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Staff: A. Willis-LB
 Staff Report: 8/30/12
 Hearing Date: 9/13/12

STAFF REPORT: Recommendations and Findings for Consent Cease and Desist and Consent Restoration Orders

Cease and Desist Order No:	CCC-12-CD-10
Restoration Order No:	CCC-12-RO-10
Related Violation File:	V-5-07-042
Property Owner:	Shea Homes Limited Partnership
Property Location:	Vacant properties at 17301 Graham Street, Huntington Beach; Orange County APNs 110-016-19, 110-016-20, and 110-016-23.
Violation Description:	Grading resulting in fill of wetlands.
Substantive File Documents:	<ol style="list-style-type: none"> 1. Public documents in Cease and Desist and Restoration Order files Nos. CCC-12-CD-10 and CCC-12-RO-10 2. 5-11-068 3. 5-10-258 4. Exhibits #1 through 5 and Appendix A of this staff report
CEQA Status:	Exempt (CEQA Guidelines (CG) §§ 15060(c)(2) and (3)) and Categorically Exempt (CG §§ 15061(b)(2), 15307, 15308)

SUMMARY OF STAFF RECOMMENDATION

Proposed Consent Orders

Staff recommends that the Commission approve Consent Cease and Desist Order No. CCC-12-CD-10 and Consent Restoration Order No. CCC-12-RO-10 (“Consent Orders”), addressing unpermitted grading resulting in fill of wetlands that occurred on vacant properties at 17301 Graham Street, Huntington Beach; Orange County Assessor Parcel Numbers 110-016-19, 110-

016-20, and 110-016-23 (“subject properties”)(Exhibit 1), all of which are owned by Shea Homes Limited Partnership (“Respondent”).

The subject properties are bounded by Graham Street to the east, the East Garden Grove Wintersburg Flood Control Channel to the south, the currently undeveloped sites immediately to the west known as the Goodell site and the Ridge site, and existing residential uses to the north. West of the Goodell and Ridge properties, is the site known as Brightwater, a development of 349 residential single family homes (approved pursuant to CDP No. 5-05-020). The Brightwater site, the Goodell property, and the Ridge property are located atop the Bolsa Chica mesa west of the subject properties. The Bolsa Chica Ecological Reserve is located south of the subject properties. This site is part of the extensive Bolsa Chica Wetlands complex, a remnant of the historic Santa Ana River/Bolsa Chica wetlands complex.

The City of Huntington Beach (“City”) has a certified Local Coastal Program (“LCP”) for this area. During the Commission’s review and deliberations on certification of the LCP, the Commission found that wetlands are present on site; these areas came to be known as the ‘EPA’, ‘AP’ and ‘CP’ wetland areas, which are described in more detail below.

Respondent has submitted CDP application No. 5-11-068 to obtain authorization for a 111-home residential development with associated infrastructure and amenities on the subject properties.

Through the Consent Orders, Respondent, although not admitting to any wrongdoing or liability under the Coastal Act, has agreed to, independent of the Commission’s action on Coastal Development Permit (“CDP”) application No. 5-11-068, resolve the issue of unpermitted grading and fill by removing unpermitted fill from wetlands on-site, restoring the 4 acre EPA wetland (Exhibit #2)¹ that was filled during Respondent’s ownership of the subject properties and restoring the 0.4 acre portion of the CP wetland (Exhibit #2)² that was filled by a tenant of the previous owner. Furthermore, under the proposed Consent Orders, Respondent will restore, create, and/or enhance additional wetlands on the subject properties and pay to fund additional wetland restoration off-site but still within coastal Orange County (See proposed Consent Orders attached as Appendix A).³

These Consent Orders are a result of a collaborative effort of Respondent and Commission staff to reach a consensual resolution focused on the restoration and protection of wetlands resources. Respondent has disputed that there has been any violation of the Coastal Act with respect to

¹ The EPA wetland is identified in Figure 6-1 of the document titled “Habitat Management Plan, Parkside Estates,” prepared by LSA Associates, Inc., for Shea Homes, dated September 2011 (“HMP”), as “4.0 ACRE SEASONAL WETLAND AREA TO BE CREATED PER HABITAT MITIGATION PLAN.”

² The CP wetland is identified in Figure 6-1 of the HMP as the “EXISTING CP WETLAND.” The 0.4 acre portion of the CP Wetland at issue is the polygon in Figure 6-1 immediately adjacent to the Existing CP Wetland identified as “WETLAND RESTORATION”.

³ As the Consent Orders provide, if CDP application No. 5-11068 is not approved and Respondent can demonstrate to the satisfaction of staff that restoration of wetlands pursuant to the proposed HMP is unworkable, Respondent will restore the EPA Wetland and the 0.4 acre portion of the CP Wetland on-site, provide for additional wetland restoration either on-site or elsewhere in coastal Orange County, and pay to fund further additional wetland restoration off-site but still within coastal Orange County. Such restoration activities and projects will be subject to staff’s review and approval.

the EPA Wetland or that Respondent was responsible for the fill in the 0.4 acre portion of the CP Wetland at issue, but in light of the proposed agreement reached with staff resolving these matters amicably, Respondent has agreed to these Consent Orders and, accordingly, that it will not contest the issuance of these Consent Orders or their enforcement.

Coastal Development Permit

The Commission is scheduled to hear Respondent's request for approval of CDP application No. 5-11-068 (to authorize development of the site with a 111-home residential development with associated infrastructure and amenities) at the October 2012 Commission meeting. Commission staff previously proposed approval of CDP application No. 5-11-068 with conditions and is proposing approval subject to the same conditions in the upcoming hearing as well. Issuance of these Consent Orders in no way limits any responsibilities Respondent may now have or may subsequently acquire to implement wetland and habitat creation, restoration, conservation, maintenance, management, and monitoring pursuant to any other Commission action, including the possible conditional approval of CDP application No. 5-11-068. Similarly, no future Commission action, including action on CDP application No. 5-11-068, limits the responsibilities Respondent has under these orders. If CDP application No. 5-11-068 is approved as proposed and conditioned, portions of the wetland restoration, enhancement, and creation envisioned by the terms of the "Habitat Management Plan" (see footnote 1) will be addressed by the permit conditions, in addition to these Consent Orders. These Orders are designed to be complimentary to any work which may be authorized under the CDP application. However, that does not affect the independent nature of each set of requirements. Similarly, if the CDP is not approved, the wetland restoration, enhancement, and creation requirements of these orders remain Respondent's freestanding obligations pursuant to the terms of these Consent Orders (see footnote 3).

Staff Recommendation

Commission staff has worked closely with Respondent to reach an agreement on Consent Cease and Desist Order No. CCC-12-CD-10 and Consent Restoration Order No. CCC-12-RO-10 to resolve the alleged Coastal Act violations, and staff recommends that the Commission approve the proposed settlement of these matters. Respondent, through these Consent Orders, has agreed to resolve all Coastal Act violation matters addressed herein, including resolving monetary claims under Coastal Act Sections 30820 and 30822, and will provide wetland restoration work and funding that will directly benefit wetlands on and in the vicinity of the site. Staff recommends that the Commission **approve** Consent Cease and Desist Order CCC-12-CD-10 and Consent Restoration Order CCC-12-RO-10 (attached as Appendix A) to address the unpermitted development, and the results thereof, as described below.

TABLE OF CONTENTS

I.	MOTION AND RESOLUTION	5
II.	JURISDICTION	5
III.	COMMISSION’S AUTHORITY	6
IV.	HEARING PROCEDURES	7
V.	FINDINGS AND DECLARATIONS	7
	A. DESCRIPTION OF UNPERMITTED DEVELOPMENT.....	7
	B. BACKGROUND.....	8
	C. BASIS FOR ISSUANCE OF ORDERS.....	9
	1. LEGAL STANDARDS.....	9
	2. DEVELOPMENT INCONSISTENT WITH COASTAL ACT.....	11
	3. CONTINUING RESOURCE DAMAGE.....	16
	D. CONSENT ORDERS ARE CONSISTENT WITH THE COASTAL ACT.....	17
	E. CALIFORNIA ENVIRONMENTAL QUALITY ACT.....	17
	F. CONSENT AGREEMENT: SETTLEMENT	17
	G. SUMMARY OF FINDINGS OF FACT.....	18

APPENDICES

Appendix A - Proposed Consent Cease and Desist and Restoration Orders

EXHIBITS

Exhibit 1	Site map and location
Exhibit 2	HMP Figure 6-1
Exhibit 3	October 25, 2007 memorandum from Commission staff ecologist
Exhibit 4	CDP No. 5-82-278
Exhibit 5	Aerial photograph of a portion of the area of the EPA Wetland and fill in the CP Wetland

I. MOTION AND RESOLUTION

Motion 1:

I move that the Commission issue Consent Cease and Desist Order No. CCC-12-CD-10 pursuant to the staff recommendation.

Staff recommends a **YES** vote. Passage of this motion will result in issuance of the Consent Cease and Desist Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Issue Consent Cease and Desist Order

The Commission hereby issues Consent Cease and Desist Order No. CCC-12-CD-10, as set forth below, and adopts the findings set forth below on grounds that development has occurred without the requisite coastal development permit, in violation of the Coastal Act.

Motion 2:

I move that the Commission issue Consent Restoration Order No. CCC-12-RO-10 pursuant to the staff recommendation.

Staff recommends a **YES** vote. Passage of this motion will result in issuance of the Consent Restoration Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Issue Consent Restoration Order

The Commission hereby issues Consent Restoration Order No. CCC-12-RO-10, as set forth below, and adopts the findings set forth below on the grounds that 1) development has occurred on the subject properties without a coastal development permit, 2) the development is inconsistent with the Coastal Act, and 3) the development is causing continuing resource damage.

II. JURISDICTION

The City has a certified LCP for this area. Once the Commission has certified an LCP, the local government obtains jurisdiction for issuing CDPs under the Coastal Act, and it has inherent (police power) authority to take enforcement actions for violations of its LCP. The Commission also retains enforcement authority to address violations under the conditions set forth in and as specified in Coastal Act Section 30810(a). However, the Commission has *unconditional* jurisdiction over this enforcement matter because at the time the unpermitted development occurred, the area of the subject properties where the unpermitted development occurred was an

area of deferred certification, and therefore, that area was not subject to local regulation under the City LCP.⁴

III. COMMISSION'S AUTHORITY

The Commission can issue a Cease and Desist Order under Section 30810 where it finds that the activity that is the subject of the order has occurred either without a required CDP or in violation of a previously granted CDP. The Commission can issue a Restoration Order under section 30811 of the Coastal Act if it finds that development 1) has occurred without a CDP, 2) is inconsistent with the Coastal Act, and 3) is causing continuing resource damage. These criteria are all met in this case, as summarized briefly, below, and discussed in more detail on pages 7-17 of this staff report.

The unpermitted activity that has occurred on the subject properties meets the definition of “development” set forth in Coastal Act Section 30106. Coastal Act Section 30600 states that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any non-exempt development in the Coastal Zone must obtain a CDP. The development was not exempt from permitting requirements and was undertaken without a CDP, in violation of Coastal Act Section 30600.

Not only does the unpermitted activity meet the definition of development as that term is defined in the Coastal Act, and therefore requires (but lacks) a CDP, but such unpermitted development is also inconsistent with the Chapter 3 policies of the Coastal Act, including Section 30231 (protection of biological productivity of coastal waters), Section 30233 (limiting fill of wetlands), and Section 30240 (protection of environmentally sensitive habitat areas or “ESHA”; including from adjacent developments), and policies within the City’s LCP, as fully discussed below.⁵

The unpermitted development has adversely impacted the resources associated with wetland habitat. Such impacts meet the definition of damage provided in Section 13190(b) of Title 14 of the California Code of Regulations (“CCR”), which defines “damage” as, “any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development.” If the unpermitted development, including, but not limited to, wetland fill, is allowed to remain unmitigated, its effects will lead to further adverse impacts (including the temporal continuation of the existing impacts) to water quality and biological productivity of wetlands and adjacent sensitive habitat.

⁴Although the Commission has direct enforcement authority in this matter, in the spirit of cooperation, Commission staff coordinated with the City, and City staff supported resolution of this matter through issuance of these Consent Orders, thus also satisfying the condition of Section 30810 for Commission action in an area covered by a certified LCP.

⁵ A description of the Chapter 3 policies of the Coastal Act and the City LCP policies that apply to the subject properties is provided in Section V of this staff report.

IV. HEARING PROCEDURES

The procedures for a hearing on a Cease and Desist Order and Restoration Order are outlined in 14 CCR Section 13185 and 14 CCR Section 13195, respectively.

For a Cease and Desist Order and Restoration Order hearing, the Chair shall announce the matter and request that all parties or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding, including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, at his or her discretion, to ask of any other party. Staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons after which time staff typically responds to the testimony and to any new evidence introduced.

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in 14 CCR Section 13186, incorporating by reference Section 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Consent Cease and Desist Order and Restoration Orders. Passage of the motions below will result in issuance of the Consent Cease and Desist Order and Consent Restoration Order.

V. FINDINGS FOR CEASE AND DESIST ORDER NO. CCC-12-CD-10 AND RESTORATION ORDER NO. CCC-12-RO-10⁶

A. DESCRIPTION OF UNPERMITTED DEVELOPMENT

The violations of the Coastal Act that formed the basis for these Consent Orders consist of development, as that term is defined in Coastal Act section 30106, on the subject properties that required a coastal development permit pursuant to the Coastal Act, but for which no such permit was obtained, including grading resulting in fill of the EPA Wetland (defined above) and a 0.4 acre portion of the CP Wetland (defined above), and change in the intensity of use of land associated with the conversion of the EPA Wetland and the impacted portion of the CP Wetland to upland.

⁶ These findings also hereby incorporate by reference the preface of the August 30, 2012 staff report (“STAFF REPORT: Recommendations and Findings for Consent Cease and Desist and Consent Restoration Orders”) in which these findings appear, which section is entitled “Summary of Staff Recommendation.”

B. BACKGROUND

The subject properties are located at 17301 Graham Street, Huntington Beach, Orange County. The properties are bounded by Graham Street to the east, the East Garden Grove Wintersburg Flood Control Channel to the south, the currently undeveloped sites immediately to the west known as the Goodell site and the Ridge site, and existing residential uses to the north (along Kenilworth Drive). West of the Goodell and Ridge properties, across Bolsa Chica Road, is the site known as Brightwater, a development of 349 residential single family homes (approved pursuant to CDP No. 5-05-020). The Brightwater site, the Goodell property, and the Ridge property are located atop the Bolsa Chica mesa west of the subject properties.

