

**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 Avillis

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:

Name:

Douglas A. Goodell

Date:

12/18/11

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

Chel F. H.
Charles Lester, Executive Director

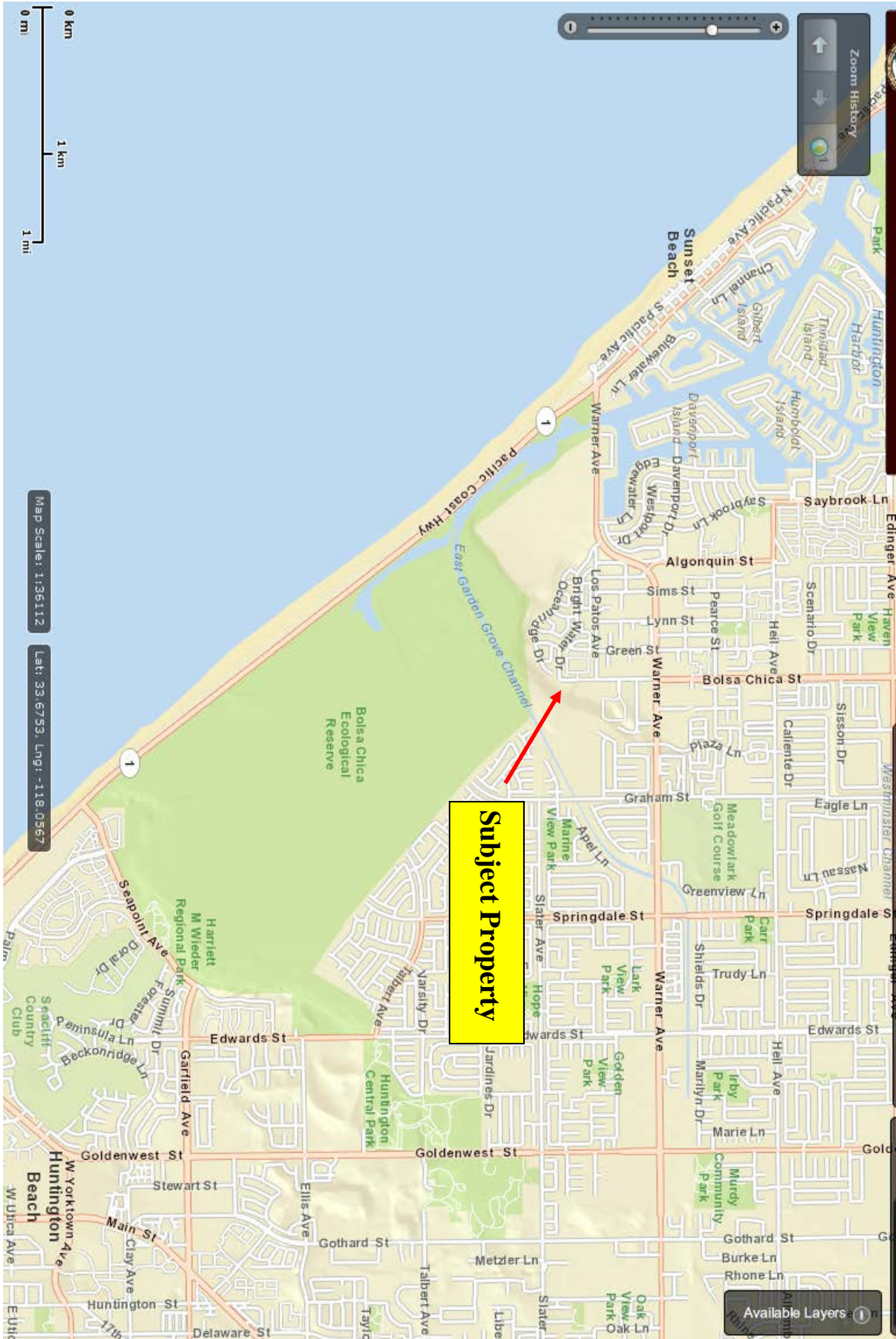
Date:

1/11/12

RECEIVED
South Coast Region

DEC 19 2011

CALIFORNIA
COASTAL COMMISSION







Subject Property

CALIFORNIA COASTAL COMMISSION

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

FILE COPY**EXEMPTION LETTER**

Date: April 16, 2010

Reference Number: 5-10-035-X

Applicant Name: Donald Goodell

Project Location: Near and Southeast of the intersection of Bolsa Chica Street and Los Patos Avenue, Orange County.
APN 110-014-20

Project Description: Implementation of a geophysical program intended to provide data for archaeological research. The program includes use of ground penetrating radar (GPR) and conductivity instruments. The results of the data collection are expected to provide two and three dimensional subsurface images of historic and prehistoric features that may be present on the site. In addition, a pedestrian surface survey will be conducted. The information gathered through the above described methods will be used to generate archaeological maps of the subject site. The maps generated are proposed to display multi-layer representations of the geophysical data to demonstrate any corresponding anomalies identified by the various instruments. Also included in the maps will be site boundaries, location of surface artifacts and other relevant GPS data collected through the proposed geophysical program and surface review. Other than placement of stakes to mark grids, no ground disturbing, or sub-surface excavation/earth movement will occur.

This is to certify that this location and/or proposed project has been reviewed by the staff of the Coastal Commission. A coastal development permit is not necessary for the reasons checked below:

- ☐ The site is not located within the coastal zone as established by the California Coastal Act of 1976, as amended.
- ☐ The proposed development is included in **Categorical Exclusion No. E-82-1** adopted by the California Coastal Commission.
- ☐ The proposed development is judged to be repair or maintenance activity not resulting in an addition to or enlargement or expansion of the object of such activities and not involving any risk of substantial adverse environmental impact (Section 30610(d) of Coastal Act).
- ☐ The proposed development is an improvement to an existing single family residence (Section 30610(a) of the Coastal Act) and not located in the area

between the sea and the first public road or within 300 feet of the inland extent of any beach (whichever is greater) (Section 13250(b)(4) of 14 Cal. Admin. Code).

___ The proposed development is an improvement to an existing single family residence and is located in the area between the sea and the first public road or within 300 feet of the inland extent of any beach (whichever is greater) but is not a) an increase of 10% or more of internal floor area, b) an increase in height over 10%, or c) a significant non-attached structure (Sections 30610(a) of Coastal Act and Section 13250(b)(4) of Administrative Regulations).

___ The proposed development is an interior modification to an existing use with no change in the density or intensity of use (Section 30106 of Coastal Act).

___ The proposed development involves the installation, testing and placement in service of a necessary utility connection between an existing service facility and development approved in accordance with coastal development permit requirements, pursuant to Coastal Act Section 30610(f).

___ The proposed development is an improvement to a structure other than a single family residence or public works facility and is not subject to a permit requirement (Section 13253 of Administrative Regulations).

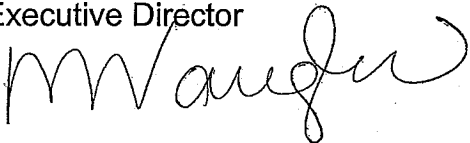
___ The proposed development is the rebuilding of a structure, other than a public works facility, destroyed by natural disaster. The replacement conforms to all of the requirements of Coastal Act Section 30610(g).

X **Other:** The proposed development does not constitute development as defined in Section 30106 of the Coastal Act.

Please be advised that only the project described above is exempt from the permit requirements of the Coastal Act. Any change in the project may cause it to lose its exempt status. This certification is based on information provided by the recipient of this letter. If, at a later date, this information is found to be incorrect or incomplete, this letter will become invalid, and any development occurring at that time must cease until a coastal development permit is obtained.

Sincerely,

PETER M. DOUGLAS
Executive Director



Meg Vaughn
Coastal Program Analyst

CALIFORNIA COASTAL COMMISSION

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

**W19b**

Filed: 6/6/11
180th Day: 12/3/11
Staff: Teresa Henry-LB
Staff Report: 12/22/11
Hearing Date: 1/11/12
Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: 5-10-258

APPLICANT: Donald E. Goodell

AGENT: Ed Mountford, Hearthside Homes
Nancy Wiley, Scientific Resources Surveys, Inc.
Dave Neish, D. B. Neish, Inc.

PROJECT LOCATION: East side of the intersection of Brightwater Drive and Bolsa Chica Street, Bolsa Chica, Orange County (APN: 110-016-18)

PROJECT DESCRIPTION: Implementation of an archaeological research plan (ARP) including subsurface investigation of potential cultural resources. The investigation will include a two-series auger program using hollow-stem augers, and small (1x1 meter) hand excavation units, wet screening, laboratory work and report of findings. The purpose of the ARP is to determine if cultural/archaeological resources (such as intact midden, Native American human remains, or archaeological features) are present on the subject site, and to define the boundaries of these areas, using the above methods and techniques that avoid impacts to these resources, if they are present.

LOCAL APPROVALS RECEIVED: Approval in Concept, County of Orange, OC Communities Planning, OC Public Works, pre-annexation zoning, City of Huntington Beach.

SUMMARY OF STAFF RECOMMENDATION:

The Coastal Act issues involved in the subject application include protection of significant archaeological/cultural resources that have a high potential to exist on the subject site and the protection of biological resources, including Southern tar plant and raptor nesting, roosting and breeding habitat. The subject 6.2 acre site is located on the southeastern portion of the Bolsa Chica Mesa and contains a known archaeological site, CA-ORA-144, "The Water Tower Site", in recognition of a water tower structure that was historically on the site up until the 1980's. However, some archaeologists consider the subject site to be the north-eastern portion of another archaeological site located on the Bolsa Chica Mesa the highly significant archaeological site CA-ORA-83, "The Cogged Stone Site" which lies primarily to the west of Bolsa Chica Street on the Hearthside Homes Brightwater project site. The project archaeologist, Scientific Resources Surveys, Inc. (SRS), agrees that CA-ORA-144 is a part of "The Cogged Stone Site" which is a 9,000 year old archaeological site that was included on the National Register of Historic Places in 2009. Additionally, the Native American Heritage Commission (NAHC) has determined that "The Cogged Stone Site" is a Native American cemetery due to the high number of Native American burials that were found on the site. Beginning in the early 1980's, the predecessor company to Hearthside Homes was granted several coastal development permits to investigate CA-ORA-83, as well as other archaeological sites on the mesa such as CA-ORA-85, "The Eberhart Site", and was also allowed to fully excavate all existing on-site archaeological resources. This work was carried out over a 20 year period and was completed in 2006.

