

FINDINGS AND RECOMMENDATIONS FOR THE ISSUANCE OF SECTION  
10(a)(1)(B) INCIDENTAL TAKE PERMIT ASSOCIATED WITH SCHWISOW  
HABITAT CONSERVATION PLAN

I. DESCRIPTION OF THE PROPOSED ACTION

a. Introduction

The U.S. Fish and Wildlife Service (FWS) proposes to issue an Incidental Take Permit (Permit) for 25 years to Duane and Darlene Schwisow, for the northern Idaho ground squirrel (*Spermophilus brunneus brunneus*) (NIDGS), a federally listed threatened species. The FWS is authorized to complete this action 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 purpose of the Permit is to authorize the incidental take of NIDGS associated with the development of a lot in Adams County, Idaho.

In support of their section 10(a)(1)(B) permit application, and as required by the ESA, the applicants have submitted to the FWS a habitat conservation plan entitled "Low-Effect Habitat Conservation Plan to Address Potential Development-Related Effects on Price Valley Northern Idaho Ground Squirrels" (HCP). The effects of the FWS issuing the section 10(a)(1)(B) permit are analyzed in the FWS's low-effect habitat conservation plan determination and in a Biological Opinion (FWS 2007). All of these documents are incorporated by reference as described in 40 CFR § 1508.13.

The FWS has determined that activities conducted in compliance with the Permit are not likely to jeopardize the continued existence of NIDGS. This document presents the FWS's analysis and finding regarding whether the HCP meets the incidental take permit issuance criteria described in section 10(a)(1)(B) of the ESA.

b. Description of the Site Development Plan

The Schwisow property is in Price Valley, 8.9 kilometers (5.5 miles) northwest of New Meadows, Adams County, Idaho. Price Valley supports one of the most robust populations of NIDGS, along with Lost Valley and the OX Ranch. The NIDGS population estimate for the Price Valley complex, which includes the Applicants' property and adjacent State and private lands, is upwards of 150 squirrels. Small, disjunct colonies of NIDGS occur along the Price Valley Road, beginning approximately 1.6 kilometers (1 mile) from the junction of Highway 95 and Price Valley Road and extending to the north of the Price Valley Guard Station on Payette National Forest lands.

The 2-hectare (5-acre) parcel is characterized by shallow, rocky soils that support grasses and sagebrush (*Artemisia* sp). The covered area is located on a side slope that is generally dry with open areas of unvegetated or sparsely vegetated soils and areas with less gradient and deeper soils and greater cover of vegetation. Dispersed throughout the site is an occasional single or small groups of ponderosa pine trees (*Pinus ponderosa*).

The covered area for this HCP is the entire 2 hectares (5 acres) area within the property boundary (Figure 1). The Project Area is the area where all development activities will occur 0.08 hectares (2 acres) on the east end of the property boundary) in habitat not currently known to be occupied at the time surveys were completed in June of 2006 (Figure 1). The Protected Area is the area where no development activities will occur (1.2 hectares (3 acres) on the west end of the property) and is habitat currently occupied by NIDGS.

Conventional track hoes and/or track dozers will be used to level and prepare the RV parking site. An access road already exists from State land and runs through a portion of the private property. A septic system will treat wastewater from the RV and then discharge the treated waste to a drainage field. The drain field will require excavation for the drain lines. Utility lines (for electric) will be underground and will run uphill from the electrical access (Box #54) across Price Valley Road. A well will provide water for domestic use. All ground disturbing activities, including leveling of the RV parking site (13.9 square meters (150 square feet)), development of a well, and excavation for the septic system and utilities will occur in suitable but currently unoccupied habitat for NIDGS.

c. Types of Activities Covered

Covered activities include leveling of an area for use as parking for an RV (RV parking site), planting of trees within the RV parking site, development of utilities for use with the RV, recreational use by the family of the property, and NIDGS population monitoring in the Protected Area.

d. Conservation Strategy

The purpose of the HCP is to minimize human disturbance to NIDGS and to avoid, minimize, and mitigate effects to NIDGS habitat. The conservation strategy contains the following: (1) identification and implementation of incidental take avoidance, minimization, and mitigation measures; (2) monitoring, reporting, and modification requirements; and (3) responses to unforeseen and changed circumstances.

