Exhibit UUU

Letters Opposed to LCPA as Proposed

Received After July 2, 2007

Meg Vaughn

From: Murphyeile@aol.com

Sent: Thursday, July 12, 2007 2:39 PM

To: pkruer@monarchgroup.com; kram@contentllc.com; bonnie.neely@co.humboldt.ca.us; kachadjian@co.slo.ca.us; mreilly@sonoma-county.org; forelc@cox.net; district5@co.monterey.ca.us; benhueso@sandiego.gov; thayerp@slc.ca.gov; brian.baird@resources.ca.gov; LWan22350@aol.com; sblank@kandsranch.com; DrBBURKE@aol.com; mary_shallenberger@ppfa.org; drdan@cox.net; skinsey@co.marin.ca.us; gonzalez@unionyes.org; Meg Vaughn

Subject: RE:9-3 decision yesterday on Parkside/Shea # 8a

Dear Commissioners:
As one of HB residents who wrote a yellow card to you asking that the hearing be heard in Oct I'd like to take a moment of your time
After we wrote the cards the City of HB wrote each of us who had written the cards a two page letter explaining how it was impossible for them to ask for a postponed. On July 3rd in the afternoon they asked you for a postponement after they had read the staff report. Yesterday the City Planning mentioned how we citizens had asked for a postponement failing to mention their reply to us. Then he asked the developer's attorney Kaufman to explain the City's stand. At least Chairman Kruer knew that wasn't a good idea. I was so sorry you didn't follow Commissioner Wan's plea and listen to your own legal advice. See you in October.
Just like to tell you this developer and City have jerked us around long enough. They are wrong and this project should be denied.
Respectfully,
Eileen Murphy
201 21st Street
HB CA 92648

Get a sneak peak of the all-new AOL.com.

HNB-MAJ-1-06

Yes! I want to protect my property – and my property's value! – so I support Shea Homes' Parkside Estates!

RECEIVED
South Coast
JUL 24 20
CALIFORNIA
COASTAL COMMI

Name: NO Way

Address:

City: I rather pay higher ZIP: property

Phone: insurance, E-Mail: better than,

Hildegard Breidenstein
17392 Lido Ln.
Huntington Bch CA 92647

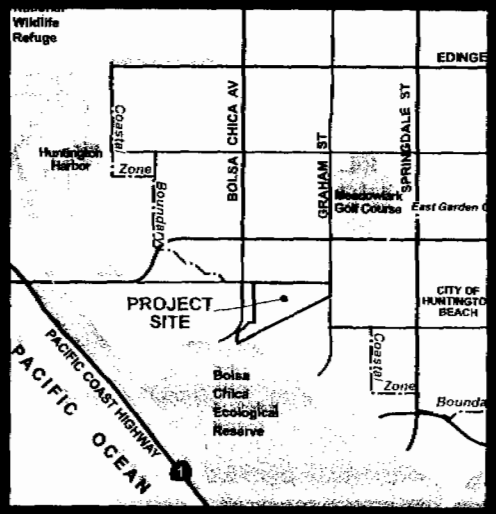
having

☐ Please tell the Coastal Commission I support Parkside Estates!

☐ I may wish to support this plan at the Coastal Commission hearing. Please call me regarding hearing details, including reserving a place on your tour bus. These

☐ I'm interested in information on buying/selling a home. Please contact me. homes.

☐ Please remove me from your list. (Provide your name)



Adam and Christine Rodell
Century 21 Beachside
19671 Beach Blvd., Suite 101
Huntington Beach, CA 92648

We are against building

PRESORTED
FIRST-CLASS MAIL
U.S. POSTAGE
PAID
SANTA ANA, CA
PERMIT NO. 15

**********AUTO**5-DIGIT 92647
RESIDENT
17392 LIDO LN
HUNTINGTN BCH CA 92647-6155

These homes. Destroys the Marsh & brings to many people and cars into this area. To much traffic.

HNB-MAJ-1-06

no matter what you do in flood protection it will not help when you have a Tidal wave from an earth quake. You do not live here, You live in Laguna in a gated isolated area where the rest of us can not buy a home. We have been here 40 years and are fine without you help. Stay away you are killing the land for wildlife. We have raccoons moving & having babies in our backyards, plus opposums, rats, etc.

BUSINESS REPLY MAIL
FIRST-CLASS MAIL PERMIT 102 LAGUNA HILLS CA

POSTAGE WILL BE PAID BY ADDRESSEE

Adam and Christine Rodell
c/o Parkside Estates Outreach
22892 Mill Creek Drive
Laguna Hills , CA 92653-9918

NO POSTAGE NECESSARY IF MAILED IN THE UNITED STATES

Why do we support Parkside Estates?

As Realtors, we've never supported a new development project before, but we have become strong supporters of Shea Homes' proposed Parkside Estates. Why?

First, it's environmentally sensitive. We love Huntington Beach's beautiful environment, so it was important to us that Parkside Estates will protect natural resources. Shea Homes assured us that under its plan, it will preserve all wetlands and sensitive habitat recognized by the Coastal Commission – and its Natural Treatment System will bring better water quality by treating runoff that currently reaches Outer Bolsa Bay and the ocean untreated.

Second, it provides huge flood safety benefits. Shea will construct $15 million in new regional flood safety improvements that will remove about 7,000 homes and businesses from the mandatory flood insurance zone and make it possible for thousands of others to be potentially eligible for lower insurance.

You can learn more about Parkside Estates at www.SheaParkside.com.

Thanks!
Adam and Christine

9-14-07

Dear Ms Vaughn —

Our remaining wetlands need protection. We support the June 29, 2007 staff report concerning the Huntington Beach LCP Amendment 1-06, which to date is the most thorough on the Upper Wetlands. Thank you, & the staff for its diligence.

Sincerely,

Ming & Marion Siu

MONDAY, 09/24/07

Dear Meg Vaughn —

Really appreciate your STAFF REPORT (6/29/07) concerning LCP Amendment 1-06, and affecting Huntington Beach.

Ecosystems may be small or big; the important thing is that they are complete, and that's what the Bolsa Chica upper wetlands will do, give us completeness.

Best wishes to you and your very diligent and professional staff.

Al White

Ms Vaughn 9/4/07

We support the June 29 2007 Staff Report concerning Huntington Beach LCP Amendment 1-06. It is the most comprehensive Report to date concerning this important issue - Thanks for your hard work and continuing diligence

Sunny and George Naylor

HNB-MAJ-1-06

Sept 23, 07

Dear Commissoners,

I appreciate what you are doing to keep our beautiful California coast from looking like Florida.

I support the June 29, 2007 staff report concerning Huntington Beach LCP Amendment 1-06 and hope that you will also! This report is very thorough and I respect the Staff's hard work and due diligence.

Sincerely,
Gail Ayres
Seal Beach, CA

HNB-MAJ-1-06

September 12, 2007

California Coastal Commission
Attn: Meg Vaughn
200 Oceangate, 10th Floor
Long Beach, Calif. 90802

RECEIVED
South Coast Region
SEP 20 2007
CALIFORNIA
COASTAL COMMISSION

Dear Meg Vaughn:

First let me say I support the June 29, 2007 Staff Report concerning Huntington Beach LCP Amendment 1-06.

This amendment is the most thorough report to date on this issue and I for one appreciate the Staff's hard work.

We Americans are trying to save this precious piece of land for the wildlife who migrate here & for us humans who need the love this quite sacred land provides. Thank you.

Sincerely,
Geraldine Porchia

HNB-MAJ-1-06

September 17, 2007

RECEIVED
South Coast Region
SEP 20 2007
CALIFORNIA
COASTAL COMMISSION

Meg Vaughn
California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802

RE: Huntington Beach LCP Amendment No. 1-06

Dear Ms. Vaughn:

I support the June 29, 2007 Coastal Commission staff report pertaining to Huntington Beach LCP Amendment No. 1-06. The staff report is the most thorough report to date on this issue and I appreciate Staff's hard work and due diligence.

Thank you for your attention in this matter and if you have any questions, contact me at (714) 475-8075.

Sincerely,

Robert Franklin

Please support
6/29/07 staff
Rpt. concerning
Hunt. Bch. LCP
Amendment 1-06.
Please help.
H. Bch. Patrice

Patty Welch Nelson
1612 Via Lazo
Palos Verdes Estates CA 90274-1248

10 SEP 2007 PM

POSTAGE REQUIRED

CA Coastal Comm.
attn: Meg Vaughn
200 Oceangate 10th floor
Long Beach, CA
90802

John Nelson

GIRLS' LOVE STORIES #175 (JANUARY 1983): RIC ESTRADA AND VINCE COLLETTA
FROM Romance Pulp: 30 Postcards, PUBLISHED BY CHRONICLE BOOKS IN 2005 IN CANADA

SEP 11 2007

CALIFORNIA
COASTAL COMMISSION

DEAR MEG VAUGHN,

I SUPPORT JUNE 29, 2007
STAFF REPORT CONCERNING
HUNTINGTON BEACH LCP AMENDMENT
1-06.

I APPRECIATE THE STAFF'S
HARD WORK + DUE DILIGENCE. IT
IS THE MOST THOROUGH REPORT

THANK YOU,
MARY KIRKPATRICK SPRINGER

HNB-MAJ-1-06

9-14-07

Dear Ms. Vaughn,

I am writing you today to let you know that my husband & I support the June 29th Staff Report concerning Huntington Beach LCP Amendment 1-06. We believe it is the most thorough report to date on this issue & appreciate the Staff's hard work & ~~diligi~~ diligence Thank for your time.

RECEIVED
South Coast Region
SEP 17 2007
CALIFORNIA
COASTAL COMMISSION

Sincerely,

Valerie & Ryan Macy-Hurley

Macy-Hurley
Ms. Valerie ~~Hurley~~
4142 Elm Ave. Unit 302
Long Beach, CA 90807-2752

The O'Brien Family
Michelle O'Brien
16282 Serenade Lane
Huntington Beach, CA 92647
714-842-3647

RECEIVED
South Coast Region
SEP 14 2007
CALIFORNIA
COASTAL COMMISSION

September 12, 2007

California Coastal Commission
Meg Vaughn
200 Oceangate, 10th Floor
Long Beach, CA 90802

Dear Meg,

Our family supports the June 29th, 2007 STAFF REPORT regarding Huntington Beach LCP Amendment 1-06. We are confident it is the most thorough report to date on this issue and appreciate all of the Staff's hard work. Please help us save our beautiful coastal "gem" for the future generations to come. It is the perfect place for wildlife to live and survive instead of our backyards.

Thank you.

Michelle O'Brien

Michelle O'Brien & family

California Coastal Commission
ATTN: Meg Vaughn
200 Oceangate, 10th Floor
Long Beach, CA 90802

RECEIVED
South Coast Region
SEP 11 2007
CALIFORNIA
COASTAL COMMISSION

September 4, 2007

Dear Coastal Commission Members,

We **support** the June 29, 2007 STAFF REPORT concerning Huntington Beach LCP Amendment 1-06. This is the most thorough report to date on this issue. We duly support the Staff's hard work and diligence.

Thank you.

Sincerely,

Dr. & Mrs. James L. Grimes

8591 Mossford Drive
Huntington Beach, CA 92646-3944

September 5, 2007

California Coastal Commission
ATTN: Meg Vaughn
200 Oceangate, 10th floor
Long Beach, CA 90802

RECEIVED
South Coast Region
SEP 11 2007
CALIFORNIA
COASTAL COMMISSION

We are writing in support of the June 29, 2007 STAFF REPORT Concerning Huntington Beach LCP Amendment 1-06. It is the most thorough report to date on this issue, and we appreciate the Staff's hard work and diligence.

Judy & Jerry Vinland
7562 Danton Circle
Huntington Beach, CA 92648

September 7, 2007

Dear Members of the California Coastal Commission,

The staff report concerning Huntington Beach LCP Amendment 1-06 of June 29, 2007 is a solid piece of work. It has my full support. I hope you will give it the careful consideration it deserves. I always fear that the loud whining of the developers will cause the staff's research to go unheard. Please do not let this happen.

Pamela Reid
13619 Franklin Street
Whittier, CA 90602

RECEIVED
South Coast Region
SEP 11 2007
CALIFORNIA
COASTAL COMMISSION

Jody Inchausti

5161 Skylark Drive, Huntington Beach, CA 92649
Home Telephone: (714) 894-9792

RECEIVED
South Coast Region
OCT 3 2007
CALIFORNIA
COASTAL COMMISSION

October 5, 2006

California Coast Commission
Attn: Meg Vaughn
200 Oceangate, 10th Floor
Long Beach, CA 90802

I am writing to show my support for the June 29th, 2007 staff report concerning Huntington Beach LCP Amendment 1-06. As far as I know, it is the most complete and well-researched report to date regarding this issue, and the staff's hard work is to be commended. I, for one, appreciate the effort and thorough approach that was taken.

Sincerely,

Jody Inchausti

Meg Vaughn

From: Julie Bixby [julie@bixby.org]
Sent: Sunday, October 21, 2007 3:46 PM
To: Karl Schwing; Meg Vaughn
Subject: Response to Shea's sept. 2007 letter

Karl Schwing wrote:
> Julie - We'll be trying to get the staff report on Shea-Parkside out
> by the end of next week, so, I doubt we'll have time to meet that
> week. If you want to submit some type of response to Shea's response,
> please do so immediately (i.e. no later than Noon, Monday) if you want
> us to have any chance to consider those comments before we finalize
> our staff report (even at this point I can't promise we'll be able to
> consider those comments, but we'll try). Otherwise, you'll have to
> wait for the addendum.

Karl & Meg,

I am writing these comments as an individual private citizen and NOT on behalf of any group I belong to.

Comments to Shea's Comments on June 2007 staff report:

Item 1: even if staff is "aware" of stables activities, that does not change the fact that some of those activities were not specifically authorized (permitted) by the Commission.

Item 4: re: "it's not what the Commission did at Goodell & Brightwater": it's consistent with what staff was *recommending* for Goodell & Brightwater. Commission went with the "too much of a hardship" plea to redo design plans of Brightwater, and the "you're taking my land" sob story of Goodell, and look at how that latter ended up—Goodell chopped down the tree in question without a permit! Neither argument--hardship or taking-- can be made here, since this is an LUPA hearing and not a CDP hearing. Shea's proposed tract map can be easily revised in their CDP application to avoid any areas declared EHSA or ESHA buffer by the LUPA.

And everyone's forgetting about CUMULATIVE IMPACTS. Because Goodell & Brightwater's ESHA weren't fully protected, that makes fully protecting Shea's groves all the more important due to LOSS OF HABITAT!

Item 7: EPA dispute—"all activities in that area have been…permitted normal farming practices." Shea claims the Tractor-in-the-Lake bulldozing aftermath is "normal"—how normal is it to have to rescue a stranded tractor and prevent future ponding? And if leveling the earth is "normal" farming, and farming has been going on for decades, why hadn't that area been leveled out years—decades-- earlier?

Item 8: re: 1998 weed abatement bulldozing & 2005 box cutter & "neither action were wetlands filled": watch the HB Council meeting replay from 1998—in addition to the specification that the Shea weeding only has to be within 100feet of the nearby houses, Councilman Peter Green specifically stated, "Around this ponded area (WP) it's not necessary to disc" the weeds. Of course Shea ignored the Council, knowing full well that WP's wetland status was in dispute at the time. And the boxcutter incident was in the same area. If this area isn't a wetlands, why is Shea trying so hard to obliterate it in both 1998 and 2005—the two times when the wetland status of WP was being actively discussed?

Item 15: Shea is blaming staff for the unpermitted development, and "did nothing to monitor restoration". We've heard that enforcement staff was short-staffed at the time, and is the Commission never allowed to correct an oversight?

And regarding Shea's entire history argument, 50 years of farming, "staff cannot conveniently disregard any history"; that's EXACTLY what Shea is demanding staff to do in items 3, 13 & 14 when they state "the issue is not the state of the property" prior to the Coastal Act. Shea can't have it both ways. Either both sides need to include pre-Coastal Act history of the site, or both sides have to do without.

Item 16: the reason for the white-hole status: Shea mentions only the "not presently functioning as wetlands" finding (their favorite phrase, since it suits their argument), not the "severely degraded wetland" phrase of the same finding. Any time this DFG finding is referred to, BOTH parts need to be included.

The "not presently" finding also begs the reverse argument: the property WAS previously functioning as wetlands, and likely is not functioning now due to the incessant farming. If the farming stopped (as the DFG rep proposed at the 1998 Council meeting), then the functioning could potentially return. Shea is correct that the potential for restoration was a factor in white-hole status and should also be mentioned.

Item 52: "no grading has occurred on the site at any time since Shea's ownership" -then why the two improper grading citations issued by the CCC? Those should be mentioned in the staff report (sorry, I don't have the dates on those, but I recall seeing the CCC citation letters).

--
Julie Bixby
Engage Romulan .sig cloaking device...

Meg Vaughn

From: Mark Bixby [mark@bixby.org]
Sent: Sunday, October 21, 2007 6:27 PM
To: Meg Vaughn; Karl Schwing; John Dixon; Jonna Engel; Bolsa Chica Land Trust; Dena Hawes; Flossie Horgan; Jan Vandersloot; Julie Bixby; Karen Merickel; karen merickel; Linda Moon; Lyndon Lee; Peggy Fiedler; Marc Stirdivant; Marcia Hanscom; Marinka Horack; Paul Arms; Paul Horgan; Robert van de Hoek; Rudy Vietmeier; Sandy Genis; Nancy Donaven
Subject: response to Shea memo of 09/21/07

020915-118-1849_I950314c-small.jpg (151 KB) 970106c-small.jpg (152 KB) 970214c-small.jpg (141 KB) 970401c-small.jpg (172 KB)
MG.jpg (422 K...

Hi CCC staff, BCLT people, and friends of Bolsa Chica,

Here are my comments in response to the Shea memo of September 21, 2007 in response to the June 2007 CCC staff report re Shea Parkisde. Those of you not already in possession of this Shea memo can find a copy here:

http://www.bixby.org/parkside/documents/CCC/shea-ccc-070921-June-response.pdf

Bottom of p.2:

"The northerly eucalyptus grove emphatically does not provide the same ecological services or values as the southerly eucalyptus grove, as detailed in our analysis of raptor use of the respective trees."

The raptor sightings data that I have collected over the past several years suggests otherwise. With few exceptions, the same raptor species utilize both eucalyptus groves. If a uniform 100m buffer is required to protect the southern grove as ESHA, then the same buffer should apply to the northern grove since the raptor utilization is so similar.

Middle of p.3:

"The staff report is inadequate and simplistic. It ignores the fact that current topographic maps continue to show a depression in the EPA area, ..."

The area in the vicinity of the EPA wetland has been highly altered by Shea in the wake of the iconic 2001 "tractor in the lake" incident to effectively relocate much of the depression volume to what is now designated the AP wetland. I documented these changes in a series of low altitude oblique aerials sent to CCC staff on July 29, 2007 in an e-mail message entitled "new oblique aerials corroborate Parkside AP cut & EPA fill".

On August 15, 2007, I snail-mailed a two-CD set of all of the aerial imagery from the BCLT archives to John Dixon.

Bottom of p.12:

"The statement is false and should be deleted. There is no "hill" to the west of the WP; staff must be referring to the area around the Slater Avenue overcrossing, which was filled first by the County as part of the construction of the flood control channel prior to the Coastal Act, and subsequently by the stable operator in building out his CDP and subsequent City CUPs."

Construction of the flood control channels (both Wintersburg and Slater) did NOT result in any significant fill being deposited in the area of the westbound Slater Avenue overcrossing. The only fill evident in the aerial record between construction of the channels and the beginning of the stables activity is the Slater Avenue roadbed itself.

In a series of e-mails I sent to CCC staff in late July 2007, I cite video footage and frame captures from January 14, 1995, showing ground topography of the site as it existed

prior to purchase by Shea. The footage and associated "after" photos I shot that month make it clear that 1) the stables operation dramatically exceeded the scope of its CDP by importing vast amounts of fill at the eastern edge of the stables (in the vicinity of the Slater overcrossing) and 2) Shea has engaged in repeated systematic grading to flatten out this hill by pushing it into adjacent low spots, corroborating the topography change conclusions reached in Van Coops' Exhibit MMM.

DVD copies of this video footage were snail-mailed to Dixon and Van Coops on July 20, 2007.

In the remainder of the Shea memo addressing Van Coops' Exhibit MMM, there are several mentions similar to "The tonal difference is associated with a remnant of the 1938 Santa Ana River flood and is not a channel". I find it difficult to determine which feature Shea is referring to here. *If* it is the so-called "ephemeral channel" that runs in sinuous fashion diagonally across the property from the southwest to the northeast, then attributing this feature to the 1938 Santa Ana River flood is incorrect.

This sinuous feature is visible in aerial images from 1928 and October 21, 1932, both of which predate the referenced flood.

Shea project documents refer to extensive soil remediation that will be required to remove substantial peat deposits from the property. In old aerial photographs, this sinuous channel continues north beyond the current boundary of the Shea property. The portions of the adjacent Kenilworth neighborhood that are built on top of this channel have undergone significant subsidence, as can be seen in the attached photo from September 15, 2002. Note the sag in the brick wall; this precisely corresponds to the visible northern extent of the sinuous feature. The homes on the other side of the sagging wall have experienced cracked patios and foundations as a result of this subsidence.

Such subsidence is characteristic of building on peat deposits. Peat deposits are formed by decayed wetland vegetation. Therefore this sinuous feature seen in nearly every aerial photograph ever taken of this property was almost certainly a tideland or wetland channel in the past, and not some remnant of the 1938 Santa Ana River flood.

Finally, I'd like to point out an additional incident of fill importation that occurred during the Shea era. Sorry about the lateness of this; I've been distracted by foot joint fusion surgery which I had on 09/20.

I have attached four reduced size & quality aerial images (John Dixon has the full-res copies of all of these in the entire BCLT archive). The first aerial from 03/14/95 serves as the baseline image. In the second aerial from 01/06/97, a bunch of apparent fill piles are seen on the county parcel. These fill piles extend into the area covered by the still-pending Smoky's CP wetland restoration order. In the third aerial from 02/14/97, there appears to have been some additional disturbance in this area, with vegetation starting to grow throughout. In the last aerial from 04/01/97, Shea has stripped all non-tree vegetation from the property.

I had a brief e-mail conversation about this with Ron Metzler back in August (see below). He says Shea was never aware of those fills, and thus never had them removed. I assert that when the entire property was disked prior to the 04/01/97 aerial, that these fills were redistributed elsewhere on the property, most likely to adjacent low areas.

- Mark B.

From: Ron Metzler
Sent: Thursday, August 16, 2007 11:06 AM
To: 'Mark Bixby'
Subject: Asserted fill piles

Mark:

Thank you for your email regarding the January 6, 1997 photograph. I apologize

that it took a while to respond; however, I and some of our team members have been on vacation.

We have not previously seen this photograph and presume you have stated the date accurately and further assume that the white spots may be piles of soil. We do not recall seeing any dumping in the area at that time, but if the photo does indeed show fill, it was placed there without our knowledge. Not being aware of it, we did not have it removed.

We have reviewed topographic maps from 1996 and 2000 and found there to be no change of elevation in the area, so it may not have been fill, or it may have been removed by some other party, or it was so insignificant that it did not show up on the topo. Further, we enlarged the photo to a scaleable size and compared it to vegetation maps, and found that no wetland vegetation was identified at that time in the area where the white dots are shown. Therefore, there is no reason to assume that whatever is pictured in this aerial had a negative effect on any resources.

Thanks,
Ron
--
mark@bixby.org
Remainder of .sig suppressed to conserve expensive California electrons...

California Coastal Commission
South Coast District Office
200 Oceangate, 10th Floor
Long Beach, CA 90802

RECEIVED
South Coast Region
JAN 27 2007
CALIFORNIA
COASTAL COMMISSION

TO WHOM IT MAY CONCERN

I was born March 10, 1922 and raised on Springdale Avenue in Huntington Beach about two miles from the Bolsa Chica area which was a gun club at that time.

A distant relative, Albert Ruoff farmed an area south of Warner Avenue (it was Wintersburg Avenue then) and east of Graham Avenue if it had been extended past Warner. It ended at Warner (then Wintersburg) and became a rough dirt road used only for farming. West of that area was land not suitable for farming as it was swampy and with scattered peat bogs.

For several of my early years, ages 10 to 14, I was an avid hunter and collector of Indian artifacts and roamed that area and the edge of the mesa after heavy rains looking for exposed arrowheads, pounders, cog stones, etc. it was during one of those "expeditions" that I found two skeletons on the downslope of the mesa and had them for at least twenty years till finally reburying them at the request of an Apache friend, Colonel Ted Davis.

It was on the lowland below the mesa that my father, brother and I would pick blackberries that grew profusely in the swampy land below the mesa.

When in that area, I would always visit a beautiful clear spring that was bubbling from the ground into a large pool surrounded by willows. The water drained into a small stream that flowed toward the ocean. This was in the area now in question as to whether it is "wetlands".

I now live in Huntington Beach at 623 – 7th Street and may be reached at 714-536-2030.

Respectfully submitted,

William E. Kettler

William E. Kettler

California Coastal Commission 7/3/2007 W 8.5a
Attn: Meg Vaughn
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

We support the staff recommendation regarding Huntington Beach LCP Amendment 1-06. The IP Amendment should be denied as submitted, and the LUP and IP Amendments be approved as modified by staff in their June 29, 2007 report.

Concerning the option of RL vs. RM zoning, we support the RL zoning as being *the most compatible* with the adjacent Kenilworth tract, especially considering all of the over-excavation, dewatering, and elevation pads that will be necessary to support *any* development on the site.

Bob & Betty Hogan
17302 Forbes Lane
Huntington Beach, CA 92649

W 8.5a

Ms. Vaughn,

I support the staff recommendation regarding Huntington Beach LCP Amendment 1-06. The IP Amendment should be denied as submitted, and the LUP and IP Amendments be approved as modified by staff in its June 29, 2007 report.

Concerning the option of RL vs. RM zoning, I support the RL zoning as being the most compatible with the adjacent Kenilworth tract, especially considering all of the over-excavation, dewatering, and elevation pads that would be necessary to support any development on the site.

While I agree with the staff's recommendation, I'm still very concerned about the threat of flooding on Kenilworth Drive and the surrounding neighborhood from rainfall runoff. If the open land is replaced by the elevated Parkside development, where will the rainfall runoff go?

Thank you for your consideration.

Colleen Ponchak

Colleen Ponchak
5351 Kenilworth Dr.
Huntington Beach, CA 92649

California Coastal Commission ,

I support the staff recommendation regarding Huntington Beach LCP Amendment 1-06. The IP Amendment shold be denied as submitted, and the LUP and IP Amendments be approved as modified by staff in their June 29, 2007 report.

Concerning the option of RL vs, RM zoning, I support the RL zoning as being *the most compatible* with the adjacent Kenilworth tract, especially considering all of the over-excavation, dewatering, and elevation pads that will be necessary to support *any* development on the site.

It is gratifying to see the CCC staff taking the time to analyze the situation more thoroughly than they had previously. Thank you.

Sincerely,

June Nye

California Coastal Commission
Attn: Meg Vaughn
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

RECEIVED

W 8.5a

Dear Ms. Vaughn,

I am urging the Coastal Commission to DENY the Implementation Plan Amendment as submitted and ask that the Land Use Plan and Implementation Plan Amendments be approved as modified. Wetlands on the property have to be protected and the only way to do that is to prevent houses from being built in those areas. The eucalyptus groves need full protection and should have the largest setbacks possible in order to preserve the habitat for the raptors and other wildlife that live there. Any development on the property needs to be minimal and low density so that it will be in keeping with the other neighborhoods in the area. Shea Homes need to be ordered to restore the wetlands that have been filled in and also be held accountable for the damage. No construction or permi of any kind should be allowed until the filled wetlands have been restored and the penaltie for Shea's illegal activities have been assigned and completed. Hold the company responsible for violating state laws and don't reward developers by allowing them to build on wetlands that have been illegally filled.

Sincerely

Date: 7-5-07

HNB-MAJ-1-06

W 8.5a

LORRAINE PRINSKY AND JERRY GOLDFEIN
5402 BARWOOD DRIVE
HUNTINGTON BEACH, CA. 92649
(714)846-1493
FAX: (714)846-4593

July 1, 2007

California Coastal Commission
Attn: Meg Vaughn
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

To the California Coastal Commission:

We have read and would like to add our support to the staff's recommendations regarding Huntington Beach LCP Amendment 1-06. We are grateful to the staff for examining this issue so carefully. We have lived in the area for over 20 years and believe that the land must be preserved as part of the Bolsa Chica Wetlands and protected from development.

In addition, we believe the IP Amendment should be denied as submitted, and the LUP and IP Amendments be approved as modified by staff in their June 29, 2007 report. Concerning the option of RL vs. RM zoning, we support the RL zoning as being the most compatible with the adjacent Kenilworth tract, especially considering all of the over-excavation, dewatering, and elevation pads that would be necessary to support any development on the site.

We greatly appreciate the work of the California Coastal Commission to monitor land use along our precious Pacific Coast.

Sincerely,

Lorraine Prinsky and Jerry Goldfein

Lorraine

OC LCV

ORANGE COUNTY
LEAGUE OF CONSERVATION VOTERS

P.O. BOX 1303
HUNTINGTON BEACH, CA 92647

CALIFORNIA COASTAL COMMISSION
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302

ATT: Meg Vaughn

RE: July 11, 2007 – Agenda Item W 8.5 a
LCP Amendment No. HNB-MAJ-1-6 (SHEA-PARKSIDE) -- DENY

Dear Chairman Kruer and Commissioners:

The Orange County League of Conservation Voters urges the Coastal Commission to deny the proposed Huntington Beach LCP and LUP amendments regarding the Shea-Parkside property, unless modified as recommended by the Coastal Commission Staff.

As noted in the Staff report at page 21, the subject property is adjacent to the Bolsa Chica Wetlands restoration area. It includes significant wetlands and ESHAs which support, even in their degraded state, numerous species of wildlife. This property must not be viewed as isolated or unrelated to the Bolsa Chica Wetlands and Mesa habitats. Any LCP or LUP amendments allowing development on the property must require protection of the wetlands and ESHA by substantial buffers.

The proposed project not only fails to sufficiently protect the wetlands and ESHA on the subject property, the proposal for residential housing to be built at a raised elevation would also negatively impact the surrounding neighborhoods and the Bolsa Chica Wetlands.

Residents in surrounding neighborhoods have recently been inundated with deceptive and misleading correspondence from Shea Homes warning that their homes will be in jeopardy of major flooding if the Parkside project is not approved as proposed. As the proposed project would only increase risks of flooding and overdue improvements to the Wintersburg Channel levee can and should be made independently of any development, the fear mongering tactics of Shea are appalling.

As stated at page 56 of the Staff report, the proposed LUP amendment is not consistent with the policies of the Coastal Act regarding public access and recreation, wetlands, ESHA, marine resources and land resources. These inconsistencies mandate a denial of the LCP and LUP amendments as proposed.

Orange County League of Conservation Voters urges the Commission to deny the subject proposed LCP and LUP amendments unless modified to protect this last salvageable segment of the greater Bolsa Chica habitat area.

Sincerely,

Steve Ray
President

W 8.5a

Sara M. Mathis
17071 Berlin Lane
Huntington Beach, CA 92649

July 2, 2007

Ms. Meg Vaughn
California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

Reference: Huntington Beach – Shea Homes Parcel – Graham Street

Dear Ms. Vaughn:

I support staff recommendation regarding Huntington Beach LCP Amendment 1-06. The IP Amendment should be denied as submitted, and the LUP and IP Amendments be approved as modified by staff in their June 29, 2007 report, excepting the option of RL vs. RM zoning on the parcel, neither should be approved.

The entire subject parcel is part of the Bolsa Chica Wetlands system, despite the owner's ongoing efforts and tactics to convert it to something else. In addition to the presence of ponding and wetland plant species, which have been well-documented on the site, the fact that the subject parcel is one to two feet below sea level and requires overexcavation, dewatering, and 260,000+ cubic yards of imported fill material (approximately 13,000 truck trips) to make it suitable for building should provide evidence enough that the site is a wetland and not suited for residential development.

The California Coastal Commission is required to protect the functions and values of the wetlands in my watershed. If the California Coastal Commission allows the subject parcel to be drained, filled, and developed, they will destroy habitat for endangered wildlife and plant species, which have been well-documented on the site, further degrade my watershed's water quality due to increased pollution and storm water runoff, increase the surrounding area's vulnerability to flooding, and eliminate scarce open space and yet another vital productive ecosystem from our coastal area.

Respectfully submitted,

Sara M. Mathis

Sara M. Mathis

W 8.5a

California Coastal Commission
Attn: Meg Vaughn
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

Dear Ms. Vaughn,

Shea Homes needs to be held accountable for all the grading and unpermitted wetland filling done over the past ten years and no further action should be taken until the wetlands on the property have been fully restored. Maximum setbacks need to be made mandatory to protect the eucalyptus groves and to allow sufficient hunting grounds for the raptors which use the trees for perching, nesting, and feeding. No houses should be built anywhere on the property due to the extensive dewatering activities and large amounts of fill import that will be necessary in order to build. The flood protection sea wall Shea wants to build should be constructed by US Fish and Wildlife and it should be built at the end of the Bolsa Pocket, not across the middle of the field.

If houses have to be built on the field, then those houses need to be low density only. All other single family neighborhoods surrounding the field are low density and any housing on the Shea property needs to be consistent with the community. I ask that the commission deny the submitted IP Amendment and vote for approval of the LUP and IP Amendments only if modified as recommended in the staff report.

Sincerely,
Helen Hamer
Date: 7-2-07

This land has been proven to be wetlands. No construction should even be allowed any wetlands. California need to preserve all these lands for our wildlife, so little is left. Shea should not be allowed to build & destroy this field

HNB-MAJ-1-06

W 8.5a

California Coastal Commission
Attn: Meg Vaughn
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

Dear Ms. Vaughn,

Shea Homes needs to be held accountable for all the grading and unpermitted wetland filling done over the past ten years and no further action should be taken until the wetlands on the property have been fully restored. Maximum setbacks need to be made mandatory to protect the eucalyptus groves and to allow sufficient hunting grounds for the raptors which use the trees for perching, nesting, and feeding. No houses should be built anywhere on the property due to the extensive dewatering activities and large amounts of fill import that will be necessary in order to build. The flood protection sea wall Shea wants to build should be constructed by US Fish and Wildlife and it should be built at the end of the Bolsa Pocket, not across the middle of the field.

If houses have to be built on the field, then those houses need to be low density only. All other single family neighborhoods surrounding the field are low density and any housing on the Shea property needs to be consistent with the community. I ask that the commission deny the submitted IP Amendment and vote for approval of the LUP and IP Amendments only if modified as recommended in the staff report.

