid dominated types and of willow-dominated types. The Cabin-Alder Allotment is located approximately 5 to 15 miles east of Gunnison. The allotment is on the north side of Highway 50, and is bordered by National Forest on the north side. Elevations range from approximately 8,000 feet in the south to 9,200-9,400 feet in the north (BLM 2011).

#### 4.1.1 Existing Land Use

The Gunnison Rising North Parcel includes approximately 431 acres designated in the PUD for development which abuts current development within the City and WCU on the west and U.S. Highway 50 to the south. The Western Plan Area is bordered on the east by the Gunnison Cemetery and Tomichi Heights subdivision, a residential and commercially developed area. Immediately to the north of the PUD residential building area, is 420 acres of native sagebrush which has been donated by GVP to WCU for study and conservation through its educational programs, and includes a 160 acre CE, administered by the CPW. The 420 acres is bordered to the north and northeast by public lands administered by the BLM.

The Contour Trail is located just to the north of the Phase II boundary, and the Cemetery Ditch Trail is near the southern edge of Phase II and follows Cemetery Ditch from WCU to Gunnison Cemetery and Tomichi Heights subdivision. Both trails have been improved and are maintained as part of the Signal Peak Trail System and can be accessed from various trail points in the City, through WCU, or through connecting trails on the BLM to the north. Signal Peak Trails Master



Plan (Gunnison Trails 2016) is a newly approved trail system (U.S. Bureau of Land Management 2018) that begins at the north boundary of Gunnison Rising with the Contour Trail and extends north through the North Parcel Mitigation Area then north and east onto BLM where 3 GuSG leks currently reside (See Figure 8). The trail system extends into the Cabin Creek side of the Cabin-Alder Allotment (where there are no GuSG leks). The trails will most likely see an increase in human activity with potential impacts to GuSG and their habitat occurring on BLM lands that are mostly Tier I habitat as shown on Figure 11.

In addition, several dirt, two-track, roads exist on the Gunnison Rising development property and are used for trail and ditch maintenance, agricultural use, and additional recreational uses. The Cemetery ditch flows through this portion of the property providing water to the irrigated hay fields that border U.S. Highway 50. This ditch, also, supports a narrow band of riparian habitat along its boundary. There is one overhead electrical line owned by Gunnison County Electric that transects the eastern edge of the parcel, and a transmission line, owned by Western Area Power Authority, that crosses just to the north of the North Parcel boundary. Both the distribution and transmission lines have access roads and require maintenance and repair activities.

Furthermore, fully developed commercial and residential areas border Gunnison Rising both to the west and east. Highway 50, the region's main transportation route, splits the property into two sections as it travels east and west through Gunnison County. Commercial and industrial development exists along this corridor within the City and extends out past the city limits to the east for approximately 3 miles. These features help to make up most of the impacts expressed in the HPT and have various impacts on GuSG and their prioritization/quality of habitat.



Table 4: Long-term averages for temperature and precipitation at the Gunnison climate station.

## **GUNNISON 3 SW, COLORADO (053662)**

### **Period of Record Monthly Climate Summary**

**Period of Record : 07/01/1893 to 06/10/2016**

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
Average Max. Temperature (F)	25.8	30.9	41.9	55.9	66.4	76.1	80.7	78.7	72.3	61.5	45.2	29.7	55.4
Average Min. Temperature (F)	-7.4	-1.8	11.5	22.3	29.4	35.7	42.7	40.9	32.2	21.6	10.5	-2.7	19.6
Average Total Precipitation (in.)	0.81	0.76	0.66	0.68	0.78	0.68	1.46	1.44	0.96	0.73	0.56	0.78	10.3
Average Total SnowFall (in.)	11.6	10	6.7	3.5	0.7	0.1	0	0	0.2	1.3	5.2	10.2	49.6
Average Snow Depth (in.)	7	8	3	0	0	0	0	0	0	0	0	4	2

### **4.1.3 Topography/Geology**

The topography ranges from hills, ridges, and benches with slopes from 5 to 40 percent, to bottomland irrigated alluvial areas with slopes from 0 to 5 percent. From north to south, dominant soils within the Plan Area primarily consist of Duffson-Spring Creek Stony loams, Dewville loam, and Irim loam.

The upper landscape geology is Pre-Ash-Flow Andesitic Lavas, Breccia's, Tuff's, and Conglomerates (General Age 30-35 M.Y.), with the bottomland characterized by Modern Alluvium (NRCS 2018).

### **4.1.4 Hydrology**

The upper landscape is made up of shallow to moderately deep soils that are well drained. The bottomland is made up predominately of deep soils with hydrology that ranges from well drained to poorly drained. Much of the bottomland is currently influenced by surface irrigation and seasonal high water from Tomichi Creek. There are several soils that are rated as Hydric Soils (NRCS 2018).

### **4.1.5 Water Quality/Quantity**

Overall water quality is good to excellent. The upper landscape is totally influenced by annual precipitation in the form of rain and snow (see Table 4 above). The bottomland has the combination of annual precipitation along with surface applied irrigation water and internal seasonal flooding from its connection to the hydrology of Tomichi Creek (NRCS 2018).

## 4.2 Biological Resources

### 4.2.1 Wildlife

Potential wildlife found in the Plan/Permit Area include a mixture of sagebrush obligates, wetland/irrigated meadow species, and other species common to the Upper Gunnison Basin in general.

Potential avian species, common to the Gunnison Basin, that may use available resources in the Plan Area include:

- American Kestrel (*Falco sparverius*)
- Bald Eagle (*Haliaeetus leucocephalus*)
- Barn Swallow (*Hirundo rustica*)
- Black-billed Magpie (*Pica hudsonia*)
- Blue-winged Teal (*Spatula discors*)
- Brewer's Sparrow (*Spizella breweri*)
- Canada Goose (*Branta canadensis*)
- Cinnamon Teal (*Spatula cyanoptera*)
- Common Nighthawk (*Chordeiles minor*)
- Common Raven (*Corvus corax*)
- Golden Eagle (*Aquila chrysaetos*)
- Great Blue Heron (*Ardea herodias*)
- Great Horned Owl (*Bubo virginianus*)
- Green-tailed Towhee (*Pipilo chlorurus*)
- Green-winged Teal (*Anas crecca*)
- Gunnison Sage-grouse (*Centrocercus minimus*)
- Horned Lark (*Eremophila alpestris*)
- Killdeer (*Charadrius vociferous*)
- Loggerhead Shrike (*Lanius ludovicianus*)
- Mallard Duck (*Anas platyrhynchos*)
- Mountain Bluebird (*Sialia currucoides*)
- Mourning Dove (*Zenaida macroura*)
- Red-tailed Hawk (*Buteo jamaicensis*)
- Redwing Blackbird (*Agelaius phoeniceus*)
- Rough-legged Hawk (*Buteo lagopus*)
- Sage Thrasher (*Oreoscoptes montanus*)
- Sandhill Crane (*Antigone canadensis*)
- Say's Phoebe (*Sayornis saya*)
- Swainson's Hawk (*Buteo swainsoni*)
- Turkey Vulture (*Cathartes aura*)
- Vesper Sparrow (*Pooecetes gramineus*)
- Western Kingbird (*Tyrannus verticalis*)
- Western Meadowlark (*Sturnella neglecta*)
- Yellow-headed Blackbird (*Xanthocephalus xanthocephalus*)

With exception of the Gunnison sage-grouse all birds listed above are considered migratory birds and are protected by the Migratory Bird Treaty Act (MBTA) of 1918. The bald and golden eagles are also protected by the Bald and Golden Eagle Protection Act of 1940 (BGEPA). Voluntary conservation measures are included for migratory birds under Section 5 below. Although bald and golden eagles could occasionally use the Gunnison Rising property for foraging or resting, since there are no known bald or golden eagle nest or roost sites on the Gunnison Rising property no conservation measures are included for eagles.

Other potential animal species, common to the Gunnison Basin, that may use available resources in the Plan Area include:

- Badger (*Taxidea taxus*)
- Black Bear (*Ursus Americana*)
- Bobcat (*Lynx rufus*)
- Bushy-tailed Woodrat (*Neotoma cinerea*)
- Coyote (*Canis latrans*)
- Elk (*Cervus canadensis*)
- Golden-mantled Ground Squirrel (*Callospermophilus lateralis*)
- Gunnison's Prairie Dog (*Cynomys gunnisoni*)
- Long-tailed Weasel (*Mustela frenata*)
- Mountain Lion (*Puma concolor*)
- Mule deer (*Odocoileus hemionus*)
- Deer mice *Peromyscus* sp.
- Raccoon (*Procyon lotor*)
- Red Fox (*Vulpes vulpes*)
- Sage and fence lizards *Sceloporus* sp.
- Shrews *Sorex* sp.
- Stripped Skunk (*Mephitis mephitis*)
- Cottontail rabbit *Sylvilagus* sp.
- Western Chorus Frog (*Pseudacris triseriata*)
- Western Terrestrial Garter Snake (*Thamnophis elegans*)
- White-tailed Jackrabbit (*Lepus townsendii*)

Locally, protection for native and naturalized species (including migratory birds) is provided for through the City of Gunnison Municipal Code, Section 5.40.040 (City 2019), which designates the city as a wildlife sanctuary and dictates that no person may at any time frighten, shoot at, wound, kill, capture, ensnare, trap, net, poison, or in any other manner kill, injure, or molest any wildlife or injure the nest, den, eggs, or young of such animals.

#### 4.2.2 Vegetation

Vegetation varies greatly between the South and North Parcels. The South Parcel vegetation includes a variety of grasses, forbs, sedges, and rushes common to irrigated hay meadows in the Gunnison Basin such as Timothy, Slender Wheatgrass, Smooth Brome, Meadow Foxtail, and Red and Alsike clovers. Additional vegetation may include a mix of native shrubs such as

willows and shrubby cinquefoil. There are approximately 183 acres of hay and pasture, 5 acres of sagebrush hillside, and 18 acres that make up the I-Bar Ranch Event Center and one single family residence.

The North Parcel vegetation community types include black sagebrush, sagebrush, bitterbrush, swales, irrigated hayfields and disturbed sites. There are approximately 270 acres of sagebrush habitat and 161 acres of hay and pasture. Quality and quantity of seasonal GuSG habitats, vegetation data was analyzed according to the minimum vegetation structural habitat guidelines from the RCP (GSRSC 2005, Appendix H). Since the RCP does not provide habitat guidelines for riparian areas and irrigated meadows, the Local Plan Brood-rearing Habitat guidelines (GLWG 1997, pages 13-14) were used to assess potential habitat in these areas. General vegetation information for the Cabin-Alder Allotment is in section 4.1 above and additional information can be found in the Cabin Creek Common Allotment #16301 and Alder Creek Common Allotment #16302 Livestock Grazing Management Environmental Assessment (BLM 2011).

