

CALIFORNIA COASTAL COMMISSION

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



W27

June 20, 1996

To: Commissioners and Interested Persons

From: Steve Scholl- South Central Coast District Director
Gary Timm- Assistant District Director
Susan Friend- Staff Analyst *SFE*

APPEAL DESCRIPTION: Appeal of the Executive Director's determination that coastal development permit application 4-95-163 (Sisson) is incomplete. This appeal has been requested by Tyron and Dolores Sisson through their representative, Donald Schmitz. The applicants propose the after-the-fact grading of two pads on two legal lots; the removal of an unpermitted mobile home, gate and pilasters; and the paving of that portion of Borna Road on the applicants' property. The sites are located at 27835 W. Borna Drive and the adjacent vacant lot (APNs: 4461-039-006 and -005). The subject sites are located in the Latigo Canyon/Solstice Canyon area east of Latigo Canyon Road.

SUBSTANTIVE FILE DOCUMENTS: California Coastal Act of 1976 as of January 1996; the Malibu/Santa Monica Mountains Land Use Plan (LUP); Coastal Development Permit Application 5-88-665 (Peck); Coastal Development Permit Application 4-95-102 (Rogari); Coastal Development Permit Application 4-95-163 (Sisson); Percolation Test for 27835 W. Borna Drive prepared by Diversified Engineering and stamped received August 11, 1988 by South Coast District Commission office for Coastal Development Permit Application 5-88-665 (Peck); a letter from GeoSystems to Fred Peck dated April 15, 1986; a letter from Buena Engineers, Inc. to Mr. Fred Peck dated August 1, 1988; a March 8, 1996 report of geologic reconnaissance for 27835 W. Borna Drive.

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

STAFF RECOMMENDATION: Staff recommends that the Commission deny the applicants' appeal and recommends that the Commission not direct staff to file coastal development permit application 4-95-163 because the filing of the incomplete application would not be consistent with Sections 30250(a), 30231, and 30253 of the California Coastal Act and applicable Commission regulations, including 14 C.C.R. Sections 13053.5, and 13050 et seq.

FINDINGS

A. Appeal Background

On July 28, 1995 the South Central Coast District Office of the California Coastal Commission received a coastal development permit application submitted by Donald Schmitz of the Land and Water Company on behalf of Tyron and Dolores Sisson for the after-the-fact grading on two lots; the removal of a mobile home, a gate and pilasters; and the paving (not after-the-fact) of a portion of Borna Drive. The application was submitted in response to a letter sent by the Commission's Statewide Enforcement Staff regarding the unpermitted grading of two lots, and the placement of a mobile home, gate and pilasters. The applicants chose not to apply for restoration of the entire site and choose not to develop the site at this time. The applicants have informed Commission staff that they would like to retain the grading of the two sites for residences which may be proposed in the future.

The two lots are located on Borna Drive, west of Latigo Canyon Road. One of the lots has been given the address of 17835 Borna Drive, the other lot does not have an assigned address. The assessor parcel numbers of these lots are 4461-039-006 and -005 respectively.

Commission staff's most recent letter (Exhibit 1) to the applicant's agent, dated June 5, 1996, states the outstanding items needed to complete this application, which are as follows:

1. Percolation tests for lot 5, and
2. Site specific geology reports for both lots.

On August 8, 1995, the application was originally determined to be incomplete by Commission staff pursuant to 14 C.C.R. Section 13050 et seq, as it was missing information necessary to determine whether the proposed project complies with all relevant policies of the Coastal Act. The applicant's agent was sent notification of the incomplete status of the application; this notification listed ten items which were needed before the application could be completed (Exhibit 2). In response to the incomplete notice, staff received from the applicants' representative a letter dated August 21, 1995 (Exhibit 3) which included five of the ten required items.

A request for the five outstanding items was made by staff in a letter to the applicants' representative dated December 18, 1995 (Exhibit 4). On February 9, 1996 Commission staff received a letter dated February 7, 1996 from Los Angeles County Counsel Principal Deputy Charles Moore regarding the requirement for local approval (Exhibit 5). A telephone conversation between Mr. Moore and Commission staff confirmed that no permits would be required at this time for the existing developments; however, Mr. Moore emphasized, that should development be proposed in the future on either site, local approvals would be required, and the local review would incorporate review of the unpermitted grading. Commission staff waived the requirement for the doubling of the filing fee; thus the only remaining items necessary to complete the application are the percolation tests for lot 5 and geology reports for both lots.

On March 18, 1996 Commission staff received a letter dated March 14, 1996 from the applicants' representative with a geologic reconnaissance report for 27835

Borna Drive only (Exhibit 6). Commission staff informed the applicant that the geologic reconnaissance report only addressed one lot. As this application covers two lots, and the geologic conditions and/or recommendations will be different for each lot, reports for both lots are needed.

In further conversations, Commission staff emphasized that contrary to the representative's arguments, full geologic reports and percolation tests are necessary for the review of this application as the applicants are requesting the retention of the grading for future residential building sites. In order for the Commission to review the feasibility of developing these sites with future residences, the Commission must address the issues regarding geology and water quality against the Chapter Three Policies of the Coastal Act. This information is required of all applicants requesting similar development in the Santa Monica Mountains.

On April 24, 1996, Commission staff received a letter from the applicant's representative (Exhibit 7) requesting that the issue of completing the file be agendized for the Commission's review and determination. This letter also addressed the outstanding items needed to complete the application; however, Mr. Schmitz was not correct in stating that the only outstanding items needed to complete the application were the percolation tests and additional fees. The remaining items needed to complete the application are percolations tests and current site specific geology reports.

