



LAWYERS FOR  
CLEAN WATER  
INC.

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**Fax**

March 7, 2008

*Via Hand Delivery*

Mayor Michael Barnes  
Brisbane City Council  
50 Park Place  
Brisbane, CA 94005-1310

**RE:    Comments of San Bruno Mountain Watch Regarding Proposed 2007 Northeast Ridge Development & Proposed Northeast Ridge Unit II EIR Addendum**

Dear Mayor Barnes and City Council Members,

This office represents San Bruno Mountain Watch regarding the proposed Northeast Ridge Development (“the project”) and proposed Northeast Ridge Unit II EIR Addendum (“2007 Addendum”).

The City of Brisbane (“City”) must not certify the proposed 2007 Addendum because there is new, substantially important, information showing the project will have significant effects not discussed in either the 1982 Environmental Impact Review (“EIR”) or the 1989 Addendum and showing that significant effects previously considered will be substantially more severe than shown in the previous environmental review documents. The Brisbane Planning Commission recommended the 2007 Addendum not be certified for this project, and the City Council should follow that recommendation.

The City cannot approve the project, as proposed, because the project will result in significant adverse environmental impacts. Nothing in CEQA requires project approval in such a situation. CEQA is designed to make sure that decision makers such as the Brisbane City Council

have information regarding adverse project impacts to decide whether or not to approve a project. The City Council would be best served by telling Brookfield to come back with a project that won't result in significant adverse environmental impacts. Here, there is substantial evidence, including the conclusions of the proposed 2007 Addendum, that the project as proposed will cause significant adverse water quality impacts from storm water runoff, water quality impacts from cumulative sewage discharge, geological impacts, biological impacts and traffic impacts.

At a minimum, the City must prepare a Subsequent EIR and circulate this Subsequent EIR for public review and comment prior to deciding whether or not to approve the project.

#### **I. CEQA Standards for Approval of an EIR Addendum**

CEQA Guidelines 15164 and 15162 and Public Resource Code section 21166 govern preparation of an Addendum. CEQA Guideline 15164 states that an addendum to a previously certified EIR is appropriate only if some changes or additions are necessary, but none of the conditions described in CEQA Guideline 15162 have occurred. The CEQA Guideline 15162(a) conditions are:

(1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted, shows any of the following:

(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but

the project proponents decline to adopt the mitigation measure or alternative; or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

Where, as here, any of the above circumstances exist, then an Addendum must not be certified. Instead, a Subsequent EIR must be prepared.

Moreover, the adequacy of an Addendum is not determined solely on project “changes”. At the February 11, 2008 City Council hearing on this matter, the City Attorney asserted that the adequacy of an Addendum is determined solely by considering project “changes”. This is incorrect. Even where there are no changes in the project, CEQA Guidelines 15162 and Public Resource Code sections 21166(b) and 21166(c) require a Subsequent EIR here because there are substantial changes regarding project circumstances which require major EIR revisions and because new relevant information has become available.

**II. It Would Be an Abuse of Discretion for the City to Certify the 2007 Addendum as There Is New, Substantially Important, Information Showing the Project Will Have Significant Effects Not Discussed in the 1982 EIR or the 1989 Addendum and Showing Significant Effects Previously Examined Will Be Substantially More Severe.**

A. Water Quality

The 2007 Addendum contains no discussion of impacts from hydrology or water quality. The Checklist attached to the 2007 Addendum opines that there is a “less than significant impact” related to violations of water quality standards and waste discharge requirements. (Impact VIII(a)). The discussion thereafter provides only the following: “The proposed changes to the project would not increase the potential for violating any water quality standards or waste discharge requirements.”

The previous environmental review documents likewise exclude any discussion of water quality impacts from 1) project-related storm water runoff or 2) project-related sewage. The 1989 Addendum only mentions that there has been no significant change to the hydrology of the Northeast Ridge since the 1983 EIR, and concludes that no adverse hydrological or biological consequences have been identified in recently conducted studies. The 1983 EIR only generally

mentioned that the project will increase the quantity of storm runoff and “can result in a degradation of water quality” including sedimentation during the construction phase. Finally, the previous environmental review documents do not discuss sewage impacts at all.