The subject site lies on the southeastern portion of the Bolsa Chica Mesa and is separated from the main portion of CA-ORA-83 by Bolsa Chica Street. Therefore, there is a high likelihood that archaeological/cultural resources are on the project site. However, portions of the subject Goodell site were developed with above and below ground World War II development and still contain remnants of this historic development that may have impacted prehistoric archaeological/cultural resources.

The purpose of the proposed archaeological research plan (ARP) is to identify portions of the subject site that contain intact cultural/archaeological resources (such as Native American human remains, archaeological features, or intact midden), and to define the boundaries of these areas, using techniques that avoid impacts to these resources, if they are present. An archaeological midden is a prehistoric mound of discarded material used in cooking and food processing and contains marine shell, animal bone, fired rocks, and discarded artifacts and characterized by organic material in the soil such as grease, blood, and body fluids. The presence of prehistoric midden soils constitutes an archaeological site. Therefore, the additional presence of prehistoric human remains, artifacts or features is not necessary to determine that an archaeological site exists. Archaeological midden is "intact" if it is in place and has not been dug up and re-deposited or severely disturbed as the result of historic or modern activities. The purpose of the proposed ARP on the Goodell site is not to excavate intact cultural/archaeological resources as was done on the adjacent Brightwater project site. Any intact cultural/archaeological resources found on the subject site will be left in place and any subsequent development of the site will be designed to avoid further impacts to these resources.

The testing plan is designed to document intact midden, human remains and other archaeological features (such as subterranean house pit structures, fired rocks, hearths,

ornaments, religious objects, etc.) and to limit disturbance to these resources, determine and map their boundaries and then cover and preserve in place any Native American human remains or features found in intact midden soils. The ARP is also designed to preserve intact midden as an archaeological/cultural resource. The Program Purpose of the proposed ARP states, "...the goal of the Constraints Analysis should be limited to identifying the locations and defining the boundaries of areas of intact cultural deposits (midden) within the property." The proposed ARP is a two-part mechanical auger and 1x1meter hand unit excavation program. A hollow-stemmed 16" bucket auger will be used, as opposed to a screw auger, in order to minimize impacts to any existing cultural deposits. Only the portion of the site that has been pre-zoned for subsequent residential use by the City of Huntington Beach will be subject to the proposed testing; which is approximately half of the 6.2 acre site. Areas pre-zoned open space or conservation will not be subject to the proposed investigation since subsequent subsurface development is not contemplated in those areas. Once intact midden areas have been established, boring will cease in those areas in order to limit impact. The applicant proposes to have all subsurface work monitored by Native American monitors with ancestral ties to the area. The NAHC has determined that both the Gabrielino and Juaneno tribal groups have ancestral ties to the Bolsa Chica Mesa.

On April 16, 2010 the Executive Director issued exemption 5-10-035-X(Goodell) for the subject site to allow the applicant's archaeological consultant to carry out a surface survey and a geophysical program intended to provide data to be used to generate archaeological maps including site boundaries, location of surface artifacts and other relevant GPS data for the subject ARP. The applicant did not request, nor did the exemption approve, any subsurface work. However, in addition to carrying out the approved geophysical plan the archaeological consultant also, without authorization, excavated by hand, sixteen 50cm wide by 101 cmbs (centimeters below surface) average depth profiles along the edge of the upper terrace of the subject site. Initially the applicant requested approval of the unpermitted development in conjunction with the proposed ARP. The combined application was scheduled on the Commission November 2011 agenda. However, the applicant postponed the application in order to respond to the staff recommendation. Following the postponement the applicant met with Commission planning and enforcement staff to discuss consensual resolution of the unpermitted excavations and has entered into a settlement agreement in the form of consent orders that would provide a resolution of the unpermitted development. The applicant subsequently modified the project description for the subject application to remove the request for approval of the after-the-fact development. Those consent cease and desist and restoration orders, CCC-12-CD-01 and CCC-12-RO-01, are also scheduled on the Commission's January 11, 2012 hearing (items W13 and W14) to precede Commission action on the subject application (see Exhibit XX for the staff report, as incorporated by reference herein).

In summary, staff recommends that the Commission **APPROVE** the proposed archaeological research plan (ARP), subject to conditions requiring the applicant carry out the proposed ARP, within the area of the site planned for future residential development, in a manner most protective of any significant archaeological/cultural resources (such as intact midden, Native American human remains or archaeological features) by, among other things, avoiding excavation of intact midden, minimizing the exposure of and the preservation in place of any archaeological/cultural resources found in intact midden; the timely preparation and appropriate dissemination of the final report of findings of the

approved ARP; the submittal of an equipment staging plan for the protection of Southern tar plant; protection of raptor nesting; and protection of water quality.

Staff Note

The proposed project is the implementation of an archaeological research plan (ARP) which allows subsurface exploration on a site that contains a known, mapped archaeological site. Boundaries of mapped archaeological sites are not exact; intact archaeological resources may be present within or outside of a mapped archaeological site, or no longer present due to historic or modern development or vandalism. Through previous archeological testing the site has been found to contain soils that indicate that intact archaeological resources may be present. Due to the sensitive nature of Native American archaeological resources recorded within the proposed ARP, and consistent with State Government Code, section 6254, subsection (r); the proposed ARP is not attached as an exhibit to the staff report. The ARP will be available at the hearing for review only by Coastal Commissioners, the deputy attorney general, and appropriate Commission staff and will be collected by staff following Commission review and kept in confidential records at the Commission office.

Standard of Review

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The subject site lies within the Bolsa Chica segment of Orange County. There is no LUP or IP for the Bolsa Chica segment of the County of Orange Local Coastal Program. The standard of review is therefore Chapter 3 of the Coastal Act and the Coastal Commission is the permit issuing entity for this area.

However, the subject site is pending annexation to the City of Huntington Beach. The City of Huntington Beach has pre-zoned the subject 6.2 acre site for low density residential, open space and conservation use. The City of Huntington Beach has a certified LCP but it will not be applicable to the project site until the area is annexed into the City and the City amends its LCP to include the site. The Commission recently approved an amendment to the certified City of Huntington Beach LCP for the Parkside Estates site, which is immediately adjacent to the subject site to the east. Land Use Plan Amendment HNB-MAJ-1-06 was approved by the Commission in November, 2007. The Implementation Plan Amendment HNB-MAJ-1-10 was approved in January, 2010. The Parkside Estates LUP Amendment is fully certified and the Commission concurrence with the Executive Director's determination that the City has fully incorporated its action on the IP Amendment is scheduled for the same Commission meeting as the subject application. Therefore, to the extent that the certified Huntington Beach LCP, as amended applies to the subject site, it may be used for guidance.

SUBSTANTIVE FILE DOCUMENTS: Cultural Resource Constraint Analysis on Archaeological Site CA-ORA-144, "The Water Tower Site" [A Part of CA-ORA-83 "The Cogged Stone Site"], The Goodell Parcel, prepared by Scientific Resource

Surveys, Inc., SRS Project No. 1731, dated October 13, 2011; 5-10-035-X(Goodell); 5-11-011(Shea Homes-Parkside);5-11-068(Shea Homes-Parkside); HNB-MAJ-1-06; HNB-MAJ-1-10; (5-05-020(Hearthside Homes - Brightwater); R5-05-020(Hearthside Homes - Brightwater); 5-05-479(Goodell); “Results of General Biological Surveys and Minimization Recommendations in Preparation for the Auger Program – Goodell Property, City of Huntington Beach, California”, letter from LSA Associates, Inc., dated March 3, 2011; “Supplement to Results of General Biological Surveys and Minimization Recommendations in Preparation for the Auger Program – Goodell Property, City of Huntington Beach, California”, LSA Associates, Inc., dated June 3, 2011; CCC-12-CD-01 (Goodell), CCC-12-RO-01(Goodell).

STAFF RECOMMENDATION:

Staff recommends that the Commission **APPROVE** the permit application with special conditions.

MOTION:

I move that the Commission approve Coastal Development Permit No. 5-10-258 pursuant to the staff recommendation.

Staff recommends a **YES** vote. This will result in adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

RESOLUTION:

I. APPROVAL WITH CONDITIONS

The Commission hereby **APPROVES** a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

The proposed project is subject to the following Special Conditions:

1. Protection of Archaeological Resources

The applicant shall carry out the proposed archaeological investigation as proposed in the revised archaeological research plan (ARP) entitled, "Cultural Resource Constraint Analysis on Archaeological Site CA-ORA-144, "The Water Tower Site" [A Part of CA-ORA-83 "The Cogged Stone Site"], The Goodell Parcel", by Scientific Resource Surveys, Inc., SRS Project No. 1731, dated October 13, 2011, and as modified by the Special Conditions contained herein.

All work shall be consistent with the applicable State of California Office of Historic Preservation (OHP) standards for archaeological work and the Native American Heritage Commission "Guidelines for Native American Monitors/Consultants" and done in a manner that is most protective of any "intact midden", human remains or archaeological features, and shall be monitored by Native American monitor(s) from each of the Gabrielino and Juaneno tribal groups, as designated by the Native American Heritage Commission (NAHC) as the tribal groups with documented ancestral ties to the area, and the Native American most likely descendent (MLD) from each of the said tribal groups, when State Law mandates identification of a MLD. Accordingly, this permit does not authorize any subsurface investigation within any known "intact midden", as shown in revised Figures 3 and 4 of the Plan dated October 13, 2011. As proposed by the applicant, all auger borings shall be placed a sufficient distance from the "intact midden", as shown in revised Figures 3 and 4, such that any necessary excavation of hand units shall not encroach into "intact midden". Further, this permit does not authorize any subsurface

investigation or excavation of any "intact midden" subsequently determined to be present on the project site through implementation of the ARP as authorized by this permit. For purposes of this permit, midden soils shall be considered to be "intact" if it is in place and has not been dug up and re-deposited or severely disturbed as the result of historic or modern activities. If any "intact midden", human remains or archaeological features are encountered, exposure of the intact midden, human remains or archaeological features shall be minimized to the maximum extent feasible and they shall be documented, left in place, and reburied (covered in place) as soon as possible. If human remains are encountered, the permittee shall comply with applicable State and Federal laws, including but not limited to, contacting the County Coroner, Native American Heritage Commission (NAHC) and the most likely descendent (MLD). Human remains found in intact midden soils, including isolated bone fragments shall be left in situ and shall be excavated only to the extent necessary for the archaeologist and Coroner to make the necessary determination as to whether the find is human in origin and whether it represents a modern forensic case. Unless required by the County Coroner, subsequent human remains, including bone fragments, 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. However, if human remains (including but not limited to, bone or bone fragments) are found in fill material, the human remains may, in consultation with the most likely descendents (MLDs) and Native American monitors, be removed from the fill material. Human remains recovered from the project site shall be reburied on-site, after negotiations with the property owner, as required by State and Federal law, and after a coastal development permit is obtained for reburial.