The following information is a summary of data from the GuSG habitat assessment completed by GVES and their subcontractors on the North Parcel in 2007 (GVES 2007), and was used during the original mitigation negotiation and planning. The potential GuSG habitat described in the assessment is not cumulative acres but rather overlapping acres based on probable seasonal use. Seasonally, potential breeding habitat consists of approximately 219 acres of big sagebrush, sagebrush-bitterbrush, drainages, riparian, and irrigated hayfields and was determined to be of moderate quality. Potential summer-fall habitat consists of approximately 651 acres of black sagebrush, sagebrush-bitterbrush, drainages, riparian, and irrigated hayfields and was found to be of low quality. Potential winter habitat consists of approximately 104 acres of big sagebrush, sagebrush-bitterbrush, and drainages and was determined to be of low quality. Existing roads, powerlines, recreational trails, and urban proximity may further decrease the overall potential quality of GuSG habitat found on the property (See Table 5).

Table 5: GuSG habitat data from the Gunnison Sage-grouse Habitat Assessment for Gunnison Rising North (GVES 2007).

<b>Gunnison Rising North GuSG Seasonal Habitat</b>		
<b>Habitat</b>	<b>Acres*</b>	<b>Quality</b>
Breeding	219	Moderate
Summer/Fall	651	Low
Winter	104	Low

\* The acres in this table differ from currently mapped seasonal habitats due to differences of mapping based on site potential. This table provides insight into the habitat quality that exists out there today.

Current mapping of the different seasonal habitats (Figure 10) within the 637 acres of Gunnison Rising includes 290 acres of Breeding and Summer/Fall habitat and 115 acres of Winter habitat.



## 5.0 CONSERVATION PROGRAM

### 5.1 Biological Goals and Objectives

The goals of this HCP are to 1) maintain higher quality and more productive GuSG habitat within the Gunnison Basin Population and 2) minimize impacts from development on GuSG.

Goal 1: Maintain higher quality and more productive GuSG habitat with the Gunnison Basin Population.

Objective 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.

Objective 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).

Gunnison Rising was proposed to keep the future growth and development of Gunnison adjacent to existing infrastructure with the hope to slow the spread of housing development into more important GuSG habitat. The Three-Mile Planning area around Gunnison has long been in the minds of both the City and County to help maintain areas outside of the Three-Mile Planning area in a more agricultural/natural setting to preserve the many benefits provided by open landscapes.

CPW included in their comments on the annexation that the Gunnison Rising proposal for a 160-acre non-development CE immediately adjacent to BLM land along their northern and northeastern portions of their land, along with the relinquishment of their BLM grazing permit, finds this as an acceptable wildlife mitigation for the Gunnison Rising Annexation proposal. The GVP proposal allows for a direct wildlife benefit to adjacent BLM lands by creating open space buffers near the proposed annexation. It also provides a direct wildlife benefit to a much larger landscape on BLM land, both inside and outside of the 26,956-acre Cabin-Alder grazing allotment. As the Gunnison Basin continues to develop, it is important that habitat available for use by wildlife is not incrementally lost and that conflicts with wildlife are minimized. As such, CPW encourages a development pattern that maintains the wildlife values of the greater portions of the Gunnison Basin. CPW feels that the Gunnison Rising proposal follows that philosophy (CPW 2009).

All entities involved in GuSG conservation within the Gunnison Basin have utilized the RCP as a guiding document for Gunnison Sage-grouse conservation efforts. Their goal has been in line with that of Habitat Protection from Permanent Loss. The objective from the RCP of

maintaining 90% of seasonally important GuSG habitat fits with the process that the City and County have gone through to get to Gunnison Rising.

Excerpts from RCP Section V. “Conservation Strategy: Rangewide Strategies – Habitat Protection from Permanent Loss” and “Appendix I - GUSG Disturbance Guidelines” (GSRSC 2005) follow:

*Protecting GUSG habitat from permanent loss is key to conserving the species. Although conversion of sagebrush habitat to new agricultural fields could impact GUSG, the most serious threat of habitat loss is from subdivision development. Maintaining sustainable rural economies, where traditional land uses compatible with sage-grouse are profitable, can significantly reduce threats associated with subdivision development. This strategy is not intended to address permanent or temporary habitat loss due to factors other than housing development or agricultural conversion.*

*While protecting 100% of all habitats used by GUSG in each population might be desirable, attempting to do so in any one population will detract resources from protecting the most important habitats in other populations (since habitat protection is very expensive and funding is likely to be limited). From a conservation standpoint, some habitat loss can probably be absorbed by GUSG, or mitigated by habitat improvements or additions. For this reason we set an objective of protecting 90% of the seasonally important habitats.*

*Objective 1: Maintain 90% of seasonally important habitats (combined public and private, as mapped) within each population, by protecting the necessary proportion of those private lands that are at risk of development from conversion to unsuitable housing densities (see “Spatially Explicit Analysis of Impacts of Additional Housing Units”, pg. 154, and Appendix F). If seasonally important habitats are not mapped for a given population, the objective is to maintain 90% of those vegetation communities within occupied habitat that are likely used by GUSG (for discussion of these communities see “Model Development”, pg. 186).*

#### RCP - Appendix I - GUSG Disturbance Guidelines

##### Housing Development

*Breeding: Lek Habitat (within 0.6 miles active lek; see Fig. 1)*

- *No housing developments should occur within 0.60 miles of active leks.*

*Other Seasonal Habitats: (Breeding: Non-lek Habitat, Summer – Fall Habitat, or Winter Habitat)*

- *Housing developments should be discouraged in all GUSG habitats. When this is not practical, houses should be clustered as much as possible to maintain larger areas of undisturbed habitat.*

Goal 2: Minimize impacts from development on GuSG.

Objective 2a: Through the City building permit process developers and individuals will receive educational materials related to the City’s ITP 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.

Objective 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 ITP area.

The City, County and Public Land agencies have worked for years to minimize the effects of construction, recreation and everyday living within the Gunnison Basin on GuSG and their habitat. Gunnison has set the example that many others try to emulate when it comes to GuSG conservation efforts. There are already some trails in use around and adjacent to Gunnison Rising that have had sign kiosks installed to explain GuSG conservation efforts.

## **5.2 Measures to Avoid and Minimize Take**

As early as 2006, GVP began discussing the Gunnison Rising development with the City, the County, CPW, and GBSGSC to try and figure out the best ways to complete the proposed development while avoiding, minimizing, and mitigating the potential detrimental effects to GuSG. One advantage of the property is that it is adjacent to the City and within the Three-Mile Planning area that both the City and County acknowledge as the highest priority area to encourage development and reduce fragmentation of the landscape. Furthermore, as described above, developing housing close to the City is also consistent with objectives in the RCP to maintain seasonal habitats as well as reduce fragmentation (GSRSC 2005).

The original proposal involved 1,738 acres of land on the east boundary of the City. It included the Tomichi Creek corridor, irrigated hay fields, and sagebrush rangelands. One of the very first items of discussion was the potential impacts to Gunnison Sage-grouse habitat and how this type of project can be brought about in a manner to reduce those impacts.

They planned for expansion of development to the existing industrial park east of Gunnison. One of the other main features within this potential development was 980 acres of Open Space within the City Limits, which would have included what is now the Tomichi Creek SWA.

GVP from the beginning worked with CPW biologists to try and figure the best ways to complete a development that was adjacent to the City and avoid, minimize, and mitigate the potential detrimental effects it could have to GuSG. The RCP has always been a guiding document utilized by everyone involved in the process.

As the process moved forward and there was more discussion about the alternatives presented in this development, changes began to take place. It was decided early on to pull in the eastern boundary of the annexation by just over a mile (back to the rock notch that Highway 50 goes through just east of the Tomichi Heights subdivision). This boundary adjustment took 216 acres out of the original proposal.

GVP also initially envisioned the City having the Tomichi Creek corridor within their City limits as a unique amenity for recreation. However, there was concern over retaining the Tomichi Creek Corridor by the City due to the extra financial, recreational, and agricultural expertise needed to manage the area. Furthermore, Tomichi Creek is also adjacent to the Chance Gulch GuSG population, which made management of public access to Chance Gulch a critical concern. Therefore, the City decided it was not interested in the Tomichi Creek Corridor so the Corridor was pulled from the Annexation proposal.

The land north of the Contour Trail (Figure 4) was slated to be developed either as part of the more dense Gunnison Rising development area or into 35-acre tracts, which would go through the County review process. However, as more discussion centered on the two leks nearest to Gunnison Rising (Signal Peak and Signal Peak West leks), the 420-acre area north of the Contour Trail was pulled from the Annexation proposal.

Under the updated planning effort the buildout and development for Gunnison Rising is expected to occur at a rate of 20 to 50 acres every 5 years; moving from west to east. Development is planned to first occur in the property within the hay fields on either side of Highway 50, which has been designated as a “No Take” area or area in which no take of GuSG has been determined to occur due to lack of use caused by existing disturbances (Terry Ireland, U.S. Fish and Wildlife Service, pers. comm. 2019). This projected time frame for buildout of up to 64 years with over 50 percent of the development occurring within the “No Take” area will help to minimize potential take of GuSG.

Policies within the City to lessen the destruction to native habitats from commercial and residential development and the accompanying anthropogenic effects of urbanization include:

- 1) The City requiring the establishment and municipal approval of Limits of Disturbance (LOD) for all site development and subdivision plans that clearly depict the area of a site that may be disturbed by earth movement and vegetation clearing providing space for all aspects of primary and accessory construction. LOD standards 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, pp. 5-8);
- 2) In accordance with the Colorado Noxious Weed Act and in conjunction with management practices utilized by Gunnison County, the City focuses on eradication, containment, and suppression of noxious weed species and restoration of desirable plant communities in treatment areas with the purpose of limiting impacts to native vegetation within the City (City 2019, Chapter 5.50, Undesirable Plant Management);
- 3) Recreation policies based on the RCP guidelines are already in place throughout the City, Gunnison County, and on adjacent public lands to minimize the impacts associated with recreational land use activities throughout the Gunnison Basin. Trail and recreation use standards have been developed with the cooperation of local municipalities, GBSGSC, CPW, public land managers and other local citizen groups that minimize some of these

disturbances and promote, depending on location, limited or restricted trail or area use during GuSG breeding season.

Additional avoidance and minimization measures include:

1. Daily and seasonal building restrictions to reduce impacts to GuSG (described in each certificate of inclusion (Appendix B)). No construction activity will be permitted from sunset to 9:00 AM from March 15<sup>th</sup> to May 15<sup>th</sup> of each year.
2. Pet handling restrictions to minimize impacts to GuSG. All pets will be on a leash from March 15<sup>th</sup> to May 15<sup>th</sup>. Additionally, it will be strongly encouraged that pets are leashed from May 15<sup>th</sup> to June 30<sup>th</sup>.
3. Placement of educational signs regarding GuSG and disturbance minimization measures (e.g. pets on leash March 15<sup>th</sup> to June 30<sup>th</sup>) at access points near the North Parcel Mitigation Area.
4. The sale of 465 acres of land below appraised value to create the South Parcel Open Space Buffer (and subsequent conveyance to CPW for the Tomichi Creek SWA established in 2011).

Regarding the Tomichi Creek SWA, Dick Bratton of GVP stated, “the opportunity presented itself to have Colorado Division of Wildlife (DOW) acquire the land prior to their merger with Colorado State Parks. We agreed to let DOW acquire the property for less than fair market value. One of the main reasons was that we had been working with DOW actively on GuSG mitigation and the Conservation Easement on the North Parcel, and we felt that DOW would provide proper management of the property for the benefit of wildlife. It cannot be said that we expected that it would be managed exclusively for GuSG mitigation as we anticipated that it would have multiple uses, i.e., fishing, duck and geese hunting, etc.” (L. Richard Bratton, GVP, pers. comm., 2020).

