

## CALIFORNIA COASTAL COMMISSION

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



W23

February 29, 1996

TO: Commissioners and Interested Persons

FROM: Steve Scholl, South Central District Director; Gary Timm, Assistant District Director; Troy Alan Doss, Staff Analyst.

APPEAL DESCRIPTION: Appeal of the Executive Director's determination that a coastal development permit (CDP) application, No. 4-95-102, is incomplete. This appeal has been requested by Mr. Ralph Rogari one of the applicant's of the application. The applicants proposed the construction of a single family residence at 2854 Seabreeze Drive, Los Angeles County, Malibu Region.

SUBSTANTIVE FILE DOCUMENTS: California Coastal Act of 1976, as of January 1995, the Malibu/Santa Monica Mountains Land Use Plan, CDP Application 4-95-102, Engineering Geologic Report for Construction of a Single Family Residence on lots 64 and 65 Tract 9455 at 2850 Seabreeze, Malibu, California, dated April 22, 1988, prepared by Donald B. Kowalewsky, Environmental & Engineering Geology.

PROCEDURAL NOTE: Pursuant to Section 13056 of the California Code of Regulations, an applicant may appeal the Executive Director's determination that an application for a coastal development permit is incomplete to the Commission for the Commission's determination as to whether the permit application may be filed. The filing of an application is the threshold step in the California Coastal Commission's (CCC) review process. Once an application is filed complete it is scheduled for hearing before the CCC.

STAFF RECOMMENDATION: Staff recommends that the Commission deny the applicants' appeal and recommends that the Commission not direct staff to file CDP application 4-95-102 because the filing of the incomplete application would not be consistent with sections 30250(a), 30231, and 30253, of the California Coastal Act and applicable CCC regulations, including 14 C.C.R. Sections 13052, 13053.5, and 13050 et seq.

## FINDINGS

### A. Appeal Background

On May 18, 1995, the South Central District office of the California Coastal Commission received a CDP application submitted by applicants Jeff Mitroka and Ralph Rogari. The application sought a CDP for the construction of a 2,632 sq. ft. single family residence located at 2854 Seabreeze Drive, located in the El Nido small lot subdivision in the Malibu region of Los Angeles County. On June 5, 1995, the permit application was determined to be incomplete by Commission staff, pursuant 14 C.C.R. Section 13050 et seq., as it was missing information necessary to determine whether the proposed project complies with all relevant policies of the Coastal Act. This same day the applicants were sent notification of the incomplete status of the permit application (See Exhibit 1) and were informed by letter that the following items would be required before the application could be filed as complete:

1. Proof of the applicant's legal interest in the property.
2. Assessor's parcel number as indicated on a property tax statement.
3. Assessor's parcel map(s) showing the applicant's property and all other properties within 100 feet of the property lines of the project site.
4. Stamped envelopes addressed to each property owner and occupant of property situated within 100 feet of the property lines of the project site.
5. An appropriate map(s) indicating location of property in relation to the coastline (such as a Thomas Brothers map).
6. A percolation test prepared by a qualified sanitarian or soils engineer.
7. County Health Department review of septic system.
8. 2 sets of detailed grading and drainage plans with cross sections and quantitative breakdown of grading amounts.
9. Two copies of a comprehensive, current (not more than 1 year old), site-specific geology and soils report.
10. A current (not more than 1 year old) County "Approved" Geologic Review Sheet.
11. A reduced set of drawings to 8 1/2" x 11" in size of the site plan, grading plan, and elevations.
12. "Approved in Concept" form completed by the building department or other responsible department.
13. Current Zoning for the project site.
14. Copies of required local approvals for the proposed project, such as zoning variances, use permits, etc.
15. Cost evaluation of contractor for the proposed development.
16. If water wells are proposed, evidence of County review and approval.

After receiving this status notification, Mr. Rogari contacted staff via telephone regarding the incomplete determination. At this time Mr. Rogari was informed by staff that he would also need to submit information regarding the County of Los Angeles Slope-Intensity Formula, or GSA formula, as is outlined in the Malibu/Santa Monica Mountains Land Use Plan, referred to as the LUP.

On August 3, 1995, the South Central office received a second submittal from the applicants. This submittal contained some of the information required to complete CDP application 4-95-102, specifically items 1-4, and 8. Additionally, staff determined that items 12-16 would not be required for the proposed development after the submittal of items 1-4, and 8. However, a number of items were still missing; specifically:

1. A vicinity map indicating the location of the property in relation to the coastline.
2. Where septic systems are proposed, percolation test prepared by a qualified sanitarian or soils engineer.
3. County Health Department review of septic system.
4. Two copies of a comprehensive, current (not more than 1 year old), site-specific geology and soils report (including maps) prepared in accordance with the Coastal Commission's Interpretive Guidelines.
5. County of Los Angeles Slope-Intensity Formula, or GSA formula, as is outlined in the Malibu/Santa Monica Mountains Land Use Plan, referred to as the LUP (See Table D).

On August 23, 1995, Commission staff sent a status letter to the applicants to inform them that the above referenced information would be required before their application could be filed as complete (See Exhibit 2). This letter also set forth in detail the reasons why the missing items were needed. Shortly after receiving this notification Mr. Rogari contacted Commission staff on the telephone regarding the incomplete status of the CDP application. During this conversation the Mr. Rogari expressed confusion regarding the status of the CDP application. This telephone call was followed by a September 5, 1995, letter from the applicants (See Exhibit 3) essentially asserting that the application should be considered complete and their belief that the Commission authority in reviewing applications for single family residences (SFR) is limited to determining if a SFR is in conformity with Chapter 3 policies of the Coastal Act. The applicants also stated that the Commission did not have the authority to adopt or enforce local land use regulations, and further asserted that they did not want to invest \$8,000 on testing or reports before the CCC was willing to decide on the issue of the size of the proposed single family residence.

Staff informed the applicants in status letters dated June 5, and August 23, 1995, that Commission staff would not be able to file the application as complete until all the referenced items were submitted to staff (Copies of the correspondence between staff and the applicants are attached in Exhibits 1-9). The applicants were also informed that these items were needed to adequately review and determine the proposed project's consistency with Chapter 3 policies of the Coastal Act. Furthermore, the applicants were informed that these submittal items were the same required of all applicants requesting to conduct similar development in small lot subdivisions of the Santa Monica Mountains, and specifically the El Nido subdivision.

On October 12, 1995, Mr. Rogari attended the Coastal Commission hearing in San Diego to address the Commission during the Public Comments portion of the hearing regarding the status of the application. The applicant asked the Commission to direct staff to accept the application as complete, and also sought an approval by the Commission on the applicant's proposed development. Staff informed the Commission that the application had been reviewed for completeness and was missing information necessary to determine whether the proposed project complies with all relevant policies of the Coastal Act. The Commission was informed by staff that the information missing regarded septic system

percolation testing, County of Los Angeles approval of the septic system, and other information consistently required by the Commission as filing requirements to determine conformity with Chapter 3, policies of the Coastal Act. Staff informed the Commission that staff had made numerous attempts to work with the applicants to explain the requirements of the Coastal Act, and thus explained why the Commission was required to have the above referenced items for the review of the proposed project. The CCC informed Mr. Rogari that it could not make a formal decision on his request because this was not on the Commission's agenda. The Commission further asked the applicants to submit the missing materials and to cooperate with staff to complete the application before it could be heard before the Commission. Staff wrote Mr. Rogari on October 23, 1995, to inform him, in writing, of the Commission's decision and of the continued incomplete status of the application (Exhibit 9).

The applicants filed a legal action and the trial court issued a writ remanding this matter to the Commission solely for a determination on the issue of the application's completeness pursuant to the Permit Streamlining Act and applicable CCC regulations. Pursuant to Section 13056, a formal appeal of the Executive Director determination that the application is incomplete is now pending before the Commission for hearing.

