

January 17, 2019

James MacDonald
APC Southern Construction Co. LLC
14802 West 44th Ave.
Golden, CO 80403

**RE: Adequacy Review #2; 112 Construction Materials Application;
Franciscotti Pit #2; File No. M-2018-058**

Dear Mr. MacDonald,

On November 29, 2018, the Division of Reclamation, Mining and Safety (Division) deemed the above referenced application complete for the purposes of filing. Pursuant to Rule 1.4 the 90-day decision date for the application has been set for February 27, 2019. Please be advised on February 27, 2019, the application may be deemed inadequate and may be denied unless the following adequacy items are addressed to the Division's satisfaction. Additionally, if you are unable to satisfactorily address any concerns identified in this review before the decision date, it will be your responsibility to request an extension of the review period. If there are outstanding issues that have not been adequately addressed prior to the end of the review period, and no extension has been requested, the Division will deny this application. In order to allow the Division adequate time to review your responses to any adequacy issues, please submit your adequacy responses to the Division no later than one week prior to the decision date. Subsequent to receipt and review of the Applicant/Operator's response to these items the Division may identify additional adequacy items. Please respond to this Adequacy Notice with the requested additional/updated information in a cover letter titled "Adequacy #2 Response; M-2018-058".

EXHIBIT H – Wildlife Information (Rule 6.4.8):

1. On January 16, 2019 the Division received the attached comment from the Colorado Parks and Wildlife. Please commit to performing a preconstruction survey, as recommended, before the pit becomes active and send the results of the survey to the Division as soon as the survey is complete. If you do not agree with the recommendations please provide a suitable response as to why a survey is not needed.

Please respond to this adequacy issue no later than one week before the decision deadline, to ensure ample time for the Division to complete its review prior to its decision deadline. The decision deadline on this application is February 27, 2019. If additional time is required to respond to these adequacy issues please submit a written request for extension of the review period. The Division reserves the right to further supplement this document with additional adequacy issues and details as necessary.



Mr. MacDonald
January 17, 2019
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If you need additional information or have any questions, please contact me at Division of Reclamation, Mining and Safety, 1313 Sherman Street, Room 215, Denver, CO 80203, by telephone at **303-866-3567 x8114**, or by email at patrick.lennberg@state.co.us.

Sincerely,

A handwritten signature in blue ink, appearing to read "Patrick Lennberg". The signature is fluid and cursive, with the first name "Patrick" and the last name "Lennberg" clearly distinguishable.

Patrick Lennberg
Environmental Protection Specialist

Enclosure: CPW Site Evaluation

Cc: Michael Cunningham; Division of Reclamation, Mining & Safety



COLORADO

Parks and Wildlife

Department of Natural Resources

Pueblo Service Center
600 Pueblo Reservoir Road
Pueblo, CO 81005
P 719-561-5300 | F 719-561-5321

January 16, 2019

Patrick Lennberg
Division of Reclamation, Mining, and Safety
1313 Sherman St, Room 215
Denver, CO 80203

RE: Consideration of 112c Construction Materials Reclamation Permit Application
Franciscotti Pit #2, File No. M-2018-58

Dear Mr. Lennberg,

This application was reviewed and the proposed mine site was evaluated by District Wildlife Manager Travis Sauder. The proposed mining site is located in a prairie habitat adjacent to the Huerfano river corridor.

There are no known Threatened and Endangered species in the area, however US Fish and Wildlife Service should be consulted on any Federally-listed Endangered and Threatened Species that might be present at the location including Bald and Golden Eagles.

There is suitable habitat at or near the project location for nesting raptors and migratory birds. CPW recommends the use of preconstruction surveys to identify raptor nests within the project area and the implementation of appropriate restrictions near active nests as proposed in the report. CPW recommends adherence to the recommended buffer distances and timing stipulations identified in the attached document "Recommended Buffer Zones and Seasonal Restrictions for Colorado Raptors". Removal or relocation of any active raptor or migratory bird nest will require consultation with CPW and US Fish and Wildlife Service prior to disturbance. Both active and potential nest sites, winter night roosts should be considered when evaluating disturbance during construction.



The site visit showed the current ranch fencing was in poor repair and was down in many areas and gates were left open. If the fencing is repaired/replaced, CPW recommends fencing within the known range of elk, deer, and pronghorn should be a maximum top height of 42" with at least 12" spacing between the top two wires or rails and a bottom wire or rail at least 16" above the ground to allow passage of young animals and pronghorn antelope. It is also recommended that the top and bottom wires be a twisted barbless type or smooth wire or rail construction. While there are no "critical periods" for wildlife associated with this site, many animals including deer, elk, pronghorn, and bear use the Huerfano river as a travel corridor and migrate through the area to reach summer and winter ranges. Following the above fencing guidelines will allow animals to continue to move through the area safely and easily.

