



U.S. Fish and Wildlife Service

**Issuance of an Incidental Eagle Take Permit for
KB Home Colorado's Westwood Development Project
Adams County, Colorado**

Finding of No Significant Impact

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June 2023

Table of Contents

1	Introduction	1
2	Background	1
3	Alternatives Considered	2
3.1	Introduction	2
3.2	Alternative 1: No Action	2
3.3	Proposed Action	3
3.4	Evaluation of Alternatives.....	3
3.5	Selected Alternative	4
4	Effects of Implementation	4
4.1	Cumulative Effects	4
4.1.1	<i>Eagle Management Unit Analysis</i>	4
4.1.2	<i>Local Area Population Analysis</i>	4
4.1.3	<i>Local Project Area Analysis</i>	5
4.2	Conclusion.....	6
4.3	Native American Cultural Values	6
5	Public Comments	7
6	Eagle Take Permit Issuance Criteria Required Determinations	7
6.1	Context	9
6.2	Intensity.....	10
6.3	Findings.....	14
7	Conclusions	14
8	List of Abbreviations and Acronyms	16
9	List of Preparers	16
10	Literature Cited	17
	Attachment 1: Environmental Assessment for the Issuance of an Incidental Eagle Take Permit for the KB Home Colorado’s Westwood Development Project, Colorado	19

1 Introduction

This Finding of No Significant Impact (FONSI) addresses the issuance of an Incidental Eagle Take Permit (IETP, or permit) pursuant to the Bald and Golden Eagle Protection Act (Eagle Act) and its 2016 implementing regulations (16 U.S. Code [U.S.C.] Sections [§§] 668–668e and 50 Code of Federal Regulations [C.F.R.] § 22.80) to KB Home Colorado, Inc (Applicant). The Applicant seeks a permit for non-purposeful disturbance take of bald eagles (*Haliaeetus leucocephalus*) under the Eagle Act associated with the construction of the proposed KB Home Colorado’s Westwood Development Project (Project) in Adams County, Colorado. The Applicant’s Project is a single-family home development consisting of houses, a detention pond, waterlines, sewer infrastructure, roads and driveways, and landscaping. There is a bald eagle pair nesting about 145 feet north of the Project boundary. Construction activities within 0.5 mile but outside of the 660-foot nest buffer began in 2021. Currently, the Applicant is in the process of preparing the site and beginning construction outside of 660 feet of the nest.

In accordance with the National Environmental Policy Act (NEPA) (42 U.S.C. §§ 4321–4347) and its implementing regulations (40 C.F.R. Part 1500 and 43 C.F.R. Part 46), and United States Fish and Wildlife Service (Service) NEPA requirements (516 Department Manual [DM] 1–4, 8), the Service prepared an Environmental Assessment (EA) analyzing the impacts to the human environment associated with permit issuance (*Environmental Assessment for the Issuance of an Incidental Eagle Take Permit to KB Home Colorado’s Westwood Development Adams County, Colorado*). The EA analyzed two alternatives, not issuing the permit (the No-action Alternative or Alternative 1) or issuing the permit (the Proposed Action). The EA (Service 2023) is incorporated by reference into this FONSI and provided as Attachment 1. Permit issuance will authorize bald eagle take that is incidental to otherwise lawful construction activities described in the EA.

The EA details the impacts of the incidental disturbance take on bald eagles and how these impacts will be avoided, minimized, and mitigated. The Eagle Act authorizes the Service to issue an IETP only when the take is compatible with the preservation of eagle species, defined as “consistent with the goals of maintaining stable or increasing breeding populations in all eagle management units and the persistence of local populations throughout the geographic range of each species” (16 U.S.C. §§ 668–668e; see also 50 C.F.R. § 22.80). The EA evaluated the No-action Alternative and a Proposed Action Alternative, based on the ability of the alternatives to meet our purpose and need, and the associated impacts to the human environment.

Upon review of the EA, the Service concludes that a FONSI is appropriate. Following review and analysis, the Service has chosen to issue an IETP for activities under our Proposed Action described in the EA.

2 Background

The EA analyzes the effects of our proposed issuance of a short term 5-year IETP on bald eagles and the human environment and evaluates impacts over the 5-year duration of the Project. The IETP will expire after five years. The Applicant could then choose to apply for a new permit.

The Service received a permit application package from the Applicant for the construction of the Project, on August 23, 2022. The EA evaluates impacts to the human environment resulting from issuance of an IETP under the 2016 eagle regulations. Pursuant to the “high quality” information standards of the NEPA regulations (40 C.F.R. § 1500.1(b)), the EA also incorporated by reference the best available science, specifically updated population estimates and other information pertaining to eagles documented in the *Bald and Golden Eagles: Population Demographics and Estimation of Sustainable Take in the United States* (Service 2016a) and the *Programmatic Environmental Impact Statement for the Eagle Rule Revision* (PEIS; Service 2016c).

There could be up to 1.33 bald eagles taken per year at the Project as a result of nest disturbance for a total authorized take of up to seven bald eagles over the life of the 5-year permit.

