

CALIFORNIA COASTAL COMMISSION

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Staff: Fernie Sy-LB
Staff Report: February 22, 2007
Hearing Date: March 14-16, 2007
Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NO.: 5-06-233

APPLICANT: California Department of Fish and Game

AGENT: Ralph Clock

PROJECT LOCATION: 2951 Eastbluff Drive, City of Newport Beach (Orange County)

PROJECT DESCRIPTION: Enhance an existing public viewing area located adjacent to Upper Newport Bay. The proposed project will consist of: construction of two (2) rows of concrete bleachers to accommodate twenty-eight (28) people, replace existing PVC pipe rail fence with cable or small diameter pipe between 24" (h) x 6" (w) x 6" (l) posts, place approximately 400 square feet of stone paved viewing areas, install two viewing telescopes and interpretive plaques, landscaping, and erect appreciation monument. Grading will consist of 50 cubic yards of import.

SUMMARY OF STAFF RECOMMENDATION:

The proposed development involves the enhancement of an existing public look-out area located at a bluff top site overlooking Upper Newport Bay. The major issues before the Commission relate to biological resources, water quality, marine resources, scenic resources, public access and geology. Staff is recommending **APPROVAL** of the proposed project subject to **TWELVE (12) SPECIAL CONDITIONS** requiring: **1)** submittal of a Construction Staging Area Plan, **2)** additional approvals for any future development; **3)** construction-phase best management practices; **4)** submittal of a Final Drainage and Run-Off Control Plan; **5)** submittal of a Grading Plan; **6)** submittal of a Final Landscape Plan; **7)** submittal of a Color and Texture Plan; **8)** conformance with geotechnical recommendations; **9)** assumption of risk; **10)** protection of accessory structures; **11)** removal of unpermitted development; and **12)** condition compliance.

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of Newport Beach only has a certified Land Use Plan and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. 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.

LOCAL APPROVALS RECEIVED: Approval-in-Concept (No. 2287-2002) from the City of Newport Beach Planning Department dated January 27, 2006.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Land Use Plan; Letter from the California Department of Fish and Game letter to Commission staff dated April 17, 2006; *Preliminary Geotechnical Review Report and Preliminary Plan for the Proposed Backbay Vista Point, Newport Beach, County of Orange, California* prepared by Leighton and Associates, Inc. dated October 8, 2002; *Ecological Assessment dated October 2002* prepared by the California Department of Fish and Game; *Review of Preliminary Geotechnical Review Report and Preliminary Plan for the Proposed Backbay Vista Point, Newport Beach, County of Orange, California* dated May 4, 2006 prepared by Leighton and Associates, Inc.; Letter from Commission staff to Ralph Clock dated July 18, 2006; Letter from Ralph Clock to Commission staff dated August 10, 2006; Letter from Ralph Clock to Commission staff dated September 14, 2006; Letter from Ralph Clock to Commission staff dated October 20, 2006; Letter from Ralph Clock to Commission staff dated November 11, 2006; *Biological Update, Environmental Assessment for Upper Newport Bay Endangered Species Memorial Lookout at the Corner of Eastbluff Drive and Back Bay Drive* prepared by Kean Biological Consulting dated November 10, 2006; Letter from Ralph Clock to Commission staff dated November 27, 2006; Letter from Ralph Clock to Commission staff dated December 11, 2006; and Letter from Newport Bay Naturalist and Friends to Commission staff dated January 22, 2007.

LIST OF EXHIBITS

1. Vicinity Maps
2. Site Plan

I. STAFF RECOMMENDATION, MOTION AND RESOLUTION OF APPROVAL

MOTION: *I move that the Commission approve Coastal Development Permit No. 5-06-233 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 permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date 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 permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. **CONSTRUCTION STAGING AREA PLAN**

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the permittee shall submit, for the Executive Director's review and approval, two (2) full size sets of Construction Staging Area Plan, which indicate that the construction staging area(s) and construction corridor(s) will avoid impacts to the Upper Newport Bay Ecological Reserve (UNBER), which is an Environmental Study Area (ESA) identified in the City's certified Land Use Plan (LUP), which are areas known by the City to contain Environmental Sensitive Habitat Areas (ESHA).

(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; and
- (b) Construction equipment, materials, or activity shall not be placed in any location which would result in impacts to the Upper Newport Bay Ecological Reserve (UNBER) including but not limited to areas containing native vegetation, wetlands, or any other habitat for sensitive wildlife.

- (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 and temporary job trailers with respect to existing areas of native vegetation and wetlands.
- 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. FUTURE DEVELOPMENT

This permit is only for the development described in Coastal Development Permit No. 5-06-233. Pursuant to Title 14 California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to the development governed by Coastal Development Permit No. 5-06-233. Accordingly, any future improvements to the public look-out area authorized by this permit, including repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-06-233 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

3. CONSTRUCTION BEST MANAGEMENT PRACTICES

- A.** The permittee shall comply with the following construction-related requirements:
- (1) No construction materials, debris, or waste shall be placed or stored where it may be subject to wave, wind, rain, or tidal erosion and dispersion;
 - (2) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
 - (3) Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters;
 - (4) Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control dust and sedimentation impacts to coastal waters during construction. BMPs shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into coastal waters; and

- (5) 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.

