

CALIFORNIA COASTAL COMMISSION

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Commission Action:

**M9b****STAFF REPORT: PERMIT AMENDMENT****APPLICATION NUMBER:** A-5-BLC-97-188-A2**RECORD PACKET COPY****APPLICANT:** Hearthside Homes**AGENT:** Buchalter, Nemer, Fields, and Younger

PROJECT LOCATION: On the Bolsa Chica Mesa adjacent to the City of Huntington Beach overlooking the Bolsa Chica wetlands. Essentially, south of Warner Avenue and landward of Pacific Coast Highway in unincorporated Orange County.

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: The installation of a temporary pre-construction chain link security fence around the perimeter of the Bolsa Chica Mesa property owned by Hearthside Homes. The chain link fence will be approximately seven feet in height, will be raised six inches above grade, and will be setback fifty feet from the edge of the Bolsa Chica Mesa to allow continued public access. The fence would also be setback fifty feet from Warner Pond.

DESCRIPTION OF AMENDMENT: "After-the-fact" request to modify special condition number three to extend the period of time that the fence may remain to provide security for pre-construction activities. Pre-construction activities are projected to be completed by March 2003.

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending that the "after-the-fact" request for the proposed amendment to extend the time for the temporary perimeter security fence be **approved**. Four special conditions are proposed as part of the approval of this amendment. The first special condition states that unless specifically altered by this amendment all standard and special conditions remain in effect. Special condition number two requires that the fence be removed and areas disturbed by the fence removal be restored by April 10, 2003. Special condition number two also replaces special condition number 3 of the underlying permit. Special

condition number three states that action on this amendment will not constitute a waiver of any public rights that may exist on the property. Special condition number four requires that the applicant submit project plans to the Commission prior to conducting any activity which may be exempt for a determination on whether it is exempt or not.

Special condition number three (3) of the underlying permit, approved on November 5, 1997 allowed the applicant to undertake one of two options by November 5, 1998. The first option was to remove the temporary perimeter fence within one year of its approval, if the applicant had not obtained a coastal development permit and a grading permit for the mass grading of the Mesa and commenced grading. The second option would have been to apply for an amendment to extend the time that the fence could remain if approved or exempt pre-construction activities could not be completed and these activities needed to be fenced to protect public safety.

The applicant has selected the second option, which is to apply for an amendment to extend the life of the temporary perimeter fence. Special condition three states, in relevant part, that, if ongoing pre-construction activities cannot be completed by a set date and these activities must be fenced to protect public safety "*... the applicant may request an amendment to this permit so that the Commission can consider whether the approved fencing may remain or whether it should be modified to be consistent with the public access provisions of the LCP and the Coastal Act.*" Consequently, the Commission must determine whether the temporary perimeter security fence is still necessary for purposes of public safety related to pre-construction activities and whether allowing the fence to remain is consistent with the public access and recreation policies and other Chapter 3 policies of the Coastal Act.

LOCAL APPROVALS RECEIVED: County of Orange Coastal Development Permit PA 97-0065 issued on May 15, 1997.

SUBSTANTIVE FILE DOCUMENTS: Bolsa Chica Local Coastal Program, County of Orange Coastal Development Permit PA 97-0065, and Coastal Development Permit A-5-BLC-97-188.

EXHIBITS:

1. Vicinity Map
2. Tax Assessor Parcel Map of project area.
3. Site Plan
4. Property Ownership November 2000

5. Project Description submitted by Hearthside Homes.
6. Buchalter, Nemer, Fields, and Younger letter of August 3, 2001
7. Commission letter of July 23, 2001
8. Bolsa Chica Land Trust letter of November 29, 1999
9. Hearthside Homes letter of August 3, 1999
10. Commission letter of July 9, 1999
11. Hearthside Homes letter of July 7, 1999
12. Hearthside Homes letter of June 10, 1999
13. Commission letter of May 11, 1999
14. Hearthside Homes letter of April 16, 1999
15. Bolsa Chica Land Trust letter of April 2, 1999
16. Commission letter of March 5, 1999
17. Bolsa Chica Land Trust letter of March 4, 1999
18. Paone Callahan McHolm & Winton letter of February 19, 1999
19. Commission letter of January 15, 1999
20. Hearthside Homes letter of December 17, 1998
21. Commission letter of December 1, 1998
22. Hearthside Homes letter of November 12, 1998
23. Commission staff report of October 17, 1997

PROCEDURAL NOTES:

1. Coastal Development Permit Amendments

Section 13166 of Title 14 of the California Code of Regulations provides for the referral of permit amendment requests to the Commission if:

- 1) *The Executive Director determines that the proposed amendment is a material change,*
- 2) *Objection is made to the Executive Director's determination of immateriality, or*
- 3) *The proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.*

The Executive Director has determined that the proposed amendment is a material change that would affect the conditions previously required for the protection of coastal resources. Specifically, this amendment requests a modification to special condition number three of the underlying permit. Therefore, pursuant to Section 13166 of Title 14 of the California Code of Regulations, the Executive Director is referring this application to the Commission. If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material.

2. Standard of Review

The policies of the Coastal Act serve as the standard of review for projects within areas which do not have a certified Local Coastal Program (LCP). However, pursuant to Section 30604(b) of the Coastal Act, once an area has been certified, the standard of review is the certified LCP. Though the Commission certified the Bolsa Chica Local Coastal Program with suggested modifications on November 16, 2000, the County of Orange (County) declined to accept the Commission's suggested modifications on May 8, 2001. Thus, pursuant to Section 13537 of Title 14 of the California Code of Regulations, the Commission's certification lapsed on May 16, 2001. Consequently the Bolsa Chica Local Coastal Program is not certified, and projects such as this amendment request, within the Bolsa Chica LCP area, are subject to the policies of the Coastal Act. However, the Commission's most recent decision (November 16, 2000) on the Bolsa Chica LCP will be used as guidance on how the Chapter 3 policies of the Coastal Act should be applied to the Bolsa Chica Mesa.

I. STAFF RECOMMENDATION, MOTION, AND RESOLUTION OF APPROVAL:

MOTION:

I move that the Commission approve the proposed amendment to Coastal Development Permit No. A-5-BLC-97-188 pursuant to the staff recommendation.

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a YES vote. Passage of this motion will result in approval of the amendment as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT AMENDMENT:

The Commission hereby APPROVES the proposed coastal development permit amendment for the proposed development and adopts the findings set forth below on grounds that the development as amended and conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act, is located between the sea and the first public road nearest the shoreline, is in conformance with the public access and recreation policies of Chapter 3 of the Coastal Act, and will not prejudice the ability of

the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. SPECIAL CONDITIONS:

1. Prior Conditions

Unless specifically altered by this amendment, all standard and special conditions attached to coastal development permit A-5-BLC-5-97-188 remain in effect in the underlying permit and, where relevant, apply equally to this amendment.

2. Maintenance and Removal of Temporary Fence

The temporary Bolsa Chica Mesa Perimeter fence approved in this permit and the adjacent perimeter trail shall be maintained. The fence (including the concrete footings) shall be removed and the areas disturbed by the fence removal shall be cleaned-up and seeded with native grasses by April 10, 2003. The site shall be returned to the natural condition which existed before the fence was installed. This special condition replaces special condition number three of the underlying permit in its entirety.

3. Public Rights

Coastal Commission approval of this permit amendment shall not constitute a waiver of any public rights that may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property.

4. Pre-construction Activities

Prior to undertaking any activity from which the fence is intended to protect the public (such as, but not limited to, oil well abandonment, oil pipeline abandonment, diking, geotechnical testing, geotechnical trenching, water well abandonment, and water well installation) in the fenced area on the Bolsa Chica Mesa, the applicant shall submit plans of the proposed work to the Executive Director with an explanation of why the applicant believes

such work is exempt or is already permitted, for evaluation by the Executive Director to determine if the proposed work is an exempt activity under the Coastal Act, if it is an activity covered under a previously approved permit, or if constitutes development under the Coastal Act and therefore requires that a coastal development permit be issued before the proposed work can be undertaken.

The applicant shall not initiate any on-the-ground activity until the Executive Director confirms in writing that the proposed activity is either exempt or has received prior approval, or a coastal development permit is issued from the Commission.

III. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT LOCATION AND AMENDED PROJECT DESCRIPTION

The temporary pre-construction fence is located along the perimeter of the Bolsa Chica Mesa (Exhibits 1,2, and 3). The nearest major intersection to the project site is the intersection of Warner Avenue and Pacific Coast Highway in the City of Huntington Beach. The project site is south of Warner Avenue and inland of Pacific Coast Highway. The project site is in unincorporated Orange County and is within the Bolsa Chica LCP area. Exhibit 4 shows the overall Bolsa Chica LCP area and the property ownership as of November 2000. The proposed amendment is an "*after-the-fact*" request to extend the time for the temporary perimeter security fence to remain on the Bolsa Chica Mesa.

Special condition number three¹ of the underlying permit allows the applicant, Hearthside Homes, to apply for an amendment to extend the period of time that the temporary perimeter security fence is to remain. Special condition number three required that the temporary perimeter security fence be removed after one year (by November 5, 1998) unless the applicant could demonstrate that approved or exempt pre-construction activities could not be completed within the time period specified and fencing was still necessary for public safety. The applicant asserts² that it has been unable to pursue completion of the pre-construction activities. Hearthside Homes, is consequently requesting "*permission to maintain the fence until pre-construction activities, including completion of archeological mitigation activities, oil well abandonment, water well abandonment, and pipeline*

¹ The full text of special condition number three can be found on page 10.

² Hearthside Homes letter of December 17, 1998 attached as Exhibit 20.

abandonment can be completed." Based on the time line submitted with this amendment request, the life of the fence would be extended to approximately March 31, 2003.

B. PROJECT BACKGROUND

Hearthside Homes proposes to construct residential units on the Bolsa Chica Mesa. Though Hearthside Homes proposes to construct homes they have not yet applied for coastal development permits to do so. Nevertheless, they are proposing to undertake pre-construction activities such as the removal of existing oil development³, geotechnical testing, and archeological work⁴. To assure public safety and to minimize public intrusion into sensitive areas such as ORA-83 Hearthside Homes proposed the temporary perimeter security fence.

On April 15, 1997, without benefit of a coastal development permit, the applicant constructed the portion of the fence along the applicant's property line with the Department of Fish and Game from Warner Avenue to the Ecological Reserve overlook. The applicant, after being informed of the requirement for a coastal development permit, applied to the County in April of 1997 for a coastal development permit⁵. Following the County's decision to issue a coastal development permit on May 15, 1997, that permit was appealed to the Commission on June 24, 1997 by the Bolsa Chica Land Trust and Commissioners Wan and Pavley.

On August 12, 1997 the Commission heard the appeals. The Commission found that the appeal raised substantial issues and continued with a De Novo hearing. During the De Novo hearing the project applicant orally modified the project description to conform to a fifty foot development setback from the bluff edge and to raise the bottom of the fence to a minimum of six inches to facilitate wildlife migration. In September, the oral project modification was followed up with a written confirmation. The Commission continued the De Novo hearing to the October Commission meeting so that staff could address the three questions raised by the Commissioners at the August hearing. The three questions were: 1)

³ Continued oil operations at Bolsa Chica was exempted from coastal development permit requirements through a "Resolution of Exemption" (E-2-15-73-71) which the South Coast Regional Coastal Zone Conservation Commission adopted on May 17, 1973.

⁴ Archeological work by the applicant on ORA-83 was approved through coastal development permit 5-89-772 which was approved by the Commission on December 14, 1989. Exhibit 3 shows the area covered by ORA-83 as "Archeological Field Work".

⁵ The Bolsa Chica Local Coastal Program was certified from July 11, 1996 to June 4, 1997. Consequently, the County of Orange was able to issue coastal development permits.

impact of the fence on animal migration, 2) maintenance of the fence, and 3) geologic stability.

Meanwhile, on August 18, 1997, the Executive Director issued an Emergency Permit to relocate approximately 200 linear feet of the existing fence along the Bolsa Chica Mesa facing the Ecological Reserve to conform to the fifty foot development setback of the Bolsa Chica LCP. The fence relocation was completed on August 22, 1997.

On November 5, 1997, the Commission approved the temporary pre-construction security fence with four special conditions (Exhibit 23). Special condition number 2 mitigated the fence's impact on animal migration, geologic stability, and public access. Concerns related to animal migration were resolved by raising the fence six inches above grade. The issue of geologic stability was resolved by requiring that the fence be setback fifty feet from the bluff edge and that its temporary nature would minimize any impact on bluff stability. Public access concerns raised by the project were resolved by requiring that a pedestrian trail be provided and that the fence would be temporary as specified in special condition number three.

Special condition number three, the subject of this amendment request, addressed the maintenance and permanency issues. This special condition required that the applicant properly maintain the functionality of the temporary perimeter security fence. Additionally, this special condition required that the temporary fence be removed within one year if the applicant had not obtained a coastal development permit and a grading permit for the mass grading of the Mesa and commenced grading. However, the special condition also allowed the applicant to apply for an amendment to extend the presence of the fence if approved or exempt pre-construction activities could not be completed and the fence was still necessary for public safety.

C. ANALYSIS OF PROPOSED AMENDMENT

The Commission granted Hearthside Homes a coastal development permit for the pre-construction security fence with the understanding that the temporary security fence would be up for a limited duration: it would either be removed within one year from the approval of the permit (by November 5, 1998); or, if certain circumstances were satisfied, the applicant could apply to amend the permit to allow the fence to remain longer. The applicant disputed this interpretation of the permit and left the fence in place but nevertheless applied for an amendment.

The applicant, Hearthside Homes, principally asserts (letter of November 12, 1998, Exhibit 22) that pre-construction activities which necessitate the presence of the

temporary security fence were delayed due to the uncertainties created by the legal challenges brought against the Bolsa Chica Local Coastal Program. According to Hearthside Homes, they believe that the County was not able to issue permits and that the one year deadline for removing the fence only applied while there was a certified LCP. The assertions of Hearthside Homes concerning the rationale for maintaining the fence are also articulated in letters which appear as Exhibits 5, 6, 9, 11, 12, 14, 18, and 20.

Hearthside Homes now proposes to continue with pre-construction activities, and they submitted a permit amendment on July 2, 2001 to extend the life of the fence. The applicant anticipates completing pre-construction activities by March 31, 2003. Staff accepted the application and brought it before the Commission. Consequently, the application of Special Condition 3 is not before the Commission. The only thing that the Commission must determine is whether the proposed permit amendment, to extend the life of the temporary pre-construction security fence, is consistent with Chapter 3 policies of the Coastal Act. Additionally, the Commission will be using its November 16, 2000 decision on the Bolsa Chica LCP as guidance.

1. SPECIAL CONDITION NUMBER THREE

The temporary pre-construction security fence came before the Commission on appeal in June 1997. The coastal development permit issued by the County of Orange, for the temporary pre-construction security fence, was appealed to the Commission by the Bolsa Chica Land Trust and Commissioners Wan and Pavley on the grounds that the proposed temporary fence was inconsistent with the fifty foot development setback required by the Bolsa Chica LCP and thus would result in adverse impacts to coastal access. Specifically, the fence was not set-back fifty from the perimeter of the Bolsa Chica Mesa to allow temporary public access. Additionally, though the fence was characterized as a temporary pre-construction security fence, the fence was approved by the County of Orange without any requirement that it be taken down when no longer necessary for its stated purpose.

The Commission found that the fence raised substantial issue with the Bolsa Chica LCP for the following reasons. First, the temporary fence precluded use of the setback area by the public beyond the minimum time that would be necessary. Next, the Commission found that since the fence would be permitted for an indefinite period of time, possibly in excess of ten years, that it constituted permanent development inconsistent with the uses allowed within the development setback area. As a final point, the Commission found that the fence as approved

by the County of Orange would violate the public access plan approved by the Commission for Bolsa Chica (version of October 9, 1997).

In approving coastal development permit A-5-BLC-97-188⁶ on November 5, 1997, the Commission imposed four special conditions, one of which was special condition number three.

Special Condition Number Three states:

3. Maintenance and Removal of the Temporary Perimeter Fence

The temporary Bolsa Chica Mesa perimeter fence approved in this permit shall be properly maintained. The temporary fence shall be removed no later than one (1) year from the date of approval of this permit if the applicant has not obtained a coastal development permit and a grading permit for the mass grading of the Mesa and commenced grading within this time period.

If approved or exempt pre-construction activities can not be completed within the time period specified above and the applicant concludes that these activities must be fenced to protect public safety, the applicant may request an amendment to this permit so that the Commission can consider whether the approved fencing may remain or whether it should be modified to be consistent with the public access provisions of the LCP and the Coastal Act.

The Commission's rationale for imposing special condition number three, as well as special condition number two, is re-stated below.

"The Commission recognizes that fencing is a physical barrier and that the fencing must be designed to minimize the adverse impacts that the project would have on animal migration, recreational opportunities, and that it be properly maintained. As a consequence, the Commission finds it necessary to impose special conditions to ensure that the fence be: constructed in such a manner that it would not significantly impede the movement of the mammals located on the Mesa by requiring that the base of the fence be six inches above the ground, that it be properly maintained, that it avoid Warner Pond, that it be removed one year after the approval of this permit (if mass grading of the Mesa has not been initiated), that the fence will be aligned along the eastern portion of the property line to assure pedestrian access to the bluff edge from Los Patos Avenue, and that the fence be setback a minimum of fifty feet along the entire bluff edge and that any vegetation obstructing public access be removed so that the current public recreational use of the site can remain on the blufftop."

.....

⁶

A copy of the staff report is attached as Exhibit 23.

"To maintain public access as specified in public access policies of the Coastal Act and as proposed in the Bolsa Chica LCP the Commission finds that it is necessary to impose two related special conditions. The first special condition requires that the temporary fence be constructed along a fifty foot setback from the bluff edge to maintain access on a temporary basis. Additionally that public access be provide from Los Patos Avenue to the Bolsa Chica Mesa blufftop along KREG's⁷ easterly property line and from Warner Avenue along the westerly property line. Further, the Commission also recognizes that future construction activity will be occurring on the Mesa in the form of mass grading. To minimize the impact of construction activity on public access a second special condition is being imposed. This special condition states that if grading is not initiated within one year, the fence will be removed.

Imposing these special conditions resolves the potential that long term development not in compliance with the public access plan contained in the Bolsa Chica LCP would be allowed. The LCP contemplates internal access through the site in the form of a public park and a public road. Allowing the temporary fence to remain for an indefinite period of time would not comply with the public access plan of the Bolsa Chica LCP. Only as conditioned does the Commission find that the proposed temporary fence is consistent with the Coastal Act regarding public access and implementation of the public access policies of the Bolsa Chica Local Coastal Program."

To discourage the fence from becoming permanent development, the Commission required that the fence be removed by November 5, 1998 if proposed development (grading) did not proceed in a timely manner. The Commission, however, also recognized that proposed development could be delayed due to unforeseen circumstances and consequently included a provision in special condition number three to allow the applicant to apply for an amendment to extend the time period for the fence.

2. FIRST AMENDMENT SUBMITTAL

On December 17, 1998, after the November 5, 1998 deadline, Hearthside Homes submitted a letter (Exhibit 20) requesting an amendment. Prior to the amendment request being submitted by Hearthside Homes, Commission staff discussed the requirements of Section 13166 of Title 14 of the Code of California Regulations with Hearthside Homes. Section 13166 of Title 14 of the California Code of Regulations requires that Executive Director reject an amendment application which lessens or avoids the intended effect of an approved special condition unless the applicant presents newly discovered material evidence.

⁷

KREG refers to Koll Real Estate Group which has subsequently become Hearthside Homes.

The proposed amendment, to extend the life of the fence was considered to lessen the intent of special condition number three by the Executive Director for several reasons⁸. First, the Commission had authorized the fence for only a limited period of time as a necessary step in implementing the public access and recreation plan of the Bolsa Chica LCP. The applicant failed to comply with the requirement to either remove the fence or to apply for an extension by November 5, 1998, thus allowing the fence to remain in violation of the Commission's dictates.

Second, special condition three provided for amendment requests only under certain, explicit conditions. Specifically, a request to extend the life of the fence was to be allowed only if pre-construction activities could not be completed by a set date and such ongoing activities threatened public safety. Hearthside Homes presented no evidence that either of these conditions was satisfied. To allow the amendment request to proceed despite the absence of these conditions precedent would have lessened the intent of the special condition.

Finally, the applicant failed to provide newly discovered material evidence that would have justified the continued presence of the temporary perimeter security fence beyond the November 5, 1998 deadline. For example, in attempting to justify the continued presence of the fence, the applicant focused solely on the litigation, yet the applicant was able to apply for a coastal development permit and upon its approval install the fence, despite the presence ongoing litigation. This amendment request was rejected on January 15, 1999 (Exhibit 19) pursuant to the requirements of Section 13166 of Title 14 of the Code of California Regulations.

Commission staff from the Long Beach Office subsequently referred the non-compliance with special condition number three to the Commission's Enforcement Staff in February 1999. The Commission's Enforcement Staff issued a letter on June 8, 2001 advising Hearthside Homes to submit an amendment application by July 2, 2001.

3. SECOND AMENDMENT SUBMITTAL

Hearthside Homes submitted a second amendment request on July 2, 2001. This application was determined to be incomplete on July 23, 2001 (Exhibit 7) pending the receipt of "*proof-of-ownership*", mailing labels, a review of pre-construction work that has been completed with what remains to be done, and an alternatives analysis to fencing the entire site. Hearthside Homes responded on August 6, 2001.

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Commission letter of January 15, 1999, Exhibit 19.

