

**CALIFORNIA COASTAL COMMISSION**

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

**W 18c****ADDENDUM**

November 8, 2007

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: ADDENDUM TO **ITEM W 18c**, COASTAL COMMISSION PERMIT APPLICATION **#5-06-344-(City of Newport Beach)** FOR THE COMMISSION MEETING OF **November 14, 2007**.

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**Changes to Staff Report**

Commission staff recommends modifications and additions to the second page of the staff report, Section III (Special Conditions) and Section IV (Findings and Declarations) of the staff report for clarification purposes. Language to be added is shown in **bold, underlined italic** and language to be deleted is in ~~strike-out~~, as shown below

1] Page 2 – Modify the following language, as follows:

Since the proposed project is an allowable use under 30233, the applicant must then demonstrate that this project as designed is the least environmentally damaging alternative. To ensure that the proposed project is the least environmentally damaging alternative, the project has been conditioned to reduce the width of the sidewalk/boardwalk along REACH 2 of the proposed project from 8-feet **to 5-feet** ~~to 4-feet~~ to further lessen the wetland impact in order to further verify that it is the least environmentally damaging alternative. The applicant would be allowed to widen the proposed sidewalk/boardwalk along REACH 3, where no wetland impacts are proposed, as long as no adverse impacts to wetlands results.

2] Page 5 – Modify Special Condition No. 1, as follows:

**1. REVISED PROJECT PLANS**

**A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and approval of the Executive Director, two (2) full-sized sets of revised project plans that substantially conform with the preliminary plans received by Commission staff on October 5, 2007, with the following revisions:

- (1) An Interpretative Sign Plan shall be submitted that will provide information such as location, sign dimensions, appearance, the proposed information to be provided, etc. and will not result in any additional direct impact upon the wetland.

- (2) The proposed 8-foot wide sidewalk/boardwalk along REACH 2 will be reduced to 5-feet wide ~~to 4-foot wide~~ to further lessen the wetland impact. The applicant may widen the proposed sidewalk/boardwalk along REACH 3, where no wetland impacts are proposed, as long as no additional adverse impacts to wetlands occur.

**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] Page 15 – Modify Section IV.B., as follows:

While the Commission agrees that the applicant has chosen the least environmentally damaging alternative among those considered, given the amount of impact upon *saltgrass, salt heliotrope, ruderal grasses and forbs* and also the Willow trees, the Commission has conditioned the project to further reduce wetland impacts. The Commission has imposed **SPECIAL CONDITION NO.1**, which requires the applicant to submit revised project plans that shows the sidewalk/boardwalk along REACH 2 of the proposed project has been reduced from 8-feet to 5-feet ~~to 4-foot~~ to further reduce the wetland impact in order to ensure that it is the least environmentally damaging alternative. In order to make up for the reduced area of boardwalk, the applicant may be allowed to widen the proposed sidewalk/boardwalk along REACH 3, where no wetland impacts are proposed, as long as no additional adverse impacts to wetlands occur. Therefore, as conditioned, the project would be the least environmentally damaging alternative.

4] Pages 17– Modify Section IV.B., as follows:

CONCLUSION

In order to assure that biological resources are protected, the Commission has imposed **SIX (6) SPECIAL CONDITIONS**. **SPECIAL CONDITION NO. 1** requires the applicant to submit revised project plans, including an interpretative sign plan, which will provide information such as location, sign dimensions, appearance, the proposed information to be provided, etc. and will not result in any additional direct impact upon the wetland. **SPECIAL CONDITION NO.1** also requires the applicant to submit revised project plans that show the sidewalk/boardwalk along REACH 2 of the proposed project has been reduced from 8-feet to 5-feet ~~to 4-foot~~ to further lessen the wetland impact in order to further verify that it is the least environmentally damaging alternative. The applicant would be allowed to widen the proposed sidewalk/boardwalk along REACH 3, where no wetland impacts are proposed, as long as no additional adverse impacts to wetlands occur. ...*No intervening changes*...

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**W 18c**

Filed: March 5, 2007  
49th Day: April 23, 2007  
180th Day: September 1, 2007  
(Extended 90-Days)  
270<sup>th</sup> Day: November 30, 2007  
Staff: Fernie Sy-LB  
Staff Report: October 31, 2007  
Hearing Date: November 14-16, 2007  
Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

**APPLICATION NUMBER:** 5-06-344

**APPLICANT:** City of Newport Beach Public Works Department; Attn: Robert Stein

**PROJECT LOCATION:** East side of Dover Drive from Cliff Drive to 970-feet north of Cliff Drive, City of Newport Beach (County of Orange)

**PROJECT DESCRIPTION:** Construction of a new 5 to 8-foot wide sidewalk/boardwalk to provide a connection with an existing sidewalk. The project will cause impacts to riparian and wetland habitat, which the applicant proposes to mitigate by planting twelve (12) Arroyo Willow Stems and creation and enhancement of approximately 0.15 acres of wetland and riparian vegetation.

**SUMMARY OF STAFF RECOMMENDATION:**

The subject site is located in the City of Newport Beach adjacent and within a wetland area. The applicant proposes to construct a new sidewalk/boardwalk to provide a connection with an existing sidewalk. In addition, the new sidewalk/boardwalk would improve safety in the area since the City claims that pedestrians walk along the street on the easterly side of Dover Drive where there is no improved path and are thus putting their lives in danger because of motorists traveling along Dover Drive. The project would cause impacts to riparian and wetland habitat, which the applicant proposes to mitigate by planting twelve (12) *Arroyo Willow Stems* and creation and enhancement of approximately 0.15 acres of wetland and riparian vegetation. The primary issue before the Commission is the impact on wetland habitat caused by the project. The project would adversely impact wetland habitat consisting of 0.051 acres of wetland vegetation and would require trimming of overhanging branches on two (2) Willow trees and removal of a large (6" dbh) overhanging limb.

The proposed project would bridge a gap that presently exists in a sidewalk that runs along the eastern side of Dover Drive, which is adjacent to and provides access to Castaways Park (a local park that is also an access point to the Upper Newport Bay Ecological Reserve). Wetlands are located within the proposed alignment. While some wetlands will be adversely impacted by the new sidewalk, the wetlands not impacted by the proposed project will remain (in addition, the proposed project involves creation and enhancement of wetlands) and would be able to be observed from the new sidewalk/boardwalk. Thus, besides connecting the existing sidewalks (northern and southern portions) along this side of Dover Drive and providing continuity among the existing facilities in the area, the proposed sidewalk/boardwalk would also serve as a "trail" that would provide opportunities for visitors to the area to interact with the natural environment through sensorial observation of the biological features encountered along the trail. In order for this use to be realized, the trail must pass through the natural resource area (wetlands). With regard to wetland impacts, Coastal Act Section 30233 requires that the project be an allowable use, and that

it must be the least environmentally damaging feasible alternative and provide adequate mitigation. The proposed wetland fill for a trail through riparian corridors may be considered a form of “*nature study... or similar resource-dependent activities*,” as it (1) provides an opportunity to observe how the natural resources coincide in their physical environment; and (2) it is dependent upon the presence of the natural area resource through which they pass to provide a nature study experience. The applicant had verbally entertained the installation of interpretative signs on site to help facilitate the identification of wetland resources; however, no signage plan has been submitted. Therefore, the Commission has conditioned the project to include installation of interpretative signs which would help identify the wetland resources found along this trail. Therefore, the proposed wetland fill is one of the uses identified by Section 30233 for which fill of a wetland is allowed.

Since the proposed project is an allowable use under 30233, the applicant must then demonstrate that this project as designed is the least environmentally damaging alternative. To ensure that the proposed project is the least environmentally damaging alternative, the project has been conditioned to reduce the width of the sidewalk/boardwalk along REACH 2 of the proposed project from 8-feet to 4-feet to further lessen the wetland impact in order to further verify that it is the least environmentally damaging alternative. The applicant would be allowed to widen the proposed sidewalk/boardwalk along REACH 3, where no wetland impacts are proposed, as long as no adverse impacts to wetlands results.

Lastly in order to conform with Section 30233 of the Coastal Act, adequate mitigation must be proposed. The applicant proposes to mitigate the impacts by planting twelve (12) *Arroyo Willow Stems* and creation and enhancement of approximately 0.15 acres of wetland and riparian vegetation. Based on the City’s Land Use Plan, the proposed impacts must be mitigated at a ratio of 3:1, which would result in 0.15 acres of mitigation. In addition to the creation and enhancement of wetlands, the applicant is proposing planting of twelve (12) *Arroyo Willow Stems*. Thus, adequate mitigation is being proposed. Therefore in this case, the proposed project, as conditioned, is an allowable use within wetlands, is the least environmentally damaging feasible alternative, and the project does provide adequate mitigation to offset the wetland impacts, thus, it is consistent with Section 30233 of the Coastal Act.

Commission staff is recommending **APPROVAL** of the proposed project subject to **SEVEN (7) SPECIAL CONDITIONS** requiring: **1)** submittal of revised project plans; **2)** submittal of a final restoration and monitoring program; **3)** submittal of a construction staging plan; **4)** timing of construction to avoid impacting nesting birds; **5)** use of construction best management practices (BMPs); **6)** identification of debris disposal site location; and **7)** submittal of a traffic control plan.

Section 30604 of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of Newport Beach only has a certified Land Use Plan. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The certified Land Use Plan may be used for guidance.

#### **STAFF NOTE:**

The proposed project was originally scheduled for the August 2007 Commission hearing with a denial recommendation. However, the applicant (City of Newport Beach) requested a postponement in order to provide Commission staff further information regarding the proposed wetland impacts associated with the project. Postponing the item from the August 2007

Commission hearing required the applicant to submit a 90-day waiver for the project to extend the time within which the project must be heard by the Commission. The 90-day waiver was submitted and the project was pulled from the August 2007 Commission hearing. The City subsequently provided staff with additional information that made staff change their previous recommendation from a denial to an approval with conditions. While the project still impacts wetlands, it was determined that, as conditioned, the proposed project is an allowable use within wetlands, is the least environmentally damaging feasible alternative, and the project does provide adequate mitigation to offset the wetland impacts, thus, it is consistent with Section 30233 of the Coastal Act. Therefore, the project has been scheduled for the November 2007 Commission hearing with an approval recommendation.

Copies of Ex-Partes as well as letters supporting staff recommendation and a letter opposing staff recommendation have been included as exhibits.

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**LOCAL & OTHER AGENCY APPROVALS RECEIVED:** City of Newport Beach Planning Department Approval-In-Concept (0204-2007) and Mitigated Negative Declaration (SCH # 2006051016).

**SUBSTANTIVE FILE DOCUMENTS:** City of Newport Beach certified Land Use Plan; Letter from Harmsworth Associates to Commission staff dated August 14, 2007; Letter from Commission staff to Harmsworth Associates dated October 5, 2006; Letter from Harmsworth Associates to Commission staff dated February 26, 2007; Letter from the California Department of Fish and Game (CDF&G) dated June 1, 2006; Letter from the United States Army Corps of Engineers (USACOE) dated October 10, 2006; Email from the Regional Water Quality Control Board (RWQCB) dated February 13, 2007; Letter and additional information from the City of Newport Beach to Commission staff received July 20, 2007; Letter and additional information from the City of Newport Beach to Commission staff received August 30, 2007; Information from Harmsworth Associates received August 30, 2007; Letter and additional information from the City of Newport Beach to Commission staff October 5, 2007; and Information from Harmsworth Associates received October 5, 2007.

