

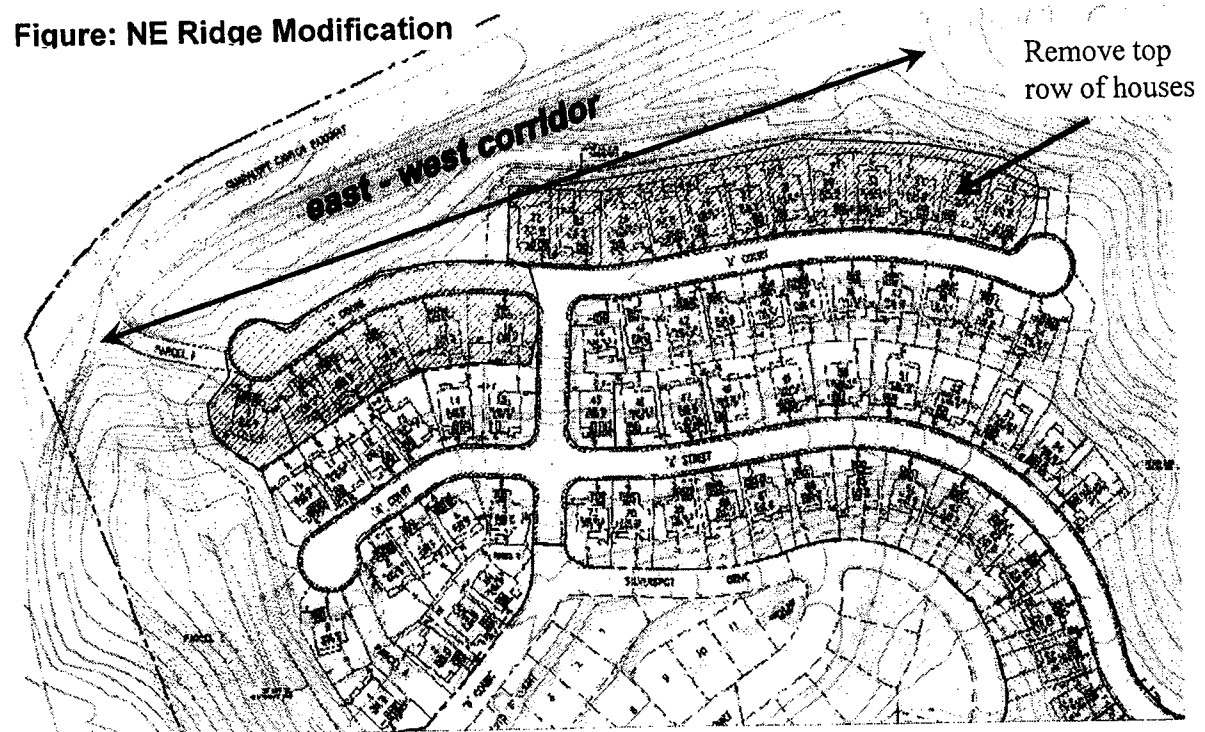
since we have recently had a fair number of fires on San Bruno Mt that may have locally killed butterflies in spite of reinvigorating their host and nectar plants.

2. Nearly all of the data relies from TRA that has violated scientific monitoring tenets from 1982-2000 yet still refers to some data collection from 1981-1982 as valid. This group has lost scientific credibility and any non-peer reviewed data from this time, such as their 1981-1982 catch and release study, is suspect. Further, continued use of this vendor to manage the HCP up to 2007 and to continue to monitor the HCP has resulted in a irretrievable conflict of interest that is equivalent to a builder acting as their own inspector, e.g. not wanting to find fault with their own previous studies.

### Restoring an East-West Migratory Corridor

A partial solution for restoring some of the east west corridor between Guadalupe and the northern end of the housing development is to remove the most northerly row of houses which would effectively double the width of the corridor. This would allow for significantly less grading thereby reducing damage to habitat needing less mitigation and thus save some cost. There are 18 home sites highlighted representing 25% of the 71 proposed units. It would be reasonable to reduce the HCP "donation" from \$4M to \$3M if there was a reduction of housing by 25%. There is significant Mission Blue and Callippe habitat directly west of the proposed development and maintaining the upper area as a migratory corridor – especially in light of the hill-topping of Callippe would be more consistent with their flight capabilities than expecting Callippe to cross Guadalupe twice to get around this development.

Figure: NE Ridge Modification



Finally, as I have already stated, I have substantial reservations about the data referenced as its from one vendor that, for the first 16 years of the HCP used monitoring procedures that were not viewed as scientifically acceptable resulting in a peer-review criticism and wholesale revision of population monitoring on San Bruno Mt. In science, once some data integrity has been questioned, all data becomes suspect and restoration of integrity and credibility may never be achieved.

According to a review by Longcore et al (2004) of TRA San Bruno Mt monitoring from 1982 to 2000 "The wandering transects violates most tenets of survey design". This vendor provided essentially useless butterfly population monitoring data for 18 years, knowingly using unacceptable scientific monitoring techniques. It is greatly appreciated, for both the public good and the species benefit that a scientifically sound and peer-reviewed monitoring scheme has been developed. Nevertheless, allowing the self same vendor that knowingly violated scientific techniques for over a decade to continue to monitor and manage the San Bruno HCP is remarkable! In another instance, this same vendor was fired by the US National Park Service in the 1990's for an unacceptable monitoring technique for monitoring the Mission Blue butterfly population at Milagra Rigde, GGNRA (Joe Cannon, Personal Communication). If this event was a unitary lapse that only impacted one year, then I would be a bit more lenient, however, there were repeated violations, and in more than one way and with multiple clients leading me to a complete lack of confidence in nearly all areas.

In the scientific and business community, this sort of failure would be grounds for immediate firing, barring of future work (e.g. NIH) and, for scientific publications, retraction of any claims made about the data. Furthermore, any other work undertaken by the same vendor is suspect as we do not know what has and what has not been done properly. Instead, even after this criticism and years of violation, HCP trustees and the FWS allowed this vendor to continue to not only monitor but also manage the HCP. Additionally, this vendor has not retracted any of their published reports from 1982 to 1998, which in the scientific arena would be required. However, as this vendor is not only the author of the annual reports from 1982 to 2000 but was also the "publisher" they are self-conflicted as a retraction of this magnitude would negatively impact future commercial work in environmental monitoring and would cause questions to arise about the validity of other previous work, and rightly so. Again, in the scientific world, if the author failed to retract knowingly invalid data and claims, then it's the responsibility of the overseeing group to retract this data. Allowing this data to remain un-retracted thereby contaminates the information that FWS relies on.

Indeed, the FWS policy statement on the "the best scientific and commercial data available" is further described according to policy guidance "To gather and impartially evaluate biological, ecological, and other information that disputes official positions, decisions, and actions proposed" ([www.fws.gov/endangered/policy/Pol004.html](http://www.fws.gov/endangered/policy/Pol004.html)). This statement should not mean that any data is considered acceptable just because there is no other data available. I hope that the FWS does not meekly accept information without critical scientific review and evaluation to determine whether or not it is credible data. Indeed, another regulatory agency, the FDA, audits original data and for a local company, ARCA in San Carlos, the FDA has recently questioned integrity of trial data and required additional studies to be completed<sup>2</sup>.

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<sup>2</sup> [www.reuters.com/article/rbssHealthcareNews/idUSBNG44794420090601](http://www.reuters.com/article/rbssHealthcareNews/idUSBNG44794420090601) ARCA: FDA denies approval for heart drug, seeks data

The negative declaration relies, in part, on a claim that the migration corridor is sufficient based on a 1982 catch and release study undertaken by TRA and results described in only brief snippets. Due to the lack of valid population data collected at that time, I cannot, as a scientist, accept the claims for this very old study which was never fully written up but instead has been presented as snippets. . the interpretations that are contained in the Negative Declaration are not merely based on population numbers but are based on interpretations of butterfly dispersal and viability, which I disagree with substantially. Even some of TRA's own data do not support the conclusions in the Negative Declaration -- no butterflies have been seen in years on the area north of Guadalupe Canyon Parkway, therefore the assumption that this is a viable alternative migratory corridor is not supported

I hope that my input may result in a re-evaluation of the interpretation that there is no significant impact on these two critically endangered species and additionally hope that the HCP trustees and FWS consider the minor modification of reducing 25% of homes to increase the east west corridor width at the northern end of the site with a concordant HCP reduction by 25%. Furthermore, I strongly urge the HCP trustees to replace the HCP monitor with an independent group that has a history of scientific integrity. The alternative, I fear, is that some time in the future we will be bussing around butterflies to the NE ridge and vice versa to the SE ridge on a regular basis to restore butterfly populations when a modification to the current plan may suffice.

I understand that the HCP situation may predate the involvement of many of those involved. It certainly predates my involvement and much of my habitat restoration work has been essentially cleaning up other peoples mistakes. However, I hope that the seriousness of the situation is fully understood and appreciated by those in decision-making authority and they take responsibility of the situation and do not let a short-term situation conflict with long term species survival.

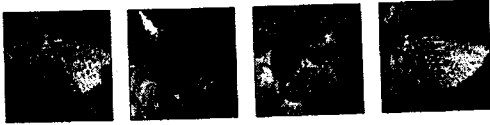
Sincerely Yours,



Amie E. Franklin, PhD

## Quest for endangered Mission blue butterflies

John Coté, Chronicle Staff Writer  
Friday, April 17, 2009



Stuart Weiss crept along a windswept ridge of San Bruno Mountain looking for his quarry. A white net fluttered behind him like a windsock.

"Be very quiet," Weiss said. "We're hunting Mission blue butterflies."

Weiss laughed at his Elmer Fudd impersonation. "We get a little silly out in the field," he said.

But the work of saving the endangered Mission blue is anything but a laughing matter for Weiss and San Francisco city officials. On Thursday they began to reintroduce the insects on Twin Peaks, one of the butterflies' few remaining habitats and a spot where only a few are thought to live.

Still, a sense of humor came in handy during the painstaking work of trying to capture pregnant butterflies from the mountaintop near Brisbane.

The hope Thursday was to net 22 pregnant females. The result: two.

That's progress, though, and the city's Recreation and Park Department, with the help of Weiss' Menlo Park-based Creekside Center for Earth Observation, has until early June to try to catch the rest under a permit issued by the U.S. Fish and Wildlife Service.

"It's better than zero," said Lisa Wayne, overseeing the project for the Recreation and Park Department, as fine mesh was placed over two mounds of silver lupine - the butterfly's natural host plant - on Twin Peaks. The two pregnant Mission blues driven from San Bruno Mountain were released under the mesh.

The white veils were removed a few hours later after the butterflies had a chance to adjust to their new home.

The Twin Peaks' population of Mission blue butterflies, which have been listed as an endangered species since 1976, has crashed in recent years. The suspected culprit is 1998's El Niño storms, which seriously damaged the silver lupine in the area.

Between 2001 and 2007, Recreation and Park staffers observed only two adults and two larvae on Twin Peaks, down from 10 adults in 1997 and more than 150 in 1981.

Last year, only one was spotted, said Jared Blumenfeld, interim San Francisco parks chief.

"We've doubled the population," Blumenfeld said after the relocation. "It kind of gives you hope."

E-mail John Coté at [jcote@sfgate.com](mailto:jcote@sfgate.com).

<http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2009/04/17/BA9M173V2U.DTL>

This article appeared on page **B - 2** of the San Francisco Chronicle

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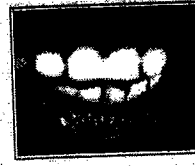
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Letter to the US FWS                      San Bruno Mountain HCP Revision  
From Amie E. Franklin, PhD  
Formerly: 500 Humboldt Road, Brisbane, CA 94005  
Currently: 653 Sharp Park Road, Pacifica, CA 94044

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June 13, 2008

copy

To: Eric Tattersall, Acting Chief, Conservation Planning and Recovery Division  
U.S. Fish and Wildlife Service,  
Sacramento Fish and Wildlife Office,  
2800 Cottage Way, W-2605  
Sacramento, CA 95825

**Re: Amendments Proposed for Nation's First Habitat Conservation Plan to Improve  
Protection of Rare Species on San Bruno Mountain**

As a scientist, member of the public and former Brisbane city resident and current San Mateo County resident I oppose the current amendment and strongly disagree with number of assertions claimed including the claim that the HCP revision does not de-fragment but permanently fragments and isolates the northeast ridge into an isolated island. According to Damschen et al (2006), "Habitat fragmentation is one of the largest threats to biodiversity". I argue that the Service has not done enough to ensure that Callippe Hill habitat is contiguous and not physically and genetically isolated from the remainder of San Bruno Mountain. I emphasize habitat since genetic and physical isolation is an issue not only for the 2 listed endangered species but also their larval host plants, their host nectar plants and the ants that tend the larvae. The Service admits that Callippe Hill represents a valuable host site for the Callippe yet, this site is doomed for permanent isolation with this plan, the consequences of which are almost universally local extinction as evidenced by the local extinction of Mission Blue – last observed in 2005 - at its original type locality in Twin Peaks of San Francisco (personal communication).

For the Service's records I have provided a number of documents describing my concern about the HCP revision at the local level in the city of Brisbane where I was a resident until recently. These are as follows:

1. Powerpoint to Brisbane City Council, March 10, 2008
2. Email Letter and Powerpoint to Brisbane City Council, February 25, 2008
3. Letter, reference articles to Brisbane Planning Commission, September 27, 2007
4. Minutes of Brisbane Planning Commission, September 27, 2007
5. Minutes of Brisbane Planning Commission, September 13, 2007
6. Minutes of Brisbane City Council May 15, 2006 (HCP revision essentially signed off without full information provided to public or planning commission involvement, ≥ \$600,000 "overpayment" by developer "forgiven" to city for city hall improvements, etc.)

My arguments have been very consistent over the past year in that the isolation of Callippe Hill is essentially permanent from a species perspective and would result, over time, in a de facto take of all of the site's mission blue and callippe due to density-independent mortality uncompensated by immigration/rescue recolonization. Since my original concerns were presented to public officials, a fire has occurred on the Hill (late summer 2007) which likely contributed to significant butterfly or egg/larva mortality. Consequently, there may have occurred a local

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population loss event already, but without any bone fide monitoring in the Spring of 2008, this will only be determined until a respected scientific monitoring occurs. Additionally, ongoing fire risk is real – there has been a fire on the Southeast ridge already this year. It is overly presumptive to assume that the NE Ridge colony may not be as important for rescue re-colonization of the SE Ridge which is circumnavigated by much busier roadways which puts the SE Ridge at greater risk for fires such as the recent fire off of Bayshore just this past month.

#### *“Best Science”*

Much of the FWS research is reliant on the best available science. In order to use the “best available science” the data to support the science has to be collected and analyzed in a scientific way. I assert that the original data collected by the former HCP manager since 1982 does not rise to the level of science and is insufficient to base an irreversible decision to permanently isolate Callippe Hill of the Northeast Ridge from the remainder of San Bruno Mountain. I make this assertion as I have a PhD from Stanford University, Department of Biological Sciences, postdoctoral research at UC Berkeley, multiple peer-reviewed scientific publications and multiple government grants awarded and now work in the biotechnology industry. Longcore in their review of the monitoring by TRA from 1982 to 2000 concluded that “The wandering transects violates most tenets of survey design. It is “convenience sampling” (Anderson 2001), providing no replication for comparison.” Replication is a key aspect of science. They further go on to state, “Ample scientific literature was available at the time that the survey technique was designed to indicate the value of replication in the form of fixed, repeated transects (Pollard et al. 1975, Pollard 1977). Failure to follow such methods, or to develop a statistically rigorous sampling scheme, reduced the scientific value of the monitoring program.” As a scientist, I would argue that this eliminates all scientific utility and is little more than information provided by a field guide of location and presence or absence of a species with no knowledge of how close to extinction the species is. The original opinion by the FWS in 2006 (with no map showing the modification ?!) relied on Longcore’s analysis but at best could only use the word “occupancy” and could not even use the word population for the northeast ridge callippe. The Service had an opportunity, even years, to have a survey conducted on the Northeast Ridge but to my knowledge no scientific surveys by a non-conflicted party not associated with the HCP have been undertaken.

#### *Conflict of Interest*

I briefly want to mention conflict of interest. The allowance by the FWS to accept both butterfly monitoring and habitat conservation/restoration by the same party for decades has allowed an inappropriate conflict of interest to persist. This conflict of interest is equivalent to a developer acting as their own building inspector, something that is rightly not allowed. Furthermore, continuing to allow this former HCP manager to continue in their role as population monitor does not negate their conflict of interest, particularly in light of the fact that their former methods for population monitoring are not regarded as reliable nor repeatable. Certainly, in the world of

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San Bruno Mountain HCP Revision

June 13, 2008

peer-reviewed science, these behaviors are not allowed to persist as they would degrade the trust in the scientific process. In this case, by the Service's allowance of over 20 years of accepting a monitor that does not follow standard scientific practices, the public has lost trust in the Service. This lack of trust on the part of the public is further substantiated by the activities of one or more of the Service's highest official who unilaterally reversed decisions on endangered species including those in California. It is not lost on the public that the developer, Brookfield has "forgiven" overpayments and deposits to benefit the city of Brisbane's facilities. Brookfield homes is a publically traded company that is majority owned (>57%) by a large multi-billion Canadian company Brookfield Asset Management. There is no reason to believe that either of these entities are concerned about endangered species in the United States.

The City of Brisbane, the developer Brookfield Homes and the US Fish & Wildlife have all presented documents to support the revised development plans on the Northeast Ridge of San Bruno Mountain. The heavy reliance on the monetary endowment to compensate for permanent loss of habitat and the mitigation of temporarily disturbed habitat is not sufficient given the non-science and minimal restoration that the previous 20+ years of HCP funding has supported. Again the public has little faith that this new amount of money will be used in a meaningful way given past experience and the lack of oversight and concern by FWS due to financial constraints with the Service. The Service should not make claims it cannot keep.

My interest in this is that I have been until recently a resident of the city of Brisbane and I remain a resident of San Mateo County. I am a trained scientist in the biopharmaceutical industry with a PhD from the Department of Biological Sciences, Stanford University followed by postdoctoral training in plant genetics at University of California at Berkeley. Furthermore, I have been involved in the GGNRA Site Stewardship (Sue Gardner, NPS) and Habitat Restoration Team (Maria Alvarez, NPS) Volunteer Programs since 1995 and have been directly involved in a large number of restoration projects in the GGNRA/NPS with this program at sites located from Bolinas in the north to as far south as Edgewood County Park. I have supported habitat restoration efforts since 2004 on San Bruno Mountain. My combined scientific training – primarily plant biology – coupled with my long-term volunteer habitat restoration work has led me to present my views on the proposed project.

The Agency has significant powers to revise the HCP plan, such as increasing the size and extent of a migration corridor, more aggressive outplanting programs of lupines for the mission blue which is not known as an active flyer as much as the Callippe. If there is an HCP revision, there should also be more external scientific, preferable academic peers, to review and revise the plan at the trustee level since the current trustees, city managers and the county supervisor, do not have the training nor are they up to date in wildlands and conservation biology. According to Kareiva et al of the NCEAS HCP working group in their evaluation of HCPs including the San Bruno Mountain HCP, concluded that:

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- species, HCPs must include information about the *status* of populations and habitats
- scientific standards for HCPs,
- include an explicit summary of available data on covered species,
- recommended the establishment of a scientific advisory committee and increased use of independent peer review

I support these recommendations and would support the FWS to do the following:

- Modify the development plan to have a real migration corridor that provides grassland, larval hosts and nectar hosts to connect Callippe to the remainder of San Bruno Mountain. This may require eliminating a row of houses in the middle, the use of pavers instead of asphalt in certain areas, the modification of landscaping around the houses
- Modify the HCP plan makeup with external scientists – preferable academic, have the HCP plan peer-reviewed AND revised by external scientists involved in conservation biology
- Foster volunteer programs similar to those in the GGNRA, instead of the currently antagonism between the volunteer groups and the HCP
- Provide for an annual San Bruno Mountain Day to bring together the public, scientists and volunteers for working seminars, update and learning - the public is currently mystified and miffed by FWS, trustees and the HCP manager, this could be similar to the annual Cal IPC meeting.

I hope the agency seriously considers my views and the views of concerned scientists and citizens. The Service has negotiating power to support the endangered species act and money is not sufficient compensation for loss of a species.

Yours Sincerely,

Amie E. Franklin, PhD

# Brisbane City Council Meeting March 10, 2008

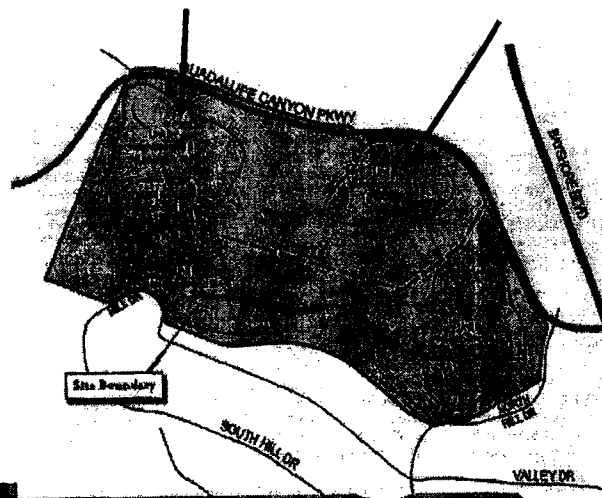
Amie E. Franklin, PhD



NE Ridge Development: 2007 VTM "preferred" over 1989 VTM by  
BHS and FWS to save "Prime" over "Degraded" Habitat

2007 VTM

1989 VTM

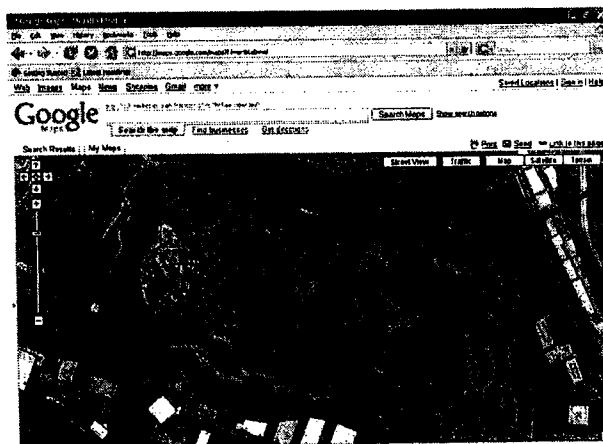


## 2007 VTM versus 1989 VTM

- Brookfield/FWS/Brisbane City Staff:  
Rationalization for relocating VTM
  - Saves higher value, un-degraded butterfly habitat on NE Ridge
  - Claims migration corridors in 2007 VTM sufficient for Callippe Migration
- Assumptions:
  - NE Ridge Butterfly colonies present and viable
  - Migration corridors will be used by butterflies



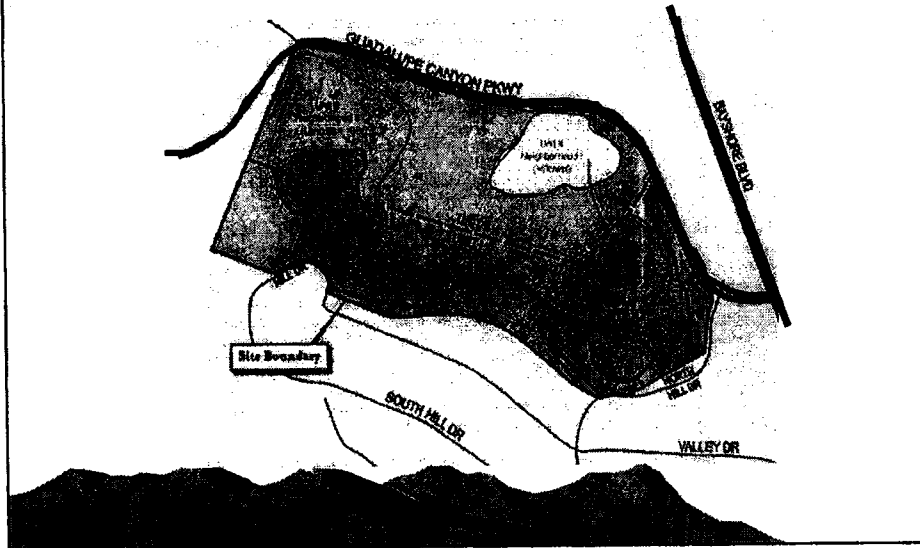
## NE Ridge 2007 Fire - Extant



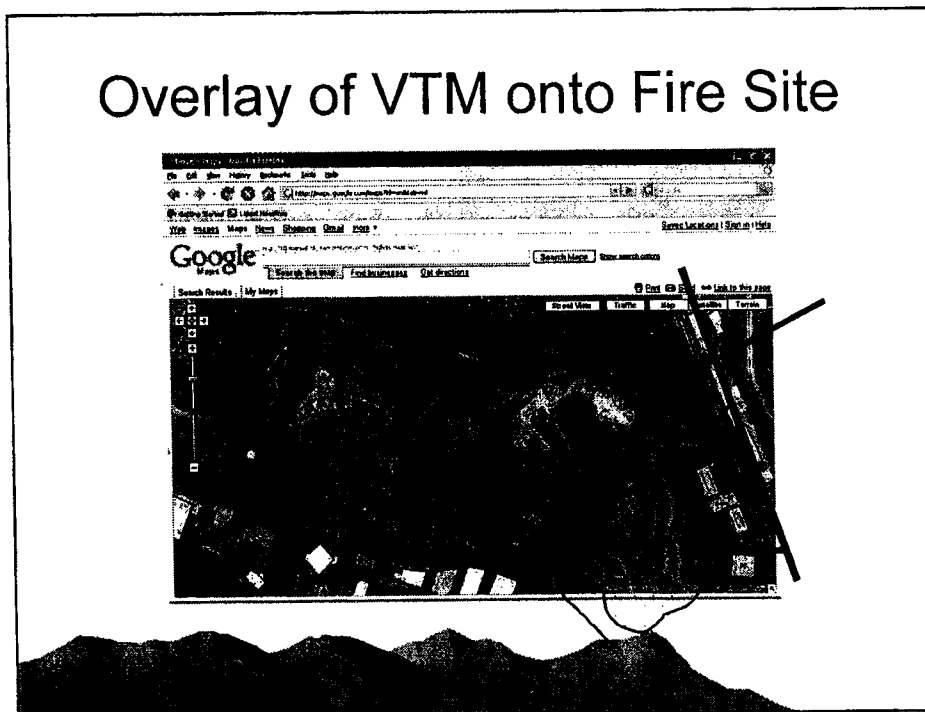
NE Ridge Burn Area - 2007



## Overlay of VTM onto NE Ridge



## Overlay of VTM onto Fire Site



## Outstanding Questions

- What is the Actual 2008 butterfly population on the NE Ridge?
  - 2007 NE Ridge fire on peak of Callippe Hill may have caused significant butterfly mortality
  - Are Mission Blue effected differently/same as Callippe?
    - important info for habitat management
  - Have lupines and/or violas recovered?
    - If so, then butterfly population may recover
    - If not, then the butterfly population may not recover

## Recommendations

- 2008 is critical for NE Ridge colonies due to 2007 fire and potential 2008 development
- A grass fire may acutely affect butterfly populations just like over-collecting
- Recommend 2 independent groups monitor NE Ridge
  - Single group has had conflict of interest
    - Technique of "wandering transects" not accepted in population monitoring - criticized by independent scientists
  - 2 monitoring groups should independently validate each other
    - Results should be within reasonable error
  - Provides a solid baseline population estimate going forward
  - Learn short and long term effects of fire on populations
  - NE Ridge smaller acreage than San Bruno Mt, so should cost less



## More Questions

- What if the NE Ridge Populations are too small survive??
  - Original 1982 estimate Callippe calc at 2000 individuals
  - How low can a population be to be viable?
  - Migration corridors may support individuals to maintain genetic diversity, but need large numbers for rescue re-colonization



copy

Attached is my powerpoint (1) in case city staff did not save it from the computer. I first saw the NE Ridge Application on Brisbane Cable this past summer/fall of 2007 when presented to the public. I have previously provided 2 letters to the Brisbane Planning Commission. Its been challenging to catch up on the HCP development documents in a this short time. This letter covers my concerns already presented to the City Council re: isolation of NE Ridge, lack of corridor, and fire hazard, as well as quotes from the original HCP, NE EIR Addendum and the FWS 2006 Opinion which are all part of the public record.

The NE EIR Addendum claims that the proposed development benefit the Callippe by "decreasing habitat fragmentation" (2) as compared to the 1989 VTM. However, in their 2006 Opinion even the FWS recognizes that, "Construction of the proposed projects will also likely further fragment the mission blue and callippe's habitat" (3) but that "The most important beneficial effect proceeding with an amendment to the HCP is additional funding." (4). In my view the 2007 VTM redesign permanently isolates the two endangered butterfly colonies from the remainder of San Bruno Mountain.

My primary concern is to maintain the continuity of the NE Ridge Mission Blue and Callippe Colonies with the SE Ridge. This continuity may prevent inbreeding and may also allow a colony be re-established in case of a widespread fire. I disagree with the EIR addendum that a sufficient corridor is present to allow these activities.

There was fire on the NE Ridge just this past summer which clearly must have caused butterfly death. Furthermore, a fire combined with overcollecting is believed to have extinguished the Bay Checkerspot butterfly on the mountain in ~1984. Other fires have occurred on both the NE and SE Ridges, consequently neither colony is inherently safe.

The fire prevention activities instituted by the City and Staff on the SE Ridge –reducing the eucalyptus groves– should help reduce the possibility of a Santa Barbara/Oakland Hills type fire which would be catastrophic for both humans and wildlife alike. Additional fire prevention is entailed in the HCP which provides guidance that there should be up to a 30 ft wide fire break buffer. (5)

I do not view the strip at the top of the NE development as a bone fide corridor – it is merely a steep remnant based on geological and engineering constraints. This design for the NE development will result in permanent isolation of both the Mission Blue and Callippe populations. The HCP discussed barriers such as "dense brush or plantings of trees (such as the Eucalyptus groves on Northeast Ridge), major paved roads and residential lots act as severe barriers to Mission Blue, and significant barriers to Callippe as well." (6)

In the new 2007 VTM the apparent size of the undeveloped corridor ranges from ~37-70 feet wide over a length of greater than 745 ft (7) delimited on its sides by Guadalupe Parkway and the development. However, the HCP guidance for corridors is as follows, "... the optimum corridor should have a width-to-length aspect ratio of at least 1:2."(8) Consequently, the corridor

Letter to the City Council  
From Amie E. Franklin, PhD  
Formerly: 500 Humboldt Road, Brisbane  
Currently: 653 Sharp Park Road, Pacifica

NE EIR Addendum

February 25, 2008

should be over 360 ft wide, particularly since we have no evidence to support long-distance Mission Blue dispersal in lieu of a corridor.

There is a real concern here since even the FWS opinion did recognize that callippe populations have been reduced "...in the northern portion of the study area, in the vicinity of development on or near the Northeast Ridge." (9) Consequently, there is already concern that this colony is at risk; it is unknown what number of adult butterflies will emerge this year given the fire.

Finally, it is unclear to me why the developer/FWS/city staff preferred this design option. I do recognize that the city and staff have done a number of other activities to enhance the endangered species such as density transfer and buying up certain Brisbane Acres lots. Nevertheless, this legacy development is still a major redesign that the council should review in light of the negative recommendation from the Planning Commission. It's unknown if the developer made any attempt revise their plan in light of the Planning Commission's response.

For the FWS, the increased funding was clearly the primary reason they accepted 2007 VTM redesign which fragments the NE Ridge colonies. Unfortunately, in spite of 2 decades of "funding", and lots of reports, the former HCP plan operator oversaw the conversion of a species from threatened to endangered instead of its de-listing.

FWS has admittedly been understaffed and underfunded and had a senior staff resign in 2007 due to inappropriate interference in endangered species decisions (10). Furthermore, FWS received input from the HCP Plan Operator, Thomas Reid & Associates, which had the most to gain from "increased HCP funding" and hence was conflicted. This group stopped being the HCP Plan Operator in the summer of 2007. Consequently, as a member of the public I am concerned about the quality and sources of the information being used to make an irreversible decision that would impact 2 endangered species.

Thank you for your patience and I will make every effort to be as clear as possible and avoid scientific jargon in the future.

Yours Sincerely,  
Amie E. Franklin, PhD


- (1) Powerpoint presentation to Brisbane City Council
- (2) NE Ridge EIR Addendum pp 2
- (3) FWS 2006 Opinion 1-1-06-F-0937 pp 38
- (4) FWS 2006 Opinion 1-1-06-F-0937 pp 43
- (5) HCP III – pp 33, "e. Buffer (Fire Break) ...a general buffer for habitat conservation purposes would provide up to 30 feet of firebreak at the edge of the building lot."
- (6) HCP III pp 2
- (7) Calculated from NE EIR Addendum Map Fig II-4
- (8) HCP III – pp.29
- (9) FWS 2006 Opinion 1-1-06-F-0937 pp 25-26
- (10) [www.fws.gov/endangered/pdfs/macdonald/ESA\\_Review\\_NR\\_FINAL.pdf](http://www.fws.gov/endangered/pdfs/macdonald/ESA_Review_NR_FINAL.pdf)

# Brisbane Planning Commission Meeting February 11, 2008

Amie E. Franklin, PhD



## Bio

- Education
    - B.S. UC Berkeley – Plant Molecular Biology
    - Ph.D., Stanford University – Plant Biology
    - Postdoctoral Research - UC Berkeley – Plant Genetics & Cell Bio
  - Work
    - Biotech – Pangene (Cell Biology/Cancer Research)
    - Biotech – EGB Advisors (Biotech Consulting)
    - Biotech – Urogen Pharmaceuticals, Inc.
  - Other
    - Volunteer – Lippman Middle School Science Fair Judge
    - Volunteer – NPS/GGNRA – Habitat Restoration Team since 1995 at Milagra & Sweeny Ridges, Fort Funston, Presidio, Marin Headlands, Muir Woods see:
      - [www.parksconservancy.org/calendar/index.asp?event=147](http://www.parksconservancy.org/calendar/index.asp?event=147)
      - [www.parksconservancy.org/our\\_work/stewardship/index.asp](http://www.parksconservancy.org/our_work/stewardship/index.asp)
- 

## Development on NE Ridge

- Multiple endangered species
  - Callippe - SB Mt only site
  - Mission Blue – SB largest, main site
- ~2000 Callippe in 1983 on NE Ridge
  - Based on TRA total population and % on NE Ridge colony – original HCP
  - Given Endangered Status, must be lower than 2000 individuals

## Butterfly Populations

- Rely on host plants for food and shelter larvae
  - Callippe – Viola – has never been propagated
  - Mission Blue – Lupine – easy to propagate
- Rely on nectar plants for food
- Mission Blue rely on ants to prevent wasp parasitism

## Population Extinction cont.


- Density-independent mortality
  - Fire – there have been 2 fires on NE Ridge within the past 5 years
    - Wax-Myrtle Fire 5 years ago
    - Fire on NE Ridge past year
  - Fire on SE Ridge above Glen Park
    - Fire 2 years ago

***Hence, no guarantee that SE Ridge is safe from extinction.***


## Local Extinction & Re-colonization

- From SE to NE Ridge and vice versa
- Re-colonization would suffer from “Founders Effect” e.g. manx cats on the isle of man have mutation
- Re-colonized site would still need annual gene flow – to maintain healthy genetic diversity and prevent inbreeding

## SE to NE Ridge Corridor

- Corridor estimated minimum ~600ft
  - Butterflies have short lives – from FWS opinion re Arnold 1981
    - 4.9 days for male Callippe
    - 7.3 days for female Callippe
  - Butterflies would need to fly against prevailing wind
- 

## FWS Opinion

- The 1 paragraph from the 1-1006-F-0937 FWS Biological Opinion (in Robin's preamble)
    - Belief that corridor would allow "movement"
    - Opinion is just that.
      - No demonstration that revegetation has ever worked
      - Butterflies would need to start down the "corridor" as soon as they were born
      - Need enough butterflies to try to fly corridor since its against the prevailing wind, they stop, don't fly straight, etc.
    - Only discuss butterfly movement, no mention of gene flow or mortality
- 

## Summary

- Disagree with FWS biological opinion
- Isolating NE Ridge would increase likelihood of local extinction due to density-independent mortality e.g. fire
- EIR and FWS rely on research undertaken by conflicted HCP manager/monitor





## Population Threats

- Density-dependent mortality
  - Less of a factor for low density/endangered species
  - Wasp parasitism
  - Predation
  - Butterfly collectors!



## Population Extinction

- Density-independent mortality
  - Weather – too hot, cold, wet, dry
  - Fungal infections noted by TRA in their reports 2 different years
  - Inbreeding depression/accumulation of deleterious mutations – generally preventable by ~1% gene flow



copy

Amie E. Franklin, PhD  
500 Humboldt Road  
Brisbane, CA 94005

sent to Jesse Wild.  
Sacramento Fish & Wildlife  
2800 Cottage Way, W-2605  
Sacramento, CA 95825

Re: San Bruno Mountain HCP/Revised Development Plan  
October 2, 2007

Dear Jesse,

It was a pleasure to meet with you and learn about the challenges that the U.S. Fish and Wildlife service has in trying to identify a path forward between the needs and rights of private landowners/developers and the long-term goals of the Endangered Species Act. I hope you also learnt something at the meeting and that the US FWS views residents of Brisbane, particularly the long-timers, as a valuable resource for information and institutional memory of the original HCP, approvals, etc and details thereof in light of the significant time from both the original approval 24 years ago and the 1989 VTM approval 18 years ago.

As you may be aware, the city of Brisbane Planning Commission has had several meetings about the proposed modification of the HCP 1989 VTM plan attended by city staff, their hired consultant (LSA Associates - that has put together an EIR addendum), city residents and monitored by representatives of Brookfield. These discussions have been enlightening - particularly those city residents that were present and have a large number of original documents from when the HCP was originally signed in 1982/83 along with later amendments. As these are all part of the public records, transcripts/minutes are available from the city. Furthermore, there is complete audiovisual available as this is televised locally within the city of Brisbane on the city's cable channel. I participated in the September 27, 2007 meeting and wanted to send you a copy of a transcript of my letter and several references as they are scientifically focused and may not be fully understood by the transcriber.

As can be seen in the attached letter, I am very concerned that the new 2007 VTM location on the Northeast Ridge may serve to permanently sever the NE Ridge Callippe and Mission Blue Colonies from the remainder of San Bruno Mountain by virtue of the proposed housing development extending all the way up to the edge of Guadalupe Canyon Road, combined with the significant eucalyptus grove that is currently present. Furthermore, Guadalupe Canyon Road is a significant barrier itself as it is a large, 4 lane road with full size service or side lanes, averaging about 70 feet wide total and nearly encircling the hilltop and housing developments on the NE Ridge. LSA Associates in their EIR addendum have made the claim that this new location would fragment the hilltop less than the original 1989 VTM while also reducing overall acreage (Northeast Ridge Unit II - EIR Addendum, page 3 paragraph 3), and thus "take" of the Callippe habitat (Mission Blue take is not mentioned probably since its already part of the pre-existing take permit) but I believe this new location would jeopardize the long-term health of the two colonies which represent significant portions of the populations of both species by sealing off this colony from the remainder of San Bruno Mountain.

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I am sure that I do not need to provide references to analogous situations e.g. island biogeography regarding isolation and loss of species over time and of isolated sites that cannot be re-colonized. In the same vein, I have heard concern that if the Mission Blue became extinct at Twin Peaks in San Francisco that it would be unlikely to be naturally re-colonized by butterflies from San Bruno Mountain.

The reason for my heightened concern is that a single event could totally "take" the colony on the NE Ridge. Just this past summer there was a significant fire on the eastern flank of the NE Ridge with helicopters flying in water from the bay. Though fire is a useful tool for pushing back coastal scrub, I am concerned that a large scale fire in the area, if hot enough and thorough enough could completely take out the colony, or put the colony through a severe genetic bottleneck that could lead to the same result, local extinction on the NE ridge and de-facto take of the whole colony. By not allowing housing in the 2007 VTM - combined with proper mitigation of the eucalyptus grove and restoring a bona fide corridor for various species including butterflies, this would allow for the possibility that the NE ridge site to be re-colonized by butterflies from the remainder of San Bruno Mountain, or at the very least, improve gene flow to mitigate a population bottleneck. Conversely, the SE ridge of San Bruno Mountain had 50 acre fire last summer that started near an elementary school in Brisbane. There have been earlier fires such as controlled burns that have gotten out of control. Consequently, the SE ridge butterfly colonies may need to rely on the NE ridge colonies for re-colonization or rescue gene flow and vice versa.

I have focused on fire, which is most easily understood, with a short-term detriment but potentially long-term benefit to these two grassland butterfly species. However, there are any number of density-independent factors that could seal the fate of the NE ridge colony including: severe winter weather causing excessive mortality, not enough or too much rain impacting host and nectar plants, even ants (e.g. the native ants that protect Callippe larvae from parasitic wasps) or fungal infections on the Callippe host (noted by HCP plan operator) can significantly impact the survival colonies on both NE and SE ridges. This is not meant to be a laundry list, but to exemplify that there are both obvious and non-obvious and even unknown risks to these endangered butterflies that should be recognized before the current 2007 VTM is officiated on by both the city of Brisbane and the US FWS.

Both city staff of Brisbane and the developer feel that the 2007 VTM solution is preferable over the 1989 VTM and their viewpoint is bolstered by the EIR Addendum written by the city's consultant, LSA Associates. Even though the developer has focused on this one location, given the dire situation with two endangered species, I think it is still warranted to look for another creative solution that does not seal off the NE ridge colony, but does allow some additional housing development for the developer. A suggestion of an alternative site or scaling back the 1989 VTM which had about 1/3 underneath pre-existing PG&E power lines (some Brisbane residents claimed that PG&E was unwilling to move in 1989) has not received any support from city staff. However, there are some unplanned parcels in the HCP, additionally land swaps have

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been used by federal, state, and county authorities for a variety of purposes. Thus, there still may be a way forward to achieve both the public good in providing a long-term solution for these two endangered species and short-term solution in allowing the developer to complete their last development on San Bruno Mountain.

Just to remind you, I received my PhD from Stanford University from the Department of Biological Sciences. My coursework and Thesis was in the area of plant biology, however I did take coursework in evolutionary ecology (Professors Roughgarden and Mooney). I subsequently carried out post-graduate research in genetics at UC Berkeley (Professor Cande). Since my academic years I have been a scientist in the biopharmaceutical industry, but have worked since '95 as an "official volunteer" for the GGNRA/NPS in their now 20 year old group called the "Habitat Restoration Team" and contributed much time and energy removing invasive exotic species and out-planting into cleared sites. It has been gratifying to observe that many sites that I worked on 10 and even 5 years ago are completely clear of invasive plants and are essentially completely restored. Consequently, I have tremendous optimism that this is possible for San Bruno Mountain County and State Park as well.

If you have any further questions or comments please do not hesitate to contact me.

Best Regards

Amie E. Franklin, PhD  
510-206-9473  
amie\_funscience@yahoo.com

Sept 27, 2007

copy

Dr. Amie Franklin  
500 Humboldt Road  
Brisbane, Ca

To: Members of the Planning Commission, City Council and City Staff

#### Fragmentation of Callippe and Mission Blue Habitat:

The inclusion of Callippe butterfly to the endangered species list warrants serious reconsideration of the EIR and statements herein, in particular regarding fragmentation of the Callippe Habitat. In 1981, the Northeast Ridge Site was the home of "30% of the Mission Blue and 25% of the Callippe populations" (HCP, Section III. Biological Program). There were an estimated 8,000 total Callippe on San Bruno Mountain when the butterflies were only threatened, 2,000 of which would have been on the Northeast Ridge.

The original VTM did fragment the ridge, but the fingers of the habitat were contiguous with the hilltop; and the hilltop, could, with eucalyptus grove mitigation and re-establishment of a grassland corridor where the proposed new VTM is placed, be made completely contiguous with the remainder of San Bruno Mountain.

In Contrast to the original VTM, the 2007 VTM development would completely seal off the Northeast Ridge population for both Mission Blue and Callippe populations, but reduce take on important Callippe habitat. I believe this could jeopardize this subpopulation which would result in a de-facto take of the whole Northeast ridge population due to the following:

- Inbreeding depression of Callippe and Mission Blue resulting in accumulation of deleterious mutations that could result in loss of fertility and ultimately local extinction.
- Density-independent mortality leading to local site extinction due to fire, loss of host plants due to severe drought, fungal infection (noted by TRA in their annual reports in 2 years), excessive cold during the over-wintering period, etc.

By sealing off the hilltop site by the urbanization and the eucalyptus grove, neither Callippe nor Mission Blue butterflies from the Southeast Ridge would be able to re-colonize and rescue the site thereby resulting in a permanent reduction. Natural re-colonization is not thought to be possible for the Twin Peaks Mission Blue Population which is a truly wholly isolated island from other Mission Blue Populations - genetic perspective.

In the same vein, if there was a significant fire, drought or other event that threatened or caused the Southeast ridge colony to go extinct, then individuals from the Northeast ridge could migrate through the corridors to re-colonize the site. Re-colonization and expansion of populations must have been important over the past 10,000 years since the beginning of the interglacial period.

A side note, the current eucalyptus grove provides a significant barrier for butterfly movement and, given the well-known phenomenon of allelopathy that eucalyptus trees exhibit, their tree litter leaches out compounds that are inhibitory to the growth of most other plants including both larva host and butterfly nectaring plants. The result is a near monoculture of eucalyptus. Consequently, planting native host plants in eucalyptus understory is unlikely to work and no one has effectively propagated and out-planted the host callippe viola. Regardless, the understory environment itself in the eucalyptus groves has significant fog drip, relative darkness and no nectar or egg-laying host plants and thus is not an enticing butterfly corridor.

