

CALIFORNIA COASTAL COMMISSION

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 SAN FRANCISCO, CA 94105-2219
 VOICE AND TDD (415) 904-5200

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Staff: CK-SF
 Staff Report: April 19, 1996
 Hearing Date: May 7, 1996
 Commission Action:

STAFF RECOMMENDATION FOR ISSUANCE OF CEASE AND DESIST ORDER

CEASE AND DESIST ORDER: CCC-96-CD-02

RELATED VIOLATION FILE: V-4-95-022

PROPERTY LOCATION: 33310 Hassted Road, Malibu
 Los Angeles County APN 4472-009-020

PROPERTY OWNER: Albert Thorne Jr.
 1215 6th Place
 Port Hueneme, California 93041

AGENT: Burtram Johnson
 P.O. Box 1379
 Santa Monica, California 90406

VIOLATION DESCRIPTION: Unpermitted grading, removal of major vegetation, and placement of solid materials.

I. EXECUTIVE SUMMARY

The subject violation consists of the initiation of a single-family residential project within the Coastal Zone without benefit of a coastal development permit. The property owner has already performed substantial development, including grading, removal of major vegetation and placement of solid materials despite notification by Commission staff that a coastal development permit is required.

The property owner, Albert Thorne Jr. and his agent, Burtram Johnson, have argued that the subject development is exempt from the permit requirements under the Coastal Act pursuant to sections 30610.1(c) and 30610.2(b) (Calvo exclusion).

Commission staff counsel and Los Angeles County Counsel have advised Thorne and Johnson that development of the property does not qualify for Calvo exclusion. The County has

instructed Thorne that no building permit will be granted for development of the property prior to Commission permit review.

Commission staff has advised Thorne to apply for a coastal development permit to either authorize the development after-the-fact or to restore the property to its pre-development state. Despite numerous discussions with Commission staff concerning this matter, Thorne and Johnson refuse to submit a permit application or to acknowledge the Commission's regulatory authority over the subject development.

The proposed order would require Thorne to cease and desist from engaging in any further development at the property without first obtaining a necessary coastal development permit and to timely submit an application for either the after-the-fact authorization or the removal of the unpermitted development that he has already performed at the property.

STAFF NOTE

A. Calvo Exclusion

Effective January 1, 1980, the Coastal Act was amended to include sections 30610.1 and 30610.2 which provide that certain single-family residential developments are exempt from the coastal development permit (CDP) requirements of the Coastal Act (Calvo amendment). Section 30610.1(a) states that prior to the certification of the applicable local coastal program, no coastal development permit (CDP) shall be required for the construction of a single-family residence on a vacant lot meeting specific criteria and located in a specified area designated by the Commission (the complete text of PRC §§ 30610.1 and 30610.2 are attached as Exhibit 2). Accordingly, on January 24, 1980, the Commission pursuant to PRC § 30610.1(b) designated specific areas in the Coastal Zone where the construction of a single-family residence on a vacant lot meeting the criteria set forth in PRC § 30610.1(c) would not require a CDP (See Exhibit 3). To take advantage of this provision, a written determination of exemption must be obtained from the local government in accordance with PRC § 30610.2(a) which states in relevant part:

“Any person wishing to construct a single-family residence on a vacant lot within an area designated by the commission pursuant to subdivision (b) of Section 30610.1 shall, prior to the commencement of construction, secure from the local government with jurisdiction over the lot in question a written certification or determination that the lot meets the criteria specified in subdivision (c) of Section 30610.1 and is therefore exempt from the coastal development permit requirements of this division.” (emphasis added)

B. The “Five Mile Gap”

When the Commission designated the areas where the Calvo exclusion may apply, it adopted a set of Single Family Residential Exclusion Zone maps. The Commission provided to the

affected local governments a set of 8-1/2 x 11" reproductions of maps showing the exclusion zones for their jurisdiction. These maps depict portions of the larger maps adopted by the Commission which showed the entire coastal zone. In the Malibu area, the 8-1/2 x 11" maps did not include a particular section of the larger map because it had no Calvo exclusion designations on it. This area has become known as the "five-mile gap area." The County, without consulting with the Commission, determined that the absence of this 8-1/2 x 11" map constituted a failure of the Commission to designate an area in accordance with the statute, and that therefore the County could make its own designations and issue exemptions in the five-mile gap area under section 30610.2(b) which states:

"If the commission does not designate the areas within the coastal zone as required by subdivision (b) of Section 30610.1 within the 60 days specified therein, a local government may make the certification authorized by subdivision (a) of this section without regard to the requirements of subdivision (b) of Section 30610.1."

Because the sheet covering the gap area was not included in the set of reduced scale maps provided to the County, Regional Planning staff believed that section 30610.2(b) applied in this area. Both Commission staff and Los Angeles County Counsel have instructed the Department of Regional Planning that it had misinterpreted section 30610.2(b), and that any certificate of exemption issued pursuant to this section was invalid and should be rescinded. The Department of Regional Planning has subsequently discontinued its practice of issuing certificates of exemption under section 30610.2(b) and is currently working with Commission staff through the Santa Monica Mountains Enforcement Task Force to rescind any certificates of exemption issued for lots that are not in exclusion areas officially designated by the Commission.

C. Gilchrist and Buckley

Johnson has argued that two Los Angeles County Superior Court cases, California Coastal Commission v. City of Los Angeles (Gilchrist) and California Coastal Commission v. Buckley (Buckley) support his interpretation of PRC § 30610.2(b). Both staff counsel and the State Attorney General's office find Johnson's argument flawed and unpersuasive (see footnote below). Johnson has made this argument unsuccessfully in several past Commission enforcement cases.

D. Site Development

Staff contacted Thorne very early in the development process (during the initial rough grading) to inform him of the coastal development permit requirement for his project. Staff indicated to Thorne that the development of a single-family residence at the PROPERTY would likely be found approvable by the Commission. However, in the absence of a coastal development permit application, it is impossible to evaluate whether the project as currently designed is consistent with the Chapter 3 policies of the Coastal Act. Staff is concerned that the grading already

performed does not minimize the alteration of natural land forms and therefore may not be consistent with Coastal Act section 30251. Only through the coastal development permit process can Thorne's project be determined to be consistent with the Coastal Act.

II. MOTION

Staff recommends adoption of the following motion:

I move that the Commission issue Cease and Desist Order No. CCC-96-CD-02 as proposed by staff.

Staff recommends a YES vote. An affirmative vote by a majority of the Commissioners present and voting is necessary to pass the motion.

III. PROPOSED FINDINGS

Staff recommends that the Commission adopt the following findings in support of its action:

A. Background

1. In December 1994, Commission staff received a telephone call from a neighboring property owner inquiring whether development on a vacant lot at 33310 Hassted Road, Malibu, Los Angeles County APN 4472-009-020 (hereinafter "the PROPERTY") was excluded from the permit requirements of the Coastal Act pursuant to a Calvo certificate of exemption.
2. On May 9, 1995, Commission staff discovered through a site inspection that development including grading, removal of major vegetation and placement of solid materials (hereinafter "the DEVELOPMENT") had been recently performed at the PROPERTY.
3. On June 26, 1995, Commission staff determined that the DEVELOPMENT had been undertaken without benefit of a coastal development permit (CDP) in violation of Coastal Act section 30600.
4. By letter dated June 29, 1995, staff notified Thorne that the DEVELOPMENT required Commission authorization in the form of an approved CDP and requested that he stop all unpermitted work on the PROPERTY and submit by July 28, 1995, an application for the after-the-fact (ATF) authorization of the DEVELOPMENT (Exhibit 4).
5. By letter to staff dated July 21, 1995, Johnson stated that the DEVELOPMENT was authorized under a Los Angeles County grading permit and is exempt from the permit requirements of the Coastal Act pursuant to a Calvo certificate of exemption issued to Thorne by the County on May 24, 1989 (Exhibit 5).

6. In the course of a telephone conversation on August 14, 1995, staff informed Johnson that the subject certificate of exemption is not valid because the PROPERTY is not located in an area designated by the Commission as a Calvo exclusion area (Exhibit 6).
7. By letter to the Los Angeles County Department of Regional Planning dated October 27, 1995, staff requested that the County immediately rescind the certificate of exemption issued to Thorne for the PROPERTY. Staff also requested the rescission of the grading permit issued to Thorne because it was issued in absence of a required CDP (Exhibit 7).
8. By letter to the County Department of Building and Safety dated November 2, 1995, staff repeated its request that the County rescind the subject grading permit (Exhibit 8).
9. By letter to Johnson dated November 7, 1995, Commission staff reiterated its position that the subject development is not located in a designated exclusion area and requested the submittal of a CDP application for either the removal or the ATF authorization of the DEVELOPMENT (Exhibit 9).
10. On November 15, 1995, the County Department of Building and Safety issued a Stop Work Order to Thorne for the DEVELOPMENT. However, the County Counsel subsequently determined to allow Thorne to complete the grading that he had initiated under the County grading permit, but to grant no further permits prior to Commission approval. Accordingly, Building and Safety lifted the Stop Work Order, but instructed Thorne that "This office will require a clearance from the Coastal Commission prior to issuing a building permit" (Exhibit 10).
11. By letter to Johnson dated January 5, 1996, staff reiterated its position that the subject certificate of exemption is invalid and the DEVELOPMENT requires a CDP (Exhibit 11). The letter states that despite the County's acquiescence of the completion of the grading, any grading performed after the date that staff first notified Thorne of the CDP requirement for such work would be considered a knowing and intentional violation of the Coastal Act, subject to substantial civil fines.
12. By letter to Johnson dated January 18, 1996, the Los Angeles County Department of Regional Planning rescinded the subject certificate of exemption (Exhibit 12).
13. In a telephone conversation with Thorne on January 29, 1996, Commission Statewide Enforcement Analyst Chris Kern notified Thorne that because he had failed to submit the previously requested CDP application, staff had decided to initiate a Commission cease and desist order proceeding to force compliance with the permit requirements of the Coastal Act (Exhibit 13). Thorne declined to state any position concerning the matter.

14. On January 30, 1996, staff transmitted by certified mail to Thorne and Johnson a Notice of Intent to Commence Cease and Desist Order Proceedings (Exhibit 14). Pursuant to the Commission's regulations, the notice included a Statement of Defense form to provide Thorne an opportunity to respond to the allegations set forth in the notice. Staff received return receipts confirming that copies of the notice were successfully delivered to both Thorne and Johnson. As of the date of this report, neither Thorne nor Johnson have responded to the notice.