The Bolsa Chica Ecological Reserve is located south of the subject properties. The Bolsa Chica Ecological Reserve, a reserve operated by California Department of Fish and Game, consists of over 1000 acres of restored and historic wetlands that were part of an even greater expanse of historic wetlands that once covered roughly 4000 acres at the mouths of the San Gabriel and Santa Ana rivers.

This site is part of the extensive Bolsa Chica Wetlands complex, a remnant of the historic Santa Ana River/Bolsa Chica wetlands complex. In the late 1890s the Bolsa Chica Gun Club completed a dam with tide gates, separating fresh water from salt water, which eliminated tidal influence from the subject properties. In the 1930s, agricultural ditches began to limit fresh water on the site, and in 1959, the East Garden Grove-Wintersburg Flood Control Channel isolated the site hydrologically. Nonetheless, wetlands persist on the site even with these alterations. Much of the subject properties has been more or less continuously farmed dating back to at least the 1930s. Presently, farming continues on portions of the subject properties.

A Land Use Plan (“LUP”) amendment for the subject properties (HNB-MAJ-1-06) was approved with suggested modifications by the Coastal Commission on November 14, 2007. The City accepted the suggested modifications, and the LUP amendment was effectively certified in August 2008. An Implementation Plan amendment (HNB-MAJ-2-10) was approved with suggested modifications by the Coastal Commission on October 13, 2010. The City has accepted the suggested modifications, the Commission concurred with the Executive Director’s determination that the City’s action was legally adequate on November 3, 2011, and the Implementation Plan amendment is now effectively certified.

In its action on the LUP amendment for the subject site, the Commission found that wetlands are present on site. In addition, the Commission found that additional wetlands would exist on site were it not for either unpermitted fill activities and/or farming activities that converted wetlands to dry lands. Extensive documentation addressing the extent and location of wetlands at the subject site has been prepared in conjunction with the proposed development during the LUP amendment process and with the coastal development permit application.

Respondent has submitted CDP application No. 5-11-068 to obtain authorization for a 111-home residential development with associated infrastructure and amenities. The applicant acknowledges the presence of wetlands at the subject site and proposes, through CDP application No. 5-11-068 and these Consent Orders, to preserve and restore all wetlands on-site, including

all existing wetlands and those wetland areas identified as having been lost due to unpermitted development.

At the June 2012 hearing on CDP application No. 5-11-068, the Commission continued the public hearing on the item in order to allow staff time to explore resolution of any outstanding Coastal Act violations on the subject properties.

To that end, Commission staff reviewed its files and all available information related to the history of reports of alleged unpermitted development at the subject properties, as well as enforcement actions. Over the past two decades, Commission staff has received and investigated a number of reports from members of the public and other sources alleging unpermitted development on the subject properties. Commission staff acted on, where appropriate, those reports for which staff had obtained sufficient information, as such information was obtained and analyzed. Based upon the information available to staff for this specific matter, which began fully to come to light during the 2007 City LUP certification and subsequent CDP processes, staff has confirmed that grading on the site resulted in fill of the 4 acre EPA Wetland. In addition, in the early 1980's, fill placed on the site by a previous owner's lessee of the site resulted in elimination of a 0.4 acre portion of the CP wetland. No new evidence has been located to support the suggestion that unpermitted development has impacted wetlands in areas other than the EPA Wetland and the 0.4 acre portion of the CP Wetland at issue.

After the June 2012 hearing, staff met with Respondent to discuss a consensual resolution of the Coastal Act violations on the subject properties, through a settlement agreement in the form of consent orders that would provide a permanent and complete resolution of this matter. At the meeting, Respondent expressed its willingness to resolve this matter consensually through the consent order process.

Since that time, staff and Respondent have worked extensively and collaboratively towards an amicable resolution of the unpermitted development. On August 28, 2012 Respondent signed Consent Cease and Desist Order No. CCC-12-CD-10 and Consent Restoration Order No. CCC-12-RO-10. In order to amicably resolve the violations through these Consent Orders, Respondent elected to settle this matter rather than submit a Statement of Defense form and contest issuance of these Consent Orders and thus agrees not to contest the issuance and/or enforcement of these Consent Orders.

C. BASIS FOR ISSUANCE OF ORDERS

1. Legal Standards

Cease and Desist Order

The statutory authority for issuance of Cease and Desist Orders is provided in Section 30810 of the Coastal Act, which states, in relevant part:

(a) If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a

permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist. The order may also be issued to enforce any requirements of a certified local coastal program or port master plan, or any requirements of this division which are subject to the jurisdiction of the certified program or plan, under any of the following circumstances:

(1) The local government or port governing body requests the commission to assist with, or assume primary responsibility for, issuing a cease and desist order.

(b) The cease and desist order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material...

Restoration Order

The statutory authority for issuance of Restoration Orders is provided in Section 30811 of the Coastal Act, which states, in relevant part:

In addition to any other authority to order restoration, the commission... may, after a public hearing, order restoration of a site if it finds that [a] the development has occurred without a coastal development permit from the commission, local government, or port governing body, [b] the development is inconsistent with this division, and [c] the development is causing continuing resource damage.

The following paragraphs set forth the basis for the issuance of the Consent Orders by providing substantial evidence that the development meets all of the required grounds listed in Sections 30810 and 30811 for the Commission to issue a Cease and Desist Order and a Restoration Order.

Development has occurred without a Coastal Development Permit

Unpermitted development consisting of grading resulting in fill of the EPA Wetland and a 0.4 acre portion of the CP Wetland, and change in the intensity of use of land associated with the conversion of the EPA Wetland and the impacted portion of the CP Wetland to upland, has occurred on the subject properties without a CDP. These activities meet the definition of “development” contained in Section Coastal Act Section 30106, as explained below.

Section 30600(a) states that, in addition to obtaining any other permit required by law, and with limited exceptions not applicable here, any person wishing to perform or undertake any development in the Coastal Zone must obtain a CDP. “Development” is defined by Section Coastal Act Section 30106 as follows:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any

materials; change in the density or intensity of use of land...change in the intensity of use of water, or of access thereto...and the removal or harvesting of major vegetation other than for agricultural purposes...

In this case, the activities described above constitute “development” within the meaning of the above-quoted definition because they involve the placement of solid material, grading, and a change in the intensity of use of land and water. They were therefore subject to the permit requirement of Coastal Act Section 30600(a) when they occurred.

A CDP was not issued by the Commission to authorize the subject development, and the unpermitted fill of wetlands is not exempt under the permit requirements.⁷ Therefore, the requirements for issuance of a Cease and Desist Order under Coastal Act Section 30810, and the first requirement for issuance of a Restoration Order under Coastal Act Section 30811, have been met.

2. The Unpermitted Development is Inconsistent with the Coastal Act

As described below, the unpermitted development is inconsistent with multiple resource protection policies of the Coastal Act, including: Section 30233 (limiting fill of wetlands), Section 30231 (protecting the biological productivity of coastal waters), and Section 30240 (protecting environmentally sensitive habitat areas, or “ESHA”; including from adjacent developments), and policies within the City LCP, as fully discussed below.⁸

a. Wetlands

Wetlands are extremely rare and important ecosystems. Of California’s remaining wetlands, southern California wetlands have been the most severely depleted. However, southern California’s coastal wetlands still support numerous resident and migrant wildlife species, including birds migrating along the Pacific flyway. Wetlands often provide critical habitat, nesting sites, and foraging areas for threatened or endangered wildlife and bird species. Because of the historical losses and current rarity of these habitats, and because of their extreme

⁷ This is true even if, as Respondent has claimed, the activity was for agricultural purposes, as the “agricultural purpose” exception in Section 30106 of the Coastal Act only applies to removal of major vegetation, not to grading or other types of development. Moreover, during the certification process for the City LUP for the subject properties, the Commission rejected the notion that grading that results in wetland fill could be considered a “normal farming activity.” Specifically, the Commission found in certifying the LUP that the Commission “concur[s] that use of such earth moving equipment, particularly when it results in the fill of wetlands, is not typically associated with normal farming activities.” Respondent has disputed that there has been any violation of the Coastal Act with respect to the EPA Wetland or that it performed any unpermitted development in the Required CP Wetland, but in light of the intent of the parties to compromise and resolve these matters in settlement, Respondent has agreed not to contest the terms of, or the issuance of these Consent Orders.

⁸ As noted above, the Coastal Commission has jurisdiction over this enforcement matter on the subject properties. However, staff notes that the unpermitted development at issue in this matter is also inconsistent with policies of the Huntington Beach LCP. Although the Huntington Beach LCP does not directly apply to this enforcement matter, the Commission considers the development standards designed to protect coastal resources contained in the Huntington Beach LCP as guidance. The LCP policies with which the unpermitted development at issue is inconsistent include, but may not be limited to, the policies cited below.

sensitivity to disturbance, wetlands are provided protection under the Coastal Act and the City LCP, including pursuant to the following provisions:

Section 30121 of the Coastal Act states:

“Wetland” means lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, pen or closed brackish water marshes, swamps, mudflats, and fens.

The Commission has further specified how wetlands are to be identified through regulations and guidance documents. Section 13577(b)(1) of the Commission’s regulations states, in pertinent part:

Wetlands shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes For purposes of this section, the upland limit of a wetland shall be defined as:

- (A) the boundary between land with predominantly hydrophytic cover and land with predominantly mesophytic or xerophytic cover;*
- (B) the boundary between soil that is predominantly hydric and soil that is predominantly nonhydric; or*
- (C) in the case of wetlands without vegetation or soils, . . .*

The City LCP defines a wetland in similar terms, essentially combining the above statutory and regulatory definitions, resulting in a definition of wetlands as:

Land which may be covered periodically or permanently with shallow water and includes saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens. Wetlands are lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this classification², wetlands must have one or more of the following attributes:

- 1. At least periodically, the land supports predominantly hydrophytes; or*
- 2. The substrate is predominantly undrained hydric soil; or*
- 3. The substrate is non-soil and is saturated with water or covered by shallow water at some point during the growing season of each year.*

² *“ Classification of Wetlands and Deep-Water habitats of the United States” by Lewis M. Cowardin, et al, United States Department of Interior, Fish and Wildlife Service, December 1979*

Section 30233(a) of the Coastal Act states:

The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible

mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

- 1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- 2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- 3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- 4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- 5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- 6) Restoration purposes.*
- 7) Nature study, aquaculture, or similar resource dependent activities.*

In addition, the City LCP specifically addresses development activity in wetlands and provides for protection policies to ensure that wetlands are not impacted by development. Policy C 6.1.20 of the City LCP limits filling of wetlands to the specific activities outlined in Section 30233 of the Coastal Act.

Section 30108.2 of the Coastal Act defines “Fill” as:

"Fill" means earth or any other substance or material, including pilings placed for the purposes of erecting structures thereon, placed in a submerged area.

The glossary of the City LCP contains a similar definition of “fill”.

The City LCP also includes the following wetland protection policies:

C 7.1:

Regulate new development through design review and permit issuance to ensure consistency with Coastal Act requirements and minimize adverse impacts to identified environmentally sensitive habitats and wetlands.

Regarding uses within wetland areas, the City LCP, specific to the subject properties, further requires:

Subarea 4K:

A. Wetlands:

Only those uses described in Coastal Element Policy C 6.1.20 shall be allowed within existing and restored wetlands.

All development shall assure the continuance of the habitat value and function of wetlands.

In addition, policy C 7.2.7, of the City LCP requires:

Any areas that constituted wetlands or ESHA that have been removed, altered, filled or degraded as the result of activities carried out without compliance with Coastal Act requirements shall be protected as required by the policies in this Land Use Plan.

The Commission's staff ecologist evaluated the subject properties and information related to the subject properties, and confirmed that the 4 acre EPA wetland area impacted by unpermitted development constituted a wetland, as that term is defined by Section 30121 of the Coastal Act and the City LCP, prior to unpermitted fill that occurred on the site. (see October 25, 2007 memorandum from John Dixon, Ph.D, Commission staff ecologist (Exhibit #3)). In addition, in 1982, in conjunction with the approval of CDP No. 5-82-278 (Exhibit #4), the Commission noted that the California Department of Fish and Game had determined that the 0.4 acre portion of the CP area impacted by unpermitted fill placed on site in the early 1980's (see Exhibit #5) contained *Salicornia virginica* (pickleweed), a wetland obligate plant species that indicates the presence of wetlands under both the City and Commission's wetland standards, which require the presence of one wetland attribute, in this case, a predominance of hydrophytic vegetation.

The unpermitted development includes placement of fill within and adjacent to wetlands. Section 30233 of the Coastal Act and Policy C.6.1.20 of the LCP do allow for fill of wetlands under narrow criteria, and when properly authorized in a CDP. Notably, there was no CDP applied for or obtained for the development activities at issue in this enforcement action. Moreover, even if Respondent had applied for a CDP from the City or CCC, the unpermitted development that resulted in wetland fill does not fall under any of the allowable criteria for wetlands fill under the Coastal Act and LCP.

In addition, as noted above, City LCP policies cumulatively require that development minimize impacts to wetlands, ensure continuance of wetland habitat value and function, and protect wetlands. The unpermitted fill of wetlands that has occurred on the subject properties, and consequent elimination of wetland habitat and function, is not conducive to furtherance of these objectives, inconsistent with Coastal Act Section 30233 and policies of the City LCP.

b. Biological Productivity/Health of Wetlands and Environmentally Sensitive Habitat Areas

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine

organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Policy C.6.1.4 of the City LCP states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain organisms and for the protection of human health shall be maintained and, where feasible, restored.

Coastal Act Section 30240(b) states:

Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The City LCP ESHA policies and ESHA definition reflect the Coastal Act's ESHA policies and ESHA definition. The City's certified LCP defines ESHA as:

Any area in which plant or animal life or their habitats are rare or especially valuable and which could be easily disturbed or degraded by human activities and developments.

In addition, the City LCP includes the following ESHA related policies:

C 7.1.2:

Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas. In the event that development is permitted in an ESHA pursuant to other provisions of this LCP, a "no-net-loss" policy (at a minimum) shall be utilized.

Policy C.7.1.3 of the City LCP duplicates the language of Coastal Act Section 30240(b).

Fill or alteration of wetland hydrology reduces wetland function, and consequently, a wetland's biological productivity. The unpermitted development at issue consists of direct fill of wetlands resulting in degradation of wetland function on the subject properties. In addition, the habitat that a functioning wetland provides is a significant coastal resource due in part to the high biological productivity of wetland habitat, the rarity of this habitat, and the sensitive species it supports. Moreover, the wetlands on the subject properties are also ecologically connected to the Bolsa Chica wetland complex, a coastal wetland that provides habitat for threatened and endangered species, and adjacent upland ESHAs.