Again, Special Condition 3 required that two criteria be satisfied for the applicant to request an amendment. The first criterion, which Commission staff found not to be satisfied by Hearthside Homes' first amendment request, was that pre-construction activities could not be completed by a set date. This time, in response to this requirement, Hearthside Homes responded on August 6, 2001 (Exhibit 6) that archaeological work at ORA-83 is ongoing, and that weather conditions prevented it from being completed by the set date. Because the applicant offered some reasoning that might, if true, satisfy this criterion, and because staff considered that it was appropriate for this issue to be placed before the Commission, Commission staff filed the amendment request.

However, in terms of the oil well and pipeline abandonment work, the applicant stated: *"Work on this effort, however, has not commenced as a result of the litigation, and subsequent LCP process before the Coastal Commission and County. As the LCP for Bolsa Chica was not certified, and the Coastal Commission action is currently in litigation, the landowner has temporarily postponed initiating the work."*⁹ (Buchalter, Nemer, Fields, and Younger letter of August 3, 2001, Exhibit 6)

To the question of why the fence was not taken down by November 5, 1998, Hearthside Homes responded that archeological work and groundwater well investigations necessitated that the site be fenced for security and safety reasons.

In terms of an alternative fencing scheme, Hearthside Homes asserts that *"A private landowner is under no requirement or obligation, legal or otherwise, to maximize public access to, over and across its private property. Public access exposes the property owner to potential liability for injuries or property damage which could occur on or around the property. ... The fence is set back to provide a 50 feet [sic] corridor along the bluff edge facing Outer Bolsa Bay which permits public access to the State-owned areas of the Bolsa Chica Mesa."* (Buchalter, Nemer, Fields, and Younger letter of August 3, 2001, Exhibit 6)

Under this amendment request Hearthside Homes proposes to maintain the fence in it's current configuration until pre-construction activities are completed. Pre-construction activities are projected to be completed by March 31, 2003. This second amendment request, which proposes to extend the life of the temporary pre-construction security fence until March 31, 2003, is the decision which is before the Commission at this time.

⁹ The County of Orange declined to accept the Commission's suggested modifications on May 8, 2001. Additionally, Hearthside Homes filed a lawsuit against the Commission on January 12, 2001.

4. APPROVAL OF AMENDMENT REQUEST

The question of development at Bolsa Chica has been very controversial as evidenced by the degree of public involvement¹⁰ and the number of lawsuits which have been filed. Since the Commission's approval of the Bolsa Chica LCP in 1996 and the fence in 1997, the Commission has recommended significant revisions (through suggested modifications) to the Bolsa Chica development plan as articulated in the LCP in response to court decisions and new biological information.

The Bolsa Chica LCP that was approved in January 1996 and subsequently modified in October 1997 proposed residential development over the entire Mesa and the relocation of the Eucalyptus trees ESHA to the Huntington Mesa. Public access and recreation amenities were to be provided through the establishment of a Mesa Community Park and public trails. The Commission approved the temporary pre-construction security fence as one of the initial activities necessary to prepare the site for the development envisioned by the Bolsa Chica LCP.

On November 16, 2000 the Commission approved a modified Bolsa Chica LCP which incorporated the guidance of the court decisions and new biological information. The Commission's latest decision on the Bolsa Chica LCP is significantly different from the January 1996 and October 1997 decisions in that the recommendation is now to limit proposed residential development to the upper bench of the Mesa and to designate the lower bench as "*Conservation*", which includes the preservation of the Eucalyptus grove in its current location.

As a consequence of Commission's recommendation that the lower bench be designated "*Conservation*" and that residential development be concentrated on the upper bench, the public access and recreation plan was significantly revised. The applicant's request to extend the life of the temporary pre-construction fence will be evaluated based on the Chapter 3 policies of the Coastal Act. The Commission's November 16, 2000 Bolsa Chica LCP decision will be used as guidance to explain how the Chapter 3 policies of the Coastal Act should be applied to the Bolsa Chica Mesa.

In terms of the Bolsa Chica's LCP public access and recreation plan, the Commission's November 2000 decision resulted in the elimination of the Mesa Community Park and various public trails in the lowland immediately below the portion of the Mesa facing the East Garden Grove Wintersburg Channel. However, the public trail from Warner Avenue to the Fish and Game Overlook above Outer Bolsa Bay was retained for purposes of maintaining existing public access.

¹⁰ The Commission has received several letters from the public concerning the fence. These letters are attached as Exhibits 8,15, and 17.

Additionally, a public trail is proposed within the buffer area separating the residential development on upper bench from the "*Conservation*" area on lower bench (Figure 1 on page 17). This proposed trail would be located in approximately the same area as the deleted Mesa Community Park. For the reasons articulated below, the Commission finds the continued presence of the fence to be consistent with policies in Chapter 3 of the Coastal Act, including those relating to public access, and recreation, and habitat, as applied to the Bolsa Chica Mesa in the Commissions latest decision on the Bolsa Chica LCP.

PUBLIC ACCESS AND RECREATION: Because of it's undeveloped state immediately adjacent to urban development, the Bolsa Chica area is utilized by the public for its recreation opportunities. Recreation opportunities include bird watching, viewing of the ocean, hiking, jogging, and walking dogs. Public use of the Mesa may be substantial, and Sections 30210 through 30214 of the Coastal Act mandate that maximum access be provided for all people of the State of California consistent with public safety needs, public rights, private property rights, and the protection of natural resource areas from overuse. Additionally Sections 30221 and 30223 of the Coastal Act mandate that land suitable for coastal recreational uses shall be protected for that use.

In approving the installation of the fence in November 1997 the Commission found that the temporary fence would be consistent with public access policies of the Coastal Act if a perimeter loop trail was provided along the portion of the Mesa facing the Outer Bolsa Bay and the lowland, and public access was provided down the extension of Bolsa Chica Street. This trail would allow the public to continue to access the Department of Fish and Game Overlook and the network of trails in the lowlands adjacent to the East-Garden Grove Wintersburg Flood Control Channel (Exhibit 3).

In adopting the Bolsa Chica LCP in November 2000 (Figure 1 on page 17) the Commission found that, by keeping the trail open from Warner Avenue along the Bolsa Chica Mesa overlooking Outer Bolsa Bay to the Department of Fish and Game overlook and providing a public trail (within the buffer) and a scenic public road along a portion of the upper bench of the Mesa, that the public would be provided with adequate access which would be appropriate given the fragility of the natural resources in the area.

The existing perimeter trail adjacent to the fence conforms substantially to the Commission's most recent decision on Bolsa Chica (in November of 2000). First, it provides the trail from Warner Avenue to the Department of Fish and Game Overlook. Second, it provides access down Bolsa Chica Street and along the portion of the upper bench facing the Bolsa Chica Lowlands (Figure 1 on page 17).

However, the Bolsa Chica LCP public access plan (November 2000) differs in some respects from the Commission's coastal development permit decision of 1997. First, the Commission's November 2000 decision on the Bolsa Chica LCP recommends that the public access to the lower bench of the Bolsa Chica Mesa facing the East-Garden Grove Wintersburg Channel be curtailed (Figure 1 on page 17). Limiting public access has been proposed to protect ESHA areas from increased human intrusion that would result from the conversion of the upper bench from open space to residential. This existing trail connects the Department of Fish and Game Overlook to the upper bench. The Commission's coastal development permit decision of 1997 requires that the perimeter trail in this location be kept open.

Second, the Commission's November 2000 decision on the Bolsa Chica LCP recommends that a public trail¹¹ be provided within the buffer which separates the upper bench from the lower bench (Figure 1 on page 17). The Commission's coastal development permit decision of November 1997, however, did not require that public access be provided in this area as Hearthside Homes asserted that public access to this area would be inappropriate based on public safety concerns resulting from the necessity to conduct the pre-construction activities which are shown on Exhibit 3. Consequently, public access through this area is precluded by the presence of the fence. Further, Hearthside Homes at this time is not proposing to construct the trail as it is not ready to proceed with the residential development on the upper bench of the Mesa. Therefore, to preserve public access opportunities, the perimeter trail adjacent to the fence must be kept open until the replacement trail shown on Figure 1 is provided.

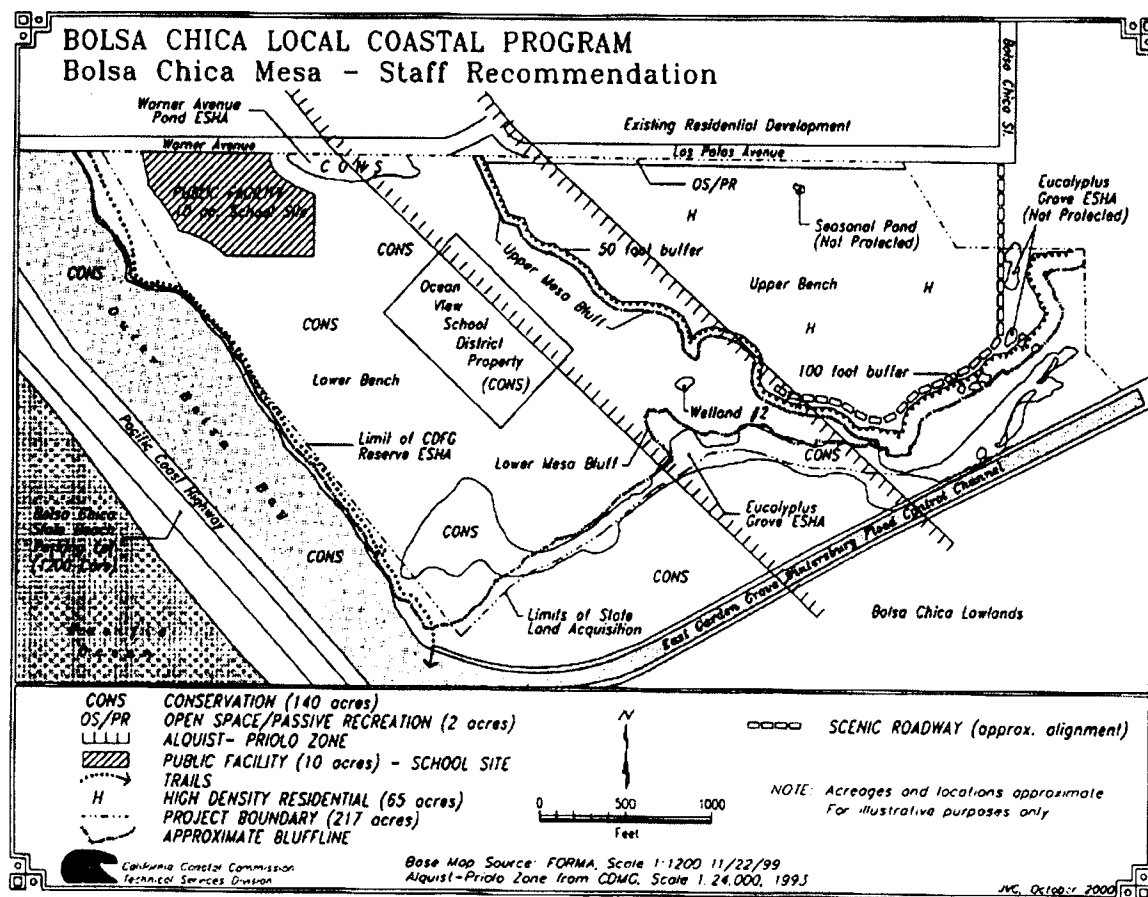
Though the perimeter trail adjacent to the fence does not fully conform to the Commission's decision on the Bolsa Chica LCP as described above, the Commission finds for the reasons described below that the existing perimeter trail is consistent with the public access and recreation policies of the Coastal Act.

First, Hearthside Homes is not proposing residential development, at this time, which would trigger the requirement that the public trail be provided within the buffer between the upper and lower benches. Also, as no development is presently occurring on the upper bench which would convert it to residential development which would result in the loss of open space and increased human use there is no mandate, at this time to close any of the existing trails. Next, for purposes of public safety related to pre-construction activities Hearthside Homes asserts that the public access must be restricted. Moreover, the existing public perimeter trail (adjacent to the fence) along the southeastern portion of the Mesa is

¹¹ The proposed trail is located in an area (as shown on Figure 1) where the public can not currently access due to the fence. The proposed trail is shown by dotted lines, one end begins above the "2" in "Wetland #2" and the other end terminates at "Los Patos Avenue".

existing. This existing trails provides the public with access to the perimeter of Mesa which could not otherwise be provided if it were closed. To maintain public access and public recreational opportunities consistent with requirements of Sections 30210 through 30214, plus Sections 30221 and 30223 of the Coastal Act, the Commission finds (as a temporary measure to maintain and maximize public access on an already established trail pending the provision of a replacement trail) that the existing public perimeter trail by the fence along the southeast portion of the Mesa must be kept open consistent with the Commission approval in November 1997 of the underlying permit.

**Figure 1: COMMISSION ADOPTED BOLSA CHICA LCP
LAND USE PLAN (NOVEMBER 2000)**



As discussed above, the perimeter trail adjacent to the temporary pre-construction fence provides public access around the perimeter of the Bolsa Chica Mesa which allows the public continued opportunities to recreate in the area consistent with

the public access and recreation policies of the Coastal Act. Therefore, the Commission finds that as long as the pre-construction fence is temporary and that a perimeter trail is provided, that the presence of the fence is substantially consistent with the public access policies of the Coastal Act, will not have a permanent adverse impact on public access and is consequently consistent with the public access and recreation policies of the Coastal Act.

TEMPORARY NATURE OF THE FENCE: The applicant proposed the temporary fence to protect public safety in the project area while pre-construction activities took place pending mass grading of the Mesa and the eventual construction of residential development, including public parks and public trails. When the Commission approved the temporary fence in November 1997, the Commission was concerned that the fence could remain for an extended period of time if the developers overall development plans were not pursued in a timely manner. For example, the public access plan (Bolsa Chica LCP version October 1997) called for the creation of a Mesa Community Park and public trails. Thus the fence was an interim measure to protect public safety while activities occurred that would eventually result in substantial improvements, providing the public with public access and recreation amenities. Consequently, leaving the fence up in the absence of any substantial activity towards completing the Bolsa Chica development plan would result in a fence that would be permanent development having an adverse impact on public access. To resolve this concern, the Commission imposed a special condition to require that the temporary fence be removed if mass grading was not initiated within one year. The Commission also allowed the applicant the opportunity to apply for an amendment to extend the life of the fence if the applicant could demonstrate that the presence of the fence was still necessary as it could not complete pre-construction activities by November 5, 1998.

The applicant asserts that pre-construction activities necessitating the fence were delayed for a variety of reasons, principally the litigation brought against the Bolsa Chica LCP. Hearthside Homes, now believes that it can go forward with pre-construction activities which necessitate the continued presence of the fence. A new schedule was submitted on July 2, 2001 (Exhibit 5). According to this schedule oil well and pipeline abandonments are projected to be completed by March 31, 2003. This gives the applicant approximately seventeen months to complete the proposed work.

Though the Commission is approving the extension of time for the temporary pre-construction fence to remain, the Commission continues to be concerned that this fence not remain for an indefinite period of time. The applicant, in 1997, believed that the fence would only be up for one year. Nearly four years have

transpired and the fence remains up. By March 2003 the fence will have been up for nearly six years.

The applicant has submitted a new schedule which establishes that pre-construction activities will be completed by March 31, 2003. Based on the applicant's schedule the necessity for the temporary fence will terminate at the end of March 2003. Allowing the temporary fence to remain after March 2003 would result in a protracted adverse impacts to coastal resources inconsistent with the Commission's November 2000 decision on the Bolsa Chica LCP. Specifically the temporary fence blocks access to the proposed trail separating the upper and lower benches as depicted in Figure 1 (page 17). Next, public access to the lowland to the northwest of the East Garden Grove Wintersburg Channel and on the lower bench of the Mesa to the Northeast of the Fish and Game Overlook is to be curtailed to protect this ESHA area from human intrusion. As previously discussed these trails are being kept available for public access on a temporary basis pending the establishment of the trail on the upper bench. To assure that the temporary fence is taken down, the Commission imposes a special condition to replace condition number three of the underlying permit. The new special condition requires that the applicant maintain the temporary fence and adjacent perimeter trail, and that the applicant remove the temporary fence by April 10, 2003. The Commission has selected April 10, 2003 to provide the applicant with a ten day period to remove the fence following the completion of pre-construction activities by March 31, 2003. This revised special condition is consistent with the applicant's proposed schedule and the public access policies of the Coastal Act.

In imposing the requirement that the fence be removed by April 10, 2003 the Commission notes that removal of the fence will result in minor disturbance when the fence fabric, poles, and footings are removed. In approving the Bolsa Chica LCP in November 2000, the Commission recommended that the area be designated "*Conservation*" to protect the habitat of the lower bench. To mitigate any disturbance resulting from the removal of the fence, the Commission is requiring that areas disturbed by the fence removal be cleaned-up of all debris and seeded with native grasses to restore the site to a natural condition. Only as conditioned for the fence removal and restoration of disturbed areas does the Commission find the time extension consistent with the public access and recreation, and environmental protection policies of the Coastal Act.

PRESCRIPTIVE RIGHTS: Public use of the Bolsa Chica Mesa may be substantial, as indicated above. Consequently, the question of prescriptive rights exists. Section 30211 of the Coastal Acts states, in part, that "*development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization.*" In approving the Bolsa Chica LCP, with suggested modifications, in November 2000 the Commission found that the proposed public

trail system was equivalent in time, place, and manner to the access made of the site in the past. However, the Commission cannot determine whether prescriptive rights actually do exist, rather, that determination must be made by a court of law. Based on the letters received from the public and staff observations of public use, there may be a valid claim of prescriptive rights. Therefore, since a full prescriptive rights analysis has not been undertaken, the Commission is imposing a special condition which states that approval of this permit amendment does not waive any public rights that may exist on the property. Only as conditioned to clarify that there is no waiver provided does the Commission find that the extension of time for the temporary pre-construction fence is consistent with Section 30211 of the Coastal Act regarding public access.

EXEMPT ACTIVITIES: The applicant, based on the submission materials¹², proposes to remove oil development, conduct geotechnical testing, water well installation, water well abandonment, and complete archeological investigations which the developer believes to be either exempt from coastal development permit requirements or authorized through a previously issued coastal development permit. Consequently, these identified activities are not part of the applicant's project description for this amendment. The applicant's project description for this amendment is solely for the extension of time that the temporary fence would be allowed to remain. Any activity that is considered not to be exempt (qualifies as development under the Coastal Act) must therefore obtain a coastal development permit before it can be undertaken.

Though the applicant believes that the activities described above are exempt, that determination belongs to the Commission. The determination of whether a proposed activity constitutes development under the Coastal Act, is exempt, or is within the scope of an issued coastal development permit is not always an easy decision to make. Before a decision can be rendered, the details of the proposed project must be evaluated by the Commission.

For example, the definition of "*development*" contained in Section 30106 of the Coastal Act is very broad and contains the phrase "*removal of or harvesting of major vegetation*." That phrase raises the question of what constitutes "*major vegetation*"? The Commission has routinely not required coastal development permits for landscaping in urban areas not adjacent to environmentally sensitive habitat areas, coastal bluff, or coastal canyons. However, the Commission has routinely required permits for landscaping and activities which could impact native vegetation in areas considered to be within or adjacent to environmentally sensitive habitat.

¹² Exhibit 3 identifies the pre-construction activities Hearthside Homes proposes to undertake.

In adopting the Bolsa Chica LCP, the Commission found that the lower bench of the Mesa should be designated as "*Conservation*". The Commission recommended that the lower bench be designated as Conservation as it was habitat necessary to support the raptors which utilize the Eucalyptus Grove ESHA and also because of the presence of Southern Tarplant (*Hemizonia parryi ssp. Australis*). Southern Tarplant is a rare annual plant which has had its habitat compromised by urban development. The Bolsa Chica Mesa population is therefore considered significant.

Some of the activities identified by the applicant may be exempt. For example, ongoing archeological work related to ORA-83 is covered by coastal development permit 5-89-772. The removal of oil facilities is covered by "Resolution of Exemption" E-2-15-7371. Though these activities, at first glance, appear to be exempt, there is a possibility that ancillary activities associated with the exempt or permitted activity may require that a coastal development permit be obtained based on the activities' potential to adversely affect the habitat at Bolsa Chica. These activities could include, but are not limited to, access roads and the removal of sensitive vegetation.

For example, geotechnical testing is normally considered to be exempt if it occurs in urban areas and does not have an adverse impact on environmentally sensitive habitat. Geotechnical testing in an environmentally sensitive habitat area, such as the lower bench of the Bolsa Chica, or coastal bluffs could have an adverse impact if access roads are created or if it is conducted on native habitat. Exhibit 3 for example identifies "*access roads*". The applicant asserts that "*it is not our intent to construct new access roads across the property to facilitate geotechnical investigation or other types of pre-construction activities.*"¹³ Though the applicant may not intend, at this time, to construct access roads; the potential still exists that access roads may be necessary when actual geotechnical testing is initiated due to unforeseen problems with accessing particular sites. Grading is defined as development under Section 30106 of the Coastal Act. Therefore, if an access road is determined to be necessary for geotechnical testing a coastal development permit would be required, even if the geotechnical testing itself was considered to be exempt. Furthermore, the site may be periodically disked, which could have an adverse impact on the ability of the lower bench to function as habitat or result in unintentional removal of Southern Tarplant. Section 30240 the Coastal Act requires that activities adjacent to and within environmentally sensitive habitat areas not have a significant adverse impact on the habitat. Therefore, proposed activities which are to be conducted either adjacent to or within environmentally sensitive habitat areas should be reviewed to assure that the proposed activity will not have an adverse environmental consequence.