#### B. Coastal Development Permit Filing Requirements

Pursuant to Section 13053.5 of the California Code of Regulations, an applicant is required to submit a coastal development permit application form and other standard information sufficient to determine whether a project complies with all relevant Chapter 3 policies of the Coastal Act. Section 13053.5(e) of the Commission's regulations indicates the Commission or the Executive Director may ask for additional information, as specified below:

*13053.5(e) Any additional information deemed to be required by the Commission or the Commission's Executive Director for specific categories of development or for development proposed for specific geographic areas.*

Additionally, C.C.R. Section 13052 states:

*When development for which a permit is required pursuant to Public Resources Code, Section 30600 or 30601 also requires a permit from one or more cities or counties or other state or local government agencies, a permit shall not be accepted for filing by the Executive Director unless all such government agencies have granted at a minimum their preliminary approval for said development.*

For the Malibu/Santa Monica Mountains area of the coastal zone, as part of the standard application form, Commission practice has been to consistently require the following information; site specific geology report(s), septic system percolation test results, Los Angeles County Health Department approval for septic systems for parcels within small lot subdivisions or on the beach, and gross structural area calculations. The applicants in this case have declined to submit this information because they assert this information is irrelevant and that the Commission does not have the legal authority to ask for such information. The following discussion outlines why the above referenced information is necessary to determine whether the proposed project is consistent with Chapter 3 policies of the Coastal Act.

## Geology/Geotechnical Reports

Section 30253 of the Coastal Act states:

*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..."*

The California Coastal Commission has consistently required the submittal of geology reports for proposed development within the coastal zone of the Malibu/Santa Monica Mountains area, as part of the standard application form, to ensure that new development is safe from, and does not contribute to, geologic hazard. This requirement has also consistently been required by the Commission for development proposals within the El Nido small lot subdivision. The Commission requires that a current geologic/geotechnical report, no more than one year old, be submitted as a filing requirement which addresses the site specific, and regional, geologic conditions of proposed building sites. These reports should provide information indicating that proposed development will not be affected or contribute to landsliding or site erosion. This is particularly true of upland development such as that found in the El Nido subdivision. A 1979 report addressing the cumulative impacts of development in the small lot subdivisions of the Santa Monica Mountains found that the El Nido subdivision "*contains erosive soils, which due to grading for homesites, would create erosion and sedimentation problems in Solstice Creek.*" As this hazard has already been identified in the El Nido area, a current geology report is needed to provide evidence that the site is currently free of such hazards, and that the proposed development will not significantly contribute to this hazard. Furthermore, landslides are a common occurrence in the Malibu/Santa Monica Mountain region. In recent years, heavy rains have caused many ancient landslides, as well as a number of previously undiscovered landslides, to occur throughout the region. A current geology report will supply the evidence required to ensure that the site remains free of the hazards of landslide on and off site of the proposed development.

The applicants have submitted a Engineering Geologic Report, dated April 22, 1988. Although this report gives an overall review of the geology associated with the applicant's proposed building site, the report is nine (9) years old. As is stated above, many areas of the Malibu/Santa Monica Mountains coastal zone have become geological active in recent years. Activity has been attributed to the fires of 1993, the 1994 Northridge Earthquake, and the Winter storms of 1994 and 1995. Each of these events have occurred in the last four (4) years, and have been responsible for numerous landslides and surface erosion. To ensure that the geologic conditions of the site have not changed, and that the proposed development is free from, and will not contribute significantly to, the hazard of landslide or erosion, the Commission consistently requires, in all applications for development within the Santa Monica Mountains, that the applicant submit a current geologic study of the subject lot. Due to the fact that the applicants have submitted a fairly comprehensive geologic report for the proposed development, staff notes that the applicants could satisfy this filing requirement by submitting a letter from the consulting geotechnical engineer stating that the site conditions have not significantly changed and the findings and recommendations of the 1988 report are still valid. This approach to meeting this filing requirement is typical and has been applied for application for development within the El Nido area, as well as throughout the Santa Monica Mountains. This approach was suggested to the applicants but was rejected by them.

The applicants have stated that the proposed building site consists entirely of volcanic rock, and that the stability of the site should not be in question; however, the applicants have not submitted evidence that the site remains stable following the recent period of geologic activity in the region. The applicants further state that is the Commission's duty to review development for conformity with the Coastal Act,

and due to the fact that the applicants do not believe that any geologic issues have been raised by the proposed development and so consistency with the Act has been determined. However, long term Commission practice and the CCC regulations all require the submittal of current (not more than one year old) reports to determine that the site is safe from a geologic/geologic engineering standpoint. As is mention above, site conditions may change over time. Therefore the Commission has requested that the report submitted by the applicants be updated by the applicants' geotechnical engineer so that conformity with Section 30253 of the Coastal Act is determined. Until this information is submitted, the application cannot be filed "complete".

### Septic System Percolation Tests/Reports

The Commission has recognized in hundreds of findings in staff reports that the potential buildout of lots in the Santa Monica Mountains, and the installation of septic systems and may contribute to adverse health effects in the local area. Sections 30231 and 30250 of the Coastal Act are designed to provide protection to coastal waters and resources, and address the individual and cumulative impacts associated with development in the coastal zone. Section 30231 of the Coastal Act states:

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entertainment....*

Section 30250 of the Act states as follows:

*New residential development...shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.*

The California Coastal Commission has consistently require the submittal percolation test for proposed development within the coastal zone of the Malibu/Santa Monica Mountains area, as part of the standard application form. This requirement has also consistently been required by the Commission for development proposals within the El Nido small lot subdivision. The submittal of percolation tests are required to ensure that the proposed development is consistent with Sections 30231 and 30250 of the Coastal Act. The submittal of this information provides the evidence that the proposed septic system is in conformance with Chapter 3 policies of the Coastal Act. Without this information it would be impossible to make this determination for this individual lot.

The applicants assert that this information should not be required as the El Nido Subdivision is fairly builtout, and the existing homes have safe and functioning septic systems. The applicants assert that the Commission already has test results regarding the septic systems of the existing homes in this area and these results should indicate that the existing systems are safe and functional. The applicants therefore believe that the Commission should not ask them for this information as the Commission already has enough evidence to determine that the site can handle the proposed septic system based on test results for other lots. The applicants further argues that the Los Angeles County Health Department will require this information for their review of their building permit and, therefore, it is not necessary for the

Commission to require, or to review, this information. However, the Commission has independent review authority from Los Angeles County and does its own separate review of septic systems for Consistency with Chapter 3 policies of the Coastal Act. The applicants also state that as their lot is not located on or within view of the ocean, the Commission should not have any authority to review their proposal for development as it is too far from the ocean to have any impact upon it. The applicants have further stated, in a letter dated September 5, 1995, that it will cost \$8,000 to conduct a percolation test that they feel the Commission does not have the right to ask for as a filing requirement.

The Commission must review all development to ensure that it "will not have significant adverse effects, either individually or cumulatively, on coastal resources" as is stated in Section 30250 of the Coastal Act. A 1979 study of the cumulative impacts of small lot subdivisions in the Santa Monica Mountains states as follows:

*Septic system discharge from one subdivision is carried downstream where it joins discharge from other subdivisions. Thus, the impact at the mouth of the creek is far more than the impact of just one subdivision; rather, it is the additive impacts of all lots in the watershed.*

This study also discusses water quality regarding to the septic systems of small lot subdivisions. The report indicates that a Soil Conservation Service study of the Malibu area "documented the septic system limitations of the soils of the area..." and that "any system would be highly susceptible to failure, as well as actual leakage into watercourses." This report further states "with so many septic systems in such close proximity to one another and so close to existing watercourses, it is probable that seepage through the bedrock due to insufficient filtering would flow into watercourses." This report also found that the buildout of lots in the El Nido subdivision could impact the ecological importance and recreational potential of Solstice Creek, the main creek which runs through Solstice Canyon, a park owned and operated by the State of California.

Therefore, the Commission must require the submittal of evidence that the proposed septic system shall function properly and not *individually* or *cumulatively* impact coastal waters or resources. This holds true for all developments in the coastal zone of the Malibu/Santa Monica Mountains, as effluent released at an individual site inland will have impacts downstream. Additionally, it is not appropriate to review septic systems from a regional standpoint. This is due to the fact that individual lots within the same subdivision may have different soil conditions and percolation rates. Therefore, information from neighboring sites is not adequate to make a finding that this site's septic system will function properly. Although a formal septic system review will be carried out by the Los Angeles County Health Department prior to issuance of a building permit, the Commission must require that evidence of this approval and a site specific percolation test be submitted in order to find consistency with Sections 30231 and 30250 of the Coastal Act. This information has been consistently been required by the Commission throughout the Malibu/Santa Monica Mountains region and within the El Nido small lot subdivision. Furthermore, the Commission must review the applicants' proposal for development under the same standard of review as that applied to each of their neighbors proposals. Staff notes that the cost of performing such a test is one of the many costs associated with development in the Santa Monica Mountains, and as a septic percolation test is also required by Los Angeles County, as well as the Commission, it is a cost that the applicant will have to incur regardless of the Commission's filing requirements.

