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CALIFORNIA COASTAL COMMISSION

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Hearing Date: August 10-13, 1999
Commission Action:

STAFF REPORT: REGULAR CALENDAR**APPLICATION NO.:** 5-98-524**APPLICANT:** Richard and Doreen Penfil **AGENT:** Zeiser Kling Consultants, Inc.**PROJECT LOCATION:** 1448 Galaxy Drive, City of Newport Beach, County of Orange

PROJECT DESCRIPTION: Permanently authorize installation of fifteen caissons along the northern and eastern property lines to enhance slope stability approved under Emergency Permits 5-98-497-G and 5-98-524-G. Demolition of a gazebo which encroaches onto the Upper Newport Bay Ecological Reserve. Ancillary development includes replacing irrigation and drainage system, re-vegetation of disturbed areas, reinstall two foot high protective wrought iron fence, add drainage pipes to convey water directly to the street, and re-vegetate the hillside with drought tolerant native plants. Eight cubic yards of grading is proposed.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission take one vote adopting a two part resolution which would approve portions of the "after-the-fact" development and deny other portions of the "after-the-fact" development. The major issue of this staff report is development on a coastal bluff-top adjacent to an ecological reserve. The proposed development consists of the installation of fifteen caissons to enhance slope stabilization on a coastal bluff that has been experiencing distress. Ancillary development includes re-vegetation of disturbed areas, the replacement of the irrigation and drainage systems and removal and reinstallation of the two foot tall wrought iron fence in a new location.

Staff recommends that the Commission deny the in-ground irrigation system that was installed without benefit of a coastal development permit since the water

discharged by irrigation would percolate into the ground and contribute to bluff instability. Staff recommends that the Commission approve the remaining portions of the development (which consists of installation of the caissons, demolition of the gazebo, grading to improve drainage, and replacement of the wrought iron fence with a new wrought iron fence) with ten special conditions. Special conditions contained in this staff report concern: revised plans, assumption of risk, conformance with the geological recommendations, gazebo demolition, implementation of a landscaping plan, conformance with a drainage and runoff control plan, imposition of best management practices, future development, and removal of the unpermitted irrigation system.

The applicant requests that the Commission approve the in-ground irrigation system. The applicant contends that the lawn area has been designed to minimize the introduction of irrigation water into the ground and consequently the proposed irrigation system would not adversely affect slope stability.

LOCAL APPROVALS RECEIVED: Approval in Concept 2571-98 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, 1448 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 1448 Galaxy Drive, Upper Back Bay Area, Newport Beach, California"* by Converse Consultants dated May 14, 1998, *"Geotechnical Report of Bluff Slope Failure Investigation, 1448 Galaxy, Newport Beach, California"* by Zeiser Kling Consultants, Inc. (PN 98038-01) dated November 2, 1998, *"Caisson Excavation Observation, 1448 Galaxy, Newport Beach, California"* by Zeiser Kling Consultants, Inc. (PN 98038-03) dated March 2, 1999, 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:

I. Staff Recommendation of Approval in Part and Denial in Part

Staff recommends that the Commission adopt the following two-part resolution. The motion passes only by affirmative vote of a majority of the Commissioners present.

A. MOTION:

"I Move that the Commission adopt the staff recommendation, by adopting the two-part resolution set forth in the staff report."

B. RESOLUTION

Part 1: Approval with Condition of a Portion of the Development

The Commission hereby **APPROVES**, as conditioned, a coastal development permit for the portion of the proposed project consisting of: the installation of fifteen caissons, and the removal of the gazebo to a depth of 12" below grade on the grounds that as conditioned, the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreational policies of Chapter 3 of the Coastal Act, 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.

Part 2: Denial of the Remainder of the Development

The Commission Hereby **DENIES** a coastal development permit for the portion of the proposed development consisting of after-the-fact construction of an in-ground irrigation system in the backyard on the grounds that the development will not be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, is located between the sea and the first public road nearest the shoreline and is not in conformance with the Chapter 3 policies of the Coastal Act and would prejudice the ability of the local government having jurisdiction of the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and would result in 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. REVISED PLANS

Prior to issuance of the coastal development permit, the applicant shall submit, in a form and content acceptable to the Executive Director, revised plans which shall delete the in-ground irrigation system from the project plans. 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.

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

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

3. CONFORMANCE OF DESIGN AND CONSTRUCTION PLANS WITH GEOTECHNICAL RECOMMENDATIONS

- A. All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with all recommendations contained in the Engineering Geologic Reports prepared by Zeiser Kling Consultants, Inc. and dated November 2, 1998 and March 2, 1999. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, evidence that an appropriate licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all of the recommendations specified in the above-referenced geologic evaluation approved by the California Coastal Commission for the project site.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development

permit unless the Executive Director determines that no amendment is required.

4. GAZEBO DEMOLITION

The top of the gazebo foundation shall be removed so that the foundation remaining will be at least 12" below grade, covered with soil, and planted consistent with the landscaping special condition (special condition number 5)

5. LANDSCAPING PLAN

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

1. The plan shall demonstrate that:

- a. all vegetation planted on the site will consist of native or non-native drought-tolerant plants which are non-invasive,
- b. all planting will be completed by within 60 days of Commission action,
- c. all required plantings will be maintained in good growing condition through-out the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan, and
- d. No permanent irrigation system shall be allowed within the property. Any existing in-ground irrigation systems in the side yards or front yards shall be disconnected and capped. The in-ground irrigation system in the backyard shall be removed. Temporary above ground irrigation to allow the establishment of the plantings is allowed. The landscaping plan shall show all the existing vegetation and any existing irrigation system.
- 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.
- f. Landscaped areas in the front and side yards can include potted ornamental provided that they are non-invasive, are placed on drained hardscape, and do not allow water to percolate into the soil.

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

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

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

6. DRAINAGE AND RUNOFF CONTROL

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

7. 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.

8. PERMISSION FROM THE DEPARTMENT OF FISH AND GAME

Prior to issuance of this permit, the applicant shall submit for the review and approval of the Executive Director written confirmation from the Department of Fish

and Game that the applicant has the legal right to enter the Upper Newport Bay Ecological Reserve for conducting work within the Ecological Reserve.

9. FUTURE DEVELOPMENT

This coastal development permit 5-98-524 approves only the development, as expressly described and conditioned herein at 1448 Galaxy Drive. Any future development, including but not limited to landscaping, shall require a coastal development permit or an amendment to this permit from the Coastal Commission.

10. CONDITION COMPLIANCE

Within 90 days of Commission action on this coastal development permit application, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the condition hereto that the applicant is required to satisfy prior to issuance of this permit including the removal of the in-ground irrigation installed in the backyard without benefit of a coastal development permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

IV. Approval Findings and Declarations.

The Commission hereby finds and declares as follows:

A. Project Description and Location

The proposed project is located at 1448 Galaxy Drive in the City of Newport Beach, County of Orange (Exhibits 1,2, & 3). Galaxy Drive is located on a bluff above Upper Newport Bay and the Upper Newport Bay Ecological Reserve. The residence is on the bayside side of Galaxy Drive, hence, the subject site is located between the nearest public roadway and the shoreline of Upper Newport Bay. The bluff is geotechnically active and has been prone to failure. The Commission has issued at least five coastal development permits for slope repairs on Galaxy Drive. Appendix A (page 22) is a review of prior Commission actions on Galaxy Drive.

On December 16, 1997 a bluff failure occurred on the adjacent property at 1454 Galaxy Drive (Exhibits 1 and 2) which affected the project site. The project proposes backyard bluff stability improvements consisting of the installation of fifteen subterranean caissons and the removal of a gazebo which encroaches onto the Upper Newport Bay Ecological Reserve. Ancillary development consists of replacing the irrigation and drainage systems, re-vegetation of disturbed areas, reinstallation of a two foot high protective wrought iron fence, addition of drainage pipes to convey water directly to the street, and re-vegetation of the hillside with

drought tolerant native plants (Exhibit 3). Eight cubic yards of grading are proposed for purposes of establishing drainage to confine surface water flows in the back yard to the property prior to it being conveyed to the street.

The applicant also applied for and received two emergency permits for the installation of fifteen subterranean caissons. Copies of these permits are attached as Exhibits 7 and 8.

B. Geologic Hazards

The subject site is developed with a single family residence and is on a coastal bluff overlooking Upper Newport Bay. Consequently, the bluff on which the lot is located is subject to failure due to water induced erosion from rainfall, irrigation, and tidal action. According to the applicant's geologic consultant, Zeiser Kling Consultants, Inc. a slide failure occurred in December 1997 just to the north of the applicants property. The cause of this failure was the infiltration of rainwater into the subsurface which may have triggered the failure.

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 five coastal development permits for slope repair or stabilization along Galaxy Drive (see Appendix A on page 22). The number of permit applications for bluff stabilization and bluff repairs on Galaxy Drive demonstrates that this bluff overlooking Upper Newport Bay is geotechnically active. Development of coastal bluffs is inherently risky, Section 30253 of the Coastal Act states, in relevant part:

New development shall:

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

To evaluate the site's stability the property was subject to two geotechnical investigations performed by Zeiser Kling Consultants, Inc. One study was titled *"Geotechnical Report of Bluff Slope Failure Investigation, 1448 Galaxy, Newport" Beach, California* and is dated November 2, 1998. The second report was prepared following the installation of the caissons under the emergency permits to validate that the caissons will enhance slope stability and is titled *"Caisson Excavation Observation, 1448 Galaxy Drive, Newport Beach, California"* and is dated March 2, 1999.

