

RESOLUTION NO. 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

WHEREAS, the San Bruno Mountain Area Habitat Conservation Plan (“HCP”) was completed and the Agreement with Respect to the San Bruno Mountain Area Habitat Conservation Plan (“Implementing Agreement”) was entered into by the City of Brisbane, among other parties, after the County of San Mateo certified a Final Environmental Impact Report and Environmental Assessment (“HCP EIR/EA”) in November 1982; and

WHEREAS, the stated purpose of the HCP is “to provide for the indefinite perpetuation of the Mission Blue and Callippe Silverspot butterflies on San Bruno Mountain, as well as to conserve and enhance the value of the Mountain as a whole as a remnant ecosystem or biological refuge which contains other rare or unusual species in addition to the two butterflies”; and

WHEREAS, the HCP provided for the preservation and perpetual management of the butterflies’ grassland habitat, with limited development allowed that would provide the funding for the ongoing management and monitoring of the Mountain; and

WHEREAS, the Northeast Ridge was one of the administrative parcels (1-07) planned for development in the HCP; and

WHEREAS, the Implementing Agreement provides that, except for unplanned administrative parcels or through an amendment, “no further mitigation or compensation is necessary or will be required by any of the parties [to the Implementing Agreement] ... to provide for the conservation, protection or enhancement of the San Bruno Mountain Area Ecological Community, including, but not limited to, the Species of Concern” as defined in the HCP; and

WHEREAS, on February 15, 1983, the Brisbane City Council, as lead agency, certified a Final Environmental Impact Report ("the NER EIR") pursuant to the California Environmental Quality Act ("CEQA") for the Northeast Ridge residential project ("the Development Project") and granted the land use entitlements for development of the Development Project, including approval of a tentative map, planned development permit, design permit, and grading permit; and

WHEREAS, on November 6, 1989, the Brisbane City Council certified an Addendum to the NER EIR ("the First Addendum to the NER EIR") for a modification to the Development Project, and approved a revised vesting tentative map and modifications to the related land use entitlements; and

WHEREAS, in 1990 the City and U.S. Fish and Wildlife Service ("Service") approved an equivalent exchange amendment to the HCP that revised the boundaries of Conserved Habitat and development area in the Northeast Ridge, after evaluating the environmental impacts of the amendment in the Addendum to the HCP EIR/EA and Supplement to the Environmental Assessment on Implementation of the HCP ("the First Addendum to the HCP EIR/EA"); and

WHEREAS, portions of the Northeast Ridge project were constructed between 1995 and 1997 in accordance with the revised development plans and the HCP as amended; and

WHEREAS, the Service listed the callippe silverspot butterfly as an endangered species in 1997; and

WHEREAS, at the direction of the City Council, Brookfield Northeast Ridge II LLC ("Brookfield"), the owner and developer of the Northeast Ridge, has been working cooperatively with City staff and with the Service to further revise the remaining development proposed within the Northeast Ridge; and

WHEREAS, in response to requests from the Brisbane City Council and the Service to preserve wildlife habitat that would have been developed under the 1989 vesting

tentative map, Brookfield applied for approval of further modifications to the vesting tentative map, planned development permit, design permit and grading permit for that portion of the Project known as Unit II, Neighborhood II, such applications being respectively identified as VTM-1-06, PD-1-06, DP-3-06 and Grading Permit EX-1-06 (collectively, "the 2007 Modified Project"); and

WHEREAS, the proposed modifications to the Project are set forth in the booklet of plans, drawings, and other materials submitted to the City by Brookfield, dated May 2007, and the same is incorporated herein by reference; and

WHEREAS, based upon an environmental checklist evaluating the changes between the proposed 2007 Modified Project and projects evaluated in the NER EIR and the First Addendum, the City has determined that a second Addendum to the NER EIR is the appropriate level of review under the California Environmental Quality Act; and

WHEREAS, a proposed second addendum to the NER EIR was prepared by LSA Associates, Inc., dated June 2007 ("the Second Addendum to the NER EIR"), which analyzed the potential environmental effects that could result from implementation of the 2007 Modified Project; and

WHEREAS, the 2007 Modified Project was reviewed and considered by the Planning Commission and the Commission had made its recommendation thereon to the City Council; and

WHEREAS, on February 11, 2008, the City Council conducted a public hearing on the Second Addendum to the NER EIR and the proposed 2007 Modified Project, at which time any person interested in the matter was given an opportunity to be heard; and

WHEREAS, on March 10, 2008, the City Council adopted Resolution No. 2008-05, entitled "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE MAKING THE FINDINGS AND GRANTING PRELIMINARY APPROVAL OF THE 2007 ADDENDUM TO THE 1983 FINAL ENVIRONMENTAL IMPACT REPORT ON THE NORTHEAST RIDGE RESIDENTIAL DEVELOPMENT, SUBJECT TO FINAL APPROVAL AND CERTIFICATION AT A LATER DATE" (the "Second Addendum Preliminary Approval"); and

WHEREAS, the Second Addendum Preliminary Approval found and determined that the City had completed its environmental review of the 2007 Modified Project in an addendum consistent with Section 15164(a) of the CEQA Guidelines, and that the Service could proceed with further analysis of the 2007 Modified Project under the Endangered Species Act ("the Act") and the National Environmental Policy Act ("NEPA") as it relates to the amendment of the Implementing Agreement and the Section 10(a) Permit; and

WHEREAS, on March 10, 2008, the City Council also adopted Resolution 2008-06, entitled: "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE GRANTING CONCEPTUAL 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), SUBJECT TO FINAL APPROVAL TO BE GRANTED AT A LATER DATE"; and