## Los Angeles County Health Department Septic Approval

C.C.R. Section 13052(i) states:

*When development for which a permit is required pursuant to Public Resources Code, Section 30600 or 30601 also requires a permit from one or more cities or counties or other state or local government agencies, a permit shall not be accepted for filing by the Executive Director unless all such government agencies have granted at a minimum their preliminary approval for said development. An applicant shall have been deemed to have complied with the requirements of this Section when the proposed development has received approvals of any or all of the following aspects of the proposal, as applicable:*

*(i) Approval of general uses and intensity of use proposed for each part of the area covered by the application as permitted by the applicable local general plan, zoning requirements, height, setback or other land use ordinances;*

The Commission has consistently required the submittal of evidence that the Los Angeles County Health Department has reviewed and approved proposed septic systems for new development located on the beach and within small lot subdivisions of the Santa Monica Mountains. This is due to the higher risk of failure of septic systems on the beach, and the potential cumulative impacts associated with septic systems in small lot subdivisions. Local approval provides evidence to the Commission that proposed septic systems are in conformance with the minimum requirements of the County of Los Angeles Uniform Plumbing Code. Additionally, the County of Los Angeles' minimum health code standards for septic systems have been found to be protective of coastal resources and take into consideration the percolation capacity of soils along the coastline, the depth of groundwater, etc. Furthermore, it would not be prudent for the Commission to act on a proposal for development until the local government has reviewed and granted conceptual approval for development. This is due to the fact that the Commission can not foresee what, if any, changes may be required by local government which may raise Coastal Act issues, and/or significantly change the project as proposed. Therefore, it is essential the conditional approval for the County Health Department be obtained prior to Commission review. Moreover, the CCC can not file an application for CDP as complete until such approvals are granted, and evidence of this approval is submit pursuant to C.C.R. Section 13052.

As is previously mentioned, the applicants assert that this information should not be required because the Los Angeles County Health Department will require this information for their review of their building permit and, therefore, it is not necessary for the Commission to require, or to review, this information. The applicants have further stated, in a letter dated September 5, 1995, that it will cost \$8,000 to conduct a percolation test that they feels the Commission does not have the right to ask for as a filing requirement. Yet, the submittal of this approval provides the Commission with additional evidence of the proposed systems' conformity with Section 30231 and 30250 of the Coastal Act, and provides the local approval required by the regulations pursuant to C.C.R. Section 13052(i).



## GSA Calculations

Section 30250 (a) of the Coastal Act states, in part, that:

*(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have a significant adverse effect, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.*

Throughout the Malibu/Santa Monica Mountains coastal zone there are a number of areas which were subdivided in the 1920's and 30's into very small "urban" scale lots. These subdivisions, known as "small-lot subdivisions" are comprised of parcels of less than one acre but more typically range in size from 4,000 to 5,000 square feet. The total buildout of these dense subdivisions would result in a number of adverse cumulative impacts to coastal resources. Cumulative development constraints common to small-lot subdivisions were documented by the Coastal Commission and the Santa Monica Mountains Comprehensive Planning Commission in the January 1979 study entitled: "Cumulative Impacts of Small Lot Subdivision Development In the Santa Monica Mountains Coastal Zone".

The study acknowledged that the existing small-lot subdivisions can only accommodate a limited amount of additional new development due to major constraints to buildout of these areas that include:

Geologic problems, road access problems, water quality problems, disruption of rural community character, creation of unreasonable fire hazards and others.

Following an intensive one-year planning effort by Commission staff, including five months of public review and input, new development standards relating to residential development on small lots in hillsides, including the Slope-Intensity/Gross Structural Area Formula (GSA) were incorporated into the Malibu District Interpretive Guidelines in June 1979. A nearly identical Slope Intensity Formula was incorporated into the 1986 certified Malibu/Santa Monica Mountains Land Use Plan under policy 271(b)(2).

Policy 271(b)(2) of the Malibu/Santa Monica Mountains Land Use Plan (LUP) requires that new development in small lot subdivisions comply with the Slope-Intensity Formula for calculating the allowable Gross Structural Area (GSA) of a residential unit (See Table I). Past Commission action certifying the LUP indicates that the Commission considers the use of the Slope Intensity Formula appropriate for determining the maximum level of development which may be permitted in small lot subdivision areas consistent with the policies of the Coastal Act. The basic concept of the formula assumes that the suitability of development of small hillside lots should be determined by the physical characteristics of the building site, recognizing that development on steep slopes has a high potential for adverse impacts on coastal resources.

**Slope-Intensity Formula:**

$$\text{GSA} = (A/5) \times ((50-S)/35) + 500$$

GSA = the allowable gross structural area of the permitted development in square feet. The GSA includes all substantially enclosed residential and storage areas, but does not include garages or carports designed for storage of autos.

A = the area of the building site in square feet. the building site is defined by the applicant and may consist of all or a designated portion of the one or more lots comprising the project location. All permitted structures must be located within the designated building site.

S = the average slope of the building site in percent as calculated by the formula:

$$\text{S} = I \times L/A \times 100$$

I = contour interval in feet, at not greater than 25-foot intervals, resulting in at least 5 contour lines

L = total accumulated length of all contours of interval "I" in feet

A = the area being considered in square feet

***Table I.***

The applicants have not submitted a GSA calculation for the proposed development. However, the applicants have submitted enough information for Commission staff to do its own calculation for the site. It is typically requested that the applicant do their own calculation of GSA for the initial submittal, as the Commission's calculation is typically more conservative. The applicants have stated that they have concerns regarding the use of the GSA formula and "how literally" it is applied. The applicants states that they have done this calculation and that the Commission would limit them to a 1,100 sq. ft. single family residence (SFR); however, the applicant is proposing the construction of a 2,300 sq. ft. SFR. The applicants have stated that they find this unacceptable. The applicants further states that there is nothing in the Chapter 3 policies of the Coastal Act that gives the Commission the right to downzone all small lot subdivisions in the Santa Monica Mountains.

However, as is stated in Section 30250 of the Coastal Act:

*New residential... development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have a significant adverse effect, either individually or cumulatively, on coastal resources.*

As stated above, the applicants believe that the Coastal Commission is limited to determining consistency with Chapter 3 policies of the Coastal Act in the review of their proposed development only. Use of the GSA formula allows the Commission to determine that development in small lot subdivisions "it will not have a significant adverse effect, either individually or cumulatively, on coastal resources." Furthermore, although the GSA formula is contained in the Malibu/Santa Monica Mountains LUP, it should be noted that in December of 1986 the Commission found that the Malibu/Santa Monica Mountains Land Use Plan (LUP) was consistent with the Chapter 3 policies of the Coastal Act, and therefore may be looked to as

guidance by Commission staff in prescribing terms and conditions of development that are consistent with the Act. The California Coastal Commission's consistent past practice has been to have a project applicant submit the pertinent GSA calculations for his/her site. This practice is for the benefit of the applicant, as the applicant's familiarity with the proposed site is quite helpful in calculating the GSA. Generally, it is to an applicant's benefit to perform a set of GSA calculations and submit these with his/her application. As is stated above, the applicants have submitted enough information for Commission staff to do a GSA calculation for the proposed development, and will do so if GSA calculations are not submitted by the applicants.

## CALIFORNIA COASTAL COMMISSION

South Central Coast Area  
89 So. California St., 2nd Floor  
Ventura, CA 93001  
(805) 641-0142

4-95-102  
(File No.)

Ralph Rogani  
(Name)

2854 Seabreeze, Malibu  
(Project Street and City)



Your coastal permit application has been reviewed and is incomplete. Before it can be accepted for filing, the information indicated below must be submitted.

