

## RESOLUTION NO. 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)**

**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**, on January 22, 2001, the Brisbane City Council approved a modification to the design permit and the grading permit for the single-family homes in Unit I, Neighborhood II of the Project; 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 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 an 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 that 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, 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 Resolution No. 2010-01, approving and certifying the Second Addendum to the NER EIR and the Second Addendum to the HCP EIR/EA, and this Resolution No. 2010-02.

**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 prepared for the 2007 Modified Project, 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 Resolution No. 2010-01 and this 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 approval of HCP Amendment No. 5 and the 2007 Modified Project.

3. **Approval of HCP Amendment No. 5.** Based upon the findings and determinations set forth in Exhibit "B-1" attached hereto and made a part hereof, the City Council hereby grants approval of HCP Amendment No. 5, and the HCP shall be amended as set forth in Exhibit "D" attached hereto and made a part hereof. In accordance with Section IX.C of the Implementing Agreement, the City Manager is directed to provide a certified copy of this Resolution No. 2010-02, or any instruments and documents that may be required to evidence the City's approval of such amendment, to the Service, the California Department of Fish and Game, and to Brookfield.

4. **Finding of Consistency with the HCP Amendment and the ITP Permit Amendment.** The City Council finds and determines that the 2007 Modified Project is consistent and complies with the conditions and requirements of HCP

Amendment No. 5 and the ITP Amendment and that no changes to the 2007 Modified Project or Second Addendum to the NER EIR are required. The 2009 Conditions of Approval for the Northeast Ridge Project attached hereto as Exhibit "C" have been updated to incorporate all of the conditions or mitigation measures required by HCP Amendment No. 5 and the ITP Amendment.

5. **Final Approval of the 2007 Modified Project.**
  - (a) **Vesting Tentative Map, VTM-1-06.** The City Council ratifies and approves the findings for approval of VTM-1-06 made by the Council in Resolution No. 2008-06, as set forth in Exhibit "B-2" attached hereto and made a part hereof, as amended, and hereby grants final approval of the modification to the Vesting Tentative Map, subject to the 2009 Conditions of Approval set forth in Exhibit "C" attached hereto and made a part hereof.
  - (b) **Planned Development Permit, PD-1-06:** The City Council ratifies and approves the findings for approval of PD-1-06 made by the Council in Resolution No. 2008-06, as set forth in Exhibit "B-2" attached hereto and made a part hereof, and hereby grants final approval of the modification to the Planned Development Permit, subject to the 2009 Conditions of Approval set forth in Exhibit "C" attached hereto and made a part hereof.
  - (c) **Design Permit, DP-3-06:** The City Council ratifies and approves the findings for approval of DP-3-06 made by the Council in Resolution No. 2008-06, as set forth in Exhibit "B-2" attached hereto and made a part hereof, and hereby grants final approval of the application for modification to the Design Permit, subject to the 2009 Conditions of Approval set forth in Exhibit "C" attached hereto and made a part hereof.
  - (d) **Grading Permit EX-1-06:** The City Council ratifies and approves the findings for approval of EX-1-06 made by the Council in Resolution No. 2008-06, as set forth in Exhibit "B-2" attached hereto and made a part hereof, and hereby grants final approval of the application for modification to the Grading Permit, subject to the 2009 Conditions of Approval set forth in Exhibit "C" attached hereto and made a part hereof.

\_\_\_\_\_  
W. CLARKE CONWAY, Mayor

I hereby certify that the foregoing Resolution No. 2010-02 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-1"**

### **FINDINGS FOR APPROVAL OF HCP AMENDMENT NO. 5**

#### THE CITY COUNCIL FINDS AND DETERMINES THAT:

1. Amendment for Equivalent Exchange of Conserved Habitat within Northeast Ridge  
This amendment will provide new Conserved Habitat that is superior in biological value and larger in size than the habitat that will be lost because:
  - (a) The revised operating plan for the Northeast Ridge results in a net increase in Conserved Habitat of 8.93 acres over the prior operating plan (as amended in 1990).
  - (b) The new Conserved Habitat is higher in biological value because the revised operating plan for the Northeast Ridge 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 from the prior operating plan. As noted above, permanent impacts are reduced by 8.93 acres. Temporary disturbances are reduced by 11.43 acres. Reducing temporary disturbances is beneficial because it minimizes impacts to viola, which has proven difficult to restore from seed.
  - (c) The new Conserved Habitat is higher in biological value because the revised operating plan for the Northeast Ridge avoids impacts in a hilltop area that is important for callippe mating and maintains and expands the movement corridor along Guadalupe Canyon Parkway. Avoiding impacts to the hilltop area and reconfiguring the development adjacent to Guadalupe Canyon Parkway decreases indirect effects on the callippe, including habitat fragmentation.
  
2. Other Proposed Amendments  
The other changes to the HCP proposed in HCP Amendment No. 5 do not conflict with the primary purpose of the HCP to provide for the indefinite, long-term perpetuation of the mission blue and callippe and other species of concern because:

- (a) The modifications to the funding program (Section V.B) describe the supplemental funding provided by the revised operating program for the Northeast Ridge. The supplemental funding provided by the revised operating plan for the Northeast Ridge allows for additional management and monitoring activities to be undertaken, which will significantly benefit HCP species of concern, including callippe. The supplemental funding and the existing HCP funding are sufficient to carry out the management and monitoring activities specified in the Habitat Management Plan, which includes programs to manage and monitor all of the Conserved Habitat within the Mountain.
  
- (b) The changes to the list of species authorized for incidental take associated with HCP activities (Section V.G) conform the text of the HCP to the amended Section 10(a) Incidental Take Permit issued by the Service. The addition of incidental take authority for callippe and bay checkerspot butterfly allows management and monitoring activities to be carried out that are beneficial to the listed species, even though these activities may result in a small amount of take of callippe and other listed species of concern, including the bay checkerspot butterfly. Authorization of take for the callippe would allow the implementation of landscape-level management measures (e.g., grazing, mowing). These measures have been shown to benefit butterfly habitat by effectively controlling invasives and will result in an increase in the total area being managed.

## **EXHIBIT "B-2"**

### **FINDINGS FOR APPROVAL OF 2007 MODIFIED PROJECT**

THE CITY COUNCIL FINDS AND DETERMINES THAT:

1. **Vesting Tentative Map – Application VTM-1-06:**
  - (a) The modified Vesting Tentative Map, together with the provisions of its design and improvement, is consistent with the City's General Plan and complies with the applicable provisions of the City's Subdivision Ordinance.
  - (b) The real property to be subdivided, and each lot or parcel to be created is of such character that it can be used safely for building purposes without danger to health or peril from fire, flood, geologic hazard or other menace, as evidenced by the Second Addendum to the NER EIR.
  - (c) Each lot or parcel to be created will constitute a buildable site and will be capable of being developed in accordance with the applicable provisions of the Zoning Ordinance.
  - (d) The site is physically suitable for the type and proposed density of development, as evidenced by the Project's prior approvals and the existing similar residential uses that abut the area.
  - (e) The design of the modified subdivision and improvements, and the type of improvements will not result in new significant environmental effects, or more severe environmental effects than those identified in the NER EIR, that would cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat, or cause serious public health problems, as evidenced by the Second Addendum to the NER EIR.
  - (f) The design of the modified subdivision or type of improvements will not conflict with easements, acquired by the public at large, for access through, or use of, property within the proposed subdivision.
  - (g) The 2007 Modified Project is an improvement to the approvals granted in 1989. The modifications result in a balanced grading plan, eliminating the need for the importation of soil, and will also result in preservation of additional sensitive wildlife habitat by eliminating development of Neighborhood I in Unit II that was previously approved in the 1989 vesting tentative map.
  - (h) The design and improvements of the 2007 Modified Vesting Tentative Map substantially conform to the development of Neighborhood II in Unit II in the vesting tentative map approved in 1989. The areas to be temporarily and permanently disturbed are roughly of the same size and location, consist of

the same single-family residential uses of similar density (which has been accomplished through the more efficient layout of the 2007 Modified Project), and provide for similar internal circulation and amenities.

**2. Planned Development Permit – Application PD-1-06:**

- (a) The land uses and improvements authorized by the modified PD permit are consistent with the City's General Plan.
- (b) The land uses and improvements authorized by the modified PD permit to be established or operated on the site will not be detrimental to the public health, safety or general welfare or materially injurious to other uses or improvements in the vicinity.
- (c) The project authorized by the modified PD permit effectively mitigates or resolves any constraints on the development of the site and serves to enhance and improve the use and occupancy of the property which is the subject of the PD permit.

**3. Design Permit – Application DP-3-06:**

- (a) The modifications to the unit designs and the site grading are an improvement to the initial approvals granted in 1989. The modifications increase the variety of unit types and elevations, decrease the visual impact and bring more of a sense of single-family neighborhood to the development.
- (b) The modified development maintains a balance of scale, form and proportion, and uses design components that are harmonious and materials and colors that complement the project. The proposal integrates well with elements of the site plan and of surrounding areas.
- (c) The orientation and location of buildings, structures, open spaces and other features maintain a compatible relationship to adjacent development.
- (d) The modified development is not in close proximity to or abutting developed uses other than similar residential uses.
- (e) The modified development respects the topography of the site and is designed to minimize its visual impact.
- (f) The modified site plan minimizes the effects of traffic on abutting streets through careful layout of the site with respect to location, dimensions of vehicular and pedestrian entrances and exit drives, and through the provision of adequate off-street parking. There is an adequate circulation pattern within the boundaries of the modified development. Parking facilities are adequately surfaced, landscaped and lit.

- (g) The modified development encourages alternatives to travel by automobile where appropriate, through the provision of facilities for pedestrians, bicycles, and access to public transportation.
- (h) The modified site plan provides open areas and landscaping to complement the buildings and structures. Attention is given to habitat protection and wildland fire hazard as appropriate.
- (i) The modified development takes reasonable measures to protect against external and internal noise.
- (j) Consideration has been given to avoiding off-site glare from lighting and reflective building materials.
- (k) Attention is given to the screening of utilities, mechanical equipment, trash containers and other equipment.
- (l) Signage is appropriate in location, scale, type and color, and is effective in enhancing the site.

4. **Grading Permit – Application EX-1-06:**

- (a) The work as proposed by the Developer is not likely to endanger any property or public way or detrimentally affect water quality.

**EXHIBIT "C"**

**NORTHEAST RIDGE PROJECT  
UNIT II, NEIGHBORHOOD II**

**Vesting Tentative Map VTM-1-06  
Planned Development Permit PD-1-06  
Design Permit DP-3-06  
Grading Permit EX-1-06**

**2009 CONDITIONS OF APPROVAL**

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**A. ENGINEERING**

**I. GENERAL**

- (a) Prior to approval of any Final Map, a Subdivision Improvement Agreement, in a form approved by the City, shall be executed by the applicant.
- (b) Prior to approval of any Final Map, an engineer's cost estimate for the construction of all public and private improvements shall be submitted to the City Engineer for approval.
- (c) Prior to recording any Final Map and based on the Engineer's Estimate, adequate security for 100% of the cost of the improvements, in a form acceptable to the City, and approved by the City Attorney, shall be supplied to ensure satisfactory and timely completion of the improvements shown on the improvement plans as specified in the Subdivision Improvement Agreement.
- (d) Prior to the approval of any Final Map, plan check and inspection fees shall be paid at the rate in effect on the date of payment, based on the approved Engineer's Estimate for both public and private improvements.
- (e) The standard conditions of approval of Tentative Maps, set forth in Section 16.16.180 of the City of Brisbane Municipal Code, and the applicable provisions of Chapter 16.42 of the Brisbane Municipal Code pertaining to Vesting Tentative Maps, are incorporated by reference and made a part of these Conditions of Approval, except that the City's Grading Ordinance shall take precedent.
- (f) Prior to the approval of a Phase I or a Phase II Final Map, the applicant shall provide plans for the related phase of improvements, subject to the approval of the City Engineer, so that all streets, street intersections and pedestrian, bicycle or vehicle access to streets shall be provided with safe stopping sight distances, as defined in Chapter 200 of the State of California, Department of Transportation, Highway Design Manual. Landscaping, cut and fill slopes, vehicle parking, monuments, signs, catchment walls and any other potential obstruction shall be designed to avoid limiting safe sight distances, or to such other standard which is to the satisfaction of the City Engineer.
- (g) Prior to acceptance of the completed work, a 5-foot level graded area shall be provided behind catchment walls in the areas as specified in the Debris Flow and Catchment Wall Report prepared by Kaldveer and Associates dated November 7, 1988, as amended by the Stevens, Ferrone & Bailey Updated Geotechnical Investigations Landmark at the Ridge-Unit 2 report dated November 1, 2001 and the Cotton Shires & Associates Geotechnical Review reports dated October 4, 2002 and December 3, 2003 and as specified and to the satisfaction of the City Engineer.