The first geotechnical investigation notes that in December 1997 that a failure occurred on the bluff slope adjacent to and encroaching into the residential property at 1454 Galaxy immediately to the north of the subject property (1448 Galaxy Drive). This report goes on to state that the bluff failure on the adjacent property is characteristic of the bluff failures that have occurred in this area, a blockslide landslide that failed on a clay layer with an out-of-slope dip. The geotechnical report concluded that the cause of the failure may have been the infiltration of rainwater into the subsurface. This finding is consistent with that of Group Delta which attributed the failure, in part, to the infiltration of water onto the bluff face. Though both geotechnical reports attribute the slide to excessive rainfall, both geotechnical reports observed that no free water was encountered in the exploratory borings.

Concerning the impact of the bluff failure on the subject property, Zeiser Kling comments that there is a possibility that the failure could propagate further into the adjacent property and into the subject property. Zeiser Kling also noted the presence of ground cracks on the subject property which are believed to be tension failures resulting from the sudden loss of lateral support when the bluff failed. In a letter (December 29, 1998) to the Commission, Zeiser Kling states that *"During a site visit on December 23, 1998, we observed evidence of slow but ongoing movement affecting the rear yard area including damaged flatwork and subsidence of the lawn area."* The Zeiser Kling report of November 2, 1998 notes that secondary slumping of terrace and fill materials in the head scarp is likely to occur if left in its present condition for a sufficient period of time and that this slumping could encroach into the extreme northeast corner of the subject property.

To assure bluff stability on the subject property and to protect the subject property from encroachment of head scarp slumping, Zeiser Kling recommended the installation of a row of piles along the northeast corner of the property. According to Zeiser Kling, the piles should be installed along the north property line starting at the northeast corner of the property. In addition, the pile line should be extended ten feet along the rear property line. Moreover, Zeiser Kling recommended that a row of piles should be constructed along the rear property line since an old bluff failure exists seaward and just outside the applicant's property line.

As originally proposed these rear yard piles would have been placed just seaward of the applicant's property line within the Upper Newport Bay Ecological Reserve. The emergency permit which allowed these caissons to be installed required that they be relocated landward to be within the applicant's property line. Consequently, Zeiser Kling prepared the second geotechnical evaluation dated March 2, 1999 to confirm that the revised caisson location would comply with the first geotechnical investigation of November 2, 1998 and provide the required level of slope stability.

The emergency coastal development permit 5-98-524-G also included the removal of a gazebo at the south east end of the property which encroached onto the Upper Newport Bay ecological reserve and was built without benefit of a coastal development permit. The applicant proposes to remove the gazebo because it is necessary to install the caissons. Zeiser Kling through a letter dated March 15, 1999 (Exhibit 4) notes that the gazebo has a five foot deep foundation. Zeiser Kling asserts that complete removal of the foundation would leave the bluff top in a condition which may be susceptible to erosion and surficial failure. Zeiser Kling recommends that the top of the gazebo foundation be removed to a depth of 6" to 12" below grade, covered with soil, and to leave the remaining foundation since it would provide slope stability. Based on the recommendation of the Zeiser Kling, the Commission finds that the top of the gazebo foundation be removed to a depth of 12" below grade and that it be covered with soil and revegetated consistent with the landscaping special condition. To assure that development is carried out consistent with this recommendation the Commission is imposing a special condition to require that the top portion of the gazebo foundation be demolished so that it is 12" below grade, that soil be placed on top of it, and that it be planted consistent with the landscaping special condition.

Though the Zeiser Kling evaluation concludes that the project can be undertaken and that the rear yard flatwork such as the concrete sidewalks and landscaping can be rebuilt, the geotechnical consultant has 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 consultant relate to: 1) reducing water infiltration into the bluff slope through an area drain system which should be inspected regularly for proper functioning, 2) Irrigation of the rear yard should be kept to a minimum, 3) structural design of the piles and testing, and 4) managing surface drainage. Zeiser Kling did not make any recommendations concerning landscaping.

Landscaping can also promote bluff stability by withdrawing water from slopes through evapotranspiration and a root system which holds the soil in place. Though plants can have a beneficial impact on bluff stability, over watering can have an adverse impact on slope stability as it adds weight and can lubricate slide

planes. To provide a planting plan which promotes bluff stability, the applicant proposes to install native or drought tolerant plants and has submitted a draft landscaping plan.

Commission staff has reviewed the landscaping plan and found several components of the plan to be inconsistent with minimizing irrigation of the rear yard as proposed in the geotechnical recommendation of Zeiser Kling and the geotechnical recommendation by Group Delta for the neighbor's property. Both geotechnical firms recommend that water percolation be minimized. Zeiser Kling in their March 15, 1999 letter (Exhibit 4) state: *"Irrigation of landscaping at and near the top of a slope can have a detrimental effect on the stability of a slope if irrigation is performed in an irresponsible manner."* Consequently, the presence of an irrigated lawn area is inconsistent with the necessity to minimize irrigation. However, according to the applicant's landscape architect, Pederson and Associates, the lawn area consists of hybrid bermuda grass which is deep rooted, drought tolerant, and is dormant from November to mid-February which means that it would not require irrigation during this period (exhibit 5). Pederson and Associates goes on to state that: *"Existing soils are clay-silt material which has a very slow percolation or infiltration rate. The slow percolation rate of this soil will allow surface rain water to rapidly enter drainage systems and be carried away providing that a 2% gradient is provided to the drainage system."* Pederson and Associates state that the rear yard lawn area is 1370 sq. ft. or 8% of the total lot area. According, to Pederson and Associates the landscaping plan has been reviewed and approved by the Department of Fish and Game. However, a letter confirming this has not been received by staff.

Though a draft landscaping plan has been prepared, the Commission finds it necessary to impose a special condition to require that a final landscaping plan be prepared which minimizes the potential of water infiltrating into the ground. The slide which occurred was caused, in part, due to the presence of water and the applicant's geotechnical firm has made recommendations that irrigation be minimized. Therefore, the applicant shall submit for the review and approval of the Executive Director a revised landscaping plan. The landscaping plan, 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 ground, no permanent in-ground irrigation shall be permitted, temporary above ground irrigation to establish the plantings is permitted; 2) landscaping shall consist of native or deep rooted drought tolerant non-native plants which are non-invasive. Invasive, non-indigenous plant species which tend to supplant native species shall not be used; and 3) Ornamental plants that are in pots which are non-invasive and are placed on drained hardscape which does not allow water to percolate into the soil will be allowed in the front and side yards. Additionally, the landscaping plan shall also show the existing backyard plants and

irrigation system. Through this special condition, one of the contributing factors to bluff failure, the introduction of water into the ground, will be minimized.

The drainage and runoff control plan shall be submitted for the review and approval of the Executive Director prior to issuance of this coastal development permit. The drainage and runoff control plan shall also evaluate the effectiveness of the existing on site drainage. If the existing on-site drainage is not consistent with the requirements of this condition, the applicant shall be responsible for installing a drainage and runoff control system which conforms to this condition within ninety days of issuance of this permit.

Although adherence to the geological consultant's recommendations will minimize the risk of damage, the risk is not eliminated entirely. Galaxy Drive has been prone to bluff failures on a consistent bases. The geotechnical report prepared by Zeiser Kling (November 2, 1998) notes that the existing slide could propagate towards the subject site. The project plans submitted on January 5, 1999 by the applicant show that an old bluff failure is located just seaward of the applicant's property. 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) and at 1454 Galaxy Drive under coastal development permit 5-98-469 (Ferber).

Since the coastal bluffs adjacent to Galaxy Drive are active, future development adjacent to the bluffs could have an adverse impact on bluff stability if not properly evaluated. For this reason, the Commission is imposing a special condition which states that any future development or additions on the property, including but not limited to hardscape improvements, grading, landscaping, vegetation removal and structural improvements, requires a coastal development permit from the Commission or its successor agency. This condition ensures that any future development on coastal bluffs which may affect the stability of the bluff and residential structures receives review by the Commission. The Commission imposed an informational future improvements special condition for development occurring at 1730 Galaxy Drive under coastal development permit 5-94-288 (Lewis) and at 1454 Galaxy Drive under coastal development permit 5-98-469 (Ferber).

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 reports prepared by Zeiser Kling on November 2, 1998 and the update of March 2, 1999. To ensure that the geotechnical consultant's recommendations are instituted, it is necessary to impose a special condition requiring verification that the project plans are in compliance with the recommendations of Zeiser Kling. Accordingly, the applicant must submit prior to issuance of the permit, for the review and approval of the Executive Director, plans (grading, drainage, and caisson plans) signed by a certified geotechnical engineer which incorporate the recommendations made by Zeiser Kling in their November 2, 1998 geotechnical investigation (PN 98038-01) and as updated by their report of March 2, 1999 (PN 98038-03).

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

C. Environmentally Sensitive Habitat Areas

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

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

Concerning development in environmentally sensitive areas the City's certified Land Use Plan notes that *"The siting of new buildings and structures must be controlled and regulated to insure, to the extent practical, the preservation of unique natural resources, and to minimize the alteration of natural land forms along bluffs and cliff."* Policy 1 in the Chapter titled "Environmentally Sensitive Habitat area and

Unique Coastal Resources" requires that environmentally sensitive habitat areas shall be preserved and protected.

