

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-5071

**RECORD PACKET COPY***TU 12a*

Request Filed: March 4, 1999  
Staff: SFR-LB  
Staff Report: March 25, 1999  
Hearing Date: April 13-16, 1999  
Commission Action: Approved with Conditions

**STAFF REPORT: REQUEST FOR RECONSIDERATION**

**APPLICATION NO.:** 5-98-469-R

**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 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

**SUMMARY OF STAFF RECOMMENDATION:**

Staff recommends that the Commission **DENY** the request for reconsideration on grounds that: (1) no new relevant evidence has been presented which could not have been presented at the hearing on the permit and (2) there has been no error of fact or law which has the potential for altering the Commission's decision.

**PROCEDURAL NOTE**

The Coastal Act and the Commission's regulations provide that at any time within thirty (30) days following a final vote upon an application for a coastal development permit, the applicant of record may request that the Commission grant a reconsideration of the denial of an application, or of any term or condition of a coastal development permit which has been granted. This process is identified in Section 30627 of the Coastal Act and in Title 14 of the California Code of Regulations Section 13109.2.

Section 13109 of the regulations state that the grounds for reconsideration of a permit action shall be as provided in Coastal Act Section 30627 which states:

*The basis of the request for reconsideration shall be either that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter or that an error of fact or law has occurred which has the potential of altering the initial decision.*

### **APPLICANT'S CONTENTION**

First, the applicant contends that "*certain testimony provided at that hearing was demonstrably false, misleading, and delivered with adversarial intent at the Ferber's.*" This false testimony resulted in the erroneous imposition of a condition that prohibited permanent irritation of the property. Second, the applicant presents evidence that the condition imposed by the Commission "... *is not only unnecessary, but actually counterproductive to the goals and objectives of stabilizing the upper bluff at the subject and adjacent properties.*"

### **LIST OF EXHIBITS**

- Exhibit 1:** Group Delta Letter of March 4, 1999 requesting that the Commission grant reconsideration.
- Exhibit 2:** Converse Consultants Letter of March 4, 1999 supporting the request for reconsideration.
- Exhibit 3:** Cornerstone Studios Letter of March 4, 1999 supporting the request for reconsideration.
- Exhibit 4:** Group Delta Letter of March 21, 1999. This letter was prepared by Group Delta to respond to staff's request for additional information on the role of evapotranspiration on bluff stability. Exhibits to this letter where not duplicated due to the large number of pages. Attachments not duplicated where: "A Guide to California's Model Water Efficient Landscape Ordinance", Assembly Bill Number 325 (California's Model Water Efficient Landscape Ordinance), "Model Water Efficient Landscape Ordinance", and 1997-98 Season Rainfall at Laguna Beach Treatment Plant Station No. 100.
- Exhibit 5:** Corner Stone Studios Letter of March 4, 1999. This letter was prepared by Cornerstone Studios to respond to staff's request for additional information on the role of evapotranspiration on bluff

stability. Though dated March 4, 1999, this letter was presented to staff on March 22, 1999.

- Exhibit 6:** Staff report prepared for the Commission hearing of February 3, 1999. The staff report is seventeen pages long and contains fifteen (15) exhibits.
- Exhibit 7:** Group Delta Letter of February 1, 1999. This letter was presented to the Commission at the public hearing on this permit application.
- Exhibit 8:** Transcript of the Commission's hearing on permit 5-98-469 which is the subject of this reconsideration request.

### **STAFF RECOMMENDATION:**

The staff recommends that the Commission adopt the following resolution:

#### **I. Denial of Reconsideration.**

The Commission hereby **DENIES** the request for reconsideration for the proposed project on grounds that the applicant has not presented new relevant evidence, which in the exercise of reasonable diligence could not have been presented at the hearing, nor has there been an error of fact or law which has the potential of altering the Commission's initial decision.

#### **II. Findings and Declarations.**

The Commission hereby finds and declares as follows:

##### **A. Project Description**

On February 3, 1999, the Commission approved coastal development permit 5-98-469 for a grade beam wall to enhance slope stability with ten special conditions. The applicant is requesting that the Commission reconsider special condition 4(c). Special condition 4(c) states: *"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."* Though the applicant has only requested reconsideration of item 4(c), item 4(d) is also affected should the reconsideration request be granted. Item 4(d) states that any existing irrigation will be disconnected and capped off.

The proposed project is located at 1454 Galaxy Drive in the City of Newport Beach, County of Orange. 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. On December 16, 1997, a bluff failure occurred which affected the project site.

Special condition number four, as approved by the Commission, is printed below. The request for reconsideration as previously noted relates specifically to item "c" below which has been highlighted in bold text. Item "d" would also be affected if the reconsideration request is granted since it states that any existing irrigation be disconnected. 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 but allowed the applicant to begin work immediately. 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. However, the applicant has begun the development authorized by the coastal development permit.

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.

## **B. Grounds for Reconsideration**

Pursuant to Section 30627(b)(4) of the Coastal Act, the Commission has the discretion to grant or a deny request for reconsideration. Section 30627(b)(3) states, in part, that a valid basis for a request for reconsideration shall be that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the project before the Commission.

### **1. Relevant New Information Which Could Not Have Been Presented At The Hearing**

In the submittal package for reconsideration the applicant has provided an updated geologic assessment from Group Delta (dated March 4, 1999, Exhibit 1), a geologic assessment from Converse Consultants (dated March 4, 1999, Exhibit 2), and an evaluation of the current landscaping by Cornerstone Studios (dated March 4, 1999, Exhibit 3). Additionally, supplementary letters from Group Delta (Exhibit 4) and Cornerstone Studios (Exhibit 5) were submitted which responded to staff's questions regarding the role of evapotranspiration on bluff stability. These supplementary assessments and letters were generated after the Commission acted on coastal development permit 5-98-469 on February 3, 1999. This information was provided to support the applicant's contention that water discharged through irrigation would not adversely affect the stability of the bluff.

This information can be divided into two themes. One theme is the Group Delta geotechnical assessment which states that the bluff failure was the result of excessive rainfall on the bluff face and that irrigation was not a contributing factor. In addition Group Delta asserts that water percolating into the soil from irrigation would migrate southwesterly, away from the bluff face based on the internal bedding of the Monterey Formation.

The second theme presented by Group Delta and Cornerstone Studios for requesting reconsideration is the role of evapotranspiration. Both Group Delta and Cornerstone Studios state that vegetation, through evapotranspiration, helps pull water out of the soil. Thus, during periods of heavy rainfall, plants, through evapotranspiration can pull water out of the soil which would help stabilize the bluff. However, during the dry season, the plants consequently require a degree of irrigation to maintain their viability. The applicant, therefore, contends that an in-ground irrigation system is necessary. Furthermore, the applicant contends that this irrigation has been properly managed over many years and that irrigation has not affected the stability of the bluff.

a. Geotechnical Information

Although the supplementary assessments were generated after the time the Commission acted on the permit application, the data contained in the assessments is not new. The geotechnical information summarized above from Group Delta is based on existing data and analysis. The supplementary assessments are specifically targeted to support the applicant's contentions that the imposition of the in-ground irrigation restriction by the Commission is inappropriate rather than relevant new information. For example, the figure attached to Exhibit 1 of the reconsideration request was included as Exhibit 5 in the staff report presented to the Commission when the Commission heard this item on February 3, 1999. Furthermore the Commission staff report of January 14, 1999 summarized the Group Delta findings: *"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."* (emphasis added) The Commission's staff report goes on to state: *"Recommendations made by the geotechnical consultants relate to: 1) reducing water infiltration, 2) landscaping, 3) the installation of a tie-back anchor and retaining wall system, and 4) managing surface drainage."* Based on the conclusions of the Group Delta geotechnical evaluation of November 2, 1998 that the bluff failure was the result of the infiltration of direct rainfall onto the soils mantling the slope, the Commission concluded that the appropriate solution was to reduce water infiltration. One way of reducing future infiltration of water into the slope is to eliminate irrigation which is a source of water. This solution, to eliminate irrigation, is also consistent with the consultants recommendation that water infiltration be reduced. Consequently, the Commission required that the applicant not use an in-ground irrigation system on his property. Since this information was available at the time of meeting, Group Delta could have presented the analysis now being made to the Commission at the time of the Commission meeting. Therefore, the portion of the reconsideration request based on Group Delta's geotechnical evaluations is not new relevant information which could not have been presented at the hearing.

b. Role of Evapotranspiration

The letter from Cornerstone Studios, a landscaping firm, represents new information which was not previously before the Commission, specifically the role of evapotranspiration in promoting bluff stability. Cornerstone Studios claims that evapotranspiration from plants during the rainy season will remove water from the bluff and that during the dry season some irrigation is need to maintain the viability of the plants. Though this may be a valid claim, Cornerstone Studios did not supply evidence that existing irrigation practices did not overly saturate lawn areas. To document that irrigation was being undertaken in a responsible manner and would not over saturate the ground, Cornerstone Studios could have submitted data (by season) on how much water the applicant's actually discharged while irrigating the lawn areas. This information, though requested, was not provided. An opinion of the impact of excess irrigation is provided by the Group Delta geotechnical assessment, which states that if any water enters the bluff through percolation it will migrate away from the bluff face.

The letter from Cornerstone Studios is new information specifically submitted to respond to the imposition of the requirement by the Commission that the property can not be irrigated through an in-ground irrigation system. Cornerstone Studios asserts that the applicant's have a water efficient automated landscaping system, that a hand watering system would not be as effective as an automated irrigation system, and that evapotranspiration by plants helps to eliminate water from the bluff. Though this may be the case, the issue before the Commission was not the efficiency of the irrigation system, but whether or not the water introduced into the bluff as a result of irrigation is de-stabilizing. Therefore, the applicant has not documented how the information is relevant. Cornerstone Studios has also failed to document the quantify of water actually discharged by the irrigation system in order to demonstrate that the irrigation system supplied water in balance with the evapotranspiration rate. Irrigation in excess of the evapotranspiration rate means that water will percolate into the bluff

Though Cornerstone Studios has provided new information in the form of an evapotranspiration evaluation, this information is incomplete for purposes of evaluating if the existing in-ground irrigation was or was not a factor leading to bluff instability. Cornerstone Studios (March 4, 1999) asserts that the "*... Ferber landscape fully functions 25% below the allowable water use for this site and has for the past 22 years ...*" Cornerstone Studios, however, did not supply a record of actual water usage (as requested by staff) on the applicant's property. The assertion that the landscape is functioning below the allowable water use is apparently based on a computed estimate of water demand of 143,935 gallons (26.87") per year compared to an allowed use of 193,000 gallons (34.58") per year under AB325 (California's Model Efficient Landscape Ordinance). Though

Cornerstone Studios documents the apparent water demand of the applicant's lot as 143,935 gallons per year, they did not supply any documentation concerning how much water was actually discharged through the in-ground irrigation system.

Therefore, the total quantity of water discharged by the irrigation system into the bluff is unknown. Group Delta's in support of Cornerstones Studios assessment asserts that the irrigation system was turned off in November, that groundwater was not encountered when the subterranean investigations were conducted, and that run-off from in-ground irrigation may not migrate to the bluff; however, the bluff did fail due to saturation of the bluff face. Since the Cornerstone Studios letter fails document that the in-ground irrigation system actually supplied water in balance with the evapotranspiration rate of the plants or that excessive in-ground irrigation did not occur which may have adversely affected the bluff stability, the Commission can not find that the information supplied by Cornerstone Studios is relevant new information that would have altered the Commission's decision.

The Commission recognizes that this in-ground irrigation restriction was imposed during the Commissioners' deliberations and that the applicant's and their consultants may not have been immediately prepared to respond to this new special condition. The original staff recommendation contained a landscaping condition which would have eliminated irrigation only in the area of the bluff failure. Under the staff recommendation, the landscaping special condition would have allowed the remaining lawn areas to be irrigated. The applicant was in agreement with the landscaping special condition. During the course of the Commission's deliberations, the Commission moved to restrict irrigation over the applicant's entire property based on the findings that the introduction of water into the project site contributed to the landslide which occurred. At the time this motion was made, neither the applicant nor the applicant's consultants objected to the imposition of this special condition. The applicant and their consultants could have objected or requested additional time so that they could respond to this special condition or requested a continuance as they have now done. However, neither a request for additional time nor a continuance was made.

Moreover, neither the applicant nor the applicant's consultant, Group Delta, who were at the Commission meeting addressed this issue at the time of the public hearing. Had the applicant been concerned over the imposition of this special condition, the applicant could have requested a continuance from the Commission to prepare a response.

As originally proposed by staff, special condition 4(c) only required that the area immediately around the grade beam not be irrigated. To support the imposition of this special condition the Commission relied on the geotechnical reports recommendation that water infiltration be minimized. Two methods of accomplishing this goal would be through reduced irrigation and managing surface



runoff. The staff report also cited a finding of a 1978 workshop which stated 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."* The applicant was provided a copy of the staff report prior to the Commission meeting. Thus the applicant was aware that staff was recommending that irrigation be limited due to the potential that it could affect bluff stability. Neither, the applicant nor the geologic consulting firm, objected to the condition as originally proposed in the staff recommendation. Though they may not have objected, they were made aware through the staff report that water infiltration was a major concern to the Commission and they should have been prepared to respond to any changes to the special conditions or questions raised through the hearing process. Even, if they were not immediately able to respond, the applicant's could have asked for a continuance to allow them to respond to the requirement that no in-ground irrigation be allowed. A request for continuance was not made.

Consequently, for all the above reasons reconsideration based on the grounds of relevant new information which could not have been previously presented must be denied.

## **2. Error of Fact or Law Which Have the Potential of Altering the Decision**

Pursuant to Section 30627(b)(4) of the Coastal Act, the Commission has the discretion to grant or deny requests for reconsideration. Section 30627(b)(3) also states, in part, that a valid basis for the request for reconsideration shall be that an error of fact or law has occurred which has the potential of altering the decision.

The applicant's request for reconsideration is attached as Exhibit 1. The applicant's basis for this reconsideration, in part, is that an error of fact occurred which has the potential of altering the Commission's decision. The applicant's consultant contends that the next door neighbor provided testimony that was "... *demonstrably false, misleading, and delivered with adversarial intent* ...". Group Delta wrote that the next door neighbor spoke critically of the existing drainage on the applicant's property and that these statements were false. Group Delta asserts that visual inspection verified that all roof drainage is collected into drain gutters and discharged to the street. Group Delta contends that this testimony, in part, led to the Commission imposing the special condition to eliminate in-ground irrigation entirely from the applicant's property.

Drainage and irrigation are two separate though related issues. As stated above, the issue before the Commission, based on the reconsideration request, is the role of the in-ground irrigation system contributing excess water into the bluff which has the effect of destabilizing the bluff. The applicant has requested this

reconsideration to have an in-ground irrigation system for purposes of maintaining his landscaping. The applicant has therefore requested that the Commission reconsider the landscaping special condition and delete the prohibition on permanent irrigation systems contain in special condition number 4.

The purpose of drainage is to enhance slope stability by discharging surface runoff to the street before it has a chance to percolate into the bluff. Group Delta's letter (Exhibit 1) which outlines the applicant's contentions states (in refuting the neighbors assertion of improper drainage) that a: *"Visual inspection by our staff has verified that all roof drainage is collected into rain gutters and discharged to the street."* This statement by Group Delta does not completely refute the neighbor's assertion because the applicant's roof drainage does not discharge directly to the street through in-ground pipes. Initially, the roof drainage via rain gutters discharges onto the ground. It then has to rise to the level of a drainage hole (located in a brick wall) which then allows the water to flow above ground towards the street. Until the water rises to the level of the drainage hole it ponds and has the potential to percolate into the bluff. The Commission consequently imposed special condition number 10 to ensure that the property was drained correctly. Special condition 10 requires that the applicant submit a drainage and runoff control assessment to accomplish the goal of conveying water to the street before it has a chance to percolate into the bluff. Moreover, the neighbor's assertion of improper drainage appear more pertinent to the Commission's imposition of special condition 10 (drainage plan) rather than the prohibition on irrigation contained in special condition 4. Therefore, the neighbors assertion of improper drainage were not errors of fact or law but rather of opinions which the Commission considered along with all other evidence presented at the hearing.

Therefore, the Commission finds that an error of fact or law has not occurred relative to the imposition of a prohibition on the use of an in-ground irrigation system. Furthermore, as previously discussed, the applicant, at the time of the public hearing had the opportunity to address the neighbor's assertions at the hearing and/or request a continuance to prepare a response to the Commission imposition of a prohibition on the use of an in-ground irrigation system. For the reasons stated above no grounds for reconsideration exist pursuant to Section 30627(b)(3) of the Coastal Act. Therefore, the Commission finds that this reconsideration request shall be denied on the basis that no error of fact occurred which had the potential of altering the Commission's decision.

GROUP



DELTA  
CONSULTANTS

Certified DBE/MBE

Geotechnical Engineering

Hydrology

Marine Biology

Water Engineering

Wetlands

Wildlife

Planning

Project No. 1862-EC01  
March 4, 1999

RECORD PACKET

**RECEIVED**

South Coast Region

MAR 4 1999

CALIFORNIA  
COASTAL COMMISSION

Mr. Steve Rynas  
CALIFORNIA COASTAL COMMISSION  
200 Oceangate, Suite 1000  
Long Beach, California 90802-4302

REQUEST FOR RECONSIDERATION OF  
SPECIAL CONDITION NO. 4  
1454 GALAXY DRIVE  
(FERBER RESIDENCE)  
NEWPORT BEACH, CALIFORNIA

CCDP NO. 5-98-469

**EXHIBIT No. 1**

Application Number:

**5-98-469-R**

**Group Delta Letter  
March 4, 1999**



California Coastal  
Commission

Dear Mr. Rynas:

Pursuant to Section 13109.2 of the California Code of Regulations, we are hereby requesting reconsideration of the provisions of Special Condition No. 4 of the above-referenced Coastal Development Permit. Specifically, we are asking reconsideration of Special Provision No. 4 (c), which reads in part: "*No permanent irrigation system shall be allowed on the property, including both the front and backyard areas.*" This special provision was added to the permit after the February 3, 1999, Coastal Commission hearing. It is our contention that certain testimony provided at that hearing was demonstrably false, misleading, and delivered with adversarial intent at the Ferbers. The subject special provision, which was subsequently inserted, is based on factual errors delivered during public comment and factual errors assumed by members of the Commission in making a determination that no irrigation of the lot would improve the stability of the bluff. The provisions of Special Condition No. 4 (c) are a horrible mistake, resulting in lower property value for the Ferbers, without any increase in bluff stability. It is our intention to demonstrate that the subject provision is not only unnecessary, but actually counterproductive to the goals and objectives of stabilizing the upper bluff at the subject and adjacent properties.

In reviewing the events of the February 3, 1999, Coastal Commission hearing, the Commission heard testimony from one of the Ferber's adjacent neighbors, Mr. Howard Colover who spoke critically of the existing drainage improvements on the Ferber's property. Mr. Colover's assertions about the drainage on the Ferber property were factually false on several counts. Visual inspection by our staff has verified that all roof drainage is collected into rain gutters and discharged to the street. Additionally, the Ferber's have installed a total of 14 area drains in the backyard, including 11 within the landscaped areas. As indicated previously, the lot grading was accomplished to provide a 2% slope from the rear of the lot toward the street. All of these measures are well beyond the standard of care for residential lot drainage and initially provided as part of the original, Coastal Commission-approved, site development to maintain a high level of site drainage and bluff stability. Contrasting the drainage improvements on the Ferber lot with the drainage situation on the adjacent lots to the north and south shows that the neighboring lots are even now continuing to discharge surface runoff over the face of the bluff, clearly destabilizing the bluff to a far greater degree than the Ferber's. Reference is made to the inspection tour made by Coastal Staff on February, 9, 1999, in this regard.

In their prohibition of irrigation on the Ferber's property, the Commission clearly assumed that an unirrigated lot is geologically more stable than an irrigated one with well established and maintained landscaping. Although seemingly obvious, this is an erroneous conclusion. The attached letter, authored by Mr. Don Wilson, the project landscape architect, will more fully develop the concepts, but briefly, a mature, well-maintained landscape has the ability to transpire water through the leaves from the soil via evapotranspiration to a far greater degree than the minimal vegetation that would survive on the Ferber's property without irrigation. The lack of vegetive cover resulting from no irrigation would not present an effective barrier to heavy rainfall from percolating rapidly into the subgrade where it has the opportunity to migrate laterally toward the bluff face. As a result, heavy rainfall will percolate more rapidly into the subsurface soils and present a greater hazard than would occur with well-established plants to slow and mitigate the rapid infiltration of excess rainfall. It should be noted that the bluff failure occurred in December, a time of year when the Ferbers had completely turned off their irrigation system for the rainy season. Excess rainfall on the bluff face was the cause of the bluff failure, not excess irrigation. Please

review the attached letter by Mr. Wilson for a more complete treatment of these concepts. The important point to be made is that it is erroneous to conclude that eliminating irrigation would provide any long-term benefit to the stability of the bluff face, but in fact would leave the bluff-top soils more susceptible to infiltration by excess rainfall by virtue of the reduced ground cover.

Previously submitted as part of the supporting materials for this permit was Converse Consultants' May 14, 1998, "Report of Landslide Investigation, Rear Yard and Natural Bluff, Back Bay Area, Newport Beach, California." Several pertinent points included in this report have apparently been either misunderstood or misinterpreted by the Commission. Subsurface explorations performed by Converse Consultants were illustrated on Drawing No. 3 incorporated into their May 14, 1998, report. A copy of that figure is attached for your examination. It shows that, while the internal bedding of the Monterey Formation is adverse (out-of-slope), the geologic contact between the Monterey Formation and the overlying Quaternary-age deposits slopes to the southwest, into the slope. Since the Monterey Formation is essentially impermeable, this contact will arrest further percolation. Driven by gravity, water would then migrate along the surface of this contact. Since the inclination of this contact surface is toward the southwest, away from the face of the bluff, it demonstrates that any percolating water, upon reaching this geologic contact at depths between about 4 to 8 feet, will migrate southwesterly, away from the face of the bluff. Additionally, in Converse's discussion about subsurface conditions, investigated after last winter's bluff failure, they observed that *"No groundwater was encountered within either the terrace deposits/Palos Verdes Sand or bedrock during our investigation. No evidence of seeps or springs were noted on the bluff during our studies."* In their inspection of the landslide debris, they noted *"No evidence of groundwater was observed within the headscarp area of the slide or along the basal slip/rupture surface, nor at the depths explored within the exploratory borings (i.e. 60 feet below ground surface)."* Inasmuch as we are now the engineer-of-record for this project, we have reviewed and supplemented Converse's field work with our own and concur with the conclusion that irrigation groundwater was not a contributing factor in last winter's failure. In that regard, please refer to the attached letter from Mr. Scott Magorien, C.E.G. and Principal Geologist for Converse Consultants, for additional supporting comments.

