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STAFF REPORT: REGULAR CALENDAR

Application No.:	**5-16-0229**
Applicant:	**City of Newport Beach**
Agent:	Michael Baker International
Location:	2600 and 2612 Mesa Drive, Newport Beach (County of Orange)
Project Description:	Drainage improvements and restoration of an eroded gully between two residential properties (2600 and 2612 Mesa Drive) including the installation of 520 linear feet of 24-inch reinforced concrete pipe, 28 linear feet of 12-inch PVC pipe, 658 cubic yards of fill, and implementation of an on-site habitat restoration plan adjacent to Upper Newport Bay in Newport Beach.
Staff Recommendation:	Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The proposed project consists of drainage improvements, erosion repair, and habitat restoration by the City of Newport Beach, between two private residences on the northern side of Upper Newport Bay. Extensive erosion of the natural drainage in this location has occurred over time due to several major storm events, which has caused a significant erosional gully resulting in a substantial amount of sediment entering Upper Newport Bay.

To reduce further erosion of the slope, the applicant proposes to install 520 linear feet of new 24 inch reinforced concrete pipe below grade to convey storm flows to the lower basin, repair the eroded areas, and revegetate the slope, which will provide permanent erosion protection for the bluff. The existing lower basin will be reconfigured and will include the installation of an energy dissipater surrounded by 189 square feet of rock rip rap, and re-use approximately 118 square feet of existing rip rap around the existing outlet structure. The applicant also proposes to restore the

impacted habitat areas with appropriate native vegetation. Issues raised by the proposed project are: impacts to habitat and biological species, and protection of water quality. These issues have been addressed through the recommended special conditions.

Although the project as proposed by the applicant will permanently impact 0.05 acre of wetland habitat consisting of mulefat scrub in the lower basin, the area of impact has been reduced to the minimum necessary to accomplish the goals of the project (repair of the existing natural drainage and restoration of the slope and associated habitat). The applicant has proposed enhancement of the wetland in the upper basin and revegetation and hydroseeding of the overall slope and lower basin at a 6:1 mitigation ratio for the project's impacts to the wetland habitat (mitigation area to impact area), which is more than the wetland habitat mitigation ratio required by the City of Newport Beach Certified Local Coastal Plan, which is 3:1. In addition, the project will permanently impact 0.07 acre of coastal sage scrub, which will be revegetated with native and habitat-appropriate plant species such as California buckwheat, Coast goldenbush, and Black sage. Staff is recommending **Special Condition 1** which requires the applicant to submit a finalized Habitat Restoration and Monitoring Plan for the onsite restoration, to assure all adverse impacts to habitat are adequately mitigated, and to ensure the quality of the restoration projects (both onsite and offsite) will be monitored to ensure that the biological productivity of the site is improved in as-built conditions.

The mulefat scrub and coastal sage scrub habitat in this location has the potential to provide nesting and foraging resources for sensitive species including the coastal California gnatcatcher, raptors and other species. In order to protect the sensitive species in the project area, **Special Condition 2 and 3** requires biological monitoring and requires the applicant provide a construction schedule to avoid impacting habitat during nesting season. As conditioned, the project is consistent with the resource protection policies of Section 4.1 of the Certified LCP, which incorporates Section 30240 of the Coastal Act.

The proposed project is located adjacent to Upper Newport Bay. In order to protect the water quality of Upper Newport Bay during construction activities, staff is recommending **Special Condition 4** which requires the applicant adhere to construction BMPs to be found consistent with Section 4.3 of the Certified LCP, which incorporates Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

Although no cultural resources or paleontological surveys were submitted for the proposed project, previous identification of archaeological, Native American, and paleontological resources within the vicinity of the project suggests that the cultural and paleontological sensitivity of the project is high. **Special Condition 5** requires submittal of an archeological monitoring plan to ensure that any prehistoric or archaeological or paleontological cultural resources that may be discovered receive proper protections in order for the project to be found consistent with Section 4.5 of the Certified LCP, which incorporates Section 30244 of the Coastal Act. Lastly, **Special Condition 6** requires the applicant provide other resource agency approvals.

Commission staff recommends **approval** of the coastal development permit application 5-16-0229, as conditioned.

