

**CONSENT CEASE AND DESIST ORDER CCC-12-CD-01
AND CONSENT RESTORATION ORDER CCC-12-RO-01**

1 CONSENT CEASE AND DESIST ORDER CCC-12-CD-01

Pursuant to its authority under California Public Resources Code (“PRC”) section 30810, the California Coastal Commission (“Commission”) hereby orders and authorizes Douglas Goodell, Stuart Goodell, and Patricia Price, their successors as trustees of Trusts A, B, and C of the Donald E. Goodell and Shirley L. Goodell Family Trust, and all of their employees, agents, and contractors; successors to any or all of the above as owners of the property identified in Section 6, below (“subject property”); and anyone acting in concert with the foregoing (hereinafter collectively referred to as “Respondents”), to take all actions required by this Consent Order CCC-12-CD-01, including:

- 1.1** Cease and desist from engaging in any further development, as that term is defined in PRC section 30106, on the subject property, unless authorized pursuant to the Coastal Act, PRC sections 30000-30900, including by this Consent Order.
- 1.2** Cease and desist from maintaining on the subject property any unpermitted development (as referred to in Section 7, below) or any physical materials on the subject property or physical changes to the subject property resulting therefrom, unless authorized pursuant to the Coastal Act, including by this Consent Order.
- 1.3** Restore the excavations described in Section 7, below, (“excavations”) in accordance with the procedures set forth in Section 4, below.

2 CONSENT RESTORATION ORDER CCC-12-RO-01

Pursuant to its authority under PRC section 30811, the Commission hereby orders and authorizes Respondents to take all actions required by this Consent Order CCC-12-RO-01, including restoring the excavations in accordance with the procedures set forth in Section 4, below.

3 NATURE OF ORDERS AND OF CONSENT

Consent Order CCC-12-CD-01 and Consent Order CCC-12-RO-01 (“Consent Orders”) authorize and require, among other things, restoration of the excavations outlined in these Consent Orders. Any development subject to Coastal Act permitting requirements that is not specifically authorized under these Consent Orders requires a coastal development permit. Nothing in these Consent Orders guarantees or conveys any right to development on the subject property other than the work expressly authorized by these Consent Orders. Through the execution of these Consent Orders, Respondents agree to comply with these Consent Orders, including the following terms and conditions.

PROVISIONS COMMON TO BOTH ORDERS

4 TERMS AND CONDITIONS

4.1 Restoration Plan

A. Within 30 days of issuance of these Consent Orders, Respondents shall submit, for the review and approval of the Executive Director of the Commission (“Executive Director”), a plan to restore the excavations on the subject property without use of mechanized equipment on the subject property and address any physical materials on the subject property or physical changes to the subject property resulting from the excavations (“Restoration Plan”). All work performed pursuant to the Restoration Plan shall be consistent with the applicable State of California Office of Historic Preservation (OHP) standards for archaeological work and done in a manner that is most protective of any and all cultural materials, including but not limited to cultural midden and midden deposits, human remains, and archaeological features on the subject property. The Restoration Plan shall include the following requirements and include and discuss the following elements:

1. The Restoration Plan shall outline restoration of the excavations that as closely as possible returns the topography of the area of the excavations to the condition that existed prior to any excavation activity. Excavations shall be restored with clean fill materials.
2. The Restoration Plan shall include a map(s), drawn to scale, that shows the specific parameters, locations and extents of the following: (1) the excavations and excavated soil, to the extent it can be identified, (2) haul routes and staging areas for excavation fill material, (3) Southern tarplant locations, and (4) the specific locations and directions from which photographs will be taken and included in the report to document restoration completion, as discussed in Section 4.1.C, below.
3. The Restoration Plan, and any reports or revisions prepared pursuant to the Restoration Plan or the terms of these Consent Orders, shall be prepared by a qualified archaeologist in consultation with Native American monitors with ancestral ties to the area appointed consistent with the standards of the Native American Heritage Commission (“NAHC”), including monitors from each of the Gabrielino and Juaneño tribal groups, as designated by the NAHC as the tribal groups with documented ancestral ties to the area (Native American monitors”), and the Most Likely Descendent (“MLD”) from each of the said tribal groups. The Restoration Plan shall identify the archaeologist and include a description of the education, training, and experience of said archaeologist. A qualified archaeologist for this project shall have experience in archaeology field work, preferably in coastal Orange County. All portions of the Restoration Plan pertaining to protection of the Southern tarplant shall be prepared by a qualified restoration ecologist or resource specialist, and shall identify that party and include a description of the education, training, and experience of said

ecologist/specialist. A qualified ecologist/specialist for this project shall have experience successfully completing restoration of Southern tarplant.

