

Developing future zoning for the subject site as well as preparing an Archaeological Research Plan for the site must include consultation with affected Native Americans/Most Likely Descendants. Evidence of such consultation, as well as any written comments received, must be included with any applications for a coastal development permit and/or LCP amendment request.

CCC-12

The MND includes cultural resources mitigation measures. However, preservation in place is not identified as one of the alternatives. Please note that the preferred alternative, based on the directions of the affected Native American(s)/Most Likely Descendant(s), may be preservation in place (in situ preservation). This is particularly important if pre-historic human remains are discovered. This possibility underscores the need for early consultation with affected Native Americans/Most Likely Descendants.

CCC-13

The historic extent and significance of on-site World War II era structures should be examined.

CCC-14

### Figure 3 – Proposed Zoning Designations

Although Figure 3 shows current City zoning on surrounding sites, Commission staff is concerned that it does not adequately reflect recent Commission and City actions relative to land uses and/or surrounding land use designations. Although the City zoning on the Shea property (immediately east and southeast of the subject site) at this point is Residential Low Density (RL), the City recently adopted a land use designation of Open Space – Conservation at this site in the area that abuts the subject Goodell site. Zoning for the Shea site is expected to be modified to reflect this land use designation. Although the MND discusses the OS - C designation on the Shea property elsewhere in the body of the document, it is not shown on a graphic and does not appear to have been factored into the City's analysis of land use compatibility.

CCC-15

In addition, while the zoning on the Hearthside property immediately to the north of the subject site is Residential Agriculture (RA), the land use designation for that site is Open Space – Parks (OS - P). Please see below for further discussion on this. Finally, the SP 15 (Specific Plan 15) zoning shown on Figure 3 for the area of the Brightwater site that abuts the subject property to the west and southwest, does not adequately convey that the area to the southwest is preserved as open space for habitat protection. Commission staff believes these distinctions are important when considering appropriate zoning for the subject site.

CCC-16

### Land Use and Planning

Page 6 of the MND, under the heading "Surrounding Land Uses and Setting, includes the following description of the 5 acre Hearthside property to the north: "An application has been submitted for the development of 22 single-family residences on the adjacent 5-acre site." In addition, on page 9 – 10, the MND states: "The proposed zoning of the project site consists of single-family residential uses and open space/conservation areas that are consistent with

CCC-17

existing, **proposed** or under-construction **single-family development adjacent to the project area on the north, east** and west and the open space areas to the east, south and southwest." This seems to treat the Hearthside property to the north as if it has been approved for single family residential development. And it does not adequately reflect the fact that the entire east and south sides of the subject property are preserved in open space for habitat protection.

CCC-17  
cont'd.

Commission staff has concerns that in considering compatibility with surrounding land uses, the site to the north is being considered as if residential development is the accepted land use. However, the certified land use designation at that site is Open Space – Parks. As such, compatibility with the OS – P land use designation should be included in the MND analysis. Commission staff points out that before development other than that which is consistent with the current OS- P land use designation could proceed, that site would first need to receive approval of an LCP amendment by the Coastal Commission. Staff cautions that OS-P is a higher priority use under the Coastal Act and conversion to the lower priority residential use is by no means certain.

CCC-18

Furthermore, with regard to land use, the proposed pre-zone includes pre-zoning 3.2 acres as Residential Low Density (RL). This would allow up to 22 single family residences on the single parcel subject site. A residential low density zone at the subject site may result in zoning that could allow development that would be inconsistent with the Chapter 3 policies of the Coastal Act and may result in more development than the subject site could support.

CCC-19

The MND compares the proposed pre-zoning of the site to the County's zoning for the site. The MND also refers to Recirculated EIR No. 551 – County of Orange (1996)[MND Reference No. 5]. While the MND also includes the Subsequent EIR No. 551 – Orange County (2002) [MND Reference No. 6] and Addendum to Subsequent EIR No 551 – Orange County (2005) [MND Reference No. 17] in the list of references, the 2002 EIR document is cited much less frequently in the MND and the 2005 EIR document is not cited at all.

CCC-20

The project considered in EIR 551 (1996) was a project that contemplated considerably more development than what has ultimately come to pass. While these are appropriate to include in the analysis, consideration of appropriate zoning for the site should not use these as the basis for what constitutes appropriate zoning today. Because there will be less development than was once contemplated, does not necessarily mean all resources needing protection will be protected. Appropriate zoning designations must be based on current, site specific information including current surrounding land use and zoning designations and recent site specific studies.

CCC-21

**Aesthetics**

The MND states:

*"The subject site is situated at approximately 50 feet above mean sea level (MSL) and views of the wetlands, lowlands, eucalyptus ESHA as well as distant views of the Pacific*

CCC-22

*Ocean can be captured from the site. A portion of the Open Space – Parks and Recreation (OS – PR) area is proposed to maintain existing views from the site and provide a public vista point. The Coastal Conservation (CC) as well as the remaining OS – PR area will maintain views of the slope to persons on the bicycle trail along the channel.”*

CCC-22  
cont'd.

Commission staff concurs with this assessment of the need to protect public views to and from the subject site. It is important to note that if the area zoned Coastal Conservation must be expanded beyond what the MND currently contemplates, these public views must still be protected and maintained.

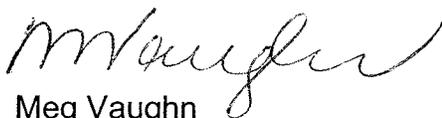
**Recreation**

The site appears to be the subject of historic public use. Aerial photographs clearly depict pathways pioneered through human use. In addition, it may be strategically located to link future public trails that are anticipated within the adjacent Shea property to the east at lower elevation, and the public trail system along the Bolsa Chica Mesa that exists within the Brightwater development. Public trail connectivity should be considered as part of the pre-zoning and zoning process for the subject site.

CCC-23

Again thank you for the opportunity to comment on the proposed pre-zoning and Mitigated Negative Declaration. Please contact me if you have any questions regarding these comments.

Sincerely,



Meg Vaughn  
Staff Analyst

cc: Mary Beth Broeren, Senior Planner

Goodell MND EA 08-017 later 4.21.09 me



Linda S. Adams  
Secretary for  
Environmental Protection

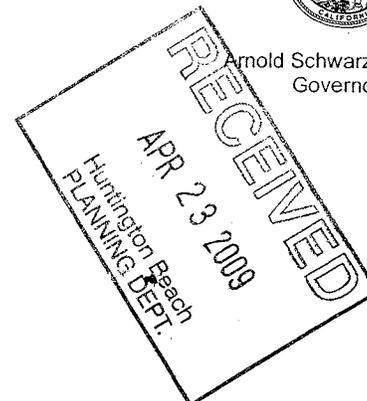


## Department of Toxic Substances Control

Maziar Movassaghi, Acting Director  
5796 Corporate Avenue  
Cypress, California 90630



Arnold Schwarzenegger  
Governor



April 22, 2009

RECEIVED APR 23 2009

Ms. Jennifer Villasenor  
City of Huntington Beach Planning Department  
2000 Main Street  
Huntington Beach, California 92648  
[jvillasenor@surfcity-hb.org](mailto:jvillasenor@surfcity-hb.org)

DRAFT MITIGATED NEGATIVE DECLARATION (ND) FOR GOODELL PROPERTY  
PRE-ZONING AND ANNEXATION (SCH# 2009031094)

Dear Ms. Villasenor:

The Department of Toxic Substances Control (DTSC) has received your submitted document for the above-mentioned project. As stated in your document: "The proposed project involves the pre-zoning and annexation of approximately 6.2 acres of property in the County of Orange unincorporated Bolsa Chica area located on the Upper Bench of the Bolsa Chica Mesa. The City agreed to process this annexation at the request of the Orange County Local Agency Formation Commission (LAFCO) in conjunction with the annexation of the Brightwater Project into the City of Huntington Beach. The annexation of Brightwater resulted in the subject site becoming an unincorporated "island" which is contrary to LAFCO policies".

DTSC-1

Based on the review of the submitted document DTSC has the following comments:

- 1) The ND should identify and determine whether current or historic uses at the project area may have resulted in any release of hazardous wastes/substances.
- 2) The document states that the ND would identify any known or potentially contaminated sites within the proposed project area. For all identified sites, the ND should evaluate whether conditions at the site may pose a threat to human health or the environment. Following are the databases of some of the regulatory agencies:

DTSC-2

DTSC-3

- National Priorities List (NPL): A list maintained by the United States Environmental Protection Agency (U.S.EPA).

ATTACHMENT NO. 5.39

- EnviroStor, a database primarily used by the California Department of Toxic Substances Control, at [www. Envirostor.dtsc.ca.gov](http://www.Envirostor.dtsc.ca.gov).
- Resource Conservation and Recovery Information System (RCRIS): A database of RCRA facilities that is maintained by U.S. EPA.
- Comprehensive Environmental Response Compensation and Liability Information System (CERCLIS): A database of CERCLA sites that is maintained by U.S.EPA.
- Solid Waste Information System (SWIS): A database provided by the California Integrated Waste Management Board which consists of both open as well as closed and inactive solid waste disposal facilities and transfer stations.
- Leaking Underground Storage Tanks (LUST) / Spills, Leaks, Investigations and Cleanups (SLIC): A list that is maintained by Regional Water Quality Control Boards.
- Local Counties and Cities maintain lists for hazardous substances cleanup sites and leaking underground storage tanks.
- The United States Army Corps of Engineers, 911 Wilshire Boulevard, Los Angeles, California, 90017, (213) 452-3908, maintains a list of Formerly Used Defense Sites (FUDS).

3  
DTS-0  
cont'd.

3) The ND should identify the mechanism to initiate any required investigation and/or remediation for any site that may be contaminated, and the government agency to provide appropriate regulatory oversight. If hazardous materials or wastes were stored at the site, an environmental assessment should be conducted to determine if a release has occurred. If so, further studies should be carried out to delineate the nature and extent of the contamination, and the potential threat to public health and/or the environment should be evaluated. It may be necessary to determine if an expedited response action is required to reduce existing or potential threats to public health or the environment. If no immediate threat exists, the final remedy should be implemented in compliance with state laws, regulations and policies.

DTSC-4

4) The project construction may require soil excavation and soil filling in certain areas. Appropriate sampling is required prior to disposal of the excavated soil. If the soil is contaminated, properly dispose of it rather than placing it in another

DTSC-5

location. Land Disposal Restrictions (LDRs) may be applicable to these soils. Also, if the project proposes to import soil to backfill the areas excavated, proper sampling should be conducted to make sure that the imported soil is free of contamination.

DTSC-5  
cont'd.

- 5) Human health and the environment of sensitive receptors should be protected during the construction or demolition activities. A study of the site overseen by the appropriate government agency might have to be conducted to determine if there are, have been, or will be, any releases of hazardous materials that may pose a risk to human health or the environment.

DTSC-6

- 6) If during construction/demolition of the project, soil and/or groundwater contamination is suspected, construction/demolition in the area should cease and appropriate health and safety procedures should be implemented. If it is determined that contaminated soil and/or groundwater exist, the ND should identify how any required investigation and/or remediation will be conducted, and the appropriate government agency to provide regulatory oversight.

DTSC-7

- 7) If weed abatement occurred, onsite soils may contain herbicide residue. If so, proper investigation and remedial actions, if necessary, should be conducted at the site prior to construction of the project.

DTSC-8

- 8) If it is determined that hazardous wastes are, or will be, generated by the proposed operations, the wastes must be managed in accordance with the California Hazardous Waste Control Law (California Health and Safety Code, Division 20, Chapter 6.5) and the Hazardous Waste Control Regulations (California Code of Regulations, Title 22, Division 4.5). If it is determined that hazardous wastes will be generated, the facility should also obtain a United States Environmental Protection Agency Identification Number by contacting (800) 618-6942. Certain hazardous waste treatment processes or hazardous materials, handling, storage or uses may require authorization from the local Certified Unified Program Agency (CUPA). Information about the requirement for authorization can be obtained by contacting your local CUPA.

DTSC-9

- 9) If the site was used for agricultural, livestock or related activities, onsite soils and groundwater might contain pesticides, agricultural chemical, organic waste or other related residue. Proper investigation, and remedial actions, if necessary, should be conducted under the oversight of and approved by a government agency at the site prior to construction of the project.

DTSC-10

Ms. Jennifer Villasenor  
April 22, 2009  
Page 4

- 10) DTSC can provide guidance for cleanup oversight through an Environmental Oversight Agreement (EOA) for government agencies that are not responsible parties, or a Voluntary Cleanup Agreement (VCA) for private parties. For additional information on the EOA or VCA, please see [www.dtsc.ca.gov/SiteCleanup/Brownfields](http://www.dtsc.ca.gov/SiteCleanup/Brownfields), or contact Ms. Maryam Tasnif-Abbasi, DTSC's Voluntary Cleanup Coordinator, at (714) 484-5489.

DTSC-11

If you have any questions regarding this letter, please contact me at (714) 484-5472 or at "ashami@DTSC.ca.gov".

Sincerely,



Al-Shami  
Project Manager  
Brownfields and Environmental Restoration Program – Cypress Office

cc: Governor's Office of Planning and Research  
State Clearinghouse  
P.O. Box 3044  
Sacramento, California 95812-3044

Mr. Guenther W. Moskat, Chief  
Planning and Environmental Analysis Section  
CEQA Tracking Center  
Department of Toxic Substances Control  
P.O. Box 806  
Sacramento, California 95812-0806

CEQA #2533

ATTACHMENT NO. 5.42



# CITY OF HUNTINGTON BEACH

## ENVIRONMENTAL BOARD

April 29, 2009

RECEIVED MAY 01 2009

City of Huntington Beach  
2000 Main Street  
Huntington Beach, California 92648

Attention: Mr. Rami Talleh, Senior Planner

Subject: **ENVIRONMENTAL ASSESSMENT NO. 08-017**  
**Goodell Property Pre-zoning and Annexation**

Dear Mr. Talleh:

At the April 2, 2009 Environmental Board meeting, the members reviewed the subject project Environmental Assessment document. The Board offers the following comments for your consideration:

1. The Proposal is difficult to evaluate in its present form due to a conspicuous absence of useful mapping of the area. The maps provided in the Assessment do not provide sufficient detail, of the area as a whole or breakdown of the proposed project sections, to give the Board a workable impression of the impact of the proposed usage, both to the site and surrounding area. The Assessment should at least utilize available satellite imaging technology (such as Google Maps) so the Board and all other interested parties can fully appreciate the potential impact to the site. } EB-1
2. The Board received comment from citizens concerned with the maintenance of existing foliage, including trees, bushes, and scrub, as being vital to the local ecosystem. The Board recommends further study and solicitation of input from local citizenry and involved organizations to more fully examine this issue. } EB-2

The Board appreciates the opportunity of commenting on this project. Please don't hesitate to contact us with questions or concerns.

Very truly yours,  
**HB ENVIRONMENTAL BOARD**

David Guido, LEED A.P.  
Chair

CC: City Council Members

ATTACHMENT NO. 5.43

# Historic Resources Board

An advisory board to the Huntington Beach City Council

RECEIVED MAY 01 2009

Planning Department  
Jennifer Villaseñor, Associate Planner

Regarding the Mitigated Negative Declaration for the Goodell Property Annexation, the Historic Resources Board of Huntington Beach has several concerns we would like to address in the hope that a more comprehensive report will generate the most appropriate finding.

HRB-1

The Goodell property, located just off Warner Avenue immediately north of the recently annexed Brightwater Development, in addition to being a contiguous part of the Bolsa Chica ecosphere is host to two important historical resources.

The first is well documented as ORA-83, an archeological site containing possibly the world's richest collection of prehistoric cogstones, matched only by its mirror twin in the southern hemisphere (see Bolsa Chica Land Trust report). There are also Native American remains from more recent prehistoric tribal activities at this site.

HRB-2

The second is a portion of the battery and bunker complex installed across the Bolsa Chica by the United States military for coastal artillery defenses during WWII, a rare extant example of Huntington Beach's participation in that historic conflagration.

Our main concern is twofold. One, the historic resources that share the site are not documented to the extent their significance deserves and that significance merits a different initial rezoning designation for the site. Two, the proposed rezoning for residential development seems premature, given the available data for the aforementioned resources and the current/past use.

HRB-3

HRB-4

The initial rezoning combination that includes residential development on the upper mesa on the property is, to a degree, based on the current Orange County designation from a previous residential development proposal. That proposal and the designation that goes with it, does not have and could not consider the most recent developments surrounding ORA-83 and its multiple resources on the neighboring Brightwater property. Similar mitigation measures for that project have been insufficient at best and more in depth study should be required before a residential designation is given. The more recent historic structures (bunkers, etc.), though less glamorous than an archeological site, are deserving of more attention as well. Further, the current Mitigated Negative Declaration documents do not explain how proposed mitigation measures are to be implemented or supervised should residential development occur, a likely scenario given the current proposal and the recent history of the city. Finally, the criteria for the level of significance given these resources are not transparent in the current Mitigated Negative Declaration documents and therefore could seem

HRB-5

# Historic Resources Board

An advisory board to the Huntington Beach City Council

subjective or even, to a small degree, arbitrary.

It makes far more sense to the Historic Resources Board for the city to annex the property with a designation for what it actually is currently, open space, or has actually been in the past, agricultural, etc. Then, with the studies and mitigation measures called for, the process for a residential development designation could start from an appropriate baseline.

HRB-6

Respectfully submitted,

Historic Resources Board

April 22, 2009

City of Huntington Beach  
Planning Department  
ATTN: Jennifer Villasenor  
2000 Main St.  
Huntington Beach, CA 92648

Re: Goodell Annexation Environmental Assessment No. 08-017

Dear Ms. Villasenor,

I am writing to express the following concerns with the Goodell property pre-zoning and annexation project Environmental Assessment No. 08-017.

## Mapping Accuracy

No legal boundary descriptions are provided in the EA for the proposed RL, OS-PR, and CC zoning designations.

BIX-1

Additionally, the proposed zoning map included with the EA was produced by generalized drawing software without being geo-referenced to latitude & longitude. Given this lack of geospatial accuracy, it is impossible to know with any certainty the location of the proposed zoning lines in relation to the sensitive biological resources that exist on the property and whether or not the proper buffers mandated by the city's LCP are being provided.

BIX-2

I'd like to request that for this project and all future projects that GIS software be used to produce proposed zoning maps at the start of the project lifecycle and that the underlying GIS data files be made available to all project stakeholders. Only then will it be possible to accurately determine the impacts to sensitive biological resources.

BIX-3

## Southern Tarplant

The EA asserts on p.19 that:

*"Southern tarplant has the potential to occur within the project site but was not observed during field surveys because no suitable habitat is present for it to exist on the site."*

Those field surveys missed several populations of southern tarplant, a CNPS List 1B.1 species (rare, threatened, or endangered in California or elsewhere; seriously endangered in California). Southern tarplant is actually quite plentiful on certain portions of the property.

BIX-4

See attached for the results of a GPS-based southern tarplant survey that I conducted last year on May 26, 2008. Each red dot on this survey map indicates one or more southern tarplants within the +/- 2m margin of error for my GPS unit. My survey shows that both the proposed RL and OS-PR areas contain significant tarplant populations. The CC zoning area needs to be expanded to encompass these two significant populations.

ATTACHMENT NO. 5.46

Also attached is an independent southern tarplant survey conducted by Huntington Beach resident Dena Hawes on August 5, 2008, and subsequently submitted to the CNDDDB. This survey corroborates my own findings and provides ground-level context photographs.

BIX-4

Southern tarplant can currently be found in numerous locations on the Goodell property as of April 17, 2009.

## Raptors

The EA and referenced biological resources report classifies the eucalyptus trees on the site as “ornamental habitat”, and on p.18 the EA asserts:

*“The ruderal vegetation as well as the ornamental non-native trees on the site provide foraging area for several raptor species including ferruginous hawk, red-tailed hawk, white-tailed kite, northern harrier, prairie falcon and American Kestrel but are not considered sensitive and provide only marginal habitat for amphibians, reptiles and small mammals due to repeated ground disturbance over time. However, while ornamental habitat is not considered a sensitive habitat type, existing eucalyptus trees on the site are contiguous with the ESHA and are considered a significant biological resource.”*

BIX-5

This assertion admits the raptor foraging value of the eucalyptus trees, and admits that the Goodell eucalyptus trees are contiguous with adjacent ESHA (which is comprised of the same types of eucalyptus trees found on the Goodell property), yet arrives at the conclusion that the Goodell eucalyptus trees are not ESHA.

Attached below are maps that document all raptor sightings that I and other observers have made from 2004 through the present day along the eastern edge of the Bolsa Chica mesa. These data were submitted to the California Coastal Commission during the processing of the Shea Parkside LCP amendment and resulted in the commission declaring the northern Shea eucalyptus grove to be ESHA along with the southern grove. From these maps it is clear that the ESHA should extend onto the Goodell property which is in between the two Shea groves. Thus the proposed CC zoning needs to be expanded to encompass all of the ESHA, and the OS-PR zoning needs to be relocated outside of the ESHA at a minimum distance of 100ft from the ESHA as called for by the city’s LCP. Note that this 100ft distance will likely be too conservative for the Coastal Commission, which approved a Shea Parkside development envelope no closer than approximately 250ft from the north grove ESHA.

BIX-6

The attached Google Earth maps provide two data representations for each species. The left map of each pair renders all of the sighting location placemarks in the same size, but uses color gradations to denote the relative difference in the number of sightings (white indicates a single sighting, whereas fully-saturated red indicates the location with the most sightings). The right map of each pair uses the same red color for all of the sighting location placemarks, but scales the size of each placemark to correspond to the number of sightings (i.e. a placemark with 10 sightings will have 10 times the area of a placemark with a single sighting).

BIX-7

Note that while the number of sightings is rendered next to each placemark, Google Earth may locate these numbers far from the placemark when many placemarks are crowded into a small area, particularly for the scaled placemark maps. Thus these sightings counts are really only useful when using Google Earth interactively where mouse-over animation makes it clear which

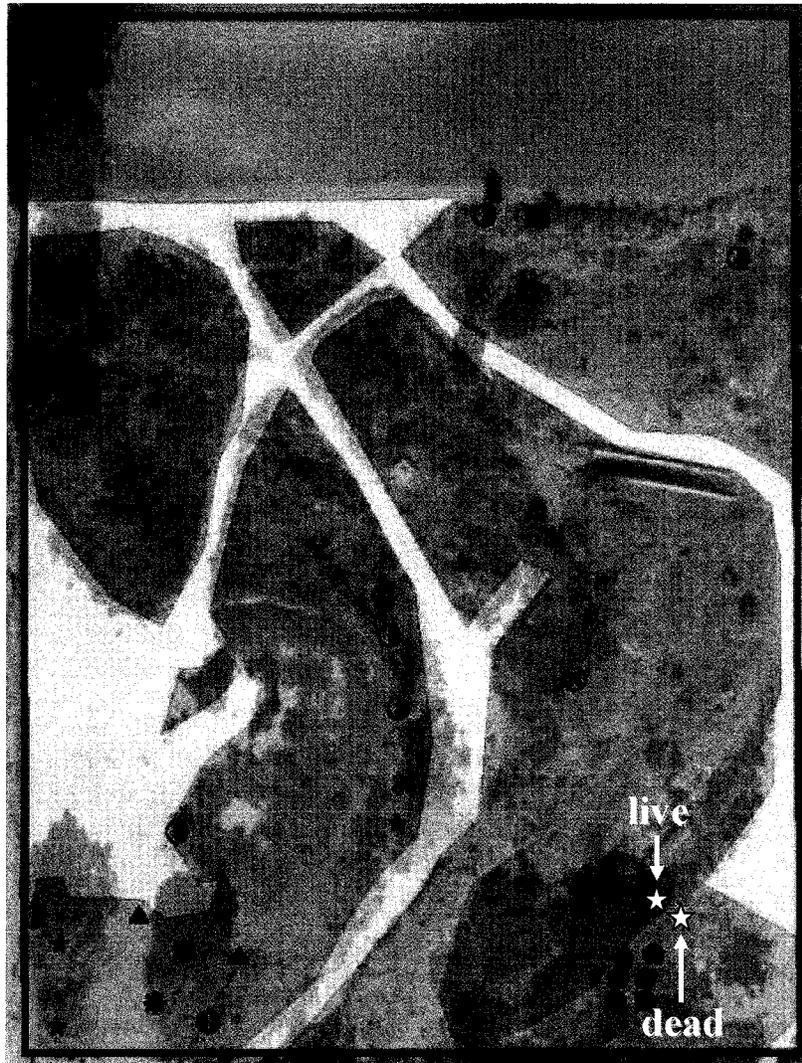
count is associated with a given placemark (the KML file for the data can be provided upon request so that interested readers can examine my data further in an interactive manner).

BIX-7  
Cont'd.

### Lowland Eucalyptus Trees Omitted from Biological Survey

Curiously, two lowland eucalyptus trees (one live, one dead) on the Goodell property have been omitted from the SWCA biological resources survey referenced by the EA. These two trees are amongst the most popular raptor perches of the eastern Bolsa Chica mesa. I have annotated the SWCA map below with white icons to show the omitted trees:

BIX-8



## EIR Required

Given the important sensitive resources on this site, an EIR is required to assess the impacts since this pre-zoning process moves the site one step closer to development.

