

## CALIFORNIA COASTAL COMMISSION

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# W18a

A-5-HNB-21-0031 (SIGNAL LANDMARK)  
JULY 7, 2021

### CORRESPONDENCE

Some of the concerns raised by these letters attached as correspondence are already addressed in the staff report.

**Correspondence packet updated 7/7/21 with additional letter from the Agent opposing the staff recommendation.**



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July 7, 2021

**Via E-Mail to [Amber.Dobson@coastal.ca.gov](mailto:Amber.Dobson@coastal.ca.gov)**

Chair Steve Padilla and Members of the California Coastal Commission  
California Coastal Commission  
455 Market Street, Suite 230  
San Francisco, CA 94105

**Re: Item 18a on July 7, 2021, Commission Agenda  
A-5-HNB-21-0031: Substantial Issue - Signal Landmark**

Chair Padilla and Members of the Coastal Commission:

This letter supplements the June 4, 2021, letter from us on behalf of Signal Landmark, Inc. ("Signal") in response to the appeals of a CDP for controlled archaeological grading of the "Windward Site" in Huntington Beach. Since Signal may be prohibited from offering testimony on its own behalf at tomorrow's "hearing," this letter will summarize points that would otherwise be presented tomorrow and is intended to *supplement* arguments made previously in June 4, 2021, letters from the Cox, Castle & Nicholson and Manatt law firms. That previous correspondence unnecessarily prompted a "postponement" of the June hearing on these appeals on the premise that Staff needed time to respond.

There is nothing in this letter that is not part of the record of the CDP proceedings and/or the proceedings for this Commission's unanimous certification of the SP/LCPA for the Windward Site in 2018. Therefore, since Staff authored one of the two appeals and has now written two thorough and detailed Staff Reports on the CDP appeals, this letter responding to Staff's claims should not prompt any assertions that Staff has not had the opportunity to consider these responses. If Staff has not considered these issues by this point, they have not properly and objectively prepared their appeal and the Staff Reports.

1. **What is "Archaeological Grading"?** The challenged CDP authorizes archaeological grading, which is a pre-development requirement of the 2018 SP/LCPA. As stated in the Staff Report for that certification:

*Controlled archaeological grading consists of using mechanized equipment where the upper soil layers are removed in approximately two centimeter depth increments by a mechanical scraper, under the supervision of the archaeological site supervisor. The grading process is limited to slow excavation in small horizontal areas of individual swaths*

*the width of the mechanical scraper blade in order to maximize the opportunity for discovery of cultural artifacts present on site. The archaeologist(s) and Native American monitor(s) examine the soils as they are exposed.*

These appeals pertain only to the approval of a CDP for archaeological grading which does not authorized any residential construction.

2. **“Regulator’s Remorse”:** Staff clearly regrets the Commission’s certification of the SP/LCPA in 2018 and Signal’s ability to develop a portion of the Windward Site after it conveys adjacent land and a portion of the Windward Site for preservation. Staff accurately states in the Staff Report that “staff’s motivations are not relevant” to these appeals. Yet, Staff’s motivations dominate Staff’s appeal and the Staff Report and clearly are intended to influence the Commission to deny the CDP. Case law is clear that in considering an appeal of a CDP, the Commission cannot usurp the role of the City by imposing policy considerations that contradict the terms of the certified LCP.
3. **The Proposed “Redo”:** With respect to both the Staff appeal and, perhaps more specifically, the Adrian Morales appeal, Staff is asking the Commission to treat as “new information” facts and policies known and considered during the 2018 certification process. It also asks the Commission to deny the CDP because it does not take into consideration specific policy considerations adopted after certification of the SP/LCPA. In circular fashion, the Staff Report also contends that general policies of the LCP must be read to now prevent implementation of the SP/LCPA - even though those policies were in effect and taken into consideration when the SP/LCPA was certified in 2018:
  - Policy considerations related to the protection of cultural resources were extensively addressed in the approval and certification of the SP/LCPA. The Commission cannot now apply to the approval of an archaeological grading CDP standards not applicable under the currently effective LCP. But to suggest, as Staff has done, that the SP/LCPA did not adequately consider the protection of cultural resources is far from correct. Findings alone contained in the 2018 Staff Report and adopted by the Commission occupy more than four pages under the heading of “Protection of Cultural Resources.” Those findings address all of the issues raised in the current Staff Reports and conclude with:

*Therefore, the Commission finds that the proposed LUP amendment, including the language proposed to be added to Table C-2 regarding new subarea 4M Windward, is consistent with the Coastal Act policies regarding protection of cultural/archaeological resources. Likewise, the Commission finds that the proposed IP amendment, including the addition of the Windward Specific Plan (Specific Plan No. 16), is in conformance with and adequate to carry out the policies of the certified LUP regarding protection of cultural/archaeological resources (including as proposed to be amended herein).*

The City and Signal have complied with the requirements of the SP/LCPA and this CDP appeal hearing. As a result, the CDP does not raise a substantial issue regarding

consistency with the City's LCP. Under the Coastal Act, this is not the time to impose new requirements or policy considerations.

- The City and Signal both followed the requirements of LCP Policy C 5.1:
  - As required by Policies C 5.1.1 and C 5.1.4(c), coordination with both SHPO and the Native American Heritage Commission was accomplished by providing a copy of the draft AMMP to both agencies for their review and comment.
  - The proposed archaeological grading is reasonable mitigation consistent with Policy C 5.1.2 and Coastal Act Section 30244. Archaeological grading will only take place on the half of the site that was (1) previously subject to archaeological excavation, and (2) determined to have the least sensitivity for cultural resources due to its long history of development (farming and operation of a pole yard).
  - All consultation requirements of Policy C 5.1.4 have been followed and the results of those consultations have been provided to the City and the Coastal Commission.
- The Staff Report focuses on the fact that the 2.5 acres subject to residential development is within an archaeological site that is considered significant, listed in the State's Sacred Lands Inventory and deemed eligible for listing – but not actually listed – on the federal National Register of Historic Places. The status of the ORA-86 archaeological site and the cultural resources that have been recorded on the surrounding area were fully disclosed and considered by both the City and the Coastal Commission during the 2018 certification process. With this knowledge, the Coastal Commission approved residential development for 2.5 acres of the Windward Site so long as an AMMP was implemented prior to grading. Other than Staff's apparent concern regarding the wisdom of the Commission's unanimous 2018 SP/LCPA certification, there are no factual changes or new information which would legally allow the Commission to block implementation of the certified SP/LCPA.
- Facts are facts, even when Staff disagrees. Neither the City nor the author of the AMMP were negligent, as staff implies by stating that the AAMP does not consider project impacts to the sacred lands. The full history of cultural resources on the Bolsa Chica Mesa and this area was thoroughly reviewed and considered when the SP/LCPA was considered by the City and the Coastal Commission. The CDP for archaeological grading was approved by the City consistent with the certified SP/LCP and there is no need for a "redo" of the detailed analysis that led to the SP/LCPA framework for the protection of cultural resources.
- The impacts of archaeological grading have been fully considered. Given the prior thorough archaeological investigations, the potential for intact cultural resources was determined to be relatively low. The archaeological grading, representing the SP/LCP's means to avoid potential impacts to cultural resources, would remove soil in increments of 1-2 inches in order to identify any cultural resources that may be present. Discovered cultural resources, if any, would be examined and a determination made whether they

should be protected in place. Thus, potential impacts to cultural resources were addressed by imposing a requirement that the sensitive process of archaeological grading be employed prior to typical project grading and that appropriate mitigation be provided for any resources found.

- Even in the name of environmental justice, the Commission cannot deny a CDP on appeal simply because, in hindsight, it wants to insert new policy considerations into a CDP which render development impossible. The Commission's Environmental Justice Policy was not adopted until three months after the SP/LCPA was certified and it would not be lawful for the Commission to apply that policy retroactively through a CDP appeal to preclude development authorized by the SP/LCP. That, in effect, would amend the certified LCP, a role the Coastal Act gives to the City alone.
4. **Timing of the Archaeological Grading CDP:** By specific reference to the project's Development Agreement, the SP/LCPA recognizes the right of Signal to proceed with archaeological grading before the "Conveyances" are made. This was subsequently acknowledged by Staff in email correspondence.
- The project's Development Agreement contains the following provision:

***"Prior to the LCPA becoming operative, the City may not issue any permits pursuant to Specific Plan, with the exception of permits for archaeological studies and archaeological grading. Permits for archaeological studies and archaeological grading may be issued at any time after certification of the LCPA."***

Commission Staff has told Signal that the project's Development Agreement is of no concern to the Commission. However, the DA was reviewed and edited by Commission Staff prior to the SP/LCPA's certification in 2018 and was attached to and discussed at length by the 2018 Staff Report.

- Most importantly, ignoring the DA requires the Commission to also ignore specific provisions of the certified SP/LCPA. Though short and to the point, an entire section (Section 5.5) of the SP/LCPA is devoted to the relationship between the DA and the SP/LCPA. It states that the DA ***"reflects the requirements of Section 5.3" of the SP/LCPA***. Section 5.3 lists the steps that must precede Windward residential development and is particularly significant to Staff's appeal. The Commission cannot selectively ignore words of Staff's choosing within the SP/LCPA.
- After certification of the SP/LCPA, Commission Staff acknowledged that archaeological grading could precede the "Conveyances." Although Commission Staff initially contended that archaeological grading could occur only after the Conveyances, it recanted after City Staff responded with disagreement and further background by saying, in a March 22, 2019, email (below) that its initial position could be *disregarded*:

**From:** Vaughn, Meg@Coastal <Meg.Vaughn@coastal.ca.gov>  
**Sent:** Friday, March 22, 2019 3:46 PM  
**To:** Villaseñor, Jennifer <JVillaseñor@surfcity-hb.org>; 'edmountford@verizon.net' <edmountford@verizon.net>  
**Cc:** Dobson, Amber@Coastal <Amber.Dobson@coastal.ca.gov>; Nguyen, Tess <tnguyen@surfcity-hb.org>; Luna-Reynosa, Ursula <ursula.luna-reynosa@surfcity-hb.org>  
**Subject:** RE: Windward Status Update

Hi All,  
You may disregard my earlier email.

As long as the City and the developer are willing to include the following conditions of approval, such a preliminary CDP should not prejudice the Specific Plan:

- The applicant/developer agrees to follow the performance standards specified in 3.7.A (Cultural/Archaeological Resources) and 3.7.B (Paleontological Resources).
- The applicant/developer agrees to restore the project site to pre-CDP conditions if the acquisition alternative under the Specific Plan is triggered.
- Express acknowledgement that limited archaeological studies approved under the CDP shall not be construed as vesting the development alternative under the Specific Plan.

Other conditions may be appropriate too, but the above should address the concerns of my earlier email.  
Thank you,  
Meg

5. **The Two-Step Appeal Process:** Commission practice has divided the CDP appeal process into two steps: substantial issue and de novo. As noted in a June 9, 2014, memo to the Commission from former Executive Director Charles Lester, this practice is not specifically “defined” in the Coastal Act. There have been instances where courts have allowed this split to allow an appeal hearing to occur over more than what was 49 calendar days as previously provided by the Coastal Act. None of the controlling facts of those cases are present here.

The appeals were filed on May 3 and May 5, respectively, more than sixty calendar days before tomorrow’s scheduled substantial issue hearing. In preparing one of those appeals and two subsequent lengthy and detailed Staff Reports, Staff has long known what it needs to know to allow the Commission to have timely held the de novo hearing by the July Commission meeting. For the record:

- Commission Staff has had both the June and July Commission meetings in which to agendize the required de novo hearing. On its own, Staff “postponed” the agendized June hearing on the premise that it needed time to respond to Signal’s response to the Staff Report. There was nothing in Signal’s letters to the Commission, however, that raised issues that should not already have been taken into consideration when Staff prepared its appeal and the first Staff Report.
- Even if Staff needed time to respond to Signal, the issues contained in Staff’s appeal and the two Staff Reports thoroughly address the substance of the appeal. For that reason, the de novo hearing could and should have been scheduled for July.
- Signal was simply informed by email on June 14 that Staff was “not prepared for De Novo yet.” Signal has not agreed to or otherwise acquiesced to the holding of the de novo

hearing beyond July 13. Signal was prepared to participate in the de novo hearing in June but there was no choice for Signal.

- Signal has not waived and is not waiving the provisions of PRC Sections 30621 and 30625 or any other provision of the Coastal Act or the Commission's regulations with respect to the timing of these appeals.
- In light of the Commission's somewhat convoluted premise that the substantial issue hearing is part of the required de novo hearing, the practice of not holding a public hearing on the substantial issue determination violates, generally and specifically with reference to these appeals, both the Coastal Act public hearing requirement for CDP appeals and principles of due process. To suggest that because three Commissioners do not want to hear more about the substantial issue question indicates that the Commission as a whole has made up its mind before the "hearing" has started and would simply prefer not to hold a hearing. That is, on its face, quite offensive to the concept of due process. The substantial issue determination is critical to whether the de novo question will be addressed and, therefore, should not be subject to the Commission's arbitrary exclusion of the public from the "public" hearing.

6. ***The Substantial Issue Question:*** As to the merits of the substantial issue question, Commission Staff has attempted to create the illusion that the SP/LCPA is not effective. There is, however, only one certified and effective LCP of the City and it includes the SP/LCPA. By conjuring up issues that distract from the true facts, Staff should not be privileged to create a phantom "substantial issue." As addressed above and in prior correspondence, if the Commission recognizes (i) the acknowledged right provided to Signal to conduct the archaeological grading prior to the Conveyances, (ii) the correct meaning of the "operative/effective" provisions of the SP/LCPA, (iii) the fact that analyses that Staff claims are now needed were, in fact, prepared and considered when the SP/LCPA was certified, and (iv) that policy issues reflecting regulator's remorse are not appropriate to CDP appeals, there simply is not a substantial issue present to justify moving forward with these appeals.

Based on these considerations, Signal requests that the Commission find that there is no substantial issue.

Sincerely,

COX, CASTLE & NICHOLSON LLP



By: Tim Paone  
Partner



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June 4, 2021

**Via E-Mail**

Chair Steve Padilla and Members of the California Coastal Commission  
California Coastal Commission  
455 Market Street, Suite 230  
San Francisco, CA 94105

**Re: Item 18b on June 9, 2021, Commission Agenda  
A-5-HNB-21-0031: Substantial Issue - Signal Landmark**

Chair Padilla and Members of the Coastal Commission:

At first glance, this agenda item may seem like just another CDP appeal on a grading permit. No big deal. That, however, is far from the truth. Rather, this appeal involves a site that already has been studied for its cultural significance, that lies within the 100% effective certified LCP of the City of Huntington Beach (the "City"), that has been offered for sale to the Trust for Public Land (the "TPL") through an option which was not exercised, and which prior to this appeal was proceeding toward development precisely as permitted by an LCPA amendment unanimously certified by this Commission in 2018 (the "LCPA"). As we will explain below, along the way Staff has developed cold feet and now wants the Commission to deny all development of this site forever. This appeal is the first step in Staff's plan which, at least, they have not concealed. Please don't fall for it.

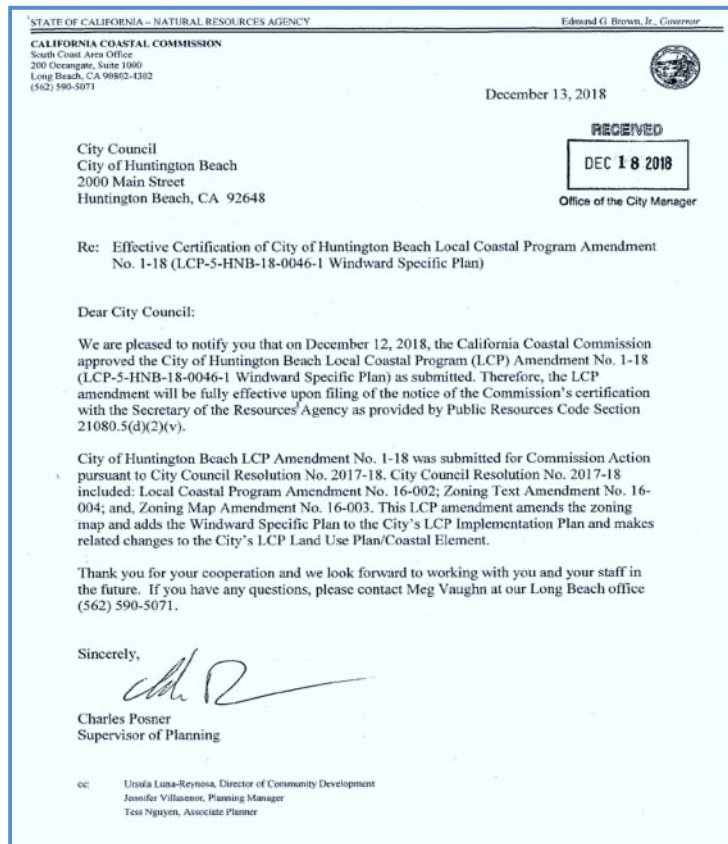
This letter is written on behalf of Signal Landmark, Inc. ("Signal"), the landowner who was issued a CDP by the City for archaeological grading (the "CDP") of property known as Windward (the "Windward Site"). Two appeals have been filed with respect to that CDP, (i) the appeal filed by Commission Staff under the signatures of Commissioners Hart and Brownsey (the "Staff Appeal") and (ii) an appeal by Adrian Morales. This letter will focus on Staff's proposed unprecedented change to the normal standard of review for CDP appeals. The substantial issue analysis and other issues not addressed in this letter will be addressed separately in a letter from the Manatt law firm. Prior to the hearing, we also will provide a matrix addressing the factual distortions of each and every allegation of both appeals.

