

Appendix A

Huntington Beach LCPA 1-06 Parkside

Findings for Denial of the Land Use Plan Amendment as Submitted

The Commission denied the Land Use Plan portion of LCP Amendment 1-06 as submitted at the May 10, 2007 hearing and continued action on question of approval LUPA if modified and on the Implementation Plan Portion of the LCPA. This appendix includes the findings for denial as they appeared at the May 10, 2007 Coastal Commission hearing.

E. Denial of the Land Use Plan Amendment as Submitted

1. Wetland

Wetlands often provide critical habitat, nesting sites, and foraging areas for many species, some of which are threatened or endangered. In addition, wetlands can serve as natural filtering mechanisms to help remove pollutants from storm runoff before the runoff enters into streams and rivers leading to the ocean. Further, wetlands can serve as natural flood retention areas.

Another critical reason for preserving, expanding, and enhancing Southern California's remaining wetlands is because of their scarcity. As much as 75% of coastal wetlands in southern California have been lost, and, statewide up to 91% of wetlands have been lost.

Section 30121 of the Coastal Act states:

“Wetland” means lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.

The Commission has further specified how wetlands are to be identified through regulations and guidance documents. Section 13577(b)(1) of the Commission's regulations states, in pertinent part:

Wetlands shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes ... For purposes of this section, the upland limit of a wetland shall be defined as:

- (A) the boundary between land with predominantly hydrophytic cover and land with predominantly mesophytic or xerophytic cover;*
- (B) the boundary between soil that is predominantly hydric and soil that is predominantly nonhydric; or*
- (C) in the case of wetlands without vegetation or soils, the boundary between land that is flooded or saturated at some time during years of normal precipitation, and land that is not*

Section 30231 of the Coastal Act states, in pertinent part:

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The biological productivity and the quality of ... wetlands ... appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, ... preventing depletion of ground water supplies and substantial interference with surface water flow, maintaining natural vegetation buffer areas that protect riparian habitats, ...

Section 30233(a) of the Coastal Act states:

The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

- 1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- 2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- 3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- 4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- 5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- 6) Restoration purposes.*
- 7) Nature study, aquaculture, or similar resource dependent activities.*

Section 30250 of the Coastal Act states, in pertinent part:

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

In addition, the City's LUP includes Policy C 6.1.20, which limits filling of wetlands to the specific activities outlined in Section 30233 of the Coastal Act. And LUP policy C 7.1.4 states, in pertinent part: *"Require that new development contiguous to wetlands or environmentally sensitive habitat areas include buffer*

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zones.”

The proposed amendment includes an Open Space Conservation designation on a 3.3 acre area within the former County parcel. The 3.3 acre area includes an undisputed wetland area (see exhibit H). The proposed Conservation designation is appropriate for this area. However, additional wetland areas exist at the subject site that would not be protected with the Conservation designation.

The Coastal Commission staff ecologist has reviewed considerable amounts of information regarding the extent of wetlands at the site, all of which are listed in his memorandum which is attached as Exhibit K to these findings and is hereby incorporated into these findings in its entirety. The property owner has submitted numerous documents intended to demonstrate that there are no wetlands on site, beyond the wetlands recognized on the former County parcel (i.e. the CP wetlands). Local citizens have submitted documents intended to demonstrate that there are significant wetlands on site. These citizens are concerned by the prospect that development may be allowed at the site if the LUP amendment were approved as submitted (and as reflected in the related coastal development permit application 5-06-327, Shea Homes, and appeal A-5-HNB-02-376). All these submissions have been reviewed by the staff ecologist. In addition, the staff ecologist has reviewed historical information regarding the subject site and surrounding area. Based on his review of the available data, the Commission's staff ecologist determined that additional wetland areas exist at the subject site (see exhibit K). For the reasons listed in that memorandum and below, the Commission concurs and adopts its ecologist's conclusions. The additional wetland areas at the site are referred to as the Wintersburg Pond or WP, which is adjacent to the EGGWFCC levee along the southern edge of the site; and the Agricultural Pond or AP, located near the base of the bluff along the western edge of the property. Additional wetland area, impacted by unpermitted fill, also exists in the area formerly known as the County Parcel, adjacent to the wetland already recognized there (see 'Filled CP wetland' on Exhibit NN). The proposed LUP amendment would designate these wetland areas Low Density Residential and Open Space Parks. These land use designations allow grading, and the construction of houses, roads, and active parks, which would necessitate the dredging and filling of the wetlands. Such uses within wetlands are inconsistent with Section 30233 of the Coastal Act.

The memorandum dated July 27, 2006 from the Commission's staff ecologist states: "The available data suggest that portions of the agricultural field ... are inundated or saturated at a frequency and duration sufficient to support a preponderance of wetland plant species." Such areas meet the definition of wetlands under the Coastal Act and the Commission's Regulations."

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There are three factors or “parameters” that are used to determine whether or not a wetland exists: the presence of hydrophytic vegetation, the presence of hydric soils, and the presence of wetland hydrology. The Commission finds an area to be wetland if any one of the three parameters is present. Usually, the presence or absence of hydrophytes or hydric soils is sufficient to determine whether a wetland exists. However, those two indicators are not necessary, as they do not actually define a wetland. Rather, an area is defined as a wetland based on whether it is wet enough long enough that it would support either of those two indicators. Therefore, the removal of vegetation by permitted activities does not change a wetland to upland.

Section 30121 of the Coastal Act provides the statutory definition of wetlands: “...lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes ...” Section 13577(b)(1) of the California Code of Regulations provides the regulatory definition of wetlands: “... land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes” Thus, the Coastal Act and the Regulations provide that a determination of the presence of wetlands may be made based on whether an area demonstrates the presence of sufficient water to promote hydric soils or to support hydrophytes, whether or not the soils and vegetation are present under existing conditions.

Because this area was historically a salt marsh and because the site has been historically farmed and continues to be farmed as of the adoption of these findings, the typically used field indicators cannot be relied upon. The repeated discing and plowing associated with the existing agricultural use destroys hydric soil features and prevents the development of natural vegetation. Nevertheless, the evidence presented in the ecologist’s memo and summarized below indicates that the site is wet enough long enough to “support the growth” of hydrophytes. Thus, the site meets the definition of wetlands contained in the Commission’s regulations. Furthermore, the site also meets the Coastal Act definition of wetlands in that it is “periodically covered in shallow water.”

The wetland conclusion is based on two lines of evidence: (1) an examination of the vegetation at a nearby location that is similar in history, physical characteristics, and hydrology to the depressions in the agricultural field,¹ and (2)

¹ In the second to last footnote in Dr. Dixon’s memo, he notes that the topography of the reference site is actually similar to that of WP as it existed in 2003, not at present. More recently a box plough was used to fill area WP, which is apparent in 2006 topographic maps. The box plough fill is under investigation by Commission staff as an alleged violation. Accordingly, relying on the topography prior to the alleged violation yields the appropriate comparison. Additionally, the hydrology section of Dr. Dixon’s memo states that LSA biologists stated that WP didn’t pond until after about 1973. However, if this is due to

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an informed estimate of the frequency of continuous inundation for long duration (at least 7 days) at various sites.

Areas WP and AP were matched by the Commission's staff ecologist, with wetland areas on the County parcel that were similar in elevation and topography. Inundation in the agricultural areas and at the reference wetlands was similar in pattern, further suggesting that the latter is a good proxy for the former. Therefore, since the dominant vegetation at the reference areas is mostly comprised of wetland species, it is reasonable to expect that the agricultural areas WP and AP would also support a predominance of hydrophytes in the absence of farming (i.e. that they are wet enough to support such vegetation).

Establishing the extent of wetlands at the site, given its history of farming and disturbance, is not straightforward. The best approach for this site known to the Commission at this time is to base the wetland boundary on current conditions as inferred from recent topography and the available photographs of recent inundation.

Prior to about 1990, it appears from aerial photographs that significant inundation was generally confined to the area delineated as wetland by the EPA in 1989 (generally in the area of the AP). Based on analysis of aerial photographs dating from 1958 to 1985, the applicant's biological consultant concluded that inundation in that area tended to have a different footprint in different years and, based on this observation, he argues that no particular area should be identified as a wetland. However, all his estimated wetland polygons in the western portion of the agricultural field appear to fall within the area delineated by the EPA. In the absence of wetland vegetation, the drawing of wetland boundaries is an approximate exercise based on a small and haphazard collection of aerial photographs or ground observations and estimates of topography. Given the approximate nature of such delineations, it appears the consultant's results are actually additional evidence that the EPA delineation was both reasonable and accurate at the time it was made. Although, prior to about 1990, wetlands hadn't been delineated in the depression adjacent to the EGGWFCC (WP area) and inundation occurred there less frequently than in the area of the AP, in recent years, ample evidence exists to show that WP is inundated for long duration following significant rainfall.

Moreover, the entire area was originally deferred certification due to the historic

changes in topography that occurred before 1973, it is again appropriate to focus on the post-1973 topography, as that represents current conditions. Conditions prior to 1973 may be irrelevant if topographical conditions changed prior to 1973, as such changes were pre-Coastal Act and therefore not Coastal Act violations.

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presence of wetland on site. In deferring certification originally, the Commission found:

*North Properties of the Bolsa Chica (Between Wintersburg Channel & base of Bluffs)
(MWD Site #1 [virtually identical to the subject site of current LCP amendment²])*

The LUP designates this site for low density residential uses. No modifications were made in the LUP from the previous denial by the Commission.

The Commission found in its “Preliminary Wetlands Determination for the Bolsa Chica Local Coastal Plan, March 11, 1980, that all available information demonstrated that the vast majority of the Bolsa Chica low lands exhibit all the characteristics set forth for the identification of wetlands pursuant to Section 30121 of the Coastal Act and concluded that the information supported a preliminary determination that areas identified on Exhibit J of the “Preliminary Determination” are wetland for the purposes of the Coastal Act. The Commission had also previously found in its denial of the City’s LUP that this area contained wetland resources.

Since that action and the previous review of the City’s LUP, the Commission and staff have examined additional information concerning the Bolsa Chica wetlands system. As part of the review of the Bolsa Chica LUP the Dept. of Fish and Game in the document “Determination of the Status of Bolsa Chica wetlands (as amended April 16, 1982) identified this area as “severely degraded Historic wetland – Not Presently Functioning as Wetland” and considered it within the context of the entire Bolsa Chica wetland system. The DFG determined that this area is part of a 1,000 acre degraded wetland system in the area outside State ownership which is capable of being restored. The DFG report noted:

“The 440 acres of historic wetland which no longer function viably as wetland consists of approximately 250 acres of roads, and pads, 70 acres of agricultural land [including the subject site], and about 120 acres of viably functioning upland habitat. The roads and fill areas presently function as resting substrate for wetland-associated

² As indicated in footnote 1, the boundaries of the MWD site at the time of the 1982 staff report were not entirely clear. However, the site clearly covered what is now the 40-acre ADC and may have covered the former County parcel and some of the 5-acre certified area as well. Moreover, it did not extend south of the flood control channel, so the observations recounted here are definitely applicable to the site that is the subject of the current application.

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wildlife, and form narrow ecotones which add to and enhance the diversity of habitat available to wildlife. The 120 acres of upland habitat, considered in union, may be considered environmentally sensitive because of their special role in the Bolsa Chica wetland ecosystem. Were it not for the involvement of dikes, roads and relatively shallow fills, these 440 acres would be viably functioning wetlands.

The entire 1,324 acre study area, including 1,292 acres of historic wetland (in which 852 acres still function viably as wetlands [sic] constitutes a fundamentally inseparable wetland system of exceptional value to wildlife.”

The DFG also discussed potential restoration of these areas and noted that the amount of acreage and location of wetlands to be restored will be dependant on the amount of fill and existing wetlands which could be consolidated to allow some development in the lowlands.

Thus, when the Commission originally deferred certification of the subject site, it did so based on the presence of wetlands. The Commission found that the site contained wetlands, even though the wetland functions were impaired, as is the case today. In addition, the Commission recognized that the site was an integral part of the overall Bolsa Chica wetland system and could feasibly be restored. If the site were to be restored it would be a valuable addition to the Bolsa Chica wetlands restoration project. Sources to feed a restored wetland at the site would come from rainfall and possibly from the adjacent EGGWFCC, as well as urban runoff. In any case, restoration of the site as a freshwater wetland would be consistent with the historic wetland system which would typically have included a freshwater component, albeit significantly inland of the subject site. The addition of freshwater habitat to the Bolsa Chica wetlands restoration would greatly increase the biodiversity of the overall restoration project. In addition, taken with the preservation of the eucalyptus grove, described below, the area would provide significant habitat benefits. However, there is no proposal for restoration at this time. Nevertheless, the Coastal Act requires protection of any areas that continue to qualify as wetlands.

Section 30233 of the Coastal Act requires that only the uses specified therein may be allowed within wetlands and even then only if the use is the least environmentally damaging alternative, and only when adequate mitigation is provided. The subject site was deferred certification due to the presence of wetlands on site. Substantial evidence exists that demonstrates the presence of wetlands at the subject site extends beyond the 3.3 acre area proposed to be designated Open Space Conservation in the proposed LUP amendment to the

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areas referred to as AP and WP herein. As proposed, those two areas would be land use designated Low Density Residential and Open Space Parks.

A third additional wetland area is located within the area formerly known as the County Parcel, adjacent to the recognized wetland area (see 'Filled CP Wetland' on Exhibit NN). This wetland area was filled without authorization from the Commission. In a letter dated 9/7/82 from the Department of Fish and Game (DFG) to Coastal Commission staff, the DFG determined the area, prior to placement of the unpermitted fill, to be wetlands, and recommended removal of the fill and revegetation (see Exhibit BBB, page 9 & 10). Pursuant to Coastal Development Permit No. 5-82-278 the unpermitted fill was to have been removed and the area revegetated.

Based on comparison of topographic (1980) and vegetation maps (Vegetation Communities, Exhibit 26 of the Bolsa Chica Land Use Plan, dated January, 1982) created before the unpermitted fill was placed, with topographic (1986 and 1996) maps created subsequent to the time the fill was placed, the elevation of the subject area was increased by at least 2 feet. Because of the unpermitted fill, the pickleweed within the filled area was no longer viable. Development approved pursuant to Coastal Development Permit 5-82-278 included removal of the unpermitted fill to an elevation of approximately three inches below the grade of the existing adjacent pickleweed stand and revegetation of the area with one or more of the following species: pickleweed, spiny rush, frankenia, sea lavender and shoregrass. However, elevations in the fill area are not consistent with pre-fill elevations. Rather, topographic maps prepared subsequent to the unpermitted fill depict the fill area at an elevation at least two feet above the adjacent CP wetland. Leading to the conclusion that removal of the fill and revegetation never occurred. Were it not for this unpermitted development, the area would have remained wetland area. Unpermitted development cannot be used as a basis to justify development in areas where, were it not for the unpermitted development, such development would not be allowed. Thus, consideration of appropriate land use designations must consider site conditions as if the unpermitted development had not occurred. Therefore, this area is considered a wetland. As proposed, the amendment would allow land uses such as residential and related uses such as roads. The proposed land use designation would allow uses that are not consistent with Section 30233 of the Coastal Act.

As proposed, the land use plan amendment would designate these three wetland areas for residential development and for use as active parks, inconsistent with Section 30233 of the Coastal Act, which allows only the seven enumerated uses in wetlands. Residential and active park are not uses allowed under Section 30233. Therefore, the Commission finds that the proposed amendment is

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inconsistent with the Coastal Act and must be denied.

In addition to protecting the wetland area itself, it is important to establish buffer areas between the wetland and development. Buffers, by separating development from wetlands, minimize the adverse effects of development on wetlands, thereby avoiding significant adverse effects to resources. Buffers also provide transitional habitat and upland area necessary for survival of various animal species. The Commission has typically found that a minimum 100-foot wetland buffer, or larger, is necessary to protect wetlands. Without the establishment of a minimum buffer size, projects could be approved with an inadequate buffer, jeopardizing the continuing viability of the wetland. Section 30250 of the Coastal Act requires that new development be located where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. Wetlands constitute a coastal resource. In addition, Section 30231 of the Coastal Act requires that all wetlands be maintained by providing natural vegetation buffer areas. The City's certified LUP includes Policy C 7.1.4, which requires buffers around wetlands. This policy would apply to the subject site, but it allows a lesser buffer area if existing development or site configuration preclude a full 100 feet. In this case, such circumstances do not apply because the site is 50 acres in size and is not constrained by the site configuration or by existing development. A buffer less than 100 feet from all on-site wetlands is not adequately protective of the wetland. The proposed amendment does not recognize all wetland areas present on site and does not provide any buffer requirements specific to the site. Thus, as proposed, the amendment could result in locating development too close to the wetland, threatening the survival of the resource, inconsistent with Section 30250 which requires that the location of development avoid significant adverse effects on coastal resources such as wetlands and Section 30231 which requires natural vegetation buffer areas.

Furthermore, Section 30250 of the Coastal Act requires that new development be located where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. Wetlands are coastal resources. In addition, Section 30231 requires that all wetlands be maintained and where feasible restored, by preventing depletion of ground water supplies and substantial interference with surface water flow. Based on information submitted with the related Coastal Development Permit application, a significant amount of earthwork would be necessary to prepare the site for residential development. It is anticipated that earthwork on the order of 400,000 cubic yards of cut and 600,000 cubic yards of fill (including 260,000 cubic yards that will be imported from off-site), with over-excavation to depths of up to 17 feet below sea level, will be necessary to eliminate potential hazards due to liquefaction, provide adequate structural support, and to raise the site above base flood elevation. It is essential that any earthwork undertaken on the site not interfere with the continuance of all

on-site wetlands. No grading is allowed within the wetland under the Coastal Act (unless the grading is for the express purpose of wetland restoration). Grading outside of the wetland and necessary buffers, could only be considered if no adverse impacts to the wetlands resulted. If grading redirected groundwater and/or surface water flow such that water from the site no longer fed the wetlands, the development activity could have a significant adverse effect on the coastal resource (wetland) and thus would be inconsistent with Sections 30231 and 30250 of the Coastal Act. However, the proposed amendment does not include any requirements that other site development, including earthwork, assure that no significant adverse effects on the wetlands will result. Thus, even if no grading were to occur within the wetlands and buffer areas, adverse impacts to the quality of on-site wetlands might result from the LUP amendment as proposed.

Further, when invasive and/or non-native species are planted within the buffer areas or within areas adjacent to the buffer, those species can displace the plants within the buffer and wetland. Introduction of non-native and invasive plants within the wetland and buffer, resulting in displacement of the wetland plants, degrades the wetland and creates significant adverse effects on the wetland, which is a coastal resource, inconsistent with the requirements of Section 30250 of the Coastal Act. In order to protect the wetlands and increase the likelihood of continuation of the wetland, only non-invasive, native plants should be allowed within the buffer.

In sum, as submitted, the LUP amendment does not adequately protect wetland resources as required by Coastal Act Sections 30231, 30233 and 30250. It therefore does not meet the requirements of, and is not in conformity with, these policies and therefore must be denied.

2. Eucalyptus ESHA

Section 30107.5 of the Coastal Act states:

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

Section 30240 of the Coastal Act states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas

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

In addition, the City's certified LUP includes the following policies:

Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

In the event that development is permitted in an ESHA pursuant to other provisions of this LCP, a "no-net-loss" policy (at a minimum) shall be utilized.

And

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

The City's certified LUP also includes policy C 7.1.4, which requires that new development contiguous to wetlands or environmentally sensitive habitat areas include buffer zones.

The subject site contains environmentally sensitive habitat area (ESHA). The trees in the "eucalyptus grove" within and adjacent to the subject site's southwestern boundary (south grove) have been previously recognized as ESHA due to the important ecosystem functions they provide to a suite of raptor species. The trees are used for perching, roosting, or nesting by at least 12 of the 17 species of raptors that are known to occur at Bolsa Chica. Although it is known as the "eucalyptus grove", the grove also includes several palm trees and pine trees that are also used by raptors and herons. None of the trees are part of a native plant community. Nevertheless, this eucalyptus grove has been recognized as ESHA for over 25 years (USFWS, 1979; CDFG 1982, 1985) not because it is part of a native ecosystem, or because the trees in and of themselves warrant protection, but because of the important ecosystem functions it provides. Some of the raptors found to be using the grove included the white tailed kite, sharp-shinned hawk, Cooper's hawk, and osprey.

Many of these species are dependent on both the Bolsa Chica wetlands and the nearby upland areas for their food. The trees in the southwestern grove have

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also been recognized by the Coastal Commission as ESHA as defined in Section 30107.5 of the Coastal Act in previous Commission actions. The Commission first recognized the ESHA status of the southwestern grove many years ago, and the California appellate court in 1999 did not question the designation of the Eucalyptus grove as an ESHA protected by the Coastal Act when, in 1995, the County of Orange, on behalf of the predecessor applicant, Koll Real Estate Group, attempted to relocate that portion of the Eucalyptus grove within their property, through the LCP process, to the Huntington Mesa, in order to make room for full development of the upper and lower benches of the Bolsa Chica Mesa.

It should be noted that the Eucalyptus grove ESHA mapped by DFG in 1982, stops abruptly along the extension of Bolsa Chica Street. However, the grove continues east from there along the base of the bluff at the western edge of the subject property (see exhibit L). There is, however, no functional distinction between the area of the grove to the west of the Bolsa Chica Street extension and the rest of the grove. Raptors and other wildlife use and benefit from the entire grove. The abrupt truncation is not consistent with actual wildlife use and the habitat function of the entire grove. Thus, there is no justification for treating only the western end of the grove as ESHA and not the entire grove. For these reasons, in 2005 the Commission found that the trees throughout the entire Eucalyptus grove along the southern edge of the mesa constitute ESHA that must be protected (see coastal development permit 5-05-020, Hearthside Homes/Signal Landmark – Brightwater Project).

The Commission has not previously considered the status of the portion of the Eucalyptus grove at the base of the mesa in the northwest corner of the Parkside site (north grove). The north grove is separated from the south grove by a gap of about 650 feet (see exhibit L). The trees in the north grove of the site provide the same type of ecological services as do the rest of the trees bordering the mesa. The following species have been observed in the north grove: white-tailed kite, merlin, red-shouldered hawk, turkey vulture, great horned owl, barn owl, peregrine falcon, Cooper's hawk, red-tailed hawk, and osprey. Of these, red-tailed hawk, Cooper's hawk, osprey, barn owl, and turkey vulture have been recently observed perching or roosting and Cooper's hawks, a California Species of Special Concern, were observed to nest there in 2005 and 2006. In addition, paired great horned owls have been regularly observed within the northern grove over the last 20 years by local raptor biologist (P. Bloom, personal communication to J. Dixon 01-31-07). The presence of an old nest suggests that the grove has probably supported nesting birds of prey in previous years. Like the rest of the Eucalyptus grove, these trees provide opportunities to raptors for perching, roosting and nesting and for hunting and safe movement corridors. In recognition of the important ecosystem functions provided by Eucalyptus trees in

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the north grove, and in conjunction with the fact that the trees could be easily disturbed, degraded, or entirely destroyed by development, the Commission finds that they meet the definition of ESHA under the Coastal Act.

Section 30240 requires that ESHA be protected from significant disruption of habitat values and only uses dependent on those resources are allowed within ESHA. Development adjacent to ESHA must be sited and designed to prevent impacts which would significantly degrade those areas. Section 30240 further requires that development be compatible with the continuance of those habitat and recreation areas. This policy is carried over into the City's certified LUP in the policies cited above. Although the area of the Eucalyptus ESHA in the southwest corner of the site is appropriately proposed to be designated Open Space Conservation, the area of the Eucalyptus ESHA located in the northwest corner of the site is proposed to be land use designated Open Space Parks. The Eucalyptus ESHA in the northwest corner is known to have supported a nesting pair of Cooper's hawks in the spring of 2005 and 2006. In addition to the nesting kites, this area of the Eucalyptus ESHA provides similar roosting and perching opportunities for the suite of raptor species. The Open Space Parks designation allows uses such as tot lots, playing fields and bike paths. Such uses are not resource dependant and, as such, allowing these uses within the ESHA is inconsistent with Section 30240 of the Coastal Act. In addition, these active uses within the ESHA would likely cause significant disruption, also inconsistent with Section 30240. Therefore, as proposed, the amendment is inconsistent with the resource protection policies of the Coastal Act, and therefore must be denied as submitted.

Section 30240(b) of the Coastal Act requires development in areas adjacent to environmentally sensitive habitat area be sited and designed to prevent impacts which would significantly degrade those areas, and to be compatible with the continuance of those habitat areas. In order to assure the ESHA is not significantly degraded and is protected and remains viable, in addition to precluding non-resource dependent development within the ESHA, a buffer zone around the ESHA must be established. A buffer zone would require that development adjacent to the ESHA be set back an appropriate distance from the ESHA. The setback is intended to move the development far enough away from the ESHA so as to reduce any impacts that may otherwise accrue from the development upon the ESHA and that would significantly degrade the ESHA or be incompatible with its continuance. The distance between the ESHA and development, the buffer zone, must be wide enough to assure that the development would not degrade the ESHA and also would be compatible with the continuance of the ESHA.

For purposes of establishing protective buffers, the eucalyptus grove ESHA

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boundary should be considered to fall along the drip line of the outermost trees of the grove (see exhibit L). The specific area of an appropriate buffer is more difficult to quantify.

There is, to some degree, a subjective approximation element in assigning dimensions to protective habitat buffers or development setbacks. For example, it probably would not be possible to distinguish the different biological effects of a 100-foot buffer compared to a 110-foot buffer or those of a 300-foot-buffer from a 100-meter (328-foot) buffer. We tend to choose round numbers in whatever units we are using. However, the difference between a 100-foot buffer and a 100-meter buffer would provide discernable benefits to wildlife. Commenting on a proposed development that borders the eucalyptus grove ESHA on its western side (coastal development permit application number 5-05-020, Brightwater), wildlife agencies recommended a buffer width of 100 meters. However, the applicant's consultants for that project (who are also the consultants for Shea Homes) recommended a 100-foot buffer. These large differences reflect differing opinions concerning the sensitivity of raptor species to disturbance and differences in opinion concerning the acceptable risk of disturbance impacts to raptors, especially raptors that have the potential for nesting at Bolsa Chica.

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

Development must be separated from ESHAs by buffers in order to prevent impacts that would significantly degrade those areas. Again, with regard to the Brightwater development, buffer recommendations from the same ESHA included a 150-meter buffer recommendation by Dr. Findlay, of the University of Ottawa. CDFG and USFWS previously recommended the establishment of a 100-meter buffer on the Bolsa Chica Mesa in the 1980's. The Coastal Commission staff ecologist recommended a minimum 100-meter buffer around the eucalyptus ESHA. In further studying the appropriate buffer for the Eucalyptus ESHA, Dr. Dixon (staff ecologist) stated:

The buffer around the Eucalyptus tree ESHA is particularly important if those trees are to continue to function as nesting habitat for a variety of raptors. The California Department of Fish and Game and the U.S. Fish and Wildlife Service recommended a 100-m buffer. A literature review

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found that raptor biologists recommended buffers for various species of nesting raptors from 200m to 1500 m in width, with the exception of 50-m buffers from visual disturbance for kestrels and prairie falcons ... In an independent review concerning a prior development proposal at Bolsa Chica with 100-foot (30-m) buffers, raptor expert Brian Walton opined that developers "...often rely on buffers that I find largely ineffective for reducing raptor fright/flight response." [and] "[t]hey describe unusual tolerance, habituated individuals or exceptions to normal raptor behavior rather than the more common behavior of wild birds."

