

CALIFORNIA COASTAL COMMISSION

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Commission Action:

**TH 11a**

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STAFF REPORT: REVISED FINDINGS**APPLICATION NUMBER:** 5-05-020**APPLICANT:** Hearthside Homes/Signal Landmark**AGENT:** Ed Mountford, Dave Neish, Donna Andrews, Susan Hori**PROJECT LOCATION:** 17201 Bolsa Chica Road, Bolsa Chica, Orange County

PROJECT DESCRIPTION: Approval of Vesting Tentative Tract Map (VTTM) 15460 for the subdivision and development of two existing parcels into the 105.3-acre Brightwater community consisting of 349 residential lots on 67.9 acres and 37.1-acres of habitat restoration and public trail, located primarily on the upper bench of the Bolsa Chica Mesa. The project also includes the construction of 349 single-family homes and the construction of two local parks within the residential community. The 37.1-acre habitat area consists of a 29.2-acre coastal sage scrub and native grassland community located along the western and southern slope and bluff top edges and the construction of a 2.5-acre Los Patos Wetland and Southern Tarplant preserve. (The Los Patos Wetland and Southern Tarplant preserve is 2.5 gross acres and 2.9 net acres). The remaining 5 acres of the 37.1-acre habitat area is the existing Eucalyptus grove. Public access, including pedestrian, bicycle and vehicular access and public parking will be allowed throughout the community. Three vertical walkways providing resident access to the habitat trail will also be available to the public. The Los Patos Avenue frontage will also be widened, paved and landscaped creating 114 (unstriped) public parking spaces. The Tract Map also includes the creation of an 11.8-acre residual parcel located on the lower bench of the Bolsa Chica Mesa.

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

DATE OF COMMISSION ACTION: April 14, 2005

**COMMISSIONERS ON
PREVAILING SIDE:** Burke, Iseman, Kram, Kruer, Neely, Potter, Reilly, Secord,
Shallenberger, Wan, and Chair Caldwell.

SUMMARY OF STAFF RECOMMENDATION

On April 14, 2005, after public hearing, the Commission **approved with conditions** Coastal Development Permit 5-05-020, finding that the development, as conditioned, conforms with the Chapter 3 policies of the Coastal Act. Staff is recommending that the Commission, after public hearing, adopt the following revised findings in support of the Commission's April 14, 2005 approval with conditions. A vote by the majority of the eleven Commissioners on the prevailing side is necessary to adopt the revised findings. **The motion to adopt the revised findings appears on page 3.**

SUMMARY OF SIGNIFICANT CHANGES FROM THE STAFF RECOMMENDATION

The Commission's action to conditionally approve the coastal development permit for the Brightwater community development project included the following significant changes from the staff recommendation:

1. The Commission found that the applicant's proposed Eucalyptus Tree ESHA buffer, varying in size from 150 to 382 feet in width is adequate to protect the numerous raptor species that nest, perch and forage within and adjacent to the approximately 5-acre Eucalyptus Grove whose trees have been designated an environmentally sensitive habitat area (ESHA). The Eucalyptus Tree ESHA and ESHA buffer on the eastern side of the project site, adjacent to the Goodell property, was also modified from the Commission staff's recommendation to remove the three trees from the ESHA designation and to establish a five hundred foot buffer between construction activities and active nests. See the Biological Resources Section, D. 1 of the findings and Special Condition 10.B.1.
2. After seeing photographic evidence and hearing testimony of significant disturbance to the Eucalyptus ESHA including the downing of trees, grading, the creation of targets, ramps, evidence of vehicle use and paintball activity, the Commission modified proposed Special Condition 10 to include the management of the Eucalyptus Tree ESHA in the Final Habitat Management Plan, including the elimination of this and any other inappropriate use of the ESHA, while allowing appropriate public access. The Biological Resources Section, D. of these findings and Special Condition 10.B.13 were modified accordingly.
3. With regards to fuel modification, the applicant agreed to use a drip irrigation system designed to mimic natural rainfall conditions including careful monitoring and adjustments, if necessary, to avoid adverse impacts. To avoid further impacts to the Eucalyptus and Burrowing Owl ESHAs the applicant also agreed to require that the residential lots abutting the habitat buffers also use only drip irrigation regulated by a timer system and also agreed to prohibit mowing within the habitat buffer. The Biological Resources Section, primarily D. 5. and Special Conditions 10.B.3, 10.B.4 and 11.C were modified accordingly to reflect the Commission's action concerning these actions.

4. The Commission also expressed concern about the use of rodenticides, a recent practice that has been brought to light in the context of other projects in the coastal zone. The applicant stated that they had no plans to use rodenticides in any way and the Commission conditioned the project to prohibit such practices, including requiring that the resident education program explain the prohibition on the use of rodenticides and its importance. The Biological Resources Section, primarily D. 3 of the findings and Special Conditions 6, 7 and 10 were modified to address this issue.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution to adopt the revised findings in support of the Commission's April 14, 2005 action to approve Coastal Development Permit 5-05-020 with special conditions. Staff recommends a **YES** vote on the motion, which would result in the adoption of the following resolution and findings.

MOTION: *I move that the Commission adopt the following revised findings in support of the Commission's action on April 14, 2005 approving Coastal Development Permit 5-05-020 with conditions.*

Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the April 14, 2005 hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings. **The eleven Commissioners on the prevailing side are:**

Burke, Iseman, Kram, Kruer, Neely, Potter, Reilly, Secord, Shallenberger Wan and Chair Caldwell.

I. Resolution to Adopt Revised Findings for Permit 5-05-020

The Commission hereby adopts the findings set forth below for the approval of Coastal Development Permit 5-05-020 on the ground that the findings support the Commission's decision made on April 14, 2005 and accurately reflect the reasons for it.

SUMMARY OF STAFF RECOMMENDATION:

The Brightwater development project, as proposed, raises issues concerning protection of environmentally sensitive habitat areas (ESHA) and important raptor foraging habitat adjacent to one of the three on-site ESHAs; protection of marine resources and the protection of cultural resources. The proposed project would also create a new irregularly shaped 11.8-ac separate legal parcel on the lower bench of the Bolsa Chica Mesa that, if developed, would cause significant impacts to Warner Pond wetland for an access road and significant impacts to a large population of Southern Tarplant in developing the parcel and that raises concerns of geologic safety with the Fault Zone of the Newport-Inglewood Fault running through a portion of the proposed new lot. The primary outstanding issues are: 1) significantly inadequate Eucalyptus tree ESHA buffer; 2) fuel modification, as currently proposed, throughout the already undersized Eucalyptus Grove buffer in order to protect the proposed adjacent residential development; 3) elimination of 68 acres of

raptor foraging habitat without mitigation for the lost habitat; 4 3) inadequate Burrowing Owl ESHA buffer; 5 4) encroachment into the recommended Burrowing Owl ESHA buffer with residential lots, grading to support residential development and for residential fire protection purposes; 6 5) inadequate mitigation of impacts to ORA-83, an important archaeological site that has twice been found eligible by the California State Historic Resources Commission for listing as a State, as well as a National Historic Site; and 7 6) inadequate water quality management plan provisions. Staff recommends **approval** of the proposed project with special conditions necessary to bring the project into conformance with the coastal resources protection policies of the Coastal Act.

The special conditions require that 1) an open space restriction be placed on the habitat areas; 2) an offer to dedicate the proposed Coastal Sage Scrub and Native Grassland Creation habitat and Southern Tarplant and Seasonal Pond Environmental Protection Area be recorded; 3) a trail easement be offered over the public trail and over the portion of the grassland habitat area that will be subject to approved fuel modification; 4) a public access and habitat management program be developed and funding be identified to carry out these activities; 5) the applicant abide by the California Burrowing Owl Consortium guidelines for avoiding and mitigating impacts to burrowing owls during construction; 6) the CC&R's of the subdivision reflect certain requirements, primarily dealing with public access and habitat protection and a prohibition on the use of rodenticides; 7) construction and development phasing be carried out in a manner that is protective of the biological resources, including a prohibition on the use of rodenticides, and assures that the public access and recreation are prioritized; 8) erosion control measures are in place to prevent impacts to the marine environment; 9) the fencing off of habitat areas and the identification of construction staging areas that will not adversely impact sensitive resources; 10) the preparation of a final habitat management plan with appropriately sized, planted and managed ESHA buffers, control of activities within those buffers and the addition of the Eucalyptus Tree ESHA to the Habitat Management Plan, and the addition of the Southern Tarplant and Seasonal Pond Environmental Protection Area into the Plan; 11) native and non-native, non-invasive appropriate landscaping throughout the project area; 12) fuel modification within the ESHA buffer areas, including the use of a drip irrigation system that mimics natural rainfall conditions to be used only within a limited area and a prohibition on all other fuel modification practices; 13) lighting be directed away from habitat buffer areas; 14) certain requirements relating to walls, fences, gates, safety devices and other habitat barriers be followed; 15) all subdivision streets, sidewalks, parking and trails and parks be open to the general public; 16) additional requirements on the proposed water quality management plan be observed; 17) a revised tentative tract map eliminating the proposed residual parcel on the lower bench, and revised plans showing the enlargement of the ~~Eucalyptus Tree~~ and Burrowing Owl ESHA buffers, public access signage and cultural resources interpretive plan along the habitat trail, revised stormdrain plan, and off-site raptor foraging habitat plans be submitted; 18) additional slope stability analysis for the revised grading plan be performed and the developer conform development plans to geotechnical recommendations; 19) the developer assume the risks of development; 20) the developer treat the exterior appearance of structures visible from the public areas; 21) the height of the structures abutting and visible from the public trails be kept to no more than 35 feet, as proposed; 22) procedures for the review and approval of future development be followed; 23) requirements and procedures established herein to be followed regarding the possible discovery of additional

archaeological resources during grading; 24) the reports required to be prepared in conjunction with the research, investigation and salvage of ORA-83 and curation of the artifacts recovered from the archaeological site be disseminated; 25) the applicant obtain all other necessary agency approvals; 26) the applicant perform work in strict compliance with all of the special conditions of this permit and 27) applicant be informed of the Commission staff's right to inspect the site.

EXECUTIVE SUMMARY

Hearthside Homes has submitted and withdrawn two previous coastal development permit applications for development of the upper bench of the Bolsa Chica Mesa. On November 6, 2002 coastal development permit application 5-02-375 was submitted, but it was eventually withdrawn by the applicant (in May of 2004) prior to the preparation of a written staff recommendation and Commission public hearing. On May 21, 2004 the property owner submitted application 5-04-192. Commission staff prepared a staff report with a recommendation of denial of the project as it was designed citing significant inconsistencies with Coastal Act provisions regarding public access and public recreation opportunities, especially lower cost visitor and recreational facilities; the protection and enhancement of marine water quality; protection of environmentally sensitive habitat areas (ESHA) and other important land resources and the allowance of only resource dependent uses in ESHA and the requirement for adequate buffers between ESHA and development areas; the protection of archaeological and cultural resources; and the protection of scenic coastal resources to and along the coast by minimizing the alteration of natural landforms.

The Commission held a public hearing on application 5-04-192 on October 13, 2004 in San Diego. Following Commission discussion of the project the applicant withdrew the application. The Commission waived the six-month waiting period at the applicant's request, allowing immediate reapplication for the development of the site. Following the October public hearing the applicant and staff had several meetings including a meeting on-site with planning and technical staff where the applicant's proposed setback areas were staked allowing a better perspective of the relationship of the proposed development to the habitat areas. On January 21, 2005 Hearthside Homes submitted the subject coastal development permit application 5-05-020 after making several modifications to the previous project design. The basic elements of the Brightwater Development project have not changed. The proposal still includes the subdivision of 2 lots into a single-family residential community and a passive public park/habitat restoration area along the western top-of-slope and gentle slope area and the southern bluff top edge and bluff face of the upper bench. Although these basic elements have not changed, the applicant has made several changes to the project aimed at addressing the Coastal Act inconsistencies of the project as voiced by the staff and by the Commission. Some of the changes are significant, bringing certain aspects of the project into conformance with the Coastal Act, if they are implemented. Other changes partially address the project's inconsistency with certain aspects of the Coastal Act but do not bring the project into conformance with applicable Coastal Act provisions while some aspects have not been modified at all and remain inconsistent with the Coastal Act. Staff recommends approval of this new proposal with special conditions to bring the proposed project into conformance with the Coastal Act in the remaining areas. The discussion below compares the October 2004 project with the current, January 2005 project.

The previously proposed guard-gated, private residential community will now be open to general public vehicular access, also allowing public parking on all subdivision streets. Under the two previous applications public vehicular and pedestrian access was prohibited into the community, but under application 5-04-192 the applicant agreed to allow pedestrian access through the guard gates and added a new pedestrian gate through the center of the site in response to staff comments that the prohibition on public vehicular access and allowance for pedestrian access only at either end of the 105 acre site did not maximize public access. All residential units will have at least two on-site enclosed parking spaces and some units will have three and four spaces. Therefore, the on-street parking should be adequate for residential guests and visitors to the habitat park and trail. One hundred fourteen additional on-street parking spaces are also being provided along Los Patos Avenue. However, the public pedestrian trail is no longer being proposed through the center of the site since the public can now park on any of the residential streets to gain access to the habitat park and trail. With these changes to the project, and as conditioned to assure that the public trail is adequately signed informing the public of its availability, that on-street parking remains publicly accessible and that the trail and benches are constructed in the early phases of the development and properly maintained, the proposed project is consistent with the public access and public recreation policies of the Coastal Act.

Another significant change that has occurred with the current project design is the elimination of the previously proposed "restoration" grading consisting of a 30 ft. high, 2 acre fill area at the southern bluff edge. The fill would have been within the Eucalyptus tree ESHA buffer area, and would have also resulted in significant landform alteration and visual impacts. With the elimination of this fill the proposed project minimizes landform alteration, and as conditioned to soften the visual impacts of the development through landscaping and exterior wall and building color compatibility, the proposed project no longer raises issues of conformance with the Coastal Act provisions protecting visual resources.

The previous project raised significant issues of consistency with the Coastal Act provisions calling for the protection of biological resources. The Brightwater development site contains three environmentally sensitive habitat areas (ESHA) as defined by Section 30107.5 of the Coastal Act – the approximately 5-acres Eucalyptus trees located primarily along the southern bluff face, the Burrowing Owl habitat within the central bluff area and the Southern Tarplant near the Los Patos wetland (Exhibit 20, Fig. 1). The two previous applications did not recognize or protect in place the Southern Tarplant ESHA populations or the Burrowing Owl ESHA habitat. The applicant initially proposed to translocate all tarplant to the lower bench to make way for residential, private recreation, water quality wetlands and public trail development. Subsequently, the applicant eliminated the lower bench translocation plan and instead proposed to translocate the tarplant to other upper bench nearby populations or immediately adjacent to its present location. Both the Los Patos wetland and the Southern Tarplant ESHA were located within the proposed 2.5-ac private recreational facility. For the tarplant found near the Los Patos wetland but further than 100 feet away from the wetland, the applicant proposed to relocate the tarplant to within 100 ft. of the wetland so that all of the tarplant would be within the 100 ft. wetland buffer. Additionally, the applicant was proposing a decomposed granite maintenance road and an elevated boardwalk for wetland viewing within the wetland and tarplant buffers.

Finally, there was additional encroachment into the Los Patos wetland buffer and direct impacts to the Southern Tarplant ESHA adjacent to the wetland due to the construction of the then proposed 2 million gallon underground water reservoir. The tarplant translocation as well as the recreational and water storage facility encroachments into the wetland and tarplant buffers are activities that are inconsistent with Sections 30240 and 30233 of the Coastal Act.

In the current Brightwater development proposal the applicant has eliminated the Southern Tarplant translocation plan and is protecting the Southern Tarplant ESHA in place with the staff recommended 50-foot wide buffer. Additionally, the project no longer includes the private recreational facility that surrounded and significantly impacted the wetland and Tarplant ESHA, and the underground water reservoir has been redesigned such that there will be no encroachment into the habitat or habitat buffer except for a one time encroachment into the buffers in order to construct the proposed 1.2 million gallon underground water reservoir. The area of the previously proposed 2.5-acre private recreation center is now proposed as a fenced 2.5¹ acre "Southern Tarplant and Seasonal Pond Environmental Protection Area." As conditioned, to provide proper buffers for the wetlands and Tarplant ESHA and to provide for monitoring and on-going maintenance and the preservation of this habitat area in perpetuity, the proposed project is consistent with Sections 30240 and 30233 with regards to the Southern Tarplant of the upper bench and the Los Patos seasonal wetland.

Under the previous application the proposed water quality treatment plan included a vegetated treatment system with a series of five cleansing wetlands and a 1.3-acre detention basin located on the slope separating the upper and lower benches. Several of the created wetlands would have impacted Southern Tarplant and the proposed detention basin was to be located within the Burrowing Owl ESHA. The applicant is now proposing to eliminate these features and is now proposing to provide a stormwater filtration system within the residential development area. The stormwater would then be discharged through a new 54" to 66" buried pipe to be constructed at the location of an existing oil pipeline that goes through an area between the Eucalyptus Grove ESHA and discharge to the Isolated Pocket Lowland. Commission staff ecologist, Dr. John Dixon, recommends that the alignment of the proposed stormdrain can be found consistent with Section 30240 of the Coastal Act based on the site-specific unique nature of the Eucalyptus ESHA on the Bolsa Chica Mesa where it is only the non-native Eucalyptus trees that constitute the ESHA, as detailed in Dr. Dixon's memo (Exhibit 20, pages 2-5).

The proposed 66" outlet contains an internal energy-dissipating collar and a rip-rap apron or other energy dissipater will be constructed below the outlet, on an existing dirt road. The State Lands Commission, owner of the pocket lowland area has consented to this new stormdrain and discharge plan. They have also evaluated the potential impacts on the to-be-restored muted tidal wetland and found them to be insignificant. The

¹ The Southern Tarplant and Seasonal Pond Environmental Protection Area has been described as being 3.2 acres in size. This larger figure is based on the Development Area (DA) boundary. The Southern Tarplant and Seasonal Pond Environmental Protection Area is located in DA 7-1 which also includes more than the tarplant and wetland areas and their buffers. Also included are the adjacent landscaped parkways and streets of the DA. The two habitat areas and their buffers total 2.5 acres and the parkways and streets bring the DA acreage up to 3.2 acres.

Commission also notes that the use of the existing 24 inch stormdrain would have required a much more extensive use of rip-rap or the extension of the existing stormdrain or the combination of the two, for approximately 200 feet, since the 24" pipe stops at mid bluff and does not extend down to the pocket lowlands as will the proposed 66" stormdrain. Further, there is a Eucalyptus tree at the immediate downslope discharge point of the existing 24" stormdrain, calling into question whether it can be used for runoff control purposes for the proposed residential development in a manner that is consistent with Section 30240 of the Coastal Act. The proposed 66" stormdrain does not raise this issue as it is located in an area that does not contain any Eucalyptus, palm or pine trees, all of which are used by the numerous raptors that use the site.

While this aspect of the project can be found consistent with the marine resources protection policies of the Coastal Act, other provisions of the water quality management program are not adequate as proposed. The project is therefore conditioned to bring it into conformance with the applicable marine protection provisions of the Coastal Act.

The applicant has also made other changes to the project that do not go far enough to bring the project into conformance with the protection of the other two environmentally sensitive habitat areas of the project site. The applicant did not previously, and still does not agree with the ESHA determination for the Burrowing Owl habitat and contends that the Burrowing Owl does not reside on the project site, but only winters on-site. The burrowing owl (*Athene cunicularia*) is a California Species of Special Concern (CSC), as designated by the California Department of Fish and Game. This bird hunts for prey over open areas and grasslands and typically nests in the abandoned burrows of rodents. Evidence of burrowing owl use of the site was documented in 2001-2002 and 2002-2003 and denoted "burrowing owl use area" by the applicant's biologist. The applicant objected to the Commission staff ecologist's designation of the applicant's "burrowing owl use area" as ESHA. The applicant's consultant countered that the Commission should use the actual burrows used by the owls rather than all of the nearby potential habitat and provided staff with a polygon created by connecting those burrows with straight lines. In their revised map of the owl use area, the applicant's consultant, LSA, omitted one burrow where an owl was seen once but then abandoned. For the reasons detailed in Section D.3 of this staff report, staff accepts this smaller "burrowing owl use area" as the Burrowing Owl ESHA boundary after going out in the field with the biologists who conducted the original surveys and a review of the information submitted subsequent to the October 2004 hearing (Exhibit 17b).

Although there is merit in accepting the applicant's reduced Burrowing Owl ESHA delineation as proposed, there is no justification for the proposed reduction in the Burrowing Owl ESHA buffer or the grading within the buffer to accommodate residential building pads. Staff ~~continues~~ continued to recommend a 164 ft. (50 meter) buffer and the applicant is ~~proposing~~ proposed a buffer of only 100 feet with an additional 50 ft. wide permanently irrigated area immediately adjacent to the residential lots². However, at the

² The Initial January 21, 2005 application proposed a 150 ft. buffer between the Burrowing Owl ESHA and the residential lots. This is already 14 ft smaller than the staff recommended 164 ft. (50 meter) Burrowing Owl ESHA buffer. Then on March 11, 2005 the applicant informed staff that the Orange County Fire Authority wanted the 50 ft. closest to the homes permanently irrigated for fire protection purposes. The applicant then

April 14, 2005 hearing the applicant modified the proposed project with regards to irrigating the buffer area adjacent to the residential lots. As detailed in Section D. of these findings and as required by Special Conditions 10.B.3 and 10.B.4, the fuel modification practices within the Burrowing Owl buffer will be consistent with Section 30240(b) of the Coastal Act.

Further, the proposed project also includes grading within the 50-foot area closest to the residential lots in order to create the residential pads. As conditioned, the applicant must also abide by the "Burrowing Owl Survey Protocol and Mitigation Guidelines" by California Burrowing Owl Consortium to determine if there is any occupation of the burrows of the Burrowing Owl ESHA. Only as conditioned to submit revised plans for a 164 ft. wide Burrowing Owl buffer, elimination residential grading in the Burrowing Owl buffer, and planting and maintaining of the buffer for habitat purposes consistent with the approved fuel modification and habitat management plans can the project be found consistent with Section 30240(b) of the Coastal Act with regards to the provision of an adequate buffer to protect the Burrowing Owl ESHA.

Another area in which the applicant has made insufficient changes is the ~~size of the Eucalyptus Tree ESHA buffer and encroachments into the Eucalyptus and Burrowing Owl ESHA buffers~~ for fuel modification purposes. In the previous applications the Eucalyptus tree ESHA buffer was proposed at 100 ft. in width, as measured from the edge of the Eucalyptus grove ESHA. This is less than half the width of the staff-recommended 328-foot (100-meter) Eucalyptus tree ESHA buffer. ~~In addition to the grossly undersized buffer the~~ The applicant previously proposed several significant encroachments into the buffer and into the ESHA itself. Due to the proximity of the future homes along the southern bluff edge to the Eucalyptus trees, under the applicant's proposal the entire 100 ft. wide buffer would also double as the Orange County Fire Authority (OCFA) required Fuel Modification area. Not only did Fuel Modification Zone D include the entire habitat buffer, it also overlapped the Eucalyptus Grove ESHA itself. In order to protect sixteen of the homes closest to the trees, the entire ESHA buffer was required to be permanently irrigated and its plant palette strictly controlled for fire suppression purposes instead of being planted and minimally managed to protect the ESHA from adjacent proposed urban uses (Exhibit 14). Additionally, there was encroachment into the actual Eucalyptus grove ESHA for initial and continued modification of the understory of the Eucalyptus Grove ESHA affecting approximately 0.8 acres of the existing five-acre grove. In addition to the use of the entire habitat buffer for required Fuel Modification, additional encroachments into the reduced Eucalyptus Grove ESHA buffer under the October 2004 project included: (1) approximately 600 linear feet of the proposed 12 ft. wide paved, all-weather, pedestrian/bicycle trail; (2) significant grading activity (including a 30 ft. high fill slope, two acres in size); (3) five of 30 proposed public parking spaces; and (4) approximately 250 ft. of the 32 ft. wide paved extension of Bolsa Chica Street.

Under the current application a public trail is still being proposed to allow bird watching and scenic views of the wetlands and Pacific Ocean but the trail has been reduced to 6 ft. in width, will have a decomposed granite surface and will be relocated closer to the residential lots. The 2-acre, 30 ft. high fill ("restoration") slope has also been eliminated as

requested that staff not consider the 50 ft. area closest to the home as habitat buffer but as "ecotone area" as a transition between the habitat and the residential area (Exhibit 4).

well as the public parking that was proposed atop the fill and the extension of Bolsa Chica Street. The southern bluff face area will now be left in open space as part of the Eucalyptus grove ESHA buffer with the elimination of the proposed fill slope.

As measured from the landward edge of the Eucalyptus tree ESHA, the applicant is now proposing a Eucalyptus ESHA buffer that varies from 150 ft. (46 meters) in the western portion to 382 ft. (116 meters) in the eastern portion of the buffer, with the average width being 274 ft. (84 meters). ~~Staff notes that where the Eucalyptus grove ESHA buffer would be widest is where there is a fairly steep slope separating the trees from the bluff top development area. In that area the proposed residential lots are set back 100 ft. from the bluff edge. Therefore the majority of this wider ESHA buffer is vertical slope area and not horizontal distance at the same elevation of the proposed residential development. The horizontal buffer distance (between the proposed lots and the bluff edge) is 100 ft. Further, the Commission notes that the raptors generally use the upper portion of the trees for nesting, roosting and perching. Therefore it is the distance—in a straight line—between the development and the tops of the trees that is important. Staff is continuing to recommend that the Eucalyptus Tree ESHA buffer be no less than 328 feet (100 meters) in width, measured from the landward-most trees, for the entire length of the Eucalyptus ESHA and that no residential support development be allowed in the buffer, in order to adequately protect the viability of the trees that have been designated ESHA under the Coastal Act by the Department of Fish and Game and recognized as such by the courts as well as the Coastal Commission. In order to be found consistent with the Coastal Act provisions regarding the protection of environmentally sensitive habitat areas the Eucalyptus Tree ESHA buffer must be sufficiently sized to protect the raptors that use the trees. For the reasons detailed in Section D of this report, only the Commission found that as proposed and as conditioned in Special Condition 10.B.1, the applicant's variable 150 to 382 ft. width Eucalyptus ESHA buffer to increase the size of the buffer to 328 feet (100 meters) can the proposed project be found consistent with the Coastal Act regarding protection of this designated ESHA resource if the buffer between development and any active nests is increased to 500 feet during construction. There is a gap through the Eucalyptus trees ESHA where there is an existing oil pipeline, no trees, and very little native vegetation. The Commission found that this pipeline corridor was not part of the Eucalyptus tree ESHA. The applicant is proposing to use that same alignment to construct the proposed new 54" to 66" storm drain. The proposed project is conditioned to avoid grading within 500 feet of the Eucalyptus Tree ESHA during the breeding season if raptors are present. The proposed project is also conditioned to employ erosion control and water quality BMPs during grading and construction, as conditioned, the proposed project can be found consistent with Section 30240 of the Coastal Act.~~

Under the October 2004 Brightwater project proposal, residential development covered all of the area that was formerly occupied by the significant archaeological site, ORA-83, known as the Cogged Stone Site. Although the applicant has carried out a comprehensive data recovery program through coastal development permits issued by the Coastal Commission beginning more than 20 years ago, there is still merit under the Coastal Act for further mitigation of the significant archaeological resources of ORA-83. ORA-83 has twice been recognized by the State Historical Resources Commission as being eligible for listing on both the State and National Register of Historical Places. The applicant states that under the current application, unlike the 2004 proposal, a significant

portion of the area previously occupied by ORA-83 will be preserved in open space and accessible to the public. However, this mitigation is inadequate in meeting the requirements of Section 30244 of the Coastal Act. The applicant proposes no interpretive signage or displays along the trails acknowledging the importance of the site to prehistoric and historic Californians and informing the public of ORA-83, nor the curation or dissemination of the wealth of data and artifacts that have been recovered from the site in over 20 years of investigation. Finally, there is still the possibility that additional cultural resources may be discovered when grading commences on relatively undisturbed portions of the site. Only as conditioned to provide for the protection of any further discoveries of significant cultural deposits, to provide for appropriate interpretive signage concerning the cultural heritage of the site, to agree to donate the recovered artifacts to an appropriate curation facility in Orange County and to disseminate the series of final reports that were required to be prepared and to have an archaeologist and Native American monitor present during further grading activities is the proposed project consistent with Section 30244 of the Coastal Act. ~~Further, the Commission notes that a significant portion of ORA-83 is within the staff recommended 328 foot Eucalyptus Tree ESHA buffer.~~ Therefore, if the full habitat buffer is required, the majority of ORA-83 will also remain in an undeveloped state, which is the desirable disposition of this area as stated by most ~~Most~~ of the Native Americans, archaeologists, anthropologists, astronomers and environmentalists who have written to the Commission concerning the 2004 application regarding the preservation of the cultural resources of the site and in the current application requested that the Commission support the staff recommended 328 foot wide Eucalyptus Tree buffer in order to preserve the maximum amount of the previous location of ORA 83 (Exhibits 18, 19, 22-24). The issue of archaeoastronomy and its importance has also been raised at the Brightwater site in both the 2004 and current application. Although there is dispute among the applicant's archaeologist and Ms. Jeffredo-Warden as to whether the Brightwater site possesses significance in this area, if ORA-83 is preserved in open space, the opportunity for these observations, if they are available from the project site, are also preserved. The Commission found that the mitigation measures required by Special Conditions 23 and 24 along with the public access trail and signage requirements (Special Condition 15 and 17) brought the project into conformance with Section 30244 of the Coastal Act.

Finally, there are two issue areas in which the applicant has made no changes. Namely, the applicant still refuses to include the 103 acres³ they own on the lower bench of the Bolsa Chica Mesa in this current application, and there is no mitigation proposed for the significant loss of raptor foraging habitat that the project would cause on the upper bench. In all of the Commission's previous consideration of the Bolsa Chica Mesa, beginning with the first LCP action in the mid 1980's, both the upper and lower benches of the Bolsa Chica Mesa as well as the Bolsa Chica Lowlands, have been before the Commission. Beginning with the applicant's first coastal development permit application for the proposed Brightwater development in November 2002 the applicant has not included its 103-acre ownership on the lower bench. The lower bench is a critical part of the Bolsa

³ The 103 acres of land on the lower bench owned by the applicant includes the 11.8-acre remnant portion of Parcel 2 that would be left over under VTTM 15460.. The majority of Parcel 2 is located on the upper bench (Exhibit 5). Therefore, the applicant has included in this application a proposal for development on 11.8 acres of the 103 acres of their lower bench ownership, through their request to create a separate legal parcel of this 11.8 land.

Chica ecosystem, and thus it is critical that the lower bench be included in the assessment of project impacts on the ecosystem. Despite numerous staff requests that the applicant include its lower bench holdings in the application for development of the upper bench and the slope between the upper and lower benches, the applicant has refused to do so, with the exception of the 11.8-acre portion of the existing Parcel 2, which lies primarily on the upper bench. The applicant is requesting that the Commission split off the lower bench portion of Parcel 2, making it a separate legal parcel. The applicant refuses to include its lower bench ownership in the current application because they wish to sell it to the Wildlife Conservation Board and in August 2004 entered into an agreement to sell it for \$65 million.

The applicant stated in a September 13, 2004 letter to staff that Hearthside Homes does not wish to include their lower bench holdings in the coastal development permit application because, "[a]mending our application to include the Lower Bench would expose Hearthside to the possibility of a Commission decision imposing a conservation easement and jeopardize the agreement between Signal Landmark and WCB" (Exhibit 6a). The applicant made the assumption about the imposition of a conservation easement over the lower bench based on the Commission's 2000 LCP suggested modification to do so in conjunction with allowing development on the upper bench with a reduced 100 ft. setback from the bluff edge, as explained in Section C of this staff report. If the applicant were to include the lower bench area in the application and the Commission indeed imposed a conservation easement over it, as staff would recommend, the applicant may not get \$65 million for the sale of the land, as the purchase price in the existing purchase-sale agreement is at market rate, based on the value of residential development not based on a more restrictive conservation land use. Because the applicant has refused to include the lower bench in the subject application, thereby preventing the Commission from assuring that it will be restricted to conservation land uses, the Commission cannot allow a reduced setback for development on the upper bench, as the applicant continues to propose. As conditioned, the applicant must submit a revised tentative tract map showing that the 11.8 portion of Parcel 2 that lies on the lower bench be connected to an adjacent parcel that will remain with the proposed VTTM 15460 that is before the Commission.

Seventy-five acres of raptor foraging habitat, the non-native annual grassland and ruderal vegetation that covers the majority of the project site, was being eliminated without mitigation under the previous application. The current application reduces the development footprint by approximately 9 acres and thus results in a reduction in the amount of annual grassland//ruderal vegetation being eliminated. Although the impact area has been reduced to 68 acres, this loss is a significant unmitigated loss of important habitat. Dr. John Dixon, Commission staff ecologist asserts that the Eucalyptus Trees would cease to function as ESHA were there not adequate foraging habitat nearby because many of the raptors that use the Eucalyptus trees for hunting perches and roosting or nesting sites forage in the wetlands, the coastal sage scrub along the bluff edge and the mesa grasslands being impacted by the proposed project. While not considered an environmentally sensitive habitat area within the meaning of Section 30107.5 of the Coastal Act, the non-native annual grassland and ruderal vegetation that covers the majority of the 105.3-acre project site is important foraging habitat for many species of raptors, including white-tailed kites (a Fully Protected Species), and several California Species of Special Concern (CSC) such as the northern harriers and burrowing

owls. This vegetation is also considered significant because it represents one of the last significant grasslands adjacent to a coastal wetland, making it an integral part of the wetland/upland ecosystem. Because of the importance of the non-native annual grassland/ruderal vegetation, the Department of Fish and Game recommended mitigation for the loss of this habitat at the project site at a ratio of 0.5 acres of preservation to 1.0 acres of loss. Following this recommendation the applicant should provide 34 acres of preserved grasslands. Although the applicant is not proposing to mitigate the loss of raptor foraging habitat, the Eucalyptus Tree and Burrowing Owl ESHA buffers can be used to partially mitigate this loss since the applicant is planning to restore this area partially with native grassland. However, the applicant's proposed buffer falls far short of the 34 acres needed to mitigate the loss of the non-native grassland. With the varying width 150 to 382 ft. (counting the permanently irrigated area) and counting even the non-grassland habitat, the applicant would have less than 30 acres. The Department of Fish and Game has stated that they would not give the applicant credit for non-grassland habitat and no credit will be given for any areas that are subject to any fuel modification. As conditioned to widened these burrowing owl buffers buffer and remove the restriction on the plant palette from all but the first 50 feet of the buffer closest to the homes, to plant the majority of the remainder of the buffer in native grassland species and to provide the remainder off-site of the 34 acres of native or annual grassland that cannot be provided on-site, consistent with the final approved final habitat management plan, the proposed project is consistent with the Coastal Act concerning the protection of raptor foraging habitat.

Areas of Remaining Major Controversy

Inadequate Buffer Between Eucalyptus Tree ESHA and Adjacent

Development. ~~The trees of the Eucalyptus Grove are used as nesting, roosting, and perching sites by many species of raptors, including white-tailed kites, red-tailed hawks, and great horned owls. Adequate buffers between habitat areas and development are essential in maintaining the viability of habitat areas. In order to provide adjacent foraging habitat and to prevent disturbance to nesting areas, staff continues to recommend a 328 foot (100-meter) buffer between the Eucalyptus Grove ESHA and the adjacent development. If grading occurs when raptors are nesting, an even larger buffer of 500 ft. (152 meters) should be provided around the nest during construction activities, as detailed in Section D, Biological Resources, of this staff report. The currently proposed Brightwater development project provides a varying width Eucalyptus Grove buffer ranging from 100 to 332 feet between the most landward trees and the proposed residential lots. However, the Commission notes that where the buffer is widest is at the easternmost portion of the site. There the majority of the Eucalyptus trees are located further down the fairly steep bluff face and the distance between the trees and the proposed residential lots represents a significant vertical distance. In this area the residential lots are set back only 100 ft. from the bluff edge but the lot is setback up to 382 feet from the northernmost Eucalyptus tree in one instance.~~

The Eucalyptus Tree ESHA Buffer Further Reduced by Fuel Modification

Requirements Activities Within ESHA Buffers. As stated above, the proposed Eucalyptus Tree ESHA buffer at 100 to 332 ft. in width is inadequate to protect the raptors from adjacent development and should be a minimum of 328 ft. (100

~~meters).~~ When the current application was submitted on January 21, 2005 the proposed Eucalyptus ESHA buffer was proposed at 150 to 382 ft. in width. The Burrowing Owl ESHA buffer is proposed at 150 ft (46 meters). The applicant revised the buffer due to the concerns of Orange County Fire Authority (OCFA). Because OCFA ~~is now requiring~~ subsequently required that the 50 ft. nearest the homes be permanently irrigated the applicant has removed this area from the habitat buffer (Exhibit 4). Although the applicant has been working with OCFA for months they do not have conceptual approval of their fire management program to date. An area that is permanently irrigated, containing a controlled plant palette and mowed, thinned, and pruned to protect adjacent development from fire damage is not planted or managed to protect the adjacent ESHA from disruption of its habitat value as required by Section 30240(b) of the Coastal Act. Therefore if these activities were to occur in the already inadequately sized Burrowing Owl ESHA buffer or the Eucalyptus ESHA buffer, the proposed project would be further inconsistent with the Coastal Act. The Commission notes that under the previous October 2004 project, OCFA still required the typical fuel modification activities, as well as the requirement of 100 ft. of permanent irrigation in addition to the normal requirement of 70 ft. of irrigated area between combustible structures and certain vegetation due to the presence of the Eucalyptus grove. These fuel modification requirements were imposed despite the fact that the applicant was also proposing to plant the area with native coastal prairie and coastal bluff scrub as well as provide other significant fire management mitigating features within the fuel modification area such as: a 12-ft wide paved all weather road with three 30 ft. wide paved access points (paseos) that was to also serve as a fire access road; a paved 30-space parking lot to also serve as a fuel break; a water feature within the fuel modification area with the construction of the series of 5 created wetlands and 1.3-acre detention basin; Class A construction of all roofs and the sprinklering of the 16 homes that were adjacent to the area where Fuel Modification Zone D encroached into the Eucalyptus grove. Therefore the Commission is not at all assured that OFCA will not require some or all the typical mowing, pruning, and thinning of the ESHA buffer area along with already controlling the plant palette to only certain very low growing natives.

With regards to the currently proposed Brightwater project, it is the opinion of the Commission's ~~staff ecologist~~ that limited fuel modification within a limited portion of the ESHA buffer, if it were first ~~widened~~ modified to be sufficiently protective, could be ~~allowed~~ found consistent with Section 30240 of the Coastal Act. If the ~~Eucalyptus Burrowing Owl~~ ESHA buffer is widened to ~~328164~~ 400 50 feet (400 50 meters) the applicant's proposed restricted plant palette and permanent, carefully monitored, drip irrigation system could be allowed only within the first 50 feet nearest the proposed residential lots. This area is called Zone B Ecotone Management area on the applicant's "Conceptual Plan Plant Palette for Open Space and ESHA Buffer" (Exhibit 4). ~~Temporary (3-5 years), above-ground irrigation could be allowed throughout the buffer for plant establishment. Mowing could also be allowed within the buffer in the 50 feet nearest the residential lots. The 50 foot wide area south of Zone B may also be mowed, if necessary but~~ However, within the Zone B Ecotone Management Area the plant palette would need to be unrestricted and must contain species appropriate to a native California

grassland community in coastal Southern California. No other fuel modification practices would be allowed within the ESHA buffers. During the April 14, 2005 hearing the Commission imposed further requirements on the fuel modification program as detailed in Section D.5 of these findings and as specified in Special Conditions 10 and 12.

Elimination of 68 Acres of Raptor Foraging Habitat Without Mitigation. The 105.3-acre project site is primarily vegetated with annual grasslands and ruderal vegetation along with several environmentally sensitive habitat areas. Although annual grassland/ruderal vegetation type is non-native, it nevertheless provides foraging habitat for many species of raptors, including white-tailed kites (a Fully Protected Species) and several California Species of Special Concern (CSC) such as northern harriers and the burrowing owls. The loss of this vegetation is also considered significant because it represents one of the last significant grasslands adjacent to a coastal wetland, making it an integral part of the wetland/upland ecosystem. The project as proposed and approved by the County of Orange provides no mitigation for this significant adverse impact. The Department of Fish and Game, in its comments on the project EIR recommended that the loss of annual grassland/ruderal vegetation be mitigated by preserving 0.5 acres of foraging habitat for each acre lost. Therefore 33.9 acres of habitat would need to be preserved. The proposed native grassland creation can be used to provide partial mitigation. However, with the applicant's proposed ESHA buffers the grassland area falls far short of this amount. Even counting the other habitat communities, including 0.41 acres of freshwater wetlands, the applicant would have less than 30 acres. Off-site opportunities for raptor foraging habitat mitigation however do exist.

Inadequate Burrowing Owl ESHA Buffer. The burrowing owl (*Athene cunicularia*) is a California Species of Special Concern (CSC), as designated by the California Department of Fish and Game. This bird hunts for prey over open areas and grasslands and typically nests in the abandoned burrows of rodents. Evidence of burrowing owl use of the site was documented in 2001-2002 and 2002-2003 and denoted "burrowing owl use area" by the applicant's biologist. Further, a raptor biologist with extensive knowledge of the Bolsa Chica Mesa has opined that wintering burrowing owls use the Bolsa Chica Mesa during most years. It is the opinion of the applicant that the bird does not reside on the project site, but only winters there. It is the opinion of the Commission's staff ecologist that the burrowing owl habitat on the upper bench constitutes an environmentally sensitive habitat area (ESHA) under the Coastal Act and therefore must be avoided. The applicant has revised their "burrowing owl use area" to exclude the ground squirrel burrows that were not observed being used by the owls citing that there are numerous nearby potential burrows without evidence of actual bird use. The applicant's revised "burrowing owl use area" omits one burrow, located in the slope of the vegetated gravel stockpile area, where the owl was seen once but vacated in favor of one of the other burrows. The applicant also recommends a Burrowing Owl ESHA buffer of 150 ft. (46 meters). Staff recommends that the Commission accept the revised burrowing owl use area as the extent of the burrowing owl ESHA. However, staff continues to recommend a 164 ft. (50 meter) buffer around

the Burrowing Owl ESHA. There is no justification for the applicant's reduced Burrowing Owl ESHA buffer. Residential development shall be prohibited in the Burrowing Owl ESHA buffer and the same provisions for fuel modification within the Eucalyptus ESHA buffer should be allowed within the Burrowing Owl ESHA buffer.

The applicant has stated that the October 2004 project was designed to be consistent with the Commission's November, 2000 action on the proposed Bolsa Chica Local Coastal Program (LCP). The applicant likewise compares the current project to the November 2000 LCP stating that the project is consistent with the Commission's action. The standard of review for the proposed project is the Coastal Act and not the Commission's action on the LCP since the LCP was never certified. However, even if the Commission's November, 2000 action did govern this action, as is discussed in Section C of this staff report, "Comparison of the Proposed Project With the 2000 Bolsa Chica LCP" the proposed project is not consistent with the Commission's 2000 action on the LCP in a number of significant provisions.