B. Staff Allegations

The staff alleges the following:

1. Albert Thorne Jr. is the owner of the PROPERTY.
2. Thorne has undertaken development, as defined by Coastal Act section 30106, at the PROPERTY, including grading an access road and pad, placing solid materials, and removing major vegetation, without benefit of a coastal development permit.
3. No exemption from the permit requirements of the Coastal Act applies to the PROPERTY.
4. This unpermitted development constitutes an ongoing violation of section 30600 of the Coastal Act.
5. In order to resolve this Coastal Act violation, Thorne must either: (1) obtain Commission approval of a coastal development permit authorizing the DEVELOPMENT; or (2) restore the PROPERTY to its pre-development state in accordance with an approved coastal development permit.
6. Despite the efforts of staff to encourage him to do so, Thorne has neither obtained Commission approval of a coastal development permit authorizing the DEVELOPMENT nor restored the PROPERTY to its pre-development state in accordance with an approved coastal development permit.

C. Alleged Violator's Defense

The State legislature explicitly granted the Coastal Commission the right to "adopt or amend ... rules and regulations to carry out the purposes and provisions of [the Coastal Act], and to govern procedures of the commission." (Pub. Res. Code § 30333.) Relying on such powers, the Coastal Commission promulgated section 13181 entitled "Commencement of Cease and Desist Order Proceeding] before the Commission," which became operative on September 3, 1992. (See Cal. Code of Regs., tit. 14, § 13181, and historical comments thereto.) Subdivision (a) of section 13181 provides in relevant part:

“If the executive director believes that the results of an enforcement investigation so warrant, he or she shall commence a cease and desist order proceeding before the commission by providing any person whom he or she believes to be engaging in development activity as described in section 30810(a) of the Public Resources Code with notice of his or her intent to do so.... The notice of intent shall be accompanied by a “statement of defense form” that conforms to the format attached to these regulations as Appendix A. *The person(s) to whom such notice is given shall complete and return the statement of defense form to the Commission by the date specified therein, which date shall be no earlier than 20 days from transmittal of the notice of intent.*” (Cal. Code of Regs., tit. 14, § 13181, subd. (a); emphasis added.)

As of the date of this report, and without excuse, Thorne has not responded to staff’s allegations as set forth in the January 30, 1996 Notice of Intent to Commence Cease and Desist Order Proceedings. Furthermore, Thorne never requested an extension of the time limit for submittal of the statement of defense form. (See Cal. Code of Regs., tit. 14, § 13181, subd. (b) (where executive director “may at his or her discretion extend the time limit ... upon receipt within the time limit of a written request for such extension and a written demonstration of good cause”).) Since the completion of section 13181’s statement of defense form is mandatory, Thorne has failed to raise and preserve any defenses that he may have.

The defense form requirement is not an empty exercise. (See, e.g., *Horack v. Franchise Tax Board* (1971) 18 Cal.App.3d 363, 368) (“When administrative machinery exists for the resolution of differences . . . such administrative procedures are [to be] fully utilized and exhausted”).) It must be remembered that the Coastal Commission’s cease and desist hearings are “quasi-judicial.” (*Ojavan Investor, Inc. v. California Coastal Comm’n* (1994) 26 Cal.App.4th 516, 528, cert. denied (1995) __U.S.__, 115 S.Ct. 1097, 130 L.Ed.2d 1065.) Thus, if the Coastal Commission is to make findings of fact and conclusions at law in the form of an adopted Staff Report, Thorne must inform the Commission, precisely and in writing, which defenses he wishes the Commission to consider before making its decision on whether or not to issue a cease and desist order.¹ The Commission should not be forced to guess which defenses Thorne wants the Commission to consider and which defenses Thorne may have raised informally prior to the hearing but now wishes to abandon. Section 13181, subdivision (a) is specifically designed to

¹ The Statement of Defense Form has six categories of information that Thorne should have provided to the Coastal Commission: (1) facts or allegations contained in the cease and desist order or the notice of intent that are admitted by respondent; (2) facts or allegations contained in the cease and desist order or the notice of intent that are denied by respondent; (3) facts or allegations contained in the cease and desist order or the notice of intent of which the respondent has no personal knowledge; (4) facts and/or a description of any documents, photographs or other physical evidence that may exonerate the respondent; (5) any other information, statement, etc. that respondent desires to make; and (6) a listing of any documents, exhibits, declarations or other materials that are being attached by respondent to the Statement of Defense Form.

serve this function of clarifying the issues to be considered by the Commission. (See *Bohn v. Watson* (1954) 130 Cal.App.2d 24, 37 (“It was never contemplated that a party to an administrative hearing should withhold any defense then available to him or make only a perfunctory or ‘skeleton’ showing in the hearing, . . . The rule is required . . . to preserve the integrity of the proceedings before that body and to endow them with a dignity beyond that of a mere shadow-play”).)²

² Thorne has neither admitted nor contested staff’s allegation by submitting a completed Statement of Defense Form as provided by the Commission’s regulations. However, Johnson has previously contended that the DEVELOPMENT is exempt from the permit requirements of the Coastal Act pursuant to a Calvo certificate of exemption the County issued to Thorne on May 24, 1989. In his July 21, 1995 letter to Commission South Central Coast Area Assistant District Director Gary Timm, September 14, 1995 telephone conversation with Commission Malibu/Santa Monica Mountains Area Supervisor John Ainsworth, November 2, 1995 telephone conversation with Commission Statewide Enforcement Analyst Chris Kern, and November 20, 1995 letter to Wayne Smith of the State Attorney General’s Office, Johnson proposes that the County correctly issued the certificate of exemption under PRC § 30610.2(b), which states:

“If the commission does not designate the areas within the coastal zone as required by subdivision (b) of Section 30610.1 within the 60 days specified therein, a local government may make the certification authorized by subdivision (a) of this section without regard to the requirements of subdivision (b) of Section 30610.1.”

As discussed in Paragraph III.A.12 above, on January 18, 1996, the County rescinded the certificate of exemption upon which Johnson’s argument is based. However, even if the certificate had not been rescinded, staff would disagree with Johnson’s position. On January 24, 1980 (which was within the 60-day period specified under section 30610.1), the Commission designated specific areas in the Coastal Zone where the construction of a single-family residence on a vacant lot meeting criteria set forth in section 30610.1(c) shall not require a CDP. The Commission’s action negates the prerequisite condition of section 30610.2(b), that the Commission not make such a designation. Therefore, section 30610.2(b) is inoperative and consequently the County possesses the authority to issue certificates of exemption only under section 30610.2(a).

In a letter to the State Attorney General’s Office dated November 20, 1995, Johnson also argues that the decision of the Los Angeles County Superior Court in the case of *California Coastal Commission v. City of Los Angeles (Gilchrist)* supports his position that the certificate of exemption is valid. The Court ruled in *Gilchrist* that the Commission lacked authority to consider the “lot” criteria specified in § 30610.1(c) when designating single-family residential exclusion zones. The property that was the subject of the *Gilchrist* lawsuit is located in an area designated according to such “lot” criteria. Thorne’s property is not located in an area with lot criteria designations. Thus, the facts in *Gilchrist* are not analogous to the Thorne matter.

Johnson also argues in the letter that the *Buckley* case (*California Coastal Commission v. Buckley*) supports his arguments concerning the Calvo exclusion. The property which is the subject of the *Buckley* case is within an area designated by the Commission as a single-family residential exclusion zone and is subject to a Calvo certificate of exemption that both the Commission and the County agree is valid. However, as discussed in paragraph I.A.4 above, Thorne’s property is not located within an area designated by the Commission as a single-family residential exclusion zone. Therefore, the County lacked the authority to grant a Calvo certificate of exemption for the PROPERTY. In consultation with County Counsel, the Department of Regional Planning has determined that the certificate of exemption issued to Thorne on May 24, 1989, was invalid. Accordingly, on January 18, 1996, the County rescinded the certificate. These facts are not analogous to the *Buckley* case.

IV. CEASE AND DESIST ORDER

Staff recommends that the Commission issue the following cease and desist order:

Pursuant to its authority under PRC § 30810, the California Coastal Commission hereby orders Albert Thorne Jr., all his agents and any persons acting in concert with any of the foregoing to cease and desist from: (1) engaging in any further development activity at the PROPERTY without first obtaining a coastal development permit which authorizes such activity; and (2) continuing to maintain any development at the PROPERTY that violates the California Coastal Act. Accordingly, all persons subject to this order shall fully comply with paragraphs A, B and C as follow.

- A. Refrain from engaging in any development activity at the PROPERTY without first obtaining a coastal development permit which authorizes such activity.
- B. (1) Within 60 days of the date of this order, submit to the Commission for its review and approval a complete coastal development permit application for either: (a) the restoration of the PROPERTY to its pre-violation state; or (b) the after-the-fact authorization of the DEVELOPMENT.

(2) Within 60 days of the date of Commission denial, in whole or in part, of an application for after-the-fact authorization of the DEVELOPMENT, submit a complete coastal development permit application for the restoration of that portion of the DEVELOPMENT which remains unpermitted.

(3) Subject to the action of the Commission on any application for after-the-fact authorization of the DEVELOPMENT, the restoration application shall include, but not be limited to: (a) a grading plan for the restoration of the PROPERTY to its pre-violation topography; (b) a revegetation plan for the coverage of all disturbed areas of the PROPERTY with native vegetation; and (c) an implementation and monitoring plan schedule that shall provide for follow-up planting should the initial revegetation fail to cover 90 percent of the disturbed areas within 120 days of completion of the restorative grading.
- C. Fully comply with the terms, conditions and deadlines of any coastal development permit for the restoration and/or development of the PROPERTY as the Commission may impose.

IDENTIFICATION OF THE PROPERTY

The property that is the subject of this cease and desist order is described as follows:

33310 Hassted Road, Malibu, Los Angeles County APN 4472-009-020

DESCRIPTION OF UNPERMITTED DEVELOPMENT

Unpermitted grading, removal of major vegetation, and placement of solid materials.

TERM

This order shall remain in effect permanently unless and until rescinded by the Commission.

FINDINGS

This order is issued on the basis of the findings adopted by the Commission on May 7, 1996, as set forth in the attached document entitled "Adopted Findings for Cease and Desist Order No. CCC-96-CD-02."