The 100-meter buffer recommended by USFWS (1979), CDFG (1982), and by staff is necessary to prevent disturbance to raptors that utilize the eucalyptus ESHA, and, based on raptor expert Peter Bloom's estimates of foraging distances, is also large enough to provide significant foraging opportunities close to the nest. This is particularly important because distant foraging increases the risk of nest predation. White-tailed kites, a fully protected species in California, have frequently nested at Bolsa Chica, and are generally considered relatively sensitive to human disturbance. Therefore, buffers that are adequate to protect nesting white-tailed kites should be adequate for most of the other species that are likely to nest in the eucalyptus ESHA. The following minimum spatial buffers have been recently recommended for nesting white-tailed kites: 100m (Bloom, 2002); 100m (Holmgren, 6.7.2002); 50m (J. Dunk (raptor researcher) in person communication to M. Holmgren, 2002); 46-61m (with "low-frequency and non-disruptive activities"; Froke, 2002). These estimates suggest that a 100-m buffer is probably adequate, but not overly conservative. Thus, the Commission finds that a buffer zone from the eucalyptus ESHA that is 100 meters wide would be appropriate to allow continuance of the ESHA and not cause significant disruption to it. However, no uniform buffer zone from the Eucalyptus ESHA is proposed as part of the LUP amendment. In fact, active park area would be allowed immediately adjacent to the trees under the LUP amendment as proposed. In addition, residential development would be allowed immediately adjacent to the ESHA, even though it cannot be considered compatible with the continuance of the ESHA.

Buffers should not be used for activities that have negative effects on the resources that are being protected.

Under the proposed LUP amendment, uses appurtenant to low density development such as roads would be allowed as close as 100 feet from the ESHA. The Open Space Park designation is proposed within and adjacent to the trees in the northwest corner of the site. Both of these uses within the locations proposed would not be consistent with the requirements of Section 30240 of the Coastal Act to protect ESHA. The land use designations that are acceptable

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within the ESHA are limited to only those designations whose uses are dependent upon the ESHA. In addition, an appropriate buffer zone must be established. As proposed the LUP amendment would land use designate areas within and adjacent to the ESHA with designations that would allow uses that are not dependent upon the ESHA, and that could significantly degrade the ESHA. The proposed amendment is not consistent with Section 30240 of the Coastal Act and therefore must be denied.

It is also worth noting that California gnatcatchers (*Poliioptila californica californica*), a species listed as “threatened” under the Endangered Species Act, are known to frequent the subject site, especially the western portion. Also, Southern tarplant (*Centromedia parryi* ssp. *Australis*), a California Native Plant Society “1b.1” species (seriously endangered in California), also exists at the site.

The primary purposes of the buffer around the eucalyptus ESHA is to keep disturbance (activity, lights, noise, pets, etc.) at a distance such that it will not disturb raptors or prevent nesting by the more sensitive species such as white-tailed kites, and to provide foraging habitat for the raptors. Uses allowed within the ESHA buffer may only be allowed if they are consistent with the purposes of the buffer.

Passive recreation uses (e.g. trails, viewing areas, interpretive signage, and benches) may be acceptable within the outer 100 feet of the buffer when included as part of an overall management plan for the ESHA. Neither passive nor active recreation is a compatible use any closer to the ESHA. Even within the outer 100 feet of the ESHA buffer, acceptable passive recreational use should be limited to the 10 meters closest to development, where feasible. It appears, from plans submitted with the related coastal development permit application, that limiting passive recreational use to the outer 30 feet of the buffer area and as close as possible to developed area is feasible at the subject site. Consequently, any trails or other passive recreational use that are appropriate within the buffer area (i.e. would not significantly degrade the ESHA area) should be restricted to only the outer 30 feet of the ESHA buffer area and, more specifically, as close to developed areas as possible.

Notwithstanding the above, formalization of an existing passive nature trail along the northern property line and adjacent to the existing multi-family residential development (Cabo del Mar), would be considered acceptable if there is no biologically superior alternative. It is acceptable because it is a passive nature trail and will not require disturbance to the habitat to formalize it, and it would afford a natural/educational experience. As it currently exists, it is immediately adjacent to the multi-family residential development just to the north of the

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subject site; thus, it is located as close as possible to existing developed area.

Portions of a Natural Treatment System (NTS) or equivalent, would be appropriate within the ESHA buffer. However, any NTS within the ESHA buffer would need to be at least 100 feet from the ESHA. Furthermore, due to the potential for disturbance that could adversely impact the ESHA if located any closer, any portion of the NTS that requires periodic maintenance or that contains roadways must be limited to the outer third of the buffer area and be located as close as feasible to developed area. An NTS within the ESHA buffer, subject to the constraints above, would be acceptable because it would occupy only a very small portion of the overall buffer area. Furthermore, the NTS itself will provide habitat value. The shallow water habitat will increase the variety of habitats within the buffer area. For these reasons, allowing an NTS type system within the ESHA buffer would not be expected to degrade the ESHA and would be compatible with its continuance.

As proposed, the amendment would allow uses other than those outlined above within the ESHA and ESHA buffer. Thus, the proposed Open Space Park designation within the ESHA and buffer zone is also inconsistent with Section 30240. Therefore, the Commission finds that the proposed amendment is inconsistent with Section 30240 which requires that ESHA be protected and so the LUP amendment as proposed must be denied.

3. Water Quality

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and

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substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30230 of the Coastal Act requires that marine resources be maintained, enhanced, and where feasible, restored. Section 30231 of the Coastal Act requires that the biological productivity and quality of coastal waters be protected and, where feasible, restored. Section 30231 further requires that the quality of coastal waters be adequate to maintain healthy populations of marine organisms. Section 30231 also requires the use of various means, including managing wastewater discharges, controlling runoff, protecting groundwater and surface water, encouraging wastewater reclamation, and protecting streams, to maintain and enhance water quality.

Development has the potential to adversely impact coastal water quality through the increase of impervious surfaces; increase of runoff, erosion, and sedimentation; and introduction of pollutants such as petroleum, cleaning products, pesticides, and other pollutants.

When development increases impervious surface area, the infiltrative function and capacity of the project site is decreased. The reduction in permeable surface therefore leads to an increase in the volume and velocity of runoff that can be expected to leave the site. The cumulative effect of increased impervious surface is that the peak discharge rate is increased and the peak occurs much sooner after precipitation events. Additionally, runoff from impervious surfaces results in increased erosion and sedimentation.

Further, pollutants commonly found in runoff associated with new development include:

- petroleum hydrocarbons such as oil and grease from vehicles;
- heavy metals;
- synthetic organic chemicals including paint and household cleaners;
- soap and dirt from washing vehicles;
- dirt and vegetation from yard maintenance;
- litter and organic matter;
- fertilizers, herbicides, and pesticides from household gardening;
- nutrients from wastewater discharge, and animal waste;
- bacteria and pathogens from wastewater discharge and animal waste.

The discharge of these pollutants to coastal waters can cause cumulative impacts such as:

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- eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species composition and size;
- excess nutrients causing algae blooms and sedimentation increasing turbidity, which both reduce the penetration of sunlight needed by aquatic vegetation that provide food and cover for aquatic species;
- disruptions to the reproductive cycle of aquatic species;
- acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior; and
- human diseases such as hepatitis and dysentery.

These impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes, reduce optimum populations of marine organisms and have adverse impacts on human health. Also where streams outlet on to recreational sandy beach areas, adverse impacts to public beach access can result.

The 50 acre project site is currently undeveloped, with the exception of farming activities. Under existing conditions, due to the site's topography and elevation, little or no runoff leaves the site during most rainfall events. The majority of the site (38.5/50 acres or 77% of the site) is proposed to be land use designated low density residential. The remaining area is proposed to be designated Open Space Parks (8.2 acres) and Open Space Conservation (3.3 acres). According to the Water Quality Management Plan (WQMP) prepared for the related coastal development permit (5-06-327) for the subject site, "[t]here are no pre-existing water quality problems with the project site."

However, installation of impervious surfaces and activities associated with residential development and related hardscape represent a potentially significant impact to water quality downstream of the project, including the Inner and Outer Bolsa Bay, Muted Tidal Pocket wetlands, Huntington Harbor and ocean waters. Because under current conditions little or no runoff leaves the site, residential development that would be allowed under the proposed amendment would create new adverse impacts where none currently exist. In addition, water bodies immediately downstream of the subject site, such as the Inner and Outer Bolsa Bay, Muted Tidal Pocket wetlands, Huntington Harbour, and Anaheim Bay Wildlife Refuge, are likely to suffer increases in water quality impairment when site development produces greater volumes and velocities of runoff as well as introducing increased pollutant loads.

In addition, although the existing LUP includes policies that require projects to incorporate water quality BMPs, none of the existing LUP policies express a preference for types of treatment control BMPs. A treatment control BMP is a

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system designed to remove pollutants from the runoff including the use of gravity settling, filtration, biological uptake, media adsorption or any other physical, biological, or chemical process.

The preferred option for treatment control BMPs is, first, vegetative (or natural) treatment (e.g. bio-swales, vegetative buffers, constructed or artificial wetlands), then, second, a combination of vegetative and mechanical systems or BMPs, and last, use of mechanical treatment systems or BMPs alone (e.g. site-specific water quality treatment plants, storm drain filters and inserts). There are a number of reasons for this hierarchy of preference including the often multiple benefits from non-mechanical BMPs such as pollutant removal, groundwater recharge, habitat creation, and aesthetics. Incorporation of artificial wetland between the housing and the eucalyptus ESHA would provide additional buffer for wildlife by restricting access. Furthermore, maintenance needs are typically more apparent and less frequent with vegetative treatment systems and thus are more likely to remain effective than mechanical systems such as storm drain inserts and the like which can become clogged and otherwise suffer mechanical difficulties. If mechanical treatment control BMPs are not continually maintained they will cease to be effective, and consequently water quality protection would not be maximized. In addition, a natural treatment system would have an environmental benefit by allowing dry weather flow to infiltrate into the wetland soil or evaporate, thus keeping excess irrigation water and other sources of dry weather flow generated by site development from discharging into Bolsa Bay waters. Although mechanical systems remove pollutants, they still discharge the treated freshwater into an environment that would be naturally dominated by saltwater during dry weather.

Incorporating vegetative treatment systems becomes more and more feasible when site design and source control BMPs are implemented. The area of land necessary to implement the preferred non-mechanical treatment systems can be minimized by incorporating site design and source control features into new development in the early planning stages. A site design BMP is a project design feature that reduces the generation of pollutants or reduces the alteration of the natural drainage features, such as minimizing impervious surfaces and the direct connectivity of impervious surfaces, as well as using permeable pavement. In addition, use of source control BMPs can also help to reduce the amount of land committed to a non-mechanical treatment system. A source control BMP is a practice that minimizes the introduction of pollutants and, thus, the release of pollutants into areas where they may be carried by runoff. Source control BMPs include: covering work areas and trash receptacles, practicing good housekeeping, and minimizing the use of irrigation and garden chemicals. One of the benefits of incorporating site design and source control BMPs into a development is that it becomes easier for a developer to incorporate natural

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treatment systems because, among other things, the use of site design and source control BMPs results in significantly less runoff needing to be treated and, thus, reducing the area needed to accommodate a natural treatment system.

The subject site represents an excellent opportunity to incorporate a natural treatment system, such as wetland detention ponds. There are multiple benefits from natural treatment systems such as pollutant removal, groundwater recharge, habitat creation, and aesthetics. Furthermore, maintenance needs are typically more apparent and less frequent with natural/vegetative treatment systems and thus are more likely to remain effective than mechanical systems such as storm drain inserts and the like which can become clogged and otherwise suffer mechanical difficulties. If mechanical treatment control BMPs are not continually maintained they will cease to be effective, and consequently water quality protection would not be maximized.

Incorporating a natural treatment system, such as wetland detention ponds, is feasible at the site. The site is an appropriate candidate for a natural treatment system because it is a large site unconstrained by existing development, limited lot size or limited by topography. There is plenty of space on the site to accommodate a wetland detention or similar type system while still allowing a reasonable development footprint. Moreover, because little or no drainage currently leaves the site, it is important that development of the site not result in creation of new adverse water quality impacts such as would result from increased runoff leaving the site. In order to achieve the goal of not creating new adverse water quality impacts, all dry weather flow would need to be retained on site to the maximum extent practicable. In the case where large volumes of nonpoint source runoff are imported to the site for treatment, it may not be possible to infiltrate or evaporate all dry weather flow on site. Nevertheless the benefits of treating dry weather runoff from offsite (with a residence time of at least 48 hours and seven days where practicable) may provide a benefit that outweighs the potential adverse impacts of returning the treated water to flood control channels. The best way to accomplish retention of dry weather flow on site typically is some type of natural treatment system. Furthermore, in order to protect water quality year round it is appropriate to impose a standard that any runoff that leaves the site must meet. The generally accepted standard for stormwater runoff is a requirement to treat at least the 85th percentile storm event, with at least a 24-hour detention time. If dry weather runoff cannot be retained on site, it should be treated (e.g., detained for at least 48 hours and where practicable for seven days in a natural treatment system). The current LUP amendment does not require these site-specific water quality measures and standards. Therefore, there is no assurance that water quality will be protected. Consequently the amendment is not consistent with the water quality policies of the Coastal Act and must be denied.

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Once development of the site occurs, run-off, along with the inherent impacts, will enter the EGGWFCC and downstream water bodies. Downstream water bodies include the Inner and Outer Bolsa Bay, Muted Tidal Pocket wetlands, Huntington Harbour, and Anaheim Bay Wildlife Refuge. Thus, all practicable efforts to mimic existing site conditions should be employed including minimizing or avoiding the discharge of runoff from the developed site. As proposed, the LUP amendment does not identify site specific water quality standards. Consequently the amendment is not consistent with the water quality policies of the Coastal Act and must be denied.

The use of permeable materials for paved areas in new developments is a site design and source control measure which can reduce the rate and volume of the first flush of stormwater runoff and can help to minimize or eliminate dry weather flow. This type of BMP is becoming more common in new developments, so that costs of permeable pavements are approaching the costs of traditional pavements. By maintaining permeability on-site, a development can be designed to more closely retain the pre-development hydrologic functions of the site. And reducing the amount of runoff generated by a development reduces the volume and flow rate of runoff that may require a treatment control BMP. Use of permeable materials can help minimize impacts associated with the creation of impervious surface such as the increase in stormwater runoff, and corresponding reduction in infiltration. However, the proposed amendment does not include any discussion on the benefits of incorporating permeable materials into the design of future projects. Consequently the amendment is not consistent with the water quality policies of the Coastal Act and must be denied.

Although the City of Huntington Beach has an LUP policy to encourage the Orange County Sanitation District to capture and treat dry weather flows, it does not address the other mitigation measure for dry weather flow which is to minimize or eliminate dry weather flow from new development sites. Many sources of dry weather flow can be eliminated by site design and source control BMPs, such as efficient irrigation, permeable pavement and natural treatment systems. The Commission finds dry weather flow in the arid climate of Southern California has the potential to adversely impact marine resources, even if the runoff is clean or treated to the maximum extent practicable and that new development should minimize or eliminate those flows. As proposed, the amendment does not include any requirements to minimize or eliminate dry weather flows generated by site development through the use of site design and source control BMPs. Consequently, adverse water quality impacts due to dry weather flows are not minimized. The amendment is therefore not consistent with the water quality policies of the Coastal Act and must be denied.

While the Commission recognizes that the City's existing policies address water quality protection and improvement within the City, it also recognizes that there are additional, more specific steps that could be taken to further protect, restore and/or enhance the water quality of drainage generated at the subject site, and thus, the marine resources, biological productivity, and water quality of the ultimate receiving waters to which this project's effluent will flow. For that reason, the proposed amendment cannot be found consistent with Sections 30230 and 30231 of the Coastal Act. The Commission's standard of review, which requires the preservation, protection, and enhancement of coastal resources including water quality, necessitates that the additional measures, outlined above, be imposed. Thus, the Commission finds that, as proposed, the amendment is inconsistent with Sections 30230 and 30231 of the Coastal Act regarding water quality.

4. Public Access and Recreation

Section 30210 of the Coastal Act states:

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

Section 30252 of the Coastal Act states, in pertinent part:

The location and amount of new development should maintain and enhance public access to the coast by ... (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, ... (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

Coastal Act Section 30212.5 states:

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

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Coastal Act Section 30213 states, in pertinent part:

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

Coastal Act Section 30223 states:

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

In addition, the City's certified LUP contains the following policies regarding public access:

Provide coastal resource access opportunities for the public where feasible and in accordance with the California Coastal Act requirements.

Encourage the use of City and State beaches as a destination point for bicyclists, pedestrians, shuttle systems and other non-auto oriented transport.

*Encourage the utilization of easements and/or rights-of-way along **flood control channels**, public utilities, railroads and streets, wherever practical, for the use of bicycles and/or pedestrian (emphasis added).*

*Maintain existing pedestrian facilities and **require new development** to provide pedestrian walkways and bicycle routes between developments (emphasis added).*

Link bicycle routes with pedestrian trails and bus routes to promote an interconnected system.

Develop a riding and hiking trail network and support facilities that provide linkages within the Coastal Zone where feasible and appropriate.

Balance the supply of parking with the demand for parking.

Maintain an adequate supply of parking that supports the present level of demand and allow for the expected increase in private transportation use.

Maintain and enhance, where feasible, existing shoreline and coastal resource access sites.

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Promote and provide, where feasible, additional public access, including handicap access, to the shoreline and other coastal resources.

Promote public access to coastal wetlands for limited nature study, passive recreation and other low intensity uses that are compatible with the sensitive nature of these areas.

Maintain and enhance, where necessary, the coastal resource signing program that identifies public access points, bikeways, recreation areas and vista points throughout the Coastal Zone.

Preserve, protect and enhance, where feasible, existing public recreation sites in the Coastal Zone.

Ensure that new development and uses provide a variety of recreational facilities for a range of income groups, including low cost facilities and activities.

Encourage, where feasible, facilities, programs and services that increase and enhance public recreational opportunities in the Coastal Zone.

Promote and support the implementation of the proposed Wintersburg Channel Class I Bikeway.

The provision of public access in new development proposals is one of the main tenets of the Coastal Act. This emphasis has been carried over into the City's certified LUP. In certifying the LUP, the Commission recognized, via the approved LUP policies, the importance of including measures such as providing and enhancing public access to the sea and other coastal resources, adequate parking and alternate means of transportation, low cost recreational uses, and public access signage, with new development.

The 50-acre site is located in close proximity to the Bolsa Chica wetlands restoration area (see exhibit G). The Bolsa Chica Wetlands, at approximately 1,000 acres, is the largest remaining wetland in Southern California. Following the 1997 State acquisition of most of the remaining wetlands that were under private ownership, a comprehensive Bolsa Chica wetlands restoration effort is now underway. In addition, because it is tidally influenced, the Bolsa Chica wetlands constitute "sea" according to the Coastal Act definition (Section 30115). Because there is no public road between the subject site and the Bolsa Chica wetlands, the site is between the sea and the first public road. As such, the area is given special significance with regard to the requirement for the provision of public access. Given the prominence of the adjacent Bolsa Chica wetlands,

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appropriate public access and passive recreational opportunities must be provided and conspicuously posted. Further, the Coastal Act gives priority to land uses that provide opportunities for enhanced public access, public recreation and lower cost visitor recreational uses.

Beyond the Bolsa Chica wetlands restoration area is the Pacific Ocean and its sandy public beaches. Thus, public access to the Bolsa Chica area would, in turn, facilitate public access, via alternate means of transportation (bicycle and pedestrian), to the ocean beach beyond.

Although the certified LUP includes (as listed above) strong public access policies, the proposed LUP amendment does not include any public access language specifically addressing public access needs appropriate for the site, taking into consideration the recreational needs of both the new residents and other users of the adjacent public recreational resources. In order to assure that access is maximized at the time of future site development, as described previously, specific language addressing access in the site specific section of the LUP is necessary. As proposed, no such language is included in the LUP amendment.

a) Bicycle Path

The subject site is immediately adjacent to the north levee of the East Garden Grove Wintersburg Flood Control Channel (EGGWFC). The County's Commuter Bikeways Strategic Plan (the regional bikeways plan for Orange County) identifies a Class I bikeway along the flood control channel. This is also reflected in the City's certified LUP. Figure C-14, Trails and Bikeways Map in the certified LUP identifies a proposed bikeway along the EGGWFCC adjacent to the site. A letter from the County's Public Facilities & Resources Department dated January 8, 1998 (see exhibit J) states:

“Regarding the City's proposal to continue the Class I bikeway northerly along the Wintersburg Channel to Graham Street: The County supports this. It would provide an excellent bikeway connection between the City's road system and the off-road wetlands perimeter route. (We suggest referring to this entire route – between Graham Street and PCH – as the Bolsa Chica Bikeway).”

In addition, a letter from the County's Public Facilities & Resources Department, dated February 13, 1998 (see exhibit J) commenting on a proposed tentative tract map for the subject site, states:

“A bicycle trail along the CO5 [East Garden Grove-Wintersburg Channel]

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north levee maintenance road will be required.”

A bike route in this area would provide substantial public access benefits. It is encouraged in existing LUP policies. It would provide a connection between existing inland routes and the Bolsa Chica area and is expected to be extended in the future along the remainder of the EGGWFCC levee adjacent to the Bolsa Chica Restoration area. When such an extension occurs (as is anticipated in the City’s LUP and by the County Public Facilities & Resources Department), the bike route would eventually link to the coast. An off road bicycle path already exists along the entire length of the City’s ocean fronting beach. A bike path at the subject site and along the remainder of the EGGWFCC would provide a new connection from inland bicycle paths to this coastal path. Not only would such a bicycle path provide substantial public recreational benefits, but it would also improve public access opportunities by providing alternate means of transportation to get to the coast and to the trails within the Bolsa Chica area. The City and the County have both indicated that a bicycle path in this location is desirable and appropriate. However, the proposed LUP amendment does not include any language specific to this site assuring that implementation of the bicycle trail will occur prior to or concurrent with sited development. Current LUP policy merely states “promote” and “encourage” the bicycle path’s implementation. Therefore there is no assurance that it will be built in a timely manner, or perhaps that it will be built at all. Thus, the amendment as proposed cannot be found to be consistent with Sections 30210, 30213 and 30252 of the Coastal Act regarding maximizing public access, and therefore, must be denied.

b) Public Streets and Parking

In addition, if the residential development that the proposed land use designation would allow were to be a private and/or gated development, public access would not be maximized or enhanced, inconsistent with Sections 30210, 30212.5, 30223 and 30252 of the Coastal Act. All public entry controls such as gates, gate/guard houses or other guarded entry, signage that discourages access and any other restrictions on the general public’s entry by and use of any streets or parking areas (e.g. private streets, preferential parking districts, resident-only parking periods/permits, etc.) would constrain the public’s ability to access the area proposed as public park as well as the public’s ability to access the public bike path along the EGGWFCC levee. In turn, public access to the Bolsa Chica area and ocean beyond would also not be provided. As stated previously, the site is between the first public road and the sea (in this case the Bolsa Chica wetlands). The provision of public parking within the area would allow visitors to begin a bike ride or walk along the levee, through the Bolsa Chica area, and on to the ocean front, that might otherwise not be feasible. Public streets and public parking within the residential area would not only support public recreational use

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in the vicinity of the subject site but also allow visitors from beyond the immediate vicinity to use the park area, and public recreational and open space resources in the Bolsa Chica area.

In addition, ungated public streets would facilitate the use of interior public trails within the development. Interior trails would further maximize, support and enhance public access opportunities. Public trails could be established leading from Graham Street to the area proposed to be designated Open Space Parks, and from within the development back onto the bike way along the EGGWFCC. Also, public trails along the edge of the wetland and ESHA buffers would provide an excellent public access experience consistent with the requirements of Sections 30210, 30212.5, 30213, 30223 and 30252 to maximize and enhance lower cost public recreational and public access opportunity with new development and assure adequate support facilities are provided. The provision of interior trails within a future development at the site would be especially consistent with Section 30252's requirement that nonautomobile circulation be provided within the new development.

In order to assure that this aspect of public access (the provision of public parking within an ungated residential area with public streets and interior trails) is provided at the time the site is developed, language reflecting this must be incorporated into the LUP. However, no such language is proposed as part of the LUP amendment. Thus the amendment cannot be found to be consistent with Sections 30210, 30212.5, 30213, 30223 and 30252 of the Coastal Act regarding maximizing and enhancing public access, and therefore must be denied.

c) Provision of Recreation and Public Access Benefits

Residential development of the subject site that would occur pursuant to the proposed amendment would have adverse impacts on public access and recreation unless the above described measures are incorporated into the design of a future project. In order to assure maximum public benefit, the public recreation and access measures would need to be provided in a timely manner. However, nothing in the proposed amendment or in the City's LUP currently requires that lower priority developments (such as residential) be phased to assure the provision of those uses that are a higher priority under the Coastal Act (such as public trails, parks, and parking) occur prior to or concurrent with the lower priority development. Without such a phasing requirement, it is difficult to assure that necessary public benefits would occur in a timely manner, or possibly even at all. Thus, as proposed, the amendment is inconsistent with Sections 30210, 30212.5, 30213 and 30252 of the Coastal Act regarding maximizing and enhancing public recreation and access and therefore must be denied.

5. Visual Resources

Section 30251 of the Coastal Act states:

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

In addition, the City's certified LUP contains the following policies:

C 4.2.1

Ensure that the following minimum standards are met by new development in the Coastal Zone as feasible and appropriate:

- a) *Preservation of public views to and from the bluffs, to the shoreline and ocean and to the wetlands.*
- b) *Adequate landscaping and vegetation.*
- c) *Evaluation of project design regarding visual impact and compatibility.*
- d) ...

C 4.7.1

Promote the use of landscaping material to screen uses that detract from the scenic quality of the coast along public rights-of way and within public view.

The subject site offers the opportunity to provide public views from the site to the Bolsa Chica wetlands area and toward the ocean beyond. The related coastal development permit application (5-06-327) proposes a public viewing area in the southwest corner of the site. The southwest corner of the site is an excellent location for providing public views to and along the coast and scenic areas, as required by Section 30251. The location also works well with the anticipated bikeway along the EGGWFCC. However, the proposed LUP amendment does not include any discussion regarding provision of public view points in

association with development of the site.

In addition, based on information submitted for the related coastal development permit application, it appears that elevations of the subject site may be raised in conjunction with any development of the subject site, such that future elevations may be similar to the elevation of the top of the EGGWFCC. The project described in the related coastal development permit application, includes a solid wall separating the rear yard area of future residences proposed under that application and the public bike path. The solid wall, proposed in the permit application to be ten feet high, immediately adjacent to the public bike path could have adverse visual impacts on public use of the bike path. However, adverse impacts could be minimized by incorporating measures such as reduced wall height, open fencing/wall, landscaped screening, use of an undulating or off-set wall footprint, or decorative wall features (such as artistic imprints, etc.), or a combination of these measures. The proposed amendment does not address this issue and does not assure that potential visual impacts of the development as viewed from the surrounding public recreational and open space areas will be addressed at the time the site is proposed for development. Therefore the proposed amendment is inconsistent with Section 30251 of the Coastal Act regarding protection of visual resources within the coastal zone and must be denied.

6. Archaeological Resources

Coastal Act Section 30244 states:

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

In addition, the City's certified LUP includes the following policies regarding Historic and cultural Resources:

Coordinate with the State Of California Historic Preservation Office to ensure that archaeological, paleontologic and historically significant resources within the Coastal Zone are identified.

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

In the event that any Native American human remains are uncovered, the County Coroner, the Native American Heritage Commission, and the Most

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Likely Descendants, as designated by the California Native American Heritage Commission, shall be notified. The recommendations of the Most Likely Descendants shall be obtained prior to the disposition of any prehistoric Native American human remains.

