

## CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA  
89 SOUTH CALIFORNIA ST., SUITE 200  
VENTURA, CA 93001  
(805) 641-0142

Request Filed: 8/30/95  
Staff: M. Betz  
Staff Report: 11/2/95  
Hearing Date: 11/14-17/95  
Commission Action:



## RECORD PACKET COPY

STAFF REPORT: REVOCATION REQUEST

APPLICATION NO.: R-4-94-178

APPLICANT: Jack Skene

PROJECT LOCATION: 27975 Winding Way, City of Malibu, L.A. County

PROJECT DESCRIPTION: Construction of 10,112 sq. ft., 28 ft. high single family residence with pool house, 4-car garage, septic system, driveway, patio, 800 sq. ft. attached guest unit, walkway, paving and 538 cu. yds. of cut and 264 cu. yds. of fill

PERSON REQUESTING REVOCATION: Sue Nelson, Friends of the Santa Monica Mountains' Park & Seashore, 1675 Sargent Place, Los Angeles, California

PROCEDURAL NOTE:

The California Code of Regulations, Title 14, Division 5.5, Section 13105 state the grounds for the revocation of a coastal development permit are as follows:

Grounds for revocation of a permit shall be:

- (a) Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the Commission finds that accurate and complete information would have caused the Commission to require additional or different conditions on a permit or deny an application;
- (b) Failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the Commission and could have caused the Commission to require additional or different conditions on a permit or deny an application. 14 Cal.Code of Regulations Section 13105.

APPLICANT'S CONTENTION:

The applicant contends that the grounds in section 13105(a) exist because:

- (1) There was "bad faith" on the part of the applicant in not forwarding adequate information to Coastal Commission staff, and the consequent failure of staff to develop findings and conditions regarding the site. (See Exhibit 1, letter of S. Nelson dated August 20, 1995 and Exhibit 2, letter of S. Nelson dated August 21, 1995)

The applicant contends that the grounds in section 13105(b) exist because:

- (1) The following persons and groups did not receive notice of the Commission hearing on the subject permit:

Friends of the Santa Monica Mountains, Parks and Seashore

Los Angeles Chapter of the American Indian Movement

City of Malibu Archaeologist

(See Exhibit 1, letter of S. Nelson dated August 20, 1995 and Exhibit 2, letter of S. Nelson dated August 21, 1995)

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SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission find that no grounds exist for revocation under either section 13105(a) or (b) and deny the request.

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STAFF RECOMMENDATION

Staff recommends that the Commission adopt the following resolution and findings:

I. Denial

The Commission hereby denies the request for revocation on the basis that (1) there was no intentional inclusion of inaccurate, erroneous or incomplete information in connection with the coastal development permit application where accurate and complete information would have caused the Commission to require additional or different conditions on the permit or deny the application; and (2) there was no failure to comply with the notice provisions of Section 13054 where the views of the persons not notified were otherwise not made known to the Commission and could have caused the Commission to require additional or different conditions or deny the application.

## II. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

### A. Permit Description/Background

On December 11, 1994, the Commission approved coastal development permit 4-94-178 (Skene) for the construction of 10,112 sq. ft., 28 ft. high single family residence with pool house, 4-car garage, septic system, driveway, patio, walkway, paving and 538 cu. yds. of cut and 264 cu. yds. of fill. The approval was subject to special conditions regarding landscaping and erosion control, color restriction, plans conforming to geologic recommendation, and wild fire waiver of liability.

The permit was the subject of the request for revocation. In two related actions, the permit was amended by the following actions. Those amendments are not the subject of the revocation request.

1. Amendment 4-94-178A was approved on July 13, 1995 to allow:

Construction of a 800 sq. ft. guest house to be attached to previously approved main house.

This amendment was determined by the Executive Director to be immaterial, was duly noticed, and no objections were received.