1. Significant Adverse Storm Water Impacts Resulting from Project
  - a. Construction Storm Water

There is new substantially important information before the City showing the project’s water quality impacts resulting from project construction storm water runoff will have significant effects not discussed in the previous EIR, and showing that significant effects previously considered will be substantially more severe than shown in the previous EIR. This evidence includes the following:

1) December 1, 2005, Phillip Williams & Associates report regarding Brisbane Lagoon Sediment Study (A true and correct copy is attached as Exhibit A to the Lawyers for Clean Water and Law Offices of Brain Gaffney Exhibit List Letter (“Exhibit List”) submitted concurrently with this comment letter);

2) May 5, 2005, Phillip Williams & Associates report regarding Best Management Practices (A true and correct copy is attached to the Exhibit List as Exhibit B);

3) the State of California’s Construction Permit for Discharges of Storm Water Associated with Construction Activities<sup>1</sup> (“Construction Permit”) (A true and correct copy is attached to the Exhibit List as Exhibit C);

4) sampling results for total suspended solids and turbidity from sediment laden storm water runoff from Brookfield’s North East Ridge Development (A true and correct copy of the sampling results are attached to the Letter of Ken McIntire);

5) photographs of sediment laden storm water runoff from Brookfield’s North East Ridge Development (A true and correct copy of the photographs are attached to the Letter of Ken McIntire);

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<sup>1</sup> State Board Order No. 99-08-DWQ, National Pollutant Discharge Elimination System (“NPDES”) Permit No. CAS000002. Order No. 99-08-DWQ is a continuation of the prior permit, State Board Order No. 92-08 DWQ. Order No. 99-08 was modified by the document entitled: “Modifications to Water Quality Order 99-08-DWQ, State Water Resources Control Board, NPDES General Permit for Storm Water Discharges Associated with Construction Activity.”

The Environmental Protection Agency (“EPA”) has identified building construction as a serious contributor to the general storm water pollution problem. Construction sites have been identified as significant dischargers of polluted storm water, including storm water containing high concentrations of silt and turbidity, as well as oil and grease, trash, sewage, and other chemicals used in construction activities and equipment maintenance.<sup>2</sup> Further, erosion rates from construction sites are much greater than from almost any other land use activity. (Novotny, V. and H. Olem. 1994. *Water Quality: Prevention, Identification, and Management of Diffuse Pollution*. New York: Van Nostrand Reinhold). Thus, the proposed project has the potential to cause an array of chemical, biological, and physical water quality impacts.

The proposed project’s construction activities include, heavy grading, cutting and filling; clearing of vegetation; landscaping; construction of buildings and roadways; operation of heavy equipment, dirt trucks, trailers and fuel trucks; the loading and unloading of heavy equipment and other vehicles; the on-site maintenance, refueling and storage of heavy equipment; the storage and use of dirt stockpiles, refuse piles, construction materials, fuel tanks and equipment; the pouring of concrete foundations, and the application of plaster and stucco materials.

A primary focus and intent of the Construction Permit is the prevention of storm water pollution in the form of soil erosion and water body sedimentation caused by earth-moving activities at construction sites. Once natural vegetation and groundcover are disturbed by grading and the operation of trucks and other heavy construction equipment, the disturbed land becomes vulnerable to erosion, and any significant rainfall event has the potential to cause large amounts of sediment and other pollutants associated with construction activities to wash down hillsides and into bays, oceans and rivers, and their tributaries, resulting in the deterioration of water quality and harm to aquatic species and their habitats. In issuing its final regulations in 1990, the EPA noted “[e]ven a small amount of construction may have a significant negative impact on water quality in

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<sup>2</sup> See, National Pollutant Discharge Elimination System - Regulations for Revisions of the Water Pollution Control Program Addressing Storm Water Discharges, 64 Fed. Reg. 68722 at 68728 — 68733 (1999) (A true and correct copy is attached to the Exhibit List as Exhibit D); Final National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges From Construction Activities, 63 Fed. Reg. 15622 at 15627 (1998). Available at <http://www.epa.gov/fedrgstr/EPA-WATER/1998/March/Day-31/w8060.htm>.

localized areas. Over a short period of time, construction sites can contribute more sediment to streams than previously deposited over several decades.” 55 Fed. Reg. 47990 (Nov. 16, 1990). Discharges of sediment are of concern because sediment clogs stream channels, reduces stream depth, and destroys aquatic habitat.

