

## PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



February 8, 2012

Mr. Alan F. Colton  
Manager – Environmental Services  
Sunrise Powerlink Transmission Project  
8315 Century Park Court, CP21G  
San Diego, CA 92123-1550

RE: SDG&E Sunrise Powerlink Transmission Line Project – Variance Request #36

Dear Mr. Colton,

On January 20, 2012, San Diego Gas and Electric (SDG&E) requested a variance from the California Public Utilities Commission (CPUC) to Mitigation Measure B-8a to allow vegetation clearing on non-Forrest service lands to occur from January 15, 2012 to February 14, 2012. On February 8, an updated request was submitted.

The CPUC voted on December 18, 2008 to approve the SDG&E Sunrise Powerlink Transmission Line Project ([Decision D.08-12-058](#)) and a [Notice of Determination](#) was submitted to the State Clearinghouse (SCH#2006091071). The BLM issued a [Record of Decision](#) approving the Project on January 20, 2009. The Project also crosses lands under jurisdiction of the U.S. Department of Agriculture; and Forest Service on the Cleveland National Forest; the Forest Service issued its Record of Decision and Supplemental Information Report on July 9, 2010.

The CPUC also adopted a Mitigation, Monitoring, Compliance and Reporting Program (MMCRP) to ensure compliance with all mitigation measures imposed on the Sunrise Powerlink Project during implementation. The MMCRP also acknowledges that temporary changes to the project, such as the need for additional workspace, are anticipated and common practice for construction efforts of this scale and that a Variance Request would be required for these activities. This letter documents the CPUC's thorough evaluation of all activities covered in this variance, and that no new impacts or increase in impact severity would result from the requested variance activities.

Variance #36 to Mitigation Measure B-8a to allow vegetation clearing to occur from January 15, 2012 to February 14, 2012 is granted by CPUC based on the factors described below.

**SDG&E Variance Request.** Excerpts from the SDG&E Variance Request, received February 8, 2012, is presented below (indented) with CPUC additions in parenthesis and in bold:

SDG&E is requesting a variance to allow vegetation clearing on non-Forest Service lands to occur from January 15 through February 14 in a small number of areas that have not been previously cleared. This request is similar to a modification to Variance #3 from Mitigation Measure B-8a as presented in the Final Environmental Impact Report/Environmental Impact Statement (FEIR/EIS) issued October 2008 and the Project Modification Report (PMR) approved on September 22, 2010. This request is necessary to ensure worker and public safety by providing small (approximately 2.5 feet x 5 feet) areas for the placement of some of the temporary concrete block anchors needed during tower erection (**covered under variance #37**), as well as to clear a small amount of vegetation that may not have been cleared previously in certain approved work areas. We do not anticipate significant clearing (cumulative totals of less than 1 acre for all concrete block anchors and less than 2 acres for any other areas), and will seek to crush or trim

vegetation rather than clear it, where consistent with worker safety. This methodology will aid in regrowth/restoration of impacted habitat. Prior to clearing vegetation, nesting bird surveys will be conducted in the area to be cleared as follows:

- Seven-day Pre-vegetation Clearing Survey – An pre-vegetation clearing survey will be conducted by a Wildlife-Agency-approved avian biologist at or within seven (7) days prior to the initiation of vegetation clearing and the results will be submitted to the CPUC/BLM designated representative for their concurrence.
- Pre-vegetation Clearing Sweep - A final survey will be conducted by the biological monitor immediately preceding vegetation clearing.