¹³ Exhibit 9, Hearthside Homes Letter of August 3, 1999.

Consistent with the requirements of Section 30240, to evaluate the issue of whether a proposed activity is exempt or not based on potential habitat impacts, the Commission is imposing a special condition to require that the applicant submit plans to the Executive Director prior to undertaking any activity. The applicant can not initiate any on-the-ground work until the applicant receives either written confirmation that the work is exempt from the Executive Director or a coastal development permit from the Commission is issued for the proposed activity. The Commission also reiterates that this permit amendment is only for the extension of time that the fence can remain on the Mesa and that the activities shown on Exhibit 3 are for illustrative purposes only. Therefore, only as conditioned for the submittal of project plans prior to the initiation of any activity does the Commission find that the proposed development is consistent with the Coastal Act.

D. LOCAL COASTAL PROGRAM

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Development Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with the Chapter 3 policies of the Coastal Act.

The County of Orange submitted on June 5, 1995 the Bolsa Chica Local Coastal Program for Commission certification. The Commission at its January 11, 1996 meeting approved the County's submittal with suggested modifications. The County subsequently adopted the Commission's suggested modifications on June 18, 1996. The County's action was reported to the Commission on July 11, 1996. With this certification, the County of Orange assumed coastal development permitting authority for projects in Bolsa Chica. The County issued, on May 15, 1997, a coastal development permit for the fence. The coastal development permit for the fence was subsequently appealed to the Commission. Certification of the Bolsa Chica LCP, however, lapsed on June 4, 1997 when the Superior Court set aside the certification of the Bolsa Chica LCP and required that the Commission reconsider its certification in light of the court's decision.

The Commission, at its October 9, 1997 meeting, approved the Bolsa Chica LCP with suggested modifications. This decision once again became subject of a lawsuit. On April 16, 1999 the appellate court issued a published decision upholding the trial court's decision to grant the petition for writ of mandate. The effect of the appellate court's decision was that the Commission re-heard the Bolsa Chica LCP on November 16, 2000.

The Bolsa Chica Local Coastal Program was approved by the Commission with suggested modifications on November 16, 2000. The County of Orange on

May 8, 2001, however, declined to accept the Commission's suggested modifications. Thus, pursuant to Section 13537 of Title 14 of the California Code of Regulations, the Commission's certification lapsed on May 16, 2001.

Consequently the Bolsa Chica Local Coastal Program is not certified, and projects, such as this amendment request, within the Bolsa Chica LCP area, are subject to the policies of the Coastal Act.

Section 30210 of the Coastal Act mandates that public access opportunities be maximized consistent with public safety needs, the protection of natural areas from overuse, private property rights, and public rights. Section 30211 of the Coastal Act mandates that development not interfere with the public's right of access. Section 30240 of the Coastal Act mandates that development environmental sensitive habitat area be protected against any significant disruption of habitat values. To comply with the requirements of the Coastal Act, the temporary pre-construction security fence has been conditioned to provide public access around its perimeter. This allows the public continued recreational opportunities such as bird watching, jogging, and viewing the ocean. The temporary security fence is also consistent with the requirements of Section 30210 and Section 30240 since it minimizes human intrusion into habitat areas and protects them from overuse. Since the temporary pre-construction fence has been found consistent (as conditioned) with the Coastal Act, the proposed development will not prejudice the County's ability to prepare a Local Coastal Program for Bolsa Chica that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

E. CONTINUANCE OF UNPERMITTED DEVELOPMENT

Without benefit of an amendment to its coastal development permit, the applicant has maintained the presence of a temporary perimeter security fence on the Bolsa Chica Mesa. Unless an amendment to the underlying permit was obtained the fence was to have been removed by November 5, 1998.

The applicant asserts that pre-construction activities that necessitated the presence of the temporary perimeter security fence were delayed due to the uncertainties created by the legal challenges brought against the Bolsa Chica Local Coastal Program (LCP). Hearthside homes now believes that it can go forward with the pre-construction activities and requests that the temporary pre-construction security fence remain to protect the public safety.

As articulated in the previous sections, the Commission has found that the fence (as conditioned) is consistent with the public access, recreation, and habitat

protection policies of the Coastal Act, as well as all other policies of Chapter 3. Consideration of the permit amendment application by the Commission has been based solely on the consistency of the proposed development with the policies of Chapter 3 of the Coastal Act.

Approval of this permit amendment application does not constitute a waiver of any legal action with regard to the alleged unpermitted development, nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit.

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project is located in an undeveloped area. Based on the review of extensive biological data much of the lower bench of the Bolsa Chica Mesa was recommended for a "*Conservation*" land use designation by the Commission when it acted on the Bolsa Chica Local Coastal Program on November 16, 2000. Additionally, the Commission recommended that the upper bench of the Bolsa Chica Mesa be designated "*Residential*".

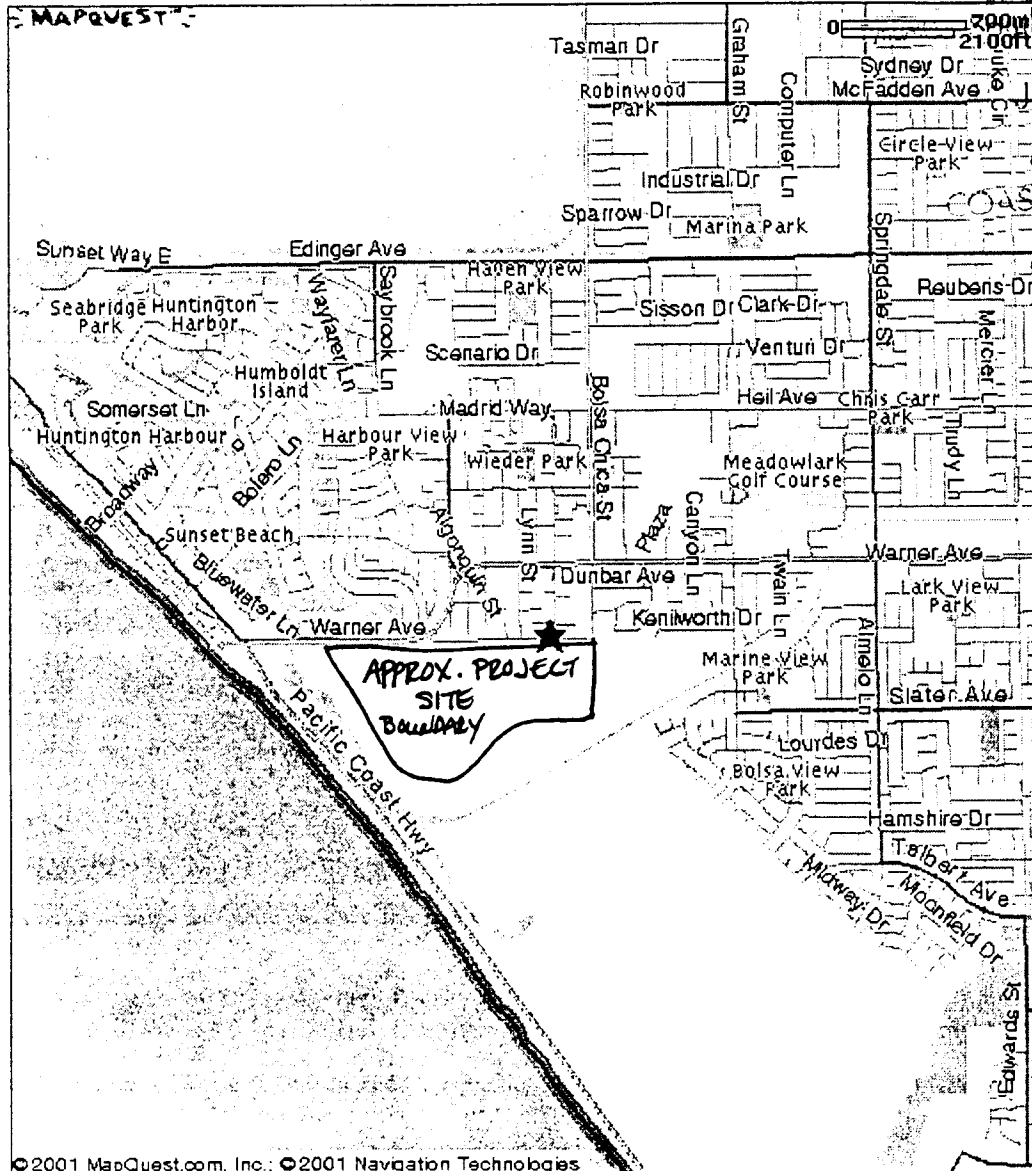
To address the environmental concerns raised by the project, the proposed development has been conditioned as follows to assure that the project will not have a significant adverse impact on coastal resources: 1) that the fence be removed by April 10, 2003 and any disturbed areas be seeded with native grasses, 2) that the Executive Director review any proposed work by the applicant to determine if a coastal development permit is required, and 3) that Commission approval does not waive any prescriptive rights that may exist on the Bolsa Chica Mesa. The proposed development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. There are no other feasible alternatives or feasible mitigation measures which would substantially lessen any significant adverse effects the activity may have on the environment. Therefore, the Commission finds that the proposed project is consistent with CEQA and the policies of the Coastal Act.

VICINITY MAP

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Coast Region

JUL 2 2001

CALIFORNIA
COASTAL COMMISSION



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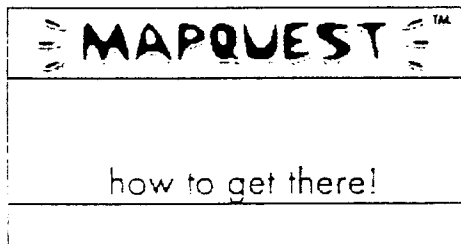


EXHIBIT No. 1
Application Number: A-5-BLC-97-188-A2
Vicinity Map
California Coastal Commission

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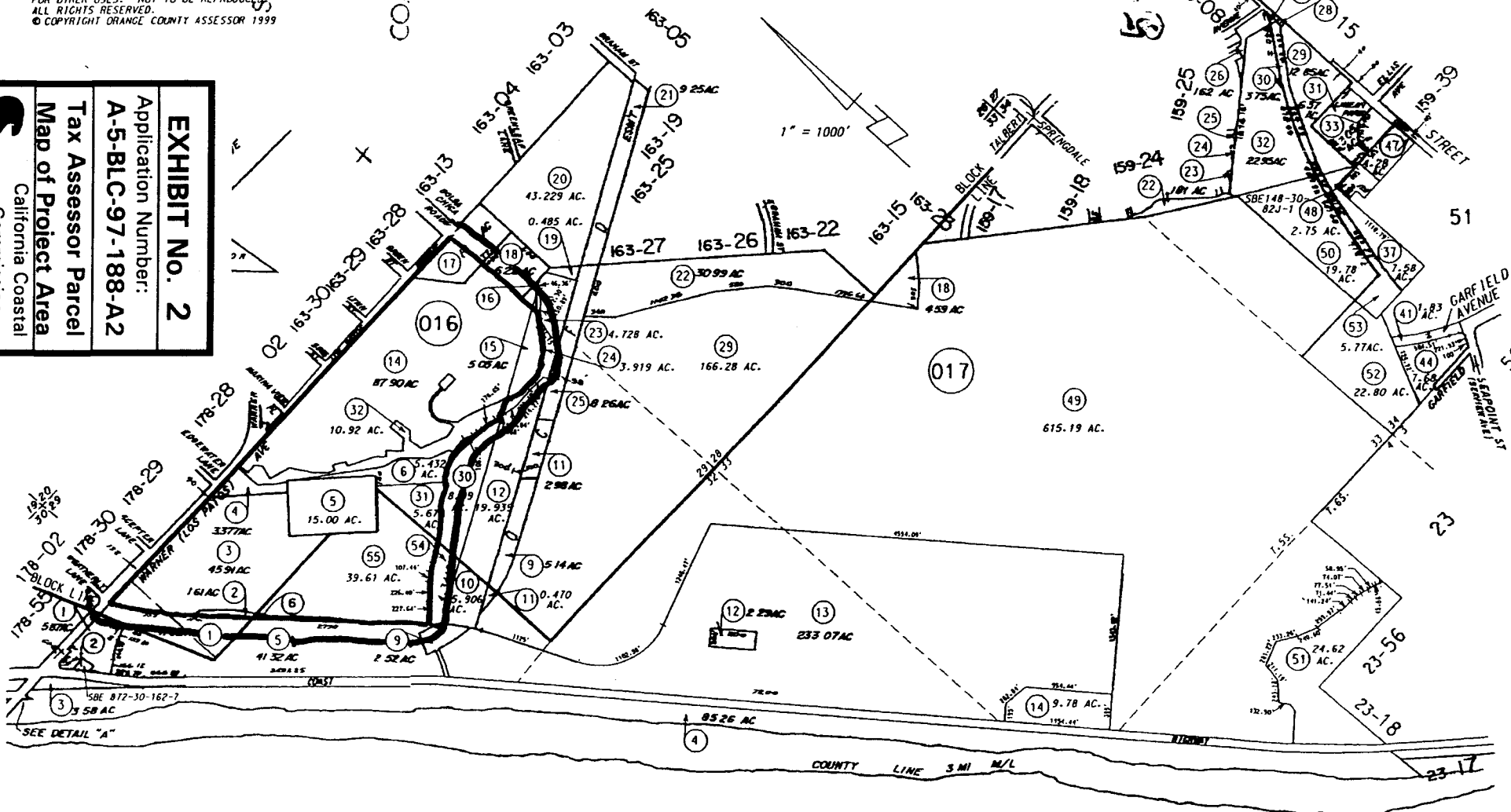
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CALIFORNIA
COASTAL COMMISSION

SEE SPECIAL PAGE 110-019 FOR FEE TITLE ASSESSMENT BELOW SURFACE
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	EXHIBIT NO. 2
	Application Number:
	A-5-BLC-97-188-A2
	Tax Assessor Parcel Map of Project Area California Coastal Commission



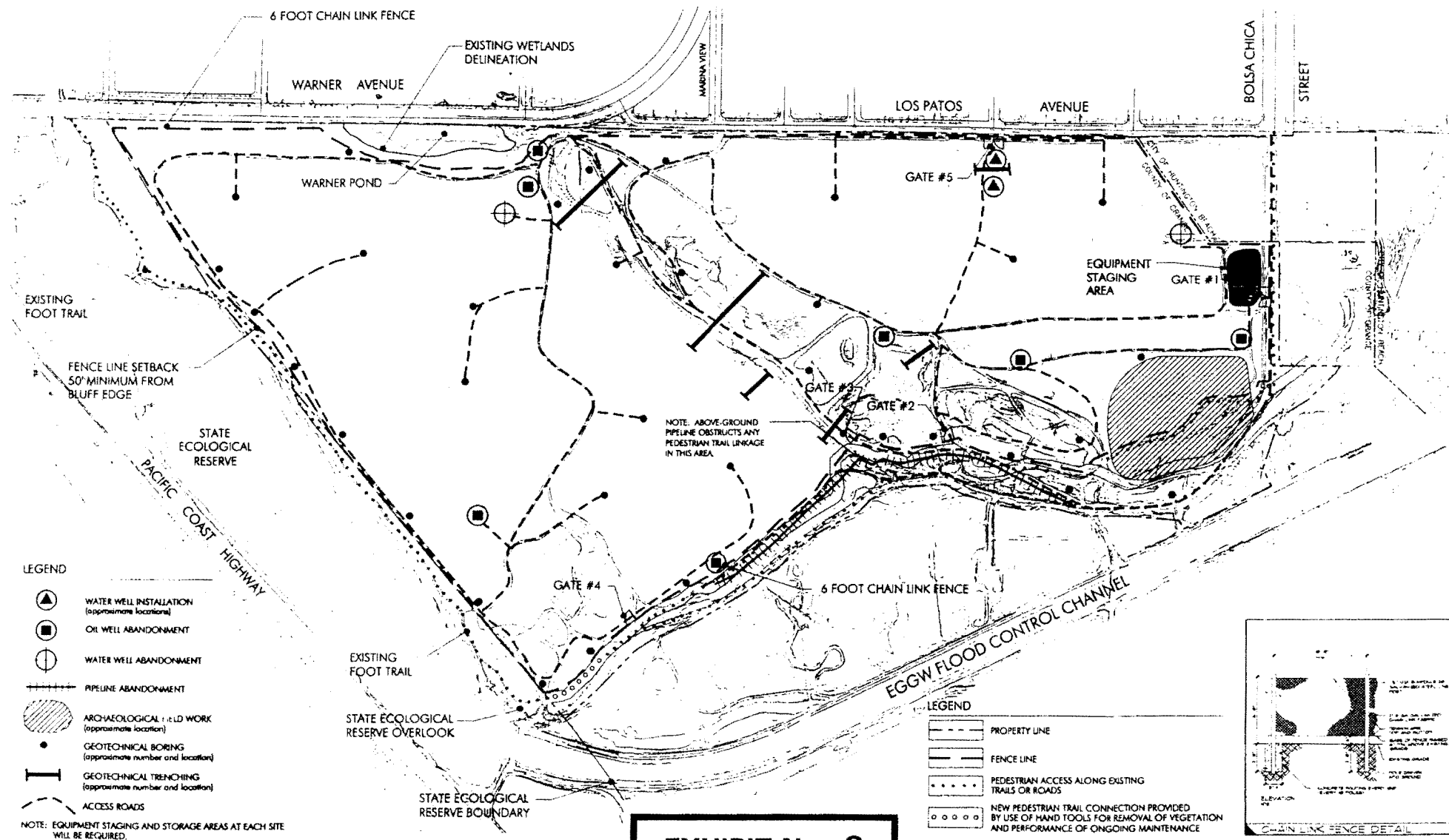
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NOTE - ASSESSOR'S BLOCK & PARCEL NUMBERS SHOWN IN CIRCLES

ASSESSOR'S MAP BOOK 110 PAGE 01 COUNTY OF ORANGE





WARNER MESA

EXHIBIT No. 3

Application Number:

A-5-BLC-97-188-A2

Site Plan

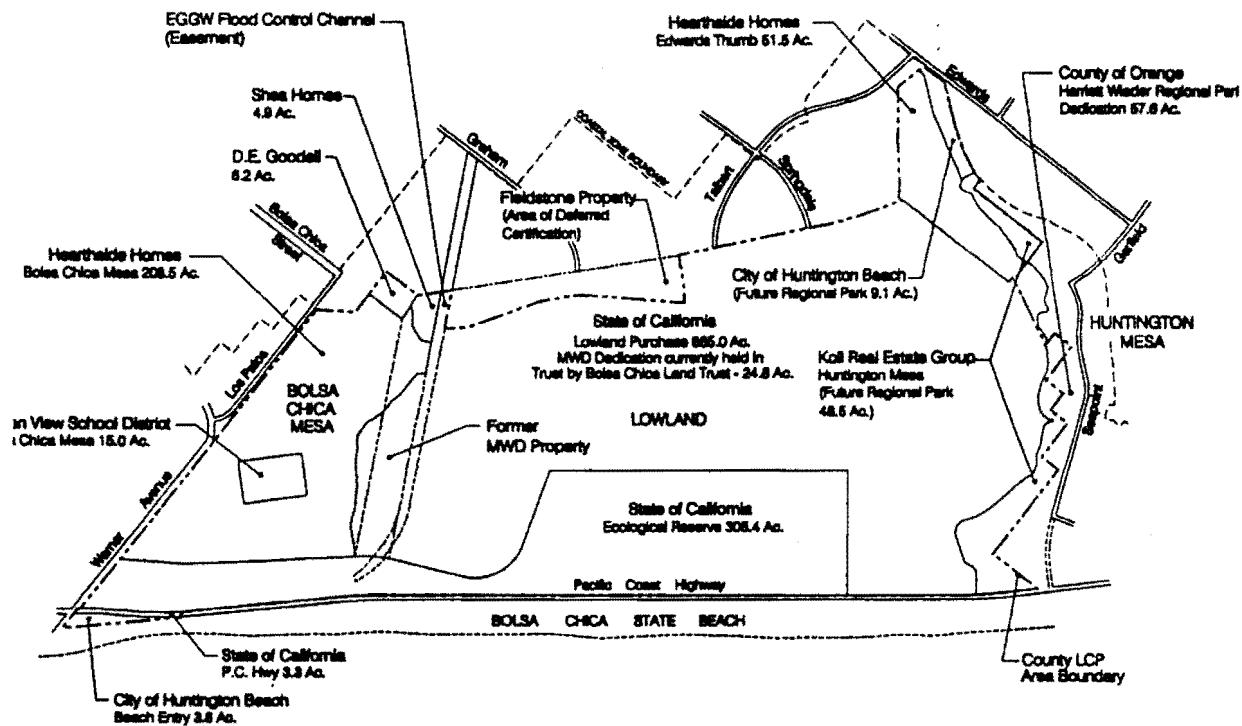


California Coastal
Commission

PRE-CONSTRUCTION ACTIVITIES
INCLUDED WITHIN FENCE PLAN

0 200 400 FORM 1000

Figure 6: Property Ownership November 2000



ACREAGE BY OWNERSHIP	County LCP Area
Hearthsde Homes/Signal Landmark:	
- Bolea Chica Mesa	208.5
- Edwards Thumb	51.5
- Huntington Mesa	48.5
Subtotal:	308.5
State of California:	
- Ecological Reserve	308.4
- Lowland Purchase	865.0
- MWD Dedication	24.8
- Pacific Coast Highway	3.3
Subtotal:	1203.4 *
City of Huntington Beach:	
- Pacific Coast Highway and Warner Avenue	3.8
- Huntington Mesa	9.1
Subtotal:	12.9
Ocean View School District	
D.E. Goodell	8.2
Shea Homes	4.9
TOTAL:	1547.0

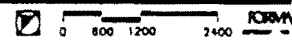
* Orange County Flood Control District holds 22.7-acre easement over Lowland.