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

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

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

Vegetation patterns in the watershed have been altered considerably by human activity. These changes have resulted from agricultural use, increasing urbanization, commercial development, and industrial development. Undeveloped areas still contain arid scrub vegetation that is typical of southern California. According to 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 prior to issuance of this permit a landscaping plan which shall be submitted for the review and approval of the Executive Director. To minimize the potential for the introduction of non-native invasive species and to minimize the potential for future bluff failure, a landscaping plan shall be prepared by a licensed landscape architect and shall incorporate the following criteria: 1) to minimize the introduction of water into the ground, no permanent in-ground irrigation shall be permitted, temporary above ground irrigation to establish the plantings is permitted; 2) landscaping shall consist of native or deep rooted drought tolerant non-native plants which are non-invasive. Invasive, non-indigenous plant species which tend to supplant native species shall not be used. Furthermore to assure that the landscaping plan will be compatible with the Upper Newport Bay Ecological reserve, it shall be reviewed and approved by the California Department of Fish and Game; and 3) Ornamental plants that are in pots which are non-invasive and are placed on drained hardscape which does not allow water to percolate into the soil will be allowed in the front and side yards. Additionally, the landscaping plan shall also show the existing backyard plants. Through this special condition, one of the contributing factors to bluff failure, the introduction of water into the ground, will be minimized.

Furthermore, to assure that construction activities on the applicant's property such as the installation of the caissons and demolition of the gazebo do not result in the transport of sediment into Upper Newport Bay and to minimize the potential for erosion the Commission is imposing a special condition to require that the applicant when undertaking construction implement best management practices such as sandbags to control erosion which is a documented problem in Upper Newport Bay. Additionally, removal of the gazebo, if not properly mitigated will leave a bare area which could erode. Consequently the Commission is imposing a special condition to require that the portion gazebo of the gazebo foundation remaining be covered with soil and planted consistent with the landscaping special condition.

Furthermore, consistent with the requirements of Section 30601.5 the Commission is imposing a special condition to require that the applicant obtain permission from the Department of Fish and Game, the landowner of the Upper Newport Bay Ecological Reserve, before undertaking any work that may occur in the Upper Newport Bay Ecological Reserve such as the removal of the gazebo and landscaping.

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

D. Public Access

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

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

E. Local Coastal Program

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

The Newport Beach Land Use Plan was certified on May 19, 1982. The project as conditioned is consistent with the Chapter 3 policies of the Coastal Act. The proposed development will not prejudice the City's ability to prepare a Local Coastal

Program for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

F. Unpermitted Development

Without benefit of a coastal development permit, the applicant has conducted eight cubic yards of grading, installed a new in-ground irrigation system, a drainage system, and lawn. The emergency permits granted by the Executive Director were only for the installation of the fifteen subterranean caissons. The grading, new in-ground irrigation systems, and new lawn is part of the project description for this coastal development permit application.

The applicant asserts that the irrigation system, drainage system, and lawn were replaced since construction activity associated with the installation of the caissons damaged them. This activity was documented by the applicant through both pictures and oral comments at meeting held with staff on March 11, 1999 (Exhibit 12). The applicant stated that he believed this work was allowable repair work since it was the repair of damage resulting from the installation of approved subterranean caissons. This work is also shown in the plans submitted to Commission staff. However, the photos indicated that the rear lawn area was substantially modified beyond that which would have been necessary following installation of the caissons at the edge of the property.

Coastal Commission staff informed the applicant that the replacement of the irrigation system, grading for and installation of a drainage system, and the installation of a lawn constituted non-exempt development. Section 13250 of the California Code of Regulations states that the following classes of development require a coastal development permit because they involve a risk of adverse environmental effects: *"Any significant alteration of land forms including removal or placement of vegetation, on a beach, wetland or sand dune, or within 50 feet of the edge of a coastal bluff, or in areas of natural vegetation designated by resolution of the commission or regional commission after public hearing as significant natural habitat."* (emphasis added). The grading, installation of the in-ground irrigation system, and lawn installation occurred within 50 feet of the edge of a coastal bluff. Consequently, the work that was undertaken constitutes development that requires a coastal development permit application.

Consideration of the permit application by the Commission has been based solely on the consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. The certified Newport Beach Land Use Plan was used as guidance by the Commission in reaching its decision.

Approval of this permit does not constitute a waiver of any legal action with regard to the alleged unpermitted development, nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit.

G. California Environmental Quality Act

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

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

IV. Denial Findings and Declarations.

The Commission hereby finds and declares as follows:

A. Geologic Hazards

The subject site is developed with a single family residence and is on a coastal bluff overlooking Upper Newport Bay. Consequently, the bluff on which the lot is located is subject to failure due to water induced erosion from rainfall, irrigation, and tidal action. According to the applicant's geologic consultant, Zeiser Kling Consultants, Inc. a slide failure occurred in December 1997 just to the north of the

applicants property. The cause of this failure was the infiltration of rainwater into the subsurface which may have triggered the failure.

Development of coastal bluffs is inherently risky. The Commission has issued at least five coastal development permits for slope repair or stabilization along Galaxy Drive (see Appendix A on page 22). 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, 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.*

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."*

To evaluate the site's stability the property was subject to two geotechnical investigations performed by Zeiser Kling Consultants, Inc. One study was titled *"Geotechnical Report of Bluff Slope Failure Investigation, 1448 Galaxy, Newport" Beach, California* and is dated November 2, 1998. The second report was prepared following the installation of the caissons under the emergency permits to validate that the caissons will enhance slope stability and is titled *"Caisson Excavation Observation, 1448 Galaxy Drive, Newport Beach, California"* and is dated March 2, 1999.

The first geotechnical investigation notes that in December 1997 that a failure occurred on the bluff slope adjacent to and encroaching into the residential property at 1454 Galaxy immediately to the north of the subject property (1448 Galaxy Drive). This report goes on to state that the bluff failure on the adjacent property is characteristic of the bluff failures that have occurred in this area, a blockslide landslide that failed on a clay layer with an out-of-slope dip. The geotechnical report concluded that the cause of the failure may have been the infiltration of

rainwater into the subsurface. This finding is consistent with that of Group Delta which attributed the failure, in part, to the infiltration of water onto the bluff face. Though both geotechnical reports attribute the slide to excessive rainfall, both geotechnical reports observed that no free water was encountered in the exploratory borings.

Moreover, in two separate actions the Commission required that an existing in-ground irrigation system be disconnect and capped-off for the property located at 1454 Galaxy which is next door to the subject property (1448 Galaxy Drive) at the Commission's February 1999 meeting and the Commission's April 1999 meeting. The Commission found at the February 1999 meeting that the slope failure which occurred at 1554 Galaxy (coastal development permit 5-98-469) was the result of excessive water in the slope and that disconnecting the in-ground irrigation system over the entire property would contribute to reducing the quantity of water infiltration into the slope. Therefore, in conjunction with the recommendations of Keiser Kling to minimize the potential for water to percolate into the soil, the Commission finds it necessary to deny the proposed in-ground irrigation system. Furthermore, the use of drought tolerant plants is an effective alternative to irrigation which may contribute to slope instability due to the percolation of water into the slope. Based on the landscaping plans requirements for drought tolerant vegetation, an in-ground irrigation system is not necessary since landscaping promotes bluff stability by withdrawing water from slopes through evapotranspiration and a root system which holds the soil in place. Though plants can have a beneficial impact on bluff stability, over watering can have an adverse impact on slope stability since it adds weight and can lubricate slide planes. To protect bluff stability consistent with the requirements of Section 30253 of the Coastal Act, the Commission denies the in-ground irrigation system for the backyard. To assure that the in-ground irrigation system in the backyard is removed, the Commission is imposing a special condition to require revised plans showing that the in-ground irrigation system has been deleted and that it be removed within ninety (90) days of Commission action.

Appendix A

Prior Commission Permits on Galaxy Drive

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 (Exhibits 7 and 8). These emergency permits were reported to the Commission at its January 1999 Commission meeting. The project under these emergency permits consists of the installation of caissons within the applicant's property along the eastern property line and the removal of an existing gazebo that encroaches onto the Ecological Reserve. Special conditions imposed required the use of best management practices to minimize the migration of silt into the Ecological Reserve, that the caisson be approved by the geotechnical consultant in their new location, that the caissons would not have off-site impacts, and that any disturbed areas be revegetated with non-invasive, primarily native, drought tolerant plants. The follow-up regular coastal development permit application was received on December 30, 1998. However, the regular coastal development permit application was deemed incomplete pending receipt of a full project description and corrected project drawings. These items were received in early March.

