

BIOLOGICAL RESOURCES REPORT

**37th Street and 65th Avenue Intersection
Design Project
Evans, Colorado**

**Project No. STU M415-025
Subaccount No. 24988**

Prepared for:

City of Evans
1100 37th Street
Evans, Colorado 80620

Prepared by:

RockSol Consulting Group, Inc.
12076 Grant Street
Thornton, Colorado 80241
(303) 962 9300

RockSol Project No. 530.02



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March, 14, 2024

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Prepared for:

City of Evans
1100 37th Street
Evans, Colorado 80620

Attention: Mark Oberschmidt, P.E.
City Engineer

Prepared by:



RockSol Consulting Group, Inc.
12076 Grant Street
Thornton, Colorado 80241
(303) 962-9300

Lauren Gentile
Environmental Services Manager

Hunter Updegraff
Environmental Specialist

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1.0 PROJECT PURPOSE AND DESCRIPTION

37th Street is a regionally significant east to west corridor known as the Freedom Parkway, connecting I-25 to the City of Evans. The City has received funding from CDOT for improvements to the intersection of 37th Street and 65th Avenue. This new intersection will consist of widening from 2 lanes to 4 lanes to mirror future roadway widening plans on 37th Street, create new designated left turn lanes, add median islands, and install new traffic signals. The project limits along 37th Street extend approximately 1,300 feet west of 65th Avenue and 3,000 feet east of 65th Avenue to the intersection with Arrowhead Drive. The project limits along 65th Avenue extend approximately 550 feet north and 500 feet south of 37th Street. The project includes the extension of an existing waterline on 37th street from Arrowhead Drive approximately 1,200 feet to the west. Additional project elements include grading, drainage improvements, utility relocation, ADA compliant sidewalks, signing, striping, and landscaping.

Figure 1: Site Vicinity Map



1.1 PROJECT SITE CONDITIONS

The Project is located within Weld County, Colorado. 37th Street intersects US 85 approximately 4.8 miles east of the Project limits. 65th Avenue intersects 37th Street approximately 1.5 miles west of 47th Avenue (Figure 1). The Project is located in both Section 21 of Township 5 North, Range 66 West of the 6th Prime Meridian and Section 28 of Township 5 North, Range 66 West of the 6th Prime Meridian. The land use adjacent to the Project includes undeveloped land, agricultural land, and residential properties. The vegetation within the Project study corridor consists primarily of upland species. Few populations of noxious weeds were observed in various locations throughout the study corridor.

2.0 METHODS

RockSol Consulting Group has completed this report to evaluate biological resources that could be impacted during construction. Several data sources were reviewed to evaluate impacts to:

- Wetlands and Waters of the U.S.
- Threatened and endangered species potential to be present and their habitat requirements.
- Migratory bird potential to be present within the study area.
- GIS data to determine if there are known bald eagle, golden eagle, or other raptor nests present within the CPW buffer zone distances.
- Colorado Department of Agriculture (CDA) listed noxious weeds.

Site surveys were also completed by an Environmental Specialist to further determine any impacts to the above listed. RockSol Environmental Specialist Hunter Updegraff performed a site visit to evaluate biological resources present on August 14, 2023. The study area was visually surveyed by walking areas with public access and driving the internal, perimeter and surrounding areas of the project vicinity via roads. Binoculars were used to determine species of birds present and to determine if active nests are present. Photographs were taken during the visit (see Appendix A). The site visit began at approximately 10:00 AM and consisted of clear skies with a temperature of 71 degrees Fahrenheit during the site visit. Discussion of the results is presented in Section 3.

3.0 OBSERVATIONS AND RESULTS

Below is a summary of findings from reviewing multiple data sources and completing site visits to determine the impacts to biological resources within the study area.

3.1 WETLANDS AND WATERS OF THE U.S.

Background:

The Clean Water Act (CWA), passed by Congress in 1972, is a federal law that regulates the discharge of pollutants into the nation's surface waters, including: lakes, rivers, streams, wetlands, and coastal waters. Activities in Waters of the U.S. (WOUS) regulated under the CWA include fill for development, water resource projects, infrastructure development, and mining projects. Section 404 of the CWA requires a permit before dredged or fill material may be discharged into Waters of the U.S., including wetlands. The U.S. Army Corps of Engineers (USACE) is responsible for administering a permit review process, conducting jurisdictional determinations, and enforcing Section 404 provisions.