The Applicant continues to demonstrate a good-faith effort to comply with the Eagle Act while we developed this EA and process the IETP application.

3 Alternatives Considered

3.1 Introduction

The EA considered alternatives for issuance of a permit for the disturbance take of bald eagles at the Project. The EA analyzed the effects of our proposed issuance of a short term 5-year IETP on the human environment and evaluates impacts over the 5-year duration of the Project. The permit expires after five years. Afterwards, the Applicant would be required to seek a new permit if the Applicant wishes to avoid the risk of prosecution for unauthorized eagle take.

NEPA requires Federal agencies to study, develop, and describe appropriate alternatives to recommended proposed actions with the potential to result in unresolved resource conflicts (42 U.S.C. § 4332(2)(E)). This is also consistent with CEQ and Department of Interior NEPA implementing regulations (40 C.F.R. Part 1500 and 43 C.F.R. § 46.300), and Service requirements (516 DM 1–4, 8).

The EA evaluated a No-action Alternative (Alternative 1) and one action alternative (the Proposed Action). The following is a brief description of the two alternatives considered. For a complete description of the alternatives, as well as alternatives that were considered but not evaluated further see Chapter 2 of the EA.

3.2 Alternative 1: No Action

Under the No-action Alternative, we would take no further action on the IETP application. In reality, the Service must take action on the IETP application, determining whether to deny or issue the permit. We consider this alternative because regulations require evaluation of a No-action Alternative, and it provides a clear comparison of any potential effects to the human environment from the proposed action.

The No-action Alternative in this context analyzes predictable outcomes of the Service not issuing an IETP. Under the No-action Alternative, the Project would likely continue to be

constructed without an IETP being issued. For purposes of analyzing the No-action Alternative, we assume the Applicant will implement all measures required by other agencies and jurisdictions while constructing the Project, but the conservation measures proposed in the IETP application package would not be required.

The Service would have no way to relate the eagle mortality occurring at this Project to other projects in the area, on a cumulative scale, when updating existing IETPs. Because the Applicant would not be bound by the terms and conditions of the IETP, the Service would not be able make recommendations for adaptive management triggers and implementation of conservation measures that would benefit eagle populations on a cumulative scale.

The Applicant may choose to implement some, none, or all those conservation and adaptive management measures. Under this alternative, we assume the Applicant will take some reasonable steps to avoid taking eagles, but the Applicant would be liable for violating the Eagle Act should take of an eagle occur.

3.3 Proposed Action

Under the Proposed Action, we would issue a short term 5-year IETP to the Applicant, authorizing them to disturb up to 1.33 bald eagles annually (for a total authorized take of up to seven bald eagles over the life of the 5-year permit) including the loss of productivity (i.e., eggs or young) due to potential abandonment of the nest during construction activities related to the Project, including required permit conditions, as allowed by regulation. The permit would also specify that the disturbance take authorization only applies to the bald eagle nest. The permit would also require nest monitoring and reporting from 2023 through the 2028 bald eagle nesting seasons; hence, the permit would not expire until after the 2028 breeding season. This would be a 50 C.F.R. § 22.80 Eagle Act permit (C.F.R. 2022) for disturbance take only. The permit would also require the Applicant to implement the applicant-committed conservation measures (Section 2 of the EA) that are designed to minimize possible bald eagle disturbance take associated with the Project.

The IETP is issued for 5 years and would apply to the Project's construction operations, effective immediately upon issuance of the permit. At the end of the 5-year permit term, the Applicant may choose to apply for a new permit under the regulations in place at that time.

As explained in the EA, the Project is in the Central Flyway Eagle Management Unit (EMU). The estimated take is analyzed at the local area population (LAP) scale, corresponding to an 86-mile radius around the Project and is based on the median natal dispersal distance of bald eagles (Service 2016a).

3.4 Evaluation of Alternatives

The EA evaluated potential impacts that could result from the issuance of a short term 5-year IETP. The EA was developed to assist the Service in evaluating effects on the human environment and in assessing the significance of the impacts that could result from the alternatives. "Significance" under NEPA requires the consideration of context and intensity (40 C.F.R. § 1508.27).

3.5 Selected Alternative

The Selected Alternative for this action is the Proposed Action (issuance of an IETP), as described below.

4 **Effects of Implementation**

As described in the EA, implementing the Selected Alternative would have no significant impacts on any of the environmental resources identified in the EA. Our Selected Alternative is consistent with our purpose and need as stated in the EA. A summary of the impact analysis and conclusions in the EA follows.

4.1 Cumulative Effects

In determining the significance of effects of the Project on eagles, we screened the proposed action against the analysis provided in the PEIS (Service 2016c) and the Service's 2016 report, "*Bald and Golden Eagles: Population Demographics and Estimation of Sustainable Take in the United States*" (Service 2016a). We also analyzed currently permitted take to ensure it does not exceed the Central Flyway EMU take limit and used our Cumulative Effects Analysis (Service 2013, Appendix C) to quantify cumulative local area population level effects.

