

# *City of Brisbane*

## *Agenda Report*

**TO:** Mayor and City Council

**FROM:** Hal Toppel, City Attorney, and Robin Leiter, Special Counsel

**SUBJECT:** Unit II, Neighborhood II Northeast Ridge Residential Development  
Approval of Second Addendum to HCP EIR/EA  
Final Approval of Second Addendum to NER EIR  
Approval of HCP Amendment No. 5  
Final Approval of 2007 Modified Project

**DATE:** For Council Meeting on January 19, 2010

### **CITY COUNCIL GOALS:**

- To develop plans and pursue opportunities to enhance Open Space (#7)
- To develop plans and pursue opportunities to protect natural resources (#8)
- To preserve and enhance livability and diversity of neighborhoods (#14)

### **PURPOSE:**

Approval of the modified project for the Northeast Ridge will result in: the elimination of 80 units that were approved for development in the 1989 Vesting Tentative Map ("1989 VTM"); the relocation of the remaining units to an area having little or no habitat value, thereby enabling the preservation of prime habitat as open space; and a significant and substantial increase in the funding being provided to the HCP by the developer and the future property owners.

Approval of HCP Amendment No. 5 would (i) modify the HCP's existing operating program for the Northeast Ridge parcel; (ii) amend the funding provisions contained in the HCP; and (iii) amend section V.G. of the HCP to add the callippe silverspot butterfly and bay checkerspot butterfly to the list of species covered by the incidental take permit for the HCP.

### **RECOMMENDATION:**

1. ADOPT RESOLUTION 2010-01, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE MAKING FINDINGS AND GRANTING FINAL APPROVAL AND CERTIFYING THE 2009 ADDENDUM TO THE SAN BRUNO MOUNTAIN HABITAT CONSERVATION PLAN 1982 ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL ASSESSMENT, AND THE 2007 ADDENDUM TO THE

## 1983 FINAL ENVIRONMENTAL IMPACT REPORT ON THE NORTHEAST RIDGE RESIDENTIAL DEVELOPMENT.

2. ADOPT RESOLUTION 2010-02, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE APPROVING AN AMENDMENT TO THE HABITAT CONSERVATION PLAN (HCP) AGREEMENT AND GRANTING FINAL APPROVAL FOR A MODIFICATION TO THE VESTING TENTATIVE MAP (VTM-1-06), PLANNED DEVELOPMENT PERMIT (PD-1-06), DESIGN PERMIT (DP-3-06), AND GRADING PERMIT (EX-1-06) FOR UNIT II, NEIGHBORHOOD II, OF THE NORTHEAST RIDGE RESIDENTIAL DEVELOPMENT (APN 005-510-020, 030, & 040).

### **BACKGROUND**

Plans for development of the Northeast Ridge have been approved since 1982. At that time, the Northeast Ridge was in unincorporated land within the City's sphere of influence. The City and County prepared the Northeast Ridge Development Final Environmental Impact Report ("NER EIR") evaluating the effect of the project, which would construct 1,250 dwelling units in five neighborhoods over approximately 100 acres. The property was subsequently annexed into the City of Brisbane in 1983, and the City approved a specific plan, tentative subdivision map, planned development permit, design permit, and grading permit for the project.

Concurrent with the granting of local land use approvals, the City, County, the U.S. Fish and Wildlife Service ("Service") and other agencies and affected landowners prepared the HCP and entered into an agreement obligating the parties to implement the plan. The HCP called for the conservation and management of approximately 2,800 acres of land for the benefit of listed species, including the mission blue and callippe silverspot butterflies. It also allowed for limited development within approximately 368 acres. The Northeast Ridge was one of the areas planned for development under the HCP, which included an operating program that mirrored the development proposal described above. Environmental effects of the approval of the HCP were analyzed in the Adoption and Implementation of San Bruno Mountain HCP and Endangered Species Act Section 10(a) Permit Final Environmental Impact Report and Environmental Assessment ("HCP EIR/EA"), prepared by the County, as lead agency under the California Environmental Quality Act ("CEQA"), and by the Service, as lead agency under National Environmental Policy Act ("NEPA").

In 1989, the property owner submitted a new development proposal for the Northeast Ridge (the 1989 VTM) that reduced the number of units to 578 in three distinct neighborhoods that would be built in two phases and result in 135.3 acres of Conserved Habitat and 92.95 acres of development. The City considered the environmental impacts of the proposed changes in the first Addendum to the Final Environmental Impact Report – Northeast Ridge Project (September 1989) ("First Addendum to NER EIR") and granted land use approvals for the new development proposal (the "1989 Modified Project").