In Mr. Colover's comments to the Commission, allegations directly and erroneously counter to these facts were alleged and acted on by the Commission. We think it worth noting that Mr. Colover is not an engineer, is ignorant of the relevant geotechnical facts of the situation, and has a personal dispute with the Ferbers that colored his comments to the Commission.

As the registered professionals exercising responsible charge over this design, we are acutely aware of the detrimental effects of uncontrolled surface and subsurface waters on bluff stability. Were there any possibility of percolating water exacerbating the instability of the bluff face, we would advocate whatever measures were necessary to mitigate its effects. The facts of the investigation clearly show that groundwater was not a contributing cause of the failure. As always, we are completely willing to work with Staff to address any and all concerns about the possible detrimental effects of irrigation on the proposed bluff repair. We are profoundly disappointed that the Coastal Commission did not solicit appropriate factual information upon which to make an informed and logical decision.

Had we been given the opportunity to respond to the Commission's concerns about irrigation and drainage, several less severe alternatives could have been presented that would have had the benefit of our collective professional judgement and consideration given to them. Among possible alternatives are installation of moisture monitoring equipment in the subgrade near the bluff face, and re-zoning and/or re-timing of the irrigation controllers. As it is, the Ferbers have a well designed, well laid out, sophisticated, and well-monitored landscaping program that already provides features well beyond that of normal residential landscaping. Reconsideration of Special Provision No. 4 would give us the opportunity to present and consider alternatives short of the severe measures instituted without thorough consideration.

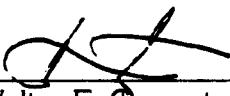
Our efforts to date on this project with Coastal Staff, and in particular Mr. Rynas, have resulted in a well engineered, carefully thought out, effective solution to the bluff failure at 1454 Galaxy Drive, as reflected in the Staff Report and recommendations, which, incidentally, wisely prohibited any irrigation on the face of the bluff. As always, we are completely willing to work with Staff to provide a comprehensive, effective design, optimized to provide the best possible long-term performance of the repair. We most

strenuously urge that our Request for Reconsideration be granted so that the well meaning, but misguided, intentions resulting in Special Provision No. 4 be corrected and not allowed to undermine the integrity of that repair, nor unfairly harm the Ferbers.

On behalf of Mr. and Mrs. Ferber, we thank you for your assistance and consideration on this matter. If you have any questions or require additional information, please give us a call.

Very truly yours,

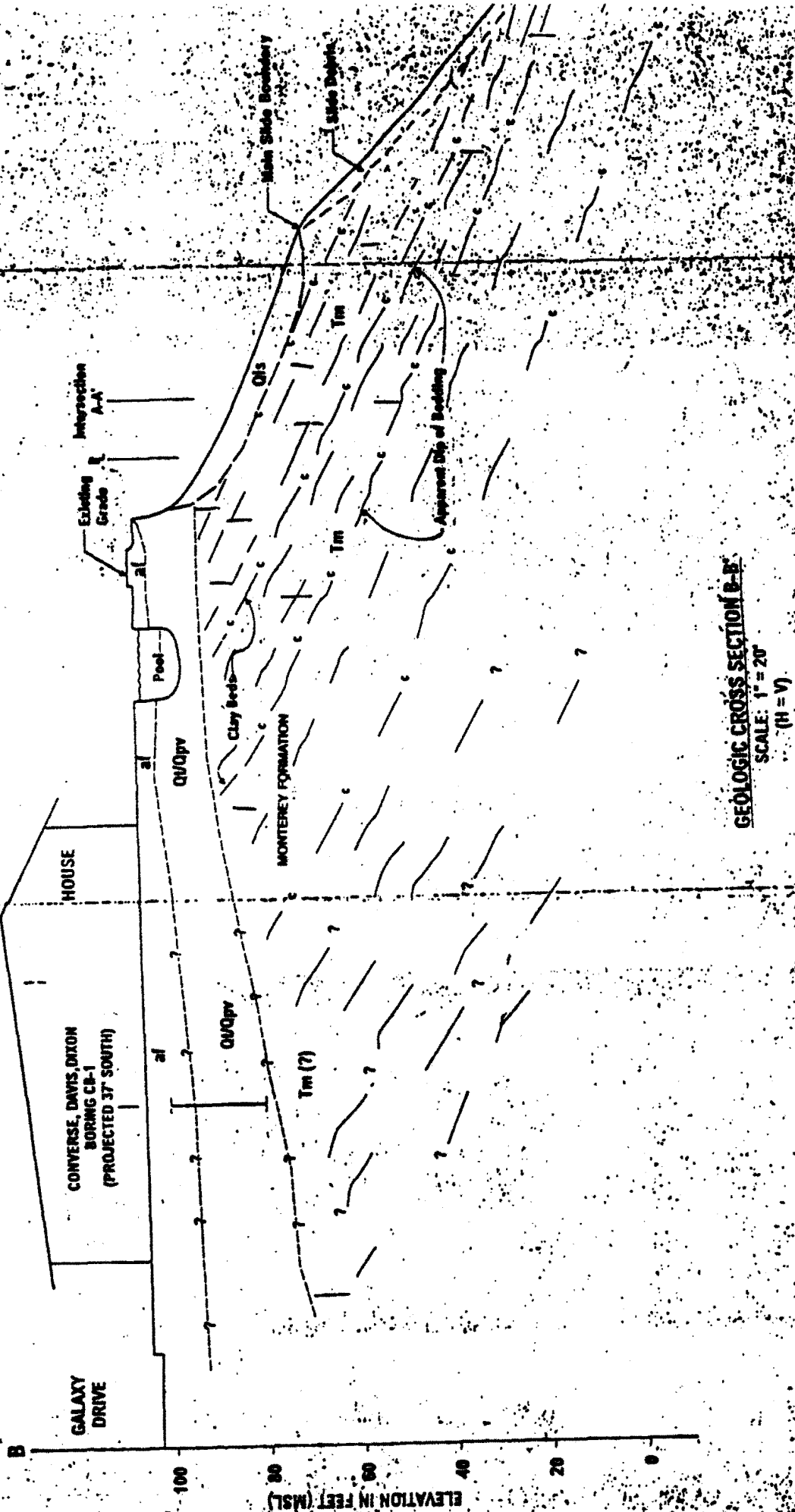
GROUP DELTA CONSULTANTS, INC.

  
\_\_\_\_\_  
Walter F. Grampton, Principal Engineer  
R.C.E. 23792, R.G.E. 245

WFC/PJJ/jc  
Attachments

cc: Richard and Melody Ferber

MSSE  
(VIEW NORTHWEST)



GEOLOGIC CROSS SECTION B-B  
SCALE: 1" = 20'  
(H = V)





## Converse Consultants

Over 50 Years of Dedication in Geotechnical Engineering and Environmental Sciences

March 4, 1999

Mr. Walter Crampton  
Principal Engineer  
Group Delta  
4455 Murphy Canyon Road, Suite 100  
San Diego, CA 92123

5-98-469-R  
**RECEIVED**  
South Coast Region

MAR 4 1999

CALIFORNIA  
COASTAL COMMISSION

Subject: Converse Consultants Geotechnical Studies for the  
Ferber Residence  
1454 Galaxy Drive  
Newport Beach, California  
(Converse Project No. 99-32113-01)

### EXHIBIT No. 2

Application Number:

**5-98-469-R**

**Converse  
Consultants Letter**



California Coastal  
Commission

Dear Mr. Crampton:

As requested, Converse Consultants (Converse) has prepared this letter addressing the geotechnical work Converse has performed for development of the Ferber residence, and our more recent evaluation of the landslide which developed on the bluff below the rear yard of the Ferber's lot on December 17, 1997.

In late 1975, Converse performed a soil and geologic investigation of the Ferber's lot for development of a single-story residence. The results of that investigation established a building setback line and recommendations to mitigate adverse surface water runoff from the property onto the unstable bluff above the Upper Back Bay of Newport Beach.

Based on the results of our investigation following the December 17, 1997 landslide, which included preparation of a detailed site topographic map, the Ferber's had developed their property in accordance with Converse's recommendations presented over 22 years ago. Most importantly, the Ferbers maintained positive surface water away from the unstable slope and controlled landscape irrigation as to not promote adverse buildup of water in the landscaped areas. Moreover, with the knowledge provided to the Ferbers regarding potential for groundwater to adversely impact the stability of the bluff, the swimming pool was constructed with a double liner in order to significantly reduce the likelihood of adverse leakage into the subsurface.



Printed on  
Recycled  
Paper

Perhaps one of the most significant positive aspects of the Ferber's lot as it relates to movement of subsurface water, is the southwesterly sloping contact between the surficial native soils and the underlying impermeable bedrock. It is quite apparent that the natural geometry of this geologic contact effectively channels groundwater away from the unstable bluff face. In fact, at no time during our subsurface investigation following the 1997 landslide (which involved drilling and downhole logging two, 60-foot deep bucket auger borings in the rear yard), did we encounter overly saturated soils or groundwater in the near surface soils. Moreover, observations made by Converse of the 15-foot high backscarp of the landslide did not reveal any groundwater discharging from the near surface soils beneath the Ferber's lot. In our opinion, even with the significant rainfall events leading up to the landslide, the well maintained surface drainage conditions and controlled landscape irrigation in the rear yard of the Ferber's lot effectively mitigated any adverse contribution of water buildup behind the bluff.

We trust the information contained herein has provided you with a clearer picture of the site conditions within the rear yard of the Ferber's lot as it relates to mitigation of surface water runoff or groundwater buildup/movement. If you have any questions or require amplification or clarification of the information presented above, please contact us at (714) 444-9660.

Sincerely,

CONVERSE CONSULTANTS



D. Scott Magorien, C.E.G. 1290  
Principal Geologist

DSM:vy



CORNERSTONE STUDIOS

PLANNING  
RESOURCE ANALYSIS  
LANDSCAPE ARCHITECTURE  
DESIGN

March 4, 1999

Mr. Steve Rynas  
CALIFORNIA COASTAL COMMISSION  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302

REQUEST FOR RECONSIDERATION OF  
SPECIAL CONDITION No. 4  
1454 GALAXY DRIVE  
(FERBER RESIDENCE)  
NEWPORT BEACH, CALIFORNIA

CCDP NO 5-98-469

Dear Mr. Rynas,

The intention of this letter is to demonstrate that Special Provision No. 4 (c), which reads in part: "No permanent irrigation system shall be allowed on the property, including both the front and backyard areas" is not only an illusion of benefit and value, but unfounded in sustainable terms.

Sustainable ornamental landscapes use trees, shrubs and turfgrasses to serve important functional roles related to environmental enhancement, such as stabilizing soil, dissipating heat, cleaning air, and reducing noise and glare. Water conservation is an essential consideration in the design and management of these sustainable landscapes in California. One key strategy employed to maintain landscape health and appearance is by supplying only the amount of water needed, thereby avoiding unnecessary applications that exceed plant needs. Rainfall in coastal southern California occurs primarily between November and March, and typically provides between 10"-18" of annual moisture. Logically, this moisture pattern will sustain some plant species, primarily natives, yet without supplemental water will not provide enough soil moisture for the majority of many of the adapted plant. The mild winters, warm summers and very long growing season in southern California become very stressful to many of these plants and they lose their vigor and productivity in the summer resulting in lack of growth and damage, including that from insects and pests.


In as much as the City of Newport Beach has adopted the provisions of AB325-California's Model Efficient Landscape Ordinance, it is important to point out that the Ferber Residence landscape has been in compliance since it was installed in 1976 although the ordinance was only adopted in 1990 and only mandated to take effect in 1993.

5-98-469-R

**RECEIVED**  
South Coast Region

MAR 4 1999

CALIFORNIA  
COASTAL COMMISSION

<b>EXHIBIT No. 3</b>
Application Number: <b>5-98-469-R</b>
Cornerstone Studios March 4, 1999
 California Coastal Commission

The state's ordinance allows irrigation water in the amount of eighty percent of ETo to be applied annually to all landscapes. It assumes the irrigation system will have an efficiency rate of 62.5%. This assumes that management practices that will allow a minimum of 62.5% of the water applied to the landscape will be made available to the plants. This allows 37.5% to be lost to evaporation, wind, runoff, etc. Using the ETo for Newport Beach of 43.2, the maximum water allowance for the property is 193,000 gallons per year. Based on the existing tree, shrub, groundcover and turf planting on the Ferber property, the annual water use is 128,000 gallons per year, or 66% of the water allowance. These figures indicate that there is very efficient water management for this landscape.

Based on these figure the Ferber residence landscape, having been in existence for 23 years, can be classified as a model water-efficient landscape. In addition, it meets the criteria of the ordinance in the following ways:

1. An irrigation system with sprinkler heads and valves are grouped in hydrozones based on plant water needs, soil type, drainage, sun/shade exposure, etc. These hydrozones allow for different watering schedules to apply only that water needed to sustain growth.
2. Turf area usage within the water budget based on turfgrass type, sprinkler head spacing, precipitation rate of nozzles, and spacing is well under 10% of the total landscape area.
3. The irrigation system (which has functioned successfully for 23 years) includes matched precipitation rate heads, head to head spacing to insure optimum coverage without overwatering one area, and internal check valves to prevent low head drainage.
4. An automatic irrigation controller and remote control valves are utilized to efficiently monitor water schedules. This prevents accidental all night watering and also provides freedom to leave the landscape for prolonged periods of time with put creating stress conditions.
5. A master valve that is capable of shutting off the system in the event of excessive flow from a mainline break or a stuck valve is installed.
6. The soils have been analyzed periodically for texture, infiltration rate, pH and soluble salts.
7. The soils have been amended periodically to improve water uptake by plants, thus reducing excess soil moisture.
8. Fertilization regimes are maintained, thus reducing water needs further, particularly in the turf areas.
9. The landscape has been maintained by a professional landscape maintenance contractor since it was installed in 1976. The contractor is there on a weekly basis and among his tasks are those of adjusting and repairing heads, remote control valves, and programming of the controller. During the winter of 1997, as in other rainy seasons,

the contractor turned off the controller, and closed the valves. No irrigation water was applied to the landscape beginning in November during the El Nino rain event.

It should be pointed out that the use of a tall fescue turfgrass variety (known as Marathon in proprietary terms) at the Ferbers' is used extensively for a small park (0.9 ac.), named Galaxy View Park, on the coastal bluff just six houses south of the Ferber residence. Even though this park landscape does not meet the requirements of AB325, to date there has not been a slope failure or any significant erosion. Turfgrasses such as tall fescue provide a vegetative cover to control erosion from both wind and water, including rainfall, and have deep root systems (12") which provide significant surficial stability in addition to drought tolerance. Generally, in our Southern California coastal climate, the application of approximately one inch of irrigation water per week for a cool season grass such as Marathon will sustain it through the peak season of summer. Turfgrasses are valuable plants in the landscape and do not deserve the generalized, subjective viewpoint that judges all lawns as something to be avoided. There are many, many ornamental landscapes along the entire coastline of California which have successfully integrated turf into their design, without adverse effects. At the same time, irrigation systems provide a benefit to these coastal bluff landscape by providing the minimum amount of water necessary for plant growth (or survival) during the peak, seasonal moisture use period, primarily summer.

A great deal of specific data and information has been obtained as the result of a combination of field and laboratory studies used to describe plant growth and adaptation. For instance, research into photosynthesis indicates that virtually all types of plants, including cool season grasses, use between 55-110 gallons of water to grow one pound of biomass such as leaves, stems or roots. This amount of water is the same for pines, oaks, azaleas, and numerous other plants.

One key component of our firms' work has been in the preparation of standards for planting and irrigation within 100 feet of the coastal bluff. In addition to numerous projects within this zone, we authored a document used by the City of Solana Beach titled "Coastal Bluff Vicinity Guidelines", to provide guidance to implement their model ordinance (Ordinance No. 195), which requires a water budget based on plant type and climate for all public and private development, in an effort to increase bluff stability and help preserve property.

We believe a balanced approach as presented in AB325 is in place to protect coastal bluffs while allowing water conserving landscapes to flourish and provide a sustainable benefit for the residents' enjoyment, and would urge that a Request for Reconsideration be granted.



CORNERSTONE STUDIOS

Very Truly Yours,  
CORNERSTONE STUDIOS, INC.

---

Don Wilson, ASLA  
RLA 1746

Cc: Richard and Melody Ferber



Certified DBE/MBE

Geotechnical Engineering

Geology

Hydrogeology

Coastal Engineering

Hydrology

Hydraulics

Environmental  
Engineering

Project No. 1862-EC01  
March 21, 1999

**RECEIVED**  
South Coast Region

MAR 22 1999

CALIFORNIA  
COASTAL COMMISSION

Mr. Steve Rynas  
**CALIFORNIA COASTAL COMMISSION**  
200 Oceangate, Suite 1000  
Long Beach, California 90802-4302

CLARIFICATION ITEMS  
REQUEST FOR RECONSIDERATION  
**1454 GALAXY DRIVE**  
(FERBER RESIDENCE)  
NEWPORT BEACH, CALIFORNIA

CCDP NO. 5-98-469

<b>EXHIBIT No. 4</b>
Application Number: <b>5-98-469-R</b>
<b>Group Delta Letter</b> <b>March 21, 1999</b>
 California Coastal Commission

Dear Mr. Rynas:

In response to your request of last week, we are providing additional background information and clarification of certain items to assist you in your review of the Request for Reconsideration of CCDP No. 5-98-469, precluding permanent irrigation of the subject bluff-top property located at 1454 Galaxy Drive in Newport Beach, California. As we discussed last week, this clarification letter is in response to your review of our correspondence dated March 4, 1999, along with a letter of the same date prepared by Cornerstone Studios, the landscape architect for this project.

With regard to AB325 - California's Model Efficient Landscape Ordinance, this is in essence a water conservation ordinance adopted by the State of California in 1990 and mandated to take effect in 1993. The ordinance is in fact a water conservation ordinance specifically tailored to minimize annual irrigation water at or below the minimum amount sustainable for typical plant species, with the deficit to be made up by rainfall during the course of the year. AB325 also sets maximum caps on landscape water usage for various types of land use, further intended to not only optimize landscape irrigation practices, but also to limit total irrigation consumption for a given

development. AB325 also acknowledges that landscapes are essential to the quality of life in California by providing areas for active and passive recreation and as an enhancement to the environment by cleaning air and water, preventing erosion, offering fire protection, and replacing ecosystems lost to development (Chapter 1145, Section 65591(d)). A copy of AB325 is included in Appendix A for your review.

The model water efficient landscape ordinance, published June 15, 1992, is more specific in that it mandates the use of automated irrigation systems (Chapter 2.7, Section 492.6Aiii). Although the ordinance does not specifically prohibit hand-watering, it is tacitly implied that hand-watering is unacceptable since in so doing, it is not possible to limit landscape water use to the ordinance specified maximum applied water allowance (MAWA). Moreover, a Landscape Irrigation Audit, mandated for all but single-family residences (Chapter 2.7, Section 492.9), cannot be conducted without an automated system. The ordinance also mandates that all new and rehabilitated landscaping projects within the State of California that require a permit [excluding cemeteries and other specific exempt sites] shall conform to the provisions of Section 492 and thus require automated irrigation systems with a specified MAWA (Chapter 2.7, Section 492.A.1). The revised Special Conditions and the Coastal Permit, as presently written, are at variance with existing state law on this issue.

Probably the most important feature of AB325, and the current state ordinance contained in Division 2, Title 23, California Code of Regulations, Chapter 2.7, Section 290 through 495 (hereinafter referred to as AB325), as it pertains to the Ferber residence and the subject of this reconsideration, is the fact that, even in 1976, the Ferber's site landscaping and landscape irrigation system was designed to be in compliance with AB325. What this in essence provides is a modest amount of landscaping on the Ferber property, much less than other residents on Galaxy Drive, along with a landscape irrigation system that provides, on an annual basis, less landscape irrigation than that necessary to sustain the plants, with the deficit being made up by rainfall. That is to say, the existing site landscaping, with only minimal irrigation during the winter months and no irrigation during the rainy season, has the ability to transpire water through the leaves from the soil via





evapotranspiration, thereby minimizing the amount of infiltration from rainfall to well below that which would occur were the site to have only minimal vegetation that would survive on the Ferber's property without irrigation.

The failure that occurred in December 1997 resulted from the record rainfalls in the days preceding the failure, aggravated by the ponding and other drainage deficiencies of their neighbor to the south, 1448 Galaxy Drive. As you are aware, the Ferbers are currently in litigation with their neighbors, a fact that clearly clouded their neighbor's testimony at the February 3, 1999, Coastal Commission hearing. More importantly, however, the southerly property (1448 Galaxy Drive - Dr. Penfield) has also sustained a series of bluff-top failures, necessitating emergency permits from the Coastal Commission (CCDP Nos. 5-98-497-G & 524-G) to mitigate their own bluff instability problems. Critical to this issue is the northeasterly dip of the geology in this area, which transfers percolating subterranean water from the Penfield property onto their adjacent neighbor to the north, and which is likely responsible for the failure on the Ferber property.

Of significance to the request for reconsideration, the landscaping on the Ferber's property did in fact have the ability to consume through evapotranspiration 150,000 gallons per year, while the actual amount of water applied to the landscape was likely on the order of 110,000 to 120,000 gallons per year, with the shortfall made up from rainfall. In reviewing the irrigation practices with the Ferber's landscape maintenance contractor, the irrigation was shut off after the first week in November 1997 in anticipation of the winter storm season, with rainfall commencing on November 12, with an ultimate season total of 35.08 inches, or approximately equivalent to in excess of a 1,000-year return period storm season. It should be noted that 5.5 inches of rain fell on December 6, 1997 (a 225-year storm), with an additional 1.6 inches of rain falling prior to the slope failure on December 16, with the soil's antecedent moisture highly elevated and fed by additional off-site subsurface flows, ultimately triggering the slope failure. Rainfall records for the Laguna Beach Treatment Plant, used for comparison with the State of California, Department of Water Resources, California Rainfall Summary Report dated June 1998, are contained in Appendix B. The combined uptake from plant transpiration on the Ferber property, along with evaporation, may have amounted to a total of 1.44 inches prior to the failure, however



was no match for the 9.77 inches of rainfall in November and early December, just prior to the failure in mid-December 1997. Add to that the additional subsurface flow originating from the adjacent property to the south, and the combination ultimately overloaded the slope and triggered the subject bluff failure.

