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## INTRODUCTION

1. On September 22, 2009, the County of San Mateo through its Board of Supervisors (County) approved Amendment No. 5 to the San Bruno Mountain Habitat Conservation Plan for the Northeast Ridge (Project) and adopted its mitigated negative declaration, “San Bruno Mountain Habitat Conservation Plan Amendment #5 Mitigated Negative Declaration.”

2. The Project authorizes reconfiguration of the Northeast Ridge housing development on San Bruno Mountain. The reconfiguration was prompted by the 1997 listing of the callippe silverspot butterfly as an endangered species under the federal Endangered Species Act. Part of the Mountain’s callippe population is found on the Northeast Ridge.

3. Members of the public, including a number of scientists, submitted evidence demonstrating that the Project could have significant and cumulative adverse impacts on the environment, especially to the callippe and its sole host plant, *viola pedunculata*, that were not mitigated by the mitigated negative declaration.

4. The evidence shows, among other things, that the Project permanently narrows a vital dispersal corridor—and temporarily disturbs part of the remainder—that allows callippe on the Northeast Ridge to travel to other parts of the Mountain where it can breed with other callippe. This evidence shows that the disturbance to the corridor and the narrowing of it may significantly and cumulatively impact the species, in part by fragmenting the butterfly’s habitat and isolating the Northeast Ridge inhabitants.

5. The evidence also demonstrates that the negative declaration’s mitigations, especially those that propose to restore callippe habitat, are inadequate and fail to reduce the Project’s impacts to a level of insignificance.

6. Under the Californian Environmental Quality Act (CEQA), the lead agency must prepare an environmental impact report (EIR) when there is substantial evidence that the project *may* have an adverse impact on the environment. The evidence before the County in

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2 this case went well beyond this low threshold. Accordingly, the County violated the law in  
3 failing to require an EIR for the Project.

4 7. Petitioner requests this Court to issue a writ of mandate setting aside the County's  
5 approval of the Project and its adoption of a mitigated negative declaration.

6 **GENERAL ALLEGATIONS**

7 8. Petitioner San Bruno Mountain Watch is a non-profit public benefit corporation  
8 organized under the laws of the State of California. Mountain Watch has over 2000  
9 members who live and/or recreate in and around San Bruno Mountain. Mountain Watch's  
10 mission is to protect and preserve San Bruno Mountain as the largest and richest remaining  
11 example of the native Franciscan bioregion.

12 9. The personal and aesthetic interests of Petitioner and the persons associated with it  
13 will be severely injured if the Project as approved by the County is allowed to proceed as  
14 planned. Petitioner is within the class of persons beneficially interested in, and aggrieved  
15 by the County's decisions.

16 10. Respondent San Mateo County is a county organized under the laws of the State  
17 of California.

18 11. Respondent Board of Supervisors (Board) is the governing body of the County.

19 12. The true names and capacities, whether individual, corporate, or otherwise, of  
20 DOES I through X are unknown to Petitioner, who therefore sues said Respondents by such  
21 fictitious names. Petitioner will seek leave to amend this petition when it has been  
22 ascertained.

23 13. County of San Mateo Department of Parks is a department within San Mateo  
24 County. It is listed in the mitigated negative declaration as the "Applicant/Owner" of the  
25 Project.

26 14. Real party Brookfield Northeast Ridge II, Inc. is listed in the negative declaration  
27 as the owner of the Northeast Ridge development.  
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2 15. Based on information and belief it is alleged that real party Brookfield Bay Area  
3 Builders, Inc. is an entity affiliated with Brookfield Northeast Ridge II, Inc. and the Project.  
4 Brookfield Bay Area Builders, Inc. is registered as a corporation doing business in  
5 California.

6 16. The true names and capacities, whether individual, corporate, or otherwise, of  
7 DOES XI through XX, are unknown to Petitioner who therefore sues said real parties in  
8 interest by such fictitious names. Petitioner will seek leave to amend this petition when  
9 they have been ascertained.

10 17. The Project site is located in the northeast corner of San Bruno Mountain. The  
11 Mountain is located on the northern San Francisco Peninsula, just south of the San Mateo-  
12 San Francisco County boundary. The Mountain is surrounded on all sides by urban  
13 development.