To form the Tomichi Creek SWA/South Parcel Open Space Buffer, the Tomichi Creek Corridor was sold to the U.S. Bureau of Reclamation and Colorado Parks and Wildlife at a bargain sale price (less than half of the appraised value) to help preserve the Corridor (see section 8.0 - Funding below). In 2004, the U.S. Bureau of Reclamation bought approximately 249 acres and subsequently conveyed their parcels of land by quitclaim deed to the State of Colorado’s Colorado Division of Wildlife (now CPW) and the Wildlife Commission in March 2011 (U.S. Bureau of Reclamation 2011). Additionally, in 2009, CPW purchased two additional parcels with Habitat Stamp money and Wildlife Cash totaling 216 acres from GVP (the 209-acre GVP parcel and the 7-acre Bradbury parcel)(CPW 2021). Together these parcels formed the 465-acre Tomichi Creek SWA. The original U.S. Bureau of Reclamation purchase was for mitigation for Blue Mesa Reservoir under the Colorado River Storage Project Act and the land was conveyed to CPW with the agreement that it would continue to provide access for public fishing and protect and improve riparian and aquatic habitat. Consequently, CPW is managing the property for those purposes as well as managing for some agriculture use. Nonetheless, GuSG utilize the property and CPW management provides benefits to GuSG by providing summer-fall habitat and some breeding habitat (Figure 10), and minimizes disturbance to GuSG on and off

of the property. The agricultural use consists of light fall/early winter grazing and hay production in some areas north and south of Tomichi Creek on the SWA. The timing and intensity of the grazing and timing of haying does not affect the GuSG's use of the SWA for brood rearing.

CPW management of the SWA provides benefits to GuSG and also provides a buffer from development that minimizes disturbance to GuSG further south. As an agency, a CPW priority is to protect GuSG and, therefore, it is expected that GuSG will continue to benefit from the South Parcel Open Space Buffer (aka Tomichi Creek SWA) for a number of years and perhaps through the life of the Permit. CPW has already put regulations in place on Tomichi Creek SWA/South Parcel Open Space Buffer that minimizes disturbance to GuSG under Wildlife Regulations, Chapter W-9 Wildlife Properties, #901, Article II Special Provisions #233 PP 47, Tomichi Creek State Wildlife Area-Gunnison County (CPW 2019a) and in the State Recreation Lands brochure (CPW 2019b).

Per the regulations, waterfowl hunting is allowed but this begins in October and ends approximately mid- to late-January when GuSG are not using the SWA. Fishing access is allowed year-round but there is limited fishing in early spring (prior to early brood rearing) and due to high flows fishermen don't fish Tomichi Creek until the end of June or mid-July, which is after early brood rearing when disturbance to GuSG is of most concern. Additionally, no public access other than fishing is allowed from the end of waterfowl season to June 30<sup>th</sup>, consequently, wildlife viewing or other recreation does not impact early brood rearing. Furthermore, haying is not conducted until late July or August (J Wenum, CPW, pers. comm. 2020) also after early brood rearing season. Should fishermen or haying operations disturb GuSG it would be when broods are older and more mobile and take is therefore not anticipated. Thus consequences to GuSG during critical time periods from disturbance by fisherman or haying will be negligible, waterfowl hunting won't disturb GuSG, grazing doesn't overlap with GuSG use, and the grazing management on Tomichi Creek SWA is discountable or may even provide some benefit to GuSG. CPW's regulations and management on Tomichi Creek SWA currently maintains habitat for the GuSG and maintains the open space buffer.

In summary, a number of avoidance and minimization measures that will benefit GuSG within the HCP Plan Area have been completed. Reducing the original development plan by 1101 acres through the creation of mitigation and open space buffers to the north (420 acres) and the south (465 acres) (Figure 4) and reducing the development area by 216 acres on the east side (see section 1.4) have reduced impacts to the Tomichi Village and Chance Gulch lek areas. In the future, daily and seasonal restrictions on developers will be implemented and certificates of inclusion for building permittees will be issued. Also educational signs for trail users of the North Parcel Mitigation Area will be erected. In combination, existing and future measures implemented for the HCP avoid and minimize consequences of the proposed 637-acre development.

### 5.3 Measures to Mitigate the Unavoidable Take

The Gunnison Rising Annexation process was a community process that took 3 years to complete. During this process, discussion centered on the need to provide for the growth of the City and County while protecting GuSG and their habitat. CPW and the GBSGSC went through many different ways of evaluating the effects of Gunnison Rising on GuSG. After the evaluation of the actual habitat values of the property owned by GVP, there was discussion of off-sight mitigation, habitat improvements in other areas of the Basin, and a mitigation formula that was similar to that used in Wetland Mitigation. GVP subsequently offered up avoidance and minimization actions described in section 5.2 (including the South Parcel Open Space Buffer) and mitigation actions described below.

Specifically, the mitigation includes:

1. The 420-acre North Parcel Mitigation Area, which includes the 160-acre CPW CE.
2. Voluntary relinquishment of a BLM grazing permit by GVP in 2009 with official relinquishment occurring in 2011 (BLM 2011).

The North Parcel Mitigation Area reduces the consequences of the action from Gunnison Rising to surrounding GuSG habitat such as the Tomichi Village Lek Area and helps protect important GuSG habitat. To form the North Parcel Mitigation Area, the 160 acre CPW CE plus another 260 acres were donated to WCU in 2016 to make up the 420-acre mitigation area (Figure 4). WCU has no building or management planned for the 420 acres other than maintaining it as open space and occasionally using it for outdoor education purposes (Sherry Ford, WCU, pers. comm. 2020). CPW provides annual monitoring on the CE through the CE management plan on those 160 acres of WCU land (WCU 2016). Although GuSG have been documented using the 160 acres (Figure 7), due to poor soils there is no planned habitat management practices for this area other than maintaining it as open space (J Wenum, CPW, pers. comm. 2020). Despite the stated poor soils, the North Parcel Mitigation Area does provide a little higher quality habitat than the Phase II development area as calculated through the HPT (Gunnison County 2018). Out of the 290 acres of Phase II, 23 percent of it is lower quality Tier II habitat and 77 percent is higher quality Tier I habitat versus the 420-acre North Parcel Mitigation Area that only has 12 percent Tier II habitat and 88 percent Tier I habitat.

The BLM grazing permit relinquishment removed 356 Animal Unit Months (AUMs) of cattle on the 14,725-acre Cabin Creek Allotment which was combined with the Alder Creek Allotment to form the 26,956-acre Cabin-Alder Allotment (Figure 9; BLM 2011). The BLM stated that they have no plans to “re-issue” Bratton’s (GVP’s) permit and that removal of the AUMs resolved a utilization issue on the allotment (Tara de Valois, BLM pers. comm. 2020). The 356 AUM’s account for 15% of the AUM’s allowed on the Cabin-Alder Allotment (BLM 2011). The AUM reduction provides the BLM and other permittees with flexibility to help meet allotment specific objectives, including GuSG habitat objectives. The intent of the 15 percent AUM reduction 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 (sagebrush, 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 important to GuSG (BLM 2011; Tara De Valois, BLM pers. comm. 2021). Management for increased grass and forbs will benefit GuSG nesting and brood rearing around the active leks on the Cabin-Alder Allotment.

The 420-acre North Parcel Mitigation Area provides a buffer from development disturbance to GUSG habitat further north and will still provide usable GUSG habitat. Removal of the GVP AUM's on the Cabin-Alder Allotment will allow BLM to better manage that area to provide breeding (nesting/early brood rearing) habitat and summer-fall (brood-rearing) habitat benefits to GUSG (Tara de Valois, BLM, pers. comm. 2021). The preservation of the North Parcel Mitigation Area (420 acres) and the removal of 356 Animal Unit Months (AUM's) on the Cabin-Alder Allotment (26,956 acres) offsets unavoidable impacts of the 597 acres of GuSG habitat impacted by the project (see section 6.2 and Figure 5).

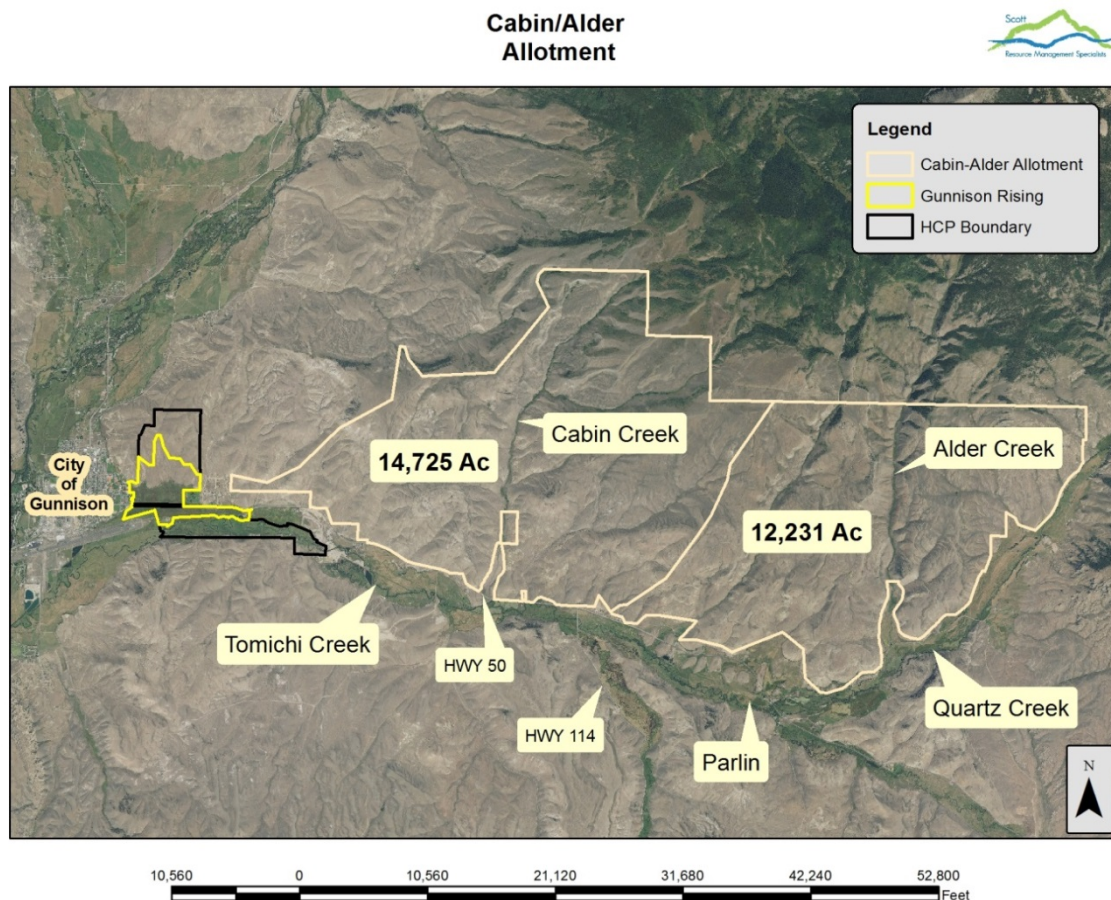


Figure 9: This map depicts the Cabin-Alder Allotment where the primary development proponent relinquished his BLM grazing permit east of Gunnison Rising. The allotment resides entirely within GuSG Habitat.



