

CALIFORNIA COASTAL COMMISSION

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Filed: March 5, 2007
49th Day: April 23, 2007
180th Day: September 1, 2007
Staff: Fernie Sy-LB
Staff Report: July 19, 2007
Hearing Date: August 8-10, 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 4 to 8 foot wide sidewalk/boardwalk to provide a connection with an existing sidewalk. The project would cause impacts to riparian and wetland habitat, which the applicant proposes to mitigate by planting eight (8) Red Willow trees. Grading is proposed.

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. The project would cause impacts to riparian and wetland habitat, which the applicant proposes to mitigate by planting eight (8) Red Willow trees. 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 0.009 acres of Red Willow Woodland. Staff recommends that the Commission **DENY** the proposed project.

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. As submitted, the proposed project is inconsistent with the Section 30233 of the Coastal Act. 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 sidewalk/boardwalk is not one of the uses identified by Section 30233 for which fill of a wetland is allowed. Also, the project is not the least environmentally damaging feasible alternative. A sidewalk already exists on the western side of Dover Drive that provides access equivalent to that proposed. Furthermore, pedestrians can navigate around the gap in the sidewalk on the eastern side of Dover by utilizing the existing trail network within Castaways Park and connections thereto from the existing segments of sidewalk on Dover. Finally, the applicant has not offered mitigation that would sufficiently offset the wetland impacts being caused by the proposed project. In this case, the proposed project is not an allowable use within wetlands, is not the least environmentally damaging feasible alternative, and the project does not provide adequate mitigation to offset the wetland impacts, thus, it is inconsistent with Section 30233 of the Coastal Act.

Furthermore, alternatives to the proposed project exist and need to be considered. For example, an alternative to the proposed project would be to redesign the project to avoid wetland impacts, such as placing the entire sidewalk/boardwalk west of the existing curb (similar to the sidewalk

proposed for REACH 1 of the proposed project). Such an alternative would avoid impacts to wetland habitat. There are, perhaps, other alternatives as well. Therefore, staff recommends that the proposed project be **DENIED**, as it would have adverse wetland impacts.

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.

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; and Email from the Regional Water Quality Control Board (RWQCB) dated February 13, 2007.

LIST OF EXHIBITS

1. Vicinity Map
2. Location Map
3. REACH 1 Plan
4. REACH 2 Plan
5. REACH 3 Plan
6. Alternative Access in Area Plan

STAFF RECOMMENDATION:

I. STAFF RECOMMENDATION OF DENIAL

Staff recommends that the Commission **DENY** the coastal development permit application by voting **NO** on the following motion and adopting the following resolution.

A. MOTION

I move that the Commission approve Coastal Development Permit No. 5-06-344 for the development proposed by the applicant.

B. STAFF RECOMMENDATION OF DENIAL

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

C. RESOLUTION TO DENY THE PERMIT

The Commission hereby **DENIES** a coastal development permit for the proposed development on the ground that the development will not conform with the policies of Chapter 3 of the Coastal Act and will 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 would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. 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-foot 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 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. The City states that the sidewalk construction is needed due to the lack of pedestrian facilities along the project segment of Dover Drive. The 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 west. 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 #6). Castaways Park is largely a passive recreation park, but with some paved and unpaved trail facilities.

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 0.009 acres of Red Willow Woodland. The applicant is proposing to mitigate these impacts by planting four (4) Red

Willow trees for each of the two (2) existing Red Willow trees that would be impacted, for a total of eight (8) new trees. Grading is also proposed. More specifically, the project is broken down into three (3) reaches (sections) as described below (Exhibits #3-5).

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 4-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) 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) Red Willow trees to allow pedestrian access, including the removal of a large (6" dbh) overhanging limb.

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 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 Red Willow Woodland

Temporary Impact: 0.002 acres

Permanent Impact: 0.007 acres

Total impact: 0.009 acres (392 square feet)

Total temporary impacts: 0.02 acres (871 square feet)

Total permanent impacts: 0.04 acres (1,742 square feet)

The City has proposed mitigation to offset the impacts to red willows, but has offered no mitigation for the loss of wetlands. The "Dover Drive Mitigation Monitoring Plan" states that the City would mitigate the pruning of large limbs from two (2) existing Red Willow trees and the removal of a large (6" dbh) overhanging limb by planting four (4) new one-gallon size Red Willow trees for each of the two (2) trees disturbed by the construction, for a total of eight (8) Red Willow trees that would be planted adjacent to the site. The eight (8) one-gallon Red Willow trees would be planted after construction of the sidewalk but prior to the completion/finalization of the project and City maintenance would hand water and monitor the eight new trees for a period of one year. In addition, all Red Willow trees trimmed as a result of the construction of the project would be monitored by City maintenance for a period of one year.