WHEREAS, conceptual approval of the 2007 Modified Project was granted in accordance with the provisions of Section V.D.(2)b of the Implementing Agreement, which 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." Therefore, final approval of the 2007 Modified Project by the City of Brisbane was deferred until the Service adopted an amendment to the HCP and issued an amendment to the Section 10(a) Incidental Take Permit pursuant to the Act incorporating the changes proposed by the 2007 Modified Project so that the City would have the opportunity to determine consistency of the 2007 Modified Project with the HCP as amended; and

WHEREAS, the City, as the local government with land use jurisdiction over the Northeast Ridge, and the County of San Mateo, in its capacity as Plan Operator and Habitat Manager for Conserved Habitat, applied to the Service for an amendment to add the callippe to the HCP's incidental take permit ("ITP") to authorize incidental take that may result from the development of the Northeast Ridge or from ongoing management and monitoring activities; and

WHEREAS, in addition to the requested amendment to the ITP, the City and the County applied for amendment to three sections of the HCP (collectively designated by the Service as "HCP Amendment No. 5"), as follows:

- (a) Section V.B: Funding Program – to describe the supplemental funding being provided by the remaining development in the Northeast Ridge;
- (b) Section V.G: Incidental Take Permit – to add callippe and bay checkerspot butterfly (another species addressed in the HCP but not listed at the time the ITP was issued) to the list of species for which take is covered under the HCP;
- (c) Chapter VII: Revised Operating Program – changing the operating program to reflect the changes made by the 2007 Modified Project, including supplemental funding; and

WHEREAS, the revision to Chapter VII was, as in 1990, processed as an equivalent exchange amendment, which requires approval of the property owner, the City, and the Service, while the conforming changes to Sections V.B and V.G were processed through the "all other amendments" provision of the HCP, which requires approval of the property owner, the City, the Service, and, to the extent the changes affect Conserved Habitat, the County; and

WHEREAS, the amendments to Sections V.B and V.G, 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; and

WHEREAS, the HCP allows equivalent exchange amendments to the operating programs for planned development parcels such as the Northeast Ridge 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; and

WHEREAS, pursuant to NEPA, the Service conducted a separate, independent, environmental review of the impacts of HCP Amendment No. 5, and was the lead agency

under NEPA with respect to such environmental analysis. The Service found that implementation of the HCP, as modified by HCP Amendment No. 5, would not result in significant effects to the environment; and

WHEREAS, the Service completed its environmental review and approved HCP Amendment No. 5 and issued an amended Section 10(a)(1)(B) Incidental Take Permit, as evidenced by the following documents, all of which have been provided to the City Council and are incorporated herein by reference:

- (a) USFWS - San Bruno Mountain Habitat Conservation Plan Environmental Assessment, dated October, 2007;
- (b) 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, dated April 15, 2008;
- (c) USFWS – Intra-Service Biological Opinion on the Amendment to the San Bruno Mountain Habitat Conservation Plan, dated May 20, 2009;
- (d) USFWS – San Bruno Mountain Habitat Conservation Plan Amendment 5, Finding of No Significant Impact – Summary of Public Comments and Service's Response to Comments, dated May, 2009;
- (e) 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, dated May 28, 2009 (the "FONSI");
- (f) Amended Text of San Bruno Mountain HCP – As Amended to Support ITP 215574-5 (the "HCP Amendment");
- (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 (the "ITP Permit Amendment"), dated May 28, 2009; and

WHEREAS, pursuant to Section IX.A.3 of the Implementing Agreement, the Service found in its FONSI (page 24) that the revised operating program for the Northeast Ridge in HCP Amendment No. 5 will result in Conserved Habitat that is larger in size and higher in biological value than the habitat that will be lost as a result of the HCP Amendment and that, pursuant to Section IX.B of the Implementing Agreement, the Service concluded in its FONSI that other amendments proposed as part of HCP Amendment No. 5 do 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; and

WHEREAS, the City Council has reviewed the FONSI, the HCP Amendment, and the ITP Amendment, and has found and determined that HCP Amendment No. 5 would be consistent with the purposes of the HCP, as illustrated by the following conclusions of the Service contained in the FONSI:

- (a) "The 2007 VTM would allow disturbances to 19.64 acres in UII-NII [Unit II-Neighborhood II], and avoids 21.20 acres of high quality callippe silverspot butterfly habitat within the area that would have been UII-NI [Unit II-Neighborhood I] under the 1989 VTM. The proposed development area in the 2007 VTM is within areas that generally have lower value habitat (i.e. lower density of larval host plants, fewer hilltops, and a grove of eucalyptus trees) than would have been disturbed under the 1989 VTM." *(Page 6)*
- (b) "The No Action Alternative may result in significant adverse impacts to vegetation and wildlife, because access to the Northeast Ridge parcel would be limited to the landowner, the Plan Operator would not conduct habitat management activities for the listed butterflies within these areas, which include the majority of the Northeast Ridge. The No Action Alternative would also result in no additional endowment funding and no expanded annual budget for vegetation management and monitoring in Conserved Habitat. ... With no additional funding, continuation of the current management program would be expected to result in the continued gradual loss of grassland habitat and decreases in butterfly distribution." *(Page 11)*
- (c) "The 2007 VTM results in less fragmentation than the 1989 VTM due to clustering of the development in Unit-II Neighborhood-II (Landmark) (UII-NII). The deletion of UII-NI will result in a larger, contiguous grassland habitat block that includes the two primary hilltop areas on the Northeast Ridge, Callippe Hill and an unnamed hill to the east. ... The 2007 VTM increases the amount of development near Guadalupe Canyon Parkway, but it is not expected that this will present a significant barrier to the callippe silverspot butterfly. Habitat would be protected on all four sides of the Carter Street/Guadalupe Canyon Parkway intersection, including a narrow hilltop that will be partially disturbed by temporary activities. At the current time, movement of this endangered species in this area is partially restricted by a 9.09 acres eucalyptus grove that would be removed under the 2007 VTM. An emergency vehicle access that part of the 2007 VTM will connect the development to Guadalupe Canyon Parkway. The emergency vehicle access will have a smaller footprint and will be less trafficked than the public roadway planned in the 1989 VTM." *(Page 13)*
- (d) "The residential development likely will not be a barrier to the callippe silverspot butterfly and the mission blue butterfly because of their ability to

