

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-5071

Page 1 of 38

Date: December 15, 2005

Permit No: 5-05-020

**COASTAL DEVELOPMENT PERMIT**

On **April 14, 2005**, the California Coastal Commission granted to **Hearthside Homes/Signal Landmark** Coastal Development Permit **5-05-020**, subject to the attached Standard and Special Conditions, for development consisting of: Approval of Vesting Tentative Tract Map (VTTM) 15460 for the subdivision and development of two existing parcels into the 105.3-acre Brightwater community consisting of 349 residential lots on 67.9 acres and 37.1-acres of habitat restoration and public trail, located primarily on the upper bench of the Bolsa Chica Mesa. The proposed project also includes the construction of 349 single-family homes and the construction of two small local parks within the residential community. The 37.1-acre habitat area consists of a proposed 29.2-acre coastal sage scrub and native grassland community located along the western and southern slope and bluff top edges slope and bluff face areas and the construction of a 2.5-acre Los Patos Wetland and Southern Tarplant preserve. (The Los Patos Wetland and Southern Tarplant preserve 2.5 net and 2.9 acres gross). The coastal sage scrub and native grassland restoration area also serves as a buffer between the proposed development and the existing 5-acre "Eucalyptus tree" environmentally sensitive habitat area (ESHA). Three proposed vertical walkways providing resident access to the habitat trail will also be available to the public. Approved VTTM 15460 also includes the creation of an 11.8-acre residual parcel located on the lower bench of the Bolsa Chica Mesa.

440,000 cubic yards of grading (220,000 c.y. cut, 220,000 c.y. fill) is proposed to carry out the proposed project. Infrastructure improvements include the construction of a 1.2-million gallon underground drinking water reservoir and aboveground pump station and a new 54" to 66" storm drain and rip-rap energy dissipater discharging treated runoff to the off-site Isolated Pocket Lowland area. Public access, including pedestrian, bicycle and vehicular access and public parking will be allowed throughout the community. The Los Patos Avenue frontage will also be widened, paved and landscaped creating 114 (unstriped) public parking spaces.

More specifically described in the application file in the Commission offices.

The development is within the coastal zone in Orange County at 17201 Bolsa Chica Road, (Bolsa Chica Mesa), Bolsa Chica.

Issued on behalf of the California Coastal Commission on December 15, 2005.

# COASTAL DEVELOPMENT PERMIT

No. 5-05-020

Page 2 of 38

PETER DOUGLAS  
Executive Director

By: *Jeresa Henry*  
Title: Coastal Program Analyst

## ACKNOWLEDGMENT

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4 which states in pertinent part, that: "A public entity is not liable for injury caused by the issuance . . . of any permit . . ." applies to the issuance of this permit.

**IMPORTANT:** THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. 14 CAL. ADMIN. CODE SECTION 13158(a).

DECEMBER 15, 2005  
Date

*Edmund B. [Signature]*  
Signature of Permittee

Please sign and return one copy of this form to the Commission office at the above address.

## STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

# **COASTAL DEVELOPMENT PERMIT**

**No. 5-05-020**

**Page 3 of 38**

5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

## **SPECIAL CONDITIONS:**

### **1. OPEN SPACE, HABITAT AND PARKS**

#### **A. Open Space Restriction – Coastal Sage Scrub and Native Grassland Habitat Restoration Area**

No development, as defined in Section 30106 of the Coastal Act, shall occur within the land identified as the habitat restoration area in the final habitat management plan approved by the Executive Director pursuant to Special Condition 10 (which lands are generally, but not fully, depicted in Exhibit 20) except for the following: habitat restoration and other development necessary to implement the final habitat management plan; fuel modification within those areas identified for fuel modification in the approved final fuel management plan pursuant to Special Condition 12 ; installation of utilities (only as approved by this permit); construction of water quality management structures (only as approved by this permit), grading (only as approved by this permit), public access trail and associated appurtenances and public access and interpretive signage (only as approved by this permit), and maintenance and repair activities pursuant to and in conjunction with the management and maintenance program detailed in Special Condition 4.

The following additional development may be allowed in the areas covered by this portion of this condition (1.A.) if approved by the Coastal Commission as an amendment to this coastal development permit or a new coastal development permit: habitat restoration beyond that listed above; maintenance, repair and upgrade of utilities; installation of water quality management structures and drains; and erosion control and repair.

The lands identified in this restriction shall be maintained in accordance with the final maintenance and funding programs approved by the Executive Director in accordance with Special Condition 4.

#### **B. Open Space Restriction - Southern Tarplant and Seasonal Pond Environmental Protection Area**

No development, as defined in Section 30106 of the Coastal Act, shall occur within the Southern Tarplant and Seasonal Pond Environmental Protection

# **COASTAL DEVELOPMENT PERMIT**

**No. 5-05-020**

**Page 4 of 38**

Area as approved by the Executive Director in the final habitat management plan pursuant to Special Condition 10 (which land is generally, but not fully, depicted in Exhibit 12) except for the following: habitat restoration and other development necessary to implement the final habitat management plan; installation of the proposed underground water reservoir (only as approved by this permit); installation of interpretive signage (only as approved by this permit), maintenance and repair activities pursuant to and in conjunction with the management and maintenance program detailed in Special Condition 4.

## **C. Open Space Restriction - Eucalyptus Environmentally Sensitive Habitat Area**

No development, as defined in Section 30106 of the Coastal Act, shall occur within the Eucalyptus Environmentally Sensitive Habitat Area (ESHA) except as approved in the final habitat management plan approved by the Executive Director (which ESHA is generally, but not precisely, depicted in Exhibit 12).

## **D. Open Space Restriction – Burrowing Owl Environmentally Sensitive Habitat Area Buffer**

No development, as defined in Section 30106 of the Coastal Act, shall occur within the Burrowing Owl Environmentally Sensitive Habitat Area (ESHA) Buffer as shown in the final habitat management plan approved by the Executive Director (which land is generally, but not fully, depicted in Exhibit 12) except for the following: habitat restoration and other development necessary to implement the final habitat management plan, grading (only as approved in this permit), irrigation (only as approved in this permit), fuel modification (only as approved in this permit), and the pedestrian trail and appurtenances (as approved in this permit).

## **2. OFFER TO DEDICATE IN FEE FOR OPEN SPACE, HABITAT ENHANCEMENT AND PUBLIC ACCESS PURPOSES**

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, and in order to implement the permittee's proposal, the permittee shall submit to the Executive Director, for review and approval, a proposed document(s) irrevocably offering the dedication of fee title over the areas identified below to a public agency(ies) or non-profit entity(ies) acceptable to the Executive Director, for public access, passive recreational use, habitat enhancement, and public trail purposes, as appropriate based on the restrictions set forth in these special conditions. Once the documents irrevocably offering to dedicate the areas identified below are approved, and also PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit evidence that it has executed and recorded those documents, completing that offer to dedicate. The land shall be offered for dedication subject to the restrictions on the use of that land set forth in the special

# **COASTAL DEVELOPMENT PERMIT**

**No. 5-05-020**

**Page 5 of 38**

conditions of this permit, and the offer to dedicate shall reflect that fact. The offer shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed but subject to the OTD required by Special Condition 3. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording. The entirety of the following land shall be offered for dedication: those lands identified as Eucalyptus ESHA buffer or Burrowing Owl ESHA and buffer in the final habitat management plan approved by the Executive Director pursuant to Special Condition 10, which lands are designated, in that plan, to be populated with Coastal Sage Scrub and Native Grassland and the approximately 5-acre Eucalyptus grove.

### **3. OFFER TO DEDICATE TRAIL AND FUEL MODIFICATION EASEMENTS**

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall execute and record document(s) in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to the homeowners association proposed in conjunction with the approval of the Brightwater development an easement for (1) public pedestrian and passive recreational use of the trail corridor as described in Special Condition 15 of this permit, and (2) fuel modification (as approved in the final fuel modification plan) and habitat restoration (as approved in the final habitat management plan) of the 100 foot wide area immediately south of the rear property lines of the residential lots that abut the native grassland and coastal sage scrub habitat restoration area. The recorded document(s) shall include legal descriptions of both the permittee's entire parcel(s) and the easement areas. The recorded document(s) shall reflect that development in the offered area is restricted as set forth in the Special Conditions of this permit. The offer shall be recorded free of prior liens and encumbrances that the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording. This OTD shall be recorded prior to the OTD required by Special Condition 2. The applicant's proposal for the lands to be offered for a public trail is generally depicted on Brightwater project Development Plan, dated February 18, 2005. However, although the relationship of those lands to the residential property boundary is generally correct, the specific location of the lands will have to change commensurate with the change in the location of the residential property boundary, to accommodate the change in the ESHA buffer, as explained in Special Condition 15, Special Condition 10.B.4, and elsewhere in these conditions. The lands to be offered for fuel modification and habitat restoration purposes are generally shown on the Conceptual Plan OCFA Protection Zones and Program Description, dated April 5, 2005, but the locations depicted therein must also be modified in accordance with the changes adopted in the final fuel modification plan and final habitat management plan approved pursuant to this permit.

# **COASTAL DEVELOPMENT PERMIT**

**No. 5-05-020**

**Page 6 of 38**

The lands identified in this dedication shall be maintained in accordance with the final maintenance and funding program approved by the Executive Director in accordance with Special Condition 4.