B. WETLANDS

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 0.009 acres of Red

Willow Woodland. 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. The proposed fill of a wetland area (which could be avoided by a redesign) to provide access in an area which already has access that does not impact wetland habitat, is not designed or intended to serve any of the allowable uses identified by Section 30233. In addition to the requirement that a proposed fill of coastal waters be an allowable use, Section 30233 also requires that projects involving fill of wetlands may only be approved if there are no feasible less environmentally damaging alternatives and that feasible mitigation has been provided.

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 impact¹.

1. Other Agency Comments

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 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 Red 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*

¹ A letter was subsequently submitted to Commission staff from Harmsworth Associates dated August 14, 2006 that mischaracterized the wetland impacts. The Commission staff biologist has reviewed this letter and found it to be inconsistent with the Mitigated Negative Declaration. The Commission staff biologist maintains that the proposed project will adversely impact wetland habitat.

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.

2. 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 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 west. Section 30233 of the Coastal Act allows the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes for: 1) new, expanded port, energy, and coastal-dependent industrial 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) 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; and 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 0.009 acres of Red Willow Woodland. This project clearly does not fall within any of the categories of permissible uses outlined in Section 30233. The only potential category within which it might fit is incidental public use because the applicant claims that it will enhance public access. The applicant states that the sidewalk construction is needed due to the lack of pedestrian facilities along the project segment of Dover Drive. There are adequate public access resources on and near Dover Drive, however, so the proposed project does not enhance public access in any meaningful way and can therefore not be considered an incidental public use (Exhibit #6). Thus, the proposed wetland fill for a sidewalk/boardwalk is not one of the uses identified by Section 30233 for which fill of a wetland is allowed. Therefore, the proposed sidewalk/boardwalk does not qualify as one of the allowable uses identified in Section 30233 of the Coastal Act.

3. 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 as identified by the California Coastal Commission. Thus, wetland impacts were not avoided under any of the alternatives analyzed by the applicant.

The applicant did not consider several alternatives that would avoid wetland impacts. For example, the 'no project' alternative would avoid wetland impacts and maintain adequate access along Dover Drive. A sidewalk already exists on the western side of Dover Drive that provides access equivalent to that proposed. That sidewalk can be reached from the easterly side of Dover Drive via existing crosswalks at Cliff Drive and 16th Street, thus, once pedestrians walking along Dover Drive on the easterly side reach the gap in the existing sidewalk they can cross over to the westerly side using the crosswalk, continuing to the next crosswalk, and then cross back over to the easterly side. Furthermore, pedestrians can navigate around the gap in the sidewalk on the eastern side of Dover (and stay on that easterly side without using the crosswalks) by utilizing the existing trail network within Castaways Park and connections thereto from the existing segments of sidewalk on Dover. No changes to the existing site conditions would result from the "no project" alternative. As such, there would be no disturbance to the existing wetland habitat. This alternative would result in the least amount of effects to the environment.

In addition, there is at least one additional alternative to the proposed project that the applicant did not consider to avoid wetland impacts (though the following is not intended to be, nor is it, comprehensive of the possible alternatives). The applicant could redesign the proposed sidewalk/boardwalk such that it remains within the paved roadbed (similar to the design of the sidewalk proposed for REACH 1 of the proposed project). This alternative would accommodate the applicant's interest in adding recreational elements, but there would be no disturbance to the wetland habitat.

4. 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 not qualified as an allowable use under the Coastal Act or avoided (or even minimized) its impacts. Nevertheless, even if the project did meet those first two 'tests', the project does not identify adequate mitigation to offset wetland impacts.

The City has proposed mitigation to offset the impacts to Red Willows, but has offered no mitigation for the loss of wetlands. The "Dover Drive Mitigation Monitoring Plan" states that the City would mitigate the pruning of large limbs from two (2) existing Red Willow trees and the removal of a large (6" dbh) overhanging limb by planting four (4) new one-gallon size Red Willow trees for each of the two (2) trees disturbed by the construction for a total of eight (8) Red Willow trees that would be planted adjacent to the site. The eight (8) one-gallon Red Willow trees would be planted after construction of the sidewalk but prior to the completion/finalization of the project and City maintenance would hand water and monitor the eight new trees for a period of one year. In addition, all Red Willow trees trimmed as a result of the construction of the project would be monitored by City maintenance for a period of one year.

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 0.009 acres of Red Willow Woodland. While the applicant has proposed mitigation for the impact to the Red Willow Woodland, mitigation for the impacts to the wetland has not been proposed.

