

APPENDIX 5.4-C

**SDG&E LOW-EFFECT HABITAT CONSERVATION PLAN FOR QUINO
CHECKERSPOT BUTTERFLY**

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LOW-EFFECT HABITAT CONSERVATION PLAN

for the

**ISSUANCE OF AN INCIDENTAL TAKE PERMIT UNDER SECTION 10(a)(1)(B)
OF THE ENDANGERED SPECIES ACT**

for the

FEDERALLY ENDANGERED QUINO CHECKERSPOT BUTTERFLY

for the

SAN DIEGO GAS AND ELECTRIC COMPANY

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EXECUTIVE SUMMARY

The San Diego Gas and Electric Company (SDG&E) has applied for a permit from the U.S. Fish and Wildlife Service (Service) pursuant to section 10(a)(1)(B) of the Endangered Species Act (Act), as amended (16 U.S.C. 1531 *et seq.*), to incidentally take the federally endangered Quino checkerspot butterfly (*Euphydryas editha quino*) (QCB or Quino). The incidental take is anticipated to occur as a result of ongoing operations and maintenance activities as well as construction of new Facilities in San Diego, Riverside, and Orange Counties, California. Implementation of the Plan may result in the loss of up to 33 acres of QCB habitat over the 50-year term of the permit. SDG&E estimates 15 of the 33 acres of potential impacts to QCB habitat will result from road grading. Other activities, such as new construction, pole brushing, and pole inseting, will account for the remaining 18 acres of potential impact. These impacts would occur in unoccupied QCB habitat, occupied QCB habitat, and QCB critical habitat.

SDG&E proposes to mitigate the effects to QCB by fully implementing the Habitat Conservation Plan (Plan or HCP). The Plan emphasizes protection of habitat through impact avoidance and use of operational protocols designed to avoid or minimize impacts to QCB. SDG&E will supplement these operational protocols, or avoidance and minimization measures, with habitat restoration and enhancement measures, and other mitigation. SDG&E proposes to implement general and QCB-specific operational protocols, designed to avoid or minimize take of QCB. To mitigate for impacts to QCB, SDG&E will implement one of the following mitigation measures: (1) pay into a QCB habitat fund which will be used to benefit QCB through the acquisition, restoration, or enhancement of QCB habitat; (2) enhance an unallocated portion of SDG&E's existing mitigation parcel for the benefit of QCB; (3) purchase credits from a to-be-established QCB bank, should one be approved by the Service in the future; or (4) acquire a mitigation parcel that supports or could support QCB.

This Plan has been prepared in consultation with the Service to fulfill the requirements of a section 10(a)(1)(B) permit application for the proposed activities.

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1.0 INTRODUCTION

The San Diego Gas and Electric Company (SDG&E) has prepared this Habitat Conservation Plan (Plan or HCP) to minimize and mitigate the effects of its activities on the federally endangered Quino checkerspot butterfly (*Euphydryas editha quino*)(QCB or Quino), and to obtain incidental take authorization for QCB. The Plan Area includes San Diego County west of the desert, the portion of Orange County within the existing SDG&E service territory, and the SDG&E Moreno Compressor Station in Riverside County, as depicted in Figure 1. The Plan Area is the same as the Plan Area for SDG&E's 1995 Subregional Natural Community Conservation Plan (Subregional Plan), which addresses 110 species, but not QCB. The Plan qualifies as a "Low-Effect" HCP as provided by the Department of the Interior Manual (516 DM 2 Appendix 1, and 516 DM 6 Appendix 1) and as defined in the Habitat Conservation Planning Handbook (November 1996).

1.1 Purpose and Need

SDG&E is a California public utility providing natural gas, electricity, and other services to customers in its service and operational territory, including San Diego County and portions of Orange and Riverside Counties. SDG&E's ability to provide these services depends on the development, installation, construction, maintenance, operation, and repair of an extensive and evolving array of public utility Facilities located throughout its service and operational territory. SDG&E is seeking a permit for incidental take of QCB in the course of otherwise lawful activities listed above. Such authorization is necessary because the activities may result in incidental take of QCB through the removal or modification of QCB habitat, despite the avoidance and minimization measures incorporated into SDG&E operational protocols. Incidental take authorization for the QCB would ensure that SDG&E could conduct its critical activities while conserving the species.

1.2 Regulatory Requirements

The Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, provides for the protection and conservation of fish, wildlife, and plants that have been federally listed as threatened or endangered. Activities otherwise prohibited by section 9 of the Act and subject to the civil and criminal enforcement provisions of section 11 of the Act may be authorized for Federal entities pursuant to the requirements of section 7 of the Act and for other persons pursuant to section 10 of the Act. Section 10(a)(2)(A) of the Act states that no permit may be issued authorizing any taking referred to in section 10(a)(1)(B) unless the applicant submits an HCP that specifies:

1. The impact which will likely result from such taking;
2. What steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps;

3. What alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized; and
4. Such other measures that the Secretary may require as being necessary or appropriate for purposes of the plan.

All HCPs must meet the following criteria in order to receive a permit:

1. The taking will be incidental;
2. The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;
3. The applicant will ensure that adequate funding for the plan will be provided;
4. The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
5. The measures, if any, required under subparagraph (A)(iv) will be met.

The Service has determined this document to be a "Low-Effect" HCP. A Low-Effect HCP is one "involving: (1) minor or negligible effects on federally-listed, proposed or candidate species and their habitats ... and (2) minor or negligible effects on other environmental values or resources. 'Low-Effect' incidental take permits are those permits that, despite their authorization of some small level of incidental take, individually or cumulatively have a minor or negligible effect on species covered ..." (HCP Handbook November 1996).

This Plan has been prepared in consultation with the Service to fulfill the requirements of section 10(1)(2)(A) of the Act as part of section 10(a)(1)(B) take permit being sought for the proposed activities and locations listed above.

1.3 Permit Applicant

San Diego Gas and Electric Company is the applicant for the incidental take permit.

1.4 Permit Duration

The duration of the section 10(a)(1)(B) permit for this project is fifty (50) years from the date of issuance. The permit allows SDG&E or their successors to incidentally take, either directly or indirectly, QCB within the geographical boundaries identified in the Plan (Figure 1) over the 50-year time period. The permit may only be transferred consistent with 50 C.F.R. § 13.25. After expiration of the permit, any "take" within said geographic boundaries will require re-authorization.

1.5 Project Description

This Plan addresses potential impacts to QCB from the use, maintenance, and repair of existing gas and electric Facilities and, with limited exception, includes typical expansions to those systems. SDG&E constructs new, expanded, and modified utility infrastructure on an ongoing basis, and conducts maintenance and repair activities on existing Facilities to maintain uniform, adequate, safe, and reliable electric and gas service. SDG&E activities other than maintenance of existing access roads include, without limitation, all current and future actions arising out of, or in any way connected with, the siting (including any site assessment, surveying, testing, or planning), design, installation, construction, use, maintenance, operation, repair and removal of Facilities within SDG&E's service territory. Some examples of these activities are described below:

Insulator Washing

- Insulator washing is essential to maintain clean insulators and prevent service outages. It involves using a high-pressure hose within 60 feet of the facility and spraying water at the insulator.

Pole Insetting

- Insetting poles places poles in-line between existing structures to provide additional strength to support new or heavier conductors, as well as achieving necessary wire clearances. Insetting is an effective method of fully utilizing existing electric line structures and alignments which often defers the need for new structures, lines and alignments.

Pole Anchor, Guy Wire, and Stub Replacement

- Pole anchors, guy wires, and stubs are used to support poles. Generally one end of a guy wire attaches to the upper portion of a wood pole and the other end attaches to the top of a stub or to an anchor buried in the ground.

Fire Control

- Fire control areas are required from the outer circumference of any pole or tower, are needed for construction, and are required by law to be maintained for fire protection after construction. Areas cleared of vegetation are also required around gas line valve complexes and cathodic test stations for fire protection.

Pole and Tower Replacement

- Poles or towers may support a variety of equipment such as conductors, insulators, switches, transformers, lightning arresters, line junctions, and other electrical equipment. This type of equipment may need to be added, repaired, or replaced in order to maintain uniform, safe, adequate, and reliable service. Due to damage, changes in conductor size, or the like, an existing transmission structure may be removed or replaced with a larger/stronger structure at the same or nearby location.

In addition to the activities described above, the permit addresses incidental take within the Plan Area associated with limited expansion of the electric generation capacity or gas transmission systems including: (1) new electrical transmission line facilities which do not extend more than 30 miles outside the Plan Area; (2) electrical interconnections with other utilities that do not project more than 30 miles outside the Plan Area; (3) new gas transmission line facilities not exceeding 30 inches in diameter and 20 miles in length (but including the natural gas transmission line between Rainbow and Santee); (4) new substations and regulator stations with total habitat impacts under 20 acres; and new gas compressor stations with total habitat impacts under 10 acres (however, new Facilities which impact more than 1 acre of QCB habitat require additional Service review, see section 3.2.3).

Up to 33 acres of QCB habitat may be lost through implementation of the Plan over the 50-year term of the permit. SDG&E estimates up to 15 of the 33 acres of potential impacts to QCB habitat will result from road grading, and that other activities (e.g., new construction, pole brushing, and pole in-setting) will account for the remaining 18 acres of potential impact. These impacts would occur in unoccupied QCB habitat, occupied QCB habitat, and designated QCB critical habitat as outlined in Section 2.3 of this Plan.

2.0 QUINO CHECKERSPOT BUTTERFLY

2.1 Species Account

The Service listed the QCB as an endangered species on January 16, 1997. This butterfly is a member of the brush-footed family (Nymphalidae) and the subfamily Melitaeinae (checkerspots and fritillaries). The QCB is one of 12 subspecies of the editha checkerspot and was formerly known as *Euphydryas editha wrightii*. QCB are known from southwestern California and northwestern Baja California, Mexico (Mattoni *et al.* 1997). The QCB differs in physical appearance from other subspecies of *E. editha* in size, wing coloration, and larval and pupal characteristics (Mattoni *et al.* 1997).

The QCB use a variety of sparsely vegetated habitats including open coastal sage scrub and chaparral, vernal pool complexes, native and non-native grasslands, remnant

forblands, desert scrub, and desert pinyon-juniper woodland. These vegetation types may support primary QCB larval host plants as well as a variety of adult nectar resources. Densely vegetated areas are not known to support QCB (Mattoni *et al.* 1997). Habitat patch suitability is determined primarily by larval host plant density, topographic diversity, nectar resources availability, and climatic conditions (USFWS 2003).

Larval host plants include dot-seed plantain (*Plantago erecta*), white snapdragon (*Antirrhinum coulterianum*), woolly plantain (*Plantago patagonica*), and thread-leaved bird's beak (*Cordylanthus rigidus*). These primary host plants may also serve as secondary hosts. Purple owl's clover (*Castilleja exserta*) is known to be a secondary larval host and may also serve as a primary QCB Host Plant. There is a possibility that *Plantago bigelovii* and *Plantago insularis* could also serve as larval host plants. While the use patterns of primary and secondary larval host plants are not fully understood, there is evidence that both may be necessary for the survival of QCB larvae (USFWS 2003). The QCB Host Plants are usually most abundant in areas of cryptobiotic soil crusts and clay soils. The QCB larvae, particularly in the early instars, have a very limited capacity for dispersion. Therefore, high local host plant density is necessary for high larval survival rates (USFWS 2003).

The QCB uses a much wider range of plant species for adult nectar feeding than for larval foliage feeding. These nectar sources are known to include lomatium (*Lomatium spp.*), goldfields (*Lasthenia spp.*), popcorn flowers (*Plagybothrys and Cryptantha spp.*), gilia (*Gilia spp.*), ground pink (*Linanthus dianthiflorus*), chia (*Salvia columbariae*), annual lotus (*Lotus spp.*), onion (*Allium spp.*), yerba santa (*Eriodictyon spp.*), and California buckwheat (*Eriogonum fasciculatum*) (67 FR 18359, Mattoni *et al.* 1997).

Life History

The life cycle of QCB includes four distinct life stages: egg, larva, pupa, and adult. There is typically one generation of adults per year, with a 4 to 8 week adult flight period beginning between late February and May, depending on weather conditions (67 FR 18356). Adult emergence from pupae is staggered, with each adult butterfly living approximately 10 to 14 days.

After hatching from eggs, pre-diapause larvae normally consume the plant on which they hatch and then migrate in search of additional plants. Larval QCB activity periods usually range from October through June. During this period, movement of QCB larvae can range up to ten meters from the QCB Host Plant.

Sufficient rainfall is necessary to break diapause. This normally occurs during November or December. The time between diapause termination and pupation can range from two weeks to three months. Adults emerge from pupae after approximately ten days. Adult QCB spend time searching for mates, basking in the sun thermoregulating, feeding on nectar, defending territories, and, in the case of females, searching for oviposition sites and depositing eggs. The QCB egg clusters typically contain 20 to 150 eggs.

Male QCB, and to a lesser extent females, are frequently observed on hilltops and ridgelines. Hilltops may represent centers of QCB population density in some areas. Because adult QCB are frequently observed on hilltops, even in the absence of nearby larval host plants, hilltops and ridgelines may be crucial for population survival.

The flight period for the adult QCB usually ranges from late February through May, although the timing and duration of the flight period can vary considerably from year to year depending on rainfall and temperature patterns. Between 1910 and 1985, there were four recorded instances of QCB flight periods occurring from October to December in response to significantly greater than normal rainfall during September and October (Mattoni *et al.* 1997).

Population Dynamics

Most QCB populations are part of a larger metapopulation structure. Isolated habitat patches are not sufficient to ensure the long-term persistence of butterfly metapopulations. Persistence of metapopulations for longer periods of time results from interaction among sets of local habitat patch populations at larger geographic scales. The long-term persistence of butterfly species with metapopulation dynamics depends on the maintenance of temporarily unoccupied habitat patches and recolonization events that link habitat patches within metapopulations. Maintenance of landscape connectivity is essential in order to maintain metapopulation resilience (67 FR 18357). Rare population outbreak events are thought to play a crucial role in QCB metapopulation resilience (Murphy and White 1984).

Accounts of large population density fluctuations at historic QCB population sites indicate that the QCB is a climate-sensitive "eruptive" species that semi-regularly increases its adult densities by orders of magnitude over a period of 5 to 10 years, then drops back to much lower densities over a similar period of time.

Dispersal

Although QCB populations tend toward low population movements, it is believed that some individuals of this species may disperse long distances in drier years, and that rare population explosions such as the one observed in 1977 may allow dispersing individuals to recolonize areas where the butterfly was eliminated by fire or other disturbances (Ehrlich *et al.* 1975, as cited in Brown 1991). Plant resources shift over time, and QCB populations have evolved to respond to shifting habitat patch suitability in space and time (67 FR 18359).

2.2 Status of the Species

The QCB historically occurred from Los Angeles County south through western Riverside, western San Bernardino, Orange, and San Diego Counties. In Baja California, QCB were known to occur from El Rosario to the northern portion of the State of Baja California Norte (USFWS, 2003). The QCB's distribution included the westernmost slopes of the Santa Monica Mountains, the Los Angeles Plain and Transverse Ranges to the edge of the upper Anza-Borrego desert. Observations of QCB have been recorded across a wide elevation range, from approximately 153 meters to over 1,533 meters. Historical localities in San Diego County include Lake Hodges, Rancho Santa Fe, San Miguel Mountain, El Cajon, Dehesa, Dulzura, Dictionary Hill, Chula Vista, Otay Lakes, Kearny Mesa, Proctor Valley, and Brown Field (Brown 1991).

The QCB was historically a common butterfly within its range. Populations declined as a result of agriculture, grazing, and urbanization. By the late 1980s, the QCB was believed to be extinct. In 1990, the butterfly was rediscovered in southwest Riverside County. The QCB's potential current distribution is defined primarily by the distribution of its primary larval host plants. In California, the QCB is known to occur in several locations in southwestern Riverside County around Temecula, Murrieta, Vail Lake, Aguanga, and Anza. The QCB is known to occur near San Vicente Reservoir, Alpine, Otay Mesa, Otay Lakes, Otay Mountain, Marron Valley, Sweetwater Reservoir, Tecate, and Jacumba in southern San Diego County, and at Oak Grove in northern San Diego County (Mattoni *et al.* 1997, Ballmer *et al.* 1998, USFWS 2000, USFWS 2003). QCB have also recently been detected in the Campo area of San Diego County.

Threats

The QCB is threatened primarily by urban and agricultural development, non-native plant species invasion, off-road vehicle use, grazing, and fire management. Urban development poses the greatest threat and exacerbates all other threats (67 FR 18359). Both the larval and adult stages have specific habitat requirements that have been significantly impacted by development, invasive non-native vegetation, overgrazing, poorly planned fire management practices, extreme weather, and off-road vehicles (62 FR 2313).

Conservation Needs

The QCB was assigned a recovery priority of 6C, based on designation as a subspecies with a high degree of threat, a moderate to low potential for recovery, and existing conflict between the species' conservation and development. Identified conservation needs include protecting and managing habitat supporting known current population distributions and landscape connectivity between them, maintaining or creating resilient populations, and conducting research necessary to refine recovery criteria.

Critical Habitat

A total of approximately 171,605 acres in Riverside and San Diego Counties, California, are designated as critical habitat for the QCB (67 FR 18356). See Figure 2. The primary constituent elements for QCB designated critical habitat consist of:

- Grassland and open canopy woody plant communities, such as coastal sage scrub, open red shank, chaparral, and open juniper woodland with host plants or nectar plants.
- Undeveloped areas containing grassland or open canopy woody plant communities, within and between habitat patches, utilized for QCB mating, basking, and movement
- Prominent topographic features, such as hills and or ridges, with an open woody or herbaceous canopy at the top.

Lands designated as critical habitat have been divided into four critical habitat units, the Lake Mathews Unit, the Southwest Riverside Unit, the Otay Unit, and the Jacumba Unit. The Lake Mathews Unit consists of 14,250 acres in the northwestern portion of Riverside County, the Southwest Riverside Unit consists of 85,950 acres in southwestern Riverside County and northern San Diego County, the Otay Unit consists of approximately 64,430 acres in the southwestern portion of San Diego County, and the Jacumba Unit consists of 9,970 acres of land in southeastern San Diego County south of Interstate 8 in the vicinity of the town of Jacumba.

2.3 Assessment of Incidental Take

Up to 33 acres of QCB habitat may be impacted through implementation of the Plan over the 50-year term of the permit. However, the actual impact from covered activities is anticipated to be no more than 16.5 acres of Suitable or Occupied QCB habitat. Because SDG&E may presume presence of QCB instead of conducting surveys in some instances, the 16.5-acre estimate has been doubled to 33.0 acres to ensure a conservative estimate of potential impacts, and to provide greater flexibility under the Plan for covered activities. SDG&E will assess the actual acreage of impacts at the time of the activity, but an estimate of potential impacts to QCB habitat over the life of the Plan is described below and summarized in Table 1. Most potential impacts to QCB are expected to result from access road maintenance and from maintenance or repair of existing Facilities. Some additional impacts could occur, however, from construction of new Facilities.

2.3.1 Access Road Maintenance

SDG&E plans to grade its existing access roads at least every two years. Historically, the access roads are approximately 12 feet wide. During grading, dirt berms may be created that typically extend two (2) feet on either side of the road, but can be wider on slope banks. Typically, for each linear foot of road that is graded, 12 square feet of existing

dirt road and 4 square feet of berm may be impacted, for a total of 16 square feet, with the exception of slope banks, which can increase the total somewhat.

SDG&E anticipates that it will conduct protocol-level QCB surveys for road maintenance projects. Based on recent experience with road maintenance (i.e., grading) for the Southwest Power Link project, in which surveys revealed only 2.18 acres of Suitable and Occupied Habitat on 33 miles of access roads that run through QCB Mapped Areas, it is anticipated that road maintenance over the life of the Plan will impact approximately 15.0 acres of QCB habitat. Because it is anticipated that roads will be maintained (i.e., graded) at least every two years, it is expected that QCB Host Plants will not recolonize the road beds during the life of the Plan. Impacts to QCB habitat as a result of road maintenance are therefore considered permanent impacts, provided the roads are maintained at least every two years. If road maintenance takes place more than two years after initial grading, impacts to QCB habitat will be considered as "new impacts" and will be mitigated accordingly.

2.3.2 Maintenance or Repair of Existing Facilities

Covered activities unrelated to access road maintenance have the potential to impact approximately 9.0 acres of QCB habitat over the life of the Plan. Based on the type of covered activities, SDG&E anticipates that approximately 8.5 acres of the impact would be temporary and that 0.5 acres of impact would be permanent.

Electric Transmission Lines

SDG&E expects approximately 1.5 acres of disturbance to Suitable QCB Habitat as a result of 2.8 miles of new 69kV transmission line. This will include 1.8 miles of new right-of-way. Approximately one mile will be new line in existing SDG&E rights-of-way. The line in existing rights-of-way will use the existing access road, but will cause 0.5 acre of disturbance due to spur roads to new poles, pulling sites and clearing around new poles. The 1.8 miles of new line in new rights-of-way will potentially disturb QCB habitat due mostly to the access road. The access road could account for 0.5 acre of impacts. Another 0.5 acre of disturbance will potentially result from clearing around poles and pulling sites. Of the 1.5 acres of impact, 1.0 acre will be permanent.

Electric Distribution

SDG&E has no present plan to build new electric distribution lines through QCB Mapped Areas, but it is possible that new distribution lines could be needed in the Mapped Areas at some time over the duration of the Plan. Normally, SDG&E constructs distribution lines in street rights-of-way. Occasionally some multiple customer service extension or an extension to a remote facility such as a pump station, communication site, military installation, etc. could require a cross-country distribution extension. For purposes of this Plan, 1.5 miles of cross-country distribution has been anticipated. Distribution impacts are generally temporary. Distribution access roads are typically irregularly maintained and

only certain poles, such as transformer poles or those with switches or equipment capable of starting fires, would be brushed. However, under this Plan, SDG&E will maintain access roads to distribution facilities within QCB Mapped Areas more regularly. Potential impacts associated with distribution facilities could be approximately 0.5 acre.

Transmission Reconductoring & Repairs and Maintenance

Limited transmission reconductoring is planned in QCB Mapped Areas within the next 5 years, but more reconductoring can be expected over the life of the Plan. Repair and maintenance activities will be continuous. Impacts from these activities are not anticipated to exceed 6 acres in aggregate. Most of these impacts would be temporary in nature.

New Gas Transmission and Gas Line Repair

SDG&E recently completed two major gas transmission projects. No new gas projects that would cross Mapped Areas are anticipated for the remaining life of the Plan. Because the gas lines are new and have a life expectancy of 100 years, SDG&E does not anticipate any major repairs during the remaining life of the Plan. Some erosion repair may be needed, from time to time. Such efforts are not expected to impact more than 1 acre of QCB habitat. Most of these impacts would be temporary in nature.

**TABLE 1
ESTIMATED IMPACTS TO QCB HABITAT OVER THE LIFE OF THE PLAN**

ACTIVITY	TEMPORARY IMPACT IN ACRES	PERMANENT IMPACT IN ACRES
Access Road Maintenance		7.5
Electric Transmission Lines		
1.0 mi. new 69kv transmission line in existing ROW, including spur roads, pulling sites, clearing around poles in existing ROW	0.5	
1.8 mi. new 69kv transmission line in new ROW; mostly access roads in new ROW		0.5
Pulling sites, clearing around poles in new ROW	0.5	
Electric Distribution	0.5	
Transmission Reconductoring/Repairs & Maintenance		
Repair and maintenance activities	6	
New Gas Transmission & Gas Line Repair		
Possible erosion repair	1	
TOTAL	8.5	8.0

By impacting QCB habitat, the covered activities may result in adverse effects to individual QCB eggs, larvae, diapausing larvae, or pupae if present at the time of the habitat disturbance. Impacts to the more mobile adult QCB are unlikely.

Based on an examination of QCB Mapped Areas and SDG&E Facilities within the Plan Area, it is expected that most of the impacts to QCB from the covered activities would occur in southern San Diego County, in the Southeast and Southwest Recovery Habitat Units. Portions of this area are also located in QCB critical habitat, in the Otay and Jacumba Critical Habitat Units (See Figure 3). Precise estimates of potential impacts to critical habitat are not possible, but to be conservative, it is assumed that up to 15 acres of critical habitat in the Otay unit and 15 acres in the Jacumba unit could be impacted by covered activities.

The impacts to QCB from covered activities under the Plan are expected to be insignificant because the Plan prioritizes the avoidance and minimization of impacts, and unavoidable impacts from covered activities would generally be very small. The Plan further provides offsetting mitigation for any unavoidable impacts, including situations for which mitigation is not required under the Act (e.g., mitigation for suitable but unoccupied habitat). Additionally, the covered activities are spread over a broad natural landscape, which reduces the significance of potential impacts on natural areas. The potential impacts of operation and maintenance activities are also spread over time, which has the potential to limit population-level effects and to allow opportunity for habitat re-establishment. This Plan also provides for mitigation for temporary impacts to QCB habitat even though SDG&E must conduct in-place restoration of temporary impacts consistent with their existing 1995 Subarea Plan.

3.0 HABITAT CONSERVATION PLAN

3.1 Purpose and Goals of the HCP

SDG&E's Low-Effect HCP addresses adverse impacts to QCB from SDG&E operations and maintenance activities, including construction of new Facilities. This Plan has been prepared to avoid and minimize impacts to QCB associated with covered activities within the Plan area. The Plan will mitigate for unavoidable impacts primarily through the establishment of the Quino Checkerspot Butterfly Mitigation Fund with the San Diego Foundation, although other QCB mitigation options are possible (see section 3.3). Such funds will be used to support the recovery of the QCB through purchase and/or management of high quality QCB habitat or through other actions.

3.2 Actions to Minimize Impacts

The following operational protocols are proposed by SDG&E to avoid and minimize impacts to QCB from SDG&E activities occurring in potential QCB habitat, also referred to in this Plan as "Mapped Areas" (See Figure 3). The Service will update the Mapped Areas annually and provide the information to SDG&E. Potential QCB habitat was mapped during the development of the Plan using the Quino Recovery Plan and data collected from 1990 through 2005. The QCB protocols listed below are designed to work in concert with, and supplement, the existing protocols that have been incorporated into SDG&E activities as a result of their existing 1995 Subregional Plan that covers 110 species but not QCB. The protocols established by the 1995 Subregional plan will be followed for QCB along with the protocols below in order to provide additional minimization of impacts to the species. Should the 1995 Subregional Plan become ineffective (i.e., is no longer being implemented), the protocols therein will still be implemented whenever a covered activity takes place in QCB habitat. The existing 1995 Subregional Plan protocols are set forth in this Plan as Appendix A.

Protocol surveys, as prescribed below, will be considered valid for a period of two years.

3.2.1 General Protocols for Operations and Maintenance Activities (Figure 4)

1. A pre-activity survey will be conducted by a qualified biologist or botanist to identify Suitable QCB Habitat whenever an activity occurs within a Mapped Area. The pre-activity survey can be conducted at any time of the year, whether or not it is within the QCB activity period. The results of these surveys will be reported to the Service through the pre-activity reporting process established in the 1995 Subregional Plan.
2. In areas where no Suitable QCB Habitat is found during the pre-activity survey, grading may occur at any time consistent with the 1995 Subregional Plan and no mitigation will be required for the QCB.
3. If Suitable QCB Habitat is present in the Work Area, the project will be redesigned to avoid all impacts to Suitable QCB Habitat, if feasible. If impacts are avoided, then grading may occur and no QCB mitigation will be required. If impacts cannot be avoided, one of the following will occur:
 - a) If timing of the project will allow, a protocol-level adult flight season survey will be conducted by a Service-permitted biologist within the Suitable QCB Habitat to determine whether or not the Work Area is occupied by QCB. In areas where no QCB are detected, grading and grubbing activities may proceed without further review

and impacts to Suitable QCB Habitat will be mitigated at a 1:1 ratio. If QCB are detected in the project Work Area, the project will be redesigned to avoid impacts to QCB, if feasible. If project redesign is not feasible or will not avoid all impacts, unavoidable impacts to Occupied QCB Habitat will be mitigated at a 2:1 ratio, and impacts to Suitable QCB Habitat will be mitigated at 1:1;

- b) If the timing of the project will not allow for adult flight season surveys to determine the presence or absence of QCB in the Work Area, it will be assumed that the identified Suitable QCB Habitat is occupied. If project redesign is not feasible or will not avoid all impacts, unavoidable impacts to the assumed Occupied QCB Habitat will be mitigated at a 2:1 ratio
4. SDG&E plans to regularly regrade its transmission and gas line access roads at least every two years. If the roads are maintained at least once every two years, then no additional mitigation will be required for ongoing road maintenance. If the roads are not maintained at least every two years, however, additional mitigation may be required, depending on whether QCB habitat has become established on the roads. If more than two years pass without any vegetation clearing, a survey and appropriate mitigation as determined by the Plan's operational protocols will be required.

3.2.2 General Protocols for Operations and Maintenance Activities for Emergency Periodic Non-Deferrable Activities (Figure 5)

1. No pre-activity survey will be conducted and no QCB adult survey will be conducted. SDG&E may take action immediately, but must contact the Service within 24 hours after undertaking the activity to provide information on the location and emergency nature of the activity.
2. Unavoidable impacts to Suitable QCB Habitat within Mapped Areas will be mitigated at a 2:1 ratio.

3.2.3 Protocols for New Construction (Figure 6)

1. A pre-activity survey will be conducted by a qualified biologist or botanist to identify Suitable QCB Habitat. The pre-activity survey can be conducted at any time of the year, whether or not it is within the QCB activity period. The results of these surveys will be reported to the Service through the pre-project reporting process

established in SDG&E's 1995 Subregional Plan. If Suitable QCB Habitat is identified during the survey, the following will occur to the extent feasible:

- a) Site the new rights-of-way, access roads and/or Facilities to avoid Suitable QCB Habitat.
 - b) Place new poles and towers so that construction impacts to Suitable QCB Habitat will be avoided or minimized.
 - c) Span Suitable QCB Habitat when the intersection of new rights-of-way and habitat cannot be avoided.
 - d) Avoid trenching through Suitable QCB Habitat.
2. If the above siting and design methods for new construction are successful in avoiding impacts to Suitable QCB Habitat, then grading may occur at any time of the year, consistent with the 1995 Subregional Plan, and no mitigation for the QCB will be required.
 3. In areas where no Suitable QCB Habitat is found during the pre-activity survey, grading may occur at any time, consistent with the 1995 Subregional Plan, and no QCB mitigation will be required.
 4. If Suitable QCB Habitat is present in the Work Area and the new Facility cannot be sited or designed to avoid the Suitable QCB Habitat, then one of the following will occur:
 - a) A protocol-level adult flight season survey will be conducted by a Service-permitted biologist within the Suitable QCB Habitat areas to determine whether or not the site is occupied by QCB. In areas where there is no QCB detected, grading and grubbing activities may proceed without further review and the Suitable QCB Habitat will be mitigated at a 1:1 ratio;
 - b) If QCB are detected in the project Work Area, the Occupied QCB Habitat will be mitigated for at a 2:1 ratio. Suitable QCB Habitat will be mitigated at 1:1; or
 - c) If the timing of the project will not allow for adult flight season surveys to determine the presence or absence of QCB, presence of QCB will be assumed and mitigation will occur at a 2:1 ratio for impacts to all Suitable QCB Habitat.

- d) If impacts to Occupied QCB Habitat (as determined by surveys or assumed) is greater than one acre, SDG&E must confer with the Service to ensure that the activity's impact will not cause the extirpation of a QCB population.

3.3 Actions to Mitigate Impacts

If an SDG&E activity is within a QCB Mapped Area, SDG&E has the option of either considering the entire area as Suitable QCB Habitat, or SDG&E may conduct additional habitat assessments to determine whether the impact area actually includes Suitable QCB Habitat (as described in the Operational Protocols above, and in the Flowcharts depicted in Figures 4, 5, and 6). This allows SDG&E to accurately quantify its impact to Suitable QCB Habitat depending on time and resources. SDG&E will mitigate for all temporary and permanent impacts to Suitable and Occupied QCB Habitat. If SDG&E chooses, protocol-level adult QCB surveys may be conducted to determine if Suitable QCB Habitat areas are actually occupied by QCB. If protocol level surveys are conducted, then mitigation at a 2:1 ratio will occur for Occupied Habitat. Impacts to Suitable QCB Habitat will be mitigated at a 1:1 ratio, and there will be no mitigation for potential QCB habitat that is determined through field assessments not to be suitable.¹

3.3.1 Mitigation for Future Impacts

SDG&E will mitigate for unavoidable impacts through one or more of the following four options: 1) payment into a QCB habitat fund to be managed by the San Diego Foundation; 2) enhancement of a portion of the existing SDG&E mitigation parcel which could support QCB habitat; 3) purchase credits from an established QCB bank should one be approved by the Service at some future date; or 4) create a new mitigation bank. SDG&E may choose which option, or combination of options to use to mitigate impacts to QCB, subject to Service approval.

3.3.1.1 Pay into a QCB Habitat Fund to be Managed by the San Diego Foundation

The San Diego Foundation is a non-profit organization established in 1975. SDG&E will irrevocably transfer to the San Diego Foundation a sum of money, in a series of

¹ This QCB Plan is intended to be implemented in concert with the Subregional Plan. However, the Subregional Plan and the QCB Plan are designed as stand-alone Habitat Conservation Plans with separate permit durations and acreage caps. In addition, mitigation requirements for each plan are separate. Where impacts are identified to Suitable or Occupied QCB Habitat as part of the overall impacts arising from an activity, a portion of the mitigation will be specific to the conservation of the QCB. For example, if an activity impacts 10 acres of coastal sage scrub habitat, and a 0.8 acre portion of that impact is considered Occupied QCB Habitat, the following calculation would be used, assuming a 2:1 mitigation ratio. Under the 1995 Subregional Plan, a total of 20 acres of mitigation would be required for impacts to species covered by the Subregional Plan. To account for impacts to the Occupied QCB Habitat, an additional 1.6 (0.8 X 2) acres of QCB mitigation would be required. The total mitigation required under this scenario would be 21.6 acres which includes deduction of 20 acres of credit from the Subregional Plan bank and 1.6 acres of QCB mitigation in accordance with the provisions of this Plan.

payments, which will be used to mitigate for SDG&E impacts to Suitable and Occupied QCB Habitat. This fund will be implemented pursuant to the *Advised Non-Endowment Fund Agreement for the SDG&E Quino Checkerspot Butterfly Mitigation Fund* (QCB Mitigation Fund Agreement) and its associated *Memorandum of Understanding Between the United States Fish and Wildlife Service and San Diego Gas & Electric Company for the SDG&E Quino Checkerspot Butterfly Mitigation Fund* (Appendix B).

3.3.1.2 Deduct Credits from Existing SDG&E Mitigation Bank

At the time the Subregional Plan was approved in 1995, SDG&E contributed funds to purchase 240 acres of high quality habitat to be used as a mitigation bank to offset impacts from SDG&E activities to the 110 covered species identified in the 1995 Subregional Plan (See Figure 4). The Service currently manages the mitigation bank as part of the San Diego National Wildlife Refuge through an endowment fee of \$275/acre, paid by SDG&E, for management of the land in perpetuity as habitat (but not necessarily QCB habitat). After the bank was established, it was determined that portions of the 240-acre parcel could be enhanced and managed for QCB habitat. Therefore, a second mitigation strategy would be the enhancement and in perpetuity management of an unallocated portion of SDG&E's existing 1995 Subregional Plan which would be used to establish a separate QCB bank. Any acreage used to establish a QCB bank within SDG&E's existing mitigation parcel would be subtracted from the remaining 1995 Subregional Plan bank credits (i.e., QCB credits will be tracked separately from multi-species credits and acreage would not be considered part of both banks). Also, allocation of QCB credits would be subject to the development, and subsequent review and approval by the Service, of a QCB Enhancement and Management Plan.

3.3.1.3 Purchase Credits from Established QCB Bank

SDG&E will have the option to purchase credits from an established QCB bank, subject to Service approval, should one be approved by the Service at some future date.

3.3.1.4 Create a SDG&E QCB Mitigation Bank to Offset Impacts to QCB

SDG&E may, at its option, elect to create a mitigation bank of its own to offset impacts to the QCB. Establishment of a QCB mitigation bank by SDG&E would be contingent upon successfully establishing a mitigation banking agreement with the Service. Also, establishment of a QCB mitigation bank would be subject to the development and subsequent review and approval by the Service of an appropriate QCB enhancement and management plan.

3.3.2 Mitigation for Grading of Existing Access Roads

The first time an access road is graded after approval of the Plan, any unavoidable impacts to Suitable or Occupied QCB Habitat will be mitigated in the same manner as for all other future activities. SDG&E plans to regularly regrade its transmission and gas line access roads at least every two years. However, despite this regular grading, small patches of QCB Host Plants may grow back in the roads between regrading operations. QCB Host Plants are known to grow on dirt roads that have been abandoned or are irregularly maintained. If the roads are maintained (i.e., graded) at least once every two years, then no additional mitigation will be required for impacts to QCB from ongoing road maintenance. If the roads are not maintained at least every two years, additional mitigation may be required, depending on whether QCB habitat has become established on the roads. If more than two years pass without any vegetation clearing, a habitat assessment, pre-activity survey, protocol QCB survey, and appropriate mitigation as defined above, may be required. Pre-activity surveys, protocol level surveys, and QCB habitat assessments completed in Mapped Areas will be valid for two years.

3.4 Monitoring and Reporting

Monitoring and Reporting for the QCB will be integrated with the monitoring and reporting conducted for SDG&E's existing Subregional Plan. Reporting will include an annual summary describing the quality and type (i.e., temporary versus permanent) of QCB habitat impacts, by individual project, and will describe the type of mitigation utilized to offset QCB impacts. The annual report, due to the Service November 1 of each year, will also include a summary of mitigation credits available at the beginning of the reporting year, any deductions made throughout the year, and a final determination of credits remaining.

3.5 Funding

The *QCB Mitigation Fund Agreement* establishes the SDG&E Quino Checkerspot Mitigation Fund (Fund) to be used to mitigate adverse impacts to QCB and QCB habitat anticipated under the Plan. For mitigation of unavoidable impacts, SDG&E will ensure that mitigation occurs prior to the impact through advance (pre-impact) payments into this Fund. SDG&E shall make an initial deposit of \$250,000 into the Fund which will be used to create QCB "mitigation credits" prior to the initiation of any activities under this Plan. These mitigation credits will be available to SDG&E to mitigate impacts to QCB habitat anticipated under the Plan. As QCB mitigation credits are used, SDG&E can add mitigation credits by making additional contributions to the Fund. At the time of Plan submittal, each QCB mitigation credit (equating to one acre of QCB habitat) was priced at \$19,000 per credit. Therefore, SDG&E's initial deposit of \$250,000 (less Fund maintenance costs) will establish a balance of approximately 13 acres of QCB mitigation

credits. To adjust for inflation, the value of each QCB mitigation credit shall be reassessed every 5 years by the Fund Advisory Committee as provided for in the QCB Mitigation Fund Agreement (Appendix B). At the discretion of the Fund Advisory Committee, the cost of QCB mitigation credits may be adjusted based on the five year review. SDG&E shall maintain a minimum net positive balance of two acres of QCB mitigation credits in the Fund during the term of the Plan.

4.0 PLAN IMPLEMENTATION

4.1 Changed Circumstances

4.1.1 Changed Circumstances Defined

Changed Circumstances are defined under the Federal "No Surprises" rule as changes in circumstances affecting a species or geographic area covered by a conservation plan that can reasonably be anticipated by the Applicant and the Service and that can be planned for in the HCP (e.g., the listing of a new species, or a fire or other natural catastrophic event in areas prone to such events).

4.1.2 Changed Circumstances Provided for in this Plan

The Service and SDG&E agree that the Changed Circumstances defined by this Section of the Plan represent all Changed Circumstances to be addressed by SDG&E. These Changed Circumstances reflect changes in circumstances that can reasonably be anticipated to occur.

Each of the defined Changed Circumstances includes an assessment of risk, a description of preventative measures, and a summary of planned responses (measures to be undertaken in the case of Changed Circumstances). Preventative measures are those measures that are or will be undertaken by SDG&E to reduce the potential for occurrence of the Changed Circumstance, and/or that reduce the potential for damage to the habitat resulting from a Changed Circumstance event. Planned responses are the specific responses that will be undertaken in the event of a Changed Circumstance. Planned responses will not include any actions beyond those expressly identified in this section, nor for any event not specifically identified as a Changed Circumstance.

4.1.2.1 The New Listing of Species Not covered by the Plan

Risk Assessment

SDG&E recognizes, as noted in the Service's discussion of its "Habitat Conservation Plan Assurances ('No Surprises') Rule," (63 F.R. 8859; February 23, 1998), that the future listing of a species whose conservation was not provided for in the Plan to a level sufficient to include the species as a Covered Species can be viewed as a Changed Circumstance. In the event that a species which is not a covered species pursuant to this Plan is listed by the Service subsequent to the issuance of the section 10 permit pursuant to this HCP, such listing may be considered a Changed Circumstance.

Preventative Measures

The development and implementation of the operational protocols in the 1995 Subregional Plan and this Plan are intended to act in concert with other surrounding HCPs to preserve habitat sufficient to lessen the likelihood of the future addition of species to the lists of endangered or threatened species under the Act.

Planned Responses

In the event of a new listing of one or more species not covered by this Plan, the Service and SDG&E will identify actions that might cause take, and SDG&E will avoid such actions in the implementation of covered activities until approval of an amendment to the Plan to address the newly listed species, or until such measures are no longer required.

4.1.2.2 Changed Circumstances Applying to an Existing or New SDG&E Mitigation Site

In the event that SDG&E decides to mitigate QCB impacts by using the existing SDG&E Subregional Plan mitigation site at the San Diego National Wildlife Refuge (Refuge) or by creating a new QCB mitigation bank, the following Changed Circumstances provisions would apply to either mitigation site option, but not to other portions of the Plan Area:

- Repetitive Fire
- Severe Drought
- Invasion by Exotic Plant Species

Repetitive Fire

Repetitive fire is defined as a fire that 1) occurs in the same location as a previous fire; 2) occurs between three to ten years after the initial fire; and 3) burns at least 50 percent of the QCB mitigation bank.

Risk Assessment

Because much of the area within the existing Subregional Plan's mitigation site on the Refuge supports highly flammable scrub and grassland, risk of wildfire within this site is high. Based on the history of fire within the Plan Area, fire is sufficiently likely to occur at this site and other potential QCB mitigation bank sites during the life of the Plan to warrant specific measures to address such a change in circumstances, although it is expected that preventative measures, including fire suppression, will be effective at reducing the risk of fire.

Under certain circumstances, the occurrence of fire within potential QCB mitigation sites may adversely affect QCB or its host plants. Repetitive fires create conditions suitable for habitat type conversion from QCB habitat to non-QCB habitat.

The damage that a repetitive wildfire might cause to a mitigation site is difficult to predict because it depends on where the wildfire started, the wind direction and force, atmospheric conditions, and other temporal factors. The severity and temperature of the fire, as well as the habitat affected, would influence the extent of the damage and the appropriate response necessary to prevent habitat type conversion.

Preventative Measures

Because most of SDG&E's activities within the Plan Area occur on land that SDG&E does not own or control, it would be difficult for SDG&E to implement preventative measures to reduce the likelihood of, or harm from fire within the Plan Area, outside of a QCB mitigation site. SDG&E does implement protocols with respect to its maintenance activities, however, that are designed to reduce the risk of fire (e.g., not parking vehicles where catalytic converters can ignite dry vegetation, using shields, protective mats, and other preventive measures during grinding or welding).