## **4. ACCESS AND HABITAT MANAGEMENT AND MAINTENANCE**

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall provide for the review and approval by the Executive Director a management and maintenance program for proposed public trail, habitat restoration and preservation areas, public facilities, associated structures and appurtenances for the foregoing and water quality management structures and associated appurtenances. The final program, which may be incorporated in whole or in part in the final habitat management plan, shall include the following:

1. IDENTIFY ALL ENTITIES RESPONSIBLE FOR MANAGEMENT AND MAINTENANCE. In general, the owner of the land shall maintain it until such time as any easement required to be offered by this permit is accepted or a fee dedication required by this permit is complete. Where an easement or a fee dedication is accepted by an entity in accordance with the terms and conditions of this permit, the holder of the easement or fee title shall be responsible for management and maintenance of the facilities within the easement or land area unless the arrangements between the original landowner and the fee or easement holder dictate that the original landowner shall retain all or part of said management and maintenance responsibility. All management and maintenance shall occur in accordance with the approved management and maintenance program.
2. IDENTIFICATION OF MANAGEMENT AND MAINTENANCE ACTIVITIES AND ASSOCIATED FUNDING PROGRAM. The management and maintenance program shall include identification of management and maintenance activities including, and funding program that will provide for the actual cost of:
  - i. maintenance and periodic repair and replacement of park facilities, trails and associated appurtenances including, but not limited to, landscaping, trail routes and surfaces, fences, benches, signage and interpretive displays, and appropriate domestic pet controls and services and,
  - ii. on-going habitat protection, restoration and maintenance as detailed in approved Final Habitat Management Plan approved by the Executive Director pursuant to Special Condition 10, including regular exotic plant removal, repair and maintenance of interpretive signs, and funding of public outreach programs, including resident education; and

# **COASTAL DEVELOPMENT PERMIT**

**No. 5-05-020**

**Page 7 of 38**

iii. maintenance of drainage systems, water quality management structures and other devices required to protect on-site habitat and ocean waters.

3. LEGAL AUTHORITY. The program shall demonstrate the legal ability of the assigned entities to undertake the development and maintain said development in accordance with the requirements of this permit.

B. The permittee shall undertake development in accordance with the approved final program. Any proposed changes to the approved final program shall be reported to the Executive Director. No changes to the approved final program shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

## **5. BURROWING OWL SURVEY AND MITIGATION PLANS REQUIREMENT**

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director, for review and approval, a burrowing owl survey and mitigation plans consistent with the "Burrowing Owl Survey Protocol and Mitigation Guidelines", prepared by the California Burrowing Owl Consortium, dated April 1993 and the "Staff Report on Burrowing Owl Mitigation", prepared by the California Department of Fish and Game (DFG), Environmental Services Division, dated September 25, 1995. Prior to submittal to the Executive Director the burrowing owl survey plan shall be reviewed and approved by DFG. The survey and mitigation protocol and guidelines include avoidance of impacts during the nesting and breeding seasons and shall be included in the required plans and reflected in the Construction/Development Phasing Special Condition of this permit.

B. The permittee shall undertake development in accordance with the approved final burrowing owl survey and mitigation plans. Any proposed changes to the approved burrowing owl survey and mitigation final plans shall be reported to the Executive Director. No changes shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

## **6. COVENANTS, CONDITIONS, AND RESTRICTIONS (CC&R' S), AND FINAL TRACT MAPS**

A. Consistent with the applicant's proposal, the applicant shall establish covenants, conditions and restrictions (CC&R's), or an equivalent thereof, for the proposed residential lots to address ownership and management of all subdivision streets, roads, trails, parks, habitat restoration and preserve areas, environmentally sensitive habitat areas, fuel modification plan areas, common landscaped areas and

# **COASTAL DEVELOPMENT PERMIT**

**No. 5-05-020**

**Page 8 of 38**

water quality management plan facilities. The CC&R 's shall reflect all applicable requirements of this coastal development permit, including but not limited to the limitations on the development of the park, trail and habitat restoration and preservation areas, and the prohibition on the use of rodenticides, as proposed by the applicant and as conditioned by this permit.

B. Subject to the review and approval of the Executive Director, the applicant shall, where feasible, consolidate proposed open space lots that are contiguous with one another and that are to be held by a common owner.

C. All areas to be owned and/or managed by the homeowners association pursuant to Special Conditions 2 and 3 of this permit shall be shown as lettered lots on the revised vested tentative tract map (VTTM) 15460, subject to the review and approval of the Executive Director.

D. As soon as a homeowner 's association or similar entity comprised of the individual owners of the 349 proposed residential lots is activated, the applicant shall transfer title to the 2.5-acre Southern Tarplant and Seasonal Pond Environmental Protection Area.

E. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, and prior to recordation of any CC&R's, or tract maps associated with the approved project, proposed versions of said CC & R's and tract maps shall be submitted to the Executive Director for review and approval. The Executive Director's review shall be for the purpose of ensuring compliance with the standard and special conditions of this coastal development permit, including ensuring that, pursuant to paragraph A of this condition, the CC&Rs also reflect the ongoing restrictions and obligations imposed by these conditions. The restriction on use of the land cited within the special conditions of this permit shall be identified on the Tract Map, where appropriate, as well as being placed in the CC & R's.

F. Simultaneous with the recording of the final tract map(s) approved by the Executive Director, the permittee shall record the covenants, conditions and restrictions approved by the Executive Director, against the property. The applicant shall submit a recorded copy of the covenants, conditions and restrictions within 30 days of their recordation to the Executive Director. The CC & R 's may not be modified in a manner that would render them inconsistent with any provision of with any provision of this permit or of any plan or other document approved by the Executive Director pursuant to the conditions of this permit. Any change that would not create a direct conflict between the CC&R's and the provisions of this permit or of any approved plan or other document shall be submitted to the Executive Director, in writing, for a determination as to whether such change requires approval of the Coastal Commission. The Executive Director shall have 90 days in which to communicate a determination to the Homeowners' Association. If, within that 90 days, the Executive Director indicates that Commission approval is

# **COASTAL DEVELOPMENT PERMIT**

**No. 5-05-020**

**Page 9 of 38**

required, no such change shall occur until such approval is secured. Otherwise, no Coastal Commission approval shall be required. The CC&R's shall indicate these restrictions within their terms.

## **7. CONSTRUCTION/DEVELOPMENT PHASING**

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a revised, final construction/development phasing plan for review and approval by the Executive Director, which shall conform to the following:

1. All development, including removal of burrowing owl foraging habitat and grading, shall be consistent with the requirements of the Burrowing Owl Survey and Mitigation Plan Requirement Special Condition of this permit. In addition, during the period of raptor nest initiation (January 1 through April 30), no grubbing, grading or other development activity shall take place within 328 feet (100 meters) of the Eucalyptus ESHA. If raptors are nesting, no grading or other activities shall occur within 500 feet of any active nest. The applicant shall initiate the Coastal Sage Scrub and Native Grassland Creation Program as approved pursuant to Special Condition 10 of this permit, as soon as practical following final grading within the area to be restored. The applicant shall carry out the restoration work in an expeditious manner in order to reestablish raptor foraging habitat in the affected area. As proposed by the applicant, no rodenticides shall be used during site preparation, grading or construction.
2. Grading of the public trail shall occur during initial grading operations, which shall be carried out consistent with the provisions for the protection of the existing ESHA. The construction of the public trail and initiation of the Coastal Sage Scrub and Native Grassland Creation Program as approved pursuant to Special Condition 10 of this permit shall be concurrent with the construction of the main roads and streets of the subdivision. The public trail shall be completed and open for public use, including the installation of habitat protection fencing pursuant to the approved final habitat management plan and the installation of signage and interpretive displays consistent with the public access, recreation improvements and signage special condition of this permit, concurrently with the opening of the first model home for public viewing.

B. The permittee shall undertake development in accordance with the approval final construction/development phasing plans. Any proposed changes to the approved final construction/development phasing plans shall be reported to the

# **COASTAL DEVELOPMENT PERMIT**

No. 5-05-020

Page 10 of 38

Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

## **8. EROSION CONTROL PLAN**

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and approval of the Executive Director, a final Erosion Control Plan that conforms to the requirements of this permit, and has been approved by the County of Orange. The Erosion Control Plan shall include written descriptions and site plans, as necessary, to describe the non-structural and structural erosion, sediment and polluted runoff controls to be used during project construction consistent with the requirements of this permit. The Erosion Control Plan shall incorporate the project Storm Water Pollution Prevention Plan and any additional construction phase erosion, sedimentation and polluted runoff control features of the project. The permittee shall undertake development in accordance with the approved final plan. In addition, the Erosion Control Plan shall include the following requirements:

1. The plan shall delineate the areas to be disturbed by grading or construction activities and shall include any temporary access roads, staging areas and stockpile areas. The natural areas on the site shall be clearly delineated on the project site with fencing or survey flags.
2. The plan shall specify that should grading take place during the rainy season (October 16 – April 15) the permittee shall install or construct temporary sediment basins (including debris basins, desilting basins or silt traps), temporary drains and swales, sand bag barriers, silt fencing, stabilize any stockpiled fill with geofabric covers or other appropriate cover, install geotextiles or mats on all cut or fill slopes and close and stabilize open trenches as soon as possible. Major structural erosion measures such as basin traps or swales shall be required on the project site prior to or concurrent with the initial grading operations (or, if grading begins during the dry season, prior to the onset of the rainy season) and maintained throughout the development process to minimize erosion and sediment from runoff waters during construction. Smaller temporary erosion controls, such as sand bag barriers, silt fencing and geofabric covers shall be stockpiled for the duration of the rainy season and these erosion control measures shall be in place any time the probability of rain in the five day forecast is 40% or greater. All sediment should be retained on-site unless removed to an appropriate approved dumping location either outside the coastal zone or to a site within the coastal zone permitted to receive fill.
3. The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days during the dry season, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils and cut and fill slopes with geotextiles and/or mats, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. These temporary erosion

# **COASTAL DEVELOPMENT PERMIT**

**No. 5-05-020**

**Page 11 of 38**

control measures shall be monitored and maintained until grading or construction operations resume. If grading or site preparation cease during the rainy season, the requirements under Condition 8.A.2 above must be maintained until the project is completed or the site restored to original conditions.