In addition, this request is in accordance with the U.S. Fish and Wildlife Service's Biological Opinion for Sunrise (2010) as to the vegetation clearing permissible in suitable habitat for California Gnatcatcher and Least Bell's Vireo under Species Specific Conservation Measures CM-1 and CM-5 which allow clearing from September 1 through February 14 and September 16 through March 14, respectively. Furthermore, this request is consistent with the Biological Opinion's Conservation Measure G-CM-50 which allows all vegetation clearing to take place for Operations and Maintenance activities from September 16 through February 14, and permits work to continue during the general avian breeding season as long as certain requirements are followed. The extension for vegetation clearing is necessary for the following purposes:

1.Placement of temporary concrete block anchors (measuring approximately 2.5 feet wide x 2.5 feet high x 5 feet long) in those areas where vegetation may obstruct the secure placement of temporary anchors. These temporary anchors are essential for worker and public safety reasons and are required to stabilize tower structures during tower construction. A separate variance is being submitted to provide CPUC/BLM with the details of the concrete block anchor placement **(covered under variance #37)**.

2. Minor additional vegetation trimming/clearing within approved work areas. In an effort to maintain sensitive habitat where possible, reduce the square footage of temporary impact areas that would need to be restored, and minimize the potential for storm water runoff, SDG&E and its contractor previously limited vegetation removal in work areas where possible. As work resumes at these locations, a small amount of additional work space may become necessary which could require minor additional vegetation clearing. All vegetation clearing will be conducted in accordance with the same impact avoidance, minimization, monitoring, and mitigation measures that apply to all other Project impact areas, including those found in the Project's Mitigation Monitoring, Compliance, and Reporting Program (MMCRP), PMR, the Nesting Bird Management and Monitoring Plan (January 13, 2012 [CPUC and BLM]), and approved plans and permits applicable to these specific activities. We will continue to coordinate with all appropriate agencies as per our approved plans, permits, and mitigation measures.

SDG&E will have qualified, on-site biologists search for active nests within the vegetation targeted for removal. SDG&E will stop all activities if nests are detected during surveys for proposed vegetation clearing. SDG&E will not disturb any active nest of protected birds (eg, MBTA, ESA, state-protected) until after the nest outcome is complete. SDG&E will conduct surveys in accordance with the Nesting Bird management and Monitoring Plan and Nest Survey Protocol and follow all other approved plans, permits and mitigation measures.

**(On January 30 and January 31, 2012 SDG&E provided the following clarifications in response to comments.)**

SDG&E will not request to remove vegetation in any area not previously surveyed for rare plants.

A biological survey would be completed to document any sensitive resources prior to any impacts to vegetation. In the event any occupied habitat is impacted, all applicable mitigation measures will be adhered to. Additionally, in occupied Quino habitat, a Quino-permitted biologist would assist in determination of the placement of concrete blocks and the walking paths. Quino host plants would be avoided to the extent possible. Temporary impacts caused by this proposed variance request will be relatively minor and sensitive resources will be avoided to the extent possible.

No pathways to the concrete blocks should not be required for clearing. The pathways (because they fall within the ROW or the 30-foot buffer) were surveyed for sensitive biological resources during the preconstruction surveys. The pathways will be determined with the assistance of a qualified biologist and will avoid sensitive resources to the extent possible.

At present there is no list of sites requiring additional clearance (**except for the anchor block locations detailed in Variance #37**). This variance request has been submitted in the event that important construction activities (e.g., pull site modifications, temporary extra work spaces, etc.) are required. Any vegetation clearing activities would be submitted to the agencies for concurrence.

### **CPUC Evaluation of Variance Request**

In accordance with the MMCRP, the subject variance request was reviewed by CPUC to confirm that no new impacts or increase in impact severity would result from the requested variance activities. The following discussion summarizes this analysis for biological, cultural, paleontological, and hydrological resources, sensitive land uses/noise, and visual. A list of conditions is presented below to define additional information and clarifications regarding mitigation requirements. In some cases, these items exceed the requirements of the Mitigation Measures and Applicant Proposed Measures, and are based on specific site conditions and/or are proposed conditions by SDG&E.

**Biological Resources.** All areas proposed under the request were assessed during the 2009 and 2010 Project preconstruction plant surveys which occurred along the entire right-of-way and 30 feet beyond. No special status plants or wildlife were reported; however, no survey data was provided with the request. Rare plants documented in previous surveys shall be avoided during vegetation clearing activities unless directly approved by the resource agencies.