#### References:

- Gonzalez et al., Metapopulation Dynamics, Abundance and Distribution in a Microecosystem. Science V 281:2045  
25 SEP 1998
- Damschen et al., Corridors Increase Plant Species Richness at Large Scales. Science V 313:1284 1 SEP 2006
- Tewksbury et al. Corridors affect plants, animals, and their interactions in fragmented landscapes. PNAS V99 No 20  
12923-12926
- del Moral and Muller. The Allelopathic Effects of Eucalyptus camaldulensis. American Midland Naturalist, Vol. 83,  
No. 1 (Jan., 1970), pp. 254-282.

REGULAR MEETING BRISBANE PLANNING COMMISSION

Members of the Planning Commission

Re: Northeast Ridge Development

July 26, 2007

To the members of the Planning Commission and City Staff:

I am writing because of my concern on the Northeast Ridge Development. I am resident of Brisbane and a scientist and business woman in the biopharmaceutical industry. My training has made me focused on outcome measures. For the past 12 years I have been volunteering with the Habitat Restoration Team of the National Park Service in the GGNRA and for 3 years helping habitat conservation on San Bruno Mountain.

I am aware that the city staff and planning commission have tried to work this problem for quite a while. However, the situation would have been immeasurably easier if Brookfield or its predecessors had actually taken the HCP seriously decades ago and followed through on the conserving habitat, not just conserving land. In contrast to the developer, the city residents and staff are here for the long haul and appreciate that decisions made now will have long term ramifications. Throwing money at the problem now may or may not help the endangered and threatened species, but will help if you are the contractor for the HCP, that is.

The HCP is a permit just like others; the city of Brisbane provides permits for construction and then inspects the sites to ensure that building was properly done with stop workages or bringing into compliance penalties for failure to follow the plan. I don't understand why there is no similar process in the HCP in spite of multiple lapses in the plan - Similarly, I doubt that the excuse of "not having enough money for compliance" would let the city of Brisbane ignore a construction problem as it more or less has in the HCP. Obviously, inspection would have to be under the Department of Fish and Game, however, it appears that the city of Brisbane has good interactions with the department.

If the developer is sufficiently convincing to the city council and planning commission for approving the development as it stands, I still think that the HCP should be, first, brought into compliance and then new habitat conservation should be initiated either prior to or concomitantly with the initiation of grading which is the real reason for the permit. Early conservation measures (well actually late) should be started ASAP to mitigate potential destruction of undisturbed land which has already been recognized. This should not merely be based on what's in their pocketbook or based on the Company's largesse, but should be based on outcome measures of population monitoring of important species by a non-conflicted environmental monitoring group. The hope is to get started on the habitat conservation, finally, and not allow continued degradation through neglect. Furthermore, this would potentially prepare the site for dedication to the County of San Mateo which should occur "prior to or concurrently with the recordation of the final subdivision map for the area to be dedicated" as in the HCP. Otherwise the County of San Mateo and the City of Brisbane will inherit the mess, the endowment will be insufficient, species will go extinct and Brookfield will be long gone just like many other building contractors that have a tendency to disappear when problems crop up.

In my long term efforts with habitat restoration, I have had the opportunity to observe what I thought were hopeless habitat sites, solid broom fields, cape ivy, etc., that have been remediated through hard work, time, and commitment, to near wild, natural habitats. Consequently, I do think there is hope to reverse the decline in species and habitat on San Bruno Mountain. However, I also believe, that like other permit processes there should be real oversight, monitoring and penalties (and also incentives!) to ensure that the objectives of the permit, for maintaining species and conserving habitat are achieved.

Yours Sincerely,

Amie E. Franklin, PhD  
500 Humboldt Road  
Brisbane, CA 94005

# *City of Brisbane*

## *Agenda Report*

**TO:** Honorable Mayor and City Council

**FROM:** City Attorney, City Engineer/Director of Public Works

**SUBJECT:** Northeast Ridge  
Second Amendment to Subdivision Improvement Agreement  
Final Map Approval – 11 Lots on Golden Aster Court

**DATE:** For Council Meeting on May 15, 2006

### **RECOMMENDATION:**

Approve Second Amendment to Subdivision Improvement Agreement and authorize Mayor to execute the agreement on behalf of the City.

Approve Final Map for Lots 1-11, Northeast Ridge Unit II on Golden Aster Court.

### **BACKGROUND AND DISCUSSION:**

#### **A. Second Amendment to Subdivision Improvement Agreement:**

The Second Amendment will update the agreement between the parties concerning various public improvements and deposits that were required under the terms of the original Subdivision Improvement Agreement that was executed at the time final map approval was granted for Unit I. Most significantly, the amendment will establish a new obligation by Brookfield to contribute \$4,000,000 toward the HCP endowment fund plus \$1,800,000 to the City for a gymnasium or other public facilities. The amendment will also allow the City to reallocate certain existing cash deposits toward the cost of public improvements. Finally, the amendment will constitute the contractual basis for increasing the annual homeowner contribution for the HCP to \$800.

The specific provisions of the Second Amendment are summarized as follows:

- 1. Guadalupe Channel Improvements:** Some of this work has been completed but the rest of the work will be delayed by the bridge replacement project. We have determined that it would be most effective for the remaining work to be performed by the City. Consequently, the existing letter of credit given as security for this work will be replaced by a cash deposit of \$1,400,000, which the City Engineer has determined will be

sufficient to pay all costs for the remaining work. We do not anticipate the actual cost will exceed this amount, but if it is less, the surplus will be retained by the City and transferred to the General Facilities Fund.

2. **Municipal Facilities Deposits.** Various deposits were made by Brookfield for public facilities that either have been completed or are no longer required. The Second Amendment will reallocate the balance of these deposits, in the amount of \$554,114, toward the cost of City Hall improvements.

3. **Access Link Deposit.** After payment of all costs related to construction of the access link between Crocker Park and central Brisbane, there is balance of \$60,000 remaining from the funds deposited by Brookfield for this work. The Second Amendment will reallocate this balance toward the cost of City Hall improvements.

4. **Final Map Approval for the 11 Golden Aster Lots.** The Second Amendment acknowledges that the 11 lots on Golden Aster Court, for all practical purposes, should be regarded as part of Unit I and final map approval should be granted upon a determination that all of the Unit I conditions of approval applicable to such lots have been satisfied (see Part B below).

5. **Additional Cash Contribution.** As mentioned above, the Second Amendment will require Brookfield to contribute \$4,000,000 toward the HCP endowment, plus an additional \$1,800,000 to the City for public facilities. The total payment will be equally allocated to each of the 88 lots in Unit II, including the 11 Golden Aster lots, and will be paid as final maps are granted for these lots.

6. **HCP Assessment Amount.** With the knowledge and approval of the U.S. Fish & Wildlife Service, the City is increasing the annual homeowner contribution to the HCP to \$800. This amount will probably be reflected in the amendment to the Section 10(a) Permit, when that amendment is finally issued by the USF&WS, but in the meantime, the Second Amendment will serve as the mechanism for implementing that increase.

## **B. Final Map Approval:**

The 11 lots which are the subject of the Final Map are located on Golden Aster Court, directly across the street from existing homes that were constructed as part of Unit I of the Northeast Ridge development. Although these lots were originally classified as part of Unit II, all of the infrastructure required for development of these lots has been installed and the lots were graded as part of the construction activity for Unit I. For this reason, the U.S. Fish & Wildlife Service has approved development of the 11 lots and has exempted these lots from the Section 10(a) Permit amendment process. It should be noted that the U.S. Fish & Wildlife Service has recognized that the Final Map approval and the related Second Amendment to the Subdivision Improvement Agreement establish the legal framework for obtaining the additional \$4,000,000 cash contribution for the HCP.

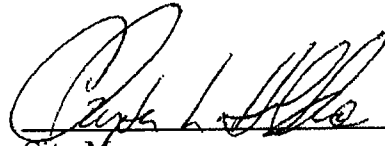



The Final Map approval constitutes a ministerial act and is dependent only upon a finding by the Director of Public Works/City Engineer that the proposed Final Map substantially complies with the Tentative Map for these lots. A statement has also been signed by the City Manager, the City Attorney, the Community Development Director, the Administrative Services Director, and the City's special counsel (Robin Leiter) confirming that the Subdivider has complied with those conditions of the Tentative Map required to be satisfied prior to the granting of final map approval for these 11 lots.

**FISCAL IMPACT/FINANCING ISSUES:**

Under the terms of the Second Amendment, the City will receive a cash payment of \$724,999 upon the granting of Final Map approval for the 11 lots on Golden Aster Court, plus additional payments with future final maps, for a total of \$1,800,000. The City will also reallocate \$614,114 of existing deposits for immediate use for public facilities and will be entitled to use any remaining balance of the cash deposit for the Guadalupe Channel Improvements. As final map approvals are granted for Unit II of the Northeast Ridge, \$4,000,000 of funding will be provided for the HCP.

  
\_\_\_\_\_  
City Attorney

  
\_\_\_\_\_  
City Manager

  
\_\_\_\_\_  
Director of Public Works/City Engineer

**Individual Comment Letter #3 – Linda K. Salmon**  
September 4, 2009

Sam Herzberg  
San Mateo County Park Department  
455 County Center, 4<sup>th</sup> Floor  
Redwood City, CA 94063

Dear Mr. Herzberg:

Of course, I am writing (again) to oppose passage of the Negative Declaration for the San Bruno Mountain Habitat Conservation Plan Amendment #5.

As you may know, I write as a rare and endangered native of San Bruno Mountain herself, a daughter to one of Brisbane's Founding Fathers, actively re-joining the fight to preserve our mountain since the invention of the HCP, and as a former member of the Brisbane Planning Commission for the 1994 re-write of our General Plan.

And I write as an expert, of sorts. If you check the files on this case, you will find some of my earliest letters opposing the impossibly poor "science" of Thomas Reid and his HCP, submitted by other community members to Fish & Wildlife in opposition to such a travesty in 1989. More recently, the Brisbane Planning Commission invited my comments (letter of 10-11-07) in response to Judith Malamut's lengthy "summary" of LSA's purported 2007 EIR Addendum to the 1982 Certified Final Environmental Impact Report (SCH #81070717) for the Northeast Ridge and Modifications to the 1989 Unit II Vesting Tentative Map and Associated Permits, as Vesting Tentative Map VTM-1-06, et cetera.

This newly planned habitat destruction by Brookfield Homes in Brisbane threatens the very survival of the Callippe Silverspot, with less than 2% habitat remaining, as well as the Mission Blue butterflies, both endangered species as well as many other associated plants and creatures.

As clearly as possible, I outlined in my 02-11-2008 letter to the current Brisbane City Council, the manner in which the findings in the above mentioned document only compare the projected outcomes of this plan to those of the 20 year old amendment to the 26 year old plan. That letter was made part of the record. It would be helpful if you would read it. An excerpt of which reads more or less as follows, in summary of some of the main points of that letter:

This new VTM-1-06 is in fact a NEW proposal and is NOT consistent with the City's General Plan as it does not improve conditions and welfare or offer adequate mitigations with regard to San Bruno Mountain Habitat or current Northeast Ridge residents.

The 2007 LSA Addendum is a woefully inadequate instrument trying to correct what we now know: That the 1982 data for the 1983 EIR is seriously flawed with regard to assumptions made by Thomas Reid & Associates and that considerable new data and science is now available to look at a number of new conditions\* that have arisen in the last 25 plus years. Two (or more) wrongs do not make a right.

\*A few of these new conditions are:

- The current HCP has failed to protect the Callippe, now fully endangered;

- Global warming and the concomitant extra nitrogen in the air has dramatically changed conditions of vegetation and the management requirements of same;
- This new proposed project is located right in the middle of extremely sensitive habitat that was designated as a key locale in the dispersion of the species in the HCP, and threatens the whole concept of backyard nectar bearing corridors that TRA assured us would continue to connect the Callippe through the D2 interchange (near the main Crocker Park road) with the rest of the mountain, not to mention the loss of other species of concern;
- The habitat exchange program upon which the HCP is based has seen a number of losses of land that were assumed to become a part of land available for habitat restoration (e.g. the Quarry basin restored);
- The nature of the proposed development has changed radically from less dense condominium type town houses (some of which might have been affordable as a result of smaller scale units) to more massive “single-family” dwellings at a massively greater density, with much greater socially produced impacts on the environment;
- The developer has failed to meet previous agreements, including, but not limited to the allowance of controlled burns on the NER for habitat management, restoration of frog ponds and watershed, etc.;
- There have been no geotechnical advances that would make it safe to build housing directly on a known (BKF), existing earthquake fault line, nor any current engineering that addresses this issue.

This doesn't even consider the new data and evidence learned from the October 1989 earthquake, the 1990 (and 2008) wild land fires, the 2006 landslide, or the current traffic gridlock – the proverbial four horsemen of California's apocalypse.

Nor does it address the main HCP's complete failure to ever consider the Callippe. When the Council and the citizens of Brisbane were reviewing the 1989 Addendum to the failed 1983 EIR, when challenged by me on the viola (I had tried over and over to transplant my favorite little “pansies” as a child, born with two green thumbs, and couldn't do it), Thomas Reid himself admitted in the public forum that he had NOT planned for the Callippe, and that TRA had not “yet” successfully been able to re-establish viola in other locales, but assured us that if the Mission Blue were protected, even though they have different host plants, then the Callippe should be alright, too. He was wrong.

We know now that no amount of money or other “mitigations” thrown at this problem can magically create a solution for replacing what is, now clear to us all, irreplaceable habitat for the Callippe.

Perhaps, when all has been adequately considered in a new and valid EIR, it may be possible to work out another location for limited additional dwelling units if Brookfield still feels they haven't made an adequate return on their investment, in balance with the needs of the people and the preservation of our rare ecological gem – but only after proper assessment with today's conditions, science and knowledge.

Obviously, such projections as LSA is trying to make in their latest addendum should be compared to the actual conditions that exist in the area right now. Many of the impacts are significant, and this project should not be approved.

Please pass on my concerns to the decision makers in this process.

Sincerely,

Linda K. Salmon

P.S. This is a resend of my letter under the San Bruno Mtn. Watch website which was unable to carry a letter of this length.

## Individual Comment Letter #4 – Michele Salmon

San Mateo County Board of Supervisors c/o  
Attn: Sam Herzberg, Senior Planner  
San Mateo County Parks Department  
455 County Center, 4<sup>th</sup> Floor  
Redwood City, CA 94063

Sent via email care of Sam Herzberg : [sherzberg@co.sanmateo.ca.us](mailto:sherzberg@co.sanmateo.ca.us)

Sept 7, 2009

To the Honorable San Mateo County Board of Supervisors: Adrienne Tissier, Mark Church, Carole Groom, Richard Gordon, and Rose Jacobs Gibson

I am writing to ask you to oppose passage of the Negative Declaration for the San Bruno Mountain Habitat Conservation Plan Amendment #5.

I am certain that you have received several letters and requests just like mine from other concerned citizens and environmentalists also asking you to oppose this.

I want to tell you about the letters that you didn't receive – the ones that didn't get written, not because the people don't feel like I feel, and certainly not because they don't care, but because they no longer believe that they can make a difference – that their voice would actually be heard. Many folks that I talked to think that this is a "done deal" and "what is the point?" of speaking up yet again.

After all, what chance do I have of being heard and changing your minds away from rubber-stamping this ludicrous document when I am not an "expert" witness? What is one small voice against that of big business, development, and the almighty dollar? Just because you are elected to represent me, what makes me think that I have a chance to change the course of our mutual history?

What if you were willing to listen and I hadn't spoken up? And we lost these species forever? I do believe that I can make a difference and naïve as I might be, I believe that you can, too. So I am speaking up. **You don't have to say yes to this amendment.** There are many reasons, legal, scientific and moral, to just say no.

Ask for a new Environment Impact Review – one using today's scientific knowledge and current, *proven* methodology. It is your prerogative to do so.

While I may not be an "expert" or work for a "prestigious" environmental firm like Thomas Reid Associates, I am definitely a witness. I have lived in Brisbane, on the slopes of San Bruno Mountain all of my life and have hiked these hills for over 50 years. I remember well the conflicted feelings of joy and despair when the "terrible compromise" was made that allowed this first HCP into existence along with the subsequent development. The joy for what was "saved" was weighed against the heavy despair of what it would "cost" in the long run. And the cost has been high and will be higher, still.

There are no "do-overs" in real life, but we should never have allowed this "Pandora's Box" to be opened. I wanted to believe that the HCP would work, but it hasn't, and amending it with a laundry list of even more unfeasible "mitigated negative declarations" that are unproven and unsubstantiated won't save these endangered species, either.

As our supervisors, our duly elected representatives, you have the privilege and the responsibility of helping to decide what our future will look like. Do you want it to look like another housing development built over the last remnants of the Franciscan Habitat? Or do you want to step up to the plate and demand better a better future rich in the biodiversity that could actually be the salvation of our own species, as well?

Sounds overly dramatic, doesn't it? Let me assure you that it is not. One does not have to be an "expert" to see what is happening right before our eyes and every species, even an insignificant butterfly, that we can bring through to the other side of this global crisis of climate change, will make a 100-fold, or maybe a thousand-fold, difference to our future.

Respectfully,

A handwritten signature in cursive script that reads "Michele".

Michele Salmon  
123 Sierra Point Rd  
Brisbane, CA 94005  
415-377-0689

## Individual Comment Letter #5 – Philip Batchelder

2915A Wheeler Street  
Berkeley, CA 94705  
Sept 7, 2009

Sam Herzberg, Senior Planner  
San Mateo County Parks Department  
455 County Center, 4th Floor  
Redwood City, CA 94063

Sent via email to Sam Herzberg : sherzberg@co.sanmateo.ca.us

Re: San Bruno Mountain Habitat Conservation Plan Amendment #5, Initial Study / Mitigated Negative Declaration

Dear Sam,

The proposed Mitigated Negative Declaration is, both expressly and by its very nature, an admission that the 2007 modification of the Northeast Ridge Project (2007 VTM) will have significant impacts to imperiled species and sensitive habitat unless the impacts are successfully mitigated.

The problem is that the proposed mitigations are deficient and infeasible, and the impacts will therefore be significant. "Successful mitigation" would mean that "(1) revisions in the project plans or proposals made by, or agreed to by, the applicant . . . would avoid the effects or mitigate the effects to a point where **clearly no significant effect on the environment would occur**, AND (2) there is **no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment**" (Cal. Pub. Res. Code § 21064.5) (emphasis added).

Following are two main examples—each of which should suffice to render approval of the Mitigated Negative Declaration improper.

### THE FUNDING IS INADEQUATE, BUT EVEN IF IT WERE, IT IS NOT ASSURED.

The increased funding that is anticipated as a result of new assessments and endowment interest remains too low to constitute a reasonable assurance that the mountain's habitat needs will be met. I understand that the City of Brisbane, taking the lead to find some way of generating funds to improve the HCP—a program to which the Trustees are bound under federal mandates—might have negotiated the best deal it could over the most substantial remaining development. Nowhere is it suggested that the necessary funding level was

established according to scientific assessment of the habitat's requirements. Rather, it seems very likely that Thomas Reid Associates merely did what it could to make the results of Brisbane's negotiations "fit." Further, while the Initial Study claims (p.15) that "[a]ll funds collected would become part of the HCP's Trust Fund used by the HCP Operator for vegetation management activities," is it not true that a substantial portion will be directed toward administration?

However, even if the expected amount were sufficient, which it is not, it is hardly assured under the proposed plan. Persons with greater financial expertise than I possess have already submitted comments explaining why this is so. The likely shortfall in the hoped-for funding means that this key mitigation measure does not comport with either prong of the above-quoted standard—yet, it must comport with both. Therefore, the impacts that this mitigation purports to eliminate or reduce to insignificance will be significant, and the Mitigated Negative Declaration cannot legally be approved.

THE 2007 VTM PROPOSAL WOULD SUBSTANTIALLY ENCROACH UPON AND OBSTRUCT THE FLIGHT PATH OF THE CALLIPPE SILVERSPOT.

While the elimination of Unit II, Neighborhood I from development plans is welcome, and while the overall disturbance footprint may be smaller than what was proposed under the 1989 VTM, the positioning of units and destruction of habitat nearer to Guadalupe Canyon Parkway poses a significant new threat to butterfly migration that has not been adequately or realistically assessed. Again, the standard is whether proposed mitigations for this destruction suffice to assure that "**clearly no significant effect on the environment would occur**, AND (2) there is **no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.**"

I flatly dispute the notion that development should proceed within a vital migration corridor because the butterflies can further avail themselves of Guadalupe Canyon Parkway to access other habitat. The Callippe is known to be a strong flier, but it is hardly roadworthy. That individuals have been observed either crossing or having crossed this wide parkway is as unsurprising as the increased urban occurrences of coyotes and mountain lions whose natural habitat is shrinking (and unlike those animals, we have no evidence that the Callippe's actual numbers are increasing).

The development configuration of the 2007 VTM, and the manner in which it narrows the Callippe's flight path while adding substantial barriers in the form of buildings, violates the standards for the use of a mitigated negative declaration. On this point alone, the County should prepare an environmental impact report.

Thank you for considering my comments.

Sincerely,

/s/ Philip Batchelder

## Individual Comment Letter #6 – Ken McIntire

>>> "Ken McIntire" <callippe@comcast.net> 9/7/2009 11:43 PM >>>

Dear Mr. Herzberg,

I have carefully studied the proposed Negative Declaration, the USFWS's Environmental Assessment, Brisbane's, 2007 EIR Addendum, Brisbane's 1989 EIR Addendum and the 1982 Northeast Ridge EIR. I am thus qualified to comment on the contents of these documents.

My studies have led me to conclude that the discussions of barriers to the flight of the callippe and the proposed flight corridor are quite flawed and not based either on sound science or on the historic HCP documents. Therefore, mitigations for the destruction of Callippe habitat, fragmentation of habitat and destruction of a flight corridor to prevent colony isolation will not work and the Negative Declaration should be rejected.

The only study of barriers to the flight of Callippe silverspot was done in 1981 using a mark-release-recapture method. It found that: heavily built up areas and industrial parks are nearly total barriers; dense tall trees are severe barriers; and 4 lane highways and residential lots are partial barriers. Though the data is not quantitative, it is at least based on a year-long study, as opposed the following speculation contained in the negative declaration:

\*The degree to which the development would be a barrier depends on the callippe silverspot reaction to the height of the homes and the availability of lower elevation corridors and nectar/host plant islands.\* P. 35, Negative Declaration for the SBMt. HCP Amendment #5

Note that the passage also suggests that host plant islands can be created for the Callippe, an idea contradicted in the 1989 EIR Addendum -- **\*\*no mitigation value should be given to recreating Callippe habitat\*\*** p. III \* 13, Northeast Ridge EIR Addendum. An idea also discredited by years of failed attempts to create viable habitat islands for the Callippe.

The Neg Dec also falsely claims that the Callippe will be able to use the narrow strip of land north of Guadalupe Canyon Parkway (a partial and life threatening barrier) opposite the land that will be disturbed during the building of the project:

The remaining narrow section of habitat along the edge of the homes (south of Guadalupe Canyon Parkway) ranges from 87 to 250 feet in width, so callippe silverspot would have to located this passageway after it has been restored from temporary construction disturbance. The callippe silverspot do, however, currently use the open space lands on the northern side of



the Guadalupe Canyon Parkway and would be able to continue to use this without interruption throughout construction and occupation of UII-NII. Ibid. pp.35, 36

A review of the data from the 2008 Callippe butterfly survey (SBM Covered Species Report, 2008) shows that the narrow strip of land referred to is the location of Transect 13, used for callippe sightings.

Only once between 2000 and 2008 were any Callippe seen at that location, and no callippe were observed there in 2006 or 2008. This transect has been dropped from future survey plans, yet this area, the Negative Declaration suggests, will attract callippe across a partial and dangerous barrier so they will have a flight corridor.

We must not gamble the survival of a species on speculation and sloppy reasoning, but rather on scientific evidence, which has not been produced here for many years.

Sincerely,

Ken McIntire

Ken McIntire  
94062

### **Individual Comment Letter #7 – Ken McIntire**

>>> "Ken McIntire" <[callippe@comcast.net](mailto:callippe@comcast.net)> 9/7/2009 10:39 PM >>>

Dear Mr. Herzberg,

I have been hiking and taking students out on San Bruno Mountain since 1990. I have observed efforts to eradicate gorse on the saddle to make way for butterfly habitat, as the HCP called for. Along with David Schooley, who carefully documented these efforts, in the early 1990s I wrote a report to the Board of Trustees documenting the failure to create butterfly habitat on the saddle.

In 2006 I became a member of the Technical Advisory Committee (TAC) for the San Bruno Mountain Habitat Conservation Plan. I have taken my role as an advisor seriously, studying background materials, attending meetings, and commenting on proposals, and taking field trips to various parts of the mountain. I also took a course in habitat restoration.

In my estimation, though the footprint of the 2007 project is smaller than the 1989 project, the proposed mitigation will not make up for harm done to the habitat and the species, and therefore the Negative Declaration should not be approved. This is because during the 26 years of the HCP, far more habitat has been lost through development than has been re-created through the mitigation measures. The newly proposed mitigation plans have no track record on San Bruno Mountain; therefore no habitat should be destroyed before success with these new measures is proven.

I have specific comments about the reliance on habitat islands as mitigation measures. In late 2006 and in 2007 the TAC was asked to develop the Habitat Management Plan for the HCP Amendment #5. Members of the TAC were asked to read and comment on various drafts of the plan written by Patrick Kobernus, at the time an employee of TRA. Patrick was an advocate of habitat islands, and early drafts described these islands in glowing terms. I, among others, asked to see these islands and a field trip was arranged. I do not remember all the participants, but I know that besides Patrick, Dave Moore, Mike Forbert, and Doug Allshouse attended along with me. The general consensus of the the people present, aside from Patrick, was that only two of the habitat islands we surveyed seemed worthy of further funding; one on the saddle that was threatened by the reemergence of gorse and other weeds, and one east of the Botanical Garden.

At the next TAC meeting, these findings were reported to the group, and when the budget was discussed, it was agreed upon to fund continued work on only two of the islands. In the final budget, more were funded, to my surprise. To me, this showed the

power inherent in being the writer of the document -- a TRA employee with a vested interest in habitat islands being proclaimed a success.

NONE of the habitat islands, whether touted as successful or not, have been created for Callippe silverspot, as the propagation, transplanting and long term survival of its host plant, the viola has not been accomplished to date. This was anticipated in the 1989 EIR Addendum for the Northeast Ridge which says, "Thus when evaluating the impact of development on the Callippe, no mitigation value should be given to recreating Callippe habitat as can reasonably be done for the Mission blue." p. III 13.

By my study of these islands through the various reports, what is clear is that only two islands of some value still exist on lands covered by the HCP, with a total footprint of from 1 to 3 acres. This after 26 years of management. This record clearly demands that no new habitat be taken until more scientific study is done, and a mitigation method is developed with proven success on San Bruno Mountain.

Sincerely,  
Ken McIntire

Ken McIntire

### Individual Comment Letter #8 – Carolyn Parker

>>> "C. Parker" <[cparker1@ix.netcom.com](mailto:cparker1@ix.netcom.com)> 9/7/2009 9:03 PM >>>

Dear Mr: Herzberg:

I am writing to oppose passage of the Negative Declaration for the San Bruno Mountain Habitat Conservation Plan Amendment #5.

I have been living on the Northeast Ridge for ten years and I also live across the street from the Landmark development. I have observed first hand the failure of the HCP to protect and honor the native plants and animals at the Ridge.

The original EIR from 20 years ago was based upon a study of 26 years earlier. These studies have not been updated to reflect the current conditions.

Moving into the Ridge, I had no idea how the modern construction practices can destroy completely the natural contour of the mountain. This project grades the land, removes the topsoil, and replaces the natural landscape with compacted fill bought in from other locations. These building practices are a disaster to the Mission Blue butterflies and the Callippe silverspot butterflies that depend upon plants that cannot be transplanted. Perhaps this would not be so scary except that Brookfield has shown no mercy to the native frog populations.

When I first moved to the Northeast Ridge, there were five identifiable frog ponds which had a thriving Pacific Tree frog population which is now the Landmark property. When Brookfield began grading, I became very concerned about the frog ponds and inquired only to be told by Brookfield that they had designed a series artificial frog ponds to protect the frogs. Brookfield bulldozed and dug up the local springs and built housing over the springs. It was especially troubling that one house not only has a spring running under the house, but that Brookfield created an open space adjacent to the house. If Brookfield had cared at all about the naive frog population or the homeowner buying the house, they would have moved the house to the adjacent open space. This way the naive frog population would have continued to thrive and it would also have allowed the homeowner a backyard that is free of water.

The frog ponds Brookfield has constructed are cement cauldrons lined with rocks which that the frogs are currently using to lay their eggs. However, Brookfield power washes the eggs away.

Jim McKessen, a native plant and frog specialist, has been working with Brisbane merchants, officials and citizens to help restore the Chorus Frog habitats. Every business and city official has been absolutely supportive of his concerns and have willingly cooperated with him except Brookfield. Brookfield have been obstructionists.

Brookfield has trimmed the Eucalyptus grove at Landmark and are planning on completely logging the grove. Already a year later there are no raptors at the Northeast Ridge. There used to be many, many hawks flying overhead. Now there are none. The consequences for the loss of raptors are the replacement of crows and ravens and BIG flocks of pigeons. The rat populations are also increasing.

Please do not approve this development without a full environmental review.

The last thing I would like to say is that by moving the location of housing to the Landmark area, Brookfield has stopped its original plan to build more affordable housing and wants to build their most expensive housing. I think that with the economy as it is that this should be reviewed and Brookfield should reconsider building affordable housing, which was the original design.

Thank you.

Carolyn Parker  
614 Callippe Court  
Brisbane, CA 94005

## **Individual Comment Letter #9 – Joe Cannon**

Sam Herzberg, Senior Planner  
San Mateo County Parks Department  
455 County Center, 4th Floor  
Redwood City, CA 94063  
Re: Mitigated Negative Declaration for  
San Bruno Mountain Habitat Conservation Plan  
Amendment #5

September 7<sup>th</sup>, 2009

Mr. Sam Herzberg:

I, Joe Cannon am commenting on the negative declaration for the San Bruno Mountain Habitat Conservation Plan Amendment #5, Initial Study/ Mitigated Negative Declaration, August 2009. To start I will briefly review my education background and experience in restoration planning, implementing and monitoring that inform by comments listed below. Upon receiving a MS in ecology, I worked seven years for the National Park Service and its sister non-profit the National Parks Conservancy planning and implementing and monitoring four habitat restoration projects. The first project I worked on was focused on restoration and monitoring of the mission blue butterfly and its habitat. I worked directly with the National Park's monitoring consultant who at the time Thomas Reid and Associates and determined that the presents/absents method they were using to monitor the butterfly population would not offer year to year comparable data. Working with the monitoring protocol developed by the Center for Conservation Biology at Stanford, I helped lay out the new monitoring transects to monitor the mission blue butterfly population. I also planned, implemented and monitored two other restoration projects involving an endanger plant, the San Francisco Lessingia, and an endangered bird species, the California clapper rail.

I have implemented a creek and upland restoration project on the saddle of San Bruno Mountain over the past four years and am currently working on two restoration projects for San Bruno Mountain Watch. I am also a member of the San Bruno Mountain Technical Advisory Committee for the current HCP and have attended most all of the meeting since it was reconvened in 2006. I am currently the president of the San Bruno Mountain Conservancy which was formed to support restoration and community based stewardship on San Bruno Mountain.

It is my opinion based on my review of the documents and my experience and background that development on the northeast ridge of San Bruno Mountain, even as mitigated, may have a significant adverse impact on the long term survival of the endangered callippe silverspot. This is due to the well established fact (Pg.2 San Bruno Mountain Habitat Management Plan 2007, personal communication Technical Advisory Committee 2006-2009) that the only food plant for the callippe silverspot butterfly *Viola pedunculata* (*Viola*) has yet to be successfully propagated despite repeated attempts.

*"While habitat islands have been created for the mission blue butterfly, and can be created for*

*the San Bruno elfin butterfly, it is unknown if the habitat island approach is appropriate for the callippe silverspot butterfly. The callippe relies on much larger areas (minimum of several acres) that consist of large colonies (i.e. several hundred plants or more) of its host plant Viola pedunculata in combination with topographic high points. Due to the high cost and difficulty of propagating viola, restoration of callippe habitat at this time is likely better served through large scale brush removal that opens up grassland habitat and allows for natural recruitment of viola.”* (Pg.2 San Bruno Mountain Habitat Management Plan 2007)

There is also no evidence that if the barrier to propagating the viola is surmounted that it can be successfully outplanted, survive and establish a viable population that will attract and support the callippe silverspot butterfly population. Destroying intact and functioning habitat of this listed species knowing that currently after numerous attempts that no new habitat has not been restored, it is unclear on what bases these impacts can or will be mitigated or even how much money would be required to do so.

Restoration of butterfly habitat as defined by the San Bruno Mountain Habitat Management Plan 2007, as *“areas where both invasive species control and replanting of native species is conducted”* has been attempted numerous times for the mission blue butterfly in the form of habitat islands.

According to the San Bruno Mountain Habitat Management Plan 2007 overall since 1982 on San Bruno Mountain including this additional proposed project *“approximately 360 acres would be developed, and approximately 270 acres would be temporarily disturbed through development activities and restored to native habitat.”*

Given these documented impacts that over 25 years of HCP funded habitat management as mitigation only 2.5 acres of Mission Blue butterfly habitat has been actually restored and shown to have mission blue butterfly present and that no new habitat has been restored for the Callippe silverspot. (personal communication with contractors at TAC meetings)

*“Within the conserved habitat, establishment of butterfly habitat (primarily mission blue) has been created” “As of 2007, five HCP habitat islands have been established, and three of these sites have had documented mission blue butterfly utilization.”* (San Bruno Mountain Habitat Management Plan 2007 Page VI-4)

*“While habitat islands have been created for the mission blue butterfly, and can be created for the San Bruno elfin butterfly, it is unknown if the habitat island approach is appropriate for the callippe silverspot butterfly. The callippe relies on much larger areas (minimum of several acres) that consist of its host plant, Viola pedunculata, and near topographic high points. Due to the high cost and difficulty of propagating Viola, restoration of callippe habitat is likely better served through large scale brush removal that opens up grassland habitat and allows for natural recruitment of Viola.”* San Bruno Mountain Habitat Management Plan 2007 Page VI-4

In the absence of significant butterfly habitat restoration success, despite numerous attempts, simply slowing the loss of habitat has not and will not mitigate for the permanent destruction or temporary disturbance of these endangered butterflies habitat.

Upon review of the last 25 years of endangered butterfly habitat management on San Bruno Mountain as part of the original HCP, has lead me to conclude that the proposed development may have a significant impact of the long term survival of the Callippe silverspot butterfly on San Bruno Mountain. The actions proposed in the negative declaration and Habitat Management Plan, 2007 are unlikely to adequately mitigated these proposed impacts due to the limited success in past management of these endangered species' habitat.

All that has been achieved by 25 years of HCP funded management of the three endangered butterflies' habitat is a reduction in the rate of loss of already conserved habitat, and there is currently no evidence to support that this has not and will not offset or compensate for increased take of intact butterfly habitat or increased loss of habitat connectivity from further proposed take of the endangered butterfly's habitat on the Northeast ridge.

*"While the core endangered species' habitat on the Mountain has been protected from invasive species over the span of the HCP, the success of this work has been attenuated by the observed landscape level changes that are occurring from: 1) the expansion of coastal scrub over grassland areas, especially on north-facing slopes; and 2) the influx and expansion of herbaceous and grass weeds within the native grasslands, especially on dryer and lower elevation slopes."* (Habitat Management Plan, 2007 Pg 2)

Part of the uncertainty in the current "stable" status of the three endangered butterflies on the mountain comes from a review of butterfly monitoring on San Bruno Mountain was done by Longcore, et.al., 2004. This report characterized the monitoring from 1982 through 2000 by stating that the *"Managers surveyed for sensitive butterfly species with the San Bruno Mountain Habitat Conservation Plan area between 1982 and 2000 using a haphazard wandering transect."* *"The wandering transects violates most tenets of survey design. It is convenience sampling providing no replication for comparison."* *"Such a methodology presents immediate difficulties for drawing statistical inference or even detecting qualitative trends."*

A second report Longcore, T. 2004, stated that *"while some information can be extracted from the "wandering surveys" conducted on San Bruno Mountain, a more rigorous survey design is necessary to allow managers to draw statistically significant inferences about the status of the butterflies and their responses to management actions."*

Although *"relative abundance (using set transects from 1998 – 2007) of the federally endangered mission blue and callippe silverspot butterflies"* has been done, data has not been collected with this method long enough to indicate a discernable positive or negative trend.

*"An analysis of the set transect data for mission blue and callippe silverspot has been done annually on the set transect data included in the San Bruno Mountain annual reports over the past seven years. Results have indicated no discernable positive or negative trend in butterfly abundance at this time, however a minimum of eight years is needed before reliable trends (if present) can be detected."* (Page VIII-3 San Bruno Mountain Habitat Management Plan 2007)

The majority of the efforts over the past 25 years of the current HCP have focused almost exclusively on the elimination of woody perennial invasives such as gorse, broom, and fennel from already conserved habitat. (Habitat Management Plan 2007) This almost exclusive reliance on large woody invasive control has done little to slow the ongoing loss of the endanger butterfly's' grassland habitat to scrub succession or the widespread invasion of non-native perennial forbs and annual grasses within the grassland habitat of the host plants.

*"Between 1982 and 2004, San Bruno Mountain lost an estimated 122 acres (8.6%) of grassland habitat primarily as a result of coastal scrub succession within the HCP conservation area."* (San Bruno Mountain Habitat Management Plan 2007) Approximately 5 acres of grassland are converting to coastal scrub per year, and it is anticipated that this process will continue. (San Bruno Mountain Habitat Management Plan 2007 Page III-3)

*"Specific areas within the conserved habitat however have shown significant negative trends in butterfly occupancy (Longcore, 2004). The areas where negative trends were identified are primarily within grassland areas that have*

*succeeded to native coastal scrub on lower elevation north facing slopes"* (San Bruno Mountain Habitat Management Plan 2007)

The past 25 years of management has failed to address the ongoing loss of butterfly habitat due to native habitat succession. There is currently no evidence to support that continued management of conserved habitat can mitigate habitat loss due to ongoing succession can be achieved in the future.

Although the Habitat management Plan of 2007 proposes to focus future management activities to attempt to address the ongoing threats posed by scrub succession and non-woody invasive species, none of these management approaches has been successfully achieved or has been shown to result in establishing functioning butterfly habitat.

Additionally, upon review the negative declaration it is my opinion that the mitigations for the incidental take permit may not adequately mitigate the impacts of the expanded development of the Northeast ridge in regards to the likely impacts to habitat connectivity and fragmentation.

The current development footprint and associated disturbance on the Northeast Ridge eliminates the critical callippe hilltop habitat and their food plant *Viola pedunculata* plants that would otherwise provide a crucial dispersal link between the remaining conserved habitat to the east of the development and the remaining callippe silverspot habitat on the rest San Bruno Mountain.

One of these impacts is an increase in habitat fragmentation and isolation of the remaining butterfly population by the proposed development lying between the proposed conserved habitat on the hills east of the proposed development and the rest of the mountain's habitat and Callippe populations. Habitat fragmentation has been shown in numerous butterfly species to increase the likelihood of extirpation.

*"The callippe silverspot butterfly is also vulnerable to the effects of habitat fragmentation. Further reduction of population size and genetic interchange among populations through isolation, genetic drift, and inbreeding depression, may result in less vigorous and adaptable populations of the callippe silverspot butterfly. Small isolated populations are vulnerable to extinction from random fluctuations in population size or variations in population characteristics (e.g., sex ratios) caused by annual weather patterns, food availability, and other factors."* (LSA, 2004)

Further the negative declaration states that "the remaining narrow section of habitat along the edge of the homes (south of Guadalupe Canyon Parkway) ranges from 87 to 250 feet in width, so callippe silverspot would have to locate this passageway after it has been restored from temporary construction disturbance". An HCP that covers the callippe silverspot population in the east bay states that "partial barriers are posed by burned areas and major roads four lanes or more wide because some butterflies will cross them while others will not." (LSA, 2004)

The HCP on page III-29 states that habitat corridors "could range from 50 to 500 feet wide depending on the length" and "should have a width-to-length ratio of at least 1:2" However this "corridor" runs along the four lane Guadalupe Canyon Parkway and the topography of the mountain is such that this area acts as a wind tunnel. Additionally because as stated above the current inability to propagate the viola would mean that this area would not be restored to habitat that would attract the butterflies across this long windy narrow roadside. In addition to the limits placed on the callippe butterfly's dispersal, the north east ridge's mission blue populations know to have a far more limited dispersal range will be additionally impacted due to the narrow and limited road side corridor resulting from the project as proposed.

*"Hilltops and ridges play an important role in callippe breeding behavior and the this species has been documented to congregate on hilltops and ridgelines to find members of the opposite sex and mate, a behavior referred to as "hilltopping". Hilltopping occurs most notably when population numbers are low in number or individuals are dispersed; this behavior aids in mate location and to increase mating success. Most observations of the callippe silverspot butterfly have been made on hilltops; this is the case at the two major San Bruno Mountain colonies. At the Southeast Ridge colony, 75 percent of the observed individuals were on ridgetops and higher elevations of steep, north facing slopes (Thomas Reid Associates 1982). Hilltops and ridge lines are integral components of callippe silverspot butterfly habitat. Losing hilltops from habitat areas likely decreases the amount of successful mate location and genetic mixing over the long-term. Urban development, along with invasive exotic plants, are the primary causes of the decline of the callippe silverspot butterfly because these two factors degrade, destroy, and fragment its habitat."* (San Bruno Mountain Habitat Management Plan 2007)

In view of the foregoing, it is my scientific opinion that the project, even as mitigated, may have a significant adverse or cumulative impact on the callippe silverspot butterfly population on San Bruno Mountain. In the absents of evidence as to the probability of successful restoration of callippe butterfly habitat, given the documented ongoing losses of habitat from non-woody invasive weeds and scrub succession, and given the inability of past attempts to propagate it's viola food plant, the finding of no significant impact appears unsupported by the above listed reason from reports listed below and referenced above.

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(Environmental Assessment)

## Individual Comment Letter #10 – Thomas Wang

>>> "Thomas Y. Wang" <[tywang@ccsf.edu](mailto:tywang@ccsf.edu)> 9/7/2009 12:12 PM >>>  
September 6, 2009

To Whom It May Concern:

I am writing to oppose the passage of the Negative Declaration for the Northeast Ridge development area. I write on behalf of the grassland homes of the Callippe Silverspot, the Mission Blue Butterfly, and a myriad of other creatures that live on the Northeast Ridge of San Bruno Mountain.

My work on San Bruno Mountain spans the last twelve years. I am a lepidopterist and ecologist who has observed and documented endangered butterflies in the Bay Area from Marin to Pacifica. Specifically, my published works include *The Egg and Larval Ecology of the Mission Blue Butterfly on San Bruno Mountain* (Master's Thesis at San Francisco State University 2004), and *A Survey of the Grasslands of the Northeast Ridge (Guadalupe Hills) as Habitat for the Mission Blue Butterfly (Icaricia icarioides) and the Callippe Silverspot (Speyeria callippe callippe)* (San Francisco Professional Gardener's Association 2007). My curriculum vitae, the abstract of my thesis, the Northeast Ridge report, and my letter to the Fish and Wildlife Service regarding the EA are enclosed. To the best of my knowledge, these papers are the only independent scientific research, not consultant monitoring, done on the mountain over the past twenty-seven years.

The continued development at the Northeast Ridge will damage the environment on many levels. The mitigation measures and additional funds for vegetation management and restoration cannot replace the land destroyed. We are in the process of losing a natural treasure whose richness is beyond monetary measures. The Northeast Ridge grasslands are Callippe Silverspot and Mission Blue habitat of the highest quality. These hills are protected from the prevailing wind and fog of the coast, and have abundant host plants and nectar plants. There are hilltops for mating Callippes, as well as native ants that tend the Mission Blue larvae. It is a small remnant of the unique grasslands of this Franciscan biological region.

The loss of these grasslands cannot be mitigated. That is to say, we cannot recreate the soil structure, seed bank, plant ecology, biological diversity, and butterfly habitat that has taken millennium to evolve and survive. Yes, thousands and thousands of years of precious creation bulldozed in a couple of weeks. We have not grown the host plant of the Callippe Silverspot butterfly, nor planted these plants outdoors. We do not know how such plants would fare in a wild situation out of the nursery; we do not know their short or long-term survival rate; we do not know if the butterflies will lay their eggs on them. It is okay to have confidence in our abilities to manipulate the natural world and to have positive goals, but the plans put forth so far are closer to fantasy than reality. Imagine that I want you to invest in a car that doesn't need gas or batteries, runs forever without human guidance, has wheels that renew themselves every five years, washes itself every night, and so on. I don't have any working plans yet, but will make it up as I go along. Give me ten years and a few million dollars, and I will give you a prototype. Would you invest in such a company?

What happens to butterflies when their homes are gradually chopped up into smaller and smaller pieces, separated by roads and houses? It is similar to making compost - you chop up the branches and organic debris into little pieces so that greater surface area is available for bacteria, fungi, and beetles to eat it up. Decomposition is fast because creatures are coming at you from all sides. Fragmentation is this process by which these ancient lands become divided, built upon, and butterfly populations plummet slowly over time. Would you like to live in a neighborhood at the edge of highways 280, 101, next to the industrial factories, downwind from the smoke stack? How do you think your kids will fare crossing the road? Or, would you prefer a close-knit neighborhood of diverse and mutually supportive friends a park to ride a bike or a scooter, and cars moving a little below the speed limit? Development kills the butterflies outright. Then, over time, other knife wounds gradually render populations extinct.