The 1989 Modified Project also required an amendment to the HCP. The City processed an "equivalent exchange" amendment changing the boundaries of the planned development and Conserved Habitat within the Northeast Ridge to match the 1989 development proposal and adjusting the funding to be provided per unit. The City and Service analyzed the effects of the proposed amendment in the Addendum to the Final

Environmental Impact Report and Supplement to the Environmental Assessment on Implementation of the San Bruno Mountain HCP and Endangered Species Act Section 10(a) Permit (December 1989) ("First Addendum to HCP EIR/EA"). The City and the Service approved the HCP amendment in 1990.

Pursuant to the development approvals granted for the 1989 Modified Project, the landowner commenced construction in 1995 and by 1997 had completed construction of the first phase, known as Unit I. In 1997, the Service listed the callippe silverspot butterfly. Although the HCP was designed to promote the conservation of the callippe and specifically provided that no further mitigation could be sought for impacts to covered species such as the callippe, the listing triggered provisions that required the owner, the City (as the local government with land use jurisdiction over the property), and the Service to confer and determine whether further opportunities existed to reduce impacts to the callippe, prior to the issuance of incidental take authorization for the species. This process occurred over several years.

In 2007, the owner submitted applications for a revised development of the second phase that had been produced in close coordination with staff from the City and the Service. The revised development proposal ("2007 Modified Project") reduced the planned development by eliminating one of the two remaining neighborhoods from the 1989 Modified Project that would be located in biologically sensitive hilltop habitat used by the callippe. This increased the amount of Conserved Habitat within the Northeast Ridge to 144.7 acres. The City analyzed the effects of the revised development in the Northeast Ridge Unit II EIR Addendum ("Second Addendum to NER EIR") (2007).

The changes to the development plan for the Northeast Ridge also required an amendment to the HCP, the fifth amendment to be processed since the HCP was completed in 1982 ("HCP Amendment No. 5"). HCP Amendment No. 5 proposed to change the operating program for the Northeast Ridge, including the boundaries of the planned development and Conserved Habitat, to match the revised development proposal in the 2007 Modified Project. As in 1989, these changes were processed as an "equivalent exchange" amendment, requiring the approval of the affected landowner, the City, and the Service. HCP Amendment No. 5 also made changes to the funding provisions in the HCP at section V.B to describe the supplemental funding being provided in the revised operating program, and amended section V.G. of the HCP to add the callippe silverspot butterfly and bay checkerspot butterfly to the list of species covered by the incidental take permit for the HCP. These changes were processed through a different amendment procedure (commonly referred to as "all other amendments") and required the approval of the affected landowner, the City, the County (to the extent it affected Conserved Habitat), and the Service.

HCP Amendment No. 5 was used to support an amendment to the HCP's incidental take permit ("ITP") to authorize take of callippe from development activities in the Northeast Ridge and from management and monitoring activities in Conserved Habitat. Both the City and the County were applicants for the amended ITP. The Service analyzed the environmental effects of HCP Amendment No. 5 in an Environmental Assessment (the "2007 EA") prepared under NEPA. The City analyzed environmental effects of HCP Amendment No. 5 under CEQA in the San Bruno Mountain Habitat Conservation Plan Environmental Impact Report/Environmental Assessment Addendum prepared by LSA Associates, Inc, dated December, 2009 ("Second Addendum to the HCP EIR/EA").

The amended ITP would allow the City, as the entity with land use authority over the Northeast Ridge, to grant land use approvals to the landowner for continued development within the Northeast Ridge parcel. It also would provide incidental take authorization for interim habitat management activities that the landowner is required to undertake in avoided and temporarily disturbed areas of the Northeast Ridge before their dedication as conserved habitat (at which point the County, as HCP Operator, would become responsible for their management). For the County, which has no land use authority over the Northeast Ridge, incidental take authorization would allow it to resume certain management activities within potential callippe habitat, without fear of liability for incidental take of the callippe.

On March 10, 2008, the City Council adopted Resolution No. 2008-05, making the findings and granting preliminary approval of the Second Addendum to the NER EIR. The City Council also adopted Resolution No. 2008-06, granting conceptual approval of the 2007 Modified Project for Unit II of the Northeast Ridge development, consisting of an amended Vesting Tentative Map, Planned Development Permit, Design Permit and Grading Permit. The preliminary approval of the Second Addendum to the NER EIR and the conceptual approval of the 2007 Modified Project were conditioned only upon: (a) approval by the Service of HCP Amendment No. 5 and issuance by the Service of an amendment to the ITP; and (b) a determination by the Brisbane City Council that the Second Addendum to NER EIR and the 2007 Modified Project were consistent and complied with HCP Amendment No. 5 and the amended ITP.