On February 2 and 7, the CPUC biological consultant coordinated with SDG&E biologists and came to agreement on the conditions presented below regarding this request. CDFG and USFG provided concurrence with the variance request and agreed upon conditions on February 6 and 8, 2012.

- SDG&E will have qualified, on-site avian biologists search for nests within the vegetation targeted for removal and within all required buffers per the Nest Survey Protocol (April 27, 2011) and Nesting Bird Management and Monitoring Plan (NBMMP) (January 13, 2012).
  
- All of the conditions below apply to this variance and to the 2012 avian nesting season only:
  - a. SDG&E shall conduct avian nest surveys in accordance with the NBMMP survey buffers and at, or within, 7 days of initiation of vegetation clearing. On the first day of vegetation clearing and for each day of clearing during the breeding season, the Biological Monitor will perform daily sweeps to look for resources, including nesting birds.
  - b. From now through February 14, 2012, a scientifically supported vegetation analysis shall be submitted as part of the Nest Survey Report (NSR). The NSR shall provide quantitative information about the vegetation in the area to be cleared as well as within the required 100-foot survey buffer. The information shall include, but not necessarily be limited to, the method of vegetation analysis; the types of vegetation communities present; dominant plant species; percent cover of woody, perennial vegetation; percent cover of annual plant species/grasses; vegetation heights; whether the vegetation is evenly distributed or occurs in clumps (or both); and any other information related to the potential for avian nesting (e.g., the presence of potential nest cavities in trees or rocks). For the area beyond the 100-foot survey buffer and out to the 500-foot survey buffer, the vegetation and potential nesting substrates shall be qualitatively described. The vegetation analysis may be conducted in conjunction with the avian nest survey provided the Avian Biologists are proficient in conducting such an analysis.

- c. If no avian nests are found in the area to be cleared or within the required survey buffers, the proposed vegetation clearing may occur (pending CPUC Biologist and/or Wildlife Agency concurrence with the results of the NSR including the vegetation analysis) despite the percent perennial vegetative cover.
- d. If an avian nest is found within an area to be cleared, a buffer (per the NBMMP) shall be established around the nest, and no clearing or other work shall occur in the buffer until the nestlings have fledged or until it has been determined by an Avian Biologist that the nest is closed.
- e. If an avian nest is found outside the area to be cleared, but within the approved buffer described in the NBMMP for that species, a Nest Buffer Justification form shall be submitted to the CPUC Biologist for review and concurrence if SDG&E proposes any work, including vegetation clearing, within that buffer.
- f. From February 15, 2012 through the end of the 2012 avian nesting season, all vegetation clearing shall be subject to the same vegetation analysis requirements described in Condition **b** above. Conditions **a** and **b** through **e**, above, shall also apply to the period February 15, 2012 through the end of the 2012 avian nesting season with the exception of the percent perennial vegetative cover described in Condition **c**. From February 15, 2012 through the end of the 2012 avian nesting season, the CPUC/Wildlife Agencies will place special consideration on vegetation clearing requests for sites with greater than 15 percent perennial vegetative cover. These requests will only be considered for approval if SDG&E can sufficiently demonstrate through the NSR that a complete assessment of the nesting status of the site to be cleared has been made. SDG&E shall not conduct the nest survey in such a way as to disrupt the behavior of any birds in the survey area (e.g., by using too many avian biologists to conduct the survey), and the NSR must include an explanation as to why the avian biologists believe that they were able to detect all nests (if any) despite the greater level of vegetative cover.
- g. The removal of trees, large shrubs, or any vegetation that has the potential to support raptor or owl nests will not be allowed as part of this variance.
- h. Per USFWS, a permitted Quino biologist will assess each impact sites within one day of impacts within Quino habitat.

**Hydrological Resources.** All SWPPP and Construction Grading Plan requirements will be implemented to avoid potential impacts.