The bluff failure on the Ferber property resulted from an extremely wet storm season, likely aggravated by the poor site drainage on the property to the south. The failure had nothing to do with the Ferber's landscape irrigation practices. Eliminating prudent on-site landscaping practices in compliance with AB325 would be detrimental to the long-term stability of the bluff, due to the increased infiltration by excess rainfall, resulting from reduced vegetated plant material.

With regard to the 128,000 gallon per year number reported in Cornerstone Studios' March 4, 1999, letter, Mr. Wilson has provided additional clarification/explanation on water usage at the Ferber property. Mr. Wilson's letter is contained in Appendix C.

On behalf of Mr. and Mrs. Ferber, we thank you for your assistance in this delicate situation, and again request your reconsideration of Special Provision No. 4(c). After you have had a chance to review the enclosed information, we would welcome the opportunity to answer any additional questions or provide additional information.

Very truly yours,

GROUP DELTA CONSULTANTS, INC.

  
Walter F. Crampton, Principal Engineer  
R.C.E. 23792, R.G.E. 245

WFC/jc  
Attachments

cc: Richard and Melody Ferber  
Mr. William H. Cantrell, Law Offices of Borton, Petrini & Conron



March 4, 1999

Mr. Walt Crampton  
Group Delta Consultants  
4455 Murphy Canyon Rd  
Suite 1000  
San Diego, CA 92123

RE: REQUEST FOR RECONSIDERATION OF  
SPECIAL CONDITION No. 4  
1454 GALAXY DRIVE  
(FERBER RESIDENCE)  
NEWPORT BEACH, CALIFORNIA

CCDP NO 5-98-469



Dear Mr. Crampton,

In response to your request for a further clarification of how we arrived at the landscape water use for the Ferber Residence I am submitting this letter. Determining irrigation for ornamental plants has moved far beyond sight or feel of the soil. There are very precise formulas and methods for determining frequency and duration of irrigation cycles to apply exact water needs to the plant, without overwatering.

It must be emphasized that the Ferber landscape was designed by a very well respected landscape architecture firm and installed by an experienced landscape contractor in 1977, after being approved by both the City of Newport Beach and the Coastal Commission fully fifteen years before a mandated statewide water conservation program, AB325, became law in 1992.

In other words, the Ferbers implemented a state-of-the-art irrigation design using state-of-the-art equipment, including two controllers, with programs for shrub and turf watering schedules, sprinklers with matched precipitation rate nozzles, and zoning of valves for sun/shade exposure. Having practiced landscape architecture for thirty years, I can attest that it was rare for a residence to have this level of design and irrigation equipment in 1977. As a result of their foresight and planning, the Ferber landscape fully functions 25% below the allowable water use for this site and has for the past 22 years-a remarkable example for residential landscape use anywhere.

A water budget has been compared to a checkbook, in that water is deposited into the soil just as money is deposited into a checking account. The deposits are made in one of two forms; rainfall or irrigation. Withdrawal or loss of water from the soil primarily through



evapotranspiration occurs on a daily basis at a rate contingent upon weather conditions. The depth of the root zone and the water holding capacity of the soil determine the size of the account, the allowable water depletion establishes the minimum account balance, and the infiltration rate dictates how quickly deposits can be made.

As I indicated in our letter dated March 4, 1999 the maximum applied water allowance (MAWA) for the property is 193,000 gallons per year. This was determined by taking the following steps:

- Find the reference evapotranspiration for the area (Eto). This is 43.2 inches.
- Calculate the landscaped area in square feet (LA). This is 9000 SF.
- Multiply (Eto) times (.8) times (LA) times (.62)
- The result is the number of gallons (or inches) of irrigation water that can be applied to the landscape in a year. This is the maximum applied water allowance.

The key to the model water efficient landscape ordinance, AB325, is estimating water use. This is done by calculating water use by hydrozone using plant factors and irrigation efficiency values. This method provides incentives to minimize water use through plant selection and the installation of efficient irrigation systems without mandating how to do it. A hydrozone is a portion of the landscaped area with plants having similar water needs that are served by a valve or set of valves. A calculation has to be made for each hydrozone to obtain the estimated total water use. The sum of estimated water use for each hydrozone will equal estimated total water use (EWU). This amount cannot exceed the total of MAWA. The formula to calculate this number is:  $EWU(\text{hydrozone}) = (Eto) \times (PF\text{-plant factor}) \times (HA\text{-hydrozone area}) \times 0.62 / (IE\text{-irrigation efficiency})$ . The Ferber landscape has two plant types or hydrozones: 1) cool season turf and, 2) mature trees, shrubs and groundcovers.

#### Hydrozone A

Area (HA)= 2925 SF

Plant type: Cool season turf  
High water use

Plant factor: 0.8

Irrigation efficiency: 0.65

#### Hydrozone B

Area (HA)= 6075 SF

Plant type: Trees, shrubs, groundcover  
Low water use

Plant factor: 0.25



CORNERSTONE STUDIOS

Irrigation efficiency: 0.65

MAWA= $43.2 \times 0.8 \times 9000 \times 0.62$ =193,000 gallons

Hydrozone A= $43.2 \times 0.8 \times 2925 \times 0.62/0.65$ = 83,235 gallons

Hydrozone B= $43.2 \times 0.25 \times 6075 \times 0.62/0.65$ = 66,700 gallons

Estimated total water use= \*149,935 gallons or 26.87 inches per year

MAWA= 193,000 gallons or 34.58 inches per year

\*Please note the difference between the 128,000 gallons previously stated and the 150,000 shown is a result of applying a lower Eto to the turf; the 0.8 is the correct one for tall fescue turf where previously the Eto for a warm season turf was used.

In summary, by implementing a water conserving landscape, the Ferbers have banked or saved approximately 1 million gallons of water during the past 22 years. In addition, they have employed a landscape maintenance company for the past 22 years to perform plant establishment tasks as well as monitor the irrigation system. A well planned, properly installed, and maintained landscape on coastal bluff-top properties reduces the potential for erosion and slope stability. AB325 provides us with the best water management tools (both human and technology) available to maintain plant vitality and prevent overwatering. This cannot be achieved by handwatering. We urge you to reconsider the recommendation for eliminating the existing automatic irrigation system. An automated system provides the most efficient use of water by matching water supply to plant needs. Let's use the best practices we have without resorting to penal actions that are counterproductive and will result in increased erosion of the bluff.

Very truly yours,  
CORNERSTONE STUDIOS, INC.

Don Wilson, ASLA  
RLA 1746

cc: Richard and Melody Ferber

**CALIFORNIA COASTAL COMMISSION**


South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-5071



Filed: January 6, 1999  
49th Day: February 5, 1999  
180th Day: July 5, 1999  
Staff: SFR-LB  
Staff Report: January 14, 1999  
Hearing Date: February 2-5, 1999  
Commission Action:

**STAFF REPORT: REGULAR CALENDAR****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.

<b>EXHIBIT No. 6</b>
Application Number: <b>5-98-469-R</b>
<b>Staff Report</b>
 California Coastal Commission

**SUMMARY OF STAFF RECOMMENDATION:**

Staff recommends approval of a modified project with nine special conditions. The major issue of this staff report is development on a bluff-top adjacent to an ecological reserve. The proposed development consists of slope stabilization and reconstruction of a backyard following a bluff failure. Staff recommends that the proposed retaining wall (for purposes of restoring the applicant's backyard) be deleted from the project as the retaining wall is not necessary for slope stabilization and would have an adverse impact on public views from the Upper Newport Bay Ecological Reserve. The grade beam wall provides the required slope stabilization. Though the proposed grade beam provides slope stabilization on the applicant's property it does not resolve the potential for future bluff failures. To develop a comprehensive solution the applicant and the Department of Fish and Game, the adjacent property owner, should initiate discussions to develop a comprehensive plan to fully repair and stabilize the slope damaged by this slide that took place on December 16, 1997.

Special conditions contained in this staff report concern: assumption of risk, conformance with the geological recommendations, elimination of the retaining wall, implementation of a landscaping plan, that the grade beam wall match the color and texture of the surrounding terrain, right of entry authorization, imposition of best management practices, that the applicant contact the Department of Fish and Game to develop a comprehensive slope repair and stabilization, and future development. The applicant has indicated general agreement with the special conditions, but may request revisions of the "prior to issuance" requirement at the public hearing.

**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**

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.

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.

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.

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).

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 (Exhibit 10).

## **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"* (Exhibit 12).

### **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."*

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. 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. 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 allowed from the eastern property line landward to the daylight line shown in the grading plan, 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. Through this special condition, one of the contributing factors to bluff failure, the introduction of ground water, will be minimized.

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. 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 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 prior to issuance of this permit that the applicant 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.



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 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, more visually obtrusive, retaining wall 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 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).

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, that the applicant initiate discussions with the California Department of Fish and Game to develop 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.

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 Ecological Reserve is consistent with Section 30240 of the Coastal Act, the Commission finds that the applicant shall prepare 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 slope, no irrigation shall be allowed from the eastern property line landward to the daylight line shown in the grading plan, 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. Through this special condition 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 Commissions 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.

The 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 to match the existing terrain. Therefore, as conditioned, to submit a landscaping plan to screen the wall and to colorize 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 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.

### **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. 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, that the applicant and the Department of Fish and Game initiate planning for a comprehensive solution, 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

GROUP

## VICINITY MAP

EXHIBIT No. 1

Application Number:

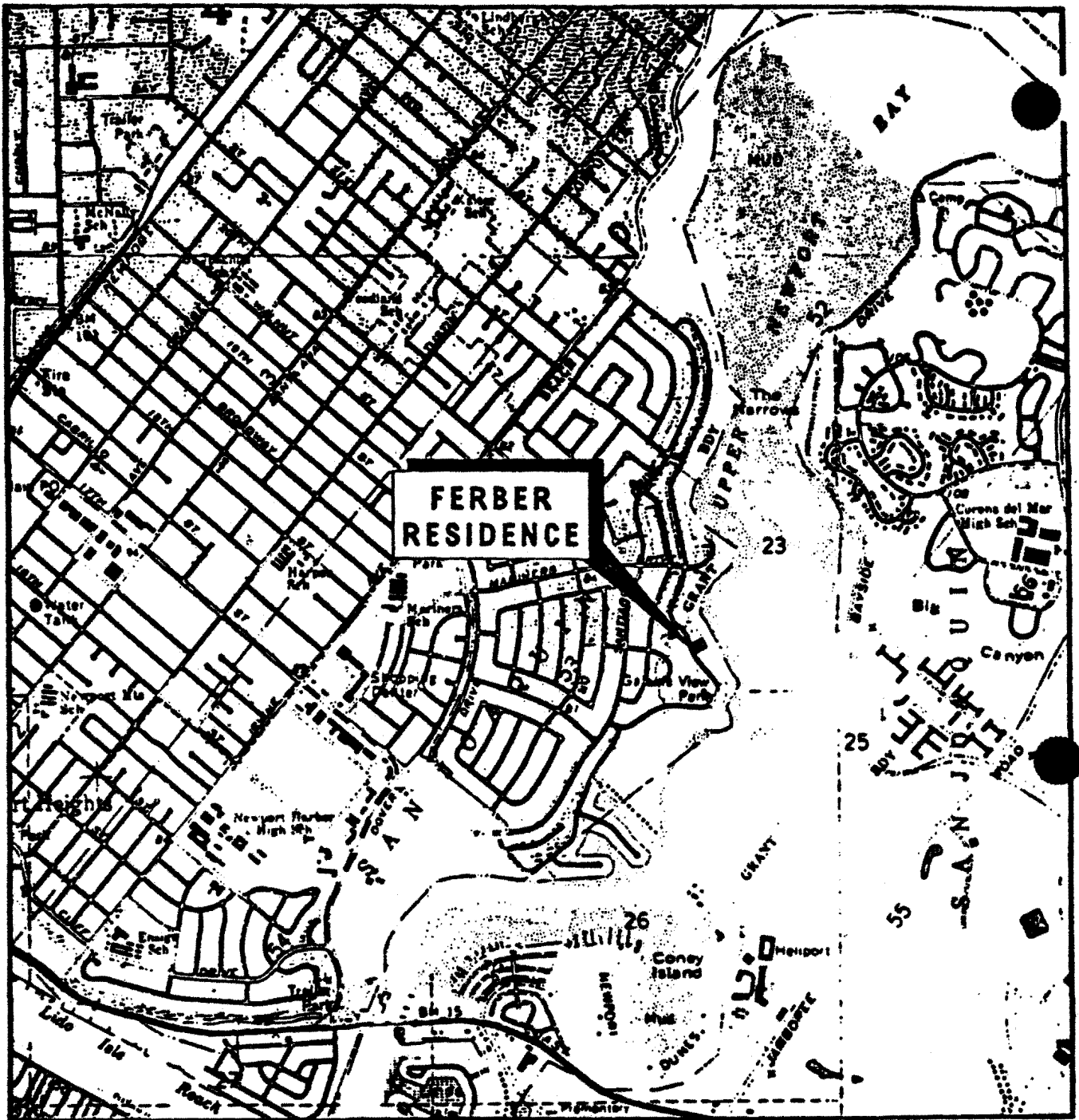
5-98-469

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



117-67

117-98

ASSESSOR'S MAP  
BOOK 117 PAGE 67  
COUNTY OF ORANGE

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

TR. NO. 4224 M. M. 157-170 14 INC.  
P. M. 18 - 27

THIS MAP WAS PREPARED FOR ORANGE COUNTY  
AND IS FOR OFFICIAL USE ONLY. THE ASSESSOR  
MAKES NO WARRANTY AS TO ITS ACCURACY  
AND ASSUMES NO LIABILITY FOR ANY LOSS  
NOT TO BE REPRODUCED. ALL RIGHTS RESERVED.  
©COPYRIGHT ORANGE COUNTY ASSESSOR

THIS MAP WAS PREPARED FOR ORANGE COUNTY  
AND IS FOR OFFICIAL USE ONLY. THE ASSESSOR  
MAKES NO WARRANTY AS TO ITS ACCURACY  
AND ASSUMES NO LIABILITY FOR ANY LOSS  
NOT TO BE REPRODUCED. ALL RIGHTS RESERVED.  
©COPYRIGHT ORANGE COUNTY ASSESSOR

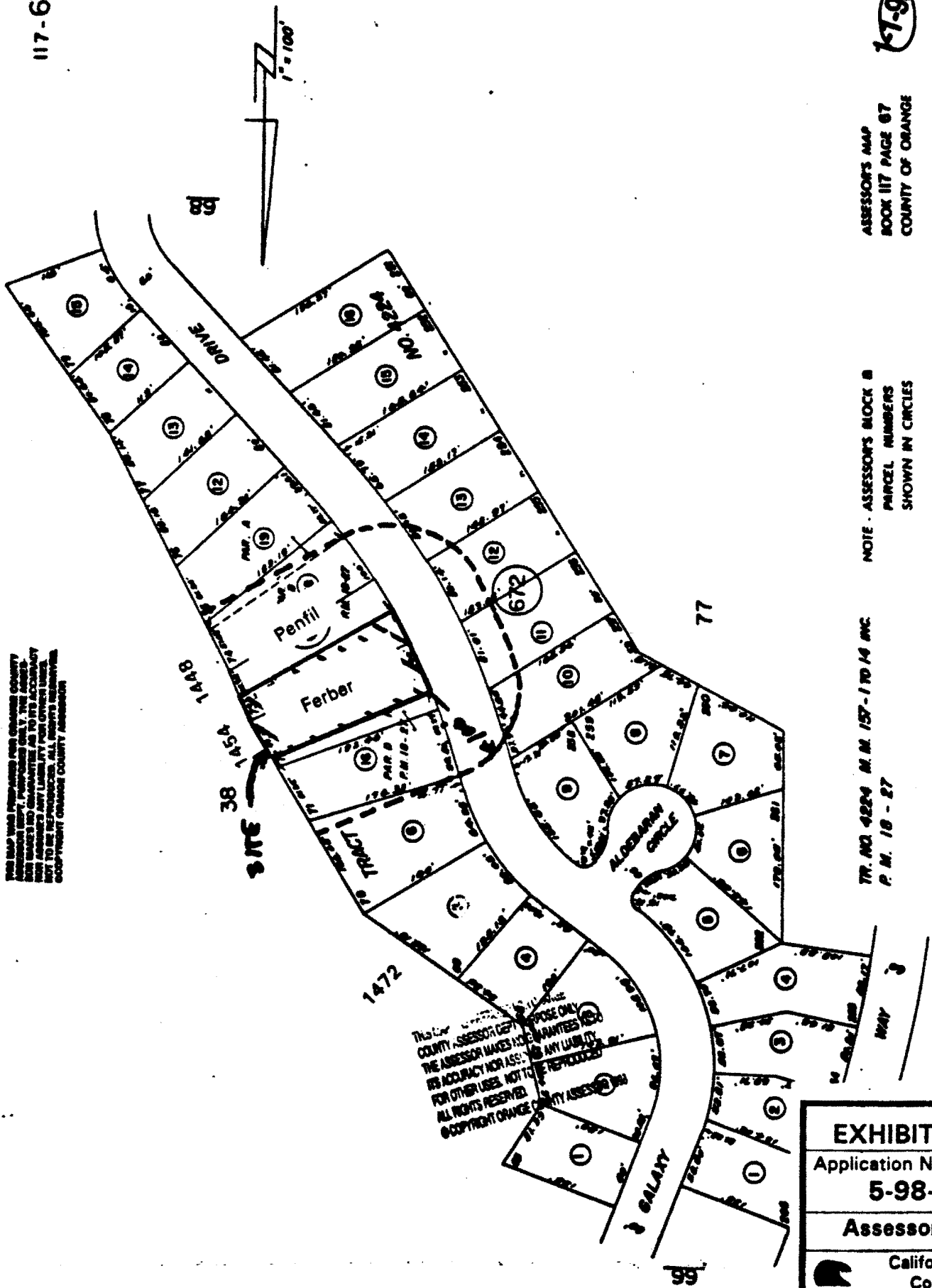


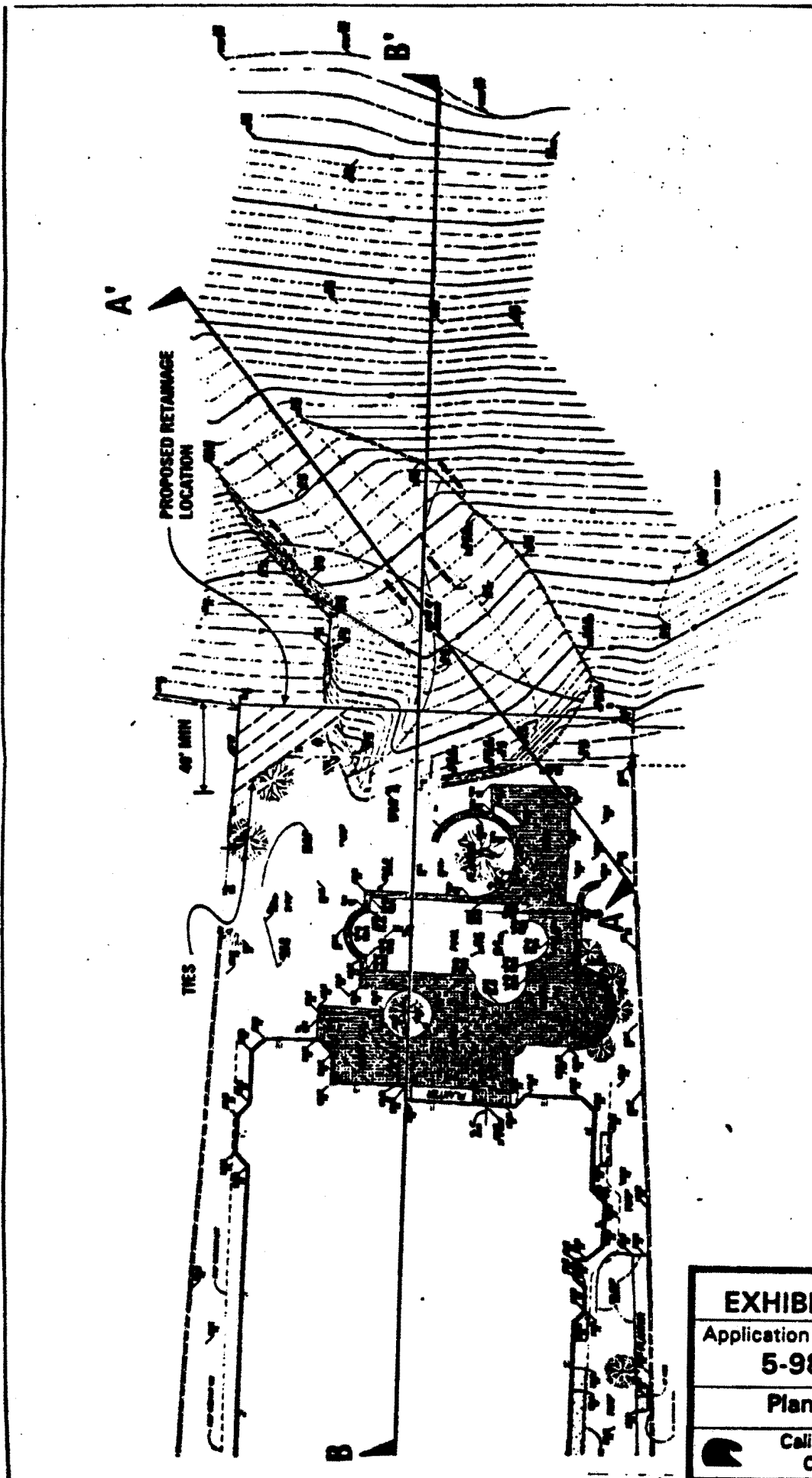
EXHIBIT No. 3

Application Number:

5-98-469

Assessor's Map

California Coastal  
Commission



**PLAN VIEW SHOWING RETAINAGE**

FENDER RESIDENCE  
1454 Galaxy Drive  
Newport Beach, California

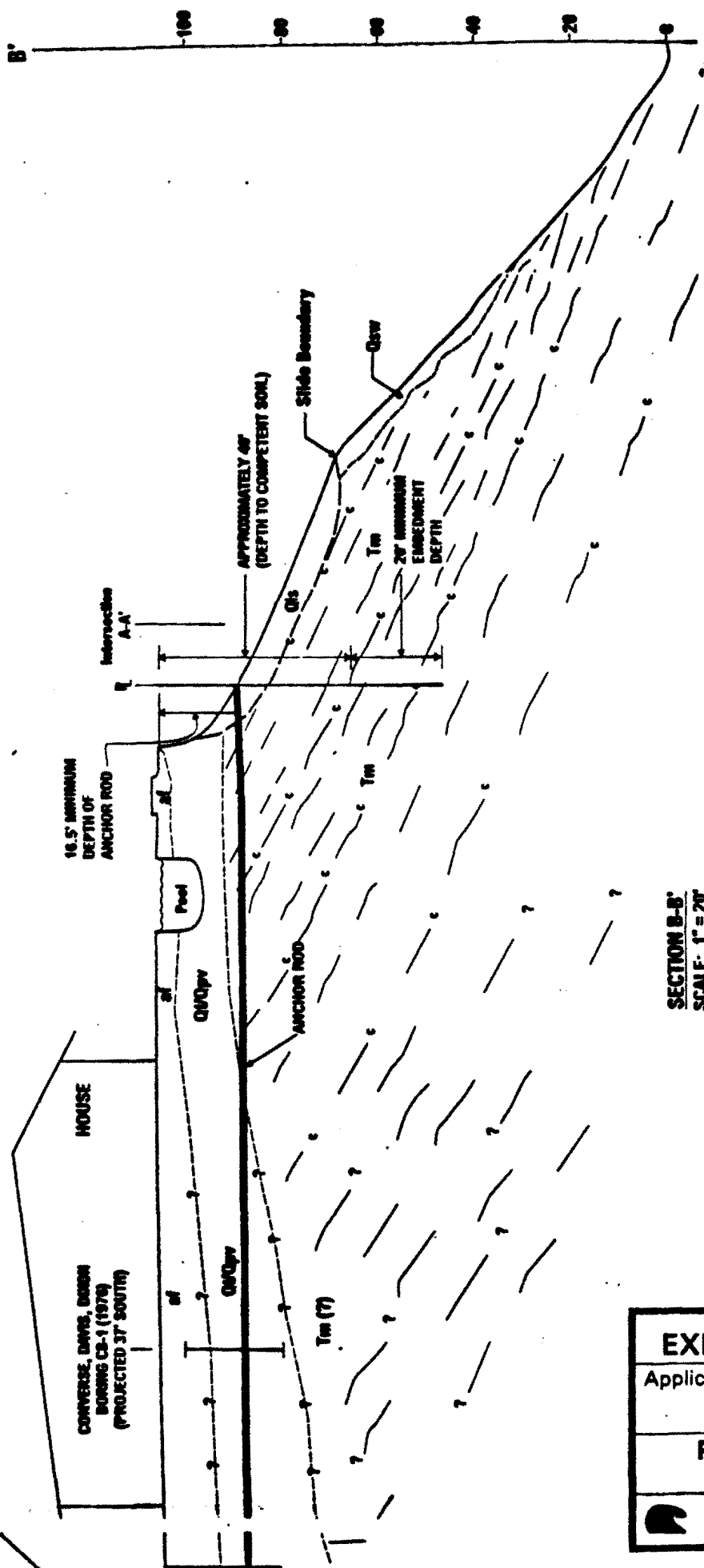
Scale: 1" = 40'  
Date: 5-14-98  
Project No: 97-3378-01  
Sheet No: 2

Converse Consultants  
Geotechnical Engineering  
and Applied Sciences

<b>EXHIBIT No. 4</b>	
Application Number: <b>5-98-469</b>	
<b>Plan View</b>	
	California Coastal Commission

N65E  
(VIEW NORTHWEST)

LOCATION OF DEADMAN



SECTION B-B'  
SCALE: 1" = 20'  
(H = V)

PROFILE SHOWING RETAINAGE AND DEADMAN			
Project No.	1" = 20'	Sheet No.	3
FERBER RESIDENCE	1454 Galaxy Drive	Scale	1" = 20'
Newport Beach, California		Author	1976
Converse Consultants	Geotechnical Engineering and Applied Sciences	Checked	1976

EXHIBIT No. 5

Application Number:

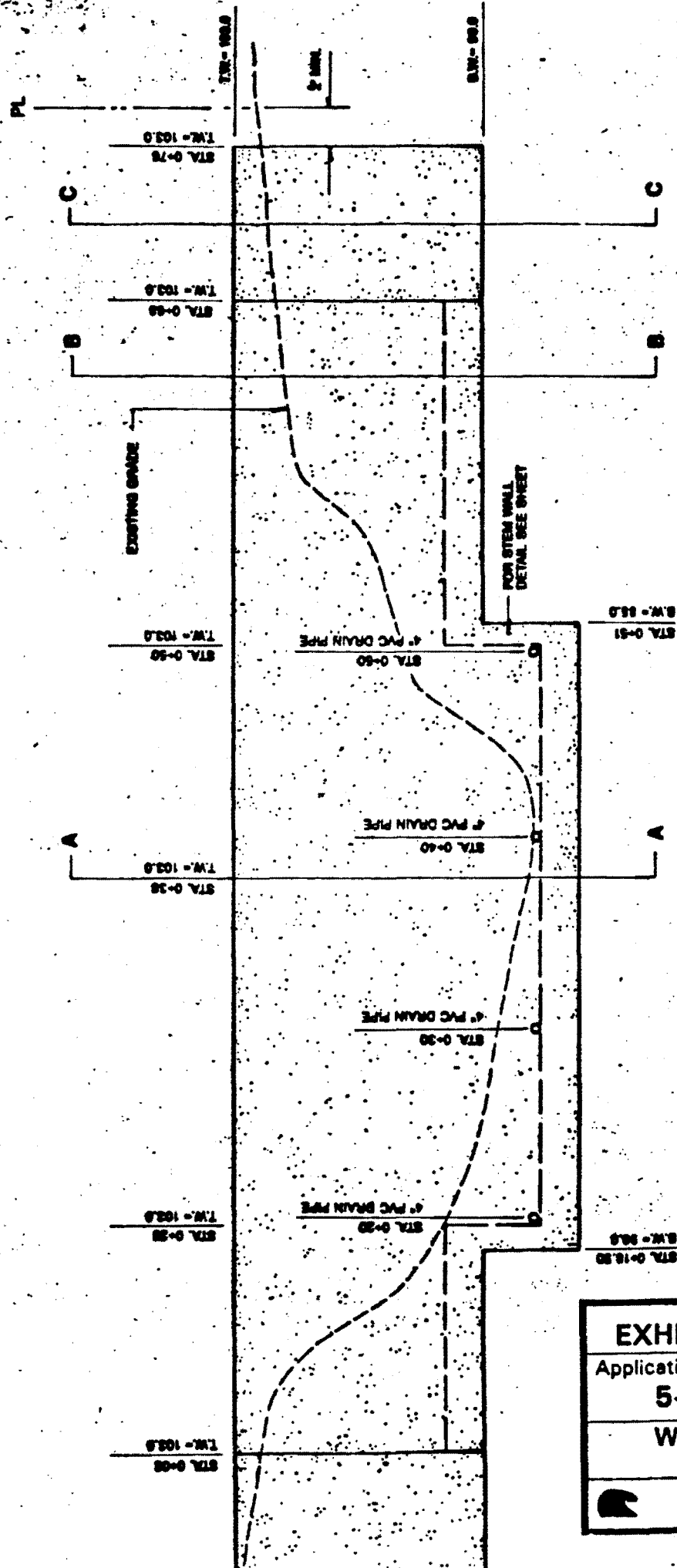
5-98-469

Profile View



California Coastal Commission





# RETAINING WALL PROFILE

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

**EXHIBIT No. 7**

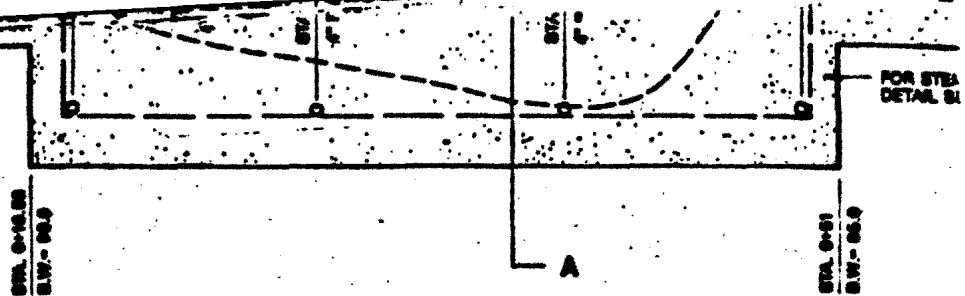
Application Number:

**5-98-469**

**Wall Profile**

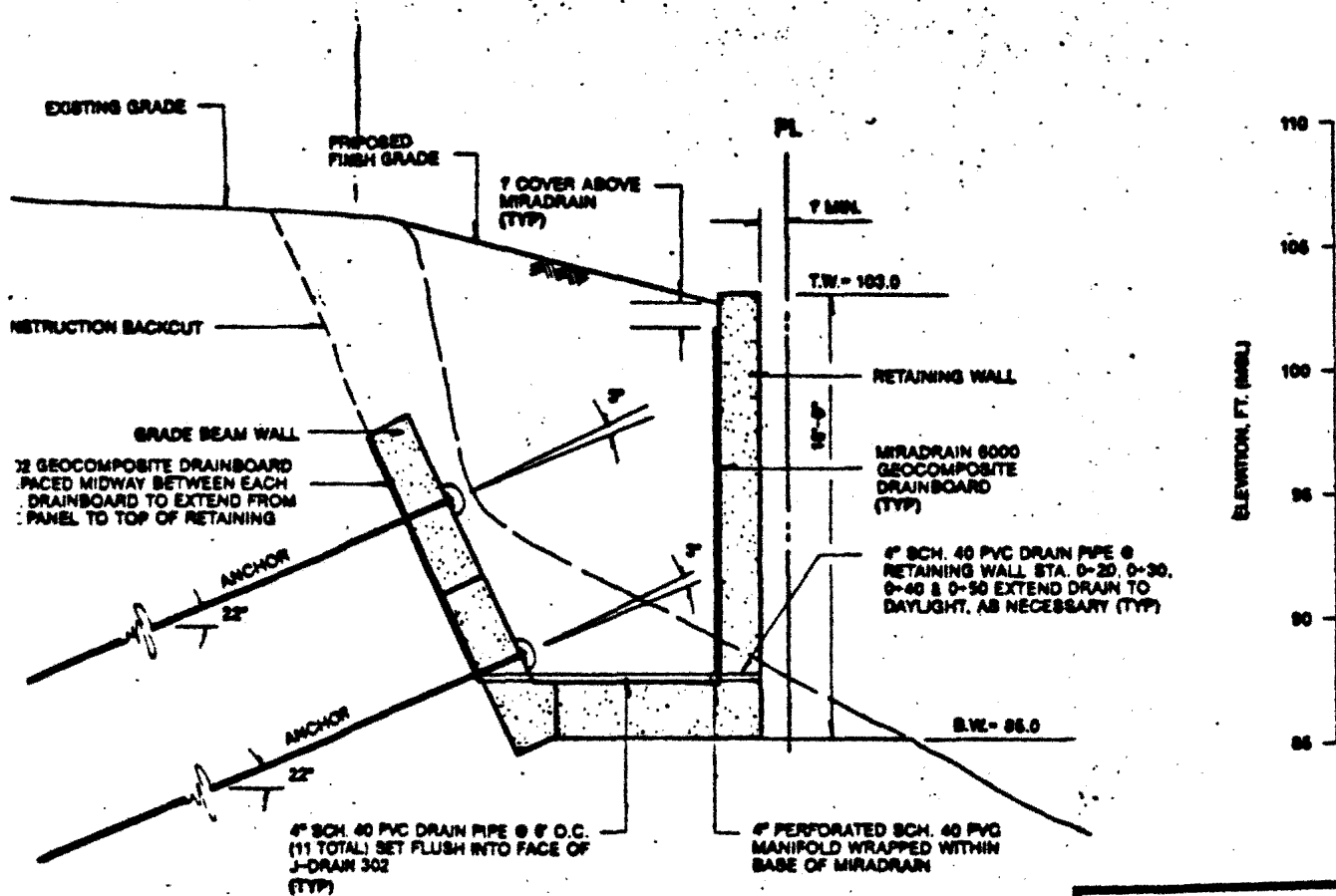


California Coastal  
Commission



## 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:

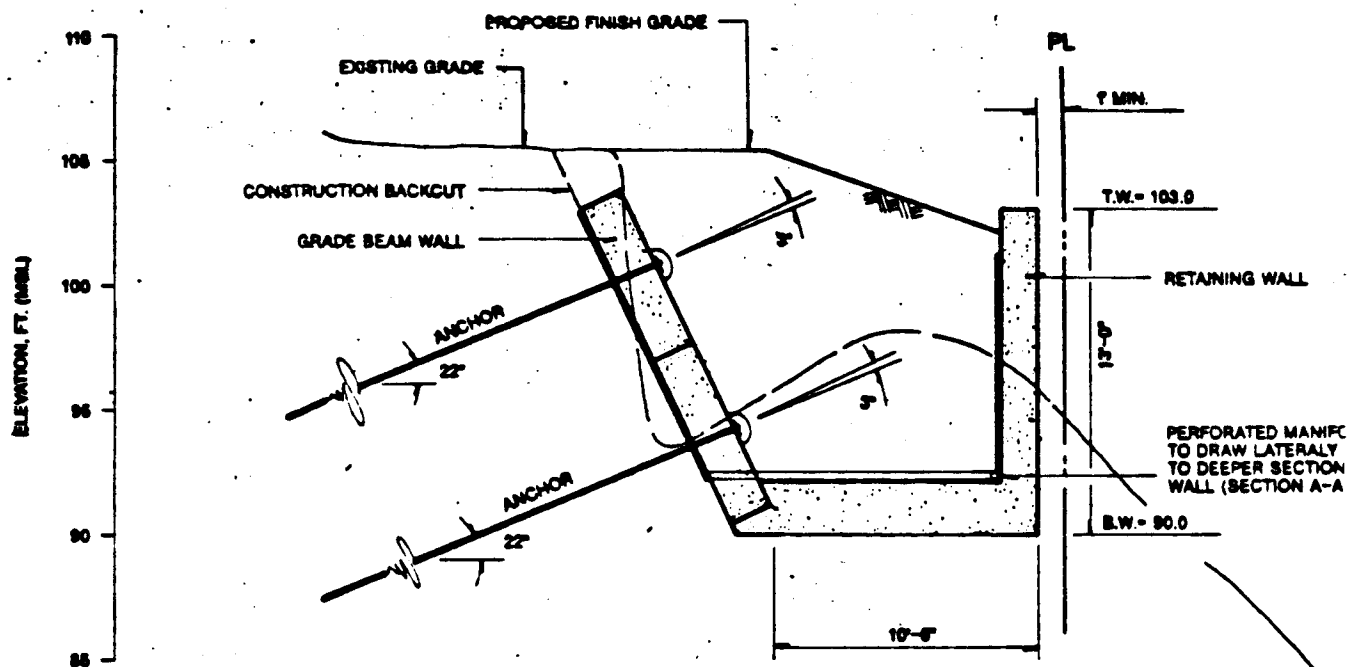
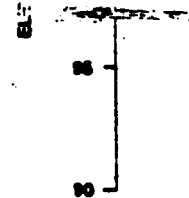
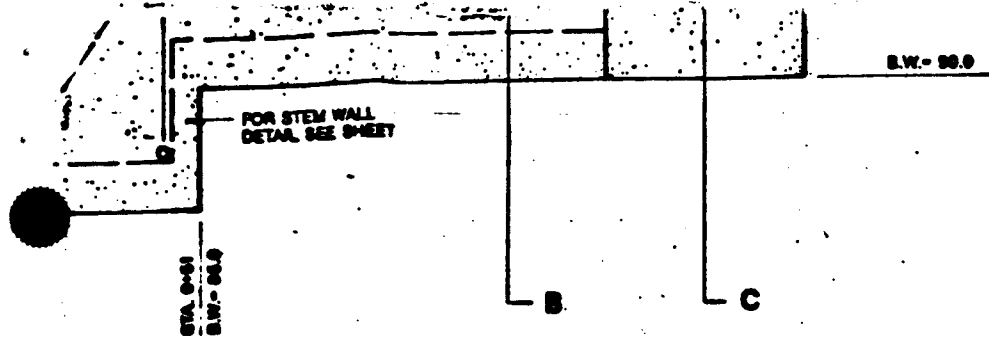
**5-98-469**

**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

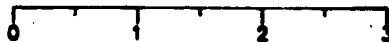
MURPHY CANYON ROAD, SUITE 100  
 SAN DIEGO, CALIFORNIA 92123  
 (619) 573-1777

PLAN PREPARED UNDER THE SUPERVISION OF:

MATTHEW W. ECKERT  
 NAME

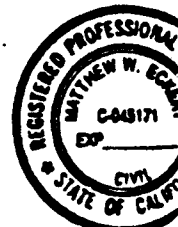
11/2/98  
 DATE

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



**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
200 Oceanside, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-8071

<b>EXHIBIT No. 10</b>
Application Number: <b>5-98-469</b>
<b>Commission Letter</b>
 California Coastal Commission

November 24, 1998

Walter F. Crampton  
Delta Consultants Group  
3347 Michelson Drive, Suite 390  
Irvine, CA 92123-4379

**Subject:** Emergency Permit Application 5-98-469-G; slope repair at 1454 Galaxy Drive, City of Newport Beach.

Dear Mr. Crampton:

On November 20, 1998 Commission staff received your request for an emergency permit to initiate slope repair work at 1454 Galaxy Drive within the City of Newport Beach. The proposed work consists of grading and a retaining wall which is approximately 13 feet high by 75 feet long with an anchor system. The proposed work will be on the applicant's property but within several feet of the Upper Newport Bay Ecological Reserve managed by the California Department of Fish and Game. Commission staff has reviewed the request for an Emergency Permit and determined that an emergency permit can not be issued at this time for the reasons reviewed below.

Section 13009 of the California Code of Regulations defines an emergency, with respect to Coastal Act emergency permits, as follows:

*...a sudden unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, property or essential public services.*

Further, Section 13142 of the California Code of Regulations, as one of the criteria for issuing an Emergency Permit, states:

*An emergency exists and requires action more quickly than permitted by the procedures for administrative permits, or for ordinary permits and the development can and will be completed within 30 days unless otherwise specified by the terms of the permit.*

Information submitted with your application demonstrates that the slope failure occurred "during this past Winter's El Nino storm season". Ample time has elapsed since the slope failure occurred to have initiated the process for obtaining an



- ◆ Please submit copies of any geology reports that may have been produced.
- ◆ Provide two sets of detailed project plans for the minimal work necessary to stabilize the situation and to identify the structures at risk.
- ◆ Please provide documentation of ownership for the site (such as a copy of a current tax bill) and a letter from the landowner authorizing Delta Consultants to act as an agent on behalf of the applicant. Further, any work which is done outside of the applicant's property must have the approval of the affected landowner. The possibility exists that some ancillary construction impacts (such as equipment access and grading) could occur to the Ecological Reserve. Please confirm in writing if any work will be done outside of the property lines for 1454 Galaxy Drive.

Please do not limit your submittal to the above mentioned items. You may also submit any additional information which you feel may help Commission staff gain a clear understanding of the scope of your project. Upon receipt of the requested information we will proceed with determining if an emergency permit is warranted and determining the completeness of your application. Enclosed is an application package for a regular coastal development permit which must be submitted. We look forward to working with you. Should you have any questions, you may contact me at 565-590-5071.

Sincerely,



Stephen Rynas, AICP  
Orange County Area Supervisor

Cc: Jay Garcia, City of Newport Beach  
Jay Elbetter, City of Newport Beach  
\\HAMMERHEAD\srynas\Staffreports\Incomplete\198469G.doc



Certified DBE/MBE

Geotechnical Engineering

Surveying

Hydrology

Coastal Engineering

Transportation

Hydraulics

Environmental  
Engineering

Project No. 1862-EC01  
December 17, 1998

Mr. Steve Rynas  
CALIFORNIA COASTAL COMMISSION  
200 Oceangate, Suite 1000  
Long Beach, California 90802-4302

RESPONSE TO REVIEW COMMENTS  
EMERGENCY PERMIT APPLICATION  
FOR BLUFF STABILIZATION  
1454 GALAXY DRIVE  
(FERBER RESIDENCE)  
NEWPORT BEACH, CALIFORNIA

CCDP NO. 5-98-469-G

**RECEIVED**  
South Coast Region

JAN 14 1999

CALIFORNIA  
COASTAL COMMISSION

**EXHIBIT No. 11**

Application Number:

**5-98-469**

Group Delta Letter



California Coastal  
Commission

Dear Mr. Rynas:

In response to your letter of November 24, 1998, we are providing additional background information to assist you in your review of the above-referenced emergency permit application. The responses to questions are provided in the order in which they were asked in your November 24 letter.

As indicated in our Emergency Permit application request for the subject project, dated November 19, 1998, although the subject bluff-top failure occurred during last winter's El Niño storms, the City deems the existing condition to be extremely unsafe and has filed two Code Violation Notices demanding repairs be completed by the 1998-99 winter storm season. Please recognize that several neighbors have also sustained slope failures and the neighbor to the south has sued the Ferber's for loss of subadjacent

lateral support and diminution of property values. As an aside, this property (1448 Galaxy Drive - Dr. Penfil) has also sustained a series of bluff-top failures with ongoing visible slope deformation sufficient to cause the City of Newport Beach to red-tag the residence as unsafe for human occupancy for fear of additional bluff-top failures undermining and damaging the structure (Photo 1).

The City of Newport Beach does, in fact, consider the subject slope failure to be an emergency, consisting of a geologic hazard, which affects the safety of the structure on the subject property. The City correctly recognizes the emergency to be of a geologic nature, with the threat associated with the upcoming winter storm season, which, if not mitigated, can and will (given sufficient rainfall) trigger additional slope failures.

The CEQA definition of emergency (Section 15359 of the California Environmental Quality Act) "means a sudden, unexpected occurrence, involving a clear and imminent danger demanding immediate action to prevent or mitigate loss of, or damage to life, health, property, or essential public services. Emergency includes such occurrences as fire, flood, earthquake, or other soil or geologic movements . . . (emphases added)." CEQA goes on to acknowledge that certain emergency projects are exempt from the requirements of CEQA, including "specific actions necessary to prevent or mitigate an emergency" (Section 15269 of CEQA).

Undeniably, the sudden and unexpected occurrence occurred during last winter's El Niño storm season; however, the real emergency at this point is the threat of additional soil or geologic movement, triggered by additional rainfall this winter, which requires action more quickly than permitted by the procedures for ordinary permits processed through the California Coastal Commission.