Before the Commission can approve the project, the project must meet all the requirements of Section 30233 which are that the project must be an allowable use, be the least environmentally damaging alternative and provide adequate mitigation. In this case, the proposed project does not meet any of the three requirements it must meet in order to qualify for approval under Section 30233 of the Coastal Act.

CONCLUSION

The project would result in temporary and permanent impacts to wetland habitat. As submitted, the proposed project is inconsistent with Section 30233 of the Coastal Act. With regard to wetland impacts, Coastal Act Section 30233 requires the project to be an allowable use, be the least environmentally damaging feasible alternative and provide adequate mitigation. The proposed wetland fill for a sidewalk/boardwalk is not one of the uses identified by Section 30233 for which fill of a wetland is allowed. Also, the project is not the least environmentally damaging feasible alternative. A sidewalk already exists on the western side of Dover Drive that provides access equivalent to that proposed. Furthermore, pedestrians can navigate around the gap in the sidewalk on the eastern side of Dover by utilizing the existing trail network within Castaways Park and connections thereto from the existing segments of sidewalk on Dover. Finally, the applicant has not offered mitigation that would sufficiently offset the wetland impacts being caused by the proposed project. In this case, the proposed project is not an allowable use within wetlands, is not the least environmentally damaging feasible alternative, and the project does not provide adequate mitigation to offset the wetland impacts, thus, it is inconsistent with Section 30233 of the Coastal Act. Furthermore, the Commission notes that although Section 30213 of the Coastal Act requires it to protect, encourage and, where feasible, provide lower cost visitor and recreational facilities, approval of this project is not appropriate because existing conditions provide access equivalent to the proposed project and the project could be redesigned to avoid wetland impacts.

C. 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:

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.)*

The construction of the proposed project is inconsistent with the policies in the City's certified LUP. The proposed fill of a wetland area is not one of the uses identified by the City's Land Use Plan and neither is it the least environmentally damaging alternative. Denial of the proposed project would preserve the existing wetland habitat. Allowing the proposed project would lead to wetland habitat being adversely impacted. The proposed development is inconsistent with the policies in the City's certified LUP, as well as the policies in Chapter 3 of the Coastal Act, as indicated above, and approval of the proposed development would therefore prejudice the City's ability to prepare a Local Coastal Program for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act.

D. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

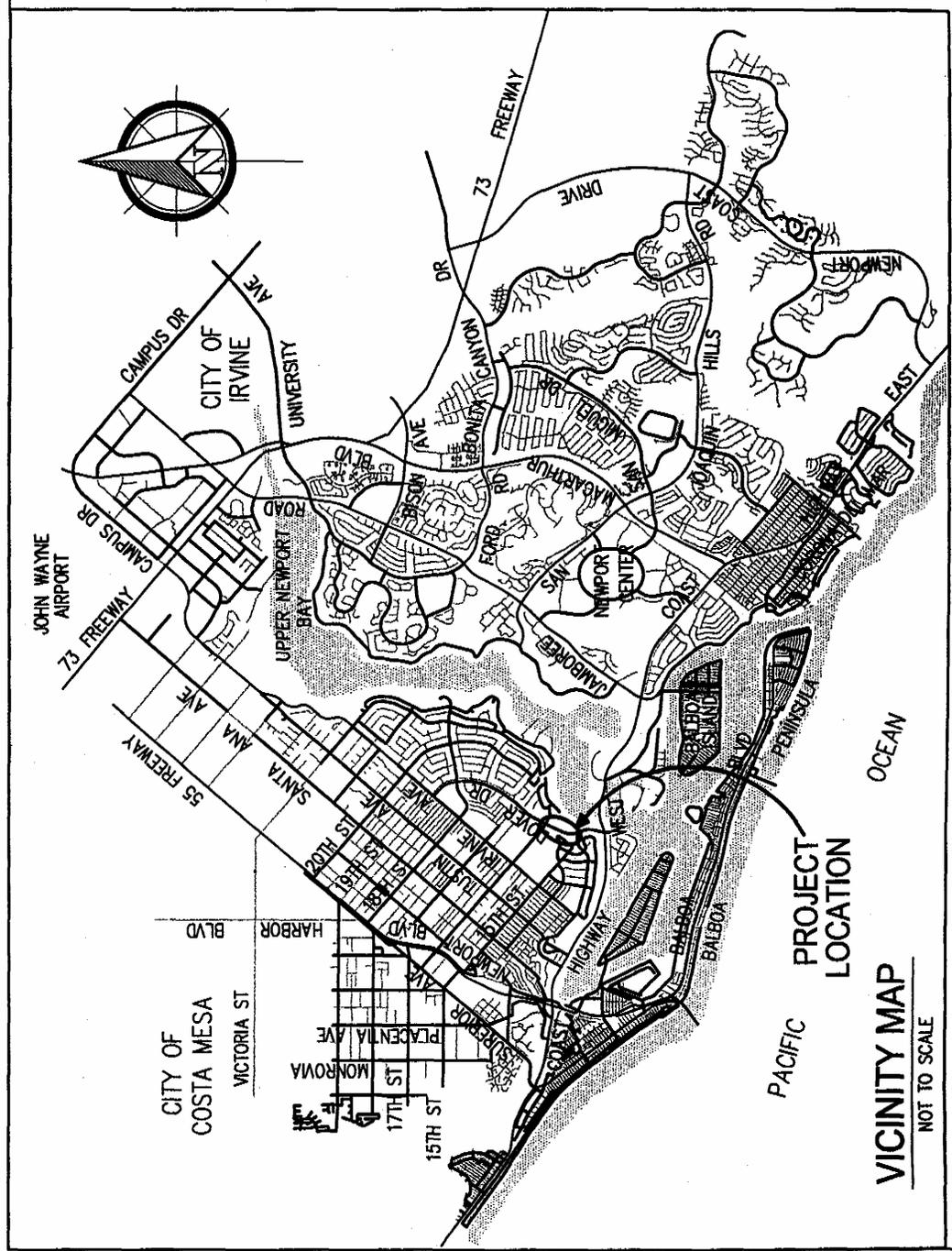
Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental 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 City of Newport Beach is the lead agency for California Environmental Quality Act (CEQA) purposes. It determined that a Mitigated Negative Declaration (SCH # 2006051016) ("MND") was appropriate for this project. The one (1) mitigation measure required in the MND was planting of four (4) new one-gallon size Red Willow Trees at the project site for each of the two (2) impacted Red Willow Trees.

