

CALIFORNIA COASTAL COMMISSION

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W14b

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STAFF REPORT: REGULAR CALENDAR

Application No.: 5-15-1751

Applicant: Orange County Parks

Agent: AECOM, Erik Larsen

Location: Due west of East Bluff Elementary School and east of Back Bay Drive, Newport Beach (County of Orange)

Project Description: Repair of existing bluff drainage facilities, consisting of the removal of approximately 162 linear feet of 30-inch Corrugated Steel Pipe, and the installation of approximately 450 linear feet of 48-inch High-Density Polyethylene Pipe, a catch drain protected by approximately 96 square feet of ungrouted rip-rap, and a sub-drain at the bottom of the erosional gully that is approximately 174 linear feet. Approximately 1,800 cubic yards of fill material will be imported to fill in areas of existing bluff erosion, and 9,800 square feet of jute matt erosion protection will be installed. Onsite habitat restoration and off-site mitigation are also proposed.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The proposed project consists of drainage improvements and erosion repair within Eastbluff on the eastern side of Upper Newport Bay. Extensive erosion of Eastbluff along Back Bay Drive has occurred over time due to the failure of the existing drainage facilities (i.e., a 36-inch Corrugated Steel Pipe, and a 30-inch Corrugated Steel Pipe on the face of the bluff). The failure of these drainage facilities has exposed and suspended the existing 30 inch Corrugated Steel Pipe (CSP) at the face of the bluff, and has resulted in a significant erosional gully which has become a safety hazard, and has resulted in the conveyance of sediment into Upper Newport Bay.

To eliminate the existing safety hazard and potential collapse of the bluff, and reduce future erosion of the bluff in the vicinity of the project site, the applicant proposes to remove and reconstruct the existing bluff drainage facilities, repair the eroded areas, and provide permanent erosion protection for the bluff. The applicant also proposes to restore the impacted habitat areas with appropriate native vegetation, and off-site mitigation for permanent impacts to the depressional swale wetland.

Issues raised by the proposed project are: impacts to habitat, protection of water quality, and protection of potential cultural resources that may be in the area. These issues have been addressed through the recommended special conditions.

Although the project will permanently impact 0.12 acre of riparian wetland habitat as proposed by the applicant, the area of impact has been reduced to the minimum necessary to accomplish the goals of the project (repair of the existing drainage facilities and restoration of the bluff and associated habitat). The applicant has proposed an *Off-Site Mitigation Plan for the East Bluff Project* which proposes 3:1 mitigation for the project's permanent impacts to riparian wetland habitat (mitigation area to impact area), which is the wetland habitat mitigation ratio required by the City of Newport Beach Certified Land Use Plan. In addition, the project will temporarily impact 0.11 acre of southern willow scrub and 0.47 acre of disturbed coastal sage scrub, which will be revegetated with native and habitat-appropriate plant species. Staff is recommending **Special Condition 1** which requires the applicant to submit a finalized Habitat Restoration and Monitoring Plan for the onsite restoration, and a finalized Offsite Mitigation Plan for the East Bluff Project to assure all adverse impacts to habitat are adequately mitigated, and to ensure the quality of the restoration projects (both onsite and offsite) will be monitored to ensure that the biological productivity of the site is improved in as-built conditions.

To ensure that construction activities will avoid impacts to public access to the bay and avoid impacts to sensitive habitat areas, **Special Condition 2** requires the applicant submit a revised staging plan to protect the existing habitat from degradation during staging and construction.

The riparian and coastal sage scrub habitat has the potential to provide nesting and foraging resources for sensitive species including the Least Bell's Vireo, the coastal California gnatcatcher, raptors and other species. In order to protect the sensitive species in the project area, **Special Conditions 3 and 4** require the applicant provide for a biological monitor during construction to protect sensitive species and to abide by a construction schedule to avoid impacting habitat during nesting season. As conditioned, the project is consistent with the resource protection policies of Section 30240 of the Coastal Act.

The proposed project is located adjacent to Upper Newport Bay. In order to protect the water quality of Upper Newport Bay during construction activities, staff is recommending **Special Condition 5** which requires the applicant adhere to construction BMPs to be found consistent with Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

Although the *Cultural and Paleontological Resources Assessment Report* prepared for the proposed project concludes that no new cultural or paleontological resources were encountered within the project limits, previous identification of archaeological, Native American, and paleontological resources within the vicinity of the project suggests that the cultural and paleontological sensitivity

of the project is high. **Special Condition 6** requires submittal of an archeological monitoring plan to ensure that any prehistoric or archaeological or paleontological cultural resources that may be discovered receive proper protections in order for the project to be found consistent with Section 30244 of the Coastal Act. Lastly, **Special Condition 7** requires the applicant provide other resource agency approvals.

Commission staff recommends **approval** of the coastal development permit application 5-15-1751, as conditioned.

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EXHIBITS

- Exhibit 1 – Vicinity Map/Project Location
- Exhibit 2 – Site Plan
- Exhibit 3 – Site Photos
- Exhibit 4 – Erosion Control Plans
- Exhibit 5 – Vegetation Impacts
- Exhibit 6 – Offsite Mitigation Location

APPENDIX 1 – Cultural Resource Testing Plan Procedures

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit No. 5-15-1751 pursuant to the staff recommendation.*

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

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

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

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

possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. Final Habitat Restoration and Monitoring Plan for Onsite and Offsite Mitigation

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, a final detailed restoration and monitoring plan for all impacts to sensitive biological resources. Said plan shall be in substantial conformance with the Conceptual Restoration Plan prepared by AECOM and dated September 5, 2014 and updated July 15, 2015, and shall be prepared by a qualified restoration ecologist and include, at a minimum, the following:

1. A baseline assessment, including photographs, of the current physical and ecological condition of the proposed restoration site, including, as appropriate, a wetland delineation conducted according to the definitions in the Coastal Act and the Commission's Regulations, a description and map showing the area and distribution of vegetation types, and a map showing the distribution and abundance of sensitive species. Existing vegetation, wetlands, and sensitive species shall be depicted on a map that includes the footprint of the proposed restoration.
2. A description of the goals of the restoration plan, including, as appropriate, topography, hydrology, vegetation types, sensitive species, and wildlife usage.
3. A description of planned site preparation and invasive plant removal;
4. A restoration plan including the planting palette (seed mix and container plants), planting design, source of plant material, plant installation, erosion control, irrigation, and remediation. The planting palette shall be made up exclusively of native plants that are appropriate to the habitat and region and that are grown from seeds or vegetative materials obtained from local natural habitats so as to protect the genetic makeup of natural populations. Horticultural varieties shall not be used.
5. A plan for documenting and reporting the physical and biological "as built" condition of the mitigation site within 30 days of completion of the initial restoration activities. This is a simple report describing the field implementation of the approved restoration program in narrative and photographs, and reporting any problems in the implementation and their resolution. The "as built" assessment and report shall be completed by a qualified biologist, who is independent of the installation contractor.
6. A plan for interim monitoring and maintenance, including:
 - a. A schedule
 - b. Interim performance standards
 - c. A description of field activities
 - d. The monitoring period (Not less than 5 years).
- e. Provision for submission of annual reports of monitoring results to the Executive Director for the duration of the required monitoring period, beginning the first year after submission of the

“as-built” report. Each report shall be cumulative and shall summarize all previous results. Each report shall document the condition of the restoration with photographs taken from the same fixed points in the same directions. Each report shall also include a “Performance Evaluation” section where information and results from the monitoring program are used to evaluate the status of the restoration project in relation to the interim performance standards and final success criteria.

7. Final Success Criteria for each habitat type, including, as appropriate:
 - a. species diversity
 - b. total ground cover of vegetation
 - c. vegetative cover of dominant species and definition of dominants (e.g., Army Corps of Engineers “50/20” rule, enumeration, species with greater than a threshold of abundance, etc.)
 - d. wildlife usage
 - e. hydrology
 - f. presence and abundance of sensitive species or other individual “target” species

8. The method by which “success” will be judged, including:
 - a. Type of comparison. Possibilities include comparing a census of the restoration site to a fixed standard derived from literature or observations of natural habitats, comparing a census of the restoration site to a sample from a reference site, comparing a sample from the restoration site to a fixed standard, or comparing a sample from the restoration site to a sample from a reference site.
 - b. Identification and description, including photographs, of any reference sites that will be used.
 - c. Test of similarity. This could simply be determining whether the result of a census was above a predetermined threshold. Generally, it will entail a one- or two-sample t-test.
 - d. The field sampling design to be employed, including a description of the randomized placement of sampling units and the planned sample size.
 - e. Detailed field methods.
 - f. Specification of the maximum allowable difference between the restoration value and the reference value for each success criterion
 - g. Where a statistical test will be employed, a statistical power analysis to document that the planned sample size will provide adequate statistical power to detect the maximum allowable difference. Generally, sampling should be conducted with sufficient replication to provide 90% power with $\alpha=0.10$ to detect the maximum allowable difference. This analysis will require an estimate of the sample variance based on the literature or a preliminary sample of a reference site. Power analysis software is available commercially and on the world wide web (e.g., <http://www.stat.uiowa.edu/~rlenth/Power/index.html>).
 - h. A statement that final monitoring for success will occur after at least 3 years with no remediation or maintenance activities other than weeding.

9. Provision for submission of a final monitoring report to the Executive Director at the end of the final monitoring period. The final report must be prepared by a qualified restoration

ecologist. The report must evaluate whether the restoration site conforms to the goals and success criteria set forth in the approved final restoration program.

10. Provision for possible further action. If the final report indicates that the restoration project has been unsuccessful, in part or in whole, based on the approved success criteria, the applicant shall submit within 90 days a revised or supplemental restoration program to compensate for those portions of the original program which did not meet the approved success criteria. The revised restoration program shall be processed as an amendment to this coastal development permit unless the Executive Director determines that no permit amendment is legally required.

The permittee shall undertake mitigation and monitoring in accordance with the approved final, revised upland mitigation plan. Any proposed changes to the approved final, revised plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Construction Staging Plan

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a plan for the review and approval of the Executive Director which indicates that the construction staging area(s) will avoid impacts to public access to the bay and avoid impacts to sensitive habitat areas.

1. The construction staging plan shall demonstrate:

- a. Construction equipment shall not be stored outside the staging area
- b. Habitat (vegetated) areas shall not be used for staging or storage of equipment
- c. The staging area for construction of the project shall not obstruct access to Upper Newport Bay Ecological Reserve

2. The plan shall include, at a minimum, the following components:

A site plan that depicts:

- (1) limits of the staging area(s)
- (2) construction corridor(s)
- (3) construction site
- (4) location of construction fencing and temporary job trailers

B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. Biological Monitor

By acceptance of this permit, the applicant agrees that:

An appropriately trained biologist shall monitor the proposed development for disturbance to sensitive species or habitat area. At minimum, monitoring shall occur once a week during any week in which construction occurs. Daily monitoring shall occur during development which could significantly impact biological resources such as dredging or construction that could result in disturbances to the Raptors or sensitive species in the area. Based on field observations, the biologist shall advise the applicant regarding methods to minimize or avoid significant impacts, which could occur upon sensitive species or habitat areas. The applicant shall not undertake any activity, which would disturb habitat area unless specifically authorized and mitigated under this coastal development permit or unless an amendment to this coastal development permit for such disturbance has been obtained from the Coastal Commission.