TABLE OF CONTENTS

EXHIBITS

APPENDIX 1 – Cultural Resource Testing Plan Procedures

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit No.* 5-16-0229 *pursuant to the staff recommendation.*

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

Resolution:

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

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment**. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. **Expiration**. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. **Interpretation**. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

4. **Assignment**. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. **Terms and Conditions Run with the Land**. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. Final Habitat Restoration and Monitoring Plan for Onsite Mitigation

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, a final detailed restoration and monitoring plan for all impacts to sensitive biological resources. Said plan shall be in substantial conformance with the Restoration Plan prepared by Michael Baker International, received by the Commission's South Coast District office on June 21, 2017, except as modified herein and shall be prepared by a qualified restoration ecologist and include, at a minimum, the following:

a. A baseline assessment, including photographs, of the current physical and ecological condition of the proposed restoration site, including, as appropriate, a wetland delineation conducted according to the definitions in the Coastal Act and the Commission's Regulations, a description and map showing the area and distribution of vegetation types, and a map showing the distribution and abundance of sensitive species. Existing vegetation, wetlands, and sensitive species shall be depicted on a map that includes the footprint of the proposed restoration.

b. A description of the goals of the restoration plan, including, as appropriate, topography, hydrology, vegetation types, sensitive species, and wildlife usage.

c. A description of planned site preparation and invasive plant removal;

d. A restoration plan including the planting palette (seed mix and container plants), planting design, source of plant material, plant installation, erosion control, irrigation, and remediation. The planting palette shall be made up exclusively of native plants that are appropriate to the habitat and region and that are grown from seeds or vegetative materials obtained from local natural habitats so as to protect the genetic makeup of natural populations. Horticultural varieties shall not be used.

e. A plan for documenting and reporting the physical and biological "as built" condition of the mitigation site within 30 days of completion of the initial restoration activities. This is a simple report describing the field implementation of the approved restoration program in narrative and photographs, and reporting any problems in the implementation and their resolution. The "as built" assessment and report shall be completed by a qualified biologist, who is independent of the installation contractor.

f. A plan for interim monitoring and maintenance, including:
   i. A schedule
   ii. Interim performance standards
   iii. A description of field activities
   iv. The monitoring period (Not less than 5 years).

g. Provision for submission of annual reports of monitoring results to the Executive Director for the duration of the required monitoring period, beginning the first year after submission of

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

h. Final Success Criteria for each habitat type, including, as appropriate:
   i. species diversity
   ii. total ground cover of vegetation
   iii. vegetative cover of dominant species and definition of dominants (e.g., Army Corps of Engineers "50/20" rule, enumeration, species with greater than a threshold of abundance, etc.)
   iv. wildlife usage
   v. hydrology
   vi. presence and abundance of sensitive species or other individual "target" species

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

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

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

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

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

2. Biological Monitor. By acceptance of this permit, the applicant agrees that:

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

3. Construction Timing. By acceptance of this permit, the applicant agrees that:

a. If construction activities, including but not limited to grading, construction, restoration activities, or other disturbance are to occur between February 15th and August 31st , a pre-construction nesting bird survey shall be conducted to determine the presence of active nests within 500 feet of the construction activities. The nesting bird surveys shall be completed no more than 72 hours prior to any construction activities. All ground-disturbance activities within 500 feet of raptor nests or other active nests or as specified below shall be halted until that nesting effort is finished.

b. The monitor shall review and verify compliance with these nesting boundaries and shall verify when the nests have been naturally vacated for the season, with no human interference. Work may resume when no other active nests are found. Upon completion of the survey and any follow-up construction avoidance management, a report shall be prepared and submitted to the Executive Director.

c. Appropriate noise-abatement measures (e.g., sound walls) shall be implemented to ensure that noise levels are less than 60 A-weighted decibels (dBA) at the active nest of a listed species, as determined by the biological monitor. This shall be verified by weekly noise

monitoring at an equivalent location conducted by a qualified Acoustical Engineer during the breeding season (February 1 to September 15) or as otherwise determined by a qualified biological monitor based on nesting activity.

The applicant further agrees that:

d. Activities involving disturbance or removal of riparian vegetation shall be prohibited during the least Bell's vireo breeding season (March 15 to September 15).

e. Vegetation impacts shall be monitored by a qualified Biologist. The Biological Monitor shall delineate (by the use of orange snow fencing or lath and ropes/flagging) all areas adjacent to the impact area that contain habitat suitable for sensitive bird occupation (i.e., California gnatcatcher, Belding savannah sparrow, light-footed clapper rail) and raptors.

f. Prior to and during any disturbance of suitable gnatcatcher habitats outside the gnatcatcher breeding season, the biologist shall locate any individual gnatcatchers on-site and direct clearing to begin in an area a minimum of 300 feet away from the birds. No site disturbance shall occur until the individual birds have naturally vacated the area without human interference. It shall be the responsibility of the permittee to assure that gnatcatchers shall not be directly injured or killed by impacts to Coastal Sage Scrub or other Scrub communities.

g. Prior to initiating vegetation impacts or project construction, the biological monitor shall meet on-site with the construction manager or other individual(s) with oversight and management responsibility for the day- to-day activities on the construction site to discuss implementation of the relevant avoidance and minimization mitigation measures for gnatcatchers. The biologist shall meet as needed with the construction manager (e.g., when new crews are employed) to discuss implementation of these measures.

