



CITY OF HUNTINGTON BEACH

2000 Main Street P.O. Box 190 California 92648

Robert F. Beardsley, P.E.
Director

Department of Public Works
(714) 536-5431

June 26, 2007

Ms. Sherilyn Sarb, Deputy Director
California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

Subject: LCP Amendment No. HNB-MAJ-1-6/Parkside Estates/Shea Homes May 10, 2007
Meeting, Agenda Item 14.a

Dear Ms. Sarb:

On May 10, 2007, the above noted LCP Amendment was presented to the Commission by the Coastal Commission staff. The City of Huntington Beach (City) would like to respond to the representations of several key elements made by commission staff and members of the public who spoke in opposition to the project. References to their statements from the Certified Transcript are noted with the page number in brackets () to direct you to where the citation can be found. The key elements or issues that the City is concerned with include the suitability of the site for residential development, required flood protection improvements, flood water displacement, and alleged acts of previous illegal grading.

Suitability of the Site

During Dr. Mark Johnsson's presentation, he stated (Pages 13, 18 and 20) that this project site was not suitable for residential development based upon seismic, flooding, stormwater displacement and grading issues without mitigation. The mitigation measures that the City required for the Parkside Estates project are typical requirements for any development in the State of California, especially along the coastal and basin areas. All developments have to be built to the seismic standards of the California Building Code (CBC), and nearly all building pads have to be elevated a minimum of 1-foot above the highest storm water flow in the street in order to meet Federal Emergency Management Agency (FEMA) and CBC requirements.

Flood Protection Improvements

The City, Orange County Flood Control District, The United States Army Corps of Engineers and FEMA have reviewed, confirmed and adopted the storm water modeling and flooding studies, technical computer models and reports that were developed to serve as backup for a major FEMA Conditional Letter of Map Revision (CLOMR) that was issued for this project site, which incorporated all of the mitigation requirements as "conditions" for the map revision and were imposed upon this development as conditions of approval to develop the property. Commission staff stated that these mitigation requirements were "exaggerated" (page 164).

The completion of the mitigation requirements for the Parkside project would allow FEMA to revise its current flood insurance maps, and thereby remove approximately 7,000 homes and businesses from the flood zone. Also, the homes lying in approximately 2,000 acres of the City of

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Huntington Beach would become potentially eligible for lower flood insurance rates due to the reduction in flood risk and the more detailed remapping of the watershed. These are not "exaggerations" as commission staff suggested. In fact, this is the kind of positive development improvements that the community expects the staff of the Public Works Department to pursue and achieve.

In a letter dated October 24, 2006 and addressed to the City of Huntington Beach, the County of Orange and Mr. Peter Douglas of the California Coastal Commission, Bolsa Chica Project Manager Jack Fancher acknowledges on page 2, paragraph 2, that "The restoration project did no modeling of storm water flow or levee failure on the Pocket side of the flood channel." He then remarks that the Lowlands Project intended to rely upon the Parkside development plans, which "calls for raising the grade of the proposed housing development out of the flood plain and, it's been said, to place a berm across the gap between the mesa and the flood channel. Presumably, this proposed berm would prevent storm water flooding into Shea's property from a flood channel levee failure next to the Pocket." Commission staff also recognized this flooding in their presentation (pages 18 through 20).

Recognizing the existing conditions and the added concerns of the restoration project the Huntington Beach Public Works Department has specifically recommended mitigation requirements to be constructed with this development by tying the re-built levee to high ground at the Bolsa Chica mesa via the "Vegetated Flood Protection Feature" (VFPF).

Flood Water Displacement

Dr. Johnsson's written report accurately states that the project more than mitigates any potential water storage displacement it might cause and notes that flood control improvements are needed in any case. However, staff's verbal presentation in the Commission hearing did not present this point very clearly (pages 18 through 20).

Dr. Johnsson made a claim that "the volume of fill added to the project site represents the volume of flood water that will be displaced into neighboring areas." He also claimed that the site "does serve as a storage area for some flood waters in a 100-year storm event, thus if no mitigation were undertaken, flooding of these neighborhoods would be exacerbated by the addition of fill at the Parkside Estates site." (pages 18 and 20).

These statements conflict with two reports that were prepared at the request of Coastal Commission staff to analyze the topographic impacts and displacement affects of the project fill against the hydrologic model that was prepared for FEMA review which underlies the CLOMR finding for this project. The extensive analysis completed in two reports, dated May 18, 2005 and March 24, 2006 concluded "Parkside Estates in the proposed developed condition would not displace floodwater." The analysis also demonstrated that, because the adjacent areas to the north are lower than the Parkside property, they would be flooded for at least 8 hours before any water begins to move into the Parkside property. Additionally, with the proposed improvements that must be built if the Parkside property develops, the actual maximum flooding elevation for the areas to the north would be nearly a foot lower than without the project.

The City was unaware of any comments that the Commission staff may have regarding the two reports that were prepared for staff until the hearing on May 10, 2007.

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Illegal Grading

Significant time was spent by various public speakers attempting to demonstrate that an excessive amount of un-permitted grading occurred on the project site over a number of years. The Commission has already received a memorandum dated May 2, 2007 from Duane Wentworth, City Grading Inspector, regarding the red tag(s) issued on this site in 1989.

After reviewing all of the slides presented by the public speakers, the City has concluded that the claims regarding excessive illegal grading are speculative, cannot be supported by viewing aerial photographs that cannot be reasonably matched in time or accuracy, and that possess major margins of error due to the limitations of the surveys that produced them. Additionally, the slide claiming to show the area of the 1989 red tag issued by the City is erroneous in size. See the attached exhibit that shows the actual area of the red tag in comparison with the claims made during the presentation.

Due to the limitations and problems with aerial photographs that may occur from differences in elevation, atmospheric conditions, the angle of the shot, shadows from cloud cover, etc., no definitive conclusions can be made about the actual conditions seen on the ground. And for certain, no amount of guessing can accurately describe the amount of grading that has occurred without a physical topographic survey performed with each aerial photo. Quite possibly, what appears to be grading may actually be surface disturbance from farming activities, horses or vehicles. Or the image may be dust control activities as was required by the CDP.

The USGS topographic maps used for overlays with the aerial photos also have accuracy limitations. At the bottom of each USGS map is a statement that says "This map complies with national map accuracy standards." In the publication U.S. National Map Accuracy Standards, Appendix B, page 193, it states "Vertical accuracy, as applied to contour maps on all publication scales, shall be such that not more than 10 percent of all the elevations tested shall be in error more than one-half the contour interval." Therefore, maps with 5-foot contour intervals, such as the one used for the slides may have a maximum error that can be as much as plus or minus 2.5-feet of the contour shown. This is a major problem for the claims made in the project opponents' presentation, since the farm field is quite flat and contour lines are spread out by distance, thus totally inconclusive for grading changes.

Additionally, in the project Environmental Report, one section was devoted to explaining the differences in the survey datums used in the preparation of topographic surveys. Depending on whether the datum is NGVD 29 or NAVD 88, a difference in elevation of 2.3 feet may occur. USGS maps use NGVD 29 datum. For current projects the County of Orange, City of Huntington Beach and Caltrans all use NAVD 88 datum. FEMA may use either NGVD 29 or NAVD88 datums depending upon the circumstances influencing their coordination with other adjacent topographies. No distinction was made between the source topographies used in any of the presentations as to survey base datums.

Additionally, the magnitude of the alleged fill suggested by the slide presentations would require well over 1,200 truck loads of material. No one has ever reported activity of this magnitude and this amount of truck activity would not have gone unnoticed.

From the field inspections performed by City personnel over the past 25 years, no major or significant earthwork activity has ever been reported other than normal farming, and City records do not support the claims made in the slide presentation.

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Summary

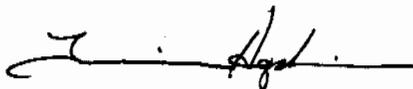
In all, the City of Huntington Beach Public Works Department would like to request that the information that was provided to the Commission be re-evaluated and that the facts are available to them in both our Environmental Impact Report and in subsequent reports and letters which have been made available to them on the key issues discussed above.

The Public Works Department requests that if errors are to be made in recommending modifications to the conditions and requirements of this project, they be made in favor of public health and safety along with the preservation of the valuable natural assets resources that make up our coastal area.

Should the Commission desire any further information or wish to have other questions answered in relation to these or other issues concerning the Public Works Department of the City of Huntington Beach, our staff representatives will be available at the next public hearing to address your concerns.

It is my hope that through additional dialogue, some level of agreement may be reached on those issues that remain.

Respectfully,



Travis K. Hopkins, PE
City Engineer
City of Huntington Beach

TH:cs

Cc: Members, California Coastal Commission
Alternates, California Coastal Commission
Peter Douglas, Executive Director, California Coastal Commission Staff
John Dixon, Ph.D., California Coastal Commission Staff
Mark Johnsson, Ph.D., California Coastal Commission Staff
Karl Schwing, California Coastal Commission Staff
Meg Vaughn, California Coastal Commission Staff
Ron Metzler, Shea Homes
Mary Beth Broeren, Principal Planner

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SheaHomes

Caring since 1881

Dear Neighbor,

We are writing to keep you informed about Parkside Estates, our proposed community near the corner of Warner and Graham that will provide much-needed flood protection for local neighborhoods. Unfortunately, it has come to our attention that misleading and inaccurate information about Parkside has caused confusion about our plan. I invite you to read the enclosed "Myths & Facts" document, which clarifies the environmental and flood safety benefits of Parkside.

With approval of Parkside and the completion of nearly \$15 million in regional flood protection improvements Shea Homes will fund, nearly 7,000 Huntington Beach homes and businesses would be removed from the flood plain, and no longer have to pay mandatory flood insurance. Homes on another 2,000 acres would be at lower flood risk, and be potentially eligible for lower flood insurance premiums.

Our opponents minimize very real flood risks, and want to bring back wetlands that disappeared between 50 and 100 years ago. They say our plan destroys wetlands, but we are committed to protecting all the natural resources the California Coastal Commission directs us to protect.

We really need your support!

Parkside Estates' benefits will only become a reality if the Coastal Commission approves our plan at its hearing on Tuesday, July 10 in San Luis Obispo.

You can help by taking a few seconds to visit our Web site and **sending a letter to the Coastal Commission**. It just takes a few seconds – just visit www.SheaParkside.com and click on the "Support Us" button. If you would like to speak in favor of our plan in San Luis Obispo, **join us at the hearing**. Just call our outreach coordinator, Laer Pearce, for more information. He can be reached at (949) 599-1212 ext. 202.

Sincerely,



Ron Metzler
Shea Homes

PS: To view the photos in the "Myths & Facts" piece in a larger format, just visit our Web site, www.SheaParkside.com.

603 S. Valencia Avenue
Brea, California 92823

925.245.3600 T
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www.SheaHomes.com

HNB-MAJ-1-06
EXHIBIT FFF
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PARKSIDE ESTATES

Misleading and inaccurate information about Shea Homes' Parkside Estates plan may have you confused. Read the facts for yourself and learn why Parkside Estates is a community that Huntington Beach needs.

Opponents' Allegations: *Parkside Estates will destroy the site's wetlands.*

THE FACTS

Currently, everyone agrees there is a 0.98-acre degraded wetland on the Parkside Estates property (the "CP" wetland, left), which we will restore and protect. We also have agreed to protect and restore a second area, the "AP," making it a viable and productive wetland.

We have presented evidence that no other areas meeting the Coastal Commission wetland criteria are present on the site, and while the Commission has not reached a decision on this matter, we have agreed to preserve and buffer any area the Coastal Commission ultimately recognizes as a wetland.

Shea Homes will preserve and enhance this saltwater wetland.

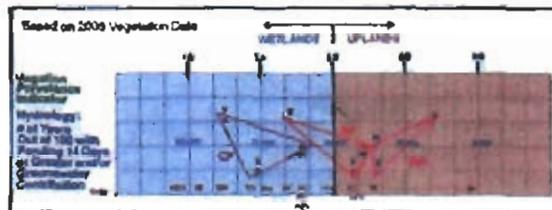
Opponents' Allegations: *The Parkside Estates plan isn't based on sound science, but rather on the few "experts" hired by Shea Homes.*

THE FACTS

Parkside Estates engaged three highly respected biological firms to provide their combined expertise in understanding highly technical wetland issues. These experts worked closely with Coastal Commission staff to develop proper protocols, then conducted studies over a three year period. These experts are bound by professional ethics and licenses to accurately report what they find – while our opponents are free to speculate.

All three firms have independently reached the same conclusions relative to wetlands and uplands on the site and their reports have been provided as part of the public record.

In addition to these findings, we also have relied on input, expertise and information from various federal, state and local sources (including our opponents) to be sure that our science is objective and complete.



Sophisticated analyses like this of soil, plants and hydrology are typical of the work done by Parkside biologists.

Soils Legend
VIST = Histosol
YH = Hydric Entisol
SH = Solodic Entisol
SD = Solodic Durisol
AC = Acid Moisture Regosol
RC = Redding Conditions
GC = 2-2% Clayed or Low Chroma with Zonose Concentrations Greater than 2 percent
DC = Concretion
LC = 2-2% Low Chroma with Redox Concentrations Less than 2 percent
M = Not a Wetland Indicator

V = Vegetation
S = Soils
H = Hydrology

Opponents' Allegations: *Shea Homes is responsible for illegal filling to cover wetlands on the site.*

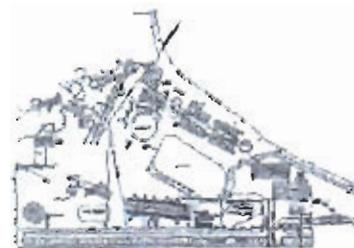
THE FACTS

Recent allegations that we have illegally filled in wetlands on the Parkside Estates site are untrue.