The applicants are unwilling to submit this information, arguing that this information is not necessary for the filing of this application. Therefore, they have requested the issue of filing be determined by the Commission. Staff has submitted this appeal for the Commission's review solely for the determination of the issue of the application's completeness pursuant to the Coastal Act and applicable Commission Regulations. Pursuant to Section 13056, a formal appeal of the Executive Director's determination that the application is incomplete is now pending before the Commission for hearing.

B. Coastal Development Permit Filing Requirements

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

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

In the Malibu/Santa Monica Mountains area of the Coastal Zone, as part of the standard application form, Commission practice has been to consistently require site specific geology report(s) and septic system percolation tests. The applicants, in this case, have declined to submit this information because they assert that this information is not necessary to the Commission's review of their project. They assert that there is currently no septic system on site and one is not proposed, as such, they should not be required to submit any percolation testing. They also claim that they are only proposing a

partial restoration and are not proposing any new development of the site. However, if they are not proposing to restore the grading on site, they must include as part of the project description the retention of the grading on site.

In determining the feasibility of these sites as potential building sites, the Commission must review the sites and determine if the graded pads are in the most appropriate locations for the construction of residences as measured by the Chapter Three policies of the Coastal Act including, but not limited to, visual impacts, environmental impacts, geologic impacts and water quality. As this is an after-the-fact application, the Commission must review the grading as if it has not occurred and address the appropriateness of siting residences in the existing locations. The Commission must review alternatives and determine the most feasible place for a residence to be sited on each lot. Alternatives to the proposed sites may be more feasible based on visual, environmental, geologic, and/or water quality issues. Some of these issues can not be addressed without the requested information. The following discussion outlines why the above referenced information is necessary to determine whether the proposed project is consistent with Chapter Three policies of the Coastal Act.

Geology/Geotechnical Reports

Section 30253 of the Coastal Act states in part:

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The California Coastal Commission has consistently required the submittal of geology reports for proposed development within the coastal zone of the Malibu/Santa Monica Mountains area, as part of the standard application form to ensure that new development is safe from, and does not contribute to, geologic hazard. This requirement has been a standard requirement for all proposed development, including grading and new development, in the Latigo Canyon/Solstice Canyon area. Specifically, the Commission requires the submittal of a current geologic/geotechnical report, which is no more than one year old, addressing site specific, as well as regional, geologic conditions for any proposed building site. The reports should provide information indicating that the proposed development will not be affected or contribute to landsliding or site erosion. The reports should also address the feasibility of the proposed grading to support development, and should contain guidelines to be followed to ensure stability of the project. As landslides and erosion are common to the Santa Monica Mountains, including Latigo Canyon and Solstice Canyon, it is imperative that the geology of the site be reviewed.

A current geology report is necessary because site conditions can change over time. Many areas of the Malibu/Santa Monica Mountains coastal zone have

become geologically active in recent years. Activity has been attributed to the fires of 1993, the 1994 Northridge earthquake, and the winter storms of 1994 and 1995. Each of these events has occurred in the last four years and has been responsible for numerous landslides and surficial erosion. To ensure that geologic conditions of the site have not changed and that the proposed development is free from, and will not contribute significantly to, the hazard of landslide or erosion, the Commission consistently requires, in all applications for development, that the applicant submit a current, site specific geology study of the subject lot.

The applicants' agent argues that in this case, geology reports are not required because no development is proposed on the building pads. Regardless of whether or not development is proposed on the graded sites, the grading of the lots require analysis to address the geologic impacts created by the development both on and off site. The Commission must address whether or not the grading is free from geologic hazard, exacerbates any adverse geologic condition, and/or contributes to erosion. This determination must occur regardless of whether or not structures are proposed at this time. The Commission must address the grading on its own merit to determine if, from a geologic standpoint, the graded sites will create adverse impacts. If these building pads are considered as future building sites, the Commission must also review the feasibility of these sites to support future residences from a geologic standpoint. Neither of these determinations can be made without site specific, current geology reports which address the feasibility of the sites to support residences, the impacts the grading will or has caused, and what recommendations should be implemented to mitigate from hazards and adverse impacts.

The applicant has submitted a total of three letters from consulting geologists which address lot 6 (27835 Borna Drive) only. Two of these letters, which were submitted with the application, are outdated and contain insufficient information. The third letter was submitted in March of 1996. None of the letters meet the requirements set forth by the Commission for the submittal of complete geologic reports. Furthermore, none of the information submitted addresses lot 5; staff has received no information regarding the geologic conditions of lot 5.

The first letter was insufficient in satisfying the requirement of a geologic report because it is not based on any geologic subsurface testing and is nine years old. Moreover, it only addresses one lot. Only a visual inspection of the site was done. The purpose of the letter was only to address the existence of "major adverse geologic problems" which could affect the property. No site specific analysis of geologic hazards existing on site was reviewed. Thus, this letter does not fulfill the requirement of submitting a current site-specific geology report which addresses the impacts on site and what steps are needed to mitigate any potential or immediate hazards. In reviewing the appeal of a filing determination for 4-95-102 (Rogari), the Commission found that a nine year old geology report was not sufficient to address the current geologic hazards and conditions of the site. In that appeal, the Commission determined that the application was incomplete and that the submittal of the requested information, including, but not limited to, current geology reports and percolation tests were required before the application could be filed.