- (h) Prior to the issuance of a Building Permit, a final driveway plan showing all driveways, slopes of both edges of the driveways, the garage finished floor elevations and the cross slope of the adjacent streets, shall be submitted and will be subject to the approval of the City Engineer.
- (i) Prior to acceptance of the completed work for Phase I or Phase II, all off-site improvements and other improvements directly related to that project phase will be constructed in accordance with City laws, regulations, ordinances and specifications, and shall be constructed and completed in accordance with the Subdivision Improvement Agreement and Final Map and shall be subject to the approval of the City Engineer.
- (j) Prior to recording any Final Map, the developer shall submit to the City, for approval, a schedule of development of public and private improvements, and the schedule shall be approved by the City Engineer.
- (k) Prior to recording any Final Map, the applicant shall provide easements acceptable to the City Engineer.
- (l) Prior to approval of any Final Map, a schedule of street furniture shall be provided by the applicant. Street furniture shall be durable and as vandal resistant as possible and shall be subject to the approval of the City Engineer and the Parks, Beaches and Recreation Commission.
- (m) Prior to the approval of any Final Map, a cohesive signage program shall be provided in the final landscape and improvement plans and shall be subject to approval of the City Engineer and the City Planning Director. All traffic and parking control signs shall comply with CALTRANS standards.
- (n) There shall be no special or decorative pavement on the public streets.
- (o) There shall be no on-street parking on the public collector streets, except as directed or modified by the City Engineer.
- (p) Public collector streets shall be constructed with sufficient room within the pavement area to accommodate bicycle travel.
- (q) Prior to approval of any Final Map, plans shall be submitted which show the design of all cut and fill slopes, slide repairs, catchment walls, benches, debris basins and related items (provisions to protect against off road vehicles) and when constructed shall be, in accordance with the recommendations contained in the Soils Report and Engineering Geology Reports prepared by Kaldveer and Associates dated January 25, 1985, May 10, 1988, July 29, 1988, October 17, 1988 and two reports dated November 17, 1988, as amended by the Updated Geotechnical Investigation Landmark at The Ridge-Unit 2 prepared by Stevens, Ferrone & Bailey dated November 1, 2001 and the Supplemental Geotechnical Review prepared by Cotton Shires & Associates dated October 10, 2002 and Geotechnical Review dated



December 3, 2003 and letter of June 12, 2007 and in accordance with the City of Brisbane Grading Ordinance, and to the satisfaction of the City Engineer. The applicant shall also comply with the recommendations of Cotton Shires & Associates as set forth in the Supplemental Geotechnical Peer Review dated January 19, 2009.

- (r) Prior to the issuance of a Grading Permit, the applicant shall prepare, and submit to the City Engineer for review and approval, a construction grading schedule with specific dates for completion of grading milestones by which the progress of the work can be evaluated. The schedule shall be in agreement with Condition A.I.j.
- (s) Prior to recording a Final Map, the applicant shall, in a form approved by the City, agree to indemnify and protect the City of Brisbane against the results of any work or labor done or materials furnished which are or become defective or are not in accordance with the terms of the documents submitted and the conditions and approvals by the City of Brisbane, which shall have appeared or been discovered within a one-year period from and after completion and final acceptance of the work in question.
- (t) All documents, plans and other submittals to the City of Brisbane shall be delivered to the Director of Planning. Duplicate copies of all documents, plans or other submittals requiring action or approval by the City Engineer shall be submitted to the City Engineer.
- (u) Nothing herein shall be interpreted to conflict with rules and regulations of the California Department of Real Estate.
- (v) Prior to issuance of any building permit, the developer shall provide the City Engineer with a written certification from the developer's geotechnical consultant, which states that the consultant has determined from satisfactory evidence that all elements of the project are designed and engineered to preclude potential problems relating to ground slippage and landslides, erosion, and storm drainage.
- (w) All conditions of approval shall apply to the development of the property and shall be binding on the project sponsor/applicant, its successors and assigns.

## **II. STREETS**

- (a) The maximum grade and minimum radius of curvature of any on-site collector street shall not exceed 15% nor be less than 350 feet respectively except as shown on the approved Vesting Tentative Map and/or specifically approved by the City Engineer.  
The maximum grade and minimum radius of curvature of any on-site non-collector street shall not exceed 15% nor be less than 150 feet respectively except as shown on the approved Vesting Tentative Map and/or specifically approved by the City Engineer.

- (b) The roadway right of way of the proposed public streets within the Northeast Ridge Project shall be dedicated to and, after acceptance, shall be maintained by the City of Brisbane.
- (c) Prior to approval of any Final Map, plans shall be submitted showing the precise size and alignment of all streets, and pedestrian and bicycle facilities, landscaping and appurtenances thereto and shall be to the satisfaction and approval of the City Engineer.
- (d) Prior to approval of any Final Map, plans shall be submitted showing sidewalks designed on the same side of the streets as the residences within the neighborhoods.
- (e) Prior to approval of any Final Map, plans shall be submitted showing all sidewalks and paths designed as shown on the Vesting Tentative Map and as specified by the City Engineer to provide safe pedestrian pathways that minimize as much as possible the necessity of pedestrians crossing major streets. Access ramps shall be provided at each location where a painted crosswalk is proposed and any quadrant of any intersection that has a sidewalk.
- (f) Prior to approval of any Final Map, plans shall be submitted showing the intersection of "A" Street and "B" Street as a ninety degree "T" intersection with "B" Street being the through street.
- (g) Prior to approval of any Final Map for Unit II, a Subdivision Improvement Agreement for Unit II improvements shall be executed and shall include the following off-site improvements, which shall be completed prior to the issuance of any Certificate of Occupancy or at the option of the City, adequate security satisfactory to the City shall be posted:
  - 1. Install all Unit II off-site trail improvements as shown on the 2007 Modified Vesting Tentative Map. Any trail improvements east of Unit II, Neighborhood II shall be consistent with the 1989 Vesting Tentative Map or otherwise approved by the U.S. Fish & Wildlife Service. Trail improvements shall be open for public use upon a determination by the City Engineer that all trail improvements have been satisfactorily completed and use of the trail will not expose members of the public to any hazards from other construction activity within the project. Trail improvements shall be maintained by the applicant until the County assumes the responsibility for maintenance.

### **III. STORM DRAINAGE**

- a) Concurrent with the approval of any Final Map, all storm drainage facilities within public streets or serving public streets or public property for which the

City of Brisbane has the maintenance responsibility shall be offered for dedication to the City of Brisbane.

- b) Prior to approval of any Final Map, public and private improvements to accommodate and convey storm water from the Northeast Ridge Project shall be designed and constructed by the applicant in accordance with the Brisbane Municipal Code and to the satisfaction of the City Engineer. On-site storm drains shall be designed to accommodate a 20-year storm event without surcharging the pipelines. At low points, where excessive ponding on the streets could occur, the drainage facilities shall be designed to accommodate a 100-year tide/storm event. All designs shall be subject to the approval of the City Engineer.
- c) Prior to approval of any Final Map, at sag (low point) locations on streets, storm water runoff overflow facilities shall be designed by the applicant to protect adjacent structures from flooding or damage should the runoff overflow the adjacent curb or gutter. Such facilities are subject to the approval of the City Engineer.
- (d) Prior to final acceptance of any storm drain pipeline, applicant shall provide a color CCTV inspection record subject to the approval of the City Engineer.

#### **IV. SANITARY SEWERS**

- (a) Concurrent with the approval of any Final Map, all sanitary sewer improvements, excluding service laterals, shall be offered for dedication to the City of Brisbane.
- (b) Prior to approval of any Final Map, all sanitary sewer improvements shall be designed in accordance with the Brisbane Municipal Code and to the satisfaction of the City Engineer.

#### **V. GRADING**

- (a) Prior to the issuance of any grading permit or to the issuance of any building permit, whichever is earlier, the applicant shall comply with the City of Brisbane Grading Ordinance.
- (b) Prior to the issuance of any Grading Permit, a grading plan consistent with the City of Brisbane Grading Ordinance shall be submitted and shall be signed and stamped by the project civil engineer prior to its submission for approval by the City Engineer. The plan shall be approved by the City Engineer prior to the issuance of a Grading Permit.
- (c) Prior to the issuance of any Grading Permit, the applicant shall comply with any applicable requirements of the State Water Resources Control Board Construction General Permit.

- (d) Prior to the acceptance of the completed grading work, the civil engineer who prepared the grading plan, and provided the required field observations of the grading operations shall certify that the work is completed, that the grading has been accomplished in substantial conformance with the plans and specifications for the project, and that the design concepts in the soils engineering and engineering geology reports for the project and the site specific additional recommendations, made by the Soils Engineer and the Engineering Geologist, made during construction have been carried out.
- (e) The grading shown on the vesting tentative subdivision map shall not commence until the applicant has complied with necessary requirements of the City's grading ordinance, set forth in Brisbane Municipal Code Chapter 15.01, as determined by the City Engineer.
- (f) GRADING OPERATIONS:
1. Prior to the issuance of the Grading Permit, the applicant shall submit plans and supporting calculations for the design of retaining walls for review and approval by the City Engineer. The grading operations shall be accomplished in accordance with the terms of the Grading Permit, the requirements of the project soils and geological reports, the approved plans and specifications and at the direction of the applicant's project civil engineer in the field. Such work shall be reviewed by the City Engineer. The project civil engineer shall be a civil engineer licensed by the State of California and experienced in soils mechanics and engineering geology.
  2. Prior to the issuance of any Grading Permit, the applicant will submit a Dust Control program to the City Engineer for review and approval. During the construction, the entire project site shall be adequately sprinkled to prevent dust from being blown into the air and carried into the adjacent developed areas. Dust control shall be for seven days a week and 24 hours a day, if required by the City Engineer.
  3. During construction, the haul roads within City of Brisbane shall be cleaned daily, or more often, as required by the City Engineer, to remove all dirt and debris spilled or tracked onto streets, which is attributable to the project construction activities.
  4. Prior to the issuance of any Grading Permit, the applicant shall provide the City security as required in the Grading Ordinance, in a form satisfactory to the City Attorney. The City also has the right to draw upon the City Cost Reimbursement Account as described in Section XII, a and b, to reimburse the City for any expense incurred due to emergency services provided by the City or its contractors to rectify public health and safety nuisances resulting from the grading work.

Prior to commencing corrective work, the City will, if time permits, notify the applicant in writing to correct any nuisance or

hazard. In the event of failure of the applicant to correct such nuisance or hazard in a timely and satisfactory manner, the City Engineer may order the necessary corrective work to be performed and the cost deducted from the City cost reimbursement account.

5. Prior to the issuance of any Grading Permit, erosion control and maintenance plans shall be submitted to the City Engineer for review and approval, as required by the Municipal Code.

(g) INSPECTION:

1. During construction, the applicant shall provide continuous on-site grading inspection services by his civil engineer. At a minimum, inspection services shall be provided at a level that will permit the civil engineer to certify that all grading work was performed in accordance with the requirements of the project soils and geological reports and in accordance with their recommendations.
2. During construction, because grading is an important element of the project, it is the City's intention to require City Inspector(s) to be in the field continuously full time, on-site. Funding for the City monitoring and inspection of construction shall be provided by the applicant from the City Cost Reimbursement Account funds provided in Section XII a. and b. In the event funds required in Section XII a. and b. are not promptly deposited by the developer, work on the project shall be stopped until such funds are provided. City monitoring will include full-time on-site monitoring by a City Inspector(s).

(h) MAINTENANCE OF UNIMPROVED GRADED AREAS:

1. Prior to acceptance of the completed work, the applicant shall provide 24 hours a day, 7 days a week maintenance, if required, by the City Engineer, of all graded or otherwise disturbed areas. The maintenance work shall include the control of dust and erosion, the repair and cleaning of drainage and silt retention facilities, the irrigation of erosion control plantings, and the repair of slope failures, sumps and potentially hazardous conditions, as required by, and subject to the approval of, the City Engineer.
2. Prior to issuance of a Grading Permit, a regular maintenance program for unimproved graded areas shall be submitted to the City Engineer for review and approval. The maintenance program shall be implemented by the applicant's contractor to the satisfaction of the City Engineer.

(i) **MAINTENANCE OF IMPROVED SLOPE AREAS:**

1. Prior to recording any Unit II Final Map or issuance of any Grading Permit, the applicant shall submit a written maintenance plan, with specifications, schedules and illustrative exhibits for the maintenance and repair of slope areas, drainage facilities, benches, gutters and subdrains, and such maintenance plan shall be approved by the City Engineer prior to the recording of any Final Map or issuance of any Grading Permit, whichever occurs first. The plan shall require that the applicant, its successors in interest, and the future owners of both the common areas and improved lots shall repair and maintain all slope areas within their property.

The applicant and future property owners shall maintain their property in accordance with the approved maintenance plan.

2. Prior to recordation of any Final Map, the maintenance plan shall be incorporated into the Northeast Ridge Project C.C. & R.'s, which shall be submitted for City approval.

(j) **LOT PAD AND GRADING APPROVALS:**

1. Prior to issuance of a Building Permit for any structure within the Northeast Ridge Project, the applicant's civil engineer shall verify in writing that the grading and earthwork within the building pad area is complete and in conformance with the approved Grading Permit and the project's soils and geotechnical reports and with his recommendations. The civil engineer's lot pad certifications shall be submitted to the City Engineer and the City's Geotechnical Consultant for review and approval.

**VI. STREET LIGHTING**

- (a) Prior to approval of any Final Map, the final street lighting (electrolier) plan for the project shall be closely coordinated with the final street improvement, grading, landscaping and other plans and shall be subject to the approval of the City Engineer.
- (b) Lighting of collector streets shall conform to IES Standards for collector streets, 0.4 foot candles with a uniformity ratio of 4 to 1. Local streets shall be designed for 0.3 foot candles with a uniformity ratio of 6 to 1, or such other standard as approved by the City Engineer.

**VII. WATER**

- (a) Prior to any framing in Unit II, the water system improvements are to be constructed and completed as shown on the Vesting Tentative Map and as specified in the Integrated Water System Analysis for the Northeast Ridge

Development, GVMID and Brisbane, dated August 1988 by Brian-Kangas-Foulk.