A completed archeological research design shall be submitted along with any application for a coastal development permit for development within any area containing archeological or paleontological resources. The research design shall determine the significance of any artifacts uncovered and make recommendations for preservation. Significance will be based on the requirements of the California Register of Historical Resources criteria, and prepared based on the following criteria:

- a) Contain a discussion of important research topics that can be addressed; and*
- b) Be reviewed by at least three (3) county-certified archeologists (peer review committee).*
- c) The State Office of Historic Preservation and the Native American Heritage Commission shall review the research design.*
- d) The research design shall be developed in conjunction with affected Native American groups.*
- e) The permittee shall comply with the requirements of the peer review committee to assure compliance with the mitigation measures required by the archeological research design.*

A County-certified paleontologist/archeologist, shall monitor all grading operations where there is a potential to affect cultural or paleontological resources based on the required research design. A Native American monitor shall also monitor grading operations. If grading operations uncover paleontological/archeological resources, the paleontologist/archeologist or Native American monitor shall suspend all development activity to avoid destruction of resources until a determination can be made as to the significance of the paleontological/archeological resources. If found to be significant, the site(s) shall be tested and preserved until a recovery plan is completed to assure the protection of the paleontological/archeological resources.

In conjunction with the Environmental Impact Report (EIR) prepared for the related development project for the subject site, an Archaeological Assessment was prepared (Appendix H to the EIR, titled Archaeological Assessment of the SHEA Homes Project Tentative 15377 and Tentative Tract 15419, March 1997). A number of archaeological sites are believed to be present on the subject site.

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These include CA-ORA-83 (known as the Cogstone site), CA-ORA-1308 and 1309. The majority of CA-ORA-83 is located off-site, but three areas of CA-ORA-83 are believed to be located within the subject site. CA-ORA 1308 and 1309 were discovered and recorded in 1991. They are described as “possible” or “potential” archaeological sites. In any case, the extent and significance of the archaeological resources on the site has not been conclusively determined. Thus, it is important that any future site development include a careful assessment of the presence and extent of archaeological resources. Although the LUP policies cited above outline procedures for sites that potentially contain archaeological resources, nothing in the proposed amendment identifies this site as one with the potential for archaeological resources. Consequently, there is no assurance that the potential for archaeological resources to occur on the site will be recognized in conjunction with future development proposals. If the potential for archaeological resources at the site is not recognized in the proposed LUP amendment for the site, application of the policies cited above may be overlooked. The proposed LUP amendment, which specifically addresses the subject site, provides the appropriate opportunity to make clear that archaeological resources may be present on this site, and therefore these specific policies must be applied. Without such language within the LUP amendment, it cannot be found consistent with Section 30244 of the Coastal Act, and so it must be denied.

7. Hazards

Section 30236 of the Coastal Act states:

Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

Coastal Act Section 30253 states, in pertinent part:

New Development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor

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contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The proposed LUP amendment would designate much of the subject site for residential development land use. Other than farming activities, the site is currently undeveloped. Thus the suitability of the site for residential development must be considered.

Most of the site, except the bluff area on the site's western boundary, is comprised of lowlands that were once a part of the historic, extensive Bolsa Chica wetlands system. Historically the site functioned as a floodplain. However, with development of the East Garden Grove Wintersburg Flood Control Channel (EGGWFC) in the 1960s, the site has ceased serving that function. The northwestern corner of the site is crossed by a bluff, approximately 40 to 50 feet high, carved by the ancestral Santa Ana River. The portion of the site that is proposed to be land use designated residential is a very flat surface at an elevation of one to two feet below sea level.

The Commission's staff geologist has reviewed a great deal of technical information submitted in conjunction with the proposed LUP amendment and related coastal development permit application. The staff geologist has prepared three memos regarding the subject site, which are attached as exhibits I, P, and Q and are hereby incorporated as though fully set forth herein. The Commission concurs with and adopts the conclusions stated in the staff geologist's memos.

Potential geotechnical issues associated with residential development at the subject site include: ground shaking during a major earthquake on a nearby fault, possible surface rupture of the hypothesized Bolsa-Fairview Fault, liquefaction during such an earthquake, inadequate foundation support, and the stability of both natural and temporarily excavated slopes. In addition, development of the site raises certain hydrological issues. Following is a discussion in the staff geologist's memo of the potential issues:

"Reference (8) indicates that the soils at the subject site are subject to liquefaction during a major earthquake. In addition, the presence of peat could lead to settlement problems, because organic materials such as peat are subject to decay and volume loss with time. In order to mitigate for these hazards, Shea Homes proposes to overexcavate the entire site to depths as great as 17 feet below sea level, involving approximately 400,000 cubic yards of cut. Unsuitable fill material such as peat would be exported, and the remainder of the material – as well as approximately

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260,000 cubic yards of imported fill, would be compacted to suitable densities to provide structural support and to be invulnerable to liquefaction.”

The magnitude of over-excavation and recompaction in themselves raise some concerns. Since the over-excavation would extend well below sea level, dewatering will be necessary. The dewatering has the potential to lower ground water levels off-site, which could lead to settlement problems. In order to avoid settlement issues, the property owner’s consultants have indicated that the excavation will take place in stages, with only narrow excavations open at any one time. In addition, a monitoring program to detect settlement would be in place. The property owner’s consultants have indicated that water produced by the dewatering operations will be discharged into the storm water drainage system. Information submitted by the property owner’s consultants indicates that the water is suitable for disposal into the ocean.

Regarding slope stability, the Memo prepared by the Commission’s staff geologist states:

“The backcuts of the excavations undertaken to mitigate the liquefaction hazard will extend to the base of the north levee of the East Garden Grove Wintersburg Flood Control Channel. The loss of lateral support for the levee, especially if high pore water pressures persist due to the rapid removal of material in the cut, has the potential to destabilize the levees. Reference (12) contains slope stability calculations that demonstrate that even with the persistence of high pore pressures and loss of lateral support, the slope supporting the levee will have a factor of safety against sliding of 1.28, which is considered adequate for temporary excavations.

No slope stability calculations have been performed on the bluff in the northwestern corner of the site, and it is likely that it is only marginally stable. This area is planned for open space, however, so slope stability is this area is not a concern.”

In 1968 the California Department of Water Resources mapped a strand of the Newport-Inglewood fault across the site and dubbed it the Bolsa Fairview fault. Apparently the fault was located only indirectly on the basis of topographic expression, vertical offset of the base of the Bolsa aquifer, abrupt water quality changes between closely spaced wells, limited sea water intrusion northeast of the fault, and pumping data. However, more recent studies by the California Division of Mines and Geology concluded that there was insufficient evidence to indicate that the fault was either active, or, in fact, even that it exists, and the State Geologist accordingly de-listed the fault under the Alquist-Priolo Act.

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Based on the more recent studies, it appears there is insufficient evidence to warrant inclusion of the fault as an identified hazard.

The subject site is, geomorphologically, an historical flood plain, however, the floodplain has been channelized. Construction of the levees associated with the EGGWFCC has already functionally isolated the river channel from the flood plain, in this particular case. Moreover, the site lies at elevations of 1 to 2 feet below sea level. Areas of the surrounding neighborhoods lie at elevations of as low as 5 feet below sea level. Low berms in the Bolsa Chica lowlands, in addition to the EGGWFCC levees, protect these neighborhoods from tidal flooding. Storm water must be collected through a series of storm drains lying well below sea level, and pumped up into the EGGWFCC through a forebay at the Slater pump station, which is on the south side of the flood control channel adjacent to the subject site.

However, the capacity of the existing EGGWFCC is insufficient to carry the 100-year flood event. The channel will carry only about 4,200 cubic feet per second and will overflow in a 100 year event. Because the south levee is mostly lower than the north, more water would overflow to the south, and into the Bolsa Chica wetlands, than to the north. Nevertheless a total of about 52 acre feet would overtop the north levee in a 100-year flood event. In fact, overtopping of the levees will likely result in their complete failure, with a resultant loss of capacity of the EGGWFCC and inundation by ocean waters. The subject site and much of the surrounding area are susceptible to tidal flooding. Tidal flooding could occur when extreme high tides occur concurrently with storm surge events. According to some studies, the existing tidal flooding risk was increased with the opening of the ocean inlet into the Bolsa Chica Restoration area. Regardless of the cause of the flooding, high tides and storm surge will create tidal flooding. The worst case scenario would occur when high tide and storm surge occurs during failure of the levees of the lower reaches of the East Garden Grove Wintersburg Flood Control Channel (EGGWFCC) (which is possible as the levees are not FEMA certified). Under these scenarios, up to 170 acres of existing development, excluding the subject site, would be flooded. Therefore, contemplation of any development of the subject site must address potential flooding of existing inland development, as well as any proposed development of the subject site, during the 100-year flood event.

Section 30236 of the Coastal Act addresses channelization and other substantial alterations of rivers and streams and requires such work incorporate the best mitigation measures feasible. In addition, if flood control measures are permitted, the Commission must find there are no other feasible methods for protecting existing structures in the floodplain, and that such protection is necessary for public safety and to protect existing development.

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In studies designed to determine appropriate base flood elevations for future residential development at the subject site, the property owner's consultants have made use of many diverse hydrologic models that included complete failure of the EGGWFCC levees, failure of the pumps, and variations in timing of the failures of both levees and pumps. Based on these studies, the property owner's consultants have demonstrated to the satisfaction of the Commission's staff geologist and to the satisfaction of the Commission that the 100-year Base Flood Elevations derived for the site are the worst case ponding elevations of all the hydrologic models considered and assure the safety of the site during a 100-year flood event.

The property owner has indicated, in documents submitted with the related coastal development permit application, that a vegetated flood protection feature (herein referred to as the "VFPF", essentially a vegetated flood protection levee) is proposed in the southwestern part of the site. In this area, the EGGWFCC is approximately 11 feet above sea level and the bluff at the western site boundary raises some 40 feet above sea level. There is a gap in elevation between the EGGWFCC levee and the bluff in the area of the former county parcel. A flood protection levee in this location could effectively capture tidal floods if it is constructed to an elevation above the expected flood flow. The existing EGGWFCC levee in the area adjacent to the subject site is expected to be reconstructed to meet FEMA certification standards and would have an elevation of 11 feet above sea level (the existing levee's elevation is also 11 feet above sea level). If a flood protection levee were constructed to the same elevation, flood waters would be prevented from flooding the subject site as well as the additional 170 inland acres.

As stated, the subject site and much of the surrounding area (an estimated 170 acres) is susceptible to flooding caused by a tidal surge and/or a 100-year storm event. Regarding the potential for the site and surrounding area to flood, the Commission's staff geologist states:

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

Regarding tsunami hazard the Memo states:

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“The Huntington Beach lowlands are quite vulnerable to a major tsunami. A tsunami that overtopped the low berms associated with the Pacific Coast Highway and the oil field roads in the Bolsa Chica wetlands could inundate a large area of the lowlands, much of which lies below sea level. The proposed “vegetated flood protection feature” and the improvements to the north levee of the East Garden Grove Wintersburg Flood Control Channel [proposed under the coastal permit application, not part of the LUP amendment], together with the increased pad elevation, will lower the vulnerability of the Parkside Estates site. Although the placement of fill on the site would displace flood waters into the surrounding neighborhood during a major tsunami, the “vegetated flood protection feature” does lower the susceptibility of this area to smaller tsunamis.”

Regarding suitability of the subject site for development, the Memo concludes:

“In summary, the Parkside Estates is not suitable for residential development without fairly extensive mitigation measures, especially for the liquefaction and flood hazards. Shea Homes’ planned method of remediation involves extensive landform alteration in the form of adding fill to raise the site above Base Flood Elevation. Although this is not a generally recommended method of mitigating a flooding hazard due to the effects it can have on adjacent areas, the planned drainage system improvements more than mitigate for these effects. The necessary excavations and dewatering operations have the capacity to induce subsidence or other instability in adjacent sites, but these effects will be mitigated by doing the excavation in stages and by careful monitoring. The site will experience strong ground shaking during a major earthquake. Early reports that an active fault crosses the site cannot, however, be supported by the data currently available.”

In order to raise pads above base flood elevations, significant amounts of fill material will be imported onto the site, raising the site elevations from the existing 1 to 2 feet below sea level to 5.5 to 11.4 feet above sea level. This raises the question of whether such fill would result in flood waters being displaced to neighboring areas. However, the subject site as it currently exists is already at a higher elevation (1 to 2 feet below sea level) than the surrounding areas (as low as 5 feet below sea level). Flooding of these neighborhoods would occur even without site development, although it would be exacerbated by the addition of fill at the subject site, if mitigation is not undertaken.

The related coastal development permit application proposes to make several improvements to the area drainage system including improving the capacity and

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stability of the EGGWFCC, increasing the capacity of the storm drains under Kenilworth Drive and Graham Street, adding two new pumps to the Slater pump station, and constructing a Federal Emergency Management Agency (FEMA) certifiable “vegetated flood protection feature” at elevation 11 feet above sea level between the bluff along the western site boundary and the north levee of the EGGWFCC. If all these improvements were implemented they would more than mitigate for the exacerbated flood condition caused by the addition of fill necessary to protect existing development in any event, and it is in the least environmentally damaging location.

In summary, information submitted relative to the related coastal development permit application indicates some level of flood control is necessary to protect existing development and there are feasible mitigation measures available consistent with the requirements of Section 30246. However, there is no specific requirement in the proposed amendment to assure that measures necessary for risk reduction would be incorporated into future site development. Without such requirements in the amendment, there is no assurance that mitigation measures will be required and risks minimized as required by Sections 30236 and 30253 of the Coastal Act. Therefore the amendment must be denied as submitted.

8. Conclusion – Consistency with Chapter 3 Policies of the Coastal Act

As proposed, the Land Use Plan amendment contains significant deficiencies with regard to consistency with the Coastal Act. As proposed, the amendment cannot be found consistent with Coastal Act Sections 30210 and 30252 regarding maximizing access, 30251 regarding protection of public views, 30233 and 30250 regarding wetlands, 30240 regarding ESHA, 30244 regarding archaeological resources, and 30230 and 30231 regarding water quality. In sum, the proposed changes to the LUP do not meet the requirements of and are not in conformity with the policies in chapter 3 of the Coastal Act. Therefore, the amendment request must be denied as submitted.

Attachment B

Coastal Commission Hearing
11/14/07

Transcript of Commissioner
Deliberations

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COASTAL COMMISSION

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CITY OF HUNTINGTON BEACH)
COUNTY OF ORANGE)

Major LCP Amendment
No. 1-06
Shea/Parkside

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Wednesday November 14, 2007
Agenda Item No. 16.a.

Sheraton San Diego Hotel
1433 Camino Del Rio South
San Diego, California

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Patrick Kruer, Chair
Bonnie Neely, Vice Chair
Steve Blank
William Burke
Larry Clark
Brooks Firestone, Alternate
Ben Hueso
Dave Potter
Mike Reilly
Sara Wan
Dan Secord, Alternate
Mary Shallenberger

Brian Baird, Resources Agency

STAFF

Peter Douglas, Executive Director
Hope Smeltzer, Chief Staff Counsel
Jamee Jordan Patterson, Deputy Attorney General
Sherilyn Sarb, District Director
John Dixon, Environmental Program Manager
Mark Johnsson, Senior Geologist

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1 **MS. QUINLAN:** My name is Mary Quinlan, Mr.
2 Chairman, members of the Commission, I am a resident of the
3 Kenliworth neighborhood, and in 2005 water flooded from the
4 Shea field, and it poured through the Kenilworth back wall
5 and flowed into the adjacent homes. Shea's response is that
6 the water is flowing uphill from the houses and into the
7 fields.

8 We can't assume anything about annual rainfall.
9 We can't base this decision on annual rainfall. We can't
10 depend on average rainfall and insuring that this is a safe
11 development for the Kenilworth neighborhood, and in
12 preventing a recurrence of this flooding.

13 With the known variables related to global
14 warming, and the risks of this development are very high.
15 This is a wetland area, and should not be developed, and
16 please support staff's recommendation.

17 **CHAIR KRUER:** Thank you.

18 Linda Moon, then Dr. David DeLange -- go ahead,
19 Ma'am.

20 **MS. MOON:** Good afternoon, I am Linda Moon, and I
21 am speaking today on behalf of the Orange County League of
22 Conservation Voters, and the League of Conservation Voters
23 urges you to adopt the LUP modifications recommended by your
24 staff.

25 The Coastal Commission staff is to be commended

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HNB-MAJ-1-06 Revised Findings
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Transcript with Commissioner Deliberations

PRISCILLA PIKE
Court Reporting Services

1 for their thorough and accurate analysis of the wetland and
2 ESHA issues presented with this property, which most
3 definitely is an integral piece in the Bolsa Chica wetlands
4 ecosystem.

5 Dr. Dixon's report, and the prior testimony has
6 well documented the continuous existence of significant
7 wetlands on this property going back 130 years.

8 As one of the founders, and a former president of
9 the Amigos de Bolsa Chica, I can assure you that the public
10 concern regarding the wetlands and ESHA did not just spring
11 up in response to Shea Homes development proposal. Thirty
12 years ago this property was designated a priority for
13 preservation by the environmental community due to the
14 historic wetlands present on the parcel, and the abundance of
15 wildlife found there. The property was then known as the MWD
16 property.

17 The 100-meters is a well supported buffer require-
18 ment that has been applied as a goal for protection of
19 species at Bolsa Chica and other locations, in order to
20 protect the valuable ecosystems.

21 The Commission should look to the research on what
22 buffer is required to protect sensitive ecosystems on this
23 particular property, and not to what minimum numbers were
24 applied at some other site.

25 We agree with staff that the north eucalyptus

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Transcript with Commissioner Deliberations

Attachment B
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1 grove on this property should not be considered lesser ESHA,
2 merely because it is separated from the larger grove, and is
3 closer to existing development. If anything, the buffers
4 should be even wider at that location to compensate for the
5 intrusion of development to the north.

6 Please approve these important and protective
7 modifications as proposed by your staff.

8 Thank you, very much.

9 **CHAIR KRUER:** Thank you.

10 Dr. David DeLange, then Ryker Coppa, and then
11 Blaize Coppa.

12 **MR. DE LANGE:** I am David DeLange. I would like
13 to simply support the staff report.

14 My main concern, the white-tailed kite, and other
15 species of concern there, is driving my concern, and the rest
16 of my time I would like to relinquish to the dinner hour.

17 **CHAIR KRUER:** Thank you, sir.

18 Ryker Coppa, and then Blaize Coppa.

19 **MR. RYKER COPPA:** Can you please cue up the DVD
20 Coppa Croak Fest.

21 I am Ryker Coppa. I am 10 years old. I live next
22 door to the Shea wetlands. I want to play a 2-minute DVD
23 clip my family calls the Croak Fest. Please adopt the staff
24 recommendations.

25 Would you play the exhibit now, please.

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1 [DVD Played]

2 UNIDENTIFIED SPEAKER: I would like to pass around
3 a photograph that Ryker has made of these croakers.

4 CHAIR KRUER: You need to give them to staff, yes,
5 give them to staff.

6 Okay, and thank you, thank you for your
7 presentation there.

8 MR. RYKER COPPA: Thank you.

9 CHAIR KRUER: Yes, Blaize Coppa.

10 MS. BLAIZE COPPA: My name is Blaize Coppa, and I
11 am 12 years old. You saw the DVD that my family calls the
12 Croak Fest. The DVD clip was filmed by my dad on April 19,
13 2006 during usually the prime mating season for frogs and
14 toads. That year the frogs and toads are finally able to do
15 what they are supposed to do because the red wing black birds
16 were actively nesting in the field, the farmers could not
17 disk or plow like they normally do at this time.

18 The frog mating calls in the DVD clip is made by
19 the hubergu [sic.] and we have it recorded forever; however,
20 do we want a DVD to be the only way for people to enjoy and
21 experience the miracle of nature that is in Surf City, our
22 city?

23 To quote a small portion from an article dated May
24 27, 1996 in a newspaper called *The High Country News for*
25 *People Who Care About the West*, and I quote:

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1 "Native frog populations are plummeting all
2 over the world. No one knows exactly why,
3 but there are six prominent possibilities,
4 destruction of wetlands is No. 1."

5 Unquote.

6 If Shea Homes builds homes on this wetlands then
7 toads, frogs and ferry shrimp will be paved over and become a
8 memory of the people who have heard their beautiful music.
9 Raptors will lose precious foraging habitat and will leave
10 the Bolsa Chica.

11 This portion of wetlands is a much needed rest
12 stop in the freeway of the skies for many species of
13 migratory birds. This is one of the last 5 percent remaining
14 wetlands left along the California coast. We have destroyed
15 95 percent of California's wetlands.

16 If these wetlands are not available for migratory
17 birds to rest, feed and eat, then Huntington Beach could be
18 responsible for a whole species of birds to become extinct.

19 As a Surf City resident, I don't want this to be
20 our legacy. Please adopt the staff's recommendations.

21 Thank you.

22 CHAIR KRUER: Thank you, Ms. Coppa.

23 Monica Ruzich.

24 [No Response]

25 Is Monica Ruzich here? Oh, there you are, thank

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1 you.

2 **MS. RUZICH:** They are a hard act to follow. My
3 name is Monica Ruzich, and I live on Kenilworth, directly
4 abutting the Shea property.

5 Construction of this project will damage the
6 surrounding homes. Hydrology of the land does not respect
7 lines on a plat map. De-watering this site will cause
8 subsidence in adjacent homes, mine among them.

9 The process of compacting the replaced soils and
10 the additional fill will worsen existing problems in the
11 area. Five to 11 feet of increased fill will increase
12 flooding in my neighborhood. We are, essentially, in a bowl,
13 and when you fill half of that bowl up, and we get heavy
14 rains, then it runs into the area that is not filled up.

15 These things are confirmed by the FEMA flood maps,
16 including Shea's development. It does not reduce the need
17 for flood insurance in our area, and there was a hint that it
18 might, actually, increase it.

19 I understand my neighbors' concerns upstream on
20 the Wintersburg Channel. They have been included in the
21 flood plain for the first time in many years. We live at the
22 terminus of a flood plain. We all have to take
23 responsibility for that. If we build in a flood plain, we
24 need to pay flood insurance.

25 This whole project violates the *Coastal Act* by

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1 significantly altering the land form.

2 I would also like to respectfully suggest that it
3 is not the Coastal Commission's role to bail Shea out of a
4 bad land use decision. This land is a contiguous part of the
5 Bolsa Chica, which has been in dispute for over 30 years, 25
6 years before they purchased the land. If they didn't do due
7 diligence in researching the background of this land, it is
8 not our responsibility now to step in and bail them out.

9 I would also like to point out -- as we did at the
10 last meeting -- that the Southern California Wetlands
11 Recovery project has designated this as land they would
12 purchase, so they have recourse.

13 Thank you, very much.

14 **CHAIR KRUER:** Thank you, very much.

15 And, with that, it is time for the city's
16 rebuttal, and Mary Beth Broeren --

17 Yes, Commissioner Burke?

18 **COMMISSIONER BURKE:** [Inaudible, off of the
19 microphone, out of hearing range.]

20 **CHAIR KRUER:** Okay, why don't we let them rebut,
21 and then we will take a break, if you want.

22 **COMMISSIONER BURKE:** [Inaudible, off of the
23 microphone, out of hearing range.]

24 **CHAIR KRUER:** Okay, that is fine, anybody who
25 wants to eat can.

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1 **EXECUTIVE DIRECTOR DOUGLAS:** This is quite a
2 rebuttal.

3 **CHAIR KRUER:** I am happy to buy some more pizzas
4 for the public, too, if you -- both Commissioner Burke and I
5 will do that. So, if you can get some more pizzas for them,
6 so we can keep going. And, thank you, Commissioner Burke,
7 very generous.

8 I don't want one, so that is fine.

9 **EXECUTIVE DIRECTOR DOUGLAS:** Let the record show,
10 Mr. Chairman, this is a first for the Commission.

11 **CHAIR KRUER:** I understand, and that is why I am
12 happy, if somebody is hungry out there, I am happy to buy
13 them a pizza, or so.

14 [Pause in proceedings.]

15 Okay, thank you, Commissioner Burke.

16 The city, this is time for the city's rebuttal, or
17 Shea, both the city and the applicant, so you have 10
18 minutes, as we determined earlier.

19 [Pause]

20 **MR. METZLER:** I would like to start by briefly
21 calling up city inspector Duane Wentworth, just for a moment.

22 Duane.

23 **MR. WENTWORTH:** Commission and staff, my name is
24 Duane Wentworth. I was the senior construction and grading
25 inspector for the MWD Shea Parkside project during most of

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1 the time of the discussion here, at least starting in 1989.

2 I just want to refute some of the comments that
3 were made here relative to my actions. I was the inspector
4 that wrote the red tags in 1989. A lot of people have
5 disputed what I said, or what I claimed to have red tagged at
6 that time. I know what I red tagged. My comments and my
7 letters to the staff and the Commission were accurate. I
8 still have my field notes from 1989. I brought them with me.
9 They addressed exactly what I did on that day, and subsequent
10 days relative to that site.

11 And, I am going to make myself available to you
12 after the rebuttal, if you have any follow up questions. I
13 just wanted to make sure that you are accurately informed.

14 **MR. METZLER:** Thank you, Duane.

15 I would like to remind you that, again, today we
16 gave you a presentation based on over 30 scientific studies
17 that means, quite simply, we know more about this field than
18 anyone else.

19 Our opponents continue to try to win your votes
20 with photos, and charges that they are not backed up with
21 scientific documentation.

22 As far as the fill allegations, remember that the
23 baseline of all of our discussions today is that the
24 California Fish and Game, and Shapiro, determined that there
25 were no wetlands anywhere, but within the CP, in 1981. CDFG

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1 said, in 1981, the rest of the property was not presently
2 functioning as a wetlands. That was all of the 45 acres
3 within the city at that time. So, the entire discussion
4 of Smokey Stables outside of the CUP, or north of Slater
5 Avenue, is not a discussion of fill or wetlands, do not be
6 deceived.

7 Julie Bixby's fill presentation was well edited,
8 because if you look at the topographic maps, you will see
9 that there is still 8 feet of fill in the vicinity of the
10 Slater overcrossing today. I would ask you to consider how
11 the farmer would have farmed the field with the steep bank
12 her video showed still in place?

13 By the way, the video Ms. Bixby showed was from
14 the month with the highest rainfall of any month in the last
15 47 years -- hardly normal conditions, and hardly conditions
16 that should influence your decision-making.

17 Likewise, Dr. Dixon's analysis of the EPA included
18 photos from the 2nd, 3rd, and 5th wettest years in the last
19 50 years, which shows how difficult it is for him to prove
20 his point.

21 Further, he failed to address why he continues to
22 ignore the other 12 studies. Also, on the EPA, Dr. Lee
23 stated that Signal Land Mark denied him access, except for
24 one brief visit, which is an admission that he has not
25 studied the site thoroughly. We did grant Dr. Lee, and an

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1 associate, to access our site, and he was able to dig soil
2 pits and undertake other research.

3 Dr. Lee told you that Criteria 3 -- told you that
4 Criteria -- 3 -- Dr. Lee told you that Criteria 3 --

5 **UNIDENTIFIED SPEAKER:** Defines long duration --

6 **MR. METZLER:** Thank you.

7 -- of 7 days, but it actually says 7 to 30 days,
8 and he ignored the scientific reality of that in the farm
9 field, soil does not become anaerobic until at least 22 days.

10 We asked Dr. Dana Sanders what he planned to say
11 at the end of his comments, and he told us he was going to
12 tell you that if he had known in 1987 what he knows today, he
13 would have concluded that the EP area was not then a wetland,
14 and it would have not supported hydrophytic plants. His
15 comments have been submitted to staff. Dr. Sanders was the
16 lead delineator on the Bilhorn study in 1987.

