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Original Staff Report](#)

W10, 11, 12 & 13

ADDENDUM

September 10, 2013

TO: Coastal Commissioners and Interested Parties

FROM: Lisa Haage, Chief of Enforcement

SUBJECT: **ADDENDUM TO ITEM NOS. W 10, 11, 12, & 13 – CONSENT CEASE AND DESIST AND RESTORATION ORDERS (SIGNAL LANDMARK AND GOODELL FAMILY TRUST) FOR THE COMMISSION MEETING OF SEPTEMBER 11, 2013**

I. Documents received:

- A) September 4, 2013 comment letter from Joyce Perry, Tribal Manager for the Juaneno Band of Mission Indians, Acjachemen Nation
- B) September 9, 2013 email from Dave Singleton, California Native Heritage Commission in support of the Consent Orders
- C) September 10, 2013 comment letter from the Bolsa Chica Land Trust

II. Response to comments received:

- A) Response to Ms. Perry's letter:

Staff has reviewed Ms. Perry's letter and responds as follows and recommends that the Commission incorporate these responses into its findings. Commission staff hereby revises its recommended findings to incorporate these responses, so that adoption of the staff recommendation will include adoption of these findings.

Commission staff appreciates Ms. Perry's insight into the history of the unpermitted development at issue and her conclusion that no human burials were encountered during the unpermitted development at issue, but noting that artifacts were indeed removed from the subject properties. Although Ms. Perry describes measures that were put in place to address treatment of the artifacts, as is explained in more detail in the staff report, no coastal development permit was applied for nor issued for the activities at issue. This is a violation of the Coastal Act's permitting requirement and means that the full range of appropriate mitigation measures, such as avoidance of the cultural materials, was not considered in the proper public forum, if at all.

Commission staff looks forward to working with Respondents, in consultation with Ms. Perry, and representatives of the Gabrieleno tribe, as is required by the Consent Orders, to finalize a Cultural Materials Plan that arranges for final appropriate treatment of the cultural materials removed from the Properties.

B) Response to comments from Dr. Patricia Martz, Professor of Anthropology at California State University, Los Angeles, and Bolsa Chica Land Trust ("BCLT"):

Staff has had discussions with Dr. Martz and Kim Kolpin, Executive Director of the Bolsa Chica Land Trust regarding this matter and responds as follows and recommends that the Commission incorporate these responses into its findings. Commission staff hereby revises its recommended findings to incorporate these responses, so that adoption of the staff recommendation will include adoption of these findings.

Commission staff appreciates Dr. Martz's and BCLT's support for enforcement action to resolve this matter and their commitment to ensuring compliance with the Coastal Act. While both Dr. Martz and the BCLT are generally supportive of the enforcement action, they have raised some issues about the Consent Orders and language in certain sections of the Consent Orders, and some clarification may be useful.

Dr. Martz and the BCLT have raised two primary issues: 1) Section 5.3 of the Consent Orders, which requires preparation and implementation of an Excavations Plan, does not specifically require that the work carried out pursuant to the Excavations Plan will not impact Cultural Materials, and they are thus concerned that restorative work required by the Excavations Plan could itself result in further impacts to cultural materials; and 2) they feel that Section 5.4 of the Consent Orders, which requires preparation and implementation of a Cultural Materials Plan to arrange for final appropriate treatment of "Cultural Materials," does not clearly state that the required treatment is limited to just the cultural materials removed from the subject properties as a result of the unpermitted development at issue. They are thus concerned that, as drafted, the Consent Orders might invite removal of additional cultural materials from the properties.

Regarding the first concern, it should be clarified that in no way do the Consent Orders authorize any further excavation on the Properties, including excavation of cultural materials. The intent of the Consent Orders is to restore impacted coastal resources. The physical restorative work required by the Excavations Plan is expressly limited to placement of fill soil in excavations where necessary to restore excavations to their pre-violation topography. The Consent Orders

also require that, to the extent feasible, all tools utilized to implement the work described in the Excavations Plan shall be hand tools. It is staff's belief that no equipment except shovels and wheelbarrows will be necessary to carry out any necessary work. Any additional development would require a Coastal Development Permit, and is not covered by these Orders. Section 3.0 of the Consent Orders ("Nature of Order and Consent"), expressly limits the scope of the work required by these Consent Orders. It states:

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 Properties other than the work expressly authorized by these Consent Orders.

Moreover, Consent Orders Section 5.1 does specifically state related to the Restoration Plan (of which the Excavations Plan is a component) that:

The Restoration Plan shall also require that all work performed be consistent with the applicable State of California Office of Historic Preservation standards for archaeological work and be performed in a manner that is most protective of any and all cultural materials, including but not limited to cultural midden and midden deposits, human remains, and archaeological features on the Properties.

Finally, Section 5.3(C) of the Consent Orders requires that restorative activities will avoid impacts to coastal resources. As is described in the staff report in more detail, the cultural materials on the subject properties constitute coastal resources that are afforded protection by the Coastal Act.

Commission staff has consulted with the Respondent that will carry out any necessary restorative work and Respondent has confirmed that it is the agreement of the parties to, in carrying out the restorative work required by the Excavations Plan, not perform any further excavation on the Properties and avoid any further impacts to cultural materials. From a practical standpoint, staff notes that the excavated areas were backfilled at the time of the unpermitted development, some 12 years ago, and staff has had the opportunity to visit the site subsequent to preparation of the staff report and notes that the topography of the excavated areas appears to be uniform with surrounding areas. Thus, it is likely that pursuant to Section 5.3.1 of the Consent Orders, the Executive Director will determine that no restorative work is necessary to return the topography of the excavated areas to its pre-violation condition, and therefore, any potential impacts to cultural materials resulting from restorative work will be avoided.

Regarding the second primary concern of Dr. Martz and BCLT noted above, staff notes that, as drafted, Section 5.4 of the Consent Orders is specifically limited in scope to just the cultural materials removed from the site as a result of the unpermitted development at issue. Section 5.4 is limited to treatment of "Cultural Materials." Cultural Materials is a defined term in the Consent Orders that is defined by Section 1.3 as "cultural materials removed from the Properties as a result of the Unpermitted Development ("Cultural Materials")." As noted above, the parties have agreed through Section 3.0 that work authorized by these Consent Orders is limited to just

that work that is described in the Consent Orders. There is thus no authorization in these Consent Orders to undertake further excavation of cultural materials, and subsequent treatment.

Dr. Martz and BCLT have also raised additional questions that are addressed in the Consent Orders and staff report, and which staff will also address in the presentation for these items. Staff hereby confirms that: 1) as indicated in section 5.5(A)(6), the Mitigation Plan must include a provision clarifying that these orders do not alleviate the need for other authorizations, including a coastal development permit(s), which must contain appropriate conditions, for the mitigation project that these Consent Orders require Signal Landmark to construct; and 2) the fact that that ORA-83 is indeed listed as an eligible site for the National Register of Historic Places.

In addition to the comments Commission staff received from BCLT that are discussed above, staff also received the attached September 10 letter, which restates some of the same issues discussed above and brings up other issues as well. Staff provides the following comments to the letter, identified by the section of the letter that they correspond with, below, which are incorporated into the staff report.

I. As the Commission is aware, there is a significant backlog of enforcement cases; statewide there are thousands of pending cases. In order to address just the most pressing and significant cases, enforcement staff must schedule enforcement items as soon as possible and move on to the next case. Given the location of this hearing, staff has had a number of discussions and meetings with interested parties, solicited comments, and responded to those comments in the addendum. Staff does not support a continuance, which would push this resolution back and in turn set back a number of violation cases awaiting Commission action. While we try to have hearings on enforcement matters locally when possible, the overarching goal of the enforcement provisions of the Coastal Act is to resolve violations as quickly as possible.

IIA. The penalty framework and the factors set forth in the Coastal Act is used very generally to reach a proposed penalty amount, but in settlement, there are a number of very site specific things that affect settlement amounts. The results here, and those in the Parker-Ventana case both arose out of a settlement context and were the result of negotiations. However, a few facts are worth noting. Under the Coastal Act framework, the penalty amounts are influenced by a number of factors, but are significantly affected by the number of days of a violation. We note that the Parker-Ventana case involved (contrary to the BCLT's statement in their letter) in fact a long-standing violation of the Coastal Act that that included closure of a 100-site public campground that occupied an almost 90 acre area of open space since 2007; closure of a public trailhead and parking area for an undetermined length of time, potentially for more than a decade; and unpermitted development across the 90-acre campground area for the purposes of the event.

IIB. Staff addresses much of the issues BCLT raises in the letter regarding the restoration activities above. As staff notes above, the Consent Orders do not authorize any further excavation on the Properties and such activity would likely constitute a violation of these Consent Orders, for which remedies, including stipulate penalties, are provided for in the Consent Orders. As also noted above, the Consent Orders include provisions that require all

restorative work to be undertaken in a manner that is most protective of coastal resources and specifically, cultural resources. Thus, staff is confident that any restorative activities undertaken pursuant to these Consent Orders will in fact help restore the integrity of this cultural site, as they are intended, and as Respondents have agreed, to do.

Regarding BCLT's suggestion for curation of the cultural materials, the Consent Orders require preparation of a cultural materials plan, in consultation with representatives of the affected tribes, that will provide for final treatment of the cultural materials. Options for final treatment will likely include the curation that BCLT suggests, as well as other options that might be more preferable to the tribal representatives.

IIC. Staff discussed the benefits of various potential locations for the mitigation project with representatives of the affected tribes and we look forward to continuing these discussions. There are benefits to locating the mitigation project on the Ridge parcel, as well as the Goodell Family Trust parcel. The unpermitted development occurred on both properties, thus either site would provide "on-site" mitigation. Although the Ridge parcel provides a location that is closer to the impacted residential structure, the Goodell parcel provides a location, even in the present state of the sites, that is more secluded and conducive to a cultural site. The Consent Orders establish some flexibility in continuing an evaluation of the options and choosing a final location for the mitigation project.

IID. Pursuant to the terms of the Consent Orders, the Executive Director may determine whether an archaeologist chosen by Respondents to undertake any restorative work is not a compatible choice and may reject such choice.

IIE. BCLT raises some issues that are related to the future planning of the site. These Consent Orders do not limit that process, but instead are intended to resolve this violation prior to any hearing on the future planning of the site in order.

Again, staff appreciates the input from Dr. Martz and the BCLT and the vital role they play in protecting coastal resources. Staff urges the Commission to issue the proposed Consent Orders in order to effectuate a settlement of the violations at issue that ensures protection of significant archaeological and cultural resources on the Bolsa Chica Mesa, and that incorporates the response to the issues raised above.

Juaneno Band of Mission Indians, Acjachemen Nation

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September 4, 2013

Mary Shallenberger, Chairwoman
California Coastal Commission
45 Fremont Street Suite 2000
San Francisco, Ca 94105

Via Email

RE: Ridge Site, Huntington Beach, Ca. Consent Cease and Desist Order CCC 13-CO8 Signal Landmark, September 11-12 Meeting.

Dear Chairwoman Shallenberger,

My intent in writing this letter is to introduce myself, explain our Tribe's involvement and make myself available for any questions you might have regarding the Ridge Site.

My name is Joyce Stanfield Perry. I am the Tribal Manager and Cultural Resource Director for the Juaneno Band of Mission Indians, Acjachemen Nation, (JBMI) under the leadership of Chief and Chairman David Belardes.

On behalf of the JBMI, I was the Native American Monitor who witnessed **all** of SRS's field work and consulted with SRS's peer review team. I witnessed the excavation of what Dr. Nancy Anastasia Wiley refers to as house pit/cultural depression area on the Ridge Site. Over several decades, our Tribe has consulted with the landowners regarding ORA 83, Sandover, Ridge and Goodell Sites. We established detailed procedures as how to excavated, handle, and curate all culturally sensitive items for ORA 83, Sandover, Ridge and Goodell Property. No ancestral remains were unearthed during the excavations on the Ridge Site. Additionally, because this area falls within a shared territory between our Tribe and the Gabrielino/Tongva people, I worked with a variety of Gabrielino monitors on these sites listed above to assure that the excavations and curated items were handled with respect.

Please contact me at 949-293-8522 or Kaamalam@gmail.com if you have any questions.

OHO'VAN
Respect

[Signed copy on file]

Joyce Stanfield Perry
JBMI

From: Dave Singleton <ds_nahc@pacbell.net>
Sent: Monday, September 09, 2013 11:30 AM
To: Willis, Andrew@Coastal
Subject: Re: Bolsa Chica Coastal Act Violation

September 9, 2013

Hi Andrew:

We did download the staff report from the Coastal Commission website. The proposed action has the support of the NAHC.

Keep up the good work!

Dave Singleton
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September 10, 2013

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Via U.S. Mail and Email

Re: Agenda Items W10, 11, 12, 13
Request for Continuance to Southern California Commission Meeting
Consent Cease and Desist Order Nos. CCC-13-CD-08, CCC-13-CD-09
Consent Restoration Order Nos. CCC-13-RO-08, CCC-13-RO-09

Honorable Commissioners:

We submit these comments on behalf of the Bolsa Chica Land Trust (BCLT). The mission of BCLT is to acquire, restore and preserve the entire 1,700 acres of the mesa, lowlands and wetlands of the Bolsa Chica wetlands, and to educate the public about this natural treasure. BCLT has been extremely involved with local government and Coastal Commission processes for projects proposed in and near the wetlands, including the residential developments proposed for the Bolsa Chica Mesa and on the Ridge and Goodell sites addressed by the Consent Cease and Desist and Consent Restoration Orders (“Consent Orders”) listed above.

BCLT and its members have advocated strong enforcement of the Coastal Act’s protections for cultural resources to prevent unpermitted excavations such as those that occurred at the Ridge and Goodell sites. As described in the Staff Report, the unpermitted excavations on the Bolsa Chica Mesa resulted in the destruction of intact middens and other Native American artifacts at a state-listed 9,000-year-old archaeological site. For this reason, BCLT supports the imposition of the Consent Orders and reiterates its strong support for the Coastal Commission and its enforcement of the Coastal Act to protect the Bolsa Chica’s archaeological and cultural resources. Given the history of Coastal Act violations at the sites and the severity of the violations addressed by the Consent Orders, BCLT believes that a greater monetary settlement is warranted and that additional detail about Respondents’ obligations under the Consent Orders should be included therein.

I. Request for Continuance of Agenda Items W10, 11, 12, 13.

Preliminarily, BCLT respectfully requests that these matters be continued to a Coastal Commission meeting located nearer to the Bolsa Chica wetlands, such as the upcoming San Diego hearing scheduled for October 9-11, 2013 or the Newport Beach meeting scheduled for November 13-15. BCLT members and local residents would prefer to attend this meeting in person, but are unable to travel the 675 miles from Orange County to Eureka to participate. Further, additional matters concerning the Bolsa Chica Wetlands and the development of the parcels affected by the Consent Orders are pending before the Commission. Moving agenda items 10-13 to a future Southern California meeting could facilitate the efficient disposition of all of the pending matters concerning the Bolsa Chica wetlands in a single meeting. In the event that the hearing on these matters proceeds as scheduled on September 11, 2013, BCLT submits these comments.

II. Comments on Consent Orders.

BCLT understands that an addendum to the staff report is being prepared to clarify the Commission's intent to prohibit further ground disturbance that may result in damage to cultural and archaeological resources on the Ridge and Goodell parcels. However, since BCLT has not thoroughly reviewed this addendum, we submit our comments on the Staff Report and draft Consent Orders as originally disclosed in the staff report.