On May 28, 2009, the Service completed its environmental review under NEPA; approved HCP Amendment No. 5; and issued the amended ITP, as evidenced by the following documents, all of which have been provided to the City Council and constitute a part of the administrative record for this compliance hearing:

- (a) USFWS - San Bruno Mountain Habitat Conservation Plan Environmental Assessment (October, 2007);
- (b) USFWS - Notice of Availability and Receipt of Application, Amendment to the Incidental Take Permit for the San Bruno Mountain Habitat Conservation Plan in San Mateo County, 73 Federal Register 20324 (April 15, 2008);
- (c) USFWS - Intra-Service Biological Opinion on the Amendment to the San Bruno Mountain Habitat Conservation Plan (May 20, 2009);
- (d) USFWS - 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 (May 28, 2009) (the "FONSI");

- (e) USFWS – San Bruno Mountain Habitat Conservation Plan Amendment 5, Finding of No Significant Impact – Summary of Public Comments and Service's Response to Comments (May, 2009).
- (f) Amended Text of San Bruno Mountain Habitat Conservation Plan – As Amended to Support ITP 215574-5 (HCP Amendment No. 5);
- (g) Amended Endangered Species Act Section 10(a)(1)(B) Incidental Take Permit for the San Bruno Mountain Area Habitat Conservation Plan, Permit No. TE 215574-5 (May 28, 2009).

All of the foregoing documents have been posted on the City's website and made available for public review since June of last year.

Approval of HCP Amendment No. 5 was granted by the County Board of Supervisors on September 22, 2009.

Table 1 – Summary of NER and HCP Related Approvals and Environmental Review

Northeast Ridge Project (NER)			Habitat Conservation Plan (HCP)		
Date of Approval	Project	Environmental Review (Lead Agency)	Date of Approval	Project	Environmental Review (Lead Agency)
1982	Specific Plan and Tentative Map	NER EIR (County/City)	1982	Adoption of HCP	HCP EIR/EA (County/Service)
1989	1989 Modified Project	First Addendum to NER EIR (City)	1990	1990 Equivalent Exchange Amendment	First Addendum to HCP EIR/EA (City/Service)
2009	2007 Modified Project	Second Addendum to NER EIR (City)	2009	HCP Amendment No. 5	2007 EA/2009 FONSI (Service)
					Second Addendum to HCP EIR/EA (City)

## DISCUSSION:

Two separate but related actions are before the City Council: (1) approving HCP Amendment No. 5; and (2) granting final land use approvals for the Northeast Ridge 2007 Modified Project.

### (1) Approval of HCP Amendment No. 5

As noted above, HCP Amendment No. 5 actually consists of several changes that were processed under two separate provisions of the HCP, which require different findings and approvals. The changes relating to the revised operating program for the Northeast Ridge, including new boundaries of the 2007 Modified Project (being reduced) and the Conserved Habitat (being increased) were processed under the "equivalent exchange" provisions of the HCP. The changes to the HCP funding section and to the list of species covered by the ITP were processed under the "all other amendments" provisions of the HCP.

With regard to the equivalent exchange amendments, the HCP allows amendments to the boundaries of planned development parcels such as the Northeast Ridge under the "equivalent exchange" provisions only if "no grading has yet occurred ... in the proposed new Conserved Habitat and upon a written finding by the local land use jurisdiction that the amendment will provide new Conserved Habitat that is essentially equivalent in biological value and acreage to the habitat that will be lost as a result of the amendment." The amendment must also be approved by the Service.

The City made such findings in its application materials for HCP Amendment No. 5. Specifically, the Biological Study and Analysis of Conserved Habitat prepared for HCP Amendment No. 5 determined that the amendment will provide new Conserved Habitat that is superior in biological value and larger in size than the habitat that will be lost, based on the following findings:

- The revised operating plan for the Northeast Ridge, based on the 2007 Modified Project, results in a net increase in Conserved Habitat of 8.93 acres. It also decreases temporary disturbances within Conserved Habitat by 11.43 acres, so that the total reduction in disturbed area is 20.36 acres.
- The new Conserved Habitat is higher in biological value because the 2007 Modified Project avoids impacts in a hilltop area that is important for callippe mating. Avoiding impacts to this area and reconfiguring the development adjacent to Guadalupe Canyon Parkway decreases indirect effects on the callippe, including habitat fragmentation.
- The 2007 Modified Project results in an increase in the amount of grassland and specifically viola, the host plant for the callippe, within the Conserved Habitat by reducing temporary and permanent disturbances of callippe habitat by approximately 62 percent. As noted above, permanent impacts are reduced by 8.93 acres. Temporary disturbances are reduced by 11.43 acres. Reducing temporary impacts is significant because it avoids impacts to viola, which has proven difficult to restore from seed.

No grading has occurred within the proposed new Conserved Habitat, and the Service has already approved HCP Amendment No. 5. Consequently, we believe City approval of HCP Amendment No. 5 is warranted as to the modification of the operating program for the Northeast Ridge parcel in Chapter VII.