17 As for the white-tailed kite, Dr. Bloom correctly
18 recalled that he, the Fish and Wildlife Service, and CDFG
19 recommended a 100-meter over 30 years ago -- buffer. But,
20 this was at a time when the development of a marina and 4,000
21 houses were proposed, so that a 100-meter buffer would have
22 been virtually the only buffer for those trees. Dr. Dixon
23 and Dr. Bloom didn't tell you that Shea's currently proposed
24 project would provide significantly more foraging habitat
25 than either a uniform 100-meter, or Fish and Game's one/half

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1 to one mitigation recommendation.

2 Finally, the image Dr. Bloom showed you that there
3 has been no nesting of this bird on our site, and also Mr.
4 Bixby was only able to document 4 visits by the birds to the
5 development area over the years he has monitored the site,
6 because the northern trees are adjacent to the development,
7 and to three very heavily used trails, the proposed minimum
8 distance to residential development of nearly 300 feet is
9 very reasonable.

10 Our opponents mislead you regarding the set
11 100-meter buffer. It has been recommended by staff, but it
12 has not ever been adopted by the Commission.

13 We have provided you this Power Point pictorial
14 rebutting all of the alleged fill, et cetera. There are a
15 few more points I would like to take up while I have the time
16 to do so.

17 First of all, for you to declare any asserted
18 filling of EPA wetlands is to first determine is it, indeed,
19 a wetlands? it never was. It wasn't properly delineated.
20 Dr. Sanders is here today to verify that, and he can further
21 amplify -- and this is the first day I've met him. He
22 informed me of the process he and Tom Yocum of EPA went
23 through in 1989 when EPA made its determination. I would
24 encourage you to ask him what he went through. You would, as
25 I, would come to the conclusion EPA area was not, and should

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1 not be a wetlands. There was no filling of wetlands.

2 Also, regarding any dewatering. Our geotechnical
3 engineer is here and able to present a detailed discussion of
4 what will occur, and what will not occur, and he is able to
5 do that upon your request to do so.

6 The flood control improvements that the County of
7 Orange is about to begin, at the beginning of the year, will
8 only begin to solve the much needed improvements. And, these
9 are really nothing more than maintenance in response to a
10 neglected levy that they have, basically, deferred for
11 several decades. We still need to come in and put in the
12 VFPP which will cut off the flood threat from the Bolsa Chica
13 pocket. We still need to improve the flood pump station
14 within the Slater Channel. We still need to provide a 120-
15 inch storm drain to complete the system, in order to provide
16 the necessary flood protections.

17 We are requesting that you adopt this amending
18 motion in order to adopt our proposed plan, in lieu of the
19 staff's NN and suggested modifications.

20 We have handed out the suggested dialogue, and if
21 you have any questions, I would certainly welcome them, thank
22 you.

23 **CHAIR KRUER:** Thank you, Mr. Metzler.

24 Okay, is there anyone else in your rebuttal?

25 **MS. BROEREN:** Thank you, Mary Beth Broeren, City

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Court Reporting Services

1 of Huntington Beach. Just to address a couple of the
2 comments with respect to land use designations on this
3 property, to clarify the record.

4 The zoning for the property has never been open
5 space. The city has always considered it, in terms of its
6 maps, for low density residential. There was discussion
7 about considering putting open space on the property at one
8 point, but that was never certified, and as has been
9 discussed here correctly, this area has been an area of
10 deferred certification since the city has been looking at
11 land use.

12 Also, I wanted to call your attention to
13 information that was provided to you in a letter regarding
14 flooding in the pocket. The fact that this threat continues
15 to remain, and that is one of the reasons why you have heard
16 from our councilmembers regarding the importance of the flood
17 protection improvements.

18 Thank you.

19 **MR. BOMKAMP:** Hello Commissioners, Tony Bomkamp,
20 again.

21 I just wanted to address a couple of issues. No.
22 1, Mr. Bixby reported his most recent vegetation sampling in
23 June, and he also noted he did samplings in March. We went
24 out and also sampled -- LSA and GLA went out and sampled in
25 March, following Mr. Bixby. We did four transects, and we

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1 found upland vegetation. We used the prevalence index test.
2 We found a prevalence index of about 3.4, which is clearly
3 upland. That report was submitted to Dr. Dixon.

4 We also analyzed Mr. Bixby's latest data, also
5 using a prevalence index, which is a more accurate and much
6 finer approach to sampling vegetation, and we actually
7 determined that the prevalence index was barely upland, but
8 it was 3.05 using Mr. Bixby's existing data.

9 One last point, then I will give it back to Ron.

10 Just to note that Dr. Dixon, the photos that he
11 based his EPA delineation on, as he acknowledged, were from
12 1995, 1998, 1993, those were 3 of the 4 wettest years in the
13 last 50, so those photos were misleading.

14 **MR. METZLER:** Thank you, Tony. Ron Metzler, again.

15 We have the amending motion up, and I would like
16 to at least read a few things into the record, if I could?

17 Just pause, for a minute?

18 [Pause]

19 **CHAIR KRUER:** Go ahead.

20 **MR. METZLER:** I am losing time. I was hoping that
21 this would be up on there, because I wanted to cover -- let
22 me just read it.

23 We ask that you conform the suggested modification
24 in staff's Exhibit NN, third revised to the city and property
25 owner's proposed land use plan dated November 9, 2007, and

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Court Reporting Services

1 find that you reject the 7-day ponding standard, therefore
2 reject the WP area as a wetland, reject the EP area as a
3 wetland, reject the 100-meter ESHA buffer --

4 CHAIR KRUER: Mr. Metzler.

5 MR. METZLER: -- accept the variable width ESHA
6 buffer and reject the concept of intermingled areas.

7 Thank you.

8 CHAIR KRUER: Your time is up.

9 And, with that we will go back to staff, close the
10 public hearing, go back to staff for their response.

11 DISTRICT DIRECTOR SARB: Thank you, Chairman
12 Krueer.

13 I would first like to respond to the city's point
14 regarding the density issues on the area that residential
15 development would be concentrated. The areas that are left
16 undeveloped, like this site, establish their own value as
17 open space, as the developable areas become more scarce, and
18 so we have to find ways of encouraging concentration of
19 development in these less sensitive areas.

20 This would be away from the -- getting away from
21 the lower density single family residential type development,
22 and that does mean increasing the intensity of use within and
23 adjacent to existing single family neighborhoods. And, often
24 there is push back from those neighborhoods. There is an
25 outcry, and that is one of the biggest problems with

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1 implementing the smart growth principles today, is that the
2 existing neighborhoods are not accepting these changes.

3 We think we need to come up with ways of breaking
4 down these barriers, and to concentrate development in areas
5 that are able to accommodate it, and maximize the remaining
6 open space. So, that is somewhat of a planning issue that is
7 addressed through our recommendation.

8 In terms of the changes that have been made since
9 May, we basically felt that we have provided an objective
10 analysis of the historical conditions that existed, and what
11 exists on the property today, and we based our recommend-
12 ations on the conclusions that we have drawn from the changes
13 that we've seen.

14 Dr. Dixon and Dr. Johnsson will address some more
15 specific points, but generally, the property owner has not
16 raised any questions or allegations that are different from
17 those that have been addressed in the memos and in the staff
18 report to date.

19 Regarding the fill of the stables areas, simply
20 stated there is evidence that there is greater fill in that
21 area than what was specifically authorized by the Commission
22 through any Coastal Development Permit or exemption, and that
23 is basically our position on that.

24 Regarding the EPA wetland delineation, we believe
25 it was reasonable at the time it was made. It was done when

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1 the property was farmed. The staff issued an exemption to
2 allow the continued farming that would be for normal farming
3 activities that are allowed to continue in wetlands, as long
4 as the wetland values are continued.

5 We see that grading has occurred that resulted in
6 the loss and fill of the wetlands, and that type of activity
7 is not exempt. We think there is evidence that the activity
8 has been different than activity normally associated with
9 farming, and the Commission's standard, in that case, is if
10 wetlands, or any modification occurs, due to unpermitted
11 activity, that the area should be treated as if the
12 unpermitted activity has not occurred, therefore the
13 Commission should consider in this Land Use Plan Amendment
14 that the wetlands are present, and afforded the protection
15 required by the *Coastal Act*.

16 Basically, staff's position is the EPA wetland
17 would exist today, were it not for unpermitted activity.
18 And, the WP wetland delineates today, and so these areas
19 should be designated as open space.

20 Regarding the intermingled areas, contrary to the
21 property owner's position, we are not establishing a new land
22 use designation here. As I mentioned in my original
23 comments, we are just seeking to provide some contiguous open
24 space. We feel that this area, if it was developed, it would
25 be disruptive of the resource and habitat protections that we

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1 are trying to achieve.

2 The recommendation does allow some development
3 uses, such as the natural treatment system, and the
4 vegetative flood protection feature. If so inclined, the
5 Commission may want to consider other potential uses in that
6 area, such as open space parks, if that may be acceptable, if
7 it is outside the wetlands and ESHA buffers.

8 Finally, on my comments regarding the applicant's
9 revised proposal, actually, no one on our staff saw that
10 proposal before lunch time today. I guess that was due to
11 the holidays, but the property owner indicates it was left at
12 the Long Beach office, and so we really have not reviewed it.

13 Just, in general, looking at it, because it
14 doesn't preserve the WP wetland, or the EPA wetland, we would
15 not be able to support it. The NTS does appear to be allowed
16 within the wetland buffers, and we wouldn't find the reduced
17 ESHA buffers acceptable. So, we don't think that it would be
18 supportable under Chapter 3 policies.

19 And, I will turn it over to Dr. Johnsson, at this
20 point.

21 **SENIOR GEOLOGIST JOHNSON:** Thank you, Sherilyn.

22 Good afternoon, Commissioners, I just want to
23 offer a clarification here, since a question has come up with
24 respect to the WP.

25 The WP wetland was delineated by staff from, in

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1 part, the 2005 topo survey provided by the applicant. The
2 same general area as the WP is on that map, a closed
3 depression at or below 1-foot elevation. Spot elevations
4 within that depression range from 0.7 to 0.9 feet. The area
5 enclosed by that depression is slightly smaller than the area
6 was in 1997.

7 On the 2007 survey, the 1-foot contour in this
8 area encloses a much smaller area, about 10 percent of that
9 on the 2006 map, and spot elevations range from .8 to .9
10 feet. Thus, to the accuracy of the surveys, there is a clear
11 elevation change in the area of the WP.

12 Shea indicates that the topographic data has been
13 inappropriately evaluated, due to differences in vertical
14 data. I just want to point out that these data were provided
15 to staff by Shea's consultants, and clearly indicated that
16 they were, too, the same datum.

17 Finally, I want to point out in Shea's response to
18 the staff report -- that is Exhibit 000 -- there is a mis-
19 quotation of Jonathan Van Coops' memo. This is page 12 of
20 the Exhibit RRR -- well, Exhibit RRR is Jon Van Coops'
21 rebuttal to this. Shea quotes Jonathan Van Coops' earlier
22 memo, as quote:

23 "...datum varies, sic. from location to
24 location, but is approximately 2.3 feet
25 in Orange County."

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1 End quote.

2 They go on to say that:

3 "This false statement about datum varying
4 from location to location points to the
5 reviewer's lack of understanding about
6 this important concept."

7 Actually, the quote should have been:

8 "...the difference between the two vertical
9 datums varied from location to location."

10 Which is completely correct.

11 With that, I will turn it over to Dr. Dixon.

12 **ENVIRONMENTAL PROGRAM MANAGER DIXON:** With regard
13 to the EPA wetland, I have not changed my position.

14 In 2006, I simply didn't address the issue. The
15 EPA wetland no longer existed, and I focused on the existing
16 conditions.

17 In his presentation, Mr. Bomkamp presented no new
18 data, all of his allegations have been technically addressed
19 in various memos. And, the arguments presented today
20 repeated those earlier allegations, and still included the
21 problems that I had previously addressed.

22 For example, his comparison of WP and CP relied on
23 data for all of CP, but I only used the driest area that
24 supports wetland plants for my comparisons. On the screen is
25 a picture of the CP area, and in the distance, over there

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1 closer to the palm tree, is the area that I used for my
2 comparisons. It certainly is drier than the CP area.

3 And, I have presented in various formats the
4 comparisons that we have available, which are photographs of
5 inundation after rainfall at these areas of interest, and so
6 here is in February of 2002, CP, AP, and WP; February of
7 2004, AP and WP looked to be rather wetter; December of '06
8 which the Shea consultants have used as an example of how
9 much wetter CP is than WP, and I can't see it; and in January
10 of '98.

11 So, when one compares the appropriate portion of
12 CP there is little difference in ponding duration. If
13 anything, WP seems to have been a little bit wetter. Since
14 the comparison area supports wetland vegetation, the area was
15 wet enough, long enough, to be a wetland.

16 And, with regard to the 7-day hydrology standard,
17 Ralph Tyer of the U.S. Fish and Wildlife Service, whose
18 wetland definition is about the same as the Commission's, has
19 noted that the 7 days is probably, generally, enough to
20 support wetland vegetation. Although this was a stated
21 minimum standard, the actual condition of AP, WP, and CP was
22 much wetter. They are estimated to have been ponded 7 to 14
23 days during 28 percent of years, but they ponded 15 to 30
24 days for 17 percent of years, and during 19 percent of years
25 they ponded for more than 30 days.

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1 The issue is not 7 days, or 14 days, but the
2 number of days that is long enough to support wetland
3 vegetation. The pattern of inundation at AP, WP, and CP
4 appears to be sufficient.

5 And, make no mistake, the approach promoted by Mr.
6 Bomkamp and Shea Homes, turns the Commission's 1-parameter
7 definition into a 2-parameter definition, and requires both
8 wetland vegetation and hydric soils.

9 In his comments today, Dr. Dana Sanders said that
10 he found that there were no wetlands on the site in 1987, and
11 this is technically true, however, to put this in
12 perspective, in 1987, Dr. Sanders wrote as follows:

13 "Surface elevations of much of the sub-unit
14 are below sea level. Based on application
15 of the multi-parameter approach the entire
16 sub-unit, 43.88 acres is presently uplands.
17 This is due to absence of wetland hydrology
18 in most of the sub-unit, and hydrophytic
19 vegetation throughout.

20 "However, it was determined that a portion of
21 this sub-unit would be sufficiently wet to
22 support hydrophytic vegetation if the farming
23 activities were to cease."

24 Unquote.

25 In other words, in 1987, Mr. Bilhorn and Dr.

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1 Sanders conducted an appropriate atypical wetland
2 delineation, and identified about 8 acres of wetlands. All
3 of Dr. Sanders other observations concerning recent data have
4 already been presented by Shea Homes' consultants, and have
5 also been addressed by staff in technical memorandums.

6 I won't address any of the other assertions, but
7 will be here to answer questions.

8 **CHAIR KRUER:** Thank you, Dr. Dixon.

9 Is that the end of your staff response?

10 **DISTRICT DIRECTOR SARB:** Yes, that concludes
11 staff's comments.

12 **CHAIR KRUER:** Okay, thank you, very much.

13 And, with that I will come to the Commission and
14 recognize Commissioner Clark, first.

15 **COMMISSIONER CLARK:** Thank you, Mr. Chair.
16 Clearly today we have had a very, very comprehensive hearing
17 on the topic before us. I have some questions for both the
18 applicant and the staff, and then I am looking for questions
19 and perspectives by other Commissioners. Can we go to the
20 slide that the applicant had, with respect to the wetland
21 studies over time, can we pull that one up?

22 [Pause]

23 There it is -- by the way, if you go to Windows
24 Pictures, you can do it a lot easier.

25 Okay, a first question, Dr. Dixon, for you, and I

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1 heard the applicant, in their opening statement, in their
2 presentation, 30-minute presentation, and in their rebuttal,
3 bring this point back up. One of the underpinnings, I think,
4 of their position with respect to the EPA wetlands not
5 existing is the fact that there has been a volume of studies
6 of the area over time, as chronicles on this slide.

7 With the exception of the Bilhorn study, all of
8 them indicate wetlands did not exist in the EPA area. Can you
9 respond to why you take a different position than that? and
10 what is the credibility of the body of work that has been
11 done over 25 years?

12 **ENVIRONMENTAL PROGRAM MANAGER DIXON:** Commission-
13 er, I addressed most of these assertions in my July 2, 2007
14 memo, and --

15 **COMMISSIONER CLARK:** Well, we have, you know 5
16 inches of --

17 **ENVIRONMENTAL PROGRAM MANAGER DIXON:** -- the main
18 point is that most is simply not wetland delineations, and
19 they didn't find anything of this sort.

20 The four early studies -- I don't know if they are
21 all up here -- Dillingham, Mulroy, Boule et al, California
22 Fish and Game, '81, they were not technical wetlands
23 delineations. Two of them were vegetation studies which
24 describe the Parkside property as a plowed field, or quote:
25 "UA" -- urban agriculture -- so that was Shapiro, and I

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1 believe Dillingham. Mulroy characterized the area as a
2 plowed field, or wheat field, containing trees and weeds.
3 California Department of Fish and Game designated the whole
4 Parkside property as severely degraded wetlands restorable
5 below a +5-foot mean sea level. These reports simply
6 acknowledged the fact that this historical salt marsh was an
7 agricultural field at the time of observations.

8 Three of the studies, Sanders, Bilhorn, and EPA
9 did find wetlands there, area that we have been referring to
10 as the EPA wetlands.

11 Three of the studies are jurisdictional
12 determinations. They weren't technical wetland delineations
13 at all. They were NRCS, Cal Fish and Game. The Army Corps
14 of Engineers received reports in their office and made a
15 jurisdictional determination that this was prior converted
16 crop land, or that they had no evidence of wetlands being
17 present.

18 For some of the studies, Frank Havore, for
19 example, was a biological study, which was intended as the
20 basis for an EIR that actually had some sort of conflicting
21 remarks with regards to the areas, whether they ponded or
22 not.

23 Kegarice was a problematic study I think, because
24 she misrepresented some of the historical information, and it
25 didn't appear that there was a technical wetland delineation

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1 done. There was a report that some holes were dug, but
2 absolutely no data, or data sheets, were part of that report.

3 So, I would simply say that it is a nice list, but
4 it doesn't indicate that a consensus of experts decided there
5 were no wetlands there.

6 **COMMISSIONER CLARK:** A follow-up question, in the
7 area of adequate water to sustain wetlands, one of the
8 assertions made by the applicant is that the water budget is
9 not enough to sustain wetlands in the EPA. Can you address
10 that point?

11 **ENVIRONMENTAL PROGRAM MANAGER DIXON:** Once again,
12 this is something that I recently discussed at some length in
13 technical memos, and are included in exhibits within the
14 staff report --

15 **COMMISSIONER CLARK:** Right, and I understand that.

16 **ENVIRONMENTAL PROGRAM MANAGER DIXON:** -- and the
17 principle problem here is that in order to come up with these
18 kinds of determinations, you not only have to have some
19 estimate about how much water is present, you also have to
20 have an estimate as of how much water is needed, in order to
21 sustain a wetland vegetation community.

22 The data that was used, in my opinion, were
23 absolutely inappropriate for that. They were data that were
24 put together back around 1940, by people who were concerned
25 about the use of water, and developing human uses of water,

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1 and they wanted to know how much water was used by
2 vegetation, and they wanted to figure out ways of capturing
3 that water.

4 And, so the studies they did for herbaceous
5 species, they put them in large metal containers and they
6 maintained a fixed level of water within those containers, so
7 that the plants had a continuous supply of water all of the
8 time for 12 months. Most of these areas were in areas where
9 evaporation was high because they had seasonally very hot
10 temperatures, and they were interested in finding out what
11 the maximum uptake was in those particular areas.

12 Now, they also did some, quote, corrections, where
13 they would reduce that amount of water by roughly -- let's
14 just say 50 percent, on that order, in order to determine
15 what the maximum uptake would be right next to the
16 containers, but in a natural marsh, because they found that
17 there were scale issues by what they observed experimentally
18 and what they would have observed nearby. They also found
19 the more water you give them, the more they use.

20 These data simply aren't reliable, and they are
21 not appropriate for this kind of determination. Now, Mr.
22 Bomkamp, for some of the data divided by half, but one still
23 has no idea what that means, and the half was arbitrary and
24 they didn't have a reasoned basis. So, I have no faith in
25 any of these guesstimates that are based on, first an

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1 estimate of water availability, and second an estimate of
2 what a wetland vegetation community would require in order to
3 hang in there.

4 **COMMISSIONER CLARK:** Dr. Dixon, another question,
5 relative to Dr. Sanders' testimony to the Commission today,
6 he basically said that all of the properties -- uplands not
7 wetlands -- can you draw the distinction for us between
8 uplands and wetlands? what is the distinction there?

9 **ENVIRONMENTAL PROGRAM MANAGER DIXON:** That was the
10 purpose of reading the verbatim transcript of what he said in
11 1987, and the point, I think is, is that we are talking about
12 two different things. We are talking about a biological
13 entity that is a wetland, but in order to identify such
14 things, as a society we define them.

15 The Army Corps of Engineers, and the EPA, require
16 the presence of three parameters, including wetland
17 vegetation. If you farm the area it doesn't have wetland
18 vegetation; therefore, in that jurisdictional sense, it
19 doesn't meet the wetland criteria.

20 However, the Corps has a remedy for this, and they
21 say that if it is an atypical situation where human
22 activities have removed the indicators of one of these
23 parameters, then you have to approach it differently. And, I
24 believe Dr. Lee, when he was at the mike, described some of
25 that approach.

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1 One of the things you do is you go and look at
2 nearby areas that look the same, about the same height, seem
3 to get about the same water, and you ask yourself, "What is
4 the vegetation there?" And, you use that as some kind of
5 proxy. It doesn't mean that the exact same vegetation would
6 grow at the questionable site, but it certainly suggests that
7 wetland indicator species could predominate there.

8 And, so, that is the kind of determination that
9 was made in 1987 and 1989, and that is what I attempted to
10 do.

11 **COMMISSIONER CLARK:** Thank you.

12 And, then, I guess maybe Director Douglas, because
13 you go back to 1982. I think we heard from Flossie Horgan,
14 the statement that in '82, the Coastal Commission had a
15 finding on the LUP that wasn't consistent and that wetlands
16 were established on the record.

17 Can anyone, from staff's perspective, talk to
18 that?

19 **EXECUTIVE DIRECTOR DOUGLAS:** Let me ask Sherilyn
20 to respond to that.

21 I was there in 1982 --

22 **COMMISSIONER CLARK:** I know you were.

23 **EXECUTIVE DIRECTOR DOUGLAS:** -- but, I don't
24 remember it.

25 **DISTRICT DIRECTOR SARB:** Yes, Commissioner Clark,

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1 through the Chair, in the action on the Huntington Beach LCP
2 Amendment, in 1982 the Commission deferred certification over
3 this area with a finding saying that one of the reasons for
4 the deferred certification was due to the presence of
5 wetlands on the property. To my knowledge, there has not
6 been any kind of detailed analysis of those wetlands until
7 this point.

8 **COMMISSIONER CLARK:** I see, so it wouldn't be
9 accurate to say that there was a determination made at that
10 point in time, correct?

11 **DISTRICT DIRECTOR SARB:** That would be correct.

12 **COMMISSIONER CLARK:** Okay, thank you.

13 **DISTRICT DIRECTOR SARB:** Just that there was a
14 potential for wetlands.

15 **COMMISSIONER CLARK:** Understand.

16 **EXECUTIVE DIRECTOR DOUGLAS:** Commissioner Clark,
17 let me just augment that with what Dr. Dixon was saying, in
18 terms of your last question, and underscore that the criteria
19 used by the Corps and EPA are different from the criteria
20 that the Coastal Commission uses, and I think it is important
21 to keep that in mind.

22 **COMMISSIONER CLARK:** Right, okay.

23 Mr. Chair, I have some other questions, but why
24 don't I yield to other Commissioners for questions at this
25 point.

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1 **CHAIR KRUER:** Mr. Baird, do you want to go ahead?

2 **COMMISSIONER BAIRD:** I find myself in a bit of a
3 quandary when I look at what Fish and Game has said about
4 this, and they say that -- at least with regard to the WPA, I
5 think, and perhaps the EPA wetlands, that they don't meet
6 their criteria, very unlikely the sites could be restored to
7 a functional wetlands without substantial manipulation of
8 hydrological conditions.

9 Then, they go on to talk about the very difficult
10 -- any kind of characterization of these as wetlands would
11 probably meet with limited success, due to the size of the
12 area, the isolated nature of the site, and other factors.

13 So, I've got our Department of Fish and Game
14 making those kinds of statements about the wetland viability
15 of the site, and then I probably would like to hear a little
16 bit from the fellow from the Corps, about his experience when
17 he came out here, and about the statements about the criteria
18 that they used, versus what the Commission staff is using.

19 But, when I look at something, for example, we
20 sort of skated over it a little bit, and I think I want to be
21 very, very clear on this, this 7-day standard is that not
22 what we are using here, or are we using a 7-day standard, but
23 if the soils are hydric, and if there might be vegetation, or
24 whatever, A, is that an absolute standard? and in the cursory
25 look that I have had, I have not seen that any other entity

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1 of state or federal government has used a 7-day standard.

2 Although, in the literature they talk about 7
3 days, and how that is an important period of time, but I
4 haven't seen that standard used, so maybe Dr. Dixon could
5 comment on that.

6 And, then, I would like to just get a comment,
7 since he is here, I think it was very interesting as I read
8 through here, Mr. Sanders, and I would just like to get his
9 perspective on the differences in the criteria used by the
10 Corps versus the Coastal Commission.

11 But, I think, first Dr. Dixon, if he could.

12 **ENVIRONMENTAL PROGRAM MANAGER DIXON:** Well, as I
13 stated earlier, Commissioner, I don't think that one should
14 focus too much on 7 days, or 14 days, or any other particular
15 days, because the way the Commission's definition is written,
16 if it is wet enough, long enough for it to support a
17 preponderance of wetland indicator species, it is a wetland.

18 And, so I felt the need to establish some minimum
19 number, simply because wetlands are supposed to have water in
20 them, and 7 days, based on the literature, and the fact that
21 it is used as a field indicator of hydric soils, that Ralph
22 Tyner of Fish and Wildlife Service thought it was generally
23 enough to promote a preponderance of wetland vegetation. Way
24 back, when EPA had their own manual, they used 7 days, but
25 they now go with the Corps, which is actually 18.5 days in

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1 this part of the world.

2 So, the 7 days is sort of a minimal standard that
3 if, you know, it isn't that wet, it is pretty darn sure it is
4 not going to be a wetland. But, the critical thing here is
5 doing the atypical analysis, where we try and identify
6 another place nearby, in the same area, that we all seem to
7 agree is a wetland, and say how do these places compare, in
8 terms of the amount of water they get? and whatever that
9 amount of water is, from what information we have -- and
10 granted you know there is a limited number of photographs
11 available, but the ones we have they look like they are about
12 the same amount of wetness.

13 **COMMISSIONER BAIRD:** An analysis with the WP, for
14 example, is you can say it has up to 7 days, or over 7 days
15 of inundation, you can't say the soils haven't gone hydric
16 and there is no hydric vegetation, when number 1, it is
17 plowed, so it doesn't have the opportunity, I suspect, but --
18 or have you been able to say that those soils, after 7 days,
19 I mean did they have the chemical characteristics?

20 **ENVIRONMENTAL PROGRAM MANAGER DIXON:** What I am
21 saying is that they don't have to hydric soils, in order to
22 support a preponderance of wetland vegetation.