Planned Responses

If a repetitive fire occurs, as above, SDG&E will provide funding for the monitoring of the QCB mitigation site to determine whether native plants are resprouting and if non-native weeds are establishing. If monitoring reveals non-native plant invasion or a lack of native sprouting over more than 50% of the burned area, SDG&E would fund appropriate remedial measures, as approved by the Service. Remedial measures may include, but are not limited to: (1) controlling non-native weeds through hand-weeding or other methods; (2) seeding the area with native seed mix, including *Plantago* species;

and/ or (3) allowing the vegetation to grow back without interference. SDG&E will provide a one time contribution of \$15,000 to fund responses to repetitive fire at the mitigation site. This \$15,000 contribution would be in addition to any endowment monies established for “regular” maintenance and monitoring activities associated with the in perpetuity operation of the QCB mitigation site, and in addition to monies addressing other Changed Circumstances in this section.

Severe Drought

For the purpose of defining Changed Circumstances, drought is defined as climatic drought with a duration of no less than three years, as declared by the California State Department of Water Resources and/or the San Diego County Water Authority (CWA).

Risk Assessment

Drought is a cyclical weather phenomenon that is beyond human control. Drought is not uncommon in Southern California, and it is a phenomenon to which local natural habitats and species have of necessity adapted over time. Drought occurs slowly over a multi-year period, differing from the catastrophic events of fire and flood, which occur rapidly and afford little time for preparing for disaster response. Drought conditions may adversely affect QCB habitat. The potential for drought to impact a QCB mitigation site increases with the length of a drought.

Preventative Measures

This Plan does not contain measures to prevent climatic drought because drought is not preventable by human intervention.

Planned Responses

Upon the occurrence of drought as defined by this section, the Service will notify SDG&E that a drought condition exists. Within 60 days of the determination of drought, the Service will assess the condition of the QCB mitigation site to determine if a monitoring program and/or remedial action is warranted.

SDG&E will provide a one-time contribution of \$15,000 to the management endowment established for any SDG&E-created QCB mitigation site. This \$15,000 contribution would be in addition to any endowment monies established for “regular” maintenance and monitoring activities associated with the in perpetuity operation of the QCB mitigation site, and in addition to monies addressing other Changed Circumstances in this section. Based upon the extent and severity of the drought, the QCB mitigation site manager may access the Changed Circumstances endowment (the \$15,000 specifically

set aside for drought response) to fund development and implementation of a monitoring program to monitor natural re-growth within the damaged area for a period of up to two years. The monitoring program will provide for site visits on a regular basis, as determined by the Service as appropriate to the drought situation.

At any time during the monitoring program, should monitoring observations indicate that allowing habitat to re-grow without interference is resulting in an unacceptable increased opportunity for invasion by exotic plant species and/or increased potential for type conversion, as determined by the QCB mitigation site manager, appropriate remedial measures will be instituted using the Changed Circumstances funding.

Invasion by Exotic Plant Species

Changed Circumstances will be deemed to have occurred when invasive weedy species exceed 30% cover on a QCB mitigation site.

Risk Assessment

Although invasive, exotic, or pest species of plants may currently be present within a QCB mitigation site, an unexpected and/or sudden increase in certain invasive species may create the potential for impacts to QCB and its host plants, which could have a significant adverse affect on QCB within the mitigation site. Opportunities for increases in invasive species could occur as urban development expands in areas surrounding a QCB mitigation site.

Preventative Measures

The occurrence of a catastrophic event, including Changed Circumstances, may precipitate sudden increases of invasive species. Any management plan approved by the Service used to establish a QCB mitigation site will include measures to reduce the opportunity for invasion by exotic species.

Planned Responses

Once invasion by exotic plant species has occurred, natural succession likely will not allow for the complete recovery of the QCB mitigation site to a pre-disturbance state. Active restoration will be required to control non-native annuals and reestablish native vegetation. SDG&E will provide a one time contribution of \$15,000 to fund exotic species control and native plant restoration in response to a Changed Circumstance. This \$15,000 contribution would be in addition to any endowment monies established for "regular" maintenance and monitoring activities associated with in perpetuity operation of the QCB mitigation site and monies associated with other Changed Circumstances.

4.1.3 Changed Circumstances Notification

If the Service or SDG&E becomes aware of the existence of a Changed Circumstance, each shall immediately notify the other. Thereafter, through a Changed Circumstance notice delivered to the QCB mitigation site manager, the Service shall identify planned responses identified in this Plan that the Service deems necessary to respond to the Changed Circumstance.

4.1.4 Changed Circumstances Funding

If SDG&E elects to create a QCB mitigation site, and such creation is approved by the Service, SDG&E will create a Changed Circumstances fund through a one-time deposit of \$45,000 into an interest bearing account at such time as the decision to create a QCB mitigation site is approved. The dollar amounts presented in this section reflect anticipated costs as of the implementation date of this Plan. If SDG&E creates a QCB mitigation bank (either at the Refuge or in a new location) more than five years after initial implementation of the Plan, the costs (and commensurate contribution by SDG&E) will be reevaluated and must be approved by the Service. This contribution would be in addition to any endowment monies established for "regular" maintenance and monitoring activities associated with the in perpetuity operation of the QCB mitigation site as outlined in the Service approved monitoring and management plan used to establish the site. SDG&E will make the principal and interest available to the QCB site manager for use at the mitigation site in the event that a Changed Circumstance occurs. Any funds remaining in the account at the end of the term of the Section 10(a) Permit will be refunded to SDG&E.

4.2 Unforeseen Circumstances

4.2.1 No Surprises Rule

Unforeseen Circumstances are discussed in the Department of the Interior's "Habitat Conservation Plan Assurances ('No Surprises') Final Rule," issued February 23, 1998 (Federal Register vol. 63, no.35). Pursuant to the provisions of the "No Surprises Policy," in the event Unforeseen Circumstances affect a species covered by this Plan, the Permittee will not be required to provide additional mitigation which requires the commitment of additional lands, additional compensation, or additional restrictions on lands or other natural resources released for development use. Should Unforeseen Circumstances arise, changes will be limited to modifications within conserved habitat areas, or the Plan's operating conservation program for the covered species, and will maintain the original terms of the Plan to the maximum extent possible. The assurances contained in the "No Surprises" regulation apply only if the permittee has complied with their obligations under the HCP.

4.2.2 Definition of Unforeseen Circumstances and Relevant Factors

For purposes of this Plan "Unforeseen Circumstances" (defined in 50 C.F.R. Section 17.3) means changes in circumstances affecting the QCB or geographic area covered by the Plan that could not reasonably have been anticipated by Plan developers and the Service at the time of the conservation plan's negotiation and development, and that result in a substantial and adverse change in the status of the QCB.

Pursuant to the "No Surprises" rule at 50 C.F.R. 17.22(b)(5)(iii)(C)(2003), the Service has the burden of demonstrating that Unforeseen Circumstances exist, using the best scientific and commercial data available. The findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the QCB. The Service will consider, but not be limited to, the following factors:

- The size of the current range of the QCB;
- The percentage of the QCB range adversely affected by the Plan;
- The percentage of QCB range that has been conserved by the Plan;
- The ecological significance of that portion of the QCB range affected by the Plan;
- The level of knowledge about the QCB and the degree of specificity of the QCB's conservation program under the Plan; and
- Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the QCB in the wild.

If the Service or SDG&E becomes aware of the existence of a potential Unforeseen Circumstance, each shall immediately notify the other of the existence of a potential Unforeseen Circumstance. Except where there is a substantial threat of imminent, significant adverse impacts to QCB, the Service will provide SDG&E thirty (30) calendar days notice of a proposed written finding of Unforeseen Circumstances prior to adopting the finding, during which time the Service will meet with SDG&E to discuss the proposed finding, to provide SDG&E with an opportunity to submit information to rebut or propose amendments to the proposed finding, and to consider any proposed changes to the operating conservation program. During the time necessary to determine the nature and extent of any additional or modified mitigation, SDG&E will avoid contributing to appreciably reducing the likelihood of the survival and recovery of the QCB. Any

revised provisions arising from Unforeseen Circumstances that could potentially affect energy services will require the Service to collaborate with the California Public Utilities Commission (CPUC) and the Federal Energy Regulatory Commission (FERC) prior to implementation.

4.2.3 Effects of Unforeseen Circumstances on Take Authorization

Notwithstanding the limits on conservation and mitigation measures identified above, the Permit for this Plan may be revoked if the Service determines that continuation of the SDG&E's activities would be inconsistent with this section of the Plan. Nothing in this Plan shall preclude the Service and any Federal, State, local or Tribal government agency, or a private entity, from taking additional actions at their own expense to protect or conserve the QCB. The existence of Unforeseen Circumstances does not authorize SDG&E to violate any Federal, State or local laws, ordinances, regulations or policies, including but not limited to the requirements of the CPUC and FERC.

4.3 Amendment Process

4.3.1 Minor Amendments

The Service or SDG&E may propose minor modifications to the Plan by providing written notice to the other party. Such notice shall include a statement of the reason for the proposed modification and an analysis of its environmental effects, including its effects on operations under the Plan and on QCB. Minor amendments are permissible without amending the underlying section 10(a)(1)(B) permit provided that the Service determines that the changes do not: (1) cause additional take of QCB that was not analyzed in connection with the original HCP; (2) result in operations under the Plan that are significantly different from those analyzed in connection with the original Plan; or (3) have adverse effects on the environment that are new or significantly different from those analyzed in connection with the original Plan.

4.3.2 Formal Amendments

Amendments that do not fit the definition of a minor amendment will be processed as formal amendments in accordance with all applicable legal requirements, including but not limited to the Federal Endangered Species Act, the National Environmental Policy Act, and the Service's permit regulations. Formal permit amendments require written notification to the Service and the same justification and supporting information for compliance with a standard incidental take permit application, including conservation planning requirements and compliance with issuance criteria.

When the Service or SDG&E believes that a formal amendment to the Plan is required, consultation with the Service will include the Service's Carlsbad and California/Nevada Operations Offices. SDG&E will prepare the appropriate documentation for submission to the Service. The documentation will include a description of the event or activity and an assessment of its impacts. The amendment will describe changes to the mitigation measures to ensure that QCB is appropriately protected.

4.4 Permit Renewal or Extension

The permit may be renewed or extended beyond the initial 50-year timeframe with the approval of the Service. The request to renew or extend the permit must be submitted in writing by SDG&E and reference the permit number; certify that all statements and information in the original application are still correct or include a list of changes; and provide specific information concerning what take has occurred under the existing permit and what portions of the project are still to be completed. The request must be made to the Service's Carlsbad Fish and Wildlife Office at least 30 days prior to the permit's expiration date. As long as the request is received within 30 days prior to the permit expiration date, the permit shall remain valid while the renewal or extension is being processed. The renewal or extension may be approved in writing by the Field Supervisor of the Carlsbad Fish and Wildlife Office. Changes to the Plan that would qualify as a formal amendment will be handled in accordance with section 6.2.

4.5 Permit Suspension

In the event of a material violation of this Plan or of the section 10(a) permit for which SDG&E is responsible, and which the Service believes is a valid ground for permit suspension, and except where, in the reasonable opinion of the Service, the alleged violation involved imminent danger to a significant extent to species not covered under the plan, the Service shall provide SDG&E with written notice by certified or registered mail of its proposed suspension of the section 10(a) permit and of the nature and extent of the violation and of any required corrective measures to preserve the proper functioning of the Plan and maintain the take authorization in full force and effect, and of SDG&E's right to object to the proposed suspension. SDG&E shall have forty-five (45) days from the date of the notice of proposed suspension to file written objections, setting forth its response to such notice of suspension and/or to any of the required corrective measures. Such response shall set forth any factual or legal basis SDG&E may have for requesting the Service rescind all or any part of such notice of violation or to delete or modify any of the required corrective measures. If SDG&E timely responds and requests that the Service rescind all or any part of a notice of violation or its required corrective measures,

within thirty (30) days of such response, the Service shall provide SDG&E with a written determination whether all or any part of such notice shall be rescinded or otherwise modified whether or not its required corrective measures will be modified or setting forth their basis for denying SDG&E's request.

If SDG&E fails to timely commence implementation of corrective measures or to diligently pursue the same within fifteen (15) days after the Service issues its determination that such measures are required, the Service may, in accordance with the procedures provided in 50 CFR §§13.27 and 13.28 take action to suspend or revoke the section 10(a)(1)(B) permit, subject to SDG&E's right to seek reconsideration and appeal of such determination pursuant to 50 CFR §13.29.

In the event the Service suspends the section 10(a) permit the Service shall, as soon as possible but no later than ten (10) days after such suspension, confer with SDG&E concerning how the violation that led to the suspension can be remedied. At the conclusion of any such conference, the Service shall determine the specific actions necessary to effectively redress the violation. In making this determination the Service shall consider the requirement of the Act or regulations issued thereunder, the conservation needs of the covered species, the terms of the section 10(a) permit and any comments or recommendations received during the meet and confer process.

Upon full performance of such necessary actions, the Service shall immediately reinstate the section 10(a) permit. It is the intent of the Service and SDG&E that in the event of any suspension of the section 10(a) permit all parties shall act expeditiously to cooperatively reinstate the same.

The Service agrees that it will not revoke or terminate the section 10(a) permit for violation of this Plan or section 10(a) permit unless the Service has provided SDG&E with written notice of the violation, and of the required corrective action, and SDG&E has failed to take appropriate remedial action within the time periods provided in accordance with this section, or the Service determines that (a) such violation cannot be effectively redressed by other remedies or enforcement action, and (b) revocation or termination is required to fulfill a responsibility of the Service under the Act.

5.0 OTHER MEASURES

Section 10(a)(2)(A)(iv) of the Act states that an HCP must specify other measures that the Director may require as being necessary or appropriate for purposes of the plan. This HCP qualifies as a "Low-Effect" HCP for which the development of an Implementing Agreement is not required. No other measures that the Director may require have been identified for this HCP.

6.0 ALTERNATIVES TO THE PROPOSED ACTION CONSIDERED

6.1 No Action Alternative

An alternative to this Plan is the No Action alternative. Under the No Action alternative, no permit would be issued. This would mean that SDG&E activities located in QCB habitat would remain subject to "take" prohibitions of the Act, and SDG&E would need to avoid take of QCB. Complete avoidance of impacts will not be possible for some of SDG&E's activities. As such, SDG&E would be required to obtain incidental take permits for those activities with unavoidable impacts. This process would occur on a project-by-project basis, but without a set of comprehensive conservation measures in advance. The result would be that SDG&E would only mitigate for impacts to occupied QCB habitat. This approach has the potential to miss or to inadequately examine conservation issues and measures which may be too ill defined, unrecognized or vague to enable a clear and meaningful impact analysis or to articulate the needed mitigation measures.

6.2 Project-by-project Alternative

The other alternative considered was a project-by-project approach to permitting that still relied on the operational protocols identified in this Plan as the standard set of measures to be used for individual permitting. Like the No Action alternative, this alternative would not address QCB incidental take permitting at a programmatic level. Under this alternative, SDG&E's activities occurring in QCB habitat would remain subject to the "take" prohibitions and permitting under the Act. Although utilizing the comprehensive operational protocols for all activities would avoid the application of haphazard conservation measures, this type of permitting for individual activities that disturb minor amounts of habitat is much too inefficient and cumbersome. This alternative would also result in an unnecessary economic burden on SDG&E.

The proposed Plan addresses QCB from a habitat basis at a programmatic level, and therefore provides more comprehensive conservation. In addition, the Plan provides SDG&E with long-term predictability concerning the nature of its operations for which incidental takings are permitted, avoiding potential facility-compromising delays.

7.0 DEFINITIONS

Activities

The term activities shall mean all current and future activities of SDG&E, arising out of or in any way connected with the siting, (including any site assessment, surveying, testing, or planning), design, installation, construction, use, maintenance, repair and removal of Facilities within the Plan Area, or any activities associated with the acquisition of property rights in relation thereto. A total of 33 acres of QCB habitat modification as a result of temporary or permanent activities is covered by the Plan.

Changed Circumstances

Changed Circumstances are defined under the Federal "No Surprises" rule as changes in circumstances affecting a species or geographic area covered by a conservation plan that can reasonably be anticipated by plan developers and the Service and that can be planned for (e.g., the listing of a new species, or a fire or other natural catastrophic event in areas prone to such events).

Changed Circumstances, and the actions to be taken for Changed Circumstances, are defined in Section 4.0 of this Plan. Planned responses will not include any action beyond those provided for under Section 4.0, nor for any event not identified as a Changed Circumstance in Section 4.0.

Emergency Non-Deferrable Activities

Emergency Non-Deferrable Activities are those activities undertaken when imminent threat to the safety and reliability of the electric and gas transmission and distribution system exists. Examples of emergency situations include but are not limited to situations such as cracked poles, scoured tower footings, downed lines, highly stressed supports, rusted anchor lines or braces, cracked insulators, lines or insulators abused by vandalism, exposed pipelines, broken pipes/gas lines, damage caused by landslides, fire, flood, etc.

Emergency Non-Deferrable Activities include but are not limited to those activities that will be required to correct the emergency, including but not limited to: driving on roads, checking equipment and facility failure, general repairs to Facilities resulting from damage/vandalism/fire, helicopter surveillance for the purpose of inspection, setting poles, installing wire and/or equipment, ferrying workers, digging pole and/or anchor holes with a mechanized auger or by hand, driving off road to gain access to poles, equipment, or wire for installation or removal, dragging wire through brush for installation or removal, and grading for emergency access, etc.

Facilities

The term Facilities shall include each of the following facilities which are a part of SDG&E's operations as a public utility, whether owned or operated by SDG&E:

San Diego Gas and Electric Company QCB Low-Effect Habitat Conservation Plan

- (a) Existing electric power generating plants, of whatever nature, including, but not limited to, steam electric and nuclear electric generating plants, and all related buildings, structures, fixtures, improvements, land and water uses, equipment, machinery, easements, licenses, franchises and other rights-of-way.
- (b) Electric transmission systems and distribution systems, whether above or below ground, including, but not limited to, all related towers, poles, transformers, anchor lines, anchors, vaults, manholes, and access roads, together with any other related fixtures, equipment, machinery, improvements, and operational accouterments and appurtenances.
- (c) Electrical substations, including all related buildings, structures, land uses, access roads, poles, towers, electric lines, anchor lines, anchors, pads, electric lines, transformers, switches, together with all other related improvements, fixtures, equipment, machinery, accouterments and appurtenances.
- (d) Telecommunication systems, including all related buildings, structures, land uses, access roads, towers, poles, antennae, vaults, lines, switches, and all other related fixtures, equipment, machinery, improvements, and accouterments, and appurtenances.
- (e) Natural gas compressor and regulator stations, transmission pipelines, and distribution systems, including, but not limited to, all related buildings, structures, pipes, valves, engines, compressors, vaults, manholes, odorant systems, and all other related equipment, machinery, fixtures, improvements, and operational accouterments, and appurtenances.
- (f) Other facilities, including, but not limited to, communication or other service facilities, above and below ground such as, but not limited to, fiber optics links, fuel lines, water pipes, pipes or conduit of whatever nature, antennae, or lines of any kind, together with any related vaults, manholes, poles, towers, fixtures, structures, land uses, access roads, improvements, equipment machinery, and operational accouterments and appurtenances, whether owned or operated by SDG&E, and which are compatible with and comprised of a similar nature to the Facilities enumerated in subparagraphs (a) through (e) above.
- (g) Future Facilities owned or operated by SDG&E, including those described in subparagraphs (b) through (f) above, as a public utility, within the meaning of California Public Utilities Code, Section 216, as the same may be configured and constituted from time to time, and all property rights in land, now or hereafter vested in SDG&E, upon, under, in or over which such Facilities are located.

This Plan does not cover expansions of electric generating capacity or major expansions of electric or gas transmission systems beyond those described herein. This Plan does cover impacts to QCB or QCB habitat within the boundaries of the Plan Area associated with: 1) new electrical transmission line facilities; 2) electrical interconnections with other utilities that do not project more than 30 miles outside of SDG&E's service territory boundary; 3) new gas transmission line facilities not exceeding both 30" in diameter and

20 miles in length (but including the natural gas transmission line between Rainbow and Santee); 4) new electric substations and gas regulator stations with habitat impacts under 20 acres; and 5) new gas compressor stations with habitat impacts under 10 acres.

Mapped Areas

Mapped Areas are illustrated in Figure 3 (as approved by the Service), and are based on the 2003 Recovery Plan for the QCB (QCB Recovery Plan) and data collection since 1990. According to the QCB Recovery Plan, sightings of QCB since the 1990s are considered extant. Earlier sightings without post 1990 backup are considered historical. There was a drought in the 1980s where QCB could not be located anywhere for several years. Pre-1990 sightings are historic because the populations have not been located again despite intensive searches in some areas. The 1990 date and system for categorizing QCB sightings was established by the map in Mattoni et al. 1997.

The Mapped Areas will be updated annually. As new QCB sightings are documented, a 1km radius circle will be placed around each new QCB sighting and included in the Mapped Area. Although the new QCB sighting and the area within the 1km radius circle may not be contiguous with the existing Mapped Area (depicted in Figure 3), the new sighting and area within the 1km radius circle will be considered part of the Mapped Area. Subsequently, the Service will update the Mapped Area (by December 1 of each year) based on the 1km radius for each sighting and provide this updated Mapped Area to SDG&E. This buffer will be slightly modified to coincide with prominent features such as roads, waterways, or ridgelines to facilitate delineation in the field. Clusters of sightings may be consolidated in a manner that specifically benefits QCB. The Service will be responsible for updating the Mapped Areas and providing the updated information to SDG&E by December 1 of each year, for use the following year.

Occupied QCB Habitat

Occupied QCB Habitat is defined in this Plan as Suitable Habitat (as defined below) that is inside the Mapped Areas and within 300 meters of a known QCB occurrence (within two years of the observation). Also, Suitable Habitat inside Mapped Areas may be considered Occupied by SDG&E in lieu of conducting surveys.

Plan Area

The area which is subject to the application of this Plan (see Figure 1).

Periodic Non-Deferrable Activities

Periodic Non-Deferrable Activities include activities that are critical to the reliability and safety of the electric and natural gas systems and must be undertaken on a periodic or occasional basis and which are not deferrable to another time of year (e.g., pole brushing, insulator washing, tree trimming, road re-grading, pole inspections, etc).

QCB Host Plants

QCB Host Plants include: (1) dot seed plantain (*Plantago erecta*), woolly plantain (*Plantago patagonica*), white snapdragon (*Antirrhinum coulterianum*), thread-leaved birds beak (*Cordylanthus rigidus*); (2) any other species of *Plantago* native to Southern

California (e.g., *Plantago insularis*); and (3) purple owl's clover (*Castilleja exserta*). Additional plant species may be added to those previously mentioned if their suitability as a larval host plant has been formally documented in the field in a survey report prepared by a Service-certified QCB biologist and provided to SDG&E in a timely manner.

Suitable QCB Habitat

Suitable QCB Habitat is defined in this Plan as shrub communities, such as coastal sage scrub, chaparral, and desert scrub, with 50 percent shrub cover or less, and the potential to support dot-seed plantain and other larval host plants. Areas that meet the shrub cover standard are excluded if the ground cover vegetation is disturbed and/or covered by understory vegetation to the extent that larval host plants do not grow. Areas of solid rock substrate and the surfaces of solidly compacted access roads which are not likely to support vegetation are also excluded. All areas of vernal pool complexes are included as Suitable QCB Habitat regardless of upland vegetation surrounding the vernal pools. Areas meeting the 50 percent shrub cover with QCB Host Plants, native herbaceous species, cryptobiotic crusts, or the potential to support any of these elements are included as Suitable QCB Habitat. Also included in Suitable QCB Habitat for this Plan are all native grasslands and non-native grasslands that show evidence of potential to support larval host plants. Evidence for a potential to support larval host plants included presence of native grasses, native wildflowers, and cryptobiotic crusts.

Unoccupied QCB Habitat

For purposes of this Plan, Unoccupied QCB Habitat are those areas outside of the Mapped Areas (as depicted in Figure 3), and those portions of the Mapped Areas that are in Suitable Habitat that have been determined through current (within two years) protocol surveys to have no QCB.

Work Area

A Work Area is an area directly affected by an activity. Work areas may include, but not be limited to work pads, areas adjacent to the Facility being installed or repaired, access routes, pull sites, and laydown and storage areas.

8.0 REFERENCES

- Ballmer, Greg, David Hawks, Ken Osborne, and Gordon Pratt. 1998. The Quino checkerspot butterfly *Euphydryas editha quino*. Unpublished Report.
- Brown, J. 1991. Sensitive and Declining Butterfly Species (Insecta: Lepidoptera) in San Diego County, California. Dudek and Associates, Encinitas, California.
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Murphy, D.D., and R.R. White. 1984. Rainfall, Resources, and Dispersal in Southern populations of *Euphydryas editha* (Lepidoptera: Nymphalidae). *Pan-Pacific Entomologist* 60:350-355.

United States Fish and Wildlife Service (USFWS). 1997. Endangered and threatened wildlife and plants: Determination of endangered status for the Laguna Mountains skipper and Quino checkerspot butterfly. *Federal Register* 62:2313-2322. January 6, 1997.

United States Fish and Wildlife Service (USFWS). 2000. Quino Checkerspot Butterfly Year 2000 Survey Protocol.

United States Fish and Wildlife Service (USFWS). 2002. Endangered and threatened wildlife and plants: Designation of critical habitat for the Quino checkerspot butterfly (*Euphydryas editha quino*). *Federal Register* 67:18355-18395. April 15, 2002.

United States Fish and Wildlife Service (USFWS). 2003. Quino Checkerspot Butterfly (*Euphydryas editha quino*) Recovery Plan. Portland, Oregon.

9.0 APPENDIX A: 1995 Subregional Plan Protocols

7.1 Operational Protocols

Operational protocols represent an environmentally sensitive approach to traditional utility construction, maintenance and repair Activities recognizing that slight adjustments in construction techniques can yield major benefits for the environment. The appropriate Operational Protocols for each individual project will be determined and documented by the Environmental Surveyor. The information regarding the qualifications and responsibilities of the environmental surveyor is contained in Appendix B. The following mitigation measures shall be adhered to by SDG&E.

7.1.1 General Behavior for All Field Personnel

1. Vehicles must be kept on access roads. A 15 mile-per-hour speed limit shall be observed on dirt access roads to allow reptile species to disperse. Vehicles must be turned around in established or designated areas only.
2. No wildlife, including rattlesnakes, may be harmed, except to protect life and limb.
3. Firearms shall be prohibited on the rights-of-way except for those used by security personnel.
4. Feeding of wildlife is not allowed.
5. SDG&E personnel are not allowed to bring pets on the rights-of-way in order to minimize harassment or killing of wildlife and to prevent the introduction of destructive domestic animal diseases to native wildlife populations.
6. Parking or driving underneath oak trees is not allowed in order to protect root structures except in established traffic areas.

7. Plant or wildlife species may not be collected for pets or any other reason.
8. Littering is not allowed. SDG&E shall not deposit or leave any food or waste on the rights-of-way or adjacent property.
9. Wild Fires shall be prevented or minimized by exercising care when driving and by not parking vehicles where catalytic converters can ignite dry vegetation. In times of high fire hazard, it may be necessary for trucks to carry water and shovels, or fire extinguishers in the field. The use of shields, protective mats, or other fire prevention methods shall be used during grinding and welding to prevent or minimize the potential for fire. Care should be exhibited when smoking in natural habitats.
10. Field crews shall refer environmental issues including wildlife relocation, dead or sick wildlife, hazardous waste, or questions about avoiding environmental impacts to the Environmental Surveyor. Biologists or experts in wildlife handling may need to be brought in by Environmental Surveyor for assistance with wildlife relocations.

7.1.2 Training

11. All SDG&E personnel working within the project area shall participate in an employee training program conducted by SDG&E, with annual updates. The program will consist of a brief discussion of endangered species biology and the legal protections afforded to Covered Species; a discussion of the biology of the Covered Species protected under this Subregional Plan; the habitat requirements of these Covered Species; their status under the Endangered Species Acts; measures being taken for the protection of Covered Species and their habitats under this Subregional Plan; and a review of the Operational Protocols. A fact sheet conveying this information will also be distributed to all employees working in the project area.
12. Designated SDG&E staff will conduct selected reviews of SDG&E operations. Any proposed modifications to Operational Protocols, procedures or conditions will be promptly provided to CDFG and USFWS for their review and input for required permit or Subregional Plan amendments.

7.1.3 Preactivity Studies

13. The Environmental Surveyor shall conduct preactivity studies for all activities occurring off of access roads in natural areas. The scope of these studies is included in Appendix A. The Environmental Surveyor will complete a preactivity study form contained in Appendix A, including recommendations for review by a biologist and construction monitoring as appropriate. Biologists should be called in when there is the potential for unavoidable impacts to Covered Species. The forms are for information only, and will not require CDFG or USFWS approval. These forms shall be faxed to CDFG and USFWS, along with phone notification, who will reply within 5 working days, indicating if they would like to review the project and/or suggest recommendations for post project monitoring. If a biologist is required, he/she will be contacted concurrent to notification to CDFG and USFWS. SDG&E's project may proceed during this time if necessary, in compliance with the recommendations of the biologist (For narrow endemic species see mitigation IV following Table 3.1). USFWS survey protocols performed by qualified biologists will be required for new projects which are defined as projects requiring CEQA review.

In those situations where the Environmental Surveyor cannot make a definitive species

identification, an on-call biologist will be brought in. When the biologist is called, he or she will be contacted concurrently with CDFG and USFWS. The biologist will make the determination of the species in question and recommend avoidance or mitigation approaches to the Environmental Surveyor and a decision will be made. In those situations where more than one visit may be necessary to identify a given species, such as certain birds, no more than three site visits shall be required. It is expected that the typical USFWS search protocols will not be utilized in most situations due to the Plan's avoidance priority. Background information necessary to complete the annual report shall be collected on the preactivity study form and used by SDG&E to prepare the annual report.

14. In order to ensure that habitats are not inadvertently impacted, the Environmental Surveyor shall determine the extent of habitat and flag boundaries of habitats which must be avoided. When necessary, the Environmental Surveyor should also demark appropriate equipment laydown areas, vehicle turn around areas, and pads for placement of large construction equipment such as cranes, bucket trucks, augers, etc. When appropriate, the Environmental Surveyor shall make office and/or field presentations to field staff to review and become familiar with natural resources to be protected on a project specific basis.
15. SDG&E will maintain a library of rare plant locations known to SDG&E occurring within easements and fee owned properties. "Known" means a verified population, either extant or documented using record data. Information on known sites may come from a variety of record data sources including local agency Habitat Conservation Plans, pre-activity surveys, or biological surveys conducted for environmental compliance on a project site (e.g. initial study), but there is no requirement for development of original biological data. Plant inventories shall be consulted as part of pre-activity survey procedures.

7.1.4 Maintenance, Repair and Construction of Facilities

16. Maintenance, repair and construction Activities shall be designed and implemented to minimize new disturbance, erosion on manufactured and other slopes, and off-site degradation from accelerated sedimentation, and to reduce maintenance and repair costs.
17. Routine maintenance of all Facilities includes visual inspections on a regular basis, conducted from vehicles driven on the access roads where possible. If it is necessary to inspect areas which cannot be seen from the roads, the inspection shall be done on foot, or from the air.
18. When the view of a gas transmission line marker becomes obscured by vegetation on a regular basis requiring repeated habitat removal, consideration shall be given to the replacement of markers with taller versions.
19. Erosion will be minimized on access roads and other locations primarily with water bars. The water bars are mounds of soil shaped to direct flow and prevent erosion.
20. Hydrologic impacts will be minimized through the use of state-of-the-art technical design and construction techniques to minimize ponding, eliminate flood hazards, and avoid erosion and siltation into any creeks, streams, rivers, or bodies of water by use of Best Management Practices.

21. When siting new facilities, every effort will be made to cross the wetland habitat perpendicular to the watercourse, spanning the watercourse to minimize the amount of disturbance to riparian areas (See Figure 4).
22. Gas and other facilities cross streambeds and require maintenance and repair. During such times water may be temporarily diverted as long as after disturbance natural drainage patterns are restored to minimize the impact of the disturbance and help to reestablish or enhance the native habitat. Erosion control during construction in the form of intermittent check dams and culverts should also be considered to prevent alteration to natural drainage patterns and prevent siltation.
23. Impacts to wetlands shall be minimized by avoiding pushing soil or brush into washes or ravines.
24. During work on facilities, all trucks, tools, and equipment should be kept on existing access roads or cleared areas, to the extent possible.
25. Environmental Surveyor must approve of activity prior to working in sensitive areas where disturbance to habitat may be unavoidable.
26. Insulator washing is allowed from access roads if other applicable protocols are followed.
27. Brush clearing around facilities for fire protection shall not be conducted from March through August without prior approval by the Environmental Surveyor. The Environmental Surveyor will make sure that the habitat contains no active nests, burrows, or dens prior to clearing.
28. In the event SDG&E identifies a covered species of plant within a 10' radius around power poles, which is the area required to be cleared for fire protection purposes, SDG&E shall notify USFWS (for ESA listed plants), and CDFG (for CESA listed plants), in writing, of the plant's identity and location and of the proposed Activity, which will result in a Take of such plant. Notification will occur ten (10) working days prior to such Activity, during which time USFWS or CDFG may remove such plant(s). If neither USFWS or CDFG have removed such plant(s) within the ten (10) working days following the notice, SDG&E may proceed to complete its fire clearing and cause a Take of such plant(s).

When fire clearing is necessary in instances other than around power poles, and the potential for impacts to Covered Species exists, SDG&E will follow the preactivity study and notification procedures in Operational Protocol number 13.
29. Wire stringing is allowed year round in sensitive habitats if conductor is not allowed to drag on ground or in brush and vehicles remain on access roads.
30. Maintenance of cut and fill slopes shall consist primarily of erosion repair. In situations where revegetation would improve the success of erosion control, planting or seeding with native hydroseed mix may be done on slopes.
31. Spoils created during maintenance operations shall be disposed of only on previously disturbed areas designated by the Environmental Surveyor or used immediately to fill eroded areas. Cleared vegetation shall be hauled off the rights-of-way to a permitted disposal location.

32. Within 6 months of Plan approval, environmentally sensitive tree trimming locations will be identified in the tree trim computer data base system utilized by tree trim contractors. (This data base also tracks the date of each tree trim, type of tree, where threatening dogs reside, etc.). The Environmental Surveyor should be contacted to perform a preactivity survey when trimming is planned in environmentally sensitive areas. Whenever possible, trees in environmentally sensitive areas (determined by CDFG and SDG&E) will be scheduled for trimming in the non-sensitive times.
33. No new Facilities and Activities shall be planned which disturb vernal pools, their watersheds, or impact their natural regeneration. Continued historic maintenance of existing infrastructure utilizing existing access roads is allowed to continue in areas containing vernal pool habitat. New construction of overhead infrastructure which spans vernal pool habitats is allowed as long as the placement of facilities or the associated construction activities in no way impact the vernal pools.
34. If any previously unidentified dens, burrows, or plants are located on any project site after the preactivity survey, the Environmental Surveyor shall be contacted. Environmental Surveyor will determine how to best avoid or minimize impacting the resource by considering such methods as project or work plan redevelopment, equipment placement or construction method modification, seasonal/time of day limitations, etc...
35. The Environmental Surveyor shall conduct monitoring as recommended in the preactivity survey report. At completion of work, the Environmental Surveyor shall check to verify compliance, including observing that flagged areas have been avoided and that reclamation has been properly implemented. Also at completion of work, the Environmental Surveyor is responsible for removing all habitat flagging from the construction site.
36. The Environmental Surveyor shall conduct checks on mowing procedures, to ensure that mowing is limited to a 12-foot wide area on straight portions of the road (slightly wider on radius turns), and that the mowing height is no less than 4 inches.
37. Supplies or equipment where wildlife could hide (e.g., pipes, culverts, pole holes) shall be inspected prior to moving or working on them to reduce the potential for injury to wildlife. Supplies or equipment that cannot be inspected or from which animals could not be removed shall be capped or otherwise covered at the end of each work day. Old piping or other supplies that have been left open, shall not be capped until inspected and any species found in it allowed to escape. Ramping shall be provided in open trenches when necessary. If an animal is found entrapped in supplies or equipment, such as a pipe section, the supplies or equipment shall be avoided and the animal(s) left to leave on its own accord, except as otherwise authorized by CDFG.
38. All steep-walled trenches or excavations used during construction shall be inspected twice daily (early morning and evening) to protect against wildlife entrapment. If wildlife are located in the trench or excavation, the Environmental Surveyor shall be called immediately to remove them if they cannot escape unimpeded.
39. Large amounts of fugitive dust could interfere with photosynthesis. Fugitive dust created during clearing, grading, earth-moving, excavation or other construction activities will be controlled by regular watering. At all times, fugitive dust emissions will be controlled by limiting on-site vehicle speed to 15 miles per hour.

40. Before using pesticides in areas where burrowing owls may be found, a pre-activity survey will be conducted.

7.1.5 Maintenance of access roads shall consist of:

41. Repair of erosion by grading, addition of fill, and compacting. In each case of repair, the total area of disturbance shall be minimized by careful access and use of appropriately sized equipment. Repairs shall be done after preactivity surveys conducted by the Environmental Surveyor and in accordance with the recommendations regarding construction monitoring and relevant protocols. Consideration should be given to source of erosion problem, when source is within control of SDG&E.
42. Vegetation control through grading should be used only where the vegetation obscures the inspection of facilities, access may be entirely lost, or the threat of Facility failure or fire hazard exists. The graded access road area should not exceed 12'-wide on straight portions (radius turns may be slightly wider) (See Figure 23).
43. Mowing habitat can be an effective method for protecting the vegetative understory while at the same time creating access to a work area. Mowing should be used when permanent access is not required since, with time, total revegetation is expected. If mowing is in response to a permanent access need, but the alternative of grading is undesirable because of downstream siltation potential, it should be recognized that periodic mowing will be necessary to maintain permanent access.
44. Maintenance work on access roads should not expand the existing road bed (See Figure 23).
45. Material for filling in road ruts should never be obtained from the sides of the road which contain habitat without approval from Environmental Surveyor..

7.1.6 Construction of new access roads shall comply with the following:

46. SDG&E access roads will be designed and constructed according to the *SDG&E Guide for Encroachment on Transmission Rights-of-Way (4/91)*.
47. Access roads will be made available to managers of the regional preserve system subject to coordination with SDG&E.
48. New access roads shall be designed to be placed in previously disturbed areas and areas which require the least amount of grading in sensitive areas during construction whenever possible (See Figure 5). Preference shall be given to the use of stub roads rather than linking facilities tangentially.
49. SDG&E will consider providing access control on access roads leading into the regional preserve system where such control provides benefit to sensitive resources.
50. New access road construction is allowed year round. Every effort shall be made to avoid constructing roads during the nesting season. During the nesting season, the presence or absence of nesting species shall be determined by a biologist and appropriate avoidance and minimization recommendations followed.

7.1.7 Construction and Maintenance of Access Roads Through Streambeds

51. Construction of new access roads through streambeds requires a Streambed Alteration Agreement from CDFG and/or consultation with the Army Corps of Engineers.
52. Maintenance or construction vehicle access through shallow creeks or streams is allowed. However, no filling for access purposes in waterways is allowed without the installation of appropriately sized culverts. The use of geotextile matting should be considered when it would protect wetland species.
53. Staging/storage areas for equipment and materials shall be located outside of riparian areas. (See Figure 23).

7.1.8 Survey Work

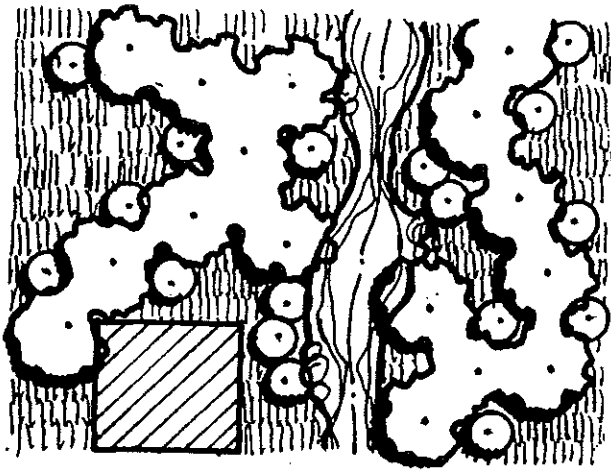
54. Brush clearing for foot paths or line-of-sight cutting is not allowed from March through August in sensitive habitats without prior approval from the Environmental Surveyor, who will ensure that activity does not adversely affect a sensitive species.
55. SDG&E survey personnel must keep vehicles on existing access roads. No clearing of brush for panel point placement is allowed from March through August without prior approval from the Environmental Surveyor.
56. Hiking off roads or paths for survey data collection is allowed year round so long as other protocols are met.

7.1.9 Emergency Repairs

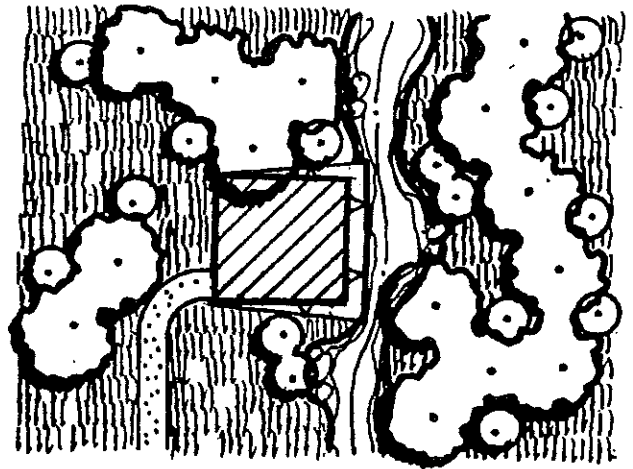
57. During a system emergency, unnecessary carelessness which results in environmental damage is prohibited.
58. Emergency repair of facilities is required in situations which potentially or immediately threaten the integrity of the SDG&E system, such as pipe leaks, or downed lines, slumps, slides, major subsidence, etc. During emergency repairs the Operational Protocols contained in this Subregional Plan shall continued to be followed to fullest extent possible.
59. Once the emergency has stabilized, any unavoidable environmental damage will be reported to the Environmental Surveyor by the foreman. The Environmental Surveyor will develop a mitigation plan and ensure its implementation is consistent with this Subregional Plan.

7.1.10 Activities of Underlying Fee Owners

60. Most SDG&E rights-of-way are held in easement only. The activities of underlying fee owners cannot be controlled by SDG&E and are not covered by this Subregional Plan.
61. When sensitive habitat exists on either side of a utility right-of-way, SDG&E will not oppose underlying fee owners dedicating said property to conservation purposes. Underlying fee owners are expected to comply with applicable federal, state, and local regulations.

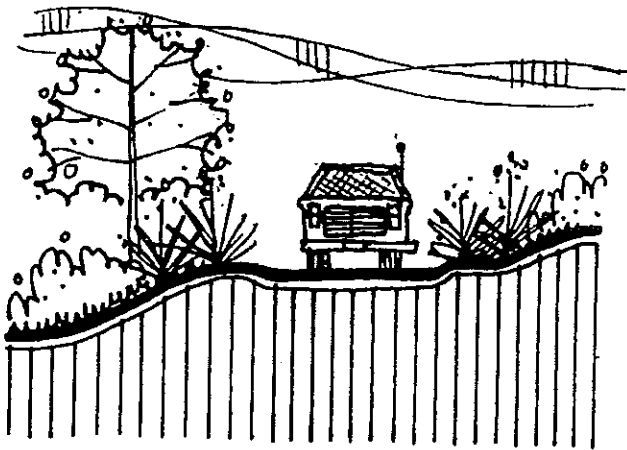


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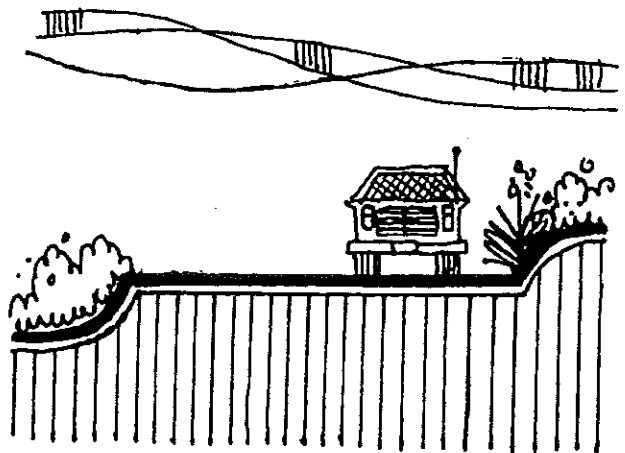


NOT THIS

CONSTRUCTION STAGING/STORAGE AREAS SHOULD BE LOCATED OUTSIDE OF STREAMS



THIS



NOT THIS

ACCESS ROAD MAINTENANCE SHOULD NOT EXPAND THE EXISTING ROAD BED

FIGURE

23

Operational Protocol Diagrams

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Subregional Natural Community Conservation Program

10.0 APPENDIX B: QCB Mitigation Fund Agreement



**ADVISED NON-ENDOWMENT FUND AGREEMENT
for
SDG&E Quino Checkerspot Butterfly Mitigation Fund**

THIS AGREEMENT is made and entered into on May 31, 2007 by and among THE SAN DIEGO FOUNDATION ("SDF"), **San Diego Gas & Electric Company** ("Donor") and the United States Fish and Wildlife Service ("USFWS").