As described above, the proposed project would have adverse environmental impacts. There are feasible alternatives or mitigation measures available, such as redesigning of the proposed sidewalk/boardwalk. Therefore, the proposed project is not consistent with CEQA or the policies of the Coastal Act because there are feasible alternatives, which would lessen significant adverse impacts, which the activity would have on the environment. Therefore, the project must be denied.

COASTAL COMMISSION

EXHIBIT # 1
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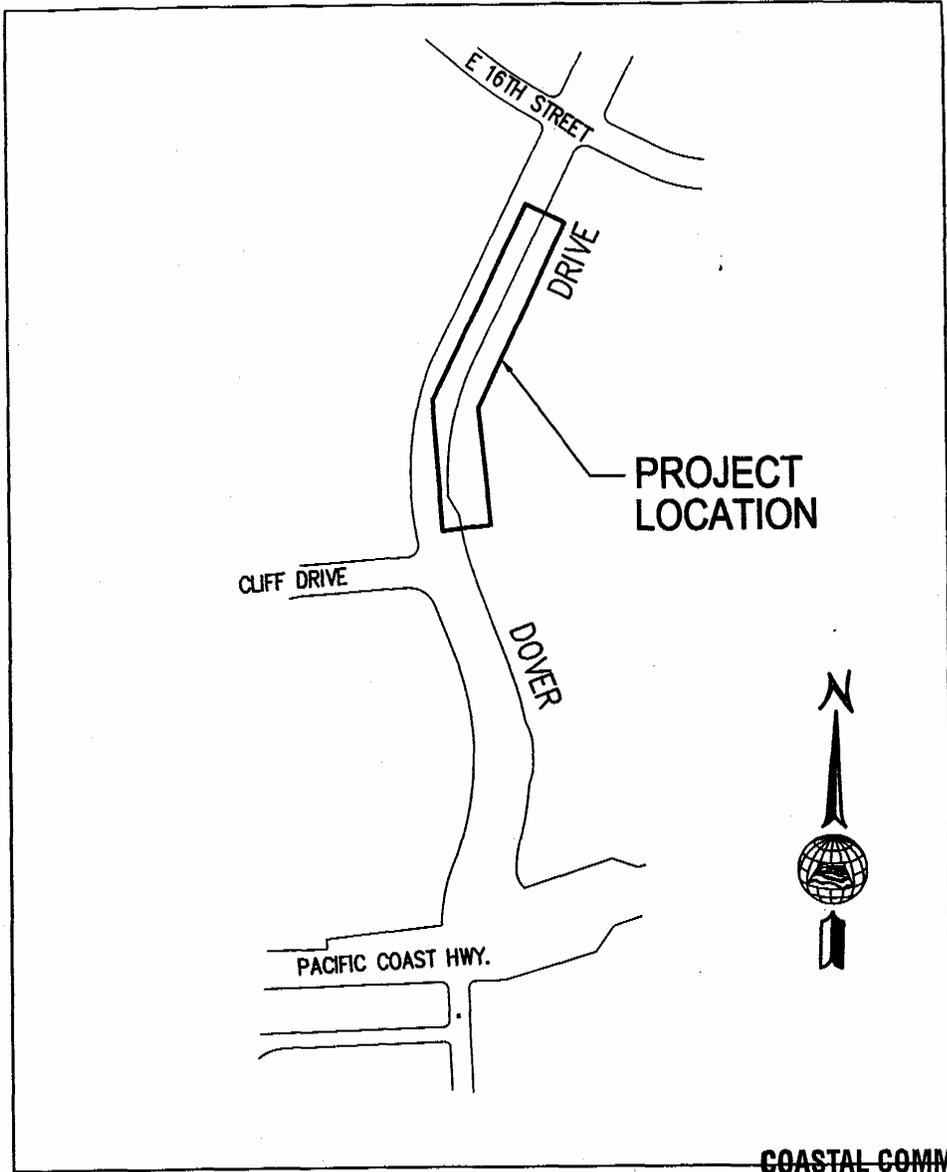
**PROJECT
LOCATION**