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

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

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

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

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

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

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

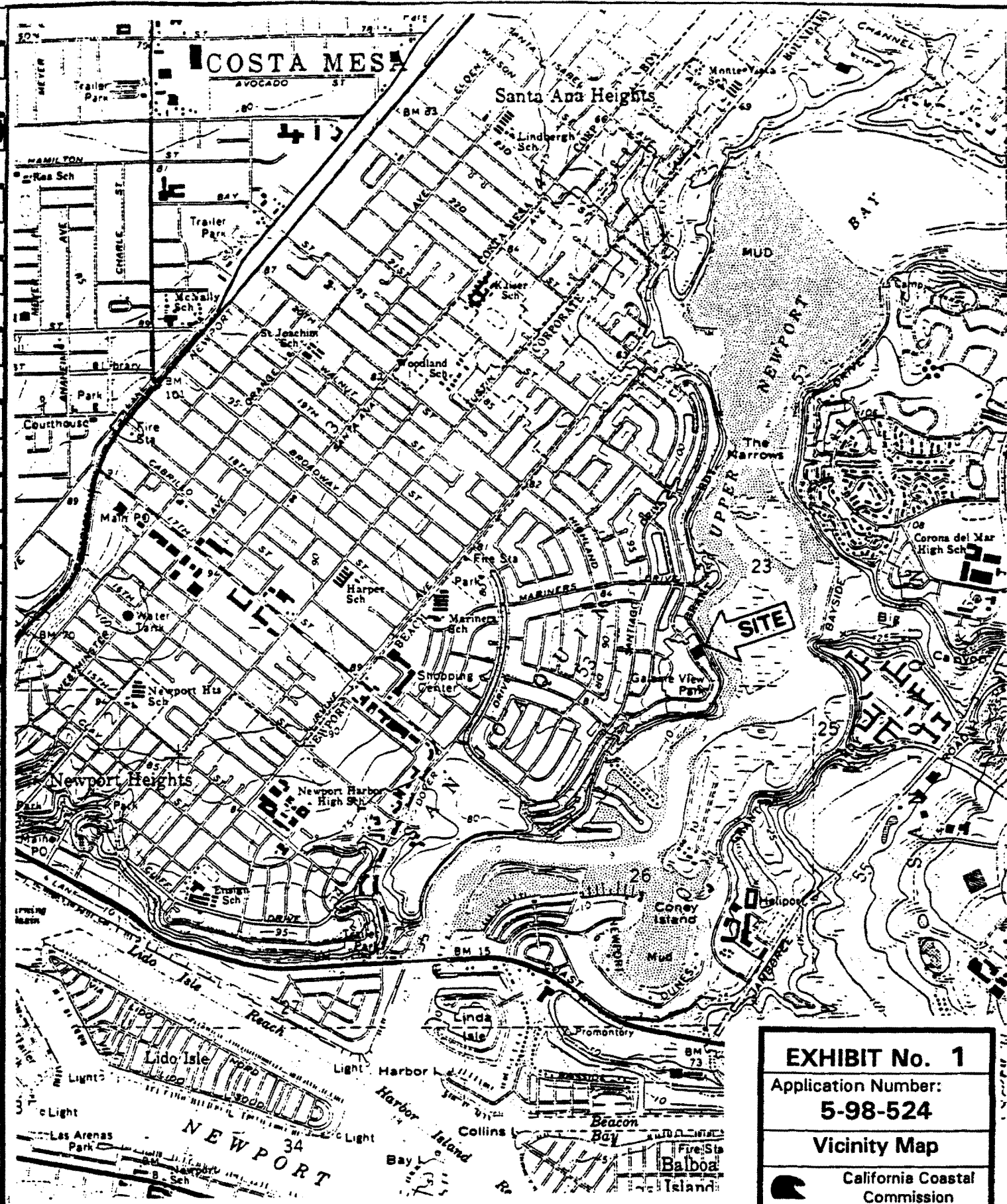


EXHIBIT No. 1
Application Number: 5-98-524
Vicinity Map
California Coastal Commission

Base Map: U.S.G.S. 7.5 Minute Topographic Map, Newport Beach Quadrangle

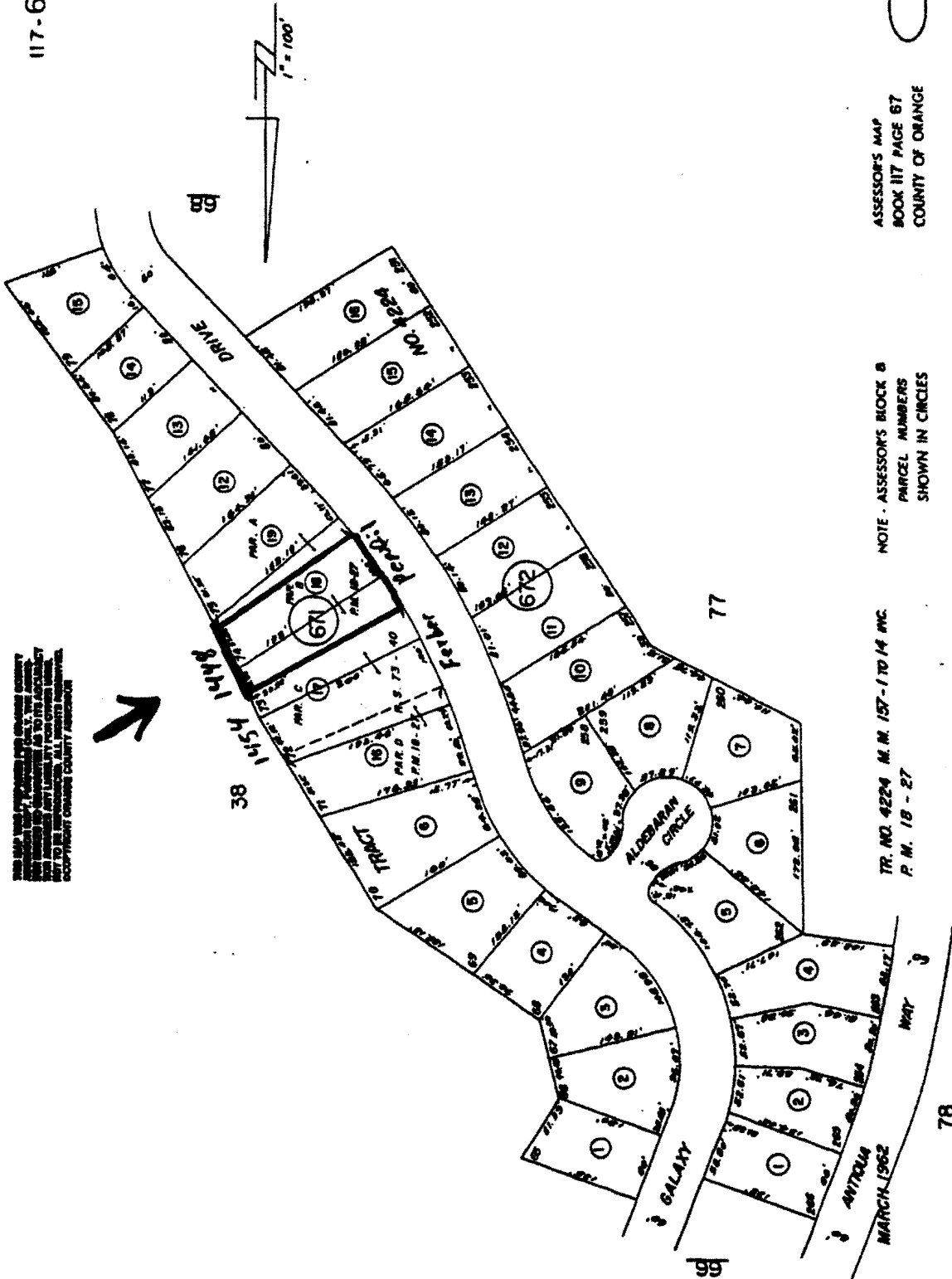


ZEISER KLING
CONSULTANTS, INC.

SITE INDEX MAP
Penfil Residence
Newport Beach, California

Figure: 1
PN: 98038-OC
Date: May, 1998

117-67



THIS MAP WAS PREPARED BY THE COUNTY OF ORANGE, CALIFORNIA, FOR THE PURPOSE OF SHOWING THE LOCATION OF THE PARCELS AND THE LOCATION OF THE ALLEYS AND DRIVEWAYS. ALL RIGHTS RESERVED. COUNTY OF ORANGE, CALIFORNIA.

ASSESSOR'S MAP
BOOK 117 PAGE 67
COUNTY OF ORANGE

NOTE - ASSESSOR'S BLOCK 8
PARCEL NUMBERS
SHOWN IN CIRCLES

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

EXHIBIT No. 2

Application Number:
5-98-524

Assessor's Map

California Coastal
Commission

GENERAL NOTES AND SPECIFICATIONS

DRAINAGE LEGEND				
SYMBOL	CONFINEMENT	DESIGN AND CONSTRUCTION	DESIGNATION	REMARKS
	CLASS 1	1. 10' MIN. DEPTH 2. 10' MIN. SPACING	1. 10' MIN. DEPTH 2. 10' MIN. SPACING	
	CLASS 2	1. 10' MIN. DEPTH 2. 10' MIN. SPACING	1. 10' MIN. DEPTH 2. 10' MIN. SPACING	
	CLASS 3	1. 10' MIN. DEPTH 2. 10' MIN. SPACING	1. 10' MIN. DEPTH 2. 10' MIN. SPACING	

NOTES: 1. ALL DRAINAGE SYSTEMS SHALL BE DESIGNED TO DRAIN ALL EXCESS WATER FROM THE SURFACE OF THE ROADWAY AND ADJACENT AREAS.