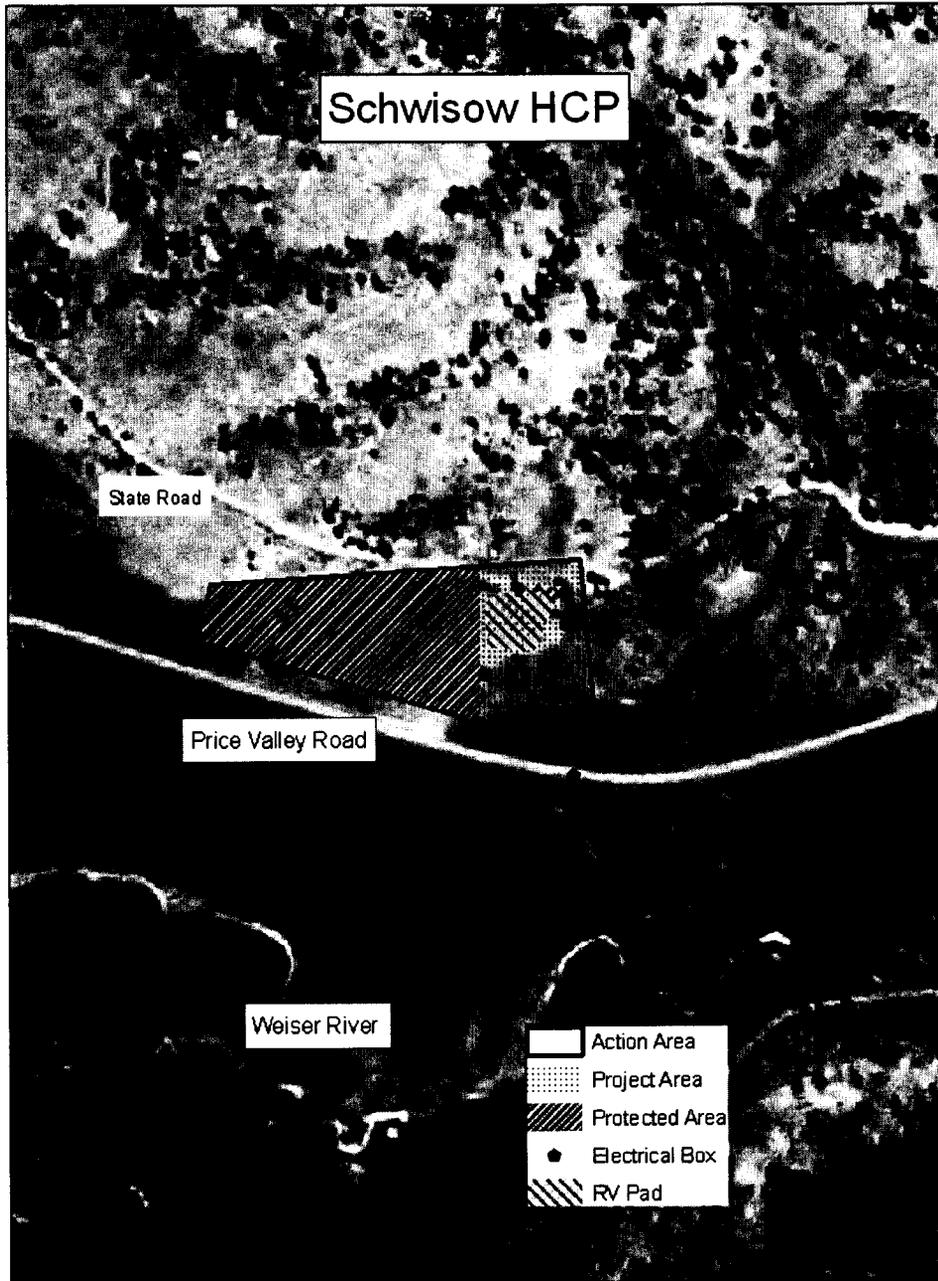


Figure 1. Map of HCP property boundary/covered area including the Project Area and Protected Area and RV pad.

### Incidental Take Avoidance, Minimization and Mitigation Measures

The proposed action describes a number of measures to avoid, minimize or mitigate the adverse effects to NIDGS. Collectively these measures would reduce the likelihood of an adverse effect on/to NIDGS, preserve the habitat, and restore the disturbed areas with native plants. These measures include:

1. Avoidance of ground disturbance in the Protected Area.
2. The Applicant will notify the FWS prior to ground disturbance (i.e., leveling of the RV parking site) to allow the agency at least 30 days to determine if NIDGS are present and relocate them, in cooperation with Idaho Department of Fish and Game (IDFG) personnel.
3. Prevent domestic pets (dogs and cats) from disturbing (chasing and killing) NIDGS in the Protected Area by prohibiting their access to the Protected Area.
4. Restore ground disturbances in the Project Area due to development/construction of utility lines, well and septic system with native plants, with an emphasis on plants that can provide nutritional value for NIDGS. The Applicants will contact either FWS or IDFG for a list of plant species to include in the restoration.
5. Allow access by IDFG and FWS for annual NIDGS monitoring. Agencies will notify the permittee at least 5 days in advance of conducting surveys.
6. Allow agents of FWS/IDFG to control badgers and/or Columbian ground squirrels on site if necessary. If the Applicant observes badger activity prior to NIDGS monitoring in July, they will contact FWS/IDFG for control of the badgers. Agencies will notify the permittee at least 5 days in advance of conducting control actions. The Applicant will assist in control of Columbian ground squirrels, when such efforts are deemed necessary by the FWS/IDFG, and after receiving sufficient training (as determined by FWS/IDFG) in ground squirrel identification.