1. Filing fee is \$\_\_\_\_\_. Payable by check or money order to the California Coastal Commission. Amount due \$\_\_\_\_\_.
- ☒ 2. Proof of the applicant's legal interest in the property. (A copy of any of the following will be acceptable: current tax bill, recorded deed, signed Offer to Purchase along with a receipt of deposit, signed final escrow document, or current policy of title insurance. Preliminary title reports will not be accepted.)
- ☒ 3. Assessor's parcel number as indicated on a property tax statement. The property legal description as contained in a Grant Deed is not the assessor's parcel number. See page 2, item 1 of the application packet.
- ☒ 4. Assessor's parcel map(s) showing the applicant's property and all other properties within 100 feet (excluding roads) of the property lines of the project site. (Available from the County Assessor). Drawings or facsimiles are not acceptable.
- ☒ 5. Stamped envelopes addressed to each property owner and occupant of property situated within 100 feet of the property lines of the project site (excluding roads), along with a list containing the names, addresses and assessor's parcel numbers of same. The envelopes must be plain (i.e., no return address), and regular business size (9 1/2 X 4 1/8"). Include a first class postage stamp on each one. Metered envelopes are not acceptable. Mailing list must be on the format shown on page C-1 of the application packet.
- ☒ 6. Enclose appropriate map(s) indicating location of property in relation to the coastline. Thomas Brothers map, road map or area maps prepared by local governments may provide a suitable base map.
- ☒ 7. Cost valuation of city/county or contractor for the development.
- ☒ 8. Copies of required local approvals for the proposed project, including zoning variances, use permits, etc. Include minutes of any hearing.
9. Verification of all other permits, permissions or approvals for or granted by public agencies (eg., Dept. of Fish and Game, U.S. Army Corps of Engineers, U.S. Coast Guard).

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- ☒ 10. Where septic systems are proposed, percolation test prepared by a qualified sanitarian or soils engineer.
- ☒ 11. County or City Health Department review of septic system.
- ☒ 12. Where water wells are proposed, evidence of County or City review and approval.
- ☐ 13. \_\_\_ set(s) of project drawings including site plans, floor plans, all elevations. Drawing must be to scale with dimensions shown. Trees to be removed must be marked on the site plan. All oak trees must be identified on site plan. Plans must be approved by the building department and stamped "Approval in Concept." We need \_\_\_ more set(s).
- ☒ 14. 2 set(s) of detailed grading and drainage plans with cross sections and quantitative breakdown of grading amounts (cubic yards of cut and fill). Plans must be to scale and prepared by a registered engineer.
- ☒ 15. Two copies of a comprehensive, current (not more than 1 year old), site-specific geology and soils report (including maps) prepared in accordance with the Coastal Commission's Interpretive Guidelines. Copies of the guidelines are available from the District Office for development.
- ☒ 16. A current (not more than 1 year old) City or County "Approved" Geologic Review Sheet.
- ☒ 17. "Approval in Concept" form completed by the building department or other responsible department.
- ☒ 18. Current zoning for project site.
- ☒ 19. A reduced set of drawings to 8 1/2 x 11" in size. The reduced set shall include a site plan, grading plan, elevations and topography if required for submittal.
- ☐ 20. For projects which include demolition, site plan and elevations or photographs of the structure to be demolished. Demolition must be included in the "Approval in Concept" project description.
- ☐ 21. Remodel projects must include percent of walls to be demolished (interior and exterior).
- ☐ 22. City or County Environmental Review Board Approval.
- ☐ 23. Any project in or near a stream course - approval from the California Department of Fish and Game.
- ☐ 24. A copy of any Final Negative Declaration, Draft of Final Environmental Impact Report (FEIR) or Final Environmental Statement (FEIS) prepared, for the project. Comments of reviewing agencies and responses to comments must be inc

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- \_\_\_25. All projects in or adjacent to a Stream, Wetland or possible Wetland - California Department of Fish and Game and U.S. Fish and Wildlife Service approvals.
- \_\_\_26. Development within 200 feet of parkland - Fire Department approved fuel (vegetation) modification plans.
- \_\_\_27. Driveways, access roads, and turn around areas - preliminary Fire Department Approval.
- \_\_\_28. Preliminary approval from the Regional Water Quality Control Board. Single family dwellings and additions to existing structures are excluded.

THE APPLICATION FORM

- \_\_\_1. The application must be signed by the applicant or the applicant's representative.
- \_\_\_2. If application is not signed by the applicant(s), a letter executed by the applicant(s) which authorizes the representative to act in his behalf and to bind the applicant(s) in all matters concerning his/her application or the authorization page of the application form must be completed by the applicant.
- \_\_\_3. Section \_\_\_ page \_\_\_ of the application must be completed.

FOR DEVELOPMENT ON A BEACH OR BLUFF THE FOLLOWING MUST BE SUBMITTED

- \_\_\_1. All projects on a beach require State lands Commission determination of location of most landward recorded mean high tide in relation to landward property line. (State lands Commission, 1807-13th Street, Sacramento, CA 95814). Please make reference to your Coastal Development Permit (file) number when contacting the State Lands Commission.
- \_\_\_2. For projects on a coastal bluff or shoreline - a stringline map showing the existing, adjacent structures, decks and bulkheads in relation to the proposed development. The stringline is to be prepared in accordance with the Coastal Commission's Interpretive Guidelines.
- \_\_\_3. Shoreline protective devices (seawalls, bulkheads, groins & rock blankets) - project plans with cross sections prepared by a registered engineer. The project plans must show the project footprint in relation to the applicant's property boundaries and the Mean High Tide Line.
- \_\_\_4. For shoreline protective devices a geotechnical report uprush study prepared in accordance the Commission guid  
Copies of guidelines are available from the District Of

EXHIBIT NO.	1
APPLICATION NO.	
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FOR SUBDIVISIONS THE FOLLOWING MUST ALSO BE PROVIDED

- \_\_\_ 1. Approved tentative tract/parcel maps with list of conditions and minutes for subdivisions and condominium projects. Maps must include location of proposed building sites (2 copies).
- \_\_\_ 2. Comprehensive site specific geologic/soils report indicating that all lots are buildable. For Malibu/Santa Monica Mountains, must have a current (not more than one year old) Geologic Review Sheet and two copies of a geologic and/or soils report.
- \_\_\_ 3. Detailed grading and drainage plans with cross sections showing all roads, building pads and remedial grading with a quantitative break down of grading amounts.
- \_\_\_ 4. Map showing all parcels and their sizes within a 1/4 miles radius of the property.
- \_\_\_ 5. Percolation test results indicating lots are capable of accommodating a septic system.

OUTSIDE OF EXISTING DEVELOPED AREAS (AS DEFINED BY GUIDELINES)

- \_\_\_ 1. Gross Structural area calculations for Malibu/Santa Monica Mountains. Small Lot Subdivisions. See Policy 271(b)(2) of the Malibu/Santa Monica Mountains Interpretive Guidelines.
- \_\_\_ 2. Statement of Water Service and Access Certificate for Building Permit signed by Los Angeles County Fire Department. If Fire Department requirements include road or water installation or modifications, submit plans stamped and approved by Los Angeles County Fire Department (not required for minor additions to single family dwellings).
- \_\_\_ 3. An archaeological report developed by a qualified archaeologist regarding the presence and significance of archaeological materials. (Selection of an archaeologist is subject to approval of the Executive Director).

STAFF COMMENTS

Under certain circumstances, additional material, not previously indicated, may be required before an application can be deemed complete. The following additional material is required for the completion of this application:

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FAILURE TO PROMPTLY SUBMIT THE INFORMATION REQUESTED ABOVE WILL RESULT IN THE DELAY OF YOUR PROJECT. PLEASE ADD ANY COMMENTS TO THE BACK OF THIS SHEET.

By Jy CD  
Date 6/5/95

0009C

EXHIBIT NO.	1
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**CALIFORNIA COASTAL COMMISSION**

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



August 23, 1995

Mr. Jeff Mitroka  
Mr. Ralph Rogari  
802 Monterey Blvd., Apt. #1  
Hermosa Beach, CA 90254

Re: Incomplete status of coastal development permit application 4-95-102.