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

4. Construction and Pollution Prevention Plan

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

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

i. Land disturbance during construction (e.g., clearing, grading, and cut-and-fill) shall be minimized, and grading activities shall be phased, to avoid increased erosion and sedimentation.

ii. Erosion control BMPs (such as mulch, soil binders, geotextile blankets or mats, or temporary seeding) shall be installed as needed to prevent soil from being

transported by water or wind. Temporary BMPs shall be implemented to stabilize soil on graded or disturbed areas as soon as feasible during construction, where there is a potential for soil erosion to lead to discharge of sediment off-site or to coastal waters.

iii. Sediment control BMPs (such as silt fences, fiber rolls, sediment basins, inlet protection, sand bag barriers, or straw bale barriers) shall be installed as needed to trap and remove eroded sediment from runoff, to prevent sedimentation of coastal waters.

iv. Tracking control BMPs (such as a stabilized construction entrance/exit, and street sweeping) shall be installed or implemented as needed to prevent tracking sediment off-site by vehicles leaving the construction area.

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

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

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

ii. Covering stockpiled construction materials, soil, and other excavated materials to prevent contact with rain, and protecting all stockpiles from stormwater runoff using temporary perimeter barriers.

iii . Cleaning up all leaks, drips, and spills immediately; having a written plan for the clean-up of spills and leaks; and maintaining an inventory of products and chemicals used on site.

iv. Proper disposal of all wastes; providing trash receptacles on site; and covering open trash receptacles during wet weather.

v. Prompt removal of all construction debris from the wetland area.

vi. Detaining, infiltrating, or treating runoff, if needed, prior to conveyance off-site during construction.

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

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

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

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

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

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

i. No construction equipment or materials (including debris) shall be allowed at any time outside of the project area.

ii. All work shall take place during daylight hours, and lighting of the wetlands is prohibited.

iii. Tarps or other devices shall be used to capture debris, dust, oil, grease, rust, dirt, fine particles, and spills to protect the quality of coastal waters.

iv. All erosion and sediment controls shall be in place prior to the commencement of construction, as well as at the end of each workday. At a minimum, if grading is taking place, sediment control BMPs shall be installed at the perimeter of the construction site to prevent construction-related sediment and debris from entering the waterways, natural drainage swales, and the storm drain system.

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

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

i. A map delineating the construction site, construction phasing boundaries, and the location of all temporary construction-phase BMPs (such as silt fences, inlet protection, and sediment basins).

ii. A description of the BMPs that will be implemented to minimize land disturbance activities, minimize the project footprint, minimize soil compaction, and minimize damage or removal of non-invasive vegetation. Include a construction phasing schedule, if applicable to the project, with a description and timeline of significant land disturbance activities.

iii. A description of the BMPs that will be implemented to minimize erosion and sedimentation, control runoff and minimize the discharge of other pollutants resulting from construction activities. Include calculations that demonstrate proper sizing of BMPs.

iv. A description and schedule for the management of all construction-phase BMPs (including installation and removal, ongoing operation, inspection, maintenance, and training). Identify any temporary BMPs that will be converted to permanent post-development BMPs.

5. Cultural Resource Treatment and Monitoring Plan

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

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

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

iii. Archaeological monitor(s) qualified by the California Office of Historic Preservation (OHP) standards, Native American monitor(s) with documented ancestral ties to the area appointed consistent with the standards of the Native American Heritage Commission (NAHC), and the Native American most likely descendent (MLD) when State Law mandates identification of a MLD, shall monitor all project grading and subsurface construction activity (such as trenching for utilities) that has the potential to impact cultural resources, as required in the approved cultural resources monitoring plan required above.

iv. The permittee shall provide sufficient archeological and Native American monitors to assure that all project grading and subsurface construction activities that has any potential to uncover or otherwise disturb cultural deposits is monitored at all times;

v. If any archaeological or paleontological, i.e. cultural deposits, are discovered, including but not limited to skeletal remains and grave-related artifacts, artifacts of traditional cultural, religious or spiritual sites, or any other artifacts, all construction shall cease within at least 50 feet of the discovery, and the permittee shall carry out significance testing of said deposits in accordance with the attached "Cultural Resources Significance Testing Plan Procedures" (Appendix 1). The permittee shall report all significance testing results and analysis to the Executive Director for a determination of whether the deposits are significant.

