

White-tailed Kiwi (*Flanus leucurus*)



Villasenor, Jennifer

From: Korson, Susan
Sent: Friday, April 03, 2009 10:31 AM
To: Villasenor, Jennifer
Subject: RE: Goodell Property

Thank you so much for your nice reply! It just sounds to me like legalese in that they need to cover all the options and bases, so they leave it pretty open-ended.

Ever since they added all that development in the wildlife mesa behind my home, I don't even go out there anymore. In a way, the mesa disappeared, since all I see now is houses. I don't even think of it as a place to go for a walk anymore. Bummer....it was so relaxing and quiet to go walking out there. Thanks again for your time Jennifer!

Take care,
Susan

From: Villasenor, Jennifer
Sent: Wednesday, April 01, 2009 3:47 PM
To: Korson, Susan
Subject: RE: Goodell Property

Hi Susan,

The project is just a pre-zoning (designate zoning for the property) and annexation from the County into the City. No development is proposed. This is a correct statement. With the zones that are proposed, a portion of the site, zoned for residential uses, could potentially be developed with 22 units as well as a portion of the property proposed to be designated as open space could be developed with a bench and walking path in the future if the pre-zoning is approved in addition to a lot of other approvals that would need to occur. At this point we could not foresee what, if anything, the sight would be developed with, but the 22-units is the most intense use of the site that could possible happen in the future. I hope this answers your questions, but if you want to talk further, give me a call. I'm at extension 1661. Thanks.

Jennifer Villasenor
City of Huntington Beach
Planning Department

From: Korson, Susan
Sent: Tuesday, March 31, 2009 3:24 PM
To: Villasenor, Jennifer
Subject: Goodell Property

Hi Jennifer,

I'm one of your city co-workers (I work as a librarian in the Children's Library) as well as a resident of the area at the end of Bolsa Chica Street. I received one of those "Notice of Availability of a Draft Mitigated Negative Declaration for the Goodell Property Pre-zoning and Annexation" letters on Friday of last week. Normally I wouldn't care enough to bother you or write anyone to ask questions, but something here caught my attention. I hope you can help, and that my question is an easy one to answer! Here goes:

In the second from the last paragraph, last sentence, on page one, it reads: "No development is proposed for this site."

4/24/2009

ATTACHMENT NO. 4.59

However, on page two, second paragraph, it reads "**allowable uses for the site would include development of up to 22 dwelling units...**"

Unless I'm misreading this letter, don't these two sentences seem to contradict each other? I liked the idea of the bench and walking path for reflection and contemplation, mentioned in paragraph one. What happened to that idea? Are they developing or not developing? I'm confused.

Thanks for the clarification.

Sincerely,

Susan Korson
Children's Librarian
Huntington Beach Public Library/Resident of Bolsa Chica Street

4/24/2009

ATTACHMENT NO. 4.60

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.

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:

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).

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.

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.. .

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.)

...

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].)

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 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.

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

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).

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.

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:

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.

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.

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.

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.”

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.

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.

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.

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.

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.

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.

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.

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.

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.

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

Yours Truly,

Sandra L. Genis

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.

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

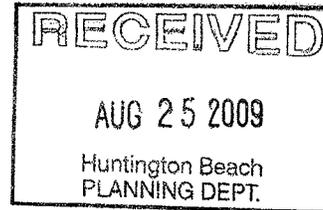
Isabelle M. Chasse
Sr. Underwriting Coordinator
Cypress CA 714-226-4829

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8/25/2009

ATTACHMENT NO. 5.1

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.

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.

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:

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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.)

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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).

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.

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:

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.

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.

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.

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.”

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.

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?

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.

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:

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.

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.

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.

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.

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.

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.

Climate Change

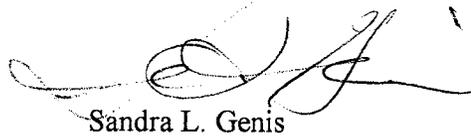
Development of the site will result in increased generation of greenhouse gases. In addition, development of the site will increase stress on wildlife species already subject to stress from changes in climate. Thus provision of adequate buffers is critical. The MND fails to address any impacts in relation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

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.