] BIX-9

Sincerely,

*Mark D. Bixby*

Mark D. Bixby  
17451 Hillgate Ln  
Huntington Beach, CA 92649-4707  
714-625-0876  
mark@bixby.org

ATTACHMENT NO. 5.49

Mark Bixby Southern Tarplant Survey – May 26, 2008



**Dena Hawes Southern Tarplant Survey – August 5, 2008**

ATTACHMENT NO. 5.51

Mail to:  
California Natural Diversity Database  
Department of Fish and Game  
1807 13<sup>th</sup> Street, Suite 202  
Sacramento, CA 95814  
Fax: (916) 324-0475 email: WHDAB@dfg.ca.gov

For Office Use Only  
Source Code HAW02F000 | Quad Code 3311861  
Elm Code \_\_\_\_\_ Occ. No. \_\_\_\_\_  
EO Index No. \_\_\_\_\_ Map Index No. \_\_\_\_\_

Date of Field Work mm/dd/yyyy: 8/5/08

### California Native Species Field Survey Form

Scientific Name: CENTROMADIA PARRYI SSP AUSTRALIS

Common Name: SOUTHERN TARPLANT

Species Found?  Yes  No \_\_\_\_\_ if not, why?  
Total No. Individuals 85? Subsequent Visit?  yes  no  
Is this an existing NDDDB occurrence?  no  Punk.  
Collection? If yes: \_\_\_\_\_  
Number \_\_\_\_\_ Museum / Herbarium \_\_\_\_\_

Reporter: DENA HAWES  
Address: 5252 VINELAND DR.  
HUNTINGTON BEACH, CA 92649  
E-mail Address: hlcat@socal.rr.com  
Phone: (714) 846-2239

Plant Information  
Phenology: 50 % vegetative 50 % flowering \_\_\_\_\_ % fruiting

Animal Information  
# adults \_\_\_\_\_ # juveniles \_\_\_\_\_ # larvae \_\_\_\_\_ # egg masses \_\_\_\_\_ # unknown \_\_\_\_\_  
 breeding  wintering  burrow site  rookery  nesting  other

#### Location Description (please attach map AND/OR fill out your choice of coordinates, below)

County: ORANGE Landowner/ Mgr.: DONALD E. GOODELL  
Quad Name: \_\_\_\_\_ Elevation: 40'  
T \_\_\_\_\_ R \_\_\_\_\_ Sec \_\_\_\_\_, \_\_\_\_\_ 1/4 of \_\_\_\_\_ 1/4, Meridian: H M S Source of Coordinates (GPS, topo. map & type): GPS  
T \_\_\_\_\_ R \_\_\_\_\_ Sec \_\_\_\_\_, \_\_\_\_\_ 1/4 of \_\_\_\_\_ 1/4, Meridian: H M S GPS Make & Model GARMIN Geko 101  
Datum: NAD27 NAD83 WGS84 Horizontal Accuracy 15' meters/feet  
Coordinate System: UTM Zone 10 UTM Zone 11 OR Geographic (Latitude & Longitude)  
Coordinates: Easting/Longitude W 118° 02.395' Northing/Latitude N 33° 42.567'

Habitat Description (plant communities, dominants, associates, substrates/soils, aspects/slope):  
AREA IS DENSELY VEGETATED W/ NON NATIVE INVASIVE SPECIES - TREE TOBACCO, PAMPAS GRASS, BLACK MUSTARD, CROWN DAISY, RUSSIAN THISTLE, FIVE-HOOK BASSIA. SMALL POPULATION OF SEASIDE HELIOTISAE ALSO PRESENT. SOIL IS HARDBACK W/ FINE GRAIN, LOOSE SURFACE LAYER. HIGHLY DISTURBED. SLOPE IS LEVEL (SMALL PLATEAU CARVED INTO THE SIDE OF THE MESA).  
Other rare taxa seen at THIS site on THIS date:

Site Information Overall site quality:  Excellent  Good  Fair  Poor  
Current / surrounding land use: FARMING ON FIELD DIRECTLY BELOW SITE TO THE EAST; EXTREME AMOUNT OF VANDALISM & DIGGING FROM AREA TEENAGERS. ADJACENT TO FARM ACCESS ROAD  
Visible disturbances: MOUNTAIN BIKE TRAIL ON HILLSIDE, BMX BIKE JUMPS; TEENS DIGGING OUT BURIED LOW II AMMUNITION BUNKER (ENTRANCE IS ON THE TARPLANT PLATEAU)  
Threats: OFFLEASH DOGS, HUMAN TRAMPLING, BIKES, DIGGING, VANDALISM  
Comments: PLANTS ARE LARGE (UP TO 3' TALL) AND DENSE; IMPOSSIBLE TO GET ACCURATE SPECIMEN COUNT DUE TO THICK BRUSH & TARPLANT SIZES. AREA OF TARPLANT COVERS APPROX 60' AREA IS UNPROTECTED

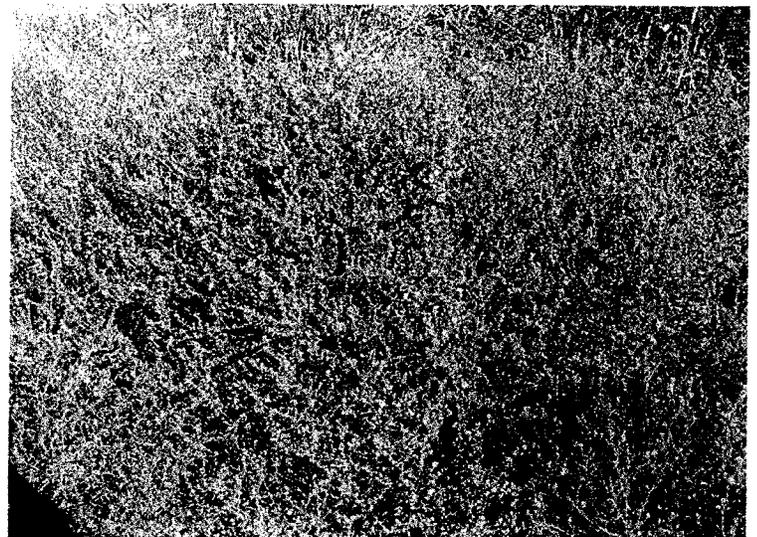
Determination: (check one or more, and fill in blanks)  
Keyed (cite reference): \_\_\_\_\_  
Compared with specimen housed at: \_\_\_\_\_  
Compared with photo / drawing in: \_\_\_\_\_  
By another person (name): \_\_\_\_\_  
Other: \_\_\_\_\_

Photographs: (check one or more) Slide Print Digital  
Plant / animal \_\_\_\_\_  
Habitat \_\_\_\_\_  
Diagnostic feature \_\_\_\_\_  
May we obtain duplicates at our expense? DIGITAL (yes) no



W 118°02.395'  
N33°42.567'

Photo looking south. Nearest intersection is Bolsa Chica Road and Los Patos. Brightwater housing development is under construction to the immediate west of the site. Tarplant habitat continues deep into the brush in the center of the photo. Thick invasive growth of black mustard, russian thistle, and five-hook bassia makes it difficult to count the tarplants. This area supported a substantial population of southern tarplant in 2006 and a smaller number in 2007 (extreme drought year). 2008 population is large and extensive; estimated at 85 plants up to 3' tall. Area has long history of mountain biking, BMX, paintball/BB shooting, and digging. Nearby WWII ammo bunker is currently being excavated by area teens; bunker is out of frame to the right of the photo. Property owner has partially filled the site with fill dirt and buried the bunker (2004?); Bobcat was used to dump & compact the fills. Tarplant habitat is in danger of being damaged or destroyed when/if bunker is reburied or fills removed. Bunker access by teens likewise increases probability of tarplant destruction from trampling, bike activity, and vandalism. Hillside erosion and silt drift from fills have buried seasonal ponds on the site.



ATTACHMENT NO. 5.53

Mail to:  
 California Natural Diversity Database  
 Department of Fish and Game  
 1807 13<sup>th</sup> Street, Suite 202  
 Sacramento, CA 95814  
 Fax: (916) 324-0475 email: WHDAB@dfg.ca.gov

For Office Use Only

Source Code \_\_\_\_\_ Quad Code 331861  
 Elm Code \_\_\_\_\_ Occ. No. \_\_\_\_\_  
 EO Index No. \_\_\_\_\_ Map Index No. \_\_\_\_\_

Date of Field Work mm/dd/yyyy: 8/5/08

### California Native Species Field Survey Form

Scientific Name: CENTROMADIA PARRYI SSP AUSTRALIS

Common Name: SOUTHERN TARPLANT

Species Found?  Yes  No \_\_\_\_\_ If not, why? \_\_\_\_\_  
 Total No. Individuals 60? Subsequent Visit?  yes  no  
 Is this an existing NDDB occurrence?  no  punk.  
 Yes, Occ. # \_\_\_\_\_  
 Collection? If yes: \_\_\_\_\_  
 Number \_\_\_\_\_ Museum / Herbarium \_\_\_\_\_

Reporter: DENA HAWES  
 Address: 5252 VINELAND DR  
HUNTINGTON BEACH, CA 92649  
 E-mail Address: hlcata@social.cc.com  
 Phone: (714) 846-2239

**Plant Information**  
 Phenology: 750 % vegetative 250 % flowering — % fruiting

**Animal Information**

# adults	# juveniles	# larvae	# egg masses	# unknown
<input type="checkbox"/>				
breeding	wintering	burrow site	rookery	nesting
				other

**Location Description (please attach map AND/OR fill out your choice of coordinates, below)**

County: ORANGE Landowner / Mgr.: DONALD E. GOODELL  
 Quad Name: \_\_\_\_\_ Elevation: 40'  
 T \_\_\_\_\_ R \_\_\_\_\_ Sec \_\_\_\_\_, \_\_\_\_\_ 1/4 of \_\_\_\_\_ 1/4, Meridian: H M S Source of Coordinates (GPS, topo. map & type): GPS  
 T \_\_\_\_\_ R \_\_\_\_\_ Sec \_\_\_\_\_, \_\_\_\_\_ 1/4 of \_\_\_\_\_ 1/4, Meridian: H M S GPS Make & Model CARMIN GEKO 101  
 Datum: NAD27 NAD83 WGS84 Horizontal Accuracy 16 meters (feet)  
 Coordinate System: UTM Zone 10 UTM Zone 11 OR Geographic (Latitude & Longitude)  
 Coordinates: Easting/Longitude W 118° 02.430' Northing/Latitude N 33° 42.545'

**Habitat Description** (plant communities, dominants, associates, substrates/soils, aspects/slope):  
LOCATION IS A SILTED-IN SEASONAL POND. CURRENT VEGETATION CONSISTS OF DEAD/SEEDING BLACK MUSTARD, CROWN DAISY, YELLOW STARTHISTLE, FORTAIL, RUSSIAN THISTLE, SOIL IS HARPACK, FINE GRAINED. AREA ORIGINALLY CONTAINED COASTAL SAGE SCRUB BUT IS NOW PRIMARILY INVASIVE NON-NATIVE SPECIES. AREA IS APPROXIMATELY 60' X 20'. SMALL POPULATION OF SOUTHERN TARPLANT GROWING APPROX 30' DUE EAST OF PRIMARY SITE (10-15 PLANTS).  
 Other rare taxa seen at THIS site on THIS date: \_\_\_\_\_

**Site Information** Overall site quality:  Excellent  Good  Fair  Poor  
 Current / surrounding land use: MAJOR HOUSING DEVELOPMENT ON ADJACENT PROPERTY; FARMING ACTIVITY ON PROPERTY BELOW THE SITE. PLANTS ARE GROWING AT EDGE OF ACCESS ROAD.  
 Visible disturbances: MOUNTAIN BIKE TRAILS, BMX BIKE JUMPS, VEHICLE TRAFFIC/FARM EQUIPMENT ON ROAD, PAINTBALL / BB SHOOTING BLINDS NEARBY.  
 Threats: HUMAN TRAMPLING, OFFLEASH DOGS, VEHICLES, BICYCLES, VANDALISM, MOST PLANTS HAVE HEAVY DAMAGE.  
 Comments: AREA IS UNFENCED, NOT SIGNED, AND NO SECURITY. PROPERTY IS HEAVILY USED BY AREA RESIDENTS & JUVENILES / TEENS FOR RECREATION, OWNER WANTS TO BUILD HIGH DENSITY DEVELOPMENT

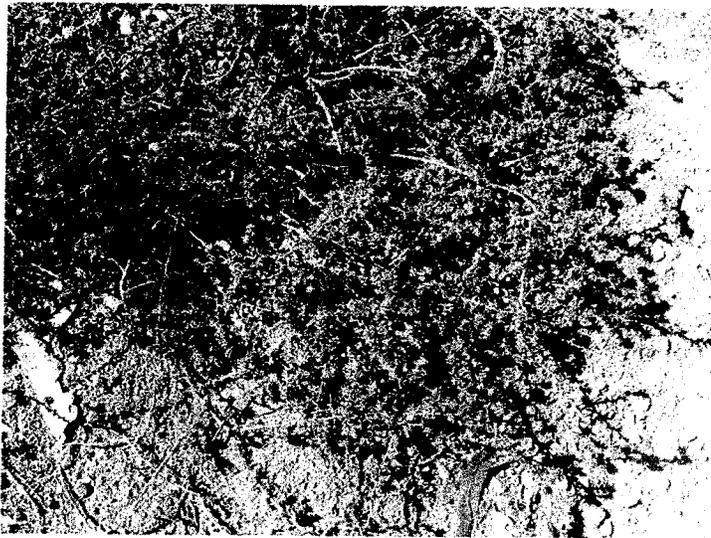
**Determination:** (check one or more, and fill in blanks)  
 Keyed (cite reference): \_\_\_\_\_  
 Compared with specimen housed at: \_\_\_\_\_  
 Compared with photo / drawing in: \_\_\_\_\_  
 By another person (name): \_\_\_\_\_  
 Other: \_\_\_\_\_

**Photographs:** (check one or more) Slide Print Digital  
 Plant / animal \_\_\_\_\_  
 Habitat \_\_\_\_\_  
 Diagnostic feature \_\_\_\_\_  
 May we obtain duplicates at our expense?  yes  no



Photo looking northwest. Nearest intersection is Bolsa Chica Road and Los Patos. Brightwater housing development is under construction to the immediate west of the site. Continuation of tarplant habitat area is out of frame to the right of the photo. BMX bike jump and bike trail through the tarplant habitat are plainly visible. Area supported southern tarplant in 2006 (approx 25 plants). 2008 population is more extensive. Majority of tarplants in this area have died from trampling and bicycle activity; tarplants out of frame are larger.

W 118°02.430'  
N33°42.545'



Small tarplant colony growing approx. 30' due east of the site. 10-15 plants.

ATTACHMENT NO. 5.56

Mail to:  
 California Natural Diversity Database  
 Department of Fish and Game  
 1807 13<sup>th</sup> Street, Suite 202  
 Sacramento, CA 95814  
 Fax: (916) 324-0475 email: WHDAB@dfg.ca.gov

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Source Code \_\_\_\_\_ Quad Code 331861  
 Elm Code \_\_\_\_\_ Occ. No. \_\_\_\_\_  
 EO Index No. \_\_\_\_\_ Map Index No. \_\_\_\_\_

Date of Field Work mm/dd/yyyy: 8/5/08

### California Native Species Field Survey Form

**Scientific Name:** CENTROMAEDIA PARRYI SSP AUSTRALIS

**Common Name:** SOUTHEAN TARPLANT

**Species Found?**  Yes  No If not, why?

Total No. Individuals 25? Subsequent Visit?  yes  no  
 Is this an existing NDDB occurrence?  no  ~~unk.~~

Collection? If yes: \_\_\_\_\_  
 Number \_\_\_\_\_ Museum / Herbarium \_\_\_\_\_

**Reporter:** DENA HAWES  
**Address:** 5252 VINELAND DR.  
HUNTINGTON BEACH, CA 92649  
**E-mail Address:** hlcat@social.fr.com  
**Phone:** (714) 846-2239

**Plant Information**

Phenology: 60 % vegetative 90 % flowering \_\_\_\_\_ % fruiting

**Animal Information**

# adults	# juveniles	# larvae	# egg masses	# unknown
<input type="checkbox"/>				
breeding	wintering	burrow site	rookery	nesting
other				

**Location Description (please attach map AND/OR fill out your choice of coordinates, below)**

County: ORANGE Landowner / Mgr.: DONALD E. GOODELL  
 Quad Name: \_\_\_\_\_ Elevation: 2'  
 T \_\_\_ R \_\_\_ Sec \_\_\_ , \_\_\_ 1/4 of \_\_\_ 1/4, Meridian: H M S Source of Coordinates (GPS, topo. map & type): GPS  
 T \_\_\_ R \_\_\_ Sec \_\_\_ , \_\_\_ 1/4 of \_\_\_ 1/4, Meridian: H M S GPS Make & Model GARMIN 660 101  
 Datum: NAD27 NAD83 WGS84 Horizontal Accuracy 15' meters/feet  
 Coordinate System: UTM Zone 10 UTM Zone 11 OR Geographic (Latitude & Longitude)  
 Coordinates: Easting/Longitude 118° 02.388' Northing/Latitude N 33° 42.540'

**Habitat Description** (plant communities, dominants, associates, substrates/soils, aspects/slope): SLOPE IS LEVEL (BASE OF HILL). AREA IS DENSELY VEGETATED W/ NON-NATIVE INVASIVE SPECIES - CRYSTALLINE ICEPLANT, SLENDER-LEAVED ICEPLANT, YELLOW SWEET-CLOVER, RUSSIAN THISTLE, FIVE-HOOK BASSIA, BLACK MUSTARD. ONE OR TWO FASCICULATED TARWEED PLANTS PRESENT. SOIL IS HARDBACK W/ LARGE AMOUNT OF CRUSHED DEAD VEGETATION COVERING SURFACE. SMALLER POPULATION OF SOUTHERN TARPLANT (APPROX 10 PLANTS) GROWING IN DENSE VEGETATION 80-100' SOUTH OF SITE. RED-STEMMED GOOSEFOOT & FIVE-HOOK BASSIA ARE DOMINANT; ALSO ICEPLANTS.  
 Other rare taxa seen at THIS site on THIS date:

**Site Information** Overall site quality:  Excellent  Good  Fair  Poor

Current / surrounding land use: FARMING ON ADJACENT PROPERTY - FARMLAND IS SITE OF PROPOSED 150-HOUSE DEVELOPMENT

Visible disturbances: FARM ACCESS ROAD, MOUNTAIN BIKE TRAILS DOWN HILLSIDE, TRAILS IN BRUSH THROUGH TARPLANT VICINITY. TRASH ACCUMULATION AND VANDALISM.

Threats: BICYCLES, OFF-LEASH DOGS, FARM VEHICLES, HUMAN TRAMPLING, VANDALISM, PAINTBALL/BB SHOOTING, TRANSIENTS

Comments: AREA HAS BEEN REPEATEDLY USED AS FARM EQUIPMENT STORAGE (DISC, PLOW, SCRAPER, ETC). POPULATION IS BISECTED BY MOUNTAIN BIKE TRAIL & BORDERED BY FARM ACCESS ROAD, VERY HEAVY RECREATIONAL USE BY RESIDENTS.

**Determination:** (check one or more, and fill in blanks)

Keyed (cite reference): \_\_\_\_\_  
 Compared with specimen housed at: \_\_\_\_\_  
 Compared with photo / drawing in: \_\_\_\_\_  
 By another person (name): \_\_\_\_\_  
 Other: \_\_\_\_\_

**Photographs:** (check one or more) Slide Print Digital

Plant / animal \_\_\_\_\_  
 Habitat \_\_\_\_\_  
 Diagnostic feature \_\_\_\_\_

May we obtain duplicates \_\_\_\_\_  
 at our expense?  yes  no



Photo looking south; farm access road visible in the upper left of image. Planted field out of frame to the left.



Smaller colony of southern tarplant (approximately 10 plants) is growing in the middle of the dense invasive vegetation in upper center of photo. Site contained approximately 30 tarplants in 2006; area is now choked with growth-inhibiting invasive species, especially iceplants.

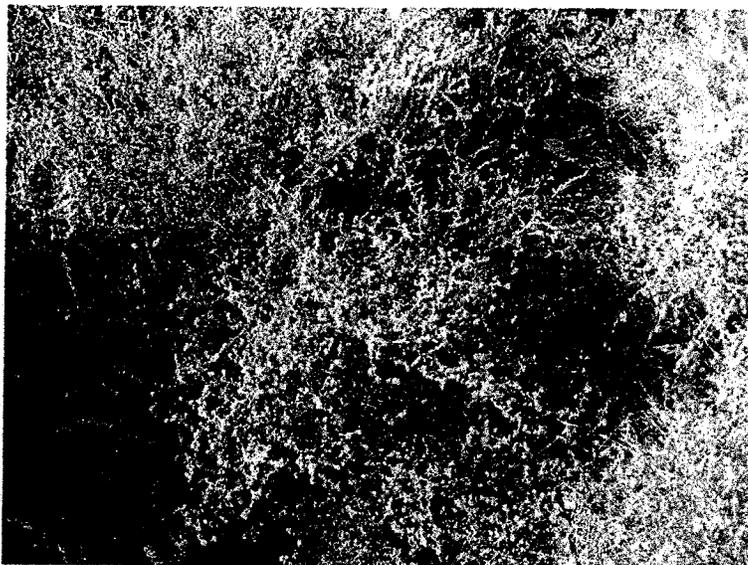
Photo looking north. →

Farm access road partially visible; road continues up the hill past buried WWII bunker and extensive southern tarplant colony. Planted field visible in upper right.



Tarplant colony is located at the base of the mesa and the site has a history of use as a farm equipment storage area. Also heavily used by off-leash dogs, juveniles/teens for paintball & BB shooting; mountain bike trails come off the hillside and bisect the colony. Area subject to heavy trampling, littering, vegetation damage, and erosion from bike trails..

W 118°02.388'  
N33°42.540'



Southern tarplants are fairly large, up to 2' in height. Found growing amongst dense russian thistle, five-hook bassia, and iceplants. Adjacent farm field is the site of a proposed housing tract.

