



Public Notice

US Army Corps
of Engineers

Sacramento District
1325 J Street
Sacramento, CA 95814-2922

Number: 200675050

Date: February 10, 2006

Comments Due: March 10, 2006

SUBJECT: The U.S. Army Corps of Engineers, Sacramento District, (Corps) is evaluating a permit application to construct the Nevada Ridge development project, which would result in impacts to approximately 0.67 acres of waters of the United States, including wetlands. This notice is to inform interested parties of the proposed activity and to solicit comments. This notice may be viewed at the Corps web site at <http://www.spk.usace.army.mil/regulatory.html>.

AUTHORITY: This application is being evaluated under Section 404 of the Clean Water Act for the discharge of dredged or fill material in waters of the United States.

APPLICANT:	John E. Koenig Nevada Ridge, LLC 724 Vine Street Denver, Colorado 90206 970-390-9570	APPLICANT'S AGENT: ERO Resources Corp. Attn: Leigh Rouse 1842 Clarkson Street Denver, CO 80218 303-830-1188
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LOCATION: The project site is 11.46 acres located in Mount Crested Butte north of Hunter Hill and Summit roads within the NE 1/4 SE 1/4 of Section 26, Township 13 South, Range 86 West, Gunnison County, Colorado. It can be seen on the Gothic USGS Topographic Quadrangle.

PROJECT DESCRIPTION: The applicant is proposing to construct 7 single-family homes, 4 multi-family units, Nevada Summit Drive, and associated infrastructure to construct the Nevada Ridge Development. Approximately 0.67 acre of wetlands would be impacted by construction of the road and three building lots. Indirect impacts to a portion of the large wetland #2 will result from intercepting and redirecting groundwater. Grading for the development of Lot 9B would impact 0.02 acre of a small non-jurisdictional isolated wetland #1. Best management practices, to include silt fencing, will be utilized to help reduce aquatic impacts. Fill materials include 2,030 cubic yards (cy) of earthen fill, 30 cy of concrete, 246 cy of asphalt, and 133 cy of boulder and grout (for retaining wall).

The development would require construction of Nevada Summit Drive to provide access to the residences. Because of the steepness of the site, construction of a road would require a switchback. Town code requires no more than a 10% grade in a straight area, 8% grade around the switchback, 5% within 100 feet of the intersection of Nevada Summit Drive and Hunter Hill Road, and 4% within 50 feet of the cul-de-sac. The road, Nevada Summit Drive, would be 24 feet wide with a 2-foot should and a 10-foot drainage ditch on each side. Grading associated with the road and skier underpass would impact hillside wetlands. The houses (lots 1-7) would be constructed in areas already impacted by the road.

Construction would begin with grading of the road and construction of retaining walls, including mechanical tiebacks, surrounding the uphill side of the switchback for the road. Retaining walls for the switchback will be concrete or some other material with mechanical steel tiebacks and a large boulder facade. Upon completion of the grading all underground utilities (sewer, water, storm, gas, and electric) would be installed. Dewatering of the site would be done during the installation of the underground

utilities. Once utilities are installed, the road will be finish graded and paved. The next phase would be grading and construction of the multi-family portion of the project, followed by grading and construction of the single-family portion. Retaining walls will be concrete (without tiebacks) with a boulder facade or a boulder retaining wall. In order to construct the road and houses, the upper portion of the wetland would require dewatering. Some of the water (750-1,000 gallons per day) would be diverted to the lower portion of the undisturbed wetland (0.45 acre). Additional seeps occur downslope and would presumably continue to support wetlands.

Project construction is targeted for spring/summer 2006. The schedule would be to complete all infrastructure construction activities including compensatory wetland mitigation by the winter 2006. The buildout and sale of homes is expected to be completed by 2011.

Based on the available information, the overall project purpose is to construct residential development in Mount Crested Butte. The applicant believes there is a need to supply luxury housing to meet the demand of local residents, investors, and buyers entering the Mount Crested Butte market. They state that the market is expected to continue to grow over the next 5-10 years while Crested Butte Mountain Resort (CBMR) improvements are implemented and that there is a need to supply retiring "baby boomers" with resort/retirement opportunities. The attached drawings provide additional project details.

ADDITIONAL INFORMATION:

Environmental Setting. The project site is located south of the old T-bar ski lift near the southern ski boundary of Mount Crested Butte Ski Resort. The project area is in a rapidly developing area of Mount Crested Butte with many existing and proposed condominium developments. A relatively steep slope characterizes the project area. The site is a mountain meadow community with diverse herbaceous vegetation. Small shrubs are scattered throughout the uplands and these include wood rose, snowberry, bushy honeysuckle, and a few willows straying from the wetland areas. Several seeps emerge from the hillside and are dominated by wetland vegetation. Two main wetland vegetation communities (herbaceous and willow dominated) occur within the wetland areas. Wetlands are typically formed where water seeps from the mountainside and flows downslope, often through a small channel or series of small channels. The largest wetland area to be impacted is classified as scrub shrub. It is willow dominated and also includes beaked sedge, redtop, bog orchid, fringed gentian, monkshood, foxtail, cow parsnip, and corn lily. Sedge-dominated herbaceous wetlands are often intermingled under the willows in the wettest areas. These are characterized by beaked sedge or highly diverse grass and forbs. Four wetland areas totaling 1.24 acres occur on the property.