**PACIFIC
PENINSULA**

OCEAN

VICINITY MAP
NOT TO SCALE

PIPE



COASTAL COMMISSION

LOCATION MAP
NOT TO SCALE

EXHIBIT # 2
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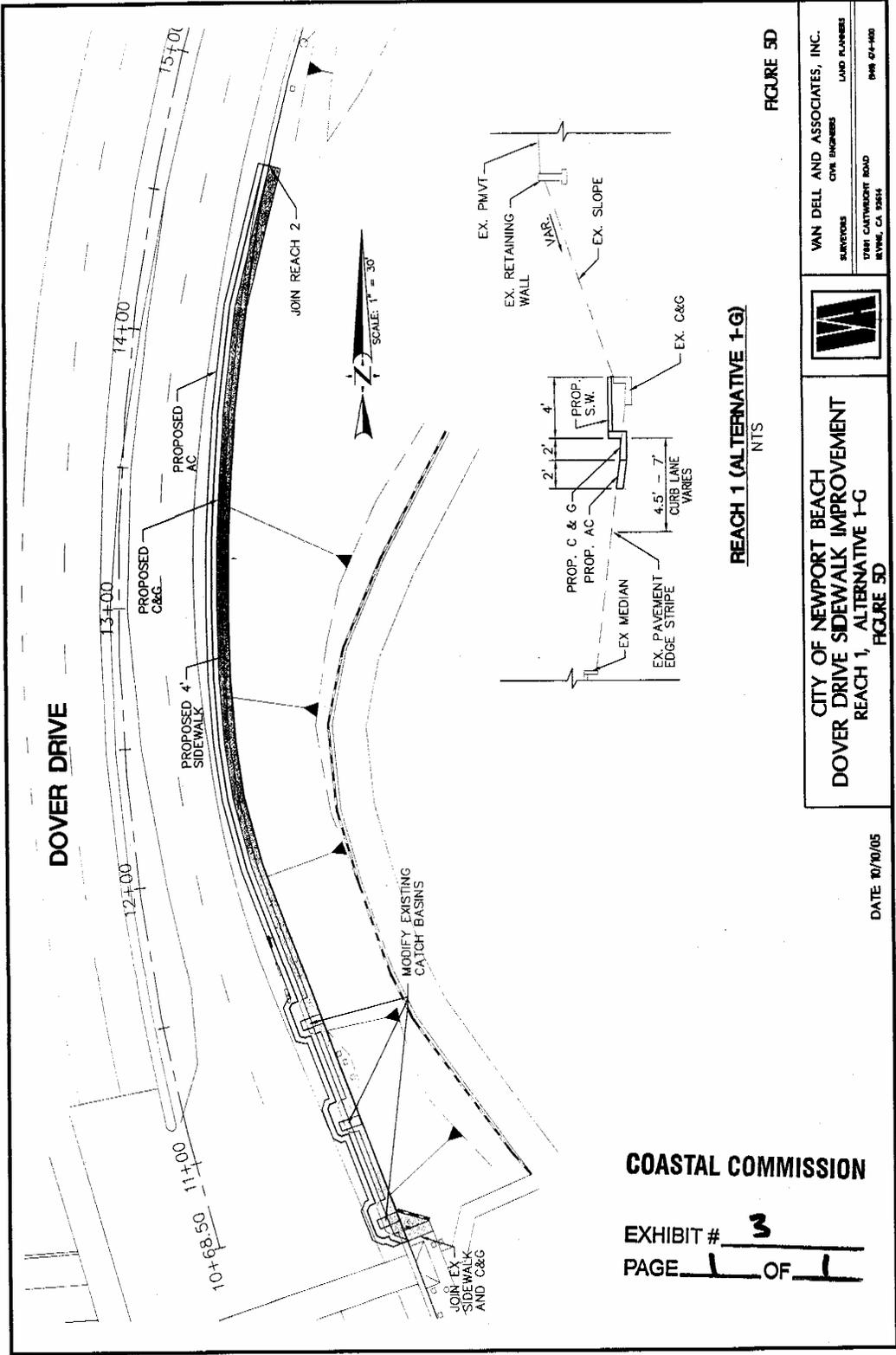