2. Amendment 4-94-178A2 was approved on September 15, 1995 to modify the future improvements deed restriction language. The following language replaced the last sentence of the condition:

Except for the Deed of Trust recorded on March 18, 1994 as Instrument No. 94-543537 in which Alexandra B. Payne holds the beneficial interest, the document shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed.

This amendment was determined by the Executive Director to be immaterial, was duly noticed, and no objections were received.

### B. Grounds for Revocation

#### Section 13105(a)

Pursuant to 14 California Code of Regulations (C.C.R.) Section 13108, the Commission has the discretion to grant or deny a request to revoke a coastal development permit if it finds that any of the grounds, as specified in 14 C.C.R. Section 13105 exist. 14 C.C.R. Section 13105 states, in part, that the grounds for revoking the permit shall be as follows: (1) that the permit application intentionally included inaccurate, erroneous or incomplete information where accurate and complete information would have caused the Commission to act differently; and, (2) that there was a failure to comply with the notice provisions where the views of the person(s) not notified were not otherwise made known to the Commission and could have caused the Commission to act differently.

On August 20 and 21, 1995 the South Central Coast District office received a written requests for revocation of the subject coastal development permit amendment (Exhibit 1.) As previously stated, the request for revocation is based on both of the grounds indicated above.

The first alleged grounds for revocation contains three essential elements or tests which the Commission must consider:

- a. Did the application include inaccurate, erroneous or incomplete information relative to the permit amendment?
- b. If the application included inaccurate, erroneous or incomplete information, was the inclusion intentional (emphasis added) on the part of the applicant?
- c. Would accurate and complete information have caused the Commission to require additional or different conditions or deny the application?

As indicated above, the first standard consists, in part, of the inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application. The applicant requesting revocation of the permit states:

"..."I am requesting revocation based upon the bad faith of the applicant and the city in not forewording adequate information to the Coastal Staff, and the failure of staff to develop findings and conditions regarding CA LAN 30 (archeological site)."

Staff has reviewed the information submitted by the applicant to investigate the accuracy and adequacy of the information submitted with the permit and amendment applications. Staff has found that the applicant did submit a complete application form and provided the necessary project information as required under the Coastal Act and 14 C.C.R. section 13053.5. Therefore, there is no evidence of inaccurate information submitted by the applicant. The applicant indicated the presence of archaeological resources and stated in the application that "site requires phase II test & monitoring by native american during construction". This constituted adequate information relative to the archaeological site's existance. The requestor has provided no evidence of any inaccuracy in the applicant's information, nor has the staff found any evidence of inaccuracy.

Therefore, there is no evidence of inaccuarate information submitted by the applicant. The fact that the applicant did not include in his original application information such as found in the Phase II study assessment recommended by the City Archaeologist, which submission was not required by Coastal Commission regulations does not equate to submission of inaccurate information. The fact that there may have been additional information pertaining to the site available elsewhere does not somehow transform the information that was submitted into "inaccurate" information. Of course, had the applicant not mentioned in any fashion the archaeological resources on the site while knowing of them, such omission could constitute submission of inaccurate information.

Commission staff determined that the application file was complete and filed the permit application as required under 14 C.C.R section 13056. There was no inaccurate or erroneous information submitted by the applicant. Therefore, the Commission finds that the first standard is not met.

The applicant requesting revocation further indicates that the City of Malibu withheld information from the Commission or did not forward adequate information to Commission Staff. First, possible omission by the City of withholding information from the Commission does not constitute a ground for revocation. Even if it did, however, the Commission could not find that there was such omission here. The applicant did provide evidence of "Conceptual Approval" from the City of Malibu as required by 14 C.C.R. section 13052. There is no evidence provided by the applicant for revocation or discovered by staff investigation that the City withheld any information which was required by Commission regulations. This assertion is not germane to the request.