A. Monetary Settlement.

BCLT appreciates that Respondents have agreed to a monetary settlement of \$600,000, to be deposited with the Coastal Conservancy Fund for the purpose of promoting the preservation of Native American cultural resources in coastal Orange County. However, in July 2013, the Coastal Commission approved a \$2.5 million monetary settlement to resolve claims related to unpermitted development associated with a wedding in Big Sur. That settlement addressed short-term development, not long-term development with permanent impacts on Native American artifacts, as here. A greater monetary settlement of \$950,000 is warranted. A greater settlement amount would also deter the type of unpermitted development and destruction that occurred here.

B. Restoration and Mitigation Obligations.

BCLT is pleased that the Consent Orders obligate Respondents to restoration and mitigation of the unpermitted excavations. Unfortunately, several aspects of the Consent Orders are vague. The restoration obligation is largely undefined, with details that appear to have been left for determination in the future, perhaps during the approval process for the LCP amendment submitted for the Ridge and Goodell parcels. In order to prevent unintended future excavations, BCLT suggests the following clarifications:

1. Restoration is not archaeological work. Nothing in section 5.1 of the Consent Orders (stating, "all work shall be consistent with applicable with State of California Office of

Historic Preservation Standards for archaeological work and shall be performed in a manner most protective of cultural resources”) authorizes archaeological work or additional excavations at the Ridge or Goodell parcels.

2. Haul routes and staging areas must avoid archaeological resources.
3. Revegetation activities must avoid impacting intact cultural deposits.
4. Any cultural midden materials, human remains, and archaeological features encountered during the course of work conducted pursuant to these Consent Orders shall not be excavated and removed, but shall be preserved in place.

In order to protect the cultural materials recovered during the unpermitted excavations, they should be curated at a repository that meets federal and state standards. The Cooper Center, administered by California State University, Fullerton, is an acceptable facility. The reburial of these artifacts onsite at the Bolsa Chica Mesa leaves them vulnerable to vandalism and theft. The Consent Orders should specify the payment of curation fees by Respondents.

C. Cultural Site.

BCLT also appreciates the Consent Orders’ requirement to construct a Native American cultural site, so long as the site is meaningful and its construction and access trails do not further impact archaeological resources or the Bolsa Chica ecosystem. Although the Consent Orders require that a CDP be obtained for the cultural site, the Orders do not specify where the site will be located. BCLT respectfully requests that the cultural site be located on the Ridge parcel, where most of the unpermitted excavations occurred. The language in the Orders requiring the Goodell Family Trust to provide access to the Goodell site for restoration work should not be construed to allow access for the construction of the cultural site or access trails. The Goodell parcel should not be used to reduce the open space obligations of the proposed future development on the Ridge parcel. The cultural site must also be designed to avoid impacts to intact cultural resources, as well as biological resources and ESHA, which militates toward including this information in the Orders as opposed to deferring decisions about siting to a future CDP process.

D. Continued Use of SRS for Archaeological or Restoration Work.

Pursuant to section 5.1(B), BCLT urges the Executive Director to find SRS (Scientific Resource Surveys, Inc.) and its archaeologists “an incompatible choice to conduct such restoration work” as a result of SRS’s repeated failures to obtain permits before conducting archaeological work on the Bolsa Chica Mesa. (Appendix A, p. 4.) BCLT objects to any use of SRS for future archaeological or restoration work on the mesa. Further, the Orders should stipulate that the monitors employed to oversee the restoration work shall be approved by the Coastal Commission and should not include the monitors who approved the unauthorized archaeological excavations that led to the imposition of these Orders.

E. Other Concerns.

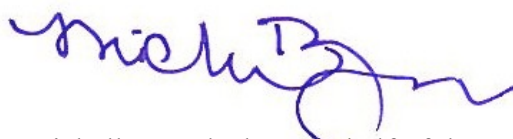
BCLT is aware that the LCPA for the Ridge and Goodell parcels is currently pending before the Commission. In order to ensure the timely completion of the restoration and mitigation required by the Consent Orders, the Commission should not grant any new land use entitlements concerning the Ridge and Goodell parcels until the requirements of the Consent Orders have been completed, with the exception of the CDPs required to satisfy Consent Order obligations.

Finally, the statement on page 10 of the Staff Report regarding the significance of ORA-83 must be revised to include the July 10, 2009 listing of the archaeological site CA-83/144, including the cultural deposits on the Goodell property, as eligible on the National Register of Historic Places. It is our understanding that this is being addressed in the addendum to the Staff Report.

Conclusion

BCLT again thanks the Commission and its staff for its continued enforcement of the Coastal Act to protect valuable cultural and habitat areas such as the Bolsa Chica wetlands. BCLT looks forward to the restoration of the Goodell and Ridge parcels and the development of meaningful mitigation for the unpermitted excavations on the properties.

Sincerely,



Michelle N. Black, on behalf of the
Bolsa Chica Land Trust

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W10,11, 12&13

Staff: A. Willis-LB
Staff Report: 8/29/13
Hearing Date: 9/11/13

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

Consent Cease and Desist Order Nos.:	CCC-13-CD-08 (Signal Landmark) CCC-13-CD-09 (Goodell Family Trust)
Consent Restoration Order Nos.:	CCC-13-RO-08 (Signal Landmark) CCC-13-RO-09 (Goodell Family Trust)
Related Violation File:	V-5-13-001
Property Owners:	1. Signal Landmark 2. Douglas Goodell, Stuart Goodell, and Patricia Price, as trustees of Trusts A, B, and C of the Donald E. Goodell and Shirley L. Goodell Family Trust ¹
Persons Subject to these Orders²:	1. Signal Landmark 2. Douglas Goodell, Stuart Goodell, and Patricia Price, as trustees of Trusts A, B, and C of the Donald E. Goodell and Shirley L. Goodell Family Trust

¹ Signal Landmark owns the property identified by Orange County Assessor's Parcel Number 110-016-35. Douglas Goodell, Stuart Goodell, and Patricia Price, as trustees of Trusts A, B, and C of the Donald E. Goodell and Shirley L. Goodell Family Trust, own the property identified as Orange County Assessor's Parcel Number 110-016-18.

² The parties listed here are the current parties subject to these consent orders. The complete list of covered parties includes references to successors and is contained in the consent orders themselves, attached as Appendices A and B.

Property Location:

Properties located southeast of the intersection of Los Patos Avenue and Bolsa Chica Street, Huntington Beach, which are identified by Orange County Assessor's Parcel Numbers ("APNs"): 110-016-35 and 110-016-18

Violation Description:

Grading, including excavation within an area of known cultural and archaeological significance, resulting in the excavation and removal from the site of the intact remnants of a dwelling structure, artifacts, and intact cultural midden

Substantive File Documents:

1. Public documents in Cease and Desist and Restoration Order files Nos. CCC-13-CD-08, CCC-13-CD-09, CCC-13-RO-08 and CCC-13-RO-09
2. Exhibits 1 through 7 and Appendices A and B of this staff report

CEQA Status:

Exempt (CEQA Guidelines (CG) §§ 15060(c)(2) and (3)) and Categorically Exempt (CG §§ 15061(b)(2), 15307, 15308, and 15321)

SUMMARY OF STAFF RECOMMENDATION

The violations that are the subject of these proceedings include unpermitted grading, including excavation within a known archaeological and cultural site, resulting in excavation and removal from the site of the intact remnants of a dwelling structure, artifacts, and intact cultural midden. As described in more detail below, Signal Landmark undertook the excavation, which extended from its property onto property owned by the Goodell Family Trust.

The properties subject to these proceedings are two contiguous, undeveloped parcels located southeast of the intersection of Los Patos Avenue and Bolsa Chica Street, which are identified by Orange County Assessor's Parcel Numbers ("APNs"): 110-016-35 and 110-016-18 ("Properties") (Exhibit 1). Signal Landmark owns the northern property, which is identified by APN 110-016-35. The Signal Landmark property - located within City of Huntington Beach city limits - is commonly referred to as "The Ridge" parcel.³ Douglas Goodell, Stuart Goodell, and Patricia Price, as trustees of Trusts A, B, and C of the Donald E. Goodell and Shirley L. Goodell Family Trust ("Goodell Family Trust") own the southern property, which is identified as APN 110-016-18, and is located in unincorporated Orange County. (See box below for a summary

³ When the Properties are identified individually in this staff report, the Signal Landmark property will be referred to as "The Ridge" parcel.

and Exhibit 2 for an aerial photograph) Signal Landmark and the Goodell Family Trust are hereinafter referred to, when referred to collectively, as “Respondents.”

Shorthand name	Relative Location	Owner	Jurisdiction	APN
The Ridge parcel	Northern	Signal Landmark	Huntington Beach	110-016-35
Goodell Family Trust parcel	Southern	Goodell Family Trust	Unincorporated Orange County (CCC)	110-016-18

The Properties, together comprising approximately 11.2 acres of land,⁴ are located on the northeastern portion of the Bolsa Chica Mesa and contain a known archaeological site, CA-ORA-86. Archaeologists consider ORA-86 to be the northeasterly continuation of another archaeological site located on the Bolsa Chica Mesa, the highly significant archaeological site CA-ORA-83. CA-ORA-83 is a 9,000 year old archaeological site known as the Cogged Stone Site, due to the great number of cogged stone artifacts recovered there. ORA-83 was placed on the California Register of Historic Places and successfully nominated to the National Register of Historic Places as representative of a ceremonial complex important to local Native American communities, and because the site has produced hundreds of cogged stones, numerous semi-subterranean pit houses, and other artifacts, making it highly significant with regard to research potential and cultural import. ORA-86 also contains significant artifacts. In fact, ORA-86, as a component of ORA-83, has been nominated to the National Register of Historic Places as well.

The violations that are the subject of these proceedings include unpermitted grading, including excavation within ORA-86, resulting in excavation and removal from the site of the intact remnants of a dwelling structure, artifacts, and intact cultural midden (See Exhibits 3 and 4). Signal Landmark undertook the excavations during the course of its archaeological investigation of The Ridge parcel. For the most part, the excavations occurred on the eastern portion of The Ridge parcel; however, excavations extended several meters onto the northeastern corner of the Goodell Family Trust parcel. (See Exhibit 5 for a depiction of the general location of the unpermitted development at issue, which is identified on the exhibit as “SRS Trenches” and “SRS Excavation Units.”) Although Signal Landmark’s apparent purpose in undertaking the violations at issue was to investigate the archaeological resources on The Ridge parcel, the Commission was not given notice of these development activities, and moreover, the activities were not authorized and they resulted in disturbance of protected archaeological resources.

Commission staff has worked closely with Respondents to reach an agreement on Consent Cease and Desist Order No. CCC-13-CD-08 and Consent Restoration Order No. CCC-13-RO-08 (“Signal Landmark Orders”) and parallel Consent Orders CCC-13-CD-09 and CCC-13-RO-09 (“Goodell Family Trust Orders”) (hereinafter, collectively referred to as “Consent Orders”) to resolve the Coastal Act violations described above.⁵ Respondents, through these Consent

⁴The Ridge parcel is approximately 5 acres and the Goodell Family Trust parcel, 6.2 acres.

⁵Although the Goodell Family Trust was not a party to the excavations that constitute the unpermitted development, liability for Coastal Act violations attach to the property owner, and as such, the Goodell Family Trust is also responsible for resolving the violations on its property. As further described in the Consent Orders attached as Appendix A, Signal Landmark has agreed to restore the impacted areas on Goodell Family Trust property and to ensure that occurs, the Goodell Family Trust has agreed to separate consent cease and desist and restoration orders

Orders, collectively have agreed to resolve all Coastal Act violation matters addressed herein, including resolving civil liability under Coastal Act Sections 30820 and 30822.

Staff recommends that the Commission **issue** Consent Orders, attached to this staff report as Appendices A and B, addressing the violations described above. Through the execution of these Consent Orders, Signal Landmark and the Goodell Family Trust have collectively agreed to, according to the specific and individual obligations assigned to each party: 1) perform no further unpermitted development on the Properties; 2) restore, as necessary, the excavated areas,⁶ 3) in conjunction with representatives of the affected Native American tribal groups, specify final appropriate treatment of cultural materials removed from the Properties as a result of the violation described above, 4) undertake a mitigation project on the Properties to promote conservation of Native American cultural resources in coastal Orange County, and 5) resolve civil liability under the Coastal Act.

that specifically require it to comply with the Coastal Act, and to allow Signal Landmark access to its property to conduct restoration and to not interfere with restoration efforts and cooperate with such activities.

⁶ Section 2 of the Goodell Family Trust Orders requires the Goodell Family Trust to provide Signal Landmark with access to its portion of the Properties as necessary to allow Signal Landmark to carry out the restoration work required by these Consent Orders.

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APPENDICES

Appendix A - Consent Cease and Desist Order No. CCC-13-CD-08 and Consent Restoration Order CCC-13-RO-08 (Signal Landmark Orders)

Appendix B – Consent Cease and Desist Order No. CCC-13-CD-09 and Consent Restoration Order CCC-13-RO-09 (Goodell Family Trust Orders)

EXHIBITS

Exhibit 1	Vicinity map
Exhibit 2	Aerial photograph map of parcels
Exhibit 3	Photographs of excavations
Exhibit 4	Photograph of representative cultural materials
Exhibit 5	Map of excavation locations
Exhibit 6	Aerial photograph map of Bolsa Chica Mesa
Exhibit 7	May 20, 2013 Notice of Intent to commence proceedings for issuance of Cease and Desist and Restoration Orders (“NOI”)

I. MOTION AND RESOLUTION

Motion 1: Consent Cease and Desist Order

I move that the Commission issue Consent Cease and Desist Order No. CCC-13-CD-08 pursuant to the staff recommendation.

Staff recommends a **YES** vote on the foregoing motion. 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-13-CD-08, 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: Consent Restoration Order

I move that the Commission issue Consent Restoration Order No. CCC-13-RO-08 pursuant to the staff recommendation.

Staff recommends a **YES** vote on the foregoing motion. 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-13-RO-08, as set forth below, and adopts the findings set forth below on the grounds that 1) development has occurred without a coastal development permit, 2) the development is inconsistent with the Coastal Act, and 3) the development is causing continuing resource damage.

Motion 3: Consent Cease and Desist Order:

I move that the Commission issue Consent Cease and Desist Order No. CCC-13-CD-09 pursuant to the staff recommendation.

Staff recommends a **YES** vote on the foregoing motion. 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-13-CD-09, 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 4: Consent Restoration Order

I move that the Commission issue Consent Restoration Order No. CCC-13-RO-09 pursuant to the staff recommendation.

Staff recommends a **YES** vote on the foregoing motion. 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-13-RO-09, as set forth below, and adopts the findings set forth below on the grounds that 1) development has occurred 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

As noted above, the violations occurred on two separate parcels, one within the city limits of the City of Huntington Beach (“City”), and the other in unincorporated Orange County. The Commission has certified a Local Coastal Program (“LCP”) that covers the parcel within the City limits, The Ridge parcel. Once the Commission has certified an LCP, the local government obtains jurisdiction for issuing Coastal Development Permits (“CDPs”) under the Coastal Act, and it has inherent (police power) authority to take enforcement actions for violations of its LCP.

In areas where a local government obtains permitting authority under the Coastal Act through the Commission’s certification of an LCP, the Commission retains enforcement authority to address violations of the local government’s LCP under the conditions set forth in and as specified in Coastal Act Section 30810(a)(1)-(3). Pursuant to Section 30810(a)(1) of the Coastal Act, Commission staff coordinated with the City, and the City requested the Commission take action to address the Coastal Act violations at issue within the City’s permit jurisdiction.

The violations at issue also extended onto the adjacent Goodell Family Trust parcel, which is located within unincorporated Orange County. There is no certified LCP for this area. The Coastal Commission therefore has initial jurisdiction over both permit and enforcement matters on the Goodell Family Trust parcel. Thus, the Commission has jurisdiction over the enforcement matters at issue, whether located on The Ridge parcel or the Goodell Family Trust parcel.