COMPLIANCE OBLIGATION

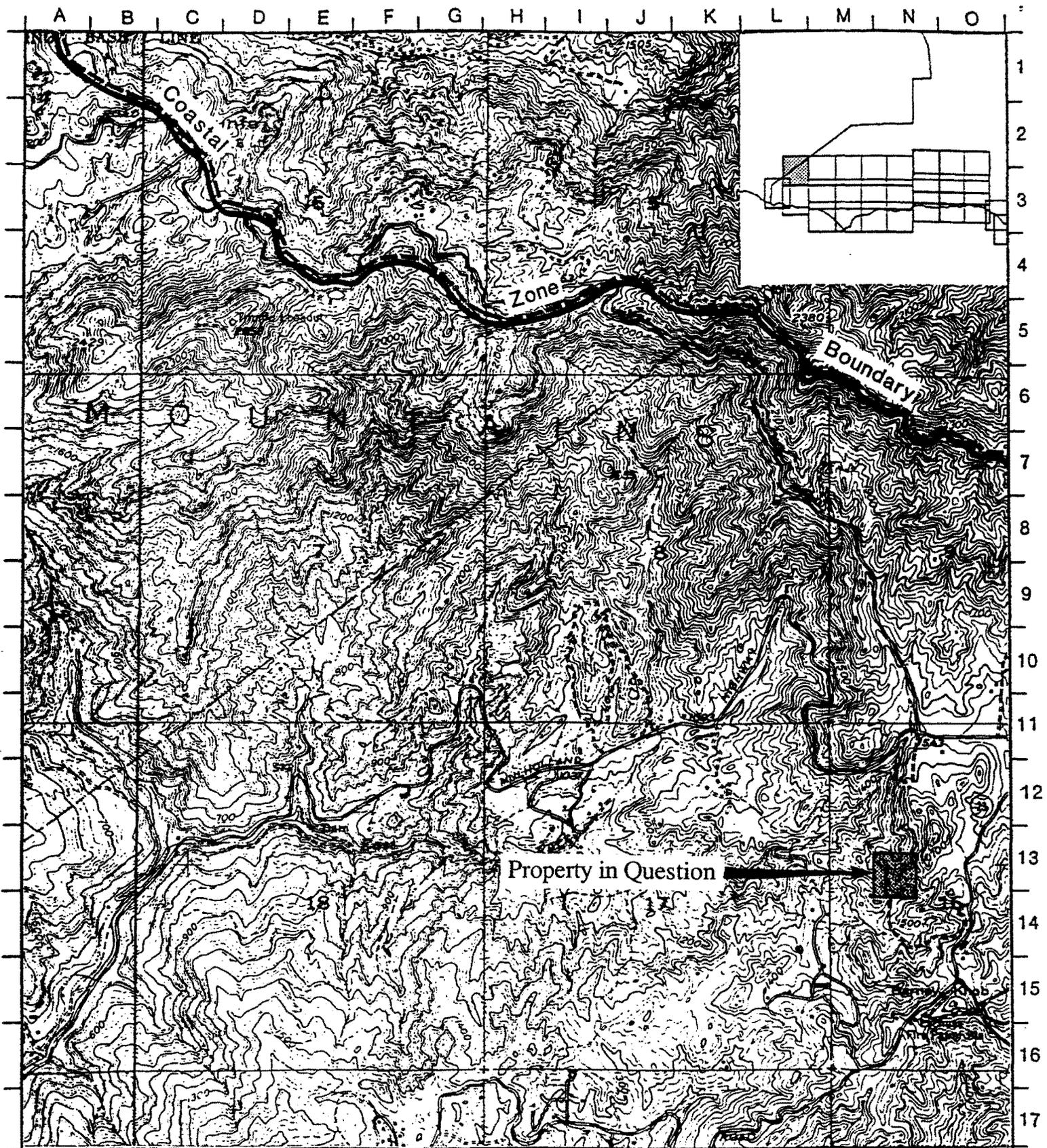
Strict compliance with this order by all parties subject thereto is required. Failure to comply strictly with any term or condition of this order including any deadline contained in this order or in the above required coastal development permit(s) as approved by the Commission will constitute a violation of this order and may result in the imposition of civil penalties of up to SIX THOUSAND DOLLARS (\$6,000) per day for each day in which such compliance failure persists. Deadlines may be extended by the Executive Director for good cause. Any extension request must be made in writing to the Executive Director and received by Commission staff at least 10 days prior to expiration of the subject deadline.

APPEAL

Pursuant to PRC § 30803(b), any person or entity against whom this order is issued may file a petition with the Superior Court for a stay of this order.

LIST OF EXHIBITS

Exhibit 1 Property Location Map
Exhibit 2..... Coastal Act sections 30610.1 and 30610.2
Exhibit 3..... Single-Family Residential Exclusion Zone Map No. 133
Exhibit 4.....June 29, 1995 letter from Ainsworth and Friend to Thorne
Exhibit 5.....July 21, 1995 letter from Johnson to Timm
Exhibit 6....Notes from August 14, 1995 telephone conversation between Johnson and Ainsworth
Exhibit 7.....October 27, 1995 letter from Kern to Cowardin
Exhibit 8.....November 2, 1995 letter from Kern to Safarik
Exhibit 9.....November 7, 1995 letter from Kern to Johnson
Exhibit 10.....November 15, 1995 Stop Work Order
Exhibit 11.....January 5, 1996 letter from Kern to Johnson
Exhibit 12.....January 18, 1996 letter from Cowardin to Johnson
Exhibit 13.....Notes from January 29, 1996 telephone conversation between Kern and Thorne
Exhibit 14.. January 30, 1996 Notice of Intent to Commence Cease and Desist Order Proceedings



CCC-96-CD-02
 APN 4472-9-20



Portion of Coastal Zone Boundary
 Map No. 133 (Triunfo Pass)



County of Los Angeles

Exhibit 1

Section 30610.1.

(a) Prior to certification of the applicable local coastal program, no coastal development permit shall be required for the construction of a single-family residence on any vacant lot meeting the criteria set forth in subdivision (c) and located in a specified area designated by the commission pursuant to subdivision (b).

(b) Within 60 days from the effective date of this section, the commission shall designate specific areas in the coastal zone where the construction of a single-family residence on a vacant lot meeting the criteria set forth in subdivision (c) shall not require a coastal development permit. Areas shall be designated for the exclusion provided for in this section if construction of single-family residences within the area to be designated has no potential, either individually or cumulatively, for significant adverse impacts on highly scenic resources of public importance, on environmentally sensitive areas, on prime agricultural land or on agricultural lands currently in production, or on public access to or along the coast.

In addition, if septic tanks will be required or used, an area identified as having septic tank problems by the appropriate regional water quality control board or the State Water Resources Control Board in an approved basin plan or by other formal action of such board may not be designated for exclusion pursuant to this section.

(c) Within areas designated pursuant to subdivision (b), no coastal development permit shall be required for the construction of a single-family residence on any vacant lot which meets all of the following criteria:

(1) It is not located between the first public road and the sea or immediately adjacent to the inland extent of any beach or of the mean high tide line where there is no beach.

(2) Is a legal lot as of the effective date of this section and conforms with the minimum lot size and lot use designations of the applicable general plan and zoning ordinances.

(3) Is not located within an area known to the affected local government, or designated by any other public agency, as a geologic hazard area or as a flood hazard area, or, if located within such an area, it has been determined by the affected local government to be a safe site for the construction of a single-family residence.

(4) Is no more than 250 feet from an existing improved road adequate for use throughout the year.

(5) Can be served by an adequate water supply that is legally available for use either by means of a well or by means of a connection to a water system with sufficient capacity to serve such lot or lots; provided, that no such connection shall require the extension of an existing water main which would have the capacity of serving four or more additional single-family residential structures.

(d) The commission shall, within 120 days from the effective date of this section, specify uniform criteria that shall be used to determine the location of "the first public road" and the inland extent of any beach for purposes of paragraph (1) of subdivision (c).

(e) Within 30 days after the 120-day period specified in subdivision (b), the commission shall report the Legislature and the Governor what has been done to carry out the provisions of this section.

(f) The provisions of this section shall apply notwithstanding any other provision of this division to the contrary.

(Added by Ch. 919, Stats. 1979.)

Section 30610.2

(a) Any person wishing to construct a single-family residence on a vacant lot within an area designated by the commission pursuant to subdivision (b) of Section 30610.1 shall, prior to the commencement of construction, secure from the local government with jurisdiction over the lot in question a written certification or determination that the lot meets the criteria specified in subdivision (c) of Section 30610.1 and is therefore exempt from the coastal development permit requirements of this division. A copy of every certification of exemption shall be sent by the issuing local government to the commission within five working days after it is issued.

(b) If the commission does not designate the areas within the coastal zone as required by subdivision (b) of Section 30610.1 within the 60 days specified therein, a local government may make the certification authorized by subdivision (a) of this section without regard to the requirements of subdivision (b) of Section 30610.1.

(Added by Ch. 919, Stats. 1979.)

(Amended by Ch. 1087, Stats. 1980.)

(Amended by Ch. 285, Stats. 1991.)

CALIFORNIA COASTAL COMMISSION

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

CERTIFIED MAIL

June 29, 1995

Al Thorne
6185 Rameriz Canyon Road
Malibu, CA. 90265

Violation File Number: V-4-MAL-95-022

Property Address: A vacant lot off Hassted Road, Malibu; Los Angeles County
APN: 4472-009-020

Unpermitted Development: Removal of vegetation and grading

Dear Mr. Thorne:

Our office has confirmed reports that the above-referenced activity on your property, which is located in the coastal zone, was undertaken without first obtaining a coastal development permit. Section 30600(a) of the Coastal Act states that in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the coastal zone must obtain a coastal development permit. "Development" is broadly defined by section 30106 of the Coastal Act to include:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of the use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations....

The removal of vegetation and grading undertaken on your property constitutes "development" and therefore requires a coastal development permit.

Any development activity performed without a coastal development permit constitutes a violation of the California Coastal Act's permitting

requirements. Coastal Act sections 30803 and 30805 authorize the Coastal Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Coastal Act section 30820(a) provides that any person who violates any provision of the Coastal Act may be subject to a penalty not to exceed \$30,000. Further, section 30820(b) states that, in addition to any other penalties, any person who "intentionally and knowingly" performs any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1000 nor more than \$15,000 for each day in which the violation persists.

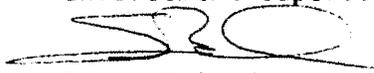
As one step toward resolving the violation, please stop all unpermitted work on the property. Any additional work could be considered a knowing and intentional violation of the Coastal Act. Please submit a completed coastal development permit application for this activity, and any other development activities contemplated on this property in the near future, to this office by July 28, 1995. If we do not receive a coastal development permit application by this date, we will refer this case to our Statewide Enforcement Unit in San Francisco for further legal action.

Please contact Susan Friend at our office if you have any questions regarding this matter. Please refer to your file number when communicating with this office.

Thank you for your anticipated cooperation.

Sincerely,


John Ainsworth
Enforcement Supervisor


Susan Friend
Enforcement Officer

2 233 296 724



Receipt for
Certified Mail
No Insurance Coverage Provided
Do not use for international Mail

encl: CDP Applicatio

SPF:JLA
0785V

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- Addressee's Address
- Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:
THURNE
6185 RAMBERZ CYN
MAYRUD CA 90265
Al Thorne

4a. Article Number
2 233 296 724

4b. Service Type
 Registered Insured
 Certified COD
 Express Mail Return Receipt for Merchandise

7. Date of Delivery
7-13-95

8. Addressee's Address (Only if requested and fee is paid)

5. Signature (Addressee)

6. Signature (Agent)

PS Form 3811, December 1991 U.S. GPO: 1993-352-714

your RETURN ADDRESS completed on the reverse side.