The other amendments proposed as part of HCP Amendment No. 5, which have been processed under the "all other amendments" provisions of the HCP, must be supported by a biological study demonstrating that the amendment does not conflict with the primary purpose of the HCP to provide for indefinite, long term perpetuation of the mission blue, callippe silverspot and other species of concern. The Biological Study for HCP Amendment No. 5 determined that the amendment is consistent with the primary purpose of the HCP, because the changes to the funding provisions will provide additional resources to support the conservation efforts of the HCP and because the incidental take authorization will facilitate both development and habitat management activities that are consistent with the HCP and will not have significant adverse effects on the species of concern. Accordingly, we believe City approval of HCP Amendment No. 5 is warranted as to the modification of the HCP funding provisions at section V.B and the list of species covered by incidental take authorization at section V.G.

The City has prepared the Second Addendum to the HCP EIR/EA to consider the environmental effects of HCP Amendment No. 5. Due to the relationship between HCP Amendment No. 5 and the 2007 Modified Project, the environmental effects evaluated in the Second Addendum to the HCP EIR/EA are similar to those analyzed in the Second Addendum to the NER EIR. As described in the Second Addendum to HCP EIR/EA, neither the changes proposed in HCP Amendment No. 5 nor changes in circumstances under which the HCP, as amended, will be implemented, will result in new significant effects or substantial increases in the severity of previously identified significant effects, or that mitigation or alternatives that would substantially reduce impacts are now feasible or available. These conclusions are also supported by substantial evidence in the record, including the finding of no significant impact (the FONSI) made by the Service in its environmental review of HCP Amendment No. 5 under NEPA.

(2) Granting final land use approvals for the Northeast Ridge 2007 Modified Project

The City Council has previously considered the Second Addendum to the NER EIR and evaluated the land use entitlements for the 2007 Modified Project under the City's subdivision and zoning ordinances. The Council is not required to re-visit the issues concerning the objections to the 2007 Modified Project that were resolved through the adoption of Resolutions 2008-05 and 2008-06. No changes to the project have been made since those Resolutions were adopted. The City Council must now conduct this compliance hearing to determine whether the 2007 Modified Project is consistent and complies with the HCP Amendment and the amended ITP, as mentioned above, and also to confirm the finding (previously made by the City Council) that the 2007 Modified Project will not result in new significant impacts or increase the severity of previously identified impacts due to project changes, changed circumstances, or changes in the feasibility of mitigation. If such determinations are made, the Second Addendum to the NER EIR can be certified as complying with CEQA and final approval of the 2007 Modified Project can be granted.

The Appendix attached to this Agenda Report contains a table showing how the terms and provisions of HCP Amendment No. 5 and the conditions of the amended ITP have been incorporated into the Conditions of Approval for the 2007 Modified Project. Also included in the packet is an updated 2009 Annotated Conditions of Approval showing the status of each of the original Conditions as applied to Unit I and Unit II of the Northeast Ridge development. The Conditions of Approval attached as Exhibit "C" to Resolution 2010-02 represent the remaining Conditions that need to be satisfied for the 2007 Modified Project.

We think substantial evidence in the record demonstrates that the 2007 Modified Project is not only consistent with HCP Amendment No. 5 and the amended ITP, but actually serves as the basis for such amendments being issued by the Service. The design of the 2007 Modified Project has been incorporated, without change, into the amended HCP operating program for the Northeast Ridge administrative parcel. The FONSI adopted by the Service to support the HCP Amendment and the amended ITP relies heavily upon the additional dedication of high value habitat (that otherwise would have been lost under the 1989 Modified Project) and the substantial additional funding that will only be achieved through approval of the 2007 Modified Project. Some of the main conclusions set forth in the FONSI have been quoted in Resolution No. 2010-01.

Furthermore, LSA Associates, Inc. prepared an update to the Second Addendum to the NER EIR to determine if there have been any project revisions or changed circumstances that alter the original analysis in the Second Addendum to the NER EIR since the time Preliminary Approval of that Addendum was granted by the City Council in Resolution No. 2008-05. The update describes changes in the physical condition of the site from ongoing construction activities under the 1989 Modified Project, erosion and sediment control measures, and conservation measures such as eucalyptus thinning and removal and viola salvage and relocation. LSA Associates, Inc. concluded, and we concur, that there have been no changes to the project and that changed circumstances do not alter the analysis in the Second Addendum to the NER EIR. Accordingly, we conclude that since the Second Addendum to the NER EIR was prepared and since the City Council last considered the 2007 Modified Project, there have been no changes to the project or to the circumstances under which it will be undertaken, and no relevant new information has become available, that would require changes to the analysis of the project or would bear on the environmental effects of the project or the availability of feasible alternatives or mitigation measures. Therefore, the 2007 Modified Project would not result in new significant environmental effects or substantial increases in the severity of previously identified significant effects, and no new mitigation measures or alternatives that would substantially reduce impacts are now feasible.

