

CALIFORNIA COASTAL COMMISSION

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Staff Report: March 25, 1999
Hearing Date: April 13-16, 1999
Commission Action: Approved with Conditions

**STAFF REPORT: REVISED FINDINGS**

APPLICATION NO.: 5-98-469

APPLICANT: Richard and Melody Ferber **AGENT:** Group Delta Consultants, Inc.

PROJECT LOCATION: 1454 Galaxy Drive, City of Newport Beach, County of Orange

PROJECT DESCRIPTION: Backyard slope repair and bluff stability improvements following a bluff failure by installing a seventy-five foot long subterranean grade beam wall and anchor system plus a seventy-five foot long by eighteen foot high retaining wall (at its highest point) within the eastern property line. Seven hundred cubic yards of grading is proposed (of which 300 cubic yards will be import) for purposes of re-establishing the backyard.

DATE OF COMMISSION ACTION: February 3, 1999

COMMISSIONERS ON PREVAILING SIDE: Commissioners Allen, Armanasco, Dettloff, Flemming, Kehoe, Nava, Potter, Reilly, Tuttle, Wan, and Chairman Areias.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission adopt the following revised findings in support of the Commission's action of February 3, 1999 approving the installation of a seventy-five foot long grade beam wall and anchor system with ten special conditions. In approving the project, the Commission deleted the retaining wall and required that the existing irrigation on-site be disconnected and capped. The applicant has filed a reconsideration request to remove the requirement to disconnect the irrigation system. This request for reconsideration has also been agendaized for the Commission's April hearing. A copy of the transcript to the

Commission's February 3, 1999 meeting is attached as an exhibit to the reconsideration staff report.

The special conditions adopted by the Commission concern: assumption of risk, submission of revised plans, conformance with the geological recommendations, submission of a landscaping plan, submission of a drainage and run-off control plan, right of entry authorization, the implementation of best management practices, submission of plans for colorizing and texturizing the grade beam, future development, and contacting the Department of Fish and Game to develop and implement a comprehensive slope stabilization plan.

Revisions to the special conditions as proposed in the staff recommendation consisted of modifying the special conditions containing the "prior to issuance" clause, modifying the landscaping special condition, obtaining permission from the Department of Fish and Game to design and implement slope repair, and adding a special condition for a drainage and runoff plan. The landscape special condition was modified to require that the existing irrigation system on the entire property be disconnected and capped off. The comprehensive slope stabilization special condition was modified to require that the applicant, upon receiving permission from the Department of Fish and Game undertake off-site slope repair. Finally, a new special condition was added to require that the applicant submit a drainage and runoff control plan within thirty days of Commission action. The special conditions as originally submitted, for purposes of comparison, are attached as Exhibit 10.

With respect to the special conditions which contained the "prior to issuance" clause, the Commission revised the language to allow the applicant to meet the special conditions within thirty days of Commission action except for the assumption of risk and comprehensive slope stabilization plan special conditions. In the case of the assumption of risk and comprehensive slope stabilization plan special conditions the applicant must meet these special conditions within ninety days of Commission action. The effect of this modification to the special conditions was to allow the applicant to immediately proceed with the bluff stabilization work as approved by the Commission.

At the Commission hearing, the Commission required that the landscaping special condition (condition number 4) as well as the drainage and runoff control plan (condition number 10), and grade beam wall design (condition number 7) be submitted within thirty days of Commission action. The Commission acted on February 3, 1999 and the thirtieth day was March 5, 1999. As of March 25, 1999 the applicant has not submitted the required landscaping plan, drainage and runoff control plan, nor the grade beam wall design. According to the applicant's agent (Group Delta) work has not yet begun, but is scheduled to begin on April 5, 1999.

LOCAL APPROVALS RECEIVED: Approval in Concept 2608-98 from the City of Newport Beach.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach certified Land Use Plan. Geotechnical Investigation titled *"Geotechnical Report Restoration and Slope Repair, 1454 Galaxy Drive, Newport Beach, California"* by Group Delta Consultants, Inc. dated November 2, 1998, *"Report of Landslide Investigation, Rear Yard and Natural Bluff Below Lot 72 and Lot 73 1454 Galaxy Drive, Upper Back Bay Area, Newport Beach, California"* by Converse Consultants dated May 14, 1998, *"Draft Geotechnical Report of Bluff Slope Failure Investigation, 1448 Galaxy, Newport Beach, California"* by Zeiser Kling Consultants, Inc. dated November 2, 1998, Coastal Commission permits 5-85-062 (Braman), 5-93-308 (Pope Trust), 5-93-367 (Rushton), 5-98-188 (Lewis), Emergency Permit 4-98-497 Penfil and Emergency Permit 5-98-524 (Penfil), and CDP application 5-98-524 (Penfil)

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 DEED RESTRICTION

Within 90 days of Coastal Commission action on the subject coastal development permit (date of action: 2/3/99, due date: 5/4/99), the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazards from hillside instability and erosion and the applicant assumes the liability from such hazards; and b) the applicant unconditionally waives any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission, its officers, agents, and employees relative to the Commission's approval of the project for any damage resulting from such hazards. The document 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 Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. REVISED PLANS

Within 30 days of Coastal Commission action on the subject coastal development permit (date of action: 2/3/99, due date: 3/5/99), the applicant shall submit for the review and approval of the Executive Director revised plans which show that the retaining wall and the footing for the retaining wall have been deleted from the project.

3. CONFORMANCE WITH GEOTECHNICAL RECOMMENDATIONS

The final revised plans shall include the signed statement of the geotechnical consultant certifying that the project plans incorporate the geotechnical recommendations contained in the geotechnical investigation titled "*Geotechnical Report Restoration and Slope Repair, 1454 Galaxy Drive, Newport Beach, California*" (Project No. 1862-EC01) by Group Delta Consultants, Inc. dated November 2, 1998 into the final design as modified by special condition number 2 (above) for the proposed development. The revised plans shall be submitted to, reviewed and approved in writing by the Executive Director.

The approved development shall be constructed in compliance with the final plans as approved by the Executive Director. Any deviations from the plans shall require a Coastal Commission approved amendment to this permit, or written concurrence from the Executive Director that the deviation is not substantial and therefore a permit amendment is not needed.

4. LANDSCAPING PLAN

Within 30 days of Coastal Commission action on the subject coastal development permit (date of action: 2/3/99, due date: 3/5/99), the applicant shall submit, for the review and approval of the Executive Director, a landscaping plan which has been reviewed and signed by a licensed landscape architect. The landscaping plan shall incorporate the following criteria:

- a. The backyard area from the property line landward to the project daylight line as shown in the grading plan shall be planted and maintained for erosion control, screening, and visual enhancement. To minimize the need for irrigation and to reduce potential erosion and slope failure, the landscaping within this area shall consist of native plants similar to that found on existing hillsides in the vicinity or deep rooted non-native plants which are drought tolerant and non-invasive. Invasive, non-indigenous plant species which tend to supplant native species shall not be used.
- b. All graded areas shall be stabilized with planting at the completion of the project. Planting shall follow accepted planting procedures adequate to provide 70% coverage within one year, and shall be repeated, if necessary, to provide such coverage.