1. NAME OF THE FUND

Donor transfers irrevocably to SDF the initial sum of Two Hundred Fifty Thousand Dollars (\$250,000) to establish in SDF the **SDG&E Quino Checkerspot Butterfly Mitigation Fund** (the "Fund"). SDF may receive additional irrevocable gifts of property including money, acceptable to SDF from time to time from Donor and from any other source to be added to the Fund, all subject to the provisions hereof.

2. PURPOSE

Subject to the limitations of paragraph 4 below, the purpose of the Fund shall be to mitigate adverse impacts to the Quino Checkerspot butterfly (Quino) from SDG&E operations and maintenance activities, including new facilities construction, as addressed in SDG&E's Quino Checkerspot Butterfly Habitat Conservation Plan.

3. INVESTMENT OF FUNDS

SDF shall have all powers necessary or desirable to carry out the purposes of the Fund, including, but not limited to, the power to retain, invest and reinvest the Fund in any manner within the "prudent person" standard and the power to commingle the assets of the Fund with those of other funds for investment purposes, subject however, to the requirements of Sections 5231 and 5240 of the California Corporations Code. If the Fund Advisory Committee has a reasonable basis to believe that SDF has not complied with the foregoing "prudent person" standard, then the Fund Advisory Committee shall have the right to request an accounting and thereafter to terminate this Agreement with a prompt distribution of the remaining assets in the Fund as recommended by the Fund Advisory Committee (defined in paragraph 5).

4. DISTRIBUTION

Subject to paragraph 6, earnings allocated by SDF to the Fund shall be distributed exclusively for charitable, scientific, literary or educational purposes or to organizations of the type to which an individual taxpayer may make deductible charitable contributions, gifts, and bequests under the income, gift and estate tax provisions of the Internal Revenue Code of 1986, as amended, and of the Revenue and Taxation Code of California, in all cases consistent with the purpose set forth in paragraph 2 above. It is intended by the foregoing that at the time a distribution is made from the Fund, the distribution must be made for a charitable, scientific, literary or educational purpose as described in, or to an organization which is described in, Sections 170(c)(1) or (2), of the Internal Revenue Code of 1986, as amended, and Section 17201 of the Revenue and Taxation Code of California and consistent with the purpose set forth in paragraph 2 above. Distributions from the Fund shall be within the purposes and procedures of SDF as contained in its Articles of Incorporation and its Bylaws.

5. RECOMMENDATIONS FOR DISTRIBUTION

- a. The Fund shall have an Advisory Committee which shall consist of two individuals; one from SDG&E and one from USFWS, at all times the Fund is in existence. The USFWS representative will serve as the Fund Advisory Committee Chair. The Chair shall be the only person who has the authority to communicate the desires of the Fund Advisory Committee to SDF, and shall be the "Fund Advisor." The SDG&E representative shall be a non-voting member of the Fund Advisory Committee and may not serve as the Chair. The function of the Fund Advisory Committee shall be to advise the Board of Governors of SDF on appropriate distributions from the Fund. Upon the death or incapacity of any member of the Fund Advisory Committee, the affected entity (i.e., SDG&E or USFWS) shall designate a new representative. The function of the Fund Advisory Committee shall be to advise the Board of Governors of SDF on appropriate distributions from the Fund.
- b. Distributions from the Fund may be made from income and/or principal and shall be made at such times and in such amounts as may be determined by the Board of Governors, as directed by the Fund Advisory Committee. There shall be no requirement that income be distributed each year; income may be accumulated and added to principal. Consistent with the foregoing, distributions shall be made to such distributees of the type described in paragraph 4 as may be designated by SDF; provided, however, that the Fund Advisor may from time to time submit to SDF the names of distributees to which it is recommended that distributions be made, which distributees shall not be other than those described in paragraph 4. All recommendations from the Fund Advisor shall be solely advisory, and SDF may accept or reject them, applying reasonable standards and guidelines with regard thereto.

- c. SDF shall provide the Fund Advisory Committee quarterly statements which reflect contributions to the fund, earnings, fees, and distributions from the fund authorized and made by the Board of Governors.

6. CONTINUITY OF THE FUND

The Fund shall continue so long as assets are available in the Fund and the purposes in the Fund can be served by its continuation. If the Fund is terminated for either of the above reasons, SDF shall devote any remaining assets in the Fund (as directed by the Fund Advisory Committee) exclusively for charitable purposes that:

- a. are within the scope of the charitable purposes of SDF's Articles of Incorporation; and,
- b. most nearly approximate, in the good faith opinion of the Board of Governors, the original purpose of the Fund as described in paragraph 2 above.

SDF shall promptly notify the Fund Advisory Committee in writing of (i) the date and reason for termination of the Fund and (ii) the intended use of the remaining assets in the Fund.

7. NOT A SEPARATE TRUST

The Fund shall be subject to the Articles of Incorporation and Bylaws of SDF. All money and property in the Fund shall be assets of SDF, and not a separate trust, and shall be subject only to the control of SDF. Pursuant to Treasury Regulations, the Board of Governors of The San Diego Foundation has the power "to modify any restriction or condition on the distribution of funds for any specified charitable purpose or to any specified organization if, in the sole discretion of the Board of Governors, such restriction or condition becomes unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community or area served." Treas. Reg. §1.170A-9(e)(11)(v)(B) and (E).

8. COSTS OF THE FUND

It is understood and agreed that the Fund shall share a fair portion of the total administrative costs of SDF. The administrative cost annually charged against the Fund shall be determined in accordance with the then current Fee Policy identified by SDF as the fee structure applicable to Funds of this type. Any costs to SDF in accepting, transferring or managing funds donated to SDF for the Fund shall also be paid by the Fund.

9. ACCOUNTING

This Fund shall be accounted for separately and apart from other gifts to SDF. The SDF shall provide the Fund Advisory Committee a quarterly statement which reflects contributions to the fund, earnings, fees, and distributions from the fund authorized and made by the Board of Governors.

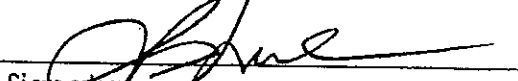
10. CHARITABLE DEDUCTIONS

It is intended by Donor and by SDF that federal gift, income and estate tax charitable deductions shall be allowed to Donor and to Donor's estate and that SDF shall continue to qualify as an organization described in Sections 170(b)(1)(A)(vi), 170(c), 2055(a), and 2522(a) of the Internal Revenue Code of 1986.

This entire Agreement shall be construed and applied so as to comply with the requirements of federal tax law for allowance of such charitable deductions and for such qualifications.

IN WITNESS WHEREOF, we execute this Agreement on June 27, 2007.

Donor: **San Diego Gas & Electric Company**



Signature

USFWS: **United States Fish and Wildlife Service**



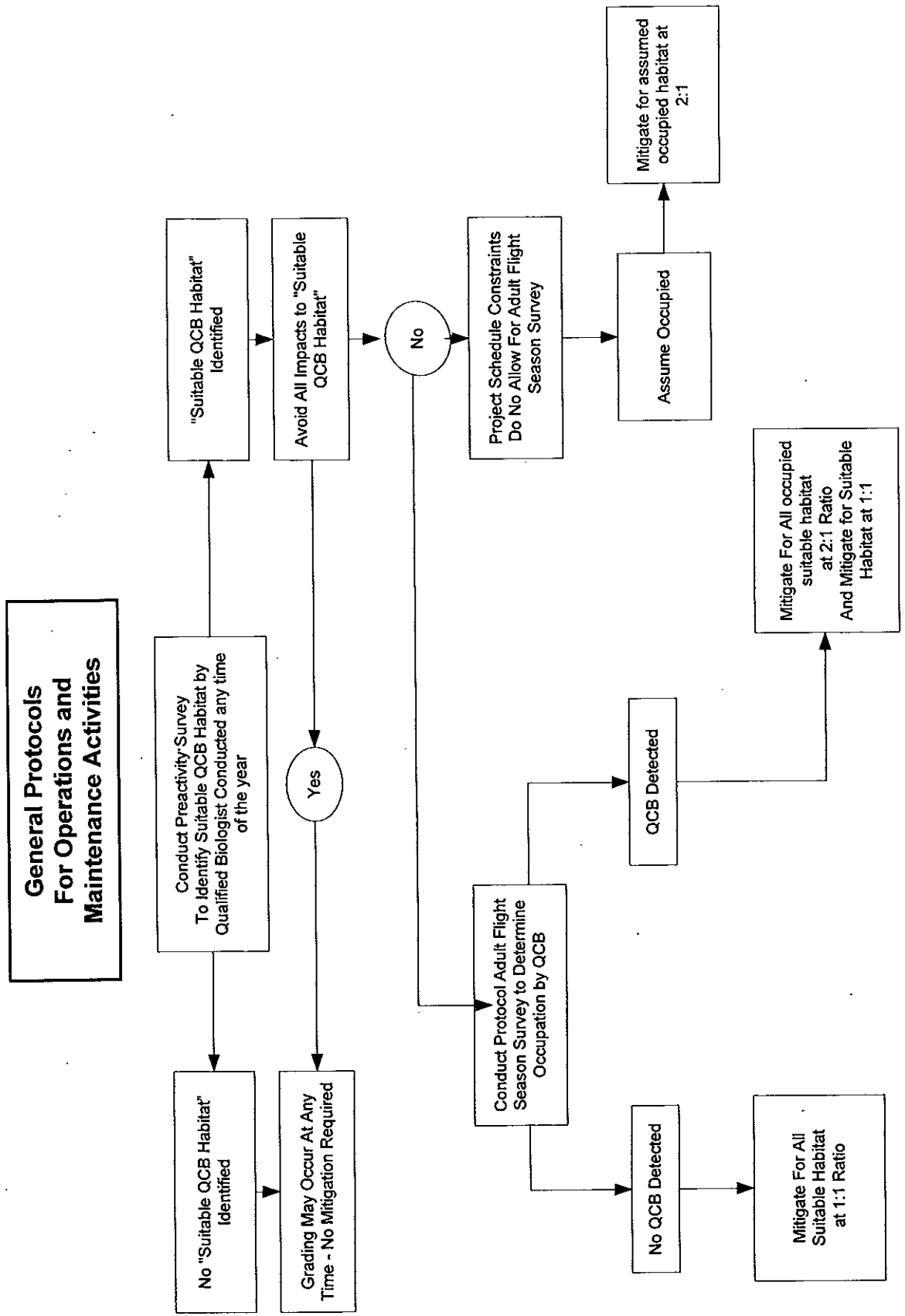
Signature

Approved by the Board of Governors of The San Diego Foundation on _____.

By: Bruce A. Blalley
Chair, Board of Governors

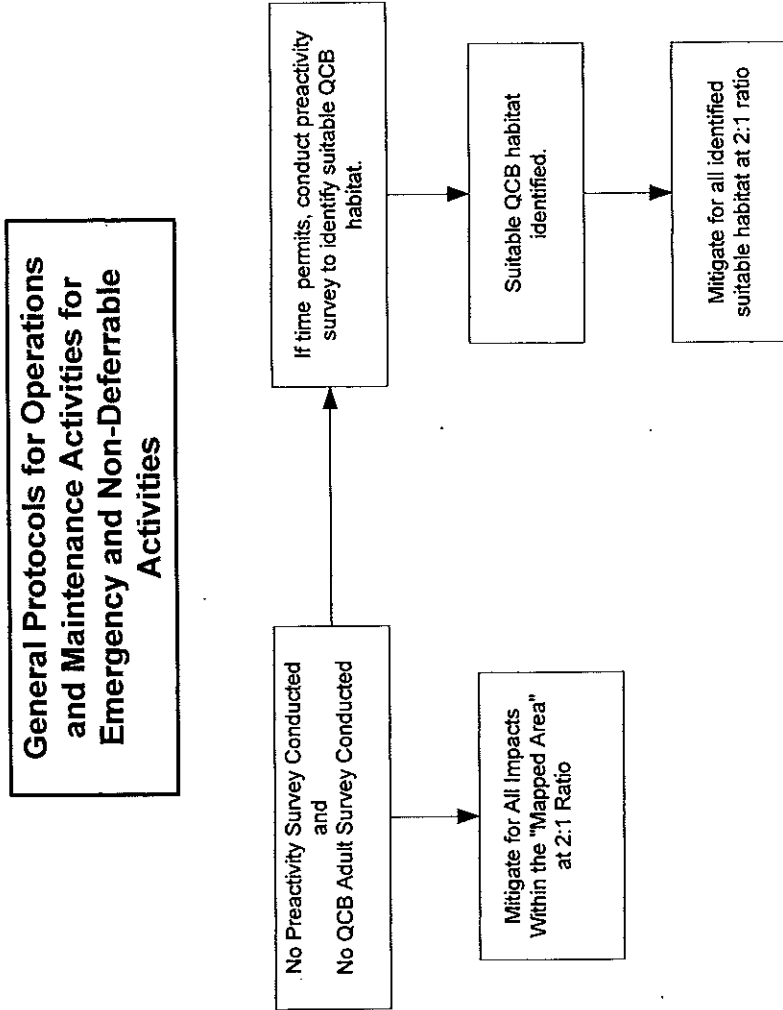
SDGE HCP QUINO PROTC 3 WITHIN MAPPED AREA

Figure 4



SDGE HCP QUINO PROTOCOLS WITHIN MAPPED AREA

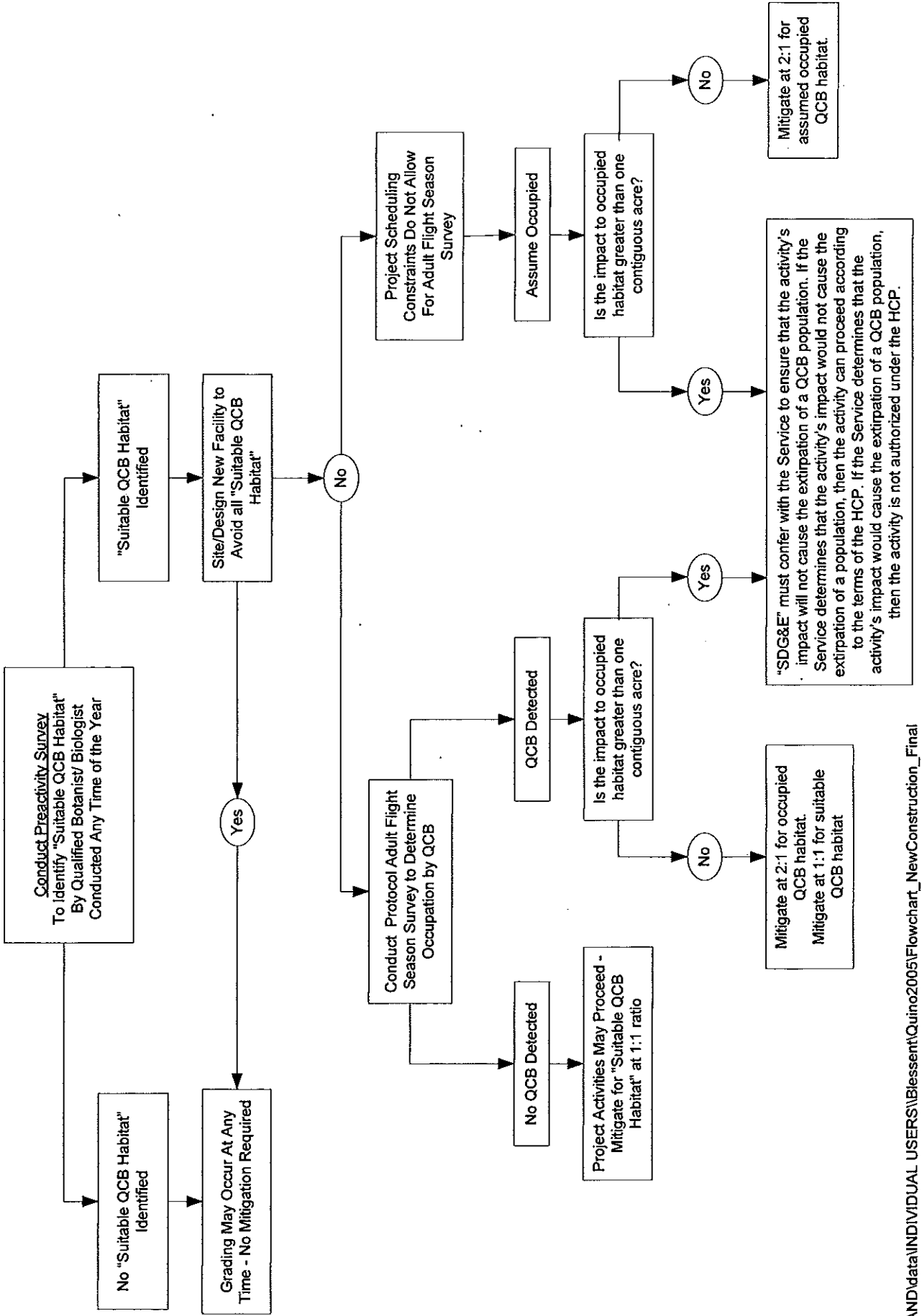
Figure 5



SDGE HCP QUINO PROTOCOL WITHIN MAPPED AREA

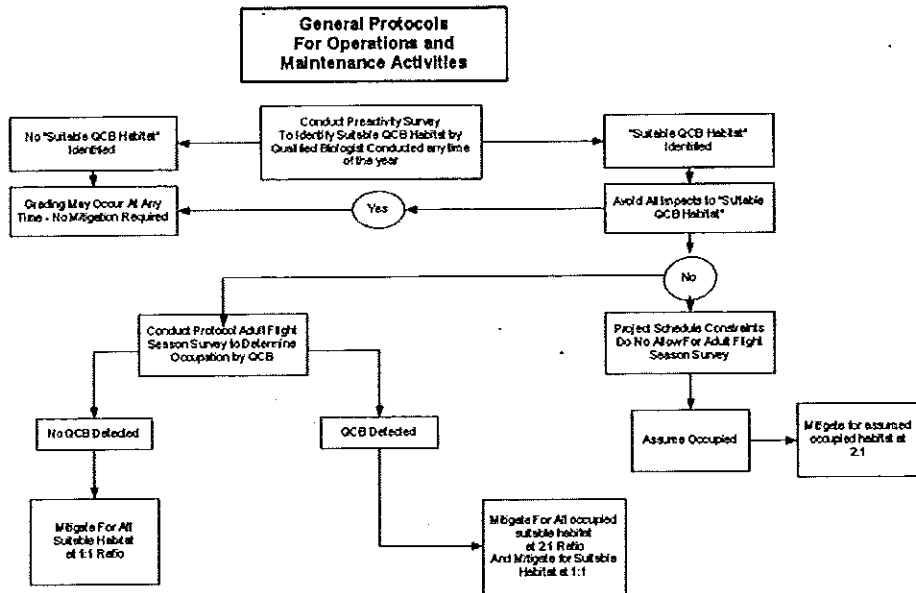
Figure 6

Protocol for New Construction



SDGE HCP QUINO PROTOCOLS WITHIN MAPPED AREA

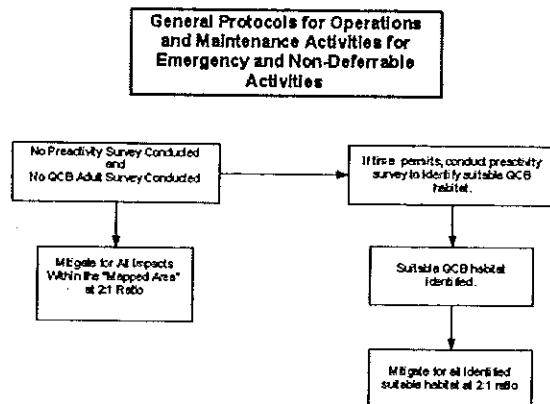
Figure 4



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SDGE HCP QUINO PROTOCOLS WITHIN MAPPED AREA

Figure 5

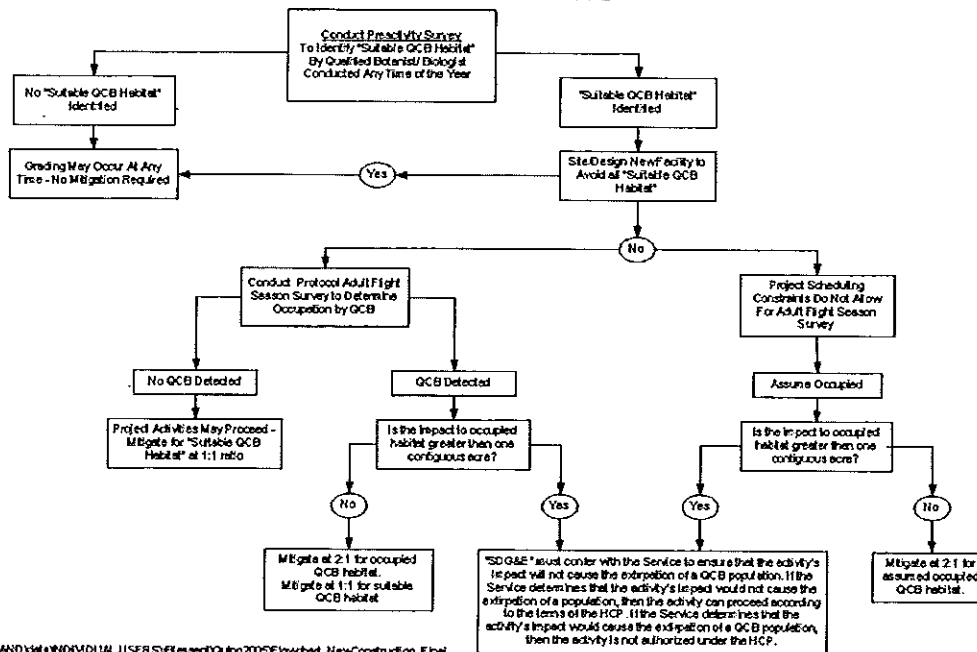


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SDGE HCP QUINO PROTOCOLS WITHIN MAPPED AREA

Figure 6

Protocol for New Construction



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Moreno Gas Compression Station

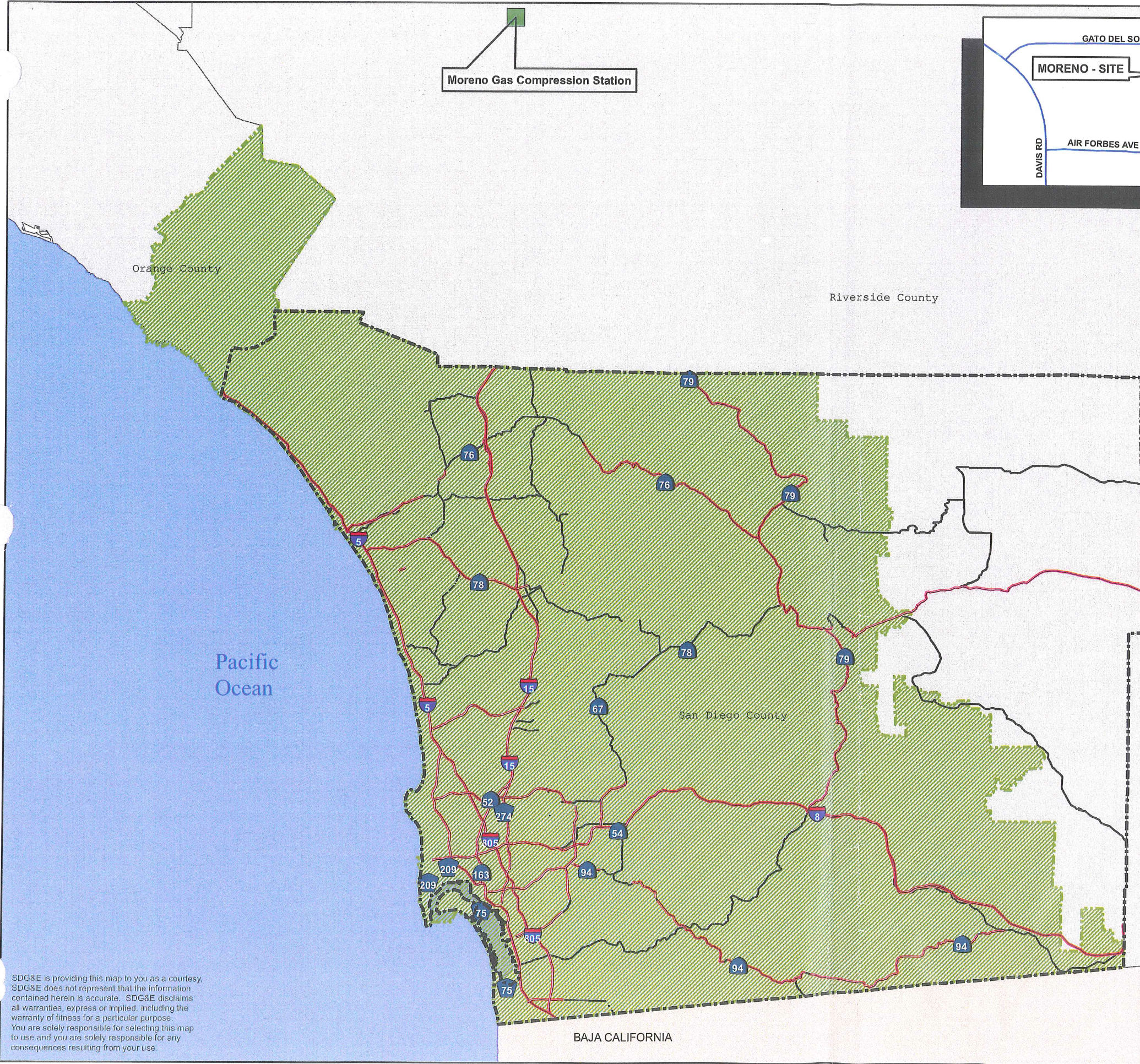
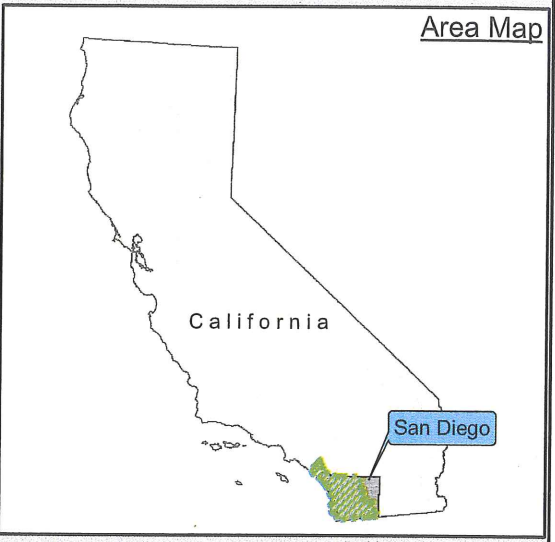
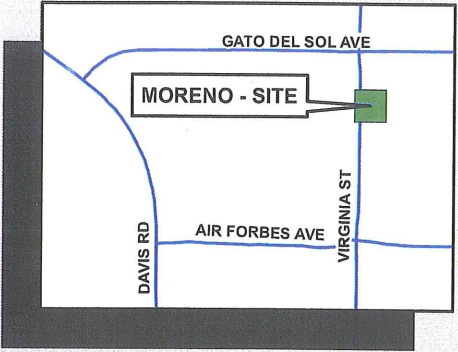


Figure 1
Plan Area Boundary

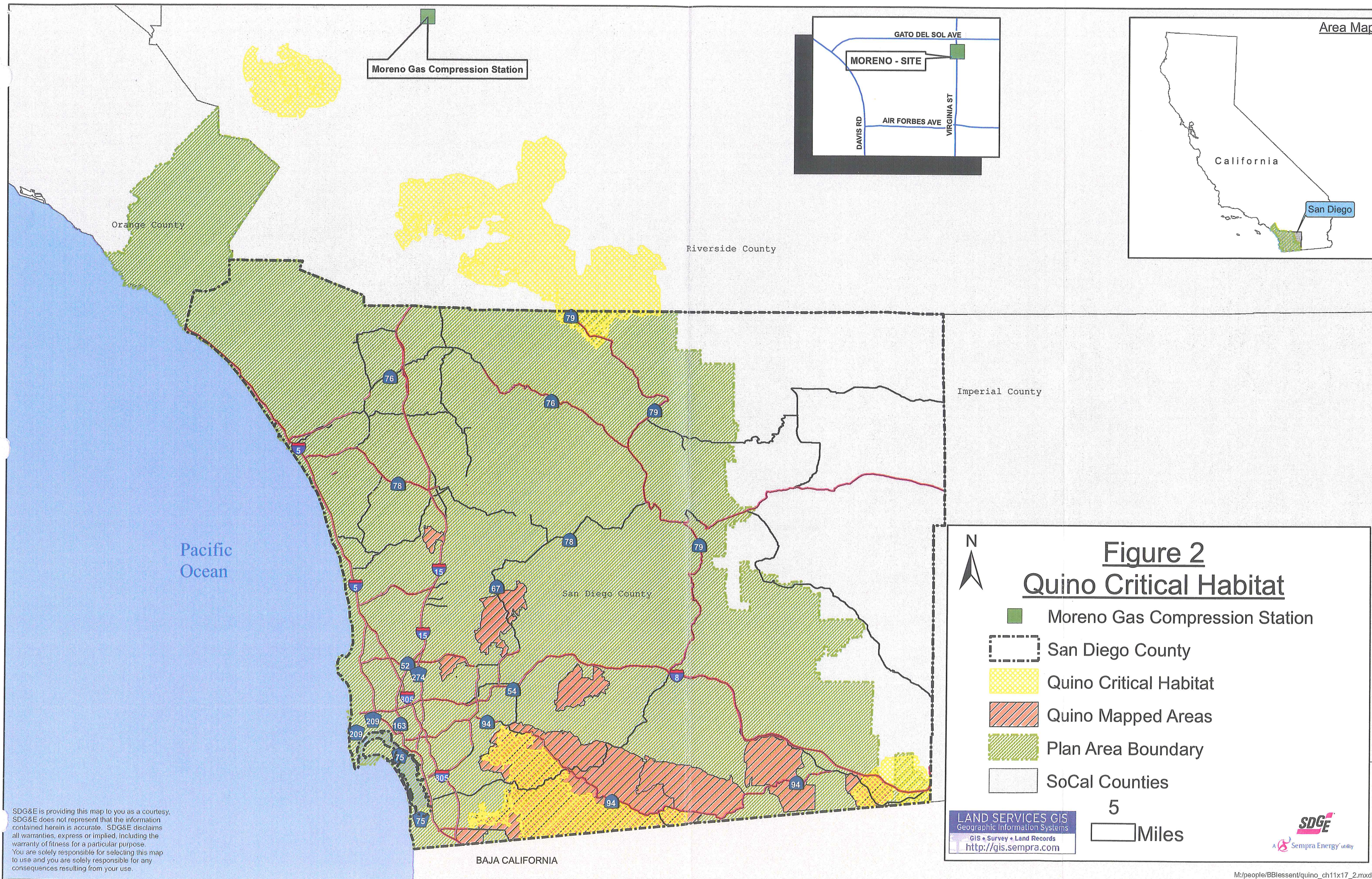
- Moreno Gas Compression Station
- San Diego County
- Plan Area Boundary
- SoCal Counties

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Moreno Gas Compression Station

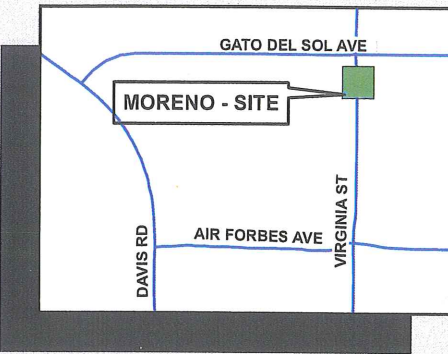


Figure 2
Quino Critical Habitat

- Moreno Gas Compression Station
- San Diego County
- Quino Critical Habitat
- Quino Mapped Areas
- Plan Area Boundary
- SoCal Counties

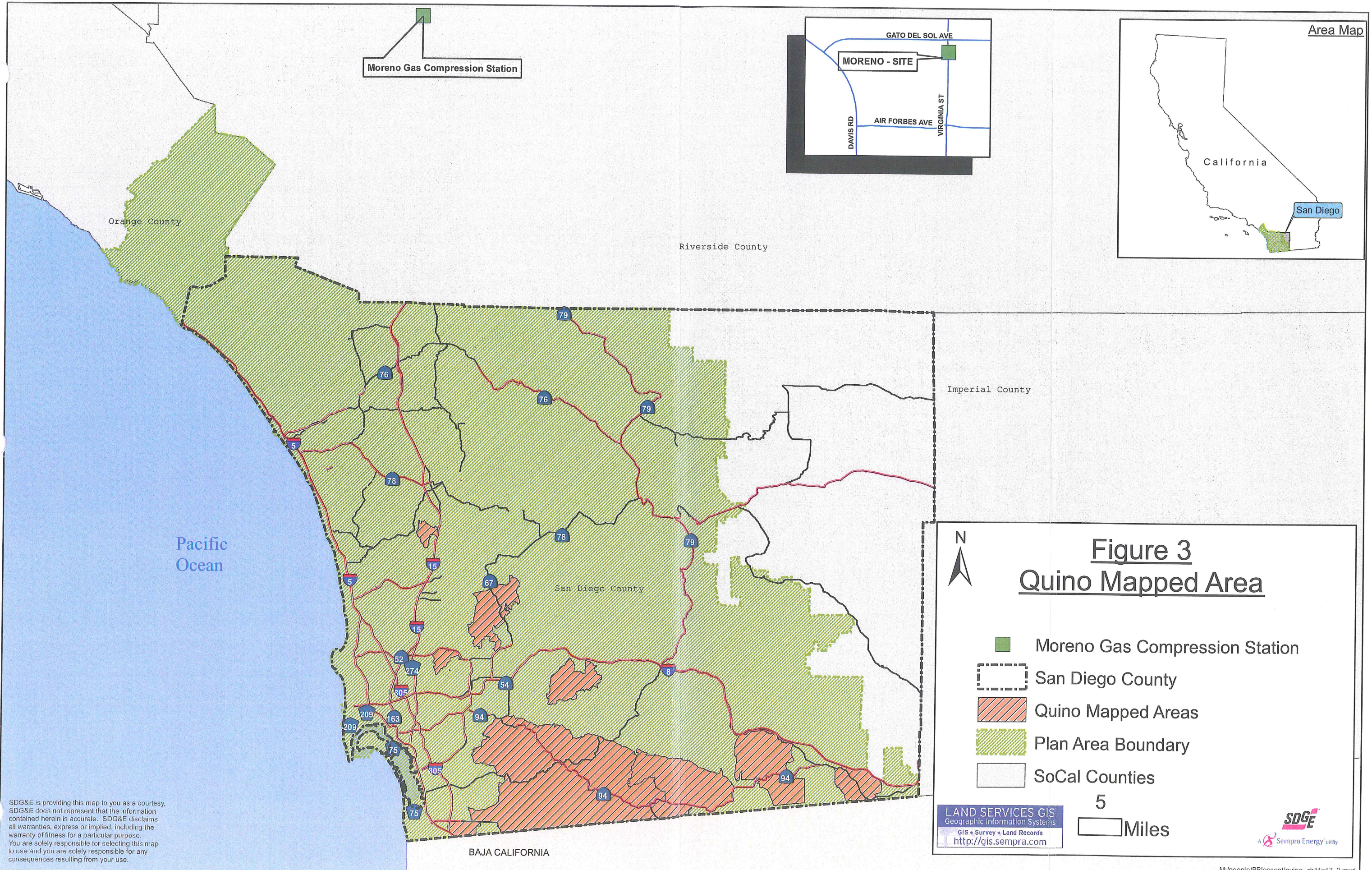


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Moreno Gas Compression Station

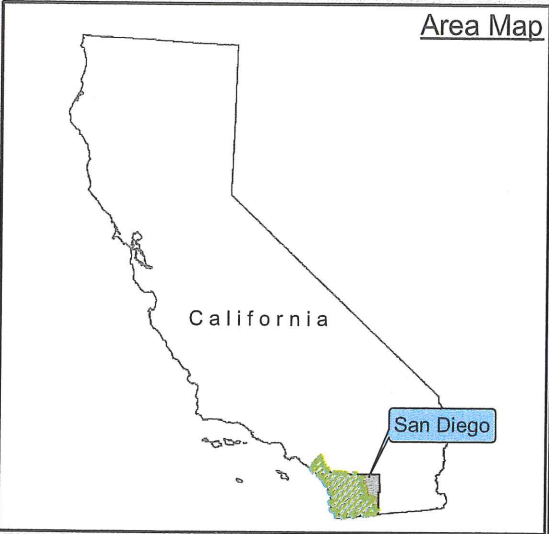


Figure 3
Quino Mapped Area



- Moreno Gas Compression Station
- San Diego County
- Quino Mapped Areas
- Plan Area Boundary
- SoCal Counties

5
Miles

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United States Department of the Interior



FISH AND WILDLIFE SERVICE

Ecological Services
Carlsbad Fish and Wildlife Office
6010 Hidden Valley Road
Carlsbad, California 92011

In Reply Refer To:
FWS-SDG-08B0213-08F0206

JAN 16 2008

Memorandum

To: Field Supervisor, Carlsbad Fish and Wildlife Office
Carlsbad, California

From: Assistant Field Supervisor, Carlsbad Fish and Wildlife Office
Carlsbad, California *Theresa O'Rourke*

Subject: Intra-Service Section 7 Consultation for the Issuance of an Endangered Species Act Section 10(a)(1)(B) Permit to San Diego Gas and Electric Company (SDG&E) for the Incidental Take of Quino Checkerspot Butterfly (*Euphydryas editha quino*) in Portions of San Diego, Orange, and Riverside Counties, California (ESA 5371.1)

This document transmits the U.S. Fish and Wildlife Service's (Service) biological opinion in accordance with section 7 of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. § 1531 et seq.), based on our review of the *Low-Effect Quino Checkerspot Butterfly Habitat Conservation Plan for the San Diego Gas and Electric Company, San Diego, Riverside, and Orange Counties, California* (Plan), dated May 2007, and its effects on the federally endangered Quino checkerspot butterfly (*Euphydryas editha quino*, QCB) and designated critical habitat for QCB. The Plan addresses impacts to QCB associated with SDG&E's operation and maintenance activities and new facility installation in portions of San Diego, Orange, and Riverside Counties. This biological opinion is based on information provided in the Plan; telephone conversations and electronic mail messages between SDG&E and the Service; and reports on file at this office.

CONSULTATION HISTORY

SDG&E was issued a section 10(a)(1)(B) permit in December 1995, for the SDG&E Habitat Conservation Plan/Subregional Natural Community Conservation Plan (*1995 SDG&E Subregional NCCP*). The 1995 SDG&E Subregional NCCP area encompasses San Diego County, west of the desert, and small portions of Orange and Riverside Counties, California. The 1995 SDG&E Subregional NCCP covers SDG&E's biological impacts from operations and maintenance as well as typical expansions to existing gas and electric facilities. The 1995 SDG&E Subregional NCCP requires avoidance of impacts as a first priority followed by appropriate off-setting measures for unavoidable impacts to covered species. The 1995 SDG&E Subregional NCCP authorizes incidental take of 110 species of concern, including 18 federally listed species, but not QCB. On September 7, 1997, SDG&E contacted the Service and the

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Department of Fish and Game (Department) to initiate the process of amending their existing 1995 SDG&E Subregional NCCP to include the QCB as a covered species. After pursuing this process off and on for almost 10 years, all three parties decided that a separate, Low-Effect Habitat Conservation Plan addressing QCB would be a more appropriate course of action rather than pursuing the amendment. A detailed consultation history follows:

September 7, 1997: SDG&E and the Service discussed a proposed amendment to the 1995 SDG&E Subregional NCCP to include the QCB as a covered species.

November 7, 1997: SDG&E sent a letter to us asking for an amendment to their Subregional NCCP to cover QCB.

January 21, 1998: We responded to SDG&E's request and outlined the documents needed to complete the amendment process.

December 2, 1999: We received an application for an amendment to the 1995 SDG&E Subregional NCCP to include QCB as a covered species.

January 5, 2000: We met with SDG&E to discuss concerns regarding the upcoming QCB season and the effects on SDG&E's operations and maintenance and to resolve issues associated with the draft amendment. We also outlined a process and schedule for completion of the amendment.

January 5, 2000 - July 10, 2000: SDG&E and Carlsbad Fish and Wildlife Office staff participated in 15 meetings and several conference calls to discuss the proposed QCB amendment. However, instead of concentrating on the draft amendment, we focused efforts on developing an interim strategy for QCB that could ultimately be incorporated into the amendment.

July 11, 2000: SDG&E provided us with a revised draft amendment.

July 21, 2000: We sent SDG&E preliminary comments on the amendment.

August 10, 2000: SDG&E provided us with a revised amendment.

August 24, 2000: SDG&E and Carlsbad Fish and Wildlife Office staff met to discuss the draft amendment.

September 7, 2000: SDG&E and Carlsbad Fish and Wildlife Office staff met again to discuss the draft amendment.

September 18, 2000: We received the "RECON QCB Take Estimate, QCB Habitat Assessment, and draft Environmental Assessment."

September 19, 2000 through May 21, 2004: SDG&E and Carlsbad Fish and Wildlife Office staff participated in over 31 meetings and several conference calls to discuss the proposed QCB amendment.

May 26, 2004: SDG&E submitted a new application package for the Subregional NCCP amendment.

September 20, 2004: Carlsbad Fish and Wildlife Office staff and the Solicitor's Office provided comments to SDG&E on the Subregional NCCP amendment.

November 29, 2004: Carlsbad Fish and Wildlife Office staff and the Solicitor's Office provided additional comments to SDG&E on the Subregional NCCP amendment.

December 20, 2004: SDG&E submitted a revised Subregional NCCP amendment application package to us.

February 28, 2005: We provided written comments to SDG&E on the revised Subregional NCCP amendment.

March 8, 2005: SDG&E and Carlsbad Fish and Wildlife Office staff met to discuss outstanding issues.

February 6, 2006: SDG&E submitted a revised Subregional NCCP amendment application package to us.

February 28, 2006: We provided SDG&E with comments on the draft amendment.

December 5, 2006: Carlsbad Fish and Wildlife Office staff met with SDG&E and the Department to discuss the Subregional NCCP amendment. In particular, the Department provided feedback that the Subregional NCCP amendment did not meet NCCP standards and would need to be revised to address deficiencies. Subsequently, it was decided by SDG&E, the Service, and the Department that the Subregional NCCP amendment would no longer be pursued, but rather SDG&E's impacts to QCB would be addressed through a stand alone Low-Effect Habitat Conservation Plan.