The Construction Permit did not exist when the 1982 EIR or 1989 Addendum were certified. California adopted its first General Construction Permit on August 20, 1992. *Available at* <http://www.waterboards.ca.gov/stormwtr/docs/constpmt.pdf>. Owners and operators of construction projects are required to have obtained coverage under the Construction Permit prior to the initiation of construction activities. Permittees are further required to fully comply with the procedural and substantive requirements of the Construction Permit during and after construction activities. A violation of the Construction Permit is a violation of the federal Clean Water Act. 33 U.S.C. § 1311. The Construction Permit prohibits: direct or indirect discharges of materials other than storm water (i.e. non-storm water discharges) not otherwise authorized by an NPDES permit, discharges that adversely impact human health or the environment, and discharges that cause or contribute to an exceedance of any applicable water quality standard contained in a Statewide Water Quality Control Plan or the applicable Regional Board’s Water Quality Control Plan.

The Construction Permit also requires that Brookfield develop and implement a Storm Water Pollution Prevention Plan that includes Best Management Practices (“BMPs”) to ensure that storm water discharges from the project meets the performance standards of Best Available Technology Economically Achievable (“BAT”) and Best Conventional Pollutant Control Technology (“BCT”). The SWPPP must specifically identify BMPs that will control erosion and stabilize soil disturbed areas; control sediment discharge, including the prevention of a net increase of sediment load in storm water discharges; prevent all non-storm water discharges wherever feasible; prevent run-off; and minimize post construction pollutant discharges. The Construction Permit also requires that Brookfield must identify any breach or malfunctioning of a BMP or any leakage or spill and collect samples. The Construction Permit SWPPP and BMP requirements were adopted in the 1992 Construction Permit, approximately 9-years after the 1983 EIR and 3-years after the 1989 Addendum. The 2007 Addendum does not address the Construction Permit requirements.

Construction storm water studies indicate BAT/BCT for turbidity is 25 NTU mean and 75 NTU maximum and 50 mg/L mean and 260 mg/L maximum for total suspended solids. Sampling results and photos of storm water runoff indicate very high levels of total suspended solids and turbidity discharged from the North East Ridge Development. Brookfield's project has repeatedly and substantially violated the Construction Permit requirement that Brookfield implement controls to reduce pollutants in storm water discharges from their construction project. *See* Sampling results and photographs, attached to the Ken McIntire Letter.

The May 5, 2005 Phillip Williams & Associates report regarding Best Management Practices and the December 1, 2005 Phillip Williams & Associates report regarding Brisbane Lagoon Sediment Study also constitute new information triggering the need for a Subsequent EIR. The May 5, 2005 Report states that the erosion control efforts on the disturbed, unvegetated hillsides within the Northeast Ridge Development above Mission Blue Drive and Callippe Court have not been successful, that these hillsides are currently generating sediment through sheet and rill erosion, recommends remedial action, and states that the existing Northeast Ridge Development sediment basin was designed in early 1990's before the current water quality requirements were implemented. The December 1 Williams report concludes that the Brisbane Lagoon, connected to San Francisco Bay, is experiencing high rates of sedimentation that could affect lagoon function and habitat quality.