14 18. In 1989, the City of Brisbane approved a vesting tentative map (1989 VTM) for a  
15 residential development on the Northeast Ridge. Pursuant to this approval, portions of the  
16 Northeast Ridge were developed. However, in 1997, the callippe silverspot was listed as an  
17 endangered species. As a result, development of the remaining dwelling units under the  
18 1989 VTM could not go forward without an amendment to the HCP authorizing take of the  
19 species.  
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21 19. The proposed Project is the approval of the 2007 amendments to the San Bruno  
22 Mountain Habitat Conservation Plan. The amendments allow reconfiguration of the  
23 development purportedly to minimize potential impacts to the callippe. The amendments  
24 include a revised operating program for the Northeast Ridge (the 1989 VTM) to allow for  
25 development of the Unit II Neighborhood II (UII-NII) under a proposed 2007 modification  
26 (2007 VTM).

27 20. The 2007 VTM would permanently disturb 16.67 acres of callippe habitat, and  
28 disturb another 2.97 acres where revegetation will be attempted. UII-NII would include 71

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2 single-family homes and increase the area approved for development by the 1989 VTM by  
3 4.97 acres. Unit II Neighborhood I, previously slated for development, would not be  
4 developed. The 2007 VTM would result in a net increase of 8.93 acres of “conserved  
5 habitat” as compared to the 1989 VTM. The 2007 VTM amendments also would include  
6 supplemental funding for ongoing habitat management and monitoring activities.

7 21. On or about August 12, 2009, the County noticed its intent to adopt a mitigated  
8 negative declaration for the Project and accepted written comment from the public on the  
9 negative declaration and Project. Members of the public, including Mountain Watch and  
10 those associated with it commented on the mitigated negative declaration and Project.

11 22. On September 22, 2009, the Board conducted a public hearing and took oral and  
12 written testimony and evidence regarding the mitigated negative declaration and Project.  
13 Members of Mountain Watch appeared at the hearing and spoke. The Board voted to adopt  
14 the mitigated negative declaration and approve the Project.

15 23. A notice of determination in accordance with the CEQA was posted on September  
16 23, 2009.

17 24. Jurisdiction of this Court is invoked pursuant to California Code of Civil  
18 Procedure 1094.5 and California Public Resources Code sections 21167, 21168, and  
19 21168.5.  
20

21 25. Petitioner has performed all conditions precedent to the filing of this Petition by  
22 raising all issues known to it before the County during the review process of the Project.  
23 Petitioner requested that the County not approve the Project and not adopt a mitigated  
24 negative declaration for it, and have performed all conditions precedent to the other causes  
25 of action.

26 26. At all times mentioned herein, the County has been able to deny the approval of  
27 the Project at issue, and to require an EIR for it. Despite such ability, and despite  
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2 Petitioner's demands for Project denial and for an EIR, the County has failed and continues  
3 to fail to perform its duty to deny the approval and require an EIR.

4 27. If the County is not ordered to withdraw its approval of the Project, and real  
5 parties are not enjoined, the land, wildlife, habitat, and environmental values subject to and  
6 affected by the Project will suffer immediate, irreparable, and permanent damage.

7 28. If the County is not ordered to withdraw its approval of the Project, and if its  
8 decision is not stayed pursuant to CCP section 1094.5, subdivision (g), the land, wildlife  
9 habitat, and environmental values subject to and affected by the Project will suffer  
10 immediate, irreparable, and permanent damage.

11 29. Real parties will not be prejudiced by an injunction, or alternatively issuance of a  
12 stay pending judgment, because they will have future opportunities for the Project if it  
13 conforms to the law.

## 14 **FIRST CAUSE OF ACTION (CEQA)**

### 15 **First Claim for Relief**

16 30. Pursuant to Public Resources Code section 21100 and CEQA Guidelines 15064,  
17 an agency must prepare an environmental impact report whenever there is substantial  
18 evidence in the record, or it can be fairly argued based on such evidence, that a project may  
19 have significant impacts on the environment. (Pub. Res. Code, § 21100; Cal. Code Regs.,  
20 tit. 14, § 15064.)

21 31. There is substantial evidence in the record that the Project may have significant  
22 adverse impacts on the environment in a number of ways.

23 32. The evidence shows that the Project will have direct and indirect significant  
24 impacts on the callippe by permanently narrowing the corridor necessary for the butterfly to  
25 find and breed with the other remaining population on the Mountain, resulting in habitat  
26 fragmentation and isolation.  
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2 33. The evidence shows that the Project will have direct and indirect significant  
3 impacts on the callippe by temporarily disturbing the remainder of the corridor necessary  
4 for the butterfly to find and breed with the other remaining population on the Mountain,  
5 resulting in habitat fragmentation and isolation.