- c. No permanent irrigation system shall be allowed on the property, including both the front and backyard areas. Temporary irrigation to allow the establishment of the plantings is allowed.
- d. The landscaping plan shall show all the existing backyard vegetation and any existing irrigation system. Any existing irrigation system will be disconnected and capped off.
- e. The applicant shall submit written evidence from the California Department of Fish and Game (Department) demonstrating that the Department has approved the landscaping plan.

The landscaping plan shall be carried out as approved by the Executive Director.

5. RIGHT OF ENTRY AUTHORIZATION

This coastal development permit 5-98-469 approves only the development within the property lines of 1454 Galaxy Drive in the City of Newport Beach. In the event that the applicant must utilize property located outside of his property lines for purposes of conducting work within his property lines, the applicant shall submit, for the review and approval, written confirmation from the affected landowner that the applicant has the legal right to enter the affected property before conducting any such work.

This permit does not authorize any development on the Upper Newport Bay Ecological Reserve. Should entry onto the Ecological Reserve result in any damage to the slope or the vegetation, the applicant shall expeditiously apply for a coastal development permit to undertake restoration.

6. BEST MANAGEMENT PRACTICES

The applicant shall implement best management practices, such as sandbags, during construction to control erosion and to minimize the potential for silt to be transported into the Ecological Reserve and wetland below the project site.

No debris shall be discarded anywhere on the Upper Newport Bay Ecological Reserve and all debris shall be removed from the project site upon completion of the project.

7. GRADE BEAM WALL DESIGN

Within 30 days of Coastal Commission action on the subject coastal development permit (date of action: 2/3/99, due date: 3/5/99), the applicant shall submit for the review and approval of the Executive Director final plans for the grade beam wall. To minimize the visual impact of manmade structures on the natural bluff, the grade beam wall shall blend in with the color and texture of the surrounding terrain.

8. FUTURE DEVELOPMENT

This coastal development permit 5-98-469 approves only the development, as expressly described and conditioned herein, for the construction of a grade beam wall and anchor tieback system plus landscaping at 1454 Galaxy Drive. Any future development, including but not limited to rear yard landscaping, shall require a coastal development permit or an amendment to this permit from the Coastal Commission.

9. COMPREHENSIVE SLOPE STABILIZATION PLAN

Within 90 days of Coastal Commission action on the subject coastal development permit (date of action: 2/3/99, due date: 5/4/99), the applicant shall submit for the review and approval of the Executive Director written evidence that the California Department of Fish and Game has been contacted to initiate planning for a comprehensive design to repair the slope damage adjacent to the project site. The applicant shall be required to prepare and implement a plan to complete slope restoration, consistent with the landscape provisions of Special Condition #4, should they be able to obtain entry and authorization from the Dept. of Fish & Game within 90 days.

10. DRAINAGE AND RUNOFF CONTROL

Within 30 days of Coastal Commission action on the subject coastal development permit (date of action: 2/3/99, due date: 3/5/99), the existence of a comprehensive drainage and runoff control system on the site, including roof gutters, collection drains and a sub-drain system for all landscape and hardscape improvements for the residence and all yard areas, shall be confirmed on site. The purpose of such a system will be to collect and discharge all site drainage to the street. If such a system is not documented on site, the applicant shall be responsible for installing a drainage and runoff control system which conforms to this condition within 90 days of Coastal Commission action.

V. Findings and Declarations.

The Commission hereby finds and declares as follows:

A. Project Description and Location

The proposed project is located at 1454 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 four coastal development permits for slope repairs on Galaxy Drive.

On December 16, 1997 a bluff failure occurred which affected the project site. The project proposes backyard slope repair and bluff stability improvements consisting of the installation of a seventy-five foot long subterranean grade beam wall and anchor system plus a seventy-five foot long by eighteen foot high retaining wall (at its highest point in the center) within the eastern property lines. Seven hundred cubic yards of grading is proposed (of which 300 cubic yards will be import) for purposes of re-establishing the backyard (Exhibit 4). As approved by the Commission, the retaining wall was deleted from the project. Further, the Commission mandated that the existing irrigation system be disconnected and capped off to minimize the introduction of water into the bluff.

The applicant also applied for an emergency permit. However, based on the information submitted by the geotechnical consultants, the Executive Director determined that the residence was not in immediate danger which required action more quickly than permitted by the procedures for regular permits. Therefore, an emergency permit was not issued. However, as a result of a request by the applicant, the special conditions containing the phrase "prior to issuance" were modified to allow the applicant to begin work. The applicant was therefore, allowed to meet all special conditions within thirty days of Commission action or within ninety days of Commission action.

B. Prior Commission Permits on Galaxy Drive

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.

5-93-308 (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.

5-93-367 (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.

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 caisson 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.

5-98-240-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 17 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 coastal development permit has not yet been received pending the completion of the construction drawings (Exhibit 3).

5-98-497-G and 5-98-524-G (Penfil) at 1448 Galaxy Drive: The Executive Director issued these two emergency permits in December 1998. The property under these two emergency permits is next to this project site (Exhibit 3). 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 and the applicants 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 received on December 30, 1998. When the staff recommendation and report has been prepared it will be submitted for Commission action.

The applicant also applied for an emergency permit. Though emergency permits were issued to the Penfil (the next door neighbor to the applicant), an emergency permit was not granted to the applicant. The Executive Director issued emergency permits because the residence at 1448 Galaxy Drive was in immediate danger. The thrust of the slide is towards the Penfil residence. The geotechnical consultants noted that *"slow but ongoing movement affecting the rear yard as evidenced by damaged flatwork and subsidence of lawn area, it is our opinion that the failure is an immediate threat to the Penfil property and residence."* (Zeiser Kling Consultants, Inc. letter of December 23, 1998). Furthermore, the City of Newport Beach had red-tagged the residence at 1448 Galaxy stating in a letter of December 22, 1998 to Commission staff that: *"we have declared it unsafe for occupancy, which certainly indicates the possibility of collapse should future slope deterioration occur"*.

C. 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 geotechnical report prepared by Converse the landslide was the result of unsupported bedding planes, over-steepened portions of the bluff below the Ferber's property, ongoing erosion along the lower portion of the bluff, and infiltration of direct rainfall into the soils mantling the slope.

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."*

Gary Griggs and Lauret Savoy wrote in "Living with the California Coast" (Duke University Press, 1985) that: *"The conflict between accelerating coastal*

development and the inherent geological instability of the shoreline is developing into a dilemma of increasing magnitude. The conflict between developing the coastline and hazards such as erosion associated with this development is increasing for several reasons: ... (3) the human induced acceleration of seacliff erosion due to cliff-top construction with its associated roof and street run-off and landscape watering. ... "

The Commission has issued at least four coastal development permits for slope repair or stabilization along Galaxy Drive. 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.*

The proposed development was subject to two site specific geotechnical investigations. The first report was prepared by Converse Consultants and is dated May 14, 1998. The second report was prepared by Group Delta and is dated November 2, 1998. Group Delta in summarizing the cause of the landslide generally agrees with the Converse findings that the slide resulted from: unsupported bedding planes, over-steepened portion of the bluff below the Ferber property, ongoing erosion along the lower portion of the bluff, and infiltration of direct rainfall onto the soils mantling the slope. Further, the Group Delta report noted that the current slope failure included a cross-bedding failure at the toe, and that the eastern face of the slope would continue to erode, which would lead to recurring landslides in the future. Group Delta, though they are in general agreement with the conclusions and opinions of Converse, believe that the factor of safety is currently less than 1.5. To improve the factor of safety, Group Delta proposes a tied-back anchor system to stabilize the bluff at the applicant's eastern property line. Group Delta concluded that the proposed slope repair and restoration would restore the slope to an equal or greater factor of safety than that which existed prior to the failure.