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The second letter, dated August 1, 1988, is also insufficient in content, addresses only one lot, and is outdated. This letter states that there are previously identified geologic hazards on the project site. The letter states that there is a fault in the extreme southwest corner of the site. However, no findings regarding this fault are given. For example, the report does not make any findings as to the feasibility of building a residence on the site with the fault present, or address mitigation measures for constructing a residence in close proximity to the fault. This letter does not satisfy the requirement for the submittal of geologic reports in that it is too old, does not include any results of geologic testing, does not address the impacts of the development, and/ or contain recommendations to mitigate or eliminate any geologic hazards on site.

The third letter, from still another consultant, was submitted in response to staff's request for site specific geology reports for both lots. This letter is not a geology report, addresses only one lot, and states that the conclusions are based on a visual inspection of the site. In this letter from GeoPlan, dated March 6, 1996, the consulting engineer states that:

Geologic data conveyed by this report are intended to identify and characterize risk which you may take into account and accept in your analysis of the proposed development but in utilizing these data please be advised that latent defects may be concealed by earth materials or improvements and that such defects, if present, are beyond the scrutiny and evaluation of the engineering geologist.

Thus, even the consulting geologist, concludes that below earth investigations are necessary to identify geologic hazards, or defects, on each site.

The information submitted by the applicant is not current, is not based on any geologic testing such as below grade borings, does not address both lots, and does not contain site specific information regarding the geologic conditions on site or recommendations for action to mitigate or avoid any geologic hazard on site. Long term practice by the Commission and the Commission's regulations require the submittal of a geologic report which contains such information. This information is necessary to determine if the site is free from hazard and is safe from a geologic/geologic engineering standpoint, consistent with Section 30253 of the Coastal Act.

Finally, on March 13, 1996 in the appeal of coastal development permit application 4-95-102 (Rogari), the Commission found that the submittal of such a site specific current geologic report as outlined above was necessary for the review of the proposed development for consistent with the Chapter Three policies of the Coastal Act. The applicants have not demonstrated a reason for deviating from this practice. Therefore, the Commission has required that current, site specific geologic reports for each lot be submitted so that conformity with Section 30253 of the Coastal Act can be determined. Until this information is submitted, the application can not be filed as "complete."

Septic System Percolation Tests/Reports

The Commission has previously recognized in past permit actions that the potential buildout of lots in the Santa Monica Mountains with the installation of septic systems may contribute to adverse health affects in the local area.

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Sections 30231 and 30250(a) of the Coastal Act are designed to provide protection to coastal waters and resources, and address the individual and cumulative impacts associated with development in the coastal zone.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30250(a) of the Coastal Act states:

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

The Commission consistently requires the submittal of evidence that a septic system on site would function properly and not individually or cumulatively impact coastal water or resources. Percolation tests are consistently required for development in the Santa Monica Mountains area as part of the standard application form. This holds true for all developments utilizing a septic system in the Malibu/Santa Monica Mountains area of the coastal zone as effluent released at an individual site inland will have impacts downstream. Additionally, it is not appropriate to review septic systems from a regional standpoint. This is due to the fact that individual lots within the same areas may have different soil conditions and percolation rates. Therefore, information for one lot may differ for a neighboring lot. The submittal of adequate evidence of the feasibility for the installation of septic system must be submitted to find consistency of the project with Sections 30231 and 30250 of the Coastal Act. The submittal of this information provides the evidence that the proposed septic system is in conformance with Chapter Three policies of the Coastal Act. Without this information it would be impossible to make this determination for these lots.

The Commission has consistently required the submittal of percolation tests for new residential development or subdivisions with proposed "future" residential development within the Coastal Zone of the Malibu/Santa Monica Mountains area as part of the standard application form. Likewise, this requirement has been consistently required by the Commission for development proposals within Latigo Canyon/Solstice Canyon area. The review of this proposal should apply the same standard of review used for all developments of similar nature in the area.

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Appeal of Filing Determination

In this case, no septic system is on site or proposed with this application. The applicants assert that the submittal of percolations tests is not necessary as no septic system is on site. However, the applicant has stated that the building pads are for future residences. If the after-the-fact grading is to be approved on the basis of "future" building sites, the Commission must review the feasibility of the site to support future residences. One aspect of a future residence will be a private sewage disposal system. The Commission can not approve grading for a future building site without knowing if the site can support such a system. Similarly, when reviewing subdivisions, which include future building sites, the Commission routinely asks for percolation tests and reports which address the feasibility of the site to support a septic system.

The most recent update letter from GeoPlan, dated March 8, 1996 does address the need for percolation tests to determine the type of septic system which would be necessary for the site. An earlier report by Diversified Engineering, stamped "Received" in the South Coast District Office on August 1, 1988 addresses percolation testing for one of the two sites. This study concludes that lot 6 could support a septic system; no information on lot 5 has been submitted. New percolation tests for lot 6 would only be required if the geology on the site has significantly changed since the date of the tests. However, percolation tests are required for lot 5.

In the appeal of coastal development permit application 4-95-102 (Rogari), the Commission found that the submittal of a percolation test/report was necessary for the review of the proposed development for a determination of consistency with the Chapter Three policies of the Coastal Act. To satisfy the requirement for the submittal of percolations tests/reports, the applicant would need percolation tests for lot 5 which show that the site could support a septic system and a current, geology report to show that the conditions of the site have not changed since the percolation tests were done on lot 6. Until this information is submitted, the application can not be filed as "complete."