## 5.4 Measures for Migratory Birds

The Migratory Bird Treaty Act (MBTA) is the cornerstone of migratory bird conservation and protection in the United States. The MBTA implements four treaties that provide for international protection of migratory birds. The FWS maintains a list of all species protected by the MBTA at 50 C.F.R. 10.13. This list includes over one thousand species of migratory birds, including eagles and other raptors, waterfowl, shorebirds, seabirds, wading birds, and passerines. The MBTA does not protect introduced species such as the house (English) sparrow, European starling, rock dove (pigeon), Eurasian collared-dove, and non-migratory upland game birds.

On December 22, 2017, the Office of the Solicitor issued an opinion with the following subject heading: “The Migratory Bird Treaty Act Does Not Prohibit Incidental Take” (M-37050). The result of this M-opinion is that any conservation recommendations or measures for migratory birds are thus voluntary, as are the recommendations below. A proposed rule consistent with M-37050 was published in the Federal Register on February 3, 2020, and if adopted will promulgate the intent of M-37050 into regulations such that “prohibitions on pursuing, hunting, taking, capturing, killing, or attempting to do the same, apply only to actions directed at migratory birds, their nests, or their eggs” (85 FR 5915). However, the M-opinion was recently set aside as contrary to law on August 11, 2020, by the U.S. District Court for the Southern District of New York. With the M-opinion vacated, the long-standing interpretation of take under the MBTA has been reinstated.

The following conservation recommendations are included to conserve migratory birds (For most birds the nesting and rearing season is between March 15 and August 31):

- a. Any ground-disturbing activities or vegetation treatments should be performed before migratory birds begin nesting or after all young have fledged;
- b. If activities must be scheduled to start during the migratory bird breeding season, steps should be taken to prevent migratory birds from establishing nests in the potential impact area. These steps could include covering equipment and structures and using various excluders (e.g., noise). Birds can be hazed to prevent them from nesting until egg(s) are present in the nest. Do not haze or exclude nest access for eagles and threatened or endangered species;
- c. If activities must be scheduled during the migratory bird breeding season, a site-specific survey for nesting birds should be performed starting no more than 7 days prior to ground-disturbing activities or vegetation treatments. Birds with eggs or young cannot be hazed, and nests with eggs or young cannot be moved until young are no longer dependent on the nest. Confirmation that all young have fledged should be made by a qualified biologist;
- d. If nesting birds are found during the survey, appropriate spatial buffers should be established around nests. Vegetation treatments or ground-disturbing activities within the buffer areas should be postponed until the birds have left the nest. A qualified biologist should confirm that all young have fledged; and,
- e. Buried electric distribution lines and limited and/or downward-facing street lighting are recommended to help reduce bird collisions and disorientation.

Locations of existing raptor nests should be identified prior to the initiation of project activities. Appropriate spatial buffer zones of inactivity should be established during crucial breeding and nesting periods relative to raptor nest sites or territories. Raptor arrival at nesting sites can occur as early as December for certain species. Nesting and fledging can continue through August. State guidelines can be used in consultation with the FWS for establishment of migratory bird and raptor nest buffers.

## **5.5 Monitoring**

### **5.5.1 Compliance Monitoring**

The City will report development related actions and conservation measures implemented annually. These include:

1. The number of building applications and amount of land altered for 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 possibly 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 voluntary Migratory bird protection conservation measures that are implemented;
11. Violations of pet restrictions.

### **5.5.2 Effectiveness Monitoring**

The City will report biological monitoring measures implemented annually. These include:

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).

## 5.6 Reporting

The City will prepare and provide an Annual HCP Report (Report) to the FWS for the duration of the twenty year ITP. The Report will be supplied by December 31<sup>st</sup> to the FWS and the City will meet 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 FWS 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 Tomichi Village 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 voluntary Migratory bird protection conservation measures that are implemented.

## 5.7 Adaptive Management Strategy

Adaptive management is considered a flexible, iterative approach to long-term management of biological resources that is directed over time by the results of ongoing monitoring and other information. This means that objectives, biological management techniques, and the assumptions behind both are regularly evaluated in light of monitoring results and new information on species needs, land use, and a variety of other factors. These evaluations are

used to adapt both management objectives and techniques to better achieve overall management goals as defined by measurable biological objectives.

The HCP describes the measures believed at this time to be necessary to minimize impacts to GuSG. However, as the status of the species and its habitats change, a more formal adaptive management process to deal with these changing issues will be needed. This process will assess the effectiveness of the existing biological objectives and propose additional or alternative biological objectives, as appropriate.

Development of the adaptive management process will be completed in a cooperative and coordinated manner with, the FWS and other local partners. The City will facilitate implementation of the adaptive management process by annually evaluating the status of the identified goals and objectives. The annual evaluation will involve the City evaluating the effectiveness of their management activities in meeting the biological goals and objectives of the HCP and in ameliorating the threats identified in the HCP, or any threats identified in the future. The City will also coordinate with the FWS after submittal of the annual Report via phone calls, or emails, or an annual meeting to determine if adaptive management actions are needed.

## **6.0 POTENTIAL BIOLOGICAL IMPACTS AND TAKE ASSESSMENT**

### **6.1 Consequences of the Action**

Consequences of the action are those that are caused by or resulting from activities associated with the proposed project and include, but are not limited to, the potential individual mortality or injury to GuSG and the elimination of habitat. The elimination of habitat in the Phase II development area will occur from infrastructure, commercial and residential site construction and alterations of the native plant community within lot boundaries. Clearing, grubbing, grading, and other land disturbance activities necessary to construct buildings, parks, utilities, roads, trails, and all other associated infrastructure will eliminate and fragment GuSG habitat. The lot boundaries are being used as the full area of direct impact to GuSG habitat to (partially) describe the action area even though the house site is much smaller than the overall lot footprint. The existing vegetation within the lot boundaries will be altered enough to be unsuitable as grouse habitat. Phase II development will eliminate 290 acres of GuSG habitat. Anticipated impacts to GuSG critical habitat is discussed in section 6.3 below.

In 2011, as the GBSGSC was looking at ways to prioritize GuSG habitat, the GBSGSC Technical Subcommittee began work to create what is now the HPT. A 1,000-foot (ft) buffer was established through the HPT process as the distance of subdivision development impacts. Individual house points were given a 300 ft buffer and then house points that were within 1000 ft of another two house points were buffered by 1000 ft due to the increased potential impact on the grouse. The Technical Subcommittee felt that areas where more house points are

located closer together (i.e. subdivisions) will have an even greater negative impact on the grouse habitat (Gunnison County 2018).

Placing the 1,000-ft buffer to the north of Phase II equates to 201 acres of potential impacts from human disturbance to GuSG north of Phase II (Figure 5). Adding the 201 acres to the 290-acre Phase II development area equals 491 acres of impact in the North Parcel. This area of impact is supported through observation on the southern end of Phase II of a hen with a brood within 165 feet below the Cemetery Ditch (Figure 6), and towards the north through observation of scat and CPW telemetry locations in the northeast corner of the WCU Donation (the 160-acre CPW CE) (Figures 6 and 7). Therefore, it can reasonably be deduced that GuSG occasionally use the 1,000-foot buffer area and Phase II and will be impacted by disturbance from the development. The 491 acres of impacted habitat provides breeding (nesting/early brood-rearing) habitat, summer-fall (brood-rearing) habitat, and wintering habitat for GuSG (Figure 10).

The entire South Parcel where development is planned has been determined to be a “No Take” area. However to the south of this area the 1,000 foot disturbance area equates to 106 acres of potential impacts from human disturbance to GuSG south of Phase I (Figure 5). Telemetered GuSG have been located on the eastern part of Tomichi Creek SWA (and on Tenderfoot Mountain further south) and are known from previous sightings by CPW personnel to occur at the toe of Tenderfoot Mountain west of Tomichi Creek SWA (Nathan Seward, CPW, pers. comm. 2019a). GuSG use may occur to a greater extent south of Tomichi Creek itself, but, based on observations GuSG may occasionally use the 1,000 buffer area east and south of the South Parcel. The 106 acres of impacted habitat provides summer-fall (brood-rearing) habitat and some breeding (nesting/early brood-rearing) habitat (Figure 10).

Mortality, injury, or behavioral disruption to GuSG may occur from collision or other interaction with construction vehicles and large equipment during movements and operation on the development site during construction, maintenance and repair activities, commercial or personal transportation. There is also potential for collision/interaction from continued human activities that occur such as recreational use of trails, domestic pet interactions, and vehicle and biking use of constructed roads. Building activities including equipment use, traffic, supply storage, noise disturbance, lighting disturbance, temporary fencing, and landscaping are additional activities and disturbances that will also cause negative consequences to GuSG within the ITP area.

Noise and sight disturbances may result in additional individual behavior changes and changes in habitat utilization. Sage grouse are shown to have a high site fidelity to seasonal habitat and these anthropogenic stressors may result in reduced vitality and decreased nesting and brooding success for individuals historically utilizing the area. There is an active lek located on public lands to the north of the Western Plan Area, and while the development area has been established outside of the RCP disturbance guidelines, there is potential these impacts may further result in avoidance behaviors leading to reduced lek attendance during GuSG breeding season. Additional impacts may occur during execution of lawful activities within the management strategies and monitoring requirements contained within this HCP.

## 6.2 Anticipated Take of GuSG

There is currently low to infrequent use of the Gunnison Rising area by GuSG because of poor habitat quality and more continuous habitat to the northeast of the North Parcel and south of the South Parcel. There are also the fluctuating seasonal use patterns, large movements that have been observed in GuSG and the difficulties inherent in predicting locations of individuals across the species range at any given point in time. Nonetheless, we can reasonably expect some take to occur based on past observations of GuSG on Gunnison Rising, Gunnison Rising mitigation/open space property, and in the near vicinity.

The total ITP area, which includes areas affected by the action, is 491 acres on the North Parcel and 106 acres on the South Parcel for a total of 597 acres (See Figure 5). This is the area used in the calculation of take in the HCP.

Occupied GuSG habitat in the Gunnison Basin at the time of listing was 592,168 acres (79 FR 69192) and was divided by the average number of grouse in the Basin, based on annual lek counts over 24 years as described in Table 3, to come up with how many acres on average each grouse needs to survive. The average number of adult GuSG is 3,650 resulting in each adult GuSG needing about 162 acres. This number will then be used to divide the number of acres impacted by the Gunnison Rising Development. There are 597 acres of habitat impact proposed to be covered by the ITP and dividing that acreage by 1 GuSG per 162 acres results in 4 (3.7) adult GuSG anticipated to be taken from the Gunnison Rising development.