The wetlands on the subject properties, the Bolsa Chica wetland complex, and adjacent upland ESHAs have been historically degraded and fragmented as a result of development in the area. Impacts to the wetlands on the subject properties can further fragment the wetland complex and adjacent uplands ESHAs, causing more extensive damage to the whole complex and the flora and fauna it supports. In disturbing the site, wetlands have been eliminated, thus impacting adjacent ESHA and the biological productivity of adjacent wetlands, which is inconsistent with Coastal Act Sections 30240(b) and 30231, and City LCP policies.

In summary, the subject unpermitted development has significantly impeded the functioning and biological productivity of wetlands on the subject properties, which in turn will affect adjacent wetlands and ESHA. Further, the interim loss of habitat value and wetland hydrology will have a significant impact that will continue to be experienced until the impacts of the unpermitted development are remedied. Due to its deleterious effect on wetland habitat and function on and off the subject properties, the unpermitted development does not maintain, much less restore, biological productivity and water quality of wetlands and is not compatible with the continuance of the habitat values and function of the Bolsa Chica wetlands complex. Therefore, the unpermitted development is inconsistent with Sections 30231, 30233, and 30240 of the Coastal Act, and policies of the City LCP, thus satisfying the second criterion for issuance of a Restoration Order. Mitigation is necessary in this case, due to the fact that even with proper restoration of the wetlands and habitat on site, the interim loss of ecosystem value will have a significant impact that will be experienced into the future.

3. Unpermitted Development is Causing Continuing Resource Damage

The unpermitted development is causing “continuing resource damage,” as defined in 14 CCR Section 13190, which states:

‘Continuing’, when used to describe ‘resource damage’, means such damage, which continues to occur as of the date of issuance of the Restoration Order.

‘Resource’ means any resource that is afforded protection under the policies of Chapter 3 of the Coastal Act, including but not limited to public access, marine and other aquatic resources, environmentally sensitive wildlife habitat, and the visual quality of coastal areas.

‘Damage’ means any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development. (emphasis added)

The wetlands on the subject properties, as well as the coastal waters and upland ESHAs on and in the vicinity of the subject properties, are afforded protection under Coastal Act Sections 30231, 30233, and 30240, as well as the City LCP, and are therefore “resources” as defined in Section 13190(a) of the Commission’s regulations. The “damage” is the degradation of that wetland habitat, including adjacent ESHA, which is caused by the unpermitted development on the subject properties, as described in the prior section.

Without restoration of the wetlands, the foregoing impacts are continuing and will continue to occur. The persistence of these impacts constitutes “continuing” resource damage, as defined in Section 13190(c) of the Commission’s regulations.

For the reasons stated above, the unpermitted actions are causing continuing resource damage. As a result, the third and final criterion for the Commission’s issuance of the proposed Restoration Order pursuant to Coastal Act Section 30811 is therefore satisfied.

D. CONSENT ORDERS ARE CONSISTENT WITH CHAPTER 3 OF THE COASTAL ACT

The unpermitted development at issue significantly impacted coastal resources, including wetlands, on the subject properties. The unpermitted development is therefore inconsistent with the resource protection policies of the Coastal Act and City LCP, and the resource damage caused by the unpermitted development will continue unless the unpermitted activities cease and the subject properties is properly restored. Issuance of these Consent Orders is essential to resolving the violations and to ensure compliance with the Coastal Act and City LCP.

The Consent Cease and Desist Order and Consent Restoration Order appended to this staff report are consistent with and, in fact, are designed to further the resource protection policies found in Chapter 3 of the Coastal Act. The Consent Orders require Respondent to remove all unpermitted development from the subject properties, restore wetlands on the subject properties using restorative grading and planting of vegetation native to southern California saltmarshes and freshwater wetlands, mitigate for temporal losses, and cease and desist from conducting any further unpermitted development on the subject properties

If the unpermitted development and any physical results of the unpermitted development, including wetland fill, are allowed to remain unmitigated, their presence and the effects thereof will lead to further adverse impacts (including the temporal continuation of the existing impacts) to coastal waters and ESHA. Therefore, the Consent Cease and Desist Order and Consent Restoration Order are consistent with the Chapter 3 policies of the Coastal Act.

E. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The Commission finds that issuance of these Consent Orders to compel the restoration of the subject properties is exempt from any applicable requirements of the California Environmental Quality Act of 1970 (CEQA), Cal. Pub. Res. Code §§ 21000 *et seq.*, and will not have significant adverse effects on the environment, within the meaning of CEQA. The Consent Orders are exempt from the requirement for the preparation of an Environmental Impact Report, based on Sections 15060(c)(2) and (3), 15061(b)(2), 15307, 15308 and 15321 of CEQA Guidelines, also in 14 CCR.

F. CONSENT AGREEMENT: SETTLEMENT

Chapter 9, Article 2 of the Coastal Act provides that violators may be civilly liable for a variety of penalties for violations of the Coastal Act, including daily penalties for knowingly and intentionally undertaking development in violation of the Coastal Act. Respondent has clearly conveyed its willingness to completely resolve the alleged violations, including any penalties,

administratively and amicably, through a settlement process. To that end, Respondent has committed to comply with all terms and conditions of the Consent Orders, and not to contest the issuance and implementation of these Consent Orders. In light of the intent of the parties to resolve these matters in a timely fashion and through settlement, Respondent has agreed pursuant to these Consent Orders to create, restore, and enhance wetlands on the subject properties and to fund a wetland mitigation project in coastal Orange County to resolve the alleged violations fully without litigation.

G. SUMMARY OF FINDINGS OF FACT

1. Shea Homes Limited Partnership is the owner of vacant properties located within the Coastal Zone (as defined in the Coastal Act) at 17301 Graham Street, Huntington Beach; Orange County APNs 110-016-19, 110-016-20, and 110-016-23 (“subject site”).
2. Shea Homes Limited Partnership (“Respondent”) owns the above-referenced properties upon which unpermitted development, as defined in Coastal Act Section 30106, has been performed, including grading resulting in fill of the EPA Wetland and the 0.4 acre portion of the CP Wetland at issue and changing the intensity of use of land associated with the conversion of the EPA Wetland and portion of the CP Wetland at issue to upland, in violation of the Coastal Act.
3. The unpermitted development described in finding #2 occurred when there was no certified LCP covering the subject site. In addition, City of Huntington Beach staff indicated support for the Commission’s proceeding with administrative action to resolve these violations.
4. The unpermitted development described in finding #2 above impacted wetlands, the biological productivity of coastal waters and adjacent ESHA, and water quality in a manner inconsistent with the Coastal Act, including Sections 30231, 30233, and 30240, and City LCP policies.
5. The unpermitted development described in finding #2 above is “causing continuing resource damage” within the meaning of Coastal Act Section 30811 and Title 14, California Code of Regulations, Section 13190.
6. Coastal Act Section 30810 authorizes the Commission to issue a cease and desist order under specified conditions, and, as is demonstrated by the prior findings, all elements of that section have been met herein.
7. Coastal Act Section 30811 authorizes the Commission to issue a restoration order under specified conditions, and, as is demonstrated by the prior findings, all elements of that section have been met herein.
8. The work to be performed under these Consent Orders, if done in compliance with the Consent Orders and the plans approved therein, will be consistent with Chapter 3 of the Coastal Act.
9. On August 28, 2012, an authorized signatory for Respondent signed Consent Cease and Desist Order No. CCC-12-CD-10 and Consent Restoration Order No. CCC-12-RO-10, a copy of which is attached to this staff report as Appendix A. Respondent agreed not to contest commencement of proceedings to issue these Consent Orders, and agreed to issuance of these Consent Orders, without first receiving written notice of intent to commence cease and desist order and restoration order proceedings pursuant to Sections 13181 and 13191, respectively, of the Commission’s administrative regulations.

10. Impacts to coastal resources resulting from the unpermitted development described in finding #2 will continue until the requirements of the Consent Orders are carried out.

Staff recommends that the Commission issue Consent Cease and Desist Order No. CCC-12-CD-10 and Consent Restoration Order No. CCC-12-RO-10 attached hereto as Appendix A.

**CONSENT CEASE AND DESIST ORDER CCC-12-CD-10
AND CONSENT RESTORATION ORDER CCC-12-RO-10**

1 CONSENT CEASE AND DESIST ORDER CCC-12-CD-10

Pursuant to its authority under California Public Resources Code (“PRC”) section 30810, the California Coastal Commission (“Commission”) hereby orders and authorizes Shea Homes Limited Partnership, all of its successors, assigns, employees, agents, and contractors, and anyone acting in concert with the foregoing (hereinafter collectively referred to as “Respondent”), to take all actions required by this Consent Order CCC-12-CD-10, including:

- 1.1** Cease and desist from engaging in any further development, as that term is defined in PRC section 30106, on the properties identified in Section 6, below (“subject properties”), unless authorized, or otherwise exempt (including normal farming activities outside of the Existing CP Wetland, the AP Wetland and their buffers), pursuant to the Coastal Act, PRC sections 30000-30900, including by this Consent Order.
- 1.2** Cease and desist from maintaining on the subject properties any unpermitted development (as referred to in Section 7, below) or any physical materials on the subject properties or physical changes to the subject properties resulting therefrom, unless authorized, or otherwise exempt (including those physical materials or physical changes related to continued normal farming activities), pursuant to the Coastal Act, including by this Consent Order.
- 1.3** Restore, create, enhance, conserve, maintain, and manage wetlands in accordance with the procedures set forth in Section 4, below.

2 CONSENT RESTORATION ORDER CCC-12-RO-10

Pursuant to its authority under PRC section 30811, the Commission hereby orders and authorizes Respondent to take all actions required by this Consent Order CCC-12-RO-10, including restoring, enhancing and creating wetlands in accordance with the procedures set forth in Section 4, below.

3 NATURE OF ORDERS AND OF CONSENT

Consent Cease and Desist Order CCC-12-CD-10 and Consent Restoration Order CCC-12-RO-10 (“Consent Orders”) authorize and require, among other things, restoration, creation, and enhancement of wetlands as outlined in these Consent Orders. Any development subject to Coastal Act permitting requirements that is not specifically authorized under these Consent Orders requires a coastal development permit (“CDP”). Nothing in these Consent Orders guarantees or conveys any right to development on the subject properties other than the work expressly authorized by these Consent Orders. Through the execution of these Consent Orders, Respondent agrees to comply with these Consent Orders, including the following terms and conditions.

PROVISIONS COMMON TO BOTH ORDERS

4 TERMS AND CONDITIONS

4.1 Definitions

As used in these Consent Orders, the underlined phrases shall have the following meanings:

HMP: the document titled “Habitat Management Plan, Parkside Estates,” prepared by LSA Associates, Inc., for Shea Homes, revised September 2011 and including the following revisions proposed by the conditions of CDP No. 5-11-068:

- 1) Eliminates any fencing and/or gate(s) that interfere with public use of the Vista Point trail across the entire length of the top of the vegetated flood protection feature (VFPF). Any reference to such fencing and/or gate(s) shall be eliminated from the HMP. Figures 1-4, 4-1, 6-1, 6-2, 7-1 shall be replaced with figures that delete such fencing and/or gate(s) across the top of the VFPF Vista Point trail;
- 2) On page 4-17 and page 6-17 delete the sentence “Remedial measures will be developed in consultation with CCC staff and approved by the Executive Director prior to implementation.”
- 3) Replace the deleted sentence on page 4-17 and page 6-17 with the following sentence: “Remedial measures shall require an amendment to this coastal development permit unless the Executive Director determines that none is legally required.”
- 4) Requires all quantitative sampling to be based on spatially stratified, randomly placed sampling units;
- 5) In Appendix A (Maintenance and Monitoring Schedule), replace the term “long-term maintenance plan” with “long-term management plan.”

Wetland Expansion Graphic: The graphic entitled “Restoration Plan – Wetlands Expansion,” Hunsaker & Associates, Irvine, Inc. dated July 26, 2012.

CP Wetland Expansion: The 1.3 acres of potential wetland identified on the Wetland Expansion Graphic as “POTENTIAL FOR ADDITIONAL WETLAND CREATION IN CP”.

EPA Wetland Expansion: The 0.5 acres of potential wetland identified on the Wetland Expansion Graphic as “AREA TO BE ADDED TO EPA WETLAND”.

Revised HMP: The version of the revision to the HMP submitted pursuant to Section 4.2.A, below, that receives final approval from the Executive Director.

EPA Wetland: The potential freshwater wetlands identified in Figure 6-1 of the HMP as “4.0 ACRE SEASONAL WETLAND AREA TO BE CREATED PER HABITAT MITIGATION PLAN”.

AP Wetland: The 0.6 acres wetland identified in Figure 6-1 of the HMP as “AP AREA WETLAND”.

Required CP Wetland: The 0.4 acres of potential wetlands identified on the Wetland Expansion Graphic as “REQUIRED CP WETLAND RESTORATION”.

Existing CP Wetland: The 1.0 acre wetland identified in Figure 6-1 of the HMP as “EXISTING CP WETLAND”.

Alternative HMP: The version of the revision to the Revised HMP submitted pursuant to Section 4.2.D, below, if the requirement for submittal of an alternative plan under Section 4.2.D is triggered, that receives final approval from the Executive Director.

4.2 Restoration Activities

A. Respondent shall prepare a revision to the HMP to incorporate the following:

- a) creation, conservation, maintenance, management, and monitoring of the CP Wetland Expansion consistent with the protocols, specifications, and methodologies for implementation of the HMP described therein; and
- b) creation, conservation, maintenance, management, and monitoring of the EPA Wetland Expansion consistent with the protocols, specifications, and methodologies for implementation of the HMP described therein.

Within 90 days of issuance of these Consent Orders, Respondent shall submit such revised HMP for the review and approval of the Executive Director of the Commission (“Executive Director”).

B. Respondent shall implement all wetland creation, restoration, enhancement, conservation, maintenance, management and monitoring, as proposed and described in Chapter 6.0 of the Revised HMP, pursuant to the terms and conditions of that approved document and these Consent Orders, except that Respondent shall not be required to implement, construct or maintain a Natural Treatment System as described in the HMP unless such is approved in conjunction with the development proposed in CDP No. 5-11-068. In the event that the development proposed in CDP No. 5-11-068 is not approved, the Alternative HMP set forth in Section 4.1 and 4.2. will apply. Issuance of these Consent Orders in no way limits any responsibilities Respondent may now have or may subsequently acquire to implement wetland and habitat creation, restoration, conservation, maintenance, management, and monitoring pursuant to any other Commission action, including the possible conditional approval of CDP No. 5-11-068.