SUBSTANTIVE FILE DOCUMENTS: See Appendix A

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. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. 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.
5. 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. OPEN SPACE, HABITAT AND PARKS

**A. Open Space Restriction – Coastal Sage Scrub and Native Grassland
Habitat Restoration Area**

No development, as defined in Section 30106 of the Coastal Act, shall occur within the land identified as the habitat restoration area in the final habitat management plan approved by the Executive Director pursuant to Special Condition 10 (which lands are generally, but not fully, depicted in Exhibit 20) except for the following: habitat restoration and other development necessary to implement the final habitat management plan; fuel modification within those areas identified for fuel modification in the approved final fuel management plan pursuant to Special Condition 12 ; installation of utilities (only as approved by this permit); construction of water quality management structures (only as approved by this permit), grading (only as approved by this permit), public access trail and associated appurtenances and public access and interpretive signage (only as approved by this permit), and maintenance and repair activities pursuant to and in conjunction with the management and maintenance program detailed in Special Condition 4.

The following additional development may be allowed in the areas covered by this portion of this condition (1.A.) if approved by the Coastal Commission as an amendment to this coastal development permit or a new coastal development permit: habitat restoration beyond that listed above; maintenance, repair and upgrade of utilities; installation of water quality management structures and drains; and erosion control and repair.

The lands identified in this restriction shall be maintained in accordance with the final maintenance and funding programs approved by the Executive Director in accordance with Special Condition 4.

**B. Open Space Restriction - Southern Tarplant and Seasonal Pond
Environmental Protection Area**

No development, as defined in Section 30106 of the Coastal Act, shall occur within the Southern Tarplant and Seasonal Pond Environmental Protection Area as approved by the Executive Director in the final habitat management plan pursuant to Special Condition 10 (which land is generally, but not fully, depicted in Exhibit 12) except for the following: habitat restoration and other development necessary to implement the final habitat management plan; installation of the proposed underground water reservoir (only as approved by this permit); installation of interpretive signage (only as approved by this permit), maintenance and repair activities pursuant to and in conjunction with the management and maintenance program detailed in Special Condition 4.

C. Open Space Restriction - Eucalyptus Environmentally Sensitive Habitat Area

No development, as defined in Section 30106 of the Coastal Act, shall occur within the Eucalyptus Environmentally Sensitive Habitat Area (ESHA) except as the approved in the final habitat management plan approved by the Executive Director (which ESHA is generally, but not precisely, depicted in Exhibit 12).

D. Open Space Restriction – Burrowing Owl Environmentally Sensitive Habitat Area Buffer

No development, as defined in Section 30106 of the Coastal Act, shall occur within the Burrowing Owl Environmentally Sensitive Habitat Area (ESHA) Buffer as shown in the final habitat management plan approved by the Executive Director (which land is generally, but not fully, depicted in Exhibit 12) except for the following: habitat restoration and other development necessary to implement the final habitat management plan, grading (only as approved in this permit), irrigation (only as approved in this permit), fuel modification (only as approved in this permit), and the pedestrian trail and appurtenances (as approved in this permit).

2. OFFER TO DEDICATE IN FEE FOR OPEN SPACE, HABITAT ENHANCEMENT AND PUBLIC ACCESS PURPOSES

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, and in order to implement the permittee's proposal, the permittee shall submit to the Executive Director, for review and approval, a proposed document(s) irrevocably offering the dedication of fee title over the areas identified below to a public agency(ies) or non-profit entity(ies) acceptable to the Executive Director, for public access, passive recreational use, habitat enhancement, and public trail purposes, as appropriate based on the restrictions set forth in these special conditions. Once the documents irrevocably offering to dedicate the areas identified below are approved, and also PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit evidence that it has executed and recorded those documents, completing that offer to dedicate. The land shall be offered for dedication subject to the restrictions on the use of that land set forth in the special conditions of this permit, and the offer to dedicate shall reflect that fact. The offer shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed but subject to the OTD required by Special Condition 3. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording. The entirety of the following land shall be offered for dedication: those lands identified as Eucalyptus ESHA buffer and Burrowing Owl ESHA and buffer in the final habitat management plan approved by the Executive Director pursuant to Special Condition 10, which lands are designated, in that plan, to be populated with Coastal Sage Scrub and Native Grassland and the approximately 5-acre Eucalyptus grove.

3. OFFER TO DEDICATE TRAIL AND FUEL MODIFICATION EASEMENTS

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall execute and record document(s) in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to the homeowners association proposed in conjunction with the approval of the Brightwater development an easement for (1) public pedestrian and passive recreational use of the trail corridor as described in Special Condition 15 of this permit, and (2) fuel modification (as approved in the final fuel modification plan) and habitat restoration (as approved in the final habitat management plan) of the 100 foot wide area immediately south of the rear property lines of the residential lots that abut the native grassland and coastal sage scrub habitat restoration area,. The recorded document(s) shall include legal descriptions of both the permittee's entire parcel(s) and the easement areas. The recorded document(s) shall reflect that development in the offered area is restricted as set forth in the Special Conditions of this permit. The offer shall be recorded free of prior liens and encumbrances that the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording. This OTD shall be recorded prior to the OTD required by Special Condition 2. The applicant's proposal for the lands to be offered for a public trail is generally depicted on Brightwater project Development Plan, dated February 18, 2005. However, although the relationship of those lands to the residential property boundary is generally correct, the specific location of the lands will have to change commensurate with the change in the location of the residential property boundary, to accommodate the change in the ESHA buffer, as explained in Special Condition 15, Special Condition ~~10.B.1~~ and 10.B.4, and elsewhere in these conditions. The lands to be offered for fuel modification and habitat restoration purposes are generally shown on the Conceptual Plan OCFA Protection Zones and Program Description, dated April 5, 2005, but the locations depicted therein in must also be modified in accordance with the changes adopted in the final fuel modification plan and final habitat management plan approved pursuant to this permit.

The lands identified in this dedication shall be maintained in accordance with the final maintenance and funding program approved by the Executive Director in accordance with Special Condition 4.

4. ACCESS AND HABITAT MANAGEMENT AND MAINTENANCE

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall provide for the review and approval by the Executive Director a management and maintenance program for proposed public trail, habitat restoration and preservation areas, public facilities, associated structures and appurtenances for the foregoing and water quality management structures and associated appurtenances. The final program, which may be incorporated in whole or in part in the final habitat management plan, shall include the following:

1. IDENTIFY ALL ENTITIES RESPONSIBLE FOR MANAGEMENT AND MAINTENANCE. In general, the owner of the land shall maintain it until such time as any easement required to be offered by this permit is accepted or a fee dedication required by this permit is complete. Where an easement or a fee dedication is accepted by an entity in accordance with the terms and conditions of this permit, the holder of the easement or fee title shall be responsible for management and maintenance of the facilities within the easement or land area unless the arrangements between the original landowner and the fee or easement holder dictate that the original landowner shall retain all or part of said management and maintenance responsibility. All management and maintenance shall occur in accordance with the approved management and maintenance program.
2. IDENTIFICATION OF MANAGEMENT AND MAINTENANCE ACTIVITIES AND ASSOCIATED FUNDING PROGRAM. The management and maintenance program shall include identification of management and maintenance activities including, and funding program that will provide for the actual cost of:
 - i. maintenance and periodic repair and replacement of park facilities, trails and associated appurtenances including, but not limited to, landscaping, trail routes and surfaces, fences, benches, signage and interpretive displays, and appropriate domestic pet controls and services and,
 - ii. on-going habitat protection, restoration and maintenance as detailed in approved Final Habitat Management Plan approved by the Executive Director pursuant to Special Condition 10, including regular exotic plant removal, repair and maintenance of interpretive signs, and funding of public outreach programs, including resident education; and
 - iii. maintenance of drainage systems, water quality management structures and other devices required to protect on-site habitat and ocean waters.
3. LEGAL AUTHORITY. The program shall demonstrate the legal ability of the assigned entities to undertake the development and maintain said development in accordance with the requirements of this permit.

B. The permittee shall undertake development in accordance with the approved final program. Any proposed changes to the approved final program shall be reported to the Executive Director. No changes to the approved final program shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

5. BURROWING OWL SURVEY AND MITIGATION PLANS REQUIREMENT

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director, for review and approval, a burrowing owl survey and mitigation plans consistent with the "Burrowing Owl Survey Protocol and Mitigation Guidelines", prepared by the California Burrowing Owl Consortium, dated April 1993 and the "Staff Report on Burrowing Owl Mitigation", prepared by the California Department of Fish and Game (DFG), Environmental Services Division, dated September

25, 1995. Prior to submittal to the Executive Director the burrowing owl survey plan shall be reviewed and approved by DFG. The survey and mitigation protocol and guidelines include avoidance of impacts during the nesting and breeding seasons and shall be included in the required plans and reflected in the Construction/Development Phasing Special Condition of this permit.

B. The permittee shall undertake development in accordance with the approved final burrowing owl survey and mitigation plans. Any proposed changes to the approved burrowing owl survey and mitigation final plans shall be reported to the Executive Director. No changes shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

6. COVENANTS, CONDITIONS, AND RESTRICTIONS (CC&R'S), AND FINAL TRACT MAPS

A. Consistent with the applicant's proposal, the applicant shall establish covenants, conditions and restrictions (CC&R's), or an equivalent thereof, for the proposed residential lots to address ownership and management of all subdivision streets, roads, trails, parks, habitat restoration and preserve areas, environmentally sensitive habitat areas, fuel modification plan areas, common landscaped areas and water quality management plan facilities. The CC&R's shall reflect all applicable requirements of this coastal development permit, including but not limited to the limitations on the development of the park, trail and habitat restoration and preservation areas, and a prohibition on the use of rodenticides, as proposed by the applicant and as conditioned by this permit.

B. Subject to the review and approval of the Executive Director, the applicant shall, where feasible, consolidate proposed open space lots that are contiguous with one another and that are to be held by a common owner.

C. All areas to be owned and/or managed by the homeowners association pursuant to Special Conditions 2 and 3 of this permit shall be shown as lettered lots on the revised vested tentative tract map (VTTM) 15460, subject to the review and approval of the Executive Director.

D. As soon as a homeowner's association or similar entity comprised of the individual owners of the 349 proposed residential lots is activated, the applicant shall transfer title to the 2.5-acre Southern Tarplant and Seasonal Pond Environmental Protection Area.

E. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, and prior to recordation of any CC&R's, or tract maps associated with the approved project, proposed versions of said CC & R's and tract maps shall be submitted to the Executive Director for review and approval. The Executive Director's review shall be for the purpose of ensuring compliance with the standard and special conditions of this coastal development permit, including ensuring that, pursuant to paragraph A of this condition, the CC&Rs also reflect the ongoing restrictions and obligations imposed by these conditions. The restriction on use of the land cited within the special conditions of this permit shall be identified on the Tract Map, where appropriate, as well as being placed in the CC & R's.

F. Simultaneous with the recording of the final tract map(s) approved by the Executive Director, the permittee shall record the covenants, conditions and restrictions approved by the Executive Director, against the property. The applicant shall submit a recorded copy of the covenants, conditions and restrictions within 30 days of their recordation to the Executive Director. The CC & R's may not be modified in a manner that would render them inconsistent with any provision of with any provision of this permit or of any plan or other document approved by the Executive Director pursuant to the conditions of this permit. Any change that would not create a direct conflict between the CC&R's and the provisions of this permit or of any approved plan or other document shall be submitted to the Executive Director, in writing, for a determination as to whether such change requires approval of the Coastal Commission. The Executive Director shall have 90 days in which to communicate a determination to the Homeowners' Association. If, within that 90 days, the Executive Director indicates that Commission approval is required, no such change shall occur until such approval is secured. Otherwise, no Coastal Commission approval shall be required. The CC& R's shall indicate these restrictions within their terms.

7. CONSTRUCTION/DEVELOPMENT PHASING

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a revised, final construction/development phasing plan for review and approval by the Executive Director, which shall conform to the following:

1. All development, including removal of burrowing owl foraging habitat and grading, shall be consistent with the requirements of the Burrowing Owl Survey and Mitigation Plan Requirement Special Condition of this permit. In addition, during the period of raptor nest initiation (January 1 through April 30), no grubbing, grading or other development activity shall take place within 328 feet (100 meters) of the Eucalyptus ESHA. If raptors are nesting, no grading or other activities shall occur within 500 feet of any active nest. The applicant shall initiate the Coastal Sage Scrub and Native Grassland Creation Program as approved pursuant to Special Condition 10 of this permit, as soon as practical following final grading within the area to be restored. The applicant shall carry out the restoration work in an expeditious manner in order to reestablish raptor foraging habitat in the affected area. As proposed by the applicant, no rodenticides shall be used during site preparation, grading or construction.
2. Grading of the public trail shall occur during initial grading operations, which shall be carried out consistent with the provisions for the protection of the existing ESHA. The construction of the public trail and initiation of the Coastal Sage Scrub and Native Grassland Creation Program as approved pursuant to Special Condition 10 of this permit shall be concurrent with the construction of the main roads and streets of the subdivision. The public trail shall be completed and open for public use, including the installation of habitat protection fencing pursuant to the approved final habitat management plan and the installation of signage and interpretive displays consistent with the public access, recreation improvements and signage

special condition of this permit, concurrently with the opening of the first model home for public viewing.

B. The permittee shall undertake development in accordance with the approval final construction/development phasing plans. Any proposed changes to the approved final construction/development phasing plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

8. EROSION CONTROL PLAN

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and approval of the Executive Director, a final Erosion Control Plan that conforms to the requirements of this permit, and has been approved by the County of Orange. The Erosion Control Plan shall include written descriptions and site plans, as necessary, to describe the non-structural and structural erosion, sediment and polluted runoff controls to be used during project construction consistent with the requirements of this permit. The Erosion Control Plan shall incorporate the project Storm Water Pollution Prevention Plan and any additional construction phase erosion, sedimentation and polluted runoff control features of the project. The permittee shall undertake development in accordance with the approved final plan. In addition, the Erosion Control Plan shall include the following requirements:

1. The plan shall delineate the areas to be disturbed by grading or construction activities and shall include any temporary access roads, staging areas and stockpile areas. The natural areas on the site shall be clearly delineated on the project site with fencing or survey flags.
2. The plan shall specify that should grading take place during the rainy season (October 16 – April 15) the permittee shall install or construct temporary sediment basins (including debris basins, desilting basins or silt traps), temporary drains and swales, sand bag barriers, silt fencing, stabilize any stockpiled fill with geofabric covers or other appropriate cover, install geotextiles or mats on all cut or fill slopes and close and stabilize open trenches as soon as possible. Major structural erosion measures such as basin traps or swales shall be required on the project site prior to or concurrent with the initial grading operations (or, if grading begins during the dry season, prior to the onset of the rainy season) and maintained throughout the development process to minimize erosion and sediment from runoff waters during construction. Smaller temporary erosion controls, such as sand bag barriers, silt fencing and geofabric covers shall be stockpiled for the duration of the rainy season and these erosion control measures shall be in place any time the probability of rain in the five day forecast is 40% or greater. All sediment should be retained on-site unless removed to an appropriate approved dumping location either outside the coastal zone or to a site within the coastal zone permitted to receive fill.
3. The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days during the dry season, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils and cut and fill slopes with geotextiles and/or

mats, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume. If grading or site preparation cease during the rainy season, the requirements under Condition 8.A.2 above must be maintained until the project is completed or the site restored to original conditions.

4. The plan shall include requirements for a third party of construction phase erosion sedimentation and pollution control features of the project. Inspections shall determine if the project is in compliance with the Erosion Control Plan and report the results to the contractors for management of the erosion, sedimentation and pollution control features of the project. Work shall be signed by a registered civil engineer.
 - a. All structural, construction phase BMPs shall be inspected, cleaned and repaired, as needed prior to the onset of the storm season, no earlier than August 1 and no later than October 1st of each year; after every major storm event (greater than 0.75 inch of precipitation); and at least monthly throughout the construction phase.
 - b. Annual reports containing data and analytical assessment of data, shall be submitted in July of each year to the Executive Director of the Commission and to the Santa Ana Regional Water Quality Control Board during the construction phase.

9. **CONSTRUCTION STAGING AREA AND FENCING**

A. All construction plans and specifications for the project shall indicate that impacts to wetlands and environmentally sensitive habitats shall be avoided and that the California Coastal Commission has not authorized any impact to wetlands or other environmentally sensitive habitat. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit a final construction staging and fencing plan for the review and approval of the Executive Director which indicates that the construction in the construction zone, construction staging area(s) and construction corridor(s) shall avoid impacts to wetlands and other sensitive habitat consistent with this approval. The plan shall include the following requirements and elements:

1. Wetlands and any environmentally sensitive habitats shall not be affected in any way, except as specifically authorized in this permit.
2. Prior to commencement of construction, temporary barriers shall be placed at the limits of grading adjacent to wetlands and all ESHA. Solid physical barriers shall be used at the limits of grading adjacent to all ESHA. Barriers and other work area demarcations shall be inspected by a qualified biologist to assure that such barriers and/or demarcations are installed consistent with the requirements of this permit. All temporary barriers, staking and fencing shall be removed upon completion of construction.
3. No grading, stockpiling or earth moving with heavy equipment shall occur within ESHA, wetlands or their designated buffers, except as noted in the final habitat management plan approved by the Executive Director pursuant to the following condition.
4. No construction equipment shall be stored within any ESHA, wetlands or their buffers.
5. The plan shall demonstrate that:

- a. Construction equipment, materials or activity shall not occur outside the staging area and construction zone and corridors identified on the site plan required by this condition; and
 - b. Construction equipment, materials, or activity shall not be placed in any location that would result in impacts to wetlands or other sensitive habitat;
6. The plan shall include, at a minimum, the following components:
- a. A site plan that depicts:
 - i. limits of the staging area(s)
 - ii. construction corridor(s)
 - iii. construction site
 - iv. location of construction fencing and temporary job trailers with respect to existing wetlands and sensitive habitat
 - v. Compliance with 'General Construction Responsibilities/ Protection of Water Quality' Special Condition of this coastal development permit.

B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

10. FINAL HABITAT MANAGEMENT PLAN

A. The permittee shall revise, implement and comply with all the habitat creation, restoration and preservation measures for the project site as approved by the Executive Director in the final Habitat Management Plan pursuant to this special condition.

B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit a revised, final habitat management plan for review and approval by the Executive Director. Prior to submittal of the final habitat management plan to the Executive Director, it shall be reviewed and approved by the California Department of Fish & Game and U.S. Fish & Wildlife Service. The final habitat management plan shall substantially conform to the habitat management plan dated January 17, 2005 as modified and specified below and by the requirements of the "Revised Tentative Tract Map and Plans" special condition of this permit. The final habitat management plan shall be modified as follows:

1. Eucalyptus ESHA Buffer Width –The Eucalyptus ESHA buffer between the Eucalyptus ESHA and the residential lots shall be of a variable width ranging from 150 to 382 feet, as submitted by the applicant at the April 14, 2005 Commission hearing and approved by the Commission, except that there shall also be a 500 foot buffer between construction activities and active nests a minimum width of 328 feet (100 meters) as measured from the northern and western edge of the defined Eucalyptus Grove ESHA, as depicted in Figure 1 of Exhibit 20. The Eucalyptus grove ESHA buffer shall be planted consistent with the approved final habitat management plan as modified by the special conditions of this permit.

2. Eucalyptus ESHA Buffer Plant Palette – The proposed restricted coastal sage scrub and native grassland creation plant palette shall only be allowed within the fifty (50) feet closest to the rear lot lines of the residential lots. A revised plant palette shall be submitted for the remaining Eucalyptus ESHA Buffer. For areas on the relatively flat mesa top, the plant palette shall contain species appropriate to a native California grassland community in coastal Southern California. For areas on the relatively steep bluff faces, the plant palette shall contain species appropriate to coastal Southern California coastal sage scrub, coastal bluff scrub communities, or additional native California grassland vegetation.
3. Irrigation and Other Fuel Modification Activities Within the Eucalyptus ESHA Buffer – ~~Permanent, in ground irrigation shall be allowed within the Eucalyptus ESHA buffer area only within the 50 foot area closest to the rear lot lines of the proposed residential lots. Within the 100 foot area closest to the rear, periodic mowing (every 3 to 5 years) may be allowed in the native grassland. If needed for initial plant establishment, temporary, above ground irrigation (3-5 years) may be allowed within the Eucalyptus ESHA buffer area beyond 50 feet of the residential lot lines. Only drip irrigation, designed to mimic the ambient rainfall condition, shall be allowed within the Eucalyptus ESHA buffer, and shall only be allowed within the fifty feet closest to the rear lot lines of the residential lots (Fuel Mod Zone B). As proposed by the applicant, the drip irrigation system shall be carefully monitored and adjusted if necessary to avoid adverse impacts, including but not limited to, attraction of Argentine ants. No other fuel modification activities may, including mowing, shall be allowed to take place within the 328 foot (100 meter) Eucalyptus ESHA buffer.~~
4. Burrowing Owl ESHA Buffer - The Burrowing Owl ESHA as depicted on Figure 1 Exhibit 20, shall be surrounded by a vegetated buffer measuring no less than 164 feet (50 meters). The plant palette for the Burrowing Owl ESHA buffer shall be revised to contain species appropriate to a native California grassland community in coastal Southern California areas on the relatively flat mesa top, and for areas on the relatively steep bluff faces, the plant palette shall contain species appropriate to coastal Southern California coastal sage scrub, coastal bluff scrub communities, or additional native California grassland vegetation. The buffer area shall be planted consistent with the plant palette approved herein. Only drip irrigation, designed to mimic the ambient rainfall condition, shall be allowed within the Burrowing Owl ESHA buffer, and such irrigation shall only be allowed within the fifty feet of ESHA buffer closest to the rear lot lines of the residential lots (Fuel Mod Zone B). As proposed by the applicant, the drip irrigation system shall be carefully monitored and adjusted if necessary to avoid adverse impacts, including but not limited to, attraction of Argentine ants. Grading for the removal of the existing stockpile of crushed concrete material shall also be allowed. No other fuel modification activities may be allowed to take place within the 164 foot (50 meter) Burrowing Owl ESHA buffer. Only minor grading associated with the construction of the approved trail, approved water quality treatment facilities or the removal of existing roads for habitat creation and restoration purposes shall be allowed.

5. Grading Adjacent to Eucalyptus ESHA - There shall be no grading within 500 feet of any occupied nest within of the Eucalyptus ESHA during the breeding season (considered to be from February 15 through August 31).
6. 2.5-acre Southern Tarplant and Seasonal Pond Environmental Protection Area - The habitat management plan shall be modified to include the proposed 2.5-acre Southern Tarplant and Seasonal Pond Environmental Protection Area as proposed by the applicant. The plan shall include any needed minor grading, including staging, staking, fencing and timing of activities, identification of and non-mechanical methods of removal of any existing weeds and undesirable plants, a plant palette, planting methods including any needed temporary above ground irrigation and initial and long-term monitoring and maintenance of the habitat preserve area. No in ground permanent irrigation shall be allowed in the preserve. The plan shall include a 100-foot buffer around the Los Patos wetland, planted with appropriate plants from the approved plant palette and a 50-foot buffer around the Southern Tarplant, planted with appropriate plants from the approved plant palette and shall be fenced/vegetated on the outer edges to prevent access to the preserve area by domestic pets and humans. The plan shall ensure that no development, with the exception of the removal by hand of any undesirable plants, as approved by the Executive Director, shall occur within the Los Patos wetlands. Further, the removal or relocation of any Southern Tarplant shall be prohibited. The plan shall include a maintenance and monitoring plan for the preserve area. The initial monitoring of the preserve area shall be for a period of no less than five years and shall be in substantial conformance with the monitoring plan, as approved by the Executive Director, for the Coastal Sage Scrub and Native Grassland Creation area. The Southern Tarplant and Seasonal Pond Environmental Protection Area shall be monitored and maintained pursuant to a long-term monitoring and maintenance plan to be approved by the Executive Director as required by this special condition. The long-term monitoring and maintenance plan shall ensure that the preserve area will be monitored at least annually after the initial five-year monitoring period and that all plantings are maintained in good growing condition. The Southern Tarplant and Seasonal Pond Environmental Protection Area shall also be subject to the perpetual management and maintenance provisions specified below. The homeowners association shall bear responsibility for the management of the Southern Tarplant and Seasonal Pond Environmental Protection Area as approved in this special condition and the other applicable special conditions of this permit.
7. The permittee shall submit a final report prepared by the biological monitor to the Executive Director, for review and approval, within 60 days of project completion that includes: as-built construction drawings with an overlay of wetlands and coastal sage scrub that were avoided, photographs of CSS and wetland areas avoided, and other relevant summary information documenting that development, including habitat restoration and preservation measures are in general compliance with all conditions of this permit.

8. The permittee shall install protective fencing or barriers along any interface with developed areas and/or use other measures, designed in consultation with the Department of Fish and Game and the Fish and Wildlife Service and approved by the Executive Director, to deter human and pet entrance into all restored and preserved wetland, CSS and ESHA buffer areas and the area of the lower bench to be sold to the State of California. Plans for fencing and/or other preventative measures shall be submitted to the Executive Director for review approval prior to the issuance of the coastal development permit in accordance with the 'Construction Staging Area and Fencing' special condition of this permit.
9. The permittee shall implement a perpetual management, maintenance and monitoring plan for all the habitat management plan areas. The plan shall include the monitoring activities of the final habitat management plan as approved by the Executive Director and shall also include a perpetual management, maintenance and monitoring plan beyond that specified in the "Conceptual Coastal Sage Scrub and Native Grassland Creation and Monitoring Plan for ESHA Buffer Associated with Brightwater Project, Orange County, CA," prepared by Glen Lukos and Associates, dated January 17, 2005. The permittee shall also establish a non-wasting endowment in favor of the State of California, for an amount determined in consultation with the Resources Agencies and approved by the Executive Director, to secure the ongoing funding for the perpetual management, maintenance and monitoring of the habitat management plan area by an agency, non-profit organization, or other entity approved by the Executive Director. The amount of the non-wasting endowment shall be based on an analysis of the amount needed to maintain and monitor the habitat creation and preservation areas as described above and approved in the final habitat management plan of this permit. The endowment shall be funded either by an initial contribution by the developer or by a combination of an initial contribution by the developer and annual payments assessed on each dwelling unit (adjusted annually consistent with the Consumer Price Index) for each residential unit. Until a qualified management entity, subject to the review and approval of the Executive Director, is identified, the permittee shall be responsible for such management.
10. The permittee shall develop a resident education program in conjunction with the Orange County Animal Control office. The program shall advise residents of the potential impacts to sensitive plant and animal species and the potential penalties for taking (i.e. disturbing or harming) such species. The program shall include, but not be limited to, information pamphlets and signage included as part of the interpretive program within the habitat management plan area. Informational pamphlets shall be distributed to all residences on a regular basis (e.g. once a year). At a minimum, the program shall include the following topics: occurrence of the listed and sensitive species in the area, their general ecology, sensitivity of the species to human activities, impacts from free-roaming pets (particularly domestic and feral cats), legal protection afforded to the listed and sensitive species, penalties for violations of Federal and State laws, reporting requirements, the importance of the presence of large predators such as the coyote in maintaining the habitat, and project features designed to reduce the

impacts to these species and promote the species continued successful occupation of the preserved areas. The resident education program shall also explain the prohibition on the use of rodenticides and its importance.

11. Restoration activities, such as weed control and removal and planting and seeding shall not take place within 500 feet of active raptor nests during the breeding season unless the permittee provides a biological monitor who will ensure no impacts to raptors occur and the permittee must obtain prior written approval from the Department of Fish and Game and the Fish and Wildlife Service. Prior to initiation of such activities, the permittee shall submit written evidence of Department of Fish and Game and the Fish and Wildlife Service approval for the review and approval of the Executive Director.
12. Appropriate controls and services that prohibit the entry of domesticated animals into habitat restoration areas shall be identified and implemented. In addition, appropriate controls and services shall be identified and implemented for areas where domestic animals, only on leashes, may be permitted, such as trails.
13. The existing approximately 5-acre Eucalyptus grove, which is home to the Eucalyptus tree ESHA, shall be included within the habitat management plan area. The ESHA shall be restored and managed to provide undisturbed perching, roosting, and nesting habitat for birds of prey. To this end, the ESHA shall be fenced and monitored to exclude humans and vehicles from traversing the ESHA along its axis. However, an alternative public trail route shall be established to link with trails on the mesa and which may cross the ESHA in a location that has the fewest negative impacts. The alternative trail route shall be conspicuously posted, shall provide the public with information on the habitat restoration purposes of the fencing and shall be maintained.

C. The permittee shall undertake development in accordance with the approved final plans. As in all cases, this requirement continues to apply to successors in interest, including purchasers of individual residential lots, and their ongoing management of their property. Any proposed changes to the approved final plans or phases of construction shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

11. LANDSCAPE REQUIREMENTS

A. All areas disturbed and/or denuded by the development and not approved for hardscape or other development that is incompatible with re-vegetation shall be re-vegetated and maintained to protect habitat and to prevent erosion into habitat areas, wetlands, and coastal waters. Such re-vegetation shall occur in accordance with the requirements of the special conditions of this permit. All required plantings shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials that conform to the requirements of the special conditions of this permit.

B. All landscaping on the private residential lots within VTTM 15460, within the proposed local parks and along the streets and roads of the subdivision, (including temporary erosion control and final landscaping) for the entire development covered by this permit shall be of plants native to coastal Orange County and appropriate to the natural habitat type or non-native, non-invasive, low water use plants on the "Approved Plant List for Non-Habitat/Non-Buffer Areas" to be approved by the Executive Director pursuant to this special condition. No plant species listed as problematic and/or invasive by the California Native Plant Society, California Exotic Pest Plant Council, or as may be identified from time to time by the State of California, or any plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized anywhere within the proposed development area, including the landscaping within the private residential lots of VTTM 15460, along the streets and roads and the park areas. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, subject to the review and approval of the Executive Director, a plant list for non-habitat/non-buffer areas that complies with the above criteria. Once approved by the Executive Director this list shall be known as the "Approved Plant List for Non-Habitat/Non-Buffer Area" and shall be recorded in the covenants, conditions and restrictions of the homeowners association pursuant to Special Condition 6 of this permit. Only those plants on the Approved Plant List for Non-Habitat/Non-Buffer Areas" shall be planted and allowed to grow within the non-habitat/non-buffer areas of the project.

C. All irrigation, both temporary and permanent, shall be prohibited in wetlands and the Eucalyptus ESHA, Burrowing Owl ESHA, and Southern Tarplant ESHA, except where explicitly permitted by the Executive Director on a case-by-case basis for restoration purposes only. With the exception of the lots abutting the Eucalyptus or Burrowing Owl ESHA buffers, permanent, in-ground irrigation may be allowed on private residential lots, common area non-habitat non-buffer areas, and as approved in the final Habitat Management Plan. Landscaping on lots abutting the Eucalyptus or Burrowing Owl ESHA buffers shall use only drip irrigation regulated by a timer system. The requirement for drip irrigation on these lots shall be specified in the CC& Rs. In all other areas, only temporary, above ground irrigation may be allowed to establish the plantings, where needed, and if approved in this permit. Common area irrigation must further comply with the following provision:

Irrigation allowed in the non-habitat/non-buffer areas shall have automatic rain gauges connected to irrigation controllers and shall be installed and maintained by the homeowners association in the common areas. The rain gauges shall monitor rainfall volume and interrupt watering schedules in response to site-specific rainfall conditions. Rain gauges shall be located adjacent to controllers to facilitate monitoring by maintenance personnel. Use of drip and efficient low-flow irrigation emitters to minimize irrigation requirements and over-irrigation shall also be used where appropriate.

D. For visual purposes, prior to the issuance of the coastal development permit, a visual enhancement plan shall be submitted for review and approval by the Executive Director along with written evidence of review and approval from the Manager, PFRD/HBP Program Management and Coordination, in consultation with the Manager, Environmental

and Project Planning Division of the County of Orange, that is designed to soften, through selective placement of primarily native vegetation, the visual impact of large expanses of wall or roof within residentially developed portions of the site that would be visible from significant vantage points along the proposed trail and parks and from off-site publicly owned open space and recreation areas and public trails.

E. Temporary Erosion Control Measures. See 'Erosion Control' Condition.

F. Timing of Final Landscaping. Final landscaping guidelines for all areas outside the habitat management plan area shall be completed and submitted for review and approval by the Executive Director prior to the issuance of the coastal development permit. The guidelines shall state that all common and private area landscaping for each phase shall be installed prior to the issuance of the first certificate of use and occupancy for that phase and shall have a licensed landscape architect or licensed landscape contractor certify that it was installed in accordance with the approved plan. The guidelines shall also state that landscaping of each residential lot shall be completed within a timely manner, pursuant to the timelines of the CC& Rs. The guidelines shall be consistent with the requirements of this coastal development. The timing of re-vegetation efforts within the habitat restoration areas identified in the revised final Habitat Management Plan shall be as indicated in the revised final Habitat Management Plan approved by the Executive Director.

G. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit landscape palette lists to be incorporated into the landscaping guidelines detailed above subject to the review and approval of the Executive Director, that identify: 1) the native plant species that may be planted in the development; 2) a list of the non-native, non-invasive common garden plant species that may be planted on the residential lots; 3) the non-native, non-invasive turf that may be planted within approved turf areas in the two local parks, and 4) the invasive plant species that are prohibited from use anywhere within the development. The landscape palette for the development shall be consistent with the Approved Plant List for Non-Habitat/Non-Buffer Areas as reviewed and approved by the Executive Director. These lists shall remain available for consultation and shall be recorded in the covenants, conditions and restrictions as required by Special Condition 6. Additions to or deletions from these lists may be made by the Executive Director of the California Coastal Commission, in consultation with the project's restoration ecologist and the Department of Fish and Game and the Fish and Wildlife Service. No deviations from the list shall occur in the plantings on the site without an amendment to this permit or a new coastal development permit unless the Executive Director determines that no amendment or new permit is required.

H. PRIOR TO SUBMITTAL OF FINAL LANDSCAPE PALETTE LISTS, LANDSCAPE PLANS, AND TEMPORARY EROSION CONTROL PLANS, the permittee shall obtain the review and approval of those lists and plans by the California Department of Fish and Game, the United States Fish and Wildlife Service and the Orange County Fire Authority. Written evidence of the required reviews and approvals shall be submitted with the lists and plans submitted to the Executive Director.

I. CONCURRENT WITH SUBMITTAL OF ALL PLANS IDENTIFYING LANDSCAPING, the permittee shall provide an analysis of each plan submitted, prepared

by a qualified biologist, which documents that the landscaping complies with all of the landscaping and habitat management requirements of this permit.

J. Monitoring. Five years from the date of the completion of the installation of landscaping of the common areas as required in these special conditions, the permittee shall submit, for the review and approval of the Executive Director, a landscape monitoring report, prepared by a licensed landscape architect or qualified resource specialist, that certifies the on-site landscaping is in conformance with the requirements of the special conditions of this permit and the landscape plans approved pursuant to the special conditions of this permit. The monitoring report shall include photographic documentation of plant species and plant coverage. If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the permittee, or successors in interest, shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The revised landscaping plan must be prepared by a licensed landscape architect or a qualified resource specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan. The permittee or successor in interest shall implement the supplemental landscaping plan approved by the Executive Director and/or seek an amendment to this permit if required by the Executive Director.

12. REVISED FUEL MODIFICATION PLAN REQUIREMENTS

A. All fuel modification shall be consistent with the requirements of the final Habitat Management Plan approved by the Executive Director pursuant to Special Condition 10 and the final fuel management plan approved by the Executive Director pursuant to subpart B of this condition, which plan is conceptually described in the "Conceptual Plan OCFA Protection Zones and Program Description" for the Brightwater development project, prepared by FORMA, dated April 5, 2005. Proposed and future residential and appurtenance structures shall be set back a sufficient distance from proposed habitat restoration and preservation areas such that there will be no vegetation pruning, thinning or clearance or mowing required by the relevant fire authority (e.g. Orange County Fire Authority) within the ~~328-foot (100 meters)~~ 150 to 382 foot Eucalyptus ESHA buffer, the 100 foot (30.5 meters) wetland buffers, the 164 feet (50 meters) Burrowing Owl ESHA buffers, or the 50 foot (15.2 meters) Southern Tarplant ESHA buffer, other than as specifically allowed by the final Habitat Management Plan approved by Special Condition 10 of this permit. Prior to submittal of the final fuel modification plan to the Executive Director, but following review and approval of the final fuel modification plan and the final habitat management plan by the Orange County Fire Authority (OCFA) pursuant to Special Condition 10, the applicant shall submit the final fuel modification plan to the California Department of Fish and Game (DFG) for their review and written approval. This requirement shall not result in any reduction of restored and preserved habitat area or public access opportunities.

B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit a final fuel management plan for the development for review and approval by the Executive Director, which plan shall be consistent with the requirements outlined above and in the special conditions of this permit. The final fuel management

plan required after approval by the Executive Director, shall include a statement that any future changes to the plan, including any changes required by the relevant fire authority or other resource agencies, shall be reported to the Executive Director of the Coastal Commission, and shall require an amendment to this permit or a new coastal development permit prior to implementation of those changes unless the Executive Director of the Coastal Commission determines that no amendment or new permit is required.

C. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

D. For purposes of this permit, this condition shall serve as notification to present and future property owners that certain structures and areas of land are subject to special fuel treatment requirements that are specified in the final fuel management plan approved by the Orange County Fire Authority and the Executive Director of the Commission. Among those requirements is a requirement that residential structures facing upon native restoration or open space areas incorporate building construction features consistent with Orange County Fire Authority guidelines for construction of structures within special fire hazard areas. Furthermore, there is a prohibition on the placement of combustible materials in the rear yards of the residential lots that abut open space areas. Proposed and future development shall conform to the requirements of the approved final fuel management plan.

13. LIGHTING

A. All lighting within the development shall be directed and shielded so that light is directed away from wetlands, and other habitat and buffer areas. Floodlamp shielding and/or sodium bulbs shall be used in developed areas to reduce the amount of stray lighting into native restoration and preservation areas. Furthermore, no skyward-casting lighting shall be used. The lowest intensity lighting shall be used that is appropriate to the intended use of the lighting. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and approval of the Executive Director, a lighting plan to protect the wetlands, and other habitat and buffer areas from light generated by the project. The lighting plan to be submitted to the Executive Director shall be accompanied by an analysis of the lighting plan prepared by a qualified biologist which documents that it is effective at preventing lighting impacts upon adjacent wetlands and environmentally sensitive habitat and buffer areas.

B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

14. WALLS, FENCES, GATES, SAFETY DEVICES AND BOUNDARIES

A. Fences, gates, safety devices and boundary treatments within or controlling access to environmentally sensitive habitat areas (ESHA), except for the Southern Tarplant and Seasonal Pond Environmental Protection Area, shall be designed to allow the free ingress, egress and traversal of the habitat areas of the site by wildlife, including the coyote. Where the backyards of residences abut habitat buffer areas, there shall be walls, fences, gates, safety devices and boundary treatments, as necessary, to contain domestic animals within the residential development and along the approved trails and exclude such animals from sensitive habitat. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit final revised plans showing the location, design, height and materials of all walls, fences, gates, safety devices and boundary treatments for the review and approval of the Executive Director. Said plans shall be accompanied by an analysis of the wall, fence, gate and boundary treatment plan prepared by a qualified biologist that documents that the modified walls, fences, gates and safety barriers and boundary treatments will minimize the uncontrolled entry of domesticated animals into wetlands and environmentally sensitive habitat and buffer areas and allow for free ingress, egress and traversal of the wetland and habitat and buffer areas of the site by wildlife. The plans shall have received prior review and approval by the County of Orange, the California Department of Fish and Game and the United States Fish and Wildlife Service.

B. The permittee shall undertake development in accordance with the approval final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

15. PUBLIC ACCESS AND RECREATION REQUIREMENTS AND IMPROVEMENTS

A. Public Access Requirements

1. Streets, Roads and Public Parking

All streets, roads and parking shall be provided as described on the revised Brightwater project Development Plan, dated February 18, 2005. All publicly and privately maintained streets, roads and public parking areas identified on the above Development Plan shall be for public street purposes including, but not limited to, pedestrian, bicycle and vehicular access. Parking shall be provided as described in the applicant's January 21, 2005 coastal development permit application submittal. All streets, roads and public parking areas shall be open for use by the general public 24 hours per day, with the exception of standard limited parking restrictions for street sweeping/maintenance purposes. Long term or permanent physical obstruction of streets, roads and public parking areas shall be prohibited. All public entry controls (e.g. gates, gate/guard houses, guards, signage, etc.) and restrictions on use by the general public (e.g. preferential parking districts, resident-only parking periods/permits, etc.) associated with any streets or parking areas shall be prohibited.

2. Public Trail

No development, as defined in Section 30106 of the Coastal Act, shall occur within the public trail corridor as approved by the Executive Director pursuant to paragraph C of this condition except for the following development: grading and construction necessary to construct the trails and appurtenances (e.g. signs, interpretive displays, benches, trash receptacles, protective fencing), vegetation removal and planting, drainage devices, erosion control and repair, maintenance and repair activities pursuant to and in conjunction with the management and maintenance program detailed in Special Condition 4 and as required below. Development that diminishes permanent public access shall be prohibited. As proposed, the public pedestrian trail shall have a decomposed granite surface, shall be six feet in width and shall be located within twenty-five feet of the southern lot lines of the proposed residential lots. The public access trail shall be open to the general public for passive recreational use.

The lands identified in this restriction shall be maintained in accordance with the final maintenance and funding program approved by the Executive Director in accordance with Special Condition 4.

3. Local Parks

The two local parks shown on the revised Brightwater project Development Plan dated February 18, 2005 (which land is generally, but not fully, depicted on Exhibit 3), shall be open to the general public and maintained for passive park use. No development, as defined in Section 30106 of the Coastal Act, shall occur within the local parks as identified, except for the following development: grading and construction necessary to construct the parks, vegetation removal and planting, drainage devices, a proposed underground sewer lift station, erosion control and repair, maintenance and repair activities pursuant to and in conjunction with the management and maintenance of the parks.

B. The applicant shall ensure the construction of the public access and passive recreation improvements for park and trail purposes as described in the project description submitted by the applicant; in the January 21, 2005 submittal, as amended on February 18, and March 4, 2005, and as modified by the special conditions of this permit. All public access and passive recreation improvements for park and trail purposes shall be completed and open for use by the general public in accordance with the final construction phasing plan approved by the Executive Director in accordance with the 'Construction/Development Phasing' special condition of this permit. Furthermore, the facilities identified in this condition shall be maintained in accordance with the final maintenance and funding program approved by the Executive Director in accordance with the 'Access and Habitat Management and Maintenance' special condition of this permit.

C. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit revised, final, detailed plans of the public access and recreation improvements for park and trail purposes for review and approval by the Executive Director. All facilities constructed shall be sited and designed to minimize disturbance to adjacent habitat areas and to minimize the obstruction of public views. All facilities shall conform to the final habitat management plan approved by the Executive Director

pursuant to condition 10. Plans shall identify all structures including location, dimensions, materials and colors, and use as well as sign and interpretive display text and graphics, size and orientation. All plans shall be of sufficient scale and detail to verify the location, size and content of all signage, and the location and orientation, size, materials and use of structures during a physical inspection of the premises. Plans shall be consistent with the modifications required in the "Revised Tentative Tract Map and Development Plans" special condition of this permit. The final plans shall also comply with the following:

1. **Public Trail Plan:** The final plans submitted for review and approval to the Executive Director shall include a revised trail location and detailed trail improvement plans. The trail shall be located within 25 feet of the rear property line of the residential lots that abut the Eucalyptus and Burrowing Owl ESHA buffers as revised by Special Condition 10 of this permit. The detailed final trail improvement plans submitted shall be in substantial conformance with the February 18, 2005 plans identified above and as modified by the conditions of this permit. Said plan(s) shall include trail alignment, width, surface and materials; designated parking; designated overlooks; recreational appurtenances such as benches, refuse containers; fencing between the trail and habitat buffer areas; erosion control and footpath control plantings (such as cactus adjacent to sensitive areas).
2. **Sign Plan:** The final plans submitted for review and approval to the Executive Director shall include a detailed signage plan that directs the public to the public trail and public passive recreation opportunities on the project site. Signs shall invite and encourage public use of access opportunities and shall identify and direct the public to their locations, including the three proposed paseos leading to the public trail. Signage shall be visible from the Warner Avenue/Los Patos intersection area and Warner Avenue/Bolsa Chica Street intersection area and from internal circulation roads and parks. Signage shall include public facility identification monuments (e.g. public park name); community identification monuments (e.g. Brightwater Community); facility identification/directional monuments (e.g. location of amenities); informational signage and circulation; interpretive signs, and roadways signs. Signs shall also identify and explain key biological habitat preservation areas (Eucalyptus grove, burrowing owl and Southern Tarplant ESHAs and the two freshwater wetlands) and the significant prehistoric and historic cultural resources of the site and Bolsa Chica area, and identify restricted areas. Prior to submittal to the Executive Director, the final interpretive displays and interpretive signage shall be reviewed by and comments solicited from the interested agencies and groups as specified in the "Revised Tentative Tract Map and Development Plans" special condition and submitted to the Executive Director. Signs and displays not explicitly permitted in this document shall require an amendment to this permit unless the Executive Director determines that no amendment is required.

- D. The revised plans shall, prior to submittal to the Executive Director, be reviewed and approved by the County of Orange Department of Beaches, Harbors and Parks after receipt of comments from the interested agencies and groups specified above.
- E. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

16. WATER QUALITY

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a final revised Water Quality Management Plan (WQMP) for the post-construction project site. The WQMP shall be prepared by a registered civil engineer and shall include project plans, hydrologic calculations, and details of the structural and non-structural Best Management Practices (BMPs) that shall be included in the project.

The final plan shall be reviewed by the consulting engineering geologist to ensure conformance with geotechnical recommendations. The final plan shall demonstrate substantial conformance with the Water Quality Management Plan (WQMP) for Brightwater Unincorporated County of Orange, CA Vesting Tentative Tract Map 15460, dated (revised) January 21, 2005, prepared by The Keith Companies. The final plan shall also include detailed plans for the proposed rip-rap erosion control device proposed below the 66" stormdrain outlet. The rip-rap shall be modified as required in special condition 17 and shall be reviewed and approved by the State Lands Commission (SLC) for that portion of the development that lies on land owned by SLC. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

1. Best Management Practice Specifications

- a. Site Design, Source Control, and Treatment Control BMPs shall be designed to reduce, to the maximum extent practicable, the volume, velocity and pollutant load of storm water and nuisance flow leaving the developed site.
- b. Maintain, to the maximum extent practicable, pre-development peak runoff rates and average volume of runoff;
- c. Post-construction structural BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter the amount of storm water runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs.
- d. The structural BMPs shall be constructed prior to or concurrent with the construction of infrastructure associated with the development within Tentative Tract 15460. Prior to the occupancy of residential structures

approved by this permit, the structural BMPs proposed to service those structures and associated support facilities shall be constructed and fully functional in accordance with the final WQMP approved by the Executive Director.

- e. All structural and non-structural BMPs shall be maintained in a functional condition throughout the life of the approved development to ensure the water quality special conditions are achieved. Maintenance activity shall be performed according to the specifications in Water Quality Management Plan (WQMP) for Brightwater Unincorporated County of Orange, CA Vesting Tentative Tract Map 15460, dated (revised) January 21, 2005, prepared by The Keith Companies. At a minimum, maintenance shall include the following:
 - i. All structural BMPs shall be inspected, cleaned and repaired, as needed prior to the onset of the storm season, no earlier than August 1st or later than October 1st of each year; after every major storm event (greater than 0.75 inch of precipitation); and at least once during the dry season;
 - ii. Should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system and restoration of the eroded area. Should repairs or restoration become necessary, prior to commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work. If the Executive Director determines that an amendment or a new permit is required to authorize the work, no such work shall begin or be undertaken until it is approved in accordance with the process outlined by the Executive Director;
- f. Impervious surfaces, especially directly connected impervious areas, shall be minimized, and alternative types of pervious pavement shall be used where feasible;
- g. Irrigation and the use of fertilizers and other landscaping chemicals shall be minimized;
- h. Trash, recycling and other waste containers, as necessary, shall be provided in common areas throughout the development. All waste containers anywhere within the development shall be covered, watertight, and designed to resist scavenging animals.
- i. Runoff from all roofs, roads and parking areas shall be collected and directed through a system of structural BMPs including vegetated areas and/or gravel filter strips or other vegetated or media filter devices. The system of BMPs shall be designed to 1) trap sediment, particulates and other solids and 2) remove or mitigate contaminants through infiltration, filtration and/or biological uptake. The drainage system shall also be designed to convey and discharge runoff from the developed site in a non-erosive manner;

- j. Debris and other water pollutants removed from structural BMP(s) during clean-out shall be contained and disposed of in a proper manner;
 - k. Storm drain stenciling ("No Dumping, Drains to Ocean" or equivalent phrase) shall occur at all storm drain inlets in the development.
 - l. Informational signs around the residential development for homeowners and the public about urban runoff and the BMPs used on-site shall be provided at trailheads, and at centralized locations near storm drain inlets.
2. The applicant shall provide in the Final Water Quality Management Plan a description of the design of both the underground media filter system and the catch basin media filters, including the basis for selection of filter media, the expected performance of the media filters, the management, operation and maintenance of the media filter systems and contingency plans if the media filters do not meet performance expectations. The Final WQMP shall be submitted to the Executive Director for approval. The WQMP shall include diversion to the sanitary sewer for dry weather flows, including dry weather between rainstorms during the rainy season. In the event that the applicant cannot secure a long-term (life of the project) agreement with the local sanitary district to accept the dry weather flows, then efficient irrigation including smart sprinkler controllers shall be installed on all landscaped areas of the development.
 3. The applicable covenants, conditions and restrictions (CC&R's) shall require that all development be carried out in accordance with the Water Quality Management Plan approved by the Executive Director.

B. Water Quality Monitoring Plan

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and approval of the Executive Director, a final revised Water Quality Monitoring Plan, designed to evaluate the effectiveness of the project structural BMPs (both the underground and catch basin media filters) and it shall include a monitoring point at the outlet of the BMPs and prior to the effluent mixing with other runoff or receiving waters.

1. Water quality monitoring for the Brightwater Development shall characterize the effectiveness of project structural BMPs (both the underground and catch basin media filters) during at least 3 storms per year over a three year period.
 - a. The monitoring program shall be designed to determine if the two major structural BMPs are performing at least as well as indicated in the WQMP and to demonstrate that the filters are protecting coastal water quality to maximum extent practical at the time of construction.
2. The Water Quality Monitoring Plan shall document how the sampling procedures are designed to address the objectives above, including the selection of sampling procedures, the frequency of sampling and sampling locations. The Water Quality Monitoring Plan shall include a map of the proposed sampling locations, methods of analysis and expected reporting limits.

3. Baseline water quality data of the pre-development conditions of the constituents that will be monitored in the Stormwater Quality Monitoring Plan shall be collected.
4. Post-development monitoring shall be conducted for a minimum period of three (3) years, following completion of development approved by this permit. Annual reports containing data and analytical assessment of data, shall be submitted to the Executive Director of the Commission and to the Santa Ana Regional Water Quality Control Board for three (3) years after all construction approved by this permit has been completed.

C. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

17. REVISED TENTATIVE TRACT MAP AND PLANS

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and approval of the Executive Director, revised tentative tract map and final development plans, approved by the County of Orange, which conform with the requirements of the special conditions of this permit and indicate the final layout of all development including but not limited to lots, grading, streets, utilities and easements, infrastructure, water quality management system, trails, park and recreation facilities, signs, interpretive amenities, habitat restoration, landscaping, and residential and public facilities.

The revised tentative tract map and final development plans shall be modified to include, but not be limited to:

1. Reconfiguration of proposed subdivision such that no separate legal parcel is created on the lower bench of the Bolsa Chica Mesa. The proposed 11.8-acre residual portion of the existing Parcel 2 shown on VTTM 15460 shall either be connected to proposed Lot AH of VTTM 15460 or sold to the Wildlife Conservation Board for conservation purposes prior to recordation of the final tract map so that it is not part of Parcel 2 when Parcel 2 is subdivided. If the applicant chooses to connect the proposed residual parcel to Lot AH, the uses of the portion that was proposed to be a residual parcel shall be limited to open space, conservation, habitat protection, and passive recreational use for wildlife viewing, and it shall not be subject to the sort of management to which the remainder of parcel AH is subject.
2. Revision of the Burrowing Owl ESHA buffer such that it is a minimum of 164 feet (50 meters) in width as measured from the outer edge of the burrowing owl ESHA, as depicted in Figure 1 of Exhibit 20.
3. Revised public passive recreational signage and interpretive display plans to include interpretive information concerning the area's prehistoric and historic use by Native Americans, including but not limited to its use

in Cogged Stone manufacturing and distribution, and archaeoastronomy, and ORA-83's general location and eligibility as a State and National Historic Site due to this significance. The interpretive information must also indicate the presence of the house pits and other significant artifacts that were recovered at ORA-83 and the location of the curation facility where the artifacts may be viewed. The applicant shall submit a detailed signage and interpretive plan including the location and orientation, size, materials, and text of all signs and interpretive displays, consistent with the requirements of the "Public Access and Recreation Improvements and Signage" special condition of this permit. Prior to submittal of the signage and interpretive plan, the plan shall be reviewed by the County of Orange, Department of Beaches Harbors and Parks, the California Department of Parks and Recreation, Office of Historic Preservation, the Native American Heritage Commission, and the Native American group(s) with cultural ties to the area as determined by the Native American Heritage Commission. The applicant shall submit written evidence of submittal of the plan to the named agencies/groups and copies of any comments from the same. The review period shall be no less than thirty days.

4. Revisions to the proposed rip-rap structure located below the proposed 66-inch stormdrain. The rip-rap structure shall be revised such that it is primarily aligned in an east-west "bowl" design, along the existing dirt road below the discharge point, in order to disperse the storm flow over greater spillover area. The revised rip-rap plan shall be submitted to the SLC for review and written approval prior to submittal to the Executive Director.
5. Submittal of an off-site raptor foraging habitat mitigation plan providing 0.5 acres of native or non-native grasslands for each acre of existing non-native grassland loss on the project site not being planted in native grassland pursuant to the approved final Habitat Management Plan required in Special Condition 10 of this permit. The off-site raptor foraging habitat mitigation plan shall include a monitoring and maintenance plan and shall be maintained as mitigation for the life of the project being approved by this coastal permit. No credit shall be given for any native grassland created or preserved on-site that is subject to any fuel modification. The off-site raptor foraging habitat mitigation plan shall be submitted to DFG for their review and approval prior to submittal to the Executive Director. The off-site raptor foraging habitat mitigation area must be owned in fee by the permittee or the permittee must own an easement over the off-site mitigation area for habitat conservation purposes.

B. The permittee shall undertake development in accordance with the final tract map and development plans, as approved by the Executive Director. Any proposed changes to the approved final tract map or plans shall be reported to the Executive Director. No changes to the approved final plans or tract map shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

18. CONFORMANCE OF DESIGN AND CONSTRUCTION PLANS TO GEOTECHNICAL REPORT

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, quantitative slope stability analyses for the revised grading plan submitted with the current Brightwater development plan. Slope stability analyses, using shear strength parameters supported by direct shear tests undertaken on relatively undisturbed samples collected at the project site, shall be provided for all natural and artificial cut and fill slopes steeper than 2:1 (horizontal to vertical). Recommendations to ensure surficial stability shall also be included.

B. All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with all recommendations contained in AMEC Earth and Environmental, Inc. 2001, "Addendum geotechnical review, revised tract map, vesting tentative tract no. 15460, Brightwater Development Project, Upper Bolsa Chica Mesa, Orange County, California", 29 p. geotechnical report dated 26 September 2001 and signed by D. Dahncke (GE 2279) and S. T. Kerwin (CEG 1267); AMEC Earth and Environmental, Inc. 1997, "Geotechnical evaluation report, Phase I rough grading plans, Vesting tentative tract 15460, Bolsa Chica Mesa, South of Warner/Los Patos Avenues, Orange County, California", 60 p. geotechnical report submitted to the Koll Real Estate Group dated 1 December 1997 and signed by D. Dahncke (GE 2279) and S. T. Kerwin (CEG 1267); and Woodward-Clyde Consultants, 1987, "Evaluation of hazards due to fault surface rupture at Bolsa Chica Mesa and in the Bolsa Chica lowland, Orange County, California", report for Signal Landmark, Inc. and Orange County Environmental Management Agency dated October 1987 and signed by Woodward-Clyde Consultants, as modified as required by additional slope stability analyses for the revised project as required in paragraph A above. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the Executive Director's review and approval, evidence that an appropriate licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all of the recommendations specified in the above-referenced geologic evaluations approved by the California Coastal Commission for the project site.

C. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

19. ASSUMPTION OF RISK, WAIVER OF LIABILITY AND INDEMNITY

By acceptance of this permit, the permittee acknowledges and agrees (i) that the site may be subject to hazards from bluff retreat, erosion, and earth movement; (ii) to assume the risks to the permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to

unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

20. STRUCTURAL APPEARANCE - EXTERIOR BUILDING TREATMENT

All structures, walls and building exteriors that would be visible from the proposed on-site public trail within the native grassland and coastal sage scrub creation and preservation area, the trails within the Bolsa Chica Wetlands, or the trails or interpretive display area within the Bolsa Chica Ecological Reserve shall be finished in earth tones including muted shades of brown, gray and green, with no white, light or bright colors, except as minor accent features. A color palette board shall be submitted for the review and approval of the Executive Director pursuant to this special condition. The color shall be maintained throughout the life of the structure(s).

21. RESIDENTIAL AREA HEIGHT RESTRICTIONS AND HABITAT BUFFER SETBACKS

A. The heights of residential structures shall not exceed 35 feet above finished grade as shown on the final approved grading plan. Further, the heights of the residential structures that abut the Eucalyptus Grove ESHA buffer and the burrowing owl buffer shall not exceed the heights as proposed on the "Development Area (DA) 8 Site Plans", prepared by FORMA, dated May 2002, submitted November 6, 2002 in the Brightwater Development coastal development submittal package.

B. Structures (enclosed) and appurtenant buildings on residential lots shall be setback a minimum of 20 feet from the rear yard property line and shall be consistent with the above height limits. Rear yard walls on the residential lots abutting the Eucalyptus Grove and burrowing owl ESHA buffers shall not exceed a total height of six feet six inches above finished grade shown on the approved final grading plan. The lower two feet of the rear yard wall shall be of concrete material and the upper four feet six inches shall be of plexiglass material. Future development shall conform to these heights and setbacks unless such heights are changed by an amendment to this permit, unless the Executive Director determines that no amendment to this permit is required.

22. FUTURE DEVELOPMENT RESTRICTION

This permit is only for the development described in Coastal Development Permit No. 5-05-020. Pursuant to Title 14, California Code of Regulations, sections 13250(b)(6) and 13253(b)(6), the exemptions otherwise provided in Public Resources Code, section 30610(a) and 30610(b) shall not apply. Accordingly, any future improvements to the single family houses and other structures described in this permit, including, but not limited to, repair and maintenance identified as requiring a permit in Public Resources Code, section 30610(d) and Title 14, California Code of Regulations, sections 13252(a)-(b), shall require an amendment to Permit No. 5-05-020 from the Commission or shall require an

additional coastal development permit from the Commission or from the applicable certified local government, unless the Executive Director of the Commission determines that no amendment or new permit is required.

23. PROTECTION OF POTENTIAL ARCHAEOLOGICAL RESOURCES DURING GRADING

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and approval of the Executive Director an archeological monitoring and mitigation plan, prepared by a qualified professional, that shall incorporate the following measures and procedures:

1. Archaeological monitor(s) qualified by the California Office of Historic Preservation (OHP) standards, Native American monitor(s) with documented ancestral ties to the area appointed consistent with the standards of the Native American Heritage Commission (NAHC), and the Native American most likely descendent (MLD) when State Law mandates identification of a MLD, shall monitor all project grading;
2. The permittee shall provide sufficient archeological and Native American monitors to assure that all project grading that has any potential to uncover or otherwise disturb cultural deposits is monitored at all times;
3. If any cultural deposits are discovered during project construction, including but not limited to skeletal remains and grave-related artifacts, traditional cultural sites, religious or spiritual sites, or other artifacts, the permittee shall carry out significance testing of said deposits and, if cultural deposits are found by the Executive Director to be significant pursuant to subsection C of this condition and any other relevant provisions, additional investigation and mitigation in accordance with all subsections of this special condition;
4. If any cultural deposits are discovered, including but not limited to skeletal remains and grave-related artifacts, traditional cultural sites, religious or spiritual sites, or other artifacts, all construction shall cease in accordance with subsection B. of this special condition;
5. In addition to recovery and reburial, in-situ preservation and avoidance of cultural deposits shall be considered as mitigation options, to be determined in accordance with the process outlined in this condition;
6. If human remains are encountered, the permittee shall comply with applicable State and Federal laws. The permittee shall extend the existing reburial agreement with the Juaneno Band of Mission Indians regarding the treatment and disposition of prehistoric Native American human remains discovered on the project site, if any additional remains are discovered. Procedures outlined in the monitoring and mitigation plan shall not prejudice the ability to comply with applicable State and Federal laws, including but not limited to, negotiations between the landowner and the MLD regarding the manner of treatment of human remains including, but not limited to, scientific or cultural study of the remains (preferably non-destructive); selection of in-situ preservation of remains, or recovery, repatriation and reburial of remains; the time frame within which reburial or ceremonies must be conducted; or selection of attendees to reburial events or ceremonies. The range of

investigation and mitigation measures considered shall not be constrained by the approved development plan. Where appropriate and consistent with State and Federal laws, the treatment of remains shall be decided as a component of the process outlined in the other subsections of this condition.

7. Prior to the commencement and/or re-commencement of any monitoring, the permittee shall notify each archeological and Native American monitor of the requirements and procedures established by this special condition. Furthermore, prior to the commencement and/or re-commencement of any monitoring, the permittee shall provide a copy of this special condition, the archeological monitoring and mitigation plan approved by the Executive Director, and any other plans required pursuant to this condition and which have been approved by the Executive Director, to each monitor.

B. If an area of cultural deposits, including but not limited to skeletal remains and grave-related artifacts, traditional cultural sites, religious or spiritual sites, or other artifacts, is discovered during the course of the project, all construction activities in the area of the discovery that have any potential to uncover or otherwise disturb cultural deposits in the area of the discovery and all construction that may foreclose mitigation options or the ability to implement the requirements of this condition shall cease and shall not recommence except as provided in subsection D and other subsections of this special condition. In general, the area where construction activities must cease shall be 1) no less than a 50-foot wide buffer around the cultural deposit; and 2) no more than the residential enclave area within which the discovery is made.

C. An applicant seeking to recommence construction following discovery of the cultural deposits shall submit a Significance Testing Plan for the review and approval of the Executive Director. The Significance Testing Plan shall identify the testing measures that will be undertaken to determine whether the cultural deposits are significant. The Significance Testing Plan shall be prepared by the project archaeologist(s), in consultation with the Native American monitor(s), and the Most Likely Descendent (MLD) when State Law mandates identification of a MLD. The Executive Director shall make a determination regarding the adequacy of the Significance Testing Plan within 10 working days of receipt. If the Executive Director does not make such a determination within the prescribed time, the plan shall be deemed approved and implementation may proceed. Once a plan is deemed adequate, the Executive Director will make a determination regarding the significance of the cultural deposits discovered.

- (1) If the Executive Director approves the Significance Testing Plan and determines that the Significance Testing Plan's recommended testing measures are de minimis in nature and scope, the significance testing may commence after the Executive Director informs the permittee of that determination.
- (2) If the Executive Director approves the Significance Testing Plan but determines that the changes therein are not de minimis, significance testing may not commence until after the Commission approves an amendment to this permit.
- (3) Once the measures identified in the significance testing plan are undertaken, the permittee shall submit the results of the testing to the Executive Director

for review and approval. The results shall be accompanied by the project archeologist's recommendation as to whether the findings should be considered significant. The project archeologist's recommendation shall be made in consultation with the Native American monitors and the MLD when State Law mandates identification of a MLD. If there is disagreement between the project archeologist and the Native American monitors and/or the MLD, both perspectives shall be presented to the Executive Director. The Executive Director shall make the determination as to whether the deposits are significant based on the information available to the Executive Director. If the deposits are found to be significant, the permittee shall prepare and submit to the Executive Director a supplementary Archeological Plan in accordance with subsection E of this condition and all other relevant subsections. If the deposits are found to be not significant, then the permittee may recommence grading in accordance with any measures outlined in the significance testing program.

D. An applicant seeking to recommence construction following a determination by the Executive Director that the cultural deposits discovered are significant shall submit a supplementary Archaeological Plan for the review and approval of the Executive Director. The supplementary Archeological Plan shall be prepared by the project archaeologist(s), in consultation with the Native American monitor(s), the Most Likely Descendent (MLD) when State Law mandates identification of a MLD, as well as others identified in subsection E of this condition. The supplementary Archeological Plan shall identify proposed investigation and mitigation measures. If there is disagreement between the project archeologist and the Native American monitors and/or the MLD, both perspectives shall be presented to the Executive Director. The range of investigation and mitigation measures considered shall not be constrained by the approved development plan. Mitigation measures considered shall range from in-situ preservation to recovery and/or relocation. A good faith effort shall be made to avoid impacts to cultural resources through methods such as, but not limited to, project redesign, capping, and creating an open space area around the cultural resource areas. In order to protect cultural resources, any further development may only be undertaken consistent with the provisions of the final, approved, Supplementary Archaeological Plan.

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

E. Prior to submittal to the Executive Director, all plans required to be submitted pursuant to this special condition, shall have received review and written comment by a peer review committee convened in accordance with current professional practice that shall include qualified archeologists and representatives of Native American groups with documented ancestral ties to the area. Names and qualifications of selected peer

reviewers shall be submitted for review and approval by the Executive Director. The plans submitted to the Executive Director shall incorporate the recommendations of the peer review committee. Furthermore, upon completion of the peer review process, and prior to submittal to the Executive Director, all plans shall be submitted to the California Office of Historic Preservation (OHP) and the NAHC for their review and an opportunity to comment. The plans submitted to the Executive Director shall incorporate the recommendations of the OHP and NAHC. If the OHP and/or NAHC do not respond within 30 days of their receipt of the plan, the requirement under this permit for those entities' review and comment shall expire, unless the Executive Director extends said deadline for good cause. All plans shall be submitted for the review and approval of the Executive Director.

F. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

24. CURATION OF ARTIFACTS AND DISSEMINATION OF CULTURAL INFORMATION

PROIR TO ISSUANCE OF THIS PERMIT the applicant shall submit for the review and approval of the Executive Director, evidence of a written agreement with a curation facility that has agreed to accept any artifacts recovered from the project site. Any such artifacts shall be curated within Orange County, at a facility meeting the established standards for the curation of archaeological resources. Further, the applicant shall request in the agreement that the facility receiving the collection prepare an appropriate display of significant materials so that the public can view the investigation results and benefit from the knowledge gained by the investigations.

If permanent curation facilities are not available, artifacts may be temporarily stored at a facility such as the Anthropology Department of the California State University at Fullerton until space becomes available at a facility meeting the above standards. The applicant shall submit written proof of acceptance from the above curation or temporary facility of 100 percent of the recovered artifacts, except for those that have been reburied pursuant to State Law, prior to issuance of the permit. In carrying out the provisions of this special condition regarding the curation of the artifacts that have been recovered from the project site and any future artifacts to be recovered through the development of the approved project, it is the intentions of the Commission to make this special condition consistent with the County's special condition regarding curation of recovered artifacts.

PRIOR TO ISSUANCE OF THIS PERMIT the applicant shall submit, for the review and approval of the Executive Director, a written agreement to distribute the series of ORA-83 Research and Salvage Program Final Reports to interested area institutions, vocational groups and Native American tribal units within Southern California, as well as to appropriate City, County and State agencies, as proposed in the "Archaeological Research Design ORA-83: "The Cogged Stone Site" Final Research and Salvage Program", by Scientific Resource Surveys, Inc., dated November 11, 1983 and conditioned in coastal development permit 5 89-772, as amended.

25. OTHER AGENCY APPROVALS

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall provide to the Executive Director a copy of a permit, or letter of permission, or evidence that no permit or permission is required for the project subject to this coastal development permit, issued by the following entities: County of Orange; City of Huntington Beach, California Department of Fish and Game; U.S. Fish and Wildlife Service; Regional Water Quality Control Board; Orange County Fire Authority; Orange County Sanitation District and the State Lands Commission. The applicant shall inform the Executive Director of any changes to the project required by the cited entities. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

26. COMPLIANCE

All development shall occur in strict compliance with the proposal as set forth in the application for permit, subject to any changes approved in this permit and subject to any approved revised plans provided in compliance with the Commission's special conditions and any other special conditions noted above. Any proposed change from the approved plans must be reviewed and approved by the Executive Director to determine if an amendment or new permit is necessary.

27. INSPECTIONS

The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.

IV. Revised Findings and Declarations

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

The Commission hereby finds and declares:

A. DESCRIPTION OF PROPOSED PROJECT AND PROJECT SITE

Bolsa Chica Mesa is made up of a lower bench and an upper bench (also referred to as the lower mesa and upper mesa) separated by a gentle slope. The upper bench is located adjacent to and south of Los Patos Avenue and west of Bolsa Chica Street in the unincorporated area of Bolsa Chica, County of Orange. Although the majority of the upper bench (105.3 acres) is located within the unincorporated Bolsa Chica area of Orange

County, approximately 0.95 acres in the northeasterly corner of the Brightwater development is located within the corporate boundaries of the City of Huntington Beach (Exhibit 1). Huntington Beach has a certified Local Coastal Program. Therefore, the City of Huntington Beach would be the agency to which the applicant must file a coastal development permit application for these nine homes. The site is surrounded on the north (across Los Patos Avenue) and northeast by (the Sandover development in the City of Huntington Beach) residential development, the Goodell property and Bolsa Chica Street; on the southeast by the Shea Homes property (the pending Parkside Development located in the City of Huntington Beach) and the existing concrete lined East Garden Grove-Wintersburg (EGGW) Flood Control Channel; on the south by the now State-owned Bolsa Chica lowlands; and on the west by the approximately 120 acre lower bench of the Bolsa Chica Mesa and beyond the lower bench, the 306 acre Bolsa Chica Ecological Reserve owned by the State Lands Commission and managed by the California Department of Fish and Game, Pacific Coast Highway, Bolsa Chica State Beach and the Pacific Ocean (Exhibit 2).

The proposed Brightwater development is located primarily on the 105.3-acre upper bench. The applicant owns approximately 103 acres on the lower bench of the Bolsa Chica Mesa, with the Ocean View School District owning 15 acres and the State Lands Commission owning the remainder of the lower bench as part of the upland portion of the Bolsa Chica Ecological Reserve. Although the applicant has indicated that their 103-acre lower bench holdings are not a part of the development proposal, some development is actually proposed for the lower bench, namely, the creation of an 11.8 acre separate legal parcel through the proposed subdivision. Upper bench development consists of a subdivision into 349 single-family residential lots, and the construction of a single family residence on each lot, passive public recreation, open space and habitat conservation areas are also proposed.

Overview of Brightwater Development Project

Subdivision Proposal

The subject coastal permit application is to subdivide and develop the upper bench of the Bolsa Chica Mesa with a 349-unit residential community. The upper bench, approximately 105.3 acres in size, is primarily one legal parcel comprised of a portion of Parcel 2 of Certificate of Compliance No. CC 92-01, but also includes an 8.2-acre parcel of land formerly owned by Metropolitan Water District. However, Parcel 2 extends down the slope separating the upper and lower benches and includes approximately 16 acres of land on the lower bench and the Lowlands (Exhibit 5). The lower bench is approximately 20 - 30 ft. above the adjacent Bolsa Chica Lowlands containing the Bolsa Chica wetlands. Approximately 5 of the 16 acres of Parcel 2 are located within the Lowlands (at or below 5 feet MSL) and the remainder, 11.8 acres is located on the lower bench. The Lowland portion of Parcel 2 was sold to the State of California in 1997 when the applicant sold its holdings within the Lowlands to the State for wetlands restoration purposes. Therefore the remaining portion of Parcel 2 that is subject to the proposed subdivision through the approval of VTTM 15460 is 11.8 acres in size and located on the lower bench (Exhibit 5).

Under the proposed vesting tentative tract map (VTTM) 15460 the applicant is requesting to separate this 11.8-acre lower bench portion from the larger upper bench portion of the existing Parcel 2 and create a "residual" parcel on the lower bench. Staff incompleting the initial coastal development permit application for the proposed development in December, 2002 for several items, including the applicant's plans concerning the lower bench⁴. Staff noted in the letter to the applicant that all previous evaluations of the biological resources, potential impacts and planning efforts for the Bolsa Chica Mesa included both the upper and lower benches of the Mesa. The applicant's response was that there were no plans, at the present time, for the lower bench. Staff further noted that the creation of this 11.8-acre residual lot is a division of land that constitutes development under Section 30106 of the Coastal Act. Thus, the application does include development on the lower bench, and the creation of a new parcel requires an explanation of the plans for that parcel. Initially the applicant was proposing to also translocate Southern Tarplant from the upper bench, within the proposed residential development footprint, to the lower bench. However, the applicant has now revised this application to eliminate any translocation of tarplant to the lower bench. Although the applicant is no longer proposing to translocate Southern Tarplant onto the lower bench, the proposed project would still involve development, as defined by Section 30106 of the Coastal Act, with the creation of the 11.8-acre parcel. All development in the coastal zone, unless it is otherwise exempt, must be approved by the Coastal Commission, since the local government has no certified LCP for this area. Despite the applicant's contention that none of the lower bench is before the Commission in the subject application, the Commission disagrees with this statement. Therefore, the proposed lower bench development is being analyzed under this application as it was approved by the local government in the approval of VTTM No. 15460 and is included in the application submittal to the Commission.

Residential Community

The proposed Brightwater residential community is a 349-unit development on approximately 68 acres of the 105.3-acre project site. The community is planned at medium-low density (6.5-12.5 DU/Ac), although the actual density within the development subareas range from 4.0 to 8.2 dwelling units per acre. The average community density is only 5.4 DU/Ac. The community design concept is that of a New England coastal village with six styles of single-family housing types and sizes. The four larger single-family home types have lots ranging from 5,000 to 6,500 square feet and homes ranging from 2,200 to 4,200 square feet. There will also be smaller units constructed as planned unit developments using reciprocal easements (zero lot lines) and other integrated site planning techniques but are detached single family residential units. The smaller styled developments have lots that are approximately 3,000 sq. ft. and the homes range from roughly 1,500 to 1,900 sq. ft. All units range from 3 to 5 bedroom floor plans with one product type having as few as two bedrooms. None of the units will exceed 35 feet in height and most will be at 28 - 32 ft. high. Project grading consists of 220,000 cubic yards of cut and 220,000 cubic yards of fill. The two areas receiving the greatest cut are the high point near Warner and Los Patos and the central bluff area where the applicant will be removing the earthen mound and the temporary stockpile of crushed concrete that was

⁴ The initial coastal development permit application that was submitted on November 6, 2002 was application 5-02-375. The applicant provided Commission staff with the requested additional information in several separate submittals over an extended period of time. The application was finally filed on September 24, 2003.

constructed with remnants of the two World War II bunkers and water cistern under coastal development permit 5-90-1143, approved on September 13, 1991.

At the northeast corner of the Brightwater project site is the boundary between the City of Huntington Beach and the unincorporated Orange County area. The boundary cuts diagonally between the Brightwater site and the recently completed Sandover development in Huntington Beach (Exhibit 3). One of the project goals is to integrate the two communities. Three of the lots approved under the VTTM 15460 will be annexed to the City and combined with three of those lots. As a result of the annexation and vacation of the existing entry into the Sandover development the potential for nine additional lots exist. Annexation and construction of any development in the City of Huntington Beach is not authorized under the subject coastal development permit. The City will handle development within the City of Huntington Beach as the certified Huntington Beach LCP covers the area.

Public Recreational Amenities

At the western and southern edges of the Brightwater development project are Planning Areas 3A and 3B, which together constitute the 34.2-acre upland habitat restoration and preservation area, located along the gentle slope between the upper and lower benches and on the southeastern bluff face of the upper bench of the Bolsa Chica Mesa (Exhibit 3). The upland habitat restoration and preservation area includes the existing 5-acre Eucalyptus grove along the southeastern bluff. The existing 0.41-acre "pocket wetland" is also within the habitat park and will be preserved in place and provided with a 100 ft. wetland buffer. Protective fencing will be placed around the Eucalyptus ESHA and the existing wetland. Dog-proof fencing will be on the bluffward side of the trail. The passive habitat park will be planted with native grassland and coastal sage scrub and coastal bluff scrub vegetation. Within the park will be a 6 foot wide decomposed granite pedestrian trail, interpretive signage, and rustic seating along the trail. Once constructed, the upland habitat park will be dedicated to the County of Orange or other public agency or non-profit group for public access and conservation purposes.

Other community facilities include a 1.2 million gallon underground water storage reservoir as well as an above ground domestic water pump station including two fire pumps on 0.3 acres. A temporary on-site groundwater well will be constructed and used during grading and construction operations. The temporary well will be abandoned once the permanent underground reservoir is completed. As detailed in Section D. of this staff report, the Orange County Fire Authority (OCFA) requires initial and on-going fuel modification to protect the future homes within the 29.2-acre area proposed for habitat restoration and preservation.

Site Description

The approximately 225-acre Bolsa Chica Mesa is only one portion of the Bolsa Chica LCP area. On the opposite end (to the south) of the LCP area is the Huntington Mesa, including the proposed Harriett Wiedner Regional Park. The County of Orange began its LCP planning activities in 1977, segmented the area within its coastal zone jurisdiction into four segments with 12 geographic subareas or segments, the Bolsa Chica area being one

of those segments. The Bolsa Chica LCP area is comprised of approximately 1,588 acres of unincorporated land within the coastal zone of northwestern Orange County. Currently, the land exists predominantly as open space containing both upland and wetland habitat. The Bolsa Chica and Huntington mesas rise some 50 feet above the lowlands and are open space areas consisting primarily of non-native grasslands. However, they are a very important component of the Bolsa Chica ecosystem. An extensive wetland area located between two upland mesas to the north (Bolsa Chica Mesa) and south (Huntington Mesa) dominates the site. The Pacific Coast Highway, Bolsa Chica State Beach, and the Pacific Ocean border the western side, while urban development occurs to the northeast. The Bolsa Chica wetlands were formerly part of an extensive coastal lagoon/salt marsh system, which was estimated to cover 2,300 acres in 1894 by the U.S. Fish and Wildlife Service. Today, substantial portions of the wetland habitat remain in the lowland area.

Bolsa Chica is a unique place along the California coast. Bolsa Chica has undergone substantial degradation caused by human interference with its natural wetlands processes commencing in the 1800's. Bolsa Chica has been used for a variety of purposes over the years, most notably for on-going oil and gas production since the 1930's. Beginning in the 1960's and continuing through the late 1980's, it became increasingly recognized that the wetlands at Bolsa Chica were in need of major restoration. Initially restoration was proposed to be achieved through construction of a new ocean inlet in conjunction with a marina (boating facility).

Over the past century, Bolsa Chica has been affected by urban, recreation, and oil-related development. Three state oil leases occur within the lowlands, which currently support 331 oil wells (active and inactive), related oil facilities, and improved and unimproved roadways. Although development has markedly changed Bolsa Chica, the area currently contains substantial and important natural resource values. The Bolsa Chica Lowlands contains one of the largest remaining coastal wetlands in southern California.

Although a good portion of the wetlands is now degraded due to oil production, road construction and flood control, tens of thousands of birds use Bolsa Chica Lowlands every year, including six endangered or threatened species. Up until 1997, the majority of the lowlands were in private ownership. However, in 1997, the State of California acquired 880 acres of the lowlands for the purpose of carrying out a comprehensive wetlands restoration, including a new ocean inlet. The Ports of Los Angeles and Long Beach are providing funding for the wetland restoration.

The Bolsa Chica Mesa has also been subject to various activities and development over the years, including cattle and sheep grazing and other agricultural activities, hunting and the construction of the Bolsa Chica Gun Club in the 1890's, oil exploration including the construction of numerous oil wells and pipelines and the construction of numerous roads that crisscross the mesa, military use with the construction of two gun emplacements or bunkers during World War II, and a borrow site for surrounding urban development. At the southern edge of the lower and upper benches of the Bolsa Chica Mesa is a continuous grove of Eucalyptus trees, planted by the property owner in the early 1900's to serve as a windbreak. Although Eucalyptus trees are not native to the area, they serve a vital biological role in the wetland/upland ecosystem. The Eucalyptus grove totals approximately 20 acres on both benches, 5 acres being on the upper bench. It is

recognized by the Department of Fish and Game as an environmentally sensitive area and has been recognized by the Coastal Commission and the courts as an environmentally sensitive habitat area or ESHA, as defined by the Coastal Act. Further inland from the Bolsa Chica Mesa bluff edge are grasslands that are used by both birds and land mammals, including, but not limited to, the burrowing owl, for foraging.

B. PLANNING HISTORY

The planning effort for the Bolsa Chica segment of the County of Orange Local Coastal Program is long and controversial. Although the subject application is the third⁵ substantial coastal development permit application to the Coastal Commission for permanent development on the Bolsa Chica Mesa, the Commission's first consideration of the Bolsa Chica Local Coastal Program (LCP) began in 1982. Despite the Commission's numerous actions on the Bolsa Chica LCP throughout this twenty-year period, no LCP has ever been fully certified.

The Bolsa Chica LCP planning area is approximately 1,588 acres in size. The planning area is flanked on the north by Warner and Los Patos Avenues and the Bolsa Chica Mesa and on the south by the Huntington Mesa and Seapoint Street⁶. Between the two mesas is the 1,300-acre Bolsa Chica Lowland. The Pacific Ocean (Bolsa Chica State Beach) borders the western side of the planning area with residential development in the City of Huntington Beach on the east. The lowlands are primarily historic and currently functioning wetlands interspersed with former wetlands that are utilized for oil production activities (pads and roads) and upland areas that are Environmentally Sensitive Habitat Areas. The 306-acre Bolsa Chica Ecological Reserve, including Inner and Outer Bolsa Bay, are managed by the California Department of Fish and Game. The East Garden Grove-Wintersburg (EGGW) Flood Control Channel, maintained by Orange County Flood Control District, is also within the Bolsa Chica lowlands. The flood control channel empties into Outer Bolsa Bay.

The Commission's first approval of the Bolsa Chica Land Use Plan (LUP) occurred in November 1984. On October 23, 1985, a revised land use plan was adopted which would have allowed for intensive development of the area including 75 acres of mixed-use marina/commercial, a 150 room motel, 500 acres of high density residential development, a navigable tidal inlet, an arterial roadway through the Bolsa Chica Wetlands (the Cross-Gap Connector), and 915 acres of wetland restoration. The amount of wetland fill that would have occurred under this LCP was not specified. This controversial LUP was never fully certified.

In June 1995, the County of Orange submitted an amended proposal of the Bolsa Chica Local Coastal Program (LCP) for Commission certification. As submitted in 1995, the Bolsa Chica LCP would have allowed 2,400 units on the upper and lower benches of the

⁵ The current application, 5-05-020 is the third application for the proposed Brightwater development. The two previous applications were submitted in November 2002 (5-02-375) and May 2004 (5-04-192). Both applications were withdrawn but proposed similar residential and passive park development as earlier versions of the subject Brightwater development proposal.

⁶ Approximately 10 acres of the Huntington Mesa and Seapoint Street are within the City of Huntington Beach.

Bolsa Chica Mesa, and up to 900 residential units in the Lowlands for a total of 3,300 residential units. The Lowland development would have resulted in the fill of 120 acres of wetland and the elimination of 65 acres of ESHA that was interspersed between the wetlands. The major property owner was required to fund the restoration of 770 acres of adjacent wetlands and dedicate the restored wetlands to a public agency, as mitigation for the wetland impacts. Public access and recreational facilities included a public loop road ("mesa connector road") on the Bolsa Chica Mesa, active and passive parks on both the Bolsa Chica Mesa and in the Lowlands, 100 public parking spaces on the Bolsa Chica Mesa and 60 public parking spaces in the Lowlands, pedestrian and bicycle trails on the mesas and in the Lowlands, a 4-acre kayak/canoe/beach facility on the inland side of PCH, and the optional provision of 10 acres of neighborhood commercial use on the Bolsa Chica Mesa. Fifty-eight acres of land on the Huntington Mesa was to also be dedicated to the County of Orange for the Harriet Wiedner Regional Park. Development on the Bolsa Chica Mesa would have eliminated Warner Pond, a 1.7-acre wetland located on the lower bench. Additionally, the Eucalyptus grove on the Bolsa Chica Mesa was to be relocated onto the Huntington Mesa in order to accommodate the build-out of the Bolsa Chica Mesa. The Commission approved this amended version of the Bolsa Chica LCP on January 11, 1996. The Commission's decision became the subject of a lawsuit.

The trial court determined on June 4, 1997 that the Commission's approval of the Bolsa Chica LCP was deficient in two respects. First, that Section 30233 of the Coastal Act does not allow the fill of wetlands for residential purposes. Second, that the Warner Pond wetland was an environmentally sensitive habitat area (ESHA) and that the Commission failed to explain how such an ESHA could be filled consistent with Section 30240 of the Coastal Act. The trial court remanded the Bolsa Chica LCP to the Commission. The Commission reheard portions of the proposed Bolsa Chica LCP on October 9, 1997. The Commission limited its review to those aspects of the case on which the court had remanded.

At the Commission's October 9, 1997 meeting, significant revisions were made to the Plan as originally submitted in June 1995. The Commission found in October 1997 that the fill of wetlands for residential development was not an allowable use and denied the development proposed in the lowland area. Residential development of the upper and lower benches of the Bolsa Chica Mesa was also scaled back to 1,235 residential units to avoid the widening of Warner Avenue which necessitated the fill of Warner Pond. Since lowland residential development was denied, the proposed wetland restoration mitigation project was also deleted from the Bolsa Chica LCP since it was to be funded by the developer through the lowland residential development. Furthermore, the wetland restoration program became moot since the majority of the lowland (880 acres) was acquired by the State of California, thus becoming public trust lands. The State and Federal governments have a Coastal Commission approved wetland restoration program covering 1,247 acres of the lowland. On November 13, 2001, the Commission approved Consistency Determination No. CD-061-01 (U.S. Fish and Wildlife Service) for the major wetland restoration project.

The Commission's October 9, 1997 decision on remand was again reviewed by the courts under the original challenge to the Commission's 1996 approval of the Bolsa Chica LCP. On April 16, 1999, the appellate court upheld the trial courts findings, added a new finding

and remanded the Bolsa Chica LCP back to the Commission. The new finding of the appellate court was that the relocation of the Eucalyptus grove from the Bolsa Chica Mesa to the Huntington Mesa was not allowed under Section 30240 of the Coastal Act. To comply with the appellate court's remand, the Commission once again re-heard the Bolsa Chica LCP on November 11, 2000. The Commission certified the LCP again, with suggested modifications that were significantly different from the previous suggested modifications.