#### **FISCAL IMPACT:**

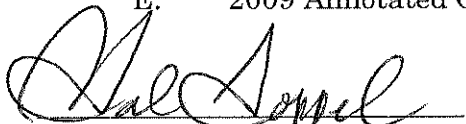
As described in HCP Amendment No. 5, approval of the 2007 Modified Project will result in a substantial increase in funding available for preservation and maintenance of the HCP. The contributions by individual homeowners will increase to \$800 annually (subject to the same CPI adjustment as charged to the existing homeowners) and a \$4,000,000 endowment will be contributed to the HCP Trustees.

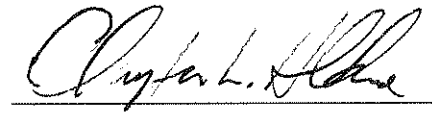


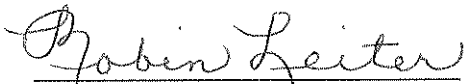
In addition to the HCP funding, the developer will also contribute \$1,800,000 toward the cost of new public facilities for the City of Brisbane.

**ATTACHMENTS:**

- A. Appendix A (supporting information for Compliance Hearing).
- B. Second Addendum to the HCP EIR/EA, dated December, 2009.
- C. Resolution No. 2010-01, making findings and granting final approval and certifying the 2009 HCP EIR/EA Addendum and the 2007 NER EIR Addendum, with attached Exhibits A-1 and A-2 (documents included in Administrative Record), Exhibit B (Update to 2007 NER EIR Addendum), Exhibit C-1 (findings for approval and certification of the Second Addendum to HCP EIR/EA), and Exhibit C-2 (findings for approval and certification of the Second Addendum to NER EIR).
- D. Resolution No. 2010-02, granting approval of HCP Amendment No. 5 and granting final approval of the 2007 Modified Project, with attached Exhibits A-1 and A-2 (documents included in Administrative Record), Exhibit B-1 (Findings for Approval of HCP Amendment No. 5), Exhibit B-2 (Findings for Approval of 2007 Modified Project), Exhibit C (Conditions of Approval), and Exhibit D (text of HCP Amendment No. 5).
- E. 2009 Annotated Conditions of Approval.

  
Hal Toppel, City Attorney

  
Clay Holstine, City Manager

  
Robin Leiter, Special Counsel

**APPENDIX "A"**  
**NORTHEAST RIDGE – UNIT II**  
**SUPPORTING INFORMATION FOR COMPLIANCE HEARING**  
**SECOND ADDENDUM TO NER EIR AND 2007 MODIFIED PROJECT**

This document provides supporting information for the proposed resolutions to be adopted by the Brisbane City Council granting final approval and certification of the Second Addendum to NER EIR and final approval of the 2007 Modified Project for the Northeast Ridge Residential Development.

Section V.D(2)(b) of the "Agreement with Respect to the San Bruno Mountain Area Habitat Conservation Plan" provides that: "...In no case shall an agency approve an application without first making written finding that the application complies with the Section 10(a) permit and this Agreement...a finding of compliance with the HCP fulfills the agency's obligation under CEQA to assess the impact, including the cumulative impact, of the project on the Species of Concern." This appendix identifies the Conditions of Approval for the 2007 Modified Project that will serve to implement the provisions of HCP Amendment No. 5 and the amended Incidental Take Permit (ITP).

**2007 Modified Project and Second Addendum to NER EIR  
Compliance with the Amended San Bruno Mountain Area Habitat  
Conservation Plan (HCP)**

The text of the San Bruno Mountain HCP was amended to support the amended ITP and the City of Brisbane's Application in connection with development activities associated with the 2007 Modified Project for the Northeast Ridge.

The amendments were made to the following sections of the HCP:

- 1) Section V.B.: Funding Program
- 2) Section V.G.: Incidental Take Permit
- 3) Chapter VII: Northeast Ridge Operating Program

The Operating Program for the Northeast Ridge in Chapter VII of the 1982 HCP was replaced with the Chapter VII Revised Operating Program in the amended HCP.

Table 1 identifies the amended HCP text that relates to the 2007 Modified Project and demonstrates how the 2007 Modified Project and 2007 Second Addendum to the NER EIR, that evaluated the Modified Project, are in compliance.

**2007 Modified Project and 2007 Second Addendum to the NER EIR  
Compliance with the Amended Endangered Species Act Section  
10(a)(1)(B) Incidental Take Permit (ITP)**

The City of Brisbane as a permittee and its designated agents must comply with the Special Terms and Conditions included in the amended Incidental Take Permit (ITP) (issued on May 28, 2009, Number TE215574-5). The US Fish & Wildlife Service also requires compliance with the Special Terms and Conditions for the permit to remain in effect. The existing ITP was amended to add the Callippe Silverspot Butterfly and the Bay Checkerspot Butterfly.