C. Respondent shall implement the Revised HMP, as provided for in Section 4.2.B completely, pursuant to the approved schedule/timeline as set forth in the plan, with all work to be completed as early as possible and consistent with recommendations by the consulting resource specialist. In specific regard to all planting and grading described in

the revised HMP, Respondent shall complete these activities prior to issuance of any certificate of occupancy for any residence on the subject properties or within 36 months of issuance of these Consent Orders, whichever occurs first. The Executive Director may further extend this deadline pursuant to Section 13 of these Consent Orders.

D. If CDP No. 5-11-068 is not approved and Respondent can demonstrate to the satisfaction of the Executive Director that restoration of wetlands pursuant to the proposed HMP is unworkable, including if it may be unworkable to undertake wetland restoration as currently proposed in the HMP if there is insufficient water to support the restoration as proposed, Respondent shall submit an Alternative HMP for the review and approval of the Executive Director to provide an alternative proposal for 1) creation, conservation, maintenance, management, and monitoring of the EPA wetland; 2) restoration, conservation, maintenance, management, and monitoring of the Required CP Wetland; and 3) restoration, enhancement, or creation, as well as conservation, maintenance, management, and monitoring of an additional 3.5 acres of wetlands in the Coastal Zone portion of Orange County, or payment of an in-lieu fee in the amount of \$227,500 to a recipient organization, subject to the review and approval of the Executive Director, for purpose of providing 3.5 acres of wetland restoration, enhancement, or creation, as well as conservation, maintenance, management, and monitoring in the Coastal Zone portion of Orange County, provided that if, consistent with this provision, additional wetland restoration, enhancement, or creation is undertaken onsite, in addition to restoration of the EPA Wetland and Required CP Wetland described in this provision above, the in-lieu fee will be pro-rated accordingly. Such plan shall include protocols, specifications, and methodologies for restoration activities described in the Alternative HMP.

E. At a minimum, the proposed Alternative HMP, referred to above, shall include the following:

1. A baseline assessment, including photographs, of the current physical and ecological condition of the proposed restoration sites, a description and map showing the areas and distribution of vegetation types, and a map showing the distribution and abundance of sensitive species. Existing vegetation, wetlands, and sensitive species shall be depicted on a map that includes the footprint of the proposed restoration;
2. A description of the goals of the restoration plan, including, as appropriate, topography, hydrology, vegetation types, sensitive species, and wildlife usage;
3. A description of planned site preparation and invasive plant removal;
4. If the topography must be altered, a formal grading plan should be included;
5. A restoration plan including the planting palette (seed mix and container plants), planting design, source of plant material, plant installation, erosion control, irrigation, and remediation. The planting palette shall be made up exclusively of native plants that are appropriate to the habitat and region and that are grown from seeds or vegetative materials obtained from local natural habitats so as to protect the genetic makeup of natural populations. Horticultural varieties shall not be used;

6. A plan for documenting and reporting the physical and biological “as built” condition of the restoration sites within 30 days of completion the initial restoration activities;
7. A plan for interim monitoring and maintenance, including:
 - a. A monitoring schedule;
 - b. Interim performance standards;
 - c. A description of field activities;
 - d. The monitoring period. Typically 5 years; and
 - e. Provision for submission of annual reports of monitoring results to the Executive Director for the duration of the required monitoring period, beginning the first year after submission of the “as-built” report. Each report shall be cumulative and shall summarize all previous results. Each report shall document the condition of the restoration with photographs taken from the same fixed points in the same directions. Each report shall also include a “Performance Evaluation” section where information and results from the monitoring program are used to evaluate the status of the restoration project in relation to the interim performance standards and final success criteria.
8. Final success criteria for each habitat type, including, as appropriate:
 - a. species diversity;
 - b. total ground cover of vegetation;
 - c. vegetative cover of dominant species and definition of dominants (e.g., Army Corps of Engineers “50/20” rule, enumeration, species with greater than a threshold of abundance, etc.); and/or
 - d. hydrology.
9. The method by which “success” will be judged, including:
 - a. Type of comparison. Possibilities include comparing a census of the restoration site to a fixed standard derived from literature or observations of natural habitats, comparing a census of the restoration site to a sample from a reference site, comparing a sample from the restoration site to a fixed standard, or comparing a sample from the restoration site to a sample from a reference site.
 - b. Identification and description, including photographs, of any reference sites that will be used.
 - c. Test of similarity to determine whether the result of a census was above a predetermined threshold.
 - d. The field sampling design to be employed, including a description of the randomized placement of sampling units and the planned sample size.
 - e. Detailed field methods.
 - f. Specification of the maximum allowable difference between the restoration value and the reference value for each success criterion
 - g. A statement that final monitoring for success will occur after at least 3 years with no remediation or maintenance activities other than weeding.
10. Provision for submission of a final monitoring report to the Executive Director at the end of the final monitoring period. The final report must be prepared by a qualified restoration ecologist. The report must evaluate whether

the restoration sites conform to the goals and success criteria set forth in the approved final restoration program; and

11. Provision for possible further action. If the final report indicates that the restoration project has been unsuccessful, in part or in whole, based on the approved success criteria, Respondent shall submit within 90 days for the review and approval of the Executive Director a revised or supplemental restoration program to compensate for those portions of the original program which did not meet the approved success criteria.

F. Upon approval by the Executive Director of an Alternative HMP Respondent shall fully implement the Alternative HMP pursuant to the terms and conditions of that approved document and these Consent Orders. Respondent shall implement the plan completely, pursuant to the approved schedule/timeline as set forth in the plan, with all work to be completed as early as possible and consistent with recommendations by the consulting resource specialist. In specific regard to all planting and grading described in the revised HMP, Respondent shall complete these activities prior to issuance of any certificate of occupancy for any residence on the subject properties or within 36 months of issuance of these Consent Orders, whichever occurs first. The Executive Director may further extend this deadline pursuant to Section 13 of these Consent Orders.

G. Respondent, or the responsible party identified in the Revised HMP, shall manage, monitor, and maintain all wetland areas per the terms of the Revised HMP, or per the terms of any Alternative HMP if the requirement for such plan described in 4.2.D is triggered.

H. Any plans, reports or revisions prepared pursuant to the terms of these Consent Orders, shall be prepared by a qualified restoration ecologist or resource specialist, and shall identify that party and include a description of the education, training, and experience of said ecologist/specialist. A qualified ecologist/specialist for this project shall have experience successfully completing wetland restoration.

4.3 Revisions of Deliverables

The Executive Director may require revisions to deliverables required under these Consent Orders, including the Revised HMP or Alternative HMP described in Sections 4.1. and 4.2, above, and Respondent shall revise any such deliverables consistent with the Executive Director's specifications and resubmit them for further review and approval by the Executive Director, by the deadline established by the modification request from the Executive Director. The Executive Director may extend time for submittals upon a written request and a showing of good cause, pursuant to Section 13 of these Consent Orders.

4.4 Submittal of Documents

All documents submitted to the Commission pursuant to these Consent Orders must be sent to:

California Coastal Commission
Attn: Andrew Willis
200 Oceangate, Suite 1000
Long Beach, CA 90802

with a copy sent to:
California Coastal Commission
Lisa Haage
45 Fremont Street, Suite 2000
San Francisco, CA 94105

5 PERSONS SUBJECT TO THE ORDERS

Persons subject to these Consent Orders are Shea Homes Limited Partnership, all of its successors, assigns, managers, officers, employees, agents, and contractors, and anyone acting in concert with the foregoing. Respondent agrees to undertake the work required herein and agrees to cause their employees and agents, and any contractors performing any of the work contemplated or required herein and any persons acting in concert with any of these entities, to comply with the terms and conditions of these Consent Orders.

6 IDENTIFICATION OF THE SUBJECT PROPERTIES

The properties that are the subject of these Consent Orders are described as follows:

Vacant properties at 17301 Graham Street, Huntington Beach; Orange County APNs 110-016-19, 110-016-20, and 110-016-23.

7 DESCRIPTION OF UNPERMITTED DEVELOPMENT CONSTITUTING COASTAL ACT VIOLATIONS

The alleged violations of the Coastal Act that formed the basis for these Consent Orders consist of development, as that term is defined in the Coastal Act (PRC section 30106), on the subject properties that required a coastal development permit pursuant to the Coastal Act, but for which no such permit was obtained, including grading resulting in fill of the EPA Wetland and the Required CP Wetland and adjoining areas, and change in the intensity of use of land associated with the conversion of the EPA Wetland and the Required CP Wetland to upland. Respondent has disputed that there has been any violation of the Coastal Act with respect to the EPA Wetland or that it performed any unpermitted development in the Required CP Wetland.

8 COMMISSION JURISDICTION

The Commission has jurisdiction over resolution of the Coastal Act violations described in Section 7 pursuant to PRC sections 30810 and 30811. In light of the desire of the parties to settle these matters, Respondent agrees to not contest the Commission's jurisdiction to issue or enforce these Consent Orders.

9 SETTLEMENT OF MATTER PRIOR TO HEARING/NONSUBMISSION OF STATEMENT OF DEFENSE

In light of the intent of the parties to compromise and resolve these matters in settlement, Respondent has elected not to submit a “Statement of Defense” form as provided for in sections 13181 and 13191 of Title 14 of the California Code of Regulations, and Respondent has agreed not to contest the terms of, or the issuance of these Consent Orders. Specifically, although not admitting to any wrongdoing or liability under the Coastal Act, Respondent has agreed not to contest the issuance or enforcement of these Consent Orders at a public hearing or any other proceeding and agrees that all jurisdictional prerequisites for issuance of these Consent Orders have been met. Respondent has agreed not to contest commencement of proceedings to issue these Consent Orders without receiving written notice of commencement of cease and desist order and restoration order proceedings pursuant to sections 13181 and 13191, respectively, of the Commission’s administrative regulations.

10 EFFECTIVE DATE AND TERMS OF THE ORDERS

The effective date of these Consent Orders is the date these Consent Orders are issued by the Commission. These Consent Orders shall remain in effect permanently unless and until rescinded by the Commission.

11 FINDINGS

These Consent Orders are issued on the basis of the findings adopted by the Commission at its September 13, 2012 meeting, as set forth in the document entitled “Staff Report and Findings for Consent Cease and Desist Order No. CCC-12-CD-10 and Consent Restoration Order No. CCC-12-RO-10.” Respondent has neither seen nor reviewed said staff report and does not necessarily agree with the contents of said staff report, but for the purpose of resolving these matters in settlement, does agree that all jurisdictional prerequisites for issuance of these Consent Orders have been met. The activities authorized and required in these Orders are consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act. The Commission has authorized the activities required in these Consent Orders as being consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act. This settlement represents the full resolution of disputed claims regarding the issue of unpermitted development described in Section 7, above, in terms of the Coastal Act and City of Huntington Beach Local Coastal Program, as of the date of these Consent Orders.

12 SETTLEMENT/COMPLIANCE OBLIGATION

12.1 In light of the intent of the parties to resolve these matters in settlement, Respondent has agreed to submit monies in the amount of \$292,500, paid to a not-for-profit recipient organization proposed by the Executive Director, or proposed by Respondent and approved by the Executive Director, such as the Huntington Beach Wetlands Conservancy, for the purpose of undertaking wetland restoration in the coastal zone

portion of the City of Huntington Beach. In the event that the Executive Director determines that directing funds to said organization is not feasible, the Executive Director may direct Respondent to submit \$292,500 to the attention of Andrew Willis of the Commission's staff, payable to the California Coastal Commission, to be deposited into Violation Remediation Account of the California Coastal Conservancy Fund (see PRC section 30823) or into such other public account as authorized by applicable California law at the time of the payment, and as designated by the Executive Director. Respondent shall submit the full settlement amount directly to the recipient organization approved by the Executive Director (or to the Commission) upon the issuance of any grading permit for construction of public trails, parks, trails, or habitat restoration or wetland creation on the subject properties or within 36 months of issuance of these Consent Orders, whichever occurs first, with a copy of the check and accompanying transmittal letter to be sent to Andrew Willis of the Commission's staff (if the money is not being paid to the Commission) at the address listed in Section 4.3, above, and to the Enforcement Division in the Commission's San Francisco office. The Executive Director may further extend this deadline pursuant to Section 13 of these Consent Orders.

- 12.2** Strict compliance with these Consent Orders by all parties subject thereto is required. Failure to comply with any term or condition of these Consent Orders, including any deadline contained in these Consent Orders, unless the Executive Director grants an extension under Section 13, will constitute a violation of these Consent Orders and shall result in Respondent being liable for stipulated penalties in the amount of \$500 per day per violation until the violation is resolved, with the exception that any wetland fill that requires a coastal development permit and is undertaken by Respondent on the subject properties without a valid coastal development permit, will result in Respondent being liable for stipulated penalties in the amount of \$2000 per day per violation until the violation is resolved. Respondent shall pay stipulated penalties within 15 days of receipt of written demand by the Executive Director for such penalties regardless of whether Respondent has subsequently complied. Stipulated penalty payments shall be made payable to the account designated under the Coastal Act and shall be sent to the Commission to the attention of Andrew Willis at the address listed in Section 4.3, above. If Respondent violates these Consent Orders, nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of the Commission to seek any other remedies available, including the imposition of civil penalties and other remedies pursuant to PRC sections 30821.6, 30822 and 30820 as a result of the lack of compliance with these Consent Orders and for the underlying Coastal Act violations as described herein.

13 DEADLINES

Prior to the expiration of any given deadline established by these Consent Orders, Respondent may request from the Executive Director an extension of the unexpired deadline. Such a request shall be made in writing 10 days in advance of the deadline, and directed to the Executive Director, care of Andrew Willis of the Commission's staff, in the Long Beach office of the Commission. The Executive Director may grant an extension of deadlines upon a showing of good cause, if the Executive Director

determines that Respondent has demonstrated that it has diligently worked to comply with its obligations under these Consent Orders but cannot meet deadlines due to unforeseen circumstances beyond its control.

14 SITE ACCESS

Respondent shall provide access to the subject properties at all reasonable times to Commission staff and any agency having jurisdiction over the work being performed under these Consent Orders. Nothing in these Consent Orders is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Commission staff may enter and move freely about the portions of the subject properties on which the violations are located, and on adjacent areas of the subject properties to view the areas where development is being performed pursuant to the requirements of these Consent Orders for purposes including but not limited to inspecting records, operating logs, and contracts relating to the site and overseeing, inspecting and reviewing the progress of Respondent in carrying out the terms of these Consent Orders.