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. Such measures shall be used during construction:

- (1) The applicant shall ensure the proper handling, storage, and application of petroleum products and other construction materials. These shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. It shall be located as far away from the receiving waters and storm drain inlets as possible;
- (2) The applicant shall develop and implement spill prevention and control measures;
- (3) The applicant shall maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems. Washout from concrete trucks shall be disposed of at a location not subject to runoff and more than 50-feet away from a stormdrain, open ditch or surface water; and
- (4) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.

4. FINAL DRAINAGE AND RUN-OFF CONTROL PLAN

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit for the review and approval of the Executive Director, two (2) full sized copies of a Final Drainage and Run-off Control Plan for the post-construction project site, prepared by a licensed water quality professional, and shall include plans, descriptions, and supporting calculations. The plan shall be in substantial conformance with the following requirements:

- (1) Runoff from all impervious areas will be directed to a trench drain, permeable areas or vegetated/landscaped areas;
- (1) The plan shall incorporate appropriate Best Management Practices (BMPs) into the development, designed to reduce, to the maximum extent practicable, the volume, velocity and pollutant load of stormwater and dry weather flows leaving the developed site;
- (2) Impervious surfaces, especially directly connected impervious areas, shall be minimized, and alternative types of pervious pavement shall be used where feasible;

- (3) Irrigation and the use of fertilizers and other landscaping chemicals shall be minimized through the use of low-maintenance landscaping and efficient irrigation technology or systems;
- (4) Trash, recycling and other waste containers, as necessary, shall be provided. All waste containers anywhere within the development shall be covered, watertight, and designed to resist scavenging animals; and
- (5) All structural and/or treatment control BMPs shall be designed, installed, and maintained for the life of the project in accordance with well-recognized and accepted design principles and guidelines, such as those contained in the California Stormwater Quality Association Best Management Practice Manuals.

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.

5. GRADING PLAN

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit for the review and approval of the Executive Director, two (2) full sized copies of a Grading Plan prepared by a licensed professional. The Grading Plan must identify the boundary of the proposed grading as the limits of the existing disturbed area demarcated by the existing PVC pipe rail fence identified on the plans received August 10, 2006.

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.

6. FINAL LANDSCAPE 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 copies of a Final Landscape Plan that demonstrate the following:

- (1) The plan shall demonstrate that:
 - (a) All landscaping shall consist of native drought tolerant non-invasive plant species that are appropriate to the habitat type. Local native plant stock shall be used if available. No plant species listed as problematic and/or invasive by the California Native Plant Society, California Invasive Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious

weed' by the State of California or the U.S. Federal Government shall be utilized within the property. Any existing landscaping that doesn't meet the above requirements shall be removed;

- (b) All planting shall provide 90 percent coverage within 90 days and shall be repeated if necessary to provide such coverage; and
- (c) All plantings shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan.

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

- (a) A map showing the type, size, and location of all plant materials that will be on the developed site, the irrigation system, topography of the developed site, and all other landscape features, and
- (b) a schedule for installation of plants.

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.

7. COLOR AND TEXTURE 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) copies of a plan demonstrating that the color and texture of the proposed structures will be compatible with the adjacent bluff face and vegetation. The plan shall demonstrate that:

- (1) The proposed structures will be constructed with materials that are earth tones or have been colored with earth tones using dye, paint or other durable finish that are compatible with the adjacent bluff face and vegetation;
- (2) White and black tones will not be used, and
- (3) The color will be maintained through-out the life of the structure.

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

8. CONFORMANCE WITH GEOTECHNICAL REPORTS

- A. All final design and construction plans, including foundation, grading and drainage plans, shall be consistent with all recommendations contained in the following geotechnical report: *Preliminary Geotechnical Review Report and Preliminary Plan for the Proposed Backbay Vista Point, Newport Beach, County of Orange, California* prepared by Leighton and Associates, Inc. dated October 8, 2002; and *Ecological Assessment dated October 2002* prepared by the California Department of Fish and Game; *Review of Preliminary Geotechnical Review Report and Preliminary Plan for the Proposed Backbay Vista Point, Newport Beach, County of Orange, California* dated May 4, 2006 prepared by Leighton and Associates, Inc..
- B. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all of the recommendations specified in the above-referenced geologic evaluation approved by the California Coastal Commission for the project site.

9. **ASSUMPTION OF RISK, WAIVER OF LIABILITY AND INDEMNIFY**

- A. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from bluff and slope instability, erosion, landslides and tidal erosion; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
- B. **PRIOR TO ANY CONVEYANCE OF THE PROPERTY THAT IS THE SUBJECT OF THIS COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Standard and Special Conditions"); and (2) imposing all Standard and Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The restriction shall include a legal description of the applicant's entire parcel or parcels. It shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the Standard and Special Conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes – or any part, modification, or amendment thereof – remains in existence on or with respect to the subject property.

- C. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit a written agreement, in a form and content acceptable to the Executive Director, incorporating all of the above terms of this condition

10. PROTECTION OF ACCESSORY STRUCTURES

In the event that erosion or bluff failure/instability threatens the public look-out area or portions thereof, the threatened portions shall be removed or relocated landward to areas that are not threatened. The public look-out area is authorized to remain in place only until it is threatened by erosion or bluff or slope failure or instability. The approval of this permit shall not be construed as creating a right to shoreline or bluff protection under Coastal Act section 30235. By acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code section 30235. Prior to removal or relocation of the threatened portions of the public look-out area, the permittee shall obtain a coastal development permit for such removal unless the Executive Director determines that no permit is legally required.