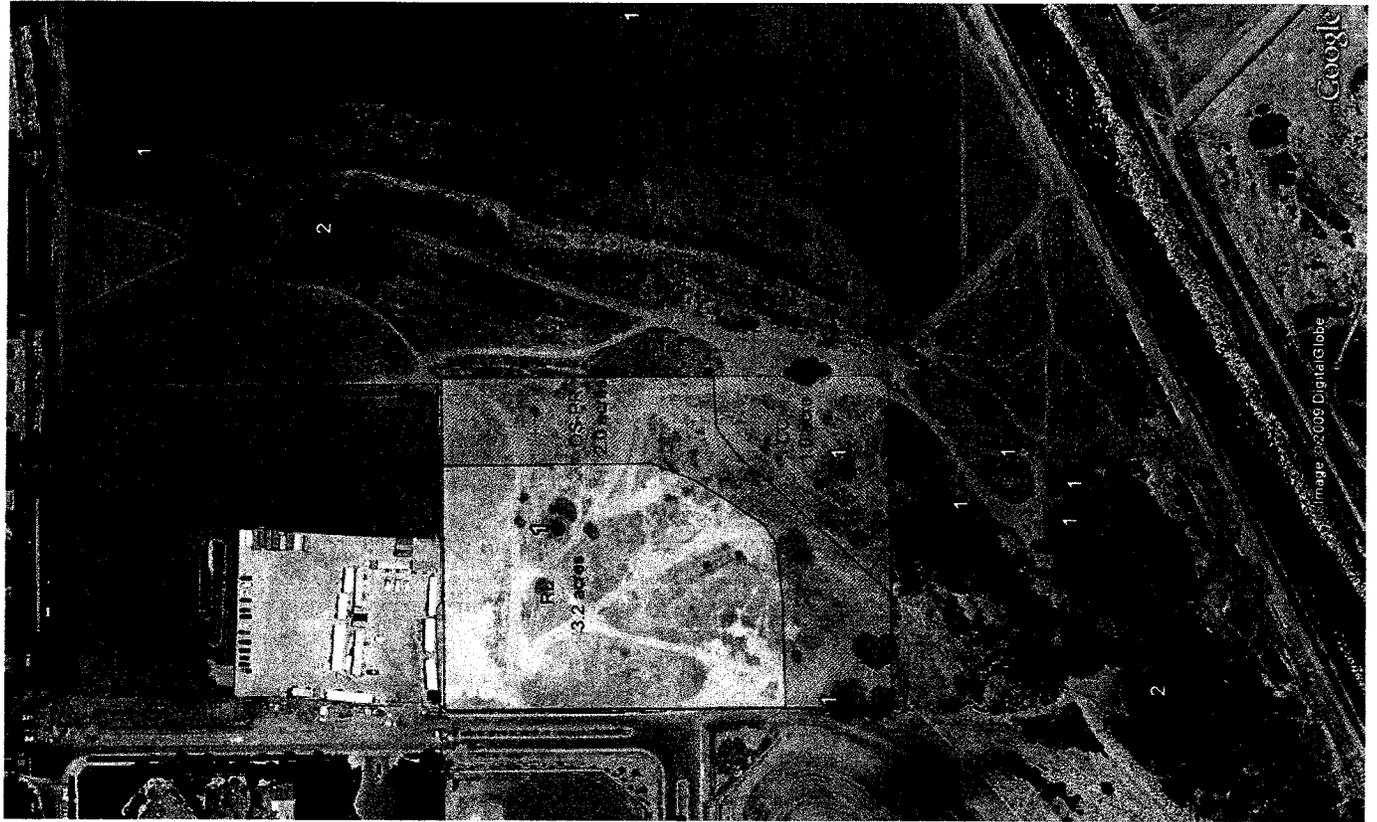
**Bolsa Chica Cumulative Raptor Survey, 2004 to Present**

ATTACHMENT NO. 5.58

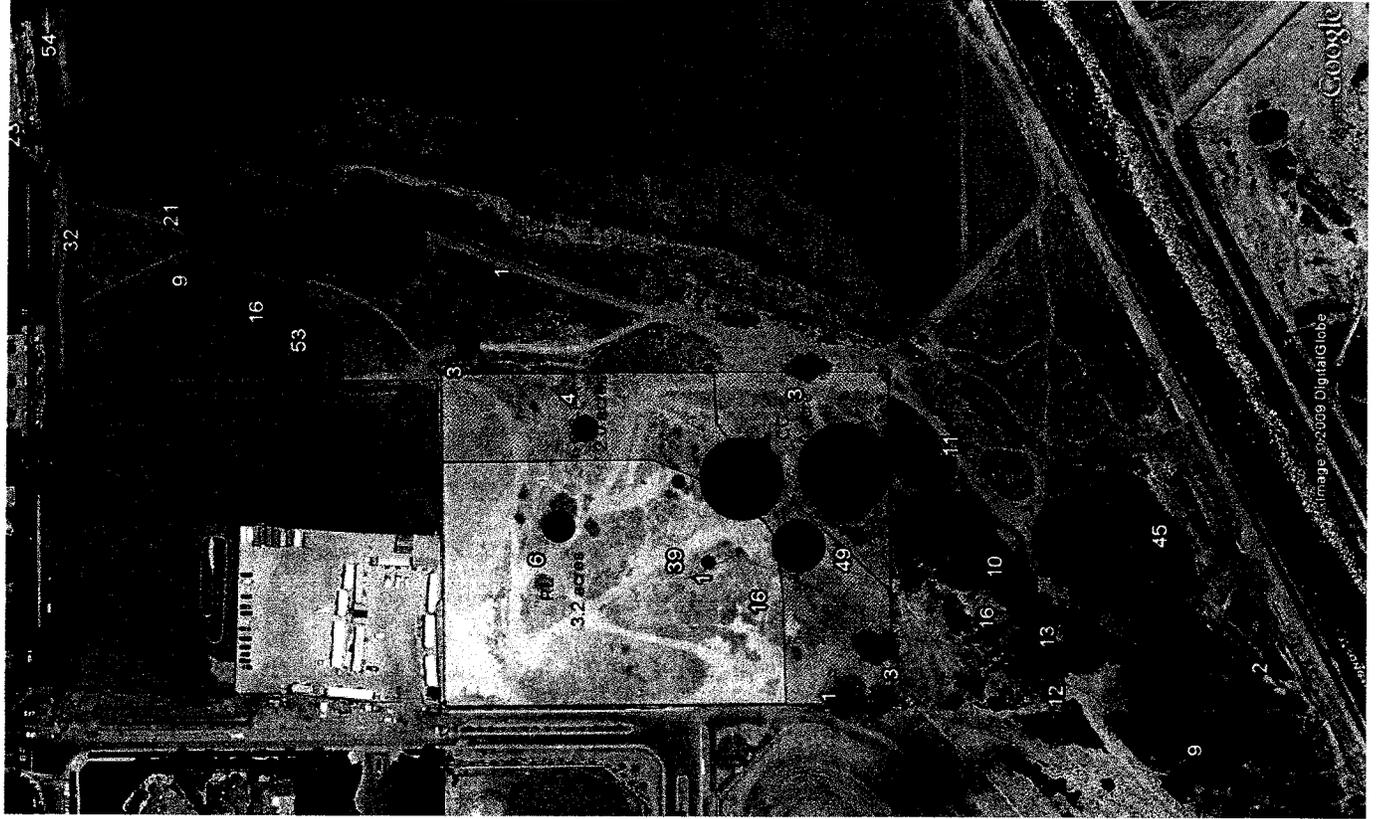
American Kestrel (*Falco sparverius*)



Barn Owl (*Tyto alba*)



Cooper's Hawk (*Accipiter cooperii*)



Great Horned Owl (*Bubo virginianus*)



**Merlin (*Falco columbarius*)**



Northern Harrier (*Circus cyaneus*)



ATTACHMENT NO. 5.64

Osprey (*Pandion haliaetus*)



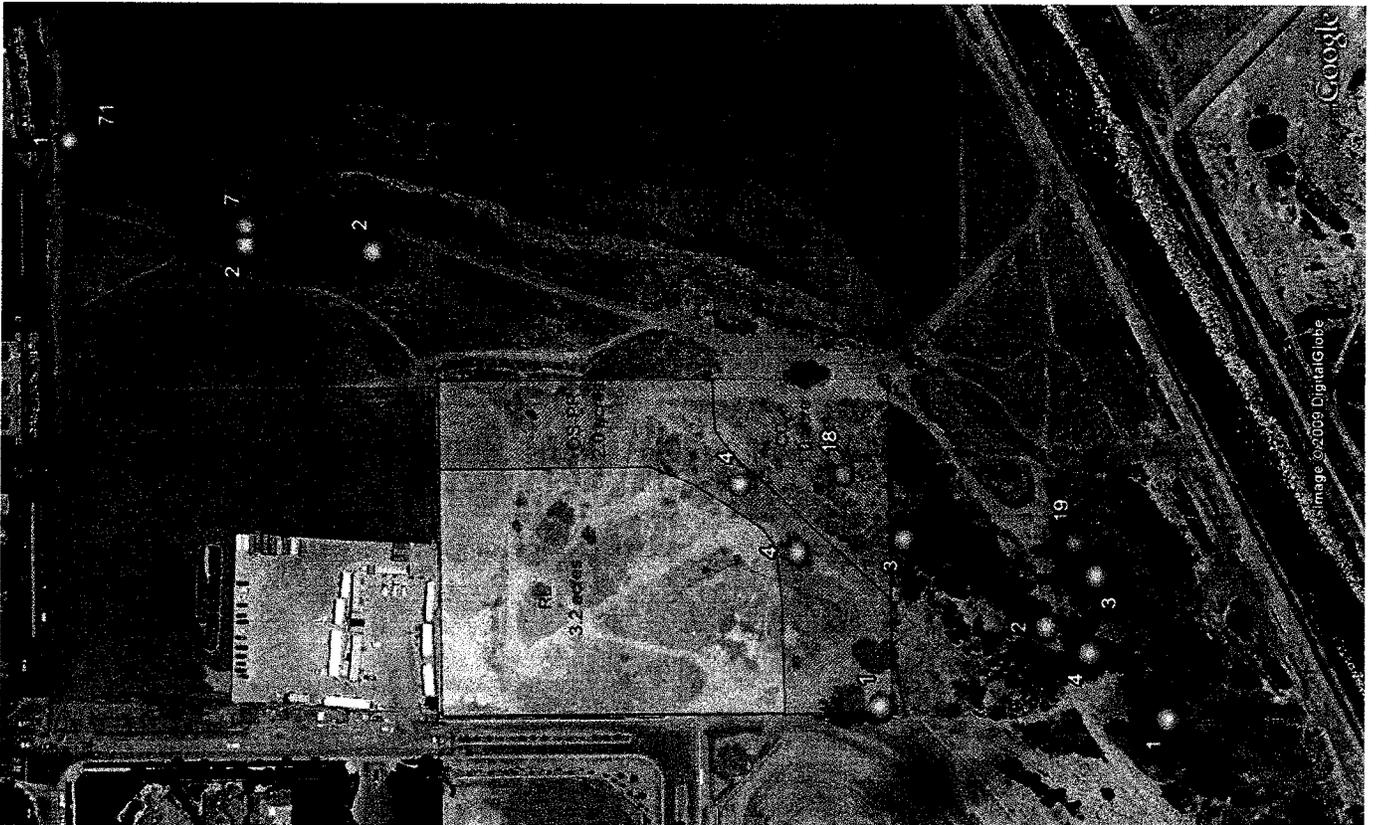
Peregrine Falcon (*Falco peregrinus*)



Red-shouldered Hawk (*Buteo lineatus*)



Red-tailed Hawk (*Buteo jamaicensis*)



Sharp-shinned Hawk (*Accipiter striatus*)



Turkey Vulture (*Cathartes aura*)



White-tailed Kite (*Elanus leucurus*)



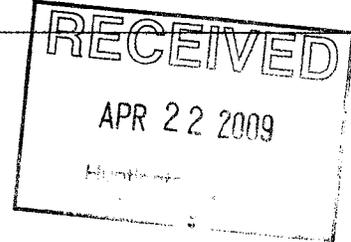
ATTACHMENT NO. 5.71



**California Cultural Resource Preservation Alliance, Inc.**

**P.O. Box 54132  
Irvine, CA 92619-4132**

**An alliance of American Indian and scientific communities working for  
the preservation of archaeological sites and other cultural resources.**



April 20, 2009

Jennifer Villasenor, Associate Planner  
City of Huntington Beach  
Planning Department  
2000 Main Street  
Huntington Beach, CA 92648

Subject: environmental Assessment No. 08-017 (Goodell Property)

Dear Miss Villasenor:

Evidently you did not read my letter of March 20, 2009 where I wrote to alert you to the fact that the aforementioned property is part of the 17.2 acre archaeological site (CA-ORA-83/86/144) that has been determined eligible for the National Register of Historic Places and is listed on the sacred site registry maintained by the California Native American Heritage Commission. The proposed zoning and annexation is an action that requires the City to comply with Senate Bill 18. SB 18 requires local governments to consult with California Native American tribes prior to making certain planning decisions to aid in the protection of traditional tribal cultural places.

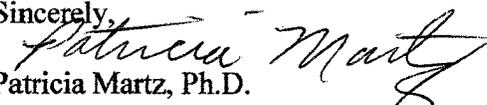
CCRP-1

We are deeply concerned about the proposed pre-zoning and annexation and development plans for the 6.2 acres of property known as the Goodell property. With the destruction of 11 acres of the site for the Brightwater housing project, the 6.2 acres represent all that is left of this significant archaeological site that most certainly contains the last remaining burials and cultural artifacts that are part of the ancient cemetery and village. The loss of the remaining portion of this world class archaeological site and most importantly, the disturbance of the remaining burials, would be a tragedy.

CCRP-2

It is troubling that nowhere in this proposal is there any mention of the fact that the property contains a significant archaeological site and cemetery or its importance to the local Native American descendants whose ancestors are buried there. The uses mentioned would disturb more burials and prohibit access to the site for ceremony. SB 18 amended Government Code §66560 to include open space for the protection of cultural places as an allowable purpose of the open space element. We hope that the City will take care to protect the cultural resources and will give at least as much consideration to California Native American descendants as they would to natural resources on the property. If you have any questions, I can be reached at [pmartz@calstaela.edu](mailto:pmartz@calstaela.edu) or (949) 559-6490.

CCRP-3

Sincerely,  
  
Patricia Martz, Ph.D.  
President

ATTACHMENT NO. 5.72

# CCRPA

**California Cultural Resource Preservation Alliance, Inc.**

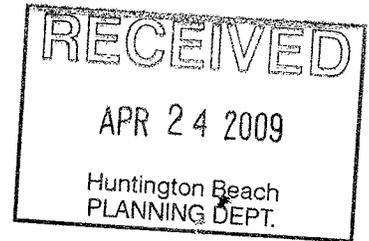
**P.O. Box 54132  
Irvine, CA 92619-4132**

**An alliance of American Indian and scientific communities working for  
the preservation of archaeological sites and other cultural resources.**

---

Cc: Fred Wilson, City Administrator  
Keith Bohr, Mayor  
Joe Carchio, Council Member  
Gil Coerper, Council Member  
Devin Dwyer, Council Member  
Jill Hardy, Council Member  
Cathy Green, Mayor Pro Tem  
Don Hansen, Council Member  
Joe Shaw, Planning Commissioner  
Dave Singleton, Native American Heritage Commission  
Jennifer McGraf, City Attorney

ATTACHMENT NO. 5.73



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Vice President  
Julie Bixby  
Treasurer  
Jim Anderson  
Secretary  
Marinka Horack

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Dr. Richard Sax  
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**ENDORSEMENTS**

Amigos de Bolsa Chica  
Algalita Marine Research  
Foundation  
Anza Borrego Foundation  
Ballona Wetlands Land  
Trust  
City of Huntington Beach  
Friends of Harbors,  
Beaches and Parks  
Huntington Beach  
Wetlands Conservancy  
Huntington Beach Tomorrow  
Orange Coast League of  
Women Voters  
Orange County  
Coastkeeper  
Peninsula Open Space Trust  
Sea and Sage Audubon  
Sierra Club  
Angeles Chapter  
Surfrider Foundation

April 24, 2009

City of Huntington Beach  
Planning Department  
Attn: Jennifer Villasenor  
2000 Main Street  
Huntington Beach, CA 92648

**Re: Goodell Annexation Environmental Assessment No. 08-017**

Dear Ms. Villasenor,

It is the Bolsa Chica Land Trust's position the **entire 6.2 acres** of the DE Goodell property being considered for annexation by Huntington Beach is part of the 8,000 year old, internationally significant, ORA 83 Cogged Stone site. This site was originally comprised of over 17 acres of which eleven acres were destroyed by the Hearthside Homes Brightwater development. Those 11 acres are now gone forever.

BCLT-1

The attached exhibits support the Land Trust's position. They represent either the entire 17 acre ORA 83 site or the 11 acres within the Hearthside Homes Brightwater development. They are submitted to the City for review to illustrate the significance of ORA 83.

- In 2001, the State Historic Preservation Commission unanimously voted ORA 83 a State Historic Site. (Exhibit A)
- A memo from the Native American Heritage Commission dated April 4, 2008 (Exhibit B) raised the following concerns:
  - ORA 83 is a sacred cemetery. "In the project archaeologist's memorandum to the company, dated January 17, 2007, it refers to a February 3, 2007 ceremony and assumed reburial. This action would be after AB2641 extending the definition of a cemetery and a place with "multiple burials" to private land." "Therefore, considering the 87 burials from ORA 83, whose chronology is unknown or certainly unclear, and given the number of burials at this project site, how can one say it is not a Cemetery?"
  - The developer has stated since 1992 that there were no human remains found at ORA 85. Yet in a memo from Nancy Wiley to Ed Mountford, Ms. Wiley state " Ted and I will wrap each burial with its grave goods... Each individual will be wrapped again in a colored burlap coded to male (blue), female (red) and unknown (beige). Children will additionally have a color separation or other designator."

BCLT-2

- In an email message of December 6, 2007, the developer's archeologist (Nancy Wiley), when asked by the NAHC staff when the human remains were found, told the staffer that "Ed Mountford has said that I cannot prepare a chronology for you until he talks to his attorney – Susan Hori."
- In an April 8, 2008 letter to the Coastal Commission ( Exhibit C), Larry Myers, Executive Director of the Native American Heritage Commission, states the following:
 

“ The NAHC has not received a report clearly showing the dates, locations and details of burial discoveries. At this point based on the information available and the large number of burials recovered and associated items, *it appears that the whole area may be a burial ground.* Southern California Indians created and used discrete areas as cemeteries. The NAHC understands that the Coastal Commission will be reviewing its permit for the Brighwater Project. The NAHC suggests that the Coastal Commission consider requiring some sort of guarantee or performance bond in order to assure that all required reports are provided on a timely basis and that documentation is completed and reburials of remains and artifacts occur as agreed.”

BCLT-2  
cont'd.

The Bolsa Chica Land Trust believes it is **IMPORTANT TO PRESERVE THE ARCHAEOLOGICAL SITE ON THE GOODELL PROPERTY** for the following reasons.

1. It is all that remains of the 8000 year old village, cemetery, and ceremonial site that is the oldest prehistoric village in Orange County.
2. Eleven acres of the seventeen acre site have been destroyed to make way for a housing development.
3. To date, at least 178 human bone concentration representing an unknown number of individuals, over 100 thousand artifacts, semi-subterranean house pits, and numerous cogged stones have be recovered from the 11 acres. The burials were recovered from an area adjacent to the remaining 6 acre Goodell property.
4. The site was the manufacturing and distribution center for the ancient stone sculptures known as *cogged stones* which played an important part in an ancient California Native American religion.
5. Over 700 of the cogged stones have been found in the area of the village. Only a few have been found at any other archaeological site in the region.
6. The site may contain evidence for a connection between the prehistoric peoples of northern Chile where the only other cogged stones outside of California have been found.
7. As the remaining intact cultural deposit representing this ancient village and cemetery, it should be preserved as a historic park honoring the first settlers in the region, the California Native Americans.
8. As such, it could be an educational resource for school children and the public as well as a place where the descendents of the California Native Americans of the region could celebrate their cultural heritage.
9. The descendants of the tribelets known as the Gabrielino/Tongva and Juaneno/Acjachemem consider this to be the place of their ancestors and a sacred ceremonial site.

BCLT-3

10. Archaeological sites are fragile and non-renewable. Archaeology is a destructive process. It is essential that a "witness area" of this highly significant archaeological site be preserved for future generations with advanced, non-destructive, archaeological techniques which can provide answers to the questions we cannot answer with today's technology.

BCCT  
4  
BCCT-5

Residential development on this archaeological site is not appropriate. Follow the previous court decisions and do an EIR at the earliest time, which is now. It will save a lot of time and expense in the future.

Sincerely,



Gerald L. Chapman  
Goodell Committee Chairman  
Bolsa Chica Land Trust

Attached Exhibits:

- Exhibit A SHPO Staff Recommendation
- Exhibit B April 4, 2008 NAHC Letter
- Exhibit C April 4, 2008 NAHC Letter

# EXHIBIT A

## Staff Evaluation

Cogged Stone Site  
CA-ORA\_83  
Huntington Beach, Orange County

The Cogged Stone Archaeological Site (CA-ORA-83) is a large prehistoric village site and cemetery situated on the upper bench of the Bolsa Chica Mesa overlooking the Bolsa Chica wetlands and, in pre-Contact times, the mouth of the Santa Ana River. The site was occupied from ca. 8000 to 2000 years before present and takes its name from the over 400 unique artifacts known as cogged stones that have been recovered from deposits within the site, some of which appear to represent various stages of production. The cogged stones show no recognizable signs of wear and some have been found within the context of Native American human burials. Smaller numbers of the cogged stones have been found throughout the region with the majority of them found in sites along the Santa Ana River drainage.

The Cogged Stone Site is significant under Criteria A and D. The site is significant under Criterion A in the area of native American history and tradition for its association with the traditional oral history and folklore of the Maritime Shoshone as the burial ground of exalted beings and the site of the cogged stones (called "star stones" by the elders), which were part of an astronomically-based religion; and because of its association with a strong emphasis on plant food procurement and processing, along with new cultural concerns relating to non-utilitarian artifacts such as beads, pendants, charmstones, discoidals, and cogged stones. As such, the site is significant to the cultural traditions of the contemporary Maritime Shoshone community and plays a role in their historically rooted beliefs, customs, and practices.

The site is significant under Criterion D in the area of prehistoric archaeology because, although the property has been previously subjected to limited archaeological excavations that have yield important scientific data, the site contains intact cultural deposits. Site CA-ORA-83 has the potential to provide important information regarding an Early Holocene transportation corridor and ritual interaction sphere that extended from the Orange County coast along the Santa Ana River drainage to the Mojave Desert. The numerous time-sensitive artifacts recovered from deposits within the site may be used to assess the chronological placement of many site sin the southern California region that do not have datable materials, but have yield some time-sensitive artifacts. Additionally, because the site was occupied during periods of significant environmental change, it has the potential to provide important information regarding cultural responses to major environmental change.

The Cogged Stone Site (CA-ORA-83) is the earliest-dated occupation and cemetery in the region and one of the last remaining early Holocene-era sites along the Orange County coast of southern California. Staff recommends listing at the state level of significance.

J. Charles Whatford  
Associate State Archaeologist  
October 14, 2001

ATTACHMENT NO. 5.77

**EXHIBIT****B**

STATE OF CALIFORNIA

Arnold Schwarzenegger, Governor

**NATIVE AMERICAN HERITAGE COMMISSION**

915 CAPITOL MALL, ROOM 364  
 SACRAMENTO, CA 95814  
 (916) 659-6251  
 Fax (916) 657-5300  
 Web Site [www.nahc.ca.gov](http://www.nahc.ca.gov)  
 e-mail: [da\\_naho@pacbell.net](mailto:da_naho@pacbell.net)



April 4, 2008

The Hon. Anthony Morales, Chairman  
 Gabrieleno/Tongva San Gabriel Band of Mission Indians  
 P.O. Box 693  
 San Gabriel, CA 91778

Sent by FAX to: 858-694-3373  
 Number of pages: 3

Re: My draft Staff Report and Professional Assessment Regarding the Hearthside Homes Project at Bolsa Chica Mesa Known as Brightwater Homes, a 349 Single Homes Development Focusing on the CA-ORA-83 Issues only. Site is Adjacent to the City of Huntington Beach, Orange County, California

Dear Chairman:

I am writing you as the Most Likely Descendant (MLD), one of two assigned to the above reference project, in response to your questions about Special Condition #23 of the California Coastal Commission Permit Application No. 5-05-020. The NAHC is preparing another and an official response to concerns raised by Teresa Henry, Coastal Commission District Manager; however, it may not be submitted in a timely manner. That is why I am addressing answers to concerns raised by you. My comments and response are as follows:

1. Issue of Reburial of the Remains and all Associated Grave Goods to Occur after Documentation is Complete: This issue is stated as a requirement on page 6 of the CCC Special Condition #23. The Native American Heritage Commission (NAHC) supports this requirement. We understand from the landowner's contract archaeologist, Nancy Anastasia Wiley, Ph.D., President of Scientific Resource Surveys, Inc. (SRS) that much of the documentation has been done but is NOT COMPLETE. We support its completion in this manner: a) priority documentation be given to those items that are generally accepted 'associated grave goods,' therefore, the *cogged stones, charmstones, discoids and beads* be documented prior to reburial. b) that sufficient time be allowed for proper preparation of the burials (e.g. wrapped in white sheets or if children, sheets of other colors) as the archaeologist (e.g. SRS) outlined in the January 19, 2007 memorandum to Hearthside Homes Senior Vice President (please see Exhibit A). The reburial with associated grave goods is customary for both the Gabrieleno Tongva and Juaneno people (note, from the Handbook of North American Indians, vol. 8: California; Robert F. Heizer, volume editor; Smithsonian Institution; Washington, D.C., 1978): "Here the dead were buried with artifacts used during life." (page 545) Also, apparently, both MLDs and the archaeologist are in agreement that the balance of more than 100,000 artifacts, excavated at the ORA-83 and the project site, can be sorted and documented after the reburials take place on a power-sort way that is only a percentage of

ATTACHMENT NO. 5.78

02/2014 07:40 FAX

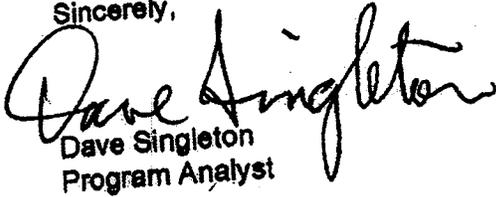
- the material in the 2,000 boxes and bags of remains would be sorted and documented.
2. Issue of What are Associated Grave Goods: It is customary for the NAHC to accept the determination and definition of 'associated grave goods' as presented by California Native American tribes. With regard to the more than 400 cogged stones found at ORA-83, archaeologists are not certain what they represent. Yet they are a spectacular discovery and, in the opinion shared with the NAHC on April 2, 2008, of Dr. Wiley, "there is no other such deposit of cogged stones anywhere in the world." What is acknowledged is that 22 were found in one house pit, meaning both the burial therein was a person of perhaps spiritual or political significance and the use of cogged stones at the site must have meant something very special. The NAHC does have access to photos of that house pit site as well as other house pit sites that contained cogged stones and locations where concentrated bone fragments were discovered at scattered sites that also included cogged stones. Now, the NAHC feels there is general agreement from the project archaeologist and between both Most Likely Descendants (MLDs) that the priority 'associated grave goods' includes cogged stones, charmstones, discoids and beads. There is little disagreement, in our view about these. There may be some disagreement that some of cogged stones and other items, discovered at a location other than a burial, are not 'associated grave goods; this would be a matter for mediation, a role requested by one of the MLDs and accepted by the NAHC and the other MLD. Also, the California 3<sup>rd</sup> Appellate Court Decision in the case of People versus Van Horn (218 Cal.App.3<sup>rd</sup> 1378; 267 CalRptr. 804 [Mar. 1990] may strengthen the right of culturally-affiliated Native American tribes as to who has the authority over both remains and associated grave goods.
3. Issue: Is the ORA-83 a sacred cemetery? As a junior staff person at the NAHC, I believe it is. This is based on the lack of information provided to the NAHC, the Orange County Sheriff-Coroner, and apparently the MLDs about when remains were discovered. When the NAHC requested that information, the project archaeologist responded by saying that she "...cannot prepare a chronology...." (Please see Exhibit "D") Furthermore in the project archaeologist's memorandum to the company, dated January 17, 2007, it refers to a February 3, 2007 ceremony and assumed reburial (please see Exhibit "A") this action would be after the law extending the definition of a cemetery and a place with "multiple burials" to private land. Formerly, the definition of a cemetery as comprising six or more burials was limited to public cemeteries; now, AB 2641 extends the definition among other provisions. It amends Public Resources Code §5097.98 that says (a) Descendants shall complete their inspection and make recommendations or preferences for treatment (to the landowner) within 48 hours; and (b) preferences for treatment shall include all reasonable options including associated items (e.g. grave goods)." Therefore, considering the 87 burials from ORA-83, whose chronology is unknown or certainly unclear, and given the number of burials at this project site, how can one say that it is not a sacred cemetery? The Native American Heritage Commission determined a University of California, San Diego site, with 30 discovered burials and perhaps fewer artifacts and grave goods a "sanctified cemetery" at their meeting of March 12, 2008 in San Diego County.
4. Territorial Issues: It is generally accepted that the cogged stones are found in the coastal areas extending from Ventura County in California to parts of Baja California Norte, of the Republic of Mexico. Then, they are found in coastal areas of Central Chile in South America. Also, it is clear from the literature on

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the cogged stones that they were very special items to the Juanenõ as well as the Gabrieleno Tongva people. The Handbook of North American Indians, vol. 8, referenced above, includes the Bolsa Chica project site within the Gabrieleno Tongva territory. Lowell Bean, one of California's most respected scholars, edited the article on the Gabrieleno Tongva. The 1925 map of the Juanenõ territory, prepared by Alfred Louis Kroeber, eminent ethnologist, shows the Bolsa Chica project area is a 'shared area' between the two tribal groups; both groups participate in an Annual Pilgrimage that starts at the ancient village of Panhe in northern San Diego County, includes Bolsa Chica and ends at Puvungna on the campus of California State University, Long Beach in Los Angeles County. Therefore, the NAHC feels that both have standing for their recommendations regarding the ORA-83, Bolsa Chica site, its discovery and treatment of the Native American human remains and the associated grave goods.