Mr. Mitroka & Mr. Rogari,

Our office has reviewed your second submittal for an application for a coastal development permit for a single family residence at 2854 Seabreeze Drive, in the City of Malibu. However, we must once again inform you that your submittal is incomplete at this time and that we will not be able to file this application as complete until we receive the following items:

1. A vicinity map indicating the location of the property in relation to the coastline. Thomas Brothers map, road map, or area maps prepared by local governments may provide a suitable base map.
2. Where septic systems are proposed, percolation test prepared by a qualified sanitarian or soils engineer.
3. County Health Department review of septic system.
4. Two copies of a comprehensive, current (not more than 1 year old), site-specific geology and soils report (including maps) prepared in accordance with the Coastal Commission's Interpretive Guidelines. Copies of the guidelines are available from the District Office for development. If a geology report has been prepared for the site and it is not current (older than 1 year) an up date letter from the consulting geologist indicating site conditions have not changed and the findings and recommendations of the report still apply will be acceptable.
5. As I mentioned to you previously, you will need to submit information regarding the County of Los Angeles Slope-Intensity Formula, or GSA formula, as is outlined in the Malibu/Santa Monica Mountains Land Use Plan, referred to as the LUP.

It should be noted that the certified Malibu/Santa Monica Mountains (LUP) contains policies which have been found to be consistent with the Coastal Act and, therefore, may be looked to as guidance by Commission staff in prescribing terms and conditions of development that are consistent with the Act. The LUP contains the following policies regarding development in 'Rural Villages':

Land Use Distribution

The land use plan map provides a framework within which new development can be accommodated within the Malibu Coastal Zone. Generally, it recognizes the presence of existing urban areas and concentrates new development at these locations. It further recognizes the presence of rural villages in the mountain areas and provides for this limited expansion, within

**EXHIBIT NO. 2**

**APPLICATION NO.**

**Appeal 4-95-102**

the context of their environmental and infrastructure resource constraints. Cognizant of the potential cumulative effects of the buildout of existing small lot subdivisions in the mountains, the Plan designates these areas for low densities and establishes mechanisms by which the potential effects can be mitigated. The following describes the principal provisions of the land use plan map.

For the purposes of this LUP, the coastal terrace shall be considered to be an existing developed area, as mapped in Attachment 1. The rural villages, significant watersheds, and other mountain areas shall be considered to be outside the developed area.

#### Rural Villages

New development would be permitted at those locations in the Santa Monica Mountains which have established themselves as "rural villages". To maintain their rural character, such development would be limited to existing prevailing densities. Generally, the Plan establishes a maximum density of one unit per acre in these areas with the potential for other local serving land uses.

As many of the rural villages have been subdivided into very small, "urban" scale parcels (4,000-5,000 square feet), the Plan designations will establish the existing lots of record in these areas as "non-conforming". Based on a 1978 County Study, this will affect an estimated 3,614 undeveloped and unrestricted parcels. As "non-conforming" parcels these could theoretically be allowed to build out, given compliance with the LCP policies and all County Engineering and Health requirements. It is anticipated that a significant percentage of these lots would not build out due to severe slopes, geologic conditions, septic limitations, the costs of development, and other constraints. If the theoretical buildouts were to occur, they would necessitate implementation of costly infrastructure (sewers or other appropriate technology) and significantly alter the existing density characteristics of these areas. Such infrastructure improvements are not proposed by this Land Use Plan,

To mitigate the potential effects and/or reduce buildout, the Plan proposes a mix of techniques, including development allocation, fee acquisition of property, offers of tax delinquent parcels, consolidation of contiguous lots, redevelopment, and surplus land exchange.

[The maximum allowable gross structural area of a residential unit to be constructed on a building site in a rural village shall be determined by the following formula:]

#### Slope-Intensity Formula:

$$\text{GSA} = (A/5) \times ((50-S)/35) + 500$$

Where: GSA = the allowable gross structural area of the permitted developed in square feet. The GSA includes all substantially enclosed residential and storage areas, but does not include garages or carports designed for storage of autos.

A = the area of the building site in square feet. The building site is defined by the applicant and may consist of all or a designated portion of the one or more lots comprising the project location. All permitted structures must be located within the designated building site.

S = the average slope of the building site in percentage as calculated by the formula:

$$S = I \times L / A \times 100$$

Where: S = average natural slope in percent.

EXHIBIT NO. 2
APPLICATION NO.
Appeal 4-95-102

I = contour interval in feet, at not greater than 25-foot intervals, resulting in at least 5 contour lines.

L = total accumulated length of all contours of interval "I", in feet.

A = the area being considered in square feet.

All slope calculations should be based on natural (not graded conditions. Maps of a scale generally not less than 1" = 10', showing the building site and existing topographic contours and noting appropriate areas and slopes, prepared by a Licensed Surveyor or Registered Professional Civil Engineer, should be submitted with the application.

The maximum allowable gross structural area (GSA as calculated above may be increased as follows:

(1) Add 500 square feet for each lot which is contiguous to the designated building site provided that such lot(s) is (are) combined with the building site and all potential for residential development on such lot(s) is permanently extinguished.

(2) Add 300 square feet for each lot in the vicinity of (e.g., in the same small lot subdivision) but not contiguous with the designated building site provided that such lot(s) is (are) combined with other developed or developable building sites and all potential for residential development on such lot(s) is permanently extinguished.

All residences approved in small lot subdivisions by the noted slope intensity/gross structural area formula shall be subject to an improvements to the property be subject to an additional coastal permit.

As we informed you in our original incomplete and status letters dated June 5, 1995, we will not be able to file your application as complete until we receive the above referenced items. Please refer to our incomplete letter dated June 5, 1995, as this letter also clearly indicates those items required to complete your application for coastal development permit. These items are the minimum required items to properly review your request for a coastal development permit, and are the same requirements asked of all applicants requesting to conduct similar development in your area. If you have further questions regarding this matter please call.

Sincerely,



Troy Alan Doss  
Coastal Program Analyst

regard.tad

EXHIBIT NO. 2

APPLICATION NO.

Appeal 4-95-102

REHM & ROGARI Attorneys at Law

12121 Wilshire Blvd., Suite 1103 • Los Angeles, CA 90025 • (310) 207-0059

JOANNA REHM  
RALPH ROGARI

September 5, 1995

CALIFORNIA COASTAL COMMISSION  
South Central Coast Area  
89 South California Street  
Suite 200  
Ventura, CA 93001

Attention: Troy Alan Doss

Re: Permit Application 4-95-102

Dear Mr. Doss:

When we last spoke, you stated that you could not understand my "resistance" to your requests for more information. My "resistance" was based on a belief that the Coastal Commission was ignoring its responsibilities, and instead, erecting unnecessary, expensive and time consuming obstacles to this permit request. Having reviewed your letter of 8/23/95, it appears that my belief was well-founded.

Before I discuss your letter, let me ask you the following question: Exactly what significant natural or scenic coastal resource exists on or near this property which the Coastal Commission seeks to protect? Since I don't believe there is any, why all hubris?

First and foremost is the matter of the slope/lot/intensity formula. You will recall that when we first spoke two months ago, it was because of a concern about this formula and how, literally applied, it would make this project worthless. As I then told you, if the Commission was going to require, because of the formula, an 1100 sq. ft. house as opposed to the modest 2300 sq. ft. house proposed, that action would be unacceptable. It was my desire to get the matter before the Commission as quickly as possible. Nothing has changed.

From your letter it appears that the Commission wants to downzone by device, all subdivisions in the Santa Monica Mountains. However, in considering requests for a coastal development permit for a single family house, the Commission's authority is limited to determining if the house is in conformity with Chapter 3 of the Act:

"A permit shall be issued if the issuing agency finds that the proposed development is in conformity with Chapter 3 (commencing with section 3020)"

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EXHIBIT NO. 3

APPLICATION NO.

Appeal 4-95-102

Troy Doss  
September 5, 1995  
Page Two

EXHIBIT NO. 3
APPLICATION NO.
Appeal 4-95-102

There is absolutely nothing in Chapter 3 that gives the Commission the right to downzone all small lot subdivisions in the Santa Monica Mountains. It is also black letter law that a governmental entity acts unlawfully when it fails to adopt zoning ordinances that can be challenged, but instead tries to implement such requirements through the building permit process. Thus, the fact that the Commission tried to get the County to do this type of downzoning 12 years ago, an action which the County has intelligently refused to take, is meaningless. To argue that you can now ignore your duty and nonetheless try to implement this illegal zoning on Mr. Mitroka is the very type of circular reasoning that got the Commission in trouble in Healing v. California Coastal Commission (1994) 22 Cal. App.4th 1158, 27 Cal. Rptr.2d 758. I submit that if the Commission had done its job 18 years ago, this property should not even be subject to a Coastal Development Permit. Public Resources Code, section 30610.1.