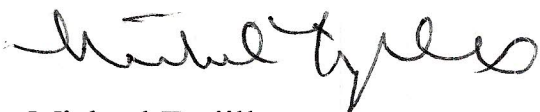
Due to the presence of black bears on the property and in the adjacent Huerfano River bottomland, CPW recommends that the operators of the facility invest in bear-proof trash containers if trash is going to be present on the facility.

Colorado Parks and Wildlife recommends that the site should be reclaimed with native grass/forbs/shrub species at the end of the operation of the pit. Ongoing monitoring for noxious weeds and treatment of those noxious weeds should continue after the pit is closed as per the plan submitted by Huerfano County Noxious Weed Control Program.

If you require further assistance or comments on this application, please contact Travis Sauder at (719)989-1027.

Thank you for allowing us the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Trujillo", with a stylized, cursive script.

Michael Trujillo
Area Wildlife Manager
Colorado Parks and Wildlife



RECOMMENDED BUFFER ZONES AND SEASONAL RESTRICTIONS FOR COLORADO RAPTORS

Tolerance limits to disturbance vary among as well as within raptor species. As a general rule, Ferruginous Hawks and Golden Eagles respond to human activities at greater distances than do Ospreys and America Kestrels. Some individuals within a species also habituate and tolerate human activity at a proximity that would cause the majority of the group to abandon their nests. Other individuals become sensitized to repeated encroachment and react at greater distances. The tolerance of a particular pair may change when a mate is replaced with a less tolerant individual and this may cause the pair to react to activities that were previously ignored. Responses will also vary depending upon the reproductive stage. Although the level of stress is the same, the pair may be more secretive during egg laying and incubation and more demonstrative when the chicks hatch.

The term "disturbance" is ambiguous and experts disagree on what actually constitutes a disturbance. Reactions may be as subtle as elevated pulse rate or as obvious as vigorous defense or abandonment. Impacts of disturbance may not be immediately evident. A pair of raptors may respond to human intrusion by defending the nest, but well after the disturbance has passed, the male may remain in the vicinity for protection rather than forage to feed the nestlings. Golden eagles rarely defend their nests, but merely fly a half mile or more away and perch and watch. Chilling and over heating of eggs or chicks and starvation of nestlings can result from human activities that appeared not to have caused an immediate response.

A 'holistic' approach is recommended when protecting raptor habitats. While it is important for land managers to focus on protecting nest sites, equal attention should focus on defining important foraging areas that support the pair's nesting effort. Hunting habitats of many raptor species are extensive and may necessitate interagency cooperation to assure the continued nest occupancy. Unfortunately, basic knowledge of habitat use is lacking and may require documentation through telemetry investigations or intensive observation. Telemetry is expensive and may be disruptive so a more practical approach is to assume that current open space is important and should be protected.

Although there are exceptions, the buffer areas and seasonal restrictions suggested here reflect an informed opinion that if implemented, should assure that the majority of individuals within a species will continue to occupy the area. Additional factors, such as intervening terrain, vegetation screens, and the cumulative impacts of activities should be considered.

These guidelines were originally developed by CDOW raptor biologist Gerald R. Craig (retired) in December 2002. To provide additional clarity in guidance, incorporate new information, and update the conservation status of some species, the guidelines were revised in January 2008. Further revisions of this document may become necessary as additional information becomes available.

RECOMMENDED BUFFER ZONES AND SEASONAL RESTRICTIONS

BALD EAGLE

Nest Site:

No surface occupancy (beyond that which historically occurred in the area; see 'Definitions' below) within ¼ mile radius of active nests (see 'Definitions' below). Seasonal restriction to human encroachment (see 'Definitions' below) within ½ mile radius of active nests from October 15 through July 31. This closure is more extensive than the National Bald Eagle Management Guidelines (USFWS 2007) due to the generally open habitat used by Colorado's nesting bald eagles.

Winter Night Roost:

No human encroachment from November 15 through March 15 within ¼ mile radius of an active winter night roost (see 'Definitions' below) if there is no direct line of sight between the roost and the encroachment activities. No human encroachment from November 15 through March 15 within ½ mile radius of an active winter night roost if there is a direct line of sight between the roost and the encroachment activities. If periodic visits (such as oil well maintenance work) are required within the buffer zone after development, activity should be restricted to the period between 1000 and 1400 hours from November 15 to March 15.

Hunting Perch:

Diurnal hunting perches (see 'Definitions' below) associated with important foraging areas should also be protected from human encroachment. Preferred perches may be at varying distances from human encroachment and buffer areas will vary. Consult the Colorado Division of Wildlife for recommendations for specific hunting perches.