January 23, 2007: We received the first draft of the *Low-Effect Quino Checkerspot Butterfly Habitat Conservation Plan for the San Diego Gas and Electric Company, San Diego, Riverside, and Orange Counties, California* (Plan).

March 8, 2007: We provided SDG&E with comments on the draft Plan.

March 13, 2007: A Notice of Availability (NOA) for the Plan was published in the Federal Register on March 13, 2007 (72 FR 11374-11375).

April 4, 2007: A revised draft Plan was received by Carlsbad Fish and Wildlife Office staff from SDG&E.

April 13, 2007: The comment period on the NOA closed and no public comments were received.

April 23, 2007: We provided additional comments on the draft Plan to SDG&E.

June 11, 2007: We received the finalized text for the Plan (dated May 2007).

BIOLOGICAL OPINION

1.0 DESCRIPTION OF THE PROPOSED ACTION

SDG&E is a California public utility providing natural gas, electricity, and other services to customers in its service and operational territory, including San Diego County and portions of Orange and Riverside Counties. SDG&E's ability to provide these services depends on the development, installation, construction, maintenance, operation, and repair of an extensive and evolving array of public utility facilities located throughout its service and operational territory. As discussed above, these activities are carried out under the existing 1995 SDG&E Subregional NCCP which covers 110 species. SDG&E "lands" consist primarily of easements granted on public and private lands but also include a substantial number of real property parcels owned in fee by SDG&E. A 210-acre Conservation Bank, now owned and managed by the San Diego National Wildlife Refuge, was established as a provision of the 1995 SDG&E Subregional NCCP.

SDG&E has prepared a Habitat Conservation Plan (HCP) to minimize and off-set the effects of its activities on QCB and to obtain incidental take authorization for QCB, since the QCB is not a covered species under the 1995 SDG&E Subregional NCCP. The HCP qualifies as a "Low-Effect" HCP as provided by the Department of the Interior Manual (516 DM 2 Appendix 1, and 516 DM 6 Appendix 1) and as defined in the Habitat Conservation Planning Handbook (November 1996).

1.1 Program Elements and Design Principles

The proposed action is the issuance of an incidental take permit under section 10(a)(1)(B) of the Act. The permit addresses the incidental take of QCB associated with SDG&E's operation and maintenance activities and new facility installation in portions of San Diego, Orange, and

Riverside Counties, California. The Plan covers biological impacts from the use, maintenance, and repairs of existing gas and electric facilities and, with limited exception, includes typical expansions to those systems. The clearing of roads (mostly existing roads, but also through new road construction) will be the main source of vegetation disturbance. SDG&E activities other than maintenance of existing access roads include all current and future actions arising out of, or in any way connected with the siting (including any site assessment, surveying, testing, or planning), design, installation, construction, use, maintenance, operation, repair and removal of facilities within the Plan Area (Figure 1). Some examples of these activities are described below:

- 1) **Washing Insulators:** Insulator washing involves using a high-pressure hose within 60 feet of a structure (e.g., tower or pole) and spraying water at the insulator to remove accumulated debris.
- 2) **Pole Insetting:** Insetting poles involves the placement of new poles in-line between existing structures to provide additional strength to support new or heavier conductors, as well as achieving necessary wire clearances.
- 3) **Installing Pole Anchors, Guy Wires, and Stubs:** To add support to poles, guy wires are attached to the upper portion of a wood pole and then secured to a stub or to an anchor buried in the ground.
- 4) **Maintenance of Fire Control Areas:** Areas around poles (typically limited to 10-feet in diameter), towers, gas line valve complexes, and cathodic test stations are cleared of vegetation to reduce possible fire ignition sources.
- 5) **Maintenance of Equipment Associated with Poles and Towers:** Poles or towers may support a variety of equipment such as conductors, insulators, switches, transformers, lightning arresters, line junctions, and other electrical equipment. This type of equipment may need to be added, repaired, or replaced in order to maintain uniform, safe, adequate, and reliable service.

In addition to the activities described above, the permit addresses incidental take within the Plan Area associated with limited expansion of the electric generation capacity or gas transmission systems including: 1) new electrical transmission line facilities which do not extend more than 30 miles outside the Plan Area; 2) electrical interconnections with other utilities that do not project more than 30 miles outside the Plan Area; 3) new gas transmission line facilities not exceeding 30 inches in diameter and 20 miles in length; 4) new substations and regulator stations with total habitat impacts under 20 acres; and new gas compressor stations with total habitat impacts under 10 acres. If an impact to Occupied QCB Habitat (as determined by surveys or assumed) is greater than one acre for new facilities, SDG&E must confer with the Service to ensure that the activity's impact will not cause the extirpation of a QCB population.

As noted above, the Plan covers biological impacts within the Plan Area (Figure 1), plus impacts from most new electrical transmission lines extending up to 30 miles outside of the Plan Area. Therefore, for purposes of this consultation, we have defined the Action Area to include the Plan Area and up to 30 miles beyond the Plan Area (excluding Mexico). This Action Area is coincident with the Action Area evaluated in the SDG&E's 1995 Subregional NCCP analysis.

SDG&E cannot determine exactly how many acres of QCB and designated QCB critical habitat may be impacted over the life of the permit. However, based on an analysis of anticipated activities presented in the Plan, SDG&E estimates that up to a total of 33 acres (17 acres temporary, 16 acres permanent) of QCB habitat may be lost through implementation of the Plan over the 50-year term of the permit. SDG&E estimates that 15 of the 33 acres of potential impacts to QCB habitat will result from road grading, and the other activities, as outlined above, will account for the remaining 18 acres of potential impacts. The exact amount of impacts to QCB critical habitat cannot be determined, but SDG&E conservatively estimates that up to 30 acres of the total impact (33 acres) will be within QCB critical habitat based on the location of anticipated activities relative to QCB designated critical habitat.

The Plan covers a variety of maintenance activities including: (1) insulator washing; (2) pole inseting; (3) pole anchoring; (4) guy wire installation and stub replacement; (5) pole and tower replacement; and (6) fire control. In addition to maintenance activities, the permit addresses incidental take within the Plan Area associated with limited expansion of the electric generation capacity or gas transmission systems including: (1) new electrical transmission line facilities which do not extend more that 30 miles outside the Plan Area; (2) electrical interconnections with other utilities that do not project more that 30 miles outside the Plan Area; (3) new gas transmission line facilities not exceeding 30 inches in diameter and 20 miles in length; (4) new substations and regulator stations with total habitat impacts under 20 acres; and new gas compressor stations with total habitat impacts under 10 acres (however, new Facilities which impact more than 1 acre of QCB habitat require additional Service review, see section 3.2.3).

Most of the individual construction projects will be small in scale (measured in square-feet) and dispersed throughout the Action Area. However, the Plan does anticipate the exceptional construction project which may affect an area greater than one acre, but such construction projects will subject to additional Service review. Most of the projects will be within the Plan Area, with only occasional projects extending beyond the Plan Area and extending into the larger Action Area.

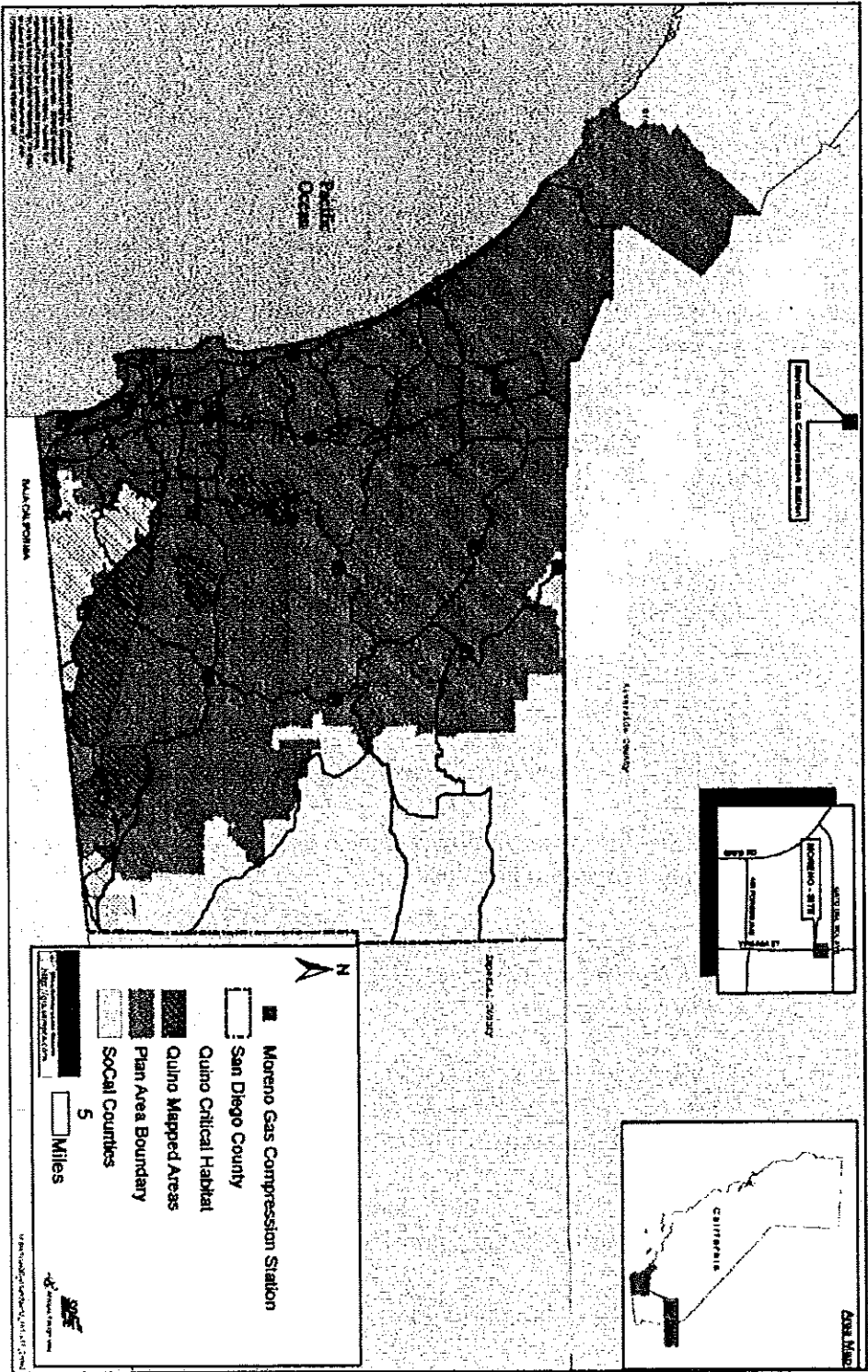


Figure 1. The Plan Area

1.2 Conservation Measures

The Plan provides a series of Operational Protocols (section 3.2 of the Plan) which are designed to avoid and minimize the impacts to QCB and QCB habitat to the greatest extent practical. These Operational Protocols are designed to work in concert with protocols found in SDG&E's existing 1995 Subregional NCCP (section 7.1 of the Subregional NCCP). However, the Plan recognizes that some impacts will be unavoidable and provides specific off-setting measures for such impacts (section 3.3 of the Plan). All of these avoidance, minimization, and off-setting measures are hereby incorporated by reference and briefly outlined below.

1.2.1 Operational Protocols and Off-setting Measures

The Plan provides a series of Operational Protocols which are designed to avoid and minimize impacts to QCB and QCB habitat to the greatest extent possible. These Operational Protocols include, but are not limited to, the following:

- a) Maintain a current map of potential QCB habitat within the Plan Area.
- b) Conduct site specific assessments (pre-activity surveys) for QCB habitat on a project-by project basis.
- c) Conduct detailed protocol-level QCB surveys when practical and warranted.
- d) Use the information gathered in a, b, and c above to avoid impacting QCB habitat to the greatest extent practical.
- e) Off-set unavoidable impacts to QCB habitat at a 1:1 ratio for unoccupied habitat and a 2:1 ratio for occupied (or assumed occupied by SDG&E if surveys are not conducted) habitat.
- f) Maintain roads such that QCB habitat does not reestablish itself in previously graded areas (i.e., prevent QCB habitat from re-establishing itself in areas where future clearing activities will take place).
- g) Consult with the Service on large-scale New Facility projects (i.e., projects which would disturb more than one acre QCB habitat).

1.2.2 Relationship between the Plan and SDG&E's existing 1995 Subregional NCCP

The Plan's Operational Protocols are designed to work in concert with, and supplement, the Operational Protocols found in SDG&E's existing 1995 Subregional NCCP. Although the Subregional NCCP Operational Protocols were designed to off-set impacts to species other than

QCB, implementation of these protocols will benefit QCB as well. If SDG&E's 1995 Subregional NCCP were to stop being implemented (e.g., the permit expires and is not renewed), all of the Operational Protocols found within section 7.1 of the 1995 Subregional NCCP will continue be implemented under this Plan. The following operational protocols from SDG&E's existing 1995 Subregional NCCP are expected to benefit QCB:

- a) Construction and maintenance crews will adhere to specific codes of conduct (as outlined in section 7.1.1 of the Subregional NCCP) such as maintaining a 15 MPH speed limit on dirt roads, not littering, etc.
- b) Construction and maintenance crews will receive training regarding the implementation of the NCCP and/or Plan.
- c) Pre-activity surveys will be conducted on a project-by-project basis for any activity which may affect QCB or QCB habitat.
- d) Pre-activity survey results will be provided to the Carlsbad Fish and Wildlife Office at least five working days prior to the proposed activity (unless it is an emergency action) and the Service will have at least five full working days to review the pre-activity survey and to raise any concerns we may have regarding the activity.
- e) Erosion will be minimized during all projects using best management practices.
- f) Trucks, tools, and equipment will be kept on existing access roads or cleared areas, to the extent possible.
- g) The environmental surveyor must approve of the activity prior to working in sensitive areas where disturbance to QCB habitat is unavoidable.
- h) SDG&E must conduct in-place restoration of temporary impacts consistent with their existing 1995 Subarea Plan.

1.2.3 Off-set of unavoidable impacts to QCB and QCB habitat

The Plan outlines four different methods SDG&E may use to off-set unavoidable impacts to QCB or QCB habitat. These options include:

- a) Pay into a QCB habitat fund to be managed by a Service approved entity.
- b) Enhance a portion of the existing SDG&E conservation bank which could support QCB habitat.

- c) Purchase credits from an established QCB bank, should one be approved by the Service in the future.
- d) Create a new QCB conservation bank, subject to Carlsbad Fish and Wildlife Office approval.

SDG&E anticipates using option "a" as its main off-setting method. However, SDG&E may choose which of the options, or combination of options, listed above that they want to use to off-set impacts to QCB, subject to written approval by the Carlsbad Fish and Wildlife Office. Section 3.3 of the Plan details each of these options and is hereby incorporated by reference.

1.3 Reporting

Monitoring and Reporting for the QCB will be integrated with the monitoring and reporting conducted for SDG&E's existing NCCP. Accounting will include an annual summary of QCB habitat impacts, detailed by individual project, and what off-setting measures were utilized to off-set QCB impacts. The annual report will also include a summary of off-setting credits available at the beginning of the reporting year, any deductions made throughout the year, and a final determination of credits still available.

2.0 STATUS OF THE SPECIES/CRITICAL HABITAT

2.1 Quino Checkerspot Butterfly

2.1.1 Listing Status

On August 4, 1994, we published a petition finding in the Federal Register (59 FR 39868) with a proposed rule to list the QCB as endangered. The final rule was published on January 16, 1997 (62 FR 2313). Designation of critical habitat for the QCB was proposed on February 7, 2002 (66 FR 9476), and finalized on April 15, 2002 (67 FR 18355). The draft recovery plan for this species was issued in January 2001 and was finalized in 2003 (USFWS 2003).

2.1.2 Critical Habitat

This biological opinion does not rely on the regulatory definition of "designated or adverse modification" of critical habitat at 50 CFR 402.02. Instead, we have relied upon the statute and the August 6, 2004, Ninth Circuit Court of Appeals decision in *Gifford Pinchot task Force v. U.S. Fish and Wildlife Service* (No. 03-35279) to complete the following analysis with respect to critical habitat.

Critical habitat for the QCB was designated on April 15, 2002 (67 FR 18356), and includes QCB habitat throughout the species' current range in the United States (i.e., Riverside and San Diego

Counties, California). A total of approximately 171,605 acres in Riverside and San Diego Counties, California, are designated as critical habitat for the QCB. In March 2005, the Homebuilders Association of Northern California, *et al.*, filed suit against the Service challenging the merits of the final critical habitat designations for several species, including QCB. In March 2006, a settlement was reached that required the Service to re-evaluate five critical habitat designations, including critical habitat designated for QCB. The settlement stipulated that any proposed revisions to the QCB designation would be submitted for publication to the Federal Register on or before December 7, 2007. A court-approved amendment to the settlement agreement extended this deadline for submission to the Federal Register to January 8, 2008. A proposed revised designation of critical habitat for QCB was published on January 17, 2008 (73 FR 3327).

Primary constituent elements for QCB are those habitat features that are essential for the primary biological needs of foraging, nesting, rearing of young, intra-specific communication, roosting, dispersal, genetic exchange, or sheltering. These features include, but are not limited to: space for individual and population growth and for normal behavior; food, water, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing of offspring; and habitats that are protected from disturbance or are representative of the historic and geographical and ecological distributions of QCB. The primary constituent elements to the conservation of QCB include, but are not limited to the following:

- 1) Open areas within scrublands at least 21.5 square feet in size that:
 - a) Contain no woody canopy cover; and
 - b) Contain one or more of the host plants *Plantago erecta*, *Plantago patagonica*, or *Antirrhinum coulterianum*; or
 - c) Contain one or more of the host plants *Cordylanthus rigidus* or *Castilleja exserta* that are within 328 feet of the host plants *Plantago erecta*, *Plantago patagonica*, or *Antirrhinum coulterianum*; or
 - d) Contain flowering plants with a corolla tube less than or equal to 0.43 inches used for Quino checkerspot butterfly growth, reproduction, and feeding;
- 2) Open scrubland areas and vegetation within 656 feet of the open canopy areas used for movement and basking; and
- 3) Hilltops or ridges within scrublands, linked by open areas and natural vegetation to open canopy areas containing an open, woody-canopy area at least 21.5 square feet in size used for Quino checkerspot butterfly mating (hilltopping behavior).

A total of 4 units are identified in the critical habitat rule. The areas designated as critical habitat are designed to provide sufficient habitat to maintain self-sustaining populations of QCB throughout its range and provide those habitat components essential for the conservation of the species. Habitat components that are essential for the QCB (i.e., primary constituent elements) include the biological needs of larval diapause, feeding, and pupation, adult oviposition, nectaring, roosting and basking, and dispersal, genetic exchange, and shelter. The critical habitat units are configured to provide room for metapopulation dynamics, which is essential for the conservation of the species, including dispersal corridors.

2.1.3 Species Description

Euphydryas editha quino is a recognized subspecies of Edith's checkerspot (*E. editha*), and is a member of the brush-footed butterfly family (Nymphalidae) and the subfamily Melitaeinae (checkerspots and fritillaries). *E. e. quino* differs from the other *E. editha* subspecies in size, wing coloration, and larval and pupal phenotypes (Mattoni et al. 1997). The QCB is moderate in size with a wingspan of approximately 4 cm (1.5 in). The dorsal (top) side of its wings is covered with a red, black, and cream colored checkered pattern, the ventral (bottom) side is mottled with tan and gold. Its abdomen generally has bright red to red-orange stripes across the top. *E. e. quino* larvae are black and have a row of nine, orange-colored tubercles (fleshy/hairy extensions) on their back. Pupae are extremely cryptic and are mottled black and blue-gray.

2.1.4 Distribution

The QCB was historically distributed throughout the coastal slope of southern California, including Los Angeles, Orange, Riverside, San Diego, and San Bernardino Counties, and northern Baja California, Mexico (Mattoni et. al 1997, U.S. Fish and Wildlife Service database). That distribution included the westernmost slopes of the Santa Monica Mountains, the Los Angeles Plain and Transverse Ranges to the edge of the upper Anza-Borrego Desert, and south to El Rosario in Baja California, Mexico (Emmel and Emmel 1973, Mattoni et al. 1997, U.S. Fish and Wildlife Service database). Although historical collection records allow for an estimate of a species' range, such records usually underestimate the number of historical sites and extent of local distributions. Collectors tended to frequent well-known sites, and no systematic or comprehensive survey of the QCB has ever been conducted (Mattoni et. al 1997).

2.1.5 Habitat Affinities

In southwestern San Diego County, the primary host plants for the QCB are dot-seed plantain (*Plantago erecta*), thread-leaved bird's beak (*Cordylanthus rigidus*), and white snapdragon (*Antirrhinum coulterianum*). Larval QCB may also use other species of plantain (*Plantago* spp.) and annual owl's-clover (*Castilleja exerta*) as primary or secondary host plants. While the use patterns of primary and secondary larval host plants are not fully understood, there is evidence that both may be necessary for the survival of QCB larvae (USFWS 2003). QCB larvae,

particularly in the early instars, have a very limited capacity for dispersion. Therefore, high local host plant density is necessary for high larval survival rates (USFWS 2003). In its adult stage, the QCB used a number of flowering plants as nectar sources. These nectar sources are known to include lomatium (*Lomatium* spp.), goldfields (*Lasthenia* spp.), popcorn flowers (*Plagybothrys* and *Cryptantha* spp.), gilia (*Gilia* spp.), ground pink (*Linanthus dianthiflorus*), chia (*Salvia columbariae*), annual lotus (*Lotus* spp.), onion (*Allium* spp.), yerba santa (*Eriodictyon* spp.), and California buckwheat (*Eriogonum fasciculatum*) (67 FR 18359, Mattoni et al. 1997).

QCB are generally found in open areas and ecotone situations which may occur in a number of plant communities, including grasslands, coastal sage scrub, and sparse native woodlands. Open areas within a given vegetation community seem to be critical landscape features for QCB populations. Optimal habitat appears to contain little or no invasive exotic vegetation, and especially, a well developed cryptogamic crust. Densely vegetated areas are not known to support QCB (Mattoni et al. 1997). Habitat patch suitability is determined primarily by larval host plant density, topographic diversity, nectar resources availability, and climatic conditions (USFWS 2003).

2.1.6 Life History

The life cycle of the QCB typically entails typically one generation of adults per year, with a four to eight week adult flight period beginning between late February and May, depending on weather conditions (67 FR 18356). During the flight period, adult butterflies move about and search for nectar sources and mates. Females lay multiple masses of 20 to 150 eggs (M. Singer, C. Parmesan, and G. Pratt unpubl. data) with a single female capable of producing more than 1,000 eggs. The eggs hatch in about 10 days and the larvae begin to feed immediately. At lower elevations in San Diego County, the primary host plant for the QCB is the dot-seed plantain; however, QCB may use other species of plantain and annual owl's-clover. As the larvae grow, they periodically shed their skin. Each phase between skin molts is referred to as an "instar" with the first instar being the first larval stage after hatching.

After hatching from eggs, the small, cryptic, larvae normally consume the plant on which they hatch and then migrate in search of additional plants (USFWS 2003). Larval QCB activity periods usually range from October through June. As summer approaches, the food plants dry out. In their third or fourth instar, larvae enter into an obligatory diapause. Diapause is a low-metabolic resting state that may last for a year or more, depending on conditions. Diapause allows larvae to survive the regular seasonal climatic extremes and also to better survive times of extended adverse conditions, such as drought. The time between diapause termination and pupation can range from two weeks to three months. Sufficient rainfall is necessary to break diapause. This normally occurs during November or December. After termination of diapause, larvae become active and feed. They then enter their pupal stage and within two to six weeks, transform into the adults and emerge as butterflies. Adults live for approximately 10 to 14 days. Adult QCB spend time searching for mates, basking in the sun thermoregulating, feeding on

nectar, defending territories, and, in the case of females, searching for oviposition sites and depositing eggs.

The flight period for the adult QCB usually ranges from late February through May, although the timing and duration of the flight period can vary considerably from year to year depending on rainfall and temperature patterns. Between 1910 and 1985, there were four recorded instances of QCB flight periods occurring from October to December, in response to significantly greater than normal rainfall during September and October (Mattoni et al. 1997).

Adult QCB, and Edith's checkerspots in general, are sedentary by nature and generally fly close to the ground. Evidence from the bay checkerspot suggests that long-distance dispersal is rare (Ehrlich 1961, Ehrlich and Murphy 1987). Bay checkerspots have been documented to move up to about 4.5 Km (2.8 miles) to colonize distant habitat patches (Harrison 1989). For the QCB, many experts familiar with the species believe that QCB populations separated by more than about 3 km (approximately 2 mi) may be demographically isolated. However, responses to abiotic factors, such as weather, may increase the distance butterflies will move (Ehrlich and Murphy 1987). Although QCB populations tend toward low population movements, it is believed that some individuals of this species may disperse long distances in drier years, and that rare population explosions such as the one observed in 1977 may allow dispersing individuals to recolonize areas where the butterfly was eliminated by fire or other disturbances (Ehrlich et al. 1975, as cited in Brown 1991). Plant resources shift over time, and QCB populations have evolved to respond to shifting habitat patch suitability in space and time (67 FR 18359). Male QCB, and to a lesser extent females, are frequently observed on hilltops and ridgelines ("hilltopping") in order to locate mates. Hilltops, ridgelines, and other prominent geologic features may represent centers of QCB population density in some areas. Because adult QCBs are frequently observed on hilltops, even in the absence of nearby larval host plants, hilltops and ridgelines may be crucial for population survival.

2.1.7 Population Trend

As recently as the 1950s, collectors described the QCB as occurring on every coastal bluff, inland mesa top, and lower mountain slope in San Diego County and coastal northern Baja California. These observations indicate that the QCB was historically widespread throughout the southern California landscape, and occurred in a variety of vegetation types, including coastal sage scrub, open chaparral, juniper woodland, farmlands, and grasslands. By the 1970s, most of the coastal bluff habitats in southern California had been urbanized or otherwise disturbed. However, the QCB still occupies known habitat locations inland and at higher elevations including Otay Lakes, and San Miguel Mountain in San Diego County, and the Gavilan Hills in Riverside County. By the middle 1980s the species was thought to have disappeared from the known locations; the petition to list the species in 1988 suggested that it might be extinct. However, extant populations of the butterfly are currently known from western Riverside County and southern San Diego County, California, and northwestern Baja California, Mexico (Mattoni, *et al.* 1997).

2.1.8 Current Threats

The QCB is threatened primarily by urban and agricultural development, non-native plant species invasion, off-road vehicle use, grazing, and fire management practices (62 FR 2313). These threats destroy and degrade the quality of habitat and result in the extirpation of local QCB populations. QCB population decline has been, and will continue to be, caused in part by enhanced nitrogen deposition, elevated atmospheric carbon dioxide concentrations, and climate change (USFWS 2003). Nonetheless, urban development poses the greatest threat and exacerbates all other threats. Activities resulting in habitat fragmentation or host or nectar plant removal reduce habitat quality and increase the probability of local QCB population extirpation and species extinction. Other threats to the species identified in the final listing rule (62 FR 2313) include illegal trash dumping and predation. Dumping, a documented problem for some populations (67 FR 18356), is detrimental because of resulting habitat degradation and destruction. Over-collection by butterfly hobbyists and dealers is a probable threat, although the magnitude of this activity is unknown. Stamp (1984) and White (1986) examined the effects of parasitism and predation on the genus *Euphydryas*, although it is not clear whether these mortality factors pose a significant threat to this species. Predation by Argentine ants (*Iridomyrmex humilis*) has been observed in colonies of the butterfly in the laboratory (G. Pratt fide 67 FR 18356) and intense predation by non-native Brazilian fire ants (*Solenopsis invicta*) is likely where they co-occur with QCB (Porter and Savignano 1990). Brazilian fire ants were documented in 1998 in the vicinity of historic QCB habitat in Orange County and have subsequently been found in Riverside and Los Angeles Counties (California Department of Food and Agriculture 1999).

Most QCB populations are part of a larger metapopulation structure. Isolated habitat patches are not sufficient to ensure the long-term persistence of butterfly metapopulations. Persistence of metapopulations for longer periods of time results from the interaction among sets of local habitat patch populations at larger geographic scales. The long-term persistence of butterfly species with metapopulation dynamics depends on the maintenance of temporarily unoccupied habitat patches and recolonization events that link habitat patches within metapopulations. Maintenance of landscape connectivity is essential in order to maintain metapopulation resilience (67 FR 18357). Rare population outbreak events are thought to play a crucial role in QCB metapopulation resilience (Murphy and White 1984). Accounts of large population density fluctuations at historic QCB population sites indicate that the QCB is a climate-sensitive "eruptive" species that semi-regularly increases its adult densities by orders of magnitude over a period of 5 to 10 years, then drops back to much lower densities over similar period of time.

2.1.9 Rangewide Conservation Needs

The QCB Recovery Plan (USFWS 2003) outlines several goals which are designed to ensure the long-term conservation of the QCB. These goals include:

1. Protecting habitat supporting known current populations (occurrence complexes) and landscape connectivity between them: The QCB Recovery Plan calls for the permanent protection of QCB habitat within occurrence complexes, including larval host plants, adult nectar resources, hilltops, and dispersal areas.
2. Maintaining or creating resilient populations: Landscape connectivity between occurrence complexes should be maintained and configured to support resilient populations.
3. Conducting research necessary to refine recovery criteria: The QCB Recovery Plan indicates that more research should be focused on determining the current short-term and potential long-term distributions of populations of QCB and their associated habitat. The QCB Plan calls for preliminary modeling of metapopulation dynamics for core occurrence complexes and investigations into the dispersal and colonization potential of QCB. Other areas of investigation should include the function of hilltops as a resource, the contribution of multi-year diapause to population resilience, the effects of elevated atmospheric carbon dioxide and nitrogen on QCB habitat, the effect of invasive plants on QCB habitat, and the magnitude of effects of over-collection and natural enemies. The QCB Recovery Plan also calls for the monitoring of populations for further evidence of local declines.
4. Permanently providing for and implementing management of occurrence complexes to restore or enhance habitat quality and population resilience: The QCB Recovery Plan calls for management actions in occurrence areas which include enhancement of host plant populations, diversification of nectar sources and pollinators, control of non-native plants, and enhancement of landscape connectivity.
5. One additional population should be documented or introduced within the Lake Mathews population site: Lake Mathews was formally occupied but is not known to be currently occupied and this site should be reoccupied.
6. Establish and maintain a captive propagation program: The QCB Recovery Plan calls for the establishment of a captive propagation program which would serve as a refugia, provide a population for research purposes, and be a source population for a reintroduction and augmentation program.
7. Establish a cooperative outreach program: The QCB Recovery Plan calls for the development and implementation of an outreach program targeting areas where QCB populations are concentrated in western Riverside and southern San Diego Counties.

3.0 ENVIRONMENTAL BASELINE

Regulations implementing the Act (50 CFR § 402.02) define the environmental baseline as the past and present impacts of all Federal, State, or private actions and other human activities in the Action Area. Also included in the environmental baseline are the anticipated impacts of all proposed Federal projects in the Action Area that have undergone section 7 consultation and the impacts of State and private actions that are contemporaneous with the consultation in progress.

3.1 Action Area

According to 50 CFR. § 402.02 and pursuant to section 7 of the Act, the "Action Area" means all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action. Subsequent analyses of the environmental baseline, effects of the action, and levels of incidental take are based upon the Action Area. For this consultation, we have defined the Action Area as the Plan Area (Figure 1) and up to 30 miles beyond the Plan Area (the Plan covers most new electrical transmission lines extending up to 30 miles outside of SDG&E's existing service territory). The Plan Area encompasses San Diego County west of the desert, the portion of Orange County within SDG&E's existing service territory, and the SDG&E Moreno Compressor Station in Riverside County (Figure 1). The Plan Area encompasses 2,245,771 acres (including 102,567 acres of designated QCB critical habitat) and the extended Action Area (Plan Area, plus a 30 mile buffer) encompasses 3,571,556 acres (including 208,153 acres of designated QCB critical habitat).

3.2 Site Characteristics and Surrounding Land Use

The Action Area encompasses 2,245,771 acres. Thirty-six (36) habitat types occur within the Action Area (KEA 1995). Within the Action Area, habitat types can be generalized from the coast to the inland areas. Along the immediate coast, the most common habitat types are maritime succulent scrub, southern maritime chaparral, southern coastal salt marsh and beach-saltpan. Along the coastal plain, coastal sage scrub, riparian habitats, and grasslands are the most common habitat types. Moving inland and into the foothills, much of the habitat is chaparral, coastal sage scrub, and oak woodland. In the mountainous regions of the Action Area, oak woodlands and coniferous forests are common. Much of the Action Area is composed of rural and urban development. As a result of the rapid pace of urbanization, the Action Area has the highest number of plants and animals in the continental United States which have become protected, or proposed for protection under the Act.

3.3 Relationship to Existing QCB Conservation

Significant areas of remaining QCB habitat have recently been protected through inclusion in HCP preserve areas, the San Diego National Wildlife Refuge, and through habitat acquisition initiatives as described below.

Riverside County

The Western Riverside Multiple Species Habitat Conservation Plan (MSHCP) includes the QCB as a covered species. The MSHCP was approved by the Service on June 22, 2004. Conservation for QCB under this MSHCP will be achieved by the inclusion of at least 67,493 acres of Core Area including suitable Conserved Habitat mosaic within seven Core Areas an additional 12 satellite locations. In addition, the MSHCP Plan will document the distribution of QCB in Western Riverside on an annual basis.

San Diego County

The subregional plan for the San Diego Multiple Species Conservation Program (MSCP), did not list the QCB as a covered species at the time it was developed. However, the City of Chula Vista did cover the QCB in its MSCP Subarea Plan (conserving 2,806 acres of QCB habitat). Chula Vista also provides active QCB management in their preserve areas.

San Diego National Wildlife Refuge

Lands placed into the Service's San Diego National Wildlife Refuge also provide for the conservation of the QCB. The Rancho San Diego and Los Montanas Occurrence Complexes are located on the Otay/Sweetwater Unit of the Refuge. Approximately 9,000 acres of QCB habitat are conserved within the Refuge.

QCB Habitat Conservation Initiatives

The California Department of Fish and Game (CDFG) manages over 10,000 acres of occupied QCB habitat within the current MSCP preserve. In addition, the Service provided the State of California with \$ 10,000,000 for the additional acquisition of 824 acres of QCB habitat in the Proctor Valley area of the Southwest San Diego Recovery Unit.

3.3 Status of QCB in the Action Area

Due to the large size of the Action Area (2,245,771 acres) and the preponderance of private lands within the Action Area, no comprehensive QCB surveys were conducted. However, the Service has identified 205,534 of potential QCB habitat (Figure 1; identified as "Mapped Areas" in the Plan) within the Plan Area ("Mapped Areas" have not been established in the extended 30-mile buffer area), based on the 2003 Recovery Plan for the QCB (USFWS 2003) and data collected since 1990¹. The extant QCB populations within the Action Area are currently restricted roughly

¹ According to the QCB Recovery Plan, sightings of QCB since the 1990s are considered extant. Earlier sightings without post-1990 backup are considered historical. There was a drought in the 1980s where QCB could not be located anywhere for several years. Pre-1990 sightings are considered historical because the populations have not been located again despite intensive

to the area represented by the Mapped Areas (Figure 1). Because no comprehensive QCB surveys have been conducted, the section below is based on a more generalized analysis of the status of QCB in the Action Area.

In the fall of 2007, San Diego County experienced several major wildfires. These fires burnt extensive areas of QCB habitat, including QCB critical habitat, within the Mapped Areas. The northernmost occupied areas within the Otay Mountain Core Occurrence Complex (Honey Springs and Dulzura non-core occurrence complexes as identified in the recovery plan) had the highest densities of adult butterflies and supported the most reproduction (observed larvae) of any known occupied areas in 2007 (CFWO 2007). These areas were not affected by the 2003 Otay and 2005 Border 50 fires. Therefore, observed relatively high Quino checkerspot butterfly abundance in 2007 in the Honey Springs and Dulzura areas (CFWO 2002, 2003, 2004, 2005, 2006, 2007) appears to have been primarily due to the lack of recent fire impacts (Anderson 2007). In 2007, the Harris Fire perimeter encompassed approximately 72% of the new Otay Mountain Core Occurrence Complex, including the northern areas that were not affected by fire in 2003 or 2005 (Service GIS database). Habitat damage within the 2007 fire perimeter is still being assessed. Note that this year (2008) we have already found caterpillars in the Dulzura (not affected by earlier fires last year) and Otay Lakes (not last year) areas, in patches of unburned habitat within the fire perimeter. This looks like a much better year environmentally (so far) for Quino than 2007. What that means is fire at least temporarily reduces Quino density, but is not likely to directly extirpate Quino in typical San Diego County habitat (Alison Anderson, Service, pers. com.)

3.3.1 Riverside County

The only portion of Riverside County included in the Action Area is in the vicinity of the Moreno Gas Compressor Station, which is located in northern Riverside County. The closest QCB recovery unit is the Northwest Riverside Recovery Unit, with the closest known QCB populations being the Harford Springs and Canyon Lake populations, approximately 18 miles away. Factors affecting the Northwest Riverside Recovery Unit, as described in the QCB Recovery Plan (USFWS 2003), include habitat destruction and fragmentation due to development, and habitat degradation due to off-road vehicle activity, nonnative plant invasion, and grazing.

3.3.2 San Diego County

Within San Diego County, QCB are known to occur in the hills north of San Vicente Reservoir, near the community of Alpine, in West Otay Mesa, Otay Valley, West Otay Mountain, Otay Lakes/Rancho Jamul, Proctor Valley, Jamul, Hidden Valley, Rancho San Diego, Los Montanas,

searches in some areas. The 1990 date and system for categorizing QCB sightings were established by the map in Mattoni *et al.* 1997.

Honey Springs, Dulzura, Marron Valley, Barrett Junction, and Tecate. Recent QCB observations in southwestern San Diego County are concentrated in lower elevation areas surrounding east Otay Valley, Otay Mountain, the Jamul Mountains, and San Miguel Mountain, and Mission Trails Park. The Otay Lakes area historically supported large, high density local populations.

Many recent QCB observations in southeastern San Diego County are concentrated northwest of the town of Jacumba, in the vicinity of Jacumba Peak, in the vicinity of Campo, and within the Anza Borrego Desert State Park boundary south of Interstate 8. Recent QCB observations also occur east of Otay Mountain and are concentrated on the eastern slope of Otay Mountain and ridgelines along the international border in the vicinity of Marron Valley. This habitat region is located in the high-desert transition area between the Anza Borrego Desert and the international border. Occupied QCB habitat in this area is found in open juniper woodlands. The vegetation in this area is a diverse mixture of desert and coastal slope communities. Habitat in the Jacumba area has not been heavily invaded by nonnative plant species, and landscape connectivity is relatively intact.

Landscape connectivity remains relatively intact in some other areas. For example, in the vicinity of the San Vicente Reservoir large areas of habitat have been conserved, including the San Vicente Occurrence Complex, the City of Poway's Iron Mountain Open Space Preserve to the north, and the County of San Diego's Sycamore Canyon Open Space Preserve to the west. Ecological connectivity extends west and south into Marine Corps Air Station Miramar and the City of San Diego's Mission Trails Regional Park.

Landscape connectivity between the southern occurrence complexes appears to be mostly intact. In addition, some degree of landscape connectivity apparently exists south of Otay Mountain in Baja California, Mexico, between the west Otay Mountain and Marron Valley Occurrence Complexes. However, no conservation measures for QCB are being implemented in Mexico.

3.4 Critical Habitat Units

The proposed activity would take place the Otay (maximum of 15 acres) and Jacumba (maximum of 15 acres) QCB critical habitat units. Descriptions of these two units follow:

- 1) Otay Unit - The Otay Unit encompasses approximately 64,430 acres within the southwestern portion of San Diego County. Lands encompassed by this unit stretch south from the San Diego National Wildlife Refuge (SDNWR) Otay-Sweetwater Unit and State Route 94 to the international border with Mexico, west along Otay River Valley and the northern rim of Otay Mesa, and east to the town of Tecate. The Otay Unit supports all or part of 12 of the 13 occurrence complexes identified in the final recovery plan (USFWS 2003) as important to recovery in southwestern San Diego County. Mapped portions of some of the complexes identified as important to

recovery in the final recovery plan (USFWS 2003) were not designated because those portions fell outside the proposed critical habitat

- 2) Jacumba Unit - The Jacumba Unit encompasses approximately 9,970 acres of land in southeastern San Diego County south of Interstate 8 in the vicinity of the town of Jacumba. This critical habitat unit supports the Jacumba occurrence complex identified as important to recovery in the recovery plan. The Jacumba occurrence complex occurs within the Southeast San Diego Recovery Unit described in the recovery plan (USFWS 2003). This apparently isolated population center occurs in a unique high-desert region of juniper woodlands, which provides a vital element of habitat heterogeneity in the species' range. The metapopulation distribution likely extends south across the international border. Occupancy has been documented approximately 3.7 miles to the south in El Condor (Baja California, Mexico) and the U.S. occurrence complex may belong to the same metapopulation.

3.5 Previous Opinions Within The Carlsbad Fish and Wildlife Office (CFO) Jurisdiction

There are 15 Biological Opinions on record addressing effects to Quino within the CFO jurisdiction. These opinions are summarized in Table 1.

Table 1. Biological Opinions Addressing Quino on File with the CFO	
Title	Take Authorized
Murrieta Springs Road extension	Not Quantified/10.6 ac Impact
Otay Mesa Generating Project	Not Quantified/3.5 ac Impact
Willows Investment Group Project	Not Quantified/22.4 ac Impact
State Rout 125 South	Take "1 Population"
Rancho Bella Vista	Not Quantified/ 98.0 ac Impact
Otay Mesa Energy Center	Not Quantified/15.0 ac Temporary Impacts 2.88 ac Permanent Impacts
Rolling Hills Ranch Subarea III	1 Adult and "unknown number more"
State Route 905 Extension Project	Not Quantified/ 29.0 ac Impact
Hunte Parkway Project	Not Quantified/4.2 ac Impact
Eastern Otay Ranch Drainage Facility	Not Quantified/3.2 ac Impact
Lake Elsinore Unified School District	Not Quantified/14.0 ac Impact
Thomas Mountain Fuels Reduction	Not Quantified - Threshold of 5 Adults
14 Mile Border Fence Infrastructure	2 Adults
Salt Creek Interceptor Sewer Project	Not Quantified/ 17.8 ac Temporary impacts 11.6 ac Permanent Impacts
Sempra Gas 6900	Not Quantified/14.4 ac Impact

4.0 EFFECTS OF THE ACTION

Effects of the action refer to the direct and indirect effects of an action on the species, together with the effects of other activities that are interrelated and interdependent with that action that will be added to the environmental baseline. Interrelated actions are those that are part of a larger action and depend on the larger action for their justification. Interdependent actions are those that have no independent utility apart from the action under consideration. Indirect effects are those that are caused by the proposed action, are later in time, and are still reasonably certain to occur.

4.1 Direct Effects

SDG&E's activities will impact up to 33 acres of QCB habitat within the Plan Area (approximately 17 acres of temporary and 16 acres of permanent impacts), as detailed in their Plan. SDG&E estimates that 15 of the 33 acres of potential impacts to QCB habitat will result from road grading, and the other activities outlined in the project description will account for the remaining 18 acres of potential impacts. Ground disturbing activities associated with SDG&E's activities, such as grading and excavation, would likely kill any QCB eggs, larvae, diapausing larvae, and pupae within the project footprints by disturbing, compacting, and manipulating the substrate and QCB host plants. It is unlikely that adult butterflies would be directly affected given their mobility. Impacts are anticipated to occur both inside and outside of designated QCB critical habitat. A maximum of 30 acres of impacts to designated QCB critical habitat are anticipated. However, impacts will be relatively small given that the Plan Area encompasses 2,245,771 acres (3,571,556 acres within the Action Area), which includes approximately 102,567 acres of QCB critical habitat (208,153 acres within the Action Area).