### Monitoring, Reporting, and Notification

The status of the Price Valley NIDGS population is monitored and reported annually by IDFG and FWS. The ongoing NIDGS monitoring is intended to be observational to document the ongoing status of the squirrels in the area.

If the FWS or their designee wants to observe NIDGS, locate burrows or other evidence of use by squirrels, they will be allowed to access the property for the duration of the permit. The FWS or their designee will notify the permittees 5 days in advance of the site survey.

Future monitoring of the site by the FWS and IDFG might provide data that will help the FWS determine the impact of human occupation in close proximity to a known NIDGS site. For example, if NIDGS remain on the site and continue to reproduce, this may be evidence that some construction activities in close proximity to a site with NIDGS will not always result in reproductive failure or site abandonment. In the sense that monitoring is a component of adaptive management, future monitoring provides a component of adaptive management. The use of the future monitoring data will depend

on the monitoring results, FWS policy, and NIDGS recovery in the future. The permittees will cooperate with the NIDGS surveyors and will allow access to the Protected Area for monitoring purposes.

Observational monitoring will be conducted by the Applicants to assess the planting and survival of native plants. If the native plantings do not survive, the Applicants will work with the FWS to diagnose and develop a remedy for the problem. Additional data collection is not necessary to determine why the native plantings did not survive. FWS and IDFG will observe success of plantings during their annual NIDGS population monitoring.

Monitoring by FWS or IDFG will document any NIDGS population increase or adverse affect from badgers, Columbian ground squirrels and pets. If declines in population numbers or reduced reproductive success are observed, the FWS and permittees will evaluate the need to control badgers, Columbian ground squirrels, and pets, and implement actions necessary to reduce the adverse effects on NIDGS.

Other requirements of the permittees include:

1. Notification of emergency actions within 30 days for those emergencies that may affect the management actions identified in the HCP; and
2. Notification of the intent to sell the property at least 30 days prior to placing the property on the market to allow the FWS to explore additional conservation opportunities or for any new landowner(s) to assume the conditions of the HCP or to revise the conditions of the HCP.

#### Unforeseen and Changed Circumstances

HCP assurances ('no surprises'), described in 63 FR 8859, provide a foundation for contingency planning in a HCP. The contingency planning is addressed by identifying potential unforeseen and changed circumstances and the appropriate response to these events. Unforeseen circumstances means changes in circumstances that could not be anticipated or planned for that result in a substantial and adverse change in the status of a covered species. Changed circumstances are those changes that can be reasonably anticipated or planned for. Given the limited geographic scope of the HCP and the low amount of incidental take anticipated by the proposed action, unforeseen circumstances are unlikely for this HCP; however, should they occur, the process for responding to them in 50 CFR 17.32(a)(5) or 17.22(a)(5) will be followed.

The HCP does identify actions associated with three changed circumstances that may occur during the duration of the permit. First, upon the Federal listing of a new species, the FWS will evaluate the HCP-covered activities and modify them, as necessary, to ensure that activities covered under the HCP are not likely to jeopardize the species or result in adverse modification of any designated critical habitat of the listed species. The permittees will implement the recommended modifications until such time that the HCP is amended. Second, if the NIDGS is delisted or if it becomes endangered, then the HCP

conditions will remain unchanged. Third, if fire occurs on the property, the permittees will be allowed to clear land and run equipment such as pumpers to bring the fire under control when necessary to protect property and human life. The permittees will notify the FWS if fire occurs on the property. If necessary, the fire damaged areas will be replanted with suitable native plants for NIDGS. If monitoring indicates that the native plantings do not survive, the permittees will work with the FWS to diagnose and develop a remedy for the problem. Additional data collection is not necessary to determine why the native plantings did not survive. If the fire occurs during the monitoring period, the damage and replanting will be documented in the annual monitoring report.

## II. ANALYSIS OF EFFECTS

The FWS has determined that the impacts likely to result to the NIDGS from the proposed action will be minimized and mitigated to the maximum extent practicable by measures described in the HCP and the associated Permit. The effects of the proposed action on the NIDGS are fully analyzed in the HCP and the FWS's Biological Opinion (FWS 2007), which are incorporated by reference, and a summary of the analysis is provided below.