23 **COMMISSIONER BAIRD:** I see, okay, all right,
24 that's good, thank you.

25 Could we hear from the Corps, Mr. Sanders. I just

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1 want to get, because I do understand that we are looking here
2 -- my understanding is, just to get this clear, that the
3 Coastal Commission definition is using one of three
4 indicators, and if there is water on the site for a long
5 enough time, that is what is, basically, being used. I just
6 am curious if you could comment on that, with respect to your
7 delineations?

8 **MR. SANDERS:** Hello, okay, basically, and what we
9 did --

10 **CHAIR KRUEER:** Your name for the record.

11 **MR. SANDERS:** I am sorry. Dana Sanders, I
12 delineated the MWD in 1987.

13 In considering what we were to do, it is correct
14 it was farmed when we were there, in fact, there was no
15 vegetation at the time that I originally looked at the site.
16 It was ready to be planted. And, so, we were faced with the
17 situation where there was no vegetation. So, then, that
18 eliminated us being able to use that criterion, as it existed
19 on the site.

20 The question about whether the soils were
21 functionally hydric, it was very clear when we looked at it,
22 that there was no indication that it was functionally hydric,
23 and later studies with the alpha alpha diperital, which
24 clearly showed whether the site is in the reducing soil
25 condition, that is critical for the development of hydric

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1 soils. If that doesn't develop, then those soils are not
2 going to function as a hydric soil.

3 So, basically, what we were left with was the
4 hydrology. Mr. Bilhorn, with his limited analysis that he
5 could do during that time, felt that there was an area there
6 that ponded water, and he got that from the aerial
7 photographs, and basically -- the ones he had available --
8 and basically we went out and looked at the site, I can tell
9 you categorically the fact that it was farmed, you know,
10 clear of vegetation in the farm field, there was absolutely
11 no indication to me that there was any sort of depression
12 there -- it was some nebulas thing.

13 But, nevertheless, because he had done some
14 hydrologic work, I had none available to me, other than what
15 he presented, I basically had no choice, because we were
16 supposed to make these determinations on the preponderance of
17 the evidence. And, so he had some that indicated, at least,
18 in one year that the site ponded water in an area, he felt
19 that that was -- what he had done was adequate to suggest
20 that this site had wetland hydrology.

21 Unfortunately, we didn't have all of these other
22 data that clearly showed that it didn't have wetland
23 hydrology, so what basically happened was because it had
24 wetland hydrology, the presumption was that if it had wetland
25 hydrology then it would develop, at least hydrophytic

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1 vegetation.

2 Now, that didn't take into account the fact that
3 -- at least for our purposes -- those conditions have to
4 happen in more than half of the years. In other words, more
5 than 50 years out of 100. Now, I know that that clearly
6 doesn't happen here. You get some years when it does get
7 wet, but it doesn't get wet in more than 50 percent of the
8 years enough to produce wetland hydrology and support even
9 annual hydrophytic vegetation.

10 So, if I had known that then, what I know now, I
11 would not have chosen to allow my delineation to be based on
12 what Mr. Bilhorn had done, because that would just be one
13 piece of the puzzle. If I had this other, that would trump
14 it.

15 **COMMISSIONER BAIRD:** Dr. Dixon, what does that --
16 translate that into your definition of this, because it seems
17 to me, that when I asked the question about development of
18 hydric soils, you kind of said that is not the point. I
19 thought you were saying that the point is that there is
20 enough water there to support wetland vegetation, and I guess
21 what I am hearing is that at the WP site, you don't have the
22 ability to see that vegetation develop, so you are looking at
23 kind of another site that has similar characteristics and
24 extrapolating. Is that what we are doing?

25 **ENVIRONMENTAL PROGRAM MANAGER DIXON:** With regard

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1 to the WP site, that is correct. With regard to the EPA site
2 I don't believe any alpha alpha diperital testing was done in
3 the 1980s. You can ask, but I believe Mr. Sanders was
4 referring to recent work by Shea Homes' consultants.

5 And, in terms of there being a depression in areas
6 of the EPA site, it was very obvious on all of the early
7 topographic maps, including the one that Mr. Bilhorn used, in
8 order to draw his boundaries, it doesn't mean that it is not
9 somewhat subtle, when you are standing out there in a great
10 big area by yourself, it is hard to see these things, but it
11 was clearly there.

12 And, so, the judgment, of course, then was that
13 there was hydrology, as Dr. Sanders said, but it doesn't
14 happen now. But, of course, now is after all kinds of
15 alterations.

16 **COMMISSIONER BAIRD:** Okay, I guess I would just
17 finish with that it seems to me, at this point, we have the
18 determination you just went through, and that is what we are
19 evaluating. At this point, there is no other state or
20 federal agency that is on record, other than the historic EPA
21 designation, that either the EPA wetland, or the WP should be
22 classified as a wetland.

23 **ENVIRONMENTAL PROGRAM MANAGER DIXON:** You know, I
24 think the Fish and Game was on record of assessing the
25 wetland descriptions that were supplied to them by the city,

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1 and on that basis of that saying there didn't appear to be
2 any wetlands there; however, Fish and Game did show up at a
3 1998 city hearing, and suggested that the area be left fallow
4 in order to empirically determine whether there were wetlands
5 present.

6 **COMMISSIONER BAIRD:** Is that in the record,
7 somewhere?

8 **ENVIRONMENTAL PROGRAM MANAGER DIXON:** Yes, it is.

9 **COMMISSIONER BAIRD:** As an exhibit?

10 **ENVIRONMENTAL PROGRAM MANAGER DIXON:** I don't
11 believe it is in an exhibit. It is in a quote from the
12 council hearings in one of my memos.

13 **COMMISSIONER BAIRD:** Okay, thank you.

14 **CHAIR KRUER:** Okay, Commissioner Wan.

15 **COMMISSIONER WAN:** These are very complex issues,
16 so let me make a couple of sort of general comments, and then
17 go through some of the specific issues.

18 First, just a quick comment about the new proposal
19 from Parkside Homes. Frankly, it is not much different from
20 their original proposal. I can't fully analyze it, because
21 it was, obviously, just submitted, but it doesn't recognize
22 the WP wetlands, or the EPA wetlands, and it doesn't deal
23 with the need for the increased protection in the northern
24 ESHA grove, and it still allows the NTS in wetland buffer,
25 and these are the major issues of this staff report.

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1 I would like to point out that, by the way, for
2 those people who are concerned, whatever development
3 footprint is approved here, the flood control levy will be
4 built, and it is necessary to be built, so that is not really
5 an issue.

6 There has been a lot of finger pointing here about
7 misleading statements, attacks on the staff as being, quote,
8 result driven. If you haven't read Dr. Dixon's memos, and
9 the memos from Jonna Engles, and John Van Coops, you should,
10 because they methodically go through the statements by the
11 agents, and take them apart for their inaccuracies, mis-
12 representations, and erroneous conclusions, and it is hard to
13 deal with that in the kind of depth that needs to be done in
14 a hearing room, but they do an excellent job in the written
15 memos.

16 In the end, Dr. Dixon's conclusions are supported
17 by extensive research of the literature, communications,
18 personal communications, and excellent mapping data, and
19 frankly, in my opinion, they are unassailable.

20 There are assertions that are made in the letter
21 that we received from the Shea -- I don't know whether we
22 call the Shea anymore, or Parkside, -- Parkside attorneys.
23 Staff does not talk about the wetlands in regards to their
24 potential as wetlands. They talk about the WP wetland as an
25 existing wetland, and the EPA wetland that did exist, where

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1 the wetlands needing protection do not currently exist, like
2 the EPA, it is because they were filled without the benefit
3 of a permit.

4 It is not a change in policy to look at wetlands
5 that once existed. It is looking at what are wetlands that
6 exist now, or would exist if they had not been filled in
7 without the benefit of the permit. That is not a change in
8 this Commission's policy. It is the policy we have always
9 followed.

10 Again, I am not going to go into the various
11 attacks on Mr. Van Coops, and ignoring studies, and stuff,
12 but the fact is we have -- the reason we have a staff to deal
13 with these issues, is because it is their job to review all
14 of the information from all sides, and give us the benefit of
15 the best scientific judgment that they have. They, of all of
16 the people out here, are the most objective of anybody. They
17 are not being paid by an applicant, or by an opponent. They
18 are our scientific judgment, and that is what they are
19 supposed to be doing.

20 Frankly, I have read the analysis of some of the
21 studies. For instance, the Bomkamp and Hunsacker, and those
22 studies are totally unsubstantiated. They are based on
23 misstatements of fact, and based on experiments that are not
24 scientifically valid.

25 Of the 12 studies -- and we will go into those

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1 studies that are cited, and Dr. Dixon did do that to some
2 extent -- the majority of them are by agents who were hired
3 by applicants, and are not studies at all. Most of them did
4 not do independent research, and of the 6 studies done after
5 the EPA determination, 3 of them weren't studies, some of
6 them are concurrence letters -- those are not wetland
7 delineation studies.

8 And, the remaining studies were scientifically
9 flawed because they didn't attempt to assess the conditions
10 as they existed in 1987, but dealt with the conditions at
11 that time.

12 I could go on and on, but suffice it to say that
13 the conclusions of these applicant's agents, such as
14 Homrighausen, and Bomkamp, are just not scientifically valid.

15 Let me go into a couple of the specific main areas
16 of concern. The first one is the ESHA, or the northern grove
17 of eucalyptus trees. And, frankly, you don't have to be a
18 genius to see how it functions, and it currently functions as
19 part of the same southern designated ESHA. They are not
20 separate. The gap is nothing to a raptor, and there is no
21 way they are not functionally connected, and operating
22 together. It is one ecosystem.

23 If this ESHA does not have sufficient buffer, it
24 will cease to function, especially for foraging raptors. We
25 are going to lose those ag fields which are the hunting

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1 grounds, and in the very least we need to maintain that
2 buffer to keep some habitat.

3 A 150-foot is not sufficiently large enough for
4 the ESHA to continue to function, and to prevent the impacts
5 of the human activity, which is going to occur on both sides
6 of this grove, distance is needed from humans, and from the
7 park, which is an active park. It is not a passive park. It
8 is an active park, and that is not appropriate close to an
9 ESHA.

10 A 100-meter buffer is not excessively large, but I
11 understand where people are coming from when they say, "Well,
12 where have you actually approved 100-meter buffer?"

13 Frankly, the buffer that was approved at
14 Hearthside on the mesa, was -- it is true it was an average.
15 It was an average of 276 feet. This is not an average of the
16 300 and some odd feet that they claim, because they
17 conveniently use the 100-meter buffer, which they say isn't
18 appropriate, from the southern grove to average that with the
19 150-foot that they are providing in the northern grove.

20 So, the issue for us has to be the impact, or the
21 need for adequate buffer on that northern grove, and 150-foot
22 doesn't do it, folks. You may not want to go to 100-meters,
23 but 150-foot is not going to protect those raptors. It is
24 going to wind up in that grove not being functional for them.

25 And, let's not be lulled into this. We average

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1 the whole thing, including I might add, the area of the
2 active park, which is hardly appropriate as a buffer.

3 It is really important, I would like to see us go
4 to go a 100-meter buffer, because just as in the southern
5 section that is what is appropriate, but regardless 150-feet
6 is not adequate.

7 The wetlands, this is a complex issue because
8 these are farmed, and the wetlands are destroyed by filling
9 and farming over the years. The farming is permitted, the
10 filling was not. And, there is plenty of evidence that both
11 the AP and the WP wetlands are, in fact, wetlands.

12 I am not going to go into the sampling in their
13 attack on Mr. Bixby's sampling methods, but frankly, what he
14 has done indicates that the plants in the WP are a prepon-
15 derance of hydrophytes. And, I might add, this is the driest
16 year on record, and you still have hydrophytes. And, in
17 fact, when I went out there in May, it was very clear that
18 some of those plants were hydrophytes, and if it is going to
19 be there from just being let to lay fallow for one year, that
20 is all, and it is the driest year on record, and there are
21 hydrophytes out there, it is pretty hard to say this is not a
22 wetland using that standard.

23 As far as the hydrology standard that the
24 applicant is using, I think Dr. Dixon covered this pretty
25 well. You have got to, first of all, the applicant is using

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1 14 days. The Commission has, in the past, in general -- and
2 I have been at this pretty long, about 20 years here -- use 7
3 days, but as Dr. Dixon says, the issue here is that 7 days is
4 the minimum. The issue is hydric soils, the production of
5 hydric soils.

6 If we do what the applicant suggests, reject the
7 7-day ponding standard, you are rejecting that standard not
8 just for this development, if it is done in this manner, but
9 for all wetlands, and that is not something that this
10 Commission should consider, because if we take these
11 findings, or these suggestions, on this basis, we are
12 changing the way and the standard for the way that we define
13 wetlands.

14 And, I might add that using 7 days as the minimum
15 doesn't turn all of northern California into a wetland, but
16 what it does do, if you go to 14 days, is to find a way most
17 of the wetlands in Southern California, and that is not
18 appropriate. We don't use all of the same standards in every
19 area. But, the truth is that 7 days is the minimum, and that
20 is what you use here.

21 What we have to do is look at the ponding, the
22 evidence of ponding over a long period of time, and that is
23 what staff has, actually, done. Their recommendation is most
24 scientifically accurate, and conservative.

25 If you look at the table -- there is a table in

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1 the Dr. Dixon's memo to us, and it says that -- and it is
2 looking at the ponding on WP, at the WP area over many years
3 -- the WP ponds for more than 7 days for 64 percent of the
4 time, during most years, and for greater than 14 days, for 45
5 percent of the time. So, even if you use the 14-day
6 standards, folks, this is still a wetland. And, we really do
7 need to be careful about setting new standards relative to
8 wetlands. This Commission has always been protective of
9 wetlands, and has had a very good record, in relationship to
10 that, and I would hate to see this set the precedent for the
11 destruction of wetlands up and down this coast.

12 As far as the water budget, which the applicant,
13 again, they do an analysis for the water budget and argue
14 against the WP being -- ability to grow wetland vegetation,
15 and as Dr. Dixon stated, this is based on a 1942 study in the
16 Sacramento delta. That is what their water budget is based
17 on, and this one study's theory has not been accepted by the
18 scientific community, which is why there is no citation for
19 it in recent studies. And, the only other study they did was
20 the study that he talked about using plants in containers.
21 This is not a scientific basis for saying it is not a
22 wetland.

23 Farming -- let me quickly go through some of these
24 others -- staff has reviewed this issue. For decades this
25 area has consistently showed a depression with the EPA

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1 delineated wetland, but in the past few years that depression
2 has been obliterated. We have seen that over and over again,
3 through all kinds of proof.

4 The applicant is certainly allowed to continue
5 farming -- and that is why I don't understand the farming
6 community's concern -- but the amendment doesn't continue
7 farming. It is to allow the development of houses, not to
8 allow the continuation of farming, which is appropriate, they
9 can continue to do that.

10 This area was deferred for certification because
11 it was considered there are wetlands on it. To come in here
12 and say there aren't any, other than the CP, is just not
13 appropriate.

14 The natural treatment system, the NTS, we don't
15 generally allow those things in buffers. I don't know why
16 you would allow it in a wetland buffer here. This is not a
17 constrained property that is so small that we are forced to
18 put it into the wetland buffer, or we can't get to develop
19 it. This is a large parcel of undeveloped land, and it
20 should be designed appropriately. And, putting the NTS in a
21 buffer is just not appropriate here.

22 And, as far as the violations, I think we have
23 gone over that over and over again. There is a lot of
24 evidence to indicate there has been illegal fill both at the
25 EPA wetland, and in the equestrian area.

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1 I would just like to close by reminding everybody
2 that this is the Bolsa Chica ecosystem, one of the most
3 important such ecosystem in the state, certainly in Southern
4 California.

5 And, it is not our job to determine what the
6 density should be. This is an LCP Amendment. It is the
7 development envelop that we must determine.

8 I don't care whether they want to make this more
9 denser, or they want to make it less dense. That is not the
10 issue. Development of part of this site is appropriate. The
11 protection of this ecosystem is also important, and staff's
12 modification do just that.

13 **CHAIR KRUER:** Thank you, Commissioner Wan.
14 Commissioner Reilly.

15 **COMMISSIONER REILLY:** Thank you, Mr. Chairman.

16 It is always tough when you have conflictive
17 scientific and wetland expert, you know, testimony coming
18 before you to try to sort out what is what, but the one thing
19 I think we can all agree on is that there have been more
20 pictures taken of this property over time than probably many
21 of our national monuments have.

22 I think, generally, staff has done a good job with
23 this. I do have some concerns, and unlike my colleague,
24 Commissioner Wan, I do not remember using a 7-day ponding
25 standard previously in the delineation of wetlands. I only

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1 have 11 years versus her 20, so I may have to defer to that,
2 but certainly in the last decade, or so, I can't recall any
3 time when we have done that, and it does concern me as a
4 precedent for agriculture in other parts of the state.

5 My understanding -- as a question to staff -- we
6 are talking about having the land, the WP land to be fallow,
7 was it not left fallow for some period of time? and what did
8 we find there, Dr. Dixon?

9 ENVIRONMENTAL PROGRAM MANAGER DIXON: I don't know
10 how long, it was periodically left fallow --

11 COMMISSIONER REILLY: I mean more recently.

12 ENVIRONMENTAL PROGRAM MANAGER DIXON: You mean --

13 COMMISSIONER REILLY: Not farmed.

14 ENVIRONMENTAL PROGRAM MANAGER DIXON: -- within
15 the last couple of years?

16 COMMISSIONER REILLY: Yes.

17 ENVIRONMENTAL PROGRAM MANAGER DIXON: It seems to
18 have a preponderance of wetland vegetation, even though it
19 has been pretty darn dry.

20 COMMISSIONER REILLY: Okay, could the applicant
21 clarify that point? because we heard that the Fish and Game
22 people and the city testify that you ought to leave it fallow
23 for awhile --

24 MR. METZLER: I've got one point.

25 COMMISSIONER REILLY: -- see what is there.

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1 **MR. METZLER:** I'm sorry, Ron Metzler, Shea Homes.
2 I've got one point, but I will let Mr. Bomkamp supplement --

3 **COMMISSIONER REILLY:** I just want you to answer my
4 question --

5 **MR. METZLER:** Okay.

6 **COMMISSIONER REILLY:** -- relative to WP, has it
7 been left fallow? what did you find there?

8 **MR. METZLER:** As soon as we received the citation
9 in early '06 we ceased farming, so it has been fallow since,
10 and I would like to supplement that these plants that may
11 look like wetland plants are not acting as hydrophytes, they
12 are acting as halophytes, upland plants, because they do not
13 have the water to sustain as wetlands.

14 **COMMISSIONER REILLY:** When in 2006 was it?

15 **MR. METZLER:** We got the citation, I am guessing,
16 in February.

17 **COMMISSIONER REILLY:** Okay, so it has been almost
18 two years.

19 **MR. METZLER:** Yes.

20 **COMMISSIONER REILLY:** All right.

21 **MR. BOMKAMP:** Tony Bomkamp. As far as the wetland
22 plants go, as I mentioned earlier we did vegetation transects
23 in the WP area in 2006, and in 2007. In both years we found
24 a predominance of upland plants. We found plants that have
25 the wetland indicator status of, you know, fac, or fac-wet,

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1 but the predominance, using what is called the prevalence
2 index -- which has been around really since the 1989 manual,
3 and has recently been adopted by the Corps in their almost
4 brand new Air West Manual, adopted in December of 2006.

5 The prevalence index takes into account all of the
6 vegetation that is there, not just the dominant species, and
7 it actually uses a weighted average, both by percentage and
8 by the indicator status of the plant, so it is a more
9 accurate method to do it. It is more time consuming, and you
10 have to be a good enough botanist to be able to identify all
11 of the plants in order to use that method.

12 **COMMISSIONER REILLY:** All right, I think that
13 answers my question.

14 And, Dr. Dixon, have you been privy to that
15 information?

16 **ENVIRONMENTAL PROGRAM MANAGER DIXON:** Yes, I have.

17 I would just point out that the prevalence index
18 is a valid way of assessing vegetation. It doesn't require
19 anymore effort than doing what is known as the 50-20
20 approach, which is a particular way of assessing dominance
21 amongst the species that are present. In both cases, you
22 have to identify the plant and estimate its abundance, in
23 terms of its cover.

24 I have spent some time looking at this issue, and
25 I haven't found any studies that would demonstrate that the

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1 prevalence index was necessarily more accurate, in terms of
2 identifying wetlands than the predominance approach using the
3 50-20 rule, and simply asking of the dominant plants, are
4 more than half of the wetland indicators?

5 And, I believe it is true that the Corps now
6 accepts both, and I am sure Mr. Bomkamp can address this, but
7 I believe they also say to use whichever one is most
8 conservative, in terms of identifying wetland vegetation.

9 **COMMISSIONER REILLY:** So, we have been operating
10 through a lot of this hearing with the notion that we didn't
11 have information about the plant community there, because it
12 had been farmed, and that is why I asked my question about
13 the last couple of years.

14 So, is it your testimony that by the other
15 measurement, the predominance measurement, that it is
16 predominantly wetlands, versus upland plants.

17 **ENVIRONMENTAL PROGRAM MANAGER DIXON:** That is
18 true. And, I haven't emphasized this because it is very
19 difficult to interpret the meaning of these vegetation
20 surveys during the period of drought.

21 What it does tell one, I think, is that over a
22 period of time, that these wetland plants have sprouted and
23 lasted long enough to place seed in the seed bank, such that
24 even in a dry period, you get a bunch of wetland species that
25 are coming up.

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1 **COMMISSIONER REILLY:** What it tells me is we have
2 two methodologies approved by the Army Corps with opposite,
3 you know, conclusions about this particular area.

4 **ENVIRONMENTAL PROGRAM MANAGER DIXON:** No, sir,
5 they are not opposite. The prevalence index is a continuous
6 variable, and people don't really know where to draw lines,
7 and the line that people have chosen --

8 **COMMISSIONER REILLY:** At least to date, they don't
9 seem to agree, that is all.

10 And, I had a question for Mark. Mark you had
11 talked about the elevation changes in WP, and earlier you
12 said that there really wasn't any from '97 to 2005, and then
13 you addressed that in your comments, and I didn't catch the
14 significance of the topographical change that you were
15 talking about. Would you go over that again for me?

16 **SENIOR GEOLOGIST JOHNSON:** Sure, thank you,
17 Commissioner.

18 The purpose of Mr. Van Coops' analysis was simply
19 to describe the topography on the ground. The difference
20 between -- we have a photo supplied by the opponent, which
21 you saw the video of showing a large amount of fill. That
22 does not appear to be present in that area in the 2005, or
23 2007 topographic surveys.

24 The resolution of the surveys is right at the
25 limit of what you could see if you would spread fill around

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1 through that WP, that was the only significance.

2 **COMMISSIONER REILLY:** Okay, earlier you said that
3 from 1997 to 2005 topos, there really wasn't -- the WP was at
4 one foot, or less, and then when did a change happen in that?
5 or has there been a significant change in that elevation?

6 **SENIOR GEOLOGIST JOHNSON:** The significant change
7 is only in the area of the below 1-foot elevation, which has
8 changed dramatically, in terms of acreage, but a very small
9 difference in elevation would account for that different
10 area.

11 **COMMISSIONER REILLY:** Has the elevation increased
12 or decreased?

13 **SENIOR GEOLOGIST JOHNSON:** It has increased.

14 **COMMISSIONER REILLY:** To what?

15 **SENIOR GEOLOGIST JOHNSON:** To the accuracy of the
16 survey. The spot elevations are to -- call that to a 1/10th
17 of a foot, and if we can really believe that to a 1/10th of a
18 foot, the change in elevation is, approximately, 3/10th of a
19 foot, I believe.

20 **COMMISSIONER REILLY:** A 3/10th of a foot in the
21 WP.

22 **SENIOR GEOLOGIST JOHNSON:** In the WP.

23 **COMMISSIONER REILLY:** Okay, because we are hearing
24 a lot about fill, and fill being used there, and I am just
25 wondering if 3/10th of a foot could be assigned to diskings as

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1 easily as it could be assigned to, you know, fill going in
2 there, and it doesn't sound like a lot of fill.

3 **SENIOR GEOLOGIST JOHNSON:** Both the EPA area and
4 the WP are very subtle features. They are fairly large, but
5 they are not deep, and topographically they are very subtle
6 features, so a little bit of fill would change the hydrology
7 of the depression.

8 **COMMISSIONER REILLY:** So, okay, we are talking
9 about 2 inches? 2.5 inches, somewhere in there?

10 **SENIOR GEOLOGIST JOHNSON:** About that, 3.5 to 4.

11 **COMMISSIONER REILLY:** Okay, 4, okay.

12 The other thing that is a little bit unusual about
13 this, and I am sort of struggling with it, is we have these
14 alleged violations that have occurred. In May, staff didn't
15 find any since they have looked at evidence, and I believe
16 staff said there was evidence of greater fill in the stable
17 area, than they can find authorized in prior -- through any
18 Coastal Development Permits.

19 And, on violations, typically, we make findings
20 and pursue enforcement actions, and it seems here we are sort
21 of recognizing what appears to be a violation, and we are
22 dealing with that through conditions and mitigation, which
23 seems like a different approach than we have taken in the
24 past relative to things that we think are violations of the
25 *Coastal Act*, and wonder if staff could comment on that?

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1 **DISTRICT DIRECTOR SARB:** Yes, Commissioner Reilly,
2 through the Chair.

3 We are just assigning land use designations at
4 this time. It is not that we are approving development on
5 the site, and so I think that we are considering the
6 unpermitted development in that realm, and preserving the
7 wetlands as if they existed and were protected under the
8 policies of the Coastal Act.

9 In terms of whether we would be pursuing enforce-
10 ment activity over the --

11 **COMMISSIONER REILLY:** I know you added language to
12 leave that opportunity open, but so are you saying, at this
13 point, that the Commission has made a finding that there is,
14 in fact, a violation and unpermitted fill on the property? is
15 that where we are, because it doesn't seem like we are quite
16 there, yet.

17 **COMMISSIONER WAN:** No, it doesn't say that, right.

18 **DISTRICT DIRECTOR SARB:** No, we have not done
19 that.

20 **COMMISSIONER WAN:** No.

21 **EXECUTIVE DIRECTOR DOUGLAS:** No, what we are --

22 **COMMISSIONER REILLY:** But, we are then asking for
23 mitigation for a finding we haven't made yet? I mean, I am
24 trying to understand.

25 **EXECUTIVE DIRECTOR DOUGLAS:** No, what we are

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1 saying is --

2 **COMMISSIONER REILLY:** We are asking for 4 acres
3 mitigation? what is it?

4 **EXECUTIVE DIRECTOR DOUGLAS:** No, my understanding
5 is, first of all, we have evidence that there appears to have
6 been a violation. We have not established that yet, because
7 we don't have the enforcement action going to the point of
8 making that determination.

9 **COMMISSIONER REILLY:** Yes, and my concern with
10 that, Peter, is that we seem to be moving on conditions which
11 assumes that violation and conditioning the land use
12 designations based on that, so I am worried about a horse and
13 a cart kind of a problem here that we have.

14 **EXECUTIVE DIRECTOR DOUGLAS:** No, we are basing our
15 recommendation really on Dr. Dixon's professional opinion
16 here, and his findings.

17 **COMMISSIONER REILLY:** Well, but there is a finding
18 in there that says the reason we are not using existing
19 conditions is that the determination that, you know, someone
20 has done unauthorized or unpermitted activities on a land,
21 that you don't have to go by existing conditions, which is
22 what we normally do, in order to make wetland findings. So,
23 it does seem to be entering in there somewhat.