The second standard consists of determining whether the inclusion of inaccurate, erroneous or incomplete information was intentional. As previously stated, there was no inaccurate information. As such, Commission staff has not found any evidence of the intentional inclusion of inaccurate, erroneous or incomplete information. Further, the revocation request does not contain any evidence that would indicate that the information presented was intentionally inaccurate, erroneous or incomplete. Therefore, the Commission finds that there was not any intentional inclusion of inaccurate, erroneous or incomplete information in connection with this permit application. The second standard is not met.

The third standard for the Commission to consider is whether accurate or complete information would have resulted in the requirement of additional or different conditions or the denial of the application. As stated above, the applicant did submit a complete permit application as required by Commission regulations. No factual evidence has been presented by the applicant for revocation which would indicate that the inclusion of additional information would have resulted in the Commission requiring different conditions or denial of the permit. While it is conceivable that if additional information had been presented to the Commission, additional conditions could have been applied to the permit, there is no actual evidence dictating such conclusion. Therefore, the Commission cannot find, based on the evidence, that the third standard has been met.

However, even if the third essential element was met, i.e., different conditions or denial would have resulted, the grounds set forth in section 13105(a) would still not be satisfied, because there was no intentional submission of inaccurate information required by the first and second elements of the test.

Therefore, the Commission finds, there is no evidence to indicate that the inclusion by the applicant of additional information in connection with the subject coastal development would have caused the Commission to require additional or different conditions on the permit or deny the application. The third element is not met. Therefore, the revocation request does not meet the grounds for revocation under section 13105(a) of the California Code of Regulations, as none of the three essential elements, of that section are met.

Section 13105(b)

The second alleged grounds for revocation of the permit is that the applicant failed to comply with the Commission's notice requirements. More specifically, the essential question the Commission must consider is whether or not there was "failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the Commission and could have caused the Commission to require additional or different conditions on a permit or deny an application?"

The revocation request asserts that the applicant did not provide the required public notice. The notification requirements for permits are found in Sections 13054 of the Coastal Commission's administrative regulations. These provisions require, that (1) the applicant shall provide a list of addresses of all residences and parcels within one hundred feet of the perimeter of the parcel on which the development is proposed, (2) provide stamped envelopes for are parcels previously described and (3) post a notice, provided by the Commission, in a conspicuous place on site which describes the nature of the proposed development.

Coastal Commission staff has reviewed the original permit file in order to determine if the notice provisions of Sections 13054 have been met. Staff has determined the following. For the original permit 4-94-178 (Skene), the site was posted as attested by a declaration of posting dated December 19, 1994. (Exhibit IV) In addition, public hearing notice was sent on September 12, 1995 to surrounding residents and property owners within 100 feet and other interested persons known at the time through a mailing list provided by the applicant. Staff has independently verified that the mailing list did include all property owners and residents within 100 feet of the subject parcel.

Based on the evidence in the administrative record of this permit application the applicant complied with the notice requirements pursuant to 14 C.C.R. Section 13054. The provisions of Section 13054 require that notice be provided to residents and property owners within 100 feet of the subject parcel and interested parties the Executive Director has reason to know may be interested. The applicant for revocation notes that "native peoples were not noticed, nor was the City archaeologist, nor were those who testified in opposition." Native American opposition was first made known in a phone call to staff, and letter subsequently received, from Carol S. Houck, Attorney at Law, received on August 7, 1995 (Exhibit 3) including letters from the noted Native American organizations (Gabrieleno Tongva Tribal Council, American Indian Movement, Southern California, and Swordfish Clan Chumash). Subsequently, the Commission staff was notified of the opposition of three other native American organizations -- American Indian Movement Southern California, Swordfish Clan Chumash, and Coastal Band of the Chumash. Commission staff were not informed these groups were interested parties until only recently, almost nine months after the Commissions approval on this permit application. Therefore, notice was provided to all those for whom the regulations call for notice and the applicant for revocation has provided no factual evidence which would indicate that required individuals were not notified. Therefore, there is no basis to conclude that inadequate note was provided.