- (b) All water mains, services and appurtenances shall be designed and installed to the standards of the City of Brisbane and to the satisfaction of the City Engineer and the City of Brisbane Fire Chief.
- (c) Prior to any Final Map approval, the plan for construction staging of the water system facilities shall be submitted and shall be subject to the approval of the City Engineer and the City Fire Chief. Fire Department general requirements for construction staging are shown in Fire Department Conditions of Approval.
- (d) All water system improvements, excluding service laterals and the North Hill Drive pumping station, shall be dedicated to the City prior to acceptance of the completed work.
- (e) Install two new PRV/PSV Stations, one located on Monarch Drive and the second on Silverspot Drive near West Hill Drive, in order to separate the pressure zone serving the Northeast Ridge from the rest of Crocker Industrial Park, in accordance with plans and specifications approved by the City Engineer.

#### **VIII. UTILITIES**

- (a) Prior to approval of any Final Map, plans showing the precise sizing and alignment of all public utility easements shall be submitted by the applicant for approval by the City Engineer and the utilities as being satisfactory to them for the intended purpose.  
Prior to recording any Final Map, the applicant shall submit letters of approval from the utility companies verifying the adequacy of rights-of-way or easements for utilities as depicted on the Final Map.
- (b) All utilities, with the exception of the existing transmission towers, high voltage transmission lines and new water tank, shall be placed underground.
- (c) Prior to the issuance of any Certificate of Occupancy, each dwelling unit within the Northeast Ridge Project shall be pre-wired by the applicant for communication and cable T.V. services.

#### **IX. MAINTENANCE**

- (a) Prior to recording any Final Map, the applicant shall supply CC&R's showing all landscaping, fire buffers, private storm drainage facilities and other common area maintenance shall be performed by the Neighborhood Homeowner Associations and the obligation to perform shall be included in and enforceable under the CC&R's, which shall be subject to the approval by the Planning Director and the City Attorney.

- (b) Any existing eucalyptus trees which are to be removed as part of the development of Unit II shall be shown on the approved Grading Plans. The land upon which existing eucalyptus trees are located, which are to remain, shall be conserved and the land dedicated to the County of San Mateo. The applicant shall maintain the eucalyptus grove until the HCP operator assumes responsibility for the maintenance of the grove or until acceptance of the dedication by the County.
- (c) The slopes, bench drains and trails within the HCP shall be maintained by the applicant until the County of San Mateo, another public entity, or the Homeowner's Association accepts maintenance responsibility.

## **X. LANDSCAPING**

- (a) Prior to approval of any Final Map, the final landscaping and monumentation plans including landscaping around the existing water tank, utility vaults and retaining walls shall be designed so that the improvements will be screened within five years and so that safe stopping sight distance requirements along the roadways are provided, all of which shall be subject to the approval of the City Engineer and the Planning Director.
- (b) Prior to approval of any Final Map, the specific landscaping around and the construction materials for the utility vaults shall be shown as part of the final improvement plans and shall be subject to approval of the City Engineer, Planning Director and respective utility company. There shall be no conflicts between structure placement, alignment and planting.

## **XI. PLANS, SPECIFICATIONS AND IMPROVEMENT AGREEMENT**

- (a) Prior to approval of any Unit II Final Map, the applicant shall submit to the City Engineer, for review and approval, complete improvement plans and specifications, for the phase of construction being considered, designed by a Civil Engineer registered in the State of California, for all of the work described above. No work shall be started until the relevant Final Map is approved and recorded.
- (b) Prior to submission of any Final Map for approval, the applicant's civil engineer shall sign, date and place his registration stamp upon each improvement, grading and construction plan, which shall be submitted for approval by the City Engineer. All traffic, channelization and signal plans shall also be designed, signed, dated and registration stamped by a traffic engineer registered in the State of California and shall be submitted for approval by the City Engineer.

Prior to filing any Final Map with the City, a Subdivision Improvement Agreement shall be executed. The design of the public improvements shall be done by experts and shall be supported by soils test



results, including R-values and drainage calculations and submitted to the City Engineer for his review and approval. The work shall be accomplished in accordance with the Subdivision Improvement Agreement between the applicant and the City, and to the satisfaction of the City Engineer.

- (c) Prior to signing the Subdivision Improvement Agreement, the applicant shall provide the City with performance and labor and material bonds, each equal to 100% of the City Engineer's estimate for the cost of construction, and liability and property damage insurance in a form required by law and approved by the City Attorney. The public improvements shall be installed by the applicant in accordance with the approved plans at no cost to the City. The Subdivision Improvement Agreement shall provide that the applicant shall pay for all the City's costs incurred in connection with the project.
- (d) Prior to the applicant's staging of infrastructure improvements (placing portions of the infrastructure improvements in service within Unit II prior to the completion of the entire subdivision infrastructure), approval by the City Engineer is required.
- (e) Prior to acceptance of the completed work, the public improvements shall be constructed and installed in accordance with plans and specifications approved by the City Engineer.
- (f) Prior to the approval of any Final Map, the applicant shall furnish the City Engineer with two copies of all documents, studies, reports analysis, calculations and related material used by the applicant's consultants to design the subdivision improvement plans.
- (g) Prior to final acceptance of completed work, the applicant shall submit a set of "Record Drawing" plans of all public utility and improvement plans to the City Engineer for approval. The "Record Drawing" plans shall be the original tracings or permanent "mylar" transparencies of a quality acceptable to the City Engineer and two blueline copies of the plans and electronic copies on CD.

## **XII. REIMBURSEMENT OF CITY COSTS**

- (a) Prior to the approval of any Final Map or the issuance of a Grading Permit or approval of a Building Permit, the applicant shall deposit funds with the City to reimburse the City for all costs for engineering, plan checking, monitoring, inspection and other costs associated with the construction and installation of the public and private improvements and supporting grading work on the Northeast Ridge Project, including administrative overhead.

These costs shall include salary, benefits, equipment, and transportation, costs of office engineering and field review services provided by civil engineering, geotechnical and other required consultants retained by the City, expenditures for materials and equipment testing, and City engineering and maintenance staff costs.

- (b) Prior to the approval of any Final Map or the issuance of a Grading Permit or a Building Permit, the applicant will deposit funds with the City to reimburse the City for expenditures incurred associated with the project. Funds will be withdrawn by the City from the deposit to pay for the incurred costs, and the developer will be billed monthly as necessary to replenish the fund. The City shall deposit such funds in a separate account referencing this specific project, and upon completion of the Northeast Ridge Project construction work, unexpended funds and accrued interest from the deposit will be returned to the applicant. The applicant shall maintain a minimum balance of \$50,000 in the account. The City will provide the applicant with the hourly rates and scope the work of those who will be performing services for the City which will be charged against this account. Failure by the applicant to maintain sufficient funds in the account for payment of the City's expenses shall be grounds for the City to suspend further work on the project until the necessary funds are deposited.

### **XIII. PRIVATE PROPERTY AND COMMON AREA IMPROVEMENTS**

- (a) The design of the streets structural pavement section, shall conform to street standards adopted for this project and as shown on the Vesting Tentative Map.
- (b) Garage driveway access slopes shall not exceed 20% at any location on a driveway which is used for vehicle traffic. Storm water runoff shall not be discharged in a concentrated flow across or over driveways.
- (c) Each residential street shall have a pedestrian sidewalk on at least one side, the unit side, of the street.
- (d) Access ramps shall be provided at each location where a painted crosswalk is proposed and any quadrant of any intersection that has a sidewalk.
- (e) Each residential unit shall be connected to a sanitary sewer system discharging into the public sewer system.
- (f) Prior to City acceptance of the completed work, traffic regulatory and warning signs shall be installed by the applicant as required by the City Engineer. At appropriate locations, streets shall be posted "No Parking at Any Time", "Tow-Away Zone", etc. subject to the approval of the City Engineer. Stop signs and crosswalks shall be installed at each street intersection where required by the City Engineer for traffic and pedestrian safety. Intersection curb returns shall have a minimum radius of 15 feet.
- (g) All roof leaders shall discharge directly into an approved drainage facility or shall discharge onto a paved surface sloping away from the building foundation. The lot drainage design shall be done by the applicant's civil engineer and subject to the approval of the City Engineer.

- (h) All storm drainage runoff shall be discharged into a pipe system, concrete gutter, or vegetative swale. Runoff shall not be surface drained into adjacent private property. Area drains shall be provided with clean outs, inlets, manholes or other structures as required to provide access for maintenance to all portions of the drainage system. The design of all storm drainage systems is subject to the approval of the City Engineer.
- (i) Prior to the approval of any Final Map, storm drains, surfaced areas, planted areas, sprinkler systems and their controls, area lighting, water lines and utility lines and facilities shall be shown on the subdivision site improvement plans and submitted for review and approval by the City Engineer.
- (j) Prior to approval of any Final Map, plans shall be submitted for review and approval for all common areas which shall be landscaped and irrigated and approved by the City Engineer and Planning Director.
- (k) All residential structures shall meet the minimum setback requirements set forth in Chapter 29 of the Uniform Building Code unless specifically provided for by the City Council's approval of a Planned Development Permit. Exceptions to this requirement may be granted by the City Engineer or waived by the City Engineer if justified and recommended in the project soils report and as shown on the Tentative Map, unless otherwise provided for herein. The City Engineer may also require additional setbacks based on the soils report for the project.
- (l) Prior to the issuance of any Certificate of Occupancy, utility easements shall be dedicated to the utility company which required said easements to maintain its facilities. All on-site improvements, excepting the public streets and the sanitary sewer and water mains (including the fire hydrants) and the storm drains within the public right of way, shall be maintained by the Homeowner's Association.
- (m) Prior to the issuance of a Building Permit, the applicant shall submit a site plan for each lot showing the location of all structures, utilities, fences, grading and drainage within the lot for approval by the City Engineer and Planning Director.
- (n) Prior to the issuance of a Building Permit, plans shall be submitted which show that each building finish floor or garage floor elevation shall be greater than the height of the pavement surface in front of the building, unless a specific drainage device is installed to route potential runoff overflow around and away from the structure and approved by the City Engineer. Garage floors and other portions of the building structure shall be protected from flooding caused by a 100-year design storm.
- (o) Prior to approval of any Final Map, the applicant shall submit structural computations for every retaining wall and for lined ditches (channels) with side slopes steeper than 1-1/2:1 for approval by the City Engineer. Retaining

walls and lined ditches shall be constructed of materials specifically approved by the City Engineer and the Planning Director, and designed by a registered civil or structural engineer specifically for use at the proposed location. Wall locations and design parameters shall be approved by the project soils engineer and are subject to approval of the Planning Director and the City Engineer.

- (p) Prior to the issuance of a Certificate of Occupancy all inspections, certifications and notifications required by law or the City must be completed and the applicant's civil engineer shall inspect the finish grading surrounding each building and certify that it conforms to the approved site plans and that there is positive drainage away from the exterior of each building, and the applicant shall make any modifications to the grading or drainage facilities required by the project civil engineer to conform to the intent of his plans.
- (q) Prior to the issuance of a Certificate of Occupancy for any residential unit within the project the applicant shall repair any structural damage to the subdivision streets and, if required by the City Engineer, overlay areas of damage and adjacent pavements with a minimum 1/4 inch thick, Type II (State Standards) Slurry Seal to the satisfaction of the City Engineer.
- (r) The Northeast Ridge Homeowner's Association C.C. & R.'s shall require the Homeowner's Association to provide ordinary and necessary maintenance of landscaping from the residential units up to the street curbs adjacent to each lot.
- (s) Prior to the applicant turning the maintenance responsibility over to the Homeowner's Association, the Homeowners' Association shall be provided with two (2) complete sets of the "record drawings" for the construction improvements and landscape plans for its use in maintenance and repair of common areas.
- (t) Prior to the issuance of a Certificate of Occupancy for each phase of the development, the applicant shall submit to the City the project grading, drainage, improvement, irrigation and utility plans marked "Record Drawing" by the applicant's civil engineer. The "Record Drawing" plans shall be permanent "mylar" transparencies of a quality acceptable to the City Engineer. No Certificate of Occupancy shall be issued until drawings have been approved by the City Engineer.

#### **XIV. SUBDIVISION MAP**

- (a) Prior to the approval of any Final Map, the applicant shall submit closures for lots, blocks and boundaries.
- (b) Prior to the approval of any Final Map, the applicant shall submit a copy of a title report of this subdivision that is less than six months old.

- (c) Prior to approval of any Final Map, the applicant shall comply with the requirements of the Subdivision Map Act and local ordinances with respect to preparing and filing subdivision final maps.
- (d) Prior to approval of any Final Map, the location of all existing and proposed public and private easements shall be shown and noted on the final map.
- (e) At least 10 days prior to the issuance of a Building Permit, the applicant shall file with the City Engineer a reproducible "mylar" copy of the Final Subdivision Map, one cloth copy and two blue line prints for the City's permanent records and one electronic copy on CD.
- (f) Prior to the submittal of any Final Map for checking, all proposed deed restrictions and C.C. & R.'s shall be submitted for the approval of the Planning Department and the City Attorney. The approved deed restrictions and C.C. & R.'s shall be recorded in the office of the County Recorder concurrent with recording any Final Map.

#### **XV. CONSTRUCTION MONITORING AND QUALITY CONTROL PROGRAM**

- (a) Prior to the issuance of a Grading Permit, a quality control program shall be submitted to the City Engineer for review and approval. In order to provide assurance to the City that the grading, improvements, landscaping and site construction work within the property to be owned and maintained by the homeowners association, as well as the drainage and finish grading improvements surrounding each home have been properly constructed in accordance with the approved plans, specifications, project requirements and conditions of approval, the applicant shall develop a quality control program to inspect the work which includes the City monitoring and inspection services.
- (b) The applicant shall inspect the project work daily and shall supply to the City Engineer daily written documentation of all inspections and testing performed to verify compliance with the approved plans. The applicant shall coordinate these activities with the City Engineer, contractors, and sub-contractors, public utilities and the Habitat Conservation Plan Operator. The quality control program shall be funded entirely by the applicant.
- (c) The City Engineer shall be authorized to inspect the construction of all improvements as well as monitor the activities of the applicant's quality control program, respond to citizen inquiries, attend construction field meetings, organize, review and file project related correspondence, logs, test results and similar documents, coordinate with public utilities and perform other services in connection with the development of the Northeast Ridge Project. The City Engineer may be assisted by Geotechnical and Civil Engineering consultants as necessary to perform the inspection and monitoring services.