Around the Bay Area, what were once fourteen colonies of Callippe Silverspots is now down to two, with the largest one here at San Bruno Mountain. About fifty years ago, the Mission Blue butterfly roamed the hills of San Francisco, north into Marin and South to Crystal Springs. Twenty-five years ago, the Mission Blue was still seen at McLaren Park and Twin Peaks. At that time, the population at Twin Peaks was estimated at over 500 individuals. Today, no more Mission Blues fly at either open space. I have witnessed the decline of Callippes and Mission Blues at the Northeast Ridge over the past twelve years. Significant damage has been done to endangered butterfly populations during this time - many thousands of Callippe Silverspots, Mission Blues, and thousands of their host plants have already been destroyed. Over time, there will be fewer buffers against extinction, and more barriers blocking chances of survival. The loss of these butterflies is only a part of the picture, with their loss goes all the other creatures as well.



What will happen when there are fewer kinds of butterflies in America, or in the world as a whole? Aren't there plenty of dinky orange and black bugs with wings? Who cares about little fluttering creatures that suck nectar, or caterpillars chewing on bits of foliage? Isn't it enough that we have the white cabbage butterfly? The ancient Greek word for butterfly was psyche. Butterflies, through their transformation and recent extinctions, grant us a window into looking at our own soul as a society.

My premise is that nature, specifically, San Bruno Mountain, is a key to our sense of wonder, and the grounding roots of the San Francisco peninsula. San Bruno Mountain is not a weedy lawn with Eucalyptus windbreaks. It is not a well-tended botanical garden. Instead, it is a wild place with its own independent rhythm and diverse connections. It is home to rare butterflies and plants, and a sanctuary for ants, snakes, and birds. The existence of such places, and our respect for them, defines us as a civilization.

In closing, I ask that you vote with your conscience, and think deeply about our relationship as humans to the natural world. As a community and society, we must acknowledge the continued destruction of these ancient habitats as a dangerous act that mocks creation and impairs future generations. Likewise, that covering our tracks with poorly researched papers and denial is not an honest and true practice. My hope is that we can recognize the pivotal role such wild and natural systems play in our own evolution, and weave them into the fabric of our modern world.

Sincerely,

Thomas Y. Wang

Mr. Eric Tattersall

Acting Chief, Conservation Planning & Recovery  
U.S. Fish & Wildlife Service  
2800 Cottage Way, W-2605  
Sacramento, CA 95825  
(916) 414 6713 fax

RE: Proposed Amendment to San Bruno Mountain Habitat Conservation Plan 73 Federal Register 20324

June 13, 2008

Dear Mr. Tattersall:

I am writing regarding the proposed amendment to the Habitat Conservation Plan as noticed in the 73 Federal Register 20324. Please allow me to offer my education and experience, and how these shape the opinion I express on the following pages.

Education and experience

My academic background is as an ecologist and as an entomologist. I received my undergraduate degree from U.C. San Diego in biology in 1994, majoring with an emphasis in ecology, animal behavior, and evolution. In 2003, I received my master's degree from San Francisco State University. My master's thesis at San Francisco State was based on the study of the ecology of the Mission Blue butterfly on San Bruno Mountain from 1997 - 1999. Specifically, I collected data regarding the distribution of its egg and larval stages at Buckeye and Owl Canyons, the Northeast Ridge, South San Francisco grasslands, and the summit around Radio Ridge. I found that the location of the Mission blue young was strongly influenced by the specific site and its ecology. Places on the mountain with a favorable mix of characteristics serve

as butterfly ‘nurseries’, with dense aggregations of eggs and larvae. These places are sheltered, have an abundance of butterfly host plants, and ant symbionts that serve as caterpillar larvae ‘care-givers’. My research indicates that the Northeast Ridge of San Bruno Mountain is one of these places.

In my graduate training, I took classes in general entomology, mycology, conservation biology, and plant taxonomy. As part of Professor John Hafernik’s class, I identified and preserved specimens we had collected from surveys of San Francisco’s natural areas and beyond. As the curator of the Entomology Museum at San Francisco State University, I maintained the collection, and interpreted its contents to visitors and students.

I first noted Callippe Silverspot adult presence in the grasslands of the Northeast Ridge while engaged in my master’s research in 1998. I read the available research on their life history and ecology, and examined specimens at the California Academy of Sciences. As I continued my work in the grasslands, I became familiar with the botany, distribution, restoration and preservation of its larval host plant - *Viola pedunculata* - in the field and nursery setting. I intend to continue with my ecological research on the Callippe Silverspot to reveal unique aspects of its biology.

Since 2004, I have been a full time professor of environmental horticulture at City College of San Francisco. I teach classes in landscape design, plant propagation, xeriscape, and tree care. My main teaching interests are the importance of soil and water, and the role that plants play in relation to our human community.

As a biological consultant, I have surveyed for the Mission Blue butterfly in grasslands around the Bay Area. I surveyed the Marin Headlands in 2006 for the Golden Gate National Recreation Area. I have conducted surveys in Pacifica at Mariner’s Pointe from 2004 to 2008, and at Milagra Ridge in 2003. As a biologist for the Natural Areas Program of San Francisco’s Recreation and Parks Department, I documented the Mission Blue butterflies on Twin Peaks from 2000-2004, and developed the survey protocol which has been used ever since. Additionally, during this time, my duties included the management and restoration of San Francisco natural areas: educating the public, vegetation management (weeding), growing native plants for out planting, and surveying for plant, insect, and fungal diversity.

Since my master’s thesis research on San Bruno Mountain ended in 1999, I have returned to visit the Northeast Ridge of San Bruno Mountain on many occasions to study its diverse flora and fauna, and to show visitors a prime example of intact butterfly grasslands. In the spring of 2007, I surveyed the grasslands of the Northeast Ridge for the host plants of the Callippe Silverspot and the Mission Blue, and documented their ecology. This report was published by the San Francisco Professional Gardener’s Association, and a copy is enclosed herein.

My analysis of the impacts of the proposed HCP amendment is based on my education and research; my experience as a habitat restorationist and as a biological consultant; and my observations on San Bruno Mountain over the past eleven years. Moreover, it is supplemented by observations of the remaining Franciscan grasslands from Marin to Pacifica. I have reviewed the San Bruno Mountain Habitat Conservation Plan Amendment Environmental Assessment of October 2007 by Jones and Stokes (EA); the Analysis of Butterfly Survey Data and Methodology from San Bruno Mountain Habitat Conservation Plan (1982-2000) by Longcore, Lam and Wilson; the Year 2007 Vegetation Management Activities Report For Endangered Species Permit PRT-2-9818 by San Mateo County Parks Department (January 2008); and the

internet sites about the Callippe Silverspot by U.C. Berkeley's Essig Museum, U.S. Fish and Wildlife Service, and Xerces Society. The analysis is divided into five parts: existing habitat, the process of butterfly decline, lack of research on San Bruno Mountain, mitigation restoration and management, and a feasible alternative.

#### Existing habitat

What will the impact be if and when development as proposed by the HCP amendment goes forward? The immediate impact will be the loss of endangered butterfly host plants. The EA estimates a loss of 2,514 *Viola pedunculata* plants - the larval host plant of the Callippe Silverspot. Based on my 2007 survey of the Northeast Ridge, at least 1,100 *Lupinus albifrons* plants, host plant of the Mission Blue butterfly, would also be destroyed. The butterfly larvae of both species that rest in or near the ground would be killed, as would any eggs laid on the plants. In the long term, the HCP amendment would cause the death of several thousand adult individuals of both species. In addition, all the other associated plants and invertebrates that rely on these grasslands as home will be destroyed. The geology and hydrology unique to this site will be altered.

The proposed action would continue development, fund human management activities for the future, and cause the take of the listed species and the destruction of habitat. The proposed action would destroy 19.64 acres of prime endangered species habitat, as well as the 1.07 acres referenced in the EA. In light of the endangered status of the Callippe Silverspot and the Mission Blue butterfly, this take and destruction is most definitely **significant**.

This action does not fulfill its own mandate or purpose to "Protect, conserve, and enhance the long-term survival of the Species of Concern, including the Callippe Silverspot and bay checkerspot, and their habitat for the continuing benefit of the people of the United States. (EA 1-6)". Nowhere in this amendment is there the protection and conservation of existing Callippe Silverspot or Mission Blue habitat.

The Mission Blue and the Callippe Silverspot are endangered in part because their particular ecological needs are specific. They are not a cosmopolitan butterfly such as the Painted Lady which is found worldwide, its larvae feeding on an array of widespread plants like cheeseweed and thistles. Nor are they native butterflies that have fully adapted to non-native plants, thereby increasing their population and generations per year. An example of this is the anise swallowtail butterfly that lays its eggs on the urban weed fennel.

Based upon my research and experience, the Mission Blue only lays its eggs on a few species of wild lupines, and the Callippe is restricted to laying eggs on the Johnny jump up viola *Viola pedunculata*. These plants are patchy in distribution. The lupines favor rocky outcrops and thin soils, while the viola grows most abundantly on the Northeast Ridge in grasslands with wet soils accompanied by long petaled irises, buttercups *Ranunculus californica*, and native bunch grasses. Furthermore, Mission Blue larvae's long term survival is linked to specific ant species that care for its larvae and protect it from predators. Both host plants (lupines and violas) are found only in the grasslands, itself a scarce vegetation community on the San Francisco peninsula.

The Northeast Ridge is one such intact grassland of the highest quality on San Bruno Mountain. It is protected from the fog and prevailing winds that shroud the westerly flanks of San Bruno Mountain. There are the soils favored by the lupines, and the gentle hill tops for

adult Callippes to congregate and mate. It has an abundance of butterfly host plants, numerous other plants to nectar on, and the Mission Blue symbiont ant *Prenolepis imparis* nests here also. All these features taken together, the Northeast Ridge is the ideal place for caterpillars, adults seeking mates, and females laying eggs. The Callippe Silverspot, the Mission Blue, and their larval host plants, are found nowhere else in the world but for the San Francisco Bay Area. San Bruno Mountain is their best remaining habitat.

#### Process of butterfly decline

If the land of the Northeast Ridge is graded and built upon, as proposed by this HCP amendment, the Callippe Silverspot and Mission Blue butterfly host plants will be destroyed. So will the butterflies that use the host plants to feed their young. The first butterfly to go extinct in the United States was the Xerces Blue in San Francisco. Its principal host plant deerweed, along with the sand dunes, were built over. The relative of the Mission Blue, the Phere's Blue, also went extinct in the 1940's and '50's when the dunes became houses.

The process of grading, construction, and building causes immediate destruction, and changes the contour of the land and flow of water. Examples of the disturbance that grading causes on grassland slopes are easy to observe. It has already occurred here at the Northeast Ridge: "Development of the first phase, which is substantially occupied, permanently disturbed 66.9 acres. In 2006 and 2007, the City of Brisbane and the USFWS agreed that Brookfield Northeast Ridge II LLC could proceed with the development of 17 single- family residential units north of Unit I (EA 2-1)".

This massive disturbance is also present at the South San Francisco grasslands next to Highway 101 and Terrabay developments. Engineers may be able to construct retaining walls and divert water such that soil does not fall into the backyards of houses, and that erosion does not cause flooding. However, they cannot keep the mountain slope from sliding down to find its repose and thereby changing the entire vegetation matrix and community in its wake. In these grasslands, seeds of California buckwheat, fescues, and checkerspots are unable to establish and keep pace with the falling slope; plants that disperse along construction activities and that can grow quickly in the nutrient poor slopes take up the vacuum left. These are mainly the invasive plants such as French broom and oxalis. As an analogy, if you take away the low buttress that holds up the pillars of a church or a mosque, or take a big notch off the cane supporting an old man, the upper portions will come down.

After grading, the once porous land that filtered water to large aquifers underground, and was the home of billions of subterranean creatures such as ants, beetles, arboreal salamanders, fungi, and caterpillar larvae, is compacted and dead. All biodiversity is destroyed.

With construction comes the associated dust and piling of excess materials on wherever it is convenient for the contractors. The land and its creatures are the last priorities when the work has to be done on a deadline, and the working staging area is minimal. More often than not, additional damage occurs beyond the original scope of the project. The last action is the installation of a variety of irrigation and landscaping which brings in plants, soils, insects, and fungi from nurseries around the state and beyond.

When land around endangered butterfly species is encircled with houses, roads and human traffic, its quality and use as a habitat diminishes. There is a slow deterioration of butterfly

habitat around the vicinity of the dwellings. It is best described as a dead zone that favors human adapted plants, animals, and invertebrates (annual grasses, garden snails, Argentine ants, mice and rats). The zone extends hundreds of yards beyond the marked boundaries of the houses. Butterfly habitat in such a setting is said to be like an island in a sea of urbanization. When butterfly populations are isolated from one another, there is little chance for butterflies to fly from one area to another to colonize new areas, select host plants to lay eggs on, or to find mates and exchange genetic heritage.

Survival for the butterflies from year to year is always a balance between natural forces, and the interactions between organisms. Survival is exacerbated if the weather is poor for flying, global climate change causes extremes in temperature, fungal or animal pests strike the host plants, or if there is an outbreak of parasitoids that lay eggs in the caterpillars and feed on them. This situation is further exacerbated in close proximity to human dwellings. Dogs playing fetch render the land compacted and devoid of host plants; snails and slugs crawl out from the established landscaping to consume tender shoots of host plants; excess runoff from sprinklers and fertilizers encourage the growth of annual grasses such as bromes and oats; people spray roundup indiscriminately to keep out weeds and the resultant chemicals drift into the wildlands; dumped garbage attracts and breeds rodents, wild life 'lovers' give large amounts of seeds, bread, and nuts to feed a small variety of birds and rodents.

The proposed action at Northeast Ridge would isolate the Callippe Silverspot population at the Northeast Ridge, and continue the fragmentation of endangered species butterfly habitat. It would restrict the flow of Callippe Silverspot movement at the western end of the ridge. Based on my experience, Guadalupe Canyon Parkway is not a viable flight corridor for the Callippe Silverspot butterfly. Its danger to butterflies is not only the vehicular traffic, but also the frequent wind tunnels and the lack of vegetation protection and cover. The west part of the Northeast Ridge is their one possible route should they cross down to the southeast ridge population - they would fly along the canyons of the Devil's Arroyo, the quarry and Owl and Buckeye Canyons, until they reach the southern grasslands. There is no other path of dispersal. Callippe Silverspot on the Northeast Ridge meet Guadalupe Parkway and houses if they head north, houses and the bay if they head east, houses and the industrial park if they head south. With this proposed action, they would become increasingly trapped on the Northeast Ridge.

Keep in mind that butterflies have short life spans, and that in any given year there are only so many good flight days due to wind and inclement weather. A Callippe Silverspot is estimated to live three weeks, while the Mission Blue lives around two weeks. Within this limited window of time and space, Callippes must find a mate while scouting the hilltops, and females will then lay eggs on the violas. The Mission Blue butterflies are not known to disperse far from their larval sites from year to year. The added barrier of houses and their accompanying death zones will cause the gradual and consistent decline of the Northeast Ridge butterfly populations over time.

Examples of this process are evidenced in the historical past by the extirpation of Callippe Silverspot at Twin Peaks (EA 3-12) and throughout San Francisco where it was first collected. The Mission Blue, once abundant in San Francisco and first collected at Twin Peaks, is now no longer an inhabitant in San Francisco. Just recently it was declared extirpated at Twin Peaks. This is also an ongoing process that is happening to the Mission Blue populations in Pacifica. What was a contiguous and navigable landscape is now cut up by barriers and dangers. The primary cause of the decline of the Callippe Silverspot is the loss of habitat from human activities (EA 3-12), and it is for this reason that the existing habitat must be conserved.

Moreover, it is imperative that we know more about the biology and ecology of the Callippe Silverspot and the Mission Blue on San Bruno Mountain.

#### Lack of research on San Bruno Mountain

To the best of my knowledge, there has been minimal biological study on the ecology of the Callippe Silverspot on San Bruno Mountain, especially over the last twenty five years. Until I did my master's thesis on the Mission Blue, there had been no studies of its juvenile ecology in the field, and no scientific research about its biology for fifteen years. A similar vacuum exists regarding the Callippe. The 1982 HCP research was concerned mainly with the population of adults and their movement. Scientists netted thousands of adults, marked them with permanent markers, then caught them again. In this way they determined how many there were, and how far the butterflies dispersed. Prior entomologists from the beginning of the nineteenth century until the 1950's were more interested in adult collection and their taxonomy in relation to other species. They preserved adults in cases, compared specimens, and documented morphological variation and geography.

In the EA, there are no discussion of research goals or methodologies, only rough maps, repetition of past reports from consultants, and poorly made assumptions about the future. There is no way to tell who did the surveys, when, what was measured, and how they did what they did. The data gathered is incomplete, and does not describe the ecology of the site. What we do have are confusing data about the abundance of butterflies and host plants.

The distribution of the Callippe Silverspot host plant *Viola pedunculata* mapped by the EA is unclear. The text states, "Figure 3-3 shows the distribution of the Callippe Silverspot on the mountain", while the actual figure 3-3 states "Grassland that supports Callippe Silverspot habitat". Do the maps indicate adult sightings, or grasslands that have viola? Obviously, not all the grasslands have viola, or offer the same topographical features of shelter, protection, and hilltops for mating. The maps do not tell us exactly what the habitat is, where it is, or in what abundance or density.

In Figure 3-4 is depicted the "Distribution of Viola on San Bruno Mountain, 2005". The legend shows red cross hatches for the *Viola* followed by "(120 acres)". There is nothing further to indicate how many plants per area (density) are within the cross hatched areas. Exactly what sort of habitat is indicated? How many violas are present on the ground to merit cross hatching? Have Callippe Silverspots butterflies been observed in the cross hatches? In what numbers?

Figure 3-5 is the "Distribution of Viola on Northeast Ridge 2005" where *Viola pedunculata* is documented as occupying 35.4 acres. At the northern edge of the Northeast Ridge where it meets the Guadalupe Parkway it is not clear what vegetation type is there, being a cross hatched yellow and black. How many plants are on the 35.4 acres? How is the distribution of plants in space?

Later, based on averages of three years of viola plant counts, the EA states that "there are approximately 133.5 acres of viola habitat throughout the mountain, of which 24.8 acres are on the Northeast Ridge. (EA 4-30)". Moreover, that "proposed 2007 VTM would result in the loss of approximately 2,514 viola plants or 3.1 acres of viola habitat (including the loss of 0.8 acres of viola habitat which occurred during the recent infrastructure grading.)". Relevant aspects of Table 4-4 of the EA is copied below for clarity in reading:

Table 4-4. Comparison of Viola Habitat Impacted by 1989 and 2007 VTMs

	1989	2007
Development	Development	2007
	Proposal	Proposal
Estimated number Of viola plants Impacted	5,830	2,514
Estimated acres of Viola habitat Impacted	8.6	3.1

The 1989 plan shows approximately 678 viola plants per acre of habitat, while the 2007 plan shows 810 plants per acre. There is no source cited for the data for 1989 plant counts; the 2007 proposal is for the average of three years of data. Based on the 2007 counts and the 24.8 acres of viola habitat on the northeast ridge (EA 4-30) I arrived at the number of EA estimated plants: 20,088 viola plants. The proposed action would therefore destroy over 12.5% of the viola population outright, then cause the decline of the remaining violas over time. This is significant.

Within the area I surveyed at the Northeast Ridge in 2007, in prime Callippe grassland, the violas were found here and there in little clumps at a density of about 90 – 120 plants per acre (369 plants over approximately 3-4 acres). My experience is that violas are not distributed evenly in large masses across the grassland as summarized by the EA. The report by Longcore et al. mentioned above, also shows that violas are concentrated in some areas of the grassland more than others. The violas are located in small patches in limited numbers; they were most abundant on the south facing slopes, in wet soils where also grows long petaled iris and *Ranunculus californica*. The ecology of the viola is as specific as the endangered butterflies. A vegetation survey of other remaining Franciscan grasslands such as Bayview Hill in San Francisco is a good demonstration of the spottiness with which violas occur. At the Northeast Ridge of San Bruno Mountain, the violas are concentrated in the midst of the proposed action next to, above, and below the grove of Eucalyptus trees.

#### Mitigation restoration and management

There is no mitigation offered that can replace Callippe Silverspot habitat. The proposed HCP Amendment will result in the loss of soil and the seed bank, changes in the underlying water table and flow of water, death of existing plants and invertebrates, and the destruction of habitat for birds and mammals. All the ancient connections that bind these together are lost permanently. The greatest mistake made by the original Habitat Conservation Plan was the assumption that habitat, with its complex interaction of plants and animals, could be created from scratch. Review of the history of the HCP, since 1982, demonstrates that it has not been possible to successfully create butterfly habitat.

A restoration site is often either a human constructed site or a continually managed one, one more akin to a garden of natives rather than a wild place. By definition, a wild place more or less takes care of itself, and needs little human attention. This is the end goal of restoration. The

Northeast Ridge in its current state is still in a state of 'wild'ness provided it is not further encroached upon and destroyed.

In some restoration areas such as on San Bruno Mountain and Milagra Ridge, workers and volunteers have outplanted nursery grown lupines for Mission Blues to lay eggs on. This is not new habitat, but merely supplementing the existing population of lupines. It is not beneficial in all cases, as introduced fungal infections from potting soils can enter the native soils. Additionally, human caused die back of planted lupines has been reported in several instances. It is my experience that nurseries growing native plants cannot replace the genetic and evolutionary gold mine of nature, nor can dozens of field workers yielding weed wrenches and herbicides.

As for the larval host plants of the Callippe Silverspot, restoration nurseries have been unable to grow the violas, much less plant them out into the wild. Its seed are few, hard to collect, and do not germinate well in the nursery. The existing plants in the field are irreplaceable. In order to conserve populations of the Callippe Silverspot on San Bruno Mountain, all of its remaining habitat must be conserved.

It is repeated numerous times in the EA that "scrub is rapidly encroaching upon the grasslands, and that the grasslands are being overtaken by weeds". The EA's unsupported proposition is that without dollars from the Brookfield Homes Endowment, the Northeast ridge grasslands of San Bruno Mountain would soon be nothing more than a patch of weeds, useless to butterflies. It is repeated in advertisement fashion that "Impacts to the Callippe Silverspot under the proposed 2007 VTM are mitigated to **not significant** through Brookfield Northeast Ridge II LLC's commitment to preserve the dispersal corridor along Guadalupe Canyon Parkway, preserve high value hilltopping habitat at Callippe Hill, and dedicate endowment funding for increased management of invasive plant species (EA 4-37 and others)".

"With no additional funding, continuation of the current management program would result in the continued loss of grassland habitat and likely eventual decreases in butterfly distribution. (EA 2-15)"

"Over the last 25 years, management efforts on the Mountain have not been able to keep pace with observed landscape level changes that are occurring from 1) the expansion of coastal scrub over large areas of grassland; and 2) the influx and expansion of herbaceous and grass weeds within the native grasslands – especially on drier and lower elevation slopes (TRA Environmental Sciences, Inc. 2007) (EA 3-6)"

While there have been changes in San Bruno Mountain's vegetation communities, more management dollars to fight this process is limited in what can be accomplished. Succession is a dynamic process, not a straightforward one. On the slopes of San Bruno Mountain, grasslands do not automatically go to scrub, and scrub to forests, as paid managers would sometimes have one believe. Vegetation communities are also where they are due to geography and exposure, water above and below ground, soil structure and content. It is no coincidence that oaks are located in San Bruno Mountain's protected canyons, willows are along the waterways, and grasslands are often on the ridges.

In their own relatively intact state, wildland sites have an organism - like quality that allows them to resist invasion, heal themselves from damage, and incorporate new elements into their existing ecology. What they most need to survive are lack of fragmentation, distance from the dead zones of human civilization, and time to adjust to new and novel organisms.



I have noted little habitat restoration work done for the benefit of endangered butterflies at the Northeast Ridge over the past eleven years. The only human ‘management’ at the Northeast Ridge I have observed have been negative: four wheel drive vehicles driving through the grasslands as part of monitoring; and the repeated paving of gravel over the fire road near what is nicknamed cow ravine. This destroyed an important cluster of the *Lupinus formosus* host plant, as well as Mission Blue caterpillars.

Management is something that occurs after the fact. After destruction and construction has already taken place, and the decline has begun. This is an opportunity to prevent the damage from taking place beforehand, and work on mending the collateral damages of civilization. The protection, attention, and care we give to our endangered butterflies at this point are not adequate to ensure their long term survival. This destructive proposed action under the guise of conservation and enhancement is a demonstration of this fact.

Another feasible alternative exists

It is important to ask “How can we can make a wise investment in the future of our society?” in this time of tremendous environmental destruction and heightened awareness and consciousness of our planet. It is not “How many homes can we build here and get away with it?” or “How can we twist words and facts around to show that we are having **no significant** impact on the planet?” or “How can we buy our way into the future with endowments making us ‘**net beneficial**’?” or “How much money can we mine out of destroying nature’s creation that has taken millennium?”. Rather, to further the purpose of conservation and recovery of listed species, the questions that must be answered are “How can we best protect, educate and steward the natural world that has been our gift to live in?”, and “How can we share this vision with the Bay Area, the United States, and the world as a whole to gather widespread support?”

The continued development of the Northeast Ridge is the collective destruction of a biological, ecological, and cultural heritage that is ancient, priceless, and precious beyond words. The amendment must not be approved based on the premise that the Northeast Ridge of San Bruno Mountain was always a “planned parcel” as seen by the HCP. Today, we have a better understanding and love for the complexity and importance of the Franciscan landscape. We can reverse gears and make the conservation of this ecological treasure house a first priority.

In protecting the Northeast Ridge from further development, no money will flow into the pockets of developers, vendors, and construction workers. The local governments will also miss out on revenue from taxes and additional residences. What must be put forward is a new vision of San Bruno Mountain, and our societal relationship to nature. Money must be solicited from other sources to protect and guard the mountain. This investment in the future will bring respect and support, and lead to funding and cash flow in the long term. Imagine eco tours in our own backyard highlighting the rarest and most unique environment in the world. Visualize school children learned in the ways of plant taxonomy and plant chemistry; non invasive scientific research on rare butterflies; landscape architects and design classes using the mountain as a source of inspiration and knowledge. As evidenced by the GGNRA event Big Year in Endangered Species, this ecological knowledge is slowly spreading.

The butterflies are a symbol and keystone of the San Francisco Bay Area, they are our panda, our rhinoceros, our snow leopard, our elephant. To honor their presence here is to root ourselves in this landscape, and give a little something back to mother nature herself. A local naturalist Norm Gershenz of the Center for Ecosystem Survival invented the save a rainforest acre;

collecting pocket change fed into parking meters. He raised millions for conservation in places like Palau and Costa Rica. Conservation in places many people will never see or experience. Why not push for the conservation of biodiversity right here in the midst of a vibrant, 'green', and educated urban metropolis? If the will and vision are there, the money will follow. There does not have to be a loser, the landowner and developers must be fairly compensated for their inability to build any further on San Bruno Mountain. There are many other places that have already been ruined, that would be well served by new construction and renovation. We must be firm about what can and cannot be created by the human hand. We must set priorities that commit to conservation, education, and stewardship, and demonstrate our collective wisdom.

I ask you to consider the alternative not provided by the environmental assessment, and that is to opt for the full protection of the Northeast Ridge at this moment in time. No more grading, building, and destruction of endangered butterfly habitat. We must allow for a broader vision for the human community that guides our relationship to the natural world. I urge that you consider the biological and monetary value of the Northeast Ridge, the impact of the proposed action, and how an investment in butterfly habitat will pay off down the line in spiritual, educational, and monetary ways. Good luck.

Sincerely,

Thomas Y. Wang  
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**Individual Comment Letter #11 – Coffey**

September 3, 2009

Sam Herzberg, Senior Planner  
San Mateo County Parks Department  
455 County Center, 4<sup>th</sup> Floor  
Redwood City, CA 94063

Re: Mitigated Negative Declaration for San Bruno Mountain Habitat Conservation Plan  
Amendment #5

Mr. Herzberg,

I recommend the San Mateo Board of Supervisors reject this mitigated negative declaration because, based on my review of the documents, there is a potentially significant impact to the endangered species under question. This impact exists because the annual funding requirement specified in HCP Amendment #5 for the mitigations cannot be achieved by the means stated there.

The need for adequate funding is built into the law that permits the taking of an endangered species. One of the criteria for the issuance of a Section 10(a)(1)(B) permit is that the management plan be adequately funded.

- “The applicant will ensure adequate funding for the conservation plan and procedures to deal with unforeseen circumstances.” (Environmental Assessment, p. 1-7).

And HCP Amendment #5 states:

- A basic element of the HCP is creation of a funding mechanism which is able to support the monitoring, research, enhancement and other conservation techniques provided in this HCP for permanent habitat conservation. The amount of funding must be adequate and protected against inflation. (HCP Amendment #5, p.1)

Given this, I expected to find a section in the Mitigated Negative Declaration, HCP Amendment #5 or its supporting documents that laid out funding requirements for the management plan over time and showed the funding sources that would meet those requirements. There does not appear to be such a section. So I have tried to gather this financial information from various parts of these documents. I have supplemented this with material from USFWS documents obtained through FOIA. Copies of these latter documents are attached to this letter as exhibits.

### **HCP Annual Funding**

As is appropriate given the above mentioned criterion, the annual amount required to support the HCP is declared in the HCP itself. Under Amendment #5, the Amendment before you, Section V.B specifies the required annual amount of funding: \$400,000. (p. 2) It is worth noting that this is the same annual amount that was stated in the

Environmental Assessment published in 2007. In other words, there has been no adjustment for inflation between 2007 and May, 2009.

Further, according to USFWS documents obtained under the Freedom of Information Act, \$400,000 is less than the annual requirement identified by the Plan Operator and Permittees during the time the HCP amendment was being developed 5 years ago. See, for instance, emails from Michael Murphy of San Mateo County to USFWS, San Mateo County and TRA personnel on 7/15/2004 (FWS 04920); Administrative Draft, San Bruno Mountain Habitat Conservation Plan, Five Year Management Plan, July 2004 (FWS 04935 through FWS 04937); and email from Craig Aubrey to USFWS personnel pm 10/6/2004 (FWS 05071). These are collectively attached as Exhibit A. The figure used in those documents for the highest level of stewardship is \$415,000 per year. As adjusted using the Consumer Price Index for Urban Wage Earners and Clerical Workers within the San Francisco-Oakland-San Jose area, this is approximately \$465,000 in 2008 dollars, 16% more than the \$400,000 specified in Amendment #5.

### **Sources of Funding**

But when we look to the sources of funding, we find that, as currently stated, HCP Amendment #5 does not even provide for an annual funding of \$400,000. Complete information about funding sources is not in HCP Amendment #5, so I also consulted additional documents published by USFWS with the Amendment last May, specifically the Biological Opinion and Findings and Recommendations as well as San Mateo County's Mitigated Negative Declaration (full titles in the References).

The first thing to note is that the financial information among these documents is not consistent. All of the documents agree that there is a twofold source of funding for the HCP under the proposed amendment:

1. Charges on housing units assessed in the original HCP plus charges on residential and non-residential units to be assessed under the proposed HCP
2. A one time \$4 million grant from the developer, Brookfield Northeast Ridge II LLC that will be invested in a non-wasting endowment

However, they do not agree as to which portions of the housing unit assessment are subject to cost of living (inflation) increases. And there is also significant disagreement as to the amount of the 2007 per unit assessment of housing units built under the existing HCP.

### **Residential Unit Assessments**

Table 1 shows references to the charges assessed on residential units in four documents: 1) the Mitigated Negative Declaration 2) HCP Amendment #5; 3) Biological Opinion; 4) Findings and Recommendations. Please note the discrepancies in the per unit amount for the units under this new amendment. They range from \$800 (2006 dollars), \$850 (2007 dollars) to \$808.09 (2008 dollars). Some of this discrepancy is apparently due to different interpretations of the inflation adjustment. HCP Amendment #5 itself says that only that

part of the charge assessed in the original HCP is subject to inflation; the charge assessed in this amendment is not. Of the 3 other documents reviewed, only one, the Biological Opinion, appears to agree with this. The Mitigated Negative Declaration does not. I don't need to tell you that, over time, whether an assessment is adjusted for inflation makes a big difference in the amount of money available from these assessments.

Similar concerns exist as to the total amount of revenue that is expected annually from these residential assessments, as Table 2 shows. As mentioned earlier, HCP Amendment #5 anticipates \$400,000 annual funding. It anticipates that \$200,000 of that will come from interest on the \$4 million endowment. So the remaining \$200,000 has to come from the annual residential assessments.

The annual residential assessments can be broken down into two parts: the amount from the existing housing units, and the amount expected from the new housing units, which are covered under HCP Amendment #5. The Biological Opinion and the Findings and Recommendations each give a figure for the amount realized from assessments on existing houses: the Biological Opinion states that in 2007, revenues were approximately \$130,000 (p. 7) and the Findings and Recommendations states that in 2005, the revenues were approximately \$140,000<sup>1</sup> (p. 25)

The Biological Opinion (p. 7) and the Findings and Recommendations (p. 25) both expect approximately \$75,000 from the new residential units. The Findings and Recommendations document gives the number of units: '88 new homes (the 17 currently under construction and the 71 in the proposed Amendment)'. (p. 25)

Table 3 and 4 look at the anticipated revenues from assessments on the 88 new housing units given the base amounts given in the documents under review. Since many of the documents give a total per-unit estimate, Table 3 calculates totals for 88 units. However, since HCP Amendment #5 breaks down the per-unit assessment for the new housing units into the part due to the original HCP (in (V)(B)(3)(a)), and the part due to this Amendment in ((V)(B)(3)(b)), and since the part specified in (V)(B)(3)(b) is not subject to inflation, the total expected annual revenues in Table 3 are not apt to be correct.

So Table 4 looks at the two documents which break down the per unit assessment into an original HCP component, and a Amendment #5 component, and calculates the total per unit assessment, and a total assessment for all units. These documents are the Mitigated Negative Declaration and Findings and Recommendations. These two documents have different values for the existing HCP per unit assessment in 2007 dollars, hence their total values are different. For the Mitigated Negative Declaration, with a 2007 per unit assessment of \$44.82, the annual total for all units is \$67,097.47. For Findings and Recommendations, with a 2007 per unit assessment of \$88.56, the annual total for all

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<sup>1</sup> I was not able to find a derivation of either \$130,000 or \$140,000. But given the two vastly different figures given as the per-unit assessment in 2007 (\$44.28 in the Negative Declaration, and \$88.56 in the Findings and Recommendations), I have to wonder whether either \$130,000 or \$140,000 is accurate.

units is \$71,122.70. Not \$75,000, but \$67,000 or at most \$71,000 can be expected under this funding leg of HCP Amendment #5.

That means that the proposed restoration program is starting with an \$8,000 or at least a \$4,000 annual shortfall from this funding source. And since the greater part of the assessment on the new units is not subject to inflation, that shortfall will increase each year. How is that shortfall going to be addressed?

<b>Table 1: HCP annual assessment on residential units</b>				
	<b>Mitigated Negative Declaration</b>	<b>HCP Amendment #5</b>	<b>Biological Opinion</b>	<b>Findings and Recommendations</b>
1982 annual assessment	'an annual charge of \$20 per dwelling unit.' p. 15	B (3)(a): '\$20 annual charge per dwelling unit' p. 1	No Discussion	'an annual charge of \$20 per dwelling unit' p. 6
2007 annual assessment for units under the 1982 HCP	'\$44.28 in 2007 dollars' p. 15	No discussion	No Discussion	'\$88.56 in 2007 dollars' p. 6
2007 – 2009 assessment	'The 71 housing units in the 2007 VTM and the 17 units constructed in 2006-2008 would pay an annual assessment of \$800 in 2006 dollars' p. 15	B (3)(b): "in addition to the annual charges described above, development within the City of Brisbane approved after May 28, 2009, including development of the Northeast Ridge, as described in the Operating Program (Chapter 7), will provide the following additional funding ... (i) residential development will provide an annual charge in the amount of \$716.73 per unit. p. 1	No Discussion	'the 71 housing units in the 2007 VTM and the 17 units under construction in Unit I would pay an annual assessment of \$800 in 2005 dollars (\$850 in 2007 dollars)' p. 6
2006, 2007 or 2008 total assessed amount for new units under HCP	'\$800.00' (2006 dollars) p. 15	No discussion	'\$808.09' (2008 dollars) p. 6	'\$850' (2007 dollars) p. 6

<b>Table 1: HCP annual assessment on residential units</b>			
<b>Mitigated Negative Declaration</b>	<b>HCP Amendment #5</b>	<b>Biological Opinion</b>	<b>Findings and Recommendations</b>
Amendment #5 Effect of Inflation – Consumer Price Index for Urban Wage Earners and Clerical Workers within the San Francisco-Oakland-San Jose area	B (3)(a): ‘adjusted annually for inflation as described in Section VI(A)(2) of the Agreement With Respect To The San Bruno Mountain Habitat Conservation Plan. p. 1  B (3)(b): The additional annual charges described in this Section V(B)(3)(b) will not be adjusted annually for inflation. p. 2	‘Each unit in 2007 Vesting Tentative Map will pay the existing annual San Bruno Mountain Habitat Conservation Plan charge, adjusted annually for inflation in accordance to the Employment Cost Index – West or its successor, plus a fixed charge of \$716.73’ p. 6	‘The amount of the dwelling unit charge would be adjusted annually in accordance with increases in the preceding calendar year’s Consumer Price Index for Urban Wage Earners and Clerical Workers within the San Francisco-Oakland-San Jose area, as reported by the U.S. Department of Labor’s Bureau of Labor Statistics.’ p. 6

<b>Table 2: Total anticipated annual revenues under HCP Amendment #5</b>			
<b>Mitigated Negative Declaration</b>	<b>HCP Amendment #5</b>	<b>Biological Opinion</b>	<b>Findings and Recommendations</b>
Total Amount from all sources	‘in excess of \$400,000’ p. 2	\$405,000: ‘\$130,000’ (p. 7) plus ‘\$275,000’ (p. 7)	‘The combined revenue is \$415,000’ p. 25
Total Amount from Brookfield \$4 M endowment	‘over \$200,000 per year in interest’ p. 16	‘approximately \$200,000.00 per year in interest’ p. 6	‘over \$200,000 per year in interest (5 percent annual rate of return)’ p. 6



**Table 2: Total anticipated annual revenues under HCP Amendment #5**

	Mitigated Negative Declaration	HCP Amendment #5	Biological Opinion	Findings and Recommendations
Total Amount from all units under the original HCP	No discussion	No discussion	'In 2007, approximately \$130,000 per year' p. 7	7 'The 2005 annual revenue ... is approximately \$140,000.' p. 25
Total Additional Amount from residential units under HCP Amendment 5	No discussion	No discussion	\$75,000, which is '\$275,000.00 per year (2007 dollars)' p. 7 less \$200,000 from the endowment.	'proposed annual assessment (\$74,800 in 2007 dollars)' p. 6 'assessment on the 88 new homes ... will generate an additional \$75,000 annually. p. 25

**Table 3: Anticipated annual revenues from 88 new residential units under HCP Amendment #5**

	Mitigated Negative Declaration	HCP Amendment #5	Biological Opinion	Findings and Recommendations
Total per-unit assessment under HCP Amendment #5	'\$800.00' (2006 dollars) p. 15	No discussion	'\$808.09' (2008 dollars) p. 6	'\$850' (2007 dollars) p. 6
Total for 88 units in 2008 using above assessment adjusted for inflation	\$75,050.34	No discussion	\$71,111.92	\$77,258.44

**Table 4: Anticipated annual revenues for 88 new residential units under different values for (V)(B)(3)(a) per unit assessment**

	Mitigated Negative Declaration	Findings and Recommendations
Per unit assessment under HCP Amendment #5 (V)(B)(3)(a) in 2007 dollars	'\$44.28 in 2007 dollars' p. 15	'\$88.56 in 2007 dollars' p. 6
Per unit assessment under HCP Amendment #5 (V)(B)(3)(a) in 2008 dollars	\$45.74 (applying 2007 to 2008 Consumer Price Index for Urban Wage Earners and Clerical Workers within the San Francisco-Oakland-San Jose area, as reported by the U.S. Department of Labor's Bureau of Labor Statistics).	\$91.48 (applying 2007 to 2008 Consumer Price Index for Urban Wage Earners and Clerical Workers within the San Francisco-Oakland-San Jose area, as reported by the U.S. Department of Labor's Bureau of Labor Statistics).
Per unit assessment under HCP Amendment #5 (V)(B)(3)(b)	'\$716.73' p. 1	'\$716.73' p. 1
Total per unit assessment in 2008 dollars	\$762.47	\$808.21
Total for 88 units in 2008 dollars	\$67,097.47	\$71,122.70
		\$808
		\$71,

### **\$4 Million Non-Wasting Endowment**

There is a reassuring consistency in the documents reviewed here about the amount of annual revenue expected from the \$4 Million Endowment to be supplied under HCP Amendment #5 by Brookfield Northeast Ridge II LLC. All of them state that they expect \$200,000 annually, a 5% annual return. HCP Amendment #5 specifies that the \$4 Million will be used to establish a non-wasting endowment to be managed by the Trustees (p. 2). A non-wasting endowment is one sufficient to generate annual earnings equal to inflation-adjusted ongoing costs. This means that some portion of earnings is reinvested so that endowment principal grows, and the earnings are sufficient to fund inflation-adjusted ongoing costs in perpetuity.

One has to ask whether 5% is a reasonable return to expect from a \$4 Million non-wasting endowment, and if it was reasonable to expect a 5% return when these documents were in preparation, is it still reasonable to expect it after the recent financial crisis?

Also relevant here is the fact that the Trustees and Operators of the San Bruno Mountain HCP are all California public agencies, and, as such, may be subject to Section 53600 of the California Government Code which limits investments to more conservative instruments. One source I found, published before the 2008 crash, suggests that non-wasting endowments under such rules can expect annual earnings of 2.2%<sup>2</sup>.

These are questions for legal and financial experts.

### **HCP Funding History**

The past history of funding for this HCP gives evidence that careful financial planning needs to be part of the analysis for the HCP. Section V.B of the original HCP says:

- “Upon full implementation of the program, it is anticipated that the amount of annual funding will be in excess of \$60,000.00, which has been determined to be sufficient for habitat conservation.” (SBM HCP Steering Committee, 1982, p. V-5).

According to the HCP Plan operators, the funding was adequate for some years. In a background memo on the San Bruno Mountain HCP Funding Program forwarded by Sam Herzberg of San Mateo County to USFWS personnel, it is noted that:

- “For the first ten years of the Trust, income exceeded expenditures. ... Beginning in fiscal year 1993-1994, the trend reversed itself, with expenditures exceeding income, as more ambitious habitat conservation and enhancement activities were undertaken on the Mountain.” (FWS 04523; Attachment to memo sent by Michael

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<sup>2</sup> Sherry Teresa, “Financial Considerations”, p. 141, in Nathaniel Carroll, Jessica Fox and Ricardo Bayon, eds. Conservation and Biodiversity Banking, Sterling, VA: Earthscan. 2008.

Murphy 3/3/2004, FWS 04521). Copies of these documents are attached as Exhibit B.

And a SBM HCP Budget showing actual and projected figures from 1999 through 2013 shows total available funds going negative in 2009. (FWS 04914; Attachment to memo sent by Sam Herzberg to Craig Aubrey 7/14/2004, FWS 04913), Copies of these documents are attached as Exhibit C.

### **Conclusion**

There are several ways the proposed HCP Amendment #5 does not meet the test of adequate funding:

- \$400,000, the annual requirement as stated in HCP Amendment #5 is the same as the requirement stated in the Environmental Assessment published in 2007. There has been no adjustment for inflation.
- Anticipated annual revenue from the assessment on new residential housing units has been overstated by from \$4,000 to \$8,000 in current dollars.
- The charge assessed by HCP Amendment #5 on new residential units will not be adjusted for inflation with the result that the amount in real dollars available will be less each year.
- It is not at all certain that a \$4 Million non-wasting endowment managed by the San Bruno Mountain HCPs can yield an inflation-secure income of 5% per year.

Hence the conclusion of the Mitigated Negative Declaration, that potential significant impacts have been reduced to less than significant levels, has not been reached.

There is general agreement among all of us who care about San Bruno Mountain that the preservation of its species requires human intervention, and thus, money. The grasslands necessary for both the Callippe Silverspot and Mission Blue butterflies are disappearing, and will not survive without restoration. So I am sympathetic to the attitude expressed throughout these documents that this housing development will help the butterflies because it will provide funds for restoration. But fees from developers who want to build on endangered species habitat are not the only way to raise money. Conservation organizations have been very successful at raising funds to acquiring land and restore open space, particularly here in the Bay Area. Our own organization, San Bruno Mountain Watch, has a history of such land acquisition: we were instrumental in the acquisition of the shellmound area in South San Francisco, a significant archaeological site, and its transfer to San Bruno Mountain State and County Park. We are in the process of further developing this land acquisition aspect of our mission, as well as increasing our historic commitment to restoration. And this well-established method of raising money to preserve and restore land does not involve putting an endangered species at risk of extermination, which the plan before you does.

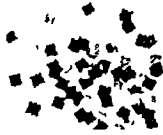
You have a chance to stop this and I urge you to do so.