Though the Group Delta report concludes that the project can be undertaken, the geotechnical consultants have made recommendations which must be complied with by the applicant to assure that the project will minimize risks to life and

property, and will assure structural integrity. Specifically Group Delta concludes that *"The likelihood of future failures at the subject site is primarily a function of slope saturation and off-site stability. The proposed slope repair does not address the current stability of the non-repaired slopes off the project site. In our opinion, the overall stability of the bluff face can be improved by further reducing the infiltration of surface waters into the slope mass, ensuring that surface run-off at the top-of-slope is directed away from the slope face by maintaining landscaping and by reducing, wherever feasible, existing slope inclinations and increasing the stability of off-site properties."* Recommendations made by the geotechnical consultants relate to: 1) reducing water infiltration, 2) landscaping, 3) the installation of a tied-back anchor and retaining wall system, and 4) managing surface drainage.

The geotechnical report prepared by Group Delta recommends that landscaping be installed to mitigate potential erosion and that it be consistent with the existing landscaping. A landscaping plan has not been submitted which implements this geological recommendation. Therefore, the Commission finds it necessary to impose a special condition to require that a landscaping plan be submitted for the review and approval of the Executive Director within thirty days of the Commission's action. The landscaping, to minimize the potential for future bluff failure, shall be prepared by a licensed landscape architect and shall incorporate the following criteria: 1) to minimize the introduction of water into the slope, no irrigation shall be permitted on the property, temporary irrigation to establish the plantings may be allowed; and 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. The landscaping plan shall also show the existing backyard plants and irrigation system. The landscaping plan shall also be approved by the California Department of Fish and Game. No irrigation is being allowed on the property since the introduction of water, anywhere on the property, would add water to the bluff which could further destabilize the bluff. Through this special condition, one of the contributing factors to bluff failure, the introduction of ground water, will be minimized.

To further reduce the potential of water entering the bluff, the Commission finds it necessary to impose a drainage and runoff control special condition to require that a drainage and runoff control plan be submitted which demonstrates that all site drainage is currently carried by piping and discharged to the street. This plan shall be submitted for the review and approval of the Executive Director within thirty days of the Commission's action. If the existing drainage system is not adequate to implement the drainage and runoff control plan, the applicant shall be responsible for installing a drainage and runoff control system which conforms to this condition within ninety days of Commission action.

Although adherence to the geological consultant's recommendations will minimize the risk of damage, the risk is not eliminated entirely. The geotechnical report prepared by Group Delta concludes: *"The likelihood of future failures at the subject site is primarily a function of slope saturation and off-site stability. The proposed slope repair does not address the current stability of the non-repaired slopes off the project site."* Therefore the standard waiver of liability condition has also been attached as a special condition. However, in this case due to the urgency to stabilize the slope, the applicant will be allowed to meet this special condition within ninety days of Commission action rather than prior to issuance of the permit. Through the standard waiver of liability special condition, 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 (as a prior to issuance special condition) was imposed on development located at 1492 Galaxy Drive under coastal development permit 5-85-062 (Braman).

As noted above, the proposed slope repair does not address the current stability of the non-repaired slope off the project site. The geotechnical report prepared by Group Delta goes on to state that: *"The majority of the landslide area is located within the California Department of Fish and Game's property in the Upper Newport Bay Ecological Reserve."* Converse in their geotechnical evaluation stated that: *"The eastern face of the slope, in our opinion will continue to erode leading to recurring landslides in the future."* The Commission's engineer has reviewed the plans and found that: *"The anchored wall will provide stability for the current slope conditions. If there is continued failure in the future, the anchored portion may have to be continued down the face of the bluff. There is nothing in the current design of the anchored wall that would prevent further extension of the anchoring in the future. Also, there is nothing in the design that would prevent continued failures of the bluff. The bulk of the slide is on Fish and Game Property and full slope stabilization would require some work at the base of the slide (a buttress fill, a retaining system, etc.) to prevent continued movement"* Consequently, the proposed project will stabilize the applicant's property, but it will not provide a comprehensive solution since the landslide is also contained on the adjacent bluff face.

To provide effective slope repair and stabilization through a comprehensive solution the Commission finds that the applicant and the Department of Fish and Game should work together. First, if a comprehensive solution is not developed, continued slope failures will again threaten the residence and ecological damage will continue to the Upper Newport Bay Ecological Reserve. Therefore, the Commission

is imposing a special condition which requires that the applicant within ninety days of the Commission's action contact the California Department of Fish and Game to initiate the process for developing a comprehensive solution to repair the off-site slide and to stabilize the slope. Should the applicant and the California Department of Fish and Game develop a comprehensive slope stabilization plan consistent with the landscape provisions of Special Condition number 4 the applicant shall implement the slope restoration within ninety days of Commission action.

Second, the proposed retaining wall is not a necessary component for stabilizing the slope. Slope stability is provided by the grade beam wall. The purpose of the retaining wall and the 700 cubic yards of grading is to approximately restore the applicant's rear yard to its condition preceding the slide. Since a comprehensive solution including the off-site slide has not been proposed, it is unknown at this time, if a retaining wall would be compatible with such a solution. Alternatives to a retaining wall exist. If the off-site slide is repaired it would be possible to cover the grade beam wall with soil and reestablish vegetation on the slope so that it is restored approximately to its natural condition. Further, if a retaining wall is permitted at this time and the slope failure expands, an even larger retaining wall (which would be more visually obtrusive) may have to be constructed in the future. Therefore, the Commission finds, through the imposition of a special condition, that the proposed retaining wall shall be deleted from the project and that revised final plans be submitted for the review and approval of the Executive Director.

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 this coastal bluff 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).

The plans submitted with the application have been prepared by the geotechnical consulting firm. The plans, however, have not been certified as incorporating the recommendations of the geotechnical report prepared by Group Delta Consultants dated November 2, 1998 (Project Number 1862-EC01). Furthermore, the Commission has required, through a special condition, that the retaining wall be deleted from the project. Consequently, the design of the proposed structures

must be reviewed by a geotechnical firm to assure that the project will incorporate all the recommendations contained in the geotechnical report prepared by Group Delta and the Commission's deletion of the retaining wall to assure that the project minimizes risks to life and property. To ensure that the geotechnical consultants' recommendations are instituted and the retaining wall is deleted, it is necessary to impose a special condition requiring compliance of the project plans as modified by the Commission with the recommendations made by the geotechnical consultants. Accordingly, the applicant must submit, for the review and approval of the Executive Director, plans (grading, drainage, and foundation) signed by a certified geotechnical engineer which incorporates the recommendations made by Group Delta in their November 2, 1998 geotechnical investigation and which eliminate the retaining wall.