### a. RV Site Development

Leveling an area for use as RV parking would result in the permanent loss of 13.9 square meters (150 square feet) of suitable, but currently unoccupied NIDGS habitat. During construction of the RV pad, NIDGS individuals nearby may be disturbed in the short-term (construction period only, for approximately two weeks to one month) resulting in temporary site abandonment. The planting of trees around the RV pad may provide perches for predators, potentially resulting in increased rates of NIDGS mortality from predation.

Installation of a septic system, utility line, and well associated with the RV pad would result in the temporary loss of an unquantifiable area within a 0.81 hectare (2 acre) area that is suitable, but not currently occupied by NIDGS. Any area disturbed for the installation of the septic system, utility line, and well will be backfilled where appropriate and planted with native grass and forb species (FWS 2006a). The loss of habitat is expected to be not longer than three to five years, depending on the success rate of restoration measures. Restoration of the disturbed area would reduce the length of time the disturbed area is unsuitable habitat and would likely result in similar, if not greater, habitat quality than was present prior to disturbance due to the NIDGS nutritional value of the plants to be used.

Increased use of motor vehicles in the action area as a result of the development may increase mortality of pups, and to a lesser extent, adults. Pups may be killed by vehicle impact after they emerge in late May and throughout June. Adults are less vulnerable to vehicle impacts as they are more cautious and aware of their surroundings (R. Vizgirdas, FWS, *in litt.* 2007).

Disturbance of NIDGS may occur in the short-term as a result of the Permittee constructing the RV pad, installation of associated utilities, and planting trees. Disturbance would also occur throughout the life of the permit (25 years) as a result of recreational use of the Project Area by the Permittees and guests. The presence of pets in the project area may result in adverse effects to NIDGS within the protected area as a result of disturbance and increased potential for spread of plague. As a result of increased human presence and pet activity, there is a possibility that productivity could be reduced (via fewer pups produced or reproductive failure) for future NIDGS offspring in the protected area, a possibility that NIDGS migration or colonization may be adversely altered, a possibility that NIDGS may abandon the protected area, and a remote possibility that NIDGS may be killed at the site as a result of plague. Plague has never been documented in the subspecies; however, the potential for it to occur still exists. Pets may additionally adversely affect squirrels in the project area by chasing, digging up burrows, and/or killing NIDGS. The risk of pets causing more than an insignificant effect to NIDGS is not likely since the action includes measures restricting pets to areas outside the protected area, and the likelihood of plague infecting the population is remote.

The proposed disturbance and development may result in reduced probability of NIDGS moving through or colonizing the two acres (0.8 hectares) of suitable but currently unoccupied habitat in the project area. The ability for NIDGS to migrate through or to the project area may be reduced as a result of the development proposed and increased disturbance levels. Vegetative restoration measures are designed to reduce the magnitude of this potential effect.

NIDGS may acclimate to some levels of human disturbance, providing the human activity does not directly endanger the physical integrity of the habitat or directly disturb or kill squirrels. Adults as well as young squirrels have been documented on the site along with active burrows. The risk of NIDGS abandonment of the protected area is considered minor because the site is currently experiencing human disturbance from a nearby residence and a gravel roadway. Due to the squirrels' potential ability to adjust to new disturbances, a monitoring and adaptive management approach associated with the action would be implemented to determine whether an adverse effect actually occurs, and if it does, actions would be implemented that mitigate or reduce those effects. Adaptive management actions could include actions such as removing or reducing the quality of avian perches in planted trees, excluding pets from the entire action area, limiting vehicle use of project area roads to periods when squirrels are less active, etc.

#### b. Protected Area

Long-term (at least 25 years) protection from development of 60 percent (1.2 hectares (3 acres)) of the action area, which is also occupied NIDGS habitat, would result in an increased likelihood of the existing NIDGS population persisting into the future. The Protected Area is adjacent to another parcel (under separate ownership) currently enrolled in a Safe Harbor Agreement (SHA) for NIDGS and currently occupied by NIDGS. The Protected Area in this HCP also would be adjacent to State land currently occupied by NIDGS. The juxtaposition of the Protected Area in this HCP to lands adjacent to those

enrolled in a SHA and State land would provide a larger block of contiguous suitable habitat, allowing NIDGS movements among the three parcels.

c. Monitoring

Monitoring activities associated with the proposed action would affect many individuals of the extant population. The affect of monitoring would likely be minor due to the fact that no individuals would be captured or handled, the small amount of time individual squirrels would be disturbed (less than three hours), and the few times each year the population would be monitored (approximately five times per year).

d. Predator/Competitor control

Control of predators (badgers) and/or potential competing species (Columbia ground squirrels), if necessary, would likely result in the short-term reduction in predation of and/or competition with NIDGS. This short-term reduction in predation and/or competition could result in a greater likelihood of long-term persistence of the NIDGS population in the action area. Control actions would likely effect NIDGS individuals through disturbance via humans placing traps and/or shooting predators. The effect of this disturbance would likely be minor because it is expected to be extremely short-term (up to three hours per control action).