- (d) Prior to the issuance of a Grading Permit, the applicant shall prepare a detailed geotechnical quality control program to provide independent review and confirmation of all geotechnical decisions and reviews during construction including, but not limited to, the installation and interpretation of instrumentation, field trials of excavation and fill materials, drainage installations, application of slope stabilization techniques and construction monitoring. This quality control program shall be subject to the approval of the City Engineer and the applicant must commit to its implementation prior to the issuance of a grading permit.
- (e) The quality control program will be monitored by the City Engineer. In the course of construction, differences of opinion may occur between the applicant and the City as to the interpretation of the approved plans and specifications, geotechnical solutions to unexpected field conditions, the acceptability of particular methods of construction and similar matters. The City Engineer will make every effort to resolve the differences to all parties satisfaction. However, the City Engineer shall make the final decision regarding disputes which decision shall be binding on the applicant, his contractors and consultants.

## **B. FIRE DEPARTMENT**

### **I. GENERAL**

The following conditions of the Fire Department (Memorandum dated September 15, 2003) shall apply to the project:

- (a) Fire sprinklers required with separate plan and permit submittal in accordance with NFPA 13-D. Presently in the 1999 edition.
- (b) Fire sprinkler system shall include attic pilot heads and garage coverage. In addition per BMC 15.44.170 a sprinkler head shall be provided below the access opening for usable under floor space, and the sprinkler system shall be an inspector's test valve piped from an hydraulically remote point of the highest elevation design area.
- (c) All buildings located within 50 feet of the Habitat Conservation Area (HCA) shall be provided with the following additional fire protection requirements:
  - 1. The underside of all balconies and stairs facing the HCA shall be protected by fire sprinklers.
  - 2. All windows facing the HCA shall be dual glazed.
  - 3. All operable windows facing the HCA and greater than five feet in any dimension shall be provided with exposure protection.

4. All eaves facing the HCA greater than three feet in depth shall be protected with fire sprinklers, eaves sprinklers, if properly positioned may also provide for window exposure protection, as required by item 3 above.
  5. If Neighborhood II, Unit II allows property owners the right to add decks in the yard area now or at a later date; fire sprinkler piping shall be extending through the building to cover the area.
- (d) A high moisture landscape zone of at least 15 feet in width shall be located behind buildings located adjacent to the HCA.
  - (e) Fire resistive landscaping shall be used for at least the first 30 feet in width behind building located adjacent to the HCA. [See also Condition C-II(i)]
  - (f) All valves controlling water supply for the automatic sprinkler systems and water-flow switches on all sprinklers systems shall be electronically monitored when the number of sprinklers is one hundred (100) or greater. A separate plan and permit submittal is required in accordance with NFPA 72, presently in the 1999 edition.
  - (g) Main water supply for the project shall meet the standards and approval of the Brisbane Fire Department and City Engineer.
  - (h) Fire hydrants shall be installed and tested to the satisfaction of the Brisbane Fire Department and the City Engineer, prior to framing. Minimum spacing distance shall be 500 feet Blue hydrant dots shall be located by the City Engineer.
  - (i) Street widths, turnarounds, standards and no parking signs shall be as approved by the Fire Department and City Engineer.
  - (j) Address numbers for all structures shall be visible from the street. Illuminated address numbers would be preferable and are encouraged. Per BMC Sec 15.44.095 requirements modified as follows: Street numbers shall be internally or externally illuminated from dusk to dawn for all new structures. The method of illumination may be provided by street lights located on an adjacent public right of way, or lighting sources located on site within a common area associated with the site, if approved by the Fire Chief.
  - (k) All roofing materials shall conform to the BMC (roofing ordinance).
  - (l) Dwellings shall be equipped with hard wire smoke detectors in accordance with the California Building Code.
  - (m) The applicant shall provide a habitat boundary map for review by the Brisbane Fire Department.

- (n) The gated Emergency Vehicle Access (EVA) road shall comply with the requirements of Section 12.24.010 of the BMC and shall provide an all-weather surface. The road must be able to support a 60,000 lb fire truck.
- (o) The construction of the EVA gate shall be approved by the City Engineer and the City shall be provided with a copy of the key to the locking mechanism.
- (p) All project roadways shall be accessible to fire apparatus prior to framing.

## C. PLANNING AND BUILDING

### I. GENERAL

- (a) Approval of the project (the 2007 vesting tentative subdivision map, and the permits) is subject to the applicant's compliance with all of these 2009 Annotated Conditions of Approval. If any of these conditions conflict with provisions of the application or with any plans or drawings submitted by the applicant, the applicant shall comply with the conditions instead of complying with the conflicting provisions of the application, plans or drawings. Wherever a condition contains the phrase "subject to the approval of" or "shall be approved by", no work on the matter to be approved shall occur until after the required approval has been given. For example, if plans are to be submitted "subject to approval of the City Engineer," no work shall occur pursuant to such plans until the City Engineer has approved them in writing.
- (b) Prior to Final Map Approval, the applicant, in its application for a Final Subdivision Public Report issued by the California Department of Real Estate for the property, shall request that the Department of Real Estate insert the following note in the final Subdivision Public Report, and require all buyers of lots within the subdivision to sign a document containing the note below that states they have read and understand it:

"The subject property is located near Pacific Gas and Electric and the City of San Francisco high-voltage electric transmission lines. Purchasers should be aware that there is ongoing research on possible potential adverse health effects caused by the exposure to a magnetic field generated by high voltage lines. Although much more research is needed before the question of whether magnetic fields actually cause adverse health effects can be resolved, the basis for such an hypothesis is established. At this time no risk assessment has been made.

Purchasers should be aware of the risk that certain pacemaker heart implant devices may not operate properly within transmission line right-of-ways. The susceptibility of the different types of pacemakers to electromagnetic interference should be discussed with a physician."



- (c) Prior to issuance of any grading or building permit, whichever is earlier, any construction trailer shall be approved as to appearance, size and location by the Planning Director. If on-site security is desired, applicant shall submit a proposal/plan for review and approval by the Planning Director, prior to the issuance of a grading or building permit, whichever is earlier.
- (d) Prior to any Final Map Approval or issuance of any Grading Permit, whichever occurs first, the applicant shall submit a schedule of development for review and approval by the Planning Director. Modifications to this schedule are subject to review of the Planning Director. Schedule shall be in accord with Condition A.I.j.
- (e) Minor modifications in any of the approved plans may be approved by the Planning Director. The Planning Director's authority under this section shall be exercised consistently with the requirement that if compliance with conditions of the map (including, but not limited to, the conditions for compliance with the federal Section 10(a) permit and Agreement With Respect to the San Bruno Mountain Area Habitat Conservation Plan) requires reduction in the number of dwelling units or relocation of dwelling units, then such reduction or relocation shall be required in preference to modifying such conditions. The City Planning Director is not authorized to modify any conditions of approval in preference to requiring a reduction in the number of dwelling units or relocation of dwelling units.
- (f) Prior to the issuance of building permits, the applicant shall submit Covenants, Conditions and Restrictions (CC&R's) to the City Attorney and Planning Director for review and approval. The CC&R's shall be written so that sections involving conditions of this staff report shall not be subject to amendment without the approval of the City, and shall contain appropriate provisions establishing the interests of the City and providing for enforcement of any provisions required by the City. The CC&R's shall include provisions for maintenance of all private drives, emergency access roads, landscaping, utilities, recreational facilities, common areas, walls/fences and parking restrictions and require a professional management organization for each homeowners' association. The CC&R's shall also provide for payment of HCP assessments in accordance with the amended Implementing Agreement.
- (g) Prior to the issuance of any building permits, the applicant shall submit to the Planning Director a certificate of compliance from the appropriate local unified school district demonstrating that any school facility fee requirements have been satisfied or waived per California Education Code Section 53080a.
- (h) The conditional use permit, the planned development permit, and the design permits shall all expire, or be extended, concurrently with expiration, or extension, of the 2007 Vesting Tentative Map.
- (i) Prior to issuance of an occupancy permit, if required by the City, 35mm microfilm of the building plans for each unit and/or building, as approved by

the Planning Director, in 4" x 6" jackets shall be submitted to the Planning and Building Department for its records.

- (j) Prior to the issuance of a grading permit, the applicant shall provide written evidence to the Planning Director that a qualified archaeologist has been notified and retained to be on-site, if required by the Planning Director, during grading and other significant ground-disturbing activity. If cultural or scientific features are discovered, work shall be stopped and the archaeologist shall report such findings to the project developer and to the Planning Director. If the cultural or scientific features are found to be significant, the archaeologist shall determine in an expeditious manner appropriate actions, in cooperation with the project developer, which insure that the resources will not be destroyed before exploration and/or salvage subject to the approval of the Planning Director. Work may only begin again with the approval of the Planning Director.
  
- (k) Concurrent with recording the CC&R's, the applicant shall record a statement which provides the information set forth below, such that the recorded notice will appear on each title report as each lot is sold. In addition, the CC&R's shall contain a provision which requires the Homeowners Association and each owner to provide a copy of the statement to each tenant prior to execution of a rental agreement, or prior to the tenant's occupancy, whichever occurs first. The applicant shall also provide a copy of the statement to each purchaser prior to execution of any sale documents. The statement shall be submitted to the Planning Director for review and approval prior to issuance of the first building permit. The statement shall contain the following information and shall be based on the most current information available.
  - 1. A statement of noise and aircraft activity to be recorded separate from the deed, including but not limited to:
    - (i) The location of aircraft flight paths over or in the vicinity of the project.
    - (ii) The distance of the project from the runways and proposed truck routes in the vicinity.
    - (iii) The probable frequency estimated decibel levels attributable to each noise source and general hours of both visual and audible impacts of aircraft and proposed truck traffic.
    - (iv) The type of flight and proposed truck activity causing impact.
  - 2. A statement containing a comprehensive description of all private and public improvements and developments adjacent to or in close proximity to the project, including but not limited to:

- (i) The location of and type of amenities provided within existing and proposed parks.
  - (ii) The existing and proposed pedestrian trails.
  - (iii) Streets with parking restrictions.
3. A statement concerning schools, including but not limited to:
- (i) The location of the elementary, middle, and high schools which will serve the project (text and map).
  - (ii) The type and provider of transportation available to transport the students to the schools sites and to provide general transportation.
  - (iii) The estimated opening date of any new schools proposed to be constructed or any revisions to student capacity in existing schools within the project's attendance boundaries.
  - (iv) A statement that all proposed school locations are within the control of the school district and are subject to change.
- (l) Prior to issuance of any building or grading permit, Final Map and occupancy permit, the applicant shall submit two (2) sets of the mitigation measures, annotated with information relating to their compliance. The applicant shall comply with all of the applicable mitigation measures set forth in the Environmental Impact Report for the project and the Addenda thereto. In addition, during project construction, the applicant shall submit an annual report regarding compliance with the mitigation measures each August.
  - (m) Prior to issuance of any building or grading permit or group of such permits, Final Map, and occupancy permit, the applicant shall submit two (2) sets of these conditions, annotated with information explaining how each condition has been or will be satisfied, or that it is not applicable at the time.
  - (n) Prior to approval of any Final Map, the Planning Commission shall recommend approval of the street names to the City Council.
  - (o) Construction shall be allowed only between the hours of 7:00 a.m. and 7:00 p.m. on weekdays and 9:00 am. to 7:00 p.m. on Saturdays. Special approval shall be required from the Planning Director for grading on Sundays and holidays. Construction equipment shall meet the noise standards set forth in Section 8.28.060 of the Brisbane Municipal Code.
  - (p) Prior to issuance of the building permits, plans for buildings shall be submitted which are designed to meet all requirements of the latest edition of the Uniform Building Codes in effect in the City of Brisbane at the time building permits are issued, and Title 24 of the California Code of

Regulations, and such plans are subject to the approval of the City Engineer and Building Official.

- (q) Dollar amounts mentioned herein shall represent the dollar value as of July 1, 1989, unless otherwise designated. Amounts contributed by the Applicant shall be indexed by the San Francisco/Oakland/San Jose Consumer Price Index for all urban consumers.
- (r) The applicant shall provide a copy of the community information packet to all new residents.
- (s) Within 60 days of any final action of approval of this project, the applicant shall submit revised sets of plans in accordance with the approval. These documents shall be reviewed and approved by the Planning Director in writing and shall become the approved set of plans kept on file at City Hall.
- (t) Prior to issuance of any Grading Permit, the applicant shall submit a letter of recommendation from the San Mateo County Health Department, regarding the control of rodents prior to and during grading. Applicant shall comply with any recommendations prior to issuance of the Grading Permit.

Prior to submission of any building permits, the applicant shall submit a program for rodent-proofing the residences approved by the San Mateo County Department of Health. Building plans shall comply with the program.