Table 1 identifies the Special Terms and Conditions of the amended ITP permit and demonstrates how the 2007 Modified Project and 2007 Second Addendum to the NER EIR that evaluated the Modified Project, are in compliance.

**TABLE 1**

**2007 Modified Project and 2007 Second Addendum to the NER EIR  
Evidence of Compliance with the Amended Habitat Conservation  
Plan and Amended Incidental Take Permit**

<p align="center"><b>ADDITIONAL SPECIAL TERMS, CONDITIONS, MINIMIZATION MEASURES, AND OBLIGATIONS FROM AMENDED ITP AND HCP</b></p>	<p align="center"><b>2007 MODIFIED PROJECT/SECOND ADDENDUM TO NER EIR FINAL CONDITIONS OF APPROVAL</b></p>
<p align="center"><b>AMENDED HCP TEXT</b></p>	
<p><b>Amended HCP Text - Section V.B. Funding Program</b></p>	
<p>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 for habitat operation, maintenance and enhancement: (i) residential development will provide an annual charge in the amount of \$716.73 per dwelling unit; and (ii) for private non-residential development, annual charges according to the following schedule: \$35.76 per 1,000 square feet for the first 100,000 square feet, \$18.26 per 1,000 square feet for the next 100,000 square feet, and \$9.26 per 1,000 square feet for any area in excess of 200,000 square feet. For purposes of application of the private non-residential fee, the area of multiple buildings covered under a single project approval will be combined. The additional annual charges described in this Section V(B)(3)(b) will not be adjusted annually for inflation.</p>	<p>C.II.(d), (k) &amp; (l)</p>
<p>4. Supplemental funding in the amount of \$4,000,000.00 will be provided by Brookfield Northeast Ridge II LLC pursuant to an agreement with the City of Brisbane. This supplemental funding will be used to establish a non-wasting endowment to be managed by the Trustees that will fund habitat operations, maintenance, monitoring and enhancement activities on the mountain to provide for the conservation of the Mission Blue, Callippe Silverspot and other Species of Concern and the San Bruno Mountain Area Ecological Community.</p>	<p>C.II.(d) &amp; (l)</p>
<p><b>Amended HCP Text - Section V.G. Incidental Take Permit</b></p>	
<p>6. The Agreement, as required by Chapter V of the HCP, shall be executed concurrently with the issuance of the Section 10(a) permit.</p> <p>Furthermore, the City of Brisbane and the County of San Mateo have applied to amend the permit to provide for take of the callippe silverspot and the bay checkerspot butterfly under Section 10(a) of the Endangered Species Act. The amended permit will set forth the following additional condition under which the City of Brisbane and San Mateo County will operate.</p>	<p>C.II.(a), (b), (e), (f), (g), (h), (i) &amp; (j)</p>

Table 1 Continued

<p style="text-align: center;"><b>ADDITIONAL SPECIAL TERMS, CONDITIONS, MINIMIZATION MEASURES, AND OBLIGATIONS FROM AMENDED ITP AND HCP</b></p>	<p style="text-align: center;"><b>2007 MODIFIED PROJECT/SECOND ADDENDUM TO NER EIR FINAL CONDITIONS OF APPROVAL</b></p>
<p>1. No taking of callippe silverspot or bay checkerspot butterfly on San Bruno Mountain shall occur except in compliance with procedural and substantive requirements of the HCP.</p>	
<p><b>Amended HCP Text- Chapter VII. Revised Operating Program</b></p>	
<p>1. No construction or conversion to urban uses shall be permitted beyond the temporarily disturbed area within 1-07-04 on Figure 1-07 C. The boundary of area 1-07-04 may be adjusted by the Landowner by not more than thirty (30) feet from the line shown on Figure 1-07 C, provided, however, that the total area increased as a result of such adjustment does not exceed five (5%) percent of the total Conserved Habitat in this Administrative Parcel. Outside area 1-07-04 construction and conversion to urban uses may occur subject only to the conditions set forth in Paragraph 2 below.</p>	<p>C.II.(a), (b), (c), (e), (g) &amp; (h) C.III.(a), (b) &amp; (c)</p>
<p>2(a). <u>Dedication of Conserved Habitat.</u> The Landowner shall agree to dedicate to the County all lands within Administrative Parcel 1-07 within the Phase II dedication area shown in Figure 1-07 I and as adjusted by the Landowner pursuant to Paragraph 1. Such dedication shall be offered by the Landowner at the time of recordation of the final map for Unit II, Neighborhood II, as shown on Figure 1-07 I.</p>	<p>C.II. (f), (g), (h), (i) &amp; (j)</p>
<p>2(b). <u>HCP Funding Program.</u> During the project development phase, the Landowner will enter into a contract with the Plan Operator to pay the reasonable cost of supervising the HCP restrictions on grading and supervising the reclamation of habitat. The monitoring and consultation funding shall be paid in accordance with Chapter VI. A. 5 of the Implementation Agreement (Agreement with respect to the San Bruno Mountain Area Habitat Conservation Plan).</p> <p>Pursuant to an agreement with the City of Brisbane, the Landowner shall fund the HCP Endowment by \$4,000,000.00, subject to reimbursement from other future developments, if there are any, within the area covered by the HCP. This Endowment would be incrementally funded from the sale of each home within Unit II, Neighborhood II and 17 homes that were incorporated into Unit I. It is expected that this endowment would generate over \$200,000 per year in interest, available to the HCP Trustees. If any future developments are approved within the HCP area, 75% of the future development's HCP Endowment contribution be used to reimburse Landowner for its HCP Endowment contribution. The remaining 25% would be contributed to the HCP for additional management funding.</p> <p>Owners of each home in the developed portions of the</p>	<p>C.I.(f) C.II.(d), (j), (k) &amp; (l) C.III.(a) &amp; (d) C.IV.(e)(11)</p>