### III. PUBLIC COMMENT

On November 30, 2004, the FWS published a Notice of Availability for the draft proposed HCP in the Federal Register (69 FR 69617). Public comment was solicited during the 30-day period to gather comments on the permit application and on whether the proposed HCP qualified as a "low-effect" HCP. A low-effect HCP is eligible for categorical exclusion under the National Environmental Policy Act of 1969, as amended. The process of reviewing and considering these comments led to slight changes to the original proposed HCP. We received four comment letters: one from the Idaho Department of Fish and Game, one from the Idaho Department of Parks and Recreation, one from the U.S. Geological Survey, and one from the Idaho Department of Lands. A summary of the FWS's responses to the commenters are below:

Idaho Department of Fish and Game – Letter of November 17, 2006

Comment 1. A concern was raised regarding the absence of NIDGS in the Project Area at the time of the surveys and the possibility that NIDGS will move into the area prior to any ground disturbances.

Response: The HCP was changed to allow the FWS to inspect the RV parking site prior to any ground disturbances to determine whether NIDGS are present in the Project Area. If NIDGS are present at the location, the FWS and IDFG will transplant NIDGS to another location to assure that take is minimized in the Project Area.

Comment 2. A concern was raised regarding the effects of grazing on NIDGS in general and how we determined whether or not grazing had occurred on the property during our July site visit.

Response: The HCP was changed to reflect that there is little to no information regarding the effects of grazing on NIDGS and we clarified our observations during the July site visit to include that we did not see any manure etc. as recent evidence of grazing on the property.

Comment 3. A concern was raised regarding the possibility that the landowner will want to fence the property to prevent livestock grazing on the property.

Response: We have clarified that fencing of the property is a changed circumstance that would need to be addressed in a major amendment to the HCP.

Comment 4. A concern was raised regarding the lack of long term monitoring data with regard to the effects of human activities within close proximity to NIDGS habitat.

Response: We agree that two years is too short a timeframe for any definitive conclusions regarding the effect of human disturbance near NIDGS sites. We are required to evaluate the proposal on the basis of the most current available information. We will continue to monitor the NIDGS on the Schwisow property for the life of the HCP and at the SHA on the adjacent property. We will maintain the ability to terminate the HCP if it appears that disturbance associated with recreational use of the property jeopardizes the continued survival and recovery of the species.

Comment 5. The commenter requested that we include cats as domestic pet.

Response: We have included cats in the definition of domestic pets.

Comment 6. A concern was raised regarding the potential impacts to the larger Price Valley population of NIDGS resulting from construction-associated traffic traveling to the property along the state road.

Response: We do not anticipate a significant increase in construction related traffic on the road. We anticipate that the landowner will use a tractor to level the RV parking site and that additional equipment will be used to drill for a well and excavate for utility lines. We anticipate that the landowner will bring the RV to the site in the spring and leave it there for the duration of the summer and early fall. The landowner will then drive to the site when they periodically will be using it. The HCP currently authorizes the leveling of a RV parking site and development of utilities. No other construction is covered for the site.

Comment 7. There was confusion regarding the terms covered area, project area and protected area.

Response: We have revised the language in the HCP to eliminate confusion with the terms in the HCP.

Comment 8. A concern was raised regarding activities other than those associated with construction of a home.

Response: We have tried to account for any potential impacts to the species, including harassment by pets and relocation of squirrels from the RV parking site.

Comment 9. A concern was raised regarding the current information of known sites and range of NIDGS

Response: We have updated the information in the HCP.

Comment 10. The reference to Protected area in section 4.1, p. 6, item #2 appears to be incorrect.

Response: This has been corrected.

Comment 11. A concern was raised regarding the meaning of “success criteria for monitoring”.

Response: We have removed the statement as we agree that it is confusing.

Comment 12. The commenter recommended that permittees inform the FWS of their intent to sell the property 30 days prior to listing the property.

Response: We agree and have changed the HCP to reflect this requirement.

U.S. Geological Survey – Letter dated November 17, 2006

Comment 1. A concern was raised regarding the effect of the plan and that it will not appreciably reduce the survival and likelihood of recovery of the species.

Response: Evaluation of whether or not the species will be jeopardized has been completed through our section 7 biological opinion process.

Comment 2. The commenter does not believe that the mitigation measures are strong enough to offset the effects on NIDGS.

Response: We believe the mitigation measures will adequately offset the effects of the project on NIDGS and we believe that the project will not jeopardize the continued survival of the species.

Comment 3. A concern was raised regarding the need to enhance the details of monitoring and adaptive management.