The preservation standard under the Eagle Act means to be consistent with the goal of maintaining stable or increasing breeding populations of bald eagles in all EMUs and the persistence of local populations throughout the geographic range of the specie (50 C.F.R. § 22.6). The Service independently evaluated the potential impacts from Project construction activities along with the implications for population level and cumulative effects. We developed conservative risk estimates for the Project and determined our cumulative effects analysis to be protective of bald eagles.

4.1.1 *Eagle Management Unit Analysis*

The annual take limit for the Central Flyway EMU is 70 bald eagles per year (Service 2016a). The Service analyzed potential bald eagle take within the Central Flyway EMU by assessing the permitted annual take of the 23 issued IETPs for the year 2023 and used that result as an average potential permitted take for the years 2023 to 2028 (timeframe covered by the requested permit). The cumulative potential loss of bald eagles from the currently issued 23 IETPs in the Central Flyway EMU is 39.24 bald eagles per year. The annual take of bald eagles that would be authorized by this permit does not exceed the EMU take limit of 70 bald eagles per year; therefore, compensatory mitigation for bald eagles is not required.

4.1.2 *Local Area Population Analysis*

The predicted take of bald eagles at the Project is up to 1.33 per year. The estimated median population size of bald eagles in the Central Flyway EMU is 30,427 (Service 2020). Based on the Service's process to calculate the LAP, the population size in the LAP is estimated to be 65 bald eagles and the annual 1% and 5% benchmarks for this local area population are about 0.65 and 3.27 bald eagles, respectively (Section 4.2 of the EA). Five currently permitted project LAP areas overlap this Project's LAP for bald eagles. Taken together, this Project's take and the

overlapping take of the other projects could result in a total annual take of 2.04 bald eagles (or 3.12% of the LAP).

The take at the LAP level of 3.12% does not exceed the 5% benchmark for the LAP associated with the Project, and this level of bald eagle take from the local area is consistent with the management objective established in the PEIS and codified in regulation. The impacts to bald eagle populations at both the LAP and EMU scales are therefore not significant. It is reasonable to assume that bald eagle numbers in the project vicinity are increasing and the conservative take estimate at the Project would not contribute to declines in the overall bald eagle population in the Central Flyway EMU.

We also documented, through an assessment of unpermitted take, that bald eagles are not experiencing atypically high levels of unpermitted mortality in this LAP. Based on the Service's eagle mortality database (which tracks sources of unpermitted take), there were 36 reported bald eagle mortalities within the LAP between 2001 and 2023, for an average of 1.57 per year. These mortalities are all considered to be unpermitted take and are largely due to anthropogenic causes (e.g., electrocution, shooting, poisoning, collision with wind turbines, etc.) and less due to natural causes or undetermined. On an annual basis, 1.57 unpermitted bald eagle takes equals about 2.39% of the total estimated bald eagle population in the LAP associated with the Project. This amount of unpermitted take is well below the 10% threshold level for unpermitted take within the LAP.

4.1.3 Local Project Area Analysis

The following cumulative effects analysis includes oil and gas related activities and infrastructure within a one-mile radius around the bald eagle nest. This supplemental analysis is consistent with recommendations from a past undertaking by the Service that shares similarities with the proposed action. Presently, there are existing housing developments, homesteads, roads and highways, and other related human infrastructure within one mile of the bald eagle nest (Section 1.4 of the EA). Much of this urban development has occurred within the last 15 years and had occurred before and during the known construction and existence of the nest. There will likely be more of this type of development into the future.

Oil and gas production that occurs within a one-mile radius of the nest includes 82 oil/gas production wells (Colorado Oil and Gas Conservation Commission website; accessed February 8, 2023). Of these 82 wells, 62 are currently abandoned and plugged, 6 are abandoned, and 14 are active. There is one abandoned and plugged well within 660 feet of the nest. Within a 1-mile radius of the nest, oil and gas wells are likely to be developed and oil and gas wells will be abandoned and plugged when they are no longer productive in the future, but these plans are not known.

Over time, future housing development, oil and gas development, recreation use, and agriculture use could collectively cause the eagle pair to leave the local area to nest elsewhere, persist for several years at the current nest location and then decide to move elsewhere to nest, or remain in this area and continue to nest at the current location into the future. This pair of bald eagles constructed a nest, successfully fledged young, and currently have hatchlings that have begun fledging as of June 6, 2023, near human development and activity and has shown tolerance to

these activities. Based on our analyses we anticipate the bald eagle pair will continue to adapt to changes related to human development and related activities and will persist at this location (or at least within their existing territory) into the foreseeable future.

4.2 Conclusion

The take that would be authorized by this permit does not exceed 5% of the LAP and does not exceed the EMU level for bald eagles (see Section 4.2 of the EA). We have determined there would be no significant adverse cumulative effects to the bald eagle population by issuing an IETP to the Applicant.

4.3 Native American Cultural Values

The National Historic Preservation Act (NHPA) is the principal federal law guiding federal actions with respect to the treatment of cultural, archaeological, and historic resources. Section 106 (54 U.S.C. § 306108) of the NHPA requires federal agencies, prior to taking action to implement an undertaking, to take into account the effects of their undertaking on historic properties and to give the Advisory Council on Historic Preservation (ACHP) and the State Historic Preservation Office (SHPO) a reasonable opportunity to comment regarding the undertaking. Historic properties are “any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on, the National Register...” of Historic Places (NRHP) (54 U.S.C. § 300308). The criteria used to evaluate the NRHP eligibility of properties affected by federal agency undertakings are contained in 36 C.F.R. § 60.4.