Site Conditions and Regulations:

The Project is located within the Flat to Rolling Plains: Ecoregions of Colorado (Chapman et al, 2006). This ecoregion is characterized by being more level and less dissected than the adjacent Moderate Relief Plains. Soils in this area are also characterized by generally silty soils that contain a veneer of loess (Chapmen et al, 2006).

The surrounding land use of the Project area includes a mix of undeveloped land, agricultural land, and residential land use in the immediate adjacent properties. The vegetation mostly consists of a mix of upland species. A water retention pond containing broadleaf cattails (*Typha latifolia*) is adjacent to the project area, southwest of the intersection and outside of the project area and buffer zone. An outlet of a drainage ditch that conveys runoff from the road is adjacent to the project area. This outlet is southwest of the intersection and contains narrowleaf willow (*Salix exigua*).

RockSol assessed the project area for potential isolated wetlands, jurisdictional wetlands, and other WOUS. Per the EPA guidance, ditches are excluded wholly in and draining only dry land, and that do not carry a relatively permanent flow of water are excluded from the definition of a Water of the United States (Final Rule: Revised Definition of “Waters of the United States” Fact Sheet, December 2022). This roadside drainage ditch falls under the exclusion from Waters of the United States based on the EPA guidance. RockSol’s environmental specialist determined that there were no wetlands or WOUS present within the project limits. This determination was based on the lack of connectivity to nearby irrigation ditches, creeks, and other WOUS within the project limits. The nearest WOUS to the project is located 695 linear feet from the intersection of 37th St and 65th Ave and falls outside of the project limits.

Recommendations:

It has been determined that neither wetlands nor WOUS will be impacted by the project activities. Therefore, no further action is required.

3.2 WILDLIFE CONCERNS

3.2.1 THREATENED, ENDANGERED, AND CANDIDATE SPECIES

Background:

The Endangered Species Act (ESA) of 1973 protects federally listed threatened and endangered species from extinction and requires federal agencies to consult with the U.S. Fish and Wildlife Service (USFWS) to ensure their actions are not likely to jeopardize the continued existence of any

listed species or result in the destruction or adverse modification of designated critical habitat of such species.

Site Conditions and Regulations:

RockSol assessed the project area for potential habitat for federally threatened, endangered, and candidate species under the ESA. The following summarizes the federally threatened and endangered species evaluation for the project using the USFWS Information, Planning, and Conservation (IPaC) system, a review of the species life history fact sheets, the project plan set, and a site visit.

Table 1 briefly describes each federally listed species that was considered during this evaluation and the potential to be affected by the project. No impacts are anticipated for the federally listed species that are present within Weld County based on project location and scope.

Table 1: Federally Threatened, Endangered, and Candidate Species

Common Name	Scientific Name	Status	Habitat	Habitat Present or Potential to be Affected by Project
Mammals				
Preble’s Meadow Jumping Mouse	<i>Zapus hudsonius preblei</i>	T	Riparian areas and adjacent wet meadows of the Mountain Prairie region of Colorado and Wyoming	No habitat and no impacts anticipated.
Gray Wolf	<i>Canis lupus</i>	E	Known to survive in all habitats in the Northern Hemisphere	No habitat and no impacts anticipated.
Birds				
*Piping Plover	<i>Charadrius melodus</i>	T	Sandy lakeshore beaches and river sandbars	No habitat and no impacts anticipated.

Common Name	Scientific Name	Status	Habitat	Habitat Present or Potential to be Affected by Project
*Whooping Crane	<i>Grus americana</i>	E	Mudflats around reservoirs and in agricultural areas	No habitat and no impacts anticipated.
Eastern Black Rail	<i>Laterallus jamaicensis</i>	T	Dense emergent marshes including beaver ponds.	No habitat and no impacts anticipated.
Fish				
*Pallid Sturgeon	<i>Scaphirhynchus albus</i>	E	Large, turbid, free-flowing rivers with a strong current and gravel or sandy substrate	No habitat and no impacts anticipated.
Flowering Plants				
Ute Ladies'-tresses	<i>Spiranthes diluvialis</i>	T	Moist to wet alluvial meadows, floodplains of perennial streams, and around springs and lakes below 7,800 feet in elevation	No habitat and no impacts anticipated.
*Western Prairie Fringed Orchid	<i>Platanthea praeclara</i>	T	Moist to wet prairies and meadows	No habitat and no impacts anticipated.
Insects				

Common Name	Scientific Name	Status	Habitat	Habitat Present or Potential to be Affected by Project
Monarch Butterfly	<i>Danaus plexippus</i>	C	Field, roadside area, open area, wet area or urban garden, milkweed and flowering plants are needed for monarch habitat.	No habitat and no impacts anticipated.