Any disputes in the field regarding the discovery of any intact midden, human remains or archaeological features arising among the applicant, the archaeologist, and/or the Native American monitors or Native American MLD, when State law requires the designation of an MLD, shall be promptly reported to the Executive Director via e-mail and telephone and the investigation 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 designated three archaeological peer reviewers, the archaeologist, Native American monitors and the Native American MLD, when State law requires the designation of an MLD, and the applicant. 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.

2. Final Report

At the completion of the field investigation, matrix sorting and laboratory analysis, and the applicant shall prepare a technical report of findings. The report shall be in accordance with all applicable guidelines, including but not limited to the State of California Office of Historic Preservation Archaeological Resource Management Reports (ARMR) and California Historical Resources Information System and shall be subject to the review and approval of the Executive Director. As proposed by the applicant, a draft report shall be prepared within three months of completion of field excavation and matrix sorting, and analysis. Review copies of the draft shall be

submitted to the Juaneno and Gabrielino Most Likely Descendants, the Peer Review Team, the Native American Heritage Commission, the State Historic Preservation Office, the landowner and their representative and the Executive Director. After review, comment and incorporation of comments of all parties and any necessary revisions, the final report shall be distributed to involved agencies (e.g. NAHC, SHPO, CCC), local government entities (e.g. County of Orange, City of Huntington Beach), the designated archaeological information center (SCIC at California State University, Fullerton), affected Native American groups (Juaneño and Gabrielino tribes) and interested professionals (Peer Reviewers and other local archaeologists). The field notes, photos, laboratory data, and other materials generated through the approved ARP shall also be distributed to the above entities. The report shall be used in consideration of the determination of the appropriate type, location and intensity of development allowed in conjunction with any subsequent coastal development permit application for the subject site.

Due to the sensitive nature of the report contents, and consistent with State Government Code, section 6254, subsection (r), the report will be held as 'confidential' and not made available to the general public.

3. Protection of Biological Resources - Equipment Staging Plan

- A. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit equipment staging plans for the review and approval of the Executive Director. Said plans shall incorporate the Recommended Minimization Measures contained in the March 3, 2011 letter from LSA Associates, Inc. entitled "Results of General Biological Surveys and Minimization Recommendations in Preparation for the Auger Program – Goodell Property, City of Huntington Beach, California" and the June 3, 2011 letter by LSA Associates, Inc., entitled, "Supplement to Results of General Biological Surveys and Minimization Recommendations in Preparation for the Auger Program – Goodell Property, City of Huntington Beach, California" and shall indicate that the equipment staging area(s) and work corridor(s), including the wet screening area(s), will avoid impacts to Southern tar plant. Access to the work area shall be via the existing adjacent street (Bolsa Chica Street) only. Upon completion of the approved field work, all borings and hand excavation units shall be backfilled, all equipment and materials shall be removed and the project site shall be restored to the conditions that existed prior to the approved field work.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved staging plans shall be reported to the Executive Director. No changes to the approved staging plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. Protection of Nesting Raptors

No mechanical boring shall be permitted within five hundred (500) feet of an occupied raptor nest during the nesting season (February 15 through August 31). One week prior to the commencement of the approved development, the applicant shall conduct a survey of all trees within the southern Eucalyptus ESHA that are within five hundred (500) feet of the work area, to determine if raptor nesting is occurring. The survey shall be conducted by a qualified biologist. The applicant shall submit, subject to the review and approval of the Executive Director, the biologist's survey, including a map of the required survey area and survey report. The survey and report shall be submitted to the Executive Director within 2 days of completion and prior to commencement of any mechanized work.

5. Storage of Materials, Mechanized Equipment and Removal of Debris

The permittees shall comply with the following construction-related requirements:

- A.** No materials, debris, or waste shall be placed or stored where it may enter a storm drain or be subject to tidal erosion and dispersion;
- B.** Any and all debris resulting from development activities shall be removed from the project site within 24 hours of completion of work;
- C.** Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or run-off of materials, and to contain sediment or contaminants associated with mechanical boring, excavation and wet screening activity, shall be implemented prior to the onset of such activity. BMPs and GHPs which shall be implemented include, but are not limited to: storm drain inlets must be protected with sandbags or berms, all stockpiles must be covered, and a pre-construction meeting should be held for all personnel to review procedural and BMP/GHP guidelines. All BMPs shall be maintained in a functional condition throughout the duration of the project.
- D.** Debris and sediment shall be properly contained and secured on site with BMPs, to prevent the unintended transport of sediment and other debris into coastal waters by wind, rain or tracking. Debris and sediment shall be removed from project areas as necessary to prevent the accumulation of sediment and other debris, which may be discharged into coastal waters. Debris shall be disposed at a debris disposal site outside the coastal zone.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares as follows:

A. Project Description, Location and Background

1. Project Description

The applicant requests to implement an archaeological research plan (ARP) in order to determine the areas of the 6.2 acre site that can be subsequently developed in a manner that avoids impacts to any intact archaeological resources that may be present. The ARP proposes only to investigate a 3.2 acre portion of the site that has been pre-zoned by the City of Huntington Beach for subsequent residential development (Exhibit 3). The initially proposed ARP, '*Cultural Resource Constraint Analysis on Archaeological Site CA-ORA-144, "The Water Tower Site" [A Part of CA-ORA-83 "The Cogged Stone Site"]*', *The Goodell Parcel*', prepared by Scientific Resource Surveys, Inc., SRS, is dated May 31, 2011. However, the May 31, 2011 submittal was superseded by a later version dated October 13, 2011. The revised plan makes two significant changes: (1) as recommended by staff, proposed hand excavation units have been relocated outside of known "intact midden" soils with revised Figures 3 and 4 showing such revision; and (2) included the request for after-the-fact approval of the hand excavation of 16 soil profiles that were dug in 2010 along the edge of the upper terrace of the site. The applicant subsequently further revised the application to withdraw the request for approval of the after-the-fact excavations and instead entered into negotiations to resolve this development through two consent orders. Those consent orders are also on the Commission's January 11, 2012 agenda (Item W13, CCC-12-CD-01 and W14, CCC-12-RO-01)..

The proposed archaeological research plan (ARP) is a subsurface investigation for the purpose of determining the presence of intact midden, Native American human remains and/or archaeological features and accurately establishing the boundaries of these archaeological/cultural resources. An archaeological midden is a prehistoric mound of discarded material used in cooking and food processing and contains marine shell, animal bone, fired rocks, and discarded artifacts and characterized by organic material in the soil such as grease, blood, and body fluids. Midden is "intact" if it is in place and has not been dug up and re-deposited or severely disturbed as the result of historic or modern activities. As proposed, all field work will be monitored by Native American representatives from both the Gabrielino and Juaneno tribal groups under the direction of most likely descendants (MLD) Gabrielino Chief Anthony Morales and Juaneno Chief David Belardes. The Native American Heritage Commission (NAHC) has determined that both the Gabrielino and Juaneno tribal groups have ancestral ties to the subject site. The proposed Plan incorporates the concerns of the affected Native American tribal groups, as well as the three archaeologist peer reviewers and NAHC (Exhibit 7).

The proposed ARP is based on "predictive modeling" in that it is designed in consideration of the records searches, archival research, and field work carried out on the Bolsa Chica Mesa since the 1920's. The Plan will be carried out in two phases. A two-part auger program, on a five-meter grid pattern, is proposed to systematically search the pre-zoned residential area for midden; and then use a second set of auger borings to accurately define midden boundaries. Once relatively intact midden deposits have been located, the second part of the program, delineation of the midden boundaries will occur. Small (1x1 meter) hand units will be excavated in order to verify that a midden deposit or feature exists. If midden deposit or features are exposed, excavations will cease at that point and the cultural material will be left in place.

Following auger boring and hand unit excavation, all material collected will be water screened using 1/8-inch hardware cloth. While the field work is in process, basic laboratory documentation and initial analyses will occur which will compliment the field

observations. The final step of the proposed project is the preparation of a technical report upon the completion of field work and all laboratory analysis. The applicant proposes to submit a draft report within three months of completion of the field working and matrix sorting. The applicant also proposes to distribute the final report to involved agencies (NAHC, SHPO and the Coastal Commission), to municipal entities, the designated archaeological information center at California State University, Fullerton, and affected Native American groups. Due to the sensitive nature of the report contents, the report will be held as 'confidential' and not made available to the general public, consistent with State Government Code, section 6254, subsection (r).

2. Project Location

The subject site is located on the upper Bolsa Chica Mesa in the unincorporated Bolsa Chica area of the County of Orange. The site is surrounded by the City of Huntington Beach. Immediately east of the subject site is the Parkside Estates site that was before the Commission in October 2011; to the west is Bolsa Chica Street and the Hearthside Homes Brightwater project site that was approved by the Commission in 2005 for subdivision, single family residential development, habitat restoration and public trails; to the north is Hearthside Homes the Ridge site for which the City of Huntington Beach has a pending application for an LCP amendment change the land use designation at the Ridge site from Open Space – Parks (OSP) to Residential Low Density and change the zoning designation from Residential Agriculture – Coastal Zone Overlay (RA – CZ) to Low Density - Coastal Zone Overlay (RL-CZ) to allow the site to be developed with single family residential development uses; and to the south a Eucalyptus grove on the Brightwater site which has been designated ESHA by the Department of Fish and Game and the Coastal Commission (Exhibits 1, 2 and 3).

The subject site is 6.2 acre in size and its geography, from highest to lowest elevations, consists of 1) a natural upper terrace; 2) a second terrace artificially created with sediments that overlie the World War II historic Bolsa Chica Military Reservation PSR Building and which contains roadways formed by cutting back the upper mesa edge; 3) steep slopes; and 4) lower bay flatlands. The City of Huntington Beach has pre-zoned the site low density residential, open space and conservation (Exhibit 3). The area zoned Open Space or Conservation encompasses portions of both the natural upper terrace and the second terrace; all of the steep slopes; and all of lower bay flatlands. No investigations are proposed on the steep slopes or in the lowlands since these areas are preserved in open space or conservation land use.