On Page 6, the Staff Report correctly recites that the standard of review for a de novo review on the merits of a project is "the certified LCP." Yet, matter-of-factly presented but dramatic in its deviation from the norm, the Staff Appeal and the Staff Report both divert to a conclusion that



the standard of review for *this* appeal is NOT the *current* certified LCP. Consistent with our seemingly post-truth world, Staff tries to imagine away, like David Copperfield making an airplane disappear, the very existence of the current certified LCP in order go back to a former version that might better achieve Staff's goals. Voila! The end justifies the means. The "end" in this case appears to be the "full preservation of the property," as brazenly stated in the Staff Appeal. That, of course, would violate the LCP, the Coastal Act, the Constitutions of the United States and California, and Section 1983 of the Civil Rights Act.

Before providing more background, it is important to repeat that the CDP was adopted pursuant to an LCP amendment **unanimously** certified by this Commission on December 12, 2018. At its core, the LCPA was and still is a "Specific Plan," the same Specific Plan that Staff prefers to discard. Once approved by this Commission, the LCPA became effective under Section 13544 of the Commission Guidelines and was incorporated into the City's LCP. To the right is confirmation from Commission Staff that the LCPA was approved and would become effective upon filing of the notice of the Commission's certification. It has remained effective ever since. Staff's gross distortion of the LCP's use of the word "operative" does not change reality. If Staff's extraordinary assertion is correct, then the LCP was dead as soon as it was certified and effective because it wasn't "operative" then, either.



The Specific Plan is not some sort of a freestanding LCP "appendage" to be tossed aside when no longer useful to Staff. Rather, it is part of the one-and-only current certified LCP of the City. Not only has the Specific Plan **never stopped being effective**, the LCP explicitly identifies only one circumstance under which the Specific Plan "will not be effective and will be moot." That circumstance is the exercise, before its expiration, of an option by the TPL to purchase the entire Windward Site and the adjacent unincorporated Goodell Property. Signal made a substantial six-year effort to sell the property to the TPL at a below market negotiated price. Signal's efforts included financial contributions, fund raising assistance, legislative advocacy, numerous extensions of the option, and more. Despite those efforts, the TPL *did not* exercise its option before it expired. Staff does not dispute this fact, but it appears to be the reason that the certified

LCP is of no further appeal to Staff. Nonetheless, the Specific Plan remains in place without any contingency for its removal.

So, how did we get here? The Specific Plan was the product of years of negotiation between Signal and Commission Staff. Staff, in fact, had a significant hand in revising much of the Specific Plan. The Windward Site was designated open space in the City's LCP. Adjacent to the Windward Site was a property identified as the "Goodell Property," a residentially designated site in unincorporated County territory, which Commission Staff stated was "known to contain sensitive habitat and sensitive cultural resources." The creative goal of the Specific Plan was to achieve permanent open space use of both the Goodell Property (even though it was not under the jurisdiction of the City or, for purposes of the LCP, the Coastal Commission) and roughly half of the Windward Site through an incentivized process. The regulatory "deal" was that Signal could develop on 2.5 acres of the 5 acres of the Windward Site if (i) the TPL option was not exercised and (ii) Signal acquired the Goodell Property at its own significant expense and dedicated or conveyed the Goodell Property and the other half of the Windward Site to a public agency or approved non-profit. The challenge came in how to implement the deal. Initially, Commission Staff stated that it would not even place on the Commission's agenda the change in designation of half of the Windward Site to residential until **after** Signal had acquired the Goodell Property (again, at very significant expense) and given away both the Goodell Property and half of the Windward Site. That, of course, was a non-starter for Signal since after incurring great expense and giving its land away, there was no assurance that the remaining half of the Windward Site could be used for residential.

After years of discussion, the solution came through the employment of the words "effective" and "operative." Under the Specific Plan (see excerpt below), "effective" very explicitly means what it always means: the time at which an approval "becomes final in the ordinary course of the

#### 5.2 Key Definitions

- a. **Approved/Approval:** "Approved" or "Approval" refers to the process(es) prescribed by applicable local and/or state law by which the Required Approvals and the Implementation Documents are authorized by the applicable decisional authority. For example, this Specific Plan/LCPA is "approved" when the City Council has voted to adopt the resolution approving this Specific Plan/LCPA **and** the Coastal Commission's certification of the LCPA is complete, whether by vote of the Commission with or without suggested modifications.
- b. **Effective:** "Effective" refers to the time at which a Required Approval or an Implementation Document becomes final in the ordinary course of the administrative process for that approval as set forth in applicable local and/or state law. For example, the Coastal Commission's regulations, specifically 14 CCR § 13544, specify when certification of the LCPA shall become "effective". For purposes of this Specific Plan/LCPA, Required Approvals and Implementation Documents may specify a later "operative" date subsequent to the "effective" date.
- c. **Operative:** "Operative" refers to the time at which a Required Approval or an Implementation Document may be exercised, used, or implemented. For purposes of this Specific Plan/LCPA, Required Approvals and Implementation Documents may specify a later "operative" date subsequent to the "effective" date.

administrative process for that approval as set forth in applicable local and/or state law.” The word “operative” comes into play, however, to provide a marker which will allow both the Commission and Signal to have the assurance that, as discussed above, they each get their share of the deal. As stated in the City’s LCP:

*“The City and the Coastal Commission need assurances that before development of the Windward Residential Parcel can begin, the conveyances and deed restrictions called for by this Specific Plan and Alternative 2 of the Settlement are operative. The Windward Owner needs assurances that if those conveyances and deed restrictions are operative, Windward Owner will have the right to proceed with the development of the Windward Residential Parcel as permitted by this Specific Plan. This Chapter 5 provides each of these parties with the needed assurances by making the operative status of all Required Approvals (specified in 5.3 below) and Implementation Documents (specified in 5.4.1 below) mutually contingent upon approval and effectiveness of all of the Required Approvals and Implementation Documents.”*

As defined in the LCP/Specific Plan, the word “operative” means *“the time at which a Required Approval or an Implementation Document may be exercised, used, or implemented. For purposes of this Specific Plan/LCPA, Required Approvals and Implementation Documents may specify a later ‘operative’ date subsequent to the ‘effective date’.”* In practice, this means that the residential designation on half the Windward Site does not become “operative” (i.e., it cannot be “exercised, used, or implemented”) until the Goodell Property had been acquired and both the Goodell Property and half of the Windward Site had been given away. On the other hand, once that is done, Signal can exercise its right to build. It was a well-negotiated, well-thought out, creative win-win that Staff no longer likes.

Today, using an unfounded premise to contend that the standard of review for the Staff Appeal is not the actual honest-to-goodness LCP of the City, but rather a previous and now superseded LCP, Staff openly has charted a course designed to achieve “full preservation of the property” by not allowing Signal to meet the very contingencies contained in the certified LCP that would allow residential development. That arbitrary action would constitute a taking and be violative of many other applicable laws, not the least of which is the Coastal Act.

Signal asks that the Commission recognize the highly unusual and illegal path that Staff is asking you to take. As you look at the substantial issue question on June 9, please consider carefully that it does not take speculation to recognize that there is an ulterior motive at work here which has little to do with the archaeological grading CDP. Staff's open flirtation with the "full preservation of the property" paints the real picture. Our other submittals hopefully will convince you that there is no substantial issue within the appeals. Either way, however, the standard of review in this case is the very same as it is in every other appeal you hear. It is the current certified LCP.

Sincerely,

COX, CASTLE & NICHOLSON LLP



By: Tim Paone  
Partner

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June 4, 2021

Client-Matter: 24970-062

## **Via Electronic Mail**

Chair Steve Padilla and Coastal Commissioners  
California Coastal Commission  
455 Market Street, Suite 230  
San Francisco, CA 94105

### **Re: A-5-HNB-21-0031 - Substantial Issue - Signal Landmark**

Dear Chair Padilla and Coastal Commissioners:

This letter is submitted on behalf of Signal Landmark, Inc. (“Signal”), the landowner and applicant for a coastal development permit (“CDP”) approved by the City of Huntington Beach to implement a Coastal Commission -authorized mitigation program on a 2.5 acre site in the City (the “Windward Site”). That CDP is now the subject of an appeal filed by Commissioners Hart and Brownsey (“Commission Appeal”) and Adrian Morales of the Gabrielino Tongva San Gabriel Band of Mission Indians (“Morales Appeal”). This letter responds to the five “arguments” in the Staff Report that form the basis of these appeals.

- **The City’s CDP is Consistent with its LCP. The Staff Report Ignores the Requirements of the City’s Certified LCP.**

Before addressing those five issues, however, there are some overarching points that need to be considered by the Commission before determining whether the appeal raises a “substantial issue” with the applicable policies of the City’s Local Coastal Program (“LCP”). For the reasons stated in the letter from Cox Castle and Nicholson, dated June 4, 2021 (“CCN Letter”) also sent on behalf of Signal, the LCP Amendment approved by the Coastal Commission in December, 2018, and which approved residential development on the 2.5 acre Windward Site provides the applicable LCP policies against which these appeals should be analyzed. As discussed in the CCN Letter, the Windward Specific Plan was made a part of the City’s LCP and establishes the policies against which the CDP is examined. The Windward Specific Plan and City’s LCP require the implementation of an archaeological mitigation program prior to any development occurring on the Windward Site. (Windward Specific Plan at Sections 3.7 and 6.4.) The City’s CDP is consistent with and implements the LCP policies in effect. Even if the Commission ignores the certified December 2018 LCP Amendment, the City’s CDP is still consistent with the LCP’s cultural resource policies as discussed in the following section.

- **The Staff Report Mischaracterizes the Proposed Mitigation Program and the Two Year Effort to Prepare the Archaeological Mitigation and Monitoring Plan (“AMMP”) Reviewed by Coastal Staff.**

The City’s LCP requires that prior to any development on the 2.5 acre Windward Site, an archaeological mitigation program must be undertaken to ensure the protection of significant archaeological resources, if discovered. (LCP Policy C5.1.) The archaeological mitigation program is the vehicle by which reasonable mitigation measures to minimize impacts to archaeological resources will be implemented consistent with LCP Policy C5.1.2. It is part of an overall mitigation program for cultural resources which includes preservation in place for significant cultural resources identified during mitigation implementation as determined by Native American consultation with the project archaeologist. Signal prepared the Archaeological Mitigation and Monitoring Plan (revised March 2021) (“AMMP”) meeting the requirements of LCP Policy C5.1.4 and submitted it together with a CDP application to the City in order to implement the required mitigation program. The AMMP was prepared after consultation with the State Office of Historic Preservation, the Native American Heritage Commission, and Native American tribes. It was reviewed by three peer reviewers.

Beyond compliance with the City’s LCP policies concerning cultural resources, because a prior CDP issued by the City for this archaeological work was appealed by the Coastal Commission in 2019, Signal and the City re-doubled their efforts to comply with the consultation requirements of LCP Policy C5.1.4, by submitting the draft AMMP to Coastal Commission staff for its review and comment twice – and incorporated and addressed Commission staff’s comments on the AMMP each time.

Given Commission staff’s review and involvement in the AMMP over the last two years, we are disappointed that the Coastal Commission has filed an appeal questioning the AMMP and its consistency with the applicable LCP policies. Surely, if there were issues of LCP consistency, they should have and could have been raised by Commission staff during the City process to provide the City and Signal the opportunity to address the deficiencies the Commission Appeal now alleges are in the AMMP.

Lastly, both appeals mischaracterize the work as “grading” with the implication that it is grading for the future residential development. It is not. The CDP is to implement an archaeological mitigation measure. The purpose of the archaeological mitigation work is to identify whether there are significant resources that must be protected – and avoided – if and when a CDP for residential development is approved.

We turn now to the five arguments presented in the Staff Report (the majority of which simply re-states verbatim the text of the Commission Appeal):

**1. Argument 1: The City-approved project misrepresents the extent of grading and the AMMP description of the grading area is inaccurate.**

The delineation of the boundaries of the archaeological “sites” on the Windward Site area of the Bolsa Chica Mesa has had a long and complicated history affected in large part by assumptions made without the benefit of a comprehensive set of archaeological studies which were not undertaken until the early 2000s by the landowner. Argument No. 1 conflates the archaeological work and assumptions involving several archaeological sites on Bolsa Chica Mesa – only one of which, ORA-86, is located within the boundaries of the Windward project. Argument No 1 also misrepresents the status of the sites and misrepresents the AMMP by alleging that it ignores archaeological site boundaries. Nothing can be further from the truth.

Since the 1970s, much of the focus of the archaeological work and significance determination of the archaeological sites on the Bolsa Chica Mesa involves ORA-83, the Cogged Stone Site, which after over 40 years of studies and excavations, is now believed to be located on the portion of Bolsa Chica Mesa south of the extension of Bolsa Chica Street and now the site of the Brightwater residential development that was constructed pursuant to CDP 5 05-020 issued by the Coastal Commission in 2005.

- **None of the archaeological sites are listed on the National Register.**

In 1980, the Pacific Coast Archaeological Society (“PCAS”) *nominated* ORA-83 for listing on the National Register of Historic Places. Its nomination included a map of what PCAS posited was the boundaries of ORA-83. (Staff Report, Exhibit 7 and AMMP, Figure 3.) Because the landowner challenged the conclusions of the PCAS nomination and opposed the listing, ORA-83 and none of the other archaeological sites on Bolsa Chica Mesa were listed on the National Register. Nevertheless, because these sites are considered *eligible for listing*, they are considered significant resources and impacts to these resources would also be considered significant. Neither Signal nor the City dispute that these archaeological resources are significant. It is for this very reason, the City required Signal to prepare and implement an AMMP before any development can occur on the Windward Site and why in 2018, the Coastal Commission approved the City’s LCP Amendment that included this requirement and concluded that it was consistent with the Chapter 3 policies of the Coastal Act.

As discussed in the AMMP, PCAS’s site boundaries for ORA-83 as depicted in Staff Report, Exhibit 7 and AMMP, Figure 3, are overbroad and encompass a separate archaeological site, ORA-86, which is located on the Windward Site. (ORA-83 and ORA-86 were determined to be separate sites because of the age and nature of the resources excavated from each site.) The archaeological resources at ORA-83 are estimated to be over 8000 years old and include the unique cogged stone artifacts. In contrast, the archaeological resources discovered at ORA-86

on the Windward site are of much more recent vintage – approximately 2,500 years old and reflect a separate settlement both in time and locale.)

The Staff Report states that the “AMMP ignores the areas and boundaries listed on the national registry in 1980.” This statement is not true. The AMMP clearly states that ORA-86 on the Windward Site was part of the area nominated by PCAS to the National Register. (AMMP Chapter 2.) And because it is a significant site, the Coastal Commission required that the applicant prepare an AMMP, and implement the AMMP before residential development could occur. Neither the City nor the applicant dispute that the archaeological mitigation work will occur in a portion of the area that was delineated in 1980 as ORA-83 included in PCAS’s National Register nomination.

It is because the area might include significant resources that an extensive subsurface investigation on the Windward Site was conducted beginning in 1999. Those excavations were monitored by Appellant Adrian Morales. As a result of that work – which was reviewed and discussed with the Coastal Commission- the City, Coastal Commission and Signal agreed that the investigated area would be less likely to contain intact cultural resources and would be better suited for residential development, than adjacent areas which had not been the subject of archaeological work.

Neither the Coastal Act, nor the City’s LCP prohibit archaeological work in areas with significant cultural resources. Section 30244 of the Coastal Act provides:

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

The consistency of the AMMP with the City’s LCP policies is addressed in Exhibit A.

**2. Argument 2: The City-approved AMMP does not address the potential impacts of the project on a site that is considered significant, nationally registered, and sacred lands, and cumulative impacts must be considered.**

The Staff Report’s summary of this argument is misleading, inaccurate and inflammatory.

- **The AMMP Recognizes that ORA-86 Was Nominated for National Register Listing.**

As discussed in Argument 1, above, the AMMP was prepared because a significant archaeological site, ORA-86, is located within the footprint of the Windward Site. The AMMP recognizes that ORA-86 was a part of the area referred to as “ORA-83” in the National Register



nomination submitted by PCAS in 1980, and is a significant site even though it is not listed in the National Register. (AMMP at page 6.) The significance of ORA-86 has been addressed in the CEQA documents prepared by the County of Orange, and the City of Huntington Beach. Again, while the City and Signal acknowledge the significance of the site and the importance of conducting archaeological mitigation which the CDP permits, it is inaccurate to describe the site as “already listed on the national registry of historic properties and has been listed since 1980.”

- **The AMMP Recognizes ORA-86 as Part of a Sacred Lands Site Complex.**

The AMMP also recognizes that the ORA-86 was included in the Sacred Lands File submission to the Native American Heritage Commission and is part of a Sacred Lands Site Complex. (AMMP at Page 9.)