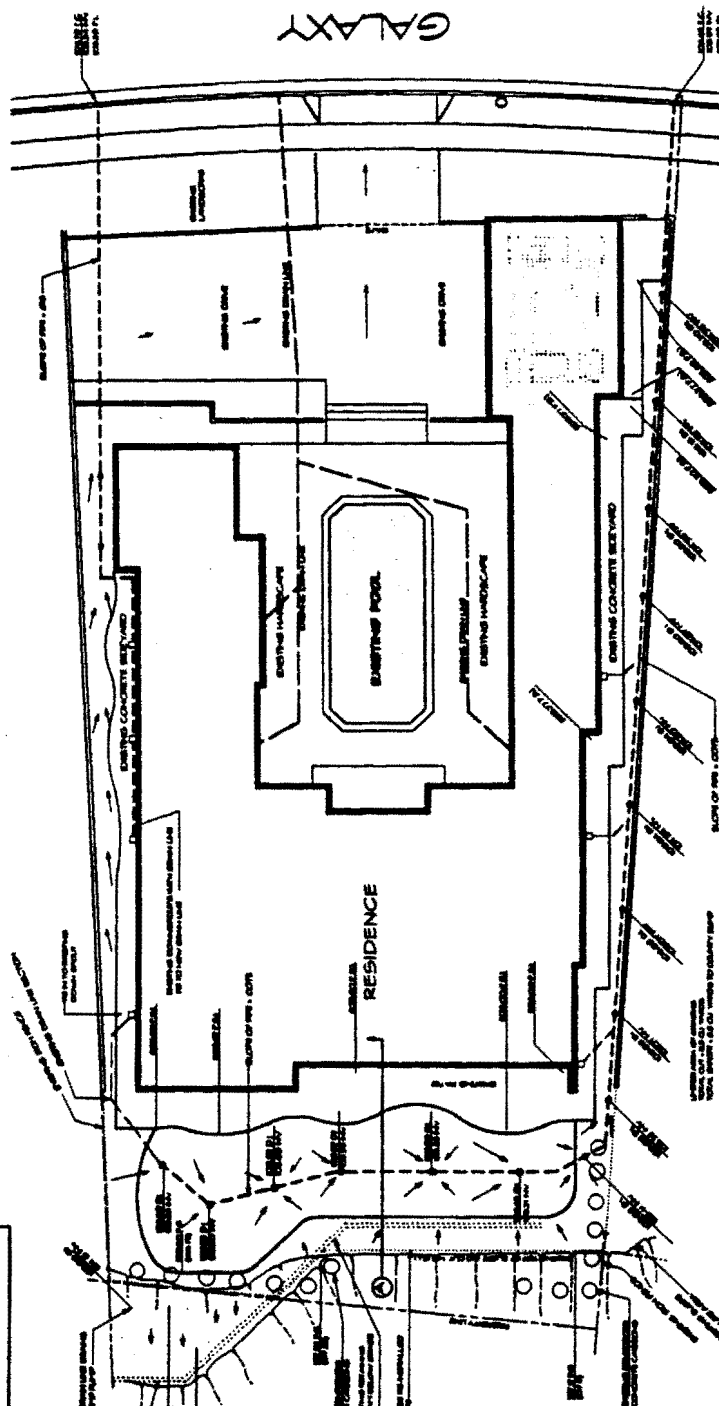
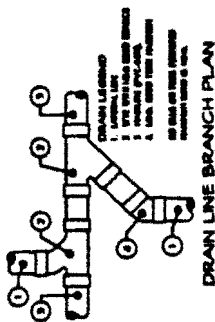
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3. ALL DRAINAGE SYSTEMS SHALL BE DESIGNED TO DRAIN ALL EXCESS WATER FROM THE SURFACE OF THE ROADWAY AND ADJACENT AREAS.

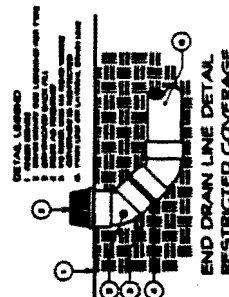
4. ALL DRAINAGE SYSTEMS SHALL BE DESIGNED TO DRAIN ALL EXCESS WATER FROM THE SURFACE OF THE ROADWAY AND ADJACENT AREAS.

5. ALL DRAINAGE SYSTEMS SHALL BE DESIGNED TO DRAIN ALL EXCESS WATER FROM THE SURFACE OF THE ROADWAY AND ADJACENT AREAS.

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READING &
DRAINAGE
PLAN

SHEET NO. L-1 OF 4

THE GROUP INCLUDES CROCHET, KNITTING, SEWING, AND OTHER HANDICRAFTS. IT IS A GREAT WAY TO MEET NEW PEOPLE AND LEARN NEW SKILLS.

THE ONE WHO'S NOT HERE

DESIGN AND CONSTRUCTION OF A

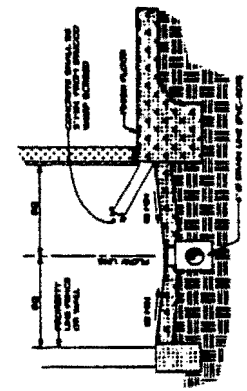
UNITED STATES COMMERCE DEPARTMENT
1221 E. DRYDEN RD. SUITE 1000 CA
97024 PH 408 (204) 720-0000

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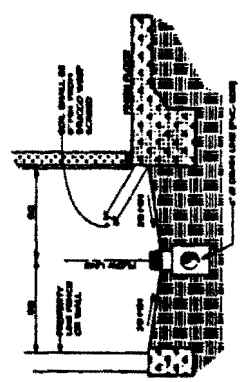
NEWPORT BACH CA 92060
TEL 607/472-5272

LEGEND

1	CENTER LINE
2	ROAD CUT
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TYPICAL HARDCAPPED SIDE YARD SECTION
EXISTING SURFACE SLOPE 1% MIN. TO DRAIN INLET



TYPICAL LANDSCAPED SIDE YARD SECTION
MINIMUM SETBACKS: 5' SIDE YARD, 5' FRONT YARD, 5' REAR YARD


EXHIBIT No. 3	
Application Number: 5-98-524	
Plan View	
	California Coastal Commission



EXHIBIT No. 4
Application Number: 5-98-524
Zeiser Kling Letter
 California Coastal Commission

March 15, 1999

Dr. Richard Penfil
1939 Port Weybridge Place
Newport Beach, CA 92660

RECEIVED
South Coast Region

MAR 16 1999

CALIFORNIA
COASTAL COMMISSION

Subject: Geotechnical Issues, 1448 Galaxy Drive, Newport Beach, CA, Coastal Commission Emergency Permits 5-98-497-G and 5-98-524-G, Coastal Development Permit Application 5-98-524.

References: Zeiser Kling Consultants, Inc., 1999, Caisson Excavation Observation, 1448 Galaxy Drive, Newport Beach, California, Coastal Commission Emergency Permits 5-98-497-G and 5-98-524-G, Coastal Development Permit Application 5-98-524, dated March 2, 1999, PN 98038-03.

Zeiser Kling Consultants, Inc., 1998, Geotechnical Report of Bluff Slope Failure, 1448 Galaxy, Newport Beach, California, dated November 2, 1998, PN 98038-01.

Dear Dr. Penfil:

Zeiser Kling Consultants, Inc. (ZKCI) has prepared this letter at your request and authorization in order to respond to the comments and questions of the Coastal Commission staff during our meeting with them on March 11, 1999 regarding the Coastal Development Permit Application 5-98-524. The issues discussed during the meeting which require a geotechnical response are: the removal of the gazebo slab, the meaning of the term moist used to describe the moisture condition of the soils encountered during the caisson excavations, and the impact that landscape irrigation on the subject property would have on the stability of the adjacent bluff slope.

It is our understanding that Dr. Penfil will remove the gazebo slab which was inadvertently constructed on Department of Fish and Game property. During caisson excavation the outer edge of the gazebo slab was found to have an approximately 5-foot deep foundation. We recommend that this foundation be left in place. Complete removal of the foundation would leave the bluff top in a condition which may be susceptible to erosion or surficial failures. Leaving the foundation in place provides protection to the top of the bluff from erosion and surficial creep/failures. The top of the foundation can be removed to a depth of 6-inches to 1-foot below the ground surface, if required, so that the top of the foundation would not be visible above the ground surface.

Dr. Richard Penfil
March 15, 1999

PN 98038-03

The term moist is one of six descriptive terms from the moisture scale used by geotechnical consultants to describe the water content of natural soils, bedrock, and artificial fill soils. The moisture scale is as follows:

- **Dry:** Little or no water is present in the soil/bedrock.
- **Damp:** Soil/Bedrock water content is greater than a dry condition but less than a moist condition.
- **Moist:** Water content is at or close to the optimum moisture content. Optimum moisture is the range of moisture contents at which maximum compaction can be achieved for soils/bedrock materials placed as artificial fill. The optimum moisture content varies for different soil/bedrock types. Soils/bedrock predominately composed of sand have optimum moisture contents lower than those composed of silt or clay and optimum moisture contents for silts are generally lower than those for clay.
- **Wet:** Soil/Bedrock water content is between optimum moisture and saturated conditions. Wet soil/bedrock does not produce seepage when exposed in an excavation.
- **Saturated:** The water content of a soil/bedrock is at it's maximum and will seep when exposed in an excavation. Saturated conditions indicate local perched water or regional ground water.

The soils and bedrock observed during the caisson excavations on the subject property were described as moist which indicates that the soil and bedrock is neither dry nor saturated, but has an optimal water content from a geotechnical perspective. This is also true for the soils and bedrock encountered in the two exploratory borings excavated for our bluff slope failure investigation which were described as moist to wet. Both of these borings were excavated immediately following rainstorms in the middle of last year's rainy season and, thus, the slight difference of the moisture content description. Saturated subsurface conditions that could affect bluff slope stability were not observed on the subject property in the excavations for caisson construction or our exploratory borings.