Therefore, the Commission finds that the proposed project, as conditioned, for: an assumption of risk deed restriction, future improvements, elimination of the retaining wall, the implementation of a landscaping plan, drainage and runoff control plans, that the applicant initiate discussions with the California Department of Fish and Game to develop and implement a comprehensive solution, and conformance with the geotechnical recommendations would be consistent with Section 30253 of the Coastal Act regarding hazards.

D. 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 was established for the principal purpose of preserving and enhancing a saltwater marsh ecosystem. Section 30240 of the Coastal Act states:

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

Concerning development in environmentally sensitive areas the City's certified Land Use Plan notes that *"The siting of new buildings and structures must be controlled and regulated to insure, to the extent practical, the preservation of unique natural*

resources, and to minimize the alteration of natural land forms along bluffs and cliff." Policy 1 in the Chapter titled "Environmentally Sensitive Habitat area and Unique Coastal Resources" requires that environmentally sensitive habitat areas shall be preserved and protected.

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 has 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, barley, 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 the Upper Newport Bay Ecological Reserve is consistent with Section 30240 of the Coastal Act, the Commission finds that the applicant shall prepare a landscaping plan and a drainage and runoff control 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 slope, no permanent irrigation shall be permitted on the property, temporary irrigation to establish the plantings may be permitted; and 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. The landscaping plan shall also be approved by the California Department of Fish and Game. The landscaping plan shall also show the existing backyard plants and irrigation system.

To assure adequate site drainage, in response to public testimony at the Commission hearing, the Commission is imposing a special condition for a drainage and runoff control plan. According to the public testimony roof drainage is not conveyed directly to the street by pipes which allows water the opportunity to percolate into the bluff. The drainage and runoff control plan shall direct all site drainage to the street. This will minimize the potential of water eroding the bluff face and minimize the potential of sediment being carried into upper Newport Bay.

Through the landscaping and drainage plan special conditions the Commission finds that the project is consistent with Section 30240 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.

E. Visual Impacts

The proposed development consists the construction of a retaining wall on a failed coastal bluff. The retaining wall, as proposed, would be approximately 18 feet high in its center (highest point) and would be approximately 75' long. The portions of the retaining wall that would be exposed would adversely change the visual character of the natural bluff through the introduction of a manmade structure when viewed by the public from the Ecological Reserve. Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Upper Newport Bay and the bluffs surrounding it constitute a scenic coastal area. As proposed the project will significantly adversely impact the scenic coastal views from the Ecological Reserve. The geotechnical section of this staff report also notes that the proposed project as submitted will not prevent future slides and that the future slides may result in an even larger manmade structure on the bluff face in the future. The proposed retaining wall would not be compatible with the character of the surrounding area as the bluff as part of the Ecological Reserve is meant to be preserved in its natural form and the project with a highly visible retaining wall would not restore the bluff to its pre-existing condition.

Therefore, the Commission finds that, as proposed, the project with an 18 foot high retaining wall is not consistent with Section 30251 of the Coastal Act since it will not protect public views from the Ecological Reserve and would be a significant landform alteration not compatible with the character of the surrounding area.

However, if the project is modified to require that the proposed grade beam wall be screened through vegetation and textured and colorized to match the surrounding terrain the project can be found consistent with Section 30251 of the Coastal Act regarding the protection of scenic resources and compatibility with the character of the surrounding area. The grade beam wall will be laid back into the slope and can be screened thereby minimizing its adverse visual impacts. Therefore, the Commission is imposing a special condition (number 7) to require that the applicant

submit plans, for the review and approval of the Executive Director, for the colorization and texturization of the grade beam wall.

A special condition shall require that the applicant submit, for the review and approval of the Executive Director, a landscaping plan (special condition number 4) which shall screen the proposed grade beam wall. The landscaping plan, shall consist of either native plants commonly found on the coastal bluff, or deep rooted drought tolerant non-native plants that are non-invasive. The landscaping plan shall be prepared by a licensed landscape architect and shall meet with the approval of the Department of Fish and Game. The grade beam wall, to minimize, visual impacts shall be colorized and texturized to match the existing terrain. Therefore, as conditioned, to submit a landscaping plan to screen the wall and to colorize and texturize the grade beam wall, the Commission finds that the project is consistent with Section 30251 of the Coastal Act regarding the protection of public views.

F. 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 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.

G. 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 and the policies of the City's certified Land Use Plan. 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).

H. California Environmental Quality Act


Section 13096(a) 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, right of entry authorization, to reduce the visual impacts of the grade beam wall, to implement best management practices, to implement a drainage plan, that the applicant and the Department of Fish and Game initiate planning for a comprehensive solution and implement it, 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. The project as proposed is the least environmentally damaging alternative. Therefore, the Commission finds that the proposed project is consistent with CEQA and the policies of the Coastal Act.