The Staff Report mischaracterizes the work that is being permitted by the City’s CDP. The permitted work is implementation of an archaeological mitigation measure using mechanical equipment in addition to hand excavation. This type of archaeological work was authorized by the Coastal Commission (when it approved the LCP Amendment for the Windward Specific Plan) and the City because it followed hand excavation of the area that was performed in 1999, and monitored by Appellant Adrian Morales. Because much of the area had been subject to hand excavation previously, both the City and the Coastal Commission approved this archaeological mitigation work to be conducted using archaeological grading techniques. By calling this “grading” without further explanation, the Staff Report intentionally attempts to characterize the work as uncontrolled and highly intrusive construction grading, as opposed to carefully monitored archaeological excavations.

- **The Staff Report’s Cumulative Impacts Argument Mischaracterizes the Relationship of the Archaeological Sites on Bolsa Chica Mesa**

The City’s CDP is for archaeological work on the Windward Site where ORA-86 is located. While it is located on the Bolsa Chica Mesa which includes a number of archaeological resources, including ORA-83, the only archaeological site on the Windward Site is ORA-86. The discussion of ORA-83 is not pertinent to the CDP on appeal. It is a separate site both in age and location, and a portion of ORA-83 has been protected in open space and has not been disturbed by the adjacent development.

The Staff Report also inaccurately states that “the Windward site, as is known from past project impacts, contained about 160 human burial on the eastern side of this mesa.” (Staff Report at 12.) The Windward Site was previously excavated by hand beginning in 1999 and no human remains were uncovered on the Windward Site. We find it hard to believe that the Staff Report is confused regarding the location of the human remains discovered on the Bolsa Chica Mesa as it was the permitting agency for the permits to conduct the archaeological work on all of the sites on the Bolsa Chica Mesa and is well aware of the prior excavations on the Windward

Site and that no human remains were found there. We can only assume that describing the Windward Site as the location of 160 human burials was an intentional mischaracterization of the site and the prior archaeological work.

The Staff Report provides a partial history of the archaeological work that has occurred on the Bolsa Chica Mesa and the discovery of human remains elsewhere on Bolsa Chica Mesa. It is because of the prior discoveries, that the Coastal Commission and the City made it a condition of development that the applicant implement an archaeological mitigation program for the *entire Windward Site* before it is allowed to apply for a permit for residential construction.

**3. Argument 3: The City-approved AMMP raises questions regarding adequate mitigation and preservation measures and consistency with LCP policies which require mitigation of impacts to existing cultural resources and efforts to protect existing cultural resources in situ or in permanent open space.**

The Staff Report continues to mischaracterize the archaeological mitigation program that the Coastal Commission approved for the Windward Site when it certified the City's LCP Amendment for the Windward Specific Plan. The AMMP includes a very detailed analysis and description of the prior archaeological work and research that has been conducted for the cultural resources of Bolsa Chica Mesa. The Staff Report criticizes the AMMP by calling it "dismissive of CA-ORA-86's status as a nationally registered site, stating that it may represent a later period of occupation." (Staff Report at Page 15.) First, neither ORA-86, nor ORA-83 or any other cultural resource site on Bolsa Chica Mesa is listed on the National Register. Second, the AMMP recognizes that ORA-86 is significant which is why a mitigation program has been developed for and a CDP is being sought for its implementation. Third, based upon additional archaeological work, the AMMP clarifies the misconception that ORA-83 is one large site that extends over the entire Mesa, but rather that the boundary in the PCAS nomination form actually encompassed several sites which reflect occupation over several thousands of years at different periods of time, and therefore ORA-86 on the Windward Site is not an extension of ORA-83, but is its own unique site and should be separated out from ORA-83. Fourth, because of the prior archaeological investigations on ORA-86, the Coastal Commission, City and Signal agreed that the 2.5 acre Windward Site could be approved for residential development if an AMMP were implemented prior to development and the remainder of the adjacent property protected as open space.

**• The Treatment of Human Remains Will Be In Accordance with State Law.**

Much is made of comments from a peer reviewer regarding the potential use of a treatment and reburial plan. Those comments are not in the AMMP's procedures if human remains are discovered. (AMMP at Page 22.) As required by State Law, upon the discovery of human remains, all work in the area will cease immediately until the Coroner and the Most

Likely Descendants as identified by the Native American Heritage Commission can examine the human remains and make a recommendation as to their treatment. The treatment of human remains will remain subject to the provisions of the Public Resources Code.

The Staff Report questions the adequacy of the AMMP because there is no discussion of what will occur when or if there are conflicting opinions of the consulting Native American Tribes. First, the recommendations are made by the designated Most Likely Descendants. The AMMP identifies that two individuals have been designated as the Most Likely Descendants for this site. Both Signal and the project archaeologist have experience working with the Most Likely Descendants to ensure that there is agreement regarding the treatment of human remains. The Commission may not be aware of the fact, but in the 1990s the Native American Heritage Commission identified five individuals as the Most Likely Descendants for Bolsa Chica and during that time, Signal, all five Most Likely Descendants and the project archaeologist were able to come to an agreement on the treatment of human remains.

The Staff Report also expresses concerns that the CDP is not consistent with the LCP because the AMMP does not discuss the requirements for Native American monitoring on the site. This is simply wrong. Beginning at Page 15, the AMMP outlines the Archaeological Monitoring Procedures, that there will be at least one representative from the Gabrielinos and one representative from the Juanenos on site to monitor all ground-disturbing work; and how the monitors will be allocated and assigned to various equipment arrays on site.

The Staff Report's failure to disclose the existence of a section on monitoring procedures after Commission staff reviewed the draft AMMP twice before it was approved by the City is an indication of the inaccuracies, errors and mischaracterizations of the proposed work and AMMP that is being cited as evidence in support of its recommendation to find substantial issue and why the Commission should reject the Staff Report's recommendation to find substantial issue.

**4. Argument 4: The City's approval leaves questions regarding adequate consultation with affected Native American Tribes on treatment and mitigation plan for the sacred lands, as required by the LCP.**

Prior to approval of the CDP, the City of Huntington Beach contacted the Native American Heritage Commission to obtain a list of the Native American tribes and representatives that should be contacted to consult regarding the proposed work and tribal cultural resources. A detailed chronology of the Native American consultation is being provided by the City of Huntington Beach.

Beyond the consultation initiated by the City, Signal and the project archaeologist also were involved in the Native American consultation and took the comments of the Native American reviewers into consideration as it prepared and revised the AMMP. Appendix D to the

AMMP provides 27 pages of correspondence from 2019, 2020 and 2021 between SRS INC (the project archaeologist) and Gabrieleno and Juaneno representatives. The cover page to this Appendix indicates where in the AMMP the suggestions by the various Native American representatives are integrated into the AMMP. The AMMP clearly shows that the Native American representatives and the project archaeologist will together make all decisions regarding the significance and disposition of any discovered materials. (See, e.g., AMMP at Pages 16, 17 and 18.) The City's record also includes detailed responses to comments submitted to the City by Appellant Adrian Morales.

Lastly, in yet another example of the Staff Report's mischaracterization of the contents of the AMMP, the AMMP addressed the fact that the CDP work would be conducted on lands that were part of a Sacred Lands Site Complex. The procedures by which the archaeological mitigation work would occur addressed and took into consideration the designation of the area as part of a Sacred Lands Site Complex. Because Argument 4 is based upon an inaccurate description of the AMMP, it fails to provide sufficient accurate evidence to support a finding of substantial issue.

**5. Argument 5: The City's approval does not address the project's consistency with other resource protection policies of the LCP that prevent landform alteration, visual impacts, and protection of sensitive biological resources (which are policies that may also be relevant to the site as a sacred landscape).**

In an attempt to confuse implementation of a mitigation measure with development of the Windward residential project, the Commission Appeal asserts that the CDP fails to address LCP policies that prevent landform alteration, visual impacts, and protection of sensitive biological resources, and that the City's CDP "does not address the visual qualities of the open space area and does not address the proposed project's potential impacts to the visual qualities of the area." The reason is simple.

The activities authorized under this CDP will not change the visual qualities of the adjacent areas designated for open space. In fact, the activities authorized under this CDP will not change or have any impact on the visual qualities of the Windward Site, because quite simply, it does not erect any structures, or result in any change to the visual appearance of the Windward Site. The CDP authorizes an archaeological mitigation program – and allows for a crew of archaeologists to excavate the 2.5 acre Windward Site using mechanical equipment, and once completed, the soil layers that were examined for the presence of cultural resources will be placed back on the Windward Site and the appearance of the site will be the same after the work as it looked prior to the work. The presence of an archaeological crew on the Windward Site is short-term only and will not damage the scenic and visual qualities of this site, the adjacent

areas, or the surrounding area. No public views to and along the ocean and scenic coastal areas will be affected – all of which demonstrates consistency with LCP Policy C4.1.1.

While the Staff Report and Commission Appeal (which the Staff Report incorporates verbatim) may express concern with the future residential development of the Windward Site which is an authorized use under the City's LCP, its concern is mis-directed. This CDP proposes no development that would affect the aesthetic resources of the coastal zone. The disturbance and construction noise assumed in the Staff Report and Commission Appeal was not considered a significant impact by the City due to the constrained manner in which the archaeological mitigation work is conducted.

The CDP will not impact sensitive biological resources. Surveys for tarplant and burrowing owl were completed as required by the City's mitigation measures for the Windward Specific Plan which is part of the City's LCP approved by the Coastal Commission. Attached is the letter from LSA providing the results of the tarplant and burrowing owl surveys that was provided to the City prior to CDP approval, as required by and consistent with the LCP. The Staff Report and Commission Appeal's concerns regarding impacts to sensitive biological resources are addressed by the evidence in the record.

## **Conclusion**

In conclusion, the Staff Report is based upon statements that do not accurately describe the contents and substance of the AMMP, and therefore do not provide the evidence to support a finding that the CDP presents a substantial issue of consistency with the LCP. Whether the CDP is examined against the LCP that includes the Windward Specific Plan or the City's LCP prior to the Commission's approval of the LCP Amendment in December 2018, the CDP and AMMP comply with all of the requirements of the LCP policies and should be determined to be consistent. Lastly, this CDP was approved by the City to require the landowner, Signal, to comply with mitigation measures adopted and approved by both the City and the Coastal Commission that must be implemented before any future development is considered – the very purpose of which is to further ensure that coastal archaeological resources are mitigated in accordance with Section 30244 of the Coastal Act.

Very truly yours,

*Susan K. Hori*

Susan K. Hori

# manatt

Chair Steve Padilla and Coastal Commissioners  
June 4, 2021  
Page 10

Enclosure

Cc: Amber Dobson  
Ed Mountford  
Bret Kossman  
Bac Nguyen  
Jennifer Villasenor  
Tim Paone

400227323.2

## MEMORANDUM

**DATE:** October 6, 2020

**To:** Ed Mountford, President, Cornerstone Real Estate Consulting

**FROM:** Samuel Bressler, Assistant Biologist, LSA

**SUBJECT:** Results of Preconstruction Southern Tarplant and Burrowing Owl Survey for the Windward Development Project

This memorandum provides the results of a preconstruction southern tarplant (*Centromadia parryi* ssp. *australis*) and burrowing owl (*Athene cunicularia*) survey conducted for the Windward Development Project (project) in Huntington Beach, California. LSA Assistant Biologist Samuel Bressler conducted the survey on September 30, 2020, from 9:30 a.m. to 11:05 a.m. Weather conditions were generally conducive to observing plant and wildlife presence on the site. The temperature was 75 to 80 degrees Fahrenheit, and the sky was clear. Wind conditions were calm at the start of the survey, with a slight breeze developing during the second half of the survey.

No southern tarplant individuals or burrowing owls were observed. Vegetation on the site was dominated by invasive annuals such as black mustard (*Brassica nigra*), totalote (*Centaurea melitensis*), and horehound (*Marrubium vulgare*), along with native annuals such as Canadian horseweed (*Conyza canadensis*) and slender aster (*Symphyotrichum subulatum*). In addition, smaller numbers of other invasive species such as tree tobacco (*Nicotiana glauca*), shortpod mustard (*Hirschfeldia incana*), Russian-thistle (*Salsola tragus*), cheeseweed (*Malva parviflora*), Australian saltbush (*Atriplex semibaccata*), and bristly oxtongue (*Picris echioides*) were also observed. Several stands of native coastal goldenbush (*Isocoma menziesii* var. *vernonioides*) were observed in the eastern half of the property. Animal species observed on the property during the survey included California ground squirrel (*Otospermophilus beecheyi*), Audubon's cottontail (*Sylvilagus audubonii*), western fence lizard (*Sceloporus occidentalis*), Allen's hummingbird (*Selasphorus sasin*), killdeer (*Charadrius vociferous*), American kestrel (*Falco sparverius*), bushtit (*Psaltiriparus minimus*), house wren (*Troglodytes aedon*), white-crowned sparrow (*Zonotrichia leucophrys*), Savannah sparrow (*Passerculus sandwichensis*), song sparrow (*Melospiza melodia*), Lincoln's sparrow (*Melospiza lincolnii*), California towhee (*Melospiza crissalis*), western meadowlark (*Sturnella neglecta*), and common yellowthroat (*Geothlypis trichas*).

Please contact me at (657) 378-5367 if you have any questions regarding these results.





# City of Huntington Beach

2000 MAIN STREET

CALIFORNIA 92648

## DEPARTMENT OF COMMUNITY DEVELOPMENT

### Planning Division

714.536.5271

### Code Enforcement Division

714.375.5155

### Building Division

714.536.5241

June 4, 2021

California Coastal Commission  
South Coast Area Office  
301 E. Ocean Blvd., Suite 300  
Long Beach, CA 90802

**SUBJECT: ITEM NO. 18B. APPEAL NO. A-5-HNB-21-0031 (SIGNAL LANDMARK, HUNTINGTON BEACH)**

Dear Coastal Commissioners,

The purpose of this comment letter is to provide an accurate depiction of the City's processing of the subject Coastal Development Permit for archeological grading. In reading the staff report, we were disappointed by the characterization of the City's process and the failure to acknowledge the collaborative efforts of the City during both the LCP amendment process of the Windward Specific Plan and the processing of the subject Coastal Development Permit. The omission of this information and the insinuation that the City's process lacked thorough tribal consultation and extensive communication with Commission staff as well as state agencies does not accurately reflect the City's process.

The Windward Specific Plan, which was certified by the Commission in December 2018 and became effective immediately upon certification, is the result of over a year of collaboration between the City and Commission staff. This approach was taken to ensure that all concerns raised by Commission staff related to coastal resources were addressed in the City's adopted document. The subject Coastal Development Permit for controlled archeological grading is the direct implementation of archeological mitigation measures incorporated into the specific plan as approved by the Commission. The mitigation measures are highly detailed and were primarily drafted by Commission staff to ensure that archeological resources would be protected. The City processed the Coastal Development Permit pursuant to the requirements of the approved mitigation measures and the appropriate findings were made to show consistency with the City's certified LCP for the site, which is the Windward Specific Plan.

The City's processing of the archeological grading Coastal Development Permit also involved significant collaboration with Commission staff, an extensive consultation effort with relevant Tribal agencies, and outreach to appropriate public agencies to ensure that a comprehensive review process of the project and associated mitigation plan was conducted. Furthermore, the Commission's staff report neglects to disclose that the extensive tribal consultation process was



conducted at Coastal staff's direction, and that Coastal staff was provided detailed updates on the progress of the consultation effort prior to the City's discretionary action. To that end, City staff shared a draft of the applicant's Archaeological Mitigation and Monitoring Plan/Paleontological Resource Mitigation and Monitoring Plan (AMMP/PRMMP) ahead of the public hearing and also ensured that the comments received from Coastal staff were included in the document that was presented for approval. The consultation process also included outreach to the State Historic Preservation Office's Tribal Liaison, and an update discussion with the Native American Heritage Commission.

It is disappointing to say the least that the City's efforts to conduct a comprehensive consultation process is inappropriately undisclosed. Attached to this letter for your reference is an accurate timeline of dates and actions that encompass the City's Tribal consultation efforts.