11. REMOVAL OF UNPERMITTED DEVELOPMENT

The applicant shall remove the existing white plastic PVC perimeter fence, kiosk and rock with a plaque within 90 days of the issuance of this permit. The Executive Director may grant additional time for good cause.

12. CONDITION COMPLIANCE

Within 90 days of Commission action on this coastal development permit application, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. PROJECT LOCATION, DESCRIPTION AND UNPERMITTED DEVELOPMENT

1. Project Location

The project site is located at an existing bluff top public look-out area at 2951 Eastbluff Drive at the intersection of Back Bay Drive and Eastbluff Drive (also known as Vista Point) in the City of Newport Beach, Orange County (Exhibit #1). The project site is 0.25 acres in size and the City of Newport Beach Land Use Plan (LUP) designates use of the site for Open Space and the proposed project adheres to this designation. The project site is adjacent to and overlooks the Upper Newport Bay Ecological Reserve (UNBER) that was created in 1975 to conserve and enhance 752 acres of saltwater marsh ecosystem in the upper reaches of Newport Bay, commonly referred to as the Back Bay. The reserve allows limited recreational and educational access as specified in the California Fish and Game code. The majority of the Upper Bay is an estuarine salt marsh system with considerable freshwater input from its 145 square mile watershed. The Upper Bay extends in a north-to northeasterly direction from the Pacific Coast Highway Bridge for a distance of about 3.5 miles and is bounded by the bluffs on the Newport Mesa on the west and the San Joaquin Terrace on the east. The subject site is located at the northwesterly reach of the Upper Bay. The Upper Bay veers east at the remnant salt pond dike and extends to the Jamboree Road Bridge where the San Diego Creek flows into Upper Newport Bay. At its southern end, Upper Newport Bay connects with Newport Harbor (Lower Newport Bay) at the Pacific Coast Highway Bridge. Lower Newport Bay extends 1.5 miles in an east-west orientation. Its ocean entrance jetty is located at the eastern (downcoast) end of the bay.

The waters and mudflats of UNBER are home to over 935 species of plants and animals. The watershed of the bay, over 154 square miles of land that surrounds the bay, supports over 750,000 people. Much of the trash, oil, pesticides, and soil that wash into the surrounding storm drains and streams pass through the bay before it moves on to our costal beaches.

The State Lands Commission owns the site and leases it to the California Department of Fish & Game (CDF&G), whom manages the project site as a public look-out area of the UNBER. The CDF&G, together with the Upper Newport Bay Naturalists and Friends, propose to construct an endangered Species Memorial Look-out area in honor of Francis & Frank Robinson. The look-out area would provide a seating area and viewing scopes for the public, informative panels and an interpretive native plant garden. Viewing of wildlife and vegetation will be enhanced, and interpretive experiences will be provided. The proposed project would also provide increased access for people with disabilities.

To the north and east of the project site is Upper Newport Bay. To the south of the site is Eastbluff Drive and residential development. To the west of the site is Back Bay Drive and residential development.

2. Project Description

The proposed project consists of enhancing an existing 0.25 acre public viewing area located adjacent to Upper Newport Bay. The proposed project will consist of: construction of two (2) rows of concrete bleachers to accommodate twenty-eight (28) people, replace existing white PVC pipe rail fence with cable or small diameter pipe between 24" (h) x 6" (w) x 6" (l) posts, place approximately 400 square feet of stone paved viewing areas, install two

viewing telescopes and interpretive plaques, landscaping, and erect appreciation monument (Exhibit #2). Grading will consist of 50 cubic yards of import. There will be no expansion of the project site (disturbed area) that is demarcated by the existing PVC pipe rail fence. No lighting is currently provided on site and none is proposed.

Light equipment will be used to build a seating area of rammed earth. The seating and viewing area will be wheelchair accessible and provide a staging area for interpretive and educational tours; as well as a place where the public can come and observe wildlife in their natural setting.

3. Unpermitted Development

The subject site is an elevated bluff top area along the perimeter of the habitat reserve but adjacent to and level with the roadway. Currently, there is an existing white plastic PVC perimeter fence, kiosk and a rock with a plaque that were apparently installed after 1972. No Coastal Commission approval could be found for the installation of these three elements. However, these three elements will be removed with the proposed project. The replacement perimeter fence will be less visually obtrusive than the existing fence.

B. BIOLOGICAL RESOURCES

Section 30240 of the Coastal Act states:

- (a) *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
- (b) *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

Section 30240 requires that environmentally sensitive habitat areas (ESHAs) be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas. Section 30240 also requires that development in areas adjacent to ESHAs and parks and recreation areas shall be sited and designed to prevent impacts, which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The proposed project is adjacent to the UNBER and is designated as an Environmental Study Area in the City's certified Land Use Plan (LUP), which are areas known by the City to contain sensitive habitat including ESHA. In order to determine the potential impacts of the project on biological resources, two biological assessments were conducted: 1) *Environmental Assessment for the Upper Newport Bay Memorial Lookout* dated April 2002 prepared by the California Department of Fish & Game, and 2) *Biological Update, Environmental Assessment for Upper Newport Bay Endangered Species Memorial Lookout at the corner of Eastbluff Drive and Back Bay Drive* dated November 10, 2006 prepared by Keane Biological Consulting. As described more fully below, these studies found that there is no sensitive habitat located within the footprint of the proposed development. However, sensitive species are known to utilize habitat in the vicinity of the development. Since the proposed development will remain within the limits of the existing

disturbed area/view overlook (i.e. there will be no expansion of the limits of the disturbed area), there will be no direct impacts on sensitive habitat. Furthermore, there will be no indirect impacts to sensitive resources known to utilize adjacent habitat.

