

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 5-98-240

APPLICANT: Bill Patton

AGENT:

PROJECT LOCATION: 1472 Galaxy Drive, City of Newport Beach, County of Orange

PROJECT DESCRIPTION: Permanently authorize the installation of 16 caissons along the eastern edge of the building pad to enhance slope stability which were allowed under an emergency permit (5-98-240-G). Repair of backyard hardscape damaged by installation of the caissons. Two hundred cubic yards of grading are proposed.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission approve the development, which consists of installation of the sixteen subterranean caissons with five special conditions. Special conditions contained in this staff report concern: assumption of risk, conformance with the geological recommendations, implementation of a landscaping plan, conformance with a drainage and runoff control plan, and a future improvements deed restriction.

The major issue of this staff report is development on a coastal bluff-top adjacent to an ecological reserve. The applicant requests that the Commission not prohibit the use of an existing in-ground irrigation system. The applicant contends that the lawn area has been designed to minimize the introduction of irrigation water into the ground and consequently the proposed irrigation system would not adversely affect slope stability.

LOCAL APPROVALS RECEIVED: Grading/Caisson approval in from the City of Newport Beach dated August 27, 1998.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach certified Land Use Plan. Coastal Commission permits 5-83-840 (Julien), 5-85-062 (Braman), 5-87-653 (Patton), 5-93-308 (Pope Trust), 5-93-367 (Rushton), 5-94-288 (Lewis), 5-98-496 (Ferber) and 5-98-524 (Penfil). Limited Geotechnical Distress Investigation of existing Residence and Garage at 1472 Galaxy Drive by NorCal Engineering dated February 28, 1999. Engineering Geologic Response to Soil Report Review GPC No. 825-98 by Scot P. Farquhar, Inc. dated September 4, 1998 and Supplemental Geotechnical Distress Investigation to Existing Residence and Garage at 1472 Galaxy Drive, Newport Beach, California by NorCal Engineering dated June 30, 1998.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby **GRANTS** a permit, subject to the conditions below, for the proposed development on the grounds that the development, located between the nearest public roadway and the shoreline, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976 including the public access and recreation policies of Chapter 3, 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 of the Coastal Act, and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions.

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and construction 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 construction has not commenced, the permit will expire two years from the date on which the Commission voted on the application, or in the case of administrative permits, the date on which the permit is reported to the Commission. Construction 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. Compliance. All construction must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director of the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. 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.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Conditions.

1. ASSUMPTION OF RISK, WAIVER OF LIABILITY, AND INDEMNITY

- A. By acceptance of this permit, the applicant acknowledges and agrees that: (i) the site may be subject to hazards from landslide, bluff retreat, erosion, and earth movement; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition. The deed restriction shall include a legal description of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

2. Future Development Deed Restriction

- A. This permit is only for the development described in coastal development permit No. 5-98-240. Pursuant to Title 14 California Code of Regulations section 13253(b)(6), the exemptions otherwise provided in Public Resources Code section 30610 (b) shall not apply to the entire parcel. Accordingly, any future improvements, including but not limited to repair and maintenance identified as requiring a permit in Public Resources section 30610(d) and Title 14 California Code of Regulations sections 13252(a)-(b), which are proposed within the parcel shall require an amendment to Permit No. 5-98-273 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.
- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restrictions on development within the parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

3. CONFORMANCE OF DESIGN AND CONSTRUCTION PLANS WITH GEOTECHNICAL RECOMMENDATIONS

- A. All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with all recommendations contained in the Engineering Geologic Report prepared by NorCal Engineering and dated February 28, 1998. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, evidence that an appropriate licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all of the recommendations specified in the above-referenced geologic evaluation approved by the California Coastal Commission for the project site.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

4. **LANDSCAPING PLAN**

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and [written] approval of the Executive Director, a plan for landscaping to protect the ESHA values of the Upper Newport Bay Ecological Reserve. The plan shall be prepared by a licensed landscape architect.

1. The plan shall demonstrate that:

- a. All vegetation planted on the site will consist of native or non-native drought-tolerant plants which are non-invasive.
- b. All required plantings will be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan.
- c. No permanent irrigation system shall be allowed within the property. Any existing in-ground irrigation systems shall be disconnected and capped. Temporary above ground irrigation to allow the establishment of the plantings is allowed. The landscaping plan shall show all the existing vegetation and any existing irrigation system.
- d. The applicant shall submit written evidence from the California Department of Fish and Game (Department) demonstrating that the Department has approved the landscaping plan.
- e. Landscaped areas in the front and side yards can include potted ornamental plants provided that they are non-invasive, are placed on drained hardscape, and do not allow water to percolate into the soil.
- f. Plantings shall be undertaken using accepted planting procedures, consistent with fire safety requirements. Such planting shall be adequate to provide ninety (90%) percent coverage within ninety (90) days and shall be repeated, if necessary, to provide such coverage.

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

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

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

to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

5. DRAINAGE AND RUNOFF CONTROL

Prior to issuance of this permit, the applicant shall submit for the review and approval of the Executive Director a drainage and runoff control plan with an evaluation of the existing system's compliance with this special condition. The drainage and runoff control plan shall show that all roof drainage, including roof gutters, collection drains, and sub-drain systems for all landscape and hardscape improvements for the residence and all yard areas, shall be confined on site. The purpose of such a system will be to collect and discharge all site drainage to the street through piping without allowing water to percolate into the ground. If such a system for conveying site drainage to the street currently does not exist, the applicant shall be responsible for installing a drainage and runoff control system which conforms to the plan as approved by the Executive Director within ninety (90) days of issuance of this permit. The applicant shall maintain the functionality of the approved drainage and runoff control plan to assure that water is collected and discharged to the street without percolating into the ground.

IV. Approval Findings and Declarations.

The Commission hereby finds and declares as follows:

A. Project Description and Location

The proposed project is located at 1472 Galaxy Drive in the City of Newport Beach, County of Orange (Exhibits 1,2, & 3). Galaxy Drive is located on a bluff above Upper Newport Bay and the Upper Newport Bay Ecological Reserve. The residence is on the bayside side of Galaxy Drive, hence, the subject site is located between the nearest public roadway and the shoreline of Upper Newport Bay. The bluff is geotechnically active and has been prone to failure. The Commission has issued at least five coastal development permits for slope repairs on Galaxy Drive. Appendix A (page 16) is a review of prior Commission actions on Galaxy Drive.