4. Construction Timing

By acceptance of this permit, the applicant agrees that:

1. If construction activities, including but not limited to grading, construction, restoration activities, or other disturbance are to occur between February 15th and August 31st, a pre-construction nesting bird survey shall be conducted to determine the presence of active nests within 500 feet of the construction activities. The nesting bird surveys shall be completed no more than 72 hours prior to any construction activities. All ground-disturbance activities within 500 feet of raptor nests or other active nests or as specified below shall be halted until that nesting effort is finished.
2. The monitor shall review and verify compliance with these nesting boundaries and shall verify when the nests have been naturally vacated for the season, with no human interference. Work may resume when no other active nests are found. Upon completion of the survey and any follow-up construction avoidance management, a report shall be prepared and submitted to the Executive Director.
3. Appropriate noise-abatement measures (e.g., sound walls) shall be implemented to ensure that noise levels are less than 60 A-weighted decibels (dBA) at the active nest of a listed species, as determined by the biological monitor. This shall be verified by weekly noise monitoring at an equivalent location conducted by a qualified Acoustical Engineer during the breeding season (February 1 to September 15) or as otherwise determined by a qualified biological monitor based on nesting activity.

The applicant further agrees that:

- Construction during Breeding and Non-Breeding Seasons for Sensitive Species
4. Activities involving disturbance or removal of riparian vegetation shall be prohibited during the least Bell's vireo breeding season (March 15 to September 15).
 5. Vegetation impacts shall be monitored by a qualified Biologist. The Biological Monitor shall delineate (by the use of orange snow fencing or lath and ropes/flagging) all areas adjacent to the impact area that contain habitat suitable

for sensitive bird occupation (i.e., California gnatcatcher, Belding savannah sparrow, light-footed clapper rail) and raptors.

6. Prior to and during any disturbance of suitable gnatcatcher habitats outside the gnatcatcher breeding season, the biologist shall locate any individual gnatcatchers on-site and direct clearing to begin in an area a minimum of 300 feet away from the birds. No site disturbance shall occur until the individual birds have naturally vacated the area without human interference. It shall be the responsibility of the permittee to assure that gnatcatchers shall not be directly injured or killed by impacts to Coastal Sage Scrub or other Scrub communities.
7. Prior to initiating vegetation impacts or project construction, the biological monitor shall meet on-site with the construction manager or other individual(s) with oversight and management responsibility for the day- to-day activities on the construction site to discuss implementation of the relevant avoidance and minimization mitigation measures for gnatcatchers. The biologist shall meet as needed with the construction manager (e.g., when new crews are employed) to discuss implementation of these measures.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved revised final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

5. Construction and Pollution Prevention Plan

PRIOR TO THE COMMENCEMENT OF CONSTRUCTION the applicant shall submit, for the review and written approval of the Executive Director, a final Construction and Pollution Prevention Plan prepared and certified by a qualified licensed professional. The final Plan shall demonstrate that all construction, including, but not limited to, clearing, grading, staging, storage of equipment and materials, or other activities that involve ground disturbance; building, reconstructing, or demolishing a structure; and creation or replacement of impervious surfaces, complies with the following requirements:

A. Minimize Erosion and Sediment Discharge. During construction, erosion and the discharge of sediment off-site or to coastal waters shall be minimized through the use of appropriate Best Management Practices (BMPs), including:

1. Land disturbance during construction (e.g., clearing, grading, and cut-and-fill) shall be minimized, and grading activities shall be phased, to avoid increased erosion and sedimentation.
2. Erosion control BMPs (such as mulch, soil binders, geotextile blankets or mats, or temporary seeding) shall be installed as needed to prevent soil from being transported by water or wind. Temporary BMPs shall be implemented to stabilize soil on graded or disturbed areas as soon as feasible during construction, where there is a potential for soil erosion to lead to discharge of sediment off-site or to coastal waters.
3. Sediment control BMPs (such as silt fences, fiber rolls, sediment basins, inlet protection, sand bag barriers, or straw bale barriers) shall be installed as needed to trap and remove eroded sediment from runoff, to prevent sedimentation of coastal waters.
4. Tracking control BMPs (such as a stabilized construction entrance/exit, and street sweeping) shall be installed or implemented as needed to prevent tracking sediment off-site by vehicles leaving the construction area.

5. Runoff control BMPs (such as a concrete washout facility, dewatering tank, or dedicated vehicle wash area) that will be implemented during construction to retain, infiltrate, or treat stormwater and non-stormwater runoff.

B. Minimize Discharge of Construction Pollutants. The discharge of other pollutants resulting from construction activities (such as chemicals, paints, vehicle fluids, petroleum products, asphalt and cement compounds, debris, and trash) into runoff or coastal waters shall be minimized through the use of appropriate BMPs, including:

1. Materials management and waste management BMPs (such as stockpile management, spill prevention, and good housekeeping practices) shall be installed or implemented as needed to minimize pollutant discharge and polluted runoff resulting from staging, storage, and disposal of construction chemicals and materials. BMPs shall include, at a minimum:

- a. Covering stockpiled construction materials, soil, and other excavated materials to prevent contact with rain, and protecting all stockpiles from stormwater runoff using temporary perimeter barriers.
- b. Cleaning up all leaks, drips, and spills immediately; having a written plan for the clean-up of spills and leaks; and maintaining an inventory of products and chemicals used on site.
- c. Proper disposal of all wastes; providing trash receptacles on site; and covering open trash receptacles during wet weather.
- d. Prompt removal of all construction debris from the wetland area.
- e. Detaining, infiltrating, or treating runoff, if needed, prior to conveyance off-site during construction.

2. Fueling and maintenance of construction equipment and vehicles shall be conducted off site if feasible. Any fueling and maintenance of mobile equipment conducted on site shall take place at a designated area located at least 50 feet from coastal waters, drainage courses, and storm drain inlets, if feasible (unless those inlets are blocked to protect against fuel spills). The fueling and maintenance area shall be designed to fully contain any spills of fuel, oil, or other contaminants. Equipment that cannot be feasibly relocated to a designated fueling and maintenance area (such as cranes) may be fueled and maintained in other areas of the site, provided that procedures are implemented to fully contain any potential spills.

C. Minimize Other Impacts of Construction Activities. Other impacts of construction activities shall be minimized through the use of appropriate BMPs, including:

1. The damage or removal of non-invasive vegetation (including trees, native vegetation, and root structures) during construction shall be minimized, to achieve water quality benefits such as transpiration, vegetative interception, pollutant uptake, shading of waterways, and erosion control.

2. Soil compaction due to construction activities shall be minimized, to retain the natural stormwater infiltration capacity of the soil.

3. The use of temporary erosion and sediment control products (such as fiber rolls, erosion control blankets, mulch control netting, and silt fences) that incorporate plastic netting (such as polypropylene, nylon, polyethylene, polyester, or other synthetic fibers) shall be avoided, to minimize wildlife entanglement and plastic debris pollution.

D. Construction In, Over, or Adjacent to Coastal Waters and Habitat. Construction taking place adjacent to coastal waters and habitat shall protect the coastal waters and habitat by implementing additional BMPs, including:

1. No construction equipment or materials (including debris) shall be allowed at any time outside of the project area.
2. All work shall take place during daylight hours, and lighting of the wetlands is prohibited.
3. Tarps or other devices shall be used to capture debris, dust, oil, grease, rust, dirt, fine particles, and spills to protect the quality of coastal waters.
4. All erosion and sediment controls shall be in place prior to the commencement of construction, as well as at the end of each workday. At a minimum, if grading is taking place, sediment control BMPs shall be installed at the perimeter of the construction site to prevent construction-related sediment and debris from entering the waterways, natural drainage swales, and the storm drain system.

E. Manage Construction-Phase BMPs. Appropriate protocols shall be implemented to manage all construction-phase BMPs (including installation and removal, ongoing operation, inspection, maintenance, and training), to protect coastal water quality.

F. Construction Site Map and Narrative Description. The Construction and Pollution Prevention Plan shall include a construction site map and a narrative description addressing, at a minimum, the following required components:

1. A map delineating the construction site, construction phasing boundaries, and the location of all temporary construction-phase BMPs (such as silt fences, inlet protection, and sediment basins).
2. A description of the BMPs that will be implemented to minimize land disturbance activities, minimize the project footprint, minimize soil compaction, and minimize damage or removal of non-invasive vegetation. Include a construction phasing schedule, if applicable to the project, with a description and timeline of significant land disturbance activities.
3. A description of the BMPs that will be implemented to minimize erosion and sedimentation, control runoff and minimize the discharge of other pollutants resulting from construction activities. Include calculations that demonstrate proper sizing of BMPs.
4. A description and schedule for the management of all construction-phase BMPs (including installation and removal, ongoing operation, inspection, maintenance, and training). Identify any temporary BMPs that will be converted to permanent post-development BMPs.

6. Cultural Resource Treatment and Monitoring Plan

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and approval of the Executive Director an archeological/cultural resources monitoring plan prepared by a qualified professional, which shall incorporate the following measures and procedures:

1. The monitoring plan shall ensure that any prehistoric archaeological or paleontological or Native American cultural resources that are present on the site and could be impacted by the approved development will be identified so that a plan for their protection can be developed. To this end, the cultural resources monitoring plan shall require that archaeological and Native American monitors be present during all grading

operations and subsurface construction activity that has the potential to impact cultural resources.

There shall be at least one pre-grading conference with the project manager and grading contractor at the project site in order to discuss the potential for the discovery of archaeological/cultural or paleontological resources.

2. Archaeological monitor(s) qualified by the California Office of Historic Preservation (OHP) standards, Native American monitor(s) with documented ancestral ties to the area appointed consistent with the standards of the Native American Heritage Commission (NAHC), and the Native American most likely descendent (MLD) when State Law mandates identification of a MLD, shall monitor all project grading and subsurface construction activity (such as trenching for utilities) that has the potential to impact cultural resources, as required in the approved cultural resources monitoring plan required above.
3. The permittee shall provide sufficient archeological and Native American monitors to assure that all project grading and subsurface construction activities that has any potential to uncover or otherwise disturb cultural deposits is monitored at all times;
4. If any archaeological or paleontological, i.e. cultural deposits, are discovered, including but not limited to skeletal remains and grave-related artifacts, artifacts of traditional cultural, religious or spiritual sites, or any other artifacts, all construction shall cease within at least 50 feet of the discovery, and the permittee shall carry out significance testing of said deposits in accordance with the attached "Cultural Resources Significance Testing Plan Procedures" (Appendix 1). The permittee shall report all significance testing results and analysis to the Executive Director for a determination of whether the deposits are significant.

G. If the Executive Director determines that the discovery is significant, the permittee shall seek an amendment from the Commission to determine how to respond to the discovery and to protect both those and any further cultural deposits that are encountered. Development within at least 50 feet of the discovery shall not recommence until an amendment is approved, and then only in compliance with the provisions of such amendment.