The *Environmental Assessment for the Upper Newport Bay Memorial Lookout* dated April 2002 prepared by the California Department of Fish & Game reviewed literature on natural resources in and near the project area including information from the California Department of Fish & Game California Natural Diversity Data Base and the California Native Plant Society and conducted an onsite survey on April 10, 2002. The potential occurrences of other species was reviewed by determining their known or documented habitat preferences. The assessment found that there is no vegetation or sensitive habitat within the limits of the proposed project, but marginal vegetation does exist adjacent to the proposed development footprint; however, no sensitive species were identified or observed in the adjacent areas during the field survey. The surrounding plant community is most closely associated with the Coastal Sage Scrub community; however the limits of the development site are made up of mineral soil and are highly disturbed due to high traffic from public use. The assessment also determined that marginal wildlife habitat does exist in the project area; however, no sensitive wildlife species were observed or identified within the project area or within 100-feet of the project area. Furthermore, the assessment states that the proposed project will not impact any sensitive wildlife or plant species. The assessment concludes: "*Due to the current disturbed status of the site and the high level of public use, the coastal scrub habitat can only be considered, at the best, marginal habitat. Because of the lack of vegetative cover and the high percentage of exotic-invasive plants in close proximity, the area is not considered valuable to sensitive species.*"

The *Biological Update, Environmental Assessment for Upper Newport Bay Endangered Species Memorial Lookout at the corner of Eastbluff Drive and Back Bay Drive* dated November 10, 2006 prepared by Keane Biological Consulting reviewed the previously completed assessment and conducted site visits. The report confirms that the information presented in the 2002 assessment was comprehensive and accurate based upon cursory observations of the project site and vicinity in 2006. Furthermore, the report states that no federally- or state-listed endangered or threatened species occurs on the project site or its immediate vicinity. However, the report does acknowledge that the California least tern, the California light-footed clapper rail and Belding's savannah sparrow occur and do nest in the saltmarsh habitat of Upper Newport Bay, below the project site. In addition, while the California gnatcatcher occurs on the bluffs along both sides of Upper Newport Bay, it was not seen or heard in the vicinity of the project site and the habitat in the immediate vicinity of the project site is not suitable for the California gnatcatcher.

As proposed, the enhancements to the existing view overlook will remain within the boundary of the existing disturbed area and there will be no encroachment upon existing habitat within the Upper Newport Bay Ecological Reserve. The proposed project is an enhancement of an existing public look-out area. Thus, the proposed project is consistent with Section 30240 in that it is a recreational use that is sited and designed to be compatible with the adjacent biological resources.

In order to make sure that the proposed project does not impact the habitat in the UNBER during construction, the Commission imposes **SPECIAL CONDITION, NO. 1**, which requires submittal of a Construction Staging Area Plan. This plan will verify that construction of the project will avoid impacts to the Upper Newport Bay Ecological Reserve (UNBER), which is an Environmental Study Area (ESA) identified in the City's certified Land Use Plan (LUP), which are areas known by the City to contain Environmental Sensitive Habitat Areas (ESHA).

To assure that future development will not impact habitat, the Commission imposes **SPECIAL CONDITION NO. 2**, a future improvements special condition

In addition, in order to ensure that construction and materials are managed in a manner which avoids impacts to adjacent habitat areas, the Commission imposes **SPECIAL CONDITION NO. 3**, which requires that construction materials, debris, or waste be placed or stored where it will not enter storm drains or be subject to tidal erosion and dispersion; removal of debris within 24 hours of completion of construction; implementation of Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed such that construction debris and sediment are properly contained and secured on site and to prevent the unintended transport of sediment and other debris into coastal waters by wind, rain or tracking.

The proposed application submittal did not include a Grading Plan. Grading is associated with the proposed project; however, the limits of the proposed grading are not known. Without a Grading Plan, there is potential for grading to take place in the UNBER that would impact habitat. Therefore, the Commission imposes **SPECIAL CONDITION NO. 5**, which requires submittal of a Grading Plan. The Grading Plan must identify the boundary of the proposed grading as the limits of the existing disturbed area demarcated by the existing PVC pipe rail fence identified on the plans received August 10, 2006.

The applicant has stated that landscaping is proposed; however, no plans have been submitted. The placement of any vegetation that is considered to be invasive which could supplant native vegetation should not be allowed. Thus, the Commission imposes **SPECIAL CONDITION NO. 6**, which requires the applicant to submit a Final Landscaping Plan, which consists of native drought tolerant non-invasive plants that are appropriate to the habitat type. Local native plant stock shall be used if available.

CONCLUSION

To minimize impacts to biological resources, **FIVE (5) SPECIAL CONDITIONS** have been imposed. **SPECIAL CONDITION, NO. 1** requires the applicant to submit a Construction Staging Area Plan. **SPECIAL CONDITION, NO. 2** requires additional approvals for any future development. **SPECIAL CONDITION, NO. 3** requires conformance with construction-phase best management practices. **SPECIAL CONDITION NO. 5** requires the applicant to submit a Grading Plan. **SPECIAL CONDITION NO. 6** requires the applicant to submit a Final Landscaping Plan. Therefore, only as conditioned, does the Commission find that the proposed project is consistent with Coastal Act Section 30240 of the Coastal Act.