We contacted nineteen native sovereign nation tribal leaders potentially affected by this Project through emailed formal letters to offer the opportunity for formal consultation concerning this potential federal action. The letters informed the tribal leaders of the receipt of the IETP application and the availability of a draft EA for the purpose of a 30-day public comment period. To date, we have not received any comments or requests for consultation from Tribes.

To address the effects of eagle take on cultural practices, the Service assessed whether the Proposed Action or No-action Alternative would impact the religious and cultural significance of eagles to Native American communities. Cumulative effects of the Proposed Action for the non-purposeful take of bald eagles will not result in regional population declines as the take of bald eagles at the Project is expected to be below the sustainable take threshold for the EMU. In addition, the Service will review take thresholds in the EMUs on a regular basis relative to bald eagle population and demographic parameters and will modify or adjust the permitting regulations accordingly. If there is evidence that demand for permitted eagle take will exceed take thresholds for the EMUs, the regional structured-allocation process will ensure that authorized take necessary to meet the religious use for traditional ceremonies of a Native American Tribe will not be precluded due to other take being authorized for another purpose (Service 2009a). The IETP will include permit conditions to ensure all recoverable eagle remains, parts, and feathers are sent to the National Eagle Repository and could then be used for Native American cultural and religious purposes. As described above, we invited tribes to engage in consultation and have determined that the avoidance and minimization measures implemented at the Project will also minimize effects to Traditional Cultural Properties (TCP). In-depth discussion related to the environmental consequences of issuing an IETP on TCPs can

be found in the 2016 PEIS section 3.7.1.3 Federal and Tribal Statutes and is incorporated here by reference.

5 Public Comments

The Service published the draft EA on the Service's Drupal electronic library website (<https://www.fws.gov/media/kb-homes-colorados-westwood-development-project>) on May 2, 2023, opening a 30-day public comment period which ended on May 31, 2023. We did not receive any comments or recommendations during the public review period. It has been determined that there is no new significant information, and the Service has prepared this FONSI in accordance with NEPA regulations (40 C.F.R. § 1508.13).

6 Eagle Take Permit Issuance Criteria Required Determinations

In consideration of this 5-year permit, we evaluated the Selected Alternative's ability to meet the required determinations of the permit issuance criteria identified in the Eagle Act's 2016 permitting regulations (50 C.F.R. Part 22; 81 F.R. 91494 (Dec. 16, 2016)).

Applicants, whose otherwise lawful activities may result in take of eagles, can apply for an IETP so that their projects may proceed without potential violations of the Eagle Act. Under the Eagle Act regulations, the Service may issue an IETP for eagle take that is associated with, but not the purpose of, an activity (50 C.F.R. § 22.80). Such permits can be issued by the Service when the take that is authorized is compatible with the Eagle Act preservation standard, is necessary to protect an interest in a particular locality, is associated with, but not the purpose of, the activity, and cannot be practicably avoided (50 C.F.R. § 22.80); see also Revisions to Regulations for Eagle Incidental Take and Take of Eagle Nests; Final Rule (Final Eagle Rule; 81 Federal Register [F.R.] 91494 [December 16, 2016; Service 2016b]). The preservation standard under the Eagle Act means to be consistent with the goal of maintaining stable or increasing breeding populations of bald eagles in all EMUs and the persistence of local populations throughout the geographic range of each species (50 C.F.R. § 22.6).

We evaluated the Final EAs Selected Alternative's (Service 2018) ability to meet the issuance criteria's required determinations identified in the Eagle Act's 2016 permitting regulations (see 50 C.F.R. § 22.80(f)). Under the regulations, the Service may not issue a permit unless the following issuance criteria are met:

- 1) The direct and indirect effects of the take and required mitigation, together with the cumulative effects of other permitted take and additional factors affecting eagle populations within the eagle management unit and local area population, are compatible with the preservation of bald eagles.*

The direct and indirect effects of the estimated take of bald eagles is consistent with the Service's management objectives, as related to eagles, at the LAP and EMU levels. Based on the Service's process to calculate the LAP and currently available data for this process, the estimated annual take related to this Project could result in a total of 2.04 bald eagles (or 3.12% of the LAP). The take at the LAP level of 3.12% does not exceed the 5% benchmark for the LAP associated with the Project, and this level of bald eagle take from the local area is consistent with the

management objective established in the PEIS and codified in regulation. The impacts to bald eagle populations at both the LAP and EMU scales are therefore not significant. It is reasonable to assume that bald eagle numbers in the project vicinity are increasing and the conservative take estimate at the Project would not contribute to declines in the overall bald eagle population in the Central Flyway EMU.

The Service finds that the direct and indirect effects of the take and required mitigation, together with the cumulative effects of other permitted take and additional factors affecting eagle populations within the EMU and LAP, are compatible with the preservation of bald eagles.