3. Project Background

A. Previous Nearby Archaeological Investigations

Archaeological investigations have been on-going on Bolsa Chica Mesa since the 1920s. Among the numerous excavations over the last 90 years, three are especially important in predictive modeling of the potential archaeological deposits on the subject Goodell site. As stated above, the project site is located on the eastern Bolsa Chica Mesa and contains a mapped archaeological site, CA-ORA-144, "The Water Tower Site". Some archaeologists, including the project archaeologist, believe CA-ORA-144 to be actually a part of the highly significant CA-ORA-83 which is a 9,000 year old archaeological site

known as the Cogged Stone Site, due to the great number of cogged stone artifacts recovered. ORA-83 has been twice found by the State Historical Resources Commission to be eligible for listing in the National Register of Historic Places. The Cogged Stone Site also lies on three other adjacent sites: the Hearthside Homes "Brightwater" site, located on the west side of Bolsa Chica Street; Hearthside Homes the "Ridge" project site, located on the east side of Bolsa Chica Street, adjacent to Los Patos Avenue; and the Parkside Estates site, located immediately east of the subject Goodell site (Exhibit 2). The 105 acre Brightwater development site was recently annexed into the City of Huntington Beach. The predecessor companies to Hearthside Homes received several coastal development permits, beginning in the early 1980's, to conduct archaeological research, salvage and relocation (on-site) of any human remains, features and artifacts that were found. The archaeological research, salvage and on-site reburial took place over the course of approximately 28 years with the final reburial occurring in spring 2009. The State of California Office of Historic Preservation has determined that the site was eligible under Criteria A and D for listing as a National Historic Site. Under Criteria A, as a type site for production, manufacture and distribution of the cogged stone artifact and an historic site that represents an Early Holocene ceremonial complex important to the local Native American communities; and under Criterion D since the site has produced hundreds of cogged stones, human remains, numerous semi-subterranean pit houses, and other artifacts, the site is considered highly significant with regard to research potential particularly if this information is combined with other archaeological and ethnographic evidence. During the 2008 revocation hearing for the Brightwater coastal development permit [R5-05-020(Hearthside Homes)] the Commission found that approximately 160 human burials, and several animal burials, over 100 significant archaeological features such as house pits, rock pits, hearths and tens of thousands of beads, charmstones cogged stones and other artifacts have been found on CA-ORA-83. The final archaeological report for ORA-83 is still pending. Hearthside Homes Ridge project site is located immediately northwest of the project site and is covered by the certified Huntington Beach Local Coastal Program. That site has undergone numerous extensive surface and subsurface archaeological investigations. A hand excavated test pit dug on this site revealed the presence of a prehistoric archaeological/cultural feature that has since been completely removed, according to SRS, Inc.

B. Previous On-Site Archaeological Investigation

With the exception of the unpermitted excavation of 16 soil profiles that occurred in 2010, the only subsurface archaeological investigation conducted on the Goodell property was occurred in 1960's. As discussed below, unpermitted subsurface investigation in the form of hand excavation of 16 soil profiles was carried out. In 2009 and 2010, records and archival searches and surface investigations were conducted in an attempt to gain a better understanding of the potential archaeological resources of the site. On April 16, 2010 the Executive Director approved an exemption [5-10-035-X (Goodell)] for the property owner to conduct a surface archaeological investigation with the use of ground penetrating radar in order to further refine the necessary archaeological research design plan that is being developed for that site. Other than the placement of stakes to mark grids, no ground disturbance or subsurface excavation or earth movement was permitted (Exhibit 4).

C. Previous On-Site Historical Development

The subject site contains remnants of historic World War II (WWII) development. The site geography, from the highest to lowest elevations, consists of 1) a natural upper terrace; 2) a second terrace artificially created with sediments that overlie the WWII Bolsa Chica Military Reservation Plotting and Spotting Room (PSR) Building as well as roadways formed by cutting back the upper mesa edge; 3) steep slopes; and 4) lower bay flatlands. The second terrace was carved into its present configuration when the WWII PSR facility was built. Still present on the subject site are a long rectangular concrete structure and two square air shafts surfacing from within the building located on the northeast portion of the site (Exhibit 3). Roadways encircle the subsurface bunker and lead downhill next to the long entrance shaft; the majority of the second terrace consists of soils covering this immense concrete structure. A retaining wall for the upper terrace was created during construction of the bunker to support the upper terrace after the natural hillside had been removed to accommodate the PSR building. Areas outside the actual bunker location have also been flattened by the WWII work, removing all natural sediments and exposing the Pleistocene terrace soils. During this localized but extensive subsurface work any existing prehistoric archaeological resources may have been dug up and re-deposited or severely disturbed. Subsequent vandalism of the abandoned historic bunker facility could have also resulted in disturbance to archaeological resources in this area of the site. A portion of the same area where the historic structures were built currently experiences further disturbance with the construction and use of unauthorized dirt bike ramps.

B. APPROVAL FINDINGS AND DECLATIONS

1. Archaeological Resources

Section 30244 of the Coastal Act states:

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

Additionally, the Huntington Beach certified Land Use Plan, used as guidance, contains policies for the protection of historical and cultural resources. Policies C5.1.1, C5.1.2, C5.1.3, C5.1.4, and C5.1.5 5 of the Coastal Element are attached as Exhibit 10 and require: (1) Coordination with State of California Historic Preservation Office to ensure protection of archaeological, paleontological and historically significant resources; (2) reasonable mitigation measures be provided where development would adversely impact archaeological or paleontological resources; (3) requires the notification of the County Coroner, NAHC and MLD upon the discovery of human remains and consultation with MLD regarding disposition of Native American human remains; (4) requires the submittal of a completed ARD along with the application for a CDP within any area containing archaeological or paleontological resources. The ARD is required to determine the significance of any uncovered artifacts and make recommendations for preservation. The ARD must be developed in consultation with affected Native American groups and also contain a discussion of important research topics, and be reviewed by at least 3 peer reviewers and OHP. Finally, the LUP requires that the permittee comply with the requirements of the peer review committee to assure compliance with the mitigation measures of the ARD and (5) requires that a County-certified paleontologist/archaeologist and a Native American monitor all grading operations where there is a potential to affect

cultural or paleontological resources, based on the ARD. If paleontological/archaeological resources are uncovered during grading operations, either monitor are required to suspend all development activity to avoid destruction of resources until a determination can be made as to the significance of the resource. If the resource is 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/archaeological resources.

The recently amended Huntington Beach LCP Implementation Plan for the adjacent Parkside Estates area contains development standard in Chapter 230, Site Standards regarding the protection of archaeological resources. Although the Huntington Beach LCP does not currently apply to the project site since the site has yet to be annexed into the City and the City would need to amend its certified LCP to include policies and development standards for the subject site, the archaeological resources on the subject site are potentially more significant than those on the adjacent Parkside site. Therefore, the Commission considers the development standards designed to protect archaeological resources contained in the Huntington Beach LCP Implementation Plan as guidance. The standards are:

Section 230.82 E

Archaeological/Cultural Resources Within the coastal zone, applications for grading or any other development that has the potential to impact significant archaeological/cultural resources shall be preceded by a coastal development permit application for implementation of an Archaeological Research Design (ARD). This is required when the project site contains a mapped archaeological site, when the potential for the presence of archaeological/cultural resources is revealed through the CEQA process, and/or when archaeological/cultural resources are otherwise known or reasonably suspected to be present. A coastal development permit is required to implement an ARD when such implementation involves development (e.g. trenching, test pits, etc.). No development, including grading, may proceed at the site until the ARD, as reflected in an approved coastal development permit, is fully implemented. Subsequent development at the site shall be subject to approval of a coastal development permit and shall be guided by the results of the approved ARD.

Archaeological Research Design (ARD) The ARD shall be designed and carried out with the goal of determining the full extent of the on-site archaeological/cultural resources and shall include, but not be limited to, postulation of a site theory regarding the archaeological and cultural history and pre-history of the site, investigation methods to be implemented in order to locate and identify all archaeological/cultural resources on site (including but not limited to trenching and test pits), and a recognition that alternative investigation methods and mitigation may become necessary should resources be revealed that indicate a deviation from the initially espoused site theory. The ARD shall include a Mitigation Plan based on comprehensive consideration of a full range of mitigation options based upon the archaeological/cultural resources discovered on site as a result of the investigation. The approved ARD shall be fully implemented prior to submittal of any coastal development permit application for subsequent grading or other development of the site. The ARD shall also include recommendations for subsequent construction

phase monitoring and mitigation should additional archaeological/cultural resources be discovered.

The ARD shall be prepared in accordance with current professional practice, in consultation with appropriate Native American groups as identified by the Native American Heritage Commission (NAHC), NAHC, and the State Historic Preservation Officer, subject to peer review, approval by the City of Huntington Beach, and, if the application is appealed, approval by the Coastal Commission. The peer review committee shall be convened in accordance with current professional practice and shall be comprised of qualified archaeologists.

Mitigation Plan The ARD shall include appropriate mitigation measures to ensure that archaeological/cultural resources will not be adversely impacted. These mitigation measures shall be contained within a Mitigation Plan. The Mitigation Plan shall include an analysis of a full range of options from in-situ preservation, recovery, and/or relocation to an area that will be retained in permanent open space. The Mitigation Plan shall include a good faith effort to avoid impacts to archaeological/cultural resources through methods such as, but not limited to, project redesign, capping, and placing an open space designation over cultural resource areas.

A coastal development permit application for any subsequent development at the site shall include the submittal of evidence that the approved ARD, including all mitigation, has been fully implemented. The coastal development permit for subsequent development of the site shall include the requirement for a Monitoring Plan for archaeological and Native American monitoring during any site grading, utility trenching or any other development activity that has the potential to uncover or otherwise disturb archaeological/cultural resources as well as appropriate mitigation measures for any additional resources that are found. The Monitoring Plan shall specify that archaeological monitor(s) qualified by the California Office of Historic Preservation (OHP) standards, and Native American monitor(s) with documented ancestral ties to the area appointed consistent with the standards of the Native American Heritage Commission (NAHC) shall be utilized. The Monitoring Plan shall include, but not be limited to: 1) procedures for selecting archaeological and Native American monitors; 2) monitoring methods; 3) procedures that will be followed if additional or unexpected archaeological/cultural resources are encountered during development of the site including, but not limited to, temporary cessation of development activities until appropriate mitigation is determined. Furthermore, the Monitoring Plan shall specify that sufficient archaeological and Native American monitors must be provided to assure that all activity that has the potential to uncover or otherwise disturb cultural deposits will be monitored at all times while those activities are occurring. The Monitoring Plan shall be on-going until grading activities have reached sterile soil.

The subsequent mitigation plan shall be prepared in consultation with Native American Heritage Commission (NAHC), Native American tribal group(s) that have ancestral ties to the area as determined by the NAHC, and the State Historic Preservation Officer, subject to peer review.