#### **LIST OF EXHIBITS**

1. Vicinity Map
  2. Location Map
  3. Project Plans (REACH 1, REACH 2 and REACH 3)
  4. Alternative Access in Area Plan
  5. Ex-Partes
  6. Letters Supporting Staff Recommendation
  7. Letter Opposing Staff Recommendation
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## I. STAFF RECOMMENDATION, MOTION AND RESOLUTION OF APPROVAL

**MOTION:** *I move that the Commission approve Coastal Development Permit No. 5-06-344 pursuant to the staff recommendation.*

### STAFF RECOMMENDATION OF APPROVAL:

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 TO APPROVE THE PERMIT:

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

## II. STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittees 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 this permit is reported to the Commission. 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 permittees to bind all future owners and possessors of the subject property to the terms and conditions.

### **III. SPECIAL CONDITIONS**

#### **1. REVISED PROJECT PLANS**

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and approval of the Executive Director, two (2) full-sized sets of revised project plans that substantially conform with the preliminary plans received by Commission staff on October 5, 2007, with the following revisions:
- (1) An Interpretative Sign Plan shall be submitted that will provide information such as location, sign dimensions, appearance, the proposed information to be provided, etc. and will not result in any additional direct impact upon the wetland.
  - (2) The proposed 8-foot wide sidewalk/boardwalk along REACH 2 will be reduced to 4-feet wide to further lessen the wetland impact. The applicant may widen the proposed sidewalk/boardwalk along REACH 3, where no wetland impacts are proposed, as long as no additional adverse impacts to wetlands occur.
- 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.

#### **2. FINAL RESTORATION AND MONITORING PROGRAM**

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall develop, in consultation with the California Department of Fish and Game (CDF&G) and U.S. Fish Wildlife Service (USFWS) as appropriate, and submit for review and written approval of the Executive Director, a detailed habitat restoration and monitoring program. Required restoration shall be at a minimum ratio of 3:1 (restoration to impact). Supplementary restoration may be identified in the restoration and monitoring program, but would not be treated as a required component of the mitigation. A qualified biologist for restoration and monitoring of the wetland creation and enhancement site shall design the restoration, mitigation, and monitoring program. The restoration, mitigation, and monitoring program shall at a minimum include the following:
- (1) Plans for site preparation and preservation of native seed bank;
  - (2) Restoration and mitigation plan including planting design, plant palette, source of plant material, plant installation, watering, erosion control, soil fertilization and weed abatement;
  - (3) Final Success Criteria. The restoration will be considered successful if the overall species composition and the vegetative cover of the dominant perennial species are similar to relatively undisturbed vegetation of the same type in nearby reference areas. The Army Corps of Engineers "50/20" rule

shall be used to determine dominance. Species composition shall be considered similar if all the dominant species and at least 80% of the non-dominant species at the reference site are present at the restored site. The vegetative cover of dominant species at the restoration and reference sites will be compared with an appropriate statistical test. Random sampling of the restoration and reference sites will be done with sufficient replication to detect a 10% absolute difference in cover with 90% power with  $\alpha=0.10$ . The cover of dominant species will be considered similar if there is no statistical difference ( $P>0.10$ ) in the average cover of each dominant species between the two sites; or, if there is a statistically significant difference, it is no greater than 10% absolute cover;

- (4) The sampling design to be employed, an estimate of the sample variance, and a statistical power analysis to estimate the necessary number of samples to meet the requirements specified above. Power analysis software is available commercially and on the worldwide web (e.g, <http://www.stat.uiowa.edu/~rlenth/Power/index.html>);
- (5) Provisions assessing the initial biological and ecological status of the “as built” restoration and mitigations sites within 30 days of their establishment in accordance with the approved restoration, mitigation, and monitoring program. The assessment shall include an analysis of the attributes that will be monitored pursuant to the program, with a description of the methods for making that evaluation.
- (6) Provisions for monitoring and remediation of the restoration site in accordance with the approved final restoration program for a period of five (5) years or until it has been determined that success criteria have been met or have failed to be met, whichever comes first;
- (7) Provisions 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” assessment. Each report shall include copies of all previous reports as appendices. Each report shall be a cumulative report that summarizes all previous reports. 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 performance standards; and
- (8) Provisions for submission of a final monitoring report to the Executive Director at the end of the reporting period. Final performance monitoring shall take place after at least three (3) years without remediation or maintenance other than weeding. The performance monitoring period shall either be five (5) years or three (3) years without maintenance or remediation, whichever is longer. The final report must be prepared in conjunction with a qualified biologist. The report must evaluate whether the restoration site conforms to the goals, objectives, and performance standards set forth in the approved final restoration program. The report



must address all of the monitoring data collected over the five (5)-year period.

- B.** If the final report indicates that the restoration project has been unsuccessful, in part, or in whole, based on the approved performance standards, the applicant shall submit within ninety (90) days a revised or supplemental restoration program to compensate for those portions of the original program that were necessary to offset project impacts which did not meet the approved performance standards. The revised restoration program, if necessary, shall be processed as an amendment to this coastal development permit.
- C.** The permittee shall monitor and remediate the restoration site in accordance with the approved monitoring program, including any revised restoration program approved by the Commission or its staff. Any proposed changes to the approved monitoring program shall be reported to the Executive Director. No changes to the approved monitoring program shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**3. STAGING AREA FOR CONSTRUCTION**

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the permittee shall submit a plan for the review and approval of the Executive Director, two (2) full-sized sets of construction staging plans, which indicate that the construction staging area(s) and construction corridor(s) will avoid impacts upon public access and habitat areas that are not specifically authorized to be impacted pursuant to this coastal development permit.

  - (1) The plan shall demonstrate that:

    - (a) Construction equipment, materials or activity shall not occur outside the staging area and construction corridor identified on the site plan required by this condition;
    - (b) Construction equipment, materials, or activity shall not be placed outside of the immediate construction zone;
    - (c) The construction staging area will gradually be reduced as less materials and equipment are necessary;
    - (d) Public access will not be diminished; and
    - (e) Adverse impacts to wetlands and other sensitive habitat that are not specifically authorized to be impacted shall be avoided.
  - (2) The plan shall include, at a minimum, the following components:

    - (a) A site plan that depicts:

      - 1. limits of the staging area(s);

2. construction corridor(s);
3. construction site;
4. location of construction fencing.

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.

4. **TIMING OF CONSTRUCTION**

To avoid adverse impacts on nesting birds, construction shall not occur from February 15<sup>th</sup> to September 1<sup>st</sup> of any year.

5. **STORAGE OF CONSTRUCTION MATERIALS, MECHANIZED EQUIPMENT, EROSION SEDIMENT CONTROL, AND REMOVAL OF CONSTRUCTION DEBRIS**

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

- A. Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of construction;
- B. Best Management Practices (BMPs) designed to prevent spillage and/or runoff of construction related materials, sediment or contaminants associated with construction activity, shall be implemented prior to the on-set of such activity. Selected BMPs shall be maintained in a functional condition throughout the duration of the project;
- C. Appropriate Best Management Practices (BMPs) designed to control erosion from the disturbed area and prevent silt and sediment from contaminating any downstream drainages and intact native habitat plant communities during grading and revegetation activities, shall be installed prior to or concurrent with grading and revegetation operations, and maintained throughout the development;
- D. Any temporarily stockpiled fill should be covered with geofabric or other appropriate cover;
- E. The use of protective cover such as dense mulch, geotextile or jute mats should be implemented on all exposed slopes to facilitate slope stabilization before and during the revegetation process and to minimize erosion and sediment from runoff waters during construction; and
- F. Construction debris and sediment shall be removed from construction areas on a regular basis during construction to prevent the accumulation of sediment debris which may be discharged into coastal waters. Debris shall be disposed of at a debris disposal site outside the coastal zone, pursuant to **Special Condition No. 6.**

6. **LOCATION OF DEBRIS DISPOSAL SITE**

The applicant shall dispose of all demolition and construction debris resulting from the proposed project at an appropriate location outside the coastal zone. If the disposal site is located within the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place.

## **7. TRAFFIC CONTROL PLAN**

**A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and approval of the Executive Director, two (2) full-sized sets of a traffic control plan that demonstrates the following:

- (1) Every effort shall be made to minimize the duration of sidewalk, bike and road lane closures so that impacts upon public access are minimized; and
- (2) The sidewalk, bike and road lanes should be opened, even intermittently, whenever possible during construction; and
- (3) A detour plan to re-route pedestrian and bicycle traffic shall be identified for those periods when the sidewalk and/or bicycle lane is closed within the project area.

**B.** The permittee shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan 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.

## **IV. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

### **A. PROJECT LOCATION AND DESCRIPTION**

The project site is located along the easterly side of Dover Drive from Cliff Drive to 970-feet North of Cliff Drive in the City of Newport Beach, Orange County (Exhibits #1-2). The starting point of the sidewalk project is approximately 950-feet north of the intersection of Dover Drive and Pacific Coast Highway. An existing sidewalk is located north and south of the proposed sidewalk/boardwalk. The project would bridge a gap in the existing sidewalk system. The City of Newport Beach certified Land Use Plan (LUP) designates the site for Open Space and the proposed project adheres to this designation. The project is located east of residential development along Dover Drive, immediately west and downslope of Castaways Park, and southwest of Newport Harbor Lutheran Church and School. An unnamed drainage located east (down a minor slope) and parallel to Dover Drive appears to contain flowing waters. This drainage flows from north to south for 500 linear feet and contains riparian and wetland species. The proposed project generally would be constructed in road right-of-way or other previously disturbed easements along Dover Drive. This minor slope located between the bottom of the unnamed drainage course and the location of where the proposed sidewalk/boardwalk (to be discussed later) is dominated by grassland vegetation. The grassland community transitions from *saltgrass* (*Distichlis spicata*), *salt heliotrope* (*Heliotropium carravascum*) and *ruderal grasses and forbs* on the lower portion of the slope adjacent to the swale, to a 3 to 6-foot wide footpath of compacted bare

ground at the top of the embankment and adjacent to Dover Drive. The sidewalk/boardwalk project will be constructed within the footpath located at the top of the embankment adjacent to Dover Drive, as well as portions of the disturbed ruderal and grassland transition area.

The City states that the sidewalk construction is needed due to the lack of pedestrian facilities along the project segment of Dover Drive. The project would connect the existing sidewalks (northern and southern portions) located on the eastern side of Dover Drive. The proposed sidewalk would provide continuity among the existing facilities north and south of the project reaches, along the west side of Dover Drive at the Cliff Drive intersection, and within the adjacent Castaways Park to the east. However, a sidewalk already exists on the western side of Dover Drive and also access to Castaways Park (adjacent to the Upper Newport Bay Ecological Reserve) is available at the southern end of the project site where there is an existing sidewalk on the east side of Dover Drive and at the northern end of the project site where there is a parking lot for and an entrance to Castaways Park (Exhibit #4). Castaways Park is largely a passive recreation park, but with some paved and unpaved trail facilities. In addition, the new sidewalk/boardwalk would improve safety in the area since the City claims that pedestrians walk along the street on the easterly side of Dover Drive where there is no improved path and are thus putting their lives in danger because of motorists traveling along Dover Drive.