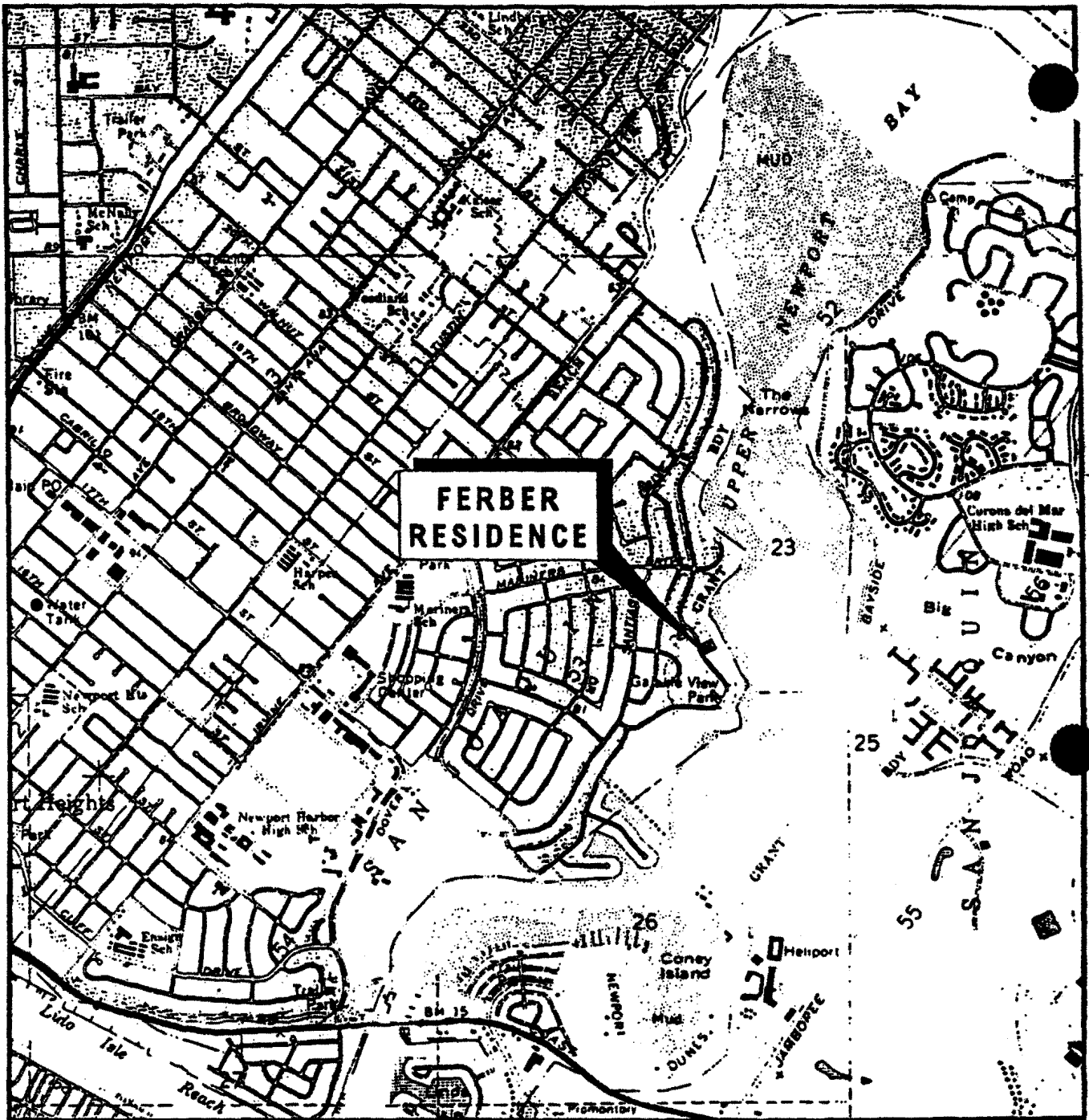


Pacific Ocean

VICINITY MAP

EXHIBIT No. 1
Application Number: 5-98-469
Vicinity Map
 California Coastal Commission

Project Name: 1454 Galaxy Drive Slope Repair



Reference: U.S.G.S. Topographic Map, 7.5 Minute Series, Newport Beach, California Quadrangle, Photorevised 1972.