Response: Currently, we are conducting observational monitoring on an annual basis. We believe this is adequate for this site. This monitoring is in conjunction with the more intensive monitoring and range wide surveys for NIDGS being conducted by the IDFG.

Comment 4. The commenter was concerned that there was no mitigation measure to prevent the encroachment by trees, especially in the Protected Area.

Response: We agree that the encroachment of trees onto the property may be an issue in the future. We will work with the landowner to reduce the encroachment of trees onto the property should it become an issue in the future. We have allowed the landowner to plant trees within the level RV parking site but we have not granted any additional take for planting trees elsewhere on the property, including the Protected Area.

Comment 5. The commenter requested that we provide more guidance on the types of native plants that will be used to restore ground disturbances.

Response: The HCP was changed to include the need to focus the use of native plants on those that will provide a foraging benefit to NIDGS.

Comment 6. The commenter requested that the landowner alert the FWS/IDFG of badger activity if it occurs prior to monitoring.

Response: We have included a request that the landowner alert us of badger activity if there is evidence of them prior to monitoring activities.

Comment 7. A concern was raised regarding protections for NIDGS that may colonize the Project Area after the construction and restoration are completed.

Response: We have acknowledged that pets may harass NIDGS within the Project Area and this was evaluated in our biological opinion. We also acknowledge that due to the recreational use of the property there may be an adverse affect on NIDGS from human disturbance but we believe that the likelihood of the disturbance jeopardizing the survival and recovery of NIDGS is low. The Biological Opinion authorizes take of NIDGS that may colonize the project area.

Comment 8. The commenter requested more information on the methods used for monitoring and suggested that we may need to conduct more detailed monitoring in order to capture reproduction.

Response: The FWS and IDFG lack the resources necessary to conduct more in-depth monitoring at this site. Our current monitoring strategy for the property is to conduct observation surveys during July. This allows us to observe the presence of pups and yearling squirrels and to verify whether or not reproduction is occurring at the site.

Comment 9. A concern was raised regarding the absence of NIDGS in the Project Area at the time of the surveys and the possibility that NIDGS will move into the area prior to any ground disturbances.

Response: The HCP was changed to allow the FWS to inspect the RV parking site prior to any ground disturbances to determine whether NIDGS are present in the Project Area. If NIDGS are present at the location, the FWS and IDFG will transplant NIDGS to another location to assure that take is minimized in the Project Area.

Comment 9. We mislabeled 4.5 in the HCP.

Response: We have corrected this error.

Comment 10. The commenter had concerns regarding what will happen if NIDGS disappear from the entire site.

Response: If NIDGS abandon the site entirely we would still need to evaluate the site in the context of jeopardy for the species. Abandonment of the site constitutes an unforeseen circumstance, as we do not expect this to happen (see Section 4.5 of the HCP for an explanation of unforeseen circumstances and process). If abandonment does occur, the FWS is required to seek additional measures, in cooperation with the landowner. The landowner must be willing to implement the additional measures. If the landowner is not willing, the FWS will terminate the HCP. There is no penalty to the landowner if all obligations of the original HCP have been met.

Comment 12. The commenter requested that we provide a provision that allows fire to run its course, especially in the Protected Area.

Response: Due to the small size of the property, we do not believe that it is reasonable to expect that the landowner will allow an uncontrolled fire on the property. We have however specified that should fire occur on the property any ground disturbances will occur only in the event that fire threatens life or property. We have not granted take for any fire suppression machinery, etc. on the Protected Area.

Comment 13. There was confusion regarding our use of the term "Monitoring Letter" in section 4.6.1.c.1.

Response: This issue has been clarified in the document. We have removed the term "Monitoring Letter". Monitoring is reported annually and will continue through the duration of this project.

Comment 14. The commenter asked whether or not the conditions of the HCP would be part of a legal transfer of property or whether the conditions of the HCP are binding on the subsequent owner.

Response: An HCP is not applied to the property title, only to the current landowner.

Comment 15. The commenter was concerned about the continued development in Price Valley and where the threshold for effects on the species' survival and recovery will be defined.

Response. We agree that development in the area may lead to further concerns for the continued survival of the species; however, it is difficult to determine at this point in time how much development will occur and how it will ultimately affect the species' survival. The purpose of monitoring is to help us determine if and how much human disturbance the species can experience without adversely affecting its survival and recovery. We will continue to work with the NIDGS technical team to evaluate impacts from proposed development projects on NIDGS relative to their survival and recovery.

Idaho Department of Lands – Letter dated October 30, 2006

Comment 1. The commenter was concerned that the proposal included development of a residence on the property. IDL has granted a temporary permit only for access to the State road and a permanent residence violates this permit.

Response: We have changed the HCP to reflect a temporary structure (the parking of an RV). The Applicants will level a site to park the RV only; no residential development is anticipated at this point in time.