The proposed project would consist of the construction of a new sidewalk/boardwalk. The new sidewalk/boardwalk would be bordered on both ends by an existing sidewalk. The project would adversely impact wetland habitat consisting of 0.051 acres of *saltgrass (Distichlis spicata)*, *salt heliotrope (Heliotropium carravascum)* and *ruderal grasses and forbs* and also require trimming of overhanging branches on two (2) Willow trees and removal of a large (6" dbh) overhanging limb to allow pedestrian access. The applicant is proposing to mitigate these impacts by planting twelve (12) *Arroyo Willow Stems* and creation and enhancement of approximately 0.15 acres of wetland and riparian vegetation. Grading is also proposed. More specifically, the project is broken down into three (3) reaches (sections) as described below (Exhibit #3).

**REACH 1** (Cliff Drive to 425-feet north of Cliff Drive) would take place within the paved roadbed of Dover Drive and require the construction of a 5 to 8-foot wide, 425-linear foot sidewalk, and modifications to the existing curb and stormwater inlets. This reach would be constructed adjacent to the existing earthen embankment; however, the sidewalk would not affect the embankment and no retaining wall would be necessary. No impacts to native vegetation would occur along this reach of the project.

**REACH 2** (425 north of Cliff Drive to 920-feet north of Cliff Drive) would take place behind the existing curb (outside of the paved roadway) and involve construction of an 8-foot wide, 495-linear foot boardwalk. The boardwalk would be constructed of wooden deck planking and would include a post and cable rail and 18-inch diameter concrete posts every 10-feet for structural support. Boardwalk construction in REACH 2 would be constructed primarily in disturbed bare ground; however, portions of the boardwalk would temporarily impact 828 square feet (0.019 acres) and permanently impact approximately 1,393 square feet (0.0032 acres) for a total of 2,221 square feet (0.051 acres) of wetlands dominated by *saltgrass (Distichlis spicata)*, *salt heliotrope (Heliotropium carravascum)* (both are wetland indicator species) and *ruderal grasses and forbs*.

**REACH 3** (920 north of Cliff Drive to 970-feet north of Cliff Drive) would take place behind the existing curb (outside the paved roadway) and require construction of a 6 to 8-foot wide, 50-linear foot of boardwalk. The boardwalk would be constructed of wooden deck planking and would include a post and cable rail and 18-inch diameter concrete posts every 10-feet for structural

support. REACH 3 would require trimming of overhanging branches on two (2) Willow trees including the removal of a large (6" dbh) overhanging limb to allow pedestrian access...

In REACH 1, an 8 to 10-foot wide strip of existing paved roadway (approximately 150 cubic yards of asphalt within the emergency parking lane) would be excavated and removed to construct the new sidewalk and curb and gutter. In REACHES 2 and 3, minor excavation (2-feet deep by 1-foot wide, approximately 72 cubic yards) would be required along the back of the curbs in those reaches in order to construct the base for the boardwalk. Minor excavation of about 1 to 2-feet deep (approximately 150 cubic yards total) would also be required to provide clearance for the wooden boardwalk support beams along the top of the slope in the 5 to 6-foot wide area behind the curb.

As previously discussed, the proposed project would result in impacts to wetlands. The impacts are broken down below.

-Saltgrass, salt heliotrope (wetland indicator species) and ruderal grasses and forbs (applicant calls this 'Disturbed Grassland Vegetation' even though the presence of wetland indicator species renders these areas 'wetlands' under the Coastal Act)

Temporary Impact: 0.019 acres

Permanent Impact: 0.032 acres

**Total impact: 0.051 acres (2,221 square feet)**

-Disturbed Willow trees

Trimming of overhanging branches on two (2) Willow trees including the removal of a large (6" dbh) overhanging limb to allow pedestrian access.

As discussed previously, the applicant is proposing to mitigate these impacts by planting twelve (12) Arroyo Willow Stems and creation and enhancement of approximately 0.15 acres of wetland and riparian vegetation. The applicant has submitted a Planting Plan for the proposed mitigation effort and it includes the following:

- 1) **SITE PREPARATION:** Site preparation will include weed abatement conducted on the western slope of the existing unnamed swale, adjacent to the proposed sidewalk/boardwalk. This is anticipated to occur in the early to late fall, taking care to avoid any remnant native vegetation.
- 2) **SEEDING:** The area will be hydroseeded in the late fall with a native seed mix comprised of *saltgrass* and *salt heliotrope*, with other associated native shrub and forb species. The plant mix will more specifically consist of the following: *saltgrass* (*Distichlis spicata*), *salt heliotrope* (*Heliotropium carravascum*), *California poppy* (*Eschscholzia californica*), *Yarrow* (*Achillea millefolium*), *Purple Needlegrass* (*Nasella pulchra*), *Mulefat* (*Baccharis salicifolia*), *Three-week fescue* (*Vulpia microstachys*) and *Coast goldenbush* (*Isocoma menziesii*).
- 3) **WILLOW PLANTING:** After the hydroseed planting, the twelve (12) Arroyo Willow Stems will be planted at the toe-of-slope position adjacent to the emergent marsh vegetation.
- 4) **MAINTENANCE AND MONITORING:** Biological monitoring will be conducted by the City of Newport Beach for a period of one (1) year to ensure project success. Long term maintenance will be conducted as part of the regular management of the adjacent Castaways Park. The following maintenance and monitoring activities are proposed:

- a) Planting and implementation will be conducted under the oversight of a qualified biologist or restoration ecologist to ensure planting success.
- b) Monitoring by a qualified biologist or restoration ecologist will occur on a bi-monthly basis for a period of one (1) year. During monitoring visits, the general success of the plantings, health and vigor of native vegetation, percent cover of weed species, and any other indicators such as erosion will be noted. The need for contingency measures such as replanting or reseeding will be evaluated during the bi-monthly monitoring visits.
- c) A final evaluation report will be submitted to the California Coastal Commission at the conclusion of the one (1) Year monitoring period, which will detail the work conducted and success rate of the planted vegetation. Success will be evaluated based on 80% native cover of native vegetation and no more than 5% cover of non-native vegetation. The success criteria for container stock will be a minimum of 90% survivorship. If at the conclusion of the one (1) Year monitoring period the vegetation has not met the success criteria, then additional maintenance and monitoring will occur annually until the project meets success criteria.
- d) On-going maintenance will be conducted as a part of the regular management of the adjacent Castaways Park. Maintenance will consist primarily of weeding activities to ensure invasive species do not outcompete native species. As the hydroseeding and container stock planting will occur in the late fall, it is not expected that supplemental irrigation will be required. However, if in the late spring or summer of the first planting year supplemental irrigation is deemed necessary, it will be conducted manually through a water truck.

**B. BIOLOGICAL RESOURCES**

Section 30233 of the Coastal Act, in relevant part, states:

*(a) 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.*

The project would adversely impact 0.051 acres of wetland habitat consisting of *Saltgrass*, *salt heliotrope* (*wetland indicator species*) and *ruderal grasses* and *forbs* and two (2) overhanging Willow tree branches and a limb. Section 30108.2 of the Coastal Act defines “Fill” as the placement of earth or any other substance or material placed in a submerged area. Section 30233 of the Coastal Act limits the fill of wetlands and open coastal waters to the seven uses enumerated above. Once a project is considered to be an allowable use under 30233, the applicant must then assert that this project is the least environmentally damaging alternative. Lastly in order to conform with Section 30233 of the Coastal Act, adequate mitigation must be proposed. The following section of the staff report will analyze the proposed project in regards to Section 30233 of the Coastal Act.

#### 1. **Allowable Use Test**

The applicant states that the sidewalk construction is needed due to the lack of pedestrian facilities along the project segment on the easterly side of Dover Drive. The project would connect the existing sidewalks (northern and southern portions) located on the eastern side of Dover Drive. The proposed sidewalk would provide continuity among the existing facilities north and south of the project reaches, along the western side of Dover Drive at the Cliff Drive intersection, and within the adjacent Castaways Park to the east. In addition, the new sidewalk/boardwalk would improve safety in the area since the City claims that pedestrians walk along the street on the easterly side of Dover Drive where there is no improved path and are thus putting their lives in danger because of motorists traveling along Dover Drive.

An unnamed drainage located east (down a minor slope) and parallel to Dover Drive appears to contain flowing waters. This drainage flows from north to south for 500 linear feet and contains riparian and wetland species. The proposed project generally would be constructed in road right-of-way or other previously disturbed easements along Dover Drive. This minor slope located between the bottom of the unnamed drainage course and the location of the proposed sidewalk/boardwalk is dominated by grassland vegetation. The grassland community transitions from *saltgrass* (*Distichlis spicata*), *salt heliotrope* (*Heliotropium carravascum*) and *ruderal grasses* and *forbs* on the lower portion of the slope adjacent to the swale, to a 3 to 6-foot wide footpath of compacted bare ground at the top of the embankment and adjacent to Dover Drive. The sidewalk/boardwalk project will be constructed within the footpath located at the top of the embankment adjacent to Dover Drive, as well as portions of the disturbed ruderal and grassland transition area. The applicant’s biological analysis states that although some facultative species have grown up into the compacted and disturbed area, the Dover Drive sidewalk project is located in upland soils entirely devoid of hydric conditions or wetland hydrology; however despite the applicant’s biological analysis that no wetlands will be impacted, the Commission’s staff

biologist states that the proposed project will adversely impact wetland habitat consisting of 0.051 acres of *saltgrass (Distichlis spicata)*, *salt heliotrope (Heliotropium carravascum)* and *ruderal grasses and forbs* and also require trimming of overhanging branches on two (2) Willow trees and removal of a large (6" dbh) overhanging limb to allow pedestrian access.

Section 30233 of the Coastal Act limits the fill of wetlands and open coastal waters to the seven uses enumerated above. Wetlands are located within the proposed sidewalk/boardwalk alignment. While some wetlands will be adversely impacted by the new sidewalk, the wetlands not impacted by the proposed project will remain (in addition, the proposed project involves creation and enhancement of wetlands) and would be able to be observed from the new sidewalk/boardwalk. Thus, besides connecting the existing sidewalks (northern and southern portions) along this side of Dover Drive and providing continuity among the existing facilities in the area, the proposed sidewalk/boardwalk would also serve as a trail that would provide opportunities for visitors to the area to interact with the natural environment through sensorial observation of the biological features encountered along the trail. In order for this use to be realized, the trail must pass through the natural resource area (wetlands). The proposed wetland fill for a trail through riparian corridors may be considered a form of "*nature study... or similar resource-dependent activities*," as it (1) provides an opportunity to observe how the natural resources coincide in their physical environment; and (2) it is dependent upon the presence of the natural area resource through which they pass to provide a nature study experience. The applicant had verbally entertained the installation of interpretative signs on site to help facilitate the identification of wetland resources. However, no signage plan has been submitted. Therefore, the Commission has imposed **SPECIAL CONDITION NO. 1**, which requires the applicant to submit revised project plans, including an interpretative sign plan, which will provide information such as location, sign dimensions, appearance, the proposed information to be provided, etc. and will not result in any additional direct impact upon the wetland. Therefore, as conditioned, the proposed wetland fill is one of the uses identified by Section 30233 for which fill of a wetland is allowed.