4. The Restoration Plan shall include: 1) graphic representations of both the original topography of the property, and the topography after the excavations were completed, drawn to scale with contours clearly marked and labeled; 2) a quantitative breakdown of the amount and type of excavated soil; and 3) the source of all fill material to be used to restore the excavations to their pre-violation topography. The Restoration Plan shall identify the source and date of all data used to produce this information.
5. The Restoration Plan shall include a detailed description of all equipment to be used. It shall indicate that all tools utilized on the subject property shall be hand tools. The Restoration Plan shall designate areas for staging of any construction equipment and materials. The Restoration Plan shall indicate that the equipment staging areas and haul routes will avoid impacts to Southern tarplant.
6. The Restoration Plan shall include a schedule/timeline of activities covered in the plan, the procedures to be used, and identification of the parties who will be conducting the restoration activities. The schedule/timeline of activities covered in the plan shall be consistent with the deadlines included in Section 4 of these Consent Orders. Respondents shall undertake restoration of the excavations subsequent to installation of the erosion control measures described in Section 4.1.A.7, below, and subsequent to staking of the cultural midden boundary pursuant to the terms and conditions of CDP 5-10-258, but by no later than within 30 days of staking of the cultural midden boundary pursuant to the terms and conditions of CDP 5-10-258. In the event that the Commission denies the archaeological research program component of CDP 5-10-258 or the application is withdrawn, Respondents shall undertake restoration of the excavations subsequent to installation of the erosion control measures described in Section 4.1.A.7, below, but by no later than within 30 days of the date of withdrawal or denial of CDP 5-10-258.
7. The Restoration Plan shall include provisions for stabilizing the soil and controlling erosion in the area of the excavations and shall specify the methods to be used prior to, during, and after restoration to do so. Such methods shall not include the placement of retaining walls or other permanent structures, grout, geogrid or similar materials. The Restoration Plan shall specify the type and location of erosion control measures that will be installed on the subject property and maintained until the excavations are restored and vegetation has reestablished to minimize erosion and transport of sediment. Respondents shall implement all approved erosion control measures within 15 days of approval of the Restoration Plan. Such measures shall be provided at all times of the year for at least three years or until vegetation has reestablished, whichever occurs first, and then shall be removed by Respondents.

8. Prior to restoring the excavations, the archaeologist shall identify as best as possible the soil excavated from the pits, and its location. That soil shall be screened for evidence of cultural materials. Any cultural materials, including cultural midden materials, human remains, and archaeological features, if encountered, shall be documented and reburied during restoration of the excavations, unless the origin of any human remains discovered during soil screening is determined by the archaeologist, in consultation with the monitors and MLDs, to be fill soil, in which case human remains shall be treated in accordance with section 4.1.A.9, below. Any such documentation shall be included with the report described in Section 4.1.C, below.
9. If the origin of any human remains discovered during the soil screening described in Section 4.1.A.8, above, conducted pursuant to these Consent Orders, is determined by the archaeologist, in consultation with the monitors and MLDs, to be fill soil, the human remains shall be documented and reburied with any other human remains discovered in fill soil during soil screening in a location chosen in consultation with the monitors and MLDs. If human remains are encountered during soil screening, Respondents shall comply with all applicable State and Federal laws, including but not limited to, contacting the County Coroner, NAHC and the MLDs.
10. All identification of excavated soil, soil screening, and restoration of excavations to their pre-violation topography conducted pursuant to these Consent Orders shall be monitored by the Native American monitors, as well as the MLDs at the MLDs' discretion. In addition, the Native American monitors and the MLDs shall be provided access to the subject property to inspect the excavations prior to their restoration. The Native American monitors and MLDs may enter and move freely about the portions of the subject property on which the excavations are located. If human remains are encountered during inspection of the excavations, Respondents shall comply with all applicable State and Federal laws, including but not limited to, contacting the County Coroner, NAHC and the MLDs. Human remains shall be left in situ and shall be excavated only to the extent necessary for the archaeologist and County Coroner to make the necessary determination as to whether the bone is human and whether it represents a modern forensic case. Unless required by the County Coroner, subsequent human remains shall not be excavated unless excavation is necessary to determine whether they are human in origin and the extent of excavation shall be the minimum necessary to make the determination.
11. The archaeologist shall document any cultural materials, including cultural midden materials, human remains, and archaeological features encountered during the course of work conducted pursuant to these Consent Orders, and such documentation shall be included with the report described in Section 4.1.C, below.