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

6. Other Agency Approvals

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

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND LOCATION

The proposed project consists of drainage improvements, erosion repair, and habitat restoration by the City of Newport Beach between two private single family residences on the northern side of Upper Newport Bay. Extensive erosion of the existing natural drainage that conveys nuisance runoff and stormwater flows from the residential area known as Bayview Heights down to Upper Newport Bay has occurred over time due to several storms, and the erosion is expanding. The erosion of the slope in this location has resulted in the creation of a steep eroded gully, causing private property loss to the owners of the properties on either side of the drainage, potential threat to existing structures, and the conveyance of a significant amount of sediment into Upper Newport Bay, resulting in negative water quality impacts. To restore the existing slope and associated habitat and prevent further erosion of the slope, the applicant proposes to install approximately 520 linear feet of 24-inch reinforced concrete pipe below grade, and install approximately 28 linear feet of 12-inch polyvinyl chloride pipe (PVC) below grade, two storm drain junction structures, 1 drain basin, one concrete energy dissipater structure, and one concrete weir outlet structure. The purpose of installing the stormwater pipe down the length of the slope is to convey storm flows from the existing upper residential area to the lower basin, thereby significantly decreasing the existing erosion problem. A new catch drain protected by approximately 189 square feet of un-grouted rip-rap will be installed at the bottom of the erosional gully, which is surrounded by an approximately 5,540 square foot detention basin. Approximately 658 cubic yards of fill material will be imported to fill in areas of existing bluff erosion. Onsite habitat restoration is also proposed.

The project site involves approximately 0.73 acre of privately owned residential property in Bayview Heights, and public open space in the Upper Newport Bay Ecological Reserve within the City of Newport Beach located between Mesa Drive to the north, and Bayview Trail (an improved asphalt paved pedestrian and vehicle access way around the bay) to the south. The land is owned by private residents, the County of Orange, and the State of California (all of whom have consented to

the proposed work on their property), and is located south of the SR-73, and west of Jamboree Road **(Exhibit 1).** Specifically, the project site is located on the southern end of two private properties, 2600 and 2612 Mesa Drive, and on open space within the ecological reserve to the north of Bayview Trail in Upper Newport Bay. Construction access will be from both Mesa Drive and Bayview Trail. Construction equipment and debris is proposed to be stored within the proposed project construction limits or on the residential properties on either side of the drainage. Public access along the Bayview Trail would be maintained throughout the entire construction period, which will require a period of 1-3 months. For purposes of describing the construction activities, the project can be divided into "upper basin", "eroded gully", and "lower basin", as explained below.

Upper Basin

Although currently dominated by exotic species, there is an existing .03 acre freshwater wetland adjacent to Mesa Drive which maintains wetland hydrology from dry weather flows consistently entering the site from the surrounding residential development via a storm drain outlet at Mesa Drive. This existing wetland will be protected in place during erosion repair and construction of the new stormwater pipe. To maintain the existing hydrology entering the site, dry weather flows will continue to discharge and flow through the existing wetland via the new stormwater junction structure that is proposed to be adjacent to Mesa Drive, with a diversion curb inside of it which will direct the low flows into a 12 inch PVC pipe that leads from Mesa Drive to the wetland. From there, water can pond to a maximum level of one foot until the wetland area fills up, and once the water reaches maximum level in the wetland area, the excess flow will spill into a 24 inch by 8 inch dome-shaped drain basin, which will direct the water back to the subterranean 24 inch RCP storm drain, and down the slope to the lower basin. The applicant proposes to remove and replace the existing headwall along the southern side of Mesa Drive at the existing 24-inch outlet pipe, and install 520 linear feet of new 24 inch RCP that will extend down the length of the slope avoiding the wetland. This new RCP pipe will connect the upper and lower portions of the project site to convey stormwater from the residential development at the top of the slope to the lower basin at the downstream end **(Exhibit 2)**. The applicant proposes to enhance the existing upper basin wetland by removing existing invasive and ornamental species such as Tree Tobacco and Tree of Heaven, and planting native plant species conducive to the area.

Eroded Gully

The majority of the 520 foot RCP stormwater pipe is proposed to be buried underneath the existing eroded gully at varying depths of approximately 2 feet to 8 feet deep, which will be backfilled with natural material and restored to its pre-erosional grade. Approximately 658 cubic yards of fill material will be imported to fill in the areas of existing slope erosion. Once the erosion repair is completed, the area will be hydroseeded with transitional native grassland plants and shrubs, such as western ragweed, creeping wild rye, and saltgrass.