2) The taking is necessary to protect an interest in a particular locality.

The Colorado Front Range is experiencing rapid residential growth and has a strong need for housing for new and existing residents. The purpose of the Project is to build residential units to meet the housing needs of residents. Portions of the project are located within 660 feet of the occupied bald eagle nest. Specifically, 41 parcels and 3 local roads are located within 660 feet of the nest, as well as 9 parcels and 1 local road located within 330 feet of the active nest site. Site preparation and construction activities for this development began in 2021 outside the 660-foot buffer. The Service has determined that the taking is necessary to protect a legitimate interest in a particular locality.

3) The taking is associated with, but not the purpose of, the activity.

The Project is being constructed to provide housing. The Service has determined that unintentional take of bald eagles is associated with, but not the purpose of, the Project.

4) The Applicant has applied all appropriate and practicable avoidance and minimization measures to reduce impacts to eagles.

Accordingly, the Selected Alternative includes applicant-committed conservation measures, as described in Section 2 of the EA, that are designed to minimize possible bald eagle disturbance take associated with the Project. The Service has determined that take is unavoidable, and that the Applicant has applied all appropriate and practicable avoidance and minimization measures to reduce impacts to eagles. Despite the implementation of the avoidance and minimization measures, some incidental take of migratory birds and eagles may still occur.

5) The Applicant has applied all appropriate and practicable compensatory mitigation measures, when required, pursuant to paragraph (c) of this section, to compensate for remaining unavoidable impacts after all appropriate and practicable avoidance and minimization measures have been applied.

Per our eagle take permit regulations (50 C.F.R. Part 22), the Service could only require compensatory mitigation when the EMU take limit is exceeded, or if necessary to protect the LAP, neither of which is the case for the Project (i.e., this LAP can withstand this level of potential take). Hence, in this case the Service will not require compensatory mitigation for bald eagle take as related to this Project.

6) *Issuance of the permit will not preclude issuance of another permit necessary to protect an interest of higher priority according to the following prioritization order:*

(i) Safety emergencies;

(ii) Increased need for traditionally practiced Native American tribal religious use that requires taking eagles from the wild;

(iii) Non-emergency activities necessary to ensure public health and safety; and

(iv) Other interests.

Issuance of the permit will not preclude issuance of another permit necessary to protect an interest of higher priority.

7) *Issuance of the permit will not interfere with an ongoing civil or criminal action concerning unpermitted past eagle take at the Project.*

There are no ongoing civil or criminal actions concerning unpermitted past eagle take at the Project.

Conclusion

The Service has determined that issuing this permit is compatible with the preservation of the bald eagle and consistent with the goals of maintaining stable or increasing breeding populations in all EMUs and the persistence of local populations throughout the geographic range of the specie (50 C.F.R. Part 22).

Significance Criteria Under NEPA

The Selected Alternative will not have a significant effect on the human environment. This conclusion is based on the following analysis of the significance criteria as defined in 40 C.F.R. § 1508.27 and as summarized in the EA.

6.1 Context

- NEPA requires the consideration of the significance of an action in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the Proposed Action. For instance, in the case of a site-specific action, significance would usually depend on the effects in the locality rather than in the nation as a whole. Both short- and long-term effects are relevant (40 C.F.R. § 1508.27(a)). For purposes of analyzing the Selected Alternative, the Service is required to consider effects of IETPs on eagle populations at three scales: (1) the EMU, (2) local area, and (3) project area (50 C.F.R. § 22.80 (f)). This is appropriate because the biologically-based bald eagle take thresholds are based on regional populations (Service 2009, 2016a, and 2016b). The EMU and LAP scales consideration is as part of the cumulative effects analysis and is discussed in more detail in Section IV above and in the EA (Chapter 4). The context of the Selected Alternative points to no significant environmental impacts, considering the following (as discussed in the EA): The Project occurs within the Central Flyway EMU, and our assessment is that bald eagle

take authorized by the Service within this EMU is well below the annual take limit for this EMU. Since this authorized take is within the take limit for this EMU, no compensatory mitigation is needed for the potential take of bald eagles, to meet the Eagle Act preservation standard.

At the LAP level, the Service-authorized take, added to projected take for the Project, is 3.12% for bald eagles and is below the 5% benchmark for this LAP. The Service's determination is that a take rate in this LAP of up to 3.12% is consistent with the management objective of bald eagle populations established in the PEIS and codified in regulation. The impacts to bald eagle populations at both the LAP and EMU scales are therefore not significant.

We also documented, through an assessment of unpermitted take, that bald eagles are not experiencing atypically high levels of unpermitted mortality in this LAP. Based on the Service's eagle mortality database (which tracks sources of unpermitted take), there were 36 reported bald eagle mortalities within the LAP between 2001 and 2023, for an average of 1.57 per year. These mortalities are all considered to be unpermitted take and are largely due to anthropogenic causes (e.g., electrocution, shooting, poisoning, collision with wind turbines, etc.) and less due to natural causes or undetermined. On an annual basis, 1.57 unpermitted bald eagle takes equals about 2.39% of the total estimated bald eagle population in the LAP associated with the Project. This amount of unpermitted take is well below the 10% threshold level for unpermitted take within the LAP. Therefore, there are no significant adverse effects on bald eagles contributed by the Project under the Selected Alternative.