On June 14, 1998 the applicant applied for an emergency permit as the rear yard was evidencing signs of distress. The geotechnical investigation submitted with the emergency permit application noted that lateral movement occurred due to recent heavy rains, that cracks had formed in the hardscape located in the backyard, and that the residence had experienced differential settlement. Based on these observations and subsurface testing, the geotechnical report dated February 28, 1998 by NorCal Engineering concluded that the rear yard and bluff face had a static factor of safety of less than 1.0. To stabilize the rear yard and bluff NorCal

recommended that the rear yard should be stabilized with piles placed in a row along the eastern portion of the building pad area. Consequently the Executive Director issued an emergency permit (5-98-240-G) to install sixteen subterranean caissons as recommend by NorCal on July 24, 1998. This emergency permit was reported to the Commission at its August 13, 1998 meeting. A copy of this permit is attached as Exhibit 6.

This application is the follow-up permit application to permanently authorize the placement of the sixteen caissons authorized under the emergency permit (5-98-240-G) and to repair the hardscape damaged through installation of the caissons. The proposed project also involves the removal of 200 cubic yards of material to make room for the installation of the caissons. This material was disposed at a landfill outside of the coastal zone.

The project site was subject to two previous coastal development permit actions. On September 25, 1987 a waiver was issued for the addition of 390 square feet to the home under 5-87-653 (Patton). This was an addition on the bayward side of the house. On November 1, 1983 a waiver was issued for the addition of 1160 square feet on the landward side of the residence under 5-83-840 (Julian)

B. Geologic Hazards

The subject site is developed with a single-family residence and is on a coastal bluff overlooking Upper Newport Bay. Consequently, the bluff on which the lot is located is subject to failure due to water induced erosion from rainfall, irrigation, and tidal action. According to the applicant's geologic consultant, the rear yard began to exhibit signs of distress following El Niño rains in 1997-1998. The apparent cause of this slope distress was the infiltration of rainwater into the subsurface.

Concerning bluff stability in the general vicinity of the project site in 1978, Commission staff noted through a working paper for the San Diego County Regional Coastal Wetlands Workshop (July 20 and 21, 1978) that: *"The slopes of the western shore of Newport are slumping into the bay quite rapidly. The main cause of this is the irrigation of lawns in urban areas on the bluffs above Upper Bay. This irrigation has altered the water table which in turn has decreased the stability of the bluffs."* In a letter dated May 3, 1998 Richard T. Higley wrote that: *"It has been the experience of the CNB City Geologist that all past slope failures on this stretch of coastal bluff have in part been triggered by hydrostatic loading caused by perched groundwater conditions."*

The Commission has issued at least five coastal development permits for slope repair or stabilization along Galaxy Drive (see Appendix A on page 16). The number of permit applications for bluff stabilization and bluff repairs on Galaxy Drive demonstrates that this bluff overlooking Upper Newport Bay is geotechnically active. Development of coastal bluffs is inherently risky, Section 30253 of the Coastal Act states, in relevant part:

New development shall:

- (1) *Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) *Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

To evaluate the site's stability the property was subject to several geotechnical investigations performed by NorCal Engineering. The first report included subsurface exploration, logging, soil sampling, and laboratory testing to determine the existing soil conditions at the site and to provide data and specific recommendations relative to the design of the proposed development. The first study is titled "*Limited Geotechnical Distress Investigation*" by NorCal Engineering and is dated February 28, 1998. The project number is 7074-97. A second study titled "*Supplemental Geotechnical Distress Investigation*" was prepared by NorCal Engineering and is dated June 30, 1998. A third study by Scot P. Farquhar, Inc. was prepared on September 4, 1998 and is titled "*Engineering Geologic Response to Soil Report Review GPC No. 825-98, dated May 3, 1998*".

The first geotechnical report prepared by NorCal Engineering (dated February 28, 1998) noted that the heavy rains (1997-1998) had apparently triggered rear yard slope instability at 1472 Galaxy Drive. In a letter dated April 26, 1999 NorCal Engineering stated that due to the large amounts of rainfall over a long period of time that groundwater levels rose to the point that the groundwater was near or slightly above the slide plane depths, causing saturated conditions and a decrease in slope stability. Furthermore, the September 4, 1998 report by Scot P. Farquhar, Inc. noted that the bedrock strata has an "*out of slope*" dip component which is a structural topographic condition that is generally considered least favorable with respect to gross slope stability. The report by Farquhar notes that no active groundwater was noted in the fill or marine terrace deposits. Seepage, however, was encountered in the potential landslide materials and bedrock strata as indicated on the boring logs. No seepage was noted for the bluff face.

NorCal Engineering concluded in this first geotechnical report that: *"Based upon our evaluations, the rear yard area and steep descending slope have a current safety factor of less than 1.0 under static conditions. Horizontal cracks from 1/2 to 1 inch have occurred in the concrete slabs and brick patio across the rear pad area during the recent heavy rains. The eastern portion of the residence has also been adversely effected with the maximum differential settlements of 1 3/4 to 2 inches noted adjacent to the rear yard area."* During installation of the soldier piles (authorized under the emergency permit) inspections were made which indicated that the groundwater depth had dropped five to twenty feet below the slide plane.

To assure bluff stability on the subject property and to protect the subject property NorCal Engineering recommended the installation of a row of piles along the eastern edge of the building pad (Exhibit 4). NorCal Engineering recommended that the piles should extend at least ten feet into competent bedrock materials. Though the evaluation by NorCal Engineering concluded that the project would enhance slope stability, NorCal did not make any recommendations concerning drainage, irrigation, or landscaping.

The second geological evaluation by NorCal Engineering (dated June 30, 1998) added tieback anchors to the geotechnical consultant's recommendation for enhancing slope stability. These tiebacks were not installed. According to a phone conversation with NorCal Engineering the project without the tiebacks has a factor of safety of approximately 1.25 meaning that the tiebacks are not necessary for achieving minimal bluff stability or insuring the protection of the single family residence.

Based on the mechanism of failure and the need to minimize the infiltration of water into the bluff slope to decrease the potential for slope failure the Commission finds it necessary to impose several special conditions. Minimizing the infiltration of water can be achieved by reducing irrigation, through drainage improvements, and through the use of vegetation.

To assure that the site is appropriately landscaped for purposes of minimizing the infiltration of water into the bluff, Commission finds it necessary to impose a special condition to require that a landscaping plan consisting of native or drought tolerant plants be prepared for the review and approval of the Executive Director prior to issuance of the permit. The landscaping plan shall be prepared by a licensed landscape architect and shall incorporate the following criteria: 1) to minimize the introduction of water into the ground, no permanent in-ground irrigation shall be permitted, temporary above ground irrigation to establish the plantings is permitted; 2) landscaping shall consist of native or deep rooted drought tolerant non-native plants which are non-invasive. Invasive, non-indigenous plant species which tend to supplant native species shall not be used; and 3)

Ornamental plants that are in pots which are non-invasive and are placed on drained hardscape which does not allow water to percolate into the soil will be allowed in the front and side yards. Additionally, the landscaping plan shall also show the existing plants and irrigation system. Through this special condition, one of the contributing factors to bluff failure, the introduction of water into the ground, will be minimized.