This is new information documenting the significant impacts, including cumulative impacts, of construction storm water from the project on area receiving waters. This new information requires a Subsequent EIR. To date, the City has not included analysis of water quality impacts in light of the Construction Permit's standards and requirements in the 2007 Addendum or the underlying EIR.

b. Post Construction

There is new substantially important information before the City showing that the project's water quality impacts resulting from post construction storm water runoff will have significant effects not discussed in the previous EIR, and showing that significant effects previously considered will be substantially more severe than those shown in the previous EIR. This evidence includes the following:

1) the San Mateo Countywide Stormwater Pollution Prevention Program, Order No. 99-059, NPDES Permit No. CAS0029921 (“MS4 Permit”) (A true and correct copy is attached to the Exhibit List as Exhibit E);

2) the San Mateo Countywide NPDES Municipal Stormwater Permit Amendment, Order No. R2-2003-0023, Amending Order No. 99-059, NPDES Permit No. CAS0029921 (“MS4 Permit Amendment”) (A true and correct copy is attached to the Exhibit List as Exhibit F);

There has been no analysis of the water quality impacts, including the cumulative water quality impacts, resulting from post construction storm water runoff. The City’s MS4 Permit prohibits discharges that cause or contribute to a violation of any applicable water quality standard for receiving waters contained in the California Ocean Plan or the Regional Board’s Basin Plan. *See* MS4 Permit, Receiving Water Limitations, B.2. The NER project is discharging sediment and other pollutants that are causing or contributing to violations of water quality standards. *See* Sampling results and photographs, attached to the Letter of Ken McIntire, and the December 1, 2005 Phillip Williams & Associates report regarding Brisbane Lagoon Sediment Study, attached to th.

MS4 Permit Amendment, Finding ¶ 6 further explains that urban development increases pollutant load, volume, and velocity or runoff and requires all new development or redevelopment<sup>3</sup> dischargers to prepare a Hydrograph Modification Management Plan, for approval by the Regional Board, “to manage impacts from changes to the volume and velocity of storm water runoff from new development and significant redevelopment projects, where these changes can cause excessive erosion damage to downstream watercourses.” (MS4 Amendment, Finding ¶ 17). The MS4 Amendment also recommends dischargers use techniques such as those described in the Bay Area Stormwater Management Agencies Association’s “Start at the Source Design Guidance Manual for Stormwater Quality Protection,” 1999 edition (“Start at the Source”) to minimize the impacts of storm water runoff. One of the techniques recommended by Start at the Source is to use permeable pavements to infiltrate storm water.

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<sup>3</sup> Redevelopment is “A project on a previously developed site that results in the addition or replacement of impervious surfaces.” The NER project is redevelopment because it will add impervious surface. *See* 2007 Addendum, page. A-19-20.

The 2007 Addendum acknowledges the siltation problem in the Brisbane Lagoon and the potential for water quality impacts because of the increase in impervious services, but it finds that the next phase of development by Brookfield Homes will have a less than significant impact. (2007 Addendum, page A-19-20). The 2007 Addendum merely compares the current phase of development to past phases, and opines that because the proposed project is less than that proposed in the 1989 Addendum, impacts will be less than significant. *Id.* Further, the 2007 Addendum notes that the developer can mitigate the impacts by using sediment traps and catchment basins, and asserts that the project will comply with Section C.3 of the MS4 Permit. (2007 Addendum, page A-19-20).

The 2007 Addendum does not discuss or evaluate how the project will comply with the MS4 Permit's prohibition on causing or contributing to exceedances of water quality standards. The 2007 Addendum does not mention the required Hydrograph Modification Management Plan, or the Start at the Source recommendations for minimizing impacts from impervious surfaces. Thus, it is unclear for the 2007 Addendum or the EIR whether the proposed project incorporates these measures. The 2007 Addendum asserts that BMPs, such as sediment traps and catchment basins will mitigate impacts to a less than significant level. (2007 Addendum, pages A-19-20). This ignores the finding in the 2005 studies that these measures were failing to stop impacts to Brisbane Lagoon. *See* Exhibit A & B, attached to the Exhibit List. The 2007 Addendum further implies that compliance with section C.3 of the MS4 Permit will ensure that impacts are less than significant. (2007 Addendum, pages A-19-20). Again, this conclusory statement ignores the findings of the City's own studies, which demonstrate non-compliance with the MS4 Permit. Finally, none of the environmental documents for the proposed project mention, let alone evaluate, the cumulative effects of post construction discharges and other polluted discharges in Brisbane on receiving waters.