- The Applicant may reduce the actual amount of bald eagle take (compared with our take estimates for the Project) through the applicant-committed conservation measures (Section 2 of the EA) that are designed to minimize possible bald eagle disturbance take associated with the Project. This will ensure that issuing an IETP to the Applicant will not have a significant impact on the local and regional bald eagle populations.
- Issuance of an IETP to the Project would have no significant adverse effects on environmental resources or values at the local or regional scale.

6.2 Intensity

Significance requires consideration of both context and intensity 40 C.F.R. § 1508.27. The term "intensity" refers to the severity of a proposed action's impact on the environment. In determining the intensity of an impact, 40 C.F.R. § 1508.27(b) directs Federal agencies to consider ten specific factors, each of which is discussed below in relation to the Selected Alternative for the Project.

1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect would be beneficial.

While consideration of the intensity of project impacts must include analysis of both beneficial and adverse effects, only a significant effect triggers the need to prepare an Environmental Impact Statement (EIS). The potential beneficial effects and adverse impacts of the Selected Alternative are discussed briefly below.

Beneficial Effects. The Selected Alternative includes implementation applicant-committed conservation measures to avoid and minimize adverse effects on bald eagles (Section 2 of the EA) that are designed to minimize possible bald eagle disturbance take associated with the Project. Our analysis is in comparison to the No-action Alternative under which the Project continues to operate without any IETP requirements and only limited conservation commitments. Issuance of this permit will allow the Project to operate in compliance with the Eagle Act should eagle take occur, while also providing the Service with valuable data from monitoring requirements.

Adverse Effects. As described in the EA, the Applicant has worked with the Service in development of the applicant-committed conservation measures to avoid and minimize adverse effects on bald eagles (Section 2 of the EA). The Selected Alternative incorporates these measures. Even so, a decrease in nest productivity or the loss of all productivity due to nest abandonment may occur as a result of construction activities. The eagle pair and nest will be monitored, and the applicant-committed conservation measures will be implemented to minimize possible bald eagle disturbance take associated with construction of the Project.

The analyses and implementation of the measures identified in the EA support the conclusion that the effects are not significant.

2) The degree to which the proposed action affects public health or safety.

As discussed in Chapter 1 of the EA, the Proposed Action is issuance of an IETP for non-purposeful disturbance take of a bald eagle nest near the Project. The Service has determined that this action will have no effect on public health or safety.

3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wilderness, wild and scenic rivers, or ecologically critical areas.

The Service only evaluated whether to issue an IETP to the Applicant, thus, only potential impacts to eagles and effects of eagle take on cultural practices were considered in the EA analyses. As the Service is only evaluating whether to issue an IETP for the Project's construction activities, the Service has concluded that numerous resources would not be impacted by the Proposed Action, including air quality, climate change, environmental justice, land use, fisheries, geology and soils, human health and safety, noise, social and economic values, surface waterbodies and floodplains, vegetation, visual resources, wetlands, migratory birds, bats, and other wildlife. Thus, these resources were not evaluated in the EA. The Service finds that issuance of an IETP to the Applicant would have no further impact on these resources.

4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

No effects of the Selected Alternative were identified as being highly controversial. As a factor for determining within the meaning of 40 C.F.R. § 1508.27(b)(4) whether to prepare a detailed EIS, controversy is not equated with the existence of opposition to a use. The NEPA implementation regulations (43 C.F.R. § 46.30) defines controversial as "circumstances where a substantial dispute exists as to the environmental consequences of the proposed action and does

not refer to the existence of opposition to a proposed action, the effect of which is relatively undisputed.” This Project could cause disturbance take of the bald eagle nest, and there is no dispute about that consequence. The Service did not receive any comments during the comments period. It has been determined that there is no new significant information. The Service has determined that the Selected Alternative will not have effects on the quality of the human environment that are likely to be highly controversial.

5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

The applicant-committed conservation measures developed for the Project and the Service’s EMU and LAP analysis were prepared to address any uncertainty regarding impacts. The Selected Alternative requires the applicant adhere to the IETP conditions as outlined in Section 2 of the EA. Nest monitoring will continue throughout the permit term at a frequency of occurrence as agreed to by the Applicant and the Service.

Additionally, we did not identify predicted effects to any other environmental resources or values from construction of the Project that are highly uncertain or involve unique or unknown risks.

As a result, the Service has determined that there are no predicted effects of the Selected Alternative on the human environment that are considered to be highly uncertain or involve unique or unknown risks.

6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

Issuance of an IETP to the Project does not set precedent for, or automatically apply to other IETP applications the Service is reviewing or could review in the future. Each permit request will be evaluated on a case-by-case basis. Therefore, the Selected Alternative does not establish precedents for future actions or represent a decision in principle about a future action. Moreover, this Project will not limit the Service’s discretion to impose additional conditions on processing future IETP applications under the Eagle Act’s permitting regulations.