Irrigation of landscaping at and near the top of a slope can have a detrimental affect on the stability of a slope if irrigation is performed in an irresponsible manner. In the Southern California area the amount of landscape irrigation generally exceeds the amount of annual rainfall. However, while irrigation is greater than rainfall when measured over an entire year, rainfall amounts can greatly exceed that of irrigation when measured over short periods of time during the rainy season.

Dr. Richard Penfil
March 15, 1999

PN 98038-03

The duration and intensity of rainfall during a storm or series of consecutive storms influences the amount of water which infiltrates into the ground. The amount and rate at which water infiltrates into the ground also depends on the permeability (the ability of water to move through soil/bedrock) of the soil or bedrock materials exposed at the ground surface. The original grading of the subject property is reported to have placed 2 to 4 feet of artificial fill, consisting of silty clay, over the lot for the purpose of creating an impermeable cap. Our exploratory borings and the caisson excavations confirm the presence of the silty clay fill cap. The clayey fill soils capping the subject property have a low permeability (water infiltrates and moves through this soil type at a very low rate).

The rear yard of the subject property has been precise graded so that the rear yard slopes away from the top of the bluff slope towards area drain inlets. In addition, the side yards and pool decking have surface drainage systems and all roof gutter downspouts are directly connected to these drainage systems. All surface drain systems outlet onto Galaxy Drive at the front of the property. The rear yard grades and property drainage systems are shown on the Grading and Drainage Plan prepared by Pedersen & Associates, dated March 15, 1999.

Drought resistant vegetation was used in the re-landscaping of the rear yard that will require minimal irrigation. It is our understanding that irrigation will be controlled by an automated system equipped with an automatic rain shut-off device that will prevent irrigation during and immediately after rainstorms. Irrigation system specifications are shown on the Landscape Plan prepared by Pedersen & Associates, dated March 15, 1999.

Minimal irrigation performed in a controlled manner is unlikely to introduce large amounts of water into subsurface due to the impermeable nature of the fill cap placed over the property. Rainfall is more likely to infiltrate into the ground than is irrigation water. However, it does not appear that large amounts of rainwater has infiltrated into the subsurface beneath the property in the past. The amount of rainwater that does infiltrate into the subsurface should be significantly reduced by the precise grading of the rear yard, the extensive surface drain systems within the property, and the impermeable fill cap. It is our opinion that the subject property has excellent surface drainage and that conditions which would allow large amounts of rainwater or irrigation to infiltrate into the subsurface do not exist on the subject property. Therefore, irrigation on the subject property should not adversely affect the stability of the bluff slope.

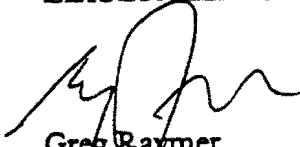
Dr. Richard Penfil
March 15, 1999

PN 98038-03

We appreciate this opportunity to be of service to you on this project. Please do not hesitate to contact our office should you have any questions.

Sincerely,

ZEISER KLING CONSULTANTS, INC.




Greg Raymer
Project Geologist
CEG 1997
Expires 7/30/99

GR:ms

**Pedersen & Assoc.
Landscape Architecture**

Ph. (949) 261-1755 • fax (949) 261-1975
20271 Acacia St., Newport Beach, CA 92660

EXHIBIT No. 5
Application Number: 5-98-524
Pedersen Letter
 California Coastal Commission

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MAR 16 1999

CALIFORNIA
COASTAL COMMISSION
March 16, 1999

Dr. Richard Penfil
1939 Port Weybridge Place
Newport Beach, CA

Subject: LANDSCAPE PLANS, INCLUDING GRADING, DRAINAGE, PLANTING AND TEMPORARY IRRIGATION FOR THE REAR YARD AREA OF 1448 GALAXY DRIVE, NEWPORT BEACH, CA.

The following is a brief description of the landscape plans for your home on Galaxy Road.

SHEET 1 : GRADING AND DRAINAGE PLAN:

The existing rear yard, prior to the installation of an operable drainage system had sheet drainage of approximately 2% which fell back to the patio on the northerly one half of the yard while the southerly one half drained very slowly (less than 1%) away from the patio towards the rear property line and slope, (see attached survey).

Existing soils are a clay-silt material which has a very slow percolation or infiltration rate. The slow percolation rate of this soil will allow surface rain water to rapidly enter drainage systems and be carried away providing that a 2% gradient is provided to the drainage system. The drainage design now provides a 2% gradient to 6 drain inlets which will transport rain water through a 4 inch diameter pipe to the street and away from the rear yard.

The entire site is approximately 17,700 sq. ft. of which 12,000 sq. ft. is building or concrete covered and serviced with a drainage system to transport surface water to the street. The rear yard lawn area is 1370 sq. ft. or less than 8% of the lot area.

Total grading on the site consisted of the removal of 9 cubic yards of soil which was hauled to the Orange County dump. The finished grades provide a 2% slope to the 6 drain inlets which will greatly eliminate possible soil saturation as may have been the case with the previous flat conditions.

Dr. Richard Pirfil
Landscape Plans, 1448 Galaxy Dr.
Date: 3-16-99
Page 2

When test borings of sub surface soils during the El Nino rain season, no soil moisture problems were observed due to the cap layer of clay silt soil.

The minor grading that took place preserved the existing top of slope position and elevations. An existing tubular steel fence was removed and existing shrubs and vines were pruned to stimulate new growth.

SHEET 2: IRRIGATION PLAN:

An existing irrigation system was damaged from the installation of 15 caissons inside the property lines of the rear yard. The irrigation system was repaired and modified with the installation of lower precipitation rate sprinkler heads.

Additionally, as a safeguard, an automatic rain shutoff monitoring device will be installed on top of the house. This device monitors rainfall and overrides the irrigation controller to prevent irrigation during and for a period after rains. The system is designed for the establishment of plantings and will be made inoperable after substantial establishment.

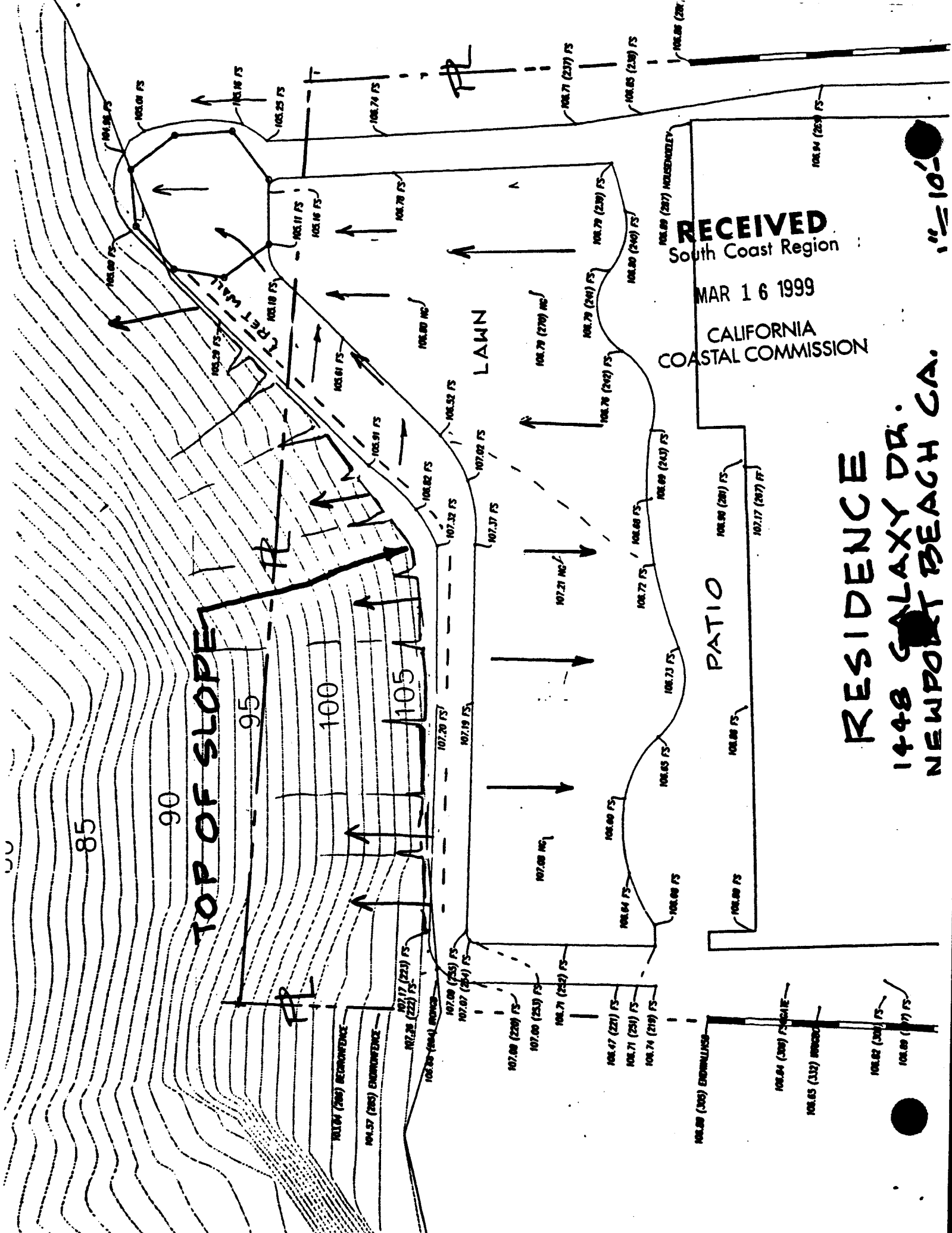
SHEET 3: PLANTING PLAN:

The planting plan designates all drought tolerant plant materials and native perennials. The plants are deep rooted and do not require pruning or spraying.