7. Other Agency Approvals

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall provide to the Executive Director a copy of each permits issued by the California Department of Fish and Wildlife, Regional Water Quality Control Board, US Army Corps of Engineers, the US Fish and Wildlife Service, and the State Lands Commission (hereinafter "other resource agencies"), or a letter of permission, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the other resource agencies. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND LOCATION

The proposed project consists of drainage improvements and erosion repair within Eastbluff on the eastern side of Upper Newport Bay. Extensive erosion of Eastbluff along Back Bay Drive has occurred over time due to the failure of the existing drainage facilities (i.e., a 36-inch Corrugated Steel Pipe, and a 30-inch Corrugated Steel Pipe on the face of the bluff). The failure of these drainage facilities has exposed and suspended the existing 30 inch Corrugated Steel Pipe at the face of the bluff, and has resulted in a significant erosional gully which has become a safety hazard, and has resulted in the conveyance of sediment into Upper Newport Bay. To repair the existing bluff drainage facilities, the applicant proposes to remove approximately 162 linear feet of 30-inch Corrugated Steel Pipe, and install approximately 450 linear feet of 48-inch High-Density Polyethylene pipe, a catch drain protected by approximately 96 square feet of un-grouted rip-rap, and a sub-drain at the bottom of the erosional gully that is approximately 174 linear feet. Approximately 1,800 cubic yards of fill material will be imported to fill in areas of existing bluff erosion, and 9,800 square feet of jute matt erosion protection will be installed. Onsite habitat restoration and off-site mitigation are also proposed.

The project site involves approximately 6.03 acres within Eastbluff, located on the eastern edge of Upper Newport Bay within the City of Newport Beach on land owned by the County of Orange. The project site is located southeast of the Costa Mesa Freeway, south of the SR-73, and west of Jamboree Road (**Exhibit 1**). Specifically, the project site is located just west of East Bluff Elementary School and Vista Del Oro, and east of Back Bay Drive in the City of Newport Beach. The project site is primarily surrounded by open space and some residential land uses, with the nearest residences located approximately 100 feet to the east (**Exhibit 2**). An existing 36-inch Corrugated Steel Pipe (CSP) storm drain line conveys residential run-off from the surrounding neighborhood, and runs underground through a large greenbelt near the top of Eastbluff, which is owned by the City of Newport Beach, and then outlets approximately 200 feet west of an existing service road on the bluff, which is property owned by the County of Orange. The 36-inch CSP bluff drain line has no outlet structure and currently discharges into an earthen depression approximately 16 feet wide, 25 feet long, and 6 feet deep, containing unspecified riprap. Discharges from the 36-inch CSP flow from this earthen depression along an approximately 220 linear foot surface drainage swale to the edge of the bluff where it is intended to enter the inlet of an existing 30-inch CSP bluff drain line, which runs approximately 125 linear feet and outlets to Upper Newport Bay. However, due to heavy storm flows from the 2004/2005 season, as well as storms from subsequent years, the inlet was blocked with trash and debris, resulting in the diversion of storm flows around the 30-inch CSP, (which was intended to carry surface flow directly from the upper residential area to a culvert underneath Back Bay Drive), causing the storm water to bypass the inlet of the 30-inch CSP, and flow down the bluff face, causing a steep erosional gully. The failure of these drainage facilities and resulting erosion has exposed and suspended a portion of the existing 30-inch CSP at the bluff face (**Exhibit 3**), as well as conveyed sediment across Back Bay Drive into Upper Newport Bay. Back Bay Drive and Upper Newport Bay are located at the bottom of the bluff and are subject to additional erosion-related sedimentation in the absence of permanent improvements at the project site.

To eliminate the existing safety hazard and potential collapse of the bluff, and reduce future erosion of the bluff in the vicinity of the project site, the applicant proposes to remove and reconstruct the existing bluff drainage facilities, repair the eroded areas, and provide permanent erosion protection for the bluff. The applicant also proposes to restore the impacted habitat areas with appropriate native vegetation, and off-site mitigation for permanent impacts to the depressional swale wetland. Construction of the proposed project will require a disturbance footprint of approximately 1.07 acre (**Exhibit 2**). For purposes of describing the construction activities, they can be divided into “upper portion” and “lower portion”, respectively.

Upper Portion

The applicant proposes to clear and grub the construction access and work areas along the upper portion of the bluff, and to excavate a small, temporary detention basin, located near the existing 36-inch CSP storm drain outlet, that will collect any discharge, and pump it down the slope to the new drain line near Back Bay Drive. The applicant proposes to trench approximately 300 linear feet between the existing storm drain outlet and bluff drain inlet to install a new 48 inch High-Density Polyethylene (HDPE) pipe, and trench for and install a new 18-inch CSP to connect to the existing 18-inch CSP culvert to the new 48-inch HDPE pipe. All trenching and excavation is proposed to be backfilled with natural material after construction. The applicant also proposes to install a catch drain, protected by approximately 96 square feet of non-grouted riprap, located near the edge of the bluff to collect sheet flow and direct it into the new 48-inch HDPE pipe, away from the bluff face, and install erosion control measures consisting of approximately 9,800 square feet of jute matt erosion protection along the top of the bluff, overlaying the newly trenched 48-inch HDPE pipe segment.

Lower Portion

The applicant proposes to clear and grub the construction access and work areas along the lower portion of the bluff, and install an approximately 174 linear foot sub-drain at the bottom of the erosional gully within East bluff. The applicant proposes to remove the existing 30-inch CSP bluff drain line and replace it with 298 linear feet of new 48-inch HDPE pipe, which will connect to the newly trenched 48-inch HDPE pipe segment proposed to be installed in the upper portion of the bluff. The applicant then proposes to import approximately 1,800 cubic yards of clean, certified fill material to fill in areas of existing bluff erosion, and remove approximately 10 cubic yards of an interfering portion of the existing concrete swale which is located at the bottom of the bluff adjacent to Back Bay Drive to accommodate the new fill slope.

Construction access will be from an existing gravel service road which is located in the upper portion of the project area adjacent to the drainage facilities, which will be accessed from the paved Back Bay Drive (**Exhibit 2**). Construction equipment and debris is proposed to be stored within the proposed project construction limits or on the existing service road. Public access along Back Bay Drive would be maintained throughout the entire construction period and would be directed by cones and signage at the intersection of Back Bay Drive and the existing service road. Although the existing service road is not a designated public-use road, residents from the adjacent residential areas on East Bluff use the service road for pedestrian access to Back Bay Drive. This service road will need to be closed to the public during the entire construction period, which will require a total of 20 working days over a period of 2.5 months.

The proposed project is anticipated to impact a total of approximately 1.04 acre of habitat, including 0.89 acre of chaparral, coastal sage scrub and ornamental vegetation; and 0.15 acre of riparian herbaceous and southern willow scrub. The proposed project will also impact 0.12 acre of riparian wetland, which has also been described as a drainage swale wetland. Although the existing earthen drainage swale between the 36-inch CSP and the 30-inch CSP flows over a very gradual slope, the swale functions more like a depression, where water tends to pond for weeks and months due to the failed drainage pipe in the lower portion of the bluff. Over time, the failure of the drainage facilities has resulted in the creation of a drainage swale wetland, which is considered degraded due to the dominance of non-native, ornamental plants and the frequency of human recreational uses.

The Eastbluff Drainage Repair Project proposes to eliminate the existing safety hazard of the steep eroded gully and reduce future erosion of the bluff in the vicinity of the project site by removing and reconstructing existing bluff drainage facilities, repairing (i.e. filling) the eroded areas, and providing additional permanent erosion protection. The project will also restore the upland vegetation with vegetation that is consistent with the surrounding area, thereby expanding the habitat and improving the habitat value of the upland habitats. The project will address existing environmental problems resulting from the failed drainage facilities within Eastbluff, including the uncontrolled erosion of the bluff and associated sedimentation, the dominant presence of non-native invasive plant species, resulting in restoration of native habitats.

Public access along Back Bay Drive will be maintained throughout the entire construction period and would be directed by cones and signage at the intersection of Back Bay Drive and the existing service road. Although the existing service road is not a designated public-use road, residents from adjacent residential areas on East Bluff use the service road for pedestrian access to Back Bay Drive from the surrounding development in the upland areas. Although this service road would need to be closed to the public during the entire construction period, there are several alternative routes pedestrians can use to access Back Bay Drive from the upland areas.

B. OTHER AGENCY APPROVALS

The applicant has received approval from or is in the process of requesting approval from the following agencies: California Department of Fish & Wildlife (Streambed Alteration Agreement); California Regional Water Quality Control Board (Clean Water Act Section 401 Water Quality Standards Certification, Santa Ana Regional Water Quality Board); and, the U.S. Army Corps of Engineers.

C. HABITAT

Section 30233(a) of the Coastal Act states:

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

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*

(3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(6) Restoration purposes.

(7) Nature study, aquaculture, or similar resource dependent activities.

Section 30240 of the Coastal Act states, in relevant part:

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

In addition, the City of Newport Beach has a certified Land Use Plan (LUP), which is used as guidance. LUP policy 4.2.3-11 requires a minimum mitigation ratio of 3:1 (mitigation:impact) for projects that result in allowable impacts to wetlands.

Coastal Act Section 30233 limits development in wetlands to the seven uses enumerated in that section. Development under Section 30233 must also be the least environmentally damaging feasible alternative, and provide adequate mitigation to offset any adverse environmental effects. Development under Section 30233 must also incorporate the best mitigation measures feasible. These requirements are echoed in the City's certified LUP policies.

According to the *Mitigated Negative Declaration/Initial Study* conducted in July, 2015, the storm drain line that conveys residential run-off from the surrounding neighborhood was constructed sometime after 1967, where no natural stream channel existed. However, a feature of the drainage facilities included an approximately 289 linear foot natural drainage swale between the outlet of the 36-inch CSP in the upper portion of the bluff, and the inlet for the 30-inch CSP in the lower portion of the bluff, which was intended to carry stormwater down the bluff approximately 125 linear feet to the Upper Newport Bay. Despite the very gradual slope of the bluff, (approximately 2:1), the drainage swale functions more like a depression in the landscape, where water tends to pond for weeks and months in part due to the blockage of the 30-inch CSP inlet. A wetland Delineation was performed for the subject site on June 6, 2014 (*Jurisdictional Delineation Letter Report for the Upper Newport Bay – East Bluff Erosion Repair Project, AECOM, September 5, 2014 and updated June 15, 2015*). Based on the results of the site visit, it was determined that a wetland was present, because the drainage swale within the upper area of the East Bluff project site contained standing water, wetland vegetation, and hydric soils. This “drainage swale wetland”, consisting of approximately 0.12 acre of degraded wetland riparian vegetation, is considered degraded due to the dominance of non-native, ornamental plants and the frequency of human recreational uses.

A habitat assessment was conducted for the project area (*Biological Resources Letter Report for the Upper Newport Bay – East Bluff Erosion Repair Project, AECOM, September 5, 2014 and updated*

July 15, 2015), which included two in-field assessments conducted on 6/6/14 and 7/14/14. The habitat assessment found that although the project area could potentially contain special status plant and wildlife species because a total of 29 special-status plant species and 10 special-status wildlife species have been historically recorded in the project location, no special-status plant or wildlife species were observed within the study area during the in-field assessments. In addition, the *Biological Resources Letter* identified the project site as providing potentially suitable foraging and cover habitat for the California Gnatcatcher, although none were observed in-field.

Impacts

All project staging and stockpiling is proposed to occur within the proposed limits of disturbance (**Exhibit 2**). The proposed project, including the grading of the upper portion, excavation of the existing stormwater pipes, burial of new stormwater pipes, and bluff restoration activities is anticipated to impact a total of approximately 1.04 acre of habitat, including 0.89 acre of chaparral, coastal sage scrub, and ornamental vegetation; and 0.15 acre of riparian herbaceous and southern willow scrub (**Exhibit 5**). As discussed, the proposed project will also impact 0.12 acre of riparian wetland. Although impacts will be restored to approximately the same location, a large portion of the flow would be redirected into the new pipe, rather than continuing through the drainage swale. Although the pipe will be buried and the swale area will remain after completion of construction, urban runoff will no longer flow into the upper area from the pipe outlet, and would bypass the upper and lower areas. Although the drainage swale would still receive precipitation, adjacent sheet flow, as well as stormwater flowing through an adjacent culvert, (which flows from the east, under the gravel access road), the amount of water entering the drainage swale would be significantly reduced as a result of this project. Therefore, a more xeric (dry) type of riparian habitat is more appropriate and sustainable in this location, because the same type of riparian wetland habitat cannot be sustained onsite as a result of the change in hydrology related to the proposed project.