6 34. The evidence shows that the Project will have direct and indirect significant  
7 impacts on the mission blue butterfly by permanently narrowing the corridor necessary for  
8 the butterfly's dispersal.

9 35. The evidence shows that the Project will have direct and indirect significant  
10 impacts on the mission blue by temporarily disturbing the remainder of the corridor  
11 necessary for the butterfly's dispersal.

12 36. The evidence shows that certain mitigations, such as restoration of callippe  
13 habitat, are not feasible and/or not capable of reducing the destruction of habitat to a level of  
14 insignificance, in part because the callippe's host plant has yet to be successfully propagated  
15 and transplanted to the wild despite numerous attempts.

16 37. The evidence shows that certain mitigations, such as continued management of  
17 conserved habitat, have proven incapable of mitigating habitat loss due to coastal scrub and  
18 invasive weed incursion to a level of insignificance.

19 38. The evidence shows that the proposed funding to manage habitat may end up  
20 being less than that proposed, and that this shortfall may affect the feasibility of mitigations  
21 to reduce harm via habitat management and restoration. For example, the negative  
22 declaration proposes a habitat management mitigation through the creation of a non-wasting  
23 \$4,000,000 endowment with a rate of return of five percent (\$200,000) to be used for  
24 habitat management and restoration. There is substantial evidence in the record that such a  
25 rate of return is not feasible for a government-controlled endowment. If the proposed  
26 funding to manage and protect habitat cannot be achieved, it follows that the Project may  
27 have a significant or cumulative impact on the environment.  
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2 39. Under CEQA, a lead agency may not hide behind a negative declaration's failure  
3 to undertake an analysis of a project's potential significant and cumulative impacts. (E.g.,  
4 *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.) Members of the  
5 public, including scientists, provided substantial evidence that the mitigated negative  
6 declaration failed to undertake the studies and analysis necessary to support its conclusions,  
7 relating to a number of issues. These include, but are not limited to, analysis of the  
8 County's ability to mitigate the destruction of callippe habitat through propagation and  
9 restoration of the callippe's food plant, and the County's ability to mitigate through  
10 management the loss of callippe habitat caused by invasive weed and coastal scrub  
11 incursion.

12 40. Because the record contains substantial evidence that the Project may have  
13 adverse impacts on the environment, the County should have required preparation of an  
14 EIR. The County violated the law and abused its discretion in approving the Project and  
15 adopting a mitigated negative declaration in furtherance thereof. (Pub. Res. Code, §§  
16 21082.2, 21100.)

### 18 **Second Claim for Relief**

19 41. Under CEQA Guidelines 15064(h) and 15065, an agency must prepare an EIR if a  
20 project's effects are individually limited, but cumulatively significant. (Cal. Code Regs., tit.  
21 14, §§ 15064, 15065.)

22 42. There is substantial evidence in the record that the Project may have incremental  
23 effects that when combined with the incremental effects of other related projects will be  
24 cumulatively considerable.

25 43. These incremental effects include past and recent projects that have destroyed or  
26 disturbed previously undisturbed callippe and mission blue butterfly habitat, including in  
27 the Northeast Ridge area.  
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2 44. These incremental effects also include the failure of past projects to successfully  
3 restore callippe habitat, and the failure to stop through habitat management the cumulative  
4 incursion of invasive weeds and scrub and resultant loss of both callippe and mission blue  
5 habitat.

6 45. In addition, recent survey evidence indicates that the callippe is not recovering  
7 after 26 years of attempted mitigation. This is evidence that the HCP has failed to mitigate  
8 cumulative disturbances to the Mountain. Accordingly, the incremental effects of these past,  
9 present, and future disturbances, in combination with the present project may combine to  
10 cumulatively impact the environment.