24 **EXECUTIVE DIRECTOR DOUGLAS:** I think,
25 historically, this Commission has always taken the position

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1 that if we have reason to believe that there has been
2 unpermitted development that changes the resource on the
3 ground, that we don't then use that to the benefit of
4 whatever development is proposed.

5 **COMMISSIONER REILLY:** I don't dispute that. It
6 just seems like that at other times, we make that
7 determination prior to making the conditions, that's all.

8 And, I guess the only other -- I am still
9 concerned about the precedent of using the 7-day ponding in
10 the absence of a predominance of obligate plants, or a
11 finding of hydric soils.

12 I think there was a slide that the applicants had
13 that was comparing the WP and CP areas relative to soils,
14 iron content, what have you, the kind of things that you
15 normally look at to make determinations about comparability
16 of two areas, and there were some pretty significant
17 differences, they had indicated on their slide, unless Dr.
18 Dixon wants to take that one on.

19 If the only part of it we are doing is hydrology,
20 on a 7-day ponding standard, I need to be more comfortable
21 that that is not a precedent that is going to now create a
22 standard for the review of other agricultural activities in
23 other parts of the state, somehow.

24 And, finally, the northern eucalyptus grove and
25 the 100-meter buffer, I could go either way on this, but it

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1 does seem a little strange to me that, you know, 150 or 200
2 feet isn't enough, when whatever raptors have been hanging
3 out in the northern grove for the last several years have
4 been hanging out about 25 feet from a major subdivision, so
5 if they are going to be affected by human activity, I just
6 need to understand a little better why that hasn't happened
7 already, I guess.

8 **CHAIR KRUER:** Commissioner Secord.

9 **EXECUTIVE DIRECTOR DOUGLAS:** Mr. Chairman.

10 **CHAIR KRUER:** Director Douglas.

11 **EXECUTIVE DIRECTOR DOUGLAS:** If I could ask Dr.
12 Dixon to respond to the first point that Mr. Reilly made.

13 **CHAIR KRUER:** Could you make your point brief,
14 please.

15 **ENVIRONMENTAL PROGRAM MANAGER DIXON:** Yes, sir.

16 First, just let me address the 7 days. We are not
17 really relying on the 7 days here, but rather a pattern of
18 inundation and 7 days was the minimum we were looking for,
19 but in fact, it is much wetter than that.

20 I terms of the Commission's prior actions, the
21 only one that I can think of right off hand is in Newport, in
22 the Bayview Landing incident, there was a small depression
23 that actually had a preponderance of wetlands plants, but
24 there was a fair bit of photographic evidence from various
25 people that demonstrated that whereas some other areas ponded

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1 for over 7 days, during the same rainfall events that this
2 area did not, and the Commission, on that basis, decided that
3 it was not a wetland, although you were one of the people who
4 said that it was.

5 **COMMISSIONER REILLY:** Was that the senior center
6 project?

7 **ENVIRONMENTAL PROGRAM MANAGER DIXON:** Yes, sir.

8 **CHAIR KRUER:** Okay, we will take the knife out
9 later.

10 Commissioner Secord, please.

11 **COMMISSIONER SECORD:** Thank you, Mr. Chair.

12 Everybody has talked about what a compound complex
13 project this is. We have looked at it for, what, 5 times
14 now? It hasn't gotten any less complicated, in fact, I think
15 one of the wetlands even grew while we had another hearing.

16 I consider this an infill project, but I believe
17 that there is a water course on the west side of the property
18 where the eucalyptus trees are, and I believe that that tree,
19 that grove of trees as it goes from sort of north to south,
20 is watered from some underground stream.

21 I have never felt that the area called WP was a
22 wetland, because I just don't think that the preponderance of
23 evidence makes it a wetland. There is, however, a wetland
24 activity over on the north side.

25 So, it seems to me that what we ought to do is to

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1 focus our restorative efforts on doing the best we can for
2 this west side grove, including the buffers and the
3 maintenance of the wetland, and let this WP area go, because
4 it isn't -- if it is a wetland, it is sort of an isolated
5 wetland, and if you can craft some way to include it into the
6 other area, it doesn't seem like it really has any function.

7 I believe this is an infill project. I believe
8 that the 7-day ponding thing has not been our historical
9 pattern, nor has the intermingled area. I think we should
10 look at the land the way it is when the application was
11 submitted.

12 If there has been illegal piling of dirt on this
13 project, it preceded the ownership of this developer, and it
14 appears that there is no doubt that there was some dirt put
15 on that Smokey Stable area.

16 So, what I would like to do is see a project get
17 approved that intensifies the preservation, with respect to
18 the west side of this property, where the eucalyptus grove
19 is, and I would personally like to ignore the WP area, and
20 move on.

21 Thank you.

22 **CHAIR KRUER:** Thank you, Commissioner Secord.
23 Commissioner Potter?

24 **COMMISSIONER POTTER:** Thank you, Mr. Chair. I
25 suffer from the same problems that Commissioner Reilly is

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1 having for several reasons.

2 First, I am concerned about the 7 versus the
3 14-day ponding issue, and what I think we have before us, as
4 is depicted with this photo with the tractor stuck in the mud
5 and the water, are a couple of episodic events that don't
6 normally produce that kind of rainfall, and that kind of
7 damage.

8 The floods of '95 - '96 and '98 were phenomenons,
9 and I can point to photos in my district, or in my county, in
10 Monterey County, where the entire Monterey Peninsula was an
11 island. You could not get from the City of Salinas to
12 Monterey. You couldn't come down Highway One. Highway One,
13 156 and 68 were flooded, and it was impossible to get to the
14 peninsula. And, incredibly pristine and prime ag lands
15 looked exactly like that photo right there.

16 So, for that reason, I am not overwhelmed by the
17 information or the data that has been put before us today as
18 the fact that this is an area that is constantly wet.

19 And, I also have the same concerns, I think that
20 Commissioner Reilly was attempting to articulate, and that is
21 around ag operations, and the ongoing and routine nature of
22 agricultural cultivation that does allow for significant
23 earth movement. It is constantly being moved on a regular
24 basis. In my area, it is nothing to rotate 10 crops through
25 in a year in one area, and that constantly necessitates

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1 contouring, furrowing, land movement, so I am not going to
2 get into a debate about, you know, what kind of equipment is
3 being used to till the land.

4 And, I will be continually concerned that we are
5 dangerously getting close to trying to dictate what goes on
6 in the ag community, and saying that farming is synonymous
7 with grading, that that concerns me.

8 What the solution to today's quandary is, I am not
9 exactly sure, either, but I am very uncomfortable changing
10 the ponding standards from 14 to 7, and the precedent setting
11 aspect of that.

12 **CHAIR KRUER:** Thank you, Commissioner Potter.

13 Vice Chair Neely.

14 **VICE CHAIR NEELY:** Thank you, Mr. Chairman.

15 I concur with Commissioners Reilly and Potter that
16 since I have been on the Commission I have not seen the 7-day
17 ponding standard used by the Commission, and I am concerned
18 about the precedence this would set for agriculture in the
19 State of California.

20 **CHAIR KRUER:** Commissioner Shallenberger.

21 **COMMISSIONER SHALLENBERGER:** Yes, I think it is
22 really unfortunate that this 7 versus 14 days is being talked
23 about as a standard. And, now we have all bought into the
24 fact that it is a standard, but it is not a standard. It is
25 a guideline. It is an indication of something to give

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1 biologists something to look at when they are determining
2 whether or not there is enough water to support hydric soils.

3 I would like to make that really clear. I think
4 it should be on the record that it is not an existing
5 standard. It is not a standard, period. It is a guideline.

6 And, in terms of -- I absolutely understand and am
7 sympathetic with the worry about the rest of ag, but
8 truthfully, right now, agriculture is not allowed to deep
9 root intermittent streams. They are not allowed to drop a
10 plow through an existing wetlands, that is current law. So,
11 I don't want to do anything here which is going to change
12 current law, and change current practice. I don't believe,
13 by taking the staff recommendation, we would do that, unless
14 we, somehow buy into the fact that 7 days is a standard.
15 Everything I have heard Dr. Dixon say is I hear it as a
16 guidance to what is sufficient water in order to create
17 hydric soils.

18 The other thing, in terms of what the Corps would
19 do, what EPA would do, on wetlands, this is a battle between
20 the state and the feds that has been going on for decades,
21 and every three years somebody will introduce a bill in the
22 Legislature supported by developers of one form or another,
23 the Chamber, whatever, in order to reduce the standard in the
24 state of how we designate wetlands, from one indicator
25 between soil, water, and plants, to two or three. This is a

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1 long time effort to reduce how we define and protect our
2 wetlands.

3 And, we just should be very careful in the process
4 of this one hearing, and of what we are putting on the
5 record, that we are not, de facto, doing exactly that, which
6 the government has not been willing to do. We are proud of
7 California having its higher standard for protecting wetlands
8 than the federal government, and we should be proud of it.

9 So, I would urge that we don't do anything today
10 -- whatever the final vote here is, please let's make sure
11 that we are not undercutting our own ability to protect
12 wetlands in this state.

13 And, there are a lot of other things, but the big
14 picture here is this isn't just some little wetland. This is
15 the last big part of the Bolsa Chica wetlands. It is huge in
16 terms of its biologic diversity, what it means to wetlands in
17 all of Southern California. So, I would urge us not to think
18 of it as just a little infill project, where we can, quote,
19 ignore a small wetland, because, oh, well, it really wouldn't
20 have that much value if it wasn't attached to some bigger
21 structure. It is. It is part of the Bolsa Chica ecosystem.

22 CHAIR KRUER: Thank you, Commissioner
23 Shallenberger.

24 Commissioner Burke.

25 COMMISSIONER BURKE: I promised myself that I

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1 wasn't going to say anything about this issue. I was going
2 to sit here, and I was going to vote, because I know that no
3 matter what I say, I am going to be in trouble, so I was just
4 going to keep my mouth shut, for a change.

5 But, one of the people who testified triggered
6 something in my mind, and believe it or not, I turned into
7 Steve Blank. I went into my computer, and I started checking
8 some stuff, because she said that the letter was written in
9 1984. That is why I asked her who signed the letter, because
10 I was there in '84.

11 And, then one thing in my mind just kept rolling,
12 and I remembered how this whole Bolsa Chica thing kind of
13 evolved, because from my perspective the most powerful Fish
14 and Game commissioner, in the history of the Fish and Game
15 was interested in this total area, and in those days, if you
16 think this part is big, it was four or five times the size in
17 those days, and other than his private duck club he wanted to
18 put in there, he really was kind of laissez faire about it,
19 but then Mike says it is really confusing when you get two
20 experts who give you different information.

21 And, when the Fish and Game Commission says two or
22 three times, in writing, that it is not a wetland, and our
23 guy, who everybody on this Commission respects very highly,
24 says it is wetlands, I think it really leaves you in a very,
25 very difficult situation.

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1 So, the vote is probably 5 or 10 minutes away, and
2 I am still wading through it here, so I hope everybody else
3 has a clearer view of it than I do.

4 **CHAIR KRUER:** Thank you, Commissioner Burke.
5 Commissioner Blank.

6 **COMMISSIONER BLANK:** So, I am a little surprised
7 that no other Commissioner has asked the staff about this,
8 what I will call the superter [sic.] film --

9 **COMMISSIONER POTTER:** The what?

10 **COMMISSIONER BLANK:** -- about the video of the
11 8-foot high fill pile. Does staff believe there was an
12 8-foot high fill pile at the time of that video tape?

13 **SENIOR GEOLOGIST JOHNSON:** Commissioner, through
14 the Chair. Yes, we certainly do. There is --

15 **COMMISSIONER BLANK:** Great, thank you.
16 What is staff's opinion of what happened to that
17 8-foot fill pile in the last 2 years? is it still there? or
18 has it been moved somewhere else?

19 **SENIOR GEOLOGIST JOHNSON:** I think it is safe to
20 say that it has been moved somewhere else.

21 **COMMISSIONER BLANK:** Great, so let me keep going.
22 Does staff have an opinion, given the topological slides you
23 have shown us, which at least to me seems to show the ground
24 growing in altitude where the fill pile has ended up?

25 **SENIOR GEOLOGIST JOHNSON:** I think that it is a

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1 reasonable hypothesis that that fill has been spread out
2 across the fields, as the result of the farming practices.

3 **COMMISSIONER BLANK:** Okay, so let me share my
4 thinking with Commissioner Burke and the rest of the
5 Commission, at least how I am thinking about what is a battle
6 of the rocket scientists here.

7 And, the way I am parsing all of the state -- and
8 just to remind the audience, while this is the Bolsa Chica
9 ecosystem, at least how I think of what I am doing up here,
10 as a Commissioner, is using the *Coastal Act*, coastal
11 regulations, today's testimony, to adjudicate between the
12 applicants, the appellants, and the staff recommendation, and
13 I have to take all of the data, all of the testimony, and try
14 to sort out how this works with the *Coastal Act* and regs.

15 And, my first question that I have to answer for
16 me is, was whether there was normal farming activities that
17 were occurring, as allowed by law -- and I think we all
18 understand that farming is allowed, mechanical devices are
19 allowed, or was this really a grading problem occurring for
20 development using farming as a cover? That is, was this non-
21 compliance or was it farming?

22 And, there is, as we heard -- and we have plenty
23 of paper from the Farm Bureau -- that there is plenty of
24 definition in USEPA, federal *Clean Water Act*, and Farm Bureau
25 about mechanic means of manipulating the soil, and there is

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1 no specific written staff guideline from the Coastal staff,
2 or regulations in the Coastal Act that helps us define what
3 is normal farming, so I'll just defer to the Farm Bureau
4 USEPA, et cetera.

5 But, I was struggling to figure out how the entire
6 site seemed to grow in height over the years, and staff seems
7 to confirm that it wasn't until I saw the photo of the 8-foot
8 fill site, that appears no longer to be there, that it is
9 this distribution of fill, even though it is spread over the
10 site, that seems to exceed even the most extreme Farm Bureau
11 concerns. So, I believe there is evidence of unpermitted
12 fill past normal farming practice in the area of WP.

13 So, question 2 for me, as I told both the
14 applicants and the appellants in ex parte, that one of my
15 criteria of whether I support this current staff report, is
16 whether there is new evidence to support the EPA wetland
17 definitions? that is, is there new information between the
18 May staff report, and the November staff report, about
19 whether EPA is really a wetland, or not.

20 And, I really came in here confused, and here I
21 believe the evidence is still ambiguous of what there is now,
22 and the experts disagree about what guidelines to use, 7 or
23 14 days, and I am not absolutely certain we could agree what
24 was there 25 years ago, but given the staff's contention that
25 EPA wetlands would exist here when farming would cease, and

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1 giving the filling of what might have been wetlands elsewhere
2 on the site, and the topographic evidence of height increase
3 over the site, I'll give staff my agreement on this one, as
4 well.

5 My third question for me was, was there evidence
6 to support the WP wetland and buffer in the May staff report?
7 and the one here in November? And, again, because of this
8 fill, I believe there was evidence to fill something in the
9 WP area.

10 And, then, finally is there evidence to support
11 the northern grove buffer for birds in both the May and
12 November staff reports, and I think Commissioner Wan -- and
13 of course Sea and Sage Audubon, and Peter Bloom, did a good
14 job on that analysis, and I agree with staff's analysis on
15 the raptor buffers.

16 So, for Commissioner Burke, that is, at least, my
17 thinking on how I am thinking on it, and that pile of dirt
18 was my, you know, smoking gun.

19 **CHAIR KRUER:** Commissioner Firestone.

20 **COMMISSIONER FIRESTONE:** Well, sir, as the new
21 guy, I wasn't going to speak, but I do farm, and speaking for
22 the farmers that are here today, that is normal. If I had a
23 hump like that that was left by the Smokey project, on my
24 place, I would knock it down, too, because you can't farm it
25 and it is probably good dirt, with probably a lot a manure in

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1 that hump.

2 Secondly, I would like, if one was going to move
3 dirt, the photograph would be a Hancock or a land plane, or
4 something that really does move dirt. Knocking down a hump
5 is not a big dirt move.

6 And, also, when I heard that the total -- levels
7 are in the inches, we do that all of the time to prepare for
8 grapes, and it is no big deal. It is normal farming. And, I
9 have some sympathy for wanting to make a decent bean field
10 out of that, which if anybody does, that is what you do in
11 the normal course of operation.

12 And, the last observation, I am not an expert on
13 wetlands. My land is about 20 miles inland, and it is quite
14 elevated, but on these wet years I have seen ponds in our
15 fields, in the normal course of things, that look more like a
16 wetland than this does, and this doesn't look like a wetland
17 to me, nor do my ponds.

18 Thank you.

19 **CHAIR KRUER:** Thank you, Commissioner Firestone.
20 Any other Commissioners?

21 Commissioner Clark.

22 **COMMISSIONER CLARK:** Thank you, Chair.

23 It seems to me that what we are really talking
24 about is whether or not we believe EPA wetlands once existed,
25 because the premise, I think, that the staff has put forward

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1 to us is, is not that EPA wetlands is there now, but that
2 they did exist, and that through illegal land alteration that
3 has changed the landscape.

4 I would like to ask the applicant to come up and
5 address this, because to me this is the cardinal point with
6 respect to where staff is on the Land Use Plan, versus where
7 the applicant is.

8 **MR. METZLER:** I am sorry Commissioner Clark, I was
9 interrupted and I didn't quite hear all of your question.

10 **COMMISSIONER CLARK:** I would like you to address
11 the basic underlying premise that the staff has put forward
12 to the Commission, which is that EPA wetlands, they don't
13 exist today, but they believe -- and they indicate to the
14 Commission -- that they did exist, and that they would exist
15 today had it not been for illegal land alteration.

16 **MR. METZLER:** I look at that as multi-part, and I
17 first need to go backwards to what was failed to be
18 recognized --

19 **CHAIR KRUER:** Your name, for the record, sir.

20 **MR. METZLER:** I'm sorry, Ron Metzler, with Shea
21 Homes.

22 I would like to go back and reemphasize what was
23 not realized when that delineation occurred. What we have
24 come to realize, that Tom Bilhorn neglected to look at the
25 change of offsite hydrology from 4.8 acres to a temporary

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1 increase of 21.8, which is what was the result of the ponding
2 that he looked at to make his determination. This was a
3 temporary 4 time increase in the hydrology. It was a major
4 flaw in his delineation, and it should have been thrown out.

5 Furthermore, the depression, as Dr. Sanders said,
6 was barely negligible, if at all.

7 Number 1, the EPA was faulty delineated in '87,
8 faulty recognized again by EPA who did no ground truthing
9 other than walk around, and Dr. Sanders can verify that to
10 the extent that they did. No data collection. They just
11 looked around, and for whatever day in the year they did
12 this, I don't know. But, clearly, there have been subsequent
13 delineations far more detailed than Dr. Dixon described,
14 specifically looking at that EPA area.

15 Steve Rynas, of the Commission, in 1998 -- I am
16 sorry, 1997, when we issued the NOP for the EIR, specifically
17 asked for a delineation in the 8.3 EPA area. We did that.
18 And, staff, then accepted it. We had meetings with Fish and
19 Game. They all bought off on this. Fish and Game, a letter
20 from Ron Remple from Fish and Game stated he reviewed the
21 data, he walked the site, and he accepted that it was no
22 longer a wetland, period, it wasn't a wetland.

23 So, I don't whether I have addressed your
24 questions, or not, but clearly it was an inaccurate
25 delineation, clearly, would not work and not be supported at

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1 all.

2 **COMMISSIONER CLARK:** And, again, to staff,
3 reaction to the applicant's put to the Commission here on
4 this point?

5 Dr. Dixon.

6 **ENVIRONMENTAL PROGRAM MANAGER DIXON:** There was a
7 change in hydrology during the period of Cabo del Mar
8 condominium construction. It was not a 4-time increase. As
9 a matter of fact, it went from about 13.86 inches available,
10 to something between 14.23 and 18.8 inches, according to Shea
11 Homes hydrology consultants, and that is an increase of
12 between around 3 percent and 36 percent. So, it was
13 definitely an increase.

14 And, then, when it was put into the storm drain,
15 it reduced the amount of water that was available on the
16 agricultural fields to about 11.6 inches, which is a
17 reduction, depending on the assumptions they used for the
18 interim period of between about 19 percent and 38 percent.
19 So, if you took the largest figure, which is about 38
20 percent, and looked at that and assumed that the decline in
21 the wetland area was going to be scaled to that, you would
22 end up with about a 5-acre wetland.

23 **MR. METZLER:** There was one other element I
24 forgot, our biologist, Art Homrighausen just reminded me of.

25 In 1981, Fish and Game specifically delineated the

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1 50-acre parcel, found zero wetlands in the 45-acre parcel, to
2 which we proposed to have some form of development -- zero
3 wetlands, nothing in the EPA or WP, or even AP, only the CP,
4 and it was less than an acre, verified also by Shapiro in
5 another prior delineation.

6 CHIEF COUNSEL SMELTZER: Commissioners, Chair?

7 CHAIR KRUER: Yes.

8 CHIEF COUNSEL SMELTZER: There has been no
9 question addressed to the applicant --

10 CHAIR KRUER: I thought Commissioner Clark asked
11 him, yes.

12 CHIEF COUNSEL SMELTZER: No, but it was redirected
13 to staff, and there was no subsequent question.

14 CHAIR KRUER: Okay, that is fine.

15 CHIEF COUNSEL SMELTZER: So, he is testifying
16 without --

17 MR. SMELTZER: Thank you, sir.

18 CHAIR KRUER: You are to only answer if someone
19 calls you up and asks you a question.

20 MR. SMELTZER: Thank you.

21 CHAIR KRUER: Thank you. I thought that somebody
22 did that, but you know, okay.

23 Commissioner Clark, did you have another question?

24 COMMISSIONER CLARK: No, you know, I would agree
25 with some of my colleagues that literally this is the war of

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1 the wizards, in terms of scientific data, and I think Dr.
2 Burke talked about it as well as anyone.

3 It is very perplexing to be presented with this
4 contradictory information from a scientific basis. But, it
5 is not clear to me that the applicant has made a full case
6 here.

7 CHAIR KRUER: Well, let me just make a few
8 comments, because it is very perplexing, very difficult,
9 there has been a lot of testimony from everyone here today,
10 and some of the comments from most of the Commissioners I do
11 agree with, there are a lot of good points, and I will try
12 not to be redundant.

13 I guess, I am concerned about those people who can
14 claim, including us, the staff, or any of us out there, that
15 can claim that they can determine elevations from a
16 2-dimensional photo. I have never been able to do that. You
17 need topography maps, et cetera. And, it can show you if
18 there is an area has been disturbed, but a lot of these
19 photos back and forth, they are very difficult to read,
20 because I don't know anybody that can do that, and determine
21 elevations in looking at a photo like that -- certainly not
22 in my power.

23 I am concerned about the -- Commissioner Reilly
24 brought it up -- I am concerned, I guess, on this 7-day
25 ponding thing. The 8 or 9 years I have been here, I don't

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1 recall ever using that as a standard, or even if we adopt
2 that today, it does become the precedent, or standard. I
3 have heard that many times, when we do that, from my
4 colleagues and friends here, it becomes the standard.

5 I would like to address something that no one has,
6 and that is there is an issue here that I think it is
7 unfortunate that no one has talked much about the project
8 that they have added today, or was left in the Long Beach
9 office, of some of what they were proposing to do, because
10 from my brief review of it, it seemed to be the far superior
11 project to end up without getting into all of the wetland
12 issues that most of my Commissioners have talked about
13 before. It ties the wetlands together. You actually come up
14 with a larger amount -- 6.5 acres, and it is all lined
15 together.

16 Because what has happened, from a planning
17 perspective, and we want to be fair that when we say, or the
18 Commission, or staff, I don't know if we are really being --
19 when we talk about smart growth. Smart growth won't apply to
20 this project. The first thing is, that you are going to end
21 up with a pad at the top, if you do that, the way it is
22 designed now, and what it is, will not be economically
23 feasible.

24 The reason it is, is that whenever you move that
25 kind of density -- and Commissioner Wan said it shouldn't be

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1 part of it, well, with all due respect, we are talking about
2 it, and everybody, I don't want them to leave here -- they
3 can vote either way they want -- but I don't want them to
4 think that, you know, we were fair to that person because we
5 are going to give them higher density. Even though, the
6 zoning is lower density, it has been lower density for years,
7 and if you put lower density up there, and you have 18, 19,
8 acres, with maybe 15 net, you would end up with 75 homes,
9 there is no way you can do the type of grading, repairs,
10 infrastructure needs, and everything on that site.

11 There is a real question of wiping out the
12 economic viability of this site. And, I just want to say, I
13 wouldn't touch it with a 10-foot pole, because the numbers
14 are not going to work, if you push them back into that site,
15 because when you build a higher density project, which I am
16 sure any of the neighbors here don't want a higher density
17 project, when it surrounded almost on 2.5 sides by lower
18 density units. The last thing you want to do, if there are
19 height issues, and there is view issues from public places,
20 et cetera, and residents don't like their private views
21 effected, and then you have to figure out how to ascertain to
22 put the parking in a higher density project, and that creates
23 the challenges right there.

24 And, when you do residual land value back, and
25 figure out what you have to do to this site, I want to be on

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1 the record to say, from my perspective, we are ending up, if
2 we send this site back, and say to somebody -- I don't want
3 people to say it is viable at, you know, 18 acres or 17
4 acres, and you are going to get higher density, because I
5 don't think you are going to get higher density, and even if
6 you did get higher density, it is still not going to work,
7 economically.

8 So, I wanted to put that on the table. I wanted
9 to address that, and I just think the intermingled areas I
10 have a real problem with that. I mean, I just think it is
11 silly. It doesn't work. If we take that position, there are
12 all kinds of topography issues, drainage issues, and
13 everything else.

14 And, if we really don't support the applicant, and
15 reject it, I hope it is not on these issues that we really
16 think that there is a good plan here, in perspective of what
17 is on the table right now, at least in the staff
18 recommendation. I think the staff has done a good job in
19 looking at all of the issues, et cetera, but there is a lot
20 of holes in this, and there are a lot of issues that I don't
21 think that we can really talk about.

22 I guess, I am really concerned also about the
23 Bilhorn study that we attach so much credibility to it, and
24 yet there is all of these other studies, and I think, if I
25 were looking at that, I would be very concerned that you have

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1 all of this other evidence and studies. And, I have never
2 seen this before, where you have 12 studies, and you have
3 another study, and the one person is correct, and the other
4 12 don't qualify, and the project doesn't work. That would
5 really trouble me, if I were somebody looking at that. I
6 would be very concerned about it.

7 So, I am trying to judge what to do here, just
8 like all of the other Commissioners, but I am very concerned
9 about where we are at, and what we are about to do. And, so I
10 just wanted to put that input in that some of my other
11 colleagues might have missed.

12 Commissioner Wan.

13 **COMMISSIONER WAN:** Just quickly, on the density
14 issue, and one other issue.

15 I agree with you. I don't know what the density
16 of this thing ought to be. This is an -- I remind everybody,
17 this is an LCP Amendment, and we are not making so much a
18 determination of what the development ought to be in terms of
19 density, as what the development footprint should be.

20 I am not privy to what it costs to purchase this
21 property, and so I am not in the position to say how many
22 homes they need, or don't need, to make this project work.
23 They have 19 acres left over, with the staff report they can
24 put houses in. It should be left to them to decide whether
25 they want high density, or low density, because this is an

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1 LCP Amendment, and they should do what they need to do to
2 make this project financially feasible for them, and I think
3 they can do that with 19 acres, because they are still going
4 to get development. I don't know how many houses, and I
5 don't think that it is for us to tell them to have high
6 density development. Again, this is an LCP, and our issue is
7 -- our issue is the footprint.