For each individual project, most direct impacts to QCB are expected to be small in scale (measured in square-feet). Furthermore, the 33 acres of direct impacts will take place over the 50-year life of the Plan. Although the Plan provides a series of operational protocols, as outlined in the Conservation Measures section above, designed to avoid and minimize impacts to QCB and designated QCB habitat, some impacts will be unavoidable. Therefore, the Plan provides for specific off-setting ratios for such impacts, as outlined in the Conservation Measures section above. These off-setting ratios will apply to both temporary and permanent impacts to designated QCB habitat, even though temporary impact areas will be restored as specified in the Plan.

Although most impacts are expected to be small, two activities were identified as potentially having larger than average contiguous impacts; a) road grading, and b) new facility construction impacting more than one acre of QCB habitat. As outlined in the Conservation Measures, the Plan includes additional access road maintenance protocols and establishes special review protocols for larger (greater than one acre) new facility construction projects. These protocols

are designed to further minimize impacts to QCB and their habitat associated with these more substantial projects.

Of the approximately 30 acres of direct impacts to designated QCB critical habitat, direct effects would occur to the Otay (maximum of 15 acres) and Jacumba (maximum of 15 acres) QCB critical habitat units. As described above, impacts from individual projects are expected to be small (measured in square feet), dispersed over a large geographic area, and spread over a 50-year time period. It is expected that impacts would occur in grasslands, open-canopy woodlands, and shrublands, but would not alter any prominent topographic features (i.e., hill-topping areas). Given these considerations, it is anticipated that the impacts would not impair the ecological functions of the habitat units or destroy or adversely modify any primary constituent element.

Approximately half (15 acres) of the impacts to designated QCB critical habitat are expected to be temporary. Temporary impacts to designated QCB critical habitat will be restored (as specified in the Plan). Loss of designated QCB critical habitat will be avoided and minimized through the Conservation Measures outlined in the project description. Both temporary and permanent impacts to designated QCB critical habitat will be off-set (at a 1:1 ratio for unoccupied habitat and a 2:1 ratio for occupied habitat). Lands which are purchased and/or managed to off-set designated QCB impacts inside or outside of critical habitat will be located within critical habitat (or will provide the same functions and values of critical habitat). Since all impacts will not take place in critical habitat, and off-setting measures (in addition to being restored) are required for temporary impacts to designated QCB critical habitat, the Plan will likely place more critical habitat into protection/management than will be permanently removed by SDG&E activities.

4.2 Indirect Effects

Indirect effects from the proposed Plan may include fragmentation of QCB habitat which may lead to the isolation of occurrence complexes. The potential for this indirect effect is small, however, given that most of SDG&E activities will be mostly measured in square feet and dispersed over a large area. To minimize the effects of fragmentation, large (i.e., greater than or equal to one acre) contiguous impacts associated with new construction will warrant closer review and oversight by the Service. Furthermore, off-site habitat acquisition efforts (associated with off-setting unavoidable impacts to QCB habitat) will be focused on maintaining connectivity between occurrence complexes.

In addition to possibly fragmenting QCB habitat, indirect effects to QCB could occur through non-native plant invasion or expansion. Native plants, including QCB host and nectaring resources, may be out-competed by non-native plants, especially if weed growth is disproportionately facilitated (as compared to native vegetation) by ground disturbing activities associated with SDG&E's temporary impacts to QCB habitat (weed species tend to be more suited to disturbed areas than are native species). Furthermore, because non-native grasses and

weeds are typically annual species they can provide additional fuel and increase the frequency or severity of wildfires. Weeds also typically respond more quickly to fire or other disturbance and thereby can facilitate conversion of one habitat type to another (e.g., coastal sage scrub converting to non-native grassland). If dead annual weeds build up, the resulting thatch may change microsite characteristics further affecting seed germination or plant growth. To off-set temporary indirect impacts to QCB habitat, temporary impact areas will be restored using native seed stock, if natural recruitment proves insufficient for restoration.

4.3 Cumulative Effects

Cumulative effects include the effects of future State, Tribal, local, or private actions that are reasonably certain to occur in the Action Area considered in this biological opinion. Future Federal actions that are unrelated to the proposed action are not considered in this action because they require separate consultation pursuant to section 7 of the Act.

We anticipate that there may be conversion or degradation of QCB habitat within the Action Area which extends beyond SDG&E's jurisdictional authority. These impacts may result from agricultural and grazing use, off-road vehicle activity, illegal dumping, impacts associated with illegal immigrants, and development on private lands. Furthermore, non-native grass and weed growth from nitrogen deposition or ground disturbance may also degrade existing QCB habitat on a regional scale. Two specific non-federal actions which may affect QCB and their habitat follow:

- 1) Subregional Plan for the San Diego MSCP - The Subregional plan for the San Diego Multiple Species Conservation Program (MSCP) did not list the QCB as a covered species at the time of its development. However, the City of Santee is proposing to cover the QCB in their MSCP Subarea Plan which would conserve approximately 555 acres of modeled QCB habitat (Technology Associates 2006). Also, San Diego County is amending their permit under the MSCP to add the QCB as a covered species and would conserve 64,000 acres of suitable QCB habitat (County of Riverside 2003). Both the Santee Subarea Plan and the County Amendment are being discussed and the protections for QCB should be considered tentative.
- 2) Campo Landfill - The Campo Band of Kumeyaay Indians has proposed to construct a landfill project on the Campo Reservation. This project would entail the sublease of 1,157 acres of the reservation to a private corporation BLT Enterprises, for the purpose of constructing and operating the landfill waste disposal area, a well field area, an access road, and other support facilities. Pursuant to this action, approximately 600 acres of potential Quino checkerspot butterfly habitat would be disturbed during landfill or facilities construction and maintenance. The tribe proposes to revegetate the 400 acre landfill area in a manner that would support QCB

after landfill closure, however the potential for recolonization of a revegetated landfill cap remains unknown.

5.0 CONCLUSION

This biological opinion does not rely on the regulatory definition of "destruction or adverse modification" of critical habitat at 50 CFR 402.02. Instead, we have relied upon the statute and the August 6, 2004, Ninth Circuit Court of Appeals decision in *Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service* (No. 03-35279) to complete the following analysis with respect to critical habitat.

After reviewing the current status of the QCB, the environmental baseline for the Action Area, the effects of the proposed project, and the cumulative effects, it is our biological opinion that the project, as proposed, is not likely to jeopardize the continued existence of the QCB and is not likely to destroy or adversely modify designated QCB critical habitat.

We present this conclusion based on the following reasons:

1. Direct impacts of up to 33 acres of designated QCB habitat (approximately 17 temporary and 16 permanent) will typically involve small patches (usually a few square feet) dispersed over a large area and take place over a long period of time (50-year life of the permit). These direct impacts are not expected to significantly decrease the long-term viability of the overall population of QCB inhabiting the Plan Area given the relatively large amount of designated QCB critical habitat (102,567 acres within the Plan Area, and 208,153 acres within the Action Area) and area of potential QCB habitat (205,534 acres within the Plan Area).
2. Direct and indirect impacts of up to 33 acres of QCB habitat (including up to 30 acres of designated critical habitat) will be off-set through implementation of the conservation measures, as outlined in the project description.
3. The Plan is consistent with the QCB Recovery Plan (USFWS 2003) in that it will provide for the permanent protection and management of QCB habitat within occurrence complexes (estimated occupied areas based on recent butterfly observations).

6.0 INCIDENTAL TAKE STATEMENT

Section 9 of the Act prohibits the take of endangered and threatened species, respectively, without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such contact. Harm is further defined by us to include significant habitat modification or degradation that results in death or injury to listed

species by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering. We define harass as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of otherwise lawful activity. Under the terms section 7(b)(4) and 7(o)(2) of the Act, taking that is incidental to and not intended as part of the action is not considered a prohibited taking provided that such taking is in compliance with the terms and conditions of this incidental take statement.

The proposed Plan, its associated documents, and this biological opinion identify anticipated impacts to the QCB likely to result from the proposed taking and the measures that are necessary and appropriate to minimize those impacts. All conservation measures described in the proposed Plan and section 10(a)(1)(B) permit issued with respect to the proposed Plan, are hereby incorporated by reference as reasonable and prudent measures and terms and conditions within this Incidental Take Statement pursuant to 50 CFR. § 402.14(i). Such terms and conditions are non-discretionary and must be undertaken for the exemptions under section 10(a)(1)(B) and section 7(o)(2) of the Act to apply. If the applicant fails to adhere to those terms and conditions, the protective coverage of the section 10(a)(1)(B) permit and section 7(o)(2) may lapse.

6.1 AMOUNT OR EXTENT OF TAKE

We anticipate that it will be difficult to quantify the number of QCB that could be affected by implementation of the Plan for the following reasons:

1. The exact number of eggs, larvae, and pupae that could be incidentally taken cannot be quantified because of the cryptic nature of the species in the egg, larva, and pupal form.
2. The exact distribution and population size of QCB in any given year is difficult to estimate due to the dynamic conditions associated with QCB habitat.
3. Varying climatic conditions will influence female reproductive fecundity and survival of the various life stages.

We anticipate the incidental take of all QCB eggs, larvae, and pupae within the 33 acres of QCB habitat (including the loss of a maximum of 30 acres of designated QCB critical habitat) which will be impacted by SDG&E's activities. Due to their mobility and the speed restrictions on vehicles utilizing SDG&E roads, we do not anticipate take of any adult QCB. The incidental take is expected in the form of harm as defined in 50 CFR § 17.3 (i.e., death).

6.2 EFFECT OF THE TAKE

In the accompanying biological opinion, we determined that this level of anticipated take is not likely to result in jeopardy to the QCB or the destruction or adverse modification of its critical habitat.

7.0 REASONABLE AND PRUDENT MEASURES

No reasonable and prudent measures beyond the conservation measures described in the project description have been identified to further minimize incidental take.

8.0 TERMS AND CONDITIONS

No reasonable and prudent measures have been proposed, therefore no terms or conditions are offered.

9.0 MONITORING AND REPORTING REQUIREMENTS

Monitoring and reporting for the QCB will be integrated with the monitoring and reporting conducted for SDG&E's existing NCCP. Accounting will include an annual summary of QCB habitat impacts, detailed by individual project, and what off-setting measures were utilized to offset QCB impacts. The annual report will also include a summary of off-setting credits available at the beginning of the reporting year, any deductions made throughout the year, and a final determination of credits still available.

The Carlsbad Fish and Wildlife Office staff is to be notified within one working day should any QCB be found dead or injured during this project. Notification must include the date, time, and location of the carcass, and any other pertinent information. The Service contact person is Chris Otahal and may be contacted at the letterhead address or at (760) 431-9440.

We retain the right to access and inspect any project site for compliance with the proposed project description and with the term and condition of this biological opinion. Any habitat destroyed that is not in compliance with the Plan should be disclosed immediately to the Service for possible reinitiation of consultation. Compensation for loss associated with such non-compliance will be requested at a minimum ratio of 5:1.

10.0 CONSERVATION RECOMMENDATIONS

Section 7(a)(1) of the Act directs Federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, help

implement recovery plans, or to develop information. We have not identified any additional conservation recommendations that should be implemented in association with the Plan or permit issuance.

11.0 REINITIATION NOTICE

This concludes formal consultation on the proposed action outlined in the request. As provided in 50 C.F.R. § 402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the proposed action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to listed species or critical habitat that was not considered in this opinion or; (4) a species not covered by the Plan is listed or critical habitat for a non-covered species is designated that may be affected by the proposed action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation.

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**LOW-EFFECT HCP SCREENING FORM -
SDG&E QUINO CHECKERSPOT BUTTERFLY
HABITAT CONSERVATION PLAN**

I. Project Information

A. Project name:

San Diego Gas and Electric Company Quino Checkerspot Butterfly Habitat Conservation Plan (Plan).

B. Affected species:

Quino checkerspot butterfly (*Euphydryas editha quino*, QCB)

C. Project size (in acres):

The Plan area covers portions of San Diego, Orange, and Riverside Counties. An estimated maximum of 33 acres of QCB habitat would be affected by implementation of the Plan over the 50-year life of the Plan (17 acres temporarily impacted, 16 acres permanently impacted). Within these 33 acres of impacts, up to 30 acres may be within QCB critical habitat (15 acres temporarily impacted and 15 acres permanently impacted).

D. Brief project description including minimization and mitigation plans:

San Diego Gas and Electric Company (SDG&E) proposes to adopt and implement the Plan to address temporary and permanent impacts to QCB habitat associated with SDG&E's operations and maintenance activities, as well as new construction. Activities that would be authorized by the Plan include the siting, design, installation, construction, use, maintenance, and repair and removal of facilities within the Plan area. Operations and maintenance activities proposed for coverage under the Plan may include, but are not limited to, grading of access roads, insulator washing, tree trimming, and pole brushing. Construction of new facilities would also be addressed under the Plan.

SDG&E proposes to use operational protocols specified in the existing *SDG&E Subregional Natural Community Conservation Plan*, dated December 1995 (NCCP) when working in QCB habitat. While these protocols were developed for species other than QCB, implementing the protocols will avoid and minimize some impacts to QCB. Some of the existing operational protocols that SDG&E is currently implementing as part of their 1995 NCCP include pre-activity surveys, seasonal restrictions on some activities, minimal impact siting criteria, and an employee education program. The Plan will supplement the 1995 NCCP

Low Effect Screening Form for the SDG&E Quino HCP

protocols to avoid and minimize impacts specific to QCB and to mitigate for unavoidable impacts to QCB. Plan avoidance and minimization measures include identifying activities which may impact QCB habitat by mapping occurrence of QCB within the Plan Area and conducting site-specific habitat and QCB surveys where possible and appropriate. SDG&E will use this information to avoid any impact to suitable QCB habitat to the greatest extent possible.

Though avoidance of impacts is the main objective of the Plan, some impacts to QCB habitat will be unavoidable. SDG&E will mitigate for unavoidable impacts through one or more of the following four options: 1) paying into a QCB habitat fund to be managed by the San Diego Foundation; 2) enhancing of a portion of the existing SDG&E mitigation parcel which could support QCB habitat; 3) purchasing credits from an established QCB bank should one be approved by the Service at some future date; or 4) creating a new QCB Mitigation Site. SDG&E may choose which option, or combination of options, they want to use to mitigate impacts to QCB, subject to Service approval. Detailed explanations of each of these options are presented in the Plan.

II. Does the HCP fit the low-effect criteria in the HCP Handbook? *The answer must be "yes" to all three questions below for a positive determination. Each response should include an explanation.*

A. Are the effects of the HCP minor or negligible on federally-listed, proposed, or candidate species and their habitats covered under the HCP prior to implementation of the mitigation plan? (Handbook pg. 1-8 and 1-9)

Yes. The majority of unavoidable impacts are expected to result in minor temporary loss of QCB habitat. An estimated maximum of 33 acres of QCB habitat would be affected by implementation of the Plan over the 50-year life of the Plan (17 acres temporarily impacted, 16 acres permanently impacted). Within these 33 acres of impacts, up to 30 acres may be within QCB critical habitat (15 acres temporarily impacted and 15 acres permanently impacted). This level of habitat removal, spread over a large geographic area, generally occurring in small patches measured in square feet, and taking place over a 50-year time span, is expected to have minor effects on QCB.

B. Are the effects of the HCP minor or negligible on other environmental values or resources (e.g., air quality, geology and soils, water quality and quantity, socio-economic, cultural resources, recreation, visual resources) prior to implementation of the mitigation plan? (Handbook pg. 1-8 and 1-9)

Yes. The proposed Plan would take place completely within the area subject to SDG&E's existing 1995 NCCP. The proposed Plan would not authorize any additional SDG&E activities beyond those already anticipated under their existing 1995 NCCP. This Plan would add additional avoidance and

Low Effect Screening Form for the SDG&E Quino HCP

minimization measures, and mitigation for unavoidable impacts, specific to QCB.

C. Would the impacts of this HCP, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects not result, over time, in cumulative effects to environmental values or resources which would be considered significant? (Handbook pg. 5-3).

Yes. Because most of the impacts to QCB will be temporary and result in a small amount of vegetation disturbance (i.e., most projects result in impacts so minor that the impacts are measured in square feet) spread over a large area, minor impacts to QCB and other environmental resources are expected, both individually and cumulatively. No more than 33 acres of QCB habitat are expected to be impacted over the 50-year life of the Plan.

III. Do any of the exceptions to categorical exclusions apply to this HCP? (from 516 DM 2.3, Appendix 2) *If the answer is "yes" to any of the questions below, the project can not be categorically excluded from NEPA. Each "no" response should include an explanation.*

Would implementation of the HCP:

A. Have significant adverse effects on public health or safety?

No. The proposed Plan is intended to benefit public health and safety by maintaining energy infrastructure. No impacts due to hazardous materials are expected.

B. Have adverse effects on such unique geographic characteristics as historic or cultural resources, park, recreation or refuge lands, wilderness areas, wild or scenic rivers, sole or principal drinking water aquifers, prime farmlands, wetlands, floodplains, or ecologically significant or critical areas, including those listed on the Department's National Register of Natural Landmarks?

No. Cultural resources will be avoided. No adverse effects are expected on park, recreation, or refuge lands, wilderness areas, or wild and scenic rivers. Although utility rights-of-way run through state and national forests and wildlife refuges, SDG&E activities occurring in those areas would conform to any requirements imposed by the land manager, and would not adversely affect such resources. SDG&E's activities are not located within an area that includes prime farmlands, or sole or principal aquifers. Impacts to ecologically significant areas within the Plan area are expected to be minor or negligible before implementation of the mitigation measures.

C. Have highly controversial environmental effects?

No. We have not identified any highly controversial effects associated with the proposed Plan.

D. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks?

No. SDG&E's activities include routine operation and maintenance of energy infrastructure in accordance with operational protocols developed for their existing 1995 NCCP.

E. Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects?

No. The Plan does not establish a precedent for future actions or represent a decision in principle about future actions that will potentially cause significant environmental effects. Future similar actions will be evaluated on their own merits.

F. Be directly related to other actions with individually insignificant but cumulatively significant environmental effects?

No. We are not aware of any other actions that are directly related to the Plan.

G. Have adverse effects on properties listed or eligible for listing on the National Register of Historic Places?

No. SDG&E's activities occur primarily in existing utility rights-of-way (ROW). A search of the National Register of Historic Places (NRHP) revealed no NRHP properties within SDG&E's ROW.

H. Have adverse effects on listed or proposed species, or have adverse effects on designated Critical Habitat for these species? Consider the degree or amount of take and the impact of the take on the species. Although take may occur under project implementation, it may be so minor as to result in negligible effects. The same concept applies when considering effects to critical habitat.

No. The Plan is expected to have minor or negligible impacts to QCB and QCB critical habitat.

I. Have adverse effects on wetlands, floodplains or be considered a water development project thus requiring compliance with either Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act?

Low Effect Screening Form for the SDG&E Quino HCP

No. Approval of the Plan will not have adverse effects on wetlands or floodplains. SDG&E's activities are unrelated to water development and QCB habitat does not occur within wetland areas.

J. Threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment?

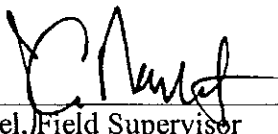
No. The proposed Plan is compliant with all applicable federal, state, and local laws. SDG&E's activities are consistent with San Diego County's General Plan and with other regional habitat conservation plans in the area. The Plan area does not include tribal land, and no SDG&E activities are proposed to occur on tribal land.

IV. ENVIRONMENTAL ACTION STATEMENT

Based on the analysis above, the Plan qualifies as a "Low Effect" HCP as defined in the U.S. Fish and Wildlife Service's *Habitat Conservation Planning Handbook*. Therefore, this action is categorically excluded from further NEPA documentation as provided by 516 DM 2, Appendix 1 and 516 DM 6, Appendix 1.

Other supporting documents: SDG&E Quino Checkerspot Butterfly HCP

Concurrence:



Jim Bartel, Field Supervisor
Carlsbad Fish and Wildlife Office
U.S. Fish and Wildlife Service

1-22-2008
Date

**FINDINGS AND RECOMMENDATIONS
FOR THE ISSUANCE OF ENDANGERED SPECIES ACT
SECTION 10(a)(1)(B) PERMIT TE162969-0
TO AUTHORIZE INCIDENTAL TAKE
ASSOCIATED WITH THE HABITAT CONSERVATION PLAN
FOR THE SAN DIEGO GAS AND ELECTRIC COMPANY
SAN DIEGO, RIVERSIDE, AND ORANGE COUNTIES, CALIFORNIA**

I. DESCRIPTION OF PROPOSAL

The San Diego Gas and Electric Company (SDG&E, Applicant or Permittee) is seeking a 50-year incidental take permit (Permit) for the Quino Checkerspot Butterfly (*Euphydryas editha quino*; "QCB") under section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The Applicant is seeking an individual Incidental Take Permit (Permit) in association with on-going operations and maintenance activities as well new facility installations within San Diego, Riverside, and Orange Counties, California. The Applicant has submitted a Habitat Conservation Plan (HCP). The HCP addresses the effects of the proposed actions on the QCB and describes implementation of measures to minimize and mitigate the effects to the QCB.

The Permit would allow incidental take in the form of harm, including death or injury, of all QCB as a result of the removal of up to 33 acres (approximately 17 acres of temporary and 16 acres of permanent impacts) of QCB habitat. These 33 acres of impacts includes a maximum of 30 acres (15 acres temporary and 15 acres permanent) of impacts to QCB critical habitat. Due to their mobility and the speed restrictions on vehicles utilizing SDG&E roads, we do not anticipate take of any adult QCB. In addition, and consistent with the U.S. Department of Interior's "No Surprises" regulations [50 CFR 17.22 (b)(5) and 17.32 (b)(5)], the Applicant is seeking assurances that no further mitigation and minimization requirements for the QCB would be required while the permit is in effect and being implemented properly. The term of the Permit is 50 years.

Documents used in the preparation of these findings and recommendations include: (1) the *Low-Effect Quino Checkerspot Butterfly Habitat Conservation Plan for the San Diego Gas and Electric Company, San Diego, Riverside, and Orange Counties, California*, dated May 2007; (2) the Service's Intra-Service Biological Opinion (FWS-SDG-08B0213-08F0206), dated February 16, 2008; and (3) the Recovery Plan for the QCB (Service 2003). These documents are herein incorporated by reference.

Project Description

The proposed action is the issuance of an incidental take permit under section 10(a)(1)(B) of the Act. The permit addresses the incidental take of QCB associated with SDG&E's operation and maintenance activities and new facility installation in portions of San Diego, Orange, and Riverside Counties. The HCP covers biological impacts from the use, maintenance, and repairs of existing gas and electric facilities and, with limited exception, include typical expansions to those systems. Road grading of existing roads and some new road construction will be the main

source of vegetation disturbance. SDG&E activities other than maintenance of existing access roads include, without limitation, all current and future actions arising out of, or in any way connected with the siting (including any site assessment, surveying, testing, or planning), design, installation, construction, use, maintenance, operation, repair and removal of facilities within the Plan Area (Figure 1). Some examples of these activities are described below:

- 1) Washing Insulators: Insulator washing involves using a high-pressure hose within 60 feet of the facility (e.g. tower or pole) and spraying water at the insulator to remove accumulated debris.
- 2) Pole Insetting: Insetting poles involves the placement of new poles in-line between existing structures to provide additional strength to support new or heavier conductors, as well as achieving necessary wire clearances.
- 3) Installing Pole Anchors, Guy Wires, and Stubs: To add support to poles, guy wires are attached to the upper portion of a wood pole and then secured to a stub or to an anchor buried in the ground.
- 4) Maintaining Fire Control Areas: Areas around poles (typically limited to 10 feet in diameter), towers, gas line valve complexes and cathodic test stations are cleared of vegetation to reduce possible fire ignition sources.
- 5) Maintaining Equipment Associated with Poles and Towers: Poles or towers may support a variety of equipment such as conductors, insulators, switches, transformers, lightning arresters, line junctions, and other electrical equipment. This type of equipment may need to be added, repaired, or replaced in order to maintain uniform, safe, adequate, and reliable service.

In addition to the activities described above, the permit addresses incidental take within the Plan Area (SDG&E Service Area) plus a 30 mile buffer around the Plan Area (excluding Mexico) associated with limited expansion of the electric generation capacity or gas transmission systems including: 1) new electrical transmission line facilities; 2) electrical interconnections with other utilities that do not project more than 30 miles outside of the Plan Area boundary; 3) new gas transmission line facilities not exceeding 30 inches in diameter and 20 miles in length; 4) new substations and regulator stations with habitat impacts under 20 acres; and new gas compressor stations with habitat impacts under 10 acres. However, projects with impacts that are greater than one acre in extent requires additional review by the U. S. Fish and Wildlife Service (Service) as outlined in the HCP.

Up to 33 acres of QCB habitat may be lost through implementation of the HCP over the 50-year term of the permit. Approximately 17 acres of impacts will be temporary and approximately 16 acres will be permanently impacted. Impacts to approximately 30 acres of QCB critical habitat will be included in the 33 acre impact total. Approximately half (15 acres) of the impacts to critical habitat will be permanent and the other half (15 acres) will be temporary.

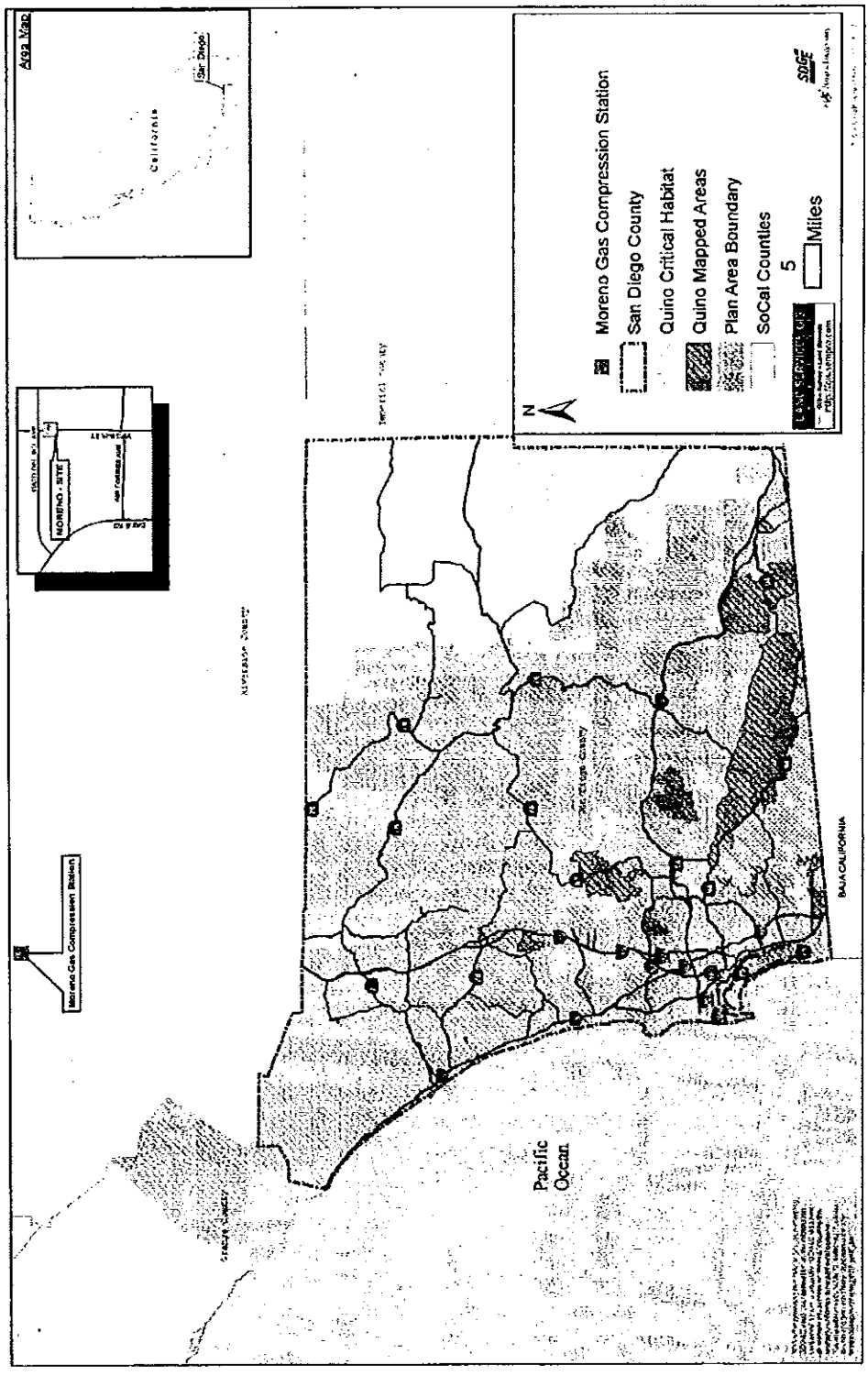


Figure 1. The Plan Area

The HCP provides a series of operational protocols which are designed to avoid and minimize impacts to QCB and QCB habitat to the greatest extent practical. However, since some impacts will be unavoidable, the HCP provides specific mitigation measures for such unavoidable impacts (Section 3.2 of the HCP). These mitigation and minimization measures are hereby incorporated by reference. In general, these measures include maintaining a current map of potential QCB habitat areas within the Plan Area, conducting project specific site assessments, and conducting detailed protocol QCB surveys when practical and warranted. SDG&E will then use this information to design the project in such a way as to avoid impacting QCB habitat to the greatest extent practical. Mitigation for suitable but unoccupied QCB habitat will be mitigated at a 1:1 ratio, while impacts to occupied suitable habitat (as determined by field surveys or assumed) will be mitigated at a 2:1 ratio. These ratios apply to both temporary and permanent impacts. The HCP's operational protocols and mitigation measures are designed to work in concert with, and supplement, the operational protocols found in SDG&E's existing Natural Community Conservation Plan (NCCP, dated December 1995). These protocols will avoid and minimize some impacts to QCB, although it was designed to off-set impacts to species other than QCB. If SDG&E's existing NCCP were to stop being implemented (e.g., the permit expires or is revoked), all of the operational protocols found within the NCCP would still be implemented under this HCP anytime a covered activity occurs within a QCB Mapped Area. Therefore, all operational protocols outlined in SDG&E's existing NCCP are also incorporated herein by reference.

SDG&E will mitigate for unavoidable impacts through one or more of the following four options: 1) paying into a QCB habitat fund to be managed by the San Diego Foundation; 2) enhancing a portion of the existing SDG&E conservation site which could support QCB habitat; 3) purchasing credits from an established QCB bank should one be approved by the Service at some future date; or 4) creating a new QCB conservation site. It is expected that payments into the San Diego Foundation fund will be the main method of mitigation; however, SDG&E may choose which option, or combination of options, they want to use to mitigate impacts to QCB subject to written approval by the Service. Section 3.3 of the HCP details each of these options and is hereby incorporated by reference.

II. ANALYSIS OF EFFECTS

The effects of the proposed actions are fully analyzed in the Service's biological opinion for the proposed action (FWS-SDG-08B0213-08F0206) which is incorporated herein by reference. The covered activities would impact up to 33 acres (approximately 17 acres temporarily and 16 acres permanently) of QCB habitat over the 50-year term of the permit. Within these 33 acres of impacts, approximately 30 acres would occur within QCB critical habitat (approximately 15 acres temporarily and 15 acres permanently). Grading and other habitat removing activities could crush or displace QCB eggs, larvae, diapause larvae, and/or pupae. Temporary impacts will be partially off-set by restoration of habitat in place as detailed in SDG&E's 1995 NCCP. Loss of habitat (permanent and temporary) resulting from unavoidable impacts will be off-set through one or more of the following four options: 1) paying into a QCB habitat fund to be managed by the San Diego Foundation; 2) enhancing a portion of the existing SDG&E conservation site which could support QCB habitat; 3) purchasing credits from an established QCB bank should one be approved by the Service at some future date; or 4) creating a new QCB

conservation site. These options are described in detail in the HCP, and these descriptions are herein incorporated by reference.

After reviewing the current status of the QCB, the environmental baseline for the Action Area (the Plan Area plus a 30-mile buffer), the effects of the proposed project, and the cumulative effects, the biological opinion for this proposed action (FWS-SDG-08B0213-08F0206) found that this action is not likely to jeopardize the continued existence of the QCB and is not likely to destroy or adversely modify designated QCB critical habitat based on the following:

1. Direct impacts of up to 33 acres of designated QCB habitat (approximately 17 temporary and 16 permanent) will typically involve small patches (usually a few square feet) dispersed over a large area and take place over a long period of time (50-year life of the permit). These direct impacts are not expected to significantly decrease the long-term viability of the overall population of QCB inhabiting the Plan Area given the relatively large amount of designated QCB critical habitat (102,567 acres within the Plan Area, and 208,153 acres within the Action Area) and area of potential QCB habitat (205,534 acres within the Plan Area).
2. Direct and indirect impacts of up to 33 acres of QCB habitat (including up to 30 acres of designated critical habitat) will be off-set through implementation of the conservation measures.
3. The Plan is consistent with the QCB Recovery Plan in that it will provide for the permanent protection and management of QCB habitat within occurrence complexes (estimated occupied areas based on recent butterfly observations).

III. PUBLIC COMMENT

On March 13, 2007, the Service published a Notice of Availability of, and solicited comments on, the application (72 FR 11374). Copies of the draft HCP and associated draft Low-Effect Screening Form and Environmental Action Statement were made available for public inspection at the Carlsbad Fish and Wildlife Office in Carlsbad, California, and were made available in electronic format. The 30-day public comment period closed on April 13, 2007. We received three requests for copies of the aforementioned documents and received no comments on the HCP during the public comment period.

This Findings and Recommendations document will be made available to all known interested parties. Following final action on the application, the Service will publish a notice of decision in the *Federal Register*.

IV. INCIDENTAL TAKE PERMIT CRITERIA: ANALYSIS AND FINDINGS

Section 10(a)(2)(A) of the Act specifically mandates that no permit may be issued by the Secretary authorizing any taking referred to in paragraph (1)(B) unless the Applicant submits to the Secretary a conservation plan that specifies the following: (i) the impact which will likely result from such taking; (ii) what steps the Applicant will take to minimize and mitigate such

impacts, and the funding that will be available to implement such steps; (iii) what alternative actions to such taking the Applicant considers and the reasons why such alternatives are not being utilized; and (iv) such other measures as the Secretary may require as being necessary or appropriate for the purposes of the plan.

Section 10(a)(2)(B) of the Act mandates that the Secretary shall issue a permit if "...after opportunity for public comment, with respect to a permit application and the related conservation plan that (i) the taking will be incidental; (ii) the Applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking; (iii) the Applicant will assure that adequate funding for the plan will be provided; (iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (v) the measures, if any, required under subparagraph (a)(iv) will be met; and [s]he has received such other assurances as [s]he may require that the plan will be implemented..."

With regard to SDG&E's proposed activities, the permit action, and section 10(a)(2)(B) requirements, the Service makes the following findings:

1. The taking will be incidental.

Any take of the QCB will be incidental to the otherwise lawful activities associated with ground disturbance (*e.g.*, grading and vehicle travel) related to operations and maintenance as well as new facility construction proposed by the Applicant as specified in the HCP.

2. The Permittee will, to the maximum extent practicable, minimize and mitigate the impacts of taking of covered animal species and the effects to other Covered Species that may occur within the Permit Areas.

The Service finds that the Permittee will minimize and mitigate the impacts of take of the QCB to the maximum extent practicable. The Permittee has developed the HCP pursuant to the incidental take permit requirements codified at 50 CFR 17.22(b)(2) and 50 CFR 17.32(b)(2), which require measures to minimize and mitigate the effects of issuing permits. The HCP has incorporated a set of Operational Protocols designed to avoid and minimize the impact to QCB habitat to the extent practicable.

The Applicant proposes to implement measures as part of the proposed action to minimize and mitigate potential adverse effects of the project on the federally endangered QCB. In summary, a maximum of 33 acres (approximately 17 acres of temporary impacts and 16 acres of permanent impacts) of QCB habitat will be impacted by the activities. Approximately 30 acres of these 33 acres of impacts will take place within QCB critical habitat (approximately 15 acres of temporary impacts and 15 acres of permanent impacts). These unavoidable impacts will be offset through one or more of the following four options: 1) paying into a QCB habitat fund to be managed by the San Diego Foundation; 2) enhancing a portion of the existing SDG&E conservation site which could support QCB habitat; 3) purchasing credits from an established QCB bank should one be approved by the Service at some future date; or 4) creating a new QCB conservation site.

The Applicant considered two alternatives to the proposed HCP to determine whether the proposed Covered Activities have, to the maximum extent practicable, minimized and mitigated the impacts of the taking. The Applicant considered the following alternatives to the Proposed Action Alternative:

1. No Action Alternative - An alternative to this HCP is the No Action alternative. Under the No Action alternative, no permit would be issued. This would mean that SDG&E activities located in QCB habitat would remain subject to "take" prohibitions of the Act, and SDG&E would need to avoid take of QCB, or pursue alternative take authorization. Complete avoidance of impacts will not be possible for some of SDG&E's activities. As such, SDG&E would be required to obtain incidental take permits for those activities with unavoidable impacts. This process would occur on a project-by-project basis, but without a set of comprehensive conservation measures in advance. The result would be that SDG&E would only mitigate for impacts to occupied QCB habitat. This approach has the potential to miss or to inadequately examine conservation issues and measures, which may be too ill defined, unrecognized or vague to enable a clear and meaningful impact analysis or to articulate the needed mitigation measures.
2. Project-by-project Alternative - The other alternative considered was a project-by-project approach to permitting that still relied on the operational protocols identified in this HCP as the standard set of measures to be used for individual permitting. Like the No Action alternative, this alternative would not address QCB incidental take permitting at a programmatic level. Under this alternative, SDG&E's activities occurring in QCB habitat would remain subject to the "take" prohibitions and permitting under the Act. Although utilizing the comprehensive operational protocols for all activities would avoid the application of haphazard conservation measures, this type of permitting for individual activities that typically disturb minor amounts of habitat at any one time is much too inefficient and cumbersome. This alternative would also result in an unnecessary economic burden on SDG&E.

The proposed HCP addresses QCB from a habitat basis at a programmatic level, and therefore, provides more comprehensive conservation than either of the alternatives above. The Preferred Alternative allows for the coordination of mitigation efforts of many small isolated impacts into a unified approach that will benefit the QCB. In addition, the HCP provides SDG&E with long-term predictability concerning the nature of its operations for which incidental takings are permitted, avoiding potential facility-compromising delays. In summary, the Proposed Action Alternative is the most feasible alternative for the Applicant while, at the same time, providing the most beneficial mitigation and conservation measures for the QCB.

Based on the minimization and mitigation measures cited above, we conclude that the Applicant has minimized and mitigated the impacts of take to the maximum extent practicable. These conclusions were reached in recognition of the following considerations: (1) effects of the action, including conservation measures proposed as part of the project description; (2) the importance of the conservation measures defined in the HCP to the survival and recovery of the QCB; (3) the conservation of QCB provided by implementation of the mitigation measures; and (4) the practicability of alternatives considered.

3. The Applicant(s) will ensure that adequate funding for the HCP and procedures to deal with unforeseen circumstances will be provided.

Funding for the HCP implementation to ensure minimization and avoidance of impacts to QCB habitat will be linked to the operating budget for SDG&E's Activities. Funding for implementation of the minimization and mitigation measures will be in place prior to impacts because of the four proposed mitigation processes outlined in finding 2 above, it is anticipated that first option (paying into a QCB habitat fund to be managed by the San Diego Foundation) will be the predominant method of off-setting impacts. Under option one, SDG&E will ensure that mitigation occurs prior to the impact through advance payments into a fund. A QCB Mitigation Fund Agreement (Appendix 1) has been established between SDG&E and the Service and this agreement establishes a SDG&E Quino Checkerspot Mitigation Fund (Fund) to be used to mitigate adverse impacts to QCB, and QCB habitat, anticipated under the HCP. SDG&E will make an initial deposit of \$250,000 into the Fund which will be used to create Quino "mitigation credits" prior to initiation of any activities approved under the HCP. These mitigation credits will be available to SDG&E to mitigate impacts to QCB habitat anticipated under the HCP. As QCB mitigation credits are used, SDG&E can add mitigation credits by making additional contributions to the Fund. At the time that this Plan was approved, each QCB mitigation credit (equating to one acre of QCB habitat) was priced at \$19,000 each. Therefore, SDG&E's initial deposit of \$250,000 (less Fund maintenance costs) will establish a balance of approximately 13 acres of QCB mitigation credits. To adjust for inflation, the value of each QCB mitigation credit will be reassessed every 5 years by the Fund Advisory Committee as provided for in the *Memorandum of Understanding between The United States Fish and Wildlife Service and San Diego Gas and Electric Company for The SDG&E Quino Checkerspot Butterfly Mitigation Fund* (Appendix 2). At the discretion of the Fund Advisory Committee, the cost of QCB mitigation credits may be adjusted based on the five year review. SDG&E will maintain a minimum net positive balance of two acres of QCB mitigation credits in the Fund during the term of the Plan. If any of the other three options are pursued, a similar "up front" mitigation process will be employed (i.e., impacts will always take place after appropriate mitigation has been acquired).

Pursuant to the Service's "No Surprises" regulations [50CFR 17.22(b)(5) and 17.32(b)(5)], the PLAN (Section 5) includes procedures to deal with unforeseen circumstances. Provided that the Permittee has complied with its obligations under the HCP and the Permit, the Service can require the Permittee to provide mitigation beyond that provided in the HCP only under Unforeseen Circumstances, and only in accordance with the "No Surprises" regulations. Notwithstanding the foregoing, in the event that the "No Surprises" regulations are vacated, unenforceable, or enjoined for any reason, or to any extent, those procedures identified in the Director's November 4, 2003, memorandum (titled "Update Concerning "No Surprises" Litigation) will be followed.

The HCP (Section 4) also identifies three changed circumstances that can reasonably be anticipated. In the event that SDG&E decides to use part of the existing SDG&E 1995 Subregional Plan mitigation site to establish a QCB Mitigation Bank or if SDG&E creates an entirely new QCB Mitigation Bank, the following Changed Circumstances have been identified:

1) repetitive fire; 2) severe drought; and 3) invasion by exotic plant species. The HCP describes the responses to such changes that will be carried out by the Applicant.

In the event that a non-Covered Species that may be affected by Covered Activities becomes listed under the Act, the Permittee will implement the "no take /no jeopardy/no adverse modification" measures identified by the Service until the Permit is amended to include such species, or until the Service notifies the Permittee that such measures are no longer needed to avoid jeopardy to, take of, or adverse modification of the critical habitat of, the non-Covered Species.

4. The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.

The Act's legislative history establishes the intent of Congress that this issuance criteria be based on a finding of "not likely to jeopardize" under section 7(a)(2) (50 CFR § 402.02). As a result, approval of the Applicant's permit application has also been reviewed by the Service under section 7 of the Act. In our biological opinion (FWS-SDG-08B0213-08F0206) we concluded that issuance of the Permit to the Applicant would not likely jeopardize the continued existence of the QCB or adversely modify its critical habitat. We presented this conclusion based on the following reasons:

- A. Direct impacts of up to 33 acres of designated QCB habitat (approximately 17 temporary and 16 permanent) will typically involve small patches (usually a few square feet) dispersed over a large area and take place over a long period of time (50-year life of the permit). These direct impacts are not expected to significantly decrease the long-term viability of the overall population of QCB inhabiting the Plan Area given the relatively large amount of designated QCB critical habitat (102,567 acres within the Plan Area, and 208,153 acres within the Action Area) and area of potential QCB habitat (205,534 acres within the Plan Area).
- B. Direct and indirect impacts of up to 33 acres of QCB habitat (including up to 30 acres of designated critical habitat) will be off-set through implementation of the conservation measures, as outlined in the project description.
- C. The Plan is consistent with the QCB Recovery Plan (USFWS 2003) in that it will provide for the permanent protection and management of QCB habitat within occurrence complexes (estimated occupied areas based on recent butterfly observations).