In the Commission's 2000 approval, it again limited the number of residential units on the Bolsa Chica Mesa to a maximum of 1,235 to avoid the filling of Warner Pond. However, the Commission further required that all future development be concentrated on the upper bench of the Bolsa Chica Mesa adjacent to existing residential development and that the entire lower bench (with the exception of a 10 acre school site adjacent to Warner Avenue) be designated for conservation and preserved through an open space deed restriction. The Commission found that in order to be most protective of the resources that development of the Bolsa Chica Mesa must be confined to the upper bench of the mesa, in close proximity to existing development, to conserve all of the resources of the lower bench in a manner that is more protective overall of significant coastal resources, than protecting each specific habitat area in conjunction with development of the entire Bolsa Chica Mesa.

The Commission also required that the Eucalyptus grove ESHA remain intact and protected on the Bolsa Chica Mesa and that it not be relocated to the Huntington Mesa, as was previously proposed and approved under the earlier LCP. To protect the portion of the Eucalyptus ESHA located on the upper bench, the Commission required that all future residential development be set back a minimum of one hundred feet from either the inland edge of the grove or the inland edge of the bluff, whichever is the greatest distance. The Commission's 2000 action on the LCP further required that future development of the portion of the upper bench that overlooks the lower bench was required to be set back fifty feet from the upper edge of the slope separating the two benches. Other significant suggested modifications contained in the Commission's 2000 action included the prohibition of storm water discharges directly into Outer Bolsa Bay or other wetland area; the provision of a scenic public loop road allowing public parking on both sides, immediately landward of the buffer and paralleling the portion of the upper bench that overlooks the Lowlands; and the protection of cultural resources by requiring that a Native American monitor also be present during all grading operations.

The Commission's November 2000 action was unacceptable to the County of Orange and the landowner. In May 2001, the County notified the Commission that it would not be adopting the Commission's suggested modifications. Therefore, the Commission's certification of the LCP lapsed six months after its action. Therefore the standard of review for the currently proposed development remains the Chapter 3 policies of the Coastal Act since there is no certified LCP for the Bolsa Chica area of the County of Orange.

**C. COMPARISON OF THE PROPOSED PROJECT WITH THE
COMMISSION'S 2000 BOLSA CHICA LOCAL COASTAL PROGRAM
ACTION**

During consideration of the Bolsa Chica LCP in November 2000, the Commission approved 100-ft. and 50-ft. buffers around sensitive habitats on the upper bench. Although the buffers were limited, the reduced buffers were accepted in the context of balancing some resource impacts against benefits that could be derived from the concentration of development on the upper bench that allowed the enhancement of biological productivity and marine resources and the protection of a contiguous block of habitat through the placement of an open space easement over the entirety of the lower bench of the Bolsa Chica Mesa. This balancing approach was only possible because the Commission had the entire Bolsa Chica Mesa before it given that they were acting on an LCP amendment that included all of the area within the Bolsa Chica LCP Area. The current situation is qualitatively different because the applicant has, for the most part, excluded the lower bench from consideration.

The Commission approved the Bolsa Chica Local Coastal Program (LCP) with suggested modifications on November 16, 2000. Following Commission action the County of Orange informed the Commission that the suggested modifications were unacceptable, and they were not adopted by the Board of Supervisors. Therefore, pursuant to sections 13537(b) of the Commission's regulations, the Commission's certification of the LCP has lapsed and is no longer of any legal effect. Although the certification of the LCP has lapsed, making the standard of review the Chapter 3 policies of the Coastal Act, the Commission can still look at its 2000 action on the Bolsa Chica LCP as an example of one set of LCP provisions and a development scenario the Commission found to be consistent with the Chapter 3 policies of the Coastal Act.

The applicant has asserted that the October 2004 project was designed using the 2000 Bolsa Chica LCP as guidance and further states that the previously proposed Brightwater development was consistent with the 2000 LCP as approved by the Commission with suggested modifications. The current application submitted in January 2005 is very similar to the October 2004 Brightwater project. As discussed in the above Executive Summary, the current application has been revised to eliminate the prohibition on public vehicular access into and parking within the community, eliminate the "restoration fill" at the bluff edge as well as the Bolsa Chica Road extension and 30-space public parking lot encroachments into the Eucalyptus ESHA, and eliminate the Southern Tarplant translocation and impacts with the elimination of the water quality features on the slope. However, a comparison of the proposed project against the standards the Commission imposed in its action on the recent Bolsa Chica LCP demonstrates that the proposed Brightwater development project differs greatly from the Commission's 2000 action, in a number of significant ways.

FEATURE	2000 LCP AS APPROVED WITH SUGGESTED MODS	PROPOSED PROJECT
Bolsa Chica Mesa Land Area Covered	Entire Upper Bench; Entire Lower Bench	Entire Upper Bench; 11.8 ac of 103 ac ownership on the lower bench.
Land Use of Lower Bench	Except for the 10-acre school site depicted as Public Facility on Fig.2.1-2, the lower bench of the Bolsa Chica Mesa shall be designated Conservation. The Eucalyptus Grove ESHA and the Warner Ave. Pond ESHA shall be preserved. (Portion of County Policy 3.1.2.4, page 60 of Exhibit 21)	Land use of 11.8-acre residual parcel created by VTTM 15460 is unknown given the uncertainty of the pending sale of the lower bench. The remaining 91.2 acres of the applicant's ownership of the lower bench is expressly not included in this application.
Size and Measurement of ESHA Buffer	The buffer on the Bolsa Chica Mesa upper bench overlooking the lowland shall extend inland one-hundred feet ⁷ from either the Eucalyptus grove ESHA or the edge of the top-of-bluff, whichever is the greatest distance. The buffer separating the lower bench from the upper bench shall extend from the top edge, fifty-feet into the upper bench. (Portion of County Policy 3.1.2.6, page 64 of Exhibit 21).	The applicant is proposing a varied width buffer ranging from 100 to 332 ft between the nearest Eucalyptus tree and the edge of the proposed 50 ft. wide fuel modification Zone B. Because the lower bench is not before the Commission there is no shifting of development from the lower bench to the upper bench to justify the reduced buffer. The greater width buffer is measured from the edge of the Eucalyptus grove. However, the existing edge of the top-of-bluff is landward of the Eucalyptus grove. Using the existing edge of the top-of-bluff would provide for a wider,

⁷The adopted findings of the LCP, dated November 27, 2000, pages 251 – 262 and the attached memo from Dr. John Dixon, staff ecologist, indicate clearly that the ESHA buffer was being reduced to 100 feet, as opposed to 100 meters, in order to concentrate development on the upper bench since a conservation easement was required to be placed on all areas of the lower bench that were owned by the landowner/master developer of the upper bench, as required by County Policy 3.1.2.6 and other LCP policies.

		more protective buffer, as required by the LCP Policy 3.1.2.6. Using the more protective measurement from the existing bluff edge, the buffer is only 50 feet wide.
Development Adjacent to ESHA (within ESHA buffers) or Park and Recreation Areas	Development in areas adjacent to ESHAs 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. (New Policy 6, page 61 of Exhibit 21)	Initially, the proposed Eucalyptus grove buffer was 150 to 382 ft. wide, as measured from the edge of the grove. However, because OCFA requires that the 50 ft. area closest to the future homes be permanently irrigated to protect them from fire damage, the applicant has reduced the ESHA buffer by 50 ft. Because permanent irrigation to support adjacent residential use is not a use based on the needs of the habitat buffer, the applicant has simply reduced the width of the habitat buffer.

As demonstrated in the table above, the proposed Brightwater development project is not consistent with the Commission's action on the 2000 LCP with regards to: failure to include the applicant's lower bench holdings (with the exception of a proposed 11.8-acre remainder parcel being created by the proposed subdivision) in the coastal development permit application in conjunction with the consideration of development on the upper bench and thus no offer of dedication of a conservation easement over the lower bench is included as a part of this application; Eucalyptus ESHA buffer is not being measured in the most protective manner (from the top of bluff edge) and is further reduced from one-third the size of the staff recommended 100 meter buffer down to only 50 ft. from the top of bluff and does not include a conservation easement over the lower bench as a part of this coastal development permit application. Although the 2000 LCP did not specifically recognize the burrowing owl habitat as ESHA, one of the Commission's suggested modifications (new Policy 6) required that development in areas adjacent to ESHAs be sited and designed to prevent impacts that significantly degrade the ESHA and that development allowed adjacent to the ESHA be compatible with the continuance of the habitat area.

Although the proposed Brightwater development project is not consistent with what the Commission approved with respect to the 2000 LCP as demonstrated in the above table, that fact in and of itself is immaterial. For one thing, there are undoubtedly multiple approvable ways to structure development on the Bolsa Chica Mesa. Moreover, the standard of review for this project proposal is the Chapter 3 policies of the Coastal Act, not the Commission's previous action, which has expired and is of no legal force or effect. However, the comparison of the proposed project with the most recent LCP action for the area is a useful exercise since the Commission in its action on the LCP found that a project designed to be consistent with the policies of the LCP, as approved with suggested modifications, would also be consistent with the Chapter 3 policies of the Coastal Act. In addition, the applicant has asserted that its current proposal is consistent with the Commission's 2000 LCP action.

D. BIOLOGICAL RESOURCES

Although 82.6 acres of the 105.3-acre Brightwater development project site (78%) is dominated by non-native annual grasslands and ruderal communities, the upper bench of the Bolsa Chica Mesa is adjacent to a non-native "Eucalyptus" grove that has been designated an Environmentally Sensitive Habitat Area by the California Department of Fish and Game and the Coastal Commission and recognized as such by the courts; and contains Southern Tarplant and coastal bluff scrub communities that were designated Environmentally Sensitive Habitat Areas by the Commission in the 2000 Bolsa Chica Local Coastal Program, and two important freshwater wetlands. These native and non-native communities combine to make the Bolsa Chica Mesa ecologically valuable. The mesa and its associated bluffs provide habitat for over 88 species of land birds, including some 33 resident species, 38 migrants, 15 wintering species and 3 summering species. Reptiles and at least ten species of mammals also utilize the Bolsa Chica Mesa.

The Bolsa Chica Mesa must also be viewed in the larger context of its role in the upland/wetland ecosystem. According to both the California Department of Fish and Game and the U.S. Fish and Wildlife Service, the Bolsa Chica Mesa and the lowland wetlands are biologically interdependent. Together with the Bolsa Chica wetlands, a part of the roughly 1,300 acre Bolsa Chica Lowlands, the mesa communities which include both the Bolsa Chica Mesa and the Huntington Mesa to the south of the Lowlands, combine to make this area an important upland-wetland ecosystem. These biological interdependencies are vital to maintaining biological productivity and diversity. However, it must also be recognized that over the years, this resource area has declined due to human impacts and development pressures. Commission staff ecologist, Dr. John Dixon, summarizes the declining, but still valuable, overall ecological condition of the greater Bolsa Chica area in a July 15, 2004 memo on the October 2004 Brightwater Development Project in this way:

"The Bolsa Chica wetlands once covered over 30 square miles and, on the Bolsa Chica and Huntington Mesas, were bounded by coastal sage scrub communities that interacted ecologically with the wet lowlands. Although the wetlands have been reduced to less than two square miles and the adjoining mesas have been substantially developed and the remaining open space much altered, the U. S. Fish and Wildlife Service in 1979 nonetheless identified the Bolsa Chica ecosystem as "one of the last remaining viable wetland-bluff ecosystems in southern California." This viewpoint was echoed by conservation biologists over twenty years later:

"...Bolsa Chica is one of the last remaining areas in coastal southern California with a reasonably intact upland-wetland gradient, which is of high ecological importance and generally lacking in representation in reserves in the region." In nearly all other coastal marsh ecosystems in southern California, the upland components have succumbed to urban development. Uplands provide pollinators for wetland plants, nesting and denning sites for avian and mammalian predators that forage in wetlands, important alternative prey populations for many of those predators, and critical habitat for primarily upland species. Many species have life-stages that rely on both wetland and upland habitats ... [citations omitted]

Dr. Dixon's memo can be found in its entirety as Exhibit 28 to this staff report and is incorporated herein by reference. Due to the special communities of the Bolsa Chica Mesa, many areas of the mesa have previously been determined to constitute environmentally sensitive habitat areas, as defined by and protected by the Coastal Act, or, if not previously so recognized, nevertheless qualify as such. The Coastal Act defines environmentally sensitive habitat areas or environmentally sensitive areas as:

Section 30107.5

"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Further, Section 30240 of the Coastal Act requires that land resources that constitute environmentally sensitive areas or environmentally sensitive habitat areas as defined by Section 30107.5 be protected by allowing only resource dependent uses within those areas. Additionally, development adjacent to environmentally sensitive areas and parks and recreation areas must be sited and designed such that the adjacent development will not degrade the habitat or recreation values of the sensitive resource. Finally, uses adjacent to environmentally sensitive land resources and park and recreation areas must be compatible with the continuance of the resource area. Coastal Act Section 30240 states:

Section 30240

(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.

In the November 2, 2000 Commission staff report concerning a proposed amendment to the Bolsa Chica Local Coastal Program the following Environmentally Sensitive Habitat

Areas (ESHA) were identified: (1) the Eucalyptus grove on and along the edge of both the upper and lower bench of the Bolsa Chica Mesa; (2) Warner Pond, located on the lower bench, a marine habitat connected by culvert to Huntington Harbor; (3) the natural habitats within the California Department of Fish and Game Ecological Reserve along the western edge of the lower bench of the Bolsa Chica Mesa; (4) the coastal sage scrub community; (5) habitat of the southern tarplant throughout the mesa; and, (6) the degraded wetlands in the lowlands that are part of a restoration plan. The Eucalyptus trees, Warner Pond, and the Ecological Reserve were generally depicted, the locations of the other ESHA types were not mapped.

There has been no change in circumstances in the intervening four years that would cause the removal any of these habitats from the recommended list of environmentally sensitive habitat areas on or adjacent to the Bolsa Chica mesa. Thus the Commission finds these areas to constitute ESHA. The only exception to this is that, as described below, the ESHA delineation for the Eucalyptus grove is being modified to more precisely reflect the nature and extent of that ESHA. In addition to the abovementioned habitats, the upper bench of the Bolsa Chica Mesa contains two small but functioning wetlands: the 0.2 acre Los Patos seasonal wetland (referred to as "seasonal pond" by the applicant), located near Los Patos Avenue and the 0.06 acre "pocket wetland" located in the central slope/bluff edge area (Exhibit 20, Figure 1). The Los Patos wetland is a seasonally ponded depression, dominated by herbaceous vegetation, including the rare Southern Tarplant. The "pocket wetland" is a small borrow pit dominated by a stand of willows and mulefat with very little understory vegetation. These wetlands are protected under Section 30233 of the Coastal Act and only certain enumerated uses are allowed. Moreover, even those uses can only be implemented if no less environmentally damaging feasible alternative exists, and if feasible mitigation measures are provided. ~~However, these~~ The "pocket" freshwater wetlands does not constitute ESHA as defined above. The proposed Brightwater development project however does not propose to fill either of these wetlands but will retain them in place with a 100-foot wetland buffer. Special Condition 10, the final Habitat Management Plan, requires the proposed 100-foot wetland buffer to be implemented. This wetland buffer is consistent with numerous past Commission actions to protect wetlands from the effects of adjacent development. However, care must be taken during grading and construction to assure that impacts to the wetlands are avoided. Special Condition 9, Construction Staging Area and Fencing, assures that the wetlands and all habitat areas are protected during grading and construction.

Another habitat of the Bolsa Chica Mesa that was not identified as ESHA in the Commission's previous actions on the Bolsa Chica LCP is that of the burrowing owl. The burrowing owl is ~~considered~~ designated a California Species of Special Concern by the Department of Fish and Game. Burrowing owls use the Bolsa Chica grassland and ruderal habitats as well as abandoned burrows of rodents or other small mammals. In the winters of 2001-2002 and 2002-2003, the applicant's biologist documented use of specific areas of the mesa by this owl (Exhibit 17a). The characteristics of the burrowing owl habitat, its ESHA status on the Bolsa Chica Mesa, and the proposed project impacts are detailed below.

The proposed residential development project will significantly impair the biological productivity of the upper bench of the Bolsa Chica Mesa, and indirectly impact the

adjacent lowland wetlands. Adverse impacts from residential development include: disturbances to wildlife, including raptors, from human activity and disruptive noise due to the inadequate buffer adjacent to the ~~Eucalyptus tree~~ Burrowing Owl ESHA; improper use of undersized the Eucalyptus ESHA and Burrowing Owl ESHA buffers for residential fuel modification; encroachment into the Burrowing Owl ESHA buffer for the construction of residential lots; and the unmitigated loss of 68 acres of raptor foraging habitat (non-native grasslands and ruderal vegetation) that is utilized by several California Species of Special Concern (CSC). The Brightwater development project features and their impacts to the various ESHA and sensitive land resources of the upper bench of the Bolsa Chica Mesa and adjacent Lowlands are detailed below.

1. Delineation of the Eucalyptus Tree ESHA and the ESHA Buffer

Eucalyptus trees are not native to California. The trees were planted, primarily along the southern slope of the lower and upper bench, by the property owners as a wind break. Dr. Dixon notes that historically, the "eucalyptus tree" ESHA associated with the Bolsa Chica mesa has been considered to be the area occupied by the roughly linear grove of trees along the southern bluff of the mesa (Exhibit 20). Most of the trees grow along the base of the bluff in the lowlands. However, some grow on the mesa top near the bluff edge at various locations. Since most of the trees are eucalyptus, the grove is often referred to as the "eucalyptus" grove or "eucalyptus" tree ESHA. However, it is important to note the grove also includes several palm trees and pine trees that are also used by raptors and herons. None of the trees are part of a native plant community. Nevertheless, this grove of trees has been recognized as an Environmentally Sensitive Habitat Area (ESHA) for over 25 years (USFWS, 1979; CDFG 1982, 1985) because of the important ecosystem functions it provides, including perching, roosting, or nesting, for at least 12 of the 17 species of raptors that are known to occur at Bolsa Chica. Some of the raptors found to be using the grove included the white tailed kite, sharp-shinned hawk, Cooper's hawk, and osprey.

Many of these species are dependent on both the Bolsa Chica wetlands and the upland areas of the Bolsa Chica Mesa for their food. Other raptor biologists who have studied the Bolsa Chica Mesa have also found it to be particularly significant to a large number of birds of prey, including the Northern Harrier, prairie falcon, burrowing owl and the loggerhead shrike. The grove has also been recognized by the Coastal Commission as an "environmentally sensitive area" or environmentally sensitive habitat area (ESHA) as defined by Section 30107.5 of the Coastal Act in previous Commission actions. The Commission first recognized the ESHA status of the grove many years ago, and the California appellate court in 1999 did not question the designation of the Eucalyptus grove as an ESHA protected by the Coastal Act when, in 1995, the County of Orange, on behalf of the predecessor applicant, Koll Real Estate Group, attempted to relocate the Eucalyptus grove, through the LCP process, to the Huntington Mesa, in order to make room for full development of the upper and lower benches of the Bolsa Chica Mesa.

There was little or no discussion in the site-specific definition or delineation of the "eucalyptus" ESHA in the case of this non-native habitat at the Bolsa Chica. Dr. Dixon notes that the map in the 1982 CDFG report truncates the Eucalyptus Grove ESHA in a

straight line that corresponds to an extension of Bolsa Chica Street. This arbitrary man-made division does not correspond to anything in nature. The trees continue as a coherent grove along the base of the mesa for several hundred feet beyond the Bolsa Chica Street line, without a gap, and raptors have been observed to use those trees. Therefore, staff has included all those trees in the ESHA maps accompanying staff reports (Exhibit 20, Figure 1). In the 2000 and 2004 recommendations, some of the trees on the mesa top adjacent to Bolsa Chica Street were also included in the ESHA maps (Exhibit 28, Figure 1). Subsequent to the October 2004 hearing, the applicant argued that the latter trees were so far distant from the rest of the grove and so separated vertically that they ought not be considered part of the ESHA. Based on the relative isolation of those trees, Dr. Dixon agreed to recommend that only the trees that were part of the coherent grove (i.e., trees in close proximity to one another) be considered as "eucalyptus" tree ESHA and altered the maps accordingly. This decision was based, in part, on the fact that trees that are part of a grove are thought to be more attractive to raptors for nesting than isolated trees because they provide a greater visual barrier for the nest. However, after agreeing to this, a pair of white-tailed kites (California Fully Protected Species) were seen nesting, this spring, in one of the pine trees at the top of the bluff near Bolsa Chica Street. And according to the applicant's biologists, currently the kites appear to be incubating eggs. Based on this use of the upper area tree by the birds, Dr. Dixon recommended that the cluster of three trees at the top of the bluff adjacent to the terminus of Bolsa Chica Street be considered part of the ESHA. And thus the residential development respect the Eucalyptus Grove buffer as explained below and as reflected in Figure 1 of Exhibit 20 and in Special Condition 10 of this permit. However, the Commission found that because white-tailed kites do not use the same trees year after year and have not previously been observed nesting in these isolated trees, it is not necessary to expand the boundary of the eucalyptus ESHA in order to protect raptor habitat. Instead the Commission found that any subsequent raptor use of these trees will be adequately protected by modifying Special Condition 10.B.1 requiring that there be a 500-foot buffer between construction activities and any active nests.

As stated above, the "Eucalyptus" Grove ESHA of the Bolsa Chica mesa is unique in that it is the non-native trees that are used by numerous raptor species for nesting, roosting and perching. When the ESHA was designated there was little or no discussion of the site-specific definition or of its delineation. Dr. Dixon opines that perhaps it was because the intuitive and obvious approach was to define and delineate the ESHA by simply drawing a line between the outermost trees of the grove. The 1982 CDFG report defined the ESHA as "the eucalyptus grove adjacent to and on the Bolsa Chica mesa" and included a map with a rough outline of the Eucalyptus grove (which included palm trees) (Exhibit 20). All subsequent maps from a variety of sources have been roughly similar. Commission staff has also created ESHA maps with the same approximate boundaries and has done so by simply connecting the outermost trees. This approach proved adequate for planning purposes until recently, but now appears insufficiently specific due to the issues raised by the applicant's proposal under the current project to discharge runoff water through buried pipes that traverse the eucalyptus grove.

The current proposal is to discharge runoff from the mesa top through a new 66-inch pipe leading to the lowlands and the construction of rip-rap apron below the discharge to prevent erosion in the lowlands. This would require digging a trench across the

eucalyptus grove to the adjacent lowland. The corridor proposed for the pipe contains no trees, is vegetated by non-native grasses and other weedy species, and currently contains an aboveground pipeline that is part of the oil field infrastructure. Dr. Dixon states that the placement of a subterranean pipeline over a period of a few weeks, if it is done in a manner that does not injure nearby trees, and construction takes place at a time when birds are not nesting, and Best Management Practices are employed to prevent erosion or slope instability, would not constitute a 'significant disruption of habitat values' and would therefore pass the first test of Section 30240(a) of the Coastal Act. Special Conditions 8, 9, 10, 16 and 17 deal with the construction, water quality and habitat protection issues associated with the new stormdrain.

However, Dr. Dixon points out that the second test of Coastal Act section 30240 is whether the proposed use is dependent on the ESHA resource, and the installation of a pipe to convey runoff from a new residential development is clearly not so dependent (Exhibit 20). Therefore, if the Eucalyptus ESHA is the grove of trees as defined and delineated by a single, two-dimensional polygon that encompasses all the trees, plus all the area above and below the plane created by that polygon, the pipeline installation is not an allowable use. However, if the aboveground portions of the trees themselves constitute the ESHA, then the gaps between the trees are not part of the ESHA and placement of the pipe in the identified corridor would not violate Section 30240(a). Dr. Dixon states, "In addition, if appropriate Best Management Practices were employed during installation and if the corridor was subsequently revegetated, it is my opinion that the installation would not create "impacts which would significantly degrade" the ESHA and would be "compatible with the continuance" of the ESHA, and, therefore, would not violate Section 30240(b) of the Coastal Act either" (Exhibit 20, page 4). Special Conditions 9, Construction Staging Area and Fencing, Special Condition 10, Final Habitat Management Plan, and Special Condition 17, Revised Tentative Tract Map and Plans require the protection of ESHA areas during grading and construction, require the planting of all non-native or denuded areas and require the construction of a rip-rap apron below the stormdrain outlet to prevent erosion in the lowlands.

Dr. Dixon goes on to explain in Exhibit 20 how the above definition of the Eucalyptus ESHA at the Bolsa Chica is reasonable given the site specific circumstances and that this definition should not be extended to a more traditional grove or portion of a forest with native species, if it were a part of a natural vegetation community where the trees would be just one element in the community or ecosystem and the overall system would be defined by and dependent on complex interactions between the trees, the understory plant species, physical soil characteristics, soil microbes and fungi, and the host of invertebrate and vertebrate animal species that act as pollinators, dispersal agents, parasites, herbivores, and predators, among other things. This type of ESHA determination should only be made in substantially similar cases where there are non-native species or horticultural plantings where it is only the trees themselves that provide the important ecosystem functions upon which the site-specific ESHA determination is based. Given the site specific characteristics of the "Eucalyptus" Tree ESHA at the project site the Commission finds the proposed ESHA definition and delineation and stormdrain proposal, as conditioned, consistent with sections 30107.5 and 30240 of the Coastal Act.

The applicant's biological consultants have pointed out that there is always an arbitrary element in assigning dimensions to protective habitat buffers or development setbacks. Dr. Dixon acknowledges that this is true, at one level. He goes on to say that the biological effects between a 100-foot buffer compared to a 110-foot buffer or those of a 300-foot buffer from a 328 foot (100-meter) buffer are probably indistinguishable. We tend to choose round numbers in whatever units we are using. However, the difference between the 100-foot buffer that the applicant has suggested as being amply protective or the 150-foot minimum buffer in the current proposal and the 100-meter buffer recommended by the wildlife agencies and by staff is not arbitrary. These large differences reflect different opinions concerning the sensitivity of raptor species to disturbance and differences in opinion concerning the acceptable risk of disturbance impacts to raptors, especially raptors that have the potential for nesting at Bolsa Chica (Exhibit 20).

In an urban environment development setbacks are usually inadequate to protect all individuals of wildlife species of concern from significant impacts. In an urban setting a buffer is usually no more than one to several hundred meters and usually less whereas in a natural setting, a buffer of two kilometers has been found to be significantly more protective. Dr. Dixon cites an example of Findlay and Houlihan (1997) where a negative correlation was found between species richness in wetlands and the density of roads on land up to 2000 meters from the wetland and concluded that narrow buffer zones were unlikely to protect biodiversity (Exhibit 20, page 6).

Development must be separated from ESHAs by buffers in order to prevent impacts that would significantly degrade those areas. DFG and the USFWS previously recommended the establishment of a 100-meter buffer on the Bolsa Chica Mesa in the 1980's. Dr. Findlay, of the University of Ottawa, in a letter to the Coastal Commission dated February 9, 2000, recommended a 150-meter buffer for all of the sensitive habitats on the Bolsa Chica Mesa. The Coastal Commission staff ecologist recommends a minimum 328 ft. (100 meter) buffer around the Eucalyptus trees. In further studying the appropriate buffer for the Eucalyptus tree ESHA, Dr Dixon states:

The buffer around the Eucalyptus tree ESHA is particularly important if those trees are to continue to function as nesting habitat for a variety of raptors. The California Department of Fish and Game and the U.S. Fish and Wildlife Service recommended a 100-m buffer. A literature review found that raptor biologists recommended buffers for various species of nesting raptors from 200 m to 1500 m in width, with the exception of 50-m buffers from visual disturbance for kestrels and prairie falcons. . . .In an independent review concerning a prior development proposal at Bolsa Chica with 100-foot (30-m) buffers, raptor expert Brian Walton opined that developers "...often rely on buffers that I find largely ineffective for reducing raptor fright/flight response." [and] "[t]hey describe unusual tolerance, habituated individuals or exceptions to normal raptor behavior rather than the more common behavior of wild birds."

Buffers should not be used for activities that have negative effects on the resources that are being protected. The "eucalyptus" tree ESHA is being fairly heavily used by hikers, runners, dogs, bikers, and four-wheel drive enthusiasts who use the steep slopes on the

upper mesa as a test track, and more recently by youthful paintball warriors who conduct their battles within the eucalyptus grove (and occasionally cut down small trees). In fact, Dr. Dixon states, the current types and intensities of use within and adjacent to the ESHA violate the provisions of Section 30240 of the Coastal Act. In recognition of these destructive activities, the Commission imposed Special Condition 10.B.13 requiring that the eucalyptus tree ESHA be included within the required Habitat Management Plan and be restored and managed to provide undisturbed perching, roosting, and nesting raptor habitat. To this end, the ESHA shall be fenced and the current public access shall be modified consistent with the ESHA protection provisions of the Coastal Act.

As indicated above, raptor use of the eucalyptus ESHA has been significantly impacts by inappropriate use of the area. Therefore, most of the raptors that currently use the trees for perching or nesting are probably from the subset of the regional population that is relatively tolerant of such human disturbance due to some combination of genetical makeup and individual history. Dr. Dixon suggests that this be kept in mind when assessing the results of a flushing study done by the applicant's biological consultants (LSA, 2000). They found that, when their perches were approached by a pedestrian, raptors flushed at distances that varied among species, individuals, and height of the perch. The lower the perch the sooner the birds flushed. Kestrels were most tolerant of human presence, often not flushing at all (flushing range 0 – 13 m). At the other extreme the single turkey vulture approached flushed at a distance of 70 m. White-tailed kites, which are a good model for setting buffer widths because they are sensitive to human intrusion in natural settings, generally flushed when approached to 30 m. Dr. Dixon asserts that, given the current level of disturbance within the ESHA, it is reasonable to assume that these birds are relatively tolerant of human presence and these flushing distances should be considered minimums. Less tolerant birds would flush much sooner and may currently avoid many areas in the ESHA. Jurek (2000) pointed out that, "Individuals within a species may have differing levels of response to human activities, owing to variation in the population for tolerating unusual situations, or to differences in habituating to human activities out of past experience or upbringing. The same level of activity that would not adversely affect one of the habituated raptors might be perceived by a newly arrived individual of the same species in the ESHA to be threatening, causing the bird to not return there." (Exhibit 20, page 6-7).

The 328 foot (100 meter) buffer recommended by USFWS (1979) CDFG (1982), and by staff is necessary to prevent disturbance to raptors that utilize the "eucalyptus" ESHA, and, based on raptor expert Peter Bloom's estimates of foraging distances, is also large enough to provide significant foraging opportunities close to the nest. This is particularly important because distant foraging increases the risk of nest predation. White-tailed kites are a fully protected species in California, have frequently nested at Bolsa Chica, and are generally considered relatively sensitive to human disturbance. Therefore, Dr. Dixon recommends that buffers that are adequate to protect nesting white-tailed kites should be adequate for most of the other species that are likely to nest in the Bolsa Chica ESHA and notes that the following minimum spatial buffers have been recently recommended for nesting white-tailed kites: 100m (Bloom, 2002); 100m (Holmgren, 6/7/2002); 50m (J. Dunk (raptor researcher) in personal communication to M. Holmgren, 2002); 46-61m (with "low-frequency and non-disruptive activities"; Froke, 2002). These estimates suggest that a 100-m buffer is probably adequate, but not overly conservative.

The applicant's biological consultants (LSA, 1999) have concluded that a "100 foot buffer will provide adequate distance to permit nesting by the most common and least sensitive raptor species in all suitable portions of the ESHA." Even if true, this is a low standard of protection and the current proposal for a minimum of 150 feet is only marginally better in the affected areas. In the same report, LSA states that, "The southern side of the ESHA will have a great deal of utility for virtually all the nesting birds, because it is bordered by hundreds of acres of open space, it will be screened from the development area by the northern edge of the ESHA, and a substantial portion of the grove is a least 100 meters from future development." Dr. Dixon's opinion of the statement by the applicant's consultant is that taken together, these statements indicate that development closer than 100 meters will reduce the utility for nesting raptors of those portions of the ESHA that are closest to the development footprint and therefore a reduced buffer would violate Section 30240(b) of the Coastal Act because the portions of the ESHA nearest the development would be significantly degraded and no longer suitable for nesting by some of the raptor species at Bolsa Chica. He recommends that the northern side of the ESHA be provided with a level of protection that is fundamentally the same as that described by LSA for the southern side and a 100-m buffer will accomplish this goal (Exhibit 20, page 8).

Dr. Dixon concluded, after evaluating the various case studies and independent reviews specifically of the raptor behavior of the Bolsa Chica Mesa, that a minimum 328 foot (100-meter) buffer is necessary if the Eucalyptus trees are going to function as nesting sites in the future. However, the Commission found that the applicant's proposed eucalyptus ESHA buffer, which ranges from 150 to 382 ft. with an average width of 274 ft., exceeds the staff's recommended width of 100 meters in some locations. Opinions of general support from two of the raptor biologists (Bloom and Walton) who reviewed earlier as well as the current proposal for the project and greater Bolsa Chica site concerning the adequacy of the eucalyptus ESHA buffer were also presented. The Commission found that there is a wide range of tolerance of human presence within species of raptors, especially for the species that are present in the eucalyptus ESHA and that the variable width eucalyptus ESHA buffer proposed by the applicant is consistent with Section 30240(b) of the Coastal Act.

He Dr. Dixon further opined that larger buffers are necessary during the extraordinary disturbance that takes place during construction. If raptors are nesting, a 500-ft (152 meter) buffer should be established around the nest during construction activities. The Commission agreed and imposed Special Condition 10.B.1 requiring this additional buffer between any active nests and development areas during construction. As discussed above, the Brightwater development project proposal of a varied width buffer, including a minimum of only 150 feet around the Eucalyptus grove is inadequate to protect the ESHA from myriad human and domestic pet activities that occur when residential development is adjacent to a sensitive area.

For the reasons cited above the proposed project can only be approved if final Habitat Management Plans are submitted showing a variable width Eucalyptus Tree ESHA buffer of 150 to 382 ft. 328-ft. in width as measured from the western and northern boundary of the Eucalyptus ESHA as submitted by the applicant and required in Special Condition 10. ~~The Eucalyptus Tress ESHA boundary is generally depicted in Figure 1 of Exhibit 20.~~

Only as conditioned is the proposed project consistent with Section 30240 of the Coastal Act.

2. Southern Tarplant ESHA

The Southern Tarplant is a Federal "Species of Concern" and listed as a 1B (Rare, Threatened, or Endangered in California and Elsewhere) plant by the California Native Plant Society (CNPS), and it also meets the CEQA Guidelines' definition of rare, threatened, or endangered species. Southern Tarplant is an annual plant that favors damp, disturbed areas and is generally restricted to grasslands, wetland edges, vernal pools, and alkaline flats in the coastal counties of southern California and has been greatly reduced and populations have been fragmented by development. According to Dr. Dixon, Southern Tarplant has become rare in California and its remaining habitat is particularly valuable due to the loss of its natural habitat. The Department of Fish and Game further noted in their January 16, 2002 EIR comments on the proposed project, that one of the characteristics of the Southern Tarplant is that, as an annual (life cycle is completed within one year), the number of detectable (above-ground flowering) plants visible in any one year vary sharply depending on factors such as soil moisture. Because of this characteristic of the plant, quantifying populations and determining the impacts of a development project on existing tarplant communities can be problematic. Therefore, the long-term health of the tarplant population depends on an extensive seed bank.

The applicant's consultant conducted tarplant surveys of both the upper and lower benches in 1999, 2000, 2001 and 2002. The largest concentration of tarplant by far is on the lower bench; however, the upper bench also contains several sizeable patches of the sensitive plant (Exhibit 16). Dr. Dixon notes that based on the applicant's surveys, the tarplant tends to be much more widely distributed among the habitats on the lower bench than on the upper bench where it is almost entirely confined to the area surrounding the seasonal pond adjacent to the Los Patos wetland. There may be habitat differences between the upper and lower benches that account for this phenomenon. Southern Tarplant is most abundant near trails and other open disturbed areas. Scattered individual plants on the upper bench do not constitute ESHA because over the four-year survey period these plant populations have remained only a few scattered individuals. However, the Tarplant populations around the Los Patos wetland on the upper bench should be considered ESHA because these more dense populations have persisted during the survey period and Southern Tarplant has become rare in California due to the loss of its native habitat and therefore its remaining habitat is particularly valuable. As stated above, Southern Tarplant is a Federal "Species of Concern" as well as a California Native Plant Society "1B species" (rare, threatened, or endangered in California and elsewhere). Similarly, the patches of tarplant near the western edge of the development area are part of the extensive population on the lower bench and are part of the ESHA. The southern tarplant at Bolsa Chica is one of the more significant populations in terms of numbers in southern California, according to Dr. Dixon. As environmentally sensitive habitat areas, the tarplant populations must be preserved in place and cannot be eliminated or translocated in order to use their existing locations for residential use.

The October 2004 Brightwater development proposal would have eliminated two of the existing ESHA populations of Tarplant within the then proposed 28-acre Upland Habitat

Park, and a third tarplant population located in the area of the then proposed 2.5-acre private recreation center surrounding the existing Los Patos seasonal wetland would also have been eliminated. The applicant later proposed to translocate the Tarplant that was within the footprint of the private recreation center and the park elsewhere on the upper bench instead of onto the lower bench as with the original proposal. The proposed On-Site Preservation/Translocation Plan was also inconsistent with section 30240(a) of the Coastal Act. Section 30240(a) of the Coastal Act does not allow impacts to existing ESHA, even to move or translocate it adjacent to its current location. Further as explained above, the Tarplant exists where it is currently located because the soil conditions and other factors and there is no guarantee that the plants will survive in a new location. Habitat that qualifies as ESHA under the Coastal Act must be protected in place, except under limited situations not applicable here, pursuant to Section 30240 of the Coastal Act. Only resource dependent uses are allowed within areas designated as ESHA.

The Southern Tarplant populations that constitute ESHA must also be protected from adjacent development with an adequately sized buffer. The Commission's staff ecologist recommends that a 50-foot buffer be established adjacent to the ESHA boundaries defined by the presence of tarplant. The Commission has used such a buffer to protect sensitive vegetation in past actions, consistent with Section 30240(b) of the Coastal Act. The current Brightwater development project now proposes to retain in place the Southern Tarplant adjacent to the Los Patos Wetlands, which has been determined by the Commission's staff ecologist to be ESHA under Section 30107.5 of the Coastal Act. Subsequent to the October 2004 Commission hearing the applicant's consultant went back to the project site to verify and refine the Tarplant mapping using GPS and aerial photos and original field notes and Los Patos seasonal pond or wetland and submitted that information to staff (Exhibit 16a). The Commission staff biologist now agrees with the delineations of the Southern Tarplant ESHA and the Los Patos Wetland. The applicant is also proposing a 100-foot wetland buffer and a 50-foot Tarplant buffer and the preservation of the area through the proposed 2.5-acre Southern Tarplant and Seasonal Pond Environmental Protection Area. However, there will be unavoidable, onetime impacts to the Southern Tarplant and wetland buffers for the construction of the 1.2 million underground water reservoir. The underground facility has been reduced from its previous size of 2.1 million gallons and has been redesigned such that future access to the facility will be from outside of the buffer area. Once construction is complete the area will be revegetated.

Although the applicant is proposing to preserve all Southern Tarplant and the wetlands and provide appropriate buffers, no revegetation, monitoring or maintenance plan for the 2.5-acre Southern Tarplant and Seasonal Pond Environmental Protection Area was submitted. Therefore, the Commission imposes Special Conditions 10 and 17 require that a habitat management plan and revised plans be provided for the Southern Tarplant/Seasonal Pond area that includes the plant palette and maintenance and monitoring, similar to the other onsite habitat areas. The habitat preservation area will also need to be managed and maintained in perpetuity. Special Conditions 2 and 4 require that this be carried out. Only as conditioned is the proposed project consistent with Sections 30233 and 30240 of the Coastal Act.

3. Burrowing Owl ESHA

One of the sensitive raptor species that uses the Bolsa Chica mesa is the burrowing owl. The Department of Fish and Game (DFG) considers the burrowing owl (*Athene cunicularia*) a California Species of Special Concern. It hunts for prey in open grasslands and areas of ruderal vegetation. The current proposed Brightwater project will impact 68 acres of such habitat. In addition to foraging over the grasslands, the burrowing owl uses the abandoned burrows of the California ground squirrel and other small rodents as shelter during the nesting and wintering seasons. The burrowing owl is in decline in most areas of California, especially in the coastal zone due to the loss of habitat as a result of development and rodent control activities. The rapid decline of this species in Orange County has been chronicled in the latter half of the 20th century.⁸

The Brightwater development site contains many burrows that have probably been used by the burrowing owl. One or two wintering birds are thought to use the Bolsa Chica Mesa, as evidenced by repeated observations of one owl or two owls in the winters of 2001-2002 and 2002-2003 by the applicant's biologists (Exhibit 17a). However, it is believed that the Bolsa Chica Mesa is used by an unknown number of migrant burrowing owls as a stop-over foraging area, according to Dr. Dixon's communications with other raptor biologists. It is raptor biologist Peter Bloom's professional opinion that migrant and wintering burrowing owls use the Bolsa Chica Mesa during most years. The Bolsa Chica Mesa is one of the few areas in the region that still has the potential for nesting by this species in the future. Additionally, the burrowing owl is one of three species of raptors at Bolsa Chica that DFG biologist Ron Jurek thinks is most in need of habitat protection. Based on this information, Dr. Dixon has determined that the area on the Bolsa Chica Mesa as mapped by the applicant's biologist as burrowing owl habitat constitute an ESHA as defined by the Coastal Act, and therefore also should be protected as required by the Coastal Act. The Commission agrees. Additionally, the DFG, in its January 16, 2002 comments on the project EIR, recommended that the burrowing owl habitat on the upper bench be retained, if feasible.

Upon receipt of the applicant's mapping showing the burrowing owl habitat location, at the request of Commission technical staff, planning staff suggested that the applicant again review the submittal of the mapped burrowing owl use area. It appeared to staff that the area might have been drawn overly broad. The applicant however did not alter the map of burrowing owl primary roosting areas. However, several months later, the applicant did survey the project area for potential burrow habitat. On June 15, 2004, the applicant's consultant, LSA, submitted the results of a survey taken on June 2, 2004 (Exhibit 17). The applicant's June 2004 survey of ground squirrel activity found approximately 130 ground squirrel burrow locations, providing a rough approximation of how squirrels and their burrows are distributed on the site, as explained by the consultant. The highest use areas were areas where there is a break in topography; at the edge of the slope of the upper mesa on the west and at the bluff edge on the south and on the bluff edge of the lower bench overlooking Outer Bolsa Bay and the lowlands on the southeastern bluff edge

⁸ Hamilton and Willick (1996) and Gallagher and Bloom (1997), according to Draft Subsequent Environmental Impact Report, Volume I, Brightwater Development Project, Orange County, California, SCH #1993071064, LSA, November 17, 2001, page 4.9-21.

of the lower bench. LSA concluded that, "the best way to offset potential impacts to burrowing owl habitat would be to enhance owl habitat suitability somewhere on the lower mesa where human disturbance could be managed".