Allowable Use

Section 30233 of the Coastal Act limits development within wetlands, such as at the subject site, to seven specific uses. One of the uses under Section 30233 for which development within wetlands is allowed, is an incidental public service use, including but not limited to, burying pipes. Another allowable use for development within wetlands is restoration. The proposed project will result in burying new stormwater pipes for the purposes of repairing existing drainage facilities, and the applicant proposes to re-vegetate the bluff with appropriate native vegetation and enhancement through removal of non-native, invasive plants, thereby improving the quality of the surrounding upland habitat from disturbed and ornamental/non-native vegetation to coastal sage scrub after post-project restoration. Thus, the proposed project is an allowable use. Therefore, the proposed development is consistent with Section 30233 of the Coastal Act with regard to uses allowed within wetlands.

Alternatives

The applicant considered two main options for this project. Option one was to provide erosion control for the upper portion, and a new pipe for the lower portion. This option would also include repairing the bluff slope in the lower area of the bluff. Option two was to provide a new pipe which would carry all stormwater inputs from the City of Newport Beach from where the stormwater enters the site in the upper area of the bluff to Back Bay Drive, which is the end of the lower area. This option also included repairing the bluff slope in the lower area. Overall, the upper and lower

areas are independent, meaning that either one could have been built and served *part* of the overall purpose of the project, however the County determined that considering the two areas as independent does not necessarily meet the goal of the project to improve stormwater drainage and reduce the County's liability by improving safety of recreational users. Just as in the project description, for purposes of describing the alternatives, they can be divided into "upper portion" and "lower portion" options, respectively.

Upper Portion Alternatives

The upper portion of the project area is currently a degraded, unimproved area. This area was evaluated under two separate potential improvement/repair variations. One variation included re-grading the existing swale area, in addition to installing erosion control measures and providing an outlet riser/structure at the downstream end of the City of Newport Beach's storm drain system (i.e., a 36-inch CSP that is currently below the grade of the existing drainage swale). Additionally, a new headwall would be installed at the downstream end of the swale at the beginning of the existing 30-inch CSP pipe that is currently located within the East Bluff Slope. This option was estimated to be more costly than the second option, which was a new storm drain line.

The second variation for the upper portion would have been to install a new 48-inch HDPE drain line within the swale area from the terminus of the existing City storm drain system to the beginning of the existing 30-inch CSP in the upper area of the slope. This work would include installing two new manhole structures and a small inlet to collect local drainage into the new storm drain. In order to install the pipe, the drainage swale would need to be partially filled in, in order to provide sufficient coverage over the pipe. This option was determined to be insufficient as it could not withstand the 100 year flood event.

Lower Portion Alternatives

The lower area is the bluff erosion area. Work in this area includes repairing of the bluff erosion by filling in the eroded area and installing a sub-drain. One option allowed for repairing the existing drain line in place. This option would not require excavation in the existing slope and be less invasive to the existing vegetation, however this option would not address the limited capacity of the existing 30-inch CSP line and the potential of larger storms not being able to be contained within the system and potential damage that could occur to the newly repaired bluff slope. The second option was to replace the existing line to Back Bay Drive which would include upsizing the new line sufficiently to carry either the 25- or 100-year storm utilizing HDPE material would provide for a long service life and improved hydraulic performance.

Based upon the research and documentation prepared for this project, Saxon Engineering (2014, 2015) recommended to repair the bluff erosion by filling it in and to replace the existing 30-inch CSP in the slope with a 36-inch to 48-inch HDPE line. Additionally, they recommended installing a new 48-inch HDPE line and associated structures in the upper drainage swale area because the creation of a new system would provide the ability to handle a larger storm event and eliminate the potential for erosion occurring that would potentially end up in the Back Bay. Additionally, this system would reduce maintenance costs to the County and would provide a system that would reflect a more current and complete design approach than the one taken when the existing system was designed and constructed back in the 1970's. Since the proposed project would reduce or eliminate safety hazards at the site that are caused by the imminent threat of continued

bluff erosion (and potential collapse), and the bluff erosion problem would continue to degrade, which could result in losing the entire upper and lower portions of the bluff, the alternatives analysis submitted by the applicant demonstrates that the proposed project is the least environmentally damaging alternative. Therefore, the proposed development is consistent with Section 30233 of the Coastal Act with regard to alternatives.

Mitigation

Section 30233 also requires that any development within wetlands provide mitigation to minimize any unavoidable adverse environmental effects. Repairs to the drainage facilities and restoration of the bluff will result in some impacts to surrounding habitat, and to mitigate for permanent and temporary impacts to southern willow scrub and coastal sage scrub habitat onsite, the applicant proposes to re-vegetate the bluff with appropriate native vegetation, and to enhance the surrounding habitat through removal of approximately 1.34 acre of non-native plants located adjacent to the drainage swale wetland. In addition, the applicant proposes to mitigate for the permanent impacts to the depressional swale riparian wetland habitat off-site, but within Upper Newport Bay through the creation of wetland/riparian habitat adjacent to a freshwater marsh (**Exhibit 6**). Offsite mitigation was necessary in this instance because the change in hydrology onsite (i.e. the significant reduction of stormwater entering the depressional swale) reduced the sustainability of a restored wetland habitat onsite.

The applicant has proposed an *Off-Site Mitigation Plan for the East Bluff Project* which proposes 3:1 mitigation for the project's permanent impacts to riparian wetland habitat (mitigation area to impact area), which is the wetland habitat mitigation ratio required by the City of Newport Beach Certified Land Use Plan. The applicant proposes to create approximately 0.36 acre of riparian wetland habitat (0.12 acre of impacted riparian wetland x 3 = 0.36 acre of mitigation) immediately adjacent to a perennial freshwater marsh at the Newport Valley site, which is owned by the City of Newport Beach and is located 1.5 miles south of the East Bluff Project within the Upper Newport Bay Nature Reserve (**Exhibit 6**).

The mitigation would occur within two 0.18 acre areas occurring along the Northern and Southern edges of the marsh, consisting of installing willow and mulefat cuttings, container plants, and a native herbaceous/native grass seed mix. The cuttings would include at least 225 cuttings per side of the mitigation area. The advantages of this site include a shallow groundwater table (less than three feet), a nearby nursery to contract grow the cuttings before planting, and a volunteer labor force to assist with implementing the plan. The project would be implemented in conjunction with the Coastal commission's Community Based Restoration and Education Program (CBREP), which empowers the public to restore and protect the native biological diversity of Upper Newport Bay. CBREP is a non-profit project of the California Coastal Commission and the Tides Center. Overall, the off-site restoration project will have a net increase of wetland habitat and existing habitat will be enhanced through removal of non-native plants. To ensure the success of both the onsite restoration and off-site mitigation projects are successful, staff is recommending **Special Condition 1** which requires the applicant to submit a finalized Habitat Restoration and Monitoring Plan for the onsite restoration, and a finalized Offsite Mitigation Plan for the East Bluff Project to assure all adverse impacts to habitat are adequately mitigated.

Other Necessary Habitat Protection Measures

As required by the County of Orange in the project Mitigated Negative Declaration (prepared by the County of Orange, July 2015) and to ensure consistency with section 30240 by requiring measures to protect adjacent sensitive habitat, a qualified biologist must be present on-site during vegetation removal. The biologist will have the authority to stop work in the event impacts to special status species outside the project footprint appear likely. In addition, the limits of work must be identified via flagging, staking, or temporary fencing in order to avoid inadvertent impacts to sensitive habitat and/or species beyond the project limits. In order to minimize adverse impacts on adjacent habitat, the Commission imposes **Special Condition 3**, which requires implementation of these habitat protection measures during project construction.

As stated above, sensitive bird species occur in the general project vicinity, including the Upper Newport Bay Ecological Reserve, and surrounding open space such as the subject site. In order to ensure consistency with section 30240 and avoid impacts to these species, impacts during the nesting season must be avoided. If construction activities are to occur during the bird nesting season (January 1 through September 30), a qualified biologist with experience in conducting bird surveys, must conduct nesting bird surveys to identify their presence or absence during construction. If active nests of special status species are identified within the construction area, work shall cease within 500 feet for raptors and within 300 feet for California Department of Fish & Wildlife listed species and/or species of special concern. Work outside these limits, however, may continue. In order to avoid adverse impacts to sensitive bird species during nesting season, the Commission imposes **Special Condition 2**, which requires that surveys for nesting birds be conducted by a qualified biologist when work is undertaken during the nesting bird season and, that if nests are identified, work be directed away from the nests. Only as conditioned, can the project be found to be consistent with Coastal Act Section 30233 regarding protection of wetlands and Section 30240 regarding protection of adjacent sensitive habitat.

D. MARINE RESOURCES/WATER QUALITY

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Furthermore, the following LUP policies, among others, frame the issues of concern for the Eastbluff Remnant Environmental Study area (ESA)¹ as well as measures to address those issues. The LUP states (emphasis added):

Potential impacts to the natural habitats in this study area (Eastbluff Remnant) include erosion, increased human activity, ambient noise, invasive species, and uncontrolled public access.

The goals of the project and its restorative aspects will address several of the impacts noted in the LUP, listed above and restore the quality of the Eastbluff Remnant ESA.

Policy 4.1.3-1: Utilize the following mitigation measures to reduce the potential for adverse impact to ESA natural habitats from sources including, but not limited to, those identified in Table 4.1.1:

C. Prohibit the planting of non-native plant species and require the removal of non-natives in conjunction with landscaping or revegetation projects in natural habitat areas.

H. Participate in implementation of Total Maximum Daily Loads (TMDLs).

I. Participate in programs to control sedimentation into and within Upper Newport Bay.

M. Implement TMDLs into Newport Bay and local watersheds to minimize water quality problems along the coastline.

N. Prohibit invasive species and require removal in new development.

O. Implement and enforce TMDLs in watershed and Upper Newport Bay to improve water quality in Newport Harbor.

Geologic earth aerial views from 1995 to 2013 were reviewed to evaluate the site history and indicate that since 2004, a sediment plume measuring approximately 180 feet wide and extending approximately 100 feet into the Back Bay from the Eastbluff drainage facilities is increasing. Water polluted with sediment can prevent animals from seeing food in the water. Sediment laden water can prevent natural vegetation from growing in that water. Sediment in stream beds can also disrupt the natural food chain by destroying the habitat where the smallest stream organisms live.

The failed drainage facilities are causing erosion and sedimentation during flood events which negatively impact the water quality and habitat quality in the Upper Newport Bay. An element of the Eastbluff Erosion Repair Project is to repair the failing drainage facilities to eliminate the scour and

¹ The Land Use Plan defines Environmental Study Area as "...Relatively large, undeveloped areas containing natural habitats and may be capable of supporting sensitive biological resources."

sedimentation caused by the eroding bluff. Overall, the project will result in improved water quality and habitat for Upper Newport Bay through the removal of sediment entering the bay, and improved habitat quality through post-construction habitat restoration. The project as proposed meets the requirements of these sections and the goals of the project are consistent with the Coastal Act.