4. The plan shall include requirements for a third party of construction phase erosion sedimentation and pollution control features of the project. Inspections shall determine if the project is in compliance with the Erosion Control Plan and report the results to the contractors for management of the erosion, sedimentation and pollution control features of the project. Work shall be signed by a registered civil engineer.
  - a. All structural, construction phase BMPs shall be inspected, cleaned and repaired, as needed prior to the onset of the storm season, no earlier than August 1 and no later than October 1st of each year; after every major storm event (greater than 0.75 inch of precipitation); and at least monthly throughout the construction phase.
  - b. Annual reports containing data and analytical assessment of data, shall be submitted in July of each year to the Executive Director of the Commission and to the Santa Ana Regional Water Quality Control Board during the construction phase.

## **9. CONSTRUCTION STAGING AREA AND FENCING**

A. All construction plans and specifications for the project shall indicate that impacts to wetlands and environmentally sensitive habitats shall be avoided and that the California Coastal Commission has not authorized any impact to wetlands or other environmentally sensitive habitat. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit a final construction staging and fencing plan for the review and approval of the Executive Director which indicates that the construction in the construction zone, construction staging area(s) and construction corridor(s) shall avoid impacts to wetlands and other sensitive habitat consistent with this approval. The plan shall include the following requirements and elements:

1. Wetlands and any environmentally sensitive habitats shall not be affected in any way, except as specifically authorized in this permit.
2. Prior to commencement of construction, temporary barriers shall be placed at the limits of grading adjacent to wetlands and all ESHA. Solid physical barriers shall be used at the limits of grading adjacent to all ESHA. Barriers and other work area demarcations shall be inspected by a qualified biologist to assure that such barriers and/or demarcations are installed consistent with the requirements of this permit. All temporary barriers, staking and fencing shall be removed upon completion of construction.
3. No grading, stockpiling or earth moving with heavy equipment shall occur within ESHA, wetlands or their designated buffers, except as

# **COASTAL DEVELOPMENT PERMIT**

**No. 5-05-020**

**Page 12 of 38**

noted in the final habitat management plan approved by the Executive Director pursuant to the following condition.

4. No construction equipment shall be stored within any ESHA, wetlands or their buffers.
5. The plan shall demonstrate that:
  - a. Construction equipment, materials or activity shall not occur outside the staging area and construction zone and corridors identified on the site plan required by this condition; and
  - b. Construction equipment, materials, or activity shall not be placed in any location that would result in impacts to wetlands or other sensitive habitat;
6. The plan shall include, at a minimum, the following components:
  - a. A site plan that depicts:
    - i. limits of the staging area(s)
    - ii. construction corridor(s)
    - iii. construction site
    - iv. location of construction fencing and temporary job trailers with respect to existing wetlands and sensitive habitat
    - v. Compliance with 'General Construction Responsibilities/ Protection of Water Quality' Special Condition of this coastal development permit.

B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

## **10. FINAL HABITAT MANAGEMENT PLAN**

A. The permittee shall revise, implement and comply with all the habitat creation, restoration and preservation measures for the project site as approved by the Executive Director in the final Habitat Management Plan pursuant to this special condition.

B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit a revised, final habitat management plan for review and approval by the Executive Director. Prior to submittal of the final habitat management plan to the Executive Director, it shall be reviewed and approved by the California Department of Fish & Game and U.S. Fish & Wildlife Service. The final habitat management plan shall substantially conform to the habitat management plan dated January 17, 2005 as modified and specified below and by the requirements of the "Revised Tentative Tract Map and Plans" special condition of this permit. The final habitat management plan shall be modified as follows:

1. Eucalyptus ESHA Buffer Width -The Eucalyptus ESHA buffer between the Eucalyptus ESHA and the residential lots shall be of a variable width ranging

# **COASTAL DEVELOPMENT PERMIT**

**No. 5-05-020**

**Page 13 of 38**

from 150 to 382 feet, as submitted by the applicant at the April 14, 2005 Commission hearing and approved by the Commission, except that there shall also be a 500 foot buffer between construction activities and active nests. The Eucalyptus grove ESHA buffer shall be planted consistent with the approved final habitat management plan as modified by the special conditions of this permit.

2. Eucalyptus ESHA Buffer Plant Palette – The proposed restricted coastal sage scrub and native grassland creation plant palette shall only be allowed within the fifty (50) feet closest to the rear lot lines of the residential lots. A revised plant palette shall be submitted for the remaining Eucalyptus ESHA Buffer. For areas on the relatively flat mesa top, the plant palette shall contain species appropriate to a native California grassland community in coastal Southern California. For areas on the relatively steep bluff faces, the plant palette shall contain species appropriate to coastal Southern California coastal sage scrub, coastal bluff scrub communities, or additional native California grassland vegetation.
3. Irrigation and Other Fuel Modification Activities Within the Eucalyptus ESHA Buffer – Only drip irrigation, designed to mimic the ambient rainfall condition, shall be allowed within the Eucalyptus ESHA buffer, and shall only be allowed within the fifty feet closest to the rear lot lines of the residential lots (Fuel Mod Zone B). As proposed by the applicant, the drip irrigation system shall be carefully monitored and adjusted if necessary to avoid adverse impacts, including but not limited to, attraction of Argentine ants. No other fuel modification activities, including mowing, shall be allowed to take place within the Eucalyptus ESHA buffer.
4. Burrowing Owl ESHA Buffer - The Burrowing Owl ESHA as depicted on Figure 1 Exhibit 20, shall be surrounded by a vegetated buffer measuring no less than 164 feet (50 meters). The plant palette for the Burrowing Owl ESHA buffer shall be revised to contain species appropriate to a native California grassland community in coastal Southern California areas on the relatively flat mesa top, and for areas on the relatively steep bluff faces, the plant palette shall contain species appropriate to coastal Southern California coastal sage scrub, coastal bluff scrub communities, or additional native California grassland vegetation. The buffer area shall be planted consistent with the plant palette approved herein. Only drip irrigation, designed to mimic the ambient rainfall condition, shall be allowed within the Burrowing Owl ESHA buffer, and shall only be allowed within the fifty feet closest to the rear lot lines of the residential lots (Fuel Mod Zone B). As proposed by the applicant, the drip irrigation system shall be carefully monitored and adjusted if necessary to avoid adverse impacts, including but not limited to, attraction of Argentine ants. Grading for the removal of the existing stockpile of crushed concrete material shall also be allowed. No other fuel modification activities may be allowed to take place within the 164 foot (50 meter) Burrowing Owl ESHA buffer. Only minor grading associated with the construction of the approved

# **COASTAL DEVELOPMENT PERMIT**

**No. 5-05-020**

**Page 14 of 38**

trail, approved water quality treatment facilities or the removal of existing roads for habitat creation and restoration purposes shall be allowed.

5. Grading Adjacent to Eucalyptus ESHA - There shall be no grading within 500 feet of any occupied nest within of the Eucalyptus ESHA during the breeding season (considered to be from February 15 through August 31).
6. 2.5-acre Southern Tarplant and Seasonal Pond Environmental Protection Area -The habitat management plan shall be modified to include the proposed 2.5-acre Southern Tarplant and Seasonal Pond Environmental Protection Area as proposed by the applicant. The plan shall include any needed minor grading, including staging, staking, fencing and timing of activities, identification of and non-mechanical methods of removal of any existing weeds and undesirable plants, a plant palette, planting methods including any needed temporary above ground irrigation and initial and long-term monitoring and maintenance of the habitat preserve area. No in ground permanent irrigation shall be allowed in the preserve. The plan shall include a 100-foot buffer around the Los Patos wetland, planted with appropriate plants from the approved plant palette and a 50-foot buffer around the Southern Tarplant, planted with appropriate plants from the approved plant palette and shall be fenced/vegetated on the outer edges to prevent access to the preserve area by domestic pets and humans. The plan shall ensure that no development, with the exception of the removal by hand of any undesirable plants, as approved by the Executive Director, shall occur within the Los Patos wetlands. Further, the removal or relocation of any Southern Tarplant shall be prohibited. The plan shall include a maintenance and monitoring plan for the preserve area. The initial monitoring of the preserve area shall be for a period of no less than five years and shall be in substantial conformance with the monitoring plan, as approved by the Executive Director, for the Coastal Sage Scrub and Native Grassland Creation area. The Southern Tarplant and Seasonal Pond Environmental Protection Area shall be monitored and maintained pursuant to a long-term monitoring and maintenance plan to be approved by the Executive Director as required by this special condition. The long-term monitoring and maintenance plan shall ensure that the preserve area will be monitored at least annually after the initial five-year monitoring period and that all plantings are maintained in good growing condition. The Southern Tarplant and Seasonal Pond Environmental Protection Area shall also be subject to the perpetual management and maintenance provisions specified below. The homeowners association shall bear responsibility for the management of the Southern Tarplant and Seasonal Pond Environmental Protection Area as approved in this special condition and the other applicable special conditions of this permit.
7. The permittee shall submit a final report prepared by the biological monitor to the Executive Director, for review and approval, within 60 days of project completion that includes: as-built construction drawings with an overlay of wetlands and coastal sage scrub that were avoided, photographs of CSS and

# **COASTAL DEVELOPMENT PERMIT**

**No. 5-05-020**

**Page 15 of 38**

wetland areas avoided, and other relevant summary information documenting that development, including habitat restoration and preservation measures are in general compliance with all conditions of this permit.