CALIFORNIA COASTAL COMMISSION

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



June 5, 1996

Donald Schmitz
Land and Water Company
29395 Agoura Road, Ste 205
Agoura Hills, CA. 91301

Coastal Development Permit Application: 4-95-163 (Sisson)

Dear Mr. Schmitz:

We are in receipt of your letter of April 18, 1996 requesting that the issue of completing the coastal development permit application file be presented before the Commission at the next available hearing. Please be advised that we consider your letter a formal appeal of the Executive Director's determination that your application is incomplete pursuant to Section 13056 of Title 14, the California Code of Regulations.

As you are aware the next available hearing, to be held on June 11-14, 1996, will be in San Rafael, California. In a telephone conversation on May 6, 1996, you told me that your client, Mr. Sisson, prefers a local hearing. The next local hearing is scheduled for Huntington Beach on July 9-12, 1996. As such, the hearing regarding the filing of this application will be scheduled for the July 9-12, 1996 Commission hearing. The exact date of your hearing item will be determined at a later date and you will be informed of that date.

Your letter is incorrect regarding the number of remaining items needed to complete the coastal development permit application 4-95-163 which is for the after-the-fact grading of roads and pads, the paving of Borna Road, and the removal of a mobile home and gate pillars. In our corrected letter of December 18, 1995, we stated the items which needed to be submitted to complete the application included site specific geology reports, percolation testing, approval from the local government and the remainder of the filing fee. In response to this letter of December 18, 1996 you submitted a letter from Los Angeles County Counsel which said that permits would not be required at this time from Regional Planning or Building and Safety for the existing grading; and thus you were no longer required to submit plans stamped by Regional Planning or a signed "Approval in concept" form. With regards to the filing fee, the Executive Director, pursuant to Section 13055 of the Administrative Code of Regulations, has decided to waive the doubling of the filing fee. Thus, the remaining items still required before this application can be filed include:

1. Percolation tests for both lots.
2. Site specific geology reports for both lots.

Please be advised that although we stated that we would accept older geologic reports with an update letter which supports the previous findings and recommendations, you have only submitted a reconnaissance letter. This letter

Exhibit 1: Letter to applicant
4-95-163

does not refer to, or include as an attachment, any older reports and does not contain any recommendations for development of the lots. Furthermore, the letter only addresses one lot. We do not have the requested detailed reports with recommendations for development for both lots. Both the geologic reports and the percolation tests are required before the application can be considered complete as these items are necessary to determine if these lots are each able to support a residence.

You stated in your letter of April 18, 1996 that the project description is for partial restoration and as such you should not be required to submit geology reports or percolation testing. That is only part of the application. The complete project description is for the after-the-fact grading of the road and pads for two lots, the removal of the mobile home and gate pillasters on site, and the paving of Borna Drive. You are not proposing any restoration of either the topography or vegetation on either site.

Next, you have contended, in previous correspondences with this office, that the building pads should be approved as "future" residential sites. Thus, since your intent is for Commission approval of future building pads, the Commission must review the feasibility of these sites as future building sites. Further, the proposed project must be reviewed against the Chapter Three policies regarding development of the lot. This includes, but is not limited to, the geologic and water quality issues raised in Sections 30253 and 30231 of the Coastal Act. In order to analyze the feasibility of these sites to support residences in compliance with all the applicable Chapter Three policies of the Coastal Act, we must have detailed geologic reports and percolation tests.

Finally, we would like to note that if your project was for the complete restoration of the site, including the restoration of the topography and the vegetative cover on site, then you would not need to submit either a geologic report or percolation tests. However, you have made it clear that your clients do not wish to apply for the restoration of this site, restoration of the topography or vegetative cover is not in the project description, and no plans for such development have been submitted. Thus, as outlined above, there are three remaining items needed before this item can be filed and scheduled for a Commission hearing on the merits of the project.

Please contact me at the above number with any questions regarding this matter.

Sincerely,



Susan Friend
Staff Analyst

cc: Tyron and Dolores Sisson
Nancy Cave-Statewide Enforcement Supervisor

1019V:SPF/VNT

CALIFORNIA COASTAL COMMISSION

South Central Coast Area
89 So. California St., 2nd Floor
Ventura, CA 93001

Date: 8-8-95

STATUS LETTER

Re: Application/Appeal No. 4-95-163

The status of this matter is noted below.

— Your application was filed on _____.
The public hearing is tentatively scheduled on _____
in _____. This tentative scheduling information
is being provided for your convenience and is subject to change.
Written notification of final scheduling of the hearing, along with a
copy of the staff report, will be mailed approximately 10 days prior to
the hearing.

IMPORTANT: The enclosed Notice of Pending Permit must be posted on the
site, in a conspicuous place, within 3 days of its receipt.

✓ — This application is incomplete and cannot be filed or processed until
the items listed on the attached sheet have been completed and submitted
to the District Office. If these items have not been received by the
date indicated, the entire package will be returned to you.

Please be advised that the items needed to complete your application
must be submitted to this office by SEPT. 11, 1995.

— This file is being returned as the application submitted is deemed
incomplete. The required substantive documents are missing. Please
see the attached sheet.

— This appeal was received _____ and has been determined
to be a valid appeal. You will be notified of the place and date of the
public hearing.