A wetland functional assessment using the "Montana Method" was performed for this site. Wetland functions are the physical, chemical, and biological processes or attributes vital to the integrity of wetland systems. For this site, the ratings are as follows:

High rated functions and values:

General wildlife habitat
Production Export/Food Chain Support
Groundwater Discharge/Recharge

Moderate rated functions and values:

Dynamic Surface Water Storage
Uniqueness

Low rated functions and values:

Sediment/Nutrient/Toxicant Retention and Removal
Recreation/Education Potential

Upland vegetation is a mix of grasses, forbs, and scattered small shrubs. The diversity of herbaceous species is high, which is fairly typical of mountain meadow communities in the area.

Background. Approximately 5 acres of the 11.46 acre Nevada Ridge parcel are within a conservation easement that was conveyed to the Crested Butte Land Trust (CBLT) in December 2000. With specific reference to land development, CBLT prohibited subdividing the conservation easement into lots or placing structures within the easement. However, anticipating future development of the remaining 6.46 acres, CBLT allowed for the future construction of a road in the conservation easement, providing a preliminary design with a certain length and width. The proposed project (Figure 3) identifies the preliminary road alignment in the conservation easement agreement that would allow access to proposed building lots of the development taking the site's steep topography and narrow width into consideration.

Alternatives. The applicant has provided information concerning several project alternatives:

Alternative 1 - No Action. Under this alternative, one access road would be constructed from Hunter Hill Road and would end in a cul-de-sac before reaching the conservation easement (Figure 5). With this alternative, there would be no wetland impact, and a Department of the Army permit would not be required. Alternative 1 would only allow 4 to 5 lots, which is not financially viable. Only 1/4 of the site would be developable, resulting in an unacceptable reduction in the value of the property. The previous project plan to sell 15 finished lots is no longer profitable due to project delays and corresponding costs as well as a significant increase in construction costs. The project plan to build homes on the 15 lots further extends the project by 3 to 5 years in order to generate a profit. This alternative was rejected because it would result in a financial loss for the project.

Alternative 2 - Road Alignment 2. Alternative 2 would allow access from Hunter Hill Road and would involve several curves to account for the steep grade (Figure 6). Because the road uses much of the developable space in this alternative, only 5 or 6 lots would be possible. The centerline curve radii of the road is tighter and grades are steeper than allowed by Town code. This alternative would impact about 0.35 acre of wetland, but the smaller number of lots would make the project economically infeasible. Alternative 2 does not meet purpose and need. It was rejected because it does not conform to local code and is not profitable.

Alternative 3 - Road Alignment 3. Alternative 3 would allow access from Hunter Hill Road (Figure 7), but differs from the preferred alternative in the angle of the cul-de-sac and radius of curve. The centerline curve radii is tighter than allowed by Town code. This alternative would allow for about 11 lots and would impact about 0.48 acre of wetland. Because Alternative 3 does not conform to local code, it does not meet purpose and need and was rejected.

Alternative 4 - Road Alignment 4. Alternative 4 would provide access from Hunter Hill Road and end in two cul-de-sacs (Figure 8). This alternative would allow for 11 lots and would impact about 0.49 acres of wetland. However, the centerline curve radii is too tight per Town code and roadway length in the conservation easement is too long and does not conform to CBLT design criteria. Additionally, grade on the eastern portion of the road is too steep (above 10%). For this reasons, Alternative 4 was rejected.

Alternative 5 - Road Alignment 5. Alternative 5 would allow access into the property by three separate roads: Hunter Hill Road, Black Diamond Trail, and Summit Road. Each road would end in a cul-de-sac (Figure 9). This alternative would allow for 14 lots and would impact about 0.02 acre of wetland. This alternative requires securing easements to build private roads across The Summit's privately owned lots abutting the project. While exploring securement of easements with The Summit lot owners, CBLT, and the Town, the applicant's attorney's legal opinion was that Summit lot owners could not grant Nevada Ridge easements for a private road across their property. The Summit declarations and bylaws restrict lot

use to single family residences only. Further, Colorado Supreme Court Case Law (Case #99SC810) support Home Owners Association's rights noting "we agree with the court of appeals that the single-family dwelling restrictive covenant precludes the owners of Lot 6 and Lot 13 from constructing a road across those lots." Although this alternative is less environmentally damaging, the applicant rejected Alternative 5 because they could not legally gain the required access to the cul-de-sacs from The Summit subdivision.

Alternative 6 - Road Alignment 6. Alternative 6 would allow one road from Hunter Hill and another road from Summit Road, both ending in cul-de-sacs on the south side of large wetland #2 (Figure 10). This alternative would allow access to 9 building lots and impact .02 acre. Similar to Alternative 5, this requires easements across The Summit's privately owned lots abutting the project. Alternative 5 was therefore rejected because legal access through The Summit subdivision could not be gained.