8. The permittee shall install protective fencing or barriers along any interface with developed areas and/or use other measures, designed in consultation with the Department of Fish and Game and the Fish and Wildlife Service and approved by the Executive Director, to deter human and pet entrance into all restored and preserved wetland, CSS and ESHA buffer areas and the area of the lower bench to be sold to the State of California. Plans for fencing and/or other preventative measures shall be submitted to the Executive Director for review approval prior to the issuance of the coastal development permit in accordance with the 'Construction Staging Area and Fencing' special condition of this permit.
9. The permittee shall implement a perpetual management, maintenance and monitoring plan for all the habitat management plan areas. The plan shall include the monitoring activities of the final habitat management plan as approved by the Executive Director and shall also include a perpetual management, maintenance and monitoring plan beyond that specified in the "Conceptual Coastal Sage Scrub and Native Grassland Creation and Monitoring Plan for ESHA Buffer Associated with Brightwater Project, Orange County, CA," prepared by Glen Lukos and Associates, dated January 17, 2005. The permittee shall also establish a non-wasting endowment in favor of the State of California, for an amount determined in consultation with the Resources Agencies and approved by the Executive Director, to secure the ongoing funding for the perpetual management, maintenance and monitoring of the habitat management plan area by an agency, non-profit organization, or other entity approved by the Executive Director. The amount of the non-wasting endowment shall be based on an analysis of the amount needed to maintain and monitor the habitat creation and preservation areas as described above and approved in the final habitat management plan of this permit. The endowment shall be funded either by an initial contribution by the developer or by a combination of an initial contribution by the developer and annual payments assessed on each dwelling unit (adjusted annually consistent with the Consumer Price Index) for each residential unit. Until a qualified management entity, subject to the review and approval of the Executive Director, is identified, the permittee shall be responsible for such management.
10. The permittee shall develop a resident education program in conjunction with the Orange County Animal Control office. The program shall advise residents of the potential impacts to sensitive plant and animal species and the potential penalties for taking (i.e. disturbing or harming) such species. The program shall include, but not be limited to, information pamphlets and signage included as part of the interpretive program within the habitat management plan area. Informational pamphlets shall be distributed to all

# **COASTAL DEVELOPMENT PERMIT**

**No. 5-05-020**

**Page 16 of 38**

residences on a regular basis (e.g. once a year). At a minimum, the program shall include the following topics: occurrence of the listed and sensitive species in the area, their general ecology, sensitivity of the species to human activities, impacts from free-roaming pets (particularly domestic and feral cats), legal protection afforded to the listed and sensitive species, penalties for violations of Federal and State laws, reporting requirements, the importance of the presence of large predators such as the coyote in maintaining the habitat, and project features designed to reduce the impacts to these species and promote the species continued successful occupation of the preserved areas. The resident education program shall also explain the prohibition on the use of rodenticides and its importance.

11. Restoration activities, such as weed control and removal and planting and seeding shall not take place within 500 feet of active raptor nests during the breeding season unless the permittee provides a biological monitor who will ensure no impacts to raptors occur and the permittee must obtain prior written approval from the Department of Fish and Game and the Fish and Wildlife Service. Prior to initiation of such activities, the permittee shall submit written evidence of Department of Fish and Game and the Fish and Wildlife Service approval for the review and approval of the Executive Director.
12. Appropriate controls and services that prohibit the entry of domesticated animals into habitat restoration areas shall be identified and implemented. In addition, appropriate controls and services shall be identified and implemented for areas where domestic animals, only on leashes, may be permitted, such as trails.
13. The existing approximately 5 acre Eucalyptus grove ESHA shall be included within the habitat management plan area. The ESHA shall be restored and managed to provide undisturbed perching, roosting, and nesting habitat for birds of prey. To this end, the ESHA shall be fenced and monitored to exclude humans and vehicles from traversing the ESHA along its axis. However, an alternative public trail route shall be established to link with trails on the mesa and which may cross the ESHA in a location that has the fewest negative impacts. The alternative trail route shall be conspicuously posted, shall provide the public with information on the habitat restoration purposes of the fencing and shall be maintained.

C. The permittee shall undertake development in accordance with the approved final plans. As in all cases, this requirement continues to apply to successors in interest, including purchasers of individual residential lots, and their ongoing management of their property. Any proposed changes to the approved final plans or phases of construction shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

# **COASTAL DEVELOPMENT PERMIT**

**No. 5-05-020**

**Page 17 of 38**

## **11. LANDSCAPE REQUIREMENTS**

A. All areas disturbed and/or denuded by the development and not approved for hardscape or other development that is incompatible with re-vegetation shall be re-vegetated and maintained to protect habitat and to prevent erosion into habitat areas, wetlands, and coastal waters. Such re-vegetation shall occur in accordance with the requirements of the special conditions of this permit. All required plantings shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials that conform to the requirements of the special conditions of this permit.

B. All landscaping on the private residential lots within VTTM 15460, within the proposed local parks and along the streets and roads of the subdivision, (including temporary erosion control and final landscaping) for the entire development covered by this permit shall be of plants native to coastal Orange County and appropriate to the natural habitat type or non-native, non-invasive, low water use plants on the "Approved Plant List for Non-Habitat/Non-Buffer Areas" to be approved by the Executive Director pursuant to this special condition. No plant species listed as problematic and/or invasive by the California Native Plant Society, California Exotic Pest Plant Council, or as may be identified from time to time by the State of California, or any plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized anywhere within the proposed development area, including the landscaping within the private residential lots of VTTM 15460, along the streets and roads and the park areas. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, subject to the review and approval of the Executive Director, a plant list for non-habitat/non-buffer areas that complies with the above criteria. Once approved by the Executive Director this list shall be known as the "Approved Plant List for Non-Habitat/Non-Buffer Area" and shall be recorded in the covenants, conditions and restrictions of the homeowners association pursuant to Special Condition 6 of this permit. Only those plants on the Approved Plant List for Non-Habitat/Non-Buffer Areas" shall be planted and allowed to grow within the non-habitat/non-buffer areas of the project.

C. All irrigation, both temporary and permanent, shall be prohibited in wetlands and the Eucalyptus ESHA, Burrowing Owl ESHA, and Southern Tarplant ESHA, except where explicitly permitted by the Executive Director on a case-by-case basis for restoration purposes only. With the exception of the lots abutting the Eucalyptus or Burrowing Owl ESHA buffers, permanent, in-ground irrigation may be allowed on private residential lots, common area non-habitat non-buffer areas, and as approved in the final Habitat Management Plan. Landscaping on lots abutting the Eucalyptus or Burrowing Owl ESHA buffers shall use only drip irrigation regulated by a timer system. The requirement for drip irrigation on these lots shall be specified in the CC&Rs. In all other areas, only temporary, above ground irrigation may be allowed to establish the plantings, where needed, and if approved

# **COASTAL DEVELOPMENT PERMIT**

**No. 5-05-020**

**Page 18 of 38**

in this permit. Common area irrigation must further comply with the following provision:

Irrigation allowed in the non-habitat/non-buffer areas shall have automatic rain gauges connected to irrigation controllers and shall be installed and maintained by the homeowners association in the common areas. The rain gauges shall monitor rainfall volume and interrupt watering schedules in response to site-specific rainfall conditions. Rain gauges shall be located adjacent to controllers to facilitate monitoring by maintenance personnel. Use of drip and efficient low-flow irrigation emitters to minimize irrigation requirements and over-irrigation shall also be used where appropriate.

D. For visual purposes, prior to the issuance of the coastal development permit, a visual enhancement plan shall be submitted for review and approval by the Executive Director along with written evidence of review and approval from the Manager, PFRD/HBP Program Management and Coordination, in consultation with the Manager, Environmental and Project Planning Division of the County of Orange, that is designed to soften, through selective placement of primarily native vegetation, the visual impact of large expanses of wall or roof within residentially developed portions of the site that would be visible from significant vantage points along the proposed trail and parks and from off-site publicly owned open space and recreation areas and public trails.

E. Temporary Erosion Control Measures. See 'Erosion Control' Condition.

F. Timing of Final Landscaping. Final landscaping guidelines for all areas outside the habitat management plan area shall be completed and submitted for review and approval by the Executive Director prior to the issuance of the coastal development permit. The guidelines shall state that all common and private area landscaping for each phase shall be installed prior to the issuance of the first certificate of use and occupancy for that phase and shall have a licensed landscape architect or licensed landscape contractor certify that it was installed in accordance with the approved plan. The guidelines shall also state that landscaping of each residential lot shall be completed within a timely manner, pursuant to the timelines of the CC&Rs. The guidelines shall be consistent with the requirements of this coastal development. The timing of re-vegetation efforts within the habitat restoration areas identified in the revised final Habitat Management Plan shall be as indicated in the revised final Habitat Management Plan approved by the Executive Director.

G. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit landscape palette lists to be incorporated into the

# **COASTAL DEVELOPMENT PERMIT**

**No. 5-05-020**

**Page 19 of 38**

landscaping guidelines detailed above subject to the review and approval of the Executive Director, that identify: 1) the native plant species that may be planted in the development; 2) a list of the non-native, non-invasive common garden plant species that may be planted on the residential lots; 3) the non-native, non-invasive turf that may be planted within approved turf areas in the two local parks, and 4) the invasive plant species that are prohibited from use anywhere within the development. The landscape palette for the development shall be consistent with the Approved Plant List for Non-Habitat/Non-Buffer Areas as reviewed and approved by the Executive Director. These lists shall remain available for consultation and shall be recorded in the covenants, conditions and restrictions as required by Special Condition 6. Additions to or deletions from these lists may be made by the Executive Director of the California Coastal Commission, in consultation with the project's restoration ecologist and the Department of Fish and Game and the Fish and Wildlife Service. No deviations from the list shall occur in the plantings on the site without an amendment to this permit or a new coastal development permit unless the Executive Director determines that no amendment or new permit is required.