## **2. Alternatives Analysis Test**

Assuming that the proposed project is an allowable use under 30233, the applicant asserts that this project is the least environmentally damaging alternative, based on an alternatives analysis for the proposed project entitled *Dover Drive Sidewalk Project Alternatives Study* prepared by Van Dell and Associates, Inc. dated September 2004/Revised August 2005. This study evaluated sidewalk alternatives over three separate reaches within the project limits. The study presented the analysis, comparison and estimated costs of 14 various sidewalk locations and design alternatives along the three reaches of the Dover Drive Sidewalk Project. The study considered varying sidewalk widths in each reach, ranging from 4 to 8 feet wide in REACH 1 and 5 to 8 feet wide in REACH 2 and REACH 3. Three (3) of the alternatives for REACH 1 did not impact wetlands; however, each of the remaining alternatives resulted in impacts to wetlands that are located in REACH 2 as identified by the California Coastal Commission. As proposed, no wetland impacts are proposed for REACH 1 and 3; however, wetland impacts are proposed for REACH 2.

In addition to the alternatives study, the City has produced a memorandum dated October 4, 2007 that states how moving the sidewalk/boardwalk (in the REACH 2 area) more toward the street would create safety concerns. In general, the City prefers an 8-foot wide bike lane because it provides an area for emergency parking. As proposed, this area will have



an 8-foot wide bike lane that would provide for emergency parking. For traffic safety concerns, the City determined that there is no option to move the sidewalk into the bike lane. Additionally, the City has provided a letter dated September 19, 2007 from a recently retired City Traffic Engineer that discusses an alternative consisting of shifting the traffic lanes along Dover Drive closer to the raised median. The engineer states that the unusual median design is well back from the striping in order to give vehicles a recovery zone as they enter the curve north on Dover Drive should they misjudge their speed relative to the degree of curvature. If traffic was moved closer to the raised median, the recovery zone would be reduced and thus create a potential for traffic accidents.

While the Commission agrees that the applicant has chosen the least environmentally damaging alternative among those considered, given the amount of impact upon *saltgrass*, *salt heliotrope*, *ruderal grasses and forbs* and also the Willow trees, the Commission has conditioned the project to further reduce wetland impacts. The Commission has imposed **SPECIAL CONDITION NO.1**, which requires the applicant to submit revised project plans that shows the sidewalk/boardwalk along REACH 2 of the proposed project has been reduced from 8-feet to 4-feet to further reduce the wetland impact in order to ensure that it is the least environmentally damaging alternative. In order to make up for the reduced area of boardwalk, the applicant may be allowed to widen the proposed sidewalk/boardwalk along REACH 3, where no wetland impacts are proposed, as long as no additional adverse impacts to wetlands occur. Therefore, as conditioned, the project would be the least environmentally damaging alternative.

### **3. Mitigation Test**

A Project that involves fill of wetlands must be an allowable use under Section 30233 of the Coastal Act. It must also be the least environmentally damaging feasible alternative and it must incorporate all feasible mitigation measures. In this case, the proposed project has qualified as an allowable use under the Coastal Act and is the least environmentally damaging alternative. Thus, the proposed project has met the first two "tests." The last test is if the proposed project has identified adequate mitigation to offset wetland impacts.

The applicant proposes to mitigate the impacts by planting twelve (12) *Arroyo Willow Stems* and by creating and enhancing approximately 0.15 acres of wetland and riparian vegetation as stated in the City's submitted Planting Plan. Based on the City's Land Use Plan, the proposed impacts must be mitigated at a ratio of 3:1, which would result in 0.15 acres of mitigation. In addition to the creation and enhancement of wetlands, the applicant is proposing planting of twelve (12) *Arroyo Willow Stems*. While the City has submitted this Planting Plan, a complete restoration and monitoring program for its proposed mitigation has not been submitted and also the submitted Planting Plan does not provide the adequate measures the Commission has typically approved, such as the applicant's proposal for only one (1) year of monitoring and the lack of specific success criteria. Typically, five (5) years of monitoring is required. Therefore, the Commission has imposed **SPECIAL CONDITION NO. 2**, which requires the applicant to submit a final restoration and monitoring program. This plan requires five (5) years of monitoring with yearly reports including a comprehensive report the final year. Reference sites are sampled using the same methodology as employed in the restoration and mitigation areas and the results guide the restoration and mitigation project goals. The plan must also describe maintenance activities such as invasive plant removal and supplemental native plant planting (if necessary). The plan must provide a contingency plan should the restoration

and/or mitigation fail to meet the project goals. Thus, as conditioned, adequate mitigation is proposed.

If construction equipment and staging is not appropriately managed, adverse impacts upon the wetlands could occur. For instance, soil stockpiles could erode causing sedimentation of wetlands. In addition, if not sited appropriately, construction equipment and activity could cause trampling of the wetlands. The applicant has stated that silt fences and other sediment and erosion control methods will be used during construction, but no specific construction staging plan has been submitted. Therefore, the Commission imposes **SPECIAL CONDITION NO. 3**, which requires the applicant to submit construction staging area(s) and construction corridor(s) plans that will avoid impacts to wetlands. The plan shall demonstrate that construction equipment or activity shall not occur outside the staging area and construction corridor identified on the site plan required by this condition and that construction equipment and activity shall not be placed in any location which would result in impacts to wetlands. The plan shall include, at a minimum, the following components: a site plan that depicts the limits of the staging area(s); construction corridor(s); construction site; the location of construction fencing and temporary job trailers with respect to existing wetlands.

The project site provides a potential habitat for nesting birds and a number of special status species, including least Bell's vireo and California gnatcatcher. No special species have been observed within the project area limits. The applicant has stated that impacts to the wildlife species associated with riparian vegetation (e.g. least Bell's vireo and other nesting birds) will be avoided, as construction will occur outside the nesting season. In order to confirm that construction will not impact these species during nesting, the Commission has imposed **SPECIAL CONDITION NO. 4**, which states that construction shall not occur from February 15<sup>th</sup> to September 1<sup>st</sup> of any year.

Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into wetlands or coastal waters water via rain or wind would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. In order to avoid adverse construction-related impacts upon biological resources, the Commission imposes **SPECIAL CONDITION NO. 5**, which outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris. This condition requires the applicant to remove any and all debris resulting from construction activities within 24 hours of completion of the project. In addition, all construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible. In addition, the Commission imposes **SPECIAL CONDITION NO. 6**, which requires the applicant to dispose of all demolition and construction debris resulting from the proposed project at an appropriate location outside the coastal zone. If the disposal site is located within the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place

### **Mitigated Negative Declaration and Other Agency Comments**

#### **Mitigated Negative Declaration**

A Mitigated Negative Declaration was prepared for the proposed project and it also determined the United States Army Corps of Engineers (USACOE), California Department of Fish & Game (CDF&G) and California Coastal Commission areas of jurisdiction for the project. The Mitigated

Negative Declaration concluded that the project would completely avoid impacting areas of USACOE jurisdiction. However, the review states that the project would impact a total of 0.06 acres of riparian vegetation and wetland habitat area (0.02 acres of temporary impacts and 0.04 acres of permanent impacts) under CDF&G and CCC jurisdiction. The Commission staff biologist has reviewed this information and confirmed that the proposed project would result in adverse wetland habitat impact.

#### United States Army Corps of Engineers (USACOE)

In a letter dated October 10, 2006, the United States Army Corps of Engineers (USACOE) determined that the proposed project does not discharge dredged or fill material into a water of the United States or an adjacent wetland. This determination is based on the Corps' 3-parameter wetland criteria and not the 1-parameter criteria used by the Commission. Therefore, the USACOE stated that the project is not subject to their jurisdiction under Section 404 of the Clean Water Act and a Section 404 permit is not required from their office.

#### Regional Water Quality Control Board (RWQCB)

In an email dated February 13, 2007, the Regional Water Quality Control Board (RWQCB) determined that if the USACOE has declined to take jurisdiction and no other Federal permits apply, then a Section 401 Certification from the RWQCB is not required.

#### California Department of Fish and Game (CDF&G)

In a letter dated June 1, 2006, the California Department of Fish & Game (CDF&G) determined that the project would not impact jurisdictional wetlands or streambeds of the CDF&G. However, the project would permanently impact 0.032 of Grassland Vegetation (*saltgrass*, *salt heliotrope*, *ruderal grasses* and *forbs*) and 0.07 of disturbed Willow Woodland) of adjacent riparian vegetation subject to CDF&G and California Coastal Commission. The letter concludes: "*Based on the Department's review of the information you submitted, the Department has determined that a Streambed or Lake Alteration Agreement is not required for your project or activity because the project or activity 1) does not substantially divert, obstruct, or change the natural flow or bed, channel, or bank of a river, stream, or lake, or 2) use material from a streambed, or 3) substantially adversely effect existing fish or wildlife resources.*" These concluding statements from CDF&G only address the applicant's permit requirements from CDF&G and were not a statement that no impacts to wetlands would occur.

#### CONCLUSION

In order to assure that biological resources are protected, the Commission has imposed **SIX (6) SPECIAL CONDITIONS**. **SPECIAL CONDITION NO. 1** requires the applicant to submit revised project plans, including an interpretative sign plan, which will provide information such as location, sign dimensions, appearance, the proposed information to be provided, etc. and will not result in any additional direct impact upon the wetland. **SPECIAL CONDITION NO.1** also requires the applicant to submit revised project plans that show the sidewalk/boardwalk along REACH 2 of the proposed project has been reduced from 8-feet to 4-feet to further lessen the wetland impact in order to further verify that it is the least environmentally damaging alternative. The applicant would be allowed to widen the proposed sidewalk/boardwalk along REACH 3, where no wetland impacts are proposed, as long as no additional adverse impacts to wetlands occur. **SPECIAL CONDITION NO. 2** requires the applicant to submit a final restoration and monitoring program. **SPECIAL**

**CONDITION NO. 3** requires the applicant to submit construction staging area(s) and construction corridor(s) plans that will avoid impacts to wetlands. **SPECIAL CONDITION NO. 4** prohibits work from taking place during the nesting season, which is from February 15<sup>th</sup> to September 1<sup>st</sup> of any year. **SPECIAL CONDITION NO. 5** outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris. **SPECIAL CONDITION NO. 6** requires the applicant to dispose of all demolition and construction debris resulting from the proposed project at an appropriate location outside the coastal zone. In this case, the proposed project, as conditioned, is an allowable use within wetlands, is the least environmentally damaging feasible alternative, and the project does provide adequate mitigation to offset the wetland impacts, thus, it is consistent with Section 30233 of the Coastal Act.