Sincerely, [signature]

Date: July 2, 2007

IT IS TIME TO PUT AN END TO PARKSIDE ESTATES ONCE AND FOR ALL. PARKSIDE IS A BAD PROJECT AND HAS NO PLACE WHATSOEVER IN THE BOLSA CHICA AREA. THE SITE IS A HISTORIC WETLANDS FROM END TO END AND THE EVIDENCE CAN STILL BE SEEN IN THE TIDAL SLOUGH WHICH STRETCHES ACROSS THE PROPERTY. SINCE PURCHASING THE PROPERTY IN 1996, SHEA HAS ENGAGED IN A STEALTH CAMPAIGN OF WETLAND FILLING UNDER THE GUISE OF INTENSIVE FARMING. WHEN WETLAND FEATURES PROVED TOO MUCH FOR FARM EQUIPMENT, BULLDOZERS WERE USED IN BLATANT VIOLATION OF THE COASTAL ACT. SHEA NEEDS TO BE ORDERED TO RESTORE ALL WETLANDS ON THE SITE AND BE HELD FULLY ACCOUNTABLE FOR WILLFUL, DELIBERATE, AND CALCULATED ACTS OF WETLAND FILLING. NO FURTHER ACTION ON THE PARKSIDE ISSUE SHOULD BE TAKEN UNTIL RESTORATION IS COMPLETED AND THE VIOLATIONS OF STATE LAW FULLY DEALT WITH.

Janed Sax, PhD
16322 Niantic Circle
Huntington Beach, CA 92649

W 8.5a

July 3, 2007

California Coastal Commission
Attn: Meg Vaughn
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

RE: Huntington Beach LCP Amendment 1-06

Dear Coastal Commissioners:

I have been a resident of Huntington Beach for over 40 years. I love this city and our earth and I've made every effort to support environmental issues on a local, national and worldwide level in my own small way. I appreciate the significant work that all of you do on a daily basis to make our state a better place

In that spirit, I'm writing in support of the CCC staff's recommendation regarding Huntington Beach LCP Amendment 1-06. I agree that the IP Amendment should be denied as submitted and the LUP and IP Amendments be approved as modified by staff in their June 29, 2007 report.

I appreciate all efforts and decisions that you have made in the past on behalf of preservation of Bolsa Chica and the recent efforts that the staff has made to fully analyze and understand the situation at hand.

Sincerely,

Janed Sax, PhD

Mary Lou Watkins
17672 Crestmoor Lane
Huntington Beach, California 92649
(714) 840-1885 Phone/Fax
mlouw@aol.com

RECEIVED

California Coastal Commission
Attn: Meg Vaughn
200 Oceangate, 10th Floor
Long Beach, Ca 90802-4416

W 8.5a

July 3, 2007

As a resident of the area adjacent to the proposed Parkside Development I support the staff recommendation regarding Huntington Beach LCP Amendment 1-06. The IP Amendment should be denied as submitted, and the LUP and IP Amendments be approved as modified by staff in their June 29, 2007 report.

Concerning the option of RL vs RM zoning, I support the RL zoning as being *the most compatible* with the adjacent Kenilworth tract, especially considering all of the over-excavation, dewatering, and elevation pads that will be necessary to support *any* development on the site.

The developer insists that there will be many improvements that will eliminate the need for flood insurance for adjacent homes. However, with their full-page ads recently they confirm that flood insurance only "may be reduced" for those of us who are closest to the proposed development. In addition to that the traffic on Graham Street will increase significantly from this development and affect us as well.

I wish to thank the Commission for their close attention to this matter and particularly the staff who took the time to completely analyze the situation and write a detailed and thoughtful report.

Sincerely,

Mary Lou Watkins

Mary Lou Watkins-Moore

W 8.5a

California Coastal Commission
Attn: Meg Vaughn
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

Dear Ms. Vaughn,

I firmly believe there should never be any houses built on the Shea field. The property was a wetland before it was farmed and remains a wetland to this day. Shea has deliberately filled in the wetlands on the property in order to build, and that's just plain WRONG. Shea can't be allowed to destroy wetlands and then claim those wetlands were never there. The Coastal Act prohibits building on wetlands. The Coastal Act prohibits filling of wetlands. Shea has already filled and wants to build. The Coastal Commission needs to see Shea's actions for what they really are: blatant violations of California law. Shea needs to be ordered to remove the fills and restore the property to its natural state. For these reasons **I urge the Commission to deny the IP as submitted and approve the IP and LUP as modified by staff.** Parkside Estates is bad for the surrounding neighborhoods, bad for the residents who live in the area, and it is bad for the environment. Any construction on the field needs to be as small as possible and needs to be limited to LOW DENSITY ONLY. **DO NOT LET SHEA PROFIT FROM THEIR ILLEGAL ACTIONS!**

Sincerely, Michael H Moon Date: 7/4/07

5442 Bankton Drive
Huntington Beach
CA 92649

"Please no building on Shea property
Save what little Wetlands we have left
in this great Nation Independence day 2007"

HNB-MAJ-1-06

W 8.5a

Richard B. Mathis
17071 Berlin Lane
Huntington Beach, CA 92649

July 3, 2007

Ms. Meg Vaughn
California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

Reference: Huntington Beach – Shea Homes Parcel – Graham Street

Dear Ms. Vaughn:

I support staff recommendation regarding Huntington Beach LCP Amendment 1-06. The IP Amendment should be denied as submitted, and the LUP and IP Amendments be approved as modified by staff in their June 29, 2007 report, excepting the option of RL vs. RM zoning on the parcel, neither should be approved.

The entire subject parcel is part of the Bolsa Chica Wetlands system, despite the owner's ongoing efforts and tactics to convert it to something else. In addition to the presence of ponding and wetland plant species, which have been well-documented on the site, the fact that the subject parcel is one to two feet below sea level and requires overexcavation, dewatering, and 260,000+ cubic yards of imported fill material (approximately 13,000 truck trips) to make it suitable for building should provide evidence enough that the site is a wetland and not suited for residential development.

The California Coastal Commission is required to protect the functions and values of the wetlands in my watershed. If the California Coastal Commission allows the subject parcel to be drained, filled, and developed, they will destroy habitat for endangered wildlife and plant species, which have been well-documented on the site, further degrade my watershed's water quality due to increased pollution and storm water runoff, increase the surrounding area's vulnerability to flooding, and eliminate scarce open space and yet another vital productive ecosystem from our coastal area.

Respectfully submitted,

Richard B. Mathis

July 3rd, 2007
W 8.5a

California Coastal Commission
Attention Meg. Vaughn
200 Oceangate, 10th Floor
Long Beach, Ca. 90802-446

I support the staff recommendation regarding Huntington Beach LCP Amendment 1-06. The IP Amendment should be denied as submitted, and the LUP and IP Amendments be approved as modified by staff in their June 29th 2007 report.

It's refreshing to have people on the staff taking the time and effort to really analyze our situation.

Sincerely,

Bess Luke Weston

Bess Luke Weston
17071 Camelot Circle
Huntington Beach, Ca. 92649

714 846 7686

July 1, 2007,

California Coastal Commission
Attn: Meg Vaughn
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

W 8.5a

Commissioners, I have lived in Huntington Beach since 1990. I purchased my home at 17192 Berlin Lane. in 1992. I bought in this location primarily for the proximity to the ocean breeze and the open wetland space. My residence is directly across Graham Street from the proposed Shea development. My wife and I walk the flood control levees to and from the wetlands weekly and really enjoy the open space which we both feel is extremely rare for Southern California.

Over the years that we have lived here and walked along the flood control channels levees we have observed a continuos change of the Shea property depending on the time of the year. Winter / Spring time typically we see lot's standing water with lot's of wetland plants and animals enjoying the abundance of a healthy and natural environment. The ponds seem to last for quite a while and while this water remains so does everything that likes these mini lakes. It's so cool to see the variety of birds that come to the these ponds and then remain while the vegetation seems to explode. Spring in these fields is visually stunning. Our observation was that before the wetlands were restored, natural ponding water in all the open spaces in the rainy reason' provided a lush and noisy environment for all to enjoy for as long as the ponds remained. As the ponds subsided farming tractors would try and grade into the edges of the ponds trying to reduce the amount of standing water remaining. Then a new explosion of crops would appear. It's been our observation over time that the area for farming has increased and that ponding areas' have reduced. Although in very wet season's the entire area's flood or are so wet that farming stops until the land can support the weight of the tractor's.

After a few years of reading about and visiting the wetlands areas we began to understand the ecosystem that has developed on the Shea property across the street. Now when we walk the levy and look down onto the Shea property we try to visualize or recognize natural patterns of life that are trying to survive and exist in this farmed open space. Were not biologists or naturalists but we do see a lot of standing water that seems to support the nature there and hope that it continues to have the opportunity to survive and exist. We have a continued respect and appreciation for what open this space provides to our wildlife neighbors. Eliminating their wetland environment to survive in seems extreme when weighed against the proposed changes for rezoning this parcel of land for residential development. We have already witnessed changes in the area that has caused both of us to feel that the elimination open space buffer zones cause the compression of wildlife into a reduced natural environment is stressing some species. The local Coyotes are much more prevalent in our neighborhood tract than before and a pair of red tail hawks that we used to see in the eucalyptus grove area now were trying to nest in a palm tree in our neighborhood,?

Our feelings are that this wetlands area seems very sensitive to any evasive change. We feel the more of this open space that we allow to be reduced the more stressed all the residents, human, animal and plant will become. We don't believe this much change locally for this natural wetlands area is really beneficial to anyone's or anything's quality of life. We believe to reduce the available space for life exist then compress all the recipients needs to sustain life, to us seems too evasively extreme.

Therefore, we support the staff recommendation regarding Huntington Beach LCP Amendment 1-06. The IP Amendment should be denied as submitted, and the LUP and IP Amendments be approved as modified by staff in their June 29, 2007 report.

Concerning the option of RL vs. RM zoning, we support the RL zoning as being *the most compatible* with the adjacent Kenilworth tract, especially considering all of the over-excavation, dewatering, and elevation pads that will be necessary to support *any* development on the site.

Thank you and your staff for their report and the opportunity to express our concerns,

Mr. & Mrs. Michael Castellano
17192 Berlin Lane
Huntington Beach
California, CA 92 629

HNB-MAJ-1-06

July 3, 2007 W 8.5a

Meg Vaughn
California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

Attention:

Dear Meg Vaughn,

We support the staff recommendation regarding Huntington Beach LCP Amendment 1-06. The IP Amendment should be denied as submitted, and the LUP and IP Amendments be approved as modified by staff in their June 29, 2007 report.

May we express our gratitude for the time and effort Coastal Commission staff has given to reconsider recommendations formed prior to the May 10, 2007 meeting. We are encouraged by their thoughtful evaluation of vital information presented by the Bolsa Chica Land Trust on that occasion.

Sincerely,

Julian Vochelli, Janet Vochelli

Julian and Janet Vochelli

19322 PITCAIRN LANE
HUNTINGTON BEACH, CA, 92646

W 8 5a

Dear CCC

My husband and I support the staff recommendation regarding Hunt. Beach LCP Amendment 1-06. The IP Amendment should be denied as submitted, and the LUP and IP Amendments be approved as modified by staff in their June 29, 2007 report.

Concerning the option RL vs. RM zoning, we support the RL zoning as being the most compatible with the adjacent Kenlinth tract.

Sincerely,

David & Joan Fisher
6191 Mar Vista Dr.
Hunt. Beach, CA 92647

BASQUIAT

Mecca, 1982
Acrylic and oilstick on canvas mounted on wood supports.
176.5 x 173 cm (69½ x 68 in.)

SANTA ANA CA 927

05 JUL 2007 PM 9 T

7/5/07

Dear Meg or Ms. Vaughn,
Thank you for your service on the Coastal Commission.
Please consider
More wetlands
Less houses
The animals, birds
& I thank you.
Fran Fain Huntington Beach Ca. 92649

Pony Express BOX 808022 PETALUMA CA 94975

California Coastal Commission
200 Oceangate 10th floor
Long Beach, Ca.
90802
Attn.: Meg Vaughn

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Dear California Coastal Commission: **May 2007**

Re: City of Huntington Beach Major LCP Amendment No. 1-06 (Shea/Parkside).

- **The 50-acre Shea (fee MWD) property in Huntington Beach is severely degraded wetlands (DFG, 1980). 25 years later, that is still true.**
- **Due to all the illegal grading on the property, the full extent of wetlands that need to be preserved and buffered has not yet been definitively established.**
- **All wetlands on the property must be protected by <u>true</u> buffers— buffers that are undiminished and unimpeded by any NTS or passive recreation or similar human disturbance.**
- **In 1981, the City of HB requested residential zoning for this parcel. CCC staff recommended at the time that "The 'Residential' designation shall be deleted." The CCC did not approve of houses then; it should reject houses now!**
- **Uphold the Coastal Act section 30233. <u>Deny</u> the LCPA.**

Sincerely: Martin & Vicki deGoede

Address: 16852 Greenview Lane HB 92649

"TU 14B" 6/24/07

"Huntington Beach LCPA HNB-MAJ-1-6 and Shea "Parkside"

I have lived on KENILWORTH DRIVE in Hunt Bch for 41 years

Neighbors for some time have tried to show that homes SHOULD NOT BE BUILT on precious "Wetlands"

Shea owns the acreage & plans to build 170 - 2 story homes and have posted recos in newspapers to prove their point of "saving the area due to the adjacent flood control channel that they are saving this area from flooding

They will remove 133,650 cubic feet of soil + recompact approx 7,108,300 cubic ft - thousands of truckloads will go down Graham - already a busy street - an artery to Marine View Middle School and our residential area

Its very disturbing that no one listens to we homeowners

THE ENTRANCE HALL
at THE HERMITAGE
NASHVILLE, TENNESSEE

adjacent to the acreage and
the ones whose property value
will be greatly decreased
AND California should
protect our remaing Wetlands

Thank you,
Barbara Olson

California Coastal Commission
Attn: Meg Vaughn
200 Oceangate 10th Floor
Long Beach, CA 90802-4416

June 21, 2007

Dear Ms. Vaughn,

I am writing to you today to advise the California Coastal Commission to my objection to the development purposed by Shea Homes of the Parkside Estates in Huntington Beach.

California's have become more aware of the importance of wetlands and how they can protect developed properties from water surge. Hurricane Katrina showed American's the extent of property damaged that can occur from the destruction of wetlands. In the case of this proposed development, we will be eliminating valuable open land that could be put to better use by collecting and purifying current storm water run off. Let's not let this last piece of the Bolsa Chica Wetlands to be saved turned into a housing tract.

The purposed development of this property will also discharge additional storm water into the already taxed EGGW Food Control Channel which discharges into an already over polluted Huntington Harbour. Shea Home's own Parkside website is stating nothing less than misleading statements about how this development will create, and I quote, "A natural treatment system, that will clean runoff from over 3,000 acres that currently reaches the Huntington Harbour and the Pacific Ocean untreated." What does that mean? That the small piece of property currently being purposed to be set aside for wetlands and/or run off purification will treat 3,000 current acres of run off going into Huntington Harbour? Just not realistic.

Another miss leading statement on their website states, and I quote, "New and improved flood control systems that will eliminate or reduce flood insurance premiums for thousands of Huntington Beach home and business owners." Shea cannot guarantee that FEMA will redraw flood insurance zones and reduce insurance rates.

Today, Shea lost even more credibility with the educated public. Their company took out a desperate full page color ad in the Huntington Beach "Independent" and "Wave" newspapers blaming the Bolsa Chica Land Trust for delays in the rebuilding of the levees adjacent to the purposed development. And I quote, "Look who won't have to pay mandatory flood insurance – if only the Bolsa Chica Land Trust would put your safety and pocket book ahead of their interests".

The ad goes on and claims 7,000 homes and business would be free of mandatory flood insurance if their hands were not tied from spending 15 million dollars in flood protection improvements. The ad ends with telling the readers where they can help support "its timely approval this summer". The contact information reference back to their website where you can easily send support to the Coastal Commission for the project. Shea Homes appears to be misleading the readers to gaining support from the public before the next hearing in July.

Let's talk about the levee. The County Flood Control District is responsible for the levee and could be held liable for damages caused by its neglect. I have spoken to the District and they are very aware of its poor condition along side the purposed Parkside project.

The longer Shea Homes believes that the Coastal Commission may accept a proposal allowing the development of the property, the more at risk home owners are in the general vicinity of the property that the levee will breach, potentiality causing millions of dollars of damage. May be the County Flood Control District is delaying major repairs in hope of Shea Homes making some of the badly needed repairs.

It was made clear to me by the Coastal Commission's decision in May to denied Shea Home's development plan, that Shea was not acting responsible by protecting existing Wetlands on their own property, nor where they being up front on subject matter. I trust the information in this letter is supporting my claim.

If the project was approved, what detrimental effect would if have on the surrounding communities and the wildlife? The community can look forward to up to four years of major construction, the estimated removal and compaction of 16,200,00 cubic feet of soil, 200-300 truck loads of dirt each day, and by Shea Homes own estimates, 2500 vehicle trips per day will be added to arterial and residential streets from the tract residents. How would you like to live under these conditions – human or fowl?

When it comes right down to it, trust is the foundation to any agreement, any partnership, and any relationship. I do not believe that Shea Homes has been up front and truthful in their dealing with the Coastal Commission or the public on this project.

I am not a big "tree hugger". I am a business owner how has to follow the rules; that's what makes us a great republic. I do believe that an industry must follow the laws as laid out by the governing body. That is all I want Shea Homes to do, follow the law....they can't build on wetlands, they can't mislead people. May be you could ask Shea Homes with all the controversy surrounding the development of the property why, in good faith, they haven't looked at offering the property for sale to the Coastal Commission? This land would be much better served as true wetlands that could assist in the cleaning of polluted water run off in our city.

It is my sincere hope that the Coastal Commission will do its part to putting an end to this long battle and deny the development of these wetlands.

Sincerely,

Greg Clifford
17501 Tuscan Circle
Huntington Beach, CA

Meg Vaughn

From: Brenda Rogers [rogersbrenda@charter.net]

Sent: Monday, July 09, 2007 5:10 PM

Cc: pkruer@monarchgroup.com; kram@contentllc.com; bonnie.neely@co.humboldt.ca.us; kachadjian@co.slo.ca.us; mreilly@sonoma-county.org; forelc@cox.net; district5@co.monterey.ca.us; benhueso@sandiego.gov; thayerp@slc.ca.gov; brian.baird@resources.ca.gov; lwan22350@aol.com; sblank@kandsranch.com; drbburke@aol.com; mary_shallenberger@ppfa.org; drdan@cox.net; skinsey@co.marin.ca.us; gonzalez@unionyes.org; Meg Vaughn

Subject: Huntington Beach LCPA 1-06

To: California Coastal Commissioners:

Re: Agenda Item W8.5 Huntington Beach LCPA 1-06 Parkside, Support Staff

Dear Coastal Commissioner:

Please support the staff recommendation for the Huntington Beach LCPA 1-06, Shea Parkside property in Huntington Beach, to be heard this Wednesday, July 11.

The staff correctly identifies and protects the wetlands and ESHA's on this portion of the historic Bolsa Chica wetlands, while allowing for an alternative development footprint that is fair to the landowner. Please support the recommended 100-meter buffer for the ESHA's and the Natural Treatment System (NTS) out of the buffers, as recommended by staff.

It is important to follow the resource protections in the Coastal Act, and the staff recommendation does just that.

E.O. Wilson, a world renowned biologist in his 80's, winner of 2 Pulitzer prizes and author of 25 books, stated on Bill Moyers Journal, seen weekly on PBS, stated that the U.N. recently reported that in just 30 years, one quarter of all mammals will be extinct on Earth. When asked what the individual could do to prevent this catastrophe from occurring, E.O. said to get involved in local environmental issues to keep biologically rich areas and wetlands out of the hands of developers. But, what we desperately need most is leadership that works off of what we have learned through science, that has produced a consensus about what is happening to the Earth's environment...and sees a vision of a future that we, as people, can work toward.
Thank you for all your hard work to protect the California Coast.

Brenda Rogers
5315 South Marina Pacifica Dr/Key 20
Long Beach, Ca 90803

Meg Vaughn

From: Penny Elia [greenp1@cox.net]

Sent: Monday, July 09, 2007 3:36 PM

To: sblank@kandsranch.com; Sara Wan; mary_shallenberger@ppfa.org; bonnie.neely@co.humboldt.ca.us; Meg Vaughn; Steve Kram; gonzalez@unionyes.org; forelc@cox.net; drbburke@aol.com; pkruer@monarchgroup.com; thayerp@slc.ca.gov; brian.baird@resources.ca.gov; drdan@cox.net; kachadjian@co.slo.ca.us; district5@co.monterey.ca.us; benhueso@sandiego.gov; mreilly@sonoma-county.org; skinsey@co.marin.ca.us; Karl Schwing

Subject: Agenda Item W8.5 Huntington Beach LCPA 1-06 Parkside, Support Staff

Dear Coastal Commissioners:

Please support the staff recommendation for the Huntington Beach LCPA 1-06, Shea Parkside property in Huntington Beach, to be heard this Wednesday, July 11.

The staff correctly identifies and protects the wetlands and ESHA's on this portion of the historic Bolsa Chica wetlands, while allowing for an alternative development footprint that is fair to the landowner. Please support the recommended 100-meter buffer for the ESHA's and the Natural Treatment System (NTS) out of the buffers, as recommended by staff.

It is important to follow the resource protections in the Coastal Act, and the staff recommendation does just that.

Thank you for upholding the Coastal Act.

Sincerely,

Penny Elia
Sierra Club
30632 Marilyn Drive
Laguna Beach, CA 92651
949-499-4499

July 6, 2007

California Coastal Commission
Attn: Meg Vaughn
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

RE: Huntington Beach Major LCP Amendment 1-06 (Shea/Parkside)

Dear Ms. Vaughn and Coastal Commissioners,

I am writing to express support for the staff recommendations contained in the June 29, 2007 staff report. While the report covers a lot of topics, I want to bring the issue of cumulative impacts to the forefront. Section 30250 of the Coastal Act states, in pertinent part:

> *"(a) New residential ...development...shall be located...where it will not have significant adverse effects, either individually or cumulatively, on coastal resources."*

RAPTOR FORAGING HABITAT

The Coastal Commission has previously recognized Eucalyptus groves at the Bolsa Chica as ESHA, thus it is no surprise that staff is recommending that the two groves on Shea also be officially designated as ESHA. Cooper's Hawks, a species of special concern, and White-tailed Kites, a California fully-protected species, are known to use the trees for perching, as are Red-tailed Hawks, Red-shouldered Hawks, and several other species. Additionally, the Cooper's Hawks use the groves for nesting.

In their December 5, 1999, report prepared for the Bolsa Chica Land Trust, "Raptor Habitat Assessment of the Bolsa Chica Mesa", the firm Tierra Madre Consultants included a chart of raptor species seen at Bolsa Chica, their habitat use, and their breeding home range. Below is an abridgement of that chart to focus on the four main species at Shea/Parkside:

SPECIES	HABITAT USE	HOME RANGE
White-tailed Kite (*Elanus leucurus*)	Nests in Eucalyptus grove, forages on Mesa and wetlands	0.57 sq km / 141 acres (Henry, 1983)
Cooper's Hawk (*Accipiter cooperii*)	Eucalyptus grove (may be suitable for nesting), bushy areas	18-531 hectares / 166 and 326 acres (Craighead and Craighead 1956)
Red-shouldered Hawk (*Bureo lineatus*)	Eucalyptus grove for nesting, Mesa for foraging	1.21 sq km / 299 acres (Bloom 1993)

Red-tailed Hawk (*Buteo jamaicensis*)	Forages on Mesa and in wetlands, perches in Eucalyptus grove, has nested on poles in wetlands	Highly variable; 31-390 hectares / 77-963 acres in one study (Petersen 1979)

There are two key points to be made here. The first is that of these four species known to use the Shea groves the most, the *minimum* home range size is 77 acres. Clearly a buffer zone of less than an acre (100 meters) is insufficient to sustain these birds of prey in their daily lives. The second point is that these species previously could use the *entire* Bolsa Chica mesa, approximately 200 acres, for foraging. That is no longer the case. The portion of the mesa closest to the Shea groves, the upper bench, is *forever lost as foraging habitat* due to the Brightwater development. Thus the 50-acre Shea property is the only sizeable upland foraging habitat these raptors have left *adjacent to the groves*.

Loss of foraging habitat is also a concern of CDFG. As noted in the current Shea/Parkside staff report HNB-MAJ-1-06 dated June 29, 2007:

> "Furthermore, it is important to assure the continuance of the raptor community by reserving adequate foraging area. In fact, the California Department of Fish and Game (CDFG) provided statements to this effect in a letter to the City dated June 15, 1998 commenting on the Draft Environmental Impact Report for the Parkside project. In that letter, CDFG states that "...[a]gricultural areas, grasslands and wetlands are of seasonal importance to several species of raptors in Orange County by providing important, if not vital, staging and wintering habitat. These habitats also provide foraging areas for resident breeding raptors." CDFG goes on the [sic] express concern about the loss of raptor foraging areas within the project site and vicinity and the impacts such loss may have on the adjacent Bolsa Chica Ecological Reserve. However, CDFG didn't suggest any specific mitigation for this loss in this letter. However, in recent years, CDFG has routinely recommended a mitigation ratio of 0.5:1 (preservation area to foraging area lost). Were this ratio applied at the subject site, about 25 acres of the subject site would need to be designated Open Space Conservation just to satisfy the foraging needs of raptors." (pg. 41)

COYOTES & OPEN SPACE

The CCC staff report on Shea/Parkside completely omits coyotes from the analysis. This has been puzzling, for as the Bolsa Chica Land Trust court decision states:

> "Under the Coastal Act, [the] Commission is required to protect the coastal zone's delicately balanced ecosystem. (§ 30001, subds. (a)-(c); § 30001.5, subd. (a); *City of San Diego* v. *California Coastal Com.* (1981)

> 119 Cal.App.3d 228, 233; *Sierra Club* v. *California Coastal Com.* (1993) 12 Cal.App.4th 602, 611 (*Pygmy Forest*).)" (pg. 15)

Coyotes are present at Shea/Parkside and are part of the greater Bolsa Chica ecosystem. Fortunately, the 2002 CCC staff report for the Marblehead development in San Clemente, Orange County, discussed coyotes in depth. The Marblehead 5-01-459 report stated:

> "Also, in order for any of the natural habitats to maintain their existing biodiversity, it is important to maintain coyotes in the system. In the absence of coyotes, these habitats would be subject to heavy predation from domestic and feral cats and other small predators causing avian diversity to plummet....If coyotes are to remain in the system, the various habitats on site must be connected with open space corridors and access to these habitat areas must remain unobstructed such that coyote can continue to access the site and circulate through it. Since coyote that are present in urban settings tend to be nocturnal, lighting from the developed areas must be strictly controlled such that the open space areas and corridors for circulation remain dark spaces." (pg. 47)

In particular, staff noted that coyotes would help protect California gnatcatchers, a federally threatened species: "Additional open space and connectivity would further maintain coyote use of the site that would further ensure that small predators are controlled and hence predation on California gnatcatcher is maintained within natural parameters." (pg. 4) The report went on: "In the heart of urban environments, Coastal Sage Scrub may still support many bird species *when there is sufficient open space to include coyotes in the system*." (pg. 35, italics added for emphasis). As gnatcatchers are present at Shea/Parkside, the issue of "sufficient open space" for coyotes comes into play when considering cumulative impacts.

CUMULATIVE IMPACTS

The Shea property is located on the north side of the East Garden Grove – Wintersburg Flood Control Channel, in the northeastern corner of the greater Bolsa Chica ecosystem. Two recent developments on the north side of the channel must be taken into account when discussing cumulative impacts of the Shea/Parkside project.

The first is the reflooding of the Bolsa Pocket. What was once an open field is now permanently under water. Coyotes can no longer traverse it, and it is no longer a foraging area for either coyotes or raptors who feast on upland species. 42 acres of foraging space, of open space—***gone forever.***

The second is the Brightwater development. While the118 acre lower bench to the northwest has been preserved, and 34 acres of bench bluff face are being restored as coastal sage scrub, the upper bench is now in the process of being paved over. As noted

in the Tierra report, the Mesa provided foraging area for many raptors (and hence open space for coyotes as well). 68 acres of foraging space, of open space—***gone forever.***

In short, 110 acres (42 Pocket + 68 upper bench) of wide open space that the coyotes used to have available to them on the north side of the channel--110 acres of foraging habitat that the raptors used on the north side of the channel--has been lost ***in just the last two years.*** And with the loss of the upper bench, the only *direct* open space foraging area for the raptors in the Shea groves is now the 50 acres *of the Shea property itself!* See attachment A for an aerial photo demonstrating the loss of habitat north of the channel.

Clearly, additional houses are incompatible with preserving the open space necessary to avoid significant adverse affects to coastal resources, the biodiversity of the Bolsa Chica.

SUMMARY

1. The raptors at Shea/Parkside need sufficient foraging area to survive; these raptors are important species to the state of California.

2. Coyotes need sufficient open space to maintain their place in the ecosystem; they serve to protect lesser avian species such as the federally threatened California Gnatcatcher which is found at Shea/Parkside.

3. Any project at Shea/Parkside would have a detrimental cumulative affect on the foraging area and open space the raptors and coyotes need to survive and maintain the biological diversity of the Bolsa Chica ecosystem.

The commission was right to deny the LUPA as submitted in May, 2007, and to ask staff to do more research. Upon further review, staff has revised their recommendations to be most protective of coastal resources, and it is the staff's recommendations of June 29, 2007, that you should be adopting now.

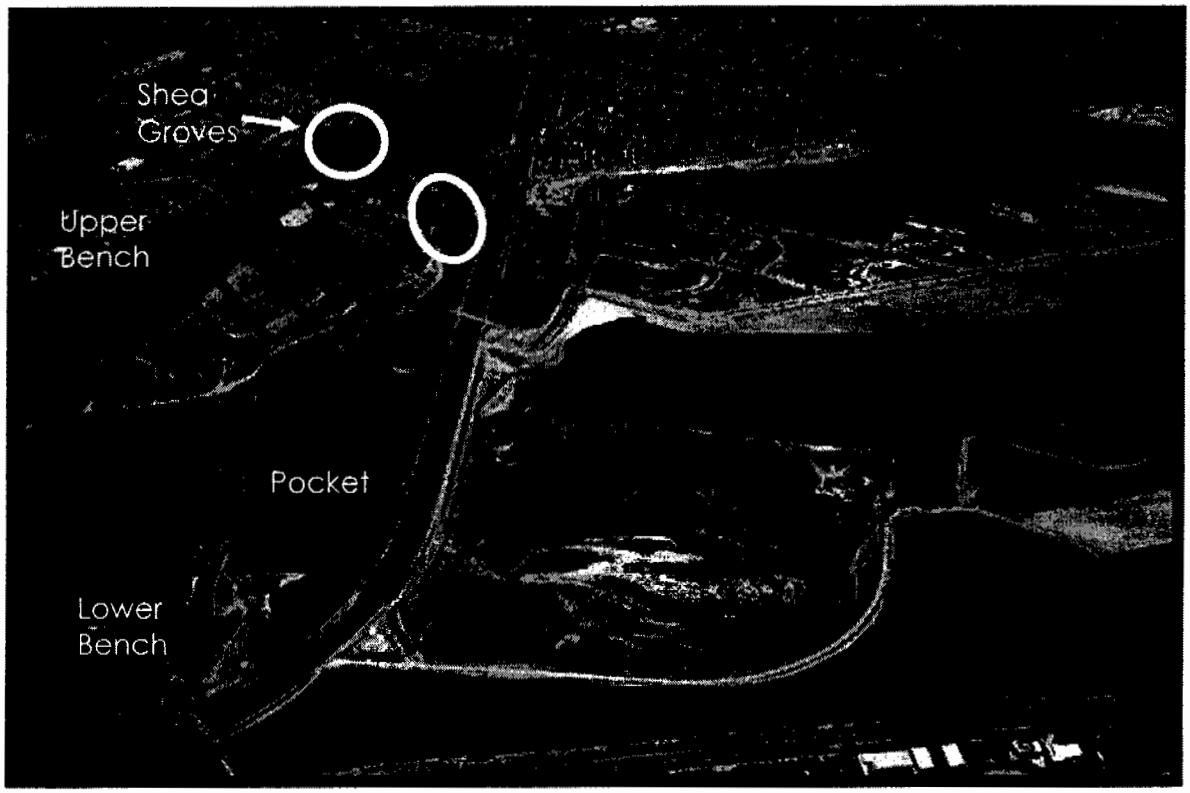
Sincerely,

Julie E. Bixby

Julie E. Bixby

attachment

Attachment A



Cumulative Effects: Raptor Upland Foraging Habitat and Coyote Open Space Lost North of the EGGW Flood Control Channel (red lines). Photo: U.S. Fish & Wildlife

Meg Vaughn

From: Larry Eaton [larry.eaton@mindspring.com]
Sent: Saturday, July 07, 2007 2:28 PM
To: pkruer@monarchgroup.com; kram@contentllc.com; bonnie.neely@co.humboldt.ca.us; kachadjian@co.slo.ca.us; mreilly@sonoma-county.org; forelc@cox.net; district5 @co.monterey.ca.us; benhueso@sandiego.gov; thayerp@slc.ca.gov; brian.baird@resources.ca.gov; lwan22350@aol.com; sblank@kandsranch.com; drbburke@aol.com; mary_shallenberger@ppfa.org; drdan@cox.net; skinsey@co.marin.ca.us; gonzalez@unionyes.org; Meg Vaughn
Cc: Larry Eaton
Subject: [Fwd: Letter sent to Adam and Christine Rodell via their web site 2:55pm 070706]

Relevance: W 8.5a (ParkSide Estates)

It was suggested by another interested party that I forward my comments to a recently received mailing along to you. Hopefully, in doing so, I am not intruding too much into your very busy schedules.

I received a colored, heavy stock, mailing with a Shea (c/o Parkside Estates Outreach) return address (hence assumed distributed by Shea) in which Adam and Christine Rodell, realtors, endorses/plays-upon the scare tactics upon which Shea continues to focus/exaggerate. In this mailing, the Rodell's claim to be an "independent" interested party who then makes the statement that ParkSide Estates is "First, it's environmentally sensitive", which, as I touch upon below, is really NOT a true factual statement. [I also, recently, sent a much longer discussion of Shea's fancy 4 page color brochure mailing of mis-leading "FACTS", to your staff which was included in the appendix of your staff report relative to your upcoming SLO meeting W8.5a]. We are being bombarded with fancy, expensive, mailings by Shea which state that all of the opposition to Shea's ParkSide efforts are very bad people. Maybe Shea's looking into a mirror is warranted?