15 GOVERNMENT LIABILITIES

Neither the State of California, the Commission, nor its employees shall be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent in carrying out activities pursuant to these Consent Orders, nor shall the State of California, the Commission or its employees be held as a party to any contract entered into by Respondent or their agents in carrying out activities pursuant to these Consent Orders.

16 SETTLEMENT VIA CONSENT ORDERS

In light of the desire to settle this matter via these Consent Orders and avoid litigation, pursuant to the agreement of the parties as set forth in these Consent Orders, Respondent hereby agrees not to seek a stay pursuant to PRC section 30803(b) or to challenge the issuance and enforceability of these Consent Orders in a court of law or equity.

17 SETTLEMENT OF MONETARY CLAIMS

The Commission and Respondent agree that these Consent Orders fully settle the Commission's monetary claims for relief for those violations of the Coastal Act described in Section 7, above, occurring prior to the date of these Consent Orders and addressed in these Consent Orders, (specifically including claims for civil penalties, fines, or damages under the Coastal Act, including under PRC sections 30805, 30820, and 30822), with the exception that, if Respondent fails to comply with any term or condition of these Consent Orders, the Commission may seek monetary or other claims for both the underlying violations of the Coastal Act and for the violation of these Consent Orders. In addition, these Consent Orders do not limit the Commission from taking enforcement action due to

Coastal Act violations at the subject properties other than those that are the subject of these Consent Orders.

18 SUCCESSORS AND ASSIGNS

These Consent Orders shall run with the land binding Respondent and all successors in interest, heirs, assigns, and future owners of the subject properties. Respondent shall provide notice to all successors, assigns, and potential purchasers of the subject properties of any remaining obligations under these Consent Orders.

19 MODIFICATIONS AND AMENDMENTS

Except as provided in Section 13, and for minor, immaterial matters upon mutual written agreement of the Executive Director and Respondent, these Consent Orders may be amended or modified only in accordance with the standards and procedures set forth in sections 13188(b) and 13197 of the Commission's administrative regulations.

20 GOVERNING LAW

These Consent Orders shall be interpreted, construed, governed and enforced under and pursuant to the laws of the State of California.

21 LIMITATION OF AUTHORITY

- 21.1** Except as expressly provided herein, nothing in these Consent Orders shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of the Coastal Act, including the authority to require and enforce compliance with these Consent Orders. Failure to enforce any provision of these Consent Orders shall not serve as a waiver of the ability to enforce those provisions or any others at a later time.
- 21.2** Correspondingly, Respondent has entered into these Consent Orders and has agreed not to contest the Commission's jurisdiction to issue and enforce these Consent Orders.

22 INTEGRATION

These Consent Orders constitute the entire agreement between the parties and may not be amended, supplemented, or modified except as provided in these Consent Orders.

23 SEVERABILITY

Should any provision of these Consent Orders be found invalid, void or unenforceable, it shall be severable from the rest of these Consent Orders, and the remaining terms shall remain in full force and effect as if the unenforceable term had not existed.

8.28.12

Page 12 of 12

24 STIPULATION

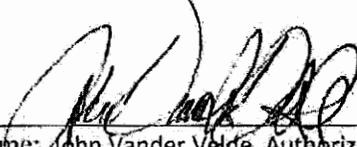
Respondent attests that it has reviewed the terms of these Consent Orders with counsel of their choosing and understands that its consent is final and stipulate to its issuance by the Commission. Because Respondent was represented by counsel, these Consent Orders are not subject to a presumption that it should be construed in favor of Respondent in the event of a dispute over its terms.

25 RECORDATION OF A NOTICE OF VIOLATION

Respondent does not object to recordation by the Executive Director of a notice of violation, pursuant to PRC section 30812(b). Accordingly, a notice of violation will be recorded after issuance of these Consent Orders. No later than thirty days after the Commission determines that Respondent has fully complied with these Consent Orders, the Executive Director shall record a notice of rescission of the notice of violation, pursuant to PRC section 30812(f). The notice of rescission shall have the same effect of a withdrawal or expungement under Section 405.61 of the Code of Civil Procedure.

IT IS SO STIPULATED AND AGREED:

On behalf of Respondent, Shea Homes Limited Partnership:

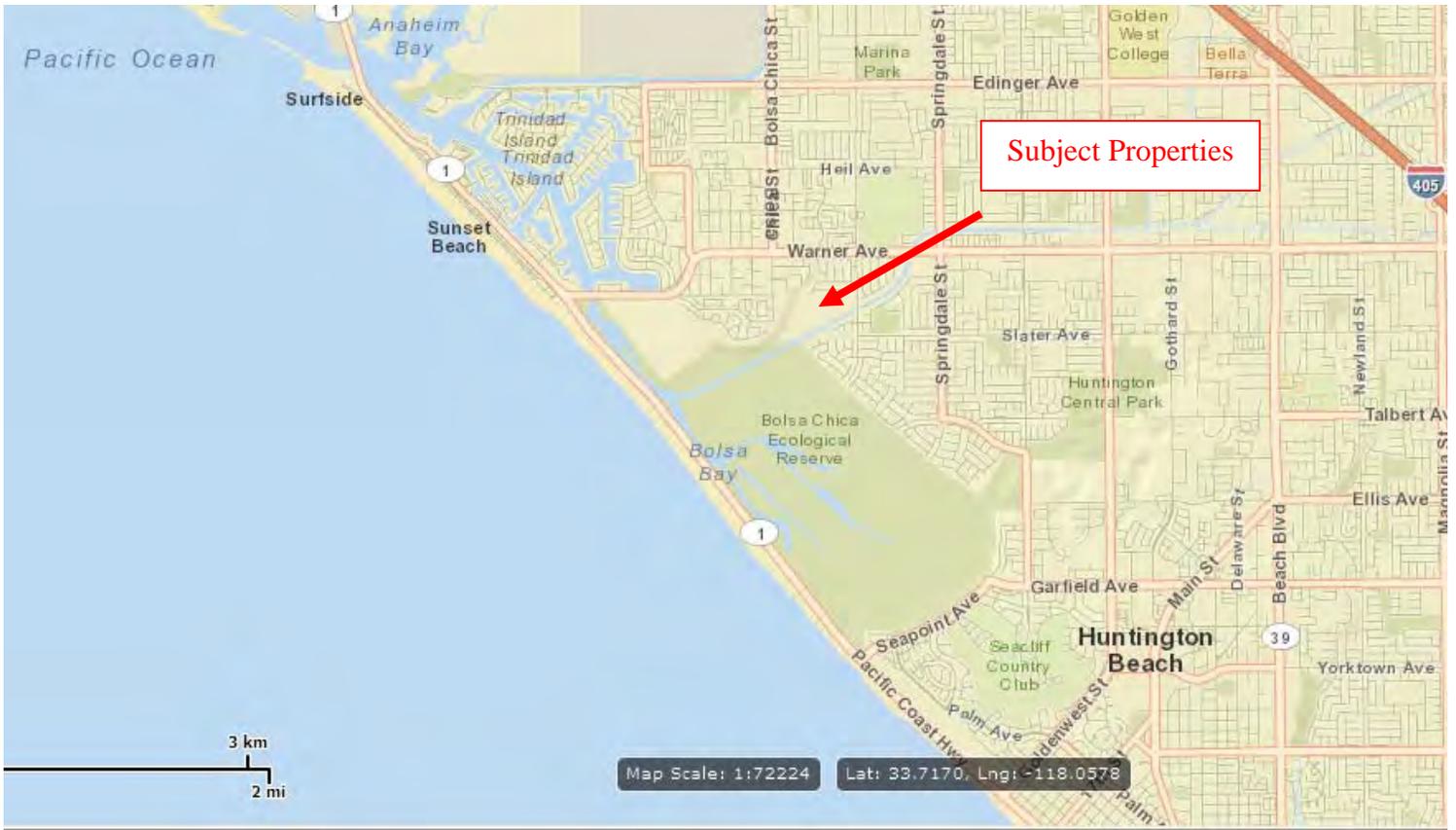

Name: John Vander Velde, Authorized Agent

8/28/12
Date

Executed in Caspar, CA on behalf of the California Coastal Commission:

Charles Lester, Executive Director

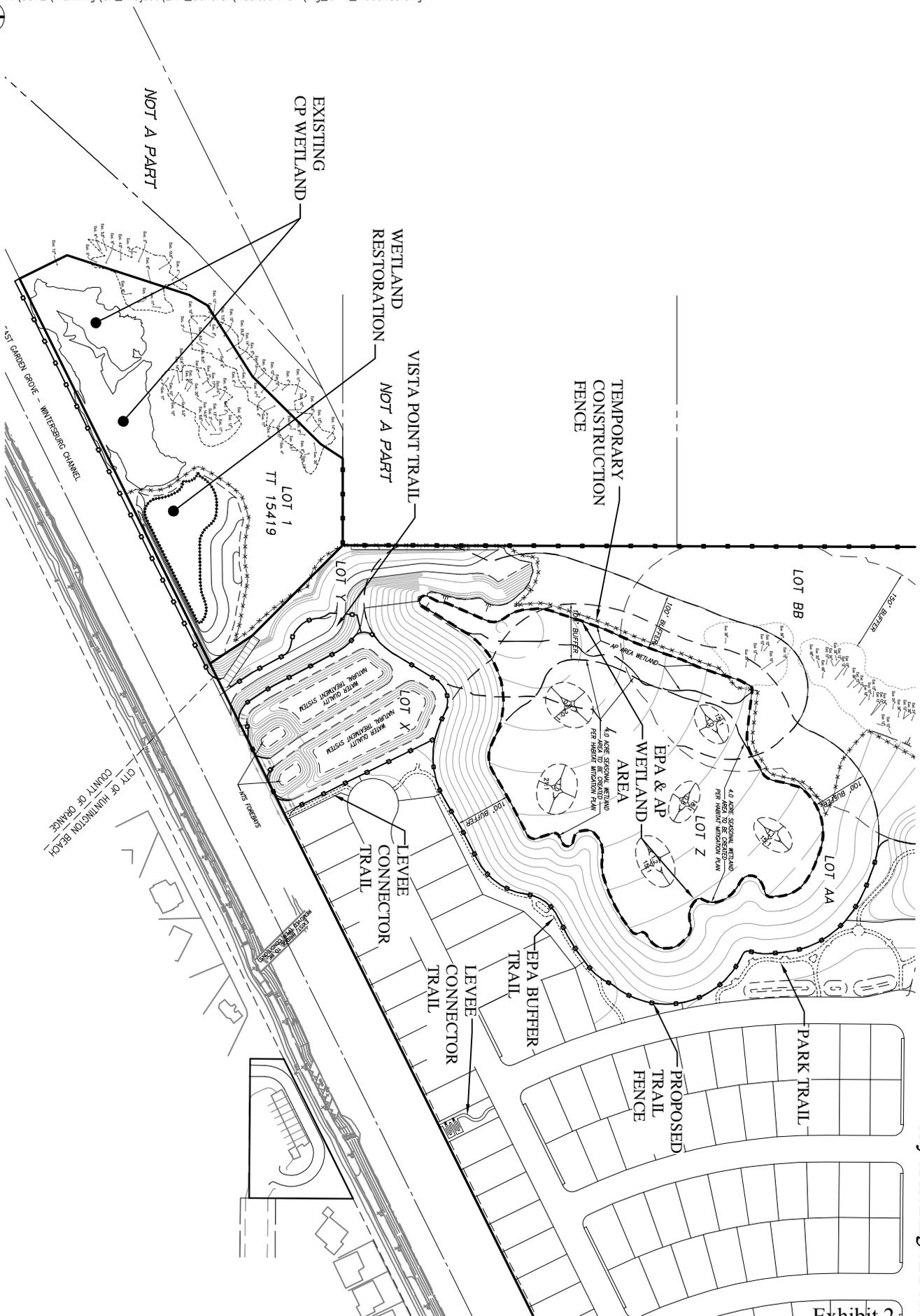
Date: September 13, 2012



1

Scale: (approx.) 1"=240' 03/31/10

Source: Hunsaker & Associates Irvine, Inc.



CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400



M E M O R A N D U M

FROM: John Dixon, Ph.D.
Ecologist

TO: Meg Vaughn

SUBJECT: Wetland and Raptor Issues at Shea Parkside

DATE: October 25, 2007

Documents reviewed:

Bilhorn, T.W. 1987. Agricultural area delineation, Bolsa Chica, Orange County, California. A report to the Signal Bolsa Corporation dated June 1987.

Bomkamp, T. (Glenn Lukos Assoc.) 2006a. Letter report to J. Dixon and M. Vaughn (CCC) dated February 22, 2006 regarding: "Summary of Alpha, Alpha-Dipyridyl Testing for WP Area, AP Area, and County Parcel at Parkside Estates.

Bomkamp, T. (Glenn Lukos Assoc.) 2006b. Letter report to J. Dixon and M. Vaughn (CCC) dated March 30, 2006 regarding: "Summary of Alpha, Alpha-Dipyridyl Testing for AP Area and County Parcel between February 24 and March 28, 2006 at Parkside Estates.

Bomkamp, T. (Glenn Lukos Assoc.) 2006c. Letter report to J. Dixon (CCC) dated October 31, 2006 regarding: "Water balance/budget for WP and CP and evaluation of vegetation in WP and AP using Pevallence Index."

Bomkamp, T. (Glenn Lukos Assoc.) 2007. Letter report to J. Dixon (CCC) dated October 5, 2007 regarding: "Water balance/budget for EPA area."

Dixon, J. (CCC). 2006. Memorandum to M. Vaughn (CCC) dated July 27, 2006 regarding: "Wetlands at Shea Homes Parkside.

Dixon, J. (CCC). 2007. Memorandum to M. Vaughn (CCC) dated July 2, 2007 regarding: "Natural resources at the Parkside property."

Division of Water Resources, California Department of Public Works. 1942. Use of water by native vegetation. Bulletin 50.

CCC-12-CD-10

CCC-12-RO-10

Exhibit 3

EPA. Region IX. 1989. A determination of the geographical extent of waters of the United States at Bolsa Chica, Orange County, California. A report dated February 1989.

Exponent. 2006a. Water availability estimate for CP pre-2005 area. A technical memorandum dated October 31, 2006.

Exponent. 2006b. Water availability estimate for WP pre-2005 area. A technical memorandum dated October 31, 2006.

Exponent. 2006c. Water availability estimate for WP post-2005 area. A technical memorandum dated October 31, 2006.

Hamilton, D. (Exponent). 2007. Water availability estimates for the EPA area at the Shea Homes property. A technical memorandum dated October 5, 2007 prepared for R. Metzler (Shea Homes).