A drainage and runoff control plan was not submitted. Controlling surface runoff is another method of reducing the potential for water infiltration into the bluff. To assure that the site is appropriately drained to minimize the infiltration of water into the bluff a drainage and runoff control plan should be prepared and implemented to assure that surface runoff is collected and discharged to the street. Therefore, the Commission requires that a drainage and runoff control plan shall be prepared and submitted for the review and approval of the Executive Director prior to issuance of this coastal development permit. The drainage and runoff control plan shall also evaluate the effectiveness of the existing on site drainage. If the existing on-site drainage is not consistent with the requirements of this condition, the applicant shall be responsible for installing a drainage and runoff control system, which conforms to this condition within ninety days of issuance of this permit.

Although adherence to the geological consultant's recommendations will minimize the risk of damage, the risk is not eliminated entirely. Galaxy Drive has been prone to bluff failures on a consistent bases. Therefore, the standard waiver of liability condition has also been attached as a special condition. By this means, the applicant is notified that the lot is in an area that is potentially subject to slope failure, which could damage the applicant's property. The applicant is also notified that the Commission is not liable for such damage as a result of approving the permit for development. In addition, the condition insures that future owners of the property will be informed of the risks and the Commission's immunity of liability. This special condition was imposed on development located at 1942 Galaxy Drive under coastal development permit 5-85-062 (Braman), at 1448 Galaxy Drive under coastal development permit 5-98-524 (Penfil), and at 1454 Galaxy Drive under coastal development permit 5-98-469 (Ferber).

Since the coastal bluffs adjacent to Galaxy Drive are active, future development adjacent to the bluffs could have an adverse impact on bluff stability if not properly evaluated. For this reason, the Commission is imposing a special condition which states that any future development or additions on the property, including but not limited to hardscape improvements, grading, landscaping, vegetation removal and structural improvements, requires a coastal development permit from the Commission or its successor agency. This condition ensures that any future development on coastal bluffs, which may affect the stability of the bluff and residential structures, receives review by the Commission. The Commission

imposed an informational future improvements special condition for development occurring at 1730 Galaxy Drive under coastal development permit 5-94-288 (Lewis), at 1448 Galaxy Drive under coastal development permit 5-98-524 (Penfil), and at 1454 Galaxy Drive under coastal development permit 5-98-469 (Ferber).

The geotechnical-consulting firm has prepared the plans submitted with the application. The plans, however, have not been certified as incorporating the recommendations of the geotechnical reports prepared by NorCal Engineering dated February 28, 1998. To ensure that the geotechnical consultant's recommendations are instituted, it is necessary to impose a special condition requiring verification that the project plans are in compliance with the recommendations of NorCal Engineering. Accordingly, the applicant must submit prior to issuance of the permit, for the review and approval of the Executive Director, plans (caisson plans) signed by a certified geotechnical engineer which incorporate the recommendations made by NorCal Engineering geotechnical investigation (PN 7074-97).

Therefore, the Commission finds, consistent with the requirements of Section 30253 of the Coastal Act, that the in-ground irrigation system be capped and disconnected and that the remainder of the proposed project is approved as conditioned for: an assumption of risk deed restriction, future improvements, the implementation of a landscaping plan, compliance with a drainage and runoff control plan, and conformance with the geotechnical recommendations.

C. Environmentally Sensitive Habitat Areas

The project site is immediately adjacent to the Upper Newport Bay Ecological Reserve managed by the California Department of Fish and Game. The Ecological Reserve is a 752 acre wetland habitat sanctuary. In 1968 the California State Legislature authorized the Fish and Game Commission to establish ecological reserves for the purpose of protecting rare and endangered wildlife, aquatic organisms, and critical habitat. Upper Newport Bay Ecological Reserve was established for the principal purpose of preserving and enhancing a saltwater marsh ecosystem. Section 30240(b) of the Coastal Act states:

- (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.

Upper Newport Bay (Bay) is one of the last major estuarine habitats remaining in a near natural condition in southern California. The Department of Fish and Game notes that the Bay is ecologically valuable due to the fact that it supports many

resident and migratory birds; many species of plants and animals; and that the Bay is a nursery for numerous marine organisms. The Upper Newport Bay Regional Park, Existing Conditions Report (May 30, 1990) identifies a total of 22 natural communities within Upper Newport Bay. Furthermore, the Bay is an important recreation area and supports nature study, bird watching, and fishing. According to the Los Angeles Times (Monday, July 22, 1996) over two million persons per year visit the Ecological Reserve. Thus, the Ecological Reserve is an important coastal visitor destination because of its ecological value and for its recreational benefits such as open space, and bird watching. Human activity, in the form of increasing urban development adjacent to the Ecological Reserve has had significant adverse effects on the Bay. Major adverse effects include increased sediment flowing into the Bay, the elimination of natural vegetation, and the elimination of habitat adjoining the Bay.

Concerning ESHA degradation, Commission staff noted in a working paper for the San Diego County Regional Coastal Wetlands Workshop (July 20 and 21, 1978) that: *"Excessive sedimentation is probably the biggest problem facing Upper Newport. The lack of proper watershed management and in particular poor grading practices have accelerated erosion and sediment transport. This process is endangering ecological habitats."* As re-emphasis of sedimentation as a problem, the Los Angeles Times (April 6, 1992) wrote that urban development adjacent to Upper Newport Bay has caused silt to flow into the Bay. The Bay is dredged on an on-going basis to remove accumulated sediments (coastal development permit 5-97-071 (County of Orange)).

Maintaining the Bay's biological productivity and ESHA values is a critical concern since estuaries are one of the most productive areas of the world. Tidal action allows acres of saltwater, spreading over mudflats to reach sunlight and air. This stimulates the growth of algae and plankton that begins the food chain essential to wildlife and commercial ocean fishing. Coastal mudflats support seventy percent of the birds using the Pacific Flyway. Birds known to frequent the Ecological Reserve include the light-footed clapper rail and Beldings Savannah sparrow, Brown Pelican, California least tern. The intertidal mud flats support cordgrass, pickleweed, jaumea and the endangered salt marsh bird's beak. Some ocean dwelling fish such as the California halibut and barred sandbass use Upper Newport Bay for spawning and as a nursery.