## References

- County of San Mateo Department of Parks. 2009. San Bruno Mountain Habitat Conservation Plan Amendment #5: Initial Study/Mitigated Negative Declaration (Mitigated Negative Declaration)
- County of San Mateo and the City of Brisbane. 2007 Biological Study and Analysis of Conserved Habitat for Amendments to the Habitat Conservation Plan for San Bruno Mountain and Incidental Take Permit PRT 2-9818. Prepared by TRA Environmental Sciences. (Appendix A)
- U.S. Fish and Wildlife Service. 2009. Amended Text of San Bruno Mountain HCP – As Amended to Support ITP 215574-5 (HCP Amendment #5)
- U.S. Fish and Wildlife Service. 2009. Findings and Recommendations pursuant to the Endangered Species Act and Finding of No Significant Impact pursuant to the National Environmental Policy Act for the Issuance of a Section 10(a)(1)(B) Incidental Take Permit (TE215574-5) associated with Implementation of the Habitat Conservation Plan for the San Bruno Mountain Habitat Conservation Plan in San Mateo County, California. (Findings and Recommendations)
- U.S. Fish and Wildlife Service. 2009. Intra-Service Biological Opinion on the Amendment to the San Bruno Mountain Habitat Conservation Plan. (Biological Opinion)
- U.S. Fish and Wildlife Service. 2007. San Bruno Mountain Habitat Conservation Plan Amendment Environmental Assessment. Prepared by Jones and Stokes. (Environmental Assessment).

# Exhibit A

Craig Aubrey's e-mail 1



**Laura Valoppi**  
07/19/2004 04:13 PM

To: "Michael Murphy" <MMurphy@co.sanmateo.ca.us>  
cc: Craig\_Aubrey@fws.gov, Kobernus@traenviro.com,  
Lori\_Rinek@fws.gov, Reid.TRA\_PO.TRA\_DOM@traenviro.com,  
"Samuel Herzberg" <SHerzberg@co.sanmateo.ca.us>  
Subject: Re: need 5 year monitoring plan

Mike,  
I spoke briefly with Jim Monroe, and he is inundated this week with litigation issues. He will give you a call likely sometime next week to discuss the below issues with you.  
I'm out of the office until Aug. 4.

Laura

"Michael Murphy" <MMurphy@co.sanmateo.ca.us>



**"Michael Murphy"**  
<MMurphy@co.sanmateo.ca.us>  
07/15/2004 04:01 PM

To: <Laura\_Valoppi@fws.gov>  
cc: "Samuel Herzberg" <SHerzberg@co.sanmateo.ca.us>,  
<Craig\_Aubrey@fws.gov>, <Lori\_Rinek@fws.gov>,  
<Kobernus@traenviro.com>,  
<Reid.TRA\_PO.TRA\_DOM@traenviro.com>  
Subject: Re: need 5 year monitoring plan

Laura--Sorry for the delay in getting the 5 year plan to you. The draft plan became available for internal review shortly before the Trustee's meeting. After the Trustees meeting, we met internally to discuss how the plan might need to be revised to reflect the concept of a progressive list of priorities depending on an available level of funding. The need for revision is based on recent discussions concerning the form of the HCP amendment and the expectations of the Service, particularly with regard to the level of funding required to carry out the Plan, and the requirement for assured funding. The following are what we see as the basic assumptions and expectations underlying the process as we move forward:

1. Restatement of goals and objectives in the HCP amendment, coupled with changes that have happened on the Mountain in the past 20 years, suggest a need for higher level active stewardship than can be sustained under current funding.
2. The 5-year plan was always intended to be the place where the details for implementing goals and objectives would be set out.
3. Accordingly, the County, as Plan Operator, has compiled a 5-year plan that shows in detail how several levels of stewardship may be accomplished, including an effort that would cost approximately \$415,000 per year.
4. We believe that, while not necessarily legally mandated, the higher level of effort is scientifically warranted, and is certainly a desirable level of active management which responds to a broad range of public, agency and local government concerns.

FWS 04920

Table E-1. HCP Management Program Options

HCP Management Program Options	1. Core Program (hand/ herbicide control of woody exotic species)	2. Core Program with a) Burning and Grazing	3. Core Program with a) Burning and Grazing b) Hand/ Herbicide follow up	4. Core Program with a) Burning and Grazing b) Hand/ Herbicide follow up c) Monitoring every 5 Years	5. Core Program with a) Burning and Grazing and b) Hand/ Herbicide follow up c) Monitoring every year	6. Expanded Program (=Core Program and all Priority One habitat areas)	7. Expanded Program with c) Monitoring every 5 Years	8. Expanded Program with c) Monitoring every year
Management Priority 1 Areas	80,000	80,000	80,000	80,000	80,000	299,981	299,981	299,981
Non-natives Control								
Conduct Controlled burning (300 acres) grazing (100 acres)	0	46,000	46,000	46,000	46,000	46,000	46,000	46,000
Follow up herbicide and hand control within burned and grazed treatment areas	0	0	50,000	50,000	50,000	0 (Included above)	0 (included above)	0 (Included above)



HCP Management Program Options	1. Core Program (=hand/ herbicide control of woody exotic species)	2. Core Program with a) Burning and Grazing	3. Core Program with a) Burning and Grazing b) Hand/ Herbicide follow up	4. Core Program with a) Burning and Grazing and b) Hand/ Herbicide follow up c) Monitoring every 5 Years	5. Core Program with a) Burning and Grazing and b) Hand/ Herbicide follow up c) Monitoring every year	6. Expanded Program (=Core Program and all Priority One habitat areas)	7. Expanded Program with c) Monitoring every 5 Years	8. Expanded Program with c) Monitoring every year
Vegetation Monitoring (within grid units)	0	0	0	800	4,000	0	800	4,000
Abundance and Presence Surveys for MB and CS - Program set up cost \$6,000 per year for first 3 years only (installation of grid corners)	0	0	0	6,000	6,000	0	6,000	6,000
Abundance and Presence Surveys for MB and CS <sup>2</sup>	0	0	0	4,000	10,000	0	4,000	10,000
San Bruno Eflin Larval surveys	0	0	0	400	2,000	0	400	2,000

ADMINISTRATIVE DRAFT. SAN BRUNO MOUNTAIN HCP 5 YEAR PLAN 2005-2009

HCP Management Program Options	1. Core Program (=hand/ herbicide control of woody exotic species)	2. Core Program with a) Burning and Grazing	3. Core Program with a) Burning and Grazing b) Hand/ Herbicide follow up	4. Core Program with a) Burning and Grazing and b) Hand/ Herbicide follow up c) Monitoring every 5 Years	5. Core Program with a) Burning and Grazing and b) Hand/ Herbicide follow up c) Monitoring every year	6. Expanded Program (=Core Program and all Priority One habitat areas)	7. Expanded Program with c) Monitoring every 5 Years	8. Expanded Program with c) Monitoring every year
Rare Plant Surveys	0	0	0	400	2,000	0	400	2,000
Ortho-photographic analysis of grassland extent (general vegetation map)	0	0	0	200	1,000	0	200	1,000
Annual Report	2,000	2,000	2,000	3,000	5,000	2,000	3,000	5,000
Subtotal	82,000	128,000	178,000	190,800	206,000	347,981	360,781	375,981
Administration (10%)	8,200	12,800	17,800	19,080	20,600	34,798	36,078	37,598
HCP Management Total	90,200	140,800	195,800	209,880	226,600	382,779	396,859	413,579

Craig Aubrey's e-mail 1

**Craig Aubrey**  
10/06/2004 01:19 PM

To: Susan C Hill/SAC/R1/FWS/DOI@FWS  
cc: Laura\_Valoppi@fws.gov@FWS  
Subject: Interest Gained from an endowment

Susan,

We are currently working on an amendment to the San Bruno Mountain HCP. Estimates provided by the consultants indicate that O&M will cost about 415K per year. There is about 120K per year guaranteed now. So, we need approximately 300K per year in 2004 dollars to manage the mountain. We are trying to estimate what size endowment we would need to generate this amount. Can you help? We know that this is based upon the interest rate but we don't know what is safe to assume and we don't know how to account for increases in costs (inflation?).

We assume you know about this because we expect that all of the banks have to deal with this. Thank you,

Craig

FWS 05071

# Exhibit B

The historical funding pattern for the HCP reflects the areas of emphasis over the course of the life of the HCP. For the first ten years of the Trust, income exceeded expenditures. As noted, income was fairly substantial from the outset, due to the fact that interim payments were being received even though development on the Mountain was not yet underway. Income was further bolstered by a planning assistance surcharge, assessed against any developer requesting the assistance. On the other side of the ledger, expenditures were lower during the early years of the Plan due, in large measure, to the need to investigate and experiment with habitat conservation techniques prior to implementing a more ambitious program of conservation and enhancement activities mountain-wide. Further, the Trustees recognized the value of developing a healthy surplus in the Fund early in the program to provide for emergency situations where a commitment of substantial funds might be necessary. Beginning in fiscal year 1993-1994, the trend reversed itself, with expenditures exceeding income, as more ambitious habitat conservation and enhancement activities were undertaken on the Mountain.

As noted above, the threshold amount of revenue determined to be adequate for habitat conservation purposes has increased from \$60,000 in 1983 to about \$107,000 today. The actual amount of revenue received currently stands at about \$160,000 to \$170,000 per year.

### 3. Funding Issues for Consideration in the HCP Amendment Process.

As noted above, for the last ten years the yearly expenditures for habitat conservation purposes have tended to exceed the income from development on within the HCP area. While the income has in fact exceeded that considered adequate for implementation of the Plan when it was adopted in 1983, the Trustees have been confronted in the last several years with the task of making tough choices among different proposed restoration and enhancement activities, and between these activities and monitoring requirements. All parties agree that additional funding would significantly enhance the ability to fully carry out the objectives of the Plan.

The options for additional revenues under the current funding provisions of the HCP are limited. As noted above, the funding source for the Plan is development authorized under the HCP. With a few exceptions, all development is completed under the Plan and this development pays into the HCP Trust Fund at the amounts specified in the Plan. Thus, the prospect of additional significant amounts of funding from future development is limited.

The current HCP Amendment Project will include an examination of methods for increasing the annual funding revenues coming into the Plan. While the HCP participants are constantly seeking grant monies to carry out projects that further the goals of the HCP, it is recognized that an assured flow of annual funding is needed to fund the annual HCP Operating Program. The County is currently seeking grant funds to engage an economic and planning consultant to evaluate possible funding mechanisms that can be levied on existing as well as new development. Among the vehicles that will be explored are benefit assessment districts, parcel taxes, and other similar funding mechanisms currently provided for in California law. Such mechanisms can take the form of, for example, open space districts, fire abatement districts, and habitat management districts. The HCP amendment process will also include a thorough review of the legal constraints that may impact the selection of a particular funding mechanism, including but not limited to, the impact of Proposition 218 voter approval requirements.

Craig Aubrey's e-mail 1



"Samuel Herzberg"  
<SHerzberg@co.sanmateo.ca.us>

03/09/2004 06:01 PM

To: <Laura\_Valoppi@fws.gov>  
cc: <Craig\_Aubrey@fws.gov>, <Lori\_Rinek@fws.gov>, <Dadmundson@jsanet.com>, <dzipin@jsanet.gov>, <Harris.TRA\_PO TRA\_DOM@traenviro.com>  
Subject: Fwd: Funding Memos

Laura,

Here are the memos I referred to. No decision has been made regarding a funding mechanism. We are still in the discussion stage.

Sam

----- Message from "Michael Murphy" <MMurphy@co.sanmateo.ca.us> on Wed, 03 Mar 2004 10:08:04 -0800 -----

To: <julia@supportparks.org>

cc: "Mary Burns" <MBurns@co.sanmateo.ca.us>, "Samuel Herzberg" <SHerzberg@co.sanmateo.ca.us>, "Victoria HARRIS" <Harris@traenviro.com>, "Patrick Kobernus" <Kobernus@traenviro.com>

Subject Funding Memos

:

Here are the two memos (plus attachment) re funding.



Memo re HCP funding.doc



Memo re HCP Funding Alternatives.doc



SAN BRUNO MOUNTAIN HCP FUNDING OPPORTUNITIES.doc

FWS 04521

**Individual Comment Letter #12 – David Schooley**

September 4, 2009

Sam Herzberg, Senior Planning  
San Mateo County Park Dept,  
455 County Center  
Redwood City, CA 94063

Dear Sam,

I watched the country's first so-called "Habitat Conservation Plan" developed on San Bruno Mountain.

The critical and visionary Rare and Endangered Species Act was deeply weakened by the HCP, which vastly increased corporate control over wildlife and pristine habitat. The HCP has become a weapon of convenience in America's increasing despoliation of the natural world.

Naïve at the beginning, I was sure that after having miraculously saved the Mountain's Saddle, our government would move forward and purchase other, fragile portions of San Bruno Mountain, protecting rare species habitat; even, perhaps, acquire extra space surrounding troubled habitat.

My expectations proved far off the mark. Our own original Mountain defender group, the Committee to Save San Bruno Mountain, split apart in the early 1980's when faced with the growing influence of the new Habitat Conservation Plan. At the same time, though, we received honest and thorough responses from scientists around the world opposing this new legal permission to kill rare species on private property. By now the HCP had swept through the cities surrounding San Bruno Mountain in San Mateo County, into the State of California, to Washington D.C. and back again. While shredding the fragile framework provided in the original Rare and Endangered Species Act for maintaining a balance of biodiversity, the HCP allowed token, after-the-fact "recreations" of the habitat that was destroyed. These "recreations", as predicted decades ago by concerned scientists, have been an almost complete failure.

For almost thirty years we have tried to expose this unscientific "take" of endangered species. First, we did a careful photo monitor check at those sites where habitat of the Mission Blue butterfly were supposed to be "recreated". This photo survey clearly demonstrated that no such habitat was ever brought into being. The report we prepared based on this survey was sent to the city governments immediately surrounding San Bruno Mountain, to the County of San Mateo as well as to the U.S. Fish and Wildlife Service, but was met with silence on all fronts.



We've joined with concerned citizens in other parts of the country who have watched similar destruction of irreplaceable habitat in their neighborhoods. Together with them we've held conferences to expose the real long-term implications of the friendly-sounding HCP . We've circulated documentation about its unscientific basis. Locally, we've given many talks, and continue to lead walks and hikes on San Bruno Mountain, where people can see the debacle of "habitat recreation" with their own eyes.

Nevertheless, the HCP's legal sway remains unbroken across the country. There has been no crack in its armor. At the moment it provides cover for a proposed development of 77 new homes on the Northeast Ridge of San Bruno Mountain, whose exact plans have changed again. Currently, the proposal includes taller buildings than before and a narrower corridor for rare and endangered Silverspot butterflies. In addition, funding levels for the corridor are insufficient.

It is time that public servants like yourself, with direct responsibility for implementing this flawed manipulation of environmental protection stop rubber-stamping new HCPs and begin to seriously question its long, sorry record of unredeemed destruction.

Sincerely yours,

David Schooley

**Individual Comment Letter #13 – Bruce Bell**

Mailing Address  
PO BOX 656  
MONROE, NEW YORK 10949

Address For All Deliveries Other Than US Postal Service  
307 MUSEUM VILLAGE ROAD  
MONROE, NEW YORK 10950

Sender's Email: [b.bell@cea-enviro.com](mailto:b.bell@cea-enviro.com)

September 1, 2009

Mr. Sam Herzberg  
San Mateo County Parks Department  
455 Count Center, 4<sup>th</sup> Floor  
Redwood City, CA 94063

**RE:** San Bruno Mountain Habitat Conservation Plan Amendment #5  
Initial Study/Mitigated Negative Declaration Comments  
CEA No. 08031

Dear Mr. Herzberg:

I have been retained by San Bruno Mountain Watch to review and prepare comments on the "San Bruno Mountain Habitat Conservation Plan Amendment #5 Initial Study/Mitigated Negative Declaration" dated August 2009 (2009 ND), with regard to stormwater and sediment impacts.

I am currently president of Carpenter Environmental Associates, Inc., (CEA) of Monroe, New York, an environmental science and engineering firm. I hold a Bachelor's degree in civil engineering, a Master's degree in environmental engineering, and a Ph.D. in environmental engineering, all from New York University. I am a registered professional engineer in New York, New Jersey, and Pennsylvania. I am Board Certified as an environmental engineer by the American Academy of Environmental Engineers. I have over 37 years of experience in environmental engineering with specialties in wastewater treatment, stormwater management, and water pollution. My experience includes the design and evaluation of stormwater management plans and facilities, preparation of Stormwater Pollution Prevention Plans, and evaluation of stormwater and sediment impacts from development. My experience also includes wastewater treatment plant design and water quality modeling. I was Professor of Environmental Engineering at The George Washington University where I taught courses in environmental engineering at the undergraduate and graduate levels and directed graduate and sponsored research.

In preparing these comments, in addition to the 2009 ND, I reviewed the "San Bruno Mountain Habitat Conservation Plan Amendment Environmental Assessment," October 2007 (2007 EA); the "Northeast Ridge Development of San Bruno Mountain Final EIR, December 1982"; the 1989 Amendment to the 1989 EIR, the Northeast Ridge Unit II EIR Addendum dated June 2007; and the "Brisbane Lagoon Sediment Study: Best Management Practices," May 5, 2005.

The 2009 ND asserts that the effects of the proposed development are *not significant* with regard to substantial erosion or siltation. The 2009 ND does not provide any additional mitigation measures for erosion or siltation beyond those provided in the previous 2007 EA. The 2007 EA relies exclusively on the findings in the 1982/1989 EIRs for the Northeast Ridge Developments and mitigation measures contained therein to arrive at a *not significant* finding with regard to substantial erosion or siltation. The mitigation measures relied upon in the 2007 EA from the 1982 EIR are listed as temporary catchment basins and sediment traps and the addition of tide gates at the Brisbane Lagoon. No new mitigation measures were added from the 1989 EIR (Table 4-1).

The 2009 ND maintains that the effects of the proposed development are *not significant* with regard to generating polluted or increased surface water runoff. The 2007 EA relies on the conclusions of the 1982/1989 EIRs for the Northeast Ridge Development and mitigation measures contained therein to arrive at a *not significant* finding with regard to rate or amount of surface runoff. No mitigation measures from the 1982 or 1989 EIRs are listed in the 2007 EA (Table 4-1).

The 2009 ND maintains that the effects of the proposed development are *not significant* with regard to the degradation of water quality. The 2007 EA also relies on the conclusions of the 1982/1989 EIRs for the Northeast Ridge Development and mitigation measures contained therein to arrive at a *not significant* finding with regard to degradation of water quality. No water quality mitigation measures from the 1982 or 1989 EIR are listed in the 2007 EA (Table 4-1).

Stormwater management has progressed greatly since the 1980s. The entire regulatory structure has changed with the advent of NPDES permits for stormwater discharges during construction. Today, there is a much greater understanding of the need to control pollution from stormwater, the rate and quantity of stormwater discharges, as well as a much greater understanding of means to do so.

The analyses done and the mitigation measures proposed in the documents I have reviewed are not sufficient to support a finding of no significant impacts on water quality from erosion and sediment transport and other pollutants found in stormwater from the proposed Northeast Ridge Development; particularly in light of the impacts on Brisbane Lagoon from previous construction on Northeast Ridge. The mitigation measures proposed do not include most of the standard best management practices (BMPs) contained in current Stormwater Pollution Prevention Plans (SWPPP). Mitigation measures such as construction staging, rapid stabilization of disturbed areas, use of erosion control blankets, drop inlet protection, and use of flocculants in sedimentation basins along with BMPs such as silt fencing and stabilized construction entrances, can reduce sediment and stormwater turbidity to low levels.

The lack of detailed analysis and the lack of mitigation measures contained in the 2009 ND and supporting documents do not support the 2009 ND's finding of no significant sediment stormwater, and water quality impacts.

Sincerely,  
CARPENTER ENVIRONMENTAL  
ASSOCIATES, INC.



Bruce A. Bell, Ph.D., P.E., BCEE  
President

**Individual Comment Letter #14 – Lewis Buchner**

# Lewis Neal Buchner

5383 Bryant Avenue  
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lewisbuchner@earthlink.net

September 2, 2009

Sam Herzberg, Senior Planner  
San Mateo County Parks Department  
455 County Center, 4th Floor  
Redwood City, CA 94063

Re: San Bruno Mountain HCP Amendment – financing

Dear Mr. Herzberg,

I write to you in my capacity as a businessman with over twenty-five years of experience as a CEO; analyzing financial statements, directing senior accounting staff, writing business plans, raising private equity funding, and interacting with boards of directors. My CV is available should you need to review it.

In analyzing the SBM HCP Amendment #5, I find two significant problems with the proposed funding methods: ignoring inflation, and being overly optimistic about the return on a non-wasting endowment.

Based on my review of the documents and my experience and background, I believe there is a potentially significant impact even with the mitigations proposed.

## **Ignoring inflation**

Section V(B)(3)(b) of the Amended Text states, “The additional annual charges described in this Section V(B)(3)(b) will not be adjusted annually for inflation.”

Given that the original 1982 HCP specifically (and correctly) provided for an inflation adjustment, it is contrary to all prudent business practices to ignore inflation in the Amendment. Just as the original \$20/unit assessment in 1982 is now adjusted to \$88.56/unit, the \$716.73 assessment as proposed in the Amendment will likely be worth many times less in 30 years if not adjusted. This is clearly a flaw in the logic of the plan and in contradiction to the fiduciary responsibilities of the HCP Trustees.

## **Overly optimistic interest projections from a non-wasting endowment**

The Amendment projects an annual 5% return on a non-wasting endowment.

I reference here the book published in 2008 called “Conservation and Biodiversity Banking: a guide to setting up and running biodiversity credit trading systems”; edited by Nathaniel Carroll, Jessica Fox and Ricardo Bayon; (Earthscan in association with the International Institute for Environment and Development; London, England and Sterling, VA USA).

### ***Who invests the conservation endowment and why does it matter?***

*Currently, the US Fish & Wildlife Service encourages bankers to provide a monetary endowment to stewards sufficient to generate annual earnings equal to inflation-*

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adjusted ongoing costs. They call this a 'non-wasting endowment'. That means the endowment's historic principal is not invaded and some portion of earnings is reinvested so that endowment principal grows, and earnings thereon are sufficient to fund inflation-adjusted ongoing costs in perpetuity.

The right endowment for any given mitigation property is dependent on a number of complex evaluations. It is also conditioned upon whether the holder of the endowment is a public agency. With an endowment, a portion of the income from its investment is used for stewardship each year. The endowment can be a perpetual source of income for stewardship because, first, the principal is left whole, and second, the principal is allowed to grow at the rate of inflation. Only a portion of the endowment's income is used for stewardship each year because the remainder is added to the principal as an offset to inflation.

Most endowments for universities, hospitals and non-profits are invested in balanced portfolios. A portion is invested in bonds for security and short-term income and the remainder in stocks for appreciation. The division between the two is often 20 to 50 per cent bonds and 50 to 80 per cent stocks, depending upon the risk aversion of the organization and the stage of the business cycle. Depending upon the exact portfolio, over the long-term (say 30 years) returns from this kind of investment average between 9 and 9.5 per cent a year. Since inflation averaged about 4 per cent over the same period, there is, on average, about 4.5 to 5 per cent remaining for stewardship. However, governments lack this flexibility and are generally limited to lower returns. Section 53600 of the California Government Code requires that all investments by public or semi-public agencies in the State of California be limited to debt instruments.

A portfolio containing these investments generally returns 1.5 to 3 points less than more diversified portfolios.

Table 9.1 Privately held endowment

	<u>Amount (\$)</u>	<u>Per cent</u>
Endowment	4,000,000	100.0
Investment earnings	340,000	8.5
inflation reinvested	160,000	4.0
Stewardship Income	180,000	4.5
Used for current expenditure and reserves		

Table 9.2 Publicly held endowment

	<u>Amount (\$)</u>	<u>Per cent</u>
Endowment	4,000,000	100.0
Investment earnings	260,000	6.2 (Bonds only)
Inflation reinvested	160,000	4.0
Stewardship income	100,000	2.2
Used for current expenditures and reserves		



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*The lower return is caused by the restriction to debt instruments but also by the requirement that the issues have a very limited term. Although the reasons for the legislation are complex, it is generally designed to reduce losses of public monies by eliminating riskier investments. Unfortunately, Orange County, California sustained its dramatic monetary loss using repurchase agreements to bet on interest rates. Since governments generally are to receive public monies that are needed in the relatively short term for public expenditures, the law is also oriented to short-term funds. The endowment in perpetuity is a new, very foreign animal in public finance.*

*The point for conservation bank endowments, however, is that those held and invested by public agencies must be larger, about 100 per cent larger, than those held and invested by private entities in order to produce the same level of income for stewardship. It is a sensitive point but one that must be dealt with realistically.*

## ***Inflation and endowments***

*Inflation rates differ from task to task within an ongoing budget. Over time, employee benefits, health insurance, general insurance and vehicle costs have increased faster than the general rate of inflation as measured by the CPI. Periodically, energy costs increase faster than the general CPI, but from time to time they fall.*

*A steward should evaluate its task-based costs and, to the extent line item cost inflation has not tracked the general CPI, modify the PAR inflation assumptions.*

That being said, the paper cited above was written prior to the financial collapse of late 2008 and early 2009. Many endowments have suffered negative growth, and optimistic assumptions about useful cash flow from a non-wasting endowment should be made more conservatively by a factor of at least 2x.

I would consider an average non-wasting income stream to be \$100,000 rather than \$200,000.

## **Recommendations**

In conclusion, I recommend that the assessment fees on residential and non-residential units be amended to include an inflation-adjustment clause per the 1982 HCP. I also recommend that the projected cash flow from the endowment be adjusted to \$100,000 per year and that the funding shortfall be addressed from other credible sources.

Kind regards,



Lewis Buchner

**Individual Comment Letter #15 – Patricia Clarey**

June 16, 2008

Eric Tattersall, Acting Chief,  
Conservation Planning and Recovery Division  
U.S. Fish and Wildlife Service  
Sacramento Fish and Wildlife Office  
2800 Cottage Way W-2605  
Sacramento, CA 95825

Regarding the San Bruno Mountain Habitat Conservation Plan Amendment Environmental Assessment  
Sent by fax 916-414-6713

Dear Mr. Tattersall,

I am the Programs and Policy Director of Californians for Alternatives to Toxics (CATs), a public interest membership organization with a focus on gaining control on the use of pesticides in our environment. I have been involved in pesticide issues since 1976 when I began preparing testimony for the Environmental Protection Agency's administrative review of the Agent Orange ingredient 2,4,5-T in 1980. I have worked for CATs for more than twenty years, first as Executive Director for nineteen years and now in the current position for one year. In my job I have worked to achieve CATs' mission in many settings including as a member of a UN-sponsored Technical Options Committee for Substances that Deplete the Ozone Layer, a Public Advisory Committee for the Northwest Forest Plan and a California Department of Transportation Roadside Vegetation Management Alternatives Committee. On behalf of our membership I have coordinated participation in administrative procedures by federal and state agencies, filed numerous state and federal lawsuits, worked closely with experts from many fields and have been recognized as an expert by a federal court in the settlement of a lawsuit filed under the Endangered Species Act. I have been the lead author of numerous reports on subjects ranging from pesticide use in California's premium wine county to pesticide use and California law in public schools. I have lectured in classrooms and universities including the University of California and Humboldt State University on my specialty of bridging science and technology to the public.

Californians for Alternatives to Toxics advocates on behalf of its membership throughout the northern California region. Members of CATs

I have reviewed the San Bruno Mountain Habitat Conservation Plan Amendment Environmental Assessment (EA). In my review of the document I have referred to other scientific, legal and technical papers. These are cited in the comments below. I have reviewed the list of documents referenced in Chapter 7 of the EA.

My concerns regarding the current EA are in the lack of analysis of 1) herbicides used under the vastly expanded vegetation management of Alternative 1; 2) related analysis of invasive species for which herbicides may be used; 3) potential residual affect of drift and field spills of herbicides; 4) root causes of herbicide-caused spread and establishment of invasive plant species and 5) the effect on plant species composition and potential for impacts to endangered species.

#### Lack of Analysis of Herbicides

The Supreme Court of California recently approved an appeals court ruling which has bearing on the need for environmental analysis of pesticides as they are planned for use within specific projects and programs.

Regarding the plans' reliance on the Department of Pesticide Regulation's registration of herbicides, we agree with plaintiffs that the fact a sister agency had assessed the environmental effects of various herbicides *in general* and registered them for use did not excuse CDF from assessing those herbicides' use *as part of a particular timber harvest plan*. The court in *Californians for Alternatives to Toxics v. Department of Food & Agriculture* (2005) 136 Cal.App.4th 1 recently

addressed this issue, holding that the existence of the Department of Pesticide Regulation's registration program did not remove the environmental impacts of pesticide use from the proper scope of an EIR on a Department of Food and Agriculture plan to control an agricultural pest: "We acknowledge that DFA's [Department of Food and Agriculture] duty under CEQA to analyze the effects of pesticide use must necessarily take into account the distinct regulatory scheme of the DPR [Department of Pesticide Regulation]. However, sole reliance on DPR's registration of pesticides and its regulatory program, including safety regulations for employees handling pesticides (Cal. Code Regs., tit. 3, § 6720 et seq.), is inadequate to address environmental concerns under CEQA. DFA is responsible for analyzing the environmental impacts of proposed pesticide use under the [pest control plan], notwithstanding that DPR must also register pesticides before they can be used in this state. DPR's registration does not and cannot account for specific uses of pesticides in the [plan], such as the specific chemicals used, their amounts and frequency of use, specific sensitive areas targeted for application, and the like." (*Id.* at p. 16.) In registering a pesticide for use in California, the Department of Pesticide Regulation does not necessarily fully assess its use in every application, such as silviculture, where it may bear potential for particular environmental effects, nor does it guarantee that the pesticide's use will never have significant environmental effects.<sup>7</sup>

CDF therefore had no grounds to state in its response to public comments that because of the Department of Pesticide Regulation's registration program "we do not have the authority to approve or disapprove any project regarding the use of chemicals." To the contrary, as the lead agency evaluating timber harvests, CDF has not only the authority but also the duty to approve, disapprove, and impose mitigation measures on timber harvest plans, including measures to address the foreseeable use of herbicides in planned silvicultural operations. (Of course, CDF must regulate herbicide use in a manner consistent with that of the Department of Pesticide Regulation; it could not, for example, approve use in a timber harvest plan of an herbicide its sister agency had disapproved for all uses.) Nor was CDF correct in concluding that any use of an herbicide in compliance with Department of Pesticide Regulation label restrictions necessarily "would not have a significant effect on the environment." (See *Californians for Alternatives to Toxics v. Department of Food & Agriculture*, *supra*, 136 Cal.App.4th at p. 17 ["Nor is there legal authority for the proposition that using registered pesticides according to their labels never results in significant adverse effects"]; cf. *Oregon Environmental Council v. Kunzman* (9th Cir. 1983) 714 F.2d 901, 905 ["the mere fact that a program involves use of substances registered under FIFRA [federal pesticide law] does not exempt the program from the requirements of NEPA [federal environmental law]' "].)

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See California Code of Regulations, title 3, section 6158, subdivision (c) (even if the use of a pesticide will unavoidably result in significant adverse impacts, the chemical may be registered if the Department of Pesticide Regulation finds "that anticipated benefits of registration clearly outweigh the risks"); *id.*,

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section 6432, subdivision (a) (county agricultural commissioner may approve a permit for pesticide use likely to cause “substantial adverse environmental impact” if he or she determines that alternatives and mitigation measures are infeasible); *id.*, section 6426, subdivision (a) (licensed pest control advisors must adopt mitigation measures only where “feasible . . . reasonable, effective and practical”). ( \_\_ Cal.4th \_\_; 2008 WL 2130983)

Please note in particular the State courts’ reliance on a federal opinion, *Oregon Environmental Council v. Kunzman* (9th Cir. 1983) 714 F.2d 901, 905 [“ ‘the mere fact that a program involves use of substances registered under FIFRA [federal pesticide law] does not exempt the program from the requirements of NEPA[federal environmental law]’ ”].) This decision requires the federal agency to undertake a worst case analysis concerning safety of herbicides. The U. S. Fish and Wildlife Service (USFWS) is not exempt from the *Oregon Environmental Council* ruling. The National Environmental Policy Act (NEPA), according to the federal court, does not exempt a program from the requirements of NEPA. Clearly USFWS is out of compliance with CEQA on this basis alone with the current EA.

While herbicides are currently being used under the HCP, the public has not been made privy to what the herbicide active ingredients used are or the so-called “inert” ingredients of the specific formulations being used. We would be willing to put good money on a bet that under the current HCP there have been changes made as to active ingredients and formulations without the NEPA procedure that is required. This does not excuse USFWS from conducting such analysis within the EA particularly because you are proposing the addition of two species to the Incidental Take Permit. All herbicides that may be used under the HCP must be analyzed for their affect on these species.

The only reference we could find to herbicides that may be used was not in the EA or its supporting documents but in another document, the San Bruno Mountain Habitat Management Plan 2007. Here, in Appendix B, pages v-3 to v-5, is found Table 4, Major Invasive Pest Plants on San Bruno Mountain and Current Hand/Herbicide or Mowing Treatment Methods for Each. We see here that Garlon 4 (active ingredient tryclopyr), Roundup Pro (glyphosate), Aquamaster (glyphosate), imazapyr (formulation is not described), and Envoy (clethodim) are “current treatment methods.”

The EA notes that various impacts may result due to herbicide use, but at no point does it analyze those impacts beyond mentioning them and that impacts will occur. For example, at page 4-23 of the EA it’s write that:

*There could also be potential release of herbicides, pesticides, and fungicides into intermittent stream courses on the Mountain. The use of pesticides and herbicides could also threaten the three listed butterflies if their use occurs in proximity to occupied habitat. Butterfly larvae in the genus Speyeria are extremely sensitive to pesticides, and even the accumulation of runoff in the soil after spraying has proven lethal to these larvae (USFWS 2006). However, to minimize potential effects on the butterflies, no spraying would take place near known habitat, pre-activity surveys would be conducted, and spraying would be limited to winds less than 10 miles per hour. Additionally, no spraying or hazardous emissions would occur within 0.25-mile of an existing or proposed school, and would therefore not expose human sensitive receptors to hazardous materials.*

“Human sensitive receptors?” Does this refer to “children?” There is no analysis to support the claim that an 0.25 mile buffer would protect human sensitive receptors. Children are especially vulnerable to the effects of pesticides because they are growing, they metabolize toxins less effectively than adults due to physical immaturity and because their size relative to an exposure makes exposures much more hazardous to children. (Pesticides in the Diets of Infants and Children. National Research Council. National Academy Press. 2002) There needs to be an adequate risk assessment provided to support that 0.25 mile is sufficient to protect human

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sensitive receptors for this NEPA procedure to be adequate but there is none.

Workers applying pesticides are also sensitive receptors. Studies of worker exposures have shown that personal habit has much to do with pesticide exposure rates. A monitoring study of Forest Service workers found higher than anticipated levels of triclopyr in the urine of applicators for whom dermal patches indicated that exposure levels should not have resulted in such levels. The kidney is a target of triclopyr and may be affected by triclopyr exposure in workers. EPA has reviewed a 6-month feeding study in dogs fed dosages of 0.1, 0.5, and 2.5 mg/kg/day with a NOEL of 0.5 mg/kg/day based on significant reductions in PSP excretion rate, absolute and relative kidney weight, and a significant increase in SGOT at 2.5 mg/kg/day. EPA's 1998 Reregistration Eligibility Decision for Triclopyr describes numerous studies in which triclopyr was found to affect the kidney. Absent an analysis of triclopyr use in the present EA, it is unknown whether the specific conditions of use will impact workers, thus lack of such analysis renders the EA in violation of NEPA.

The EA makes claims and offers mitigations that are not supported in any way. On what does USFWS base the claim that using herbicides in winds up to 10 miles per hour would "minimize potential effects on the butterflies"? There is no justification made for this mitigation and it does not satisfy the requirement under NEPA to analyze potentially significant effects. As the recent fire in other parts of the Santa Cruz mountains indicates, winds can have disastrous effects. What is the difference between spraying an herbicide such as hexazinone -- which could be used under the HCP because there are no limitations on what herbicide active ingredients or formulations can be used -- in a 9.8 mile per hour wind and a 10.1 mile per hour wind? This is an important question that should be examined within a sufficient NEPA procedure. The sulfonyl urea Oust, which is commonly used for control of various invasive plant species, has been found at toxic levels in dust blown many miles from the site of application in Big Basin, Idaho by the Bureau of Land Management. The herbicide, used to control cheatgrass in Idaho, drifted onto nearby farms, wiping out sugar beets, corn, barley and other crops. More than 100 farmers in 10 south-central Idaho counties claimed damages in excess of \$100 million as a result, saying their fields were rendered virtually infertile by the herbicide. As Iowa State University notes, "Chemical trespass, or herbicide drift, is one of the most important issues facing agriculture. Using current application methods, chemical drift is an inevitable component of pesticide application. The potential for drift can be minimized by increasing carrier volume, lowering the spray boom, using nozzles that create larger spray droplets, and reducing spray pressure. However, the best strategy to minimize spray drift is to avoid applications when wind conditions are high. While this strategy may seem simple, it is the most effective and consistent drift control practice." (<http://www.ipm.iastate.edu/ipm/icm/1997/5-26-1997/herbdrift.html>)

Other experts point out that the type of equipment has significant impacts on pesticide drift. Any of these chemicals may also drift. Two forms of glyphosate are mentioned in the Habitat Management Plan Table 4. In Yates WE et al, Drift of Glyphosate Sprays applied with Aerial and Ground Equipment (Weed Science. 1978. 26:597-604), the potential losses from spray applications of glyphosate [N-(phosphonomethyl)glycine] with and without the inclusion of a polymer thickening agent were evaluated in field tests, applied under identified weather conditions with a boom-nozzle ground sprayer, helicopter, and fixed-wing aircraft. The researchers found that some evidence of reduced airborne drift was apparent where the polymer thickening agent was used with aircraft and ground equipment. The test results indicate that significant reduction in drift losses were obtained with proper application equipment; however, the use of a polymer thickening agent reduced drift only slightly for certain applications. The current EA does not describe what adjuvants are mixed with herbicides nor what type equipment will be used to apply the chemicals, and avoids analysis of the impacts of these factors that can affect the significance of impacts. Clearly there is enough controversy regarding drift that an analysis of its potential must be undertaken for the weather conditions and other environmental conditions for the San Bruno Mountain.

There is no analysis of the impact of admitted potential release of herbicides, pesticides and fungicides into intermittent stream courses on the Mountain. For example, the active ingredient triclopyr in Garlon 4 comes in the form of butoxyethyl ester of triclopyr, which has a different fate and effect in the environment than other forms of triclopyr. The EPA described triclopyr's fate in water in the Reregistration Eligibility Decision (RED) at page 64 (EPA 738-R-98-011) *While triclopyr TEA and BEE are the forms applied, both readily form the acid. The acid and its degradate TCP are of concern in the ground water assessment. Triclopyr acid is*

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*somewhat persistent, with persistence increasing as it reaches deeper soil levels, where there are anaerobic conditions; it is also very mobile. TCP is both mobile and persistent. Pesticides with similar properties have been found in ground water. Due to the environmental fate characteristics of triclopyr acid, the Agency believes this chemical has a potential to leach to ground water.*

EPA also found, at page 106 of the RED that *there is potential for the major soil degradate of triclopyr, trichloropyridinol (TCP), to leach to groundwater from triclopyr TEA BEE applications and that although triclopyr acid is not predicted to persist in surface waters, however, the triclopyr degradate, TCP, may persist.*

Clearly, there are concerns for the potential for triclopyr and its degradate TCP to impact water yet USFWS has not analyzed this chemical or any of the others proposed for expanded use and near added listed species.

Because triclopyr is moderately persistent and leaches through soil, the potential exists that it could breach a buffer zone and impact the endangered species and must be analyzed to satisfy NEPA, but here it is not.

There is no supporting analysis of the threat to the listed butterflies even though *Speyeria* "are extremely sensitive to pesticides and even the accumulation of runoff in the soil after spraying has proven lethal to these larvae." How can such a threat be mitigated unless there is an analysis? Without it the NEPA procedure is inadequate.

What is the potential for effect of imazapyr on plants and habitat on which the butterflies, particularly *Speyeria*, exist? Imazapyr is a potent herbicide. Drift of small amounts can severely damage valuable plants. For example, a study of the effect of simulated drift on yield and quality of potatoes found that amounts of imazapyr as small as 1/50 of the normal agricultural rate reduced potato yields to as little as one-third of exposed plants. Yield of high quality potatoes decreased by 99 percent because folded, multiknobby, and cracked potatoes were common. (Eberlien, Guttieri. 1994. Potato response to simulated drift of imidazolinone herbicides. Weed Science. 42:70-75) Will damage occur to non-target plants within the area covered by the HCP?

What's more, imazapyr is a persistent pesticide with broad activity. Once sprayed, imazapyr leaches through soil. Plants important and even necessary to the listed butterflies proposed for addition to the HCP that are not targets for spraying could be affected. . Buffers may not be sufficient for keeping imazapyr from where *Speyeria* larvae may exist. Because it leaches and is persistent, imazapyr could potentially affect the larvae of *Speyeria*. Laboratory studies show that imazapyr is essentially stable under most environmental conditions and is not degraded by hydrolysis, aerobic or anaerobic soil degradation, or by aerobic and anaerobic aquatic metabolism. Aerobic soil half-lives are estimated at 1.2 years to 5.9 years. Photolysis in water is the only significant degradation pathway (half-life 2-5 days), but this process requires the pesticide to be dissolved in clear water and exposed to strong sunlight. The persistence of imazapyr has been well documented; field studies on residual activity of imazapyr demonstrate that areas treated with imazapyr were still toxic to all plants tested (primarily food crops and forage grasses) one year after treatment. Laboratory studies show substantial plant growth inhibition at very low concentrations of imazapyr. Because imazapyr is a non-selective, broad-spectrum herbicide, drift and/or runoff to non-target plants will cause damage near application sites. U.S. EPA's risk assessment for imazapyr indicates that non-crop uses of imazapyr by ground spray are likely to exceed EPA's Levels of Concern ("LOC") for non-target plants as a result of runoff and spray drift. Herbicide damage to non-target plants increases their susceptibility to disease and will interfere with their ability to compete successfully with other plants.

In summary, imazapyr is very persistent in the environment, highly water soluble, and does not absorb well to most soils. Thus, any imazapyr released into the environment will readily be transported off site by precipitation, flooding or irrigation runoff. Imazapyr's mobility and persistence, combined with an annual treatment regime that is intended to last for several years will likely result in widespread collateral damage to other plants that are downgradient from the treated area. Reestablishment of native species will be difficult in areas with residual imazapyr in the soil. (Reregistration Eligibility Decision for Imazapyr. EPA 738-R-06-007. 2006.) The current EA fails to analyze imazapyr and to take into consideration how potential expanded use of this chemical could impact the environment, or whether it will even be used.

I do not raise this issues regarding the herbicides that may be used under the amended HCP to the exclusion of other potential significant impacts of the use of herbicides. It is almost impossible for the public to comment on the sufficiency of the NEPA procedure when there is so little information of the pesticides that would be used or analysis of those pesticides. Without such analysis, the EA is not acceptable and cannot stand. It's clear that the NEPA document to support the proposed amendment should be a full Environmental Impact Statement with risk

assessments for the herbicides proposed for use.

#### Lack of Analysis of Invasive Species For Which Herbicides May Be Used

In order to provide an adequate environmental analysis as required by NEPA, the invasive species for which herbicides may be used must be described. The reason for this is that different herbicides would be used for different species thus the potential for impacts varies depending on which species are of greatest concern. For example, triclopyr products would be used for woody species, glyphosate for broad leaved species. Adjuvants must also be described and analyzed for impacts. California registers adjuvants as pesticides. The Forest Service analyzes all chemicals in any mixture it uses, including surfactants and dyes. Different adjuvants may be used for different target species. The HCP must list which pesticides and adjuvants may be used and another NEPA procedure undertaken if other chemicals will be added to those already analyzed and for which a decision has been made, for example if a new invasive plant for which a new herbicide would be used. To complete an adequate NEPA procedure, USFWS must take into consideration which plant species will be targets for vegetation control or eradication.

#### Lack of Analysis for Drift Damage and Field Spills

Oregon State University describes for farmers some of the mitigations that can be employed for drift. (<http://oregonstate.edu/dept/ncs/newsarch/2004/Mar04/herbicide.htm>) *You can minimize spray drift by selecting the proper equipment and using good application techniques, according to Corp. Management instructions and warnings are found on the herbicide label and must be followed carefully. In addition, Corp recommends the following practices to reduce the potential for drifting spray. Select herbicides that are less likely to injure sensitive crops. All herbicides can drift as spray droplets, but some herbicides vaporize and drift farther as fumes. For example, the esters of 2,4-D or MCPA can produce damaging vapors, while the amines of 2,4-D or MCPA are less volatile and usually drift as heavier droplets or dry particles.*

*Use nozzles that produce large spray droplets. Small droplets take longer to fall to the ground, and so they drift farther and vaporize more quickly. Switching from standard flat-fan nozzles to venturi nozzles increases droplet size and can greatly reduce the amount of drift.*

*Reduce the distance between nozzle and target (boom height). Less distance means less time to travel from nozzle to target and therefore less drift.*

*Do not spray when humidity is low and temperature is high. Low relative humidity and high temperatures will cause more rapid evaporation of spray droplets between the spray nozzle and the target. Evaporation reduces droplet size, which in turn increases the potential drift of spray droplets.*

*Do not spray when the wind blows toward sensitive crops. The amount of herbicide lost from the target area and the distance the herbicide moves will increase as wind velocity increases, so greater wind velocity generally will cause more drift. However, severe crop injury from drift can occur with even a light breeze, especially under conditions that result in vertically stable air.*

*Reduce spray pressure. As the spray solution emerges from the nozzle in a sheet, droplets form at the edge of the sheet. Increased nozzle pressure causes the sheet to be thinner, breaking into smaller droplets. Reduced spray pressure and larger orifice nozzles produce a thicker sheet of spray and larger droplets less likely to drift.*

Clearly there are many mitigations other than spraying in winds less than 10 miles per hour that should be considered in the NEPA procedure but in the current EA are not. The reason for mitigation is that drift can harm sensitive species.

on adjacent boundary vegetation.