Regards,



Ursula Luna-Reynosa  
Director of Community Development

ULR:JV:hb

Attachment: Timeline of City of Huntington Beach Tribal Consultation, Coastal Development Permit No. 20-016

**Timeline of City of Huntington Beach Tribal Consultation, CDP No. 2020-016**

<b>Date</b>	<b>Action</b>
October 6, 2020	Submitted Tribal Consultation Request to NAHC for CDP 20-016.
October 7, 2020	Received Contact List from NAHC providing 11 NA Contacts.
October 8, 2020	Submitted Tribal Consultation Request to 11 NA Contacts requesting contact within 30 days; Received Consultation request from Juaneno Mission Indians, Acjachemen Nation.
October 9, 2020	Received Consultation request from Gabrieleno Mission, Kizh Nation.
October 12, 2020	Received notice from Pala Band of Mission Indians; Project not within Traditional Use Area (TUA).
November 3, 2020	No response from October 8 <sup>th</sup> Consultation Request from Anthony/Adrian Morales of Gabrieleno Tongva San Gabriel Mission Indians – City sent second request.
November 20, 2020	City sends copy of draft AMMP/PRMMP for subject CDP to CCC staff for review and comments or questions.
December 4, 2020	City receives first contact from Anthony/Adrian Morales requesting consultation.
December 7, 2020	City holds formal consultation with Acjachemen Nation.
December 10, 2020	Coastal Commission staff submits comment letter on draft AMMP/PRMMP to City. City hosts Zoom meeting with NAHC staff discussing history of project site and updates on consultation efforts.
December 17, 2020	Anthony/Adrian Morales respond to City request; refused to consult with City if CDP applicant is present and declined Zoom meeting. City staff meets with NAHC and provides NAHC with copy of draft AMMP/PRMMP for review and comments.
December 22, 2020	City hosted conference call for consultation with Anthony/Adrian Morales. A complete consultation discussion did not occur due to technical difficulties with phone connections. Re-sent a new conference call invitation during agreed upon timeframe. No response.
December 28, 2020	City contacts State Historic Preservation Office and Tribal Liaison (SHPO) regarding review of draft AMMP/PRMMP. SHPO advises City has no responsibility to consult with SHPO since no federal or state funding or permitting is involved.
January 4, 2021	City contacted Anthony/Adrian Morales to schedule formal consultation. No response.
January 19, 2021	City contacted Anthony/Adrian Morales to schedule formal consultation. No response.
February 5, 2021	City holds formal consultation discussion with Kizh Nation, CDP applicant. Sent copy of draft AMMP to Kizh Nation contacts for review and comments.
February 9, 2021	Due to no responses for scheduling consultation, City sends draft AMMP/PRMMP and project site plans to Anthony/Adrian Morales requesting

	consultation discussion. City advises Anthony/Adrian Morales that their comments to Dr. Nancy Wiley on September 25, 2020 have been received.
February 12, 2021	Second Consultation discussion with Kizh Nation, CDP applicant regarding comments on draft AMMP.
February 19, 2021	City receives formal comments and mitigation measures from Kizh Nation to be incorporated into project AMMP. City advises Anthony/Adrian Morales that the opportunity to consult on project will end February 22 <sup>nd</sup> at 5PM.
February 22, 2021	At 6PM, Anthony/Adrian Morales submits comments to City regarding AMMP/PRMMP.
March 3, 2021	City provides update to CCC staff regarding CDP consultation process and public hearing dates. City also advises Anthony/Adrian Morales of date of public hearing, and that the City will conclude formal consultation and consider comments received as final comments on project on March 10, 2021.
March 10, 2021	City provides update to Coastal Commission staff regarding consultation process, specifically with Anthony/Adrian Morales and consistent lack of response to requests for consultation.
March 24, 2021	City provides Acjachemen Nation with updated AMMP/PRMMP that includes their comments from consultation process, advises date of public hearing.
April 2, 2021	Kizh Nation submits final comments and proposed mitigation measures, which are incorporated into the AMMP/PRMMP; City advises date of public hearing.
April 7, 2021	Zoning Administrator approves CDP 20-016 with findings and conditions of approval. There were no public comments or attendees for the item.

**Re: Windward appeal****Adrian Morales** <moralesadrian66@yahoo.com>

Fri 6/4/2021 6:11 PM

**To:** Alvarado, Marlene@Coastal <Marlene.Alvarado@coastal.ca.gov>; 'chiefrbwife@aol.com' <chiefrbwife@aol.com> 1 attachments (966 KB)

SHPO Letter-Bolsa Chica 2.pdf;

Hi Marlene

Attached below for your records is a correspondence letter from the State Historical Preservation Officer (SHPO 2014) in regards to the Ridge project on the Bolsa Chica Mesa, the location presently known as the proposed Windward project. Please circulate this letter among the commissioners for their records.

Regards,  
Adrian Morales  
GTSGBMI

[Sent from Yahoo Mail for iPhone](#)**Yahoo Mail**

Take a trip into an upgraded, more organized inbox with Yahoo Mail. Login and start exploring all the free, orga...

On Friday, June 4, 2021, 11:20 AM, Alvarado, Marlene@Coastal <Marlene.Alvarado@coastal.ca.gov> wrote:

Hi Adrian,

The deadline to submit materials for the addendum is today at noon. Do you plan on submitting any material regarding the Windward appeal?

**Marlene Alvarado** | Coastal Program Analyst**CALIFORNIA COASTAL COMMISSION**

South Coast District Office

301 Ocean Blvd. Suite 300

Long Beach, CA 90802

(562) 590-5071

If you need to submit an appeal or an emergency application, please email a supervisor and copy: [SouthCoast@coastal.ca.gov](mailto:SouthCoast@coastal.ca.gov).

Please note that public counter hours for all Commission offices are currently suspended indefinitely in light of COVID-19. However, the Commission remains

open for business, and you can contact staff directly by email, US mail, or by leaving a message in the general voicemail box of (562) 590-5071.

\*Please note: Due to COVID-19, I am frequently working remotely. As such, email is the best way to contact me.\*

---

**From:** Dobson, Amber@Coastal <Amber.Dobson@coastal.ca.gov>  
**Sent:** Tuesday, May 25, 2021 1:30 PM  
**To:** Adrian Morales <moralesadrian66@yahoo.com>; 'chiefrbwife@aol.com' <chiefrbwife@aol.com>  
**Cc:** Alvarado, Marlene@Coastal <Marlene.Alvarado@coastal.ca.gov>  
**Subject:** Windward appeal

Hi Anthony,

Here is the link to the staff report for the appeal.

<https://documents.coastal.ca.gov/reports/2021/6/W18b/W18b-6-2021-report.pdf>

If you need help this week, please contact Marlene. I'm on vacation until June 7.

**Amber Dobson** | District Manager  
**CALIFORNIA COASTAL COMMISSION**  
South Coast District Office  
301 Ocean Blvd. Suite 300  
Long Beach, CA 90802  
(562) 590-5071

If you need to submit an appeal or an emergency application, please email a supervisor and copy: [SouthCoast@coastal.ca.gov](mailto:SouthCoast@coastal.ca.gov).

Please note that public counter hours for all Commission offices are currently suspended indefinitely in light of the coronavirus. However, the Commission remains open for business, and you can contact staff directly by email, US mail, or by leaving a message in the general voicemail box of (562) 590-5071.

**OFFICE OF HISTORIC PRESERVATION  
DEPARTMENT OF PARKS AND RECREATION**

1725 23<sup>rd</sup> Street, Suite 100  
SACRAMENTO, CA 95816-7100  
(916) 445-7000 Fax (916) 445-7053  
calshpo@parks.ca.gov  
www.ohp.parks.ca.gov



January 6, 2014

Teresa Henry  
District Manager  
South Coast District Office  
California Coastal Commission  
200 Oceangate, 10<sup>th</sup> floor  
Long Beach, CA 90802-4416

Dear Ms. Henry:

**RE: City of Huntington Beach LCP Amendment No. HNB-MAJ-1-12 (Ridge):**

I am writing to provide comments in regards to the impact of the proposed change of land use designation from Open Space-Parks to Residential Low Density and the zoning from Residential Agriculture to residential Low Density at a parcel located in the City of Huntington Beach known as the Ridge property. As the State Historic Preservation Officer my responsibility is to promote the protection of California's irreplaceable heritage resources. Specifically, I am commenting pursuant to Section 30244 of the Public Resources Code: "Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Office, reasonable mitigation measures shall be required," as well as Section 30116 which includes archeological sites designated by the State Historic Preservation Officer as sensitive coastal resource areas.

The impact of these land use changes would be significant. The property in question, known as the Ridge, is part of a very large village complex that occupied the upper banks of the Bolsa Chica mesa from 9000 to 2000 years before the present. Over the years a number of specific archeological sites within this complex have been recorded, including ORA-83 (site of production and distribution of cogged stones), ORA-84, ORA-85, ORA-86, and ORA-288; only portions of ORA-83 and ORA 86 remain, the balance lost to development. ORA-83, known as the cogged stone site, is listed in the National Register of Historic Places by the National Park Service at the recommendation of the State Historic Resources Commission and the State Historic Preservation Officer. Although these various sites have been given discrete identifiers, it is important to remember that they are all part of a larger property. Site numbers are merely recording conveniences and each only represents a part of the whole. Impacts to the Ridge property would in fact impact the whole of the remaining part of this once large village.

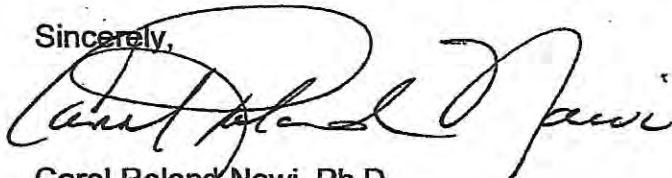


The property on Bolsa Chica mesa holds great cultural and religion importance to California Native Americans, including the Gabrieleno/Tongva Band of Mission Indians-San Gabriel. Large scale properties comprised of multiple, linked features that form a cohesive landscape are known as Traditional Cultural Properties. Current cultural resource management practice has moved beyond solely recognizing and promoting the protection of specific sites within a larger complex to recognizing and promoting the protecting of larger Native American cultural landscapes. The federal Advisory Council on Historic Preservation has formally adopted a *Native American Traditional Cultural Landscapes Action Plan*. The National Park Service has published and is currently updating its *Guidelines for Evaluating and Documenting Traditional Cultural Properties*. This bulletin identifies one example of a culturally significant property as "a location with the traditional beliefs of a Native American group about its origins, its cultural history, or the nature of the world."

Since the significance of Traditional Cultural Properties is based on cultural and often religious significance, and not on their ability to yield, or likely to yield, information important in history or prehistory, impacts cannot be mitigated to less than a significant level by usual archeological practices such as excavation. Even the process of identifying such properties through testing, such as auguring or trenching will have significant impacts. Based on the cultural material, including human remains, encountered during prior development on parts of ORA-83 and ORA-86, there is a high likelihood of encountering similar cultural material at the Ridge property.

The proposed change of land use designation from Open Space-Parks to Residential Low Density and the zoning from Residential Agriculture to residential Low Density would significantly impact the remains of ORA-86 as well as other remains of this village complex that represents 7000 years of human occupation.

Sincerely,

A handwritten signature in black ink, appearing to read 'Carol Roland-Nawi', written over a horizontal line.

Carol Roland-Nawi, Ph.D.  
State Historic Preservation Officer

June 8, 2021

Client-Matter: 24970-062

**Via Electronic Mail**

Amber Dobson  
Marlene Alvarado  
South Coast District  
California Coastal Commission  
301 E. Ocean Blvd., Suite 300  
Long Beach, CA 90802

**Re: A-5-HNB-21-0031 - Substantial Issue - Signal Landmark**

Dear Ms. Dobson and Ms. Alvarado:

Signal Landmark previously submitted comments on the Staff Report that was prepared for the Substantial Issue hearing scheduled for June 9, 2021. (See Letter from Tim Paone, Cox Castle & Nicholson, dated June 4, 2021 and Letter from Susan K. Hori, Manatt Phelps & Phillips, dated June 4, 2021.) While many of the statements and assertions in the two appeals that were filed in connection with the City of Huntington Beach's approval of a Coastal Development Permit for the archaeological mitigation program proposed by Signal Landmark were included in the Staff Report, there were numerous other statements and arguments that were not. Enclosed please find a response to the statements and assertions made in the Appeal filed by Coastal Commissioners Brownsey and Hart, and the Appeal filed by Adrian Morales. Each statement in the respective appeal was assigned a number which corresponds to a response in the accompanying matrices. Bracketed copies of the Appeals are also enclosed. We understand that the hearing on Substantial Issue has been postponed, but request that this correspondence and the enclosed response matrices be included in the record for this appeal. We appreciate your consideration of the enclosed materials.

Very truly yours,

*Susan K. Hori*

Susan K. Hori





Amber Dobson and Marlene Alvarado  
June 8, 2021  
Page 2

Enclosures

Cc: Ed Mountford  
Bret Kossman  
Bac Nguyen  
Jennifer Villasenor  
Tim Paone

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**CALIFORNIA COASTAL COMMISSION**

SOUTH COAST DISTRICT OFFICE  
301 E. OCEAN BLVD., SUITE 300  
LONG BEACH, CA 90802  
(562) 590-5071  
SOUTHCOAST@COASTAL.CA.GOV

**APPEAL FORM****Appeal of Local Government Coastal Development Permit****Filing Information (STAFF ONLY)**

District Office: South Coast

Appeal Number: A-5-HNB-21-0031Date Filed: 5/3/21Appellant Name(s): Commissioners Hart and Brownsey**APPELLANTS**

**IMPORTANT.** Before you complete and submit this appeal form to appeal a coastal development permit (CDP) decision of a local government with a certified local coastal program (LCP) to the California Coastal Commission, please review the appeal information sheet. The appeal information sheet describes who is eligible to appeal what types of local government CDP decisions, the proper grounds for appeal, and the procedures for submitting such appeals to the Commission. Appellants are responsible for submitting appeals that conform to the Commission law, including regulations. Appeals that do not conform may not be accepted. If you have any questions about any aspect of the appeal process, please contact staff in the Commission district office with jurisdiction over the area in question (see the Commission's contact page at <https://coastal.ca.gov/contact/#/>).

**Note regarding emailed appeals.** Please note that emailed appeals are accepted **ONLY** at the general email address for the Coastal Commission district office with jurisdiction over the local government in question. For the South Coast district office, the email address is [SouthCoast@coastal.ca.gov](mailto:SouthCoast@coastal.ca.gov). An appeal emailed to some other email address, including a different district's general email address or a staff email address, will be rejected. It is the appellant's responsibility to use the correct email address, and appellants are encouraged to contact Commission staff with any questions. For more information, see the Commission's contact page at <https://coastal.ca.gov/contact/#/>.

1 The local coastal development permit, 20-016, approved by the City of Huntington Beach Zoning Administrator, raises issues as to consistency with the certified Huntington Beach Local Coastal Program (LCP) cultural resources protection policies.

2 The City's certified Land Use Plan Coastal Element contains the following policies regarding cultural resources:

*C5 -Promote the preservation of significant archaeological and paleontological resources in the Coastal Zone.*

3 *C.5.1 -Identify and protect to the maximum extent feasible, significant archaeological, paleontological and historic resources in the Coastal Zone.*

4 *C. 5.1.1 -Coordinate with the State of California Historic Preservation Office to ensure that archaeological and palaeontologic and historically significant resources within the Coastal Zone are identified.*

5 *C.5.1.2- Where new development would adversely impact archaeological or paleontological resources within the Coastal Zone, reasonable mitigation measures to minimize impacts shall be required.*

6 *C. 5.1.3 - In the event that any Native American human remains are uncovered, the County Coroner, the Native American Heritage Commission, and the Most Likely Descendants, as designated by the California Native American Heritage Commission, shall be notified. The recommendations of the Most Likely Descendants shall be obtained prior to the disposition of any prehistoric Native American human remains.*

7 *C.5.1.4- A completed archaeological research design shall be submitted along with any application for a coastal development permit for development within any area containing archaeological or paleontological resources. The research design shall determine the significance of any artifacts uncovered and make recommendations for preservation. Significance will be based on the requirements of the California Register of Historical Resources criteria and prepared based on the following criteria:*

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

8 C 5.1.5- A County-certified paleontologist/archaeologist, shall monitor all grading operations where there is a potential to affect cultural or paleontological resources based on the required research design. A Native American monitor shall also monitor grading operations. If grading operations uncover paleontological/archaeological resources, the paleontologist/archaeologist or Native American monitor shall suspend all development activity to avoid destruction of resources until a determination can be made as to significance of the paleontological/archaeological resources. If found to be significant the site(s) shall be tested and preserved until a recovery plan is completed to assure the protection of paleontological/archaeological resources.

9 The City's certified Implementation Plan Zoning Code also provides standards for Archaeological/Cultural Resources, in Section 230.82.8 Archaeological/Cultural Resources. Among the requirements included in that section is the following (Section 230.82.8.4. Mitigation Plan):

10 *Mitigation Plan. The ARD [Archaeological Research Design] 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. (Emphasis added).*

11 In addition, Section 230.82.8.7 states: *The subsequent mitigation shall be prepared in consultation with the 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.*

12 In approving local Coastal Development Permit 2-016, the City Zoning Administrator approved archaeological grading and monitoring activities on a vacant 2.5-acre portion of an approximately 5-acre property located in the Coastal Zone. The controlled archaeological grading will consist of using mechanized equipment where the subsurface soils are removed in approximate 2-centimeter depth increments by a mechanical scraper under the supervision of the Archaeological Principal Investigator/site supervisor in coordination with Native American Monitors, which will continue until sterile soils are reached. The grading operation on the 2.5-acre site will be split in half, so that grading will occur on the western side, and materials will be stockpiled on the eastern side, and then vice versa. The grading will take approximately 30-60 days. If resources are found, grading will stop until an assessment can be made regarding the status of the resource.

13 The grading and monitoring activities approved by the City are effectuated via the City-approved document titled Windward Residential Project Archaeological Mitigation and Monitoring Plan (AAMP) and Paleontological Resource Mitigation and Monitoring Plan by Nancy Anastasia Wiley ND and Joe D. Stewart, PhD, Chief Paleontologist, dated April 2021. The AMMP is intended to establish the procedures to conduct controlled archaeological grading across the western half (2.5 acres) of the subject property. The western half, under the Windward Specific Plan in the event the specific plan becomes operative (as that term is defined in the specific plan), could potentially be allowed to support residential development on 2.5 acres. The Windward Specific Plan has not

13 become operative yet. As such, the standard of review for the subject site is the City's certified Local Coastal Program (LCP), not including the Windward Specific Plan (approved by the Commission in December 2018).