Regarding the second and third essential element of the test, there is no evidence provided by the applicant for revocation, nor has the staff review disclosed any, indicating that the views of the persons not notified were otherwise made known to the Commission. Thus, the Commission cannot conclude that the views of the persons not notified were made known to the Commission in some other fashion. However, even though the Commission cannot make this conclusion, the grounds for satisfaction of Section (b) are, in any event, not met, because there is no evidence that those views could have caused the Commission to require additional or different conditions or deny the permit. Thus, the first and third elements of Section (b) are not met. Even if the third element was satisfied, however, the test of Section (b) is still not met because there was no failure of notice under 13054, which is the first required element of the test. Therefore, the Commission finds that the grounds in 13105(b) are not met.

C. Summary

As listed above, the request for revocation does not meet the requirements of 14 C.C.R. 13105(a) & (b). The Commission finds, therefore, that this revocation request should be denied on the basis that no grounds exist because there is no evidence of the intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application which could have caused the Commission to require additional or different conditions on a permit or deny an application; and on the basis that there is no evidence that the notice provisions of Section 13054 were not complied with where the views of the person(s) not notified were not otherwise made known to the Commission and could have caused the Commission to require additional or different conditions on a permit or deny an application.

6851A

# Friends of the Santa Monica Mountains' Park & Seashore

Environmental Advocate Planning of Parks, Beaches  
and Open Space for all Southern California

EXHIBIT NO. I
APPLICATION NO. R-4-94-178
Skene
p1 of 2

1  
Topanga Center, Box 123  
115 South Topanga Canyon Blvd.  
Topanga, California 90272

Mr. Peter Douglas  
Executive Director  
California Coastal Commission  
89 South California Street  
San Francisco, CA 94105-2219

CALIFORNIA  
COASTAL COMMISSION

August 21, 1995

Subject: REVOCATION OF Coastal Permit 4 94 178 and City of Malibu Neg Declaration 94-006 connected to construction of a 11,142 square foot single family house at 27975 Winding Road, Malibu by Jack and Roseanne Skene 28219 Agoura Road, Agoura Hills, CA 91301. The conditions attached to this permit fail to mention the significant archaeological site CA LAN-30, nor was this information part of the negative declaration forwarded to the Coastal Commission by the applicant and the city. This occurred in spite of extensive coastal commission archaeological guidelines, the presence of a city archaeologist and city guidelines, and a working study group. Something is amiss.

The city archaeologist required Phase II mitigation. Skene refused to comply, citing cost, he sued the city for a regulatory taking. This suit was dropped, it appears, in return for the city backing off on the Phase II mitigation. In June, 1995 the coastal commission adopted resolution No. 95-412 declaring equivalency, was amended to begin construction of an 800 foot gate house, four car garage on a 5.5 acres (A 2 acre footprint is permitted) over a significant archaeological site, yet there was still no information regarding significance of CA LAN 30 in the amendment. It also appears that Mr. Skene and the City must amend the amendment at some future date to deal with the substitute mitigation. That mitigation is opposed by the Friends of the Santa Monica Mountains, Parks and Seashore, The LA Chapter of the American Indian Movement and numerous individuals. None were noticed for the coastal hearing.

For instance the native people were not noticed, nor was the city archaeologist, nor were those who testified in opposition. Therefore, I am requesting revocation of the permit based upon the bad faith of the applicant and the city in not forwarding adequate information to the coastal staff, and the failure of staff to develop findings and conditions regarding CA LAN 30. This project is within the Santa Monica Mountains National Recreation Area boundary.

Originally approved with a negative declaration NO. 94-006 from the city it was to have been mitigated with a required Phase 2 Archaeological Study, now a new substitute mitigation will destroy the site. The Coastal Commission claims that the concept



approval in July constitutes final approval, and that the 10 day time for appeal has run out.