The project has been approved by the City of Newport Beach in recognition of this emergency, and they have threatened the Ferbers with legal action.



*An evaluation from a registered geotechnical engineer that a structure, such as a home (not hardscape) is in eminent [sic] danger and that corrective work requires action more quickly than permitted by the procedures for regular Coastal Development permits.*

Group Delta Consultants is a geotechnical engineering firm and the undersigned is a registered geotechnical engineer in the State of California. To help illustrate the extent and magnitude of the problem, we have prepared a Site Plan (Figure 1) showing both the subject residence and the adjacent residences to both the north and south. Also shown on the Site Plan is the extent and geometry of this past winter's slope failure, with the basal slip surface shown on the plans being the adverse clay seam on which the failure occurred. As indicated on the Site Plan, bedding dips to the northeast (N28E) at approximately 30 to 34 degrees, making the slope highly unstable. These highly dipping beds (30 to 34 degrees) are extremely unstable and highly sensitive to any increase in subsurface moisture.

As indicated on Figures 1 and 2, and as reported in the landslide investigation report by Converse Consultants dated May 14, 1998, the dip of the bedding compared to the slope geometry of the bluff results in an actual out-of-slope dip of 23 degrees, or somewhat flatter than the actual bedding, with the geometry of the slope providing a certain amount of natural buttressing. However, with the past year's failure, the cross slope bedding is no longer buttressed by the adjacent coastal bluff, and progressive failures are likely, given any increase in subsurface moisture.

GDC provided a geotechnical report dated November 2, 1998, in support of our proposed slope repair project. We have conducted slope stability analyses based primarily on the Converse data in developing the lateral restraint necessary to stabilize the upper bluff, along with the general design requirements for both the tied-back anchors and the concrete reaction necessary for restraining the bluff. Figure 3 provides the typical hypothetical failure geometry used in our analyses for sizing the tied-back bluff restraint system, with the following significant observations:

- 1) Face of bluff is comprised of unstable blocks (computed factor of safety near 1) of formation material that are controlled by adversely dipping clay beds and seams.



- 2) Stability of blocks are influenced by infiltration into the vertical joints generally located along the interface between the Monterey Formation and the Marine Terrace.
- 3) Failures of blocks are progressive in nature.
- 4) Largest potential failure block is defined by toe-of-slope.
- 5) Tieback loads based on stability of the largest block.

In summary, 1454 Galaxy Drive is at risk and, assuming any level of rainfall during this winter, is in imminent danger, requiring corrective work more quickly than can be permitted by the procedures for regular Coastal Development Permits. This is likely the fundamental reason why the City of Newport Beach is demanding that repairs be completed prior to this winter's storm season.

*The registered geotechnical engineer must also provide an alternatives analysis to establish the minimal amount of work necessary to stabilize this situation.*

As indicated in the previous response, the fundamental threat is from rainfall during this upcoming winter's storm season, increasing soil moisture and hence reducing soil strengths and increasing driving forces (due both to hydrostatic forces and increased soil weight).

Although arguably, the temporary erosion control measures suggested by the City (October 28, 1998, letter) may preclude a small amount of rainfall infiltration on the site, it should be noted that the Ferber's property, being one of the most recently developed properties, is one of the few lots that actually drains to the street, with no over-bluff drainage, as is typical throughout the development, including the adjacent property to the south. Moreover, the subject residence has considerable flatwork with ample drainage to the street, further discouraging infiltration of surface waters into the subsurface. It should also be noted that the Ferbers have covered all exposed soil within their backyard and extending downslope a short distance onto the Fish and Game property to essentially eliminate this source of water infiltration.

Conversely, the residence to the south (1448 Galaxy Drive) does, in fact, drain over the slope and almost by design encourages infiltration of surface waters into the near-surface, creating significant risk of additional failures on the Ferber property, ultimately propagating into the Penfil property. Photo 2 is a photograph looking south standing at the northeast corner of the Penfil property, where progressive slope failures have caused the edge of the slope to pull away, with a series of failures extending down the east-facing bluff. Photo 3 is taken near the southeasterly edge of the Penfil property, showing the reverse slope near the edge of the rear yard to a topographic low adjacent the house, where water drains into a series of area drains that are in turn piped to the east, discharging over the face of the bluff. Also indicated on Photo 3 is the northerly rear yard perimeter concrete walkway, which is separated approximately 3½ inches due to progressive slope deformation/instability, which may have separated joints in the easterly-draining discharge pipes, further exacerbating subsurface infiltration. It should be noted that roof drainage also discharges into the rear yard and over the face of the bluff, again through discharge pipes that have likely separated, emitting yet additional subsurface water.

Photo 4 shows one of the discharge pipes on the Penfil property exiting onto the slope face near the southeast corner of the property, where rear yard improvements have appeared to encroach onto the adjacent Fish and Game property.

Photo 5, again taken near the northeast corner of the Penfil property, this time looking to the north, shows the failure on the Ferber property in close proximity to the side yard fence separating the two properties.

There is no convenient way, much less legal way, for the Ferbers to correct the serious drainage deficiencies of their neighbor to the south, and the presence of the failure on the Ferber property has now predisposed the property additional failures. Moreover, it could be argued that the drainage deficiencies on the Penfil property actually caused the Ferber failure; however, at this juncture, there are no temporary short-term solutions to mitigate the significant geologic hazard that exists, which will fail this winter, damaging the Penfil residence, given any reasonable level of rainfall.

Although Coastal Staff have noted that the City's letters do not explicitly mandate that the applicant construct a full slope repair, including the proposed retaining wall, to mitigate the problem, the fundamental reality is that the tieback anchors and interior grade beam wall is necessary at this time to preclude any significant additional failures that can occur this winter. In our discussions with City Staff, they do in fact desire this level of effort to stabilize the coastal bluff prior to this winter's storms. Arguably, the reconstruction/reclamation of the Ferber rear yard slope can be deferred at this time, as this additional remedial work does not improve the overall stability of the coastal bluff.

*Please submit copies of any geologic reports that may have been produced.*

GDC's geotechnical report dated November 2, 1998, and Converse Consultants' report of landslide investigation dated May 14, 1998, have been appended to the Coastal Development Permit application, submitted concurrently with this Emergency Permit request.

*Provide two sets of detailed project plans for the minimal work necessary to stabilize this situation and to identify the structures at risk.*

As indicated on Figure 1, the residence at 1448 Galaxy Drive (Penfil) is currently at significant risk, with the Ferber residence and adjacent residence and to the north exposed to a very real, but lower, level of risk due to progressive slope failures. Two sets of project plans, approved by the City of Newport Beach, have been submitted as part of this application package. Arguably, the minimal work necessary for stabilization of this geologic hazard would include the construction of the tiebacks and the grade beam wall (the individual concrete anchor panels shown on the Phase I work on Sheet 2 of the construction drawings). The Phase II build out and rear yard reclamation can be deferred at this time, if that is the desire of Coastal Staff.

On behalf of Mr. and Mrs. Ferber, their neighbors, and the City of Newport Beach, we thank you for your assistance in this delicate situation, and again request your consideration in approving an emergency permit to initiate repairs to the east-facing bluff, enabling




Mr. Steve Rynas  
CALIFORNIA COASTAL COMMISSION  
Project No. 1862-EC01

December 17, 1998  
Page 7

compliance with the City's rather specific requests and the protection of both the Ferber's and their neighbor's properties. If you have any questions or require additional information, please give us a call.

Very truly yours,

GROUP DELTA CONSULTANTS, INC.

  
Walter F. Crampton, Principal Engineer  
R.C.E. 23792, R.G.E. 245

WFC/jc

Enclosures:      Photos 1 through 5  
                         Figure 1 - Site Plan  
                         Figure 2 - Geologic Section  
                         Figure 3 - Typical Hypothetical Failure Geometry

cc:    Richard & Melody Ferber  
         Mr. Jay Elbettar, City of Newport Beach  
         Mr. Jay Garcia, City of Newport Beach





# DANGER

## BUILDING UNSAFE DO NOT ENTER OR OCCUPY

**WARNING!** THIS STRUCTURE IS DECLARED UNSAFE FOR  
HUMAN OCCUPANCY OR USE BY THE CITY OF  
NEWPORT BEACH BUILDING DEPARTMENT.  
ENTRY MAY RESULT IN DEATH OR INJURY.

ADDRESS: 1448 GALAXY

DATE: 10-5-98

POSTED BY: City of Newport Beach

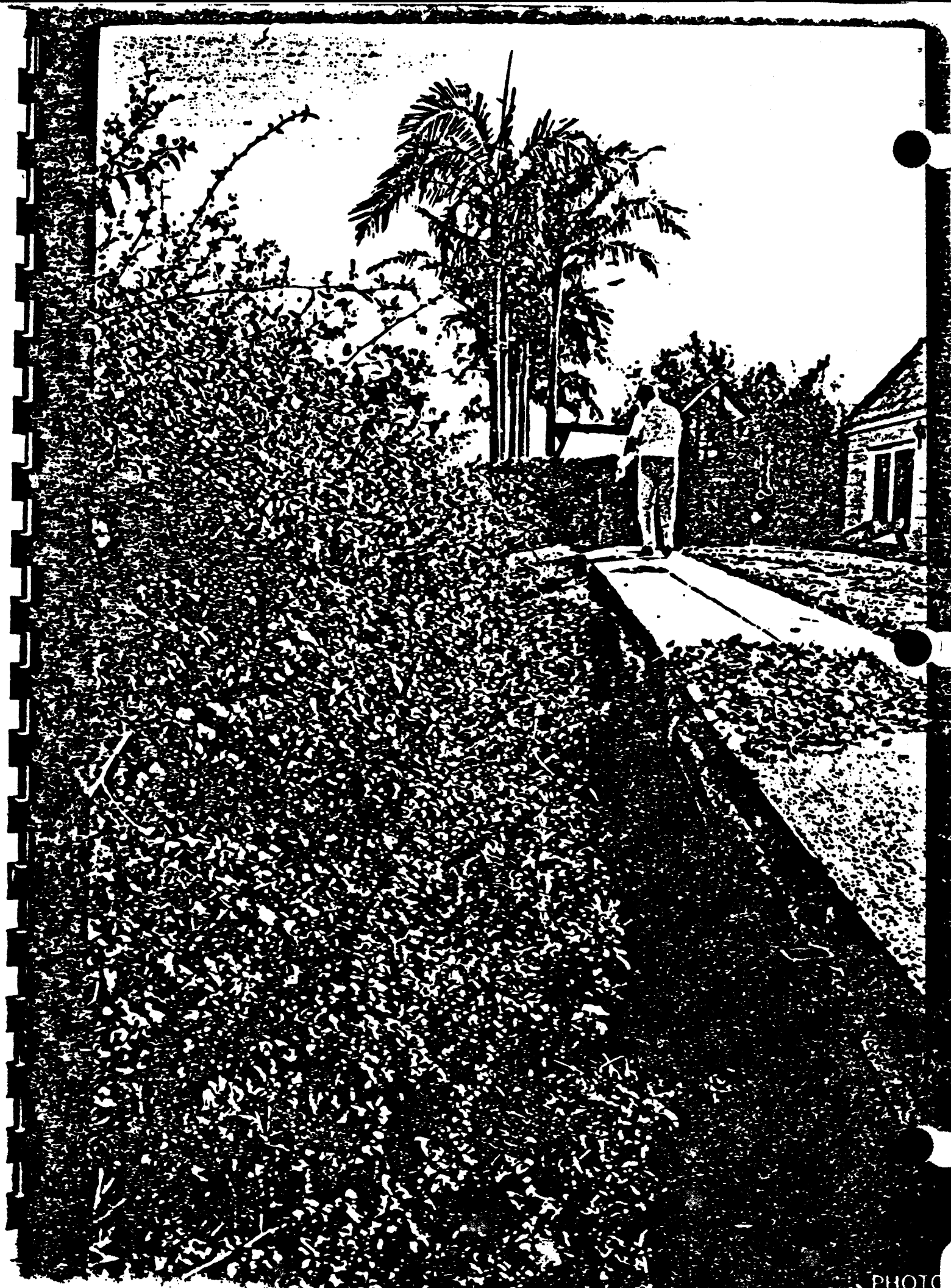
TIME: 10 AM

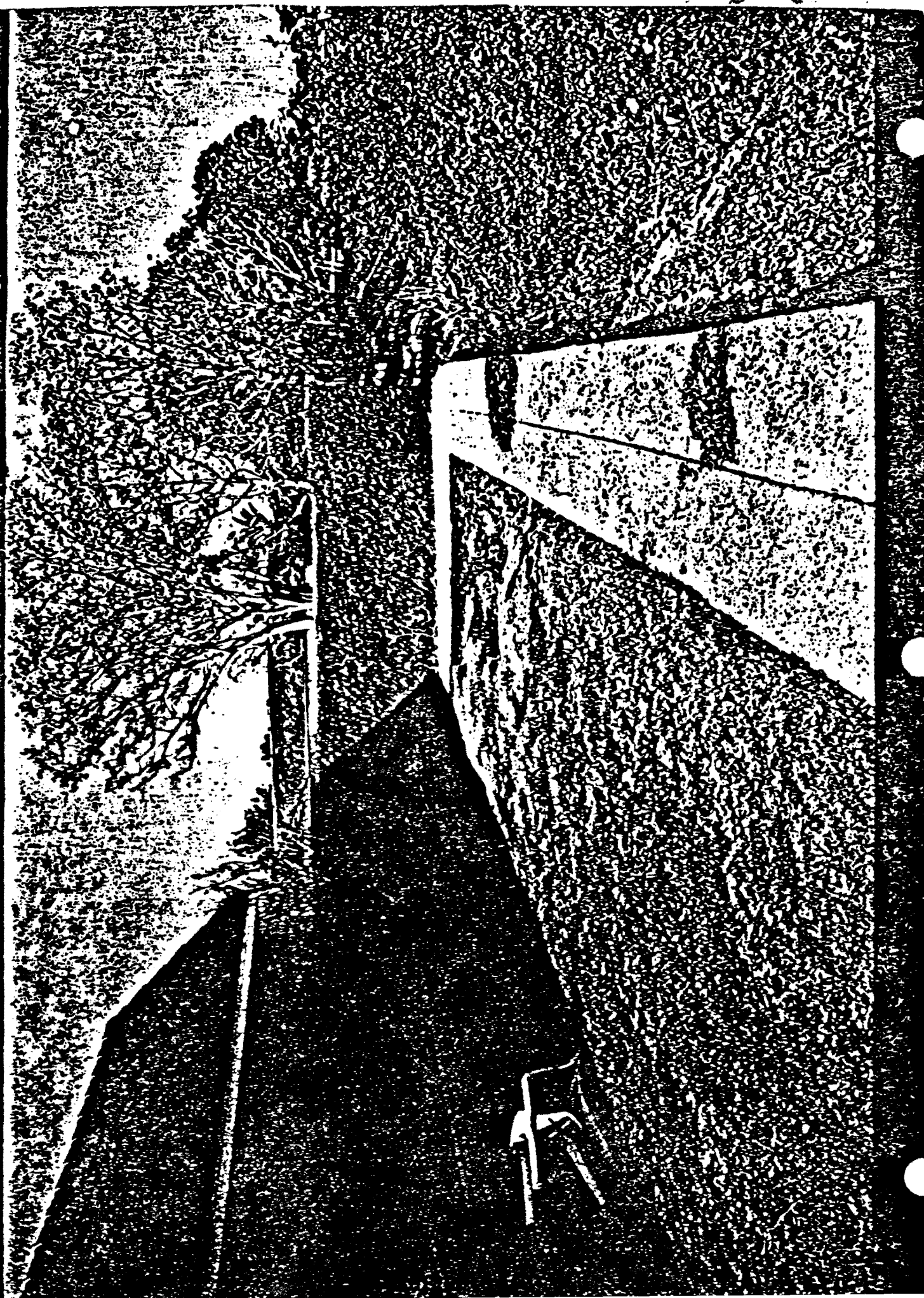
REASON: Building Inspector's Office Declared  
TYPE OF PUBLIC MESSAGE: Slope Failure, May Cause  
Damage to Structure

AUTHORIZED BY: SEC. 800 OF THE UNIFORM BUILDING CODE FOR

INFORMATION CALL: 644-3267

DO NOT REMOVE UNLESS AUTHORIZED BY THE BUILDING OFFICIAL



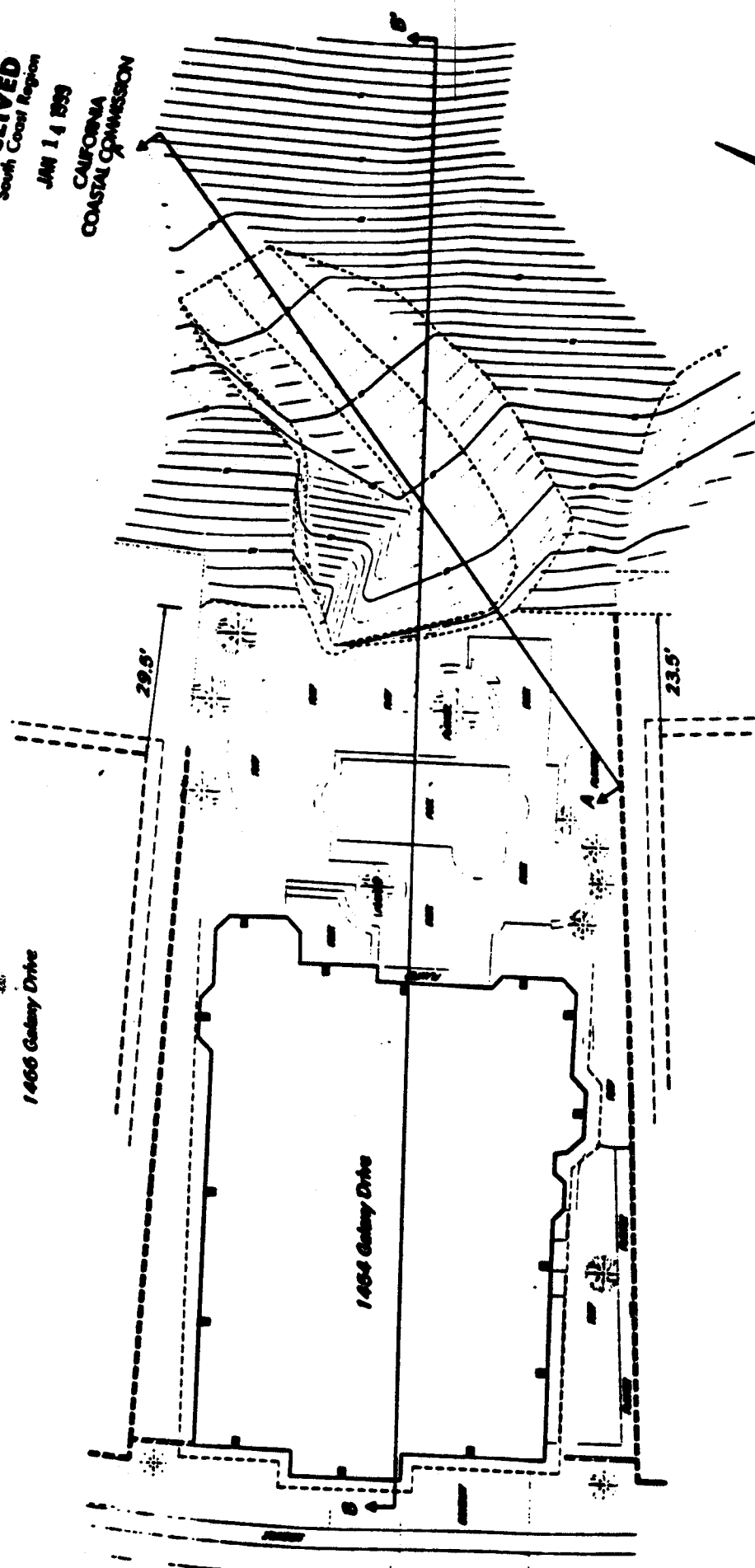








**RECEIVED**  
 South Coast Region  
 JAN 14 1959  
 CALIFORNIA  
 COASTAL COMMISSION



**Site Plan**  
 Scale: 1"=20'

Project Name: Galaxy  
 Slope Report

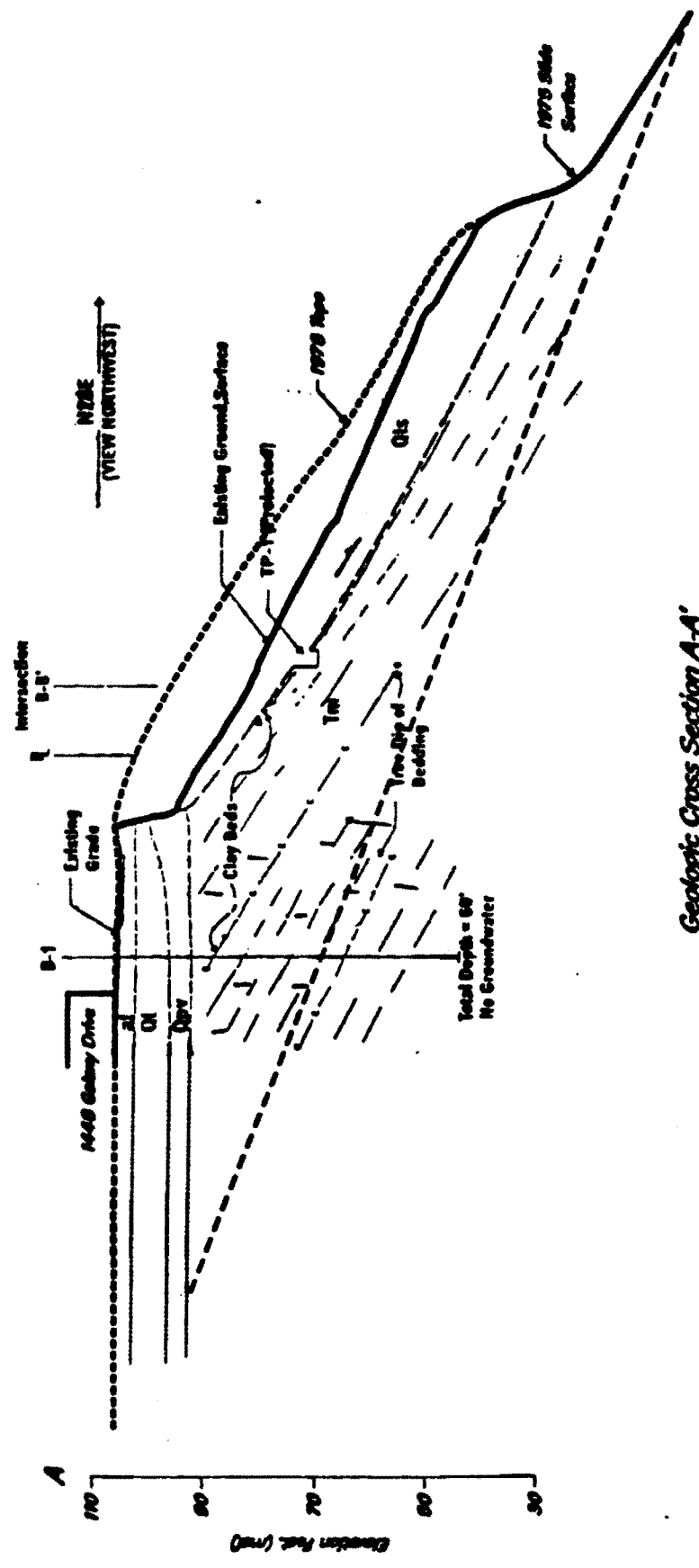
Project Number: 1

Sheet 1 of 1

NOTE:  
Reproduced from Drawing No. 1 - By Connors Consultants  
(5-14-98)

**Geologic Cross Section A-A'**

Scale: 1"=20' (horiz. vert.)