— This appeal was received _____ after the expiration
of the appeal period, hence it is not a valid appeal.

— This appeal was received _____ but has been determined
invalid for the following reason:

If you have any questions, please contact this office at (805) 641-0142



SUSAN P. FRIEND
Coastal Program Analyst

Exhibit 2: Incomplete Notice
4-95-163

10-92/6351E

CALIFORNIA COASTAL COMMISSION

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

4-95-163
(File No.)
S12207
(Name)
27835 W. BORNA DR.
(Project Street and City)



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

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

NO
septic

- 10. Where septic systems are proposed, percolation test prepared by a qualified sanitarian or soils engineer. ~~see staff note 3~~ CURRENT TESTS OR AN UPDATE LETTER IS NECESSARY. see STAFF NOTE 3 ALSO
- 11. County or City Health Department review of septic system.
- 12. Where water wells are proposed, evidence of County or City review and approval.
- 13. 2 set(s) of project drawings including site plans, floor plans, all elevations. Drawing must be to scale with dimensions shown. Trees to be removed must be marked on the site plan. All oak trees must be identified on site plan. Plans must be approved by the building PLANNING department and stamped "Approval in Concept." We need more set(s). PLEASE BE SURE TO INCLUDE A SURVEY OF ALL DEVELOPMENT ON SITE AND SPECIFY WHICH DEVELOPMENTS WILL BE REMOVED.
- 14. 2 set(s) of detailed grading and drainage plans with cross sections and quantitative breakdown of grading amounts (cubic yards of cut and fill). Plans must be to scale and prepared by a registered engineer.
- 15. Two copies of a comprehensive, current (not more than 1 year old), site-specific geology and soils report (including maps) prepared in accordance with the Coastal Commission's Interpretive Guidelines. Copies of the guidelines are available from the District Office for development.
- 16. A current (not more than 1 year old) City or County "Approved" Geologic Review Sheet.
- 17. "Approval in Concept" form completed by the PLANNING building department or other responsible department.
- 18. Current zoning for project site.
- 19. A reduced set of drawings to 8 1/2 x 11" in size. The reduced set shall include a site plan, grading plan, elevations and topography if required for submittal.
- 20. For projects which include demolition, site plan and elevations or photographs of the structure to be demolished. Demolition must be included in the "Approval in Concept" project description.
- 21. Remodel projects must include percent of walls to be demolished (interior and exterior).
- 22. City or County Environmental Review Board Approval.
- 23. Any project in or near a stream course - approval from the California Department of Fish and Game.
- 24. A copy of any Final Negative Declaration, Draft of Final Environmental Impact Report (FEIR) or Final Environmental Impact Statement (FEIS) prepared, for the project. Comments of all reviewing agencies and responses to comments must be included.

- ___ 25. All projects in or adjacent to a Stream, Wetland or possible Wetland - California Department of Fish and Game and U.S. Fish and Wildlife Service approvals.
- ___ 26. Development within 200 feet of parkland - Fire Department approved fuel (vegetation) modification plans.
- ✓ ___ 27. Driveways, access roads, and turn around areas - preliminary Fire Department Approval.
- ___ 28. Preliminary approval from the Regional Water Quality Control Board. Single family dwellings and additions to existing structures are excluded.

THE APPLICATION FORM

- ___ 1. The application must be signed by the applicant or the applicant's representative.
- ___ 2. If application is not signed by the applicant(s), a letter executed by the applicant(s) which authorizes the representative to act in his behalf and to bind the applicant(s) in all matters concerning his/her application or the authorization page of the application form must be completed by the applicant.
- ___ 3. Section ___ page ___ of the application must be completed.

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

- ___ 1. All projects on a beach require State lands Commission determination of location of most landward recorded mean high tide in relation to landward property line. (State lands Commission, 1807-13th Street, Sacramento, CA 95814). Please make reference to your Coastal Development Permit (file) number when contacting the State Lands Commission.
- ___ 2. For projects on a coastal bluff or shoreline - a stringline map showing the existing, adjacent structures, decks and bulkheads in relation to the proposed development. The stringline is to be prepared in accordance with the Coastal Commission's Interpretive Guidelines.
- ___ 3. Shoreline protective devices (seawalls, bulkheads, groins & rock blankets) - project plans with cross sections prepared by a registered engineer. The project plans must show the project footprint in relation to the applicant's property boundaries and the Mean High Tide Line.
- ___ 4. For shoreline protective devices a geotechnical report and wave uprush study prepared in accordance the Commission guidelines. Copies of guidelines are available from the District Office.

FOR SUBDIVISIONS THE FOLLOWING MUST ALSO BE PROVIDED

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

OUTSIDE OF EXISTING DEVELOPED AREAS (AS DEFINED BY GUIDELINES)

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

STAFF COMMENTS

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

- ① Your billing fee must include a fee for grading. This fee, as an after-the-fact application, is \$400.00 plus \$10.00 for every 1000 cubic yards ~~per~~ OVER

over 75 cubic yards

- (2) Since Tryon only owns one parcel and Dolores owns the other; both persons need to be applicants. Please modify ~~your~~ this w/a letter stating th/ both Tryon and Dolores will be applicants
- (3) Please specify whether the septic system and any other utility structures are to remain or be removed. Please note that if the residence is removed ~~stuff~~ may be removed all associated developments such as the septic system, be removed.