## 6.3 Anticipated Impacts on Critical Habitat

In its November 20, 2014, Designation of Critical Habitat for Gunnison Sage-Grouse: Final Rule, the FWS designated 592,168 acres as occupied critical habitat for GuSG in the Gunnison Basin (Table 1, 79 FR 69312). Most of the Western Plan Area (1,358 acres out of the 1,522 acres) is included in designated critical habitat and all of the Eastern Plan Area (26,956 acres) is included in designated critical habitat. The 160-acre CE on the North Parcel Mitigation Area and a 4-acre parcel (part of a larger WCU-enrolled parcel under the Candidate Conservation Agreement with Assurances (CCAA) for Gunnison sage-grouse (CPW 2006)) within the development area were previously excluded from critical habitat (79 FR 69312).

While any habitat loss may impact individuals utilizing the immediate resources of the area, the impact of loss of critical habitat to the Gunnison Basin population and species is anticipated to be comparatively minor. Vegetation data from the 2007 Habitat Assessment for Gunnison Rising North (GVES 2007) shows that the seasonal GuSG habitat that will be affected during development activities is low to moderate quality, recognizing there are overlapping seasonal habitats (See Table 5). Habitat quality has probably not changed much in recent years since there has not been any conservation measures implemented that would improve this habitat since 2007. The 2007 Habitat Assessment did not include the South Parcel but the affected areas there could probably be categorized as moderate quality habitat (see Figure 11) because



there has been some GuSG use observed close to the affected areas on the south side of Tomichi Creek (Nate Seward, CPW, pers. comm. 2019b; Figure 7).

Utilizing the same mapping process completed in certificate of inclusions under the CCAA for Gunnison sage-grouse (CPW 2006), and recent telemetry and observational information provided by CPW (Nathan Seward, CPW, pers. comm. 2019b; Figure 7), an updated seasonal habitat map was created (Figure 10). This map of the potential, Breeding, Summer/Fall and Winter Habitats utilized landscape characteristics such as; slope and aspect, vegetation, and proximity to irrigation ditches to create a GIS representation of those habitats. This map shows the area of impact from Gunnison Rising (Figure 10).

For the North Parcel, Figure 10 shows that Breeding and Summer/Fall habitats start with the habitat line 165 feet out into the hay meadow below the Highline Ditch and continues to the north boundary of the HCP area. The Winter habitat is mapped based on the south to west slope aspects of approximately 150 to 330 degrees, which represents the potential landscape that could contain the least amount of snow in the winter months. The total land area for these habitats amounts to approximately 794 acres for Breeding habitat, 1014 acres for Summer/Fall habitat and 421 acres for Winter habitat. They can be divided out based on: the North part of the HCP - Breeding habitat - 713 acres, Summer/Fall habitat - 713 acres, and Winter habitat - 421 acres, and the South part of the HCP - Breeding habitat - 81 acres, and Summer/Fall habitat - 301 acres.

Although not all the critical habitat is high quality some will still be impacted. On the North Parcel, there is 290 acres of Gunnison Rising considered within the Development footprint. However, four acres of this were excluded from critical habitat designation for a total of 286 acres of critical habitat impacted within the Development footprint. Outside of the Development footprint there is a 1,000 foot buffer, as established by the HPT, where consequences of the action are considered to reduce the value of critical habitat. This area equals 201 acres; however, an additional 4 acres of this area is within the 160-acre CE that has been excluded from critical habitat, resulting in 197 acres of critical habitat within the 1,000 foot buffer. Consequently, 483 acres of critical habitat will be impacted from the Gunnison Rising Development on the North Parcel (Figure 5).

For the South Parcel there is 206 acres of critical habitat that is within the Development footprint and is all considered as part of the “No Take” area (Terry Ireland, U.S. Fish and Wildlife Service, pers. comm. 2019). In addition, there are 94 acres south of the planned development area but north of Tomichi Creek that is non-functional GuSG habitat due to existing disturbances such as Highway 50 and other disturbances (Nate Seward, CPW, pers. comm. 2019b; Figures 5, 10). This area won’t be developed but is also considered within a “No Take” area on the South Parcel making critical habitat within the “No Take” area 300 acres on the South Parcel (Figure 5). Lastly, there are 106 acres of critical habitat within the 1,000 foot HPT-designated buffer south of Tomichi Creek where critical habitat value may be reduced, particularly in close proximity to the proposed development. Therefore, in total the South Parcel contains 406 acres of critical habitat that will be impacted by the project.

The entirety of the North and South Parcel Mitigation/Open Space Buffer, including the 1,000 foot buffers will, nonetheless, still provide a disturbance buffer to GuSG further north and south off of the areas. Additionally, the habitat may still be utilized by GuSG within the 1,000 foot buffer as distance increases from development. However, not counting potential GuSG use within the 1,000 foot buffer, out of the 1,522 acres in the Western Plan Area, 889 acres considered occupied critical habitat will be impacted from the Development (483 acres North Parcel; 406 acres South Parcel). No critical habitat will be impacted from Gunnison Rising in the Eastern Plan Area.

## Gunnison Rising HCP Seasonal Habitats

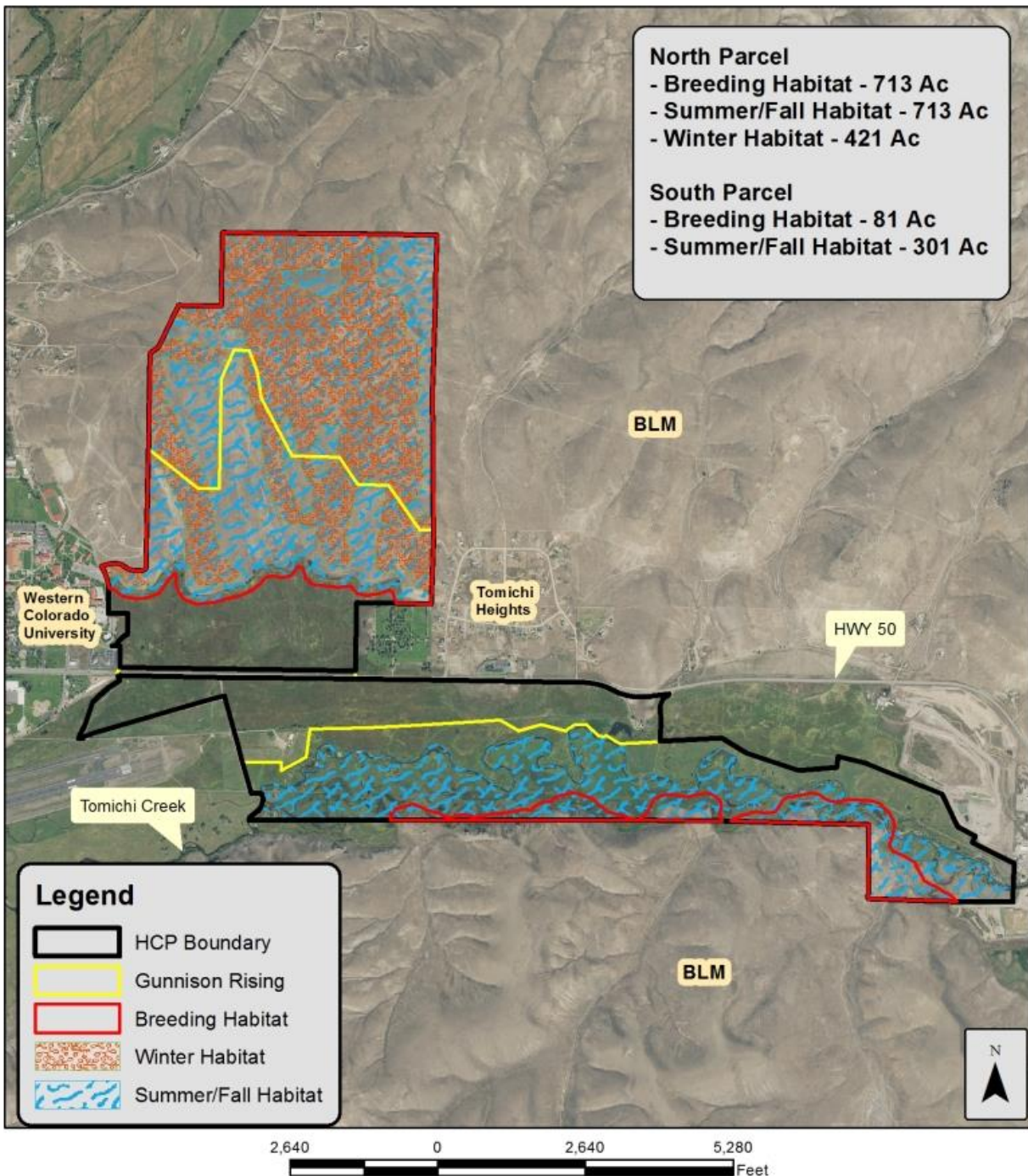


Figure 10: This map depicts the mapped Seasonal Habitat in Overall Gunnison Rising HCP Boundary. It provides the area of Gunnison Rising that overlaps with the Seasonal Habitats on the North Parcel.

## **6.4 Anticipated Impacts of the Taking of GuSG**

The effects of any incidental take of individual GuSG resulting from covered activities will be relatively small when considering the Gunnison Basin population as a whole. Anticipated take of 4 adults is only 0.11 percent of the 24-year annual average of 3,650 GuSG within the Gunnison Basin. Also, there has been little documented use of habitat by GuSG within the 597 acres proposed for coverage by the ITP (see Figure 6 and Figure 7). The existing impact due to already existing adjacent development, Hwy 50 traffic, and recreational use of the property, most likely have provided a level of negative effect to GuSG to keep them from utilizing much of the habitat within Gunnison Rising. However, some use has been documented and resiliency of the GuSG population will likely be diminished due to reduction of available habitat primarily for brood rearing (summer/fall habitat) but also wintering and possibly breeding habitat.

## **6.5 Methods for Determining Habitat Quality and Amount of Take Outside of the Development Footprint**

The HPT was utilized to help inform all of section 6 of this HCP on impacts to GuSG and their critical habitat. In development of the HPT the RCP Habitat Guidelines and soils/vegetation mapping were used together to create a Tool that represented the potential seasonal habitat structure on the landscape within the Gunnison Basin. The seasonal habitats were then given scores that reflected the overall ranking of the different seasonal habitats. Then different impacts to that habitat were incorporated into the HPT in a manner that showed how those impacts affected the overall scoring of habitat values across the Basin. Impacts that had GIS mapped layers to show the effects of those impacts on the landscape, such as; roads, trails, houses, and powerlines, were utilized to show negative effects and develop the scoring within the HPT. The HPT was cross-checked by CPW against much of the data they had collected within the Gunnison Basin and almost 85% was found to match-up with CPW data.

The HPT was approved by the GBSGSC in 2012 as a tool to assist the County with making determinations in the application process for permits leading to Land Use Changes. When the HPT was approved a score of 15 points and above was considered Tier I habitat and the most critical for conservation efforts in the Basin. A score of 15 and above represented over 50 percent of the land area within the Gunnison Basin. A score of 14 and below was considered Tier II habitat. Tier II habitat is still GuSG habitat, but because of its proximity to potential impacts it is considered already impacted.