FIGURE 5D

REACH 1 (ALTERNATIVE 1-G)
 NTS

VAN DELL AND ASSOCIATES, INC.
 CIVIL ENGINEERS
 LAND PLANNERS
 SUPERVISORS
 17841 CASTLEWOOD ROAD
 IRVINE, CA 92614
 949.974.1100



CITY OF NEWPORT BEACH
 DOVER DRIVE SIDEWALK IMPROVEMENT
 REACH 1, ALTERNATIVE 1-G
 FIGURE 5D

DATE 10/10/05

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EXHIBIT # 3
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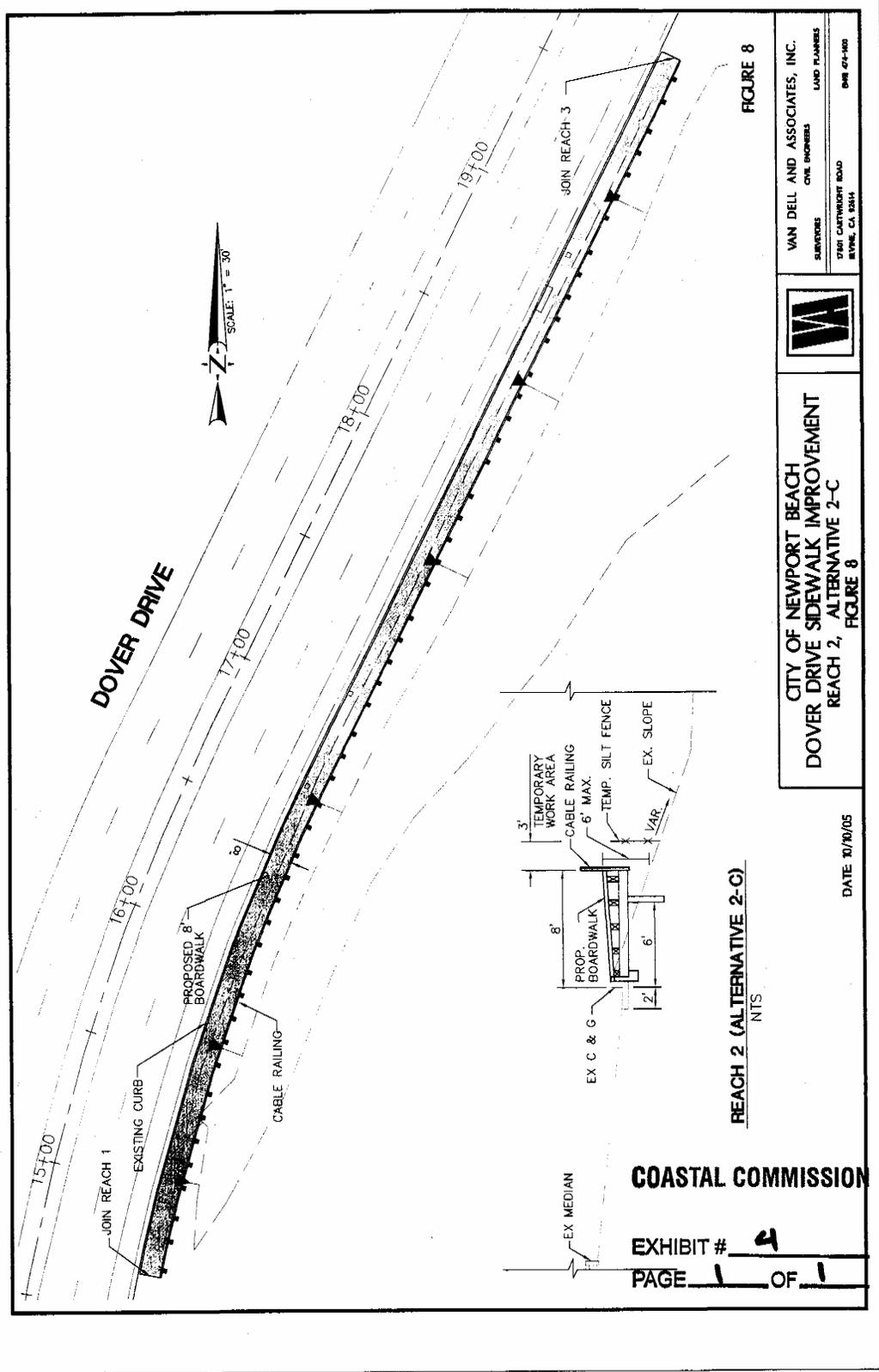