C. WATER QUALITY AND THE MARINE ENVIRONMENT

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

Section 30232 of the Coastal Act states:

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

The proposed project is located near the coastal waters of Upper Newport Bay. Upper Newport Bay is a critical coastal water body on the federal Clean Water Act 303(d) list of "impaired" water bodies. The designation as "impaired" means that water quality within the water body does not meet State and Federal water quality standards designed to meet the 1972 Federal Clean Water Act goal of "fishable, swimmable" waters. In Upper Newport Bay, the listing cites elevated concentrations of metals, nutrients, pathogens, pesticides and sedimentation/siltation from a variety of sources including urban runoff, agriculture, channel erosion and other unknown non-point sources as the reason for listing Upper Newport Bay as an "impaired" water body. The listing is made by the California Regional Water Quality Control Board, Santa Ana Region (RWQCB), and the State Water Resources Control Board (SWRCB), and confirmed by the U.S. Environmental Protection Agency. Further, the RWQCB has targeted the Newport Bay watershed, which would include Upper Newport Bay, for increased scrutiny as a higher priority watershed under its Watershed Initiative. Finally, Newport Bay is identified as a "Critical Coastal Area" (CCA) under California's Critical Coastal Areas Program and is one of five pilot CCAs targeted to address coastal watersheds in critical need of protection from polluted runoff. The standard of review for development proposed in coastal waters is the Chapter 3 policies of the Coastal Act, including the following water quality policies: Sections 30230, 30231 and 30232.

1. Construction Impacts to Water Quality

Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain or wind would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species' ability to see food in the water column. In order to avoid adverse construction-related impacts upon marine resources, **SPECIAL CONDITION NO. 3** 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.

2. Post-Construction Impacts to Water Quality

The proposed development will result in urban runoff entering the storm water system. Pollutants such as sediments or toxic substances such as grease, motor oil, heavy metals, debris, pesticides and fertilizers are often contained within urban runoff entering the storm water system. In this case, the site drains a public look-out area adjacent to biological resources and streets. Therefore, the primary post-construction water quality concerns associated with the proposed project may include debris, pesticides and fertilizer.

The proposed development would result in the discharge of storm water into the storm water conveyance system. As such, the amount of pollutants carried through the system would increase proportionally. Therefore, the project has the potential to affect the water quality of the coastal waters in Newport Beach.

The proposed project is new development, which affords an opportunity to improve water quality. Much of the pollutants entering the ocean come from land-based development. The Commission finds that it is necessary to minimize to the extent feasible within its jurisdiction the cumulative adverse impacts on water quality resulting from incremental increases in impervious surface associated with additional development. Reductions in the amount of pollutants in the existing runoff would be one step to begin to reduce cumulative adverse impacts to coastal water quality. The currently proposed project drains a public look-out area. As such, appropriate measures must be taken to assure that adverse effects on water quality are minimized. In order to deal with these post construction water quality impacts, the applicant has stated that on site runoff will be directed to a gravel pit to drain most of the water prior to running off site; however, no plans have been submitted. In addition, the submitted Site Plan, identifies stone paving, but does not clarify if the stone paving will allow permeation into the ground. In addition, the Site Plan identifies rake paving, but does not clarify what type of paving. Therefore, the Commission imposes **SPECIAL CONDITION NO. 4**, which requires the applicant to submit a Final Drainage and Run-Off Control Plan that will address the water quality impacts identified above.

The proposed application submittal did not include a Grading Plan. Therefore, the Commission imposes **SPECIAL CONDITION NO. 5**, which requires submittal of a Grading Plan. The Grading Plan must identify the boundary of the proposed grading as the limits of the existing disturbed area demarcated by the existing PVC pipe rail fence identified on the plans received August 10, 2006.

The applicant has stated that landscaping is proposed; however, no plans have been submitted. The placement of any vegetation that is considered to be invasive which could supplant native vegetation should not be allowed. Invasive plants have the potential to overcome native plants and spread quickly. Invasive plants are generally those identified by the California Invasive Plant Council (<http://www.cal-ipc.org/>) and California Native Plant Society (www.CNPS.org) in their publications. Furthermore, any plants in the landscape plan should only be drought tolerant to minimize the use of water (and native to coastal

Orange County and appropriate to the habitat type). The term drought tolerant is equivalent to the terms 'low water use' and 'ultra low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at <http://www.owue.water.ca.gov/landscape/pubs/pubs.cfm>. Thus, the Commission imposes **SPECIAL CONDITION NO. 6**, which requires the applicant to submit a Final Landscaping Plan, which consists of native drought tolerant non-invasive plants that are appropriate to the habitat type.

CONCLUSION

To minimize the adverse impacts upon the marine environment, **FOUR (4) SPECIAL CONDITIONS** have been imposed. **SPECIAL CONDITION NO. 3** identifies construction-phase best management practices. **SPECIAL CONDITION NO. 4** requires the applicant to submit a Final Drainage and Run-Off Control Plan. **SPECIAL CONDITION NO. 5**, requires the applicant to submit a Grading Plan. **SPECIAL CONDITION NO. 6**, requires the applicant to submit a Final Landscape Plan, which only consists of native drought tolerant non-invasive plants. Therefore, only as conditioned, does the Commission find that the proposed project is consistent with Section 30230, 30231 and 30232 of the Coastal Act.

D. SCENIC RESOURCES

Section 30251 of the Coastal Act states, in relevant part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas...