As with any tool utilized for natural resource inventory, especially a mapping tool, it is only as good as the information put into the computer. So it is always a given that the HPT gives you a starting point to work with and every determination needs to have further ground inventory to collect the needed information to help make more site specific recommendations for the actions that are being planned. The HPT is not qualitative, so onsite evaluation based on the GuSG habitat guidelines is needed as well to help make good resource decisions. An example from Figure 11 is a small unit of Tier I habitat that sits on a small rock bluff adjacent to Hwy 50 and north of a residence on the eastern part of Gunnison Rising. It is mapped as habitat, but

knowing that location it would be very unlikely that GuSG utilize that small spot due to the true nature of the habitat in existence in the location so it is considered part of the “No Take” area.

To provide a sense of the HPT mapping in relationship to the HCP area and its surrounding habitat, Figure 11, provides a larger scale overview. With the knowledge that yellow to green is Tier II habitat (Figure 11) you can visualize how the development within the existing City and Tomichi Heights subdivision are impacting habitat. You can also see in Figure 10 how the main WAPA powerline transects habitat north of Highway 50, and how some landscape and habitat characteristics can overcome that impact and still be considered Tier I habitat. South of Tomichi Creek the division between Tier I and Tier II stands out as that irrigated hay meadow/sagebrush transition that is important habitat for GuSG throughout much of the annual life-cycle.

In the same manner that the HPT differentiates Tier I and Tier II habitat, the same is true for the FWS Designated Critical Habitat mapping. There is knowledge that GuSG do not utilize every inch of land area within the Designated Critical Habitat and so utilizing the HPT can provide needed information to help make decisions on where best to plan for development into the future. GuSG Seasonal Habitats can be easily mapped on the landscape utilizing the RCP Habitat Guidelines (Figure 10). Once mapped you can then overlay the planned development footprint that will impact the habitat and that Development footprint can then be utilized to help come up with quantity of impacts to the quality categories of GuSG habitat utilizing the HPT (see Figures 5, 8, and 11).

In trying to capture the change in habitat values from this planned development or the overall impacts, a 1,000 foot buffer can be created around the planned development area. A 1,000 foot buffer was decided upon by HPT development participants as the largest area of indirect impact from a housing development. A housing development was considered to be 3 or more houses being within 1,000 feet of each other and had the highest negative impact to habitat with a score of -20 (Figure 11) (Gunnison County 2018).



## Gunnison Rising HCP Habitat Prioritization Tool

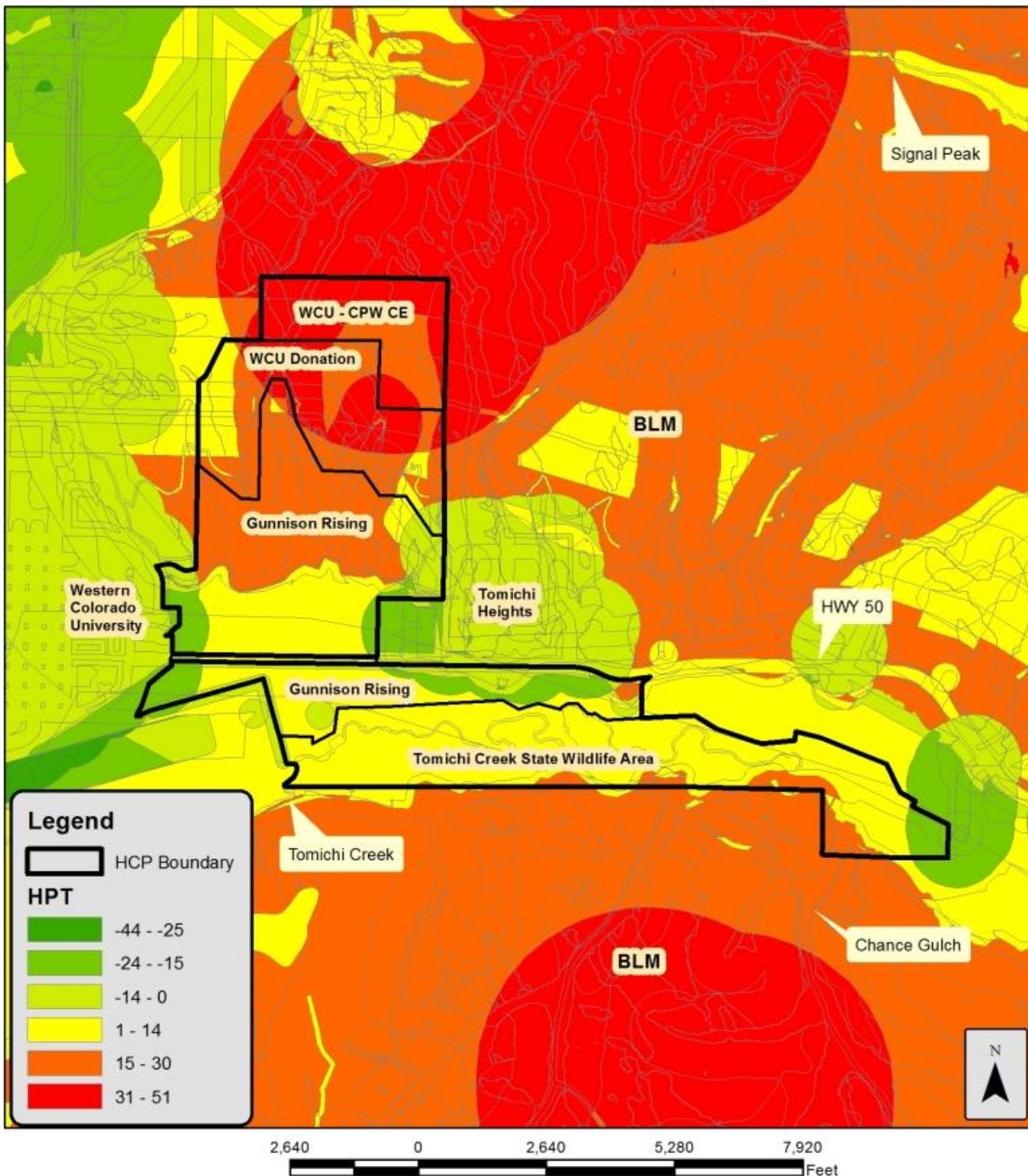


Figure 11: This map shows how the Habitat Prioritization Tool (HPT) maps habitat, with the higher priority habitat being 15 and above or Tier I. It shows the impacts to habitat from adjacent development and the major powerline north of Highway 50.



## 7.0 CHANGED AND UNFORESEEN CIRCUMSTANCES

On February 23, 1998, the Services codified a final rule (63 FR 8859) to provide certain regulatory assurances to permittees under section 10(a)(1)(B) (50 CFR 17.22(b)(5)(iii)(B) and 17.32(b)(5)(iii)(B); 50 CFR 222.307(g)(3)(ii)). These assurances are called the No Surprises assurances and essentially mean that “a deal is a deal.” As long as the permittee is properly implementing the HCP, the Services will not impose additional requirements or restrictions. If an unforeseen circumstance occurs, unless the permittee consents, the Services will not require him/her to commit additional land, water, or financial compensation or impose additional restrictions on the use of land, water, or other natural resources beyond the level agreed to in the HCP. The Services will honor these assurances as long as a permittee is implementing the requirements of the HCP, permit, and other associated documents in good faith, and their permitted activities will not jeopardize the species.

Section 17.32(b)(5) of 50 CFR refers specifically to No Surprises assurances for threatened species (which is the GuSG’s current classification) and the regulatory assurances afforded to the City are as follows:

*“(5) Assurances provided to permittee in case of changed or unforeseen circumstances. The assurances in this paragraph (b)(5) apply only to incidental take permits issued in accordance with paragraph (b)(2) of this section where the conservation plan is being properly implemented, and apply only with respect to species adequately covered by the conservation plan. These assurances cannot be provided to Federal agencies. This rule does not apply to incidental take permits issued prior to March 25, 1998. The assurances provided in incidental take permits issued prior to March 25, 1998 remain in effect, and those permits will not be revised as a result of this rulemaking.”*

### 7.1 Changed Circumstances

Section 17.32(b)(5)(i) and (ii) of 50 CFR states the following: *“Changed circumstances provided for in the plan.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and were provided for in the plan's operating conservation program, the permittee will implement the measures specified in the plan.

*(ii) Changed circumstances not provided for in the plan.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and such measures were not provided for in the plan's operating conservation program, the [FWS] will not require any conservation and mitigation measures in addition to those provided for in the plan without the consent of the permittee, provided the plan is being properly implemented.”

Changed circumstances provided for in this HCP are as follows:

#### 7.1.1 Fire

If unplanned fire occurs in GuSG habitat within the Plan Area, additional conservation measures may be required to meet the biological goals of the HCP. Reseeding following an unplanned fire

event may be necessary to reduce the potential for invasive weeds and to maintain a desired shrub, grass, and forb species mix. Wildfires in some instances depending on the size and severity of the fire can be a way to enhance GuSG habitat by resetting succession. This will have to be evaluated on a case by case basis to determine conservation measures if any that may be needed to lessen the impacts to GuSG and their habitat. As the Permittee, the City will be responsible for collaborating with the developer(s) and other necessary parties in the event of a fire on land within the City boundary. WCU and CPW (State of Colorado) will be responsible for fires occurring on their respective lands within the North and South Parcel Mitigation/Open Space Buffer. If fire spreads between the landownership all entities will collaborate to deal with reclamation efforts. The BLM has initial attack responsibilities for all fires that start on BLM lands (Kathy Brodhead, BLM, pers. comm. 2021) and would, therefore, address fires on the BLM Cabin-Alder Allotment (Eastern Plan Area) as a matter of course.

#### **7.1.2 Invasive Plant Species**

In accordance with the Colorado Noxious Weed Act and in conjunction with management practices utilized by the County, the City's Annual Weed Management plan focuses on eradication, containment, and suppression of noxious weed species and restoration of desirable plant communities in treatment areas with the purpose of limiting impacts to native vegetation within the City. The City has an extensive Undesirable Plant Management Section 5.50 within their Municipal Code (City 2019). In conjunction with an increase in invasive species or new invasive species that are identified; weeds will be sprayed or otherwise treated with best management practices to remove them from the Plan Area. As the Permittee, the City will be responsible for collaborating with the developer(s) and other necessary parties in the event weeds invade the development area on land within the City boundary. WCU and CPW (State of Colorado) will be responsible for weeds occurring on their respective lands within the North and South Parcel Mitigation/Open Space Buffer. As weeds spread between the landownership all entities will collaborate to deal with weed control efforts. The City and collaborators will be responsible for determining best management practices and conducting weed control efforts. The BLM is responsible for managing weeds on BLM lands (Kathy Brodhead, BLM, pers. comm. 2021), and would, therefore, address weeds on the BLM Cabin-Alder Allotment (Eastern Plan Area) as a matter of course.

#### **7.1.3 Climate Change**

Seasonal and annual temperature and precipitation changes were examined and used in assessing the vulnerability of species and ecosystems (The Nature Conservancy (TNC) 2011). The average annual temperature of the Upper Gunnison Basin is projected to increase by approximately 3°C (5.4°F) from the late 20th century to the middle 21st century. Average summer temperatures are projected to increase by approximately 4°C (7°F). Climate projections show no distinct trends in average annual or seasonal precipitation, but they reveal several ecologically important changes, including a 10-25% decrease in average annual runoff, more precipitation falling as rain rather than snow, earlier snowmelt and spring runoff peaks, and changes in the seasonality of flooding. Rising temperatures are projected to bring about these hydrologic changes no matter how precipitation patterns change in the basin (precipitation projections are considerably less certain than temperature projections). These

changes underscore the critical need to assess and prepare for ongoing and projected climate change impacts to ecosystems and species in the Gunnison Basin.