In any event, the building of this house definitely complies with section 30250(a) because it is located within an existing developed area. There is also no scenic quality to the lot; it is surrounded by houses, doesn't even have an ocean view and since the lot is now weeds, development will enhance the scenic and visual quality of the area. Section 30251.

Which brings me to your statement that since the Commission classified the subdivision where this lot is located as a "rural village" it is outside the developed areas of Los Angeles. But neither you nor the Commission can turn a cow into a horse by simply changing its name.

In Healing, supra, the Court of Appeal recognized the existence of four houses as a developed area. The subdivision where this property is located is highly developed.

As you will recall from the pictures I showed you, basically every lot on Seabreeze, Searidge, Valmere, Corral Canyon Road in book 4457, maps 14, 15, 18 is developed with a house. In addition, more than half of those 80 houses are greater than 2000 sq. ft. in size.

You should also be aware that the development of new homes is, for the most part, over in this entire small lot subdivision. We've already talked about the lots in book 4457, maps 14, 15, 18. The remaining parcels in book 4457 and those in book 4458, maps 17, 19, 20, 21 and 22 either contain houses (around 30) or are owned by the State Conservancy (around 200).

I don't profess to know about other communities in other canyons

Troy Doss  
September 5, 1995  
Page Three

in other parts of the vast Santa Monica Mountains. But this property must be considered in relationship to its immediate surroundings, not the entire Santa Monica Mountains. Billings v. C.C.C. (1980) 163 Cal. Rptr. 288.

In short, I see nothing in Chapter 3 that gives the Commission authority to adopt and enforce land use regulations. Attempting to do so by applying such regulations to coastal permit applicants is a taking. But even if I'm wrong, applying that regulation to this property, given the circumstances of the community, would constitute a taking for which the Commission must pay compensation. Lucas v. So. Carolina Coastal Council (1993) 120 L.Ed.2d 798 (Fifth Amendment violated when land use regulation does not substantially advance legitimate state interests or denies an owner economically viable use of his land).

I already told you and I reaffirm: Mr. Mitroka will not build an 1100 sq. ft. house on this property because the magic formula spits that number out. Since you stated that it is the Commission's decision to determine if it is going to attempt to condition the building of this site on cutting the house size in half so that no family could ever live there, we would like to get that decision. Surely there has to be an economical way to do so!

Which brings me to the other items in your letter. Other than the fact that you have a pre-printed checklist of items which your staff apparently feels is useful, could you please explain to me exactly why you are demanding an updated geology report and percolation test results?

Don't forget that modest, affordable housing is essential to the social and economic needs of the people of this State. Public Resources Code sections 3001(d), 3001.5(b). Likewise, the Commission and its staff cannot exercise its power to grant or deny a permit in a manner which will take or damage private property for public use without paying compensation. Public Resources Code section 30010.

To get an updated geology report will cost around \$1,000. To get a percolation test requires hiring a grading contractor to grade a spot for the drill rig to sit (\$600 - \$1,000); hiring a drill rig to drill a test hole (1 or 2 days at \$200 per hour = \$1,600 - \$3,200); and hiring a person to conduct the testing (\$300 - \$500). In addition, since you have to pay the drill rig travel time, and if not completed, the test hole will fill up and become useless, it is usually most cost efficient to complete the test hole upon passing. Thus, you are demanding Mr. Mitroka invest about \$8,000 before the Commission is willing to decide on the house size issue.

EXHIBIT NO. 3
APPLICATION NO.
Appeal 4-95-102

Troy Doss  
September 5, 1995  
Page Four

Why can't these matters wait?

Moreover, it appears to me that by requiring reporting of this type as a matter of course of those who propose modest homes, Commission staff is wasting the resources of the public it is supposed to serve. While section 30253 requires that new development assure geologic stability, etc., whatever happened to common sense and working with County building and safety?

This property is comprised of volcanic rock. How could putting a house on rock create geologic instability? True, there is some minor grading to be done -- and as a theoretical matter, that could effect the adjacent properties. But that, like the septic system is primarily a building and safety issue, not a coastal resource issue. I refuse to believe that the drafters of the Coastal Act intended the Commission to be a second building and safety department. In fact, the opposite appears to be true, as the Act provides that the Commission is to rely heavily on local government. Section 3004(a).

Since, as a condition to building the house, the County building and safety department will be required to answer all questions conceivable under section 30253, it is redundant for the Commission staff to also do so. I believe it is a well known fact that the County will not allow either this house or any house to be built in any manner that will adversely affect any adjacent property.

In any event, Mr. Mitroka is not willing to invest the above mentioned monies only to learn that he needs to go to court to obtain the right to build the size home he desires. Demand is made for the Commission to determine if it intends to limit Mr. Mitroka to a 1100 sq. ft. home instead of the 2300 sq. ft. home he desires to build.

If this matter is not presented to the Commission for decision, we will consider this a denial of a permit, file for administrative mandamus and seek damages for the taking.

If you wish to discuss this further, do not hesitate to contact me. Your prompt attention to this matter is appreciated.

Very truly yours,

  
RALPH ROGARI

RR:  
cc: Jeff Mitroka

REHM & ROGARI Attorneys at Law

12121 Wilshire Blvd., Suite 1103 • Los Angeles, CA 90025 • (310) 207-0059

JOANNA REHM  
RALPH ROGARI

September 22, 1995

CALIFORNIA COASTAL COMMISSION  
South Central Coast Area  
89 South California Street  
Suite 200  
Ventura, CA 93001

Attention: Troy Alan Doss

Re: Permit Application 4-95-102

Dear Mr. Doss:

When we spoke on August 31, 1995, you stated that someone from the Commission would call me about my concerns in the handling of application 4-95-102. That did not happen.

I have received no response to my letter of September 5, 1995. My telephone calls have not been returned. I attempted to have this letter faxed to you, but you instructed the receptionist not to give out the fax number.

Enough is enough. What is tragic is that all the people of the State end up paying when State employees act unreasonably.

I can only assume that the Coastal Commission intends to impose a size restriction based on the formula you forwarded as a condition to issuing a Coastal permit on this property.

Be advised that a petition for a writ of mandate along with a complaint for declaratory relief and damages will be filed on Friday, September 29, 1995, unless my concerns are addressed before then.

Very truly yours,

*Ralph Rogari*  
RALPH ROGARI

RR:  
cc: Jeff Mitroka

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SEP 25 1995  
CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

EXHIBIT NO. 4
APPLICATION NO.
Appeal 4-95-102



## CALIFORNIA COASTAL COMMISSION

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



EXHIBIT NO. 5
APPLICATION NO.
Appeal 4-95-102

September 25, 1995

Ralph Rogari  
Rehm & Rogari  
12121 Wilshire Blvd., Suite 1103  
Los Angeles, CA 90025

RE: Incomplete coastal development permit #4-95-102

Dear Mr. Rogari:

We have received your letters dated September 5 and September 22, 1995. Commission staff are currently reviewing your Sept. 5, 1995, letter and will respond to you as soon as possible. In regards to your Sept. 22, 1995, letter stating that we were unwilling to allow you to fax us your letter, you should be made aware that it is standard Commission policy not to release our fax number to the general public as the fax machine is for inter-agency communications only.

We apologize for any time delay regarding our response to you and this matter, however, all matters regarding coastal development permits are handled in a first come first serve basis. Furthermore, as you are requesting that we review your application for a coastal development permit ASAP, and make a determination regarding your proposal, you should once again be advised that the Commission can not review nor make any determination regarding your proposal until we have a completed coastal development permit (CDP). We should once again refer you to our letter dated August 23, 1995, which outlines in detail the information required to complete your application for a CDP. Once again, please be aware that we are currently reviewing your recent letters and shall respond to your requests more directly ASAP. Thank you for your cooperation and understanding regarding this matter.

