

MEMORANDUM

DATE: May 3, 2006

TO: Steve Whitson, Refuge Manager, Lee Metcalf NWR

FROM: John Cornely, Acting Assistant Regional Director, MBSP

SUBJECT: Comments on proposed Legacy Ranch development adjacent to Lee Metcalf NWR

In response to your request, I have consolidated comments from biologists in the Migratory Bird Program regarding potential impacts to protected migratory bird species and the habitats that they occupy in and around the area of the proposed development. We appreciate the opportunity to review the proposal and include the following comments:

Western riparian areas are one of the most important wildlife habitats occurring in Region 6, and are necessary for the preservation of many wildlife species, including a variety of fishes, amphibians, mammals and migratory birds. Wildlife use of riparian habitats is disproportionately greater than any other single habitat type, with 75% of the terrestrial species in Region 6 directly dependant on riparian and adjacent aquatic zones for reproduction or for foraging during reproduction.

A constant-effort mist netting station was conducted at Lee Metcalf NWR from 1993-present, and has documented a diverse avian community at the refuge. Overall, 65 species were identified among over 2,800 captures. Many of the dominant species nesting at Lee Metcalf were Neotropical migrants, including the Willow Flycatcher, Swainson's Thrush, Gray Catbird, Northern Waterthrush, and Yellow Warbler. Productivity for these and many other bird species was documented at Lee Metcalf.

The Bitterroot Valley contains important riparian areas that provide critical habitat for migratory birds during the nesting season as well as areas where birds can rest and forage along their migration routes. As development in the Bitterroot Valley increases, these scarce riparian zones become islands of habitat, necessary to many species for successful reproduction and survival. Lee Metcalf National Wildlife Refuge may be critical to preserving this riparian resource in a valley with increasing development. Because the proposed development will occur adjacent to the refuge, cooperation from future residents is imperative in order to minimize the impacts to the natural environment surrounding the refuge and to allow the refuge to operate and conduct activities as originally intended.

Impacts to Habitat

The Environmental Assessment (EA) describes the majority of the parcel (259 acres) as having been historically used for irrigated and dryland hay and crop agriculture. Stands of ponderosa pine and black cottonwood trees are present (57 acres), as well as

wetlands (3 acres) and pastureland (64 acres) with vegetation well established. The Drainage Report indicated that the majority of agricultural land is left un-vegetated for much of the year. A description could not be found concerning the types of crops grown to determine their value for migratory birds. However, migratory birds may utilize habitat in pastureland, wetlands, and tree stands throughout the year for nesting, roosting, and foraging. These areas will be reduced or eliminated as a result of the development. In addition, only 40% of the trees will be retained further reducing an important habitat component. Because the Migratory Bird Treaty Act (MBTA) prohibits the taking of any migratory bird or any part, nest, or egg, except as permitted by regulation, I recommended that construction activities in each phase and any removal of trees begin after the nesting season to minimize unauthorized take of migratory birds. In the event that activities must occur during the nesting season, the proper permits must be acquired from the USFWS Migratory Bird Permit Office in Denver, Colorado.

The Wetland Assessment Tab documents three wetlands on the site (3.01 acres); two are palustrine-emergent wetlands associated with discharge of groundwater, and the third is man-made, associated with the irrigation ditch. The plan states that only a very small portion of these wetlands will be affected by the proposed development (.04 acres) and that any filled wetlands would be mitigated. It is important to note that although artificial, mitigated wetlands provide important habitat, they often do not have the same hydrology and hydrophytic vegetation and therefore are not as productive as natural wetlands. In addition, because the remaining wetlands would be preserved in a common area it is doubtful that the wetlands would be able to sustain former levels of productivity due to disturbance and access by residents.

To protect the remaining riparian resources, a Riparian Resource Management Plan is incorporated into the proposed covenants. These areas are to be designated and preserved for riparian and wildlife values. Within these areas there shall be no construction, no drain fields, no roads, no changes in topography, no vehicular access, and no livestock. The Plan will be helpful in protecting these valuable resources, however, because these areas will be highly fragmented and access by pedestrians will still be allowed, the value to wildlife will be significantly reduced.

Efforts have been made to increase the amount of open space above what is required by the county (196 acres). Open areas and parks will be landscaped and vegetated to provide wildlife habitat. A maintenance plan will be developed that will require the HOA to maintain all of the open space including irrigation, mowing, and conducting weed control. Although habitat may be created in an area that was previously agricultural land with limited potential for wildlife, these open space areas will probably be planted with monotype grasses that will not support most native species. In addition, these open space areas are highly fragmented and will probably not function as natural migration corridors. Planners should also be aware that groomed, short-grass areas are also attractive to large concentrations animals which could lead to human health

and safety concerns. While in the course of their regular maintenance, I recommend that the HOA routinely monitor these areas to prevent birds from nesting and feeding and use allowable methods to prevent animals from concentrating in these areas.