Most of the allegations involve events that occurred well before Shea Homes owned the property, and most were done with the proper environmental permits. Indeed, the portions of the site to be included in the Parkside development did not and do not have wetlands on them, according to wetland studies conducted by multiple agencies and individuals – so how could wetlands have been filled?

There is one small area of wetlands that may indeed have been illegally filled about 15 years before Shea purchased the land. We have acknowledged that, and have stated that we will alter the Parkside Estates plan so this area can be restored to wetland habitat.

Charges that we filled wetlands after purchasing the site are also false. The Coastal Commission granted Shea Homes permission to farm the site in 1998, based on a California Department of Fish & Game finding that the farm fields do not contain wetlands. With this permission, our farmer prepared fields, plowed, planted and harvested. Opponents say this is "filling a wetland" – but remember, the California Department of Fish & Game said there are no wetlands on the field.



One of several plans prepared by Smoky's Stables for review by the City, County or Coastal Commission.

Opponents' Allegations:

Parkside Estates would become a wetland if farming stopped and homes are not built.

THE FACTS

With or without homes, the farmed area does not regularly receive enough moisture to support wetlands. The historic wetlands were fed by tidal influence, which ended in 1899 with the construction of tide gates by the Bolsa Chica Gun Club. Upstream flow ended in the 1960s with construction of new neighborhoods.

Without its historic sources of water, the land simply does not receive enough water to be a wetland. If left unfarmed and undeveloped, the site would become a field of weeds, not a wetland – as it has in periods when it was temporarily not farmed.

Opponents' Allegations:

If homes are built, the eucalyptus trees and the birds of prey that live there won't be protected.

THE FACTS

The Parkside plan protects birds of prey and eucalyptus groves on the site. We will protect the southern eucalyptus trees with a 100-meter buffer, even though the Hearthsides Brightwater project next door has a variable buffer that is narrower in some areas and wider in others.

We are not contesting the designation of the northern eucalyptus trees (pictured) as an Environmentally Sensitive Habitat Area (ESHA); we only want the Commission to consider allowing a variable buffer like Hearthsides' - one that recognizes the existing conditions that surround this area.



Cooper's Hawks, the only raptors that nest in the northern eucalyptus trees, are highly acclimated to the urban environment.



Opponents' Allegations:

Parkside Estates will increase the urban runoff that pollutes Huntington Harbour.

THE FACTS

To the contrary, our plan will improve area water quality. Upon approval, Shea proposes to build a freshwater wetland – a Natural Treatment System (NTS) – that will clean all of Parkside Estates' urban runoff, in addition to all the runoff from 22 acres around the Cabo del Mar condominiums, which currently flows untreated to Outer Bolsa Bay, Huntington Harbour and the ocean.

The NTS will also clean up to 30 percent of the dry-weather runoff from the 3,000-acre Slater watershed, providing a significant improvement of water quality in the area and helping to protect

Huntington Harbour. It also will attract and nourish birds and other wildlife.

The NTS will be a beautiful freshwater wetland like the Ballona NTS wetland, shown on the left, or the San Diego Creek NTS created by the Irvine Ranch Water District, shown on the right. Both of these NTS projects have been praised by many of the Parkside opponents.



Opponents' Allegations:

The flood insurance and flood protection promised by Shea Homes will not happen, or are over-stated.

THE FACTS

This is not true! The Coastal Commission's staff geologist said in his staff report that flood protection from Parkside Estates is real and needed. In fact, by issuing a Conditional Letter of Map Revision (CLOMR), FEMA is obligated to issue a new flood map once the improvements are certified.

The fact of the matter is that the repair of Huntington Beach's dangerously deteriorated levees (pictured on the left and right) cannot begin until Parkside Estates is approved by the Coastal Commission, and our \$15 million in developer-funded flood control improvements are completed.

Of course, the County could repair the levees, but questions regarding the County's funding sources and timing have yet to be answered – and Parkside is ready to start the improvements as soon as the Coastal Commission approves the plan.



The area needs flood protection because water in the flood control channel often gets this high!



The Wintersburg-East Garden Grove flood channel levee along Parkside.

Opponents' Allegations:

Shea Homes is just scaring people with talk about imminent tidal flooding.

THE FACTS



The new 40-acre body of salt water (right red circle) is up to seven feet higher in elevation than homes near Parkside (left red outline).

Both the City of Huntington Beach and the County of Orange have written letters to state and federal officials raising concerns about the imminent risk of tidal flooding resulting from the Bolsa Chica restoration project. A 10-year storm combined with a high tide is sufficient to cause the tidal flooding of 800 homes in the Warner-Graham area.

Both the U.S. Fish & Wildlife Service and the National Marine Fisheries Service (managers of the Bolsa Chica restoration) have admitted that the restoration project did not turn out as they planned. As a result, there is now a massive, 40-acre salt water body in the Pocket – at a higher elevation than homes in the area.



An old oil field road is all that's protecting neighborhoods in the Graham-Warner area.

The Coastal Commission staff has agreed that a tidal flood protection feature is necessary. Upon approval by the Coastal Commission, Parkside will build a certified tidal flood barrier that will protect homes now at risk of tidal flooding.

Opponents' Allegations:

Localized channel repairs will NOT guarantee removal from mandated flood insurance zones and will increase the potential for levee failure downstream on the south channel berm.

THE FACTS

By issuing a Conditional Letter of Map Revision, FEMA is obligated to issue a new flood map once the Parkside improvements are installed. The charge that Parkside Estate's levee work could jeopardize the south levee is ludicrous. The new levee will increase water-holding capacity in that portion of the flood control channel. The two new pumps in the Slater pump station will improve flood protection on both sides of the flood control channel.

When FEMA issues its letter of map revision, homes in the yellow area of the map below will be removed from the flood plain and will become eligible for the elimination of mandatory flood insurance premiums. Homes in the blue area will be at lower flood risk and will be eligible for potentially lower flood insurance premiums.



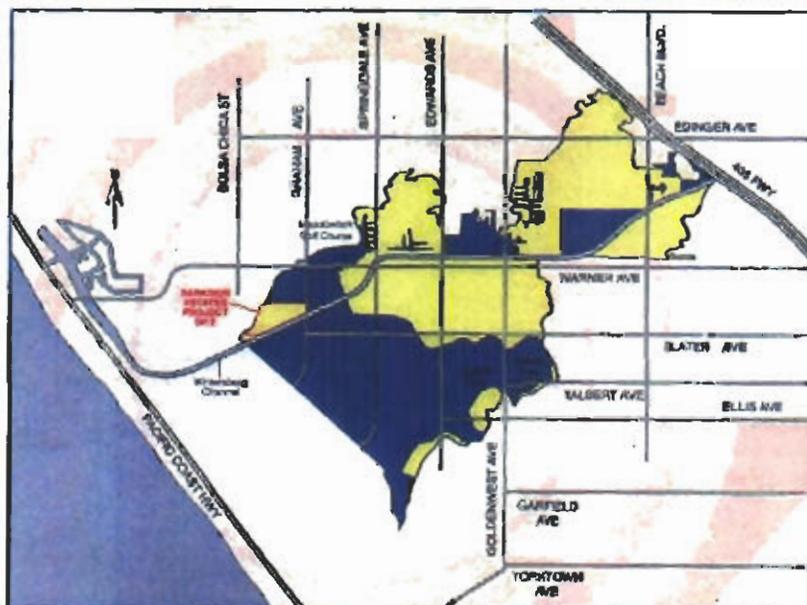
Huntington Beach flooding in 1998. Shea Homes will pay for new pumps that will help drain neighborhoods like this much more quickly.

Opponents' Allegations:

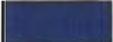
Proposed flood control improvements will only protect people on the north side of the Wintersburg Channel.

THE FACTS

Homes and businesses both north and south of the Wintersburg Channel will benefit from Parkside Estates' \$15 million in flood protection infrastructure improvements. Roughly half of the 7,000 homes and businesses that will be removed from the flood zone and mandatory insurance requirements are on the south side of the channel, as are most of the homes that will be eligible for lower flood insurance premiums.



 Homes eligible for removal from current flood zone and mandatory flood insurance requirements

 Homes in this area may be eligible for lower flood insurance premiums

Opponents' Allegations:

Flooding in the area will become worse because the fill placed on the Parkside Estates site will cause floodwater to flow into surrounding neighborhoods.

THE FACTS

Not true at all. The Parkside Estates site and surrounding neighborhoods in the historic floodplain are functionally isolated from the Wintersburg flood control channel. In the event of failure of the existing levees, flooding of the surrounding neighborhoods would occur even without development of Parkside Estates, and the Coastal Commission's geologist said as much.

Because the surrounding neighborhoods near the Graham Street/Kenilworth Avenue intersections are actually at lower elevations than the Parkside site, water from a failed upstream levee would flood neighboring homes hours before it would rise enough to flood the Parkside site. That's why we are proposing to rebuild the levees, install larger storm drains and increase the efficiency of the Slater pump station – giving our neighbors greater flood protection, lower depth of flooding and faster drainage of their neighborhoods.

Opponents' Allegations:

The opponents' plan to create wetlands on the entire site would improve flood safety in Huntington Beach.

THE FACTS

False! The opponents' plan (pictured) would breach the County flood control levee and make no provision for a certified tidal flood protection levee. They have no plans to build a large set-back levee next to the homes along Kenilworth and Graham. (This levee would cost millions of dollars and be nearly as high as the adjacent homes' second story windows.) They also have no plans to add pumping capacity to the Slater pump station or build a barrier against tidal flooding, as Shea Homes will do.



And perhaps most important, without the \$15 million in storm drain, pump and levee improvements we will install, FEMA will not re-draw the Huntington Beach flood maps.

Opponents' Allegations:

Shea Homes should just sell the land so it can be open space.

THE FACTS

No conservation group or agency has ever presented an offer to purchase the property despite the fact that Shea Homes has provided conservation groups with financial information. Frankly, it is unlikely that public funds would be allocated for such a purchase because the area has already received millions of dollars for the Bolsa Chica land acquisition and wetlands restoration. State officials are obligated to ensure that public land acquisition funds are distributed fairly throughout the state.



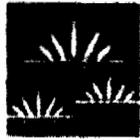
Further, preservation of the site as open space will indefinitely delay the repair of levees, the installation of new storm drains and pumps, and the construction of tidal flooding protection. FEMA will not redraw the flood maps until this work is completed.

It is unlikely the state would spend more on open space conservation in the area, since the restoration of Bolsa Chica has already received state funding.

PARKSIDE ESTATES

For more information, or to view larger pictures, please visit:

www.SheaParkside.com

**MEMORANDUM**

To: Sherilyn Sarb, Meg Vaughn
From: Art Homrighausen, Tony Bomkamp, Dr. Mike Josselyn
RE: Off-site drainage into Parkside Estates "EPA area"
Huntington Beach LCPA 1-06
Date: June 22, 2007

A member of our team received an email request from Meg Vaughn on June 18, as follows:

I received the "Memorandum-Historic "EPA area" on Parkside Estates, Huntington Beach" dated June 3, 2007, prepared by LSA. That memorandum refers to hydrological changes at the Parkside site that occurred as a result of construction of the Cabo del Mar condos (adjacent to, but outside the coastal zone). Please provide information/ documentation regarding those hydrological changes. For example, do City approvals include an approved drainage plan? I'm looking for information that would clarify and document where the drainage from the Cabo del Mar site that used to drain onto the Parkside property is now directed. Approved graphics/plans and written descriptions will be useful.

To respond to this request, we have reviewed the historical record on Cabo del Mar and other nearby developments and provide this memo to document hydrological changes caused by the construction of the Cabo del Mar condominiums in the early 1980s and Harbor Bluffs about a decade earlier.

Prior to 1986, an area of approximately 22 acres where the Cabo del Mar and Harbor Bluffs developments now stand drained into the northwest portion of the Parkside Estates farm field area. This long-term drainage pattern probably contributed to soil in that area becoming relatively richer in organics, and relatively darker than other soil on the site. The City's Master Plan of Drainage planned to redirect this drainage via a storm drain, and this was accomplished in 1986.

The plans for the storm drain are attached, including both the April 30, 1982 plans and the March 20, 1986 "As Built" plans.

From this, we have assembled the following timeline, which incorporates both dates of plans and construction, and the dates of various studies made in this portion of the Parkside Estates site:

Ms. Sherilyn Sarb
Ms. Meg Vaughn
Parkside Estates
Page 2

- In 1971, before there was development in the 22-acre area in and around Cabo del Mar, Dillingham found no wetland in the northwest portion of the 44-acre field (the area that subsequently has become referred to as the "EPA area").
- A temporary bubbler was installed no later than December 1978 immediately outside the Coastal Zone, draining Harbor Bluffs. The bubbler was apparently designed as a temporary measure, to be replaced by the long-planned 60-inch City storm drain in the City's Master Plan of Drainage. Concentrated runoff from the bubbler flowed onto the Parkside property.
- On or about May 28, 1981,¹ runoff from the Cabo del Mar area was directed to the bubbler. From this point until it was disconnected in 1986, the bubbler was draining its maximum area (22 acres, approximately 77 cfs at Q₁₀₀).
- In its December 1981 *Determination of the Status of the Bolsa Chica Wetlands* (revised June 8, 1982), the California Department of Fish & Game determined that there were no functioning wetlands present anywhere on the Parkside farm field, even though the bubbler had been in place for a number of years.
- Bilhorn made his June 1987 wetland determination based on two aerial photos taken in March 1982, in which he wrongly determined that dark soils were wet soils (see our memo of June 12, 2007, *Historic "EPA area" on Parkside Estates, Huntington Beach, Huntington Beach LCPA 1-06*). At this time, the bubbler had been in place for approximately six years. As pointed out in our EPA area memo, Dr. Dixon determined there were no prolonged ponding periods during March 1982.
- No later than March 20, 1986, the date of the "As Built" plans, the bubbler was disconnected and the flow was directed to the City's new storm drain.