# CITY OF NEWPORT BEACH

P.O. BOX 1768, NEWPORT BEACH, CA 92658-8915

December 24, 1998

**RECEIVED**  
South Coast Region

DEC 28 1998

CALIFORNIA  
COASTAL COMMISSION

Mr. Stephen Rynas, AICP  
Orange County Area Supervisor  
California Coastal Commission  
200 Oceangate, Suite 100  
Long Beach, CA 90802-4302

**SUBJECT: Emergency Permit Applications 5-98-4976 at 1448 Galaxy Drive,  
and 5-98-469-6 at 1454 Galaxy Drive**

Dear Mr. Rynas:

This letter is a follow-up to our telephone conversation yesterday and to clarify our concern further. It is our opinion that the subject properties are in imminent danger of collapse or further damage should the slope failure expand or additional ground movements occur. We have been fortunate to have a dry season so far; however, future sustained rains would certainly contribute to these events.

If you have any questions, please contact me at (949) 644-3282.

Very truly yours,  
BUILDING DEPARTMENT



Jay Elbettar, P.E., C.B.O.  
Director

JE:mg

C: Sharon Wood  
Patricia Temple  
Faisal Jurdi

<b>EXHIBIT No. 12</b>
Application Number: <b>5-98-469</b>
<b>Newport City Letter</b>
 California Coastal Commission

Mr. Richard Ferber, 1454 Galaxy Drive, Newport Beach, CA 92660  
Ms. Doreen Penfil, 907 Muirfield, Newport Beach, CA 92660

3300 Newport Boulevard, Newport Beach





# CITY OF NEWPORT BEACH

P.O. BOX 1768, NEWPORT BEACH, CA 92658-8915

**RECEIVED**  
South Coast Region

DEC 28 1998

CALIFORNIA  
COASTAL COMMISSION

December 22, 1998

<b>EXHIBIT No. 13</b>
Application Number: <b>5-98-469</b>
<b>Newport City Letter</b>
 California Coastal Commission

Mr. Stephen Rynas, AICP  
Orange County Area Supervisor  
California Coastal Commission  
200 Oceangate, Suite 100  
Long Beach, CA 90802-4302

**SUBJECT: Emergency Permit Applications 5-98-4976 at 1448 Galaxy Drive,  
and 5-98-469-6 at 1454 Galaxy Drive**

Dear Mr. Rynas:

The slope failures at Galaxy Drive have been a major concern to the City of Newport Beach's Building Department. We have worked with property owners on repair and mitigation schemes by conducting site visits and expediting our review and analysis of their submittals. We consider Galaxy Drive slope repairs as one of our highest priorities.

I am concerned of your denial of the emergency repairs requested. Although you raised valid issues regarding the application completeness, which demonstrates your thorough review and effort. I would like to offer the following information:

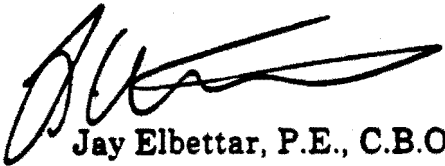
- A. Soil investigations of this nature cannot be conducted during the rainy season. It is a complex matter that requires considerable time to complete. Developing and designing the structural system also requires time and in these days of heavy construction activities, it is difficult to retain consultants who will begin the project immediately. These factors should be considered when judging the submittal's timelines.
- B. The severity of the slope failures does not lend itself to interim solutions of sandbagging and plastic covering. Considerable expense would be incurred if other temporary solutions were used in lieu of a permanent solution, even if they are determined to be technically feasible. Furthermore, we will not support such solutions since it may disturb the slope.

Mr. Stephen Rynas, AICP  
Page Two  
December 22, 1998

- C. As for the structure stability at 1448 Galaxy Drive, we have declared it unsafe for occupancy, which certainly indicates the possibility of collapse should future slope deterioration occur.

This letter offers our opinions and concerns. It is not solicited by the property owners and is not meant to request a waiver of any requirements stated in the denial letters. However, I would like to suggest that you examine this input and hope that you reconsider your decision.

Very truly yours,  
BUILDING DEPARTMENT



Jay Elbettar, P.E., C.B.O.  
Director

JE:mg

- C: Sharon Wood  
Patricia Temple  
Faisal Jurdi

Mr. Richard Ferber, 1454 Galaxy Drive, Newport Beach, CA 92660  
Ms. Doreen Penfil, 907 Muirfield, Newport Beach, CA 92660

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-5071

**EMERGENCY PERMIT**

**DATE:** DECEMBER 23, 1998

**EMERGENCY PERMIT:** 5-98-497-G

**APPLICANT:** Dr. and Mrs. Penfil


**LOCATION:** 1448 Galaxy Drive, Newport Beach, County of Orange

**EMERGENCY WORK PROPOSED:** The installation of eight (8) subterranean piles within the property lines of 1448 Galaxy Drive on the northeast corner of the lot. The installation of the seven (7) pilings by the gazebo in the southeastern portion of the lot are NOT authorized at this time.

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 that an unexpected occurrence in the form of a landslide 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 attached conditions.

<b>EXHIBIT No. 14</b>	
Application Number:	
<b>5-98-469</b>	
Emergency Permit	
	California Coastal Commission

Very Truly Yours,

Peter M. Douglas  
Executive Director

By: 

Title: Los Angeles Area Supervisor

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-5071

**EMERGENCY PERMIT****DATE: DECEMBER 31, 1998****EMERGENCY PERMIT: 5-98-524-G****APPLICANT: Richard and Doreen Penfil****LOCATION: 1448 Galaxy Drive, Newport Beach, Orange County**

**EMERGENCY WORK PROPOSED:** Demolition of a gazebo and pad at the southeastern corner bayward of the property line and construction of seven (7), 36 inch diameter, maximum 39 foot long caissons within and along the rear property line.

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 that an unexpected occurrence in the form of a recent landslide and evidence of ongoing movement 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 attached conditions.

Very Truly Yours,

Peter M. Douglas  
Executive Director

By: *Terese Henry*  
Title: District Manager

**EXHIBIT No. 15**

Application Number:  
**5-98-469**

**Emergency Permit**



California Coastal  
Commission

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-5071



Filed: January 6, 1999  
49th Day: February 5, 1999  
180th Day: July 5, 1999  
Staff: SFR-LB  
Staff Report: January 13, 1999  
Hearing Date: February 2-5, 1999  
Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

**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 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.

**SUMMARY OF STAFF RECOMMENDATION:**

Staff recommends approval of a modified project with eight special conditions. The major issue of this staff report is development on a bluff-top adjacent to an ecological reserve. The proposed development consists of slope stabilization and reconstruction of a backyard following a bluff failure. Staff recommends that the proposed retaining wall (for purposes of restoring the applicant's backyard) be deleted from the project as the retaining wall is not necessary for slope stabilization. The grade beam wall provides the required slope stabilization. Furthermore the proposed slope stabilization is an interim solution since it does not resolve the potential for future bluff failures. To develop a comprehensive solution the applicant and the Department of Fish and Game should initiate discussions to develop a comprehensive plan to fully repair and stabilize the slope damaged by the slide of December 16, 1997.

Special conditions contained in this staff report concern: assumption of risk, conformance with the geological recommendations, elimination of the retaining

wall, implementation of a landscaping plan, right of entry authorization, imposition of best management practices, that the applicant contact the Department of Fish and Game to develop a comprehensive slope repair and stabilization, and future development. The applicant's agent has indicated that he (the agent) is in agreement with the special conditions.

**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**

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. 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 which do not contain the retaining wall and footing for the retaining wall. 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 of 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.

3. 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



**5-98-469**  
**(Mr. And Mrs. Ferber)**

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 irrigation system in the backyard in conjunction with the proposed landscaping.
- 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.

**4. 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 that has to be repaired, the applicant shall apply for a coastal development permit to undertake restoration.

**5. 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.

**6. COLORIZATION OF GRADE BEAM WALL**

To minimize the visual impact of manmade structures on the natural bluff, the grade beam wall shall match the color of the surrounding terrain.

**7. 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 shall require a coastal development permit or an amendment to this permit from the Coastal Commission.

8. COMPREHENSIVE PLAN

Prior to issuance of this permit, the applicant shall document in writing that he has contacted the California Department of Fish and Game to initiate planning for a comprehensive design to repair the damage caused by the slide of December 16, 1997 and to stabilize the entire slope affected by the slide of December 16, 1997.

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. 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 at 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 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).

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 (Exhibit 10).

As a consequence of this slide, the next door neighbor (to the south) at 1448 Galaxy Drive (Exhibit 3) applied for and received two emergency permits (5-98-497 (Penfil) and 5-98-524 (Penfil)) from the Executive Director (Exhibits 14 & 15). These permits were for the installation of subterranean caissons along the eastern



Certified DBE/MBE

Geotechnical Engineering

Grading

Hydrology

Coastal Engineering

Highways

Hydraulics

Environmental

Project No. 1862-EC01  
February 1, 1999

Mr. Steve Rynas  
CALIFORNIA COASTAL COMMISSION  
200 Oceangate, Suite 1000  
Long Beach, California 90802-4302

ADDITIONAL CLARIFICATION ITEMS  
EMERGENCY PERMIT APPLICATION  
FOR BLUFF STABILIZATION  
1454 GALAXY DRIVE  
(FERBER RESIDENCE)  
NEWPORT BEACH, CALIFORNIA

CCDP NO. 5-98-469-G

Dear Mr. Rynas:


On behalf of the Ferbers, we would like to again request that you consider granting an emergency permit to initiate repairs within the subject property to the east-facing bluff above the upper Newport Bay Ecological Reserve. As we have previously discussed, during our meeting with you last December 18, and more recently during several telephone conversations, the subject failure is integral with, and likely caused by, improper bluff-top drainage at the adjacent property to the south (1448 Galaxy Drive), where an emergency permit was issued by the California Coastal Commission (CCDP No. 5-98-497-G) for the installation of eight subterranean piles on the northeast corner of the lot to protect the structure at 1448 Galaxy Drive from an active and ongoing landslide.

The subject landslide, referred to in the above-referenced emergency permit, traverses the southwest corner of the Ferber's property, and thereafter extending onto and principally located on the adjacent Newport Bay Ecological Reserve, administered by the Department of Fish and Game. Critical to the existing emergency permit for 1448

**RECEIVED**  
South Coast Region

FEB 17 1999

CALIFORNIA  
COASTAL COMMISSION

<b>EXHIBIT No. 7</b>
Application Number: <b>5-98-469-R</b>
Group Delta Letter February 1, 1999
 California Coastal Commission

Galaxy Drive is the triggering mechanism, which we believe originates from improper disposition of on-site drainage at 1448 Galaxy Drive, which has adversely affected our client's property (1454 Galaxy Drive), along with that of the 100'-foot-tall bluff owned and administered by the Department of Fish and Game. Moreover, the proposed repairs, while providing limited protection to the residence at 1448 Galaxy Drive, does nothing to correct the fundamental problem, which continues to exacerbate the existing landslide, causing ongoing movement and damage to the Ferber's property. Without abating the problematic rear yard drainage at 1448 Galaxy Drive, progressive and ongoing slope instability will likely compromise the eight currently-permitted piles and cause further damage to both 1454 Galaxy Drive and the Ecological Reserve slope.

As you are aware, concurrently with our emergency permit request, we have filed a regular Coastal Development Permit application, for which we understand Coastal Staff has recommended approval, pending certain project modifications and nine Special Conditions, with the Coastal Commission Hearing set for February 3, 1999. As we have discussed, with the exception of the "prior to issuance" requirements, the Ferbers are agreeable with all of the proposed Special Conditions. To the best of our recollection, these Special Conditions also reflect Staff's suggestions for tentative approval of an emergency permit, as discussed during our December 18, 1998, meeting in the Long Beach Coastal Commission offices. As a point of clarification, and for the record, we wish to point out that Special Condition No. 2 removes a significant architectural wall that was intended to reclaim that portion of rear yard lost by the landslide. Although the Ferbers were agreeable to the removal of this wall, they did so with the understanding that a structural deck could be reconstructed integral with the repair to essentially reclaim the lost portion of rear yard and to mask the significant bluff-top scar created by the landslide. Moreover, landscaping within the slide area, as requested in Special Condition No. 4, would further mask the landslide scar and essentially hide the deck, making it all but invisible from both the Ecological Reserve and other existing development east of the Upper Newport Bay.

We remain of the opinion that 1454 Galaxy Drive is at risk and, assuming any level of rainfall during this winter, is in imminent danger, requiring the initiation of corrective work as soon as practically possible. As indicated in Exhibit Nos. 12 and 13 appended to the Coastal Commission Staff Report, the City of Newport Beach concurs with this opinion and has mandated under threat of legal action that the property owners at 1448 and 1454



Galaxy Drive initiate upper bluff repairs as soon as possible to preclude additional failures and/or the loss of bluff-top residences.

The Ferbers have already contracted with a contractor for remediation of the landslide and we have discussed all of the salient points outlined in the Staff Report, including the recommendations and Special Conditions, all of which will be complied with. We are currently in the process of preparing revised plans (Special Condition No. 2), and a landscaping plan (Special Condition No. 4). All but the structural plan sheets of the revised plans should be completed for both Coastal and City Staff review by the February 3, 1999, Commission Hearing date. The structural plan sheets should be completed by February 10, 1999. We currently anticipate completion of the landscaping plan by February 22, 1999. The preparation of the required deed restrictions (Special Condition No. 1) will be completed as soon as possible; however, as a practical matter, we anticipate this will take several weeks, and possibly months, to complete.

Based on discussions with the contractor, Malcolm Drilling, they have tentatively committed to mobilizing all of their equipment on February 9, 1999, with the plan being to lift all construction equipment over the house via a large crane, with actual slope restoration commencing on or about February 12. In this regard, we again request that the Emergency Permit for bluff stabilization be granted, enabling initiation of work on the slope on or about February 12, 1999, in strict compliance with all of the Special Conditions, including the elimination of the L-shaped retaining wall originally proposed easterly of the tied-back grade beam wall. Revised plans (Special Condition No. 2) will be issued by February 3, 1999, for both City and Coastal Staff review and approval, and the landscaping plan as soon as possible; but, in any event, by February 22, 1999. While all other Special Conditions will be addressed as soon as possible, we request a period of 90 days to resolve any specific Coastal Staff and/or City of Newport Beach special requests.

#### RESPONSE TO REQUEST FOR ADDITIONAL INFORMATION

At your request, we are providing additional background information for your use in evaluating the current project, as reflected in your Staff Report. We have paraphrased questions raised during our telephone conversations on January 7 and 12, 1999.



*How does the pool in the Ferber's rear yard affect the stability of the bluff?*

The proposed tieback design is based on the worst-case hypothetical failure geometry (shown on Figure 3 of our December 17, 1998, Response to Review Comments report), which resists the largest possible hypothetical failure mass. Although undesirable, a pool leak would saturate and possibly destabilize intermediate bedding, which, although resisted by the grade beam wall, could trigger an additional slope failure further down on the Fish and Game property. With this consideration in mind, the pool was originally designed with a double shell to further preclude the potential for any leakage. This issue was discussed in detail with Coastal Staff in 1976 as part of the original permit and this scenario has been carefully considered and mitigated. We have also discussed this possible scenario in some detail and have since added a series of hydroaugers (horizontal drains), extending from underneath the pool to the face of the wall. Were any pool leaks to occur, water would be noted discharging from the hydroaugers, enabling early detection and repair of the pool. The Ferbers are also well aware of the importance of maintaining pool integrity and, for the last 20 years have been monitoring their water usage, correlating pool evaporation (to correlate pool water use) and potable water supply use within the house, considering both personal consumption and landscape irrigation needs. There has been no increase in water usage.

In this same regard, the reader should examine Figure 2 of the December 17, 1998, Response to Comments report, which illustrates the negative effect of improper site drainage at 1448 Galaxy Drive, which clearly allows water infiltration into the subsurface and uncontrolled discharge onto the slope face, both of which have likely contributed to, if not entirely responsible for, the subject landslide affecting both properties and the adjacent Fish and Game property.

*Since the proposed retaining wall is adjacent to a sensitive environmental zone, how much of the wall will be exposed above ground?*

The plans are currently being revised to reflect the construction of only a grade beam wall as a reaction for the tiebacks, a necessary requisite for stabilizing the upper bluff. The maximum exposed wall height will be approximately 12 feet, with a total wall length of 72 feet. The actual square footage of the exposed wall is approximately 565 square feet. The



surface of the wall will be colored and textured to blend in with that of the adjacent natural exposures in the bluff, and, when combined with the landscaping, will essentially disappear.

*Since the backfill behind the proposed retaining wall is sloped, are there any drainage implications for the downslope bluff? If so, what would be needed to mitigate the implications?*

We currently propose to reclaim the lost portion of rear yard with a structural deck extending out the rear property line, and at the same grade as the remainder of the existing backyard. The westerly edge of the deck will be supported on the top of the grade beam wall, and the entire deck will slope to the west, along with that of the remainder of the rear yard, with all water falling on the deck sloping to the west and ultimately discharging onto Galaxy Drive. There will be no over-bluff flow of water within the property limits of 1454 Galaxy Drive. All site drainage will continue to drain to the street.

*What is the complete scope of work for the slope repair? Currently, the scope of work includes the installation of retaining wall and tieback system. Is there any work or slope stabilization proposed for the downslope portion of the bluff below the retaining wall? If not, how does the downslope stability or lack of it affect the project? Specifically, how would the retaining wall system and tieback system be affected?*

Currently, the scope of work includes minimal grading to facilitate the installation of the tied-back grade beam wall and to eliminate the vertical scarps within the property limits. We have also included a series of hydroaugers extending beneath the existing pool.

There is currently no work proposed for the downslope portion of the bluff below the retaining wall. Although this would be desirable, based on our initial discussions with Fish and Game personnel, we were informed that no work could be conducted on the Fish and Game property. We will, however, in compliance with Special Condition No. 9, contact Fish and Game to once more request their assistance/support/permission to implement a comprehensive design to repair the slope damage adjacent to the project site on the downslope Fish and Game property.

The question of downslope stability can most easily be addressed by examining Figure 3 of our Response to Review Comments dated December 17, 1998. This figure has been reproduced herein as Figure 1, with the proposed improvements superimposed on the figure to illustrate the beneficial effect of the proposed repairs to the bluff-top properties and the additional limited benefit to downslope stability. Specifically, the tied-back grade beam wall provides significant lateral restraint from a reaction developed from deep within the interior of the bluff below the basal hypothetical failure geometry. As indicated in the figure, significant out-of-slope bedding results in a naturally unstable geologic environment and hence the reason for continuing bluff instability along the entire length of Galaxy Drive. Undeniably, an additional lower-bluff failure can occur on the Fish and Game property, affecting a lower adversely-dipping clay seam extending up to, and worst case developing a graben extending up to, the proposed tied-back grade beam wall. This will, however, not destabilize the grade beam wall, due to its large compressive force into the existing bluff-top graben. Were any additional bluff failure to occur below the tied-back wall, physical erosion through natural subaerial processes could eventually start to undermine the bottom of the wall, eventually necessitating extension of the grade beam wall below the lower failure plane. All of this said, it should be noted that the proposed repair substantially reduces bluff-top driving forces and, thus, substantially reduces the potential for additional failures on the Fish and Game property. Moreover, with improvements to rear yard drainage on the adjacent property to the south (1448 Galaxy Drive), the potential for additional groundwater infiltration will be reduced, further mitigating the potential for future additional bluff failures.

*Please provide a discussion on the visual aesthetics of the currently proposed repair.*

As indicated previously, we are currently proposing to incorporate both coloring and texturing into the surface of the structural shotcrete grade beam. We are currently proposing to treat the finished surface of the grade beam with PERMEON™ staining agent, which reacts with the alkalinity in the concrete to provide a mottled, natural appearance similar in color to that of the adjacent bluff. We have used this product on several seawalls and other concrete structures, with excellent success. To provide you with more information on this product, we have enclosed a color copy of the PERMEON™ brochure. We are currently proposing to texture the surface similar to a tied-back shotcrete wall we designed for the City of Dana Point on Stonehill Drive. A photograph of the surface treatment is also attached.





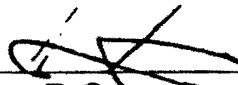
Mr. Steve Rynas  
CALIFORNIA COASTAL COMMISSION  
Project No. 1862-EC01

February 1, 1999  
Page 7

If you have any questions or require additional information, please give us a call.