14 In April 2016 the landowner entered into an option agreement with the Trust for Public Land (TPL) to acquire the 2.5 acre Windward and neighboring 8.7 acre Goodell Family Trust property for open space/conservation purposes. TPL's option on the property expired in April 2019 without the property being acquired. The findings of the Specific plan approval from 2019 state: "In the event the Windward Specific Plan does not become operative as described in that document, the uses permitted in Subsection 4M [the subject Windward site] shall be limited to Open Space-Parks and/or Open Space Conservation....Thus, the 2.5 acres of residential development that would be allowed under the Specific Plan's Development Alternative could be implemented *only after preservation of 8.7 acres of land for open space conservation uses is assured.*"

15 At the time the Commission approved the Windward Specific Plan, efforts were underway to acquire and preserve the subject property. Because the property was not acquired for preservation to date, the property owner is pursuing development of some of the property as outlined in the specific plan. One of the significant questions raised here is whether it is appropriate at this time to allow development to proceed or whether additional efforts toward full preservation of the property should or could be pursued. The proposed archeological grading is a precursor to development in an area that some local native Americans tribal representatives with ancestral ties to the area have identified as sacred lands and prefer the area not be disturbed any further.

16 **The City-approved project raises several questions of consistency with the LCP policies that require protection of significant archeological resources to the maximum extent feasible, for the reasons enumerated below:**

1. *The City-approved project misrepresents the extent of grading and the AMMP description of the grading area is inaccurate.*

17 The AMMP states: "the current Controlled Archaeological Grading is limited to areas along the western edge of ORA-86 in what ARI described as "periphery areas (outside the nominated area) containing only scattered artifacts and very little undisturbed surface material" (PCAS 1980)." That does not appear to be the case. The AMMP does not include an exhibit showing the proposed grading area overlaid onto the site boundaries of the national listing. The grading is proposed well within the area nominated for the national registry, as shown in Figure 3, and is not limited to the periphery areas, as quoted above. The area representing ORA-86 on exhibits showing the 2001 SRS Grid and Auger Program was taken from the boundaries established by Herring and Eberhart in the 1960s, and the AMMP ignores the areas and boundaries listed on the national registry in 1980 (which covers CA ORA-83 and -86 and then some). This point was brought up to the City in a consultation with tribal members.

18 2. *The City-approved AMMP does not address the potential impacts of the project on a site that is considered significant, nationally registered, and sacred lands.*



18 The proposed controlled grading is intended to allow for development by exposing remaining archeological resources that may be present underground, in order to test any resources for significance and determine if they should be preserved onsite or off-site. The Bolsa Chica mesa has already been determined to support significant resources (over the past 60 years) and is already listed on the national registry of historic properties and has been listed since 1980. The listing in 1980 included the subject site (ORA 86) in addition to the well-known cogged-stone site (ORA 83). The cogged-stone site (ORA 83) is located on the Bolsa Chica Mesa less than 100 yards from the subject site (ORA 86). In fact, when the site was listed on the National Register in 1980, ORA 83 included this subject site (the area of ORA 86) and was described as: *"The Cogstone Site, CA-Ora-83, is a highly unique and significant archaeological resource. The site is unique for its tremendous yield of cogstones, over three hundred (300) have been recovered from ORA-83 totals more than the sum of all other cogstones found in Southern California, the primary (and assumed to be only) area in the United States where they are found in great quantities. These objects, long considered to have ceremonial significance (Eberhart 1971), indicate by their sheer volume, that CA-Ora-83 could have been the ceremonial center where, in all probability, most if not all, of the cogstones in southern California were produced....The boundaries of CA-Ora-83, as shown on the attached maps, were determined to be the limits of the most concentrated and least disturbed area of the site as well as the most significant by the research of Butzbach (1975) and Carter and Howard (1975). The designated area appears to be the primary locus of the Cogstone Complex with periphery areas (outside of the nominated area) containing only scattered artifacts and very little undisturbed subsurface material."* (PCAS 1980).

19 Further, in 1994, the boundaries of a village site complex as listed in the sacred lands file with the Native American Heritage Commission was expanded beyond the national registry area to include the entire Bolsa Chica Mesa. The site has been subject to several archeological investigations in the past, and each one has yielded significant archeological resources, so significant that the site is of local, national, and international significance. The site has been documented to support a village, and a regional religious area that predates the Egyptian pyramids and shows more than 9,000 years of continuous settlement. While these past investigations have unfortunately removed human remains, burial sites, and extremely rare and valuable ceremonial objects, the site is still considered a significant and sacred site. It is considered a sacred landscape by the Native American tribes, regardless of the presence or absence of underground archeological deposits.

20 There are 11 documented pre-historic areas of archeological deposits on the Bolsa Chica Mesa, suggesting that the prehistoric village and ceremonial site was vast, and that there are connections between these deposits. The AMMP summarizes: "The eleven Bolsa Chica Mesa sites present a full range of activity areas including short and long-term residential bases and limited use areas from the Millingstone through the very early Late Prehistoric Horizons (Wallace 1955). They are not single period, single use sites associated with the Cogged Stone Site but rather provide a richer, more complex view of life on Bolsa Chica Mesa from about 9,500 to 1,200 years ago. Collectively, these sites provide a picture of environmental, economic, and social change on Bolsa Chica Mesa over at least an 8,000-year period."

21 Historic topographic maps indicate that the Bolsa Chica Mesa stretches across the Windward site, overlooking the wetlands. This is important because the local Native American tribes have

21 provided ethnographic evidence (through Coastal Commission Tribal Consultation processes) that indicates that religious sites were commonly placed on the tops of bluffs overlooking water. This site, as is known from past project impacts, contained about 160 human burials on the western side of this mesa. The eastern side (the current subject of this grading CDP) is a continuation of the mesa overlooking the water. While it is true that significant archeological excavation has taken place in the past, the fact that some ancestors are no longer located on the site (and human burials were reburied elsewhere) does not change the fact that the site is sacred.

22 It is concerning that the City, in response to comments brought up in consultation, responded: "the portion of ORA-86 that has been scientifically investigated since 1999 [is] shown to be nearly void of cultural resources" since former archeological preliminary investigations also came to that conclusion, and yet significant cultural resources were found during project development.

23 Significant excavation of burials on the mesa occurred from 1990-1993, again from 1999-2002, and again from 2006-2007. In 1992, the archeologist representing the developer of the Bolsa Chica Mesa at the time provided a letter indicating that excavation of ORA-85 was complete, only to find 32 human burials several years later (in 2006). Again, in 2004 the archeologist representing the developer provided a letter indicating that excavation of ORA-83 was 97% complete, only to find an additional 40 human burials between 1999-2002. The housing development at the cogged-stone site (Hearthside homes, today known as Brightwater) was approved in 2005 (CDP 5-05-020) and during additional grading in 2006, an additional 75 human burials were found and excavated. The archeologist stated that this occurred because the boundaries of ORA-83 had not been properly mapped during initial investigations, and the boundary was revised three or more times over the years, enlarging the area known as ORA-83. (In 2006, 70% of the burials were found outside of the ORA-83 boundaries.) In total, approximately 160 human burials were found, most no more than 100 yards from the subject site. Because the site boundaries of ORA-83 were not clear prior to grading and excavation, it is reasonable that burials could extend onto the subject project site of the mesa because ORA-86 boundaries may not have been adequately defined, and it is possible the ceremonial areas could be far larger than the 1980 National Register listing anticipated. (It should be noted that initial investigations of ORA-86 and auger holes were limited to 100 cm in depth. Sterile soils can be as deep as 152 cm in depth in this area. The proposed grading project would expose sterile soils down to a maximum depth of about 152 cm; however, a cultural depression and resources in this area were located 9 meters below the ground surface, about 13 times deeper than initial investigations.)

24 The AMMP states: "Archaeological site CA-ORA-86 is a younger northeastern extension of National Register eligible site CA-ORA-83, The Cogged Stone Site. The site was used approximately 2,000 years ago, while the Cogged Stone Site was settled nearly 10,000 years ago and was essentially abandoned by the time Herring's Site 'E' was occupied. Due to this association, any remnants of the younger site are significant and unique archaeological resources. In addition, the Cogged Stone Site and associated Bolsa Chica Mesa sites are listed as 'Sacred Lands' by the Native American Heritage Commission (NAHC) and are considered 'Tribal Cultural Resources' (TCRs). Exemplary efforts are therefore being taken to insure that if portions remain of the original site which were previously undetected, then these will be

24

*located through Controlled Archaeological Grading prior to issuance of a project grading permit (CR-2).*” The AMMP suggests that the controlled grading itself will protect the Tribal cultural resources as sacred lands and will protect the Nationally registered areas containing ORA 86. In past Commission consultation, affected Native American tribes have indicated that grading and further disturbance of archeological deposits on the site is detrimental to the protection of the lands as sacred lands. This point was made by tribal members to the City in communications, “As relayed in the prior comments, the proposed grading excavations will cause a severe adverse effect on a NRHP (Nationally Registered Historic Property) site” (Morales email to the City, 2.22.21).

25

The submitted AMMP and the City staff reports do not consider the project impacts to the sacred land, and do not consider the proposed project’s impact to the nationally registered site (already documented as significant resources, which may not be consistent with resource protection policies of the LCP, which specifically require *the preservation of significant archaeological and paleontological resources in the Coastal Zone and protect[ion] to the maximum extent feasible, significant archaeological, paleontological and historic resources in the Coastal Zone.* (Land Use Plan, Coastal Element Section C.5, Historic and Cultural Resources.) Because the site is listed on the National Register, it is considered BOTH a significant archeological site AND an historic resource.

24

The City acknowledged this fact and stated: “It should be noted that ORA-83 was also nominated and deemed eligible for listing on the National Register of Historic Places at the time the archaeological grading occurred. The nomination does not preclude implementation of this mitigation program on the site.” While the nomination does not preclude implementation of development or grading, approval of the project is not consistent with the LCP policies that do require protection, to the maximum extent feasible, of both archeological and historic resources that are significant. The point of the national register listing is that the resources have already been demonstrated to be significant, and while ORA-83 was largely destroyed during grading and development and impacts to ORA-86 occurred without a coastal development permit, that does not necessitate approval of removal or destruction of the remaining portions of the national registered historic property, when the LCP requires preservation. Further, the LCP requires preservation of *cultural and historic resources*, which includes the sacred lands and tribal cultural landscape. The AMMP does not address the protection of the sacred lands as a tribal cultural resource, and the City approved project does not require mitigation for these proposed impacts, consistent with policy C.5.1.2- *Where new development would adversely impact archaeological or paleontological resources within the Coastal Zone, reasonable mitigation measures to minimize impacts shall be required.*

27

The EIR adopted by the City in 2017 (Mitigated Negative Declaration No. 16-003) indicated that the project would cause a substantial adverse change in the significance of a historical resource as defined in §15064.5 and cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5. The project could also possibly disturb human remains, but some measures could mitigate these impacts. The EIR proposed mitigation measures to address these impacts, which include development of the subject AMMP, monitoring, and controlled grading, among other measures. The EIR was intended to address the impacts that a residential housing project would have on the site, and as such, controlled grading



27 was proposed as a mitigation measure; however, to date there has been no analysis of the impacts that the controlled grading will have on the site as a significant historic resource and a significant archeological resource. The proposed project may cause a substantial adverse change in the significance of the historical resource that cannot be mitigated adequately through the proposed mitigation measures, and may require additional mitigation or preservation methods.

28 3. *The City-approved AMMP raises questions regarding adequate mitigation and preservation measures and consistency with LCP policies which require mitigation of impacts to existing cultural resources and efforts to protect existing cultural resources in situ or in permanent open space.*

29 The 2018 staff report for the Windward Specific Plan states: "Given the rich cultural heritage of the Bolsa Chica Mesa, it becomes clear that any residential use at the site must not be allowed if it would adversely impact any culturally significant resources that remain on the site. Typically, an open space designation is most protective of a cultural resource area."

30 The AMMP is dismissive of ORA 86's status as a nationally registered site, stating that it may represent a later period of occupation. However, resources from a later period of occupation may still represent a significant resource, according to an AMMP peer reviewer: "Importantly, this last Ora-86 site area seemingly represent the unique archaeological remnants of the C-14 dated use (or very brief occupation) of the mesa only about 2,000-1,200 years ago. It is the only area of the mesa recognized with any archaeology heritage remnants of the "Late Prehistoric" culture era. (Indeed, this may represent an uniquely early moment represented with the "Shoshonean Intrusion Theory," when proto-Tongva/Juaneno/Luiseno speakers of the Shoshonean language family first came west to occupy the region and split apart the [prior occupying] proto-Chumash/Kumeyaay speakers of an Hokan language family.").

31 While the AMMP describes the two ORAs (83 and 86) as separate, and they may be, that doesn't change the fact that a large portion of the Windward site is already considered significant for archeological resources and is already listed on the National Register. As such, the portions of the site that are within the ORA 86 boundaries as identified in 1960 and within the boundaries of the national registered site as listed in 1980, should already be subject to the protection policies of the LCP that require: *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.* The good-faith effort to preserve these resources in-place through an open-space designation is already applicable, and further efforts including capping the remainder of the site considered significant or a dedication of open space may not have been appropriately considered.

32 The AMMP allows for insignificant resources (or degraded or damaged resources) to be excavated and reburied off-site, while it would protect resources that are found in-situ and determined to be significant. Primarily of concern, the AMMP specifies that human remains found in-situ would be

32

considered significant and would be protected in place; however, the site is disturbed due to past site investigations and farming, and according the AMMP any human remains found on the site that were not in-situ would therefore not be protected in place. Additionally, any ceremonial or religious artifacts found but associated with human remains would not be considered for protection in place (or if these types of items are to be preserved in place, that is not made clear in the plan). The plan states:

*Should the resource be determined to be significant, avoidance and preservation in place shall be the preferred treatment. In situ preservation procedures for types of archaeological resources which may be discovered include known significant items such as:*

- *in situ human remains; house pits, hearths, artifact caches, and midden deposits*
- *ceremonial or religious artifacts if associated with human remains such as:*
- *cogged stones, pipes, crystals, pigments, incised stone, beads, bone/shell ornaments*

33

One Peer reviewer suggests:

*possession is not illegal if it is allowed by an agreement reached pursuant to subdivision (l) of PRC Section 5097.94 or pursuant to Section 5097.98. The agreement is a treatment and reburial plan that is signed by the Most Likely Descendant, the archaeologist, and the landowner. The Plan should state that if human remains are found, a treatment and reburial plan will be negotiated and implemented.*

34

If human remains are found, a treatment and reburial plan may not be desired by the affected Native American MLD and would be in contrast to the policies of the LCP which require "Good Faith Efforts" to maintain and protect resources in place. Therefore, the plan should **not** state that if human remains are found, a treatment and reburial plan will be implemented.

35

There is no discussion in the AMMP of what will occur when or if there are conflicting opinions of the consulting Native American tribes regarding treatment methods. If preservation and protection of the resources is the preferred alternative, will the treatment method be pre-determined to be preservation in place in the absence of a consensus?

36

The AMMP does not discuss the requirements for Native American monitoring of the site. How will the monitoring schedule be developed to include the three tribal groups? Will there be a fair and equitable rotation schedule between the tribal groups or will a minimum of one monitor per group be present on the site each day of grading?

37

**4. The City's approval leaves questions regarding adequate consultation with affected Native American Tribes on treatment and mitigation plan for the sacred lands, as required by the LCP.**

38

The LCP requires: ***The subsequent mitigation shall be prepared in consultation with the 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.***

39

The AMMP states: "The document is further intended to conform with requirements of the 2017 CCC Tribal Consultation Policy." (The Commission's Tribal Consultation Policy was approved in August 2018, not in 2017.) The Tribal Consultation Policy allows for the Commission to

39 | conduct an independent review and not rely on other agencies' conclusions, including review of projects on appeal.

40 | The 2018 Tribal Consultation Policy acknowledges that Tribal Cultural Resources can be more apparent or more broad than just archeological deposits: "Tribal Cultural Resources will qualify as archeological, paleontological, visual, biological, or other resources that the Commission is tasked with protecting pursuant to the Coastal Act." In this case, consultation with Native American Tribal members indicated that concerns were raised regarding the project's impact to Tribal Cultural Resources associated with the sacred landscape, beyond the potential for further undiscovered archeological deposits.

41 | The tribal comments received from each group were not attached to the City's record. It is not clear if all tribal concerns have been adequately addressed per the City's record. However, it is clear that some consultation took place. Other than copies of emails from the City and the Archeologist reaching out to the affected Tribes, there is no summary of the concerns raised during verbal consultation. There is a formal response attached to the AMMP to the concerns raised by the Gabrielino-Tongva Band of Mission Indians, in which the City comments and the AMMP still do not address the concern of impacts to the sacred landscape as a result of the grading.

42 | The conclusion of consultation generally occurs when: "The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists to a tribal cultural resource; or A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code § 21080.3.2, subd. (b)."

There is no determination in the AMMP or the City's response that this point was reached after the Gabrielino-Tongva Band of Mission Indians requested additional consultation to discuss alternatives to grading and mitigation measures for Tribal Cultural Resources in February 2021. Staff is unable to determine if Tribal Cultural Resources were considered in the consultation process, or if the language of the AMMP and the status of archeological deposits was the only point of discussion in the consultations. The tribal concern regarding the proposed controlled grading impacts to Tribal cultural resources as sacred lands and a Nationally registered site does not appear to have been addressed prior to the conclusion of consultation. The point of conclusion of the consultation (the parties agree to measures to mitigate or avoid a significant effect or a conclusion that a mutual agreement cannot be reached) does not appear to have been reached, as there is no discussion in the AMMP regarding the impacts to the sacred land and there are no additional proposed mitigation measures to address the impacts on the sacred land.