The plant materials have been reviewed and approved by Mr. Tim Dillingham of the Department of Fish and Game.

The lawn is a hybrid bermuda grass which is deep rooted, drought tolerant and goes dormant from November to mid February and does not require irrigation through this season for establishment.

Robert L. Pedersen
LA # 1109



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South Coast Region

MAR 16 1999


CALIFORNIA
COASTAL COMMISSION

RESIDENCE
1448 GALAXY DR.
NEWPORT BEACH CA.

1"=10'-0"

MEMORANDUM
TO: STEVE RYNAS
FROM: RICHARD PENFIL
DATE: 15 MARCH 99

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South Coast
MAR 1 1999
CALIFORNIA
COASTAL COMMISSION

EXHIBIT No. 6
Application Number: 5-98-524
Penfil Letter
 California Coastal Commission

**RE: OVERALL PLAN FOR COMPLETION OF HILLSIDE
-STABILIZATION PROJECT FOR 1448 GALAXY**

On 16 December 1997, there was a slope failure on the property adjacent to our house. In May of 1998 our house was red tagged by the city of Newport Beach. We have been unable to occupy our home since that time and have suffered enormous personal losses from this catastrophe. My personal and my professional life have been seriously impacted beyond anything you might imagine. The financial burden has escalated to an unacceptable level and, in fact, it is not longer financially feasible to maintain this property. This total disruption continues to this date and I request your reasonable cooperation to attempt to put an end to this disruption.

I have employed qualified professionals to provide the best possible solution to this ongoing nightmare. These professionals include Zeiser Kling Geotechnical consultants, Brandow & Johnston--structural engineers, DH civil engineering, Peter Construction, Robert Pedersen--registered landscape architect, Wesley Davis, Esq. and Allen Abshez, Esq. The geotechnical firm evaluated the hillside and made recommendations for the proper repair including caissons, and the need for proper grading, drainage and landscaping.

With the assistance of the Coastal Commission staff, I was granted emergency permits, on the 28th and 31st of December 1998, to install the fifteen caissons as designed by the licensed, registered consultants. Permits were obtained from the City of Newport Beach and work began, as mandated by both the emergency permits and by the City, immediately. On December 28, 1998 I submitted an application to the Coastal Commission for approval of the permanent repair. I received a letter from the staff in January 1999. The letter and follow-up telephone calls from staff indicated that my application could be presented to the Commission during the April meeting however a landscaping plan needed to be submitted. Additional telephone conversations indicated that the landscaping plan needed to include grading plans, drainage plans and that the planting materials needed to be drought resistant. The City had also required grading and drainage plans. Two sets of these plans were forwarded to the staff. Again, these plans were developed by registered, licensed professionals. The plans were approved by the City of Newport Beach and, in an attempt to put an end to this fifteen month long disaster, work was begun as soon as permits were obtained. Drainage and fine grading needed to be completed before the red tag could be removed by the City. Work was completed and final approval was

obtained from the City on March 9, 1999. During the process of installing the caissons, damage was done to the drive and sidewalk. A separate permit to repair this damage was obtained from the City and this work is near completion.

As a follow-up to the letters and telephone conversations, on 11 March 99, Robert Pedersen, a registered landscape architect, Greg Raymer, a geologist and member of the Zeiser Kling Geotechnical Consulting Group and I met with members of the Coastal Commission staff. The purpose of the meeting was to review my application for the permanent permit. During the meeting, very little time was spent reviewing the major portion of the repair, the caissons. At the meeting, I also provided staff with pictures of the property which showed the extent to which I have gone to minimize risk to the hillside. These measures included the elimination of the Koi pond with its waterfall and extensive water system. The pond was part of the property when I purchased it in 1989 and its elimination took place shortly after the purchase. At the same time I removed all planting materials and watering systems from the courtyard and from all of the areas around the perimeter of the house as well as much of the plant materials which were in the bayside yard. These actions, I believe may well have contributed to the fact that when five holes were inspected to the greatest depth of fifty feet, there was no evidence of infiltration of water.

The primary emphasis, during the meeting, was concentrated on the grading, drainage, landscaping and irrigation. The following is a brief review of these issues and is backed by comments from the appropriate professionals.

The grading and drainage plan, which directs all water from the highest point on the property to the drainage system had been approved, permitted and final approval given by the City. This plan required further clarification for the staff and it is supplied with this letter. The drainage plan appeared to be satisfactory. It is important to note that approximately ninety per cent of the property is completely devoid of any planted material. Every square inch of the property, from the top of the slope, is directly drained to the street via three (four inch) pipes through core holes in the curb. The grading is designed to allow absolutely no runoff to the bluff. Ten per cent or less of the property has plant material which is designed to be drought resistant and requires only minimal watering to establish and maintain. The temporary watering system is designed to deliver the minimum water and even contains a system that does not allow watering when there is rain. This system can not be activated until the rainwater has evaporated. This system is much more certain to deliver significantly less water than a hand watering system.

Much discussion during the meeting centered on the grass and a concrete pad which, during planning for the caissons was determined to be on Fish and Game property. The grass requires essentially no more watering than the materials which are on the list of acceptable materials that was presented to us at the meeting. Additional changes in the plant materials were made to comply with the

requests of staff. This information is included in the accompanying report from the landscape architect. As to the concrete pad, this is on top of a gradebeam, which was installed, under permit, in 1973. It was represented to be part of the property when I purchased it and in view of the fact that it carried a City permit, I had no reason to question its location. It is my firm belief that since the pad can not be seen from any point other than my property, it does not interfere with any use of the Fish and Game land, arguably provides some increased deterrent to erosion, and its removal only disturbs the hillside, the pad should be allowed to remain in place. It should also be noted that the pad is no longer easily accessible from my property. However, despite that belief, after the meeting with staff, I have decided to comply with the wishes of staff and remove the pad. The gradebeam, which is not visible and does afford protection against soil erosion, will remain in place. This was also the opinion of staff at the meeting.

I am certain that with the removal of the pad, the clarification of the grading and the changes in the planting materials, as well as the modification of the watering system to supply only enough water to establish the plants, we have complied with staff recommendations and I believe that staff can now reasonably recommend this project for approval. I have also been assured, by the consultants, that because of the selection of planting materials and the accompanying minimal watering requirements, the extensive drainage system and the grading, there will be no infiltration of water into the soil of more than a few inches. When two test holes were drilled in February of 1998, and when inspection was made in three of the fifteen caissons holes in January of 1999, there was no evidence of water infiltrating into the ground. This fact along with the extensive efforts to further decrease the water to the area and to create an additional extensive drainage system beyond that which already existed, must give comfort that this project is well within the acceptable range and in fact borders on the extreme.

Steve and Teresa, I appreciate your assistance and guidance and look forward to you recommending this application for approval by the Commission.

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

EXHIBIT No. 7	
Application Number: 5-98-524	
Emergency Permit 5-98-497-G	
	California Coastal Commission

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.

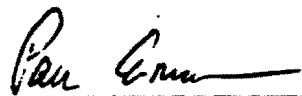
This letter constitutes approval of the emergency work you or your representative has requested to be done at the location listed above. I understand from your information that an unexpected occurrence in the form of a landslide requires immediate action to prevent or mitigate loss or damage to life, 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.

Very Truly Yours,

Peter M. Douglas
Executive Director

By: 

Title: Los Angeles Area Supervisor

CONDITIONS OF APPROVAL:

1. The enclosed form must be signed by the permittee and returned to our office within 15 days.
2. Only that work specifically described above and for the specific property listed above is authorized. Any additional work requires separate authorization from the Executive Director.
3. The work authorized by this permit must be completed within 30 days of the date of this permit.
4. Within 60 days of the date of this permit, the permittee shall apply for a regular Coastal Development Permit to have the emergency work be considered permanent. If no such application is received, the emergency work shall be removed in its entirety within 150 days of the date of this permit unless waived by the Director.
5. In exercising this permit the permittee agrees to hold the California Coastal Commission harmless from any liabilities for damage to public or private properties or personal injury that may result from the project.
6. This permit does not obviate the need to obtain necessary authorizations and/or permits from other agencies.
7. The applicant shall implement best management practices, such as sandbags, during construction to minimize the potential for silt to be transported into the Ecological Reserve and wetland below the project site.
8. The applicant shall not enter nor conduct work within the California Department of Fish and Game's Upper Newport Bay Ecological Reserve until the Executive Director has verified that California Department of Fish and Game has authorized such work in writing. A copy of such an authorization from the Department of Fish and Game shall be forwarded to the Commission before any such work occurs.

Condition number four (4) indicates that the emergency work is considered to be temporary work done in an emergency situation. If the property owner wishes to have the emergency work become a permanent development, a Coastal Development Permit must be obtained. A regular permit would be subject to all of the provisions of the California Coastal Act and may be conditioned accordingly. These conditions may include provisions for public access (such as an offer to dedicate an easement) and/or a requirement that a deed restriction be placed on the property assuming liability for damages incurred from storm waves. If you have any questions about the provisions of this emergency permit, please call the Commission office in Long Beach (562) 590-5071.