If you have any further questions, any of us are available to respond.

cc: Ms. Teresa Henry
Mr. Karl Schwing
John Dixon, Ph.D.
Mark Johnsson, Ph.D.
Mr. Ron Metzler

¹ In our earlier memo on the "EPA area" we stated this occurred in 1982 or 1983. Further research revealed the earlier 1981 date.

SheaHomes

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Our Vision ...to be the most respected builder in the country

RECEIVED
South Coast Region

JUN 22 2007

CALIFORNIA
COASTAL COMMISSION

June 20, 2007

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

Dear Chairman Kruer and Mr. Douglas:

As you recall, at the May 10 hearing on the Huntington Beach LCPA (1-06), the primary opponent presentation focused on alleged unpermitted fill in various areas of the project site, using a series of aerial photographs and photographs of activities on the site to present a case that wetlands had been filled and their locations moved. Further, they said Shea Homes had used farming as a cover to deliberately fill wetlands.

These allegations had been made prior to the hearing and had been addressed in the staff report addendum of May 8, 2007 (pages 1-11), but Executive Director Peter Douglas stated at the conclusion of public comment:

"It really demonstrates the importance of public participation and public testimony and the public hearing process, because we saw evidence today, information today, that make me concerned about the nature of our recommendation.

"This Commission has historically not allowed illegal fill of wetlands to then benefit subsequent developers by saying it is not a wetland, when there is evidence that it may have been previously illegally filled. We certainly saw that here today, and I think that is a change, in terms of our understanding, and our perception of this project." (Hearing transcript, p. 165)

The purpose of this letter is to show that Mr. Douglas' perception, which apparently was shared by many Commissioners, is not correct. The opponents' presentation was rife with errors, misinterpretations and concealed information. This letter will show you that:

- Most of the activities our opponents described as illegal were, in fact, permitted. This includes both development related to Smoky's Stables prior to Shea's ownership of the subject site, and farming subsequently conducted by Shea Homes.
- A 13,600-square-foot area of pickleweed in the CP was covered by fill in the early 1980s, some 14 years before Shea Homes purchased the site. We had informed the

Shea Homes Limited Partnership, Southern California Division

An independent member of the Shea family of companies

Commission before the May 10 hearing that we would amend our plan to restore and preserve this area. (There is some photographic evidence showing disturbance in this area of the CP prior to the Coastal Act. Nevertheless, it appears that some of the pickleweed had re-established before the subsequent fills.)

- Six studies of the site conducted contemporaneously to Smoky's Stables' development on the site show there was no wetland in the area north of Slater Ave., so the opponents' charge that an earlier "WP" wetland had been covered and moved to a new location is false.
- Shea Homes' farming operations in the 1990s were a continuation of the legal and ongoing use predating the Coastal Act, and had been reviewed by Commission staff and allowed to continue.
- The chronology of the 2006 Notice of Violation was misrepresented by our opponents. Also, Coastal staff agreed that no action can be taken regarding that violation until the Commission determines whether the WP is a wetland, as reflected in the staff report.

To rebut the opponents' claims, we will refer to areas that are denoted below.



Biological Assessments of the Site Prior to Smoky's Stables

Six separate biological studies that were contemporaneous with Smoky's Stables development and operations on the site include discussions of vegetation or wetland delineations. Each of these studies showed that the wetland indicator plant, pickleweed, was found only south of Slater Avenue, and that no wetlands existed in the area where most of the Smoky's Stables construction occurred. The studies are:

- Dillingham (1971) mapped vegetation and delineated wetlands. The map shows wetland vegetation in the CP area (south of Slater), but no wetland vegetation or wetlands north of Slater Avenue.
- A diagram in the Environmental Impact Report for a prior proposed development on the Parkside property (1973) shows "marsh" only in the former County parcel.
- Vegetation maps prepared by Shapiro (1981) showed two polygons of wetland vegetation in the CP area, but no wetland vegetation elsewhere on the site.
- The draft agreement between the Department of Fish & Game and Smoky's Stables (February 1, 1982) included a map of the proposed Smoky's Stables development that shows marsh only south of Slater Ave. and indicates agriculture in all other areas proposed for Smoky's Stables.
- A wetland determination of the site by the California Department of Fish & Game (June, 1982) states "Extensive ground truthing by Department personnel has resulted in no substantive disagreement with the Shapiro and Associates map of wetland resources" – in other words, the only area on the site with wetland indicators was the CP, south of Slater.
- The Bolsa Chica Local Coastal Program vegetation map prepared by the Local Coastal Program of the County of Orange (1982) showed pickleweed in the CP, confirming Shapiro.

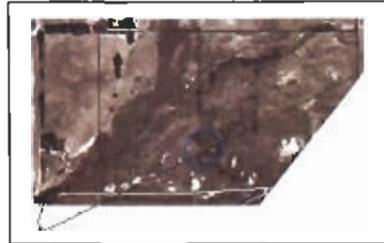
In summary, all of these studies confirmed pickleweed or wetland in the CP area south of Slater Ave., and none of them show any wetland or wetland vegetation in any part of the parcel north of Slater Ave., where our opponents focused their presentation on allegedly unpermitted fill. The alleged fill north of Slater Ave. was *not* over wetlands.

BCLT Misrepresentation of Historic Condition of Site (Prior to Coastal Act)

In its presentation to the Coastal Commission, BCLT represented the site as largely unaffected by development prior to enactment of the Coastal Act. This is not the case, as the following chronology shows:

- 1899 Bolsa Chica Duck Club builds tide gate at Bolsa Chica, ending all tidal influence on the Parkside site.

1938 Santa Ana River flood washes over site, covering the former tidal slough on the site (the top photograph is from 1932, before the flood; the second photo was taken the day after the flood). The slough (blue circles) disappears at this point and is not visible in any subsequent photographs of the site.¹



1949 U.S. Geological Survey map shows "marsh" ending at the south side of Slater Ave. (arrow). In all subsequent mapping, pickleweed does not extend north of Slater Ave.



1959 The East Garden Grove-Wintersburg flood control channel is built, effectively removing the Parkside site from the Santa Ana River floodplain. Fill was placed on the site by levee construction, and by the construction of a bridge and bridge approach fills for the Slater Ave. overpass of the channel.



1960s Construction of surrounding neighborhoods and related storm drains cuts off most upstream hydrology that historically reached the site.

1976 The photograph on the right was taken on December 28, 1976, three days before the Coastal Act became effective. (Mr. Stirdivant mistakenly said this image was taken after the Coastal Act's effective date.) He described the area indicated by the green arrow as fill. If it is indeed fill, it was present **before** the Coastal Act. The photo also shows what may be pre-Coastal Act fill in the CP area south of Slater Ave., adjacent to the Wintersburg flood control channel, as indicated with a blue circle.



¹ NOTE: All thumbnail images incorporated into this letter are included as full-sized images at the end of this letter.

In contrast to the opponents' presentation of the site's condition before the Coastal Act, by January 1, 1977, the effective date of the Coastal Act, the site had been removed from tidal influence, removed from the floodplain, cut off from most upstream water sources, had been farmed for decades, and was subjected to levee construction, road construction and related fill.

BCLT Misrepresentation of Smoky's Stables Permitting

In addressing the allegations of Jan Vandersloot, M.D. of illegal fill during the period of Shea Homes' ownership, it is important to consider authorized changes to the site by Smoky's Stables prior to Shea's ownership. As already demonstrated, no wetlands were ever delineated in the areas of the Smoky's Stables' operations above Slater Ave. – not in the WP, WP+ (as identified by Mr. Bixby on slide #65 of his May 10 hearing presentation), EPA or AP areas prior to Shea's ownership.

In their presentation, opponents made little mention of the fact that Smoky's Stables submitted plans for its operations, and these plans were reviewed and approved by both the Coastal Commission and the City of Huntington Beach.

This permitting began in 1981, about the time of this photo. The stable area prior to the initiation of expansion is circled in blue. Even at this stage, riders were using parts of the current Parkside site (red oval). The permit requests that followed can be documented as:



- On February 26, 1981, the County of Orange approved plans for Smoky's Stables, conditional on City approval. These plans covered the expansion of the stable facilities from the adjoining Goodell property, where it had been in operation since the 1960s, onto the Parkside site (then in MWD ownership, and in the City). This allowed 50 horses, a stable, corrals, holding pens and a tack shed.
- On June 2, 1981, Smoky's Stables received a five-year Conditional Use Permit from the City, also allowing a 50-horse facility.
- On October 28, 1982, Coastal Commission approval 5-82-278 approved the installation of a mobile home, expansion of the stables and fill and grading of a parking facility. It also required removal of gravel from the CP area.
- On October 20, 1986, the County of Orange and on December 16, 1986 the City of Huntington Beach both extended their earlier CUPs. No expansion was proposed for the portion in the County (Goodell property) and a minor expansion was proposed for the portion within City jurisdiction.

- On August 15, 1989, the City of Huntington Beach approved a CUP for Smoky's Stables to include two 18-stall barns, a riding arena, tack room and watchman's trailer.
- In 1994, the stable's CDP application 5-93-376 was reviewed and on June 15 the Commission staff issued an exemption letter. The CDP and Exemption Letter only covered the 13,000 square foot portion of the stable site on the Goodell property.

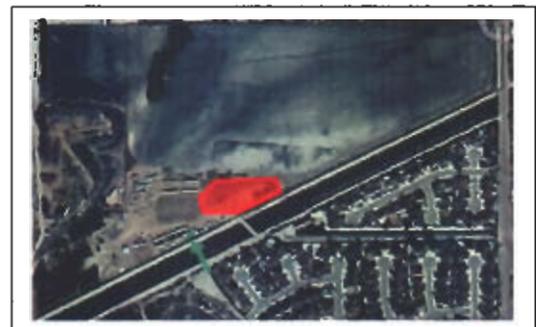
We have found no record of any Coastal Commission Notice of Violation to Smoky's Stables' for the duration of its presence and operations on the site. During multiple site visits in which Coastal staff was accompanied by Shea Homes representatives, staff never identified any preceding problems from Smoky's Stables' operations that required the attention of the property owner.

The plans authorized for Smoky's Stables in 1981 and 1982 included a horse arena at an elevation of approximately 0.0 feet with a drainage channel that drained from the horse arena to the "WP+" area. Plans showed a sump adjacent to the flood control channel with a pump. Presumably, the sump would have received nuisance and rain water from the stable and corral areas and the pump would pump it into the flood control channel. Also approved were holding pens, parking areas, a tack shed and a mobile home. The operator was also conditioned to remove gravel fill from the CP area.

Subsequent Conditional Use Permits allowed expansion of the facility so it ultimately grew to a 125-horse facility. The full extent of this permitted development is shown in the diagram on page 2 of this memo.

BCLT Misrepresents the 1987 "Red-Tagged" Fill

BCLT also overstated the size of the area that was "red-tagged" for illegal fill in 1987. In Mr. Stirdivant's presentation, this image was included, showing in red a very large area that he stated was the area that was red-tagged.

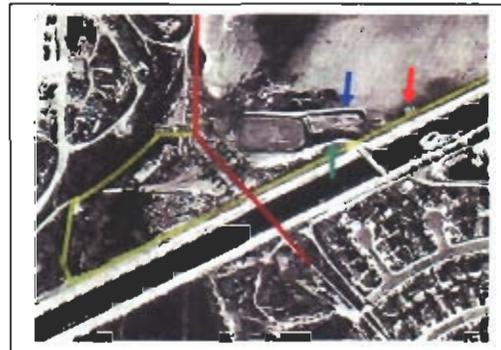


However, Mr. Dwayne Wentworth, the City of Huntington Beach inspector who red-tagged the fill violation, has stated that the area he red-tagged was much smaller (Staff report Addendum AAA, page 147). The approximate location of the 20' X 50' area Mr. Wentworth red-tagged is indicated by the green spot on the image. Mr. Wentworth stated that the fill was approximately two feet in depth, not the eight feet claimed by Mr. Stirdivant. (The area is quite small, and is visible along the flood control channel just below and to the left of Mr. Stirdivant's large red polygon.)

BCLT Misrepresentation of Smoky's Stables Photographic Evidence

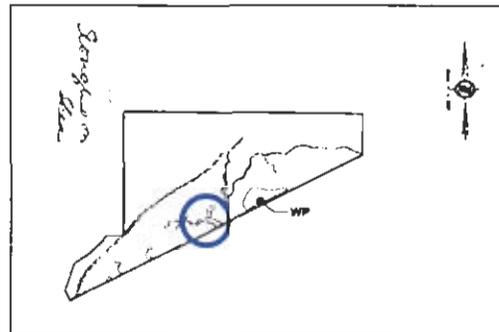
Our opponents used aerial photographs purporting to show where fill occurred; however it is not possible to discern elevation from a two dimensional photograph, except, to some extent, by the presence of shadows.

In this photograph, note the distinctive shadow at the Slater Ave. overpass (green arrow), where the elevation is approximately 11 feet (NGVD 29). The permitted drainage ditch (blue arrow), which opponents said was an elevated area defining the edge of fill, is actually a ditch that is below 00 feet. They look the same, but there is at least an 11-foot elevation difference between the top of the road at the levee and the drainage ditch, showing that it is not possible to accurately discern elevations from two-dimensional aerial photographs. (Note also the sump and pump [red arrow], which removed water that flowed from the arena area via the drainage ditch to the sump. Were this area a wetland as our opponents allege, Commission staff would not have allowed a pump there.)



Alleged Fills 1998 – 2005 - Background

Vandersloot presented an argument to the Commission on May 10 that a historical wetland existed in the WP area and was subsequently impacted by fill placed on the site by Smoky's Stables. He did this by connecting the genesis of the WP to the old tidal slough on the site.