fly through the cut and thinned eucalyptus grove, open areas, spaces between homes, and around the north side of the development." *(Page 14)*

- (e) "The implementation of the 2007 VTM will not result in a complete barrier to east-west movement of [the callippe and mission blue butterflies] along the north side of the proposed residential units 39-50, which are directly south of Guadalupe Canyon Parkway, or prevent movement back and forth over Guadalupe Canyon Parkway." *(Page 15)*
- (f) "Without implementation of the management activities, the San Bruno elfin butterfly likely will decline in status, and the callippe silverspot butterfly and the mission blue butterfly are likely to be extirpated in the foreseeable future from San Bruno Mountain." *(Page 17)*
- (g) "Amending the HCP will allow for development in the Northeast Ridge, which is not located within critical habitat; the additional funding included in the Amendment will be provided for invasive plant control and management that likely will enhance the primary constituent elements not only within the critical habitat unit, but throughout the Mountain." *(Page 20)*
- (h) "The Biological Opinion (Service 2009) concluded that without the supplemental funding and associated enhanced management actions the habitats utilized by the callippe silverspot butterfly and the other listed butterfly species will continue to decline to such a point that these species are highly likely to become extirpated from this site in the foreseeable future." *(Page 24)*; and

WHEREAS, HCP Amendment No. 5 was approved by the Board of Supervisors of the County of San Mateo on September 22, 2009, but only with respect to the impact of such Amendment on the Conserved Habitat, as provided by Section IX.B of the Implementing Agreement; and

WHEREAS, based upon an environmental checklist evaluating the changes proposed in HCP Amendment No. 5, the City has determined that an addendum to the HCP EIR/EA is the appropriate level of review under the California Environmental Quality Act; and

WHEREAS, LSA Associates, Inc. prepared a proposed addendum to the HCP EIR/EA dated December, 2009 ("Second Addendum to the HCP EIR/EA"), which analyzed the potential environmental effects that could result from implementation of the HCP as modified by HCP Amendment No. 5 and concluded that 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; and

WHEREAS, LSA Associates, Inc. prepared an update to the Second Addendum to the NER EIR, a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference, which determined that no revision to the analysis performed in the Second Addendum to the NER EIR is necessary because there have been no changes to the 2007 Modified Project and there have been no changes in circumstances that alter the Second Addendum to the NER EIR's evaluation since the City Council initially considered the 2007 Modified Project; and

WHEREAS, on January 19, 2010, the City Council conducted a public hearing on HCP Amendment No. 5 and the proposed final approval of the 2007 Modified Project, at which time any person interested in the matter was given an opportunity to be heard; and

WHEREAS, on January 19, 2010, after consideration of the comments received in the public hearing and the documents and information provided in the administrative record, as defined in Section 2 below, the City Council adopted this Resolution No. 2010-01 and Resolution No. 2010-02, granting final approval to the 2007 Modified Project and approving HCP Amendment No. 5.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Brisbane as follows:

1. **Incorporation of Recitals.** All of the recitals set forth above are incorporated into this Resolution and made a part hereof.

2. **Designation of Administrative Record.** In addition to the staff reports and written communications submitted to the City Council by members of the public, the City Council acknowledges that:

- (a) All of the documents listed in Exhibit "A-1", attached hereto and made a part hereof, were furnished to the City Council in connection with its consideration and adoption of Resolution No. 2008-05, granting preliminary approval of the Second Addendum to the NER EIR, and Resolution No. 2008-06, granting conceptual approval of the 2007 Modified Project; and
- (b) All of the additional documents listed in Exhibit "A-2", attached hereto and made a part hereof, have been furnished to the City Council in connection with its consideration and adoption of this Resolution No. 2010-01 and Resolution No. 2010-02.

Each of the documents listed in Exhibits A-1 and A-2 shall constitute a part of the administrative record of the proceedings conducted by the City Council with respect to its approvals of the Second Addendum to the HCP EIR/EA and the Second Addendum to the NER EIR.

3. Approval and Certification of the Second Addendum to the HCP EIR/EA. Based upon the findings and determinations set forth in Exhibit "C-1" attached hereto and made a part hereof, the City Council hereby grants approval of the Second Addendum to the HCP EIR/EA and certifies that:

- (a) The Second Addendum to the HCP EIR/EA has been prepared and completed in compliance with CEQA;
- (b) The Second Addendum to the HCP EIR/EA, along with the HCP EIR/EA and the First Addendum to the HCP EIR/EA, together with other related documents as listed above, were presented to the City Council and have been reviewed and considered by the City Council prior to making a decision on HCP Amendment No. 5; and
- (c) Implementation of the HCP as modified by HCP Amendment No. 5 will not result in new significant impacts or substantial increases in severity of previously identified significant effects due to changes in the HCP or to

changed circumstances, and no new mitigation measures or alternatives that would substantially reduce impacts are now feasible or available; and

- (d) The City Council has independently reviewed and analyzed the data in the Second Addendum to the HCP EIR/EA and determined it was adequate, along with the HCP EIR/EA and First Addendum to the HCP EIR/EA, for the actions being taken on HCP Amendment No. 5, and certification thereof reflects the independent judgment of the City Council.