The project is consistent with policies above referring to TMDLs in that the project addresses a source of excess sediment entering the bay. In March 1999, the Santa Ana Regional Water Quality Control Board approved a sediment total maximum daily load (TMDL) for the Newport Bay watershed to address water quality impairment due to excessive sedimentation. The TMDL for sediment requires implementation and maintenance of sediment control measures aimed at ensuring that existing habitat acreages of Upper Newport Bay are not significantly changed and sediment discharges in the watershed are reduced by 50% over an established period of time. The long term goal of the sediment TMDL is to reduce the frequency of dredging Upper Newport Bay to once every 20 to 30 years.

Upper Newport Bay is listed as an impaired water body under section 303(d) of the Clean Water Act. According to this classification, the following contaminants occur in both Upper and Lower Newport Bay: pesticides and metals, nutrients, pathogens, and sediments/siltation. The Project intends to help meet these TMDLs by addressing the erosion issues related with the failed drainage facilities, contributing to overall improved water quality and an improved marine environment.

As construction activities may generate debris or sediment that could enter the wetlands, creek or Newport Bay, **Special Condition 8** requires the applicant adhere to construction BMPs. The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction activities on the marine environment. The Commission finds that the proposed development, as conditioned, conforms with Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

C. CULTURAL AND ARCHEOLOGICAL RESOURCES

Section 30244 of the Coastal Act states:

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

Policies of the LUP state:

4.5.1-1: Require new development to protect and preserve paleontological and archaeological resources from destruction, and avoid and minimize impacts to such resources. If avoidance of the resource is not feasible, require an in-situ or site-capping preservation plan or a recovery plan for mitigating the effect of the development.

4.5.1-2: Require a qualified paleontologist/archeologist to monitor all grading and/or excavation where there is a potential to affect cultural or paleontological resources. If grading operations or excavations uncover paleontological/archaeological resources,

require the paleontologist/archeologist monitor to suspend all development activity to avoid destruction of resources until a determination can be made as to the significance of the resources. If resources are determined to be significant, require submittal of a mitigation plan. Mitigation measures considered may range from in-situ preservation to recovery and/or relocation. Mitigation plans shall include a good faith effort to avoid impacts to cultural resources through methods such as, but not limited to, project redesign, in situ preservation/capping, and placing cultural resource areas in open space.

4.5.1-3: Notify cultural organizations, including Native American organizations, of proposed developments that have the potential to adversely impact cultural resources. Allow qualified representatives of such groups to monitor grading and/or excavation of development sites.

4.5.1-5: Where there is a potential to affect cultural or paleontological resources, require the submittal of an archeological/cultural resources monitoring plan that identifies monitoring methods and describes the procedures for selecting archeological and Native American monitors and procedures that will be followed if additional or unexpected archeological/cultural resources are encountered during development of the site. Procedures may include, but are not limited to, provisions for cessation of all grading and construction activities in the area of the discovery that has any potential to uncover or otherwise disturb cultural deposits in the area of the discovery and all construction that may foreclose mitigation options to allow for significance testing, additional investigation and mitigation.

Surveys conducted in connection with the project's EIR did not identify any archaeological or paleontological resources on the site. However, the applicant proposes to have an archaeological monitor present during excavation to inspect the materials. A Cultural Resources Assessment was conducted to assess the potential for adverse impacts to cultural/archaeological/paleontological resources due to the proposed grading and trenching activities related to the proposed project (*Cultural and Paleontological Resources Assessment Upper Newport Bay-East Bluff Drainage Repair Project, prepared by AECOM, November 2014*), which recommended that OC Parks retain a qualified cultural resources specialist and a Native American representative to monitor ground disturbing activities associated with the Project. However, the proposed project does not include archaeological or Native American monitoring. Consistent with the policies of the LUP that require an archeological and cultural resources monitoring plan be submitted, **Special Condition 9** requires submittal of an archeological monitoring plan to ensure that any prehistoric, archaeological or paleontological cultural resources that may be present on the site and could be impacted by the proposed development receive proper protections, preferably avoidance. The plan shall include provisions for both Professional Archeologists and Native American monitors be present during soil disturbance. Additionally, the condition requires that the Native American groups with ties to the area are noticed about the project and are included in the review process before monitoring begins. Cultural history can aid in cultural resource location and identification on a project site and can assist in the preliminary resource investigations prior to site preparation. At a minimum, Native American groups should be notified of impending development through the CEQA process, but in order to maximize protection of archeological and cultural resources, these groups should be invited to participate in preliminary investigations and project review and/or design. Additionally, reports and results of investigations should be shared with these groups for feedback, commentary, and

peer-review. As conditioned for a monitoring plan and protection of the archeological resources, the project is consistent with Section 30244 of the Coastal Act.

D. LOCAL COASTAL PROGRAM (LCP)

Coastal Act section 30604(a) states that, prior to certification of a local coastal program (“LCP”), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. The Coastal Land Use Plan (CLUP) for the City of Newport Beach was effectively certified on May 19, 1982. The certified CLUP was updated on October 2005 and in October 2009. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified CLUP for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare an LCP that is in conformity with the provisions of Chapter 3 of the Coastal Act.

E. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 Title 14 of the California Code of Regulations requires Commission approval of a coastal development permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The County of Orange, the lead agency, performed an Initial Study in July, 2015, pursuant to CEQA. The County concluded that a mitigated negative declaration was appropriate for the proposed project. The Initial Study and mitigated negative declaration indicates that the project would have construction activities that could impact nesting birds, vegetation communities such as riparian and wetland habitat and could temporarily disrupt wildlife movement, as well as impacts to prehistoric resources if found on the site. Additionally, the project would also result in temporary vibration and construction noise which could contribute to potential cumulative impacts. The County adopted mitigation measures to reduce the effects of the project below any level of significance. Conditions of approval of this permit also address the impacts to habitat and wildlife and prehistoric resources and, as conditioned, the project is consistent with the Coastal Act.

As a responsible agency under CEQA, the Commission has determined that the proposed project, as conditioned, is consistent with the enhancement of marine productivity and water quality policies, and the protection of the archeological, and biological resources policies of the Coastal Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX 1

CULTURAL RESOURCES SIGNIFICANCE TESTING PLAN PROCEDURES

A. An applicant seeking to recommence construction following discovery of cultural deposits shall submit a Significance Testing Plan for the review and approval of the Executive Director. The Significance Testing Plan shall identify the testing measures that will be undertaken to determine whether the cultural deposits are significant. The Significance Testing Plan shall be prepared by the project archaeologist(s), in consultation with the Native American monitor(s), and the Most Likely Descendent (MLD) when State Law mandates identification of a MLD. The Executive Director shall make a determination regarding the adequacy of the Significance Testing Plan within 10 working days of receipt. If the Executive Director does not make such a determination within the prescribed time, the plan shall be deemed approved and implementation may proceed.

1. If the Executive Director approves the Significance Testing Plan and determines that the Significance Testing Plan's recommended testing measures are de minimis in nature and scope, the significance testing may commence after the Executive Director informs the permittee of that determination.

2. If the Executive Director approves the Significance Testing Plan but determines that the testing measures therein are not de minimis, significance testing may not recommence until after an amendment to this permit is approved by the Commission.

3. Once the measures identified in the Significance Testing Plan are undertaken, the permittee shall submit the results of the testing to the Executive Director for review and approval. The results shall be accompanied by the project archeologist's recommendation as to whether the deposits are significant. The project archeologist's recommendation shall be made in consultation with the Native American monitors and the MLD when State Law mandates identification of a MLD. The Executive Director shall make the determination as to whether the deposits are significant based on the information available to the Executive Director. If the deposits are found to be significant, the permittee shall prepare and submit to the Executive Director a supplementary Archeological Plan in accordance with subsection B of this condition and all other relevant subsections. If the deposits are found to be not significant, then the permittee may recommence grading in accordance with any measures outlined in the significance testing program.

B. An applicant seeking to recommence construction following a determination by the Executive Director that the cultural deposits discovered are significant shall submit a Supplementary Archeological Plan for the review and approval of the Executive Director. The Supplementary Archeological Plan shall be prepared by the project archaeologist(s), in consultation with the Native American monitor(s), the Most Likely Descendent (MLD) when State Law mandates identification of a MLD, as well as others identified in subsection C below. The Supplementary Archeological Plan shall identify proposed investigation and mitigation measures. The range of investigation and mitigation measures considered shall not be constrained by the approved development plan. Mitigation measures considered may range from in-situ preservation to recovery and/or relocation.

A good faith effort shall be made to avoid impacts to cultural resources through methods such as, but not limited to, project redesign, capping, and placing cultural resource areas in open space. In order to protect cultural resources, any further development may only be undertaken consistent with the provisions of the Supplementary Archaeological Plan.

1. If the Executive Director approves the Supplementary Archaeological Plan and determines that the Supplementary Archaeological Plan's recommended changes to the proposed development or mitigation measures are de minimis in nature and scope, construction may recommence after the Executive Director informs the permittee of that determination.
2. If the Executive Director approves the Supplementary Archaeological Plan but determines that the changes therein are not de minimis, construction may not recommence until after an amendment to this permit is approved by the Commission.

C. Prior to submittal to the Executive Director, all plans required to be submitted pursuant to this special condition, except the Significance Testing Plan, shall have received review and written comment by a peer review committee made up of qualified archeologists convened in accordance with current professional practice. Representatives of Native American groups with documented ancestral ties to the area shall also be given an opportunity to review and submit written comments on the required plans. Names and qualifications of selected peer reviewers shall be submitted for review and approval by the Executive Director. The plans submitted to the Executive Director shall incorporate the recommendations of the peer review committee and Native American representatives or explain why the recommendations were rejected. Furthermore, upon completion of the review process, all plans shall be submitted to the California Office of Historic Preservation (OHP) and the NAHC for their review and an opportunity to comment. The plans submitted to the Executive Director shall incorporate the recommendations of the OHP and NAHC. If the OHP and/or NAHC do not respond within 30 days of their receipt of the plan, the requirement under this permit for that entities' review and comment shall expire, unless the Executive Director extends said deadline for good cause. All plans shall be submitted for the review and approval of the Executive Director.