H. PRIOR TO SUBMITTAL OF FINAL LANDSCAPE PALETTE LISTS, LANDSCAPE PLANS, AND TEMPORARY EROSION CONTROL PLANS, the permittee shall obtain the review and approval of those lists and plans by the California Department of Fish and Game, the United States Fish and Wildlife Service and the Orange County Fire Authority. Written evidence of the required reviews and approvals shall be submitted with the lists and plans submitted to the Executive Director.

I. CONCURRENT WITH SUBMITTAL OF ALL PLANS IDENTIFYING LANDSCAPING, the permittee shall provide an analysis of each plan submitted, prepared by a qualified biologist, which documents that the landscaping complies with all of the landscaping and habitat management requirements of this permit.

J. Monitoring. Five years from the date of the completion of the installation of landscaping of the common areas as required in these special conditions, the permittee shall submit, for the review and approval of the Executive Director, a landscape monitoring report, prepared by a licensed landscape architect or qualified resource specialist, that certifies the on-site landscaping is in conformance with the requirements of the special conditions of this permit and the landscape plans approved pursuant to the special conditions of this permit. The monitoring report shall include photographic documentation of plant species and plant coverage. If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the permittee, or successors in interest, shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The revised landscaping plan must be prepared by a licensed

# **COASTAL DEVELOPMENT PERMIT**

**No. 5-05-020**

**Page 20 of 38**

landscape architect or a qualified resource specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan. The permittee or successor in interest shall implement the supplemental landscaping plan approved by the Executive Director and/or seek an amendment to this permit if required by the Executive Director.

## **12. REVISED FUEL MODIFICATION PLAN REQUIREMENTS**

A. All fuel modification shall be consistent with the requirements of the final Habitat Management Plan approved by the Executive Director pursuant to Special Condition 10 and the final fuel management plan approved by the Executive Director pursuant to subpart B of this condition, which plan is conceptually described in the "Conceptual Plan OCFA Protection Zones and Program Description" for the Brightwater development project, prepared by FORMA, dated April 5, 2005. Proposed and future residential and appurtenance structures shall be set back a sufficient distance from proposed habitat restoration and preservation areas such that there will be no vegetation pruning, thinning or clearance or mowing required by the relevant fire authority (e.g. Orange County Fire Authority) within the 150 to 382 foot Eucalyptus ESHA buffer, the 100 foot (30.5 meters) wetland buffers, the 164 feet (50 meters) Burrowing Owl ESHA buffers, or the 50 foot (15.2 meters) Southern Tarplant ESHA buffer, other than as specifically allowed by the final Habitat Management Plan approved by Special Condition 10 of this permit. Prior to submittal of the final fuel modification plan to the Executive Director, but following review and approval of the final fuel modification plan and the final habitat management plan by the Orange County Fire Authority (OCFA) pursuant to Special Condition 10, the applicant shall submit the final fuel modification plan to the California Department of Fish and Game (DFG) for their review and written approval. This requirement shall not result in any reduction of restored and preserved habitat area or public access opportunities.

B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit a final fuel management plan for the development for review and approval by the Executive Director, which plan shall be consistent with the requirements outlined above and in the special conditions of this permit. The final fuel management plan required after approval by the Executive Director, shall include a statement that any future changes to the plan, including any changes required by the relevant fire authority or other resource agencies, shall be reported to the Executive Director of the Coastal Commission, and shall require an amendment to this permit or a new coastal development permit prior to implementation of those changes unless the Executive Director of the Coastal Commission determines that no amendment or new permit is required.

# **COASTAL DEVELOPMENT PERMIT**

**No. 5-05-020**

**Page 21 of 38**

C. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

D. For purposes of this permit, this condition shall serve as notification to present and future property owners that certain structures and areas of land are subject to special fuel treatment requirements that are specified in the final fuel management plan approved by the Orange County Fire Authority and the Executive Director of the Commission. Among those requirements is a requirement that residential structures facing upon native restoration or open space areas incorporate building construction features consistent with Orange County Fire Authority guidelines for construction of structures within special fire hazard areas. Furthermore, there is a prohibition on the placement of combustible materials in the rear yards of the residential lots that abut open space areas. Proposed and future development shall conform to the requirements of the approved final fuel management plan.

## **13. LIGHTING**

A. All lighting within the development shall be directed and shielded so that light is directed away from wetlands, and other habitat and buffer areas. Floodlamp shielding and/or sodium bulbs shall be used in developed areas to reduce the amount of stray lighting into native restoration and preservation areas. Furthermore, no skyward-casting lighting shall be used. The lowest intensity lighting shall be used that is appropriate to the intended use of the lighting. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and approval of the Executive Director, a lighting plan to protect the wetlands, and other habitat and buffer areas from light generated by the project. The lighting plan to be submitted to the Executive Director shall be accompanied by an analysis of the lighting plan prepared by a qualified biologist which documents that it is effective at preventing lighting impacts upon adjacent wetlands and environmentally sensitive habitat and buffer areas.

B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

## **14. WALLS, FENCES, GATES, SAFETY DEVICES AND BOUNDARIES**

A. Fences, gates, safety devices and boundary treatments within or controlling access to environmentally sensitive habitat areas (ESHA), except for the Southern Tarplant and Seasonal Pond Environmental Protection Area, shall be designed to allow the free ingress, egress and traversal of the habitat areas of the site by

# **COASTAL DEVELOPMENT PERMIT**

**No. 5-05-020**

**Page 22 of 38**

wildlife, including the coyote. Where the backyards of residences abut habitat buffer areas, there shall be walls, fences, gates, safety devices and boundary treatments, as necessary, to contain domestic animals within the residential development and along the approved trails and exclude such animals from sensitive habitat. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit final revised plans showing the location, design, height and materials of all walls, fences, gates, safety devices and boundary treatments for the review and approval of the Executive Director. Said plans shall be accompanied by an analysis of the wall, fence, gate and boundary treatment plan prepared by a qualified biologist that documents that the modified walls, fences, gates and safety barriers and boundary treatments will minimize the uncontrolled entry of domesticated animals into wetlands and environmentally sensitive habitat and buffer areas and allow for free ingress, egress and traversal of the wetland and habitat and buffer areas of the site by wildlife. The plans shall have received prior review and approval by the County of Orange, the California Department of Fish and Game and the United States Fish and Wildlife Service.

B. The permittee shall undertake development in accordance with the approval final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

## **15. PUBLIC ACCESS AND RECREATION REQUIREMENTS AND IMPROVEMENTS**

### **A. Public Access Requirements**

#### **1. Streets, Roads and Public Parking**

All streets, roads and parking shall be provided as described on the revised Brightwater project Development Plan, dated February 18, 2005. All publicly and privately maintained streets, roads and public parking areas identified on the above Development Plan shall be for public street purposes including, but not limited to, pedestrian, bicycle and vehicular access. Parking shall be provided as described in the applicant's January 21, 2005 coastal development permit application submittal. All streets, roads and public parking areas shall be open for use by the general public 24 hours per day, with the exception of standard limited parking restrictions for street sweeping/maintenance purposes. Long term or permanent physical obstruction of streets, roads and public parking areas shall be prohibited. All public entry controls (e.g. gates, gate/guard houses, guards, signage, etc.) and restrictions on use by the general public (e.g. preferential parking districts, resident-only parking periods/permits, etc.) associated with any streets or parking areas shall be prohibited.

# **COASTAL DEVELOPMENT PERMIT**

No. 5-05-020

Page 23 of 38

## **2. Public Trail**

No development, as defined in Section 30106 of the Coastal Act, shall occur within the public trail corridor as approved by the Executive Director pursuant to paragraph C of this condition except for the following development: grading and construction necessary to construct the trails and appurtenances (e.g. signs, interpretive displays, benches, trash receptacles, protective fencing), vegetation removal and planting, drainage devices, erosion control and repair, maintenance and repair activities pursuant to and in conjunction with the management and maintenance program detailed in Special Condition 4 and as required below. Development that diminishes permanent public access shall be prohibited. As proposed, the public pedestrian trail shall have a decomposed granite surface, shall be six feet in width and shall be located within twenty-five feet of the southern lot lines of the proposed residential lots. The public access trail shall be open to the general public for passive recreational use.

The lands identified in this restriction shall be maintained in accordance with the final maintenance and funding program approved by the Executive Director in accordance with Special Condition 4.

## **3. Local Parks**

The two local parks shown on the revised Brightwater project Development Plan dated February 18, 2005 (which land is generally, but not fully, depicted on Exhibit 3), shall be open to the general public and maintained for passive park use. No development, as defined in Section 30106 of the Coastal Act, shall occur within the local parks as identified, except for the following development: grading and construction necessary to construct the parks, vegetation removal and planting, drainage devices, a proposed underground sewer lift station, erosion control and repair, maintenance and repair activities pursuant to and in conjunction with the management and maintenance of the parks.

B. The applicant shall ensure the construction of the public access and passive recreation improvements for park and trail purposes as described in the project description submitted by the applicant; in the January 21, 2005 submittal, as amended on February 18, and March 4, 2005, and as modified by the special conditions of this permit. All public access and passive recreation improvements for park and trail purposes shall be completed and open for use by the general public in accordance with the final construction phasing plan approved by the Executive Director in accordance with the 'Construction/Development Phasing' special condition of this permit. Furthermore, the facilities identified in this condition shall be maintained in accordance with the final maintenance and funding program approved by the Executive Director in accordance with the 'Access and Habitat Management and Maintenance' special condition of this permit.