12. Any disputes in the field regarding the discovery of any cultural midden materials, human remains or archaeological features arising among the Respondents, the archaeologist, and/or the Native American monitors or MLDs, shall be promptly reported to the Executive Director via e-mail and telephone and the work shall be halted in the area(s) of dispute. Work may continue in area(s) not subject to dispute. Disputes shall be resolved by the Executive Director in consultation with the Native American monitors, the MLDs, the archaeologist, and Respondents. If disputes cannot be resolved by the Executive Director in a timely fashion, said disputes shall be reported to the Commission for resolution at the next regularly scheduled Commission meeting following the dispute.

B. Upon approval of the Restoration Plan by the Executive Director, Respondents shall undertake restoration in accordance with the approved Restoration Plan. Respondents shall implement the plan completely, pursuant to the approved schedule/timeline as set forth in the plan, with all work to be completed as early as possible and consistent with recommendations by the consulting archaeologist and resource specialist. The Executive Director may extend these deadlines or modify the approved schedule upon a showing of good cause, pursuant to Section 13 of these Consent Orders.

C. Within 30 days of completion of the activities set forth in the Restoration Plan as described in the preceding sections of this Section 4, Respondents shall submit to the Executive Director a report documenting restoration of the excavations. This report shall include a summary of dates when work was performed and photographs that show implementation of the Restoration Plan, documentation of any cultural materials encountered during the course of work conducted pursuant to these Consent Orders, and photographs of the subject property before and after the work required by the Restoration Plan has been completed.

4.2 Revisions of Deliverables

The Executive Director may require revisions to deliverables required under these Consent Orders, and Respondents shall revise any such deliverables consistent with the Executive Director's specifications, and resubmit them for further review and approval by the Executive Director, by the deadline established by the modification request from the Executive Director. The Executive Director may extend time for submittals upon a written request and a showing of good cause, pursuant to Section 13 of these Consent Orders.

4.3 Submittal of Documents

All documents submitted to the Commission pursuant to these Consent Orders must be sent to:

California Coastal Commission
Attn: Andrew Willis
200 OceanGate, Suite 1000

with a copy sent to:
California Coastal Commission
Attn: Patrick Veasart

5 PERSONS SUBJECT TO THE ORDERS

Persons subject to these Consent Orders are Douglas Goodell, Stuart Goodell, and Patricia Price, their successors as trustees of Trusts A, B, and C of the Donald E. Goodell and Shirley L. Goodell Family Trust, and all of their employees, agents, and contractors; successors to any or all of the above as owners of the subject property; and anyone acting in concert with the foregoing, all of whom are jointly and severally subject to all the requirements of these Consent Orders. Respondents agree to undertake the work required herein and agree to cause their employees and agents, and any contractors performing any of the work contemplated or required herein and any persons acting in concert with any of these entities, to comply with the terms and conditions of these Consent Orders.

6 IDENTIFICATION OF THE SUBJECT PROPERTY

The property that is the subject of these Consent Orders is described as follows:

Vacant property on the east side of the intersection of Brightwater Drive and Bolsa Chica Street; Orange County APN 110-016-18.

7 DESCRIPTION OF UNPERMITTED DEVELOPMENT CONSTITUTING COASTAL ACT VIOLATIONS

The violations of the Coastal Act that formed the basis for these Consent Orders consist of development, as that term is defined in the Coastal Act (PRC section 30106), on the subject property that required a coastal development permit pursuant to the Coastal Act, but for which no such permit was obtained, consisting of excavation of 16 50-cm wide by, on average, 101-cmbs (centimeters below surface) deep pits and deposition of soil excavated from said pits, and any other physical materials on the subject property or physical changes to the subject property resulting from the excavations.

8 COMMISSION JURISDICTION

The Commission has jurisdiction over resolution of the Coastal Act violations described in Section 7 pursuant to PRC sections 30810 and 30811. In light of the desire of the parties to settle these matters, Respondents agree to not contest the Commission's jurisdiction to issue or enforce these Consent Orders.

9 SETTLEMENT OF MATTER PRIOR TO HEARING/NONSUBMISSION OF STATEMENT OF DEFENSE

In light of the intent of the parties to resolve these matters in settlement, Respondents have elected not to submit a "Statement of Defense" form as provided for in sections 13181 and 13191 of Title 14 of the California Code of Regulations, and Respondents have agreed not to contest the legal and factual bases for, the terms of, or the issuance of

these Consent Orders. Specifically, Respondents have agreed not to contest the issuance or enforcement of these Consent Orders at a public hearing or any other proceeding. Respondents have agreed not to contest commencement of proceedings to issue these Consent Orders without receiving written notice of commencement of cease and desist order and restoration order proceedings pursuant to sections 13181 and 13191, respectively, of the Commission's administrative regulations.