5. Other measures, as required by the Director of the Fish and Wildlife Service, as necessary or appropriate for purposes of the plan will be met.

The HCP incorporates all elements determined by the Service to be necessary for approval of the HCP and issuance of the Permit to the Applicant.

6. The Service has received the necessary assurances that the plan will be implemented.

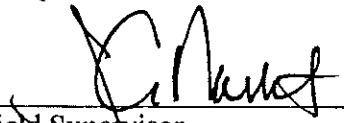
Prior to any ground-disturbing activities, SDG&E will provide a deposit of \$250,000 into the SDG&E Quino Checkerspot Butterfly Mitigation Fund to acquire approximately 13 acres of QCB mitigation credits. Thereafter, SDG&E will maintain a net balance of at least two acres of QCB mitigation credits at all times.

V. GENERAL CRITERIA AND DISQUALIFYING FACTORS

The Service has no evidence that the Permit should be denied on the basis of the criteria and conditions set forth in 50 CFR § 13.21 (b) and (c). The Applicant has met the criteria for the issuance of the Permit and no disqualifying factors exist that would prevent the Permit from being issued under current regulations.

VI. RECOMMENDATION ON PERMIT ISSUANCE

Based on these findings with respect to the proposed action, the Service recommends issuance of section 10(a)(1)(B) incidental take number TE162969-0 to the Applicant for incidental take of the QCB in accordance with the HCP.



Field Supervisor Date
Carlsbad Fish and Wildlife Office 1-22-2008

Appendix 1
Advised Non-Endowment Fund and Agreement
For
SDG&E Quino Checkerspot Butterfly Mitigation Fund



ADVISED NON-ENDOWMENT FUND AGREEMENT
for
SDG&E Quino Checkerspot Butterfly Mitigation Fund

THIS AGREEMENT is made and entered into on May 31, 2007 by and among THE SAN DIEGO FOUNDATION ("SDF"), **San Diego Gas & Electric Company** ("Donor") and the United States Fish and Wildlife Service ("USFWS").

1. NAME OF THE FUND

Donor transfers irrevocably to SDF the initial sum of Two Hundred Fifty Thousand Dollars (\$250,000) to establish in SDF the **SDG&E Quino Checkerspot Butterfly Mitigation Fund** (the "Fund"). SDF may receive additional irrevocable gifts of property including money, acceptable to SDF from time to time from Donor and from any other source to be added to the Fund, all subject to the provisions hereof.

2. PURPOSE

Subject to the limitations of paragraph 4 below, the purpose of the Fund shall be to mitigate adverse impacts to the Quino Checkerspot butterfly (Quino) from SDG&E operations and maintenance activities, including new facilities construction, as addressed in SDG&E's Quino Checkerspot Butterfly Habitat Conservation Plan.

3. INVESTMENT OF FUNDS

SDF shall have all powers necessary or desirable to carry out the purposes of the Fund, including, but not limited to, the power to retain, invest and reinvest the Fund in any manner within the "prudent person" standard and the power to commingle the assets of the Fund with those of other funds for investment purposes, subject however, to the requirements of Sections 5231 and 5240 of the California Corporations Code. If the Fund Advisory Committee has a reasonable basis to believe that SDF has not complied with the foregoing "prudent person" standard, then the Fund Advisory Committee shall have the right to request an accounting and thereafter to terminate this Agreement with a prompt distribution of the remaining assets in the Fund as recommended by the Fund Advisory Committee (defined in paragraph 5).

4. DISTRIBUTION

Subject to paragraph 6, earnings allocated by SDF to the Fund shall be distributed exclusively for charitable, scientific, literary or educational purposes or to organizations of the type to which an individual taxpayer may make deductible charitable contributions, gifts, and bequests under the income, gift and estate tax provisions of the Internal Revenue Code of 1986, as amended, and of the Revenue and Taxation Code of California, in all cases consistent with the purpose set forth in paragraph 2 above. It is intended by the foregoing that at the time a distribution is made from the Fund, the distribution must be made for a charitable, scientific, literary or educational purpose as described in, or to an organization which is described in, Sections 170(c)(1) or (2), of the Internal Revenue Code of 1986, as amended, and Section 17201 of the Revenue and Taxation Code of California and consistent with the purpose set forth in paragraph 2 above. Distributions from the Fund shall be within the purposes and procedures of SDF as contained in its Articles of Incorporation and its Bylaws.

5. RECOMMENDATIONS FOR DISTRIBUTION

- a. The Fund shall have an Advisory Committee which shall consist of two individuals; one from SDG&E and one from USFWS, at all times the Fund is in existence. The USFWS representative will serve as the Fund Advisory Committee Chair. The Chair shall be the only person who has the authority to communicate the desires of the Fund Advisory Committee to SDF, and shall be the "Fund Advisor." The SDG&E representative shall be a non-voting member of the Fund Advisory Committee and may not serve as the Chair. The function of the Fund Advisory Committee shall be to advise the Board of Governors of SDF on appropriate distributions from the Fund. Upon the death or incapacity of any member of the Fund Advisory Committee, the affected entity (i.e., SDG&E or USFWS) shall designate a new representative. The function of the Fund Advisory Committee shall be to advise the Board of Governors of SDF on appropriate distributions from the Fund.
- b. Distributions from the Fund may be made from income and/or principal and shall be made at such times and in such amounts as may be determined by the Board of Governors, as directed by the Fund Advisory Committee. There shall be no requirement that income be distributed each year; income may be accumulated and added to principal. Consistent with the foregoing, distributions shall be made to such distributees of the type described in paragraph 4 as may be designated by SDF; provided, however, that the Fund Advisor may from time to time submit to SDF the names of distributees to which it is recommended that distributions be made, which distributees shall not be other than those described in paragraph 4. All recommendations from the Fund Advisor shall be solely advisory, and SDF may accept or reject them, applying reasonable standards and guidelines with regard thereto.

- c. SDF shall provide the Fund Advisory Committee quarterly statements which reflect contributions to the fund, earnings, fees, and distributions from the fund authorized and made by the Board of Governors.

6. CONTINUITY OF THE FUND

The Fund shall continue so long as assets are available in the Fund and the purposes in the Fund can be served by its continuation. If the Fund is terminated for either of the above reasons, SDF shall devote any remaining assets in the Fund (as directed by the Fund Advisory Committee) exclusively for charitable purposes that:

- a. are within the scope of the charitable purposes of SDF's Articles of Incorporation; and,
- b. most nearly approximate, in the good faith opinion of the Board of Governors, the original purpose of the Fund as described in paragraph 2 above.

SDF shall promptly notify the Fund Advisory Committee in writing of (i) the date and reason for termination of the Fund and (ii) the intended use of the remaining assets in the Fund.

7. NOT A SEPARATE TRUST

The Fund shall be subject to the Articles of Incorporation and Bylaws of SDF. All money and property in the Fund shall be assets of SDF, and not a separate trust, and shall be subject only to the control of SDF. Pursuant to Treasury Regulations, the Board of Governors of The San Diego Foundation has the power "to modify any restriction or condition on the distribution of funds for any specified charitable purpose or to any specified organization if, in the sole discretion of the Board of Governors, such restriction or condition becomes unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community or area served." Treas. Reg. § 1.170A-9(e)(11)(v)(B) and (E).

8. COSTS OF THE FUND

It is understood and agreed that the Fund shall share a fair portion of the total administrative costs of SDF. The administrative cost annually charged against the Fund shall be determined in accordance with the then current Fee Policy identified by SDF as the fee structure applicable to Funds of this type. Any costs to SDF in accepting, transferring or managing funds donated to SDF for the Fund shall also be paid by the Fund.

9. ACCOUNTING

This Fund shall be accounted for separately and apart from other gifts to SDF. The SDF shall provide the Fund Advisory Committee a quarterly statement which reflects contributions to the fund, earnings, fees, and distributions from the fund authorized and made by the Board of Governors.

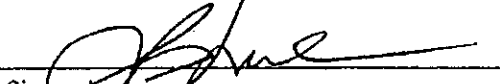
10. CHARITABLE DEDUCTIONS

It is intended by Donor and by SDF that federal gift, income and estate tax charitable deductions shall be allowed to Donor and to Donor's estate and that SDF shall continue to qualify as an organization described in Sections 170(b)(1)(A)(vi), 170(c), 2055(a), and 2522(a) of the Internal Revenue Code of 1986.

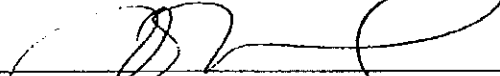
This entire Agreement shall be construed and applied so as to comply with the requirements of federal tax law for allowance of such charitable deductions and for such qualifications.

IN WITNESS WHEREOF, we execute this Agreement on June 27, 2007.

Donor: **San Diego Gas & Electric Company**


Signature

USFWS: **United States Fish and Wildlife Service**


Signature

Approved by the Board of Governors of The San Diego Foundation on _____.

By: Bruce A. Blakley
Chair, Board of Governors

Appendix 2
Memorandum of Understanding Between
The United States Fish and Wildlife Service
And
San Diego Gas and Electric Company
For the
SDG&E Quino Checkerspot Butterfly
Mitigation Fund

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE UNITED STATES FISH AND WILDLIFE SERVICE
AND
SAN DIEGO GAS AND ELECTRIC COMPANY
FOR THE
SDG&E QUINO CHECKERSPOT BUTTERFLY
MITIGATION FUND**

This Memorandum of Understanding (MOU) is entered into this 31 day of May, 2007, by and between the United States Fish and Wildlife Service (USFWS), and the San Diego Gas and Electric Company (SDG&E) hereinafter referred to collectively as the "Parties."

I. RECITALS

This Agreement is based on the following facts, intentions, and expectations.

1. USFWS has jurisdiction over the conservation, protection, restoration, enhancement, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species pursuant to the provisions of various federal laws including the Endangered Species Act, 16 USC § 1531 et seq., the Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661-666c, and the Fish and Wildlife Act of 1956, 16.
2. SDG&E is a public utility providing natural gas, electric power, and other services to its customers within its service territory, which includes all of San Diego County and a portion of Orange County. SDG&E is a "public utility" within the meaning of Article XII, Section 3, of the California Constitution and Section 216 of the California Public Utilities Code. SDG&E's operations as a public utility extend through the jurisdictional boundaries of numerous local governments and are matters of statewide concern. SDG&E operations are regulated primarily by the California Public Utilities Commission (CPUC) and by other state agencies having concurrent jurisdiction. As a functional mandate, Section 451 of the Public Utilities Code requires SDG&E to provide its customers with adequate, safe, and reliable electric and gas service. To the extent the CPUC has the authority or power to regulate public utilities, local governments are precluded by Article XII, Section 8, of the California Constitution from regulating the affairs of public utilities.
3. In connection with its application for a permit from the USFWS pursuant to Section 10(a)(1)(B) of the Endangered Species Act to incidentally take the Quino Checkerspot butterfly (Quino) as a result of SDG&E operations and maintenance activities, including construction of new facilities, in the San Diego, Riverside and Orange Counties, California, SDG&E has developed, or is developing, a Quino Checkerspot Butterfly Habitat Conservation Plan (Quino HCP) to address adverse impacts to the Quino. While the Quino HCP proposes to avoid and minimize impacts to Quino habitat to the extent practical, the Quino HCP anticipates that some impacts to Quino habitat will be unavoidable. The Quino HCP allows

SDG&E to mitigate for unavoidable impacts to Quino habitat by way of payment into a Quino habitat fund to be managed by the San Diego Foundation (SDF).

4. This Agreement sets forth the Parties rights and obligations with one another in respect of the funding and management of, and distributions from, such Quino habitat fund.

II. OBLIGATIONS OF THE PARTIES

1. The Parties have entered into, or shall concurrently enter into, The San Diego Foundation Advised Non-endowment Fund Agreement for SDG&E Quino Checkerspot Butterfly Mitigation Fund in the form attached hereto (Fund Agreement) which establishes the SDG&E Quino Checkerspot Mitigation Fund (Fund) to be used to mitigate unavoidable adverse impacts to Quino and Quino habitat anticipated under the Quino HCP..
2. SDG&E shall make an initial deposit of \$250,000 into the Fund which will be used to create Quino "Mitigation Credits" at the rate set forth below. These Mitigation Credits will be available to SDG&E to mitigate impacts to Quino habitat anticipated under the HCP. As these Mitigation Credits are drawn down by the USFWS, SDG&E can add Mitigation Credits by making additional contributions to the Fund.
3. Initially, for each \$19,000 SDG&E contributes to the Fund, the USFWS shall grant 1 acre of Quino Mitigation Credits. Therefore, SDG&E's initial deposit of \$250,000 (less Fund maintenance costs, see Section II.7 below) will establish a balance of approximately 13 acres of Quino Mitigation Credits. As Quino Mitigation Credits are drawn down, SDG&E may add Quino Mitigation Credits by making additional monetary contributions to the Fund. To adjust for inflation, the value of each Quino Mitigation Credit (measured in acres) shall be reassessed every five (5) years by the Fund Advisory Committee (as defined in the attached Fund Agreement). At the discretion of the Fund Advisory Committee, the cost of Quino Mitigation Credits may be adjusted based on the five year review.
4. SDG&E shall maintain a minimum net positive balance of two Quino Mitigation Credits (i.e., 2 acres of credit) in the Fund.
5. All monies deposited into the Fund by SDG&E shall be invested by the SDF consistent with Section 3 of the attached Fund Agreement. All interest shall be added the Fund principal, but shall not be used to establish additional Quino Mitigation Credits.
6. Distribution of Fund earnings and principal shall be carried out consistent with Sections 4 and 5 of the attached Fund Agreement.
7. The Fund Agreement provides for the sharing of a fair portion of the total administrative costs of the SDF, and all costs of accepting, transferring or

managing funds donated to SDF for the Fund shall be governed by Section 8 of the attached Fund Agreement. Annually, on December 31 of each year, the number of Quino Mitigation Credits shall be adjusted to compensate for costs associated with implementing the Fund (i.e., the monetary costs of Fund implementation for the year will be converted into a commensurate Quino Mitigation Credit equivalent using the ratio provided in Section II.3 above and deducted from the Quino Mitigation Credit balance).

8. SDG&E shall provide the USFWS an annual summary accounting of activities carried out under this MOU including: a) the initial balance of Quino Mitigation Credits available at the beginning of the year; b) a list of deductions of Quino Mitigation Credits, by project, accrued during the year; c) any Quino Mitigation Credits acquired during the year; and d) a summary balance of Quino Mitigation Credits available at year's end. This summary accounting will be incorporated into the Annual Report associated with SDG&E's existing Subregional Natural Community Conservation Plan.
9. The Parties acknowledge and agree that the performance by SDG&E of its obligations under this MOU shall satisfy SDG&E's obligations to mitigate for unavoidable impacts to the Quino and the Quino habitat as set forth in the Quino HCP.

III. GENERAL PROVISIONS

1. Effective Date: This MOU shall become effective immediately upon execution of this MOU by the USFWS and SDG&E.
2. Term of Agreement: Except as otherwise provided herein, this Agreement shall be in effect as long as the Fund Agreement remains active, as defined in Section 6 of the attached Fund Agreement.
3. Termination: This MOU may be terminated by either Party without cause at any time upon thirty (30) days written notice to the other Party. Upon termination of this MOU, SDG&E shall no longer be able to acquire additional Quino Mitigation Credits pursuant to this MOU; however, the remaining mitigation credit balance in the Fund would remain available for SDG&E mitigation credits. The continuity of the Fund Agreement is governed by Section 6 of the attached Fund Agreement, and therefore, termination of this MOU will not affect the continuity of the Fund Agreement.
4. Entire Agreement: This MOU and its related Fund Agreement contain the entire agreement of the Parties with respect to the matters covered by this MOU and attached Fund Agreement, and no other agreement, statement, or promise made by any Party, or any employee, officer, or agent of any Party, which is not contained in this MOU or the attached Funding Agreement shall be binding or valid.

5. Interpretation and Headings: The language in this MOU and attached Fund Agreement shall in all cases be simply construed according to its fair meaning and not strictly for or against any Party. Headings of the paragraphs of this Agreement are for the purpose of convenience only and the words contained in such headings shall in no way be held to explain, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.
6. Notices: All notices, demands, requests, or other communications from one Party to another Party may be personally delivered, sent by facsimile, sent by recognized overnight delivery service, or sent by mail, certified or registered, postage prepaid, to the address stated in this paragraph and shall be effective at the time of personal delivery, facsimile, transmission, or mailing. Contact information for each Party is as follows:

USFWS U. S. Fish and Wildlife Service
 Carlsbad Fish and Wildlife Office
 6010 Hidden Valley Road
 Carlsbad, CA 92011
 Attention: Therese O'Rourke
 Telephone: (760) 431-9440

SDG&E San Diego Gas and Electric Company
 8315 Cnetury Park Court, CP21E
 San Diego, CA 92123
 Attention: Chris Chambers
 Telephone: 858-637-3704

Each Party may change the address to which such notices, demands, requests or other communications may be sent by giving the other Parties written notice of such change. The Parties agree to accept facsimile transmitted signed documents and agree to rely on such documents as if they bore original signatures. Each Party agrees to provide to the other Party within 5 business days after transmission, such documents bearing the original signatures.

7. Successors and Assigns: This MOU and Fund Agreement, and the rights and obligations thereunder shall not be transferred or otherwise assigned by SDG&E without the prior written approval of the proposed transferee/assignee by the USFWS.
8. Execution: This MOU and Fund Agreement may be executed in several counterparts and all counterparts so executed shall constitute one agreement which shall be binding on both of the Parties, notwithstanding that both of the Parties are not signatory to the original or same counterpart. If any provision of this MOU is held invalid, the other provisions shall not be affected thereby. This MOU represents the entire agreement of the Parties and may not be amended, except in writing signed by each Party hereto. Each Party to this MOU warrants to the other that it is duly organized, validly existing and if a corporation,

qualified to do business in the State of California, and that it and the respective signatories have full right and authority to enter into and consummate this MOU and all related documents.

In witness whereof, this MOU is executed as of the date and year first above written.

UNITED STATES FISH AND WILDLIFE SERVICE

BY: _____

(signature)

Name: _____

Title: _____

SAN DIEGO GAS AND ELECTRIC COMPANY

BY: _____

(signature)

Name: _____

Title: _____



Department of the Interior
U.S. Fish and Wildlife Service
Federal Fish and Wildlife Permit Application Form

Expires September 30, 2007
OMB No. 1018-0094

Return to: [Click here for addresses](#)

Type of Activity:

Endangered Species - USFWS
911 N.E. 11th Avenue
Portland, OR 97232-4181

Native Endangered & Threatened Species -
Incidental Take permits Associated With A Habitat Conservation Plan (HCP)

Complete sections A, B, and C, on this page, plus the attached pages of this application. Application will not be considered complete without all sections. See additional instructions on attached pages.

A. Complete if applying as an individual				
1.a. Last name	1.b. First name	1.c. Middle name or initial	1.d. Suffix	
2.a. Street address (line 1)	2.b. Street address (line 2)	2.c. Street address (line 3)		
3.a. City	3.b. Province	3.c. State	3.d. Zip code/Postal code:	3.e. Country
4. Date of birth (mm/dd/yyyy)	5. Social Security No.	6. Occupation	7.a. Home telephone number	
7.b. Work telephone number	7.c. Fax number	8. E-mail address	9. County	
10. List any business, agency, organizational, or institutional affiliation associated with the wildlife or plants to be covered by this permit (see C.1.)			11. Doing business as (dba)	

B. Complete if applying as a business, corporation, public agency or institution				
1.a. Name of business, agency, or institution San Diego Gas & Electric		1.b. Doing business as (dba) Business		
2.a. Street address (line 1) 8315 Century Park Court CP21E	2.b. Street address (line 2)	2.c. Street address (line 3)		
3.a. City San Diego	3.b. Province	3.c. State CA	3.d. Zip code 92123	3.e. Country San Diego
4. Tax identification no. 05-118400	5. Describe the type of business, agency, or institution and provide state of incorporation Public Utility Company			
6.a. Principal officer (President, director, etc) Last name Furgerson	6.b. First name Scott	6.c. Middle name or initial P.	6.d. Suffix	
7. Principal officer title: Director of Environmental Services		8. Home telephone number		
9. Work telephone number 858-650-6146	10. Fax number 858-637-3700	11. E-mail address SFurgerson@semprautilities.com	12. County San Diego	

C. All applicants complete	
1.	Do you currently have or have you had any Federal Fish and Wildlife permits? (For simplification, all licenses, permits, registrations, and certificates will be referred to as a permit.) Yes <input checked="" type="checkbox"/> If yes, list the number of the most current permit you have held: PRT-809637 No <input type="checkbox"/>
2.	Have you obtained all required State, Federal, or foreign government approval(s) to conduct the activity you propose? Yes <input type="checkbox"/> If yes, provide a copy of the approval(s). Will Apply Have applied <input checked="" type="checkbox"/> Not required <input type="checkbox"/>
3.	Enclose check or money order payable to the U.S. FISH AND WILDLIFE SERVICE in the amount of \$100 for a new permit/to renew an existing permit, or \$50 to make substantive amendments to an existing permit [50 CFR 13.11(d)(2)]. The attached pages provide information on who is exempt from paying the fee.
4.	Certification: I hereby certify that I have read and am familiar with the regulations contained in Title 50, Part 13, of the Code of Federal Regulations and the other applicable parts in subchapter B of Chapter I of Title 50, and I certify that the information submitted in this application for a permit is complete and accurate to the best of my knowledge and belief. I understand that any false statement herein may subject me to the criminal penalties of 18 U.S.C. 1001.
5.	Signature (in blue ink) of applicant/person responsible for permit in Section A. or B. (no photocopied/stamped signatures.) <i>Scott Furgerson</i>
6.	Date (mm/dd/yyyy): 07/16/2007

PERMIT APPLICATION FORM INSTRUCTIONS

The following instructions pertain to the standard permit form 3-200 that must be completed as an application for a U.S. Fish and Wildlife Service (FWS) or CITES permit. The General Permit Procedures in 50 CFR 13 address the permitting process. For simplification, all licenses, permits, registrations, and certificates will be referred to as a permit.

- Complete all appropriate blocks/lines/questions in Sections A, OR B, and C on page 1, plus the attached pages of this application. **Print clearly or type in the information.** Applications will not be considered complete without these pages. An incomplete application may cause delays in processing or may be returned to the applicant.
- Sign the application **in blue ink** and send the original to the address at the top of the application. Faxes or copies of the original signature will not be accepted.
- Please plan ahead. Allow at least 90 days for your application to be processed (50 CFR 13.11). However, due to variations in the size, complexity and impacts of Habitat Conservation Plans, some applications for an Incidental Take permit may take up to 12 months to process. Applications are processed in the order they are received.
- Additional forms and instructions, plus copies of the FWS permit regulations, are available from the FWS permit web site at <http://permits.fws.gov/>.

Most of the application form is self-explanatory, but the following provides some assistance for completing the form.

COMPLETE EITHER SECTION A. OR SECTION B. :

- Section A. **"Complete if applying as an individual"** - Enter the complete name of the responsible individual who will be the permittee if a permit is issued. Enter personal information that identifies the applicant. All blocks must be completed. **If you are applying on behalf of a client, the personal information must pertain to the client; and a notarized document evidencing power of attorney must be included with the application.**
- Section B. **"Complete if applying as a business, corporation, public agency, or institution"** - Enter the complete name and address of the business, corporation, public agency or institution that will be the permittee if a permit is issued. Give a brief description of the type of business the applicant is engaged in, the name and phone number of the person in charge (i.e., principal officer), and if the company is incorporated, the State in which it is incorporated.

ALL APPLICANTS COMPLETE SECTION C. :

- Section C.1 **"Do you currently have or have you had any Federal Fish and Wildlife permits? List the number(s) of your most current FWS or CITES permit or the number of the most recent permit if none are currently valid.**
- Section C.2 **"Have you obtained all required State, Federal or foreign government approval(s) to conduct the activity you propose?"** (Please be aware that there may be other requirements necessary to conduct this activity such as a hunting license, import permit, or collection permit.) If "yes," list the State, Federal or foreign countries involved and type of document required. Include a copy of these documents with the application. If you have applied for the documents, check the "have applied" box and list the State, Federal or foreign countries involved and type of documents required. If the proposed activity is not regulated, check "not required."
- Section C.3 **"Enclose check or money order (if applicable)"** You must enclose an application processing fee unless you are fee exempt. Consult the Application Processing Fee section on the next page for details. If you are fee exempt, write "EXEMPT" in this space. Make your check or money order payable to the "U.S. Fish and Wildlife Service" and attach it to the application form.
- Section C.4-6 **"CERTIFICATION"** The individual identified in Section A., the principal officer named in Section B., or person with a valid power of attorney (notarized documentation must be included in the application) must sign and date the application **in blue ink**. This signature binds the applicant to the statement of certification. This means that you certify that you have read and understand the regulations that apply to the permit. You also certify that everything included in the application is true to the best of your knowledge. Be sure to read the statement and re-read the application and your answers before signing.

APPLICATION FOR A FEDERAL FISH AND WILDLIFE PERMIT

Paperwork Reduction Act and the Privacy Act – Notices

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and the Privacy Act of 1974 (5 U.S.C. 552a), please be advised that:

1. The gathering of information on wildlife and plants is authorized by:
 - a. Bald and Golden Eagle Protection Act (16 U.S.C. 668), Title 50 Part 22 of the Code of Federal Regulations (CFR);
 - b. Endangered Species Act of 1973 (16 U.S.C. 1531-1544), Title 50 CFR Part 17;
 - c. Migratory Bird Treaty Act (16 U.S.C. 703-712), Title 50 CFR Part 21;
 - d. Marine Mammal Protection Act of 1972 (16 U.S.C. 1361, *et seq.*), Title 50 CFR Part 18;
 - e. Wild Bird Conservation Act (16 U.S.C. 4901-4916), Title 50 CFR Part 15;
 - f. Lacey Act (18 U.S.C. 42); Injurious Wildlife, Title 50 CFR Part 16;
 - g. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (TIAS 8249); Title 50 CFR Part 23.
 - h. General Provisions, Title 50 CFR Part 10;
 - i. General Permit Procedures, Title 50 CFR Part 13; and
 - j. Wildlife (Import/export/transport), Title 50 CFR Part 14.
2. Information requested in this form is purely voluntary. However, submission of requested information is required in order to process applications for permits authorized under the above laws. Failure to provide all requested information may be sufficient cause for the U.S. Fish and Wildlife Service to deny the request. Response is not required unless a currently valid Office of Management and Budget (OMB) control number is displayed.
3. Certain applications for permits authorized under the Endangered Species Act of 1973 (16 U.S.C. 1539) and the Marine Mammal Protection Act of 1972 (16 U.S.C. 1374) will be published for public comment in the Federal Register (FR) as required by the two laws.
4. Routine use disclosures outside the Department of the Interior (DOI) may be made without the consent of an individual if the disclosure is compatible with the purposes for which the record was collected. (Ref. 68 FR 52611, September 4, 2003) Disclosures outside the DOI may be made under the routine uses listed below without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected.
 - a. To subject matter experts, and State, Federal, local, and foreign agencies, for the purpose of obtaining advice relevant to making a decision on an application for a permit or when necessary to accomplish a FWS function related to this system of records.
 - b. To the public as a result of publishing Federal Register notices announcing the receipt of permit applications for public comment or notice of the decision on a permit application.
 - c. To Federal, State, local, or foreign wildlife and plant agencies for the exchange of information on permits granted or denied to assure compliance with all applicable permitting requirements.
 - d. To Captive-bred Wildlife registrants under the Endangered Species Act for the exchange of authorized species, and to share information on the captive breeding of these species.
 - e. To Federal, State, and local authorities who need to know who is permitted to receive and rehabilitate sick, orphaned, and injured birds under the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act; federally permitted rehabilitators; individuals seeking a permitted rehabilitator with whom to place a sick, injured, or orphaned bird in need of care; and licensed veterinarians who receive, treat, or diagnose sick, orphaned, and injured birds.
 - f. To the Department of Justice (DOJ), or a court, adjudicative, or other administrative body or to a party in litigation before a court or adjudicative or administrative body, under certain circumstances;
 - g. To the appropriate Federal, State, tribal, local, or foreign governmental agency responsible for investigating, prosecuting, enforcing, or implementing statutes, rules, or licenses, when we become aware of a violation or potential violation of such statutes, rules, or licenses, or when we need to monitor activities associated with a permit or regulated use.
 - h. To a congressional office in response to an inquiry to the office by the individual to whom the record pertains.
 - i. To the General Accounting Office or Congress when the information is required for the evaluation of the permit programs.
 - j. To provide addresses obtained from the Internal Revenue Service to debt collection agencies for purposes of locating a debtor to collect or compromise a Federal claim against the debtor, or to consumer reporting agencies to prepare a commercial credit report for use by the FWS.
5. For individuals, personal information such as home address and telephone number, financial data, and personal identifiers (social security number, birth date, etc.) will be removed prior to any release of the application.
6. The public reporting burden on the applicant for this information collection varies depending on the activity for which a permit is requested. The relevant burden for completing an application for an Incidental Take permit is 3 hours. This burden estimate includes time for reviewing instructions, gathering and maintaining data and completing and reviewing the form. You may direct comments regarding the burden estimate or any other aspect of the form to the Service Information Clearance Officer, U.S. Fish and Wildlife Service, Mail Stop 222, Arlington Square, U.S. Department of the Interior, 1849 C Street, NW, Washington D.C. 20240.

Freedom of Information Act (FOIA) – Notice

For organizations, businesses, or individuals operating as a business (i.e., permittees not covered by the Privacy Act), we request that you identify any information that should be considered privileged and confidential business information to allow the Service to meet its responsibilities under FOIA. Confidential business information must be clearly marked "Business Confidential" at the top of the letter or page and each succeeding page and must be accompanied by a non-confidential summary of the confidential information. The non-confidential summary and remaining documents may be made available to the public under FOIA [43 CFR 2.13(c)(4), 43 CFR 2.15(d)(1)(i)].

Application Processing Fee

The fee to process this application for an Incidental Take permit is \$100. This fee applies to new permit applications and to renewals of existing valid permits. The fee to process a significant amendment to an existing valid Incidental Take permit is \$50. Significant amendments are those that pertain to the purpose and conditions of the permit, and that are not purely administrative. Checks should be made payable to "U.S. Fish and Wildlife Service." The application processing fee is assessed to partially cover the cost of processing a request for a permit, and does not guarantee the issuance of a permit. The fee will not be refunded under any circumstances. However, we may return your check to you if you withdraw your application before we have significantly processed it (refer to 50 CFR 13.11(d)).

There is no fee for minor amendments to an existing valid permit (such as updating your name and address information). These minor administrative changes are required under 50 CFR 13.23(c).

The fee requirement does not apply to any federal, tribal, state, or local government agency or to any individual or institution acting on behalf of such agency for the proposed activity. State, tribal and local public colleges/universities do not have to pay a fee because they are affiliated with a government body. Proof of fee exempt status must be included in the application.

**APPLICATION FOR A PERMIT UNDER THE
ENDANGERED SPECIES ACT**

NATIVE ENDANGERED & THREATENED SPECIES

**INCIDENTAL TAKE PERMITS ASSOCIATED WITH A
HABITAT CONSERVATION PLAN (HCP)**

INSTRUCTIONS TO APPLICANTS

To expedite a final decision on your application, you are urged to coordinate with us as soon as possible for guidance in assembling a complete application package. If you are renewing or amending a valid permit, your complete application package must be received at least 30 days prior to the expiration of the valid permit. This time period begins when we receive a complete permit application package and does not include any time required for requesting clarification or additional information about your application.

The time required to process an application for an Incidental Take permit will vary depending on the size, complexity, and impacts of the HCP involved. Procedurally, the most variable factor in application processing is the level of analysis required for the proposed HCP under the National Environmental Policy Act (e.g., whether an application requires preparation of an Environmental Impact Statement, Environmental Assessment, or whether a categorical exclusion applies), although other factors such as public controversy can also affect application processing times. The target processing timeline from when we receive a complete application package to our final decision on a permit application is: up to 3 months for low-effect HCPs, 4 to 6 months for HCPs with an Environmental Assessment, and up to 12 months for HCPs with a 90-day comment period and/or an Environmental Impact Statement. Although not mandated by law or regulation, these targets are adopted as U.S. Fish & Wildlife Service and National Marine Fisheries Service (NMFS/NOAA Fisheries) policy and all offices are expected to streamline their Incidental Take permit programs, and to meet these targets to the maximum extent practicable.

The information provided in your permit application will be used to evaluate your application for compliance with the Endangered Species Act, its implementing regulations (which may require a 30 to 90 day public comment period), and U.S. Fish & Wildlife Service policy. Receipt and possession of a permit under the Endangered Species Act should be regarded as a privilege, as we must balance permit issuance with our duties to protect and recover listed species.

Up-to-date annual reports and any other required reports under your valid permit(s) must be on file before a permit will be considered for renewal or amendment.

If your activities may affect species under the authority of NMFS/NOAA Fisheries, then you may need to obtain a separate permit from that agency. In addition, we share jurisdiction with

NMFS/NOAA Fisheries for sea turtles (e.g., we evaluate applications for permits to conduct activities impacting sea turtles on land, and NMFS/NOAA Fisheries evaluates applications for permits to conduct activities impacting sea turtles in the marine environment). To apply for a permit to conduct activities with sea turtles in the marine environment or other species under NMFS/NOAA Fisheries jurisdiction, please contact them via their permit web page at <http://www.nmfs.noaa.gov/pr/permits/>

We cannot issue an Incidental Take permit under Section 10(a)(2)(A)(i) of the Endangered Species Act unless you submit a conservation plan that specifies the impacts that are likely to result from the incidental take associated with your activity.

Our general permit regulations at 50 CFR 13.12(a)(9) allow us to collect such other information as we determine that is relevant to the processing of a permit application. Before you submit an application for an Incidental Take permit, we may require that you conduct biological surveys to determine which species and/or habitat would be impacted by the activities sought to be covered under the permit. Biological surveys provide information necessary to develop an adequate HCP, and to assess the biological impacts of the proposed activities. In addition, the information provided in a biological survey can reduce the applicant's risk of take under Section 9 of the Endangered Species Act by ensuring that affected species and/or habitat are identified and appropriately covered under the permit.

You are required to obtain a Scientific Purposes, Enhancement of Propagation or Survival permit (commonly referred to as a Recovery permit) from us before engaging in any biological survey activities that would take listed species. Contact our Ecological Services Field Office closest to the location of your activity to obtain technical assistance in determining the need for both a biological survey and a Recovery permit for your survey activity. The contact information for our Ecological Services Field Offices can be found on the U.S. Fish & Wildlife Service's office directory web page at <http://offices.fws.gov/directory/listofficemap.html>

If a biological survey is required, you will need to send us your complete Recovery permit application package at least 3 months prior to commencement of survey activities to facilitate processing of your Recovery permit application. The Recovery permit application is designated as U.S. Fish & Wildlife Service form # 3-200-55.

We maintain a list of Recovery permittees (such as biological consultants) who have authorized the release of their contact information to third parties for conducting biological surveys on a contract basis. This list is provided to the public at the discretion of each of U.S. Fish and Wildlife Service Regional Office as time and workload allow. Please be aware that this list does not represent an endorsement by us of any particular permittee.

If you are not applying as an individual, but as a business, corporation, institution, or non-Federal public agency (block B. on page 1 of the application), the person to whom the permit will

be issued (e.g., the landowner, president, director, executive director, or executive officer) is legally responsible for implementing the permit. Although other people under the direct control of the permittee (e.g., employees, contractors, consultants) receive third party take authorization in their capacity as designees of the permittee, the individual named as the permittee ultimately is legally responsible for the permit and any activities carried out under the permit except as otherwise limited in the case of permits issued to State or local government entities under 50 CFR 13.25(d).

If you wish to coordinate the processing of this permit application through an authorized agent, and to have that agent represent you as the primary contact with us, check the box below. Sign (in blue ink) and date the authorization statement, and provide contact information for your authorized agent.

I hereby authorize the following person to act as an authorized agent on my behalf in the processing of this permit application and to furnish, upon request, supplemental information in support of this permit application.

signature (in blue ink)

date

please print name legibly

Your Authorized Agent's Contact Information

Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Telephone: _____

Fax: _____

E-Mail: _____

Please check one:

Renewal of a valid Incidental Take permit associated with a HCP using my current application package on file. The renewal fee is \$100.

Amendment (with *major changes*) of a valid Incidental Take permit associated with a HCP. If the information in your current application package has changed in a manner that triggers a major amendment or a change not otherwise specified in the Incidental Take permit or HCP or Implementing Agreement, then you must apply for an amendment

to your valid permit. Such major changes may include changes in location, activity, amount or type of take, or species to be covered by the permit. Please contact our Ecological Services Field Office located closest to your proposed activity for technical assistance in making this determination. The contact information for our Ecological Services Field Offices can be found on the U.S. Fish & Wildlife Service's office directory web page at <http://offices.fws.gov/directory/listofficemap.html>. The amendment fee is \$50.

New application for an Incidental Take permit associated with a HCP. The application fee is \$100.

If this application includes transfer or succession of a valid Incidental Take permit, please check the box below:

Transfer or succession of a valid Incidental Take permit associated with a HCP using the current application package on file. No application fee is required.

You have 4 options for providing the specific information for items A. - E. below. Choose only one option.

Option I. Renewal of a Valid Incidental Take Permit.

Sign (in blue ink) the following statement if you are applying to renew a valid Incidental Take permit. If you are proposing major changes to your Incidental Take permit, you must use Option II.

The individual signing box C. on page 1 of the application must also sign the following statement. This certification language is required under 50 CFR 13.22(a).

I certify that the statements and information submitted in support of my original application for a U.S. Fish & Wildlife Service Incidental Take permit # _____ are still current and correct and hereby request renewal of that permit.

signature (in blue ink)

date

please print name legibly

* Please note: If you have signed above statement, then your renewal request is complete. Please submit this renewal request to the return address on page 1 of the application. Requests for renewals must be received no later than 30 days prior to permit expiration to

ensure that your current permit remains in effect while we process your renewal request.

Option II. Amended Incidental Take Permit (with *major changes*)

Sign (in blue ink) the following statement if you are proposing to amend a valid Incidental Take permit by making major changes. Such major changes may include changes in location, activity, amount or type of take, or species to be covered by the permit.

The individual signing box C. on page 1 of the application must also sign the following statement. This certification language is required under 50 CFR 13.22(a).

I certify that the statements and information submitted in support of my original application for a U.S. Fish and Wildlife Service Incidental Take permit # _____ are still current and correct, except for the changes listed below, and hereby request amendment of that permit.

signature (in blue ink)

date

please print name legibly

Provide a brief description of the changes to your valid permit (answer the appropriate questions for these changes under Option III. below).

Option III. New Incidental Take Permit & Supplementary Information for Amendment of a Valid Permit (with *major changes*).

General permit regulations for the U.S. Fish & Wildlife Service can be found at 50 CFR 13. Regulations for an Incidental Take permit under the Endangered Species Act can be found at 50 CFR 17.22(b)(1) for endangered wildlife species and 50 CFR 17.32(b)(1) for threatened wildlife species.

Each landowner who wishes to be covered under a new or amended the Incidental Take permit associated with an HCP must sign (in blue ink) and date the Incidental Take Permit Application Certification Notice at the end of this application, unless the landowner will be covered under this U.S. Fish & Wildlife Service Incidental Take permit via another vehicle, such as a certificate of inclusion (50 CFR 13.25(d)). Any change in the language of the Certification Notice must be reviewed by the Department of Interior, Office of the Solicitor and approved by the U.S. Fish & Wildlife Service. The same person who signs in box C. on page 1 of the application should sign the certification.

If the information in items A. - E. below is already provided in your final HCP (or Implementing Agreement, if applicable), then you do not have to provide it here. Instead, check the box below and use the spaces provided in items A. - E. to indicate the page numbers in your HCP or Implementing Agreement that provide the requested information. Please specify whether the page numbers are from the HCP or the Implementing Agreement.

- I am not providing the information for items A. - E. as part of my Incidental Take permit application because it is already provided in my final HCP or Implementing Agreement (copy attached or already submitted).

If the requested information in items A. - E. is not provided in your final HCP or final Implementing Agreement, or you are using Option II. to amend your valid Incidental Take permit, then attach separate pages for the missing information. In order to assist us in processing your request, please provide the item number (A. 1.a., etc.) of the required information before each of your responses. Thank you.

Please ensure that your final HCP and Implementing Agreement (if applicable) are attached if it has not been previously submitted.

If you have previously submitted a final draft HCP or Implementing Agreement, please indicate the document's date.

Date of final draft HCP May 2007

Date of final draft Implementing Agreement N/A

Applications for an Incidental Take permit associated with a HCP must provide the following specific information (relevant to the activity) under items A. - E. below in addition to the general information on page 1 of the application.

A. Identify species and activity:

1. For a new Incidental Take permit: page 1
 - a. Provide the common and scientific names of the species being requested for coverage in the permit and their status (endangered (E), threatened (T), proposed endangered (PE), proposed threatened (PT), candidate for listing (C), or species likely to become a candidate (LC)). page 1
 - b. Provide the number, age, and sex of such species to the extent known
 - c. Quantify the anticipated effects to their habitat. page 4, 8

- d. Describe the land use or water management activity sought to be authorized for each species. page 3,4
2. For an amended Incidental Take permit:
- a. Identify the species to be added to your valid permit (provide both the scientific, to the most specific taxonomic level, and common names), as well as the species status (see 1.a.. above).
 - b. Provide the number, age and sex of such species to the extent known.
 - c. If any activities requested in this application differ from those authorized in your valid permit, then for each species state the currently authorized activity, the requested new activity, and how the new activity will impact each species.
 - d. Identify each activity associated with your project that would result in the incidental take of each species.
 - e. Quantify any anticipated effects to the habitat of each added species.
 - f. Identify species to be deleted from your valid permit and the reason(s) for the deletion.

Page(s) & source document : page 1-4 of HCP

B. Identify location of the proposed activity:

- 1. Provide the name of the State, county, and specific location of the proposed activity site(s). Include a formal legal description, section/township/range information, county tax parcel number, local address, or any other identifying property designation that will precisely place the location of the proposed activity site(s). Attach a location map and plat of the project site clearly depicting the project boundaries and the footprint and location of all portions of the property that would be affected by your proposed activities. Figure 1
- 2. Provide the total number of acres covered by the HCP 2,245,171
 Is this the total acreage of the parcel? (circle one) yes no
- 3. Provide the approximate number of acres to be impacted 33 acres
page 4,8

4. *All land within the "mapped area"*
Provide the approximate number of acres to be protected 238,156
5. Provide a complete description, including timeframes, for implementation of proposed voluntary management activities to enhance, restore, or maintain habitat benefiting federally listed, proposed or candidate species, or other species likely to become candidates. Include schedules for implementing these activities.

Page(s) & source document: page 11-17

C. Describe the proposed activities in the conservation plan:

You must submit a Habitat Conservation Plan. We strongly encourage you to ensure that your HCP is consistent with the Habitat Conservation Planning Handbook, subsequent Handbook addendums, and current policies to minimize delays in evaluating your application. The Handbook and other HCP information is available on the U.S. Fish & Wildlife Service's Endangered Species web page at <http://endangered.fws.gov/hcp/index.html>.

Provide a complete description of activity(ies) to be authorized or reference the applicable HCP or Implementing Agreement page numbers identifying the subject information.

The HCP must specify:

1. The impact that will likely result from the incidental taking. A discussion of the impact that will likely result from the incidental take should include quantification of any anticipated effects to the habitat of the species sought to be covered by the permit. *table 1 ; page 10*
2. The steps that will be taken to minimize and mitigate such impacts, the funding that will be available to implement such steps, and the procedures to deal with unforeseen circumstances. *page 23-25*
3. The steps that will be taken to monitor and report on such impacts, including a copy of the monitoring plan. We are authorized to require reports of activities conducted under a permit per the U.S. Fish & Wildlife Service's general permit regulations at 50 CFR 13.45. *page 17*
4. Alternative actions to such incidental taking that have been considered and the reasons why these alternatives are not proposed for use. *page 28*
5. The biological goals(s) and objectives for the HCP. *page 11*

6. The duration requested for the proposed permit. *page 12*

Page(s) & source document : *page 2*

D. Implementing Agreement

An Implementing Agreement

is *is not* (FWS Regional Office to circle one)

required as part of the permit application for a Habitat Conservation Plan.