11 46. Because the record contains substantial evidence that the Project may have  
12 cumulative impacts on the environment, the County should have required preparation of an  
13 EIR. The County violated the law and abused its discretion in approving the Project and  
14 adopting a mitigated negative declaration. (Pub. Res. Code, §§ 21082.2, 21100.)  
15

### 16 **Third Claim for Relief**

17 47. Ordinarily, the baseline physical conditions by which a lead agency determines  
18 whether an impact is significant is the environmental setting at the time the notice of  
19 preparation is published, or if no notice of preparation is published, at the time  
20 environmental analysis is commenced. (Cal. Code Regs., tit. 14, § 15125, subd. (a).)  
21

22 48. The mitigated negative declaration violated this principle. It assumed the baseline  
23 was the previously approved development, the 1989 VTM. But the 1989 VTM could not go  
24 forward because of the listing of the callippe as an endangered species. It therefore could  
25 not go forward without approval of the Amendment at issue. The environmental conditions  
26 on the Northeast Ridge at the time of the 1989 VTM are no longer germane. The proper  
27 baseline for the present Project is the environmental setting at the time the notice of  
28 preparation was published, or if no notice of preparation was published, at the time  
environmental analysis was commenced. That occurred in 2008 or 2009.

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2 49. The reliance on a 1989 baseline and inclusion of the 1989 VTM as part of it  
3 prevented thorough environmental analysis of the Project and its potential adverse impacts,  
4 especially in connection with the callippe. The callippe's listing as an endangered species  
5 occurred a number of years after the 1989 VTM.

6 50. By using a baseline from 1989 that included the approved 1989 development, the  
7 mitigated negative declaration failed to consider the impacts of the Project in its entirety.  
8 Such an error constitutes a prejudicial abuse of discretion under CEQA. (Pub. Res. Code, §  
9 21168, 21168.5.)

10  
11 **WHEREFORE, Petitioner prays for judgment as follows:**

12 1. For Writ of Mandate ordering the County to set aside its approval of the Project,  
13 and its adoption of a mitigated negative declaration, and to prepare an EIR as required by  
14 CEQA and its regulations.

15 2. For a permanent injunction enjoining real parties in interest, their agents,  
16 employees, representatives, and all persons acting in concert or participating with them,  
17 from engaging in any activity stemming from the County's approval of the Project and  
18 adoption of its mitigated negative declaration until those activities have been lawfully  
19 approved under California statutes and regulations.

20 3. Alternatively, for a stay of the County's decision approving the Project pending  
21 judgment pursuant to Code of Civil Procedure section 1094.5, subdivision (g).


22 4. For reasonable attorney's fees under California Code of Civil Procedure Section  
23 1021.5.

24 5. For costs of suit.  
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6. For such other and further relief as the Court deems proper.

Dated: October 14, 2009



PAUL V. CARROLL  
Attorney for Petitioner

**VERIFICATION**

1  
2 I, Ken McIntire, am the director of San Bruno Mountain Watch, Petitioner in the  
3 present action. I have authority to sign this verification. I have read the foregoing petition  
4 and know the contents thereof. The same is true of my own knowledge, except as to those  
5 matters stated on information and belief, which I am informed and believe are true, and on  
6 that basis allege them to be true.  
7

8 I declare under penalty of perjury that the foregoing is true and correct and that this  
9 verification was executed on October 15, 2009, at Redwood City, California.

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11   
12 Ken McIntire

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PROOF OF SERVICE

I am a citizen of the United States and a resident of the County of San Mateo. I am over the age of eighteen years and not a party to the within entitled action; my business address is: 1103 17<sup>th</sup> Avenue, Redwood City, CA 94063.

On October 15, 2009, I served one true copy of PETITION FOR WRIT OF ADMINISTRATIVE MANDATE, PETITIONER'S NOTICE REGARDING PREPARATION OF ADMINISTRATIVE RECORD by placing a true copy thereof enclosed in a sealed envelope, and postage thereon fully prepaid, in the United States mail at Redwood City, California addressed as follows:

Attorney General, Resources Div.  
455 Golden Gate Ave., Ste. 11000  
San Francisco, CA 94102

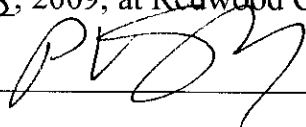
Board of Supervisors,  
County of San Mateo  
Hall of Justice  
400 County Center  
Redwood City, CA 94063

Brookfield Northeast Ridge II, LLC  
500 La Gonda Way, Ste. 100  
Danville, CA 94526

Brookfield Bay Area Builders Inc.  
500 La Gonda Way, Ste. 100  
Danville, CA 94526

County of San Mateo Department of  
Parks  
455 County Center  
Redwood City, CA 94063-1646

I, Paul V. Carroll, declare, under penalty of perjury, that the foregoing is true and correct. Executed on October 15, 2009, at Redwood City, California.

  
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