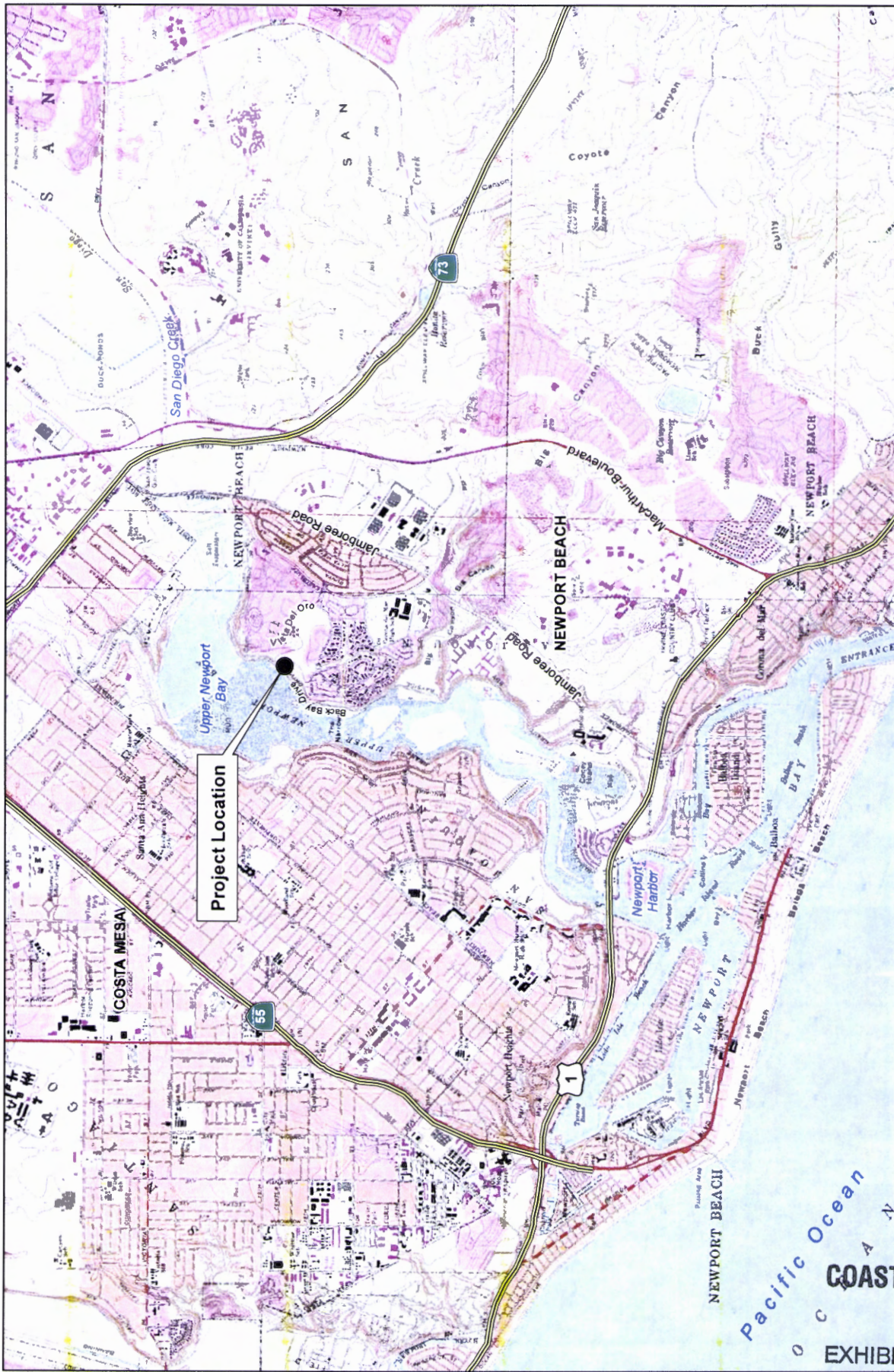


Figure 1
Location Map



Source: USGS Topographic Quadrangles, CalAtlas (2013), OC Parks (2014), and AECOM (2014).

P:\20 Environmental\1893 Upper Newport Bay - 13 - OC CR Agreement\13-09-20 Working Docs - CAD\GIS\Figure 1-Location Map.mxd

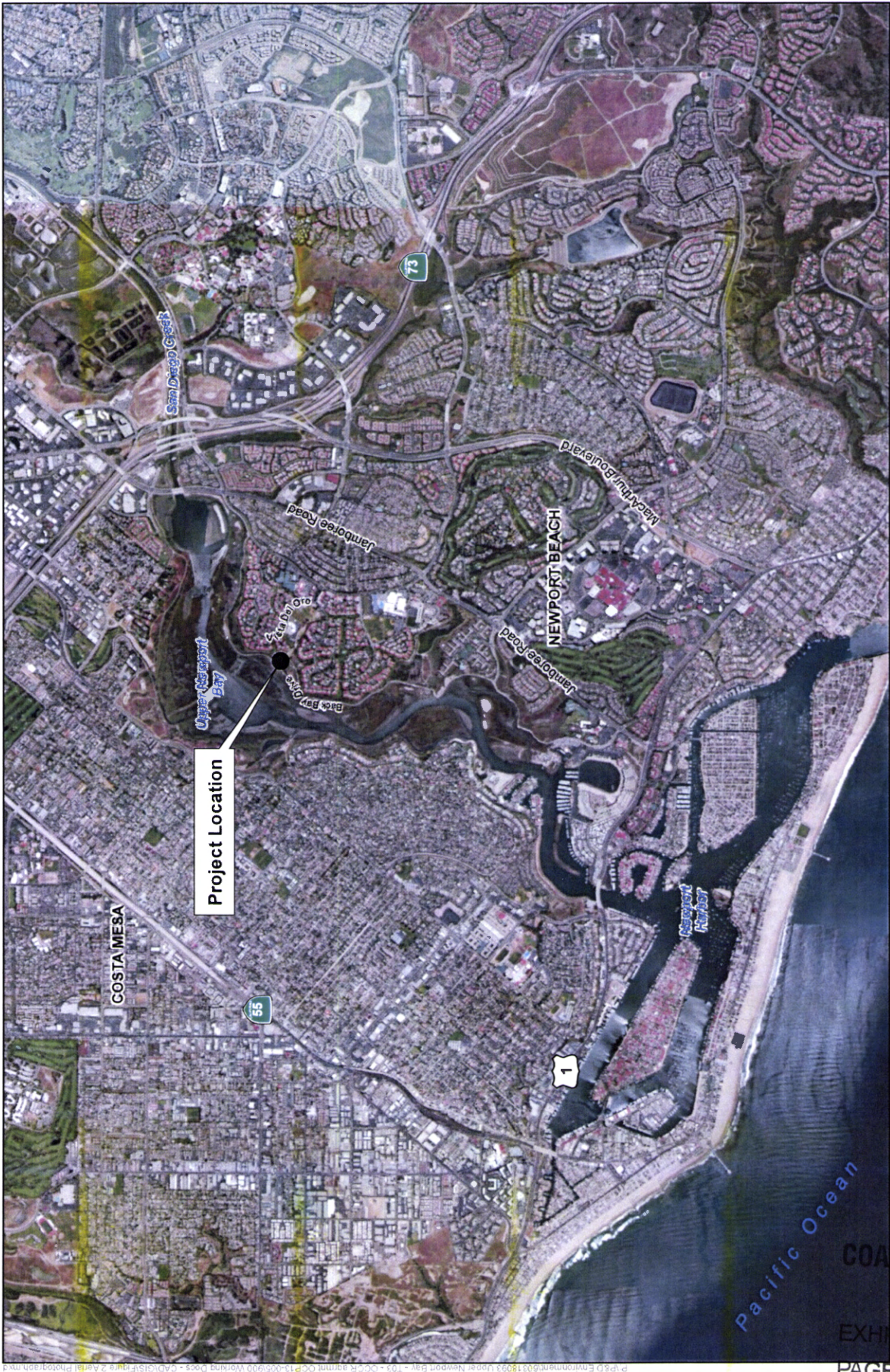


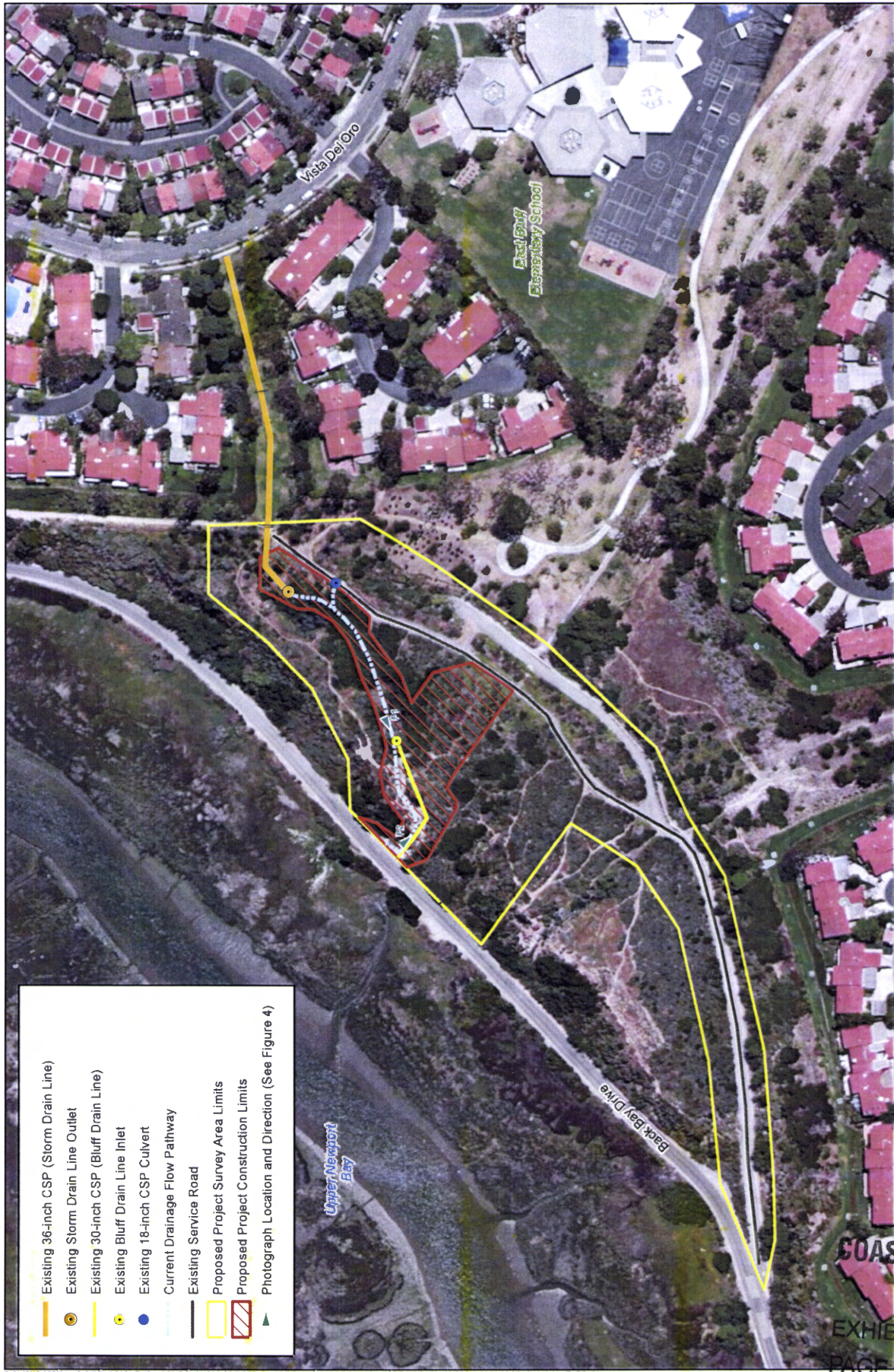
Figure 2
Aerial Photograph



Scale 1" = 47,520 feet
1" = 0.75 mile

Source: ESRI (2014), Google Earth (2014), and AECOM (2014).