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

By



Date

8.8-95

0009C



The Land & Water Company

RECEIVED
AUG 25 1995
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

August 21, 1995

California Coastal Commission
89 South California Street, Suite 200
San Buenaventura, CA 93001

Attention: Jack Ainsworth and Susan Friend

RE: APPLICATION FOR EXISTING PADS AND DRIVEWAY, AND REMOVAL OF A MODULAR HOUSE AND GATE PILASTERS LOCATED AT 27835 WEST BORNA DRIVE, MALIBU CA; CDP #4-95-163

Dear Jack and Susan:

Thank you for your prompt incompleteness notice dated 8 August 1995 regarding the above mentioned application. In said notice you requested a number of additional items for the completion of our application, to which we have drafted the following response and enclosed the following items:

#1. ADDITIONAL FILING FEE FOR GRADING.

At the time of the permit submittal we had not accurately calculated the total grading conducted by Mr. Peck, the previous owner of the property. The total cut and fill performed on the property in the early 1980's has now been calculated to be 3,646 cubic yards for both lots. Accordingly, the additionally fee of \$200.00 plus \$20.00 for the quantity of grading over 75 cubic yards, is enclosed.

However, please note that we will not accept a doubling of the fee for an "after the fact permit application". Please keep in mind that the Sissons' are trying to resolve administratively a violation that existed on their property for almost a decade before they bought it, that the Coastal Commission (CCC) was aware of this violation the entire time, and that the CCC took no action to warn innocent purchasers (such as the Sissons') of the violations' existence.

Irrefutably, and without stated contention from your staff, the Sissons' are without guilt in this matter. Your application states that "Fees for after-the-fact permits shall normally be double the regular permit fee cost". This is not a "normal" after the fact permit, and the Sissons' should not be subjected to any punitive

29395 Agoura Road
Suite 205
Agoura Hills, CA 91301

(818) 889-2460

Exhibit 3: Letter from Applicant
4-95-163

fee structure.

#2. PERCOLATION TESTS

We have ascertained that there is not a septic system on the property, nor do we intend to request one with this application. Accordingly, no percolation tests or plans will be submitted for a septic system.

#3. TWO SETS OF PROJECT PLANS

Please find enclosed with this correspondence two (2) copies of a comprehensive grading plan which shows all development to be removed, as well as the grading on the site including cross sections and grading figures per parcel.

#4. COMPREHENSIVE GEOLOGY AND SOILS REPORT.

We submitted in our application packet to your office on 28 July 1995 the following documents:

A geologic examination of the subject property by GEO/SYSTEMS dated 15 April 1986.

A geologic literature search by Buena Engineers Inc. dated 1 August 1988.

A percolation test report for the subject property by Diversified Engineering dated 11 August 1988.

We understand that it is common practice for the CCC to request an updated geology report when existing reports are more than a year old. Nevertheless we would draw your attention to the fact that the subject application is for work done over ten years ago, and that the previously submitted review sheets were drafted four years after the work was completed.

Given the nature of the site and application we feel it is unwarranted to demand the expense of additional geology and soils review. We are removing all structures from the property and only seeking to retain the existing landforms. If a future property

owner seeks to build a house on the land they will have to apply to the CCC and County for permits to do so, and we believe that would be a more appropriate time to require an in depth updated geology and soils report.

#5 LOCAL GOVERNMENT APPROVAL IN CONCEPT

As relayed in our letter of 27 July 1995 we are requesting that the CCC staff waive the AIC, which your regulations allow you to do at your discretion. The County of Los Angeles unsuccessfully tried to prosecute in court the previous owner, Mr. Peck, for the subject grading, and the judge threw out their case in the interest of justice. Under court order the County of Los Angeles no longer has any jurisdiction regarding the grading that took place on the subject property, and it is inappropriate for the CCC to usurp the Court's decision and demand that we go back to the County for their review and approval.

#6 REDUCED SET OF DRAWINGS

You will find enclosed with this letter two sets of drawings of the site plan reduced to 8 1/2" x 11" in size.

#7 DEMOLITION

Pursuant to your request you will find enclosed photographs of the structures to be demolished.

#8 FIRE DEPARTMENT APPROVAL IN CONCEPT

If you will recall complete road plans were submitted to your office on 21 December 1994 for the paving of McReynolds, Mar Vista, and Borna Roads (CDP 4-94-224). Said plans were stamped approved in concept by Los Angeles County fire department, and included the roadway up to and including the Sissons' land. We have included another copy of the referenced map, and highlighted the portion not included in the previous approval but incorporated into our present application.

#9 APPLICANTS

As requested, this letter serves to state that Dolores Sisson is also an applicant, along with her husband Tryon.

Please call me if you need any additional information or materials regarding this matter, and thank you for your time and consideration.

Sincerely:
THE LAND & WATER CO.



Donald W. Schmitz Jr.