Protection of scenic and visual resources is an important mandate of the Coastal Act. The project site is located adjacent to the UNBER and currently serves as public look-out area of the UNBER. The views of the UNBER from the project site would not be adversely impacted with the proposed project. The proposed project is the enhancement of the existing public look-out area and includes construction of two (2) rows of concrete bleachers to accommodate twenty-eight (28) people, replace existing bright white PVC pipe rail fence with cable or small diameter pipe and post fence as well as paved viewing areas, telescopes, interpretive plaques, landscaping, and appreciation monument. More specifically, the proposed project would now include seating and telescopes that were not present before and would therefore enhance the experience of the public look-out area. Views of the UNBER are currently provided from the project site and will not change. There are also views across the site from Eastbluff Drive. However, these views from the roadway are generally of the horizon, as opposed to the waters of Newport Bay which can be seen by pedestrians from the view overlook itself. A component of the proposed project is construction of a two-tiered seating platform that will be a maximum 6-foot high with native vegetation fronting it. Post project, views across the site while driving along Eastbluff Drive would still include horizon views and also the approximately 6-foot high seating platform that will be visually softened by the proposed native vegetation landscaping. Thus, the views across the site from Eastbluff Drive would not significantly change compared with existing conditions. Therefore, while views across the site from Eastbluff Drive would not significantly change, the viewing experience from the project

site would be enhanced with the proposed project with the construction of the seating, ADA accessible walkways and the installation of the telescopes.

The proposed project would also enhance scenic and visual resources by removing the existing white PVC pipe rail fence. However, the colors of the proposed material have not been identified. The colors of the proposed materials should be earth tone/natural so as to blend with the natural surrounding area. Thus, the Commission imposes **SPECIAL CONDITION NO. 7**, which requires that the colors of the project materials shall be restricted to colors compatible with the surrounding environment, such as earth tones. No white tones or bright colors shall be acceptable.

CONCLUSION

To minimize the adverse impacts upon visual and scenic resources, **ONE (1) SPECIAL CONDITION** have been imposed. **SPECIAL CONDITION NO. 7** requires that the colors of the project materials be restricted to colors compatible with the surrounding environment, such as earth tones. No white tones or bright colors shall be acceptable. Therefore, only as conditioned, does the Commission finds that the proposed project is consistent with Section 30251 of the Coastal Act.

E. PUBLIC ACCESS

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.

Section 30252 of the Coastal Act states, in relevant part:

The location and amount of new development should maintain and enhance public access to the coast by...

(4) providing adequate parking facilities or providing substitute means of serving the development with public transportation.

One of the strongest legislative mandates of the Coastal Act is the preservation of coastal access. Section 30213 of the Coastal Act requires that lower cost visitor and recreational facilities be protected, encouraged and where feasible provide. Section 30252 of the Coastal Act requires that new development maintain and enhance public access to the coast by providing adequate parking or alternative means of transportation.

The proposed project will enhance an existing public look-out area overlooking the Upper Newport Bay Ecological Reserve (UNBER). The proposed project would not result in adverse impacts to public access of the site or the adjacent UNBER. Access would be enhanced and more specifically the project would result in increased access for people with disabilities. Thus, access would be maintained and improved with the proposed project.

No on-site parking is provided on site. However, unmarked parking spaces are provided along Eastbluff Drive adjacent to the site and these parking spaces would remain with the proposed project. Alternative means of transportation are also provided in the vicinity of the site in the form of a designated bicycle lane.

CONCLUSION

Thus, the project will not have an adverse impact to public access. Therefore, the Commission finds that the proposed project is consistent with Sections 30213 and 30252 of the Coastal Act.

F. GEOLOGY

Section 30253 of the Coastal Act states:

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

To assess the geologic feasibility of the project, the applicant submitted the following reports: *Preliminary Geotechnical Review Report and Preliminary Plan for the Proposed Backbay Vista Point, Newport Beach, County of Orange, California* prepared by Leighton and Associates, Inc. dated October 8, 2002; *Ecological Assessment dated October 2002* prepared by the California Department of Fish and Game; and *Review of Preliminary Geotechnical Review Report and Preliminary Plan for the Proposed Backbay Vista Point, Newport Beach, County of Orange, California* dated May 4, 2006 prepared by Leighton and Associates, Inc.. The report states that the project site is an unpaved bluff top area above the natural bluff descending to the Newport Back Bay. Furthermore, the report states that, in general, the Back Bay bluffs are oversteepened and generally unstable in their existing natural condition. The report did not identify the project site as being unstable. However, the report ultimately concludes that the project is feasible from an engineering perspective provided the applicant complies with the recommendations contained in the report, such as making sure that surface and subsurface drainage be planned and controlled to prevent overtopping of the top of the slope, erosion, and seepage into the substrate. Since the initial report was conducted 4 years ago, an up-to date addendum dated May 4, 2006 was submitted. The report acknowledged that the previously proposed three-tiered seating platform had been changed to a two-tiered seating platform with the addition of new low walls and a 4-foot wide aisle. The addendum concludes that based on review of the revised plan and a site visit on May 1, 2006, the recommendations in the previous report dated October 8, 2002 remain valid. In order to assure that risks are minimized, the geotechnical consultant's final recommendations must be incorporated into the design of the project. Therefore, the Commission imposes **SPECIAL CONDITION NO. 8**, which requires the applicant to submit, for the review and approval of the Executive Director, final design and construction plans reviewed and signed by the geotechnical consultant indicating that the recommendations contained in the geotechnical report have been incorporated into the design of the proposed project.