Vegetation patterns in the watershed have been altered considerably by human activity. These changes have resulted from agricultural use, increasing urbanization, commercial development, and industrial development. Undeveloped areas still contain arid scrub vegetation that is typical of southern California. According the Upper Newport Bay Regional Park, Existing Conditions Report (May 30, 1990) exotic species, both plant and animal have invaded Upper Newport Bay.

These include non-native grassland species, which are infiltrating native habitat such as wild oats, barely, fennel, and artichoke thistle. Introduced birds include English sparrows and rock doves. Introduced mammals include the house mouse and Virginia opossum.

To assure that development on property adjacent to Ecological Reserve is consistent with Section 30240(b) of the Coastal Act, the Commission finds that the applicant shall prepare prior to issuance of this permit a landscaping plan which shall be submitted for the review and approval of the Executive Director. To minimize the potential for the introduction of non-native invasive species and to minimize the potential for future bluff failure, a landscaping plan shall be prepared by a licensed landscape architect and shall incorporate the following criteria: 1) to minimize the introduction of water into the ground, no permanent in-ground irrigation shall be permitted, temporary above ground irrigation to establish the plantings is permitted; 2) landscaping shall consist of native or deep rooted drought tolerant non-native plants which are non-invasive. Invasive, non-indigenous plant species which tend to supplant native species shall not be used. Furthermore to assure that the landscaping plan will be compatible with the Upper Newport Bay Ecological reserve, it shall be reviewed and approved by the California Department of Fish and Game; and 3) Ornamental plants that are in pots which are non-invasive and are placed on drained hardscape which does not allow water to percolate into the soil will be allowed in the front and side yards. Additionally, the landscaping plan shall also show the existing backyard plants. Through this special condition, one of the contributing factors to bluff failure, the introduction of water into the ground, will be minimized.

Through these special conditions the Commission finds that the project is consistent with Section 30240(b) of the Coastal Act which requires that development adjoining environmentally sensitive habitat areas and parks and recreation areas shall be designed to prevent impacts which would significantly degrade those areas and shall be compatible with the continuance of those habitat and recreation areas.

D. Public Access

The project site is on the seaward side of Galaxy Drive which is the first public road immediately inland of Newport Bay. Section 30604(c) of the Coastal Act requires that every coastal development permit issued for any development between the nearest public road and the sea include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3. The proposed development is located between the sea and the nearest public road.

The proposed development is located on a lot with an existing single family dwelling. The proposed development will not change the use nor intensity of use of the site. Public access opportunities exist through Galaxy View Park which overlooks the Bay and North Star Beach. The proposed development, as conditioned, will not result in any adverse impacts to existing public access or recreation in the area. Therefore, the Commission finds that the project is consistent with the public access and recreation policies of the Coastal Act.

E. Local Coastal Program

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

The Newport Beach Land Use Plan was certified on May 19, 1982. The project as conditioned is consistent with the Chapter 3 policies of the Coastal Act. The proposed development will not 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 as required by Section 30604(a).

F. California Environmental Quality Act

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

The project is located in an existing urbanized area. The proposed development has been conditioned to assure that the project will not have a significant adverse impact on coastal resources and has been conditioned to: provide an assumption of risk deed restriction, for conformance with the geotechnical recommendations, to implement a landscaping plan, conformance with a drainage and runoff control plan, and that future improvements require either an amendment or a new coastal development permit. The proposed development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. There are no other feasible alternatives or feasible mitigation measures which would substantially lessen any significant

adverse effects the activity may have on the environment. Therefore, the Commission finds that the proposed project is consistent with CEQA and the policies of the Coastal Act.

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Appendix A

Prior Commission Permits on Galaxy Drive

5-98-497-G, 5-98-524-G, and 5-98-524 (Penfil) at 1448 Galaxy Drive: The Executive Director issued these two emergency permits in December 1998. These emergency permits were reported to the Commission at its January 1999 Commission meeting. The project under these emergency permits consists of the installation of caissons within the applicant's property along the eastern property line and the removal of an existing gazebo that encroaches onto the Ecological Reserve. Special conditions imposed required the use of best management practices to minimize the migration of silt into the Ecological Reserve, that the caisson be approved by the geotechnical consultant in their new location, that the caissons would not have off-site impacts, and that any disturbed areas be revegetated with non-invasive, primarily native, drought tolerant plants. The follow-up regular coastal development permit application was approved on August 10, 1999 with ten special conditions which required an assumption of risk deed restriction, revised plans, conformance with the geotechnical recommendation, a landscaping plan which requires the use of native and drought tolerant vegetation and which eliminated in-ground irrigation, demolition of the gazebo, the requirement to obtain a right of entry authorization if any work is done within the Upper Newport Bay Ecological Reserve, the use of best management practices, a coastal development permit for future development, the submission and implementation of a drainage and runoff control plan, and the requirement that within 90 days of Commission action that the prior to issuance special conditions be met.

5-98-469 and 5-98-469-G (Ferber) at 1454 Galaxy Drive: The Commission approved the installation of a grade beam wall to stabilize the slope at its meeting of February 3, 1999. The Executive Director did not grant the request for an emergency permit as the home was not in immediate danger. The Commission approved the regular coastal development permit with ten special conditions which required an assumption of risk deed restriction, revised plans, conformance with the geotechnical recommendation, a landscaping plan which requires the use of native and drought tolerant vegetation and which eliminated in-ground irrigation, the requirement to obtain a right of entry authorization if any work is done within the Upper Newport Bay Ecological Reserve, the use of best management practices, the submission of plans for a colorized and texturized grade beam, a coastal development permit for future development, to contact the Department of Fish and Game to undertake full slope repair and stabilization, and the submission and implementation of a drainage and runoff control plan. The applicant also requested that the Commission re-consider the special condition prohibiting the use of an in-ground irrigation system on his lot. The Commission heard this reconsideration request on April 13, 1999 and upheld the imposition of the special condition requiring that the existing in-ground irrigation system be disconnected.

5-98-240 and 5-98-240-G (Patton) at 1472 Galaxy Drive: The Executive Director issued this emergency permit on July 21, 1998. This emergency permit was reported to the Commission at its August 1998 Commission meeting. The project under this emergency permit was for the installation of a blufftop stabilization system consisting of 16 pilings with 30-foot long tieback anchors located under the building pad. A retaining wall was not proposed under the emergency permit. The follow-up regular permit application was received on February 8, 1999.