This Implementing Agreement must be signed at finalization of the HCP. Are you willing to commit to an Implementing Agreement at finalization of the HCP?

- Yes, I am willing to commit to an Implementing Agreement. Please submit any unsigned, draft Implementing Agreement that you have prepared with our Field Office.
- No, I am not willing to commit to an Implementing Agreement.

E. Identify other permits required:

1. List any additional valid permits currently held or other permits needed for the proposed activities (i.e. Corps of Engineers permits, Environmental Protection Agency NPDES permits, State, county or city permits, etc).
2. Attach a copy of permit or provide agency name, permit number (if any), effective date, and duration.
3. Provide information on any pending applications for the above permits and the reasons why the permits have not been issued.

Page(s) & source document: *SDG3E will apply for any additional*

required permits prior to commencement of each individual project.

Option IV. Permit Transfer or Succession of a Permit

Complete the following if you are applying for transfer of a valid Incidental Take permit to you or obtaining rights of succession of a valid Incidental Take permit. In addition, you and the current permit holder may also need to sign an assumption agreement. Please contact our

Ecological Services Field Office nearest your activity to determine whether you and the current permit holder need to execute an assumption agreement. The contact information for our Ecological Services Field Offices can be found on the U.S. Fish & Wildlife Service web page at <http://offices.fws.gov/directory/listofficemap.html>.

Please indicate the name of the HCP to be transferred or succeeded and indicate the document's date.

Name of HCP _____

Date of HCP _____

An Assumption Agreement

is *is not* (FWS Ecological Services Field Office to circle one)

required as part of the transfer or succession permit application for the HCP.

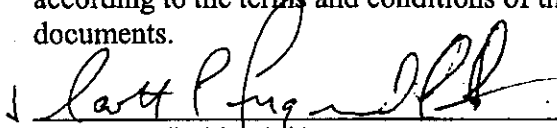
Incidental Take Permit Application

Certification Notice

The same person who signs in box C. on page 1 of the application should sign (in blue ink) the following certification.

By submitting this application and receiving an Incidental Take permit pursuant to Section 10(a)(1)(B) of the Endangered Species Act, I

_____ (print name(s))
attest that I/we own the lands indicated in this application, or have sufficient authority or rights over these lands to implement the measures of the Habitat Conservation Plan (and Implementing Agreement if applicable) covered by the Incidental Take permit. Further, upon receipt of the Incidental Take permit, I/we agree to conduct the activities as specified in the Habitat Conservation Plan (and Implementing Agreement if applicable) according to the terms and conditions of the Incidental Take permit and its supporting documents.


signature (in blue ink)

7/16/07
date

Scott P. Ferguson
please print name legibly

signature (in blue ink)

date

please print name legibly

The public reporting burden for completing this application is estimated to be 3 hours, including time for reviewing instructions, gathering and maintaining application data, and completing and reviewing the forms. Comments regarding the burden estimate or any other aspect of the reporting requirement(s) should be directed to the U.S. Fish & Wildlife Service Information Collection Clearance Officer, MS 222 ARLSQ, U.S. Fish and Wildlife Service, Washington, DC 20240.

An agency may not conduct and a person is not required to respond to a collection of information unless a currently valid OMB control number is displayed.



FEDERAL FISH AND WILDLIFE PERMIT

1. PERMITTEE

SAN DIEGO GAS & ELECTRIC
8315 CENTURY PARK COURT CP21E
SAN DIEGO, CA 92123
U.S.A.

2. AUTHORITY-STATUTES
16 USC 1539(a)

REGULATIONS (Attached)
50 CFR 17.22

50 CFR 13

3. NUMBER
TE162969-0

4. RENEWABLE
 YES
 NO

5. MAY COPY
 YES
 NO

6. EFFECTIVE
01-22-08

7. EXPIRES
INDEFINITE

8. NAME AND TITLE OF PRINCIPAL OFFICER (If #1 is a business)
SCOTT FERGERSON
DIRECTOR OF ENVIRONMENTAL SERVICES

9. TYPE OF PERMIT
ENDANGERED SPECIES

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED
See Section 1.0 of the Habitat Conservation Plan.

11. CONDITIONS AND AUTHORIZATIONS:

- A. GENERAL CONDITIONS SET OUT IN SUBPART D OF 50 CFR 13, AND SPECIFIC CONDITIONS CONTAINED IN FEDERAL REGULATIONS CITED IN BLOCK #2 ABOVE, ARE HEREBY MADE A PART OF THIS PERMIT. ALL ACTIVITIES AUTHORIZED HEREIN MUST BE CARRIED OUT IN ACCORD WITH AND FOR THE PURPOSES DESCRIBED IN THE APPLICATION SUBMITTED. CONTINUED VALIDITY, OR RENEWAL, OF THIS PERMIT IS SUBJECT TO COMPLETE AND TIMELY COMPLIANCE WITH ALL APPLICABLE CONDITIONS, INCLUDING THE FILING OF ALL REQUIRED INFORMATION AND REPORTS.
- B. THE VALIDITY OF THIS PERMIT IS ALSO CONDITIONED UPON STRICT OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL OR OTHER FEDERAL LAW.
- C. VALID FOR USE BY PERMITTEE NAMED ABOVE.
- D. Further conditions of authorization are contained in the attached Special Terms and Conditions.

ADDITIONAL CONDITIONS AND AUTHORIZATIONS ALSO APPLY

12. REPORTING REQUIREMENTS

ISSUED BY

TITLE
FIELD SUPERVISOR

DATE
08/20/2007

U.S. FISH AND WILDLIFE SERVICE, CARLSBAD, CALIFORNIA
PERMIT CONDITIONS FOR TE162969-0, page 1 of 2

- E. All sections of Title 50 *Code of Federal Regulations*, §§ 13, 17.22, and 17.32 are conditions of this permit. These sections are attached.
- F. The authorizations granted by this permit are subject to compliance with, and implementation of, the final *Low-Effect Quino Checkerspot Butterfly Habitat Conservation Plan for the San Diego Gas and Electric Company, San Diego, Riverside, and Orange Counties, California* (HCP), which is hereby incorporated by reference into this permit.
- G. Except as conditioned below, the Permittee and its designated agents are authorized under the Federal Endangered Species Act of 1973, as amended, (Act), to incidentally take the federally endangered Quino checkerspot butterfly (*Euphydryas editha quino*, QCB), the extent that take would otherwise be prohibited under section 9 of the Act and its implementing regulations, or pursuant to a rule promulgated under section 4(d) of the Act. Take must be incidental to otherwise lawfully covered activities associated with SDG&E's operations, maintenance, and new facility construction, as identified more specifically in the HCP and as conditioned herein. The amount of take authorized is as follows:

We anticipate the incidental take of all QCB eggs, larvae, and pupae within the 33 acres of QCB habitat (including the loss of a maximum of 30 acres of designated QCB critical habitat) which will be impacted by SDG&E's activities. Due to their mobility and the speed restrictions on vehicles utilizing SDG&E roads, we do not anticipate take of any adult QCB. The incidental take is expected in the form of harm as defined in 50 CFR § 17.3 (i.e., death).

Conditions

The Permittee has four mitigation options from which to choose.

- i) Paying into a QCB habitat fund to be managed by the San Diego Foundation;
 - ii) Enhancing a portion of the existing SDG&E conservation site which could support QCB habitat;
 - iii) Purchasing credits from an established QCB bank should one be approved by the Service at some future date; or
 - iv) Creating a new QCB conservation site.
- H. Upon finding a dead, injured, or sick endangered or threatened wildlife species, the Permittee or its designated agents shall orally notify, within 1 working day, the Service's Carlsbad Fish and Wildlife Office (telephone 760-431-9440). Written notification to the

U.S. FISH AND WILDLIFE SERVICE, CARLSBAD, CALIFORNIA
PERMIT CONDITIONS FOR TE162969-0, page 2 of 2

Carlsbad Fish and Wildlife Office shall be made within 3 working days and shall include the date, time, and location of the specimen and any other pertinent information. Dead animals may be marked in an appropriate manner, photographed, and left on site. Should any sick or injured animals survive, the Carlsbad Fish and Wildlife Office shall be contacted regarding final disposition of the animals. In the event that a species has been taken in contravention of any Federal, State, or local law, all relevant information shall be reported within 24 hours to the Carlsbad Fish and Wildlife Office or to the Service's Division of Law Enforcement in San Diego, (619) 557-5063.

- I. Monitoring and reporting for the QCB will be integrated with the monitoring and reporting conducted for SDG&E's existing Natural Community Conservation Plan. Accounting will include an annual summary of QCB habitat impacts, detailed by individual project, and identifying what measures were utilized to off-set QCB impacts. The annual report will also include a summary of off-setting credits available at the beginning of the reporting year, any deductions made throughout the year, and a final determination of credits still available.
- J. The Permittee and designated agents shall maintain a copy of this permit on file while conducting taking activities. Please refer to the permit number in all correspondence concerning permit activities. Any questions you may have about this permit should be directed to the Field Supervisor, Carlsbad Fish and Wildlife Office.

Attachment

§ 12.42

(g) If the Solicitor decides that relief should not be granted, the Solicitor shall so notify the petitioner in writing, stating in the notification the reasons for denying relief. The petitioner may then file a supplemental petition, but no supplemental petition shall be considered unless it is received within 60 days from the date of the Solicitor's notification denying the original petition.

[45 FR 17864, Mar. 19, 1980, as amended at 47 FR 56861, Dec. 21, 1982]

§ 12.42 Recovery of certain storage costs.

If any wildlife, plant, or evidentiary item is seized and forfeited under the Endangered Species Act, 16 U.S.C. 1531 *et seq.*, any person whose act or omission was the basis for the seizure may be charged a reasonable fee for expenses to the United States connected with the transfer, board, handling, or storage of such property. If any fish, wildlife or plant is seized in connection with a violation of the Lacey Act Amendments of 1981, 16 U.S.C. 3371, *et seq.*, any person convicted thereof, or assessed a civil penalty therefor, may be assessed a reasonable fee for expenses of the United States connected with the storage, care and maintenance of such property. Within a reasonable time after forfeiture, the Service shall send to such person by registered or certified mail, return receipt requested, a bill for such fee. The bill shall contain an itemized statement of the applicable costs, together with instructions on the time and manner of payment. Payment shall be made in accordance with the bill. The recipient of any assessment of costs under this section who has an objection to the reasonableness of the costs described in the bill may, within 30 days of the date on which he received the bill, file written objections with the Regional Director of the Fish and Wildlife Service for the Region in which the seizure occurred. Upon receipt of the written objections, the appropriate Regional Director will promptly review them and within 30 days mail his final decision to the party who filed objections. In all cases, the Regional Director's decision

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shall constitute final administrative action on the matter.

[47 FR 56861, Dec. 21, 1982]

Subpart F—Return of Property

§ 12.51 Return procedure.

If, at the conclusion of the appropriate proceedings, seized property is to be returned to the owner or consignee, the Solicitor or Service shall issue a letter or other document authorizing its return. This letter or other document shall be delivered personally or sent by registered or certified mail, return receipt requested, and shall identify the owner or consignee, the seized property, and, if appropriate, the bailee of the seized property. It shall also provide that upon presentation of the letter or other document and proper identification, and the signing of a receipt provided by the Service, the seized property is authorized to be released, provided it is properly marked in accordance with applicable State or Federal requirements.

PART 13—GENERAL PERMIT PROCEDURES

Subpart A—Introduction

- Sec.
- 13.1 General.
- 13.2 Purpose of regulations.
- 13.3 Scope of regulations.
- 13.4 Emergency variation from requirements.
- 13.5 Information collection requirements.

Subpart B—Application for Permits

- 13.11 Application procedures.
- 13.12 General information requirements on applications for permits.

Subpart C—Permit Administration

- 13.21 Issuance of permits.
- 13.22 Renewal of permits.
- 13.23 Amendment of permits.
- 13.24 Right of succession by certain persons.
- 13.25 Transfer of permits and scope of permit authorization.
- 13.26 Discontinuance of permit activity.
- 13.27 Permit suspension.
- 13.28 Permit revocation.
- 13.29 Review procedures.

Subpart D—Conditions

- 13.41 Humane conditions.

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- 13.42 Permits are specific.
- 13.43 Alteration of permits.
- 13.44 Display of permit.
- 13.45 Filing of reports.
- 13.46 Maintenance of records.
- 13.47 Inspection requirement.
- 13.48 Compliance with conditions of permit.
- 13.49 Surrender of permit.
- 13.50 Acceptance of liability.

AUTHORITY: 16 U.S.C. 668(a), 704, 712, 742j-1, 1374(g), 1382, 1538(d), 1539, 1540(f), 3374, 4901-4916; 18 U.S.C. 42; 19 U.S.C. 1202; 31 U.S.C. 9701.

SOURCE: 39 FR 1161, Jan. 4, 1974, unless otherwise noted.

Subpart A—Introduction

§ 13.1 General.

Each person intending to engage in an activity for which a permit is required by this subchapter B shall, before commencing such activity, obtain a valid permit authorizing such activity. Each person who desires to obtain the permit privileges authorized by this subchapter must make application for such permit in accordance with the requirements of this part 13 and the other regulations in this subchapter which set forth the additional requirements for the specific permits desired. If the activity for which permission is sought is covered by the requirements of more than one part of this subchapter, the requirements of each part must be met. If the information required for each specific permitted activity is included, one application will be accepted for all permits required, and a single permit will be issued.

§ 13.2 Purpose of regulations.

The regulations contained in this part provide uniform rules, conditions, and procedures for the application for and the issuance, denial, suspension, revocation, and general administration of all permits issued pursuant to this subchapter B.

[54 FR 38147, Sept. 14, 1989]

§ 13.3 Scope of regulations.

The provisions in this part are in addition to, and are not in lieu of, other permit regulations of this subchapter and apply to all permits issued thereunder, including "Import and Marking" (part 14), "Feather Imports" (part

15), "Injurious Wildlife" (part 16), "Endangered Wildlife and Plants" (part 17), "Marine Mammals" (part 18), "Migratory Birds" (part 21), "Eagles" (part 22) and "Endangered Species Convention" (part 23). As used in this part 13, the term "permit" shall refer to either a license, permit, or certificate as the context may require.

[42 FR 10465, Feb. 22, 1977, as amended at 42 FR 32377, June 24, 1977; 45 FR 56673, Aug. 25, 1980]

§ 13.4 Emergency variation from requirements.

The Director may approve variations from the requirements of this part when he finds that an emergency exists and that the proposed variations will not hinder effective administration of this subchapter B, and will not be unlawful.

§ 13.5 Information collection requirements.

(a) The Office of Management and Budget approved the information collection requirements contained in this part 13 under 44 U.S.C. and assigned OMB Control Number 1018-0092. The Service may not conduct or sponsor, and you are not required to respond, to a collection of information unless it displays a currently valid OMB control number. We are collecting this information to provide information necessary to evaluate permit applications. We will use this information to review permit applications and make decisions, according to criteria established in various Federal wildlife conservation statutes and regulations, on the issuance, suspension, revocation, or denial permits. You must respond to obtain or retain a permit.

(b) We estimate the public reporting burden for these reporting requirements to vary from 15 minutes to 4 hours per response, with an average of 0.803 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the forms. Direct comments regarding the burden estimate or any other aspect of these reporting requirements to the Service Information Collection Control Officer, MS-222 ARLSQ, U.S. Fish and Wildlife Service, Washington, DC 20240, or the Office of

Management and Budget, Paperwork Reduction Project (1018-0092), Washington, DC 20603.

[63 FR 52634, Oct. 1, 1998]

Subpart B—Application for Permits

§ 13.11 Application procedures.

The Service may not issue a permit for any activity authorized by this subchapter B unless the applicant has filed an application in accordance with the following procedures. Applicants do not have to submit a separate application for each permit unless otherwise required by this subchapter.

(a) *Forms.* Applications must be submitted in writing on a Federal Fish and Wildlife License/Permit Application (Form 3-200) or as otherwise specifically directed by the Service.

(b) *Forwarding instructions.* Applications for permits in the following categories should be forwarded to the issuing office indicated below.

(1) Migratory bird banding permits (50 CFR 21.22)—Bird Banding Laboratory, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Laurel, Maryland 20708. (Special application forms must be used for bird banding permits. They may be obtained by writing to the Bird Banding Laboratory).

(2) Exception to designated port (50 CFR part 14), import/export license (50 CFR 14.93), migratory bird permit, other than banding (50 CFR part 21) and Bald or Golden eagle permits (50 CFR part 22)—Assistant Regional Director for Law Enforcement of District in which the applicant resides (see 50 CFR 10.22 for addresses and boundaries of the Law Enforcement Districts).

(3) Feather quota (50 CFR part 15), injurious wildlife (50 CFR part 16), endangered and threatened species (50 CFR part 17), marine mammal (50 CFR part 18) and permits and certificates for the Convention on International Trade in Endangered Species (CITES) (50 CFR part 23)—U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, P.O. Box 3654, Arlington, Virginia 22203.

(c) *Time notice.* The Service will process all applications as quickly as possible. However, it cannot guarantee final action within the time limits the

applicant requests. Applicants for endangered species and marine mammal permits should submit applications to the Office of Management Authority which are postmarked at least 90 calendar days prior to the requested effective date. Applicants for all other permits should submit applications to the issuing office which are postmarked at least 60 days prior to the requested effective date.

(d) *Fees.* (1) Unless otherwise exempted by this paragraph, applicants for issuance or renewal of permits must pay the required permit processing fee at the time of application. Applicants should pay fees by check or money order made payable to "U.S. Fish and Wildlife Service." The Service will not refund any application fee under any circumstances if the Service has processed the application. However, the Service may return the application fee if the applicant withdraws the application before the Service has significantly processed it.

(2) Except as provided in paragraph (d)(4) of this section the fee for processing any application is \$25.00. If regulations in this subchapter require more than one type of permit for an activity, and the permits are issued by the same office, the issuing office may issue one consolidated permit authorizing the activity. The issuing office may charge only the highest single fee for the activity permitted.

(3) A fee shall not be charged to any Federal, State or local government agency, nor to any individual or institution under contract to such agency for the proposed activities. The fee may be waived or reduced for public institutions (see 50 CFR 10.12). Proof of such status must accompany the application.

(4) *Nonstandard fees.*

Type of permit	Fee
Import/Export License (Section 14.93)	\$50.
Marine Mammal (Section 18.31)	\$100.
Migratory Bird-Banding or Marking (21.22)	None.
Bald or Golden Eagles (Part 22)	None.

(e) *Abandoned or incomplete applications.* Upon receipt of an incomplete or improperly executed application, or if the applicant does not submit the proper fees, the issuing office will notify the applicant of the deficiency. If the

applicant fails to supply the correct information to complete the application or to pay the required fees within 45 calendar days of the date of notification, the Service will consider the application abandoned. The Service will not refund any fees for an abandoned application.

[47 FR 30785, July 15, 1982, as amended at 50 FR 52889, Dec. 26, 1985; 54 FR 4031, Jan. 27, 1989; 54 FR 38147, Sept. 14, 1989; 61 FR 31868, June 21, 1996]

§ 13.12 General information requirements on applications for permits.

(a) General information required for all applications. All applications must contain the following information:

(1) Applicant's full name, mailing address, telephone number(s), and:

(i) If the applicant is an individual, the date of birth, height, weight, hair color, eye color, sex, and any business or institutional affiliation of the applicant related to the requested permitted activity; or

(ii) If the applicant is a corporation, firm, partnership, association, institution, or public or private agency, the name and address of the president or principal officer and of the registered agent for the service of process;

(2) Location where the requested permitted activity is to occur or be conducted;

(3) Reference to the part(s) and section(s) of this subchapter B as listed in paragraph (b) of this section under which the application is made for a permit or permits, together with any additional justification, including supporting documentation as required by the referenced part(s) and section(s);

(4) If the requested permitted activity involves the import or re-export of wildlife or plants from or to any foreign country, and the country of origin, or the country of export or re-export restricts the taking, possession, transportation, exportation, or sale of wildlife or plants, documentation as indicated in §14.52(c) of this subchapter B;

(5) Certification in the following language:

I hereby certify that I have read and am familiar with the regulations contained in title 50, part 13, of the Code of Federal Regulations and the other applicable parts in sub-

chapter B of chapter I of title 50, Code of Federal Regulations, and I further certify that the information submitted in this application for a permit is complete and accurate to the best of my knowledge and belief. I understand that any false statement herein may subject me to suspension or revocation of this permit and to the criminal penalties of 18 U.S.C. 1001.

(6) Desired effective date of permit except where issuance date is fixed by the part under which the permit is issued;

(7) Date;

(8) Signature of the applicant; and

(9) Such other information as the Director determines relevant to the processing of the application.

(b) *Additional information required on permit applications.* As stated in paragraph (a)(3) of this section certain additional information is required on all applications. These additional requirements may be found by referring to the section of this subchapter B cited after the type of permit for which application is being made:

Type of permit	Section
Importation at nondesignated ports:	
Scientific	14.31
Deterioration prevention	14.32
Economic hardship	14.33
Marking of package or container:	
Symbol marking	14.83
Import/export license	14.93
Feather import quota: Importation or entry	15.21
Injurious wildlife: Importation or shipment	16.22
Endangered wildlife and plant permits:	
Similarity of appearance	17.52
Scientific, enhancement of propagation or survival, incidental taking for wildlife	17.22
Scientific, propagation, or survival for plants	17.62
Economic hardship for wildlife	17.23
Economic hardship for plants	17.63
Threatened wildlife and plant permits:	
Similarity of appearance	17.52
General for wildlife	17.32
American alligator-buyer or tanner	17.42(a)
General for plants	17.72
Marine mammals permits:	
Scientific research	18.31
Public display	18.31
Migratory bird permits:	
Banding or marking	21.22
Scientific collecting	21.23
Taxidermist	21.24
Waterfowl sale and disposal	21.25
Special aviculturist	21.26
Special purpose	21.27
Falconry	21.28
Raptor propagation permit	21.30
Depredation control	21.41
Eagle permits:	
Scientific or exhibition	22.21
Indian religious use	22.22
Depredation control	22.23
Falconry purposes	22.24

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Type of permit	Section
Take of golden eagle nests	22.25
Endangered Species Convention permits	23.15

[39 FR 1161, Jan. 4, 1974, as amended at 42 FR 10465, Feb. 22, 1977; 42 FR 32377, June 24, 1977; 44 FR 54006, Sept. 17, 1979; 44 FR 59083, Oct. 12, 1979; 45 FR 56673, Aug. 25, 1980; 45 FR 78154, Nov. 25, 1980; 46 FR 42680, Aug. 24, 1981; 48 FR 31607, July 8, 1983; 48 FR 57300, Dec. 29, 1983; 50 FR 39687, Sept. 30, 1985; 50 FR 45408, Oct. 31, 1985; 54 FR 38147, Sept. 14, 1989]

Subpart C—Permit Administration

§ 13.21 Issuance of permits.

(a) No permit may be issued prior to the receipt of a written application therefor, unless a written variation from the requirements, as authorized by § 13.4, is inserted into the official file of the Bureau. An oral or written representation of an employee or agent of the United States Government, or an action of such employee or agent, shall not be construed as a permit unless it meets the requirements of a permit as defined in 50 CFR 10.12.

(b) Upon receipt of a properly executed application for a permit, the Director shall issue the appropriate permit unless:

(1) The applicant has been assessed a civil penalty or convicted of any criminal provision of any statute or regulation relating to the activity for which the application is filed, if such assessment or conviction evidences a lack of responsibility.

(2) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his application;

(3) The applicant has failed to demonstrate a valid justification for the permit and a showing of responsibility;

(4) The authorization requested potentially threatens a wildlife or plant population, or

(5) The Director finds through further inquiry or investigation, or otherwise, that the applicant is not qualified.

(c) *Disqualifying factors.* Any one of the following will disqualify a person from receiving permits issued under this part.

(1) A conviction, or entry of a plea of guilty or nolo contendere, for a felony violation of the Lacey Act, the Migratory Bird Treaty Act, or the Bald and Golden Eagle Protection Act disqualifies any such person from receiving or exercising the privileges of a permit, unless such disqualification has been expressly waived by the Director in response to a written petition.

(2) The revocation of a permit for reasons found in § 13.28 (a)(1) or (a)(2) disqualifies any such person from receiving or exercising the privileges of a similar permit for a period of five years from the date of the final agency decision on such revocation.

(3) The failure to pay any required fees or assessed costs and penalties, whether or not reduced to judgement disqualifies such person from receiving or exercising the privileges of a permit as long as such moneys are owed to the United States. This requirement shall not apply to any civil penalty presently subject to administrative or judicial appeal; provided that the pendency of a collection action brought by the United States or its assignees shall not constitute an appeal within the meaning of this subsection.

(4) The failure to submit timely, accurate, or valid reports as required may disqualify such person from receiving or exercising the privileges of a permit as long as the deficiency exists.

(d) *Use of supplemental information.* The issuing officer, in making a determination under this subsection, may use any information available that is relevant to the issue. This may include any prior conviction, or entry of a plea of guilty or nolo contendere, or assessment of civil or criminal penalty for a violation of any Federal or State law or regulation governing the permitted activity. It may also include any prior permit revocations or suspensions, or any reports of State or local officials. The issuing officer shall consider all relevant facts or information available, and may make independent inquiry or investigation to verify information or substantiate qualifications asserted by the applicant.

(e) *Conditions of issuance and acceptance.* (1) Any permit automatically incorporates within its terms the conditions and requirements of subpart D of

this part and of any part(s) or section(s) specifically authorizing or governing the activity for which the permit is issued.

(2) Any person accepting and holding a permit under this subchapter B acknowledges the necessity for close regulation and monitoring of the permitted activity by the Government. By accepting such permit, the permittee consents to and shall allow entry by agents or employees of the Service upon premises where the permitted activity is conducted at any reasonable hour. Service agents or employees may enter such premises to inspect the location; any books, records, or permits required to be kept by this subchapter B; and any wildlife or plants kept under authority of the permit.

(f) *Term of permit.* Unless otherwise modified, a permit is valid during the period specified on the face of the permit. Such period shall include the effective date and the date of expiration.

(g) *Denial.* The issuing officer may deny a permit to any applicant who fails to meet the issuance criteria set forth in this section or in the part(s) or section(s) specifically governing the activity for which the permit is requested.

[39 FR 1161, Jan. 4, 1974, as amended at 42 FR 32377, June 24, 1977; 47 FR 30785, July 15, 1982; 54 FR 38148, Sept. 14, 1989]

§ 13.22 Renewal of permits.

(a) *Application for renewal.* Applicants for renewal of a permit must submit a written application at least 30 days prior to the expiration date of the permit. Applicants must certify in the form required by § 13.12(a)(5) that all statements and information in the original application remain current and correct, unless previously changed or corrected. If such information is no longer current or correct, the applicant must provide corrected information.

(b) *Renewal criteria.* The Service shall issue a renewal of a permit if the applicant meets the criteria for issuance in § 13.21(b) and is not disqualified under § 13.21(c).

(c) *Continuation of permitted activity.* Any person holding a valid, renewable permit, who has complied with this section, may continue the activities authorized by the expired permit until

the Service has acted on such person's application for renewal.

(d) *Denial.* The issuing officer may deny renewal of a permit to any applicant who fails to meet the issuance criteria set forth in § 13.21 of this part, or in the part(s) or section(s) specifically governing the activity for which the renewal is requested.

[54 FR 38148, Sept. 14, 1989]

§ 13.23 Amendment of permits.

(a) *Permittee's request.* Where circumstances have changed so that a permittee desires to have any condition of his permit modified, such permittee must submit a full written justification and supporting information in conformity with this part and the part under which the permit was issued.

(b) The Service reserves the right to amend any permit for just cause at any time during its term, upon written finding of necessity, provided that any such amendment of a permit issued under § 17.22(b) through (d) or § 17.32(b) through (d) of this subchapter shall be consistent with the requirements of § 17.22(b)(5), (c)(5) and (d)(5) or § 17.32(b)(5), (c)(5) and (d)(5) of this subchapter, respectively.

(c) *Change of name or address.* A permittee is not required to obtain a new permit if there is a change in the legal individual or business name, or in the mailing address of the permittee. A permittee is required to notify the issuing office within 10 calendar days of such change. This provision does not authorize any change in location of the conduct of the permitted activity when approval of the location is a qualifying condition of the permit.

[54 FR 38148, Sept. 14, 1989, as amended at 64 FR 32711, June 17, 1999]

§ 13.24 Right of succession by certain persons.

(a) Certain persons other than the permittee are authorized to carry on a permitted activity for the remainder of the term of a current permit, provided they comply with the provisions of paragraph (b) of this section. Such persons are the following:

(1) The surviving spouse, child, executor, administrator, or other legal

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representative of a deceased permittee; or

(2) A receiver or trustee in bankruptcy or a court designated assignee for the benefit of creditors.

(b) In order to qualify for the authorization provided in this section, the person or persons desiring to continue the activity shall furnish the permit to the issuing officer for endorsement within 90 days from the date the successor begins to carry on the activity.

(c) In the case of permits issued under § 17.22(b) through (d) or § 17.32(b) through (d) of this subchapter B, the successor's authorization under the permit is also subject to a determination by the Service that:

(1) The successor meets all of the qualifications under this part for holding a permit;

(2) The successor has provided adequate written assurances that it will provide sufficient funding for the conservation plan or Agreement and will implement the relevant terms and conditions of the permit, including any outstanding minimization and mitigation requirements; and

(3) The successor has provided such other information as the Service determines is relevant to the processing of the request.

[64 FR 32711, June 17, 1999]

§ 13.25 Transfer of permits and scope of permit authorization.

(a) Except as otherwise provided for in this section, permits issued under this part are not transferable or assignable.

(b) Permits issued under § 17.22(b) or § 17.32(b) of this subchapter B may be transferred in whole or in part through a joint submission by the permittee and the proposed transferee or in the case of a deceased permittee, the deceased permittee's legal representative and the proposed transferee, provided the Service determines that:

(1) The proposed transferee meets all of the qualifications under this part for holding a permit;

(2) The proposed transferee has provided adequate written assurances that it will provide sufficient funding for the conservation plan or Agreement and will implement the relevant terms and conditions of the permit, including

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any outstanding minimization and mitigation requirements; and

(3) The proposed transferee has provided such other information as the Service determines is relevant to the processing of the submission.

(c) In the case of the transfer of lands subject to an agreement and permit issued under § 17.22(c) or (d) or § 17.32 (c) or (d) of this subchapter B, the Service will transfer the permit to the new owner if the new owner agrees in writing to become a party to the original agreement and permit.

(d) Except as otherwise stated on the face of the permit, any person who is under the direct control of the permittee, or who is employed by or under contract to the permittee for purposes authorized by the permit, may carry out the activity authorized by the permit.

(e) In the case of permits issued under § 17.22(b)-(d) or § 17.32(b)-(d) of this subchapter to a State or local governmental entity, a person is under the direct control of the permittee where:

(1) The person is under the jurisdiction of the permittee and the permit provides that such person(s) may carry out the authorized activity; or

(2) The person has been issued a permit by the governmental entity or has executed a written instrument with the governmental entity, pursuant to the terms of the implementing agreement.

[64 FR 32711, June 17, 1999, as amended at 64 FR 52676, Sept. 30, 1999; 69 FR 24092, May 3, 2004]

§ 13.26 Discontinuance of permit activity.

When a permittee, or any successor to a permittee as provided for by § 13.24, discontinues activities authorized by a permit, the permittee shall within 30 calendar days of the discontinuance return the permit to the issuing office together with a written statement surrendering the permit for cancellation. The permit shall be deemed void and cancelled upon its receipt by the issuing office. No refund of any fees paid for issuance of the permit or for any other fees or costs associated with a permitted activity shall be made

when a permit is surrendered for cancellation for any reason prior to the expiration date stated on the face of the permit.

[54 FR 38149, Sept. 14, 1989]

§ 13.27 Permit suspension.

(a) *Criteria for suspension.* The privileges of exercising some or all of the permit authority may be suspended at any time if the permittee is not in compliance with the conditions of the permit, or with any applicable laws or regulations governing the conduct of the permitted activity. The issuing officer may also suspend all or part of the privileges authorized by a permit if the permittee fails to pay any fees, penalties or costs owed to the Government. Such suspension shall remain in effect until the issuing officer determines that the permittee has corrected the deficiencies.

(b) *Procedure for suspension.* (1) When the issuing officer believes there are valid grounds for suspending a permit the permittee shall be notified in writing of the proposed suspension by certified or registered mail. This notice shall identify the permit to be suspended, the reason(s) for such suspension, the actions necessary to correct the deficiencies, and inform the permittee of the right to object to the proposed suspension. The issuing officer may amend any notice of suspension at any time.

(2) Upon receipt of a notice of proposed suspension the permittee may file a written objection to the proposed action. Such objection must be in writing, must be filed within 45 calendar days of the date of the notice of proposal, must state the reasons why the permittee objects to the proposed suspension, and may include supporting documentation.

(3) A decision on the suspension shall be made within 45 days after the end of the objection period. The issuing officer shall notify the permittee in writing of the Service's decision and the reasons therefore. The issuing officer shall also provide the applicant with the information concerning the right to request reconsideration of the decision under § 13.29 of this part and the

procedures for requesting reconsideration.

[54 FR 38149, Sept. 14, 1989]

§ 13.28 Permit revocation.

(a) *Criteria for revocation.* A permit may be revoked for any of the following reasons:

(1) The permittee willfully violates any Federal or State statute or regulation, or any Indian tribal law or regulation, or any law or regulation of any foreign country, which involves a violation of the conditions of the permit or of the laws or regulations governing the permitted activity; or

(2) The permittee fails within 60 days to correct deficiencies that were the cause of a permit suspension; or

(3) The permittee becomes disqualified under § 13.21(c) of this part; or

(4) A change occurs in the statute or regulation authorizing the permit that prohibits the continuation of a permit issued by the Service; or

(5) Except for permits issued under § 17.22(b) through (d) or § 17.32(b) through (d) of this subchapter, the population(s) of the wildlife or plant that is the subject of the permit declines to the extent that continuation of the permitted activity would be detrimental to maintenance or recovery of the affected population.

(b) *Procedure for revocation.* (1) When the issuing officer believes there are valid grounds for revoking a permit, the permittee shall be notified in writing of the proposed revocation by certified or registered mail. This notice shall identify the permit to be revoked, the reason(s) for such revocation, the proposed disposition of the wildlife, if any, and inform the permittee of the right to object to the proposed revocation. The issuing officer may amend any notice of revocation at any time.

(2) Upon receipt of a notice of proposed revocation the permittee may file a written objection to the proposed action. Such objection must be in writing, must be filed within 45 calendar days of the date of the notice of proposal, must state the reasons why the permittee objects to the proposed revocation, and may include supporting documentation.

(3) A decision on the revocation shall be made within 45 days after the end of

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the objection period. The issuing officer shall notify the permittee in writing of the Service's decision and the reasons therefore, together with the information concerning the right to request and the procedures for requesting reconsideration.

(4) Unless a permittee files a timely request for reconsideration, any wildlife held under authority of a permit that is revoked must be disposed of in accordance with instructions of the issuing officer. If a permittee files a timely request for reconsideration of a proposed revocation, such permittee may retain possession of any wildlife held under authority of the permit until final disposition of the appeal process.

[54 FR 38149, Sept. 14, 1989, as amended at 64 FR 32711, June 17, 1999]

§ 13.29 Review procedures.

(a) *Request for reconsideration.* Any person may request reconsideration of an action under this part if that person is one of the following:

(1) An applicant for a permit who has received written notice of denial;

(2) An applicant for renewal who has received written notice that a renewal is denied;

(3) A permittee who has a permit amended, suspended, or revoked, except for those actions which are required by changes in statutes or regulations, or are emergency changes of limited applicability for which an expiration date is set within 90 days of the permit change; or

(4) A permittee who has a permit issued or renewed but has not been granted authority by the permit to perform all activities requested in the application, except when the activity requested is one for which there is no lawful authority to issue a permit.

(b) *Method of requesting reconsideration.* Any person requesting reconsideration of an action under this part must comply with the following criteria:

(1) Any request for reconsideration must be in writing, signed by the person requesting reconsideration or by the legal representative of that person, and must be submitted to the issuing officer.

(2) The request for reconsideration must be received by the issuing officer within 45 calendar days of the date of notification of the decision for which reconsideration is being requested.

(3) The request for reconsideration shall state the decision for which reconsideration is being requested and shall state the reason(s) for the reconsideration, including presenting any new information or facts pertinent to the issue(s) raised by the request for reconsideration.

(4) The request for reconsideration shall contain a certification in substantially the same form as that provided by § 13.12(a)(5). If a request for reconsideration does not contain such certification, but is otherwise timely and appropriate, it shall be held and the person submitting the request shall be given written notice of the need to submit the certification within 15 calendar days. Failure to submit certification shall result in the request being rejected as insufficient in form and content.

(c) *Inquiry by the Service.* The Service may institute a separate inquiry into the matter under consideration.

(d) *Determination of grant or denial of a request for reconsideration.* The issuing officer shall notify the permittee of the Service's decision within 45 days of the receipt of the request for reconsideration. This notification shall be in writing, shall state the reasons for the decision, and shall contain a description of the evidence which was relied upon by the issuing officer. The notification shall also provide information concerning the right to appeal, the official to whom an appeal may be addressed, and the procedures for making an appeal.

(e) *Appeal.* A person who has received an adverse decision following submission of a request for reconsideration may submit a written appeal to the Regional Director for the region in which the issuing office is located, or to the Director for offices which report directly to the Director. An appeal must be submitted within 45 days of the date of the notification of the decision on the request for reconsideration. The appeal shall state the reason(s) and issue(s) upon which the appeal is based

and may contain any additional evidence or arguments to support the appeal.

(f) *Decision on appeal.* (1) Before a decision is made concerning the appeal the appellant may present oral arguments before the Regional Director or the Director, as appropriate, if such official judges oral arguments are necessary to clarify issues raised in the written record.

(2) The Service shall notify the appellant in writing of its decision within 45 calendar days of receipt of the appeal, unless extended for good cause and the appellant notified of the extension.

(3) The decision of the Regional Director or the Director shall constitute the final administrative decision of the Department of the Interior.

[54 FR 38149, Sept. 14, 1989]

Subpart D—Conditions

§ 13.41 Humane conditions.

Any live wildlife possessed under a permit must be maintained under humane and healthful conditions.

[54 FR 38150, Sept. 14, 1989]

§ 13.42 Permits are specific.

The authorizations on the face of a permit which set forth specific times, dates, places, methods of taking, numbers and kinds of wildlife or plants, location of activity, authorize certain circumscribed transactions, or otherwise permit a specifically limited matter, are to be strictly construed and shall not be interpreted to permit similar or related matters outside the scope of strict construction.

[39 FR 1161, Jan. 4, 1974, as amended at 42 FR 32377, June 24, 1977]

§ 13.43 Alteration of permits.

Permits shall not be altered, erased, or mutilated, and any permit which has been altered, erased, or mutilated shall immediately become invalid. Unless specifically permitted on the face thereof, no permit shall be copied, nor shall any copy of a permit issued pursuant to this subchapter B be displayed, offered for inspection, or otherwise used for any official purpose for which the permit was issued.

§ 13.44 Display of permit.

Any permit issued under this part shall be displayed for inspection upon request to the Director or his agent; or to any other person relying upon its existence.

§ 13.45 Filing of reports.

Permittees may be required to file reports of the activities conducted under the permit. Any such reports shall be filed not later than March 31 for the preceding calendar year ending December 31, or any portion thereof, during which a permit was in force, unless the regulations of this subchapter B or the provisions of the permit set forth other reporting requirements.

§ 13.46 Maintenance of records.

From the date of issuance of the permit, the permittee shall maintain complete and accurate records of any taking, possession, transportation, sale, purchase, barter, exportation, or importation of plants obtained from the wild (excluding seeds) or wildlife pursuant to such permit. Such records shall be kept current and shall include names and addresses of persons with whom any plant obtained from the wild (excluding seeds) or wildlife has been purchased, sold, bartered, or otherwise transferred, and the date of such transaction, and such other information as may be required or appropriate. Such records shall be legibly written or reproducible in English and shall be maintained for five years from the date of expiration of the permit.

[39 FR 1161, Jan. 4, 1974, as amended at 42 FR 32377, June 24, 1977; 54 FR 38150, Sept. 14, 1989]

§ 13.47 Inspection requirement.

Any person holding a permit under this subchapter B shall allow the Director's agent to enter his premises at any reasonable hour to inspect any wildlife or plant held or to inspect, audit, or copy any permits, books, or records required to be kept by regulations of this subchapter B.

[39 FR 1161, Jan. 4, 1974, as amended at 42 FR 32377, June 24, 1977]

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§ 13.48 Compliance with conditions of permit.

Any person holding a permit under subchapter B and any person acting under authority of such permit must comply with all conditions of the permit and with all applicable laws and regulations governing the permitted activity.

[54 FR 38150, Sept. 14, 1989]

§ 13.49 Surrender of permit.

Any person holding a permit under subchapter B shall surrender such permit to the issuing officer upon notification that the permit has been suspended or revoked by the Service, and all appeal procedures have been exhausted.

[54 FR 38150, Sept. 14, 1989]

§ 13.50 Acceptance of liability.

Except as otherwise limited in the case of permits described in § 13.25(d), any person holding a permit under this subchapter B assumes all liability and responsibility for the conduct of any activity conducted under the authority of such permit.

[64 FR 32711, June 17, 1999]

PART 14—IMPORTATION, EXPORTATION, AND TRANSPORTATION OF WILDLIFE

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Sec.

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Subpart D [Reserved]

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limited taking, and an import permit is issued under § 17.22;

(v) Any permanent exports of such specimens meet the requirements of paragraph (g)(4) of this section; and

(vi) Each person claiming the benefit of the exception in paragraph (g)(1) of this section must maintain accurate written records of activities, including births, deaths and transfers of specimens, and make those records accessible to Service agents for inspection at reasonable hours as set forth in §§ 13.46 and 13.47.

[40 FR 44415, Sept. 26, 1975, as amended at 40 FR 53400, Nov. 18, 1975; 41 FR 19226, May 11, 1976; 44 FR 31580, May 31, 1979; 44 FR 54007, Sept. 17, 1979; 58 FR 68325, Dec. 27, 1993; 63 FR 48640, Sept. 11, 1998; 68 FR 2919, Jan. 22, 2003; 68 FR 61136, Oct. 27, 2003]

§ 17.22 Permits for scientific purposes, enhancement of propagation or survival, or for incidental taking.

Upon receipt of a complete application, the Director may issue a permit authorizing any activity otherwise prohibited by § 17.21, in accordance with the issuance criteria of this section, for scientific purposes, for enhancing the propagation or survival, or for the incidental taking of endangered wildlife. Such permits may authorize a single transaction, a series of transactions, or a number of activities over a specific period of time. (See § 17.32 for permits for threatened species.) The Director shall publish notice in the FEDERAL REGISTER of each application for a permit that is made under this section. Each notice shall invite the submission from interested parties, within 30 days after the date of the notice, of written data, views, or arguments with respect to the application. The 30-day period may be waived by the Director in an emergency situation where the life or health of an endangered animal is threatened and no reasonable alternative is available to the applicant. Notice of any such waiver shall be published in the FEDERAL REGISTER within 10 days following issuance of the permit.