The timeframe for this vulnerability assessment is the mid-21st century (2040-2069), as near-term projections of climate change scenarios are largely based on past greenhouse gas emissions and thus have a higher degree of certainty than longer-term horizons (TNC 2011).

Low-elevation sagebrush shrublands are not expected to be limited by a requirement for cooler, high-elevation habitat. Stands in the Gunnison Basin are already established in cooler, drier habitats than are typical for this type outside the area. There are no apparent barriers to dispersal for these plant communities, although there is some question of whether adjacent juniper communities will replace the big sagebrush stands if winter temperatures warm sufficiently. While individual stands of sagebrush are vulnerable to increased invasive species, e.g., cheatgrass, and increased frequency/severity of fires, sagebrush will likely migrate into adjacent elevations with appropriate moisture and environmental conditions. While the Gunnison Climate Working Group assumed there would be open habitat for sagebrush to move into, complications include differences in lag time of movement of forested types, soil texture and competition.

Resulting changes in vegetation communities over time that could impact GuSG may require changes to management activities to ensure that the performance standards established in this HCP are achieved. Such changes could include altering timing or frequency of management activities described in the HCP. Actions beyond those discussed in this HCP are not covered, and the City will consult with FWS to determine if any proposed changes to management actions beyond such minor adjustments as changes to timing or frequency may result in take of listed species and therefore require an amendment to the ITP to provide take coverage.

#### **7.1.4 Newly Listed Species**

If a newly listed species occurs within the Plan Area covered by this HCP, the City, with technical assistance by FWS, will determine if that newly listed species might be affected by the Covered Activities. If take to the newly listed species can be avoided, then no additional action is required. If take of the species cannot be avoided, the City will consult with FWS before proceeding with development activities to determine if the Permit can be amended to incorporate conservation actions for the newly listed species. Amending the HCP to incorporate an additional Covered Species will require additional analysis under the ESA and NEPA.

If natural events occur, such as those listed above, or other events, such as a change in genetic taxonomy, that could affect the City's ability to meet the biological goals and objectives described in this HCP, then how these events have affected GuSG and/or their habitat will be described and addressed in the annual monitoring plan. Site management actions will be altered/adapted using best available science to promote the continued goals and objectives of habitat conservation for the GuSG.

## 7.2 Unforeseen Circumstances

Section 17.32(b)(5)(iii) of 50 CFR states the following: “(iii) *Unforeseen circumstances*. (A) In negotiating unforeseen circumstances, the [FWS] will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the conservation plan without the consent of the permittee.

(B) If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, the [FWS] may require additional measures of the permittee where the conservation plan is being properly implemented, but only if such measures are limited to modifications within conserved habitat areas, if any, or to the conservation plan's operating conservation program for the affected species, and maintain the original terms of the conservation plan to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the conservation plan without the consent of the permittee.

(C) The [FWS] will have the burden of demonstrating that such unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. The [FWS] will consider, but not be limited to, the following factors:

- (1) Size of the current range of the affected species;
- (2) Percentage of range adversely affected by the conservation plan;
- (3) Percentage of range conserved by the conservation plan;
- (4) Ecological significance of that portion of the range affected by the conservation plan;
- (5) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the conservation plan; and
- (6) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.”

In the event of Unforeseen Circumstances FWS will provide written notice (except where there is substantial threat of imminent, significant adverse impacts to a Covered Species) to the City with a detailed statement of the facts regarding the unforeseen circumstance involved, the anticipated impact(s) to the Covered Species and their habitat(s), and all information and data that supports the assertion. In addition, the notice will include any proposed conservation measure(s) that is believed would address the Unforeseen Circumstance, an estimate of the cost of implementing such conservation measure(s), and the likely effects upon the City.

Section 17.32(b)(6) of 50 CFR states the following: “(6) Nothing in this rule will be construed to limit or constrain the [FWS], any Federal, State, local, or Tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a conservation plan.”

In accordance with No Surprises, the City will be responsible for implementing and funding adaptive management and remedial measures in response to any Changed Circumstances as described in the HCP. The City would only be obligated to address Unforeseen Circumstances within the specified limits described above.

The City understands that No Surprises assurances are contingent on proper implementation of the ITP and the HCP. The City also understands that FWS may suspend or revoke the Permit, in whole or in part, in accordance with Federal regulations (50 CFR Section 13.27 and 13.28 and other applicable laws and regulations) in force at the time of such suspension or revocation.

## 8.0 FUNDING

The mitigation/open space buffers have already been established and the parcels are currently being managed in a manner that benefits GuSG. Funding has already been provided by GVP and includes:

1. North Parcel Mitigation Area: Funding was provided by donation of 420 acres of open-space land valued at \$1,730,000 to WCU for a donation tax credit. Included within this is the 160 acre CPW CE.
2. South Parcel Open Space Buffer: The 465-acre South Parcel Open Space Buffer was acquired through purchase of three parcels of land below appraised value as shown. This facilitated creation of CPW's Tomichi Creek SWA.

Appraised Values – June 16, 2009

GVP Parcel (western 209 acres of Tomichi Creek SWA) - \$2,020,000

BOR Parcel (eastern 249 acres of Tomichi Creek SWA) - \$2,400,000

Bradbury Parcel (7 acres Parcel of Tomichi Creek SWA) - \$170,000

Total Property Value - \$4,260,000

Compensation for GVP Parcels - BOR \$310,000 and CPW \$1,546,228

Total Compensation - \$1,856,228

Difference of - \$2,403,772 (Amount funded by GVP)

In addition to the above funding, GVP will be responsible for the costs associated with the monitoring transects completed in the area north of the Cemetery ditch. These monitoring transects will be completed annually for 5 years. The cost of this monitoring will be approximately \$1,500 per year or a total of \$7,500.

The City will cover the collection of other monitoring information and GIS development mapping from available resources throughout the ITP duration. The primary source of administrative costs is expected to be staffing, as dedicated City staff time will be required to

process building permit applications, the associated certificates of inclusions, and ensure HCP compliance. Office-related and other miscellaneous expenses would also likely be incurred.

Staffing costs include salaries and benefits for City employees working on the administrative aspects of the HCP. Office expenses include, but are not limited to, computers, other IT equipment and software, supplies, communications, copying and printing, and postage.

Overall, it is estimated that annual administrative costs for the HCP would be approximately \$1100 annually, excluding contingencies, and would remain relatively constant over the Permit term. This expenditure is staff salaries and administrative fees that are part of the overall planning departments operating budget which will come out of City general fund budget, which amounts to a small percentage of the overall operating budget.

## **9.0 PERMIT/HCP ADMINISTRATION**

The City will hold the ITP and be the overall administrator of the HCP/ITP. All developers or individuals proposing to build homes on Gunnison Rising property will submit a Building Permit Application (Appendix A) and will go through the City approval and permitting process. Any infrastructure besides homes (streets, utilities, etc.) will also require overall City approval. At the time developers or individuals are going through the Building Permit process a certificate of inclusion will be provided to inform them of their inclusion under this HCP and to inform them of building and pet restrictions to be implemented for the benefit of GuSG. The developers or individuals will be required to sign the certificate of inclusion prior to receiving a City Building Permit.

As implementation of the HCP/ITP moves forward there is the realization that the area to be developed under the HCP/ITP may occur well into the future and the ITP will most likely need to be extended to accommodate the buildout of Gunnison Rising. As such language on amendments and renewal are provided below.

### **9.1 Amendments**

It is necessary to establish a procedure whereby the Permit can be amended. However, it is important that the effect of any amendments will not jeopardize any listed species or other rare species or adversely affect them. Amendments must be evaluated based on their effect on the habitat as a whole. The FWS must be consulted on all proposed amendments that may affect any federally listed species. The types of proposed amendments and the applicable amendment procedures are described below.

#### **9.1.1 Minor Amendments**

Minor amendments are changes to the HCP whose effects on Covered Species, the conservation strategy, and the Permittee's ability to achieve the biological goals and objectives of the HCP are either beneficial or not significantly different than those described in this HCP.



Such amendments also will not increase or change impacts to species, their habitats, and the environment beyond those analyzed in the HCP, NEPA, and the Biological Opinion or increase the levels of take beyond that authorized by the ITP. Minor amendments may require an amendment to the ITP. A proposed minor amendment must be approved in writing by the USFWS and the Permittee before it may be implemented. A proposed minor amendment will become effective on the date of the joint written approval. If a minor amendment requires amending the ITP, the minor amendment would become effective on the date of approval of the amended ITP.

The Permittee or the USFWS may propose minor amendments by providing written notice to the other party. The party responding to the proposed minor amendment shall respond within 30 days of receiving notices of such a proposed modification, unless the other party agrees to an extension of that period. Such notice shall satisfy the provisions of 50 CFR Section 13.23 as well as include a description of the proposed minor amendment; the reasons for the proposed amendment; an analysis of the environmental effects, if any, from the proposed amendment, including the effects on Covered Species and an assessment of the amount of take of the species; an explanation of the reason(s) the effects of the proposed amendment conform to and are not different from those described in this HCP; and any other information required by law.

When the Permittee proposes a minor amendment to the HCP, the USFWS may approve or disapprove such amendment or recommend that the amendment be processed as a major amendment as provided below. The USFWS will provide the Permittee with a written explanation for its decision. When the USFWS proposes a minor amendment to the HCP, the Permittee may agree to adopt such amendment or choose not to adopt the amendment. The Permittee will provide the USFWS with a written explanation for its decision. The USFWS retains its authority to amend the ITP for just cause, however, consistent with 50 CFR section 13.23.

#### **9.1.2 All Other Amendments**

Other amendments may be considered major amendments to the Permit, which would require additional steps be taken under both NEPA and the ESA. A major amendment is any proposed change or modification that does not satisfy the criteria for a minor amendment. Major amendments to the HCP and ITP are required if the Permittee desires, among other things, to modify the Covered Activities described in the HCP such that they may affect the impact analysis or conservation strategy of the HCP, affect other environmental resources or other aspects of the human environment in a manner not already analyzed, or result in a change for which public review is required. Major amendments must undergo the same formal review process as the original HCP and ITP, including appropriate NEPA analysis, a Federal Register notice, and an intra-Service Section 7 consultation. For example, a major amendment would be required if the documented level of take exceeds that covered by the ITP. A major amendment may also be required if take of another ESA-listed species not adequately covered by the ITP becomes likely.

The HCP and ITP may be formally amended upon written notification to USFWS with the supporting information similar to that provided with the original ITP application. The specific document requirements for the application may vary, however, based on the substance of the amendment. For instance, if the amendment involves an action that was not addressed in the original HCP or NEPA analysis, the documents may need to be revised or new versions prepared addressing the proposed amendment. If circumstances necessitating the amendment were adequately addressed in the original documents, an amendment of the ITP might be all that would be required. If possible, the need for a major amendment should be determined at least one year before ITP expiration to allow for development of the amendment application and subsequent processing prior to expiration of the original ITP. A major amendment may require additional or modified minimization and/or mitigation measures, and/or additional or modified monitoring protocols.