The Director of Community Development is authorized and instructed to file a Notice of Determination for the Second Addendum to the HCP EIR/EA in the manner provided by law.

4. Approval and Certification of the Second Addendum to the NER EIR.

Based upon the findings and determinations set forth in Exhibit "C-2" attached hereto and made a part hereof, the City Council hereby grants final approval of the Second Addendum to the NER EIR and certifies that:

- (a) The Second Addendum to the NER EIR has been prepared and completed in compliance with CEQA; and
- (b) The Second Addendum to the NER EIR, along with the NER EIR and the First Addendum to the NER EIR, together with other related documents as listed above, were presented to the City Council and have been reviewed and considered by the City Council prior to making a decision on the 2007 Modified Project; and
- (c) The 2007 Modified Project and the Second Addendum to the NER EIR are consistent and comply with the conditions and requirements of the HCP Amendment and the ITP Amendment, and no changes to the 2007 Modified Project or Second Addendum to the NER EIR are required by the Service's approval of the HCP Amendment and the ITP Amendment; and

- (d) No revisions to the Second Addendum to the NER EIR are required because there have been no changes to the 2007 Modified Project and there have been no changes in circumstances that alter the analysis of impacts in the Second Addendum to the NER EIR since the City Council initially considered the 2007 Modified Project; and
- (e) The 2007 Modified Project would not result in new significant effects or substantial increases in severity of previously identified significant effects due to changes in the project or to changed circumstances, and no new mitigation or alternatives that would substantially reduce impacts are now feasible or available; and
- (f) The City Council has independently reviewed and analyzed the data in the Second Addendum to the NER EIR and determined it is adequate, along with the NER EIR and First Addendum to the NER EIR, for the actions being taken on the 2007 Modified Project, and certification thereof reflects the independent judgment of the City Council.

The Director of Community Development is authorized and instructed to file a Notice of Determination for the Second Addendum to the NER EIR in the manner provided by law.

W. CLARKE CONWAY, Mayor

I hereby certify that the foregoing Resolution No. 2010-01 was duly and regularly adopted at the regular meeting of the Brisbane City Council on _____, 2010, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Sheri Marie Spediacci, City Clerk

EXHIBIT "A-1"

DOCUMENTS INCLUDED IN ADMINISTRATIVE RECORD FOR PRELIMINARY APPROVALS

1. Adoption and Implementation of San Bruno Mountain Habitat Conservation Plan and Endangered Species Act Section 10(a) Permit, dated November, 1982.
2. Northeast Ridge Development of San Bruno Mountain Final Environmental Impact Report, dated December, 1982 and certified 1983.
3. Northeast Ridge Project Addendum to Final Environmental Impact Report and Response to Comments, dated September, 1989.
4. Northeast Ridge Project Equivalent Exchange Amendment to the San Bruno Mountain Habitat Conservation Plan, dated December, 1989.
5. USFWS Federal listing of the callippe silverspot butterfly as an Endangered Species, as published in the Federal Register on December 5 1997.
6. Biological Opinion prepared by US Fish and Wildlife Service dated April 7, 2006.
7. Northeast Ridge Unit II EIR Addendum, dated June, 2007.
8. Landmark at the Ridge Application for Vesting Tentative Map and Associated Permits submitted by Brookfield Homes Bay Area Inc., dated May, 2007 (the 2007 Modified Project).
9. City of Brisbane Planning Commission Agenda Reports regarding the Northeast Ridge from June 28, 2007 through October 25, 2007.
10. City of Brisbane Planning Commission Minutes regarding the Northeast Ridge from June 28, 2007 through October 25, 2007.
11. Correspondence received from the public to the Planning Commission submitted for Northeast Ridge Hearings conducted from June 28, 2007 through October 25, 2007.
12. San Bruno Mountain Management Plan, dated October, 2007.
13. San Mateo County Staff and Technical Advisory Committee Report regarding Habitat Management Plan with attachments, dated 2008.
14. Minutes of City Council meeting on January 28, 2008.
15. Correspondence received from the public to the City Council submitted for Council meeting on January 28, 2008.

16. Correspondence received from the public to the City Council submitted for Northeast Ridge Hearings conducted on February 11, 2008 and March 10, 2008.
17. Materials Regarding Storm Water Regulation applicable to the Northeast Ridge development:
 - (a) Project Conditions of Approval
 - (b) Grading Permit Conditions
 - (c) Adopted Best Management Practices – 6/24/02
 - (d) NPDES Data Worksheet
 - (e) NPDES Permit Reporting Information
 - (f) NPDES Site Design Checklist
18. Brisbane Shuttle bus route map.