0 2000 4000
SCALE IN FEET

SITE LOCATION MAP

FERBER RESIDENCE
1454 Galaxy Drive
Newport Beach, California



Converse Consultants

Geotechnical Engineering
and Applied Sciences

EXHIBIT No. 2

Application Number:
5-98-469

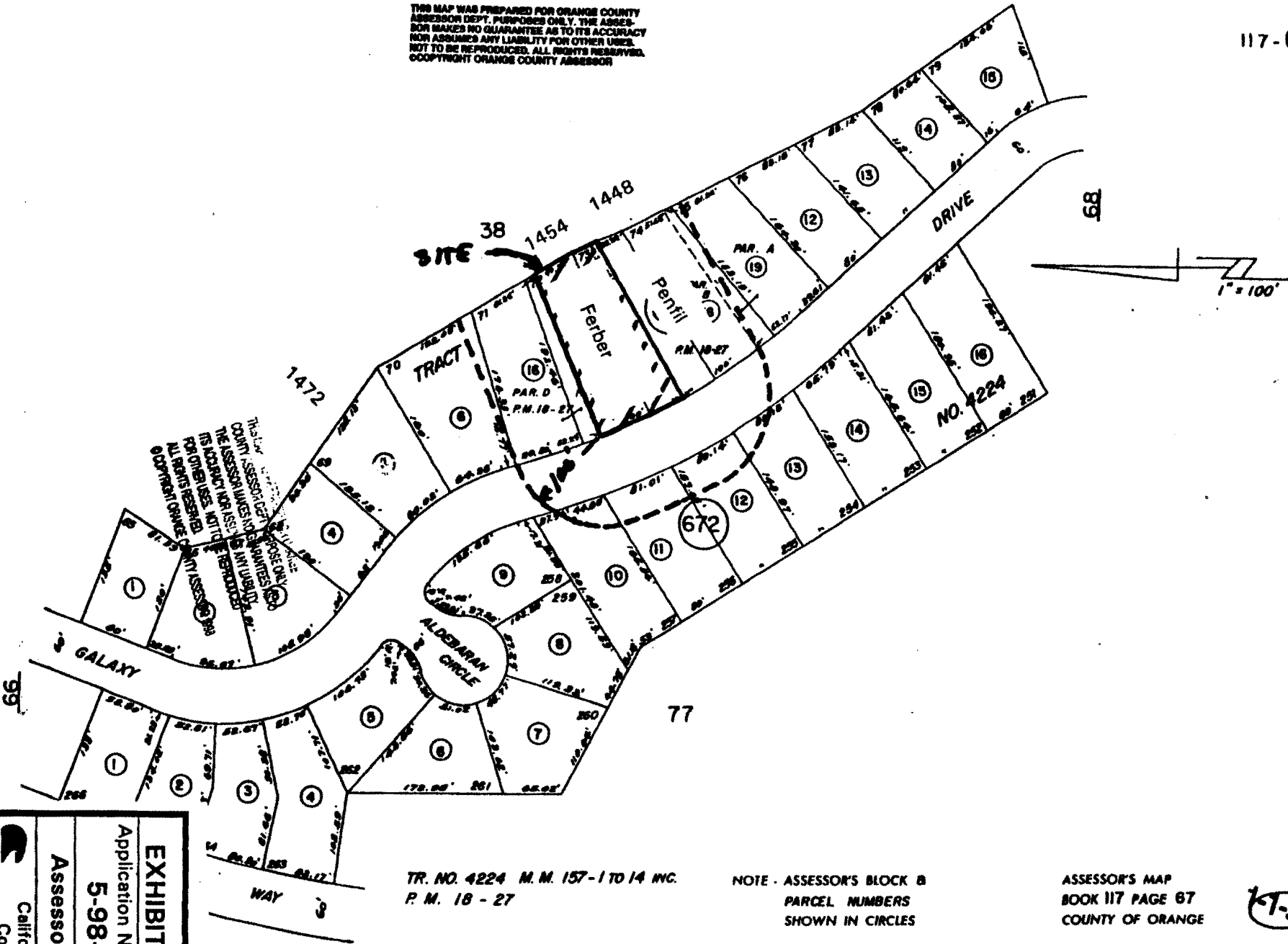
Site Location



California Coastal
Commission

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117-67



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

NOTE - ASSESSOR'S BLOCK B
PARCEL NUMBERS
SHOWN IN CIRCLES

ASSESSOR'S MAP
BOOK 117 PAGE 67
COUNTY OF ORANGE

117-98

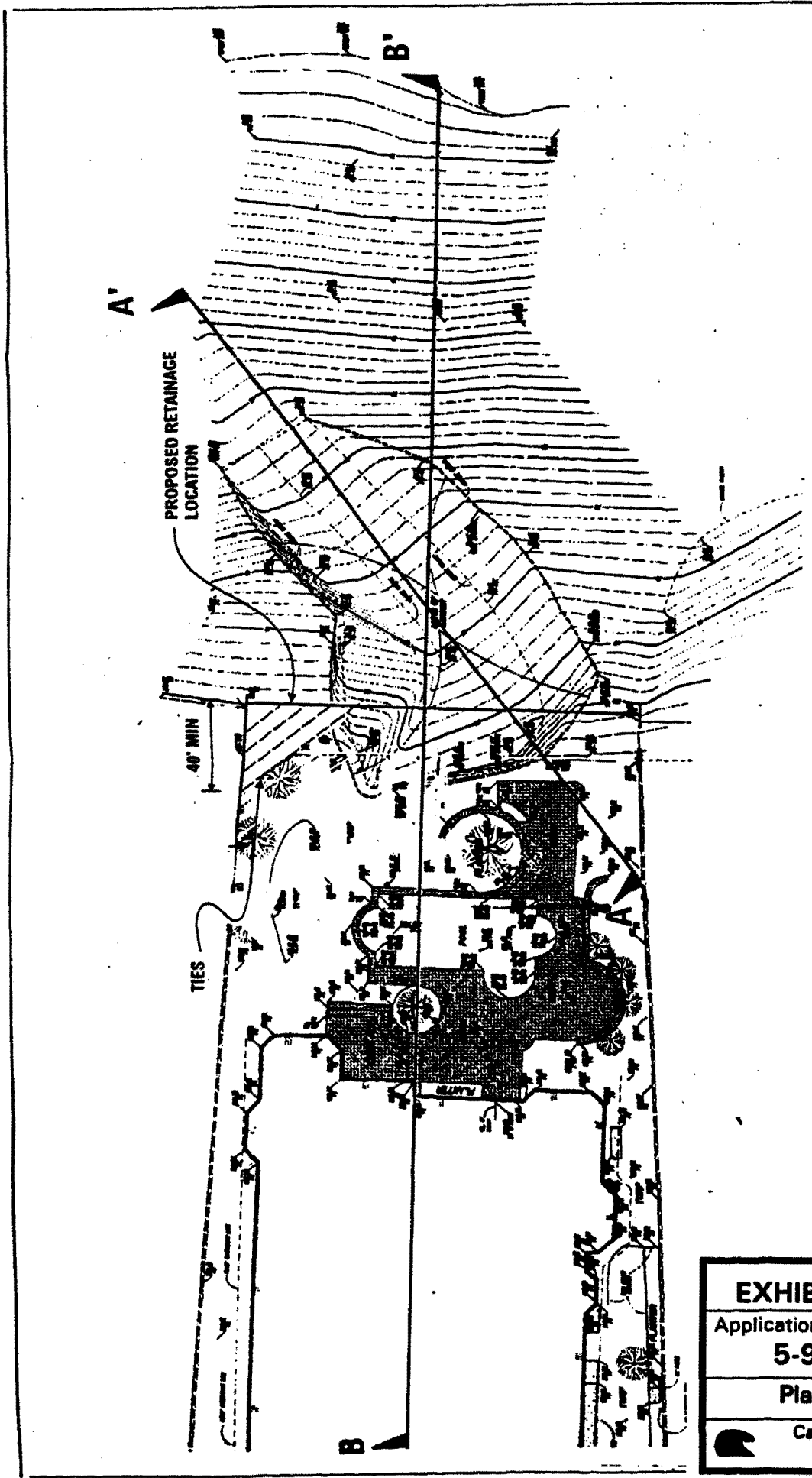
EXHIBIT No. 3

Application Number:

5-98-469

Assessor's Map

California Coastal
Commission



PLAN VIEW SHOWING RETAINAGE

FERBER RESIDENCE
 1454 Galaxy Drive
 Newport Beach, California

Scale: 1" = 40'
 Date: 5-14-98
 Project No: 97-32819-01
 Drawing No: RLF
 Sheet No: 2

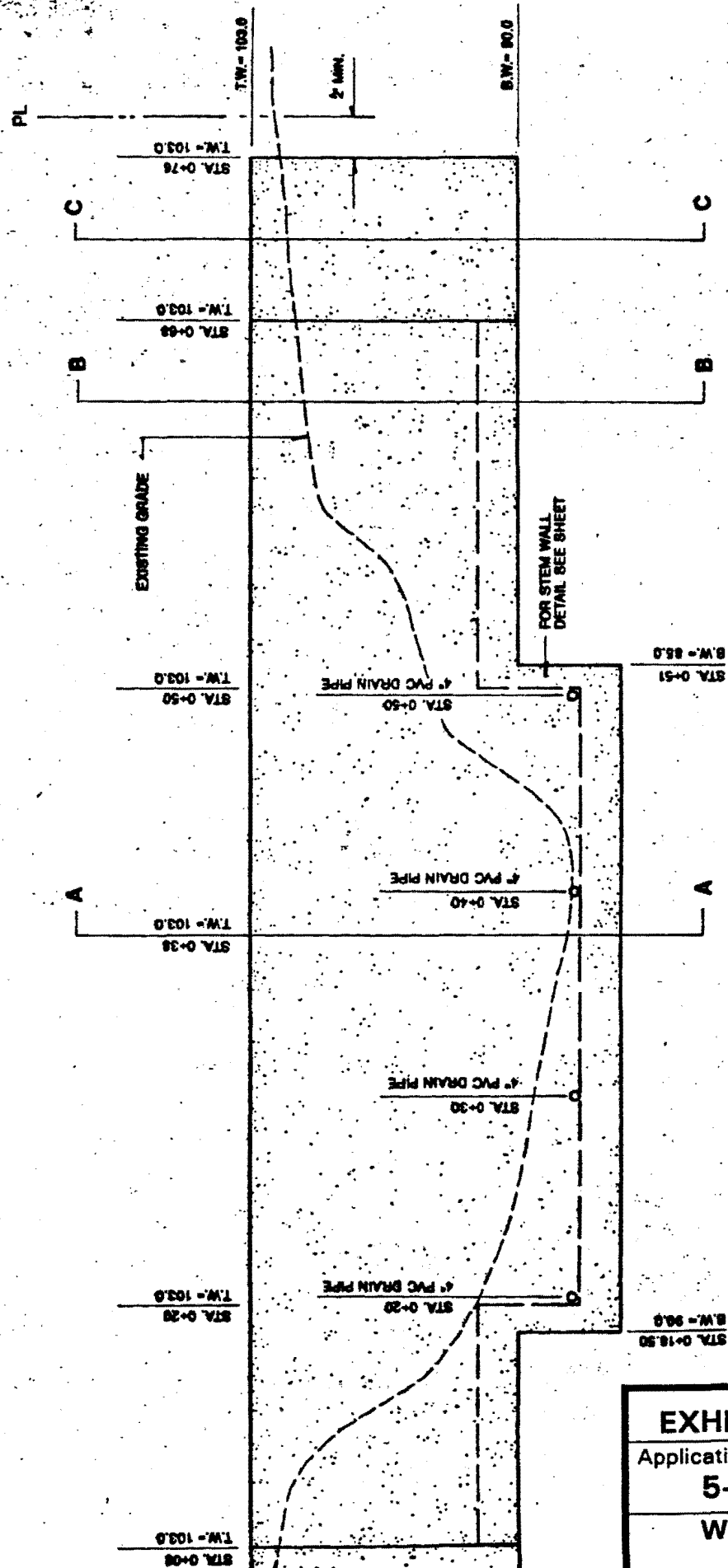
Converse Consultants
 Geotechnical Engineering
 and Applied Sciences

EXHIBIT No. 4

Application Number:
5-98-469

Plan View

California Coastal
Commission



RETAINING WALL PROFILE

PROFILE SCALE: HORIZ. & VERT. 1" = 5'

	EXHIBIT No. 7
	Application Number: 5-98-469
	Wall Profile
	California Coastal Commission