## 9.2 Permit Renewal

The expected life of the project is 64 years. However, this HCP has been written in anticipation of issuance of an ITP with a 20 year duration (see section “1.3 Permit Holder/Permit Duration” for further explanation). The Permittee may seek a Permit renewal for continued construction, operations, and maintenance of the project if construction continues past 20 years. Depending on issuance and length of time of the first renewed Permit, additional renewals may be sought including if construction continues past the project’s expected 64-year life span.

The provisions of 50 CFR 13.22 govern how the existing ITP can remain in effect during the processing of a new Permit or Permit extension. However, the Permittee may not take Covered Species beyond the quantity authorized by the original ITP, nor may the Permittee change the scope of the HCP during this time. If the Permittee fails to file a renewal request within 30 days prior to ITP expiration, the ITP shall become invalid upon expiration. The Permittee must have complied with all annual reporting requirements to qualify for a Permit renewal.

If a Permit renewal is requested, the FWS will review the HCP to determine if changes are necessary. Revisions depend on how much of the originally covered activity has been completed, whether the mitigation has kept pace with impacts, or possibly if the status of covered species has changed. The effects of climate change, or other factors, may lead the FWS to recommend new species or habitat surveys to identify potential HCP amendments. Any renewed Permit must satisfy applicable statutory and regulatory requirements in force as of the date of the approval of the renewal request. Permit renewals must be advertised in the Federal Register before the FWS makes a decision, even if there are no revisions.

## **10.0 TABLES/FIGURES/APPENDICES**

### **10.1 List of Tables**

Table 1: Projected Population Growth Rates – Gunnison County

Table 2: Residential Parcels

Table 3: Summary of population data from Gunnison sage-grouse lek counts in the Gunnison Basin, 1995–2018.

Table 4: Long-term averages for Climate at the Gunnison climate station

Table 5: Qualitative Seasonal Habitat Data from the GuSG Habitat Assessment for Gunnison Rising North, 8/8/2007

### **10.2 List of Figures**

Figure 1: Map overview of Gunnison Rising 2009 Annexation Boundary within the City of Gunnison and the City of Gunnison within the State of Colorado

Figure 2: Map depicting the Urban Growth Boundary within the Three-Mile Planning Boundary around the City of Gunnison

Figure 3: Most recent planning effort put forth by the 4 Community Partners

Figure 4: Map of the Overall Habitat Conservation Planning Area

Figure 5: Map depicting the area of “No-Take” to GuSG Habitat within Gunnison Rising

Figure 6: Map from 2007 habitat assessment showing GuSG sign and bird observations

Figure 7: Map of CPW telemetry GuSG location adjacent to the HCP planning area

Figure 8: Signal Peak Trails Master Plan map

Figure 9: Map showing the Cabin-Alder BLM allotment

Figure 10: Map depicting the Seasonal Habitat in the Gunnison Rising HCP and the overlap of development on those seasonal habitats

Figure 11: Map showing the Habitat Prioritization Tool (HPT) in relationship to the HCP Area

### **10.3 List of Appendices**

Appendix A: Building Permit Application Draft

Appendix B: Draft Certificate of Inclusion

## 11.0 REFERENCES

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### 11.3 List of Preparers

Gunnison Valley Properties, 864 W South Boulder Rd, Louisville, CO 80027-2410

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John M. Scott, Scott Resource Management Specialist (SRMS). P.O. Box 996, Gunnison, Colorado, 81230. 970-901-8498. [scottrms@gunnison.com](mailto:scottrms@gunnison.com)

# APPENDICES

## Appendix A



### BUILDING PERMIT APPLICATION DRAFT

City of Gunnison Building Office  
201 W. Virginia Ave., PO Box 239, Gunnison, CO 81230  
Phone # (970) 641-8151 Fax # (970) 641-8156

**Please submit three (3) copies of building plans and one (1) digital copy if available.**

<b>CONTACT INFORMATION</b>	<b>OWNER</b>	Name _____		<b>CONTRACTOR</b>	Name _____	
		Address _____			License # _____	
		City _____	State/Zip _____		Address _____	
		Phone # _____			City _____ State/Zip _____	
<b>APPLICANT</b>		Name _____		<b>JOBSITE</b>	Phone # _____	
		Address _____			Email _____	
		City _____	State/Zip _____		Street Address: _____	
		Phone # _____			<b>Legal Description</b>	
		Email _____		Lot(s) _____ Block _____ Addition _____		
				Subdivision: _____		
<b>PERMIT TYPE</b>	<input type="checkbox"/> Single Family Residential		<input type="checkbox"/> Duplex	<input type="checkbox"/> Multi-Family Residential		<input type="checkbox"/> Accessory Dwelling Unit
	<input type="checkbox"/> Residential Addition		<input type="checkbox"/> Garage	<input type="checkbox"/> Deck/Porch		<input type="checkbox"/> Remodel
	<input type="checkbox"/> New Commercial Bldg.		<input type="checkbox"/> Commercial Storage	<input type="checkbox"/> Commercial Addition		<input type="checkbox"/> Commercial Remodel
	<input type="checkbox"/> Change of Occupancy		<input type="checkbox"/> Certificate of Occupancy	<input type="checkbox"/> Utility/Misc.		<input type="checkbox"/> Other _____
<b>BUILDING TYPE</b>	Brief description of project: _____		<b>Construction Type:</b>			
			<input type="checkbox"/> Standard wood framing, trusses, concrete foundation <input type="checkbox"/> Metal framing, concrete foundation <input type="checkbox"/> Block building <input type="checkbox"/> Manufactured <input type="checkbox"/> Alternative (describe) _____			
<b>PLANNING &amp; ZONING</b>	<b>LANDSCAPING REQUIREMENTS</b>		Zone District: R-1 R1M R-2 R2M R3 RMU C CBD I B-1			
	A landscaping plan shall be submitted for all new building projects demonstrating compliance with the requirements of the City of Gunnison Land Development Code. All approved landscaping shall be completed prior to issuance of a final Certificate of Occupancy.		Front Setback: _____		Bldg. Height: _____	
			Side Setback: _____		Lot Size: _____	
			Rear Setback: _____		Landscaping Plan Submitted? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Is the property governed by a Homeowner's Association (HOA)?						
<input type="checkbox"/> Yes <input type="checkbox"/> No (If yes please provide a copy of architectural review approval)						
<b>ENDANGERED SPECIES ACT</b>	Is the property located in the Gunnison Rising Incidental Take Permit area (Gunnison Sage-grouse (GuSG) habitat)?					
	<input type="checkbox"/> Yes <input type="checkbox"/> No <i>-Refer to the Gunnison Rising Habitat Conservation Plan</i> IF YES, you will follow the construction activity guidelines agreed upon in the Gunnison Rising incidental take authorization of the Threatened GuSG? <input type="checkbox"/>					
<b>COST/SIZE</b>	Estimated cost of the project: \$ _____		Total square footage (SF) of structure*:			
	Building Office Valuation: \$ _____		Residential SF*		Porch/Deck SF	
	For manufactured buildings, include cost of foundation and cost of unit: \$ _____		Garage SF		Commercial SF*	
*exterior dimensions of building (excluding garage and porches) for each floor						
<b>SIGNATURE</b>	<b>Notice:</b> Separate State issued permits are required for electrical and plumbing work. From the date of building permit issuance, the applicant has 180 days to commence work before the permit expires. By signing this application the applicant(s) acknowledges that the information provided above is true and correct and hereby agrees to comply with all provisions of laws, codes and ordinances governing this type of work and assumes responsibility for compliance with the approved plans.					
	<b>Applicant Name(print)</b>		<b>Applicant Signature</b>		<b>Date</b>	
(LETTER OF AUTHORIZATION REQUIRED IF APPLICANT IS NOT THE OWNER)						
<b>OFFICE USE ONLY</b>	Building Code Construction Type: _____		Application Date Received: _____			
	Occupancy Classification: _____					
	Flood Plain: No Yes If yes - provide Elevation Certificate					
	Plan Review Complete:					
Building Office Approval:						
BUILDING PERMIT # _____						
Date Paid/Issued: _____						

Revised 1/2019

**Appendix B**  
**GUNNISON RISING LOW-EFFECT HCP**

**CERTIFICATE OF INCLUSION**  
For Private Land Owners

The City of Gunnison Community Development Department  
(Address)

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The United States Fish and Wildlife Service ("Service") issued to the City of Gunnison ("City") an Incidental Take Permit ("Permit") No. \_\_\_\_\_, on **[[[Date]]]**, for a period of 20 years, pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1539(a)(1)(B). Such Permit authorizes the "Take" of Gunnison Sage-grouse and its habitat in accordance with the terms and conditions of the Permit, the Gunnison Rising Low-Effect Habitat Conservation Plan ("HCP"). Under the Permit, **[[[insert name of party seeking the certificate of inclusion]]]** ("Participating Landowner") is authorized to perform certain activities covered in the Permit resulting in the "Take" of **Gunnison Sage-grouse** and its habitat, provided all applicable terms and conditions of the Permit and the HCP are met.

As the owner of the property depicted on Exhibit "A", attached hereto and incorporated herein by this reference, you are entitled to the protection of the Permit for the activities authorized by the County in the **[[[name of City permit]]]**, with respect to any Take of **Gunnison Sage-grouse** and its habitat as identified in the HCP. In the event the property depicted on Exhibit "A" is used for other purposes without the express consent of the City of Gunnison, Take Authorization under the Permit will automatically cease and the U.S. Fish and Wildlife Service shall be notified by the City of the revocation of the Certificate of Inclusion within 5 business days of such action. Such authorization is provided as described in the Permit and the HCP.

By signing this Certificate of Inclusion, you signify your election to receive Take Authorization under the City's Permit in accordance with the terms and conditions thereof and in accordance with the terms and conditions of the City of Gunnison's **[[[name of City permit]]]**. This Certificate of Inclusion does not impose additional regulatory control over the signatory nor require the signatory to provide additional information not called for in the Certificate of Inclusion, but instead ensures compliance with 50 Code of Federal Regulations, section 13.25(d).

Construction noise can adversely alter Gunnison Sage-grouse lekking (mating) activities. To ensure disturbance from construction is minimized, no construction activity will be permitted between sunset and 9 am from March 15th to May 15th within the Permit boundary. During this period, all pets must be on a leash. Additionally, the City strongly encourages pet owners to keep pets leashed from May 15th to June 30th when GUSG breed, nest, and raise chicks.

owners to keep pets leashed from May 15th to June 30th when GUSG breed, nest, and raise chicks.

Coverage under the Permit will become effective upon receipt of the executed Certificate of Inclusion by the City of Gunnison and Participating Landowner. In the event the subject property is sold or leased, the buyer or lessee must be informed of these provisions and execute a new Certificate of Inclusion and **[[[name of City permit]]]**.

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**(((Name of Private Landowner)))**

Date

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Address

Phone

**(((Name Community of Development Director)))**

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Community Development Director  
City of Gunnison, Representative

Date