10 EFFECTIVE DATE AND TERMS OF THE ORDERS

The effective date of these Consent Orders is the date these Consent Orders are issued by the Commission. These Consent Orders shall remain in effect permanently unless and until rescinded by the Commission.

11 FINDINGS

These Consent Orders are issued on the basis of the findings adopted by the Commission at its January 11, 2012 meeting, as set forth in the document entitled "Staff Report and Findings for Consent Cease and Desist Order No. CCC-12-CD-01 and Consent Restoration Order No. CCC-12-RO-01." The activities authorized and required in these Orders are consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act. The Commission has authorized the activities required in these Consent Orders as being consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act.

12 SETTLEMENT/COMPLIANCE OBLIGATION

- 12.1** In light of the intent of the parties to resolve these matters in settlement, Respondents have agreed to fund a mitigation project in the amount of \$430,000, paid to a not-for-profit recipient organization proposed by the Executive Director, or by Respondents within 30 days of issuance of these Consent Orders for the approval of the Executive Director, to promote conservation of archaeological resources in coastal Orange County. In the event that the Executive Director determines that directing funds to said organization is not feasible, Respondents shall propose for the Executive Director's approval, by no later than within 30 days of the Executive Director's determination of infeasibility, an alternative recipient not-for-profit organization that facilitates conservation of archaeological resources, including in coastal Orange County, and pay \$430,000 to such organization once approved by the Executive Director. In the event that no such alternative recipient organization or project is identified, proposed by Respondents, and agreed upon by no later than July 1, 2012, the Executive Director may direct Respondents to submit \$430,000 to the attention of Andrew Willis of the Commission's staff, payable to the California Coastal Commission, to be deposited into Violation Remediation Account of the California Coastal Conservancy Fund (see PRC section 30823) or into such other public account as authorized by applicable California law at the time of the payment, and as designated by the Executive Director. Respondents shall submit the full settlement amount directly to the recipient organization approved by the Executive Director (or to the Commission) in four separate

payments of \$100,000, \$100,000, \$100,000, and \$130,000, on or before July 1, 2012, January 1, 2013, January 1, 2014, and January 1, 2015, respectively, with a copy of the checks and accompanying transmittal letter to be sent to Andrew Willis of the Commission's staff (if the money is not being paid to the Commission) at the address listed in Section 4.3, above, and to the Enforcement Division in the Commission's San Francisco office.

- 12.2** Strict compliance with these Consent Orders by all parties subject thereto is required. Failure to comply with any term or condition of these Consent Orders, including any deadline contained in these Consent Orders, unless the Executive Director grants an extension under Section 13, will constitute a violation of these Consent Orders and shall result in Respondents being liable for stipulated penalties in the amount of \$500 per day per violation until the violation is resolved, with the exception that any ground disturbance that is substantially inconsistent with a previously issued coastal development permit or any other ground disturbance that requires a coastal development permit and is undertaken by Respondents on the subject property without a valid coastal development permit, will result in Respondents being liable for stipulated penalties in the amount of \$2000 per day per violation until the violation is resolved. Respondents shall pay stipulated penalties within 15 days of receipt of written demand by the Executive Director for such penalties regardless of whether Respondents have subsequently complied. Stipulated penalty payments shall be made payable to the account designated under the Coastal Act and shall be sent to the Commission to the attention of Andrew Willis at the address listed in Section 4.3, above. If Respondents violate these Consent Orders, nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of the Commission to seek any other remedies available, including the imposition of civil penalties and other remedies pursuant to PRC sections 30821.6, 30822 and 30820 as a result of the lack of compliance with these Consent Orders and for the underlying Coastal Act violations as described herein.

13 DEADLINES

Prior to the expiration of any given deadline established by these Consent Orders, Respondents may request from the Executive Director an extension of the unexpired deadline. Such a request shall be made in writing 10 days in advance of the deadline, and directed to the Executive Director, care of Andrew Willis of the Commission's staff, in the Long Beach office of the Commission. The Executive Director may grant an extension of deadlines upon a showing of good cause, if the Executive Director determines that Respondents have demonstrated that they have diligently worked to comply with their obligations under these Consent Orders but cannot meet deadlines due to unforeseen circumstances beyond their control.

14 SITE ACCESS

Respondents shall provide access to the subject property at all reasonable times to Commission staff and any agency having jurisdiction over the work being performed under these Consent Orders. Nothing in these Consent Orders is intended to limit in any

way the right of entry or inspection that any agency may otherwise have by operation of any law. The Commission staff may enter and move freely about the portions of the subject property on which the violations are located, and on adjacent areas of the subject property to view the areas where development is being performed pursuant to the requirements of these Consent Orders for purposes including but not limited to inspecting records, operating logs, and contracts relating to the site and overseeing, inspecting and reviewing the progress of Respondents in carrying out the terms of these Consent Orders.