**Cultural and Paleontological Resources.** All areas proposed under this request occur within approved work boundaries except for the anchor locations outlined in Variance Request #37. The areas within approved work boundaries were surveyed for paleontological and archaeological resources during both preconstruction fielding activities and cultural resources inventory work for the Sunrise Powerlink Final Environmentally Superior Southern Route (Garcia-Herbst, Iversen, Laylander, and Williams 2010). SDG&E shall continue to follow established protocols in these areas.

On January 26, 2012 review comments were supplied by the CPUC reviewer:

Based on the Final Paleontological Monitoring and Discovery Treatment Plan, accepted on June 17, 2010, the potential to encounter paleontological resources within the structure locations identified in Variance #37 as requiring additional safety measures to assist with tower leg stability varies from no potential to high potential. However, because the concrete block anchors will be placed by helicopter,

no ground disturbing activities will occur within the proposed anchor locations. No NTP conditions are recommended. “

Cultural resources sites were identified near or within some of the proposed tower locations identified in Variance #37. Therefore, in accordance with Mitigation Measure C-01b: Erect protective flagging or other markers for ESA; sites will be flagged off with temporary orange fencing and designated as Environmentally Sensitive Areas (ESA). ESA buffers around the sites will be established and these sites will be protected as exclusionary zones. Mitigation Measure C-01e: Implement archaeological monitoring at cultural ESAs, states that Project-wide archaeological and Native American monitors are to be on-site during the temporary fencing of ESAs. In addition, any ground disturbing activities (including the concrete block anchor placement work) near the designated ESA will be monitored full-time by an archaeologist.

In the event of an unanticipated discovery of archaeological materials, all ground-disturbing work within the immediate area of the discovery will be suspended. Any new discoveries shall be managed in compliance with the procedures and guidelines for Treatment for Unanticipated Discoveries set forth in the Historic Properties Management Plan (HPMP).

**Traffic/Sensitive Land Uses/Noise.** No concerns noted.

**Visual.** No visual concerns are noted.

**Conditions of Variance Approval.**

The conditions presented below shall be met by SDG&E and its contractors. All of the conditions below apply to this variance and to the 2012 avian nesting season only.

1. The CPUC approval of Variance Request #36 is limited to non-federal lands only. Separate approvals for BLM and Forest Service lands are required.
2. All applicable project mitigation measures, APMs, compliance plans, permit conditions and conditions of NTP #13 shall be implemented. Some measures have on-going/time-sensitive requirements and shall be implemented prior to and during construction where applicable.
3. Copies of all relevant permits, compliance plans, and this Variance approval shall be available on site.
4. During the 2012 avian nesting season, SDG&E will have qualified, on-site avian biologists search for nests within the vegetation targeted for removal and within all required buffers per the Nest Survey Protocol (April 27, 2011) and NBMMP (January 13, 2012).
5. During the 2012 avian nesting season, SDG&E shall conduct avian nest surveys in accordance with the NBMMP survey buffers and at, or within, 7 days of initiation of vegetation clearing. On the first day of vegetation clearing and for each day of clearing during the breeding season, the Biological Monitor will perform daily sweeps to look for resources, including nesting birds.
6. During the 2012 avian nesting season, from now through February 14, 2012, a scientifically supported vegetation analysis shall be submitted as part of the Nest Survey Report (NSR). The NSR shall provide quantitative information about the vegetation in the area to be cleared as well as within the required 100-foot survey buffer. The information shall include, but not necessarily be limited to, the method of vegetation analysis; the types of vegetation communities present;

dominant plant species; percent cover of woody, perennial vegetation; percent cover of annual plant species/grasses; vegetation heights; whether the vegetation is evenly distributed or occurs in clumps (or both); and any other information related to the potential for avian nesting (e.g., the presence of potential nest cavities in trees or rocks). For the area beyond the 100-foot survey buffer and out to the 500-foot survey buffer, the vegetation and potential nesting substrates shall be qualitatively described. The vegetation analysis may be conducted in conjunction with the avian nest survey provided the Avian Biologists are proficient in conducting such an analysis.