From: Susan Nelson, Friends of the Santa Monica Mountains Parks and Seashore

EXHIBIT NO. I
APPLICATION NO. R-4-94-18
Skene
p2 of 2

S U E N E L S O N

Writer and Planner

1675 Sargent Place  
Los Angeles, California 90026

213-250-3233

Fax 213-250-5840

EXHIBIT NO. II

APPLICATION NO.

R-4-94-178

Skene

p 1 of 2

8/20/95

Dear Peter,

This case permit 9 94 178 has come to my attention, because the archaeological site CA LAN 30 on the 5.5 acre site at 27595 Winding Way Malibu, which is under contention has been declared significant by the city archaeologist and Chumash expert Dr. Chester King. American Indian Movement AIM Chapter Executive Director Fern Mathias, and Dee Garcia, Chairwoman Gabrieleno Council view CA LAN 30 as one of the most intact sites within the city boundaries and one of the most important coastal sites within the Santa Monica Mountains National Recreation Area (NRA). The initial coastal permit was conditioned and negative declaration 94-006 was mitigated. None of those conditions had been met prior to the amendment (none were associated with the archaeological site) and the Phase II mitigation from the Negative Declaration not honored. In spite of the fact that the city of Malibu employs a city archaeologist, has a study group and hires a native american monitor, neither it nor the applicant informed your staff of significance of the site.

When the city archaeologist required a Phase II assessment, the developer claimed that he was victim of a regulatory taking and filed a lawsuit. Then, claiming a statutory cap on the money that he was required to spend on mitigation, he demanded and received from the city substitute mitigation which will allow him to proceed with construction of a gatehouse prior to the construction of the main house. The city backed the developer assertions on the cap and then improvised a substitute voluntary monitoring program in lieu of Phase II assessment. The voluntary monitoring will include use of a trenching machine which normally grinds up evidence before artifacts and valuable information related to material conditions of prehistoric culture can be saved and researched. There will be an archaeologist and monitor selected by the City Manager, which means, I believe, the developer. In other words the new mitigation program destroys the site.

City Attorney Hogin advised the Malibu City Council that it could not review the accompanying negative declaration to Permit 4 94 178 awarded with the original application because statutory limits on the reply had been exceeded. Perhaps the letter of the law has been met in complying with filing dates, but the intent of the coastal act and its subsequent guidelines adhering to that act in regard to archaeology have not been met as the buck keeps being passed back and forth between the lead agency and the commission without sufficient information.

On reviewing the Coastal Commission excellent set of guidelines, it is incomprehensible to me that the second mitigation improvised by the City Planning Director, which calls for volunteer monitors and

oversight by a native person chosen by the city manager, not the city archaeologist, or the Hutash Tugapan group of the National Park Service (ordered by the Coastal Commission in the case of the Talapop site at Malibu Creek State Park), without a similar study and research design, is sufficient to meet the conditions necessary for the mitigated negative declaration attached to the coastal permit. The present negative declaration with the mitigation substitution will end in the destruction of a significant archaeological site. There will be no knowledge added to our own understanding of Chumash prehistoric settlement in the Santa Monica Mountains.

I am asking that the coastal permit be revoked and that the developer should submit new plans. The present permit is for 2 acres on a 5.5 acre site. The City of Malibu, as the lead agency, and the California Coastal Commission should support guidelines pertaining to native american rights and historic preservation objectives under local, state and federal laws. It should find also find a way to assist the funding for the mitigation, or for acquisition.