All required plans shall be consistent with the City of Huntington Beach General Plan and Local Coastal Program and in accordance with current professional practice, including but not limited to that of the California Office of Historic Preservation and the Native American Heritage Commission, and shall be subject to the review and approval of the City of Huntington Beach and, if appealed, the Coastal Commission.

Coastal Act Section 30244 requires that any impacts to significant archaeological resources be reasonably mitigated. Avoidance of impacts to archaeological resources is the preferred alternative, which will avoid mitigation requirements. In the past, as with the Brightwater site, previous Commissions have allowed archaeological research designs (ARD) to be carried out that excavated Native American and other archaeological resources for the purpose of analyzing the artifacts and features as well as human remains, in order to provide information on prehistoric times and conditions. The Native American human and animal remains were reburied on the project site in a permanent open space area but artifacts and features were often sent to museums. These were standard mitigation measures that also served to allow for residential or other types of development of the majority of the site after the resources were relocated. Increasingly, Native Americans, as well as some archaeologists and environmental organizations have found these mitigation measures to be objectionable and have petitioned the Commission to avoid impacts by allowing the archaeological resources to remain in place, especially when the archaeological resources are Native American human remains.

The proposed project is to carry out an archaeological research plan (ARP) to determine if intact cultural/archaeological resources exist on the site and to determine the boundaries of such resources, if they exist. No other development is proposed at this time. The results of the proposed ARP will be used in conjunction with the earlier on-site geophysical investigation (and unpermitted soil profiles) to determine the appropriate area for future development of the site. Previous archaeological investigations of the site in the 1960s and in 2009 and 2010 have indicated that intact soils including intact midden soils exist on the subject site. The proposed ARP was guided by the information obtained through previous archaeological investigations performed on-site and on adjacent properties, including geophysical, subsurface and records searches. Based on the previous archaeological investigations the City of Huntington Beach has pre-zoned the 6.2 ac site for residential (3.2 ac - RL), open space-parks and recreation (2.0 ac – OS-PR) and conservation use (1.0ac - CC). The ARP proposes investigation of only the portion of the site pre-zoned for future residential use (Exhibit 3).

The revised archaeological research plan (ARP), ‘*Cultural Resource Constraint Analysis on Archaeological Site CA-ORA-144, “The Water Tower Site” [A Part of CA-ORA-83 “The Cogged Stone Site”], The Goodell Parcel*’, prepared by Scientific Resource Surveys, Inc., SRS, dated October 13, 2011 proposes all augers and hand unit excavation outside of known “intact midden” soils. As proposed, all field work will be monitored by Native American representatives from both the Gabrielino and Juaneno tribal groups under the direction of most likely descendants (MLD) Gabrielino Chief Anthony Morales and Juaneno Chief David Belardes. The Native American Heritage Commission (NAHC) has determined that both the Gabrielino and Juaneno tribal groups have ancestral ties to the subject site.

The proposed ARP has been modified by the applicant, and is conditioned by Special Condition 1, to avoid encroachment into known "intact midden" deposits since development within intact midden, even testing, would not be most protective of archaeological resources.

The proposed ARP will be carried out in two phases. A two-part auger program, on a five-meter grid pattern, is proposed in order to systematically search existing portions of the pre-zoned residential area for midden; and then uses a second set of auger borings to accurately define midden boundaries. A 12" hollow-stemmed bucket auger (rather than a screw auger) will be utilized to provide the least amount disturbance. Further, the shaft of the auger will be marked in 20 cm intervals to aid in depth control and thereby further reducing the potential impacts to any archaeological resources. The proposed use of hollow-stem augers is to allow for deep penetration, beneath historic development, and any hard clay layer that may be present on the site. Although the applicant has chosen to use a hollow-stem auger as opposed to the screw type auger and to use the smaller bucket (12" as opposed to 16") in order to minimize disturbance, there is still a potential to impact archaeological/cultural resources that are present. In accordance with the concerns expressed by the Native Americans designated by NAHC as having ancestral ties to the area, as well as the recommendations of the three archaeologist peer reviewers (Exhibit 7), in the areas suspected of containing human remains, features or intact midden, one meter square hand units will replace auger borings in an attempt to minimize impacts to these resources, if they are present. After the soils are removed from the bucket, they will be measured for stratigraphic change, recorded and then screened for artifacts. If an auger borings recover historic material or disturbed soils associated with structural foundations or a significant find, such as but not limited to, unusual shell or faunal remains; special artifacts such as cogged stones or charmstones; projectile points or pestles; fired rocks; or human remains (including, but not limited to, bone or bone fragments), further excavation will be carried out in the least invasive fashion in order to establish the source of the find. 1x1meter units will be then be hand excavated.

A second set of auger borings, if necessary, and 1x1 meter hand excavation units, will be used to accurately define boundaries of any intact archaeological resources. According to the proposed ARP, each auger boring will be deep enough to extend below the strata that would contain any midden deposits into clearly defined sterile soils (Pleistocene terrace deposits). This is an important aspect of the ARP as experience on the adjacent Brightwater site found that burials were beneath the 'hard clay layer' and were found to exist despite the fact that the site was thought to contain limited intact prehistoric resources given the long-term agricultural (including plowing) activities and the construction of subsurface historic World War II (WWII) facilities among other activities. The proposed ARP also recognizes that prehistoric midden deposits may still exist below the historic WWII materials that were constructed on the subject site. Therefore the auger program is designed to penetrate the historic strata and the hard clay layer to examine these deposits.

Once intact midden deposits have been located, the second part of the program, delineation of the midden boundaries can be completed. Small 1x1 meter hand units are proposed in order to verify that a midden deposit or feature exists. If midden deposit or features are exposed, excavations will cease at that point and the cultural material will be left in place. Another purpose of the hand units is to determine whether additional

archaeological/cultural resources are present when isolated feature materials (e.g. fired rock), or bone fragments), are exposed. If an artifact is found through auger boring or if it is suspected that an archaeological feature may be present based on isolated feature materials found in an auger boring (e.g. fired rock, bone fragment), then a one meter square hand excavated unit will be placed adjacent to the auger hole in order to verify that a midden deposit or feature exists.

The consulting archaeologist for the proposed project suggests, for midden deposit to be deemed significant, the deposit should have artifacts and/or features (including human or animal bone) so that meaningful data can be gleaned from the cultural materials and their context. Archaeologist Dr. Patricia Martz, president of the California Cultural Resource Preservation Alliance (CCRPA) disagrees with this statement (Exhibit 11). Dr. Martz states that one of the criterion (criterion d) used by the National Register of Historic Places to determine that CA-ORA-83 was eligible for listing as a significant archaeological site is that the intact midden has the potential to provide important information. Intact midden, even if no human or animal burials, tools, ornaments, religious items, or other artifacts or features are found, still contains prehistoric shell (ecofacts) and is evidence of long-term prehistoric Native Americans use and/or habitation. Thus, CCRPA argues that intact midden should be preserved as an archaeological witness area and as a place where the Native American descendants can come to honor their ancestors. Three other letters were received, the content of which are described below, voicing similar concerns, among other things (Exhibits 12 -14). As proposed and as conditioned in Special Condition 1, the ARP will preserve intact midden and minimize disturbance of this archaeological/cultural material.

If midden deposits or features are exposed, excavations will cease at that point and the cultural materials will be left in place. The alignment of the 1x1 meter hand unit will be in a northerly orientation. The unit will be placed so that the auger hole is situated in the corner of the 1x1 meter unit; the unit is thereby treated as a continuation of the previous excavation. Units will be excavated in arbitrary ten centimeter levels and extend to a maximum depth of 150 cm. Excavation sidewalls will be photographed and the stratigraphy drawn. Soil samples will be taken per level of excavation from a consistently sampled corner (i.e. northwest) from each auger boring/unit for purposes of description, analysis and comparison with each other. Through this method, disturbed soils, intact soils, and midden soils will be differentiated. In addition, a pollen sample will be removed in 10cm increments from the back of each hand unit, if units are excavated, and saved for future special studies. Charcoal pieces likely to yield radiocarbon dates for useful target events will be mapped and collected from the units using appropriate techniques so as not to compromise the integrity of the sample. Scale drawings of unit's levels and stratigraphic sections will be prepared and all excavations will be photo-documented.

If bone fragments are uncovered during auger boring or hand excavation, a determination will be made as to whether the bone is human or other animal. In the event human remains are encountered, excavation will immediately stop and the human remains are protected from the elements by covering the cultural deposit with a permeable membrane and then soil and the spot is marked. The applicant proposes to follow all applicable State law regarding the discovery of human remains. The Plan states:

In accordance with the California Health and Safety Code, Section 7050.5, no further disturbance shall occur until the County Coroner has made the necessary findings as to origin. Further, pursuant to California Public Resources Code Section 5097.98(b) remains shall be left in place and free from disturbance until a final decision as to the treatment and disposition has been made. ***The remains will be uncovered for inspection by the coroner.*** (emphasis added)

If the Orange County Coroner determines the remains to be Native American, the Native American Heritage Commission shall identify the 'most likely descendant.' The most likely descendant shall then make recommendations, and engage in consultations concerning the treatment of the remains as provided in Public Resources Code 5097.98. Since human remains have been discovered on Bolsa Chica Mesa previously, the Native American Heritage Commission has identified the following individuals as "Most Likely Descendants": David Belardes (Juañeno) and Anthony Morales (Gabrielino). In accordance with the Public Resource Code requirements, notification will also be provided to these Most Likely Descendants upon the discovery of human remains.

As stated above, the applicant proposes to uncover any human remains for inspection by the coroner. The Commission is concerned that this statement suggests that human remains may be completely or extensively uncovered or excavated in order for the coroner to make a determination as to whether the bones represent a modern forensic case. On October 13, 2011, staff discussed this concern with the Tiffany Williams, Senior Deputy Coroner, Orange County Coroner's Office. Ms. Williams stated that while every case is different, the Coroner's Office also agrees with the goal of leaving burials in place, to the maximum extent possible in order to minimize impacts to prehistoric archaeological resources. If the find is a modern forensics case, the remains need to be left intact since the area would be a considered a crime scene. She further stated that after the Coroner's Office has made an initial visit due to the discovery of human remains, in working with the project archaeologist, if it is established that the area is an archaeological site, that subsequent visits are not always necessary upon subsequent discoveries of human bones or bone fragments. However, all subsequent reports of discoveries are noted by the Coroner's Office and the reports should continue to be made. Therefore, the Commission imposes Special Condition 1 which requires that the proposed ARP be carried out in a manner that will limit the exposure of all bones or bone fragments and that they be exposed only to the extent necessary for the archaeologist and Coroner to make the necessary determination as to whether the bone is human and whether it represents a modern forensic case. Further, unless required by the County Coroner, subsequent human remains (including but not limited to bones or bone fragments) shall not be exposed unless exposure is necessary to determine whether they are human in origin and the extent of exposure shall be the minimum necessary to make the determination. Only as conditioned to minimize the excavation of Native American human remains is the proposed project consistent with Section 30244 of the Coastal Act.