Upper Newport Bay-East Bluff Drainage Repair Project



- Existing 36-inch CSP (Storm Drain Line)
- Existing Storm Drain Line Outlet
- Existing 30-inch CSP (Bluff Drain Line)
- Existing Bluff Drain Line Inlet
- Existing 18-inch CSP Culvert
- Current Drainage Flow Pathway
- Existing Service Road
- Proposed Project Survey Area Limits
- Proposed Project Construction Limits
- Photograph Location and Direction (See Figure 4)

Scale: 1" = 2,400 feet
 0 100 200 400 600 Feet

**Figure 3
 Project Site**

Upper Newport Bay-East Bluff Drainage Repair Project

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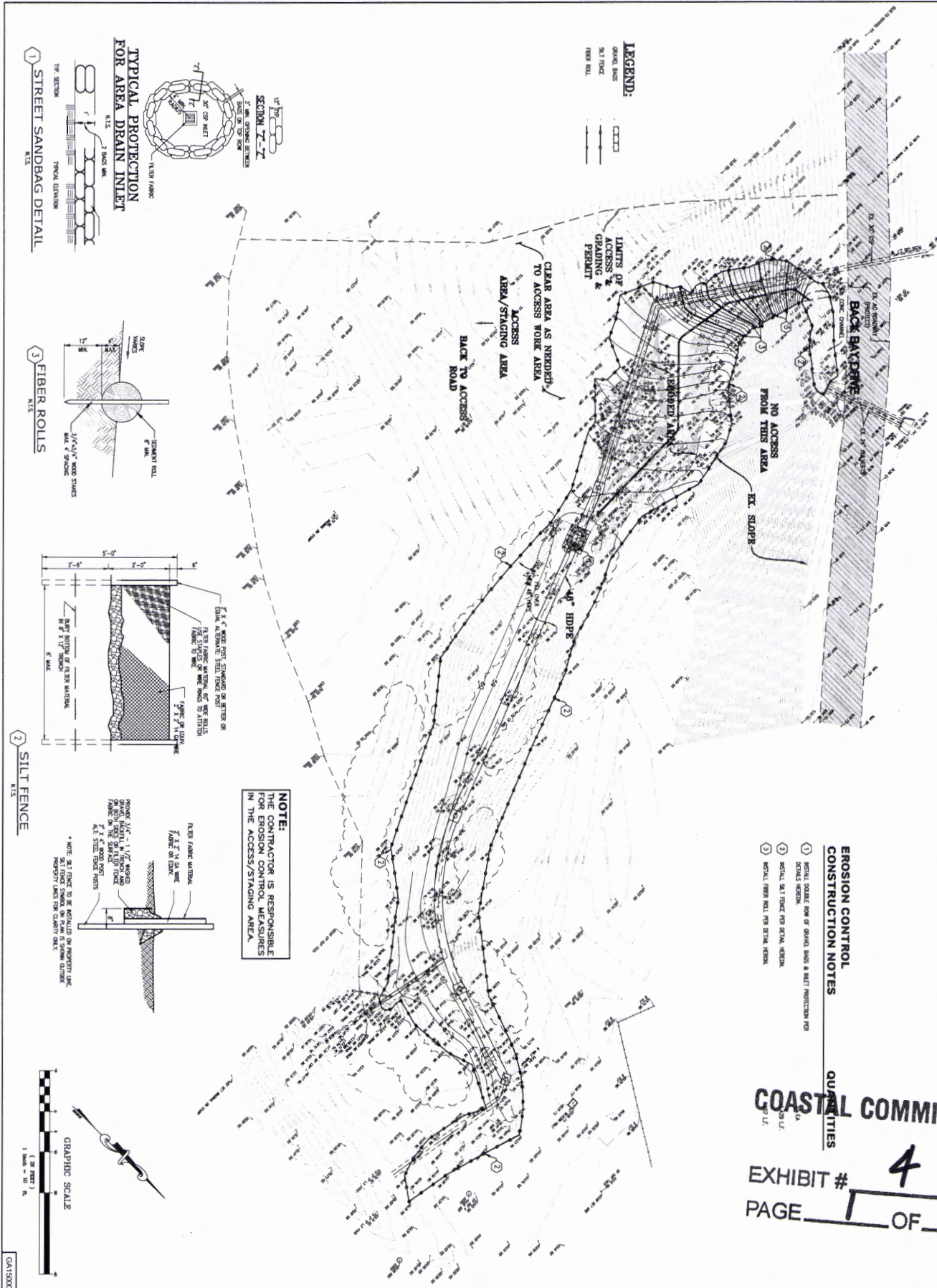
EXHIBIT # **2**
 PAGE **1** OF **1**



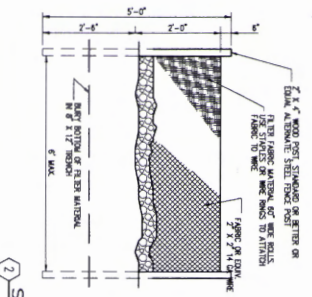
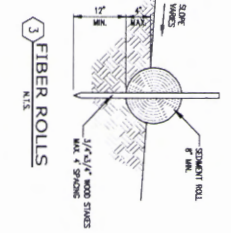
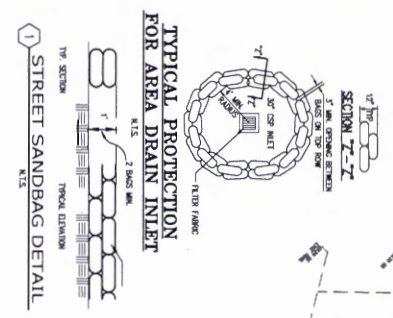
COASTAL COMMISSION

EXHIBIT # 3

PAGE 1 OF 1



LEGEND:
 GRAD BARS
 SLOPE
 FIBER ROLL



NOTE:
 THE CONTRACTOR IS RESPONSIBLE FOR EROSION CONTROL MEASURES IN THE ACCESS/STAGING AREA.

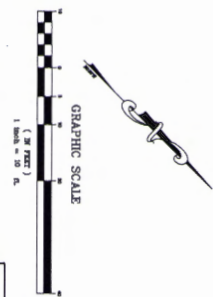
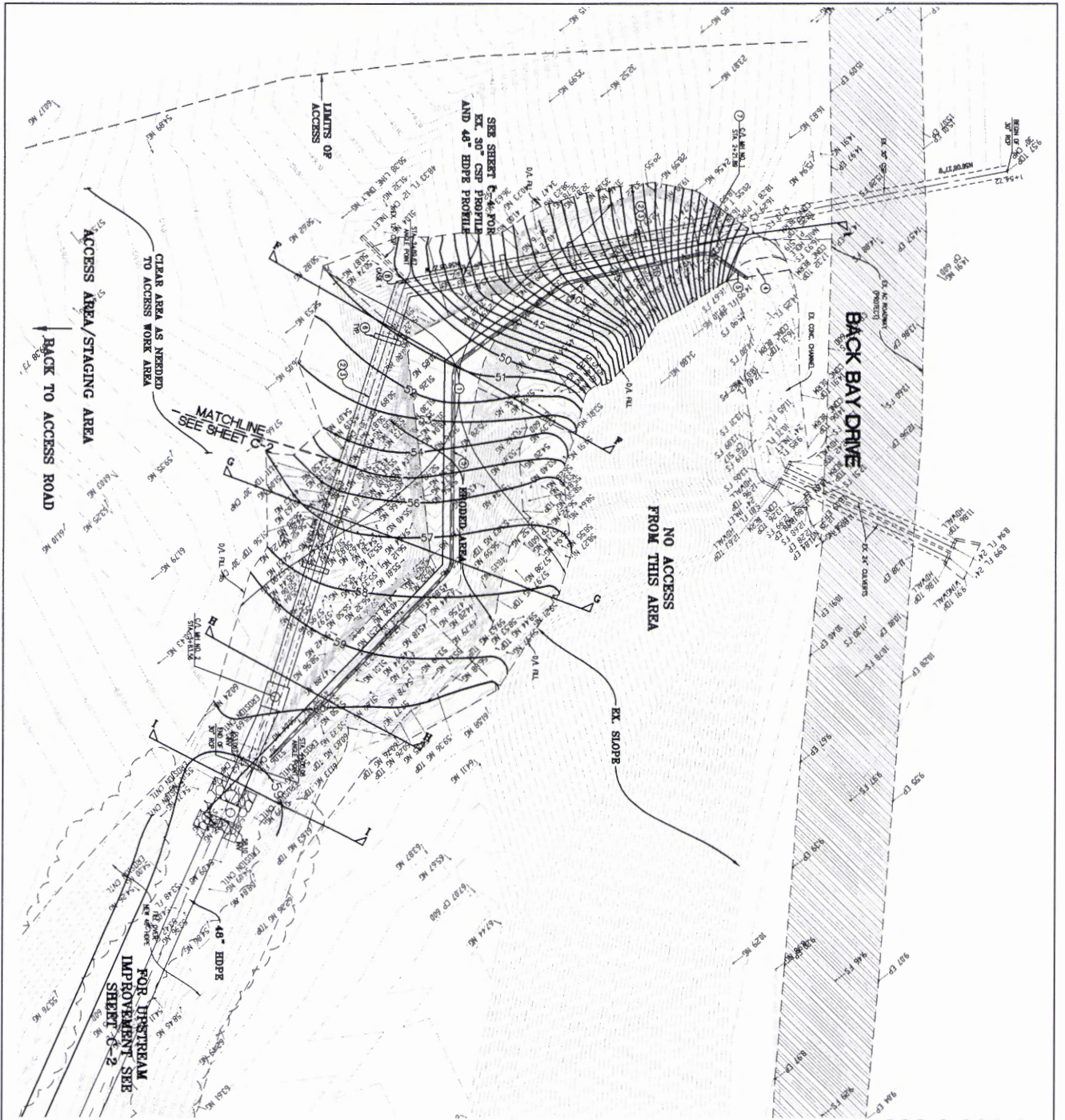
- EROSION CONTROL CONSTRUCTION NOTES**
- 1) INSTALL DOUBLE ROW OF SAND BAGS & SLOTTED PROTECTOR FOR DETAIL WORKING
 - 2) INSTALL SLOTTED FIBER ROLL FOR DETAIL WORKING
 - 3) INSTALL FIBER ROLL FOR DETAIL WORKING

COASTAL COMMISSION

EXHIBIT # **4**

PAGE **1** OF **2**

SHEET TITLE EROSION CONTROL PLAN PARK FACILITY UPPER NEWPORT BAY REGIONAL PARK NEWPORT BEACH, CA PROJ. NO. 64XXXXX PROVIDED BY DC PARKS	DESIGNED BY: KMS		NO. DESCRIPTION SHT. APPROVED DATE	COUNTY OF ORANGE OC COMMUNITY RESOURCES		
	DRAWN BY: SC				CHECKED BY: KMS	REVISIONS
	DRAWING CODE: FILE NAME: PLOT DATE: 01.16.14				SCALE: AS NOTED ON PLAN	



SEE SHEET C-5
FOR SECTIONS.