III. COMMISSION'S AUTHORITY

The Commission can issue a Consent Cease and Desist Order under Coastal Act 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 issued CDP. The Commission can issue a Consent 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 here, and discussed in more detail in Section V.E, below.

The unpermitted activity that has occurred on the Properties meets the definition of “development” set forth in Coastal Act Section 30106 and LCP Section 245.04. Coastal Act Section 30600 and LCP Section 245.06 state 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, nor has a permit application been submitted,⁷ much less a permit obtained, and was undertaken without a CDP, in violation of Coastal Act Section 30600 and LCP Section 245.06.

Not only does the unpermitted activity meet the definition of development as that term is defined in the Coastal Act and the City LCP, and therefore requires (but lacks) a CDP, but such unpermitted development is also inconsistent with the Chapter 3 policies of the Coastal Act, including Sections 30244 (archaeological or paleontological resources), 30230 (marine resources), 30231 (biological productivity and water quality), 30240 (environmentally sensitive habitat areas), and 30253 (minimization of adverse impacts) and policies within the City's LUP,⁸ and is causing continuing resource damage, as defined in California Code of Regulations, Title 14 (“14 CCR”), as fully discussed below.

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. The Chair shall then have staff indicate what matters are already part of the record and the Chair shall announce the rules of the proceeding, including time limits for presentations.

⁷ By way of background, the portion of the Properties within the City's LCP permit jurisdiction, which is also the area of the Properties where the Unpermitted Development largely occurred, is located within the Commission's “Appeals Area,” as that term is defined by LCP Section 245.04(B). The “Appeals Area” is defined to include areas located between the sea and the first public road. This area is also within the Commission's appeals jurisdiction as defined in the Coastal Act, for the same reason. See Coastal Act Section 30603(a)(2). Therefore, if Respondents had applied for and obtained any permit for development activity within the City's permit jurisdiction, which it did not, any action taken by the City under its LCP approving proposed development at this location, including the Unpermitted Development, would be appealable to the Commission.

⁸ A description of the Chapter 3 policies of the Coastal Act and the City LUP policies that apply to The Ridge parcel is provided in Section V.E.2 of this staff report.

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 shall then recognize any other persons who have indicated a desire to speak concerning the matter by submitting a speaker slip, 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 Sections 13195 and 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 so 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 Cease and Desist Order and Restoration Order, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of the motion above, per the Staff recommendation or as amended by the Commission, will result in issuance of the Cease and Desist Order and Restoration Order.

V. FINDINGS FOR CONSENT ORDERS⁹

A. DESCRIPTION OF THE PROPERTIES

As noted above, the Properties are located on the Bolsa Chica Mesa, which rises above the Bolsa Chica Ecological Reserve and wetlands complex lying south and southeast of the mesa. The reserve consists of over 1000 acres of wetlands operated and maintained by the California Department of Fish and Wildlife for conservation and recreation purposes. Also southeast of the mesa is the Shea Homes Parkside Estates project site. (See Exhibit 6 for an overview of the Bolsa Chica Mesa.) In September 2012, the Commission issued consent orders directing Shea Homes to, among other things, undertake wetland restoration on the Parkside Estates site. In October 2012, the Commission approved a coastal development permit authorizing Shea Homes to subdivide and create 111 residential lots, construct single family homes and a public active park, passive park, public access trails and undertake habitat restoration in addition to wetland restoration required by the consent orders noted above.

One of the individual Properties, The Ridge parcel, is currently land use designated Open Space - Parks and zoned Residential Agriculture. The City has submitted a request to the Commission for an LCP amendment (“The Ridge LCPA”) to change the land use designation at the site from Open Space – Parks to Residential Low Density. The proposed amendment would also change the zoning designation at the site from Residential Agriculture to Residential Low Density. The

⁹ These findings also hereby incorporate by reference the preface of the August 29, 2013 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.”

Commission will likely hear the City's request for approval of the LCPA at a future Commission meeting.

As noted above, the archaeological site that spans the Properties, ORA-83, of which ORA-86 is a component, was placed on the California Register of Historic Places by the State Office of Historic Preservation and the state office has also found the site to be eligible to be a National Historic Place due to its archaeological and cultural significance. As a result of years of archaeological research, much of which was performed pursuant to CDPs, and some of which predated the Coastal Act, approximately 160 human burials and over 100 significant archaeological features such as house pits, rock pits, hearths and tens of thousands of beads, charmstones, cogged stones and other artifacts have been found on ORA-83. Cogged stones are unusual artifacts that are manufactured for use in ceremonial practices. More cogged stones, over 500 or roughly half of the total found anywhere, have been found on ORA-83 than any other site and they are thought to have been distributed throughout coastal and near-coastal California. It is also believed that the ORA-83 site served as a ceremonial center and a center for the manufacture of the cogged stones.

The 105.3 acre Brightwater residential development is located west of the Properties, across Bolsa Chica Street. The Brightwater development was the subject of CDP 5-05-020. The approved Brightwater development includes 349 residences on 67.9 acres and 37.1 acres of habitat restoration and public trails, located primarily on the upper bench of the Bolsa Chica Mesa.

B. PERMIT AND ENFORCEMENT HISTORY FOR THE PROPERTIES AND SURROUNDING AREA

Archaeological investigations have been on-going on the Bolsa Chica Mesa since the 1920s. Beginning in the early 1980's, Signal Landmark was granted several CDPs to investigate ORA-83 - including CDP No. 5-89-772, which was issued to Signal Landmark in 1991 for archaeological study on the Brightwater residential project site - as well as other archaeological sites on the mesa. The Commission's approvals were restricted to areas within its permit jurisdiction, which does not encompass The Ridge parcel. Thus, none of the permits noted above authorized development on The Ridge parcel.

On April 14, 2005, the Commission approved CDP No. 5-05-020 for approval of a tract map for the subdivision and development of the 105.3-acre Brightwater project site. The Brightwater project consists of construction of 349 single family residences and habitat restoration. Also included are two local parks, a public trail along the blufftop edge of the property and three public vertical accessways leading to the blufftop trail. Two known archaeological sites, ORA-83 and ORA-85, are located on the Brightwater project site. However, CDP No. 5-05-020 did not authorize any work specifically on The Ridge site, nor could the Commission have authorized development on The Ridge parcel, which is located within the City's permit jurisdiction, in the context of CDP No. 5-05-020.

With regard to the Goodell Family Trust parcel, in 2010 the Executive Director determined through exemption CDP No. 5-10-035-X that a surface survey and a geophysical program intended to provide data to be used to generate archaeological data was exempt. The activity determined by the Executive Director to be exempt did not include any subsurface work.

However, in addition to carrying out the exempt geophysical plan, the Goodell Family Trust's archaeological consultant also, without authorization, excavated sixteen soil profiles by hand. The Goodell Family Trust met with Commission enforcement staff to discuss consensual resolution of the unpermitted excavations and entered into a settlement agreement in the form of consent orders that provide a resolution of the unpermitted development through ordering and authorizing restoration of the unpermitted excavations and settlement of civil liability. Those consent orders, CCC-12-CD-01 and CCC-12-RO-01, were issued by the Commission on January 11, 2012. Pursuant to the terms of the Consent Orders, the Goodell Family Trust agreed to, among other things: 1) cease and desist from conducting any further unpermitted development on the Goodell Family Trust parcel; 2) install erosion control measures; 3) arrange for Native American monitors to oversee all work conducted pursuant to the Consent Orders; 4) screen excavated soil for cultural materials; 5) document and rebury all cultural materials encountered during work conducted pursuant to the Consent Orders; 6) return the topography of excavated areas to its preexisting condition; and 7) fund a mitigation project in the amount of \$430,000 to promote conservation of archaeological resources in coastal Orange County.

C. DESCRIPTION OF UNPERMITTED DEVELOPMENT

The violations that are being resolved by these Consent Orders include unpermitted development, including grading within ORA-86, an area of known cultural and archaeological significance, resulting in excavation and removal from the site of the intact remnants of a dwelling structure, artifacts, and intact cultural midden.¹⁰ Signal Landmark undertook the excavations during the course of its archaeological investigation of The Ridge parcel. For the most part, the excavations were undertaken on the eastern portion of The Ridge parcel. In addition, excavations extended several meters onto the northeastern corner of the Goodell Family Trust parcel.

The archaeological investigation of The Ridge parcel - which included non-development activities as well as the subject excavations - is described in a January 18, 2013 letter from Signal Landmark's archaeological consultant (Scientific Resource Surveys, Inc. ("SRS")) that was included with The Ridge LCPA submission materials. The January 18 SRS letter describes the archaeological investigation as follows:

Beginning in 2001, the entire parcel at the southeast corner of Los Patos Avenue and Bolsa Chica Road was subjected to a multi-stage investigation program reviewed and approved by the Peer Review Team and proceeding from surface survey... systematic auger program and backhoe trenching to test unit (two meters square) hand excavations...

A small deposit remained intact in the southeast corner of the parcel...The subsurface remains of the feature and its environs were completely removed by hand-excavation essentially recovering the entire small localized deposit that remained of CA-ORA-86.

¹⁰ The description herein of the violation at issue is not necessarily a complete list of all development on the Properties that is in violation of the Coastal Act and/or that may be of concern to the Commission. Accordingly, the Commission's silence regarding (or failure to address) other development on the Properties should not be treated as indicative of Commission acceptance of, or acquiescence in, any such development.

See Exhibit 5 for a depiction of the general locations of the unpermitted development at issue, which are identified on the exhibit as “SRS Trenches” and “SRS Excavation Units.” Hereinafter, the unpermitted development activities described above that are the subject of these proceedings are collectively referred to as the “Unpermitted Development.”

D. SETTLEMENT DISCUSSIONS

Upon learning of the Unpermitted Development during review of documents related to The Ridge LCPA, Commission staff consulted with the City and, as is provided for in the Coastal Act, in an April 3, 2013 letter, the City requested that the Commission assume primary enforcement authority with regard to these violations. To that end, on May 20, 2013 the Executive Director notified Signal Landmark of his intent to commence proceedings for issuance of Cease and Desist and Restoration Orders (“NOI”) to address the Unpermitted Development (Exhibit 7). The NOI further set forth a suggested framework to legally resolve the violation via “consent orders”. In accordance with 14 CCR Sections 13181 and 13191, the letter was accompanied by a Statement of Defense (“SOD”) form, and established a deadline for its completion and return.

In subsequent meetings and telephone conversations, Respondents expressed their interest in agreeing to consent orders and working towards settlement rather than submitting a SOD. When staff discovered that the Unpermitted Development extended onto the Goodell Family Trust, the trust’s representatives were incorporated into negotiations to resolve this matter. In the interest of expeditious settlement of this issue, the Goodell Family Trust has agreed to commencement of proceedings to issue these Consent Orders without first receiving a formal written notice of intent to commence cease and desist order and restoration order proceedings pursuant to 14 CCR Sections 13181 and 13191, respectively, and shall not contest that procedure.

Staff and Respondents have worked collaboratively towards an amicable resolution of the Unpermitted Development. Signal Landmark and the Goodell Family Trust signed these Consent Orders on August 23 and 24, 2013, respectively. In order to amicably resolve the violations through these Consent Orders, Respondents agree not to contest the legal and factual bases for, the terms of, or the issuance of these Consent Orders, and have elected to settle this matter rather than submit a SOD form and contest issuance of these Consent Orders. Specifically, Respondents agree not to contest the issuance or enforceability of these Consent Orders at a public hearing or any other proceeding. In addition, Respondents have agreed that all substantive and procedural requirements set forth in Coastal Act Section 30812 as prerequisites for recordation of notice of violations have been satisfied. Respondents do not object to recordation by the Executive Director of notice of violations, pursuant to PRC Section 30812(b).

E. BASIS FOR ISSUANCE OF ORDERS

1) STATUTORY PROVISIONS

(a) Consent Cease and Desist Orders

The statutory authority for issuance of these Consent 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 any requirements of [the Coastal Act] which are subject to the jurisdiction of the certified program or plan, under any of the following circumstances:

(1) The local government . . . 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...

(b) Restoration Orders

The statutory authority for issuance of these Consent 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.

2) FACTUAL SUPPORT FOR STATUTORY ELEMENTS

The following pages set forth the basis for the issuance of the proposed Consent Cease and Desist and Restoration Orders by providing substantial evidence that the Unpermitted Development meets all of the required grounds listed in Coastal Act Sections 30810 and 30811 for the Commission to issue Cease and Desist Order and Restoration Orders.

(a) Development has occurred without a Coastal Development Permit

Unpermitted Development, as described in Section V.C, above, has occurred on the Properties without a CDP. Section 30600(a) of the Coastal Act states that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the Coastal Zone must obtain a coastal development permit. "Development" is defined by Section 30106 of the Coastal Act in relevant part 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...

Likewise, Huntington Beach LCP Section 245.06 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 in Section 245.04 of the City’s LCP in relevant part as follows:

The placement or erection of any solid material or structure on land... discharge or disposal of any materials; grading, removing, dredging, mining, or extraction of any materials...

Grading, including excavation within an area of known cultural and archaeological significance, resulting in excavation and removal from the site of the intact remnants of a dwelling structure, artifacts, and intact cultural midden clearly constitutes “development” within the meaning of both of the above-quoted definitions and therefore is subject to the permit requirements of Section 30600(a) of the Coastal Act and Section 245.06 of the City’s LCP.

The portion of the Unpermitted Development that was undertaken within the City’s LCP permit jurisdiction required a CDP from the City, and the portion of the Unpermitted Development that was undertaken within the Commission’s permit jurisdiction required a CDP from the Commission. Commission staff has researched our records and consulted with the City and determined that the neither the City nor the Commission issued such CDPs. Respondents agree that the Unpermitted Development required a CDP and none was issued, and that neither CDP No. 5-89-772, nor any other CDP, authorized the Unpermitted Development.¹¹

(b) The Unpermitted Development is not Consistent with the Coastal Act and the LCP

As described below, the Unpermitted Development is inconsistent with multiple resource protection policies of the Coastal Act, including, but necessarily limited to: Sections 30244 (protection of archaeological and paleontological resources), 30230 (protection of marine resources), 30231 (protection of biological productivity and water quality), 30240 (protection of environmentally sensitive habitat areas, or “ESHA”), and 30253 (minimization of adverse impacts). Furthermore, the Unpermitted Development is also inconsistent with similar resource protection policies of the City’s LCP as fully described below.

Archaeological Resources

¹¹ Please see the NOI, attached as Exhibit 7, for staff’s analysis demonstrating that CDP No. 5-89-772 could not apply to the Unpermitted Development that occurred on The Ridge parcel since that parcel is outside the Commission’s permitting jurisdiction and, moreover, that the Unpermitted Development was also outside the scope of the work authorized by CDP 5-89-772. Thus, the development that occurred on the Goodell Family Trust parcel, although it is within the Commission’s permitting jurisdiction, was not authorized by CDP 5-89-772.

The Unpermitted Development is inconsistent with Coastal Act Section 30244, which requires protection of archaeological and paleontological resources within the Coastal Zone. Section 30244 of the Coastal Act states:

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

The Unpermitted Development is also inconsistent with Huntington Beach's LCP Policy C.5.1.2 which requires protection of historic and cultural resources. LCP Policy C.5.1.2 states:

Where new development would adversely impact archeological or paleontological resources within the Coastal Zone, reasonable mitigation measures to minimize impacts shall be required.

In addition, Policy C5.1.4, along with Section 230.82E, of the LCP requires the following:

Policy C5.1.4

A completed archeological research design (ARD) shall be submitted along with any application for a coastal development permit for development within any area containing archaeological or paleontological resources.