Regarding human remains, the applicant further states, it is of paramount importance that the context of any discovered bone is examined by the various participants. Previous experience on this archaeological site has shown that isolated bone fragments may be found which have lost their original context and have been dislodged from their source by rodent activity or historic disturbances. The applicant suggests, in the event that isolated

pieces of bone or bone fragments are found, and as determined by agreements between the landowner and Native American representatives, these will be documented, left in situ, and adjacent excavations will be conducted in order to locate the original source of the isolate. If the burial can be located, the isolate will be left in-situ and reburied. The applicant proposes that if the burial can not be located, the isolate will be removed and reburied at a later time with other isolates. The Commission notes that CA-ORA-83 is approximately 9,000 years old and that the animal and human bone found on the adjacent Brightwater site were in a fragmented condition. Therefore, individual bone fragments could be considered isolated and therefore removed under the applicant's proposal. As approved by the permit, only isolated bone fragments located within fill material may be removed and reburied elsewhere on the property through a subsequent coastal development permit. All human remains, including isolated bone fragments, if found in intact midden, shall not be removed and exposure of such resources shall be minimized.

Following auger boring and hand unit excavation, all material collected will be water screened using 1/8-inch hardware cloth. Although wet screening is a labor-intensive process, when the excavation includes high clay content soils, such as those on the subject Goodell property, the wet screening process helps to break down the clumps of aggregated clay materials in an efficient and non-invasive manner, according to the project archaeologist. This step is critical to collecting as much information as possible from the extracted soils and helps provide for accurate integrity statements. However, it is also important to ensure that the wet screening does not adversely impact important biological resources which exist on the site. As discussed below, there is Southern tar plant on the subject site that must be protected. Adverse impacts to marine water quality could also result from the wet screening process if not done properly. Section IV.B.3 of this staff report below discusses potential marine resources impacts.

While the field work is in process, basic laboratory documentation and initial analyses will occur which will compliment the field observations. Laboratory work will include the sorting of collected material. 'Collected materials' will consist of materials recovered from the auger coring and hand excavations necessary to determine the location and boundaries of intact cultural midden and do not include intact midden constituents, features, or human remains. Analysis will be conducted on historic as well as prehistoric material, including fire affected rock. Faunal remains, vertebrate specimens and shellfish remains will also be analyzed. The documentation of the location of structural remains, units, features (including human and animal bone) and artifacts will occur using multi-layer mapping derived from the GPS data collected during the 2010 site investigation. The original archaeological site mapping and site boundary delineation will be able to be redefined using the subsurface information that will be obtained as a result of the proposed ARP and the 2010 geophysical investigation as well as all other research and site analysis. The final step of the proposed project is the preparation of a technical report upon the completion of field work and all laboratory analysis. The applicant proposes to submit a draft report within three months of completion of the field working and matrix sorting. The applicant also proposes to distribute the final report to involved agencies (NAHC, SHPO and the Coastal Commission), to municipal entities, the designated archaeological information center at California State University, Fullerton, and affected Native American groups. Due to the sensitive nature of the report contents, the report will be held as 'confidential' and not made available to the general public, consistent with State Government Code, section 6254, subsection (r).

As proposed and as conditioned the subject ARP will be carried out in a manner that is most protective of archaeological/cultural resources and is therefore consistent with Section 30244 of the Coastal Act. Further, the proposed ARP as conditioned, will not prejudice the preparation of the LCP for the area once it is annexed to the City of Huntington Beach.

Comments Received

Three letters were received after the staff report for this application was published for the November Commission meeting. The applicant postponed the matter from the November Commission hearing in order to respond to the staff recommendation. The Native American Heritage Commission (NAHC) letter, dated October 24, 2011 supports documentation and preservation in place of any intact midden as well as human remains and archaeological features. The letter goes on to say that the NAHC considers the project site a part of a 'cultural landscape' involving numerous nearby archaeological and historical sites in the sub region of Southern California; a cultural landscape as defined by the 1992 Secretary of the Interiors Standards for the treatment of Historic Properties, and also, federal Executive Order No. 11593 (preservation of cultural environment) (Exhibit 12).

A letter, dated October 24, 2011, was also received from the Bolsa Chica Land Trust (BCLT) (Exhibit 13). The BCLT letter states, among other things, that in July, 2009 that the US Dept of Interior designated 17 acres (including the subject Goodell site) of ORA-83 – the 9,000 year old "Cogged Stone Site" – as eligible for listing on the National Register of Historic Places and that it is the only such National Historic site on the coast of Southern California from Ventura to San Diego. BCLT asserts that proper mitigation [for the removed and relocation of a significant number of human and animal burials, grave goods and other archaeological features on the adjacent 11 acres of the Cogged Stone Site] for the Brightwater development is avoidance and preservation of the entire remaining 6.2 acres of the site located on the Goodell property. Further, BCLT requests that additional protections be added concerning the treatment of "isolates", the Coroner's review of all human remains, not file any subsequent application for the Goodell site until submittal of the final report for the subject ARP and require the submittal of final reports prior to publication or presentation. Finally, the BCLT also requests that the Commission postpone action on the subject ARP until the final report for the adjacent Brightwater site is submitted.

The final archaeological/cultural resources report for the Brightwater site is due by the end of the year. The applicant stated that the final report has been submitted to the archaeology peer reviewers. Comments are expected from the peer reviewer beginning next month. Those comments will also be submitted to Commission staff. The applicant anticipates that the comments will be incorporated and the report finalized by March, 2012.

The final letter was received from Michael McMahan (Exhibit XX). The letter expresses concerns about the length of time it is taking to submit the final archaeological/cultural report for CA-ORA-83 and its importance to the subject site. Further, the letter calls for in situ preservation of the Goodell site. (Exhibit 14).

2. Biological Resources

The Coastal Act requires the protection of biological resources and states:

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.

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

The Goodell site has been disturbed by historic subsurface bunker construction and above ground road, water tower and radar facilities and subsequent development and activities such as a commercial pole yard and unauthorized construction of dirt bike ramps. However, the site also contains biological resources. Though the site is dominated by ruderal, non-native plant species, Southern tar plant, (*Centromadia parryi ssp. australis*) a California Native Plant Society List 1B.1 species (seriously endangered in California), is also present on the site. According to the applicant's biological consultant, LSA Associates, Inc., several general and focused biological surveys have been conducted on the subject site, including surveys by LSA Associates, Inc. in 2007, 2009 and 2010 (Exhibits 5 and 6). Those surveys were for the purpose of general biological assessment, protocol coastal California gnatcatcher surveys and vegetation mapping.

The most recent biological survey of the site was done by LSA on February 12, 2011. The purpose of the survey was to ascertain general site conditions and to determine whether the proposed auger locations would impact any significant biological resources. That survey found that while the Bolsa Chica Mesa area is known to be used by the burrowing owl, a California Species of Special Concern, no signs of burrowing owl use (e.g., tracks, pellets, feathers) were detected. Further, although wildlife activity was relatively high, the bird species and numbers present were those expected in an urban edge location; with the exception of the less common citing of a merlin (*Falco columbarius*) (Exhibit 5). To respond to questions regarding the presence of the California gnatcatcher, LSA's June 3, 2011 letter concludes that the gnatcatcher is not present on the subject site (Exhibit 6). LSA states that their biologists make very frequent visits to the project vicinity in connection with their work on the adjacent Parkside Estates and the Ridge sites and their on-going habitat restoration efforts at the Brightwater site. LSA further states that the last observation of a single gnatcatcher, which was in the area for a few months, was spring 2007. Therefore, based upon the above biological assessments, the only potential habitat impacts associated with the proposed archaeological testing would be to Southern tar plant.

Southern Tar plant

As stated above, though the subject site is dominated by ruderal, non-native plant species, Southern tar plant, (*Centromadia parryi ssp. australis*) a California Native Plant Society List

Exhibit 5

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1B.1 species (seriously endangered in California), is also present on the site. The tar plant is scattered throughout the site as shown on the vegetation map in Exhibit 5 (page 3). On February 12, 2011 a focused survey by LSA was conducted for the purpose of documenting the presence of Southern tar plant in relation to the proposed auger locations. LSA noted that the annual Southern tar plant was not visible at the time of the winter survey but that the current tar plant locations were compared with recently mapped locations and concluded that none of the proposed auger locations overlapped tar plant areas. The June 3, 2011 LSA letter reviewed the tar plant locations based on the revised auger locations and concludes that the revised auger plan avoids tar plant impacts if the proposed minimization measures recommended in the March 3, 2011 letter are implemented, if the archaeological testing is done outside the Southern tar plant spring/summer growing season. LSA further recommends, among other things, that if the proposed testing is done during the tar plant annual growing season that the auger locations be marked in the field inspected by a biologist (Exhibit 6). However, the relocation of individual growing plants is not recommended because disruption of the root system during the annual growth period could lead to plant failure.

As conditioned by Special Condition 3 the applicant is required to abide by the biologist's recommendations of the above two letters and to submit an equipment staging and work plan that avoids areas of Southern tar plant and to require that the borings and excavations be backfilled so that the soil does not prevent or hinder tar plant seed germination. Further, as conditioned the proposed project is consistent with Section 30240(b) of the Coastal Act requiring protection of biological resources.

Raptor Nesting Habitat

Adjacent to the subject site, on the southern boundary, is a grove of Eucalyptus trees. The grove includes other non-native trees such as palm and pine trees. However, these trees are used by raptors for nesting, roosting, and as a base from which to forage. The Eucalyptus grove in the south as well as a northern grove, have been designated ESHA by both the Department of Fish and Game and the Coastal Commission because of their use by up to 17 species of raptors.

The Coastal Act requires that ESHA habitat be protected against any significant disruption of habitat values, including noise impacts. Accordingly, the Commission conditions this permit to protect any nesting raptors from construction noise, including mechanical augering. Special Condition 4 prohibits mechanical boring within 500 feet of an occupied nest during the nesting season (February 15 – August 31). The applicant is anxious to implement the proposed archaeological testing in order to have the field work completed before the winter rains. Therefore, the proposed field work will most likely be completed well before raptor nesting season begins in mid February. However, the applicant is also required to survey any trees of the Eucalyptus grove that are within 500 ft. of the proposed work area to determine if raptor nesting is occurring prior to commencement of any mechanical work. As conditioned the proposed project is consistent with Section 30240(a) of the Coastal Act.