Sincerely,

Troy Alan Doss  
Coastal Program Analyst

cc: Jack Ainsworth  
Cathy Cutler

RR2:TAD  
TAD-VNT

## CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 804-5200



EXHIBIT NO.	6
APPLICATION NO.	
Appeal 4-93-102	

September 27, 1995

Ralph Rogari, Esq.  
Rehm & Rogari  
12121 Wilshire Blvd., Suite 1103  
Los Angeles, CA 90023

Dear Mr. Rogari:

I am writing to confirm the major points that Catherine Cutler and I expressed in our telephone conversation yesterday. We called you in response to your letters of September 5 and September 22 in which you raise various concerns about the Commission's review of the information necessary to file your client's application. You contend that your client should not be required to submit various technical reports identified by the staff to be necessary under the Permit Streamlining Act in order to file an application. You request that in the absence of that information, the Commission should "determine if it intends to limit [your client] to a 1100 sq. ft. home instead of the 2300 sq. ft. home he desires." You state your understanding that the Commission would apply a formula that would require that the applicant's house be reduced in size to 1100 square feet. You also indicate that you believe that the Commission's actions could be found to have taken your client's property and that you intend to institute litigation against the Commission. (It was unclear from the context of our conversation whether you contend that a taking has already occurred as a result of the staff's requirement that your client submit additional information or whether you assert that a taking will occur if the Commission approves a house of less than 2300 square feet.)

We informed you that it would be necessary under the Permit Streamlining Act for your client to submit the information identified to be necessary to file the application in order for the Commission to review the application. Therefore, it would not be possible for the Commission to reach a determination on whether the proposed house size would be consistent with the Coastal Act until your client has submitted the information that is required to file the application. We explained that your client may appeal the staff's determination regarding the required information to the Commission. Unless the Commission finds in favor of your client, the staff's determination is binding. We explained that the Commission could not waive the requirement and that the information be submitted during its review and instead rely on future determinations by another regulatory agency such as the County. The Commission is required by law to have a record before it at the time that it acts that contains adequate factual information to

Ralph Rogari  
September 27, 1995  
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EXHIBIT NO. 6
APPLICATION NO.
Appeal 4-95-102

support the action it takes. (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296.)

We advised you that the slope intensity formula referred to by Mr. Doss is used as guidance by the staff in preparing its recommendation to the Commission, and that it is not binding upon the Commission. We also informed you that the staff has not yet performed the calculation under that formula, thus it is not possible to conclude that staff would recommend that the proposed house be reduced in size to 1100 square feet.

You have cited various cases applicable to regulatory takings. We requested that if you believe that the Commission has taken or may take an action that may result in a taking of your client's property without adequate compensation, that you submit information to document how your client's reasonable investment backed expectations would be frustrated. Please submit the following:

1. Date the applicant purchased or otherwise acquired the property, and from whom.
2. The purchase price paid by the applicant for the property.
3. The fair market value of the property at the time the applicant acquired it. Describe the basis upon which the fair market value is derived, including any appraisals done at the time.
4. Changes to general plan, zoning or similar land use designations applicable to the subject property since the time of purchase of the property. If so, identify the particular designation(s) and applicable change(s).
5. At the time the applicant purchased the property, or at any subsequent time, has the property been subject to any development restriction(s) (for example, restrictive covenants, open space easements, etc.), other than the land use designations referred to in question (4) above?
6. Any changes to the size or use of the property since the time the applicant purchased it. If so, identify the nature of the change, the circumstance and the relevant date(s).
7. If the applicant has sold or leased a portion of, or interest in, the property since the time of purchase, indicate the relevant date(s), sales price(s), rent assessed, and nature of the portion or interest sold or leased.
8. Is the applicant aware of any title report, litigation guarantee or similar document prepared in connection with all or a portion of the property? If so, provide a copy of each such document, together with a statement of when the document was prepared and for what purpose (e.g. refinancing, sale, purchase, etc.).

Ralph Rogari  
September 27, 1995  
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EXHIBIT NO.	6
APPLICATION NO.	
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9. Has the applicant solicited or received any offers to buy all or a portion of the property since the time of purchase? If so, provide the approximate date of the offer and the offered price.
10. Identify, on an annualized basis for the last five calendar years, the applicant's costs associated with ownership of the property. These costs should include, but not necessarily be limited to, the following:
  - property taxes;
  - property assessments;
  - debt services, including mortgage and interest costs; and
  - operation and management costs.
11. Apart from any rent received from leasing all or a portion of the property (see question #7 above), does the applicant's current or past use of the property generate any income? If the answer is yes, list on an annualized basis for the past five calendar years the amount of generated income and a description of the use(s) that generates or has generated such income.

You asked during our conversation about what Coastal Act policies will be implemented through the submittal by your client of the information identified by Mr. Doss. Under Title 14, California Code of Regulations, section 13052, certain local governmental approvals must be obtained by an applicant before an application for a coastal development permit may be filed as complete. Here, you need to obtain approval by the County Health Department of the planned septic system before we can file your application. That approval will indicate whether the system meets all County Health Code requirements. This information is necessary in order to analyze the system's possible effects on coastal resources and, in turn, consistency with the Coastal Act, including section 30231, something we are required to do before making any recommendation to the Coastal Commission on a specific application. Unless the staff's analysis of the information submitted by your client indicates that the septic system would be consistent with the Coastal Act, the staff will be unable to recommend approval of the proposed house. Thus, submission to us of Health Department approval is a critical item of information.

In addition, in connection with your obtaining approval from the County of the septic system, a percolation test will be necessary. Your client will need to submit the test results to the Ventura Office, together with the County approval so that the staff may evaluate the test results. Where the test results are favorable, the staff will be able to recommend that the Commission find the system to be consistent with Coastal Act section 30231 which is necessary in order to be able to recommend approval of the proposed residence. Therefore, without submission of the test results, the staff cannot do

EXHIBIT NO. 6
APPLICATION NO.
Appeal 4-95-102

Ralph Rogari  
September 27, 1995  
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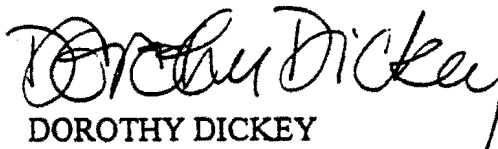
the necessary evaluation nor make the necessary analysis of consistency with the Chapter 3 policies of the Coastal Act.

The geology report you submitted dates from 1988. It is established Coastal Commission practice and procedure and a filing requirement that such reports be current, i.e., authored within the past year (please see the "Pink Sheet" sent to you previously with status letter). Unless a current report is submitted, the staff cannot sufficiently evaluate the stability of the proposed house and the site consistent with Title 14, California Code of Regulations, section 13053.5. That section requires that sufficient information be submitted so that staff can evaluate whether the project complies with relevant Coastal Act policies. Here, the planned residence must be evaluated in connection with Coastal Act section 30253, which requires in relevant part that new development shall not create or contribute significantly to geologic instability. The staff cannot perform this evaluation with a report that is seven years old.

Referring to the calculation of maximum house size under the Slope Intensity Formula, the staff cannot complete its evaluation of the planned house without submission by your client of items "S" and "A" so that the total possible building area can be seen and measured against the maximum possible area for the subject parcel. This analysis is required to measure consistency with Coastal Act section 30250(a) policies concerning cumulative impacts.

This explanation of the information necessary to file your client's application is intended to supplement our letter of August 23, and should not be construed to limit the requirements identified therein.

Very truly yours,

  
DOROTHY DICKEY  
Deputy Chief Counsel

REHM & ROGARI Attorneys at Law

12121 Wilshire Blvd., Suite 1103 • Los Angeles, CA 90025 • (310) 207-005

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SEP 29 1995

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

September 28, 1995

Via fax to 415-904-5400  
and mail to

CALIFORNIA COASTAL COMMISSION  
South Central Coast Area  
89 South California Street  
Suite 200  
Ventura, CA 93001

45 Fremont Street  
Suite 2000  
San Francisco, CA 94105

Attention: Troy Alan Doss, Dorthy Dickey, Kathy Cutler

Re: Permit Application 4-95-102

Dear Ladies and Gentlemen:

This letter is in response to my telephone call of September 26, 1995 with staff attorneys Dorthy Dickey and Kathy Cutler. While we spoke for a good deal of time, we were unable to make much progress on any agreements satisfactory to all.

It was my understanding from our conversation that I should speak to Mr. Doss and perhaps further geology reporting will not be required. However, you quite articulately advised me that it is policy to require both current geology and septic reports for any housing project in the Santa Monica Mountains so that the Commission can comply with its duties under sections 30231 and 30253 of the Coastal Act. You also advised that if necessary, you would be quite comfortable defending this policy in court.