Effect of herbicide drift studied the presence and abundance of plant species in adjacent ditch-bank vegetation along sprayed and unsprayed crop edges in the same fields. Only along the unsprayed winter wheat crop did the diversity and cover of dicotyledons increase, as did the floristic value of the vegetation. A lot of species were only found on the ditch banks next to the unsprayed cereal edges, such as *Ranunculus repens*, *Thlaspi arvense*, *Rumex crispus* and *Papaver rhoeas*. Along this crop no effect was found on monocotyledons. No significant effects were found in the ditch-bank vegetation adjacent to the sugar beet or potato crop. This difference in effect on ditch-bank vegetation among the crops can



be explained by differences in the spraying method, herbicides used and dosages employed. Imazapyr, as described above, can have enormous impacts on non-target plant species. Any drift at all could be lethal to the *Speyeria* larvae.

Accidental spills in the field can have even greater impacts due to the concentrated nature of the chemicals. I can find no evidence that USFWS is requiring a spill contingency plan under the HCP and incidental take permit. What if herbicide is spilled during transport to a spray site, and what if the spill occurs in the habitat of the listed butterflies? Is there no potential for significant effect? Because there is no analysis of the potential for spills, there is no mitigation, and lacking the analysis the current EA is not an adequate NEPA procedure.

#### Lack of Analysis of the Causes of Herbicide-Induced Spread and Establishment of Invasive Plant Species and Impacts to Plant Communities

At page 2-10 of the EA the claim is made that *Herbicide application is conducted on the Mountain because it can be conducted faster than hand work and is more cost effective. Herbicide application over successive years, however, can create a dense layer of thatch, and this additional biomass on the soil tends to favor colonization by nonnative annual grasses, herbaceous weeds, and coastal scrub succession.* No evidence is provided to support the claims of fastness or cost effectiveness. Nor is the proposition that thatch and additional biomass favor colonization by nonnative plants and native brush supported by even field notes, nor does it have a basis in science. If this is a local observation, it should be described as such. Other reasons have been put forth for why herbicides often actually increase the abundance of invasive plants. In the case of purple loosestrife, herbicides can cause the plant to spread because loosestrife has an advantage where herbicide residues are present.

Evidence exists, that herbicides create conditions more hospitable to invasive species than were present before the chemicals were used. McDonald and Everest (1996) of the USFS Pacific Southwest Research Station, found that cheatgrass populations, not observed in the study plots at the beginning of a study, exploded in an herbicide-treated plot (at 743,667 plants per acre with 22% foliar cover) where it was 6 times greater in number of plants and more than 7 times greater in foliar cover than in the control plot (130,300 plants per acre, 3% foliar cover) two years after treatment. Of particular interest is that this study was done to consider the most effective means of reducing bearclover, another possibly high priority threat.

McDonald and Everest (1996) found that the cheatgrass was colonizing bare ground. George Harper of the Canadian Forest Service found similar dynamics in comparable ecological conditions in British Columbia. As he notes in his Brush River Brushing Trial site project report (<http://www.for.gov.bc.ca/research/forprod/fordyn/projects/ep1179/ep1179.htm>) "Total number of plant species present varied considerably over all plots, independent of treatment. Total number of species are higher in glyphosate than in other treatments due to the ability of invading plant species to colonize on exposed sites. The initial reduction of shrub and herb cover of naturally occurring species following herbicide application probably allows for the establishment of such 'invaders'." That herbicides appear to be a disturbance factor that actually encourages invasive species to colonize and spread in herbicide-treated areas clearly must be analyzed in the current EA.

#### Lack of Analysis of the Effect On Plant Species Composition and Potential for Impacts to Endangered Species.

A study done by the British Columbia Ministry of Forests Research Program in the Upper McKay Creek near Lillooet, B.C. found that the choice of herbicides can have a profound effect on the plant species content and diversity many years after treatment (<http://www.for.gov.bc.ca/hfd/pubs/Docs/Lmh/Lmh45.htm>). "The abundance of several low shrub species (black twinberry, black gooseberry, thimbleberry, trailing raspberry, red raspberry, birch-leaved spirea, and black huckleberry) was reduced for nine years following application of glyphosate. Hexazinone tended to have a longer-lasting effect than glyphosate on the abundance of grasses and

forbs." As this report observes, "Plant communities naturally change over time, but sudden shifts in structure and composition may negatively affect the availability of food for wildlife." Lacking an analysis of the impacts over the long-term that may be expected from the use of various herbicides on non-target plant species composition and abundance, and lacking adequate guidance for which herbicides and other treatment options are suited or not suited for various ecological conditions common within the San Bruno Mountain, the EA cannot serve as an appropriate document for decisions regarding herbicides.

In conclusion, the fundamental flaw of not listing the herbicides and adjuvants and their formulations that can be used under the amended HCP and not analyzing the significant impacts of the herbicides causes the entire EA to fail to fulfill the requirements or adequate analysis of environmental impacts required under NEPA. The HCP fails the Endangered Species Act because it does not provide the mitigations necessary to allow the incidental take permit. I urge USFWS to go back to the drawing board and prepare the full Environmental Impact Statement required for the San Bruno Mountain Habitat Conservation Plan Amendment. The EA cannot stand as written and is insufficient for the job.

Sincerely,

Patricia M. Clary  
Programs and Policy Director  
Californians for Alternatives to Toxics  
315 P Street, Eureka, CA 95501 707.445.5100 patty@alt2tox.org

**Individual Comment Letter #16 – Dana Dillworth**

TO: San Mateo County Department of Parks

FROM: Dana Dillworth, Director CLEAN

August 28, 2009

RE: San Bruno Mountain Habitat Conservation Plan Amendment Number Five  
Initial Study/ Mitigated Negative Declaration

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The objective before this body is to determine whether the environmental document is sufficient and spirit of the law is being honored while this important exception to the rule of protecting the endangered species populations is considered. We expect a full study and discussion about the species of concern and their environment, their range, and their health in current times. None is present. **This initial study is deficient.**

Under Biology Mitigation Measures (pg. 18) there is mention that this action is a loss of 4.6% of their habitat. Could you please explain where you got that figure since the range of their host plant is so limited? Are the other Callippe populations contiguous and protected? What are the impacts of the Wax Myrtle Ravine and the Owl and Buckeye Canyon fires on these populations since your earlier studies? Please provide a specific map of their range so that we may determine the extent of impacts and how well your mitigation measures, if any, will work.

There is no mention of quarry dust issues, either for the future residents or the species of concern. This is clearly a site condition to be addressed and mitigation measures may be required.

There is no mention of new risks associated with chaotic climate, global warming changes. Mitigations, such as permeable streets and functional habitat buffers should be addressed and proposed. Instead, you are proposing "V" ditches and high retaining walls whose scope and scale are yet to be determined. There is no way to address these impacts in this document without full disclosure of the design. Citizens have already experienced a great loss when riparian habitat designs were changed outside their purview and became ornamental rather than functional habitat as intended. This unintended environmental impact must be reviewed and mitigated.

Even using the terminology of "Conserved Habitat" is misused in this document. These areas once disturbed are allowed to go fallow, never become habitat again. Pictures of the fringe habitat areas of the Northeast Ridge were provided in earlier meetings (are available for your review,) showing there is no concern to maintain the damaged areas once construction is allowed. The trifle annuity you will receive appears to be earmarked for other things. You need a provision to make sure the newly damaged areas truly get restored and returned to their potential habitat glory.

Leaving dedication of the habitat to a future date uncertain is a mistake. We have already experienced developers go bankrupt (quarry and Southwest Diversified) and are barred from completing the necessary improvements in the meantime. Dedication of habitat and payment into the Endowment should not be incremental, but swift and immediate. This developer has already said they don't have to restore the invasive weed-filled "disturbed" habitat because they pay their annual fee. We need better protection, not more of the same.

Alternatives? Under CEQA alternatives must be discussed.

- Better yet, how about increasing habitat and increasing populations of the species of concern?
- How about no more degradation to this area and pack these entitlement-units around the already disturbed acres? They have not done the proper work in the past and when asked for relief from the City of Brisbane attorney, citizens were told that the documents were not enforceable.

Why repeat the mistakes of the past, work off a twenty-year-old hastily prepared environmental document, and ignore the challenge of the future? It would be best to get a full study of the environmental impacts, propose yet another relocation and protection strategy, and get this area in the hands of stewards who will do the work of protecting the lands.

**Individual Comment Letter #17 – Jim McKissock**

## Kevin Pohlson

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**From:** Samuel Herzberg [sherzberg@co.sanmateo.ca.us]  
**Sent:** Wednesday, August 26, 2009 12:20 PM  
**To:** Kevin Pohlson  
**Subject:** Fwd: No negative declaration for this Project!

>>> "Jim McKissock" <earthcarenow@sbcglobal.net> 8/26/2009 12:08 PM >>>

Dear Mr. Herzberg:

I am writing to oppose passage of the Negative Declaration for the San Bruno Mountain Habitat Conservation Plan Amendment #5.

The planned habitat destruction by Brookfield Homes in Brisbane threatens the very survival of the Callippe silverspot and Mission blue butterflies.

The findings in the document only compare the projected outcomes of this plan to those of the 20 year old amendment to the 26 year old plan. Obviously, such projections should be compared to the actual conditions that exist in the area right now. Many of the impacts are significant, and this project should not be approved.

It is obvious from the Mountain Watch video on You-Tube that neither Brookfield nor the responsible government agencies have been called to account for the past violations of federal law so clearly posted on the sign on the neighboring property, which should have been protected, but was destroyed as shown in the video.

I am also aware of the destruction of the natural wildlife corridor and natural spring creek that was to run through the existing north east ridge project. After the original developer sold out to Brookfield, they converted the original natural creek and vegetation to a landscaped cement culvert. This destroyed red legged frog habitat (a protected species) and reduced the habitat value to almost zero with the exception of a small Pacific Chorus frog population, which is barely surviving do to the fact that Brookfield employees regularly blast out the eggs and tadpoles that do manage to exist in a small number of puddles in the culvert with high pressure hoses during the breeding season to reduce algae. This small relic population of the once large Chorus frog population will also soon disappear as new froglets are essential to this population's continuance. Again no one was held to account for this.

Having over 30 years of experience with native plant propagation and restoration efforts I can attest to the difficulty in propagating and establishing Viola pedunculata in new areas. The loss of this habitat has to be considered a net loss period. It is not well understood why butterflies will prefer one area over another. The loss of a preferred site may result in the loss of the population that was using it even though the same larval plants may exist in some numbers in the near by region.

It would be utterly irresponsible for the County of San Mateo or any other public agency to approve this or any other development without a full environmental review which includes the projects prospects for financial success. Given the current financial situation and loss of high paying local jobs a project like this may easily become yet another financial black hole as well as an environmental disaster. Even if the developer could manage to get this project built. The prospects for anyone to expect to buy and pay for one of these units is dim for the foreseeable future.

In closing Brookfield has time and again shown it's lack of concern for the protection of the natural resources of Mount San Bruno and is a bad fit with the mountain and the community of Brisbane. I'm sure the thousands of residents outside of Brisbane that love and wish to protect this living jewel will agree. Thank You Jim McKissock  
Earthcare

Please pass on my concerns to the decision makers in this process.

Jim McKissock

516 Richmond St  
El Cerrito CA.  
94530

Save Paper.  
Think before you print.



**Individual Comment Letter #18 – Patricia Mahoney**

Kevin Pohlson

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From: Samuel Herzberg [sherzberg@co.sanmateo.ca.us]  
Sent: Wednesday, August 26, 2009 4:13 PM  
To: Kevin Pohlson  
Subject: Fwd: Please don't destroy more butterfly habitat

MAHONEY

>>> "Patricia Mahoney" <pmahoney2@mac.com> 8/26/2009 4:02 PM >>>

Dear Mr. Herzberg:

I am writing to oppose passage of the Negative Declaration for the San Bruno Mountain Habitat Conservation Plan Amendment #5.

The planned habitat destruction by Brookfield Homes in Brisbane threatens the very survival of the Callippe silverspot and Mission blue butterflies.

The findings in the document only compare the projected outcomes of this plan to those of the 20 year old amendment to the 26 year old plan. Obviously, such projections should be compared to the actual conditions that exist in the area right now. Many of the impacts are significant, and this project should not be approved.

Please pass on my concerns to the decision makers in this process.

At the very least, a new EIR should be done! The mountain's being slowly carved up and destroyed. I've lived in SF for my entire life and am shocked and dismayed by what I see each time I drive by or visit San Bruno Mountain. It's absolutely wrong to allow developers to destroy irreplaceable habitat and endangered species for the sake of a few dollars. The homes being built are energy-wasteful and they don't fit in to their environment. The butterflies are beautiful and need to be protected. Naming new streets in ugly housing developments for butterflies being driven to extinction is obscene. A new EIR would reveal the damage proposed by such wanton and irresponsible development. We do not need any more of these awful developments- but we certainly need natural beauty and nature's wonders, now, more than ever!

Thank you.  
Pat Mahoney

Patricia Mahoney  
1030 Treat Avenue  
San Francisco  
94110

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**Individual Comment Letter #19 – Sam Ellis Moreau**

## Kevin Pohlson

---

From: Samuel Herzberg [sherzberg@co.sanmateo.ca.us]  
Sent: Tuesday, September 08, 2009 11:19 AM  
To: Kevin Pohlson  
Subject: Fwd: Please Reject the "Negative Declaration"

S MOREAU

>>> "Sam Ellis Moreau" <Sam@gooddirt.com> 9/7/2009 8:36 PM >>>

About 3 years ago I began working on a film project about San Bruno Mountain. This project involved doing much research about the history of the mountain and how the first HCP in the nation came to be. One aspect that really grabbed me was the early biological research and the different biologists conducting the research. I found it interesting that there was so much controversy surrounding the research and I was saddened by the fact the in the end, the \*research\* that was selected to be used as the \*official biological statement\* of the mountain in fact favored the developers rather than the mountain.

I have also read the dozens of letters written to the US Fish & Wildlife Service when the original take permit was being considered in the early 1980\*s. The letters warned the USFWS that this \*research\* ranged from \*inadequate\* to down right \*bogus\*.

I was curious about the authors of these letters, so I got online and researched them. They included noted environmentalists from across the country and top biologists from SF State, UC Berkeley, UC Davis and Stanford. These were individuals expressing their independent, expert opinions. Their opinions were in stark contrast to the scenario presented by the developer-funded research presented to the USEFWS. These letters make for very interesting reading and I would encourage anyone involved in the care of San Bruno Mountain to read them.

This same \*research\* is still being used to make critical decisions. Yes, it have been slightly revised but it is, at the core, the same research which is now seriously outdated. When making critical decisions about any important issue in life one always wants the most current, thorough, up-to-date information possible. Doesn\*t San Bruno Mountain deserve the same?

I\*m sure it hasn\*t been easy for San Mateo County to manage the nation\*s first HCP. It was a new concept fraught with many unforeseen issues and I think all involved can agree that mistakes have been made.

Now is the chance to learn from the past and go forward with a new understanding of what is best for the mountain. I urge you to reject the Negative Declaration.

Sincerely,

Sam Ellis Moreau  
136 Trinity Rd.  
Brisbane  
94005

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**Individual Comment Letter #20 – Del Shambari**

**From:** "del schembari" <bat025@yahoo.com>  
**To:** SHerzberg@co.sanmateo.ca.us  
**Date:** 8/24/2009 8:30 AM  
**Subject:** HCP amendment #5 negative declaration

*SCHEMBARI*

Del Schembari  
321 Alta Mesa Dr.  
South San Francisco, Ca. 94080

Attn: Sam Herzberg  
San Mateo County Parks Department  
455 County Center, 4th Floor  
Redwood City, CA 94063

Dear Mr. Hertzberg,

I have several comments regarding the County accepting a negative declaration Environmental Impact Report (EIR) regarding the North East Ridge (NER) Habitat Conservation Plan (HCP) on San Bruno Mountain.

First of all when I read the Habitat Conservation Plan (HCP) I learned their conclusion was that it couldn't really predict at what point the reduction of habitat could lead to a species extinction. One logical thing is that the Calipe Silverspot butterfly species would be better off with no more development on the Northeast Ridge.

If there is more development there should be an agreement that that would allow occasional burning of the grasslands to root out weeds along with intensive hand picking of invasive species. In the August 2009 assessment it seemed to indicate that prescribed burns were not a popular option. Education of the development population is essential to allow burning as an important tool to protect habitat. I'm unaware of the efforts thus far to promote this valuable technique. Occasional burns are crucial to protect existing structures. Letting fuel build up nearby is a prescription for disaster.

Monies gathered via an assessment district should be subject to a public hearing to determine how new funds are spent. Especially important would be input from local ecologists, volunteer workers, and Brisbane city leaders.

There is a mention of paying for a flood gate for excess water runoff. This raised several questions in my mind. One, where is the money coming from the flood gate? Will it be taken from habitat restoration money? Will the city of Brisbane foot the bill?

The V shaped cement gutter seems an archaic method of moving water from the development site. There are much more user friendly methods to manage water now such as developing wetlands such as suggested on P. 17 of the September/October issue of Sierra (the Sierra Club magazine). The article highlights a landscape architect approach of biomimicry using gently sloped depressions or swales, rain gardens, and wetlands (check browndanos.com for more info).

Finally, the public hearing time during the day is set up for those who are off work, and are paid to attend such meetings. It would be much more user friendly, and democratic, to hold such a public hearing in Brisbane itself where most of the stake holders are.

Thanks for the opportunity to comment.

Del Schembari

**CC:** sanbruno@mountainwatch.org

**Individual Comment Letter #21 – Robert Howard**

## Kevin Pohlson

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From: Samuel Herzberg [sherzberg@co.sanmateo.ca.us]  
Sent: Tuesday, September 08, 2009 11:17 AM  
To: Kevin Pohlson  
Subject: Fwd: Negative Declaration for the San Bruno Mountain Habita  
#5.

Howard

>>> "Robert Howard" <rihoward@rawbw.com> 9/7/2009 7:46 PM >>>

Dear Mr. Herzberg:

I am writing to oppose passage of the Negative Declaration for the San Bruno Mountain Habitat Conservation Plan Amendment #5.

The proposed action will severely restrict the flight corridor of the Callippe Silverspot butterfly and most likely result in a separation of the populations on the mountain. This will result in a reduction of genetic variability and hence viability of the population. The host plant for the Callippe Silverspot butterfly, *Viola pedunculata* is found in the area proposed for development and some grading has already occurred in areas where it is known to have grown. *Viola pedunculata* are extremely difficult to successfully transplant.

Housing so close to this habitat will have detrimental effects due to increase of NO2 from exhaust gases of heating systems in the dwellings and increased vehicle traffic. There is no way to prevent house holders from violating the terms of the HCP. The existing terms of the HCP have not been enforced vigorously and city officials have been observed denying the existing boundaries.

The planned habitat destruction by Brookfield Homes in Brisbane threatens the very survival of the Callippe silverspot and Mission blue butterflies.

Further the study produced over the years of the mountain habitat have numerous flaws in methodology ranging from count techniques and observations, to where and how weather conditions were measured.

Residents of the area have observed animals such as garter snakes but these are not reported as being observed in TRA's reports.

The findings in the document only compare the projected outcomes of this plan to those of the 20 year old amendment to the 26 year old plan. Obviously, such projections should be compared to the actual conditions that exist in the area right now. Many of the impacts are significant, and this project should not be approved.

The No Action section of the "San Bruno Mountain Habitat Conservation Plan Amendment Environmental Assessment" states that if no action is permitted then the owner would not permit access to the property and basically let it go to waste. Is that actually realistic? It is more likely that neighboring property owners including the county would sue the owner for public nuisance if the owner failed to maintain the habitat.

My reading of "Amended Text of San Bruno Mountain HCP As Amended to Support ITP 215574-5" in my humble opinion actually fails to do what most people think it does. On careful reading it seems carelessly drafted and has a loop hole where by the developer would not actually end up paying anything for being permitted to develop the area in question and hence the trust would not gain \$4 million but the habitat would be lost.

Please pass on my concerns to the decision makers in this process.

Yours sincerely,

Robert Howard

Robert Howard  
614 Callippe Court



**DEPARTMENT OF HOMELAND SECURITY****U.S. Customs and Border Protection****Approval of SGS North America, Inc., as a Commercial Gauger**

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of approval of SGS North America, Inc., as a commercial gauger.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.13, SGS North America, Inc., 1267 N. Witter St., Pasadena, TX 77536, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquires regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [cbp.labhq@dhs.gov](mailto:cbp.labhq@dhs.gov). Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

[http://cbp.gov/xp/cgov/import/operations\\_support/labs\\_scientific\\_svcs/commercial\\_gaugers/](http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/)

**DATES:** The approval of SGS North America, Inc., as commercial gauger became effective on April 18, 2007. The next triennial inspection date will be scheduled for April 2010.

**FOR FURTHER INFORMATION CONTACT:** Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: April 7, 2008.

Ira S. Reese,

*Executive Director, Laboratories and Scientific Services.*

[FR Doc. E8-8000 Filed 4-14-08; 8:45 am]

BILLING CODE 9111-14-P

**DEPARTMENT OF HOMELAND SECURITY****U.S. Customs and Border Protection****Accreditation and Approval of Inspectorate America Corporation, as a Commercial Gauger and Laboratory**

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of Inspectorate America Corporation, as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Inspectorate America Corporation, 3904 Corporex Park Drive Suite 145, Tampa, FL 33619, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [cbp.labhq@dhs.gov](mailto:cbp.labhq@dhs.gov). Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. [http://cbp.gov/xp/cgov/import/operations\\_support/labs\\_scientific\\_svcs/commercial\\_gaugers/](http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/)

**DATES:** The accreditation and approval of Inspectorate America Corporation, as commercial gauger and laboratory became effective on August 22, 2007. The next triennial inspection date will be scheduled for August 2010.

**FOR FURTHER INFORMATION CONTACT:** Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: April 7, 2008.

Ira S. Reese,

*Executive Director, Laboratories and Scientific Services.*

[FR Doc. E8-7998 Filed 4-14-08; 8:45 am]

BILLING CODE 9111-14-P

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service**

[FWS-R8-ES-2008-N0051; 11120-0008-0221-F2]

**Amendment to the Incidental Take Permit for the San Bruno Mountain Habitat Conservation Plan in San Mateo County, CA**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability and receipt of application.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce that the County of San Mateo and the City of Brisbane, acting on the behalf of the County of San Mateo and Cities of Brisbane, Daly City, and South San Francisco (Applicants or Permittees), have applied for an amendment to an incidental take permit under the Federal Endangered Species Act of 1973, as amended (Act). We are considering the issuance of an amended permit to the Applicants that would add the authorization for take of the federally endangered callippe silverspot butterfly (*Speyeria callippe callippe*) and the federally threatened bay checkerspot butterfly (*Ephydra editha bayensis*) (bay checkerspot) incidental to the Applicant's activities outlined in their proposed amendments to the 1982 San Bruno Mountain Habitat Conservation Plan (HCP) in San Mateo County, California. The HCP amendments would adjust the boundaries of Conserved Habitat within the 228-acre Northeast Ridge (Administrative Parcel 1-07) and provide supplemental HCP funding provisions that would allow additional habitat management and monitoring activities to occur on the approximately 2,828 acres of habitat conserved and managed under the HCP on San Bruno Mountain.

We request comments from the public on the permit application and an Environmental Assessment. The permit application includes the *Biological Study and Analysis of Conserved Habitat for Amendments to the Habitat Conservation Plan for San Bruno Mountain and Incidental Take Permit PRT 2-9818* (Study). The Study describes the proposed changes to the 1982 HCP as it was last amended in 1989, and the measures that the Applicants would undertake to minimize and mitigate take of the covered species.

**DATES:** We must receive your written comments on or before June 16, 2008.

**ADDRESSES:** Please address written comments to Eric Tattersall, Acting Chief, Conservation Planning and Recovery Division, Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W-2605, Sacramento, California 95825. You also may send comments by facsimile to (916) 414-6713.

**FOR FURTHER INFORMATION CONTACT:** Eric Tattersall, Acting Chief, Conservation Planning and Recovery Division, Sacramento Fish and Wildlife Office, at (916) 414-6600.

**SUPPLEMENTARY INFORMATION:**

**Availability of Documents**

You may obtain copies of these documents for review by contacting the individual named above [see **FOR FURTHER INFORMATION CONTACT**]. Documents also will be available for public inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office [see **ADDRESSES**].

**Background**

Section 9 of the Act and Federal regulations prohibit the "take" of fish and wildlife species listed as endangered or threatened (16 U.S.C. 1538). Take of federally listed fish or wildlife is defined under the Act to include the following activities: harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532). We may, under limited circumstances, issue permits to authorize incidental take (i.e., take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). Regulations governing incidental take permits for endangered species are found in 50 CFR 17.22 and 50 CFR 17.32.

San Bruno Mountain is located on the northern San Francisco Peninsula, just south of the San Mateo-San Francisco County boundary. The Mountain is surrounded on all sides by the cities of Colma to the west, Daly City to the north, Brisbane to the east, and South San Francisco to the south. The San Bruno Mountain HCP study area consists of 3,537 acres, of which 2,828 acres are presently Conserved Habitat.

The County of San Mateo and City of Brisbane are requesting, on behalf of the HCP permittees, an amendment to an existing incidental take permit for activities covered by proposed amendments to the 1982 HCP, as amended. The proposed HCP amendments would include the following changes. Chapter VII of the HCP would be revised to replace the

approved operating program for development of the Northeast Ridge (the 1989 Vesting Tentative Map (VTM)) to allow for the development of Unit II-Neighborhood II (UII-NII) under a proposed 2007 modification (the 2007 VTM). The reconfiguration would reduce the amount of land to be developed and increase the size and value of Conserved Habitat within the Northeast Ridge, as well as reduce impacts to the Species of Concern covered under the HCP.

Section V.B of the HCP would be amended to address supplemental funding of four million dollars to be provided by the developer, Brookfield Northeast Ridge II LLC, concomitant to development of UII-NII within the Northeast Ridge. These funds would establish an HCP Endowment, which would be funded incrementally upon the granting of final map approval for the lots in UII-NII, pursuant to an agreement between Brookfield Northeast Ridge II LLC and the City of Brisbane. The HCP Endowment would be managed by the HCP Trustees and would be available to fund ongoing habitat management and monitoring activities described in the Habitat Management Plan (HMP) that is appended to the Study. Section V.B would also be amended to increase the annual charge per dwelling unit and per 1,000 feet of floor area for commercial and industrial activities within the portion of the HCP area under the City of Brisbane's jurisdiction. All funds from the annual charge would be part of the HCP's Trust Fund and managed by the Trustees.

These amendments and the biological analysis required by the 1982 HCP are detailed in the Study. The Study evaluates the proposed change to the boundary of the Conserved Habitat on the Northeast Ridge parcel described in the HCP and considers the effect of this action, and ongoing management and monitoring activities, on the callippe, the listed species on the existing incidental take permit (the mission blue butterfly (*Icaricia icarioides missionensis*), San Bruno elfin butterfly (*Callophrys mossii bayensis*), bay checkerspot, and San Francisco garter snake (*Thamnophis sirtalis tetrataenia*), and other listed species that currently occur or have been historically documented on the Mountain, including the California red-legged frog (*Rana aurora draytonii*). It also considers the effects of grading that occurred in 2007 for the installation of infrastructure and other drainage and slope stability improvements deemed necessary by the City of Brisbane for public health,

safety, and welfare reasons (2007 Infrastructure Grading).

The Service's Environmental Assessment considers the environmental consequences of three alternatives. The Proposed Project Alternative consists of the issuance of an amendment to the incidental take permit and implementation of the Study and HMP. With Alternative 2 (1989 Northeast Ridge Plan), an amendment to the existing incidental take permit would be issued to add take coverage for the callippe silverspot and bay checkerspot for the adopted HCP, which includes the 1989 VTM for Northeast Ridge and continuation of habitat management activities under the existing funding program. With the No Action alternative, there would be no issuance of an amendment to the existing incidental take permit to add take coverage for the callippe silverspot and bay checkerspot. The proposed reconfiguration of the Northeast Ridge would not occur, nor would the supplementary funding for vegetation management on the Mountain be provided. Under the No Action alternative, certain types of habitat management activities for conserved habitats on the Mountain would not have take authorization.

**Public Review**

We invite the public to review the Plan, Implementing Agreement and Environmental Assessment during a 60-day public comment period (see **DATES**). Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

We provide this notice pursuant to section 10(a) of the Act and the regulations for implementing NEPA, as amended (40 CFR 1506.6). We will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of NEPA regulations and section 10(a) of the Act. If we determine that those requirements are met, we will issue a permit to the Applicant for the incidental take of the covered species. We will make our final permit decision no sooner than 60 days from the date of this notice.

Dated: April 9, 2008.

Ken McDermond,

Deputy Regional Director, Region 8, California and Nevada, Sacramento, California.

[FR Doc. E8-8051 Filed 4-14-08; 8:45 am]

BILLING CODE 4310-55-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Fish and Wildlife Service

## DEPARTMENT OF COMMERCE

### National Marine Fisheries Service; Bay Delta Conservation Plan for the Sacramento-San Joaquin Delta, California

**AGENCIES:** Bureau of Reclamation, Interior; Fish and Wildlife Service, Interior; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice of Intent (NOI) to prepare an environmental impact statement/environmental impact report (EIS/EIR) and notice of public scoping meetings.

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation), the Fish and Wildlife Service (FWS), and the National Marine Fisheries Service (NMFS) intend to serve as co-lead agencies in the preparation of a joint EIS/EIR for the Bay Delta Conservation Plan (BDCP). The California Department of Water Resources (DWR) will serve as the lead agency under the California Environmental Quality Act (CEQA). Reclamation will serve as the administrative lead for all actions related to this Federal Register Notice.

The BDCP is a conservation plan being prepared to meet the requirements of the Federal Endangered Species Act (FESA), the California Endangered Species Act (CESA), and the State of California's Natural Communities Conservation Planning Act (NCCPA). DWR and State and Federal water contractors intend to apply for FESA and CESA incidental take permits (ITP) for water operations and management activities in the Sacramento-San Joaquin Delta. These incidental take authorizations would allow the incidental take of threatened and endangered species resulting from covered activities and conservation measures that will be identified through the planning process including those associated with water operations of the Federal Central Valley Project (CVP), as operated by Reclamation, the California

State Water Project (SWP), as operated by DWR, as well as operations of certain Mirant Delta LLC (Mirant Delta) power plants. Additionally, the BDCP will, if feasible, be used as the basis for FESA compliance by Reclamation, including compliance with Section 7 of FESA in coordination with FWS and NMFS. Ultimately, the BDCP is intended to secure authorizations that would allow projects that restore and protect water supply and reliability, water quality, and ecosystem health to proceed within a stable regulatory framework.

On January 24, 2008, FWS and NMFS issued a NOI to conduct public scoping and prepare an EIR/EIS regarding the BDCP for the Sacramento-San Joaquin Delta, California (73 FR 4178). As the BDCP effort has progressed, Reclamation has determined it has a substantive interest in the development and ultimate implementation of the BDCP. Specifically, Reclamation seeks to improve water supply reliability for its Federal water contractors, while meeting its FESA obligations. Environmental constraints, including measures to protect endangered species in the Sacramento-San Joaquin Delta, impair that water supply reliability. The BDCP will recommend actions and conservation measures for implementation to improve both environmental conditions in the Delta and water supply reliability. Reclamation expects the recommended actions and conservation measures to include activities that are within Reclamation's responsibilities. The NOI is, therefore, being reissued to include Reclamation as a co-lead agency, update the status of the BDCP planning process, correct an error in the January 24, 2008, NOI, and to provide notice of scoping meetings. As the Federal lead agencies continue to refine the purpose and need for the project, additional public notices regarding scoping will be issued and additional scoping meetings will be held.

**DATES:** Ten public scoping meetings will be held at various times and locations throughout California. See **SUPPLEMENTARY INFORMATION** section for public scoping meeting dates.

Written comments on the scope of the BDCP or issues to be addressed in the EIS/EIR must be received no later than May 30, 2008.

The scoping period on the initial Notice of Intent published jointly by FWS and NMFS on January 24, 2008 (73 FR 4178), is scheduled to close on March 24, 2008. Comments submitted under that NOI need not be resubmitted, as all comments will be consolidated and incorporated under this NOI for

review and response by the co-lead agencies (i.e., Reclamation, FWS, and NMFS).

**ADDRESSES:** Send written comments to Patti Idlof, Bureau of Reclamation, 2800 Cottage Way, MP-150, Sacramento, CA 95825, e-mail to [pidlof@mp.usbr.gov](mailto:pidlof@mp.usbr.gov), or fax to (916) 978-5055.

See **SUPPLEMENTARY INFORMATION** section for public scoping meeting addresses.

**FOR FURTHER INFORMATION CONTACT:** Patti Idlof, Natural Resource Specialist, Reclamation, at the above address or 916-978-5056; Lori Rinek, FWS, 916-414-6600; or Rosalie del Rosario, NMFS, 916-930-3600.

### SUPPLEMENTARY INFORMATION:

#### Public Scoping Meeting Dates

Public scoping meetings will be held on the following dates and times:

- Monday, April 28, 2008, 10 a.m. to 2 p.m., Sacramento, CA.
- Tuesday, April 29, 2008, 5 p.m. to 9 p.m., Chico, CA.
- Wednesday, April 30, 2008, 6 p.m. to 10 p.m., Clarksburg, CA.
- Monday, May 5, 2008, 6 p.m. to 10 p.m., Stockton, CA.
- Tuesday, May 6, 2008, 6 p.m. to 10 p.m., San Jose, CA.
- Wednesday, May 7, 2008, 6 p.m. to 10 p.m., Los Banos, CA.
- Thursday, May 8, 2008, 1 p.m. to 4 p.m., Los Angeles, CA.
- Monday, May 12, 2008, 6 p.m. to 10 p.m., San Diego, CA.
- Tuesday, May 13, 2008, 6 p.m. to 10 p.m., Fresno, CA.
- Wednesday, May 14, 2008, 6 p.m. to 10 p.m., Bakersfield, CA.

#### Public Scoping Meeting Addresses

Public scoping meetings will be held at the following locations:

- Sacramento—California Resources Building Auditorium, 1416 Ninth Street, Sacramento, CA 95816.
- Chico—Chico Masonic Family Center, 1110 West East Avenue, Chico, CA 95926.
- Clarksburg—Clarksburg Middle School, 52870 Netherlands, Clarksburg, CA 95612.
- Stockton—San Joaquin Farm Bureau, 3290 North AdArt Road, Stockton, CA 95215.
- San Jose—Santa Clara Valley Water District, 5700 Almaden Expressway, San Jose, CA 95118.
- Los Banos—City of Los Banos, Public Services Department Main Office Senior Center—Miller & Lux Building, 830 6th Street, Los Banos, CA 93635.
- Los Angeles—Junipero Serra State Office Building, 320 West Fourth, Carmel Room 225, Los Angeles, CA 90013.

**Findings and Recommendations pursuant to the Endangered Species Act  
and Finding of No Significant Impact pursuant to the National Environmental Policy Act  
for the Issuance of a Section 10(a)(1)(B) Incidental Take Permit (TE215574-5)  
associated with Implementation of the Habitat Conservation Plan for the San Bruno Mountain  
Habitat Conservation Plan in San Mateo County, California**

## I. DESCRIPTION OF THE PROPOSAL

The U.S. Fish and Wildlife Service (Service) proposes to issue an amended incidental take permit (ITP or Permit) to the Cities of Brisbane, Daly City, South San Francisco, and the County of San Mateo (Applicants or Permittees) in San Mateo County, California, under the authority of section 10(a)(1)(B) and section 10(a)(2) of the Endangered Species Act of 1973, as amended (ESA). The existing 10(a)(1)(B) permit issued March 4, 1983 by the Service authorized the incidental take of three Federally listed animal species, the endangered San Bruno elfin butterfly (*Incisalia mossii bayensis*), endangered mission blue butterfly (*Icaricia icarioides missionensis*), and endangered San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) for a period of 30 years. The City of Brisbane (City) seeks to amend the incidental take permit to include two additional Federally listed animal species, the endangered callippe silverspot butterfly (*Speyeria callippe callippe*) and threatened Bay checkerspot butterfly (*Euphydryas editha bayensis*) in connection with development activities on the Northeast Ridge and management and monitoring of Conserved Habitat (areas of San Bruno Mountain (Mountain) currently held or will be held in fee title by the San Mateo County or the State of California) carried out under the existing San Bruno Mountain Habitat Conservation Plan (HCP). The San Bruno elfin butterfly, mission blue butterfly, callippe silverspot butterfly, Bay checkerspot butterfly, and San Francisco garter snake are collectively referred to as "Covered Species."

Upon the issuance of the amended ITP, the City would receive incidental take authorization for the Covered Species as a result of certain activities identified in the amended HCP submitted by the City as part of the permit application. The Bay checkerspot butterfly does not currently inhabit the Mountain. The checkerspot was historically known from the Mountain until the mid 1980s. Should the Bay checkerspot butterfly become re-established on the Mountain during the term of the Permit, the ITP would authorize take of the Bay checkerspot butterfly in association with vegetation management activities for the remainder of the permit term, subject to renewal. The ITP would continue to authorize incidental take of San Bruno elfin, mission blue butterfly, and San Francisco garter snake.

The existing HCP and subsequent amendments, including the proposed Amendment, describe the project in detail, together with the conservation measures that would be implemented to avoid, minimize, and mitigate take of the Covered Species that is expected to occur as a result of the project. The existing Implementing Agreement (IA) concerns implementation of the HCP and has been signed by the Service, San Mateo County, City of Brisbane, City of Daly City, City of South San Francisco, California Department of Fish and Game, and the California Department of Parks and Recreation. The proposed ITP and existing IA will remain in effect until March 4, 2013 (30 years from the date of the original ITP), subject to renewal. Changes to the IA are not anticipated.

This document includes the Service's Findings and Recommendations pursuant to the ESA, which provide an administrative record of how the proposed Amendment under review satisfies each of the permit issuance criteria under section 10(a)(2)(B) of the ESA and in the Service's implementing regulations for the ESA (50 CFR 17.22(b)(2) and 17.32(b)(2)). These Findings also include our responses to public comments received, and a recommendation for permit issuance or denial. Parts I – VI of this document are relevant to these Findings and Recommendations.

This document also includes a summary of the Environmental Assessment (EA) conducted pursuant to the regulations of the National Environmental Policy Act (NEPA) of 1969 (40 CFR 1506.6), and briefly presents why the EA (and other documents made available during the public comment period) supports our Finding of No Significant Impact (FONSI) and the reasons why the proposed action will not have a significant effect on the human environment for which an environmental impact statement therefore will not be prepared. Parts I, II, and VII of this document are relevant to this FONSI.

Documents reviewed in the preparation of this combined FONSI and Findings and Recommendations include: (1) Final Rule listing the callippe silverspot butterfly as an endangered species that was published in the **Federal Register** on December 5, 1997; (2) Application for an Amendment to the section 10(a)(1)(B) permit for San Bruno Mountain (PRT 2-9818) dated February 5, 2008, from the City of Brisbane and associated materials received by the Service on February 7, 2008; (3) San Bruno Mountain Habitat Management Plan 2007, dated September 2007 (prepared by the San Mateo County Parks Department); (4) San Bruno Mountain Area Habitat Conservation Plan (volumes 1 and 2), dated May 1982 (prepared by the San Bruno Mountain Habitat Conservation Plan Steering Committee); (5) Biological Study and Analysis of Conserved Habitat for Amendments to the Habitat Conservation Plan for San Bruno Mountain and Incidental Take Permit PRT 2-9818, dated October 2007 (prepared for the County of San Mateo and City of Brisbane); (6) Analysis of Butterfly Survey Data and Methodology from San Bruno Mountain Habitat Conservation Plan (1982-2000) 1. Status and Trends, dated 2004 (prepared by Travis Longcore, Christine S. Lam, and John P. Wilson); (7) San Bruno Mountain Habitat Conservation Plan Amendment Environmental Assessment, dated October 2007 (prepared for the Service by Jones and Stokes); (8) San Bruno Mountain Habitat Conservation Plan Activities Report for Endangered Species Permit PRT-2-9818 (1984 – 2009); (9) Special Report on San Bruno Mountain Habitat Conservation Plan Management Budget, dated August 9, 2006 (prepared for San Mateo County by Thomas Reid Associates); (10) 57 public comment letters submitted on the EA; (11) Intra-Service Biological Opinion on Issuance of a Section 10(a)(1)(B) Incidental Take Permit for the proposed Amendment (not used in determining a FONSI); and (12) electronic mail, telephone discussions, and meetings between the Service, City of Brisbane, Brookfield Northeast Ridge II LLC (Brookfield), Thomas Reid Associates (TRA), and others, between 1998 and 2009. These documents are hereby incorporated by reference, as described in 40 CFR 1502.21.

### **Alternatives Considered**

The Service considered three alternatives in the EA: (1) the Proposed Action Alternative (reconfiguration of the Northeast Ridge Plan); (2) the 1989 Northeast Ridge Plan Alternative;

and (3) the No Action Alternative. A number of other alternatives that would meet the City's need to provide incidental take authorization in order to continue to implement activities covered under the existing HCP were also considered, but eliminated from further consideration for reasons described in Chapter 2 of the EA. These alternatives included an alternative development site (to development activities on the Northeast Ridge) and a substantially reduced development alternative.

### Proposed Action Alternative

The Proposed Action consists of Service issuance of an amendment to an existing section 10 ITP. As described in Chapter 1 of the EA, the HCP amendment would include a revised operating program for the Northeast Ridge; provision of supplementary funding; and a proposal for the addition of the callippe silverspot and Bay checkerspot butterflies to the ITP.

The specific project (reconfiguration of the Northeast Ridge) and activities (Management and Monitoring of Conserved Habitat) that trigger the need for issuance of an amendment to the existing ITP to add the callippe silverspot and Bay checkerspot butterflies to the list of covered species are listed below. These activities may physically disturb, harm, or harass the listed butterflies and are analyzed in *Chapter 4, Environmental Consequences*, of the EA. Management and Monitoring of Conserved Habitat is a component of the existing HCP, as such, it is not part of the proposed Amendment. However, the EA analyzed impacts resulting from Management and Monitoring on the callippe silverspot and Bay checkerspot butterflies. The Service's Biological Opinion (BO) also analyzed impacts resulting Management and Monitoring the callippe silverspot and Bay checkerspot butterflies, as well as the other Covered Species.

### **Reconfiguration of the Northeast Ridge**

The 2007 Northeast Ridge development has been substantially modified from the 1989/1990 approvals (1989 VTM). The Amendment proposes to authorize the 2007 Vesting tentative map (VTM), which would include 71 single-family homes in Unit II-Neighborhood II (UII-NII) (Landmark). Under the 2007 VTM, the 228.3 acre parcel on the Northeast Ridge would contain 144.66 acres of Conserved Habitat for the Covered Species and 83.66 acres of development (EA Table 2-1 provides an overview of the 2007 VTM acreages). In 2006, the City of Brisbane and Service agreed that Brookfield could continue with development of 11 single-family residential units on 5.67 acres north of Unit I that had been disturbed by remedial grading required for an earlier phase of development. Because the area had been previously impacted and no longer contained potentially suitable habitat for the callippe silverspot or Bay checkerspot butterflies, take of listed butterflies was not likely and no incidental take authorization was required, and these homes and associated infrastructure are currently under construction. In 2007, the City and Service further determined that roadway construction, infrastructure installation, and slope stabilization measures needed for public health, safety, and welfare reasons required grading of an additional 1.07 acre area north of Unit I (referred to as "infrastructure grading"). The City and Service agreed that six additional housing units

could be constructed on this previously undisturbed area outside the HCP fence location at that time. The total, 17 housing units, considered 'transferred' to Unit I comprise a 6.74 acre area. The EA evaluated potential impacts to the callippe silverspot and its habitat on the 1.07 acre Infrastructure Grading site, although it was not part of the proposed Amendment.

The 2007 VTM would permanently disturb 16.67 acres, with an additional 2.97 acres temporarily disturbed and subsequently revegetated, for a total of 19.64 acres. The UII-NI area would be left undeveloped and would be dedicated as Conserved Habitat. The Service, the City, and Brookfield conferred on a plan to redesign UII-NII to avoid high quality callippe silverspot habitat along the western boundary of the Northeast Ridge and to transfer 28 units from UII-NI to UII-NII. After construction, UII-NII would include 71 single-family homes. As a result, UII-NII would increase in size by 4.97 acres over the 1989 VTM, but the additional impacts would occur in an existing blue gum eucalyptus (*Eucalyptus globulus*) grove and areas previously designated for temporary disturbance and restoration. The 2007 VTM would result in a net increase of 8.93 acres of Conserved Habitat over the 1989 VTM. Permanent development footprint impacts are reduced from 25.60 acres under the 1989 VTM to 16.67 acres in the 2007 VTM. Temporary impacts are similarly reduced from 14.40 acres to 2.97 acres. Brookfield also proposes to provide supplemental funding for the HCP, as described below.

The 2007 VTM covers the final phase of development of Administrative Parcel 1-07-02, including the following activities.