Enclosures: Acceptance Form
Coastal Permit Application Form
cc: Local Planning Department

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: *Teresa Henry*
Title: District Manager

EXHIBIT No. 8
Application Number: 5-98-524
Emergency Permit 5-98-524-G
 California Coastal Commission

CONDITIONS OF APPROVAL:

1. The enclosed form must be signed by the permittee and returned to our office within 15 days.
2. Only that work specifically described above and for the specific property listed above is authorized. Any additional work requires separate authorization from the Executive Director.
3. The work authorized by this permit must be completed within 30 days of the date of this permit.
4. Within 60 days of the date of this permit, the permittee shall apply for a regular Coastal Development Permit to have the emergency work be considered permanent. If no such application is received, the emergency work shall be removed in its entirety within 150 days of the date of this permit unless waived by the Director.
5. In exercising this permit the permittee agrees to hold the California Coastal Commission harmless from any liabilities for damage to public or private properties or personal injury that may result from the project.
6. This permit does not obviate the need to obtain necessary authorizations and/or permits from other agencies.
7. Prior to commencement of construction the applicant shall submit to the Executive Director for review and approval, two (2) sets of project plans, signed by the geotechnical consultant and the City of Newport Beach that are in substantial conformance with the plans submitted on December 30, 1998.
8. Prior to commencement of construction the applicant shall submit to the Executive Director for review and approval, a written statement from the geotechnical consultant approving the relocated caissons along and within the southeastern property line as proposed on the plans submitted December 30, 1998. The geotechnical consultant must also verify that the new alignment will provide the site at least the minimum factor of safety required by the local government and will not result in adverse off-site impacts.
9. The applicant shall replant the disturbed area after removal of the gazebo and pad with non-invasive, primarily native, drought tolerant plants to the satisfaction of the Department of Fish and Game. If the area is not revegetated prior to the start of the winter rains, appropriate erosion control shall be installed to prevent runoff into the ecological reserve.

Condition number four (4) indicates that the emergency work is considered to be temporary work done in an emergency situation. If the property owner wishes to have the emergency work become a permanent development, a Coastal Development Permit must be obtained. A regular permit would be subject to all of the provisions of the California Coastal Act and may be conditioned accordingly. These conditions may include a requirement that a deed restriction be placed on the property assuming liability for damages incurred.

If you have any questions about the provisions of this emergency permit, please call the Commission office in Long Beach (562) 590-5071.

Enclosures: Acceptance Form
Coastal Permit Application Form

cc: Local Planning Department



CITY OF NEWPORT BEACH

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

October 21, 1998

Mr. Wesley Davis
Davis & Balmuth
111 Pacific, Suite 200
Irvine, CA 92618-3311

5-98-524-6

5-98-4974

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South Coast Region
DEC 14 1998

CALIFORNIA
COASTAL COMMISSION

SUBJECT: Request for Clarification, Notice of Code Violation

Dear Mr. Davis:

The ground movement which resulted in ground cracks on 1448 Galaxy Drive was previously referred to as "slope failure" in the notice dated September 23, 1998. While the ground movement may be related to the slope failure on 1454 Galaxy Drive, we have not received a geotechnical investigation report from Dr. Penfil's geotechnical consultant or from Mr. Ferber at 1454 Galaxy Drive which establishes the cause and origin of the ground movement on 1448 Galaxy Drive or slope failure on 1454 Galaxy Drive.

On October 19, 1998 we received a faxed letter from Mr. Greg Raymer of Zeiser Kling Consultants which stated that the slope failure is located on 1454 Galaxy Drive and on the Department of Fish and Game property. Mr. Raymer concluded that the existing failure is *not likely* to move farther onto 1448 Galaxy Drive, but it is *possible* that it does. This letter was submitted via fax without a copy of the geotechnical investigation from which the conclusion was drawn. Therefore, we are not able to review the investigation or concur with Mr. Raymer.

The City is pursuing the enforcement of a slope repair at 1454 and 1448 Galaxy Drive. The City might have to take legal action to compel the repair by the property owners. It will take some time to compel Mr. Ferber to do the work, should he not cooperate. More over, the solution he may choose to stabilize his property may not result in acceptable stability at 1448 Galaxy. Therefore, it is necessary for Dr. Penfil to proceed with the necessary geotechnical investigation and repair to stabilize his property at this time.

Very truly yours,
BUILDING DEPARTMENT
Jay Elbetta, P.E., C.B.O., Director

By:


Faisal Jurdi, Chief Plan Check Engineer

Attachments

cc: Building Director
Mike Dexter
Richard Higley

EXHIBIT No. 9
Application Number: 5-98-524
City of Newport Beach Letter
California Coastal Commission



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

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

EXHIBIT No. 10

Application Number:

5-98-524

**City of Newport
Beach Letter**



California Coastal
Commission

**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:

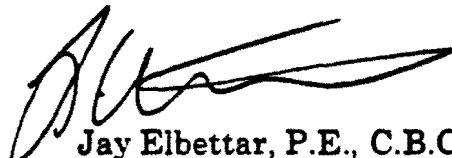
- A. Soil investigations of this nature cannot be conducted during the rainy season. It is a complex matter that requires considerable time to complete. Developing and designing the structural system also requires time and in these days of heavy construction activities, it is difficult to retain consultants 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



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

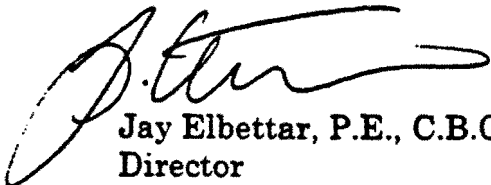
**SUBJECT: Emergency Permit Applications 5-98-4976 at 1448 Galaxy Drive,
and 5-98-469-6 at 1454 Galaxy Drive**

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

EXHIBIT No. 11
Application Number: 5-98-524
City of Newport Beach Letter
 California Coastal Commission

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

CONFERENCE WITH COASTAL COMMISSION STAFF


11 MARCH 99

ISSUES

CAISSONS, DRAINAGE, GRADING, LANDSCAPING, GAZEBO, PAD,
GRADEBEAM

1. CAISSONS—AS PER DESIGN PREVIOUSLY SUBMITTED SEE Z-K REPORT, BRANDOW-JOHNSON REPORT AND CITY APPROVAL ON 3 FEB 99
2. DRAINAGE—AS PER LANDSCAPE PLAN, DESIGNED BY PEDERSEN, REVIEWED BY Z-K, INCLUDED IN LANDSCAPE PLANS AND APPROVED BY CITY ON 8 MARCH 99
3. GRADING—AS PER LANDSCAPE PLAN, DESIGNED BY PEDERSEN, REVIEWED BY Z-K, FINAL APPROVAL BY CITY OF ENTIRE PROJECT ON 9 MARCH 99.
4. LANDSCAPING—AS PER PEDERSEN PLAN—DROUGHT RESISTANT—TO BE APPROVED BY FISH AND GAME
5. GAZEBO—LATTICE COVER—WAS PUT IN PLACE IN 1991 USING A SCALED DOWN VERSION OF THE LATTICE COVER THAT WAS CONSTRUCTED IN 1973—REMOVED MARCH 1999
6. GRADEBEAM AND PROTECTIVE PAD—THE GRADEBEAM WAS INSTALLED IN 1973 WITH A FENCE ON TOP OF THE GRADEBEAM. THE FENCE WAS A REQUIREMENT OF THE CITY OF NEWPORT BECAUSE OF THE KOI POND THAT WAS IN THE BAYSIDE YARD AND WAS TEN FEET DEEP. THIS GRADEBEAM, WHICH COULD NOT BE SEEN WHEN I BOUGHT THE HOUSE, AND THE FENCE WERE REPRESENTED TO BE ON THE PROPERTY LINE. AT THIS TIME, THE GRADEBEAM CAN NOT BE SEEN EXCEPT FROM THE 1448 PROPERTY. THE PAD WAS PUT IN PLACE IN 1991 WHEN ALL OF THE LANDSCAPING WAS REMOVED. MUCH LANDSCAPING WAS REMOVED FROM THE ENTIRE PROPERTY IN ORDER TO DECREASE THE NEED FOR WATERING. THE GRADEBEAM, FENCE AND A LATTICE COVER WERE INSPECTED AND APPROVED BY THE CITY IN 1973, LONG BEFORE I PURCHASED THE PROPERTY.

IN VIEW OF THE FACT THAT WE, IN 1989-91, REMOVED THE KOI POND WITH ITS EXTENSIVE WATER SYSTEM AND DRAINAGE, REMOVED EXTENSIVE LANDSCAPING FROM THE REAR YARD, SIDE YARD AND ATRIUM, DECREASED THE FENCE HEIGHT FROM FIVE TO TWO FEET AND INSTALLED CAISSONS AND IMPROVED THE DRAINAGE AND GRADING, IT IS MY REQUEST TO LEAVE THE PAD IN PLACE. IT IS VISIBLE ONLY FROM THE PROPERTY. IT CAUSES NO PHYSICAL HARM TO THE BLUFF AND DOES HELP TO PREVENT SOIL EROSION. IT DOES NOT LIMIT THE ACCESS TO NOR USE OF THE AREA BY ANY INDIVIDUAL. I REQUEST STAFF TO APPROVE THIS PROJECT AND RECOMMEND APPROVAL BY THE COMMISSION.

EXHIBIT No. 12
Application Number: 5-98-524
Penfil Discussion Points
 California Coastal Commission