While the geotechnical reports confirm that the proposed project is feasible, impacts to the bluff are also being prevented with the proposed project. Since the proposed project will not be encroaching more bayward (i.e. toward the bluff edge), possible impacts to the bluff are being avoided. As proposed, the project will not encroach any further bayward and will only result in enhancement of the existing public look-out area. However, since coastal bluffs in southern

California are recently emergent landforms in a tectonically active environment, any development on a coastal bluff involves some risk to development. Although adherence to the geotechnical consultant's recommendations will minimize the risk of damage from erosion, the risk is not entirely eliminated. The findings above support the contention that development on coastal bluffs involves risks and that structural engineering can minimize some of the risk but cannot eliminate it entirely. Therefore, the Commission imposes **SPECIAL CONDITION NO. 9**, an assumption of risk.

Also, since the proposed project includes new development, it can only be found consistent with Section 30253 of the Coastal Act if a shoreline/bluff protective device is not expected to be needed in the future. The applicant's geotechnical consultant has indicated that the site is sufficiently stable that no significant geotechnical intervention will be needed to assure stability of the development. No bluff or shoreline protective devices are proposed. If not for the information provided by the applicants that the site is safe for development, the Commission could not conclude that the proposed development will not in any way "require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs." However, the record of coastal development permit applications and Commission actions has also shown that geologic conditions change over time and that predictions based upon the geologic sciences are inexact. Even though there is evidence that geologic conditions change, the Commission must rely upon, and hold the applicants to, their information, which states that the site is safe for development without the need for protective devices. If the Commission were forced, in the future, to approve a shoreline protection device to protect the structures being approved now, it would mean that the project approved now is not consistent with Section 30253's prohibition on new development requiring shoreline protective devices. In addition, the proposed structures are appurtenances that can be feasibly removed or relocated if they were threatened by hazards in the future. Therefore, the Commission imposes **SPECIAL CONDITION NO. 10**, which states that in the event that erosion or bluff failure/instability threatens the public look-out area or portions thereof, the threatened portions shall be removed or relocated landward to an area that is not threatened. A coastal development permit would be required for this activity unless the Executive Director determines that a permit is not legally required.

CONCLUSION

To minimize geologic hazards, **THREE (3) SPECIAL CONDITION** has been imposed. **SPECIAL CONDITION NO. 8** requires the applicant to submit, for the review and approval of the Executive Director, final design and construction plans reviewed and signed by the geotechnical consultant indicating that the recommendations contained in the geotechnical report have been incorporated into the design of the proposed project. **SPECIAL CONDITION NO. 9**, is an assumption of risk **SPECIAL CONDITION NO. 10** states that in the event that erosion or bluff failure/instability threatens the public look-out area or portions thereof, the threatened portions shall be removed or relocated landward to an area that is not threatened. Therefore, only as conditioned, does the Commission finds that the proposed project is consistent with Sections 30253 of the Coastal Act.

G. UNPERMITTED DEVELOPMENT

Development, including installation of a white plastic PVC perimeter fence, a kiosk and a rock with a plaque, has occurred on the subject site without the required coastal development permit. These three elements will be removed with the proposed project.

To ensure that the unpermitted development component of this application is resolved in a timely manner, **SPECIAL CONDITION NO. 11** requires the applicant to remove the unpermitted development on the site within 90 days of issuance of this permit and **SPECIAL CONDITION NO. 12** require that the applicants satisfy all conditions of this permit, which are prerequisite to the issuance of this permit within 90 days of Commission action. Although development has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to any alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

H. LOCAL COASTAL PROGRAM

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will 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. At the October 2005 Coastal Commission Hearing, the certified LUP was updated. Since the City only has an LUP, the policies of the LUP are used only as guidance. The Newport Beach LUP includes the following policies, among others, that relate to development at the subject site:

Coastal Resource Protection, Policy 4.1.1-4 states,

Protect ESHAs against any significant disruption of habitat values.

Coastal Resource Protection, Policy 4.1.3-1 states,

Utilize the following mitigation measures to reduce the potential for adverse impacts to ESA natural habitat from sources including, but not limited to, those identified in Table 4.1.1:

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

E. Limit encroachments into wetlands to development that is consistent with Section 30233 of the Coastal Act and Policy 4.2.3-1 of the Coastal Land Use Plan.

Water Quality, Policy 4.3.2-14 states,

Whenever possible, divert runoff through planted areas or sumps that recharge the groundwater dry wells and use the natural filtration properties of the earth to prevent the transport of harmful materials directly into receiving waters.

Scenic and Visual Resources, Policy 4.4.1-1 states;

Protect and, where feasible, enhance the scenic and visual qualities of the coastal zone, including public views to and along the ocean, bay, and harbor and to coastal bluffs and other scenic coastal areas.

Public Access and Recreation, Policy 3.1.1-1 states,

Protect, and where feasible, expand and enhance public access to and along the shoreline and to beaches, coastal parks, and trails.

Visitor-Serving and Recreational Development, Policy 2.3.1-3 states,

On land designated for visitor-serving and/or recreational uses, give priority to visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation over other commercial uses, except for agriculture and coastal-dependent industry.