## **II. HABITAT CONSERVATION PLAN**

Note: Approvals for the applications for a vesting tentative subdivisions map, grading permits, a design permit, and a planned development permit, are all subject to the following conditions. The words used in these conditions are used as defined in the Agreement with Respect to the San Bruno Mountain Area Habitat Conservation Plan

- (a) The landowner/applicant shall comply with all of the terms and conditions of the permit No. PRT 2-9818 issued by the U.S. Fish and Wildlife Service to the City of Brisbane (and to the cities of Daly City and South San Francisco and to the County of San Mateo) on March 4, 1983, authorizing the taking of endangered species pursuant to Section 10 of the Endangered Species Act (16 U.S.C. Section 1531, et seq.), as amended and changed to Permit No. TE215574-5 by Amendment dated May 28, 2009 ("Section 10 (a) permit"), and with all of the terms and conditions of the Agreement With Respect To The San Bruno Mountain Area Habitat Conservation Plan ("Implementing Agreement"), which was signed by the City of Brisbane on November 15, 1982 and by the U.S. Fish and Wildlife Service on March 12, 1983, as amended May 28, 2009 to support ITP 215574-5. The Implementing Agreement was recorded by the San Mateo County Recorder as document 83026343 on March 22, 1983.

- (b) All terms and conditions of the Section 10(a) permit and the Implementing Agreement, to the extent that they apply to the Northeast Ridge Project, shall be complied with, regardless of whether the conditions of approval of each permit list each applicable term and condition.
- (c) Temporary access to portions of any Developable Administrative Parcel which are to become Conserved Habitat shall be provided by the Landowner/Applicant to the Plan Operator in order to permit the Plan Operator to monitor plan compliance and to develop plans for the protection, operation and enhancement of the Conserved Habitat upon reasonable terms and conditions (including waivers of liability, insurance, etc.) and to conduct any activity consistent with the Implementing Agreement.
- (d) The landowner/applicant shall participate in the funding program set forth in the Implementing Agreement and in these conditions and as approved by the Plan Operator. See Section C- II(k).
- (e) Activities authorized by the Section 10(a) permit and the Implementing Agreement shall be exercised under the direct supervision of the City of Brisbane.
- (f) Prior to issuance of any permit, plans shall be submitted for review and approval which allow no construction or conversion to urban uses in the area designated 1-07-04 on Figure 1-07 C on page VII-64 of the Habitat Conservation Plan, as amended by the 2007 Vesting Tentative Map.
- (g) After approval of a final map, prior to approval of any change in the boundary area for Parcel 1-07-04 of the HCP, shown on Figure 1-07, the adjustment shall be reviewed and approved by the City to insure that the adjustment is not more than thirty (30) feet from the line shown on Figure 1-07 C and 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, as provided in the HCP.
- (h) Prior to issuance of any grading permit or the approval of any Final Map, whichever occurs first, the landowner/applicant shall offer for dedication to the County of San Mateo, in phases (at the option of the landowner) consistent with the area covered by each Final Map, the additional undisturbed Open Space (as described in the 2007 Vesting Tentative Map and Second Addendum to the FEIR) and the Conserved Habitat. Title shall be dedicated in fee to the County. The land shall be dedicated subject to the conditions of the Habitat Conservation Plan and shall also be dedicated subject to the condition that if the restrictions of the Habitat Conservation Plan ever end, then the land shall be kept in open space unless another use is approved by the voters of the City of Brisbane. The form and substance of the latter restriction shall be submitted to the City Attorney for review and approval prior to issuance of any grading permit or the approval of any Final Map, whichever occurs first.

- (i) Prior to approval of any Final Map, the landowner/applicant shall submit a covenant for approval and for recordation concurrently with the Final Map, with respect to each Development Area, burdening and running with the land in favor of the City of Brisbane in substantially the form set forth on page 16 of the Implementing Agreement. The landowner/applicant shall also covenant in favor of the City of Brisbane and the County of San Mateo to establish and maintain a buffer area of thirty (30) feet in width adjacent to each construction phase, or an alternate fire system and buffer area subject to the approval of the City Fire Marshal, to protect urban uses with the Development Areas from fire. The covenant shall provide that the applicant/landowner shall be responsible for removal of wooded vegetation within the buffer areas until such maintenance responsibility is assumed by the Homeowners Association.
- (j) Prior to acceptance of the dedication and maintenance responsibility by the County of San Mateo, the applicant shall be responsible for all maintenance within the conserved Habitat Area (all that area outside the proposed development and associated improvements).
- (k) Prior to dedication of conserved habitat, and concurrently with the recordation of the final subdivision maps creating lots for sale to the public, the Landowner shall record a covenant in the form attached as Exhibit G to the Habitat Conservation Plan or contained in an amendment to the recorded CC&R's, which requires that each homeowner pay an annual assessment to the Habitat Conservation Trust Fund. The annual assessment for each lot in Unit I was originally established at \$20 in 1983 dollars, adjusted each year thereafter based upon the percentage increase in the Employment Cost Index-West Region, published by the United States Department of Labor, Bureau of Labor Statistics ("Index"). The annual assessment for the 17 lots in Unit II approved as part of Unit I and the remaining 71 lots in Unit II shall be \$800 in 2005 dollars, a portion of which equal to the same assessment charged to the Unit I property owners being subject to adjustment each year thereafter based upon the percentage increase in the Index. The additional covenant shall be subject to the approval of the City Attorney as to form and substance.
- (l) The applicant shall contribute the maximum sum of \$4,000,000 to the trustees of the Habitat Conservation Plan as an endowment fund for the preservation and maintenance of the San Bruno Mountain Habitat Conservation Plan area. The total endowment contribution shall be allocated equally to each of the 71 lots in Unit II and the 17 lots previously approved as part of Unit I, resulting in an allocation of \$45,455 for each lot. The contributions for the HCP endowment shall be paid in accordance with the terms of an amendment to the Subdivision Improvement Agreement to be executed between the developer and the City prior to any approval of a final map for Unit II.

### III. HCP GRADING PERMIT CONDITIONS

- (a) Prior to issuance of any grading permit, the landowner/applicant shall prepare a Restoration Plan for the Reclaimed Habitat Area and contract for an inspector as follows: No grading shall occur until the Restoration Plan has been approved by the City of Brisbane, in consultation with the Plan Operator. The Restoration Plan shall provide for runoff controls, reclamation, quality, placement and type of replacement vegetation, and adequate bonding to secure proper performance. The landowner/applicant shall, in carrying out the Restoration Plan 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.
- (b) Prior to the issuance of any grading permit, plans shall be submitted which provide that no grading shall occur within the Conserved Habitat other than in specifically designated Reclaimed Habitat areas.
- (c) Prior to the issuance of any grading permit, plans shall be submitted for review and approval which provide that there shall be no grading within 300 feet of any point on a boundary of the Conserved Habitat which is required to be fenced, until, (1) fences (snow or two strand wire fencing or other methods) shall be erected on the boundary of the Conserved Habitat between temporarily disturbed areas and undisturbed areas for a reasonable distance (including fencing of eucalyptus trees that are to be retained) as shown in Figure 1-07 H and J in Chapter VII of the HCP and as amended by the 2007 Vesting Tentative Map, (2) a pre-grading conference shall be held, attended by the contractor, the developer, the grading foremen, the heavy equipment operators, the Habitat Manager, and a representative of the City of Brisbane, to explain the prohibition against grading beyond fenced areas, and (3) a sign shall be posted on the fence every 100 feet which shall state that grading beyond the fence is not permitted and may result in the imposition of criminal penalties (Such statement shall be in the language set forth on page 16 of the Implementing Agreement).
- (d) Prior to issuance of any grading permit which permits grading within 200 feet of Conserved Habitat, the landowner/applicant shall post a bond in favor of the City of Brisbane, the San Bruno Mountain Area Habitat Conservation Trust Fund, and the Plan Operator, securing performance of the obligations set forth on page 31 of the Implementing Agreement. The bond shall be no less than \$25,000.00 per acre of Conserved Habitat, other than areas constituting Reclaimed Habitat, that occurs within 200 feet of any area that is to be graded.
- (e) Grading shall be conducted during the nonbreeding season for most special-status birds (generally September to February). If construction is scheduled or vegetation management activities are scheduled to occur during the breeding season for special-status and non-special status migratory birds and raptors (generally March to August), a qualified wildlife biologist shall be

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

#### **IV. ARCHITECTURE / DESIGN / LANDSCAPING**

- (a) Prior to issuance of applicable building permits, any additional elevations or architectural revisions and additional colors and materials shall be reviewed by the Planning Director to determine conformance with previously approved guidelines adopted by the Planning Commission. All approved or required changes shall be incorporated into the design or landscaping of the homes.
- (b) Prior to issuance of any building permits, the applicant shall retain a certified acoustical engineer to determine house design and construction standards (e.g. sound-rated windows, acoustically rated walls and ceilings, etc.) to achieve interior noise attenuation levels not to exceed 50 dBA for bedrooms and 55 dBA for the remainder of the house with concern for both aircraft and truck traffic noise. Certification of compliance with these standards shall be submitted with each building permit application and such compliance is subject to review and approval of the City Engineer.
- (c) Prior to issuance of building permits the plans shall be reviewed for compliance with Title 24 of the California Code of Regulations and a statement shall be submitted by the applicant demonstrating to the extent feasible that the homes provide for future passive or natural heating or cooling opportunities and noting additional solar and energy conservation measures, including a concentration of the glazing and provision of overhangs on south facing elevations, for review and approval by the Planning Director. Building plans shall include provisions for stubbing out for solar collectors. High efficiency heating equipment and high performance glazing are required for each residential unit.

Prior to issuance of building permits, the locations and screening of A.C. pad and gas and electrical meter locations shall be reviewed and approved by the Planning Director.



- (d) Prior to issuance of any Grading Permit or Final Map Approval, whichever comes first, plans shall be submitted for review and approval of the Planning Director to provide that retaining walls exceeding 4' in height shall be separated into a series of smaller walls or be of crib design, except as required to meet geotechnical criteria and as approved by the Planning Director.
- (e) Prior to any Final Map Approval, the applicant shall submit draft CC&R's, or documentation subject to City approval showing that the existing CC&R's for Unit I shall also be applicable to Unit II, which shall be subject to City approval and shall include the following:
1. A landscaping program which establishes the minimum level of horticultural training of personnel and the quality, frequency and types of landscape maintenance required and a program for future planting, thinning and/or removal of landscape plants.
  2. A requirement that each Homeowners' Association shall employ a professional management consultant to administer the landscape maintenance contract and oversee the implementation of the contract. The consultant shall adhere to the landscaping criteria established for Landmark I. The City shall be empowered to provide needed maintenance if required maintenance is not accomplished and to place a lien against the property within the Project to recover all City costs in enforcing and conducting such maintenance.
  3. A section which prohibits long term parking of large and recreational vehicles.
  4. A requirement that sections, relating to City requirements, of the CC&R's shall not be amended without approval of the City.
  5. A requirement that any addition to a structure shall require written Homeowners' Association approval prior to being submitted for City approval.
  6. A requirement for maintenance of street furniture by the entity responsible for maintaining the area in which the furniture is located.
  7. The CC&R's shall not include a section which regulates the colors of the homes in Neighborhood 2 (after the initial color approval), nor prohibits flags or Brisbane Stars.
  8. A requirement for annual maintenance and/or inspection of the storm drainage facilities.
  9. A provision that gates or barriers on the private roadways shall require City Council approval prior to installation.

10. A provision that invasive plants shall not be allowed in privately landscaped areas.
  11. A provision for collection of the HCP annual assessment from each homeowner, as described in Condition II(1). The HCP assessment shall be included as part of the regular assessment levied each year by the Homeowners' Association ("HOA") and shall be collected by the HOA and remitted to the HCP Trust in accordance with the terms of a Collection Agreement between the HOA and the HCP Trust.
- (f) Prior to issuance of any grading permit or any Final Map Approval, whichever occurs first, a plan for revegetation and screening of existing and proposed benches, if any, including plants compatible with the HCP requirement shall be submitted and shall be subject to the approval of the Planning Director. This plan shall illustrate effective vegetative screening of the benches from views on and off-site and take into account maintenance access needs.
  - (g) Prior to the issuance of any grading permit or any Final Map Approval, whichever occurs first, the applicant shall submit a 1"-40' scale plan showing that the rear and side setbacks will comply with the setbacks set forth in the approved Planned Development Permit for Unit II.
  - (h) Prior to issuance of any grading permit or any Final Map Approval, whichever occurs first, plans shall be submitted for review and approval of the Planning Director which provide that driveways shall have a minimum length of 18' (length shall be measured as the shortest line between the building and the property line). A maximum of 10% of total driveways in a Neighborhood may be 8' in length or less if adequate parking (two on- or off-street spaces for each unit) is provided within 100'. Prior to application for a building permit, the plans shall include automatic garage door openers for all units.
  - (i) Prior to the issuance of any grading permit or any Final Map Approval, whichever occurs first, a plan shall be submitted which provides an area completely available for ornamental landscaping adjacent to, and in front of, all retaining walls, as approved by the Planning Director.
  - (j) Prior to any Final Map Approval, the applicant shall submit a street lighting plan showing location, number and type of lights and shall include expected levels of illumination, type of illumination. Said plan shall be subject to approval of the City Engineer and include a concealed source/cut-off luminaire on the public streets in order to minimize visibility of the light from a distance and to direct light down to the roadway.
  - (k) Prior to any Final Map Approval, the applicant shall submit irrigation plans that shall be subject to approval by the Planning Director. Irrigation plans shall provide information on drip system included in crib walls.