- Grading of 19.64 acres of undisturbed area for UII-NII, including 16.67 acres that would be permanently disturbed and 2.97 acres that would be disturbed temporarily and then revegetated pursuant to HCP criteria.
- Dedication of 78.27 acres of Conserved Habitat, including the 2.97 acres that would be temporarily disturbed and then restored.
- Construction, use, and maintenance of 71 single-family detached home lots.
- Landscaping and maintenance of common areas, including revegetation and management of temporarily disturbed areas and installation and maintenance of fuel management zones.
- Installation, operation, and maintenance of required public or association owned infrastructure, sidewalks, community fencing or walls, streetlights, traffic signs and signals, drainage facilities (including concrete V-ditches), and utilities (including, but not limited to, water, sewer, electricity, gas, telephone, and cable).
- Construction and use of the public emergency vehicle access (EVA).
- Removal of portions of the existing eucalyptus grove (6.82 acres).
- Monitoring required for the installation, construction, or operation of any of the features described above.

The fuel modification zone, which would be owned and maintained by the HCP Operator, would be vegetated, to the extent practicable, with native plants that do not present an invasive threat to the adjacent grasslands within the future Conserved Habitat. Portions (approximately 0.41 acres) of the fuel modification zone extend into otherwise

undisturbed areas. The Northeast Ridge homeowners associations may conduct additional maintenance of the fuel modification zone through removal of wooded material within 30 feet of adjacent lots. Concrete V-ditches would be installed on the graded slopes within the fuel modification zone to convey stormwater runoff. These facilities would also be maintained by the Plan Operator but are not expected to require frequent maintenance.

The Northeast Ridge homeowner's association would fund the required maintenance, per an agreement with the City.

The primary access to UII-NII would be from the south via existing streets in the adjacent UI-NII. The EVA, approximately 20 feet wide and 180 feet long, would connect the northern corner of the community ("C" Court) to Guadalupe Canyon Parkway. Access to this EVA, which would be concrete, would be limited by locked gates to emergency vehicles only.

Portions of the perimeter of UII-NII may have a 4-foot catchment wall where lots and roadways are adjacent to the HCP open space. These areas may include a portion of "C" Court in the northern tip of the development and the easterly edge of "A" Street in the southern end of the development. The final designs of the catchment walls are subject to the City Engineer's approval of the grading and improvement plans, at the time of, or just prior to, final map approvals.

The Northeast Ridge currently contains a 7.85-acre eucalyptus grove. Existing approvals related to the 1989 VTM require removal and thinning of these trees, which has been delayed due to the listing of the callippe silverspot butterfly. Construction of the proposed 2007 VTM would permanently remove 6.82 acres of eucalyptus trees; 1.02 acres would remain in Conserved Habitat and be thinned (minimum of 45-feet between trees) by Brookfield. This is an increase of 2.1 acres of tree removal as compared to the 1989 (from 4.7 acres under the 1989 VTM to 6.8 acres under the 2007 VTM).

### **Conserved Habitat**

Reductions in the size of the Northeast Ridge development area increase the size of Conserved Habitat over the 1989 VTM. The 2007 VTM would increase undisturbed Conserved Habitat by 20.36 acres and would result in a net increase in Conserved Habitat of 8.93 acres, because UII-NI would not be constructed (EA Table 2-3 provides a comparison of Conserved Habitat acreages in Unit II between the 1989 and 2007 VTMs). Under the 2007 VTM, the 228.3 acre parcel would contain 144.7 acres of Conserved Habitat, which is an increase from the 135.73 acres of Conserved Habitat under the 1989 VTM. This is a net increase of 8.97 acres of Conserved Habitat. The reconfigured Conserved Habitat area contains high quality butterfly habitat (including hilltops, topographic diversity, and high density of callippe silverspot butterfly larval hosts plants), is contiguous with other Conserved Habitat areas off-site (areas north of Guadalupe Canyon Parkway), and is contiguous with the majority of grassland habitat on the Northeast Ridge.



The 2007 VTM would allow disturbances to 19.64 acres in UII-NII, and avoids 21.20 acres of high quality callippe silverspot butterfly habitat within the area that would have been UII-NI under the 1989 VTM. The proposed development area in the 2007 VTM is within areas that generally have lower value habitat (i.e., lower density of larval host plants, fewer hilltops, and a grove of eucalyptus trees) than would have been disturbed under the 1989 VTM. Additionally, the extent of impacts in UII-NII would be minimized by the use of catchment walls, which limit the grading required to stabilize slopes. The increased development acreage in UII-NII would occur in the eucalyptus grove and areas previously proposed as revegetated areas. Due to the height and density of the 7.85-acre eucalyptus grove, it currently acts as a partial barrier to butterfly movement, and its removal would be beneficial to the species; although, the benefits of tree removal may be offset by the residential development, that may serve as a partial barrier to movement and increasing human activity directly adjacent to butterfly habitat (see Section 4.3 of the EA). However, the Service's Biological Opinion (Service 2009) for the proposed Amendment concluded that "[t]he residential development likely will not be a barrier to the callippe silverspot and the mission blue butterflies because of their ability to fly through the cut and thinned eucalyptus grove, open areas, spaces between the homes, and around the north side of the development" (see *Effects of the Proposed Action* in the 2009 Biological Opinion).

### **Proposed Mitigation**

Development of the 2007 VTM would be conducted with the avoidance, minimization, and mitigation measures required in the existing HCP. The following additional measures will also be undertaken:

- The existing HCP (1982, as amended) requires an annual charge of \$20 per dwelling unit (\$88.56 in 2007 dollars). Pursuant to recent subdivision improvement agreements with the City of Brisbane, the 71 housing units in the 2007 VTM and the 17 units under construction in Unit I would pay an annual assessment of \$800.00 in 2005 dollars (\$850 in 2007 dollars). This proposed annual assessment (\$74,800 in 2007 dollars) represents a substantial increase to the amount currently required under the HCP. The amount of the dwelling unit charge would be adjusted annually in accordance with increases in the preceding calendar year's Consumer Price Index for Urban Wage Earners and Clerical Workers within the San Francisco-Oakland-San Jose area, as reported by the U.S. Department of Labor's Bureau of Labor Statistics. All funds collected would become part of the HCP's Trust Fund used by the Plan Operator for vegetation management activities. Contribution to the Trust Fund is required by the HCP for all development within the HCP boundary.
- Brookfield would fund a \$4 million endowment (Endowment) to be managed by the HCP Trustees for the ongoing habitat management and monitoring activities of the HCP. The new Endowment would be established pursuant to a negotiated agreement between the City of Brisbane and Brookfield. The Endowment would be funded incrementally upon the granting of final map approval for the lots in UII-NII.

Funding of the Endowment was divided over 88 dwelling units, including the 71 housing units in the 2007 VTM and the 17 units under construction in Unit I. It is expected that this Endowment would generate over \$200,000 per year in interest (5 percent annual rate of return), available to the Trustees for the management and monitoring of the Conserved Habitat. The management would be done in accordance with the Habitat Management Plan, as described in Section II.B of the EA.

- The remainder of the Northeast Ridge, which includes undisturbed open space areas and the areas temporarily disturbed but restored/revegetated to grassland habitat, would be dedicated as Conserved Habitat. Brookfield would fund the management of the restored areas for a period that extends 5 years after the completion of grading and revegetation in these areas. All undisturbed areas would be dedicated to and maintained by the HCP Operator.
- Brookfield would remove a portion of the on-site eucalyptus grove, which acts as a barrier to movement of the mission blue and callippe silverspot butterflies. Approximately 6.82 acres of the eucalyptus grove would be removed at the time of housing construction for U11-N11 or a timeframe mutually agreeable to the City and the developer.

The existing HCP currently provides a funding mechanism used to address the highest priority threats to endangered butterfly habitat. The 2007 Habitat Management Plan (HMP) proposes to enhance existing management methods, some of which have only been used on a limited basis due to limited funding, such as, grazing, burning, and mowing. These techniques would be used on a more comprehensive scale in order to change the conditions that favor invasive species and brush on the Mountain. Utilizing these additional tools on a broad scale, require substantial additional funding (TRA 2007). TRA (2007) reports that management and monitoring of Priority 1, 2, and 3 areas within the HCP area to maintain existing grasslands and reclaim former grassland areas that have been lost to coastal scrub succession would require a significant increase in funding. Without the supplemental funding, only Priority 1 areas containing core habitat for the callippe silverspot and mission blue butterflies would be managed. The existing Trust Fund and new Endowment would be used by the Plan Operator for enhanced vegetation management and monitoring activities on all Priority 1, 2, and 3 areas.

### **Management and Monitoring of Conserved Habitat**

There are approximately 2,750 acres of Conserved Habitat on San Bruno Mountain. Much of these lands provide habitat for the Mountain's listed butterflies, as well as other rare and endangered species that inhabit it. Habitat management activities are authorized under the existing HCP, and since the 1990s, habitat management has been guided by management plans, which had been updated every five years. The addition of the callippe silverspot and Bay checkerspot butterflies to the ITP would authorize the potential take of both species during vegetation management and monitoring in Conserved Habitat, and the potential take of callippe silverspot butterflies during vegetation management, replanting, and restoration following the final phase of the

Northeast Ridge development (described above). Take of the callippe silverspot and Bay checkerspot butterflies, either direct take of individuals and/or indirect take of individuals resulting from habitat modification would be authorized for habitat management activities that occur under the 2007 HMP and/or future iterations of the HMP. The 2007 HMP is included as Appendix B to the EA.

The 2007 HMP focuses on continuing the current habitat management methods that have proven to be successful, as well as utilizing methods covered under the existing HCP that have not been widely used (due to limited funding), to reverse the conditions that favor invasive species and brush on the Mountain. The 2007 HMP defines Priority 1, 2, and 3 areas for habitat management in order to focus protection and restoration efforts: Priority 1 areas include all grassland areas including all habitats for the four listed butterflies; Priority 2 areas include all other native plant communities; and Priority 3 areas include dense invasive species infestations. The 2007 HMP implements a Stewardship Grazing Program, including application and testing of grazing projects. It also expands monitoring to provide relative population and distribution data for the callippe silverspot, mission blue, and San Bruno elfin butterflies. Habitat management would be conducted in all management units every year, with a focus on fulfilling the goals and objectives of the HCP. The work program would be determined on an annual basis through the collaboration between the Plan Operator, County of San Mateo, and the San Bruno Mountain Technical Advisory Committee, with guidance from the Service.

### **Vegetation Management**

The following is a list of the vegetation management techniques listed in the 2007 HMP: (1) livestock grazing; (2) prescribed burning; (3) pile burning; (4) mowing; (5) herbicide application; (6) mechanical clearing; and (7) replanting/restoration. A detailed description of each is provided in the EA, 2007 HMP, and the Biological Opinion.

### **Monitoring**

The existing HCP requires monitoring to ensure compliance with the terms of the HCP and to evaluate effectiveness of ongoing conservation efforts. The HMP's monitoring program is intended to implement the monitoring requirements of the HCP based on contemporary scientific practices. Undertaken by the Plan Operator, monitoring includes recording regular observations of biological processes and conservation activities on the Mountain. The purpose of monitoring is to assure that the Plan conditions are being met, and to keep an ongoing record of the progress of Plan implementation and allows the Plan Operator to conduct periodic re-evaluation of the vegetation management activities and modify them as appropriate. The degree of monitoring corresponds to the intensity of construction and/or management techniques underway. Monitoring would be structured to provide sufficient information for ongoing review. Monitoring of initial experimentation would be more intensive than monitoring done after techniques are established.

Endangered butterfly monitoring conducted over the 25-year span of the HCP has focused on assessing the distribution and/or relative abundance of the endangered callippe silverspot, mission blue, and San Bruno elfin butterflies on the Mountain. All three butterflies have low growing host plants that can easily be overgrown by weeds and/or coastal scrub vegetation, and all three species overlap in their distribution on the Mountain. Two monitoring systems have been used to monitor the endangered species on the Mountain: set transects and wandering transects. The 2007 HMP directs continuation of the current set transect monitoring system, with minor modifications made to the mission blue transects.

Rare plant distribution data has been collected in GIS format within the last 5 years for all listed plant species. This includes the manzanita colonies (all species), Diablo rock rose (*Helianthella castanea*), San Francisco lessingia (*Lessingia germanorum*), San Francisco spineflower (*Chorizanthe cuspidata* var. *cuspidata*), San Francisco campion (*Silene verecunda* ssp. *verecunda*), and dune tansy (*Tanacetum camphoratum*). The 2007 HMP directs GPS mapping of all the special status rare plant species on a cycle of once every two years on the Mountain to track changes in distribution and monitor health of these colonies.

Monitoring for additional species (i.e., bumblebees and ants) may be conducted and academic research on the Mountain is encouraged to provide this additional information. HCP monitoring funds are focused on the endangered species and their habitats, as required under the HCP permit. While monitoring is focused on the butterflies of concern and rare plants, study and management of the Mountain's overall ecosystem will benefit the listed species.

Vegetation management effectiveness monitoring is vital to recognizing changes to the ecosystem and to gauge the results of habitat management work. Effectiveness monitoring over the 25-year span of the HCP has been focused on tracking invasive species distribution and coastal scrub succession. Vegetation monitoring has been done using primarily two methods: daily tracking of work conducted and overall distribution of vegetation types and invasive species. To track large scale changes in vegetation, the 2007 HMP directs mapping using aerial ortho-photo interpretation and field checking, and that the Mountain should be remapped using this technique every 5 years. For finer scale monitoring, fixed transects and quadrats will be used.

#### 1989 Northeast Ridge Alternative

As described above, the City approved a 1989 VTM that provided for 579 residential units, and the Service and DFG approved an Equivalent Exchange Amendment for this revised design in 1990 (EA Figure 2-2). Under the 1989 VTM, the 228.3-acre parcel on the Northeast Ridge would contain 135.7 acres of Conserved Habitat for the Covered Species and 92.59 acres of development (EA Table 2-4 provides an overview of the 1989 VTM acreages).

If the Service amended the existing ITP to add callippe silverspot and Bay checkerspot butterflies to the existing HCP, the construction of UII-NI under the 1989 VTM would result in greater take associated with direct effects to listed butterflies as well as greater take associated with indirect effects from habitat loss than the 2007 VTM (Proposed Action Alternative). The 1989 VTM includes disturbance of 18.8 acres for UII-NI and 21.2 acres for UII-NII (EA Table 2-1). The 1989 VTM would permanently disturb 25.60 acres, with temporary disturbances to 14.40 acres that would be revegetated, for a total of 40.00 acres of disturbance. It would also remove 29.31 acres of grassland habitat as opposed to 12.01 acres under the 2007 VTM. The construction footprint of UII-NI is within an area considered a favored hilltop for the butterfly.

Under the 1989 VTM, a total of 151 new dwelling units would be constructed in two neighborhoods in Unit II (not including the 17 units transferred to Unit I in 2006/2007). The 1989 VTM would result in 80 more housing units than the 2007 VTM, which proposes 71 units in Unit II. These units would be assessed the annual dwelling unit charge authorized under the existing HCP and no additional endowment would be established. The existing HCP requires an annual charge of \$20 per dwelling unit (\$88.56 in 2007 dollars) for management and maintenance of Conserved Habitat. At \$88.56 per dwelling unit, the 151 housing units would generate a total of \$13,372.56 annually (in 2007 dollars) in assessments for implementing conservation activities on the Mountain, which is less than the annual assessment (\$74,800 in 2007 dollars) proposed under the 2007 VTM and associated subdivision agreements. Funding generated under the 1989 VTM, would allow the continuation of existing management activities, but not the enhanced activities in the 2007 HMP. Under the existing management plan, an average of 5.3 acres of grassland convert to coastal scrub annually; it is anticipated that the gradual loss of grassland habitat and decreases in butterfly distribution would continue under the existing management plan. The existing level of funding only allows the highest quality habitat to be maintained and allows encroachment of invasive weeds and native brush into the annual grassland. However, unlike the No Action Alternative, discussed below, management activities could be carried out within all Conserved Habitat areas, as this alternative would authorize incidental take of the callippe silverspot and Bay checkerspot butterflies.

#### No Action Alternative

Under the No Action alternative, the existing Northeast Ridge development configuration and Conserved Habitat described and depicted in the existing HCP (1982, as amended) would remain in effect, which includes the 1989 VTM (EA Figure 2-2). However, since incidental take of the callippe silverspot and Bay checkerspot butterflies would not be authorized, activities that result in take could not legally occur in any areas that support the callippe silverspot butterfly. As a result of minimum City standards (for street widths and lengths, street grades, looped water systems, lot widths and depths, driveway and garage depths, and emergency vehicle access), it is anticipated that most, development in the designated development areas may result in take of the callippe silverspot butterfly. Therefore, under this alternative, Brookfield would likely not build any additional homes within the 1989 VTM footprint. The development of even a portion of the 1989 VTM

would likely be difficult and not cost effective. The No Action Alternative would result in little or no new residential construction on the Northeast Ridge at this time. However, the landowner may pursue a revised development plan, submittal of a revised HCP amendment and ITP application, and/or legal means to uphold existing development rights in the future.

The No Action Alternative may result in significant adverse impacts to vegetation and wildlife, because access to the Northeast Ridge parcel would be limited to the landowner, the Plan Operator would not conduct habitat management activities for the listed butterflies within these areas, which include the majority of the Northeast Ridge. The No Action Alternative would also result in no additional endowment funding and no expanded annual budget for vegetation management and monitoring in Conserved Habitat. The annual dwelling unit charge would be limited to \$20 per dwelling unit (\$88.56 in 2007 dollars), as required under the existing HCP. With no additional funding, continuation of the current management program would be expected to result in the continued gradual loss of grassland habitat and decreases in butterfly distribution. The existing level of funding only allows limited vegetation management that is generally limited to area with the highest habitat value; this limited management allows encroachment of invasive weeds and native brush into grassland habitats. Additionally, under the No Action Alternative, the ITP would not be amended to add callippe silverspot or Bay checkerspot butterflies; this would eliminate any management activity in areas that support these species that could result in take of the callippe silverspot or Bay checkerspot butterflies including, but not limited to grazing, mowing, and burning. The inability of the Plan Operator to conduct vegetation management activities within habitats that support callippe silverspot or Bay checkerspot butterflies would lead to the build-up of dense layer of thatch, as well as brush invasion. Increase in grass thatch and coastal scrub would displace the butterflies' larval host plants; this in turn would be expected to reduce the distribution and abundance of all listed butterflies within the HCP boundary.

### **Impact Topic Areas**

Based on both internal and external scoping of the proposed Federal action of permit issuance, the following impact areas were analyzed in the EA:

- Visual Resources
- Climate/Regional Air Quality/Sensitive Receptors
- Seismicity/Geologic Hazards/Soils
- Hydrology/Flooding/Water quality
- Hazardous Materials
- Biological Resources
- Land Use
- Cultural Resources
- Noise
- Public Health Hazards
- Public Services/Utilities

## II. PUBLIC COMMENT

The Service published a Notice of Availability (Notice) of an EA and receipt of the City's application for an ITP, and announced the availability of the proposed Amendment in the *Federal Register* on April 15, 2008 (73 FR 20324). Publication of the Notice initiated a 60-day public comment period which ended on June 16, 2008. Copies of the proposed Amendment, 2007 HMP, 2007 Biological Study, and EA were mailed to all interested persons upon request. Fifty-six comment letters were received during the 60-day comment period; one was received after the comment period closed. Eleven comment letters were identical with four more letters being nearly identical. Our decision documents will be made available to all interested parties upon request. Following final action on the permit application, our agency will publish a notice of decision in the *Federal Register*.

## III. ESA DECISION: INCIDENTAL TAKE PERMIT CRITERIA – ANALYSIS AND FINDINGS

### Analysis of Biological Effects to ESA Listed, Proposed, and Candidates Species

The proposed Amendment will result in incidental take of all callippe silverspot and mission blue butterflies in 19.64 acres of grassland habitat associated with development on the Northeast Ridge. Incidental take of mission blue butterflies would be less than the amount currently authorized under the existing HCP and ITP. In addition, adverse affects to all Covered Species associated with management and monitoring of approximately 2,800 acres will be subject to incidental take. The existing section 10(a)(1)(B) incidental take permit covers the take of the mission blue butterfly, San Bruno elfin butterfly, and San Francisco garter snake, but does not include callippe silverspot or Bay checkerspot butterflies. The Bay checkerspot butterfly was known from the Mountain until the mid 1980s; however, the checkerspot does not currently inhabit the Mountain.

Both the revised Northeast Ridge development plan and habitat management and monitoring were analyzed in the Service's biological opinion (Service file #81420-2008-F-0946) (Service 2009), which concluded these and other activities will not jeopardize the callippe silverspot butterfly or the other listed species on the Mountain or result in adverse modification of designated critical habitat. Below is a summary of the Service's effects analysis:

#### A. Reconfiguration of Conserved Habitat, Proposed Development, and Related Development Activities within the Northeast Ridge:

The callippe silverspot butterfly and the mission blue butterfly may be harassed, injured, or killed as a result of construction activities and young and eggs may be injured or killed as a result of being crushed or buried by earth moving activities, including temporary disturbances and permanent loss of habitat. Increased levels of dust caused by construction or other earth moving activities may clog butterfly spiracles (breathing

tubes) and asphyxiate the early stages of the two species, and thus cause their death by asphyxiation. However, the inclusion of dust control measures during construction activities should minimize any potential effects to these butterflies.

The Amendment's change in the configuration of Conserved Habitat will reduce impacts to the callippe silverspot and the mission blue butterflies more than the 1989 VTM because; (1) it will have a smaller development footprint as a result of the elimination of Unit-II Neighborhood-I (Hillcrest) (UII-NI) than the 1989 VTM under the existing section 10(a)(1)(B) permit; and (2) the Amendment will conserve more hilltopping habitat than would have been conserved under the existing section 10(a)(1)(B) permit. Reconfiguration of the Northeast Ridge development and Conserved Habitat is not likely to result in take of the San Bruno elfin butterfly, Bay checkerspot butterfly, San Francisco garter snake, or have adverse effects on the San Francisco lessingia.

The Amendment will designate new Conserved Habitat on the Northeast Ridge that is larger in size and higher in biological value than the habitat that would have been lost as a result of the 1989 VTM and is of higher value than the habitat lost as a result of the 2007 VTM. Approximately 0.84 acre of existing Conserved Habitat will be lost through development under the proposed Amendment; this area consists primarily of a eucalyptus grove, which does not provide habitat for the callippe silverspot or mission blue butterflies. The reconfiguration will result in a net increase in Conserved Habitat by 8.93 acres.

The 2007 VTM results in less fragmentation than the 1989 VTM due to clustering of the development in Unit-II Neighborhood-II (Landmark) (UII-NII). The deletion of UII-NI will result in a larger, contiguous grassland habitat block that includes the two primary hilltop areas on the Northeast Ridge: Callippe Hill and an unnamed hill to the east. While Callippe Hill has been conserved as habitat through existing HCP, the 1989 VTM would have severely impacted the unnamed hill to the east. The 2007 VTM increases the amount of development near Guadalupe Canyon Parkway, but it is not expected that this will present a significant barrier to the callippe silverspot butterfly. Habitat would be protected on all four sides of the Carter Street/Guadalupe Canyon Parkway intersection, including a narrow hilltop that will be partially disturbed by temporary activities. At the current time, movement of this endangered species in this area is partially restricted by a 9.09 acre eucalyptus grove that would be removed under the 2007 VTM. An emergency vehicle access that is part of the 2007 VTM will connect the development to Guadalupe Canyon Parkway. The emergency vehicle access will have a smaller footprint and will be less trafficked than the public roadway planned in the 1989 VTM.

Impacts to callippe silverspot and mission blue butterflies would also result from the loss of larval host plants (Johnny jump-up (*viola pedunculata*) and lupine (*Lupinus albifrons*, *L. formosus*, and *L. variicolor*) respectively) and nectar plants. The development of the 2007 VTM would require grading of 19.64 acres of undisturbed habitat, including 2.97 acres that will be restored pursuant to the restoration guidelines in the Habitat Management Plan. An additional 1.07 acres of previously undisturbed habitat have been impacted by the 2007 Infrastructure Grading. The 16.67 acres that would be permanently



disturbed, and the 1.07 acres disturbed by the 2007 Infrastructure Grading include approximately 12.01 acres of grassland habitat.

Hilltopping habitat is important for the callippe silverspot butterfly because the adult males patrol for females on summits and ridgetops, while females fly uphill to mate and downhill to oviposit within areas containing Johnny jump-up. The grassland also supports lupines and nectar plants utilized by the mission blue butterfly. The 2007 VTM significantly reduces impacts to hilltop and downslope ovipositing habitat for both of these endangered species by eliminating the development of UII-NI. The site of UII-NI has been described as "...prime habitat for both butterfly species, particularly the [callippe]" (Murphy 1989). Murphy (1989) stated that UII-NI "...has greater negative impacts that development in other Northeast Ridge areas."

Temporary disturbance associated with the 2007 VTM would disturb an area that is approximately 880 feet long and 100 to 200 feet wide, located on the south side of a ridgeline, approximately 100 feet south of Guadalupe Canyon Parkway. The ridgeline has consistently been utilized by the callippe silverspot butterfly (TRA 2003-2005), as do hilltops and ridgeline areas to the north and east. The impact from grading on the south side of the ridgeline is anticipated to be temporary because the topographic high point of the ridgeline will remain and continue to provide hilltopping habitat for the callippe silverspot butterfly. After grading, the disturbed area will be restored to grassland habitat.

Impacts to callippe silverspot and mission blue butterflies may occur as a result of barriers to movement. Development under the 2007 VTM would be located in an area dominated by grassland and blue gum eucalyptus. Current and historical data document callippe silverspot and mission blue butterflies using the grassland habitat on the slope below the eucalyptus trees. The eucalyptus grove is approximately 25 to 350 feet wide and extends north to south through Unit II of the Northeast Ridge development. Callippe silverspot butterflies have been observed moving through the grove in the narrow areas; however, in the widest areas, the trees and understory appear to be at least a partial barrier to their movement. The eucalyptus trees will be cut and thinned, but 1.02 acres would remain and there will be a minimum of 45 feet between the trees. The barrier to movement by the callippe silverspot and mission blue butterflies would be significantly reduced by the cutting and thinning.

The proposed development under the 2007 VTM includes the construction of 71 homes. These homes will be two stories high, and the permanent footprint of the development ranges from approximately 50 to 1300 feet across. Temporary disturbance includes an additional 100 to 200 feet to the width of the project footprint, although these areas will not contain structures that could serve as a barrier to butterfly movement and will be restored. The residential development likely will not be a barrier to the callippe silverspot butterfly and the mission blue butterfly because of their ability to fly through the cut and thinned eucalyptus grove, open areas, spaces between the homes, and around the north side of the development.

The existing four-lane Guadalupe Canyon Parkway located directly to the north of the Northeast Ridge is not a permanent barrier to mission blue and callippe silverspot butterflies; however, the number of animals that are able to move across this road is dependent on various factors, including the amount of traffic and the speeds of the vehicles. Several studies have found that roads do not appear to substantially restrict the movement of butterflies (Mungira and Thomas 1992; Ries and Debinski 2001; Ries *et al.* 2001; Saarinen *et al.* 2005; Valtonen and Saarienen 2005). However, in these studies, butterflies with different dispersal tendencies also differed in their behavioral repose to road edges. The more vagile, strong flying species were less sensitive to road barriers (Mungira and Thomas 1992; Ries and Debinski 2001) than species that were either habitat specialist (Ries and Debinski 2001) or those that were not efficient dispersers (Mungira and Thomas 1992; Valtonen and Saarinen 2005). Callippe silverspot butterflies are strong fliers, as are members of the genus *Speyeria* as a whole (Howe 1975).

The callippe silverspot butterfly has been observed flying across Guadalupe Canyon Parkway during annual monitoring over the past 25 years. The mission blue butterfly was observed on two occasions crossing Guadalupe Canyon Parkway, and once crossing a 40-foot wide road at Twin Peaks (San Bruno Mountain Habitat Conservation Plan Steering Committee 1982). There is Conserved Habitat on both sides of Guadalupe Canyon Parkway - the Saddle and Rio Verde parcels on the north, and the Northeast Ridge Water Tank Parcel and the Northeast Ridge on the south. After development of the 2007 VTM, the Conserved Habitat along the south side of Guadalupe Canyon Parkway will vary in width from approximately 87 feet to 250 feet. Habitat on the north side of Guadalupe Canyon Parkway will not be affected by the Northeast Ridge construction. The implementation of the 2007 VTM will not result in a complete barrier to east-west movement of these two listed butterflies along the north side of proposed residential units 39-50, which are directly south of Guadalupe Canyon Parkway, or prevent movement back and forth over Guadalupe Canyon Parkway.

Callippe silverspot and mission blue butterflies may be impacted by vehicular traffic along Guadalupe Canyon Parkway. Although roadways may not be a significant barrier to butterflies, the vehicles that travel on them can result in significant levels of mortality (Mungira and Thomas 1992; McKenna *et al.* 2001; Ries *et al.* 2001); however, when it has been measured, usually <10 percent of butterflies from study populations experience direct vehicle mortality (Mungira and Thomas 1992; Ries *et al.* 2001; Valtonen and Saarinen 2005); although McKenna *et al.* (2001) suggested a higher proportion of mortality was possible. However, the majority of traffic on Guadalupe Canyon Parkway is during the early morning and early evening "rush hours", periods when the two listed butterflies have not yet begun flying, or are less likely to be active. McKenna *et al.* (2001) found that butterfly mortality declined at the highest traffic levels (19,700 vehicles and 26,000 vehicles per 24 hours). Among other reasons, they speculated that at speeds of 55 miles per hour and greater, butterflies were caught in a "wind current" going over the roof of the car, with the result that the animals were "catapulted" over the vehicle instead of colliding with it.

## B. Management and Monitoring of Conserved Habitat

A significant amount of the Mountain has been protected as open space; however, lack of funding and listing of the callippe silverspot butterfly has resulted in limited vegetation management on the Mountain. Species diversity and vegetative cover of invasive, exotic plants and the amount of coastal scrub habitat have increased significantly since the issuance of the original ITP. Grasslands in Conserved Habitat decreased by approximately 122 acres between 1982 – 2004 due to coastal scrub succession. As a result of limited funding, weed control activities have focused on larger plants, such as gorse, fennel, and eucalyptus, but more attention is required to control and manage weedy grasses, such as quaking grass (*Briza maxima*), wild oats (*Avena fatua*), ripgut brome (*Bromus diandrus*), and small forbs, including yellow oxalis (*Oxalis stricta*), sheep sorrel (*Rumex acetosella*), and English plantain (*Plantago lanceolata*).

Although the Habitat Management Plan is part of the existing HCP, incidental take of callippe silverspot butterflies resulting from management actions were not previously included on the ITP. Implementation of the 2007 Habitat Management Plan will result in some adverse effects to the listed butterflies, and San Francisco garter snakes, but the overall long term effects will be beneficial. The Amendment will provide funding to protect and restore butterfly habitat on a more thorough scale than is possible under the current management budget and support ongoing grazing and brush removal experiments and invasive species control. Clearing coastal scrub from former grassland areas and controlling invasive weeds will allow for the natural recruitment of Johnny jump up and lupines into reclaimed grassland areas. In the vicinity of the Northeast Ridge, the additional funds will be used to manage Conserved Habitat on both sides of Guadalupe Canyon Parkway and the area around the water tank, including the removal of coastal scrub and invasive species that are currently encroaching on grasslands. Specific parcels that would directly benefit include those that have had a large decline in occupancy by the callippe silverspot butterfly, mission blue butterfly, and their larvae host and adult nectar plants over the span of the HCP and include the Rio Verde parcels, Northeast Ridge Water Tank Parcel, and the McKesson parcel. Coastal scrub succession, and to a lesser extent invasive weed infestation, has replaced the grassland habitat for these two endangered species in these areas. The revised operating plan for the Northeast Ridge also requires the developer, Brookfield, to fund the management of the 78.27 acres of proposed Conserved Habitat within the Northeast Ridge prior to dedication of this parcel to the State and County Park. The Trustees for the San Bruno Mountain Habitat Conservation Plan will be able to collect the annual habitat conservation plan fees and build up the endowment prior to taking over management responsibilities.

Implementation of the management actions may result in the death, injury, harassment, or harm of the mission blue butterfly, San Bruno elfin butterfly, callippe silverspot butterfly, Bay checkerspot butterfly, and the San Francisco garter snake, and adverse effects to the San Francisco lessingia due to clearing of vegetation and other activities associated with hand clearing, flaming, herbicides, livestock grazing, prescribed burning, pile burning, mowing, mechanical clearing, replanting/restoration, suppression, and mechanical treatment. However, adverse affects to these the San Bruno elfin, mission blue butterfly,

and San Francisco garter snake were analyzed in previous Findings and biological opinions; these species are included in this Findings and the biological opinion to update the affects analysis and ensure the proposed Amendment will not jeopardize the continued existence of any of the Covered Species. Activities associated with vegetation management are necessary to eliminate or control invasive plants that compete with the plants utilized by the listed butterflies, degrade or eliminate habitat for the San Francisco garter snake, or degrade the habitat or outcompete the San Francisco lessingia, and thus result in significant long-term benefits to the survival and recovery of these species in the wild. Without implementation of the management activities, the San Bruno elfin butterfly likely will decline in status, and the callippe silverspot butterfly and the mission blue butterfly are highly likely to be extirpated in the foreseeable future from San Bruno Mountain. The existing HCP includes implementing several actions described in the recovery plan for the San Bruno elfin butterfly and mission blue butterfly (Service 1984) and the proposed Amendment does not change this.

The control of invasive plants and coastal scrub in grassland habitat will result in some areas becoming temporarily unvegetated, but the Habitat Manager will restore them with appropriate native plant species. Although some patches of habitat occupied by the listed species may become temporarily isolated, these open areas are unlikely to prevent the dispersal and gene flow of the listed butterflies and the San Francisco garter snake. Movements and dispersal corridors between habitat patches is critical to their population dynamics. Movement between population centers maintains gene flow and reduces genetic isolation. Genetically isolated populations are at greater risk of deleterious genetic effects such as inbreeding, genetic drift, and founder effects.

The potential effects of the proposed management and monitoring of Conserved Habitat on the San Francisco lessingia include direct mortality from burning, mowing, and clearing, or being crushed by vehicles, project-related personnel, or associated equipment. Potential harmful or injurious effects include impairment of respiratory and photosynthesis processes due to smoke resulting from project activities. Alteration of microhabitats may include the destruction of cryptogamic crusts that help to exclude invasive non-native plants and improve water infiltration. Below ground effects include loss or degradation of soil structure, fertility, porosity, and water holding capacity. Below ground effects also include potential loss of seed banks which are vital to re-establishing broadly distributed populations.

Impacts on listed species from specific management actions are provided below:

*Hand Work, Mowing, and Mechanical Clearing:* Harm, harassment, injury, or mortality of the four listed butterfly species, San Francisco garter snake, and the San Francisco lessingia may result from crushing, capturing, poisoning, or otherwise damaging individuals that may be located within restoration and enhancement areas due to vegetation removal, use of herbicides, use of vehicles or motorized equipment that could crush individuals, crew movement, debris removal, and maintenance activities that may include vehicles, motorized equipment, and vegetation removal. Work activities may harass adult butterflies causing them to flee the area; this disturbance may increase the

potential for predation or their escaping to unsuitable habitat. Behavioral disturbance to the listed animals may result in an energetic expense that could reduce individual fitness.

The San Francisco garter snake could be crushed, entombed in its burrows, hit and injured or killed by vehicle strikes, harassed by noise and vibration, poisoned, burned, and experience a reduction in natural food sources as a result of the management activities. The garter snake may become trapped if plastic mono-filament netting is used for erosion control or other purposes where they would be subject to death by predation, starvation, injury, or desiccation.

*Herbicide Use:* While, incidental take of listed species resulting from pesticide use will not be covered under the section 10 (a)(1)(B) permit, the Service included a review of the potential cumulative effects of pesticides and herbicides on listed species if their use occurs within or in close proximity to occupied habitat. Herbicides pose a threat to listed butterflies if they kill the larvae host or adult nectar plants, or if the surfactant used in the herbicide has insecticidal effects.

*Livestock Grazing:* In moderation or at low levels, grazing will maintain habitat (e.g., Weiss 1999) for the four listed butterflies. Appropriately timed, low-intensity grazing will reduce the invasion of invasive plants. Such benefits must be weighed against the possible trampling of the early stages of the butterflies and their host and nectar plants. Historically grazing by Pleistocene herbivorous mammals and then domestic livestock occurred in areas inhabited by all four of these insects and likely helped maintain grassland habitat on the Mountain. Livestock grazing once occurred in some of the areas on the Mountain inhabited by the mission callippe silverspot butterflies but due to limitations in funding has not been recently implemented on a wide scale.

*Flaming, Prescribed Burning, and Pile Burning:* Historically, fire played a major role in maintaining California grasslands occupied by the callippe silverspot butterfly (Heady 1988) and mission blue butterfly. These two species have behavioral and biological adaptations to cope with fire, and their populations can be maintained in a landscape with cool burning fast moving grassland fires. However, if hot burning slow fires move through grasslands when eggs, larvae, or pupae are present, it likely kills them. If fire occurs during the summer flight period of the callippe silverspot butterfly or the spring flight period of the mission blue butterfly, we expect that most, if not all, adults present will avoid death by flying away from the fire. After the fire is out, adults return to the burned areas in search of host and nectar plants; this behavior was observed in the regal fritillary butterfly. Grassland fires in the San Francisco Bay area often leave patches of unburned habitat. The callippe silverspot and mission blue butterflies likely will use host and nectar plants in these unburned areas. The larval host and/or adult nectar plants could be eliminated by burning. Over the short term (3-5 years) host and nectar plants maybe reduced in burnt areas, but over the long term, a mosaic of fire in a large habitat area is likely beneficial if it retards coastal scrub invasion or otherwise promotes growth of the host plant and nectar plants.

Insects breathe via spiracles and inhalation of smoke particles could prevent their respiration and result in their asphyxiation. Deposits of high amounts of smoke particles

on the larval food plants can abrade leaves, and adversely affect photosynthesis (Thompson et al. 1984), which may lead to smaller and fewer food plants. Dust is expected to be reduced with implementation of dust abatement measures; however measures that include the wetting or dampening of exposed ground surfaces may also result in adverse effects to butterflies. Unseasonal moisture may trigger untimely germination of seeds when growing conditions are unfavorable. Seeds may potentially germinate followed by desiccation and the eventual death of seedlings, a process that has been used as an eradication method for the invasive yellow star thistle. Alteration of microhabitats may include the destruction of cryptogamic crusts that help to exclude invasive non-native plants and improve water infiltration. Below ground effects include loss or degradation of soil structure, fertility, porosity, and water holding capacity. These effects typically result from the soil compaction associated with the activities included as part of the HMP. Below ground effects also include potential loss of seed banks which are vital to re-establishing broadly distributed populations.

Since fire is an important component of natural ecosystems in California, the mechanical treatment and prescribed fire portions of the HMP will likely result in long-term beneficial effects to the San Francisco garter snake through the maintenance of habitat for this endangered species. However, in the short term, heat and smoke from the fires may kill or injure individuals. Individuals of the San Francisco garter snake may be adversely affected by increased levels of sedimentation into aquatic habitats caused by runoff from burned areas. If heavy sedimentation occurs in ponds or other water bodies where the Pacific treefrog prey, of the San Francisco garter snake breeds, it is possible that eggs and tadpoles will suffocate because of the silt, and reduce or eliminate the listed reptile at the site. Without adequate measures, heavy loss of sediments from the streambed may result in down-cutting of channels which could further degrade the stability of banks, and functions of the riparian ecosystem. Excess sedimentation or excess numbers of fire-associated personnel and their vehicles and equipment could damage or destroy the mammal burrows used by the aestivating or hibernating snakes. There is no scientific information on members of the genus *Thamnophis*' response to smoke exposure; however, gophers and California voles have higher metabolisms than snakes and easily persist through light fires in grasslands and removal of shrub canopy.

Voies and gopher burrow densities may increase significantly as a result of the mechanical treatment and prescribed fire portions of the proposed project. Gopher burrows vacated as a result of predation by raptors are typically occupied by voles. Voies and gopher burrows will create the sub-surface structure sufficient for San Francisco garter snake retreat and hibernation sites. Gopher burrows are a known escape refugia for San Francisco garter snakes and are often used as hibernacula. San Francisco garter snake populations are dependent on sufficient hibernacula, situated adjacent to foraging habitat, as such vegetation management actions are likely to increase suitable habitat for the garter snake on the Mountain.

*Replanting/Restoration:* An effect of the proposed project on the listed butterflies is the elimination of their habitat due to invasive vegetation invading areas where restoration has not been implemented or is inadequate. Soil disturbance, as associated with project

associated activities, facilitates the invasion of areas by non-native species. Increased human activity can introduce new species to an area. Although many of these plants do not survive or thrive in the areas to which they are introduced, some do. These plants could eventually displace or otherwise out-compete the plants which are depended upon by callippe silverspot and mission blue butterflies.

Habitat management activities that do not use locally collected native plant species could result in adverse effects to the four listed butterflies on San Bruno Mountain. Adult female butterflies that have been reared on different plant species may “imprint” on their chemical signature and not recognized other foodplants, and native, but non-local, foodplants may contain biochemical components that are poisonous to herbivorous insects. However, this effect is expected to be minimized because habitat restoration actions that include revegetation will utilize local seed sources.

While restoration biologists have had great success with increasing the abundance of host plants for the mission blue butterfly on the Mountain, no attempts were made to enhance populations of the callippe silverspot butterfly’s host plant (Johnny jump up) until 2001; this plant requires deep soils with established grass cover, making it more difficult to establish than the shallow soil-tolerant lupine species used by the mission blue butterfly (TRA 2002). After years of weed control, hydroseeding, and erosion control, some areas at the Northeast Ridge and Terrabay of the Mountain now support new populations of Johnny jump up (TRA 2002). PG&E has had promising, but limited success with their propagation. Most recently, TRA reported two successes in propagating Johnny jump up. In the first success, plants that had been produced in a nursery survived outplanting with only a one-year turnaround, which bodes well for growing plants to be used in restoration activities in a nursery. In the second success, a direct seeding trial on the Northeast Ridge suggests that seeds can germinate successfully in the field (Patrick Kobernus pers. comm.).

#### C. Bay checkerspot butterfly Critical Habitat

The proposed Amendment is not expected to appreciably diminish the value of the critical habitat for the Bay checkerspot butterfly or prevent the critical habitat from sustaining its role in the conservation and recovery of the species. Management activities that would result in temporary impacts within critical habitat will remove or control exotic plant species and are expected to enhance the primary constituent elements or will be of a relative small size and will be of an insignificant or discountable nature. Amending the HCP will allow for development in the Northeast Ridge, which is not located within critical habitat; the additional funding included in the Amendment will be provided for invasive plant control and management that likely will enhance the primary constituent elements not only within the critical habitat unit, but throughout the Mountain.

#### D. Cumulative Effects

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

From 1995 to 2020, the human population is projected to increase by 18 percent for the San Francisco Bay hydrologic region (California Department of Water Resources 1998). According to the California Department of Forestry, from 2000 to 2020, the human population in the Bay Area region is expected to grow by 29 percent (5.3 million people to 6.8 million people), and by 60 percent from 2000 to 2040 (5.3 million people to 8.4 million people) (California Department of Finance 1998). San Bruno Mountain is a population site for hiking, picnicking, and other passive forms of recreation. Therefore, the number of human visitors will increase with concomitant adverse effects on the San Francisco garter snake and the four listed butterflies, including air pollution, trampling, release of exotic species, and poaching.

The continued spread and increasing density of exotic plant species and coastal scrub habitat will continue to degrade and eliminate habitat for the San Francisco garter snake, mission blue butterfly, San Bruno elfin butterfly, Bay checkerspot butterfly, and the callippe silverspot butterfly. The cumulative effects of these threats pose a significant impediment to the survival and recovery of these species unless the restoration, enhancement, and management of the Conserved Habitat on the Mountain are successful.

Drift from insecticide spraying for pest insects, such as exotic fruit flies from areas surrounding the Mountain could adversely impact the four listed butterflies on the Mountain. Control measures for the exotic light brown apple moth (*Epiphyas postvittana*) likely will include a multiphase approach using insecticides, insect growth regulators, spinosyns, and *Bacillus thuringiensis* var. *kurstaki*, a disease-causing bacterial strain specific to butterflies and moths (Lepidoptera) (Varela *et al.* 2008); the use of any of these agents in the vicinity of the Mountain could adversely affect the four listed butterflies.

Urban development results in increased numbers of pets. Both feral and domestic cats (*Felis catus*) and dogs (*Canis lupus familiaris*) prey on aquatic and riparian species including the San Francisco garter snake. People exploring creeks and wetlands on the Mountain may harass, collect, and kill this listed species.

Non-native species that prey upon, or compete with, listed species continue to be released in the San Francisco Bay Area, including the Mountain. Bullfrogs likely will be released in the future, and they likely will eat the San Francisco garter snake. Sowbugs and earwigs are predators on eggs, larvae, and pupae of butterflies (Edney *et al.* 1974; Langston and Powell 1975; Mattoni *et al.* 2003), likely including the four listed species on the Mountain.



The endangered San Francisco garter snake is a species that is highly valued in the international reptile trade (retired Special Agent K. McCloud pers. comm. to C.D. Nagano). Poaching from small or isolated populations of this listed species may result in their extirpation. The internet has become a popular venue for the international commercial trade in reptiles and amphibians. Poachers collecting non-listed reptiles, such as the western yellow bellied racers and western gopher snake, on the Mountain would likely collect any San Francisco garter snakes they encounter.