CCC-96-02
EXHIBIT 4

IP

LORTRAM JOHNSON - CONSULTANT
Post Office Box 1379, Santa Monica, California 90406
(310) 459-5929 - (310) 454-1221

July 21, 1995

California Coastal Commission
South Central Coast Area
89 South California Street, Ste 200
Ventura, California 93001

RECEIVED
JUL 26 1995
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Attn: Gary Timm
Assistant District Director

Subject: Violation Notice V-4-MAL-95-022 dated 6/29/95
Removal of vegetation and grading
L.A. County APN 4472-009-020

Dear Gary Timm:

On May 15, 1989 Los Angeles County (hereinafter the "County") determined that Property Owner Al Thorne's parcel APN 4472-009-020 met the statutory requirements for exemption from coastal development permit requirements pursuant to PRC §30610.1(c) and issued a Certificate of Exemption from the coastal development permit requirements of the Coastal Act for parcel in accordance with PRC §30610.2 (Attachment 1). The Certificate of Exemption was timely submitted to Commission by the County. The California Coastal Commission (hereinafter the "Commission") did not challenge the County-issued Certificate of Exemption pursuant to CCP 1085.

"Therefore, Los Angeles* County hereby certifies that said and proposed single-family residence meets the requirements of Section 30610.1(c) of Public Resources Code and is thereby exempt from* the coastal development permit requirements of the Coast Act."

On June 29, 1995 the Commission issued a Stop Work Order bearing Violation File Number V-4-MAL-95-022 regarding "removal of vegetation and grading". The Commission has no jurisdiction over said parcel/lot since the County issued a Certificate of Exemption on May 15, 1989 for said parcel. There is not now or has there been a Coastal Development Permit required for single-family residential development of said parcel since May 15, 1989. The County has approved and issued a grading permit for said parcel. The grading of the parcel is per the County issued grading permit. The Commission has exceeded its authority in issuance of the Stop Work Order on June 29, 1995, thus the Stop Work Order is void and of no force and effect.

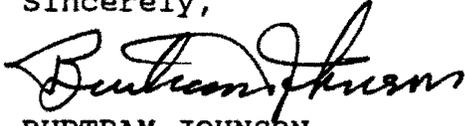
It is requested that the California Coastal Commission immediately specify that Stop Work Order dated June 19, 1995 identified as violation file number V-4-MAL-95-022 is determined to be void and of no force and effect. Any delays in make the requested "void

CCC-96-02
EXHIBIT 5

and/of no force and effect" determination which causes additional development, grading and construction costs could be the basis of a damages action against the Commission. The illegally issued Stop Work Order noted herein is a violation of the property owner's constitutional rights.

An immediate written responses is requested.

Sincerely,



BURTRAM JOHNSON

for Property Owner Al Thorne

Attachment:

1. Cert. of Exemption dtd 5/15/89

cc: Al Thorne

2019 12/27
Certification Form for Local Government
to use for Single-Family Development Permits
Only in Areas Designated by the Commission

On May 15, 1989 Albert Thorne applied for a permit to construct a single-family residential development on an existing Parcel which is within an area designated by the California Coastal Commission pursuant to Section 30610.1 of the Public Resources Code.

Pursuant to Section 30610.2 of the Public Resources Code the County of Los Angeles has determined that the construction of this single-family residence meets all of the following lot criteria:

- (1) The construction of the single-family residence on the lot is not located between the first public road and the sea or immediately adjacent to the inland extent of any beach or of the mean high tide line where there is no beach.
(Please attach a copy of Commission's 8½" x 11" quad map showing location of parcel within designated area.)
- (2) a) The lot is a legal lot pursuant to Section 702.1A of Ordinance No. 1494 as of January 1, 1980.
b) The lot also conforms with the minimum lot size and lot use designations of the applicable general plan and zoning ordinance. (Please attach a copy or statement referencing the applicable general plan.)
- (3) The construction of the single-family residence on the lot is not located within an area known to the County of Los Angeles, or designated by any other public agency as a geologic hazard area or as a flood hazard area. OR although the lot is located within an area recognized as a geologic hazard area by _____ (or flood hazard area by _____) it has been determined by County of Los Angeles to be a safe site for the construction of a single-family residence.
- (4) The construction of the single-family residence on the lot, located at Terminus of Heasted Road, is no more than 250 feet from an existing improved road that meets minimum County requirements for fire and emergency vehicular use throughout the year.
- (5) The residence can be served by an adequate water supply that is legally available for use (by means of a well) OR (by means of a connection to a water system with sufficient capacity to serve such lot and no such connection will require the extension of an existing water main which as the capacity of serving four or more additional single-family residential structures).

Therefore, Los Angeles County hereby certifies that Said lot and proposed single-family residence meets the requirements of Section 30610.1(c) of Public Resources Code and is thereby exempt from the coastal development permit requirements of the Coastal Act.

Benjamin Dominguez
(Signed)

5-14-89
(Dated)

CALIFORNIA COASTAL COMMISSION

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

MEMORANDUM

September 14, 1995

TO: Thorne Violation File

FROM: John Ainsworth

SUBJECT: Conversation with Burt Johnson Regarding Thorne Grading and
Vegetation Clearance Violation

On August 14, 1995 at 8:45 am I received a telephone call from Burt Johnson who claimed to represent Al Thorne, regarding the violation letter we sent to Mr. Thorne which referred to a vegetation clearance and grading violation on Mr Thorne's parcel. Mr. Johnson indicated that Mr. Thorne received a Calvo Exclusion for grading and construction of a single family home on the subject parcel.

I told Mr. Johnson that the subject area was not within a Calvo Exclusion Area and if he did receive a Calvo Exclusion it was not valid. I indicated that a coastal development permit is required for the unpermitted vegetation clearance, grading and the proposed single family residence. I also indicated that I had telephone conversation with Dave Cowardin with Los Angeles County Department of Regional Planning and that Mr. Cowardin told me that if Mr. Thorne had a Calvo Exclusion it was not valid. I further indicated that we had received correspondence in June of 1992 from the Office of the County Council to the Director of Regional Planning indicating that Calvo Exclusions were only valid in the mapped Calvo Exclusion Areas and that any exclusions issued outside of these mapped areas should be rescinded.

Mr. Johnson disagreed that the Calvo exclusion Mr. Thorne received was not valid and cited several legal cases, the Buckely Case in Malibu and the Gilcrest Case in Playa Del Rey, which he claims allows for the issuance of Calvo Exclusions outside of mapped exclusion areas. He indicated he would call the Mr. Cowardin and confirm that the Calvo Exclusion was not valid.

I finally indicated that it is the position of the Commission that the unpermitted grading and the proposed single family residence does require a permit as outlined in the violation letter sent to Mr. Thorne.

1756M

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200



October 27, 1995

David Cowardin
Los Angeles County
Department of Regional Planning
Hall of Records, Room 1360
Los Angeles, California 90012

SUBJECT: Rescission of Certificate of Exemption granted to Albert Thorne

Dear Mr. Cowardin:

On May 24, 1989, Los Angeles County issued to Albert Thorne a certificate of exemption from the coastal development permit requirements of the California Coastal Act for the construction of a single-family residence on a parcel located "at the terminus of Haasted Road" (APN 4472-009-020) pursuant to PRC § 30610.2 (CALVO exclusion). This property is located within the so called "gap area" which is not depicted in the set of reduced exclusion area maps previously provided to the County.

As stated in Los Angeles County Counsel Charles Moore's June 9, 1992, letter (enclosed), any certificate of exemption previously issued within the gap area was issued in error and should be rescinded. Accordingly, Commission staff hereby requests that you immediately rescind the subject certificate of exemption. In addition, staff requests that the enclosed grading permit be rescinded because it was issued in the absence of a required coastal development permit. Please call me at (415) 904-5294 if you have any questions regarding the foregoing. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Kern", written over a horizontal line.

CHRIS KERN
Coastal Program Analyst II
Statewide Enforcement Unit

cc: Nancy Cave, Statewide Enforcement Supervisor
Susan Friend, South Central Coast Area Enforcement Staff

enclosures

CALIFORNIA COASTAL COMMISSION

1000 WEST STREET, SUITE 2000
DUBLIN, CA 94568-2219
TELEPHONE (415) 904-5200



November 2, 1995

James Safarik
Los Angeles County
Department of Building and Safety
4111 North Las Virgenes Road, # 201
Calabasas, California 91302

SUBJECT: Coastal Act Violation File No. V-4-95-022 (THORNE)

Dear Mr. Safarik:

As we discussed in our telephone conversation this morning, Commission Enforcement Staff hereby requests that the County rescind the grading permit granted to Albert Thorne on October 20, 1994.

On May 24, 1989, Los Angeles County issued to Thorne a certificate of exemption from the coastal development permit requirements of the California Coastal Act for the construction of a single-family residence on a parcel located "at the terminus of Haasted Road" (APN 4472-009-020) pursuant to PRC § 30610.1 (CALVO exclusion). The subject property is not located in an area designated by the Commission as a single-family residential exclusion area under PRC § 30610.1(b). Rather, this property is located within the so called "gap area" which is not depicted in the set of reduced exclusion area maps previously provided to the County.

As stated in Los Angeles County Counsel Charles Moore's June 9, 1992, letter (enclosed), any certificate of exemption previously issued within the gap area was issued in error and should be rescinded. Accordingly, Commission staff has requested rescission of the certificate of exemption, and we hereby request that you immediately rescind the enclosed grading permit because it was issued in the absence of a required coastal development permit. Please call me at (415) 904-5294 if you have any questions regarding the forgoing. Thank you for your attention to this matter.

James Safarik
November 2, 1995
Page Two

Sincerely,



CHRIS KERN
Coastal Program Analyst II
Statewide Enforcement Unit

cc: Nancy Cave, Statewide Enforcement Supervisor
Susan Friend, South Central Coast Area Enforcement Staff

enclosures

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-6200



November 7, 1995

Burtram Johnson
P.O. Box 1379
Santa Monica, California 90406

SUBJECT: Coastal Act Violation File No. V-4-95-022 (THORNE)

Dear Mr. Johnson:

This letter is in reply to your July 21, 1995, letter to Gary Timm concerning the above referenced matter. In your letter you propose that grading and vegetation removal undertaken on the property owned by Albert Thorne at the terminus of Haasted Road in Malibu, Los Angeles County Assessor's Parcel Number 4472-009-020, is exempt from the permit requirements of the California Coastal Act pursuant to PRC §§ 30610.1(c), 30610.2 (Calvo exclusion). As we discussed in our telephone conversation on November 2, 1995, Commission staff does not agree with your analysis because the subject development is not located in a designated exclusion area and does not therefore qualify for Calvo exclusion. I must also reiterate staff's opinion that the subject development has been undertaken in violation of the permit requirements of the Coastal Act.