# **COASTAL DEVELOPMENT PERMIT**

**No. 5-05-020**

**Page 24 of 38**

C. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit revised, final, detailed plans of the public access and recreation improvements for park and trail purposes for review and approval by the Executive Director. All facilities constructed shall be sited and designed to minimize disturbance to adjacent habitat areas and to minimize the obstruction of public views. All facilities shall conform to the final habitat management plan approved by the Executive Director pursuant to condition 10. Plans shall identify all structures including location, dimensions, materials and colors, and use as well as sign and interpretive display text and graphics, size and orientation. All plans shall be of sufficient scale and detail to verify the location, size and content of all signage, and the location and orientation, size, materials and use of structures during a physical inspection of the premises. Plans shall be consistent with the modifications required in the "Revised Tentative Tract Map and Development Plans" special condition of this permit. The final plans shall also comply with the following:

1. **Public Trail Plan:** The final plans submitted for review and approval to the Executive Director shall include a revised trail location and detailed trail improvement plans. The trail shall be located within 25 feet of the rear property line of the residential lots that abut the Eucalyptus and Burrowing Owl ESHA buffers as revised by Special Condition 10 of this permit. The detailed final trail improvement plans submitted shall be in substantial conformance with the February 18, 2005 plans identified above and as modified by the conditions of this permit. Said plan(s) shall include trail alignment, width, surface and materials; designated parking; designated overlooks; recreational appurtenances such as benches, refuse containers; fencing between the trail and habitat buffer areas; erosion control and footpath control plantings (such as cactus adjacent to sensitive areas).
2. **Sign Plan:** The final plans submitted for review and approval to the Executive Director shall include a detailed signage plan that directs the public to the public trail and public passive recreation opportunities on the project site. Signs shall invite and encourage public use of access opportunities and shall identify and direct the public to their locations, including the three proposed paseos leading to the public trail. Signage shall be visible from the Wamer Avenue/Los Patos intersection area and Warner Avenue/Bolsa Chica Street intersection area and from internal circulation roads and parks. Signage shall include public facility identification monuments (e.g. public park name); community identification monuments (e.g. Brightwater Community); facility identification/directional monuments (e.g. location of amenities); informational signage and circulation; interpretive signs, and roadways signs. Signs shall also identify and explain key biological habitat preservation areas (Eucalyptus grove, burrowing owl and Southern Tarplant ESHAs and the two freshwater wetlands) and the significant prehistoric and historic cultural resources of the site and Bolsa Chica area, and identify restricted areas. Prior to submittal to the Executive Director, the final interpretive displays

# **COASTAL DEVELOPMENT PERMIT**

**No. 5-05-020**

**Page 25 of 38**

and interpretive signage shall be reviewed by and comments solicited from the interested agencies and groups as specified in the "Revised Tentative Tract Map and Development Plans" special condition and submitted to the Executive Director. Signs and displays not explicitly permitted in this document shall require an amendment to this permit unless the Executive Director determines that no amendment is required.

- D. The revised plans shall, prior to submittal to the Executive Director, be reviewed and approved by the County of Orange Department of Beaches, Harbors and Parks after receipt of comments from the interested agencies and groups specified above.
- E. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

## **16. WATER QUALITY**

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a final revised Water Quality Management Plan (WQMP) for the post-construction project site. The WQMP shall be prepared by a registered civil engineer and shall include project plans, hydrologic calculations, and details of the structural and non-structural Best Management Practices (BMPs) that shall be included in the project.

The final plan shall be reviewed by the consulting engineering geologist to ensure conformance with geotechnical recommendations. The final plan shall demonstrate substantial conformance with the Water Quality Management Plan (WQMP) for Brightwater Unincorporated County of Orange, CA Vesting Tentative Tract Map 15460, dated (revised) January 21, 2005, prepared by The Keith Companies. The final plan shall also include detailed plans for the proposed rip-rap erosion control device proposed below the 66" stormdrain outlet. The rip-rap shall be modified as required in special condition 17 and shall be reviewed and approved by the State Lands Commission (SLC) for that portion of the development that lies on land owned by SLC. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

### **1. Best Management Practice Specifications**

- a. Site Design, Source Control, and Treatment Control BMPs shall be designed to reduce, to the maximum extent practicable, the

# **COASTAL DEVELOPMENT PERMIT**

**No. 5-05-020**

**Page 26 of 38**

volume, velocity and pollutant load of storm water and nuisance flow leaving the developed site.

- b. Maintain, to the maximum extent practicable, pre-development peak runoff rates and average volume of runoff;
- c. Post-construction structural BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter the amount of storm water runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs.
- d. The structural BMPs shall be constructed prior to or concurrent with the construction of infrastructure associated with the development within Tentative Tract 15460. Prior to the occupancy of residential structures approved by this permit, the structural BMPs proposed to service those structures and associated support facilities shall be constructed and fully functional in accordance with the final WQMP approved by the Executive Director.
- e. All structural and non-structural BMPs shall be maintained in a functional condition throughout the life of the approved development to ensure the water quality special conditions are achieved. Maintenance activity shall be performed according to the specifications in Water Quality Management Plan (WQMP) for Brightwater Unincorporated County of Orange, CA Vesting Tentative Tract Map 15460, dated (revised) January 21, 2005, prepared by The Keith Companies. At a minimum, maintenance shall include the following:
  - i. All structural BMPs shall be inspected, cleaned and repaired, as needed prior to the onset of the storm season, no earlier than August 1st or later than October 1st of each year; after every major storm event (greater than 0.75 inch of precipitation); and at least once during the dry season;
  - ii. Should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system and restoration of the eroded area. Should repairs or restoration become necessary, prior to commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work. If the Executive Director determines that an amendment or a new permit is required to authorize the work, no such work shall

# **COASTAL DEVELOPMENT PERMIT**

**No. 5-05-020**

**Page 27 of 38**

begin or be undertaken until it is approved in accordance with the process outlined by the Executive Director;

- f. Impervious surfaces, especially directly connected impervious areas, shall be minimized, and alternative types of pervious pavement shall be used where feasible;
  - g. Irrigation and the use of fertilizers and other landscaping chemicals shall be minimized;
  - h. Trash, recycling and other waste containers, as necessary, shall be provided in common areas throughout the development. All waste containers anywhere within the development shall be covered, watertight, and designed to resist scavenging animals.
  - i. Runoff from all roofs, roads and parking areas shall be collected and directed through a system of structural BMPs including vegetated areas and/or gravel filter strips or other vegetated or media filter devices. The system of BMPs shall be designed to 1) trap sediment, particulates and other solids and 2) remove or mitigate contaminants through infiltration, filtration and/or biological uptake. The drainage system shall also be designed to convey and discharge runoff from the developed site in a non-erosive manner;
  - j. Debris and other water pollutants removed from structural BMP(s) during clean-out shall be contained and disposed of in a proper manner;
  - k. Storm drain stenciling ( "No Dumping, Drains to Ocean " or equivalent phrase) shall occur at all storm drain inlets in the development.
  - l. Informational signs around the residential development for homeowners and the public about urban runoff and the BMPs used on-site shall be provided at trailheads, and at centralized locations near storm drain inlets.
2. The applicant shall provide in the Final Water Quality Management Plan a description of the design of both the underground media filter system and the catch basin media filters, including the basis for selection of filter media, the expected performance of the media filters, the management, operation and maintenance of the media filter systems and contingency plans if the media filters do not meet performance expectations. The Final WQMP shall be submitted to the Executive Director for approval. 3
- The WQMP shall include diversion to the sanitary sewer for dry weather flows, including dry weather between rainstorms during the rainy season. In the event that the applicant cannot secure a long-term (life of the project) agreement with the local sanitary district to accept the dry weather flows, then efficient irrigation including smart sprinkler controllers shall be installed on all landscaped areas of the development.

# **COASTAL DEVELOPMENT PERMIT**

**No. 5-05-020**

**Page 28 of 38**

3. The applicable covenants, conditions and restrictions (CC&R 's) shall require that all development be carried out in accordance with the Water Quality Management Plan approved by the Executive Director.

## **B. Water Quality Monitoring Plan**

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and approval of the Executive Director, a final revised Water Quality Monitoring Plan, designed to evaluate the effectiveness of the project structural BMPs (both the underground and catch basin media filters) and it shall include a monitoring point at the outlet of the BMPs and prior to the effluent mixing with other runoff or receiving waters.

1. Water quality monitoring for the Brightwater Development shall characterize the effectiveness of project structural BMPs (both the underground and catch basin media filters) during at least 3 storms per year over a three year period.
  - a. The monitoring program shall be designed to determine if the two major structural BMPs are performing at least as well as indicated in the WQMP and to demonstrate that the filters are protecting coastal water quality to maximum extent practical at the time of construction.
2. The Water Quality Monitoring Plan shall document how the sampling procedures are designed to address the objectives above, including the selection of sampling procedures, the frequency of sampling and sampling locations. The Water Quality Monitoring Plan shall include a map of the proposed sampling locations, methods of analysis and expected reporting limits.
3. Baseline water quality data of the pre-development conditions of the constituents that will be monitored in the Stormwater Quality Monitoring Plan shall be collected.
4. Post-development monitoring shall be conducted for a minimum period of three (3) years, following completion of development approved by this permit. Annual reports containing data and analytical assessment of data, shall be submitted to the Executive Director of the Commission and to the Santa Ana Regional Water Quality Control Board for three (3) years after all construction approved by this permit has been completed.

C. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

# **COASTAL DEVELOPMENT PERMIT**

**No. 5-05-020**

**Page 29 of 38**

## **17. REVISED TENTATIVE TRACT MAP AND PLANS**

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and approval of the Executive Director, revised tentative tract map and final development plans, approved by the County of Orange, which conform with the requirements of the special conditions of this permit and indicate the final layout of all development including but not limited to lots, grading, streets, utilities and easements, infrastructure, water quality management system, trails, park and recreation facilities, signs, interpretive amenities, habitat restoration, landscaping, and residential and public facilities.