If you have any questions, please contact me at (916) 653-6251.

Sincerely,

  
Dave Singleton  
Program Analyst

ATTACHMENT NO. 5.80

EXHIBIT "A"  
Bolsa  
chica

January 19, 2007

TO: Ed Mountford, Brian Bartlett- Hearthside Homes  
[cc: Joyce Perry, David Belardes, Robert Dorame, Anthony Morales]

FROM: Ted and Nancy Wiley- SRS, Inc.  
[cc: Jeff and Joanne Couch, Tracey Stopes, Paul E. Langenwalter]

RE: Reburial- Ora-85 Internments and Associated Materials

This memo provides a quick update regarding the status of our work towards the final reburial of human remains and associated grave goods on February 3, 2007.

All work is on schedule and will be finished by this Friday, January 26, 2007. Joanne is in the process of completing a comprehensive tracking sheet for the reburial of all associated materials including artifacts and sacred earth. Jeff has nearly completed the reburial map to include size of the reburial pit and a proportional layout of the Ora-85 individuals. A grid will then be laid out within the pit so that there can be an exact placement of each individual on the reburial date. By Friday, Paul Langenwalter will produce his customary burial chart listing all known characteristics of each burial and most importantly, sex and age, when possible.

*Handwritten:* j bartlett  
Joanne  
Stopes

Accordingly, we anticipate and request your cooperation for the following:

- 1] On Monday, January 29<sup>th</sup>, the final pit be excavated by Hearthside at the far western end of the newly designated reburial area according to the specifications of the reburial map and under the direction of Jeff Couch.
- 2] The access ramp be placed at the south end of the pit in order to leave as much area in the designated reburial area as undisturbed as possible.
- 3] On Tuesday and Wednesday, January 30<sup>th</sup> and 31<sup>st</sup>, Jeff will grid the pit and Eric and his Pacific Paving crew will haul all associated earth from behind the trailers down to the pit and place the appropriate dirt in the corresponding square in the grid.
- 4] Then on Thursday, February 1<sup>st</sup>, matrix from the sorting process will also be taken to the pit and placed in the appropriate grid squares. In this way, all materials besides the human bone and associated artifacts will already be placed in the ground at least two days prior to the Saturday reburial.
- 5] On Friday, February 2<sup>nd</sup>, Ted and I will wrap each burial with its grave goods in white cloth as requested by the Juaneno Band. Each individual will then be wrapped again in colored burlap coded to male [blue], female [red], and unknown [beige]. Children will additionally have a color separation or other designator. This coding will aid the participants in the various ceremonies in addressing the reburied individuals in a more personal manner.
- 6] On Saturday, February 3<sup>rd</sup>, Ted and I will place the Ora-85 people in the ground within their reserved space for the morning ceremony.
- 7] We have requested that the Juaneno have their ceremony first so that after their ceremony, mats and animal skins may be added to the individual wrappings as requested by the Gabrielino. There is a precedent by Signal Landmark for purchasing leather [or

*Handwritten signature/initials*

2014 07:48 FAX

skins] for reburial. The first reburial in the early 1990s did have these materials. This was a preference of Raymond Belardes, the first Most Likely Descendant on this project. The Gabrielino should be reimbursed for this purchase since you are paying for the white cloth requested by the Juaneno.

8] We have also had one of our people paid to pick up elders of a tribal group to attend the reburial if they cannot drive or do not have transportation. We suggest that you offer to provide compensation for one person from each tribal group to do the same.

9] Please have extra security on Saturday from sunrise to sunset.

10] Please remember that Hearthside has always been responsible for filling in the pit at day's end with both the removed earth and placing in the pit a chain link fencing barrier.

As an aside, I further understand from my staff that there has been some discussion about reburying all of the artifacts from the site at the same time as the reburial. SRS has an obligation to document any artifacts to be reburied as mandated by County and Coastal Commission Guidelines and State law. All artifacts associated with the burials will be documented beforehand and then reburied on Saturday with the appropriate individual. The remaining site artifacts cannot be reburied at that time because they have not been processed or documented yet, since all efforts have been focused on burial-related materials only. In addition, Cal. State Los Angeles has an extensive collection of materials removed from this site by Prof. Hal Eberhart prior to ARI, Westec or SRS's work, and ARI's artifacts were given to PCAS when Marie Cottrell dissolved that non-profit corporation in the early 1980's. The Native Americans would have to request that these artifacts be returned from Cal State LA and PCAS under the Repatriation Act before a reburial of artifacts could occur. There is, however, an adequate area designated by Hearthside for Ora-85 and Ora-83 reburials for future repatriation of additional materials. The Ora-85 non-burial artifacts, therefore, will not be reburied on February 3<sup>rd</sup> but legally this matter has no bearing on the repatriation of human remains and associated grave goods from that site.

This is a brief outline of the anticipated activities for next week. Ted and I will arrive in Orange County on Monday, January 29<sup>th</sup> at 10:00 pm and will be on-site starting late morning on Tuesday. If any party has questions or requests changes to this schedule please call me at 907-723-1896; e-mail me at [wileycoyote@aptalaska.net](mailto:wileycoyote@aptalaska.net); or talk with me in person on Tuesday. We look forward to a respectful and successful reburial on February 3<sup>rd</sup>.

ATTACHMENT NO. 5.82

EXHIBIT 10

From: Dave Singleton <ds\_nahc@pacbell.net>  
 Subject: Telephone Conversations with Nancy Anastasia Wiley, Ph.D., Pres. of SRS Inc.  
 Date: April 3, 2008 4:35:07 PM PDT  
 To: Larry Myers <lm\_nahc@pacbell.net>  
 Cc: Anthony Madrigal <am\_nahc@pacbell.net>

April 3, 2008

Hi Larry & Anthony:

This is an outline of my recent conversations with Nancy Anastasia Wiley, the Project Archaeologist for Hearthside Homes, developer of Brightwater Homes, a residential project of proposed 349 homes built on the Bolsa Chica Mesa, adjacent to the northern city limits for Huntington Beach, Orange County. The property is owned by Signal Landmark of Irvine; Orange County.

The main points of my conversations with Dr. Wiley are:

1. Cogged Stones as 'associated grave goods'; Dr. Wiley confirmed that the 22 cogged stones found at the 'house-pit' of an apparent Shaman or tribal leader are clearly associated grave goods;
2. Dr. Wiley also indicated that other personal items such as charmstones, beads, discoidal and cogged stones, if found with burials are clearly 'associated grave goods';
3. The documentation on the identified four types of grave goods has been substantially done but is NOT COMPLETE; Dr. Wiley seemed to welcome the NAHC support for the immediate and the longer-range (the 100,000 artifacts, et al) documentation to be done;
4. Dr. Wiley also seemed to welcome the NAHC as a 'mediator' in the project at MLD Morales' request.
5. Dr. Wiley wants to retain good relations with the NAHC and has offered to make a presentation in the NAHC offices on ORA-83 with films of the cogged stones and other items;

While the NAHC and her archaeologist peers may disagree with the manner in which Dr. Wiley and SRS has managed this project, the NAHC and others would not have the hard facts of the 174 burials discovered; 87 still to be re-buried; the number of cogged stones (more than 400), the 100,000 artifacts and thousands of archaeological features of significance, had not Dr. Wiley provided that information to the NAHC. She also cooperated with photographing of the 2,000 boxes of un-sorted material in three trailers in Temecula.

Dave

ATTACHMENT NO. 5.83

From: wileycoyote@srscorp.net  
 Subject: [Fwd: ORA-83, The Cogged Stone Site]  
 Date: December 17, 2007 6:03:42 PM PST  
 To: ds\_naho@pacbell.net  
 1 Attachment, 32.0 KB

Dave- Let's try this again!!!

----- Original Message -----  
 Subject: [Fwd: ORA-83, The Cogged Stone Site]  
 From: wileycoyote@srscorp.net  
 Date: Thu, December 6, 2007 6:54 pm  
 To: ds\_naho@pacbell.net

----- Original Message -----  
 Subject: ORA-83, The Cogged Stone Site  
 From: wileycoyote@srscorp.net  
 Date: Thu, December 6, 2007 6:52 pm  
 To: ds\_nach@pacbell.net

Dave-  
 In regards to our phone conversation today:  
 1- attached is the 'Inventory List of Unfinished Work' that I submitted to the Gabrielino and Juaneno groups when Ed decided to have a meeting with them without me;  
 2- a proofsheets of photos will be e-mailed to you by my staff later today; printed copies will be given to Anthony on Monday;  
 3- Ed Mountford has said that I cannot prepare a chronology for you until her talks to his lawyer- Susan Hori. If this is not in writing by Monday- I will give one verbally to Anthony at the meeting.

It was good talking with you. The Native people speak very highly of you.

Nancy Anastasia Wiley

November 5th.doc (32.0 KB)

# EXHIBIT

# E

STATE OF CALIFORNIA

Arnold Schwarzenegger, GOVERNOR

## NATIVE AMERICAN HERITAGE COMMISSION

915 CAPITOL MALL, ROOM 364  
SACRAMENTO, CA 95814  
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Web Site [www.nahc.ca.gov](http://www.nahc.ca.gov)  
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April 8, 2008

Theresa Henry  
The California Coastal Commission  
South Coast Area Office  
200 Oceangate Suite 1000  
Long Beach CA 908024302  
Fax (562) 590 5084

Re: Brightwater-Bolsa Chica Project

Dear Ms. Henry:

The Native American Heritage Commission (NAHC) is informed by the NAHC appointed Most Likely Descendent, Anthony Morales, that Hearthside Homes has proposed reburial of 87 human remains from ORA-83 on April 21, 2008. The NAHC is also informed that documentation on the associated grave goods has been substantially done but is not complete. These associated grave goods include cogged stones, charm stones, beads and discoidals and other items.

The NAHC supports the Most Likely Descendants' request that documentation on all associated grave goods be completed before reburial and that all grave goods be reburied with remains. In this regard, the NAHC notes that the Cultural Resources Grading Monitoring Plan at page 6 dated 12-12-05 adopted pursuant to Special Condition No. 23, of the Coastal Permit indicates that human remains and any "artifacts associated with human remains" will be reburied after documentation is complete. It is also noted that the above 12-12-05 Monitoring Plan at page 7 also specifies that the location of the artifacts (associated with human remains) in the ground in relationship to the human remains will be documented so that when the human remains are reburied, the artifacts can be placed in the same relationship to the remains as they were when discovered. The Monitoring Plan also specifies that the artifacts (associated grave goods) will be kept with the human remains and examined and documented, and will be reburied together with the human remains.

The NAHC notes that based on information received from the project archaeologist, 22 cogged stones were discovered in a large burial pit. These are clearly associated with the human remains. The NAHC also notes that there are approximately 4217 artifacts that were found on ORA-83 including numerous cogged stones (over 400 on the project) and the NAHC is informed that only artifacts associated with remains are being processed at

ATTACHMENT NO. 5.85

this time. Based on information received from the project archaeologist, the NAHC believes that there are numerous other artifacts that must be analyzed and documented and that many of these may be determined to be artifacts associated with human remains and should be reburied with remains. NAHC is aware of information that indicates there were numerous bone clusters where cogged stones were present, which suggests these features are burial areas.

As you are aware Public Resources Code 5097.98 requires that the recommendation of the Most Likely Descendant with regard to treatment of remains and associated items be given great deference by the land owner and that if an agreement as to disposition cannot be reached, the law mandates that the remains and associated items be reburied on the property in a dignified manner not subject to subsurface disturbance. The NAHC strongly supports the recommendations of the Most Likely Descendants in determining which artifacts are artifacts associated with human remains and that otherwise pertain to the burial. The Most Likely Descendant has specialized knowledge of the local tribal community burial practices and beliefs.

The NAHC is informed that both Most Likely Descendants support waiting 6 months for the first reburial until major features that are clearly associated with individual burials can be studied and documentation on these completed. The NAHC supports this disposition.

The NAHC remains concerned about the Brightwater -Bolsa Chica Project. Although the NAHC has been in contact with the project archaeologist and has received a January 2007 and a November 5, 2008 status report, as of this date the NAHC has not received a promised map from the project archaeologist showing burials, house pits, photos and features. The NAHC has not received a report clearly showing the dates, locations and details of burial discoveries. At this point based on information available and the large number of burials recovered and associated items, it appears that the whole area may be a burial ground. Southern California Indians created and used discrete areas as cemeteries. The NAHC understands that the Coastal Commission will be reviewing its permit for the Brightwater Project. The NAHC suggests that the Coastal Commission consider requiring some sort of guarantee or performance bond in order to assure that all required reports are provided on a timely basis and that documentation is completed and reburials of remains and artifacts occur as agreed.

Sincerely,

*Original signature on file*  
Larry Myers, Executive Secretary NAHC

Cc: Bill Mungry, Chairman NAHC  
Anthony Madrigal, General Counsel NAHC  
Dave Singleton, NAHC  
Susan Hori, Counsel Brightwater Homes  
Nancy Anastasia Wiley, Project Archaeologist

April 24, 2009

Jennifer Villasenor  
City of Huntington Beach  
Huntington Beach City Hall  
2000 Main Street  
Huntington Beach, CA 92648

Subject: MND for Goodell annexation and pre-zoning (SCH # 2009031094)

Dear Ms. Villasenor,

Thank you for the opportunity to comment upon the Mitigated Negative Declaration for the Goodell Property Pre-zoning and Annexation (SCH # 2009031094) located on 6.2 acres of property in the County of Orange unincorporated Bolsa Chica area located on the Upper Bench of the Bolsa Chica Mesa. These comments are submitted on behalf of the Bolsa Chica Land Trust and myself.

GEN-1

The site is highly sensitive both on its own and as part of the Bolsa Chica ecosystem, including but not limited to the Bolsa Chica Ecological Reserve. Trees and snags on the site provide nesting for raptors and important plant species such as southern tarplant have been observed on the site, as noted by Mr. Mark Bixby in his letter on this MND. Cultural resources include Ca-Ora-83, which is listed by the Native American Heritage Commission registry of sacred sites. The portion of Ca-Ora-83 on the Brightwater property was found to contain human remains, and was likely a prehistoric cemetery. In an April 8, 2008 letter to the Coastal Commission, Larry Myers the Executive Director of the Native American Heritage Commission states the following:

GEN-2

The NAHC has not received a report clearly showing the dates, locations and details of burial discoveries. At this point based on information available and the large number of burials recovered and associated items, ***it appears that the whole area may be a burial ground.*** [emphasis added]

Resources from the historic era potentially include an underground plotting and switching room from the World War II era.

The proposed project will entail the pre-zoning and annexation of the 6.2 acre project site to allow for residential and open space uses. Under the proposed pre-zoning, 3.2 acres will be designated for Residential Low Density (RL), 2.0 acres will be designated Open Space-Parks & Recreation (OS-PR), and 1.0 acre will be designated Coastal Conservation (CC).

GEN-3

The RL designation allows for single-family residential uses as well as limited commercial uses such as nurseries, and wireless communications facilities. Up to twenty two dwelling units could be built in the area to be designated RL (MND p. 4).

While the MND indicates that the area to be designated OS-PR is intended to be utilized only for passive recreation, the designation would permit more active uses. The designation would certainly allow clearing of vegetation and grading.

GEN-4

By contrast, the MND repeatedly states that “The project... does not contemplate development of the site” (MND pp. 12,15,16,17, 22,23,24, and 28). Clearly this is not the case, when the MND itself identifies future development of twenty two dwelling units (p. 4) and a recreation area. Environmental review for the pending project must reflect this anticipated future development, though as stated in the MND (p. 4), prior to development of the site the City anticipates that future project approvals would include a coastal development permit, general plan amendment, local coastal program amendment, tentative tract map and, potentially a conditional use permit..

GEN-5

### The Process

As stated in *Citizens for Responsible & Open Government v. City of Grand Terrace*, (2008) 160 Cal. App. 4th 1323:

CEQA provides that generally the governmental agency must prepare an EIR on any project that may have a significant impact on the environment. (§§ 21080, subd. (d), 21100, subd. (a), 21151, subd. (a); *Pala Band of Mission Indians v. County of San Diego* (1998) 68 Cal.App.4th 556, 570–571 [80 Cal. Rptr. 2d 294], quoting *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1601–1602 [35 Cal. Rptr. 2d 470].) Whenever there is substantial evidence supporting a fair argument that a proposed project may have a significant effect on the environment, an EIR normally is required. (§ 21080, subd. (c)(1); *Guidelines*, § 15070, subd. (a); *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1399 [43 Cal. Rptr. 2d 170]; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927 [21 Cal. Rptr. 3d 791] (*Pocket Protectors*)). “The fair argument standard is a ‘low threshold’ test for requiring the preparation of an EIR. [Citations.] It is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency's determination. Review is de novo, with a preference for resolving doubts in favor of environmental review.” (*Pocket Protectors, supra*, at p. 928.)

GEN-6

...

A mitigated negative declaration is one in which “(1) the proposed conditions ‘avoid the effects or mitigate the effects to a point where *clearly* no significant effect on the environment would occur, and (2) there is *no substantial evidence* in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.’ (§ 21064.5, italics added.)” (*Architectural Heritage Assn. v. County of Monterey, supra*, at p. 1119; see also *Citizens' Com. to Save Our Village v. City of Claremont* (1995) 37 Cal.App.4th 1157, 1167 [44 Cal. Rptr. 2d 288].)

GEN-7

In reviewing an agency's decision to adopt a mitigated negative declaration, a trial

court applies the “fair argument” test. (*Gentry v. City of Murrieta, supra*, 36 Cal.App.4th at p. 1399; see also *Pala Band of Mission Indians v. County of San Diego, supra*, 68 Cal.App.4th at p. 571.)

Adoption of a Mitigated Negative Declaration is inappropriate in this case inasmuch as the clear potential for significant adverse impacts on the environment exists. These include but are not limited to impacts on geology and soils, hydrology and water quality, air quality, transportation/traffic, biological resources, cultural resource, noise, and aesthetics.

GEN-7  
cont'd.

For many of these potential impacts, including geology and soils, hydrology and water quality, air quality, and noise, the MND concludes that:

“Impacts related to ...[XYZ]... would be analyzed if and when development is proposed. No impacts would occur.”

This approach fails on two counts. First, evidence in the record does not support a conclusion that “no impacts would occur”. While investigation of impacts may be deferred to future study, the City cannot conclude that no impacts will occur without recognizing the significance of the potential environmental effects, committing itself to mitigating their impact, and articulating specific performance criteria (*Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296; *Gentry v. City of Murrieta* (1995) 36 Cal. App. 4th 1359; 43 Cal. Rptr. 2d 170). For many potential impacts, the MND does none of that. Further, promises regarding future environmental review ring empty, when one recognizes that pursuant to CEQA Section 21081 the City can approve, and has approved, projects where EIRs identify significant unavoidable environmental impacts which will not be fully mitigated.

GEN-8

In accordance with Section 15004(b) of the Guidelines for the Implementation of the California Environmental Quality Act (CEQA), an environmental document is to be prepared as early as feasible in the planning process. Per *Laurel Heights Improvement Association of San Francisco, Inc. v. The Regents of the University of California* (1988 ) 47 Cal. 3d 376:

...the later the environmental review process begins, the more bureaucratic and financial momentum there is behind a proposed project, thus providing a strong incentive to ignore environmental concerns that could be dealt with more easily at an early stage of the project.

GEN-9

This is necessary if an EIR is to fulfill the stated purpose of CEQA which is

not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind. (*Bozung v. LAFCO* (1975) 13 Cal.3d 263)

Per Guidelines Section 15003):

The EIR serves not only to protect the environment but also demonstrate to the public that it is being protected...The EIR is to inform other governmental

agencies and the public generally...The EIR is to demonstrate to an apprehensive citizenry that the agency has...considered and analyzed the ecological implications..."

Thus, an EIR must be prepared at a point in time when it may actually influence decision making. The proposed pre-zoning will limit the range of future alternatives for the project site and will establish a development envelope for the site. All impacts of development within that envelope must be examined in full, based on the existing environmental baseline, i.e. vacant land (*Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d.180).

GEN-9  
cont'd.

The question is not whether or not the proposed project will bring the project site and surrounding area to an environmental point of no return, but whether the proposed project will move one step closer to that point of no return. To the latter question, the answer is a resounding "yes!"

While it is recognized that certain detailed analyses can only occur when detailed plans have been developed, many analyses can and should be conducted now. Where no analyses can be pursued, the City must identify the potential impact, articulate a framework for mitigation, and commit to mitigating the impact *now*. Absent such commitment, evidence does not exist to support any finding of no impact.

GEN-10

This can best be achieved by use of a program EIR as provided in Guidelines Section 15168. The program approach can provide for review of the complete project prior to the time that any actions are taken to irretrievably commit the lead and responsible agencies to a course of action. The program EIR may be supplemented with a Subsequent or Supplemental EIR if new information regarding a project, anticipated impacts, or the existing environment becomes available later.

**Potential Impacts**

As noted above, potential impacts may occur on geology and soils, hydrology and water quality, air quality, transportation/traffic, biological resources, cultural resources, noise, and aesthetics. These are described in more detail as follows:

GEN-11

**Geology and Soils**

As stated in the MND (p. 12), "Due to steep slopes that exist on the site, there is potential for slope instability and erosion of bluffs...". Erosion of bluffs is of particular concern both due to their status as unique coastal resources and the potential that eroded materials may be carried into sensitive resources of the Bolsa Chica. While the MND articulates the potential impact, no framework for mitigation nor commitment thereto is provided. Thus, it cannot be concluded that no impacts will occur.

GEN-12

## Hydrology and Water Quality

Though not identified in the MND, use of the site according to the proposed pre-zoning would result in increased impervious surfaces which would create or contribute runoff water, including increased urban runoff, with potential impacts on wetlands resources of the Bolsa Chica. Impacts could occur both due to changes in freshwater flows as well as pollutants such as heavy metals, fertilizers, pesticides, and petroleum residues which may be carried into the wetlands. The MND fails to identify this potential impact or provide a framework for mitigation or commitment thereto.

GEN-13

The failure to acknowledge potential impacts due to erosion is particularly puzzling inasmuch as this potential impact is mentioned in the discussion of geology and soils (MND p. 12). Potential impacts would likely be greatest during grading and construction, but could continue.

## Air Quality

The MND notes that the basin is a non-attainment area for various pollutants (p. 15), but fails to examine how construction of twenty two and a park may affect air quality. The potential for generation of dust to surrounding residential areas as well as the Ecological Reserve must be examined and mitigated. The MND fails to identify this potential impact or provide a framework for mitigation or commitment thereto.