Section 230.82E

Within the coastal zone, applications for grading or any other development that has the potential to impact significant archaeological/cultural resources shall be preceded by a coastal development permit application for implementation of an Archaeological Research Design (ARD). This is required when the project site contains a mapped archaeological site, when the potential for the presence of archaeological/cultural resources is revealed through the CEQA process, and/or when archaeological/cultural resources are otherwise known or reasonably suspected to be present. A coastal development permit is required to implement an ARD when such implementation involves development (e.g. trenching, test pits, etc.). No development, including grading, may proceed at the site until the ARD, as reflected in an approved coastal development permit, is fully implemented. Subsequent development at the site shall be subject to approval of a coastal development permit and shall be guided by the results of the approved ARD.

Unpermitted excavations were undertaken within, or partially within, the boundary of ORA-86, according to Signal Landmark's estimation of the site limits. The Commission has not concurred with Signal Landmark's estimate of the extent of the archaeological site ORA-86 on the Properties. This will likely be an issue addressed through The Ridge LCPA process. However, by Signal Landmark's own estimate, 8 unpermitted trenches and 18 test units, which constitute all of the unpermitted trenches and test units at issue, were excavated within, or partially within, the boundary of ORA-86.

The site was excavated in the absence of a CDP, precluding an analysis of mitigation options, such as avoidance of cultural resources, which would have otherwise been implemented during the permitting process. In fact, the Unpermitted Development resulted in disturbance of cultural resources, including excavation and removal from the site of remnants of a dwelling structure; intact cultural midden, a protected archaeological resource that helps define the boundaries of the cultural site; and other significant artifacts. Therefore, the protection and appropriate treatment of the archaeological resources contained within this significant cultural site were not ensured, as is required by the CDP process.¹² The Unpermitted Development is thus inconsistent with both the Coastal Act's and LCP's archaeological resources protection policies.

Marine Resources, Biological Productivity, Environmental Sensitive Habitat Areas, and Minimization of Adverse Impacts

The Unpermitted Development is inconsistent with Coastal Act Sections 30230 and 30231, which require protection of marine resources and biological productivity of coastal waters, including from the effects of erosion and run-off. Also, the Unpermitted Development is inconsistent with Coastal Act Section 30240, which requires protection of ESHA, and Section 30253(b), which requires that new development minimize erosion. Sections 30230, 30231, 30240, and 30253 state, in relevant part:

Section 30230

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231

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.

Section 30240

¹² As noted above, the expansive archaeological site on the Bolsa Chica Mesa, of which the site on the subject property is believed to be a part, has been successfully nominated to the National Register of Historic Places by the State Historical Preservation Officer through the State Historical Resources Commission, as a National Historic Site.

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed...*
- (b) Development in areas adjacent to environmentally sensitive habitat areas... shall be sited and designed to prevent impacts that would significantly degrade those areas...*

Section 30253

New development shall... (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter landforms along bluffs and cliffs.

The Unpermitted Development is also inconsistent with City LCP polices, including the following: C6.1.2, C6.1.4, C7.1.3, and C1.1.9, which are the LCP equivalents to the Coastal Act protection policies previously mentioned. Policies C6.1.2, C6.1.4, C7.1.3, and C1.1.9 state:

C6.1.2

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to area and species of special biological or economic significance.

C6.1.4

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.

C7.1.3

Development in areas adjacent to environmentally sensitive habitat areas... shall be sited and designed to prevent impacts which would significantly degrade those areas...

C1.1.9

New Development shall be designed to assure stability and structural integrity, and neither create nor contribute significantly to erosion, geographic instability, or destruction of the site or surrounding area or in any way require the construction of a protective device

The Unpermitted Development resulted in disturbance of soil and deposition of unsecured soil on and adjacent to a slope descending to the Bolsa Chica Wetlands complex, a coastal wetland that provides habitat for threatened and endangered species. Furthermore, the eucalyptus grove ESHA on the “Shea Parkside” property is immediately east of the Properties. Excavations by their nature involve the discarding and piling of soil. Here, excavations were performed on top of a slope without permitted soil erosion protection measures.

The Unpermitted Development has thus put the Properties, and surrounding water bodies and habitat areas, at risk of the effects of unregulated erosion and sediment laden runoff.

Unmanaged runoff across disturbed dirt areas can increase the level of sediment entering water bodies, consequently also increasing the turbidity of receiving waters, which reduces the penetration of sunlight needed by aquatic vegetation that provides food and cover for aquatic species and disrupts the reproductive cycles of aquatic species, leading to adverse changes in reproduction and feeding behavior. These impacts reduce the biological productivity and the quality of coastal waters and reduce optimum populations of marine organisms. Similarly, sediment-laden stormwater runoff can increase sedimentation in coastal waters. Sedimentation of coastal waters impacts fish populations, in part by burying aquatic vegetation that provides food and cover for aquatic species. Furthermore, this site is located in near proximity to wetland and terrestrial areas identified as ESHAs that could be affected by unregulated, sediment-laden runoff emitted from the Properties. For these reasons, the Unpermitted Development is inconsistent with Coastal Act Sections 30230, 30231, 30240 and 30253(b) of the Coastal Act.

c. Unpermitted Development is Causing Continuing Resource Damage

The Unpermitted Development is causing “continuing resource damage,” as defined in 14 CCR Section 13190. 14 CCR Section 13190(a) defines the term “resource” as it is used in Section 30811 of the Coastal Act as follows:

‘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.

The archaeological resources on the Properties, as well as the coastal waters and habitat areas in the vicinity of the Properties, are afforded protection under Coastal Act Sections 30230, 30231, 30240, 30244, and 30253(b), and are therefore “resources” as defined in Section 13190(a) of the Commission’s regulations.

The term “damage” in the context of Restoration Order proceedings is defined in Section 14 CCR 13190(b) as follows:

‘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.

The term “continuing” is defined by 14 CCR Section 13190(c) of the Commission’s regulations as follows:

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

The Unpermitted Development impacted protected archaeological resources, has been undertaken without reasonable mitigation measures necessary to ensure protection and appropriate treatment of archaeological resources, and exposed the site and surrounding coastal waters and habitat areas to the effects of unregulated runoff, thereby causing “damage” to a

resource, as defined in Section 13190(b) of the Commission's regulations. Without restoration of the excavated areas and final appropriate treatment of the cultural materials, 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. 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 significantly impacted coastal resources, including archaeological resources, on the Properties. The Unpermitted Development is therefore inconsistent with the resource protection policies of the Coastal Act and the City LCP, and the resource damage caused by the Unpermitted Development will continue unless the unpermitted activities cease and the Properties are properly restored. Issuance of the Consent Orders is essential to resolving the violations and to ensure compliance with the Coastal Act.

The Consent Orders attached 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 as well as policies contained in the City's LCP. The Consent Orders require Respondents, according to the specific and individual obligations assigned to each party, to:

- 1) perform no further unpermitted development on the Properties;
- 2) restore the excavated areas;
- 3) arrange for and implement, in conjunction with representatives of the affected Native American tribal groups, the final appropriate treatment of cultural materials removed from the Properties as a result of the Unpermitted Development;
- 4) undertake a mitigation project on the Properties to promote conservation of Native American cultural resources in coastal Orange County; and
- 5) resolve civil liability under the Coastal Act.

Therefore, the Consent Orders are consistent with the Chapter 3 policies of the Coastal Act.

3) BASIS FOR RECORDATION OF A NOTICE OF VIOLATION

Under the Coastal Act, a Notice of Violation ("NOVA") may be recorded against property that has been developed in violation of the Coastal Act. The NOVA is recorded in the office of the county recorder where the property is located and appears on the title to the property. The NOVA serves a protective function by notifying prospective purchasers that a Coastal Act violation exists on the property and that anyone who purchases the property may be responsible for the full resolution of the violation. The statutory authority for the recordation of a NOVA is set forth in Coastal Act Section 30812. The Respondents here, as part of the Consent Orders, agreed to recordation of a NOVA. This NOVA will be removed as soon as the violations are fully resolved, as provided for in both 30812 and the Consent Orders, themselves.

F. CONSENT ORDERS ARE CONSISTENT WITH CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The Commission finds that issuance of these Consent Orders to compel the restoration of the 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.

G. FINDINGS OF FACT

1. The Properties are located southeast of the intersection of Los Patos Avenue and Bolsa Chica Street in Orange County and identified by the Orange County Assessor's Office as APNs 110-016-35 and 110-016-18. The Properties are located within the Coastal Zone.
2. Signal Landmark owns the property identified by the Orange County Assessor's Office as APN 110-016-35. Douglas Goodell, Stuart Goodell, and Patricia Price, as trustees of Trusts A, B, and C of the Donald E. Goodell and Shirley L. Goodell Family Trust ("Goodell Family Trust"), own the property identified as Orange County Assessor's Parcel Number 110-016-18.
3. Signal Landmark undertook development on the Properties without the required Coastal Act permit. The development, included, but may not have been limited to, grading within ORA-86, an area of known cultural and archaeological significance, resulting in excavation and removal from the site of the intact remnants of a dwelling structure, artifacts, and intact cultural midden. The activities described immediately above constitute "development" as defined in the Coastal Act and City LCP.
4. The Unpermitted Development is not consistent with multiple resource protection policies Chapter 3 of the Coastal Act, including, but necessarily limited to: Sections 30244 (protection of archaeological and paleontological resources), 30230 (protection of marine resources), 30231 (protection of biological productivity and water quality), 30240 (protection of environmentally sensitive habitat areas, or "ESHA"), and 30253 (minimization of adverse impacts). The Unpermitted Development is "causing continuing resource damage" within the meaning of Coastal Act Section 30811 and Title 14, California Code of Regulations, Section 13190.
5. Coastal Act Section 30810 authorizes the Commission to issue a cease and desist order under these circumstances, when the Commission determines that any person or government agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the Commission without securing a permit or (2) is inconsistent with any permit previously issued by the Commission. Coastal Act Section 30811 authorizes the Commission to issue a restoration order when it finds that development (1) has occurred without a CDP, (2) is inconsistent with the Coastal Act, and (3) is causing continuing resource damages. All of these elements have been met in this case.

6. Commission staff consulted with the City and, as is provided for in the Coastal Act, in an April 3, 2013 letter, the City requested that the Commission assume primary enforcement authority with regard to these violations.
7. 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.

Staff recommends that the Commission issue Consent Cease and Desist Order Nos. CCC-13-CD-08 and CCC-13-CD-09 and Consent Restoration Order Nos. CCC-13-RO-08 and CCC-13-RO-09 attached hereto as Appendices A and B.

CONSENT CEASE AND DESIST ORDER CCC-13-CD-08 AND CONSENT RESTORATION ORDER CCC-13-RO-08

1. CONSENT CEASE AND DESIST ORDER CCC-13-CD-08

Pursuant to its authority under California Public Resources Code (“PRC”) Section 30810, the California Coastal Commission (“Commission”) hereby orders and authorizes Signal Landmark, all of its successors, assigns, employees, agents, contractors, and any person or entities acting in concert with any of the foregoing (hereinafter collectively referred to as “Respondent”) to:

- 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 4.2, below, (“Properties”) unless authorized pursuant to the Coastal Act, PRC Sections 30000-30900, which includes through these Consent Orders.
- 1.2** Cease and desist from performing or maintaining on the Properties any “Unpermitted Development”, as that phrase is defined in Section 4.3, below, or the results thereof.
- 1.3** In consultation with the Native American Monitors and the Most Likely Descendants, as those terms are defined in Sections 4.5 and 4.6, respectively, below, restore, the excavated areas described in Section 4.4, below (“Excavations”) pursuant to the terms of Section 5, below; arrange for and implement final treatment of cultural materials removed from the Properties as a result of the Unpermitted Development (“Cultural Materials”), in accordance with the procedures set forth in Section 5.4, below; and develop and implement a mitigation plan in accordance with the procedures set forth in Section 5.5, below.
- 1.4** Fully and completely comply with the terms and conditions of Consent Restoration Order CCC-13-RO-08 as provided in Section 2, below.

2. CONSENT RESTORATION ORDER CCC-13-RO-08

Pursuant to its authority under PRC Section 30811, the Commission hereby orders and authorizes Respondent to restore the Properties by complying with the restoration requirements described in Section 5, below, including taking all restorative actions listed therein, including, among other things, 1) protecting cultural resources, 2) restoring the Excavations, if determined necessary by the Executive Director, 3) mitigating for impacts to cultural resources, and 4) implementing a long-term monitoring program.

3. NATURE OF ORDERS AND OF CONSENT

Through the execution of Consent Cease and Desist Order CCC-13-CD-08 and Consent Restoration Order CCC-13-RO-08 (hereinafter collectively referred to as “Consent Orders”), Respondent agrees to comply with the terms and conditions of these Consent Orders. These Consent Orders authorize and require restoration activities, among other things, 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 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, below.

Respondent further agrees to condition any contracts for work related to these Consent Orders upon an agreement that any and all employees, agents, and contractors; and any persons or entities acting in concert with any of the foregoing or with any of the other Respondents, adhere to and comply with the terms and conditions set forth herein.

PROVISIONS COMMON TO BOTH ORDERS

4. DEFINITIONS

4.1 Consent Orders. Consent Cease and Desist Order No. CCC-13-CD-08 and Consent Restoration Order No. CCC-13-RO-08 are referred to in this document as Consent Orders.

4.2 Properties. The Properties that are the subject of these Consent Orders are described as follows:

Properties located southeast of the intersection of Los Patos Avenue and Bolsa Chica Street, Huntington Beach that are identified by Orange County Assessor’s Parcel Numbers (“APNs”) 110-016-35 and 110-016-18.

4.3 Unpermitted Development. All “development”, as that term is defined in the Coastal Act (PRC Section 30106), that has occurred on the Properties and required authorization pursuant to the Coastal Act, but for which no such authorization was obtained, including, but not necessarily limited to: grading, including excavation within an area of known cultural and archaeological significance resulting in the excavation and removal from the site of the intact remnants of a dwelling structure, artifacts, and intact cultural midden.

4.4 Excavations. Those areas of the Properties where unpermitted grading, i.e. excavation, occurred. The Excavations are generally identified as “SRS Trenches” and “SRS Excavation Units” in graphics (e.g. Figure 9) in the April 2013 document “2013 Archaeological Abstract, Assessment of Excavations on CA-ORA-86, Bolsa Chica Mesa, Huntington Beach, CA” prepared by SRS, Inc.

4.5 Native American Monitors. Native American monitors from the tribal group(s) with documented ancestral ties to the Bolsa Chica Mesa area appointed consistent with the standards of the California Native American Heritage Commission (“NAHC”).

- 4.6 Most Likely Descendants (“MLDs”).** Persons, as designated by the NAHC pursuant to California Public Resources Code Section 5097.98, that are most likely to be descended from the Native American inhabitants of the Bolsa Chica Mesa area.
- 4.7 Archaeologist.** A professional archaeologist who has experience in cultural and archaeological field work in coastal Orange County. The Archaeologist must be selected in consultation with the Native American Monitors and the MLDs. The Restoration Plan, described below in Section 5, shall propose an Archaeologist for the review and approval of the Executive Director and include a description of his or her education, training, and experience.
- 4.8 Persons Subject to the Consent Orders.** Signal Landmark, all of its successors, assigns, employees, agents, contractors, and any person or entity acting in concert with any of the foregoing, all of whom are jointly and severally subject to all requirements of these Consent Orders.

5. RESTORATION PLAN

These Consent Orders require the preparation and implementation of a Restoration Plan, as defined below, to govern restoration of the Excavations.