**C. PUBLIC ACCESS**

Section 30210 of the Coastal Act states:

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

Section 30213 of the Coastal Act states, in pertinent part:

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

The project site fronts Dover Drive, and south of the project site, Dover Drive intersects with Pacific Coast Highway. Pacific Coast Highway is a main arterial highway that serves as a major access route to the beaches and bays in and around Newport Beach and adjacent cities. The proposed project is expected to take about three (3) months for completion and may indirectly result in adverse traffic impacts along Pacific Coast Highway during construction since work will take place along the existing bike lane and one northbound lane of traffic. However, at least one of the two (2) northbound lanes will remain open and a sidewalk already exists on the western side of Dover Drive and also access to Castaways Park (adjacent to the Upper Newport Bay Ecological Reserve) will continue to be available at the southern end of the project site where there is an existing sidewalk on the east side of Dover Drive and at the northern end of the project site where there is a parking lot for and an entrance to Castaways Park. Nevertheless, the temporary closure of the bike and road access need to be limited as much as possible during construction in order to continually provide public access, while also allowing development of the proposed project. The applicant has not supplied information on how this will be accomplished. Therefore, the Commission is imposing **SPECIAL CONDITION NO. 7**, which requires the applicant to submit a traffic control plan. This plan shall show how sidewalk, bike and road access will be maintained during the course of the proposed project. The applicant will be required to make every effort to minimize the duration of sidewalk, bike and road lane closures so that public access remains available. These lanes should be opened, even intermittently, whenever possible during construction. In addition, the plan needs to identify detours available during periods of closure.

**CONCLUSION**

In order to assure that public access is maximized to the extent feasible, the Commission has imposed **ONE (1) SPECIAL CONDITION. SPECIAL CONDITION NO. 7** requires the applicant to submit a traffic control plan. Therefore, as conditioned, the Commission finds adequate access is available nearby, and the proposed development is consistent with Sections 30210 and 30213 of the Coastal Act.

**D. LOCAL COASTAL PROGRAM (LCP)**

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project would not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program that conforms with the Chapter 3 policies of the Coastal Act.

The City of Newport Beach Land Use Plan (LUP) was certified on May 19, 1982. Since the City only has an LUP, the policies of the LUP are used only as guidance. The recently updated (October 2005) Newport Beach LUP includes the following policies that relate to development at the subject site:

Coastal Resource Protection/Wetlands and Deepwater Areas/Dredging, Diking, and Filling, Policy 4.1.2-5 states,

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

- A. Construction or expansion of port/marine facilities.
- B. Construction or expansion of coastal-dependent industrial facilities, including commercial fishing facilities, and commercial ferry facilities.
- C. *In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities shall not exceed 25 percent of the degraded wetland.*
- D. *In open coastal waters, other than wetlands, including estuaries and streams, new or expanded boating facilities, including slips, access ramps, piers, marinas, recreational boating, launching ramps, and pleasure ferries, and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- E. *Maintenance of existing and restoration of previously dredged depths in navigational channels, turning basins, vessel berthing, anchorage, and mooring areas, and boat*

*launching ramps. The most recently updated U.S. Army Corps of Engineers maps shall be used to establish Newport Bay depths.*

- F. Incidental Public Service purposes which temporarily impact the resources of the area, such as burying cables and pipes, inspection of piers, and maintenance of existing intake and outfall lines.*
- G. Sand extraction for restoring beaches, except in environmentally sensitive areas.*
- H. Restoration purposes.*
- I. Nature study, aquaculture, or similar resource-dependent activities.*
- J. In the Upper Newport Bay Marine Park, permit dredging, diking, or filling only for the purposes of wetland restoration, nature study, or to enhance the habitat values of environmentally sensitive areas. (Policy 4.2.3-1.)*

Coastal Resource Protection/Wetlands and Deepwater Areas/Dredging, Diking, and Filling, Policy 4.2.3-11 states,

*Requires the following minimum mitigation measures if a project involves diking or filling of a wetland:*

- A. If an appropriate mitigation site is available, the applicant shall submit a detailed plan which includes provisions for (1) acquiring title to the mitigation site; (2) “in-kind” wetland restoration or creation where possible; (3) where “out-of-kind” mitigation is necessary, restoration or creation of wetlands that are of equal or greater biological productivity to the wetland that was filled or dredged; and (4) dedication of the restored or created wetland and buffer to a public agency, or permanent restriction of their use to open space purposes. Adverse impacts shall be mitigated at a ratio of 3:1 for impacts to seasonal wetlands, freshwater marsh and riparian areas, and at a ratio of 4:1 for impacts to vernal pools and saltmarsh (the ratio representing the acreage of the area to be restored/created to the acreage of the area diked or filled), unless the applicant provides evidence establishing, and the approving authority finds, that restoration or creation of a lesser are of wetlands will fully mitigate the adverse impacts of the dike or fill project. However, in no event shall the mitigation ratio be less than 2:1 unless, prior to the development impacts, the mitigation is completed and is empirically demonstrated to meet performance criteria that establish that the created or restored wetlands are functionally equivalent or superior to the impacted wetlands. The mitigation shall occur on-site wherever possible. Where not possible, mitigation should occur in the same watershed. The mitigation site shall be purchased and legally restricted and/or dedicated before the dike or fill development may proceed.*
- B. The applicant may, in some cases, be permitted to open equivalent areas to tidal action or provide other sources of surface water in place of creating or restoring wetlands pursuant to paragraph A. this method of mitigation would be appropriate if the applicant already owns, or can acquire, filled or diked areas which themselves are not environmentally sensitive habitat areas but which would become so if such areas were opened to tidal action or provided with other sources of surface water.*

- C. *However, if no appropriate sites under options (A) and (B) are available, the applicant shall pay an in-lieu fee of sufficient value to an appropriate public agency for the purchase and restoration of an area of equivalent productive value, or equivalent surface area.*

*This third option would be allowed only if the applicant is unable to find a willing seller of a potential restoration site. The public agency may also face difficulties in acquiring appropriate sites even though it has the ability to condemn property. Thus, the in-lieu fee shall reflect the additional costs of acquisition, including litigation, as well as the cost of restoration. If the public agency's restoration project is not already approved by the City, the public agency may need to be a co-applicant for a permit to provide adequate assurance that conditions can be imposed to assure that the purchase of the mitigation site shall occur prior to issuance of the permit. In addition, such restoration must occur in the same general region (e.g., within the same estuary) where the fill occurred.*

Coastal Resource Protection/Wetlands and Deepwater Areas/Dredging, Diking, and Filling, Policy 4.2.3-13 states,

*Where impacts to wetlands are allowed, require monitoring of mitigation measures for a period of sufficient time to determine if mitigation objectives and performance standards are being met. Mid-course corrections shall be implemented if necessary to meet the objectives or performance standards. Require the submittal of monitoring reports during the monitoring period that document the success or failure of the mitigation. To help insure that the mitigation project is self-sustaining, final monitoring for all mitigation projects shall take place after at least three years with no remediation or maintenance activities other than weeding. If performance standards are not met by the end of the prescribed monitoring period, the monitoring period shall be extended or the applicant shall submit an amendment application proposing alternative mitigation measures and implement the approved changes. Unless it is determined by the City that a differing mitigation monitoring schedule is appropriate, it is generally anticipated that monitoring shall occur for a period not less than five years.*

Coastal Resource Protection/Wetlands and Deepwater Areas/Dredging, Diking, and Filling, Policy 4.2.3-14 states,

*Require that any project that includes diking, filling, or dredging of a wetland or estuary, as permitted pursuant to Policy 4.2.3-1, maintain the functional capacity of the wetland or estuary. Functional capacity means the ability of the wetland or estuary to be self-sustaining and to maintain natural species diversity. In order to establish that the functional capacity is being maintained, the applicant must demonstrate all of the following:*

- A. *That the project does not alter presently occurring plant and animal populations in the ecosystem in a manner that would impair the long-term stability of the ecosystem; i.e., natural species diversity, abundance, and composition are essentially unchanged as a result of the project.*
- B. *That the project does not harm or destroy a species or habitat.*
- C. *That the project does not harm a species or habitat that is essential to the natural biological functioning of the wetland or estuary.*

- D. *That the project does not significantly reduce consumptive (e.g., fishing, aquaculture and hunting) or non-consumptive (e.g., water quality and research opportunity) values of the wetland or estuarine ecosystem'*

Coastal Resource Protection/Wetlands and Deepwater Areas/Dredging, Diking, and Filling, Policy 4.2.3-18 states,

*Require restoration plans to be reviewed and approved by a qualified professional prior to accepting sites for mitigation.*

The proposed project, as conditioned, is an allowable use within wetlands, is the least environmentally damaging feasible alternative, and the project does provide adequate mitigation to offset the wetland impacts, thus, it is consistent with Policy 4.1.2-5. By conditioning the project to require the applicant to submit a final restoration and monitoring plan, the project is consistent with Policies 4.2.3-11, 4.2.3-13, 4.2.3-14 and 4.2.3-18. The proposed development, as conditioned, is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.

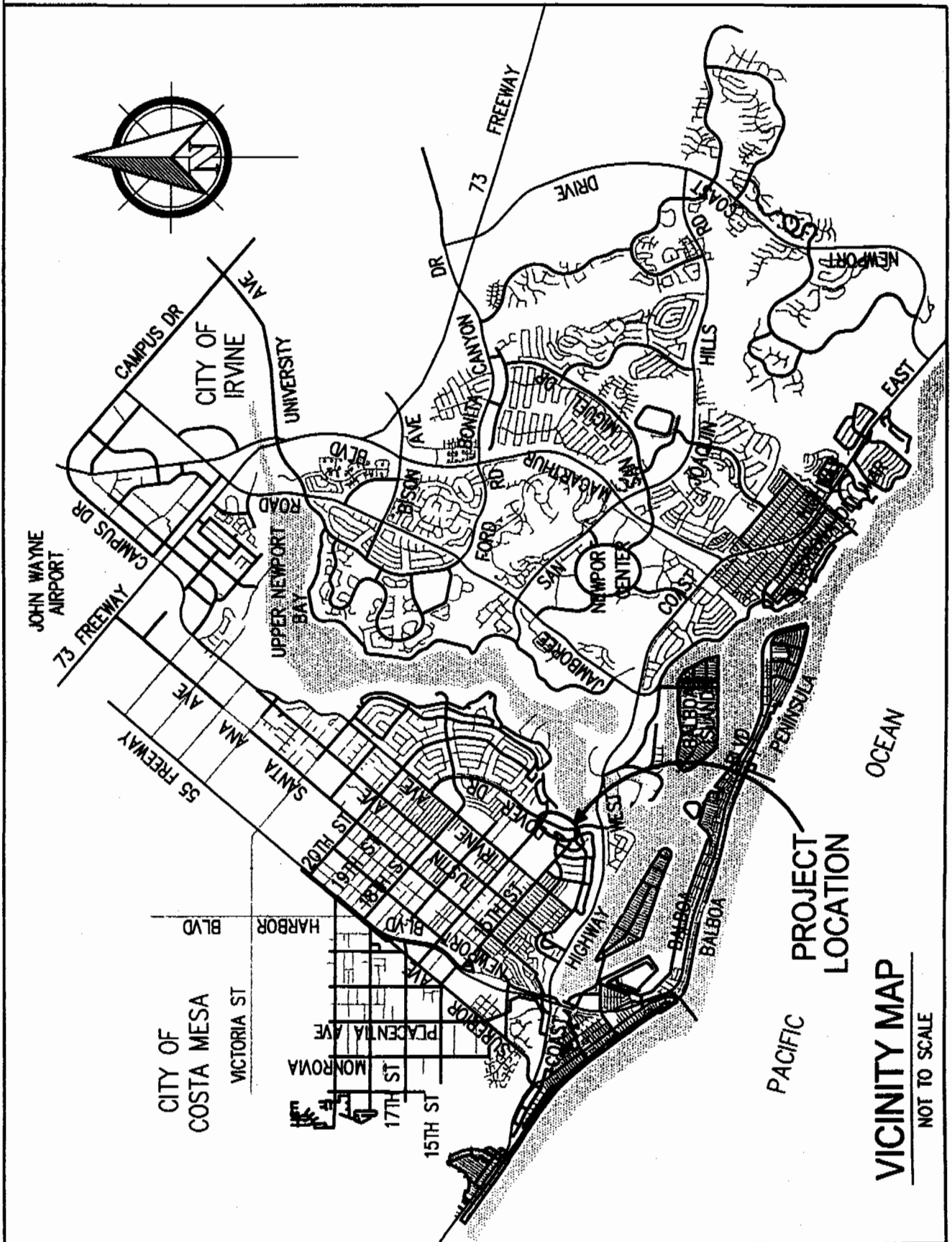
**E. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, 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.