EXHIBIT No. 4

Application Number:

A-5-BLC-97-188-A2**Property Ownership
November 2000**California Coastal
CommissionBOLSA CHICA
LAND USE PLAN

PROPERTY OWNERSHIP



APPLICANT'S APPENDIX TO THE PROJECT DESCRIPTION

Section I, Item 2: Describe the proposed development in detail.

The existing cyclone fence was approved by the County of Orange on May 15, 1997 by action of the Orange County Zoning Administrator (see Exhibit Tab 7), and subsequently approved by the California Coastal Commission on November 5, 1997 on appeal pursuant to Coastal Development Permit A-5-BLC-97-188. This permit application requests permission to maintain the fence until pre-construction activities, including completion of archaeological mitigation activities, oil well abandonment, water well abandonment, and pipeline abandonment can be completed.

On December 17, 1998, the applicant in a letter to Steven C. Rynas, California Coastal Commission from Ed Mountford, Hearthside Homes, requested an amendment to CDP A-5-BLC-97-188 to extend the period of time the fence could be maintained on site. (A copy of the December 17, 1998 Mountford Letter is attached to this Appendix and made a part of this application.)

By letters to Stephen Rynas, California Coastal Commission from Ed Mountford, Hearthside Homes, dated April 16, 1999, June 10, 1999, July 7, 1999, and August 3, 1999, a detailed description of the proposed pre-construction activities which necessitated maintenance of the fence, a site plan, and schedule of those activities were provided. (Copies of all referenced letters are attached to this Appendix and made a part of this application.)

The following is an updated list of activities remaining to be conducted on the property:

1) Oil Well and Pipeline Abandonment and other Pre-development Activities.

The abandonment of up to seven additional wells and the removal of several hundred feet of pipeline needs to be completed. A complete description of the proposed activity was provided in the July 7, 1999 letter from Ed Mountford to Steven Rynas, a copy of which is attached to this Appendix and made a part of this application. The description remains accurate, however, the timing has changed as a result of the applicant's inability to pursue completion of this work.

Schedule: January 2002-March 2003

2) Archaeological Mitigation.

Archaeological mitigation previously approved by the Coastal Commission for the ORA-83 site is still being completed. Work was slowed by the rainy condition which resulted in the collapse of several units and trenches which had to be shored and cleaned before work could be completed. A complete description of the work remaining was provided in the July 7, 1999 letter from Ed Mountford to Steven Rynas. The backhoe trenches described at that time have been excavated, examined and backfilled. A peer review meeting will be held on July 3, 2001, at which time approval is expected to begin the mechanical excavations described in the ORA-83 mitigation plan. If approved by the peer reviewers, this work could begin in late July and will take until January 2002 to

APPLICANT'S APPENDIX TO THE PROJECT DESCRIPTION

complete. The time to complete this work has been extended from earlier estimates because of greater knowledge of soil conditions (hard packed soil) and the time and effort it will take to complete the work given these physical site conditions.

Schedule: The work is currently ongoing. If no additional work is recommended by the Coastal Commission-designated peer review group, field work is anticipated to be completed by the end of first quarter, 2002.

Section III. Additional Information, Item 1 Present use of property.

a. Are there existing structures on the property?


Yes. There is an existing cyclone fence on the property which was approved by the County of Orange on May 15, 1997 by action of the Orange County Zoning Administrator, and subsequently approved by the California Coastal Commission on November 5, 1997 on appeal pursuant to Coastal Development Permit A-5-BLC-97-188. This permit application requests permission to maintain the fence until pre-construction activities, including completion of archaeological mitigation activities, oil well abandonment, water well abandonment, and pipeline abandonment can be completed.

In addition to the fence, there are structures, such as temporary trailers and equipment, on a portion of the property associated with ongoing archaeological mitigation work being conducted at ORA-83, in accordance with a mitigation plan approved by three Coastal Commission designated peer reviewers pursuant to a coastal development permit.

Finally, there are existing oil wells and pipelines, and a water well on the property.

Section III. Additional Information, Item 4 Description of the Location and Nature of Access

Pursuant to Special Condition 2 to CDP No. A-5-BLC-97-188, the perimeter fence is set back a minimum of 50 feet from the top of the existing bluff edge. The alignment of the fence along the eastern portion of the property line provides for pedestrian access to the bluff edge from Los Patos Avenue. In addition, where vegetation may have obstructed public use of the 50 feet setback area, the vegetation was cleared to assure that public access was not obstructed.

EXHIBIT No. 5
Application Number: A-5-BLC-97-188-A2
Project Description Appendix
 California Coastal Commission

Buchalter Nemer Fields & Younger

A Professional Law Corporation


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TELEPHONE (949) 760-1121 / FAX (949) 720-0182

File Number: H3331-0001
Direct Dial Number: (949) 224-6284
E-Mail Address: shori@buchalter.com

August 3, 2001

VIA FAX AND FEDERAL EXPRESS

Stephen Rynas
Orange County Area Supervisor
California Coastal Commission
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302

EXHIBIT No. 6
Application Number: A-5-BLC-97-188-A2
Buchalter, Nemer, Fields, and Younger, Letter of August 3, 2001
 California Coastal Commission

Re: Coastal Development Permit Amendment A-5-BLC-97-188-A2

Dear Steve:

In response to your letter dated July 23, 2001, we have prepared the following materials and responses. Please note, however, that certain materials, such as the proof of ownership, is not enclosed with this package and will be delivered to you next week.

1. ***Item 1 of Section IV requires that the applicant submit proof of the applicant's legal interest in the property.***

We have submitted a request to Signal Bolsa Corporation for copies of tax bills for the remainder of the assessor parcels on which the fence is located or other evidence to demonstrate proof of ownership. As soon as we receive these documents, we will have the material delivered to your office. Please be advised that since the time the original permit application was filed, however, there has been no change in ownership for the property in question. The property remains under the ownership of Signal Bolsa Corporation.

2. ***Item 4 of Section IV requires that the applicant submit stamped envelopes addressed to each property owner and occupant along with a list containing the names, addresses, and assessor's parcel number of the persons being contacted.***

When we submitted our amendment application on July 2, 2001, we also submitted a box of stamped envelopes addressed to the owners and occupants of property within a 100 feet of the perimeter of the property on which the proposed development is located. Attached as an exhibit to Tab 2 of our application was the Assessor's parcel map and the list of owners and occupants within 100 feet of the perimeter of the property that were identified by the title company's search. Address labels were provided by the title company and were submitted as part of the Tab 2 exhibit. In response to your request, I

Application Number:

A-5-BLC-97-188-A2**Buchalter, Nemer, Fields,
and Younger, Letter of
August 3, 2001**California Coastal
Commission

Stephen Rynas
August 3, 2001
Page 2

am enclosing with this letter a mailing list with all of the these names and addresses with APN.

As you noted in your email message of July 27, 2001, Section 13054 of the Coastal Commission's regulations and Item 5 of the Section IV of the application requests "stamped, addressed envelopes and a list of names and addresses of all other parties known to be interested in the proposed development (such as persons expressing interest at a local government hearing, etc.)." Enclosed are stamped, addressed envelopes for interested parties. The names and addresses of these interested parties are also contained in the enclosed mailing list. In preparing this list, we contacted Ron Tippetts and Grace Fong of the County of Orange for the County's mailing list when the fence permit application was considered by the County, and included the individuals who were listed on the appeal that was submitted on this permit to the Coastal Commission.

So that you may more easily access the mailing list, I will also provide you with an electronic version so the mailing list (in Word) by email on Friday, August 3, 2001.

3. ***Please describe the status of the pre-construction activities.***

A description of the proposed pre-construction activities was provided in our application materials. As of the date of this letter, the archaeological mitigation work described in our application is currently ongoing. As you know, pursuant to CDP 5-89-772, a fairly specific description of work and the location of such work was established by a peer review group that was appointed to ensure that the archaeological mitigation work on ORA-83 addressed the concerns of the Pacific Coast Archaeological Society. Due to weather conditions which has the effect of slowing archaeological work during the winter, rainy months, the work was not completed as we originally anticipated in 2000. As noted in our application materials, a peer review meeting was held on July 3, 2001, to discuss the progress of the work. At that meeting, it was agreed by the peer reviewers that commencement of the mechanical excavations described in the Peer Reviewer Memorandum of Agreement on file with the Coastal Commission, in the area of ORA-83 commonly referred to as the "plowed field" should start in August. This work is currently underway and should be completed by the end of first quarter, 2002.

The second activity described in our permit amendment application materials was the oil well and pipeline abandonment work. The nature of this work was described in the materials submitted as part of our amendment application. Work on this effort, however, has not commenced as a result of the litigation, and subsequent LCP process before the Coastal Commission and County. As the LCP for Bolsa Chica was not certified, and the Coastal Commission action is currently in litigation, the landowner has temporarily postponed initiating this work

Stephen Rynas
August 3, 2001
Page 3

4. *Please provide an explanation for why the fence was not removed to comply with the requirements of Special Condition #3 once this decision (decision to not pursue completion of the pre-construction activities) was made.*

The fence was not removed because even though some of the pre-construction activities were not pursued, some of the work was conducted, e.g., the archaeological mitigation and the groundwater wells, and the archaeological work is still being conducted and requires fencing of the site for security and safety reasons.

5. *Please provide an evaluation of alternatives which maximize public access, such as providing fencing at each well site while the well is being removed.*

The perimeter fence that is the subject of the pending coastal permit amendment application surrounds property that is privately-owned. A private landowner is under no requirement or obligation, legal or otherwise, to maximize public access to, over and across its private property. Public access exposes the property owner to potential liability for injuries or property damage which could occur on or around the property, e.g., pedestrian and bicycle accidents, fires, rattlesnake or dog bites, mischief by persons using the unlit property at night, etc. In light of the fact that certain pre-construction activities, such as archaeological investigations and oil facility abandonment, are being conducted or scheduled to be conducted on the property, the need to control, as opposed to maximize, public access is underscored. Public access to the State-owned property is not affected by the fence. The fence is set back to provide a 50 feet corridor along the bluff edge facing Outer Bolsa Bay which permits public access to the State-owned areas of Bolsa Chica Mesa.

Very truly yours,


BUCHALTER, NEMER, FIELDS & YOUNGER
A Professional Corporation

By


SUSAN K. HORI

Enclosure

cc: Ed Mountford

EXHIBIT No. 6
Application Number: A-5-BLC-97-188-A2
Buchalter, Nemer, Fields, and Younger, Letter of August 3, 2001
 California Coastal Commission

CALIFORNIA COASTAL COMMISSION


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



July 23, 2001

Susan Hori
Buchalter, Nemer, Fields, and Younger
Suite 400
895 Dove Street
Newport Beach, CA 92658-2998

Subject: Coastal Development Permit Amendment A-5-BLC-97-188-A2

EXHIBIT No. 7	
Application Number: A-5-BLC-97-188-A2	
Commission Letter of July 23, 2001	
	California Coastal Commission

Dear Ms. Hori:

We are in receipt of your amendment request for coastal development permit A-5-BLC-97-188. Coastal development permit A-5-BLC-97-188 authorized Hearthside Homes to construct a temporary pre-construction fence. Pursuant to special condition number three of the underlying permit, Hearthside Homes is allowed to apply for an amendment to extend the time that the fence is to remain. This amendment request proposes to extend the presence of the fence until pre-construction activities are completed in March 2003 (estimated). The amendment was received by this office on July 2, 2001.

Commission staff has reviewed the amendment application and determined it to be incomplete pending the receipt of the following information.

- ◆ Item #1 of Section IV of the permit application requires that the applicant submit proof of the applicant's legal interest in the property. Tab #1 of the submission package contained the tax bill for only one parcel (APN #110-016-14). Tab #2 of the submission package contains a tax assessor parcel map which documents that there are many other parcels traversed by the fence. Please submit the tax bills for all the other parcels traversed by the fence to document that Hearthside Homes still owns the land.
- ◆ Item #4 of Section IV of the permit application requires that the applicant submit stamped envelopes addressed to each property owner and occupant along with a list containing the names, addresses, and assessor's parcel numbers of the persons being contacted. Tab #3 contains an informational sheet which states that stamped envelopes have been submitted. No mailing list of the persons being contacted, consistent with the second half of item #4 of Section IV of the permit application was supplied. Please provide a mailing list of each owner and occupant being contacted. We would appreciate having this information provided as either a Microsoft WORD (version 97) mailing list document or as an ACCESS (version 97) mailing list document.
- ◆ When the Commission approved coastal development permit A-5-BLC-97-188 on November 5, 1997 it was with the understanding that Hearthside Homes would soon

be undertaking pre-construction activities which necessitated the presence of the fence for public safety. Since pre-construction activities would be of limited duration pending mass grading of the Mesa, the fence was considered by the Commission to be temporary. Special Condition #3 required that the temporary fence be removed within one year (by November 5, 1998) if Hearthside Homes had not obtained a coastal development permit for mass grading of the Mesa. A coastal development permit for mass grading has not been issued. However, the special condition also allowed for Hearthside Homes to apply for an amendment to extend the presence of the fence if pre-construction activities could not be reasonably completed by November 5, 1998.

Tab #5 of the application submittal contains the details, including the timeframes for the amendment request. Oil well and pipeline abandonment activities, for example, are anticipated to take until March 2003. However, in July 1999 the oil well and pipeline abandonment activities were estimated to be completed by May 2000. Please describe the status of each of these activities (what has been done and what remains to be accomplished)?

You stated in several letters beginning with the April 16, 1999 letter that a decision was made not to pursue completion of the pre-construction activities. Please provide an explanation for why the fence was not removed to comply with the requirements of Special Condition #3 once this decision was made?


The fence essentially runs along the entire perimeter of the Bolsa Chica Mesa and limits public access. Alternatives exist to fencing the entire Mesa. Rather than fence the entire site, fencing could be provided at each site while the abandoned well is being removed. Please provide an evaluation of alternatives which maximize public access.

Please provide the requested information by August 3, 2001. This will provide us with sufficient time to prepare a staff report for the Commission's September 11-14, 2001. Once we receive the requested information we can resume processing your application. Should you have any questions on this letter, please give me a call.

Sincerely,



Stephen Rynas, AICP
Orange County Area Supervisor
H:\Letters\Hearthside Homes hearthside11.doc

EXHIBIT No. 7
Application Number: A-5-BLC-97-188-A2
Commission Letter of July 23, 2001
 California Coastal Commission

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Bolsa Chica

CALIFORNIA
COASTAL COMMISSION

LAND TRUST

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CO-FOUNDER



November 29, 1999

California Coastal Commission
Mr. Peter Douglas
45 Fremont St. #2000
San Francisco, Calif. 94105-2219

Dear Commissioners and Mr. Douglas,

The Bolsa Chica Land Trust is concerned that the Coastal Commission has failed to execute the Coastal Act conditions relative to what is designated as a "temporary pre-construction fence" on Bolsa Chica Mesa. The Commission granted the Koll Real Estate Group permit # A-5-BLC-97-188 to construct such a fence on November 5, 1997.

The conditions of the permit read that the fence must be taken down "no later than one year from the date of approval if the applicant has not obtained a coastal development permit and a grading permit for the mass grading of the Mesa and commenced grading within this time period." One year from the approval was would have been November 5, 1998. It is now November 30, 1999 and the fence is still up.

It is apparent that the applicant has approached the Commission to have the conditions changed. We are unaware that public notice has been given for such a change in permitting protocol.

Please respond to our concerns. We believe that the fence should be taken down as the company has not complied with the permit agreement. Your attention to this matter is greatly appreciated.

Sincerely,

Paul C. Horgan, President

LOCAL SPONSORS: GARDEN GROVE EDUCATION ASSOCIATION,
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CALIFORNIA
COASTAL COMMISSION

EXHIBIT No. 8

Application Number:

A-5-BLC-97-188-A2

Bolsa Chica Land Trust
Letter of

November 29, 1999

California Coastal
Commission



HEARTHSIDE HOMES, INC.

August 3, 1999

Mr. Stephen Rynas
California Coastal Commission
200 Oceangate Suite 1000
Long Beach, CA 90802-4302

Dear Stephen:

In your letter of July 9, 1999, you ask Hearthside Homes to identify those pre-construction activities on the Bolsa Chica Mesa which may require a coastal development permit. You specifically mention new access roads and the installation of water wells.

Responding directly to your questions, it is not our intent to construct new access roads across the property to facilitate geotechnical investigations or other types of pre-construction activities. There are a number of existing trails/roads across the property which allow sufficient access for heavy equipment. The exhibit I submitted to you in June shows the approximate locations of geotechnical investigations and access points for the equipment. The exhibit was not meant to indicate that new roads would be constructed to facilitate equipment access.

The proposed water well work involves three distinct components. First, a test well will be drilled to determine the viability of using groundwater as a water source for the project. If the test well data shows that there is sufficient water quantity and quality then approval will be sought for installation of a permanent well. It is anticipated that the permanent well will not be necessary until after the Bolsa Chica LCP is certified. In the event we move forward on the permanent well, Hearthside will apply to the County of Orange for a coastal development permit.

The third component of the water well work involves abandoning two existing shallow groundwater wells installed by the Army Corps of Engineers. Hearthside Homes was unaware that abandoning these existing wells requires a coastal development permit. Be that as it may, if you advise us that this activity requires a coastal development permit we will apply for a permit from the County of Orange once the LCP is certified.

In response to your last request, I forwarded to you a revised schedule for pre-construction activities dated July 7, 1999. I suspect our letters passed each other in the Post Office. If you need any further information, I will be pleased to provide it to you.

Sincerely,

Ed Mountford
Senior Vice President

COASTAL COMMISSION
CALIFORNIA

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EXHIBIT No. 9

Application Number:
A-5-BLC-97-188-A2

Hearthside Homes
Letter of
August 3, 1999



California Coastal
Commission

CALIFORNIA COASTAL COMMISSION

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



July 9, 1999

Ed Mountford
Senior Vice-President
Hearthside Homes
Suite 250
6 Executive Circle
Irvine, CA 92614

EXHIBIT No. 10

Application Number:
A-5-BLC-97-188-A2

**Commission Letter
of July 9, 1999**



California Coastal
Commission

Subject: Coastal Development Permit 5-97-188-A1 (Hearthside Homes)

Dear Ed:

On June 11 we received a cover letter and a pre-construction activities plan for pre-construction work that Hearthside Homes is proposing on the Bolsa Chica Mesa. We have reviewed the information supplied and determined that your request for an amendment remains incomplete for the reasons cited below.

The pre-construction activities plan contains a variety of activities such as oil well abandonment and geotechnical testing that are exempt from coastal development permit requirements. However, some of the ancillary activities proposed appear to require a coastal development permit. For example, geotechnical testing is exempt, however the pre-construction activities plan identifies what appear to be new access roads to the sites of the geotechnical borings. The construction of new access roads, even though it is in support of an exempt type of activity requires a coastal development permit. Please clarify the issue of whether new access roads are being proposed.

Next it has been our understanding that test wells (for water) would be drilled. The pre-construction activities plan identifies the installation of water wells and the abandonment of water wells. If these wells are not test wells, then the installation and abandonment of these water wells requires a coastal development permit before these activities can occur. Please clarify the nature proposed water well work.

Furthermore, your letter stated that the schedule you previously submitted is now outdated and that a new schedule would be submitted by July 1, 1999. A new schedule has not been submitted. As you are aware, the Commission approved the temporary pre-construction fence with the anticipation that mass

Ed Mountford

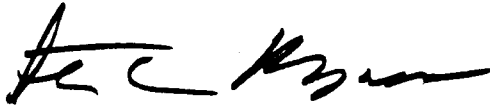
Coastal Development Permit 5-97-188-A1 (Hearthside Homes)

July 9, 1999

Page: 2

grading of the Mesa would be initiated by November 1998. The Commission granted the permit to Hearthside Homes to allow the fence with the expectation that it would be a temporary fence necessary for exempt pre-construction activities. Mass grading of the Mesa has not been initiated nor has the fence been removed. Though the permit allows for an amendment to be submitted (consistent with 14 CCR 13166) we remain concerned over the continued lack of an acceptable amendment application after eight months from Hearthside Homes. Since an amendment has not been approved to CDP 5-97-188 the fence should have been removed by November 5, 1998 under the terms of special condition number 3. Should you have any questions please give me a call at 562-590-5071

Sincerely,



Stephen Rynas, AICP
Orange County Area Supervisor

cc: Pam Emerson, Coastal Commission
Nancy Cave, Statewide Enforcement Program Supervisor
\\HAMMERHEAD\srynas\$\GENERAL\hearthside08.doc

EXHIBIT No. 10

Application Number:
A-5-BLC-97-188-A2

Commission Letter
of July 9, 1999




California Coastal
Commission



HEARTHSHIDE HOMES, INC.

July 7, 1999

Mr. Steven Rynas
California Coastal Commission
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302

EXHIBIT No. 11
Application Number: A-5-BLC-97-188-A2
Hearthside Homes Letter of July 7, 1999
 California Coastal Commission

Dear Steven:

This letter is a follow up to my June 10, 1999 letter concerning Hearthside Home's request for an amendment to Coastal Development Permit 5-97-188-A1 to extend the time the fence can be maintained on our property. As I mentioned in my last correspondence with you, the recent Court of Appeal decision regarding the Bolsa Chica LCP has adversely impacted the schedule of pre-construction activities I previously sent to you in April. Since the LCP will be remanded back to the Commission for another hearing prior to certification, we have revised the scheduling of some of the pre-construction activities taking place on the Mesa.