Section 30610.1(a) of the Coastal Act provides that prior to the certification of the applicable local coastal program, no coastal development permit (CDP) shall be required for the construction of a single-family residence on a vacant lot meeting specific criteria and located in a specified area designated by the Commission. Accordingly, on January 24, 1980, the Commission pursuant to PRC § 30610.1(b) designated specific areas in the Coastal Zone where the construction of a single-family residence on a vacant lot meeting the criteria set forth in PRC § 30610.1(c) shall not require a CDP. To take advantage of this provision, a written determination of exemption must be obtained in accordance with PRC § 30610.2 which states in relevant part:

"(a) Any person wishing to construct a single-family residence on a vacant lot within an area designated by the commission pursuant to subdivision (b) of Section 30610.1 shall, prior to the commencement of construction, secure from the local government with jurisdiction over the lot in question a written

Burtram Johnson
November 7, 1995
Page 2

certification or determination that the lot meets the criteria specified in subdivision (c) of Section 30610.1 and is therefore exempt from the coastal development permit requirements of this division." (emphasis added)

On May 24, 1989, Los Angeles County issued to Thorne a Calvo certificate for the construction of a single-family residence at the subject property. Contrary to the statement in the certificate, the subject property is not located in one of the designated single-family residential exclusion areas, and does not therefore qualify for CDP exemption under PRC § 30610.1. The property is located within the so called "five-mile gap" which is not depicted in a set of reduced exclusion area maps previously provided to the County. As stated in Los Angeles County Counsel Charles Moore's June 9, 1992, letter (enclosed), any certificate of exemption previously issued within the gap area was issued in error and should be rescinded.

Furthermore, because the subject property is not located in a designated exclusion area, the County had no authority to even consider granting this certificate of exemption. Thus, staff does not agree with your assertion that the Commission had an obligation to challenge this invalid certificate. The certificate of exemption issued to Thorne is void and has no effect, and the subject development is not exempt from the CDP requirements of the Coastal Act.

This matter may be resolved by either the after-the-fact authorization or the removal and restoration of the unpermitted grading and vegetation removal. If Mr. Thorne wishes to pursue the development of his property, staff recommends that he submit a CDP application for the after-the-fact authorization of the subject unpermitted vegetation removal and grading as well as for the authorization of any other development contemplated at the site. If you agree to this approach, please submit the complete CDP application to the Commission's South Central Coast Area office in Ventura. Also, please sign and return to this office the enclosed Waiver of Legal Argument form.

If we do not receive your positive reply, including the complete permit application and signed waiver, within 30 days of the date of this letter, staff will schedule this matter for a cease and desist order hearing to recommend that the Commission order pursuant to PRC § 30810 the removal and restoration of any development undertaken at the property without a required CDP. In accordance with PRC § 30821.6, violation of a cease and desist order may be subject to a \$6,000 daily fine. Please call me at (415) 904-5294 if you have any questions regarding the forgoing. Thank you for your attention to this matter.

Burtram Johnson
November 7, 1995
Page 3

Sincerely,



CHRIS KERN
Coastal Program Analyst II
Statewide Enforcement Unit

cc: Albert Thorne
Gary Timm, South Central Coast Assistant District Director
Nancy Cave, Statewide Enforcement Supervisor
Susan Friend, South Central Coast Area Enforcement Staff

enclosure

JOB ADDRESS 33310 HASTED Rd
OWNER ALBERT THORNE

I AM RESCINDING THE
GRADING STOP WORK
NOTICE DATED 11-15-95 BY
INSPECTOR KEN ARGUELLES

THIS OFFICE WILL
REQUIRE A CLEARANCE
FROM THE COASTAL
COMMISSION PRIOR TO
ISSUING A BUILDING
PERMIT.

CONTACT THE UNDER-
SIGNED IF YOU HAVE ANY
QUESTIONS.

11-27-95 James Sanford
DATE INSPECTOR'S SIGNATURE

ADDRESS 33310 HASTED Rd
OWNER A. THORNE

STOP ALL WORK

You are in violation with the provisions of the County Ordinance as indicated below:
~~XX~~ Coastal Commission
Building Code
Plumbing Code
Mechanical Code
Electrical Code
Zoning Ordinances
Grading Code

DESCRIPTION: Contact
Coastal Commission
Chris Kern
Coastal Program Analyst II
Statewide Enforcement Unit.

Submit plans for the work within 10 days to the office listed above and apply for a plan check for the required Permit.

Obtain a Permit within 10 days for the work at the office listed above.

A referral has been made to the Enforcement Section of the Department of Regional Planning.

11-15-95 Ken Arguelles
DATE INSPECTOR'S SIGNATURE

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-6200

January 5, 1996

Burtram Johnson
P.O. Box 1379
Santa Monica, California 90406

SUBJECT: Coastal Act Violation File No. V-4-95-022 (THORNE)

Dear Mr. Johnson:

You have stated that you disagree with Commission staff's position that the grading and vegetation removal performed at the subject property constitute a violation of the permit requirements of the Coastal Act because you believe that the development is exempt from the Act's permit requirements under the CALVO amendment. Since our last conversation concerning this matter, I have discussed the validity of the subject certificate of exemption with David Cowardin of the Los Angeles County Department of Regional Planning. In consultation with County Counsel, Mr. Cowardin confirmed that the County agrees that the County issued the certificate of exemption in error. Consistent with this determination, on November 27, 1995, James Safarik of the County Department of Building and Safety issued to Mr. Thorne a notice that the County will not issue a building permit for the subject property without Commission [coastal development permit] approval (see enclosure)¹.

You propose that the County correctly issued the certificate of exemption under § 30610.2(b) which states:

(b) If the commission does not designate the areas within the coastal zone as required by subdivision (b) of Section 30610.1 within the 60 days specified therein, a local government may make the certification authorized by subdivision (a) of this section without regard to the requirements of subdivision (b) of Section 30610.1.

As you are aware, on January 24, 1980 (which was within the 60 day period specified under § 30610.1), the Commission designated specific areas in the Coastal Zone where the construction of a single-family residence on a vacant lot meeting criteria set forth in § 30610.1(c) shall not require a CDP. The Commission's action negates the prerequisite condition of § 30610.2(b) that the Commission not make such a designation. Therefore, the Commission and the Los Angeles

¹ The County has also rescinded its "Stop Work Order" to allow completion of grading previously authorized by a County grading permit. Mr. Thorne should be aware that despite this action by the County, any grading performed at the site that is not authorized by a coastal development permit is considered to be a violation of the Coastal Act, and that any development, including grading, performed after the date of that Commission staff first notified Mr. Thorne of this matter will be considered a knowing and intentional violation, subject to civil penalties of between \$1,000.00 and \$15,000.00 per day (PRC § 30820(b)).

County Counsel agree that § 30610.2(b) is inoperative and consequently that the County possesses the authority to issue certificates of exemption only under § 30610.2(a).

You propose that the *Gilchrist* and *Buckley* cases support your position that the certificate of exemption is valid. Commission staff's view concerning the effect of the decision in *Gilchrist* has not changed from that discussed in the letters dated December 4, 1991, and March 30, 1992, written to you by the Commission's Chief Counsel (copies enclosed). As for the *Buckley* case, the Commission's appeal of the trial court's decision is pending and therefore it is inappropriate to rely on the lower court's ruling at this time.

Staff believes that the Commission would likely approve a coastal development permit (CDP) application for the construction of a single-family residence at the subject property. (Of course, until an application is filed, staff cannot commit to a recommendation.) If, in light of the foregoing, Mr. Thorne would like to seek Commission approval of his project, he must submit to the Commission's South Central Coast Area office a CDP application for the after-the-fact authorization of the subject unpermitted vegetation removal and grading as well as for the authorization of further development contemplated at the site. Please contact me at your earliest convenience to discuss whether staff should expect such an application. If I have not received your positive reply by January 19, 1996, staff will pursue further enforcement action as necessary to resolve this violation. Thank you for your attention to this matter.

Sincerely,



CHRIS KERN
Coastal Program Analyst II
Statewide Enforcement Unit

enclosures

cc: Albert Thorne
David Cowardin, Los Angeles County Department of Regional Planning
Nancy Cave, Statewide Enforcement Supervisor

bcc: Alan Hager, Supervising Deputy Attorney General
Charles Moore, Los Angeles County Counsel
Gary Timm, South Central Coast Assistant District Director
John Bowers, Statewide Enforcement Legal Counsel
Cathy Cutler, South Central Coast Area Legal Counsel
Susan Friend, South Central Coast Area Enforcement Staff

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200



December 4, 1991
Certified Mail

Burtram Johnson
Post Office Box 1379
Santa Monica, CA 90406

Violation File No.: V-5-91-030 (Tuchman)

Violation Location: 5942 Ramirez Canyon Road, Malibu
APN 4467-007-011

RE: Exemption from Coastal Development Permit Requirement
Pursuant to Section 30610 (CALVO Exclusion).

Dear Mr. Johnson:

This letter is in response to your November 15, 1991, letter which states your position that the development undertaken at the above referenced property is exempt from all coastal development permit (CDP) requirements. Additionally, it is appropriate to address your allegations that in pursuit of resolution of the subject Coastal Act violation investigation, "the acts of the Coastal staff are arbitrary and capricious and have been intentionally and maliciously committed to threaten, intimidate and harass Mr. Tuchman and constitute an abuse of process by said staff." After reviewing your submittal, I have concluded that the subject unpermitted development constitutes a violation of the Coastal Act and that the Commission's enforcement staff has acted reasonably in carrying out its duty to correct this violation.

You have submitted to us a Certificate of Exemption issued by Los Angeles County which states that the subject property meets the lot criteria of Section 30610.1(c) of the Coastal Act. You conclude that according to this document the property is exempt from the CDP requirement pursuant to Section 30610.1. Section 30610.1(a) states:

Prior to certification of the applicable local coastal program, no coastal development permit shall be required for the construction of a single-family residence on any vacant lot meeting the criteria set forth in subdivision (c) and located in a specified area designated by the commission pursuant to subdivision (b).

As stated in our October 21, 1991, letter to Michael Tuchman, Commission staff has determined that the subject property is identified on the Single-Family Residential Exclusion Area Designation Map No. 96 to be in an area designated as A2 (Environmentally Sensitive Area), and not in an exclusion area. Development in such an area may not be excluded from the CDP requirement under Section 30610.1; therefore, the Certificate of Exemption that you have submitted is invalid.