EXHIBIT "A-2"

ADDITIONAL DOCUMENTS INCLUDED IN ADMINISTRATIVE RECORD FOR FINAL APPROVALS

1. Final Environmental Impact Report and Environmental Assessment for the Adoption of the San Bruno Mountain Habitat Conservation Plan and Endangered Species Act 10(a) Permit, dated November, 1982.
2. Addendum to the Final Environmental Impact Report and Supplement to the Environmental Assessment on Implementation of the San Bruno Mountain Conservation Plan and Endangered Species Act Section 10(a) Permit PRT-2-9818, dated November, 1989.
3. USFWS – San Bruno Mountain Habitat Conservation Plan Environmental Assessment, dated October, 2007.
4. Agenda Report for City Council meeting on January 28, 2008.
5. Agenda Report for City Council meeting on February 11, 2008.
6. Minutes of City Council meeting on February 11, 2008.
7. Agenda Report for City Council meeting on March 10, 2008.
8. Resolution 2008-05, A Resolution Of The City Council Of The City Of Brisbane Making The Findings And Granting Preliminary Approval Of The 2007 Addendum To The 1983 Final Environmental Impact Report On The Northeast Ridge Residential Development, Subject To Final Approval And Certification At A Later Date, adopted on March 10, 2008.
9. Resolution 2008-06, A Resolution Of The City Council Of The City Of Brisbane Granting Conceptual 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), Subject To Final Approval To Be Granted At A Later Date, adopted on March 10, 2008.
10. Minutes of City Council meeting on March 10, 2008.
11. 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, dated April 15, 2008.
12. San Bruno Mountain Habitat Conservation Plan Year 2008 Activities Report for Special Status Species, Endangered Species Permit PRT-2-9818, TRA Environmental Sciences, January 2009

13. USFWS – Intra-Service Biological Opinion on the Amendment to the San Bruno Mountain Habitat Conservation Plan, dated May 20, 2009.
14. USFWS – San Bruno Mountain Habitat Conservation Plan Amendment 5, Finding of No Significant Impact – Summary of Public Comments and Service's Response to Comments, dated May, 2009.
15. 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, dated May 28, 2009 (the "FONSI").
16. Amended Text of San Bruno Mountain HCP – As Amended to Support ITP 215574-5 (the "HCP Amendment") (which includes the amended Operating Program for the Northeast Ridge project).
17. 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 (the "ITP Permit Amendment"), dated May 28, 2009.
18. Response to Issues Raised During the Review of Status Reports on San Bruno Mountain Habitat Management and Biological Monitoring, San Bruno Mountain HCP Technical Advisory Committee, August 2009
19. Notice of finding of no significant impact (FONSI) and issuance of amended incidental take permit, as published by the U.S. Fish and Wildlife Service, 74 Federal Register 50985, dated October 2, 2009.
20. 2009 Addendum to the San Bruno Mountain Habitat Conservation Plan 1982 Environmental Impact Report/Environmental Assessment, dated December, 2009.
21. Update to the 2007 Northeast Ridge EIR Addendum.
22. Notice of Public Hearing for City Council meeting on November 16, 2009 (at the City Council meeting on November 16, 2009, the public hearing was continued to January 19, 2010).
23. Agenda Report for City Council meeting on January 19, 2010.

EXHIBIT "B"

UPDATE TO 2007 NORTHEAST RIDGE EIR ADDENDUM

Introduction

This document provides a review and update for the Northeast Ridge Unit II EIR Addendum to the Final EIR for the Northeast Ridge residential development project prepared in 2007 by the City of Brisbane (the "Second Addendum to the NER EIR" or "Second Addendum"). The City of Brisbane, as Lead Agency under the California Environmental Quality Act ("CEQA"), prepared the Second Addendum to analyze the potential effects of proposed modifications to the approved Northeast Ridge project that would reduce development acreage and further minimize impacts to the endangered callippe silverspot butterfly (the "2007 Modified Project"). The Brisbane City Council considered the Addendum in March 2008 and made the preliminary findings that approval of the 2007 Modified Project would be appropriate, based on the reduction in environmental impacts associated with the project and the consistency of the project with local ordinances.¹ However, the City could not grant final approvals for the 2007 Modified Project until the US Fish & Wildlife Service (the "Service"): (1) issued an amended incidental take permit ("ITP") authorizing incidental take of the callippe in connection with development and habitat management activities under the HCP, and (2) approved an amendment to the HCP's operating program for the Northeast Ridge to maintain consistency with the 2007 Modified Project.²

In May 2009, after preparation of an Environmental Assessment pursuant to NEPA ("2007 EA"), the Service issued a Finding Of No Significant Impact ("2009 FONSI") and an amended ITP and approved the amended Northeast Ridge operating program (along with conforming amendments to other provisions of the HCP in Sections V.B and V.G). The City now may approve the 2007 Modified Project if it finds the project is consistent and complies with the ITP and HCP, as amended.³ Before doing so, however, the City Council must make findings regarding the potential environmental effects of the Northeast Ridge project, as amended by the 2007 Modified Project. Accordingly, the City has requested this update to the Second Addendum to determine whether any changes in the 2007 Modified Project or the circumstances surrounding its implementation have occurred, or new information has become available, since the preparation and preliminary approval of the Second Addendum that would alter the analysis contained therein or the Council's findings and conclusions regarding the project, as set forth in Resolutions 2008-05 and 2008-06..

¹ Brisbane City Council Resolutions No. 2008-05 and No. 2008-06, March 10, 2008.

² In order to approve the 2007 Modified Project, the City must make findings that the project is consistent and complies with the terms of the HCP and ITP as amended. See Appendix A to the Agenda Report for the City Council meeting on January 19, 2010.

³ The City also is required to approve the HCP amendments; that action is the subject of the 2009 Second Addendum to the HCP EIR/EA that was prepared for the adoption of the HCP.

Update

The 2007 Modified Project itself has not changed since the Second Addendum to the NER EIR was prepared in 2007, as evidenced by the fact that Brookfield Northeast Ridge II LLC ("Brookfield") has not submitted any revisions to the 2007 VTM or related materials. The 2007 VTM and related entitlements before the City Council for consideration, including the Planned Development Permit, Design Permit and Grading Permit, are the same as those analyzed in the Second Addendum in 2007 and considered by the Council in March 2008. No changes to the 2007 Modified Project are necessary to maintain consistency with the amended ITP and HCP amendments, approved by the Service in May 2009.