3. Marine Resources

Coastal Act Sections 30230 and 30231 require the protection of marine resources and state:

Section 30230

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

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

The subject site is near the Bolsa Chica Ecological Preserve, a coastal wetland that provides habitat for threatened and endangered species. The proposed project includes the excavation of soil through mechanical auger boring and 1x1 meter hand excavated units. Although the soil will be backfilled upon completion of the field work, during field work there is the potential for the soil to adversely impact off-site marine resources if the site is not properly contained.

As conditioned by Special Condition 5 the proposed project will use standard construction best management practices (BMPs) and good housekeeping measures (GHMs) to prevent erosion and run-off of excavated soil into the adjacent restored Bolsa Chica Ecologic Preserve. The project, as conditioned, is therefore consistent with the marine resources protection policies of the Coastal Act.

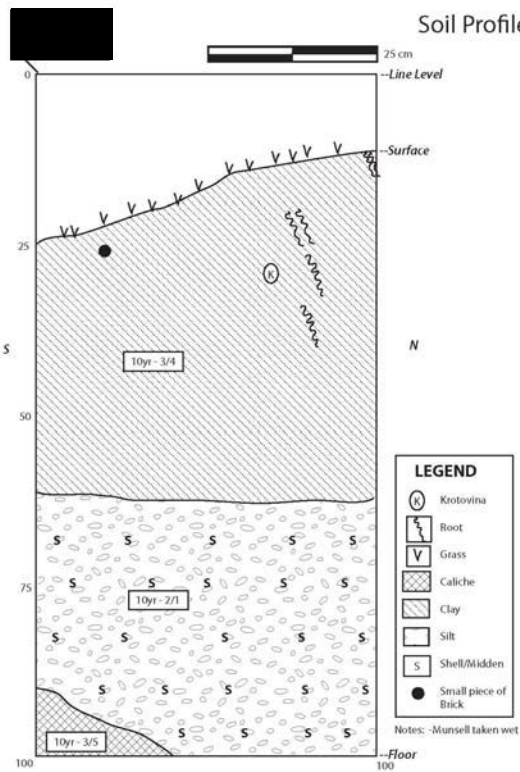
4. California Environmental Quality Act

Section 13096 of the Commission's regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

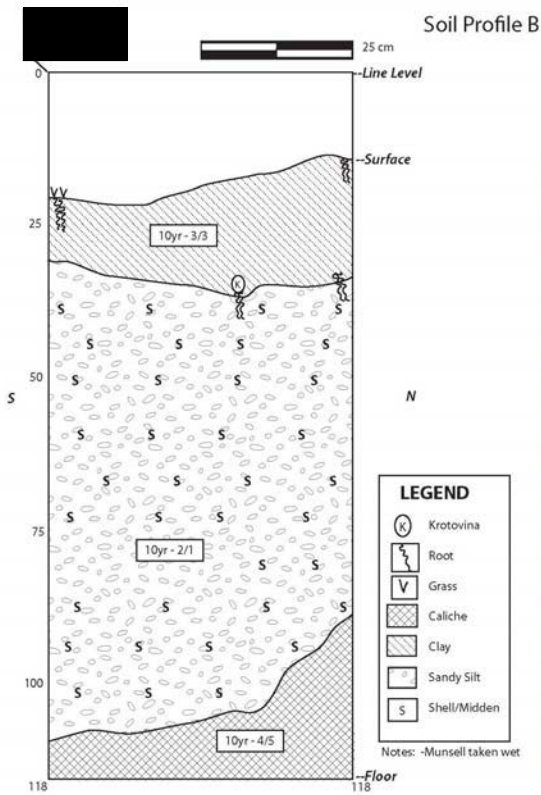
In this case, the County of Orange is the lead agency and the Commission is the responsible agency for the purposes of CEQA. The County of Orange issued a CEQA

exemption for the proposed project. There are no other feasible alternatives or mitigation measures available which will lessen any significant adverse archaeological, biological, or marine resource impact the activity would have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with CEQA and the policies of the Coastal Act.

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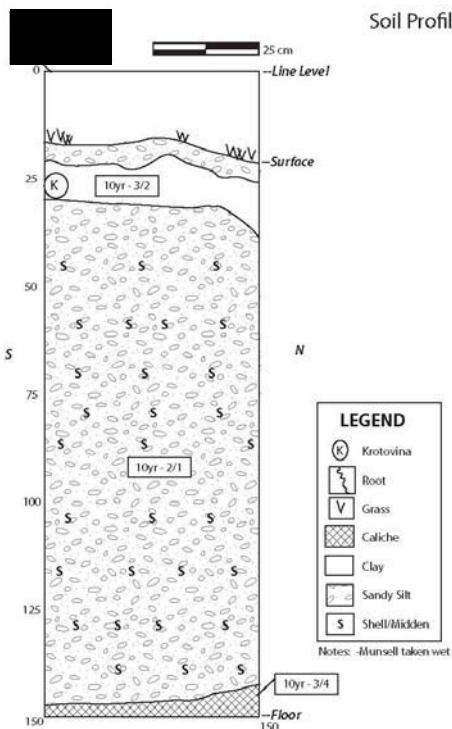
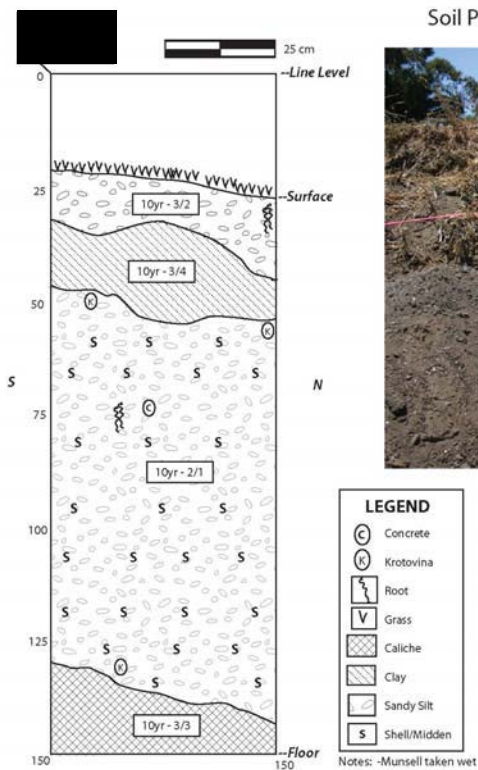


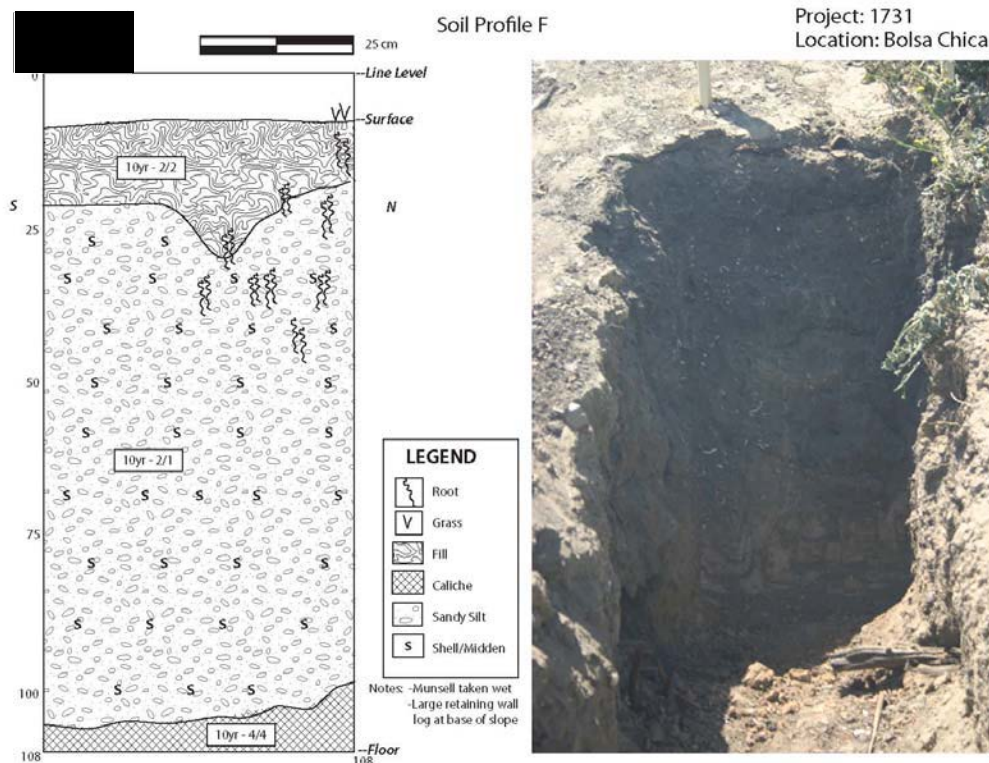
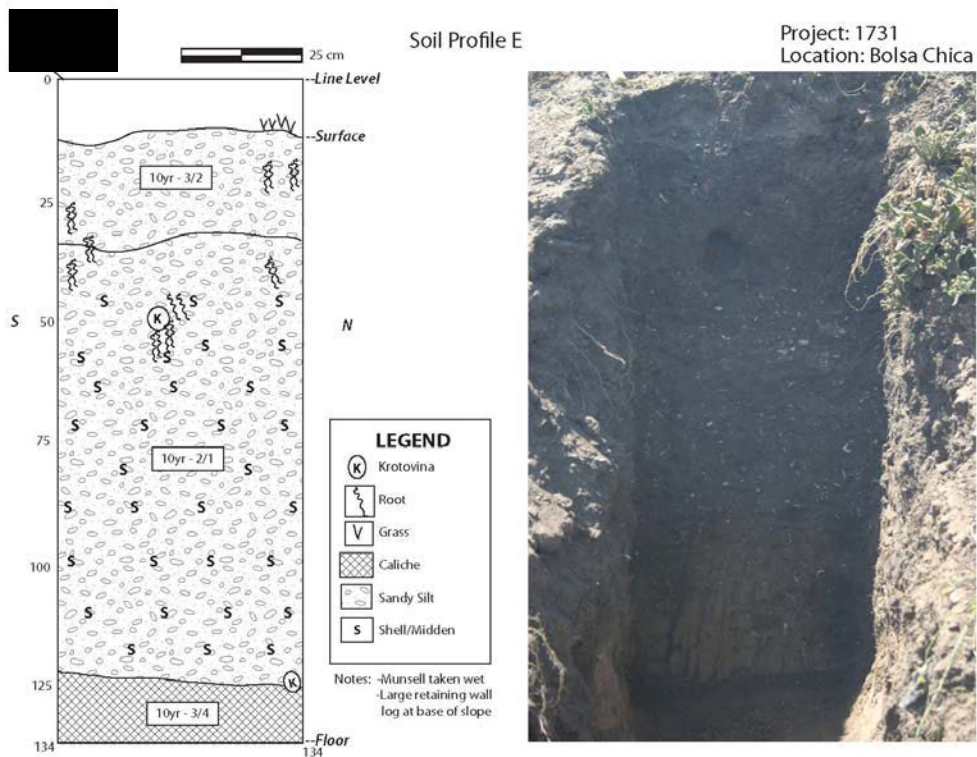
Project: 1731
Location: Bolsa Chica