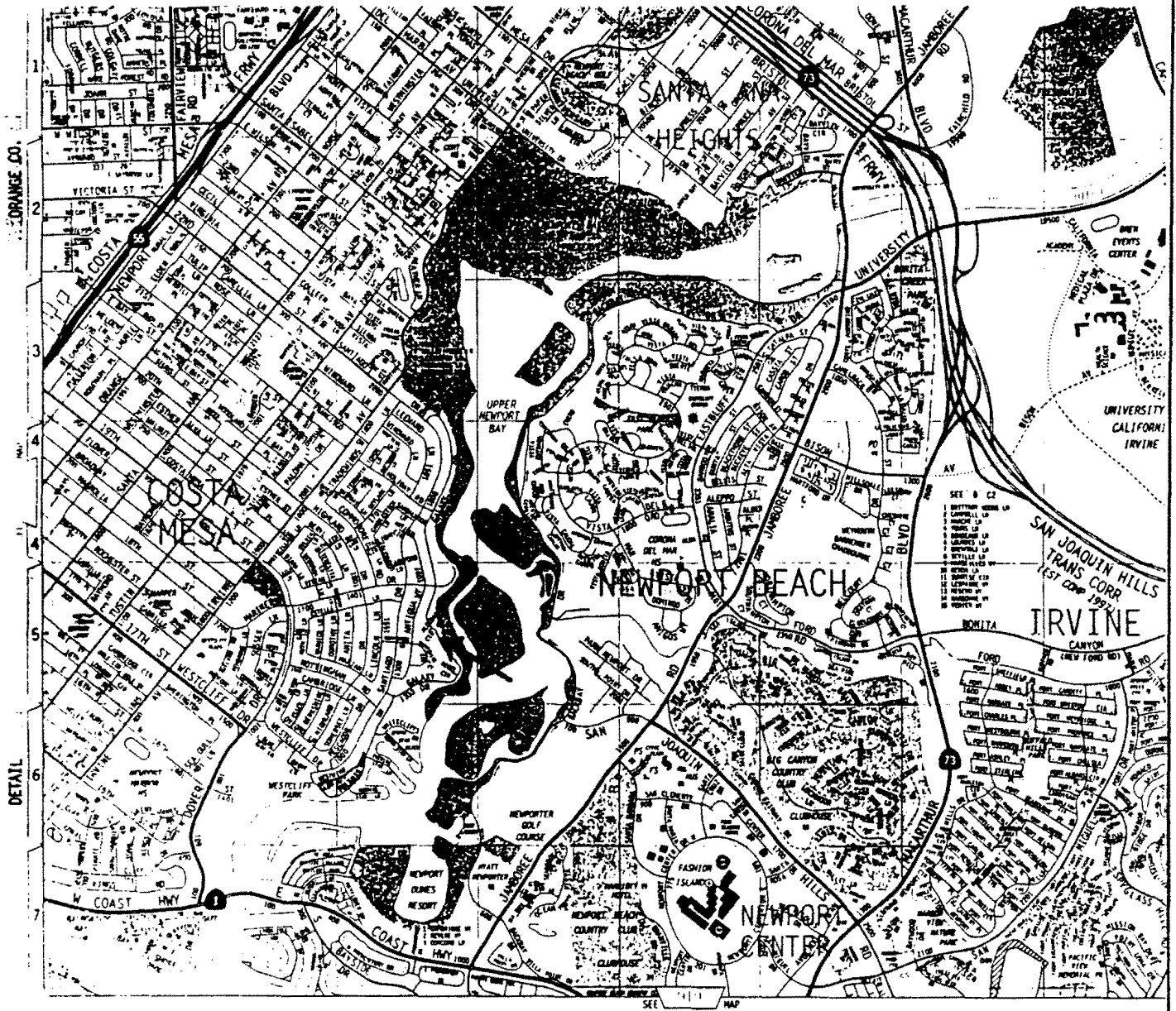
5-94-288 (Lewis) at 1730 Galaxy Drive: The Commission approved this permit at its February 1995 hearing. The proposed project consisted of the installation of ten caissons for purposes of bluff stabilization with a three-foot high wrought iron fence on top of the bluff and a six-inch high concrete curb along the bluffward edge of an existing patio. One special condition was imposed requiring that an amendment or a new permit be obtained for any future development.

5-93-308 (Pope Trust) at 1818 Galaxy Drive: The Commission approved this permit at its September 1993 hearing. The proposed project consisted of demolition of an existing damaged patio slab of approximately 1028 square feet, installation of eight caissons, and replacement with a new patio of approximately the same size in approximately the same location as the existing patio, construction of a drain down the bluff face and storm drain outlet, and a boundary line adjustment. Special conditions imposed included the submission of the final property boundary lines, permission from the Department of Fish and Game to perform development on the Ecological Reserve, Department of Fish and Game approval of the restoration plan to restore the vegetation impacted by the project, the removal of all debris following completion of the project, the requirement that mechanized equipment can not be used on the bluff face, and conformance with the geotechnical recommendations.

5-99-040 and 5-99-040-G (Fleming) at 1824 Galaxy Drive: The project proposed under these applications is for the installation of a retaining wall and caissons which would be placed two feet seaward of the applicant's property line. Consequently the project would be located within the Upper Newport Bay Ecological Reserve. The proposed retaining wall would be approximately 78' feet long by 12' high. These permit applications were received January 28, 1999. Both the emergency permit application and regular permit application are incomplete pending an alternatives analysis consistent with the requirements of Section 30240 and 30251 of the Coastal Act and an evaluation of how the observed moisture in the ground has affected slope stability.

5-85-062 (Braman) at 1942 Galaxy Drive: This was an Administrative Permit issued by the Executive Director. The Commission concurred with the Executive Director's determination on March 13, 1985. The proposed project consisted of stabilization of earth and bluff beneath and immediately adjacent to a single-family residence overlooking Upper Newport Bay. Special conditions included an assumption of risk deed restriction, requirements to control runoff and reduce erosion, the replanting of all graded areas with native plants, and conformance with the geotechnical recommendations.

5-93-367 (Rushton) at 2000 Galaxy Drive: The Commission approved this permit at its March 1994 hearing. The proposed project consisted of bluff stabilization and repair including 528 cubic yards of grading, installation of 12 caissons and construction of a retaining wall. The retaining wall and caissons were originally proposed on the ecological reserve and not on the property owned by the applicant. However, the Commission required that the caissons and retaining wall be relocated onto the applicant's property. Special conditions imposed included the submission of a landscaping plan approved by the California Department of Fish and Game, and conformance with the geotechnical recommendations. One requirement of the geotechnical recommendation was that the retaining wall could not be more than four feet above finished grade. The purpose of this requirement was to minimize the visual impact of a large retaining wall as seen from the Ecological Reserve. The landscaping plan applies to the bluff face.