7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts.

We evaluated cumulative effects on eagles as required by NEPA (40 C.F.R. § 1508.8) and the Eagle Act’s permitting regulations. Under 50 C.F.R. 22.80 (f)(1), when reviewing a permit application, the Service is required to consider effects of take permits on eagle populations at three scales: (1) the EMU, (2) local area, and (3) project area. Our evaluation also considers cumulative effects.

We incorporated data on mortality at wind farms and electric utilities, and additional information on population-limiting effects in our eagle cumulative impact assessment. We also discussed reasonably foreseeable future (Section 4 of the EA).

The LAP of bald eagles for the Project is approximately 65 eagles and the annual 1% and 5% benchmarks for this local area population are about 0.65 and 3.27 bald eagles, respectively. Five currently permitted wind energy projects LAP boundaries overlap this Project’s LAP boundary

for bald eagles. Therefore, this Project could result in a total annual take of 2.04 bald eagles (or 3.12% of the LAP).

The Service has established take limits for bald eagle populations by EMU in the Final Environmental Assessment (FEA) for the 2009 Eagle Act take regulations and these were revised in the PEIS. This Project is within the Central Flyway, North EMU, which has an annual take threshold of 70 bald eagles per year (Service 2016b). The predicted annual take of bald eagles at the Project is up to 2.04 bald eagle per year. Therefore, the annual population effects in the Central Flyway EMU would be well below the corresponding take threshold. Therefore, there are no significant adverse cumulative effects contributed by the Project under the Selected Alternative.

8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

The NHPA of 1966 (54 U.S.C. § 300101 *et seq.*) is legislation intended to preserve historical and archaeological sites in the U.S. Historic properties are defined as “any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion in the National Register of Historic Places maintained by the Secretary of the Interior.” This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register Criteria (36 C.F.R. § 800.16(l)(1)). Some tribes and tribal members may consider eagle nests and other areas where eagles are present to be sacred sites provided for in the American Indian Religious Freedom Act of 1978 (42 U.S.C. § 1996 *et seq.*). Such sites may also be considered properties of traditional religious and cultural importance to an Indian Tribe (commonly referred to as Traditional Cultural Properties (TCPs)), and as potential historical properties of religious and cultural importance of NHPA.

Our authority is limited to potentially authorizing take of eagles by the Project. Apart from eagles, impacts to historical resources associated with construction of the Project are outside the scope of our review.

No new ground-disturbing activities will occur as part of or related to issuing the IETP.

We contacted nineteen native sovereign nation tribal leaders through formal letters, and other tribes potentially affected by this action. To date, we have not received any comments or consultation requests from Tribes. The current and future avoidance and minimization measures implemented at the Project will also minimize effects to TCPs.

We have determined that issuing an IETP will not result in the loss or destruction of significant scientific, cultural, or historical resources. The IETP will include permit conditions to ensure all recoverable eagle remains, parts, and feathers are sent to the National Eagle Repository and could then be used for Native American cultural and religious purposes.

9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

On February 27, 2023, the Service initiated an intra-service Section-7 consultation for the issuance of an IETP for the Project (Attachment 1, EA). It was determined that the Project will have “no effect” on six federally listed/proposed species, the Preble's meadow jumping mouse (*Zapus hudsonius preblei*), Ute ladies'-tresses (*Spiranthes diluvialis*), one Rocky Mountain species: gray wolf (*Canis lupus*), and four Platte River species: piping plover (*Charadrius melodus*), whooping crane (*Grus americana*), pallid sturgeon (*Scaphirhynchus albus*), and western prairie fringed orchid (*Platanthera praeclara*). Additionally, monarch butterfly (*Danaus plexippus*), a candidate species for listing under Endangered Species Act (ESA), could potentially occur in the Project area. Our decision regarding the IETP will not alter the physical footprint of the Project and will not alter its impacts to federally threatened and endangered species; therefore, no further evaluation of impacts to species listed under the ESA is warranted for the Service’s decision of whether to issue an IETP.

10) Whether the action threatens a violation of Federal, State, or local law requirements imposed for the protection of the environment.

The Selected Alternative will not violate any Federal, State, or local law.

6.3 Findings

Under the Selected Alternative, we estimate that up to 7 bald eagles (1.33 bald eagles annually) could be taken by the Project over a 5-year period. The Selected Alternative requires implementation of the applicant-committed conservation measures, as described in Section 2 of the EA, that are designed to minimize possible bald eagle disturbance take associated with the Project. The permit would also require nest monitoring and reporting from 2023 through the 2028 bald eagle nesting seasons. The issuance of an IETP to the Applicant would have no significant adverse effects on environmental resources or values. Based on the intensity and context of these effects and consideration of the elements associated with the Selected Alternative, issuance of an IETP to the Applicant as analyzed in the attached EA is not expected to result in significant adverse effects to the human environment.