Upon closer observation however, this particular mailing actually includes solicitation of potential customers (postcard attached asking for potential customer response) for Rodell's real estate business, which, to me, is seemingly taking, possibly unethical, advantage of the present high visibility of the proposed Shea/ParkSide Estates situation. The content of this mailing and my perceived real objectives of Rodells prompted me to respond to their mailing via their business web site (see below for the response that I sent to Rodell).

I am a resident of Kenilworth Dr., hence a VERY interested party who desires that the interest of the local residence and of the coastal environment be best served. I very much appreciate the GREAT efforts of you staff to finding the TRUE FACTS around the present Shea property situation. I know that often with TRUTH comes unwarranted criticism. However, keep up your excellent work all along the coast of our great state of CA.

Thank you for you attention to this particular coastal item. Have a good day.

lre

---- Original Message to Adam and Christine Rodell via their real estate business web site -----
----in response to their color brochure mailing--------

It is rather disheartening for you (*/"A Tradition Rich In Caring And Service")/* to claim that Shea is "environmentally sensitive". Contrary to Shea's highly acclaimed FACTS propaganda brochure, Shea has

ONLY made concessions relative to environmental aspects in and around proposed ParkSide estates BECAUSE of the efforts of others that REALLY ARE "environmentally sensitive". Shea would NOT have blinked an eye to NOT provide ANY of the present concessions that they are saying they are doing out of the goodness of their heart (protect birds of prey and eucalyptus groves, improve area water quality, preserve wetlands (a federal coastal mandate), etc).

Instead, I feel that Shea continues to use scare tactics to bully people into doing what Shea wants, which is to realize high profits rather than be sensitive to public and/or environmental needs. Agreed, Shea will contribute to potential flood reduction in some ways, but these same efforts will also contribute to higher risk of area flooding of surrounding properties. In the first place Shea MUST build up the land next to the flood control channel by federal mandate before constructing houses on that land. (This alone goes a long way toward reinforcing the channel on the north side.) What Shea continues to state time and time again is a promise rezoning for MANY people, whereas, just reinforcing the channel within Shea's property is NOT sufficient, in itself, for federal rezoning (as Shea either outright claims or alludes to). The FULL channel must be upgraded to federal standards before any rezoning can take place. Even the Orange County Flood Control (OCFC) division manager has stated that Shea, with respect to comparisons to Katrina, is being over-alarming and overstating the risk.

Fiction: Shea says "by issuing a Conditional Letter of Map Revision, FEMA is obligated to issue a new flood map once the Parkside improvements are installed".

Fact: No flood zone revisions can be released until the full Wintersburg flood channel is upgraded to FEMA standards. It is also the OCFC responsibility to see that the full channel is upgraded, even if Shea does not do a portion of it.

Shea is saying that doing their improvement of a few hundred feet of channel will protect areas clear back to the 405 freeway (I assume you have read their FACTS brochure). Again, OCFC must upgrade the full length before any flood zoning changes can be considered, much less changed, and they must upgrade both sides of the Shea property.

It is a extremely logical that if there are extremely heavy rates of rain fall which are beyond the capability of any "new" drainage system that is installed with the new ELEVATED housing area to handle, the excess water from this elevated, asphalt covered area, WILL contribute to flooding of the homes in the surrounding, lower elevation Kenilworth area. The present lower lying field has permitted a great deal of these recent heavy rains to soak down into the soil thus reducing potential flooding the local area. If you read Shea's literature carefully, you also see, after saying or allude a number of times that added pumps in the Wintersburg channel will SAVE everyone from flooding, that in reality, they then say the pumps will ONLY help pump out the flooded areas more quickly AFTER being flooded - - NOT prevent any flooding.

Another observation: why is it that Shea apparently seems to only have support from those that they pay in one form or another (lawyers, consultants, builders, etc) and from realtors that stand to benefit from the building and sale of new homes in the area. Even though Shea has had "supporters" appear at meetings, stating that they are "independent" interested parties, what I have seen is that most, if not nearly all of them have some financial ties back to Shea. Hence, Shea continues to utilize evasive, underhanded and scare tactics to achieve their goal - - which really is not a positive contribution to society.

It seems that to often with sales people and politicians (who are also often sales people these days, rather than representative of the people), things are exaggerated to serve the goals/objectives of an individual or company. General public benefits are secondary.

So it is rather hard to accept that you truly represent an "independent" endorsement of what Shea is saying and tactics being used. If so, I would hesitate to use your services if you endorse such behaviors.

One could continue on with may other points, the above only scratches the surface.

lre

HNB-MAJ-1-06

Meg Vaughn

From: Alexa McMahan [irishlady86@yahoo.com]

Sent: Sunday, July 08, 2007 1:40 PM

To: pkruer@monarchgroup.com; kram@contentllc.com; bonnie.neely@co.humboldt.ca.us; kachadjian@co.slo.ca.us; mreilly@sonoma-county.org; forelc@cox.net; district5@co.monterey.ca.us; benhueso@sandiego.gov; thayerp@slc.ca.gov; brian.baird@resources.ca.gov; lwan22350@aol.com; sblank@kandsranch.com; drbburke@aol.com; mary_shallenberger@ppfa.org; drdan@cox.net; skinsey@co.marin.ca.us; gonzalez@unionyes.org; Meg Vaughn

Subject: Emails to Coastal Commissioners re: Wednesday Shea-Parkside Hearing

Re: Agenda Item W8.5 Huntington Beach LCPA 1-06 Parkside, Support Staff

Dear Coastal Commissioner:

Please support the staff recommendation for the Huntington Beach LCPA 1-06, Shea Parkside property in Huntington Beach, to be heard this Wednesday, July 11.

The staff correctly identifies and protects the wetlands and ESHA's on this portion of the historic Bolsa Chica wetlands, while allowing for an alternative development footprint that is fair to the landowner. Please support the recommended 100-meter buffer for the ESHA's and the Natural Treatment System (NTS) out of the buffers, as recommended by staff.

It is important to follow the resource protections in the Coastal Act, and the staff recommendation does just that.

Thank you.

Sincerely,
Michael McMahan
4892 Maui Circle
Huntington Beach, CA 92649

Yahoo! oneSearch: Finally, mobile search that gives answers, not web links.

Meg Vaughn

From: Marinka Horack [horackm@hotmail.com]
Sent: Sunday, July 08, 2007 12:40 PM
To: pkruer@monarchgroup.com; kram@contentllc.com; bonnie.neely@co.humboldt.ca.us; kachadjian@co.slo.ca.us; mreilly@sonoma-county.org; forelc@cox.net; district5 @co.monterey.ca.us; benhueso@sandiego.gov; thayerp@slc.ca.gov; brian.baird@resources.ca.gov; lwan22350@aol.com; sblank@kandsranch.com; drburke@aol.com; mary-shallenberger@ppfa.org; drdan@cox.net; skinsey@co.marin.ca.us; gonzalez@unionyes.org; Meg Vaughn; horackm@hotmail.com
Subject: W8.5 - Support Staff

RE: Agenda Item W8.5 - Huntington Beach LCPA 1-06 Parkside - Support Staff

Dear Coastal Commissioner:

Please support the staff recommendation for the Huntington Beach LCPA-1-06 Shea Parkside property, to be heard this Wednesday, July 11.

The staff correctly identifies and protects wetlands and ESHAs on this portion of the historic Bolsa Chica Wetlands. Please support the staff recommended 100 METER buffer for ESHAs, and the Natural Treatment System out of the buffers, as recommended by staff.

The Coastal Act protects our wetlands and ESHAs, and the staff report recommends just that.

Sincerely,
Marinka Horack
21742 Fairlane Circle
Huntington Beach, CA 92646

---

http://imagine-windowslive.com/hotmail/?locale=en-us&ocid=TXT_TAGHM_migration_HM_mini_pcmag_0507

Meg Vaughn

From: Murphyeile@aol.com

Sent: Sunday, July 08, 2007 12:43 PM

To: pkruer@monarchgroup.com; kram@contentllc.com; bonnie.neely@co.humboldt.ca.us; kachadjian@co.slo.ca.us; mreilly@sonoma-county.org; forelc@cox.net; district5@co.monterey.ca.us; benhueso@sandiego.gov; thayerp@slc.ca.gov; brian.baird@resources.ca.gov; LWan22350@aol.com; sblank@kandsranch.com; DrBBURKE@aol.com; mary_shallenberger@ppfa.org; drdan@cox.net; skinsey@co.marin.ca.us; gonzalez@unionyes.org; Meg Vaughn

Subject: Re: Agenda Item W8.5 Huntington Beach LCPA 1-06 Parkside, Support Staff

To: California Coastal Commissioners:

LCPA 1-06

Dear Coastal Commissioners:
i am writing in support of the CC staff's report to be heard July 11,2007

It is important to follow the resource protections in the Coastal Act and the staff recommendation does just that.

The staff correctly identifies and protects the wetlands and ESHA's on this portion of the historic Bolsa Chica wetlands, while allowing for an alternative development footprint that is fair to the landowner. Please support the recommended 100-meter buffer for the ESHA's and the Natural Treatment System (NTS) out of the buffers, as recommended by staff.

Thank you.

Sincerely,

Eileen Murphy
201 21st Street
HB CA 92648

****

See what's free at AOL.com.

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JUL 9 2007

CALIFORNIA
COASTAL COMMISSION

To: California Coastal Commission

Re: W 8.5A

We support the staff recommendation regarding Huntington Beach LCP Amendment 1-06. The IP amendment should be denied as submitted, and the LUP and IP Amendments be approved as modified by staff in their June 29, 2006 report.

Concerning the option of RL vs. RM zoning, we support the RL zoning as being the "most compatible" with the adjacent Kenilworth tract especially considering all of the over-excavation, dewatering, and elevation pads that will be necessary to support "any" development on the site.

Anna Young, 5362 Bonanza, H.B. 92649
Laura Fischbein, 18561 Florida St. 3026, HUNTINGTON BCH, CA. 92648
Louis Ciotti, Louis Ciotti 16791 RUBY CIR. HUNTINGTON BEACH, CA. 92649
Martin Greenhalgh 16882 Canyon LN. H.B. 92649
Lorine Scalise, 16882 Canyon Ln. H.B., CA 92649
Craig Bohi, 5435 Overland Dr. HB 92649 (714) 840-9321
JoAnn Royal JoAnn Royal 16871 CANYON LN H.B 92649
Marjorie M. Vliet 16862 Canyon Ln H.B. 92649
Eulalia D. Hurd 5322 OVERLAND DR 92649
Evelyn C. Abinas 5422 Bonanza HB 92649
Martha M. Hoffmann 16902 Canyon Lane H.B. 92649
Bernadine A. Abinas 5331 Bonanza H.B. 92649
Loretta Wuellenweber 5452 Bonanza Dr H.B. 92649
Donald Wuellenweber 5452 Bonanza Dr HB 92649

July 4, 2007

"W 8.5 a"

California Coastal Commission
Attn: Meg Vaughn
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

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South Coast Region
JUL 6 2007
CALIFORNIA
COASTAL COMMISSION

Re: Shea Parkside Estates

Dear Ms. Vaughn:

I am writing in regard to the upcoming hearing for the above referenced project. I will not be abler to attend the hearing due to a conflicting business commitment but wanted to respond. My wife, children and I live on Kenilworth Drive which abuts the subject property. While we have opposed the project, as submitted, for a variety of reasons but I would like to make the following points relative to the subject hearing.

We have been in contact over the past few years regarding Shea's repeated violations of California Law regarding the subject property. They have conducted unpermitted grading at the site for the past 10 years, as detailed by your office. While the CA Costal Commission has repeatedly requested them to stop this activity, Shea has not mitigated the damage caused. They must be required to return the site to its original condition before any of this is considered.

We are frankly, most concerned with how the proposed dewatering will effect, not only the existing wetlands but also how it will effect the neighboring residential properties and public infrastructure. The situation along the Bushard corridor relative to dewatering is very disturbing and a similar situation is likely to occur at Parkside.

In conclusion, we support the staff recommendation regarding Huntington Beach LCP Amendment 1-06. The IP Amendment should be denied as submitted, and the LUP and IP Amendments be approved as modified by staff in their June29, 2007 report. Concerning the option of RL vs. RM zoning, I support the RL zoning as being the most compatible with our Kenilworth tract, especially considering all of the over-excavation, dewatering, and elevation pads that will be necessary to support any development on the site. This is clearly a site that should not be developed.

Respectfully submitted,

Douglas & Tracy Stewart
5342 Kenilworth Drive
Huntington Beach, CA 92649

Mr. and Mrs. Kenneth Feldman
5411 Glenstone Drive
Huntington Beach, CA 92649

W 8.5a

July 6, 2007

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California Coastal Commission
Attn: Meg Vaughn
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

Dear Ms Vaughn:

This letter is in support of the Commission's staff and their decision regarding the LUP and IP amendments approval per their June 29, 2007 report.

Obviously, your staff is composed of specialists and experts in those areas under the juridstiction of the commission. Surely, their conclusions were based upon the evidence gathered and presented. Why would the Commission make any decision contrary to the evidence presented by this learned and unbiased staff?

Since 1997, I have lived directly across from the Shea's wetland property, separated from it by the Wintersburg Channel. The ground water table level on that property is quite high. During periods of light rain, the plowed up land is a quarmire. When the rain is heavy, it becomes a large pond.

Several years ago, my wife took some pictures of the area a couple of days after a light rain. One of the tractors used to move dirt fom one area to another became bogged down in the deep mud almost up to the tractor's cab. It took several days before the tractor could be pulled out. My wife's photos, I believe, were shown to the Commission at one of the previous meetings.

Homes are something that gives enjoyment to the few. Wetands are something for all to enjoy, not for just a day, not for just a week, not for just a month, not for just a year, but always!

Very truly yours,

Kenneth Feldman

Kenneth Feldman

Coastal Commission Letter 7/05/07

Monica D. Ruzich Hamilton
5401 Kenilworth Drive
Huntington Beach, CA 92649
Phone: (714) 840-8901
E-mail: mdruzich@earthlink.net

W 8.5a

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July 5, 2007

Ms. Meg Vaughn
California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

Re: CCC Agenda item—W8.5a: Shea/Parkside Development site & Bolsa Chica wetlands conservation

Dear Ms. Vaughn,

I live at 5401 Kenilworth Drive in Huntington Beach. My home is located approximately 200 feet northerly of the north boundary of the subject development site. My neighborhood and the surrounding 150 acres, or so, are near sea-level in a geographic basin of sorts bounded by the Wintersburg Channel to the south, the Bolsa Chica Mesa to the west, and gently rising terrain to the north and east. The area is a geographic sump where excess surface run-off must be pumped into the Wintersburg Channel to drained into Outer Huntington Harbor. Very shallow sub-surface water presently drains across the subject Shea/Parkside tract to the south through ephemeral sub-surface channels into wetland areas known as the Bolsa Chica Pocket. These sub-surface ephemeral channels are readily recognizable on aerial photos taken from the late-'30s through the present and were designated on maps as early as the 1880s. It is also evident that this sub-surface drainage takes place throughout the annual seasons.

My educated concern is for what will happen if this sub-surface drainage gets blocked for some reason. My concern is greatly intensified by Shea Homes' plans to remove the upper 14 feet of the subject parcel, dewater the ground, replace this with compacted soil, then add another 5 to 11 feet of compacted fill on top of that. This proposed process will effectively put in a dam against not only any surface run-off from areas to the north and east but sub-surface drainage as well. This excessive land alteration plan will put my neighborhood at serious risk from accumulating ground water. <u>If one wished to create a lake where my house now stands one would build such a dam like that proposed by Shea Homes.</u>

When my husband and I purchased our home in 1987, we were aware of the near-sea level elevation of our property and the surrounding areas of approximately 150 acres. We were also aware of the potential flood hazard for which flood insurance was mandated. However, we were not aware of the potential groundwater problems of our neighborhood. Although we were fully aware of the shallow water table, we were not alerted to resulting problems till the late-spring of 2006 when groundwater began percolating through pavement cracks in Kenilworth Drive and in the backyards of neighbors on Kenilworth and Greenleaf.

We find no comfort in Shea's "promises" to take the utmost care in earthwork and dewatering processes to prevent subsidence of homes in the Kenilworth tract. Nonetheless, Shea Homes will not indemnify property owners from immediate damages caused by such processes, let alone, long term damages from damming the natural sub-surface drainage of groundwater. While we're greatly heartened by the latest CCC staff report , we remain concerned about any proposed plans that could block this natural flow.

The Shea/ Parkside development should not have been approved by the Huntington Beach City Council nor be allowed to proceed by the California Coastal Commission. There are reasons that sections of the Coastal Act are meant to prevent projects that call for massive earthwork and excessive land alterations. Such projects could create devastating consequences to neighboring areas. The Shea/Parkside project is a prime example.

Therefore, I support the staff recommendation regarding Huntington Beach LCP Amendment 1-06. The prior IP Amendment should be denied as submitted and the LUP and IP Amendments approved as modified by the staff in its June 29, 2007 report.

Sincerely,

Monica D. Ruzich Hamilton
California Homeowner

G. Victor Leipzig, Ph.D.
17461 Skyline Lane
Huntington Beach, CA 92647
(714) 848-5394 (Phone/FAX)
vicleipzig@aol.com

July 6, 2007

RECEIVED
South Coast Region
JUL 5 2007
CALIFORNIA
COASTAL COMMISSION

California Coastal Commission
Attn: Meg Vaugn
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
By fax at (562) 590-5084.

Re: Item W8.5a, Shea Property, Huntington Beach

Dear Commissioners:

I strongly support your staff's recent proposal on item W8.5a (Shea property) and encourage you to adopt it at your meeting on July 11.

The staff proposal affords protection to previously unprotected Bolsa Chica wetlands. Even in a degraded condition, these wetlands offer irreplaceable values that would be lost by urban development.

This letter supplements a previous letter to you (dated Feb 14, 2007).

Sincerely,

G. Victor Leipzig, Ph.D.

Richard K. Moore
17672 Crestmoor Lane
Huntington Beach, CA 92649

W 8.5a

July 1, 2007

California Coastal Commission
Attn: Meg Vaughn, Coastal Program Analyst
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

RECEIVED
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JUL 3 - 2007
CALIFORNIA
COASTAL COMMISSION

Dear Ms. Vaughn,

I moved to Huntington Beach in 1973. Our first home was an apartment on Warner, between Golden West and Edwards. We always hoped to buy a home closer to the ocean and have access to the beautiful coastline. In 2002 that dream came true as we moved to Crestmoor. We now take daily walks down to the berm, along the berm to the channel, and along the channel to the overlooks. It has been astonishing to see the wetlands restore themselves, as the area was cleared and access to the ocean returned.

I support your staff recommendation regarding Huntington Beach LCP Amendment 1-06. The IP Amendment should be denied as submitted, and the LUP and IP Amendments be approved as modified by staff in their June 29, 2007 report.

Concerning the option of RL vs. RM zoning, I support the RL zoning as being *the most compatible* with the adjacent Kenilworth tract, especially considering all of the over-excavation, dewatering, and elevation pads that will be necessary to support development on the site.

I, and the residents I speak to, are so grateful for the research your staff has done to get to the history and truth of these marvelous lands. We look forward to a fully restored Bolsa Chica wetland reserve.

Sincerely,

Richard K. Moore

W 8.5a

Marinka Horack
21742 Fairlane Circle
Huntington Beach, CA 92646

RECEIVED
South Coast Region
JUL 6 2007
CALIFORNIA
COASTAL COMMISSION

July 3, 2007

California Coastal Commission
Attn: Meg Vaughn
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

RE: Huntington Beach LCP Amendment 1-06. Shea/Parkside

Dear Coastal Commissioners:

I strongly support the staff recommendation regarding the Huntington Beach LCP Amendment 1-06. The IP Amendment should be denied as submitted, and the LUP and IP Amendments be approved as modified by the staff in their June 29, 2007 report.

Congratulations to the Coastal Commission staff on its diligent work and determination to protect the few wetlands that remain in our highly over-developed region.

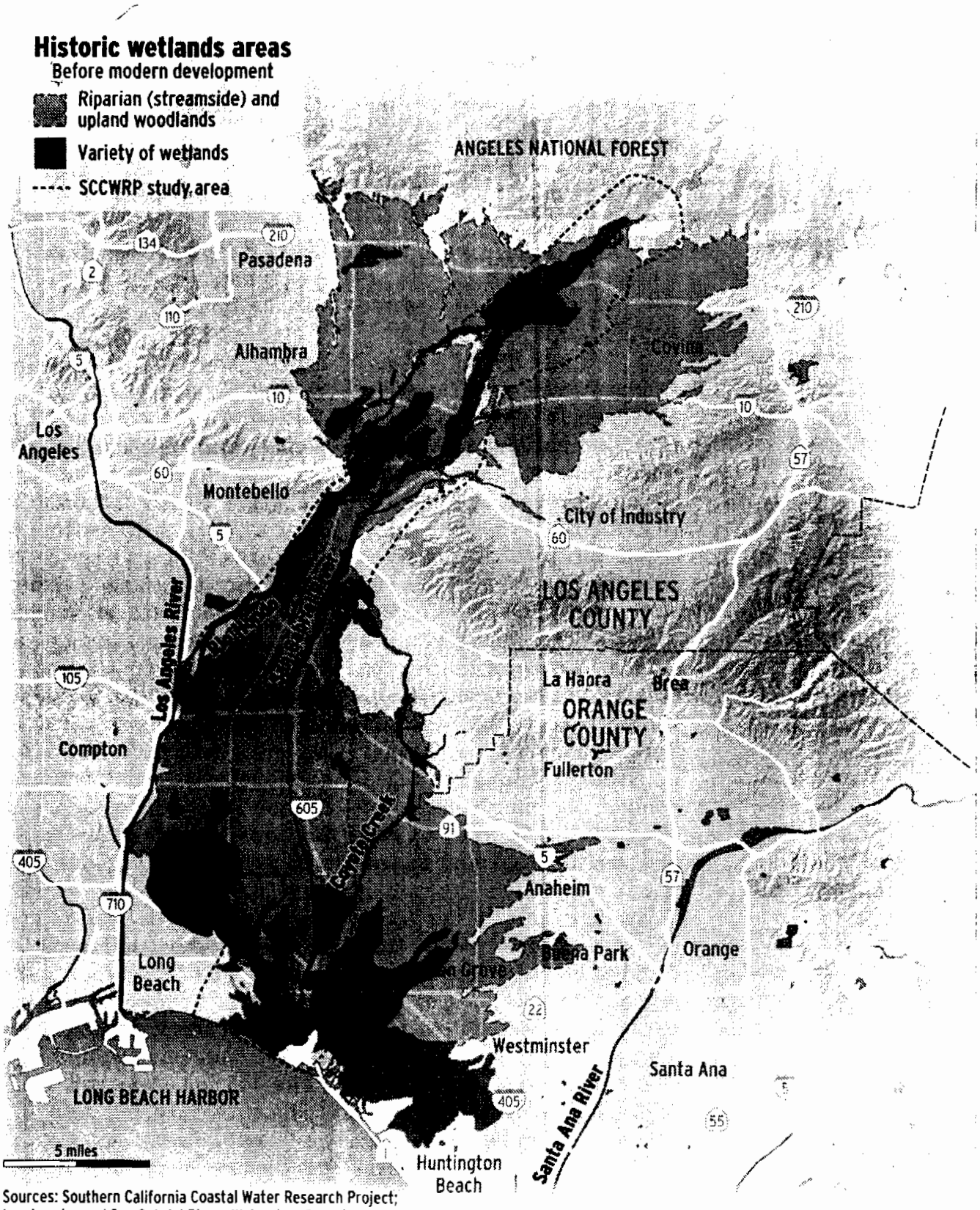
A Southern California Coastal Water Research Project study, led by Dr Eric Stein, has shown that, historically, vast areas of the Los Angeles/Orange County Basin were wetlands. Enclosed with this letter is an Orange County Register article, published on July 2, 2007, about the SCCWRP study of historic wetlands of the Los Angeles/Orange County Basin. The article is of interest in the Shea - Parkside case because that area was part of those vast wetlands. Also enclosed here are copies of the wetlands map made by the Southern California Coastal Water Research Project.

So many of our Southern California wetlands have been destroyed and paved over, that it is even more crucial and urgent that we save and restore what little Is left. In 2007, California is suffering from over-development, and lacks enough natural open space. Please follow the staff recommendations. Please save the Upper Bolsa Chica Wetlands.

Sincerely,

Marinka Horack

Marinka Horack



Sources: Southern California Coastal Water Research Project; Los Angeles and San Gabriel Rivers Watershed Council

The Register

HNB-MAJ-1-06

HNB-MAJ-1-06

Focus | IN DEPTH

Vanished world

San Gabriel River's wild, wetter youth.

By PAT BRENNAN
THE ORANGE COUNTY REGISTER

Roses, grapes and blackberries by the handful. Thick forests, wet meadows, intricately braided streams. And, come flood season, the whole coastal plain drowned in one vast, continuous sheet of water.

Welcome to Los Angeles.

Two centuries ago, the Los Angeles basin, Orange County included, was a far wetter place. The San Gabriel River, now confined to rigid channels, raged unpredictably across the landscape, and ponds and marshes sometimes made the country impassable.

Such is the picture painted by a group of scientists and historians who recently patched together maps as old as 170 years with written records and other clues to try to get a bird's-eye view of the San Gabriel River in its youth.

The group, led by biologist Eric Stein of the Southern California Coastal Water Research Project in Costa Mesa, is helping to pioneer a new field called "historical ecology."

"It's been kind of a collaboration between historians and scientists," Stein said. "We're interested in how the plant composition's changed, what types of plants we should use for restoration, what kinds of species were lost."

To do it, they reached all the way back to the sketchy maps of the Spanish land grant period in the 1830s. They pored over surveyor's maps from the land-crazed late 19th century. They looked at 90-year-old soil maps and 1920s aerial photos, and read obscure oral histories from old-timers collected back when Charlie Chaplin was the big box-office draw.

All of it was matched with geographic information system maps and other modern data sources, Stein said, and checked and cross-checked until the fuzzy picture of the river's wilder days began to grow sharp.

"The biggest surprise for me is that the system was a lot wetter," Stein said. "The common perception of L.A. as a desert is really a misconception."

Human alteration of the landscape and regional climate change have combined to create the semi-arid environment we live in now, he said.

"After traveling an hour through the valley, we came to an arroyo of water which flows among many green marshes, their banks covered with willows and grapes, blackberries and innumerable Castilian rose bushes loaded with roses."

FRIAR JUAN CRESPI
PACIFIC COAST EXPLORER, 1769

Another important discovery was that the San Gabriel River often wasn't much of a river at all – instead, it was a tributary that flowed into the Los Angeles River.

But during heavy floods, the San Gabriel could break out and flow to the ocean on its own, creating a network of marshes and stream channels at Alamitos Bay.

The verdant wetlands and forests impressed early Spanish explorers as remarkably similar to their homeland, though there was one big difference from many moist habitats: boom and bust cycles that could turn the basin into one giant, boggy marsh one year, then leave it dry and parched the next.

At other times, as during a massive flood in 1884, the Los Angeles, San Gabriel and Santa Ana rivers merged into "one vast sheet of water" that left the area impenetrable for weeks, on foot or horseback, according to one oral history.

The floods would deposit massive drifts of wood on the coast from disrupted forests upstream, supplying locals with timber for years.

After a big flood in 1867, one man made an astonishing discovery as he worked his way down into a wood pile that had stood 30 feet high.

"He hauled wood for two years," Stein said. "There were lots of logs, as large as 5 feet in diameter. He found a dead grizzly bear in the pile of logs."

While the reconstruction of the river is fascinating in itself, the real reason for the $150,000 effort is rooted in the modern world. Restoration groups are discussing how to bring parts of the San Gabriel back to a more natural state.

"When we think about what type of wetlands to restore, this kind of study provides a really good context," Stein said.

He doesn't kid himself: That wild old river can never really be brought back. "We're not trying to recreate the past," he said. "There's been too much change. But we can use our understanding of the past to make smarter decisions."

A striking illustration of that came when the scientists b gan to compare the old w lands with the new.

Land managers and wat quality agencies are fond creating wetlands for polluti control and wild habitat. Th are springing up all ov Orange County.

But these wetlands are d ferent from the kind th stretched across the flo plains of the past.

Back in the 19th century, b fore extensive agriculture a development drained wh were then viewed as usele swamps, the most comm freshwater type by far were kali wetlands, known as *cie gas* in Spanish.

The group's findings ha begun to draw plenty of atte tion. An exhibit based in pa on their work is being compl ed at the Long Beach Aqua ium of the Pacific.

CONTACT THE WRITER:
Environment editor Pat Brenna at 714-796-7865 or pbrennan@ocregister.com.

W 8.5a

5 July 2007

RECEIVED
South Coast Region
JUL 10 2007
CALIFORNIA
COASTAL COMMISSION

California Coastal Commission
Attn: Meg Vaughn
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

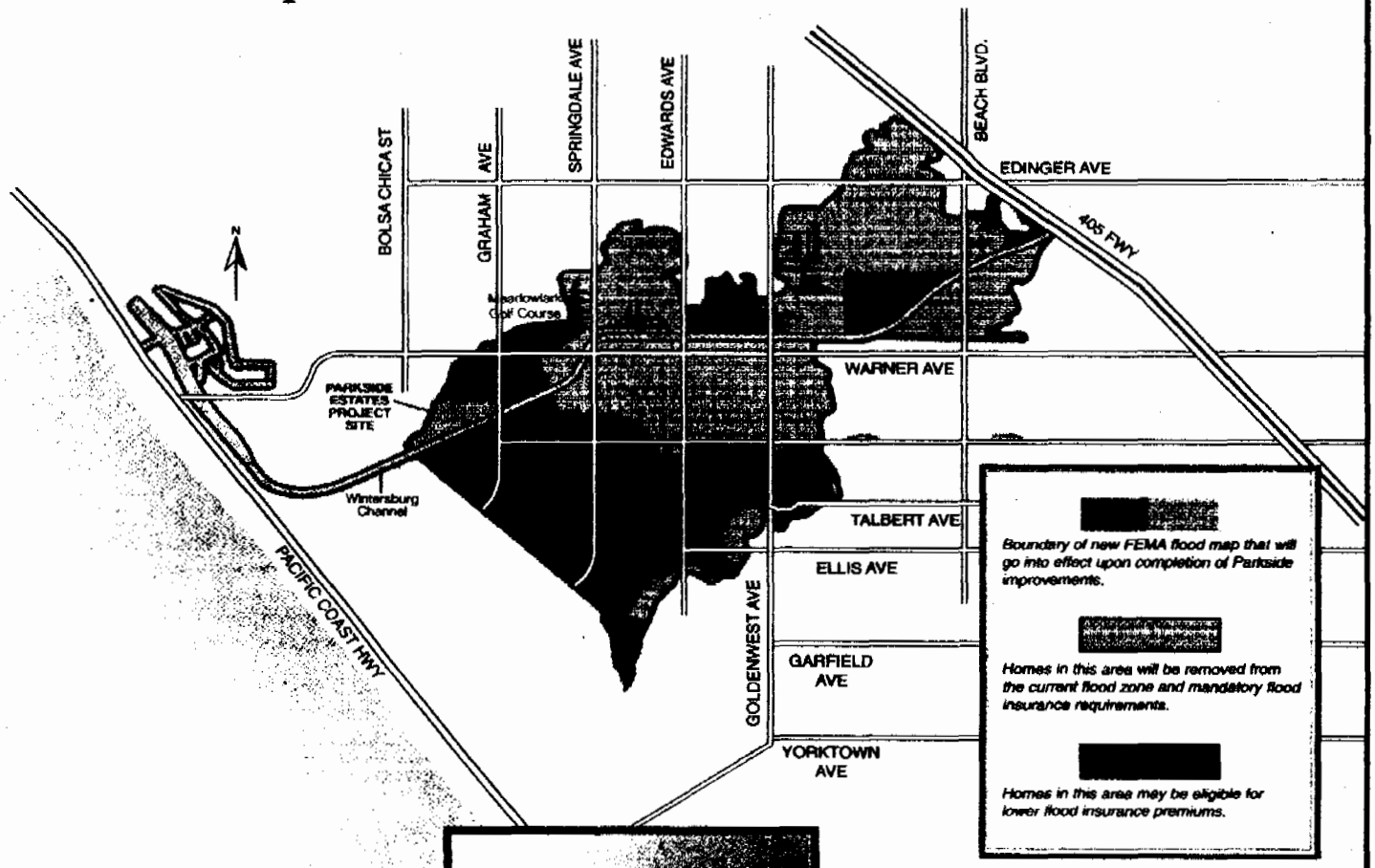
Dear Ms. Vaughn, Commissioners, and Staff:

Well, well, well... It seems Shea Homes is getting desperate. First a full page ad slamming the Bolsa Chica Land Trust's efforts to stop Parkside Estates appears in the HB Independent and HB Wave, then the intelligence of area residents is insulted by a mass mailing of pro-Parkside propaganda rubbish two days later. And then the people of HB were once again subjected to the same misleading advertising spin job in the June 28 editions of the aforementioned publications. The reason for Shea's full-out assault on Parkside opponents is clear – Shea is trying to build a housing tract on wetlands, has been documented multiple times committing violations of the Coastal Act, and doesn't want the public or the Coastal Commission to know about it. The accusations against the Land Trust and Parkside opponents are, to use Shea's own words, "ludicrous," and are nothing more than diversionary tactics and a cheap smear campaign designed to mislead people into giving support for a housing development which simply does not conform to State Law.

Shea has made numerous claims regarding the benefits of the flood control protections Parkside Estates will bring, yet there have consistently been some glaring omissions in Shea's widespread advertising campaign. According to numerous advertisements from Shea, Parkside "... will free about 7,000 homes and businesses from mandatory flood insurance." Yet what Shea fails to include in those advertisements is the fact that the 7,000 buildings estimate is based upon computer modeling – in other words, a software program. Any software is only as good as the designer who created the the program and more importantly, the person who enters the data for computation. If any of the data Shea entered into that program were incomplete or erroneous in any way, the projected flood zone reduction model would be flawed and therefore rendered invalid. Prior to restoration of the Bolsa Pocket, USFWS used a computer model to indicate the volume of water which would be present after construction of the tidal culvert was completed. Needless to say, the quantity of water in the Pocket is not what FWS expected.