In reviewing the October 2004 Brightwater development proposal Dr. Dixon however recommended that the Commission use a similar approach in identifying the Burrowing Owl ESHA on the Bolsa Chica as it did in a recent project in the South Central Coast District, the Arco Dos Pueblos Golf Links (December 11, 2002 Commission Hearing). In that case, the Commission designated only trees known to have been used by white-tailed kites for nesting or perching and adjacent trees as ESHA. In the case of Brightwater, LSA Associates has identified the area containing burrows known to be used by wintering burrowing owls. Burrowing owls tend to reuse burrows year after year and an area should be considered occupied if at least one burrowing owl has been observed occupying a burrow there within the last three years, according to the California Burrowing Owl Consortium and the Department of Fish and Game. Therefore, the LSA field observations were good evidence of occupied habitat, and Dr. Dixon recommended that the Commission designate as ESHA the area mapped by LSA as the "Primary roosting areas used by wintering burrowing owls". This LSA mapping is shown in Exhibit 17a and is reflected in Figure 1 of Dr. Dixon's July 15, 2004 memo (Exhibit 28).

Following the October 2004 Commission meeting the applicant's biological consulting team presented staff with alternative mapping of the owl use area based on the observations of the original surveyors (Exhibit 17b). They suggested a revised burrowing owl use area by compiling their observations of the bird from October 17, 2001 through April 21, 2003. The "burrowing owl use area" was revised to be a smaller area by eliminating one burrow where one bird had been seen once, but abandoned the burrow in favor of another one. Evidence of abandonment was spider webs and debris at the burrow entrance. ~~Finally, the date of the observation at this burrow of November 2001 just exceeds the Consortium's three-year criteria for considering a burrow to be occupied, and therefore is not considered to be within the boundary of the ESHA.~~ For these reasons the Commission's staff ecologist recommends that the Burrowing Owl ESHA be delineated as shown on the applicant's November 17, 2004 submittal. Although there is merit in accepting the applicant's a reduced Burrowing Owl ESHA delineation as proposed by the applicant, there is no justification for the proposed reduction in the Burrowing Owl ESHA buffer.

As discussed in Section D.1 of this report, buffers serve several important functions. Section 30240(b) of the Coastal Act requires that ESHA be protected from adjacent development. In order to avoid disturbing burrowing owl habitat, the California Burrowing Owl Consortium and the California Department of Fish and Game recommend 164-foot (50 meter) buffers during the non-breeding season, 264-foot (75 meter) buffers during the breeding season, and a minimum 6.5 acres of foraging habitat maintained adjacent to the burrows. However, given that the existing use of the Bolsa Chica mesa is by wintering and migrant birds, the Commission finds that a 164 foot (50 meter) buffer is adequate to protect the Burrowing Owl ESHA. However, as conditioned in Special Condition 5, the applicant must abide by the "Burrowing Owl Survey Protocol and Mitigation Guidelines" by California Burrowing Owl Consortium to determine if there is any occupation of the burrows of the Burrowing Owl ESHA. Further, the proposed project also includes grading in the

Burrowing Owl ESHA buffer for the construction of the residential lots and permanent irrigation within the first 50 feet of the 164 ft. buffer. Grading to support residential development and the extension of residential land use are not allowed in habitat buffers. As conditioned herein, residential grading is not allowed within the 164 foot buffer. Only as conditioned in Special Condition 10 to submit revised habitat management plans for a 164 ft. wide Burrowing Owl buffer to allow only that grading in the Burrowing Owl buffer for the removal of existing roads so that the area can be restored with native vegetation, for the public trail in the upper 25 ft of the buffer and any necessary water quality treatment facilities, and planting and maintaining of the buffer for habitat purposes consistent with the approved fuel modification and habitat management plans can the project be found consistent with Section 30240(b) of the Coastal Act with regards to the provision of an adequate buffer to protect the Burrowing Owl ESHA.

During the April 14, 2005 hearing the Commission expressed concern about the recent practice that has been brought to light in the context of other projects, namely excessive rodent control or rodenticide. The applicant's response was that they were not planning to employ rodenticides in any form within the project. The Commission required that the importance of prohibiting this practice be included in the development's resident education program in the Final Habitat Management Plan requirements as well as in the Construction Staging and Phasing Plan Special Condition.

4. Annual Grassland and Ruderal Foraging Habitat

The vegetation type on the project site is predominantly non-native annual grasslands and ruderal vegetation. Of the 105.3-acre development area, 82.6 acres of open vegetated areas are dominated by annual grasslands (55.9 acres) and ruderal grassland/forb (26.7 acres), according to the project EIR. Although annual grasslands and ruderal vegetation are generally not considered to be sensitive resources because of the exotic character of the dominant species, these habitats nevertheless provide important support for many native species of plants and animals. This habitat type is particularly important as foraging habit for many species of birds of prey and it is being rapidly replaced by development in much of coastal southern California. At the Bolsa Chica mesa, the annual grassland and ruderal vegetation provides critical support for the many species of birds that use the Eucalyptus, palms, and pine trees along the bluff edge for perching, roosting and nesting. Without adequate foraging habitat nearby, the existing Eucalyptus grove of the Bolsa Chica Mesa would not continue to function as ESHA.

In the past, little concern has been expressed nor any actions taken about the loss of annual grasslands and ruderal vegetation given their status as non-native habitat. However, in recent years, with the increasing loss of native prairies, it has come to the attention of the Department of Fish and Game and other raptor biologists that the remaining non-native annual grassland and ruderal vegetation are becoming a critical food source which is essential to the health of populations of many birds of prey and other native species. For this reason, DFG has recommended mitigation under the California Environmental Quality Act for the loss of such non-native habitat. In over 60 recent actions, DFG has required preservation of foraging habitat at a ratio of 0.5 acres preserved to each acre lost to development. At Bolsa Chica, the foraging habitat on the mesa is absolutely necessary for the continued presence of many of the raptors that utilize

the Eucalyptus ESHA. Furthermore, concerning the interconnectedness of the foraging habitat and the Eucalyptus ESHA, DFG biologist Ron Jurek wrote, in an October 2000 independent review of the potential effects of development on raptors of the Bolsa Chica Mesa, that the Eucalyptus ESHA "...is a zone of trees with good perching and nesting conditions within raptor habitat. It is not the raptor habitat itself. In my professional opinion, for most of the raptor species known to use the ESHA, raptor use depends primarily on the availability of the food resources of the surrounding lands....".⁹

As proposed, the Brightwater development project would eliminate 68 acres of annual grassland and ruderal habitat, combined. In approving the development, the County of Orange also adopted the project's subsequent EIR. The EIR states that the proposed loss of foraging habitat will not be significant considering the existence of the remaining habitat on the mesa and in the region. The Commission notes that of the existing grassland and ruderal habitat on the upper bench of the Bolsa Chica Mesa, the Brightwater development project eliminates all but 1.5 acres of grassland and all but 6 acres of ruderal vegetation. Therefore the EIR statement must be referring to the grassland and ruderal habitats remaining on the lower bench of Bolsa Chica Mesa. However, the Commission notes that the lower bench is not before the Commission given that the applicant has refused to include it in this coastal development permit application. There is no guarantee that the lower bench will be sold for conservation purposes.

Moreover, even if the lower bench were to be preserved, the Commission believes that the loss of nearly 70 acres of annual grassland and ruderal habitat directly adjacent to the Eucalyptus Tree ESHA would still be a significant loss. For the reasons stated in the extended quotation listed below, the impacts on the raptors is likely to be directly related and proportional to the size of the vegetation removed, regardless of the presence of similar vegetative communities nearby. In fact, if anything, the ratio should be higher here, due to the particular significance of the Bolsa Chica Mesa to a great variety of raptors. The special importance of the Eucalyptus trees and adjacent foraging habitats to many species of nesting and wintering raptor species has been recognized by the wildlife agencies for over 20 years.

The project EIR also suggested that the loss of foraging habitat would not be significant based on a statement of another October 2000 independent reviewer of the Bolsa Chica Mesa, Brian Walton, that concluded that the overall population status would not be changed for any species of raptor at Bolsa Chica. Although this statement is true, Dr. Dixon points out that this standard is not adequate in the context of resource conservation and states, "it would be a very low standard that ignores the local or regional significance of a species' presence. It simply means that the viability of the species in California is unlikely to be measurably decreased by local losses. Similar claims can be made of impacts even to many endangered species where the loss of a few individuals is unlikely to push the species to extinction. That fact is, however, not a compelling argument for additional impacts". In fact, Mr. Walton did not intend to suggest that the raptor habitat at Bolsa Chica was unimportant. This is obvious in the following excerpts from Mr. Walton's letters to the Department of Fish and Game and to the Coastal Commission:

⁹ Jurek, R. (CDFG; Member, Independent Review Committee appointed by CCC, CDFG & Hearthside Homes). October 16, 2000. Letter to S. Hansch (CCC) concerning probable effects of development on raptors at Bolsa Chica Mesa.

Pete [Bloom] and I have studied raptors in coastal California for the last 25+ years. No one else can say that. We still feel that the raptors and the Bolsa Chica habitat are important. That has been a consistent opinion for nearly 20 years from the only two people who have been continuously focused on these species in these locations.

During that period ... the rest of Orange County has largely been paved over and upland grasslands near coastal wetlands are almost non-existent. Hence, it would be likely that the opinions we had in 1982 on the importance of this habitat are even more relevant in 2000. I have difficulty in understanding why any development is allowed to occur in this area.

and:

The clearest case where development is impacting raptors and their prey species but where the Commission still is uncertain of the real impact on raptor populations, is in Orange County. There, most raptor species have been completely eliminated from the coastal zone as breeders and most of the region has vastly reduced wintering population range. Even still, the last bit of available open space (Bolsa Chica) is being considered for some development, with the idea that the remaining raptors will move elsewhere or not be impacted, or live in remnant open space within the developed area.

It is not accurate, in fact, that individual raptors when impacted by development simply move elsewhere and everyone survives. If that were true, there would be areas of incredible density in non-developed areas, where the impacted raptors have moved and are now living with pre-existing birds. This philosophy would be analogous to thinking that if you tore down one of two adjacent apartment buildings, that all the residents would simply move into the remaining building and live two families to an apartment. The density of raptors is dependent on a variety of things, so birds cannot actually just get denser in adjacent areas by moving off development sites.

Given the above facts concerning the importance of grasslands and ruderal habitats for the proper functioning of the adjacent Eucalyptus ESHA for the many raptors that use the Bolsa Chica Mesa, a decision has to be made as to whether these vegetative communities themselves constitutes ESHA as defined by the Coastal Act. Dr. Dixon outlines the issues that have to be factored when making such a determination. Although the raptor foraging habitat at Bolsa Chica is clearly of high ecological value because of its context in maintaining the raptors, including the burrowing owl, the non-native habitat alone does not constitute ESHA. However, its loss as contemplated in the proposed Brightwater development project would clearly be inconsistent with Section 30240(b) of the Coastal Act, which prohibits development adjacent to ESHA that would significantly degrade the ESHA. As discussed herein, the importance of foraging habitat is clearly such that the loss of a large amount at Bolsa Chica would result in "impacts which would significantly degrade" the adjacent Eucalyptus Tree ESHA such that it would no longer be especially

valuable to birds of prey. Therefore, to be in compliance with Section 30240(b) of the Coastal Act, development must be sited such that this does not occur.

Because of the significant adverse effects of development on raptor foraging habitat, Dr. Dixon suggests that the Commission follow the recommendation of the Department of Fish and Game and seek mitigation for annual grassland and ruderal foraging habitat on the Bolsa Chica Mesa by preserving 0.5 acres of such habitat for each acre lost to development. Preservation preferably should be on the project site adjacent to the Eucalyptus Tree ESHA and could reasonably include the recommended buffer areas for the Eucalyptus trees and for the burrowing owl habitat described above.

To mitigate the loss of 68 acres of annual grassland and ruderal vegetation the applicant would need to provide 34 acres of habitat, preferably on-site by widening ~~the Eucalyptus and the Burrowing Owl ESHA buffers~~ and planting ~~them~~ it, along with the Eucalyptus ESHA buffer, with native grassland species. As conditioned to widened and plant these buffers and remove the restriction on the plant palette from all but the first 50 feet of the buffer closest to the homes, to plant the majority of the remainder of the buffer in native grassland species, to minimize irrigation of the buffer area as discussed below and as specified in Special Condition 10 and to provide the remainder off-site of the 34 acres in native or non-native grassland that cannot be provided on-site, as required in special condition 17, consistent with the approved final habitat management plan, the proposed project is consistent with the Coastal Act concerning the protection of raptor foraging habitat.

5. Biological Impacts of Fuel Modification on the Eucalyptus Grove and Burrowing Owl ESHA and Buffer Areas

Although the proposed project is not located within a high fire danger area, the proposed homes are of concern to the Orange County Fire Authority (OCFA) due to the presence of the existing Eucalyptus trees located primarily on the southern bluff face of the upper bench of the Bolsa Chica Mesa. Eucalyptus trees are highly flammable and are not normally allowed to be planted or retained within 170 feet of habitable or combustible structures. OCFA has prepared Fuel Modification Guidelines for development in areas where there is the potential for damage to life or property due to fire. The Guidelines do however allow special consideration for rare and endangered species, geologic hazards, tree ordinances, or other conflicting restrictions as identified in the environmental documents. OCFA Fuel Modification Guidelines are as follows:

Zone A – provide a minimum 20 feet wide level graded area at the top or base of slope and immediately adjacent to the protected development, no combustible structures, fully irrigated with automatic irrigation system, all vegetation shall be highly fire resistant and shall not include undesirable combustible vegetation.

Zone B – provide a minimum 50 feet wide irrigated area and must be planted with plants from the approved OCFA Plant List. No combustible construction is allowed.

Zone C and D – are considered the non-irrigated, thinning zones. Zone C is 50 feet in width and requires 50% thinning with removal of all dead and dying

undesirable species. Zone D is 50 feet in width and requires 30% thinning with removal of all dead and dying growth and undesirable species. Specific requirements for these zones include: all fuels be reduced to a maximum of 8-12 inches in height and native grasses, when used, shall be cut after annual seeding and shall not exceed 8 inches in height. All plants within these zones must be chosen from the approved OCFA plant list. Trees which are being retained with the approval of the agency having jurisdiction shall be pruned to provide clearance of three times the height of the under story plant material or 10 feet, whichever is higher. Dead and twiggy growth shall also be removed. All existing plants or plant grouping except cacti, succulents, trees and tree-form shrubs shall be separated by a distance of three times the height of the plant material or 20 feet, whichever is the greater.

The applicant has designed the proposed subdivision such that the residential lots are as close to the bluff edge as possible in order to maximize the use the upper bench for residential development and to maximize ocean and wetland views of the future homes owners. The Burrowing Owl ESHA and buffer are located between the proposed residential lots and the Eucalyptus grove near the center of the site. The existing Eucalyptus grove is located primarily along the bluff face with very few trees on the bluff top. The residential lots are set back 150 to 382 feet away from the Eucalyptus trees. Because no combustible structures can be located within 170 feet of the Eucalyptus trees the 20 foot wide Fuel Modification Zone A is on the rear yards of the residential lots. ~~Because the Eucalyptus trees are on the bluff face, the set back distance between the trees and the homes represent both vertical and horizontal distance and appears to be based on what is allowed under OCFA Guidelines as opposed to what is necessary to protect the viability of the Eucalyptus grove for continued raptor nesting, roosting and perching habitat, as required by Section 30240 of the Coastal Act.~~ Where the bluff is steepest and the trees are furthest away from the residential lots the setback from the bluff edge is no more than 100 ft (Exhibit 12).

Initially the entire area was proposed as Eucalyptus Tree ESHA buffer and the applicant assured staff that OCFA would approve the habitat restoration and preservation plan because the native plants that were chosen were all low growing, low fuel load and could be sustained on their own after establishment with temporary irrigation (2-5 years). Staff was later told by the applicant that OCFA is requiring that the first 50 feet closest to the homes be permanently irrigated in order to avoid drought conditions. On March 11, 2005 staff received from the applicant a revision to the project description concerning the width of the Eucalyptus Tree ESHA buffer and a 4 page Conceptual Plan OCFA Protection Zones and Program Description (Exhibit 4). Based upon OCFA requirements, the applicant has further reduced the ESHA buffer by 50 ft. and this 50 foot area will now become Zone B Ecotone Management area, to be permanently irrigated for interim establishment and drought conditions. The March 11th letter states that although the applicant wishes to remove this area from the habitat buffer that it will function no differently. The applicant argues that although the area will be managed to protect future homes from fire damage, that it will function almost identical to the adjacent "pure" habitat buffer. The applicant notes that both the ecotone management area and the habitat buffer will be planted with a controlled palette that allows only low-growing, low-fuel natives. If

any other native plants colonize the area they will have to be removed. Although staff has yet to receive written confirmation of approval from OCFA of the latest conceptual fuel modification plan received on March 11, 2005 or the original habitat creation and monitoring plan received on January 21, 2005, the applicant contends that neither area will have to be managed in the traditional manner of mowing, thinning or pruning or other mechanical maintenance activities.

Clearly the ecotone management area is being designed and maintained as support for the adjacent residential development. Native plants do not need to be permanently irrigated to buffer native habitat from other development. Indeed, the adjacent "pure" buffer is not being permanently irrigated. The Department of Fish and Game (DFG) in their review of the previously proposed October 2004 fuel modification program expressed concerns over the non-compatible goals of habitat protection and fire protection for adjacent habitable structures. DFG noted in its April 24, 2003 review of several documents associated with the proposal that, a modified plant palette had been prepared to avoid native coastal sage or coastal bluff scrub species prohibited by the County's list of undesirable species including California sagebrush (*Artemisia californica*) and other common coastal sage scrub species. Also cited by DFG was the irrigation of coastal sage scrub (css) that was being protected in place and the normal requirement that css vegetation be thinned and removed as stated above in the Zones C and D requirements. Concern was also expressed over the limited list of species proposed for the then proposed coastal prairie plant community, especially given the abundance of non-native grasses and forbs that would have competed with this new habitat. DFG suggested that additional local native species be added to the coastal prairie palette in order to increase native diversity and include native coastal grassland species that are more disturbance adapted. Finally, DFG commented on the likely results of the introduction of irrigation, mowing, thinning and other habitat disturbance that would have been created by using the upland habitat park, including the Eucalyptus ESHA buffer, for fuel modification purposes. Specifically cited examples are the negative alterations of native arthropod communities and vegetation thinning requirements requiring the removal of species such as California sagebrush. In the previous application DFG ultimately concluded, after an exchange of several rounds of clarifications between the applicant's biological consultants, that the Eucalyptus ESHA would not be adversely affected if all of the specific construction and management activities of the conceptually approved fuel modification plan were followed. Nonetheless, DFG also stated that they "do not consider fuel modification zones, regardless of their native species content, to be considered acceptable as mitigation for biological impacts." While the applicant has yet to receive DFG approval of the current habitat creation and monitoring plan, many of the same concerns are present in the instant application.

Section 32040(b) requires that development adjacent to ESHA be sited and designed such that significant impacts to the ESHA are prevented and that the adjacent use be compatible with the continuation of the habitat area. Based on this Coastal Act provision, ~~Commission staff ecologist is prepared to recommend that the Commission approves~~ limited fuel modification development in the habitat buffer. First the ~~Eucalyptus Tree and Burrowing Owl~~ buffers would have to be widened as ~~recommended~~ required above, for the reasons set forth above before development to support an adjacent use could occur within the habitat buffers. Secondly, the plant palette should only be restricted within the first 50

feet closest to the residential lots where ~~permanent~~ drip irrigation, designed to mimic the ambient rainfall condition, is also proposed by the applicant. ~~Periodic mowing (every 3-5 years) within that 50 foot area could also occur as well as within the next 50 ft. area closest to the homes.~~ As proposed by the applicant, the drip irrigation system shall be carefully monitored and adjusted if necessary to avoid adverse impacts, including but not limited to, attraction of Argentine ants. However, the plant palette must not be restricted beyond the 50-foot area closest to the homes nor should permanent irrigation occur beyond this point. The plant palette must contain species appropriate to a native California grassland community in coastal Southern California on the relatively flat mesa top area. Pruning and thinning and all other fuel modification activities are prohibited in the habitat buffers ~~except for temporary (3 to 5 years), above ground irrigation if needed for establishment of the native plants.~~ Only as conditioned to prepare a revised fuel modification plan that is consistent with these terms and the requirements of the final habitat management plan is the proposed project consistent with Section 30240(b) of the Coastal Act.

E. PUBLIC ACCESS AND RECREATION

The provision of public access in new development proposals is one of the main tenants of the Coastal Act, especially in conjunction with new development located between the sea and the first public road, such as the subject project. The 225-acre Bolsa Chica Mesa is located between the first public road and the mean high tide of the sea. At roughly 50 ft. above mean sea level, spectacular views of the wetlands and the associated wildlife and uninterrupted views of the Bolsa Chica State Beach and Pacific Ocean are available from the upper bench of the Bolsa Chica Mesa. Santa Catalina Island is also often visible from the project site. The Bolsa Chica Wetlands at approximately 1,000 acres is the largest remaining wetland in Southern California. Following the 1997 State acquisition of most of the remaining wetlands that were under private ownership, a comprehensive Bolsa Chica wetlands restoration effort is now underway. Given the prominence of the adjacent Bolsa Chica wetlands, appropriate public access and passive recreational opportunities must be provided and conspicuously posted. Further, the Coastal Act gives priority to land uses that provide opportunities for enhanced public access, public recreation and lower cost visitor recreational uses.

Section 30210 Access; recreational opportunities; posting

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

(Amended by Ch. 1075, Stats. 1978.)

Section 30211 Development not to interfere with access

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 30212 New development projects

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) Adequate access exists nearby, or, (3) Agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

(b) For purposes of this section, "new development" does not include:

(1) Replacement of any structure pursuant to the provisions of subdivision (g) of Section 30610.

(2) The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.

(3) Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.

(4) The reconstruction or repair of any seawall; provided, however, that the reconstructed or repaired seawall is not a seaward of the location of the former structure.

(5) Any repair or maintenance activity for which the commission has determined, pursuant to Section 30610, that a coastal development permit will be required unless the commission determines that the activity will have an adverse impact on lateral public access along the beach.

As used in this subdivision "bulk" means total interior cubic volume as measured from the exterior surface of the structure.

(c) Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.

(Amended by: Ch. 1075, Stats. 1978; Ch. 919, Stats. 1979; Ch. 744, Stats. 1983.)

Section 30212.5 Public facilities; distribution

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Section 30213 Lower cost visitor and recreational facilities; encouragement and provision; overnight room rentals

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

The commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.

(Amended by: Ch. 1191, Stats. 1979; Ch. 1087, Stats. 1980; Ch. 1007, Stats. 1981; Ch. 285, Stats. 1991.)

The previously proposed Brightwater development project did not provide for maximum public access to and along the bluff where views of the coast are available, as required by the Coastal Act. The project included a 28-acre upland habitat park and a 0.6-mile long paved pedestrian/bicycle trail, bicycle racks, benches, a kiosk and interpretive information along the slope and bluff face. The park was to be dedicated to the County Department of Harbors Beaches and Parks. However, despite the provision of these recreational amenities, general public access to the amenities was limited. The subdivision was designed with guard-gated entries and general public vehicular access was not allowed within the residential community. The extension of a separate public road on the eastern project boundary (Bolsa Chica Street) was the only public entry into the entire 105-acre site where 30 public parking spaces were proposed. Further, notice to the public of the availability of the recreational amenities was inadequate. Public access provisions to the recreational amenities were inconsistent with the Coastal Act mandate of maximizing public access opportunities. As proposed, several aspects of the recreational amenities and public parking lot also significantly adversely impacted environmentally sensitive resources of the site.

The currently proposed project has vastly improved public access provisions. The residential subdivision is no longer proposed as a gated private community. The guard houses and gated entryways have been eliminated and public vehicular access is no longer prohibited. The public will now be able to drive, bicycle or walk into and throughout the community, park along any subdivision road, and use all three of the proposed paseos or vertical walkways leading to the passive habitat park and trail. The public parking lot within the habitat park has been eliminated. The project frontage road, Los Patos Avenue, will also be widened, paved and landscaped and provides the opportunity for 114 additional on-street parking spaces. The trail has also been reduced from a 12-foot wide

paved pedestrian/bicycle facility to a more environmentally friendly, 6-foot wide decomposed granite pedestrian only trail. Although these changes have been significant and have brought the proposed project more in line with the Coastal Act public access and recreation mandates, additional changes are necessary.

The off-site signage informing the public of the availability of the proposed park is located at Warner Avenue and Bolsa Chica Street. No signage informing the public of the habitat park and trail is provided at the community entrance at the intersection of Warner Avenue and Los Patos Avenue. The existing publicly owned Bolsa Chica Ecological Reserve parking lot is located at Warner Avenue and Pacific Coast Highway. Many visitors from outside of the local area use this parking lot to enjoy the wetlands. This would be a good location for informing the public of the proposed upper bench trail and passive habitat park. The applicant should work with the Department of Fish and Game, managers of the Ecological Reserve, to include public signage and printed information concerning the upland habitat park, at the Ecological Reserve parking lot and in Ecological Reserve literature. To further appropriately maximize public access and enjoyment of this significant coastal resource, the applicant shall also install benches, interpretive signage and trash receptacles along the trail.

Public access and opportunities for public recreation are given priority in the Coastal Act over private residential development. Therefore, the public access and passive public recreation amenities must be constructed and open for public use prior to or concurrent with private residential use of the site. According to the applicant, the plan is to have the State Lands Commission take over ownership of the habitat park and trail. However, the trail and the portion of the habitat park closest to the residential development would be managed and maintained by the homeowners association for public access, passive recreation, habitat protection and approved fuel modification purposes through a management and maintenance easement. Only as conditioned for the additional public access signage, the provision of benches, interpretive signage and trash receptacles, dedication of the habitat park and trail to the State Lands Commission, other public agency or non-profit agency for habitat, public access and passive recreational purposes, and a management and maintenance easement in favor of the homeowners association is the proposed project consistent with the public access and recreation policies of the Coastal Act and the Commission is assured that these facilities will be preserved for these uses and managed and maintained in a manner that is also protective of the adjacent environmentally sensitive habitat areas.

As detailed in the Cultural Resources section of this staff report, the entire Bolsa Chica area as well as the project site has a rich prehistoric and historic past in terms of its use and occupation by Native Americans. Two mapped archaeological sites, ORA-83 and ORA-85 are located on the project site. Although the landowner has received several coastal development permits over the last 20 years to carry out archaeological investigations and data recovery and salvage, the cultural heritage of the site should be recognized and made known to visitors. The applicant proposes that a portion of ORA-83, known as the Cogged Stone site, be placed in permanent open space and accessible to the public as a part of the Eucalyptus Grove ESHA buffer that will be restored with native grassland and preserved. Placing interpretive signage along the habitat trail at the site, as conditioned, informing the public of the rich cultural history also provides partial mitigation

for the removal of the cultural resources that were permitted to be removed from the project site consistent with Section 30244 of the Coastal Act.

F. SCENIC AND VISUAL RESOURCES

The Coastal Act seeks to minimize the alteration of natural bluffs and cliffs in the coastal zone in order to protect the scenic views to and along the coast and throughout coastal areas generally. Section 30251 of the Coastal Act states:

Section 30251 Scenic and visual qualities

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

1. Existing Geomorphology and Past Development Activities

The Brightwater residential project site is located on the upper bench of the Bolsa Chica Mesa and the slope between the upper and lower benches. The proposed residual parcel is located on the lower bench, at the toe of the slope separating the two benches (Exhibit 15). Existing ground elevations on the upper bench range from 30-50 ft. above mean sea level (MSL). The surface elevation of the lower bench is 10-30 ft. above MSL. The two benches are separated by a slope approx. 25 ft high with an average gradient of 10-15%. Also at the toe of the slope, running parallel to it, lies the surface trace of the Newport-Inglewood fault, suggesting that the slope is a "fault line scarp", created by differential movement across the fault. According to the Commission's staff geologist, Dr. Mark Johnsson, the Bolsa Chica Mesa is one of the few places in Orange County where a fault line scarp can be observed. Grading and urbanization have destroyed most fault line scarps associated with the Newport-Inglewood fault zone.

The southeastern bluff edge of the project site has a steeper gradient than the slope separating the upper and lower benches. The bluff face averages 45% slope with some areas being near vertical. At the toe of the southeastern bluff edge is the Isolated Pocket Lowland and the EGGW Flood Control Channel. The southeastern bluff was formed by fluvial erosion by the Santa Ana River when its alignment flowed in this part of the lowlands. The natural topography of the Bolsa Chica Mesa has been modified over the past 100 years. Previous activity includes agricultural use, the grading of access roads for the construction of oil wells and oil/gas pipelines, construction (in the early 1940's) and demolition (in the 1990's) of two World War II gun emplacements or concrete bunkers and water cisterns, archaeological investigation, and excavation of portions of the bluff and slope edges to be used for fill for development in the City of Huntington Beach. All of the past development, with the exception of the demolition of the WW II bunkers and the later archaeological investigations, was done prior to the Coastal Act.

Development on the Bolsa Chica Mesa pursuant to coastal development permits approved by the Coastal Commission include, the demolition of the WW II bunkers and water cistern in 1991. Several archaeological investigations and data recovery has also occurred on the Bolsa Chica Mesa pursuant to coastal development permits issued between 1983 and 1990, as detailed in Section I, Cultural Resources, of this staff report.

2. Bluff/Slope Edge Delineation

Commission staff and the applicant spent several conversations and written correspondence dealing with the location of the bluff edge of the upper bench of the Bolsa Chica Mesa. The applicant contends that because of the prior activity on the mesa, including alterations to the slope and bluff edges, that they do not constitute natural landforms. The Commission staff geologist disagreed with this assessment and continued to ask for a delineation of the top-of-slope. In addition, identification of the top-of-slope is relevant to an evaluation of the safety of the proposal irrespective of whether or not the slope constitutes a natural landform. The applicant also argues that the slope separating the upper and lower benches of the Bolsa Chica Mesa is not a bluff. Commission staff geologist concurs in the determination that the slope separating the upper and lower benches is probably not a bluff, given the gradual nature of the slope separating the two benches. A delineation of the top-of-slope for the western edge of the project site would be useful in evaluating various aspects of the project.

The applicant produced a map showing the top-of-slope between the upper and lower benches to be a line drawn part way down the slope. Apparently this line was chosen because it corresponds to an interpolated line that is the top of a steep road cut on the slope. Although staff does not agree that the applicant's line conforms to the top of the actual altered slope, we do agree that the determination of top-of-slope is made difficult by the previous alteration that has resulted in the gradual rounding of the slope. Given the circumstances, the Commission staff geologist indicated that, "it is probably best to determine the slope face on the basis of its measured gradient, which is markedly steeper than the very gentle gradient of the mesas above and below".

The applicant also produced a map containing a delineation of the edge of the river bluff on the southern edge of the upper mesa overlooking the Lowlands. The applicant drew the line using the guidelines of the California Code of Regulations, Section 13577(h)(2). Commission staff geologist review of the applicant's bluff edge delineation found that while there are some small areas of disagreement, there is one major discrepancy. The discrepancy is the area of the large borrow pit where the applicant was previously proposing a 30 ft. high fill slope, approximately two acres in size (Exhibit 15). The applicant places the top of bluff at the outer edge of the cut. However, Section 13577(h)(2) states, that in cases where there is a step like feature that, "... the landward edge of the topmost riser shall be taken to be the cliff edge". Following the above-cited Regulations, Commission staff geologist draws the bluff edge considerably inland of the applicant's line.

3. Proposed Grading

As currently designed, the 105.3-acre upper bench portion of the Brightwater project includes 440,000 cubic yards (cy) of balanced grading. No grading is proposed on the lower bench residual parcel. A breakdown of the grading reveals 220,000 cy of cut and 220,000 cy of fill. The grading plan retains the existing grade differential between the upper and lower benches and also aims to restore the transitional slope to a natural appearance along the proposed native restoration and preserve area, according to the application submittal. No grading is proposed within the existing Eucalyptus grove ESHA, the Los Patos wetlands or freshwater wetland within the burrowing owl ESHA.

The applicant previously proposed grading at the current southerly edge of the bluff overlooking the Isolated Pocket Lowland, now owned by the State of California. The proposed fill would have been located within the applicant's proposed 100-ft wide Eucalyptus grove ESHA buffer. According to the applicant, the upper bench bluff edge grading was proposed in order to "restore" the bluff edge to its 1939 configuration. The bluff was altered in the early 1940's with the construction of two World War II gun embankments and in 1971 with the removal of material from along the slope overlooking the lower bench and the bluff above the Isolated Pocket Lowland. The applicant further stated that the fill was being proposed to support public access; the extension of Bolsa Chica Street, the only public road into the project site, and 30 public parking spaces, which were to be located on the proposed fill slope area. The current application no longer proposes the 30-ft. high fill slope. The applicant has produced a graphic (Proposed ESHA Buffers and Open Space Setbacks, dated January 21, 2005) that correctly shows the edge of the southern bluff, marked as "2000 CCC Top of Bluff".

The majority of the grading work is to smooth out high points and the fill of low points including areas where roads, archaeological investigations and similar ground disturbances have occurred over the years. The proposed grading plan shows that maximum cut is approximately 10 feet and the maximum fill is about 15 feet. The stockpile of crushed concrete that was temporarily stored on site from the demolition of the World War II bunkers and cistern that occurred with a coastal development permit will also be removed. The stockpile is located in the central bluff area, just northeast of the Burrowing Owl ESHA.

The proposed project includes 2-story homes with attached garages immediately adjacent to a proposed public nature trail. Coastal Act Section 30251 protects public views looking to the coast from inland areas but also protects views looking inland from locations along the coast. The homes are also adjacent to a habitat buffer. The homes adjacent to the Eucalyptus Tree and Burrowing Owl ESHA will also be visible from the Bolsa Chica Wetlands, the Bolsa Chica Ecological Reserve, Bolsa Chica State Beach and the Pacific Ocean looking inland. As such, the proposed residential development must be sited and designed to minimize significant adverse impacts on the scenic views from the project site. The Commission therefore imposes a landscaping special condition, special condition 11 and a structural appearance special condition number 20 requiring that the visual impacts of the proposed residential development be softened with the use of appropriate landscaping and exterior treatment of the structures such that they are compatible with the

natural setting by using and maintaining primarily earth tones and muted shades. Only as conditioned is the proposed development consistent with Section 30251 of the Coastal Act.

G. HAZARDS

Section 30253 Minimization of adverse impacts

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.
- (3) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Control Board as to each particular development.
- (4) Minimize energy consumption and vehicle miles traveled.
- (5) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.

Section 30253 of the Coastal Act requires that new development minimize risks to life and property in areas of high geologic, flood and fire hazard. The proposed Brightwater development includes approval of a subdivision to create 349 single-family lots and the construction of the homes, a 1.2 million gallon water reservoir, 2.5-acre Southern Tarplant environmental preservation area, 34.2-acre habitat restoration and preservation passive park with a decomposed granite pedestrian trail. The active Newport-Inglewood Fault runs along the slope between the upper and lower benches of the Bolsa Chica Mesa (Exhibit 15). In addition, there are many constructed fill and cut slopes on the proposed grading plan.

1. Slope Stability Analysis

Commission staff geologist, Dr. Mark Johnsson reviewed the previously proposed grading plan and requested geotechnical information of the applicant in order to determine if the proposed project assures stability and structural integrity, will not contribute to erosion or geologic instability or destruction of the site or surrounding property or require the construction of protective devices that would substantially alter the natural landforms along the bluffs. The applicant's geotechnical consultant performed direct shear tests on relatively undisturbed site samples in order to derive soil strength parameters for use in the slope stability analyses of the proposed slopes in the project based on the latest grading plan¹⁰.

¹⁰ Originally the County of Orange approved a grading plan that required 220,000 cubic yards of export and a 40-ft high fill slope on the southeast bluff edge instead of the current 30-foot high slope. The applicant planned to export the material to the adjacent Parkside Estates site in the City of Huntington Beach. When

The Commission staff geologist concurred with the applicant's previous geotechnical slope stability analyses demonstrating that all proposed slopes would be stable. However, due to the potential for surficial instability, Dr. Johnsson recommended that the applicant abide by the consultant's recommendations contained in one of the submitted reports regarding drainage and landscaping of the slopes.¹¹ The applicant has not submitted new slope stability analyses for the revised grading plan. Therefore the Commission imposes special condition 18 requiring the submittal of this information for all natural and artificial cut and fill slopes steeper than 2:1. Because the new grading plan is similar to the previous plan that was shown to be stable, there is no reason to believe that the proposed project will not be safe. However, the geotechnical consultant may make additional or different recommendations, given the new OCFA requirement to permanently irrigate the fifty feet nearest the proposed residential lots. The Commission also imposes the typical assumption of risk special condition in recognition of the inherent risks of developing coastal bluffs and slopes. Finally, the applicant's geotechnical consultant must review and certify that all recommendations have been incorporated into the final grading and construction plans that are necessary to assure that the development will not create instability or contribute significantly to erosion or the destruction of the site or surrounding properties or in any way require the construction of protective devices that would substantially alter natural landforms along the bluffs and cliffs of the project area.

No geotechnical information was provided for the proposed 11.8-acre lower bench parcel. The applicant states that the intended use of the parcel is to sale it to the Wildlife Conservation Board, for conservation purposes, with the remainder of its lower bench holdings. The lower bench sale is not included in this application and therefore is not before the Commission so the Commission has no assurance of this. If the 11.8-acre lower bench portion of Parcel 2 will be put into conservation land use, no geotechnical information is necessary. However, as explained above, the area does not need to be subdivided into a separate legal parcel to use it for conservation purposes. If the land were allowed to become a separate legal parcel, the landowner would expect a reasonable economic use of the property. Therefore, the Commission would need detailed geotechnical as well as biological information to be assured that the parcel being created can be developed in a manner consistent with all of the applicable Chapter 3 policies of the Coastal Act. As described below, the Newport-Inglewood Fault Zone runs through the proposed residual parcel. Therefore, the creation of the 11.8-acre lower bench residual parcel can not be found consistent with Section 30253 of the Coastal Act.

2. Newport-Inglewood Fault Zone

A portion of the proposed subdivision is traversed by the Newport-Inglewood fault zone, generally recognized as the source of the 6.25 magnitude Long Beach earthquake in 1933 that killed 120 people and resulted in the passage of the Field Act. The fault traverses the gentle slope between the upper and lower benches and the southeastern and

staff requested evidence of approval for the export, the applicant modified the grading plan to balance cut and fill operations on-site.

¹¹ AMEC Earth and Environmental, Inc. 1997, "Geotechnical evaluation report, Phase I rough grading plans, Vesting Tentative Tract 15460, Bolsa Chica Mesa, South of Warner/Los Patos Avenues, Orange County, California", 60 p. geotechnical report submitted to the Koll Real Estate Group dated 1 December 1997 and signed by D. Dahncke (GE 2279) and S.T. Kerwin (CEG 1267).

northwestern portions of the proposed lower bench residual parcel (Exhibit 15). The fault has also been designated an Earthquake Fault Zone by the State Geologist under the Alquist-Priolo Act. However, the area has not been identified as one susceptible to earthquake-induced landslides or liquefaction hazard on the California Geological Survey Seismic Hazard Map under the Seismic Hazard Mapping Act, according to Dr. Johnsson. In sum, the area immediately surrounding the fault qualifies as an area of high geologic hazard for purposes of Coastal Act section 30253(1).

The applicant has prepared and submitted for Commission staff review the necessary reports, including trenching and mapping, pursuant to the Alquist-Priolo Act. The studies verify that the North Branch Fault (of the Newport-Inglewood Fault Zone) is considered active. The surface trace of the fault was identified through detailed trenching and mapping, and a 50-foot setback from all fault traces was identified in accordance with the Alquist-Priolo Act, that prohibits structures for human habitation to be built across an active fault. Commission staff geologist's review of the fault data shows that the fault seems to be well established at its present location. Dr. Johnsson concurs that the 50-foot setback is adequate for the proposed upper bench residential development given that no residential lots of the subdivision abut the mapped fault setback line.

As shown in Exhibit 15, the active earthquake fault traverses the southern 500 and approximately 1,000 ft. of the northern portion of the proposed irregularly shaped 11.8-acre lower bench residual parcel. Coastal Act section 30253(1) requires that new development minimize risks to life and property in areas of high geologic hazard. The creation of the residual parcel is new development that would make further structural development possible on the new parcel. As stated, no geotechnical information has been provided for the proposed new parcel. For this reason, among others, staff recommends that the Commission deny the creation of this lower bench parcel given its seismic hazard constraints and lack of geotechnical information demonstrating that the parcel can be developed consistent with the geologic hazard and all other applicable Chapter 3 provisions of the Coastal Act.

3. Hydrology

The previous Brightwater project proposed a vegetated water quality treatment system (VTS) including a series of five proposed treatment wetlands, an existing freshwater wetland and a proposed 1.3-acre detention basin to treat low flow and stormwater runoff prior to discharging it to an existing 24-inch stormdrain emptying into the Isolated Pocket Wetlands below the project site. Due to the system's impacts on Southern Tarplant and the burrowing owl ESHA, it has been eliminated from the current proposal. The current water quality management plan replaces the previous VTS and existing 24-inch corrugated metal pipe with a new 66-inch reinforced concrete pipe with an internal energy dissipater in the outlet and 20 feet of rip-rap below the outlet. Except for about 8 acres, the surface runoff from the developed site will be collected and directed to the Bolsa Chica Wetlands through this new pipe. Section 30253 of the Coastal Act also requires that new development minimize risks to life and property in areas of high flood hazard. The stormwater runoff from the project site under the developed condition could have potential flooding impacts on the adjacent Isolated Pocket Wetland area to which it drains.

A hydrologic study, Preliminary Hydrology Study for the Brightwater Development, dated September 2001 and revised December 2004, by The Keith Companies calculated the volumes and discharge velocities of the 2, 5, 10 and 100 year storm events expected for the proposed project. The study shows that the discharge velocity at the end of the new 66-inch pipe, corresponding to a 10-year storm event, is 4.8 feet per second, which should be non-erosive, if discharged onto a rip-rap energy disperser as proposed. The volume of water discharged to the Bolsa Chica Wetlands during a 100-year storm event increases from 34 acre feet in the existing condition to 39.4 acre feet in the developed condition. The additional 5.4 acre feet will be discharged into an area of about 40 acres, which would result in less than two inches of additional water during a 100-year rainfall event. Accordingly, both the discharge velocity and the increase in the volume of water discharged to the Wetlands as a result of the development should have no adverse impacts to the Wetlands. The State Lands Commission as well as other members of the eight agency Steering Committee overseeing the Bolsa Chica Wetlands Restoration effort has reviewed the new water quality treatment proposal. They concur with the assessment that the new proposal will not cause any significant adverse impacts to the wetlands.

H. MARINE RESOURCES – WATER QUALITY

New development can have significant adverse impacts on coastal water quality and biological productivity, if adequate erosion and runoff control measures are not properly designed and implemented during grading and construction. New development can also adversely affect water quality after construction if permanent pollution prevention, reduction and treatment measures are not provided and maintained for the life of the development. Sections 30230 and 30231 of the Coastal Act require the protection of marine resources by protecting the quality of coastal waters. Specifically, these policies require:

Section 30230 Marine resources; maintenance

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

Section 30231 Biological productivity; water quality

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The 105.3 acre Brightwater project site is to consist of 349 single family residences, a 1.2 million gallon underground drinking water reservoir, public streets and sidewalks, two small public parks and 37 acres of open spaces area. The impervious surfaces and activities associated with this scale of residential development represents a potentially significant impact to coastal resources, including portions of the Bolsa Chica wetlands, Huntington Harbor and ocean waters. The County of Orange required the preparation of a hydrology/water quality study in the review of the project at the local level. The applicant also prepared a Master Drainage Plan, Storm Water Pollution Prevention Plan (SWPPP), and Water Quality Management Plan (WQMP). These documents and revisions were submitted to Commission staff and reviewed by the Commission's Water Quality Unit.