FIGURE 8

VAN DELL AND ASSOCIATES, INC.
 SURVEYOR CIVIL ENGINEER LAND PLANNER
 12621 CARTWRIGHT ROAD
 BEVERLY HILLS, CA 90210
 DRAW 07-100



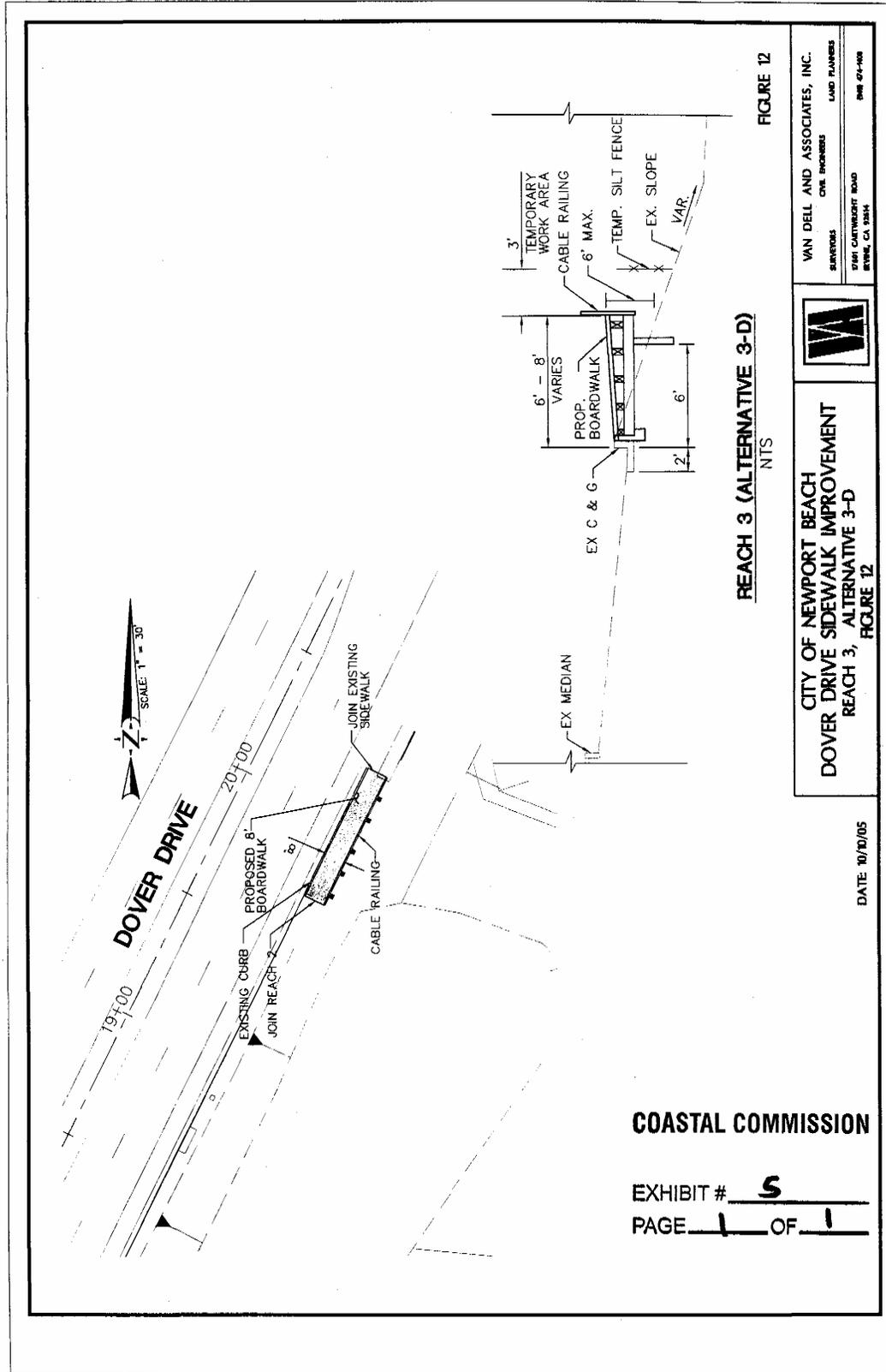
CITY OF NEWPORT BEACH
 DOVER DRIVE SIDEWALK IMPROVEMENT
 REACH 2, ALTERNATIVE 2-C
 FIGURE 8