In addition to omitting information about how the projected flood zone reduction was obtained, Shea is making false claims to thousands of residents in stating that Parkside will lower or remove FEMA flood insurance. In an interview with OC Voice Editor John Earl, Orange County Flood Control Division Manger Nadeem Majaj states that FEMA certification of the channel levees can only be obtained once the OCFCD completes repairs to the north and south berms between Warner Ave. and the Bolsa Chica Outer Bay – a project that won't be completed for years. Majaj also states that Shea's PR firm is sensationalizing the situation by making comparisons to the New Orleans levee failures during Hurricane Katrina. By omitting the requirement of channel repairs upstream and downstream of the Parkside project from their advertisements, Shea is deliberately misleading thousands of people into believing that Parkside alone will take those 7,000 homes and business out of mandatory flood zones.

Look who won't have to pay mandatory flood insurance – if only the Bolsa Chica Land Trust would put your safety and pocket book ahead of their interests.



Huntington Beach levees are in bad shape, like New Orleans' were before Katrina. Rebuilding the levees to bring greater flood safety could begin soon – but the Bolsa Chica Land Trust is standing in the way.

Deteriorated Levee

Shea Homes is ready to spend $15 million for regional flood protection improvements that will free about 7,000 homes and businesses from mandatory flood insurance. Thousands more will be eligible for lower flood insurance premiums because they would be at lower flood risk.

To learn more about the sustainable Parkside Estates Plan and about how you can help support its timely approval this summer, please visit our Web site or call for more information: 949/599-1212, ext. 202.

PARKSIDE ESTATES

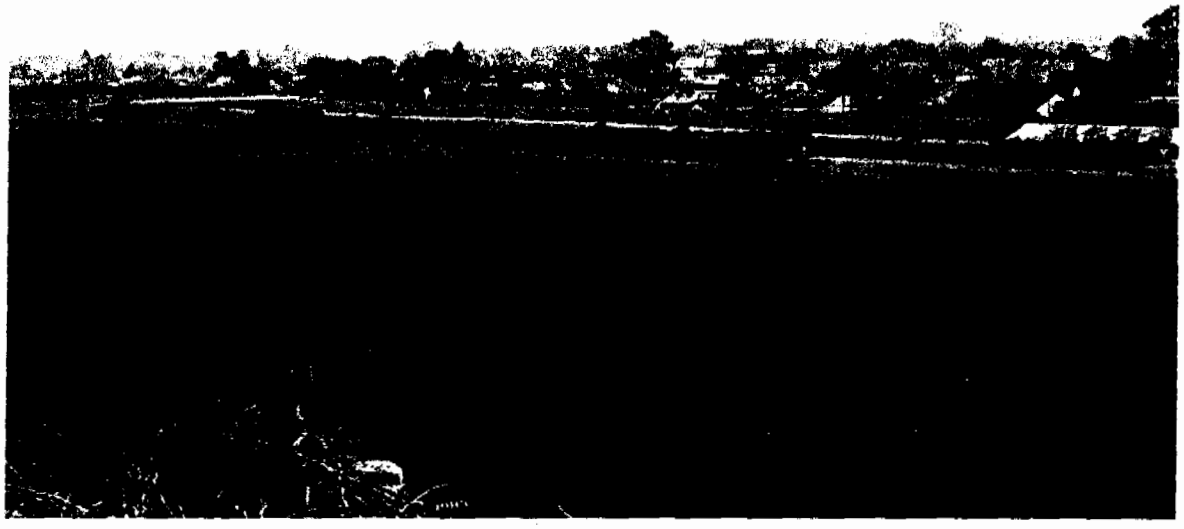
www.SheaParkside.com

Preserved wetlands. Necessary new flood protection. Beautiful new homes.

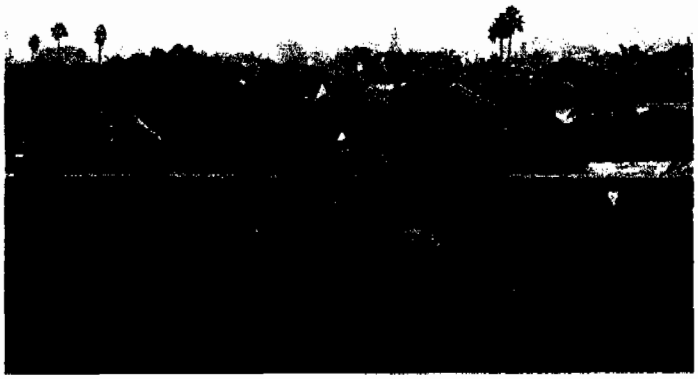
HNB-MAJ-1-06

Shea is also making outrageous, false, and borderline libelous accusations that the Bolsa Chica Land Trust doesn't care about the residents who live near the channel and who would be flooded if the north berm should breach. The Land Trust and Parkside opponents who live in the immediate area of the project site are well aware of the dilapidated and dangerous condition of the flood control channel, more so than most people and certainly more than those who live in neighborhoods that will not suffer the permanent adverse effects that Parkside Estates will bring should the project be built. Despite being in imminent danger of flooding should the channel breach with the upcoming winter storms, area residents remain staunchly opposed to Parkside. Residents know full well that the channel can be repaired without Parkside being constructed; fixing the channel berm is not contingent upon the construction of a housing tract. Residents are well aware that building a housing tract with only one entrance (Graham) will substantially increase the traffic volume on Graham, Slater, and Warner – streets which are already clogged with vehicles, especially during the morning and evening rush hours. Residents do not want their homes damaged by the dewatering activities Shea will conduct in order to prepare the site for construction. Residents do not want to be subjected to four long years of major construction activity adjacent to their back yards. And residents simply do not want to live in the shadow of 170, 35' tall, 2-story homes constructed on top of 5-11' of fill dirt – houses which will be permanently and obtrusively towering over adjacent neighborhoods like so many castles on a hill looking down on the peasants below.

Shea's false accusations against Parkside opponents' motivations would be laughable were it not for the seriousness of the claims. The Land Trust's only interests in stopping the Parkside project are in seeing that the regulations set forth by the California Coastal Act are upheld and that violators of those laws are held accountable. Wetlands exist on the Shea property. Wetlands have existed there in the past and wetlands are present there now, despite Shea's repeated attempts to destroy them. True, Shea does have permits to farm the property, and farm they do. Quite intensively, in fact. However, it must be pointed out that bulldozers are not farming equipment, yet Shea has been documented using bulldozers to shove large amounts of dirt around in an effort to fill wetlands – a direct violation of the Coastal Act, Public Resources Code Section 30233. And attaching a "big box scraper" to the back of a tractor and dragging four inches of dirt into an active wetland parcel in the field over the course of three days can hardly be called farming related activity, especially when no other part of the field received such treatment during that time. Big box scrapers are by definition earth moving equipment and are designed to move dirt from one place to another – in other words, grading. A lot of questionable things can be done under the guise of farming, but grading and wetland filling most certainly are not included.



Aerial view of the WP portion of the field which was "farmed" with the box scraper in December 2005.



Using the big box scraper to fill the WP in December 2005; note the wheels-up position which allows the scraper to fully rest on the ground.

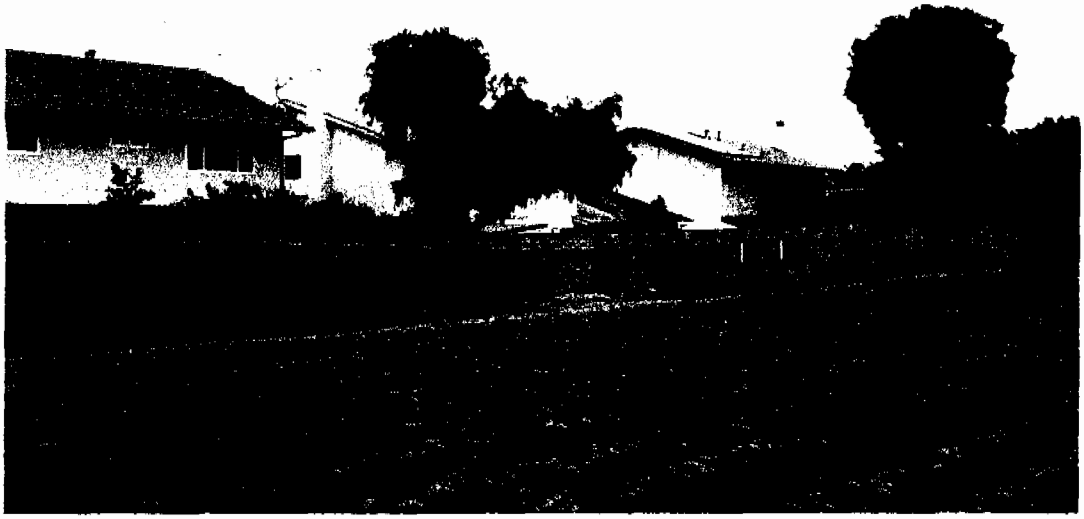
In regards to Shea's proposed Vegetated Flood Protection Feature (VFPF), the Coastal Act clearly prohibits construction of such items for the protection of new structures. Because of the potential for flooding from the Bolsa Pocket and/or a breach in the north channel levee downstream of the Parkside site, a VFPF is indeed necessary to protect existing residences in the area surrounding the Shea property. However, in a January 25, 2007, Geotechnical Review Memorandum written by CCC Staff Geologist Mark Johnsson discussing the VFPF proposed by Shea Homes, Mr. Johnsson writes:

"In summary, I concur with the applicant and his hydrologic consultants that some combination of reinforcement of the EGGWFCC levee and an additional levee/floodwall between the northern levee of the EGGWFCC and he river bluff to the northwest is a necessary component of flood control protection to assure that the Parkside Estates site will be free of flood hazards in a 100-year flood event. A byproduct of these improvements will be protection of some 800 homes currently at risk."

According to Mr. Johnsson's conclusion, Shea's proposed VFPF must be built in order to protect Parkside Estates – a new construction – from a flooding event, and the surrounding residences will essentially receive piggy-backed protection as a "byproduct" of the sea wall necessary for the new housing tract. If this is indeed the case, then the VFPF proposed by Shea Homes is a clear violation of the Coastal Act. Unquestionably a flood protection wall of some sort needs to be constructed to protect existing homes from potential flooding of the Bolsa Pocket or north levee breach in the Pocket vicinity, however it is not necessary to build Parkside Estates to accomplish this. A leaky spigot is best plugged at the source, not three or four junctions down the pipeline. The leaky spigot in this case is the Bolsa Pocket; construction of a VFPF or other suitable flood protection feature at the easternmost end of the Pocket (i.e. the "oil field road") would not only protect area residences from potential flooding, but also the State eucalyptus ESHA and Hearthside ESHA to the immediate east. Since the USFWS was responsible for the Bolsa Pocket restoration (and subsequent tidal lake), flood prevention measures should also be the responsibility of the USFWS.

As for Ron Metzler's repeated assertions that the water in the Bolsa Pocket is seven feet higher in elevation than area homes – baloney. The Bolsa Pocket is muted tidal and is thus mean sea level. The Shea property ranges from -.5' MSL to +2' MSL; since the homes in the Kenilworth tract immediately to the north of the Parkside site are only 1-2' below that of the Shea parcel, it is impossible for the Kenilworth neighborhood to be seven feet below the elevation of the Bolsa Pocket, and even Shea's own topographic maps indicate as much. Such fallacious claims only serve to spread misinformation and are nothing short of sensationalistic scare tactics designed to mislead uninformed people into supporting Parkside Estates. Shea Homes and it's PR firm need to enjoined from making such outlandish claims; to continue to do so is tantamount to yelling "FIRE!" in a crowed theater.

It has been mentioned many times before that Shea has a habit of overlooking, ignoring, and dismissing various issues regarding the Parkside site: Wandering Skippers, California Gnatcatchers, Southern Tarplant, nesting raptors, etc. It is therefore not surprising given Shea's historical pattern of minimization that the very serious issue of subsidence due to site dewatering should be so thoroughly ignored. Granted, Shea does plan to have an observer on site during the dewatering process, however having a crew standing around and watching the dewatering procedure will do nothing to prevent subsidence of neighboring homes five, ten, or twenty years down the road. Residences adjacent to the field have been experiencing subsidence for decades and in some cases major home damage has occurred. Houses have separated from the foundations, doors and windows no longer close properly, back yards have sunk, concrete patios have split and lowered, and wells have popped up during swimming pool excavations. The Kenilworth neighborhood is an extension of the Shea property and was constructed in the early 1960's, prior to the passage of the Coastal Act; the neighborhood was built on top of existing wetland soils and very little remediation or dewatering activity took place. Since subsidence has already occurred in the Kenilworth tract and indeed continues to occur, the dewatering activity Shea plans to conduct poses a very real concern for neighborhood residents, in particular those whose homes abut the Shea field. During a Shea-sponsored public meeting several years ago, one Kenilworth resident expressed concerns about the large number of trucks transporting fill dirt to the project site and commented that subsidence was an ongoing problem. Shea's response was that evaluating the causes of past distress to existing properties was beyond the purview of the Parkside Estates project; in other words, despite very obvious evidence of subsidence occurring to area residents, Shea wasn't interested in what effects Parkside construction would have on existing homes.



Subsidence of the Kenilworth back wall in the vicinity of the tidal slough which cuts across the Shea field and continues underneath the tract to the north. Dark line near the top of the fence are the cap blocks of the original fence line.

Subsidence is evident in the sunken fence; blocks are 6" high. Fence has sunk by at least 12" since the Kenilworth tract was constructed. Shea's dewatering of the site will only serve to exacerbate the situation and cause more damage to area homes.

It would seem that the only thing Shea is concerned about is pushing the Parkside Estates development through at any cost, and it has become evident over the past decade that Shea will let nothing – rare species, wetlands, subsidence of neighboring homes, or even the Coastal Act – stand in the company's way. Shea Homes has in fact been sued by the Coastal Law Enforcement Action Network (CLEAN) for committing multiple instances of unpermitted grading, trenching, and wetland filling which have been documented over the past decade. Obviously this is something that Shea Homes would rather not have publicized, however tort actions are a matter of public record, as are Coastal Commission hearings. The lawsuit recently heard in Orange County Superior Court will no doubt be touted as a victory by Shea's lawyers, yet that is far from the truth. Shea sought and vigorously fought to have the suit dismissed entirely, however the presiding judge refused to throw the case out and instead scheduled a new hearing for December 2007 in order to give the Coastal Commission time to deal with the multiple violations first. Hardly a victory for Shea Homes or Shea's attorneys. As for Shea's childish whining that the recent Coastal Commission hearing in San Pedro was "unfair" due to opponents having more time to speak – hogwash. Opponents were given the same amount of time to present their case as Shea Homes; that Parkside opponents made better use of the public comments period and presented substantial evidence of Shea's Coastal Act violations simply means that Shea was out-classed by a grass-roots organization dedicated to upholding state law and by residents striving to preserve their quality of life. It should be noted that the only speakers to address the Commission on behalf of Parkside Estates were a few real estate agents who were no doubt seeking to increase their potential client base and employees of Shea's public relations firm who failed to identify themselves as being on the company payroll. Shea's whining about the hearing being unfair and use of devious tactics does not reflect well upon the company or its hired public relations firm.

Shea has made repeated claims that Parkside Estates will preserve and restore wetlands on the property, however Shea has a history of conveniently neglecting to mention that the company has been steadfastly denying the existence of those very same wetlands and has only recently (and reluctantly) declined to continue contesting the existence of one of the wetland parcels on the site. Shea is still hotly contesting the presence of other wetland areas and will undoubtedly continue to do so until the bitter end. A ten year history of unpermitted fills, denials, and misleading propaganda campaigns hardly makes for a cooperative effort. And Shea has yet to explain how building houses on wetlands will preserve and restore those wetlands, or how converting documented raptor nesting habitat into an active-use public park will enhance and protect those very same nesting grounds from degradation, disruption, and intrusion from human activity and domestic pets.

It is truly a shame that Shea's misleading PR campaign will undoubtedly be successful in recruiting uninformed members of the public to the pro-Parkside camp. Based upon the amount of super-slick advertising and shameless opponent bashing being done, Shea Homes is evidently running scared, especially if one considers the royal pasting the company received at the latest Coastal Commission hearing. It is also a shame that so many trees have died to create the paper used in promoting such an environmentally destructive housing project. Too bad there isn't a way to hold Shea Homes accountable for that, too.

Dena Hawes
Huntington Beach

W 8.5a

Ms. Vaughn,

I support the staff recommendation regarding Huntington Beach LCP Amendment 1-06. The IP Amendment should be denied as submitted, and the LUP and IP Amendments be approved as modified by staff in its June 29, 2007 report.

Concerning the option of RL vs. RM zoning, I support the RL zoning as being the most compatible with the adjacent Kenilworth tract, especially considering all of the over-excavation, dewatering, and elevation pads that would be necessary to support any development on the site.

While I agree with the staff's recommendation, I'm still very concerned about the threat of flooding on Kenilworth Drive and the surrounding neighborhood from rainfall runoff. If the open land is replaced by the elevated Parkside development, where will the rainfall runoff go?

Thank you for your consideration.

Sherlene Cutler

Sherlene Cutler
10394 La Sombra Ave
Fountain Valley CA
92708

[8 copies received]

W 8.5a

California Coastal Commission
Attn: Meg Vaughn
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

RECEIVED

Dear Ms. Vaughn,

I firmly believe there should never be any houses built on the Shea field. The property was a wetland before it was farmed and remains a wetland to this day. Shea has deliberately filled in the wetlands on the property in order to build, and that's just plain WRONG. Shea can't be allowed to destroy wetlands and then claim those wetlands were never there. The Coastal Act prohibits building on wetlands. The Coastal Act prohibits filling of wetlands. Shea has already filled and wants to build. The Coastal Commission needs to see Shea's actions for what they really are: blatant violations of California law. Shea needs to be ordered to remove the fills and restore the property to its natural state. For these reasons **I urge the Commission to deny the IP as submitted and approve the IP and LUP as modified by staff.** Parkside Estates is bad for the surrounding neighborhoods, bad for the residents who live in the area, and it is bad for the environment. Any construction on the field needs to be limited to LOW DENSITY ONLY. **DO NOT LET SHEA PROFIT FROM THEIR ILLEGAL ACTIONS!**

Sincerely, Date: 7/3/07

Rosalind Connors

[3 copies received]

Exhibit VVV

Letters in Support of LCPA as Proposed

Received After July 2, 2007

Humboldt County Farm Bureau

5601 So. Broadway, Eureka, CA 95503
Serving Agriculture Since 1913

June 29, 2007

Ms. Meg Vaughn
California Coastal Commission
South Coast Region
200 Oceangate, Suite 1000
Long Beach, Ca 90802-4302

RE: Huntington Beach/Shea Homes LCPA

Dear Ms. Vaughn:

The Humboldt County Farm Bureau represents over 600 farm families and related businesses, including many who have farmed within the Coastal Zone for years. On behalf of our members, I am writing to express our deep concern regarding the proposed designation of areas within the farm field on the Shea Parkside site as wetlands, and the violation that was filed after Shea Homes and its contract farmer placed approximately three to six inches of soil in one such area as part of routine farming activities.

We are also concerned that the violation was issued even though the incident occurred before a draft wetland determination was issued – a determination that the Commission has yet to rule on. This appears to be an egregious regulatory overreach.

We request that the Commission reject the staff's wetland determination as an unfounded, dangerous, and inappropriate new precedent. We also request that the Commission direct its enforcement staff to withdraw the violation notice in question.

Sincerely,

Jim Regli
President

CC: Patrick Kruer, Chairman
Bonnie Neely, North Coast Region Commissioner
Sharon Wright, North Coast Region Alternate
Peter Douglas, Executive Director

Phone (707) 443-4844 • Fax (707) 443-0926 • email: humboldtfb@sbcglobal.net

Los Angeles County Farm Bureau
41228 12th Street West, Suite A • Palmdale, CA 93551
Telephone 661.274.9709 • Fax 661.274.0637
www.lacfb.org

RECEIVED
South Coast Region
JUN 2007
CALIFORNIA
COASTAL COMMISSION

June 29, 2007

Mr. Patrick Kruer, Chairman
Mr. Peter Douglas, Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

RE: Violation Notice V-5-06-003, Orange County

Dear Sirs:

I am writing on behalf of the Los Angeles County Farm Bureau, which represents over 5,400 members, to express our concern about issues related to the violation notice cited above.

In the violation notice, the Commission's staff described the process of "grading and placement of fill material in a wetland," what our farmers consider to be a routine and permitted agricultural practice. The citation is troubling to agricultural interests in the Los Angeles County coastal zone because it declares routine field preparation to be "grading."

The Los Angeles County Farm Bureau is very concerned that your staff is attempting to issue a violation against normal farming activities. The commission's staff is basing their notion on the contention that a wetland "might" someday be formed upon a current piece of agricultural land, and are also trying to redefine routine farming operations as "grading." The violation notice states:

> Specifically, the unpermitted development involved the use of a device designed to move soil from elevated areas into depressions, i.e. a box blade scraper ... to move soil from a berm and raised fill pad along the Wintersburg Channel to adjacent wetlands located on subject property.

It is important to note that the implement used, a box plow (not a "box blade scraper"), is a commonly used tool in field preparation. It is used, as the violation notice accurately states, to move soil from elevated areas into depressions. This is, and always has been, the nature of field preparation: Farmers use equipment to level a site because raised areas shed water too quickly and do not produce well, and depressions hold water too long and also do not produce well. We understand that only about four to six inches of soil was moved through this operation, an amount considerably less than the amount of soil that is routinely moved to create furrows, which are typically about nine or ten inches deep.

Should these routine farming operations now be deemed "unpermitted development," it will jeopardize family farming operations in the Coastal Zone. If farmers can be cited for routine and legal operations because the area they are farming *could* become a wetland if it is not farmed, the Commission in effect will have declared farming in the Coastal Zone to be illegal. This is an unacceptable result, and we urge you to reconsider any and all violations against standard agricultural practices.

The Los Angeles County Farm Bureau asks the Commission to consider our comments and rescind the violation.

Sincerely,

Terry Munz
President

cc: Commissioners, California Coastal Commission
Alternates, California Coastal Commission
Ms. Meg Vaughn, California Coastal Commission
John Hewitt, California Farm Bureau

Santa Barbara County Farm Bureau

Affiliated with the California Farm Bureau Federation and the American Farm Bureau Federation

RECEIVED

June 4, 2007

Ms. Meg Vaughn
California Coastal Commission
South Coast Region
200 Oceangate, Suite 1000
Long Beach CA 90802-4302

RE: Huntington Beach/Shea Homes LCPA

Dear Ms. Vaughn:

The Santa Barbara County Farm Bureau represents over 800 California farm families and related businesses, including many who have farmed within the Coastal Zone for many years. On behalf of our members, I am writing to express our deep concern regarding the proposed designation of areas within the farm field on the Shea Parkside site as wetlands, and the violation that was filed after Shea Homes and its contract farmer placed approximately three to six inches of soil in one such area as part of routine farming activities.

The staff report on the Huntington Beach LCPA states on page 28 of Exhibit K that it is "reasonable to expect" that low areas on the site "could" develop a preponderance of wetland indicator species "in the absence of farming" "over a period of decades." This constitutes an entirely new and extremely unreasonable definition of what constitutes a wetland. The Coastal Commission is expected to make its determinations based on the characteristics of the site now, not what it could be decades hence if farming is stopped.

We are also concerned that the violation was issued even though the incident occurred before a draft wetland determination was issued – a determination that the Commission has yet to rule on. This appears to be an egregious regulatory overreach.

We request that the Commission reject the staff's wetland determination as an unfounded, dangerous and inappropriate new precedent. We also request that the Commission direct its enforcement staff to withdraw the violation notice in question.

HNB-MAJ-1-06 [illegible] Way • P.O. Box 1846 • Buellton, California 93427 • Telephone (805) 688-7479 • FAX (805) 688-0428

Finally, it is our belief that the Coastal Commission staff is not sufficiently versed in farming practices to understand the nature of site preparation, leveling and use of normal farming equipment. For example, under routing plowing and field preparation practices, the movement of three to six inches of soil anywhere on a farm field is insignificant, and is certainly not "fill." We would be pleased to help arrange for a Farm Bureau presentation to the Commission and staff regarding normal farming practices at your convenience.

Sincerely,

Thomas N. Gibbons
President

CC: Patrick Kruer, Chairman
Khatchik Achadjian South Coast Region Commissioner
Brooks Firestone South Coast Region Alternate
Peter Douglas, Executive Director

Meg Vaughn

From: Thomas Green [thomas@aescotechnologies.com]
Sent: Thursday, July 12, 2007 3:23 PM
To: Meg Vaughn
Subject: Huntington Beach Parkside LCPA: Approval requested with NO DELAY

Dear Ms. Vaughn,

I am writing to urge the Coastal Commission's approval of Local Coastal Program Amendment 01-06, as proposed by the City of Huntington Beach and Shea Homes.

The proposal has many merits, but I particularly like its parks and the greater public access to coastal areas it provides. The new bike and hiking trails and vista points overlooking the restored Bolsa Chica wetlands and nearby Environmentally Sensitive Habitat Areas will be a great asset for the public. These benefits are unnecessarily threatened by ongoing bureaucratic delays and unwarranted opposition to the plan.

I also appreciate that Parkside Estates will protect wetlands and the eucalyptus trees, and treat urban runoff through a new freshwater wetland. The flood control benefits it brings will also be a benefit to thousands of Huntington Beach residents and businesses.

This is a plan that deserves a speedy approval from the Coastal Commission in July.

Sincerely,

Thomas Green
Huntington Beach

[4 copies received]

Meg Vaughn

From: Kris Weber [kweber@hunsaker.com]
Sent: Thursday, October 18, 2007 3:17 PM
To: Meg Vaughn
Cc: Gil Coerper
Subject: LCPA 1-06 Huntington Beach/Parkside Estates

Dear Ms. Vaughn,

I am very concerned that the Coastal Commission staff's recommendation last July for Parkside Estates (LCPA 1-06) will result in Huntington Beach not receiving the flood protection it needs.

For Shea to generate the funds needed to build the millions of dollars in flood control improvements they have committed to, they would have no choice but to build high-density homes of three stories or more on the small 17-acre site Coastal staff recommends. We oppose such a plan, as it would be incompatible with our long-established community character and with Huntington Beach's zoning and general plan. More importantly, a high density project will have significant negative impact on coastal resources and would limit on-street parking for public access.

A more balanced plan can both protect and expand wetland resources, and provide the flood control improvements necessary for a new FEMA flood map for the area. I urge rejection of the July staff recommendation and approval of the applicant's and City's proposal.

Sincerely,

Kris Weber
Irvine

[19 copies received]

Meg Vaughn

From: Ray Raines [rayraines@hotmail.com]
Sent: Tuesday, July 17, 2007 5:29 PM
To: Meg Vaughn
Subject: Huntington Beach Parkside LCPA: Approval requested with NO DELAY

Dear Ms. Vaughn,

I have reviewed materials relative to Shea Homes Parkside Estates and strongly support the plan and encourage the Coastal Commission's approval of Local Coastal Program Amendment 01-06 on July 10th.

There is a great shortage of new homes in the coastal areas of Orange County, and this site - as an infill property surrounded almost entirely by existing development - is an ideal place to build new homes. I would like to live in an ocean-close community that has an environmentally sensitive plan, and Parkside Estates is just that - it protects wetlands and habitat areas, will use a new natural treatment system (wetland) to treat runoff, and reduce flood risks for thousands of people.

These public benefits shouldn't be delayed any longer. I encourage the Commission to approve the amendment and permit when the matter comes before them this fall.

Sincerely,

Ray Raines
Huntington Beach

[3 copies received]

HNB-MAJ-1-06

Meg Vaughn

From: Ronald Roth [rwroth6@aol.com]
Sent: Wednesday, July 18, 2007 2:42 PM
To: Meg Vaughn
Subject: Huntington Beach Parkside LCPA: Approval requested with NO DELAY

Dear Ms. Vaughn,

I am familiar with the Shea Homes Parkside Estates project and strongly encourage the Coastal Commission's approval of Local Coastal Program Amendment 01-06, as proposed by the City of Huntington Beach and Shea Homes. Further delays put our homes at risk, exposing us to an additional rainy season without the critical flood safety improvements offered by Shea's plan.

The Commission's approval of Parkside Estates could make it possible for Shea to complete its tidal flooding protection by the 2007-2008 rainy season, and the other flood protection features by the 2008-2009 season, but further Coastal Commission delays will jeopardize both of these dates.

Shea Homes' commitment to spend $15 million on new storm drains, pumps and levee improvements will only become a reality upon your approval. Once completed, these improvements will reduce flood risk and flood insurance costs for approximately 7,000 Huntington Beach home and business owners.

Please approve the amendment and permit for a reasonable and VIABLE Parkside plan when the matter comes before you.

Sincerely,

Ronald Roth
Huntington Beach

[6 copies received]

HNB-MAJ-1-06

Meg Vaughn

From: Peter Grant [pgrant@socal.rr.com]
Sent: Tuesday, July 17, 2007 9:14 PM
To: Meg Vaughn
Subject: Huntington Beach Parkside LCPA: Approval requested with NO DELAY

Dear Ms. Vaughn,

I strongly encourage Coastal Commission approval of the Shea Parkside Local Coastal Program Amendment 01-06 proposed by the City of Huntington Beach and Shea Homes.

Shea Homes has shown itself to be a very responsible landowner that has bent over backward to comply with all the regulatory requirements - yet its plan and the millions of dollars of developer-funded improvements it will bring have been delayed for years. It is obvious that a small group of non-scientist, anti-growth activists have done everything they can to delay the project, but the time has come for the Commission to hear the case and approve the project.

These public benefits shouldn't be delayed any longer, and Shea Homes' property rights should be honored. I am therefore requesting an affirmative action by the Coastal Commission.

Sincerely,

Peter Grant
Huntington Beach

Exhibit WWW

Ex Parte Communications

Received After July 12, 2007

Teresa Henry

From: Vanessa Miller
Sent: Monday, July 16, 2007 12:20 PM
To: Sherilyn Sarb; Teresa Henry
Cc: Jeff Staben
Subject: FW: Commissioner Clark Ex Parte
Importance: High

-----Original Message-----
From: Larry Clark [mailto:forelc@cox.net]
Sent: Monday, July 09, 2007 6:09 PM
To: Vanessa Miller
Subject: Fw: Commissioner Clark Ex Parte
Importance: High

Commissioner Clark Ex Parte:

Date: Monday 07/02/07
Location: Manhattan Beach CA
Parties: Donna Andrews (Donna Andrews & Associates), Ron Metzler (Shea Homes)
Subject: Huntington Beach LCP Amendment/Parkside Estates (Weds 8.5a)

I met with Ms Andrews and Mr Metzler at their request.
Summary of Ron Metzler and Donna Andrews input to me were:

- Surprised by Staff revised report that the EPA Wetlands should be restored & the existance of additonal wetlands in the CP Area
- Shea Homes had previously records of this property and were not in agreement regarding the EPA Wetlands
- Mr Metzler felt it was unfair that at the last hearing on this matter in February they were only allowed 20 mins to 2 hrs for staff and the opposition
- Mr Metzler indicated he had met with the Executive Director since the last hearing without satisfaction
- Staff was over-stepping their authority on the open space conservation
- EPA Wetlands were being mis-characterized and was the result of the Harbor Bluff condo development's artifically created hydrology/run-off

- 1982 'depression ponding' of water does equal wetlands
- Shea Homes was not in posession of all of the Staff's new analysis and felt they and Huntington Beach needed more time to assess their reaction and position and may be asking for a postponement of this matter until Oct when the Commission is meeting in San Pedro

Larry Clark
Coastal Commissioner

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATION

RECEIVED
South Coast Region
JUL 24 2007
CALIFORNIA
COASTAL COMMISSION

Date and time of communication: (For messages sent to a Commissioner by mail or facsimile or received as a telephone or other message, date time of receipt should be indicated.)	7/16/07 – 5:08 p.m.
Location of communication: (For communications sent by mail or facsimile, or received as a telephone or other message, indicate the means of transmission.)	Eureka, CA – Via email
Person(s) initiating communication:	Marinka Horack
Person(s) receiving communication:	Bonnie Neely
Name or description of project:	Huntington Beach LCPA

Detailed substantive description of content of communication:
(If communication included written material, attach a copy of the complete test of the written material.)

Email correspondence attached.

7/17/07

Date

Signature of Commissioner

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceedings and provide the Executive Director with a copy of any written material that was part of the communication.

ıayes, Kathy

From: Neely, Bonnie
Sent: Monday, July 16, 2007 5:08 PM
To: Hayes, Kathy
Subject: FW: W8.5 - Support Staff

Exparte this letter to the commission. Thanks.

-----Original Message-----
From: Marinka Horack [mailto:horackm@hotmail.com]
Sent: Sunday, July 08, 2007 12:40 PM
To: pkruer@monarchgroup.com; kram@contentllc.com; Neely, Bonnie; kachadjian@co.slo.ca.us; mreilly@sonoma-county.org; forelc@cox.net; district5@co.monterey.ca.us; benhueso@sandiego.gov; thayerp@slc.ca.gov; brian.baird@resources.ca.gov; lwan22350 @aol.com; sblank@kandsranch.com; drburke@aol.com; mary-shallenberger@ppfa.org; drdan@cox.net; skinsey@co.marin.ca.us; gonzalez@unionyes.org; mvaughn@coastal.ca.gov; horackm@hotmail.com
Subject: W8.5 - Support Staff

RE: Agenda Item W8.5 - Huntington Beach LCPA 1-06 Parkside - Support Staff

Dear Coastal Commissioner:

Please support the staff recommendation for the Huntington Beach LCPA-1-06 Shea Parkside property, to be heard this Wednesday, July 11.

The staff correctly identifies and protects wetlands and ESHAs on this portion of the historic Bolsa Chica Wetlands. Please support the staff recommended 100 METER buffer for ESHAs, and the Natural Treatment System out of the buffers, as recommended by staff.

The Coastal Act protects our wetlands and ESHAs, and the staff report recommends just that.

Sincerely,
Marinka Horack
21742 Fairlane Circle
Huntington Beach, CA 92646

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http://imagine-windowslive.com/hotmail/?locale=en-us&ocid=TXT_TAGHM_migration_HM_mini_pcmag_0507

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATION

RECEIVED
South Coast Region
JUL 2 4 2007
CALIFORNIA COASTAL COMMISSION

Date and time of communication: (For messages sent to a Commissioner by mail or facsimile or received as a telephone or other message, date time of receipt should be indicated.)	7/16/07 – 5:24 p.m.
Location of communication: (For communications sent by mail or facsimile, or received as a telephone or other message, indicate the means of transmission.)	Eureka, CA – Via email
Person(s) initiating communication:	Eileen Murphy
Person(s) receiving communication:	Bonnie Neely
Name or description of project:	Parkside/Shea

Detailed substantive description of content of communication:
(If communication included written material, attach a copy of the complete test of the written material.)