#### IV. INCIDENTAL TAKE PERMIT CRITERIA – ANALYSIS AND FINDINGS

Section 10(a)(2)(A) of the Act requires that no permit may be issued by the FWS authorizing any taking unless the applicant submits a conservation plan that specifies the following: the impact that will likely result from such taking; what steps the applicant will take to minimize and mitigate such impacts and the funding that will be available to implement such steps; what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized; and such other measures as the FWS may require as being necessary or appropriate for the purposes of the plan. Section 10(a)(2)(B) of the Act mandates that the FWS issue a permit if the taking will be incidental; the impacts of such taking are minimized and mitigated to the maximum extent practicable; the applicant assures adequate funding for the plan; and if the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. With regard to this specific project, permit actions, and section 10(a)(2)(B) requirements, the FWS makes the following findings:

1. The taking will be incidental.

The FWS finds that the taking of NIDGS under the HCP will be incidental to otherwise lawful activities. The activities for which incidental take coverage are sought under the Permit are the development of a legal lot in Adams County, Idaho. Any take of NIDGS from human disturbance associated with the development will be incidental to, and not the purpose of, these lawful activities.

2. The Permittees will, to the maximum extent practicable, minimize and mitigate the impacts of taking of covered animal species and the effects to other covered species that may occur within the permit areas.

The FWS finds that Mr. and Mrs. Duane Schwisow will minimize and mitigate the impacts of take of NIDGS to the maximum extent practicable. They have developed an HCP, pursuant to the incidental take permit requirements codified at 50 CFR 17.22(b)(1) and 50 CFR 17.32(b)(1), which require measures to minimize and mitigate the effects of issuing the Permit. Under the provisions of the HCP, the impacts of take will be minimized, mitigated, and monitored through the following measures:

- (a) Identification and implementation of incidental take avoidance and minimization measures to reduce impacts to the northern Idaho ground squirrel, as described above in Section II.d and in Section 4.4 of the HCP;
- (b) The preservation of the Protected Area for the duration of the Permit; and
- (c) The establishment of a monitoring and reporting plan to ensure the success of the mitigation and notification of the FWS.

To make the finding that the conservation measures included in the HCP avoid, minimize and mitigate the impacts of take to the maximum extent practicable, the FWS must first evaluate whether the conservation measures are rationally related to the level of take anticipated under the plan. Take is defined under the Act to include those actions that harass, harm or kill listed fish or wildlife. In effect, the conservation measures need to address the biological needs of the NIDGS in a manner that is commensurate with the impacts to the species allowed under the HCP. The FWS believes the level of avoidance, minimization, and/or mitigation provided for in the HCP compensates for the impacts of take of the NIDGS that will or could potentially occur under the plan. The primary form of take is harassment resulting from the human disturbance associated with the proposed action. Harass is defined as actions that create the likelihood of injury to listed fish or wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering.

Thus human disturbance, in and of itself, does not result in take; take results when the human disturbance significantly disrupts normal behavioral patterns. Having evaluated the effects to the NIDGS, the FWS concludes that the level of take will be low, affecting a small portion of one metapopulation (FWS 2006a). The proposed action may result in periodic or complete abandonment of the habitat from human disturbance. The risk of abandonment of this site and its significance to the NIDGS metapopulation in Price Valley is considered minor because the site is located in an area that experiences human disturbance from nearby residences and a major roadway so the NIDGS may adjust to any new disturbances.

The FWS further concludes that with respect to the NIDGS the impacts of take will be effectively minimized and mitigated by three conservation actions. First, the project area's habitat potential will be maintained by the preservation of occupied habitat within the project boundary. Second, outdoor construction activities will be completed in the unoccupied portion of the project boundary. Direct modifications to the listed species' habitat are so limited that the impacts to the species are negligible and indirect effects, such as human disturbance, will be managed by restrictions on domestic pets.

To make a finding that the HCP minimizes and mitigates the impacts of take to the maximum extent practicable, the FWS first must find that the minimization and mitigation measures provided under the plan are rationally related to the level of take anticipated under the plan. As explained above, the FWS believes that the level of take likely to occur is low, the impacts of that take on the species are minor, and the HCP prescriptions effectively compensate for the take anticipated to occur.

One alternative was considered in the HCP to determine its practicability: the no action alternative. Under the no action alternative, no section 10 (a)(1)(B) permit would be issued for the take of the NIDGS and no HCP would be implemented by the applicants. This alternative was rejected because it was inconsistent with the development goals of the applicants and did not provide long-term assurance that a portion of the property would be protected.