The revised tentative tract map and final development plans shall be modified to include, but not be limited to:

1. Reconfiguration of proposed subdivision such that no separate legal parcel is created on the lower bench of the Bolsa Chica Mesa. The proposed 11.8-acre residual portion of the existing Parcel 2 shown on VTTM 15460 shall either be connected to proposed Lot AH of VTTM 15460 or sold to the Wildlife Conservation Board for conservation purposes prior to recordation of the final tract map so that it is not part of Parcel 2 when Parcel 2 is subdivided. If the applicant chooses to connect the proposed residual parcel to Lot AH, the uses of the portion that was proposed to be a residual parcel shall be limited to open space, conservation, habitat protection, and passive recreational use for wildlife viewing, and it shall not be subject to the sort of management to which the remainder of parcel AH is subject.
2. Revision of the Burrowing Owl ESHA buffer such that it is a minimum of 164 feet (50 meters) in width as measured from the outer edge of the burrowing owl ESHA, as depicted in Figure 1 of Exhibit 20.
3. Revised public passive recreational signage and interpretive display plans to include interpretive information concerning the area's prehistoric and historic use by Native Americans, including but not limited to its use in Cogged Stone manufacturing and distribution, and archaeoastronomy, and ORA-83's general location and eligibility as a State and National Historic Site due to this significance. The interpretive information must also indicate the presence of the house pits and other significant artifacts that were recovered at ORA-83 and the location of the curation facility where the artifacts may be viewed. The applicant shall submit a detailed signage and interpretive plan including the location and orientation, size, materials, and text of all signs and interpretive

# **COASTAL DEVELOPMENT PERMIT**

**No. 5-05-020**

**Page 30 of 38**

displays, consistent with the requirements of the "Public Access and Recreation Improvements and Signage" special condition of this permit. Prior to submittal of the signage and interpretive plan, the plan shall be reviewed by the County of Orange, Department of Beaches Harbors and Parks, the California Department of Parks and Recreation, Office of Historic Preservation, the Native American Heritage Commission, and the Native American group(s) with cultural ties to the area as determined by the Native American Heritage Commission. The applicant shall submit written evidence of submittal of the plan to the named agencies/groups and copies of any comments from the same. The review period shall be no less than thirty days.

4. Revisions to the proposed rip-rap structure located below the proposed 66-inch stormdrain. The rip-rap structure shall be revised such that it is primarily aligned in an east-west "bowl" design, along the existing dirt road below the discharge point, in order to disperse the storm flow over greater spillover area. The revised rip-rap plan shall be submitted to the SLC for review and written approval prior to submittal to the Executive Director.
5. Submittal of an off-site raptor foraging habitat mitigation plan providing 0.5 acres of native or non-native grasslands for each acre of existing non-native grassland loss on the project site not being planted in native grassland pursuant to the approved final Habitat Management Plan required in Special Condition 10 of this permit. The off-site raptor foraging habitat mitigation plan shall include a monitoring and maintenance plan and shall be maintained as mitigation for the life of the project being approved by this coastal permit. No credit shall be given for any native grassland created or preserved on-site that is subject to any fuel modification. The off-site raptor foraging habitat mitigation plan shall be submitted to DFG for their review and approval prior to submittal to the Executive Director. The off-site raptor foraging habitat mitigation area must be owned in fee by the permittee or the permittee must own an easement over the off-site mitigation area for habitat conservation purposes.

B. The permittee shall undertake development in accordance with the final tract map and development plans, as approved by the Executive Director. Any proposed changes to the approved final tract map or plans shall be reported to the Executive Director. No changes to the approved final plans or tract map shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

# **COASTAL DEVELOPMENT PERMIT**

**No. 5-05-020**

**Page 31 of 38**

## **18. CONFORMANCE OF DESIGN AND CONSTRUCTION PLANS TO GEOTECHNICAL REPORT**

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, quantitative slope stability analyses for the revised grading plan submitted with the current Brightwater development plan. Slope stability analyses, using shear strength parameters supported by direct shear tests undertaken on relatively undisturbed samples collected at the project site, shall be provided for all natural and artificial cut and fill slopes steeper than 2:1 (horizontal to vertical). Recommendations to ensure surficial stability shall also be included.

B. All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with all recommendations contained in AMEC Earth and Environmental, Inc. 2001, "Addendum geotechnical review, revised tract map, vesting tentative tract no. 15460, Brightwater Development Project, Upper Bolsa Chica Mesa, Orange County, California", 29 p. geotechnical report dated 26 September 2001 and signed by D. Dahncke (GE 2279) and S. T. Kerwin (CEG 1267); AMEC Earth and Environmental, Inc. 1997, "Geotechnical evaluation report, Phase I rough grading plans, Vesting tentative tract 15460, Bolsa Chica Mesa, South of Warner/Los Patos Avenues, Orange County, California", 60 p. geotechnical report submitted to the Koll Real Estate Group dated 1 December 1997 and signed by D. Dahncke (GE 2279) and S. T. Kerwin (CEG 1267); and Woodward-Clyde Consultants, 1987, "Evaluation of hazards due to fault surface rupture at Bolsa Chica Mesa and in the Bolsa Chica lowland, Orange County, California", report for Signal Landmark, Inc. and Orange County Environmental Management Agency dated October 1987 and signed by Woodward-Clyde Consultants, as modified as required by additional slope stability analyses for the revised project as required in paragraph A above. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the Executive Director's review and approval, evidence that an appropriate licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all of the recommendations specified in the above-referenced geologic evaluations approved by the California Coastal Commission for the project site.

C. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

# **COASTAL DEVELOPMENT PERMIT**

**No. 5-05-020**

**Page 32 of 38**

## **19. ASSUMPTION OF RISK, WAIVER OF LIABILITY AND INDEMNITY**

By acceptance of this permit, the permittee acknowledges and agrees (i) that the site may be subject to hazards from bluff retreat, erosion, and earth movement; (ii) to assume the risks to the permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

## **20. STRUCTURAL APPEARANCE - EXTERIOR BUILDING TREATMENT**

All structures, walls and building exteriors that would be visible from the proposed on-site public trail within the native grassland and coastal sage scrub creation and preservation area, the trails within the Bolsa Chica Wetlands, or the trails or interpretive display area within the Bolsa Chica Ecological Reserve shall be finished in earth tones including muted shades of brown, gray and green, with no white, light or bright colors, except as minor accent features. A color palette board shall be submitted for the review and approval of the Executive Director pursuant to this special condition. The color shall be maintained throughout the life of the structure(s).

## **21. RESIDENTIAL AREA HEIGHT RESTRICTIONS AND HABITAT BUFFER SETBACKS**

A. The heights of residential structures shall not exceed 35 feet above finished grade as shown on the final approved grading plan. Further, the heights of the residential structures that abut the Eucalyptus Grove ESHA buffer and the burrowing owl buffer shall not exceed the heights as proposed on the "Development Area (DA) 8 Site Plans", prepared by FORMA, dated May 2002, submitted November 6, 2002 in the Brightwater Development coastal development submittal package.

B. Structures (enclosed) and appurtenant buildings on residential lots shall be setback a minimum of 20 feet from the rear yard property line and shall be consistent with the above height limits. Rear yard walls on the residential lots abutting the Eucalyptus Grove and burrowing owl ESHA buffers shall not exceed a total height of six feet six inches above finished grade shown on the approved final grading plan. The lower two feet of the rear yard wall shall be of concrete material and the upper four feet six inches shall be of plexiglass material. Future development shall conform to these heights and setbacks unless such heights are

# **COASTAL DEVELOPMENT PERMIT**

**No. 5-05-020**

**Page 33 of 38**

changed by an amendment to this permit, unless the Executive Director determines that no amendment to this permit is required.

## **22. FUTURE DEVELOPMENT RESTRICTION**

This permit is only for the development described in Coastal Development Permit No. 5-05-020. Pursuant to Title 14, California Code of Regulations, sections 13250(b)(6) and 13253(b)(6), the exemptions otherwise provided in Public Resources Code, section 30610(a) and 30610(b) shall not apply. Accordingly, any future improvements to the single family houses and other structures described in this permit, including, but not limited to, repair and maintenance identified as requiring a permit in Public Resources Code, section 30610(d) and Title 14, California Code of Regulations, sections 13252(a)-(b), shall require an amendment to Permit No. 5-05-020 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government, unless the Executive Director of the Commission determines that no amendment or new permit is required.