A threat to the mission blue butterfly, San Bruno elfin butterfly, Bay checkerspot butterfly, and callippe silverspot butterfly is the illegal collection for commercial and personal purposes. Adult specimens of these species are highly valued by private collectors, and an international market exists for illegally collected specimens of them, as well as other listed and rare butterflies (Ehrlich 1984; Collins and Morris 1985; U.S. Attorney's Office 1994; Williams 1996). Butterflies in small populations are vulnerable to harm from collection of adult butterflies (Gall 1984a, 1984b). A population may be reduced to below sustainable numbers (Allee effect) by removal of females, reducing the probability that new colonies will be founded. Collectors pose a threat because they may be unable to recognize when they are depleting butterfly colonies below the thresholds of survival or recovery (Collins and Morris 1985; Hayes 1981). A convicted collector had large numbers of callippe silverspot and mission blue butterflies in his collection (C.D. Nagano, pers. obs.; U.S. Attorney's Office 1994). This same poacher stated that collecting San Bruno elfin butterflies was easily accomplished on Radio Ridge on San Bruno Mountain because few people were in the area during the week, and individual adults can easily be collected when they are perching on the Pacific stonecrop that grow along the roadside cliff faces (C.D. Nagano, pers. obs.).

Based on the: (1) Final Rule listing the callippe silverspot butterfly as an endangered species published in the **Federal Register** on December 5, 1997; (2) *Application for an Amendment to the section 10(a)(1)(B) permit for San Bruno Mountain (PRT 2-9818)* dated February 5, 2008, from the City of Brisbane and associated material that was received by the Service on February 7, 2008; (3) *San Bruno Mountain Habitat Management Plan 2007* dated September 2007 prepared by the San Mateo County Parks Department; (4) *San Bruno Mountain Area Habitat Conservation Plan* (volumes 1 and 2) dated May 1982, prepared by the San Bruno Mountain Habitat Conservation Plan Steering Committee; (5) *Biological Study and Analysis of Conserved Habitat for Amendments to the Habitat Conservation Plan for San Bruno Mountain and Incidental Take Permit PRT 2-9818* dated October 2007 prepared for the County of San Mateo and City of Brisbane; (6) *Analysis of Butterfly Survey Data and Methodology from San Bruno Mountain Habitat Conservation Plan (1982-2000) 1. Status and Trends* dated 2004, prepared by Travis Longcore, Christine S. Lam, and John P. Wilson; (7) *San Bruno Mountain Habitat Conservation Plan Amendment Environmental Assessment* dated October 2007 prepared by Jones and Stokes; (8) electronic mail, telephone discussions, and meetings between the Service, City of Brisbane, Brookfield, Thomas Reid Associates, and others, between 1998 and 2009; and (9) other available information, the Service concluded in its Biological Opinion that the endangered callippe silverspot butterfly and threatened Bay checkerspot butterfly will be incidentally taken by the proposed project activities because they will have an adverse affect eggs, larvae, and adults of both species

within approximately 19.64 acres of grassland habitat on the Northeast Ridge. In addition, adverse affects to these two species will occur associated with management and monitoring of approximately 2,800 acres. Adverse affects to the endangered San Bruno elfin butterfly, endangered mission blue butterfly, and endangered San Francisco garter snake, will also occur; however, take associated with these species was already considered in previous biological opinions and take of these species is currently authorized under the existing ITP. Although take of plant species is not prohibited under the Act and therefore cannot be authorized under an incidental take permit, the San Francisco lessingia was included in the Service's biological opinion for the proposed Amendment to determine if the Amendment would jeopardize its continued existence and in recognition of the conservation benefits provided to the species under the HCP. There are no anticipated effects to any proposed, or candidate species or their habitats from this project and critical habitat for the threatened Bay checkerspot butterfly will not be adversely modified.

### **Findings for Permit Issuance Criteria**

#### **1. The taking will be incidental.**

The taking of Covered Species would result from, but would not be the purpose of, otherwise lawful activities conducted or carried out by the City or Plan Operator, and agents or third parties under the City's or Plan Operator's control. These activities are development activities on the Northeast Ridge and continued maintenance and monitoring activities associated with the HCP. All activities covered under the permit must be carried out in accordance with all appropriate local, State, and Federal laws.

#### **2. The Permittee will, to the maximum extent practicable, minimize and mitigate the impacts of taking listed species and other Covered Species.**

The Service has determined that impacts to the Covered Species likely to result from the issuance of the proposed Amended ITP will be minimized and mitigated to the maximum extent practicable by the measures described in the proposed Amendment to the existing HCP, and the existing IA. The proposed Amendment to the existing HCP would minimize and mitigate the impact of the proposed taking of the Covered Species through the implementation of the measures described below.

The disturbance of 19.64 acres of grassland habitat associated with development on the Northeast Ridge will be mitigated with: (1) the permanent conservation of an additional 8.97 acres dedicated as Conserved Habitat over the 1989 VTM; (2) establishment of a \$4,000,000 endowment; and (3) an increase in the annual dwelling charge for 88 dwellings from \$20 per unit (\$88.56 in 2007 dollars) to \$800 per unit (\$850 in 2007 dollars). As discussed above, the establishment of an endowment and subsequent increase of annual funding would allow an expansion of the existing vegetation management. Existing funding is sufficient only to conduct vegetation management in Priority 1 areas, while additional funding will allow the Plan Operator to conduct management in Priority 2 and 3 areas to help reclaim grasslands that have been lost to coastal scrub or invasive species. The proposed Amendment will result in incidental take

of all callippe silverspot butterflies in 19.64 acres of grassland habitat associated with development on the Northeast Ridge. However, overall the Amendment will contribute to the survival and recovery of the callippe silverspot butterfly, and other Covered Species because: (1) the revised operating plan for the Northeast Ridge will result in Conserved Habitat that is larger in size and higher in biological value than the habitat that will be lost as a result of the Amendment; (2) the revised operating plan has a reduced development footprint that avoids impacts to a hilltop area important to the callippe silverspot butterfly's mating success and reduces impacts to the larvae food plants of the mission blue and callippe silverspot butterflies; (3) reduces impacts to habitat by approximately 50%, including both temporary and permanently disturbed areas, compared to the 1989 VTM currently approved under the section 10(a)(1)(B) permit; (4) reduces habitat fragmentation by clustering development and elimination of the UII-NI development; and (5) the additional funding associated with the Amendment provides a significant increase in the funding available for the management of all Conserved Habitat. The Biological Opinion (Service 2009) concluded that without the supplemental funding and associated enhanced management actions the habitats utilized by the callippe silverspot butterfly and the other listed butterfly species will continue to decline to such a point that these species are highly likely to become extirpated from this site in the foreseeable future.

#### Avoidance and Minimization Measures

The City will continue to implement the avoidance and minimization measures of the existing HCP (EA Table 4-1). The following additional minimization measures will also be implemented to minimize the effects of the proposed Amendment on all Covered Species and habitats:

- a. Prior to conducting vegetation management work in a specified area, the Plan Operator will survey the target area for the presence of butterfly host plants, and crews conducting hand work, herbicide application, mowing, or mechanical clearing work under the Habitat Manager will be trained in the identification of butterfly host plants and will avoid them. Whenever crews are unfamiliar with the native plant species and the endangered species' host plants, all butterfly host plants in the area will be flagged and crews will be closely monitored during operations. All herbicides will be used in compliance with their labels. Herbicide drift will be minimized by applying the herbicide as close to the target area as possible. Grazing and burning will be limited to grasslands with a low density of butterfly host plants in order to avoid trampling, damage, or loss.
- b. The Plan Operator or authorized developer will conduct all tree removal and grading during the nonbreeding season for most special-status birds (generally September to February). If construction or vegetation management activities are scheduled to occur during the breeding season for special-status and non-special-status migratory birds and raptors (generally March to August), a qualified wildlife biologist will be retained to conduct focused nesting surveys in appropriate habitat prior to the start of construction or vegetation management. The nesting surveys will be conducted 15

days prior to initiation of construction or vegetation management activities that will occur in suitable habitat between March 1 and August 15. If no active nests are detected during these surveys, no additional mitigation is required. If surveys indicate that special-status bird nests are found in any areas that would be directly affected by construction or vegetation management activities, a no-disturbance buffer will be established around the site to avoid disturbance or destruction of the nest site until after the breeding season or after a qualified wildlife biologist determines that the young have fledged (usually late June to mid-July). The extent of these buffers will be determined by the biologist (coordinating with Service) and will depend on the level of noise or construction disturbance, line of sight between the nest and the disturbance, and ambient levels.

**3. The Permittee will ensure that adequate funding for the Habitat Conservation Plan and procedures to deal with unforeseen circumstances will be provided.**

The City will ensure funding for implementation of all take avoidance, minimization, and mitigation measures and changed circumstances as specified in the HCP, its subsequent amendments, and the proposed Amendment. Over the course of the HCP's history, annual spending has varied widely from year to year, with expenditures as low as \$60,000 to over \$200,000. The 2005 annual revenue for management of the HCP area is approximately \$140,000. The Draft San Bruno Mountain 5-Year Plan identifies the annual level of funding needed to implement a thorough management program at \$425,000 (\$415,000 for management plus \$10,000 annually for a contingency fund). This model, however, reflects the uppermost limit of a range of scenarios for enhanced management. The full range of financial scenarios for enhanced management ranges from approximately \$140,000 per year (for the existing "core program" aimed at controlling exotic species, plus controlled burning and grazing) to approximately \$383,000 per year (for comprehensive management of all Priority One areas) to a maximum of approximately \$415,000 per year (for comprehensive management of all Priority One areas plus extensive monitoring every year) (TRA Draft San Bruno Mountain HCP 5 Year Plan 2004).

Brookfield will provide \$4,000,000 in a non-wasting endowment in order to supplement the HCP's existing funding sources. The endowment is expected to generate approximately \$200,000 annually at a 5 percent rate of return. In addition, assessment on the 88 new homes (the 17 currently under construction and the 71 in the proposed Amendment) will generate an additional \$75,000 annually (TRA 2007a, p. 6-7). The combined revenue provided by the proposed Amendment is \$415,000 (\$140,000 existing revenue in addition to \$275,000).

Procedures for changed and unforeseen circumstances are stated in the HCP and IA under their respective sections for each. The Applicants would be responsible for the changed circumstances identified in the HCP. In the event that currently listed species – or any currently unlisted species which is listed in the future – which are not covered in the HCP is impacted by the proposed project, the Applicants would be responsible for consulting with the Service and taking appropriate action, as necessary, to comply with the ESA.

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

The ESA's legislative history establishes the intent of Congress that this issuance criterion be identical to a regulatory finding of "no jeopardy" under section 7(a)(2) (see 50 CFR 402.03). As a result, issuance of this section 10(a)(1)(B) permit was reviewed by the Service under section 7 of the ESA. In the biological opinion prepared for the proposed project, the Service concluded that issuance of an incidental take permit for the proposed Amendment is not likely to jeopardize the continued existence of the Covered Species or adversely modify critical habitat.

5. **Other measures, as required by the Service of the Applicants, have been met.**

The San Bruno Mountain Amended HCP and existing IA has incorporated all elements necessary for issuance of a section 10(a)(1)(B) permit and otherwise required by the Service.

#### **IV. SPECIES ASSURANCES – ANALYSIS AND RECOMMENDATIONS**

The City is not seeking assurances from the Service that no further mitigation will be required for these species in the event of unforeseen circumstances in the future.

Species are adequately covered if the HCP addresses the conservation of the species and its habitat and if all section 10 issuance criteria have been met. All section 10 issuance criteria have been met for the Covered Species as described under part III of these Findings.

The HCP adequately addresses conservation of the Covered Species and their habitat as described in Section III and in the Service's biological opinion (Service 2009), especially since without implementation of the management activities, as allowed by the increased funding, the San Bruno elfin butterfly likely will decline in status, and the callippe silverspot butterfly and the mission blue butterfly are highly likely to be extirpated in the foreseeable future from the Mountain.

#### **V. GENERAL CRITERIA AND DISQUALIFYING FACTORS – ANALYSIS AND FINDINGS**

The Service has no evidence that the permit application should be denied on the basis of criteria and conditions set forth in 50 CFR 13.21(b)-(c).

#### **VI. RECOMMENDATION ON ISSUANCE OF PERMIT**

Based on these findings with respect to the permit application, the San Bruno Mountain HCP, its subsequent amendments, the proposed Amendment, the Service's EA (JSA 2007) for this project, I recommend issuance of the amended section 10(a)(1)(B) ITP (#TE215574-5) to the City for incidental take of the Covered Species in accordance with San Bruno Mountain HCP, as Amended.

## VII. FINDING OF NO SIGNIFICANT IMPACT – NEPA DECISION

### Alternatives Considered

The Service considered a reasonable range of alternatives including the proposed action, issuance of an amended ITP based on the 1989 VTM, and a no action alternative. For a description of the alternatives please see Section I above.

### Effects on the Human Environment

The EA, incorporated by reference and attached, was prepared to disclose potential environmental impacts pursuant to NEPA. Only the EA and those documents made available during the public comment period were used in this FONSI. The EA supports the following findings:

#### Visual Resources

Because the majority of existing residential development has already been constructed in the vicinity of U11-N11, the resulting urbanization of undeveloped land and diminished views of open space in this portion of Brisbane would be minimal. The proposed changes would result in a total increase of 4.97 acres of permanently disturbed area at the U11-N11 site compared to the 1989 VTM. However, overall development within the Northeast Ridge would be reduced by 8.93 acres over the 1989 VTM. The overall impact on scenic views would decrease as a result of the proposed changes. The 2007 VTM also includes smaller lots resulting in a more compact development, and the proposed housing would not project above the ridgeline. These changes reduce the visual impact to the viewshed to not significant.

Changes in views may occur from vegetation management activities. Removal of invasive species could potentially affect views by resulting in small clearings, patches of dying vegetation, or temporarily blackened areas on the Mountain. These impacts to visual resources from vegetation management activities would be temporary (not lasting more than one season), irregular (not occurring over the entire Mountain at the same time), and generally small in size and are therefore are not significant.

#### Climate/Regional Air Quality/Sensitive Receptors

The proposed 2007 VTM is consistent with growth anticipated under the City's 1994 General Plan and falls within the population projections prepared by the Association of Bay Area Governments (ABAG); therefore, the project would not conflict with implementation of an applicable air quality plan.

Because the Plan Operator would implement all relevant Bay Area Air Quality Management District's (BAAQMD) control measures identified in the 2000 Clean Air Plan, vegetation Management and Monitoring activities would be in compliance with local and regional plans. The mitigation measures identified in the 1982 and 1989 EA/EIR will continue to be implemented (EA Table 4-1). Therefore with mitigation, this impact is not significant.

Sensitive receptors to air pollutants typically include hospitals, nursing facilities, schools, and elderly care facilities. U11-N11 would be located approximately 0.3 miles from a school. However, the proposed project will not expose any sensitive receptors to substantial pollutant concentrations because the 1982 EA/EIR mitigation measures will continue to be implemented (EA Table 4-1). Therefore with mitigation, this impact is not significant.

Smoke and particulates released from both planned and accidental fires have the potential to expose sensitive receptors adjacent to the Mountain. However, the Plan Operator will comply with BAAQMD regulations, including those that apply to open burning and addresses jurisdictional authority, timing of burns, and preparation of smoke management plans. Use of gas mowers, weed trimmers, chain saws, tractors, and other electric equipment for vegetation management may also result in minor emissions. However, implementation of the 1982 EA/EIR mitigation measures will continue to be implemented (Table 4-1). Therefore with mitigation, this impact is not significant.

#### Seismicity/Geologic Hazards/Soils

New structures developed on the project site will be designed and constructed in accordance with the California State Building Code (Title 24) and local building codes, to reduce potential seismic ground-shaking impacts. The mitigation measures identified in the 1982 and 1989 EA/EIR will continue to be implemented (Table 4-1). Therefore with mitigation, this impact is not significant.

ABAG liquefaction susceptibility maps indicate the project site has a very low susceptibility to liquefaction. Therefore, development would not likely result in ground failure hazards and management and monitoring activities would also not likely result in ground failure hazards.

The 2007 VTM would include debris catchment walls to mitigate potential landslide hazards. Any weak, potentially unstable colluvial materials encountered during project grading will be removed. Infrastructure Grading has stabilized steep slopes near Unit I. Local building codes and the mitigation measures identified in the 1982 and 1989 EA/EIR will continue to be implemented (EA Table 4-1). Therefore with mitigation, this impact is not significant.

Management and Monitoring activities could potentially initiate landsliding and debris flows through disturbance of topsoil during hand or mechanical clearing of brush invasions, grazing, prescribed or micro burns, and other techniques. The 1982 EA/EIR mitigation measures will continue to be implemented on the Mountain (EA Table 4-1). Therefore with mitigation, this impact is not significant.

Site grading and geotechnical control may result in temporary soil erosion or topsoil loss. However, the proposed changes from the 1989 VTM would reduce the potential for soil erosion or topsoil loss as the total development area under the proposed project would decrease by approximately 8.93 acres. Additionally, the mitigation measures identified in the 1982 and 1989 EA/EIR would continue to be implemented (EA Table 4-1). Therefore with mitigation, this impact is not significant.

Management and Monitoring activities could potentially cause temporary soil erosion through disturbance of topsoil during vegetation management, such as hand or mechanical removal of brush invasions, prescribed or micro burns, grazing, and other techniques. However, these actions would be temporary (not lasting more than one season), irregular (not occurring over the entire Mountain at the same time), and generally small in size. The 1982 EA/EIR mitigation measures will continue to be implemented (EA Table 4-1). Therefore with mitigation, this impact is not significant.

Expansive soils, usually clay soils, that have the ability to change in volume when the water content of the soil changes, are not known at the project site. However, if expansive soils are found during preliminary grading activities the impact will be reduced through compliance with the California State Building Code (Title 24), and implementation of the mitigation measures outlined in the 1982 and 1989 EA/EIR (A Table 4-1). Therefore with mitigation, this impact is not significant.

Implementation of the proposed Alternative would not result in the loss of availability of known mineral resources of value to the region or State, because no mineral resources of value to the region or State are known to occur on the Mountain.

#### Hydrology/Flooding/Water quality

The 71 housing units constructed under the proposed 2007 VTM would obtain its water supply from SFPUC via the City of Brisbane. Although the 1989 Addendum states that the project may result in minor changes to the direction or rate of flow of groundwater in the development areas, studies conducted before the preparation of the 1989 Addendum did not identify any adverse hydrological consequences. The proposed project would not rely on groundwater and would therefore not deplete groundwater supplies. In addition, the mitigation measures identified in the 1982 and 1989 EA/EIR would continue to be implemented (EA Table 4-1). Therefore with mitigation, this impact is not significant.

Management and Monitoring activities on the Mountain would not affect groundwater supplies. This impact is not significant.

Surface runoff from the proposed Alternative would be less than that from 1989 VTM due to a reduced development footprint. The mitigation measures outlined in the 1982 and 1989 EA/EIR, which include sediment traps and catchment basins to collect sediment runoff, would continue to be implemented (EA Table 4-1). Therefore with mitigation, this impact is not significant.

Management and Monitoring activities could potentially cause temporary soil erosion through disturbance of topsoil during vegetation management activities. Soil disturbance and subsequent erosion or siltation may occur following hand or mechanical clearing, prescribed or micro burns, and minor trampling from livestock grazing. However, changes are expected to be minor (small in size), temporary (not lasting more than one season), and irregular (occurring in patches). The existing mitigation measures shall continue to be implemented on the Mountain (EA Table 4-1). Therefore with mitigation, this impact is not significant.



Water quality may be impacted during and after the development phase for the 2007 VTM. However, the proposed Amendment would disturb less area than was the 1989 VTM. The proposed changes would not increase the potential for violating any water quality standards or waste discharge requirements. Implementation of pesticide restrictions under the terms of the HCP and the existing mitigation measures (EA Table 4-1) will reduce the levels of sediment and/or pollutants entering surface water. Therefore with mitigation, this impact is not significant.

Management and Monitoring activities could potentially cause temporary soil erosion through disturbance of topsoil during vegetation management following hand work, prescribed or pile burning, grazing, and mechanical clearing. Additionally, there would be a risk of fuel and/or oil release during vegetation management using weed trimmers, chain saws, gas mowers, and/or heavy machinery. Ongoing management and monitoring activities also have the potential to release herbicides, pesticides, and fungicides into intermittent stream courses on the Mountain. However, the Plan Operator would take precautions to ensure that accidental release or spills do not occur, existing mitigation measures shall continue to be implemented on the Mountain (EA Table 4-1), and pesticide use in Conserved Habitat is prohibited under the HCP. Therefore with mitigation, this impact is not significant.

The only FEMA flood zone located within the HCP boundaries is located in the Crocker Industrial Park. During and after construction, project-related runoff into the Crocker Industrial Park would increase surface flows in the streets and may compound flooding conditions during 10-year storm events. The hydrological conditions at the site have not substantially changed since the 1982 and 1989 EA/EIR and the existing mitigation measures shall continue to be implemented on the Mountain (EA Table 4-1). Therefore with mitigation, this impact is not significant.

Management and Monitoring could temporarily increase the rate and/or amount of surface runoff if vegetation removal exposes topsoil and reduces infiltration rates. Soil disturbance and associated surface runoff may occur following hand or mechanical clearing, prescribed or micro burns, and minor trampling from livestock grazing. However, changes are expected to be minor (small in size), temporary (generally lasting no more than one season), and irregular (occurring in patches) and the existing mitigation measures shall continue to be implemented on the Mountain (EA Table 4-1). Therefore with mitigation, this impact is not significant.

### Hazardous Materials

Hazardous materials, associated with business and industry, are not anticipated to be used during the operational period of the project since the proposed project includes residential housing. Grading and construction activities would involve the transport, use, and disposal of chemical agents, solvents, paints, and other hazardous materials that are commonly associated with construction activities. Discharge of household hazardous materials may also occur. The amount of these chemicals present during construction would be limited and would be in compliance with existing government regulations. Implementation of the proposed project is unlikely to create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials because the amount of materials would be

small, their use would be temporary, and limited to the building site. This impact is not significant.

Management and Monitoring activities have the potential to transport and use hazardous materials on the Mountain. There would be a risk of fuel and/or oil release during vegetation management using weed trimmers, chain saws, gas mowers, and/or heavy machinery. There could also be potential release of herbicides, pesticides, and fungicides into intermittent stream courses on the Mountain. The use of pesticides and herbicides could impact listed species. However, the Plan Operator would take precautions to ensure that no accidental releases occur during implementation of management techniques, existing mitigation measures will shall continue to be implemented (EA Table 4-1), and pesticide use in Conserved Habitat is prohibited. Therefore with mitigation, this impact is not significant.

Occupation of the residential subdivision may also result in hazardous emissions or household hazardous waste. However, the project site is not located within 0.25 mile of an existing or proposed school and would therefore not expose sensitive receptors to hazardous emissions.

#### Biological Resources (vegetation, wildlife, species of concern)

Development of UII-NII would permanently disturb 16.67 acres of land for the construction of homes, roadways, infrastructure, and landscaped areas. An additional 2.97 acres would be disturbed temporarily for remedial grading but would be restored and dedicated as Conserved Habitat. Of the 16.67 acres of permanent disturbance, 12.01 acres are grassland habitat (10.94 acres disturbed for construction of UII-NII and 1.07 acres already disturbed for the Infrastructure Grading). This represents a total loss of 9.7% of grassland on the Northeast Ridge and less than 1% of grassland on the Mountain (EA Table 4-3). However, the 2007 VTM results in a increase of 17.30 acres of grassland over the 1989 VTM due to the dedication of Conserved Habitat in the entire UII-NI area and a net increase of 8.93 acres of Conserved Habitat. The 2007 VTM represents a decrease in the total area of development and an overall decrease in loss of grassland habitat. The 1982 EA/EIR mitigation measures (EA Table 4-2) will continue to be implemented. Therefore with mitigation, this impact is not significant.

Native grasslands would be enhanced within the Conserved Habitat, in accordance with the 2007 HMP to enhance cover of native forbs and perennial grasses. Annual grasslands are common on the Mountain, representing 90% of the land area but are dominated by non-native invasive species (primarily grasses). Although minor temporary disturbance may occur during implementation of the management techniques, the increased vegetation management made possible through the endowment fund from Brookfield would protect and enhance annual grasslands habitat over time. The 1982 EA/EIR mitigation measures (EA Table 4-1) will continue to be implemented. The proposed Amendment also establishes an endowment and supplemental funding for vegetation management actions. Therefore with mitigation this impact is not significant.

A major threat to the butterflies on the Mountain is the invasion of their annual grassland habitat non-native plant species and succession to coastal scrub. These species out-compete native host plants and thereby eliminate butterfly habitat. Soil disturbance, such as that associated with

development on the Northeast Ridge, may facilitate the invasion of areas by non-native species. Non-natives that are already present in the area may have a competitive advantage over native plants in dominating a temporarily disturbed area. In addition, increased human activity may introduce new non-native species to an area from foot traffic or domestic pets. Plants may also “escape” from residential areas. The 2007 VTM represents a decrease in the total area of development from the 1989 VTM, and associated potential spread of non-native species. Additionally, the supplementary funding provided by endowment would allow for enhanced vegetation management to combat the spread of invasive species on the Mountain. The establishment of the endowment fund reduces this impact to not significant.

Construction activities, including site grading and preparation, construction of geotechnical controls, and installation of public utilities, could potentially disturb a variety of special status plant species. Although no special status plant species (EA Table 3-2) have been documented within the development area of the Northeast Ridge, potentially undiscovered populations could be impacted. Potential disturbance of special status plants is reduced under the 2007 VTM, compared to the 1989 development authorizations. The EA concluded that continued implementation of the existing mitigation measures (EA Table 4-1) and new mitigation measures in the 2007 EA reduces this impact to not significant.

Native annual grasslands would be enhanced within the Conserved Habitat, in accordance with the 2007 HMP, by using hand work, herbicide application, livestock grazing, prescribed or micro burning, mowing, mechanical clearing, and/or restoration techniques to enhance cover of native forbs, perennial grasses, and special status plants. Although minor temporary disturbance to special status plants may occur during implementation of the management actions, the enhanced vegetation management made possible through the increased funding would protect and enhance annual grasslands habitat over time. Management efforts emphasize protection and expansion of special status species populations that service as host or nectar plants for the listed butterflies. The EA concluded that continued implementation of the existing mitigation measures (EA Table 4-1) and establishment of the endowment fund reduces this impact is not significant.

Compared to the 1989 VTM, the proposed reconfiguration represents a decrease in the total area of development and an overall decrease in loss of callippe silverspot and mission blue butterfly habitat, a decrease in the amount of fragmentation, and increases the preservation of high quality hilltopping habitat for both species. The 1989 VTM would result in impacts to 8.6 acres of high and low value callippe silverspot butterfly habitat, while the 2007 VTM would result in impacts to 3.1 acres of low value callippe silverspot butterfly habitat. Destruction of larval host plant would result in a decrease in the amount of habitat available for callippe silverspot reproduction. Individual callippe silverspot butterflies may also become disoriented as a result of the loss of their habitat and fail to find a mate and/or reproduce. However, impacts to the callippe silverspot under the proposed 2007 VTM have been mitigated to not significant through the preservation of high value hilltopping habitat on the two hills, dedication of an endowment, and increased funding for enhanced vegetation management of invasive plant species and enhancement of butterfly habitat (see discussion below). Enhanced vegetation management, along with implementation of existing and new mitigation measures reduces this impact to not significant.

Potential take of the mission blue and San Bruno elfin butterflies and habitat disturbance would be similar to that described for the callippe silverspot since their host plants also require grassland habitat. Development under the 2007 VTM would result in the loss of 12.01 acres of the grassland habitat (including 1.07 acres that were disturbed by the Infrastructure Grading). Impacts on the listed butterflies may result from loss of habitat that supports the animals' host plants, placement of a movement barrier between colonies, habitat fragmentation, and introduction of non-native plants. Impacts would also occur through direct loss of individuals during construction activities or human activities once the development is occupied. However, no host plants for the San Bruno elfin are found within the Northeast Ridge development area and therefore take of San Bruno elfins is not likely to occur as a result of the 2007 VTM. Impacts to the mission blue butterfly are similar to those for callippe silverspot butterfly.

Butterfly habitat on the Mountain would benefit from the enhanced management work afforded by the Proposed Action. Native annual grasslands would be enhanced within the Conserved Habitat, in accordance with the 2007 HMP, to enhance cover of native forbs and perennial grasses. Because they are also located in grasslands, potential disturbance of mission blue and San Bruno elfin host plants are comparable to those impacts from vegetation management described above. The 2009 Biological Opinion concluded that implementation of the adopted HCP and the Proposed Action is not likely to jeopardize the continued existence of the mission blue butterfly and San Bruno elfin (Service 2009). Although minor temporary disturbances may occur during implementation of the management techniques, the increased vegetation management made possible through the increased funding and endowment would protect and enhance annual grasslands habitat over time. The 1982 EA/EIR mitigation measures will continue to be implemented (EA Table 4-1) and establishment of the endowment fund reduces this impact is not significant.

### Land Use

Implementation of the Proposed Action would not physically divide an established community. The proposed project itself is part of a planned larger residential development on the Northeast Ridge. Construction of UII-NII would contribute to the housing stock within the City. This impact is not significant.

Ongoing management and monitoring on the Mountain's protected lands would not physically divide a community. Therefore this impact is not significant.

The Northeast Ridge development was included in the 1982 HCP as a "Planned Parcel." Both the 1983 EIR and 1989 Addendum concluded that the project was in conformance with all applicable policies of the 1980 Brisbane General Plan (and the 1985 Housing Element, in the case of the 1989 Addendum). The proposed 2007 VTM is consistent with growth anticipated under the City's 1994 General Plan and falls within the population projections prepared by ABAG; therefore, the project would not conflict with any applicable land use plan, policy, or regulation. This impact is not significant.

Open space on the Mountain is managed for the benefit of covered butterfly species and their habitat. All Conserved Habitat is designated as open space on the City of Brisbane General Plan

and County of San Mateo General Plan. Vegetation management and monitoring activities under the 2007 HMP would not conflict with this open space designation, nor any local plans, policies, or regulations. This impact is not significant.

The Northeast Ridge development was included in the 1982 HCP as a "Planned Parcel." Construction of the Northeast Ridge project was anticipated at that time and the impacts associated with its development were mitigated by provisions of the HCP and the 1982 EA/EIR. The Service also took into account potential impacts in its analysis for issuance of the original ITP. The proposed Amendment includes the final phase of development on the Northeast Ridge, under the 2007 VTM that minimizes potential impacts to listed butterflies. While development of UII-NI was included in the 1983 and 1989 VTMs, it is now proposed to remain as Conserved Habitat and managed under the HCP. The 2007 VTM results in more undisturbed open space and less permanently developed area. This reconfiguration is consistent with the HCP's goal of the long-term survival of the Mountain's listed species, as well as the HCP's preservation strategy (as opposed to restoration) for butterfly habitat, therefore this impact is not significant.

Enhanced vegetation management made possible through the endowment fund and supplemental funding would continue to implement the existing HCP. All management and monitoring on the Mountain's protected lands would be conducted in accordance with the existing HCP, and would facilitate protection and expansion of habitat for the Species of Concern, therefore implementation of the proposed Amendment will be beneficial.

Development under the 2007 VTM would result in fewer development impacts than Alternative 2. The construction activities might temporarily disrupt adjacent residences; however, once inhabited, the new residences would be compatible with the existing neighborhood. This impact is not significant.

Land uses adjacent to the Mountain include parks and open space, residential neighborhoods, commercial, and industrial developments. Hand work, mowing, and mechanical clearing – all activities that may employ gas- or electric-powered equipment – may result in minor noise and emissions. However, these impacts would be temporary and sporadic, and are considered less than significant. Additionally, prescribed, micro, and pile burning have the potential to accidentally ignite an urban-interface fire hazard. Because of the need to ensure adequate protection of species and habitat, vegetation management under the 2007 HMP includes a wide range of measures to eliminate or minimize incompatibility with surrounding uses. All burning on the Mountain would require assistance from California Department of Forestry and Fire Protection (CALFIRE) and/or the local fire departments, a permit from the BAAQMD, and a burn plan approved by CALFIRE. With implementation of these minimization measures, this impact is reduced to not significant.

### Cultural Resources

A records search with the Northwest Information Center of the California Historical Resources Information System (NWIC), Sonoma State University concluded that there were no historical resources recorded at the site (such as Indian Trust Assets). Thus, the Proposed Action would not result in any substantial adverse changes in historical resources. However, all mitigation

measures and requirements identified in the 1982 and 1989 EA/EIR (EA Table 4-1) will be implemented. Therefore with mitigation this impact is not significant.

Management and Monitoring would not disturb known historical resources, because none are known from the Mountain; however, activities could potentially impact unknown resources. Uprooting of woody vegetation during hand work and mechanical clearing could potentially uncover historical resources under the topsoil. Prescribed and pile burning could accidentally damage or destroy unknown resources. The 1982 EA/EIR mitigation measures will continue to be implemented (EA Table 4-1). Therefore with mitigation this impact is not significant.

The proposed project would not disturb known archeological resources or result in any substantial adverse changes in the significance of archaeological resources. All mitigation measures and requirements identified in the 1983 EIR and 1989 Addendum for cultural resources would remain in effect for the proposed project (EA Table 4-1). Therefore with mitigation this impact is not significant.

Management and Monitoring would not disturb known archeological resources; however, such activities could potentially impact unknown resources. Uprooting of woody vegetation during hand work and mechanical clearing could potentially uncover historical resources under the topsoil. Additionally, prescribed and pile burning could accidentally damage or destroy unknown resources. However, as noted above, a records search concluded that there were no historical resources recorded at the site. The 1982 EA/EIR mitigation measures will continue to be implemented (EA Table 4-1). Therefore with mitigation this impact is not significant.

Construction of 71 dwelling units under the proposed project would not directly or indirectly destroy a unique paleontological resource or site or unique geologic feature because none are known from the site. In addition, all mitigation measures and requirements identified in the 1982 and 1989 EA/EIR for cultural resources would continue to be implemented (EA Table 4-1). Therefore with mitigation this impact is not significant.

### Noise

Construction activities would temporarily increase noise levels in the Northeast Ridge during the construction period. Earth-moving activities could temporarily expose persons to increased noise levels of up to 90 dBA at the source. The City of Brisbane sets a maximum allowable noise level for construction equipment at 83 dBA at a distance of 25 feet from the source. Development under the 2007 VTM would result in fewer development impacts than Alternative 2, including a shorter construction period due to removal of UII-NI from development. Adherence to the City's Municipal Code 8.28.060, as well as the application of the mitigation measure outlined in the 1989 Addendum (EA Table 4-1), will reduce potential noise impacts to not significant.

Management and Monitoring activities may result in temporary, sporadic incidences of noise. Hand work, mowing, and mechanical clearing, all activities that may employ gas- or electric-powered equipment, may result in minor noise generation. However, because the Mountain is an

open space, most vegetation management practices would not be auditable from adjacent urban land uses. This impact is not significant.

The use of earth-moving and other construction equipment may result in temporary exposure to groundborne vibration or groundborne noise levels. This groundborne vibration and noise is not expected to be excessive and would be short-term in its duration. Development under the 2007 VTM would result in fewer development impacts than Alternative 2, including noise and vibration generation for a shorter construction period due to removal of UII-NI from development. The 1989 Addendum outlines a noise mitigation measure that will continue to be implemented (EA Table 4-1). Therefore with mitigation this impact is not significant.

The project's residential and open space uses would not substantially increase ambient noise levels in the study area above existing levels. UII-NII would not generate enough traffic or other noise source to create a perceptible change in noise in the vicinity of the project site. No substantial long-term increase in ambient noise levels is expected to result. Although the project site is not located within an airport land use plan or within two miles of the San Francisco International Airport, the 1983 EIR stated that aircraft overflight may expose residents to a Community Noise Equivalent Level (CNEL) of 65 dBA. During the day, aircraft noise usually increases current noise levels anywhere from 5 to 15 dBA; this increase is somewhat higher at night when ambient noise levels are lower. Mitigation measures in the 1982 and 1989 EA/EIR will continue to be implemented (EA Table 4-1). Therefore with mitigation this impact is not significant.

Management and Monitoring activities may result in temporary, sporadic incidences of noise. Hand work, mowing, and mechanical clearing, all activities that may employ gas- or electric-powered equipment, may result in minor noise generation. However, because the Mountain is an open space, most vegetation management practices would not be auditable from adjacent urban land uses. No substantial long-term increase in ambient noise levels is expected to result with implementation of the project. This impact is not significant.

#### Public Health Hazards

The Northeast Ridge is not located within an airport land use plan nor is it within two miles of an airport. The project would not result in an airport-related safety hazard for people residing or working in the project area. Therefore this impact is not significant.

Prescribed, micro, or pile burns conducted on the Mountain have the potential for smoke interference with aircraft landing or departing from the San Francisco International Airport, located approximately 4.5 miles southwest of the Mountain. Other management and monitoring would not impair flight patterns or create safety hazards related to the airport. This impact is not significant.

The proposed 2007 VTM includes the removal of an approved road connection (previously referred to as Carter Street) from Silverspot Drive to Guadalupe Canyon Parkway at the northwestern corner of UII-NII. However, a paved emergency vehicle access (EVA) road for the UII-NII site would be retained at that location. The paved EVA at the former UII-NI site also

would remain, even though this neighborhood would not be further developed. The proposed project would not impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan. This impact is not significant.

Hand work conducted by the Habitat Manager has the potential for flaming hazards. Prescribed, micro, and pile burning have the potential to accidentally ignite an urban-interface fire hazard. Ignition of a wildfire could impair implementation of, or physically interfere with, an adopted emergency response plan or emergency evacuation plan. Mitigation measures in the 1982 and 1989 EA/EIR will continue to be implemented (EA Table 4-1). Therefore with mitigation this impact is not significant.

The project site is adjacent to existing and proposed Conserved Habitat. Construction of 71 new dwelling units adjacent to this open space would expose new residents to wild land fire hazard. However, the proposed changes to the project do not result in an increase of exposure or risk of wild land fires over those evaluated in the 1982 and 1989 EA/EIR, which concluded these impacts were not significant. Additionally, buildings will incorporate safety features, such as sprinklers. Mitigation measures in the 1982 and 1989 EA/EIR will continue to be implemented (EA Table 4-1). Therefore with mitigation this impact is not significant.

#### Public Services/Utilities

Since the 1989 Addendum, the Fire Department has relocated to 3445 Bay shore Boulevard at Valley Drive. The 1989 Addendum concluded that the Fire Department's response times are well within the County standard of 6 minutes 59 seconds for emergencies involving Advanced Life Support equipment. Fire protection and emergency response services would be provided to UII-NII from this relocated station. The Northeast Ridge would result in increased demand for emergency services, as well as the short-term impact of an increase in plan checking and inspection workload. However, this potential increase would be reduced from the 1989 VTM due to the removal of UII-NI from development. As such, the Fire Department would need fewer staff to serve the number of Brisbane residents associated with the project. Both the 1982 1989 EA/EIR Addendum provided mitigation measures that will continue to be implemented (EA Table 4-1). Therefore with mitigation this impact is not significant.

Escaped wildfires would increase demand for fire protection services and withdraw local fire department resources away from urban responses. However, as stated above, EVA roads are part of the project design and Fire Department response times are well within the County's standard. Both the 1982 1989 EA/EIR Addendum provided mitigation measures that will continue to be implemented (EA Table 4-1). Therefore with mitigation this impact is not significant.

Since the 1989 Addendum, the Police Department has relocated to 50 Park Lane. Police protection services would be provided to UII-NII from this relocated station. Increased demand for police protection would be reduced from the 1989 VTM due to the removal of UII-NI from development. As such, the Police Department would need to hire fewer staff to serve the number of Brisbane residents associated with the project. This impact is not significant.



Management and Monitoring activities would have a negligible impact on police protection activities within the study area. Law enforcement personnel may be called out to the Mountain if vandals were to steal or destroy management and monitoring tools, equipment, or supplies; however this is expected to be a rare event. This impact is not significant.

New elementary and intermediate school students generated at build out would not likely exceed optimum or maximum capacities, because as a condition of approval for the 1989 VTM, the applicant donated a 1.7-acre site to Brisbane Elementary School District (BESD) for a future elementary school. Construction of the future elementary school would reduce potential impacts to school services. The reduced development proposed under the 2007 VTM would further reduce impacts on local school capacity. Based on California legislative changes in 1998, the applicant would pay an impact fee of \$2.14 per square foot of residential development. Assuming that each house developed in UII-NII has an average footprint of 2,957 square feet, this would result in the impact fee payment of approximately \$449,286.00. Due to the reduction in housing units in the 2007 VTM, however, BESD would receive a lower school impact fee payment than under the 1989 VTM. Therefore with mitigation this impact is not significant.

Management and Monitoring activities would not generate additional demand for school facilities. Therefore there would be no impact.

Residential Construction would increase demand for parks and recreation. The applicant paid an in-lieu park fee for construction of a school/park/recreation center site. Under the 2007 VTM, the applicant would dedicate 144.66 acres of Conserved Habitat to San Mateo County as Plan Operator of the HCP. Brookfield also constructed a neighborhood park and several community buildings that will serve the residents of the Northeast Ridge. A swimming pool, shower area, and offices was constructed at a school district site adjacent to the Brisbane Elementary School, and a 1.2-acre parcel on the northeast corner of Old Bay shore and Old County Road was landscaped and improved for usable open space. In addition to these design features and community improvements associated with the overall development, the proposed 2007 VTM includes 8.93 more acres of Conserved Habitat than proposed in the 1989 VTM. Therefore these measures reduce this impact to not significant.

Vegetation management would improve habitat conditions on the Mountain for the covered butterfly species. Continued protection of the endangered butterflies may support visitation to the County and State Parks land. However, Management and Monitoring activities would not increase demand for parks and recreation. Therefore there would be no impact.

The 2007 VTM would not result in construction of new wastewater treatment facilities or accidents of wastewater treatment standards of the San Francisco Bay Regional Water Quality Control Board (SFBRWQCB). The proposed modifications include changes to the parcel lot configuration and grading plans, and a reduction in the total number of residences. Adequate capacity exists within the City of Brisbane's contract with SFPUC to provide wastewater collection and treatment services to the proposed project. The 1989 Addendum included mitigation measures that would provide for additional facilities to meet the demands of the new population (EA Table 4-1). Therefore with mitigation this impact is not significant.

Management and Monitoring activities would not result in the need for additional wastewater treatment capacity or accidents of wastewater standards. Therefore there would be no impact.

Conversion of undeveloped land for construction could result in increased surface runoff and associated flooding. However, the 2007 VTM would not require or result in the construction of new storm water drainage facilities or expansion of existing facilities. Surface runoff from 71 dwelling units would be accommodated by existing and planned facilities. The amount of impervious surface area in the new parcel lot configuration is less than that in the 1989 VTM, resulting in a reduction in overall and peak runoff volumes. The City's downstream storm water drainage infrastructure was designed to accommodate drainage impacts from the 1989 VTM, but would be receiving less surface runoff under the reconfigured plan. The mitigation measures in the 1982 EA/EIR will continue to be implemented (EA Table 4-1). Therefore with the reduction in overall development footprint and mitigation this impact is not significant.

Management and Monitoring could temporarily increase the rate and/or amount of surface runoff if vegetation removal exposes topsoil and alters infiltration rates. Soil disturbance and associated surface runoff may occur following hand or mechanical clearing, prescribed or micro burns, and minor trampling from livestock grazing. Although increased surface runoff may discharge into nearby storm water drainage facilities, the increase is minor and will be temporary. The mitigation measures in the 1982 and 1989 EA/EIR will continue to be implemented (EA Table 4-1). Therefore with the reduction in overall development footprint and mitigation this impact is not significant.

The 2007 VTM includes modifications to the circulation layout, parcel lot configuration, and grading plan for the UII-NII neighborhood, and foregoes construction of additional homes at UII-NI. Although this development would generate new demand for water supplies, it would not require construction of new water treatment facilities. Based on the implementation of the mitigation measures outlined in the 1982 and 1989 EA/EIR (EA Table 4-1), no new or expanded entitlements would be required and there would be sufficient water supplies available to serve the project from existing entitlements and resources. Therefore with the reduction in overall development footprint and mitigation this impact is not significant.

Management and Monitoring activities, primarily replanting and restoration, may result in short-term demand for water supplies as some newly planted species may be irrigated. Irrigation is generally conducted for only the first few seasons, in order to establish the plant's root bed. As such, water demand for restoration activities would be temporary and periodic. Therefore this impact is not significant.

Construction of 71 dwelling units would generate demand for garbage and recycling services. However, no significant impact related to landfill capacity limitation is anticipated since the proposed project is a reduction from impacts over the 1989 VTM. Therefore this impact is not significant.

Management and Monitoring activities would not result in the need for additional landfill capacity, because these activities would not generate landfill waste. Therefore there would be no impact.

### Transportation (level of service standard)

The 2003 Traffic and Circulation Technical Analysis was conducted to determine circulation system performance with the addition of traffic from the 2007 VTM to existing traffic volumes. All study area intersections are projected to operate at satisfactory levels of service under the Existing plus Project conditions; therefore this impact is not significant.

Management and Monitoring activities are not anticipated to have a substantial effect on area traffic volumes because trip generation for maintenance activities would be minimal. Therefore this impact is not significant.

The 2003 Traffic and Circulation Technical Analysis was conducted to determine circulation system performance with the addition of traffic from the 2007 VTM to existing traffic volumes. Bayshore Boulevard is a designated Congestion Management Program (CMP) facility on the C/CAG network. Under both the Existing plus Project and Cumulative conditions, the Bayshore Boulevard/Guadalupe Canyon Parkway intersection and the Bayshore Boulevard/Valley Drive intersection would operate at acceptable levels of service (at or above level of service (LOS) C). Therefore this impact is not significant.