8 Just one point on the WP. The WP wetland
9 delineation isn't based on whether there was or wasn't fill.
10 You can find, even with the fill, that the WP is a wetland,
11 as of today it is an existing wetland. It exhibits the
12 plants necessary, whether it is ponding 7 days or 14 days, or
13 any other days, it is exhibiting the plants, and by
14 Commission's current standards, it is a current wetlands.

15 **CHAIR KRUER:** Thank you, Commissioner Wan.

16 Commissioner Baird, and then if somebody would,
17 one of the Commissioners would offer up a motion, one way or
18 the other, so we can get to that.

19 Commissioner Baird.

20 **COMMISSIONER BAIRD:** Just two comments.

21 One is, I do think we need to be careful that, are
22 we making a decision on a kinda sorta maybe violation? and I
23 think that is something that has got to be very clear.

24 And, I think as Commissioner Firestone said, he is
25 a farmer, I mean you go in and you go over this site over and

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1 over and over. I mean, obviously, there are going to be some
2 changes in the characteristics, so I think we have to be
3 careful.

4 I think this happened under the watchful eye of
5 the California Coastal Commission for the past 10 to 20
6 years, where this grading -- not grading, or whatever the
7 farming activity, whatever occurred, so I think that is point
8 one.

9 You know, I am very ambivalent about -- I have a
10 hard time calling either of these things, the WP or the EPA,
11 wetlands based on what I have heard, and based on with the
12 Department of Fish and Game has told me. So, I have to leave
13 it at that, and certainly with what we heard from the
14 representative from the Corps on the EPA wetland, it seems to
15 have come back into the fold suddenly, at the 11th hour of
16 the 7th day.

17 So, that is where I am. I think somebody has got
18 to make the call on whether you are going to go forward with
19 these two wetlands in here, or not, move it. I don't make
20 motions. I am a no-voting member.

21 **COMMISSIONER SECORD:** Mr. Chair, procedurally, we
22 would need the motion out of the staff report, and then we
23 would have to modify it, and I can do that, but I would like
24 to offer in advance that there will be a modification, a
25 modifying motion.

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1 CHAIR KRUER: Okay.

2 COMMISSIONER SECORD: If everybody agrees, then I
3 move that the Commission certify the Land Use Plan Amendment
4 No. 1 --

5 COMMISSIONER HUESO: Excuse me, can he make a
6 motion?

7 CHAIR KRUER: I think he was just talking about
8 procedural.

9 COMMISSIONER HUESO: Okay.

10 CHAIR KRUER: That sounded procedural to me. I
11 think he can still make a motion.

12 COMMISSIONER HUESO: Okay.

13 CHAIR KRUER: Commissioner Secord.

14 [MOTION]

15 COMMISSIONER SECORD: I move that the Commission
16 certify Land Use Plan Amendment No. 1-06 for the City of
17 Huntington Beach if it is modified as suggested by staff, and
18 recommend a "No" vote.

19 CHAIR KRUER: Okay -- no, I don't know if you want
20 to do that?

21 COMMISSIONER SECORD: I don't want to do that.

22 CHAIR KRUER: That denies it, I think.

23 COMMISSIONER SECORD: Excuse me.

24 CHAIR KRUER: What is your intention?

25 COMMISSIONER SECORD: Let me rethink that, with

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1 the able --

2 DEPUTY ATTORNEY GENERAL PATTERSON: Commissioners.

3 CHAIR KRUEER: Let me go to counsel --

4 COMMISSIONER SECORD: Mr. Chair.

5 CHAIR KRUEER: Just a minute Mr. Secord, let me
6 hear from counsel, first, for direction here.

7 DEPUTY ATTORNEY GENERAL PATTERSON: Let me just
8 clarify.

9 The Commission previously denied this as
10 submitted, so what is before you today is a motion to approve
11 with suggested modifications --

12 CHAIR KRUEER: Right.

13 DEPUTY ATTORNEY GENERAL PATTERSON: -- either all
14 or one, or somewhere in between of the suggested
15 modifications that have been proposed by your staff.

16 COMMISSIONER SECORD: In that case, then, I would
17 recommend a "Yes" vote with the amending motion coming right
18 along.

19 COMMISSIONER HUESO: I'll "second" that.

20 CHAIR KRUEER: Okay, it has been moved by
21 Commissioner Secord, seconded by Commissioner Hueso, both the
22 maker and seconder of the motion are asking for -- passage of
23 this motion will result in the certification of the Land Use
24 Plan Amendment with the suggested modifications, and adoption
25 of the resolutions and findings.

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1 Would you like to speak to your motion,
2 Commissioner Secord?

3 **COMMISSIONER SECORD:** What I would like to do, Mr.
4 Chair, is to offer up an amendment to that motion. Is this
5 the time -- is this the right time for it?

6 **CHAIR KRUER:** Yes, it is.

7 [MOTION]

8 **COMMISSIONER SECORD:** Then I would move that we
9 utilize the picture entitled consolidation and enhancement
10 plans 6.85 total wetlands with no WP, and make that into the
11 amended motion that would reject the 7-day ponding standard
12 and reject the WP area as a wetland, reject the 100-meter
13 ESHA buffer, and accept the variable width ESHA area buffer,
14 and reject the concept of intermingled areas.

15 **CHAIR KRUER:** Okay.

16 **COMMISSIONER REILLY:** Mr. Chair.

17 **CHAIR KRUER:** Yes.

18 **COMMISSIONER REILLY:** I would ask the maker of the
19 amending motion if he would like to separate some of those
20 issues, because some of us may feel differently about
21 different ones?

22 **CHAIR KRUER:** Yes.

23 **COMMISSIONER SECORD:** Well, that would lead to a
24 whole series of motions, and I am not the -- would you help
25 me with that, Mike?

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1 **CHAIR KRUER:** Yes, Commissioner Reilly.

2 [Pause]

3 **COMMISSIONER SECORD:** Well, the advice I am
4 getting from my colleague is one motion to reject the 7-day
5 ponding standard, therefore reject the WP area as a wetland.

6 **CHAIR KRUER:** Okay, is that your first amending
7 motion?

8 **COMMISSIONER SECORD:** That would be the first
9 amending motion, if we can get a "second"?

10 **CHAIR KRUER:** Okay, is there a "second" to
11 Commissioner Secord's 7-day.

12 **COMMISSIONER HUESO:** I'll second that.

13 **CHAIR KRUER:** Commissioner Hueso seconds it.
14 Would you like to speak to your amending motion?

15 **COMMISSIONER SECORD:** Well, I think we have heard
16 both sides. The issue here is the tendency to use the 7-day
17 period as an extension of our policies, and if we can stick
18 with the way policy has previously been, then we can reject
19 the 7-day ponding standard, and that would allow the
20 rejection of the WP area as a wetland.

21 **CHAIR KRUER:** Commissioner Hueso, as the seconder
22 of the motion.

23 **COMMISSIONER HUESO:** [off microphone, could not
24 be heard.]

25 **CHAIR KRUER:** I'm sorry? Well, you don't want to

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1 speak to the second? okay.

2 Commissioner Clark.

3 **COMMISSIONER CLARK:** I guess I have a question
4 about this, because I thought Dr. Dixon clearly told us that
5 it wasn't 7-day ponding as the standard that he used, that it
6 was a pattern of indentation, and not 7 days ponding, so why
7 are we even discussing 7-day ponding in this context?

8 **COMMISSIONER POTTER:** Well, specific to that
9 point, Mr. Chair, if I might, and I think Commissioner
10 Shallenberger actually raised this issue, and there was
11 consensus that we really didn't want reference to the 7 days
12 item.

13 But, on the proposed adoption of the findings, on
14 Appendix A, it specifically calls out a couple of times, the
15 term long duration, and long duration is in parens defined
16 as, "At least 7 days of water," so there is a very specific
17 site referencing 7 days within the proposed findings, so I am
18 not comfortable adopting anything that has this very new
19 definition incorporated into the findings.

20 It also says in these, "In the absence of wetland
21 vegetation the drawing of wetland boundaries is an
22 approximate exercise based on a small and haphazard
23 collection of aerial photographs, or ground observations, and
24 estimates of topography," which I think goes to Commissioner
25 Burke's problem.

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1 **CHAIR KRUER:** Okay.

2 Commissioner Wan.

3 **COMMISSIONER WAN:** Question of Dr. Dixon.

4 Am I correct that in the case of the WP it isn't
5 just the ponding issue, but that currently there is evidence
6 of a preponderance of hydrophytes.

7 **ENVIRONMENTAL PROGRAM MANAGER DIXON:** The
8 principle basis for identifying the WP as a wetland that
9 would be apparent in the absence of farming activities is a
10 comparison with a similar area, in the CP area, and the
11 overall pattern of inundation that during some years it was 7
12 to 14 days, some years it was greater, some years it was
13 greater than 30 days.

14 Then in addition to that, it is apparent from the
15 vegetation that is there right now, in a drought year, that
16 these plants have been germinating, setting seed for some
17 time, and there is a seed bank present. So, when you have an
18 atypical situation, where some of the indicators are removed
19 by human activities, you have to look at it with sort of the
20 weight of the evidence thing, and there is no such thing that
21 I know of as a 7-day ponding standard for identifying
22 wetlands.

23 **CHAIR KRUER:** Thank you.

24 Commissioner Reilly.

25 **COMMISSIONER REILLY:** Would it be possible to get

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1 the slide up that actually compared the WP and the CP areas?

2 [Pause]

3 Mr. Chair, if someone else wants to speak, and
4 stuff like that, while it is being pulled up that is fine
5 with me.

6 CHAIR KRUER: Okay.

7 COMMISSIONER REILLY: Okay, here it is.

8 COMMISSIONER WAN: Is that the one you want?

9 COMMISSIONER REILLY: Yes, that is the one, and
10 the technical person for the applicant, I forget your name?
11 There he is back there, okay.

12 MR. BOMKAMP: Yes, Commissioner Reilly, Tony
13 Bomkamp.

14 COMMISSIONER REILLY: Can you just explain briefly
15 these characteristics and why you think that it is difficult
16 to compare the two areas?

17 MR. BOMKAMP: Sure, what we did here, this is
18 actually based on soils testing, we collected the soils and
19 took it to a soils lab, so that we could have all of these
20 various factors analyzed to determine whether or not the
21 soils in the CP and the soils in the AP are similar, and it
22 was aimed at addressing Dr. Dixon's, you know, approach of
23 trying to compare the two areas.

24 And, so, what you do see is that -- and we have
25 actually included a few other things here, but I think there

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1 is agreement between us and Dr. Dixon that there are no
2 hydric soils in the WP, and that right now there clearly are
3 hydric soils in the CP, that there are very clear characters
4 there.

5 In terms of the hydrophytes, again, we have done
6 sampling in the last couple of years, in the WP, and not
7 found, you know, our studies show there are no wetland --
8 that there are wetland indicators, but it is not a
9 predominance, and clearly in the CP there is no question,
10 again, it is very clearly hydrophytes, it is pickleweed, salt
11 grass, those kinds of species.

12 Salinity in the CP is very high, in fact, in some
13 cases it is hyper-saline, higher than salt marsh habitat,
14 because of evaporation, and the fact that the area actually
15 continues to get saltier.

16 The salinity in the WP is very low. It is typical
17 of a farm field, which is why it has been farmed.

18 Organics, again, in the CP are very high, again
19 that is a condition that develops under anaerobic conditions
20 over time, the organics continue to build up in the soil, and
21 so you have high organics in the CP, again, very low organics
22 in the WP, based on our soils data.

23 The ammonia, the ratio of NH4 to NHO3, again is
24 another characteristic of wetlands. You get ammonia buildup
25 in the soil, and so there is, again, a major difference again

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1 in those characters. Same thing with sulfates, we get high
2 sulfates in the CP, which is an indicator of wetlands. It is
3 sulfur, the rotten egg smell that you get.

4 And, then, the FAR is just kind of a general, more
5 of a, I guess you could say, when you are looking at crop
6 land, it is something you use for crop land to determine how
7 well it is going to work for crops.

8 **COMMISSIONER REILLY:** All right, thank you, very
9 much.

10 And, Dr. Dixon, just to conclude here, in looking
11 at those characteristics, or the differences in those
12 characteristics, to use the CP as a comparison for WP, do you
13 find any of those differences significant?

14 **ENVIRONMENTAL PROGRAM MANAGER DIXON:** Well, of
15 course I received all of this in a more quantitative fashion
16 in the past, and I reviewed it all very carefully, but what
17 isn't shown here -- I also asked the Shea consultants to look
18 at a bunch of other wetlands, and do these same chemistry
19 tests, which they did, and these things varied amongst the
20 wetlands, as much as most of them varied between the CP and
21 the WP. So, in order to use these, to make these kinds of
22 strong statements, I think is totally inappropriate.

23 And, take, for example, salinity. Salinity is
24 extraordinarily high in CP. Interestingly, it is higher in
25 the upland parts of CP than it is in the wetland part.

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1 And, in terms of the WP, I think Mr. Bomkamp might
2 want to rethink saying that it is very low there, in fact,
3 it is still pretty high. It is just nothing like it is in
4 the CP. And, as a matter of fact, I think you notice that
5 Mr. Metzler, earlier, referred to those plants that are going
6 there as being halophytes, things that require salt in order
7 to grow. It is a salty area. It is not as salty as the
8 other area.

9 But, one of the main things is, is this data were
10 taken from all over the CP, and lumped together, and I was
11 really interested in one particular area of the CP that
12 didn't get sampled very heavily.

13 **CHAIR KRUER:** Thank you, Dr. Dixon.

14 Does that answer your question, Commissioner
15 Reilly, okay.

16 **COMMISSIONER REILLY:** I'm not sure.

17 **CHAIR KRUER:** If there is nothing else, again the
18 amendment motion is the maker and seconder are asking to
19 reject the 7-day ponding standard, therefore rejecting the WP
20 area as a wetland.

21 I would call for the question.

22 **COMMISSIONER SHALLENBERGER:** I have a question
23 here.

24 **CHAIR KRUER:** Commissioner Shallenberger.

25 **COMMISSIONER SHALLENBERGER:** I am not actually

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1 sure what this means. We have already said that there isn't
2 a ponding standard. There is the language about 7 days. Is
3 this suggestion that the language be deleted from the
4 findings about 7-day ponding, because we don't have a
5 standard to reject.

6 **CHAIR KRUER:** I think some of us think it will
7 become a standard, or that it is like a standard, and I think
8 they want to be clear, and I think that is why, on this
9 motion.

10 **COMMISSIONER SHALLENBERGER:** So, is the effect of
11 -- I am trying to see what we are actually -- I mean, maybe
12 counsel can help here? I don't actually know what this
13 means, in terms of what it will look like, when it comes back
14 to us to adopt findings? will it just the language which says
15 including 7-days ponding be deleted, or what?

16 **CHIEF COUNSEL SMELTZER:** Yes, that language would
17 be deleted in Suggested Modifications 3 and 4, which would
18 reflect the change in the mapping.

19 **COMMISSIONER SHALLENBERGER:** Okay, because the
20 word "therefore" is also confusing. The WP is not found in
21 our staff report. It isn't designated a wetland because of
22 this 7-day ponding that is referred to, but it seems to me to
23 be two unrelated things.

24 **EXECUTIVE DIRECTOR DOUGLAS:** I think, Commissioner
25 Shallenberger, you are correct. There is no 7-day standard,

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1 and we aren't proposing one. That simply is not the basis
2 for the determination it is a wetland.

3 I think what you are trying to do here is you are
4 trying to say that -- in this motion -- that you don't think
5 this area is a wetland, and that would be the simple way to
6 approach that issue, just say you don't find it as a wetland,
7 because I think that is what you are trying to achieve.

8 **COMMISSIONER SHALLENBERGER:** And, I assume you
9 would like something on the record saying why all of these
10 scientists sitting up here believe it is not a wetland.

11 **COMMISSIONER SECORD:** And, that is where the 7
12 days comes in.

13 **CHAIR KRUER:** That is the issue, though.

14 **COMMISSIONER SHALLENBERGER:** But, just saying --
15 but deleting a standard that doesn't exist is not a finding
16 that it is not a wetland. You can leave it that way.

17 **CHAIR KRUER:** Well, that is the -- they are trying
18 to get it out of the staff report, based on the findings.

19 Okay, I am going to call the roll. They are
20 asking for a "Yes" vote on rejecting the 7-day ponding
21 standard, and rejecting the WP area as a wetland.

22 Clerk, call the roll.

23 **SECRETARY MILLER:** Commissioner Clark?

24 **COMMISSIONER CLARK:** No.

25 **SECRETARY MILLER:** Commissioner Hueso?

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1 **COMMISSIONER HUESO:** Yes.

2 **SECRETARY MILLER:** Commissioner Secord?

3 **COMMISSIONER SECORD:** Yes.

4 **SECRETARY MILLER:** Commissioner Neely?

5 **VICE CHAIR NEELY:** Yes.

6 **SECRETARY MILLER:** Commissioner Potter?

7 **COMMISSIONER POTTER:** Aye.

8 **SECRETARY MILLER:** Commissioner Reilly?

9 **COMMISSIONER REILLY:** Yes.

10 **SECRETARY MILLER:** Commissioner Commissioner

11 Shallenberger?

12 **COMMISSIONER SHALLENBERGER:** No.

13 **SECRETARY MILLER:** Commissioner Wan?

14 **COMMISSIONER WAN:** No.

15 **SECRETARY MILLER:** Commissioner Firestone?

16 **COMMISSIONER FIRESTONE:** Yes.

17 **SECRETARY MILLER:** Commissioner Blank?

18 **COMMISSIONER BLANK:** No.

19 **SECRETARY MILLER:** Commissioner Burke?

20 **COMMISSIONER BURKE:** No.

21 **SECRETARY MILLER:** Chairman Kruer?

22 **CHAIR KRUER:** Yes.

23 **SECRETARY MILLER:** Seven, five.

24 **CHAIR KRUER:** Okay, that is the first amending

25 motion.

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1 Commissioner Secord.

2 **COMMISSIONER SECORD:** Thank you, Mr. Chair.

3 The next amending motion is to reject the EPA area
4 as a wetland.

5 **CHAIR KRUER:** Okay, is there a "second" to that?

6 [No Response]

7 Doesn't seem like there is a "second" to that one,
8 Commissioner Secord. Go on.

9 [MOTION]

10 **COMMISSIONER SECORD:** Try another one.

11 Reject the 100-meter ESHA buffer, and accept the
12 variable width ESHA buffer.

13 **CHAIR KRUER:** Okay, is there a "second" to that one?

14 **COMMISSIONER SECORD:** And recommending a "Yes"
15 vote.

16 **CHAIR KRUER:** Okay.

17 **COMMISSIONER HUESO:** I'll second it.

18 **CHAIR KRUER:** Thank you, seconded by Commissioner
19 Hueso.

20 Commissioner Secord, would you like to speak to
21 your amending motion?

22 **COMMISSIONER SECORD:** The purpose of this exercise
23 is to try to focus the development to the east of this
24 corridor of vegetation, including the eucalyptus trees, and
25 the CP wetland, and that is the purpose of it, and if we can

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1 support it, then we can move on with this project.

2 **CHAIR KRUER:** Okay.

3 Commissioner Hueso, would you like to speak to
4 your "second"?

5 **COMMISSIONER HUESO:** In hearing the testimony, it
6 was very clear to me that just a very specific measurement
7 doesn't really achieve the goal of protecting the wildlife,
8 and necessarily protecting the foraging area.

9 So, I am looking at the contours of the hillsides,
10 and the trees, and seeing how a very heavy concentration of
11 sitings and wildlife activity was close to the most intense
12 development in this area. I thought maybe there was some
13 room to design the project in a way that takes into
14 consideration the actual wildlife movements, and isn't
15 committed to a very artificial boundary that is not
16 necessarily going to provide the goal of protecting the
17 wildlife.

18 **CHAIR KRUER:** Thank you, Commissioner Hueso.
19 Commissioner Clark, again.

20 **COMMISSIONER CLARK:** Yes, thank you.

21 On this particular point, I am okay with the
22 variable buffer. I think the applicant has demonstrated that
23 it would be an effective buffer, and I support it.

24 **CHAIR KRUER:** Commissioner Reilly.

25 **COMMISSIONER REILLY:** Well, I would be more

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1 comfortable if I knew what the buffer was, I guess.

2 And, I would like to have the applicant -- we have
3 this map here with a bunch of red lines on it, but I don't
4 have any -- it is hard for me to tell what the distances are,
5 particularly on the northern grove.

6 CHAIR KRUER: That is a very good point,
7 Commissioner Reilly. Who wants to come up and go over that
8 for Commissioner Reilly, and the rest of us?

9 MR. HOMRIGHAUSEN: Good evening, Commissioners,
10 Art Homrighausen, with LSA Associates.

11 If we can get that figure up.

12 COMMISSIONER REILLY: Yes, go back one.

13 MR. HOMRIGHAUSEN: This was the result of a
14 realization that we were -- you know, we were arguing about
15 100 feet versus 100 meters, and I thought it would be helpful
16 to just show what the actual distances are under the various
17 scenarios.

18 And, with this proposed development plan, what I
19 did was took an average of, approximately, every 25 feet
20 along the edge of the eucalyptus trees that faces the
21 development. So, I wasn't measuring from the backside of the
22 trees, or trees that were farther away.

23 I did this several different ways, and this was
24 the method that came out with the shortest distances, so was
25 the most conservative. If you look there at the northern

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1 trees, and what these red lines show are the distances to the
2 proposed residential development --

3 **COMMISSIONER REILLY:** I would like to know both,
4 what the distance to the park is, and to the residential
5 development.

6 **MR. HOMRIGHAUSEN:** Right, okay, well maybe it
7 would be easier to start with the park, then.

8 That park boundary is set at a minimum of 150 feet
9 from the northern trees, and it is actually -- that 150-foot
10 distance is more at the northern area. By the time to you
11 get to the southern part of the northerly trees, the distance
12 becomes greater because the 100-foot buffer from the wetlands
13 prevails, and pushes those distances out.

14 But, so it ranges from -- well, like I said, the
15 minimum is 150 feet, and right in that area where the dot is
16 now, that distance is, in fact, 150 feet. By the time you
17 get farther along the edge of the park --

18 **COMMISSIONER REILLY:** And, what is the additional
19 distance to the housing development up there?

20 **MR. HOMRIGHAUSEN:** The minimum distance to the
21 housing development, right up there at the northerly most
22 extent, is 297 feet. And, then it increases somewhat as you
23 work farther south.

24 And, certainly, Dr. Dixon is correct. I averaged
25 the distances all along the trees, which seemed to me, as

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1 Commissioner Wan pointed out, if we are looking at the
2 entirety of the trees, I thought it would be best to look at
3 all of the trees, and average the distance, just as was done
4 for Brightwater. It looks a little different because the
5 trees are discontinuous.

6 **COMMISSIONER REILLY:** Still in the northern area,
7 what is the distance, then, once you get past the park, from
8 the eucalyptus trees to the development?

9 **MR. HOMRIGHAUSEN:** Well, it is a little -- I don't
10 have my map in front of me, but it is a little more than 300
11 feet. It borders on -- there are just a couple of little
12 slivers in there that are less than the 100 meters. Most of
13 the area actually exceeds 100 meters.

14 **COMMISSIONER REILLY:** All right, thank you.

15 **CHAIR KRUEER:** Okay.

16 Commissioner Wan, you had a question?

17 **COMMISSIONER WAN:** Yes, just one quick question,
18 because I think the issue is the distances to the northern
19 eucalyptus grove, which has to be looked at, what is its
20 protection? I can't tell -- does anybody -- I don't know
21 what color that is. Is this all park? And, so, is that all
22 is active park?

23 **MR. HOMRIGHAUSEN:** You know, when I brought this
24 forward in a letter to the Commissioners before the prior
25 hearing, I suggested that the actual uses of that park could

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1 be determined by the Commission, perhaps, if the CDP --

2 **COMMISSIONER WAN:** No, it has to be determined
3 now.

4 **MR. HOMRIGHAUSEN:** Okay.

5 **COMMISSIONER WAN:** And, the zoning, as I
6 understand it, for all of this, is active park, and so
7 therefore the distance is not 297 feet. It may be 297 feet
8 to the residential development, but it is 150 feet to the
9 active park.

10 **MR. HOMRIGHAUSEN:** For part of it, and part of it
11 is a little bit farther. But, you are right, then that is
12 the way this was drawn.

13 I felt that, you know, the residential is
14 certainly a different use, and while the park may or may not
15 have active uses in it, it still provides some buffering
16 effect for raptors, and so that is why I did it both ways.

17 **COMMISSIONER WAN:** A big difference an active and
18 a passive park, in terms of impacts on raptors, and as long
19 as it is zoned for active park, it will be -- at some point
20 it could become an active park, and you are talking about
21 sports fields, you are talking about lighting, that is all
22 possible when you are dealing with an active park.

23 If you don't believe that that is the case, then
24 it should be changed, the designation, to passive.

25 **MR. HOMRIGHAUSEN:** Okay, the city just whispered

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1 in my ear that passive park would be acceptable. They would
2 like to have trails in it, which, you know --

3 **COMMISSIONER WAN:** That is consistent with a
4 passive use, with a passive park, not an active park.

5 **MR. HOMRIGHAUSEN:** Okay, so it looks like passive
6 uses would be acceptable to the applicant.

7 **COMMISSIONER BLANK:** Mr. Chairman, I have one more
8 question.

9 **CHAIR KRUER:** Commissioner Blank, you can go after
10 Commissioner Burke.

11 **COMMISSIONER REILLY:** Well, if I still have the
12 floor, could we a city representative come up and verify
13 that? It is always something counsel asks for.

14 **MS. BROEREN:** Yes, question, please.

15 **COMMISSIONER REILLY:** The question is, in terms of
16 the land use designation proposed by the city for the park,
17 there is a concern that if it is really going to be part of a
18 buffer that it be a passive park, rather than an active park,
19 and is there a difference in terms of city zoning? and what
20 is your willingness to accept that kind of a condition?

21 **MS. BROEREN:** The city had previously conceded the
22 fact that it could be a passive park, only. It was
23 originally intended to be a combination of passive and
24 active, but given the concerns that staff had expressed to us
25 early on, we had agreed to allow it to be only a passive

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1 park, and that could be reflected in the mod language.

2 COMMISSIONER REILLY: Thanks, very much.

3 CHAIR KRUER: Thank you.

4 Commissioner Burke.

5 COMMISSIONER BURKE: No, I was only going to
6 support Commissioner Wan's request for a passive park.

7 CHAIR KRUER: Commissioner Blank.

8 COMMISSIONER BLANK: Is Mr. Bloom still here, our
9 raptor expert? can I just ask him a question, if I can.

10 I am just kind of concerned, measuring these
11 distances -- and I'll maybe start the question as you walk up
12 -- that we are kind of neglecting the fact that currently
13 today those raptors are nesting in those areas, but they are
14 foraging in an empty set of fields for gopher, and we just
15 kind of forgotten we are building houses there, so if we are
16 providing a buffer, right now aren't they like eating gophers
17 and foraging there --

18 MR. BLOOM: Yes.

19 COMMISSIONER BLANK: -- so what does this buffer
20 -- does this do anything?

21 MR. BLOOM: What the buffer is doing to offer is
22 to simply -- and I say a 100-meter buffer will offer is some
23 foraging habitat, plus a certain distance from development,
24 human disturbance, that will help the birds to either nest,
25 hunt, or sleep.

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1 **COMMISSIONER BLANK:** Okay, and, so if we get rid
2 of any foraging habitat, where are they going to forage?