PROPOSED FINISH GRA

110

PH

EXISTING GRADE

STA. 0+10.00
B.W. = 85.0

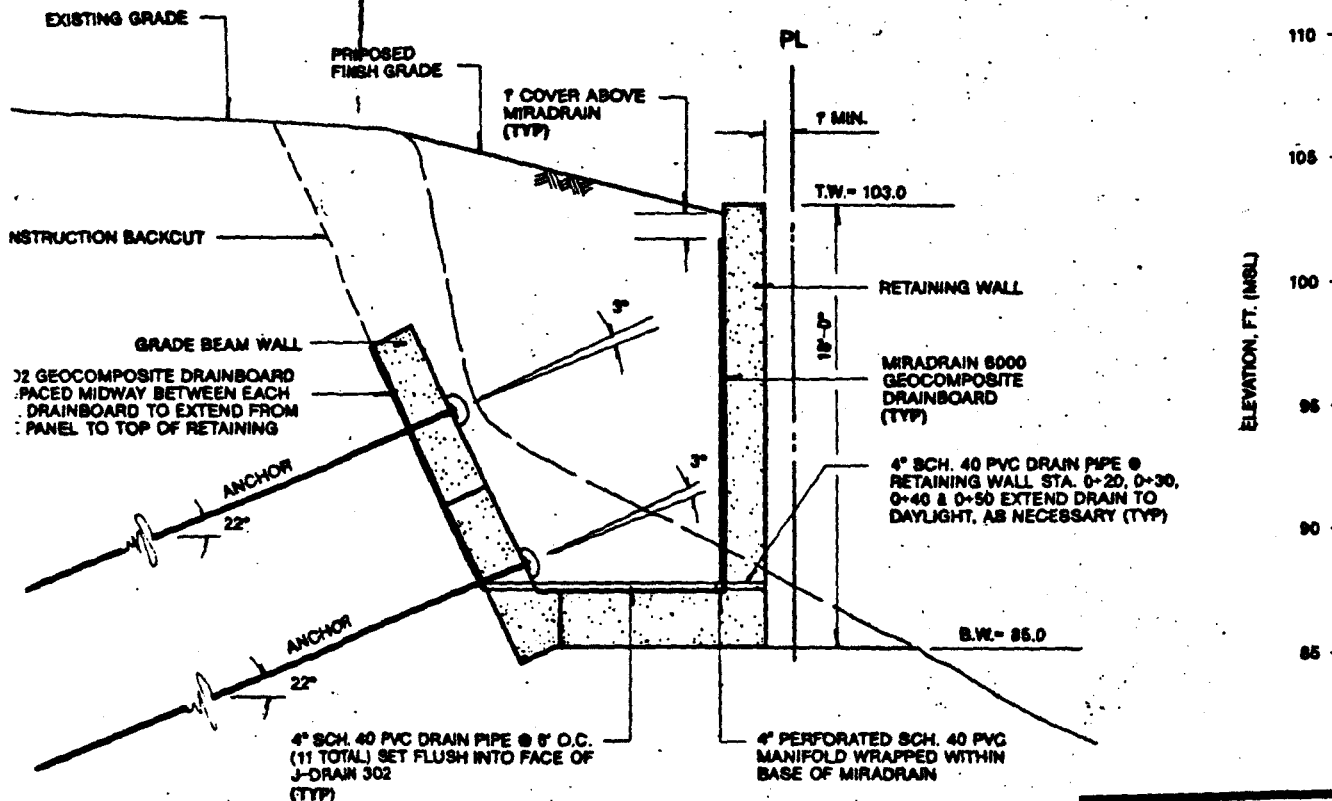
STA. 0+51
B.W. = 85.0

FOR STA
DETAIL S1

A

RETAINING WALL PROFILE

PROFILE SCALE: HORIZ. & VERT. 1" = 5'



SECTION A-A

STA. 0+20 TO 0+50
PROFILE SCALE: HORIZ. & VERT. 1" = 5'

EXHIBIT No. 8

Application Number:

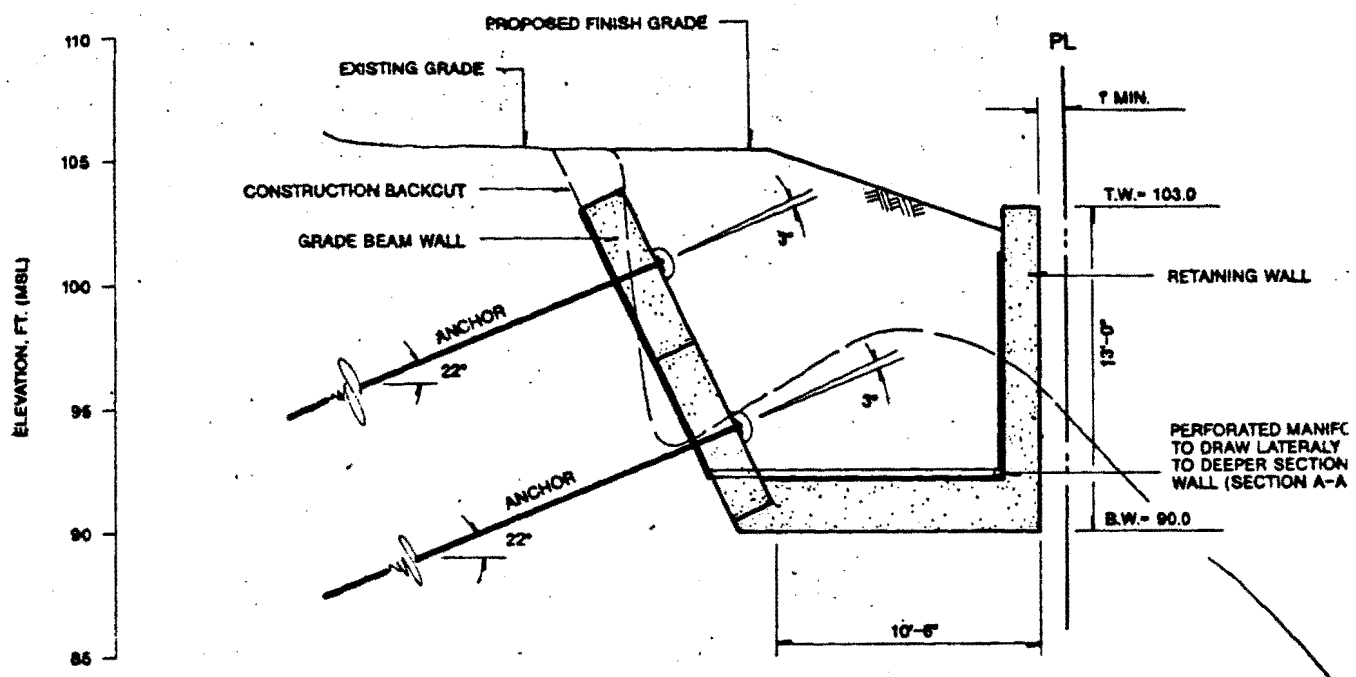
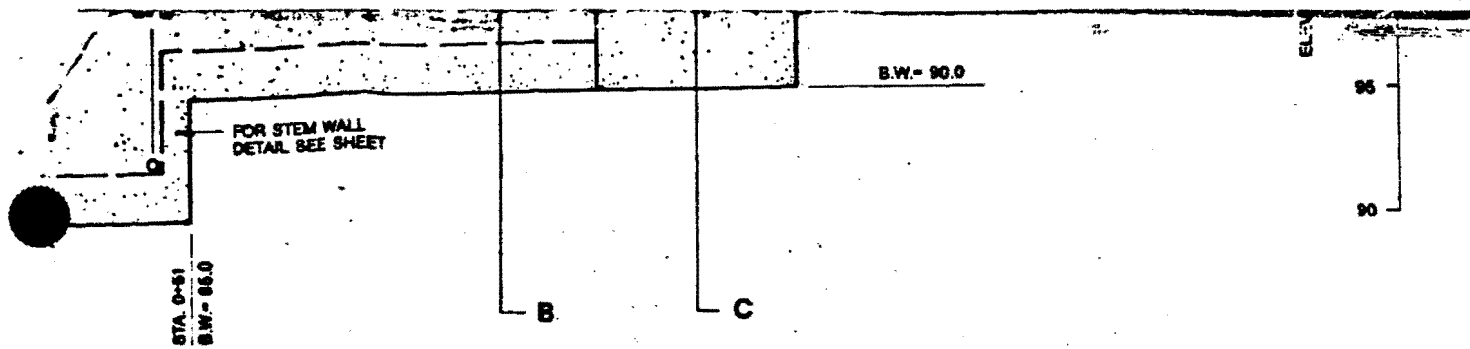
5-98-469