Lower Basin

The applicant proposes to reconfigure the existing detention basin located at the end of the new stormwater pipe, and install an 11.5 foot by 13 foot energy dissipating structure, surrounded by 189 square feet of un-grouted rip rap, which will reduce the velocity of the stormwater entering the basin. The resulting basin will have a bottom surface area of approximately 5,540 square feet at the outlet of the energy dissipating structure, which will connect on the southern end of the basin to an existing 3.5 foot by 5.5 foot outlet structure with an attached 36 inch RCP surrounded by

approximately 118 square feet of salvaged rip rap that will convey the remaining stormwater to the existing storm drain outlet that is located under the Bayview Trail, into Upper Newport Bay. This basin currently maintains a 0.04 acre freshwater wetland which will be temporarily impacted by the construction **(Exhibit 3).** However, the applicant proposes to mitigate this wetland loss onsite by enhancing the upper wetland by removing invasive and ornamental vegetation, planting wetland appropriate native vegetation, replanting the mulefat that will be impacted in the lower basin, and the overall hydroseeding and planting of appropriate native vegetation throughout the slope **(Exhibit 4)**.

Impacts

The proposed project is anticipated to permanently impact a total of approximately 0.73 acre of habitat, consisting of coastal sage scrub, mulefat scrub, and ornamental vegetation. The proposed project will also impact 0.05 acre of wetland located in the lower basin (included in the calculated 0.73 acre of permanently impacted habitat).

The Bayview Heights Drainage Repair Project proposes to eliminate the existing safety hazard of the steep eroded gully and reduce future erosion of the slope in the vicinity of the project site by installing a new stormwater pipe, reconstructing the existing slope, repairing (i.e. filling) the eroded areas, and re-vegetating the slope with native plantings. The project will also enhance the upper wetland by removing invasive and ornamental vegetation and planting appropriate wetland vegetation. The slope will also be hydroseeded and planted with native vegetation that is consistent with the surrounding area, thereby expanding the habitat and improving the habitat value of the upland habitats. The project will address existing environmental problems resulting from the eroding slope, including the uncontrolled erosion of the slope and associated sedimentation, the dominant presence of non-native invasive plant species, and will result in restoration and enhancement of native habitats. Public access along Bayview Trail in Upper Newport Bay Ecological Reserve will be maintained throughout the entire construction period.

B. OTHER AGENCY APPROVALS

The applicant has received a Streambed Alteration Agreement from the California Department of Fish and Wildlife as of April 4, 2016, and is in the process of requesting approval from the following agencies: California Regional Water Quality Control Board (Clean Water Act Section 401 Water Quality Standards Certification, Santa Ana Regional Water Quality Board); and the U.S. Army Corps of Engineers.

C. STANDARD OF REVIEW

The applicant initially filed a complete CDP application for the proposed project to South Coast Coastal Commission staff for consideration by the Commission on January 6, 2017 since the City did not have a certified LCP in place at that time. In the time between filing of the complete CDP application and consideration of the CDP application now by the Commission, the Commission certified the City of Newport Beach's LCP on January 13, 2017. Therefore, although the Commission has retained the CDP for permit processing purposes, the standard of review is the certified LCP.

D. HABITAT

Section 4.2.3 of the City's Certified LCP incorporates 30233(a) of the Coastal Act, which states:

> *The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*
> *(l) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
> *(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
> *(3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
> *(4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
> *(5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
> *(6) Restoration purposes.*
> *(7) Nature study, aquaculture, or similar resource dependent activities.*

Section 4.1 of the City's Certified LCP incorporates Section 30240 of the Coastal Act, which 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.*

According to background information provided by the consultant, the unnamed drainage at Newport Bay is an ephemeral drainage that receives urban runoff from the surrounding development, and is a tributary to Newport Bay. The curb-side inlet along Mesa Drive that conveys residential run-off from the surrounding neighborhood to this drainage was constructed sometime in the 1960's where no natural stream channel existed. However, a feature of the drainage includes a relatively level area between the road and the eroded gully, where water tends to consistently pond for weeks and months due to residential irrigation and runoff consistently flowing into the area.