- 5.1 Required Elements.** Within the time periods set forth below, Respondent shall submit, for the review and approval of the Commission’s Executive Director, a Restoration Plan that is comprised of the following components: Excavations, Cultural Materials, Mitigation, and Monitoring Plans (collectively “Restoration Plan”). The Restoration Plan shall set forth the measures Respondent proposes to use, in consultation with the Native American Monitors and MLDs, to arrange for and implement appropriate final treatment of the Cultural Materials; restore the Excavations, if determined necessary by the Executive Director; mitigate for impacts to cultural resources resulting from the Unpermitted Development; and monitor all related activities to ensure that they have been completed pursuant to the terms of these Consent Orders. The Restoration Plan shall therefore contain the following components: (1) an Excavations Plan, (2) a Cultural Materials Plan, (3) a Mitigation Plan, and (4) a Monitoring Plan. The Restoration Plan shall address all Unpermitted Development, as defined in Section 4.3, and the results thereof. The Restoration Plan shall also require that all work performed be consistent with the applicable State of California Office of Historic Preservation standards for archaeological work and be performed in a manner that is most protective of any and all cultural materials, including but not limited to cultural midden and midden deposits, human remains, and archaeological features on the Properties.

5.2 General Provisions

- (A) The Restoration Plan shall outline all proposed restoration of the Excavations in accordance with Section 5.3 below; appropriate final

treatment of Cultural Materials in accordance with Section 5.4, below; all mitigation activities, in accordance with Section 5.5, below, and all proposed monitoring activities, in accordance with Section 5.6, below.

- (B) The Restoration Plan, and any reports or revisions prepared pursuant to the Restoration Plan or the terms of these Consent Orders shall be prepared in consultation with an Archaeologist and the Native American Monitors and with the MLDs. Prior to the preparation of the Restoration Plan, Respondent shall submit for the Executive Director's review and approval the qualifications of the proposed Archaeologist, including a description of the proposed Archaeologist's educational background, training, and experience related to the preparation and implementation of the activities described in the Restoration Plan. If the Executive Director determines that the qualifications of the Archaeologist make him or her an incompatible choice to conduct such restoration work, he shall notify Respondent and, within 10 days of such notification, Respondent shall submit for the Executive Director's review and approval a different Archaeologist.
- (C) The Restoration Plan shall include a schedule/timeline of activities covered in the plan, the procedures to be used, and identification of the parties who will be conducting the activities required pursuant to these Consent Orders. The schedule/timeline of activities covered by the Restoration Plan shall be in accordance with the deadlines included in Sections 5.3, 5.4, 5.5, and 5.6 of these Consent Orders for the submission of, and if necessary, revision to the Excavations Plan, Cultural Materials Plan, Mitigation Plan, and Monitoring Plan, respectively.

5.3 Excavations Plan

5.3.1 Within 60 days of issuance of these Consent Orders, Respondent shall submit documentation regarding the existing topography of the Properties to show whether the topography of the Properties remains disturbed as a result of the Unpermitted Development, and describe the soil in the areas in which the Excavations occurred, to the extent they can be identified. The Executive Director shall determine whether an Excavations Plan, as described in Section 5.3.2, is required to return the topography of the Excavations to the condition that existed prior to the Unpermitted Development.

5.3.2 If deemed necessary by the Executive Director pursuant to the terms of Section 5.3.1, the Respondent shall prepare and submit within 60 days of the Executive Director's determination, an Excavations Plan that :

- (A) describes the work necessary to restore the topography of the Excavations to the condition that existed prior to the Unpermitted Development and indicates that if additional fill material is necessary to restore the topography, clean fill materials shall be used.

- (B) includes a map(s), drawn to scale, that shows the specific parameters, locations and extents of the following: (1) the Excavations and excavated soil, to the extent it can be identified, (2) haul routes and staging areas for restoration of Excavations, (3) Southern Tarplant locations, and (4) the specific locations and directions from which photographs will be taken and included in the report to document restoration completion, as discussed in Section 5.6, below.
- (C) includes: 1) graphic representations of the original topography of the Properties, the topography after the Excavations were completed, and the current topography, drawn to scale with contours clearly marked and labeled; 2) a quantitative breakdown of the amount and type of excavated soil; and 3) the source to be used to obtain any fill material necessary to restore the Excavations to their pre-violation topography. The Excavations Plan shall identify the source and date of all data used to produce this information. The Excavations Plan shall indicate that the restorative activities, equipment staging areas, and haul routes will avoid impacts to any coastal resources, including Southern Tarplant.
- (D) includes a detailed description of all equipment to be used. It shall indicate that, to the extent feasible, all tools utilized to implement the work described in the Excavations Plan shall be hand tools. The Excavations Plan shall designate areas for staging of any construction equipment and materials.
- (E) includes provisions for stabilizing the soil and controlling erosion in the area of the Excavations and specifies the methods to be used prior to, during, and after restoration to do so. Such methods shall not include the placement of retaining walls or other permanent structures, grout, geogrid or similar materials. The Excavations Plan shall specify the type and location of erosion control measures that will be installed and maintained until the excavations are restored and vegetation has reestablished to minimize erosion and transport of sediment. Respondent shall implement all approved erosion control measures within 15 days of approval of the Excavations Plan. Such measures shall be provided at all times of the year for at least three years or until vegetation has reestablished, whichever occurs first, and then shall be removed by Respondent.
- (F) indicates that if human remains are encountered during work undertaken pursuant to these Consent Orders, Respondent shall comply with all applicable State and Federal laws, including, but not limited to, contacting the County Coroner, NAHC and the MLDs.
- (G) requires that the Native American Monitors and MLDs be provided access to inspect the Excavations prior to their restoration. The Native American Monitors and MLDs may enter and move freely about the portions of the Properties on which the Excavations are located.

- (H) requires that the Archaeologist document any cultural materials, including cultural midden materials, human remains, and archaeological features encountered during the course of work conducted pursuant to these Consent Orders, and indicate that such documentation shall be included with the report described in Section 5.6, below.
- (I) specifies that Respondent shall complete restoration of the Excavations by implementing the work required by the Excavations Plan by no later than 30 days after approval of the Excavations Plan.

5.4 Cultural Materials Plan. Within 90 days of issuance of these Consent Orders, Respondent shall submit for the review and approval of the Executive Director, the Cultural Materials Plan component of the Restoration Plan. The Cultural Materials Plan shall be prepared in consultation with the Native American Monitors and the MLDs and shall arrange for final treatment of the Cultural Materials. Options considered for final treatment of the Cultural Materials shall include, but not necessarily be limited to, reburial of all or some of the Cultural Materials on the Properties or in a suitable location on the Bolsa Chica Mesa, or donation of the Cultural Materials to an institution or entity approved by the Executive Director for the long-term curation of the Cultural Materials. Any disputes regarding treatment of the Cultural Materials arising among the Respondent, the Archaeologist, and/or the Native American Monitors or MLDs, shall be promptly reported to the Executive Director. Disputes shall be resolved by the Executive Director in consultation with the Native American Monitors, the MLDs, the Archaeologist, and Respondent. If disputes cannot be resolved by the Executive Director in a timely fashion, said disputes shall be reported to the Commission for resolution at the next regularly scheduled Commission meeting following the dispute. The Cultural Materials component shall include a schedule/timeline for final treatment of the Cultural Materials. The Cultural Materials component shall specify that Respondent will finalize treatment of the Cultural Materials within 90 days of approval of the Cultural Materials Plan, and will submit a report documenting final treatment of the Cultural Materials within 30 days of satisfaction of the requirements set forth in the Cultural Materials Plan.

5.5 Mitigation Plan

- (A) Within 180 days of issuance these Consent Orders, Respondent shall submit, for the review and approval of the Commission’s Executive Director, a plan prepared in consultation with the Native American monitors and the MLDs, to mitigate for impacts to archaeological and cultural resources on the Properties caused by the Unpermitted Development (“Mitigation Plan”). The Mitigation Plan shall include the following:
 - (1) a plan to construct on an area of the Properties owned by Respondent, a cultural area, designed in consultation with the Native American Monitors and MLDs, that provides sufficient

space and amenities to provide an area that can be used by Native Americans for, among other activities, ceremonial and reflection purposes (“Cultural Site”), similar to the cultural site at Hellman Ranch in Seal Beach, California. The proposal shall include all information necessary to complete a CDP application to construct the Cultural Site.

- (2) a plan to construct trails that connect the Cultural Site to 1) Bolsa Chica Street, 2) areas on the Properties open or required to be open to the public, and 3) public areas within the adjacent Brightwater project (“Cultural Site Trails”). The proposal shall include all information necessary to complete a CDP application to construct the Cultural Site Trails.
- (3) a signage program that details a system of signs that clearly direct the public to and mark the location of public accessways, including Cultural Site Trails as determined appropriate in consultation with the Native American Monitors and MLDs; public parking areas; and the Cultural Site, and provides information about the cultural history of the Properties, the Bolsa Chica Mesa, and the purpose of the Cultural Site. The signage program shall include plans that indicate the location, materials, dimensions, colors, and text of the signs. The signage program shall include the following:
 - (a) Location of the signs notifying the public of the Cultural Site and Cultural Site Trail access;
 - (b) The signage program shall also include 1) placement of interpretive map signs located in conspicuous locations on an area of the Properties open or required to be open to the public and 2) revision of existing signs at the Brightwater project trailhead located at the intersection of Bolsa Chica Street and Brightwater Drive to incorporate the Cultural Site and Cultural Site Trails.
 - (c) All signs included in the signage program shall make it apparent that the Cultural Site and Cultural Site Trails are open and available to the public. All signs shall include the standard Coastal Access Logo and include language that indicates the Cultural Site and Cultural Site Trails are provided in partnership with the California Coastal Commission.
 - (d) A map showing the proposed locations of all public signs.
- (4) a plan to revegetate areas adjacent to the Cultural Site and Cultural Site Trails (“Revegetation Plan”). At a minimum all areas within

10 feet of the Cultural Site and Cultural Site Trails (“Revegetation Area”) shall be revegetated with plant species native to coastal Orange County. The Revegetation Plan shall be prepared by a professional who has experience successfully completing restoration and revegetation (using California native plant species) of grassland and coastal sage scrub habitats in coastal Orange County (“Resource Specialist”). The Revegetation Plan shall include all information necessary to complete a coastal development permit application for revegetation of the Revegetation Area.

- (5) a provision committing Respondent to draft; submit for the review and approval of the Executive Director and revise, if necessary, at the direction of the Executive Director pursuant to Section 7; execute; and record deed restrictions in a form and content acceptable to the Executive Director to allow public access over and passive recreational use of the Cultural Site and Cultural Site Trails. The deed restrictions shall include legal descriptions of the Properties, the Cultural Site, and the Cultural Site Trails. The requirement for a deed restriction may be waived if the property on which the Cultural Site and/or Cultural Site Trails are constructed is already subject to a similar deed restriction, an irrevocable offer or dedicate a public access easement, or a similar instrument acceptable to the Executive Director. The deed restrictions shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restrictions. These deed restrictions shall not be removed or changed without Commission authorization.
 - (6) a provision committing Respondent to obtain all necessary permissions, including but not limited to a CDP(s), to conduct and complete the work required to implement the Mitigation Plan.
- (B) Respondent shall complete all elements of the Mitigation Plan, consistent with the terms and conditions of these Consent Orders and any CDP(s) issued to authorize implementation of the components of the Mitigation Plan, by no later than 24 months from the approval of the Mitigation Plan by the Executive Director.
- (C) At a minimum, the cost of constructing the Cultural Site and Cultural Site Trails shall be \$200,000. Respondent shall submit an accounting of its costs to demonstrate Respondent has expended a minimum of \$200,000 to complete construction of the Cultural Site and Cultural Site trails.

5.6 Monitoring Plan

The Restoration Plan shall indicate, if an Excavations plan as described in Section 5.3.2, above, is required, Respondent shall submit a Monitoring Plan to monitor all restoration and mitigation activities required by these Consent Orders. The Monitoring Plan shall specify that within 30 days of completion of the activities set forth in the Excavations Plan, Respondent shall submit a report documenting restoration of the Excavations. This report shall include a summary of dates when work was performed and photographs that show implementation of the work required by the Excavations Plan, documentation of any cultural materials encountered during the course of work conducted pursuant to these Consent Orders, and photographs of the Properties before and after the work required by the Excavations Plan has been completed.

6. IMPLEMENTATION AND COMPLETION

Upon the Executive Director's approval of any of the Restoration Plan components described above in Section 5.3, 5.4, 5.5, and 5.6 (if required), by the Executive Director, Respondent shall fully implement that component of the Restoration Plan consistent with all of its terms, and the terms set forth herein.

6.1 All plans, reports, photographs and other materials required by these Consent Orders shall be sent to:

California Coastal Commission
Attn: Andrew Willis
200 Oceangate, 10th Floor
Long Beach, CA 90802

With a copy sent to:
California Coastal Commission
Attn: N. Patrick Veasart
89 S. California Street, Suite 200
Ventura, California 93001

ADDITIONAL PROVISIONS COMMON TO BOTH CONSENT ORDERS

7. REVISIONS OF DELIVERABLES

The Executive Director may require revisions to deliverables under these Consent Orders, 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.

8. COMMISSION JURISDICTION

The Commission has jurisdiction over resolution of these alleged Coastal Act violations pursuant to PRC Sections 30810 and 30811. Respondent agrees not to contest the Commission's jurisdiction to issue or enforce these Consent Orders.

9. RESOLUTION OF MATTER VIA SETTLEMENT

In light of the intent of the parties to resolve these matters in settlement, Respondent has not submitted a "Statement of Defense" form as provided for in Sections 13181 and 13191 of Title 14 of the California Code of Regulations ("14 CCR") and has agreed not to contest the legal and factual bases for, the terms of, or the issuance of these Consent Orders, including the allegations of Coastal Act violations contained in the "Notification of Intent to Commence Cease and Desist Order and Restoration Order Proceedings" dated May 20, 2013 ("NOI"). Specifically, Respondent has agreed not to contest the issuance or enforcement of these Consent Orders at a public hearing or any other proceeding.

10. RECORDATION OF NOTICES

Respondent has agreed that all substantive and procedural requirements set forth in Coastal Act Section 30812 as prerequisites for recordation of notice of violations have been satisfied. Respondent does not object to recordation by the Executive Director of notice of violations, pursuant to PRC Section 30812(b). Accordingly, notice of violations will be recorded after issuance of these Consent Orders. After the Commission determines that Respondent has fully complied with these Consent Orders, and has received from Respondent the rescission fee required by the County Recorder's Office, 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 as a withdrawal or expungement under Section 405.61 of the Code of Civil Procedure.

11. EFFECTIVE DATE AND TERMS OF THE CONSENT ORDERS

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

12. FINDINGS

These Consent Orders are issued on the basis of the findings adopted by the Commission, as set forth in the document entitled "Staff Report and Findings for Consent Cease and Desist Order No. CCC-13-CD-08 and Consent Restoration Order No. CCC-13-RO-08." The activities authorized and required in these Consent 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.

13. SETTLEMENT/COMPLIANCE OBLIGATION

- 13.1** In light of the intent of the parties to resolve these matters in settlement, Respondent has agreed to pay a monetary settlement in the amount of \$600,000 for the purpose of promoting preservation of Native American cultural resources in coastal Orange County. The settlement monies shall be deposited into the Violation Remediation Account of the California Coastal Conservancy Fund (see PRC Section 30823) with a check made out to the Violation Remediation Account, 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, with a check made out to that account. The settlement monies shall be submitted to the Commission's Long Beach Office, at the address provided in Section 6.1, to the attention of Andrew Willis of the Commission, in two separate payments of \$300,000 by no later than 9 months and 18 months from issuance of these Consent Orders, respectively. Settlement payments shall include a reference to the numbers of these Consent Orders.
- 13.2** Strict compliance with these Consent Orders by all parties subject thereto is required. Respondent intends to take responsibility for the violations described in Section 4.3, above, and also agree to obtain all necessary permissions to conduct and complete the work required to resolve the violations addressed herein. Respondent, employees and agents, and any person acting in concert with any of the foregoing are jointly and severally subject to all the requirements of these Consent Orders. Respondent agrees to undertake the work required herein, and agree to cause their current and future 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.
- 13.3** 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 14, will constitute a violation of these Consent Orders and shall result in Respondent being liable for stipulated penalties in the amount of \$1,000 per day per violation. Respondent shall pay stipulated penalties regardless of whether Respondent has subsequently complied. 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 for the violations addressed herein, including imposition of civil penalties and other remedies pursuant to PRC Sections 30820, 30821.6, and 30822 as a result of the lack of compliance with the Consent Orders and for the underlying Coastal Act violations described herein.