GEN-14

## Transportation/traffic

Impacts on traffic will clearly occur. The MND, in reliance on Orange County Subsequent EIR No. 551, states that no impacts on transportation and traffic would occur, yet presents information from SEIR No. 551 which indicates otherwise. As stated in the MND (p.17):

The results of the study indicated that...the existing LOS at the intersection of Pacific Coast Highway and Warner Avenue was considered unacceptable and the **development of the Brightwater residential project would further impact the intersection** [emphasis added]. Physical constraints of the intersection and Coastal Act requirements pertaining to the presence of coastal wetlands along Warner Avenue prevented the implementation of any feasible mitigation measures.”

GEN-15

Thus, increased traffic at Pacific Coast Highway and Warner Avenue would create an unavoidable, unmitigable, adverse impact. The MND notes that anticipated development at Brightwater was decreased from 387 units contemplated in SEIR No. 551, to 349, but provides no evidence that development of even the reduced Brightwater residential project would not “further impact the intersection”.

Incredibly, the MND the goes on to conclude that the proposed project “would not result in significant impacts to traffic even when combined with the completion of the Brightwater residential development”. Are we to believe that development of 387 dwelling units as contemplated in SEIR No. 551 “would further impact the intersection”, but development of 371

dwelling units (349 at Brightwater + 22 at Goodell) would not? This makes no sense. Clearly any additional traffic at the intersection of the already substandard Pacific Coast highway and Warner Avenue intersection would result in an adverse impact, on both an individual and cumulative basis.

GEN-15  
cont'd.

### Biological Resources

While the MND identifies certain resources and commits to a framework for mitigation, this is not the case for all resources. The proposed project could potentially result in impacts to southern tarplant which exists on the site. Further, the MND fails to address all raptor roosts on the site, including two lowland eucalyptus.

A major issue in the review of the Brightwater project was how loss of upland forage would affect raptor predation on sensitive species in the wetlands below. While not pristine, the project site, like the previously undeveloped Brightwater site, provides forage area for raptors including American Kestrel (*Falco sparverious*), Barn Owl (*Tyto alba*), Cooper's Hawk (*Accipiter cooperii*), Great Horned Owl (*Bubo virginianus*), Merlin (*Falco columbarius*), Northern Harrier (*Circus cyaneus*), Osprey (*Pandion haliaetus*), Peregrine Falcon (*Falco peregrinus*), Red-shouldered Hawk (*Buteo lineatus*), Red-tailed Hawk (*Buteo jamaicensis*), Sharp-shinned Hawk (*Accipiter striatus*), Turkey Vulture (*Cathartes aura*), White-tailed Kite (*Elanus leucurus*). The potential exists for impacts on those raptors as well as lowland species which may be subject to increased predation, including such sensitive species as Belding's Savannah Sparrow and Light-footed Clapper Rail.

GEN-16

Potential impacts will also occur due to propagation of additional introduced plant species. Absent measures which would ensure that invasive species are not planted on the site, it cannot be concluded that no impact would occur.

Potential impacts would occur due to predation by domestic pets including cats and dogs. Absent measures which would ensure that domestic pets are fully controlled at all times, it cannot be concluded that no impact would occur.

Potential impacts would occur due to increased light, glare and noise, with potential impacts on sensitive species. A one hundred foot buffer is inadequate to ensure that no impacts will occur. Rather, a minimum one hundred meter buffer must be provided for all sensitive habitat.

### Cultural resources

The proposed zoning would allow elimination of pre-historic (CA-Ora-83) and historic (World War II) resources on the site. While inadequate, some framework is provided for mitigation of impacts on pre-historic resources, but no provision is made regarding historic resources.

GEN-17

The Bolsa Chica Land Trust believes **it is important to preserve the archaeological site on the Goodell property** due to the following:

- It is all that remains of the 8,500 year old village, cemetery, and ceremonial site that is the oldest prehistoric village in Orange County
- Eleven acres of the 17 acre site have been destroyed to make way for a gated community.
- To date, 178 human bone concentrations representing an unknown number of individuals, over 100 thousand artifacts, semi-subterranean house pits, and numerous cogged stones have been recovered from the 11 acres. The burials were recovered from an area adjacent to the remaining 6 acres owned by Mr. Goodell.
- This site also represents the birthplace of the ancient stone sculptures known as cogged stones.
- The site was the manufacturing and distribution center for the cogged stones which played an important part in an ancient California Indian religion.
- Over 700 of the cogged stones were found within the area of the village. Only a few have been found at any other archaeological site in the region.
- The site may contain evidence for a connection between the prehistoric peoples of northern Chile where the only cogged stones outside of California have been found.
- The descendants of both the Gabrielino/Tongva and Juaneno/Acjachemem consider this site to be the place of their ancestors and a sacred ceremonial site.

GEN-17  
cont'd.

As the remaining intact cultural deposit representing this ancient village and cemetery, it should be preserved as a historic park honoring the first settlers in the region, the California Indians. As such, it could be an educational resource for school children and the public as well as a place where the descendants of the California Indians of the region could celebrate their cultural heritage. Upon implementation of development according to the proposed RL and OS-PR zoning the resource would be lost.

GEN-18

Archaeological sites are fragile and non-renewable. Archaeological “recovery” is a destructive process. It is essential that a “witness area” of this highly significant archaeological site be preserved for future generations with advanced archaeological techniques that can provide answers to the questions we cannot answer with today’s technology and that is non-destructive.

**Noise**

Development of the site will result in increased noise during construction and upon occupation of the site. Noise from concrete mixers (85 dBA at 50 feet), generators (81 dBA at 50 feet) and other construction equipment (74 to 98 dBA at 50 feet) would affect nearby residents as well as wildlife. The MND fails to articulate the potential impact, or provide a framework for mitigation or commitment thereto.

GEN-19

**Aesthetics**

Views of the site will sustain significant adverse impacts due to implementation of the proposed project. Open space would be replaced by housing and night time views would include additional outdoor lighting. Views across the site from existing public streets toward the Reserve would be lost. Views toward the site from public trails within the Reserve would also be significantly altered. The MND fails to articulate the potential impact, or provide no

GEN-20

framework for mitigation or commitment thereto. Potential mitigation measures would include limitations on color palette, limitations on outdoor lighting and preservation of view corridors.

} GEN-20  
cont'd.

**Climate Change**

Development of the site will result in increased generation of greenhouse gases. In addition, development of the site will increase stress on wildlife species already subject to stress from changes in climate. Thus provision of adequate buffers is critical. The MND fails to address any impacts in relation to climate change at all.

} GEN-21  
cont'd.

**Conclusion**

Based on the above, it cannot be assured that no significant adverse impacts will occur as a result of the proposed project. On the contrary, it is likely that impacts can and will occur. Thus, the proposed MND should not be adopted.

} GEN-22

Thank you for the opportunity to comment. Please keep us informed as this project proceeds.

Yours Truly,

Sandra L. Genis

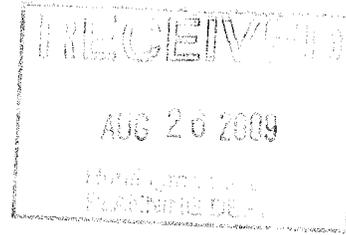
# APPENDIX B

## Comments on Recirculated Draft MND No. 08-017 (comment period 7/27/09 – 8/25/09)

ATTACHMENT NO. 5.95

**CALIFORNIA COASTAL COMMISSION**

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



August 25, 2009

Jennifer Villasenor, Associate  
City of Huntington Beach  
2000 Main Street  
Huntington Beach, CA 92648

Re: Recirculated Draft Mitigated Negative Declaration No 08-017  
(Goodell Property Pre-zoning and Annexation)

Dear Ms. Villasenor:

Coastal Commission staff received the Public Notice of Availability for the above referenced document on July 27, 2009 and accessed the document on the City's website. Commission staff previously commented on the original draft Mitigated Negative Declaration for the project in a letter dated April 22, 2009. We appreciate the opportunity for continued involvement as project review proceeds.

CCC-1

In response to one of our prior comments, changes have been made in the document reflecting recent land use actions on the adjacent property to the east (commonly known as the Parkside site) and clearer identification of the location of open space/ESHA property to the west (commonly known as the Brightwater site), as well as discussion of approved land use designation and zoning on the property to the north (Residential Agriculture and Open Space Parks). These changes in the MND appear to more accurately reflect the existing situation of the surrounding areas. However, we retain concerns that the proposed pre-zoning will not adequately accommodate protection of on-site environmentally sensitive habitat areas and all necessary buffer areas.

CCC-2

New studies of the site have also been performed including a subsequent Biological Survey conducted by LSA, Inc. in June 2009, and a report on the history of archaeological investigations on the project site, prepared by Scientific Resource Surveys (SRS, Inc.) in May 2009. We appreciate the need for additional information that drove the preparation of these documents. However, Commission staff has not had an opportunity to review these documents and therefore retains concerns expressed in the April 22, 2009 comment letter on the initial MND.

CCC-3

Furthermore, it should be noted that the additional archaeological report did not involve any new site specific, subsurface work and also that it references the fact that the only site specific, subsurface work that has been conducted on the site was two hand excavated units dug in 1963. As expressed in our letter of April 22, 2009 we continue to believe that, in order to develop appropriate land use designations and zoning for the site, it may be most appropriate to develop an Archaeological Research Design Plan (ARP) prior to submittal of an LCP amendment request to the Coastal Commission. Also, as previously noted, approval of a coastal development permit must be obtained prior to carrying out an

CCC-4

**ATTACHMENT NO. 5.96**

Recirculated Draft Mitigated Negative Declaration No 08-017  
Goodell Property Pre-zoning and Annexation  
Page 2

ARP. Early and continued consultation with the affected Native Americans/Most Likely Descendants is also very important in this case.

CCC-4  
cont'd.  
CCC-5

In sum, Commission staff retains the concerns with the proposed pre-zoning as expressed in our letter of April 22, 2009 and incorporates that letter by reference.

Again, thank you for the opportunity to comment and please do not hesitate to contact me if you have questions regarding these comments.

Sincerely,



Meg Vaughn  
Staff Analyst

cc: Mary Beth Broeren, Senior Planner



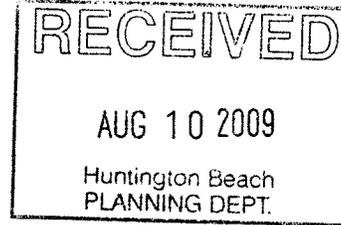
California Cultural Resource Preservation Alliance, Inc.

P.O. Box 54132
Irvine, CA 92619-4132

An alliance of American Indian and scientific communities working for
the preservation of archaeological sites and other cultural resources.

August 5, 2009

Jennifer Villasenor, Associate Planner
City of Huntington Beach
Planning Department
2000 Main Street
Huntington Beach, CA 92648



Subject: Recirculated Draft Mitigated Negative Declaration No. 08-017 (Goodell Property Pre-zoning and Annexation)

Dear Miss Villasenor:

In our letter of December 13, 2008 we wrote to alert you to the fact that the Goodell property contains the last remaining intact portion of the archaeological site CA-ORA-83, the cogged stone site, and that the property almost certainly contains human burials. We were gratified to see that a brief mention of cultural resources was mentioned in your notice and your checklist, but it seems that the significance of this world class site is not taken seriously.

CCRP-1 (A)

We wish to inform you that on July 17, 2009, the entire site, including the Goodell property is listed on the National Register of Historic Places (NRHP). Please see www.nps.gov/history/nr/listings/20090717.htm. This means that a "Mitigated Negative Declaration" is not the right document for this process as California case law supports the fact that impacts to a NRHP eligible or listed cultural resource cannot be mitigated below a level of significance. Please see "The Writ...or the Wrecking Ball" in the California State Bar Environmental Law Section of the Environmental Law News Volume 6. Number 304 Fall Winter 1997 http://www.calbar.org. Therefore, the city needs to return to step one and do (at a minimum) a focused EIR to address this significant impact to the environment. In addition, since a General Plan change is involved, SB 18 requires extensive, open-ended with the Native American community.

CCRP-2 (A)

While we support the annexation by the city of Huntington Beach, the proposed RL zoning designation that will allow development of up to 22 dwelling units as well as other potential development is ill conceived. This development, and indeed any ground disturbing activities, will result in the destruction of the National Registered archaeological site. As with the important chenopod scrub habitat on the site, the only mitigation is avoidance and preservation.

CCRP-3 (A)

If you have any questions, please call me at (949) 559-6490, or email at pmartz@calstatela.edu.

Sincerely,
Patricia Martz, Ph.D.



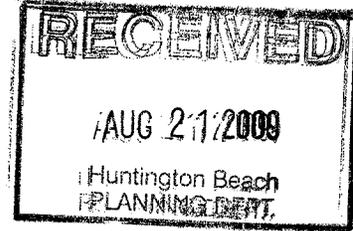
California Cultural Resource Preservation Alliance, Inc.

P.O. Box 54132
Irvine, CA 92619-4132

An alliance of American Indian and scientific communities working for
the preservation of archaeological sites and other cultural resources.

August 20, 2009

Jennifer Villasenor, Associate Planner
City of Huntington Beach
Planning Department
2000 Main Street
Huntington Beach, CA 92648



Subject: Recirculated Draft Mitigated Negative Declaration No. 08-017 (Goodell Property Pre-zoning and Annexation)

Dear Miss Villasenor:

Thank you for taking time out of your busy schedule to meet with us last Friday. The purpose of this letter is to reiterate the concerns and recommendations that were discussed. We are glad that the City of Huntington Beach plans to annex the Goodell property. Our main concern is for the preservation of the remaining portions of the unique cogged stone site (CA-ORA-83). As the manufacturing place for the ancient stone sculptures known as cogged stones and the center of a ca 9000 year-old ritual congregation, there is no other archaeological site like it in the entire world. Preservation of the intact areas of this site, and in particular the human burials, should be a high priority in the decisions regarding zoning. Indiscriminately zoning the level areas of the site for low density housing will almost certainly result in the destruction of this significant cultural property. Instead, intact cultural deposits should be identified using the least destructive methods as possible and zoned as conservation or open space.

CCRP-1 (B)

Another concern is the language regarding testing and "mitigation". Pg. 31 of the Recirculated Environmental Assessment states that back hoe trenching shall be conducted in and amongst historic structure locations and along parcel boundaries. The site is too fragile and culturally sensitive to be tested using a back hoe. The western parcel boundaries adjacent to the Brightwater parcel almost certainly contain human burials as the majority of the 178 "human bone concentrations" was found beneath the dirt road adjacent to the Goodell property. A cut bank at the southern end of the property shows 200 cm of intact cultural deposits and dark, cultural bearing soil can be observed eroding out of the eastern bluffs of the property. The tribal community and the scientific community do not want any more burials to be exposed by heavy machinery.

CCRP-2 (B)

Please revise the language on pg. 31 to eliminate the use of a backhoe and to require observations of cut banks and remote sensing methods to identify the areas of the site containing cultural deposits. I have enclosed some articles regarding the use of magnetic imaging and ground penetrating radar.

CCRP-3 (B)

We also request that the zoning plans include interpretive materials and a place similar to that at Hellman Ranch where the tribal community can hold ceremonies to honor the ancestors. If you have any questions, please call me at (949) 559-6490, or email at pmartz@calstatela.edu.

CCRP-4 (B)

**CCRPA**

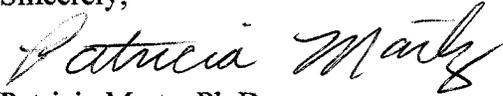
**California Cultural Resource Preservation Alliance, Inc.**

**P.O. Box 54132  
Irvine, CA 92619-4132**

**An alliance of American Indian and scientific communities working for  
the preservation of archaeological sites and other cultural resources.**

---

Sincerely,



Patricia Martz, Ph.D.  
President

Cc: Joe Shaw, Planning Commissioner  
Dave Singleton, Native American Heritage Commission  
Teresa Henry, California Coastal Commission

ATTACHMENT NO. 5.101

# Technology Opens a Door to Old Egypt

■ **Archeology:** Using magnetic imaging, a German team maps a vast underground metropolis that may have been Ramses II's capital. Excavating it would take 'a lifetime.'

By MARIAM SAMI  
ASSOCIATED PRESS

**QANTIR, Egypt**—This is a typical Nile Delta farming village, its simple mud-brick houses sitting along dirt roads amid the green carpeting of rice and corn fields.

Yet there's grandeur here—a vast, buried metropolis from millenniums ago that was discovered by German archeologists using cutting-edge imaging technology.

The exploration team believes the site is the long-lost capital of Ramses II, a mighty pharaoh who lived more than 3,200 years ago.

Working with magnetic imaging equipment used by geophysicists to search for oil, the archeologists have mapped an underground city they estimate spread over 12 square miles.

It "is so vast and so big that there are no words to describe it," said Edgar Pusch, head of the archeological team from the Pelizaeus Museum in Hildesheim, Germany. "Something like this has never been detected before in Egypt."

The computer plottings produced by the team show winding streets, structures that look like small houses, spacious buildings, palaces and a lake shore in ghostly white lines on black.

Among the marvels are a huge stable with attached royal chariot and arms factories.

"This stable is an amazing thing," Pusch said.

Covering nearly 185,000 square feet, the stable had six identical rows of halls connected to a vast courtyard. Each hall had 12 rooms, each 40 feet long. The floors sloped down to holes for collecting horse urine that Pusch speculates was used in dyeing cloth, softening leather and fertilizing vineyards.

Pusch said the stable held up to 460 horses, making it "the largest ever ancient stable."

to the Nile Delta.

Pusch believes Ramses II moved the capital to Qantir to escape the powerful priests who resided in the south and also to be close to the coasts of Turkey and Syria.

"It was ideal for him and his military campaigns to have a post like this," Pusch said.

Some statues, texts and remains of pottery had pointed to the ancient capital's being near the cluster of villages around Qantir, about 60 miles northeast of Cairo. Qantir had been excavated on and off since the 1920s without ever before yielding much.

Rather than dig up colossal amounts of mud and disturb farming, Pusch called on Egyptian and German geophysicists to help map the grounds using an ultra-sensitive, portable cesium magnetometer. The technique is akin to looking into a person's chest through an X-ray image, only on a much grander scale.

Transferred to computers, the readings become lines and shapes like a blueprint of a building.

Magnetic mapping has been used for oil prospecting and military uses like detecting submarines from the air, said Helmut Becker of the Bavarian State Authority for Monument Conservation.

A serious application to archeology has existed only since 1994, and the team working in Qantir is

only the second such in the world after Austria-based experts, Becker added.

The technique is used in Qantir only a few days each year, depending on the availability of geophysicists. Since 1996 about 810,000 square feet have been covered, or one-15th of the total area, Pusch said.

"We need another 10 years to finish" the city center alone, he said.

Producing the magnetic images has so far cost more than \$2 million, with most of the money provided by the German government.

"It gives us one of the best chances to look into everyday life of ancient Egypt in an area which has not been investigated so deeply until now," Pusch said.

West of the stable is the chariotry, where light, two-wheeled war chariots were manufactured and maintained. Numerous reliefs on temple and tomb walls show such chariots pulled by two horses and ridden by two soldiers. Ramses II himself was depicted riding one.

An arms assembly line is nearby. Pusch's team has dug up chariot parts, arrow shafts, flint arrowheads, javelin heads, daggers and bronze scales of body armor.

The scientists dug in only a few spots, then calculated the rest of a structure's outlines. "If we excavated all this, we would need a lifetime," Pusch said.

For the most part, the team relies on the magnetic images to look at the ancient city.

When small areas are excavated, they are filled back in so farming can resume. Pusch said the village cannot be quarantined as a historic site.

"What could be done is to open 'excavation windows' in certain very interesting areas like a villa or a house," he said.

He also envisions a local museum to house objects dug from the site, models of the whole city and three-dimensional, computerized images reconstructing the city.

Historians know Ramses II moved ancient Egypt's capital from the south, known as Upper Egypt,

ATTACHMENT NO. 5.102

# Scientists Use Radar Beams to Reach for Tars

A high-tech fossil search at L.A.'s Page Museum spots subterranean tar pits but no blips of bone.

By BOB POOL  
Times Staff Writer

It was more sticky wicket than groundbreaking moment Tuesday when scientists tried to use high-tech electronic imaging equipment to find prehistoric fossils buried in Los Angeles.

All that the ground-penetrating radar equipment scanning a subterranean area at the La Brea Tar Pits discovered was, well, tar.

It turns out that the gooey black tar that trapped Ice Age animals and preserved their bones also makes the resultant fossils invisible to ground radar — much like special absorbent coverings make stealth fighters invisible to aerial radar.

And to top it off, heavy cellphone use along nearby Wilshire Boulevard and commercial radio broadcasts in the area were jamming the ground radar.

"I can see radio talk shows interfering with our signal here," scientist Lawrence Conyers said as he studied his radar screen.

Tuesday's experiment was aimed at determining if radar could be used instead of time-consuming, random — often hit-or-miss — digging to find prehistoric bones.

Researchers said the test proved that buried deposits of

paleontologist Chris Shaw and anthropologist Manuel Flores pulsated radar signals into a lawn known as the Pit 61-67 Compound. It is west of the museum building.

Resembling a one-wheeled lawnmower being pushed methodically back and forth over the grassy area, the contraption was wired to a flat-screen monitor 20 feet away that displayed the outline of any object within 6 feet of the surface.

Conyers and Harris peered at the screen, whose unwavering lines suggested that nothing was hidden under the lawn. In actuality, the screen was depicting a thick deposit of tar beneath a layer of sand, soil and grass. Any fossils caught in the sticky mass were blending right in with the tar's radar image.

"We'd hoped to see individual bones. But we don't know what a bone looks like," Conyers joked.

"We were in a pit on top of bones earlier today and didn't see anything. Tar deposits are a total wipeout. You don't see anything at all when you come across them. See how everything disappears; it's all smeared."

Harris said the bones have become totally impregnated by tar over the eons. That, along with their submersion in the asphaltic sediment, makes them invisible to radar.

Conyers speculated that cellular phone and broadcast radio signals in the Mid-Wilshire area might be interfering with the radar receiver. He said he would



lay the to-ar-hs p-c-d h r

thing at all when you come across them. See how everything disappears; it's all smeared." Harris said the bones have become totally impregnated by tar over the eons. That, along with their submersion in the asphaltic sediment, makes them invisible to radar.

Conyers speculated that cellular phone and broadcast radio signals in the Mid-Wilshire area might be interfering with the radar receiver. He said he would use special computer software in hopes of cleaning up radar signals recorded at the Pit 61-67 Compound.

What little he saw on the radar screen, however, was enough to signal to Harris that the test was not a waste of time. "We found out what tar pit deposits underground look like," he said. "We could well be digging right here in the future for fossils."

Tuesday's test was prompted in part by an upcoming Venezuelan archeology expedition. Even with the bone-imaging setback, Harris and Shaw have been appointed to the Board of Scientific Advisors at the Foundation for Quaternary Paleontological Research, a consortium of scientists and oil-industry sponsors that heads the paleoecological investigation of fossil deposits in northern Venezuela.

Officials hope to establish a Page Museum-style research center in that country.

broadcasts in the area were jamming the ground radar. "I can see radio talk shows interfering with our signal here," scientist Lawrence Conyers said as he studied his radar screen.

Tuesday's experiment was aimed at determining if radar could be used instead of time-consuming, random — often hit-or-miss — digging to find prehistoric bones.

Researchers said the test proved that buried deposits of tar could be located by ground radar. And tar, after all, is where the fossils are found, said John Harris, chief curator and head of the Natural History Museum of Los Angeles County's vertebrate studies division.

Conyers, a University of Denver anthropology professor who also is an expert on geology and geophysics, provided the \$35,000 worth of imaging equipment and conducted the experiment without charge.

A pioneer in the use of ground radar in what he calls "noninvasive archeology," Conyers has used his gear to pinpoint a Mayan village buried under volcanic ash, a 1,700-year-old buried settlement in Peru, and ancient pit houses used by Indians in Utah.

Ground-penetrating radar is commonly used by engineers looking for pipes at construction sites, by transportation officials inspecting roadbeds and bridge supports, and in police investigations where buried bodies or evidence is being sought.

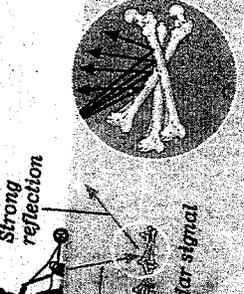
At the tar pits, a lunchbox-size radar antenna guided along the ground by Page Museum

**NO LUCK: Anthropologist Manuel Flores, left, and paleontologist Chris Shaw use ground-penetrating radar at the La Brea Tar Pits in an unsuccessful attempt to find fossil bones.**

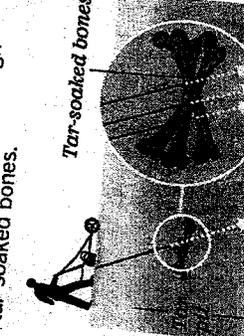
**Searching in tar**

Ground radar didn't find bones during the test in the La Brea Tar Pits, but it found tar, where experts say prehistoric bones may be hidden.

**Without tar**  
Ground-penetrating radar sends back strong reflections showing location and size of an object.



**With tar**  
Most of the ground-penetrating radar signal passes through tar-soaked bones.



**Weak reflections**  
The darker the color, the stronger the reflections. The white spot in this image from the La Brea test is a tar pit.