It was reported that surface disturbances during the construction phase would have the potential to produce airborne sediment that would be absorbed by vegetated areas between the Bitterroot River and the proposed subdivision and prevent the sediment from entering the river. However, there was no mention of protecting the wetlands that currently exist on the project site. I recommend that appropriate measures are taken to protect these sites from contamination.

The EA states that unaltered habitat adjacent to the project area (NWR) may have reduced habitat values because some species and individuals could avoid using habitat, especially during construction activities. Because wildlife will be displaced and will seek areas where they can nest and forage, the refuge may actually see an increase in wildlife. The increase may eventually cause crowding and indirectly lead to an increase in mortality stemming from depleted resources and/or disease susceptibility.

The Biological Report conducted by Geomatrix Consultants addresses additional beneficial measures that will be implemented to reduce the impact to the natural environment and wildlife that include restrictions on fencing to facilitate movement of wildlife, burying power lines to reduce collisions, reducing the amount of pesticides applied (compared to historical agricultural applications), and providing buffer areas. Buffer areas can be useful in reducing the amount of disturbance to wildlife, however, the proposed distances of 100 ft along the refuge and the East Side Highway and 50 ft along all other boundaries, are relatively small. I recommend increasing the buffer zone between the development and the refuge to further minimize wildlife conflicts. In addition, efforts to secure an agricultural or conservation easement to purchase the 26 acres directly to the south of the refuge on the west side of Eastside highway would be worth pursuing otherwise increased wildlife encounters in this portion of the development should be expected.

Landscaping will occur in the buffer and road right-of-ways. While incorporating plants into the landscape may provide additional habitat and aesthetic value, I recommend that precautions be taken in the selection of plants that will be utilized. Shrubs that produce fleshy fruit have been found to be hazardous to fruit-eating birds increasing the rate of mortality particularly along high-traffic roadways such as Eastside highway. In addition, I recommend that reduced speed zones be established between the Eastside Highway and refuge to remind residents of the potential for wildlife crossings and reduce the number of wildlife strikes.

Birds of Conservation Concern

The Biological report stated that the proposed development will not significantly impact

special status-species because the site does not have suitable habitat. This determination was made by consulting with local biologists, the Montana Natural Heritage Program (MNHP) and using a private consultant to conduct surveys and observations.

An active bald eagle nest is known to occur 2.5 miles from the proposed project site on the Lee Metcalf National Wildlife Refuge. In addition to protection under the MBTA, bald eagles are also protected under the Endangered Species Act (ESA) and the Bald and Golden Eagle Protection Act (BGEPA). Under the BGEPA and incorporated into the recent Draft Bald Eagle Management Guidelines (February 2006), it is illegal to disturb a bald eagle to the degree that interferes with or interrupts normal breeding, feeding, or sheltering habits, causing injury, death, or nest abandonment. Within the guidelines specific recommendations for land management practices and methods to avoid disturbing bald eagles are provided.

Although the project site is not a "key use area" for bald eagles the proposed project may reduce habitat for prey species and reduce an important habitat component with the removal of 60% of trees. The BGEPA prohibits removal or destruction of both active and alternate bald eagle nests. Other known threats to Bald Eagles have been previously been addressed such as reducing pesticide usage and burying powerlines that could be hazardous. Please review the draft guidelines to ensure that the necessary measures are taken to avoid potential unauthorized take of bald eagles. The guidelines can be found at: <http://www.fws.gov/migratorybirds/baldeagle.htm>.

Proposed Covenants, Conditions, and Restrictions

We are encouraged that Sunnyside Orchards recognizes the value of the area to be developed as having important resources for wildlife and the effort they have taken to include measures to educate future residents about their role in living compatibly with wildlife and minimizing the impacts to the land. Specific regulations are included in the proposed covenant subsection "Living with Wildlife" and "Living with Lee Metcalf Wildlife Refuge" that were developed in cooperation with the Montana Department of Fish, Wildlife & Parks.

The proposed covenants state that homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets, and properly storing garbage, pet food, and other potential wildlife attractants. Pets will be required to be confined to the house, fenced yard, or in an outdoor kennel area when not under the direct control of the owner. This is an important section of the covenants since pets can potentially harass and either directly or indirectly kill wildlife. I recommend that the covenants specifically include restrictions for cats and that cats be prohibited from wandering the outdoors since they pose a significant risk to birds and other wildlife.