Email correspondence attached.

7/17/07

Date

Signature of Commissioner

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceedings and provide the Executive Director with a copy of any written material that was part of the communication.

Hayes, Kathy

From: Neely, Bonnie
Sent: Monday, July 16, 2007 5:24 PM
To: Hayes, Kathy
Subject: FW: 9-3 decision yesterday on Parkside/Shea # 8a

Another exparte.

-----Original Message-----
From: Murphyeile@aol.com [mailto:Murphyeile@aol.com]
Sent: Thursday, July 12, 2007 2:39 PM
To: pkruer@monarchgroup.com; kram@contentllc.com; Neely, Bonnie; kachadjian@co.slo.ca.us; mreilly@sonoma-county.org; forelc@cox.net; district5@co.monterey.ca.us; benhueso@sandiego.gov; thayerp@slc.ca.gov; brian.baird@resources.ca.gov; LWan22350@aol.com; sblank@kandsranch.com; DrBBURKE@aol.com; mary_shallenberger@ppfa.org; drdan@cox.net; skinsey@co.marin.ca.us; gonzalez@unionyes.org; mvaughn@coastal.ca.gov
Subject: RE:9-3 decision yesterday on Parkside/Shea # 8a

Dear Commissioners:
As one of HB residents who wrote a yellow card to you asking that the hearing be heard in Oct I'd like to take a moment of your time
After we wrote the cards the City of HB wrote each of us who had written the cards a two page letter explaining how it was impossible for them to ask for a postponed. On July 3rd in the afternoon they asked you for a postponement after they had read the staff report. Yesterday the City Planning mentioned how we citizens had asked for a postponement failing to mention their reply to us. Then he asked the developer's attorney Kaufman to explain the City's stand. At least Chairman Kruer knew that wasn't a good idea. I was so sorry you didn't follow Commissioner Wan's plea and listen to your own legal advice. See you in October.
Just like to tell you this developer and City have jerked us around long enough. They are wrong and this project should be denied.
Respectfully,
Eileen Murphy
201 21st Street
HB CA 92648

Get a sneak peak of the all-new AOL.com.

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATION

RECEIVED
South Coast Region
JUL 2 4 2007
CALIFORNIA
COASTAL COMMISSION

Date and time of communication: (For messages sent to a Commissioner by mail or facsimile or received as a telephone or other message, date time of receipt should be indicated.)	7/16/07 – 5:30 p.m.
Location of communication: (For communications sent by mail or facsimile, or received as a telephone or other message, indicate the means of transmission.)	Eureka, CA – Via email
Person(s) initiating communication:	Penny Elia
Person(s) receiving communication:	Bonnie Neely
Name or description of project:	Huntington Beach LCPA

Detailed substantive description of content of communication:
(If communication included written material, attach a copy of the complete test of the written material.)

Email correspondence attached.

7/17/07

Date

Signature of Commissioner

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceedings and provide the Executive Director with a copy of any written material that was part of the communication.

Hayes, Kathy

From: Neely, Bonnie
Sent: Monday, July 16, 2007 5:30 PM
To: Hayes, Kathy
Subject: FW: Agenda Item W8.5 Huntington Beach LCPA 1-06 Parkside, Support Staff

Exparte.

-----Original Message-----
From: Penny Elia [mailto:greenp1@cox.net]
Sent: Monday, July 09, 2007 3:36 PM
To: sblank@kandsranch.com; Sara Wan; mary_shallenberger@ppfa.org; Neely, Bonnie; Meg Vaughn; Steve Kram; gonzalez@unionyes.org; forelc@cox.net; drbburke@aol.com; pkruer@monarchgroup.com; thayerp@slc.ca.gov; brian.baird@resources.ca.gov; drdan@cox.net; kachadjian@co.slo.ca.us; district5@co.monterey.ca.us; benhueso@sandiego.gov; mreilly@sonoma-county.org; skinsey@co.marin.ca.us; Karl Schwing
Subject: Agenda Item W8.5 Huntington Beach LCPA 1-06 Parkside, Support Staff

Dear Coastal Commissioners:

Please support the staff recommendation for the Huntington Beach LCPA 1-06, Shea Parkside property in Huntington Beach, to be heard this Wednesday, July 11.

The staff correctly identifies and protects the wetlands and ESHA's on this portion of the historic Bolsa Chica wetlands, while allowing for an alternative development footprint that is fair to the landowner. Please support the recommended 100-meter buffer for the ESHA's and the Natural Treatment System (NTS) out of the buffers, as recommended by staff.

It is important to follow the resource protections in the Coastal Act, and the staff recommendation does just that.

Thank you for upholding the Coastal Act.

Sincerely,

Penny Elia
Sierra Club
30632 Marilyn Drive
Laguna Beach, CA 92651
949-499-4499

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATION

RECEIVED
South Coast Region
JUL 2 4 2007
CALIFORNIA
COASTAL COMMISSION

Date and time of communication: (For messages sent to a Commissioner by mail or facsimile or received as a telephone or other message, date time of receipt should be indicated.) 7/16/07 – 5:09 p.m.

Location of communication: (For communications sent by mail or facsimile, or received as a telephone or other message, indicate the means of transmission.) Eureka, CA – Via email

Person(s) initiating communication: Michael McMahan

Person(s) receiving communication: Bonnie Neely

Name or description of project: Huntington Beach LCPA

Detailed substantive description of content of communication: (If communication included written material, attach a copy of the complete test of the written material.)

Email correspondence attached.

7/17/07

Date

Signature of Commissioner

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

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If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceedings and provide the Executive Director with a copy of any written material that was part of the communication.

Hayes, Kathy

From: Neely, Bonnie
Sent: Monday, July 16, 2007 5:09 PM
To: Hayes, Kathy
Subject: FW: Emails to Coastal Commissioners re: Wednesday Shea-Parkside Hearing

Another exparte.

-----Original Message-----
From: Alexa McMahan [mailto:irishlady86@yahoo.com]
Sent: Sunday, July 08, 2007 1:40 PM
To: pkruer@monarchgroup.com; kram@contentlic.com; Neely, Bonnie; kachadjian@co.slo.ca.us; mreilly@sonoma-county.org; forelc@cox.net; district5@co.monterey.ca.us; benhueso@sandiego.gov; thayerp@slc.ca.gov; brian.baird@resources.ca.gov; lwan22350@aol.com; sblank@kandsranch.com; drbburke@aol.com; mary_shallenberger@ppfa.org; drdan@cox.net; skinsey@co.marin.ca.us; gonzalez@unionyes.org; mvaughn@coastal.ca.gov
Subject: Emails to Coastal Commissioners re: Wednesday Shea-Parkside Hearing

Re: Agenda Item W8.5 Huntington Beach LCPA 1-06 Parkside, Support Staff

Dear Coastal Commissioner:

Please support the staff recommendation for the Huntington Beach LCPA 1-06, Shea Parkside property in Huntington Beach, to be heard this Wednesday, July 11.

The staff correctly identifies and protects the wetlands and ESHA's on this portion of the historic Bolsa Chica wetlands, while allowing for an alternative development footprint that is fair to the landowner. Please support the recommended 100-meter buffer for the ESHA's and the Natural Treatment System (NTS) out of the buffers, as recommended by staff.

It is important to follow the resource protections in the Coastal Act, and the staff recommendation does just that.

Thank you.

Sincerely,
Michael McMahan
4892 Maui Circle
Huntington Beach, CA 92649

Yahoo! oneSearch: Finally, mobile search that gives answers, not web links.

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATION

Date and time of communication: (For messages sent to a Commissioner by mail or facsimile or received as a telephone or other message, date time of receipt should be indicated.)	7/16/07 – 5:08 p.m.
Location of communication: (For communications sent by mail or facsimile, or received as a telephone or other message, indicate the means of transmission.)	Eureka, CA – Via email
Person(s) initiating communication:	Eileen Murphy
Person(s) receiving communication:	Bonnie Neely
Name or description of project:	Huntington Beach LCPA

Detailed substantive description of content of communication:
(If communication included written material, attach a copy of the complete test of the written material.)

Email correspondence attached.

7/17/07

Date

Signature of Commissioner

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If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceedings and provide the Executive Director with a copy of any written material that was part of the communication.

Hayes, Kathy

From: Neely, Bonnie
Sent: Monday, July 16, 2007 5:08 PM
To: Hayes, Kathy
Subject: FW: Agenda Item W8.5 Huntington Beach LCPA 1-06 Parkside, Support Staff

Here's another exparte. I just viewed these letters today.

-----Original Message-----
From: Murphyeile@aol.com [mailto:Murphyeile@aol.com]
Sent: Sunday, July 08, 2007 12:43 PM
To: pkruer@monarchgroup.com; kram@contentllc.com; Neely, Bonnie; kachadjian@co.slo.ca.us; mreilly@sonoma-county.org; forelc@cox.net; district5@co.monterey.ca.us; benhueso@sandiego.gov; thayerp@slc.ca.gov; brian.baird@resources.ca.gov; LWan22350@aol.com; sblank@kandsranch.com; DrBBURKE@aol.com; mary_shallenberger@ppfa.org; drdan@cox.net; skinsey@co.marin.ca.us; gonzalez@unionyes.org; mvaughn@coastal.ca.gov
Subject: Re: Agenda Item W8.5 Huntington Beach LCPA 1-06 Parkside, Support Staff

To: *California Coastal Commissioners:*

LCPA 1-06

Dear Coastal Commissioners:
i am writing in support of the CC staff's report to be heard July 11,2007

It is important to follow the resource protections in the Coastal Act and the staff recommendation does just that.

The staff correctly identifies and protects the wetlands and ESHA's on this portion of the historic Bolsa Chica wetlands, while allowing for an alternative development footprint that is fair to the landowner. Please support the recommended 100-meter buffer for the ESHA's and the Natural Treatment System (NTS) out of the buffers, as recommended by staff.

Thank you.

Sincerely,

Eileen Murphy
201 21st Street
HB CA 92648

W. 8.5.a.

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATION

RECEIVED
South Coast Region
JUL 24 2007
CALIFORNIA
COASTAL COMMISSION

Date and time of communication: Tues, July 3, 2007; 12:00 PM
(For messages sent to a Commissioner by mail or facsimile or received as a telephone or other message, date time of receipt should be indicated.)

Location of communication: La Jolla
(For communications sent by mail or facsimile, or received as a telephone or other message, indicate the means of transmission.)

Person(s) initiating communication: Mary Beth Broeren (City of HB); Ron Metzler (Shea Homes); Tony Bomkamp, Donna Andrews, Susan McCabe, Nancy Lucast

Person(s) receiving communication: Pat Kruer, Lorena Gonzalez

Name or description of project: Huntington Beach LCPA 1-06, (Shea – Parkside Estates); July 2007, Wed, 8.5 a

Detailed substantive description of content of communication:
(If communication included written material, attach a copy of the complete text of the written material.)

City and Shea representatives described the May 10 public hearing for the benefit of CCCr Gonzalez who had not been present. They explained that the City and Shea team believed, going into the hearing, that the only issue of disagreement regarding wetland determination was the standard for ponding: Dr. Dixon believed it should be 7 days in most years; but the City and property-owner biologists believe that the universally-accepted standard is 14 days. The single other area of disagreement was the buffer dimension for the northern eucalyptus trees, but the hearing discussion never got to that issue.

City and property owner had been led to believe, prior to the May public hearing, that staff had previously reviewed and analyzed all of the photos and assertions of unpermitted fills that were made by opponents at the public hearing and concluded that there was no illegal fill of wetlands by Shea (as explained in detail in Staff's addendum dated May 8, 2007, p.4). Shea contends that no new information was submitted by opponents at the public hearing. They stated that the only staff member who seemed not to have been privy to the years of opponents' allegations and property owner responses was the Executive Director who was apparently surprised by the opponents' presentation.

Shea representatives indicated that City and property owner relied upon the staff to defend its analysis and recommendation, but staff did not do so. They added that they are mystified as to why, after years of a cooperative working relationship, the staff would fail to defend its years-long analysis and recommendation. They believe the Executive Director effectively silenced the staff (who were very familiar with the case) at the public

hearing by interrupting the proceedings with an exclamation of outrage and a call for a continuance.

They proceeded to walk through a PowerPoint presentation, which has been given to staff and all Commissioners, that rebuts the opponents' main arguments.

At this point, City and Shea have just received the staff report electronically (at end of day on Fri) and it still is lacking two key documents. Inasmuch as the staff recommendation is radically different from the May 10 recommendation, they feel there is inadequate time to mount a proper defense and inadequate time for the Commissioners themselves to sufficiently review the reams of reports necessary to make an appropriately informed decision at the July 11 public hearing. They have requested a postponement to October, but have been rebuffed by Commission staff.

7/5/07
Date

Signature of Commissioner

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication.

Karen Merickel, Flossie Horgan
Bolsa Chica Land Trust

Issues discussed with commissioners regarding item Wednesday Shea parkside project

1. Illegal fills, stockpiling-1989
   1989 City staff report - 8' illegal ∴ must be
   now City + Shea say it was 2' ∴ 2 illegal fills from 1989
2. Applicants plans for the site
   over excavate 17' below sea level, 400,000 cubic yards cut + dewater (page 54-staff report 4/07)
3. Shea parkside letter of June 20, 2007
   general tone - newspaper ads-
4. Weed abatement -1998
   City ordered Shea to clear weeds from 100' from residences not entire site
5. box plowing of 2005
   Dixon memo
6. North grove ESHA
   there are species of concern that use ESHA
7. EPA wetland\ New information
   Landform alteration, EIS review
   cabo del mar impact
8. Support Staff report of June 29, 2007

RECEIVED
South Coast Region
JUL 24 2007
CALIFORNIA
COASTAL COMMISSION

Commissioner Larry Clark
Ex Parte Meeting with Flossie Horgan & Karen Merickel (BCLT)
Tues 10 July 2007
San Luis Obispo

7/11/07

HNB-MAJ-1-06

Jeff Staben

From: Vanessa Miller
Sent: Monday, July 16, 2007 12:20 PM
To: Sherilyn Sarb; Teresa Henry
Cc: Jeff Staben
Subject: FW: Commissioner Clark Ex Parte
Importance: High

RECEIVED
South Coast Region
JUL 24 2007
CALIFORNIA
COASTAL COMMISSION

-----Original Message-----
From: Larry Clark [mailto:forelc@cox.net]
Sent: Monday, July 09, 2007 6:09 PM
To: Vanessa Miller
Subject: Fw: Commissioner Clark Ex Parte
Importance: High

Commissioner Clark Ex Parte:

Date: Monday 07/02/07
Location: Manhattan Beach CA
Parties: Donna Andrews (Donna Andrews & Associates), Ron Metzler (Shea Homes)
Subject: Huntington Beach LCP Amendment/Parkside Estates (Weds 8.5a)

I met with Ms Andrews and Mr Metzler at their request.
Summary of Ron Metzler and Donna Andrews input to me were:

- Surprised by Staff revised report that the EPA Wetlands should be restored & the existance of additonal wetlands in the CP Area
- Shea Homes had previously records of this property and were not in agreement regarding the EPA Wetlands
- Mr Metzler felt it was unfair that at the last hearing on this matter in February they were only allowed 20 mins to 2 hrs for staff and the opposition
- Mr Metzler indicated he had met with the Executive Director since the last hearing without satisfaction
- Staff was over-stepping their authority on the open space conservation
- EPA Wetlands were being mis-characterized and was the result of the Harbor Bluff condo development's artifically created hydrology/run-off

- 1982 'depression ponding' of water does equal wetlands
- Shea Homes was not in posession of all of the Staff's new analysis and felt they and Huntington Beach needed more time to assess their reaction and position and may be asking for a postponement of this matter until Oct when the Commission is meeting in San Pedro

Larry Clark
Coastal Commissioner

CALIFORNIA FARM BUREAU FEDERATION

NATURAL RESOURCES AND ENVIRONMENTAL DIVISION

2300 RIVER PLAZA DRIVE, SACRAMENTO, CA 95833-3293 · PHONE (916) 561-5665 · FAX (916) 561-5691

Received at Commission Meeting

JUL 0 9 2007

From:

W 8.5a

July 9, 2007

Via Fax: (805)543-5273
and Fed Ex: 799671646079

Mr. Patrick Kruer, Chairman
Mr. Peter Douglas, Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Re: ***City Of Huntington Beach LCP Amendment No. HNB-MAJ-1-6 (Shea-Parkside); South Coast District (Orange County) Agenda Item No. W 8.5a.***

Dear Sirs:

The California Farm Bureau Federation ("Farm Bureau") is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the State of California and to find solutions to the problems of the farm, the farm home and the rural community. Farm Bureau is California's largest farm organization, comprised of 53 county Farm Bureaus currently representing over 91,500 farm families and individual members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California's resources. Farm Bureau appreciates the opportunity to comment and hereby submits the following remarks regarding the Agenda Item W 8.5a.

After review of the Coastal Commission's staff report and associated file documents we are concerned that the evaluation of circumstances surrounding Agenda Item W 8.5a could be better informed in light of several recently published joint memoranda from the United States Environmental Protection Agency ("US EPA") and the United States Army Corps of Engineers ("USACOE"). Farm Bureau also has some concern over what appears to be a possible misapplication of existing rules and regulations and the application of Coastal Commission regulatory authority with respect to historically farmed agricultural land.

COASTAL COMMISSION
HNB LCPA 1-06
EXHIBIT # XXX
PAGE 1 OF 36

US EPA and US ARMY CORPS OF ENGINEER MEMORANDUM

On June 5, 2007 US EPA and USACOE published agency guidance documents to assist in delineating "water of the United States" for purposes of the Clean Water Act.[1] The guidance documents are intended to assist field offices in implementing the Clean Water Act in light of recent United States Supreme Court decisions.[2] Generally speaking, the joint guidance describes three categories of water: (1) certain types of waters over which the agencies will assert jurisdiction, (2) other types of waters they will consider case-by-case to determine whether they have a significant nexus with traditional navigable water, and (3) other features over which the agencies generally will not assert jurisdiction. Jointly these memorandums are necessary evaluative tools and should be considered with respect to the pending matter because of the staff report's heavy reliance on prior USEPA wetland delineations. A review of the site specific facts and circumstances regarding the disputed wetlands as applied against the criteria for jurisdictional waters may result in a different conclusion by USEPA and thus necessitate a different set of findings and conclusions in the staff report. Staff reliance on federal law and specifically USEPA analysis is evidenced by the following excerpts which include, but are not limited to:

> a prior wetland delineation issued by the U.S. Environmental Protection Agency in 1989 that delineated an approximately 8.3 acre wetland.

Staff Report Page 2

> in 1989, the U.S. EPA published its delineation of an approximately 8 acre wetland area.

Staff Report Page 22

> The Commission therefore concurs with the EPA's conclusion and finds that the area identified as a wetland was in fact a wetland at the time of its delineation in 1989.

Staff Report Page 30

In light of the new USEPA and USACOE memorandums and the Staff Report's reliance on these agencies' findings, there may no longer be any federal jurisdictional authority over the disputed wetlands.[3] In turn, this may alter key conclusions in the staff report. As such, Farm Bureau recommends the Coastal Commission consult with USEPA and

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[1] *MEMORANDUM FOR DIRECTOR OF CIVIL WORKS AND US EPA REGIONAL ADMINISTRATORS (* issued 6-5-07);
CLEAN WATER ACT JURISDICTION - FOLLOWING THE U.S. SUPREME COURT'S DECISION IN RAPANOS V. UNITED STATES & CARABELL V. UNITED STATES (memorandum dated 6-5-07); and
CORPS AND EPA RESPONSES TO THE RAPANOS DECISION – KEY QUESTIONS FOR GUIDANCE RELEASE (undated memorandum) (ATTACHMENTS 1, 2 AND 3)

[2] *Rapanos v. U.S.; Carabell v. U.S. Army Corps of Engineers,* 126 S. Ct. 2208 (2006)

[3] Farm Bureau acknowledges that the project proponent (Shea Homes) have conceded the presence of part of the disputed areas as in fact being wetlands. However, Farm Bureau believes that all of the disputed areas should be evaluated as to their status as wetlands against the USEPA and USACOE memoranda.

XXX 2

PRIOR CONVERTED CROPLAND

Farm Bureau also believes that the Coastal Commission should apply and document the site specific facts of this issue against USACOE RGL 90-7 and USEPA's applicable regulations and guidance documents regarding prior converted cropland[4]. Several portions of the staff report appear to indicate a misapplication or failure to apply the relevant legal standards in evaluating a designation of prior converted cropland. Examples of facts supporting the lands as prior converted cropland include, but are not limited to:

> In the late 1890s the Bolsa Chica Gun Club completed a dam with tide gates, which eliminated tidal influence, separating fresh water from salt water. In the 1930s, agricultural ditches began to limit fresh water on the site, and in 1959, the East Garden Grove-Wintersburg Flood Control Channel isolated the site hydrologically.

Staff Report Page 15

> The majority of the subject site has been more or less continuously farmed since at least the 1950s.

Staff Report Page 22

> [T]he site has been historically farmed and continues to be farmed as of the adoption of these findings...

Staff Report Page 28

The correct application of the factors comprising prior converted cropland are essential because these lands are per se not waters of the United States and would therefore be beyond the regulatory or legal jurisdiction of USEPA and USACOE. Further misapplication is evidenced on Page 29 of the Staff Report where it states

> Therefore, since the dominant vegetation at the reference areas is mostly comprised of wetlands species, it is reasonable to expect that the agricultural areas WP and AP would also support a predominance of hydrophytes in the absence of farming (i.e. that they are wet enough to support such vegetation).

The staff report suggests that the disputed area could perhaps receive future wetland delineation by if certain contingent events occur in the future. However, attention should be given to the disputed area's present and recent past characteristics and use as prior converted crop land. Note should also be made of the omission of an important fact regarding the finding that the disputed area is "wet enough to support such vegetation". Farming in a generally arid climate requires the artificial application of water (irrigation) to the soil in order to grow crops. This artificial application of water may in fact be the source of moisture in question.

The Staff Report is also void of a reasonable explanation of why the Natural Resource Conservation Service November 20, 1998 letter designating the Shea Homes property as prior converted cropland is no longer applicable[5].

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[4] See generally, 33 USC 1344; 33 CFR 328.3(a)(8).

[5] November 20, 1998 Letter to James Barnes, Project Planner City of Huntington Beach from Robert S. Hewitt NRCS District Conservationist. (ATTACHMENT 4)

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Furthermore, a thorough review of the applicable laws and regulations would yield a conclusion that prior converted cropland includes: lands that have been significantly modified so that it no longer exhibits its natural hydrology or vegetation, lands that no longer perform the functions or has the values that the area did in its natural condition, and land has been significantly degraded through human activity. As such, Farm Bureau requests the Coastal Commission to reevaluate the facts of this matter after a comprehensive review of the applicable laws, regulations, and prior findings of the Natural Resource Conservation Service November 20, 1998 letter.

NORMAL FARMING ACTIVITIES

Farm Bureau also has concerns with the Staff Report's discussion relating to "normal farming activities." The Clean Water Act exempts from the Section 404 program (dredge and fill of wetlands) discharges associated with normal farming, ranching, and forestry activities such as plowing, cultivating, minor drainage, and harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices.[6] Furthermore, USEPA guidance describes normal farming activities to include, among other activities, plowing and other mechanical means of manipulating soil, including land leveling, to prepare it for the planting of crops.[7]

Farm Bureau is particularly concerned that the staff report in this case takes a very narrow view of normal farming activities, which would consequently deem as "unpermitted development" some types of field preparation activities which are in every sense normal to farmers and ranchers. In particular, the staff report singles out "earth movement" using a bulldozer or box plough as a "development" activity. Farm Bureau does not concur with this implication and believes it should be informed by corresponding precedent under the Federal Clean Water Act. The very narrow view of normal farming activities otherwise evidenced in the staff report could have serious impacts on the operational flexibility of California's coastal farmers, and for this reason Farm Bureau hopes the Coastal Commission will carefully review its determination in this regard.

Without comment as to the specific set of facts at issue in Agenda Item W 8.5a, Farm Bureau also believes that the correct application of the Clean Water Act's normal farming activities exemption would be better informed with the input from such agencies as USEPA, the United States Department of Agriculture Natural Resource Conservation Service, and University of California Cooperative Extension. Accordingly, Farm Bureau recommends that the Coastal Commission undertakes such consultation in this case.

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[6] Section 404(f)(1)(A) of the Clean Water Act, 33 U.S. C. 1344.

[7] USEPA Memorandum *CLEAN WATER ACTION SECTION 404 REGULATORY PROGRAM AND AGRICULTURAL ACTIVITIES* (1990). http://www.epa.gov/owow/wetlands/guidance/cwaag.html (ATTACHMENT 5)

XXX4

States Department of Agriculture Natural Resource Conservation Service, and University of California Cooperative Extension. Accordingly, Farm Bureau recommends that the Coastal Commission undertakes such consultation in this case.

In conclusion, Farm Bureau believes that the Coastal Commission's decision on Agenda Item W 8.5a would be better informed and comport with the respective provisions of law if it undertook those recommendations above. Please contact John Hewitt either by telephone (916) 561-5614 or via electronic mail jhewitt@cfbf.com if you have any questions regarding this matter.

Sincerely,

JOHN HEWITT

JRH\mmm
Encl.

XXX5

W 8.5e

000 P04 [illegible] 11:47

USDA United States Department of Agriculture

Natural Resources Conservation Service

950 N. Ramona Boulevard, Suite 6
San Jacinto, CA 92582
(909) 654-7139 ♦ Fax: (909) 654-8334

November 20, 1998

James Barnes
Project Planner
City of Huntington Beach
2000 Main Street
Huntington Beach, Ca. 92648

RECEIVED
NOV 25 1998
DEPARTMENT OF PLANNING

Subject: Prior Converted Cropland Designation, Shea Homes Property

Dear Mr Barnes,

After reviewing all of the materials available to me regarding the Shea Homes Property in Huntington Beach, I have based my response of the following information:

1. Evidence shows that the property was being farmed prior to 1985.

2. Designation of this property as "Prior Converted Cropland" by the Army Corps of Engineers in 1992, review of their designation in 1998, and an independent report from Lisa Kegarice of Tom Dodson and Associates in December of 1997 have determined that this property meets the criteria for Prior Converted Cropland.

Based on this information, the Natural Resources Conservation Service (NRCS) concurs that the Army Corps of Engineers' 1992 designation of Prior Converted Cropland for the Shea Homes Property is still valid.

Sincerely,

Robert S Hewitt

Robert S. Hewitt
District Conservationist, San Jacinto

cc: Lisa Kegarice, Tom Dodson & Associates

The Natural Resources Conservation Service, formerly the Soil Conservation Service, is an agency of the United States Department of Agriculture

AN EQUAL OPPORTUNITY EMPLOYER

XXX6

ATTACHMENT 4

W 8.5a

Attachment to CFBF letter of 7-9-07

U.S. Environmental Protection Agency

Wetlands

Laws, Regulations, Guidance and Scientific Documents
State, Tribal, and Local Initiatives
Landowners
Water Quality and 401 Certification
Monitoring and Assessment
Wetlands and Watersheds
Restoration
Education
In Your Area

MEMORANDUM: CLEAN WATER ACT SECTION 404 REGULATORY PROGRAM AND AGRICULTURAL ACTIVITIES

United States Environmental Protection Agency
United States Department of the Army

A number of questions have recently been raised about the applicability of the Clean Water Act Section 404 Regulatory Program to agriculture. This memorandum is intended to assist Section 404 field personnel in responding to those questions and to assure that the program is implemented in a consistent manner. At the outset, we should emphasize that we respect and support the underlying purposes of the Clean Water Act regarding the exemption from Section 404 permitting requirements for "normal farming" activities. The exemptions (at Section 404(f) of the Act) recognize that American agriculture fulfills the vitally important public need for supplying abundant and affordable food and fiber and it is our intent to assure that the exemptions are appropriately implemented.

What are normal farming activities? Who makes that determination? Can agricultural producers plant crops in wetland areas that have been farmed for many years? These are questions that have generated significant confusion and concern in the agricultural community. This memorandum will explain the extent of the Section 404 program and clarify some misunderstandings that may exist in the field. Therefore we encourage you to widely distribute this memorandum.

What is Section 404?

The Federal Water Pollution Control Act Amendments of 1972 established the Section 404 Regulatory Program. Under this Act, it is unlawful to discharge dredged or fill material into waters of the United States without first receiving authorization (usually a permit) from the Corps, unless the discharge is covered under an exemption. The term "waters of the United States" defines the extent of geographic jurisdiction of the Section 404 program. The term includes such waters as rivers, lakes, streams, tidal waters, and most wetlands. A discharge of dredged or fill material involves the physical placement of soil, sand, gravel, dredged material or other such materials into the waters of the United States. Section 404(f) exemptions, which were added in 1977, provide that discharges that are part of normal farming, ranching, and forestry activities associated with an active and continuous ("ongoing") farming or forestry operation generally do not require a Section 404 permit.

With this background in mind, we can now turn to the issues that are the focus of concern. As previously noted, Section 404(f) exempts discharges of dredged or fill material into waters of the United States associated with certain normal agricultural activities. Of course, activities that do not involve a discharge of dredged or fill material into waters of the United States never require a Section 404 permit. Further as provided in the Interagency Federal Manual for Identifying and Delineating Jurisdictional Wetlands, while a site is effectively and legally drained to the extent that it no longer meets the regulatory wetlands hydrology criteria (as interpreted by the Interagency Manual), it is not a wetland subject to jurisdiction under Section 404 of the Clean Water Act.

What is the "normal farming" activities exemption?

XXX7

The Clean Water Act exempts from the Section 404 program discharges associated with normal farming, ranching, and forestry activities such as plowing, cultivating, minor drainage, and harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices (Section 404(f)(1)(A)). To be exempt, these activities must be part of an established, ongoing operation. For example, if a farmer has been plowing, planting and harvesting in wetlands, he can continue to do so without the need for a Section 404 permit, so long as he does not convert the wetlands to dry land. Activities which convert a wetland which has not been used for farming or forestry into such uses are not considered part of an established operation, and are not exempt. For example, the conversion of a bottomland hardwood wetland to crop production is not exempt.

In determining whether an activity is part of an established operation, several points need to be considered. First, the specific farming activity need not itself have been ongoing as long as it is introduced as part of an ongoing farming operation. For example, if crops have been grown and harvested on a regular basis, the mere addition or change of a cultivation technique (e.g., discing between crop rows to control weeds rather than using herbicides) is considered to be part of the established farming operation. Second, the planting of different agricultural crops as part of an established rotation (e.g., soybeans to rice) is exempt. Similarly, the rotation of rice and crawfish production is also exempt (construction of fish ponds is not an exempt activity and is addressed below). Third, the resumption of agricultural production in areas laying fallow as part of a normal rotational cycle are considered to be part of an established operation and would be exempted under Section 404(f). However, if a wetland area has not been used for farming for so long that it would require hydrological modifications (modifications to the surface or groundwater flow) that would result in a discharge of dredged or fill material, the farming operation would no longer be established or ongoing.

As explained earlier, normal farming operations include cultivating, harvesting, minor drainage, plowing, and seeding. While these terms all have common, everyday definitions, it is important to recognize that these terms have specific, regulatory meanings in relation to the Section 404(f) exemptions. For example, plowing that is exempt under Section 404(f) means all mechanical means of manipulating soil, including land leveling, to prepare it for the planting of crops. However, grading activities that would change any area of waters of the United States, including wetlands, into dry land are not exempt. Minor drainage that is exempt under Section 404(f) is limited to discharges associated with the continuation of established wetland crop production (e.g., building rice levees) or the connection of upland crop drainage facilities to waters of the United States. In addition, minor drainage also refers to the emergency removal of blockages that close or constrict existing drainageways used as part of an established crop production. Minor drainage is defined such that it does not include discharges associated with the construction of ditches which drain or significantly modify any wetlands or aquatic areas considered as waters of the United States. Seeding that is exempt under Section 404(f) includes not only the placement of seeds themselves, but also the placement of soil beds for seeds or seedlings on established farm or forest lands. Cultivating under Section 404(f) includes physical methods of soil treatment to aid and improve the growth, quality, or yield of established crops. Except as provided under Section 404(f)(2) as explained below, construction or maintenance of irrigation ditches or maintenance of drainage ditches is also exempt.

Recognizing area and regional differences in normal farming practices, EPA and the Corps agree to develop additional definitions of normal farming practices in consultation with the designated Land Grant Colleges and the Cooperative Extension Services. We also further encourage our field staffs to utilize the expertise in these colleges and agricultural services in the ongoing implementation of the Section 404 program.

When the normal farming activity exemption do not apply?

Sections 404(f)(2) provides that discharges related to activities that change the use of the waters of the United States, including wetlands, and reduce the reach, or impair the flow or circulation of waters of the United States are not exempted. This "recapture" provision involves a two-part test that results in an activity being considered not exempt when both parties are met: 1) does the activity represent a "new use" of the wetland, and 2) would the activity result in a "reduction in reach/impairment of flow or circulation" of waters of the United States? Consequently, any discharge of dredged or fill material that results in the destruction

of the wetlands character of an area (e.g., it conversion to uplands due to new or expanded drainage) is considered a change in the waters of the United States, and by definition, a reduction of their reach and is not exempt under Section 404(f). In addition, Section 404(f)(1) of the Act provides that discharges that contain toxic pollutants listed under Section 307 are not exempted and must be permitted.

However, discharges that are not exempt are not necessarily prohibited. Non-exempted discharges must first be authorized either through a general or individual Section 404 permit before they are initiated.

What are General Permits?

Even if a farming activity is one that does not fall under an exemption and a permit is required, some farming activities are eligible for General Permits. Section 404(e) of the Act authorizes the Corps, after notice and opportunity for public hearing, to issue General Permits on a State, regional or nationwide basis for certain categories of activities involving a discharge of dredged or fill material in waters of the United States. Such activities must be similar in nature and cause only minimal adverse environmental effects. Discharges authorized under a General Permit may proceed without applying to the Corps for an individual permit. However, in some circumstances, conditions associated with a General Permit may require that persons wishing to discharge under that permit must notify the Corps or other designated State or local agency before the discharge takes place. A list of current General Permits is available from each Corps District Office, as well as information regarding notification requirements or other relevant conditions.

Rice Farming

Questions have arisen regarding the relationship of the Section 404 program to rice farming. We understand these concerns, and recently have initiated actions that will allow farmers to understand better the regulatory program and provide more efficient and equitable mechanisms for implementing provisions of the Section 404 program.