To my offer to stipulate that any coastal development permit issued for the property would be subject to proof of compliance with the County of Los Angeles Codes, most particularly those governing septic systems, I really do not believe I got a response. I note that you stated that the Commission was not a rubber stamp for the County.

By making this proposal, I am not asking the Commission to rubber stamp the County -- what I am asking is for staff and the Commission to decide whether or not basic County waste disposal requirements for a house of this size will be adequate; without the necessity of first proving that such requirements are met. (That is all these reports will do) If they are, with this stipulation all sides needs are met: my client does not have to spend large sums of money to first prove to the Commission what he is going to ultimately have to prove to build the house, just to get a decision that the house is in conformity with Chapter 3; the Commission knows that before this house is built, it will have a septic system

EXHIBIT NO. 7

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Appeal 4-95-102

which handles waste water flow to County standards.

Moreover, I can't imagine how a waste disposal system for a small house in a Community of houses 1 1/2 miles from the ocean, at an elevation 700 feet higher than the ocean and with no wetlands, estuaries, streams or lakes within miles can even implicate section 30231. I would be interested in knowing how the Commission feels the biological productivity and quality of the ocean is going to be affected by the proposed septic system of this house? Moreover, how are reports that show the actual discharge rates of the land going to provide useful information?

In any event, this certainly seems like a reasonable proposal, particularly if staff agrees that if County waste disposal requirements are met in this case, the proposed development would likely be in conformity with chapter 3 of the Coastal Act.

As discussed above, if the staff doesn't agree, we would certainly like to know why.

Lastly we talked about whether or not a lawsuit would be appropriate at this time. You are of the opinion that such an action is not appropriate in that administrative remedies still exist. You suggest that my client could appear before the Commission at it next meeting and bring up his problems during the public comment section of the meeting.

I am not sure that this is really required, but Mr. Mitroka certainly has no desire to incur unnecessary legal expense if it can be avoided. The problem as I see it is that both Mr. Mitroka and I believe that the Commission has sufficient information to decide his simple permit request, but staff will not present the request to the Commission. You are therefore demanding that Mr. Mitroka present the permit request to the Commission himself. We are not adverse to doing that, but certainly don't want to waste time. I am well aware of the inertia which results when an administrative body has something presented to in an unusual manner and consequently has no materials, other than those then presented to consider.

Therefore if we can't reach some kind of agreement along the lines indicated and move forward in the usual fashion, I would request that the necessary materials be forwarded to the Commission by staff in time for its October meetings. I don't want to be facing a bunch of blank stares and a cordial thanks, while everyone wonders what this idiot is talking about.

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Please contact me to discuss this matter further when you have had time to speak with the appropriate people.

Very truly yours,

  
RALPH ROGARI

RR:

cc: Jeff Mitroka



EXHIBIT NO. 8

APPLICATION NO.

Appeal 4-95-102

## REHM &amp; ROGARI Attorneys at Law

12121 Wilshire Blvd., Suite 1103 • Los Angeles, CA 90025 • (310) 207-0059

October 8, 1995

Via fax to 415-904-5400  
and mail toCALIFORNIA COASTAL COMMISSION  
South Central Coast Area  
89 South California Street  
Suite 200  
Ventura, CA 9300145 Fremont Street  
Suite 2000  
San Francisco, CA 94105

Attention: Dorthy Dickey

Re: Permit Application 4-95-102

Dear Ms. Dickey:

I have attempted to reach you without success today and am consequently faxing this letter. As you know the Commission is presently meeting in San Diego and unless we can reach some kind of agreement, I want them to consider the instant application. Since my letter of 9/28 was faxed, I have not heard from you. I also do not know if your letter dated 9/27 was to be considered your response.

In addition to my concern in getting this matter to the Commission without further delay, I have three points.

First, can someone explain to me just how Commission staff feels that the ocean, 1 1/2 miles away from the property and 700 feet lower, can in any manner be affected by the use of a septic system with this house?

Second, can someone explain to me how the proposed house, to be put on a site consisting entirely of volcanic rock, can reasonably be believed to effect the stability of the remaining volcanic rock on the site?

Remember, it is the duty of the Coastal Commission to issue a permit unless it finds that the development is not in conformity with chapter three. Since no one can identify any concern, much less any reasonable concern, you can see why the requests are so troubling.

Third, you state in your letter that you are unclear what is the taking in this case. It was (and still is) my opinion that should the Coastal Commission attempt to chop off part of Mr. Mitroka's house, that would constitute a taking. No different than if someone mandated you to chop off parts of your house. I'm sure

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COASTAL COMMISSION

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that each foot has value and that at a certain point, the house would be worthless to you. Moreover, because my requests for a Commission determination of this issue were met by requirements of seemingly unwarranted information, I was concerned that this application was being delayed because of either a personality conflict or staff agenda in conflict with the Coastal Act.

Commission staff still has not articulated to me any reasonable concern as to how a septic system on the property could adversely affect the ocean or how putting the proposed house on the rock can adversely affect the stability of the remaining rock. Given that there is no real concern, it now seems to me that a taking has already occurred since the application has been needlessly delayed.

In any event, one would think that staff would use its knowledge and common sense, look at the material submitted, and advise the Commission that the building of this simple house does not implicate either sections 30231 and 30253 of the Act. However, if staff is not permitted to do so, and it will get this matter before the Commission quickly, Mr. Mitroka will get a report from a qualified geologist to that effect.

I would request you to contact me once you have read this fax.

Very truly yours,

  
RALPH ROGARI

RR:

cc: Jeff Mitroka

## CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-8200



October 23, 1995

Ralph Rogari, Esq.  
Rehm & Rogari  
12121 Wilshire Blvd., Suite 1103  
Los Angeles, CA 90025

EXHIBIT NO.	9
APPLICATION NO.	
Appeal 4-95-102	

RE: Coastal Development Permit Application No. 4-95-102 (Mitroka)

Dear Mr. Rogari:

This letter will serve as a follow-up to Dorothy Dickey's letter to you of September 27, as well as to events that transpired at the Commission's October hearing, and will also serve to confirm the current status of the above-referenced application.

During the October Commission hearing, you took the opportunity to appeal to the Coastal Commission the staff's determination that the application was incomplete, pursuant to section 13056 of Title 14 of the California Code of Regulations. As you know, the Commission at the hearing did not direct the Commission staff to file the submitted application as complete. As of this date, the application is still incomplete and all of the items listed in Troy Doss' letter of August 23, 1995 must still be submitted before the application may be filed complete. A copy of that letter is enclosed for your convenience. Because this application has been pending incomplete for about 6 months, we anticipate returning your file to you as incomplete if all of the remaining items have not been received by January 1.

In addition, there are two assertions in your letter of September 28 which need to be addressed. First, on page 1, you state that it was your understanding that further geology reporting may not be required for the application can be filed complete. This is an incorrect understanding. As explained in Mr. Doss' letter, additional geology information is required. Second, the assertions made in the fourth full paragraph of page 2 of your letter must be corrected. During our telephone conversation, we noted that the Commission adopted section 13056, which is cited above, to implement the requirement set forth in the Permit Streamlining Act that it "provide a process for the applicant to appeal ...[a] decision [that an application is incomplete]". (Government Code section 65943(c).) As you know, we advised you during that conversation that we could not provide you with any legal advice as to whether or not a lawsuit would be appropriate, nor did we provide you with such advice. We did, however, point out to you that, under the Permit Streamlining Act, if you or Mr. Mitroka chose not to address the full Commission with your concerns before filing suit as provided for under section 13056, the Commission would anticipate raising that omission as a defense to any lawsuit brought.

Ralph Rogari, Esq.  
October 23, 1995  
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Should you have any further questions or need clarification about the items remaining to be submitted before the application can be filed complete, please feel free to call Troy Doss in our Ventura Office.

Very truly yours,

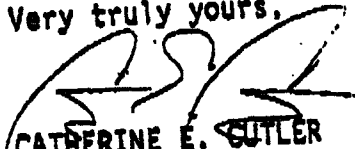
  
CATHERINE E. CUTLER  
Staff Counsel

EXHIBIT NO. 9
APPLICATION NO.
Appeal 4-95-102

Encl: a/s

cc: Dorothy Dickey  
Troy Doss

bcc: Ralph Faust

3265L