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

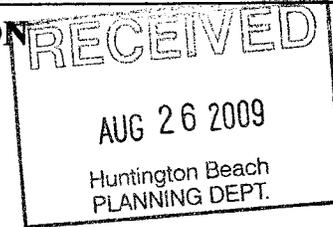
Yours Truly,

A handwritten signature in black ink, appearing to read 'Sandra L. Genis', with a large, stylized flourish extending to the left.

Sandra L. Genis

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.

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.

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.

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

ATTACHMENT NO. 5.11

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.

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

ATTACHMENT NO. 5.12



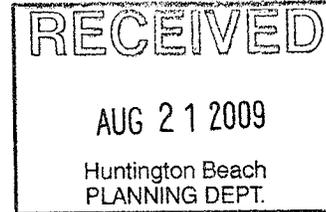
California Cultural Resource Preservation Alliance, Inc.

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 coggled stone site (CA-ORA-83). As the manufacturing place for the ancient stone sculptures known as coggled 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.

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.

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.

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.

ATTACHMENT NO. 5.13

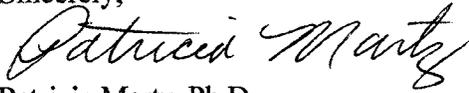
CCRPA

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. 5.14

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 manure that Pusch speculates was used in dyeing cloth, softening leather and fertilizing vineyards.

Pusch said the stable held up to 400 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 chariot factory 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 feet, 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. 5.15

Scientists Use Radar Beams to Reach for Tars

SEE Pg 2

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 cell-phone 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 Coryers 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 remains of

paleontologist Chris Shaw and anthropologist Manuel Flores pulsed 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.

Coryers 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," Coryers 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.

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



ATTACHMENT NO. 5.16

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...ing 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, the Wilshire Boulevard test indicated that there will be a role for radar when fossil excavation begins in the Lake Maracaibo region in late spring.

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.

...ing the ground radar. "I can see radio talk shows interfering with our signal here," 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.

Strong reflection

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

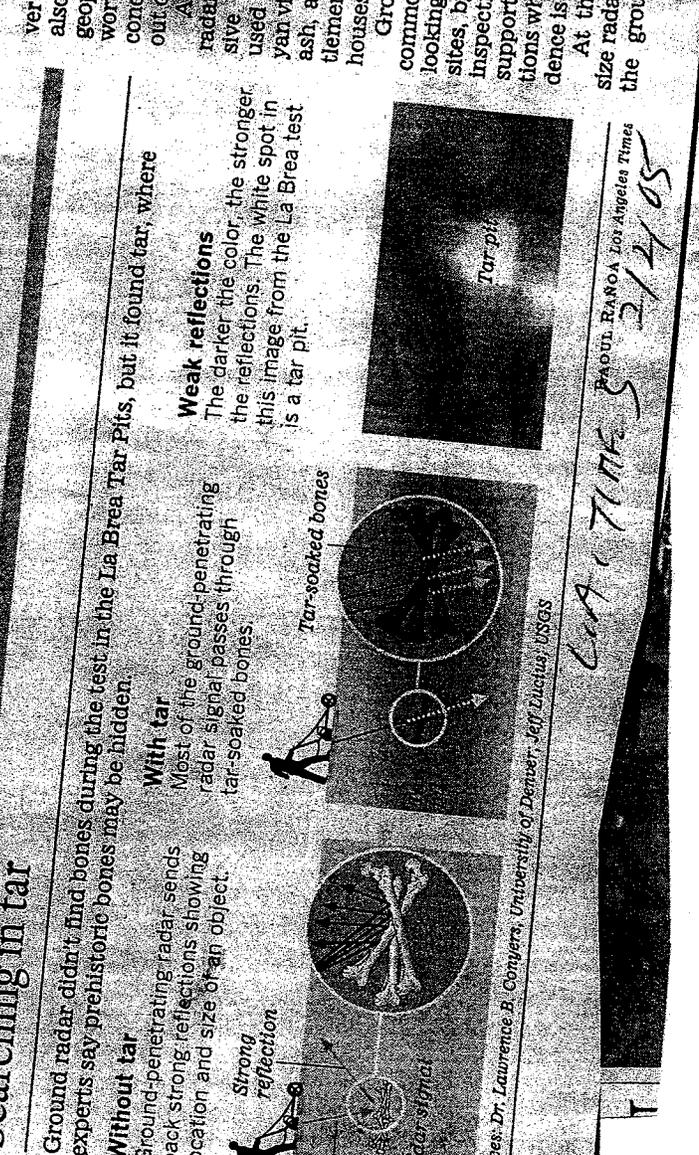
Weak reflections
The darker the color, the stronger the reflections. The white spot in this image from the La Brea test is a tar pit.