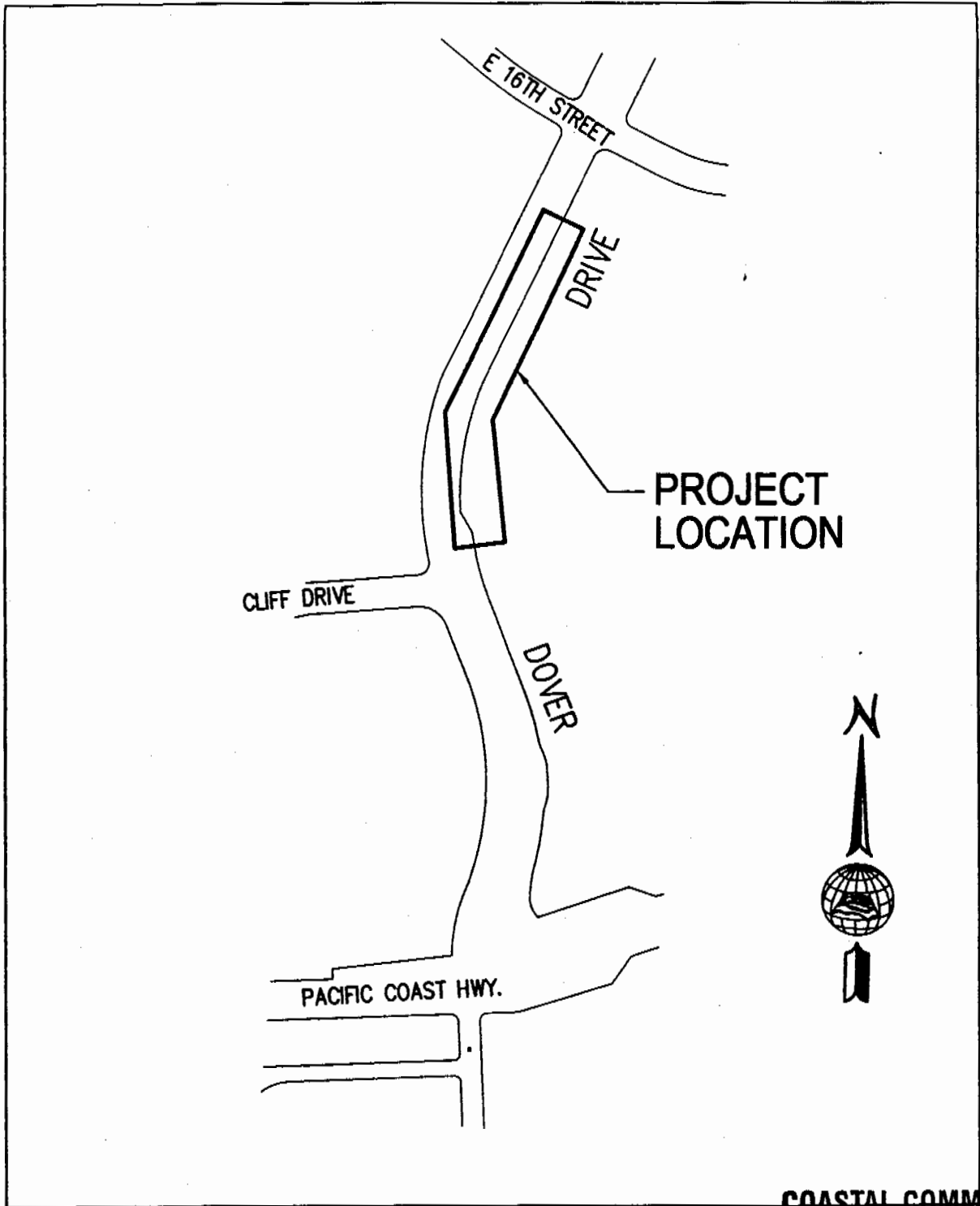
The proposed project is located in an urban area. All infrastructure necessary to serve the site exists in the area. As conditioned, the proposed project has been found consistent with the biological resource and public access policies of Chapter 3 of the Coastal Act. Mitigation measures include: **1)** submittal of revised project plans; **2)** submittal of a final restoration and monitoring program; **3)** submittal of a construction staging plan; **4)** timing of construction to avoid impacting nesting birds; **5)** use of construction best management practices (BMPs); **6)** identification of debris disposal site location; and **7)** submittal of a traffic control plan.

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse effect, which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.





PIPE



COASTAL COMMISSION

# LOCATION MAP

NOT TO SCALE

EXHIBIT # 2  
PAGE 1 OF 1

CLIFF DRIVE

DOVER DRIVE

REACH 1

12' 12'

5' BIKE LANE

8' BIKE LANE

6' BIKE LANE

5' SIDE-WALK

8' SIDE-WALK

5' SIDE-WALK

5' SIDE-WALK

13+00

7.4' SIDE-WALK

R/W

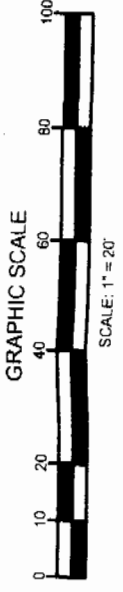
R/W

COASTAL COMMISSION

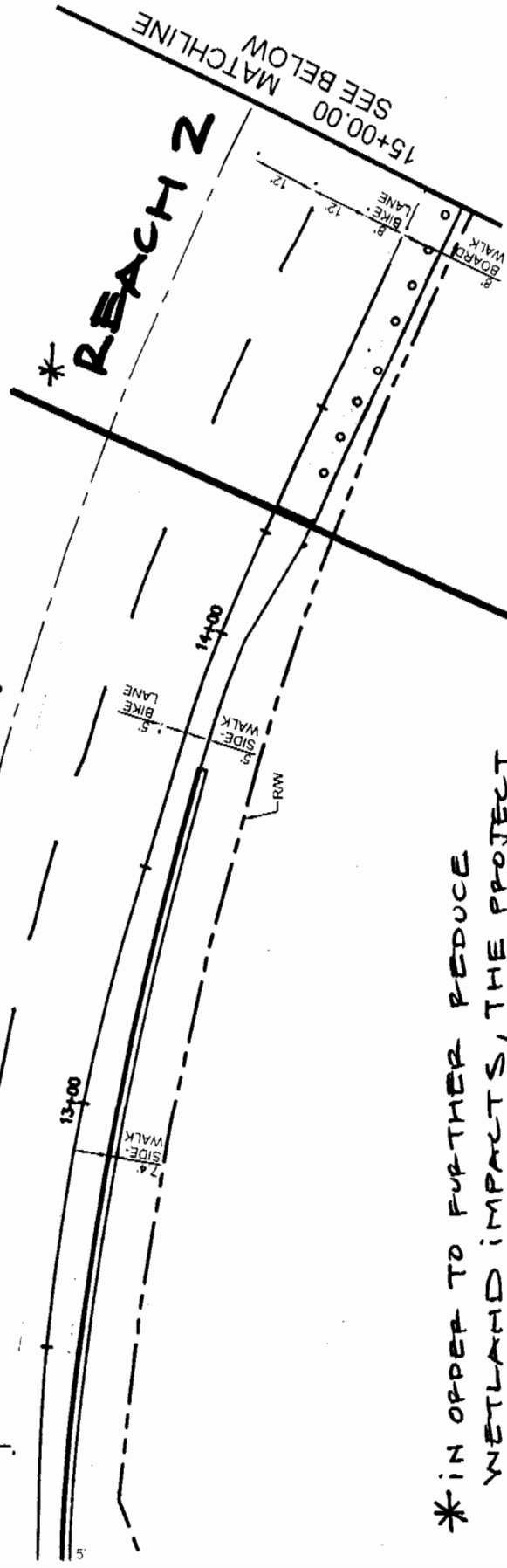
EXHIBIT # **3**

PAGE **1** OF **4**

1.00  
 0.00  
 0.00  
 0.00  
 0.00  
 0.00



DOVER DRIVE REACH 1



\* IN ORDER TO FURTHER REDUCE  
 WETLAND IMPACTS, THE PROJECT  
 HAS BEEN CONDITIONED TO REDUCE THE  
 WIDTH OF THE BOARDWALK IN  
 REACH 2 FROM 8-FEET WIDE TO  
 4-FEET WIDE.

COASTAL COMMISSION

EXHIBIT # 3  
 PAGE 2 OF 4

\* IN ORDER TO FURTHER REDUCE  
WETLAND IMPACTS, THE PROJECT  
HAS BEEN CONDITIONED TO REDUCE  
THE WIDTH OF THE BOARDWALK  
IN REACH 2 FROM 8-FEET WIDE  
TO 4-FEET WIDE.