Homrighausen, A. (LSA), T. Bomkamp (GLA), and M. Josselyn (WRA). 2007. Memorandum to S. Sarb (CCC) dated June 12, 2007 regarding: "Historic 'EPA area' on Parkside Estates, Huntington Beach, Huntington Beach LCPA 1-06."

Homrighausen, A. (LSA). 2007. Letter to M. Vaughn (CCC) dated July 7, 2007 regarding: "Buffer distance for northern eucalyptus trees."

Van Coops, J. (CCC). 2007a. Memorandum to J. Dixon and M. Johnsson (CCC) dated July 2, 2007 regarding: "Aerial photo and map interpretation for Shea property (Orange Co. APNs 110-016-19 and 110-016-20, and 110-016-23)."

Van Coops, J. (CCC). 2007b. Memorandum to J. Dixon and M. Johnsson (CCC) dated October 25, 2007 regarding: "Response to the LCPA 1-06 Staff Report Comment Letter from Shea Homes."

Wetland Definition

Consultants for Shea Homes continue to reject the wetland definition (Title 14 California Code of Regulations Section 13577(b)) that has long been the basis for the Commission's wetland decisions. Bomkamp (2007) makes a de facto argument that the presence of hydric soils are a necessary condition for the presence of a wetland. This is apparent in the following assertions:

"Ponded areas represent the absolute maximum extent of potential wetlands^[1]. ...[W]e know that the ponded areas in the agricultural field do not exhibit reduced iron^[2] until after 27 to 35 days^[3]. Therefore, in accordance with all accepted definitions, these areas would not be considered wetlands."

¹ This is not necessarily true. For example, a pond observed after a small rainstorm may be much smaller than the existing wetland.

² The observed presence of reduced iron is one field indicator of hydric soils.

“The scientific literature supports a further conclusion that, because anaerobic soil conditions are required to support a predominance of plant species that are functioning as hydrophytes^[4], none of these areas [AP/EPA and WP/WP+] should qualify as wetlands under the Coastal Act.³”

Mr. Bomkamp’s conclusions are contained within his premise, which cannot be reconciled with the wetland definition in the Commission’s Regulations.

All wetlands occur along a moisture gradient. Along this gradient, soils go from saturated to relatively dry; the physical indicators of hydric soils, which form under periodic anaerobic conditions, go from abundant to absent; and, wetland indicator species go from predominant to uncommon. Typically, the wetland indicator species will continue to be predominant beyond the point on the gradient at which the indicators of hydric soils drop out. Although there are objective places at which to draw a line distinguishing uplands from wetlands, there is no single correct location. The wetland definition in the 1987 Corps of Engineers Wetland Delineation Manual and the definition implicit in Mr. Bomkamp’s remarks would place the line near the wet end of the gradient. The definition in the Commission’s Regulations moves the line farther toward the dry end of the gradient. Other definitions are even more inclusive.

Potential Size of Wetlands

Consultants for Shea Homes have attempted to assess the potential for the formation of wetlands at the Parkside property by estimating water availability and by estimating the water requirements of some common wetland indicator plants (Bomkamp 2006, 2007; Exponent 2006a,b,c; Hamilton 2007). Given a fixed amount of water, the potential size of a wetland will be inversely proportional to the water demand of the vegetation.

Water availability was estimated by Exponent (2006a,b,c; Hamilton 2007) using rainfall records, soil characteristics, the estimated size of the watershed⁵, and the size of the presumptive wetland⁶ receiving the water. The available water was estimated as the amount of rain falling directly into the presumptive wetland plus runoff from the contributing area, which was calculated as the amount falling on the watershed minus the amount soaking into the ground (~87%). The contributing watershed was estimated based on local topography and on the presence of drainage infrastructure that directed water onto the Shea property during some years and into the municipal storm drain system more recently.

³ Although there is some disagreement on the actual number of days of saturation required for iron reduction to occur at the Shea Homes property (Dixon 2006), the existing data suggest that the period is greater than a week at the AP. Strictly, this is only known for the AP area where the samples were taken. The factors affecting the rate at which anaerobic conditions develop (e.g., soil pH and soil organic content, and the factors affecting the validity of the test for ferrous iron, such as soil iron content, vary from place to place within the agricultural field.

⁴ Hydrophytes are simply plants growing in water or on a substrate that is “at least periodically” deficient in oxygen as a result of excessive water content. This is a much broader definition than implied by Mr. Bomkamp.

⁵ The size of the local watershed or “drainage area” was estimated by Hunsaker and Associates, but the methods used have not been described.

⁶ If most of the available water is from runoff, then a smaller receiving area (presumptive wetland) will have more available water than a larger receiving area.

Using this model (Exponent 2006a,b), it was estimated that, prior to 2005, the median amount of water available within the CP wetland was 20.81 inches of water per year and the median within WP was 13.25 inches per year. Therefore, one would expect that there would be greater inundation at CP than at WP during most years. However, this expectation does not match the actual observations of ponding at the particular site in the CP wetland that I used for comparisons (Dixon 2006). In the available photographs taken of both areas at about the same time, WP generally has more standing water. This is probably because the overall receiving area of the CP wetland is large relative to that portion of the wetlands that I used as a comparison area, which is higher than much of the surrounding wetland terrain. Obviously, the assumption that all parts of a wetland have the same water availability is wrong. It is also clear that some areas of the CP wetland are able to support a preponderance of wetland vegetation with less water than the amount estimated for the total acreage. I include this example to demonstrate that although the simplifying assumptions of the water availability model are not unreasonable as a first cut, the devil is in the details.

Given estimates of water availability (Hamilton 2007), the potential size of the EPA wetland was calculated based on the assumption that the average annual water requirement for wetland vegetation is 24.6 inches (Bomkamp 2007). This water requirement was extrapolated from a report on the “consumptive use” of water or “evapo-transpiration” by a variety of California native plants (Division of Water Resources 1942). The purpose of the DWR study was to determine the potential availability of water for irrigation and other human uses⁷. For herbaceous species, plants were grown in large metal containers within which the water level could be kept constant throughout the year. Thus, the fraction of the roots that reached “ground water” or that were within the capillary fringe had a constant unlimited supply of water. Although the design may be appropriate for its intended purpose, which was to determine the maximum vegetative water demand under different conditions and to estimate the limiting depth of groundwater for vegetation, the results of the studies tell us nothing about the minimum water availability required to support a preponderance of wetland vegetation at the Shea Homes property or elsewhere. This is obvious in the reported relationships between water availability and the amount of water consumed (Department of Water Resources 1942). The more water that was made available to plants, the more they used. Also, where evaporation was higher, water use was higher. Under similar experimental conditions, plants in the Owens Valley used more water than plants near Santa Ana and the latter no doubt use more water than plants nearer the coast, although there were no coastal experimental stations.

Based on consumptive use results in the DWR study, Bomkamp extrapolates that salt grass (and probably pickleweed) requires around 40 inches of water per year. Although this may be roughly the amount that would be used were water continuously available in the majority of the root zone throughout the year, it is not the amount of water that is required by the species. In fact, the DWR report documented that when water availability was decreased by lowering the experimental depth to “ground water,” salt grass continued to grow while consuming as little as 10 inches of water per year. The DWR data simply do not enable one to estimate the requirements for species such as

⁷ For example, it was found that 24% of consumptive use in the Sacramento Delta “...goes to sustain plants serving little or no purpose.” Interestingly, these kinds of studies showed that a large quantity of water could be recovered by extracting groundwater and thereby lowering it “...beyond the reach of the vegetation...[which] was the basis for the construction of the ... Los Angeles aqueduct.”

salt grass living in a seasonally wet environment where nearly all the growth takes place opportunistically during a brief time in the winter when water from rainfall is available⁸. Since the estimates of vegetative water requirements are extrapolations based on inappropriate data (and are probably significantly inflated), the resulting estimates of the size of potential wetlands are not reliable or useful.

Temporal Changes in Water Availability

Hunsaker and Associates prepared maps showing estimated drainage areas (Hamilton 2007) based on topography for the years 1970, 1980, 1997, and 2005. Exponent (Hamilton 2007) used this information and estimates of the contributions of the Harbor Bluffs development and the Cabo del Mar condominiums (both north of the Shea Homes property) to estimate water availability during different time periods. Beginning some time during the period of about 1978 to 1980, water was diverted to a bubble-up structure that discharged onto the Shea Homes property. After about 1986, this water went into the storm drain system. Exponent used two estimates of infiltration for the period during which the Cabo del Mar condominiums were being built – 87% infiltration represents the estimated average for undisturbed soil in this area; 69% estimated infiltration represents the construction period when the ground was cleared of vegetation and compacted and runoff was probably higher. The results of this modeling exercise are shown for the periods of interest in Table 1.

Table 1. Estimated water availability for an 8-acre receiving area (EPA wetland area) during various time periods.

Time Period	Topography Used	Conditions	Estimated Water Availability for the 8-acre EPA area
Prior to c. 1978	1970	No water diversion structures; 87% infiltration assumed.	13.86 in
c. 1978 – c. 1986	1980	Water diverted to Shea Homes property from Harbor Bluffs & Cabo del Mar; 87% infiltration assumed.	14.23 in
c. 1978 – c. 1986	1980	Water diverted to Shea Homes property from Harbor Bluffs & Cabo del Mar; 69% infiltration assumed.	18.80 in
c.1986 - 1997	1997	Water diverted from Harbor Bluffs & Cabo del Mar to municipal storm drain; 87% infiltration assumed	11.60 in

Existence and Size of a Wetland in the Area Delineated by EPA

The consultants for Shea Homes contend that the EPA wetland never existed (Homrighausen et al. 2007) and question whether ponded areas that are apparent in aerial photographs represent wetlands (Bomkamp 2007). The latter skepticism is based

⁸ The DWR report pointed out the limitations of their experimental protocols even for estimating consumptive water use: “It has been shown that the limitations of soil tanks make them inadequate for some types of consumptive use investigations. Tanks are suited to areas of high ground water ... but studies in other areas where the water table is beyond reach of root systems may best be carried on through soil sampling.” Shallow ground water is unusual at the Shea Homes property.

on the probable lack of hydric soil conditions and the theoretical calculations from inappropriate estimates of the water requirements of wetland vegetation discussed above. I have critiqued and rejected most of these arguments (see above and Dixon (2007)). The weight of the evidence indicates that a wetland meeting the definition in the Coastal Act and Commission's Regulations existed roughly within the area delineated by the EPA prior to about 1998. However, the consultants for Shea Homes have raised reasonable questions regarding the size of the area that frequently ponded and that was estimated at 7.6 acres by Bilhorn (1987), 8.3 acres by EPA (1989), and assumed to be 8 acres for purposes of calculation of water availability (Bomkamp 2007, Hamilton, 2007).

Since the wetland boundary delineation accepted by EPA appears to have been based largely on evidence of ponding during the construction period for the Cabo del Mar condominiums, the size of the wetland was likely an over estimate. Compared to the period prior to construction of the Cabo del Mar condominiums, the water availability during the construction period is estimated to have increased by between 3% and 36%, depending on runoff assumptions (Table 1). The water availability at the time that Shea Homes acquired the property is estimated to be about 2.25% less than before the condominium construction, but about 19% to 38% less than during the construction period. If size scales linearly with water availability, the actual size of the wetland after 1986 may have been in the range of 5 to 6.5 acres. Bomkamp (2007) presents delineations of ponded areas apparent in aerial photographs taken in 1962, 1967, 1980, 1981, 1983, and 1995. Considering only those delineations from photographs taken outside the Cabo del Mar construction period, the average ponded area was 4.0 acres⁹.

The period of greatest interest is from 1986 (when water diversion changes were completed) to 1998 (when Shea Homes began significant land leveling). Unfortunately, there are few pertinent data available. However, photographs taken on February 10, 1993 (Figure 1), January 28, 1995 (Figure 2), and March 19, 1996 (Figures 3 & 4) show clear evidence of standing water in or adjacent to the boundaries of the EPA delineation and there probably was standing water obscured by crops on January 29, 1997 (Figure 5), since portions of the EPA area are generally inundated when there is this much standing water adjacent to the flood control channel and in the riding arena (cf. Figure 1). Based on recent observations of ponding after extreme rainfall, the EPA area was also almost certainly ponded for long duration after 8.6 inches of rain in February 1998, but no photographs are available. Although the photographic record is spotty, it appears that portions of the area delineated by EPA continued to be inundated following significant rainfall even after the runoff from neighborhoods to the north was diverted to the storm drain.

The size of the ponded areas during the post-construction period can only be accurately estimated from the two vertical aerial photographs taken in 1995 (Figure 2) and 1996 (Figures 3 & 4). The size of the ponded or saturated area¹⁰ in 1995 is about 6.1

⁹ This includes an El Niño year. The available photographs were taken for purposes other than wetland delineation and are a haphazard collection of dates. They should be treated as a random sample. Neither heavy nor light rainfall years should be discarded from this small sample.

¹⁰ Bomkamp (2007) estimated the area of dark soils to be 6.63 acres, but argues that only about 2 acres was actually inundated. The Commission's mapping supervisor does not think there is sufficient basis in the aerial image to make such a distinction.

acres¹¹. Van Coops estimates the size of the pond in the 1996 aerial to be about 2.9 acres. There is relatively little difference in the estimated pre- and post-construction water availability, so it is reasonable to use all the available ponding estimates to estimate the mean area. This results in an estimate of 3.6 acres.

Based on the Bilhorn (1987) and EPA (1989) estimates of the wetland area during the period of construction of the Cabo del Mar condominiums, estimates of water availability during the periods of interest, and the estimated size of ponded areas in available photographs, I think 4.0 acres is a reasonable estimate of the average area that ponded before about 1978 (prior to the construction of the Cabo del Mar condominiums) and between about 1986 (when water from the northern neighborhoods was diverted to the storm drain) and 1998 (when significant land leveling began). In order to estimate the shape and location of a 4-acre wetland within the footprint of the EPA delineation, the Commission's mapping unit overlaid the areas of inundation from 1995 (a very wet year) and 1996 (a below average rainfall year) over 1996 topography (Figure 6). A 4-acre wetland area was obtained by expanding the boundary of the 1996 inundation footprint until it intersected either the boundary of the 1995 inundation footprint or the edge of the topographic depression defined by the +0.5-ft contour, whichever was reached first. This process was continued until the estimated area of the resultant polygon was 4.0 acres (Figure 7). The boundary of this 4-acre historical wetland area relative to the area delineated by EPA in 1989 is shown in Figure 8. This 4-acre area is my best estimate of the portion of the wetland delineated by EPA that would have been frequently ponded or saturated near the surface after the water from the northern neighborhoods was diverted to the storm drain in about 1986 and before the significant land leveling that took place after about 1998 (see Van Coops 2007a, 2007b).