Thank you,  
Susan Nelson

EXHIBIT NO. II
APPLICATION NO. R-4-94-178
Skene
p 2 of 2

**CAROL S. HOUCK**

**Attorney At Law**  
State Bar #177248

201 No. Alvarado Avenue  
OJAI, CALIFORNIA 93023

Telephone (805) 646-8995  
Fax (805) 646-8995 0

EXHIBIT NO. III
APPLICATION NO. R-4-94-178
p1 of 2

August 2, 1995

**RECEIVED**  
AUG - 7 1995  
CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

Merle Betz  
California Coastal Commission  
89 So. California St.  
Ventura, CA 93001

Re: Permit No. 4-94-178. (Skene)

Dear Mr. Betz:

Pursuant to our telephone conversations of last week and today concerning the permit of Mr. Jack Skene for development of Parcel 4467-011-008, Permit No. 4-94-178 in the city of Malibu, enclosed is information regarding several irregularities regarding the adoption and approval of the Negative Declaration. Although we understand that these concerns may not have a substantive effect on the Coastal Commissions approval process, we believe this information should be forwarded in order to provide the Commission with important and significant information.

As you are aware, the proposed development of this property is subject to California Environmental Quality Act (CEQA) and does not qualify for exemption. On July 24, 1995, the city of Malibu approved and adopted substitute mitigation measures for negative declaration No. 94-006, which eliminated the original condition that required a Phase II archaeological study be conducted on the site in order to assess and evaluate the significance and suitability of mitigation measures. This condition complied with the recommendations of UCLA Archaeological Institute in the Quick Check report, as well as the recommendations by the city's archaeologist, Dr. Chester King.

Although the City of Malibu found otherwise, the substitute mitigation measures adopted and approved by the City Council of Malibu last Tuesday, July 24, 1995 are NOT equivalent to the previously adopted mitigation measures, and WILL have an adverse impact on archaeological resources, as verified in

the comments addressed to the city council by Dr. King (attached). Moreover, there is an indication that the conclusions based on the initial study do not comply with CEQA's requirements.

At this time, we are investigating other omissions in the permit process that may be potential violations of CEQA, including the possible failure to consult with the Native American Heritage Commission, a trustee agency that must be consulted by the lead agency in connection with preparation of an EIR or Negative declaration. Pub Res C § 21080.3(a).

Also attached to this letter, is a copy of Resolution No. 95-412 and the relevant substitute mitigation measures approved and adopted by the City of Malibu, numerous letters from interested Native American groups, including a letter from D. Garcia, Tribal Chair of the Gabrieleno Tongva Tribal Council and member of the Cultural Resources Committee, as well as a copy of the comments of Dr. King, as indicated above.

Should the California Coastal Commission request further information on this project, we will do our best to accommodate you.

Yours truly,

  
Carol S. Houck  
Attorney for  
American Indian Movement

/ch  
encl.

EXHIBIT NO. III
APPLICATION NO. R-4-94-178
p 2 of 2

Donald Wilkins  
22241 Pacific Coast Hwy.  
Malibu, CA 90265

RECEIVED  
JAN 4 1995  
CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

DECLARATION OF POSTING

TO: South Central Coast District

Pursuant to the requirements of California Administrative Code 13054(b), this certifies that I/we have posted the "Public Notice" of application to obtain Coastal Commission Permit No. ~~94-94-178~~ for development of construction of 10,112 sq. ft., 28 ft. high from existing grade single family residence with 4-car garage, septic system, driveway, patio and walkway paving and 538 cu. yds. of cut and 264 cu. yds. of fill located at 27975 Winding Way, Malibu.

The public notice was posted at a conspicuous place, easily read by the public and as close as possible to the site of the proposed development.

P. D. Wilkins ARCHITECT  
(Signature)

Date: 19 ~~DECEMBER~~ 1994

NOTE: YOUR APPLICATION CANNOT BE PROCESSED UNTIL THIS "DECLARATION OF POSTING" IS RETURNED TO THIS OFFICE. If the site is not posted at least eight days prior to the meeting at which the application is scheduled for hearing, or the Declaration of Posting is not received in our office prior to the hearing, your application will be removed from its scheduled agenda and will not be rescheduled for Commission action until the Declaration of Posting has been received by this office.

EXHIBIT NO. <u>IV</u>
APPLICATION NO. <u>94-94-178</u>
<u>Skene</u>
Declaration of <u>Posting</u>