Sources: Dr. Lawrence B. Conyers, University of Denver; Jeff Lactus; USGS

LA BREA TAR PITS 3/24/05

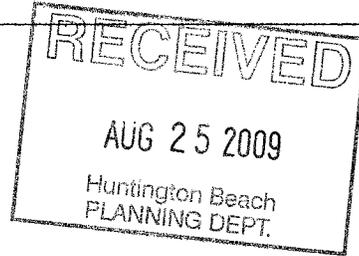
THE BONES AT CA-DRA-83 DO NOT CONTAIN TAR



California Cultural Resource Preservation Alliance, Inc.

P.O. Box 54132
Irvine, CA 92619-4132

An alliance of American Indian and scientific communities working for
the preservation of archaeological sites and other cultural resources.



August 22, 2009

Jennifer Villasenor, Associate Planner
City of Huntington Beach
Planning Department
2000 Main Street
Huntington Beach, CA 92648

Subject: Recirculated Draft Mitigated Negative Declaration No. 08-017 (Goodell Property Pre-zoning and Annexation)

Dear Miss Villasenor:

This is an addendum to my letter of August 20, 2009. In conducting further research regarding remote sensing methods to locate cultural deposits in the Goodell property, I find that ground penetrating radar is best for locating bone deposits, stone cairns and burial pits, but not for intact midden (dark soil from fires and carbon with food remains and artifacts). Instead systematic coring (not auguring) would be the least invasive and most effective method. Coring was used at the Playa Vista development to locate ancient cultural deposits beneath a wetlands.

(CRP-1)
(c)

Also, in recognition that a site that is listed as eligible on the National Register of Historic Places cannot be mitigated to a level of no significance through data recovery excavations, the language on pg. 31 regarding the treatment of the cultural deposits when found should strongly support preservation and require the developer to explore alternatives for preserving the site with most likely descendants appointed by the Native American Heritage Commission, the concerned scientific community, the city planners and the Coastal Commission.

(CRP-2)
(c)

Please give these recommendations your sincerest consideration.

Thank you,

Handwritten signature of Patricia Martz

Patricia Martz, Ph.D.
President

Cc: Joe Shaw, Planning Commissioner
Dave Singleton, Native American Heritage Commission
Teresa Henry, California Coastal Commission

ATTACHMENT NO. 5.105

**Villasenor, Jennifer**

**From:** Chasse, Isabelle M [Isabelle.Chasse@uhc.com]

**Sent:** Friday, August 07, 2009 7:35 AM

**To:** Villasenor, Jennifer

Hello, Ms. Villasenor. I'm writing this not only as a resident of Huntington Beach but also as someone concerned about preserving CA and USA heritage. I live at the edge of the Bolsa Chica Wetlands, I walk there, I've learned a lot about the history, the wildlife, changing seasons and what it brings and I have read many books about the history of the peoples who have lived there before we did. CHAS-1

I equate the building of this site as if England decided that Stonehenge was no longer a significant historical site, tore it down to build condos or Egypt got tired of the pyramids. From all I've read, this place is culturally and archeologically valuable. Cog stones! Found in only one other place in the world! Graves and artifacts as old as 20,000 years! There is no amount of money that could make up for the loss of what we haven't even discovered yet and it's right in our backyards!

I am not Native American, I have no vested interest in saving this place other than the fact that I can see, daily, the cost to the ecosystem that building on it brings. There are so many other ways for CA to profit from this land - allow the Natives to be the guardians of the site, let them be the ones who teach visitors (for a price) about the rich history, to show dances or food, perhaps, to show how the people lived, what they ate, how they fished, what they wore. Let archeologists excavate certain areas and display the finds for prosperity, don't bury them under homes that no one but the very wealthy can afford. Make this a place of peace and refuge, not refuse.

I'm only one voice but when I walk there, I hear the voices of the birds and the coyotes, the wind, the earth, the buried, the living. I try not to hear the voice of greed and construction. I understand that the land was bought fairly at some point but there is more here to lose than just a few acres of land, there is the richness of America before she was bought and sold, when people treated the land with respect and did not presume ownership.

Just something to add your stack of those who wish the building would stop while cool heads considered the real price. Once gone, it's gone forever.

Sincerely,

Isabelle M. Chasse

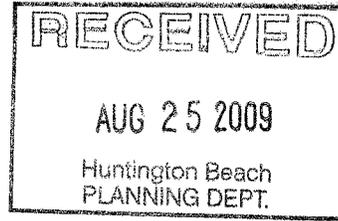
Isabelle M. Chasse  
Sr. Underwriting Coordinator  
Cypress CA 714-226-4829

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ATTACHMENT NO. 5.106

8/25/2009

August 24, 2009



Jennifer Villasenor  
City of Huntington Beach  
Huntington Beach City Hall  
2000 Main Street  
Huntington Beach, CA 92648

Subject: Recirculated MND for Goodell annexation and pre-zoning (SCH # 2009031094)

Via hand delivery and  
Fax at 714-374-1540

Dear Ms. Villasenor,

Thank you for the opportunity to comment upon the Recirculated Mitigated Negative Declaration for the Goodell Property Pre-zoning and Annexation (MND No. 08-017; SCH # 2009031094) located on 6.2 acres of property in the County of Orange unincorporated Bolsa Chica area located on the Upper Bench of the Bolsa Chica Mesa. These comments are submitted on behalf of the Bolsa Chica Land Trust and myself.

GEN-1

A Mitigated Negative Declaration (MND) for this project was previously circulated in March 2009. We request that all comments submitted in response to the March 2009 MND be included in the public record for this recirculated MND.

GEN-2

The site is highly sensitive both on its own and as part of the Bolsa Chica ecosystem, including but not limited to the Bolsa Chica Ecological Reserve. Trees and snags on the site provide nesting for raptors and important plant species such as southern tarplant have been observed on the site, as noted by Mr. Mark Bixby in his letter on this MND. Cultural resources include Ca-Ora-83, which is listed by the Native American Heritage Commission registry of sacred sites and was recently determined to be eligible for listing on the National Register of Historic Places. The portion of Ca-Ora-83 on the Brightwater property was found to contain human remains, and was likely a prehistoric cemetery. In an April 8, 2008 letter to the Coastal Commission, Larry Myers the Executive Director of the Native American Heritage Commission states the following:

GEN-3

The NAHC has not received a report clearly showing the dates, locations and details of burial discoveries. At this point based on information available and the large number of burials recovered and associated items, *it appears that the whole area may be a burial ground.* [emphasis added]

Resources from the historic era potentially include an underground plotting and switching room from the World War II era.

The proposed project will entail the pre-zoning and annexation of the 6.2 acre project site to allow for residential and open space uses. Under the proposed pre-zoning, 3.2 acres will be designated for Residential Low Density (RL), 2.0 acres will be designated Open Space-Parks & Recreation (OS-PR), and 1.0 acre will be designated Coastal Conservation (CC). The RL designation allows for single-family residential uses as well as limited commercial uses such as nurseries, and wireless communications facilities. Up to twenty two dwelling units could be built in the area to be designated RL (MND p. 4).

GEN-4

While the MND indicates that the area to be designated OS-PR is intended to be utilized only for passive recreation, the designation would permit more active uses. The designation would certainly allow clearing of vegetation and grading.

GEN-5

By contrast, the MND repeatedly states that "The project... does not contemplate development of the site" (MND pp. 12,15,16,17, 22,23,24, and 28). Clearly this is not the case, when the MND itself identifies future development of twenty two dwelling units (p. 4) and a recreation area. Environmental review for the pending project must reflect this anticipated future development, though as stated in the MND (p. 4), prior to development of the site the City anticipates that future project approvals would include a coastal development permit, general plan amendment, local coastal program amendment, tentative tract map and, potentially a conditional use permit..

GEN-6

**The Process**

As stated in *Citizens for Responsible & Open Government v. City of Grand Terrace*, (2008) 160 Cal. App. 4th 1323:

CEQA provides that generally the governmental agency must prepare an EIR on any project that may have a significant impact on the environment. (§§ 21080, subd. (d), 21100, subd. (a), 21151, subd. (a); *Pala Band of Mission Indians v. County of San Diego* (1998) 68 Cal. App. 4th 556, 570-571 [80 Cal. Rptr. 2d 294], quoting *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal. App. 4th 1597, 1601-1602 [35 Cal. Rptr. 2d 470].) Whenever there is substantial evidence supporting a fair argument that a proposed project may have a significant effect on the environment, an EIR normally is required. (§ 21080, subd. (c)(1); *Guidelines*, § 15070, subd. (a); *Gentry v. City of Murrieta* (1995) 36 Cal. App. 4th 1359, 1399 [43 Cal. Rptr. 2d 170]; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal. App. 4th 903, 927 [21 Cal. Rptr. 3d 791] (*Pocket Protectors*)). "The fair argument standard is a 'low threshold' test for requiring the preparation of an EIR. [Citations.] It is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency's determination. Review is de novo, with a preference for resolving doubts in favor of environmental review." (*Pocket Protectors, supra*, at p. 928.)

GEN-7

...  
A mitigated negative declaration is one in which "(1) the proposed conditions 'avoid the effects or mitigate the effects to a point where clearly no significant

GEN-8

effect on the environment would occur, and (2) there is *no substantial evidence* in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.' (§ 21064.5, italics added.)" (*Architectural Heritage Assn. v. County of Monterey, supra*, at p. 1119; see also *Citizens' Com. to Save Our Village v. City of Claremont* (1995) 37 Cal. App. 4th 1157, 1167 [44 Cal. Rptr. 2d 288].)

In reviewing an agency's decision to adopt a mitigated negative declaration, a trial court applies the "fair argument" test. (*Gentry v. City of Murrieta, supra*, 36 Cal. App. 4th at p. 1399; see also *Pala Band of Mission Indians v. County of San Diego, supra*, 68 Cal. App. 4th at p. 571.)

Adoption of a Mitigated Negative Declaration is inappropriate in this case inasmuch as the clear potential for significant adverse impacts on the environment exists. These include but are not limited to impacts on geology and soils, hydrology and water quality, air quality, transportation/traffic, biological resources, cultural resource, noise, and aesthetics.

For many of these potential impacts, including geology and soils, hydrology and water quality, air quality, and noise, the MND concludes that:

"Impacts related to ...[XYZ]... would be analyzed if and when development is proposed. No impacts would occur."

This approach fails on two counts. First, evidence in the record does not support a conclusion that "no impacts would occur". While investigation of impacts may be deferred to future study, the City cannot conclude that no impacts will occur without recognizing the significance of the potential environmental effects, committing itself to mitigating their impact, and articulating specific performance criteria (*Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296; *Gentry v. City of Murrieta* (1995) 36 Cal. App. 4th 1359; 43 Cal. Rptr. 2d 170). For most potential impacts, the MND does none of that. Further, promises regarding future environmental review ring empty, when one recognizes that pursuant to CEQA Section 21081 the City can approve, and has approved, projects where EIRs identify significant unavoidable environmental impacts which will not be fully mitigated.

In accordance with Section 15004(b) of the Guidelines for the Implementation of the California Environmental Quality Act (CEQA), an environmental document is to be prepared as early as feasible in the planning process. Per *Laurel Heights Improvement Association of San Francisco, Inc. v. The Regents of the University of California* (1988 ) 47 Cal. 3d 376:

...the later the environmental review process begins, the more bureaucratic and financial momentum there is behind a proposed project, thus providing a strong incentive to ignore environmental concerns that could be dealt with more easily at an early stage of the project.

This is necessary if an EIR is to fulfill the stated purpose of CEQA which is

GEN-8  
cont'd.

GEN-9

GEN-10

not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind. (*Bozung v. LAFCO* (1975) 13 Cal.3d 263)

Per Guidelines Section 15003):

The EIR serves not only to protect the environment but also demonstrate to the public that it is being protected...The EIR is to inform other governmental agencies and the public generally...The EIR is to demonstrate to an apprehensive citizenry that the agency has...considered and analyzed the ecological implications..."

GEN-10  
cont'd.

Thus, an EIR must be prepared at a point in time when it may actually influence decision making. The proposed pre-zoning will limit the range of future alternatives for the project site and will establish a development envelope for the site. All impacts of development within that envelope must be examined in full, based on the existing environmental baseline, i.e. vacant land (*Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d.180).

The question is not whether or not the proposed project will bring the project site and surrounding area to an environmental point of no return, but whether the proposed project will move one step closer to that point of no return. To the latter question, the answer is a resounding "yes!"

While it is recognized that certain detailed analyses can only occur when detailed plans have been developed, many analyses can and should be conducted now. Where no analyses can be pursued, the City must identify the potential impact, articulate a framework for mitigation, and commit to mitigating the impact **now**. Absent such commitment, evidence does not exist to support any finding of no impact.

GEN-11  
cont'd.

This can best be achieved by use of a program EIR as provided in Guidelines Section 15168. The program approach can provide for review of the complete project prior to the time that any actions are taken to irretrievably commit the lead and responsible agencies to a course of action. The program EIR may be supplemented with a Subsequent or Supplemental EIR if new information regarding a project, anticipated impacts, or the existing environment becomes available later.

**Potential Impacts**

As noted above, potential impacts may occur on geology and soils, hydrology and water quality, air quality, transportation/traffic, biological resources, cultural resources, noise, and aesthetics. These are described in more detail as follows:

GEN-12

**Geology and Soils**

As stated in the MND (p. 12), "Due to steep slopes that exist on the site, there is potential for slope instability and erosion of bluffs...". Erosion of bluffs is of particular concern both due to

GEN-13

their status as unique coastal resources and the potential that eroded materials may be carried into sensitive resources of the Bolsa Chica. While the MND articulates the potential impact, no framework for mitigation nor commitment thereto is provided. Thus, it cannot be concluded that no impacts will occur.

GEN-13  
cont'd.

### Hydrology and Water Quality

Though not identified in the MND, use of the site according to the proposed pre-zoning would result in increased impervious surfaces which would create or contribute runoff water, including increased urban runoff, with potential impacts on wetlands resources of the Bolsa Chica. Impacts could occur both due to changes in freshwater flows as well as pollutants such as heavy metals, fertilizers, pesticides, and petroleum residues which may be carried into the wetlands. The MND fails to identify this potential impact or provide a framework for mitigation or commitment thereto.

GEN-14

The failure to acknowledge potential impacts due to erosion is particularly puzzling inasmuch as this potential impact is mentioned in the discussion of geology and soils (MND p. 12). Potential impacts would likely be greatest during grading and construction, but could continue.

### Air Quality

The MND notes that the basin is a non-attainment area for various pollutants (p. 15), but fails to examine how construction of twenty two residential and an active recreation facility may affect air quality. The potential for generation of dust to surrounding residential areas as well as the Ecological Reserve must be examined and mitigated. The MND fails to identify this potential impact or provide a framework for mitigation or commitment thereto.

GEN-15

### Transportation/traffic

Impacts on traffic will clearly occur. The MND, in reliance on Orange County Subsequent EIR No. 551, states that no impacts on transportation and traffic would occur, yet presents information from SEIR No. 551 which indicates otherwise. As stated in the MND (p.17):

The results of the study indicated that...the existing LOS at the intersection of Pacific Coast Highway and Warner Avenue was considered unacceptable and the **development of the Brightwater residential project would further impact the intersection** [emphasis added]. Physical constraints of the intersection and Coastal Act requirements pertaining to the presence of coastal wetlands along Warner Avenue prevented the implementation of any feasible mitigation measures.”

GEN-16

Thus, increased traffic at Pacific Coast Highway and Warner Avenue would create an unavoidable, unmitigable, adverse impact. The MND notes that anticipated development at Brightwater was decreased from 387 units contemplated in SEIR No. 551, to 349, but provides no evidence that development of even the reduced Brightwater residential project would not “further impact the intersection”.

Incredibly, the MND goes on to conclude that the proposed project “would not result in significant impacts to traffic even when combined with the completion of the Brightwater residential development”. Are we to believe that development of 387 dwelling units as contemplated in SEIR No. 551 “would further impact the intersection”, but development of 371 dwelling units (349 at Brightwater + 22 at Goodell) would not? This makes no sense. Clearly any additional traffic at the intersection of the already substandard Pacific Coast highway and Warner Avenue intersection would result in an adverse impact, on both an individual and cumulative basis.

GEN-16  
cont'd.

### Biological Resources

While the MND identifies certain resources and commits to a framework for mitigation, this is not the case for all resources. The proposed project could potentially result in impacts to southern tarplant which exists on the site. The MND states that “a finding of significance at this time would be speculative.” (p. 20). Would not a finding as to lack of significance be equally speculative? Based on the fair argument standard discussed above, impacts to tarplant should be considered potentially significant.

The MND proposes a relocation program for tarplant if necessary (BIO-8, p., 23), with tarplant to be relocated to open space portions of the site. It is unclear where this would be. Does the City proposed to locate the tarplant in areas designated for park purposes, potentially utilized for active recreation? That would hardly be consistent with species protection. Or would the tarplant be located in conservation areas where it may displace other sensitive resources?

GEN-17

A major issue in the review of the Brightwater project was how loss of upland forage would affect raptor predation on sensitive species in the wetlands below. While not pristine, the project site, like the previously undeveloped Brightwater site, provides forage area for raptors including American Kestrel (*Falco sparverious*), Barn Owl (*Tyto alba*), Cooper’s Hawk (*Accipiter cooperii*), Great Horned Owl (*Bubo virginianus*), Merlin (*Falco columbarius*), Northern Harrier (*Circus cyaneus*), Osprey (*Pandion haliaetus*), Peregrine Falcon (*Falco peregrinus*), Red-shouldered Hawk (*Buteo lineatus*), Red-tailed Hawk (*Buteo jamaicensis*), Sharp-shinned Hawk (*Accipiter striatus*), Turkey Vulture (*Cathartes aura*), White-tailed Kite (*Elanus leucurus*). The potential exists for impacts on those raptors as well as lowland species which may be subject to increased predation, including such sensitive species as Belding's Savannah Sparrow and Light-footed Clapper Rail.

Potential impacts will also occur due to propagation of additional introduced plant species. Absent measures which would ensure that invasive species are not planted on the site, it cannot be concluded that no impact would occur.

Potential impacts would occur due to predation by domestic pets including cats and dogs. Absent measures which would ensure that domestic pets are fully controlled at all times, it cannot be concluded that no impact would occur.

Potential impacts would occur due to increased light, glare and noise, with potential impacts on sensitive species. A one hundred foot buffer is inadequate to ensure that no impacts will occur. Rather, a minimum one hundred meter buffer must be provided for all sensitive habitat.

GEN-17  
cont'd.

### Cultural resources

The proposed zoning would allow elimination of pre-historic (CA-Ora-83) and historic (World War II) resources on the site. While some framework is provided for supposed mitigation of impacts on pre-historic resources, but no provision is made regarding historic resources. In any case, the loss of any additional portion of CA Ora-83 would constitute a significant adverse effect, even if resources are documented and recovered. As stated by Susan Stratton, supervising archeologist at the California Office of Historic Preservation:

GEN-18

I don't see how you can mitigate for this. Let's say you completely destroy a building. How are you going to compensate for the destruction? Maybe you build a replica. But in this case you have an archeological site and it's a non-renewable resource so whatever remains of this particular site, it's forever. It will never be duplicated. You can't build a replica of this.

The Bolsa Chica Land Trust believes **it is imperative that the archaeological site on the Goodell property** be preserved due to the following:

- It is all that remains of the 8,500 year old village, cemetery, and ceremonial site that is the oldest prehistoric village in Orange County
- Eleven acres of the 17 acre site have been destroyed to make way for a gated community.
- To date, 178 human bone concentrations representing an unknown number of individuals, over 100 thousand artifacts, semi-subterranean house pits, and numerous cogged stones have been recovered from the 11 acres. The burials were recovered from an area adjacent to the remaining 6 acres owned by Mr. Goodell.
- This site also represents the birthplace of the ancient stone sculptures known as cogged stones.
- The site was the manufacturing and distribution center for the cogged stones which played an important part in an ancient California Indian religion.
- Over 700 of the cogged stones were found within the area of the village. Only a few have been found at any other archaeological site in the region.
- The site may contain evidence for a connection between the prehistoric peoples of northern Chile where the only cogged stones outside of California have been found.
- The descendants of both the Gabrielino/Tongva and Juaneno/Acjachemem consider this site to be the place of their ancestors and a sacred ceremonial site.

GEN-19

Additional material concerning Ora-83 has been submitted to the City under separate cover by Ms. Flossie Horgan, Executive Director of the Bolsa Chica Land Trust. That material must be included in the public record for this environmental review.

We are extremely disappointed that the MND (p.30) belittles the significance of on-site archaeological resources, referring to the site as highly disturbed in language reminiscent of

environmental documents for the Brightwater project. As we now know, the Brightwater development site has yielded numerous cog stones and human remains not acknowledged or anticipated in environmental documents for the project, resulting in a tragic loss of cultural values and desecration of burial sites.

GEN-19  
cont'd

As the remaining intact cultural deposit representing this ancient village and cemetery, it should be preserved as a historic park honoring the first settlers in the region, the California Indians. As such, it could be an educational resource for school children and the public as well as a place where the descendants of the California Indians of the region could celebrate their cultural heritage. Upon implementation of development according to the proposed RL and OS-PR zoning the resource would be lost.

GEN-20

Archaeological sites are fragile and non-renewable. Archaeological "recovery" is a destructive process. It is essential that a "witness area" of this highly significant archaeological site be preserved for future generations with advanced archaeological techniques that can provide answers to the questions we cannot answer with today's technology and that is non-destructive.

### Noise

Development of the site will result in increased noise during construction and upon occupation of the site. Noise from concrete mixers (85 dBA at 50 feet), generators (81 dBA at 50 feet) and other construction equipment (74 to 98 dBA at 50 feet) would affect nearby residents as well as wildlife. The MND fails to articulate the potential impact, or provide a framework for mitigation or commitment thereto.

GEN-21

### Aesthetics

Views of the site will sustain significant adverse impacts due to implementation of the proposed project. Open space would be replaced by housing and night time views would include additional outdoor lighting. Views across the site from existing public streets toward the Reserve would be lost. Views toward the site from public trails within the Reserve would also be significantly altered. The MND fails to articulate the potential impact, or provide no framework for mitigation or commitment thereto. Potential mitigation measures would include limitations on color palette, limitations on outdoor lighting and preservation of view corridors.

GEN-22

### Land Use

The MND (p. 10) indicates that the proposed zoning would be consistent with the RA zoning to the north. However, the RA zoning permits only one dwelling unit per acre, with a maximum of five dwellings permitted on a single parcel (Huntington Beach Ordinance Code Section 9104). Thus, the project site would be permitted a maximum of six dwellings for the entire site, and a maximum of three dwellings for the site proposed for residential use. Thus, the proposed project is not consistent with the RA zoning, but is significantly more intense. The MND fails to address this potential impact.

GEN-23

**Climate Change**

Development of the site will result in increased generation of greenhouse gases. In addition, development of the site will increase stress on wildlife species already subject to stress from changes in climate. Thus provision of adequate buffers is critical. The MND fails to address any impacts in relation to climate change at all.

} GEN-24

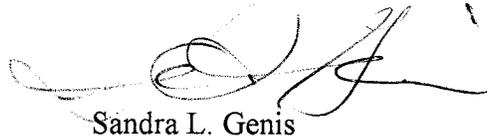
**Conclusion**

Based on the above, it cannot be assured that no significant adverse impacts will occur as a result of the proposed project. On the contrary, it is likely that impacts can and will occur. Thus, the proposed MND should not be adopted.

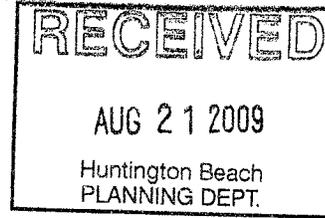
} GEN-25

Thank you for the opportunity to comment. Please keep us informed as this project proceeds.

Yours Truly,



Sandra L. Genis



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Julie Bixby  
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August 20, 2009

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Jennifer Villasenor  
City of Huntington Beach, Planning Dept  
2000 Main Street  
Huntington Beach, CA 92648

Subject: Recirculated Mitigated Negative Declaration for Goodell Property Pre zoning and Annexation NO 08-017

Dear Ms. Villasenor,

Attached you will find two documents.

1. An article which appeared in the OC Register on August 6, 2009. This article refers to the recent declaration( July 9) by the National Registry of Historic Places regarding the ORA 83 site which includes the entire 6.2 acres of the subject property of this MND. It is critical that the City pay attention to the importance of preserving this pre-historical National Historic eligible archaeological site. CEQA requires an EIR.
2. A copy of the Revocation request made to the Coastal Commission in 2008. This document will clarify the ongoing 20 year campaign by the developers at Bolsa Chica to disregard the archaeological significance of the Bolsa Chica specifically ORA 83, ORA 85.

BCLT-1

BCLT-2

BCLT-3

Impacts to a resource that is eligible or listed on the National Register of Historic Places cannot be mitigated below a level of significance. Data recovery "mitigation" documentation and demolition destroy rather than preserve and are not appropriate. A mitigated Negative Declaration (MND) can only be used when there are no residual adverse impacts after mitigation.

Please consider these issues when addressing this zoning project.