## **23. PROTECTION OF POTENTIAL ARCHAEOLOGICAL RESOURCES DURING GRADING**

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and approval of the Executive Director an archeological monitoring and mitigation plan, prepared by a qualified professional, that shall incorporate the following measures and procedures:

1. Archaeological monitor(s) qualified by the California Office of Historic Preservation (OHP) standards, Native American monitor(s) with documented ancestral ties to the area appointed consistent with the standards of the Native American Heritage Commission (NAHC), and the Native American most likely descendent (MLD) when State Law mandates identification of a MLD, shall monitor all project grading;
2. The permittee shall provide sufficient archeological and Native American monitors to assure that all project grading that has any potential to uncover or otherwise disturb cultural deposits is monitored at all times;
3. If any cultural deposits are discovered during project construction, including but not limited to skeletal remains and grave-related artifacts, traditional cultural sites, religious or spiritual sites, or other artifacts, the permittee shall carry out significance testing of said deposits and, if cultural deposits are found by the Executive Director to be significant pursuant to subsection C of this condition and any other relevant provisions, additional investigation and mitigation in accordance with all subsections of this special condition;

# **COASTAL DEVELOPMENT PERMIT**

**No. 5-05-020**

**Page 34 of 38**

4. If any cultural deposits are discovered, including but not limited to skeletal remains and grave-related artifacts, traditional cultural sites, religious or spiritual sites, or other artifacts, all construction shall cease in accordance with subsection B. of this special condition;
5. In addition to recovery and reburial, in-situ preservation and avoidance of cultural deposits shall be considered as mitigation options, to be determined in accordance with the process outlined in this condition;
6. If human remains are encountered, the permittee shall comply with applicable State and Federal laws. The permittee shall extend the existing reburial agreement with the Juaneno Band of Mission Indians regarding the treatment and disposition of prehistoric Native American human remains discovered on the project site, if any additional remains are discovered. Procedures outlined in the monitoring and mitigation plan shall not prejudice the ability to comply with applicable State and Federal laws, including but not limited to, negotiations between the landowner and the MLD regarding the manner of treatment of human remains including, but not limited to, scientific or cultural study of the remains (preferably non-destructive); selection of in-situ preservation of remains, or recovery, repatriation and reburial of remains; the time frame within which reburial or ceremonies must be conducted; or selection of attendees to reburial events or ceremonies. The range of investigation and mitigation measures considered shall not be constrained by the approved development plan. Where appropriate and consistent with State and Federal laws, the treatment of remains shall be decided as a component of the process outlined in the other subsections of this condition.
7. Prior to the commencement and/or re-commencement of any monitoring, the permittee shall notify each archeological and Native American monitor of the requirements and procedures established by this special condition. Furthermore, prior to the commencement and/or re-commencement of any monitoring, the permittee shall provide a copy of this special condition, the archeological monitoring and mitigation plan approved by the Executive Director, and any other plans required pursuant to this condition and which have been approved by the Executive Director, to each monitor.

B. If an area of cultural deposits, including but not limited to skeletal remains and grave-related artifacts, traditional cultural sites, religious or spiritual sites, or other artifacts, is discovered during the course of the project, all construction activities in the area of the discovery that have any potential to uncover or otherwise disturb cultural deposits in the area of the discovery and all construction that may foreclose mitigation options or the ability to implement the requirements of this condition shall cease and shall not recommence except as provided in subsection D and other subsections of this special condition. In general, the area

# **COASTAL DEVELOPMENT PERMIT**

**No. 5-05-020**

**Page 35 of 38**

where construction activities must cease shall be 1) no less than a 50-foot wide buffer around the cultural deposit; and 2) no more than the residential enclave area within which the discovery is made.

C. An applicant seeking to recommence construction following discovery of the cultural deposits shall submit a Significance Testing Plan for the review and approval of the Executive Director. The Significance Testing Plan shall identify the testing measures that will be undertaken to determine whether the cultural deposits are significant. The Significance Testing Plan shall be prepared by the project archaeologist(s), in consultation with the Native American monitor(s), and the Most Likely Descendent (MLD) when State Law mandates identification of a MLD. The Executive Director shall make a determination regarding the adequacy of the Significance Testing Plan within 10 working days of receipt. If the Executive Director does not make such a determination within the prescribed time, the plan shall be deemed approved and implementation may proceed. Once a plan is deemed adequate, the Executive Director will make a determination regarding the significance of the cultural deposits discovered.

- (1) If the Executive Director approves the Significance Testing Plan and determines that the Significance Testing Plan's recommended testing measures are de minimis in nature and scope, the significance testing may commence after the Executive Director informs the permittee of that determination.
- (2) If the Executive Director approves the Significance Testing Plan but determines that the changes therein are not de minimis, significance testing may not commence until after the Commission approves an amendment to this permit.
- (3) Once the measures identified in the significance testing plan are undertaken, the permittee shall submit the results of the testing to the Executive Director for review and approval. The results shall be accompanied by the project archeologist's recommendation as to whether the findings should be considered significant. The project archeologist's recommendation shall be made in consultation with the Native American monitors and the MLD when State Law mandates identification of a MLD. If there is disagreement between the project archeologist and the Native American monitors and/or the MLD, both perspectives shall be presented to the Executive Director. The Executive Director shall make the determination as to whether the deposits are significant based on the information available to the Executive Director. If the deposits are found to be significant, the permittee shall prepare and submit to the Executive Director a supplementary Archeological Plan in accordance with subsection E of this condition and all other relevant subsections. If the deposits are found to be not significant, then the permittee may recommence

# **COASTAL DEVELOPMENT PERMIT**

**No. 5-05-020**

**Page 36 of 38**

grading in accordance with any measures outlined in the significance testing program.

D. An applicant seeking to recommence construction following a determination by the Executive Director that the cultural deposits discovered are significant shall submit a supplementary Archaeological Plan for the review and approval of the Executive Director. The supplementary Archeological Plan shall be prepared by the project archaeologist(s), in consultation with the Native American monitor(s), the Most Likely Descendent (MLD) when State Law mandates identification of a MLD, as well as others identified in subsection E of this condition. The supplementary Archeological Plan shall identify proposed investigation and mitigation measures. If there is disagreement between the project archeologist and the Native American monitors and/or the MLD, both perspectives shall be presented to the Executive Director. The range of investigation and mitigation measures considered shall not be constrained by the approved development plan. Mitigation measures considered shall range from in-situ preservation to recovery and/or relocation. A good faith effort shall be made to avoid impacts to cultural resources through methods such as, but not limited to, project redesign, capping, and creating an open space area around the cultural resource areas. In order to protect cultural resources, any further development may only be undertaken consistent with the provisions of the final, approved, Supplementary Archaeological Plan.

- (1) If the Executive Director approves the Supplementary Archaeological Plan and determines that the Supplementary Archaeological Plan's recommended changes to the proposed development or mitigation measures are de minimis in nature and scope, construction may recommence after the Executive Director informs the permittee of that determination.
- (2) If the Executive Director approves the Supplementary Archaeological Plan but determines that the changes therein are not de minimis, construction may not recommence until after the Commission approves an amendment to this permit.

E. Prior to submittal to the Executive Director, all plans required to be submitted pursuant to this special condition, shall have received review and written comment by a peer review committee convened in accordance with current professional practice that shall include qualified archeologists and representatives of Native American groups with documented ancestral ties to the area. Names and qualifications of selected peer reviewers shall be submitted for review and approval by the Executive Director. The plans submitted to the Executive Director shall incorporate the recommendations of the peer review committee. Furthermore, upon completion of the peer review process, and prior to submittal to the Executive Director, all plans shall be submitted to the California Office of Historic Preservation (OHP) and the NAHC for their review and an opportunity to comment. The plans submitted to the Executive Director shall incorporate the recommendations of the OHP and NAHC. If the OHP and/or NAHC do not respond within 30 days of their

# **COASTAL DEVELOPMENT PERMIT**

**No. 5-05-020**

**Page 37 of 38**

receipt of the plan, the requirement under this permit for those entities' review and comment shall expire, unless the Executive Director extends said deadline for good cause. All plans shall be submitted for the review and approval of the Executive Director.

F. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

## **24. CURATION OF ARTIFACTS AND DISSEMINATION OF CULTURAL INFORMATION**

PROIR TO ISSUANCE OF THIS PERMIT the applicant shall submit for the review and approval of the Executive Director, evidence of a written agreement with a curation facility that has agreed to accept any artifacts recovered from the project site. Any such artifacts shall be curated within Orange County, at a facility meeting the established standards for the curation of archaeological resources. Further, the applicant shall request in the agreement that the facility receiving the collection prepare an appropriate display of significant materials so that the public can view the investigation results and benefit from the knowledge gained by the investigations.

If permanent curation facilities are not available, artifacts may be temporarily stored at a facility such as the Anthropology Department of the California State University at Fullerton until space becomes available at a facility meeting the above standards. The applicant shall submit written proof of acceptance from the above curation or temporary facility of 100 percent of the recovered artifacts, except for those that have been reburied pursuant to State Law, prior to issuance of the permit. In carrying out the provisions of this special condition regarding the curation of the artifacts that have been recovered from the project site and any future artifacts to be recovered through the development of the approved project, it is the intentions of the Commission to make this special condition consistent with the County's special condition regarding curation of recovered artifacts.

PRIOR TO ISSUANCE OF THIS PERMIT the applicant shall submit, for the review and approval of the Executive Director, a written agreement to distribute the series of ORA-83 Research and Salvage Program Final Reports to interested area institutions, vocational groups and Native American tribal units within Southern California, as well as to appropriate City, County and State agencies, as proposed in the "Archaeological Research Design ORA-83: "The Cogged Stone Site" Final Research and Salvage Program", by Scientific Resource Surveys, Inc., dated

# **COASTAL DEVELOPMENT PERMIT**

**No. 5-05-020**

**Page 38 of 38**

November 11, 1983 and conditioned in coastal development permit 5 89-772, as amended.

## **25. OTHER AGENCY APPROVALS**

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall provide to the Executive Director a copy of a permit, or letter of permission, or evidence that no permit or permission is required for the project subject to this coastal development permit, issued by the following entities: County of Orange; City of Huntington Beach, California Department of Fish and Game; U.S. Fish and Wildlife Service; Regional Water Quality Control Board; Orange County Fire Authority; Orange County Sanitation District and the State Lands Commission. The applicant shall inform the Executive Director of any changes to the project required by the cited entities. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

## **26. COMPLIANCE**

All development shall occur in strict compliance with the proposal as set forth in the application for permit, subject to any changes approved in this permit and subject to any approved revised plans provided in compliance with the Commission's special conditions and any other special conditions noted above. Any proposed change from the approved plans must be reviewed and approved by the Executive Director to determine if an amendment or new permit is necessary.

## **27. INSPECTIONS**

The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.