However, Vandersloot misidentified the location of the WP area when presenting this 1873 survey map to the Commission. He stated that the WP is located where the former tidal slough met the Wintersburg flood control channel (blue circle). The WP is actually located farther east, as indicated. (His assertion that the tidal slough is somehow relevant to the WP is erroneous because, of course, the slough had been obliterated by the Santa Ana flood in 1938.)

Because he misidentified the location of the tidal slough relative to the WP, his supposition is false and discredits the foundation of his primary argument that earlier illegal wetland fills (by Smoky's Stables) were wrongly bringing benefit to a subsequent developer (Shea Homes).

BCLT Misrepresented Shea Homes' 1998 Farming Operations

Shea Homes purchased the property in September 1996, and continued the historic farming operations on the site. In early 1997, we received a notice of violation and cease and desist order from Commission staff ordering us to stop farming, which we did. We then initiated a process to prove our right to farm the site. As a part of this process and the EIR process for Parkside Estates, a jurisdictional delineation of the entire farm field was conducted by Tom Dodson Associates (Lisa Kegarice). The delineation found no wetlands outside the CP area, and on February 25, 1998, the Commission rescinded the violation previously issued for farming on the 44-acre portion of the parcel, stating:

Coastal Commission staff has reviewed your coastal development permit application 5-97-224 for disking the subject property ... for the purposes of agriculture, weed abatement and fire hazard removal. ...

Coastal Commission staff has determined that a coastal development permit is not required for the disking operation based on the property's prior usage for agricultural purposes.

Commission staff withheld determining whether there were wetlands on that parcel pending a CDFG review of the Dodson delineation. CDFG provided that review on March 16, 1998, stating:

Based upon the information outlined within the above-referenced letter by TDA [Tom Dodson Associates], 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.

Please note that CDFG and the Commission use the same standard for the determination of wetlands.

Concurrently, the City of Huntington Beach issued notices to abate weeds on various sites around the city, including the Parkside site. Following a public hearing at which Vandersloot and others testified in opposition to the proposed weed abatement on the Parkside parcel because of their belief that a wetland existed there. After consideration, the City issued a weed abatement order for Parkside. It was only after receiving the Commission letter, the CDFG letter



and the City order that Shea Homes undertook the weed abatement operation so prominently mentioned in the opponents' presentation, as pictured in this April 22, 1998 photograph.

Our opposition did not point out to the Commission that the 1998 rainfall year was one of the wettest on record (it is still referred to as "the 1998 El Niño"), resulting in flooding throughout Huntington Beach, as shown in the photo from the City's Web site, on the right. This rainfall, coupled with the cease and desist order which stopped farming for over a year, resulted in the growth of dense mustard across the site to a height of up to eight feet, as pictured in the opponents' photographs. By April, our farmer was already several weeks behind schedule and we were under orders from the City to remove the mustard. In order to remove the mustard in these unusually wet conditions that precluded the use of rubber-tired tractors, tracked equipment had to be used. All of the operations pictured by the opponents were authorized and there was no fill of wetlands, as none were documented on the site. The operation simply fulfilled the weed abatement order and restored the site to a condition that is conducive to farming.



BCLT Misrepresented Alleged CP Fills of 1998

Vandersloot also showed the Commission photos taken on December 5, 1998 of stockpiles of soil in the CP area which he said "have never been removed" and were spread out to fill portions of the CP. Both assertions are incorrect.



These piles were dumped on the site surreptitiously without Shea Homes' knowledge. Upon becoming aware of this "moonlight dumping," Shea Homes immediately notified Reed Thomas Company, Inc., a grading contractor, and as documented by the receipt included as attachment 8, all of the soil was removed from the site on December 22, 1998.

BCLT Charges of "EPA Wetland" Fill Unfounded

As documented in our memorandum dated June 12, 2007, neither Dillingham, Shapiro nor CDFG ever determined there to be a wetland in the "EPA area." As demonstrated in our memo, it was inappropriately delineated by Bilhorn in 1987 based on soil color in photos from 1982, an error perpetuated by EPA in 1989. As such, we believe the

evidence is clear that there is no “EPA wetland,” as the area does not exhibit wetland conditions in most years (see memo for detailed analysis).

Nevertheless, we feel it is important to address Vandersloot’s allegations of fill in March 2001.

First, as is typical of the opponents of Parkside, their photographs reflect extreme conditions and not “normal” or typical conditions. For example, nearly seven inches of rain fell in the 30 days preceding this March 12th photograph he showed, and 10 inches fell in the 60 days preceding the photo. This exceptionally unusual rainfall level explains why Vandersloot was able to show you a photo of a tractor surrounded by water on the site.



Second, it is critical to note that the Commission authorized the resumption of farming three years earlier for the entire farm field, including all of the areas Vandersloot described as “cut” and “fill” on May 10.

Finally, no discussion of the farming operations in the “EPA area” or any other portion of the 44-acre field is complete without addressing what legally constitutes farming. The practice of farming is regulated, and as such, agencies have written legal descriptions of various farming practices, including plowing. These definitions are in the record, as they were described on pages 3-145 and 3-146 of the response to comments of the Parkside Estates EIR. Of note:

- “The Clean Water Act defines normal farming activities as including “plowing, seeding, cultivating, minor drainage, harvesting”
- “The Corps has defined ‘plowing’ to mean ‘all forms of primary tillage, including moldboard, chisel, or wide-blade plowing, discing, harrowing and similar physical means utilized on farm, forest or ranch land for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops.’”
- “The Corps and EPA have jointly stated that ‘plowing’ includes ‘land leveling, to prepare it for planting crops.’”

These definitions accurately describe the sort of farming activities that have been conducted on the site for decades, including a specific reference to a “wide-blade” plow, i.e., a box plow, the use of which was criticized by our opponents. Also, the specific reference to “land leveling” describes the farmer’s efforts to remove low and high spots from the field, which is necessary for optimal production.

BCLT Misrepresented Facts Relative to the 2006 Notice of Violation

In his April 30, 2007 letter to the Commission, Mark Bixby stated:

The attached photo from December 27, 2005, *less than one week after Dr. John Dixon published his draft memo declaring the WP to be a wetland*, shows a tractor filling the WP with 4 inches of soil scraped from the adjacent high area. (Emphasis in original)

This is incorrect and so easy to verify as incorrect one wonders why Bixby made this sensationalistic error. The farming did occur on December 27, 2005, as he stated. However, the date of Dr. Dixon's draft report is January 12, 2006, three weeks after the farming – not one week earlier.

Therefore, the WP had not been declared by any agency or anyone with official status to be a wetland on December 27, 2005. Neither was the operation illegal fill. As explained above, the operation was a completely legal field leveling, as defined and allowed by the Corps of Engineers and EPA, and as had been done as an acceptable practice for over 50 years.

We are very concerned about the allegations of deliberate and illegal activity by Shea Homes, which are unfounded and completely untrue. We are confident that you will find that the actual, documented events are quite different from the false and irresponsible picture painted by the Bolsa Chica Land Trust.

The material presented by BCLT on May 10 was already in the record, and we were surprised that Commission staff did not support its own position regarding the allegations, as stated in its May 8, 2007 Addendum to the staff report. As you can see by the detail in this letter, it would have been impossible for us to provide a comprehensive rebuttal of their allegations in our allocated few minutes at the May 10 hearing. Therefore, we relied on staff to address these issues at the conclusion of the public hearing, and were confident that they had the necessary understanding of events, given the countless meetings and communications staff had conducted with the City, the Parkside team, and members of the BCLT.

We are confident that this letter, and our subsequent meeting with Director Douglas on June 27, will sufficiently address the BCLT's misleading representations, so these matters will not consume valuable time at our hearing this July.

If you have any questions, please contact me or any of my team members.

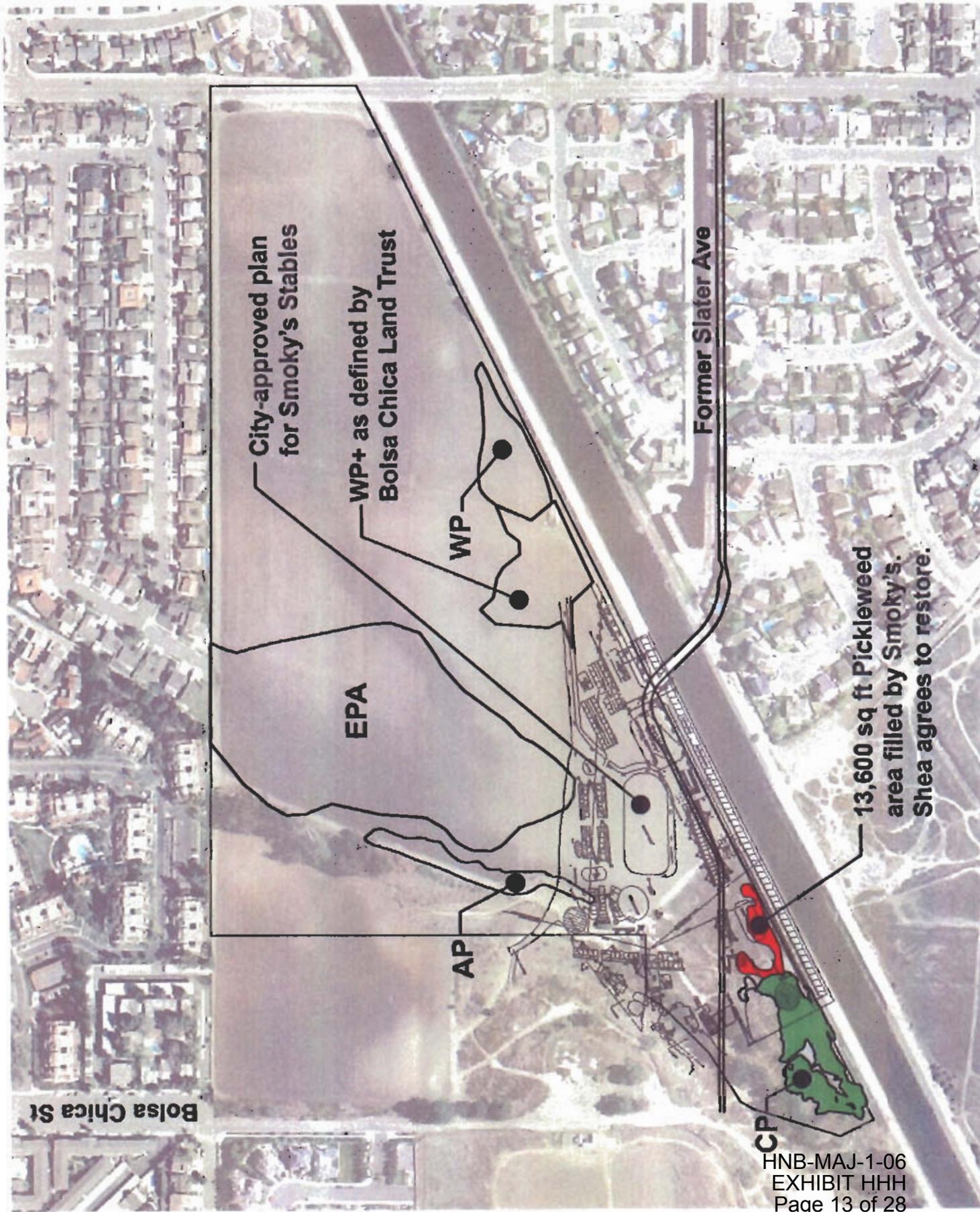
Mr. Patrick Kruer
Mr. Peter Douglas
California Coastal Commission
Page 12

Sincerely,
Shea Homes, LLC

A handwritten signature in black ink, appearing to read "Ron Metzler". The signature is stylized with a large, sweeping "R" and "M".

Ron Metzler
Vice President, Planning and Entitlement

Cc: Members, California Coastal Commission
Alternates, California Coastal Commission
John Dixon, Ph.D.
Mark Johnsson, Ph.D.
Ms. Sherilyn Sarb
Mr. Karl Schwing
Ms. Meg Vaughn
Mr. Andrew Willis