Funding associated with the 2007 Modified Project has not changed, but the Service approvals clarify the various components of the supplemental funding. New homes constructed within the Northeast Ridge as part of the 2007 Modified Project would pay both the existing inflation-adjusted HCP charge, which was set at \$20.00 in 1982 and was approximately \$83 in 2005 dollars; and (2) a new, fixed annual charge of \$716.73 per home (not adjusted for inflation). This supplemental funding is in addition to the \$4 million that Brookfield would provide from the sale of homes built under the 2007 Modified Project to fund a non-wasting HCP Endowment for habitat management activities. The Service has estimated that the HCP Endowment would yield an annual return of approximately \$200,000. This Endowment income, when combined with the existing HCP funding and the proposed supplemental funding, would generate approximately \$400,000 per year for habitat management and monitoring activities.

Nor has any change occurred in the relevant regulatory environment. As noted above, the Service has issued incidental take authorization for the callippe and bay checkerspot butterflies and has approved amendments to the HCP consistent with the 2007 Modified Project. However, the Second Addendum disclosed that those actions were necessary for approval of the 2007 Modified Project. The Service's actions therefore do not represent a change in the circumstances underlying the proposed project that would alter the analysis in the Second Addendum.

Minor changes have occurred in the physical conditions of the Northeast Ridge parcel due to ongoing construction and related activities pursuant to previous approvals that are not part of the 2007 Modified Project. These ongoing activities were previously disclosed and considered in the Second Addendum and previous environmental review documents and therefore do not alter the analysis contained in the Second Addendum. The changes are as follows:

First, seventeen new homes within Northeast Ridge Unit I have been completed since the Second Addendum was prepared, pursuant to existing approvals issued under the 1989 VTM for the Northeast Ridge. As explained in the Second Addendum, these homes were not part of the 2007 Modified Project, but because they had not yet been constructed and occupied⁴ when the Second Addendum was prepared, they were described in that

⁴ Construction of eleven of these homes was underway when the Addendum was prepared in 2007, while construction of the remaining six had not yet begun.

document in order to provide the most conservative analysis of future impacts.⁵ Due to the timing of their construction, these homes also would be subject to the supplemental HCP funding provisions that apply to the 2007 Modified Project.

Second, thinning and removal of eucalyptus trees has occurred, as required under the 1989 operating program for the Northeast Ridge. The tree removal was done in order to remove obstacles to movement by callippe and other species of concern. The tree removal was not part of the 2007 Modified Project⁶ and did not require incidental take authorization because it did not occur in callippe habitat.⁷

Third, routine erosion control measures have been applied to the areas disturbed by eucalyptus removal and by the construction of the seventeen homes described above.

There is no evidence that relevant changes have occurred in the circumstances surrounding implementation of the proposed project, as described above, nor has new information become available, that would warrant reconsideration of the analysis in the Second Addendum. The habitat management activities for the HCP have not been changed, and the results of recent HCP monitoring activities indicate that populations of species of concern and their habitat remain within recent historical ranges, consistent with the assumptions underlying the analysis in the Second Addendum.⁸ Recent events such as

⁵ See, e.g., Second Addendum to the NER EIR at page 27.

⁶ The Second Addendum stated that the 2007 Modified Project would include thinning and removal of eucalyptus trees from the Northeast Ridge development area. However, the revised Northeast Ridge operating program does not require removal of eucalyptus. Removal of eucalyptus from developable areas, and thinning of eucalyptus in conserved habitat, was required under the 1989 operating program for the Northeast Ridge. This activity was delayed for some time by the listing of the callippe, but in November 2007 the HCP Habitat Manager (TRA) determined, and the Service concurred, that tree removal would not cause impacts to butterfly habitat. Thereafter, between December 2007 and June 2008, Brookfield removed the eucalyptus trees within the area currently designated for development and thinned the trees within the area currently designated as conserved habitat under the 1989 operating program. If the 2007 Modified Project and the related HCP EIR/EA Second Addendum and NER EIR Second Addendum are approved, the only additional tree removal activities to occur would be the removal of any remaining eucalyptus trees within areas newly designated for development.

⁷ See the Biological Study and Analysis of Conserved Habitat for Amendments to the Habitat Conservation Plan for San Bruno Mountain and Incidental Take Permit PRT 2-9818, prepared by TRA Environmental Sciences, p. 7 (October 2007).

⁸ See, e.g., San Bruno Mountain Habitat Conservation Plan Year 2008 Activities Report for Special Status Species, Endangered Species Permit PRT-2-9818, p. 8 (TRA Environmental Sciences January 2009) (finding that no long-term changes in callippe population sizes are occurring); San Bruno Mountain Habitat Conservation Plan Year 2006 Activities Report for Special Status Species, Endangered Species Permit PRT-2-9818, p. 10 (TRA Environmental Sciences February 2007) (explaining that, to date, no statistically significant long-term trends in mission blue population have been detected).