The proposed project will not be encroaching onto the bluffs in the UNBER; therefore the project is consistent with Policies 4.1.1-4 and 4.1.3-1. By conditioning the project for submittal of a Final Landscape Plan, the project is consistent with Policy 4.1.3-1. By conditioning the project for submittal of a Final Drainage and Run-Off Control Plan, the project is consistent with Policy 4.3.2-14. Since the proposed project will not cause any adverse impacts to scenic and visual resources, but instead enhance and modify scenic and visual resources, the project is consistent Policy 4.4.1-1. Since the proposed project would be enhancing an existing public look-out area, the project is consistent with Policies 3.1.1-1 and 2.3.1-3. 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.

I. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096(a) of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or further 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 resources, water quality, marine resources, scenic resources, public access and geology policies of Chapter 3 of the Coastal Act. Mitigation measures include the following Special Conditions: **1)** submittal of a Construction Staging Area Plan, **2)** additional approvals for any future development; **3)** construction-phase best management practices; **4)** submittal of a Final Drainage and Run-Off Control Plan; **5)** submittal of a Grading Plan; **6)** submittal of a Final Landscape Plan; **7)** submittal of a Color and Texture Plan; **8)** conformance with geotechnical recommendations; **9)** assumption of risk; **10)** protection of accessory structures; **11)** removal of unpermitted development; and **12)** condition compliance.

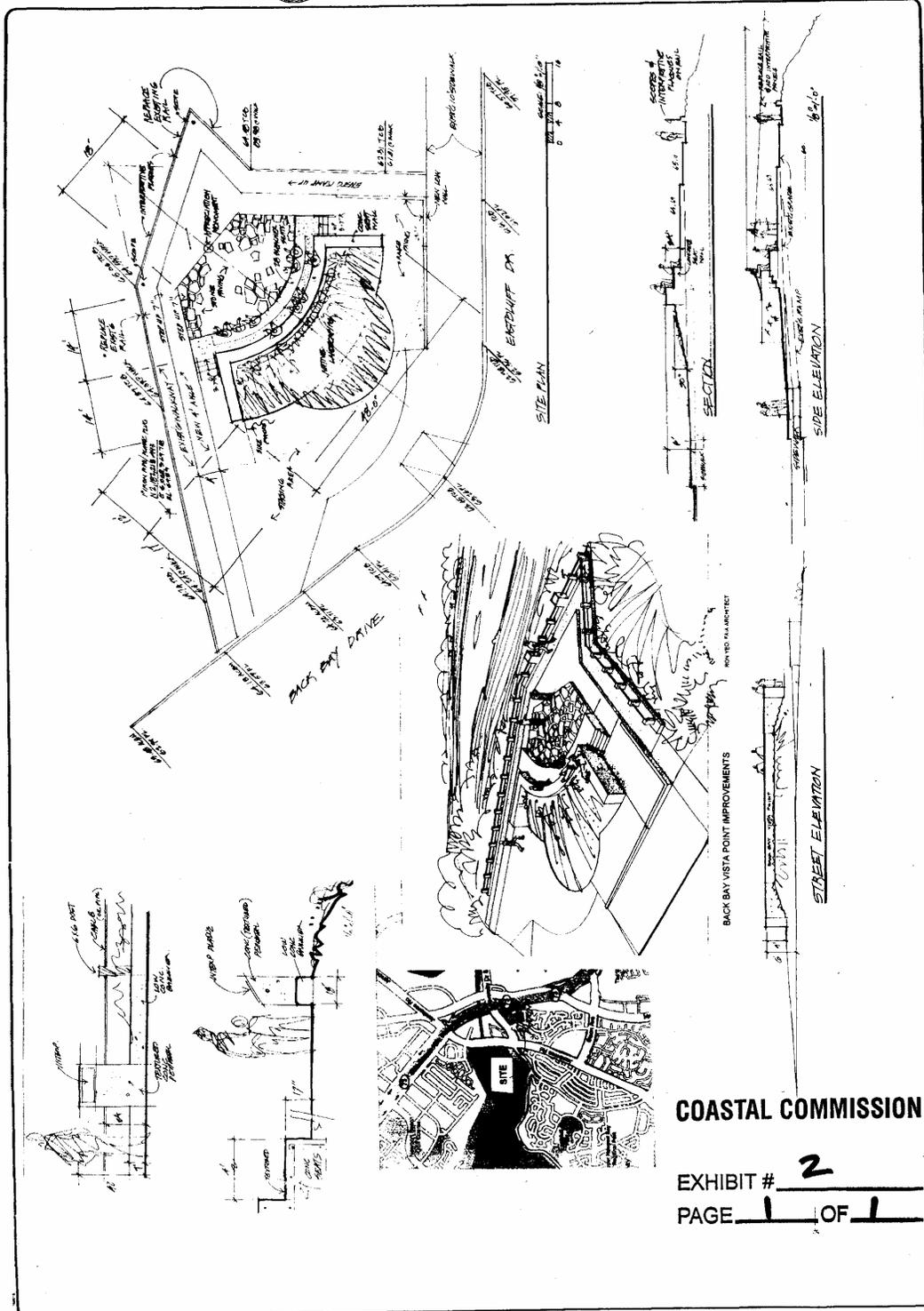
As conditioned, there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse effect, which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate 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.

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BACK BAY VISTA POINT
CALIFORNIA DEPARTMENT OF FISH & GAME

DATE: _____
DRAWN BY: _____
JOB # _____
SHEET NO. _____



COASTAL COMMISSION
EXHIBIT # 2
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