43 | 5. *The City's approval does not address the project's consistency with other resource protection policies of the LCP that prevent landform alteration, visual impacts, and protection of sensitive biological resources (which are policies that are relevant to the site as a sacred landscape).*

44 | Biological and visual policies of the LCP:

Goal C4

44 Preserve and, where feasible, enhance and restore the aesthetic resources of the City's coastal zone, including natural areas, beaches, harbors, bluffs and significant public views.

C 4.1.1

45 The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect public views to and along the ocean and scenic coastal areas. (J-C 7, I-C 8, I-C 14)

46 C-7 1.3 incorporates the same requirement as Coastal Act Section 30240: that *development adjacent to ESHA be sited and designed to prevent impacts which would significantly degrade the ESHA and that the development be compatible with the continuance of the ESHA.*

47 The City's approval does not address the visual qualities of the open space area and does not address the proposed project's potential impacts to the visual qualities of the area.

48 The submitted plans shows that there is a line of established trees along the western side of the Windward site. Some of these trees will be protected in place, and some will be removed during grading. There is no discussion of the trees' potential to support habitat in the City's approval. It is not clear that a biological survey was conducted assessing the potential habitat. There are no conditions for appropriate habitat buffers, construction periods outside of the nesting season, impacts of the construction noise on nesting birds, etc. This is relevant as a line of trees to the East of the Windward site containing Eucalyptus trees is considered ESHA in the Windward Specific Plan, "abundant habitat is present in the vicinity including wetlands and important groves of eucalyptus trees used by raptors for nesting and roosting which have been identified as environmentally sensitive habitat areas (ESHAs)." For the line of trees along the western side of Windward, there was no assessment of the status of the trees as ESHA in the findings of the City's approval.

49 Additionally, the specific plan requires specific assessments of potential burrowing owl habitat and southern tar plant prior to construction or grading, which are habitats that would rise to the level of ESHA. The City's findings do not address these biological resources and do not address the potential impacts.

50 Controlled grading would destroy burrowing owl habitat (if present on the site) and would completely destroy the tar plant vegetation (if present on the site). There are no conditions to avoid these resources or provide mitigation if impacts cannot be avoided in the City's approval.

**SIGNAL LANDMARK'S RESPONSES TO STATEMENTS IN THE APPEAL**  
**SUBMITTED BY COMMISSIONERS HART AND BROWNSEY, DATED MAY 3, 2021**

Comment #	Signal Landmark Response
1	This is a statement regarding the appellants position that the City-approved Coastal Development Permit (CDP) presents issues of consistency with the City's LCP policies. Signal disagrees with the appellants' position for the reasons stated in the Letters from Tim Paone, Cox Castle & Nicholson and Susan K. Hori, Manatt Phelps & Phillips dated June 4, 2021, and submitted to the Coastal Commission on behalf of Signal Landmark.
2	This is a re-statement of the City's LCP policies. No response is required.
3	This is a re-statement of the City's LCP policies. No response is required
4	This is a re-statement of the City's LCP policies. Demonstrating consistency with this policy, Appendix B in the Consultation Documentation Appendix of the Archaeological Mitigation and Monitoring Plan (AMMP) presents documentation of correspondence between The City of Huntington Beach and the California Office of Historic Preservation as this policy requires. The City of Huntington Beach has also submitted a letter to the Coastal Commission dated June 4, 2021, with a detailed chronology of its outreach efforts, including the dates of calls to, with and involving the Office of Historic Preservation.
5	This is a re-statement of the City's LCP policies. No response is required.
6	This is a re-statement of the City's LCP policies. Demonstrating consistency with this policy, Chapter 4 of the AMMP presents an Unanticipated Discoveries Plan which includes "Procedures for Unanticipated Human Remains" and sets out Protocols for the Discovery of Human Remains. Both modern and historic/archaeological remains are discussed. The AMMP emphasizes that all human remains will be treated with respect and dignity and that the California Health and Safety Code Section 7050.5 and the Public Resources Code Section 5097.98 will be followed during implementation of the AMMP.
7	This is a re-statement of the City's LCP policies. Demonstrating consistency with this policy, the AMMP and Paleontological Resource Mitigation and Monitoring Plan (PRMMP) provides the context that as part of a Sacred Lands Complex the site is registered with the Native American Heritage Commission as a Tribal Cultural Resource/ Traditional Cultural Property which is also part of Traditional Cultural Landscape. It is part of an archaeological site complex which is eligible for inclusion on both the National Register and the California Register. It is also recognized by the Los Angeles County Museum of Natural History as overlying potentially significant fossil remains. Mitigation and monitoring protocols and an unanticipated discoveries plan were specifically formulated for this project in order



	<p>preserve and protect the various site components. Three County-certified and Coastal Commission approved archaeologists have reviewed all drafts and the final AMMP (Appendices E and F) and the PRMMP was prepared by a County-approved paleontologist.</p> <p>Appendices B and C of the AMMP provide documentation of interactions between the City or Huntington Beach and OHP as well as NAHC. Appendix D provides 27 pages of correspondence from 2019, 2020 and 2021 between SRS INC and Gabrielino and Juaneno representatives. The cover page to this Appendix also indicates where in the AMMP the suggestions by the various representatives are integrated into the report. The document now clearly shows that the Native American representatives and the Archaeologists together make all decisions regarding the significance and disposition of any uncovered materials (pages 13,14,15,17,19,20 and 22).</p> <p>The City of Huntington Beach has also submitted a letter to the Coastal Commission dated June 4, 2021, with a detailed chronology of its outreach efforts, including the dates of calls to, with and involving the Office of Historic Preservation, the Native American Heritage Commission and Native American tribes.</p>
8	<p>This is a re-statement of the City's LCP policies.</p> <p>AMMP Chapter 3 presents Generalized Mitigation and Monitoring Protocols and Chapter 4 discusses an Unanticipated Discoveries Plan specifically formulated for this program and includes the roles of the Archaeological, Native American and Paleontological Monitors. The document now clearly shows that the Native American representatives and the Archaeologists together make all decisions regarding the significance and disposition of any uncovered archaeological materials (pages 13,14,15,17,19,20 and 22). The Qualified Project Paleontologist will oversee all paleontological monitoring. Fossils will be evaluated, collected and curated according to procedures outlined by the Society of Vertebrate Paleontology, the standard for the discipline.</p>
9	This is a statement describing the policies in the City's LCP. No response is required.
10	<p>This is a statement of the City's LCP policies.</p> <p>The current Mitigation Plan includes the Mitigated Negative Declaration No.2016-003 Cultural Resources Mitigation Measures outlined in Table 2 of the AMMP. This incorporates CR-1 Preparation of the AMMP, CR-2 Controlled Grading must occur prior to issuance of a Project Grading Permit, CR-3 Stop Work Orders criteria for all Construction Personnel, CR-4 Call for a Research Design and Preservation-in-Place Plan for Unanticipated Discoveries, CR-5 Protection of Human Remains, if located and CR-6 Monitoring of all grading activities by a City/County Certified Paleontologist. The AMMP clearly states again and again that all significant cultural resources shall remain in situ, be covered by a protective barrier (page 21), and avoided during project construction by project redesign including placing an open space designation over the cultural resources. The document clearly shows that the Native American representatives and the Archaeologists together make all decisions regarding the significance and disposition of any uncovered materials (pages 13,14,15,17,19,20 and 22).</p>
11	<p>This is a re-statement of the City's LCP policies.</p> <p>Appendices B and C provide documentation of interactions between the City or Huntington Beach and OHP as well as NAHC. Appendix D provides 27 pages of correspondence from 2019, 2020 and 2021 between SRS INC and Gabrielino and Juaneno</p>

	representatives. The cover page to this Appendix also indicates where in the AMMP the suggestions by the various representatives are integrated into the report. In addition, three County-certified and Coastal Commission approved archaeologists have reviewed all drafts and the final AMMP (Appendices E and F) and the PRMMP was prepared by a County-approved paleontologist.
12	This is a brief description of the archaeological mitigation that was the subject of the City's CDP. Mitigation and Monitoring Protocols are outlined in Chapter 3 of the AMMP which includes controls for the mechanized equipment operator, actual order of the grading procedures and supervision by the Principal Investigator/Project Archaeologist, Native American representatives from Gabrieleno and Juaneno tribal groups, and the Project Paleontologist. These supervisors will institute stop work orders as appropriate.
13	This is a description of the Windward Specific Plan, and the archaeological monitoring procedures set forth in the Specific Plan and described in the AMMP. Signal Landmark disputes the standard of review described in this comment and the effectiveness of the Windward Specific Plan. Please refer to the Letter from Tim Paone, Cox Castle & Nicholson to Chair Padilla and the Coastal Commission, dated June 4, 2021.
14	Signal Landmark disputes the standard of review described in this comment and the effectiveness of the Windward Specific Plan. Please refer to the Letter from Tim Paone, Cox Castle & Nicholson to Chair Padilla and the Coastal Commission, dated June 4, 2021.
15	Signal Landmark disputes the Commission's implication that additional time for acquisition of the property should be provided given the extensions that have already been provided for acquisition of the property. Please refer to the Letter from Tim Paone, Cox Castle & Nicholson to Chair Padilla and the Coastal Commission, dated June 4, 2021.
16	This is a statement regarding the appeal's position that the CDP is inconsistent with the City's LCP policies. For the reasons stated herein, Signal Landmark disagrees with this statement.
17	<p>Argument #1 was incorporated into the Coastal Commission Substantial Issue Staff Report dated May 21, 2021. Signal disagrees with the appellants' position for the reasons stated in the Letters from Tim Paone, Cox Castle &amp; Nicholson and Susan K. Hori, Manatt Phelps &amp; Phillips dated June 4, 2021, and submitted to the Coastal Commission on behalf of Signal Landmark.</p> <p>The National Register boundaries of the site were established by the Pacific Coast Archaeological Society in 1981 (Figure 3) and were based on previous documentation by Alika Herring and Dr. Hal Eberhart from CSULA in 1961 (Figure 2). Both maps are generalized, both show the site boundaries within the Windward Residential Project area and extending both north and south of that parcel. The Herring and Eberhart map was based on surface evidence only. Herring actually excavated two hand units on the Goodell Property which produced no artifacts but were limited in depth due to hardpan soil conditions. In 1966 Eberhart conducted a summer archaeological field program on CA-ORA-86 where he concluded that the sites were extremely disturbed with artifacts, shell and other materials removed from their original context. The hand units with the most materials were located along the eastern edge of the property. The entire area of his work will be preserved since its fall within the eastern half of the parcel which is designated as open space. During the 1980s and 1990s, subsequent to Eberhart's work, ARI and SRS INC</p>

	<p>both expanded the subsurface investigations to accurately define the subsurface boundaries of the site deposit since disturbance blurs the surface boundaries. The final site boundaries are generally shown on Figure 4 as essentially confined to the eastern half of the site. Only the western half of the parcel is proposed for grading and construction. The area to be graded has been documented as the least likely area to contain significant cultural resources as documented by Independent Archaeological Reviewer, Dr. William Hildebrandt, in a 2017 review provided as Appendix F. This review was requested by the Bolsa Chica Land Trust. The archaeologist was unknown to previous investigators providing a neutral analysis of the subsurface archaeological data.</p>
18	<p>Argument #2 was incorporated into the Coastal Commission Substantial Issue Staff Report dated May 21, 2021. Signal disagrees with the appellants' position for the reasons stated in the Letters from Tim Paone, Cox Castle &amp; Nicholson and Susan K. Hori, Manatt Phelps &amp; Phillips dated June 4, 2021, and submitted to the Coastal Commission on behalf of Signal Landmark</p> <p>Potential site impacts have been reduced to little or none because the project is limited to the western half of the Windward Residential project area. This portion of the site appears to lack <i>in situ</i> cultural resources and only contains mixed materials moved about by early agricultural efforts on the Mesa as documented by archaeological investigations from the 1960s to the 1990s/2000 and by Independent Archaeological Reviewer, Dr. William Hildebrandt, in a 2017 review provided as Appendix F and prepared at the request of the Bolsa Chica Land Trust.</p>
19/20/21/22	<p>These comments are addressed in the AMMP. AMMP Chapter 2: CA-ORA-86 Archaeological Site Parameters and Associations clearly states that the site is:</p> <ol style="list-style-type: none"> <li>1) Part of a National Register (NR) Site Complex;</li> <li>2) Part of a Sacred Lands Complex; and</li> <li>3) Underlain by Fossil-bearing Geologic Formations.</li> </ol> <p>The area to be graded has been documented as the least likely area to contain significant cultural resources as documented by Independent Archaeological Reviewer, Dr. William Hildebrandt, in a 2017 review provided as Appendix F to the AMMP. This is also true since the extraordinary features present on CA-ORA-83, the southern part of the site complex, are not present on CA-ORA-86. This site represents the last occupation in the area when there was little or no use of the neighboring site areas. Excavations clearly indicate that a single family or single individual occupied this area and used a house pit for a very short period of time. The person(s) salvaged materials and artifacts from the neighboring site areas and reused these to make items they needed. Excavations since the 1960s by 3 separate groups (PCAS/CSULA, ARI and SRS) did not locate any evidence of human or animal burials or their associated cogged stones, charmstones and other older ritual artifacts.</p>
23/24/25	<p>The extraordinary remnants of occupation on Bolsa Chica Mesa including human and animal burials, ceremonial house pits, and large quantities of significant artifacts were located by the efforts of Controlled Archaeological Grading by SRS INC. It was not known to any of the previous investigators that burials even existed on Bolsa Chica Mesa and no one located or even speculated that ceremonial house pits might be present. This precisely WHY Controlled Archaeological Grading is needed at CA-ORA-86 and called for in CR-2 as a Cultural Resource Mitigation Measure (AMMP: Table 2). The difference in Controlled Archaeological</p>



	Grading on CA-ORA-86 vs other areas on Bolsa Chica is that significant cultural resources will be left in situ and the project redesigned to accommodate these preservation efforts. Additional extraordinary finds are not expected on this site given the data collected from past investigations but Controlled Archaeological Grading will locate these if they exist with minimal disturbance to the resource since the mechanical equipment will proceed in approximate 2" intervals. Once located a protective barrier or shield will be placed over the resource so that no new impacts can occur (see AMMP: Procedures for Unanticipated Archaeological Discoveries).
26	<p>There is no dispute that the City, Signal Landmark, and its archaeologist recognized and acknowledged that a complex of archaeological sites were included in the National Register nomination, and that these sites were also submitted to the Native American Heritage Commission for listing in its sacred lands file. For these reasons, the Windward Project proposes the preservation of a significant portion of ORA-86, through the avoidance of development on 50% of the Windward Site and the adjacent 8.7 acre Goodell parcel (located under the jurisdiction of the County of Orange). Because of the prior archaeological work on the Windward Site, the City concluded and the Coastal Commission agreed when it approved the LCP Amendment to include the Windward Specific Plan that the westernmost 2.5 acres of the Windward Site could be developed for residential uses only after completion of a comprehensive archaeological mitigation program – which is the subject of this CDP now on appeal. The City's actions were consistent with its LCP policies that provide for the permanent protection of 50% of the property, and the implementation of mitigation measures <b>as allowed under LCP Policy C5.1.2 and Coastal Act Section 30244</b>.</p> <p>Signal disagrees with the appellants' position for the reasons stated in the Letters from Tim Paone, Cox Castle &amp; Nicholson and Susan K. Hori, Manatt Phelps &amp; Phillips dated June 4, 2021, and submitted to the Coastal Commission on behalf of Signal Landmark.</p>
27	The purpose of the Controlled Archaeological Grading is to FIND unanticipated discoveries and set them aside for preservation NOT to clear the way for development. If, as jointly determined by the Native American representatives and Principal Investigator/Project Archaeologist, no significant finds are discovered during the entire grading project then all parties can be assured that no cultural resources will be disturbed or destroyed by the proposed development. If materials are uncovered which are determined to be significant then these will be preserved in situ and a redesign of the project will occur to avoid impacts to the significant resource. The western half of the property is essentially outside the boundaries of this portion of the site as determined by numerous investigations over the decades (see Chapter 2: Site Parameters and Associations) but the site does remain within the general boundaries of the Sacred Lands Site Complex, the National Register Site Complex and is underlain by fossiliferous older Quaternary Alluvium. For these reasons, The Controlled Archaeological Grading was included as CR-2 in the Mitigation Measures in order to protect and preserve cultural resources on this property.
28	Argument #3 was incorporated into the Coastal Commission Substantial Issue Staff Report dated May 21, 2021. Signal disagrees with the appellants' position for the reasons stated in the Letters from Tim Paone, Cox Castle & Nicholson and Susan K. Hori, Manatt Phelps & Phillips dated June 4, 2021, and submitted to the Coastal Commission on behalf of Signal Landmark.