EARTHWORK QUANTITIES
FILE: 1704 C.T.
DRAWN BY: LIZB.ELL
PROJECT:

COASTAL COMMISSION
EXHIBIT # **4**
PAGE **2** OF **2**

CONSTRUCTION NOTES	QUANTITIES
1) EXISTING CONCRETE CURB TO BE REPAIRED	17N C.T.
2) EXISTING CONCRETE CURB TO BE REPAIRED	18N C.T.
3) EXISTING CONCRETE CURB TO BE REPAIRED	19N C.T.
4) EXISTING CONCRETE CURB TO BE REPAIRED	20N C.T.
5) EXISTING CONCRETE CURB TO BE REPAIRED	21N C.T.
6) EXISTING CONCRETE CURB TO BE REPAIRED	22N C.T.
7) EXISTING CONCRETE CURB TO BE REPAIRED	23N C.T.
8) EXISTING CONCRETE CURB TO BE REPAIRED	24N C.T.
9) EXISTING CONCRETE CURB TO BE REPAIRED	25N C.T.
10) EXISTING CONCRETE CURB TO BE REPAIRED	26N C.T.
11) EXISTING CONCRETE CURB TO BE REPAIRED	27N C.T.
12) EXISTING CONCRETE CURB TO BE REPAIRED	28N C.T.
13) EXISTING CONCRETE CURB TO BE REPAIRED	29N C.T.
14) EXISTING CONCRETE CURB TO BE REPAIRED	30N C.T.
15) EXISTING CONCRETE CURB TO BE REPAIRED	31N C.T.
16) EXISTING CONCRETE CURB TO BE REPAIRED	32N C.T.
17) EXISTING CONCRETE CURB TO BE REPAIRED	33N C.T.
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19) EXISTING CONCRETE CURB TO BE REPAIRED	35N C.T.
20) EXISTING CONCRETE CURB TO BE REPAIRED	36N C.T.
21) EXISTING CONCRETE CURB TO BE REPAIRED	37N C.T.
22) EXISTING CONCRETE CURB TO BE REPAIRED	38N C.T.
23) EXISTING CONCRETE CURB TO BE REPAIRED	39N C.T.
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25) EXISTING CONCRETE CURB TO BE REPAIRED	41N C.T.
26) EXISTING CONCRETE CURB TO BE REPAIRED	42N C.T.
27) EXISTING CONCRETE CURB TO BE REPAIRED	43N C.T.
28) EXISTING CONCRETE CURB TO BE REPAIRED	44N C.T.
29) EXISTING CONCRETE CURB TO BE REPAIRED	45N C.T.
30) EXISTING CONCRETE CURB TO BE REPAIRED	46N C.T.
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33) EXISTING CONCRETE CURB TO BE REPAIRED	49N C.T.
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82) EXISTING CONCRETE CURB TO BE REPAIRED	98N C.T.
83) EXISTING CONCRETE CURB TO BE REPAIRED	99N C.T.
84) EXISTING CONCRETE CURB TO BE REPAIRED	100N C.T.

<p>C-3</p> <p>Sheet 5 of 8</p>	<p>BLUFF EROSION REPAIR</p> <p>PARK FACILITY</p> <p>UPPER NEWPORT BAY REGIONAL PARK</p> <p>NEWPORT BEACH, CA</p> <p>PROJ. NO. EHX0000 (PROVIDED BY OC PARKS)</p>	<p>DESIGNED BY:</p> <p>KMS</p> <p>DRAWN BY: KMS</p> <p>CHECKED BY: KMS</p> <p>DRAWING CODE:</p> <p>FILE NAME:</p> <p>PLOT DATE: 01-16-14</p> <p>SCALE: AS NOTED ON PLAN</p>	<p>saxonengineering</p> <p>SAVING ENGINEERING. SERVING YOU. INC.</p> <p>10001 UNIVERSITY AVENUE, SUITE 400, NEWPORT BEACH, CA 92659</p> <p>TEL: 949.441.9200 FAX: 949.441.9202</p> <p>DATE: 01-16-14</p>	<p>NO. DESCRIPTION</p> <p>SHT. APPROVED</p> <p>DATE</p> <p>REVISIONS</p>	<p>COUNTY OF ORANGE</p> <p>OC parks</p> <p>OC COMMUNITY RESOURCES</p>
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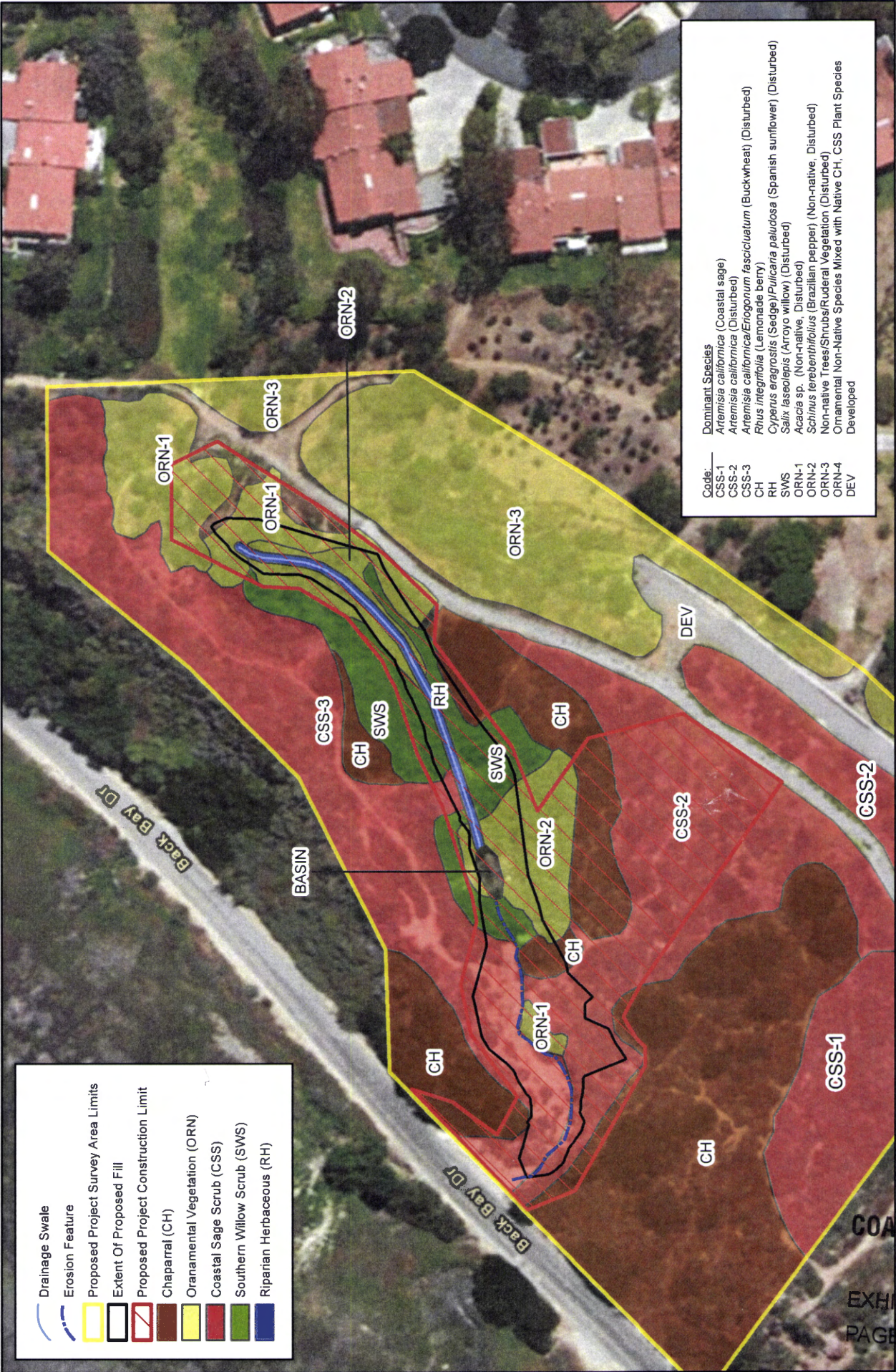
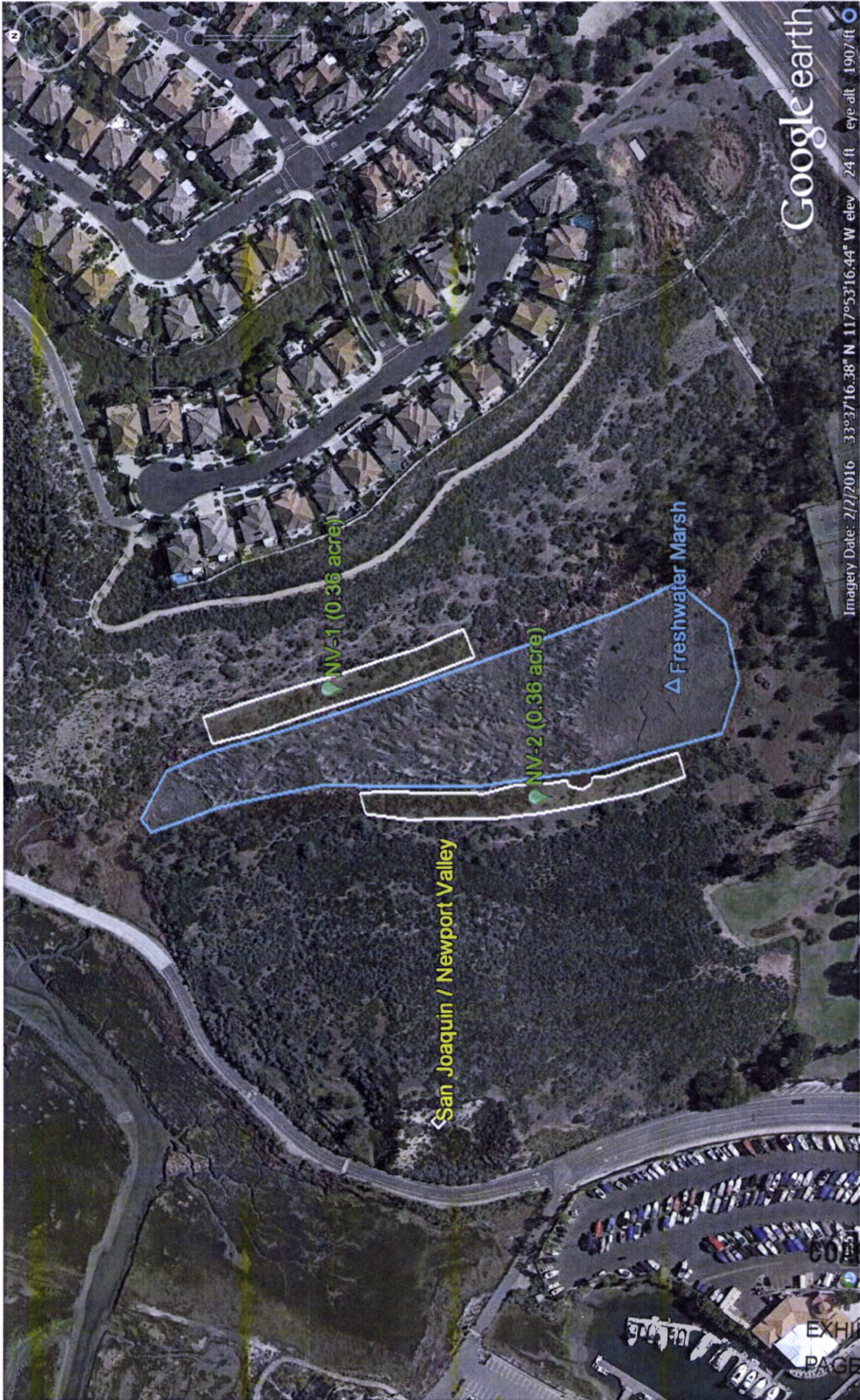


Figure 6
Vegetation Communities Proposed Impacts



Google earth

Imagery Date: 2/2/2016 33°37'16.38" N 117°53'16.44" W elev 24 ft eye-alt 1907 ft

San Joaquin / Newport Valley

NV-1 (0.36 acre)

NV-2 (0.36 acre)

△ Freshwater Marsh

COASTAL COMMISSION

EXHIBIT # 6
PAGE 1 OF 1