You argue that according to the decision made by the Los Angeles County Superior Court in California Coastal Commission v. City of Los Angeles (Gilchrist), Map 96 is void and Los Angeles County has assumed the authority to issue an exemption under Section 30610.2(b). It has been and continues to be the position of the Commission that the ruling in that trial court decision is applicable only to the lots which were the subject of the Gilchrist lawsuit. Therefore, the Calvo maps, including Map 96, are valid and Los Angeles County may only issue exemption certificates for lots within areas indicated for exemption by the Commission.

Additionally, the ruling in Gilchrist was based on the argument that the Commission lacked the authority to designate areas on the Calvo map according to "lot" criteria. The property that was the subject of that lawsuit was in an area designated according to such criteria. Were it the case that Tuchman's property was designated on Map 96 according to "lot" criteria, the facts might be at least arguably analogous to those of Gilchrist. However, Tuchman's property is designated on the map according to "area" criteria. It is in fact designated as being within a Sensitive Environmental Area. The Commission acted firmly within the authority granted it by the Legislature pursuant to Section 30610.1(b) when it designated the area in which the subject property is located as ineligible for exemption based on the applicable "area" criteria.

Finally, neither does the Certificate of Exemption that you have submitted from Los Angeles County support your position. In fact, the first paragraph of the Certificate states:

"On March 15, 1989 Sally Scott and Michael Tuchman applied for a permit to construct a single-family residential development on an existing parcel which is within an area designated by the California Coastal Commission pursuant to Section 30610.1 of the Public Resources Code."

(emphasis added)

Los Angeles County has not adopted the position that it has the authority to issue exemptions under Section 30610.2(b). The Certificate form specifically states that the exemption is for lots in an area designated by the Commission pursuant to Section 30610.1. Therefore, Los Angeles County issued the exemption under the authority of Section 30610.2(a). However, the subject property is not in an area designated by the Commission. The premise upon which this Certificate of Exemption is based is false. This Certificate is not valid. The subject development is not exempt from CDP requirements and has been undertaken in violation of the Coastal Act.

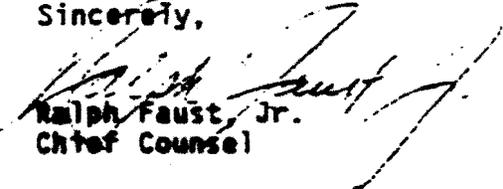
Because this development has been undertaken in violation of the Coastal Act, Commission staff has attempted to resolve this matter administratively by urging Tuchman to comply with that law's permit requirements. If you choose to challenge these requirements, Commission staff will pursue appropriate legal resolution of this matter. This is a factual statement. It is not nor has it ever been intended as harassment.

Johnson
December 4, 1991
Page Three

As Tuchman's failure to submit the requested CDP application for the restoration of the site to its predevelopment state as a partial resolution of this violation has been perpetuated by the erroneous belief that the property was exempt from CDP requirements, I will extend the deadline for the submittal of such application in an effort to reach an administrative resolution of this violation.

Therefore, in order to continue pursuit of an administrative resolution to the subject violation in lieu of litigation, Tuchman must submit a completed CDP application to the Commission's South Coast Area office for the restoration of the subject property to its previolation state by no later than December 30, 1991, and this office must receive a signed Waiver of Legal Argument within two weeks of your receipt of this letter. No further extensions will be granted. Additionally, monetary penalties may be required for settlement in lieu of litigation. Failure to submit the requested application and waiver by the above mentioned deadlines will result in the referral of this matter to the State Attorney General's office for appropriate legal action.

Sincerely,



Ralph Faust, Jr.
Chief Counsel

cc: Coastal Commissioners
Peter Douglas, Executive Director, CCC
Nancy Cave, Statewide Enforcement Coordinator, CCC
Michael Tuchman

1690p

CCC-96-02
EXHIBIT 11

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200



March 30, 1992

Burtram Johnson
Post Office Box 1379
Santa Monica, CA 90406

Violation File Numbers: V-5-89-044 and V-5-91-025 (Buckley)
Violation Location: 6815 Dume Drive, Malibu, Los Angeles County
APN: 4468-008-025
Subject: Your letter dated December 26, 1991

Dear Mr. Johnson:

This letter is written to respond to your contentions that the California Coastal Commission and its staff are in violation of the Coastal Act, prior Commission determinations and a California Superior Court decision, by falsely citing Peggy Ann Buckley and John W. Buckley, (Buckleys) the underlying property owners, for violations of Coastal Act permit requirements. You also contend that the development activities that have been undertaken at the Buckley property are exempt from all coastal development permit (CDP) requirements.

After reviewing your letter and Commission files, I have concluded that the Commission and the staff involved in this matter have reasonably and professionally performed their duties to restrain unpermitted development and to enforce the permit requirements of the Coastal Act.

With respect to your contention concerning exemptions from CDP requirements pursuant to Sections 30610.1-2 (Calvo Exclusion), I have included, as an attachment to this letter, my response dated 4 December 1991, to your letter dated 15 November 1991, on behalf of Michael Tuchman. I believe that letter adequately details my opinion on the issue of Sections 30610.1-2 (Calvo Exclusion) and the applicability of the decision made by the Los Angeles County Superior Court in California Coastal Commission v. City of Los Angeles (Gilchrist) on other properties within the California coastal zone. In summary, you contend that the Court, when it ruled in favor of the City in the Gilchrist case, also ruled that all of the Commission's designations pursuant to Section 30610.1 (Calvo Exclusion) were void and of no legal consequence, and therefore all local and regional governmental agencies within the state coastal zone can permit single-family residential development without the Commission also requiring that a permit be obtained from the Commission. My response to your contention is that the ruling in the trial court decision is applicable only to the lots which were the subject of the Gilchrist lawsuit and not to other lots throughout the state's coastal zone.

In any event, you indicate that the Buckleys obtained a Certificate of Exemption for single-family residential construction for their parcel located

Letter to Burtram Johnson
March 30, 1992
Page Two

at 6815 Dume Drive. You also state on page two of your letter that, "Apparently the Commission's Chief Legal Counsel Ralph Faust, Jr. is refusing to either read the Certificates of Exemption or the documentation that has been submitted to the Commission concerning Certificates of Exemption." With respect to this case, only one Certificate of Exemption is relevant. That certificate was submitted in conjunction with plans to construct a single-family residence on the front portion of the property located at 6815 Dume Drive, approximately two and one-half months after the placement of fill, (i.e., development) had occurred at the subject property. The certificate only speaks to construction of a single-family residence and does not address other types of development that are not exempt pursuant to Sections 30610.1-2 of the Coastal Act. In August, 1989, when unpermitted development activity was reported to the South Coast Area Office, Commission staff checked with the County to see if a Certificate of Exemption had been issued and it had not. Commission staff appropriately pursued the fact that the Buckleys had placed fill on their property in the absence of any permit approval from either the County or the Commission. After the Buckleys produced the necessary permit approvals and other documentation required, the violation case was closed.

I would also like to respond to the statements you make in your letter concerning the validity of Commission staff investigation of the two cited violation cases. I would also like to make clear that I am responding to you as an individual, and not to you as an authorized representative of the Buckleys, since I have received nothing from the Buckleys that authorizes you to act on their behalf.

You contend that V-5-89-044 and V-5-91-025 are false/illegal violation citations. You characterize both violation cases as being unpermitted grading, dumping of landfill and construction for a single-family residence on the Buckley parcel. You close your letter by stating that both violation numbers (V-5-89-044 and V-5-91-025) are "null and void." I disagree with your categorization of these two violation cases. Both were valid Coastal Act enforcement investigations and the following discussion relates to the chronological history of the Commission's investigation of these two enforcement cases and related actions undertaken by the Buckleys.

Commission staff investigation of V-5-89-044

You have stated that V-5-89-044 was an invalid violation case. I disagree with your statement. After the Buckleys were contacted and after an exchange of telephone calls and letters, the Buckleys ultimately agreed with Commission staff that the case was valid, and that unpermitted development had been performed inconsistent with the Coastal Act. The Buckleys filed the necessary documentation to cause V-5-MAL-89-044 to be resolved. In fact, Violation File No. V-5-89-044 has been closed.

Letter to Burtram Johnson
March 30, 1992
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The Commission enforcement staff followed agency procedures for investigation of reported Coastal Act violations when they investigated V-5-89-044. First, on August 7, 1989, a member of the public reported to Commission staff that fill was being dumped in a canyon on the Buckley property. When V-5-89-044 was first investigated, the reported activities only involved the placement of fill into a canyon located between 6805 and 6841 Dume Drive in Malibu, and not the construction of a single-family residence as implied in your letter. The placement of fill was confirmed by Commission enforcement staff on August 9, 1989.

Following agency internal procedures, staff then contacted the Buckleys on August 15, 1989, advising them that the unpermitted fill constituted development which required a CDP and therefore was in violation of the Coastal Act. Staff advised the Buckleys to stop all unpermitted development at the site and to submit a completed CDP application by August 30, 1989.

Much discussion then ensued between Commission enforcement staff and the Buckleys and James Harnish, an authorized representative of the Buckleys, concerning whether or not the placement of fill was exempt from permit requirements pursuant to Sections 30610.1-2 of the Act (Calvo Exclusion). This type of discussion between an alleged violator and the staff is typical of all Coastal Act violation investigations.

On August 25, 1989, Pam Emerson of Commission staff informed Harnish that development activities (other than the construction of a single-family residence) within the Calvo Exclusion area are not exempt from Commission review pursuant to Sections 30610.1(c) and 30610.2(a) of the Coastal Act. On August 30, 1989, Emerson informed Harnish that only the front portion of the Buckley parcel was within the Calvo Exclusion area, and that the back portion of the parcel was not, as it included an environmentally sensitive habitat area (ESHA). Emerson stated that the County cannot issue a Calvo certificate for any development on that portion of the Buckley parcel. She stated that the County may issue a Calvo certification for the construction of a single-family home and the dumping of structural fill for said home only if said development does not impact the ESHA on the property. She finally stated that a CDP application would be necessary for any development proposed for the back portion of the Buckley parcel. The statements made by Emerson are appropriate and consistent with agency procedures with respect to Sections 30610.1-2 of the Coastal Act.

The Commission reviews Calvo certifications supplied by prospective permit applicants that are issued by the County in order to insure that they meet all the requirements necessary for such a certification. Since the Commission had not received a Calvo certification from the County or the Buckleys, the development activities were still considered to be in violation of the Coastal Act as they were unpermitted activities.