Tar-soaked bones

Tar pit

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

LA BREA TAR PITS
PAUL RAYON Los Angeles Times
3/24/05



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



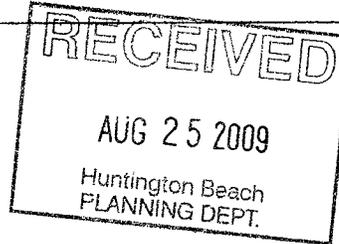
California Cultural Resource Preservation Alliance, Inc.

**P.O. Box 54132
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**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.

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.

Please give these recommendations your sincerest consideration.

Thank you,

Patricia Martz, Ph.D.
President

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

ATTACHMENT NO. 5.18



OFFICERS

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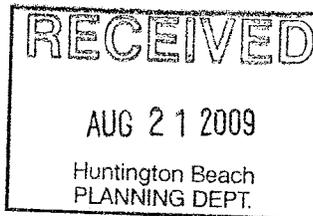
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ENDORSEMENTS

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

August 20, 2009



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,

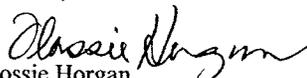
Attached you will find two documents.

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.

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
Executive Director

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. 5.20

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."

GODELL 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 HEARTHSIDE 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, 10th 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. 5.23

Page 2

The following are staff report sections and correspondence from applicant:

July 27, 1992 letter from attorney for Hearthside, 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. 5.26

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.

Page 4

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 goods 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. 5.28

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, Hearthiside 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.

Page 6

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. 5.30

Professor Patricia Montez
California Cultural Resources
Preservation Alliance

Box 54132 Irvine, CA 92619

Patricia Montez

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 Chumash / O'odham / Taiwanese

John Moore Chumash / Tohono / Akimel O'odham

Paul Diaz Chumash / Taivo

Sergio Lopez Chumash / O'odham

Robert Jean Chumash

Cindi Alvitte / Tongva

Diana Lopez Yuki

Alfred D. 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 D Cruz Jr Juaneno Band of Mission Indians

Sleep 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

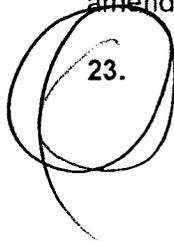
A. The heights of residential structures shall not exceed 35 feet above finished grade as shown on the final approved grading plan. Further, the heights of the residential structures that abut the Eucalyptus Grove ESHA buffer and the burrowing owl buffer shall not exceed the heights as proposed on the "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 archeologist and the Native American monitors and/or the MLD, both perspectives shall be presented to the Executive Director. The range of investigation and mitigation measures considered shall not be constrained by the approved development plan. Mitigation measures considered shall range from in-situ preservation to recovery and/or relocation. A good faith effort shall be made to avoid impacts to cultural resources through methods such as, but not limited to, project redesign, capping, and creating an open space area around the cultural resource areas. In order to protect cultural resources, any further development may only be undertaken consistent with the provisions of the final, approved, Supplementary Archaeological Plan.

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

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

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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ATTACHMENT NO. 5.41