Table 1 *Continued*

<p style="text-align: center;"><b>ADDITIONAL SPECIAL TERMS, CONDITIONS, MINIMIZATION MEASURES, AND OBLIGATIONS FROM AMENDED ITP AND HCP</b></p>	<p style="text-align: center;"><b>2007 MODIFIED PROJECT/SECOND ADDENDUM TO NER EIR FINAL CONDITIONS OF APPROVAL</b></p>
<p>Northeast Ridge pay the annual HCP charge, which is adjusted annually for inflation as described in Section V(B)(3)(a). Owners of each of the homes within the Unit II, Neighborhood II will be required to pay the annual HCP charge and the additional charge of \$716.73 per year, as described in Section V(B)(3)(b). The HCP charges commence when the City issues the Certificate of Occupancy and when title is transferred from the Landowner. These HCP charges would be paid through the Homeowners Association and transferred to the County for use by the Trustees for ongoing habitat operation, maintenance and enhancement.</p>	
<p>2(c). <u>Salvage Provisions.</u> Prior to grading, transplant Viola from grading footprint to areas where CS habitat is being restored (areas where scrub or non-natives have been removed). As much as possible, the ground around the Viola should be moved with it in an effort to transport any larvae that may be around the base of the plant.</p>	<p>C.III.(a) &amp; (b)</p>
<p>2(d). <u>Reclamation Provisions.</u> With respect to any areas which are to be graded or disturbed and thereafter dedicated as Conserved Habitat, the Landowner shall prepare a Reclamation Plan for approval by the City (or County, as the case may be) in accordance with its normal standards and procedures for grading permits. These provide for grading to be accomplished, erosion and run-off controls, and revegetation with native grassland species approved by the Plan Operator. In addition, the Landowner shall clearly define on the ground (by snow or two strand wire fencing or other methods) the limits of disturbance anticipated and shall limit the construction disturbance to said limits as provided in fencing and signing provisions of the MOU and Chapter 5. The fencing shall be constructed at the boundary between temporarily disturbed areas and undisturbed areas as shown in Figure 1-07 H. At the time of approval of the reclamation plan(s), those plans shall substitute for the more generalized maps referenced in this section.</p> <p>A performance bond shall be secured through the City of Brisbane or Plan Operator for all restoration/reclamation activities prior to disturbance of the site. The performance bond requirement does not apply to the salvage operations described in Section 2(c) of this Operating Program. The amount of the performance bond shall be the amount determined by the Plan Operator to be adequate to ensure proper performance of the restoration/reclamation activities based. The bond shall be released to the Landowner within 30 days after the Plan Operator has determined the restoration/reclamation activities have been successfully completed. The funds will not be obtained</p>	<p>C.II.(d), (j) &amp; (k) C.III.(a), (b), (c) &amp; (d)</p>