15 GOVERNMENT LIABILITIES

Neither the State of California, the Commission, nor its employees shall be liable for injuries or damages to persons or property resulting from acts or omissions by Respondents in carrying out activities pursuant to these Consent Orders, nor shall the State of California, the Commission or its employees be held as a party to any contract entered into by Respondents or their agents in carrying out activities pursuant to these Consent Orders.

16 SETTLEMENT VIA CONSENT ORDERS

In light of the desire to settle this matter via these Consent Orders and avoid litigation, pursuant to the agreement of the parties as set forth in these Consent Orders, Respondents hereby agree not to seek a stay pursuant to PRC section 30803(b) or to challenge the issuance and enforceability of these Consent Orders in a court of law or equity.

17 SETTLEMENT OF CLAIMS

The Commission and Respondents agree that these Consent Orders settle the Commission's monetary claims for relief for those violations of the Coastal Act described in Section 7, above, occurring prior to the date of these Consent Orders and addressed in these Consent Orders, (specifically including claims for civil penalties, fines, or damages under the Coastal Act, including under PRC sections 30805, 30820, and 30822), with the exception that, if Respondents fail to comply with any term or condition of these Consent Orders, the Commission may seek monetary or other claims for both the underlying violations of the Coastal Act and for the violation of these Consent Orders. In addition, these Consent Orders do not limit the Commission from taking enforcement action due to Coastal Act violations at the subject property other than those that are the subject of these Consent Orders.

18 SUCCESSORS AND ASSIGNS

These Consent Orders shall run with the land binding Respondents and all successors in interest, heirs, assigns, and future owners of the subject property. Respondents shall provide notice to all successors, assigns, and potential purchasers of the subject property of any remaining obligations under these Consent Orders.

19 MODIFICATIONS AND AMENDMENTS

Except as provided in Section 13, and for minor, immaterial matters upon mutual written agreement of the Executive Director and Respondents, these Consent Orders may be amended or modified only in accordance with the standards and procedures set forth in sections 13188(b) and 13197 of the Commission's administrative regulations.

20 GOVERNING LAW

These Consent Orders shall be interpreted, construed, governed and enforced under and pursuant to the laws of the State of California.

21 LIMITATION OF AUTHORITY

21.1 Except as expressly provided herein, nothing in these Consent Orders shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of the Coastal Act, including the authority to require and enforce compliance with these Consent Orders. Failure to enforce any provision of these Consent Orders shall not serve as a waiver of the ability to enforce those provisions or any others at a later time.

21.2 Correspondingly, Respondents have entered into these Consent Orders and waive their right to contest the factual and legal bases for issuance of these Consent Orders, and the enforcement thereof according to its terms. Respondents have agreed not to contest the Commission's jurisdiction to issue and enforce these Consent Orders.

22 INTEGRATION

These Consent Orders constitute the entire agreement between the parties and may not be amended, supplemented, or modified except as provided in these Consent Orders.

23 SEVERABILITY

Should any provision of these Consent Orders be found invalid, void or unenforceable, it shall be severable from the rest of these Consent Orders, and the remaining terms shall remain in full force and effect as if the unenforceable term had not existed.

24 STIPULATION

Respondents attest that they have reviewed the terms of these Consent Orders with counsel of their choosing and understand that their consent is final and stipulate to its issuance by the Commission. Because Respondents were represented by counsel, these Consent Orders are not subject to a presumption that it should be construed in favor of Respondents in the event of a dispute over its terms.

25 RECORDATION OF A NOTICE OF VIOLATION

Attention: Andrew Willis

12.16.11
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Respondents do not object to recordation by the Executive Director of a notice of violation, pursuant to PRC section 30812(b). Accordingly, a notice of violation will be recorded after issuance of these Consent Orders. No later than thirty days after the Commission determines that Respondents have fully complied with these Consent Orders, the Executive Director shall record a notice of rescission of the notice of violation, pursuant to PRC section 30812(f). The notice of rescission shall have the same effect of a withdrawal or expungement under Section 405.61 of the Code of Civil Procedure.

IT IS SO STIPULATED AND AGREED:
On behalf of Respondents:

Douglas A. Goodsell
Name:

12/18/11
Date:

Executed in Santa Monica, CA on behalf of the California Coastal Commission:

Ch. F. Lester
Charles Lester, Executive Director

1/11/12
Date:

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