The Brightwater development site is currently undeveloped and no off-site drainage flows onto the site. The mesa is vegetated with primarily non-native grassland, ruderal vegetation and several vegetated ESHA. There are also approximately 17 acres of dirt roads or other non-vegetated areas on the site. The hydrology study evaluates the existing hydrologic condition and divides the site into several drainage areas (Exhibit 7, Existing Hydrology). The majority of the project area drains to the south under existing conditions to depressional areas that act as detention basins. During larger rain events, runoff flows to the Isolated Pocket Lowland via an existing 24 inch corrugated metal pipe (CMP) southeast of the project site. The Isolated Pocket Lowland area is located between the EGGW Flood Control Channel (EGGW FCC) and the project site, and currently has no direct connection to the ocean. The Isolated Pocket Lowland area now belongs to the State and will be restored as part of the Bolsa Chica Wetlands Restoration Project. In the current wetland restoration plan, the Isolated Pocket Wetland will be connected to the EGGW Flood Control Channel through a culvert allowing salt water to enter the Isolated Pocket Wetland on a regular basis, but with a reduced (muted) tidal range.

The Brightwater development previously proposed to treat runoff from the 85th percentile storm events and dry season flows on-site by diverting runoff to a treatment wetland or Vegetated Treatment System (VTS) consisting of series of five freshwater ponds located within the proposed upland habitat park on the slope separating the upper and lower benches. The proposed treatment wetlands and associated detention basin have been eliminated from the Water Quality Management Plan under the current project because they were to be located within the burrowing owl environmentally sensitive habitat area (ESHA) and would have impacted significant populations of the Southern Tarplant. Under the current proposal an underground media filter system will treat all of the runoff from all storms up to and including the 85th percentile storm event and the first flush from larger storms. Where the previous WQMP proposed sending dry weather flows to the VTS for infiltration or evaporation, the current plan proposes to minimize these flows using efficient irrigation and sends any remaining dry weather flows to the sanitary sewer. Most of the impervious areas that were previously proposed in the nature park (a 12 ft. wide, approximately 3,500 ft. long paved pedestrian/bicycle trail, the extension of Bolsa Chica Street at 32 ft. in width, and 30 parking spaces) have now been eliminated. Now the only non-vegetated area in the 34-acre passive habitat park will be a 6-foot wide decomposed granite trail. The previously proposed VTS may have provided some additional benefits (e.g., wetland habitat, scenic values and groundwater infiltration), beyond the currently proposed underground media filter system, but could not be implemented on the surface area available without impacting existing habitat.

The applicant now proposes to consolidate runoff from 92% of the developed land to a single drainage area (Drainage Area B, see Exhibit 8, Proposed Hydrology) and provide an underground media filter system underneath one of the three pedestrian walkways leading to the habitat park. As proposed, the treated runoff will be discharged to the sanitary sewer during dry weather and to the Isolated Pocket Wetland during wet weather. The modifications will reduce the runoff to Huntington Harbor by 75% and all the remaining runoff that flows to the harbor from developed streets will be treated, thus reducing potential impacts to a water body that is listed by the state as impaired for copper, nickel, Dieldrin, PCBs and pathogens. Catch basin media filters will treat the remaining runoff to Huntington Harbor (Drainage Area A). Moreover, all developed areas of the project will have standard structural and non-structural best management practices (BMPs) as indicated in the Brightwater Water Quality Management Plan dated January 21, 2005.

The Water Quality staff of the Coastal Commission reviewed and evaluated the WQMP to determine whether it met its stated goals and whether it was in conformity with the marine resources protection policies of the Coastal Act (Exhibit 9). The Water Quality Unit concluded that the WQMP could significantly reduce the discharge of polluted runoff from the development, if certain necessary and feasible modifications were made to the overall treatment program being proposed. However, as proposed in the January 21, 2005 version of the WQMP, there were several inconsistencies with Sections 30230 and 30231 of the Coastal Act.

1. Erosion Control Plan

The applicant has submitted a draft Storm Water Pollution Prevention Plan (SWPPP) dated January 21, 2003. This document provides conceptual plans for erosion, sedimentation and polluted runoff control during the construction phase of this project as it was described at that time. The draft SWPPP was developed to assist the applicant in responding to the California State Water Resources Control Board (SWRCB) Order No. 99-08 DWQ, Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (Construction Storm Water Permit). While submittal of SWPPPs to the SWRCB is required by the Construction Storm Water Permit, and that permit imposes standards for the development of the SWPPP, and while construction projects are required to have a SWPPP on site, the SWPPP may or may not ever be reviewed by the Regional Water Quality Control Board staff or any State Board staff. In addition, the Construction Storm Water Permit only requires that the SWPPP be complete prior to the start of construction.

In order to adequately review project efforts to control erosion, sedimentation and polluted runoff during the construction phase, the Coastal Commission requires submittal of a plan (Erosion Control Plan) prior to the issuance of the Coastal Development Permit that describes all construction phase BMPs required to conform to the mandates of California Coastal Act Sections 30230 and 30231. In order to minimize duplication of effort, this plan should incorporate the most recent version of the SWPPP, as well as any additional BMPs required to address site-specific coastal resources. This Erosion Control Plan must also be approved by the local jurisdiction as being in compliance with the local stormwater

requirements. In order to ensure that construction phase BMPs conform to the mandates of California Coastal Act Sections 30230 and 30231, Condition 8 requires that the developer submit an Erosion Control Plan, that conforms to the requirements of this permit, incorporates the most recent version of the SWPPP and has been approved by the County of Orange prior to issuance of the Coastal Development Permit.

2. Water Quality Management Plan

Structural BMPs proposed by the project developer in the January 21, 2005 version of the WQMP include: an underground media filter system sized to treat the 85th percentile storm event for 92% of the developed area of the project; dry weather diversion of treated water to the sanitary sewer system; catch basin media filters on the remaining portion of the site draining to Huntington Harbor; efficient irrigation for common areas; runoff minimizing landscape design for common area; energy dissipating riprap at new stormdrain outlets and inlet trash racks. The non-structural BMPs include: education for property owners, tenants and occupants; activity restrictions (e.g., no auto repairs or oil changing on site, no discharge of landscaping debris to storm drains, no clean up from painting in paved areas, no washwater from construction activities into stormdrains); common area landscaping maintenance; BMP maintenance requirements; common area litter control; catch basin inspections; and requirements for regular street sweeping.

The WQMP proposes to treat project runoff draining to Huntington Harbor (Drainage Area A) using catch basin media filters. Catch basin media filters are proposed because this area is constrained by steep slopes, limited area and does not drain towards the large media filters in Area B. The WQMP indicates that the catch basin media filters will be designed to treat the runoff for suspended solids, oil and grease, and heavy metals, but does not specify the capacity of the BMP. The Coastal Commission finds that flow-through BMPs should be sized to treat the 85th percentile 1-hour storm event with a safety margin of 2 or greater in order to maintain marine resources and to avoid diminishing biological productivity or water quality to a level that would reduce populations of marine organisms below optimum levels or endanger human health. In order to ensure that catch basin media filter BMPs conform to the mandates of California Coastal Act Sections 30230 and 30231, Condition 16.A.1.c requires that the developer meet the sizing criteria above and Condition 16.A.2 requires that the developer shall use a filter media that meets performance expectations in removing the pollutants named above.

Various individuals, organizations and agencies expressed concerns over the Brightwater WQMP as proposed in October 2004. Those concerns are addressed either here or in answer to the letter from the Orange County Coastkeeper below. The concerns include:

- potential adverse impacts to the Isolated Pocket Lowland wetlands due to the volume of the project freshwater flows;
- that the WQMP does not provide information on total loading or potential adverse cumulative impact caused by use of pesticides, fertilizers and other chemicals by individual homeowners and the impacts of animal waste; and
- that low flows should be diverted to the OC Sanitation District treatment plant.

Concern has been expressed about potential impacts of stormwater runoff may have in reducing halophytic plants and encouraging brackish or fresh water plants in the adjacent State-owned Isolated Pocket Lowlands, especially given the extensive 1,100-acre Bolsa Chica Wetlands Restoration Project (Restoration Project). When the applicant sold the Isolated Pocket Lowlands area to the State the applicant retained a drainage easement to accommodate the flows from the proposed development. However, the discharge must be done in a way that it does not adversely impact water quality or the biological productivity of the wetlands. During review of the Vegetated Treatment System (incorporated in the previous WQMP) staff discussed these concerns with personnel from the Bolsa Chica Steering Committee who commented that they were aware of the Brightwater project and did not object to the proposed discharge to the Isolated Pocket Wetland area. Further, the Steering Committee felt that the low freshwater volumes into what will be muted tidal habitats would create very localized, but beneficial, biological diversity and are not likely to contribute contamination. The Steering Committee is aware of the modifications to the January 21, 2005 version of the WQMP and has no objections to the current plan. The new plan was reviewed and approved by the landowner, the California State Lands Commission.

Concerns about potential adverse cumulative impact caused by use of pesticides, fertilizers and other chemicals by individual homeowners and the potential effects of animal wastes are valid and these pollutants are a potential problem throughout our coastal communities. In response to these concerns, the WQMP includes both non-structural and structural BMPs such as education for property owners, tenants and occupants; common area landscaping maintenance; common area efficient irrigation to minimize runoff; common area litter control; catch basin inspections; media filtration; low flow diversion and requirements for regular street sweeping to deal with these issues. The homeowner education BMP is intended to make individuals aware that misuse of water and household chemicals can have harmful impacts on the nearby wetlands, harbor and ocean. The underground media filtration system in combination with the other BMPs are an effective system for minimizing the impacts of irrigation runoff, pesticides, fertilizer and pet wastes, especially in combination with source control of these pollutants through best management practices in the common areas and private areas of the development. In addition, if the proposed low flow diversion to the sanitary sewer is implemented, many of these pollutants will be further reduced through the wastewater treatment process. In sum, in reliance on the professional judgment of the Commission's Water Quality Unit, the Commission concludes that the total additional loading of pesticides, fertilizers and other chemicals and the impacts of animal waste will not have a significant adverse impact on marine resources, coastal water quality, or biological productivity.

The current project does propose to divert dry weather flows to the sanitary sewer. While such diversion has occurred for several major residential developments in Southern California over the past few years, it has not been generally required by the water quality agencies or by the Commission for several reasons. In some cases, diversion can be a quick fix to beach water quality problems, but it is an end-of-pipe solution that tends to de-emphasize the responsibility of upstream landowners to control sources of pollution and maintain site hydrology near natural conditions. In addition, diversion of first flush runoff to a sewage treatment plant would require the governing board for the plant to find that there is adequate capacity to treat the additional water.

As sewage treatment plants approach their design capacity, governing boards can be expected to refuse to treat urban runoff if that would reduce their capacity to treat residential sewage. Moreover, although sanitary sewer diversion can be effective, there is no evidence at this time that it should substitute for a comprehensive system of best management practices implemented throughout a project in order to meet the requirements of Coastal Act Sections 30230 and 30231.

- A letter, dated March 8, 2005, from the Orange County Coastkeeper, raised concerns about the water quality plan provisions of the current project (Exhibit 29) including: that the underground media filtration system should include additional storage to detain and treat greater volumes of water than the runoff of the 85th percentile storm event;
- that the developer should use the latest technologies available for the catch basin media filters;
- that the developer should agree to install smart sprinkler controllers on single family houses;
- that the WQMP should include a monitoring plan to evaluate the water quality system effectiveness and determine if it complies with numeric effluent discharge standards;
- that the monitoring plan should measure the results in the pipe and not in the receiving waters; and
- that the responsibility for maintenance of BMPs and education of homeowners be included in the property Conditions, Covenants and Restrictions (CC&Rs) or other governance structure to ensure that the water quality protections are adequately addressed many years into the future.

The Orange County Coastkeeper (Coastkeeper) is concerned that the underground media filter system BMP will bypass storms larger than the 85th percentile design storm and recommends that the project include additional storage capacity for stormwater. Although treating more stormwater or detaining stormwater for longer periods may have some water quality benefits, the Coastal Commission, Regional Water Board and other authorities have determined that the 85th percentile storm event is the point where the cost of additional treatment outweighs the benefits. Moreover, there is no evidence that, by limiting the size of the underground media filter system to the 85th percentile design storm, the project will result in an increase in pollution that will degrade marine resources, which is the standard for Coastal Act purposes, or otherwise violate the requirements of Sections 30230 and 30231. In fact, the evidence presented indicates just the opposite – that the proposed system will satisfy the requirements of those sections by maintaining marine resources and will not diminish biological productivity or water quality to a level that would reduce populations of marine organisms below optimum levels or endanger human health.

The Coastkeeper is also concerned that the catch basin media filter treatment technology to be used on the drainage to Huntington Harbor is not adequate. They indicated in their letter and a phone conversation that a previous version of the WQMP specified an

outdated technology. Condition 16.A.2 will also specify that the final design of the catch basin media filter BMP selected by the developer will be submitted to the Executive Director for review, prior to permit issuance.

The Coastkeeper recommended that the developer install "smart sprinkler controllers" on the individual lots of the development. These "smart sprinkler controllers" adjust the amount of irrigation based on sensors that measure current weather and soil conditions. The applicant is proposing "efficient irrigation" in common areas of the development (but not on individual lots) to avoid excess runoff and diversion of dry weather nuisance flows to the sanitary sewer. Efficient irrigation is described in the WQMP as including, at a minimum: water sensors; properly adjusted irrigation heads; irrigation timing and cycle lengths adjusted to water demands; and grouping plants with similar water requirements. The WQMP indicates that the irrigation system will be designed and operated based on the requirements of the California Model Water Efficient Landscape Ordinance (June 15, 1992). At the April 14, 2005 Commission hearing the applicant agreed to require that the residential lots abutting the Eucalyptus and Burrowing Owl buffers use drip irrigation regulated by timer systems. The Commission imposed this offer in Special Condition 11.C. Further, the applicant agreed to use an efficient drip irrigation system within the allowable irrigation area pursuant to the approved fuel modification program. The irrigation system will be designed to mimic the ambient rainfall condition and shall be carefully monitored and adjusted if necessary, as required by Special Condition 10.B.3 and 10.B.4 and the Final Habitat Management Plan.

Addition of a requirement for smart sensors and the other aspects of efficient irrigation on individual lots would minimize dry weather flow from both common and private portions of the development and minimize freshwater discharge to the Isolated Pocket Wetland during the dry season. This would create the treatment system discharge conditions that had been planned during the design of the previously proposed Vegetated Treatment System (i.e., no freshwater flow to the Isolated Pocket Wetland during the dry season). In order to eliminate dry weather flow the current WQMP proposes to divert any dry weather runoff to the sanitary sewer.

Even though the applicant does plan to divert the dry weather runoff to the sanitary sewer, efficient irrigation on private lots would still serve a valuable purpose since it would reduce the volume of diverted flows and reduce the time that irrigation systems would operate during or after rain events. And the efficient irrigation would add redundancy to the water quality protection system in case the sanitary sewer district is not able to accept the diverted runoff. While efficient irrigation systems or smart sprinkler controllers are more expensive than standard systems, the costs can be reduced by installing the systems during initial landscaping and by sharing the costs of sensor installations.

While the inclusion of smart sprinkler controllers on private lots would be an improvement to the overall water quality program, it does not appear to be required for the project to conform to the mandates of California Coastal Act Sections 30230 and 30231, as long as the dry weather runoff is diverted to the sanitary sewer. In order to ensure that the project conforms to the mandates of California Coastal Act Sections 30230 and 30231, Condition 16.A.3 requires that the developer divert dry weather runoff to the sanitary sewer or

minimize dry weather runoff to the extent practicable by extending the efficient irrigation system and smart sprinkler controllers to individual lots.

Concerns about the need for a monitoring program or a quantitative estimate of the total loading of pollutants to the waters downstream are related in that they presume that the quality of runoff is regulated by quantitative regulatory standards, such as a waste load allocation. In fact, at this time, the control of polluted runoff nationwide and in California is primarily regulated by requiring dischargers to use nonstructural and structural Best Management Practices (BMPs) to reduce the discharge of pollutants to the maximum extent practicable. Few municipal stormwater permits contain numeric effluent standards or require site-specific monitoring. Thus, the Regional Water Boards have not developed generally applicable, quantitative standards for nonpoint source pollution that could be applied or enforced by other agencies, including the Commission.

The strategy of requiring structural and nonstructural BMPs is a significant step towards dealing with polluted runoff; a water quality problem that is widespread, caused by the actions of many people and where responsibility cannot be readily assigned to specific parties. A large variety of BMPs have been approved by federal and state agencies for their ability to reduce the pollutants that are found in polluted runoff. The suite of BMPs considered appropriate for California are found in the California Stormwater Quality Association (CASQA) BMP handbook. While the Coastal Commission has, on occasion, required monitoring of discharge from specific developments, this has been in response to the proposed use of management practices that are not designed to the specifications in the CASQA BMP handbook due to site-specific conditions or innovative methods in need of additional information to document effectiveness.

In addition, the WQMP does indicate that there will be a performance-monitoring program allowing Coastal Commission staff, as well as Regional Water Board staff, to evaluate the effectiveness of the filter media and recommend any needed improvements. The monitoring program will test the water quality entering and leaving the new media filter system for three storms per year over a three-year period. If the Regional Water Board finds that the discharges from this development may be causing receiving waters to fail state standards, that agency can require additional monitoring at any time and, based on the information collected, take further actions to address the problem.

A specific concern of the Coastkeeper is that the water quality samples taken at the outlet of the underground media filter system be taken "in the pipe" and before the discharge mixes with receiving waters. This will allow for a better evaluation of the effectiveness of the BMP, since the sample will not be diluted or mixed with untreated water. While this sample location was not specified in the WQMP, the water quality consultant for the developer, provided additional information in a February 11, 2005 email on monitoring locations, analytes, analytical methods, filter media, and BMP maintenance responsibilities, that has not yet been included in the WQMP. The consultant indicates that monitoring downstream of the underground media filter system will be "at the proposed storm drain outlet", which seems to indicate that it is prior to mixing in receiving waters. In order to ensure that the project conforms to the mandates of California Coastal Act Sections 30230 and 30231, Condition 16.B requires that prior to issuance of the permit the developer shall provide a detailed water quality monitoring plan designed to

evaluate the effectiveness of the project structural BMPs (both the underground and catch basin media filters) and it shall include a monitoring point at the outlet of the BMPs and prior to mixing with other runoff or receiving waters.

The Coastkeeper recommends that the responsibility for the long-term management, operation and maintenance of the WQMP (including structural BMPs and non-structural BMPs, such as education of homeowners) be included in the property Conditions, Covenants and Restrictions (CC&Rs) or other governance structure. Their concern is that BMP maintenance and water quality education are "beyond the working knowledge and expertise of a typical Homeowners Association (HOA) Board of Directors". In addition, without a formal commitment, other competing needs (e.g. maintenance of common areas) may cause a reduction in coastal water protection over time.

The water quality consultant for the project has indicated that the underground media filter system will be constructed by Stormwater Management Inc. and that "The HOA will have financial responsibility for maintenance of the media filters, but it is unlikely that they would be doing the physical maintenance. They indicate that the HOA would probably be contracting the work out, and due to the proprietary nature of the media filter, Storm Water Management, Inc. would be the only one capable of performing the work."

While it is reassuring that the maintenance of the primary structural BMPs will be conducted by knowledgeable professionals, evidence that the WQMP will be fully implemented over the life of the project is needed. CCC water quality staff agrees that the additional safeguard of a long-term governance structure is necessary for long-term water quality protection and that that a description of this structure needs to be included in the WQMP. Evidence of the governance structure needs to be presented to the Executive Officer for his approval prior to permit issuance. In order to ensure that the project conforms to the mandates of California Coastal Act Sections 30230 and 30231, Condition 16 requires that prior to issuance of the permit the developer shall provide evidence of a governance structure that ensures the full implementation of the WQMP for the life of the project, including proper management, operation, and maintenance of the structural BMPs and ongoing education of homeowners.

In conclusion, Commission Water Quality Unit staff has reviewed the WQMP dated January 21, 2005 and supporting documents as listed above. Based on those documents, the Coastal Commission concludes that if the permit is conditioned to require additional assurances that the catch basin media filter BMPs to be used are properly sized and designed for the expected pollutants of concern; that the monitoring plan is adequately implemented to evaluate BMP effectiveness; that the dry weather flow is diverted or the dry weather runoff is minimized by adding efficient irrigation on individual lots, including timer controlled drip irrigation on the lots abutting the habitat buffers; permitted irrigation in the fuel modification area is limited to drip irrigation designed to mimic ambient rainfall patterns that is monitored and adjusted if necessary; that BMP maintenance is performed by trained professionals; and that implementation of the WQMP including BMP maintenance is mandated in the project CC&Rs for the life of the project, then the water quality aspects of this project would appear to be consistent with Sections 30230 and 30231 of the Coastal Act. Only as conditioned can the proposed Brightwater development protect water quality and marine resources pursuant to Sections 30230 and 30231 of the Coastal Act.

I. CULTURAL RESOURCES

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

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

Coastal Act Section 30244 states that reasonable mitigation measures shall be required where development would adversely impact identified archaeological resources. The applicant contends that the Brightwater development project will not adversely impact either of the two on-site identified archaeological sites due to the fact that a series of measures to mitigate the impacts of future development have been implemented completely in the case of ORA-85, and at the time of the October 2004 hearing, 97% complete in the case of ORA-83¹² as approved by the County of Orange, and the Coastal Commission. The coastal development permits and other actions that have been taken by the Coastal Commission for ORA-83 and ORA-85 are reviewed below. Despite the fact that approvals were obtained from the County and the Commission for complete recovery of cultural resources, as proposed by the applicant, and archaeological testing and recovery work has been on-going since the mid-1980's, under these permits, there still remains considerable opposition to removal of the cultural resources of ORA-83.

During the preparation of the staff report for the October 2004 hearing, Commission staff received several letters from archaeologists, including university professors, and several letters from environmental groups, Native Americans, and individuals calling for the preservation of ORA-83, even though they are aware that a full recovery program for the site has long since been approved. Staff received a copy of a 1999 letter from the head of the archaeology division of the Smithsonian National Museum of Natural History supporting the preservation of what remains at ORA-83 and a 2001 letter from Congresswoman Loretta Sanchez supporting the listing of ORA-83 in the Federal Register as a National Historic Site. Some request that the site be capped and left as open space after the data has been recovered, instead of allowing residential development at the site of an identified prehistoric and historic cultural resource. While others suggest that further destruction of ORA-83 be avoided, relocation of proposed development away from ORA-83. Yet others assert that recent mechanical excavations at ORA-83 have revealed the presence of numerous semi-subterranean house pit features at the base of the site, beneath the midden deposit and contend that this feature represents a new, significant area of needed research. Although the Commission approved the full recovery of ORA-83 as proposed by the applicant in the previous permits listed below, the Commission finds

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

no evidence in the record of those permits at the time of their approvals that the "semi-subterranean house pits" were known or expected to exist, beneath the shell midden.

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

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

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

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

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

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

On November 5, 2004 the State Historic Resources Commission conditionally moved to recommend that the State Historic Preservation Officer submit the nomination to the Keeper of the National Register for a determination of CA-Ora-83's eligibility for inclusion in that register (Exhibit 13). The November 5th action went on to say that, "The

Commission agrees that the property is eligible at the national rather than the state level of significance" and then set out five conditions that need to be met, including the completion of the revisions and the submittal of the registration form to the Keeper no later than May 5, 2005. The third condition of the motion dealt specifically with the significance of the site as a prehistoric archaeoastronomical observation point, stating that the case should be made more of a consideration rather than a major aspect of the property's significance (Exhibit 13).

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

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

As stated above, and submitted in Exhibits 30, 31 and 32, Maritime Shoshone Inc. has submitted significant research and investigative material concerning the archaeoastronomical significance of a portion of the project site based on extensive experience in the field. They are requesting additional mitigation beyond that recommended by staff and is detailed in Exhibits 31 and 32. They further request access

to the portion of ORA-83 inside of the fenced mesa area in order to verify the observation area. Additional mitigation includes, but is not limited to, no grading or changing of existing elevations, and no benches, or public trails within the observation area. Exhibit 32 includes a map of additional area to be considered.

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

Description and Status of ORA-83

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

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

Description and Status of ORA-85

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

which may be evidence of ceremonial utensil manufacture, no obvious objects associated with religious ceremonies were recovered. Finally, no evidence of human remains in the form of burials or cremations was found. However, over 2,000 artifacts, more than 1,500 fire affected rock, and thousands of faunal remains have been recorded at the site. Although analysis of the recovered material had not been completed as of September 2003, the applicant states that the approved testing and data recovery program approved by the Coastal Commission concerning ORA-85 in 1989 was completed in 1991. .

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

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

5-83-984

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

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

the research design, and (4) provision for Executive Director review and approval of the work planned in subsequent tasks after Task 5 (Auger Program) and Task 7 (Hand Excavation Units – Initial series).

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

5-83-702-A3¹³

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

5-89-772

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

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

13

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

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

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

5-89-772-A1

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

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

5-89-772-A2

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

comment on the project due to staffing shortages. The Commission then approved the requested amendment.

Executive Director Report to the Commission

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

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

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

R5-89-772

Although Commission staff held meetings between the applicant and the affected Native American groups and required the review of the proposed work by PCAS, the controversy surrounding ORA-83 did not end. On November 3, 1999 the Bolsa Chica Land Trust filed a request with the Commission to revoke the Phase II approval of the final research and data recovery program permit. The contentions raised in the revocation request were: that further archaeological work, not in the immediate vicinity of the eucalyptus grove, and

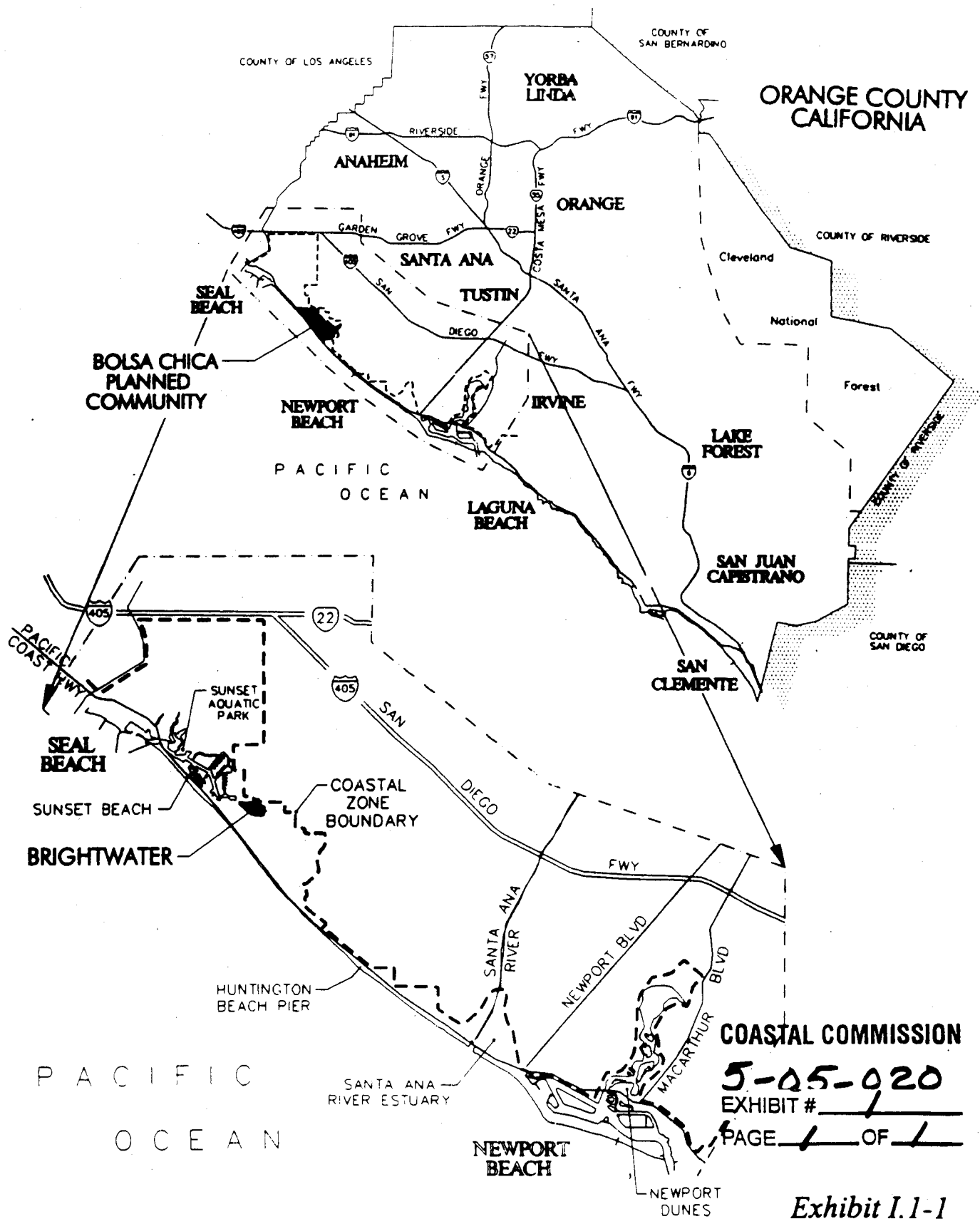
therefore beyond the approved scope of work was occurring; that the permitted work has been completed in its entirety for over five years, that the permit is also ten years old and therefore should be revoked or suspended; that the work under the permit was not pursued with due diligence as required by the standard conditions of the permit; the additional scraping and clearing. The Commission denied the revocation request finding that it did not establish the grounds required to do so pursuant to Section 13105 of the Commissions' Regulations.

K. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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 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 has been conditioned to be found consistent with the biological resources, public access, water quality, and archaeology policies of the Coastal Act. The special conditions would require that 1) an open space restriction be placed on the habitat areas; 2) an offer to dedicate the proposed Coastal Sage Scrub and Native Grassland Creation habitat and Southern Tarplant and Seasonal Pond Environmental Protection Area be recorded; 3) a trail easement be offered over the public trail and over the portion of the grassland habitat area that will be subject to approved fuel modification; 4) a public access and habitat management program be developed and funding be identified to carry out these activities; 5) the applicant abide by the California Burrowing Owl Consortium guidelines for avoiding and mitigating impacts to burrowing owls during construction; 6) the CC&R's of the subdivision reflect certain requirements, primarily dealing with public access and habitat protection conditions; 7) construction and development phasing be carried out in a manner that is protective of the biological resources and assures that the public access and recreation are prioritized; 8) erosion control measures are in place to prevent impacts to the marine environment; 9) the fencing off of habitat areas and the identification of construction staging areas that will not adversely impact sensitive resources; 10) the preparation of a final habitat management plan with appropriately sized, planted and managed ESHA buffers, controls activities within those buffers, and the addition of the Southern Tarplant and Seasonal Pond Environmental Protection Area into the Plan; 11) native and non-native, non-invasive appropriate landscaping throughout the project area; 12) fuel modification within the ESHA buffer areas be regulated; 13) lighting be directed away from habitat buffer areas; 14) certain requirements relating to walls, fences, gates, safety devices and other habitat barriers be followed; 15) all subdivision streets, sidewalks, parking and trails and parks be open to the general public; 16) additional requirements on the proposed water quality management plan be observed; 17) a revised tentative tract map eliminating the proposed residual parcel on the lower bench, and revised plans showing the enlargement of the Eucalyptus Tree and Burrowing Owl ESHA buffers, public access signage and cultural resources interpretive plan along the

habitat trail, revised stormdrain plan, and off-site raptor foraging habitat plans be submitted; 18) additional slope stability analysis for the revised grading plan be performed and the developer conform development plans to geotechnical recommendations; 19) the developer assume the risks of development; 20) the developer treat the exterior appearance of structures visible from the public areas; 21) the height of the structures abutting and visible from the public trails be kept to no more than 31.5 feet, as proposed; 22) procedures for the review and approval of future development be followed; 23) requirements and procedures established herein to be followed regarding the possible discovery of additional archaeological resources during grading; 24) the reports required to be prepared in conjunction with the research, investigation and salvage of ORA-83 and curation of the artifacts recovered from the archaeological site be disseminated; 25) the applicant obtain all other necessary agency approvals; 26) the applicant perform work in strict compliance with all of the special conditions of this permit and 27) applicant be informed of the Commission staff's right to inspect the site.



BRIGHTWATER

*Exhibit I.1-1
 Location Maps*



URL: <https://doi.org/10.1016/j.sbspro.2013.09.001>

FIGURE ONE

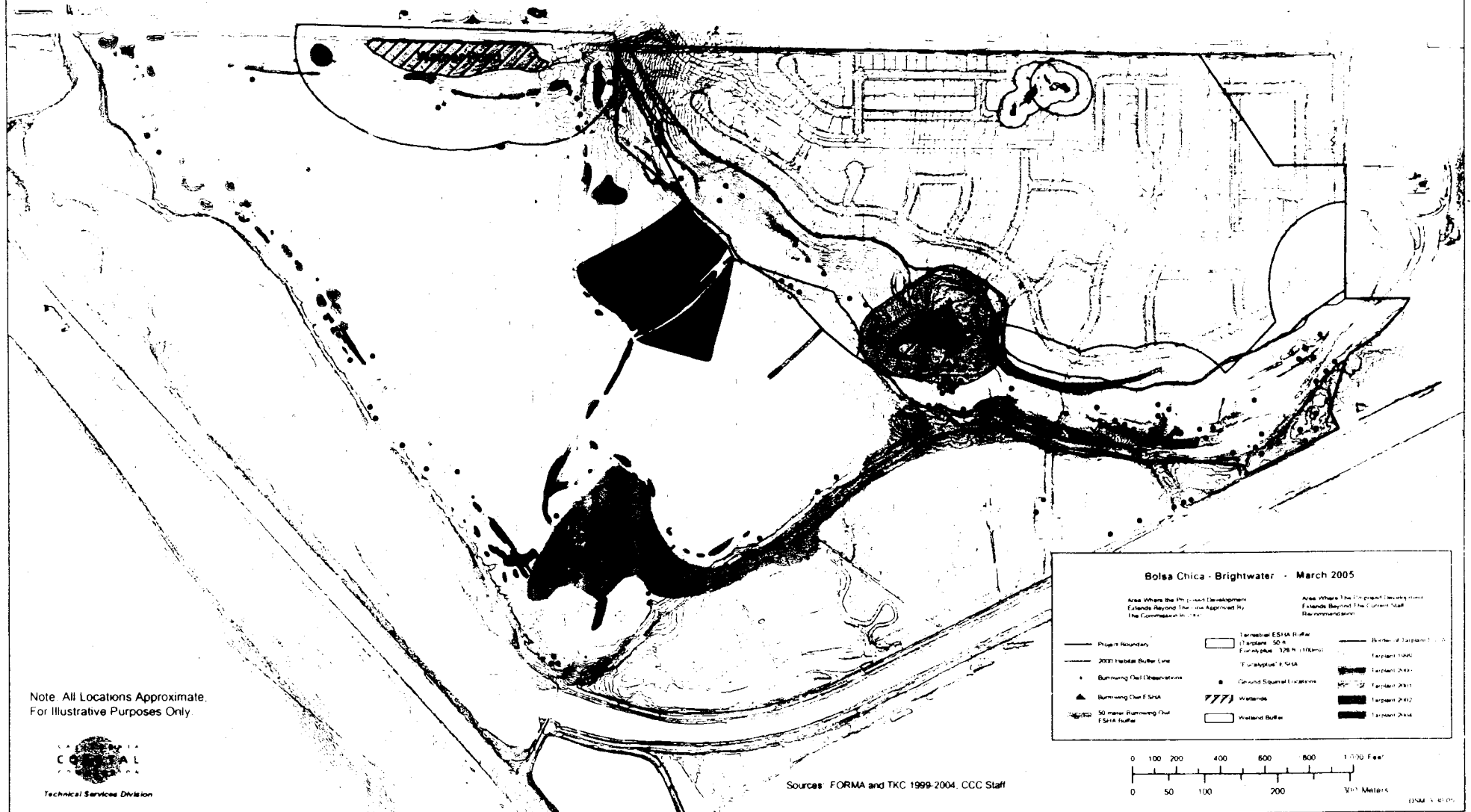


EXHIBIT 3
5-05-020
REVISED FINDINGS



COASTAL COMMISSION

EXHIBIT # 4

PAGE 1 OF 1

Bates Creek Bridge - March 2005

This map was created by the Department of Transportation, California State Office, as part of the project to update the California Statewide Highway Inventory. It is based on the latest available data from the California State Office and the Federal Highway Administration.

The map shows the location of the Bates Creek Bridge and the surrounding area. It includes labels for "Added 'Keep Out' areas (in addition to EHSAs)" and "Designated No-Go Zone (in accordance with EHSAs)".

Legend:

- Added "Keep Out" areas (in addition to EHSAs)
- Designated No-Go Zone (in accordance with EHSAs)

Scale: 0 100 200 400 600 800 1,000 Feet

Source: FHWA and TMC 1999-2004, CCC Staff

QUESTAL

NEW SERVICE DIRECTORY

Sources: FURIMA and TNC 1999-2004, CCC Staff

Added "Keep Out" areas
(In addition to EHSA).

Bates Ckcs - Brightwater - March 2005

4. All orders to Process Live-Grass
Indicate Shipped to Customer Mail
Flow immediately.

1000

Thompson (1908)

Office number: _____
Date: _____
Name of Candidate: _____
Signature: _____

Page 222

10

0 100 200 400 600 800 1000

100

RECEIVED

South Coast Region

MAY 17 2005

STATE OF CALIFORNIA

COASTAL COMMISSION COASTAL COMMISSION

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HEARTHSIDE HOMES &

SIGNAL LANDMARK, INC.

UPPER BENCH OF BOLSA CHICA

COUNTY OF ORANGE

Application No. 5-05-20
(Brightwater)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Thursday, April 14, 2005
Agenda Item No. 7.a.

Fess Parker's Doubletree Resort
633 East Cabrillo Boulevard
Santa Barbara, California

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COMMISSIONERS

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Patrick Kruer, Vice Chair
David Allgood, Alternate
William A. Burke
Toni Iseman
Steven Kram
Bonnie Neely
Dave Potter
Mike Reilly
Dan B. Secord
Mary Shallenberger
Sara Wan

Brian Baird, Resources Agency

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-o0o-

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-oOo-

1 rodenticides, or whatever you call them.

2 I don't know how you could enforce that, but
3 certainly in terms of a condition that you would enforce
4 through whatever means might be available, is something for
5 you to consider, and you might want to discuss that when it
6 gets back to the Commission. But, we would have no objection
7 to something like that. I just hadn't thought through how we
8 could recommend something that was enforceable. Certainly,
9 an education program, but that is not necessarily going to be
10 enough, but if you want, we would certainly be prepared to
11 craft something along lines that we think might work.

12 CHAIR CALDWELL: All right.

13 CHIEF COUNSEL FAUST: Madam Chair, just one thing,
14 from a legal perspective.

15 The applicant gave to me -- and I assume gave to
16 the Commissioners as well -- a one-page handout with a
17 proposed motion that would incorporate the various changes
18 that they are proposing to the staff's recommendation, and I
19 just wanted to comment, briefly, on that.

20 Your regulations provide that in a circumstance
21 where the staff is recommending approval, the principle
22 motion is always to move to approve per staff, per the staff
23 recommendation, and then if any Commissioners should want to
24 make any amendment motion of any sort, it is made subsequent
25 to that. So, if any Commissioners should choose to make any

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1 of the proposed changes that the applicant is seeking, they
2 would come as amending motions to the principle motion.

3 Thank you.

4 CHAIR CALDWELL: Thank you for straightening us
5 out on that.

6 Does that conclude the staff's comments, right
7 now? All right.

8 Commissioner Wan.

9 COMMISSIONER WAN: Before I have some comments, I
10 would like to ask staff a couple of questions.

11 In October, the Commission, consistent with what
12 we have done in other locations, specifically directed that
13 there be no fire management allowed in the buffer, yet, you
14 are allowing both irrigation and mowing in the first 50 feet
15 of the buffer, and I believe mowing, under certain
16 circumstances, in the next 50 feet -- maybe in the owl
17 habitat, I think it is? Can you explain the justification
18 for that?

19 ENVIRONMENTAL PROGRAM MANAGER DIXON: In talking
20 with counsel, the question that was presented to me was
21 whether or not the ESHA, itself, would be degraded by these
22 activities, and it was my opinion that so long as the plant
23 palette was an appropriate palette of native grasses, that
24 would be attractive to rodents, that then these activities
25 would not have negative effects on the eucalyptus tree ESHA,

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1 and more specifically, of course, the use of them by raptors.

2 COMMISSIONER WAN: Would that also be true if --
3 because you are recommending a 100-meter buffer, we are
4 talking about 150-foot buffer, does that change that issue?

5 ENVIRONMENTAL PROGRAM MANAGER DIXON: I don't
6 think it changes it for the planting palette. The use of the
7 irrigation might reduce the use of the area, and have a
8 proportionally greater effect than it would if it was a
9 larger buffer.

10 COMMISSIONER WAN: The other question, I have for
11 you, has to do with, in the staff report you have a comment
12 made there that in the area where the applicant has listed
13 the buffer as being 382-feet wide, that it is not horizontal
14 distance, that it is, actually, measured somewhat vertically
15 up the face of the bluff, is that accurate? or how is it
16 being measured?

17 ENVIRONMENTAL PROGRAM MANAGER DIXON: My under-
18 standing is that buffers are always measured along the plane,
19 horizontally.

20 COMMISSIONER WAN: Okay, I just wanted to confirm
21 that, because that is not what it says in the staff report,
22 so I wanted to make sure that that is correct, and we don't
23 have to be worried about that issue.

24 And, the applicant is shaking his head, so I am
25 assuming that that is correct? okay.

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1 Let me make a couple of comments. Obviously, this
2 is a very important project that is in front of us, and this
3 project is considerably better than it was in October when --
4 and there is no question about that.

5 But, the issue in front of us now is not whether
6 that is better than it was, how much the applicant has moved
7 in the direction of the Coastal Act, but whether or not the
8 Coastal Act policies are being followed.

9 It is great that we are only down to really,
10 basically, two issues. One has to do with the owl buffer,
11 and the other has to do with the -- and the ESHA buffer, and
12 the other has to do with the size of the eucalyptus buffer.
13 I am not sure I understand what the biological justification
14 is for reducing the size of the owl ESHA buffer from 50
15 meters to 46 meters. I don't know where that comes from.

16 I believe the Burrowing Owl Consortium has a
17 standard recommendation for 50 meters, so I am not sure where
18 that comes from, nor where it is justified, or how it is
19 justified.

20 Oh, that reminds me, this is another question, you
21 also indicate in there that there is some grading that is
22 proposed to take place in that buffer? is that still the
23 case, or has that been changed in any way?

24 COASTAL PROGRAM MANAGER HENRY: Yes, there is
25 grading proposed in the buffer.

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1 COMMISSIONER WAN: Okay, so, clearly grading
2 within a buffer is not dependent upon that buffer, and it is
3 certainly not consistent with what we have done in the past
4 anywhere that I am aware of, to allow grading for residential
5 purposes in a buffer, so I can't support any changes to the
6 owl buffer issue.

7 Looking at the 100-meter buffer issue, that is a
8 more difficult question, because there is no -- and I agree
9 that there is no one magic line that you can draw that says
10 something is, or is not the appropriate buffer. I think it
11 is a gradation. One of the reasons is because it is very,
12 very difficult, scientifically, to do the studies necessary
13 to make that determination, and I suspect that there is a
14 certain amount of case-by-case involved in it.