the 2008 fires on the Southeast Ridge and in Owl and Buckeye canyons on San Bruno Mountain are within the range of natural events to which the San Bruno Mountain ecosystem is adapted and may have both helpful and harmful effects, but such events do not necessarily represent cause for concern regarding the status of the callippe or other species of concern. Within the last five years alone large fires have occurred within the Brisbane Acres, Southeast Ridge and the Northeast Ridge management units. There has not been any data to suggest that fires have negatively impacted the callippe silverspot population. In addition, fire is considered to be beneficial to callippe silverspot habitat because it opens up brush stands and removes thatch which suppress the growth of the callippes' host plant, *Viola pedunculata*. In any case, recovery of habitat in these areas will be monitored as part of the HCP habitat management program and restoration efforts may be undertaken as needed.⁹ In addition, the recent issuance by the Service of the FONSI and amended ITP, and its approval of the amendments to the HCP, provide further support for the conclusions contained in the Second Addendum that the 2007 Modified Project would not result in new or substantially more severe significant environmental impacts.¹⁰

Finally, no new mitigation measures or feasible alternatives that would substantially reduce impacts associated with the 2007 Modified Project have become available since the Second Addendum was prepared. Although members of the public have suggested alternatives, such as a "no-development" configuration for the Northeast Ridge, these suggestions are not considered feasible, inasmuch as they would not be consistent with land use designations under the HCP or with existing development entitlements associated with the Northeast Ridge project, nor have these suggestions identified alternative sources of funding to replace the supplemental funding associated with the 2007 Modified Project.¹¹

In conclusion, no changes in the 2007 Modified Project or the surrounding circumstances have occurred, and no new information has become available, since the preparation of the Unit II NER Addendum that would warrant revision to the analysis in the Second Addendum to the NER EIR.

⁹ See Response to Issues Raised During the Review of Status Reports on San Bruno Mountain Habitat Management and Biological Monitoring, San Bruno Mountain HCP Technical Advisory Committee, August 2009; Year 2008 Activities Report, *supra*, at p. 8.

¹⁰ See Environmental Assessment for the San Bruno Mountain Habitat Conservation Plan Amendment, U.S. Fish and Wildlife Service, October 2007; Biological Opinion on the Amendment of the San Bruno Mountain Habitat Conservation Plan, U.S. Fish and Wildlife Service May 20, 2009; Amended Section 10(a)(1)(B) Incidental Take Permit for the San Bruno Mountain Habitat Conservation Plan, San Mateo County, California, U.S. Fish and Wildlife Service, May 20, 2009; Findings and Recommendations Pursuant to the Endangered Species Act and Finding of No Significant Impact pursuant to the National Environmental Policy Act for the Issuance of a Section 10(a)(1)(B) Incidental Take Permit (TE215574-5), U.S. Fish and Wildlife Service, May 28, 2009.

¹¹ See Summary of Public Comments and Service's Response to Comments on the San Bruno Mountain Habitat Conservation Plan Amendment Environmental Assessment, U.S. Fish and Wildlife Service, May 20, 2009.

EXHIBIT "C-1"

**FINDINGS FOR APPROVAL AND CERTIFICATION OF THE
SECOND ADDENDUM TO THE HCP EIR/EA**

THE CITY COUNCIL HEREBY FINDS AND DETERMINES THAT:

- (a) No new significant environmental effects or substantial increases in the severity of previously identified significant effects will be created by HCP Amendment No. 5 because:
- (1) The HCP as amended will reduce the overall area subject to development within the Northeast Ridge and conserve high value hilltop habitat for endangered butterfly species, thereby reducing the impacts associated with development. The size and intensity of the development within the Northeast Ridge have been substantially decreased and the area of land to be preserved as habitat for endangered species has been significantly increased.
 - (2) The revised operating program for the Northeast Ridge will not result in habitat fragmentation of butterfly species, including the callippe and mission blue. Guadalupe Canyon Parkway is not a permanent barrier for the callippe and mission blue butterflies, which have been observed crossing the roadway during 25 years of annual monitoring. There will be Conserved Habitat varying in width from 87 feet to 250 feet on both sides of the road, and the amendment replaces a public roadway connecting development to Guadalupe Canyon Parkway with a smaller and less trafficked emergency vehicle access. The removal and thinning of eucalyptus trees will reduce an existing barrier in the area, and the residential development adjacent to Guadalupe Canyon Parkway will not be a barrier because of the butterflies ability to fly over the homes or through spaces between the homes or around the homes by flying on north side of the development.
 - (3) The amendments do not propose any change in the HCP management program for conserved habitat and will not result in a substantial

change in the impacts associated with management activities. The HCP EIR/EA fully examined the environmental effects of management and monitoring activities, which are not being changed by HCP Amendment No. 5. The HCP management program has been successful in slowing the loss of grassland habitat and managing the spread of brush/scrub and invasive plants. Supplemental funding provided in HCP Amendment No. 5 will allow for additional areas to be managed, including areas that previously could not be managed efficiently due to the prohibition of take of the callippe. The effectiveness of HCP management is demonstrated by the fact that butterfly populations have been relatively stable during the period of the HCP.

(4) The funding provided by HCP Amendment No. 5 is adequate. Over the course of the HCP's history, annual spending has varied widely from year to year. Current funding under the HCP is approximately \$140,000 annually. HCP Amendment No. 5 is expected to provide supplemental funding in the amount of \$275,000 annual, almost twice the existing HCP budget. This additional funding will allow the HCP Operator to expand its management and monitoring activities beyond the "core" program of controlling exotic species to providing a more comprehensive management of all high priority grassland areas.

(b) The circumstances under which the HCP, as modified by HCP Amendment No. 5, will be undertaken have not substantially changed in ways that would require any major revisions to the HCP EIR/EA.