NORTH



EXHIBIT No. 1

Application Number:

5-98-240

Vicinity Map

California Coastal

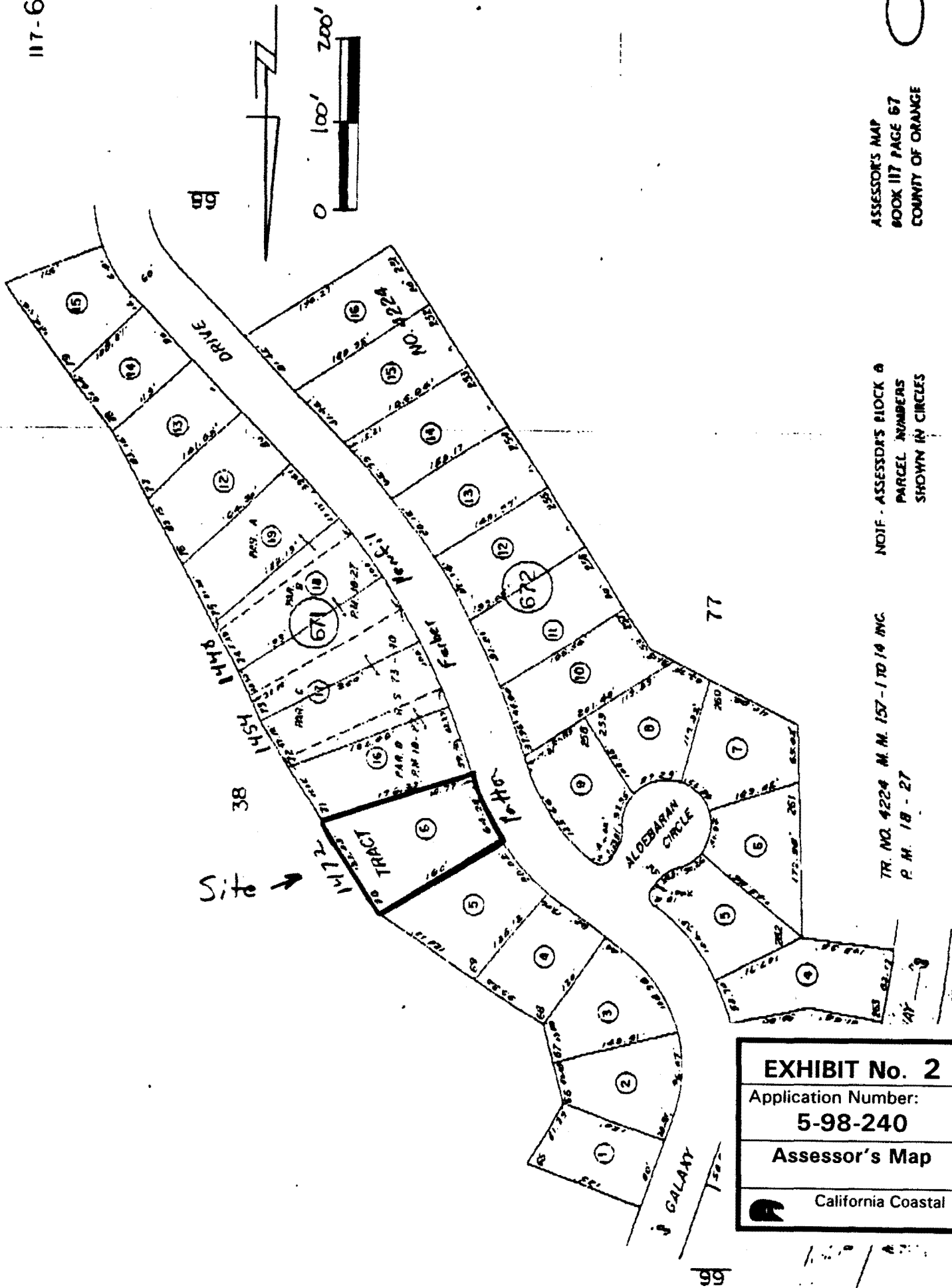


NorCal Engineering
SOILS AND GEOTECHNICAL CONSULTANTS

PATTON RESIDENCE

PROJECT 7074-97

DATE



ASSESSOR'S MAP
 BOOK 117 PAGE 67
 COUNTY OF ORANGE

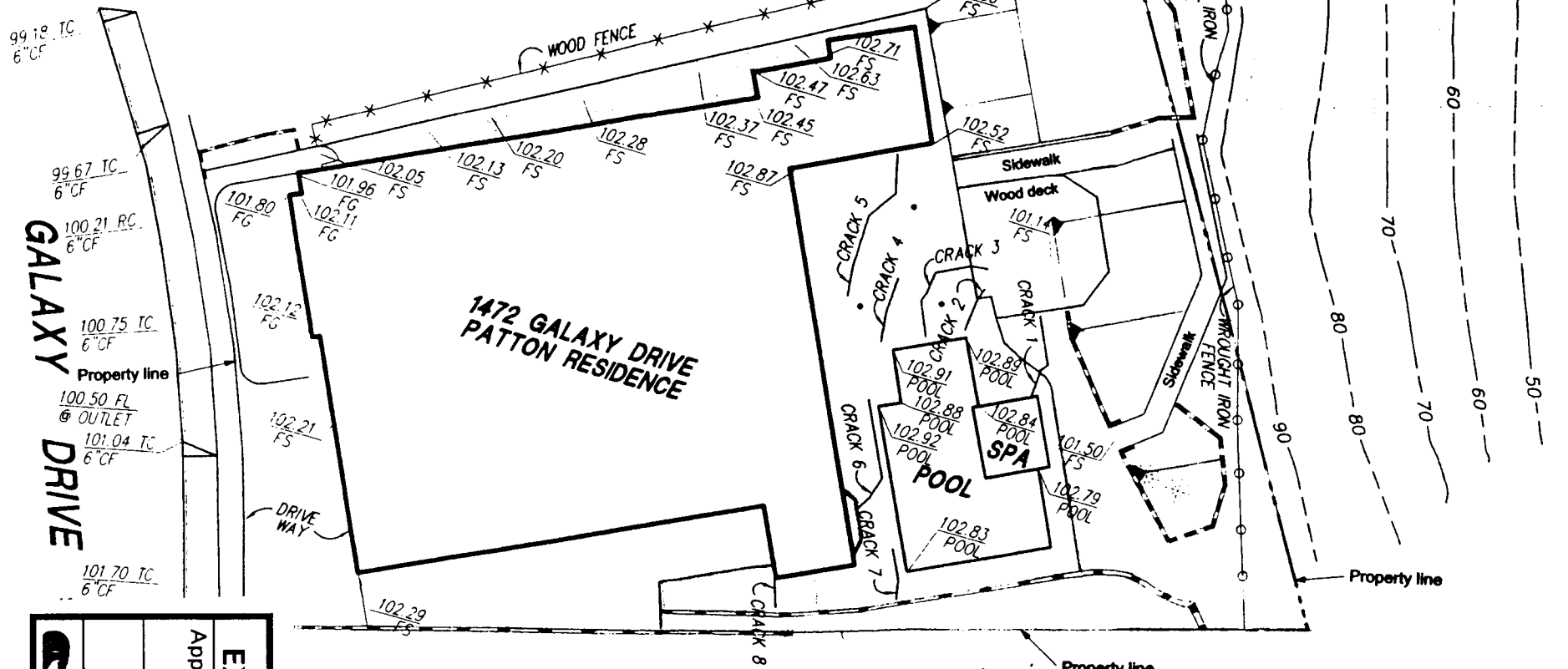
NOTIF - ASSESSOR'S BLOCK &
 PARCEL NUMBERS
 SHOWN IN CIRCLES