15 The studies that have been done by -- the so-called
16 studies that have been done by the applicant's experts are
17 really anecdotal. They are not scientific studies. They had
18 flushing studies done. They looked around to see where you
19 can find a red-tailed hawk. Well, I can find red-tailed
20 hawks at any given time, almost any place. That doesn't mean
21 that they aren't affected, and won't be affected by a major
22 development in the area, and that the use of this ESHA won't
23 be affected.

24 I have to remind everybody, that the whole reason
25 that we have gone around this for the last 30 years, starting

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1 with the battle over the wetlands and lowlands, and the need
2 for preserving as much as possible of the upper mesa, has
3 been to create as normal and natural an ecosystem as is
4 possible, and that includes the wide range of raptor species
5 that can live there, and not to limit it to certain narrow
6 range of members of certain species, but to create as natural
7 an ecosystem as is possible. That's the reason there has
8 been battle over this, and the battle didn't stop when the
9 wetlands were preserved.

10 In 2000, when we did the -- and I was here for
11 that -- well, I have been here, I guess, for all of them.
12 But, in 2000, when we did the LCP, we did, in fact, specify
13 that there should be a 100-meter buffer. As staff said, we
14 used balancing to bring it down to 100 feet.

15 The applicant choose not to go the route of
16 including the lower bench in his application. That is his
17 decision, for whatever reason he did that. But, because that
18 is not there, and that is now going to be sold, not have a
19 conservation easement put on it, you can't do the balancing.

20 But, the issue is not that. The issue, in fact,
21 is consistency with the Coastal Act, and what is sufficient
22 to protect this ESHA and its function. While there is no
23 magic number, and it, obviously, more is always better. I
24 can show you some of the studies that are out there, by the
25 way, that they recommend 200 meters, 300 meters, 400 meters

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1 where there has been a scientific study, and that is,
2 clearly, not what we are going to do today.

3 In 150 feet, in which the first 50 feet is being
4 managed for fire purposes is hardly adequate for an important
5 ecosystem like this. So, I am very concerned that simply
6 going to the smaller buffer, in this manner, is going to have
7 a significant effect on the way in which this entire system
8 will function. These raptors are there, they need to have
9 adequate foraging habitat, and nesting habitat -- by the way,
10 if they don't have an adequate foraging habitat, they are
11 going to wind up foraging in the wetlands down below.

12 That is the reason why the state is willing to pay
13 \$65 million for that lower mesa, it is to provide foraging
14 habitat for these raptors, and given all of that expense, it
15 is incumbent upon this Commission to make sure that that
16 habitat is appropriate.

17 So, I am, you know, very concerned about any
18 reduction in the size of this buffer.

19 CHAIR CALDWELL: Commissioner Kruer.

20 COMMISSIONER KRUEER: Yes, Madam Chair, thank you.

21 I was, also, here in 2000, and this has been a
22 very challenging project. And, I remember back then when we
23 wanted them to come back -- we were talking about 1200-plus
24 homes. I think we also have to take that into consideration
25 of where we are today.

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1 As far as the buffer, I have heard a lot of
2 testimony today, and I have read everything. I am not
3 convinced what the magic number is, but I will tell you that
4 I don't think that 100-meters across the whole project --
5 what are we talking about if we do that? do we really need
6 that in every place? Or, is there, should it be instead of
7 100 feet, 150 feet?

8 But, what we do, if we do the latest scenario,
9 would have a dramatic effect in my opinion to this project,
10 as far as the way it is laid out now. Really, I think
11 everyone needs to understand what this plan is. It is a very
12 good plan now, from what it was. I would say the open space
13 is very equivalent, 56 percent, I think is very same as the
14 Headlands, and a lot higher than Marblehead. And, we have
15 got take into consideration, too, this project was much
16 larger that took care of a lot of land.

17 And, people talk about the \$65 million, and they
18 go, "Wow, they didn't give up anything." But, I will tell
19 you, they did give up something.

20 If you look at the residual land value of these
21 lots, and what someone does, it is worth a lot more, and
22 probably the only reason today this project is feasible to go
23 forward with 349 -- or whatever the Commission wants to
24 approve -- is the fact there has been a tremendous change in
25 the value of land, and prices, as we all know, along the

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1 coast.

2 But, in a way, we are very lucky, and I think it
3 is win-win that this is going to be preserved and purchased,
4 and et cetera. I don't see it as something bad. I think it
5 is a good thing.

6 But, I will tell you, if we follow and overlay
7 what we are talking about today, with some of these new
8 changes -- and I think staff has done a very good job on
9 this, and have worked on this very hard, and it is a
10 difficult issue when it comes to this buffer issue. But, it
11 will have a dramatic effect, because what happens is, the
12 streets, and circulation, and the walkways, the gates opened,
13 the way this thing is laid out is a very, very good plan to
14 build houses. It has less of an impact than most plans I
15 have seen. It is well, well designed.

16 But, what happens is, if you take out where these
17 areas are, I think a Mr. Goodell came up and said where his
18 property is -- he is wiped out in my opinion. He is very
19 much so, if this buffer exist, this gentleman next door, and
20 where it goes into his property.

21 But, what happens is they have broken up these
22 lots into the larger lots, obviously looking over -- the
23 6,000-square foot lots overlooking the best views, et cetera,
24 you would cut out a lot of those lots, most of those lots,
25 and it has a dramatic effect on the grading, on the changes

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1 in the streets circulation, and you will end up with a lot
2 smaller lots, and you won't have the diversity of the 6000s,
3 the 5000s, and something else.

4 And, it is like -- I think it was last month, we
5 had a project down in San Diego, and the same thing we were
6 talking about, and making a change, or anything -- I think it
7 was Pardee Construction -- what we wanted to do -- don't hope
8 for it too much -- would have dramatically effected the
9 grading, even though we were reducing houses, it changed the
10 effects of the impacts, the environmental impacts,
11 dramatically, so we continued it.

12 But, this one, I think we all had better look at
13 it carefully, because if you wipe out the larger lots along
14 the edge, and then change these loop streets, and not have
15 these long bowling alley designs, et cetera -- and they
16 didn't do it here -- with all of the open area, et cetera, I
17 am not sure that we are going to come out with a better plan.

18 But, on the other hand, I want to hear what the
19 rest of the Commissioners say, in regard to this buffer area.
20 I am not convinced that 100 meters along -- it is always
21 better to have more, but is it fair? is it really something
22 fair? do we really need to have it? or do we just want to do
23 it, because we do do that, this project starts over. You
24 have got to come up with a whole new grading plan, you have
25 got to come up with a whole new street plan, a whole new

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1 design, you have got to go over everything. We are really
2 setting the project back. I heard a lot people talk about,
3 we would like this to be the last time here.

4 If we adopt the staff's recommendation, today,
5 this project will be delayed for months and months and
6 months. It is a whole new redesign. It isn't like --
7 because you are changing the whole street system, to make the
8 whole thing work.

9 But, I want to hear what the rest of the
10 Commissioners have to say about the buffer area, and I think
11 staff has done a very good job working on this, and I think
12 the applicant has come a long ways, but I think, you know, it
13 is a very, very good plan as it is right now, but I just need
14 to hear more on the buffer.

15 CHAIR CALDWELL: Commissioner Shallenberger.

16 COMMISSIONER SHALLENBERGER: Thank you.

17 First of all, I would like to hear from staff, do
18 we have anything -- I didn't see it in the paperwork here --
19 from Fish and Game? in terms of what the Department of Fish
20 and Game is saying about the current proposal, and the staff
21 recommendation?

22 ENVIRONMENTAL PROGRAM MANAGER DIXON: There have
23 been a number of communications from Fish and Game, and they
24 have commented on the burrowing owl, where their recommend-
25 ation was to follow the Consortium's plan, but they would

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1 accept mitigation, if there were impacts.

2 COMMISSIONER SHALLENBERGER: Wait, I don't under-
3 stand what you just said? they would accept whose plan?

4 ENVIRONMENTAL PROGRAM MANAGER DIXON: They were
5 making recommendations with regard to the various elements of
6 the plan, and they recommended that the burrowing owl habitat
7 protections follow the Consortium's recommendations for
8 50-meter buffers, as I recall.

9 But, if there were impacts, that they would accept
10 mitigation, so that -- and they have recommended .5 acre
11 preservation to 1 acre of loss for foraging habitat, and they
12 have considered that the irrigated buffer is an impact, and
13 cannot be counted, but has to be counted as an impact, and
14 that the next 50 feet is not an impact. It is impact
15 neutral, but you don't get credit for it, in terms of making
16 those calculations.

17 They have made -- I think they have accepted the
18 fuel mod, and I think those are the things that have
19 commented on. I am sorry, I am not very articulate about it.

20 EXECUTIVE DIRECTOR DOUGLAS: Well, the question
21 was, what has Fish and Game said about the buffer?

22 COMMISSIONER SHALLENBERGER: Yes.

23 EXECUTIVE DIRECTOR DOUGLAS: And, it is my under-
24 standing that they have supported the 100 meters, and that
25 that hasn't changed.

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1 CHAIR CALDWELL: Okay.

2 COMMISSIONER SHALLENBERGER: My question is to
3 staff.

4 CHAIR CALDWELL: Commissioner Shallenberger, do
5 you want to continue?

6 COMMISSIONER SHALLENBERGER: Yes, I do, and my
7 question is to staff, and it is important to me.

8 The Department of Fish and Game is a trustee
9 department charged with the protection of our fish and
10 wildlife in this state, so if -- which is why I asked about
11 something as important as this.

12 In the policies in Chapter 3 of the Coastal Act,
13 which is really what we need to be looking at, it says that
14 the development in areas adjacent to environmentally
15 sensitive habitat areas -- and parks and recreation, which we
16 are not actually dealing with here -- shall be sited and
17 designated to prevent impacts which would significantly
18 degrade those areas and shall be compatible with the
19 continuance of those habitat and recreation areas. This is
20 the only standard that we can look at, as a Commission right
21 now.

22 The fact that this project is better than it was
23 -- we have heard from two Commissioners who were here when it
24 first came before you, and I wasn't, and it doesn't matter
25 that I wasn't because the only project that matters to the

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1 Commission today is the proposal that is before it. There
2 has been a reference to they have given up a lot, and all of
3 that, and that we can feel grateful for that, but it is
4 really not relevant to our quasi-judicial responsibility, to
5 approve a project which is consistent with the Coastal Act.

6 It strikes me, the other thing about the language,
7 as I read it in the Coastal Act, the burden of proof is not
8 to absolutely come up and prove that if we don't do this
9 buffer, there will be significant impacts. The burden of
10 proof is the other way around.

11 The staff is proposing something, the 50 meter for
12 the burrowing owl, and the 100 meter for ESHA, and unless
13 somebody can tell me -- which I have not heard today -- that
14 the smaller amount that is being proposed by some people will
15 absolutely have no impact on the ESHA, then we don't have the
16 ability to approve that. We don't have -- this is not a
17 balancing act for us right now. This is to make sure that
18 the environmentally sensitive habitat areas, there will be no
19 -- let's see, sited and designed to prevent impacts that
20 would significantly degrade those areas.

21 So, the burden of proof, if we are going to reduce
22 these buffers, is not on our staff, it seems to me, to say
23 absolutely, this is required. It is on the people who want
24 it less than that to say, absolutely, if the buffer is
25 smaller there will be no significant impact, and that I have

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1 not heard.

2 So, I had two other --

3 Yes, sorry.

4 ENVIRONMENTAL PROGRAM MANAGER DIXON: I would like
5 to make a clarification.

6 It is my understanding that the Fish and Game and
7 Fish and Wildlife Service, in 1982 and 1979, respectively,
8 made recommendations for 100-meter buffers at Bolsa Chica,
9 but I don't think -- and to my knowledge, they have not
10 modified those recommendations.

11 On the other hand, I don't think that they have
12 explicitly commented on staff's recommendations, or come out
13 and indicated that our recommendations be followed.

14 COMMISSIONER SHALLENBERGER: Except that your
15 recommendations are consistent with what you say was their
16 position previously? okay.

17 And, then, I just want to kind of alert staff that
18 I am really concerned about this rodenticide issue, so when
19 we get to taking votes, I am probably going to look to you,
20 and I don't think education is what I am after. I want to
21 find something that, actually, particularly with the Wildlife
22 Conservation Board, acquiring the, you know, we need to
23 protect that land, as well, so that there is no -- limit the
24 amount of secondary impact from anticoagulants, so just
25 advanced warning that I am going to look to you for an

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1 amendment to whatever motion finally comes before us.

2 CHAIR CALDWELL: Commissioner Reilly.

3 COMMISSIONER REILLY: Thank you, Madam Chair, a
4 couple of questions of staff, and then, probably, a couple of
5 comments.

6 On our addendum, on Item No. 32, I believe it is,
7 which is on page 13 of the addendum, has to do with burrowing
8 owl, and I wonder if staff could explain the criteria here
9 where the Consortium criteria is that if there is no sighting
10 in three years, which has just passed in an area, what affect
11 does that have? and what affect does it have on our designa-
12 tion and buffer, what have you? I am just curious about that
13 particular point that was made.

14 ENVIRONMENTAL PROGRAM MANAGER DIXON: The
15 Consortium standard is that if an observation has been made
16 within 3 years that the habitat be considered occupied.

17 COMMISSIONER REILLY: Okay, and where are we
18 relative to that standard, with the area that we are designa-
19 ting right now?

20 ENVIRONMENTAL PROGRAM MANAGER DIXON: I believe
21 the last observation was in winter 2003. The applicant's
22 biologist, who made those observations is here, and can
23 verify that.

24 COMMISSIONER REILLY: Well, I am just reading
25 here, it says the date of the observation of this burrow, of

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1 November 2001 exceeds the 3-year criteria, so I am just
2 curious as to what that refers to?

3 ENVIRONMENTAL PROGRAM MANAGER DIXON: That is a
4 little confusing, I think.

5 The staff report was meant to address the single
6 observation of a burrowing owl that was somewhat distant from
7 the other observations, and that was not used in drawing the
8 ESHA boundary.

9 COMMISSIONER REILLY: Okay.

10 ENVIRONMENTAL PROGRAM MANAGER DIXON: And, so
11 there were a number of reasons we are not using that single
12 observation. The principle one being that it didn't appear
13 that it really used the burrow, that it was there a few days,
14 and then moved and used the other burrows that were marked.

15 And, another possible reason is that it was a very
16 long time ago when that single observation was made.

17 COMMISSIONER REILLY: Okay, so the ESHA that we
18 have identified down there in the buffer aren't for
19 observations that have been made in the last 3 years, right,
20 that is helpful to clarify that.

21 Can staff show us, on the slide or something, what
22 the added ESHA also added, in terms of buffer area to this
23 project, the new ESHA designation that was recently made?

24 ENVIRONMENTAL PROGRAM MANAGER DIXON: You will
25 have to be a little patient while the machine comes back up

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1 again.

2 [Pause in proceedings.]

3 COMMISSIONER REILLY: While we are waiting for
4 that, I just had another -- I was reading through, I think,
5 it was one of your earlier reports, Dr. Dixon, and you had
6 made some comment about native grasses being designated as
7 ESHA, and that this is relatively new for the Commission.
8 Could you comment on that?

9 ENVIRONMENTAL PROGRAM MANAGER DIXON: Was that in
10 writing, with regards to Bolsa Chica?

11 COMMISSIONER REILLY: I believe so, yes.

12 ENVIRONMENTAL PROGRAM MANAGER DIXON: I am afraid
13 I can't conjure that one up. Native grasses have long been
14 considered a sensitive habitat by the California Department
15 of Fish and Game, and as long as I have been here we have
16 followed that recommendation, and when they are in reasonable
17 condition, have considered them to be ESHA.

18 COMMISSIONER REILLY: Okay.

19 ENVIRONMENTAL PROGRAM MANAGER DIXON: But, we
20 don't have any native grasses at the site right now, in terms
21 of a native grass --

22 COMMISSIONER REILLY: What are the grasses we are
23 talking about here, then?

24 ENVIRONMENTAL PROGRAM MANAGER DIXON: The grasses
25 that are there now are annual grasses, which are exotic --

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1 COMMISSIONER REILLY: Non-natives.

2 ENVIRONMENTAL PROGRAM MANAGER DIXON: -- exotic,
3 non-native species.

4 COMMISSIONER REILLY: Okay, maybe that is what I
5 am referring to.

6 ENVIRONMENTAL PROGRAM MANAGER DIXON: Well, that
7 is true. For a very long time those were not protected by
8 anyone, and then raptor biologists and the Department of Fish
9 and Game suddenly realized that the reality in California is
10 that we don't have large extents of perineal native grasses
11 any longer, and the kind of grasslands that we have are these
12 naturalized exotics.

13 And, so as a matter of fact, the California Native
14 Plant Society has recommended that they no longer be called
15 non-native grasslands, that they be called California annual
16 grasslands, in recognition of the fact that that is the
17 grassland we have, and that is where the rodents live that
18 are the prey of these raptors. And, of course, it also is
19 the place where many of our native species of annual plants
20 exist that used to be in a native prairie.

21 So, we were losing it at a progressive rate, and
22 so the Fish and Game decided that under CEQA they should
23 start preserving it, and they do that by requiring a half-an-
24 acre of preservation for every acre of loss.

25 CHAIR CALDWELL: That is on page 11 of the staff

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1 report.

2 COMMISSIONER REILLY: Okay.

3 And, that, in turn, leads us to now define that as
4 sensitive habitat, as well?

5 ENVIRONMENTAL PROGRAM MANAGER DIXON: No. we don't
6 define it as sensitive habitat. We just recommend that --

7 COMMISSIONER REILLY: You just recommend to use
8 the same mitigation as Fish and Game?

9 ENVIRONMENTAL PROGRAM MANAGER DIXON: That's
10 correct.

11 COMMISSIONER REILLY: Okay.

12 ENVIRONMENTAL PROGRAM MANAGER DIXON: And, have
13 done it previously at the Hellman, for example.

14 COMMISSIONER REILLY: All right, and so we are
15 still waiting for this to come up.

16 Let me ask staff another question, and on this
17 sheet that the applicant has put forward, without regard to
18 the buffer issues on No. 1 and 2, could staff just comment,
19 briefly, on Items 3 and 4, in terms of timing that is being
20 requested here, and whether or not that seems feasible, from
21 a staff's standpoint to, you know, meet or comply with some
22 of the guidelines that are being requested?

23 DEPUTY DIRECTOR LEE: Yes, through the Chair.

24 Commissioner Reilly, we have indicated to them
25 that Item No. 3 is not something that we would entertain.

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1 For one element, the sale of the lower bench is not even
2 before the Commission. This application does not include the
3 lower bench, so procedurally, it would not be possible.

4 But, we also have never, to my knowledge ever
5 dealt into any kind of deposit of a permit into escrow, so it
6 is just something that we haven't done.

7 And, with regard to Item No. 4, it would not be
8 possible for us to bring back revised findings and conditions
9 at the next meeting. The mailing for that is next week.

10 EXECUTIVE DIRECTOR DOUGLAS: And, I think the main
11 point is that the acquisition of the lower bench really has
12 nothing to do with this project --

13 COMMISSIONER REILLY: Well, I --

14 EXECUTIVE DIRECTOR DOUGLAS: -- and it would be
15 inappropriate, I think, to --

16 COMMISSIONER REILLY: It does for me.

17 EXECUTIVE DIRECTOR DOUGLAS: Oh, it may, in your
18 mind, but the idea of somehow linking Commission's actions --

19 COMMISSIONER REILLY: My recollection, Mr.
20 Director, is that when this was before us -- I think it was
21 2004 -- that there was a written provision on the part of the
22 applicants that would have assured the Commission that if we
23 went forward with what they were proposing that they would
24 have committed to going forward with the Wildlife
25 Conservation Board agreement, and that that was before us

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1 when we heard this previously.

2 EXECUTIVE DIRECTOR DOUGLAS: To my recollection,
3 that was never in your staff recommendation. It may have
4 been something that they suggested, but we never tied the two
5 together. We did, when it was initially before the
6 Commission --

7 COMMISSIONER REILLY: No, I know that.

8 EXECUTIVE DIRECTOR DOUGLAS: -- when we had the
9 balancing, but after that the applicant decided not to
10 include the lower bench, and I think it would be a real
11 mistake to tie your permit to an acquisition by another
12 agency that we have nothing to do with.

13 COMMISSIONER REILLY: Well, my interest isn't
14 tying it to a permit of another agency.

15 My interest is in trying to assure that whatever
16 the Commission does here doesn't obviate that particular
17 agreement, and the eventual protection of that 102-acres in
18 the lower bench, and whatever we can do to get some assurance
19 that the action of the Commission, you know, would not
20 obviate or cancel that agreement. I am interested in hearing
21 that, because I think it is important to, obviously, the
22 Commission, the resource, and the community that that deal go
23 forward.

24 As it stands right now, if we -- you know we are
25 playing a poker game on this. We had them reduce 9 acres

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1 from the 2004, we are asking for another 8 acres, in terms of
2 the change in ESHA designation in the buffer from that, so
3 that is about 15 acres, roughly calculated, I think you are
4 probably talking about \$60 million worth of homes there, and
5 stuff, which just about turns out to be what they are going
6 to be getting for the lower bench.

7 I am just concerned about the poker game, where at
8 some point in time, they are going to decide to go ahead and
9 propose on the lower bench, instead of putting it in resource
10 protection as we would wish to see it, that's all.

11 EXECUTIVE DIRECTOR DOUGLAS: Well, and again, as I
12 said, the issue of whether or not the acquisition goes
13 forward, I don't see that there is anything that this
14 Commission can do to affect that. Either it goes forward, or
15 it doesn't.

16 And, in fact, I have had conversations with the
17 executive officer of the Wildlife Conservation Board, when
18 early on there was an attempt to try to kind of use that
19 acquisition as leverage on this Commission, for you to
20 approve the permit, and they assured us that they would not
21 participate in that. And, we assured them that we were not
22 going to, in reverse, try to do anything here that affects
23 their decision, their independent decision of whether or not
24 to acquire that land.

25 The mitigation that we are talking about here is

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1 intended to address the impacts of the upper mesa, upper
2 bench development only, and what happens to the lower bench
3 if, for some reason, the board of this applicant decides not
4 to go through with the acquisition, and come forward with a
5 development plan at some point in the future, that is their
6 decision, and we would have to deal with that proposal when
7 and if it comes in.

8 But, my guess is, if you approve this today, that
9 they are going to go through with their acquisition, is just
10 my guess, and I would be surprised if that didn't happen.

11 COMMISSIONER REILLY: Are we looking at schematic
12 on the changes in the buffer --

13 ENVIRONMENTAL PROGRAM MANAGER DIXON: Yes.

14 COMMISSIONER REILLY: -- designation now? All
15 right, so the blue was the previous buffer, and the red is
16 the additional --

17 ENVIRONMENTAL PROGRAM MANAGER DIXON: That is so.

18 COMMISSIONER REILLY: -- buffer.

19 ENVIRONMENTAL PROGRAM MANAGER DIXON: And, I
20 should probably -- this was in my memo -- but I should
21 probably remind the Commission that, in fact, after the 2004
22 hearing, when we were working out these issues with the
23 applicant, that they said why do we need that tree that is
24 kind of hanging out by itself there, up on top of the bluff,
25 to be in the ESHA? and isn't that sort of an exceptional

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1 point?

2 Now, in fact, along part of the bluff, as in the
3 area that has been considered ESHA for over 20 years, there
4 are trees that grow up from the lowlands along the side of
5 the bluff, and on the bluff, and those have been considered
6 part of the ESHA.

7 But, in looking at this area, which was not part
8 of that early mapping effort, and considering the vertical
9 separation from the actual grove of trees, and the horizontal
10 separation from them, I agreed with the applicant to
11 recommend to this Commission that that single tree be taken
12 out of the ESHA, and we actually made maps to that extent.
13 And, if that were the case, that blue line that has a little
14 bulge in it would, more or less, travel straight over to the
15 property line.

16 Then, of course --

17 COMMISSIONER REILLY: You are talking about the
18 third tree back, just inside of the blue line?

19 ENVIRONMENTAL PROGRAM MANAGER DIXON: That's
20 right, the one that is in the blue line.

21 COMMISSIONER REILLY: I understand.

22 ENVIRONMENTAL PROGRAM MANAGER DIXON: However,
23 then the white-tailed kites elected to nest in a pine tree
24 there, and I wrestled with it for a long time, and in fact,
25 my analysis would have been as it was in dealing with the

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1 applicant's, that those probably would not be ESHA.

2 But, then we have the testimony of a fully
3 protected species, that have elected to place a nest in them,
4 and are currently sitting on eggs. And, based on that fact,
5 and the way in which this Commission has treated nesting
6 white-tailed kites in the past, at ARCO Dos Pueblos, I felt
7 it was my responsibility to include that as a changed
8 situation, and put it into the ESHA.

9 COMMISSIONER REILLY: And, just so I am under-
10 standing, were it not for that, then your inclination would
11 have been to not only not have those two trees be ESHA, but
12 also not that third one in line, as well?

13 ENVIRONMENTAL PROGRAM MANAGER DIXON: That is
14 correct.

15 COMMISSIONER REILLY: And, that probably would
16 have pulled the buffer line back to where?

17 ENVIRONMENTAL PROGRAM MANAGER DIXON: Well, if you
18 see where the arc begins?

19 COMMISSIONER REILLY: Yes.

20 ENVIRONMENTAL PROGRAM MANAGER DIXON: And, if you
21 just kind of bring that out straight, that would be,
22 approximately, what it would have been.

23 COMMISSIONER REILLY: Okay, thank you, Dr. Dixon.

24 CHAIR CALDWELL: Commissioner Kram, then
25 Commissioner Secord.

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1 COMMISSIONER KRAM: While I wasn't here in 2000,
2 from reading the staff reports, which are very comprehensive
3 -- and I want to commend the staff on them.

4 Obviously, the history of this project and what
5 has transpired and the com- promises that have been reached
6 so far are very important.

7 I agree with Commissioner Kruer that to change
8 this, and to increase the buffer site means a redesign of the
9 entire project.

10 But, I wanted to ask the staff, in the beginning
11 of the presentation, you talked about how the lower bench was
12 not conserved for free, and there has been a lot of discus-
13 sion about the lower bench, and the value of the lower bench,
14 and how that value may have changed since 2000-plus -- I am
15 not sure when.

16 I am wondering if the applicant could talk about
17 the value of the lower bench, and what the value may be
18 today, and whether that conservation will go through on the
19 lower bench, if this project goes forward.

20 CHAIR CALDWELL: You are asking for the applicant
21 to come forward?

22 COMMISSIONER KRAM: Yes, please.

23 MR. MOUNTFORD: Ed Mountford, for Hearthside
24 Homes.

25 I think this is a general look at property in the

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1 area. I think you are basically looking at upwards of \$4
2 million an acre, the value of that property.

3 COMMISSIONER KRAM: So, what do you estimate the
4 value of that property to be today?

5 MR. MOUNTFORD: Well, if -- for the lower bench,
6 Commissioner?

7 COMMISSIONER KRAM: Yes.

8 MR. MOUNTFORD: Let's say, if we applied all of
9 the buffers, you know, that we are talking about for the
10 resources that exist on the lower bench, you end up with,
11 approximately 40 developable acres.

12 COMMISSIONER KRAM: So, you are saying the lower
13 bench could be worth \$200 million?

14 MR. MOUNTFORD: It is \$160 million.

15 COMMISSIONER KRAM: I am sorry, \$160 million.

16 Well, but you are in the process of conveying the
17 title of that for \$65 million, am I correct?

18 MR. MOUNTFORD: That is correct.

19 COMMISSIONER KRAM: And, the difference, you
20 consider to be at --

21 MR. MOUNTFORD: Well, we are ending the Bolsa
22 Chica battle. We are putting everything behind us.

23 We are doing what the Commission asked us to do in
24 November of 2000, preserve the lower bench, develop the upper
25 bench. That has been the land plan goal that we have been

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1 working on since that time.

2 And, we had a little different path in getting
3 there, Commissioner, but the results are the same.

4 CHAIR CALDWELL: Thank you, sir, you answered the
5 question well.

6 MR. MOUNTFORD: Thank you.

7 COMMISSIONER KRAM: Madam Chair, may I?

8 I also want to ask, so the two are tied together?
9 the sale of the lower bench and this application?

10 MR. MOUNTFORD: Correct.

11 COMMISSIONER KRAM: Okay, also, there was a
12 question about the Fish and Game, and whether they
13 recommended --

14 MR. MOUNTFORD: Yes, thank you, I appreciate that.
15 Could I just pass something out, please.

16 Commission, when we submitted our application,
17 actually, for Brightwater, our first development plan for the
18 upper bench, back in 2002, we got a letter back from staff
19 saying that your application has been deemed incomplete, and
20 here is all of the things that we want you to show us before
21 we will deem you application complete.

22 One of the things that staff asked for was an
23 evaluation of various plans that we had submitted by the
24 Department of Fish and Game, and on the letter that you are
25 going to be getting a copy of, the plans that the Fish and

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1 Game Department evaluated were the ESHA Protection and
2 Habitat Creation Plan, Southern Tarplant Translocation Plan,
3 Water Quality Management Plan, Seasonal Pond Protection, and
4 then there was a trust fund to monitor raptor predation.

5 And, when you get your copy of your letter, if you
6 would, turn to page 3. And, we spent 6 months with Depart-
7 ment of Fish and Game, in the latter part of '02, and the
8 first part of '03, sitting down with them. We were down
9 several times at their office in Carlsbad, and we sat down
10 with them, and the plans, and we went over everything, and
11 they asked questions, we brought our consultant team down, we
12 had numerous meetings with them, and also site visits, and
13 their conclusion on page 3, as far as the ESHA is concerned:

14 "The responses provided by Hearthside Homes
15 project team conclude that the designated
16 ESHA will not be affected by the creation
17 of the upland habitat park, or the require-
18 ments for fuel management. Our review of
19 the responses, in conjunction with the
20 project plan, provides a sufficient basis
21 for concurring that the ESHA will not be
22 affected by the proposed project, if all
23 of the specific construction and management
24 activities are followed."

25 ///

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1 COMMISSIONER KRAM: This was in '03?

2 MR. MOUNTFORD: Yes, this was -- right, but this
3 was the predecessor to the plan that is before you today.
4 This is the one that had the actual smaller buffers. This
5 had 100-foot minimum buffers.

6 COMMISSIONER KRAM: Thank you very much.

7 MR. MOUNTFORD: You are welcome.

8 EXECUTIVE DIRECTOR DOUGLAS: Madam Chair.

9 CHAIR CALDWELL: Staff, please.

10 EXECUTIVE DIRECTOR DOUGLAS: If we may, a couple
11 of responses.

12 We don't think that answers the question. I have
13 asked Dr. Dixon to make that point.

14 But, relative to the value of the lower bench, the
15 \$65 million is based on official appraisals by the state, and
16 so that is what they determined was the value that they could
17 pay for, and that has to go through the Department of General
18 Services.

19 What Mr. Mountford is suggesting, in terms of what
20 he thinks it is worth, you know, that is not nearly the
21 point. The point is the state has to spend public funds,
22 according to what their appraisal shows, which takes into
23 account a lot more of the constraints.

24 COMMISSIONER KRAM: When was that appraisal? if I
25 could ask you, do you know when that was?

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1 EXECUTIVE DIRECTOR DOUGLAS: They did several, and
2 the applicant can tell you about that, but the state did
3 several appraisals, is my understanding.

4 I am not privy to the details of those, because we
5 try to keep arm's length from the acquisition agency, as a
6 regulatory agency, but it is my understanding that there were
7 several state appraisals, official appraisals, that then lead
8 them to the conclusion that they could buy it for the \$65
9 million.

10 COMMISSIONER KRAM: So, if I could just ask the
11 applicant, when the appraisals that you had -- well, when was
12 that appraisal done for the state? and are you estimating the
13 value being the present value today? and do you have
14 appraisals to support the \$4 million an acre?

15 MR. PACINI: My name is Ray Pacini. I am the CEO
16 of the applicant.

17 And, the Wildlife Board had a couple of
18 appraisals. We had a couple of appraisals. And, there was a
19 difference of opinion.

20 Their \$65 million appraisal was, approximately, a
21 year ago. The values have gone up on the coast at least 20
22 to 30 percent in that time frame. We had one appraisal for
23 \$185 million, another appraisals for \$240 million.

24 We made the decision, as a board, to sell the
25 lower bench at less than the appraised value on the

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1 assumption that it would facilitate getting approval of the
2 upper bench by achieving the objectives the Commission set
3 out in November of 2000.

4 CHAIR CALDWELL: Thank you, sir.

5 Commissioner Secord.

6 EXECUTIVE DIRECTOR DOUGLAS: Excuse me.

7 CHAIR CALDWELL: Sorry --

8 EXECUTIVE DIRECTOR DOUGLAS: Relative to the
9 Department of Fish and --

10 CHAIR CALDWELL: -- oh, yes.

11 EXECUTIVE DIRECTOR DOUGLAS: -- Game letter.

12 CHAIR CALDWELL: Dr. Dixon.

13 ENVIRONMENTAL PROGRAM MANAGER DIXON: Yes, I think
14 it is important to understand the context here.

15 The Department of Fish and Game, as they said
16 here, concluded that the designated ESHA will not be affected
17 by the creation of an upland habitat park, and will not be
18 affected by the requirements for fuel management. And, they
19 simply didn't address the affects of the development on the
20 use by raptors of that ESHA.

21 And, I would agree that -- and that is similarly
22 the kind of reasoning that we use in terms of recommending
23 that the irrigation be allowed in the first 50 feet, and
24 disturbances as much as mowing be allowed in the next 50
25 feet, so long as it was placed in native grasslands, that it

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1 would not affect the ESHA. That is a whole different
2 question.

3 CHAIR CALDWELL: Thank you.

4 Commissioner Secord, then Commissioner Baird, then
5 Commissioner Burke.

6 COMMISSIONER SECORD: Thank you very much, Madam
7 Chair.

8 I was interested in the issue of the buffer, in
9 relation to the lower bench issues, and I believe Ms. Lee
10 said that the buffer distance of 100 meters was altered as a
11 function of some relationship to the lower bench, and I
12 wondered if you would mind reiterating what you said, because
13 it sounded to me like the buffer distance had changed because
14 of the availability as a preserve, with respect to the lower
15 bench? would you say that, again, please.

16 DEPUTY DIRECTOR LEE: Yes, through the Chair.

17 Commissioner Secord, over the number of times that
18 this item has come back to the Commission, the history has
19 been that in 2000, the Commission reviewed it, Dr. Dixon's
20 recommendation was 100 meters.

21 But, at that time, we were looking at the lower
22 bench, and the upper mesa, both areas were before the
23 Commission. The Commission, at that time, ultimately
24 determined a higher density of development on the upper mesa,
25 conserving the lower bench, and we believe the Commission's

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1 findings and action supported that, and made a concession,
2 and accepted 100-foot buffer at that time. But, it was a
3 tradeoff for the conservation of the lower bench.

4 COMMISSIONER SECORD: Thank you, very much.

5 EXECUTIVE DIRECTOR DOUGLAS: I think the important
6 part was that we used the balancing clause --

7 COMMISSIONER SECORD: Yes.

8 EXECUTIVE DIRECTOR DOUGLAS: -- to balance those

9 --

10 COMMISSIONER SECORD: Yes.

11 EXECUTIVE DIRECTOR DOUGLAS: -- impacts, and
12 because of the preservation of the lower bench, we were
13 willing to say a lower buffer area would be appropriate.

14 But, with the lower bench off of the table, we
15 have to deal with the impacts of this project on the upper
16 bench, with mitigation on the upper bench, leaving out the
17 lower bench.

18 COMMISSIONER SECORD: And, I guess, whether the
19 lower bench is off of the table, is another issue.

20 I have been at this for five months now, and this
21 Commission and staff has been dealing with this particular
22 project for roughly 20 years, and it has been a matter of
23 burden and benefit, and trading one benefit, say, for
24 another. So, I think we are awfully close to getting this
25 done, and I am very proud of the Commission, and probably the

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1 staff, for getting this to the place where we are.

2 With respect to the change in the ESHA, with
3 respect to the kite nests in a pine tree, now the buffer got
4 bigger right to go around -- that red bubble on the chart
5 shows that the ESHA has changed because of this particular
6 nest, in this particular year, and I am wondering if the
7 project simply couldn't be conditioned to protect that area
8 during the nesting season, and then go back to the former
9 accepted buffer that would save us a great deal of grief?

10 COMMISSIONER REILLY: Using the ESHA?

11 COMMISSIONER SEBORD: The former ESHA designation,
12 thank you, very much, Commissioner Reilly.

13 And, that would be my questions.

14 CHAIR CALDWELL: Thank you.

15 Commissioner --

16 Dr. Dixon, would you like to respond to that?

17 ENVIRONMENTAL PROGRAM MANAGER DIXON: Well,
18 regardless of the Commission's determination of whether this
19 new use of the tree by the kites makes it an ESHA, the nest
20 will be protected, because it is a fully protected species,
21 and the California Fish and Game will require, probably, a
22 500-foot buffer around it during any construction activities.

23 CHAIR CALDWELL: Director Douglas.

24 EXECUTIVE DIRECTOR DOUGLAS: So, what, basically,
25 I understand, is that the protection of that tree is required

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1 anyway under state law, because it is a fully protected
2 species.

3 Now, what happens after the nesting occurs, and
4 the fledglings leave the nest, and the kites, the adults
5 leave the nest, Dr. Dixon didn't answer that question. I
6 imagine that that is something that is up to the Commission.

7 ENVIRONMENTAL PROGRAM MANAGER DIXON: The
8 applicant's biologist has pointed out that it is very
9 unlikely that those white-tailed kites will nest there next
10 year.

11 And, as a matter of fact, white-tailed kites
12 happen to be one of those species that don't show nest
13 fidelity, and they are very unlikely to nest in the same tree
14 more than one year in a row. Over a long period of time, the
15 same trees, or grove of trees, may be used.

16 COMMISSIONER SECORD: So, it is a practical
17 possibility that that old ESHA determination could again be
18 valid?

19 ENVIRONMENTAL PROGRAM MANAGER DIXON: That is
20 certainly something the Commission has to decide.

21 COMMISSIONER SECORD: Okay, well, I am in favor,
22 generally, of the variable buffer, because I think that,
23 frankly, there are areas that need more protection than
24 others, and I think the buffer, if this buffer could retract
25 to its former state with ESHA protection, I would feel a lot

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1 better about it, because this project has come together very
2 nicely, with a couple of these minor things held out, and I
3 am pleased to see this opportunity.

4 CHAIR CALDWELL: Commissioner Baird.

5 COMMISSIONER BAIRD: I have been wrestling with
6 this quite a bit, as all of us have, I think.

7 But, I find myself getting a little confused,
8 because when Commissioner Shallenberger asked the question
9 about Fish and Game commenting on this, I had sort of written
10 down that, apparently, it sounded like they hadn't commented
11 on the ESHA buffer since 1982, in the last 20 years. That is
12 what I was hearing, and maybe I wasn't quite hearing that
13 correctly.

14 Then, when I look at this document from the
15 Department of Fish and Game for a project that appeared to be
16 a larger project, it appears, from what I am reading -- and I
17 would like your comment on this -- it appears from what I am
18 reading that they were feeling that that buffer, at that
19 time, was appropriate. And, I am not sure that I saw this
20 finding reflected in the staff report, which I may have
21 missed.

22 So, I would like your comment on this. I am just,
23 you know, how we are dealing with this finding by our
24 wildlife management agency. I must say, I think, at the
25 Resources Agency, what my job is, what all of these different

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1 departments are saying and doing, and here I have something
2 that causes me a little bit of consternation, quite frankly.

3 ENVIRONMENTAL PROGRAM MANAGER DIXON: Well, as I
4 mentioned before, Commissioner, the California Department of
5 Fish and Game was commenting on the effects of the habitat
6 management plan, and the fuel modification plan -- the ESHA.
7 And, they concluded that they would not have a significant
8 impact on the ESHA, and I would agree.

9 But, they did not comment on the effects of the
10 development on the raptor use of the ESHA, which is a
11 completely different issue.

12 COMMISSIONER BAIRD: Well, I have just going to
13 ask, then, has there ever been, in all of these years -- and
14 it is hard to understand how that conversation never
15 occurred. Do we not sit down, as agencies, when we are
16 looking at these things? I mean, that question was never
17 asked nor answered by the Department of Fish and Game?

18 ENVIRONMENTAL PROGRAM MANAGER DIXON: We have, in
19 the past, we requested input from Fish and Game, and from
20 Fish and Wildlife Service. Fish and Wildlife Service
21 biologist had actually intended, I think, to write us a
22 letter, but for whatever internal reasons, neither the
23 Department of Fish and Game, nor the Department of Fish and
24 Wildlife, at that time, provided us with a biological opinion
25 on it.

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1 EXECUTIVE DIRECTOR DOUGLAS: The only thing that
2 we have -- I mean, we don't need to get into the details of
3 when Fish and Game is asked to comment, whether they do or
4 not, and why they don't, but that has been an ongoing issue
5 that we have had over many, many years, and I don't want to
6 speculate about that at this point.

7 But, in any event, the last comment we had from
8 them, relative to the buffer, was that they had taken the
9 position that 100 meters was the appropriate buffer, and they
10 haven't changed that position. This letter doesn't change
11 that. It doesn't address it.

12 So, no we haven't talked to them in the last few
13 years, to the extent that they gave us any response, and what
14 they may have said privately, not officially, is not relevant
15 to this determination. It is not a matter of public record.

16 CHAIR CALDWELL: Commissioner Burke, then
17 Commissioner Allgood.

18 COMMISSIONER BURKE: I have a recollection, a
19 question, and a statement.

20 My recollection is that Commissioner Reilly was
21 absolutely correct, because I remember the time, together, of
22 the two, so -- and to be honest, I can't remember if it was
23 -- where it was in the staff report, or writing, but it
24 absolutely was tied together.

25 You know, I don't want to get involved in this

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1 thing about the appraisal, but if you appraise some dirt, and
2 you owned that dirt, and you build something on it, the dirt
3 is worth more than the appraisal of the dirt, we all know
4 that. So, even though the dirt, at the lowest appraisal,
5 which is what government buys something is \$62 million or
6 \$68, or whatever it was, I know if you put something on it,
7 it would be worth significantly more. So, you know, the dirt
8 had value.

9 What I am a little confused about, and
10 Commissioner Wan tried to help me out here. Mr. Goodell, Mr.
11 Goodell got up and he testified that if we did -- and it
12 wasn't clear, I didn't quite get his testimony, but he said
13 something about the buffers as we are proposing them stops
14 him from being able to use his land.

15 Can you give me a staff comment on that.

16 EXECUTIVE DIRECTOR DOUGLAS: Well, first of all,
17 we have no basis on which to evaluate that kind of an
18 assertion; however, as you know, this Commission does have a
19 requirement to comply with the Constitution and a prohibition
20 against taking of private property.

21 So, if you do -- if he is right, which we don't
22 know, and he wouldn't be able to develop consistent with that
23 policy, or that provision of Commission action or interpre-
24 tation of the Coastal Act, the Coastal Act, itself, provides
25 for an override, based on the takings provision, so that he

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1 would be entitled to an economically viable use, irrespective
2 of what the buffer restrictions, or ESHA restrictions might
3 mean.