The following revisions to the schedule assume the Commission will conduct another hearing on the LCP in October 1999 and grading for the project will commence in June 2000. Because not all of the pre-construction activities have been re-scheduled, the fence is still needed to protect the Mesa while other scheduled work is undertaken. For example, the remaining archaeological work will still take place this summer. A complete schedule of activities is provided below.

1) Oil Well and Pipeline Abandonment

Abandonment of some of the oil facilities on the Mesa was undertaken and completed in 1998. The abandonment of up to seven additional oil wells at various locations on the Mesa and removal of several hundred feet of pipeline needs to be completed. The nature of this work requires the use of drilling rigs and excavation equipment that will cause temporary hazardous conditions. In addition to removal of oil facilities, we are also going to be conducting tests for methane gas and hazardous substances in the soil over the entire Mesa. This testing involves heavy drilling equipment and borings to assess the potential for subsurface methane gas.

We expect to re-commence abandonment work in February or March 2000 (depending on weather conditions) with completion anticipated in May 2000.

2) Geotechnical

Preliminary geotechnical investigations (i.e., cone penetration tests and borings) have been completed in order to provide geotechnical information for the preparation of rough grading plans. However, further borings and backhoe trenches will be necessary to determine the extent of certain geotechnical conditions in the project area. The tests will be conducted on all areas proposed for residential development and will require leaving the trenches open for sufficient time to determine subsurface geotechnical conditions. Consequently, these areas should be fenced to avoid intrusion by people or animals.

Geotechnical fieldwork will re-commence in March 2000 and conclude in April 2000.

3) Groundwater Wells

A test well must be drilled to determine the viability of using groundwater as a domestic water source for the project. If on-site wells prove feasible, two permanent wells will be drilled. In addition, two existing shallow groundwater wells installed by the Army Corps of Engineers nearly 50 years ago must be abandoned. The two Corps wells are located in the eastern portion of the Mesa in the area of the now demolished Corps bunker.

Drilling of the test well will commence in February 2000 or March 2000 depending on the availability of drilling equipment and the weather and will take approximately 90 days to complete. Abandonment of existing groundwater wells will be undertaken concurrent with the abandonment of oil wells and pipelines beginning in February 2000 and concluding in May 2000.

4) Archaeological Mitigation

Archaeological mitigation previously approved by the Coastal Commission for the ORA-83 site needs to be completed. The last phase of the mitigation for ORA-83 involves a series of backhoe trenches and mechanical excavations in the area referred to as the "plowed field". This area is outside the small area subject to the salvage program. This mitigation work is being conducted to comply with the recommendations of the ORA-83 peer reviewers to address the concerns of the Pacific Coast Archaeological Society (PCAS) to ensure that recovery of artifacts is complete. The final phase mitigation program is currently scheduled to begin in August 1999 and will take approximately 90-120 days to complete.


All of the pre-construction activities described above are consistent with the Commission's approval of the original Coastal Development Permit for installation of the fence. Due to the unanticipated delay caused by the litigation,



HEARTHSIDE HOMES, INC.

June 10, 1999

Mr. Steven Rynas
California Coastal Commission
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302

EXHIBIT No. 12
Application Number: A-5-BLC-97-188-A2
Hearthside Homes Letter of June 10, 1999
 California Coastal Commission

Dear Steven:

I have reviewed your letter of May 11, 1999 and your request for a site plan detailing each specific pre-construction activity we will be undertaking on Warner Mesa. You also requested an explanation as to why we believe that we will proceed with pre-construction in a timely manner and offer the following responses:

In response to your first request, I have enclosed a map of the Mesa showing the approximate locations of the various pre-construction activities. The precise locations of some of these activities such as geotechnical evaluations are impossible to determine at this time because the exact locations of a boring or a trench will depend on conditions in the field. Other activities such as oil well and pipeline abandonment are in fixed locations and easy to identify. Still other activities such as the boundaries for archaeological fieldwork are generally defined but could change based on findings in the field. Be that as it may, we believe the information provided on the map should be sufficient for your purposes in determining where certain activities are taking place in relation to the Mesa and the existing fence. The location of the proposed work and area affected by the proposed work are clearly identified on the map. The circle around the oil and water well locations shown on the map represents a fifty-foot radius for access and operation of drilling equipment.

It is important to keep in mind that while some of these pre-construction activities such as geotechnical borings are confined to relatively small areas of land during actual operations, the drill rigs and other heavy equipment must move from location to location and to and from the site. Thus, fencing each individual work location does not address the issue of public safety as it relates to the movement of heavy equipment across the entire site.

On April 16, 1999, we provided you, per your request, detailed information concerning the timing and schedule of pre-construction activities. Unfortunately, the schedule submitted to you has again been impacted by the latest Court of Appeal decision overturning the Coastal Commission's previous approval of the

Mr. Steven Rynas

Page 2

June 10, 1999

Bolsa Chica Local Coastal Program. We are completing a revised schedule for your review and should have that to you by July 1, 1999.

In the meantime, please review the enclosed map and advise us if you have any other questions. We hope to resolve this matter to your satisfaction so that our permit amendment application will be deemed complete and submitted for hearing before the Coastal Commission.

Sincerely,

HEARTHSIDE HOMES, INC.



Ed Mountford

Senior Vice President

EM:js

Enclosure

EXHIBIT No. 12

Application Number:

A-5-BLC-97-188-A2

Hearthside Homes

Letter of

June 10, 1999



**California Coastal
Commission**

CALIFORNIA COASTAL COMMISSION

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



May 11, 1999

Ed Mountford
Senior Vice-President
Hearthside Homes
Suite 250
6 Executive Circle
Irvine, CA 92614

EXHIBIT No. 13

Application Number:
A-5-BLC-97-188-A2

**Commission Letter
of May 11, 1999**



California Coastal
Commission

Subject: Coastal Development Permit 5-97-188-A1 (Hearthside Homes)

Dear Ed:

On April 20, 1999 we received your letter of April 16, 1999 in which you provided additional information concerning the work to be undertaken on the Bolsa Chica Mesa which requires the continued presence of the temporary pre-construction fence. This letter was in response to our letter of March 5, 1999 in which we requested that Hearthside Homes provide specific examples of ongoing or contemplated work including identification of the specific location of the work and time frames for the work. We have reviewed the information provided and determined that we can not file your amendment application as no site plans identifying the specific location of where work would occur were submitted.

As you are aware, the Commission approved the temporary pre-construction fence with the anticipation that mass grading of the Mesa would be initiated by November 1998. Mass grading of the Mesa requires that the entire area be fenced to discourage the public from entering a construction area. However, in the event grading was not initiated, the Commission acknowledged that Hearthside Homes could apply for an amendment so that the Commission could consider whether the approved fencing should remain in place or be modified to be consistent with the public access provisions of the Bolsa Chica LCP and the Coastal Act. Since mass grading of the Mesa has not been initiated, the necessity of fencing the entire Mesa must be re-evaluated. For example some of the work identified in your letter, such as geotechnical testing, appears to only occupy small areas of the Mesa and would only require that the project site itself be fenced for a short period of time and not the whole Mesa. Plans showing the specific location or proposed work and the area to be affected by the proposed work are necessary to evaluate if the entire Mesa must still be fenced. The lack of plans identifying the specific location of work and area impacted by proposed work makes it infeasible for Commission staff to evaluate whether the fence should remain in place in its current configuration. Therefore, we request that Hearthside Homes submit project plans showing the specific location and areal extent of contemplated work.

In several letters (starting with the letter of November 12, 1998), Hearthside Homes has advocated that the litigation affecting the Bolsa Chica LCP prevented Hearthside Homes from undertaking its pre-construction activities. Our letter of December 1, 1998 stated that the pending litigation on the LCP did not suspend the time limit nor the ability of Hearthside Homes to remove the fence. Now, in your letter of April 16, 1999 Hearthside Homes has disclosed that the postponement of certain activities was a management decision based on financial considerations rather than the legal inability to proceed. Consequently, Hearthside Homes was in a position to remove the fence by November 5, 1998 as required by special condition number three of coastal development permit 5-97-188. Coastal Commission staff would appreciate a clarification of why you now believe that it is possible for Hearthside Homes to proceed with pre-construction activities as now proposed?

We request that site plans showing the location and areal extent of contemplated pre-construction work including an explanation of why you believe that you will now proceed with the pre-construction in a timely manner. Please submit the information by June 11, 1999. Once we receive the requested information we will evaluate it to determine if the plans and explanation are adequate and we will then be able to make a determination as to whether or not the amendment request is complete.


Alternatively, Hearthside Homes may still remove the existing fence to resolve its unpermitted nature. Please note, that approximately six months have now elapsed since the fence should have been removed. Since the fence has not been removed and an acceptable amendment request consistent with special condition number 3 and 14 CCR 13166 has not been submitted; we will (following your submittal of the requested information) make a determination on whether or not to forward violation V-5-99-01 to our San Francisco Office for appropriate enforcement action to resolve this violation case. Should you have any questions please give me a call at 562-590-5071

Sincerely,



Stephen Rynas, AICP
Orange County Area Supervisor

cc: Pam Emerson, Coastal Commission
Nancy Cave, Statewide Enforcement Program Supervisor
\\HAMMERHEAD\srinas\$\GENERAL\hearthside07.doc


EXHIBIT No. 13
Application Number: A-5-BLC-97-188-A2
Commission Letter of May 11, 1999
 California Coastal Commission



HEARTHSIDE HOMES, INC.

April 16, 1999

Mr. Steven Rynas
California Coastal Commission
Southcoast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302

EXHIBIT No. 14
Application Number: A-5-BLC-97-188-A2
Hearthside Homes Letter of April 16, 1999
 California Coastal Commission

Dear Steven:

The purpose of this letter is to provide you with more specific information regarding our application for a one-year extension of time on Coastal Development Permit 5-97-188-A1 as requested in your letter of March 5, 1999. As part of furnishing you with more specific information to support our request, I would also like to clarify what appears to be a misunderstanding as to the status of pre-development activities on the Bolsa Chica Mesa.

Since the Coastal Commission issued the permit for the temporary fence in April 1998 and installation of the fence was completed in June 1998, a number of the pre-development activities identified in our original permit request have been initiated but not yet completed.

The reason the work was initiated and then interrupted prior to completion is due to the Bolsa Chica LCP litigation. Quite frankly, the LCP litigation has taken longer than we initially expected. In view of the protracted litigation, financial management considerations dictated that we postpone completion of certain activities until we had a better understanding of when the litigation might conclude and development of the site could move forward. As it stands now, we have been advised by legal counsel that the litigation will conclude in early or mid-1999 and we will be ready to resume pre-development activities this summer.

As to the specific pre-development activities that are to be resumed or re-commenced this summer, the following is a summary of the work to be performed and a projected schedule for this completion.

1.) Oil Well and Pipeline Abandonment

Abandonment of some of the oil facilities on the Mesa was undertaken and completed in 1998. The abandonment of up to seven additional oil wells at various locations on the Mesa and removal of several hundred feet of pipeline needs to be completed. The nature of this work requires the use of drilling rigs

and excavation equipment that will cause temporary hazardous conditions. In addition to removal of oil facilities, we are also going to be conducting tests for methane gas and hazardous substances in the soil over the entire Mesa. This testing involves heavy drilling equipment and borings to assess the potential for subsurface methane gas.

We expect to re-commence abandonment work in June 1999 with completion anticipated in September 1999.

2.) Geotechnical

Preliminary geotechnical investigations (i.e., cone penetration tests and borings) have been completed in order to provide geotechnical information for the preparation of rough grading plans. However, further borings and backhoe trenches will be necessary to determine the extent of certain geotechnical conditions in the project area. The tests will be conducted on all areas proposed for residential development and will require leaving the trenches open for sufficient time to determine subsurface geotechnical conditions. Consequently, these areas should be fenced to avoid intrusion by people or animals.

Geotechnical fieldwork will re-commence in September 1999 and conclude in October 1999.

3.) Groundwater Wells

A test well must be drilled to determine the viability of using groundwater as a domestic water source for the project. In addition, two existing shallow groundwater wells installed by the Army Corps of Engineers nearly 50 years ago must be abandoned. The two Corps wells are located in the eastern portion of the Mesa in the area of the now demolished Corps bunker.

Drilling of the test well will commence in August or September depending on the availability of drilling equipment and will take approximately 90 days to complete. Abandonment of existing groundwater wells will be undertaken concurrent with the abandonment of oil wells and pipelines beginning in June 1999 and concluding in September 1999.

4.) Archaeological Mitigation

Archaeological mitigation previously approved by the Coastal Commission for the ORA-83 site needs to be completed. The last phase of the mitigation for ORA-83 involves a series of backhoe trenches and mechanical excavations in the area referred to as the "plowed field". This area is outside the small area

subject to the salvage program. This mitigation work is being conducted to comply with the recommendations of the ORA-83 peer reviewers to address the concerns of the Pacific Coast Archaeological Society (PCAS) to ensure that recovery of artifacts is complete.

The final phase mitigation program is currently scheduled to begin in August 1999 and will take approximately 90-120 days to complete.


All of the pre-development activities described above are consistent with the Commission's approval of the original Coastal Development Permit for installation of the fence. We believe that we have provided to you a list of the activities remaining to be completed; an explanation why these activities could not be completed by November 1998; significant descriptions of these activities and the equipment needed for this work, demonstrating why they should not be conducted in an unsecured area; and a schedule of how long each activity will take to complete. We respectfully request that 1) this permit amendment be deemed complete and submitted to the Coastal Commission for its consideration; and 2) the permit be amended to maintain the fence through December 31, 1999.

Sincerely,

HEARTHSIDE HOMES, INC.



Ed Mountford
Senior Vice President

EXHIBIT No. 14
Application Number: A-5-BLC-97-188-A2
Hearthside Homes Letter of April 16, 1999
 California Coastal Commission

Bolsa Chica



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Coastal Commission
% Steve Rynas

April 2, 1999

On behalf of the Bolsa Chica Land Trust Board of Directors, I request that the Coastal Commission not renew the permit for the Koll Real Estate Group (now Hearthside Homes) for a fence on the Bolsa Chica Mesa

The fence was originally installed without a permit and after a hearing it was allowed because of public safety due to the proposed project development.

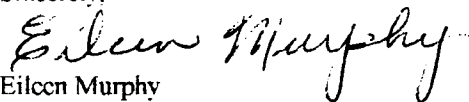
Koll, California Coastal Communities and presently Hearthside were told to take the fence down since there is NO development going on NOW.

They appealed and were denied FOUR months ago.

They still have not removed the fence.

Earth Day is coming up (April 24th) and it would be nice to be able to enjoy the Bolsa Chica as it should be open and not encumbered by an illegally erected fence whose permit has elapsed.

Sincerely,



Eileen Murphy
Board of Directors

RECEIVED
South Coast

APR 5 1999

CALIFORNIA
COASTAL COMMISSION

EXHIBIT No. 15

Application Number:
A-5-BLC-97-188-A2

**Bolsa Chica Land
Trust Letter of
April 2, 1999**



California Coastal
Commission



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CALIFORNIA COASTAL COMMISSION

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



March 5, 1999

Susan Hori
Paone Callahan McHolm & Winton
Eighth Floor
19100 Von Karman
P.O. Box 19613
Irvine, CA 92623-9613

EXHIBIT No. 16

Application Number:

A-5-BLC-97-188-A2**Commission Letter
of March 5, 1999**California Coastal
Commission**Subject: Coastal Development Permit 5-97-188-A1 (Hearthside Homes)**

Dear Susan:

On February 22, 1999 we received your letter dated February 19, 1999 on behalf of Hearthside Homes asserting that the Notice of Violation (V-5-99-001) was unwarranted and that the amendment request should have been accepted. To apply for an extension of time under special condition number 3 your client must demonstrate that pre-construction activities are still ongoing. This has not been accomplished as explained below. Furthermore, as previously stated, the Commission and your client were aware of the litigation over the Bolsa Chica LCP at the time the fence was approved. Litigation clearly does not affect the fence permit. Had the litigation affected the fence permit, the temporary pre-construction fence could not have been installed.

Your letter also requests a meeting and information on the process for seeking Commission review of an Executive Director decision to reject an amendment application. We do not believe that a meeting is necessary at this time. The amendment request was rejected because it lacked certain material information, as specified below. The submittal of the requested information may allow the Executive Director to accept the amendment request.

In your letter you stated that our rejection of your client's amendment request was premature since work is still being conducted on the property which requires that the site remain fenced for purposes of public safety. Our decision to reject the amendment request was based on the lack of specific information which would support the assertion that the site must be fenced for purposes of public safety.

On October 23, 1998 I contacted Mr. Mountford, of Hearthside Homes, by phone to review with him the requirements of special condition number 3. Through subsequent phone conversations, I advised Mr. Mountford that he would have to supply specific examples of contemplated work and a time frame for when the identified pre-construction work such as oil well abandonment would be accomplished to justify the continued presence of a temporary pre-construction fence for purposes of protecting public safety. Your letter to me acknowledges that: *"Once the permittee provides*

Susan Hori

Coastal Development Permit 5-97-188-A1 (Hearthside Homes)

February 23, 1999

Page: 2

evidence to support these findings, it may request an amendment to be considered by the Coastal Commission." However, no such evidence has been provided.

The amendment request submitted was deficient since it did not contain specific examples of proposed pre-construction work requiring the presence of the fence for public safety purposes. In fact, the cover letter from Hearthside Homes for the amendment request suggests that pre-construction activities are not ongoing in that it states: *"Pre-construction activities have been suspended pending the outcome of LCP litigation. While it is difficult to predict when pre-construction activities will commence, we believe that a one-year extension of the time during which the fence can be maintained is needed for reasons of public safety."* Your current letter asserts that drilling and testing of water wells and the abandonment of oil fields facilities is still being conducted and demands that the area be fenced. This does not appear to be consistent with the statement in the amendment application that pre-construction activities have been suspended. We suggest that you clarify whether pre-construction activities are occurring and that you provide specific examples of ongoing or contemplated work and the time frame for that work.

Should Hearthside Homes be able to provide evidence of specific oil field abandonment work or other pre-construction work, the location of the work, and time frames for the work Commission staff could review the amendment request pursuant to special condition three and consistent with 14 CCR 13166. Should you have any questions on this matter, please give me a call.

Sincerely,



Stephen Rynas, AICP
Orange County Area Supervisor

cc: Pam Emerson, Coastal Commission
Nancy Cave, Statewide Enforcement Program Supervisor
H:\GENERAL\hearthside03.doc

EXHIBIT No. 16

Application Number:
A-5-BLC-97-188-A2

**Commission Letter
of March 5, 1999**



California Coastal
Commission

Bolsa Chica

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CO-FOUNDER

Coastal Commission
% Steve Rynas

March 4, 1999

On behalf of the Bolsa Chica Land Trust Board of Directors, I request that the Coastal Commission not renew the permit for the Koll Real Estate Group (now Hearthside Homes) for a fence on the Bolsa Chica Mesa.

The fence was originally installed without a permit and after a hearing it was allowed because of public safety due to the proposed project development.

At this time, there is no project going on at the Bolsa Chica Mesa.

The time for the permit as long since lapsed. Therefore, it is unnecessary and inappropriate to extend the permit.

Sincerely,

Eileen Murphy

Eileen Murphy
Board of Directors

EXHIBIT No. 17

Application Number:

A-5-BLC-97-188-A2

Bolsa Chica Land
Trust Letter of
March 4, 1999



California Coastal
Commission



LOCAL SPONSORS: GARDEN GROVE EDUCATION ASSOCIATION, HUNTINGTON BEACH CITY COUNCIL,
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MARTIN J. STEIN
WILLIAM P. TANNER, III
DANIEL K. WINTON

February 19, 1999

VIA FAX AND U.S.

Stephen Rynas
California Coastal Commission
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302


Re: **Coastal Development Permit Application 5-97-188-A1**

EXHIBIT No. 18

Application Number:

A-5-BLC-97-188-A2

**Paone, Callahan, McHolm,
and Winton Letter of
February 19, 1999**

 California Coastal
Commission

Dear Steve:

Our client, Hearthside Homes, sent us a copy of the Notice of Violation, V-5-99-001, it received today regarding the temporary pre-construction fence around its property. The Notice follows correspondence between you and Ed Mountford of Hearthside Homes regarding Special Condition 3 to Coastal Development Permit No. 5-97-188 and whether the permittee can submit an amendment application to extend the time for removing the temporary pre-construction fence at Bolsa Chica. We reviewed your letter dated January 15, 1999, to Mr. Mountford, the Special Condition in question, and Section 13166 of the Coastal Act regulations (14 Cal. Code of Reg. § 13166) that you cited. Neither the permit itself nor the regulation support your rejection of the amendment application. Given the legal challenges involving the Bolsa Chica Local Coastal Program (LCP), the permittee has been unable to obtain a coastal development permit to commence grading and construction on the Mesa. Given the impossibility of performance, the permittee should be either:

- (1) Allowed to maintain the status quo, i.e., the fence, until the validity of the Bolsa Chica LCP is upheld by a court of law at which time the permittee can process a coastal development permit and grading permit for the Mesa; or
- (2) Allowed to process an amendment -- as allowed under Special Condition 3 -- so that the Coastal Commission can consider whether the fencing can remain or be modified.