City-approved plan
for Smoky's Stables

WP+ as defined by
Bolsa Chica Land Trust

WP

EPA

AP

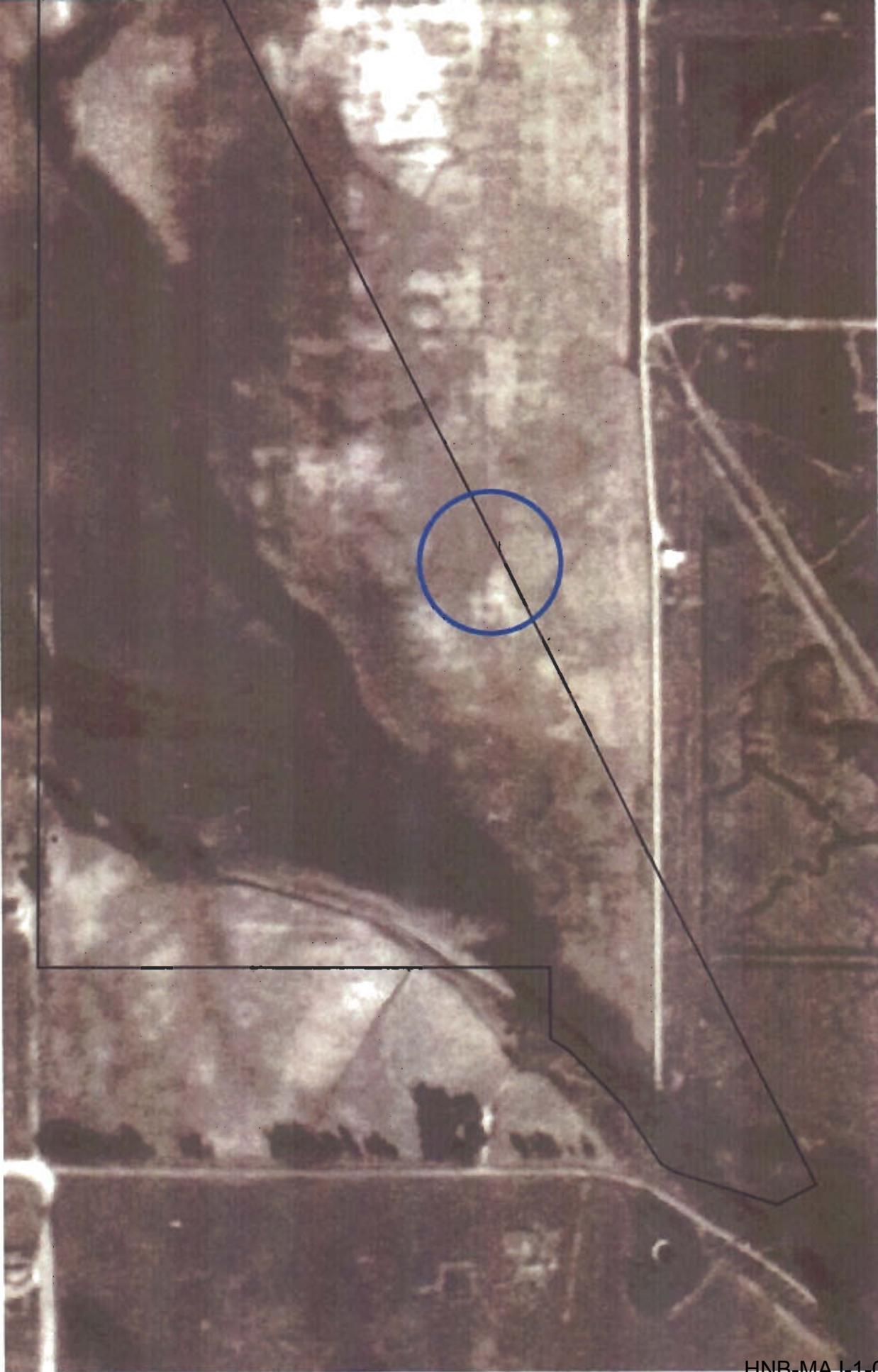
Former Slater Ave

13,600 sq ft Pickleweed
area filled by Smoky's.
Shea agrees to restore.

CP

Bolsa Chica St



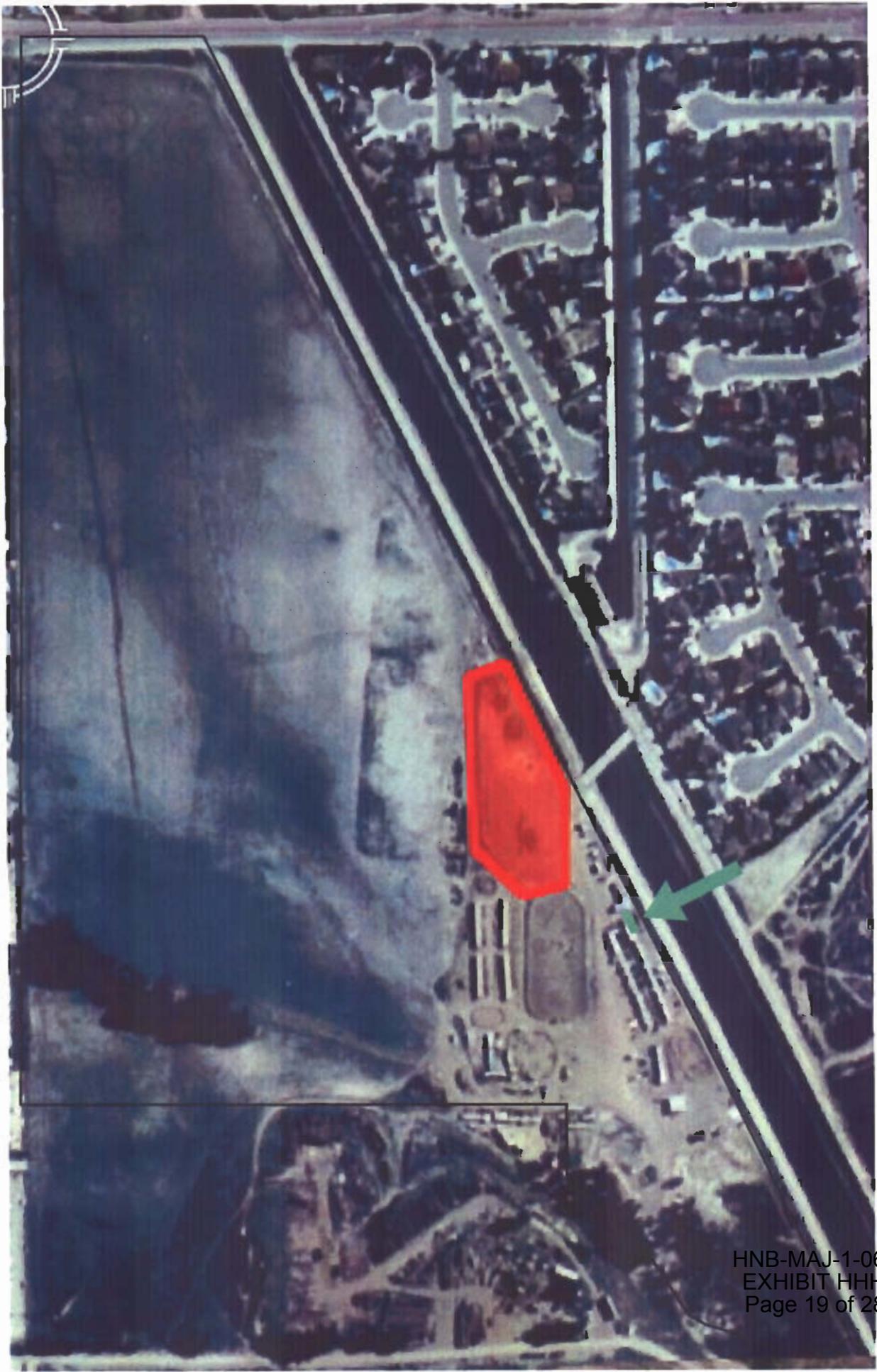


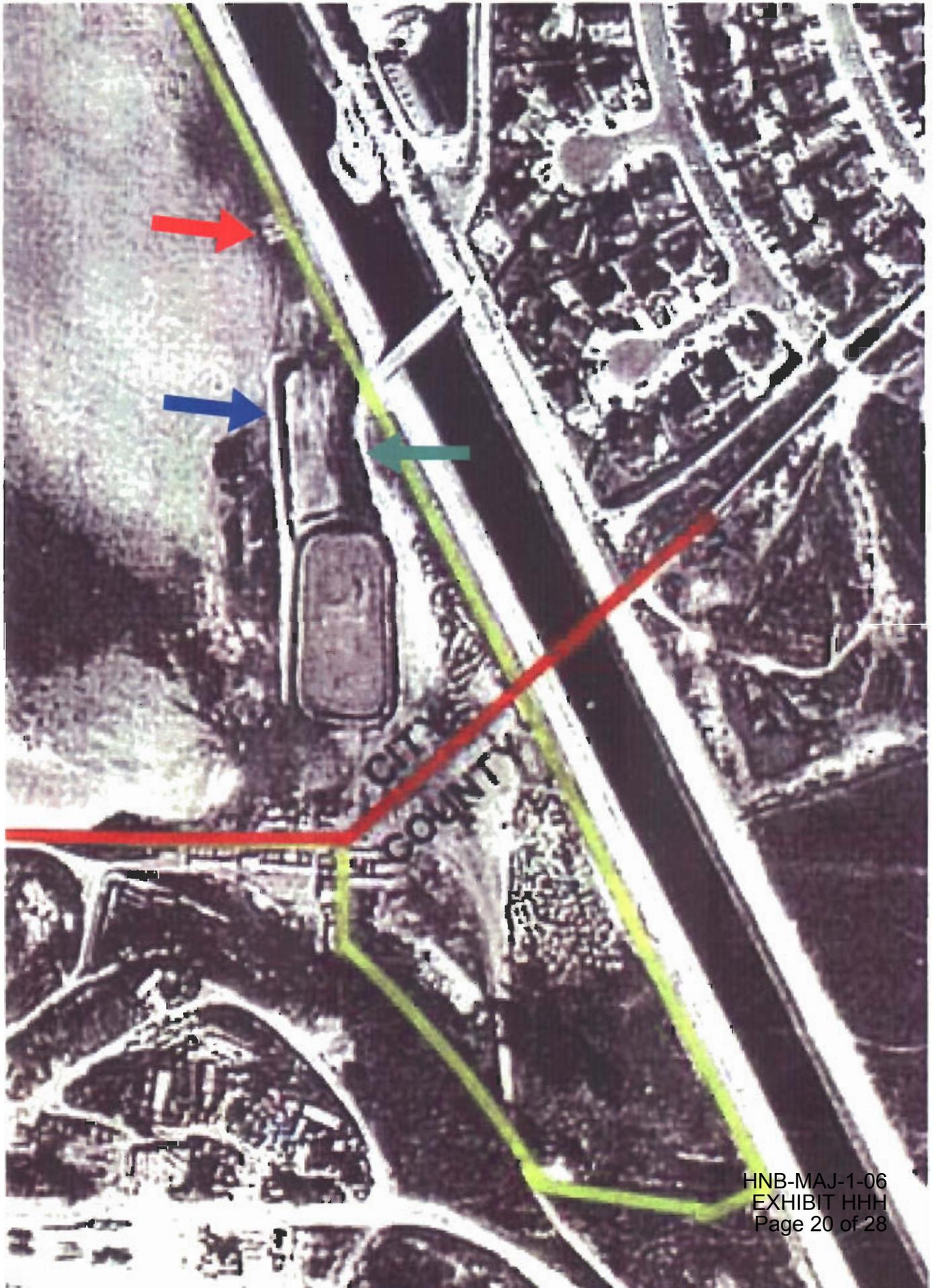


USGS 1949



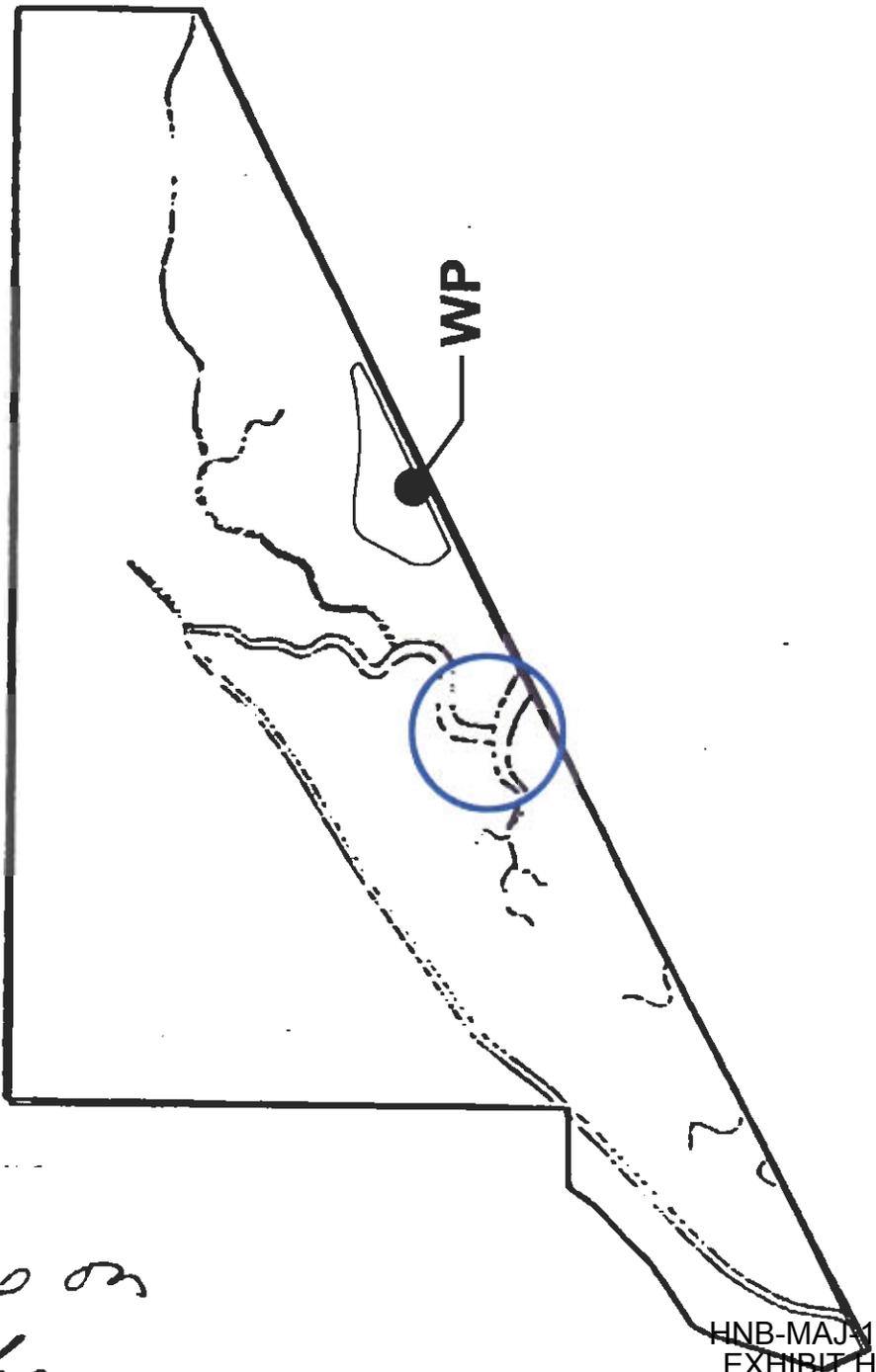








SCALE: 1" = 500'



*Sloughs on
Idea*







EPA 03-12-2001





reed thomas co., inc.
excavating - grading

1025 N. SANTIAGO STREET
SANTA ANA, CALIFORNIA 92701
(714) 558-7691 FAX (714) 558-7361
LIC. #A470948

INVOICE

NO. 13873

PAGE 1

B
I SHEA HOMES
L 603 SOUTH VALENCIA AVENUE
L P.O. BOX 1509
BREA, CA 92822
T
O

J SHH9604R
O SHH9604R - PARKSIDE ESTATES
B GRAHAM ST., BOLSA CHICA
HUNTINGTON BEACH.
N
O

INVOICE DATE	INVOICE NO.	CUSTOMER NO.	PAYMENT TERMS	CONTRACT NO.
12/29/98	13873	SHH100		

QUANTITY	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
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GRAHAM STREET, BOLSA CHICA
HUNTINGTON BEACH, CA

DAILY WORK TICKET
12/22/98 NO 21691

535.00

Shea Homes Co. California

Cost Code 3250705000

Cost Type-Cost Code 030603

Coding Approval

Payment Approved JRM 1-4-99

Processed By

Printed By

GROSS	RETAINAGE	TAX	NET AMOUNT
535.00	.00	.00	535.00

HNB-MAJ-1-06
EXHIBIT HHH
Page 26 of 28

CONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT
(Civil Code §3262 (d) (3))

Upon receipt by the undersigned of a check from Shea Homes

in the sum of \$ 535.00 payable to _____

Reed Thomas Co., Inc. and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien, stop notice, or bond right the undersigned has on the job of _____

Shea Homes located at Graham Street, Balsa (Owner)
Chica, Huntington Beach (Job Description)

This release covers the final payment to the undersigned for all labor, services, equipment or material furnished on the job, except for disputed claims for additional work in the amount of \$ _____. Before any recipient of this document relies on it, the party should verify evidence of payment to the undersigned.