29	<p>This is an incomplete statement from the 2018 Staff Report. Because of the prior archaeological work on the 5-acre Windward Site, it was determined – by the City and the Coastal Commission – that the easternmost 2.5 acres of the site should be preserved in open space to provide protection for any cultural resources that might be present, and because of the prior history of site disturbance and archaeological work, that the westernmost 2.5 acres could be developed for residential uses only after implementation of an archaeological mitigation program to determine if there were any <i>in situ</i> cultural resources on that portion of the property. The AMMP is designed to implement that mitigation program and to assist the City and Coastal Commission in that determination. The Controlled Archaeological Grading Program described in the AMMP is designed to determine if any significant cultural resources exist on the property and if found to redesign the project, cap the resource for additional protection and place the resource in a newly designated open space.</p>
30	<p>The appeal mischaracterizes the AMMP and fails to understand that differences in the time periods for the archaeological resources. The AMMP recognizes that ORA-86 was part of the area included in the nomination submitted to – <b>but not listed in</b> – the National Register. The AMMP is not dismissive of the resource because it belongs to a later time period than the majority of site use on the Mesa. Just the opposite it provides a glimpse at use of the Mesa 2,000 years ago. What the AMMP does try to do is to distinguish the differences between this time period and that of the extraordinary ceremonial complex 7,000 years earlier. There is a tendency to lump the sites all together and imply that what was found at one was found at all of them. In fact the 11 sites within the National Register Complex over stretch from approximately 10,000 years ago to 2,000 years ago and overlap in time to form a continual sequence of Mesa occupation. But each one is distinctly different from the others. No two are alike and CA-ORA-86 is the simplest and most lightly used of the eleven.</p>
31	<p>The portion of ORA-86 that is within the Windward site is considered significant, and therefore, subject to the protection policies of the LCP. The LCP does not mandate preservation of every archaeological site. Neither does Section 30244 of the Coastal Act. Rather, the LCP requires the implementation of reasonable mitigation which the AMMP does – in conformance with the policies of the City’s LCP. If significant, in situ resources are uncovered during the archaeological mitigation work, the options of capping, avoidance and preservation will be fully considered.</p> <p>The development of our knowledge of the site boundaries has been discussed. It is a rule of the scientific method that the more data that becomes available the more any theory can be refined. The Appeal would like to stop refining the site boundaries after the ‘s Herring/Eberhart map and 1980s National Register nomination. This ignores later work. Three maps attached to the November 30, 2018 letter to Adrian Morales and the Gabrieleno Band of Mission Indians in Appendix D provide a close-up of the Herring/Eberhart site boundary compared to the SRS INC auger holes series, the Eberhart, ARI and SRS INC hand units and mechanical trenches, and the SRS INC Unit Block exposing the house pit found by SRS INC trenches. It is clear that the majority of the materials on the site are located in the eastern half of the property prompting Independent Reviewer Dr. William Hildebrandt to state that the area to be graded has been documented as the least likely area to contain significant cultural resources (Appendix F).</p>
32	<p>The significance and disposition of any cultural resource will be determined jointly by the Native American representatives and Archaeologists as they are located. A list of know significant resources has been provided in the AMMP in an attempt to be</p>

	thorough and cover all types of materials that can be demonstrated to be significant. However, circumstances could arise where some mundane artifact is found in a context that changes it to a significant artifact. Only the Native and Archaeological specialists can make this determination and this is not something that the Commissioners can oversee.
33/34	The AMMP at pages 13,14,15,17,19,20 and 22 states that the disposition and treatment of any find will be determined jointly by the Native American representatives and the Principal Investigator/ Project Archaeologist. Special treatment of many types of materials routinely occurred during previous investigations on Bolsa Chica Mesa and were reburied, not just human remains. The Native Americans and Archaeologist reserve the right to make that decision at the time of the find recognizing that context as well as material type or artifact type or animal type will play an important role in any decision. The AMMP clearly states that if human remains are found, the provisions of Public Resources Code Section 5097.98 will be implemented, including consultation with the “most likely descendant,” and a reburial plan will be implemented. Avoidance and preservation in place of any human remains that are discovered is an option to be considered.
35	Any disagreement between the consulting tribes will be a matter of Native American concern. If such occurs then presumably the MLDs and Chiefs of the affected nations will work out a resolution process. The Archaeologist would not presume to get involved in such a controversy but would abide by the collective decision made either by them or the NAHC as a neutral party if asked.
36	Once again, this decision would be made by the affected Native American tribal groups. The AMMP calls for one Juaneno and one Gabrieleno on site per day which would be enforced. Any other arrangement depends on what groups are hired to monitor and how the Native Americans internally decide to divide their time.
37	<p>Argument #4 was incorporated into the Coastal Commission Substantial Issue Staff Report dated May 21, 2021. Signal disagrees with the appellants’ position for the reasons stated in the Letters from Tim Paone, Cox Castle &amp; Nicholson and Susan K. Hori, Manatt Phelps &amp; Phillips dated June 4, 2021, and submitted to the Coastal Commission on behalf of Signal Landmark. See also the letter from the City of Huntington Beach, dated June 4, 2021 which provides a detailed chronology of the consultation undertaken by the City with the Coastal Commission staff, Native American tribes, the Native American Heritage Commission and the State Office of Historic Preservation regarding the AMMP.</p> <p>See also AMMP at Appendix D for 27 pages of Native American consultation documentation from 2019, 2020 and 2021.</p>
38	<p>See Response to Comment 37, above.</p> <p>AMMP Appendices B and C provide documentation of interactions between the City of Huntington Beach and OHP as well as NAHC. Appendix D provides 27 pages of correspondence from 2019, 2020 and 2021 between SRS INC and Gabrielino and Juaneno representatives. The cover page to this Appendix also indicates where in the AMMP the suggestions by the various representatives are integrated into the report. In addition, three County-certified and Coastal Commission-approved archaeologists have reviewed all drafts and the final AMMP (Appendices E and F) and the PRMMP was prepared by a County-approved paleontologist.</p>

39	This statement addresses the Coastal Commission's Tribal Consultation Policy and that the Commission may conduct its own independent review of tribal consultation. While the Commission may do so, and may do so for appealed permits which are being reviewed de novo, that is not a legitimate basis to file or support an appeal. Coastal Act Section 30603 sets forth the grounds for an appeal of a locally-approved CDP as being limited to "an allegation that the development does not conform to the standards set forth in the certified local coastal program, or the public access policies set forth in this division." The City complied with its LCP policies including consultation with Native American group. The fact that the Commission may wish to conduct its own independent review of tribal consultation is not a reason to appeal the City's permit.
40/41	<p>Bolsa Chica Mesa has been identified as a Traditional Cultural Landscape which is oriented towards all natural resources as well as cultural resources. Previous investigations have uncovered pits used to excavate for mineral deposits such as ochre. In this case the pit and the ochre would both be considered significant even if the ochre is naturally occurring. Such determinations can only come with the consultation between Native representatives and Archaeologists as described in the AMMP. As a result of tribal consultation, additional information and considerations were included in the AMMP. For example, the AMMP includes an PRMMP not only because Paleontologists are interested in recovering and studying fossils and also and dating geologic formations but also because many tribal peoples consider distinct fossils to be significant and are used as part of sacred rituals. These have all been considered when preparing the AMMP which is why the PRMMP is presented as an integral part of the AMMP and not as a separate disassociated document.</p> <p>The tribal comments were included in the AMMP. See also Letter from the City of Huntington Beach, dated June 4, 2021 which provides a detailed chronology of tribal consultation undertaken by the City.</p> <p>The "sacred landscape" was never raised as an issue to the Archaeologist. Nonetheless, the Archaeologist already acknowledged the site as part of a Sacred Site Complex which includes Tribal Cultural Resources (TCR), Traditional Cultural Properties (TCP) and the Traditional Cultural Landscape (TCL) as all part of the Sacred Site Complex.</p>
42	First, the provisions regarding the conclusion of tribal consultation are from the California Environmental Quality Act, and not the Coastal Commission's 2018 Tribal Consultation Policy. As the record reflects, both the applicant and the City of Huntington Beach engaged in tribal consultation with three Native American tribes. The comments received from the Gabrieleno Tongva nation were responded to in writing by the City; however, no alternatives to the proposed mitigation program were identified.
43	Argument #5 was incorporated into the Coastal Commission Substantial Issue Staff Report dated May 21, 2021. Signal disagrees with the appellants' position for the reasons stated in the Letters from Tim Paone, Cox Castle & Nicholson and Susan K. Hori, Manatt Phelps & Phillips dated June 4, 2021, and submitted to the Coastal Commission on behalf of Signal Landmark.
44	This comment re-states LCP Policy Goal C4 regarding preservation of the aesthetic resources of the City's coastal zone. As discussed in the Letters from Tim Paone, Cox Castle & Nicholson and Susan K. Hori, Manatt Phelps & Phillips dated June 4, 2021, and submitted to the Coastal Commission on behalf of Signal Landmark, short-term archaeological mitigation work will have no permanent, significant adverse impact on the aesthetic resources of the coastal zone.

45	This comment re-states LCP Policy C4.1.1 regarding the protection of public views. As discussed in the Letters from Tim Paone, Cox Castle & Nicholson and Susan K. Hori, Manatt Phelps & Phillips dated June 4, 2021, and submitted to the Coastal Commission on behalf of Signal Landmark, short-term archaeological mitigation work will have no permanent, significant adverse impact on the scenic and visual qualities of the coastal zone and will not have any impact on public views.
46	This comment re-states LCP Policy C7.1.3 which incorporates Coastal Act Section 30240 regarding the protection of ESHA. See Letters from Tim Paone, Cox Castle & Nicholson and Susan K. Hori, Manatt Phelps & Phillips dated June 4, 2021, and submitted to the Coastal Commission on behalf of Signal Landmark.
47	This comment states that the CDP does not address the visual qualities of the open space and the project's potential impact to the visual qualities of the area. As discussed in the Letters from Tim Paone, Cox Castle & Nicholson and Susan K. Hori, Manatt Phelps & Phillips dated June 4, 2021, and submitted to the Coastal Commission on behalf of Signal Landmark, short-term archaeological mitigation work will have no permanent, significant adverse impact on the scenic and visual qualities of the coastal zone.
48	This comment is addressed in the Letter from Susan K. Hori, Manatt Phelps & Phillips dated June 4, 2021, and submitted to the Coastal Commission on behalf of Signal Landmark. A biological survey was conducted and submitted to the City.
49	This comment is addressed in the Letter from Susan K. Hori, Manatt Phelps & Phillips dated June 4, 2021, and submitted to the Coastal Commission on behalf of Signal Landmark. A biological survey was conducted and submitted to the City that described the work done to determine if burrowing owl habitat and southern tar plant were present on site. They were not.
50	This comment is addressed in the Letter from Susan K. Hori, Manatt Phelps & Phillips dated June 4, 2021, and submitted to the Coastal Commission on behalf of Signal Landmark. A biological survey was conducted and submitted to the City that described the work done to determine if burrowing owl habitat and southern tar plant were present on site. They were not.

**CALIFORNIA COASTAL COMMISSION**

SOUTH COAST DISTRICT OFFICE  
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**APPEAL FORM****Appeal of Local Government Coastal Development Permit****Filing Information (STAFF ONLY)**

District Office: South Coast

Appeal Number: A-S-HNB-21-0031Date Filed: 5/5/21 5PMAppellant Name(s): Adrian Morales**APPELLANTS**

**IMPORTANT.** Before you complete and submit this appeal form to appeal a coastal development permit (CDP) decision of a local government with a certified local coastal program (LCP) to the California Coastal Commission, please review the appeal information sheet. The appeal information sheet describes who is eligible to appeal what types of local government CDP decisions, the proper grounds for appeal, and the procedures for submitting such appeals to the Commission. Appellants are responsible for submitting appeals that conform to the Commission law, including regulations. Appeals that do not conform may not be accepted. If you have any questions about any aspect of the appeal process, please contact staff in the Commission district office with jurisdiction over the area in question (see the Commission's [contact page](https://coastal.ca.gov/contact/#/) at <https://coastal.ca.gov/contact/#/>).

**Note regarding emailed appeals.** Please note that emailed appeals are accepted **ONLY** at the general email address for the Coastal Commission district office with jurisdiction over the local government in question. For the South Coast district office, the email address is [SouthCoast@coastal.ca.gov](mailto:SouthCoast@coastal.ca.gov). An appeal emailed to some other email address, including a different district's general email address or a staff email address, will be rejected. It is the appellant's responsibility to use the correct email address, and appellants are encouraged to contact Commission staff with any questions. For more information, see the Commission's [contact page](https://coastal.ca.gov/contact/#/) at <https://coastal.ca.gov/contact/#/>.

1 The Windward Residential Project will definitely cause a substantial adverse effect to the NRHP property, Tribal Cultural Resources, and a Unique Historical Resource. The project's Environmental Process and the proposed grading plan (AMMP) has not addressed or complied to the PRCs listed below. The grading documents AMMP was not created in our interest or through any agreement as defined in CCR 15064.5 (d), rather it was presented to the tribe for review by the applicant's consultant, not the LEAD AGENCY. Also to mention that the project APE has not formally been evaluated as a mitigation measure as defined in PRC 21083.2 (d) for this project specific.

2 PRC 5024.1 (a) - The CA Register is established and is an authoritative guide in CA to be used by state and local agency's to identify Historical resources and to indicate what properties should be protected from substantial adverse changes.

(b) - CA ORA 86 already meets the criteria

(c) - CAORA 86 already meets the criteria

(d) - The CA Register shall include the following:

(1)- CA properties formally determined eligible for, or listed in, the NRHP.

3 PRC 5024 (f) - Each state agency shall submit to the State Historic Preservation Officer for comment documentation for any project having the potential to effect historical Resources listed in or potentially eligible for inclusion in the NRHP or registered as or eligible for registration as a state historical landmark.

4 PRC 5024.5

(c) - Each State agency shall maintain written documentation of the officers concurrence with proposed actions which would have an effect on a historical resource on the master list.

5 PRC 5020.1

(k) - Local register of historical resources means a list of properties officially designated or recognized as historically significant by a local government pursuant to a local ordinance or resolution.

6 PRC 21074 (a) - Tribal cultural resources are either of the following

(1) - sites, features, places, cultural landscapes, sacred places, and objects with cultural value to CA Native Americans.

(A) included in the CA Register of Historical Resources (CA ORA 86)

(B) included in a local register of historical resources as defined in subdivision (k) of Section 5020.1

(2) A resource determining by the lead agency to be significant pursuant to the criteria set forth in subdivision (c) of Section 5024.1. In applying the criteria set forth in subdivision (c) of Section 5024.1 for the purposes of this paragraph, the lead agency shall consider the significance of the resource to a CA Native American tribe

(b) A cultural landscape that meets the criteria of subdivision (a) is a tribal cultural resource to the extent geographically defined in terms of the size and scope of the landscape.

(c) A historical resource described in Section 21084.1, a unique archaeological resource as described in subdivision (g) of Section 21083.2, or a non-unique archaeological resource as defined in subdivision (h) of Section 21083.2 may also be a tribal cultural resource if it conforms with the criteria of subdivision (a).

7 PRC 21084.1- A project that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment.

8 CCR 15064.5 - Determining the Significance of Impacts to Archaeological and Historical Resources

(a) The term historical resource shall include the following:

(1)- A resource listed on the CA Register of Historical Resources as defined in PRC 5024.1

- (2) - A resource included in a local register of historical resources as defined in PRC 5020.1(k)
- (3) - Any object, building, structure, site, area, place, record, or manuscript determined to be significant in the agricultural, engineering, scientific, economic, architecture, educational, social, political, military, or cultural annals of California may be considered an historical resource. Generally, a resource shall be considered by the LEAD AGENCY to be historically significant if the resource meets the criteria for listing on the CA Register of Historical Resources defined by PRC 5024.1
- (3) (A), (B) and (C) all apply to ORA 86
- (b) - A project that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment.
- (c) - CEQA applies to effects on archaeological sites
- (1) - When a project will impact an archaeological site, the LEAD AGENCY shall first determine whether the site is an historical resource, as defined in subdivision (a)
- (2) - If a LEAD AGENCY determines that the archaeological site is an historical resource, it shall refer to the provisions of Section 21084.1 of the PRC, this section, Section 15126.4 of the guidelines, and the limits contained in Section 21083.2 of the PRC do not apply.
- (d) - When an initial study identifies the existence of, or the probable likelihood, of Native American human remains within the project, a LEAD Agency shall work with the appropriate Native Americans as identified by the NAHC. The applicant may develop an agreement for treating the human remains and items associated items

PRC 15126.4- Mitigation Measures

- (b) Mitigation Measures related to Impacts on Historical Resources
- (3) Public agencies should
- (A)

PRC 21083.2 Determination of projects that may have significant effects to unique archaeological resources

- (a)
- (b) Preservation efforts of unique historical resources
- (1)
- (2)
- (4)
- (d) Mitigation Excavation Evaluations
- (g) Unique archaeological resources means an archaeological artifacts, object, and site
- (1)
- (2)
- (3)



COASTAL DEVELOPMENT PERMIT NO. 20-016 (WINDWARD ARCHAEOLOGICAL  
GRADING AND MONITORING)

4. Grounds for Appeal

Issues raised by appellants of LCP 19-004, Windward Archaeological Mitigation and Monitoring Plan allowing archaeological grading of the same 2.5 acres that were filed in 2019 were not resolved because the developer withdrew the CDP application. We believe that the objections raised by Patrica Martz, Rebecca Robles, Alfred Cruz, Jr. and Coastal Commissioners Padilla and Uranga are still valid with respect to this CDP application. We summarize them below and have also attached the original appeals to this document.