\* REACH 2

DOVER DRIVE

R/W

16+00

17+00

18+00

R/W

COASTAL COMMISSION

EXHIBIT # 3  
PAGE 3 OF 4

15+00.00 MATCHLINE  
SEE ABOVE

12'

12'

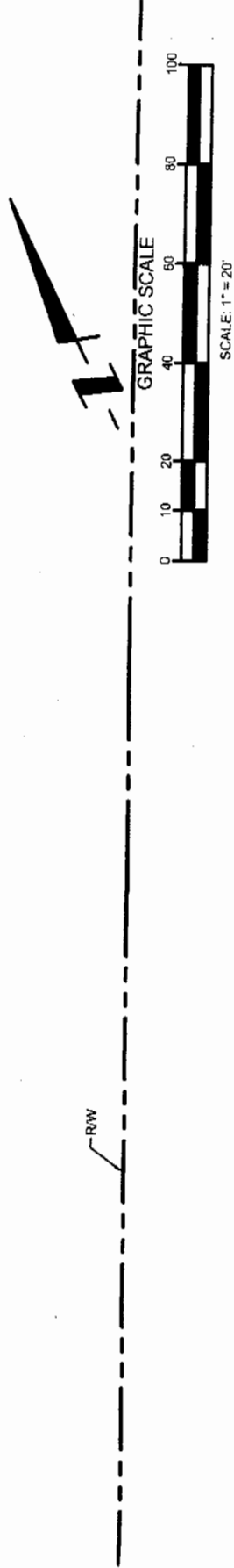
8'

BIKE  
LANE

8'

BOARD-  
WALK

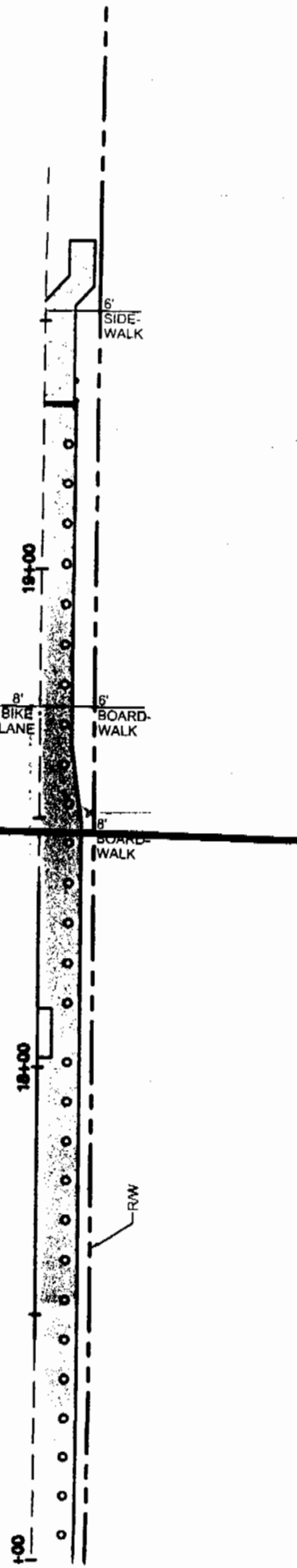
\* IN ORDER TO FURTHER REDUCE WETLAND IMPACTS, THE PROJECT HAS BEEN CONDITIONED TO REDUCE THE WIDTH OF THE BOARDWALK IN REACH 2 FROM 8- FEET WIDE TO 4- FEET WIDE.



DOVER DRIVE

\* REACH 2

\*\* REACH 3



\*\* THE APPLICANT WOULD BE ALLOWED TO WIDEN THE BOARDWALK IN REACH 3 WHERE NO WETLAND IMPACTS ARE PROPOSED, AS LONG AS NO ADDITIONAL ADVERSE IMPACTS TO WETLANDS OCCUR.

COASTAL COMMISSION

EXHIBIT # 3  
PAGE 4 OF 4

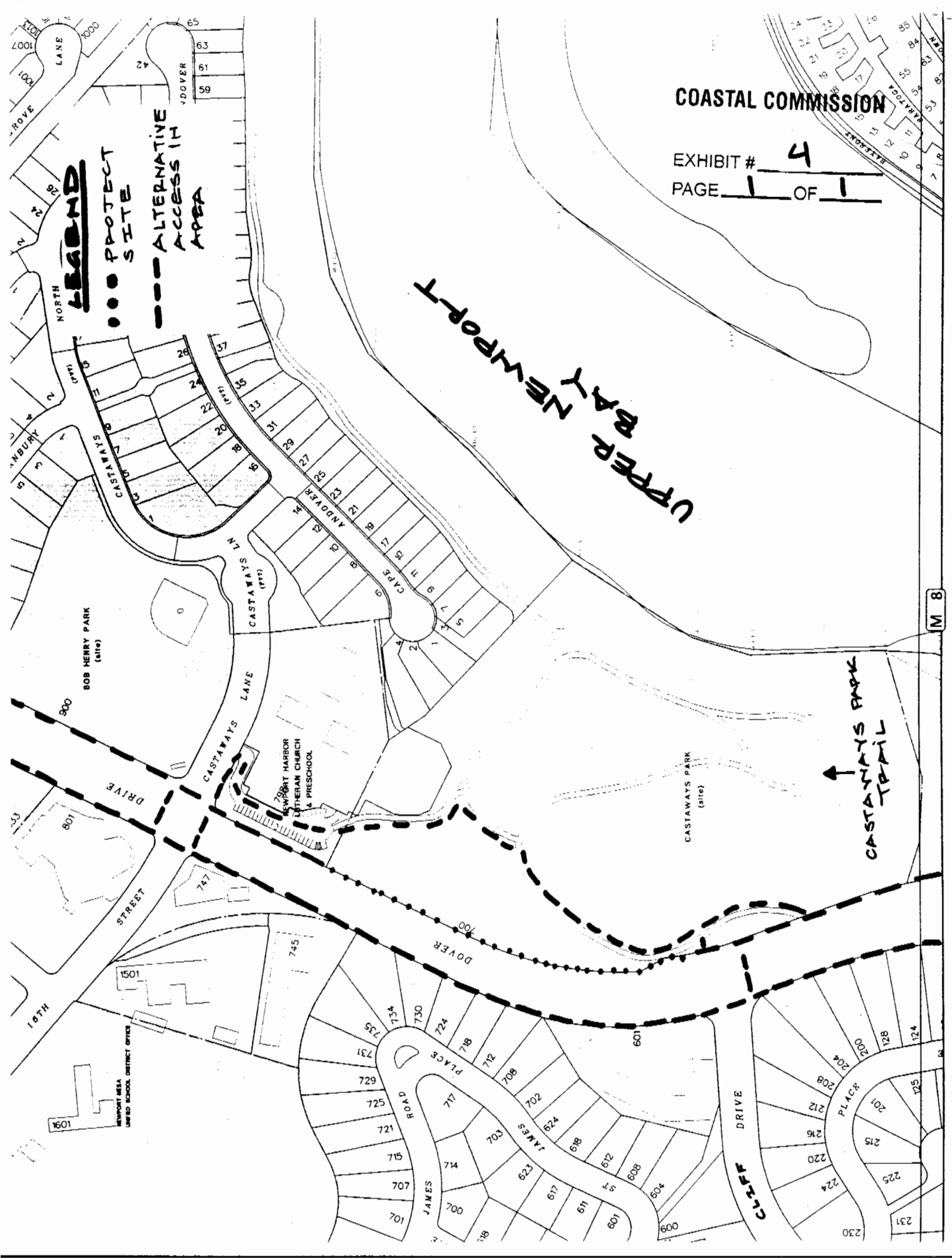
COASTAL COMMISSION

EXHIBIT # 4  
PAGE 1 OF 1

**LEGEND**

●●● PROTECT SITE

--- ALTERNATIVE ACCESS IN AREA



8/18/2007 9:42 PM FROM: Fax TO: 1 415 357-3839 PAGE: 002 OF 002

FORM FOR DISCLOSURE OF  
EX-PARTE COMMUNICATIONS

Name or description of the project: 5-06-344 (City of Newport Beach, Dept. of Public Works, Newport Beach)

Time/Date of communication: August 16, 2007; 2pm

Location of communication: 22350 Carbon Mesa Rd., Malibu

Person(s) initiating communication: Jan Vandersloot

Person(s) receiving communication: Sara Wan

Type of communication: phone call

Jan called to discuss this. Said that he supported the conclusion that the area was a wetland but felt that the sidewalk could be constructed because this could be viewed as an incidental public service. I said I did not see how that interpretation could be used. That this was not a repair, or even widening of an existing sidewalk. It was the placement of a new sidewalk and that is not incidental. He indicated that perhaps it could be consistent with 30233 because it was for nature study. I asked him if the principle purpose of the sidewalk was nature study and he said it wasn't but that it could be used for that purpose in addition to the other uses. I said, it had to be the principle purpose and that trying to expand the uses under incidental public service or nature study was a very slippery slope to go down, that he should meet with staff and find out their thinking, but I could not go along with trying to do that because this was for something we liked.



Date: 8/18/07

---

Sara WanRECEIVED  
South Coast Region

AUG 21 2007

CALIFORNIA COASTAL COMMISSION  
COASTAL COMMISSIONEXHIBIT # 5  
PAGE 1 OF 3



## EX-PARTE COMMUNICATIONS DISCLOSURE

Person(s) initiating communication: Penny Elia – Sierra Club  
Marcia Hanscom – Sierra Club/CLEAN  
Kristen Coppa

Person(s) receiving communication: Commissioner Larry Clark

Location of communication: Bristol Farms  
1570 Rosecrans Ave.  
Manhattan Beach, CA 90266

Time/Date of communication: August 1, 2007 – 12:30 pm

Type of communication: Meeting

Name or description of the project(s):

**COASTAL COMMISSION**  
EXHIBIT # 5  
PAGE 2 OF 3

Began meeting by explaining the purpose and make-up of ORCA (Organization of Regional Coastal Activists) and the goal of conducting regularly scheduled monthly meetings with all Commissioners. These meetings are held up and down the coast each month with other ORCA representatives, that include, but are not limited to members of Sierra Club, Surfrider, Audubon, CA Native Plant Society, etc. It is ORCA's additional goal to consolidate activists' input on the major agenda items each month and share this consolidated input with each County's/area's respective Commissioner(s). With that in mind, dates for September will be organized the week following the August hearing.

### Enforcement

Discussed in general terms the need for added enforcement staff and the appropriate funding for same.

### **c. City of Oxnard Amendment No. OXN-MAJ-1-07 (Breakers Way Rezone) Public hearing and action on request by City of Oxnard to amend its LCP to change the zoning of the Breakers Way parcel located in the Oxnard Shores neighborhood from Resource Protection (RP) to Single Family Beach (R-B-1). (DC-V)**

Discussion on lawsuit and terms of settlement as well as the fact that this item will be heard in closed session. It is important that both of the lots be brought back and heard together as a piecemeal approach will only lead to destruction of ESHA (Sand Dune).

### **a. City Of Laguna Beach LCP Amendment No. LGB-MAJ-1-07b (Assorted Implementation Plan Revisions). Public hearing and action on City of Laguna Beach LCP Amendment No. 1-07b which changes**

**or adds Implementation Plan provisions regarding permit processing and Design Review Board powers, among others. (MV-LB)**

**b. City of Laguna Beach LCP Amendment No. LGB-MAJ-2-06 (Design Review Procedures). Public hearing and action on request by the City of Laguna Beach to amend the certified Local Coastal Program (LCP), affecting the Implementation Plan, by amending several design review procedures addressing variances, a change to the type of development subject to design review and building permit requirements, codification of Administrative Design Review process, and changes to requirements related to staking, biological reports, fire department review, public notice, public hearings, appeals, and re-application for approval of denied proposals. (RT-LB)**

Requested support of staff recommendations on both of these LCPAs. Discussion followed as to the ongoing problems in Laguna Beach with respect to habitat destruction in the name of fuel mod and inappropriate biological review of the last remaining very high value habitat areas. This discussion also involved a statewide look at fuel mod plans since it is apparently the newest tool being used to destroy ESHA up and down the coast. San Diego Brush Management mentioned along with problems in Malibu and elsewhere along the coast.