E = Federally Endangered, T = Federally Threatened. *Source:* iPAC, 2021.

The four species indicated (*) occur downstream along the South Platte River and could be impacted by projects that would result in water depletion to the South Platte River and its tributaries. These include the pallid sturgeon, piping plover, western prairie fringed orchid, and whooping crane. This project does not have elements that could cause water depletions to the South Platte River Basin.

State listed species were also taken into consideration. Table 2 briefly describes each state listed threatened and endangered species that was considered during this evaluation and the potential to be affected by the project. No impacts are anticipated for the state listed species that are present within Weld County based on project location and scope.

Table 2: State Listed Threatened and Endangered

Common Name	Scientific Name	Status	Habitat	Habitat Present or Potential to be Affected
Least Tern	<i>Sterna antillarum</i>	SE	Preferred nesting habitat consists of sandy or pebbly beaches such as lakes and reservoirs and in sandy soil sandbars and river channels.	No habitat and no impacts anticipated.

Common Name	Scientific Name	Status	Habitat	Habitat Present or Potential to be Affected
Preble's Meadow Jumping Mouse	<i>Zapus hudsonius preblei</i>	ST	Live in vegetation near ponds and streams. Willow thickets or grassy aspen forests.	No habitat and no impacts anticipated.
Burrowing Owl	<i>Athene cunicularia</i>	ST	Prefers dry, open areas with short grasses and no trees. Live in underground burrows created by prairie dogs, ground squirrels, and badgers. Can be found in landscaped areas.	No habitat and no impacts anticipated.

SE = State Endangered, ST = State Threatened. *Source:* CPW, 2023.

Recommendations:

It has been determined that the project will not result in any direct or indirect impacts to federal or state listed threatened, endangered, or species proposed for listing or its habitat which could potentially occur in Weld County, within and near the vicinity of the project site, resulting in a “no effect”. The decision is based on the site visit on August 15, 2023, a review of the USFWS Information, Planning, and Conservation (iPAC) system, the listed species life history fact sheets, and a review of the current project plan set. No further action is required for Endangered Species Act compliance.

3.2.2 RAPTORS AND MIGRATORY BIRDS

Background:

The Migratory Bird Treaty Act (MBTA) of 1918 is a federal law implemented to protect migratory birds. The statute makes it unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, kill, possess, offer for sale, offer to purchase, etc. any migratory bird, any part, nest, or egg of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or part, of any such bird or any part, nest, or egg thereof. A list of

the migratory bird species protected under the Act can be found on the U.S. Fish and Wildlife Service website.

In addition to the MBTA, the Bald and Golden Eagle Protection Act is a federal law originally passed in 1940. It provides for the protection of the bald eagle and the golden eagle (as amended in 1962) by prohibiting the take, possession, sale, purchase, barter, offer to sell, purchase or barter, transport, export, or import, of any bald or golden eagle, alive or dead, including any part, nest, or egg, unless allowed by permit (16 U.S.C. 668(a); 50 CFR 22). This also includes both active and inactive nests.

Site Conditions and Regulations:

On August 14, 2023, RockSol's Environmental Specialist Surveyed the Project area for evidence of Raptors and Migratory Birds. Suitable habitat for migratory birds and/or raptors was identified within the project limits.

No active nests were identified within or adjacent to the project area. However, there are trees present that create habitat for migratory birds. These tree species include Siberian elm (*Ulmus pumila*) and blue spruce (*Picea pungens*).

Recommendations:

Colorado Parks and Wildlife raptor buffers should be adhered to if any birds of prey are encountered during the active nesting seasons, which are listed by species. Consultation with CPW will be required if construction occurs within the buffer zone during nesting season. Raptors begin nesting as early as February 15.