DATED: 12/29/98

Reed Thomas Co., Inc.
(Company Name)

By Mary Lindberg A/R
(Title)

NOTE: This form of release complies with the requirements of Civil Code Section 3262 (d) (3). It is not effective until the check that constitutes final payment has been properly endorsed and has cleared the bank.

SHEA BUSINESS PROPERTIES

255 Brea Canyon Road
Wanun - California
91789
(714) 598-9000

HNB-MAJ-106
EXHIBIT HHH
Page 28 of 28



MEMORANDUM

To: Sherilyn Sarb ^{DK}
 From: Art Homrighausen, Tony Bomkamp, Dr. Mike Josselyn ^{TB}
 RE: Historic "EPA area" on Parkside Estates, Huntington Beach
 Huntington Beach LCPA 1-06
 Date: June 12, 2007

RECEIVED
South Coast Region

JUN 14 2007

CALIFORNIA
COASTAL COMMISSION

This memo provides information relevant to the status of the area designated by Dana Sanders and Thomas Bilhorn to be a wetland ("the EPA Wetland"). Dr. John Dixon has summarized much of the material in his July 27, 2006 report; however, there is information relevant to the "EPA Wetland" area that was not included in Dr. Dixon's memorandum. In addition, we have conducted a more detailed analysis of some of the previous studies cited by Dr. Dixon.

The memo covers the following topics:

- Four mappings or wetland determinations made before the Bilhorn/EPA delineation and six made subsequent to it all found no wetland in the "EPA wetland" area.
- Bilhorn erred by concluding that dark soil equaled wet soil, and this error was picked up by EPA. We show through aerial photos taken during both unseasonably dry years, and years Dr. Dixon found no ponding on the site, that soil color is not a measure of soil wetness.
- We also cite Sanders' field observations from the period studied by Bilhorn, in which he states there was no evidence of past inundation or saturation.
- By reviewing the various studies, we show that the Bilhorn/EPA delineation with regard to the subject property was less detailed and comprehensive than many other studies conducted in the area. A major error in the Bilhorn study was the failure to note that the EPA area's watershed had been reduced by 22 acres by the construction of the Cabo del Mar condominiums.
- Relying on topographic studies, we show that opponent allegations of "cut and fill" in the EPA area are unfounded and are, in fact, indicative of routine farming and field preparation activities.
- Finally, relying on numerous sources including Dr. Dixon, we show that the EPA area does not have sufficient hydrology to support wetlands, even in the absence of farming, and that a 7-day standard is not appropriate for this site, based on site-specific data.

III 1

Ms. Sherilyn Sarb
California Coastal Commission
EPA Area

Summary of other Earlier Findings Regarding the "EPA Wetland"

Before the Sanders and Bilhorn studies, four studies evaluated the Parkside site; none identified a wetland in the area where Bilhorn identified "wet soils" – the area which subsequently became referred to as the "EPA Wetland." These studies are:

- o Vegetation mapping and wetland delineation prepared by Dillingham (1971, Attachment 1). Note that the Dillingham study describes the state of the site prior to enactment of the Coastal Act.
- o A tract map for a prior proposed development on the Parkside property that indicates site vegetation (1873, Attachment 2),
- o Vegetation mappings prepared by Shapiro (1981, Attachment 3),
- o A wetland determination of the site by the California Department of Fish & Game (1981, Attachment 4).

Subsequent to the Bilhorn review, the following studies of the site were made. As with the prior studies, none identified a wetland in the "EPA" area:

- o The Sanders letter of 1991 finding that the site was "prior converted cropland" based on a lack of wetland hydrology. It is important to note that in this letter, Sanders observes that his initial determination was that no wetlands were associated with the EPA area; however, he modified his initial position of "no wetlands" to follow Bilhorn's analysis (addressed in more detail below). In short, Sanders' corrected position is consistent with our findings relative to Bilhorn's study.
- o The Army Corps of Engineers letter of 1992 concurring with Sanders' finding of "prior converted cropland," which depends on a finding that the site does not pond for more than 15 days during most years.
- o A biological resource assessment by Frank Hovore & Associates in 1997, in which Hovore noted that the 8.3-acre "EPA" area had been deprived of hydrology "sufficient to form [wetland] habitat"
- o A wetland delineation by Kegarice in 1997
- o A letter from the California Department of Fish & Game to the City of Huntington Beach in 1998
- o A jurisdictional delineation by GLA in 2004, which focused on the 44-acre farm field area, including the "EPA" area.

As you can see, there has been an extremely extensive review of this site, and with the exception of Bilhorn and EPA, none of these studies has determined there to be a wetland at the "EPA" site.

III 2

Ms. Sherilyn Sarb
California Coastal Commission
EPA Area

We also would note that on Page 29 of his July 27, 2006 memorandum, Dr. Dixon makes the following assertion:

"One could argue that the EPA delineation should stand because there has been no change in the overall hydrology of the site (i.e., total input and outflow of water) since 1989 and the recent photographic evidence is meager."

While we concur that the hydrology has not changed since 1989, Dr. Dixon apparently has failed to note that both Bilhorn and EPA did not account for the changed hydrological conditions that occurred about 1982 or 1983 during construction of the Cabo del Mar condominiums. Bilhorn's aerial photographs (addressed further below) were from March 1982, before the site hydrology was changed; whereas his report dates from after the hydrological diversion. Sanders points out this oversight in 1991. Also, as noted below, Dr. Dixon found ponding during this period was less than 7 days, even at the time before the site's hydrology changed.

Dark soils evident in photographs are not an indication of soil moisture

The so-called "EPA Wetland" was first defined by Sanders in 1987 based upon Bilhorn (1987), who based his analysis on the combination of a topographic depression and the appearance of dark soils in two aerial photographs. Bilhorn presumed that dark soils were equivalent to wet soils.¹ This presumption was flawed, as demonstrated by several lines of evidence:

- There are numerous photos that show distinct boundaries of dark soils approximating the "EPA wetland" boundary, even though the photos were taken at times when the soils could not possibly have been wet. For example, Attachment 5, a photo from January 31, 1970, clearly shows dark soils in the "EPA Wetland" area – but only two inches of rain had fallen in the entire month, so the soil was no more than slightly moist. On page 83 of his July 27, 2006 memo "*Wetlands at Shea Homes Parkside Estates*," Dr. Dixon states:

"Based on rainfall pattern and amount, it is unlikely that topographic depressions were continuously inundated for long duration [7 days] this season."
- A review of all the aerials of the site show the EPA area (and the now dry relictual riparian area) consistently have darker soil values than adjacent soil.

¹ Bilhorn wrote on page 3 and 4 of his study "Agricultural Area Delineation, Bolsa Chica, Orange County California (June 1987), "Using March 18 and 31 1982, photographs, which are representative of normal year seasonal and transient ponding, a portion of the area ... shows wet soil conditions. **Darkest in value (wettest)** is the section running north-south at the western edge of the parcel, from the riding stable to the dead-end street. The soils lying within the "arm" of the - 0.5-foot contour ... are **much lighter in value and therefore much drier.**" (Emphasis added)

We have inserted three representative examples (Attachments 6, 7 and 8), from 1984, 2000 and 2002 respectively.

- The May 28, 1984 photo was taken in a period that had only 1.1 inch of rain over the preceding four months, and a seasonal total of 7.9 inches, well below average.
 - The February 2, 2000 photo was taken in a period that had only 0.87 inches of rain in the preceding five months, and a seasonal total of 6.5 inches, nearly all of which came after this photo was taken.
 - The May 23, 2002 photo was taken in a period that had only 0.99 inches of rain in the preceding five months, and seasonal total of 2.87 inches, the second-driest year locally recorded.
- Bilhorn's interpretation of wet soils used in the "EPA wetland" determination is based on March 1982 photographs. Dr. John Dixon's rainfall and ponding analysis states that ponding occurred for less than seven days during March 1982. On page 95 of *"Wetlands at Shea Homes Parkside Estates,"* Dr. Dixon states:
 - “Based on rainfall pattern and amount, it is unlikely that topographic depressions were continuously inundated for long duration [7 days] this season.”
 - Bilhorn's delineation of wetlands does not correspond with the mapped topographic depression, even though he stated that the topographic map he used (Attachment 9) generally corresponded with the observable conditions in the field. Some of the dark soil areas mapped by Bilhorn as "EPA wetland" are higher in elevation by one foot or more than adjacent light soil areas that were not mapped as wetland, including an area approximately equal in size to the EPA area, as shown in Attachment 10.

On-site observations used in "EPA Wetland" determination reveal no ponding

- Sanders stated in his 1991 letter:
 - “I observed site conditions of the area in question on several occasions during 1987-1988. During that period, I saw no evidence of either current or past inundation or soil saturation in the [EPA] area.”

In fact, Sanders originally concluded that none of the area in the agricultural field was wetland. Nevertheless, in 1987 Sanders deferred to Bilhorn's hydrology analysis, even though, in retrospect, it appears flawed. Even though Dr. Dixon has discounted the Sanders 1991 letter because of an apparent error in how he addressed Bilhorn's observations on the site's hydrology, that error has no impact on the factuality of Sanders' on-site observations of the physical conditions of the site.

Ms. Sherilyn Sarb
California Coastal Commission
EPA Area

- In the same 1991 letter, Sanders noted that ponding after two storms did not last for more than seven days.
- No direct evidence of surface hydrology was ever reported by EPA, Sanders or Bilhorn; rather, as noted, Bilhorn made a flawed determination of "wetted soils," for a period that Dr. Dixon notes exhibited ponding for a period of less than 7 days. This error was then propagated by the EPA, which relied on Bilhorn.
- Dr. Dixon even notes that the results of the Bilhorn study were ambiguous.²

The EPA delineation was based on much less data than other studies

- The delineation of wetlands in the agricultural area was based on less information than was available for the rest of the Bolsa Chica area.
- The three studies which identified a wetland in that area [Bilhorn (1987), Sanders (1987) and EPA (1989)] are in reality one study ~ Bilhorn. Sanders makes it clear in his 1991 letter that Bilhorn is flawed, noting the altered hydrology. None of these three studies recognize the changes in hydrology caused by the construction of the Cabo del Mar condominiums, which occurred in 1982 and 1983, during the time the reports were being prepared. Cabo del Mar first temporarily increased the hydrology of the EPA area, then eliminated 22 acres of the EPA area's watershed when the site was tied to a storm drain.³
- No researcher ever identified the "EPA wetland" area as a currently functioning wetland. Instead, based on presumed hydrology in 1982, EPA, Bilhorn and Sanders all said that hydrophytic vegetation would likely develop in the absence of farming. Subsequent observations and analysis by Sanders (1991) determined that the low area was dominated by upland grasses and weeds, and that ponding occurred for less than seven days in most years; this is consistent with the earlier studies by Dillingham and Shapiro.
- The EPA area has been determined to not be a wetland by the U.S. Army Corps of Engineers, the Natural Resource Conservation Service and the California Department of Fish and Game. Note that the federal determinations were based on a lack of sufficient inundation to cause the formation of wetland, and that CDFG uses the same criteria as the Coastal Commission. There is absolutely no actual evidence that the "EPA wetland" area met the Coastal Commission wetland criteria at the time Shea took ownership and continued farming operations.

² Page 9 of Dr. Dixon's January 2006 report on Parkside wetlands

³ Dr. Dixon says on page 97 of his January 2006 report on Parkside wetlands that less than half an inch of rain had fallen up to that date in December 1983 – another clear indication that dark soil does not represent wet soil.

Ms. Sherilyn Sarb
California Coastal Commission
EPA Area

"Cut and Fill" Allegations Ignore Farming Practices and Commission Actions

- In 1998 the Commission wrote Shea Homes stating that farming is an allowed use on the entire 44-acre farm field site, including the "EPA wetland" area.
- Federal definitions of farming (EPA, Corps of Engineers) define plowing as "All forms of primary tillage, including wide blade plowing ... and similar means for ... cutting soil," and state that "plowing includes land leveling to prepare for the planting of crops."⁴
- Earth movement in this area is the result of farming – the necessity to have a flat field without areas that hold water or shed water. Changes in topography have been minimal – a matter of inches, less than the depth of a furrow. The EPA area and other areas being both raised and lowered over the years. Nothing in the topographic evidence supports the contention that there was "deliberate" fill in this area.