Sincerely,

*Flossie Horgan*  
Flossie Horgan  
Executive Director

**ADVISORY BOARD**

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**ENDORSEMENTS**

Amigos de Bolsa Chica  
Algalita Marine Research  
Foundation  
Anza Borrego Foundation  
Ballona Wetlands Land  
Trust  
City of Huntington Beach  
Friends of Harbors,  
Beaches and Parks  
Huntington Beach  
Wetlands Conservancy  
Huntington Beach Tomorrow  
Orange Coast League of  
Women Voters  
Orange County  
Coastkeeper  
Peninsula Open Space Trust  
Sea and Sage Audubon  
Sierra Club  
Angeles Chapter  
Surfrider Foundation

Thursday, August 6, 2009

# Ancient burial ground gets national designation

'Cogged stone' site at Bolsa Chica Mesa listed as eligible with the National Register of Historic Places.

**BY CINDY CARCAMO**

THE ORANGE COUNTY REGISTER

A site that is widely regarded as an ancient American Indian burial ground at the Bolsa Chica Mesa has received national historic designation, exciting preservationists who say the move grants the area slightly more protection against future development.

Federal officials last month determined the "cogged stone" site at Bolsa Chica as eligible for listing with the National Register of Historic Places. The area was named after the hundreds of carved stone disks – cogged stones – found on the site. The disks were possibly used for sacred rituals.

"We value the property as a significant resource," said National Register of Historic Places historian Paul Lusignan. "There was a tremendous amount of information about the prehistoric site and distinction for the fact that it has the cogged stone site, which is a unique archeological feature found in very few other locations."

The designation makes the cogged stone site the only archeological spot along the Orange County coast to receive such an honor. The area captures some of the land within the Hearthsides Homes development and an estimated six acres of unincorporated land owned by Don Goodell that the city of Huntington Beach is proposing to annex.

Only four other archeological sites in the county have received the distinction.

The honor is just the latest chapter in a decades-long battle among preservationists, tribal members and developers.

In 2008, tensions reignited after an announcement about the unearthing of 174 ancient American Indian remains, half of them found over an 18-month period on a site slated to become a community with more than 300 homes. The land was once shared by the Juaneno Band of Mission Indians and the Gabrieleno-Tongva.

The discovery of hundreds of mysterious cogged stones and human bone fragments that are up to 8,500 years old confirmed the decades-long rumors that the Brightwater Hearthsides Homes site was an ancient burial ground of international importance, Native American officials have said.

The site would have ultimately been listed with the National Register of Historic Places. However, the land owners -- Hearthsides Homes and Goodell -- opposed the official listing, Lusignan said.

Ed Mountford, senior vice president of Hearthsides Homes, did not say in a written statement why they opposed the listing. He said they did not have more information to change their position at this time.

ATTACHMENT NO. 5.117

Regardless, the listing is simply a technicality, Lusignan explained. The eligible status still affords the area the same protection as an official listing.

While the national designation is more of an honorary distinction, he said it carries a lot of weight, enough to be taken into consideration during environmental reviews.

In addition, the designation makes it much harder for local governments to issue a "mitigated negative declaration." The issuance declares that a project does not have enough of an environmental impact to warrant an in-depth study.

The new historic designation changes some things for the clogged stone site, which is largely in the process of being developed.

It deems the site a significant resource and therefore does not allow the city to skip an environmental impact report for development, said Susan Stratton, an archeologist who supervises a team at the California Office of Historic Preservation.

"I don't see how you can mitigate for this," Stratton said. "Let's say you completely destroy a building. How are you going to compensate for the destruction? Maybe you build a replica. But in this case you have an archeological site and it's a non-renewable resource so whatever remains of this particular site, it's forever. It will never be duplicated. You can't build a replica of this."

#### **GOODELL PROPERTY MOST AFFECTED**

That's why preservationists contend the city of Huntington Beach will now have to re-evaluate the proposed annexation of the Goodell property. In the past, city officials have said they could skip the environmental impact report for the undeveloped 6.2 acres, saying the annexation would not have enough of an environmental impact to warrant an in-depth study.

Patricia Martz, a professor of anthropology and archeology at Cal State Los Angeles who spent about a decade preparing the application for the national designation, said she plans to meet with city planners soon about a re-evaluation.

However, Jennifer Villasenor, the city's Planning Department manager, said the city can move forward without the environmental review at this stage in the annexation process and still be in compliance with state standards laid out in the California Environmental Quality Act.

"We have a cultural report that shows that it's eligible for listing on the national register," she said. "We didn't exempt it from CEQA and we're going through the CEQA process."

"It's sort of like the first step in a long series of steps. This is just looking at the pre-zoning designations," she said. "There's nothing right now that tells us (a development) would be proposed."

#### **NO EFFECT ON HEARTHESIDE HOMES**

As for Hearthside Homes?

Martz says it's too late.

"Unfortunately that site has been almost totally destroyed except for buffer areas. If we'd got the site listed sooner it would have applied for this as well," she said.

Mountford said it essentially would not have made a difference.

"...Eligible for listing on the National Register of Historic Places does not change the way (the site) has been treated by the landowner or the regulatory agencies," he said.

The developer said he plans to rebury the last set of human remains and associated grave goods in about a month.

Mountford added that the area had already been recognized in 1983 by the State Office of Historic Preservation.

However, Stratton who works at the state office, said the National Register bears a lot more weight, especially in the realm of public opinion.

"It's hard to see whether it will grant more protection than 1983," she said. "However, it plays into public opinion. You have the groups out there that will say 'Oh my gosh. We are going to destroy a national registered site.' It doesn't mean you'll be able to keep it from being destroyed, but in terms of how it's going to play out there in the public? Who knows."

June 2, 2008

California Coastal Commission  
Teresa Henry, District Manager  
200 OceanGate, 10<sup>th</sup> floor  
Long Beach, CA 90802-4416

**RECEIVED**  
South Coast Region  
JUN 2 2008  
CALIFORNIA  
COASTAL COMMISSION

RE: Brightwater / Bolsa Chica Permit 5-05-020

Dear Ms. Henry:

We, the undersigned (petitioners) along with over 500 interested citizens who have submitted signatures, request an immediate investigation by the California Coastal Commission with respect to Permit 5-05-020 Brightwater, approved April 14, 2005 (Condition of Approval 23 attached as Exhibit A).

If any of the following allegations are discovered to be true we request that the Commission immediately revoke or suspend this permit.

The petitioners want to preface the above request by noting that over decades the petitioners have come to believe that the Bolsa Chica sacred site is being systematically destroyed or, at a minimum, placed in grave peril. The petitioners do not fault the Coastal Commission or any other public agency for this state of affairs. However, we believe the following presents such a clear case of improper action relative to the Bolsa Chica sacred site that specific action must be taken immediately.

#### Revocation of Permits

Section 13105 of Title 14 of the California Code of Regulations provides as follows:

Grounds for revocation of a permit shall be:

- a. Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the commission finds that accurate and complete information would have caused the commission to require additional or different conditions on a permit or deny an application;

In accordance with Title 14 CCR Section 13053.5 c, an application is to include a dated signature by or on behalf of each of the applicants, attesting to the truth, completeness and accuracy of the contents of the application. We are concerned that the Commission may have been provided with less than complete information regarding the cultural resources on the Brightwater site, resources of which the applicant may have been aware.

ATTACHMENT NO. 5.120

Page 2

The following are staff report sections and correspondence from applicant:

**July 27, 1992** letter from attorney for Hearthsides, Susan Hori to Cindi Alvitre (Exhibit B)  
***“As you know, other sites on Bolsa Chica Mesa have already been fully excavated and mitigated ( ORA 289, ORA 78 and ORA 85). No human remains were found during the course of any of the excavations. All of the material which was recovered, i.e. shells, beads, etc are in the possession of the landowner or the archeological consultant.”***  
(Emphasis supplied)

**April 14, 2005**

Coastal Commission staff report: Revised Findings 10/13/2005 (ExhibitC )

Page 97 of revised findings

***“The applicant contends that the Brightwater development project will not adversely impact either of the two on-site identified archeological sites due to the fact that a series of measures to mitigate the impacts of future development have been implemented completely in the case of ORA 85, and at the time of the October 2004 hearing, 97% complete in the case of ORA 83 as approved by the County of Orange, and the Coastal Commission.”*** (Emphasis supplied)

Page 101 of revised findings ORA 85 ***“No evidence of ceremonial or other structures were found. Other than four quartz crystals, which may be evidence of ceremonial utensil manufacture, no obvious objects associated with religious ceremonies were recovered. Finally, no evidence of human remains in the form of burials or cremations was found.”*** (Emphasis supplied)

Page 101 of revised findings ***“According to the applicant’s archeological consultant, the site was 97% recovered at the time of the application submittal for the October 2004 hearing. Based on staff observations in November of 2004 the site (ORA 83) appears to be virtually 100% recovered.”*** (Emphasis supplied)

Page 98 from revised findings for 5-05-020 ( Brightwater)

***“Although the Commission approved the full recovery of ORA 83 as proposed by the applicant in the previous permits listed below, the Commission finds no evidence in the record of those permits at the time of their approvals that the “semi subterranean house pits” were know or expected to exist, beneath the shell midden.”***

***“In November 2004, Commission staff accompanied the applicant and their consulting team on the project site to revisit a number of issues that had been raised at the October 2004 Commission meeting. At that time staff verified that the house pits had all been excavated and backfilled.”***

From the NAHC memo dated April 4, 2008

The NAHC staff noted that the archeologist stated that “Cogged stones as associated grave goods Dr Wiley confirmed that the 22 cogged stones found at the house pit of an apparent Shaman or tribal leader are clearly associate grave goods”

The question here is when was this house pit destroyed?

ATTACHMENT NO. 5.121

The following are what we believe to be the facts which support this revocation request:

1. Photos taken September 14, 2006 at the area of ORA 85. This is not archeological grading but rather construction grading. Since it is unclear when human remains were found, and that if they are found during grading that the Special Condition #23 must be followed we have included these photos. ( exhibit D)

2. In a November 2007 memo (exhibit E ) from the developer's archeologist to Ed Mountford et al in which it was disclosed that the following had been recovered at the Brightwater site. The following is stated:

- There are 87 human remains that need to be reburied
- There are 83 prehistoric features that were uncovered with the burials
- There are 4,217 artifacts that were found during grading monitoring on ORA 83
- There are 1,622 artifacts that were found during the grading monitoring ORA 85
- There are approximately 2,000 boxes of materials
- There are over 100,000 artifacts that have been collected.

2. April 2008, the Bolsa Chica Land Trust filed a public records request from the Coroner of Orange County to determine how many reports to the Coroner of human remains had been made as a result of the archeological work at Brightwater. The request was for any findings from 1990 until present. The Land Trust was provided with records for only 6 cases since 1990 to present relative to ORA 83 and 85: (Exhibit F )

- 9/30/93 Case # 93-5868-LL reported 11/3/93
- 8/3/99 case # 99-05178me additional human remains found 11/29/99
- 11/4/99 Case # 99-07108-LL reported 11/5/99
- 3/30/00 Case # 00-02277-RO reported 4/4/00
- 4/27/00 Case # 00-02791-LY reported 4/27/00
- 6/12/02 Case # 02-03972-GA reported 6/14/02

3. May 22, 2008 letter to Rebecca Robles, Acjachemen Nation, from NAHC staff refers to the following Coroner reports (Exhibit G):

- April 19, 2008 "concerning sets" of Native American human remains that were originally reported to NAHC December 17, 2007 as 87 sets of burials of Native American human remains. When were these remains found??
- August 19, 2006
- June 22, 2003 date Most likely descendant contacted June 22, 2006
- September 6, 2001
- January 16, 2001
- May 2000
- May 2000

These Coroner reports were not included in response to the request of the Land Trust.

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4. In an April 4, 2008 letter to Anthony Morales from staff at NAHC (Exhibit H), the following concerns are raised;

- The issue of reburial of the remains and all associated grave good is to occur after documentation is complete.
- ORA 83 is a sacred cemetery- "In the project archaeologist's memorandum to the company, dated January 17, 2007, it refers to a February 3, 2007 ceremony and assumed reburial ( see Exhibit E) this action would be after AB2641 extending the definition of a cemetery and a place with "multiple burials" to private land." "Therefore, considering the 87 burials from ORA -83, whose chronology is unknown or certainly unclear, and given the number of burials at this project site, how can one say that it is not a cemetery?"
- The developer has stated since 1992 that there were no human remains found on ORA 85. Yet in a memo from Nancy Wiley to Ed Mountford, Ms. Wiley states "Ted and I will wrap each burial with its grave goods.... Each individual will be wrapped again in colored burlap coded to male (blue), female (red) and unknown (beige). Children will additionally have a color separation or other designator."
- In an email message of 12/6/07 the developer's archeologist (Nancy Wiley), when asked by the NAHC staff when the human remains were found, told the staffer that "Ed Mountford has said that I cannot prepare a chronology for you until he talks to his lawyer- Susan Hori." ( Exhibit H )
- " While the NAHC and her archeologist peers may disagree with the manner in which Dr. Wiley and SRS have managed this project, the NAHC and others would not have the hard facts of the **174 burials discovered; 87 still to be re-buried; the number of cogged stones (over 400), the 100,000 artifacts and thousands of archeological features of significance**, had not Dr. Wiley provided the information to the NAHC." (Emphasis supplied)

5. In an April 8, 2008 letter to the Commission, Larry Myers from the NAHC (Exhibit I) states the following:

- **"The NAHC has not received a report clearly showing the dates, locations and details of burial discoveries. At this point based on information available and the large number of burials recovered and associated items, it appears that the whole area may be a burial ground.** Southern California Indians created and used discrete areas as cemeteries. The NAHC understands that the Coastal Commission will be reviewing its permit for the Brightwater Project. The NAHC suggests that the Coastal Commission consider requiring some sort of guarantee or performance bond in order to assure that all required

ATTACHMENT NO. 5.123

reports are provided on a timely basis and that documentation is completed and reburials of remains and artifacts occur as agreed.” (Emphasis supplied)

In addition, even if the Commission had received all information known to exist by the developer and developer’s consultants, Commission review of Permit 5-05-020 would still be in order in accordance with Special Condition #23, adopted by the Commission on October 13, 2005 as outlined below:

1. In accordance with 23.A.3, artifacts were to be tested. The time frames are unclear. The Executive Director is to determine if the resources are significant. This implies that the Executive Director would be informed immediately. We do not believe that the Executive Director was informed as the project progressed.
2. In accordance with 23.A.4, construction is to cease if artifacts or human remains are found during construction, until allowed to proceed by the Executive Director per Condition 23.C. We do not believe that the Executive Director was informed of the excavation of human remains during grading.
3. Per condition 23C, work may recommence after reporting the find to the Executive Director, and approval of a significance testing plan by the Executive Director. We are not aware of such a plan being approved.
4. Per Condition 23C, if the Executive Director determines that the measures recommended in the testing plan require more than minimal changes from previously approved plans, the Commission must approve the changes.
5. Per Condition 23.A.6, Hearthside is to comply with all applicable state and federal laws. Based on a review of the coroner reports and the NAHC letter of May 22, it appears that there was a three year time lag (2003-2006) in reporting in at least one case (p.13 of pdf file). Other sheets do not provide complete data as to date of find and date of report.
6. In accordance with 23.B, construction is to cease if artifacts or human remains are found during “the course of the project”, and a fifty foot wide buffer is to be provided. Construction may only recommence if approved by the Executive Director. (Condition 23.D).
7. Per condition 23D, work may recommence after reporting the find to the Executive Director, and approval of a Supplementary Archaeological Plan by the Executive Director. We are not aware of any such Supplementary Plan.

The issue comes down to “what did they know and when did they know it”? Based on dates of 2003, 2001, etc as to the date of find on materials cited above, it appears that at least some of the finds were known to the applicant. Unfortunately, not all of the forms are completely filled out with dates.

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We request the Commission to investigate whether or not complete information was provided with the Brightwater application. We request that the Commission review and determine if any testing plan or supplementary plans were prepared in accordance with Condition 23C and 23D as discussed above. Further, according to Special Condition #23 subsection D and E, the NAHC is to be given the opportunity to review and comment on all plans required to be submitted pursuant to this special condition. We are not aware that such plans exist or were reviewed.

The information referred to above became known to the undersigned in February of 2008. We have been researching the facts about the above project since that date and believe that we have exercised due diligence.

Thank you for your consideration in this matter.

Sincerely,

Alfred G. Cruz, Jr. Juaneno Band Mission Indians  
Rommel Cruz, Juaneno Band Mission Indians  
Richard Silva, Juaneno  
Miles Harry, Paiute/ Lakota  
Rhonda Robles, Juaneno Band of Mission Indians, Acjachemen Nation  
Louis Robles, Jr. Juaneno Band of Mission Indians Acjachemen Nation  
Alfred G. Cruz, Sr. Juaneno Band of Mission Indians  
Lloyd Valenzuela Acjachemen  
Susan Diaz, Chumash/O'odham  
Christopher Diaz, Chumash/ O'odham  
Raymond Diaz, O'odham/ Mayo  
Lenore Vega, Chumash/ O'odham  
Angel Diaz, Chumash/O'odham/Taiwanese  
John Moreno, Chumash/Tohono/Akimel O'odham  
Ted Vega, Chumash/ Taino  
Georgiana Sanchez, Chumash/ O'odham  
Roger Leon, Chumash  
Cindi Alvitre/ Tongva  
Susana Salas, Yaqui  
Paul Moreno, MicMac Nation  
28872 Escalona Drive, Mission Viejo, CA 92692  
Professor Patricia Martz, California Cultural Resources Preservation Alliance  
Box 54132 Irvine, CA. 92619-4132  
Gerald Chapman, Bolsa Chica Land Trust  
5200 Warner Ave, #108, Huntington Beach, CA 92648  
Over 500 signatures on petitions attached exhibit J

ATTACHMENT NO. 5.125

Professor Patricia Moritz

California Cultural Resources  
Preservation Alliance

Box 54132 Irvine, CA 92619

Patricia Moritz

Paul R Moeno

28872 Escalona Dr  
Mission Viejo, CA 92692

MicMac Nation

Bolsa Chica Land Trust



5200 Warner Ave #108  
Huntington Beach, CA  
92649

Susan Diaz Chumash / O'odham

Christina Diaz Chumash / O'odham

Raymond Diaz O'odham MAYO

Frederick Diaz Chumash / O'odham

Angel Diaz Chinast / O'odham / Taiwanese

John Moore Chumash / Tohono / Akimel O'odham

Joe Day Chumash / Tohono

Sergio Lopez Chumash / O'odham

Robert Jean Chumash

Cindi Alvitte Langda

Duane Lopez Yji

Alfred M. Coy Jr. Juaneno Band Mission Indians

Rommel Cruz Juaneno

RICHARD SILVA JUANEÑO

MILES HARRY PAIUTE/LAKOTA

Rhonda Robles Juaneno Band of Mission Indians  
Acjachemen Nation

Louis Robles Jr Juaneno Band of Mission Indians  
Acjachemen Nation

Alfred G Cruz Jr Juaneno Band of Mission Indians

Greg Valenzuela Acjachemen

**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 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;
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 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 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 archaeologist 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

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**

PRIOR 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 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.

**IV. Revised Findings and Declarations**

**Staff Note:** These revised findings include the staff's recommended findings that were set forth in the April 1, 2005 staff report and the April 13, 2005 addendum for the April 14, 2005 hearing for coastal development permit application 5-05-020. When the Commission approved the permit, it also modified staff's recommended Special Conditions. The portions of the findings that the Commission rejected are crossed-out: ~~rejected portions~~. The supplemental findings added in support of the Commission's April 14, 2005 action are identified with underlined text.

The Commission hereby finds and declares:

**A. DESCRIPTION OF PROPOSED PROJECT AND PROJECT SITE**

Bolsa Chica Mesa is made up of a lower bench and an upper bench (also referred to as the lower mesa and upper mesa) separated by a gentle slope. The upper bench is located adjacent to and south of Los Patos Avenue and west of Bolsa Chica Street in the unincorporated area of Bolsa Chica, County of Orange. Although the majority of the upper bench (105.3 acres) is located within the unincorporated Bolsa Chica area of Orange County, approximately 0.95 acres in the northeasterly corner of the Brightwater development is located within the corporate boundaries of the City of Huntington Beach (Exhibit 1). Huntington Beach has a certified Local Coastal Program. Therefore, the City of Huntington Beach would be the agency to which the applicant must file a coastal development permit application for these nine homes. The site is surrounded on the north (across Los Patos Avenue) and northeast by (the Sandover development in the City of Huntington Beach) residential development, the Goodell property and Bolsa Chica Street;

PAONE  
CALLAHAN  
McHOLM  
& WINTON  
LAWYERS

B

THOMAS P. APLIN  
ROBERT E. CALLAHAN  
JIM CHIBOUCAS  
SUSAN K. HORI  
RAYMOND KING  
JOHN LEHR\*\*

STEVEN A. McHOLM  
KATHLEEN CAROTHERS PAONE  
TIM PAONE  
DANIEL K. WINTON  
RENE E. ZIEBARTH

\*\*ALSO ADMITTED IN DISTRICT OF  
COLUMBIA  
\*\*ALSO ADMITTED IN NEW YORK

July 27, 1992

Ms. Cindi M. Alvitre  
Gabrielino Tribal Council  
2462 Avocado  
Riverside, California 92507

Re: Bolsa Chica Archaeology

Dear Cindi:

Following up on our recent telephone conversations, I have compiled some information for you regarding the Bolsa Chica archaeological sites. First, I am enclosing a copy of the most recent draft of the Reburial Agreement for your review. I hope that some of the changes which have been made address your concerns. The revised agreement provides for reburial on the Huntington Mesa on the Bolsa Chica property. It also clarifies the hold harmless provision. As we discussed, we wish to avoid the situation where we have arranged to rebury the artifacts and human bone fragments in accordance with your wishes, but then are faced with other Native Americans claiming to be the most likely descendants and who hold up resolution of these issues. In the event that occurs, the agreement asks that you and David Belardes resolve the issue of most likely descendants and appropriate representation among the tribal members and that the landowner not get involved in having to choose between one representative or another.

Second, I have enclosed maps of the site showing the location of the various archaeological sites. The site that is currently being excavated is ORA-83. As you know, other sites on Bolsa Chica Mesa have already been fully excavated and mitigated (ORA-289, ORA-78, and ORA-85). Raymond Belardes served as the Native American monitor on all of those excavations. No human remains were found during the course of any of the excavations. All of the material which was recovered, i.e., shells, beads, etc. are in the possession of the landowner or the archaeological consultant.

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Ms. Cindi Alvitre  
July 27, 1992  
Page 2

Third, you asked about the status of the environmental impact report for the project. The City of Huntington Beach and the U.S. Army Corps of Engineers are jointly preparing an environmental impact statement/environmental impact report (EIS/EIR) for the project as the project includes both the annexation of the property to the City and approval of a local coastal program as well as the issuance of a Section 404 permit by the Corps to conduct work in waters of the United States. The City and Corps have estimated that the Draft EIS/EIR will be published sometime in August 1992. I will see to it that you receive a copy for your review.

Fourth, you asked about the ownership of the property. The property is owned by the Signal Bolsa Corporation. Signal Bolsa Corporation is a wholly-owned subsidiary of a corporation known as the Bolsa Chica Corporation. The Chief Executive Officer of the Bolsa Chica Corporation is Michael Dingman. Because the Bolsa Chica Corporation is headquartered on the East Coast, the Bolsa Chica Corporation has hired The Koll Company, an Orange County-based development company to oversee the day-to-day management of the project. The Chief Executive Officer of The Koll Company is Donald Koll. The President of The Koll Company is Ray Wirta and the President for Southern California Operations, under whose direction the Bolsa Chica project falls is Richard Ortwein. The project manager for the Bolsa Chica project is Lucetta Dunn who is Senior Vice President of The Koll Company. (Ms. Dunn was formerly an officer and general counsel to the Signal Bolsa Corporation.) Assisting Ms. Dunn in managing the project is Mr. Larry Brose, Vice President of The Koll Company.

In terms of the archaeology issues, Ms. Dunn will be the signatory on the reburial agreement for The Koll Company and the Bolsa Chica Corporation. The agreement negotiations and any issues arising in connection with the archaeological work, such as the retention of a Native American Monitor, will be handled by Mr. Brose or myself. Therefore, if you have any questions regarding the project or The Koll Company's involvement, please feel free to contact either Mr. Brose at 833-3030 or me.

If you have any questions, or if we can be of any further assistance, please do not hesitate to contact either of us. After you have completed your review of the enclosed materials, and have had an opportunity to discuss these issues with members of your tribal council and

Ms. Cindi Alvitre  
July 27, 1992  
Page 3

David Belardes or Phil Ibanez, we would like to meet with you and Mr. Belardes to finalize the agreement and discuss any other issues that you or he may have with respect to the excavations.