Very truly yours,

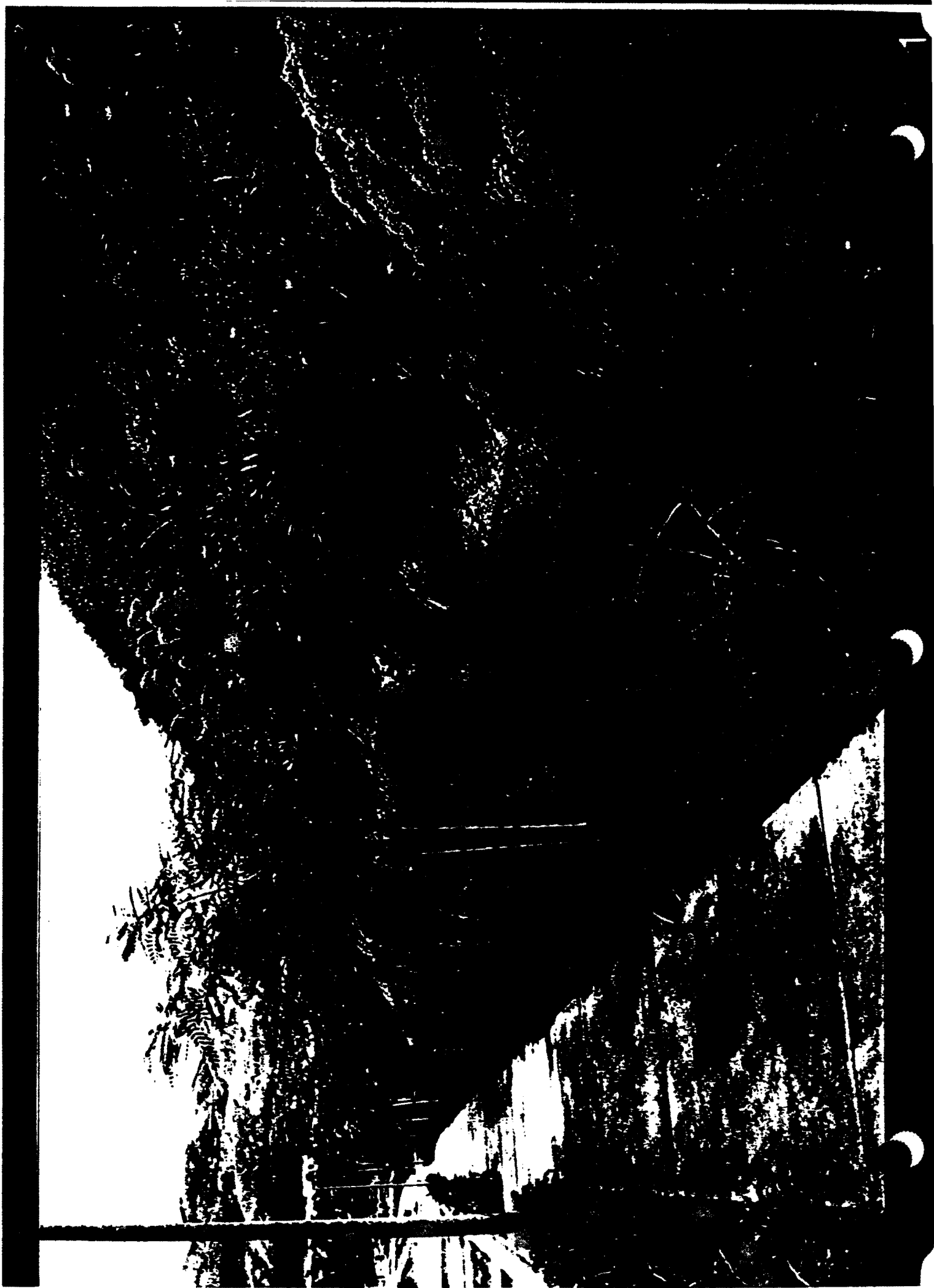
GROUP DELTA CONSULTANTS, INC.

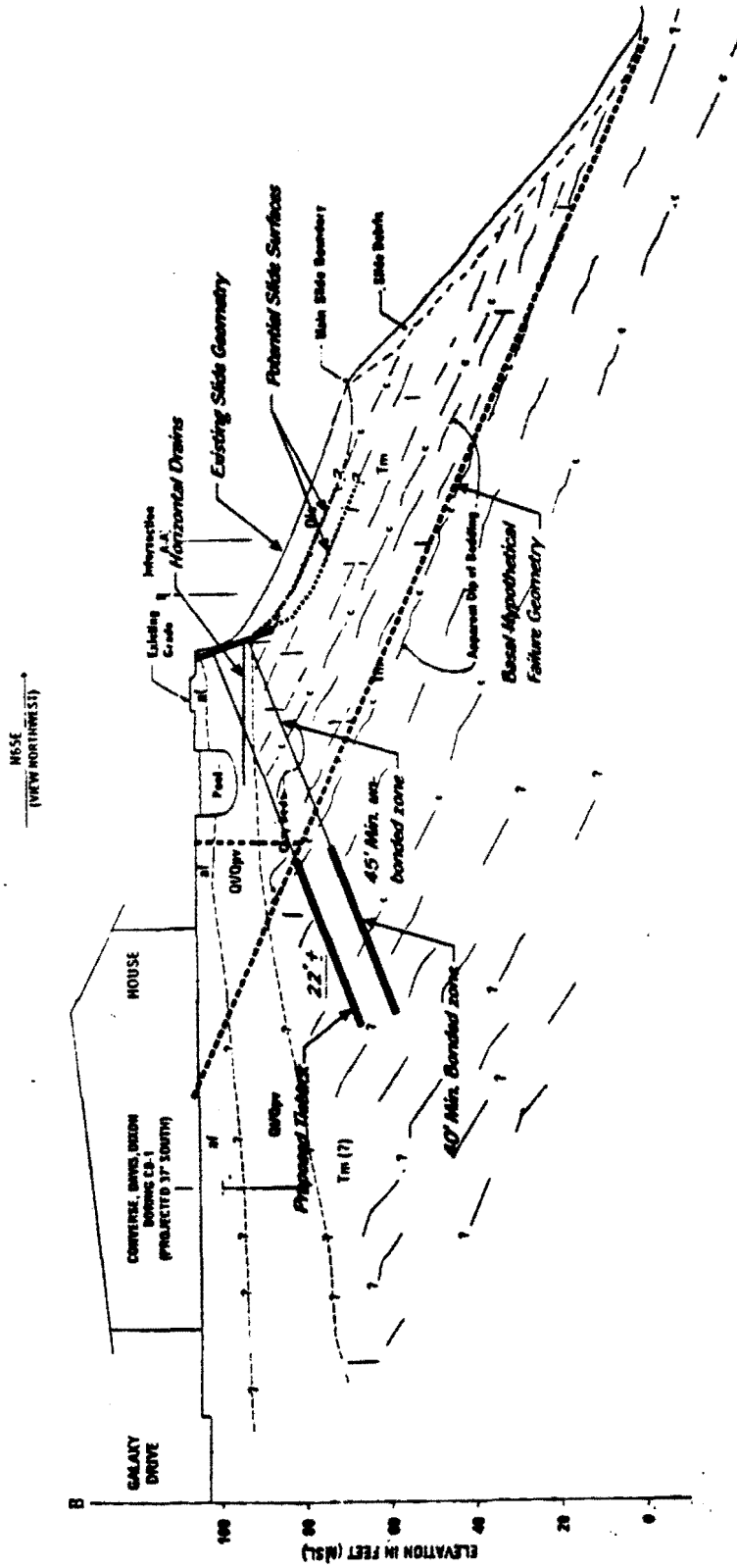
  
Walter F. Crampton, Principal Engineer  
R.C.E. 23792, R.G.E. 245

WFC/jc

cc: Richard & Melody Ferber  
Mr. Jay Elbettar, City of Newport Beach  
Mr. Jay Garcia, City of Newport Beach







# **Geologic Cross Section B-B'**

No Scale

## **NOTE:**

Reproduced from Drawing No. 1 - By Converse Consultants (5-14-98)

See also Fig. 3 from Group Delta's Response to Reader Comments, Emergency Permit Application for Sluff Stabilization, Dated December 17, 1998

Project Number: 1862

Project Name: Galaxy Drive Slope Repair

Figure Number: 1

# PERMEON® COLORATION SYSTEMS



Palmdale, California  
The Washington Highway Project  
Showing freshly exposed road cuts on this unique desert resort  
development closely contrast with the natural desert pattern. Exposed Permeon  
granules immediately replicate the surrounding desert varnish colors.



PERMEON  
COLORATION SYSTEMS

San Diego, California  
Concrete retaining wall on Newport Coast Drive  
Permeon granules convert gray into warm, natural  
and integrated earth tones. Permeon colors are  
extremely stable and will never fade  
or bleed.

## Permeo: A Patented, Single-Step, Environmentally Safe Color Mitigation Process

In a matter of days, patented Permeo technology simulates desert varnish produced by nature over decades or even centuries.

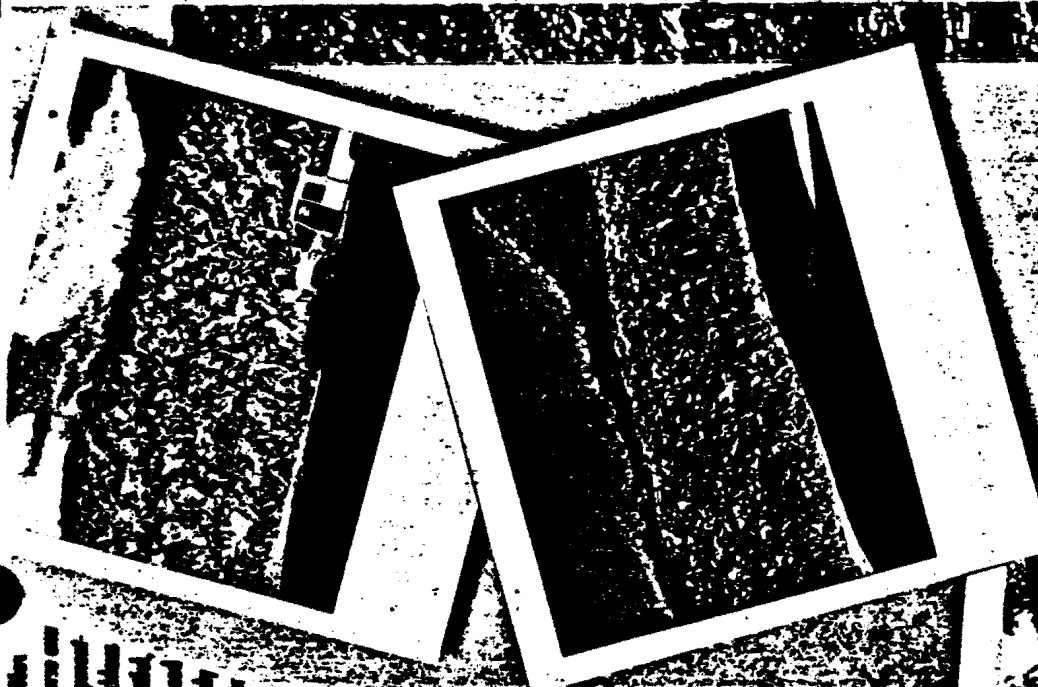
"Desert varnish" is the same compound given to the thin dark, coating that covers much of the desert areas, mountains and valleys of arid and semi-arid regions throughout the world. Natural formation of these coatings is geologically slow and can extend over centuries. However, they can be removed or destroyed in a matter of seconds.

Man's activities such as road construction, site preparation and mining can expose existing scars of freshly exposed rock that are visible from great distances.

Permeo is safe to apply, friendly to plants and wildlife, resistant to washing and chemically neutral relative to the environment. Proven applications can protect fragile desert patterns ranging from light brown to black, fresh rock, existing imperfections, and severely scarred natural landscapes.

When applied to concrete, Permeo produces natural and convincing color tones.

- Permeo has been specified by:
- Golf Course Designers
  - Mining Companies
  - Private Landscape Architects
  - Major Trade Show Designers and Builders
  - State and Federal Agencies
  - U.S. Department of Interior
  - U.S. Department of Transportation
  - U.S. Forest Service
  - U.S. Highway Department



However, New Spain Golf Course and Desert Development in the Jack Wilson area in this beautiful, extremely exposed desert and highly trafficked area of Permeo, and permanent colors were red. If left to weather, the area would become a desert.

Colorado Department of Transportation  
**Glenn Canyon Project:**  
 Vertical rock face on the Road 100 of I-70 through Glenwood Canyon was bleached and sculpted to make it appear natural. However, it was still highly visible and appeared as bright scars in contrast to the surrounding brown to black colors of the unexcavated walls. Thanks to Permeo technology and application, the construction scars are now invisible.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

STATE OF CALIFORNIA  
COASTAL COMMISSION

COPY

RICHARD E. and  
MELODY E. FERBER  
CITY OF NEWPORT BEACH  
COUNTY OF ORANGE

Application No. 5-98-469

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Wednesday  
February 3, 1999  
Agenda Item No. 20.e.

**RECEIVED**  
South Coast Region

MAR 23 1999

CALIFORNIA  
COASTAL COMMISSION

Hotel Del Coronado  
1500 Orange Avenue  
Coronado, California

<b>EXHIBIT No. 8</b>
Application Number: <b>5-98-469-R</b>
<b>Transcript of the Public Hearing</b>
California Coastal Commission

A P P E A R A N C E S

## COMMISSIONERS

Rusty Areias, Chair  
Sara Wan, Vice Chair  
Penny Allen  
Jeff E. Brothers, Alternate  
Shirley Dettloff  
Nancy Flemming  
Christine Kehoe  
Pedro Nava  
Dave Potter  
Mike Reilly  
Andrea Tuttle  
  
Victor Holanda, AICP, Trade & Commerce Agency

## STAFF

Peter Douglas, Executive Director  
Ralph Faust, Chief Counsel  
Deborah Lee, District Director  
Jamee Jordan Patterson, Deputy Attorney General

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X   T O   S P E A K E R S

STAFF

Page Nos.

District Director Lee, Staff Report.....4,15,29

PUBLIC TESTIMONY

Walter Crampton, representing the Applicant..... 8,26  
Howard Colover, nearby resident..... 10  
Richard Penfil, nearby resident.....14,23  
Richard Ferber, Applicant.....18,22

COMMISSIONER REMARKS

Allen.....22,24,27,29  
Areias..... 23  
Flemming.....22,24,27,28  
Reilly..... 6,27  
Wan.....17,23,26,28

ACTIONS

Motion by Dettloff..... 22  
Withdrawn..... 25  
Motion to Continue by Allen.. 26  
Motion by Reilly..... 28  
Vote..... 29

CONCLUSION..... 30

-ooo-



1 California Coastal Commission

2 February 3, 1999

3 Richard E. & Melody E. Ferber -- Application No. 5-98-469

4 \* \* \* \* \*

5 DISTRICT DIRECTOR LEE: That brings us to Item  
6 20.e. This is an application for a project on Galaxy Drive,  
7 above the Upper Newport Bay Ecological Reserve in Newport  
8 Beach.

9 The project involves a rear-yard slope repair and  
10 bluff stability improvements, following a major bluff failure  
11 that occurred over a year ago, and includes an installation  
12 of a 75-foot long subterranean grade beam wall and anchor  
13 system, and as the applicants requested an additional 75-foot  
14 long 18-foot high retaining wall along the rear yard area to  
15 recapture the backyard.

16 Staff is recommending approval of a modified  
17 project, with several special conditions. The major issue  
18 for staff here was that this is a substantial failure that  
19 has occurred above the Ecological Reserve, and the slope  
20 stabilization, and reconstruction of the backyard, we feel  
21 can be accomplished by only completing the grade beam, and  
22 the anchor system.

23 The inclusion of the retaining wall aspect of the  
24 project is really to, as I said, recapture the rear yard  
25 area, and would result in, at some points along the retaining

1 wall, 18-feet of exposed retaining wall, that we feel is  
2 incompatible with the view shed up and around the Upper  
3 Newport Bay Ecological Reserve.

4 The applicant is in agreement with that revised  
5 project, but it does lend concern to another condition, which  
6 is we are concerned about making sure that the entire slope  
7 gets recontoured and revegetated in a plan that would include  
8 the Department of Fish and Game's involvement and support.  
9 And, unfortunately, that does not appear to be occurring at  
10 this point.

11 The applicant is not in disagreement, and would  
12 agree with trying to broach a more comprehensive solution  
13 with the Department of Fish and Game, but it is going to  
14 involve both entities in order to really reconstruct and  
15 complete this project.

16 Staff understands, as I said, that the revised  
17 project is acceptable to the applicant, and they are in  
18 general agreement with all of the recommendations; however,  
19 they do have concerns about the timing, and want relief from  
20 some of the prior-to-issuance conditions relating to the  
21 submittal of plans, and the execution of the assumption of  
22 risk documents.

23 Staff indicated that these are standard  
24 provisions, and that we felt they should indicate those  
25 issues to you directly, and at this point that would conclude

1 my comments.

2 CHAIR AREIAS: Yes, Mr. Reilly.

3 COMMISSIONER REILLY: Quick question of staff. I  
4 am trying to understand what the problem is with revegeta-  
5 tion.

6 If the Commission is on board with it, and the  
7 applicant is on board with it, what is the problem with Fish  
8 and Game?

9 DISTRICT DIRECTOR LEE: The revegetation and the  
10 reconstruction of the slope would occur on Department of Fish  
11 and Game property, based on -- at least the input from the  
12 applicant at this point, they have expressed little interest,  
13 and it may be a legitimate constraint, or financial  
14 limitation on being able to do the work, to actually bring in  
15 soils, reconstruct the slope, and then hopefully revegetate  
16 it.

17 The applicant is limited from doing any work on  
18 the site, on the DFG site, as well, by the department, so  
19 there is a little bit of a catch-22 between the two entities.

20 COMMISSIONER REILLY: So, what happens with this  
21 application if Fish and Game doesn't want to move forward  
22 with the mitigations as they are outlined here?

23 DISTRICT DIRECTOR LEE: There would not be any  
24 mitigation on the down slope area, unless we can convince,  
25 and be able to work with DFG to be a more pro-active player

1 in this situation.

2 The applicants' site will be stabilized with the  
3 construction of the grade beam and anchors on their property,  
4 but the underlying loss of materials on the lower slope would  
5 still remain there.

6 We have a Special Condition No. 9 that simply  
7 indicates that the applicant will pursue negotiations and  
8 work with the Department of Fish and Game, and I think at a  
9 staff level we are going to have to be involved in that, as  
10 well. But, at this point, they are limited from doing any  
11 work on the DFG property.

12 COMMISSIONER REILLY: Well, for our purposes,  
13 though, from the staff perspective, is this application  
14 approvable without some certainty of concurrence and  
15 cooperation of DFG in carrying out their part of the project?

16 DISTRICT DIRECTOR LEE: I believe it is. Part of  
17 the reason that the applicant is concerned about the timing  
18 on some of the conditions, is because this has been a  
19 significant failure.

20 The adjoining homesite has been red tagged, and an  
21 emergency permit has been issued for it, because the slope  
22 failure extends and causes problems to the adjacent home.  
23 The situation will only get worse if we don't at least  
24 rectify the -- and stabilize the upper slope area, but there  
25 is a problem with being able to complete the entire slope

1 restoration.

2 CHAIR AREIAS: I would like to go to the public  
3 hearing, and then we will come back.

4 COMMISSIONER REILLY: Yes.

5 CHAIR AREIAS: Okay.

6 Walt Crampton, representing the applicant, and  
7 then Howard Colover, and then Richard Penfil.

8 MR. CRAMPTON: Thank you, Commissioners.

9 I would like to first thank staff for their  
10 efforts, and we support staff's position, with the singular  
11 exception of the prior-to-issuance discussion.

12 I would like to, if I could, draw your attention,  
13 first off, to Exhibit 5 of the staff report. What Exhibit 5  
14 shows you is the very seriously adversely dipping geology  
15 along this entire length of Galaxy Drive. The importance  
16 here is that there has been numerous failures along this  
17 street for the last 20 years. The city is very concerned,  
18 and we are trying to rectify this fundamental problem.

19 If you look at Exhibits 12 and 13, they are two  
20 letters from the City of Newport Beach to your staff analyst  
21 in the Long Beach office, acknowledging that the city is very  
22 concerned about this entire area, asking that they allow  
23 these, our clients, and neighbors to go and proceed forward  
24 as quickly as possible.

25 As staff correctly indicated, you have actually

1 granted Emergency Permits for this same adverse geology to  
2 the neighbor to the south, to neighbors to the north.

3 We have filed an emergency permit, and  
4 concurrently, this regular permit, and staff wanted to try  
5 and push through the regular permit, as opposed to the  
6 administratively approving this, although in December, during  
7 our meeting, they were at least working towards administra-  
8 tive approval of the emergency permit. It is a serious  
9 problem.

10 We would ask that you approve this project with  
11 the modification of the prior-to-issuance language. We are  
12 working with the staff. We are working with the city. The  
13 city is actually threatening legal action against these  
14 homeowners, so they don't go forward. The homeowners wish to  
15 go forward.

16 We are complete with the redesign. We have done  
17 all of the requirements provided by staff. The recordation,  
18 the deed restrictions, and the like, will take some time  
19 working with staff. We have made arrangements with  
20 contractors to start work, essentially, next week. We are  
21 asking for the ability to start work next week.

22 And, I would like to reserve a few minutes to  
23 answer any questions that may arise from other concerned  
24 parties. And, I believe --

25 CHAIR AREIAS: Thank you, Mr. Crampton.

1 MR. CRAMPTON: -- both neighbors are here.

2 CHAIR AREIAS: Okay.

3 Howard Colover, and then Richard Penfil.

4 MR. COLOVER: I am Howard Colover. I am the owner  
5 of the home to the north of the residence in question, the  
6 home in question we are talking about.

7 I would just like to bring up two or three points,  
8 if I may, having read the report I obtained, coming here  
9 today, things which are not mentioned in that.

10 I moved into my home the beginning of '97. At  
11 that time, the incident of this work, it was suggested that  
12 new railings be put up that had corroded on my property, and  
13 the neighbor next door, Mr. Ferber. I agreed to that,  
14 because they both were in a bad state, and we paid our share.

15 However, the railing put up on his residence was  
16 put 2-foot, approximately, further into the bay than the  
17 original railing -- something which was not discussed with  
18 me, or raised.

19 Secondly, the natural flora plant life down the  
20 slope for approximately 50 feet, or so, was desecrated -- I  
21 mean, cut away to a great degree. When I saw this one day, I  
22 approached the people and stopped it continuing, eventually,  
23 but the damage was done.

24 Thirdly, the area -- so the bay side of the new  
25 fence, for approximately a 10-foot - 12-foot region, was

1 replaced with fresh soils, and new plants. Plants, which in  
2 the opinion of a landscape company I was using, highly  
3 recognized -- notable -- recognized in the area, were not  
4 suitable for the terrain in question, out of keeping --  
5 daisies and things like that.

6 Throughout the summer period, from roughly  
7 January, February, until the bad storms we had in December,  
8 that area was irrigated by hand with a hose very regularly,  
9 by climbing over the fence and watering so and so. Okay,  
10 these are the observations which occurred.

11 We then had the major -- in other words, the  
12 ground, in my view, was highly saturated, un-normally so,  
13 during the high -- during the summer, which was very dry.  
14 We then had this torrential el nino weather, and on the first  
15 big storm I came out two or three days later, and to my  
16 amazement I saw the plastic, and found out that -- as I had  
17 been working long hours that time of the year, and hadn't  
18 observed it immediately -- that there was this big hole.