- xc Tryon Sisson
- Larry Lieberman esq.
- Adrienne Klein, Statewide Enforcement Analyst
- Nancy Cave, Statewide Enforcement Supervisor
- Daniel Olivas, Deputy Attorney General, Los Angeles
- Ralph Faust, Chief Counsel
- Peter Douglas, Executive Director

CALIFORNIA COASTAL COMMISSION

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

**CORRECTED LETTER**

December 18, 1995

Donald Schmitz
Land and Water Company
29395 Agoura Road, Ste 205
Agoura Hills, CA. 91301

Coastal Development Permit Application: 4-95-163 (Sisson)
Property Location: 27835 W. Borna Drive, Malibu; Los Angeles County

Dear Mr. Schmitz:

This letter corrects a letter dated December 12, 1995, which was mistakenly sent to you. This letter serves to follow-up our latest telephone conversation on October 23, 1995 regarding the completion of the application noted above. As you are aware, this application, 4-95-163, was initially incompleted by staff on August 8, 1995. The following items were required before the application could be filed:

- 1) The filing fee
- 2) Percolation tests if a septic system was present or proposed
- 3) Two sets of detailed drawings, including grading plans, stamped "Approval in Concept" by Regional Planning
- 4) A reduced set of drawings
- 5) A signed "Approval in Concept" form from Regional Planning
- 6) A current site specific geology report
- 7) Pictures, and a site plan of structures to be removed
- 8) Fire Department approval for the Driveway
- 9) Modification of the Application to reflect both property owners as applicants

On August 21, 1995 we received a letter from you which included the required documents for items 1, 4, 7, 8, and 9 noted above. We also received verification that no septic system exists on site or is proposed. However, because this application proposing a future building site, percolation tests need to be done to show that the site can support a residence with a septic system. We also received two sets of plans which detail the demolition and the grading; however these plans are not stamped "Approval in Concept" by Regional Planning. We also did not receive a current geology report.

Since we received your letter, we have spoken with both representatives from the District Attorney's Office and Building and Safety. As I have stated to you on the telephone, the County of Los Angeles does not consider this matter to be resolved at their level. They maintain that no grading permit was ever issued for this site, and therefore, a grading

Exhibit 4: Letter to Applicant
4-95-163

permit is still required. With regards to the dismissal of the misdemeanor complaint, I would like to point out that Mr. Peck, did plead guilty to this count for unpermitted grading. The dismissal of the case may have occurred because he served his probation, not because the County had no jurisdiction or because a permit was issued. Therefore, we maintain that you must receive an "Approval in concept" from Regional Planning for the after-the-fact grading. If you oppose this request, as you indicated in our telephone conversation of October 23, 1995, we suggest that you immediately bring this matter to the attention of the County Counsel for their interpretation of the hearing results.

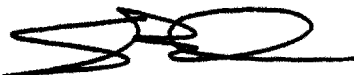
The next issue we discussed on October 23, 1995, concerned the geology reports. You indicated that you would send to our office copies of the previous reports and obtain a current letter from the consulting geologist. As of this date, we have not received any further information.

Finally, with regards to the filing fee we would like to correct a previous error. We stated that the filing fee would include a fee for grading, which would be doubled. A closer review of our fee schedule indicates that a filing fee for grading only accompanies an application for a residential development such as a single family residence or subdivision. In this case, no grading fee is required. However, the fee for this project falls under "Other Development not otherwise covered herein" For projects which cost under \$100,000, the cost is \$600.00. Moreover, since this is an after-the-fact permit application, the filing fee is doubled. The doubling of the fee occurs because of the significant additional review required by staff. Since a total of \$470.00 has been submitted for the filing fee and the filing fee is \$1,200.00, an additional \$730.00 is due.

Since this matter involves an outstanding violation, we would like to see this application completed as soon as possible. We would like to schedule this matter for the February 1996 hearing. As such, we are requesting that you submit the requested items to this office by January 8, 1996. This should provide ample time for you to obtain any information and discuss this matter with the Los Angeles County Counsel.

Please contact me with any questions or concerns regarding this matter.

Sincerely,



Susan P. Friend
Staff Analyst

cc: Tyron and Dolores Sisson
Nancy Cave: Statewide Enforcement Supervisor
Adrienne Klein: Statewide Enforcement Officer



COUNTY OF LOS ANGELES
OFFICE OF THE COUNTY COUNSEL
648 KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012

DE WITT W. CLINTON, COUNTY COUNSEL

TELEPHONE
(213) 974-1845
TELECOPIER
(213) 617-7182

February 7, 1996

California Coastal Commission
89 South California Street, Suite 200
San Buenaventura, California 93001

Attention: Susan Friend
South Coast Enforcement Officer

Re: Coastal Act Violation No. V-5-84-37, described as the unpermitted grading of a road and house pad and the placement of the two trailers and two gate pilasters located on APNs 4461-039-005/6 off Borna Drive in Solstice Canyon, Malibu.

Dear Ms. Friend:

In 1988, criminal charges filed by the County of Los Angeles against Fred H. Peck for unpermitted grading on parcels 4461-039-005 and 006 were dismissed by the Municipal Court. It is our understanding that the Coastal Commission has requested that the current owners of the property obtain a coastal development permit for the old Peck unpermitted grading.

We have considered the County's current position regarding the previous unpermitted grading, in light of the 1988 dismissal.

No approval or correction of the previous work is currently required by the County because of the previous court action and the passage of time.

RECEIVED

FEB 09 1996

Exhibit 5: Letter from County
4-95-163 Counsel

CALIFORNIA
COASTAL COMMISSION
COAST DISTRICT

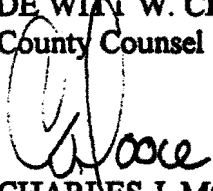
Ms. Susan P. Friend
February 7, 1996
Page 2

However, any future development application will cause a grading permit application, which will allow the County to analyze the previous unpermitted grading before approving any additional development.