Letter to Burtram Johnson
March 30, 1992
Page Four

Apparently on August 31, 1989, the Buckleys agreed with Commission staff that their activities were unpermitted activities as defined by the Coastal Act. On that date, Harnish informed Commission staff that the Buckleys had ceased dumping, were working on getting a Calvo certification, and would not fill or work in the canyon without a CDP. By letter dated the same day, John Buckley stated that he and his wife were applying for a Calvo certification from the County. On October 24, 1989, Mrs. Buckley received the Calvo certification from the County of Los Angeles for a single-family residence on the front portion of the property. The Buckleys and/or their representative, James Harnish, submitted the issued Calvo certification to the Commission. Commission staff closed the violation file on this case on October 31, 1989, because the Buckleys had: 1) demonstrated that the placement of fill was for a single-family residence located on the front portion of their parcel; 2) been issued a grading permit by the County for the fill in the context of a single-family residential application; and 3) received a Calvo certification for the residential development because said development is located on the front portion of the Buckley parcel, in a Calvo Exclusion area.

Thus, V-5-89-044 was a valid Coastal Act investigation of unpermitted development. The alleged violators, the Buckleys, ~~apparently~~ agreed with Commission staff that they had conducted unpermitted development since they agreed to submit all requested documents in order to cause the development to be considered permitted under the Coastal Act. Therefore, V-5-89-044 is not an invalid case.

Buckley submittal of CDP Application No. 5-90-900 for a new project

It is interesting to note that on November 13, 1990, the Buckleys filed CDP Application No. 5-90-900, proposing to partially fill the canyon/ravine area on the back portion of their parcel. By voluntarily filing their application without protest or objection, the Buckleys apparently recognized and accepted the fact that the back portion of their parcel was subject to Coastal Commission permit requirements. This fact was revealed during the investigation of V-5-89-044 and agreed to by the Buckleys when they submitted material to resolve V-5-89-044.

CPD Application No. 5-90-900 consisted of a proposal to grade 9,011 cu. yds. (2,435 cu. yds. of cut and 6, 576 cu. yds. of fill) to create three pad areas for: 1) a garden; 2) a riding ring or future tennis court; 3) a future guest house; and 4) an access driveway to reach the pads. The Commission denied the Buckleys' permit application request on March 15, 1991.

The Buckleys could have appealed the Commission's decision to a court of law pursuant to Section 30801 of the Act, but no such petition for a writ of mandate was ever filed by the Buckleys or any of their agents. The Commission's permit decision is now immune from collateral attack as a matter of law. Thus, it was properly assumed by Commission staff that the Buckleys

Letter to Burtram Johnson
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accepted the Commission's denial action and would abide by that decision.

Commission staff investigation of V-5-91-025

The second violation investigation cited in your letter, V-5-91-025, as being invalid and therefore null and void, was only commenced after Commission staff received complaints from the public on March 26, 1991, that grading was occurring on the back portion of the Buckley parcel. Contrary to your suggestion, this grading was not characterized as being grading for a single-family home. This grading was characterized as being fill placed within an ESMA. After receiving the telephone call, it appeared to staff that the Buckylys were attempting to carry out the requested development that had been denied by the Commission on March 15, 1991. Therefore, Commission management appropriately directed staff to perform site visits and to deliver Stop Work letters if unpermitted activities were occurring in conflict with the Commission's decision on CDP Application No. 5-90-900.

On two separate visits conducted on March 27, 1991, Susan Friend and Robin Maloney-Rames of Commission staff hand-delivered two Stop Work letters, advising the Buckylys to stop and informing them that further unpermitted work would be considered a knowing and intentional violation of the Coastal Act. Mrs. Buckley responded to Friend that she did not need a CDP as the ravine, located in the back portion of the parcel, was in a Calvo Exclusion area, and that she would continue to work since three bulldozers were stuck in the ravine which she needed to get out. Mrs. Buckley told Robin Maloney-Rames that Los Angeles County had told her she was exempt from CDP requirements. Maloney-Rames told her the following: that the County had no authority over the Commission, that the Commission had denied her CDP application, that she was in violation of the Coastal Act, and that he was delivering a Stop Work order from the Commission. Buckley stated she would ignore the Stop Work order and would continue work on the property. As far as I am concerned, the Commission staff involved in conducting the site visits and delivering the Stop Work letters handled themselves in an appropriate manner consistent with internal agency procedures on enforcement investigations.

Our staff tried to communicate the agency's concern over unpermitted activity being conducted beyond just the deliverance of Stop Work letters. These communication efforts were made so that if at all possible litigation could be avoided to resolve this disagreement between the Buckylys and the Commission. Susan Friend had several telephone conversations with Mrs. Buckley, her engineering representative and her contractor regarding the need to stop the unpermitted activity. On the same day that Friend and Maloney-Rames delivered the Stop Work letters, Friend informed Mrs. Buckley by telephone that the work must stop because the issued Calvo certification for development activity on the front portion of the parcel did not exempt the grading activity occurring on the back portion of the parcel from CDP requirements. Buckley stated the grading on the back portion of their property would not stop. Staff contacted the Buckylys' attorney of record, Sherman Stacey. Stacey indicated to Friend

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on March 28, 1991, that he had informed Mrs. Buckley that continued work on the back portion of the property could lead to a temporary restraining order, referral to the Attorney General's Office and fines. According to Stacey, Mrs. Buckley refused to state that the work would stop.

On April 4, 1991, in preparation for litigation referral, Friend visited the Buckley site and photographed evidence of grading within the subject canyon area, located on the back portion of the Buckley property. On April 11, 1991, Mrs. Buckley informed Friend by telephone that two tractors had been stuck in the mud in the subject canyon since March 27, 1991, and that she would remove the tractors but would not grade. Friend advised Buckley that the tractors could be removed but that no other work should proceed. On the same day Friend spoke to Shank Engineering, the Buckleys' contractor and specified how the tractors could be removed. Friend indicated that if holes or ditches were created, sandbags should be used to protect the slope. Mrs. Buckley telephoned Friend again on April 11, 1991, and stated that up to one-half acre of the subject parcel was within an ESMA, that erosion was occurring at the site, that the steep slope would make sandbagging difficult and that she would try other means to protect the slope.

It was clear from Mrs. Buckley's statements and actions that development was not going to stop within the area of the parcel subject to Commission permit requirements. Hence, V-5-91-025 was elevated from the South Coast Area Office to the Commission's headquarters office due to the Buckleys' refusal to stop. Headquarters enforcement staff sent the file to the Attorney General's Office for appropriate legal remedy available to the Commission pursuant to Chapter 9 of the Coastal Act.

Thus, contrary to your letter's contention, both V-5-89-044 and V-5-91-025 are valid Coastal Act violation investigations, one of which has been resolved in a manner acceptable to both parties to the investigation, the Commission and the Buckleys. V-5-91-025 is still an active case which could have been resolved without resorting to litigation had the Buckleys chosen to cooperate with Commission enforcement staff. Since the Buckleys refused to cooperate and get necessary permits for activity which had been previously denied by the Commission, Commission enforcement staff very appropriately sought corrective legal remedy.

Commission staff has not continually demanded a CDP for single-family residential development on the Buckley parcel. Commission staff has properly requested that unpermitted development, for which a CDP is required, located on land within the Commission's permit jurisdiction be first reviewed and approved by the Commission before said development is performed. The Buckleys twice chose to perform such development without a CDP. The Buckleys chose to perform development the second time in a knowing and intentional manner, and refused to stop performing development after Commission staff requested them to do so. Pursuant to Section 30803 of the Coastal Act, any person, including the Commission, may maintain an action for declaratory and equitable relief to

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restrain a violation of the Coastal Act. The Commission and its staff were forced to maintain such an action after the Buckleys refused to stop performing unpermitted development activities in an area within the Commission's permit jurisdiction.

If you have any questions or comments regarding this letter, please do not hesitate to contact me or Nancy Cave of my staff.

Sincerely,

Ralph Faust, Jr.
(RS)

Ralph Faust, Jr.
Chief Counsel

enclosure

cc: John and Peggy Buckley
Chuck Moore, Los Angeles County Counsel
Monte Richard, Esquire
Governor's Office
State Personnel Board

2324p

JOB ADDRESS 33310 HASTED RD
OWNER ALBERT THORNE

JOB ADDRESS 33310 HASTED DR W
OWNER A. THORNE

STOP ALL WORK

You are in violation with the provisions of the County Ordinance as indicated below:

- Coastal Commission
- Building Code
- Plumbing Code
- Mechanical Code
- Electrical Code
- Zoning Ordinances
- Grading Code

DESCRIPTION: Contact
Coastal Commission
Chris Kern
Coastal Program Analyst II
Statewide Enforcement Unit.

I AM RESCINDING THE
GRADING STOP WORK
NOTICE DATED 11-15-95 BY
INSPECTOR KEN ARGUELLES

THIS OFFICE WILL
REQUIRE A CLEARANCE
FROM THE COASTAL
COMMISSION PRIOR TO
ISSUING A BUILDING
PERMIT.

CONTACT THE UNDER-
SIGNED IF YOU HAVE ANY
QUESTIONS.

Submit plans for the work within 10 days to the office listed above and apply for a plan check for the required Permit.

Obtain a Permit within 10 days for the work at the office listed above.

A referral has been made to the Enforcement Section of the Department of Regional Planning.

11-27-95
DATE

James Safarik
INSPECTOR'S SIGNATURE

11-15-95
DATE

K Arguelles
INSPECTOR'S SIGNATURE



Los Angeles County
Department of Regional Planning

Director of Planning, James E. Harll, AICP



January 18, 1996

Burtram Johnson
Post Office Box 1379
Santa Monica, California 90406

Dear Mr. Johnson:

**SUBJECT: SITE PLAN REVIEW CASE NO. 38586
CERTIFICATE OF EXEMPTION FOR A SINGLE FAMILY RESIDENCE AT
33310 HASSTED DRIVE, MALIBU, APN 4472-009-020**

The subject property was granted a Certificate of Exemption on May 24, 1989, in which the County declared that the proposed single family residence was exempt from the coastal development permit requirements of the Coastal Act. The purpose of this letter is to advise that this grant of a Certificate of Exemption has been rescinded.

On June 9, 1992, the Director of Planning was advised by County Counsel that the Department should not issue coastal development permit exemptions and those approved prior to June 9, 1992, should be rescinded where no building permit has been issued. At the time, you were provided a copy of that County Counsel opinion.

On October 23, 1995, this position was reiterated and amplified in another County Counsel opinion to Supervisor Deane Dana. Hoping to provide relief where appropriate, County Counsel noted that an exemption issued prior to June 9, 1992, might be honored if sufficient site activities had been undertaken to vest the owner's rights under generally recognized legal principles. The letter stated that a vested right might be obtained by having secured a building permit and diligently commencing construction and performing substantial work.