**d. Application No. 5-06-344 (City of Newport Beach, Dept. of Public Works, Newport Beach) Application of City of Newport Beach, Dept. of Public Works to construct and connect sidewalk/boardwalk to existing sidewalk and plant 8 Red Willow trees as mitigation for impacting riparian and wetland habitat, at East side of Dover Drive from Cliff Drive to 970 ft north of Cliff Drive (south of 16th Street), adjacent to Castaways Park, Newport Beach, Orange County. (FSY-LB) [POSTPONED]**

At the time of our meeting this item was not postponed, but we were hoping that it would be. Discussion on the overall impacts to wetlands and the fact that any impact at this point is unacceptable due to the critical decrease in wetlands, impacts to Pacific Flyway, etc. This discussion tied into UC Santa Cruz agenda item that had been postponed. It was agreed that a marine study center in the middle of a wetland was inappropriate.

**f. City of San Diego LCP Major Amendment No. 1-07 (Brush Management). Public hearing and action to extend time limit for one year on request by the City of San Diego to adopt the Commission's suggested modifications for certification of the City's proposed brush management regulations. (DNL-SD)**

See previous comments.

**COASTAL COMMISSION**

EXHIBIT # 5  
PAGE 3 OF 3

**Fernie Sy**

**From:** JonV3@aol.com  
**Sent:** Friday, August 03, 2007 12:33 AM  
**To:** Sherilyn Sarb; Teresa Henry; Karl Schwing; Fernie Sy; Peter Douglas  
**Cc:** RStein@city.newport-beach.ca.us; wetlandact@earthlink.net; greenp1@cox.net; mark.massara@sierraclub.org  
**Subject:** Agenda Item W18d-8-2007 Dover Drive Sidewalk, Application No. 5-06-344

August 2, 2007

Patrick Kruer, Chair, and  
 California Coastal Commission  
 South Coast District  
 1000 Oceangate,  
 Long Beach, CA

**COASTAL COMMISSION**

Re: Agenda Item W18d-8-2007  
 Application No. 5-06-344  
 City of Newport Beach Public Works Department  
 Dover Drive Sidewalk

EXHIBIT # 6  
 PAGE 1 OF 4

Recommend: Approval with Special Conditions and Mitigation Plan

Dear Chair Kruer and Coastal Commissioners,

I understand that the Public Works Department of Newport Beach has been working with Coastal Commission staff to resolve outstanding issues that have caused the Coastal Commission staff to recommend denial of the application for a sidewalk and boardwalk along Dover Drive in Newport Beach along a wetland in Castaways Park, a natural park in Newport Beach. I have been working with Bob Stein of the Newport Beach Public Works Department to explain the staff report and try to work out a resolution consistent with Coastal Act protections embodied in Section 30233 of the Coastal Act.

I think the Newport Beach staff recognizes that Coastal Commission jurisdictional wetlands do exist in the area contemplated for the sidewalk and boardwalk and that Section 30233 applies due to the healthy stands of wetland vegetation present there, including salt marsh heliotrope and saltgrass. I have recommended that the Incidental Public Services provision in Section 30233 would make the sidewalk and boardwalk an allowable use in the wetland for public safety and public access reasons.

Dover Drive is an extremely busy, wide, fast, and potentially dangerous arterial in Newport Beach. It has a blind curve along the proposed sidewalk route that causes traffic to veer towards the curb. I have personally seen mothers with strollers on the street due to no sidewalk. There is a dirt user-defined path where the sidewalk and boardwalk are proposed to be located. It is not a feasible alternative to ask pedestrians to cross the wide busy street to access the coast, or travel up into the park and down towards the street to navigate around the stretch of Dover without a sidewalk. Therefore I think the sidewalk and boardwalk ought to be approved.

However, the Newport Beach staff is only proposing a minimalist mitigation plan, with hydroseeding in the fall and routine maintenance by Parks Department staff. The staff report and Mitigated Neg Dec have identified 0.051 acres of wetlands impacted by the project. Mitigation for loss of this acreage at a 3:1 or 4:1 ratio would be realized by establishing 0.153 or 0.204 acres of similar habitat on the slope above the cattails in the wetland. This acreage is approximately the size of bare ground on the slope there now. Thus, establishing the whole slope with salt marsh heliotrope, saltgrass, alkali heath, pepper grass, and other appropriate wetlands species would provide mitigation for the 0.051 acres of permanent loss of wetland habitat caused by the project.

I would strongly recommend strict requirements for success of this mitigation, given past experiences in Newport Beach where native plant monitoring and success efforts have sometimes been less than stellar, i.e., Back Bay View Park, Bayview Landing project landscape plan, Special Condition No. 7 (CDP 5-03-091). I would strongly

8/3/2007

recommend that Newport Beach be required to have a specific mitigation plan including a landscape plan, plant palette, temporary irrigation, replacement of failed plants, and a minimum 5-year monitoring program to ensure success. Otherwise the proposed hydroseed may not work and we are left with a bare slope with only natural recruitment.

With that, I would recommend approval of the project with Special Conditions relating to mitigation. Although the City is eager to get this project approved by the Coastal Commission on August 8, I think that the meeting could be continued to ensure the proper mitigation, since the planting program would best wait for next winter's rain anyway to provide the best chance for successful planting of the mitigation plan.

Sincerely,

Jan D. Vandersloot, MD  
2221 E 16th Street  
Newport Beach, CA 92663  
(949) 548-6326

\*\*\*\*\*

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**COASTAL COMMISSION**

EXHIBIT # 6  
PAGE 2 OF 4

8/3/2007

July 23, 2007

Mr. Fernie Sy  
Coastal Program Analyst  
California Coastal Commission  
200 OceanGate, 10th Floor  
Long Beach, CA 90802-4302

**RECEIVED**  
South Coast Region

JUL 27 2007

CALIFORNIA  
COASTAL COMMISSION

RE: Coastal Development Permit Application No. 5-06-344

Dear Mr. Sy,

At the city's request I've toured the site of the proposed sidewalk/boardwalk project. I am also very familiar with the area, having been involved with the adjacent Castaways Park restoration. I also drive or bicycle past this particular location many times each week.

As the President of the Newport Bay Naturalists and Friends (NBNF), I am often in opposition to changes taking place in the coastal zone, however after seeing the plans for and walking the site, I find this is a project that I can support. This is out of the specific area in which the NBNF operates, so this is not an official position of the NBNF board, but mine as a citizen of Newport Beach.

My support is based on the following:

- ◆ Currently this is a very hazardous condition for pedestrians who have to step into the street and compete with cars and bicyclists for space.
- ◆ Currently pedestrians walk on the dirt between the curb and the embankment slope above the wetland, packing the soil resulting in a lack of vegetation in the "pathway". This creates potential erosion of the bank into the wetland below during rain events. ( This has not currently been an issue because of lack of rain.)
- ◆ Currently pedestrians walk on the dirt between the curb and bluff base just before being forced into the street creating another place for possible erosion
- ◆ This project will improve conditions on a main route to the bay and coastal resources located there, bettering public access. Because of coastal bluffs in this area there are few routes for residents to access the bay.

COASTAL COMMISSION

EXHIBIT # 6  
PAGE 3 OF 4

- ◆ At the site there is degraded slope with no vegetation that will be vegetated with native plants as well as the addition of willows as mitigation. This will result in an improvement to the site.
- ◆ The board walk section will enhance the appearance of the site over the current condition and offer a pleasant observation point for the existing wetland and part of the Castaways Park.

I did not note any indication in the plans that removal or filling of wetlands will occur, and in fact that proposed plantings will enhance and expand the amount of wetland habitat. Since the project will improve public access, the project is consistent with the intent of Chapter 3, Article 2 and does not conflict with Chapter 3, Article 4 of the Coastal Act.

Sincerely,



Dennis Baker  
706 1/2 Begonia Ave.  
Corona del Mar, CA 92625  
949.675.2199

**COASTAL COMMISSION**

EXHIBIT # 6  
PAGE 4 OF 4

**Fernie Sy**

**From:** Marcia Hanscom [wetlandact@earthlink.net]  
**Sent:** Friday, August 03, 2007 3:48 PM  
**To:** Sherilyn Sarb; Teresa Henry; Karl Schwing; Fernie Sy; Peter Douglas  
**Cc:** mark.massara@sierraclub.org  
**Subject:** Fw: Agenda Item W18d-8-2007 Dover Drive Sidewalk, Application No. 5-06-344

Coastal Commission staff ~

Just so you all know, Penny Elia on behalf of Sierra Club, and I, on behalf of CLEAN and Wetlands Defense Fund, met with two Commissioners this week and told them we strongly support the staff recommendation on this item. They were in agreement that staff ought to be supported in upholding the wetland protection provisions of the Coastal Act and were glad to know of our support of the staff recommendation.

I see the item is postponed now. I hope that this does not mean that the City of Newport Beach and their consultants see an opening for weakening of the wetlands provisions of the Coastal Act.

Please keep me posted as to the future of this item. I rarely disagree with Jan Vandersloot on wetland and ESHA issues, but here I must - for the sake of strong wetland protections in the coastal zone.

Thank you for your work on a well-reasoned staff report.

best wishes ~ Marcia Hanscom

-----Forwarded Message-----

From: JonV3@aol.com  
 Sent: Aug 3, 2007 12:32 AM  
 To: ssarb@coastal.ca.gov, thenry@coastal.ca.gov, kschwing@coastal.ca.gov, fsy@coastal.ca.gov, pdouglas@coastal.ca.gov  
 Cc: RStein@city.newport-beach.ca.us, wetlandact@earthlink.net, greenp1@cox.net, mark.massara@sierraclub.org  
 Subject: Agenda Item W18d-8-2007 Dover Drive Sidewalk, Application No. 5-06-344

August 2, 2007

Patrick Kruer, Chair, and  
 California Coastal Commission  
 South Coast District  
 1000 Oceangate,  
 Long Beach, CA

Re: Agenda Item W18d-8-2007  
 Application No. 5-06-344  
 City of Newport Beach Public Works Department  
 Dover Drive Sidewalk

Recommend: Approval with Special Conditions and Mitigation Plan

Dear Chair Kruer and Coastal Commissioners,

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I think the Newport Beach staff recognizes that Coastal Commission jurisdictional wetlands do exist in the

**COASTAL COMMISSION**

EXHIBIT # 7  
 PAGE 1 OF 2

8/6/2007

area contemplated for the sidewalk and boardwalk and that Section 30233 applies due to the healthy stands of wetland vegetation present there, including salt marsh heliotrope and saltgrass. I have recommended that the Incidental Public Services provision in Section 30233 would make the sidewalk and boardwalk an allowable use in the wetland for public safety and public access reasons.

Dover Drive is an extremely busy, wide, fast, and potentially dangerous arterial in Newport Beach. It has a blind curve along the proposed sidewalk route that causes traffic to veer towards the curb. I have personally seen mothers with strollers on the street due to no sidewalk. There is a dirt user-defined path where the sidewalk and boardwalk are proposed to be located. It is not a feasible alternative to ask pedestrians to cross the wide busy street to access the coast, or travel up into the park and down towards the street to navigate around the stretch of Dover without a sidewalk. Therefore I think the sidewalk and boardwalk ought to be approved.

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Sincerely,

Jan D. Vandersloot, MD  
2221 E 16th Street  
Newport Beach, CA 92663  
(949) 548-6326

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EXHIBIT # 7  
PAGE 2 OF 2