7. During the 2012 avian nesting season, if no avian nests are found in the area to be cleared or within the required survey buffers, the proposed vegetation clearing may occur (pending CPUC Biologist and/or Wildlife Agency concurrence with the results of the NSR including the vegetation analysis) despite the percent perennial vegetative cover.
8. During the 2012 avian nesting season, if an avian nest is found within an area to be cleared, a buffer (per the NBMMP) shall be established around the nest, and no clearing or other work shall occur in the buffer until the nestlings have fledged or until it has been determined by an Avian Biologist that the nest is closed.
9. During the 2012 avian nesting season, if an avian nest is found outside the area to be cleared but within the approved buffer described in the NBMMP for that species, a Nest Buffer Justification form shall be submitted to the CPUC Biologist for review and concurrence if SDG&E proposes any work, including vegetation clearing, within that buffer.
10. During the 2012 avian nesting season from February 15, 2012 through the end of the 2012 avian nesting season, all vegetation clearing shall be subject to the same vegetation analysis requirements described in Condition 6 above. Conditions 5 and 7 through 9, above, shall also apply to the period February 15, 2012 through the end of the 2012 avian nesting season with the exception of the percent perennial vegetative cover described in Condition 7. From February 15, 2012 through the end of the 2012 avian nesting season, the CPUC/Wildlife Agencies will place special consideration on vegetation clearing requests for sites with greater than 15 percent perennial vegetative cover. These requests will only be considered for approval if SDG&E can sufficiently demonstrate through the NSR that a complete assessment of the nesting status of the site to be cleared has been made. SDG&E shall not conduct the nest survey in such a way as to disrupt the behavior of any birds in the survey area (e.g., by using too many avian biologists to conduct the survey), and the NSR must include an explanation as to why the avian biologists believe that they were able to detect all nests (if any) despite the greater level of vegetative cover.
11. During the 2012 avian nesting season, the removal of trees, large shrubs, or any vegetation that has the potential to support raptor or owl nests will not be allowed as part of this variance.
12. A permitted Quino biologist will assess each impact sites within one day of impacts within Quino habitat and will monitor all clearing work.
13. SDG&E will not request to remove vegetation in any area not previously surveyed for rare plants. Rare plants documented in previous surveys shall be avoided during vegetation clearing activities unless directly approved by the resource agencies.
14. SDG&E will control the spread of invasive plant species by implementing the 2009/2010 Weed Control Plan.

15. Cultural resources sites were identified near or within some of the proposed tower anchoring locations (see variance #37) where vegetation clearing is slated to occur. Therefore, in accordance with Mitigation Measure C-01b, sites will be flagged off with temporary orange fencing and designated as ESAs. ESA buffers around the sites will be established and these sites will be protected as exclusionary zones. Mitigation Measure C-01e states that Project-wide archaeological and Native American monitors are to be on-site during the temporary fencing of ESAs. In addition, any ground disturbing activities (including the concrete block anchor placement work) near the designated ESA will be monitored full-time by an archaeologist.
16. In the event of an unanticipated discovery of archaeological materials, they shall be managed in compliance with the procedures and guidelines for Treatment for Unanticipated Discoveries set forth in the HPMP.
17. All unanticipated cultural and biological discoveries shall be immediately reported to the CPUC EM.
18. All complaints received by SDG&E in regard to use of the areas, shall be logged and reported immediately to the CPUC.

Please contact me if you have any questions or concerns.

Sincerely,

Billie Blanchard  
CPUC Environmental Project Manager  
Sunrise Powerlink Transmission Project

cc: Daniel Steward, BLM El Centro Field Office  
Tom Zale, BLM El Centro Field Office  
Bob Hawkins, Forest Service  
Erinn Wilson, CDFG  
Eric Porter, USFWS  
Susan Lee, Aspen Environmental Group  
Vida Strong, Aspen Environmental Group  
Anne Coronado, Aspen Environmental Group