Section A

California Coastal
Commission

GROUP DELTA CONSULTANTS, ENGINEERS & GEOLOGISTS

4455 MURPHY CANYON ROAD, SUITE 100
SAN DIEGO, CALIFORNIA 92123
(619) 573-1777



SECTION B-B

STA. 0+08 TO 0+20, STA. 0+50 TO 0+68
 PROFILE SCALE: HORIZ. & VERT. 1" = 5'

EXHIBIT No. 9

Application Number:

5-98-469

Section B



California Coastal
 Commission

ELTA CONSULTANTS, INC.
 ENGINEERS & GEOLOGISTS

100 CANYON ROAD, SUITE 100
 SAN DIEGO, CALIFORNIA 92123
 (619) 573-1777

PLAN PREPARED UNDER THE SUPERVISION OF:

MATTHEW W. ECKERT
 NAME

11/2/98
 DATE

ORIGINAL SCALE IN INCHES
 FOR REDUCED PLANS



CONTRACTOR MUST NOTIFY THE
 BELOW LISTED AGENCY AT
 LEAST TWO (2) WORKING DAYS
 PRIOR TO COMMENCEMENT OF
 EXCAVATION :

UNDERGROUND SERVICE ALERT
 (USA) 1-800-422-4133



Exhibit 10

Original Special Conditions to 5-89-469

1. ASSUMPTION OF RISK DEED RESTRICTION

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, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazards from hillside instability and erosion and the applicant assumes the liability from such hazards; and b) the applicant unconditionally waives any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission, its officers, agents, and employees relative to the Commission's approval of the project for any damage resulting from such hazards. The document 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 Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. REVISED PLANS

Prior to issuance of the coastal development permit, the applicant shall submit for the review and approval of the Executive Director revised plans which show that the retaining wall and the footing for the retaining wall have been deleted from the project.

3. CONFORMANCE WITH GEOTECHNICAL RECOMMENDATIONS

Prior to issuance of the coastal development permit, the applicant shall submit for the review and approval of the Executive Director:

- a) final revised plans. These plans shall include the signed statement of the geotechnical consultant certifying that the project plans incorporate the geotechnical recommendations contained in the geotechnical investigation titled *"Geotechnical Report Restoration and Slope Repair, 1454 Galaxy Drive, Newport Beach, California"* (Project No. 1862-EC01) by Group Delta Consultants, Inc. dated November 2, 1998 into the final design as modified by special condition number 2 (above) for the proposed development.

The approved development shall be constructed in compliance with the final plans as approved by the Executive Director. Any deviations from the plans shall require a Coastal Commission approved amendment to this permit, or written concurrence from the Executive Director that the deviation is not substantial and therefore a permit amendment is not needed.

Exhibit 10

Original Special Conditions to 5-89-469

4. LANDSCAPING PLAN

Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, a landscaping plan which has been reviewed and signed by a licensed landscape architect. The landscaping plan shall incorporate the following criteria:

- a) The backyard area from the property line landward to the project daylight line as shown in the grading plan shall be planted and maintained for erosion control, screening, and visual enhancement. To minimize the need for irrigation and to reduce potential erosion and slope failure, the landscaping within this area shall consist of native plants similar to that found on existing hillsides in the vicinity or deep rooted non-native plants which are drought tolerant and non-invasive. Invasive, non-indigenous plant species which tend to supplant native species shall not be used.
- b) All graded areas shall be stabilized with planting at the completion of the project. Planting shall follow accepted planting procedures adequate to provide 70% coverage within one year, and shall be repeated, if necessary, to provide such coverage.
- c) No permanent irrigation system shall be allowed within the backyard area from the property line landward to the project daylight line as shown in the grading plan. Temporary irrigation to allow the establishment of the plantings is allowed.
- d) The landscaping plan shall show all the existing backyard vegetation and any existing irrigation system.
- e) The applicant shall submit written evidence from the California Department of Fish and Game (Department) demonstrating that the Department has approved the landscaping plan.

The landscaping plan shall be carried out as approved by the Executive Director.

5. RIGHT OF ENTRY AUTHORIZATION

This coastal development permit 5-98-469 approves only the development within the property lines of 1454 Galaxy Drive in the City of Newport Beach. In the event that the applicant must utilize property located outside of his property lines for purposes of conducting work within his property lines, the applicant shall submit, for the review and approval, written confirmation from the affected landowner that the applicant has the legal right to enter the affected property before conducting any such work.

Exhibit 10

Original Special Conditions to 5-89-469

This permit does not authorize any development on the Upper Newport Bay Ecological Reserve. Should entry onto the Ecological Reserve result in any damage to the slope or the vegetation, the applicant shall expeditiously apply for a coastal development permit to undertake restoration.

6. BEST MANAGEMENT PRACTICES

The applicant shall implement best management practices, such as sandbags, during construction to control erosion and to minimize the potential for silt to be transported into the Ecological Reserve and wetland below the project site.

No debris shall be discarded anywhere on the Upper Newport Bay Ecological Reserve and all debris shall be removed from the project site upon completion of the project.

7. GRADE BEAM WALL DESIGN

Prior to issuance of the coastal development permit, the applicant shall submit for the review and approval of the Executive Director final plans for the grade beam wall. To minimize the visual impact of manmade structures on the natural bluff, the grade beam wall shall blend in with the color and texture of the surrounding terrain.

8. FUTURE DEVELOPMENT

This coastal development permit 5-98-469 approves only the development, as expressly described and conditioned herein, for the construction of a grade beam wall and anchor tieback system plus landscaping at 1454 Galaxy Drive. Any future development, including but not limited to rear yard landscaping, shall require a coastal development permit or an amendment to this permit from the Coastal Commission.

9. COMPREHENSIVE SLOPE STABILIZATION PLAN

Prior to issuance of this permit, the applicant shall submit for the review and approval of the Executive Director written evidence that he has contacted the California Department of Fish and Game to initiate planning for a comprehensive design to repair the slope damage adjacent to the project site.