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SUBJECT: Initial Study/Mitigated Negative Declaration for San Bruno Mountain Habitat Conservation Plan, Amendment #5 - comments

Mr. Herzberg:

I am submitting the following comments on the subject Mitigated Negative Declaration for San Bruno Mountain Habitat Conservation Plan (HCP) amendment 5, related to revision of the operating plan for the Northeast Ridge development. These comments are submitted prior to the public meeting on this proposed action. I am submitting these comments as an independent technical reviewer and private citizen.

My qualifications to comment are based in part on (a) thirty years professional experience in applied plant ecology in conservation and management contexts; (b) twenty five years field experience with vegetation of the San Francisco Peninsula; (c) endangered species recovery planning and Section 7 Endangered Species Act consultation for the U.S. Fish and Wildlife Service, including the draft recovery plan for coastal plants of the northern San Francisco Peninsula (including species also occurring within San Bruno Mountain HCP area); and (d) nearly twenty years experience in preparing and reviewing joint NEPA/CEQA or CEQA-only documents.

I have reviewed the subject Initial Study (IS)/Mitigated Negative Declaration (MND), as well as the corresponding 2009 intra-Service biological opinion (BO) and Finding of No Significant Impact (FONSI) by the U.S. Fish and Wildlife Service, covering the same HCP amendment for the Northeast Ridge development area. My understanding from all these documents is that the listing of the Callippe silverspot butterfly (*Speyeria callippe callippe*), which was not federally listed (and had no critical habitat designation) at the time of the original HCP, forces the issue of providing Incidental Take Permits (ITP) for any development on the Northeast Ridge. The current requirement for ITP coverage of the *S. c. callippe* appears

to be of fundamental importance for this CEQA review because it indicates that no development could proceed under the 1989 Vesting Tentative Map (VTM) or its 2007 modification without take authorization for this federally listed subspecies. This is apparently the origin of the current proposed amendment action.

Existing conditions versus antecedent HCP as CEQA environmental baseline. The environmental impact analysis of your IS/MND appears, however, to follow the U.S. Fish and Wildlife Service's approach of evaluating impacts of the proposed HCP amendment by comparing it with an speculative "environmental baseline" established by development and conservation plans in the previous approved HCP. NEPA does allow impact analysis based on a "no action alternative" that assumes likely default actions and environmental consequences in the absence of a proposed federal (project) action. But in this case, it is clear that no development could occur without take authorization for *Speyeria callippe callippe*, so the "no action alternative" would be the same as "no (development) project", not "the Northeast Ridge development authorized by the 1989 VTM or previously amended HCP". This would be an academic argument if the IS/MND had not committed the same fallacy of using the previous HCP amendment as a speculative environmental baseline for comparison of impacts with the proposed amendment, instead reference to physical and biological conditions existing today. The IS/MND fails to describe or evaluate the biological composition, structure, ecological trends of the Northeast Ridge development site in substantial, relevant detail.

CEQA normally requires that existing conditions at the time the analysis is commenced be used as the environmental baseline for impact assessment (CEQA guidelines Section 15125(a)). The IS impact analysis generally follows the comparative structure of table 2, Comparison of Total Land Conversion in 1989 and 2007 Northeast Ridge VTMs, Unit II, which omits any reference to existing conditions relevant to biological resources that it acknowledges may be significantly impacted without mitigation. Similarly, the analysis of "conserved habitat" (IS p. 14) treats existing 19.64 acres grassland habitat in the project area (cited by USFWS) to be destroyed as though it were already developed, and considers only the speculative "gains" in conserved habitat by comparing the 2007 and 1989 VTMs. This is absurd (in CEQA perspective) because the 1989 VTM is could not be developed today without the HCP amendment, so existing habitat would certainly count as the environmental baseline, not the 1989 VTM! The IS fails to independently assess under CEQA the impacts of development under the 2007 VTM and proposed amended HCP. It cannot rely on the USFWS NEPA documents, which use the antecedent HCP as a baseline rather than existing conditions.

Mitigation of significant impacts to listed species and their habitats. The IS also uncritically relies on USFWS (FONSI, BO of 2009) equally credulous and uncritical assessment of the project's "mitigation" efficacy to offset the significant impacts of destroying nearly 20 acres of grassland on San Bruno Mountain. The IS identifies at least four biological impacts that would be significant without adequate mitigation (IS p. 27). The IS discussion of mitigation measures is devoted exclusively to funding mechanisms, and is devoid of reference to actual biological monitoring data on habitat quality (plant species

composition, abundance) and habitat area resulting from past management that was funded. The premise that “additional” funding (endowments, Homeowners Association assessments) of the HCP from development of the Northeast Ridge would result in habitat improvements is entirely unsupported by reference to data, despite more than two decades of monitoring. Funding programmatic mitigation under the HCP, *in itself*, cannot physically or biologically offset an adverse impact *unless* the substantive mitigation measure is reasonably reliable and effective. The contrary appears to be true: IS refers to “former grassland areas that have been lost to coastal scrub succession”(p. 16), and the USFWS FONSI (also p. 16) states that the cover of invasive weed species (adverse for listed insect species) has significantly *increased* since issuance of the original ITP, with a loss of 122 acres of grassland converted to scrub. This significant cumulative impact is not identified or evaluated in the IS.