Commission staff's rejection of my client's amendment application and issuance of a violation notice is entirely premature and fails to allow the permittee the opportunity to have the Coastal Commission consider whether factors justify maintaining the fence as allowed under Special Condition 3. We have reviewed the correspondence received by my client and are concerned

with the position expressed by staff with respect to this amendment application. It is clear that Commission staff has predetermined the outcome of this application, and we are concerned that a decision has been made absent a complete review of the information in the application and a public hearing before the Commission.

1. **Special Condition 3 Clearly Anticipated the Need for Amendments -- for the Approved Work.**


In approving Special Condition 3, the Coastal Commission clearly anticipated that the permittee might not be able to complete all approved or exempt pre-construction activities within the time frame of the permit. Therefore, Special Condition 3 specifically authorizes the permittee to request an amendment so that the Commission can consider whether the approved fencing may remain. Unlike other special conditions, or Section 13166(1), which can vest discretion in the Executive Director to make certain determinations, this Special Condition clearly states that the matter should be brought back before the Commission to determine whether its previously-issued permit should be amended. At a minimum, due process requires that the amendment application be accepted and set for a hearing before the Coastal Commission.

2. **Neither Special Condition 3, Nor Section 13166 Require Evidence of New Information Not Previously Considered.**

Your letter states that the amendment application did not describe any "newly contemplated pre-construction work." Special Condition 3 does not require a finding that additional or newly-completed work be undertaken. It premised its amendment provision upon the fact that it may not be possible for the permittee to complete all work within the allotted time frame. Special Condition 3 only requires that the permittee demonstrate two things:

1. That the approved or exempt pre-construction activities could not be completed within the time period of the permit; and
2. That these activities must be fenced to protect public safety.

Once the permittee provides evidence to support these findings, it may request an amendment to be considered by the Coastal Commission. Abandonment of oil field facilities, and the drilling and testing of water wells are still being conducted on the property. Because of the nature of the work, the condition of the property, and the equipment used to conduct this work, public safety demands that the area be fenced to keep trespassers, vandals, children and domestic animals out of harms way.

EXHIBIT No. 18
Application Number: A-5-BLC-97-188-A2
Paone, Callahan, McHolm, and Winton Letter of February 19, 1999
 California Coastal Commission

The reference to new information in Section 13166 is not applicable to this situation. The proposed amendment does not lessen or avoid the intended effect of the approved permit. It merely complies with permit requirements. In approving Special Condition 3, the Commission identified the standards required for an amendment. Newly discovered material information was not required. The approved permit clearly anticipates the need for an amendment and does not require the permittee to submit new information or identify new work to support an amendment request.

The intent of Special Condition 3 was to allow the fence to be maintained for a period of one year, unless the activity cannot be completed within the one year time period. After one year's time, the applicant may request an amendment so that the Commission can decide whether the fence can be maintained, or modified to address public access issues. It appears that by rejecting the amendment application, the Commission staff has on its own decided to avoid the clear intent of the permit.

3. **By Filing an Amendment Request, the Permittee is Abiding by the Requirements of Special Condition 3.**

Hearthside Homes clearly understood that by accepting the permit it also agreed to abide by the terms of the permit and its special conditions. That being the case, Special Condition 3 clearly advises the permittee that if additional time is needed, it must file an application for an amendment which would be considered by the Commission. The permittee has complied with the terms of this Special Condition. It is not the permittee that has failed to abide by the terms of the permit; it is Commission staff by prematurely rejecting the application and not allowing it to be considered by the Commission.

4. **Certification of the Bolsa Chica LCP Has Been Challenged; Grading Permits Cannot Be Obtained from the County.**

Finally, a fundamental assumption regarding Permit No. 5-97-188 was that the LCP would remain certified, the County would assume coastal permit authority, and the permittee could begin construction work on the Mesa pursuant to validly issued plans and permits approved by the County. As noted in prior correspondence between you and Mr. Mountford, the Coastal Commission's certification of the Bolsa Chica LCP is now in litigation because of questions surrounding the Commission's public hearing process. Through no fault of its own, the permittee has been unable to process construction permits with the County. Staff has taken the position that the litigation does not suspend the time limit for removing the fence. Nevertheless, the permittee's ability to obtain grading permits and commence construction were factors considered by the Commission in issuing the permit. Therefore, we request the Commission

Stephen Rynas
February 19, 1999
Page 4

staff to permit us to discuss the matter with Coastal Commission legal counsel -- as to whether this particular condition should be interpreted with absolutely no regard for the legal status of the Bolsa Chica LCP. We believe that it is entirely reasonable to conclude that because of the ongoing litigation, the circumstances under which grading permits could be obtained do not exist and until the County's permit authority is re-established, the time limits of this Special Condition are effectively suspended.


Finally, given the tenor of the correspondence on this matter, we would appreciate it if you would provide us with information regarding an applicant's administrative recourse to appeal staff's decision to reject an application under Section 13166. We would obviously prefer that the matter be resolved in a mutually agreeable manner, and therefore, would request that as a next step, a meeting be arranged with Coastal Commission staff, Commission legal counsel, and the permittee and its counsel to discuss (1) the impact of the ongoing litigation on the permit terms; (2) the applicability of the new evidence provision to this amendment in light of precise language of Special Condition 3; and (3) the Notice of Violation. I shall contact you in the next several days to schedule such as meeting.

Very truly yours,



Susan K. Hori

cc: Ed Mountford
Raymond Pacini
Lucy Dunn, Esq.

EXHIBIT No. 18
Application Number: A-5-BLC-97-188-A2
Paone, Callahan, McHolm, and Winton Letter of February 19, 1999
 California Coastal Commission

CALIFORNIA COASTAL COMMISSION

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




January 15, 1999

Ed Mountford
Vice President Hearthside Homes
Suite 250
6 Executive Circle
Irvine, CA 92614

EXHIBIT No. 19

Application Number:
A-5-BLC-97-188-A2

**Commission Letter
of
January 15, 1999**

 California Coastal
Commission

Subject: Coastal Development Permit Application 5-97-188-A1

Dear Mr. Mountford:


On December 18, 1998 we received your amendment application to extend the time for removing the temporary pre-construction fence at Bolsa Chica. We have reviewed the amendment application and determined that your amendment request must be rejected as it would lessen the intent of a special condition imposed by the Commission. The affected special condition states the following:

3. Maintenance and Removal of the Temporary Perimeter Fence

The temporary Bolsa Chica Mesa perimeter fence approved in this permit shall be properly maintained. The temporary fence shall be removed no later than one (1) year from the date of approval of this permit if the applicant has not obtained a coastal development permit and a grading permit for the mass grading of the Mesa and commenced grading within this time period.

If approved or exempt pre-construction activities can not be completed within the time period specified above and the applicant concludes that these activities must be fenced to protect public safety, the applicant may request an amendment to this permit so that the Commission can consider whether the approved fencing may remain or whether it should be modified to be consistent with the public access provisions of the LCP and the Coastal Act.

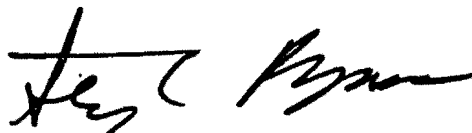
In our letter of December 1, 1998 advising you of the requirement to comply with this condition, we stated that any amendment request submitted must be consistent with Section 13166 of the California Code of Regulations. Section 13166 states:

EXHIBIT NO. 15	
Application Number: A-5-BLC-97-188-A2	
Commission Letter of January 15, 1999	
	California Coastal Commission

- (1) *An application for an amendment shall be rejected if, in the opinion of the executive director, the proposed amendment would lessen or avoid the intended effect of a partially approved or conditioned permit unless the applicant presents newly discovered material information, which he could not, with reasonable diligence, have discovered and produced before the permit was granted.*

Your application package did not contain any description of newly contemplated pre-construction work that would require extending the presence of the temporary fence. This information was requested in a phone conversation with you in December 1998 when I advised you that you would need to supply specific examples of contemplated work which requires that the fence be left in place including a timeline for the projected work. Your submission letter, however, only re-asserted your prior letter of November 16, 1998 claiming that the current litigation suspended the ability of Hearthside Homes to continue work at Bolsa Chica. In our letter of December 1, 1998 we informed you that the current litigation does not suspend the ability of Hearthside Homes to continue with previously approved or exempt pre-construction activities. Additionally, by accepting this permit (with its special conditions) and undertaking installation of the fence; Hearthside Homes assumed responsibility to abide by the conditions of the permit. Based on the lack of new material information we must conclude that this amendment request can not be accepted since it would lessen the effect of special condition number 3 which requires that the temporary fence be removed one year from the date of the Commission's action which occurred on November 16, 1997. Since the time period allowed for the fence to remain has expired, please immediately remove the temporary fence. Your application material will be returned under separate cover. Should you have any additional questions on this matter, please give me a call.

Sincerely,



Stephen Rynas, AICP
Orange County Area Supervisor

cc: Pam Emerson, Coastal Commission
Nancy Cave, Statewide Enforcement Program Supervisor
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HEARTHSIDE HOMES, INC.

A5-BLC-97-188

December 17, 1998

Steven C. Rynas
California Coastal Commission
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302

EXHIBIT No. 20
Application Number: A-5-BLC-97-188-A2
Hearthside Homes Letter of December 17, 1998
 California Coastal Commission

Dear Steven:

Thank you for your December 1, 1998 letter clarifying Coastal Commission staff's interpretation of special condition #3 for Coastal Development Permit 5-97-188. Based on your interpretation, you have advised that Hearthside Homes request an amendment to the CDP to extend the period of time the fence can be maintained on site. The purpose of this letter is to request such an amendment and a completed application is enclosed.

As you know, on November 5, 1997 the Commission approved a request by Koll Real Estate Group, now known as Hearthside Homes, to place a chainlink security fence on the Bolsa Chica Mesa because of pre-construction work that was being undertaken in anticipation of development. Prior to the start of mass grading for residential development, a number of pre-development activities needed to be conducted, including abandonment of oil wells and pipelines, water well drilling, geotechnical borings and trenches, archaeological mitigation and other related activities – all of which posed potential hazards and public safety concerns on the site. In order to mitigate the possibility of injury to the public, Hearthside Homes requested permission to construct a security fence. In approving the permit, the Commission assumed Hearthside Homes would be able to complete pre-construction work, obtain grading permits from the County, and commence grading of the property within one year.

As a result of litigation brought against the Coastal Commission's hearing process, the Commission's certification of the Bolsa Chica Local Coastal Program ("LCP") was suspended. Consequently, Hearthside Homes has not been able to pursue its pre-construction activities and the County is prohibited from issuing permits to grade this property. The sole reason why we were unable to obtain grading permits within the time period set forth in the permit was because of the legal challenges brought against the LCP and the Coastal Commission's hearing procedures to certify the LCP.

It should also be noted that although the Commission approved the permit in November 1997, the permit was not issued until April 24, 1998, and construction of the fence was not completed until June 1998. Thus the fence has only been in place for six months. The public access provisions of the permit have been adhered to with ample public access provided on the perimeter of the mesa.

All of the reasons the Commission originally approved the permit still remain today. Pre-construction activities have been suspended pending the outcome of the LCP litigation. While it is difficult to predict when pre-construction activities will commence, we believe that a one-year extension of the time during which the fence can be maintained is needed for reasons of public safety. We request that special condition #3 be amended to read as follows: "The temporary fence shall be removed no later than one (1) year from the date of approval of this amendment to Permit No. 5-97-188, if the Applicant has not obtained a coastal development permit and grading permit for the Bolsa Chica (Warner) Mesa and commenced grading."

Hearthside Homes appreciates your consideration of our request. I can be reached at (949) 250-7760 if you have any questions.


Sincerely,

HEARTHSIDE HOMES



Ed Mountford
Senior Vice President

EM:jm
Attachments

EXHIBIT No. 20
Application Number: A-5-BLC-97-188-A2
Hearthside Homes Letter of December 17, 1998
 California Coastal Commission

CALIFORNIA COASTAL COMMISSION

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



December 1, 1998

Ed Mountford
Vice President Hearthside Homes
Suite 250
6 Executive Circle
Irvine, CA 92614

Subject: Coastal Development Permit 5-97-188

EXHIBIT No. 21

Application Number:

A-5-BLC-97-188-A2**Commission Letter of
December 1, 1998**California Coastal
Commission

Dear Mr. Mountford:

On November 16, 1998 we received your letter in response to my phone call of October 23, 1998 regarding the removal of the temporary pre-construction fence at the property Hearthside Homes owns within the Bolsa Chica Local Coastal Program (LCP) area.

On November 5, 1997 the Commission approved coastal development permit (CDP) 5-97-188 for a temporary pre-construction fence. Special Condition Number 3 requires that the fence be removed by November 5, 1998 unless certain conditions are met. Special Condition 3 states the following.

3. Maintenance and Removal of the Temporary Perimeter Fence

The temporary Bolsa Chica Mesa perimeter fence approved in this permit shall be properly maintained. The temporary fence shall be removed no later than one (1) year from the date of approval of this permit if the applicant has not obtained a coastal development permit and a grading permit for the mass grading of the Mesa and commenced grading within this time period.

If approved or exempt pre-construction activities can not be completed within the time period specified above and the applicant concludes that these activities must be fenced to protect public safety, the applicant may request an amendment to this permit so that the Commission can consider whether the approved fencing may remain or whether it should be modified to be consistent with the public access provisions of the LCP and the Coastal Act.

In your letter to us you assert that Hearthside Homes has not been able to pursue its pre-construction activities because certification of the Bolsa Chica LCP has been suspended pending the outcome of litigation. Consequently, Hearthside Homes concluded in the letter that the time period for the removal of the temporary fence was also suspended, without requiring any action by Hearthside Homes to file an amendment to extend the time period for retaining the temporary fencing.

Commission staff has determined that the current litigation on the LCP does not suspend the time limit for removing the fence. First, the subject of the litigation is the Commission's certification of the Bolsa Chica LCP, not its approval of CDP 5-97-188. Therefore, the litigation could not automatically suspend CDP 5-97-188. Second, the Commission was aware of the litigation, which was initiated in March 1996 when it approved the permit for the fence on November 5, 1997. When the Commission approved CDP 5-97-188, subject to conditions including Special Condition 3, it required removal of the fence within one year from the date of approval. Even though litigation was underway, Hearthside Homes at the Commission hearing asserted that the installation of a temporary fence was necessary for undertaking previously approved or exempt, on-going pre-construction activities and that grading would be undertaken in the near future, pursuant to a permit issued under the Bolsa Chica LCP. To ensure that the fence would not remain in place any longer than necessary the Commission found it necessary to impose Special Condition 3 to maintain public access. The Bolsa Chica LCP public access program provided for public access along the perimeter of the land owned by Hearthside Homes and through it by way of trails and a public road system. The temporary pre-construction fence allows public access around the perimeter but not through the project site.

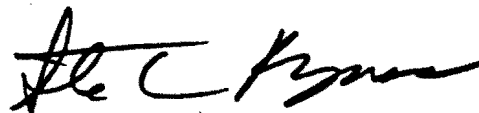
In accepting this permit with all its conditions and undertaking the permitted development, even though litigation was delaying its planned construction, Hearthside Homes assumed the responsibility to abide by the conditions of the permit. Since grading has not been initiated within the required time period, there is no need for the site to be fenced. We also note that Hearthside Homes could have requested a permit amendment to extend the time period as specified in Special Condition 3 quoted above if it believed the fence was necessary to protect public safety. Such a request was not made.

Since the time period for allowing the fence to remain under Special Condition 3 has lapsed and Hearthside Homes has not requested such an amendment, the fence must be removed. Alternatively, Hearthside Homes may submit an amendment request consistent with 14 CCR 13166 to extend the one-year

Page: 3


deadline for removal of the fence. We will conduct a site visit on December 21, 1998 to determine whether the fence has been removed. Should we find that the fence has not been removed, and if no amendment application consistent with 14 CCR 13166 has been received as of that date, we will consider this a knowing and intentional violation of the Coastal Act and we will proceed accordingly. Should you have any questions on this matter, please give me a call.

Sincerely,



Stephen Rynas, AICP
Orange County Area Supervisor

cc: Pam Emerson, Coastal Commission
Nancy Cave, Statewide Enforcement Program Supervisor
H:\GENERAL\hearthside01.doc

EXHIBIT No. 21
Application Number: A-5-BLC-97-188-A2
Commission Letter of December 1, 1998
 California Coastal Commission



HEARTHSIDE HOMES, INC.

November 12, 1998

Steven C. Rynas
California Coastal Commission
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302

RECEIVED
NOV 16 1998
CALIFORNIA
COASTAL COMMISSION

RE: Coastal Development Permit A-5-BLC-97-188

Dear Steve:

After your telephone call regarding Special Condition 3 to Coastal Development Permit A-5-BLC-97-188 (the "Permit"), I reviewed the language of the condition and the circumstances under which the Permit was issued and the fence constructed. Koll Real Estate Group, now known as Hearthside Homes, Inc., requested permission to construct and maintain a fence because of the pre-construction work that was being undertaken on the Bolsa Chica Mesa. In order to prepare the site for development, Hearthside Homes was conducting oil well abandonment activities, water well tests, geotechnical evaluations, and other pre-construction work – all of which posed potential hazards and public safety concerns on the site. In order to mitigate the possibility of injury to the public, we requested permission to construct a fence. It was assumed that within the one year period that maintenance of the fence was allowed, we would be able to complete pre-construction work, obtain grading permits from the County, and commence grading of the property in anticipation of development.

As a result of litigation brought against the Coastal Commission's hearing process, the Commission's certification of the Bolsa Chica Local Coastal Program ("LCP") was suspended. Consequently, Hearthside Homes has not been able to pursue its pre-construction activities and the County is prohibited from issuing permits to grade this property. The sole reason why we were unable to obtain grading permits within the time period set forth in the Permit was because of the challenges brought against the LCP. In light of the ongoing litigation and the inability of the County to issue permits, we believe that the period during which we were to complete our pre-construction activities has effectively been suspended or tolled until certification of the LCP has been re-instated and the County re-gains its ability to issue grading permits. Therefore, because it is legally impossible to obtain grading permits from the County, the one-year period is tolled until such time as the County re-gains the ability to issue grading permits. Given that the Permit was issued under the assumption that there was a valid LCP and that grading permits could be legally issued, this condition implicitly assumes that the one year period only runs while there is a certified LCP. Given the current status of the LCP, we do not believe that an extension or amendment is required at this time.

Sincerely,

HEARTHSIDE HOMES, INC.




Ed Mountford
Senior Vice President

EXHIBIT No. 22
Application Number: A-5-BLC-97-188-A2
Hearthside Homes Letter of November 12 1998
 California Coastal Commission

CALIFORNIA COASTAL COMMISSION

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



Filed: June 24, 1997
49th Day: August 12, 1997
180th Day: Dec. 21, 1997
Staff: SFR-LB
Staff Report: October 17, 1997
Hearing Date: November 4-7, 1997
Commission Action: Continued from
8/12/97

STAFF REPORT: REGULAR CALENDAR

APPEAL NUMBER: A-5-BLC-97-188

APPLICANT: Koll Real Estate Group

AGENT: Ed Mountford

PROJECT LOCATION: On the Bolsa Chica Mesa adjacent to the City of Huntington Beach overlooking the Bolsa Chica wetlands. Essentially south of Warner Avenue and landward of Pacific Coast Highway in unincorporated Orange County.

PROJECT DESCRIPTION: The placement of a pre-construction chain link security fence around the perimeter of the Bolsa Chica Mesa property owned by Koll Real Estate Group. The chain link fence will be approximately seven feet in height, will be raised six inches above grade, and will be setback fifty feet from the edge of the Bolsa Chica Mesa to allow continued public access.

LOCAL APPROVALS RECEIVED: Coastal Development Permit Application PA-97-0065.

SUBSTANTIVE FILE DOCUMENTS: See Exhibit 2.

EXHIBIT No. 23

Application Number:
A-5-BLC-97-188-A2

**Commission Staff
Report of
October 17, 1997**

 California Coastal
Commission

SUMMARY OF STAFF RECOMMENDATION **ISSUES TO BE RESOLVED**

On August 12, 1997 the Commission heard the proposed fence project on appeal and found substantial issue with the County's approval of a coastal development permit for the project. At the substantial issue hearing the issue to be resolved was should the fence conform to the fifty foot development setback requirement. At the De Novo stage, the applicant orally revised the project description to conform to the fifty foot setback and to raise the bottom of the fence to permit animal migration. During the course of the public hearing, Commissioners raised the following questions which this staff report will address: 1) impact of the fence on animal migration, 2) maintenance of the fence, and 3) geologic stability.

Staff recommends that the Commission approve the project with four special conditions related to: Retention of the local government conditions of approval, conformance with the fifty foot development setback, maintenance and removal of the temporary fence, and State Lands Commission review of the proposed development. The applicant has been informed of the special conditions and is in agreement with the special conditions.

STAFF RECOMMENDATION:

Staff recommends that the Commission adopt the following resolution:

I. APPROVAL WITH CONDITIONS

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

II. STANDARD CONDITIONS

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

III. SPECIAL CONDITIONS.

1. Retention of the Local Government Conditions of Approval

The conditions of approval for PA-97-0065 approved by the Orange County Zoning Administrator on May 15, 1997 that are not in conflict with the Commission's special conditions listed below are incorporated by reference and shall remain in effect.

2. Revised Plans for the Temporary Perimeter Fence and Interim Trail

Prior to issuance of this permit, the applicant shall submit, subject to the review and approval of the Executive Director, revised plans for the Bolsa Chica Mesa perimeter fence which indicates that the entire fence shall be no closer to the existing bluff edge than fifty (50) feet.