In an April 19, 1990 letter responding to a request from Senator Patrick J. Leahy, Chairman and 11 members of the Senate Committee on Agriculture, Nutrition and Forestry, we stated our position that discharges of dredged or fill material associated with the construction of rice levees for rice farming in wetlands which are in established agricultural crop production are "normal farming activities" within the meaning of Section 404(f)(1)(A) and are therefore exempt from Section 404 regulation under the following conditions:

1. the purpose of these levees is limited to the maintenance and manipulation of shallow water levels for the production of rice crops; and

2. consistent with current agricultural practices associated with rice cultivation,

   - the height of the rice levees should generally not exceed 24 inches above their base; and

   - the material to be discharged for levee construction should generally be derived exclusively from the distribution of soil immediately adjacent to the constructed levee.

Land leveling for rice farming in wetlands which are in established crop production also is a "normal farming activity" within the meaning of Section 404(f)(1)(A) and is therefore exempt from Section 404 regulation.

Fish ponds

We are developing a General Permit authorizing discharges of dredged or fill material associated with the construction of levees and ditches for the construction of fish ponds in wetlands that were in agricultural crop production prior to December 23, 1985. A draft General Permit has been developed by the Vicksburg District, Army Corps of Engineers and should be

issued by June 1, 1990. This General Permit should serve as a model permit for other areas of the country and this activity will be considered for a nationwide General Permit.

It should be made clear, however, that the Section 404(f) exemption for "normal farming activities" and the General Permit being developed for fish ponds apply only to the use of wetlands which are already in use for agricultural crop production. These provisions do not apply to 1) wetlands that were once in use for agricultural crop production but have lain idle so long that modifications to the hydrologic regime are necessary to resume crop production or, 2) the conversion of naturally vegetated wetlands to agriculture, such as the conversion of bottomland hardwood wetlands to agriculture.

Limitations of the Section 404(f) Exemptions

It should be emphasized that the use of Section 404(f) exemptions does not affect Section 404 jurisdiction. For example, the fact that an activity in wetlands is exempted as normal farming practices does not authorize the filling of the wetland for the construction of buildings without a Section 404 permit. Similarly, a Section 404 permit would be required for the discharge of dredged or fill material associated with draining a wetland and converting it to dry land.

Enforcement

Given that the normal farming practices as described above are exempt from regulation under Section 404, neither EPA nor the Corps will initiate enforcement actions against farmers or other persons for engaging in such normal farming activities. Further, there will be no enforcement against actions that meet the description of activities covered by, and any conditions contained in, general permits issued by the Corps.

Conclusion

Proper implementation of the Section 404 program is an issue of extreme importance to the nation. We encourage you to distribute this memorandum not only to your staffs but to the public at large so that there will be a better general understanding of the program and how it operates.

LaJuana S. Wilcher /s/
Assistant Administrator for Water
U.S. Environmental Protection Agency
May 3, 1990

Roland W. Page
Assistant Secretary of the Army, Civil Works
May 3, 1990

XXX 10

W.O.S.
Attachment to OFBF letter of 7-9-07

MEMORANDUM FOR DIRECTOR OF CIVIL WORKS AND US EPA REGIONAL ADMINISTRATORS

Subject: U.S. Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (Corps) Coordination on Jurisdictional Determinations (JDs) under Clean Water Act (CWA) Section 404 in Light of the *SWANCC* and *Rapanos* Supreme Court Decisions

1. Purpose. The purposes of this memorandum are to promote and improve interagency cooperation, facilitate increased communication, and establish an efficient and effective process for determining Clean Water Act Section 404 jurisdiction in light of the Supreme Court decisions in Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers, 531 U.S. 159 (2001) (SWANCC), and the consolidated cases Rapanos v. United States, and Carabell v. United States, 126 S. Ct. 2208 (2006) (jointly hereafter Rapanos). The procedures included in this memorandum replace the coordination procedures contained in the January 2003 EPA/Army guidance implementing the *SWANCC* decision (but leaves the remainder of that guidance unaffected) and articulate new coordination procedures for JDs affected by Rapanos. This memorandum does not nullify or supersede the 1990 Geographic Jurisdiction Memorandum of Agreement (MOA), including its special case provisions.

2. Current Practice. The Corps districts are currently posting all Approved JD Forms for public review on their respective websites. The EPA efficiently reviews these JD forms, as needed, to monitor consistency with regulation and policy.

3. Documentation Requirements. Under this memorandum, case-by-case evaluations are required to determine if there is a "significant nexus" to navigable waters for JDs involving the classes of waters listed in subparagraph 4.a.(2). Documentation for these JDs shall be made using the Approved JD Form developed by Corps headquarters (HQ) in consultation with EPA. The information on the jurisdictional form shall identify the rationale for asserting or not asserting jurisdiction.

4. Coordination Requirements.

a. Interagency Coordination Required. The EPA and the Corps will follow the coordination procedures in paragraph (5) for the following JDs:

(1) Determinations for intra-state, non-navigable, isolated waters potentially covered solely under 33 C.F.R. §328.3(a)(3), where jurisdiction is asserted or not asserted based on interstate commerce factors.

XXX 11

ATTACHMENT 1

(2) Determinations based on a finding of a "significant nexus" with traditional navigable waters, which are required for the following waters:

(i) non-navigable tributaries that do not typically flow year-round or have continuous flow at least seasonally (e.g., typically at least 3 months each year);

(ii) wetlands that are adjacent to such tributaries; and

(iii) wetlands that are adjacent to but that do not directly abut a *relatively permanent* non-navigable tributary.

b. Interagency Coordination Not Required. Interagency coordination following the procedures below is not required for JDs involving traditional navigable waters, including their adjacent wetlands, and for relatively permanent non-navigable tributaries of traditional navigable waters, including wetlands with a continuous surface connection with such relatively *permanent tributaries*.

5. Coordination Procedures.[1,2] Effective immediately, for all waters referenced in paragraph 4.(a), agency coordination of JDs will be conducted as follows:

a. The Corps district will conduct the JD, document the basis and rationale for asserting or declining to assert jurisdiction under the CWA, and provide an electronic copy of the draft JD form to the appropriate EPA regional office. To facilitate and expedite the coordination of documents, both agencies will, to the maximum extent feasible, transmit all documents electronically. For purposes of this guidance, when documents are transmitted electronically, the date of receipt shall be the date of transmission.

b. Corps districts will provide the appropriate EPA regional office and Corps HQ with an electronic copy of every draft JD form (and supporting documentation) proposing to assert or decline jurisdiction over an intrastate, non-navigable, isolated water. The EPA regional office will in turn be responsible for ensuring that EPA HQ also receives copies of every such JD form in a timely manner. The EPA regional office will review the JD forms pursuant to the procedures in paragraphs 5.c. and 5.d. below. Draft JDs elevated to HQ under paragraph 5.d. will be reviewed by EPA and Corps HQs pursuant to the procedures outlined in paragraph 5.e. below. In addition, either Corps HQ or EPA HQ may choose to initiate a joint HQ review of a particular JD involving an intrastate, non-navigable, isolated water. Such joint HQ review must be initiated within 21 calendar days of when the district provided copies of the draft JD to the EPA Region and Corps HQ. The joint HQ review will proceed pursuant to the procedures in subparagraph e.(2)(i) or e.(2)(ii) as appropriate. If neither the Corps HQ or EPA HQ chooses to initiate a joint review within 21 calendar days, and the EPA regional office does not elevate within the timeframes identified under paragraph 5.d., the district may proceed and finalize the JD.

[1] Should any deadline in this interagency memorandum fall on a weekend or holiday, the deadline will be the next business day.
[2] Coordination procedures are presented in Figures 1 and 2. Where a jurisdictional determination is associated with potential authorization of a project under a Nationwide Permit (NWP), it may be necessary for the Corps and EPA to establish an alternative consultation schedule to accommodate NWP timeframes potentially associated with the particular project.

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c. With respect to interagency coordination of other jurisdictional determinations, the EPA regional office may review the JD form to determine if it will comment on the Corps' determination. To help facilitate an efficient review of the draft JD and to expedite the review process, the EPA may ask the Corps to provide a copy of the documentation provided by the applicant and/or responsible party, where the JD is considered complex. The agencies will coordinate and attempt to resolve any JD issues at the local level within 15 calendar days after EPA's receipt of the form. EPA may notify the Corps at any time within the 15 day period that it does not intend to provide comments on a particular draft JD. Within these 15 calendar days, the EPA regional office may elect to elevate the review to their Regional Administrator (RA) and so notify the Corps district in writing.[3] Such written notification shall briefly explain the rationale for EPA's position. If no notification is provided by EPA within the 15 calendar days, the Corps district may proceed and finalize the JD.

d. When the JD is elevated to the RA, the RA and the District Engineer (DE) shall have 10 calendar days from the date of EPA's notification to the Corps under paragraph 5.c. above to resolve the issue. If the issue is not resolved between the RA and DE, the RA shall, within the 10 calendar days, elevate the JD to EPA HQ and concurrently provide written notification to the DE that the JD is being elevated. Upon receipt of notification from EPA that the matter has been elevated, the DE shall immediately provide the draft JD record to Corps HQ. If no notification of elevation is provided by EPA within the 10 calendar days, or a resolution is otherwise reached, the Corps district may proceed and finalize the JD.

e. The Corps and EPA HQs will review and provide guidance on elevated draft JDs as follows:

(1) The Corps and EPA shall coordinate efficiently and appropriately to reach agreement on the JD.

(2) The Corps and EPA shall initiate discussions no later than 5 calendar days after notification of elevation under paragraph 5.d. above to determine if an interagency agreement exists on the elevated JD.

(i) If a mutual decision is reached on the assertion or declination of jurisdiction, a joint HQs level decision memo discussing the rationale of the decision will be provided to EPA and Corps field offices no later than 14 calendar days after HQ interagency discussions were initiated; or

(ii) If a mutual decision is not reached at the EPA and Corps HQs, a joint HQs level decision memo prepared by EPA explaining EPA's rationale in support of an approved JD will be provided to EPA and Corps field offices no later than 21 calendar days after interagency discussions were initiated. Copies of the joint memo will be provided to all Corps districts and to EPA Regional offices.

[3] For the purposes of this guidance, "in writing" or "written notification" may include electronic mail communication.

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(iii) Upon receipt of the joint HQs level decision memo, the Corps district may issue an Approved JD pursuant to the memo and post the JD form on its website.

f. A HQs decision made pursuant to either subparagraph c.(2)(i) or (ii) above will be considered an appealable action for purposes of the Corps administrative appeals process under 33 C.F.R. §331 et seq. However, any decision on appeal will not question or overturn any legal or policy determination made by EPA or Corps HQs pursuant to this joint guidance memorandum, but can examine and question any matter or finding of fact. If the Review Officer determines that the HQs decision was based on a mistake of fact or a lack of necessary facts that determination can be presented to EPA and/or Corps HQs suggesting reconsideration of the decision.

6. This guidance will remain in effect indefinitely for isolated, intra-state, non-navigable waters potentially covered only under 33 C.F.R. §328.3(a)(3) where jurisdiction is being asserted or not asserted using interstate commerce factors unless and until this guidance is revoked or modified in writing by agreement of both agencies. This guidance for all other waters addressed herein shall remain in effect for six months from the date of the last signature on this memorandum unless otherwise extended or modified by written agreement of both agencies.

Benjamin H. Grumbles
Assistant Administrator for Water
U.S. Environmental Protection Agency

Date: June 5, 2007

John Paul Woodley, Jr.
Assistant Secretary of the Army
(Civil Works)

Date: 5 June 2007

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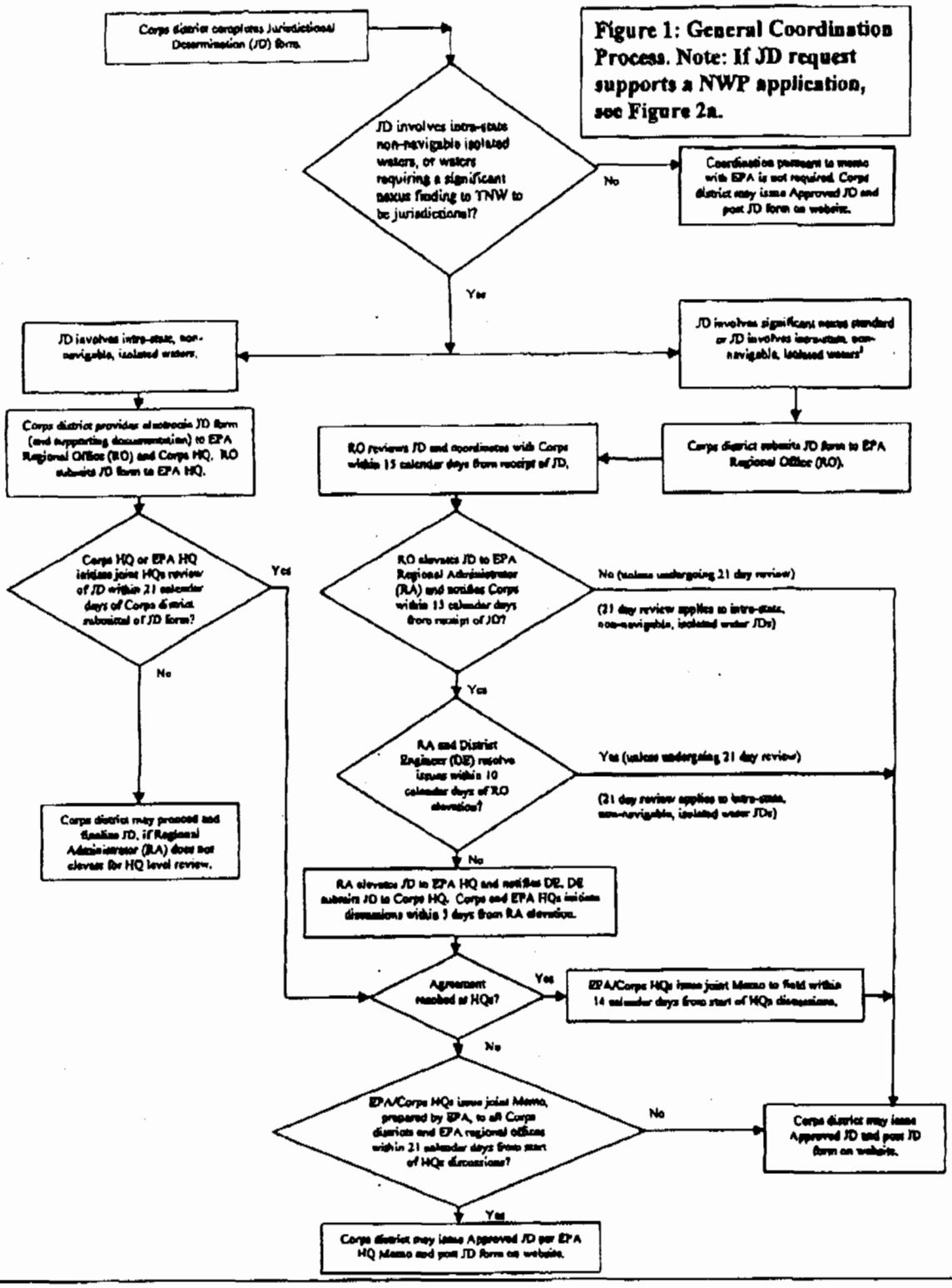
Figure 1: General Coordination Process. Note: If JD request supports a NWP application, see Figure 2a.



Notes: 1. A headquarters decision pursuant to this process will be considered an appealable action for purposes of the Corps administrative appeals process under 33 C.F.R. §331 et seq. However, any decision on appeal will not question or overturn any legal or policy determination made by EPA or Corps headquarters pursuant to this joint guidance memorandum, but can examine and question any matter or finding of fact. If the Review Officer determines that the headquarters decision was based on a mistake of fact or a lack of necessary facts, that determination can be presented to EPA and/or Corps headquarters suggesting reconsideration of the decision.

2. This guidance will remain in effect indefinitely for isolated, intra-state, non-navigable waters potentially covered only under 33 C.F.R. §328.3(a)(3) where jurisdiction is being asserted or not asserted using interstate commerce factors unless and until this guidance is revoked or modified in writing by agreement of both agencies. This guidance for all other waters addressed herein will remain in effect for six months from the date of the last signature on this memorandum unless otherwise extended or modified by written agreement of both agencies.

3. For JDs that involve intra-state, non-navigable waters, the elevation process must proceed along both paths of EPA/Corps referral per the procedures outlined in the joint coordination memo.

4. The above process does not apply for applications (pre-construction notifications) for Nationwide Permits (see Figure 2).

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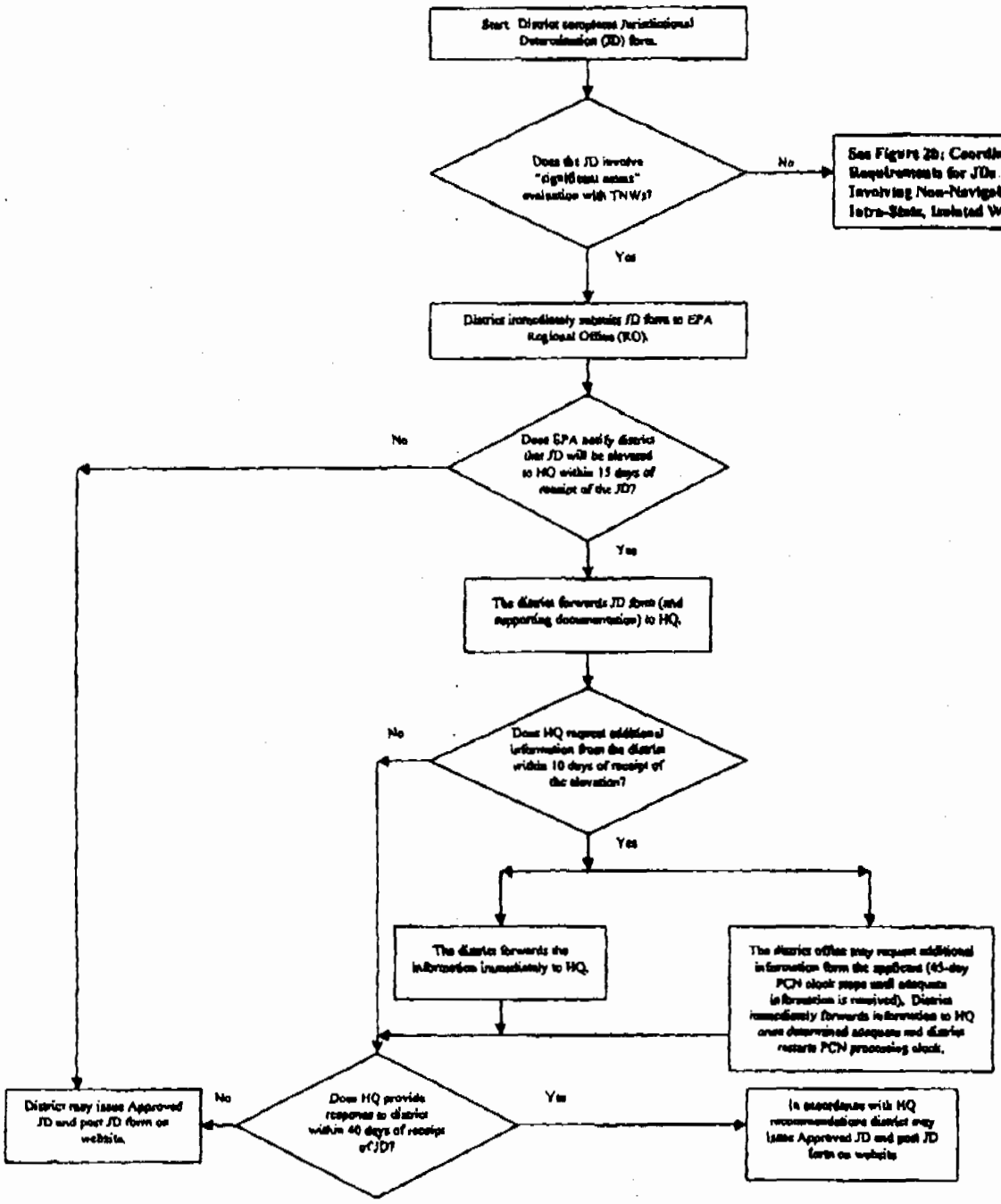
Figure 1a: Coordination Requirements for JDs Involving "Significant Nexus" Evaluation with TNWs and Supporting NWP Applications



Notes: 1. A headquarters decision pursuant to this process will be considered an appealable action for purposes of the Corps administrative appeals process under 33 C.F.R. §331 et seq. However, any decision on appeal will not question or overturn any legal or policy determination made by EPA or Corps headquarters pursuant to this joint guidance memorandum, but can examine and question any matter or finding of fact. If the Review Officer determines that the headquarters decision was based on a mistake of fact or a lack of necessary facts, that determination can be presented to EPA and/or Corps headquarters suggesting reconsideration of the decision.
2. This guidance for all other waters addressed herein will remain in effect for six months from the date of the last signature on this memorandum unless otherwise extended or modified by written agreement of both agencies.
3. The process above applies for applications (pre-construction notifications) for Nationwide Permits involving "significant nexus" evaluations with TNWs.

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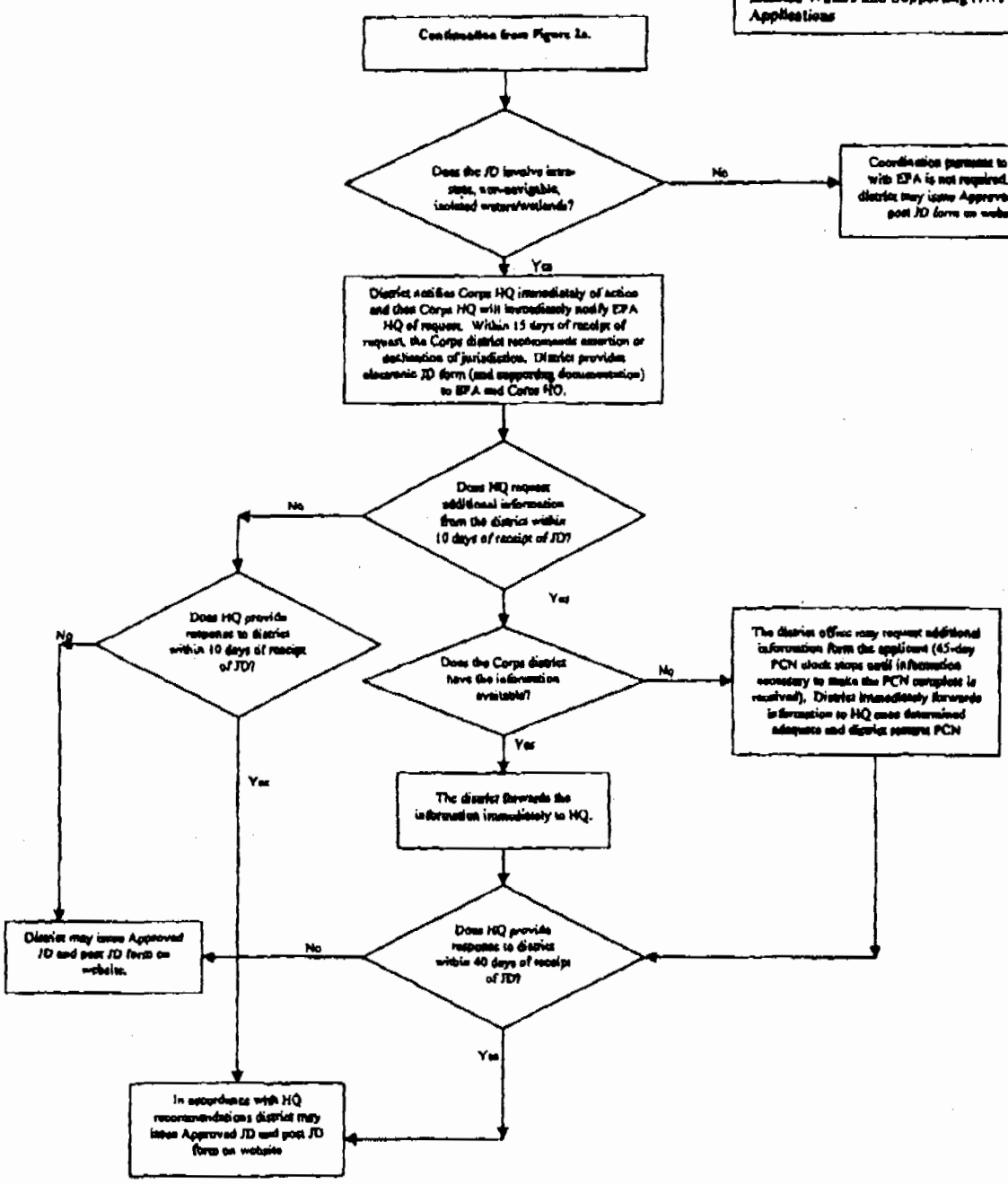
Figure 2b: Coordination Requirements for JDs Involving Non-Navigable, Intra-State, Isolated Waters and Supporting NWP Applications



Notes: 1. A headquarters decision pursuant to this process will be considered an appealable action for purposes of the Corps administrative appeals process under 33 C.F.R. §331 et seq. However, any decision on appeal will not question or overturn any legal or policy determination made by EPA or Corps headquarters pursuant to this joint guidance memorandum, but can examine and question any matter or finding of fact. If the Review Officer determines that the headquarters decision was based on a mistake of fact or a lack of necessary facts, that determination can be presented to EPA and/or Corps headquarters suggesting reconsideration of the decision.
2. This guidance will remain in effect immediately for isolated, intra-state, non-navigable waters potentially covered only under 33 C.F.R. §328.3(a)(3) where jurisdiction is being asserted or not asserted using interstate commerce factors unless and until this guidance is revoked or modified in writing by agreement of both agencies.
3. The process above applies for applications (pre-construction notifications) for Nationwide Permits involving non-navigable, intra-state, isolated waters, including wetlands.

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Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in Rapanos v. United States & Carabell v. United States

This memorandum provides guidance to EPA regions and U.S. Army Corps of Engineers ["Corps"] districts implementing the Supreme Court's decision in the consolidated cases Rapanos v. United States and Carabell v. United States[1] (herein referred to simply as "Rapanos") which address the jurisdiction over waters of the United States under the Clean Water Act.[2] The chart below summarizes the key points contained in this memorandum. This reference tool is not a substitute for the more complete discussion of issues and guidance furnished throughout the memorandum.

Summary of Key Points

The agencies will assert jurisdiction over the following waters:

- **Traditional navigable waters**
- **Wetlands adjacent to traditional navigable waters**
- **Non-navigable tributaries of traditional navigable waters that are relatively permanent where the tributaries typically flow year-round or have continuous flow at least seasonally (e.g., typically three months)**
- **Wetlands that directly abut such tributaries**

The agencies will decide jurisdiction over the following waters based on a fact-specific analysis to determine whether they have a significant nexus with a traditional navigable water:

- **Non-navigable tributaries that are not relatively permanent**
- **Wetlands adjacent to non-navigable tributaries that are not relatively permanent**
- **Wetlands adjacent to but that do not directly abut a relatively permanent non-navigable tributary**

The agencies generally will not assert jurisdiction over the following features:

- **Swales or erosional features (e.g., gullies, small washes characterized by low volume, infrequent, or short duration flow)**
- **Ditches (including roadside ditches) excavated wholly in and draining only uplands and that do not carry a relatively permanent flow of water**

The agencies will apply the significant nexus standard as follows:

- **A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by all wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical and biological integrity of downstream traditional navigable waters**
- **Significant nexus includes consideration of hydrologic and ecologic factors**

[1] 126 S. Ct. 2208 (2006).
[2] 33 U.S.C. §1251 et seq.

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Background

Congress enacted the Clean Water Act ("CWA" or "the Act") "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters."[3] One of the mechanisms adopted by Congress to achieve that purpose is a prohibition on the discharge of any pollutants, including dredged or fill material, into "navigable waters" except in compliance with other specified sections of the Act.[4] In most cases, this means compliance with a permit issued pursuant to CWA §402 or §404. The Act defines the term "discharge of a pollutant" as "any addition of any pollutant to navigable waters from any point source[,]"[5] and provides that "[t]he term 'navigable waters' means the waters of the United States, including the territorial seas[,]."[6]

In Rapanos, the Supreme Court addressed where the Federal government can apply the Clean Water Act, specifically by determining whether a wetland or tributary is a "water of the United States." The justices issued five separate opinions in Rapanos (one plurality opinion, two concurring opinions, and two dissenting opinions), with no single opinion commanding a majority of the Court.

The Rapanos Decision

Four justices, in a plurality opinion authored by Justice Scalia, rejected the argument that the term "waters of the United States" is limited to only those waters that are navigable in the traditional sense and their abutting wetlands.[7] However, the plurality concluded that the agencies' regulatory authority should extend only to "relatively permanent, standing or continuously flowing bodies of water" connected to traditional navigable waters, and to "wetlands with a continuous surface connection to" such relatively permanent waters.[8]

Justice Kennedy did not join the plurality's opinion but instead authored an opinion concurring in the judgment vacating and remanding the cases to the Sixth Circuit Court of Appeals.[9] Justice Kennedy agreed with the plurality that the statutory term "waters of the United States" extends beyond water bodies that are traditionally considered navigable.[10] Justice Kennedy, however, found the plurality's interpretation of the scope of the CWA to be "inconsistent with the Act's text, structure, and purpose[,]" and he instead presented a different standard for evaluating CWA jurisdiction over

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[3] 33 U.S.C. § 1251(a).
[4] 33 U.S.C. § 1311(a), §1362(12)(A).
[5] 33 U.S.C. § 1362(12)(A)
[6] 33 U.S.C. § 1362(7). See also 33 C.F.R. § 328.3(a) and 40 C.F.R. § 230.3(s).
[7] Id. at 2220.
[8] Id. at 2225-27.
[9] Id. at 2236-52. While Justice Kennedy concurred in the Court's decision to vacate and remand the cases to the Sixth Circuit, his basis for remand was limited to the question of "whether the specific wetlands at issue possess a significant nexus with navigable waters." 126 S. Ct. at 2252. In contrast, the plurality remanded the cases to determine both "whether the ditches and drains near each wetland are 'waters,'" and "whether the wetlands in question are 'adjacent' to these 'waters' in the sense of possessing a continuous surface connection...." Id. at 2235.
[10] Id. at 2241.

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wetlands and other water bodies.[11] Justice Kennedy concluded that wetlands are "waters of the United States" "if the wetlands, either alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical, and biological integrity of other covered waters more readily understood as 'navigable.' When, in contrast, wetlands' effects on water quality are speculative or insubstantial, they fall outside the zone fairly encompassed by the statutory term 'navigable waters.'"[12]

Four justices, in a dissenting opinion authored by Justice Stevens, concluded that EPA's and the Corps' interpretation of "waters of the United States" was a reasonable interpretation of the Clean Water Act.[13]

When there is no majority opinion in a Supreme Court case, controlling legal principles may be derived from those principles espoused by five or more justices.[14] Thus, regulatory jurisdiction under the CWA exists over a water body if either the plurality's or Justice Kennedy's standard is satisfied.[15] Since Rapanos, the United States has filed pleadings in a number of cases interpreting the decision in this manner.

The agencies are issuing this memorandum in recognition of the fact that EPA regions and Corps districts need guidance to ensure that jurisdictional determinations, permitting actions, and other relevant actions are consistent with the decision and supported by the administrative record. Therefore, the agencies have evaluated the Rapanos opinions to identify those waters that are subject to CWA jurisdiction under the reasoning of a majority of the justices. This approach is appropriate for a guidance document. The agencies intend to more broadly consider jurisdictional issues, including clarification and definition of key terminology, through rulemaking or other appropriate policy process.

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[11] Id. at 2246.

[12] Id. at 2248. Chief Justice Roberts wrote a separate concurring opinion explaining his agreement with the plurality. See 126 S. Ct. at 2235-36.

[13] Id. at 2252-65. Justice Breyer wrote a separate dissenting opinion explaining his agreement with Justice Stevens' dissent. See 126 S. Ct. at 2266.

[14] See Marks v. United States, 430 U.S. 188, 193-94 (1977); Waters v. Churchill, 511 U.S. 661, 685 (1994) (Souter, J., concurring) (analyzing the points of agreement between plurality, concurring, and dissenting opinions to identify the legal "test ... that lower courts should apply," under Marks, as the holding of the Court); cf. League of United Latin American Citizens v. Perry, 126 S. Ct. 2594, 2607 (2006) (analyzing concurring and dissenting opinions in a prior case to identify a legal conclusion of a majority of the Court); Alexander v. Sandoval, 532 U.S. 275, 281-282 (2001) (same).

[15] 126 S. Ct. at 2265 (Stevens, J., dissenting) ("Given that all four justices who have joined this opinion would uphold the Corps' jurisdiction in both of these cases – and in all other cases in which either the plurality's or Justice Kennedy's test is satisfied – on remand each of the judgments should be reinstated if *either* of those tests is met.") (emphasis in original).

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Agency Guidance[16]

To ensure that jurisdictional determinations, administrative enforcement actions, and other relevant agency actions are consistent with the Rapanos decision, the agencies in this guidance address which waters are subject to CWA § 404 jurisdiction.[17] Specifically, this guidance identifies those waters over which the agencies will assert jurisdiction categorically and on a case-by-case basis, based on the reasoning of the Rapanos opinions.[18] EPA and the Corps will continually assess and review the application of this guidance to ensure nationwide consistency, reliability, and predictability in our administration of the statute.

1. Traditional Navigable Waters (i.e., "(a)(1) Waters") and Their Adjacent Wetlands

Key Points

- **The agencies will assert jurisdiction over traditional navigable waters, which includes all the waters described in 33 C.F.R. § 328.3(a)(1), and 40 C.F.R. § 230.3 (s)(1).**
- **The agencies will assert jurisdiction over wetlands adjacent to traditional navigable waters, including over adjacent wetlands that do not have a continuous surface connection to traditional navigable waters.**

EPA and the Corps will continue to assert jurisdiction over "[a]ll waters which are currently used, or were used in the past, or may be susceptible to use in interstate or

[16] The CWA provisions and regulations described in this document contain legally binding requirements. This guidance does not substitute for those provisions or regulations, nor is it a regulation itself. It does not impose legally binding requirements on EPA, the Corps, or the regulated community, and may not apply to a particular situation depending on the circumstances. Any decisions regarding a particular water will be based on the applicable statutes, regulations, and case law. Therefore, interested persons are free to raise questions about the appropriateness of the application of this guidance to a particular situation, and EPA and/or the Corps will consider whether or not the recommendations or interpretations of this guidance are appropriate in that situation based on the statutes, regulations, and case law.