As stated above, Management and Monitoring activities are not anticipated to have a substantial effect on area traffic volumes and trip generation for maintenance activities would not impact LOS. Therefore this impact is not significant.

The 2003 Traffic and Circulation Technical Analysis identified intersection deficiencies for the northbound left turn lanes and queue lengths for the Bayshore Boulevard/Guadalupe Canyon Parkway and Bayshore Boulevard/Valley Drive intersections. Recommended improvements to correct these deficiencies, including the addition of a second northbound left turn pocket at the Bayshore Boulevard/Valley Drive intersection and lengthening the left turn pocket to provide at least 300 feet of queuing space, have been implemented and were included in the existing conditions for this traffic study. No new impacts were identified for traffic and circulation issues associated with the proposed 2007 VTM. Therefore this impact is not significant.

Management and Monitoring activities would not result in traffic hazards or construction of new design features. Therefore there would be no impact.

The 1989 Addendum concluded that the Northeast Ridge would provide 5.4 parking spaces per unit or 5.7 parking spaces per unit, based on the doubleloaded street option or the single-loaded street option, respectively. The City of Brisbane required a parking standard of 2.5 spaces per unit in each neighborhood as a condition of the Planned Development Permit. Construction of the 71 housing units in the 2007 VTM will conform to these standards, including construction of two-car garages for each unit. Additionally, mitigation measures outlined in the 1989 Addendum required the development of a parking management program and the prohibition of parking of recreational vehicles, boats, trailers, etc. in the project. Implementation of the 1989 mitigation measures will continue to be implemented (EA Table 4-1). Therefore with mitigation this impact is not significant.

Management and Monitoring activities are not anticipated to have an effect on parking capacity on the Mountain. Parking needs for maintenance activities will be accommodated by existing facilities. Therefore this impact is not significant.

Implementation of the 2007 VTM would not conflict with adopted policies, plans, or programs supporting alternative transportation. New residences occupying UII-NII would have access to the Mountain's extensive trail system. Additionally, mitigation measures outlined in the 1982 and 1989 EA/EIR will continue to be implemented (EA Table 4-1). Therefore, with mitigation, this impact is not significant.

Management and Monitoring activities would not conflict with adopted policies, plans, or programs supporting alternative transportation. Prescribed or micro burning may temporarily preclude use of portions of the Mountain's trail system for alternative transportation. However, the use of prescribed fire would be short term, confined to a specific time of year, and not expected to occur frequently. Therefore this impact was not significant.

#### Population/Socioeconomic (disadvantaged communities)

The 2007 VTM was anticipated in planning projections for the City of Brisbane, included in the 1982 HCP as a "Planned parcel", and accounted for in the ABAG's regional growth projections. Population growth was previously addressed in the 1983 EIR and 1989 Addendum; implementation of the proposed 2007 VTM would reduce potential direct and indirect impacts resulting from the increased population. This project would not result in substantial population growth. Therefore this impact is not significant.

Management and Monitoring would not induce population growth on the Mountain because it would not increase the number of people living in the area. Therefore there would be no impact.

The proposed Northeast Ridge development would not permanently change the conditions that affect individual businesses or the local economic climate (land use, transportation systems, customer base, etc.). Demand for construction employment would increase during grading, site preparation, infrastructure installation, slope stabilization, and housing construction phases. However, this demand would be temporary and limited to the periods during active construction. Therefore this impact is not significant.

Management and Monitoring would have few potential effects on economic conditions within the study area. Establishment of the endowment, however, would allow more funding to be available annually for implementation of vegetation management and monitoring activities. The Habitat Manager may hire additional field and/or biological staff to implement the enhanced management program. The 1982 EA/EIR mitigation measures shall continue to be implemented (EA Table 4-1). Therefore with mitigation this impact is not significant.

The 2007 VTM would contribute to meeting the City of Brisbane's residential development needs. Although it would not likely provide housing affordable to disadvantaged communities, it is not expected to be an impediment to meeting regional housing needs. There would be no adverse impacts to disadvantaged populations. Therefore this impact is not significant.

Management and Monitoring activities associated with the proposed Amendment would not result in disproportionately high or significant effects on minority and low-income populations. Therefore this impact is not significant.

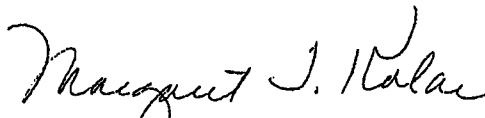
NEPA Cumulative Impacts

NEPA defines cumulative effects as those resulting from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such actions. Foreseeable actions that could result in cumulative impacts were analyzed in the EA and determined that with mitigation the Amendment would not significantly contribute to cumulative impacts.

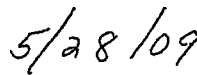
**NEPA Decision**

In accordance with the National environmental Policy Act of 1969 (NEPA), as amended, and the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA (40 CRF Parts 1500-1508), the Service's Pacific Southwest Region has found that based on the EA and documents that were made available to the public during the public comment period, the proposed Amendment will not result in significant impacts to the physical and biological resources in the San Bruno Mountain HCP area or in the surrounding area and that the City of Brisbane's proposed project will not significantly affect the quality of the human environment (40 C.F.R. 1501.4 (e), 1508.13). Therefore, an Environmental Impact Statement is not required.

It is my determination that the proposal does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(c) of the NEPA. Accordingly, an Environmental Impact Statement on the proposed action is not required. An Environmental Assessment has been prepared in support of this finding and is incorporated by reference and attached. The EA is also available from the Service's Sacramento Fish and Wildlife Office.



Deputy Regional Director  
Pacific Southwest Region  
Fish and Wildlife Service



Date



## United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Pacific Southwest Region  
2800 Cottage Way, Suite W-2606  
Sacramento, California 95825



In Response Reply To:  
R8FWS/R8/

Ms. Wendy Ricks  
City Manager  
City of Brisbane  
50 Park Place  
Brisbane, California, 94005

Dear Ms. Ricks:

Enclosed is a copy of your amended Endangered Species Act section 10(a)(1)(B) incidental take permit for the San Bruno Mountain Area Habitat Conservation Plan (HCP). Please thoroughly and carefully read the enclosed permit. Compliance with the Special Terms and Conditions is required for the permit to remain in effect. Acceptance of this permit acknowledges your commitment to comply with all Special Terms and Conditions included in the permit.

Thank you for helping to conserve federally listed species. We look forward to assisting you in implementing the HCP.

If you have any questions about this permit please contact Mr. Eric Tattersall, Division Chief Conservation Planning and Recovery, Fish and Wildlife Service, Sacramento Fish and Wildlife Office, at (916) 414-6600.

Sincerely,

Deputy Regional Director

Enclosures

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## United States Department of the Interior



FISH AND WILDLIFE SERVICE  
Sacramento Fish and Wildlife Office  
2800 Cottage Way, Room W-2605  
Sacramento, California 95825-1846

In reply refer to:  
81420-2008-F-0946

**MAY 20 2009**

### Memorandum

**To:** Deputy Manager, Pacific Southwest Region, Sacramento, California  
(ATTN: Sheila Larsen)

**From:** *Carly C. Mond*  
Field Supervisor, Sacramento Fish and Wildlife Office, Sacramento, California

**Subject:** Submission of Final Documents for Issuance of an Amended Section 10(a)(1)(B) Incidental Take Permit for the San Bruno Mountain HCP, San Mateo County, California

Attached are documents required to complete processing of Amendment 5 of the San Bruno Mountain Habitat Conservation Plan (HCP), San Mateo County, California. This office has determined that further solicitor review is not necessary as solicitor guidance was previously provided and incorporated. This package consists of the Findings and Recommendations, draft Terms and Conditions, the signed Intra-Service Section 7 Biological Opinion on the issuance of the permit, and Finding of No Significant Impact (FONSI) and attached Final Environmental Assessment. Electronic copies of the FONSI, Findings and Recommendations, and permit Terms and Conditions are included with this submittal on CD. No changes to the existing Implementing Agreement (IA) have been made.

The 60-day public comment period on the EA and Amended HCP closed on July 16, 2008. We received 57 public comments during this 60-day period.

The enclosed documents should fulfill all information requirements needed to complete the review and processing of this amended permit application. Please contact Eric Tattersall (Division Chief Conservation Planning and Recovery) or Mike Thomas (Conservation Planning) at (916) 414-6680 if you have questions regarding this HCP package.

Attachments

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### FEDERAL FISH AND WILDLIFE PERMIT

1. PERMITTEE

SAN BRUNO MOUNTAIN HCP PERMITTEES  
SEE ATTACHMENT A  
, CA  
U.S.A.

2. AUTHORITY-STATUTES

16 USC 1539(a)  
16 USC 1533(d)

REGULATIONS (Attached)

50 CFR 17.22  
50 CFR 17.32

50 CFR 13

3. NUMBER

TE215574-5

AMENDMENT

4. RENEWABLE

YES  
 NO

5. MAY COPY

YES  
 NO

6. EFFECTIVE

7. EXPIRES  
03/31/2013

8. NAME AND TITLE OF PRINCIPAL OFFICER (If #1 is a business)

SEE ATTACHMENT A

9. TYPE OF PERMIT

THREATENED AND ENDANGERED SPECIES

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED

San Bruno Mountain, County of San Mateo, California

Permit amended to: 1) add the Callippe Silverspot Butterfly and the Bay Checkerspot Butterfly; 2) adjust the permit boundary - Northeast Ridge parcel; 3) eliminate Unit II Neighborhood I development; 4) provide supplemental funding

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.

c.1. Permit Number 2-9818 issued on March 4, 1983, changed to Permit Number TE215574-5

- a. County of San Mateo
- b. City of Brisbane
- c. City of Daly City
- d. City of South San Francisco

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

*Margaret J. Kalar*

TITLE

DEPUTY REGIONAL DIRECTOR, PACIFIC SOUTHWEST REGION

DATE

05/28/2009



SPECIAL TERMS AND CONDITIONS FOR  
FEDERAL FISH AND WILDLIFE PERMIT TE1215574-5  
U.S. FISH AND WILDLIFE SERVICE, SACRAMENTO FISH AND WILDLIFE OFFICE,  
SACRAMENTO, CALIFORNIA

- E. Acceptance of this permit serves as evidence that the Permittee and its designated agents agree to abide by the terms of this permit and all sections of *Title 50 Code of Federal Regulations*, part 13 and 17, pertinent to issued permits. Section 11 of the Endangered Species Act of 1973, as amended, provides of civil and criminal penalties for failure to comply with permit conditions. *Title 50 Code of Federal Regulations*, part 13 and part 17.32 regarding threatened species are attached.
- F. The authorization granted by this permit is subject to compliance with and implementation of the final San Bruno Mountain Area Habitat Conservation Plan as amended (HCP), which is hereby incorporated into the permit.
- G. The permittee or designated agents are authorized to conduct ground disturbance on the project site upon receipt of this permit.
- H. The permittee and designated agents are authorized under the Federal Endangered Species Act of 1973, as amended (Act), to incidentally take (injure, kill, harass, harm) the endangered San Bruno elfin butterfly (*Incisalia mossii bayensis*), endangered mission blue butterfly (*Icaricia icarioides missionensis*), endangered callippe silverspot butterfly (*Speyeria callippe callippe*), endangered San Francisco garter snake (*Thamnophis sirtalis tetrataenia*), and the threatened Bay checkerspot butterfly (*Euphydryas editha bayensis*) (collectively referred to as Covered Species) and habitat, consisting of approximately 19.64 acres on the Northeast Ridge and 2,800 acres that will be managed and monitored at the project site. Take is authorized to the extent that take of this species 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 lawful activities associated with construction of the reconductoring activities as described in the HCP, and as conditioned herein.
- I. Upon finding any dead, injured, or sick individual of the Covered Species or unanticipated harm associated with project authorized under this incidental take permit, the permittee or designated agents must notify the Service's Sacramento Fish and Wildlife Office within three working days. The Service contact person for this is the Chief of the Conservation Planning Branch, Sacramento Fish and Wildlife Office, at (916) 414-6600.
- All observations of the Covered Species - live, injured, sick, or dead - shall be recorded on California Natural Diversity Data Base field sheets and sent to the California Department of Fish and Game, Wildlife and Data Analysis Branch, 1807 13<sup>th</sup> Street, Sacramento, California 95814.
- J. Any other federally listed or proposed species found on or adjacent to the site must be reported within three working days of its finding. The Service contact for this information is the Chief of the Conservation Planning Branch at the number above.

SPECIAL TERMS AND CONDITIONS FOR  
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SACRAMENTO, CALIFORNIA

K. A final report shall be prepared as described in the HCP.

One copy of the report shall be submitted to each of the following entities: (1) the Service's Sacramento Fish and Wildlife Office, Assistant Field Supervisor for Endangered Species – Coast Bay Delta and Forest Foothills, 2800 Cottage Way, Suite W-2605, Sacramento, California 95825; (2) California Department of Fish and Game, Supervisor, Environmental Services, 1416 Ninth Street, Sacramento, CA 95814; and (3) Staff Zoologist, California Natural Diversity Database, California Department of Fish and Game, Wildlife and Data Analysis Branch, 1807 13<sup>th</sup> Street, Sacramento, CA 95814.

L. A copy of this permit must be in the possession of the permittee and designated agents 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, Sacramento Fish and Wildlife Office.

Attachments

Attachment 1

50 CFR 13.1 to 13.50

50 CFR 17.22

50 CFR 17.32

## § 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. 937L, *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 60 days mail his final decision to the party who filed objections. In all

cases, the Regional Director's decision 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.

U.S. Fish and Wildlife Serv., Interior

- 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 requirements.
- 13.48 Compliance with conditions of permit.
- 13.49 Surrender of permit.
- 13.50 Acceptance of liability.

Authority: 18 U.S.C. 659a, 704, 712, 742-1, 1374(a), 1382, 1538(d), 1539, 1540(f), 3374, 4901-4916; 19 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.

[51 FR 28147, 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 "Importation, Exportation and Transportation of Wildlife"

(part 14), "Wild Bird Conservation Act" (part 15), "Injurious Wildlife" (part 16), "Endangered and Threatened Wildlife and Plants" (part 17), "Marine Mammals" (part 18), "Migratory Bird Permits" (part 21), "Eagle Permits" (part 22), and "Endangered Species Convention" (the Convention on International Trade in Endangered Species of Wild Fauna and Flora) (part 23). As used in this part 13, the term "permit" will refer to a license, permit, certificate, letter of authorization, or other document as the context may require, and to all such documents issued by the Service or other authorized U.S. or foreign government agencies.

[70 FR 18317, Apr. 11, 2005]

§ 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

## § 13.11

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 ABLSQ, U.S. Fish and Wildlife Service, Washington, DC 20240, or the Office of Management and Budget, Paperwork Reduction Project (1018-0092), Washington, DC 20503.

(33 FR 5284, Oct. 1, 1968)

### 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 you have filed an application under the following procedures:

(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) You may obtain applications for migratory bird banding permits (50 CFR 21.22) by writing to: Bird Banding Laboratory, USGS Patuxent Wildlife Research Center, 12100 Beech Forest Road, Laurel, Maryland 20708-4037. Submit completed permit applications to the same address.

(2) You may obtain applications for designated port exception permits and import/export licenses (50 CFR 14) by writing to the Special Agent in Charge (SAC) of the Region in which you reside (see 50 CFR 2.2 or the Service Web site, <http://www.fws.gov>, for addresses and boundaries of the Regions). Submit completed permit applications to the same address.

(3) You may obtain applications for Wild Bird Conservation Act permits (50 CFR 15); injurious wildlife permits (50 CFR 16); captive-bred wildlife registrations (50 CFR 17); permits authorizing import, export, or foreign commerce of endangered and threatened species; and interstate commerce of non-native endangered or threatened species (50 CFR 17); marine mammal permits (50 CFR 18); and permits and certificates for im-

port, export, and reexport of species listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (50 CFR 23) from: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203-1610. Submit completed permit applications to the same address.

(4) You may obtain Endangered Species Act permit applications (50 CFR 17) for activities involving native endangered and threatened species, including incidental take, scientific purposes, enhancement of propagation or survival (i.e., recovery), and enhancement of survival by writing to the Regional Director (Attention: Endangered Species Permits) of the Region where the activity is to take place (see 50 CFR 2.2 or the Service Web site, <http://www.fws.gov>, for addresses and boundaries of the Regions). Submit completed applications to the same address (the Regional office covering the area where the activity will take place). Permit applications for interstate commerce for native endangered and threatened species should be obtained by writing to the Regional Director (Attention: Endangered Species Permits) of the Region that has the lead for the particular species, rather than the Region where the activity will take place. You can obtain information on the lead Region via the Service's Endangered Species Program Web page (<http://endangered.fws.gov/wildlife.html>) by entering the common or scientific name of the listed species in the Regulatory Profile query box. Send interstate commerce permit applications for native listed species to the same Regional Office that has the lead for that species. Endangered Species Act permit applications for the import or export of native endangered and threatened species may be obtained from the Division of Management Authority in accordance with paragraph (b)(3) of this section.

(5) You may obtain applications for bald and golden eagle permits (50 CFR 23) and migratory bird permits (50 CFR 21), except for banding and marking permits, by writing to the Migratory Bird Permit Program Office in the Region in which you reside. For mailing

U.S. Fish and Wildlife Serv., Interior

§ 13.11-

addresses for the Migratory Bird Regional Permit Offices, see below, or go to: <http://permits.fws.gov/mbrpermits/addresses.html>. Send completed applications to the same address. The mailing addresses for the Regional Migratory Bird Permit Offices are as follows:

Region 1 (CA, HI, ID, NV, OR, WA).

U.S. Fish and Wildlife Service, Migratory Bird Permit Office, 911 N.E. 11th Avenue, Portland, OR 97232-4181.

Region 2 (AZ, NM, OK, TX): U.S. Fish and Wildlife Service, Migratory Bird Permit Office, P.O. Box 709, Albuquerque, NM 87103.

Region 3 (LA, IL, IN, MN, MO, MI, OH, WI): U.S. Fish and Wildlife Service, Migratory Bird Permit Office, One Federal Drive, Fort Snelling, MN 56111.

Region 4 (AR, FL, GA, KY, LA, MS, NC, SC, TN, FR, VI): U.S. Fish and Wildlife Service, Migratory Bird Permit Office, P.O. Box 49208, Atlanta, GA 30389.

Region 5 (CT, DC, DE, MA, MD, ME, NH, NJ, NY, PA, RI, VA, VT, WV): U.S. Fish and Wildlife Service, Migratory Bird Permit Office, P.O. Box 778, Hadley, MA 01035-0770.

Region 6 (CO, KS, MT, ND, NE, SD, UT, WY): U.S. Fish and Wildlife Service, Migratory Bird Permit Office, P.O. Box 25486, DFC (60130), Denver, CO 80226-0486.

Region 7 (AK): U.S. Fish and Wildlife Service, Migratory Bird Permit Office (MS-202), 1011 E. Tudor Road, Anchorage, AK 99503.

(c) *Time notice.* The Service will process all applications as quickly as possible. However, we cannot guarantee final action within the time limit you request. You should ensure that applications for permits for marine mammals and/or endangered and threatened species are postmarked at least 90 calendar days prior to the requested effective date. The time we require for processing of endangered and threatened species incidental take permits will vary according to the project scope and significance of effects. Submit applications for all other permits to the issuing/reviewing office and ensure they are postmarked at least 60 calendar days prior to the requested effective date. Our processing time may be increased by the procedural require-

ments of the National Environmental Policy Act (NEPA), the requirement to publish a notice in the FEDERAL REGISTER requesting a 30-day public comment period, when we receive certain types of permit applications, and/or the time required for extensive consultation within the Service, with other Federal agencies, and/or State or foreign governments. When applicable, we may require permit applicants to provide additional information on the proposal and on its environmental effects as may be necessary to satisfy the procedural requirements of NEPA.

(d) *Fees.* (1) Unless otherwise exempted under this subsection, you must pay the required permit processing fee at the time that you apply for issuance or amendment of a permit. You must pay by check or money order made payable to the "U.S. Fish and Wildlife Service." This Service will not refund any application fee under any circumstances if we have processed the application. However, we may return the application fee if you withdraw the application before we have significantly processed it:

(2) 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 in accordance with § 13.1. You may submit a single application in such cases, provided that the single application contains all the information required by the separate applications for each permitted activity. Where more than one permitted activity is consolidated into one permit, the issuing office will charge the highest single fee for the activity permitted.

(3) Circumstances under which we will not charge a permit application fee are as follows:

(4) We will not charge a permit application fee to any Federal, tribal, State, or local government agency or to any individual or institution acting on behalf of such agency. Except as otherwise authorized or waived, if you fail to submit evidence of such status with your application, we will require the submission of all processing fees prior to the acceptance of the application for processing.

§13.11

(1) As noted in paragraph (d)(4) of this section.  
 (2) We may waive the fee on a case-by-case basis for extraordinary extenuating circumstances provided that the issuing permit office and a Regional or Assistant Director approves the waiver.  
 (4) *User fees.* The following table identifies specific fees for each permit application or amendment to a current permit. If no fee is identified under the Amendment Fee column, this particular permit either cannot be amended and a new application, and application fee, would need to be submitted or no fee will be charged for amending the permit (please contact the issuing office for further information).

application or amendment to a current permit. If no fee is identified under the Amendment Fee column, this particular permit either cannot be amended and a new application, and application fee, would need to be submitted or no fee will be charged for amending the permit (please contact the issuing office for further information).

Type of permit	CFR citation	Fee	Amendment fee
<b>Migratory Bird Treaty Act</b>			
Migratory Bird Import/Export	50 CFR 21	\$75	
Migratory Bird Banding or Marking	50 CFR 21	100	\$50
Migratory Bird Banding Collecting	50 CFR 21	100	
Migratory Bird Banding	50 CFR 21	75	
Waterfowl Banding	50 CFR 21	75	
Special Carcass Grant	50 CFR 21	75	
Migratory Bird Special Purpose/Education	50 CFR 21	75	
Migratory Bird Special Purpose/Save	50 CFR 21	100	
Migratory Bird Special Purpose/Game Bird Propagation	50 CFR 21	100	
Migratory Bird Special Purpose/Artisanal	50 CFR 21	100	
Factory	50 CFR 21	50	
Rebird Propagation	50 CFR 21	100	50
Migratory Bird Rehabilitation	50 CFR 21	100	
Migratory Bird Depredation	50 CFR 21	50	
Migratory Bird Depredation/Homestead	50 CFR 21	50	
<b>Bald and Golden Eagle Protection Act</b>			
Eagle Scientific Collecting	50 CFR 22	100	50
Eagle Exhibition	50 CFR 22	75	
Eagle Falconry	50 CFR 22	100	
Eagle—Native American Religious	50 CFR 22	100	50
Eagle Depredation	50 CFR 22	100	50
Golden Eagle Adult Take	50 CFR 22	75	
Eagle Transport—Scientific or Exhibition	50 CFR 22	(1)	(2)
Eagle Transport—Native American Religious Purpose	50 CFR 22		
<b>Endangered Species Act/CITES/Lacey Act</b>			
ESA Recovery	50 CFR 17	100	50
ESA Interstate Committee	50 CFR 17	100	50
ESA Enhancement of Survival (Balt Harbor Agreement)	50 CFR 17	50	25
ESA Enhancement of Survival (Candidate Conservation Agreement with Assurances)	50 CFR 17	50	25
ESA Incidental Take (Habitat Conservation Plan)	50 CFR 17	100	50
ESA and CITES Import/Export and Foreign Commerce	50 CFR 17	100	50
ESA and CITES Museum Exchange	50 CFR 17	200	100
ESA Captive-bred Wildlife Registration	50 CFR 17	100	
Removal of Captive-bred Wildlife Registration	50 CFR 17	100	50
CITES Import (including trophies)	18, 23	100	50
CITES Export	50 CFR 23	75	40
CITES Re-Export	50 CFR 23	75	40
CITES Certificate of Origin	50 CFR 23	75	40
CITES Re-Export	50 CFR 23	50	
CITES Personal Effects and Pet Export/Re-Export	50 CFR 23	100	50
CITES Appendix II Export (native subspecies and subspecies—excluding live animals)	50 CFR 23	200	100
CITES Master File (includes files for arrival, prospective, domestic, etc., and re-exports)	50 CFR 23	100	
Removal of CITES Master File	50 CFR 23	75	
Single-use permits issued on Master File	50 CFR 23	50	
CITES Annual Program File	50 CFR 23	25	
Single-use permits issued under Annual Program	50 CFR 23	50	50
CITES replacement documents (lost, stolen, or damaged documents)	50 CFR 23	75	
CITES Passport for Traveling Exhibitions and Pets	50 CFR 23	100	
CITES/ESA Passport for Traveling Exhibitions	50 CFR 14	100	50
Import/Export License	50 CFR 14	100	50
Designated Pet Exception	50 CFR 14		



U.S. Fish and Wildlife Serv., Interior

§ 13.12

Type of permit	CFR citation	Fee	Amendment fee
Injurious Wildlife Permit	50 CFR 16	100	50
—Transport Authorization for Injurious Wildlife	50 CFR 16	25	
<b>Wild Bird Conservation Act (WBCA)</b>			
Personal Pet Import	50 CFR 15	50	
WBCA Scientific Research, Zoological Breeding or Display, Cooperative Breeding	50 CFR 15	100	50
WBCA Approval of Cooperative Breeding Programs	50 CFR 15	200	100
—Renewal of a WBCA Cooperative Breeding Program	50 CFR 15	50	
WBCA Approval of a Foreign Breeding Facility	50 CFR 15	*250	
<b>Marine Mammal Protection Act</b>			
Marine Mammal Public Display	50 CFR 16	300	150
Marine Mammal Scientific Research/Enhancement/Registered Agent or Tannery	50 CFR 16	150	75
—Renewal of Marine Mammal Scientific Research/Enhancement/Registered Agent or Tannery	50 CFR 16	75	

- \* No fee
- † Each
- ‡ Per animal
- § Per species.

(5) We will charge a fee for substantive amendments made to permits within the time period that the permit is still valid. The fee is generally half the original fee assessed at the time that the permit is processed; see paragraph (d)(4) of this section for the exact amount. Substantive amendments are those that pertain to the purpose and conditions of the permit and are not purely administrative. Administrative changes, such as updating name and address information, are required under 13.23(c), and we will not charge a fee for such amendments.

(6) Except as specifically noted in paragraph (d)(4) of this section, a permit renewal is an issuance of a new permit, and applicants for permit renewal must pay the appropriate fee listed in paragraph (d)(4) of this section.

(e) *Abandoned or incomplete applications.* If we receive an incomplete or improperly executed application, or if you do not submit the proper fees, the issuing office will notify you of the deficiency. If you fail to supply the correct information to complete the application or to pay the required fees within 45 calendar days of the date of notification, we will consider the application abandoned. We will not refund any fees for an abandoned application.

(70 FR 13317, Apr. 11, 2005)

§ 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

50 CFR Ch. I (10-1-05 Edition)

§ 13.21

wildlife or plants, documentation as indicated in § 13.52(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 subchapter 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.

(5) 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, including, but not limited to, information on the environmental effects of the activity consistent with 40 CFR 1506.5 and Departmental procedures at 516 DM 6, Appendix 1.3A.

(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 of nondesignated parts	14.21
Scientific	14.32
Deforestation prevention	14.33
Economic hardship	
Marking of packages or containers	14.53
Symbol marking	14.53
Import/export permits	14.53
Factor report upon importation or entry	14.53
Foreign wildlife importation or shipment	17.22
Exchange of wildlife and plant permits	17.52
Similarity of appearance	
Scientific, enhancement or propagation of survival, incidental taking for wildlife	17.22
Scientific, propagation, or shipment for plants	17.62
Economic hardship for wildlife	17.23
Economic hardship for plants	17.53
Threatened wildlife and plant permits	
Similarity of appearance	17.52
General for wildlife	17.32
American seller-buyer of mammal	17.42(a)
General for plants	17.72

Type of permit	Section
Mammal permits:	
Scientific research	18.31
Public display	18.31
Migratory bird permits:	
Bandings or marking	21.22
Scientific collecting	21.23
Transportation	21.24
Wildlife sale and disposal	21.25
Special aviculturist	21.26
Special purpose	21.27
Falcons	21.28
Reptile propagation permits	21.30
Depredation control	21.41
Eagle permits:	
Scientific or exhibition	22.21
Indian religious use	22.22
Depredation control	22.23
Falcons purposes	22.25
Take of golden eagle nests	22.25
Endangered Species Convention permits	22.25

(39 FR 1161, Jan. 4, 1974, as amended at 42 FR 10463, Feb. 22, 1977; 42 FR 32377, June 24, 1977; 44 FR 54006, Sept. 17, 1979; 44 FR 59082, Oct. 12, 1979; 45 FR 55873, Aug. 25, 1980; 45 FR 78154, Nov. 26, 1980; 46 FR 42680, Aug. 24, 1981; 48 FR 31607, July 8, 1983; 48 FR 57200, Dec. 29, 1983; 50 FR 39827, Sept. 20, 1985; 50 FR 55408, Oct. 31, 1985; 54 FR 38197, Sept. 14, 1989; 70 FR 18318, Apr. 11, 2005]

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 judgment, 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) *Conditions of issuance and acceptance.* 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, as well as any other conditions deemed appropriate and included on the face of the permit at the discretion of the Director.

(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.

[30 FR 1181, Jan. 4, 1974, as amended at 42 FR 32377, June 24, 1977; 47 FR 30785, July 15, 1982; 54 FR 33148, Sept. 14, 1989, 70 FR 16319, Apr. 11, 2005]

#### § 13.22 Renewal of permits.

(a) *Application for renewal.* Applicants for renewal of a permit must submit a written application at least 30 days

## § 13.23

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)(3), (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 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.

[54 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 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.

[54 FR 32911, June 17, 1989, as amended at 61 FR 52678, Sept. 30, 1996; 69 FR 24082, 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 38129, 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

## § 13.28

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 therefor. 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 reasons 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 the objection period. The issuing officer shall notify the permittee in writing of the Service's decision and the reasons therefor, 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 ad-

ressed, 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 38249, 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 that set forth specific times, dates, places, methods of taking or carrying out the permitted activities, numbers and kinds of wildlife or plants, location of activity, and associated activities that must be carried out; describe certain circumscribed transactions; or otherwise allow a specifically limited matter, are to be strictly interpreted and will not be interpreted to permit similar or related

## § 13.43

matters outside the scope of strict construction.

(70 FR 18320, Apr. 11, 2005)

## § 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)

## § 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.

(54 FR 32711, June 17, 1989)

## PART 14—IMPORTATION, EXPORTATION, AND TRANSPORTATION OF WILDLIFE

### Subpart A—Introduction

- Sec.  
14.1 Purpose of regulations  
14.3 Scope of regulations.



## § 17.21

560--59 FR 59177; November 19, 1994.  
 564--59 FR 60568; November 25, 1994.  
 565--59 FR 62352; December 6, 1994.  
 567--59 FR 64622; December 15, 1994.  
 570--60 FR 61; January 3, 1995.  
 572--60 FR 3562; January 13, 1995.  
 574--60 FR 6684; February 3, 1995.  
 574--60 FR 12485; March 7, 1995.  
 581--61 FR 10887; March 15, 1996.  
 584--61 FR 31058; June 19, 1996.  
 585--61 FR 41023; August 7, 1996.  
 587--61 FR 42186; August 21, 1996.  
 589--61 FR 52354; October 7, 1996.  
 590--61 FR 65058; October 16, 1996.  
 591--61 FR 53107; October 16, 1996.  
 592--61 FR 53123; October 16, 1996.  
 593--61 FR 53130; October 16, 1996.  
 594--61 FR 52137; October 16, 1996.  
 595--61 FR 53152; October 16, 1996.  
 596--61 FR 53358; October 16, 1996.  
 599--61 FR 67497; December 23, 1996.  
 600--62 FR 588; January 6, 1997.  
 601--62 FR 1647; January 10, 1997.  
 603--62 FR 1694; January 13, 1997.  
 604--62 FR 4122; January 29, 1997.  
 608--62 FR 6561; February 6, 1997.  
 611--62 FR 14361; March 25, 1997.  
 614--62 FR 31748; June 11, 1997.  
 615--62 FR 33237; June 18, 1997.  
 620--62 FR 33373; June 19, 1997.  
 623--62 FR 40712; July 31, 1997.  
 624--62 FR 42702; August 8, 1997.  
 625--62 FR 54807; October 22, 1997.  
 627--62 FR 61925; November 20, 1997.  
 628--62 FR 19849; April 22, 1998.  
 640--63 FR 43115; August 12, 1998.  
 641--63 FR 44594; August 20, 1998.  
 645--63 FR 49024; September 14, 1998.  
 646--63 FR 49021; September 14, 1998.  
 647--63 FR 53615; October 8, 1998.  
 648--63 FR 54970; October 13, 1998.  
 649--63 FR 54956; October 13, 1998.  
 650--63 FR 54984; October 13, 1998.  
 652--63 FR 59244; November 3, 1998.  
 657--64 FR 13120; March 17, 1999.  
 661--64 FR 26412; May 28, 1999.  
 662--64 FR 26408; May 28, 1999.  
 663--64 FR 26392; May 28, 1999.  
 668--64 FR 46928; September 3, 1999.  
 667--64 FR 66590; October 20, 1999.  
 668--64 FR 66596; October 20, 1999.  
 671--64 FR 63752; November 23, 1999.  
 672--64 FR 69203; December 19, 1999.  
 673--64 FR 71687; December 22, 1999.  
 676--65 FR 3875; January 25, 2000.  
 679--65 FR 3890; January 25, 2000.  
 681--65 FR 4162; January 25, 2000.  
 683--65 FR 5276; February 3, 2000.  
 684--65 FR 6338; February 9, 2000.  
 685--65 FR 7764; February 16, 2000.  
 689--65 FR 14887; March 20, 2000.  
 691--65 FR 14898; March 20, 2000.  
 691--65 FR 14897; March 20, 2000.  
 704--65 FR 62219; October 18, 2000.  
 708--65 FR 27908; May 21, 2001.  
 711--65 FR 49567; September 23, 2001.  
 712--65 FR 51896; October 10, 2001.

720--67 FR 1868; January 14, 2002.  
 721--67 FR 3128; January 23, 2002.  
 722--67 FR 4625; February 6, 2002.  
 723--67 FR 11449; March 14, 2002.  
 727--67 FR 44382; July 2, 2002.  
 733--67 FR 68016; November 7, 2002.  
 735--68 FR 16988; April 8, 2003.  
 739--68 FR 28344; October 15, 2003.  
 742--69 FR 18506; April 8, 2004.

**EDITORIAL NOTE 1:** For FEDERAL REGISTER citations affecting the table in § 17.12(h), see the listing above.

**EDITORIAL NOTE 2:** For FEDERAL REGISTER citations affecting § 17.12, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

## Subpart C--Endangered Wildlife

## § 17.21 Prohibitions.

(a) Except as provided in subpart A of this part, or under permits issued pursuant to § 17.22 or § 17.23, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit or to cause to be committed, any of the acts described in paragraphs (b) through (f) of this section in regard to any endangered wildlife.

(b) *Import or export.* It is unlawful to import or to export any endangered wildlife. Any shipment in transit through the United States is an importation and an exportation, whether or not it has entered the country for customs purposes.

(c) *Takes.* (1) It is unlawful to take endangered wildlife within the United States, within the territorial sea of the United States, or upon the high seas. The high seas shall be all waters seaward of the territorial sea of the United States, except waters officially recognized by the United States as the territorial sea of another country, under international law.

(2) Notwithstanding paragraph (c)(1) of this section, any person may take endangered wildlife in defense of his own life or the lives of others.

(3) Notwithstanding paragraph (c)(1) of this section, any employee or agent of the Service, any other Federal land management agency, the National Marine Fisheries Service, or a State conservation agency, who is designated by a agency for such purposes, may,

## § 17.22

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.

(d) *U.S. captive-bred scimitar-horned oryx, addax, and dama gazelle.* Notwithstanding paragraphs (b), (c), (e), and (f) of this section, any person subject to the jurisdiction of the United States may take; export or re-import, deliver, receive; carry, transport or ship in interstate or foreign commerce, in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce live wildlife, including embryos and gametes, and sport-hunted trophies of scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), and dama gazelle (*Gazella dama*) provided:

(1) The purpose of such activity is associated with the management or transfer of live wildlife, including embryos and gametes, or sport hunting in a manner that contributes to increasing or sustaining captive numbers or to potential reintroduction to range countries;

(2) The specimen was captive-bred, in accordance with § 17.3, within the United States;

(3) All live specimens of that species held by the captive-breeding operation are managed in a manner that prevents hybridization of the species or subspecies.

(4) All live specimens of that species held by the captive-breeding operation are managed in a manner that maintains genetic diversity.

(5) Any export of or foreign commerce in a specimen meets the requirements of paragraph (g)(4) of this section, as well as parts 13, 14, and 23 of this chapter;

(6) Each specimen to be re-imported is uniquely identified by a tattoo or other means that is reported on the

documentation required under paragraph (h)(5) of this section; and

(7) Each person claiming the benefit of the exception of this paragraph (h) must maintain accurate written records of activities, including births, deaths, and transfers of specimens; and make those records accessible to Service officials for inspection at reasonable hours set forth in §§ 13.46 and 13.47 of this chapter.

(8) The sport-hunted trophy consists of raw or tanned parts, such as bones, hair, head, hide, hooves, horns, meat, skull, rug, taxidermed head, shoulder, or full body mount, of a specimen that was taken by the hunter during a sport hunt for personal use. It does not include articles made from a trophy, such as worked, manufactured, or handcraft items for use as clothing, curios, ornamentation, jewelry, or other utilitarian items for commercial purposes.

(49 FR 4415, Sept. 26, 1975, as amended at 49 FR 6346, Nov. 14, 1975; 4 FR 19226, May 11, 1976; 44 FR 31580, May 31, 1979; 44 FR 6407, Sept. 17, 1979; 58 FR 86223, Dec. 27, 1993; 63 FR 46640, Sept. 11, 1998; 63 FR 2318, Jan. 22, 2003; 68 FR 61134, Oct. 27, 2003; 70 FR 52318, Sept. 2, 2005)

§ 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 S-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 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;

(b) *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.

(c) *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;

(B) *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 § 18.21(b) of this subchapter, except for § 18.21(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)(ii)(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 sci-

entific 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.

(8) *Criteria for revocation.* A permit issued under paragraph (b) of this section may not be revoked for any reason except those set forth in § 13.22(a)(1) through (4) of this subchapter or unless continuation of the permitted activity would be inconsistent with the criterion set forth in 16 U.S.C. 1539(a)(2)(B)(iv) and the inconsistency has not been remedied.

(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 other-

wise 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 (a) become effective the day of issuance for species covered by the Safe Harbor Agreement.

(5) *Assurances provided to permittees.* (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.

(1) 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

## § 17.22

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 permittees 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 Agreement with Assurances Agreement is being properly implemented, and apply only with respect to species adequately covered by the Candidate Conservation Agreement 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 noncommercial 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 § 13.22(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.

(9) *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

## § 17.23

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 38687, Sept. 30, 1985, as amended at 63 FR 6271, Feb. 24, 1998; 63 FR 62635, Oct. 1, 1998; 64 FR 32711, June 17, 1999; 64 FR 52576, Sept. 30, 1999; 69 FR 24092, May 3, 2004; 69 FR 28670, May 25, 2004; 69 FR 71751, Dec. 10, 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:

(i) Deals specifically with the wildlife sought to be covered by the permit;

(ii) Escame binding prior to the date when the notice of a review of the status of the species or the notice of proposed rulemaking proposing to list such wildlife as endangered was published in the FEDERAL REGISTER, whichever is earlier; and

(iii) Will cause monetary loss of a given dollar amount if the permit sought under this section is not granted.

(b) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (a) of this section, the Director will decide whether or not a permit should be issued under any of the three categories of economic hardship, as defined in section 10(b)(2) of the Act. In making his decisions, the Director shall consider, in addition to the general criteria in § 13.21(b) of this subchapter, the following factors:

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

(2) 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;

U.S. Fish and Wildlife Serv., Interior

§ 17.32

(3) The economic, legal, subsistence, or other alternatives or relief available to the applicant;

(4) The amount of evidence that the applicant was in fact party to a contract or other binding legal obligation which;

(i) Deals specifically with the wildlife sought to be covered by the permit; and

(ii) Become binding prior to the date when the notice of a review of the status of the species or the notice of proposed rulemaking proposing to list such wildlife as endangered was published in the FEDERAL REGISTER, whichever is earlier.

(5) The severity of economic hardship which the contract or other binding legal obligation referred to in paragraph (b)(4) of this section would cause if the permit were denied;

(6) Where applicable, the portion of the applicant's income which would be lost if the permit were denied, and the relationship of that portion to the balance of his income.

(7) Where applicable, the nature and extent of subsistence taking generally by the applicant; and

(8) The likelihood that applicant can reasonably carry out his desired activity within one year from the date a notice is published in the FEDERAL REGISTER to review status of such wildlife, or to list such wildlife as endangered, whichever is earlier.

(c) *Permit conditions.* In addition to the general conditions set forth in part 13 of this subchapter, every permit issued under this section shall be subject to the following special conditions:

(1) In addition to any reporting requirements contained in the permit itself, the permittee shall also submit to the Director a written report of his activities pursuant to the permit. Such report must be postmarked or actually delivered no later than 10 days after completion of the activity.

(2) The death or escape of all living wildlife covered by the permit shall be immediately reported to the Service's office designated in the permit.

(d) Duration of permits issued under this section shall be designated on the face of the permit. No permit issued under this section, however, shall be valid for more than one year from the

date a notice is published in the FEDERAL REGISTER to review status of such wildlife, or to list such wildlife as endangered, whichever is earlier.

[40 FR 4415, Sept. 25, 1975, as amended at 40 FR 53400, Nov. 19, 1975, 40 FR 58307, Dec. 15, 1975; 50 FR 39683, Sept. 30, 1985]

Subpart D—Threatened Wildlife

§ 17.31 Prohibitions.

(a) Except as provided in subpart A of this part, or in a permit issued under this subpart, all of the provisions in § 17.21 shall apply to threatened wildlife, except § 17.21(c)(5).

(b) In addition to any other provisions of this part 17, any employee or agent of the Service, of the National Marine Fisheries Service, or of a State conservation agency which is operating a conservation program pursuant to the terms of a Cooperative Agreement with the Service in accordance with section 8(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 18131, Apr. 28, 1978, as amended at 44 FR 31580, May 31, 1979, 70 FR 10503, Mar. 4, 2005]

§ 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

## § 17.32

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)(ii)(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.

§ 17.32

(6) *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 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.

(8) 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 § 17.36 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 § 13.28 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.

(8) *Criteria for revocation.* A permit issued under paragraph (b) of this section may not be revoked for any reason except those set forth in § 13.28(a)(1) through (4) of this subchapter or unless continuation of the permitted activity would be inconsistent with the criterion set forth in 16 U.S.C. 1539(a)(2)(B)(iv) and the inconsistency has not been remedied.

(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 (S-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 § 17.32(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 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

## § 17.32

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 permittees.* (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, 1988:

(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.

(5) *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 § 17.28(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 18 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 permittees 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 Agreement is being properly implemented, and apply only with respect to species adequately covered by the Candidate Conservation Agreement 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 § 17.28(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 2871, Feb. 23, 1998; 63 FR 52635, Oct. 1, 1998; 64 FR 32714, June 17, 1999; 64 FR 52676, Sept. 30, 1999; 65 FR 24023, May 8, 2004; 65 FR 29670, May 25, 2004; 65 FR 71731, Dec. 10, 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 80226 (303/238-7540 or FTS 778-7540), 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 Washington, 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)(i)(B) and (iv) of this section, no person shall possess, deliver, carry, transport, ship, export, receive, or sell any unlawfully taken grizzly bear. Any unlawful taking of a grizzly bear shall 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.

(B) Authorized Federal, State, or Tribal employees, when acting in the course of their official duties, may, for scientific or research purposes, possess, deliver, carry, transport, ship, export, or receive unlawfully taken grizzly bears.

(iii) Import or export. Except as provided in paragraphs (b)(1)(iii)(A) and (B) and (iv) of this section, no person shall import any grizzly bear into the United States.

**From:** Samuel Herzberg  
**To:** SBM HCP TAC  
**Date:** 1/24/2008 5:34:04 PM  
**Subject:** Success Criteria and Field Trip to Kirby Canyon

Dear SBM HCP TAC,

I've been working with Mike Forbert on finalizing the proposed success criteria (word and excel documents) based on Doug and Jake's comments received. This is what the TAC will recommend to the HCP Trustees for addition to the Habitat Management Plan. Attached is a copy of what will be presented to the HCP Trustees at their mid February meeting. Date is still being determined, and I'll let you all know that when I know. As future 3 Year Habitat Management Plans are prepared by the TAC we will rereview this success criteria to make any necessary changes.

Attached is the Final Nitrogen Deposition Study that Stu Weiss prepared for San Bruno Mountain. It has some valuable information and recommendations in it. As part of his contract with TRA, Stu has agreed to lead a short field trip to Kirby during the Bay Checkerspot butterfly flight season to see how grazing is working in maintaining this species' habitat. Stuart and I are proposing April 1, 2, 3, 8, 9, or 10 from 12:00 - 3:00 p.m., so northbound traffic returning will not be bad. This will coincide with when the Viola is blooming. Though it would be nice to see BCB out there as well, the primary focus should be on evaluating the non-serpentine Speyeria habitat areas where grazing is being conducted.

I'd appreciate hearing back from people which dates are preferred, so we can nail down the date, and then send out details on how to get there, etc... Thanks!

Sam

**CC:** [stu@creeksidescience.com](mailto:stu@creeksidescience.com)