Additionally, the revised plans shall:

- a) indicate areas where vegetation would obstruct public use of the setback area,
- b) include a plan for the removal of any vegetation obstructing public access,
- c) shall show that the base of the fence has been raised a minimum of six (6) inches above the ground to allow the movement of animals beneath the fence,
- d) shall avoid Warner Avenue Pond and shall place Warner Avenue Pond on the exterior of the proposed fencing as shown on the Fence Location Plan prepared by FORMA that was received by Commission staff on June 27, 1997, and that
- e) the fence along the eastern portion of the property line shall assure pedestrian access to the bluff edge from Los Patos Avenue.

The revised plans may include devices or other methods (such as bollards) to prevent vehicular access onto the applicant's property as long as pedestrian access is not impeded.

This permit only approves construction of the perimeter fence, vegetation removal, and devices to prohibit vehicular access on the applicant's property.

The project shall be constructed consistent with the revised plans approved in this permit.

3. Maintenance and Removal of the Temporary Perimeter Fence

The temporary Bolsa Chica Mesa perimeter fence approved in this permit shall be properly maintained. The temporary fence shall be removed no later than one (1) year from the date of approval of this permit if the applicant has not obtained a coastal development permit and a grading permit for the mass grading of the Mesa and commenced grading within this time period.

If approved or exempt pre-construction activities can not be completed within the time period specified above and the applicant concludes that these activities must be fenced to protect public safety, the applicant may request an amendment to this permit so that the Commission can consider whether the approved fencing may remain or whether it should be modified to be consistent with the public access provisions of the LCP and the Coastal Act.

4. State Lands Commission Review

Prior to issuance of this permit, the applicant shall obtain a written determination from the State Lands Commission that:

- a. No State lands are involved in the development; or
- b. State lands may be involved in the development and all permits required by the State lands Commission have been obtained; or
- c. State lands may be involved in the development, but pending a final determination of state lands involvement, an agreement has been made by the applicant with the State Lands Commission for the project to proceed without prejudice to that determination.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION AND BACKGROUND

The coastal development permit as originally submitted to the County of Orange was for a pre-construction chain link security fence around the perimeter of the Bolsa Chica Mesa property owned by the Koll Real Estate Group (See Exhibit 7). The chain link fence will be approximately seven feet in height with three access gates proposed at selected points around the perimeter (See Exhibit 8). A portion

of the fence facing the East Garden Grove Wintersburg Channel (south alignment) would have been at the base of the Mesa. The gates would permit the landowner to have vehicular access to the site through existing roads and are not intended for public use.

Without benefit of a coastal development permit, the applicant constructed the portion of the fence along the property line with the Department of Fish and Game from Warner Avenue to the Ecological Reserve overlook. The applicant, after being informed of the requirement for a coastal development permit, applied to the County in April of 1997 for a coastal development permit. As a consequence of the public hearing process before the Orange County Zoning Administrator, the project was revised. Significant project revisions included: relocating the fence along Outer Bolsa Bay to conform to the fifty foot blufftop setback policy, relocating the fence along the southerly boundary to provide a five foot wide temporary trail to accommodate interim public access, and authorizing the possible widening of vehicular access roads by the applicant on the southerly boundary if necessary to accommodate vehicles. Following the County's decision to issue a coastal development permit on May 15, 1997 this permit was appealed to the Commission on June 24, 1997 by the Bolsa Chica Land Trust and Commissioners Wan and Pavley.

On August 12, 1997 the Commission heard the appeals. The Commission found substantial issue and continued the De Novo hearing. During the De Novo hearing the project applicant orally modified the project description to conform to the fifty foot development setback and to raise the bottom of the fence a minimum of six inches to allow for wildlife migration. In September the oral project modification was followed up with a written confirmation. The Commission continued the De Novo hearing to the October Commission meeting so that staff could address the three questions raised by the Commissioners at the August hearing. The three questions are: 1) impact of the fence on animal migration, 2) maintenance of the fence, and 3) geologic stability.

On August 18, 1997 the Executive Director issued an Emergency Permit to relocate approximately 200 linear feet of the fence along the Bolsa Chica Mesa facing the Ecological Reserve to conform to the fifty foot development setback. The fence relocation was completed on August 22, 1997 (see attached letter at the back of the staff report as Exhibit 4).

B. ADOPTION OF SUBSTANTIAL ISSUE FINDINGS

The findings and declarations on substantial issue are herein incorporated by reference.

C. STANDARD OF REVIEW

The County of Orange, prior to June 4, 1997, had a certified Local Coastal Program for Bolsa Chica. Normally the certified LCP would serve as the standard of review since Section 30604(b) of the Coastal Act states that *"After certification of the local coastal program, a coastal development permit shall be issued if the issuing agency or the commission on appeal finds that the proposed development is in conformity with the certified local coastal program."* However, on June 4, 1997 the Superior Court set aside the certification of the Bolsa Chica LCP and required that the Commission reconsider its certification in light of the judge's decision.

On October 9, 1997 the Commission approved the Bolsa Chica LCP with suggested modifications that responded to the judge's ruling. However, the Orange County Board of Supervisor's has not yet acted on the Commission's suggested modifications which means that certification of the LCP is not yet effective. Certification of the LCP will become effective when the Orange County Board of Supervisor's approval is reported to the Commission by the Executive Director. Therefore, evaluation of the proposed project will be based on the California Coastal Act. The Bolsa Chica LCP will still be used as guidance by the Commission for evaluating the proposed development.

Additionally, Section 30604(c) of the Coastal Act requires that every coastal development permit issued for any development between the nearest public road and the sea shall include a specific finding that the development is in conformity with the public access policies of Chapter 3 of the Coastal Act.

D. CONFORMANCE WITH THE ESHA POLICIES OF THE COASTAL ACT AND THE DEVELOPMENT SETBACK POLICIES OF THE BOLSA CHICA LOCAL COASTAL PROGRAM

In the substantial issue hearing, the Commission found that the fence was inconsistent with Land Use Policy 6.2.22 for the following reasons. First, the Commission found that since the fence would be permitted for an indefinite period of time, possibly in excess of ten years, that it constituted permanent development inconsistent with the uses allowed within the development setback area. Second, the Commission found that the fence as approved by the County did not replicate the public access plan approved by the Commission for Bolsa Chica.

Section 30240 of the Coastal Act mandates the protection of environmentally sensitive habitats. This section of the Coastal Act was also the basis for the

Commission adding Land Use Policy 6.2.22 to the Bolsa Chica LCP. Section 30240 of the Coastal Act states:

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

The fence as original proposed by the applicant to the County of Orange would have been located adjacent to environmentally sensitive habitat and recreational areas. The Commission found substantial issue with the permit issued by the County of Orange on August 12, 1997 and then initiated the De Novo hearing. At the De Novo hearing the applicant subsequently orally modified the project to comply with the fifty foot blufftop development setback and to raise the base of the fence a minimum of six inches above the ground. The applicant submitted written modification to the project description consistent with the oral change.

Additionally, at the Commission's August 1997 Commission meeting the question of the impact of the fence on wildlife migration was raised. Chain link fences, since they constitute a physical barrier, can have an adverse impact on wildlife habitat values. Adverse impacts on wildlife habitat is inconsistent with Section 30240 of the Coastal Act.

During the course of preparing the Bolsa Chica Local Coastal Program, the County of Orange prepared an Environmental Impact Report for Bolsa Chica. The "1996 Recirculated Draft Environmental Impact Report # 551 (SCN: 93-071064)" reviewed the presence of terrestrial wildlife over the entire Bolsa Chica ecosystem. The DEIR does not document the presence of large terrestrial mammals. The DEIR does acknowledge the presence of cottontail rabbit, opossum, striped skunk, coyote, long-tailed weasel, and the red fox. The DEIR notes that the red fox is considered an invasive non-native species and that the coyote is considered an important meso-predator regulator. As such the coyote is an effective biological means of controlling the red fox population.

The DEIR did not document the presence of any sensitive mammals on the Mesa. The DEIR acknowledges the presence of sensitive reptiles, amphibians, and birds throughout the whole Bolsa Chica ecosystem. The fence would have minimal impact on reptiles and amphibians taking into account their small size. The fence would have minimal impact on birds considering their ability to fly.

The findings of the DEIR concerning terrestrial animals is consistent with a field study conducted in February 1990 by C. Robert Feldmeth for CDP 5-90-1143 for the demolition of the two gun emplacements on the Mesa. Dr. Feldmeth as a consequence of his field investigation concluded that no plant or animal species listed by State or Federal government were on the property. Two sensitive species, based on habitat characteristics, could be present. These two species are the San Diego horned lizard and the burrowing owl. Dr. Feldmeth observed five species of mammals which included the: black-tailed hare, Audubon's cottontail, California ground squirrel, Botta pocket gofer, and the coyote.

Additionally, EIP Associates evaluated the fence project in terms of its potential impacts to wildlife in September 1997. The letter concludes that the installation of a chain link fence, raised a minimum of six inches above the ground, would not impede the movement of small mammals such as coyotes, rabbits and squirrels and that the fence may discourage the movement of the red fox. However, this adverse impact is not considered significant since the red fox is considered a predator to the federally listed tern, elegant tern, and western snowy plover. The coyote, as mentioned previously, controls the population of the red fox. As such the presence of the coyote is considered biologically beneficial. A copy of the letter is attached as Exhibit 6. Based on the biological information provided, the impacts of the fence on the terrestrial animals can be minimized by requiring that the applicant raise the level of the bottom of the fence to a sufficient height to allow the terrestrial animals to pass underneath it.

The Commission recognizes that fencing is a physical barrier and that the fencing must be designed to minimize the adverse impacts that the project would have on animal migration, recreational opportunities, and that it be properly maintained. As a consequence, the Commission finds it necessary to impose special conditions to ensure that the fence be: constructed in such a manner that it would not significantly impede the movement of the mammals located on the Mesa by requiring that the base of the fence be six inches above the ground, that it be properly maintained, that it avoid Warner Pond, that it be removed one year after the approval of this permit (if mass grading of the Mesa has not been initiated), that the fence will be aligned along the eastern portion of the property line to assure pedestrian access to the bluff edge from Los Patos Avenue, and that the fence be setback a minimum of fifty feet along the entire bluff edge and that any vegetation obstructing public access be removed so that the current public recreational use of the site can remain on the blufftop.

In the case of Warner Avenue Pond, the applicant (at the time the coastal development permit was applied for with the County of Orange) submitted plans which showed the proposed fence avoiding Warner Avenue Pond. Based on the drawings the fence ranges from approximately thirty feet to nearly ninety feet in distance from the pond. At the Commission hearing on October 9, 1997 the Commission approved the Bolsa Chica LCP with a 100 foot buffer around Warner

Avenue Pond. The proposed fence is compatible with the 100 foot buffer as it has been designed to allow the movement of small animals, the fence is temporary in nature as it will be removed within one year and would allow public access to the pond. To assure that the wetland values of Warner Avenue Pond are not adversely impacted the Commission is requiring that the temporary fence, in the vicinity of Warner Avenue Pond, conform to the submitted drawings that were received on June 27, 1997 by Commission staff that were prepared by FORMA showing that the fence will avoid Warner Avenue Pond and will be setback thirty to ninety feet from the pond.

These special conditions will alleviate the potential that long term development inconsistent with the buffer and public access policies of the LCP and Section 30240 of the Coastal Act would occur (i.e. a fence remaining on-site for an indefinite period of time). Only as conditioned to minimize impacts on both wildlife and ESHA resources does the Commission find that the proposed fence is consistent with Section 30240 of the Coastal Act regarding development adjacent to environmentally sensitive habitat areas and recreation areas, and the buffer policies of the Bolsa Chica Local Coastal Program.

E. Geologic Stability

Section 30253 of the Coastal Act states that new development shall: 1) assure stability and structural integrity; 2) neither create nor contribute significantly to erosion geologic instability, or destruction of the site or surrounding area; and shall minimize risks to life and property in areas of high geologic, flood, and fire hazard. To minimize the adverse impacts of development on geologic stability, the development should be set back from bluff edges. The purpose of a development setback is to minimize both the potential to create a geologic hazard and to protect a proposed structure from damage due to slope failure. Construction adjacent to slopes has the potential to accelerate erosion or to induce slope failure. For example, development adjacent to bluffs can alter drainage patterns and if flows are directed to the bluff edge accelerated erosion often results. Portions of the proposed temporary fence are adjacent to bluffs at Bolsa Chica. Therefore there is potential that the fence could have an adverse impact on bluff stability especially if allowed to remain in place for an extended period of time. The applicant has not prepared a geotechnical report which addresses the impact of the fence on bluff stability, but did agree at the August 12, 1997 Commission hearing to conform to the fifty foot development setback required by land use policy 6.2.22 of the Bolsa Chica LCP.

The fence is a temporary structure which has been conditioned to be removed after one year. Additionally, land use policy 3.3.2.10 of the Bolsa Chica LCP

contemplates that the bluff will be remedially graded for stabilization of anticipated residential development on the Mesa. The temporary nature of the fence and compliance with the fifty foot development setback will minimize any adverse impacts to bluff stability. Only as conditioned can the Commission find the project consistent with the Section 30253 of the Coastal Act regarding the geologic stability and with the development setback provisions of the Bolsa Chica Land Use Plan.

F. PUBLIC ACCESS

Sections 30210 through 30214 of the Coastal Act mandate that maximum access be provided for all the people of the State of California. Since this project is between the first public road and sea the access policies of the Coastal Act apply to this project. Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30115 of the Coastal Act defines "sea" to include "harbors, bays, channels, estuaries, salt marshes, sloughs, and other areas subject to tidal action through any connection with the Pacific Ocean". The Bolsa Chica wetlands adjacent to the site are subject to tidal action of the Pacific Ocean. Consequently, although the subject site is not between the first public road and the Pacific Ocean, it is between the first public road and the "sea" as that term is defined in the Coastal Act. Therefore, any proposed development in the area must be found consistent with the public access policies of the Coastal Act.

During staff visits to the site, members of the public have been observed walking on the site. Members of the public have also indicated that they have used the area for walking, jogging, bicycling, and bird watching. Aerial photographs indicate an established trail along the blufftop facing both Outer Bolsa Bay and the EGGW Channel as well as other trails throughout the Mesa. Public use of the Mesa may consequently be substantial. Only a court of law can determine whether or not public rights of implied dedication actually exist. The Commission dealt with the issue of the appropriate level of public access for the Mesa area when it approved the LCP. The LCP public access program provides for extensive public access including a park and trail system. Part of the trail system is along the entire bluff edge. Another portion of the trail system provides for public access from Warner Avenue to the bluff edge and along a future public road. There will also be local public streets on the Mesa that are included in the bicycle trail system.

To maintain public access as specified in public access policies of the Coastal Act and as proposed in the Bolsa Chica LCP the Commission finds that it is necessary to impose two related special conditions. The first special condition requires that the temporary fence be constructed along a fifty foot setback from the bluff edge to maintain access on a temporary basis. Additionally that public access be provide from Los Patos Avenue to the Bolsa Chica Mesa blufftop along KREG's easterly property line and from Warner Avenue along the westerly property line. Further, the Commission also recognizes that future construction activity will be occurring on the Mesa in the form of mass grading. To minimize the impact of construction activity on public access a second special condition is being imposed. This special condition states that if grading is not initiated within one year, the fence will be removed.

Imposing these special conditions resolves the potential that long term development not in compliance with the public access plan contained in the Bolsa Chica LCP would be allowed. The LCP contemplates internal access through the site in the form of a public park and a public road. Allowing the temporary fence to remain for an indefinite period of time would not comply with the public access plan of the Bolsa Chica LCP. Only as conditioned does the Commission find that the proposed temporary fence is consistent with the Coastal Act regarding public access and implementation of the public access policies of the Bolsa Chica Local Coastal Program.

G. STATE LANDS REVIEW

The Koll Real Estate Group property on the Bolsa Chica Mesa is bordered in part by State Lands. The fence, as conditioned by the Commission, is proposed to be located within the property boundary of the Koll Real Estate Group. The fence plans submitted by the Koll Real Estate Group do not show the property line between the Koll Real Estate Group and State Lands. Consequently the relationship of the fence to the property line is unknown. Section 30601.5 of the Coastal Act requires that an applicant for a proposed project must demonstrate a legal right, interest, or other entitlement to use the property. To assure that the proposed fence, as conditioned by the Commission, is in compliance with Section 30601.5 of the Coastal Act, the Commission finds that the applicant must have the project reviewed by the State Lands Commission.

H. LOCAL COASTAL PROGRAM

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Development Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which

conforms with the Chapter 3 policies of the Coastal Act. The Commission on October 9, 1997 approved the Bolsa Chica LCP. However, final certification is pending based on the adoption of the Commission's suggested modifications by the Orange County Board of Supervisors and the Executive Director's reporting of the Orange County Board of Supervisors adoption to the Commission.

The proposed fence, as conditioned to be removed within one year, is a temporary structure. The temporary fence has been conditioned to minimize impacts to wildlife movement, minimize impacts to public access, and to minimize adverse impacts to habitat by raising the bottom of the fence, avoiding Warner Avenue Pond, setting the development back from the bluff edge, and requiring that the fence be removed after one year. Impacts to public access will be minimized by requiring that the fence be setback fifty feet from the bluff edge, that vegetation obstructing public access be identified and removed, and that public access be provided along the eastern portion of the applicant's property line from Los Patos to the bluff edge. With these conditions the temporary fence is consistent with policies of the Bolsa Chica LCP. The proposed development, as conditioned by the Commission, will not create adverse impacts on coastal access or coastal resources under Chapter 3 of the Coastal Act. Therefore the Commission finds that approval of the project will not prejudice the County's ability to prepare a Local Coastal Program for Bolsa Chica.

I. UNPERMITTED DEVELOPMENT

Without benefit of a coastal development permit, the applicant has undertaken partial construction of the fence along the Bolsa Chica Mesa Perimeter. Coastal Commission staff confirmed the presence of the partially constructed fence on April 22, 1997 through a site visit. Coastal Commission staff contacted both the County of Orange and the Koll Real Estate Group to advise them that a coastal development permit would be required. On April 22, 1997 Koll Real Estate Group filed an application for a coastal development permit with the County of Orange.

Consideration of the permit application by the Commission has been based solely on the consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. The Bolsa Chica Local Coastal Program was used as guidance by the Commission in reaching its decision. In evaluating the proposed development, the Commission found that the proposed development, as submitted, was inconsistent the policies of the Coastal Act and with Land Use Policy 6.2.22 of the Bolsa Chica LCP. To bring the project into conformance with the ESHA and public access policies of the Coastal Act and with the buffer and public access policies of the Bolsa Chica LCP the project has been conditioned to have the fence setback fifty feet from the edge of the bluff to promote public access and minimize adverse

impacts to wildlife habitat, to raise the bottom of the fence, and to impose a time frame for the removal of the fence.

Approval of this permit does not constitute a waiver of any legal action with regard to the alleged unpermitted development, nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit. The Commission may take action at a future date with respect to the removal of the unpermitted development and/or restoration of the site.

J. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the resource protection and public access policies of the Coastal Act. Mitigation measures which include: compliance with the development setback guidelines, maintenance of public access, and State Lands review will minimize all adverse impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.

EXHIBIT 1

COPY OF ORANGE COUNTY COASTAL DEVELOPMENT PERMIT PA-97-0065

ATTACHMENT A

Findings

(As Approved by Zoning Administrator on May 15, 1997)

The Orange County Zoning Administrator hereby finds:

- I. The project is consistent with the objectives, policies, general land uses and programs specified by the General Plan adopted pursuant to the State Planning and Zoning Laws.
- II. The project, subject to the specified conditions, is consistent with the provisions of the Orange County Zoning Code.
- III. That Final EIR 551, previously certified on June 18, 1996, satisfies the requirements of CEQA and is approved as a Program EIR for the proposed project based upon the following findings:
 - a. Based on the Initial Study, it is found that the EIR serves as a Program EIR for the proposed project; and
 - b. The approval of the previously certified Final EIR for the project reflects the independent judgment of the Lead Agency.
- IV. The location, size, design and operating characteristics of the project will not create unusual noise, traffic or other conditions or situations that may be objectionable, detrimental or incompatible with other permitted uses in the vicinity.
- V. The project will not result in conditions or circumstances contrary to the public health and safety and the general welfare.
- VI. The development project proposed by the application conforms with the certified Bolsa Chica Local Coastal Program.
- VII. The project will not deter the public access and public recreation policies of the California Coastal Act.
- VIII. The approval of this application will result in no modification to the requirements of the certified Bolsa Chica Local Coastal Program Land Use Plan.

EXHIBIT No. 1
Application Number: A-5-BLC-97-188
 California Coastal Commission

CONST DETAIL

6. Approval of this application constitutes approval in accordance with Condition #10 for the construction of an exterior security fencing around the Bolsa Chica Mesa undeveloped area. Said fence will be allowed to remain in place until the completion of grading and construction. Notwithstanding the proposed plan, upon the issuance of building or grading permits, the fence may be relocated to encompass the footprint of those construction activities. Additional temporary interior fencing of future construction related activities may be installed to a maximum six (6) feet in height subject to review and approval of the Manager, Land Use Planning.

7. HP HP G

ARCHAEO SURVEY

Prior to the issuance of any building permit or construction of any fence, the applicant shall provide a brief report prepared by a County certified archaeologist that reviews and maps the juxtaposition of archaeological deposits and the fence posts and, where needed, as determined in the report and approved by the Manager Coastal and Historical Facilities, a County certified archaeologist shall observe any earth-disturbing activity (such as post hole digging) and monitor for potential archaeological impacts.