Alternative 7 (preferred) - Road Alignment 1. The preferred alternative would provide site access from Hunter Hill Road, would cut across the steep slope and turn through the conservation easement, ending in a cul-de-sac on the southeast portion of the site (Figures 3 and 4). This would impact 0.67 acre of the upper reach of wetlands and allow for an adequate number of development lots. This proposed development plan is the most feasible because access would be from an existing easement, would meet Town code criteria for radius of curve and slope of the road, and would create the best arrangement and number of lots. This alternative would allow for efficient use of the development area and also would preserve open space adjacent to the development. Although not the least environmentally damaging, it is preferred for the following reasons:

- * Development and road design conforms to Town code and CBLT design criteria.
- * It allows for an economically feasible development without subdividing the conservation easement.
- * It conforms to the wishes of the CBLT.
- * It meets project purpose and need.

The applicant's preferred roadway design is based on input from CBLT, CB Fire District, CBMR, and the Town Planning Commission and staff. The preferred alternative incorporates various design elements such as adequate turn radius for safety and fire issues and retaining walls to minimize wetland impacts.

Additional information concerning project alternatives may be available from the applicant or their agent. Other alternatives may develop during the review process for this permit application. All reasonable project alternatives, in particular those which may be less damaging to the aquatic environment, will be considered. An alternatives summary is attached as Table 1 (attachment 6 of 17).

Mitigation. The Corps requires that applicants consider and use all reasonable and practical measures to avoid and minimize impacts to aquatic resources. The applicant has explored several alternatives that would avoid and minimize wetland impacts; however, none of the less damaging alternatives were logistically feasible. Although 0.67 acre of wetland will be permanently impacted by the proposed project, 0.48 acre of wetland would remain preserved within the conservation easement for perpetuity. An additional measure to minimize wetland impacts is the use of a retaining wall at wetland edges (attachment 5 of 17). Furthermore, a 50-foot buffer area is planned between the wetland and proposed development. A minimum of 10 impacted willows will be transplanted to the remaining wetland edge to enhance this shrub buffer. Standard best management practices will also be used to minimize impacts to wetlands and water quality during construction.

Because of concerns with slope stability, the applicant explored offsite compensatory mitigation options. Five sites, as well as purchasing mitigation banking credits, have been evaluated. To provide compensatory mitigation, one or more of these options may be selected. The applicant is continuing to work with the Town, CBMR, the Forest Service, and CBLT to finalize the mitigation plan for submittal to

and approval by the Corps of Engineers. The mitigation options may be reviewed in Table 3 (attachment 13 of 17) and Figures 12-15.

The applicant will monitor mitigation success and provide as-built assessments following any mitigation construction to determine baseline conditions. Monitoring site visits, assessments, and photographic work will be performed during the growing season until the plantings have achieved and maintained success criteria. Corrective actions will be developed should any problems be encountered. Monitoring reports will be submitted annually to the Corps by December 31st until mitigation is deemed successful.

OTHER GOVERNMENTAL AUTHORIZATIONS: Water quality certification or a waiver, as required under Section 401 of the Clean Water Act from the Colorado Department of Public Health and Environment is required for this project. The applicant has indicated they have applied for certification.

Locally, the applicant is in the process of a subdivision and rezoning request with the Town of Mount Crested Butte.

HISTORIC PROPERTIES: Based on the available information (including a December 22, 2005 letter from the Colorado Historical Society), cultural resources are not within the project's area of potential effect.

ENDANGERED SPECIES: The project will not affect any Federally-listed threatened or endangered species or their critical habitat that are protected by the Endangered Species Act.

The above determinations are based on information provided by the applicant and our preliminary review.

EVALUATION FACTORS: The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the described activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit, which reasonably may be expected to accrue from the described activity, must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the described activity will be considered, including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership and, in general, the needs and welfare of the people. The activity's impact on the public interest will include application of the Section 404(b)(1) guidelines promulgated by the Administrator, Environmental Protection Agency (40 CFR Part 230).

The Corps is soliciting comments from the public, Federal, State, and local agencies and officials, Indian tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps to determine whether to issue, modify, condition, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

SUBMITTING COMMENTS: Written comments, referencing Public Notice 200675050, must be submitted to the office listed below on or before March 10, 2006:

Susan Bachini Nall, Environmental Engineer
US Army Corps of Engineers, Sacramento District
Colorado/Gunnison Basin Regulatory Office
400 Rood Avenue, Room 142
Grand Junction, Colorado 81501-2563
Email: Susan.Nall@usace.army.mil

The Corps is particularly interested in receiving comments related to the proposal's probable impacts on the affected aquatic environment and the secondary and cumulative effects. Anyone may request, in writing, that a public hearing be held to consider this application. Requests shall specifically state, with particularity, the reason(s) for holding a public hearing. If the Corps determines that the information received in response to this notice is inadequate for thorough evaluation, a public hearing may be warranted. If a public hearing is warranted, interested parties will be notified of the time, date, and location. Please note that all comment letters received are subject to release to the public through the Freedom of Information Act. If you have questions or need additional information please contact the applicant or the Corps' project manager Susan Bachini Nall, 970-243-1199, extension 16, Susan.Nall@usace.army.mil.

Attachments: 17