Very truly yours,

DE WITT W. CLINTON
County Counsel

By


CHARLES J. MOORE
Principal Deputy County Counsel
Public Works Division

CJM:mas

c: Adrienne Klein
Nancy Cave
Tryon N. Sisson



The Land & Water Company

March 14, 1996

California Coastal Commission
89 South California Street
Ventura, CA 93001

Attention: Susan Friend

RE: COASTAL DEVELOPMENT PERMIT APPLICATION: 4-95-163 (Sisson)
27835 W. BORNA DRIVE, MALIBU; LOS ANGELES COUNTY

Enclosures as noted.

Dear Susan:

You will find enclosed with this correspondence the following document pursuant to your request:

#1) Two (2) copies of an updated geological reconnaissance of the subject property from GEOPLAN Inc. dated 8 March 1996.

Please note that the report finds that the site is grossly stable and suitable for residential development.

In regards to the remaining issues toward completion of the file, please note the following:

- a) We appreciate your determination that the issue of Local Approval in Concept was laid to rest by the 7 February 1996 correspondence to your office by Charles Moore, Principal Deputy County Counsel, which stated in part that:

"No approval or correction of the previous work is currently required by the County because of the previous court action and the passage of time."

- b) We have determined that there is not a septic system on the property, nor do we intend to request one with this application. Accordingly, no percolation tests or plans will be submitted for a septic system.
- c) The additional funds you are requesting from Mr. Sisson for the application as stated in your letter of 18 December 1995, which called for a doubling of the application fee, is unwarranted. We acquiesce that the project could be classified

29395 Agoura Road
Suite 205
Agoura Hills, CA 91301

Exhibit 6: Letter from Applicant
4-95-163

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MAR 18 1996

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

The Land & Water Co.

under "Other Developments not otherwise covered herein" as stated in the Coastal Development Application form, and therefore the application fee would then be \$600.00. As we have paid \$470.00 to date, you will find a check for \$130.00 to balance the difference.

If you are concerned that this violation procedure requires "significant additional review" by staff which justifies doubling the fee, then we recommend that you drop the matter in its entirety and consider the matter vested, estopped, and adjudicated; just as the County appears to have done. Regardless, the Sisson's are, without any contention from your office, innocent purchasers of this property, and are trying to resolve administratively a violation which has languished in the CCC offices for over a decade. Please take this fact into account and exercise some reasonable discretion by completing the subject file.

All other matters previously delineated by your office to complete the file have been deemed satisfied in your previous correspondence of 12 December 1995. Accordingly, we are hopeful that the documents and funds enclosed with this letter will be adequate to complete the file and this application can be scheduled for a public hearing.

Thank you for your time and consideration regarding this matter. Please don't hesitate to contact me should you require any additional information or materials.

Sincerely:
THE LAND & WATER CO.



Mr. Donald W. Schmitz Jr.
xc Tryon Sisson
Larry Lieberman esq
Adrienne Klein, Statewide Enforcement Analyst
Nancy Cave, Statewide Enforcement Supervisor
Daniel Olivas, Deputy Attorney General, Los Angeles
Ralph Faust, Chief Counsel
Peter Douglas, Executive Director



The Land & Water Company

April 18, 1996

California Coastal Commission
89 South California Street
Ventura, CA 93001

Attention: Susan Friend

RE: COASTAL DEVELOPMENT PERMIT APPLICATION: 4-95-163 (Sisson)
27835 W. BORNA DRIVE, MALIBU; LOS ANGELES COUNTY

RECEIVED

APR 23 1996

CALIFORNIA
COASTAL COMMISSION

APR 24 1996

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Dear Susan:

Thank you for discussing with me yesterday the above mentioned application and its status relative towards completion. We have submitted numerous additional plans, documents, and money to complete this file pursuant to staff's requests, and we are disappointed that staff will not complete the file and bring our application before the Coastal Commission (CCC). The last remaining items staff is demanding are:

- a) a subsurface percolation test and septic design.
- b) additional funds pursuant to a doubling of the application fees as this is a violation matter.

Candidly we fail to see the logic behind staff's insistence on these matters. We are proposing a partial restoration of the site, and a percolation test is clearly not applicable to this request. As to the doubling of the fees we have affirmed repeatedly, without objection from your office, that this Sisson's are innocent purchasers of this property and have engaged in no development of the site; permitted or otherwise. Penalizing them by doubling the fees is clearly unfair and they will not acquiesce to your demand.

We have for months discussed these remaining issues and sent several letters to seek resolution, and it would appear that we are at an impasse. Evidently only two options remain to be exercised; litigation, or taking the matter of completing the file to the CCC itself.

The Sisson's have been hopeful of resolving this matter administratively without going to court, and wish to bring the matter of completing the file before the CCC. Accordingly, we request that staff place our application, and the issue of completing the file, before the CCC at its next available agenda.

29395 Agoura Road
Suite 205
Agoura Hills, CA 91301

(818) 889-2460

Exhibit 7: Letter requesting
4-95-163 appeal

Thank you for your time and consideration regarding this matter. Please don't hesitate to contact me should you require any additional information or materials.

Sincerely:
THE LAND & WATER CO.

A handwritten signature in cursive script, appearing to read "Don Schmitz", with a long horizontal flourish extending to the right.

Mr. Donald W. Schmitz Jr.

xc Tryon Sisson
Larry Lieberman esq.
Adrienne Klein, Statewide Enforcement Analyst
Nancy Cave, Statewide Enforcement Supervisor
Daniel Olivas, Deputy Attorney General, Los Angeles
Ralph Faust, Chief Counsel
Peter Douglas, Executive Director