The "EPA wetland" area will not support wetland conditions

- It is important to note that even the AP area is on the extreme margins of, if not outside the margins of, the Coastal Commission's wetland criteria (i.e., no hydric soils, ponding for less than 14 days in most years, and development of hydrophytic vegetation presumed by Dr. Dixon). The AP area concentrates much of the agricultural field runoff and runoff from 2.5 acres of adjacent hillside into a smaller and deeper depression than the former EPA Wetland. If the 0.63-acre AP area at best barely meets the Coastal Commission wetland criteria, it stands to reason that an area covering about 8 acres that receives less water and has fewer periods of inundation will not meet the criteria.
- Dr. Dixon's own analysis refutes 7 day test for the AP (and potential EPA area by extension). On page 16, Dr. Dixon states that the 7 day standard is based on the minimum time required for soils to become anaerobic. In the same paragraph he references a report from EPA that states that inundation or saturation must meet or exceed a duration of 7 continuous days during the growing season in order to support hydrophytic vegetation and to exclude upland plant species, working (presumably) on the assumption that the presence of anaerobic conditions precludes establishment of upland plants.
- In a fairly lengthy section that addresses hydric soils, Dr. Dixon notes on page 22 that the AP requires between 14 and 28 days to exhibit iron reduction. In his conclusions on page 23, he states "...it is more likely than not that during most years areas WP and AP are not ponded for the duration needed to promote the formation of hydric soils at those locations, given the nature of the soils present.

⁴ Parkside Estates EIR response to comments, pp. 3-145, 3-146

III 6

Ms. Sherilyn Sarb
California Coastal Commission
EPA Area

- Given that it is the development of anaerobic conditions that limits or excludes upland plant species while providing suitable conditions for a hydrophytic community, it also follows that in the absence of such limiting conditions, the conclusion that 7 days is sufficient to promote the growth of hydrophytes is not warranted for the AP or the EPA area, and is in fact an unsupported conclusion.
- As such, Dr. Dixon's use of a seven day standard for hydrology is not supportable for this site based on the site-specific data with which he is in agreement.

cc: John Dixon, Ph.D.
Mr. Karl Schwing
Ms. Meg Vaughn

Attachments:

1. Dillingham map, 1971
2. Tract map, 1973
3. Shapiro map, 1981
4. California Department of Fish & Game, 1981
5. 1970 aerial photo
6. 1984 aerial photo
7. 2000 aerial photo
8. 2002 aerial photo
9. Bilhorn topographic map
10. Bilhorn topographic map, detail

Meg Vaughn

From: Mark Bixby [mark@bixby.org]
Sent: Saturday, May 26, 2007 6:31 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; Shirley Dettloff
Subject: Shea Parkside AP vegetation update

Hi CCC staff, Bolsa Chica Land Trust people, and other friends of Bolsa Chica,

WP and the former stables area got most of the mindshare at the May 10th hearing, but amazing things are happening at AP that should not be overlooked.

A large quantity of the obligate hydrophytic species seaside heliotrope is growing within the AP buffer zone, which suggests that the current AP boundaries are currently undersized.

Please download my AP vegetation update letter from:

<http://www.bixby.org/parkside/documents/CCC/nwwr-ccc-070526-AP.pdf>

Note that I have intentionally omitted the applicant and consultants from this e-mail. While I had been going above and beyond the call of duty in sending this stuff to the applicant over the years, this courtesy was very seldom reciprocated by the other side, which forces us opponents to periodically poll CCC staff to learn of new applicant-submitted material.

If the applicant will agree to extend me the courtesy of sending me copies (electronic is OK and in fact preferable) of all future submittals they send to CCC staff, then I will be happy to include the applicant on future e-mails of mine.

--

mark@bixby.org

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JJJ,

Meg Vaughn

From: Mark Bixby [mark@bixby.org]
Sent: Wednesday, May 30, 2007 6:51 AM
To: Meg Vaughn; Karl Schwing; John Dixon; Jonna Engel; Jan Vandersloot; Sandy Genis; Julie Bixby; Marc Stirdivant; Flossie Horgan; Jerry Chapman; Flossie Horgan; Paul Horgan; Paul Arms; Rudy Vietmeier; Marinka Horack; Karen Merickel; karen merickel
Subject: more disappearing Smoky's pickleweed?



0705010_0010f.JP
G (505 KB)



0705010_0010c.JP
G (51 KB)



0705010_0011f.JP
G (318 KB)



0705010_0011c.JP
G (42 KB)

Hi CCC staff and Parkside BCLT people,

I have attached images from two maps that I photographed on 05/02/07 when the BCLT Parkside team met with CCC staff in Long Beach.

The first map (the first two attachments) is the original Smoky's expansion plan from February 1982, back when the stables operator didn't consider pickleweed to be anything special and was planning to build a parking lot on top of the 1981 Shapiro pickleweed (Shapiro pickleweed not depicted on this map).

But take a look in the northeastern corner crop in the second attachment. We see a labelled area of pickleweed between the two major arenas. There is also a similarly drawn vegetated area between the easternmost arena, the road, and the levee, but it is unlabelled.

Now look at the second pair of attachments dating from a September 1982 map. The CCC has already rejected the initial plan, and ordered the restoration of the Shapiro pickleweed zone. But we see that the northeastern pickleweed patch and the unlabelled vegetation area have disappeared.

Hmmm...

One explanation of this is that once the stables operator realized that pickleweed was going to be problematic, he chose to omit the eastern pickleweed from the revised map in order to gain quick approval for the revised project.

Unfortunately the various CCC staff reports from that period do not mention the eastern pickleweed. I don't know if the "now you see it, now you don't" difference between the two maps escaped staff's attention, or if this difference was noted in some document not currently possessed by BCLT but deemed unimportant.

So I just wanted to make sure you all were aware that the stables operator had admitted to an area of obligate hydrophytic vegetation which disappeared on subsequent maps and certainly no longer exists today due to the unpermitted filling that followed issuance of CDP 5-82-278.

--

mark@bixby.org

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JJJz

Meg Vaughn

From: Mark Bixby [mark@bixby.org]
Sent: Monday, June 04, 2007 9:10 PM
To: Meg Vaughn; Karl Schwing; John Dixon; Jonna Engel
Cc: Julie Bixby; Jan Vandersloot; Sandy Genis; Marc Stirdivant; Flossie Horgan; Jerry Chapman; Flossie Horgan; Paul Horgan; Paul Arms; Rudy Vietmeier; Marinka Horack; Karen Merickel; karen merickel; Dean Albright
Subject: Re: DFG, wetlands, and the bulldozing of April 1998 at Parkside

Hi CCC staff, Parkside BCLT people, and Dean Albright,

Dean Albright has provided me with video he shot on April 24, 1998, two days after the date of the bulldozer pics we showed at the May 10th hearing in San Pedro. Dean's video shows evidence of earth movement that would seem to exceed standard "weed abatement" practice. The under 10 minutes worth of video can be downloaded from:

<http://www.bixby.org/mark/albright-980424/>

Of the three video clips, clip #2 has some narration recorded on the day it was shot. I'm told the video was so shaky because it was very windy on the day it was shot, and it was hard to hold the camera still.

The above URL is a temporary download location. Interested parties wishing to save these video clips should download them to their own PCs.

Dean -- please do a "reply all" to this message and thoroughly describe your recollections from that day.

Thanks...

- Mark B.

Julie Bixby wrote:

> Hello, CCC staff and Parkside BCLT people,
>
> A follow-up to the 1998 photos of Shea's bulldozing activity.
> Attached
> are the minutes from the April 20, 1998 HB City Council meeting. The
> section on Shea begins on page 9. On page 10, Scott Harris, a biologist
> with DFG, speaks to the issue of potential wetlands on the property, and
> if Shea would only leave the land fallow for a while in order to make a
> proper determination. Just TWO DAYS later the bulldozers made their
> move (see Jan Vandersloot's public comments power point from May 10,
> video time stamp approx. 4:30).
>
> We are attempting to get an audio or visual record of the meeting to
> know exactly what Mr. Harris said, but again, it is very telling that as
> soon as anyone hints that there might be official wetlands on site,
> Shea's bulldozers spring into action to erase that notion.
>

--
mark@bixby.org

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JJJ₃

Meg Vaughn

From: Mark Bixby [mark@bixby.org]
Sent: Thursday, June 21, 2007 9:18 AM
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
Subject: LA Times article on 1981 Smoky's fill incident



LAT sept 1981.pdf
(70 KB)

Hi CCC staff and friends of Bolsa Chica,

Please see attached for a 1981 LA Times article on the Smoky's Stables fill incident.

Of particular interest is where Fred Burkett said he imported the fill "to elevate the area around his stable and corral to prevent flooding during the rainy season". Hmmm.

This stated motive for the filling seems to be pretty clear proof to me that wetland hydrology was present on the site prior to the fills. I.e. if ponding was only occasional and short in duration (less than 7 days), why go to the trouble of importing so much fill? That Burkett had contracted to import 1,500 truckloads of fill strongly implies that ponding was chronic, pervasive, and long-lived (greater than 7 days).

Although Burkett was caught red-handed in 1981, we know from the extensive aerial photography record that Burkett soon resumed his unpermitted filling activities and by 1989 he had succeeded in filling his entire stables footprint by as much as 8ft of fill.

The commission cannot allow such a bold filling of wetlands to go unenforced. The commission needs to uphold the Coastal Act and direct that all of the unpermitted fills from the stables era (and the Shea era) be removed.

--

mark@bixby.org

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JJJ₄

JJJ5

Dumping of Fill Dirt in Bolsa Chica Wetlands Halted

LESLIE BERKMAN

Los Angeles Times (1886-Current File); Sep 15, 1981; ProQuest Historical Newspapers Los Angeles Times (1881 - 1985)
pg. OC_A3

Dumping of Fill Dirt in Bolsa Chica Wetlands Halted

By LESLIE BERKMAN, Times Staff Writer

Mounds of dirt from a City of Huntington Beach project have been dumped on a portion of the environmentally prized Bolsa Chica lowlands in violation of the Coastal Act, state Coastal Commission officials said Monday.

The road contracting firm, All American Asphalt, based in Orange, said it halted the dumping immediately after an order to do so was issued Monday by the commission. The firm estimated that over the last two weeks it has deposited 6,000 cubic yards of dirt and gravel on parts of 11 acres.

State Coastal Commission lawyer Steve Brown said All American was told to stop the dumping or face possible legal action. He said the commission will also demand removal of the deposited dirt.

A Coastal Act violation, he said, derives from the fact that the 11-acre dumping ground is part of the 1,200-acre Bolsa Chica lowlands that the Coastal Commission has preliminarily designated as wetlands worthy of special protection.

To place dirt on such an area, he said, would require a special permit and none was granted by the Coastal Commission in this case.

Hugh Lee, the contractor's representative on the road

project, said the firm was unaware it was doing anything wrong.

Lee explained that Fred Wayne Burkett, who operates a commercial horse stable and animal farm on the 11 Bolsa Chica acres just north of the Winterburg flood control channel, had wanted the dirt.

All American Asphalt had been hired by the City of Huntington Beach to reconstruct about three miles of worn out roadways on Edinger Avenue and Spring Street.

Lee said All American therefore took Burkett up on his offer to accept an estimated 40,000 tons — 1,500

'Ignorance of the law is no defense,' says a Coastal Commission lawyer.

truckloads — of dirt that the road excavation was expected to generate, Lee said he was amazed that Burkett had a use for so much dirt.

Burkett said Monday that he intended to use the dirt to build a 50-space parking lot, to elevate the area around his stable and corral to prevent flooding during the rainy season, and to construct a series of small canals and ponds that he planned to stock with fish.

Burkett said his plans were endorsed by the Metropolitan Water District of Southern California, from whom he leases the 11 acres for \$300 a year, and by a local official of the state Department of Fish and Game.

The Metropolitan Water District, in a statement released late Monday, acknowledged that Burkett had asked permission to allow the dumping on his property and was told there appeared to be no reason why it couldn't be done.

However, the water district added that it did not know about the wetland restrictions and it disclaimed responsibility for any violation of the law.

"It is the responsibility of the lessee to conduct his activities on the land in compliance with the law and if something was done that was not in compliance, it is up to the lessee to remedy the situation," the district said.

The 11-acre parcel was acquired by the water district about 10 years ago, a district spokesman said, to house support facilities for a nuclear power plant that was planned to be built offshore. Those plans fell through, he said.

Kit Novak, Fish and Game's local representative, said that although he supported Burkett's idea of creating ponds on his leasehold, he could see no justification for the illegal use of fill, which he contended would be used mostly for other purposes.

"Ignorance of the law is no defense," said Coastal Commission lawyer Brown. He contended that under the law, Burkett, the contractor and the water district could be held liable.

However, he said that apparently the City of Huntington Beach is not responsible for the actions of the contractor since it never gave "actual or expressed consent" to the dumping.

Brown said he first learned that truckloads of fill

were being taken to Bolsa Chica last Thursday. He said he was so informed by an official of the federal Environmental Protection Agency, who in turn had been advised by a biologist working in the area.

The incident fortunately was checked early, Brown said, but he added that it seems to be indicative of a disturbing trend. "A lot of people have been filling wetlands and it has been going on statewide recently," he said.

He noted that as recently as June, the state attorney general's office, at the Coastal Commission's behest, filed a lawsuit accusing Signal Landmark Inc. and other parties of illegally plowing and grading another part of Bolsa Chica. That suit is still pending trial.

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Meg Vaughn

From: Mark Bixby [mark@bixby.org]
Sent: Tuesday, June 26, 2007 11:22 AM
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
Subject: 1975 pre-fill stables aerial showing wetness



GoogleEarth_Image
.jpg (326 KB)...