Because the IS does not state what substantive mitigation measures would be implemented by additional funding mechanisms and funds, and does not assess the efficacy or permanence of vegetation management counted as mitigation, it cannot argue that funding will likely mitigate potential significant impacts to listed species and their habitats. The USFWS assessment of the progressive loss of grassland habitat to scrub (despite decades of HCP funding) raises substantial doubts about the nexus between funding and desirable outcomes of habitat management. The premise that all habitat degradation is due to under-funding is not explained or justified. The IS does not even indicate what portion of the funding is allocated to on-the-ground habitat management actions versus purely administrative, documentary, or monitoring procedures.

Need to analyze entire project and cumulative impacts under CEQA – The IS appears to omit reference to biological impact-causing activities within the scope of the proposed HCP amendment that occurred around 2007, as described on page 3 of the USFWS BO, “Prior Development within the Northeast Ridge.”. The BO states on p. 4:

In 2007, grading to construct a road, repair drainage features and conduct associated slope stabilization measures was conducted within a 6.74-acre area north of Unit I. Approximately **5.67 acres** of this area had been **previously disturbed by grading related to construction of Unit I** in 1995 and 1996. The City of **Brisbane determined repairs were necessary** for public health, **safety and welfare** reasons on approximately 1.07 acres in previously undisturbed area outside the Habitat Conservation Plan fence location at that time. Prior to Brisbane's approval of construction, it **informed the Service** of the proposed relocation of the fence and that grading would occur in previously undisturbed areas, and the work was **disclosed** through the Site Activity Permit notification process. The Site Activity review also **described mitigation** for impacts to habitat, which was **consistent with those proposed for activities covered by these Amendments**. The Service advised the City of Brisbane that **we do not impede activities that are necessary to prevent loss of human life or property**. (*bold added for emphasis*)

The IS fails to identify these impacts as either cumulative impacts, cumulative projects, or disclose them as part of the proposed activity (subject to after-the-fact authorization and CEQA impact analysis and mitigation). The USFWS description of these grading activities, curiously enough, does not refer to permitting or enforceable mitigation, but only to their being “disclosed”, “described mitigation”, “consistent with those proposed for activities covered by these Amendments” (which are only today under CEQA review!). The Service’s

heartening disclosure that it does not impede undescribed life-threatening or property-threatening activities has no bearing on the need for its own ESA authorization (ITP) and your agency's coverage under CEQA. These activities completed in 2007 are either reasonably related to development of the Northeast Ridge, or caused cumulative impacts to sensitive habitats and resources that require CEQA assessment. The County should coordinate with the City of Brisbane and bring these after-the-fact activities into CEQA compliance. The IS assessment of CEQA impacts to listed species and substantial habitat areas (over 5 acres!) would be incomplete without this remedy.

The IS must address significant environmental context changes and impacts since the previous EIRs. The IS does not account for significant changes in the environmental baseline assumed by earlier EIRs for the San Bruno Mountain HCP; for example, it fails to identify the large-scale (estimated 122 acre grassland to scrub conversion) habitat loss analyzed by the USFWS. I have reviewed Joe Cannon's expert comment letter on the IS/MND, and I concur with his general conclusion that invasive species spread and scrub succession are significantly outpacing habitat management restoration that has been funded for decades. At minimum, your CEQA analysis must account for quantitative change in habitat (vegetation) types and habitat quality that are directly related to functional ecological support for listed species since the last EIR for HCP amendment. The IS cannot uncritically rely on an older EIR for biological impact assumptions or assessments without re-evaluating the biological context of its conclusions, based on current conditions.

Conclusions

The IS fails to address potentially significant impacts relative to existing conditions. It also fails to assess potentially significant indirect and cumulative impacts to listed species (relative to the antecedent EIR(s)) in view of failure of ongoing habitat management to contain or reverse the rampant spread of invasive species, as well as post-grazing coastal scrub succession.

The County should therefore prepare either a supplemental EIR or an EIR amendment that adequately addresses:

- (a) important changes in baseline biological conditions within San Bruno Mountain HCP area;
- (b) all reasonably related physical activities in the proposed project that may have caused or contributed to potentially significant impacts prior to initiation of this CEQA document (including unauthorized activities);
- (c) an objective and consistent environmental baseline for impact analysis that complies with CEQA guidelines;
- (d) rigorous evaluation of the substantive (not merely procedural) efficacy of mitigation for potentially significant biological impacts.

Please contact me if you have any questions regarding this letter.

Respectfully submitted,



Peter R. Baye, Ph.D.

Copies furnished:

Paul Carroll
Joe Cannon
San Bruno Mountain Watch
Interested parties