- (l) Prior to any Final Map Approval, the applicant shall sign a landscape maintenance agreement as approved by the City Attorney, and provide a Performance Bond, for a period of 12 months from completion of landscape installation and to insure continued maintenance of all public and private common landscaped areas. The City shall have the right to inspect the landscape periodically during the maintenance period and at the end of the maintenance period. In any case, the City must be satisfied with the condition of the landscape before the applicant's maintenance agreement is terminated.
- (m) The applicant shall comply with all tree preservation measures required by the City. If any trees are to be removed or thinned, the tree removal crew shall follow tree thinning procedures previously established for Unit I, as recommended in the Eucalyptus Management Handbook For the Northeast Ridge Development prepared by Ralph Osterling Consultants, with commentary by Barrie Coate.
- (n) Prior to issuance of any grading permit or any Final Map Approval, whichever occurs first, the applicant shall submit landscape plans at 1"-40' scale which shall be subject to Planning Director approval and conform to the following specifications:
  - 1. The overall tree density for the project shall be no less than one tree per 350 square feet of landscaped area exclusive of fire buffer landscaping. Specifically, the following areas shall have increased density of tree planting:
    - Neighborhood II, Side Yards: A minimum of one additional tree between each house, since the tree planting appears sparse, shall be included in the working drawings.
  - 2. The density of planting in all setbacks shall be adequate to provide screening of the buildings while allowing views out and shall be subject to approval by the Planning Director. Where setbacks between buildings and edge of pavement are less than 12 feet, narrow, open canopy trees that allow views out shall be selected. They shall be planted more densely than in other areas in order to screen the architecture. The selected species should be deep rooted and root barriers shall be used where necessary (within 10' of paving) to prevent roots from lifting paving.
  - 3. All street frontage trees shall be a minimum of 15 gallons. The minimum street tree spacing shall be an average of 1 tree per 20 linear feet with no 2 trees closer than 8' OC (on center). In informal streetscapes, trees shall be planted in clusters with spacing between trees varying from 8' OC to 20' OC and with clusters no more than 40' apart (trunk to trunk).

4. Conflicts between the existing eucalyptus and new plants shall be minimized. This includes keeping irrigation water away from the eucalyptus, planting adjacent areas with species tolerant to low amounts of water and planting material which is visually and culturally compatible with the eucalyptus.
5. Project entries and public roadways shall be landscaped in accordance with updated landscape plans.
6. The plans shall show landscape screening of utility vaults and existing and proposed water tanks. If requested by the Planning Director, elevations or other illustrative drawings shall also be prepared.
7. The plan shall illustrate the location of and the maintenance for the Public Services Easement wherever it occurs on the Project.
8. If trees are not allowed in the PSE because of the location of utilities, the developer shall provide an area equivalent in width and length and adjacent to the PSE for tree planting. If necessary, structures shall be deleted, set back and/or habitat acreage redistributed (if allowed by Section 10(a) permit and Implementing Agreement) so that the tree planting area is not reduced.
9. The plan shall illustrate the boundaries of maintenance responsibilities and how boundaries are defined (fence, wall, pavement, etc.).
10. The plan shall include a plant palette which includes species and typical spacing and size. A minimum of 50% of the trees shall be 24" box or larger unless approved by the Planning Director. Location and size of trees shall be as approved by the Planning Director.
11. A minimum landscaped area (entirely available for landscaping) shall be provided for screening at the edges of the developed areas, as required by the Planning Director, taking into consideration areas of the project that abut open space.
12. The plan shall include ornamental plants, as approved by the Planning Director, within the crib walls. If the crib wall exceeds 10' in height, a minimum of 7' of landscaping in front of the crib wall shall be provided, subject to minor modifications approved by the Planning Director.
13. The plan shall include trees, in an undulating pattern, within 5' to 15' of each roadway that is adjacent to an undeveloped area or habitat. The location of the planting areas and location and species of trees within those areas shall be subject to the approval of the Planning Director. The delineation of the maintenance jurisdiction for this planted area shall be subject to the approval of the Planning Director.

14. Drainage channel and rocks shall be placed outside the minimum landscaped area and/or outside the line shown on the amended Habitat Boundary Plan as buffer line.
  15. Sidewalks shall be provided adjacent to all units up to the last driveways of all cul de sacs.
  16. Landscaping for stem walls that exceed 6' in height shall be reviewed and approved by the Planning Director.
- (o) Prior to issuance of building permits, the City's Inspector will review the staking of foundations to insure that the required landscape setbacks are met. Reimbursement for City costs to be provided as in Section XII, a. and b.
  - (p) Prior to approval of the any Final Map, during the design of improvements, the Planning Director shall review and approve the design, size, material and color for trails, walks, any pathway lights, irrigation, roadways including curb and gutter, fences and walls.

**D. POLICE DEPARTMENT**

- (a) Prior to issuance of any building permit, the Police Department shall review and approve the plans in accordance with their recommendations entitled "Residential Risk Analysis Pre-Construction Design Review" dated July 17, 1989. The building plans shall comply with such recommendations.
- (b) Prior to issuance of each occupancy permit, each unit shall be inspected and approved by the Police Chief for compliance with Condition D.1.

**E. PARKS & RECREATION**

- (a) Trails within the Habitat shall be approved by the Plan Operator.

**F. FINANCE DEPARTMENT**

- (a) If a public improvement(s) as required herein is not completed, the applicant may request that additional security or bonding be accepted in lieu of completion. Such request shall be reviewed by the City Attorney, Planning Director and Finance Director for their determination.

**G. BRISBANE SCHOOL DISTRICT**

All conditions completed.

**H. REGIONAL WATER QUALITY CONTROL BOARD**

- (a) Prior to any Final Map Approval or issuance of any grading permit, whichever occurs first, applicant shall comply with any applicable requirements of the Regional Water Quality Control Board.

**I. ARMY CORPS OF ENGINEERS**

- (a) Any approval of these applications shall be conditioned upon compliance with the requirements of the Army Corps of Engineers, as stated in its letter dated July 13, 1989, having been achieved. Formal notice of this compliance is required.

**J. PACIFIC GAS AND ELECTRIC COMPANY**

- (a) Prior to any Final Map Approval, a clearance letter from PG&E shall be submitted for review and approval by the City Engineer.

**K. MISCELLANEOUS ADDITIONAL CONDITIONS**

- (a) Prior to any Final Map approval, or issuance of grading permits, whichever occurs first, provide a letter from the City's cable television provided indicating their ability to cooperate in providing cable facilities to the development.
- (b) The Applicant agrees to indemnify, defend and hold the City and its officers, officials, boards, commissions, employees and volunteers harmless from and against any claim, action or proceeding brought by any third party to attack, set aside, modify, or annul the approval, permit or other entitlement given to the applicant, or any of the proceedings, acts or determinations taken, done or made prior to the granting of such approval permit or entitlement.
- (c) The applicant shall contribute to the city the sum of \$1,800,000 for public facilities, to be allocated equally to each of the 71 lots in Unit II and the 17 lots previously approved as part of Unit I, resulting in an allocation of \$20,454 for each lot. The contributions for the public facilities shall be paid in accordance with the terms of an amendment to the Subdivision Improvement Agreement to be executed between the developer and the City prior to any approval of a final map for Unit II.

## **EXHIBIT "D"**

### **TEXT OF HCP AMENDMENT NO. 5**

#### **Amended Text of San Bruno Mountain HCP As Amended to Support ITP 215574-5**

*Section V.B of the HCP would be replaced with the following text:*

#### **B. FUNDING PROGRAM**

A basic element of the HCP is creation of a funding mechanism which is able to support the monitoring, research, enhancement and other conservation techniques provided for in this HCP for permanent habitat conservation. The amount of funding must be adequate and protected against inflation. It does not seem possible to provide permanent, inflation-free funding solely by reliance on discretionary appropriations from public entities. As a result, the HCP proposes to rely on private funding for habitat maintenance. Funds for habitat maintenance would be deposited in four distinct but overlapping phases: initial funding, service contract funding, permanent funding, and supplemental funding.

- 1) Interim funding will begin upon the execution of this Agreement, and will be paid by the Landowners. Upon full implementation of the program, it is anticipated that the total amount of interim funding paid by the Landowners will be approximately \$50,000.00 per year.
- 2) Funds will also be raised through fees charged to the developers for monitoring of development, and for consultation provided to the developers, by the Plan Operator. The fees charged will cover the Plan Operator's costs and expenses and will also provide some extra money for operation and enhancement of the Conserved Habitat.
- 3) (a) Except as provided herein, permanent and ongoing funding for habitat operation, maintenance and enhancement will be provided by a \$20.00 annual charge per dwelling unit within the Development Areas and a \$10.00 annual charge per 1,000 square feet of floor area of private non-residential development on the mountain, adjusted annually for inflation as described in Section VI(A)(2) of the Agreement With Respect To The San Bruno Mountain Area Habitat Conservation Plan. As the construction is completed and permanent funding is imposed, interim funding will be phased out.  
  
(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.

- 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.

Concurrently with the execution of this Agreement, the County and the Cities shall either enter into a trust agreement and thereby and thereupon establish the "San Bruno Mountain Area Habitat Conservation Trust Fund" (hereinafter "Trust Fund") or form an Assessment District or provide for other appropriate funding sources as provided below. The funding source shall have the duty to use the funds for habitat conservation on San Bruno Mountain so as to provide for the conservation of the Mission Blue, Callippe Silverspot and other Species of Concern and the San Bruno Mountain Area Ecological Community.

The trustees of the Trust Fund shall be the Managers for the County and the Cities who shall act and administer the Trust Fund solely for the purpose of providing the County with funds for the protection and enhancement of the Species of Concern by the operation, maintenance and enhancement of the Conserved Habitat for such purposes, all as set forth in greater detail in said Trust Agreement.

The funds will be paid annually to the funding source, as appropriate, and dedicated solely to habitat conservation activity. Upon full implementation of the program, it is anticipated that the amount of annual funding will be in excess of \$400,000.00, which has been determined to be sufficient for habitat conservation. The exact amount of annual funding cannot be calculated because Landowners will begin participation in the funding program at different times. The Trust will consist of one representative each from San Mateo County, Brisbane, Daly City and South San Francisco. The Trustees of the Trust shall have the duty to use the funds for habitat conservation on San Bruno Mountain so as to provide for the conservation of the Mission Blue, Callippe Silverspot and other Species of Concern and the San Bruno Mountain Area Ecological Community.



In connection with the subdivision, development and use of the Developable Administrative Parcels, the respective local agency having jurisdiction shall require, and in any event (except as provided in the Agreement) each Landowner with respect to each Development Area, or portion thereof, shall record, a covenant with respect to such Developable Administrative Parcels, or portion thereof.

Prior to the time when the funding from covenants and restrictions assessments provided for above becomes available, the parties shall establish an Interim Funding (Interim Fund) in the amount of at least \$50,000.00 per year for preliminary habitat restoration activities, native plant seeding and species population monitoring, and other habitat enhancing and monitoring activities. It is anticipated that additional interim funding will come from new projects, contributions from public agencies and from fees for monitoring and consultation, so that the interim funding will probably be in excess of \$50,000.00 per year.

As a contribution to the Interim Fund, each of the following Landowners shall pay to the Plan Operator the amount of money set forth below opposite its name monthly in advance, commencing with the later of (i) the approval of a specific plan, rezoning for residential or commercial purposes, PUD, or tentative subdivision map for any portion of the Developable Administrative Parcel set forth opposite the respective Landowner's name below; or (ii) the execution of this Agreement by each Landowner.

<u>Landowner/Developable Administrative Parcel</u>	<u>Monthly Payment</u>	<u>Pro Rata Limit</u>
Cadillac-Fairview Homes West: Northeast Ridge Project	\$ 1,956.67	\$ 23,480.00
W.W. Dean & Associates: South Slope Project	781.67	9,380.00
Presley: Reservoir Hill	681.67	8,180.00
Foxhall Investment, Ltd: Rio Verde Estates and Rio Verde Heights	746.67	8,960.00

With respect to all other Developable Administrative Parcels, the Landowner with respect thereto, upon the approval of any PUD, tentative subdivision tract map, building permit, grading permit, conditional use permit or special use permit shall be required to commence and continue paying to the Plan Operator for the Interim Fund, in the same manner and to the same extent provided above with respect to the Landowners specified in this subsection, a charge in the amount of \$20.00 per year for every residential unit and \$10.00 per year per 1,000 square feet of non-residential floor area proposed to be developed under the approval sought.

In the event that any of the Landowners above fails to meet its interim habitat funding obligation, the obligation to make payments shall terminate and the respective

Amended Text of San Bruno Mountain HCP – As Amended to Support ITP 215574-5

Landowner shall thereafter have no obligation to make further payments and the Landowner shall lose its rights and benefits under the Section 10(a) Permit.

As the permanent funding provided becomes available, the Interim Funding shall be phased out.

The parties to this Agreement recognize and agree that the permanent charge/assessment may be satisfied through collection on the annual County property tax bill of an equivalent amount. Such collection may be through an assessment levied by a public entity or district such as a landscape and lighting district pursuant to Streets and Highways Code §§ 22500-22679, an open space maintenance district pursuant to Government Code §§ 50575-50628, or some other mutually agreed upon funding source. All parties agree to cooperate in good faith in the formation of such a funding source as is selected by the Cities and the County and the Landowners shall consent to the formation of any such funding source so selected.

*Section V.G of the HCP would be replaced with the following text:*

#### G. INCIDENTAL TAKE PERMIT

The County of San Mateo and the cities of Brisbane, Daly City and South San Francisco received a permit for taking of the Mission blue and other listed species under Section 10(a) of the Endangered Species Act. Each of the four local governments are named as a permittee.

The permit application sets forth proposed conditions under which the local governments will operate. The conditions include the following:

1. No taking of Mission blue on San Bruno Mountain shall occur except in compliance with procedural and substantive requirements of the Agreement.