Hi CCC staff and friends of Bolsa Chica,

I spent much of last weekend updating my Google Earth Parkside model. See attached for a newly acquired aerial image from 02/17/75 showing wetness in the stables area before any major stables filling had started. The blue polygon denotes the area listed as below sea level on the 1965 USGS topo map.

The full-res aerial (without the polygon) can be obtained directly from:

<http://www.bixby.org/parkside/kml/750217c.JPG>

But you are encouraged to use my Google Earth model which likely has the most complete collection of aerial images in existence for the Parkside property. I added a couple dozen new images on Sunday.

If you want to see what I am talking about, download, install, and launch Google Earth from <http://earth.google.com>. Then in the Places section of the left nav window, right-click on the My Places icon, then click Add, Network Link. Enter <http://www.bixby.org/parkside/kml/showme.kml> into the Link field.

Then double-click the newly added entry that appears under My Places.

If the above instructions don't work for you, please PHONE ME at 714-625-0876 and I will be happy to talk you through the process.

--
mark@bixby.org

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Meg Vaughn

From: Mark Bixby [mark@bixby.org]
Sent: Tuesday, June 26, 2007 1:55 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
Subject: recent Shea Parkside flood control assertions



mythsAndFactsSingl
e.pdf (701 K...

Hi CCC staff and friends of Bolsa Chica,

Shea makes a number of flood control claims in the attached direct mailing piece (downloaded from <http://www.sheaparkside.com/mythsAndFactsSingle.pdf>) that bear further investigation. Among them:

1) "By issuing a Conditional Letter of Map Revision, FEMA is obligated to issue a new flood map once the Parkside improvements are installed." But wait just a minute -- the CLOMR that was issued assumes that Shea is going to improve the northern EGGW levee along the *entire* border of the Shea property. But I recall reading in some memos from late last year or early this year that the new plan is to only improve the levee down to the location of the VFPF, leaving the original (decaying) levee intact where it borders the CP wetland area. Wouldn't this reduction in levee improvement invalidate the CLOMR?

2) Shea says that water in the restored Bolsa Pocket "...is up to seven feet higher in elevation than homes near Parkside". Huh? The Pocket was restored to muted tidal conditions, thus water level in the Pocket should not be exceeding MSL. Furthermore, a large-format Shea map entitled "Site Topography Comparison: 1996 to 2003" dated 06/23/04 shows elevations along the northern portion of the Shea property ranging between 1 and 2 feet in elevation. The math simply does not compute here. If water level in the Pocket is no more than zero feet in elevation (i.e. MSL), then the homes adjacent to Parkside would need to be seven feet BELOW sea level for Shea's assertion to be true. That is simply not the case, not even according to Shea's own topo map.

--
mark@bixby.org
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JJJ₇

Meg Vaughn

From: Mark Bixby [mark@bixby.org]
Sent: Tuesday, June 26, 2007 8:41 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; Andrew Willis
Subject: Parkside county parcel EPA pocket wetlands?



1989-EPA-mapc.jpg
(853 KB)

Hi CCC staff and friends of Bolsa Chica,

I apologize for lobbing so many last minute items your way today. This is the last one, I promise. ;-)

There has been so much focus on the large 8.1 acre EPA wetland on the Shea city parcel that I fear two smaller EPA pocket wetlands have been overlooked on the Shea county parcel. The light only dawned for me today when a tattered, yellowing, large-size copy of the EPA wetland map was delivered to me.

The attached 1989 EPA wetland map shows two skinny wetlands in the county parcel. An analysis of my Google Earth historic aerial imagery at <http://www.bixby.org/parkside/kml/showme.kml> shows that the locations of these two skinny wetlands were relatively undisturbed from when the Coastal Act was passed until 02/19/83 when some disturbance of the northern pocket wetland becomes evident. The northern pocket wetland appears to have been completely filled by the time of the 05/28/84 photo.

These pocket wetlands are depicted on LSA 2002 county parcel wetland delineation maps, without any explanatory legend or associated text.

The Sanders 1991 report that fed into the prior converted cropland designation was solely focused on the 8.1 acres without any mention of the county pocket wetlands.

These pocket wetlands have not been cropped since passage of the Coastal Act. You have to go back in the aerial record to at least 1959 to find clear evidence of cropping.

If they were not cropped since the EPA delineated them in 1989, and they are not mentioned in the Sanders 1991 report, were they included in the prior converted cropland decision? It seems unlikely.

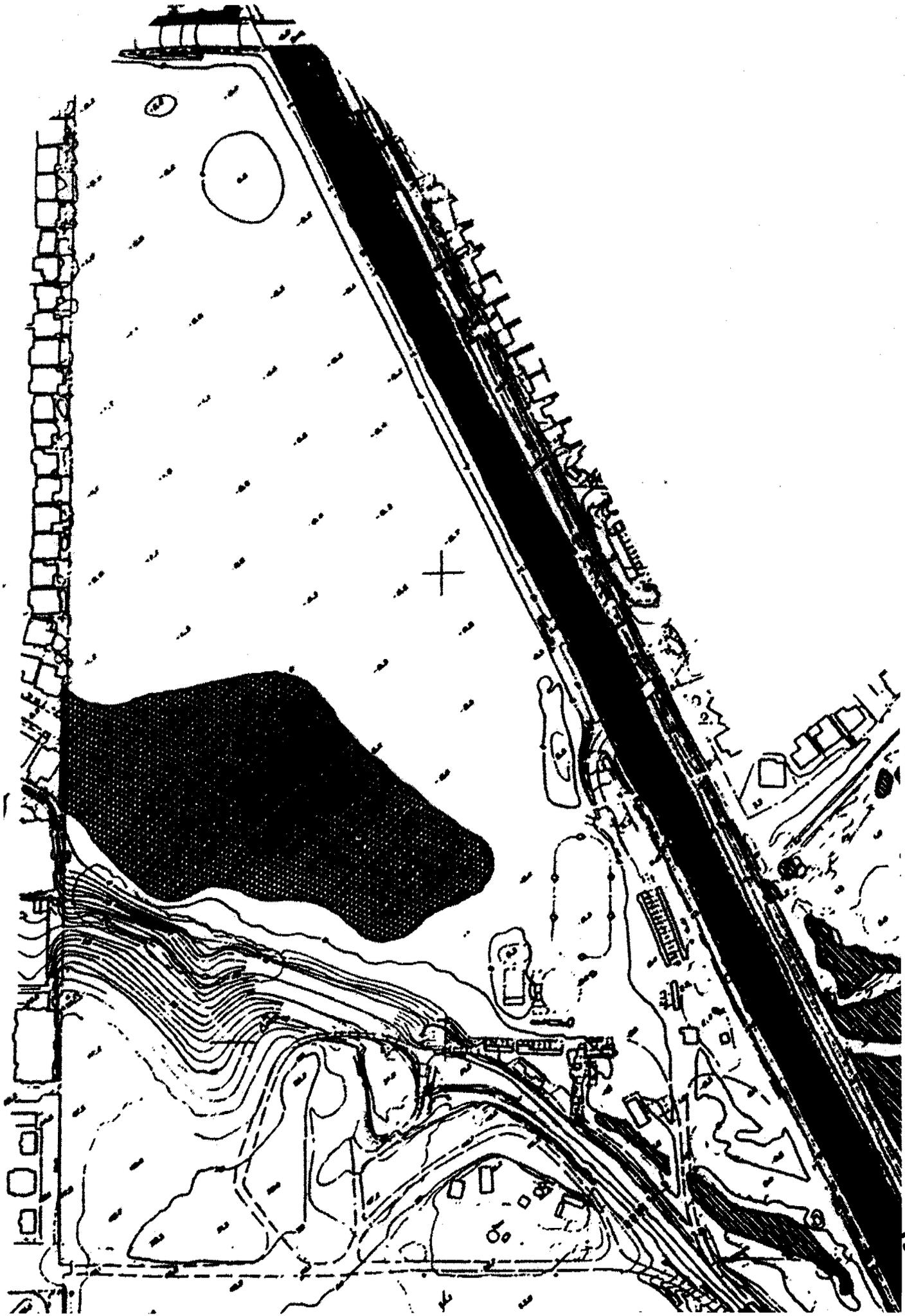
If they were federal wetlands, then they were also CCC wetlands. They appear to be intact in my 03/15/81 photo. The parking lot fill explicitly granted by CDP 5-82-278 did not include these pocket wetlands. It seems likely that the "existing condition" recognized by the CDP included these unfilled wetlands.

Yet these two wetlands are not recognized today by CCC staff Exhibit L. Why not? It looks to me like the northern pocket wetland was another victim of unpermitted stables fill.

I realize that these two wetlands are outside of the proposed development footprint and are protected within the southern euc grove ESHA buffer. But if there was unpermitted fill in violation of 30233, then the filled northern pocket wetland must be restored in order to enhance the habitat value of the ESHA.

--
mark@bixby.org

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Neighbors for Wintersburg Wetlands Restoration
17451 Hillgate, Huntington Beach, CA 92649-4707 - 714-625-0876 - www.bixby.org/parkside

June 27, 2007

We8.5a

California Coastal Commission
South Coast Area Office
ATTN: Meg Vaughn
200 Oceangate, Suite 1000
Long Beach, CA 90802-4416

RE: Bixby raptor maps and Huntington Beach LCPA HNB-MAJ-1-06 and Shea Homes Parkside Estates

Dear Ms. Vaughn and Coastal Commissioners,

It has recently come to my attention that there may be a possible misunderstanding regarding the raptor sighting maps that I presented at the San Pedro hearing on May 10, 2007, as well as the maps I have previously submitted in letter form onto the written administrative record.

My letter form maps denote sightings at a particular perch location by a string of letters with the first letter being underlined, i.e. "WWWWW". The underlined letter denotes the location of the first sighting, and the subsequent adjacent letters serve as a count of additional sightings at the location indicated by the first letter. Thus the preceding example indicates a total of 6 sightings at one specific location under the first underlined "W". The maps I showed in my San Pedro PowerPoint presentation used a similar representation but utilized a red dot instead of an underlined letter to denote the perch location with better visibility for the hearing room.

I tried to explain this mapping methodology as clearly as I knew how in my letters and in my speech, but apparently I was not clear enough, and some confusion resulted over whether or not my strings of letters indicated raptor foraging usage over the adjacent agricultural field.

My current maps tend to undercount raptor usage of the agricultural field. The relative lack of landmarks in the vastness of the field makes it difficult to accurately map perch locations, and my maps do not attempt to record the flyover activity which is a major component of foraging. So most of the agricultural field raptor foraging activity that I have witnessed has gone unmapped.

The raptor species that I semi-regularly observe foraging in the agricultural field (mostly when fallow) are American Kestrel, Cooper's Hawk, Northern Harrier, Turkey Vulture, and White-tailed Kite. Other agricultural foragers include Great Blue Heron and Great Egret. Most agricultural foraging activity occurs in the western half, i.e. from WP to the mesa.

Hopefully this letter has cleared up any lingering confusion. I have worked out a new & improved map design that will prevent this type of misunderstanding in the future. I look forward to implementing this design later this year once the LCPA process quiets down.

KKK

Sincerely,

Mark D. Bixby

Mark D. Bixby
Neighbors for Wintersburg Wetlands Restoration
17451 Hillgate Ln
Huntington Beach, CA 92649-4707
714-625-0876
mark@bixby.org
<http://www.bixby.org/parkside/>

KKK₂

Exhibits

LLL

and

MMM

To be Provided

Separately

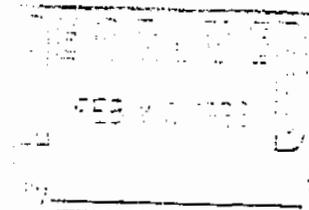
CALIFORNIA COASTAL COMMISSION

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



February 25, 1998

Ronald C. Metzler
Vice President Community Development
Shea Homes Southern California, Inc.
P.O. Box 487
655 Brea Canyon Road
Walnut, CA 91788-0487



Subject: CDP Application 5-97-224 and Violation V-5-97-002

Dear Mr. Metzler

Coastal Commission staff has reviewed your coastal development permit application 5-97-224 for disking the subject property located at the intersection of Graham Street and Kenilworth Drive for purposes of agriculture, weed abatement and fire hazard removal. Additionally the project description included the temporary excavation of three test pits for purpose of monitoring groundwater levels, the fencing of the pits, backfilling the pits, and removal of the fencing upon completion of the project.

Coastal Commission staff has determined that a coastal development permit is not required for the disking operation based on the property's prior usage for agricultural purposes. However, the proposed excavation of test pits, fencing, and backfilling requires a coastal development permit. Please submit a revised project description for CDP application 5-97-224 by March 20, 1998.

The effect of this letter on V-5-97-002 will be the removal of the disking operation as unpermitted development. The unpermitted development consisting of the test pits and the associated development will remain until the Commission acts on a permit application for the test pits.

Though the property has been used extensively for agricultural purposes on a historical basis, the site has also been identified as potentially containing wetlands. The modification to the project description of coastal development permit application 5-97-224 should not be taken as an indication that the property does not contain wetlands. Commission staff has received a copy of a letter dated December 17, 1997 describing a wetland evaluation of the property undertaken by Lisa Kegarice. At a meeting held on February 18, 1998 between

Ex NNN,

the Department of Fish and Game, Shea Homes, and the Coastal Commission the Department of Fish and Game agreed to review this wetland evaluation. The conclusion reached by the Department of Fish and Game concerning the existence of wetlands will be used by Commission staff in its evaluation. Should you have any questions please give me a call at the number shown on the letterhead.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Rynas". The signature is fluid and cursive, with a large initial "S" and a long, sweeping tail.

Stephen Rynas, AICP
Orange County Area Supervisor

cc: Pam Emerson, Coastal Commission
Jim Barnes, City of Huntington Beach
Terry Dickerson, California Department of Fish and Game