A wetland delineation was performed for the subject site on May 18, 2015 (*Bayview Heights Drainage Restoration, City of Newport Beach, California, Delineation of State and Federal Jurisdictional Waters, Michael Baker International).* Based on the delineation and site visit with Commission staff ecologist, Dr. Jonna Engel, it was determined that two wetland areas are present, one in the upper end (0.03 acre), and one in the lower end of the drainage (0.05). The drainage in the upper area of the slope indicated a high water table and saturation, both of which are qualities indicating wetland hydrology under CCC jurisdiction. A healthy stand of mulefat (0.05 acre) was

identified in the southern end of the drainage, and is also considered a wetland under CCC jurisdiction. The applicant proposes to protect in place the wetland in the upper area; however the wetland in the lower end of the drainage will be impacted as a result of the project as discussed in further detail below.

Impacts

A habitat assessment was conducted for the project area (*Habitat Assessment for the Bayview Heights Drainage Restoration Project Located in the City of Newport Beach, Orange County, California*) on March 4, 2016. The habitat assessment found that although the majority of the survey area is surrounded by existing development and has been heavily disturbed, limiting the site's viability as suitable habitat for sensitive biological resources, the survey area has the *potential* to support a small number of special-status avian species such as coastal California gnatcatcher, although none were observed. These species may forage over the survey area, but are not expected to nest onsite. Implementation of the proposed project will have temporary impacts to the mulefat scrub on the southern portion of the survey area, but any impacts to this plant community shall be restored. In addition, the applicant proposes to replant a portion of the slope with coastal sage scrub species to further improve the habitat value of the Coastal Sage Scrub community in this location, which may benefit special-status avian species post-project.

All project staging and stockpiling is proposed to occur within the proposed limits of disturbance **(Exhibit 2).** The proposed project, including burial of the new stormwater pipe, installation of the energy dissipating structure, associated riprap, and slope restoration activities are anticipated to impact a total of approximately 0.73 acre of habitat, including 0.07 acre of coastal sage scrub, 0.05 acre of wetland (mulefat scrub), and 0.23 acre of ornamental vegetation.

Allowable Use

Section 4.2.3 of the Certified LCP which incorporates Section 30233 of the Coastal Act limits development within wetlands, such as at the subject site, to seven specific uses. One of the uses for which development within wetlands is allowed, is an incidental public service use, including but not limited to, burying pipes. The proposed project will result in burying a new stormwater pipe for the purposes of repairing an existing drainage, which serves as an incidental public service because it will repair an existing drainage which collects runoff from the surrounding upland residential area preventing flooding, and will ensure the stability and integrity of the gully slope which would affect at the very least the homes at 2600 and 2612 Mesa Drive, and it will maintain and enhance the biological quality of the Upper Newport Bay Ecological Reserve. Thus, the proposed project is an allowable use. Therefore, the proposed development is consistent with Section 4.2.3 of the Certified LCP which incorporates Section 30233 of the Coastal Act with regard to uses allowed within wetlands.

Alternatives

Land Use Policy 4.2.3 of the certified LCP also requires that development proposed in wetlands be the least environmentally-damaging feasible alternative. Prior to submitting the coastal development permit application, the applicant explored several different design alternatives, all of which involved fill of the upper *and* lower wetland areas, and mainly varied in the location and configuration of the proposed new stormwater pipe. At the request of Commission staff, the applicant proposed three more design alternatives that protected in place the upper wetland. Option one explored the feasibility of an "open channel" alternative which would widen the drainage, or leave the drainage "day-lighted" rather than installing an underground pipe to convey the run-off entering the site. The

applicant contends that this was not a viable option as the grade was too steep, the site was too narrow, and both residential parcels had already lost property as a result of the erosion. Commission staff coastal engineer, Dr. Lesley Ewing, agreed with this analysis and conclusion.

Option two proposed to increase the size of the upper basin as a means of slowing down the velocity of the flows entering the drainage, protecting in place the upper wetland, and actually increasing the size of the upper wetland. However, one of the property owners objected to this alternative due to their concern that a bigger wetland on their property might attract more wildlife which was undesirable to them. This option also entailed re-contouring the upper basin and existing wetland (i.e. grading the wetland), which may have reduced the productivity of the wetland when restored. The third option proposed to protect the upper wetland in place and maintain the hydrology by allowing existing dry weather flows to continue to discharge and flow through the existing wetland, with a bypass for stormwater to enter into the proposed stormwater pipe, which would convey the stormwater down the slope to the bay. This was the least environmentally damaging feasible alternative, and reflects the current project description.

Since the proposed project would reduce or eliminate safety hazards at the site that are caused by the imminent threat of continued slope erosion (and potential collapse), and the erosion problem would continue to degrade, which could result in losing more of the slope, and the proposed project protects the upper wetland in place, the alternatives analysis submitted by the applicant demonstrates that the proposed project is the least environmentally damaging alternative. Therefore, the proposed development is consistent with Section 4.2.3 of the Certified LCP which incorporates 30233 of the Coastal Act with regard to alternatives.