Very truly yours,



Susan K. Hori

Enclosures

cc: David Belardes (w/enclosures)  
Nancy A. Whitney-Desautels, Ph.D. (w/reburial agreement)  
Lucy Dunn (w/reburial agreement)  
Darlene A. Shelley (w/reburial agreement)

**CALIFORNIA COASTAL COMMISSION**South Coast Area Office  
200 OceanGate, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-5071Filed: 3/11/05  
Approved: 4/14/2005  
Staff: TH-LB  
Staff Report: 9/22/2005  
Hearing Date: 10/13/2005  
Commission Action:**TH 11a****STAFF REPORT: REVISED FINDINGS****APPLICATION NUMBER:** 5-05-020**APPLICANT:** Hearthside Homes/Signal Landmark**AGENT:** Ed Mountford, Dave Neish, Donna Andrews, Susan Hori**PROJECT LOCATION:** 17201 Bolsa Chica Road, Bolsa Chica, Orange County

**PROJECT DESCRIPTION:** 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 project also includes the construction of 349 single-family homes and the construction of two local parks within the residential community. The 37.1-acre habitat area consists of a 29.2-acre coastal sage scrub and native grassland community located along the western and southern slope and bluff top edges and the construction of a 2.5-acre Los Patos Wetland and Southern Tarplant preserve. (The Los Patos Wetland and Southern Tarplant preserve is 2.5 gross acres and 2.9 net acres). The remaining 5 acres of the 37.1-acre habitat area is the existing Eucalyptus grove. Public access, including pedestrian, bicycle and vehicular access and public parking will be allowed throughout the community. Three vertical walkways providing resident access to the habitat trail will also be available to the public. The Los Patos Avenue frontage will also be widened, paved and landscaped creating 114 (unstriped) public parking spaces. The Tract Map also includes the creation of an 11.8-acre residual parcel located on the lower bench of the Bolsa Chica Mesa.

Grading consists of 440,000 cubic yards (220,000 c.y. cut, 220,000 c.y. fill). Infrastructure improvements include the construction of a 1.2-million gallon underground drinking water reservoir and aboveground pump station on 0.3 acres and a new 54" to 66" storm drain and rip-rap energy dissipater discharging treated runoff to the off-site Isolated Pocket Lowland area.

**DATE OF COMMISSION ACTION:** April 14, 2005**COMMISSIONERS ON PREVAILING SIDE:** Burke, Iseman, Kram, Kruer, Neely, Potter, Reilly, Secord, Shallenberger, Wan, and Chair Caldwell.ATTACHMENT NO. 5.139

## I. CULTURAL RESOURCES

Section 30244 of the Coastal Act protects cultural resources in the coastal zone and states:

*Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.*

Coastal Act Section 30244 states that reasonable mitigation measures shall be required where development would adversely impact identified archaeological resources. The applicant contends that the Brightwater development project will not adversely impact either of the two on-site identified archaeological sites due to the fact that a series of measures to mitigate the impacts of future development have been implemented completely in the case of ORA-85, and at the time of the October 2004 hearing, 97% complete in the case of ORA-83<sup>12</sup> as approved by the County of Orange, and the Coastal Commission. The coastal development permits and other actions that have been taken by the Coastal Commission for ORA-83 and ORA-85 are reviewed below. Despite the fact that approvals were obtained from the County and the Commission for complete recovery of cultural resources, as proposed by the applicant, and archaeological testing and recovery work has been on-going since the mid-1980's, under these permits, there still remains considerable opposition to removal of the cultural resources of ORA-83.

During the preparation of the staff report for the October 2004 hearing, Commission staff received several letters from archaeologists, including university professors, and several letters from environmental groups, Native Americans, and individuals calling for the preservation of ORA-83, even though they are aware that a full recovery program for the site has long since been approved. Staff received a copy of a 1999 letter from the head of the archaeology division of the Smithsonian National Museum of Natural History supporting the preservation of what remains at ORA-83 and a 2001 letter from Congresswoman Loretta Sanchez supporting the listing of ORA-83 in the Federal Register as a National Historic Site. Some request that the site be capped and left as open space after the data has been recovered, instead of allowing residential development at the site of an identified prehistoric and historic cultural resource. While others suggest that further destruction of ORA-83 be avoided, relocation of proposed development away from ORA-83. Yet others assert that recent mechanical excavations at ORA-83 have revealed the presence of numerous semi-subterranean house pit features at the base of the site, beneath the midden deposit and contend that this feature represents a new, significant area of needed research. Although the Commission approved the full recovery of ORA-83 as proposed by the applicant in the previous permits listed below, the Commission finds no evidence in the record of those permits at the time of their approvals that the "semi-subterranean house pits" were known or expected to exist, beneath the shell midden.

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<sup>12</sup> "Archaeological Site CA-ORA-83: The Cogged Stone Site, Synopsis: A History of Archaeological Investigations, Nancy Anastasia Desautels, PhD, Scientific Resources Surveys, Inc., Project No. 926, April 28, 2003.. "Archaeological Site CA-ORA-85: The Eberhart Site, Synopsis: A History of Archaeological Investigations, Nancy Anastasia Desautels, PhD, Scientific Resources Surveys, Inc., Project No. 926, September 2003.

The July 10, 2003 brief update statement by the applicant's archaeological consultant, signed by the three current peer reviewers stated that, "The Peer Review Committee members, over the last several years, have overseen the nature of the ongoing phases of the Ora-83 site investigation and had made recommendations on strategies appropriate to address the unusual breadth of the emergent field discoveries." The update further states that the "special new topics" evolving at Ora-83 include, "describing and evaluating the patterns of the multitude of semi-subterranean 'house pit' features revealed." Professor Pat Martz, a past member of the California State Historical Resources Commission states in revisions to her 2001 nomination of ORA-83 for listing on the National Register of Historic Places to the State Historic Preservation Officer, that house pit structural features are rarely found in Southern California and are extremely rare since the site was occupied during the Early Holocene/Millingstone Horizon of California prehistory. Semi-subterranean house pits are large circular depressions that were excavated below the surface a few feet and framed with poles and then thatched. Under normal climatic conditions (not consistently dry, or consistently wet) organic materials would not preserve. It is likely that the house pit structures would have a hard packed floor, post-holes and a hearth. Professor Martz contends that these house pit features are probably still present at the base of the site and that these semi-subterranean house pits have the potential to address important questions regarding village structure, social organization, settlement patterns, gender activities, and demographics, as well as relationship of the structures to astronomical features.

In November 2004 Commission staff accompanied the applicant and their consulting team on the project site to revisit a number of issues that had been raised at the October 2004 Commission meeting. At that time staff verified that the house pits had all been excavated and backfilled.

Archaeologists have recognized the astronomical significance of numerous archaeological sites in Southern California for more than 25 years and celestial observations have been conducted at several archaeological sites. Recently, among both scientists and Native Americans, there has been a growing interest in studying ORA-83 to determine if the site was a key location in the complex spiritual/philosophical system of knowledge regarding the Cosmos held by prehistoric Native Americans. Beginning in 1994, a Cogged Stone Site study team, made up of scientists and Native Americans, has tested its astronomical research design for ORA-83 several times. The According to Dr. Martz, the team proposed that the view from the elevated mesa encompasses geographic features that ethnographic data suggest may have functioned as cyclical astronomical alignments such as Catalina Island to the southwest and Point Fermin Heights to the west. The team discovered that the sun sets over West End Point of Santa Catalina Island for three days in late December, signaling the winter solstice, and that it rises directly over the Point Fermin Heights to indicate the spring and fall equinoxes. The Commission has found no evidence in the record of the previous permits that the approved mitigation measures were for impacts to archaeoastronomical resources.

A Native American from the Band of Luiseno Mission Indians, representing the Maritime Shoshone, Inc, a not-for-profit Native corporation, has sought to preserve a 7.4 acre portion of ORA-83 for its archaeoastronomical value. In Ms. Jeffredo-Warden's May 2004

nomination submittal to the State Historic Preservation Officer for listing of the site on the National Register of Historic Places she states that the archaeological and archaeoastronomical data obtained at the CA-ORA-83 site, dated from 8,660 to 1,098 RYBP, evidently constitutes, in addition to the earliest reliably dated observatory site in North America, one of the earliest fixed astronomical observation points in the world. At the time of the October 2004 hearing, Ms. Jeffredo-Warden was also requesting that the Coastal Commission preserve a 7.4-acre portion of ORA-83 in order to conduct additional astronomical tests and to do further research on the site as well as the preservation of the existing site contours to preserve the existing solstitial alignments and Ms. Jeffredo-Warden submitted a copy of the nomination to the Commission. A letter was received from Senator Diane Feinstein, dated August 4, 2004, urging the Commission to fully consider the concerns raised by Ms. Jeffredo-Warden regarding appropriate mitigation for cultural resources of ORA-83. Several letters of support of the archaeoastronomical resources preservation were received from, including but not limited to, professors of archaeology, the director of the Griffith Observatory and the International Indian Treaty Council (these letters were attached as exhibits as well as the public portion of Ms. Jeffredo-Warden's nomination of the site to the State Historic Resources Commission to the staff report for the October 2004 hearing).

Ms. Jeffredo-Warden is also a trained anthropologist and folklorist. She has been working for several years with Mr. C. Thomas Hoskinson, among others, a mathematician, aerospace engineer/scientist, and author of numerous professional papers on rock art and Native American astronomy regarding the archaeoastronomical significance of ORA-83 and the project site. Mr. Hoskinson is nationally recognized and regarded as a founder of California archaeoastronomy (Exhibits 30 and 31). The credentials of the members and consultants of the Maritime Shoshone, Inc. are detailed in the Attachments to Exhibit 31. Based upon the research and investigations of Jeffredo-Warden and Hoskinson, Paul Kleven, on behalf of Ms. Jeffredo-Warden and Maritime Shoshone, Inc. submitted a letter dated April 6, 2005 challenging the statements made by Ms. Martz and the applicant's archaeological consultants, SRS, contained in the staff report, among other things (Exhibit 30).

On April 12, 2005 staff also received a letter from Amy Minter on behalf of Maritime Shoshone Inc. objecting to the appropriateness of the Brightwater development project without what they believe to be adequate feasible mitigation to the archaeoastronomical significance of ORA 83. The letter, Exhibit 32, included in this exhibit package, cites many of the same issues as Exhibits 30 and 31, including recommending additional mitigation measures and goes further to include a map asking for further protections. Staff also received a letter on April 12, 2005 from the State Office of Historic Resources, Exhibit 33. in which they clarified their conditional action on November 5, 2004.

On November 5, 2004 the State Historic Resources Commission conditionally moved to recommend that the State Historic Preservation Officer submit the nomination to the Keeper of the National Register for a determination of CA-Ora-83's eligibility for inclusion in that register (Exhibit 13). The November 5<sup>th</sup> action went on to say that, "The Commission agrees that the property is eligible at the national rather than the state level of significance" and then set out five conditions that need to be met, including the completion of the revisions and the submittal of the registration form to the Keeper no later than May

5, 2005. The third condition of the motion dealt specifically with the significance of the site as a prehistoric archaeoastronomical observation point, stating that the case should be made more of a consideration rather than a major aspect of the property's significance (Exhibit 13).

The applicant has submitted several letters in rebuttal to the statements of the archaeoastronomical significance of the site. The applicant contends that several studies, over a period of years, were done and no archaeoastronomical significance was found to exist on the site. The applicant's archaeologist has submitted a letter to this effect, signed by the three peer reviewers, agreeing that the project site was found to possess no archaeoastronomical significance. Ms. Jeffredo-Warden has countered that neither the applicant's archaeologist nor any of the three peer reviewers have expertise in this field.

Pursuant to Section 30244 of the Coastal Act the Commission must decide whether the proposed project would adversely impact identified archaeological resources. If such a finding is made, reasonable mitigation measures shall be required. As stated above, and as detailed below, the Commission has granted the applicant and previous land owners several coastal development permits to carry out extensive archaeological research, testing and full recovery of ORA-83 and ORA-85. Though some features were not specifically discussed in the research design application submittals, the peer review committee required by the Commission often requested that the applicant carry out additional investigations to ensure that no resources were overlooked in order to get a full understanding, as much as possible, of the past. The applicant is proposing to leave in open space that portion of ORA-83 that lies within their proposed Eucalyptus Tree and Burrowing Owl ESHA buffers. The area would become a part of the proposed coastal sage scrub and native grassland habitat creation and monitoring plan and include a public trail and fuel modification in the upper portions. Therefore if the Commission requires that this area be preserved as open space to protect the raptors that use the Bolsa Chica Mesa as detailed in Section D of this staff report, a portion of ORA-83 will be preserved. Further, Exhibits 18, 19, and 22 and 23 are letters from Native Americans, including the Acjachemem Nation, Ancestor Walk Coordinator, and from the president of the California Cultural Resources Preservation Alliance (CCRPA), an alliance of American Indian and scientific communities working for the preservation of archaeological sites and other cultural resources. They request the Commission impose a 100 meter setback or "the greatest open space possible". However, the Commission finds that the applicant's proposed 150 to 382 foot wide open space area for habitat protection purposes under Section 30240 of the Coastal Act can also serve to further protect the area previously used as a prehistoric and historic archaeological site and is therefore consistent with Section 30244 of the Coastal Act.

As stated above, and submitted in Exhibits 30, 31 and 32, Maritime Shoshone Inc. has submitted significant research and investigative material concerning the archaeoastronomical significance of a portion of the project site based on extensive experience in the field. They are requesting additional mitigation beyond that recommended by staff and is detailed in Exhibits 31 and 32. They further request access to the portion of ORA-83 inside of the fenced mesa area in order to verify the observation area. Additional mitigation includes, but is not limited to, no grading or changing of existing

Special  
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23

elevations, and no benches, or public trails within the observation area. Exhibit 32 includes a map of additional area to be considered.

The Native American Heritage Commission sent a letter to the Commission during its October 2004 deliberations requesting that that the Brightwater project includes interpretive signage along the Mesa detailing the area's prehistoric and historic history. Finally, the above letters also request signage concerning the Native American past of the site as well as dissemination of the wealth of knowledge that has been gained over the two decades of study at the site and curation of the appropriate portions of the artifacts recovered from the site. Only as conditioned to place appropriate interpretive signage along the public trail informing the public of the cultural resources of the area, to disseminate the series of required final reports to institutions and interested groups, to curate the artifacts recovered from the site in a facility in Orange County meeting established standards, and to have an archaeologist and Native American monitor present when grading operations commence to ensure that if any additional cultural resources are found there are procedures in place to go about determining the significance of the resources and to ensure that work can proceed without adversely impacting archaeological or paleontological resources.

#### **Description and Status of ORA-83**

ORA-83 is 11.8 acres in size and is located at the southeastern bluff edge of the Brightwater. ORA-83 is commonly known as the Cogged Stone Site, and consists of a shell midden. Cogged Stones are unusual artifacts that are manufactured and used in ceremonial practices. More Cogged Stones, over 400 or roughly half of the total found, have been found on ORA-83 than any other site and are thought to have been distributed throughout coastal and near-coastal California. Similar stones have also been found on the coast of northern Chile. It is also believed that the Cogged Stone site served as a ceremonial center and a center for the manufacture of the Cogged Stones. ORA-83 has been twice found by the State Historical Resources Commission to be eligible for listing in the National Register of Historic Places. However, the listing has been declined by the property owner.

According to the applicant's archaeological consultant, the site was 97% recovered at the time of the application submittal for the October 2004 hearing. Based on staff observations in November 2004 the site appears to be virtually 100% recovered

#### **Description and Status of ORA-85**

ORA-85, the Eberhart Site is described by Dr. Desautels of Scientific Resource Surveys, Inc. (SRS), as a shell midden located on the western edge of the Bolsa Chica Mesa. Knowledge of the Eberhart site has existed since the 1920's. Based on the numerous investigations of the site carried out by other researchers beginning in the mid-1960's and by SRS beginning in the 1980's, the Eberhart site was determined to be a residential base or village and was not a limited special-purpose shellfish gather and processing station. No evidence of ceremonial or other structures were found. Other than four quartz crystals, which may be evidence of ceremonial utensil manufacture, no obvious objects associated with religious ceremonies were recovered. Finally, no evidence of human remains in the

form of burials or cremations was found. However, over 2,000 artifacts, more than 1,500 fire affected rock, and thousands of faunal remains have been recorded at the site. Although analysis of the recovered material had not been completed as of September 2003, the applicant states that the approved testing and data recovery program approved by the Coastal Commission concerning ORA-85 in 1989 was completed in 1991.

**Past Coastal Commission Action Concerning Archaeological Resources on or Adjacent to the Brightwater Project Site**

The Coastal Commission reviewed and approved several coastal development permits and permit amendments for archaeological activity on and adjacent to the project site beginning in the early 1980's. The Commission also acted on a revocation request of one of the coastal development permits for activities within ORA-83 in 1999. Additionally, in 1994, at the request of the City of Huntington Beach, the Executive Director undertook an investigation and made a report to the Commission concerning ORA-83. The Coastal Development Permit actions and Executive Director report are reviewed below:

**5-83-984**

The first coastal development permit for archaeological activity on the project site was permit 5-83-984, granted to Signal Landmark on April 11, 1984 for Phase I of "Final Research and Data Recovery Program" on ORA-83, known as the Cogged Stone Site. The archaeological testing program was a five-step program which involved (1) an extensive survey and evaluation of all recorded prehistoric sites (done in 1970); (2) a series of archaeological test excavations (done between 1971 and 1975); (3) an evaluative report based on a synthesized data from all test excavations (prepared in 1975); (4) an archival research focused on understanding the nature and extent of man's historic disturbances of the site with particular emphasis on delineating portions of the site likely to be least disturbed and worthy of further archaeological work (undertaken in 1981 and 1982); and (5) a final research and salvage program to define the remaining remnants of archaeological midden which still existed on the subject site. This permit was to allow the applicant to do further testing in order to determine the nature of the relationship between the surface concentration of cogged stones (that had been long since collected) and the underlying midden deposit (that had been heavily disturbed). The permit dealt with two main areas within ORA-83: the plowed field and the area around the eucalyptus grove. It was determined that the greatest amount of cultural material (which consists mostly of shell) was located within the eucalyptus grove since the presence of trees discouraged grading and plowing over the years. The narrow strip of land directly adjacent and north of the trees and a small area east of the grove were determined to contain shallow deposits of basal midden.

The Commission imposed one special condition on permit 5-83-984. The Commission required that the Archaeological Research Design be modified to provide (1) clarification that preservation of all or part of the site may be appropriate depending on the results of the exploratory phase of the investigation; (2) clarification that the augering program was principally for delineating site boundaries; (3) definition of the term "disturbed" as used in the research design, and (4) provision for Executive Director review and approval of the

work planned in subsequent tasks after Task 5 (Auger Program) and Task 7 (Hand Excavation Units – Initial series).

Prior to the issuance of this permit in 1984 the Research Design for the first phase of the project came under much scrutiny and opposition by the general public, several archaeologists and Native American groups as well.

5-83-702-A3<sup>13</sup>

85 *Insua will get back to me.*

The first coastal development permit for archaeological activity at ORA-85 the Eberhart Site, and ORA-289. The Signal landmark permit amendment for a testing and evaluation program for the two archaeological sites became effective on August 23, 1988, after no objection was received of the Executive Director's determination that the permit amendment was consistent with the Coastal Act.

5-89-772

83

This coastal development permit application, granted to Signal landmark Inc. on December 14, 1989 approved Phase II of the Final Research and Salvage Program for ORA-83, the Cogged Stone Site. This work represented the second half of the last stage of the five step archaeological program for ORA-83 that began with the work approved under permit 5-83-984 in 1984. One key element of the program was to ensure that it contributed to the understanding of history or prehistory through a carefully thought out research design. By the time of this application, ORA-83 had been nominated for inclusion in the National Register of Historic Places and was recommended for this designation by the State Historic Resources Commission on November 4, 1982, based on the significance of the archaeological artifacts the site had produced.

The coastal development permit approved the excavation of 17 two-meter by two-meter hand units in six areas within the eucalyptus grove of the upper bench of the Bolsa Chica Mesa. However, if features or in-place cogged stones were found during the approved excavations, the excavation of additional intervening units would be allowed, if needed, in order to fully expose, document and remove those resources. The excavation of up to 12 additional units was authorized by the permit. The Commission imposed one special

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Coastal development permit application 5-83-702 and permit amendments 702-A and 702-A2 did not involve activity within any archaeological site. They were approved between September, 1983 and September, 1987 authorizing geotechnical trenching and soil borings to determine the location of faults and to gather other geotechnical information on the Bolsa Chica Mesa and the Lowlands. The original 1983 permit was granted to Signal Landmark and the Huntington Beach Company. The first permit amendment was granted to Signal Landmark and the permittee of the second amendment was Signal Landmark Inc. On behalf of Signal Bolsa Corporation.

ATTACHMENT NO. 5.146

condition on the permit requiring the submittal of written evidence that the applicant had retained a County certified archaeologist to monitor the work approved by the permit and the submittal of evidence that a copy of the report on literature and records search and field survey for the site had been reviewed and approved by the Orange County manager of Harbors, Beaches and Parks. Further, the applicant was required to demonstrate that the proposed project had received review from the above designated County official, from members of the Pacific Coast Archaeological Society (PCAS), and from the Native American Groups (more particularly those who belong to the Juaneno and Gabrielino tribes).

In an attempt to avoid the controversy that surrounded permit 5-83-984, Commission staff met with representatives of the Juaneno and Gabrielino Indian tribal groups and the applicant's consulting archaeologist to determine who would represent both tribal groups in monitoring the proposed excavations. The applicant also published a notice in a local newspaper of general circulation of its application for a coastal permit for the proposed project.

**5-89-772-A1**

83

The first amendment to permit 5-89-772 was issued on March 8, 1991. The applicant requested an amendment to the special condition of the original permit requiring the review of the proposed archaeological testing and recovery plan by members of the Pacific Coast Archaeological Society (PCAS) because they had reached an impasse with the members of the group. The dispute was over the percentage and extent of ORA-83 that should be examined. The applicant proposed to excavate only 7 acres of the 11.9-acre site because it was the least disturbed. PCAS wanted 100% of ORA-83 to be sampled, including the plowed field area and suggested that it could be done using a fine-scale operation with heavy machinery, removing thin layers at a time, under archaeological supervision.

The Commission ultimately modified the special condition, not by removing PCAS, but by providing that any comments by PCAS be reviewed by a three member peer review team. Further, any conflicts between PCAS comments and the applicant's archaeologist's scope of work was to be resolved by the peer review team and by the State Office of Historic Preservation.

**5-89-772-A2**

83

This amendment request was to delete the requirement of review by the State Office of Historic Preservation (SOHP) from the special condition. The requirement for SOHP review had been added in 5-89-772-A1 to help mediate disputes between the applicant's archaeologist and the PCAS reviewers. The applicant requested this change because there was a delay in getting SOHP to review and comment on the project. Initially the Commission decided that review by SOHP should not be eliminated because the agency had continued to express a desire to do so. However, ultimately the State Office of Historic Preservation sent a letter stating that they would not be able to review and comment on the project due to staffing shortages. The Commission then approved the requested amendment.

### **Executive Director Report to the Commission**

On February 28, 1994 the City of Huntington Beach requested that the Executive Director investigate and determine whether any of the Commission permits issued for testing and excavation within ORA-83 or the demolition of the adjacent World War II bunkers should remain in force or be rescinded. The Executive Director focused the investigation on whether there was any evidence that the permits were not in compliance with the terms and conditions of their approvals, and secondly, whether there was any merit to suspending any of the permits and processing a revocation request. The specific permits that were investigated were 5-89-772, as amended and 5-90-1143, a permit issued on September 27, 1991 for the demolition of the two World War II gun emplacements that were located adjacent to ORA-83.

The specific questions asked by the City to be investigated were: (1) was significant information concerning the presence of human remains on ORA-83 intentionally not disclosed; (2) why were the discovery of human remains not reported to the County Coroner over a year after the discovery, in violation of the applicable law that they be reported within 24 hours of discovery, (3) was there an attempt to circumvent the system and its definition of proper handling of human remains, (4) had proper procedures (daily logs, preservation techniques, disposition of artifacts and timely reports) been followed in the work conducted at ORA-83, (5) should ORA-83 be designated a cemetery and remain intact, (6) the scientific integrity and cultural sensitivity of personnel performing work at ORA-83 and whether their work had been monitored by appropriate State agencies on a regular basis, (7) should the Archaeological Information Center at UCLA receive the extensive information that had been obtained from the site, (8) should the site be placed on the National Register of Historic Places as was previously recommended, and (9) should there be better legislation to protect archaeological sites like ORA-83.

The Executive Director's response to many of the above questions was that they were beyond the purview of the Coastal Commission and that some of the issues raised should be addressed by the Native American monitors and/or peer review team that were required by the permits to be consulted in decisions regarding certain aspects of the development. The Executive Director concluded that the applicant was in compliance with the terms and conditions of both permits and that there was no merit to the grounds for processing a revocation request.

#### **R5-89-772**

Although Commission staff held meetings between the applicant and the affected Native American groups and required the review of the proposed work by PCAS, the controversy surrounding ORA-83 did not end. On November 3, 1999 the Bolsa Chica Land Trust filed a request with the Commission to revoke the Phase II approval of the final research and data recovery program permit. The contentions raised in the revocation request were: that further archaeological work, not in the immediate vicinity of the eucalyptus grove, and therefore beyond the approved scope of work was occurring; that the permitted work has been completed in its entirety for over five years, that the permit is also ten years old and