19 So, my opinion, and my view, is that because of  
20 the negligence in what was done here with respect, certainly  
21 -- if it didn't cause what subsequently happened, instigated  
22 it -- certainly didn't help. I was very upset about it. I  
23 just moved into the house, and it meant a lot to us.

24 Okay, my other concerns are, I have looked at this  
25 plan. I notice, in the details, they don't mention about

PRISCILLA PIKE

Court Reporting Services

39672 WHISPERING WAY  
OAKHURST, CA 93644

TELEPHONE  
(977) 680-8230



1       irrigation. In looking at my neighbors, my neighbors'  
2       irrigation and drainage, I am very dissatisfied -- and have  
3       mentioned this in the past -- that there is no apparent  
4       drainage in that home.

5               In my home, when I moved into it, I was advised it  
6       was essential to get the water from around the house, in the  
7       back of the house, and the patio, to the street. I redid the  
8       drainage totally, put large, 2-inch, or so, piping, which I  
9       have all documentation on. I have gutters, down pipes going  
10      into piping, taking the water to the street, exiting in two  
11      places.

12             My neighbor's home, there is a gutter on one side,  
13      which was put in, around the rest of the house there is no  
14      guttering. There are some down pipes. The water runs off  
15      into the soil. It is not taken anywhere. It saturates into  
16      the soil. And, into the street, there is one pipe on the  
17      upper side, and nothing on the low side, near me, exiting to  
18      the street.

19             So, I think this is unsatisfactory, and is not the  
20      ideal situation, because where we are living we have problems  
21      -- which I was aware of when I moved into the house -- where  
22      soils move, and become saturated, expansive soils they are  
23      called, and one gets cracking and problems because of this.  
24      But, you have got to mitigate the situation, and I did that.

25             So, these two things, you know, concern me, and I

1 think if they didn't cause what subsequently happened, they  
2 made a big difference to it. There is nowhere else that the  
3 slope failure has been quite as dramatic, and with this  
4 indentation -- if you will look at the photographs which I  
5 have, be like this --

6 CHAIR AREIAS: Better wind up, Mr. Colover.

7 MR. COLOVER: I am sorry.

8 Okay, my third comment is I understand there is a  
9 grade beam being proposed. The grade beam is 70, 75 feet.  
10 The property is roughly 100 feet, which means either side of  
11 the grade beam there is a roughly 12, 15 feet area which is  
12 not protected. The grade beam is set back approximately 18  
13 feet, I understand, from the property line of the bay, which  
14 means there is no protection on the edges of my property, or  
15 my neighbors.

16 I am concerned about lateral support, and also  
17 future erosion, because -- and there will always be natural  
18 erosion. There will always be sluffing, because that is  
19 where we are living in the bay, and we are all susceptible to  
20 that along there. My concern is because of now what has  
21 happened, there could be further erosion, this needs more  
22 protection, which would then infringe on my property, and  
23 then the neighbors on the other side.

24 And, those are the three things I would like to  
25 bring out.

1 CHAIR AREIAS: Thank you, Mr. Colover.  
2 Richard Penfil.

3 MR. PENFIL: Thank you. I am the owner of 1448  
4 Galaxy, and you will notice in this application there were  
5 two emergency permits issued to us, courtesy of your staff,  
6 especially with the help of Teresa Henry, who went out of her  
7 way and was excellent, so as were a number of other people  
8 today. I thank your staff. They have been very supportive.

9 The only comment that I would like to make about  
10 this is I support an effort to repair the property that the  
11 Ferber's have. I am very concerned about the lack of any  
12 lateral support included in this proposal, and in fact,  
13 throughout this application there are a number of omissions,  
14 and a number of untruths. Some of this was related by Mr.  
15 Colover; however, I don't think this is probably the proper  
16 forum for that.

17 I support the repair of the property. I would  
18 like to make sure that it has proper lateral support.

19 Thank you.

20 CHAIR AREIAS: Mr. Crampton, response.

21 MR. CRAMPTON: The Ferber residence is the most  
22 recently constructed residence on Galaxy Drive, received a  
23 permit, I believe, from the Commission, originally, in 1976.  
24 It is the only lot on Galaxy Drive that has been graded in  
25 such a way to add fill to the rear, so that by gravity

1 everything drains to the street. The other neighbors,  
2 actually, have water that drains over the tops of the slopes.  
3 They are older lots.

4 So, this particular lot, 1454, with the Ferber's,  
5 it does, in fact, completely gravity drain to the street. It  
6 does not have the infiltration that occurs elsewhere within  
7 the development. And, I don't think it is necessary to get  
8 involved in the details, but there is conflicts between the  
9 neighbors, and hence there is some confusion as to who wants  
10 to say what about whom.

11 So, the reality is the geology is what it is. It  
12 is a serious problem. The city recognizes the problem. We  
13 all collectively want to get the thing repaired. We are very  
14 confident that our repair will, in fact, stabilize the  
15 hillside. We would like to initiate that as soon as  
16 possible. We are working with Steve Rynas, your coastal  
17 staff in Long Beach. We are working with the City of  
18 Newport.

19 We would ask that you grant the applicants the  
20 opportunity to start work immediately. Thank you.

21 CHAIR AREIAS: Okay.

22 Ms. Lee -- Mr. Crampton, just stay close.

23 DISTRICT DIRECTOR LEE: We did have our staff  
24 engineer review the proposal, and Ms. Ewing was in full  
25 support of the staff recommendation, and did feel that the

1 retaining wall component could be separated and independent  
2 of the grade beam. She did not express any concerns about  
3 the issue that was raised by the other speakers, regarding  
4 lateral support, so I can't offer a whole lot more on that,  
5 other than what the applicants' geotechnical consultant has  
6 indicated to you.

7 We do believe that there is a serious problem  
8 here, that needs to be addressed, and particularly now before  
9 we get into any heavy rains. So, I think there is some  
10 grounds for allowing some relief on the timing of the three  
11 conditions that I understand the applicants are most  
12 concerned about.

13 Those would be the Special Conditions No. 2 and 4,  
14 with regard to submittal of the revised plans. I believe  
15 they have indicated that they could comply with those  
16 measures within 30 days. So, we could incorporate an  
17 allowance for those to be within 30 days of issuance, that we  
18 get those plans.

19 And, then, the other one that presents a timing  
20 concern for them is just the processing of the assumption of  
21 risk document, Special Condition No. 1. This is not a normal  
22 thing for the Commission, as I said earlier, to give any  
23 variance on the timing of these, but if the Commission  
24 concurs that there is a need to proceed more quickly here,  
25 given the current conditions, and the neighboring properties,

1 it would be appropriate to maybe give three months for the  
2 execution of those documents. The applicants have not  
3 indicated any dispute with them, just a matter of timing.

4 The only thing that I -- just in thinking as the  
5 hearing continued -- I do think, maybe that we could, with  
6 the applicants' agreement, we could probably strengthen  
7 Special Condition No. 9 on this slope stabilization plan,  
8 that if they would agree with it, that the applicant be  
9 required to prepare and implement a plan to complete the  
10 slope restoration consistent with the landscape provisions of  
11 Special Condition No. 4, should they be able to obtain the  
12 right of entry, and authorization from the Department of Fish  
13 and Game. And, then as I said at the staff level, we would  
14 also be pursuing with them to obtain that authorization from  
15 the department to allow them to do that work.

16 CHAIR AREIAS: Okay.

17 DISTRICT DIRECTOR LEE: That would conclude my  
18 remarks.

19 CHAIR AREIAS: Okay, will of the Commission?

20 CHAIR AREIAS: Ms. Wan.

21 VICE CHAIR WAN: I have a couple of questions of  
22 you.

23 One, dealing with the draining issue, are you  
24 relying upon the natural drainage to the street? or do you  
25 have gutters that go to a pipe, and then that goes to a

1 street? or do you allow the water to come off of the house,  
2 and off of the concrete, and just simply drain naturally --  
3 quote, naturally -- to the street?

4 MR. CRAMPTON: The rear yard of the Ferber  
5 residence actually has a couple of feet of fall from east to  
6 west, from the bluff to the street, so you have fairly  
7 adequate drainage.

8 VICE CHAIR WAN: But, you don't have actual  
9 gutters that collect it and put it into a pipe that takes it  
10 to the street?

11 MR. CRAMPTON: No, we do not.

12 VICE CHAIR WAN: How about --

13 MR. CRAMPTON: I'm sorry, maybe I misspeak --

14 VICE CHAIR WAN: -- well, if you do, I would like  
15 to know that.

16 MR. CRAMPTON: The applicants are saying, yes,  
17 they do have area drains.

18 VICE CHAIR WAN: Maybe they could come up, and  
19 address that question?

20 Could one of you come up? Because that is  
21 important, what happens to that water. Do you have a  
22 drainage system, where you have gutters, and other pipes?

23 MR. FERBER: Where are you?

24 VICE CHAIR WAN: I am over here, okay?

25 That take the water that comes off of the house,

1 and off of the concrete, takes it to a pipe, and the pipe  
2 then takes it to a street?

3 MR. FERBER: Definitely. We have got a series of  
4 drains. I think about 14 in the back yard, that drain the  
5 one to the south side to the street by pipe. We also have a  
6 series on the north and the south side of the street, a  
7 series of gutters and downspouts --

8 VICE CHAIR WAN: Okay.

9 MR. FERBER: -- that drain directly to the street.

10 VICE CHAIR WAN: Okay, that was --

11 MR. FERBER: And, again, our property was graded  
12 when I built the house, at the request of a geotechnical  
13 report that I had.

14 COURT REPORTER: May I please have your name for  
15 the record?

16 MR. FERBER: Richard Ferber, F-e-r-b-e-r.

17 VICE CHAIR WAN: Because that is a question. I  
18 mean, it is important that that not rely on, quote, natural  
19 drainage, that it --

20 MR. FERBER: Very definitely not.

21 VICE CHAIR WAN: -- goes, that if you are assuring  
22 this Commission that it goes to drain pipes.

23 MR. FERBER: Very definitely.

24 VICE CHAIR WAN: Okay, the second question I have,  
25 has to do with in the area -- and I don't know which is the



1 rear, and which is the front -- there is an area that is  
2 where --

3 MR. FERBER: To the west is the front, to the east  
4 is the back.

5 VICE CHAIR WAN: Okay.

6 Where the slope is -- we are dealing with the  
7 landscaping -- in the area of the house that is not by the  
8 slope, do you have lawn, or anything like that?

9 MR. FERBER: I have lawn in the back yard. I have  
10 lawn on the south side, to the street. I have planting to  
11 the north side, to the street. Yes, I definitely -- and, I  
12 have quite a bit of hard scape in the backyard also, with a  
13 series of drains that drain to the street.

14 VICE CHAIR WAN: Okay.

15 MR. FERBER: Also, I have re-compacted the soil --  
16 at the request of the soils report -- I have re-compacted the  
17 soil and sloped it two degrees to the street from the slope.

18 VICE CHAIR WAN: Okay, the reason I have asked  
19 this is question is because I am concerned -- I see this  
20 routinely in an area where I live, where hillsides move  
21 around. And, to have a lawn in an area where you are putting  
22 water into that hillside, I don't care whether it is in the  
23 front of the house, or in the rear of the house, I am just at  
24 a loss when we are in the process now of dealing with slope  
25 stabilization that impacts an ecological preserve below it,

1 and that we are allowing lawn, and that level of water. Is  
2 there something we can do about that, because I am just -- I  
3 am always amazed at people who do that, because the amount of  
4 water that you are putting into that hillside is going  
5 somewhere.

6 MR. FERBER: Excuse me, but I did everything per  
7 recommendation, approved both by Coastal Commission, by the  
8 city, per the recommendation of my soils engineers --

9 VICE CHAIR WAN: That may be, and you still wound  
10 up with a slope failure, okay?

11 MR. FERBER: Well, unfortunately, but --

12 VICE CHAIR WAN: Right, and I am just telling you  
13 that I have a lot of concern.

14 And, I don't know if there is anything we can do  
15 about it, but it seems to me that if we are approving bluff  
16 stabilization, or slope stabilization, I don't know how we  
17 can allow that type of plantings to be permitted.

18 MR. FERBER: Well, relative to the total surface  
19 of the property, the lawn in the backyard is minimal,  
20 probably an eighth of the entire area. The rest is either  
21 hard scape, or --

22 CHAIR AREIAS: Okay, any other -- any further  
23 questions?

24 [ No Response. ]

25 Will of the Commission?

PRISCILLA PIKE

Court Reporting Services

39672 WHISPERING WAY  
OAKHURST, CA 93644

TELEPHONE  
(999) 683-8236

1 [ No Response. ]

2 Further discussion?

3 [ No Response. ]

4 Motion?

5 [ MOTION ]

6 COMMISSIONER DETTLOFF: Move per staff.

7 CHAIR AREIAS: Commissioner Dettloff moves per  
8 staff.

9 COMMISSIONER FLEMMING: Second.

10 CHAIR AREIAS: Is there a second? Seconded by  
11 Commissioner Flemming.

12 MR. FERBER: Excuse me, Chairman, could I have  
13 another 30 seconds, please.

14 CHAIR AREIAS: No, I am sorry, you can't. The  
15 public hearing was completed, and there are 9 conditions in  
16 the staff report, so.

17 Okay, discussion.

18 COMMISSIONER ALLEN: I understand Commissioner  
19 Wan's concerns about the landscaping, and the drainage. I  
20 think the drainage issue has been resolved by Mr. Crampton,  
21 and the applicant, in terms of how the property drains, and  
22 the various mechanisms that they have put into place to  
23 insure that the drainage is appropriate on the site.

24 I think the watering practices, the irrigation  
25 practices, that were mentioned by one of our speakers are

1 going to be addressed by putting in drought tolerant  
2 landscaping, and I think that will sort of minimize the need  
3 for any watering.

4 VICE CHAIR WAN: You see, my concern is that there  
5 is a condition in there that says that we don't allow  
6 irrigation in the backyard, but we are going to allow it in  
7 the front yard, and what goes into those hills, once it gets  
8 down into the hill, it moves around, and I don't -- I mean, I  
9 just know from experience of what happens where I live, where  
10 hills are moving around. Once the water goes into the hill,  
11 you don't know where it is going.

12 And, I would prefer to see that there be no  
13 irrigation, period, on that property. I don't know if the  
14 rest of the Commission agrees, but that is the way you -- you  
15 don't prevent this, because those hills are moving anyway,  
16 but you can slow it down, and maybe decrease it if you  
17 prevent irrigation of those properties, and I think there  
18 shouldn't be allowed any irrigation -- I think we have a  
19 condition in there that says there is no irrigation allowed  
20 in the backyard, but doesn't prevent irrigation in the front  
21 yard.

22 CHAIR AREIAS: Okay, any further discussion?

23 Mr. Penfil, I had a question for you.

24 MR. PENFIL: Yes, sir.

25 CHAIR AREIAS: Is it your belief that the staff

1 recommendation will solve the problem?

2 MR. PENFIL: My first comment is that the roof  
3 drainage, I think, goes into downspouts that are not  
4 connected to anything, and so they spill out onto the grass.

5 I think that Commissioner Wan hit the key issues,  
6 and I think that a matter of -- those are such very important  
7 issues. Those downspouts are connected to gutters that  
8 drain, approximately, 20 percent of the roof. They are not  
9 connected to pipes that go to the street.

10 In fact, there are photos -- I think the staff has  
11 done a fine job.

12 COMMISSIONER ALLEN: I am troubled by this.

13 What we are having here is a dispute that we have  
14 absolutely no ability to come to grips with, and I am  
15 inclined to say, let's put this item off. Let's wait a  
16 month. Let's have staff go out there and look at the  
17 drainage. It is, obviously, a problem. And, you know, we  
18 have always been extremely reticent to allow any retaining  
19 devices, and to do so in this case, without insuring that  
20 there are not conditions that will continually erode that  
21 hillside, I think is important.

22 VICE CHAIR WAN: That is the point I wanted to  
23 make.

24 COMMISSIONER FLEMMING: Point of order.

25 We need to deal with the motion that is on the

1 floor, and then you could make that.

2 CHAIR AREIAS: Commissioner Wan.

3 VICE CHAIR WAN: If Commissioner Allen wants to  
4 move to continue it on that basis, I would support it,  
5 because I think what you have said is exactly what my  
6 concerns are.

7 If we are going to do this, I am not opposed to  
8 allowing this to happen. I just certainly want to make sure  
9 that we are not going to allow practices to continue that  
10 will exacerbate this.

11 CHAIR AREIAS: Okay.

12 Commissioner Dettloff.

13 COMMISSIONER DETTLOFF: You know, I think that  
14 makes --

15 CHAIR AREIAS: Commissioner Dettloff, if you are  
16 going to make a motion, make a motion, don't preface it.

17 COMMISSIONER DETTLOFF: -- no, I would like to  
18 withdraw my motion, and let another motion be made.

19 CHAIR AREIAS: Is that all right with the  
20 "seconder"?

21 [ No Response. ]

22 All right?

23 COMMISSIONER FLEMMING: Yes.

24 CHAIR AREIAS: Okay, will of the Commission?

25 ///

1       [ MOTION ]

2               COMMISSIONER ALLEN: Move to continue this item.

3               VICE CHAIR WAN: I want to hear from staff,  
4 though, on the timing?

5               CHAIR AREIAS: Is there a "second"?

6               VICE CHAIR WAN: I'll second.

7               CHAIR AREIAS: Okay, moved by Commissioner Allen,  
8 seconded by Commissioner Wan, to continue.

9               Ms. Wan had a question on the timing, Ms. Lee?

10              VICE CHAIR WAN: I don't want to -- if delaying  
11 this a month is going to create a problem. I don't want to  
12 create a problem for the repair work. I do believe the  
13 repair work needs to go forward. I just think we need to,  
14 also, deal with this issue, and I don't know how to deal with  
15 it.

16              CHAIR AREIAS: Mr. Crampton.

17              MR. CRAMPTON: With all due respect, I would like  
18 to propose that you allow us to work with staff, resolve  
19 Commissioner Wan's questions, and allow the applicant to go  
20 forward. It is what the city wishes. I believe the  
21 neighbors wish it.

22              I appreciate the concern expressed by Commissioner  
23 Wan -- Steve Rynas has been to the site, your staff analyst  
24 with the Long Beach office -- allow staff to again resolve to  
25 the satisfaction of the Commissioners, but please do not --

1 COMMISSIONER ALLEN: My concern simply has to do  
2 with --

3 CHAIR AREIAS: How do we -- I mean --

4 COMMISSIONER ALLEN: -- this drainage issue, and  
5 whether or not there is continuing activity on the site that  
6 will only exacerbate the problem.

7 I think what we need to do is try to resolve it  
8 once and for all. I don't think anyone is suggesting that we  
9 don't allow the revetment, but to make sure that the problem  
10 doesn't continue, or get worse.

11 CHAIR AREIAS: Okay.

12 I am going to go to Mr. Reilly.

13 COMMISSIONER REILLY: Well, I am just concerned  
14 that we get stuck on some of these technical points, and then  
15 continuing these things, and you know, interminably.

16 And, it seems to me that there are two issues on  
17 the table. One is, you know, the ongoing permission to have  
18 permanent irrigation systems in the front of the house, which  
19 I think we can simply take away by adding that front part to  
20 the condition --

21 COMMISSIONER FLEMMING: Right.

22 COMMISSIONER REILLY: -- that disallows irrigation  
23 in the back.

24 And, the other is simply to add a condition that  
25 requires that, you know, drainage from the pipes go under-



1 ground, be piped out to the front. Now, if it is already  
2 there, it is not a problem, but if it is not already there,  
3 they have got to do it.

4 COMMISSIONER FLEMMING: Right, very sensible.

5 CHAIR AREIAS: Okay.

6 COMMISSIONER REILLY: I think if we do those two  
7 things, we have solved the problems, and we can approve this.

8 VICE CHAIR WAN: I agree with that.

9 CHAIR AREIAS: Okay.

10 COMMISSIONER FLEMMING: I support that.

11 VICE CHAIR WAN: I support that.

12 CHAIR AREIAS: Okay.

13 Would somebody like to make a motion?

14 [ MOTION ]

15 COMMISSIONER REILLY: I will so move.

16 COMMISSIONER FLEMMING: Second.

17 CHAIR AREIAS: I will overlook your preference.

18 MR. CRAMPTON: Excuse me, may I --

19 CHAIR AREIAS: I has been moved and seconded.

20 Mr. Riley, discussion?

21 COMMISSIONER REILLY: No.

22 CHAIR AREIAS: Any further discussion?

23 COMMISSIONER REILLY: No.

24 CHAIR AREIAS: Okay, secretary, call the roll.

25 Any objection to a unanimous roll call?

1 [ No Response. ]

2 Seeing none, so ordered.

3 COMMISSIONER REILLY: That is on the amendment.

4 CHAIR AREIAS: That is on the amendment.

5 VICE CHAIR WAN: Then we have to go to the main  
6 motion.

7 CHAIR AREIAS: Okay, the main motion is before us  
8 -- no, no, that was it. Ms. Dettloff --

9 COMMISSIONER ALLEN: Withdrew the main motion.

10 CHAIR AREIAS: -- withdrew the main motion.

11 COMMISSIONER FLEMMING: Okay.

12 VICE CHAIR WAN: I want to make sure we understand  
13 what we did.

14 COMMISSIONER FLEMMING: Mr. Chairman, are we --

15 COMMISSIONER REILLY: So, we approved an amendment  
16 to what?

17 COMMISSIONER FLEMMING: -- complete on that?

18 CHAIR AREIAS: Ms. Lee.

19 COMMISSIONER REILLY: We approved an amendment for  
20 a motion to continue?

21 CHAIR AREIAS: Are you clear?

22 DISTRICT DIRECTOR LEE: No, I was just talking  
23 with counsel.

24 Did the Commission --

25 CHAIR AREIAS: Mr. Reilly, clarify this for us.

1 DISTRICT DIRECTOR LEE: Did you -- my only  
2 question was on the timing revisions? Were you incorporating  
3 those, to allow them the one month on the revised plans? and  
4 the 30 days for the assumption of risk?

5 COMMISSIONER REILLY: As per staff, yes.

6 DISTRICT DIRECTOR LEE: Okay.

7 CHAIR AREIAS: Clear now, Ms. Lee?

8 DISTRICT DIRECTOR LEE: Yes.

9 CHAIR AREIAS: Okay, all right, move on to the  
10 next item.

11 \*

12 \*

13 [ Whereupon the hearing was concluded. ]

14

15

16

17

18

19

20

21

22

23

24

25