Mitigation

Section 4.2.3 of the Certified LCP, which incorporates 30233 of the Coastal Act, also requires that any development within wetlands provide mitigation to minimize any unavoidable adverse environmental effects. Installation of the stormwater pipe, repairs to the eroded drainage and restoration of the slope will result in some impacts to surrounding habitat, and to mitigate for permanent impacts to 0.07 acre of coastal sage scrub and 0.05 acre of mulefat scrub habitat onsite, the applicant proposes to re-vegetate the slope with appropriate native vegetation, and to enhance the surrounding habitat through removal of approximately 0.23 acre of non-native invasive plants located in the upper wetland and lower wetland.

The applicant has proposed 6:1 mitigation for the project's permanent impacts to the lower wetland habitat and coastal sage scrub (mitigation area to impact area), which is the wetland habitat mitigation ratio required by the City of Newport Beach Certified Local Coastal Plan.

The mitigation would occur onsite consisting of replanting .43 acre of mulefat and coastal sage scrub and hydroseeding with species such as saltgrass, mugwort, and ragweed, with slopes replanted with coastal sage scrub species. To ensure the onsite restoration is successful, staff is recommending **Special Condition 1** which requires the applicant to submit a finalized Habitat Restoration and Monitoring Plan for the onsite restoration to assure all adverse impacts to habitat are adequately mitigated.

Other Necessary Habitat Protection Measures

As recommended by the *Habitat Assessment for the Bayview Heights Drainage Restoration Project Located in the City of Newport Beach, Orange County, California* (prepared by Michael Baker International), and in order to ensure consistency with the City's Certified LCP Section 4.1 which incorporates section 30240 of the Coastal Act, impacts to sensitive bird species and potential impacts during the nesting season must be avoided. If construction activities are to occur during the bird nesting season (January 1 through September 30), a qualified biologist with experience in conducting bird surveys, must conduct nesting bird surveys to identify their presence or absence during construction. If active nests of special status species are identified within the construction area, work shall cease within 500 feet for raptors and within 300 feet for California Department of Fish & Wildlife listed species and/or species of special concern. Work outside these limits, however, may continue. In order to avoid adverse impacts to sensitive bird species during nesting season, the Commission imposes **Special Condition 3**, which requires that surveys for nesting birds be conducted by a qualified biologist when work is undertaken during the nesting bird season and, that if nests are identified, work be directed away from the nests.

Conclusion

Only as conditioned, can the project be found to be consistent with Section 4 of the Certified LCP which incorporates Coastal Act Section 30233 regarding protection of wetlands and Section 30240 regarding protection of adjacent sensitive habitat.

E. MARINE RESOURCES/WATER QUALITY

Section 4.3 of the City's Certified LCP incorporates Section 30230 of the Coastal Act, which states:

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

Section 4.3 of the City's Certified LCP also incorporates Section 30231 of the Coastal Act, which states:

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

Water polluted with sediment can prevent animals from seeing food in the water and sediment laden water can prevent natural vegetation from growing in that water. Sediment in stream beds can also disrupt the natural food chain by destroying the habitat where the smallest stream organisms live.

The subject drainage is causing erosion and sedimentation during flood events which negatively impact the water quality and habitat quality in the Upper Newport Bay. A major benefit of this drainage restoration project is to eliminate the scour and sedimentation caused by the eroding slope. Overall, the project will result in improved water quality and habitat for Upper Newport Bay through the removal of sediment entering the bay, and improved habitat quality through post-construction habitat restoration. The project as proposed meets the requirements of these sections and the goals of the project are consistent with the LCP.

A Total Maximum Daily Load (TMDL) is a regulatory term in the U.S. Clean Water Act, describing a plan for restoring impaired waters that identifies the maximum amount of a pollutant that a body of water can receive while still meeting water quality standards. In March 1999, the Santa Ana Regional Water Quality Control Board approved a sediment total maximum daily load (TMDL) for the Newport Bay watershed to address water quality impairment due to excessive sedimentation. The TMDL for sediment requires implementation and maintenance of sediment control measures aimed at ensuring that existing habitat acreages of Upper Newport Bay are not significantly changed and sediment discharges in the watershed are reduced by 50% over an established period of time. The long term goal of the sediment TMDL is to reduce the frequency of dredging Upper Newport Bay to once every 20 to 30 years. The project is consistent with the policies above in that the project addresses a source of excess sediment entering the bay (TMDLs).