[17] This guidance focuses only on those provisions of the agencies' regulations at issue in Rapanos -- 33 C.F.R. §§ 328.3(a)(1), (a)(5), and (a)(7); 40 C.F.R. §§ 230.3(s)(1), (s)(5), and (s)(7). This guidance does not address or affect other subparts of the agencies' regulations, or response authorities, relevant to the scope of jurisdiction under the CWA. In addition, because this guidance is issued by both the Corps and EPA, which jointly administer CWA § 404, it does not discuss other provisions of the CWA, including §§ 311 and 402, that differ in certain respects from § 404 but share the definition of "waters of the United States." Indeed, the plurality opinion in Rapanos noted that "... there is no reason to suppose that our construction today significantly affects the enforcement of §1342 ... The Act does not forbid the 'addition of any pollutant *directly* to navigable waters from any point source,' but rather the 'addition of any pollutant *to* navigable waters.'" (emphasis in original) 126 S. Ct. 2208, 2227. EPA is considering whether to provide additional guidance on these and other provisions of the CWA that may be affected by the Rapanos decision.

[18] In 2001, the Supreme Court held that use of "isolated" non-navigable intrastate waters by migratory birds was not by itself a sufficient basis for the exercise of federal regulatory jurisdiction under the CWA. See Solid Waste Agency of Northern Cook County (SWANCC) v. U.S. Army Corps of Engineers, 531 U.S. 159 (2001). This guidance does not address SWANCC, nor does it affect the Joint Memorandum regarding that decision issued by the General Counsels of EPA and the Department of the Army on January 10, 2003. See 68 Fed. Reg. 1991, 1995 (Jan. 15, 2003).

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foreign commerce, including all waters which are subject to the ebb and flow of the tide."[19] These waters are referred to in this guidance as traditional navigable waters.

The agencies will also continue to assert jurisdiction over wetlands "adjacent" to traditional navigable waters as defined in the agencies' regulations. Under EPA and Corps regulations and as used in this guidance, "adjacent" means "bordering, contiguous, or neighboring." Finding a continuous surface connection is not required to establish adjacency under this definition. The Rapanos decision does not affect the scope of jurisdiction over wetlands that are adjacent to traditional navigable waters because at least five justices agreed that such wetlands are "waters of the United States."[20]

2. *Relatively Permanent Non-navigable Tributaries of Traditional Navigable Waters and Wetlands with a Continuous Surface Connection with Such Tributaries*

Key Points

- **The agencies will assert jurisdiction over non-navigable tributaries of traditional navigable waters that are relatively permanent where the tributaries typically flow year-round or have continuous flow at least seasonally (e.g., typically three months).**
- **The agencies will assert jurisdiction over those adjacent wetlands that have a continuous surface connection to such tributaries (e.g., they are not separated by uplands, a berm, dike, or similar feature.)**

A non-navigable tributary[21] of a traditional navigable water is a non-navigable water body whose waters flow into a traditional navigable water either directly or indirectly by means of other tributaries. Both the plurality opinion and the dissent would uphold CWA jurisdiction over non-navigable tributaries that are "relatively permanent" – waters that typically (e.g., except due to drought) flow year-round or waters that have a

[19] 33 C.F.R. § 328.3(a)(1); 40 C.F.R. § 230.3(s)(1). The "(a)(1)" waters include all of the "navigable waters of the United States," defined in 33 C.F.R. Part 329 and by numerous decisions of the federal courts, plus all other waters that are navigable-in-fact (e.g., the Great Salt Lake, UT and Lake Minnetonka MN).

[20] Id. at 2248 (Justice Kennedy, concurring) ("As applied to wetlands adjacent to navigable-in-fact waters, the Corps' conclusive standard for jurisdiction rests upon a reasonable inference of ecologic interconnection, and the assertion of jurisdiction for those wetlands is sustainable under the Act by showing adjacency alone.").

[21] A tributary includes natural, man-altered, or man-made water bodies that carry flow directly or indirectly into a traditional navigable water. Furthermore, a tributary, for the purposes of this guidance, is the entire reach of the stream that is of the same order (i.e., from the point of confluence, where two lower order streams meet to form the tributary, downstream to the point such tributary enters a higher order stream). The flow characteristics of a particular tributary will be evaluated at the farthest downstream limit of such tributary (i.e., the point the tributary enters a higher order stream). It is reasonable for the agencies to treat the stream reach as a whole in light of the Supreme Court's observation that the phrase "navigable waters" generally refers to "rivers, streams, and other hydrographic features." 126 S. Ct. at 2222 (Justice Scalia, quoting Riverside Bayview, 474 U.S. at 131). The entire reach of a stream is a reasonably identifiable hydrographic feature. The agencies will also use this characterization of tributary when applying the significant nexus standard under Section 3 of this guidance.

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continuous flow at least seasonally (e.g., typically three months).[22] Justice Scalia emphasizes that relatively permanent waters do not include tributaries "whose flow is 'coming and going at intervals ... broken, fitful.'"[23] Therefore, "relatively permanent" waters do not include ephemeral tributaries which flow only in response to precipitation and intermittent streams which do not typically flow year-round or have continuous flow at least seasonally. However, CWA jurisdiction over these waters will be evaluated under the significant nexus standard described below. The agencies will assert jurisdiction over relatively permanent non-navigable tributaries of traditional navigable waters without a legal obligation to make a significant nexus finding.

In addition, the agencies will assert jurisdiction over those adjacent wetlands that have a continuous surface connection with a relatively permanent, non-navigable tributary, without the legal obligation to make a significant nexus finding. As explained above, the plurality opinion and the dissent agree that such wetlands are jurisdictional.[24] The plurality opinion indicates that "continuous surface connection" is a "physical connection requirement."[25] Therefore, a continuous surface connection exists between a wetland and a relatively permanent tributary where the wetland directly abuts the tributary (e.g., they are not separated by uplands, a berm, dike, or similar feature).[26]

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[22] See 126 S. Ct. at 2221 n. 5 (Justice Scalia, plurality opinion) (explaining that "relatively permanent" does not necessarily exclude waters "that might dry up in extraordinary circumstances such as drought" or "seasonal rivers, which contain continuous flow during some months of the year but no flow during dry months").

[23] Id. (internal citations omitted)

[24] Id. at 2226-27 (Justice Scalia, plurality opinion).

[25] Id. at 2232 n.13 (referring to "our physical-connection requirement" and later stating that Riverside Bayview does not reject "the physical-connection requirement") and 2234 ("Wetlands are 'waters of the United States' if they bear the 'significant nexus' of physical connection, which makes them as a practical matter *indistinguishable* from waters of the United States.") (emphasis in original). See also 126 S. Ct. at 2230 ("adjacent" means "physically abutting") and 2229 (citing to Riverside Bayview as "confirm[ing] that the scope of ambiguity of 'the waters of the United States' is determined by a wetland's *physical connection* to covered waters...") (emphasis in original). A continuous surface connection does not require surface water to be continuously present between the wetland and the tributary. 33 C.F.R. § 328.3(b) and 40 C.F.R. § 232.2 (defining wetlands as "those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support ... a prevalence of vegetation typically adapted for life in saturated soil conditions").

[26] While all wetlands that meet the agencies' definitions are considered adjacent wetlands, only those adjacent wetlands that have a continuous surface connection because they directly abut the tributary (e.g., they are not separated by uplands, a berm, dike, or similar feature) are considered jurisdictional under the plurality standard.

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3. *Certain Adjacent Wetlands and Non-navigable Tributaries That Are Not Relatively Permanent*

Key Points

- **The agencies will assert jurisdiction over non-navigable, not relatively permanent tributaries and their adjacent wetlands where such tributaries and wetlands have a significant nexus to a traditional navigable water.**
- **A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical and biological integrity of downstream traditional navigable waters.**
- **"Similarly situated" wetlands include all wetlands adjacent to the same tributary.**
- **Significant nexus includes consideration of hydrologic factors including the following:**
  - **volume, duration, and frequency of flow, including consideration of certain physical characteristics of the tributary**
  - **proximity to the traditional navigable water**
  - **size of the watershed**
  - **average annual rainfall**
  - **average annual winter snow pack**
- **Significant nexus also includes consideration of ecologic factors including the following:**
  - **potential of tributaries to carry pollutants and flood waters to traditional navigable waters**
  - **provision of aquatic habitat that supports a traditional navigable water**
  - **potential of wetlands to trap and filter pollutants or store flood waters**
  - **maintenance of water quality in traditional navigable waters**
- **The following geographic features generally are not jurisdictional waters:**
  - **swales or erosional features (e.g. gullies, small washes characterized by low volume, infrequent, or short duration flow)**
  - **ditches (including roadside ditches) excavated wholly in and draining only uplands and that do not carry a relatively permanent flow of water**

The agencies will assert jurisdiction over the following types of waters when they have a significant nexus with a traditional navigable water: (1) non-navigable tributaries that are not relatively permanent,[27] (2) wetlands adjacent to non-navigable tributaries that are not relatively permanent, and (3) wetlands adjacent to, but not directly abutting, a relatively permanent tributary (e.g., separated from it by uplands, a berm, dike or similar feature).[28] As described below, the agencies will assess the flow characteristics and functions of the tributary itself, together with the functions performed by any wetlands adjacent to that tributary, to determine whether collectively they have a significant nexus with traditional navigable waters.

The agencies' assertion of jurisdiction over non-navigable tributaries and adjacent wetlands that have a significant nexus to traditional navigable waters is supported by five

[27] For simplicity, the term "tributary" when used alone in this section refers to non-navigable tributaries that are not relatively permanent.

[28] As described in Section 2 of this guidance, the agencies will assert jurisdiction, without the need for a significant nexus finding, over all wetlands that are both adjacent and have a continuous surface connection to relatively permanent tributaries. See pp. 6-7, supra.

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justices. Justice Kennedy applied the significant nexus standard to the wetlands at issue in Rapanos and Carabell: "[W]etlands possess the requisite nexus, and thus come within the statutory phrase 'navigable waters,' if the wetlands, either alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical, and biological integrity of other covered waters more readily understood as 'navigable.'"[29] While Justice Kennedy's opinion discusses the significant nexus standard primarily in the context of wetlands adjacent to non-navigable tributaries,[30] his opinion also addresses Clean Water Act jurisdiction over tributaries themselves. Justice Kennedy states that, based on the Supreme Court's decisions in Riverside Bayview and SWANCC, "the connection between a non-navigable water or wetland may be so close, or potentially so close, that the Corps may deem the water or wetland a 'navigable water' under the Act. ... Absent a significant nexus, jurisdiction under the Act is lacking."[31] Thus, Justice Kennedy would limit jurisdiction to those waters that have a significant nexus with traditional navigable waters, although his opinion focuses on the specific factors and functions the agencies should consider in evaluating significant nexus for adjacent wetlands, rather than for tributaries.

In considering how to apply the significant nexus standard, the agencies have focused on the integral relationship between the ecological characteristics of tributaries and those of their adjacent wetlands, which determines in part their contribution to restoring and maintaining the chemical, physical and biological integrity of the Nation's traditional navigable waters. The ecological relationship between tributaries and their adjacent wetlands is well documented in the scientific literature and reflects their physical proximity as well as shared hydrological and biological characteristics. The flow parameters and ecological functions that Justice Kennedy describes as most relevant to an evaluation of significant nexus result from the ecological inter-relationship between tributaries and their adjacent wetlands. For example, the duration, frequency, and volume of flow in a tributary, and subsequently the flow in downstream navigable waters, is directly affected by the presence of adjacent wetlands that hold floodwaters, intercept sheet flow from uplands, and then release waters to tributaries in a more even and constant manner. Wetlands may also help to maintain more consistent water temperature in tributaries, which is important for some aquatic species. Adjacent wetlands trap and hold pollutants that may otherwise reach tributaries (and downstream navigable waters) including sediments, chemicals, and other pollutants. Tributaries and their adjacent wetlands provide habitat (e.g., feeding, nesting, spawning, or rearing young) for many aquatic species that also live in traditional navigable waters.

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[29] Id. at 2248. When applying the significant nexus standard to tributaries and wetlands, it is important to apply it within the limits of jurisdiction articulated in SWANCC. Justice Kennedy cites SWANCC with approval and asserts that the significant nexus standard, rather than being articulated for the first time in Rapanos, was established in SWANCC. 126 S. Ct. at 2246 (describing SWANCC as "interpreting the Act to require a significant nexus with navigable waters"). It is clear, therefore, that Justice Kennedy did not intend for the significant nexus standard to be applied in a manner that would result in assertion of jurisdiction over waters that he and the other justices determined were not jurisdictional in SWANCC. Nothing in this guidance should be interpreted as providing authority to assert jurisdiction over waters deemed non-jurisdictional by SWANCC.

[30] 126 S. Ct. at 2247-50.

[31] Id. at 2241 (emphasis added).

When performing a significant nexus analysis,[32] the first step is to determine if the tributary has any adjacent wetlands. Where a tributary has no adjacent wetlands, the agencies will consider the flow characteristics and functions of only the tributary itself in determining whether such tributary has a significant effect on the chemical, physical and biological integrity of downstream traditional navigable waters. A tributary, as characterized in Section 2 above, is the entire reach of the stream that is of the same order (i.e., from the point of confluence, where two lower order streams meet to form the tributary, downstream to the point such tributary enters a higher order stream). For purposes of demonstrating a connection to traditional navigable waters, it is appropriate and reasonable to assess the flow characteristics of the tributary at the point at which water is in fact being contributed to a higher order tributary or to a traditional navigable water. If the tributary has adjacent wetlands, the significant nexus evaluation needs to recognize the ecological relationship between tributaries and their adjacent wetlands, and their closely linked role in protecting the chemical, physical, and biological integrity of downstream traditional navigable waters.

Therefore, the agencies will consider the flow and functions of the tributary together with the functions performed by all the wetlands adjacent to that tributary in evaluating whether a significant nexus is present. Similarly, where evaluating significant nexus for an adjacent wetland, the agencies will consider the flow characteristics and functions performed by the tributary to which the wetland is adjacent along with the functions performed by the wetland and all other wetlands adjacent to that tributary. This approach reflects the agencies' interpretation of Justice Kennedy's term "similarly situated" to include all wetlands adjacent to the same tributary. Where it is determined that a tributary and its adjacent wetlands collectively have a significant nexus with traditional navigable waters, the tributary and all of its adjacent wetlands are jurisdictional. Application of the significant nexus standard in this way is reasonable because of its strong scientific foundation – that is, the integral ecological relationship between a tributary and its adjacent wetlands. Interpreting the phrase "similarly situated" to include all wetlands adjacent to the same tributary is reasonable because such wetlands are physically located in a like manner (i.e., lying adjacent to the same tributary).

Principal considerations when evaluating significant nexus include the volume, duration, and frequency of the flow of water in the tributary and the proximity of the tributary to a traditional navigable water. In addition to any available hydrologic information (e.g., gauge data, flood predictions, historic records of water flow, statistical data, personal observations/records, etc.), the agencies may reasonably consider certain physical characteristics of the tributary to characterize its flow, and thus help to inform the determination of whether or not a significant nexus is present between the tributary and downstream traditional navigable waters. Physical indicators of flow may include the presence and characteristics of a reliable ordinary high water mark (OHWM) with a

[32] In discussing the significant nexus standard, Justice Kennedy stated: "The required nexus must be assessed in terms of the statute's goals and purposes. Congress enacted the [CWA] to 'restore and maintain the chemical, physical, and biological integrity of the Nation's waters' ..." 126 S. Ct. at 2248. Consistent with Justice Kennedy's instruction, EPA and the Corps will apply the significant nexus standard in a manner that restores and maintains any of these three attributes of traditional navigable waters.

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channel defined by bed and banks.[33] Other physical indicators of flow may include shelving, wracking, water staining, sediment sorting, and scour.[34] Consideration will also be given to certain relevant contextual factors that directly influence the hydrology of tributaries including the size of the tributary's watershed, average annual rainfall, average annual winter snow pack, slope, and channel dimensions.

In addition, the agencies will consider other relevant factors, including the functions performed by the tributary together with the functions performed by any adjacent wetlands. One such factor is the extent to which the tributary and adjacent wetlands have the capacity to carry pollutants (e.g., petroleum wastes, toxic wastes, sediment) or flood waters to traditional navigable waters, or to reduce the amount of pollutants or flood waters that would otherwise enter traditional navigable waters.[35] The agencies will also evaluate ecological functions performed by the tributary and any adjacent wetlands which affect downstream traditional navigable waters, such as the capacity to transfer nutrients and organic carbon vital to support downstream foodwebs (e.g., macroinvertebrates present in headwater streams convert carbon in leaf litter making it available to species downstream), habitat services such as providing spawning areas for recreationally or commercially important species in downstream waters, and the extent to which the tributary and adjacent wetlands perform functions related to maintenance of downstream water quality such as sediment trapping.

After assessing the flow characteristics and functions of the tributary and its adjacent wetlands, the agencies will evaluate whether the tributary and its adjacent wetlands are likely to have an effect that is more than speculative or insubstantial on the chemical, physical, and biological integrity of a traditional navigable water. As the distance from the tributary to the navigable water increases, it will become increasingly important to document whether the tributary and its adjacent wetlands have a significant nexus rather than a speculative or insubstantial nexus with a traditional navigable water.

Accordingly, Corps districts and EPA regions shall document in the administrative record the available information regarding whether a tributary and its adjacent wetlands have a significant nexus with a traditional navigable water, including the physical indicators of flow in a particular case and available information regarding the functions of the tributary and any adjacent wetlands. The agencies will explain their basis for concluding whether or not the tributary and its adjacent wetlands, when considered together, have a more than speculative or insubstantial effect on the chemical, physical, and biological integrity of a traditional navigable water.

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[33] See 33 C.F.R. § 328.3(e). The OHWM also serves to define the lateral limit of jurisdiction in a non-navigable tributary where there are no adjacent wetlands. See 33 C.F.R. § 328.4(c). While EPA regions and Corps districts must exercise judgment to identify the OHWM on a case-by-case basis, the Corps' regulations identify the factors to be applied. Those regulations have recently been further explained in Regulatory Guidance Letter (RGL) 05-05 (Dec. 7, 2005). The agencies will apply the regulations and the RGL and take other steps as needed to ensure that the OHWM identification factors are applied consistently nationwide.

[34] See Justice Kennedy's discussion of "physical characteristics," 126 S. Ct. at 2248-2249.

[35] See, generally, 126 S. Ct. at 2248-53; see also 126 S. Ct. at 2249 ("Just as control over the non-navigable parts of a river may be essential or desirable in the interests of the navigable portions, so may the key to flood control on a navigable stream be found in whole or in part in flood control on its tributaries....") (citing to Oklahoma ex rel. Phillips v. Guy F. Atkinson Co., 313 U.S. 508, 524-25(1941)).

Swales or erosional features (e.g., gullies, small washes characterized by low volume, infrequent, or short duration flow) are generally not waters of the United States because they are not tributaries or they do not have a significant nexus to downstream traditional navigable waters. In addition, ditches (including roadside ditches) excavated wholly in and draining only uplands and that do not carry a relatively permanent flow of water are generally not waters of the United States because they are not tributaries or they do not have a significant nexus to downstream traditional navigable waters.[36] Even when not jurisdictional waters subject to CWA §404, these geographic features (e.g., swales, ditches) may still contribute to a surface hydrologic connection between an adjacent wetland and a traditional navigable water. In addition, these geographic features may function as point sources (i.e., "discernible, confined, and discrete conveyances"), such that discharges of pollutants to other waters through these features could be subject to other CWA regulations (e.g., CWA §§ 311 and 402).[37]

Certain ephemeral waters in the arid west are distinguishable from the geographic features described above where such ephemeral waters are tributaries and they have a significant nexus to downstream traditional navigable waters. For example, in some cases these ephemeral tributaries may serve as a transitional area between the upland environment and the traditional navigable waters. During and following precipitation events, ephemeral tributaries collect and transport water and sometimes sediment from the upper reaches of the landscape downstream to the traditional navigable waters. These ephemeral tributaries may provide habitat for wildlife and aquatic organisms in downstream traditional navigable waters. These biological and physical processes may further support nutrient cycling, sediment retention and transport, pollutant trapping and filtration, and improvement of water quality, functions that may significantly affect the chemical, physical, and biological integrity of downstream traditional navigable waters.

Documentation

As described above, the agencies will assert CWA jurisdiction over the following waters without the legal obligation to make a significant nexus determination: traditional navigable waters and wetlands adjacent thereto, non-navigable tributaries that are relatively permanent waters, and wetlands with a continuous surface connection with such tributaries. The agencies will also decide CWA jurisdiction over other non-navigable tributaries and over other wetlands adjacent to non-navigable tributaries based on a fact-specific analysis to determine whether they have a significant nexus with traditional navigable waters. For purposes of CWA §404 determinations by the Corps, the Corps and EPA are developing a revised form to be used by field regulators for documenting the assertion or declination of CWA jurisdiction.

Corps districts and EPA regions will ensure that the information in the record adequately supports any jurisdictional determination. The record shall, to the maximum extent practicable, explain the rationale for the determination, disclose the data and information relied upon, and, if applicable, explain what data or information received greater or lesser weight, and what professional judgment or assumptions were used in

[36] See 51 Fed. Reg. 41206, 41217 (Nov. 13, 1986).
[37] 33 U.S.C. § 1362(14).

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reaching the determination. The Corps districts and EPA regions will also demonstrate and document in the record that a particular water either fits within a class identified above as not requiring a significant nexus determination, or that the water has a significant nexus with a traditional navigable water. As a matter of policy, Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

All pertinent documentation and analyses for a given jurisdictional determination (including the revised form) shall be adequately reflected in the record and clearly demonstrate the basis for asserting or declining CWA jurisdiction.[38] Maps, aerial photography, soil surveys, watershed studies, local development plans, literature citations, and references from studies pertinent to the parameters being reviewed are examples of information that will assist staff in completing accurate jurisdictional determinations. The level of documentation may vary among projects. For example, jurisdictional determinations for complex projects may require additional documentation by the project manager.

Benjamin H. Grumbles
Assistant Administrator for Water
U.S. Environmental Protection Agency

John Paul Woodley, Jr.
Assistant Secretary of the Army
(Civil Works)
Department of the Army

[38] For jurisdictional determinations and permitting decisions, such information shall be posted on the appropriate Corps website for public and interagency information.

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Attachment to CFBF letter of 7-9-07

Corps and EPA Responses to the *Rapanos* Decision

Key Questions for Guidance Release

1. EPA analysis performed prior to the Rapanos decision stated that 53% of the waters in the U.S. were potentially at risk in the *Rapanos* and *Carabell* cases. Are these waters no longer jurisdictional?

In preparation for the Rapanos litigation, EPA estimated that 53% of the streams mapped in the National Hydrography Database were headwater streams and that 59% were either intermittent or ephemeral (both excluding Alaska). EPA performed these analyses to better understand the extent of waters that could be potentially removed from jurisdiction were petitioner's interpretation of the scope of Waters of the US adopted by the court. The Rapanos decision did not adopt petitioner's interpretation. As a result, those estimates are not an accurate estimate of waters jurisdictional after Rapanos.

We expect that many of these streams will be able to satisfy one of the standards established in the *Rapanos* decision, however, until the guidance has been in-place for a period time, we will not have case specific data to evaluate the extent of changes to historic (pre-*Rapanos*) CWA jurisdiction. The Agency's "*Rapanos* Guidance" is not intended to either increase or decrease CWA jurisdiction, but rather to provide guidance to the field to enable them to make jurisdictional determinations that are defensible following the *Rapanos* decision.

2. What do the agencies anticipate will be the impact of this guidance on the scope of geographic jurisdiction under the Clean Water Act?

The objective of this guidance is to clarify requirements for CWA jurisdictional determinations (JD) following the Supreme Court's *Rapanos* decision. Our primary purpose in issuing the guidance and associated technical field tools is to ensure a clear understanding of JD documentation requirements and foster a high level of national consistency in JD documentation and decisions. The guidance itself is not intended to either expand or contract CWA jurisdiction, but rather to effectively implement the decision by the Supreme Court in *Rapanos*.

3. What is the purpose of the comment period?

We are providing a six month public comment period to allow us to immediately rely on the guidance for consistent implementation of the decision, and also allow the public to provide comments, case studies, and experiences with the use of this guidance.

The Court's split decision in the *Rapanos* and *Carabell* decisions has caused uncertainty among agency field personnel and the general public regarding the scope of Federal jurisdiction under the Clean Water Act's section 404 program. For this reason, the agencies believe it is important that the guidance be issued immediately. At the same time, the agencies appreciate that the public has considerable interest in the issues

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addressed in this guidance. For this reason, we are providing a six month public comment period, which will allow us to immediately rely on the guidance for consistent implementation of the decision, and allow the public to provide comments informed by actual experience. To assure the public of our commitment to carefully consider their comments, and to address issues that may unexpectedly arise during implementation of the guidance, the agencies will within nine months from the date of issuance either reissue, revise, or suspend the guidance.

4. **The holding in *Rapanos* seems limited to a vacatur of the agencies' jurisdictional determinations in theses two cases and a remand back to the original circuit court? Does the agencies' guidance interpret the decision to require that CWA jurisdiction be reduced?**

No, the agencies are not interpreting the *Rapanos* decision as requiring that CWA jurisdiction be reduced or expanded. The agencies will assert CWA protections to the maximum extent allowed under the *Rapanos* decision. The guidance provides clarification for the agencies field staff, consistent with the Supreme Court decision, of what waters are regulated under the CWA by indicating when a wetland, tributary, or other water is a "water of the United States". The guidance identifies situations under which CWA jurisdiction is clear, such as for traditional navigable waters and their adjacent wetlands, and situations where a case-by-case decision is needed to determine jurisdiction, such as for tributaries that are not relatively permanent.

On June 16, 2006, a split Supreme Court in *Rapanos* vacated and remanded the judgments of the Sixth Circuit Court of Appeals. The Court issued five opinions with no single opinion commanding a majority of the Court.

A plurality of the Court held that wetlands adjacent to non-navigable tributaries are "waters of the United States" under the Clean Water Act only if the tributary to which the wetland is adjacent is a relatively permanent waterbody and the wetland has a continuous surface connection with the tributary. Justice Kennedy concurred with the plurality that the cases should be remanded, but disagreed with the plurality's analysis. He concluded that the Clean Water Act's jurisdiction over wetlands depends on whether a "significant nexus" exists between the wetlands and navigable waters, and that a significant nexus between wetlands and traditional navigable waters exists "if the wetlands, either alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical, and biological integrity" of traditional navigable waters. The dissenting opinion, authored by Justice Stevens, viewed the government's interpretation of the scope of "waters of the United States" as a reasonable interpretation in light of the ambiguity of that statutory term and the important water quality role of wetlands.

5. **The agencies' guidance concludes that certain waters (e.g., swales, gullies, washes, etc.) generally are not waters of the U.S. Are the agencies eliminating CWA protection for these waters?**

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The Corps/EPA Guidance does not categorically broaden or narrow CWA jurisdiction, but reflects the CWA as interpreted by the Supreme Court in *Rapanos*. The plurality standard indicates that waters that are traditionally navigable or wetlands immediately adjacent are jurisdictional, as well as tributaries that are "relatively permanent" and wetlands that have a continuous surface connection to such waters. The Kennedy standard provides that waters with a "significant nexus" to navigable-in-fact waters are jurisdictional.

As indicated in the Guidance, the jurisdictional status of some waters is dependent on a case-by-case showing of whether or not the particular water meets either the Plurality or Kennedy standards.

Ephemeral washes and intermittent streams? The jurisdictional status of ephemeral or intermittent waters depends on whether such waters meet either the Plurality or Kennedy standards, as described above. Waters that flow only following precipitation events (ephemeral) will need to meet the Kennedy significant nexus test to be jurisdictional. Intermittent streams will either need to flow at least seasonally to meet the Scalia relatively permanent flow standard, or will have to meet the Kennedy significant nexus standard to be jurisdictional.

Isolated waters? *Rapanos* did not address the question of isolated waters and the regulations found at 33 CFR 328.3(a)(3) and 40 CFR Sec. 230.3(s)(3, indicating such waters may be jurisdictional under some circumstances. The Guidance is focusing only on issues raised in *Rapanos*, and as a result does not address isolated waters. Note that the guidance does not find as jurisdictional those waters deemed non-jurisdictional in the 2001 Supreme Court decision in *Solid Waste Agency of Northern Cook County (SWANCC)*. In *SWANCC*; the Court held that a water could not be considered jurisdictional based solely on its use by migratory birds, although the decision did not invalidate (a)(3) or other regulations. Since the decision EPA and Corps field staff no longer base Clean Water Act jurisdiction solely on the presence of migratory birds. After *Rapanos* and *SWANCC*, some isolated waters may still be jurisdictional under other bases, such as where they are themselves navigable (such as the Great Salt Lake in Utah).

Ditches? The guidance indicates that ditches (including roadside ditches) excavated in and draining only uplands are generally not considered jurisdictional, where they do not carry a relatively permanent flow of water. However such waters may serve as hydrologic connections that are relevant to a significant nexus determination for other waters. Other ditches may be jurisdictional if they meet either the Scalia or Kennedy standards.

6. **What waters does the Corps/EPA Guidance indicate are protected under the Clean Water Act (CWA) after *Rapanos*?**

The guidance has been developed to implement the U.S. Supreme Court decision in *Rapanos*. In accordance with the guidance, jurisdiction will be as follows:

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The agencies will assert jurisdiction over the following waters:
- Traditional navigable waters
- Wetlands adjacent to traditional navigable waters
- Non-navigable tributaries of traditional navigable waters that are relatively permanent (i.e., the tributaries typically flow year-round or have continuous flow at least seasonally)
- Wetlands that directly abut such tributaries

The agencies will decide jurisdiction over the following waters based on a fact-specific analysis to determine whether they have a significant nexus with a traditional navigable water:
- Non-navigable tributaries that do not typically flow year-round or have continuous flow at least seasonally
- Wetlands adjacent to such tributaries
- Wetlands adjacent to but that do not directly abut a relatively permanent non-navigable tributary

The agencies will apply the significant nexus evaluation as follows:
- A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by all wetlands adjacent to the tributary to determine if in combination they significantly affect the chemical, physical and biological integrity of downstream traditional navigable waters
- Significant nexus includes consideration of hydrologic and ecologic factors

7. **Is the effect of the *Rapanos* decision (and the Guidance) limited to CWA Section 404, or all programs under the CWA?**

The Guidance focuses only on those provisions of the Corps and EPA regulations at issue in *Rapanos* – 33 CFR 328.3(a)(1), (a)(5) and (a)(7) and 40 CFR Sec. 230.3(s)(1), (s)(5), and (s)(7), which are the provisions addressing jurisdictional status of these categories of waters. This is not to say that other CWA program are not affected, rather that the *Rapanos* guidance focuses on jurisdictional determinations in the context of the Sec. 404 program.

In light of this, EPA may issue additional guidance concerning the effect of *Rapanos* on other CWA programs that use the common "waters of the U.S." definition, such as the NPDES program under section 402.

8. **Does the agencies' new guidance supersede their January 2003 guidance interpreting the *SWANCC* decision? Will the agencies continue to require that field staff get HQ approval before protecting isolated wetlands but not when they deny CWA protection for such waters?**

The newly issued *Rapanos* guidance does not supersede the agencies' January 2003 guidance interpreting *SWANCC*. The agencies will continue to evaluate jurisdiction over

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isolated wetlands and streams on a case-by-case basis. Concurrent with release of the *Rapanos* guidance, however, the Corps and EPA are issuing a jurisdictional determination documentation form and instructions to field personnel along with a memorandum establishing coordination procedures to be followed for new jurisdictional determinations. These technical tools and coordination procedures will help to provide national consistency, predictability, and improve the scientific basis for the agencies' CWA jurisdictional determinations. The coordination memorandum also addresses the so called "phone-home" provision of the January 2003 guidance by directing that all draft jurisdictional determinations involving isolated waters potentially affected by *SWANCC* be coordinated with EPA and Corps HQ, including draft determinations that would decline CWA jurisdiction.

9. Does *Rapanos* and the Guidance mean the no-net-loss wetlands goal is unattainable?

The agencies will continue to apply all of their regulatory tools in order to meet the no net loss of wetlands goal in the section 404 permit program. Since 1990, the Corps and EPA have worked to achieve a National goal of no-net-loss of wetlands under the Section 404 regulatory program. This goal is pursued by evaluating all proposed Section 404 permits to assure that every effort is made to avoid impacts to aquatic resources, minimize those impacts that are unavoidable, and effectively compensate for all permitted aquatic resource losses

10. What is the role of states and tribes in protecting waters, including those not addressed by the federal CWA?

An important component of successful implementation of the Clean Water Act (CWA) section 404 program is a close working relationship with states and tribes. States and tribes may assume operation of the section 404 program, and to date two have done so (Michigan and New Jersey). Many states and tribes have chosen to protect wetlands under State/Tribal law, while working cooperatively with the federal agencies without formally assuming the section 404 program.

The Administration remains committed to a strong Federal-State partnership to protect the Nation's waters. Annually, EPA has awarded an average of $15 million to help enhance existing or develop new wetlands protection programs at the State, Tribal, and local levels. In addition to Wetlands Program Development Grants, EPA provides funding assistance for a variety of CWA programs involving wetlands and other waters. For example, EPA awards grants to states and tribes to implement projects and programs to reduce "nonpoint" sources of pollution, to support approaches of controlling stormwater and other "wet weather flows," and to reduce and prevent pollution of specific waters such as the Great Lakes and the Chesapeake Bay. The Agency also advances the President's Cooperative Conservation agenda through collaborative efforts such as the Five Star Restoration Program and the National Estuary Program.

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States have the authority to regulate waters that are not addressed under the Clean Water Act. Section 510 of the Act provides: "[e]xcept as expressly provided in this chapter, nothing in this chapter shall ... be construed as impairing or in any manner affecting any right or jurisdiction with respect to the waters (including boundary waters) of such States." Since the Supreme Court ruled in *SWANCC* in 2001, at least two states enacted legislation specifically designed to protect isolated wetlands, and some states had authority to regulate such wetlands before the *SWANCC* decision on which they could rely.

11. Now that the agencies have issued "interim" guidance, will EPA and the Corps proceed to develop regulations to clarify the scope of CWA jurisdiction?

The guidance supports a strong regulatory program, which is one of three key elements to the Bush Administration wetlands policy: a strong regulatory program that ensures no net loss; an active management program that will result in the restoration, enhancement and protection of three million acres by 2009; and a commitment to conserve isolated wetlands such as prairie potholes.

Rulemaking is among several actions the Administration is considering in response to the *Rapanos* decision. Rulemaking takes time – certainly well over a year to develop a final rule, in part, because of the important public notice and comment provisions called for under the Administrative Procedure Act. Agency guidance can more quickly assist regulators, the regulated community, and the public to understand and consistently apply the CWA. As a result, EPA and the Corps have focused efforts to date on developing the Guidance issued today.