In addition to evaluating the effectiveness of the minimization and mitigation provided under the HCP, the FWS must also evaluate whether these measures minimize and mitigate the impacts of take "to the maximum extent practicable." This requires evidence in the record that additional mitigation would not be feasible. However, the FWS does not believe that feasibility can be divorced from considerations of proportionality (that is, the mitigation under the plan must be proportional to the impacts of take under the HCP). Thus, when considering whether additional minimization and mitigation measures are feasible, the FWS first and foremost must consider the adequacy of the mitigation provided to compensate for the impacts of take and determine that the mitigation is sufficient and fair. The proposed action is a "low-effect" HCP that may affect NIDGS associated with the Price Valley metapopulation. Any additional measures, such as off-site mitigation, would be impracticable to the applicants.

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

The FWS finds that Mr. and Mrs. Duane Schwisow will ensure funding adequate to implement the HCP. The main emphasis of the HCP is the site development plan that identifies the areas that can be developed in the project area. The additional HCP prescriptions include set aside of the protected area, plantings, monitoring, notification requirements and procedures to address changed circumstances. The costs to the permittees for implementing the monitoring and notification requirements are small with minor out of pocket expenses. The Permittees have also committed to addressing changed circumstances by replacing any planting lost due to fire. Funding these

management actions as outlined in the HCP is not likely to cause any monetary hardship on the permittees and they are both capable and willing to fulfill all of their obligations under the HCP.

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

The FWS finds that the taking to be authorized under the proposed Permit will not appreciably reduce the likelihood of the survival and recovery of the NIDGS in the wild. The Act's legislative history establishes the intent of Congress that the issuance criterion be identical to a finding of "no jeopardy" pursuant to section 7(a)(2) of the Act and the implementing regulations pertaining thereto (50 CFR 402.02). As a result, the FWS has reviewed the HCP under section 7 of the Act. In a Biological Opinion (FWS 2007), which is incorporated herein by reference, the FWS has concluded that the issuance of the proposed Permit is not likely to jeopardize the continued existence of the NIDGS. Our conclusion is based on in part annual monitoring that shows that the NIDGS may be able to tolerate a certain level of human disturbance (associated with occupation of the site) in close proximity to it habitat (FWS *in litt.* 2004, 2005, 2006b).

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

The FWS finds that no additional measures are required for the purposes of the HCP to be met.

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

The FWS finds that the HCP provides the necessary assurances that the plan will be carried out by Mr. and Mrs. Duane Schwisow or future permittees.

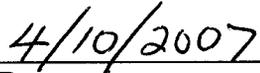
## V. GENERAL CRITERIA AND DISQUALIFYING FACTORS – FINDINGS

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

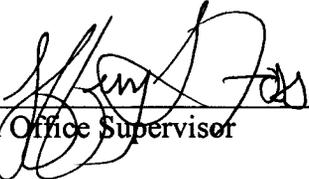
VI. RECOMMENDATION ON PERMIT ISSUANCE

Based on the foregoing findings with respect to the proposed action, I recommend approval of permit for Duane and Darlene Schwisow (PRT-TE-133608-0) for the incidental take of the northern Idaho ground squirrel in accordance with the HCP.

  
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Deputy Field Office Supervisor

  
\_\_\_\_\_  
Date

Approved:

  
\_\_\_\_\_  
Field Office Supervisor

  
\_\_\_\_\_  
Date

## References

- U.S. Fish and Wildlife Service (FWS). 2004. Status review of the Safe Harbor Agreement for Northern Idaho Ground Squirrels on the Mack Property in New Meadows, Idaho. Permit No. TE030508-0.
- U.S. Fish and Wildlife Service (FWS). 2005. 2005 NIDGS Field Surveys/Population Monitoring at Bob Mack's Private Property. Memo from Ray Vizgirdas, U.S. Fish and Wildlife Service, Boise, Idaho.
- U.S. Fish and Wildlife Service (FWS). 2006a. Low-Effect Habitat Conservation Plan to Address Potential Development-Related Effects on Price Valley Northern Idaho Ground Squirrels. Dated November, 2006
- U.S. Fish and Wildlife Service (FWS). 2006b. 2006 NIDGS Field Surveys/Population Monitoring at Bob Mack's Private Property. Memo from Ray Vizgirdas, U.S. Fish and Wildlife Service, Boise, Idaho.
- U.S. Fish and Wildlife Service (FWS). *in litt.* 2007. Low-effect Habitat Conservation Plan (HCP) and authorization of incidental take for northern Idaho ground squirrel (NIDGS: *Spermophilus brunneus brunneus*) in Price Valley, Adams County, Idaho, Biological Opinion (Permit Number: TE133608-0). Dated March 09, 2007.
- Vizgirdas, Ray, *in litt.* 2007. Comments on the draft Schwisow HCP Biological Opinion. Received on January 11, 2007. US Fish and Wildlife Service, Snake River Fish and Wildlife Office, Boise, Idaho.