To date, the City has not included analysis of water quality impacts, including cumulative water quality impacts, of post construction and the MS4 Permit standards and requirements. This is new information requiring a Subsequent EIR.

c. Sewage

There is new, substantially important, information before the City showing the project's

water quality impacts resulting from sewage discharges will have significant effects not discussed in the previous EIR and showing that significant effects previously considered will be substantially more severe than shown in the previous EIR. This evidence includes the following:

1) the July 19, 2007 correspondence from the San Francisco Public Utility Commission to the San Francisco Bay Regional Water Quality Control Board summarizing wet weather sewage discharges from San Francisco's Southeast Water Pollution Control Plant (A true and correct copy is attached to the Exhibit List as Exhibit G);

2) the July 20, 2006 letter from San Francisco Public Utility Commission to San Francisco Bay Regional Water Quality Control Board summarizing wet weather sewage discharges from San Francisco's Southeast Water Pollution Control Plant (A true and correct copy is attached to the Exhibit List as Exhibit H);

3) photograph of Combined Sewer Overflows ("CSO") from the San Francisco sewer system (A true and correct copy is attached to the Exhibit List as Exhibit I);

All of the sewage from the City goes to the San Francisco Southeast Water Pollution Control Plant. The San Francisco sewer system is averaging 10 CSOs each year resulting in millions of gallons of raw sewage discharged each year to San Francisco Bay and the Pacific Ocean. This proposed project will only increase the City's contribution to such sewage discharges. This is new substantially important information which must be analyzed in a Subsequent EIR.

#### C. Geological Impacts

The Environmental Checklist attached to the 2007 Addendum concludes that "the proposed project would result in an *increase* in the number of people and structures exposed to seismic hazards," and that despite the risk of landslides including debris flows, the "locations where debris catchment walls and fences will be required and that wall locations and required freeboard will [only] be shown on final plans." (p. A-13 to -14.)

These impacts were not analyzed in the 1982 EIR or the 1989 Addendum as the currently proposed project will "result in an increased amount of disturbed area [4.83 acres in northern area] within the Landmark II site." Figure II-3 shows the increased disturbed areas in green and red. Figure II-6 shows in red the area where over 325,00 cubic yards of hillside will be cut. A

Subsequent EIR must be prepared both because this is a substantial change in the project which will require major revisions of the previous EIR or negative declaration due to new significant environmental effects and a substantial increase in the severity of effects and because this is new information that the project will have one a significant effect not discussed in the previous EIR.

Moreover, the 2007 Addendum does not fulfill its duty as informational disclosure document. There is no geotechnical discussion in the 2007 Addendum despite the fact that LSA consulted with 2 geotechnical engineers and 2 geotechnical consultants. (2007 Addendum, Page 44). Page A-13 of the Environmental Checklist discloses that the geotechnical consultants concluded in June 12, 2007 letter that “adequate identification and investigation of potential site geotechnical constraints have been completed and satisfactory measures have been proposed to address the identified site constraints.” However, the 2007 Addendum does not disclose what those geotechnical constraints are or what measures have been proposed to address the geotechnical constraints.

D. Traffic Impacts

The proposed project includes new significant impacts that have never been analyzed before. The project will result in increased traffic delays 1) at the Mission Blue / Guadalupe intersection in the a.m.; and 2) at the Bayshore /Guadalupe intersection in the p.m.; and 3) at the Silverspot /West Hill intersection in a.m. and p.m. by 2014. *See* 2007 Addendum, p. 39 & 41. Thus, a Subsequent EIR must be prepared to analyze these impacts.