(1) The listing of the callippe silverspot butterfly and bay checkerspot butterfly under the federal Endangered Species Act subsequent to the certification of the 1983 EIR and adoption of the 1989 Addendum did not change the circumstances in a way that requires major revisions to the HCP EIR/EA because impacts to the species were fully evaluated in the HCP EIR/EA and First Addendum to the HCP EIR/EA. The callippe silverspot and bay checkerspot butterflies have

always been designated as species of concern under the HCP, and their possible listing under the Act was foreseen at the time the HCP was adopted.

- (2) HCP Amendment No. 5 decreases the impacts to the callippe silverspot butterfly by increasing the amount of conserved habitat and increasing the funding available for management, as described in the Second Addendum to the HCP EIR/EA.
- (3) Current environmental conditions and identified threats to covered species and their habitats fall within the range of conditions that the HCP was designed to address.
- (4) Cumulative effects are not more significant than previously analyzed. The HCP inherently minimizes potential cumulative effects by planning for comprehensive conservation and limited development within the Mountain. HCP Amendment No. 5 would allow the completion of development in the final remaining Planned Parcel. All prior development activities have been accounted for, and no further development is anticipated under the HCP.

Furthermore, the U.S. Fish and Wildlife Service, in the FONSI and biological opinion, fully evaluated HCP Amendment No. 5, which was found to have no significant impact on the environment.

- (c) Implementation of the HCP as modified by HCP Amendment No. 5 will not result in new or more severe significant effects than those previously identified and evaluated in the HCP EIR/EA and the First Addendum to the HCP EIR/EA. HCP Amendment No. 5 represents a superior design to the Northeast Ridge that will reduce the extent and severity of impacts upon the environment, and provides for supplemental funding that can be used to carry out additional management and monitoring activities for the benefit of species covered by the HCP.
- (d) No new mitigation measures or alternatives, in addition to those incorporated into HCP Amendment No. 5, that would substantially reduce impacts are now feasible or available. Specifically, “no development” or “further reduced

development” alternatives are not feasible because they are not consistent with the land use entitlements for the Northeast Ridge, and no viable sources of funding to supplement existing management have been identified.

EXHIBIT "C-2"

**FINDINGS FOR APPROVAL AND CERTIFICATION OF THE
SECOND ADDENDUM TO NER EIR**

THE CITY COUNCIL HEREBY FINDS AND DETERMINES THAT:

- (a) No new significant environmental effects or substantial increases in the severity of previously identified significant effects will be created by the 2007 Modified Project because
- (1) The 2007 Modified Project will reduce the overall area subject to development within the Northeast Ridge and conserve high value hilltop habitat for endangered butterfly species, thereby reducing the impacts associated with development. The size and intensity of the development within the Northeast Ridge have been substantially decreased and the area of land to be preserved as habitat for endangered species has been significantly increased.
 - (2) The 2007 Modified Project will not result in habitat fragmentation of butterfly species, including the callippe and mission blue. Guadalupe Canyon Parkway is not a permanent barrier for the callippe and mission blue butterflies, which have been observed crossing the roadway during 25 years of annual monitoring. There will be Conserved Habitat varying in width from 87 feet to 250 feet on both sides of the road, and the amendment and replaces a public roadway connecting development to Guadalupe Canyon Parkway with a smaller and less trafficked emergency vehicle access. The removal and thinning of eucalyptus trees will reduce an existing barrier in the area, and the residential development adjacent to Guadalupe Canyon Parkway will not be a barrier because of the butterflies ability to fly over the homes or through spaces between the homes or around the homes by flying on the north side of the development.
 - (3) The 2007 Modified Project is expected to provide supplemental funding in the amount of \$275,000 annual, almost twice the existing

HCP budget. This additional funding will allow the HCP Operator to expand its management and monitoring activities beyond the “core” program of controlling exotic species to providing a more comprehensive management of all high priority grassland areas.

- (b) The circumstances under which the 2007 Modified Project will be undertaken have not substantially changed in ways that would require any major revisions to the NER EIR.
 - (1) The listing of the callippe silverspot butterfly and bay checkerspot butterfly under the federal Endangered Species Act subsequent to the certification of the NER EIR and adoption of the First Addendum did not change the circumstances in a way that requires major revisions to the NER EIR because impacts to the species were fully evaluated in the NER EIR and First Addendum and in the CEQA/NEPA documents prepared for the adoption of the HCP and subsequent amendments to the HCP.
 - (2) The 2007 Modified Project decreases the impacts to the callippe silverspot butterfly by increasing the amount of conserved habitat and increasing the funding available for management, as described in the Second Addendum to the NER EIR.
 - (3) Current environmental conditions and identified threats to covered species and their habitats fall within the range of conditions that the HCP was designed to address.
 - (4) Cumulative effects are not more significant than previously analyzed. The 2007 Modified Project is part of the development contemplated under the HCP, which inherently minimizes potential cumulative effects by planning for comprehensive conservation and limited development within the Mountain. The 2007 Modified Project would allow the completion of development in the final remaining Planned Parcel. All prior development activities have been accounted for, and no further development is anticipated under the HCP.

Furthermore, the U.S. Fish and Wildlife Service, in the FONSI and biological opinion, fully evaluated HCP Amendment No. 5, which was found to have no significant impact on the environment.

- (c) Implementation of the 2007 Modified Project will not result in new or more severe significant effects than those previously identified and evaluated in the NER EIR and the First Addendum. The 2007 Modified Project represents a superior design that will reduce the extent and severity of impacts upon the environment.
- (d) No new mitigation measures or alternatives, in addition to those incorporated into the 2007 Modified Project, that would substantially reduce impacts are now feasible or available. Specifically, “no development” or “further reduced development” alternatives are not feasible because they are not consistent with the land use entitlements for the Northeast Ridge, and no viable sources of funding to supplement existing management have been identified.