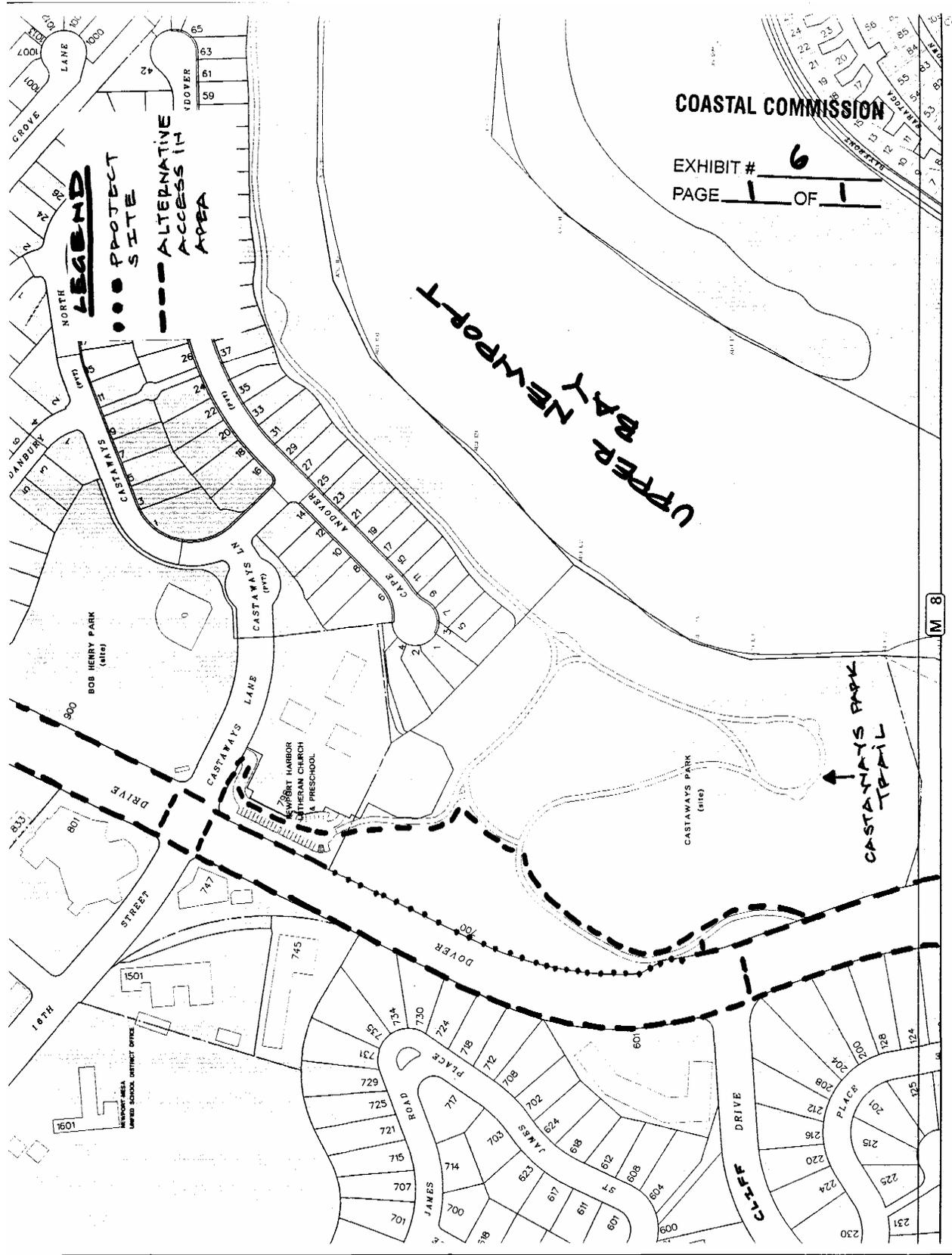
DATE 10/10/05

REACH 2 (ALTERNATIVE 2-C)
 NTS

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EXHIBIT # 4
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COASTAL COMMISSION

EXHIBIT # 6
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UPPER BAY NEWPORT

LEGEND

●●● PROJECT SITE
- - - ALTERNATIVE ACCESS AREA

CASTAWAYS PARK TRAIL

M 8