E. Biological Impacts

There is new information of substantial importance regarding the invasive plant composition on San Bruno Mountain, regarding the endangered status of the Callippe Silverspot, regarding the importance of specific ant species in maintaining Mission Blue butterflies, regarding the difficulty of plant restoration, and regarding the impacts on butterflies of proposed development based on the surveys of not just adult butterflies, but also based on surveys of butterfly larva and eggs.

In addition, there is a substantial change regarding the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to new significant

environmental effects based on Brookfield's failure to timely remove the eucalyptus on the Northeast Ridge and based on proposed building within Conserved Habitat. Removal of the eucalyptus was a condition of approval of the project in 1982, which the landowners have only complied with in 2008 – twenty-six years late. The HCP required that the landowner:

“[d]uring the initial stages of project development thin the eucalyptus grove in conserved habitat areas to leave open spaces of at least 45 feet between each tree with a diameter at breast height of 25 inches or more. This will open up the area and allow native species to grow under the trees and allow butterflies to pass through the trees. While thinning maintain the value of the trees for screening development should be maintained as feasible. Native plant species, including host plants of the butterflies of concern should be planted where trees are removed or thinned.”

Further, it is a glaring defect for the proposed 2007 Addendum to conclude that “unavoidable impacts described in the 1983 EIR and 1989 Addendum would be more than offset by the conservation measures included incorporated into the project, including a significant increase in funds (p. 25), given that the 1989 Addendum reiterated the widely accepted scientific observation that “revegetation efforts for the Callippe to date have been limited and largely unsuccessful” and conclusion that “when evaluating the impact of development on the Callippe, no mitigation value should be given to recreating Callippe habitat.” (1989 Addendum, p. III-13.)

**III. It Would Be an Abuse of Discretion for the City to Certify the 2007 Addendum as There is New, Substantially Important, Information Showing Mitigations, Which Are Considerably Different From Those Analyzed In The 1983 EIR And 1989 Addendum, Would Substantially Reduce Significant Environmental Effects**

CEQA requires preparation of a Subsequent EIR where, as here, there are mitigations, considerably different from those analyzed in the previous EIR, which would substantially reduce one or more significant effects on the environment.

Mitigations for the storm water impacts which should be included in the Subsequent EIR include an adequately sized detention basin, applying bonded fiber matrix on slopes, phased construction so no construction occurs in the wet season, slope pads to collect water, adequately sized BMPs, and the BMPs that Phillip Williams & Associates proposed to respond to sedimentation flowing to the Brisbane Lagoon.

#### **IV. The City Has Failed To Adequately Analyze Cumulative Impacts**

Identification of a project's significant environmental impacts is necessary to implement CEQA's policy of informed decision-making. (Pub. Res. Code §§ 21002.1(a), 21003.1(b).) Significant impacts should be discussed with emphasis in proportion to their severity and probability of occurrence, and environmental review documents must be "prepared with a sufficient degree of analysis to provide decision-makers with information which intelligently takes account of environmental consequences."

A mandatory finding of significance is required if the possible effects of a project are individually limited but "the incremental effects of an individual project are considerable when viewed *in connection with* the effects of past projects, the effects of other current projects, and the effects of probable future projects." (Pub. Res. Code § 21083(b); CEQA Guideline 15065(c), emphasis added.) "Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." (CEQA Guideline 15355(b); *Communities for a Better Environment v. California Resources Agency* ("CBE") (2002) 103 Cal. App. 4th 98, 114; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692, 720–721.)

The cumulative impacts analysis is essential in preventing impacts which are individually minor but cumulatively considerable from overwhelming the environment. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal. App. 4th 1184, 1214.) California courts have repeatedly found that analysis of cumulative impacts is among the primary CEQA functions. It is vitally important that an agency avoid minimizing the cumulative impacts. Rather, a conscientious effort must be made to provide public agencies and the general public with adequate and relevant information. (*Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal. App. 3d 1043, 1051; *Kings County, supra*, 221 Cal. App. 3d at 723.)

The cumulative traffic impact analysis only include future projects, but does not consider past and present development as required by CEQA.