3 **MR. BLOOM:** Effectively, that reduces the quality
4 of that territory substantially, and that is why I suggested
5 this may result in a net take. It certainly is a net take of
6 habitat, as demonstrated by Mark Bixby's dots and tricks
7 locations.

8 **COMMISSIONER BLANK:** And, this is of a threatened
9 species.

10 **MR. BLOOM:** A fully protected species --

11 **COMMISSIONER BLANK:** I see.

12 **MR. BLOOM:** -- state fully protected.

13 **COMMISSIONER BLANK:** Oh, interesting, thank you.

14 **MR. BLOOM:** You are welcomed.

15 **CHAIR KRUER:** Thank you, Commissioner Blank.

16 Okay, is there anyone else?

17 [No Response]

18 If there is not, there is a motion and a second to
19 reject the 100-meter ESHA buffer, and accept the variable
20 width ESHA buffer, and also included the city agrees to make
21 the park passive.

22 And, with that, I will call for the question.
23 They are asking for a "Yes" vote.

24 Roll call, please.

25 **SECRETARY MILLER:** Commissioner Hueso?

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1 COMMISSIONER HUESO: Yes.
2 SECRETARY MILLER: Commissioner Secord?
3 COMMISSIONER SECORD: Yes.
4 SECRETARY MILLER: Commissioner Neely?
5 VICE CHAIR NEELY: Yes.
6 SECRETARY MILLER: Commissioner Potter?
7 COMMISSIONER POTTER: Aye.
8 SECRETARY MILLER: Commissioner Reilly?
9 COMMISSIONER REILLY: Yes.
10 SECRETARY MILLER: Commissioner Shallenberger?
11 COMMISSIONER SHALLENBERGER: No.
12 SECRETARY MILLER: Commissioner Wan?
13 COMMISSIONER WAN: No.
14 SECRETARY MILLER: Commissioner Firestone?
15 COMMISSIONER FIRESTONE: Aye, please.
16 SECRETARY MILLER: Commissioner Blank?
17 COMMISSIONER BLANK: No.
18 SECRETARY MILLER: Commissioner Burke?
19 COMMISSIONER BURKE: Yes.
20 SECRETARY MILLER: Commissioner Clark?
21 COMMISSIONER CLARK: Yes.
22 SECRETARY MILLER: Chairman Kruer?
23 CHAIR KRUER: Yes.
24 EXECUTIVE DIRECTOR DOUGLAS: Before she announces
25 the vote, just to confirm, that included a suggested

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1 modification that the park be a passive park.

2 CHAIR KRUEER: Yes, sir.

3 EXECUTIVE DIRECTOR DOUGLAS: Just for the record.

4 CHAIR KRUEER: It certainly did.

5 COMMISSIONER SECORD: And, stipulated by the city.

6 CHAIR KRUEER: Okay.

7 COMMISSIONER SECORD: And, finally, Mr. Chair,
8 reject --

9 COMMISSIONER REILLY: The vote, can we announce
10 it?

11 CHAIR KRUEER: Let's announce the vote first.

12 SECRETARY MILLER: Nine, three.

13 CHAIR KRUEER: Nine, three, thank you, so that
14 passes.

15 Then, Commissioner Secord.

16 [MOTION]

17 COMMISSIONER SECORD: Finally, the last amending
18 motion is to reject the concept of intermingled areas.

19 CHAIR KRUEER: Is there a "second" to the motion?

20 COMMISSIONER HUESO: I'll second it.

21 CHAIR KRUEER: Moved by Commissioner Secord,
22 seconded by Commissioner Hueso.

23 Would you like to speak to your motion,
24 Commissioner Secord?

25 COMMISSIONER SECORD: It has been developed that

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1 the area in WP is a marginal wetland, if it is a wetland at
2 all, and to give it the power of merging with these other
3 areas and creating a new mechanism to do that strikes me as a
4 reach for this Commission.

5 So, I would like to have a "Yes" vote on the
6 concept of rejection.

7 **CHAIR KRUER:** Commissioner Hueso?

8 **COMMISSIONER HUESO:** I just want to concur with
9 Commissioner Secord's comments.

10 **CHAIR KRUER:** Okay.

11 Anyone else of my colleagues, before I call the
12 roll on this one.

13 [No Response]

14 Again, they are asking for a "Yes" vote.

15 **EXECUTIVE DIRECTOR DOUGLAS:** Mr. Chairman.

16 **CHAIR KRUER:** Commission -- Director Douglas.

17 **EXECUTIVE DIRECTOR DOUGLAS:** I am not a
18 Commissioner --

19 **CHAIR KRUER:** We'll make you one, then.

20 **EXECUTIVE DIRECTOR DOUGLAS:** No, no, please.

21 We need some clarification of what you mean,
22 because getting rid of the intermingled area doesn't tell us
23 what you are trying to do? you are trying to change the line
24 for the development footprint? and if that is the case, could
25 you just tell us which line you are trying to establish?

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1 **COMMISSIONER SECORD:** Well, on one of the charts
2 that we have been presented, the area WP is surrounded by a
3 rather large buffer, and the EPA wetland is surrounded by a
4 very large buffer, and then there was discussion among the
5 staff of more or less joining those two buffered areas, that
6 rendered a great deal of the middle part of this project
7 unbuildable.

8 And, it was my intention by this motion to try to
9 focus the development where it could be done without
10 particular controversy, and try to improve the status of that
11 corridor where the eucalyptus trees are, and where the CP
12 wetland is, focus on the west side of the property.

13 [Pause to look at map]

14 **EXECUTIVE DIRECTOR DOUGLAS:** If you could look at
15 the --

16 **COMMISSIONER SECORD:** That one.

17 **COMMISSIONER BLANK:** This one?

18 **CHIEF COUNSEL SMELTZER:** Actually, that -- I don't
19 believe that recognizes the EPA wetland, which is still --
20 that motion did not go forward, so that map would not
21 actually accurately represents all of the buffers.

22 **DISTRICT DIRECTOR SARB:** If you could look at
23 Exhibit NN, third revision. It is a combination somewhat --

24 **CHAIR KRUER:** Yes.

25 **DISTRICT DIRECTOR SARB:** -- of the staff --

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1 **CHAIR KRUER:** Yes.

2 **DISTRICT DIRECTOR SARB:** -- recommendation and the
3 applicant's recommendation.

4 **CHAIR KRUER:** Yes, that is what Commissioner
5 Secord, I believe -- is that not correct, Commissioner
6 Secord? That is what you are doing?

7 **COMMISSIONER SECORD:** Yes.

8 **CHAIR KRUER:** You are saying, with the exception
9 of the EPA designated wetland, you know, you have to get --
10 it would be the combination of the --

11 **COMMISSIONER SECORD:** That is correct.

12 **COMMISSIONER WAN:** Can I say something?

13 **CHAIR KRUER:** Yes.

14 **COMMISSIONER WAN:** It, basically, I think what you
15 are trying to say is that it is basically this, except that
16 it has the EPA area in it.

17 **CHAIR KRUER:** Yes.

18 **COMMISSIONER WAN:** I think that is what you are
19 trying to say. I am not saying I am supporting it, but I
20 think that is what he is trying to say.

21 **CHAIR KRUER:** Okay, anyone else?

22 Commissioner Reilly.

23 **COMMISSIONER REILLY:** I just think that
24 Commissioner Wan is right. I think that where we are at
25 right now, if we vote to approve this, is basically with the

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1 applicant's proposal, but still with the staff's designation
2 of the EPA wetland.

3 CHAIR KRUER: Yes.

4 COMMISSIONER REILLY: Okay.

5 CHAIR KRUER: And, with that, if there are no more
6 questions on that, Clerk, call the roll. They are asking for
7 a "Yes" vote.

8 SECRETARY MILLER: Commissioner Secord?

9 COMMISSIONER SECORD: Yes.

10 SECRETARY MILLER: Commissioner Neely?

11 VICE CHAIR NEELY: Yes.

12 SECRETARY MILLER: Commissioner Potter?

13 COMMISSIONER POTTER: Aye.

14 SECRETARY MILLER: Commissioner Reilly?

15 COMMISSIONER REILLY: Yes.

16 SECRETARY MILLER: Commissioner Shallenberger?

17 COMMISSIONER SHALLENBERGER: Yes.

18 SECRETARY MILLER: Commissioner Wan?

19 COMMISSIONER WAN: No.

20 SECRETARY MILLER: Commissioner Firestone?

21 COMMISSIONER FIRESTONE: Aye.

22 SECRETARY MILLER: Commissioner Blank?

23 COMMISSIONER BLANK: Yes.

24 SECRETARY MILLER: Commissioner Burke?

25 COMMISSIONER BURKE: Yes.

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1 SECRETARY MILLER: Commissioner Clark?

2 COMMISSIONER CLARK: Yes.

3 SECRETARY MILLER: Commissioner Hueso?

4 COMMISSIONER HUESO: Yes.

5 SECRETARY MILLER: Chairman Krueer?

6 CHAIR KRUEER: Yes.

7 SECRETARY MILLER: Eleven, one.

8 CHAIR KRUEER: Eleven, one, so that motion passes.

9 COMMISSIONER REILLY: Main motion?

10 CHAIR KRUEER: Main motion now.

11 COMMISSIONER SHALLENBERGER: Mr. Chair.

12 CHAIR KRUEER: Yes.

13 COMMISSIONER SHALLENBERGER: If it is necessary,
14 to make another amendment to accept Shea's offer to create an
15 additional five acres of new wetlands, which is what I
16 understand was what they brought to us as part of the
17 project. If I could get a "second".

18 COMMISSIONER SECORD: I'll second the motion, and
19 invite Mr. Ron Metzler to answer the question.

20 COMMISSIONER SHALLENBERGER: May I speak to my
21 motion, before --

22 CHAIR KRUEER: Yes, and let me let Commissioner
23 Shallenberger go ahead. She has the floor.

24 COMMISSIONER SHALLENBERGER: Thank you, I think,
25 as I understand it, the project proponent has offered this as

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1 part of the package.

2 I just want to point out that this is part of the
3 difficulty we try and resist, you know, doing amendments kind
4 of ourselves from the dais. I wasn't here last month, but I
5 have been told that a very large project that was before us
6 was postponed because the project proponent only had 10 days
7 to respond to a rather detailed staff report.

8 This project was before us 6 months ago, and they
9 were asked to go off and work with staff and the Sierra Club
10 to come up with some kind of reasonable compromise. And,
11 they think it is reasonable, and the Sierra Club isn't
12 supporting it, staff isn't supporting it, and so we are up
13 here without actually having it before us, and without staff
14 having analyzed it.

15 So, whether this amendment passes or not, then I
16 would like to ask the project proponent up to ask them if
17 there is anything else that they dropped off at the Long
18 Beach Office that was in their offer to us. But, at this
19 point, anybody can ask the project proponent up that they
20 want, but from my point of view, it is on the document that
21 they presented to us. It was in my hotel room last night,
22 and I would urge a "Yes" vote.

23 **CHAIR KRUER:** Do you have a "second" to your
24 amending motion?

25 **COMMISSIONER SECORD:** I seconded it.

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1 CHAIR KRUER: Okay, Commissioner Shallenberger.

2 COMMISSIONER SHALLENBERGER: No.

3 CHAIR KRUER: Okay, Commissioner Secord.

4 COMMISSIONER SECORD: I seconded the motion, and
5 then asked Mr. Metzler to come up and speak to it.

6 MR. METZLER: Ron Metzler, again, with Shea Homes.
7 The plan was provided was a package plan,
8 contingent upon the absence of EPA, contingent upon the
9 absent of WP.

10 COMMISSIONER SHALLENBERGER: So, it was an all or
11 nothing? just take it or leave it? That is not my idea of a
12 a reasonable compromise, so I would urge the Commission to --

13 MR. METZLER: With us providing a 5-acre --

14 COMMISSIONER SHALLENBERGER: Thank you.

15 MR. METZLER: -- voluntary wetland?

16 COMMISSIONER SHALLENBERGER: Thank you.

17 COMMISSIONER REILLY: Let's not argue it.

18 CHAIR KRUER: He's not --

19 COMMISSIONER REILLY: Mr. Chairman.

20 CHAIR KRUER: Yes, Commissioner Reilly.

21 COMMISSIONER REILLY: Question of staff --

22 COMMISSIONER SHALLENBERGER: Why can't we vote
23 mine?

24 CHAIR KRUER: Yes, I know, and we will.

25 COMMISSIONER REILLY: As we stand currently, the

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1 natural treatment system is outside of the buffer, according
2 to the staff recommendation, is that correct?

3 **DISTRICT DIRECTOR SARB:** It is not allowed within
4 the wetland buffer, that is right.

5 **COMMISSIONER REILLY:** All right, thank you.

6 **CHAIR KRUER:** Okay, there is an amending motion.
7 Commissioner Shallenberger has, and Commissioner Secord
8 "seconded" it, and --

9 **COMMISSIONER HUESO:** Just ask some clarification,
10 if I can?

11 **CHAIR KRUER:** Would you state your amending motion
12 again, for the record, so that we are clear.

13 **COMMISSIONER SHALLENBERGER:** Yes, I would like to
14 add in the creation of an additional 5 new wetland acres,
15 which, according to this sheet they gave us last night,
16 called Huntington Beach LC -- I don't know how to identify
17 it. It is the same one that we just looked at, okay. Well,
18 the AP -- the .6 is from the AP wetlands.

19 **CHAIR KRUER:** You are talking about the whole AP
20 plus an --

21 **COMMISSIONER SHALLENBERGER:** Yes.

22 **CHAIR KRUER:** -- additional --

23 **COMMISSIONER SHALLENBERGER:** Which is what they
24 proposed in what they sent us.

25 **CHAIR KRUER:** No, what they sent us was that if

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1 the EPA wasn't there --

2 **COMMISSIONER SHALLENBERGER:** I understand that.

3 **CHAIR KRUER:** -- that they would create a 6.5-acre
4 wetland, and connect where the WP was, et cetera.

5 Now, what I am trying to ask is are you suggesting
6 they give you the -- there was no motion on the EPA, so it
7 stands right now --

8 **COMMISSIONER SHALLENBERGER:** Okay.

9 **CHAIR KRUER:** -- so are you suggesting on top of
10 that 8.5 acres you are asking the applicant to give another
11 6.5 acres? I am just asking.

12 **COMMISSIONER SHALLENBERGER:** I would phrase it
13 differently. I would say that the Commission has decided not
14 to preserve the WP, and the Commission has decided to reduce
15 the buffer around the eucalyptus, and as of yesterday, the
16 project proponent was prepared to create 5 new acres of
17 wetlands, and that is my motion, that that creation of an
18 additional 5 acres be amended in.

19 **CHAIR KRUER:** Okay.

20 Commissioner Wan.

21 **COMMISSIONER WAN:** Just a point of clarification.

22 The 5 acres that you are talking about for
23 creation is within the area that is of the EPA? it is not
24 additional acreage? am I correct?

25 **CHAIR KRUER:** That is correct.

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1 COMMISSIONER WAN: Okay.

2 CHAIR KRUEER: That is what I --

3 COMMISSIONER WAN: And, that is the point of
4 clarification.

5 CHAIR KRUEER: -- was trying to point out.

6 COMMISSIONER WAN: Okay, that is the area where
7 the EPA wetlands are, and I think that is the 5 acres you are
8 talking about. It is within the area that we are now --

9 COMMISSIONER SHALLENBERGER: I just go back to
10 about what I said about it being a mistake trying to rewrite
11 these things from dais, and withdraw my motion.

12 COMMISSIONER SECORD: I'll withdraw the "second".

13 CHAIR KRUEER: Okay, thank you, very much.

14 Main motion, there is a motion now, and a "second"
15 on the main motion, both the maker and the "seconder" are
16 asking for a "Yes" vote, and passage of this motion will
17 result in the certification of the Land Use Plan Amendment.

18 EXECUTIVE DIRECTOR DOUGLAS: With the
19 modifications.

20 CHAIR KRUEER: With the modifications that we have
21 -- that is correct.

22 EXECUTIVE DIRECTOR DOUGLAS: That you have made,
23 and that staff is recommending --

24 CHAIR KRUEER: That is right.

25 EXECUTIVE DIRECTOR DOUGLAS: -- that survive.

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1 CHAIR KRUER: That is correct, okay.
2 And, with that, Clerk, would you call the roll on
3 the main motion.

4 SECRETARY MILLER: Commissioner Neely?

5 VICE CHAIR NEELY: Yes.

6 SECRETARY MILLER: Commissioner Potter?

7 COMMISSIONER POTTER: Aye.

8 SECRETARY MILLER: Commissioner Reilly?

9 COMMISSIONER REILLY: Yes.

10 SECRETARY MILLER: Commissioner Shallenberger?

11 COMMISSIONER SHALLENBERGER: No.

12 SECRETARY MILLER: Commissioner Wan?

13 COMMISSIONER WAN: No.

14 SECRETARY MILLER: Commissioner Firestone?

15 COMMISSIONER FIRESTONE: No.

16 SECRETARY MILLER: Commissioner Blank?

17 COMMISSIONER BLANK: No.

18 SECRETARY MILLER: Commissioner Burke?

19 COMMISSIONER BURKE: Yes.

20 SECRETARY MILLER: Commissioner Clark?

21 COMMISSIONER CLARK: Yes.

22 SECRETARY MILLER: Commissioner Hueso?

23 COMMISSIONER HUESO: Yes.

24 SECRETARY MILLER: Commissioner Secord?

25 COMMISSIONER SECORD: Yes.

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1 **SECRETARY MILLER:** Chairman Kruer?

2 **CHAIR KRUER:** Yes.

3 **SECRETARY MILLER:** Eight, four.

4 **CHAIR KRUER:** It passes, okay.

5 **EXECUTIVE DIRECTOR DOUGLAS:** Mr. Chairman, we will
6 need to make some modifications of the lines. You didn't
7 include that in your motions, but the way we read what you
8 did, we will have to modify the line to conform with what you
9 did on the three motions that you passed, in modifications,
10 and I just wanted to make sure for the record you understand
11 that, so it will come back with the modified line --

12 **CHAIR KRUER:** Okay.

13 **EXECUTIVE DIRECTOR DOUGLAS:** -- to conform with
14 what you did.

15 **COMMISSIONER REILLY:** And, would the map also
16 contain the treatment plant area. Will the new map contain
17 an envelop for the treatment plant area?

18 **EXECUTIVE DIRECTOR DOUGLAS:** It will retain it as
19 what? as it is proposed, right?

20 **CHAIR KRUER:** Commissioner Burke.

21 **EXECUTIVE DIRECTOR DOUGLAS:** It is outside of the
22 wetland buffer, yes.

23 **COMMISSIONER BURKE:** [Not on microphone, out of
24 hearing range.]

25 **CHAIR KRUER:** Can you speak into --

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Attachment B
HNB-MAJ-1-06 Revised Findings
Page 123 of 124
Transcript with Commissioner Deliberations

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COMMISSIONER BURKE: The motion we just approved did not include an additional 5 acres?

CHAIR KRUER: That is correct.

COMMISSIONER BURKE: Right, okay, so there was no confusion here.

CHAIR KRUER: No, no, there is no confusion.

*

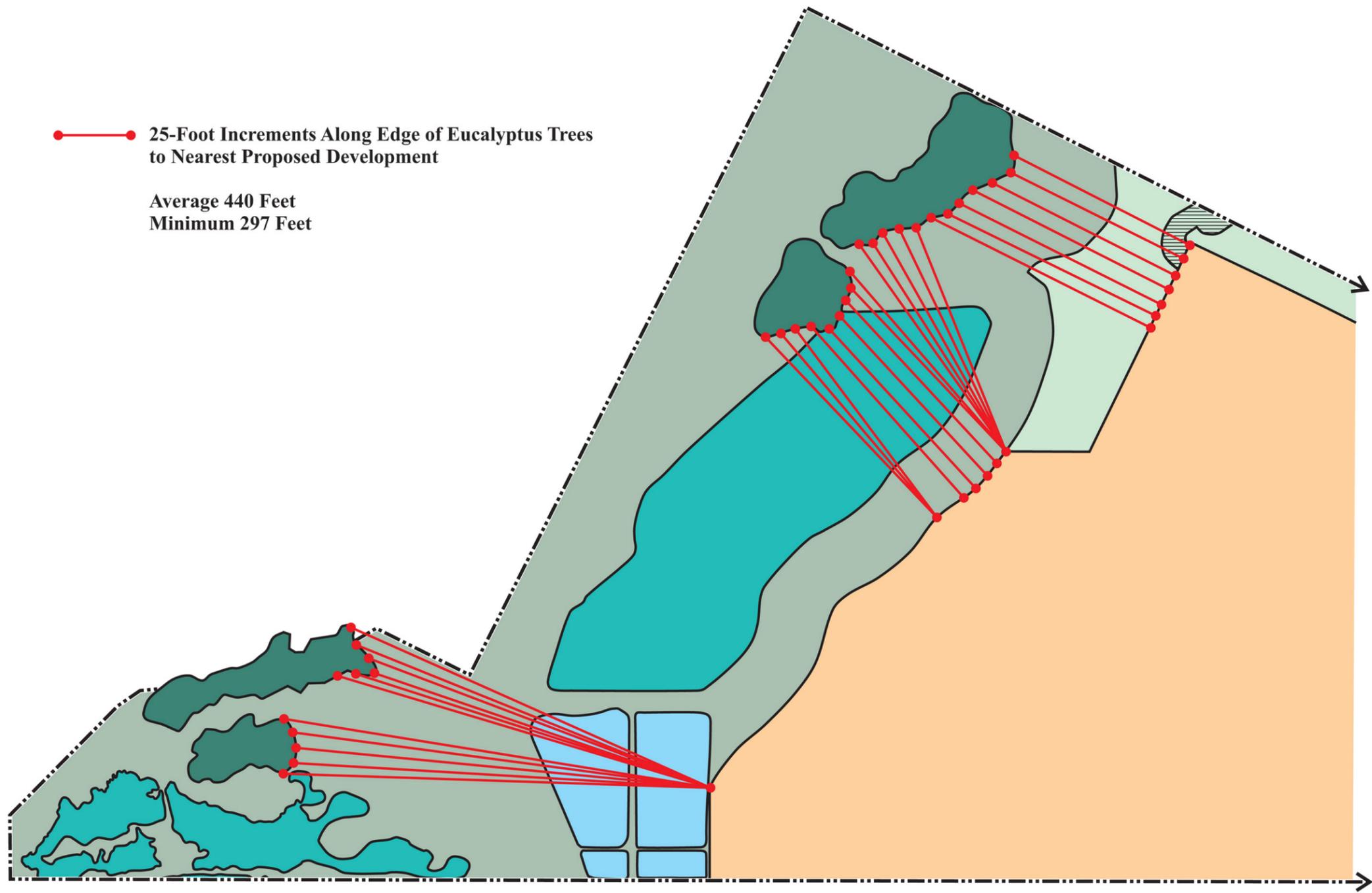
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[Whereupon the hearing concluded at 8:00 p.m.]

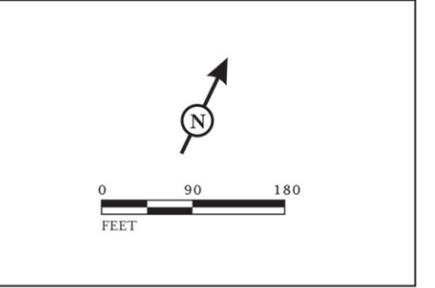
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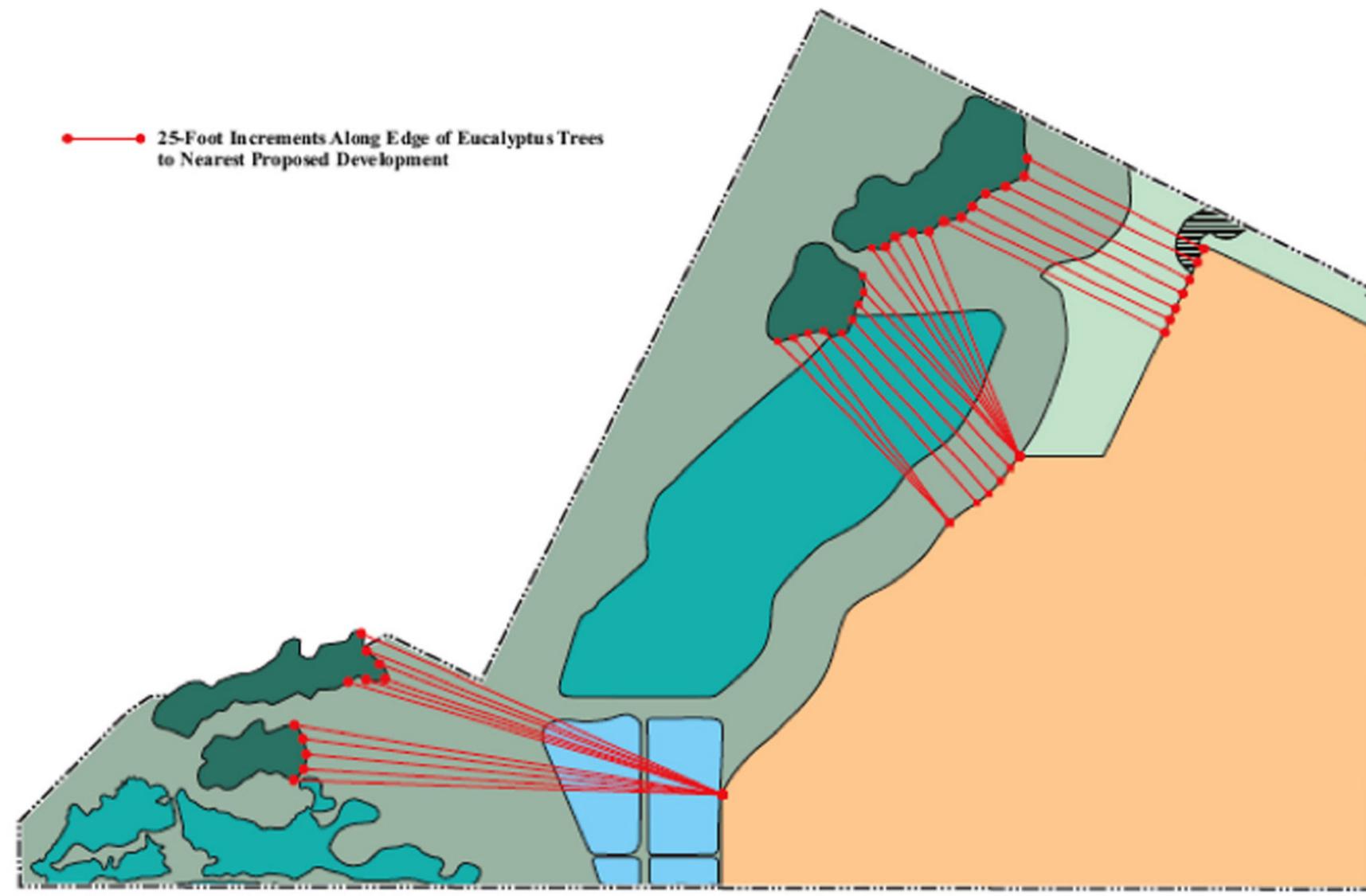
Attachment C



- LEGEND**
- Park/Paseo
 - Restored Native Vegetation
 - Eucalyptus Trees
 - Preserved/Restored Wetland
 - NTS Water Surface
 - Emergency Access Road
 - Residential Development
 - Project Boundary



L S A



	Avg. Distance: Trees to Nearest Edge of Development (ft)	Minimum Distance (ft)	Maximum Distance (ft)
Approved Brightwater	276	150	375
Parkside: Edge of Residential	440	297	650
Parkside: Edge of Park or Residential	378	150	650

Buffer Exhibits Shown/
Distributed at November '07 Hearing