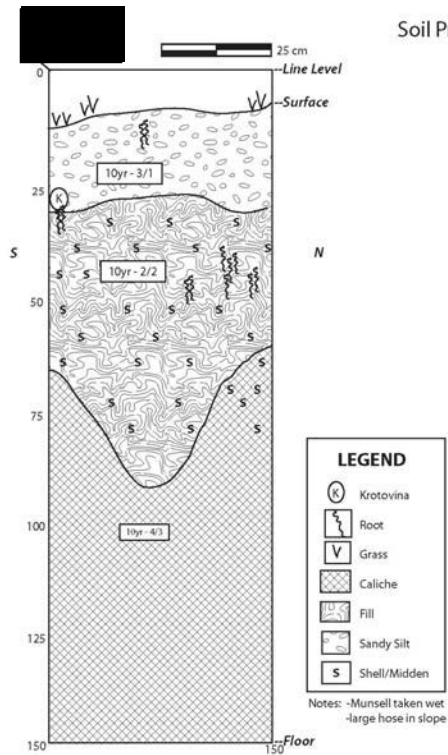


Project: 1731
Location: Bolsa Chica/Goodell

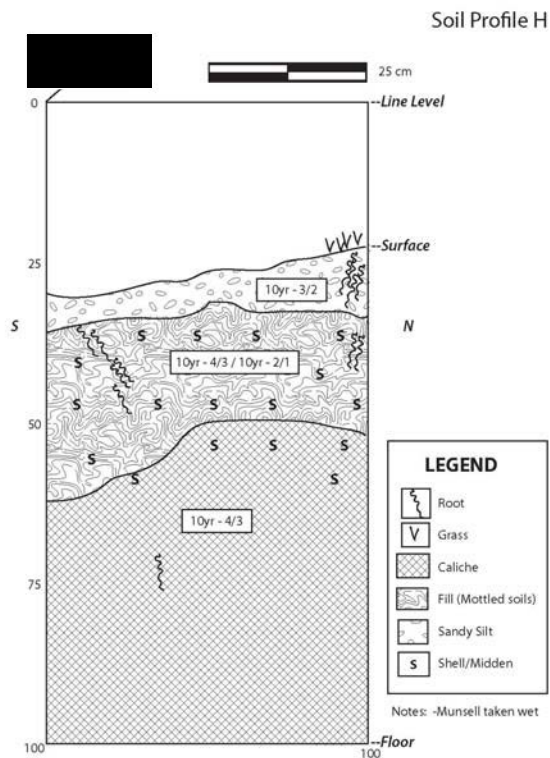






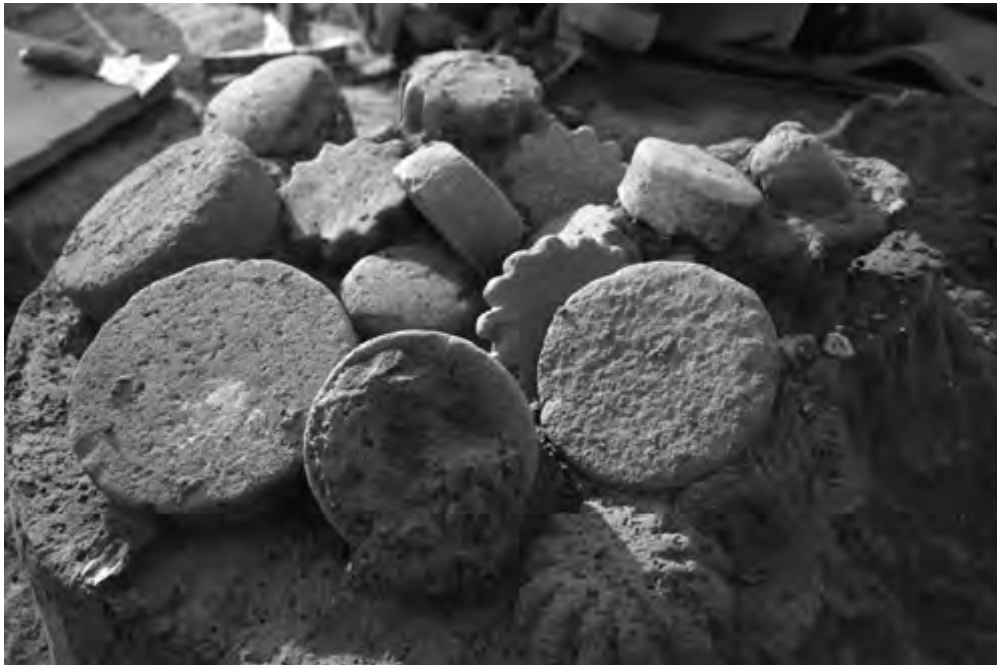


Project: 1731
Location: Bolsa Chica



Project: 1731
Location: Bolsa Chica





Source: *Saved by the Well: The Keystone Cache at CA-ORA-83, the Cogged Stone Site* by Jeffrey S. Couch, Joanne S. Couch, and Nancy Anastasia Wiley



NATIVE AMERICAN HERITAGE COMMISSION GUIDELINES FOR NATIVE AMERICAN MONITORS/CONSULTANTS



When developers and public agencies assess the environmental impact of their projects, they must consider "historical resources" as an aspect of the environment in accordance with California Environmental Quality Act (CEQA) Guidelines section 15064.5. These cultural features can include Native American graves and artifacts; traditional cultural landscapes; natural resources used for food, ceremonies or traditional crafts; and places that have special significance because of the spiritual power associated with them. When projects are proposed in areas where Native American cultural features are likely to be affected, one way to avoid damaging them is to have a Native American monitor/consultant present during ground disturbing work. In sensitive areas, it may also be appropriate to have a monitor/consultant on site during construction work.

A knowledgeable, well-trained Native American monitor/consultant can identify an area that has been used as a village site, gathering area, burial site, etc. and estimate how extensive the site might be. A monitor/consultant can prevent damage to a site by being able to communicate well with others involved in the project, which might involve:

1. Requesting excavation work to stop so that new discoveries can be evaluated;
2. Sharing information so that others will understand the cultural importance of the features involved;
3. Ensuring excavation or disturbance of the site is halted and the appropriate State laws are followed when human remains are discovered;
4. Helping to ensure that Native American human remains and any associated grave items are treated with culturally appropriate dignity, as is intended by State law.

By acting as a liaison between Native Americans, archaeologists, developers, contractors and public agencies, a Native American monitor/consultant can ensure that cultural features are treated appropriately from the Native American point of view. This can help others involved in a project to coordinate mitigation measures. These guidelines are intended to provide prospective monitors/consultants, and people who hire monitors/consultants, with an understanding of the scope and extent of knowledge that should be expected.

DESIRABLE KNOWLEDGE AND ABILITIES:

1. The on-site monitor/consultant should have knowledge of local historic and prehistoric Native American village sites, culture, religion, ceremony, and burial practices.
2. Knowledge and understanding of Health and Safety Code section 7050.5 and Public Resources Code section 5097.9 et al.



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3. Ability to effectively communicate the meaning of Health and Safety Code section 7050.5 and Public Resources Code section 5097.9 et al. to project developers, Native Americans, planners, landowners, and archaeologists.
4. Ability to work with local law enforcement officials and the Native American Heritage Commission to ensure the return of all associated grave goods taken from a Native American grave during excavation.
5. Ability to travel to project sites within traditional tribal territory.
6. Knowledge and understanding of CEQA Guidelines section 15064.5 and Section 106 of the National Historic Preservation Act of 1966 (NHPA), as amended.
7. Ability to advocate for the preservation in place of Native American cultural features through knowledge and understanding of CEQA mitigation provisions, as stated in CEQA Guidelines section 15126.4(b)(A)(B), and through knowledge and understanding of Section 106 of the NHPA.
8. Ability to read a topographical map and be able to locate sites and reburial locations for future inclusion in the Native American Heritage Commission's (NAHC) Sacred Lands Inventory.
9. Knowledge and understanding of archaeological practices, including the phases of archaeological investigation.

REQUIREMENTS:

1. Required to communicate orally and in writing with local Native American tribes, project developers, archaeologists, planners and NAHC staff, and others involved in mitigation plans.
2. Required to maintain a daily log of activities and prepare well written progress reports on any "findings" at a project site (i.e., human remains, associated grave goods, remains, bone fragments, beads, arrow points, pottery and other artifacts).
3. Required to prepare a final written report describing the discovery of any Native American human remains and associated grave goods, and their final disposition. This report shall contain at a minimum the date of the find, description of remains and associated grave goods, date of reburial, and the geographical location of reburial, including traditional site name if known. The report shall include a discussion of mitigation measures taken to preserve or protect Native American cultural features and, if applicable, a comparison with mitigation measures described in the environmental impact report. This report shall be submitted to NAHC after the completion of the project. Information from the report may be included in the NAHC Sacred Lands Inventory.
4. Ability to identify archaeological deposits and potential areas of impact.



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EXPERIENCE:

It is recommended that each monitor/consultant have experience working with Native American cultural features under the guidance of an archaeologist that meets the professional qualifications, as defined in the in the *Secretary of the Interior's Standards and Guidelines* for archaeology. Letters from an on-site archaeologist should be submitted with a copy of the archaeologist's resume. Experience and knowledge regarding cultural, traditional, and religious practices can be gained by training from tribal elders. This experience and knowledge may be verified by the submission of such things as copies of contracts, reports, and letters from elders. Formal education in an appropriate field, such as anthropology, archaeology, or ethnology, may be substituted for experience.

PREFERENCE:

It is recommended that preference for monitor/consultant positions be given to California Native Americans culturally affiliated with the project area. These Native Americans will usually have knowledge of the local customs, traditions, and religious practices. They are also aware of the local tribal leaders, elders, traditionalists, and spiritual leaders. Since it is their traditional area being impacted, culturally affiliated Native Americans have a vested interest in the project.

Approved by the Native American Heritage Commission: 9/13/2005