14. DEADLINES

Prior to the expiration of the deadlines established by these Consent Orders, Respondent may request from the Executive Director an extension of the deadlines. Such a request shall be made in writing and received by the Executive Director 10 days in advance of the

deadline, and directed to the Executive Director, care of Andrew Willis, 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 diligently worked to comply with their obligations under these Consent Orders, but cannot meet deadlines due to unforeseen circumstances beyond its control.

15. SEVERABILITY

Should any provision of these Consent Orders be found invalid, void or unenforceable, such illegality or unenforceability shall not invalidate the whole, but the Consent Orders shall be construed as if the provision(s) containing the illegal or unenforceable part were not a part hereof.

16. SITE ACCESS

Respondent shall provide Commission staff access to portions of the Properties it owns at all reasonable times and any other 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 Respondent's property on which the Excavations occurred, and on adjacent areas of the Properties for purposes of, among other things: viewing the areas where development is being performed pursuant to the requirements of these Consent Orders; inspecting records, operating logs, and contracts relating to the site; and overseeing, inspecting, and reviewing the progress of Respondent's implementation of the Restoration Plan and compliance with these Consent Orders.

17. 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 its agents in carrying out activities pursuant to these Consent Orders.

18. 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.

19. SETTLEMENT OF CLAIMS

The Commission and Respondent agree that these Consent Orders settle the Commission's monetary claims for relief from Respondent for the violations alleged in

the NOI, occurring prior to the date of 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 on the Properties beyond those that are the subject of the NOI.

20. SUCCESSORS AND ASSIGNS

These Consent Orders shall run with the land, binding Respondent, including successors in interest, heirs, assigns, and future owners of the Properties. Respondent agrees that it will provide notice to all successors in interest, heirs, assigns, and potential purchasers of the Properties of any remaining obligations under these Consent Orders. These Consent Orders are also a personal legal obligation and, Respondent is responsible for the obligations required by these Consent Orders without regard to the ownership of the Properties.

21. MODIFICATIONS AND AMENDMENTS

Except for minor, non-substantive modifications, subject to agreement between the Executive Director and Respondent, these Consent Orders may be amended or modified only in accordance with the standards and procedures set forth in Section 13188(b) and Section 13197 of Title 14 of the California Code of Regulations.

22. GOVERNMENT JURISDICTION

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

23. NO LIMITATION OF AUTHORITY

23.1 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.

23.2 Correspondingly, Respondent has entered into these Consent Orders and waived its right to contest the factual and legal bases for issuance of these Consent Orders, and the enforcement thereof according to its terms. Respondent has agreed not to contest the Commission's jurisdiction to issue and enforce these Consent Orders.

23.3 Nothing in these Consent Orders shall be construed as limiting in any way the ability of the Commission to identify coastal resources on the Properties (including cultural resources not addressed herein) or to analyze and either

preclude or limit, consistent with the Coastal Act, the impacts of any proposed future development on the Properties on coastal resources.

24. 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.

25. CERTIFICATION OF AUTHORITY

The person who signs this document on behalf of Signal Landmark attests that he or she has the legal authority to bind Signal Landmark.

26. STIPULATION

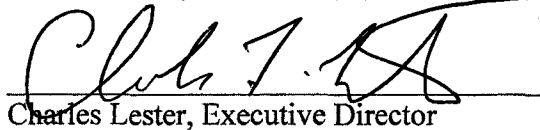
Respondent and its representatives attest that they have reviewed the terms of these Consent Orders and understand that their consent is final and stipulate to its issuance by the Commission.

IT IS SO STIPULATED AND AGREED:

On behalf of Respondent:


Signal Landmark SR. VICE PRESIDENT 8/23/13
Date

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


Charles Lester, Executive Director 9/11/13
Date

CONSENT CEASE AND DESIST ORDER CCC-13-CD-09
AND CONSENT RESTORATION ORDER CCC-13-RO-09

1 CONSENT CEASE AND DESIST ORDER CCC-13-CD-09

Pursuant to its authority under California Public Resources Code (“PRC”) Section 30810, the California Coastal Commission (“Commission”) hereby orders and authorizes Douglas Goodell, Stuart Goodell, and Patricia Price, their successors as trustees of Trusts A, B, and C of the Donald E. Goodell and Shirley L. Goodell Family Trust (“Goodell Family Trust”); successors to any or all of the above as owners of the property identified in Section 5.2, below (“Property”); and all their assigns, employees, agents, contractors, and any person or entities acting in concert with any of the foregoing (hereinafter collectively referred to as “Goodell Family Trust”) to:

- 1.1** Cease and desist from engaging in any development, as that term is defined in PRC Section 30106, on the Property unless authorized pursuant to the Coastal Act, PRC Sections 30000-30900, which includes through these Consent Orders.
- 1.2** Allow for the restoration of the areas impacted on the Property by the Unpermitted Development described in Section 5.3, below, to occur by fully and completely complying with the terms and conditions of Consent Restoration Order CCC-13-RO-09, as provided in Section 2, below.

2 CONSENT RESTORATION ORDER CCC-13-RO-09

Pursuant to its authority under PRC Section 30811, the Commission hereby orders and authorizes Goodell Family Trust to:

- 2.1** Allow Signal Landmark; and all its employees, agents, and contractors (collectively, “Signal Landmark”), and the Native American Monitors and MLDs, as those terms are defined in Section 4.5 and 4.6 of Consent Cease and Desist Order No. CCC-13-CD-08 and Consent Restoration Order CCC-13-RO-08 (“Signal Landmark Orders”), access to the Property for the purpose of conducting the restorative work on the Property outlined in the Signal Landmark Orders and performing any maintenance or monitoring required by the Signal Landmark Orders.
- 2.2** Not block or impede the ability of Signal Landmark to perform and carry out the approved Restoration Plan required by the Signal Landmark Orders (“Restoration Plan”) consistent with the requirements of those orders.
- 2.3** Cooperate with the implementation of the Restoration Plan by Signal Landmark.
- 2.4** Allow the Executive Director of the Commission, and/or his designees access to the Property for purposes of inspecting the Property to assess compliance with the Signal Landmark Orders.

3 NATURE OF ORDERS AND OF CONSENT

Through the execution of Consent Cease and Desist Order CCC-13-CD-09 and Consent Restoration Order CCC-13-RO-09 (hereinafter collectively referred to as “the(se) Consent Orders”), Goodell Family Trust agrees to comply with the terms and conditions of these Consent Orders.

PROVISIONS COMMON TO BOTH ORDERS

4 PERSONS SUBJECT TO THESE CONSENT ORDERS

Douglas Goodell, Stuart Goodell, and Patricia Price, their successors as trustees of Trusts A, B, and C of the Donald E. Goodell and Shirley L. Goodell Family Trust; successors to any or all of the above as owners of the Property; and all their assigns, employees, agents, contractors, and any person or entity acting in concert with any of the foregoing shall be held joint and severally liable for all of the obligations in these Consent Orders.

5 DEFINITIONS

- 5.1 Consent Orders.** Coastal Commission Cease and Desist Order No. CCC-13-CD-09 and Restoration Order No. CCC-13-RO-09 are collectively referred to in this document as the(se) Consent Orders.
- 5.2 The Property.** The Property that is the subject of these Consent Orders is described as follows: property located southeast of the intersection of Los Patos Avenue and Bolsa Chica Street, Huntington Beach, which is identified by Orange County Assessor’s Parcel Number 110-016-18.
- 5.3 Unpermitted Development.** All “development”, as that term is defined in the Coastal Act (PRC Section 30106), that has occurred on the Property and required authorization pursuant to the Coastal Act, but for which no such authorization was obtained, including, but not necessarily limited to: grading, including excavation within an area of known cultural and archaeological significance resulting in the excavation and removal from the site of the intact remnants of a dwelling structure, artifacts, and intact cultural midden.

6 COMMISSION JURISDICTION

The Commission has jurisdiction over resolution of these alleged Coastal Act violations pursuant to PRC Sections 30810 and 30811. Goodell Family Trust agrees not to contest the Commission’s jurisdiction to issue or enforce these Consent Orders.

7 RESOLUTION OF MATTER VIA SETTLEMENT

In light of the intent of the parties to resolve these matters in settlement, Goodell Family Trust has not submitted a “Statement of Defense” form as provided for in Sections 13181 and 13191 of Title 14 of the California Code of Regulations (“14 CCR”) and has agreed not to contest the

legal and factual bases for, the terms of, or the issuance of these Consent Orders, including the allegations of Coastal Act violations contained in the “Notification of Intent to Commence Cease and Desist Order and Restoration Order Proceedings” addressed to Signal Landmark and dated May 20, 2013 (“NOI”)(See Exhibit 1). Specifically, Goodell Family Trust has agreed not to contest the issuance or enforcement of these Consent Orders or the Signal Landmark Orders at a public hearing or any other proceeding. In the interest of expeditious settlement of these matters, the Goodell Family Trust has agreed to commencement of proceedings to issue these Consent Orders without first receiving a formal written notice of intent to commence cease and desist order and restoration order proceedings against it pursuant to 14 CCR Sections 13181 and 13191, respectively, and shall not contest that procedure.

8 RECORDATION OF NOTICE

Goodell Family Trust agrees that all substantive and procedural requirements set forth in Coastal Act Section 30812 as prerequisites for recordation of a notice of violation against the Property for the violations alleged in the NOI have been satisfied. Goodell Family Trust does not object to recordation by the Executive Director of such a notice of violation, pursuant to PRC Section 30812(b). Accordingly, a notice of violation will be recorded after issuance of these Consent Orders. After the Commission determines that Goodell Family Trust has fully complied with these Consent Orders, through completion of implementation of the Restoration Plan, and has received from Goodell Family Trust the rescission fee required by the County Recorder’s Office, 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 as a withdrawal or expungement under Section 405.61 of the Code of Civil Procedure.

9 EFFECTIVE DATE AND TERMS OF THE CONSENT ORDERS

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

10 FINDINGS

These Consent Orders are issued on the basis of the findings adopted by the Commission, as set forth in the document entitled “Staff Report and Findings for Consent Cease and Desist Order Nos. CCC-13-CD-08 and CCC-13-CD-09 and Consent Restoration Order Nos. CCC-13-RO-08 and CCC-13-RO-09.” The activities authorized and required in these Consent Orders are consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act.

11 SETTLEMENT/COMPLIANCE OBLIGATION

Strict compliance with these Consent Orders by the Goodell Family Trust is required. Failure to comply with any term or condition of these Consent Orders will constitute a violation of these Consent Orders and shall result in Goodell Family Trust being liable for stipulated penalties in the amount of \$250 per day per violation. Goodell Family Trust shall pay stipulated penalties within 15 days of receipt of written demand by the Commission for such penalties. If Goodell

Family Trust 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 for the violations addressed herein, including imposition of civil penalties and other remedies pursuant to PRC Sections 30820, 30821.6, and 30822 as a result of the lack of compliance with the Consent Orders and for the underlying Coastal Act violations described herein.

12 SEVERABILITY

Should any provision of these Consent Orders be found invalid, void or unenforceable, such illegality or unenforceability shall not invalidate the whole, but the Consent Orders shall be construed as if the provision(s) containing the illegal or unenforceable part were not a part hereof.

13 SITE ACCESS

Goodell Family Trust shall provide access to the Property at all reasonable times to Commission staff and any other 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 Property on which the Unpermitted Development occurred, and on adjacent areas of the Property for purposes including, but not limited to: viewing the areas where development is being performed pursuant to the requirements of these Consent Orders and the Signal Landmark Orders; inspecting records, operating logs, and contracts relating to the site; and overseeing, inspecting, and reviewing the progress of Signal Landmark's implementation of the Restoration Plan and compliance with the Signal Landmark Consent Orders.

14 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 Goodell Family Trust 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 Goodell Family Trust or its agents in carrying out activities pursuant to these Consent Orders.

15 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, Goodell Family Trust 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.

16 SETTLEMENT OF CLAIMS

The Commission and Goodell Family Trust agrees that these Consent Orders settle the Commission's monetary claims for relief from Goodell Family Trust for the violations alleged in the NOI,¹ occurring prior to the date of 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 Goodell Family Trust 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 on the Property beyond those that are the subject of the NOI.

17 SUCCESSORS AND ASSIGNS

These Consent Orders shall run with the land, binding Goodell Family Trust, including successors in interest, heirs, assigns, and future owners of the Property. Goodell Family Trust agrees that it will provide notice to all successors in interest, heirs, assigns, and potential purchasers of the Property of any remaining obligations under these Consent Orders.

18 MODIFICATIONS AND AMENDMENTS

Except for minor, non-substantive modifications, subject to agreement between the Executive Director and Goodell Family Trust, these Consent Orders may be amended or modified only in accordance with the standards and procedures set forth in 14 CCR Section 13188(b) and Section 13197.

19 GOVERNMENT JURISDICTION

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

20 NO LIMITATION OF AUTHORITY

20.1 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.

20.2 Correspondingly, Goodell Family Trust has entered into these Consent Orders and waived its right to contest the factual and legal bases for issuance of these Consent Orders, and the enforcement thereof according to its terms. Goodell Family Trust has

¹The violations alleged in the NOI are distinct from the violations addressed by Consent Cease and Desist Order No. CCC-12-CD-01 and Restoration Order No. CCC-12-RO-01, which were previously issued by the Commission in January 2012. These Consent Orders do not modify or limit obligations that the Goodell Family Trust still have under Consent Cease and Desist No. CCC-12-CD-01 and Restoration Orders No. CCC-12-RO-01.

agreed not to contest the Commission's jurisdiction to issue and enforce these Consent Orders.

20.3 Nothing in these Consent Orders shall be construed as limiting in any way the ability of the Commission to identify coastal resources on the Property (including cultural resources not addressed herein) or to analyze and either preclude or limit, consistent with the Coastal Act, the impacts of any proposed future development on the Property on coastal resources.

21 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.

22 CERTIFICATION OF AUTHORITY

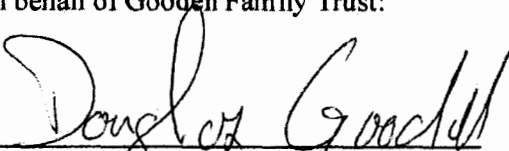
The person(s) who signs this document on behalf of the Goodell Family Trust attests that he or she has the legal authority to bind the Goodell Family Trust.

23 STIPULATION

Goodell Family Trust and its representatives attest that they have reviewed the terms of these Consent Orders and understand that their consent is final and stipulate to its issuance by the Commission.