TR. NO. 4224 M.M. 157-1 TO 14 INC.
 P.M. 18 - 27

EXHIBIT No. 2
Application Number: 5-98-240
Assessor's Map
California Coastal



0 20 40
SCALE IN FEET



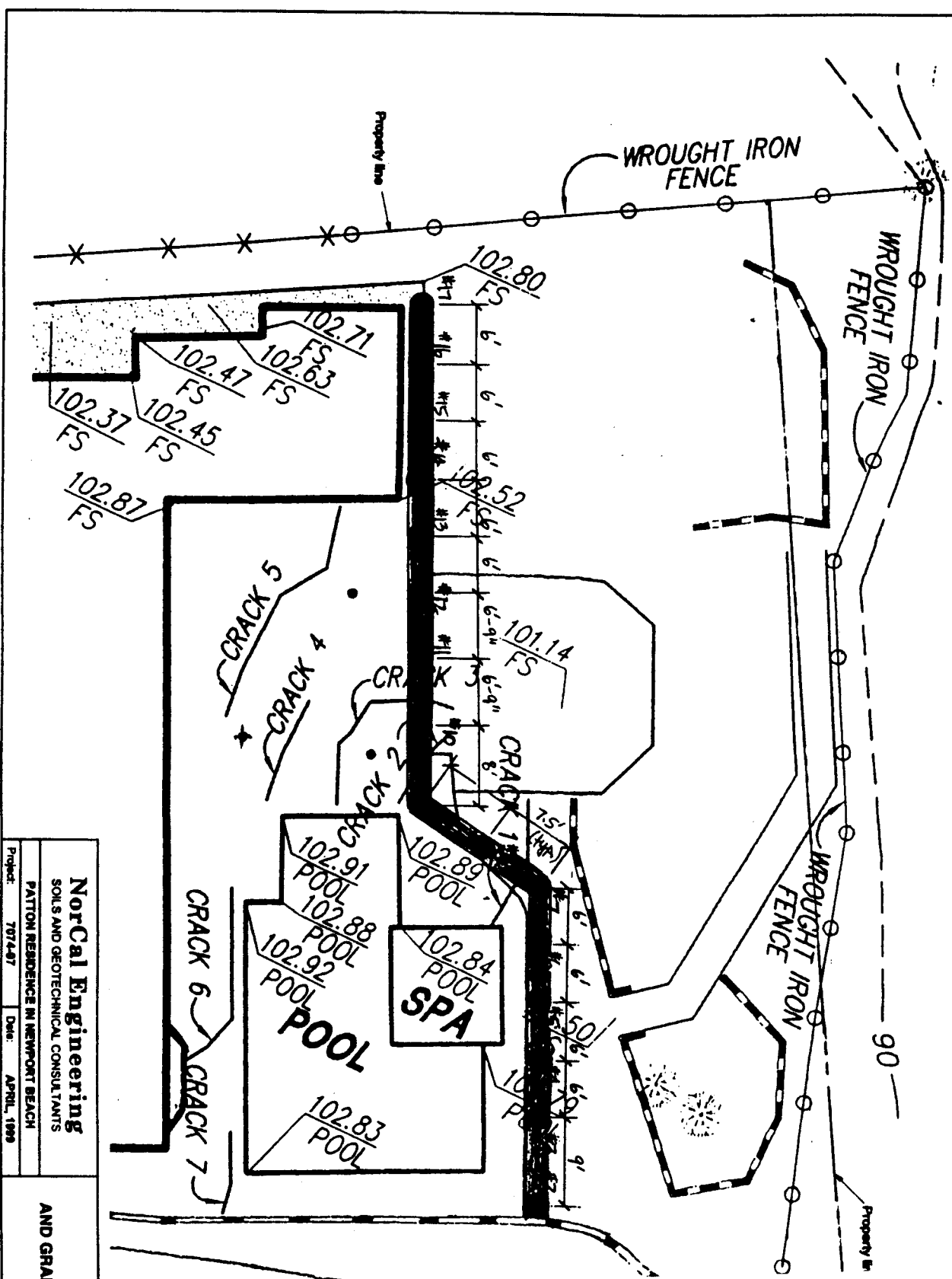
GALAXY DRIVE

1472 GALAXY DRIVE
PATTON RESIDENCE

	EXHIBIT No. 3
	Application Number: 5-98-240
	Site Map

NorCal Engineering	
SOILS AND GEOTECHNICAL CONSULTANTS	
PATTON RESIDENCE IN NEWPORT BEACH	
Project: 7074-97	Date: APRIL, 1999