7 Conclusions

The Service developed the EA and FONSI in accordance with the NEPA of 1969, as amended, and the Council on Environmental Quality’s Regulations for Implementing the Procedural Provisions of NEPA (40 C.F.R. Part 1500). The Service concludes that, with the implementation of the avoidance, minimization, mitigation, and adaptive management measures outlined in Section 2.1 of the EA, the Selected Alternative for issuance of an IETP to the Applicant for the operation at the Project will result in no significant impacts to the quality of the human environment, individually or cumulatively with other actions in the general area.

It is our determination that the Selected Alternative is not a major Federal action significantly affecting the quality of the human environment under Section 102(2)(c) (42 U.S.C. § 4332) of NEPA. Accordingly, an EIS is not required and our environmental review under NEPA is concluded with this finding of no significant impact (40 C.F.R § 1508.13 & 43 C.F.R. § 46.325). As stated at the beginning of this document, the EA prepared in support of this finding is incorporated by reference and attached (Attachment 1) hereto. The EA is also available from the

Service's online Drupal library website at: <https://www.fws.gov/media/kb-homes-colorados-westwood-development-project>.

Regional Director
Mountain-Prairie Region
U.S. Fish and Wildlife Service

Date

8 List of Abbreviations and Acronyms

C.F.R.	Code of Federal Regulations
EA	Environmental Assessment
EIS	Environmental Impact Statement
EMU	Eagle Management Unit
ESA	Endangered Species Act
F.R.	Federal Register
FONSI	Finding of No Significant Impact
IETP	Incidental Eagle Take Permit
LAP	Local Area Population
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NRHP	Nation Register of Historic Places
PEIS	Programmatic Environmental Impact Statement
SHPO	State Historic Preservation Office
U.S.C.	U.S. Code

9 List of Preparers

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10 Literature Cited

- Avian Power Line Interaction Committee (APLIC). 2012. Reducing Avian Collisions with Power Lines: The State of the Art in 2012. October. Edison Electric Institute and APLIC. Washington, D.C. Available at: http://www.aplic.org/uploads/files/11218/Reducing_Avian_Collisions_2012watermarkLR.pdf
- Bald and Golden Eagle Protection Act (Eagle Act). 1940. 16 United States Code § 668–668d. June 8, 1940. Available at: <https://www.gpo.gov/fdsys/pkg/USCODE-2010-title16/pdf/USCODE-2010-title16-chap5A-subchapII-sec668.pdf>
- Colorado Oil and Gas Conservation Commission, Department of Natural Resources. 2023. COGCC Interactive Map. Accessed February 8, 2023. Available online: <https://cogcc.state.co.us/maps.html#/gisonline>
- Dalthorp, D., M. M. P. Huso, and D. Dail. 2017. Evidence of absence version 2.0 software user guide. U.S. Geological Survey (USGS) Data Series 1055, Reston, Virginia, U.S.A.
- Federal Register. 91494–91554. Vol 81, No. 242, December 16, 2016. Rules and Regulations. REVIEW 54 United States Code (U.S.C.) § 300308. 2014. Title 54 - National Park Service and Related Programs; National Park Service and Related Programs Section (§) 300308 Historic Property. 54 U.S.C. 3000308. Available online: <https://www.law.cornell.edu/uscode/text/54/300308>
- U.S. Fish and Wildlife Service (Service). 2016a. Bald and Golden Eagles: Population Demographics and Estimation of Sustainable Take in the United States, 2016 Update. U.S. Fish and Wildlife Service (Service), Division of Migratory Bird Management, Washington D.C. April 26, 2016. Available online: <https://www.fws.gov/sites/default/files/documents/bald-and-golden-eagles-status-report-and-sustainable-take.2016.pdf>
- U.S. Fish and Wildlife Service (Service). 2016b. Eagle Permits; Revisions to Regulations for Eagle Incidental Take and Take of Eagle Nests; Final Rule. 50 C.F.R. 13 and 22. Department of the Interior Fish and Wildlife Service. 81 Federal Register (F.R.) 242: 91494-91554. December 16, 2016.
- U.S. Fish and Wildlife Service (Service). 2016c. Programmatic Environmental Impact Statement for the Eagle Rule Revision. United States Department of the Interior Fish and Wildlife Service. December 2016. Available online: <https://www.fws.gov/sites/default/files/documents/programmatic-environmental-impact-statement-permits-to-incidentally-take-eagles.pdf>
- U.S. Fish and Wildlife Service (Service). 2020. Final Report: Bald Eagle Population Size: 2020 Update. U.S. Fish and Wildlife Service, Division of Migratory Bird Management, Washington, D.C. U.S.A.
- U.S. Fish and Wildlife Service (Service). 2023. Environmental Assessment for the Issuance of an Incidental Eagle Take Permit to KB Home Colorado’s Westwood Development Adams County, Colorado. Available online: <https://www.fws.gov/media/kb-homes-colorados-westwood-development-project>

U.S. Fish and Wildlife Service (Service). 2023. Initial Project Scoping: IPaC - Information for Planning and Consultation. IPaC, Environmental Conservation Online System (ECOS), Service. Accessed February 27, 2023. Available online: <http://ecos.fws.gov/ipac/>

Attachment 1: Environmental Assessment for the Issuance of an Incidental Eagle Take Permit for the KB Home Colorado's Westwood Development Project, Colorado.