8. BP BP B

CONST NOISE

Prior to the beginning of any drilling or construction activities, the project proponent shall produce evidence acceptable to the Manager, Building Permit Services, that: All Construction vehicles or equipment, fixed or mobile, operated within 1,000 feet of a dwelling shall be equipped with properly operating and maintained mufflers. All operations shall comply with Orange County Codified Ordinance Division 6 (Noise Control). Stockpiling and/or vehicle staging areas shall be located as far as practicable from dwellings.

9. Notwithstanding the proposed plan, prior to construction of the fence or the issuance of any building or grading permit, within the fenced area, the developer shall provide access plans and specifications meeting the approval of the Manager, Building Permit Services, that the design of the proposed entrances to the site are adequate to serve the proposed use and will provide suitable construction and emergency access.
10. Notwithstanding the proposed plan, prior to the construction of any fence, the applicant shall submit revised plans to the Manager, Land Use Planning for review and approval. Said plans shall denote the following:
 - A. Relocate the fence along the westerly boundary adjacent to the State Ecological Reserve so as to provide for a minimum 50 foot setback from the bluff edge.

MINUTES

ORANGE COUNTY ZONING ADMINISTRATOR HEARING - May 15, 1997

ZONE TAPE NO.: ZA0B6
ZA0B5

RECORDING INDEX: 00:00-E.O.T. TIME: 2:06
32:28-E.O.T.

ITEM 1.: PUBLIC HEARING: - Coastal Development Permit No. PA97-0065, EIR 551, of Bolsa Chica LCP Project.

The Zoning Administrator introduced the project.

Planner IV Fong gave the staff presentation. She stated that the project site is located within the certified Bolsa Chica Local Coastal Program (LCP) area and is zoned residential. She noted that the project site is currently vacant but historically subjected to oil fields and agricultural activities.

Ms. Fong stated that the applicant (Koll Real Estate Group) is requesting the placement of a pre-construction chain link security fence around the perimeter of the Bolsa Chica Mesa development area. Ms. Fong stated that the applicant is also requesting that the proposed CDP include any additional future chain link fencing with a six (6) foot maximum height within the perimeter. She noted that the reason for this interior fencing was future site-specific security requirements (e.g. oil well abandonment, water well testing etc.) She stated that the fencing is requested to provide protection for interim land uses, preliminary grading and borrow site activity, removal of oil operations, geotechnical investigations, surveying, water well drilling, infrastructure evaluations and archaeological/paleontological investigations. Ms. Fong stated that the chain link fence will be approximately 7 feet in height with three access gates proposed at selected points around the perimeter.

Ms. Fong stated that the proposed temporary use is consistent with the existing certified LCP which designates the site for residential development. She stated that the use could allow the construction of chain link fences to provide for public safety and site security prior to and during development of the site. She noted that the fenced area will be kept locked during drilling, testing and future home building and other construction activity.

Ms. Fong stated that it was staff's opinion that the implementation of project design features proposed by the applicant and the Conditions of Approval will provide sufficient protection to ensure public safety and minimize any hazards from construction. She stated that staff is recommending approval of the proposed project.

2:10 P.M.: The Zoning Administrator opened the public hearing.

Ed Mountford, representing Koll Real Estate Group stated he agreed with the staff report and was available to answer questions.

Mr. Neely noted that a portion of the fence had already been erected. He asked why the fencing on the Bolsa Mesa had occurred apparently without benefit of the necessary Coastal Development Permit.

He stated that while Koll did put up the fence without benefit of permits, they were apparently misled by County staff. He noted that Koll did stop work when they were notified by the County. Mr. Neely agreed that the fence is not set back the required 50 feet from the bluff edge in one location along the westerly boundary adjoining the State Ecological Reserve.

Mr. Neely stated that he had reviewed the Terrestrial Biology Section 4.8 of EIR 551 and confirmed that there are no sensitive plants or animals located within the fenced area. He discussed the mitigation measures as listed in EIR 551 to address the upland area. He noted that the habitat to be contained by the fence consisted of non-native grassland and ruderal vegetation. The fence would encompass a eucalyptus grove that had been identified as a nesting site for raptors. EIR 551 called for mitigation of the ultimate removal of the eucalyptus trees by off-site replacement at Harriett Wieder Regional Park.

He stated that the EIR specifically addressed the need to preserve mammal movement around the perimeter of the mesa development area to connect with the lowland and wetland areas. The principal movement to be addressed was the need for Coyotes to move freely in order to provide effective control of meso-predators (red fox/domestic cats, etc.) which might prey upon endangered lowland or wetland species. He pointed out that the EIR anticipated that suitable connectivity would be maintained around the perimeter of the mesa residential area once the development was complete.

Mr. Neely stated that EIR 551 recognized a linkage between upland and lowland habitats. However, the EIR pointed out that the ecological value of the upland area (exclusive of the raptor nesting sites) had been greatly reduced by substantial historic disturbances. He noted the EIR had concluded that historic disturbance and isolation from outlying natural habitats had rendered the loss of upland habitat associated with the ultimate mesa development to be insignificant.

He stated that EIR 551 identified trail activities near the wetlands as potentially significant impacts, particularly the presence of humans and dogs. The EIR indicated that fences or barriers might need to be erected between the upland and lowland areas so as to mitigate that impact.

Mr. Neely concluded that the biological impacts of the proposed perimeter fencing were similar to those that might result from the ultimate mesa development with respect to small mammal movement.

He further concluded that, since the proposed fencing retains the same wildlife movement corridors contemplated by the EIR, there would not be a significant impact. Similarly, since the fence did not impede the use of the eucalyptus trees for raptor nesting, that aspect of the project did not present significant impacts.

He stated that the fencing along the western edge needs to be set back at least 50 feet from the bluff edge. Mr. Neely noted that this fence is temporary and that construction is usually accompanied by perimeter fencing.

He pointed out that the concerns regarding the aesthetics of the fence needed to be viewed in the context of the temporary nature of the fence. Mr. Neely recognized that security requirements should be balanced with aesthetic needs.

Mr. Neely added a new Condition #10 to read as follows:

10. Notwithstanding the proposed plan, prior to the construction of any fence, the applicant shall submit revised plans to the Manager, Land Use Planning for review and approval: Said plans shall denote the following
 - A. Relocate the fence along the westerly boundary adjacent to the State Ecological Reserve so as to provide for a minimum 50 foot setback from the bluff edge.
 - B. Relocate the fence along the southerly boundary adjacent to the pocket wetland so as to provide a 5 foot wide temporary trail to accommodate interim public access prior to commencement of construction activities.
 - C. Add a note to the plan to indicate that barbed wire is not to be installed on the northerly section of fences along Los Patos from Marina View to the private driveway extension of Bolsa Chica St., unless the applicant provides evidence to the Manager, Land Use Planning that that section of fence along Los Patos has been breached by trespassers.

Mr. Mountford stated he had no objections to modifications of Conditions #6 and #9, but was concerned with Condition #10. He stated that if the fence is set back 6 feet from the edge of the pocket wetland, it would impede vehicle access along the the interior of the fence. Mr. Mountford suggested a 3 foot setback.

Mr. Neely responded that 3 feet would not be enough to provide public access. He stated that if the setback didn't allow sufficient vehicle access, the applicant might need to widen a portion of the access road by a few feet to provide minimal vehicular access. Mr. Neely stated he would reduce the setback from 6 feet to 5 feet.

Mr. Neely reopened the public hearing.

Mr. Mountford concurred with the revision.

Ms. Geier-Lahti stated that if the fence is temporary, then a time limit should be established as to when the fence must be removed. She requested a clarification of the time limit.

Mr. Neely explained that the fence would serve for pre-construction and construction related security. He stated that some portions of the fence would be moved or relocated when construction begins. He noted that the fence will remain in some locations until construction is complete. Mr. Neely explained that Koll will have to apply for Coastal Development Permits for the residential development, and since those plans would show permanent fencing, any fencing not identified on the Coastal Development Permit would need to be removed.

Ms. Geier-Lahti asked how residents will access the future park site that Koll is required to build if there is a fence.

SUBSTANTIVE FILE DOCUMENTS: EXHIBIT 2

1. Bolsa Chica Local Coastal Program
2. Bolsa Chica Local Coastal Program Staff Report, Revised Findings of June 12, 1997
3. County of Orange, Coastal Development Permit Application PA-97-0065
4. County of Orange, Staff Report on Coastal Development Permit Application PA-97-0065
5. County of Orange, Initial Study for Coastal Development Permit Application PA-97-0065 dated May 7, 1997
6. County of Orange, Minutes of the Zoning Administrator Hearing of May 15, 1997
7. County of Orange, Notice of Final Decision, dated June 2, 1997
8. Superior Court of the State of California, County of San Diego, Statement of Decision (Case No. 703570) Concerning the Bolsa Chica land Trust, Huntington Beach Tomorrow, Shoshone-Gabrielino Nation, Sierra Club, and Surfrider Foundation versus the California Coastal Commission, dated June 4, 1997
9. Coastal Development Permit 5-93-060 issued by the Coastal Commission
10. Coastal Development Permit 5-90-1143 issued by the Coastal Commission
11. Emergency Coastal Development Permit A-5-BLC-97-188-G issued by the Coastal Commission

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CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, 10th Floor
Long Beach, CA 90802-4302
(562) 590-5071

EMERGENCY PERMITTO: Signal Bolsa Corp/Signal Co. Inc.18 August 1997

Date

4400 MacArthur Blvd., Suite 300A-5-BLC-97-188-GNewport Beach, CA 92660

(Emergency Permit No.)

Bolsa Chica Mesa, along the western bluff edge, Bolsa Chica, Orange County

Location of Emergency Work

Relocate approximately 200 linear feet of a 7 foot high chain link fence sothat the fence is setback a minimum of fifty (50) feet from the bluff edge.**Work Proposed**

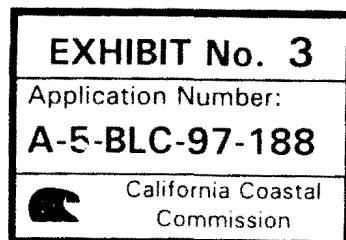
This letter constitutes approval of the emergency work you or your representative has requested to be done at the location listed above. I understand from your information and our site inspection that an unexpected occurrence in the form of bluff erosion requires immediate action to prevent or mitigate loss or damage to life, health, property or essential public services. 14 Cal. Admin. Code Section 13009. The Executive Director hereby finds that:

- (a) An emergency exists which requires action more quickly than permitted by the procedures for administrative or ordinary permits and the development can and will be completed within 30 days unless otherwise specified by the terms of the permit;
- (b) Public comment on the proposed emergency action has been reviewed if time allows; and
- (c) As conditioned the work proposed would be consistent with the requirements of the California Coastal Act of 1976.

The work is hereby approved, subject to the conditions listed on the reverse.

Very Truly Yours,

Peter M. Douglas
Executive Director

By: Jeresa HenryTitle: District Manager

AUG 29 1997

CALIFORNIA
COASTAL COMMISSION

August 25, 1997

Chuck Damm, South Coast District Director
California Coastal Commission
200 Ocean Gate 10th Floor
Long Beach, Ca. 90802-4302

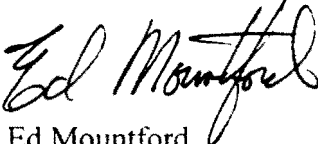
Dear Chuck,

I am writing to notify you that the relocation of the chain link fence on the west side of the Bolsa Chica Mesa was completed on August 22nd in accordance with permit #A-5-BLC-97-188-G. The fence has been moved back (easterly) to a minimum of 50 feet from the westerly edge of the mesa near Outer Bolsa Bay.

Thank you for your staff's cooperation in issuing the necessary permit in an expeditious manner. If you have any questions regarding this matter or would like to inspect the completed work please call me at (714) 477-0874.

Sincerely,

KOLL REAL ESTATE GROUP



Ed Mountford
Vice President



440 MacArthur Boulevard
Suite 301
Newport Beach, CA 92660
(714) 477-0874
FAX (714) 478-2105

September 19, 1997

Chuck Damm, South Coast District Director
CALIFORNIA COASTAL COMMISSION
200 Ocean Gate, 10th Floor
Long Beach, CA 90802-4302

Dear Chuck:

I am writing to notify you that the relocation of the chain link fence on the west side of the Bolsa Chica Mesa was completed on August 22nd in accordance with permit #A-5-BLC-97-188-G. The fence has been moved back (easterly) to a minimum of 50 feet from the westerly edge of the mesa near Outer Bolsa Bay.

With respect to our pending permit application to complete the remainder of the fence, we concur with staff's recommendation of a 50 foot setback along the south-facing edge of the Bolsa Chica Mesa. We also agree to raise the bottom of the fence so rodents and other small animals can move through the area unobstructed.

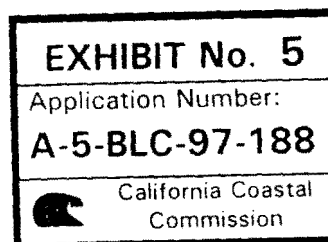
Thank you for your staff's cooperation in issuing the necessary permit in an expeditious manner. If you have any questions regarding this matter or would like to inspect the completed work, please call me at (714) 477-0873.

Sincerely,

KOLL REAL ESTATE GROUP

Ed Mountford
Ed Mountford
Vice President

EM:jm



4400 MacArthur Boulevard
Suite 300
Newport Beach, CA 92660
(714) 477-0873
FAX (714) 476-2075



MEMORANDUM

TO: Mr. Chuck Damm, California Coastal Commission

FROM: Terri S. Vitar, EIP Associates *TSV*

DATE: September 10, 1997; revised September 11, 1997

SUBJECT: BIOLOGICAL OPINION REGARDING INSTALLATION OF FENCE MATERIAL
ALONG THE BOLSA CHICA MESA




We have completed our review of The Koll Real Estate Group's proposal to install chain link fencing (raised six inches above the ground surface) along the Bolsa Chica Mesa and offer the following comments:

- The installation of chain link fencing, raised a minimum of six inches above the ground surface, allows the unimpeded movement of small to medium-sized mammals, including coyote, rabbits, squirrels, lizards, snakes, and possums. All of these species are common on the Bolsa Chica Mesa. There are no sensitive terrestrial species known to occur within, or to substantially use, the mesa.
- The type of fencing proposed also allows the movement of undesirable species, such as domestic cats or small dogs. However, the movement of these undesirable species would also occur if the fence were not installed.
- Installation of the fence may discourage the movement of the red fox, which is considered a predator to the federally and state listed least tern, elegant tern, and western snowy plover. All of these bird species nest in the Bolsa Chica lowlands and have historically been subject to the extensive and undesirable predation by the red fox. In addition, the red fox was recently observed in the vicinity of the Bolsa Chica Mesa during the week ending September 5, 1997 by Michael Brandman Associates' biologists.
- In our opinion, installation of the fence material (as described above) would not contribute to a significant biological impact, either by the direct loss of any species, the indirect loss of any species, or by indirect harm caused by impeded wildlife movement opportunities, decreased foraging opportunities, or decreased nesting opportunities.

If you have any questions, please do not hesitate to contact Terri Vitar at EIP Associates at 310-937-1580.

cc: Ed Mountford, The Koll Real Estate Group

EXHIBIT No. 6
Application Number: A-5-BLC-97-188
 California Coastal Commission

Location of Project

LEGEND

--- PLANNING AREA

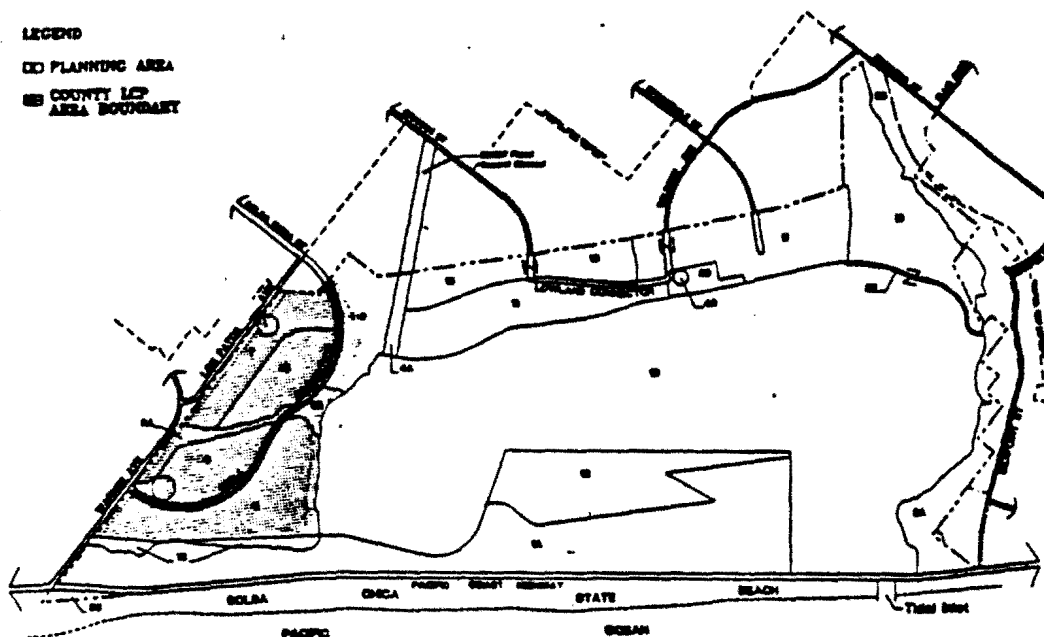
--- COUNTY LCP AREA BOUNDARY

The map illustrates the project location within a larger geographical context. A dashed line outlines the 'PLANNING AREA', and a solid line indicates the 'COUNTY LCP AREA BOUNDARY'. The map shows a coastal region with several labeled areas: 'SOLANA' on the left, 'OMEGA' in the center, 'PACIFIC COAST HIGHWAY' running along the coast, 'STATE BEACH' to the right, and 'THOUSAND OAKS' at the bottom right. A 'PACIFIC OCEAN' label is at the bottom left. A 'THOUSAND OAKS' label is also present near the bottom right. The map includes various lines representing roads, boundaries, and geographical features, with some areas shaded to indicate specific project zones.

LEGEND

DD PLANNING AREA

EE COUNTY LEP
AREA BOUNDARY



California Coastal
Commission



Amigos de Bolsa Chica

P.O. Box 3748, Huntington Beach, CA 92605-3748 • (714) 897-7003

September 22, 1997

RECEIVED
SEP 23 1997

CALIFORNIA
COASTAL COMMISSION

CALIFORNIA COASTAL COMMISSION
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: October 7, 1997 Agenda Item #15(f)
BOLSA CHICA FENCE

Dear Commissioners:

Amigos de Bolsa Chica has been the primary advocate for the public access, acquisition, restoration and protection of the Bolsa Chica Wetlands for over 22 years.

We appreciate your positive response to our request that the public's right of access to this valuable environmental and recreational resource not be impeded before, during or after any construction activity on the Bolsa Chica Mesa, as reflected by the action taken at your August 12, 1997 meeting. We encourage you to maintain that position.

It is important that a minimum 50 foot setback be maintained and that trails allowing the public to walk along the wetlands remain open and available for use.

We are confident that the State can manage problems such as illegal camping and dumping by implementing appropriate regulations and without interfering with the public's access.

Thank you for your action in support of the public's use and enjoyment of the Bolsa Chica.

Sincerely,

Tom Livengood / lw

TOM LIVENGOD
President

EXHIBIT No. 9
Application Number: A-5-BLC-97-188
 California Coastal Commission

Long Beach

Sept. 28, 1997
Re: A-5-BLC-97-188

Dear Commissioners:

I hope that you realize that the Koll Real Estate Group (KREG) has not complied in a friendly or caring manner in removing the fence which they put up without a permit. The fence is at some points along the westerly direction not fifty feet from the property line but JUST BARELY fifty feet at some points from the bluff edge. They have left barbed wire, chunks of cement and other impediments in the path where the public can get hurt walking on the bluff. Last Saturday, Sept. 20th, I was working on the mesa planting plants along the path from Warner Ave. to the Observation Point. I witnessed these violations first hand.

I wish that it were convenient for each of you commissioners to walk on this path. It is really a beautiful experience and you would see for yourself. This callous disregard for public safety on KREG's part..

Sincerely,
Eileen Murphy
201 21st Street
H.B. CA 92648

RECEIVED
SEP 30 1997

CALIFORNIA
COASTAL COMMISSION

EXHIBIT No. 10
Application Number: A-5-BLC-97-188
 California Coastal Commission

Sept. 28, 1997

Dear CCC:

Re: A-5-BLC-97-188:

We are very opposed to the seven foot high chain link "pre-construction" security fence around the perimeter of the Bolsa Chica mesa for several reasons:

1) there shouldn't be any construction on the mesa;

2) the fence is a hazard to the animals that use the wetlands as habitat.

Please order the fencing removed. Thank you. Sincerely,
Mr. & Mrs. J.L. Denison

EXHIBIT No. 11

Application Number:

A-5-BLC-97-188



California Coastal
Commission

September 29, 1997

Mr. Chuck Damm, South Coast District Director
CALIFORNIA COASTAL COMMISSION
200 Oceangate, 10th Floor
Long Beach, CA 90802

OCT 6 1997

CALIFORNIA
COASTAL COMMISSION

RE: Bolsa Chica Fence Permit -
October 7th Agenda - Item 15A

Dear Mr. Damm:

The purpose of this letter is to request a continuance of the Bolsa Chica Fence Permit item to the Commission's November 1997 meeting. It appears more appropriate to consider this permit in view of the Commission's action on the Bolsa Chica LCP on October 9th.

I appreciate your consideration of this request.

Sincerely,

KOLL REAL ESTATE GROUP



Ed Mountford
Vice President

EM:jm