IT IS SO STIPULATED AND AGREED:

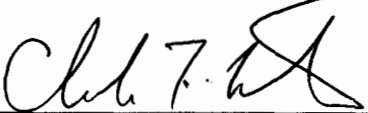
On behalf of Goodell Family Trust:



For the Goodell Family Trust

8/24/13
Date

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

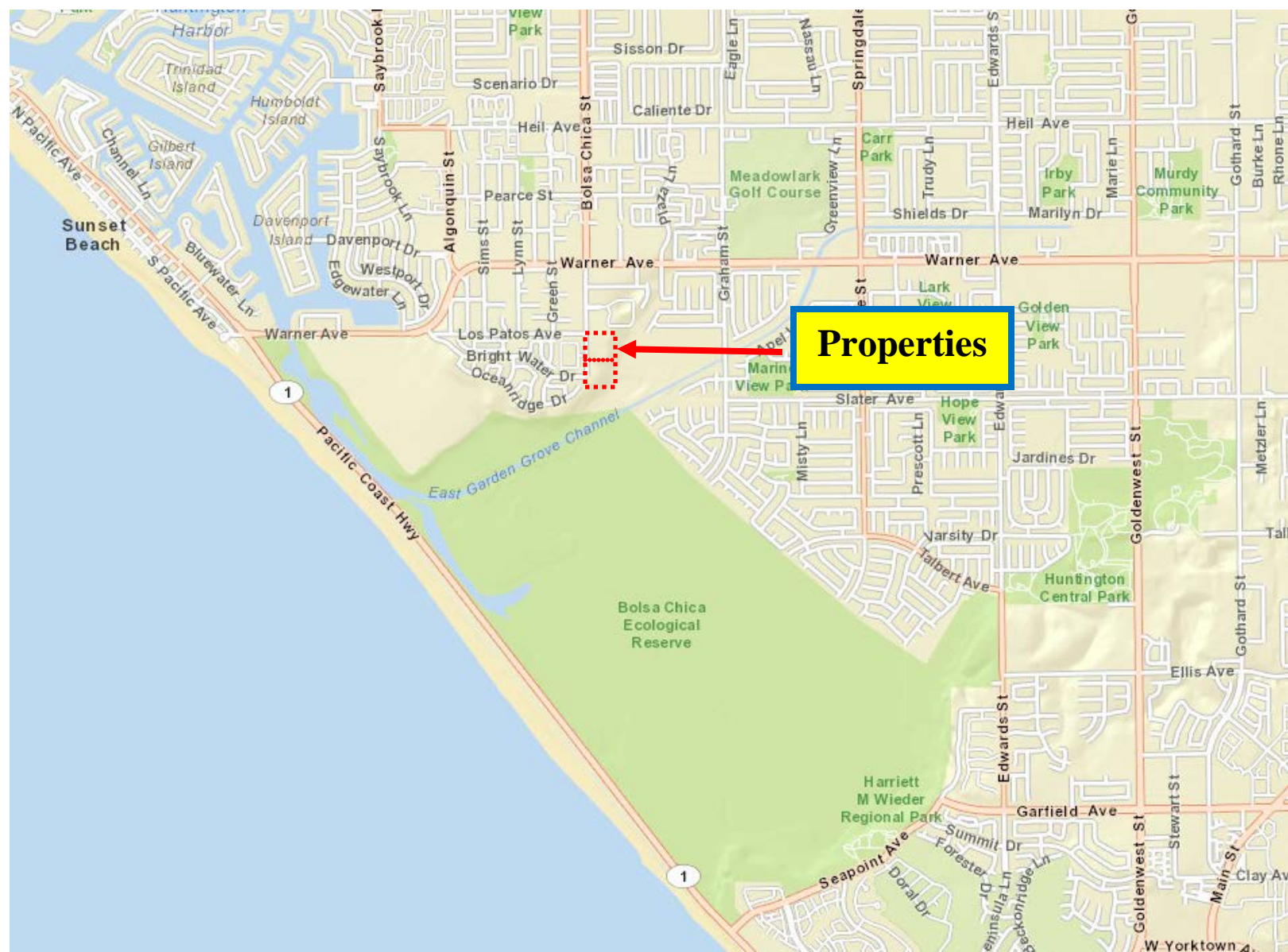


Charles Lester, Executive Director

9/11/13
Date

Exhibit 1: Notification of Intent to Commence Cease and Desist Order and Restoration Order Proceedings addressed to Signal Landmark and dated May 20, 2013

See Exhibit 7 of the staff report for the NOI
See Exhibit 7 of the staff report for the NOI



Location of the Properties



Overview of the Properties



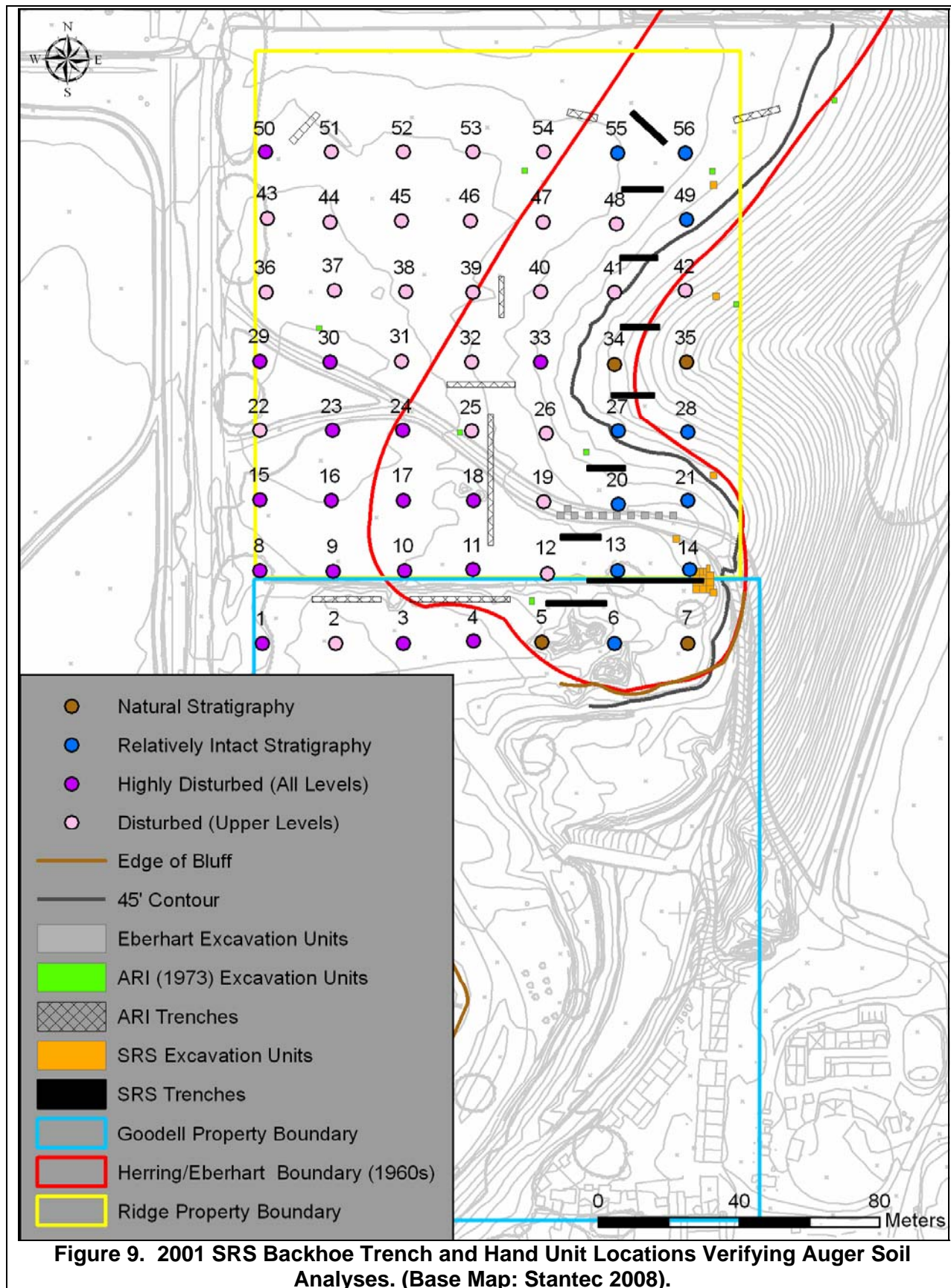
A. Unit Excavation



D. Feature Excavation



Obsidian, shell, and pearl cultural materials excavated from Properties as a result of the Unpermitted Development.





Bolsa Chica Mesa Overview

CALIFORNIA COASTAL COMMISSION

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



Via Certified and Regular Mail
(Certified Receipt No. 7011 1570 0001 0916 2964)

May 20, 2013

Signal Landmark
Attn: Ed Mountford
27285 Las Ramblas, Suite 210
Mission Viejo, CA 92691

**Subject: Notification of Intent to Commence Cease and Desist Order
and Restoration Order Proceedings**

Violation No.: V-5-13-001

Subject Property: Property located southeast of the intersection of Los Patos Avenue
and Bolsa Chica Street, Huntington Beach, Orange County
APN 110-016-18.

Unpermitted Development: Excavations, including within an area of known cultural and
archaeological significance, resulting in the excavation and
removal from the site of the intact remnants of a dwelling
structure, artifacts, and intact midden.

Dear Mr. Mountford:

I am directing this notice to your attention as the owner of the property described above ("subject property"). California Coastal Commission ("Commission") staff appreciates your efforts to work cooperatively towards resolution of previous issues related to your other properties on the Bolsa Chica Mesa; we hope to continue to collaborate to resolve this matter as well.

In reviewing documents related to the application for Huntington Beach Local Coastal Program Amendment No. 1-12 – The Ridge ("the LCPA"), Commission enforcement staff confirmed that development has occurred on the subject property, which is located within the City of Huntington Beach ("City"), without the permit required by the Coastal Act¹ (hereinafter referred to as "unpermitted development"). The unpermitted development is detailed in a January 18, 2013 letter from your archaeological consultant - Scientific Resource Surveys, Inc. ("SRS") - that is included with the LCPA submission materials. The January 18 letter describes the subject unpermitted development activity as follows:

¹ The Coastal Act is codified in the California Public Resources Code ("PRC") at sections 30000 to 30900. Unless otherwise specified, all further section references are to the PRC, and thus to the Coastal Act.

Beginning in 2001, the entire parcel at the southeast corner of Los Patos Avenue and Bolsa Chica Road was subjected to a multi-stage investigation program reviewed and approved by the Peer Review Team and proceeding from surface survey... systematic auger program and backhoe trenching to test unit (two meters square) hand excavations...

A small deposit remained intact in the southeast corner of the parcel... The subsurface remains of the feature and its environs were completely removed by hand-excavation essentially recovering the entire small localized deposit that remained of CA-ORA-86.

We would like to work with you to resolve these issues amicably, and we are willing to consider options that could involve agreeing to a consensual resolution to the Coastal Act violations on the subject property, such as consent cease and desist and restoration orders (“consent orders”). In order to be able to resolve the violations through formal enforcement actions, whether as a consent or regular order proceeding, we initiate the process by sending you this letter, the purpose of which is to notify you of my intent, as the Executive Director of the Commission to commence proceedings for issuance of cease and desist and restoration orders to address unpermitted development on the subject property.

Development is broadly defined by the Coastal Act (PRC § 30106) and, similarly, by the relevant portion of the City Local Coastal Program (“LCP”), Section 245.04 of the Huntington Beach Zoning and Subdivision Ordinance, 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 any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of the use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations.... (emphasis added)

As you know, pursuant to Section 30600(a) of the Coastal Act and Section 245.06 of the LCP, any person wishing to perform or undertake development in the Coastal Zone must obtain a coastal development permit (“CDP”), in addition to any other permit required by law, unless the development is otherwise exempt, which is not the case here. The activities described above are “development” under the Coastal Act and the City LCP because they involve both grading and extraction of materials. Therefore, the development activities required a coastal development permit. Any development activity conducted in the Coastal Zone of the City without the necessary coastal development permit constitutes a violation of the Coastal Act and the City LCP. As is provided for in the Coastal Act, in an April 3, 2013 letter, City requested that the Commission assume primary enforcement authority with regard to these violations.

The coastal development permit process is not merely a procedural hurdle. It enables the permitting entity, the City and/or Commission, to review proposed development activity in order

to ensure it is consistent with the Coastal Act or LCP. If the proposal is found not to be consistent with the relevant requirements, the process also enables the permitting entity to condition the project to make it consistent, for example by requiring appropriate mitigation measures to identify portions of sites that contain cultural and archaeological resources and avoid impacts to those resources. In this situation, the development proceeded without benefit of a coastal development permit, thus precluding the City and/or Commission from requiring appropriate mitigation measures to protect cultural and archaeological resources through the coastal development permit process. In fact, the excavations resulted in significant disturbance, if not destruction, of protected cultural and archaeological resources.

Again, this letter is not intended to supplant the opportunity to resolve this matter consensually, but it is a legally mandated step in the ongoing process that is intended to facilitate the resolution of the issues. The steps noticed herein are designed to resolve the aforementioned Coastal Act violations through formal enforcement actions, and we can utilize these mechanisms whether we come to agreement on a consent process or not. As noted above, we would like to discuss with you means to resolve this matter.

If adopted by the Commission, consent orders would likely direct you to, among other actions: (1) cease and desist from undertaking any further development on the subject property unless authorized by a CDP or by other means consistent with the Coastal Act, (2) cease and desist from maintaining any unpermitted development on the subject property, (3) restore the impacted areas pursuant to an approved restoration plan, (4) mitigate for impacts to coastal resources, (5) take all steps necessary to ensure compliance with the Coastal Act, and (6) resolve your liability for civil penalties under Chapter 9 of the Coastal Act.

Site Background

The subject property is located on the northeastern portion of the Bolsa Chica Mesa and contains a known archaeological site, CA-ORA-86. Archaeologists consider ORA-86 to be the northeasterly continuation of another archaeological site located on the Bolsa Chica Mesa, the highly significant archaeological site CA-ORA-83. CA-ORA-83 is a 9,000 year old archaeological site known as the Cogged Stone Site, due to the great number of cogged stone artifacts recovered there. ORA-83, was successfully nominated to the National Register of Historic Places under Criterion A as a type site for production, manufacture and distribution of the cogged stone artifact and a prehistoric site that represents an Early Holocene ceremonial complex important to the local Native American communities, and under Criterion D since the site has produced hundreds of cogged stones, human remains, numerous semi-subterranean pit houses, and other artifacts and since the site is considered highly significant with regard to research potential, particularly if this information is combined with other archaeological and ethnographic evidence. ORA-86 also contains significant artifacts, which unfortunately were excavated and disturbed as a result of the subject development. In fact, ORA-86, as a component of ORA-83, has been nominated to the national register. Yet, although ORA-86 is commonly considered to be related to ORA-83, the sites have been excavated pursuant to separate archaeological projects, as detailed below.

CDP and Violation History

In the January 18 letter, your archaeological consultant asserted that the unpermitted activities described above were authorized by CDP No. 5-89-772, as amended, which the Coastal Commission issued to Signal Landmark in 1991 for archaeological study on a parcel separate from the subject property. This separate parcel located in unincorporated Orange County - within the Coastal Commission's permit jurisdiction - constitutes the Brightwater residential project site, hereinafter "the Brightwater property." As detailed below, the Coastal Commission did not authorize, nor could it have authorized, the subject development via CDP No. 5-89-772 for a number of reasons.

a. The subject property is not within the Coastal Commission's permit jurisdiction

The City LCP was certified by the Coastal Commission in 1985, and the subject property is located within the jurisdiction of the LCP. Following certification of the LCP, the authority to issue most coastal development permits was transferred from the Coastal Commission to the City, with the Commission retaining limited permit authority and appeal jurisdiction.² Except in limited circumstances not applicable here, such as (but not limited to) a *de novo* permit issued by the Coastal Commission after appeal, or a consolidated permit issued pursuant to Coastal Act Section 30601.3 (which is not applicable here for a few reasons, most notably because the subject development predated the legislative amendment that added Section 30601.3 to the Coastal Act), the Coastal Commission no longer has authority to issue coastal development permits in areas covered by a certified LCP. Therefore, the subject development required a coastal development permit from the City – not the Commission. Commission staff has researched our records and consulted with the City and determined that the City did not issue such coastal development permit.