Clearing and grubbing of vegetation that may disturb ground nesting migratory birds should be completed before birds begin to nest or after the young have fledged. If work activities are planned between April 1 and August 31, vegetation shall be removed and/or trimmed to a height of six inches or less prior to April 1. Once vegetation has been removed and/or trimmed, appropriate measures, i.e., repeated mowing/trimming, shall be implemented to assure vegetation does not grow more than six inches. Failure to maintain vegetation height of six inches or less may impact project construction if active ground nesting birds are found.

To prevent incidental impacts to raptors and other migratory birds, CDOT Specification 240 will be incorporated into the plans.

3.3 NOXIOUS WEED MANAGEMENT

Background:

The Colorado Department of Agriculture organizes noxious weeds into three different lists depending on the level of urgency to implement management. List A species are designated for eradication on all county, state, federal, and private lands upon identification. List B species are managed to stop continued spread and List C species have no requirement for management.

Potential Habitat:

The surrounding area is comprised primarily of residential and agricultural properties. Few species of errant noxious weeds were present. The surrounding vegetation consists of the following few noxious weeds: field bindweed (*Convolvulus arvensis*)(List C) and Siberian elm (*Ulmus pumila*) (List C).

Recommendations:

Noxious weed management practices will be implemented through the inclusion of herbicide treatment in the plans to adhere to the Colorado Noxious Weed Act. Depending on local regulations, additional noxious weeds may be treated if part of the local agency weed management policies. Native seed mixes approved by the City will be implemented into the plans.

To prevent the spread of noxious weeds, a bid item for herbicide treatment is recommended.

4.0 CONCLUSION

Based on the above-described results, migratory birds (including their active nests) and noxious weed management are the main concerns of the project. It is recommended that a revised CDOT Specification 240 will be added to the plans so that any potential tree removals or clear and grub will only be performed after a wildlife biologist has ensured that there are no active nests in the area. If active nests are found, buffer zones will be adhered to until the young have fledged the nests.

An herbicide treatment bid item will be added to the plans for treatment of noxious weed species as required by the CDA.

5.0 LIMITATIONS

All information provided in this report is based on current plans where disturbance is expected to occur for the proposed trail as described herein. If project plans change, a further assessment may be necessary for any additional areas of disturbance.

6.0 REFERENCES

- CDA. 2021. Noxious Weed Species ID. <https://ag.colorado.gov/conservation/noxious-weeds/species-id>. Accessed August 15, 2023.
- Chapman, S.S., Griffith, G.E., Omernik, J.M., Price, A.B., Freeouf, J., and Schrupp, D.L., 2006, Ecoregions of Colorado (color poster with map, descriptive text, summary tables, and photographs): Reston, Virginia, U.S. Geological Survey (map scale 1:1,200,000).
- CPW. 2013. Guidelines for Senate Bill 40 Certification Developed and Agreed Upon by Colorado Parks and Wildlife and the Colorado Department of Transportation.
- CPW. Species Profiles. <https://cpw.state.co.us/learn/Pages/SpeciesProfiles.aspx>. Accessed August 15, 2023.
- CPW. Threatened and Endangered List. <https://cpw.state.co.us/learn/Pages/SOC-ThreatenedEndangeredList.aspx>. Accessed August 15, 2023.
- DNR. 2013. Memorandum of Agreement by and among the Colorado Department of Natural Resources and Department of Transportation regarding Senate Bill 40 Certification.
- Environmental Protection Agency. (n.d.). EPA. <https://www.epa.gov/wotus/revising-definition-waters-united-states>. Accessed August 21, 2023.
- USFWS. 2021. Information for Planning and Consultation (IPaC) Database. <https://ecos.fws.gov/ipac/>. Accessed August 14, 2023.
- USFWS. 2020. Migratory Bird Treaty Act Protected Species List. <https://www.fws.gov/birds/management/managed-species/migratory-bird-treaty-act-protected-species.php>. Updated March 13, 2020.

Appendix A: Project Photographs



NW corner of Intersection - Facing West
(August 2023)



Southwest corner of Intersection – Facing East
(September 2022)



NE corner of Intersection – Facing South
(August 2023)



Southwest corner of Intersection – Facing North
(September 2022)



Southeast corner of Intersection – Facing NW
(August 2023)



Pond Southwest of Project
(September 2023)