4 CHAIR CALDWELL: Thank you.

5 Commissioner Allgood, then Commissioner Reilly.

6 COMMISSIONER ALLGOOD: Yeah, I have not sat for a
7 Bolsa Chica hearing before, and I --

8 CHAIR CALDWELL: Well, congratulations.

9 COMMISSIONER ALLGOOD: Yeah, and I feel so lucky.

10 But, I do believe that we have to protect ESHA as
11 the Coastal Act requires.

12 What I am uncertain of is, particularly on the
13 diagram up there. To our biologist, you are saying that
14 absent the nest of the white-tailed kite, and in the past,
15 because there wasn't a nest for the white-tailed kite, that
16 the area circled in red was not considered ESHA, is that
17 correct?

18 ENVIRONMENTAL PROGRAM MANAGER DIXON: That is
19 correct.

20 COMMISSIONER ALLGOOD: And, additionally, you are
21 saying today, in your testimony, that it is unlikely that
22 that pair of hawks will revisit that site to nest in the
23 future, because of the nature of the species.

24 ENVIRONMENTAL PROGRAM MANAGER DIXON: That pair
25 will probably not visit that site to nest in the next year,

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1 or two.

2 COMMISSIONER ALLGOOD: And, is there -- I guess I
3 am clear now, that what you are saying is that absent the
4 nest, the white-tailed kite nest, that those three trees in
5 the surrounding area, don't have value as ESHA?

6 ENVIRONMENTAL PROGRAM MANAGER DIXON: I wouldn't
7 say absent the nest. It was my opinion that -- no, I think
8 that is probably close to being right. It was my opinion
9 that they didn't have sufficient value to be included with
10 the rest of the trees as ESHA, because I didn't think they
11 would get the kind of bird use that the rest of the ESHA got.

12 The testimony of the birds convinced me that now I
13 should recommend it to the Commission as a changed circum-
14 stance, but it certainly is a borderline kind of determin-
15 ation.

16 COMMISSIONER ALLGOOD: Okay.

17 And, the only reason I am asking, I am not trying
18 to work out a compromise here, because I don't think that is
19 on the table, but it does strike me, in looking at that map,
20 that that is a pretty major impact, and will, as some of the
21 more developer experts folks on the Commission have said, we
22 are looking at a major redesign of this project, and so
23 whatever we do today, they are not going to walk out of here
24 with a buildable project is, I guess, the impression I am
25 getting.

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1 I have just got to ask, out of curiosity, we have
2 been back and forth on the age of the advice from Fish and
3 Game. When was the last time you asked Fish and Game, or
4 anybody of staff, ask Fish and Game for a reading on this?
5 was it sometime between the last quoted opinion in '82 and
6 now?

7 ENVIRONMENTAL PROGRAM MANAGER DIXON: It was for
8 the 2000 hearing.

9 COMMISSIONER ALLGOOD: And, you got no input from
10 them?

11 ENVIRONMENTAL PROGRAM MANAGER DIXON: It did not
12 appear that we were going to get an opinion from either
13 agency.

14 COMMISSIONER ALLGOOD: Okay, and well, it did not
15 appear, but in time for that hearing, but did it ever come
16 in?

17 ENVIRONMENTAL PROGRAM MANAGER DIXON: No.

18 COMMISSIONER ALLGOOD: Oh, interesting, okay.

19 CHAIR CALDWELL: Commissioner Reilly.

20 COMMISSIONER REILLY: Thank you, Madam Chair.

21 I am going to offer an amendment to modify --

22 CHAIR CALDWELL: We don't have a motion on the
23 table. We need a main motion.

24 COMMISSIONER REILLY: We don't have a main?

25 CHAIR CALDWELL: No.

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1 ///

2 [MOTION]

3 COMMISSIONER REILLY: Let me start by moving per
4 staff, then, on the main motion.

5 COMMISSIONER NEELY: Second.

6 CHAIR CALDWELL: It has been moved by Commissioner
7 Reilly, seconded by Commissioner Neely, to approve this
8 project per the staff recommendation.

9 [MOTION]

10 COMMISSIONER REILLY: All right, and I will move to
11 amend the ESHA designation to remove the three trees in
12 question here, and adjust the boundary accordingly. And,
13 also, to set up a 500-foot buffer from the pine tree during
14 the nesting and fledgling season.

15 COMMISSIONER SECORD: Second.

16 CHAIR CALDWELL: All right, we have an amending
17 motion on the table to remove the three trees, the two trees
18 on the Goodell property, and the one tree closest to those
19 two on the subject property, and to provide a 500-foot buffer
20 during the nesting season, is that correct?

21 COMMISSIONER REILLY: That is correct.

22 CHAIR CALDWELL: All right.

23 Any discussion of the motion?

24 Commissioner Burke.

25 COMMISSIONER BURKE: If I could ask staff a

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1 question.

2 Commissioner Kram and I are questioning, you know,
3 we have been to the site, and we have seen all of these
4 pictures, but we have never seen leaves on this tree, on any
5 of these trees.

6 COMMISSIONER ALLGOOD: Doesn't mean they don't
7 have them.

8 COMMISSIONER BURKE: I mean, normally, the
9 eucalyptus leave, you know --

10 CHAIR CALDWELL: Well, some of us don't have hair,
11 either.

12 [General Discussion]

13 COMMISSIONER BURKE: Now, wait a minute. He is my
14 friend, you'd better leave him alone.

15 Are these trees alive?

16 [General Discussion]

17 EXECUTIVE DIRECTOR DOUGLAS: I am.

18 COMMISSIONER BURKE: Hey, look, let me tell you
19 something, I'm defending you up here, man, you'd better stick
20 with me for a minute.

21 CHAIR CALDWELL: All right, sorry about that one.
22 I couldn't resist.

23 COMMISSIONER BURKE: Yes, we'll get you some
24 Brownie points later.

25 Doctor?

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1 ENVIRONMENTAL PROGRAM MANAGER DIXON: If you would
2 look at the photograph there, on the slide, or better yet on
3 the copy that you have before you, the majority of the trees
4 are alive.

5 The grove, overall, has got a lot of sick trees --

6 COMMISSIONER BURKE: No, but, the tree that the
7 birds are nesting in now, does it have leaves on it?

8 ENVIRONMENTAL PROGRAM MANAGER DIXON: Oh, yeah,
9 the birds would not nest in those snags. They use them for
10 perching, but no, they require cover for their nests.

11 CHAIR CALDWELL: All right, we have a motion on
12 the table. The mover and the seconder are requesting a "Yes"
13 vote.

14 Is there any objection to a unanimous roll call on
15 this?

16 COMMISSIONER ALLGOOD: I wanted to ask a question.

17 CHAIR CALDWELL: Commissioner Allgood.

18 COMMISSIONER ALLGOOD: I am curious, the movement
19 of the boundary you are imposing, what impact does that have
20 on the archaeological site, if any?

21 CHAIR CALDWELL: Staff, can you respond to that
22 question?

23 COMMISSIONER ALLGOOD: Is that beyond?

24 [No Response]

25 CHAIR CALDWELL: On ORA-83.

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1 COMMISSIONER ALLGOOD: Yes.

2 DEPUTY DIRECTOR LEE: Through the Chair.

3 Commissioner Allgood, our understanding of what
4 Ms. Jeffredo-Warden's request would be, would be that that
5 area does need to be protected for the archaeo-astronomical
6 concern, as well.

7 Their exhibit that they passed out, included all
8 of the area that staff was recommending be found ESHA, and
9 included the two darker areas, and then also the area in
10 checkerboard.

11 COMMISSIONER ALLGOOD: Well, I am looking at --
12 where is the source of this map? Yes, the archaeological
13 map, as I read it, if I read the previous map correctly, the
14 arc looks to clear it, and I didn't have that map in front of
15 me, so I think I have answered my question.

16 Thank you.

17 EXECUTIVE DIRECTOR DOUGLAS: Yes, if you look at
18 the exhibit with the pink shading, and the darker -- whatever
19 that color is -- fuchsia?

20 COMMISSIONER ALLGOOD: Sure.

21 EXECUTIVE DIRECTOR DOUGLAS: Okay.

22 COMMISSIONER ALLGOOD: Fuchsia, who cares.

23 EXECUTIVE DIRECTOR DOUGLAS: Then, if you change
24 the buffer as the amending motion would, you would exclude an
25 area that they had asked be included for protection of

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1 archaeological resources. That would be the effect.

2 CHAIR CALDWELL: All right.

3 Are we ready for a roll call vote on this motion?

4 [No Response]

5 All right, please call the roll -- seeking a "Yes"
6 vote.

7 SECRETARY GOEHLER: Commissioner Iseman?

8 COMMISSIONER ISEMAN: Yes.

9 SECRETARY GOEHLER: Commissioner Kram?

10 COMMISSIONER KRAM: Yes.

11 SECRETARY GOEHLER: Commissioner Kruer?

12 COMMISSIONER KRUER: Yes.

13 SECRETARY GOEHLER: Commissioner Neely?

14 COMMISSIONER NEELY: Yes.

15 SECRETARY GOEHLER: Commissioner Allgood?

16 COMMISSIONER ALLGOOD: No.

17 SECRETARY GOEHLER: Commissioner Potter?

18 COMMISSIONER POTTER: Aye.

19 SECRETARY GOEHLER: Commissioner Reilly?

20 COMMISSIONER REILLY: Yes.

21 SECRETARY GOEHLER: Commissioner Secord?

22 COMMISSIONER SECORD: Yes.

23 SECRETARY GOEHLER: Commissioner Shallenberger?

24 COMMISSIONER SHALLENBERGER: No.

25 SECRETARY GOEHLER: Commissioner Wan?

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1 COMMISSIONER WAN: Yes.

2 SECRETARY GOEHLER: Commissioner Burke?

3 COMMISSIONER BURKE: Yes.

4 SECRETARY GOEHLER: Chairman Caldwell?

5 CHAIR CALDWELL: Yes, the amending motion carries.

6 SECRETARY GOEHLER: Ten, two.

7 CHAIR CALDWELL: All right.

8 Commissioner Wan.

9 [MOTION]

10 COMMISSIONER WAN: I have another amending motion
11 that I want to make, and you will have to help me with the
12 wording on this.

13 But, I move that the eucalyptus ESHA -- I guess I
14 can't preface my motion to explain it.

15 CHAIR CALDWELL: We'll let you speak to it. Go
16 ahead.

17 COMMISSIONER WAN: You will let me speak to it.

18 I think the idea of a variable buffer is not a bad
19 idea, because as I said there is no magic number.

20 At the same time, I am not comfortable with 150-
21 foot buffer that includes 50 feet of fire management in it.
22 That, for this type of a system is just too little.

23 And, so what I would propose is to move that -- we
24 add -- we use the applicant's buffer, as he has proposed it,
25 but add to that 50 feet in those areas where -- and this is

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1 the part that is difficult -- okay, where by adding the 50
2 foot to the buffer, it does not increase the buffer beyond
3 the 100 meters. In other words, I am not asking in an area
4 where he is giving 382 feet to add 50 feet on it. And, I
5 don't know how to explain that verbally, but you see what I
6 am saying.

7 If I get a "second" to my motion, I will try to
8 elaborate a little bit further.

9 COMMISSIONER REILLY: What is the undisturbed
10 buffer size you are trying to preserve, Commissioner?

11 COMMISSIONER WAN: I am trying to preserve as
12 undisturbed the buffer that the applicant is offering.

13 Right now, he is offering a buffer, for example,
14 that is variable between 150 feet to 382 feet, but 50 feet of
15 it is -- at least 50 feet of it is disturbed, and so by
16 adding the 50 feet back, what you get, effectively, is an
17 undisturbed buffer.

18 COMMISSIONER REILLY: So, you would allow buffer
19 size with a minimum of 200 feet?

20 COMMISSIONER WAN: Correct.

21 COMMISSIONER REILLY: Okay.

22 COMMISSIONER WAN: But, no, I am not asking that
23 that 50 feet be added in such a way as to push the -- for
24 example where it is 300 feet to add 50 feet on it, and make
25 it out --

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1 COMMISSIONER REILLY: Minimum of 200?

2 COMMISSIONER WAN: -- yeah, it is a minimum of
3 200, but I do think you need a condition that says it doesn't
4 go beyond a certain point, too.

5 Okay, fine.

6 CHAIR CALDWELL: Do we have a "second" on that?

7 EXECUTIVE DIRECTOR DOUGLAS: Well, oh, I am sorry.

8 CHAIR CALDWELL: Then, we can figure out whether
9 we understand it.

10 COMMISSIONER REILLY: I'll second it.

11 CHAIR CALDWELL: All right, thank you.

12 EXECUTIVE DIRECTOR DOUGLAS: Just in terms of
13 making sure that we understand what the motion is, it would
14 be to use the applicant's buffer, to add 50 feet for the
15 brush clearance and mowing, but in no event would it be more
16 than 300 feet.

17 COMMISSIONER REILLY: No, that is not it.

18 COMMISSIONER WAN: No.

19 COMMISSIONER REILLY: My understanding is that in
20 areas where they are proposing a buffer that is less than 200
21 feet, the minimum would be 200 feet, and other than that, you
22 would follow their variable line.

23 COMMISSIONER WAN: No, that is not quite -- that
24 is almost.

25 COMMISSIONER REILLY: Well, okay, I tried.

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1 EXECUTIVE DIRECTOR DOUGLAS: So, did I.

2 COMMISSIONER WAN: Okay, let's put the --

3 CHAIR CALDWELL: I thought I understood it,
4 actually.

5 COMMISSIONER WAN: -- map up so at least --

6 CHAIR CALDWELL: But, you try again.

7 COMMISSIONER WAN: Yes, let's put that up -- can
8 we put that up?

9 [Pause in proceedings.]

10 EXECUTIVE DIRECTOR DOUGLAS: This is going to take
11 awhile to bring it up. Do you want to try to explain it a
12 little bit more, and we will try to figure it out?

13 COMMISSIONER WAN: Okay, basically, what I am
14 saying is that you are adding the 50 feet to that -- we are
15 only talking about the eucalyptus buffer now. We are not
16 talking about any of the other, you know, the burrowing owl
17 habitat.

18 EXECUTIVE DIRECTOR DOUGLAS: Right.

19 COMMISSIONER WAN: All right, you are adding 50
20 feet to --

21 Oh, okay, here we go. So the 50 feet would be
22 added to the section where -- and I don't know where the
23 break is -- that goes on the left, that is 150 feet, bringing
24 that to 200 feet. Where it is 382 feet, you wouldn't add
25 anything. Where -- and this is what I was trying to explain

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1 -- where it is 294 and 251, you would be bringing it up to
2 no more than 100 meters.

3 EXECUTIVE DIRECTOR DOUGLAS: Right, that is the
4 way I understood it.

5 So, what you are, basically, saying is the
6 applicant's buffer, plus 50 feet, but in no event would it be
7 greater than --

8 COMMISSIONER WAN: Greater than 100 meters.

9 EXECUTIVE DIRECTOR DOUGLAS: -- 100 meters, as a
10 result of the additional 50 feet, it would not be greater
11 than the 300.

12 CHAIR CALDWELL: Yes.

13 Commissioner Iseman, then Commissioner Kruer.

14 EXECUTIVE DIRECTOR DOUGLAS: Yes, 300 -- whatever
15 100 meters is, right -- 328, right.

16 COMMISSIONER ISEMAN: I would like to ask the
17 effect on the lots, if this were done, what we are looking
18 at, by moving that?

19 CHAIR CALDWELL: Mr. Mountford, I believe she
20 would --

21 MR. MOUNTFORD: Thank you.

22 CHAIR CALDWELL: -- like to ask you what the
23 effect is on the subdivision.

24 MR. MOUNTFORD: Well, let me see if I can first
25 describe it.

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1 Can I use the lazer pointer, please.

2 EXECUTIVE DIRECTOR DOUGLAS: Commissioner Wan,
3 while he is getting it ready, did I accurately describe what
4 you intended?

5 MR. MOUNTFORD: Commission, what I think I am
6 hearing you saying is, there are two pinch points here. There
7 is 150 here, and 150 at this point here, and what you are
8 suggesting is that it be 50 foot deeper in this area here,
9 between these two points, is that correct?

10 COMMISSIONER WAN: No, that is only part.

11 MR. MOUNTFORD: Because there are these two pinch
12 points.

13 COMMISSIONER WAN: That is correct in that area.

14 MR. MOUNTFORD: Right, because if you notice the
15 eucalyptus trees here, they bend back down into the lowland
16 here, so you have a point here that is 150 feet, and then it
17 varies throughout here, and then there is another pinch point
18 at this location here, you know, where it is the 150 feet.

19 So, essentially, what you are saying is that this
20 goes back 50 feet in this location.

21 COMMISSIONER WAN: No, I am saying that in that
22 location, but then there is, off on the right hand side, you
23 also have areas that are less than 100 meters.

24 MR. MOUNTFORD: We have areas with less than 100
25 meters.

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1 COMMISSIONER WAN: And, so I am talking about
2 where it is less than that, those areas would also require an
3 additional 50 feet.

4 MR. MOUNTFORD: Okay, I understand.

5 COMMISSIONER WAN: So, it is on two sections, not
6 the middle section, obviously.

7 MR. MOUNTFORD: Well, let me -- can I clarify one
8 thing --

9 COMMISSIONER WAN: Yes.

10 MR. MOUNTFORD: -- if I could, please.

11 Commissioner, I think the characterization of this
12 as being disturbed is really not correct. Essentially, what
13 it is, the 50 feet behind the homes is planted with native
14 plants. The only difference is there are sprinklers there.
15 In case of a drought, the fire authority would like to have
16 some moisture there, so that the plant material there has
17 moisture during drought conditions.

18 There is a difference in the plant palette, in
19 that it is lower growing natives, but they all are native
20 plants. It is not disturbed. The raptors aren't going to
21 know the difference.

22 COMMISSIONER WAN: Excuse me, the raptors will
23 know the difference, for a couple of reasons. First of all,
24 it is going to be mowed --

25 MR. MOUNTFORD: That is not correct.

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1 COMMISSIONER WAN: Am I correct in saying that
2 there will be mowing in this area?

3 ENVIRONMENTAL PROGRAM MANAGER DIXON: We
4 recommended that mowing be allowed in the area. Most
5 recently, I understand from the applicants, that they don't
6 think that they will need to mow.

7 COMMISSIONER WAN: But, it is permissible?

8 ENVIRONMENTAL PROGRAM MANAGER DIXON: Yes.

9 COMMISSIONER WAN: Okay, okay --

10 MR. MOUNTFORD: But, the fire authorities -- the
11 Orange County Fire Authority approved the plan that did not
12 have any mowing in it. It was, basically, the 50 foot
13 irrigated zone with native plants. That is the fuel
14 modification.

15 COMMISSIONER WAN: That is No. 1. The other thing
16 that occurs in this area is irrigation, which brings in
17 Argentine ants, which affects the habitat. You can't get
18 around the affects of water on the habitat in that area, and
19 that is why this Commission, in the Dana Point Headlands that
20 we just approved, in the discussion down on the San Diego
21 LCP, we made the point, repeatedly, that we don't do fire
22 management in the buffer.

23 CHAIR CALDWELL: Is it possible to turn the
24 temperature down in this room, thank you.

25 MR. MOUNTFORD: To answer Commissioner Iseman's

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1 question, is I think based on what we have outlined, it is
2 pretty obvious what the impact is. It eliminates those homes
3 all along the edge there, and we will have to redesign the
4 project, and shift everything back 50 feet. I mean, that is
5 the net effect.

6 CHAIR CALDWELL: Commissioner Wan, are you
7 completed with your questioning?

8 COMMISSIONER WAN: Yes.

9 CHAIR CALDWELL: Commissioner Secord, then
10 Commissioner Allgood.

11 COMMISSIONER SECORD: I wanted to ask the
12 applicant if the landscape plan is permissive of drought
13 tolerant native plants and drip irrigation? that might make
14 Commissioner Wan very happy.

15 MR. MOUNTFORD: They are drought tolerant native
16 plants, the entire plant palette.

17 COMMISSIONER SECORD: And, what about drip
18 irrigation?

19 MR. MOUNTFORD: I suppose -- to be honest with
20 you, Commissioner, we hadn't thought that through, but I am
21 sure that that --

22 COMMISSIONER SECORD: I was trying to find a way
23 to solve this issue, because this fire break management, or
24 whatever, has become a sore point.

25 If you could agree to an above ground drip

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1 irrigation, on an as-needed basis, maybe Commissioner Wan
2 would be happier.

3 Yes, it does preclude mowing. It is not
4 sprinklers.

5 MR. MOUNTFORD: That is fine, Commissioner, we
6 hadn't planned it out in that detail, but I don't see a
7 problem with that.

8 Thank you.

9 CHAIR CALDWELL: All right, Commissioner Allgood.

10 COMMISSIONER ALLGOOD: I am going to have a
11 question for my fellow Commissioner, because I respect
12 Commissioner Wan's opinion, but it strikes me that if you
13 have got a landscape plan that waters only in drought
14 conditions, and that water is managed with drip, and
15 otherwise there is no irrigation of the native species, and
16 no mowing, that it is going to be much less attractive to the
17 Argentine ants, than a full on landscape with sprinklers.

18 COMMISSIONER WAN: Can I ask --

19 COMMISSIONER ALLGOOD: And, I will ask the
20 biologist, too, but I am trying to make you happy, also.

21 COMMISSIONER WAN: Ask the biologist.

22 COMMISSIONER ALLGOOD: Your happiness is my
23 fondest desire.

24 CHAIR CALDWELL: I'm next, okay.

25 Dr. Dixon.

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1 ENVIRONMENTAL PROGRAM MANAGER DIXON: Well, this
2 biologist doesn't know the answer to that question, because
3 it is going to be a function of how long between irrigation
4 episodes, and of course the ants are going to be right at the
5 edge of the habitat, because they are going to be in all of
6 the homes.

7 Now, whether that additional 50 feet is going to,
8 periodically, is going to make a difference in how far those
9 ants can forage, I just don't know.

10 COMMISSIONER ALLGOOD: Well, let me kind of go at
11 it another way.

12 It strikes me that if you are irrigating to mimic
13 -- and I think this could be programmed, my wife just happens
14 to be a landscape designer, and contractor. You can program
15 irrigation to very closely mimic natural systems, and if you
16 are saying that any kind of irrigation attracts Argentine
17 ants and rain doesn't, then I would think I would want to see
18 some proof of that.

19 And, secondly, if we can get an agreement from the
20 applicant to consult with appropriate scientists, to irrigate
21 in a way that mimics natural rainfall, which should eliminate
22 the fire hazards, and I hope satisfy the Fire Department, and
23 forbid mowing, then we have, essentially, given just, you
24 know, a little bit of extra water -- don't mean to make a
25 speech here, but do you see where I am going with this?

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1 ENVIRONMENTAL PROGRAM MANAGER DIXON: Yes.

2 COMMISSIONER ALLGOOD: That, if we had an
3 irrigation system that closely mimics natural rain patterns,
4 should satisfy the Fire Department, should satisfy, I would
5 hope, the ecosystem, and a drip irrigation system, if you
6 went in to mow it you would wreck it, so --

7 MR. MOUNTFORD: Commissioner.

8 COMMISSIONER ALLGOOD: -- and I am told that that
9 gentleman behind you actually knows the answer to this
10 question.

11 MR. MOUNTFORD: That is true, he is --

12 COMMISSIONER ALLGOOD: Would you have him come
13 forward.

14 MR. MOUNTFORD: -- the former president of the
15 California Native Plant Society.

16 COMMISSIONER ALLGOOD: Okay, great.

17 CHAIR CALDWELL: State your name.

18 MR. BOMKAMP: Tony Bomkamp with Glenn Lukos
19 Associates, and former president of the Orange County
20 Chapter.

21 And, I will agree with John, in that we won't know
22 what happens until it happens, but as long as we can design
23 it so that it does just mimic natural rainfall, and it is
24 carefully monitored, that would be, I think, the key that it
25 has to be carefully monitored, and has to be designed so that

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1 it would mimic the ambient rainfall, which would mean that
2 you would set it so that it would approximate 12, to 14, to
3 16 inches of rain per year, which would be the average annual
4 rainfall. Then, you would be not attracting Argentine ants,
5 because you would be mimicking the normal rainfall regime.

6 And, you would probably have to do some
7 adjustments based on the soils, if they are heavier soils,
8 they will drain a little slowly, so, you know, you would have
9 to make some adjustments. But, it could be monitored and
10 studied to, basically, mimic the natural condition.

11 COMMISSIONER ALLGOOD: Would the applicants agree
12 to do that?

13 MR. MOUNTFORD: Yes, Commissioner, and not only
14 that, but we have that monitoring program, already built into
15 some of the special conditions that are before right now,
16 that requires -- that is part of habitat management plan,
17 that 50-foot area, and that includes monitoring on an ongoing
18 basis.

19 COMMISSIONER ALLGOOD: And, Commissioner Wan, what
20 do you think? I see your microphone is on, so I figured --

21 COMMISSIONER WAN: Oh, I see. I didn't even
22 realize it was on.

23 Well, obviously, prohibiting the mowing is an
24 improvement, there is no question about that, but one of the
25 reasons for, perhaps not in the 294 -- the other section, but

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1 just on the 150-foot section, one of the other benefits of
2 adding the 50 feet, obviously, is to also at least partially
3 increase the buffer, because -- not to a full 100 meters,
4 obviously, but at least to increase it in an area where 150
5 feet for these raptors, particularly, in that area, it is
6 going to be taken down 9 feet, and you are going to be line-
7 of-sight. And, I have a lot of experience with raptors, and
8 what happens to them, and 150 feet is, frankly, just too
9 close.

10 So, if you want to go, dealing with that, then
11 perhaps we can just do the 200 -- go back to what you
12 suggested, originally, which is a minimum of 200 feet, and
13 not add it on the other side, but just in that 150 section.

14 COMMISSIONER ALLGOOD: One other quick -- I want
15 to follow up on one more --

16 COMMISSIONER REILLY: I'll accept that as the
17 seconder for the modification.

18 COMMISSIONER ALLGOOD: I just have one other
19 question.

20 CHAIR CALDWELL: All right, Commissioner Allgood.

21 COMMISSIONER ALLGOOD: On the properties, them-
22 selves, what are the restriction on landscaping, on the
23 actual lots?

24 MR. MOUNTFORD: There is a condition of approval
25 in the staff report that requires us to submit a plant

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1 palette to the staff that includes natives and non-natives
2 that will be allowed to be planted in the community, and it
3 is, essentially, at staff's discretion to establish that
4 plant palette, the way I understand the condition.

5 COMMISSIONER ALLGOOD: It is because of their
6 proximity to this very sensitive area, on those lots, can you
7 require that they irrigate with drip, also, so that there is
8 not fly away water?

9 MR. MOUNTFORD: The plan for the perimeter wall,
10 Commissioner, is a 2-foot masonry high wall with 4.5 feet of
11 plexiglass on top. I wouldn't envision that you would get
12 much water migrating off of it.

13 COMMISSIONER ALLGOOD: Well, if people are running
14 their sprinklers -- I mean, anything that is not on a timer,
15 that is at the discretion of the homeowner, is going to lead
16 to excess water, and that, if it is down slope, it is going
17 to get into the buffer, so that is my understanding.

18 MR. MOUNTFORD: All right, and we can certainly
19 include that into the landscape restrictions.

20 COMMISSIONER ALLGOOD: Okay.

21 CHAIR CALDWELL: All right, thank you, very much
22 for being so responsive.

23 I am about to call for the question, but
24 Commissioner Krueer is going to elbow me if I don't call on
25 him to make a point, before I call for the question.

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1 COMMISSIONER KRUER: I think it is -- I was not
2 ready to support that, but I think what Commissioner Wan is
3 talking about now is much more achievable, because these are
4 60 by 100 foot lots, and if you only have it down where the
5 150 is, where you increase that by 50 feet, I mean, it is
6 something you can work with, and it isn't totally, totally, a
7 whole new -- obviously, there is going to be a lot of work,
8 and loss of time, but we do have to protect the ESHA, et
9 cetera, and if that increase from 100 to 150 feet, again, the
10 variable buffer, I support, and if we can get 50 more feet
11 down there where the 150 feet is, it is probably a good way
12 to go, listening to all of the testimony.

13 CHAIR CALDWELL: Okay, I am ready to call for the
14 question.

15 EXECUTIVE DIRECTOR DOUGLAS: Madam Chair, we would
16 like to know what the motion now is.

17 CHAIR CALDWELL: As I understand the motion, the
18 motion is to have a minimum of a 200-foot buffer, along this
19 -- pardon me?

20 COMMISSIONER WAN: Using the applicant's map.

21 CHAIR CALDWELL: Thank you.

22 So, using the applicant's map, we are calling for
23 a 200-foot buffer --

24 EXECUTIVE DIRECTOR DOUGLAS: That's right.

25 CHAIR CALDWELL: -- along this boundary --

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1 EXECUTIVE DIRECTOR DOUGLAS: As a minimum.

2 CHAIR CALDWELL: As a minimum.

3 EXECUTIVE DIRECTOR DOUGLAS: Okay.

4 And, then, wherever it is more than 200 --

5 CHAIR CALDWELL: Then we will go to the
6 applicant's buffer.

7 EXECUTIVE DIRECTOR DOUGLAS: Okay, we understand
8 that.

9 COMMISSIONER ISEMAN: All right, I think that this
10 is too vague. I don't know how much we are talking about,
11 and we don't know where we are going, so I think we need to,
12 actually, know what kind of slices we are taking, because we
13 look at where it says 150, and we don't know exactly where
14 that 50 feet is.

15 I have never seen us vote on something that was
16 this ambiguous.

17 CHAIR CALDWELL: Okay.

18 Commissioner Reilly, any further comments?

19 COMMISSIONER REILLY: Well, I think the
20 alternative is we should go with staff, so I'll call for the
21 question.

22 CHAIR CALDWELL: All right.

23 Can we have a roll call vote, please. They are
24 asking for a "Yes" vote.

25 SECRETARY GOEHLER: Commissioner Kram?

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1 COMMISSIONER KRAM: No.
2 SECRETARY GOEHLER: Commissioner Kruer?
3 COMMISSIONER KRUER: I am going to pass.
4 SECRETARY GOEHLER: Commissioner Neely?
5 COMMISSIONER NEELY: No.
6 SECRETARY GOEHLER: Commissioner Allgood?
7 COMMISSIONER ALLGOOD: Forgive me, would you
8 repeat the motion?
9 COMMISSIONER REILLY: A 200-foot minimum.
10 CHAIR CALDWELL: The motion is to take the
11 applicant's proposed buffer, but to increase it to a minimum
12 of 200 feet.
13 COMMISSIONER ALLGOOD: Okay, I'll -- yes.
14 SECRETARY GOEHLER: Commissioner Potter?
15 COMMISSIONER POTTER: No.
16 SECRETARY GOEHLER: Commissioner Reilly?
17 COMMISSIONER REILLY: Yes.
18 SECRETARY GOEHLER: Commissioner Secord?
19 COMMISSIONER SECORD: No.
20 SECRETARY GOEHLER: Commissioner Shallenberger?
21 COMMISSIONER SHALLENBERGER: Yes.
22 SECRETARY GOEHLER: Commissioner Wan?
23 COMMISSIONER WAN: Yes.
24 SECRETARY GOEHLER: Commissioner Burke?
25 COMMISSIONER BURKE: Pass.

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1 SECRETARY GOEHLER: Commissioner Iseman?

2 COMMISSIONER ISEMAN: No.

3 SECRETARY GOEHLER: Commissioner Kruer?

4 COMMISSIONER KRUEER: Yes.

5 SECRETARY GOEHLER: Commissioner Burke?

6 COMMISSIONER BURKE: Can I leave the room? I heard
7 my mother call me.

8 No.

9 SECRETARY GOEHLER: Chairman Caldwell?

10 CHAIR CALDWELL: Yes.

11 SECRETARY GOEHLER: Six, six.

12 CHAIR CALDWELL: The motion fails.

13 COMMISSIONER BURKE: Are we going to vote?

14 CHAIR CALDWELL: All right, we have a main motion.

15 COMMISSIONER SHALLENBERGER: Sorry.

16 CHAIR CALDWELL: Commissioner Shallenberger.

17 COMMISSIONER SHALLENBERGER: I would like -- does
18 staff have a recommendation for --

19 EXECUTIVE DIRECTOR DOUGLAS: It would be to
20 include a condition that would require in the CC&Rs for the
21 project -- it would be an amendment to Condition No. 6 --
22 that the CC&Rs would include a provision to prohibit the use
23 of rodenticides.

24 And, then, in Condition No. 10, final habitat
25 management resident education program, would include an

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1 explanation of why that prohibition is important.

2 COMMISSIONER SHALLENBERGER: I would like to make
3 that motion -- or it is an amendment right, an amendment.

4 CHAIR CALDWELL: Yes, an amending motion.

5 COMMISSIONER SHALLENBERGER: An amending motion.

6 EXECUTIVE DIRECTOR DOUGLAS: I think we can save
7 you the time, and we will incorporate that into the staff
8 recommendation, and you might want to hear from the
9 applicant, as to whether they have an objection to that.

10 CHAIR CALDWELL: Mr. Mountford, do you have any
11 objection to the rodenticide restriction?

12 MR. MOUNTFORD: No.

13 CHAIR CALDWELL: Thank you.

14 COMMISSIONER SHALLENBERGER: Thank you.

15 COMMISSIONER WAN: Question.

16 CHAIR CALDWELL: Commissioner Wan.

17 COMMISSIONER WAN: In addition to the prohibition
18 of use in the CC&Rs and in the homes -- and I don't know if
19 the applicant is planning on doing this -- but it is not
20 uncommon when sometimes you go to do grading -- and that is
21 what happened in the issue over by Catellus -- before they
22 went to do grading, they applied rodenticide to those hills,
23 and so I would like to see that that not occur in this, and I
24 don't know -- as I said, I don't know if you were planning on
25 using a rodenticide before.

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1 Maybe you can come up and answer that. Are you
2 planning to use rodenticide in any way?

3 MR. MOUNTFORD: No, Commissioner, we are not.

4 COMMISSIONER WAN: So, you should have no
5 objection -- do you have an objection to it?

6 MR. MOUNTFORD: No.

7 COMMISSIONER WAN: So, in addition, I would
8 include in that the fact that it can't be used during the
9 development process.

10 EXECUTIVE DIRECTOR DOUGLAS: No rodenticide be
11 used in connection with the development of this project,
12 okay.

13 And, they don't have a problem with that, so,
14 okay.

15 CHAIR CALDWELL: Okay, thank you for that
16 clarification.

17 We have a main motion on the table.

18 COMMISSIONER WAN: Call for the question.

19 COMMISSIONER REILLY: Madam Chair, before we do
20 that, as we are going with, basically, staff's buffer for the
21 entire ESHA area, as opposed to that which was suggested by
22 the applicant, I was just wondering if anyone on the
23 prevailing side on that last motion, wants to ask for a
24 reconsideration on the vote.

25 CHAIR CALDWELL: Well, you mean the "No" votes?

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1 COMMISSIONER REILLY: Yes.

2 COMMISSIONER WAN: There was no prevailing side.

3 CHAIR CALDWELL: Prevailing because it was a
4 failure of the motion.

5 Yes, anyone who voted "No" want to reconsider?

6 [No Response]

7 You are watching democracy in action. It is not
8 pretty, but hopefully we are getting something done.

9 COMMISSIONER SECORD: Madam Chair.

10 CHAIR CALDWELL: Yes.

11 COMMISSIONER SECORD: I would like to discuss
12 this. The things are going along a little quick for my aged
13 brain. I am not sure.

14 What I wanted -- what I personally wanted, I was
15 comfortable with the applicant's buffer. I was comfortable
16 with the notion of taking out those trees that made the
17 staff's ESHA determination increase, so I would like to go
18 back to the buffer.

19 I would like to go back to the staff, to the
20 applicant's buffer, absent that bulge --

21 CHAIR CALDWELL: We are beyond that. We voted on
22 that.

23 COMMISSIONER SECORD: -- dispose of that. We
24 disposed of the bulge.

25 CHAIR CALDWELL: We are done with the bulge.

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1 COMMISSIONER SECORD: Now, we are back to the
2 buffer, and we have done this negotiation, with respect to
3 the drought tolerant plants and the drip irrigation.

4 Now, given that state, why cannot we -- why can't
5 we simply use the applicant's --

6 CHAIR CALDWELL: You are free to make a motion to
7 that effect.

8 COMMISSIONER SECORD: I would like --

9 CHAIR CALDWELL: Commissioner Secord.

10 [MOTION]

11 COMMISSIONER SECORD: I would like to make that
12 motion.

13 I am not sure, let's see, it is an amending motion
14 with respect to the buffer, using the applicant's buffer, and
15 the drip irrigation, and the no mowing.

16 COMMISSIONER REILLY: That has already been
17 incorporated.

18 CHAIR CALDWELL: Yes, the no mowing has already
19 been incorporated.

20 COMMISSIONER SECORD: All right.

21 CHAIR CALDWELL: So you are talking about adopting

22 --

23 COMMISSIONER SECORD: The applicant's --

24 CHAIR CALDWELL: -- incorporating the applicant's
25 buffer --

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1 COMMISSIONER SECORD: -- buffer --
2 CHAIR CALDWELL: -- for the eucalyptus ESHA.
3 COMMISSIONER REILLY: On the eucalyptus --
4 COMMISSIONER SECORD: -- on the eucalyptus ESHA,
5 with the native plants, the drip irrigation.
6 CHAIR CALDWELL: That has all been accepted by the
7 applicant, already. You don't need to go there.
8 COMMISSIONER WAN: Not the applicant's buffer.
9 COMMISSIONER SECORD: So, we have got a motion,
10 and a second.
11 Thank you, Madam Chair.
12 CHAIR CALDWELL: Okay.
13 Do we have a "second" to that motion?
14 COMMISSIONER BURKE: I'll second it.
15 CHAIR CALDWELL: All right, it has been moved by
16 Commissioner Secord, seconded by Commissioner Burke, to
17 accept the applicant's buffer on the eucalyptus ESHA.
18 And, they are seeking a "Yes" vote.
19 COMMISSIONER SECORD: Yes, ma'am.
20 CHAIR CALDWELL: Any discussion of that.
21 CHIEF COUNSEL FAUST: Madam Chair.
22 CHAIR CALDWELL: You want to call for the
23 question?
24 COMMISSIONER ALLGOOD: Well, I do have a question,
25 but there is a question from counsel.

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1 CHAIR CALDWELL: Oh, yes, I am sorry.

2 CHIEF COUNSEL FAUST: Madam Chair, noting here a
3 little bit of confusion, perhaps, at the staff table, and
4 wanting to be sure things were clarified, has the applicant
5 changed its proposal in order to incorporate the elements
6 that you were just discussing? the drip irrigation, the no
7 mowing, and so on?

8 There was discussion of it, and I just want to
9 make sure that it was clear in the record that the applicant
10 had changed its proposal.

11 EXECUTIVE DIRECTOR DOUGLAS: It is my understand-
12 ing that they have changed their proposal to include the no
13 mowing, and the drip irrigation. So, that is now part of the
14 project.

15 So, the only motion that is before you is whether
16 or not to adopt the applicant's buffer.

17 CHAIR CALDWELL: That's right. That is my
18 understanding, as well.

19 COMMISSIONER ALLGOOD: Madam Chair, I never heard
20 an answer to Mike's query for reconsideration, and given the
21 new motion, I am not going to be able to support the new
22 motion, because I don't think it is protective enough.

23 So, I would like to see if there was anyone on the
24 prevailing side that would reconsider.

25 COMMISSIONER REILLY: I think --

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1 CHAIR CALDWELL: We would have to take that up.

2 COMMISSIONER REILLY: -- we would have to it up
3 after this vote, if there is a need to do that.

4 But, I would just observe that Commission Wan's
5 motion, as it would compare to staff's recommendation that is
6 currently the active recommendation before us, would provide
7 the applicant much more room than the staff recommendation,
8 you know, under any case.

9 So, that is just an observation.

10 CHAIR CALDWELL: All right, we are voting on
11 whether to adopt the applicant's proposal for the eucalyptus
12 ESHA buffer, seeking a "Yes" vote.

13 Can we have a roll call, please, on this.

14 SECRETARY GOEHLER: Commissioner Kruer?

15 COMMISSIONER KRUER: Yes.

16 SECRETARY GOEHLER: Commissioner Neely?

17 COMMISSIONER NEELY: Yes.

18 SECRETARY GOEHLER: Commissioner Allgood?

19 COMMISSIONER ALLGOOD: No.

20 SECRETARY GOEHLER: Commissioner Potter?

21 COMMISSIONER POTTER: Aye.

22 SECRETARY GOEHLER: Commissioner Reilly?

23 COMMISSIONER REILLY: No.

24 SECRETARY GOEHLER: Commissioner Secord?

25 COMMISSIONER SECORD: Yes.

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1 SECRETARY GOEHLER: Commissioner Shallenberger?

2 COMMISSIONER SHALLENBERGER: No.

3 SECRETARY GOEHLER: Commissioner Wan?

4 COMMISSIONER WAN: No.

5 SECRETARY GOEHLER: Commissioner Burke?

6 COMMISSIONER BURKE: Yes.

7 SECRETARY GOEHLER: Commissioner Iseman?

8 COMMISSIONER ISEMAN: Yes.

9 SECRETARY GOEHLER: Commissioner Kram?

10 COMMISSIONER KRAM: Yes.

11 SECRETARY GOEHLER: Chairman Caldwell?

12 CHAIR CALDWELL: No.

13 SECRETARY GOEHLER: Seven, five.

14 CHAIR CALDWELL: The motion carries.

15 All right, on to the main motion. Any need for
16 discussion at this point?

17 [No Response]

18 I don't think so.

19 Any objection to a roll call vote here?

20 [No Response]

21 You want to adopt the previous vote? No.

22 Let's do a roll call vote, then, on the main
23 motion, which is to approve this project, incorporating the
24 changes that the applicant has agreed to, and accepting
25 removal of those three trees -- in our first amending motion

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1 -- from ESHA, but protective measures as we described, and
2 adopting the applicant's proposal for the eucalyptus ESHA, as
3 was just voted on.

4 The mover and the seconder are seeking a "Yes"
5 vote.

6 Can we have a roll call, please.

7 SECRETARY GOEHLER: Commissioner Neely?

8 COMMISSIONER NEELY: Yes.

9 SECRETARY GOEHLER: Commissioner Allgood?

10 COMMISSIONER ALLGOOD: No.

11 SECRETARY GOEHLER: Commissioner Potter?

12 COMMISSIONER POTTER: Aye.

13 SECRETARY GOEHLER: Commissioner Reilly?

14 COMMISSIONER REILLY: Yes.

15 SECRETARY GOEHLER: Commissioner Secord?

16 COMMISSIONER SECORD: Yes.

17 SECRETARY GOEHLER: Commissioner Shallenberger?

18 COMMISSIONER SHALLENBERGER: Yes.

19 SECRETARY GOEHLER: Commissioner Wan?

20 COMMISSIONER WAN: Yes.

21 SECRETARY GOEHLER: Commissioner Burke?

22 COMMISSIONER BURKE: Yes.

23 SECRETARY GOEHLER: Commissioner Iseman?

24 COMMISSIONER ISEMAN: Yes.

25 SECRETARY GOEHLER: Commissioner Kram?

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1 COMMISSIONER KRAM: Yes.
2 SECRETARY GOEHLER: Commissioner Kruer?
3 COMMISSIONER KRUER: Yes.
4 SECRETARY GOEHLER: Chairman Caldwell?
5 CHAIR CALDWELL: Yes.
6 SECRETARY GOEHLER: Eleven, one.
7 CHAIR CALDWELL: All right, your project is
8 approved.

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11 [Whereupon the hearing concluded at 5:45 p.m.]
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