Therefore, the Coastal Commission could not have, and did not, authorize the subject development through CDP No. 5-89-772, even if the subject development were part of the project approved via CDP No. 5-89-772, which, as described below, it was not, since the subject property is outside the Commission's retained permit jurisdiction.

Furthermore, there is no doubt that you would have been aware that the Commission issues permits for development within unincorporated Orange County and that the City issues permits for development within the City, as evidenced by your submittals of applications to the Commission for development within unincorporated Orange County (e.g. the Brightwater applications) and your application submittal to the City for development within the City (i.e. the Sandover application).

²Although the Commission delegated much of its permit-issuing authority to the City in conjunction with its certification of the City's LCP, and the City has inherent (police power) authority to take enforcement actions for violations of its LCP, the Commission also retains enforcement authority to address violations under certain conditions. For example, section 30810 authorizes the Commission to issue a Cease and Desist Order under the conditions set forth in Section 30810(a). Commission staff coordinated with the City, and City staff supported resolution of this matter through issuance of these Consent Orders, thus satisfying the condition of Section 30810 for Commission action to enforce the requirements of a certified LCP.

b. Subject development is not within the area covered by CDP No. 5-89-772

Consistent with the limitations on the Coastal Commission's permit authority noted above, on its face, CDP No. 5-89-772 describes the approved project location as the "Upper Bench of Bolsa Chica Mesa located in an unincorporated area of Orange County, near Warner Avenue and Bolsa Chica Street." Furthermore, the application for CDP No. 5-89-772 that you submitted requests authorization for development only within unincorporated Orange County and restricts its request for authorization to a specific parcel in unincorporated Orange County. As noted above, the site of the subject development is a property within the City and, thus, within the City's permit jurisdiction, as opposed to the Commission's.

c. Subject development is not covered by the "MOA"

Although the assertion is moot since, as noted above, (a) the Commission did not have authority to authorize the subject development within the City's permit jurisdiction through the subject CDP, and (b) the location descriptions in the CDP application and the CDP itself did not include the subject property; for the sake of completeness we are responding to your claim that the subject development was within the scope of the work approved pursuant to CDP No. 5-89-772. The development authorized by CDP No. 5-89-772 is described as follows in the project description: "Final mitigation on ORA-83 otherwise known as the 'Cogged Stone Site' which will include the excavation of 17 two meter by two meter hand units in a total of 6 areas within a eucalyptus grove." CDP No. 5-89-772 was subsequently amended to include authorization for the following activities: "To complete work on the 26 open test units that have received review and approval from the Office of Historic Preservation. Upon completion the units will be backfilled." All of this development was limited per the project description, as well as the Commission's jurisdiction, to areas located within unincorporated Orange County.

The subject development was clearly not listed in the project description for CDP No. 5-89-772; however, you claim that the subject development was authorized via the CDP pursuant to Special Condition No. 1, which addressed the scope of archaeological study on the Brightwater property in unincorporated Orange County.

Special Condition No. 1 of the CDP, as amended, requires:

Prior to authorization to proceed with development, the applicant shall submit to the Executive Director, written evidence that an archaeologist certified by the County of Orange has been retained by the applicant and that a copy of the report on literature and records search and field survey has been provided and approved by the Manager, County of Orange EMA-Harbors, Beach and Parks/Program Planning Division. Furthermore, the applicant shall demonstrate that the proposal has received review from members of the Pacific Coast Archaeological Society, and from the Native American Groups (more particularly those who belong to the Juaneno and Gabrieleno tribes). Any comments submitted by PCAS upon its review shall be reviewed by a peer review team. Any conflicts between PCAS comments and the applicant's archaeologist's scope of work shall be resolved by the peer review team and by the State Office of Historic Preservation.

The Pacific Coast Archaeological Society (“PCAS”) reviewed the proposal referenced in the condition above and provided its comments in a letter dated November 12, 1990. In turn, a peer review team that you assembled reviewed PCAS’s comments and identified a scope of work comprised of a series of tasks to be undertaken by your archaeological consultant. This scope of work was formalized in a memorandum of agreement (“MOA”) signed by SRS and the peer review group on March 16, 1991. Your archaeological consultant carried out the archaeological work authorized by CDP No. 5-89-772 between 1990 and 2003.

The final report that you prepared to document the study of archaeological sites on the Bolsa Chica Mesa³ describes in extensive detail the work conducted pursuant to CDP No. 5-89-772, as amended, including each of the tasks identified by the MOA. The subject development is not depicted on the maps or exhibits, nor in the narrative text, that show where the work undertaken pursuant to CDP No. 5-89-772 occurred. The final report confirms that all of the development undertaken pursuant to CDP No. 5-89-772 occurred on the Brightwater property within unincorporated Orange County, consistent with the scope of the Coastal Commission’s permit jurisdiction in the area at the time the Commission approved CDP No. 5-89-772 and the amendment(s) thereto.

Moreover, the May 2009 document prepared for purposes of the LCPA by your archaeological consultant entitled “Archaeological Abstract: Archaeological Site CA-ORA-86 Herring’s Site E” does not associate the subject development with the work undertaken pursuant to CDP No. 5-89-772, and in fact confirms that the subject development was undertaken in order to salvage ORA-86, independent of the archaeological study of ORA-83 authorized by CDP No. 5-89-772. The archaeological abstract describes the subject development as such:

In 2001, Signal Landmark, Inc. again authorized and funded archaeological investigations in order to ascertain if intact portions of CA-ORA-86 existed east of Bolsa Chica Road in anticipation of future development. The study methods, which were used to recover adequate scientific information to test the Research Design hypotheses, included a multistage program of sampling procedures defined by Redman (1979) and outlined in previous SRS research designs (SRS 1983, 1987, 199b).

The abstract thus distinguishes between the research design for the subject property and “previous” research designs, including the research design approved pursuant to CDP No. 5-89-772.

It is apparent from the final report for the archaeological work at ORA-83 undertaken pursuant to CDP No. 5-89-772, and the archaeological abstract related to work undertaken at ORA-86, that the investigations of the sites were undertaken independently. Thus, for this reason as well, the subject development falls outside the purview of CDP No. 5-89-772.

³ Preparation of a final report was included in the project description for CDP No. 5-89-772 and is also a requirement of the coastal development permit (5-05-020) that authorized subdivision of, and residential development on, the Brightwater property.

Violation Resolution

In response to a Commission staff letter dated March 22, 2013, regarding what action would be appropriate, and what person or entity would be the appropriate party, to address the unpermitted development under the policies of the City LCP; in an April 3, 2013 letter, City requested that the Commission assume primary enforcement authority with regard to these violations.

We're happy to meet with you to discuss a consensual resolution of this matter, potentially through a settlement agreement in the form of consent orders that would provide a permanent and complete resolution of this matter. This certainly remains Commission staff's preferred approach, and therefore, to that end, I am initiating formal cease and desist and restoration order proceedings in order to ensure protection of the significant cultural resources at the subject property.

Cease and Desist Order

The Commission's authority to issue cease and desist orders is set forth in Coastal Act Section 30810(a), which begins by stating the following:

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.

(2) The commission requests and the local government or port governing body declines to act, or does not take action in a timely manner, regarding an alleged violation which could cause significant damage to coastal resources...

As noted above, the City requested that the Commission assume primary responsibility for issuing a cease and desist order ("CDO") to address this matter. Section 30810(b) states that the cease and desist order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act.

The unpermitted development described herein clearly constitutes "development" within the meaning of the definition in the LCP (Section 245.04), is not otherwise exempt from permitting requirements under the LCP, and therefore is subject to the permit requirement of LCP Section 245.06. A CDP was not issued by the City or the Commission to authorize the subject unpermitted development.

As the activities at issue required a CDP and none was obtained, the criterion of Section 30810(a) for issuance of a CDO has been satisfied. For these reasons, I am issuing this "Notice of Intent" to commence cease and desist order proceedings. The procedures for the issuance of cease and desist orders are described in Sections 13180 through 13188 of the Commission's regulations, which are codified in Title 14 of the California Code of Regulations.

The proposed cease and desist order will direct you to (1) cease and desist from undertaking any further development on the subject property unless authorized by a CDP or by other means consistent with the Coastal Act, (2) cease and desist from maintaining any development on the subject property unless authorized by a CDP or by other means consistent with the Coastal Act, and (3) take all steps necessary to ensure compliance with the Coastal Act.

In addition, although it is not a necessary criterion for the Commission's issuance of a cease and desist order, it is worth noting that there are potential conflicts between the substantive protections listed in the Coastal Act and LCP for archaeological resources and your actions in this case. These substantive protections are noted in the next section of this document.

Restoration Order

Section 30811 authorizes the Commission to order restoration of a site in the following terms:

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 the development has occurred without a coastal development permit from the commission..., the development is inconsistent with this division, and the development is causing continuing resource damage.

Pursuant to Section 13191 of the Commission's regulations, I have determined that the specified activities meet the criteria of Section 30811 of the Coastal Act, based on the following:

- 1) Unpermitted development has taken place, including, but not limited to, excavations, including within an area of known cultural and archaeological significance. These excavations resulted in the excavation and removal from the site of the intact remnants of a dwelling structure, artifacts, and intact midden.
In addition, soil disturbance on the site, which slopes down to adjacent wetlands and upland environmentally sensitive habitat areas ("ESHA"), impacted wetlands that are ecologically connected to the Bolsa Chica wetland complex, a coastal wetland that provides habitat for threatened and endangered species, and adjacent upland ESHAs.
- 2) This development is inconsistent with the resource protection policies of the Coastal Act, including, but not limited to the following:
 - a) 30230 (Marine resources)
 - b) 30231 (Biological productivity, water quality)
 - c) 30240 (ESHA)
 - d) 30244 (Archaeological or paleontological resources)

- 3) A dwelling structure, artifacts, and cultural midden have been excavated and removed from site without return; thus, unpermitted development persists and is thereby causing continuing resource damage, as defined by Section 13190 of the Commission's regulations. The impacts from the unpermitted development remain unmitigated; therefore, the damage to resources protected by the Coastal Act is continuing.

For the reasons stated above, I have decided to commence proceedings for the Commission's issuance of a restoration order in order to restore the subject property. The procedures for the issuance of restoration orders are described in Sections 13190 through 13197 of the Commission's regulations, which are codified in Title 14 of the California Code of Regulations.

Response Procedure

In accordance with Sections 13181(a) and 13191(a) of the Commission's Regulations, you have the opportunity to respond to Commission staff's allegations as set forth in this notice of intent to commence cease and desist and restoration order proceedings by completing the enclosed Statement of Defense (SOD) form. The SOD form must be returned to the Commission's Long Beach office at 200 OceanGate 10th Floor, Long Beach, 90802, directed to the attention of Andrew Willis, by no later than **June 11, 2013**.

However, should this matter be resolved via a settlement agreement, a statement of defense form would not be necessary. In any case, and in the interim, staff would be happy to accept any information you wish to share regarding this matter.

Commission staff intends to schedule the hearings for the cease and desist and restoration orders during an upcoming Commission meeting in the Los Angeles or Orange County area.

Notice of Violation of the Coastal Act

In addition to the remedies proposed above, Section 30812 of the Coastal Act also allows me as the Executive Director to, after providing formal notice and opportunity for a hearing, record a Notice of Violation of the Coastal Act against your property if this matter is not resolved administratively.

The Executive Director of the Commission may record a Notice of Violation against the title to the property pursuant to Section 30812, after providing notice and the opportunity for a hearing. Section 30812 provides, in part:

(a) Whenever the executive director of the commission has determined, based on substantial evidence, that real property has been developed in violation of this division, the executive director may cause a notification of intention to record a notice of violation to be mailed...to the owner of the real property at issue...

(b) ... The notification shall state that if, within 20 days of mailing of the notification, the owner of the real property at issue fails to inform the executive director of the owner's objection to recording the notice of violation, the executive director shall record the notice of violation in the office of each county recorder where all or part of the property is located.

(d) If, after the commission has completed its hearing and the owner has been given the opportunity to present evidence, the commission finds that, based on substantial evidence, a violation has occurred, the executive director shall record the notice of violation...

Should you choose to object to the recording of a Notice of Violation and wish to present evidence to the Coastal Commission at a public hearing on the issue of whether a violation has occurred, you must specifically object, in writing, within 20 calendar days of the postmarked mailing of this notification. The objection should be sent to Andrew Willis at the Commission's Long Beach office. Please include the evidence you wish to present to the Coastal Commission in your written response and identify any issues you would like us to consider. If recorded as provided for under Section 30812(b), the Notice of Violation will become part of the chain of title of the subject property and will be subject to review by potential buyers. This notice is intended to put other parties on notice of the status of the property and to avoid unnecessary confusion. The Notice of Violation will be rescinded once the violations are resolved.

Should this matter be resolved via a settlement agreement, we would request that you agree to our recordation of a NOVA as part of any such settlement, in which case a formal objection would not be necessary.

Civil Liability/Exemplary Damages

You should be aware that the Coastal Act includes a number of penalty provisions for unpermitted development. Section 30820(a)(1) provides for civil liability to be imposed on any person who performs or undertakes development without a CDP and/or that is inconsistent with any previously issued CDP in an amount that shall not exceed \$30,000 and shall not be less than \$500 for each instance of development that is in violation of the Coastal Act. Section 30820(b) provides that additional civil liability may be imposed on any person who performs or undertakes development without a CDP and/or that is inconsistent with any previously issued CDP when the person intentionally and knowingly performs or undertakes such development, in an amount not less than \$1,000 and not more than \$15,000 per day for each day in which each violation persists. Section 30821.6 provides that a violation of a cease and desist order or a restoration order can result in civil fines of up to \$6,000 for each day in which the violation persists. Section 30822 provides for additional exemplary damages in appropriate cases.

Resolution

We would like to work with you to resolve these issues. As noted above, one option that you may want to consider is agreeing to consent orders. Consent cease and desist and restoration orders would provide you with an opportunity to have more input into the process and timing of

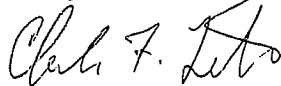
restoration of the subject property and mitigation of the damages caused by the unpermitted activity and could potentially allow you to negotiate a penalty amount with the Commission staff in order to resolve the complete violation without any further formal legal action. Consent orders would provide for a permanent resolution of this matter so that all parties can move forward.

Another benefit of consent orders that you should consider is that in a consent order proceeding, Commission staff will be promoting the agreement between you and staff, rather than addressing the violations through a disputed hearing.

If you are interested in discussing the possibility of agreeing to consent orders, please contact or send correspondence to the attention of Andrew Willis in the Commission's Long Beach office by no later than **May 29, 2013**, to discuss options to resolve this case. Again, should we settle this matter, you do not need to expend the time and resources to fill out and return the SOD form mentioned above.

It is staff's goal to resolve the Coastal Act violations described herein amicably and as quickly as possible so that all parties can move forward. If you have any questions about this letter or the pending enforcement case, please do not hesitate to contact Andrew Willis as soon as possible. We greatly appreciate your time and input and look forward to discussing this matter further and working together on a consensual resolution.

Sincerely,



CHARLES LESTER
Executive Director

Encl. Statement of Defense Form for Cease and Desist and Restoration Order

cc: Scott Hess, Planning and Building Director, City Huntington Beach
Sherilyn Sarb, Deputy Director, CCC
Lisa Haage, Chief of Enforcement, CCC
Teresa Henry, District Manager, CCC
Alex Helperin, Senior Staff Counsel, CCC
Andrew Willis, South Coast District Enforcement Officer, CCC