2. The conserved habitat shall be held, used and administered in accordance with the HCP and Agreement.

3. The development areas shall be used and administered in accordance with the conditions in Chapter VII of the HCP.

4. A permanent institutional structure and funding mechanism shall be established in accordance with Chapter V of the HCP and compliance with the applicable funding requirements shall be demonstrated by each developer prior to the issuance of any grading permit or building permit.

5. The permit shall be valid for an initial thirty year term, from 1983 to 2013.

6. The Agreement, as required by Chapter V of the HCP, shall be executed concurrently with the issuance of the Section 10(a) permit.

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.

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.

*The Operating Program for the Northeast Ridge in Chapter VII of the HCP would be replaced with the following text and exhibits (exhibits not included below are not affected by the amendment):*

## REVISED OPERATING PROGRAM

**Planning Area:** Northeast Ridge (1)

**Administrative Parcel:** Northeast Ridge Project (07)

**Location and description:** The Northeast Ridge is located in the northeast corner of San Bruno Mountain. It is bounded on the south by the Crocker Industrial Park, on the north and east by Guadalupe Canyon Parkway and on the west by a P G & E transmission line (Figure 1-07 A). It has a hilly terrain which supports four vegetation types: annual grassland, coastal scrub, riparian/wetland, and introduced exotics (eucalyptus, gorse). Approximately 90% of the site is annual grassland.

**Ownership:** The undeveloped Unit II portions of the site are owned by Brookfield Northeast Ridge LLC (Landowner), and future development of the Unit II project is under the supervision of Brookfield Bay Area Builders Inc.

**Project:** The development of 71 single-family homes in the Unit II, Neighborhood II.

**Status:** This is a planned parcel. The original Concept Plan was submitted and approved by the Task Force and Local Agency at Public Forums in March and April 1982. A Specific Plan was submitted to the City of Brisbane and County of San Mateo in Sept. 1982. An EIR was prepared on the Specific Plan. In November 1989, the Brisbane City Council approved a vesting tentative subdivision map and related applications for a project of 579 dwelling units. In August 1990 the U. S. Fish and Wildlife Service approved the Northeast Ridge Equivalent Exchange Amendment to the HCP. In 2007, Brookfield Homes submitted a revised development plan for Unit II in coordination with the City and County, and the U. S. Fish and Wildlife Service subsequently approved an Amendment to the HCP and Section 10(a) permit that incorporates the revised plan and that includes take authorization for the callippe silverspot in the Landmark II development area.

**Biological Issues:** The Northeast Ridge includes rolling hillsides, terraces and slopes and residential development on the lower slopes. Even with the development, it remains an important habitat area for the callippe silverspot and the mission blue butterfly. Within undeveloped areas of the Northeast Ridge, grasslands are the dominant community and abundant host plants for both the callippe silverspot and mission blue are present. The area is mostly grassland with some areas converting to coastal scrub. A large eucalyptus grove that was present on the site has been thinned and removed in accordance with the Operating Program approved in 1990. The grasslands are dominated by non-native annual grasses and herbaceous weeds in many areas, yet the area still supports the butterfly host plants and the rare butterflies in high numbers.

Control work on French broom, eucalyptus and fennel has been successful, however non-native annual grasses and weeds such as Italian thistle and wild radish still pose potential threats to the fragile grassland.

**Impact:** The development of the Unit II, Neighborhood II phase of the Northeast Ridge development will disturb approximately 19.64 acres of land, 16.67 acres will be permanently converted to urban uses, while 2.97 acres will be subject to habitat restoration. Approximately 12 acres of the total area disturbed by the Unit II project is grassland. Of that, approximately 2.27 acres of the total area disturbed is occupied by Johnny jump-up (*Viola pedunculata*), which is the callippe silverspot butterfly's larvae food plant. The loss of grassland represents roughly 1% of the remaining grassland on San Bruno Mountain as mapped in 2003. The loss of viola represents roughly 1.7% of the remaining viola on San Bruno Mountain. Habitat that supports the mission blue butterfly will also be removed as a result of the development of Unit II, Neighborhood II.

**HCP Objectives -- Specific Conservation Needs:** Since the Northeast Ridge parcel comprises a major portion of the San Bruno Mountain butterfly population, intensive mitigation and enhancement activities are warranted. However, because development planning was sensitive to the needs of the butterfly populations and the findings of the Biological Study, no specific habitat manipulation is required within the development boundaries (permanently and temporarily disturbed areas), with the exception of reclamation of cut and fill slopes. The enhancement activities will focus on expanding and improving habitat in the Conserved Habitat areas which will eventually be dedicated to the County.

Habitat conservation measures include: retention of large, contiguous, and diverse areas of Conserved Habitat around the development sites; reclamation of cut and fill slopes with host plant species; phasing of development so that lower grade habitat areas are disturbed first; coordination with other developments in the planning area through the Plan Operator so that the total impact on the species of concern is minimized; both temporary and permanent protection of the Conserved habitat, initially from construction activities and finally from human encroachment; the use of habitat enhancement techniques to improve and expand the Conserved Habitat; and dedication of the Conserved Habitat once development has been assured. Finally, monitoring should take place to assess the effect of the above measures.

The ultimate Conserved Habitat area, which is shown as Management Unit 1-07-04 in Figure 1-07 C, will consist of everything but the permanently disturbed areas, shown as Management Units 1-07-01 to 1-07-03 in the same Figure. The developer will be financially responsible for reclaiming all of the temporarily disturbed areas within the Conserved Habitat area for a 5-year period.

### Operating Program

**Obligations:** The landowner/developer has the following obligations:

1. No construction or conversion to urban uses shall be permitted beyond the temporarily disturbed habitat area within the 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 or within the temporarily disturbed habitat area within the 1-07-04, construction and conversion to urban uses may occur subject only to the conditions set forth in Paragraph 2 below.

2. Prior to any construction within Administrative Parcel 1-07, the Landowner shall provide for the following:

a. Dedication of Conserved Habitat. 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.

b. HCP Funding Program. 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).

Pursuant to an agreement with the City of Brisbane, the Landowner shall fund the HCP endowment by 4,000,000, 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.

Owners of each home in the developed portions of the 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.

c. Salvage Provisions. 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.

d. Reclamation Provisions. 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.

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 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.

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.

e. Pesticide Control. 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.

f. Buffer Areas. 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.

g. Inspection. 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.

The Plan Operator has the following obligations:

1. Prepare and execute an annual operating program for the Conserved Habitat within Administrative Parcel 1-07 and comply with mitigation measures set forth for Management Unit 1-07-04;
2. Monitor the effect of all activities within Development Areas on adjacent Conserved Habitat and provide advice and direction to the Landowner to assist its compliance with the obligations described above with respect to Administrative Parcel 1-07;
3. Designate vegetation materials for use in Reclamation Plans and review such Reclamation Plans submitted by the Landowner with respect to Administrative Parcel 1-07 in a timely fashion to avoid delays in the implementation of such Plans;
4. Manage habitat strips along both sides of GCP and the area around the water tank as butterfly movement corridors to facilitate exchange of butterflies from N R to Saddle areas. To achieve this, the coastal scrub areas north of GCP and near the water tank will need to be opened up and restored to grassland habitat.
5. Accept dedications of Conserved Habitat within Administrative Parcel 1-07.
6. Notify the U. S. Fish and Wildlife Service immediately of the finding of any endangered species found dead or injured as a result of activities authorized under the Section 10(a) permit. Notification must include the date, time, and location of the specimen and any other pertinent information. The Service contact person for this information is Ms. Lori Rinek at (916) 414-6600. Any mission blue butterflies found dead or injured shall be deposited with the California Department of Fish and Game.

**Management Units:**

1. **1-07-01 and 1-07-03.** These units contain the permanently disturbed areas of the Unit I development.
2. **1-07-02.** This unit contains the permanently disturbed areas of the Unit II development.
3. **1-07-04.** This unit contains all of the ultimate Conserved Habitat in the parcel.



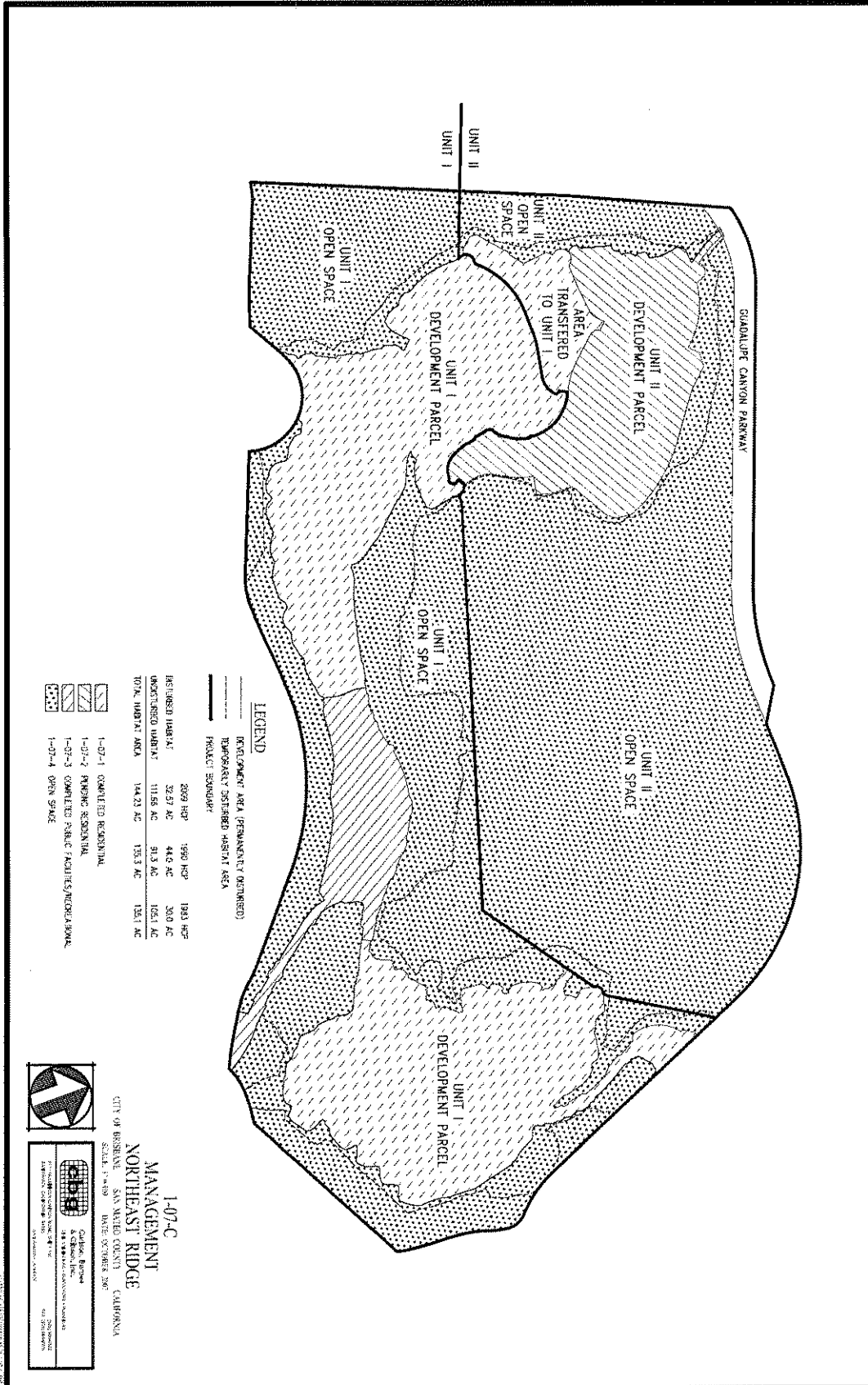
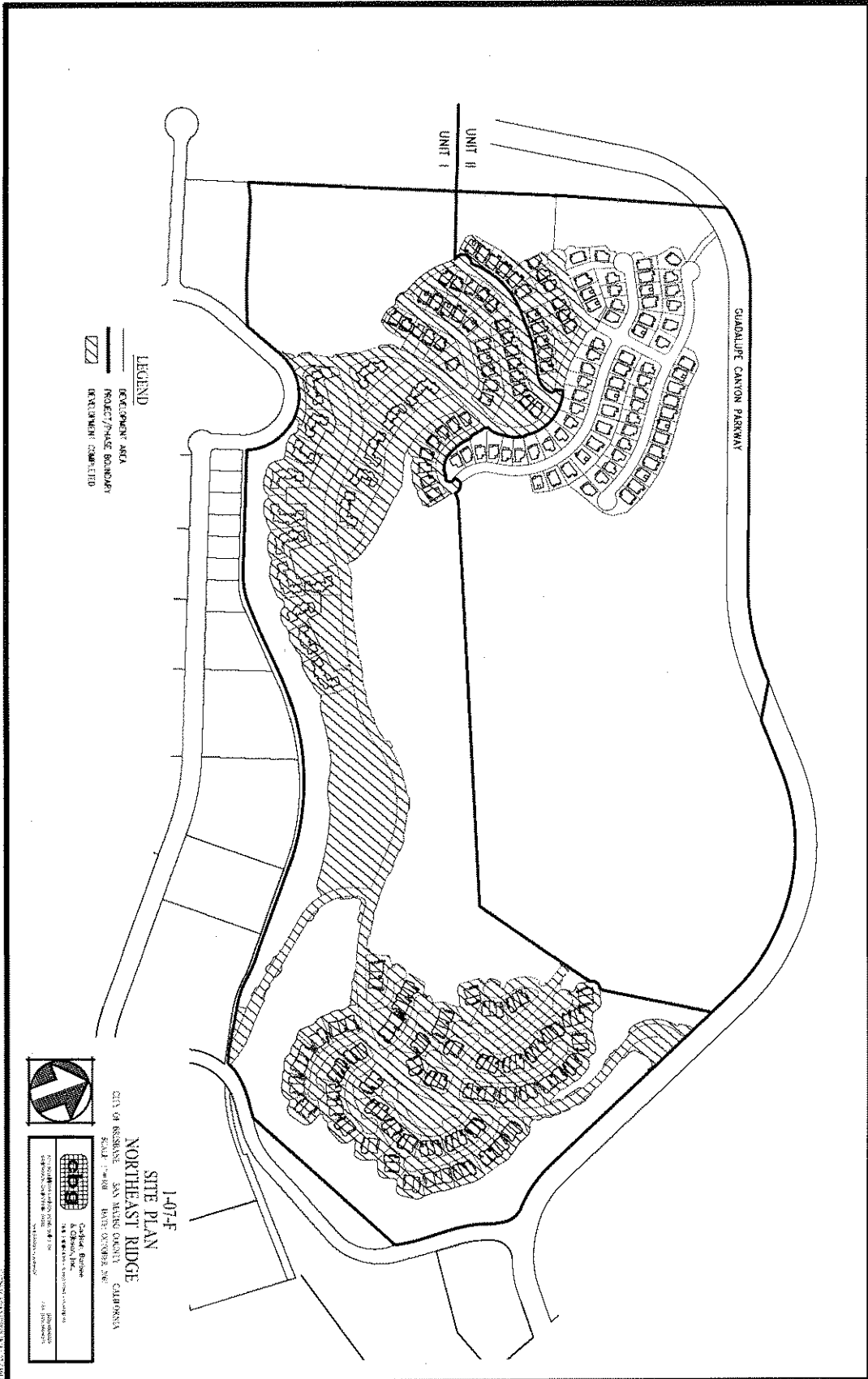