Applying the guidelines of the previous opinions to this specific case, County Counsel recommended a review to determine if the property owner had diligently proceeded to vest his rights. Records show that County Building and Safety issued a grading permit in error on October 10, 1994, based on the original 1989 exemption document. Grading work was stopped by Building and

Burtram Johnson
January 18, 1996
Page Two

Safety on November 15, 1995, due to further questions about the need for a coastal development permit. On advice of County Counsel, Building and Safety determined on November 27, 1995, to allow the owner to complete the approved grading. However, a building permit has never been applied for on this project site.

Consequently, the Certificate of Exemption issued on May 24, 1989, for the subject property has been formally rescinded. No building permits can be issued without approval of a coastal development permit. For current information on applying for a such a permit, I am attaching the most recent California Coastal Commission letter relating to the subject property.

If you have any further questions, please call the Site Plan Review Section at (213) 974-6278, between 1:00 and 6:00 p.m., Monday through Thursday.

Very truly yours,

DEPARTMENT OF REGIONAL PLANNING
James E. Hartl, AICP
Director of Planning



David C. Cowardin
Site Plan Review Section

DC:ccd

c. ✓Chris Kern, Statewide Enforcement Unit,
California Coastal Commission
Department of Public Works, Building and Safety Division
Zoning Enforcement

Attachment



CALIFORNIA COASTAL COMMISSION
 STATE OF CALIFORNIA - THE RESOURCES AGENCY
 VIOLATION INVESTIGATION REPORT-- TELEPHONE LOG

STAFF Chris Kern	DATE 1/29/96	TIME approx 10:30AM	VIOLATION FILE NO. V-4-95-022
CONVERSATION WITH Al Thorne	MAILING ADDRESS 6185 Ramirez Canyon, Malibu/1215 6th Place, Port Hueneme		PHONE NUMBER (805) 486-1913
SUBJECT OF DISCUSSION Notice of Intent to Initiate Cease and Desist Order Proceedings concerning 33310 Haasted Road, Malibu, APN 4472-009-020			

DETAILS OF DISCUSSION

1 I first called (310) 457-7864 which is the telephone number listed for Al
 2 Thorne at 6185 Ramirez Canyon. When I called this number the woman who
 3 answered said that Al Thorne could be reached at the (805) number above and
 4 that he was listed at Ramirez Canyon because he had lived there most of his
 5 life. I asked if the 805 number was a work number and she stated that it was
 6 his residence. I did not ask her relationship to Thorne but I would guess that
 7 she is an older relative, perhaps his mother. I then tried the 805 number and
 8 reached Al Thorne. He said he had another call and that he would call back.
 9 About 10 minutes later, Al Thorne returned my call. He confirmed that he is
 10 the owner of the above mentioned property and that he has received previous
 11 correspondence from CCC regarding same. I asked if 6185 Ramirez is his correct
 12 mailing address. He responded that 6185 Ramirez would work but he also gave
 13 1215 6th Place, Port Hueneme, 93041. The rest of the telephone conversation
 14 was mostly a monologue in which I explained that staff would prefer to resolve
 15 our dispute by Thorne's voluntary submittal of an ATF application, but that I
 16 would mail CCDO notice today. I explained what the Notice was and that he
 17 would have an opportunity to respond. I stated that staff could suspend the
 18 CCDO process at any time that he convinced us that he was willing to
 19 voluntarily comply or that our position regarding the permit requirements was
 20 in error. I stated that in the case that a CCDO is issued, Staff would be more
 21 likely to pursue civil penalties in order to close the case than if he
 22 submitted an application voluntarily. At this point I asked if he had anything
 23 to add or whether he would agree to submit a CDP application in light of our

STAFF (Signature and Date)

APPROVED BY (Signature and Date)



CALIFORNIA COASTAL COMMISSION
STATE OF CALIFORNIA -- THE RESOURCES AGENCY
VIOLATION INVESTIGATION REPORT-- TELEPHONE LOG

PAGE 2

1 | conversation. He declined to state any position but said he would look for the
2 | notice in the mail.

STAFF (Signature and Date)

APPROVED BY (Signature and Date)

CCC-96-02
EXHIBIT 13

CALIFORNIA COASTAL COMMISSION

46 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-6200

**NOTICE OF INTENT TO COMMENCE CEASE AND DESIST ORDER PROCEEDINGS**

January 30, 1996

Burtram Johnson
P.O. Box 1379
Santa Monica, California 90406

FILE NUMBER: Cease and Desist Order File No. CCC-96-CD-02 (THORNE)

PROPERTY LOCATION: 33310 Hassted Drive, Malibu, Los Angeles County
APN 4472-009-020

PROPERTY OWNER: Albert Thorne Jr.

Dear Mr. Johnson:

This notice is addressed to you in your capacity as the representative of Albert Thorne Jr. concerning alleged violations of the California Coastal Act (PRC § 30000 et seq.) at the above referenced property. The alleged violations involve development, including grading, removal of major vegetation and placement of solid materials, without a required coastal development permit (CDP) in violation of PRC § 30600.

By communications which include but are not limited to a letter to Mr. Thorne dated June 29, 1995, letters to you dated November 7, 1995, and January 5, 1996, a telephone conversation with you on November 2, 1995, and a telephone conversation with Mr. Thorne on January 29, 1996, Commission staff has recommended that, in order to resolve this matter, Mr. Thorne submit a CDP application for either the after-the-fact authorization of the above described unpermitted development or for the restoration of the property to its pre-development state. As of the date of this notice, staff has received no indication that Mr. Thorne is willing to voluntarily resolve this matter in the suggested manner. Therefore, staff has decided to commence a proceeding to recommend that the Commission issue a Cease and Desist Order pursuant to PRC § 30810 requiring Mr. Thorne to cease and desist from (1) engaging in any further development and (2) continuing to maintain any unpermitted development at the subject property without first obtaining a necessary CDP.

In accordance with the Commission's regulations, Mr. Thorne has the opportunity to respond to the staff's violation allegations as set forth in this notice by completing the enclosed

January 30, 1996
Burtram Johnson
PAGE TWO

Statement of Defense Form. The completed Statement of Defense Form must be received by this office by no later than February 20, 1996.

You have previously argued that the subject development is exempt from the permit requirements of the Coastal Act pursuant to a certificate of exemption granted by Los Angeles County and dated May 24, 1989. By letter dated January 18, 1996, the County indicated to you that the subject certificate of exemption has been rescinded. If, in light of the County's rescission of the certificate of exemption, you have changed your position on this issue and are interested in discussing voluntary resolution of this matter, please contact Chris Kern of the Commission's Statewide Enforcement staff at (415) 904-5294 so we may postpone the cease and desist order hearing to allow time for the submittal of the aforementioned CDP application.

Sincerely,



RALPH FAUST
Chief Counsel

enclosure

cc: Albert Thorne Jr.
John Ainsworth, South Central Coast Area Enforcement Supervisor
David Cowardin, Los Angeles County Department of Regional Planning

is your return address on the reverse side?

receive the for an extra

1. Addressee's Address
2. Restricted Delivery
Consult postmaster for fee.

3. Article Addressed to:
BURTRAM JOHNSON
P.O. BOX 1379
SANTA MONICA, CA 90406

4a. Article Number
Z 778 711 863

4b. Service Type
 Registered Insured
 Certified COD
 Express Mail Return Receipt for Merchandise

7. Date of Delivery
FEB 07 1996

5. Signature (Addressee)
Burtram Johnson

6. Signature (Agent)

8. Addressee's Address (Only if requested and fee is paid)

Thank you for using Return Receipt Service.

Z 778 711 863



Receipt for Certified Mail

No Insurance Coverage Provided
Do not use for International Mail
(See Reverse)

PS Form 3800, March 1993

Sent to: **BURTRAM JOHNSON**

Street and No.: **P.O. BOX 1379**

P.O. State and ZIP Code: **SANTA MONICA, CA 90406**

Postage: \$ **0.55**

Certified Fee: **1.10**

Special Delivery Fee:

Restricted Delivery Fee:

Return Receipt Showing to Whom & Date Delivered: **1.10**

Return Receipt Showing to Whom, Date, and Addressee's Address:

TOTAL Postage & Fees: \$ **2.75**

Postmark or Date:
letter dtd. 1/30/96
C. Kern

CC-1-30-96

Z 778 711 864



Receipt for Certified Mail

No Insurance Coverage Provided
Do not use for International Mail
(See Reverse)

PS Form 3800, March 1993

Sent to: **AL THORNE**

Street and No.: **1215 6th PLACE**

P.O. State and ZIP Code: **PORT HUENEME, CA 93041**

Postage: \$ **0.55**

Certified Fee: **1.10**

Special Delivery Fee:

Restricted Delivery Fee:

Return Receipt Showing to Whom & Date Delivered: **1.10**

Return Receipt Showing to Whom, Date, and Addressee's Address:

TOTAL Postage & Fees: \$ **2.75**

Postmark or Date:
letter dtd. 1/30/96
C. Kern

CCC-96-02

EXHIBIT 14

is your return address completed on the reverse side?

I also wish to receive the following services (for an extra fee):

1. Addressee's Address
2. Restricted Delivery
Consult postmaster for fee.

3. Article Addressed to:
AL THORNE
1215 6th PLACE
PORT HUENEME, CA 93041

4a. Article Number
Z 778 711 864

4b. Service Type
 Registered Insured
 Certified COD
 Express Mail Return Receipt for Merchandise

7. Date of Delivery
2/11/96

5. Signature (Addressee)
Al Thorne

8. Addressee's Address (Only if requested and fee is paid)

Thank you for using Return Receipt Service.

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200



Statement of Defense Form

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, (FURTHER) ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU. IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE YOU COMPLETE THIS FORM OR OTHERWISE CONTACT THE COMMISSION ENFORCEMENT STAFF.

This form is accompanied by either a cease and desist order issued by the executive director or a notice of intent to initiate cease and desist order proceedings before the commission. This document indicates that you are or may be responsible for or in some way involved in either a violation of the commission's laws or a commission permit. The document summarizes what the (possible) violation involves, who is or may be responsible for it, where and when it (may have) occurred, and other pertinent information concerning the (possible) violation.

This form requires you to respond to the (alleged) facts contained in the document, to raise any affirmative defenses that you believe apply, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the (possible) violation or may mitigate your responsibility. This form also requires you to enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps, drawings, etc. and written declarations under penalty of perjury that you want the commission to consider as part of this enforcement hearing.

You should complete the form as fully and accurately as you can and as quickly as you can and return it no later than February 20, 1996, to the commission's enforcement staff at the following address:

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105

If you have any questions, please contact as soon as possible Chris Kern of the commission enforcement staff at telephone number 415-904-5200.

1. Facts or allegations contained in the cease and desist order or the notice of intent that you admit (with specific reference to the paragraph number in such document):