Other than the flawed cumulative traffic analysis, there is no cumulative impact analysis in the 2007 Addendum. There is not evidence consideration of the other Brookfield development, including the development of Court B and Golden Aster. Nor is there any consideration of other

projects in Brisbane, including the Baylands project.

**V. The Addendum Violates CEQA Because it Fails to Adequately Describe the Project and Analyze the Full Impacts.**

An accurate and complete project description is necessary to fully evaluate the project's potential environmental effects. (*City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398, 406 & 408; *see also County of Inyo* (1977) 71 Cal. App. 3d 185, 193.)

At page 7, the proposed 2007 Addendum discloses that “17 additional units have been approved for development.” Likewise, attached to the 2007 Addendum in the Appendix B “Planning Documents” is a Second Amendment to Subdivision Agreement for the Northeast Ridge granting Final Map Approval on the condition that Brookfield pay for a remodel of City Hall and construct a gymnasium. The City’s approval of development and its discretionary approval of subdivision agreements and Final Maps must occur, by law, only after completion of CEQA environmental review. These 17 additional units and the construction of streets and drainage facilities on Court B and Golden Aster Court were included in the 2003 Addendum but the 2003 Addendum was never certified or approved by the City as in compliance with CEQA. Now, the proposed 2007 Addendum excludes these units and streets, thus their construction has never been included in any City environmental review document. At a minimum, the City must describe this portion of the project in order and consider the project specific and cumulative impacts.

**VI. Because Of The Proposed Project’s Significant Adverse Impacts, Under CEQA the City Can Deny The Proposed Project, or Approve The Project Only After Adopting A Statement Of Overriding Considerations.**

Because of the significant adverse impacts resulting from this project, the City can only approve the project if it determines that specific economic, social, technological, or other project benefits outweigh the significant adverse effects on the environment, and substantial evidence supports this determination. Pub. Res. Code 21083.

However, under CEQA, the City is not required to approve this project. Because of the substantial evidence of significant adverse impacts, the City Council would be best served by telling Brookfield to come back with a project that won’t result in significant adverse environmental

impacts.

**VII. Council Member Waldo Should Recuse Himself from Deliberations and Voting on the Project Because of His Expressed Bias Regarding Project Approval**

There is substantial evidence in the record that former mayor, and now Council Member, Steve Waldo on at least two occasions has expressed his bias regarding approval of the proposed project.

In *Nasha L.L.C. v. City of Los Angeles* (2004) 125 Cal. App. 4th 470, the Court of Appeal held that a City Planning Commission decision must be set aside due to an unacceptable probability of actual bias on the part of one of the decisionmakers. The basis for the Court's holding was that Planning Commissioner Lucente, in advance of a Planning Commission hearing, authored an article in a local residents association newsletter which stated that a project site was a crucial habitat corridor and notified readers who to contact for more information. The Court held that the agency decision on the project must be set aside despite the fact that Planning Commissioner Lucente had no financial interest in the matter and that he was not the sole decisionmaker. The Court of Appeal decision was based on the rationale that "procedural due process in the administrative setting requires that the hearing be conducted ...before a reasonably impartial, noninvolved reviewer." The court held that Lucente's authorship of the newsletter article gave rise to an unacceptable probability of actual bias and was sufficient to preclude Lucente from serving as a "reasonably impartial, noninvolved reviewer."

Given Council Member Waldo's repeated expressed bias for approval of the proposed project, if this Council proceeds without his recusal, the Council is vulnerable to having its decision set aside.

**CONCLUSION**

The City has failed to provide any explanation as to why it should not prepare a Subsequent EIR. The substantial evidence before the City requires that, at a minimum, a Subsequent EIR be prepared prior to deciding whether to approve the proposed project.

Please continue to include both this office, the Law Offices of Brian Gaffney, and San

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Bruno Mountain Watch, in any further communications to the public on this proposed project and environmental review related thereto.

Very truly yours,

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Daniel Cooper  
Lawyers for Clean Water, Inc.

cc: San Bruno Mountain Watch  
Law Offices of Brian Gaffney  
Paul Carroll, Esq.