Exhibit 1-07-F



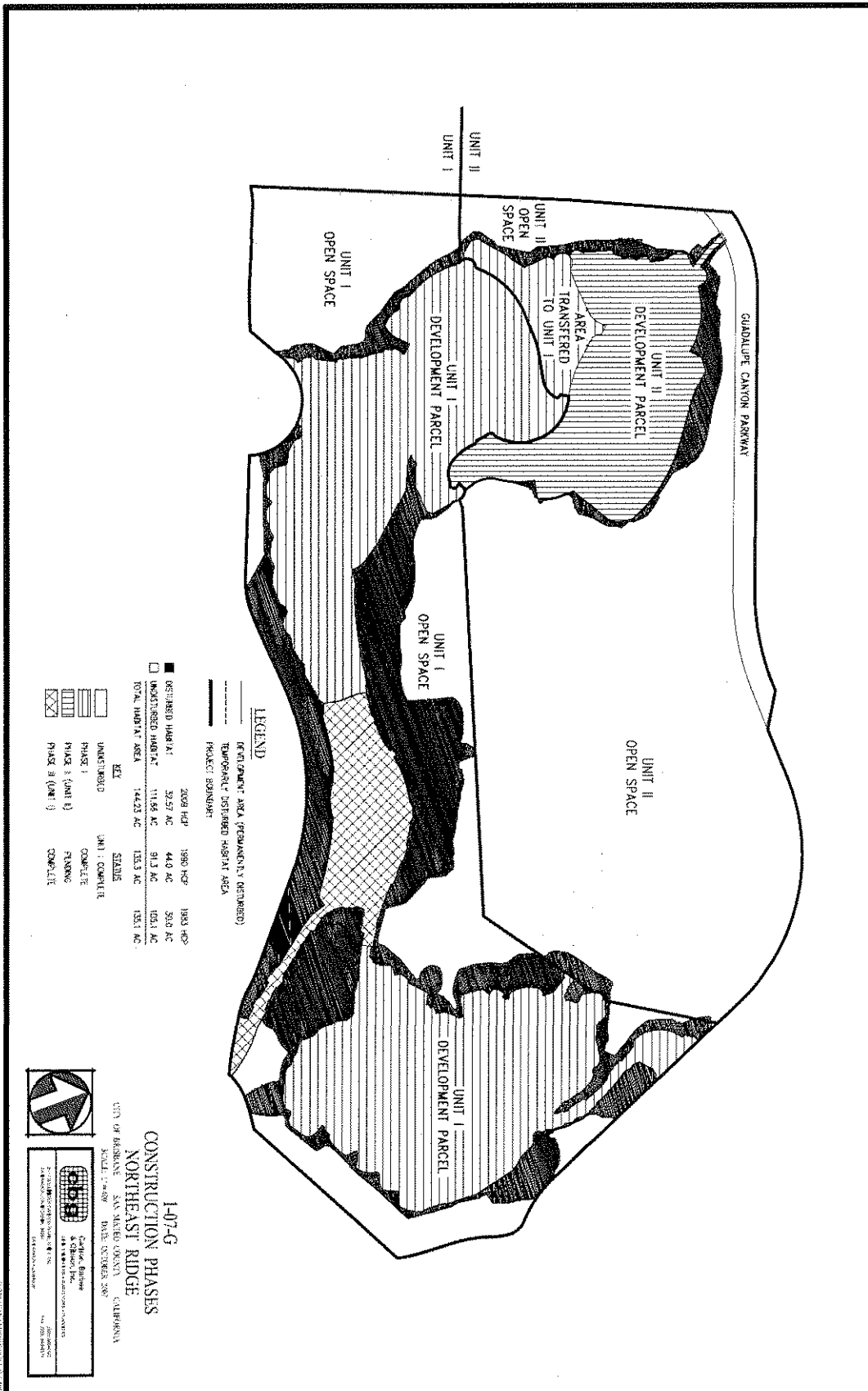


Exhibit 1-07-H

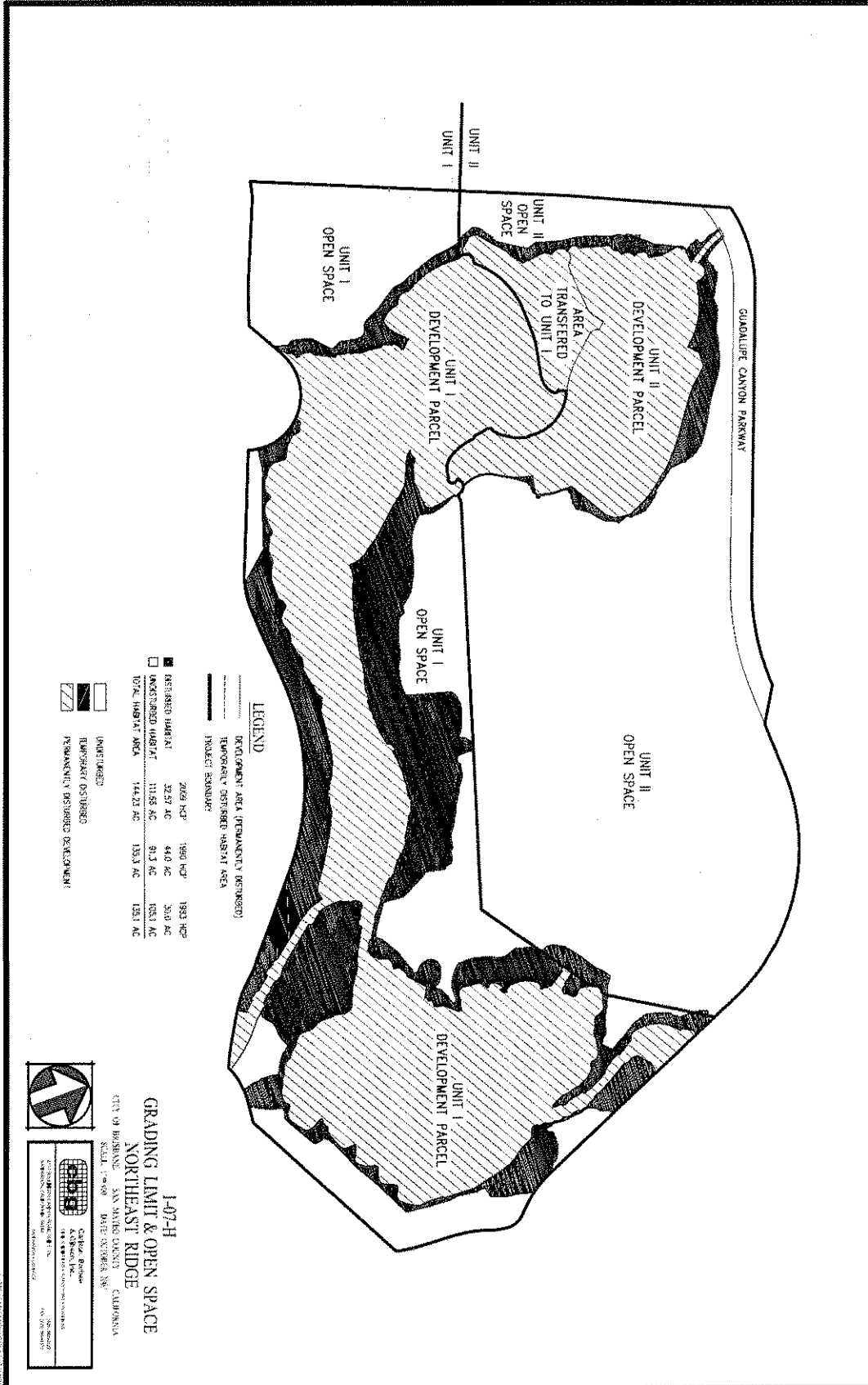
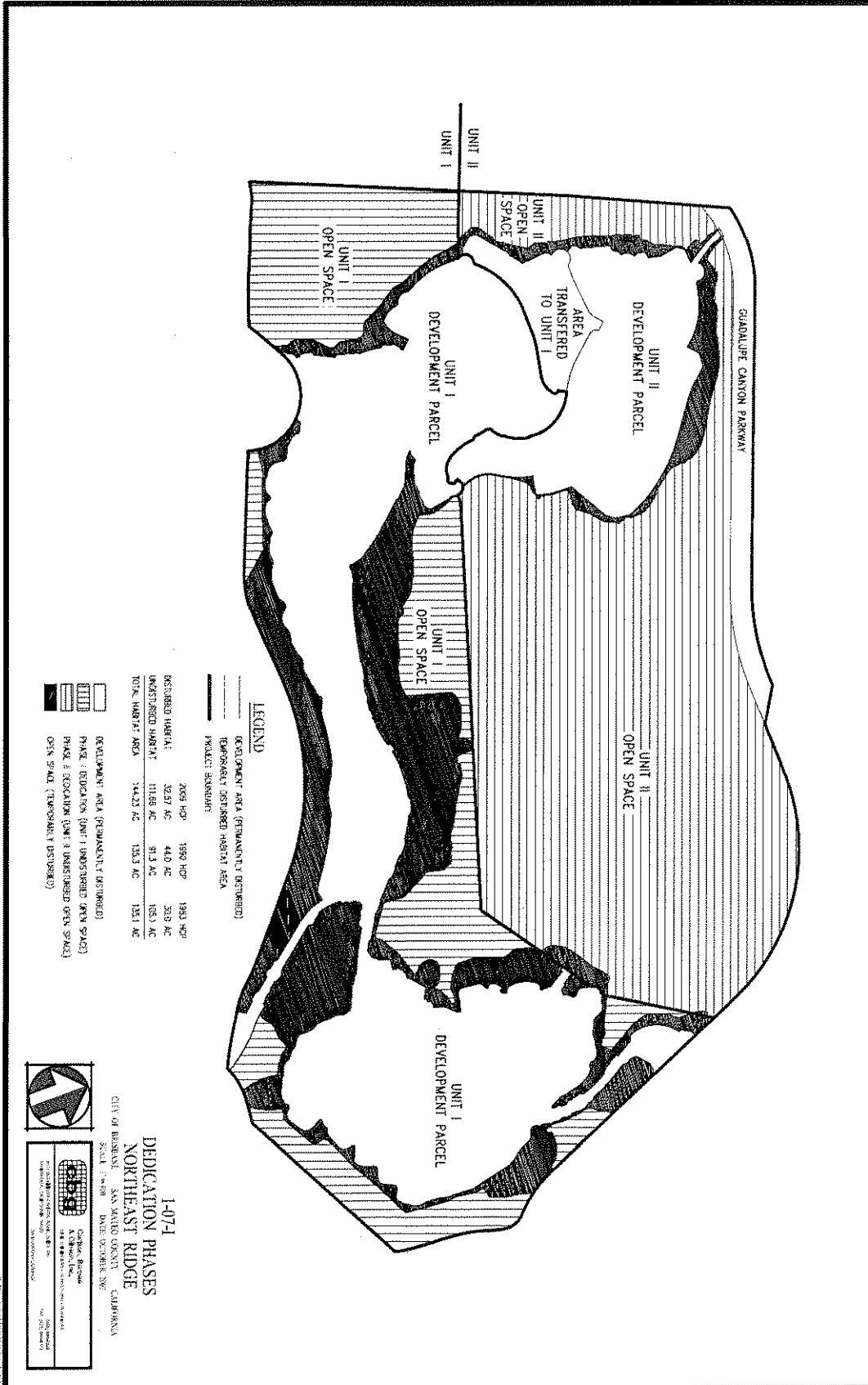


Exhibit 1-07-I



**1-07-I**  
**DEDICATION PHASES**  
**NORTHEAST RIDGE**  
 CITY OF BERKELEY, SAN MATEO COUNTY, CALIFORNIA  
 SCALE: 1" = 500'  
 DATE: OCTOBER 2007

**City of Berkeley**  
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