Table 1 *Continued*

<p style="text-align: center;"><b>ADDITIONAL SPECIAL TERMS, CONDITIONS, MINIMIZATION MEASURES, AND OBLIGATIONS FROM AMENDED ITP AND HCP</b></p>	<p style="text-align: center;"><b>2007 MODIFIED PROJECT/SECOND ADDENDUM TO NER EIR FINAL CONDITIONS OF APPROVAL</b></p>
<p>from the HCP fund to meet the restoration/reclamation obligations. If restoration/reclamation is not completed by the Landowner, the bond will be used to fund completion of the activities.</p> <p>The Landowner shall maintain temporarily disturbed open space areas Management Unit 1-07-04 for a period of five years from completion of grading and revegetation. The dedication of temporarily disturbed open space areas subject to maintenance and turnover criteria that defer the timing of the HCP Trustees' obligation to commence maintenance allows the HCP Trustees to collect the HCP charges from occupied residences within Unit II, Neighborhood II and to build up a reserve before the HCP Trustees assume management responsibilities for these areas. All undisturbed areas will be maintained by the HCP Operator.</p>	
<p>2(e). <u>Pesticide Control</u>. The Landowner shall establish covenants and restrictions encumbering Development Areas in favor of the County and/or City prohibiting the use of aerial or large-scale spraying of pesticides without the approval of the Plan Operator.</p>	<p>C.II.(a), (b) &amp; (i)</p>
<p>2(f). <u>Buffer Areas</u>. The Landowner shall covenant in favor of the City of Brisbane and the County to establish and maintain a buffer area of up to thirty (30) feet in width to protect urban uses within the Development Areas from fire. Native plants, which will not present an invasion threat to grasslands within the Conserved Habitat, are preferred. These buffer areas will be maintained by the Homeowners Association.</p>	<p>C.II.(a), (b), (d), (g) &amp; (i)</p>
<p>2(g). <u>Inspection</u>. The Landowner shall, in carrying out Reclamation Plans for Administrative Parcel 1-07, contract for an inspector acting for the County as Plan Operator to monitor grading and revegetation activities through completion of the reclamation activities and acceptance of the offer of dedication.</p>	<p>C.II.(a), (b), (c), (g) &amp; (j) C.III.(a), (c) &amp; (d)</p>
<p><b>INCIDENTAL TAKE PERMIT (TP TE1215574-5)</b></p>	
<p>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 <i>Title 50 Code of Federal Regulations</i>, 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. <i>Title 50 Code of Federal Regulations</i>, part 13 and part 17.32 regarding threatened species are attached.</p>	<p>A.V.(g) Inspection 1. &amp; 2. A.V.(i) Maintenance of Unimproved Graded Areas 1. &amp; 2. C.II.(a) &amp; (b)</p>
<p>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 (Hep); which is hereby incorporated into the permit.</p>	<p>C.II.(a) &amp; (b)</p>

Table 1 *Continued*

<p style="text-align: center;"><b>ADDITIONAL SPECIAL TERMS, CONDITIONS, MINIMIZATION MEASURES, AND OBLIGATIONS FROM AMENDED ITP AND HCP</b></p>	<p style="text-align: center;"><b>2007 MODIFIED PROJECT/SECOND ADDENDUM TO NER EIR FINAL CONDITIONS OF APPROVAL</b></p>
<p>G. The permittee or designated agents are authorized to conduct ground disturbance on the project site upon receipt of this permit.</p>	<p>C.II.(a) &amp; (b) C.III</p>
<p>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 (<i>Incisalia mossii bayensis</i>), endangered mission blue butterfly (<i>Icaricia icarioides missionensis</i>), endangered callippe silverspot butterfly (<i>Speyeria callippe callippe</i>), endangered San Francisco garter snake (<i>Thamnophis sirtalis tetrataenia</i>), and the threatened Bay checkerspot butterfly (<i>Euphydryas editha bayensis</i>) (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.</p>	<p>C.II.(a), (b), (c) &amp; (e) C.III. (a) &amp; (c)</p>
<p>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.</p> <p>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 13th Street, Sacramento, California 95814.</p>	<p>C.II.(a), (b) &amp; (e)</p>
<p>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.</p>	<p>C.II.(a), (b) &amp; (e)</p>
<p>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</p>	<p>C.II.(a) &amp; (b)</p>



Table 1 *Continued*

<p style="text-align: center;"><b>ADDITIONAL SPECIAL TERMS, CONDITIONS, MINIMIZATION MEASURES, AND OBLIGATIONS FROM AMENDED ITP AND HCP</b></p>	<p style="text-align: center;"><b>2007 MODIFIED PROJECT/SECOND ADDENDUM TO NER EIR FINAL CONDITIONS OF APPROVAL</b></p>
<p>Natural Diversity Database, California Department of Fish and Game, Wildlife and Data Analysis Branch, 1807 13th Street, Sacramento, CA 95814.</p>	
<p>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.</p>	<p>C.II.(a), (b), (c), &amp; (e)</p>

Sources: County of San Mateo, Amended Text of the San Bruno Mountain Habitat Conservation Plan, March 2008; USFWS, Amended ESA Section 10(a)(1)(B) Incidental Take Permit for the San Bruno Mountain Area Habitat Conservation Plan (# TE215574-5) May 28, 2007; City of Brisbane, 2009; LSA Associates Inc. 2009