(a)(1) *Application requirements for permits for scientific purposes or for the enhancement of propagation or survival.* A person wishing to get a permit for an activity prohibited by § 17.21 submits

an application for activities under this paragraph. The Service provides Form 3-200 for the application to which all of the following must be attained:

(i) The common and scientific names of the species sought to be covered by the permit, as well as the number, age, and sex of such species, and the activity sought to be authorized (such as taking, exporting, selling in interstate commerce);

(ii) A statement as to whether, at the time of application, the wildlife sought to be covered by the permit (A) is still in the wild, (B) has already been removed from the wild, or (C) was born in captivity;

(iii) A resume of the applicant's attempts to obtain the wildlife sought to be covered by the permit in a manner which would not cause the death or removal from the wild of such wildlife;

(iv) If the wildlife sought to be covered by the permit has already been removed from the wild, the country and place where such removal occurred; if the wildlife sought to be covered by the permit was born in captivity, the country and place where such wildlife was born;

(v) A complete description and address of the institution or other facility where the wildlife sought to be covered by the permit will be used, displayed, or maintained;

(vi) If the applicant seeks to have live wildlife covered by the permit, a complete description, including photographs or diagrams, of the facilities to house and/or care for the wildlife and a resume of the experience of those person who will be caring for the wildlife;

(vii) A full statement of the reasons why the applicant is justified in obtaining a permit including the details of the activities sought to be authorized by the permit;

(viii) If the application is for the purpose of enhancement of propagation, a statement of the applicant's willingness to participate in a cooperative breeding program and to maintain or contribute data to a studbook;

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (a)(1) of this section, the Director will decide whether or not a permit should be issued. In making

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this decision, the Director shall consider, in addition to the general criteria in §13.21(b) of this subchapter, the following factors:

(i) Whether the purpose for which the permit is required is adequate to justify removing from the wild or otherwise changing the status of the wildlife sought to be covered by the permit;

(ii) The probable direct and indirect effect which issuing the permit would have on the wild populations of the wildlife sought to be covered by the permit;

(iii) Whether the permit, if issued, would in any way, directly or indirectly, conflict with any known program intended to enhance the survival probabilities of the population from which the wildlife sought to be covered by the permit was or would be removed;

(iv) Whether the purpose for which the permit is required would be likely to reduce the threat of extinction facing the species of wildlife sought to be covered by the permit;

(v) The opinions or views of scientists or other persons or organizations having expertise concerning the wildlife or other matters germane to the application; and

(vi) Whether the expertise, facilities, or other resources available to the applicant appear adequate to successfully accomplish the objectives stated in the application.

(3) *Permit conditions.* In addition to the general conditions set forth in part 13 of this subchapter, every permit issued under this paragraph shall be subject to the special condition that the escape of living wildlife covered by the permit shall be immediately reported to the Service office designated in the permit.

(4) *Duration of permits.* The duration of permits issued under this paragraph shall be designated on the face of the permit.

(b)(1) *Application requirements for permits for incidental taking.* A person wishing to get a permit for an activity prohibited by §17.21(c) submits an application for activities under this paragraph. The Service provides Form 3-200 for the application to which all of the following must be attached:

(i) A complete description of the activity sought to be authorized;

(ii) The common and scientific names of the species sought to be covered by the permit, as well as the number, age, and sex of such species, if known;

(iii) A conservation plan that specifies:

(A) The impact that will likely result from such taking;

(B) What steps the applicant will take to monitor, minimize, and mitigate such impacts, the funding that will be available to implement such steps, and the procedures to be used to deal with unforeseen circumstances;

(C) What alternative actions to such taking the applicant considered and the reasons why such alternatives are not proposed to be utilized; and

(D) Such other measures that the Director may require as being necessary or appropriate for purposes of the plan;

(2) *Issuance criteria.* (i) Upon receiving an application completed in accordance with paragraph (b)(1) of this section, the Director will decide whether or not a permit should be issued. The Director shall consider the general issuance criteria in §13.21(b) of this subchapter, except for §13.21(b)(4), and shall issue the permit if he or she finds that:

(A) The taking will be incidental;

(B) The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such takings;

(C) The applicant will ensure that adequate funding for the conservation plan and procedures to deal with unforeseen circumstances will be provided;

(D) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild;

(E) The measures, if any, required under paragraph (b)(1)(iii)(D) of this section will be met; and

(F) He or she has received such other assurances as he or she may require that the plan will be implemented.

(ii) In making his or her decision, the Director shall also consider the anticipated duration and geographic scope of the applicant's planned activities, including the amount of listed species habitat that is involved and the degree to which listed species and their habitats are affected.

(3) *Permit conditions.* In addition to the general conditions set forth in part 13 of this subchapter, every permit issued under this paragraph shall contain such terms and conditions as the Director deems necessary or appropriate to carry out the purposes of the permit and the conservation plan including, but not limited to, monitoring and reporting requirements deemed necessary for determining whether such terms and conditions are being complied with. The Director shall rely upon existing reporting requirements to the maximum extent practicable.

(4) *Duration of permits.* The duration of permits issued under this paragraph shall be sufficient to provide adequate assurances to the permittee to commit funding necessary for the activities authorized by the permit, including conservation activities and land use restrictions. In determining the duration of a permit, the Director shall consider the duration of the planned activities, as well as the possible positive and negative effects associated with permits of the proposed duration on listed species, including the extent to which the conservation plan will enhance the habitat of listed species and increase the long-term survivability of such species.

(5) *Assurances provided to permittee in case of changed or unforeseen circumstances.* The assurances in this paragraph (b)(5) apply only to incidental take permits issued in accordance with paragraph (b)(2) of this section where the conservation plan is being properly implemented, and apply only with respect to species adequately covered by the conservation plan. These assurances cannot be provided to Federal agencies. This rule does not apply to incidental take permits issued prior to March 25, 1998. The assurances provided in incidental take permits issued prior to March 25, 1998 remain in effect, and those permits will not be revised as a result of this rulemaking.

(i) *Changed circumstances provided for in the plan.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and were provided for in the plan's operating conservation program, the permittee will implement the measures specified in the plan.

(ii) *Changed circumstances not provided for in the plan.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and such measures were not provided for in the plan's operating conservation program, the Director will not require any conservation and mitigation measures in addition to those provided for in the plan without the consent of the permittee, provided the plan is being properly implemented.

(iii) *Unforeseen circumstances.* (A) In negotiating unforeseen circumstances, the Director will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the conservation plan without the consent of the permittee.

(B) If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, the Director may require additional measures of the permittee where the conservation plan is being properly implemented, but only if such measures are limited to modifications within conserved habitat areas, if any, or to the conservation plan's operating conservation program for the affected species, and maintain the original terms of the conservation plan to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the conservation plan without the consent of the permittee.

(C) The Director will have the burden of demonstrating that unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. The Director will consider, but not be limited to, the following factors:

(i) Size of the current range of the affected species;

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(2) Percentage of range adversely affected by the conservation plan;

(3) Percentage of range conserved by the conservation plan;

(4) Ecological significance of that portion of the range affected by the conservation plan;

(5) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the conservation plan; and

(6) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

(6) Nothing in this rule will be construed to limit or constrain the Director, any Federal, State, local, or Tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a conservation plan.

(7) *Discontinuance of permit activity.* Notwithstanding the provisions of § 13.26 of this subchapter, a permittee under this paragraph (b) remains responsible for any outstanding minimization and mitigation measures required under the terms of the permit for take that occurs prior to surrender of the permit and such minimization and mitigation measures as may be required pursuant to the termination provisions of an implementing agreement, habitat conservation plan, or permit even after surrendering the permit to the Service pursuant to § 13.26 of this subchapter. The permit shall be deemed canceled only upon a determination by the Service that such minimization and mitigation measures have been implemented. Upon surrender of the permit, no further take shall be authorized under the terms of the surrendered permit.

(c)(1) *Application requirements for permits for the enhancement of survival through Safe Harbor Agreements.* The applicant must submit an application for a permit under this paragraph (c) to the appropriate Regional Director, U.S. Fish and Wildlife Service, for the Region where the applicant resides or where the proposed activity is to occur (for appropriate addresses, see 50 CFR 10.22), if the applicant wishes to engage in any activity prohibited by § 17.21.

The applicant must submit an official Service application form (3-200.54) that includes the following information:

(i) The common and scientific names of the listed species for which the applicant requests incidental take authorization;

(ii) A description of how incidental take of the listed species pursuant to the Safe Harbor Agreement is likely to occur, both as a result of management activities and as a result of the return to baseline; and

(iii) A Safe Harbor Agreement that complies with the requirements of the Safe Harbor policy available from the Service.

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (c)(1) of this section, the Director will decide whether or not to issue a permit. The Director shall consider the general issuance criteria in § 13.21(b) of this subchapter, except for § 13.21(b)(4), and may issue the permit if he or she finds:

(i) The take will be incidental to an otherwise lawful activity and will be in accordance with the terms of the Safe Harbor Agreement;

(ii) The implementation of the terms of the Safe Harbor Agreement is reasonably expected to provide a net conservation benefit to the affected listed species by contributing to the recovery of listed species included in the permit, and the Safe Harbor Agreement otherwise complies with the Safe Harbor policy available from the Service;

(iii) The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any listed species;

(iv) Implementation of the terms of the Safe Harbor Agreement is consistent with applicable Federal, State, and Tribal laws and regulations;

(v) Implementation of the terms of the Safe Harbor Agreement will not be in conflict with any ongoing conservation or recovery programs for listed species covered by the permit; and

(vi) The applicant has shown capability for and commitment to implementing all of the terms of the Safe Harbor Agreement.

(3) *Permit conditions.* In addition to any applicable general permit conditions set forth in part 13 of this subchapter, every permit issued under this paragraph (c) is subject to the following special conditions:

(i) A requirement for the participating property owner to notify the Service of any transfer of lands subject to a Safe Harbor Agreement;

(ii) When appropriate, a requirement for the permittee to give the Service reasonable advance notice (generally at least 30 days) of when he or she expects to incidentally take any listed species covered under the permit. Such notification will provide the Service with an opportunity to relocate affected individuals of the species, if possible and appropriate; and

(iii) Any additional requirements or conditions the Director deems necessary or appropriate to carry out the purposes of the permit and the Safe Harbor Agreement.

(4) *Permit effective date.* Permits issued under this paragraph (c) become effective the day of issuance for species covered by the Safe Harbor Agreement.

(5) *Assurances provided to permittee.* (i) The assurances in paragraph (c)(5) (ii) of this section (c)(5) apply only to Safe Harbor permits issued in accordance with paragraph (c)(2) of this section where the Safe Harbor Agreement is being properly implemented, and apply only with respect to species covered by the Agreement and permit. These assurances cannot be provided to Federal agencies. The assurances provided in this section apply only to Safe Harbor permits issued after July 19, 1999.

(ii) The Director and the permittee may agree to revise or modify the management measures set forth in a Safe Harbor Agreement if the Director determines that such revisions or modifications do not change the Director's prior determination that the Safe Harbor Agreement is reasonably expected to provide a net conservation benefit to the listed species. However, the Director may not require additional or different management activities to be undertaken by a permittee without the consent of the permittee.

(6) *Additional actions.* Nothing in this rule will be construed to limit or constrain the Director, any Federal, State,

local or Tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a Safe Harbor Agreement.

(7) *Criteria for revocation.* The Director may not revoke a permit issued under paragraph (c) of this section except as provided in this paragraph. The Director may revoke a permit for any reason set forth in § 13.28(a)(1) through (4) of this subchapter. The Director may revoke a permit if continuation of the permitted activity would either appreciably reduce the likelihood of survival and recovery in the wild of any listed species or directly or indirectly alter designated critical habitat such that it appreciably diminishes the value of that critical habitat for both the survival and recovery of a listed species. Before revoking a permit for either of the latter two reasons, the Director, with the consent of the permittee, will pursue all appropriate options to avoid permit revocation. These options may include, but are not limited to: extending or modifying the existing permit, capturing and relocating the species, compensating the landowner to forgo the activity, purchasing an easement or fee simple interest in the property, or arranging for a third-party acquisition of an interest in the property.

(8) *Duration of permits.* The duration of permits issued under this paragraph (c) must be sufficient to provide a net conservation benefit to species covered in the enhancement of survival permit. In determining the duration of a permit, the Director will consider the duration of the planned activities, as well as the positive and negative effects associated with permits of the proposed duration on covered species, including the extent to which the conservation activities included in the Safe Harbor Agreement will enhance the survival and contribute to the recovery of listed species included in the permit.

(d)(1) *Application requirements for permits for the enhancement of survival through Candidate Conservation Agreements with Assurances.* The applicant must submit an application for a permit under this paragraph (d) to the appropriate Regional Director, U.S. Fish and Wildlife Service, for the Region

where the applicant resides or where the proposed activity is to occur (for appropriate addresses, see 50 CFR 10.22). When a species covered by a Candidate Conservation Agreement with Assurances is listed as endangered and the applicant wishes to engage in activities identified in the Agreement and otherwise prohibited by § 17.31, the applicant must apply for an enhancement of survival permit for species covered by the Agreement. The permit will become valid if and when covered proposed, candidate or other unlisted species is listed as an endangered species. The applicant must submit an official Service application form (3-200.54) that includes the following information:

(i) The common and scientific names of the species for which the applicant requests incidental take authorization;

(ii) A description of the land use or water management activity for which the applicant requests incidental take authorization; and

(iii) A Candidate Conservation Agreement that complies with the requirements of the Candidate Conservation Agreement with Assurances policy available from the Service.

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (d)(1) of this section, the Director will decide whether or not to issue a permit. The Director shall consider the general issuance criteria in § 13.21(b) of this subchapter, except for § 13.21(b)(4), and may issue the permit if he or she finds:

(i) The take will be incidental to an otherwise lawful activity and will be in accordance with the terms of the Candidate Conservation Agreement;

(ii) The Candidate Conservation Agreement complies with the requirements of the Candidate Conservation Agreement with Assurances policy available from the Service;

(iii) The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any species;

(iv) Implementation of the terms of the Candidate Conservation Agreement is consistent with applicable Federal, State, and Tribal laws and regulations;

(v) Implementation of the terms of the Candidate Conservation Agreement will not be in conflict with any ongoing conservation programs for species covered by the permit; and

(vi) The applicant has shown capability for and commitment to implementing all of the terms of the Candidate Conservation Agreement.

(3) *Permit conditions.* In addition to any applicable general permit conditions set forth in part 13 of this subchapter, every permit issued under this paragraph (d) is subject to the following special conditions:

(i) A requirement for the property owner to notify the Service of any transfer of lands subject to a Candidate Conservation Agreement;

(ii) When appropriate, a requirement for the permittee to give the Service reasonable advance notice (generally at least 30 days) of when he or she expects to incidentally take any listed species covered under the permit. Such notification will provide the Service with an opportunity to relocate affected individuals of the species, if possible and appropriate; and

(iii) Any additional requirements or conditions the Director deems necessary or appropriate to carry out the purposes of the permit and the Candidate Conservation Agreement.

(4) *Permit effective date.* Permits issued under this paragraph (d) become effective for a species covered by a Candidate Conservation Agreement on the effective date of a final rule that lists a covered species as endangered.

(5) *Assurances provided to permittee in case of changed or unforeseen circumstances.* The assurances in this paragraph (d)(5) apply only to permits issued in accordance with paragraph (d)(2) where the Candidate Conservation with Assurances Agreement is being properly implemented, and apply only with respect to species adequately covered by the Candidate Conservation with Assurances Agreement. These assurances cannot be provided to Federal agencies.

(i) *Changed circumstances provided for in the Agreement.* If the Director determines that additional conservation measures are necessary to respond to changed circumstances and these measures were set forth in the Agreement,

the permittee will implement the measures specified in the Agreement.

(ii) *Changed circumstances not provided for in the Agreement.* If the Director determines that additional conservation measures not provided for in the Agreement are necessary to respond to changed circumstances, the Director will not require any conservation measures in addition to those provided for in the Agreement without the consent of the permittee, provided the Agreement is being properly implemented.

(iii) *Unforeseen circumstances.* (A) In negotiating unforeseen circumstances, the Director will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the Agreement without the consent of the permittee.

(B) If the Director determines additional conservation measures are necessary to respond to unforeseen circumstances, the Director may require additional measures of the permittee where the Agreement is being properly implemented, but only if such measures maintain the original terms of the Agreement to the maximum extent possible. Additional conservation measures will not involve the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the Agreement without the consent of the permittee.

(C) The Director will have the burden of demonstrating that unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. The Director will consider, but not be limited to, the following factors:

- (1) Size of the current range of the affected species;
- (2) Percentage of range adversely affected by the Agreement;
- (3) Percentage of range conserved by the Agreement;

(4) Ecological significance of that portion of the range affected by the Agreement;

(5) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the Agreement; and

(6) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

(6) *Additional actions.* Nothing in this rule will be construed to limit or constrain the Director, any Federal, State, local or Tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a Candidate Conservation with Assurances Agreement.

(7) *Criteria for revocation.* The Director may not revoke a permit issued under paragraph (d) of this section except as provided in this paragraph. The Director may revoke a permit for any reason set forth in § 13.28(a)(1) through (4) of this subchapter. The Director may revoke a permit if continuation of the permitted activity would either appreciably reduce the likelihood of survival and recovery in the wild of any listed species or directly or indirectly alter designated critical habitat such that it appreciably diminishes the value of that critical habitat for both the survival and recovery of a listed species. Before revoking a permit for either of the latter two reasons, the Director, with the consent of the permittee, will pursue all appropriate options to avoid permit revocation. These options may include, but are not limited to: extending or modifying the existing permit, capturing and relocating the species, compensating the landowner to forgo the activity, purchasing an easement or fee simple interest in the property, or arranging for a third-party acquisition of an interest in the property.

(8) *Duration of the Candidate Conservation Agreement.* The duration of a Candidate Conservation Agreement covered by a permit issued under this paragraph (d) must be sufficient to enable the Director to determine that the benefits of the conservation measures in the Agreement, when combined with

those benefits that would be achieved if it is assumed that the conservation measures would also be implemented on other necessary properties, would preclude or remove any need to list the species covered by the Agreement.

(e) *Objection to permit issuance.* (1) In regard to any notice of a permit application published in the FEDERAL REGISTER, any interested party that objects to the issuance of a permit, in whole or in part, may, during the comment period specified in the notice, request notification of the final action to be taken on the application. A separate written request shall be made for each permit application. Such a request shall specify the Service's permit application number and state the reasons why that party believes the applicant does not meet the issuance criteria contained in §§ 13.21 and 17.22 of this subchapter or other reasons why the permit should not be issued.

(2) If the Service decides to issue a permit contrary to objections received pursuant to paragraph (c)(1) of this section, then the Service shall, at least ten days prior to issuance of the permit, make reasonable efforts to contact by telephone or other expedient means, any party who has made a request pursuant to paragraph (c)(1) of this section and inform that party of the issuance of the permit. However, the Service may reduce the time period or dispense with such notice if it determines that time is of the essence and that delay in issuance of the permit would: (i) Harm the specimen or population involved; or (ii) unduly hinder the actions authorized under the permit.

(3) The Service will notify any party filing an objection and request for notice under paragraph (c)(1) of this section of the final action taken on the application, in writing. If the Service has reduced or dispensed with the notice period referred to in paragraph (c)(2) of this section, it will include its reasons therefore in such written notice.

[50 FR 39687, Sept. 30, 1985, as amended at 63 FR 8871, Feb. 23, 1998; 63 FR 52635, Oct. 1, 1998; 64 FR 32711, June 17, 1999; 64 FR 52676, Sept. 30, 1999; 69 FR 24092, May 3, 2004; 69 FR 29670, May 25, 2004]

§ 17.23 Economic hardship permits.

Upon receipt of a complete application, the Director may issue a permit authorizing any activity otherwise prohibited by § 17.21, in accordance with the issuance criteria of this section in order to prevent undue economic hardship. The Director shall publish notice in the FEDERAL REGISTER of each application for a permit that is made under this section. Each notice shall invite the submission from interested parties, within 30 days after the date of the notice, of written data, views, or arguments with respect to the application. The 30-day period may be waived by the Director in an emergency situation where the life or health of an endangered animal is threatened and no reasonable alternative is available to the applicant. Notice of any such waiver shall be published in the FEDERAL REGISTER within 10 days following issuance of the permit.

(a) *Application requirements.* Applications for permits under this section must be submitted to the Director by the person allegedly suffering undue economic hardship because his desired activity is prohibited by § 17.21. Each application must be submitted on an official application form (Form 3-200) provided by the Service, and must include, as an attachment, all of the information required in § 17.22 plus the following additional information:

(1) The possible legal, economic or subsistence alternatives to the activity sought to be authorized by the permit;

(2) A full statement, accompanied by copies of all relevant contracts and correspondence, showing the applicant's involvement with the wildlife sought to be covered by the permit (as well as his involvement with similar wildlife), including, where applicable, that portion of applicant's income derived from the taking of such wildlife, or the subsistence use of such wildlife, during the calendar year immediately preceding either the notice in the FEDERAL REGISTER of review of the status of the species or of the proposal to list such wildlife as endangered, whichever is earliest;

(3) Where applicable, proof of a contract or other binding legal obligation which:

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section 6(c) of the Act, who is designated by his agency for such purposes, may, when acting in the course of his official duties, take those threatened species of wildlife which are covered by an approved cooperative agreement to carry out conservation programs.

(c) Whenever a special rule in §§ 17.40 to 17.48 applies to a threatened species, none of the provisions of paragraphs (a) and (b) of this section will apply. The special rule will contain all the applicable prohibitions and exceptions.

[43 FR 18181, Apr. 28, 1978, as amended at 44 FR 31580, May 31, 1979]

§ 17.32 Permits—general.

Upon receipt of a complete application the Director may issue a permit for any activity otherwise prohibited with regard to threatened wildlife. Such permit shall be governed by the provisions of this section unless a special rule applicable to the wildlife, appearing in §§ 17.40 to 17.48, of this part provides otherwise. Permits issued under this section must be for one of the following purposes: Scientific purposes, or the enhancement of propagation or survival, or economic hardship, or zoological exhibition, or educational purposes, or incidental taking, or special purposes consistent with the purposes of the Act. Such permits may authorize a single transaction, a series of transactions, or a number of activities over a specific period of time.

(a)(1) *Application requirements for permits for scientific purposes, or the enhancement of propagation or survival, or economic hardship, or zoological exhibition, or educational purposes, or special purposes consistent with the purposes of the Act.* A person wishing to get a permit for an activity prohibited by § 17.31 submits an application for activities under this paragraph. The Service provides Form 3-200 for the application to which as much of the following information relating to the purpose of the permit must be attached:

(i) The Common and scientific names of the species sought to be covered by the permit, as well as the number, age, and sex of such species, and the activity sought to be authorized (such as taking, exporting, selling in interstate commerce);

(ii) A statement as to whether, at the time of application, the wildlife sought to be covered by the permit (A) is still in the wild, (B) has already been removed from the wild, or (C) was born in captivity;

(iii) A resume of the applicant's attempts to obtain the wildlife sought to be covered by the permit in a manner which would not cause the death or removal from the wild of such wildlife;

(iv) If the wildlife sought to be covered by the permit has already been removed from the wild, the country and place where such removal occurred; if the wildlife sought to be covered by permit was born in captivity, the country and place where such wildlife was born;

(v) A complete description and address of the institution or other facility where the wildlife sought to be covered by the permit will be used, displayed, or maintained;

(vi) If the applicant seeks to have live wildlife covered by the permit, a complete description, including photographs or diagrams, of the facilities to house and/or care for the wildlife and a resume of the experience of those persons who will be caring for the wildlife;

(vii) A full statement of the reasons why the applicant is justified in obtaining a permit including the details of the activities sought to be authorized by the permit;

(viii) If the application is for the purpose of enhancement of propagation, a statement of the applicant's willingness to participate in a cooperative breeding program and to maintain or contribute data to a studbook;

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (a)(1) of this section, the Director will decide whether or not a permit should be issued. In making this decision, the Director shall consider, in addition to the general criteria in § 13.21(b) of this subchapter, the following factors:

(i) Whether the purpose for which the permit is required is adequate to justify removing from the wild or otherwise changing the status of the wildlife sought to be covered by the permit;

(ii) The probable direct and indirect effect which issuing the permit would have on the wild populations of the

wildlife sought to be covered by the permit;

(iii) Whether the permit, if issued, would in any way, directly or indirectly, conflict with any known program intended to enhance the survival probabilities of the population from which the wildlife sought to be covered by the permit was or would be removed;

(iv) Whether the purpose for which the permit is required would be likely to reduce the threat of extinction facing the species of wildlife sought to be covered by the permit;

(v) The opinions or views of scientists or other persons or organizations having expertise concerning the wildlife or other matters germane to the application; and

(vi) Whether the expertise, facilities, or other resources available to the applicant appear adequate to successfully accomplish the objectives stated in the application.

(3) *Permit conditions.* In addition to the general conditions set forth in part 13 of this subchapter, every permit issued under this paragraph shall be subject to the special condition that the escape of living wildlife covered by the permit shall be immediately reported to the Service office designated in the permit.

(4) *Duration of permits.* The duration of permits issued under this paragraph shall be designated on the face of the permit.

(b)(1) *Application requirements for permits for incidental taking.* (i) A person wishing to get a permit for an activity prohibited by §17.31 submits an application for activities under this paragraph.

(ii) The director shall publish notice in the FEDERAL REGISTER of each application for a permit that is made under this section. Each notice shall invite the submission from interested parties, within 30 days after the date of the notice, of written data, views, or arguments with respect to the application.

(iii) Each application must be submitted on an official application (Form 3-200) provided by the Service, and must include as an attachment, all of the following information:

(A) A complete description of the activity sought to be authorized;

(B) The common and scientific names of the species sought to be covered by the permit, as well as the number, age, and sex of such species, if known;

(C) A conservation plan that specifies:

(1) The impact that will likely result from such taking;

(2) What steps the applicant will take to monitor, minimize, and mitigate such impacts, the funding that will be available to implement such steps, and the procedures to be used to deal with unforeseen circumstances;

(3) What alternative actions to such taking the applicant considered and the reasons why such alternatives are not proposed to be utilized; and

(4) Such other measures that the Director may require as being necessary or appropriate for purposes of the plan.

(2) *Issuance criteria.* (i) Upon receiving an application completed in accordance with paragraph (b)(1) of this section, the Director will decide whether or not a permit should be issued. The Director shall consider the general issuance criteria in 13.21(b) of this subchapter, except for 13.21(b)(4), and shall issue the permit if he or she finds that:

(A) The taking will be incidental;

(B) The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such takings;

(C) The applicant will ensure that adequate funding for the conservation plan and procedures to deal with unforeseen circumstances will be provided;

(D) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild;

(E) The measures, if any, required under paragraph (b)(1)(iii)(D) of this section will be met; and

(F) He or she has received such other assurances as he or she may require that the plan will be implemented.

(ii) In making his or her decision, the Director shall also consider the anticipated duration and geographic scope of the applicant's planned activities, including the amount of listed species habitat that is involved and the degree to which listed species and their habitats are affected.

(3) *Permit conditions.* In addition to the general conditions set forth in part 13 of this subchapter, every permit

issued under this paragraph shall contain such terms and conditions as the Director deems necessary or appropriate to carry out the purposes of the permit and the conservation plan including, but not limited to, monitoring and reporting requirements deemed necessary for determining whether such terms and conditions are being complied with. The Director shall rely upon existing reporting requirements to the maximum extent practicable.

(4) *Duration of permits.* The duration of permits issued under this paragraph shall be sufficient to provide adequate assurances to the permittee to commit funding necessary for the activities authorized by the permit, including conservation activities and land use restrictions. In determining the duration of a permit, the Director shall consider the duration of the planned activities, as well as the possible positive and negative effects associated with permits of the proposed duration on listed species, including the extent to which the conservation plan will enhance the habitat of listed species and increase the long-term survivability of such species.

(5) *Assurances provided to permittee in case of changed or unforeseen circumstances.* The assurances in this paragraph (b)(5) apply only to incidental take permits issued in accordance with paragraph (b)(2) of this section where the conservation plan is being properly implemented, and apply only with respect to species adequately covered by the conservation plan. These assurances cannot be provided to Federal agencies. This rule does not apply to incidental take permits issued prior to March 25, 1998. The assurances provided in incidental take permits issued prior to March 25, 1998 remain in effect, and those permits will not be revised as a result of this rulemaking.

(i) *Changed circumstances provided for in the plan.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and were provided for in the plan's operating conservation program, the permittee will implement the measures specified in the plan.

(ii) *Changed circumstances not provided for in the plan.* If additional conservation and mitigation measures are deemed necessary to respond to

changed circumstances and such measures were not provided for in the plan's operating conservation program, the Director will not require any conservation and mitigation measures in addition to those provided for in the plan without the consent of the permittee, provided the plan is being properly implemented.

(ii) *Unforeseen circumstances.* (A) In negotiating unforeseen circumstances, the Director will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the conservation plan without the consent of the permittee.

(B) If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, the Director may require additional measures of the permittee where the conservation plan is being properly implemented, but only if such measures are limited to modifications within conserved habitat areas, if any, or to the conservation plan's operating conservation program for the affected species, and maintain the original terms of the conservation plan to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the conservation plan without the consent of the permittee.

(C) The Director will have the burden of demonstrating that such unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. The Director will consider, but not be limited to, the following factors:

(1) Size of the current range of the affected species;

(2) Percentage of range adversely affected by the conservation plan;

(3) Percentage of range conserved by the conservation plan;

(4) Ecological significance of that portion of the range affected by the conservation plan;

(5) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the conservation plan; and

(6) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

(6) Nothing in this rule will be construed to limit or constrain the Director, any Federal, State, local, or Tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a conservation plan.

(7) *Discontinuance of permit activity.* Notwithstanding the provisions of §13.26 of this subchapter, a permittee under this paragraph (b) remains responsible for any outstanding minimization and mitigation measures required under the terms of the permit for take that occurs prior to surrender of the permit and such minimization and mitigation measures as may be required pursuant to the termination provisions of an implementing agreement, habitat conservation plan, or permit even after surrendering the permit to the Service pursuant to §13.26 of this subchapter. The permit shall be deemed canceled only upon a determination by the Service that such minimization and mitigation measures have been implemented. Upon surrender of the permit, no further take shall be authorized under the terms of the surrendered permit.

(c)(1) *Application requirements for permits for the enhancement of survival through Safe Harbor Agreements.* The applicant must submit an application for a permit under this paragraph (c) to the appropriate Regional Director, U.S. Fish and Wildlife Service, for the Region where the applicant resides or where the proposed action is to occur (for appropriate addresses, see 50 CFR 10.22), if the applicant wishes to engage in any activity prohibited by §17.31. The applicant must submit an official Service application form (3-200.54) that includes the following information:

(i) The common and scientific names of the listed species for which the applicant requests incidental take authorization;

(ii) A description of how incidental take of the covered species pursuant to the Safe Harbor Agreement is likely to occur, both as a result of management activities and as a result of the return to baseline;

(iii) A Safe Harbor Agreement that complies with the requirements of the Safe Harbor policy available from the Service; and

(iv) The Director must publish notice in the FEDERAL REGISTER of each application for a permit that is made under this paragraph (c). Each notice must invite the submission from interested parties within 30 days after the date of the notice of written data, views, or arguments with respect to the application. The procedures included in §17.22(e) for permit objection apply to any notice published by the Director under this paragraph (c).

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (c)(1) of this section, the Director will decide whether or not to issue a permit. The Director shall consider the general issuance criteria in §13.21(b) of this subchapter, except for §13.21(b)(4), and may issue the permit if he or she finds:

(i) The take will be incidental to an otherwise lawful activity and will be in accordance with the terms of the Safe Harbor Agreement;

(ii) The implementation of the terms of the Safe Harbor Agreement is reasonably expected to provide a net conservation benefit to the affected listed species by contributing to the recovery of listed species included in the permit, and the Safe Harbor Agreement otherwise complies with the Safe Harbor policy available from the Service;

(iii) The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any listed species;

(iv) Implementation of the terms of the Safe Harbor Agreement is consistent with applicable Federal, State, and Tribal laws and regulations;

(v) Implementation of the terms of the Safe Harbor Agreement will not be

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in conflict with any ongoing conservation or recovery programs for listed species covered by the permit; and

(vi) The applicant has shown capability for and commitment to implementing all of the terms of the Safe Harbor Agreement.

(3) *Permit conditions.* In addition to any applicable general permit conditions set forth in part 13 of this subchapter, every permit issued under this paragraph (c) is subject to the following special conditions:

(i) A requirement for the participating property owner to notify the Service of any transfer of lands subject to a Safe Harbor Agreement;

(ii) When appropriate, a requirement for the permittee to give the Service reasonable advance notice (generally at least 30 days) of when he or she expects to incidentally take any listed species covered under the permit. Such notification will provide the Service with an opportunity to relocate affected individuals of the species, if possible and appropriate; and

(iii) Any additional requirements or conditions the Director deems necessary or appropriate to carry out the purposes of the permit and the Safe Harbor Agreement.

(4) *Permit effective date.* Permits issued under this paragraph (c) become effective the day of issuance for species covered by the Safe Harbor Agreement.

(5) *Assurances provided to permittee.* (i) The assurances in subparagraph (ii) of this paragraph (c)(5) apply only to Safe Harbor permits issued in accordance with paragraph (c)(2) of this section where the Safe Harbor Agreement is being properly implemented, and apply only with respect to species covered by the Agreement and permit. These assurances cannot be provided to Federal agencies. The assurances provided in this section apply only to Safe Harbor permits issued after July 19, 1999.

(ii) The Director and the permittee may agree to revise or modify the management measures set forth in a Safe Harbor Agreement if the Director determines that such revisions or modifications do not change the Director's prior determination that the Safe Harbor Agreement is reasonably expected to provide a net conservation benefit to the listed species. However, the Direc-

tor may not require additional or different management activities to be undertaken by a permittee without the consent of the permittee.

(6) *Additional actions.* Nothing in this rule will be construed to limit or constrain the Director, any Federal, State, local or Tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a Safe Harbor Agreement.

(7) *Criteria for revocation.* The Director may not revoke a permit issued under paragraph (c) of this section except as provided in this paragraph. The Director may revoke a permit for any reason set forth in § 13.28(a)(1) through (4) of this subchapter. The Director may revoke a permit if continuation of the permitted activity would either appreciably reduce the likelihood of survival and recovery in the wild of any listed species or directly or indirectly alter designated critical habitat such that it appreciably diminishes the value of that critical habitat for both the survival and recovery of a listed species. Before revoking a permit for either of the latter two reasons, the Director, with the consent of the permittee, will pursue all appropriate options to avoid permit revocation. These options may include, but are not limited to: extending or modifying the existing permit, capturing and relocating the species, compensating the landowner to forgo the activity, purchasing an easement or fee simple interest in the property, or arranging for a third-party acquisition of an interest in the property.

(8) *Duration of permits.* The duration of permits issued under this paragraph (c) must be sufficient to provide a net conservation benefit to species covered in the enhancement of survival permit. In determining the duration of a permit, the Director will consider the duration of the planned activities, as well as the positive and negative effects associated with permits of the proposed duration on covered species, including the extent to which the conservation activities included in the Safe Harbor Agreement will enhance the survival and contribute to the recovery of listed species included in the permit.

(d)(1) *Application requirements for permits for the enhancement of survival through Candidate Conservation Agreements with Assurances.* The applicant must submit an application for a permit under this paragraph (d) to the appropriate Regional Director, U.S. Fish and Wildlife Service, for the Region where the applicant resides or where the proposed activity is to occur (for appropriate addresses, see 50 CFR 10.22). When a species covered by a Candidate Conservation Agreement with Assurances is listed as threatened and the applicant wishes to engage in activities identified in the Agreement and otherwise prohibited by § 17.31, the applicant must apply for an enhancement of survival permit for species covered by the Agreement. The permit will become valid if and when covered proposed, candidate or other unlisted species is listed as a threatened species. The applicant must submit an official Service application form (3-200.54) that includes the following information:

(i) The common and scientific names of the species for which the applicant requests incidental take authorization;

(ii) A description of the land use or water management activity for which the applicant requests incidental take authorization; and

(iii) A Candidate Conservation Agreement that complies with the requirements of the Candidate Conservation Agreement with Assurances policy available from the Service.

(iv) The Director must publish notice in the FEDERAL REGISTER of each application for a permit that is made under this paragraph (d). Each notice must invite the submission from interested parties within 30 days after the date of the notice of written data, views, or arguments with respect to the application. The procedures included in § 17.22(e) for permit objection apply to any notice published by the Director under this paragraph (d).

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (d)(1) of this section, the Director will decide whether or not to issue a permit. The Director shall consider the general issuance criteria in § 13.21(b) of this subchapter, except

for § 13.21(b)(4), and may issue the permit if he or she finds:

(i) The take will be incidental to an otherwise lawful activity and will be in accordance with the terms of the Candidate Conservation Agreement;

(ii) The Candidate Conservation Agreement complies with the requirements of the Candidate Conservation Agreement with Assurances policy available from the Service;

(iii) The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any species;

(iv) Implementation of the terms of the Candidate Conservation Agreement is consistent with applicable Federal, State, and Tribal laws and regulations;

(v) Implementation of the terms of the Candidate Conservation Agreement will not be in conflict with any ongoing conservation programs for species covered by the permit; and

(vi) The applicant has shown capability for and commitment to implementing all of the terms of the Candidate Conservation Agreement.

(3) *Permit conditions.* In addition to any applicable general permit conditions set forth in part 13 of this subchapter, every permit issued under this paragraph (d) is subject to the following special conditions:

(i) A requirement for the property owner to notify the Service of any transfer of lands subject to a Candidate Conservation Agreement;

(ii) When appropriate, a requirement for the permittee to give the Service reasonable advance notice (generally at least 30 days) of when he or she expects to incidentally take any listed species covered under the permit. Such notification will provide the Service with an opportunity to relocate affected individuals of the species, if possible and appropriate; and

(iii) Any additional requirements or conditions the Director deems necessary or appropriate to carry out the purposes of the permit and the Candidate Conservation Agreement.

(4) *Permit effective date.* Permits issued under this paragraph (d) become effective for a species covered by a Candidate Conservation Agreement on

the effective date of a final rule that lists a covered species as threatened.

(5) *Assurances provided to permittee in case of changed or unforeseen circumstances.* The assurances in this paragraph (d)(5) apply only to permits issued in accordance with paragraph (d)(2) where the Candidate Conservation with Assurances Agreement is being properly implemented, and apply only with respect to species adequately covered by the Candidate Conservation with Assurances Agreement. These assurances cannot be provided to Federal agencies.

(i) *Changed circumstances provided for in the Agreement.* If the Director determines that additional conservation measures are necessary to respond to changed circumstances and these measures were set forth in the Agreement, the permittee will implement the measures specified in the Agreement.

(ii) *Changed circumstances not provided for in the Agreement.* If the Director determines that additional conservation measures not provided for in the Agreement are necessary to respond to changed circumstances, the Director will not require any conservation measures in addition to those provided for in the Agreement without the consent of the permittee, provided the Agreement is being properly implemented.

(iii) *Unforeseen circumstances.* (A) In negotiating unforeseen circumstances, the Director will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the Agreement without the consent of the permittee.

(B) If the Director determines additional conservation measures are necessary to respond to unforeseen circumstances, the Director may require additional measures of the permittee where the Agreement is being properly implemented, but only if such measures maintain the original terms of the Agreement to the maximum extent possible. Additional conservation measures will not involve the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or

other natural resources otherwise available for development or use under the original terms of the Agreement without the consent of the permittee.

(C) The Director will have the burden of demonstrating that unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. The Director will consider, but not be limited to, the following factors:

(1) Size of the current range of the affected species;

(2) Percentage of range adversely affected by the Agreement;

(3) Percentage of range conserved by the Agreement;

(4) Ecological significance of that portion of the range affected by the Agreement;

(5) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the Agreement; and

(6) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

(6) *Additional actions.* Nothing in this rule will be construed to limit or constrain the Director, any Federal, State, local or Tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a Candidate Conservation with Assurances Agreement.

(7) *Criteria for revocation.* The Director may not revoke a permit issued under paragraph (d) of this section except as provided in this paragraph. The Director may revoke a permit for any reason set forth in § 13.28(a)(1) through (4) of this subchapter. The Director may revoke a permit if continuation of the permitted activity would either appreciably reduce the likelihood of survival and recovery in the wild of any listed species or directly or indirectly alter designated critical habitat such that it appreciably diminishes the value of that critical habitat for both the survival and recovery of a listed species. Before revoking a permit for

either of the latter two reasons, the Director, with the consent of the permittee, will pursue all appropriate options to avoid permit revocation. These options may include, but are not limited to: extending or modifying the existing permit, capturing and relocating the species, compensating the landowner to forgo the activity, purchasing an easement or fee simple interest in the property, or arranging for a third-party acquisition of an interest in the property.

(8) *Duration of the Candidate Conservation Agreement.* The duration of a Candidate Conservation Agreement covered by a permit issued under this paragraph (d) must be sufficient to enable the Director to determine that the benefits of the conservation measures in the Agreement, when combined with those benefits that would be achieved if it is assumed that the conservation measures would also be implemented on other necessary properties, would preclude or remove any need to list the species covered by the Agreement.

[50 FR 39689, Sept. 30, 1985, as amended at 63 FR 8871, Feb. 23, 1998; 63 FR 52635, Oct. 1, 1998; 64 FR 32714, June 17, 1999; 64 FR 52676, Sept. 30, 1999; 69 FR 24093, May 3, 2004; 69 FR 29670, May 25, 2004.]

§ 17.40 Special rules—mammals.

(a) [Reserved]

(b) Grizzly bear (*Ursus arctos*)—(1) *Prohibitions.* The following prohibitions apply to the grizzly bear:

(i) *Taking.* (A) Except as provided in paragraphs (b)(1)(i)(B) through (F) of this section, no person shall take any grizzly bear in the 48 conterminous states of the United States.

(B) Grizzly bears may be taken in self-defense or in defense of others, but such taking shall be reported, within 5 days of occurrence, to the Assistant Regional Director, Division of Law Enforcement, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225 (303/236-7540 or FTS 776-7540), if occurring in Montana or Wyoming, or to the Assistant Regional Director, Division of Law Enforcement, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1490, 500 Northeast Multnomah Street, Portland, Oregon 97232 (503/231-6125 or FTS 429-6125), if occurring in Idaho or Wash-

ington, and to appropriate State and Indian Reservation Tribal authorities. Grizzly bears or their parts taken in self-defense or in defense of others shall not be possessed, delivered, carried, transported, shipped, exported, received, or sold, except by Federal, State, or Tribal authorities.

(C) *Removal of nuisance bears.* A grizzly bear constituting a demonstrable but non immediate threat to human safety or committing significant depredations to lawfully present livestock, crops, or beehives may be taken, but only if:

(1) It has not been reasonably possible to eliminate such threat or depredation by live-capturing and releasing unharmed in a remote area the grizzly bear involved; and

(2) The taking is done in a humane manner by authorized Federal, State, or Tribal authorities, and in accordance with current interagency guidelines covering the taking of such nuisance bears; and

(3) The taking is reported within 5 days of occurrence to the appropriate Assistant Regional Director, Division of Law Enforcement, U.S. Fish and Wildlife Service, as indicated in paragraph (b)(1)(i)(B) of this section, and to appropriate State and Tribal authorities.

(D) *Federal, State, or Tribal scientific or research activities.* Federal, State, or Tribal authorities may take grizzly bears for scientific or research purposes, but only if such taking does not result in death or permanent injury to the bears involved. Such taking must be reported within 5 days of occurrence to the appropriate Assistant Regional Director, Division of Law Enforcement, U.S. Fish and Wildlife Service, as indicated in paragraph (b)(1)(i)(B) of this section, and to appropriate State and Tribal authorities.

(E) [Reserved]

(F) *National Parks.* The regulations of the National Park Service shall govern all taking of grizzly bears in National Parks.

(ii) *Unlawfully taken grizzly bears.* (A) Except as provided in paragraphs (b)(1)(ii)(B) and (iv) of this section, no person shall possess, deliver, carry, transport, ship, export, receive, or sell any unlawfully taken grizzly bear. Any