Buffer For Northern Eucalyptus Grove (Raptor Habitat)

Homrighausen (2007) presents Shea Homes's proposed footprint for residential development and a public park and asserts that the development plan "provides an effect variable width buffer." He estimates an average buffer width of 334 feet (102 m), with a minimum width of 173 feet (53 m). This result appears to have been obtained by averaging the development setback from both the southern grove of eucalyptus trees and the northern grove, and by including the active park area within the buffer. The proposed development plan is shown in Figure 9 with 50-m (164-ft) and 100-m (328-ft) buffers around the northern eucalyptus grove. It is obvious that the proposed development, which includes the park, is effectively less than 164 feet (50-m)¹² from the northern eucalyptus trees that provide raptor habitat, rather than 334 feet. This is not an adequate setback to protect raptors from disturbance. For the reasons I discussed in some depth previously (Dixon 2007), I recommend that a 100-m buffer be established around the northern grove of eucalyptus trees.

¹¹ Van Coops (2007a) originally estimated the area from a hard copy as roughly 5 acres. A more recent estimate using digital data and geographic information system (GIS) software is 6.1 acres.

¹² Homrighausen (2007) acknowledges that the park boundary was drawn 150 feet from the eucalyptus trees.

Figure 1. Oblique aerial photograph taken on February 10, 1993. There were about 5.7 inches of rain during the 30 days prior to the photograph and about 18.7 inches for the 1992-1993 rain year. Much of the ponding in the EPA area was probably obscured by vegetation.



Figure 2. Vertical aerial photograph taken on January 28, 1995. There were about 11.7 inches of rain during the 30 days prior to the photograph and about 18.3 inches for the 1994-1995 rain year. The area estimated to be ponded is contained within the green polygon and comprises about 6.1 acres.



Figure 3. Vertical aerial photograph taken on March 19, 1996. There were about 3.7 inches of rain during the 30 days prior to the photograph and about 7.3 inches for the 1995-1996 rain year. The estimated area of inundation is shown separately in Figure 4 because the polygon obscures some of the surface features seen here.



Figure 4. Vertical aerial photograph taken on March 19, 1996. The estimated area of inundation, which is enclosed by the orange polygon, comprises about 2.9 acres.



Figure 5. Oblique aerial photograph taken on January 29, 1997. There were about 4.8 inches of rain during the 30 days prior to the photograph and about 10.6 inches for the 1992-1993 rain year. The ground surface in the EPA area is obscured by vegetation. When the riding arena area and the area next to the flood control channel have this much water, it is highly likely that portions of the EPA area were also inundated (see Figure 1).



Figure 6. Estimated areas of inundation on January 28, 1995 and on March 19, 1996 overlaid on 1996 elevation contours.

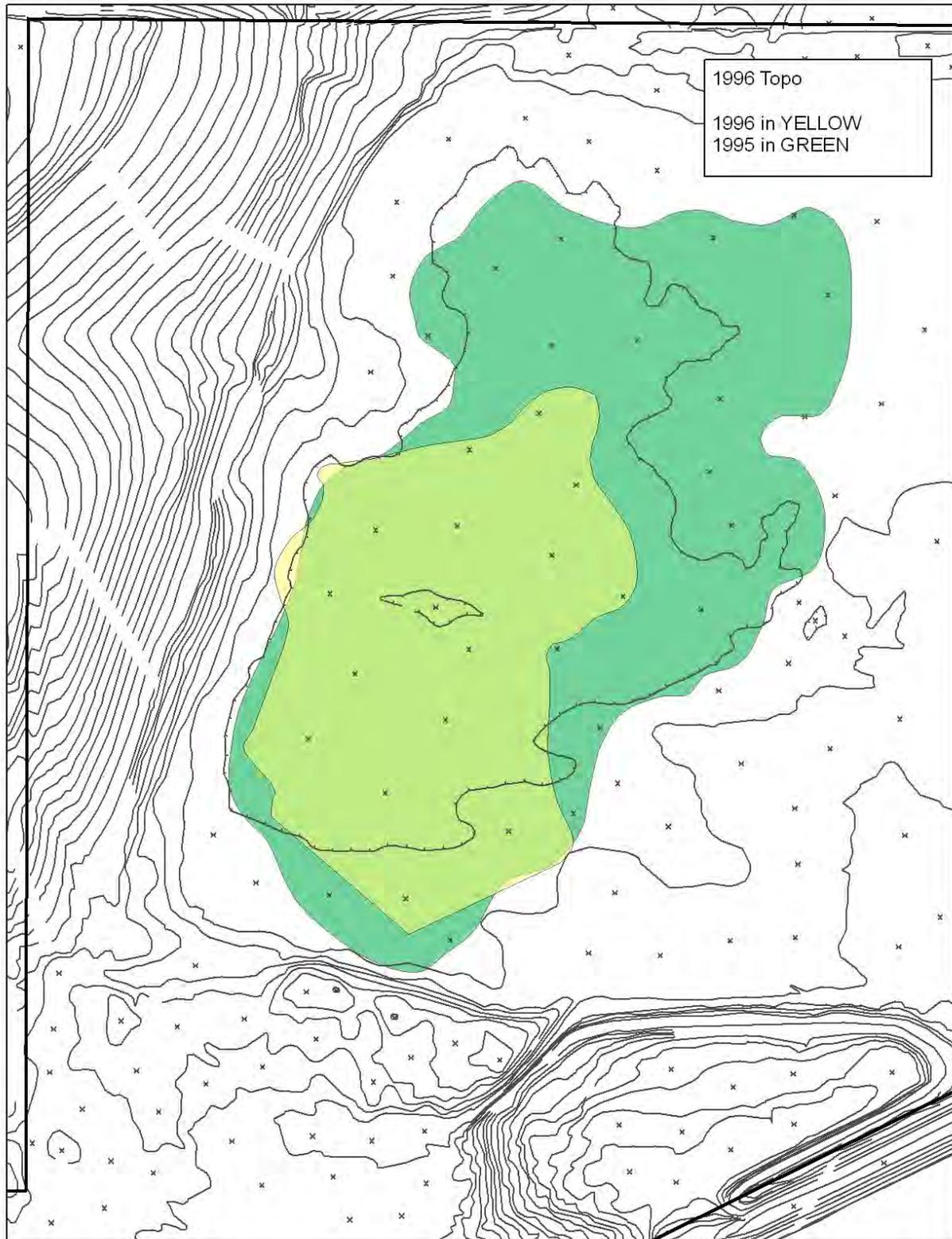


Figure 7. The blue polygon was obtained by expanding the boundary of the area inundated in 1996 (encompassed by the blue polygon) until it intersected the edge of the depression defined by the +0.5-foot contour or the edge of the area inundated in 1995, or until 4-acres was reached.

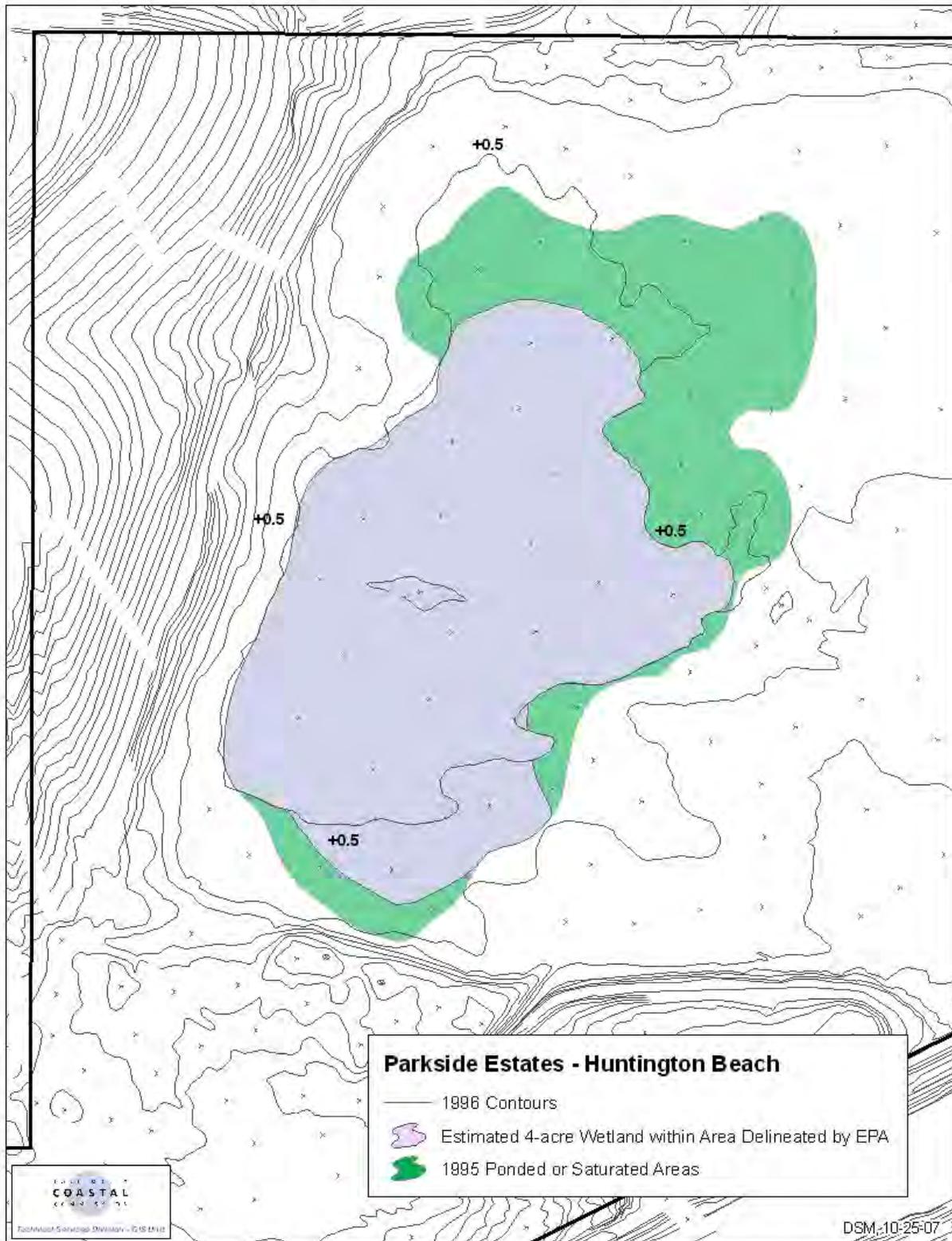
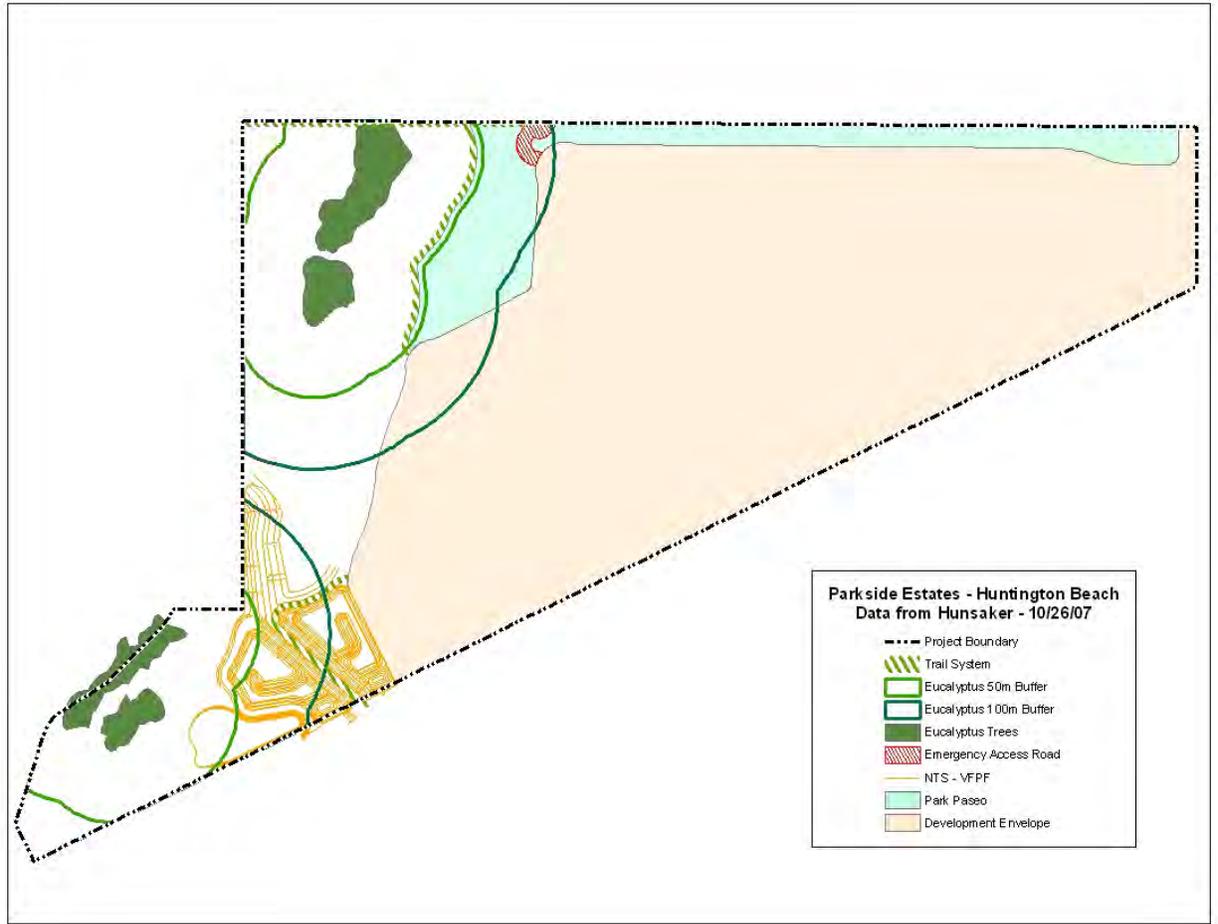


Figure 8. The area delineated by EPA during the construction period for the Cabo del Mar condominiums is shown in tan. Shown in lavender is the 4-acre portion of the EPA wetland that is estimated to have been present before and after the hydrological modifications associated with the construction of Cabo del Mar and before the significant land leveling that took place beginning in 1998.



Figure 9. Proposed development plan presented in Homrighausen (2007) with 50-m and 100-m buffers around the northern eucalyptus trees that provide important raptor habitat. In the key, "NTS" is a natural treatment system for urban runoff and "VFPP" is a vegetated flood protection feature or levee.