EPA and the Corps have a long history of working together closely and cooperatively in order to fulfill our important statutory duties on behalf of the public, and we expect this cooperative approach to continue as we implement the Clean Water Act as interpreted by the *Rapanos* decision. Any decision to pursue new rulemaking will be collaborative, as will the substantive work of developing any new rules to establish a revised regulatory definition of "waters of the US"

Also noteworthy, is the March 28, 2006 jointly issued U.S. Army Corps of Engineers - EPA proposed set of new standards to promote "no net loss" of wetlands and streams. This proposed mitigation rule represents a collaborative effort between the Corps and EPA to develop a consistent set of science-based standards to compensate for unavoidable impacts to wetlands, streams, and other aquatic resources. The rule establishes a single set of standards that all forms of compensation must satisfy, and that is based on better science, increased public participation, and innovative market-based tools.

12. Is legislation needed to clarify what waters are protected by the CWA?

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The Administration has not has not taken a position on any legislation to clarify the scope of "waters of the US" protected under the CWA. EPA and the Corps appreciate the interest that legislation cosponsors have in strong protection of the Nation's aquatic resources, but are still evaluating whether the *Rapanos* decision may be fully addressed by administrative means.

13. Will the scope of CWA regulatory controls over development activities remain unclear following implementation of the Rapanos guidance?

The Administration is committed to making timely and well documented decisions of the CWA jurisdictional status of aquatic resources that may be impacted by proposed development activities. Over the years, the reach of CWA jurisdiction to certain wetlands and other aquatic resources has by times been contentious, and the Supreme Court's involvement in the *Rapanos* and *Carabell* cases is a clear example of this. Additional cases challenging CWA jurisdiction are tried and decided in lower courts on a regular basis. While today's guidance provides more clarity for how decisions of the jurisdictional status of non-navigable tributaries and their adjacent wetlands will be made, it is likely that legal challenges to the scope of CWA jurisdiction will continue.

During the first six months implementing the guidance, the agencies invite public comments, case studies, and experiences with the use of this guidance.

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State of California - The Resources Agency
DEPARTMENT OF FISH AND GAME
http://www.dfg.ca.gov
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PETE WILSON, Governor

March 16, 1998

Mr. James R. Barnes, Project Manager
City of Huntington Beach
2000 Main Street
Huntington Beach, California 92648

Dear Mr. Barnes:

Shea Homes Residential Development
Orange County

The Department of Fish and Game (Department) is providing comment on the Biological Evaluation and Wetland Determination for the proposed Shea Homes residential development site located within the City of Huntington Beach, in Orange County. Also included in these comments is the Department's opinion concerning the potential for restoring any portion of the site into a functioning wetland.

The Department is providing these written comments as requested by the City of Huntington Beach (City), lead agency for the proposed Shea Homes development project under the California Environmental Quality Act (CEQA). The City made this request during a pre-project planning meeting held by the Department on February 18, 1998. The Department understands that these comments are necessary in order to facilitate the Coastal Commission's evaluation of Shea Home's coastal development permit application.

It is the Department's understanding that the majority of the proposed site (44 acres) is located within the City of Huntington Beach, with a 5-acre portion located within an adjoining unincorporated area of Orange County.

At this time, the Department is only providing comment on the wetland delineation for the 44-acre portion of the site located within the City of Huntington Beach. The Department's evaluation is based upon information submitted by Ms. Lisa Kegarice of Tom Dodson and Associates (TD&A), as provided in a December 17, 1997 letter to Ms. Jana Morgan of EDAW, Inc.. This letter provides information verifying and updating the wetland determination for the 44-acre portion of the project site only.

Conserving California's Wildlife Since 1870.

Exhibit YYY
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Based upon the information outlined within the above-referenced letter by TDA, the Department concurs that the subject property located within the City of Huntington Beach does not meet wetland criteria nor would there appear to be any likelihood that this portion of the site could be restored to a functional wetland without substantial manipulation of the hydrological conditions of the site.

The Department also concurs with the biological assessment performed on the total site including the western most portion, by Mr. Frank Hovore of Frank Hovore and Associates (FH&A), as detailed in a February 17, 1997 correspondence to the Department. This assessment appears to be consistent with conditions existing on the site.

The Department would also like to reiterate what was discussed at the pre-project planning meeting regarding the western most portion of the proposed site located within the unincorporated area of Orange County. It is the Department's understanding, based upon the above-referenced biological assessment and direct observation by Department field staff, that fragments of saltmarsh still persist within a portion of this area. It was also observed upon subsequent visits that a portion of this area has been filled and saltmarsh vegetation removed. The exact dimensions of this area as it now exists or its size prior to recent disturbances was not discussed in any great detail during the pre-project planning meeting. The Department did clearly state that mitigation measures for the existing loss of this area and subsequent losses of the remaining portion of this wetland, as a result of proposed site development, would need to be assessed and provided, under CEQA, in order to comply with the Department's "No Net Loss of Wetland Habitat" Policy.

In addition, the Department has also determined that separate notification for a Streambed Alteration Agreement pursuant to Fish and Game Code § 1600 et seq., is not required for the project as described, including that portion of the site containing hydrologically isolated remnants of saltmarsh vegetation.

The Department recommends that any mitigation measures implemented under CEQA be performed directly adjacent to the contiguous areas associated with the Bolsa Chica wetlands to the south of the Wintersberg Channel. Attempting to restore the existing remnant saltmarsh portion of the project site into an on-site viable wetland would probably meet with limited success due to its small size, the isolated nature of the site from any existing functioning wetland or tidal influence, and its close proximity to the proposed residential development and associated disturbances by people and domestic pets.

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The Department further recommends that a description of any wetland losses associated with this project which includes total acreage loss and a detailed mitigation plan be included in the Environmental Impact Report for this project. This information would facilitate review by resource agencies and other interested parties.

The Department appreciates the opportunity to comment on this proposed project. If you have any questions regarding this matter please contact Mr. Scott Harris, Wildlife Biologist at (562)590-5100.

Sincerely

Ronald D. Rempel

Ronald D. Rempel
Regional Manager

copy: Ms. Terri Dickerson
Department of Fish and Game
Laguna Niguel, California

Mr. Tim Dillingham
Department of Fish and Game
San Diego, California

Mr. Stephan Rynas
California Coastal Commission
Long Beach, California

Mr. Jack Fancher
U.S. Fish and Wildlife Service
Carlsbad, California

YYY3

State of California · The Resources Agency
DEPARTMENT OF FISH AND GAME
http://www.dfg.ca.gov
South Coast Region
330 Golden Shore, Suite 50
Long Beach, California 90802
(562) 590-5113

PETE WILSON, Governor

RECEIVED
JUN 19 1998
DEPARTMENT OF
COMMUNITY DEVELOPMENT

June 15, 1998

Mr. James R. Barnes, Project Manager
City of Huntington Beach
2000 Main Street
Huntington Beach, California 92648

Dear Mr. Barnes:

Parkside Estates Draft Environmental Impact Report
SCH #97091051, Orange County

The Department of Fish and Game has reviewed the Draft Environmental Impact Report (DEIR) for impacts to biological resources for the above referenced project. The proposed project includes the construction of 208 single family homes and a park site on approximately 49 acres of land. Approximately 44.5 acres of the project is located in the City of Huntington Beach and 4.5 acres is located in the unincorporated County of Orange.

The Department has the following concerns regarding wildlife impacts and makes the following comments regarding mitigation measures for the project:

Habitat Impacts

Appendix G of the DEIR includes a March 16, 1998 letter written by the Department to the City of Huntington Beach. In that letter the Department concurred with the no wetland value determination as described in the December 17, 1997 verification/update report of the wetland value determination conclusion prepared by the City of Huntington Beach's consultant, Tom Dodson and Associates, for the Shea Company Property TT#15377. The Department's letter was based upon the information provided by Tom Dodson and Associates in their verification/update of wetland determination as referenced above.

The DEIR states "Historic aerial photographs clearly show that the Orange County portion of the property was formed from the upper margin of the Bolsa Chica marshlands." Although this area has been severed geographically by the construction of the East Garden Grove-Wintersburg Channel and its biological values degraded by off-site road construction, oil drilling and associated surface activities, [redacted]. Namely, the loss of two small patches of degraded pickleweed habitat identified in the DEIR. The Department recommends that the wildlife values associated with this parcel be mitigated by the preservation and enhancement of [redacted] habitat at a location acceptable to the Department. Therefore, Section 5.8, Mitigation Measure No. 2 should be amended to increase the mitigation from 0.8 to 2.0 acres. This mitigation should encompass the protection and enhancement of wildlife values on or as a part of a significant ecological system in the project

Conserving California's Wildlife Since 1870.

Exhibit ZZZ

vicinity, such as the Bolsa Chica Lowlands or the Upper Newport Bay Ecological Reserve. Alternative equivalent mitigation may also be acceptable if it is consistent with the DEIR and approved by the Department prior to any site development activities.

Section 8.4-Mitigation and Measures

Page 8-16 - Biological Resource Mitigation Measure Two

1. The Department recommends that mitigation measures for the pocket wetlands located within the Orange County portion of the proposed project be implemented prior to receiving a grading permit for the site.

2. The second sentence of biological mitigation measure two, page 8-16, is unclear and should be reworded to clarify the intent.

Raptor Habitat Impacts

The biological report contained in Appendix G of the DEIR states that the proposed site supports an "abundant gopher and ground squirrel populations that may attract resident and seasonal hunting use by birds of prey, including a number of hawks and owls."

Wintering raptors migrate from their breeding grounds in the northern latitudes to southern California and beyond. Agricultural areas, grasslands and wetlands are of seasonal importance to several species of raptors in Orange County by providing important, if not vital, staging and wintering habitat. These habitats also provide foraging areas for resident breeding raptors.

The biological report further indicates that 13 sensitive raptor species could be "observed locally or expected to pass through the general site vicinity during seasonal migration." The report documents the sightings of several raptor species foraging or flying over the site. These observations include: a mated pair (presumably) of white-tailed kites (*Elanus leucurus*), a California Fully Protected Bird; a Ferruginous hawk (*Buteo regalis*); and a Northern harrier (*Circus cyaneus*) both California Species of Special Concern. Based on its status as a fully protected species, the take of white-tailed kites is prohibitated.

The reduction of available raptor foraging areas within the project site and vicinity may also result in an increased dependance by birds of prey on dwindling remaining open space containing finite and/or sensitive prey resources such as the adjacent Bolsa Chica Ecological Reserve. The Department is concerned that this may result in increased raptor densities in the reserve resulting in increased predation on sensitive bird species such as the California least tern (*Sterna antillarum brown*) and Belding's savannah sparrow (*Passerculus sandwichensis beldingi*).

Alternatives to the Proposed Project

An evaluation of alternatives to the proposed project which would reduce biological impacts to a level of insignificance as required under CEQA Guidelines Section 15126(d) 1 was not included for impacts to wildlife habitats which provide wetland values and/or raptor foraging areas on the proposed project site.

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In summary, the Department recommends the proposed Parkside Estates Residential Development Project only be approved if all significant impacts to wildlife resources are disclosed and mitigated to less than significant levels.

The Department realizes the many challenges that are involved in evaluating the proposed project related biological impacts on the site and appreciates the opportunity to comment. If you have any questions. please contact Mr. Scott Harris, Wildlife Biologist, at the letterhead address or by telephone at (562) 590-5100.

Sincerely,

Ronald D. Rempel

Ronald D. Rempel
Regional Manager

cc: Department of Fish and Game
Long Beach

Mr. Larry Sitton
Mr. Scott Harris

Mr. Stephen Rynas
California Coastal Commission
Long Beach

Mr. Jack Fancher
U.S. Fish and Wildlife Service
Carlsbad

Mr. Eric Stein
U.S. Army Corps of Engineers
Los Angeles

ZZZ3

STATE OF CALIFORNIA-THE RESOURCES AGENCY
GRAY DAVIS, Governor
DEPARTMENT OF FISH AND GAME
South Coast Region
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San Diego, California 92123
(858) 467-4201
FAX (858) 467-4235

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COASTAL COMMISSION

January 16, 2002

Flex your POWER

Ms. Grace Fong
County of Orange
Planning and Development Services Department
300 North Flower Street
P.O. Box 4048
Santa Ana, California 92702-4048

Dear Ms. Fong:

Draft Subsequent Environmental Impact Report for the Brightwater Development Project County of Orange and City of Huntington Beach, California (SCH 1993071064)

The Department of Fish and Game (Department) has reviewed the Draft Subsequent Environmental Impact Report (SEIR) dated November 17, 2001, for the Brightwater Development project. The Department conducted its interview as a Trustee Agency pursuant to California Environmental Quality Act (CEQA) Section 15386 and is responsible for the conservation, protection and management of the state's biological resources.

The proposed project consists of the following land uses: (1) development of 387 single family residences; (2) construction of an underground water reservoir; and (3) approximately 29 acres of recreation/conservation open space on approximately 106.25 acres of the Upper Bench of the Bolsa Chica Mesa. Approximately 105.3 acres of the site is located within an unincorporated area in the County of Orange, and approximately 0.95 acre is located within the City of Huntington Beach. Nine of the residential units would be located partially or wholly within the City of Huntington Beach and would be annexed to the City.

The project area is dominated by annual grass/forb communities, with small amounts of eucalyptus, coastal bluff scrub, and wetlands. Wetlands and a designated Environmentally Sensitive Habitat Area (i.e., "Eucalyptus ESHA") would be avoided by the proposed development. The development would result in impacts to a total of approximately 75.2 acres of open vegetated areas dominated by annual grasslands (54.4 acres) and areas vegetated with "ruderal" grassland/forb associations (20.8 acres). Approximately 0.04 acre of eucalyptus outside of the Eucalyptus ESHA and 0.2 acre of coastal bluff scrub would be impacted. The project would also convert approximately 13.9 acres designated as disturbed/graded/road to urban uses.

HNB LCPA 1-06 Exhibit AAAA

The project would impact southern tarplant (*Centromadia parryi* ssp. *australis*) and result in a loss of habitat for several California Species of Special Concern (CSC) including San Diego coast horned lizard (*Prhynosoma coronatum blainvillei* - CSC), white-tailed kite (*Elanus caeruleus* - CSC), northern harrier (*Circus cyaneus* - CSC), short-eared owl (*Asio flammeus*), burrowing owl (*Athene cunicularia* - CSC), loggerhead shrike (*Lanius ludovicianus* - CSC), California horned lark (*Eremophila alpestris actia* - CSC), and San Diego black-tailed jackrabbit (*Lepus californicus bennettii* - CSC).

In addition, the SEIR considers the potential indirect effects of the proposed project on several special status species inhabiting the Bolsa Chica Lowlands, including California least tern (*Sterna antillarum browni*), western snowy plover (*Charadrius alexandrinus nivosus*), and peregrine falcon (*Falco peregrinus anatum*).

The SEIR employs the use of nine Project Design Features (PDFs) associated with biological resources. The purpose of the PDFs is to avoid or reduce impacts to a less than significant level by incorporation of mitigating measures into the Project Description. In addition to the nine PDFs, two biological mitigation measures are also proposed for remaining potentially significant impacts not addressed by the PDFs.

The Department offers the following comments concerning this project:

Project Design Features

While the PDFs provided in the SEIR have the potential to reduce the impacts of the proposed project, they are generally too vague/non-specific such that their effectiveness cannot be assured. Generally, the PDFs should be described in enough detail to demonstrate that these measures will avoid or mitigate a significant impact. Specific comments on PDFs will be included under the appropriate topical areas below.

Surface Hydrology and Constructed Wetlands

Most of the runoff from the proposed development would enter wetlands for biological treatment. A relatively small area (6.26 acres) would drain to storm drains feeding into the Huntington Harbor while a much larger drainage area (93.19 acres) would enter a series of treatment wetlands, an existing pocket wetland, or directly into a detention basin before discharging to the Isolated Pocket Lowland. The constructed treatment wetlands have the potential to provide some wildlife foraging and cover benefits while improving surface water quality flowing from the development to the Isolated Pocket Lowland. Because the constructed wetland basins have been designed, in part, to settle out suspended solids, it is expected that excavation or maintenance of the created wetlands will be necessary. The Department is concerned about potential future maintenance of the constructed wetlands. We recommend that measures are taken to avoid or minimize future maintenance to the extent practicable. For instance when future maintenance is unavoidable, we request that the maintenance is performed outside of the general nesting/breeding season for birds (March 1 to August 31); the maintenance methodology and timing should be described in the Final SEIR.

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The choice of native plant materials to be planted in the constructed wetlands may influence the ability of the wetlands to effectively treat urban runoff, and would strongly influence the habitat values. We would like to work with the project applicant to identify an appropriate plant palette for the constructed wetlands that will benefit them.

The Department believes that more analysis is necessary regarding the effects of increased freshwater runoff into the State-owned Isolated Pocket Lowland. On page 4.9-31 of the SEIR, the Isolated Pocket Lowland is described as consisting of barren, unvegetated flats, areas of non-native vegetation, and limited areas of native wetland vegetation. The SEIR states that the discharge of large storm freshwater runoff will both partially counteract the accumulation of salt and result in an increase in native vegetation improving biological productivity. With the information provided, this is a very speculative claim. The Final SEIR should, at a minimum, include appropriate information from the cited Glenn Lukos Associates, Inc. letter dated September 6, 2001, so that the rationale for expecting native habitat expansion in the Isolated Pocket Lowland can be better understood. Since the Isolated Pocket Lowland currently supports a mix of non-native and limited native wetland vegetation according to the SEIR, the addition of water could result in an increase in non-native vegetation as well as an increase in native vegetation. The proximity of propagule sources can also be a major influence on whatever vegetation community becomes established in the Isolated Pocket Lowland. The additional water could result in a number of different scenarios, depending on several factors. These scenarios should be discussed in the Final SEIR. The volume and temporal availability of the additional water are factors influencing the species and structure of wetland vegetation, and this should also be discussed.

The SEIR states that the accumulation of salts may be improved by the influx of fresh water. However, it is not immediately clear if salts would be flushed from the area, or temporarily diluted. If water entering the Isolated Pocket Lowland is allowed to flow through and discharge elsewhere, salts would enter into solution and be flushed away. However, if first-flush and other storm flows simply stand within the Isolated Pocket Lowland, additional dissolved salts would enter/concentrate in the area and subsequent evaporation may increase the salt concentration problem.

Besides including additional information regarding the effects of runoff on the Isolated Pocket Lowland, we recommend that the applicant examine ways to utilize the additional water source to improve the biological function of the area and ensure that detrimental impacts do not result from the discharge. Active management may be necessary to encourage the development of better quality habitat in this area. The management of the Isolated Pocket Lowland should be considered in concert with the restoration efforts for other areas of the Bolsa Chica Lowlands. Please contact the State Lands Commission (Dwight Sanders 916-574-1880) who holds fee title to the property for coordination on possible ways to integrate potential habitat improvements in the Isolated Pocket Lowland with the larger Restoration Project. The Department staff is available to advise on restoration efforts in the Pocket Lowlands.

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Grasslands and Herbaceous Habitats

As pointed out in the SEIR, the "annual grasslands"vegetation association is mapped separately from "ruderal." While the term "ruderal" is often used to describe vegetation dominated by non-native forbs, the application of this term is somewhat arbitrary. The SEIR treats the loss of 75.2 acres of non-native grassland/ruderal on the Upper Mesa as not a significant impact. Bolsa Chica represents one of the last significant grasslands adjacent to a coastal wetland and we believe that the impacts are significant. Although annual grasslands or "ruderal" areas are generally not considered to be sensitive resources for the plant species they support, they are increasingly being recognized as rapidly declining habitats for several declining wildlife species in coastal southern California. Several sensitive species associated with grassland potentially occur or have been identified on the Bolsa Chica Mesa including San Diego coast horned lizard, white-tailed kite, northern harrier, burrowing owl, loggerhead shrike, San Diego black-tailed jackrabbit, and California horned lark. Coyote (*Canis latrans*), recently observed on the project site, is an effective predator of both red fox (*Vulpes fulva*) and domestic cat (*Felis domesticus*), two non-native species capable of extirpating entire populations of sensitive wildlife. The Department believes that the loss of grassland/ruderal habitat is significant for the following reasons: (1) the proximity of the project area to the coast, where open herbaceous habitats are particularly scarce; (2) the loss of habitat for a large number of sensitive plant and animal species reported from the Bolsa Chica Mesa; (3) the project area's importance in supporting a viable coyote population at Bolsa Chica; and (4) and its ecological values due to the site's connectivity with the much larger Bolsa Chica Lowlands. We recommend mitigation at a ratio of no less than 0.5 to 1 for the loss of 75.2 acres of annual grasslands and areas vegetated with "ruderal" grassland/forb associations. Mitigation could consist of the permanent preservation of a portion of the Lower Bolsa Chica Mesa (via a conservation easement) that is contiguous with other preserved open space.

PDF 9-1

Please provide additional information on how the botanist will identify and regulate areas of plant habitat that are intended to be preserved. Include information on the type, color, and frequency of markers. We recommend that stakes should be placed at regular intervals (e.g. every ten feet), and be adorned with an identifier (e.g. hot pink colored flagging) to assist equipment operators in recognizing and avoiding areas of preserved habitat.

Southern Tarplant

Southern tarplant is listed as 1B (Rare, Threatened, or Endangered in California and Elsewhere) by CNPS and meets the CEQA definition of rare (threatened) and endangered species (see CEQA Guidelines, § 15380). Several occurrences of southern tarplant in Orange County have recently been impacted or are threatened by impending development. As southern tarplant is restricted to grasslands, wetland edges, vernal pools, and alkaline flats in the coastal counties of southern California, the species has been greatly reduced and populations have been fragmented by development. As an annual species (life cycle is completed within one year) with the numbers of detectable (i.e., above-ground flowering) plants visible in any one year varying sharply depending on soil moisture and other conditions, quantifying populations and determining the impacts of a development project can be problematic. The survey results provided in the SEIR cover three years of surveys for this species. The repetition of surveys is an appropriate strategy, and the

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results confirm fluctuations in both numbers and in locations where the species was identified. These results are consistent with similar survey results for this species in other locations. However, by focusing on the number of individual plants to be impacted (1,070 plants, based on 2001 survey results) the SEIR does not adequately quantify the loss of southern tarplant. As conditions change, population numbers and locations may also change. The detectability of the species is simply too variable to rely on total counts for a given year to provide adequate impact assessment information. Therefore, the extent of the occurrence on the project site should be estimated using both the observed total counts and the acreage of all areas where southern tarplant has been observed during all surveys over the last several years. The discussion of impacts in the Final SEIR should include the acreage of impact, an estimated total count, and an acknowledgment that the occurrence includes a seedbank that cannot be quantified by conventional survey techniques.

Because of the rarity of the species and recent impacts contributing to a cumulative loss, we disagree that the loss of southern tarplant is below a level of significance. The reduction in numbers and habitat (estimated as 12% of the 2001 Bolsa Chica population) is a significant impact (see CEQA Guidelines § 15065(a)). We concur with PDF 9-2 which proposes replacement of the portions of southern tarplant that will be lost on areas of the Bolsa Chica Mesa, but no detail is provided. Before it can be determined that this PDF would reduce the impacts below a level of significance, key information regarding the mitigation strategy must be provided in the Final SEIR. The replacement area could be included within the conserved portion of the annual grassland habitat. The following, excerpted from the Department's NOP comment letter dated August 20, 2001 (see SEIR Appendix A), describes the detail necessary for the Department to adequately review this PDF:

Mitigation measures for adverse project-related impacts to sensitive plants, animals, and habitats should be discussed. Mitigation measures should emphasize avoidance and reduction of project impacts. For unavoidable impacts, on-site habitat restoration or enhancement should be discussed in detail. If on-site mitigation is not feasible, off-site mitigation through habitat creation and/or acquisition and preservation in perpetuity should be addressed.

a. *The Department generally does not support the use of relocation, salvage, and/or transplantation as mitigation for impacts to rare, threatened, or endangered species. Studies have shown that these efforts are experimental in nature and largely unsuccessful.*

b. *Areas reserved as mitigation for project impacts should be protected from future direct and indirect impacts. Potential issues to be considered include limitation of access, conservation easements, monitoring and management programs, control of illegal dumping, water pollution, and fire.*

c. *Plans for restoration and revegetation should be prepared by persons with expertise in southern California ecosystems and*

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> *native plant revegetation techniques. Each plan should include, at a minimum: (a) the location of the mitigation site(s); (b) the plant species to be used, container sizes, and seeding rates; (c) a schematic depicting the mitigation area; (d) planting schedule; (e) a description of the irrigation methodology; (f) measures to control exotic vegetation on site; (g) specific success criteria; (h) a detailed monitoring program; (i) contingency measures should the success criteria not be met; and (j) identification of the party responsible for meeting the success criteria and providing for conservation of the mitigation site in perpetuity.*

With modifications to the current PDF 9-2, it may be possible to reduce the impact below a level of significance. This species is associated with relatively open areas. The proposed replacement area would need to be appropriately managed to reduce potentially competing vegetation. This management may include periodic weeding and light disturbance of the site.

General Mesa Wildlife

The Department's recommended mitigation for the loss of annual grassland and ruderal habitats would also mitigate for the loss of habitat for San Diego coast horned lizard, white-tailed kite, northern harrier, loggerhead shrike, California horned lark, and San Diego black-tailed jackrabbit.

Burrowing Owl

We recommend that PDF 9-5 is revised to include additional information to ensure consistency with the Department's Staff Report on Burrowing Owl Mitigation[1].

1. Occupied burrows should not be disturbed during the nesting season (February 1 through August 31) unless a qualified biologist approved by the Department verifies through non-invasive methods that either: (1) the birds have not begun egg-laying and incubation; or (2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

2. To offset the loss of foraging and burrow habitat on the project site, a minimum of 6.5 acres of foraging habitat (calculated on a 100 m (approx. 300 ft.) foraging radius around the burrow) per pair or unpaired resident bird, should be acquired and permanently protected. The protected lands should be adjacent to occupied burrowing owl habitat (if possible) and at a location acceptable to the Department. Protection of additional habitat acreage per pair or unpaired resident bird may be applicable in some instances.

3. When destruction of occupied burrows is unavoidable, existing unsuitable burrows should be enhanced (enlarged or cleared of debris) or new burrows created (by installing artificial burrows) at a ratio of 2:1 on the protected lands site.

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4. If owls must be moved away from the disturbance area, passive relocation techniques should be used rather than trapping. At least one or more weeks will be necessary to accomplish this and allow the owls to acclimate to alternate burrows.

5. The project sponsor should provide funding for long-term management and monitoring of the protected lands. The monitoring plan should include success criteria, remedial measures, and an annual report to the Department.

Cats and Coyotes

We disagree with the following statement regarding cats and listed/sensitive ground-nesting birds on the Lowlands on Page 4.9-35 of the SEIR: *If cats are present in relatively low numbers, the impact on the birds is not expected to be significant. However, the impact of the presence of domestic cats in areas adjacent to the wetlands could have a potentially significant impact on common and sensitive species of birds if cats are present in large numbers.* The presence of a single cat, if allowed free reign, could result in significant impacts to sensitive small animals that constitute potential prey. Estimates of the number of prey taken by cats vary, but the potential annual take has been estimated to be as high as 1000 animals.[2] A recent California study reported that each pet cat living adjacent to a moderately sized habitat fragment in San Diego returned an average of 24 rodents, 15 birds, and 17 lizards to its home residence annually.[3] Because these results do not account for prey that are not brought home, the actual number taken is likely much higher. Any measures that can be implemented to minimize the domestic cat threat should be incorporated into the project. While PDF 9-3 does attempt to address the problem, it will be very difficult to completely control cats. We recommend that the education of the detrimental effects of domestic cats be extended to all residents of the development, not just the original property owners. The cat control plan should also include monitoring of open space and regular trapping of cats, if needed, in consultation with the Department.

A robust population of coyote, if maintained on the site, will likely provide additional cat control services. While the SEIR does state that the proposed project is not likely to affect the continued presence of the coyote at Bolsa Chica, no supporting data is provided to verify this statement. As the presence of the coyote in its role as a meso-predator regulator is a crucial factor in the long-term survival of many upland birds known from the site including California quail (*Callipepla californica*) and sensitive Lowland birds susceptible to predation by non-native animals, we request that a more detailed analysis is provided in the Final SEIR. This analysis should take into account the ecological needs of the coyote and by estimation of the carrying capacity and acreage of the site, provide population estimates both before and after development.

[2] Coleman, J.S., S.A.Temple, and S.R. Craven. Cats and wildlife, a conservation dilemma (Http://wildlife.wisc.edu/extension/carfly3.htm)

[3] Crooks, K.R. and M.E.Soule. 1999. Mesopredator release and avifaunal extinctions in a fragmented system. Nature 400: 563-566

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A statement in the last paragraph on page 2.9-10 of the SEIR may be misleading regarding the food preferences of coyotes. The coyote is indeed an important meso-predator regulator, but should not be included along with the red fox as an effective predator on "smaller animals, particularly ground and near-ground nesting birds such as the sensitive light-footed clapper rail and least tern." While this may be true of the red fox, it is certainly not true of the coyote, whose primary diet rarely includes birds.

Belding's Savannah Sparrow

The SEIR discusses several sensitive and listed species on both the Bolsa Chica Mesa and Lowlands. However, the large Bolsa Chica population of Belding's savannah sparrow (*Passerculus sandwichensis beldingi*), a State-listed endangered species of utmost concern to the Department, is not addressed. Because the increase in residences in the area has the potential to contribute to detrimental effects, including a potential increase of feral cat predation on Belding's savannah sparrow, the species should be fully addressed in the Final SEIR.

Raptor and Corvid Predation on Lowland Birds

The issue of raptor (especially American kestrel) and corvid (i.e., crow and common raven) predation on the sensitive bird species of the Lowlands is a problematic management issue. The control of the predator species is costly, time-consuming, and often ineffective. The Department would not support a project that would result in an increase in predation on sensitive Lowland birds, particularly California least tern, Belding's savannah sparrow, and western snowy plover. As discussed in the SEIR, the potential exists for the project to contribute to a cumulative increase in raptor and corvid predation on nesting birds in the Lowlands. However, attributing a direct cause-and-effect relationship to an increase or decrease in predation relating to the proposed project would be extremely difficult.

Mitigation Measure 9.1 is vague and would be difficult to implement as written:

> *Prior to the issuance of grading permits, the applicant shall establish a trust fund in an amount to be determined in consultation with CDFG, to assist in the ongoing management of raptor predation upon nesting sensitive species after the implementation of the residential development on the Bolsa Chica Mesa. The fund will be available to CDFG and USFWS if it can be determined by CDFG and USFWS, to the satisfaction of the County Environmental and Project Planning Division, that the residential development results in an increase in raptor predation. If no such effect is demonstrated within five years of completion of project construction, the trust fund shall revert to the applicant.*

In order to determine a causal site-specific effect (i.e., the project is directly causing an increase in predation), a study may need to include a review of historic population trends for the sensitive target species at Bolsa Chica, pre- and post- construction monitoring at Bolsa Chica, monitoring of off-site locations/control sites, consideration of statewide trends in raptor/corvid population fluctuations and movements, and other data (El Niño fluctuations, etc.). The time and resources necessary for the Department to pursue such a study at this time are not available.

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Any changes in predation (higher or lower) following development of the site would most likely be related to a variety of factors. If raptor predation can be shown to increase or decrease over time (making observations for at least seven years to capture climactic variation), it is likely that the development of the Upper Bolsa Chica Mesa could then be considered a significant contributing factor. In light of this, we suggest that Mitigation Measure 9.1 is revised as follows:

> Prior to the issuance of grading permits, the applicant shall establish a trust fund in an amount to be determined in consultation with CDFG, to assist in the ongoing management of sensitive avian species nesting in the Lowlands after the implementation of the residential development on the Upper Bolsa Chica Mesa. The fund may be used for management of predatory raptors/corvids, habitat improvement, or other measures designed to improve the reproductive success of sensitive species nesting in the Lowlands. The fund will be available to CDFG and USFWS following approval of the project. The applicant, in consultation with CDFG and USFWS, shall monitor the Lowlands for at least one nesting season *prior to construction and review past sensitive species monitoring reports to* establish baseline levels for raptor/corvid predation, taking historic fluctuations into account. The applicant, in coordination with CDFG and USFWS, shall monitor for up to seven years following the construction of the proposed project. If a raptor predation increase from the baseline levels is documented in at least two of the seven years of monitoring, then a raptor/corvid predation effect will be considered to have occurred. If no such effect is demonstrated within seven years of completion of project build-out, on completion of all landscaping, the trust fund shall revert to the applicant.

Mitigation Measure 9.2

We concur with the SEIR's determination that the potential impacts of non-native landscaping invading open space are potentially significant. None of the plant materials to be used in the development should consist of species listed on Lists A & B of the California Exotic Pest Plant Council's list of "Exotic Pest Plants of Greatest Ecological Concern in California as of October 1999." This list includes such species as: pepper trees, pampas grass, fountain grass, ice plant, myoporum, tree of heaven, black locust, capeweed, periwinkle, sweet alyssum, English ivy, and Spanish broom. A copy of the complete list can be obtained by contacting the California Exotic Pest Plant Council at 32912 Calle del Tesoro, San Juan Capistrano, CA 92675-4427, or by accessing their web site at http://www.caleppc.org..

In addition, the use of some types of plant materials may increase the numbers of American kestrel (*Falco sparverius*), a primary predator of California least tern and western snowy plover at Bolsa Chica. In particular, kestrels are common urban nesters in the dead leaf bases of Mexican and California fan palms (*Washingtonia* spp.), and may use other species of palm with persistent leaf bases (e.g. *Brahea* sp., *Phoenix canariensis*, etc.) as well. We therefore recommend that palms with persistent leaf bases are not permitted to be used for landscaping at any time within the proposed development Some other types of palms that shed leaves and

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maintain a smooth trunk, such as king palm (*Archontophoenix cunninghamiana*) may be more acceptable. Our staff is available to work with the project applicant on the appropriate landscaping palette.

Thank you for the opportunity to comment on this project If you have any questions or comments about this letter please call Brad Henderson at (310) 214-9950.

Sincerely,

J. A. Stewart
for C. F. Raysbrook
Regional Manager

cc: Department of Fish and Game
Sacramento:
Robert C. Hight, Director
Ronald D. Rempel, Deputy Director

San Diego:
Chuck Raysbrook
Terri Stewart
Brian Shelton
Meredith Osborne
File

California Coastal Commission
Long Beach

U.S. Fish and Wildlife Service
Carlsbad
Jack Fancher

BH:bh/sl
File:Chron-CFR
file:bhenderson\brightwaterbolsachlcamesaseir.wpd

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