GOLDEN EAGLE

Nest Site:

No surface occupancy (beyond that which historically occurred in the area) within ¼ mile radius of active nests. Seasonal restriction to human encroachment within ½ mile radius of active nests from December 15 through July 15.

OSPREY

Nest Site:

No surface occupancy (beyond that which historically occurred in the area) within ¼ mile radius of active nests. Seasonal restriction to human encroachment within ¼ mile radius of active nests from April 1 through August 31. Some osprey populations have habituated and are tolerant to human activity in the immediate vicinity of their nests.

FERRUGINOUS HAWK

Nest Site:

No surface occupancy (beyond that which historically occurred in the area) within ½ mile radius of active nests. Seasonal restriction to human encroachment within ½ mile radius of active nests from February 1 through July 15. This species is especially prone to nest abandonment during incubation if disturbed.

RED-TAILED HAWK

Nest Site:

No surface occupancy (beyond that which historically occurred in the area) within 1/3 mile radius of active nests. Seasonal restriction to human encroachment within 1/3 mile radius of active nests from February 15 through July 15. Some members of this species have adapted to urbanization and may

tolerate human habitation to within 200 yards of their nest. Development that encroaches on rural sites is likely to cause abandonment.

SWAINSON'S HAWK

Nest Site:

No surface occupancy (beyond that which historically occurred in the area) within ¼ mile radius of active nests. Seasonal restriction to human encroachment within ¼ mile radius of active nests from April 1 through July 15. Some members of this species have adapted to urbanization and may tolerate human habitation to within 100 yards of their nest.

PEREGRINE FALCON

Nest Site:

No surface occupancy (beyond that which historically occurred in the area) within ½ mile radius of active nests. Seasonal restriction to human encroachment within ½ mile of the nest cliff(s) from March 15 to July 31. Due to propensity to relocate nest sites, sometimes up to ½ mile along cliff faces, it is more appropriate to designate 'Nesting Areas' that encompass the cliff system and a ½ mile buffer around the cliff complex.

PRAIRIE FALCON

Nest Site:

No surface occupancy (beyond that which historically occurred in the area) within ½ mile radius of active nests. Seasonal restriction to human encroachment within ½ mile radius of active nests from March 15 through July 15.

NORTHERN GOSHAWK

No surface occupancy (beyond that which historically occurred in the area) within ½ mile radius of active nests. Seasonal restriction to human encroachment within ½ mile radius of active nests from March 1 through September 15.

BURROWING OWL

Nest Site:

No human encroachment within 150 feet of the nest site from March 15 through October 31. Although Burrowing Owls may not be actively nesting during this entire period, they may be present at burrows up to a month before egg laying and several months after young have fledged. Therefore it is recommended that efforts to eradicate prairie dogs or destroy abandoned towns not occur between March 15 and October 31 when owls may be present. Because nesting Burrowing Owls may not be easily visible, it is recommended that targeted surveys be implemented to determine if burrows are occupied. More detailed recommendations are available in a document entitled "Recommended Survey Protocol and Actions to Protect Nesting Burrowing Owls" which is available from the Colorado Division of Wildlife

Recommended Buffer Zones and Seasonal Restrictions Around Raptor Use Sites

[illegible]

DEFINITIONS

Active nest – Any nest that is frequented or occupied by a raptor during the breeding season, or which has been active in any of the five previous breeding seasons. Many raptors use alternate nests in various years. Thus, a nest may be active even if it is not occupied in a given year.

Active winter night roost – Areas where Bald Eagles gather and perch overnight, and sometimes during the day in the event of inclement weather. Communal roost sites are usually in large trees (live or dead) that are relatively sheltered from wind and are generally in close proximity to foraging areas. These roosts may also serve a social purpose for pair bond formation and communication among eagles. Many roost sites are used year after year.

Human encroachment – Any activity that brings humans in the area. Examples include driving, facilities maintenance, boating, trail access (e.g., hiking, biking), etc.

Hunting perch – Any structure on which a raptor perches for the purpose of hunting for prey. Hunting perches provide a view of suitable foraging habitat. Trees are often used as hunting perches, but other structures may also be used (utility poles, buildings, etc.).

Surface occupancy – Any physical object that is intended to remain on the landscape permanently or for a significant amount of time. Examples include houses, oil and gas wells, tanks, wind turbines, roads, tracks, etc.

CONTACT

For further information contact:

David Klute
Bird Conservation Coordinator
Colorado Division of Wildlife
6060 Broadway
Denver, CO 80216
Phone: 303-291-7320
Email: david.klute@state.co.us

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Revised 02/2008