California Coastal Commission
SOUTH COAST DISTRICT
666 E. Ocean Blvd., Suite 3107
P.O. Box 1450
Long Beach, CA 90801
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*Approved
Per Staff
10/28/82*

FILED: 4-12-82
49th DAY: Waived
180th DAY: 10-5-82
STAFF: Peter Xander PX
EDITED BY: George Kalisik
STAFF REPORT: 10-12-82 (bp)
HEARING DATE: October 26-29, 1982

REGULAR CALENDAR
STAFF REPORT AND RECOMMENDATION

Application No. 5-82-278 (Burkett/Smoky's Stables)

Applicant: Fred Burkett/Smoky's Stables U.S.A., Inc.
17172 Bolsa Chica Road #71
Huntington Beach, CA 92649

Description: Installation of a mobile home as a caretaker's facility, expansion of stable facilities, parking area improvements, and removal of gravel fill.

Lot area 10.77 acres

Site: The property is located between the southerly terminus of Bolsa Chica Road and the Wintersburg flood control channel.

Substantive File Documents:

1. Bolsa Chica subarea Land Use Plan for the County of Orange Local Coastal Program.
2. City of Huntington Beach Land Use Plan.
3. Department of Fish and Game Determination of the Status of the Bolsa Chica Wetlands, 1981 (as amended 4/16/82).

SUMMARY
The staff is recommending approval of the amended project as submitted.



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148
CCC-12-CD-10
CCC-12-RO-10
Exhibit 4

STAFF RECOMMENDATION

The staff recommends the Commission adopt the following resolution:

I. Approval

The Commission hereby grants a permit for the proposed development on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions

1. Notice of Receipt and Acknowledgement. The permit is not valid and construction shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If construction has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Construction shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All construction must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

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III. Findings and Declarations

The Commission finds and declares as follows:

1. Project Description and History. The proposed development is for the installation of a mobile home as a caretaker's facility, expansion of the existing horse stables area from thirty horse stalls to fifty, grading and filling of a parking area to accommodate fifty vehicles, and for the removal of previously placed fill. The property is owned by the Metropolitan Water District of Southern California and is leased to the applicant. The applicant also has a lease agreement with the Signal Bolsa Corporation for the use of the properties owned by Signal Bolsa for horseback riding use.

On or about the week of Spetember 6, 1981, the applicant had road fill material delivered to the subject property. A member of the South Coast District staff observed dump trucks unloading the fill material on the property on September 10, 1981. The dumping was halted when the applicant and the property owner were notified. The subject application includes a request that the aforementioned fill material be used for improving the parking area for the existing and proposed uses.

The original staff recommendation was for denial of the development since no measures were proposed to rectify the placement of the road fill material, some of which was placed on an area identified by the California Department of Fish and Game as a wetland. Subsequent to the preparation of that original staff report, the applicant has amended the permit application to include the following mitigation measures to rectify the placement of fill: (1) The existing fill, located on about 13,600 square feet of the property identified by Fish and Game as previously containing Salicornia virginica (pickleweed), will be removed to a depth of approximately three inches below the grade of an existing adjacent stand of pickleweed; (2) The 13,600 square foot area will be revegetated with one or more of the following species of plants: pickleweed, spiny rush, frankenia, sea lavender, and shoregrass; (3) A fence will be placed around the revegetated area, sufficient to preclude domestic animal intrusion into the area.

2. Lower Cost Visitor and Recreational Facilities. Section 30213 of the Coastal Act states, in part, that "Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred." The existing facility currently serves the neighboring communities as one of the very few stable and riding facilities remaining in the coastal areas of Orange County. Some horses are boarded by local residents, while other horses are available for riding use on a rental basis for a nominal fee. The proposed expansion of the facility would increase opportunities for public use of the riding rings and trails in the leased properties adjacent to the project site. Since the stables operation currently offers a lower cost recreational use to the public and since the expansion of the stables will increase those opportunities, the Commission finds that the project is consistent with the requirements of Section 30213 of the Coastal Act to encourage and provide such public recreational opportunities.

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150
CCC-12-CD-10

CCC-12-RO-10

Exhibit 4

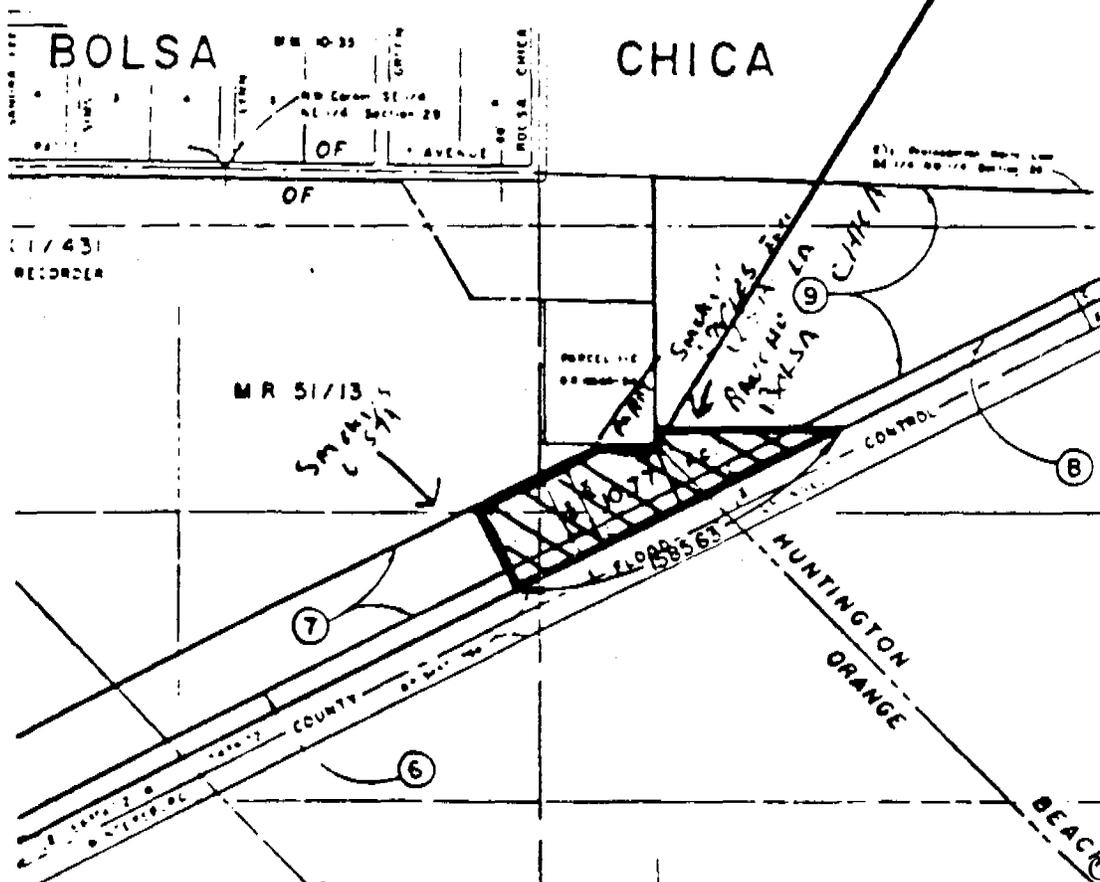
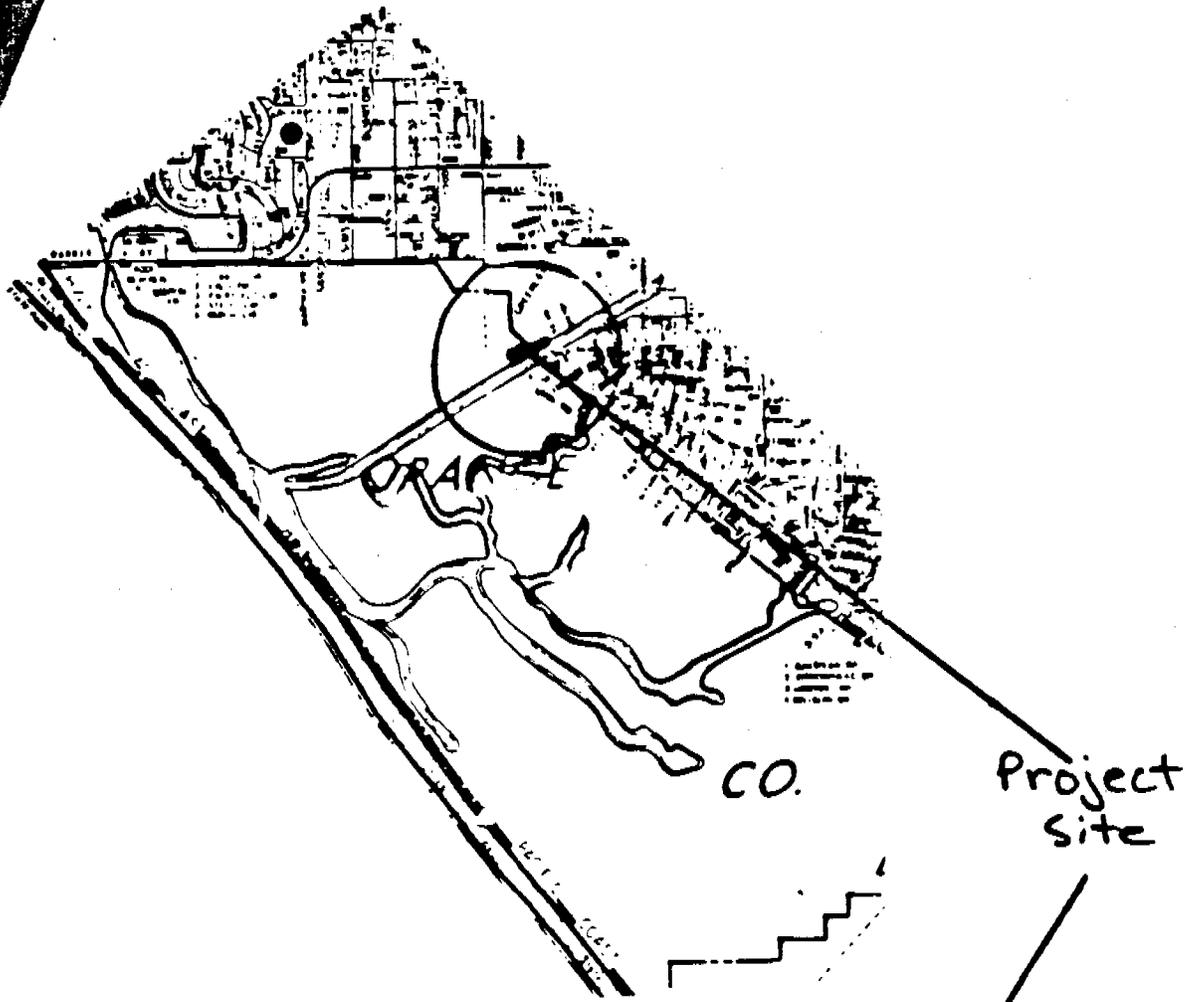
3. Violation. As discussed in the project description and history, a portion of the property not involved with the proposed expansion of the stables was covered by fill placed by the applicant without a coastal development permit. The fill consisted of roadbed fill of gravel, pebbles, and small stones and was placed on a portion of the property identified by the California Department of Fish and Game as previously containing Salicornia virginica (pickleweed), a wetland/salt marsh plant species. As a means of mitigating the adverse impacts of the fill placement on the pickleweed area, the applicant amended his permit application to include the following: (1) The existing fill, located on an area of approximately 13,600 square feet of the subject site which previously contained pickleweed, will be removed to a depth of three inches below the grade of an existing adjacent stand of pickleweed; (2) The 13,600 square foot area will be revegetated with one or more of the following species of plants typically found in a southern California salt marsh/wetland: pickleweed, spiny rush, frankenia, sea lavender, and shoregrass; (3) A fence will be placed around the revegetated area to preclude domestic animal intrusion into the revegetated area. Among the farm animals found at the stables besides the horses are dogs, sheep, rabbits, a goat, and a variety of fowl.

Although development has taken place prior to submission of this permit application, consideration of the applicant by the Commission has been based solely upon Chapter 3 policies of the Coastal Act. Approval or denial of this permit does not constitute a waiver of any legal action with regard to any violation of the Coastal Act that may have occurred; nor does it constitute an admission as to the legality of any development undertaken on the subject site without a Coastal permit.

BBB₄151
CCC-12-CD-10

CCC-12-RO-10

Exhibit 4



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Exhibit 1
5-82-278

CCC-12-CD-10
CCC-12-RO-10
Exhibit 4

2

September 23, 1982

Naomi Schwartz, Chairperson
California Coastal Commission
South Coast District
666 East Ocean Boulevard, Suite 3107
Long Beach, California 90801-1450

Attention: Peter Xander

Re: Amendment To Permit Application No. 5-82-278

Dear Chairperson Schwartz:

Enclosed are two copies of an amendment to Permit Application No. 5-82-278. The amended application has been prepared in accordance with discussions with Peter Xander of your staff and Kit Novick of the Department of Fish and Game.

Very truly yours,

Fred W. Burkett 9-24-82

Fred Burkett
Smoky's Stables, U.S.A., Inc.

Enclosure

cc: Russell Twomey, Esq.
Kit Novick
Robert McNatt
Steven Kaufmann, Esq.

Exhibit 3
5-82-278

CCC-12-GD-10

CCC-12-RO-10

Exhibit 4

BBB 7

EXHIBIT "A"
APPLICATION NO. 5-82-278

The following activities are the subject of this Permit Application:

1. Installation of a mobile home as a caretaker facility.
2. Establishment of additional stable facilities including stalls, dressage arena, pony ring, bull pen, wash racks and tack shed.
3. Grading and fill of a parking facility for approximately 50 cars.
4. Removal of existing fill from approximately 13,600 square feet identified by the Department of Fish and Game as previously containing Salicornia virginica (pickleweed). The fill will be removed to a depth of approximately three inches below the grade of the existing adjacent pickleweed stand.
5. Revegetation of an area of approximately 13,600 square feet continuous with the existing adjacent pickleweed stand with one or more of the following species: pickleweed, spiny rush, frankenia, sea lavender and shoregrass.
6. Establishment of a fence around the vegetated area described in item 5 above sufficient to preclude domestic animal intrusion.

The facilities described above are illustrated on the plans attached hereto as Exhibit "B".

BBB 8

Exhibit 4
5-82-278

CCC-12-CD-10

CCC-12-RO-10

Exhibit 4

55



Area of EPA Wetland

Fill in CP Wetland