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

As construction activities may generate debris or sediment that could enter the wetlands, creek or Newport Bay, **Special Condition 5** requires the applicant adhere to construction BMPs. The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction activities on the marine environment. Staff recommends that the Commission find that the proposed development, as conditioned, conforms with Section 4.3 of the City's Certified LCP regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

F. CULTURAL AND ARCHEOLOGICAL RESOURCES

Land Use Policies of the LCP state:

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

4.5.1-2: Require a qualified paleontologist/archeologist to monitor all grading and/or excavation where there is a potential to affect cultural or paleontological resources. If grading operations or excavations uncover paleontological/archaeological resources, require the paleontologist/archeologist monitor to suspend all development activity to avoid destruction of resources until a determination can be made as to the significance of the resources. If resources are determined to be significant, require submittal of a mitigation plan. Mitigation measures considered may range from in-situ preservation to recovery and/or relocation. Mitigation plans shall include a good faith effort to avoid impacts to cultural resources through methods such as, but not limited to, project redesign, in situ preservation/capping, and placing cultural resource areas in open space.

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

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

To Commission staff's knowledge, no surveys were conducted on the site that indicated any archaeological or paleontological resources exist on the site previous identification of archaeological, Native American, and paleontological resources within the vicinity of the project suggests that the cultural and paleontological sensitivity of the project is high. Consistent with the policies of the Land Use Policies of the Local LCP that require an archeological and cultural resources monitoring plan be submitted, **Special Condition 5** requires submittal of an archeological monitoring plan to ensure that any prehistoric, archaeological or paleontological cultural resources that may be present on the site and could be impacted by the proposed development receive proper protections, preferably avoidance. The plan shall include provisions for both Professional Archeologists and Native American monitors be present during soil disturbance. Additionally, the condition requires that the Native American groups with ties to the area are noticed about the project and are included in the review process before monitoring begins. Cultural history can aid in cultural resource location and identification on a project site and can assist in the preliminary resource investigations prior to site preparation. At a minimum, Native American groups should be notified of impending development through the CEQA process, but in order to maximize protection of archeological and cultural resources, these groups should be invited to participate in preliminary investigations and project review and/or design. Additionally, reports and results of investigations should be shared with these groups for feedback, commentary, and peer-review. As conditioned for

a monitoring plan and protection of the archeological resources, the project is consistent with the applicable policies of the LCP.

G. PUBLIC ACCESS

Coastal Act Section 30210 states:

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

Coastal Act Section 30211 states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Coastal Act Section 30221 states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

The proposed development is located between the first public road and the sea. Therefore, if the Commission issues a CDP for the project, it must find that the development is in conformity with the public access and public recreation policies of Chapter 3.

To ensure that construction activities will avoid impacts to public access to Upper Newport Bay Ecological Reserve and avoid impacts to sensitive habitat areas, **Special Condition 2** requires the applicant submit a revised staging plan to protect the existing habitat from degradation during staging and construction. Furthermore, Public access along the Bayview Trail would be maintained throughout the entire construction period, which will require a total of 20 working days over a period of 2.5 months. As conditioned, the proposed development is in conformity with the public access and recreation policies of Chapter 3.

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 Title 14 of the California Code of Regulations requires Commission approval of a coastal development permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation

measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The City of Newport Beach determined that the project was categorically exempt under Section 15304 of the CEQA regulations [Class 4 Minor Alterations to Land] in February, 2016. Under Section 15251(c) of Title 14 of the California Code of Regulations, the Commission's CDP regulatory process has been certified as the functional equivalent to the CEQA process. As a responsible agency under CEQA, the Commission has determined that the proposed project, as conditioned, is consistent with the development within wetlands policies, enhancement of marine productivity and water quality policies, and the protection of the archeological, and biological resources policies of the Coastal Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX 1

CULTURAL RESOURCES SIGNIFICANCE TESTING PLAN PROCEDURES

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

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

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

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

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

but not limited to, project redesign, capping, and placing cultural resource areas in open space. In order to protect cultural resources, any further development may only be undertaken consistent with the provisions of the Supplementary Archaeological Plan.

1. If the Executive Director approves the Supplementary Archaeological Plan and determines that the Supplementary Archaeological Plan's recommended changes to the proposed development or mitigation measures are de minimis in nature and scope, construction may recommence after the Executive Director informs the permittee of that determination.

2. If the Executive Director approves the Supplementary Archaeological Plan but determines that the changes therein are not de minimis, construction may not recommence until after an amendment to this permit is approved by the Commission.

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