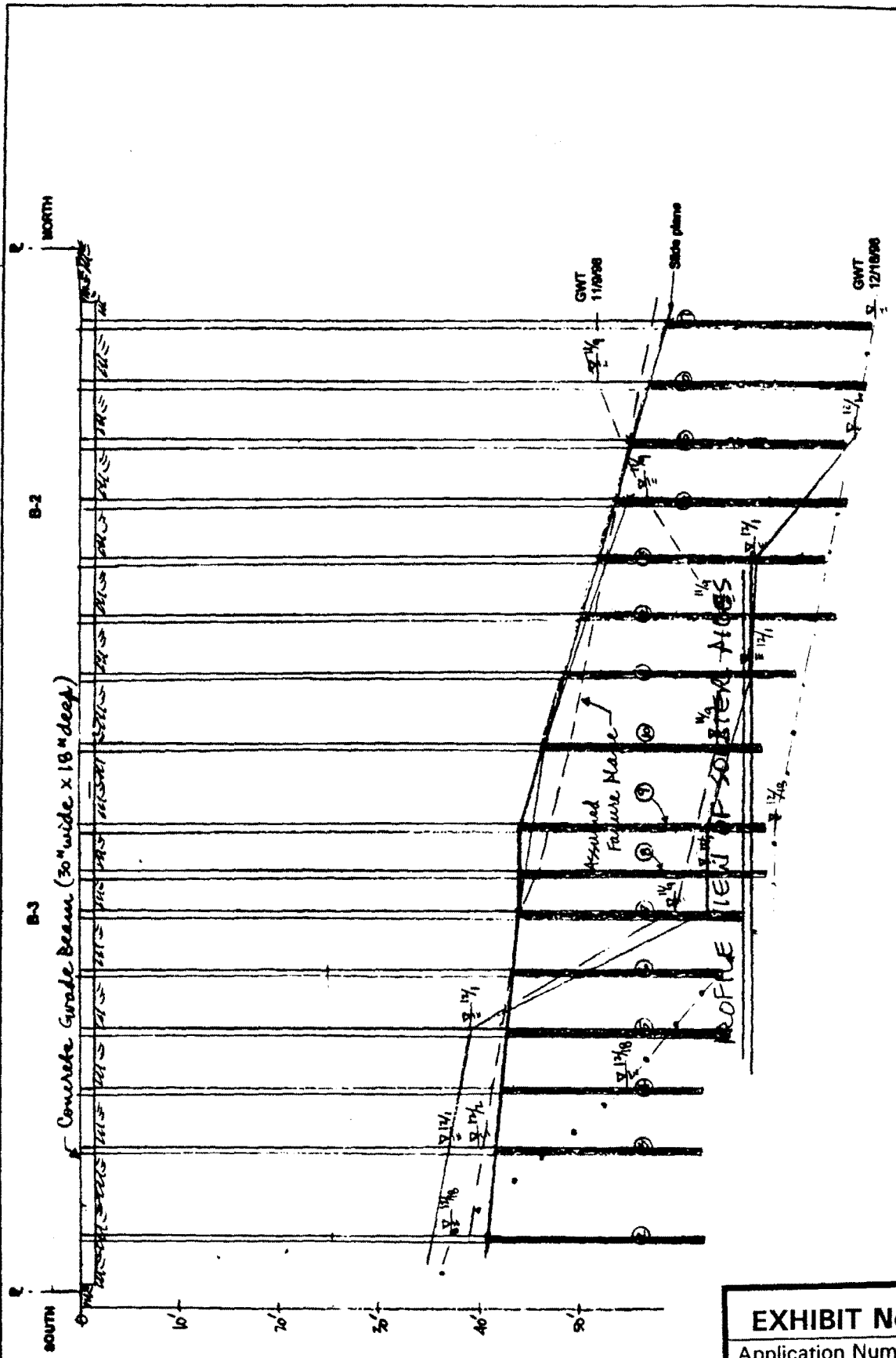
SITE PLAN



NorCal Engineering
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 PATTON RESIDENCE IN NEWPORT BEACH
 Project: 707447 Date: APRIL, 1999

SOLDER PILE
AND GRADE BEAM LOCATION MAP
 FIGURE 2

EXHIBIT No. 4
Application Number: 5-98-240
Project Location
California Coastal



NorCal Engineering
 SOILS AND GEOTECHNICAL CONSULTANTS
 Project: 7074-87 Date: APRIL, 1999
 PATTON RESIDENCE IN NEWPORT BEACH

**PROFILE VIEW
 OF SOLDIER PILES**

FIGURE 3

EXHIBIT No. 5
Application Number: 5-98-240
Sectional View
California Coastal

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, 10th Floor
Long Beach, CA 90802-4302
(562) 590-5071

EMERGENCY PERMIT

TO: William and Melinda Patton July 21, 1998
Date
1472 Galaxy Dr.
Newport Beach, CA 92660 5-98-240G
(Emergency Permit No.)
1472 Galaxy Dr., Newport Beach, Orange County
Location of Emergency Work


Installation of blufftop stabilization system consisting of 17 pilings with
30 foot long tieback anchors.

Work Proposed

This letter constitutes approval of the emergency work you or your representative has requested to be done at the location listed above. I understand from your information and our site inspection that an unexpected occurrence in the form of slope failures requires immediate action to prevent or mitigate loss or damage to life, health, property or essential public services. 14 Cal. Admin. Code Section 13009. The Executive Director hereby finds that:

- (a) An emergency exists which requires action more quickly than permitted by the procedures for administrative or ordinary permits and the development can and will be completed within 30 days unless otherwise specified by the terms of the permit;
- (b) Public comment on the proposed emergency action has been reviewed if time allows; and
- (c) As conditioned the work proposed would be consistent with the requirements of the California Coastal Act of 1976.

The work is hereby approved, subject to the conditions listed on the reverse.

EXHIBIT No. 6
Application Number: 5-98-240
Emergency Permit
 California Coastal

Very Truly Yours,

Peter M. Douglas
Executive Director

By: Jeresa Henry
Title: District Manager

CONDITIONS OF APPROVAL:

1. The enclosed form must be signed by the property owner and returned to our office within 15 days.
2. Only that work specifically described above and for the specific property listed above is authorized. Any additional work requires separate authorization from the Executive Director.
3. The work authorized by this permit must be completed within 30 days of the date of this permit.
4. Within 60 days of the date of this permit, the permittee shall apply for a regular Coastal Permit to have the emergency work be considered permanent. If no such application is received, the emergency work shall be removed in its entirety within 150 days of the date of this permit unless waived by the Director.
5. In exercising this permit the applicant agrees to hold the California Coastal Commission harmless from any liabilities for damage to public or private properties or personal injury that may result from the project.
6. This permit does not obviate the need to obtain necessary authorizations and/or permits from other agencies.

Condition #4 indicates that the emergency work is considered to be temporary work done in an emergency situation. If the property owner wishes to have the emergency work become a permanent development, a Coastal permit must be obtained. A regular permit would be subject to all of the provisions of the California Coastal Act and may be conditioned accordingly. These conditions may include provisions for public access (such as an offer to dedicate an easement) and/or a requirement that a deed restriction be placed on the property assuming liability for damages incurred from storm waves.

If you have any questions about the provisions of this emergency permit, please call the Commission Area office.

Enclosures: 1) Acceptance Form; 2) Regular Permit Application Form

cc: Local Planning Department

TH, SR, RR, RMR, FILE

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