Alfred Cruz/Rebecca Robles Appeal and Pat Martz's Appeal

The archaeological grading and monitoring plan that the City of Huntington Beach approved is inconsistent with the Windward Specific Plan and the Huntington Beach Local Coastal Plan. Specifically with the Historic and Cultural Resources Section, C5.1.4(c) "The State Office of Historic Preservation and the Native American Heritage Commission shall review the research design." and (d) "The research design shall be developed in conjunction with affected Native American groups." The site to be graded is listed on the California Native American Heritage Commission's Inventory of Sacred sites as well as the National Register of Historic Places. Past Coastal Commission permits have resulted in the destruction of the majority of the archaeological site complex known as CA-ORA-83/86/144. Preservation of the remaining portions of this site complex is of great concern to the Gabrieleno/ Tongva and other local Native American descendants and should not be subject to further impacts.

Commissioners Padilla and Uranga Appeal

1. CDP 19-004 is inconsistent with certified Huntington Beach Local Coastal Program regarding cultural resources C.5 (C.5.1.1 - C.5.1.5)

2. Anticipatory Destruction/Piecemealing: Because the Windward Specific Plan is not yet operative, there is no potential for residential development at this time, and therefore, archeological grading is unnecessary until or unless residential development becomes a possibility. The grading and monitoring activities approved by the City are effectuated via the City-approved document titled Archaeological Mitigation and Monitoring Plan (AMMP), Windward Residential Project. The AMMP is intended to establish the procedures to conduct controlled archaeological grading across the western half (2.5 acres) of the subject property. It is the western half that, under the Windward Specific Plan, that, in the event the specific plan becomes operative (as that term is defined in the specific plan), could potentially be allowed residential development. The Windward Specific Plan has not become operative yet.

3. A Sacred Site and a National Register Site containing Significant Cultural/Tribal Cultural Resources will be impacted. The Bolsa Chica area in general is significant due to the

15 extensive presence of environmentally sensitive habitats and wetlands and due to the significance and extent of Native American cultural resources that have been discovered there. The Bolsa Chica Mesa particularly is an area known for its significant cultural value dating back as far as 9,000 years before present time, based upon pre-historic human use, including manufacturing and ceremonial use of unique coggled stone afiitacts, numerous archaeological features and artifacts, and as a Native American cemetery. The Mesa contains several mapped archaeological sites; CA-ORA-83, -85, -86 and -144. Many archaeologists believe that ORA-86 on the subject Windward site is the northeastern extension of ORA-83. According to the State Historic Preservation Officer, as well as multiple archaeologists and Native Americans, these separate archaeological sites are a part of a large prehistoric village complex that occupied the Bolsa Chica Mesa from 9,000 to 2,000 years before present time. Additionally, the site has recently been designated as a Sacred Site by the Native American Heritage Commission. There was no discussion of the impact that archeological grading would have on the status of the land as a Sacred Site.

16 4. Cumulative impacts must be considered. Much of the upland value of the mesa and nearby area as coastal resources have been lost to residential development. Because the early CDPS issued for archaeological work on the Bolsa Chica Mesa allowed full excavation and recovery of all cultural resources much of the Sacred and National Register Site has been damaged and/or erased. ORA-83 (which, as registered, includes ORA-86) is known as the coggled stone site because these unique stones were believed to have been manufactured here, the site is actually much more complex and supported permanent human habitation as well as a sacred burial site or Native American cemetery. On ORA-83 and ORA-85 alone approximately 350 pre-historic cultural features were discovered, including approximately 160 human burials and 31 animal burials, 25 semi-subterranean structures (house pits with hearths, storage sheds, and ceremonial structures with a dance floor), fire affected rocks and other rock artifacts, shell and rock cairns, and well over 100,000 beads, charm stones, tools and other artifacts were discovered. More than 70% of other Native American and animal burials and prehistoric features that were discovered on the Bolsa Chica Mesa were found outside of the boundaries of the previously recorded archaeological sites.

17 5. Preservation in situ is not required. The City is not clear that preservation in situ is the preferred alternative for any significant resources present on the site. There is little assurance that preservation in place would occur. Without such assurance the CDP approved by the City cannot be found to be consistent with the cultural resource protection policies of the certified LCP, regardless of the resource's status or eligibility for listing. Although the Windward Specific Plan language requires preservation in situ where appropriate and feasible that language does not diminish that the primary goal is preserving in place, including capping or avoiding development near and over the resource left in place. Moreover, no evidence that preservation in situ is not appropriate or feasible is included in the AMMP. Currently, the AMMP makes little distinction as to whether preservation in place or excavation and removal would occur upon discovery of significant cultural resources, and limits preservation in place only for resources eligible for state listing (after significant testing).

6. Applicants have already been permitted to profit from the destruction of the Bolsa Chica Mesa Sacred and National Register Site and violations of the Coastal Act. It should be remembered that the current applicant and property owner, Signal Landmark, is the same applicant and land owner/permittee who developed 347 homes on the adjacent site known as Brightwater. It was during work on that site that the Native American cemetery was discovered and destroyed, due to earlier CDPs for archaeological work that allowed recovery and removal. And in addition, it bears noting past actions at this site by this archaeologist include: subsurface archaeological work conducted without benefit of a valid CDP during which significant cultural resources were discovered and completely removed from site (prehistoric house pit and related resources).

## CALIFORNIA COASTAL COMMISSION

South Coast Area Office  
 301 East Ocean Blvd., Suite 300  
 Long Beach, CA 90802  
 (562) 590-5071

June 17, 2019



**APPEAL FROM COASTAL PERMIT  
 DECISION OF LOCAL GOVERNMENT**

**RECEIVED**  
 South Coast Region

JUN 17 2019

CALIFORNIA  
 COASTAL COMMISSION

**SECTION I. Appellant(s)**

Name, mailing address and telephone number of appellant(s):

Commissioners301 East Ocean Blvd., Suite 300Long Beach, CA 90802 (562) 590-5071**SECTION II. Decision Being Appealed**

1. Name of local government: City of Huntington Beach
2. Brief description of development being appealed:  
 Archaeological Mitigation & Monitoring Plan allowing archaeological grading on the 2.5 acre western portion of the property known as the Windward site on the Bolsa Chica mesa.
3. Development's location (street address, assessor's parcel no., cross street, etc.): 5 acre property at the southeast corner of the intersection of Bolsa Chica Street and Los Patos Avenue (south of the City owned property with public trail), Huntington Beach, Orange County (APN: 163-361-10)
4. Description of decision being appealed:
  - a. Approval: no special conditions: \_\_\_\_\_
  - b. Approval with special conditions: XX
  - c. Denial: \_\_\_\_\_

Note: For jurisdictions with a total ICP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

**TO BE COMPLETED BY COMMISSION:**APPEAL NO: A-5-HNB-19-0045DATE FILED: 6/17/19

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

**SECTION IV. Reasons Supporting This Appeal**

**PLEASE NOTE:**

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal, however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

The archaeological grading and monitoring plan that the City of Huntington Beach approved is inconsistent with the Huntington Beach Local Coastal Plan and the Windward Specific Plan

It is also not in compliance with the Historic and Cultural Resources section of the Huntington Beach Local Coastal Plan. Specifically with C5 1.4 (c) "The State Office of Historic Preservation and the Native American Heritage Commission shall review the research design" and (d) "The research design shall be developed in conjunction with affected Native American groups."

This is important because the archaeological remains to be graded are listed on the California Native American Heritage Commission's Inventory of Sacred sites as well as the National Register of Historic Places. Past Coastal Commission permits have resulted in the destruction of the majority of the archaeological site complex known as CA-ORA-83/86/144. Preservation of the remaining portions of this site complex is of great concern to the Gabrieleno/ Tongva and other local Native American descendants and should not be subject to further impacts.

Attachment to Appeal of local CDP decision, Application # 20-016

3. Identification of Interested Persons

Ed Mountford, Cornerstone Consulting, 18685 Main St, Huntington Beach, CA 92648

Signal Landmark, 6 Executive Cir STE 250, Irvine, CA 92614

Rob Wood, Environmental Planner, NAHC, 1550 Harbor Blvd, Suite 100 • West Sacramento,  
CA 95691

Julianne Polanco, State Historic Preservation Officer 1725 23rd Street Suite 100 Sacramento,  
CA 95816

23

**SIGNAL LANDMARK'S RESPONSES TO STATEMENTS IN THE APPEAL**

**SUBMITTED BY ADRIAN MORALES, DATED MAY 5, 2021**

<b>Comment #</b>	<b>Signal Landmark Response</b>
1	<p>The Appellant states its position regarding the Windward Residential Project's substantial adverse effect on the archaeological resource. As a matter of correction and clarification:</p> <ul style="list-style-type: none"><li>• The archaeological resource, ORA-86, was included in the National Register nomination; it has not been formally listed on the National Register of Historic Places</li><li>• The City of Huntington Beach and the project archaeologist consulted with Appellant Morales and two other Native American tribes because of the potential impact to ORA-86 which was acknowledge and recognized by all parties as a significant archaeological site, eligible for listing on the National Register, listed on the Sacred Lands File maintained by the Native American Heritage Commission and considered a tribal cultural resource</li><li>• The tribal consultation was conducted pursuant to City of Huntington Beach LCP Policy 5.4; not the CEQA tribal consultation policies. While the City conducted its own tribal consultation with Mr. Morales and his tribe (see Letter from the City of Huntington Beach to the Coastal Commission dated June 4, 2021), the tribal consultation was not conducted pursuant to CEQA.</li></ul>
2	<p>This comment recites the provisions of Public Resources Code Section 5024.1 With respect to how the AMMP has addressed the requirements of Section 5024.1, the AMMP at Chapter 2: CA-ORA-86 Archaeological Site Parameters and Associations, clearly states that the site is 1] Part of a National Register (NR) Site Complex, 2] Part of a Sacred Lands Complex, and 3]Underlain by Fossil-bearing Geologic Formations. It is within this broad context that the site automatically includes eligibility for the California Register (CR) since the criteria for the NR and the CR are the same with modifications that better fit state cultural resources.</p>
3	<p>This comment recites the provisions of Public Resources Code Section 5024.1(f). The City complied with the requirements to consult with the Office of Historic Preservation. Appendix B in the Consultation Documentation Appendix to the AMMP presents documentation of correspondence between the City of Huntington Beach and the California OHP.</p>
4	<p>This comment recites the provisions of Public Resources Code Section 5024.5. As a part of a National Register Site Complex, the site is automatically listed with OHP. Per Response to Comment 3, the OHP was consulted regarding the proposed work.</p>
5	<p>This comment recites the provisions of Public Resources Code Section 5020.1. The history of local site recognition is presented in Chapter 2 of the AMMP.</p>
6	<p>This comment recites the provisions of Public Resources Code Section 21074(a) which is the definition of "tribal cultural resources" in the California Environmental Quality Act.</p>

	As part of a Sacred Lands Complex the site is registered with the Native American Heritage Commission as a Tribal Cultural Resource/Traditional Cultural Property which is also part of Traditional Cultural Landscape. It is part of a site complex which is eligible for inclusion on both the National Register and the California Register. It is also recognized by the Los Angeles County Museum of Natural History as overlying potentially significant fossil remains.
7	This comment recites the provisions of Public Resources Code Section 21084.1 which is an excerpt from CEQA. The City of Huntington Beach prepared a mitigated negative declaration in compliance with CEQA and identified the project's potential effect on ORA-86 as a significant impact and identified mitigation measures to address the potential significant effects development of the Windward site on ORA-86.
8	This comment recites the provisions of Section 15064.5 of the CEQA Guidelines concerning the definition of historical resource. See Comment 7, above. The City of Huntington Beach complied with CEQA and identified ORA-86 as a significant archaeological resource and identified mitigation measures to address potential impacts to this resource. However, as this Appeal concerns consistency with the City's Local Coastal Program and the Chapter 3 policies of the Coastal Act, the City's compliance with CEQA is not pertinent to the subject of this appeal.
9	This comment recites excerpts from the provisions of Section 15126.4 of the CEQA Guidelines concerning mitigation measures. See Response to Comment 3. The City complied with CEQA and prepared a mitigated negative declaration. The impact to ORA-86 was identified as a significant impact, and mitigation measures were identified and adopted to mitigate the significant impacts to this significant cultural resource.
10	This comment recites excerpts from the provisions of Section 21083.2 of CEQA. The City recognized that ORA-86 was a significant cultural resource in the mitigated negative declaration it prepared, and identified and adopted mitigation measures to address the potentially significant impacts on this resource.
11	In 2019, the City issued a CDP to Signal Landmark to conduct archaeological mitigation. That CDP was appealed to the Coastal Commission. Signal Landmark elected to withdraw its approved CDP and the City rescinded its approval of the CDP. In the intervening two years, Signal Landmark worked with the City, Native American tribes, the Coastal Commission, the Native American Heritage Commission and the Office of Historic Preservation to address the concerns raised in the appeal of the 2019 CDP. Contrary to the Appellant's contention, Signal's position is that it has spent the last two years addressing each and every one of the concerns presented in the two appeals of its CDP in 2019.
12	The Appellant reiterates arguments from the 2019 appeal of the City CDP approving a prior version of the AMMP. Since that time, the AMMP has been revised to reflect two years of work with the City, Native American tribes, State agencies and the Coastal Commission to address the archaeological and tribal cultural resource concerns. AMMP Appendices B and C provide documentation of interactions between the City and OHP as well as NAHC. Appendix D provides 27 pages of correspondence from 2019, 2020 and 2021 between SRS INC and Gabrieleno and Juaneno representatives. The cover page to this Appendix indicates where in the AMMP the suggestions by the various Native American tribal representatives are integrated into the AMMP. The document now clearly shows that the Native American representatives and the Archaeologists together make all



	decisions regarding the significance and disposition of any uncovered materials (pages 13,14,15,17,19,20 and 22). See also Letter from the City of Huntington Beach, dated June 4, 2021.
13	The Appellant reiterates arguments from the 2019 appeal of the City CDP approving a prior version of the AMMP. This argument concerns the CDP's consistency with LCP policies. See Letter from Susan K. Hori, Manatt Phelps & Phillips, dated June 4, 2021.
14	The Appellant reiterates arguments from the 2019 appeal of the City CDP approving a prior version of the AMMP. This argument concerns whether the Windward Specific Plan is "operative." See Letter from Tim Paone, Cox Castle and Nicholson, dated June 4, 2021.
15	The Appellant reiterates arguments from the 2019 appeal of the City CDP approving a prior version of the AMMP. The site is already part of a Sacred Lands Complex which includes the Traditional Cultural Landscape of the Bolsa Chica; any grading in this area will not change this designation. The AMMP recognizes and acknowledges the significance of these sites and the unique cultural resources that have been discovered at this site. Accordingly, in order to mitigate potential impacts, the City adopted mitigation measures and included policies in its LCP to address the protection of cultural resources. The City's CDP and the AMMP are consistent with the LCP policies and implement the City-adopted mitigation measures.
16	The Appellant reiterates arguments from the 2019 appeal of the City CDP approving a prior version of the AMMP. The area to be graded has been documented as the least likely area to contain significant cultural resources as documented by Independent Archaeological Reviewer, Dr. William Hildebrandt, in a 2017 review provided as Appendix F. This is also true since the extraordinary features present on CA-ORA-83, the southern part of the site complex, are not present on CA-ORA-86. This site represents the last occupation in the area when there was little or no use of the neighboring site areas. Excavations clearly indicate that a single family or single individual occupied this area and used a house pit for a very short period of time. The person(s) scavenged materials and artifacts from the neighboring site areas and reused these to make items they needed. Excavations since the 1960s by 3 separate groups (PCAS/CSULA, ARI and SRS) did not locate any evidence of human or animal burials or their associated clogged stones, charmstones and other older ritual artifacts.
17	The Appellant reiterates arguments from the 2019 appeal of the City CDP approving a prior version of the AMMP. Preservation in situ is mandatory in the 2021 version of the AMMP if significant cultural resources are uncovered.
18	The Appellant reiterates arguments from the 2019 appeal of the City CDP approving a prior version of the AMMP. The appeal before the Coastal Commission concerns the proposed archaeological work on the 2.5 acres of the Windward Site. In order to avoid potential significant impacts that may result from unanticipated discoveries of significant resources, the City is requiring that an archaeological mitigation program be implemented prior to any development.
19	This is a copy of the 2019 Appeal filed by Commissioners Uranga and Padilla. As described in Response to Comment 11, the City and Signal Landmark have spent the last two years addressing these concerns. Commissioners Uranga and Padilla have not appealed the 2021 CDP.
20	This is a copy of the 2019 Appeal filed by Commissioners Uranga and Padilla. For a discussion of the consistency of the City's 2021 CDP with its LCP policies, see Letter from Susan K. Hori, Manatt Phelps & Phillips, dated June 4, 2021.

21	This is a copy of the 2019 Appeal filed by Commissioners Uranga and Padilla. The City complied with the LCP policy regarding agency consultation prior to issuing the 2021 CDP. AMMP Appendices B and C provide documentation of interactions between the City and OHP as well as NAHC. Appendix D provides 27 pages of correspondence from 2019, 2020 and 2021 between SRS INC and Gabrieleno and Juaneno representatives. The cover page to this Appendix indicates where in the AMMP the suggestions by the various Native representatives are integrated into the report.
22	This is a copy of the 2019 Appeal filed by Commissioners Uranga and Padilla. The area to be graded has been documented as the least likely area to contain significant cultural resources as documented by Independent Archaeological Review Dr. William Hildebrant in a 2017 review provided as Appendix F. It is anticipated that little or no portions of the site will be impacted by the grading effort.
23	This is a list of Interested Persons. No response is required.