

CALIFORNIA COASTAL COMMISSION

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



Fri. 4a

Staff: RS - SF
Staff Report: October 16, 1997
Hearing Date: November 7, 1997

STAFF RECOMMENDATION FOR CEASE AND DESIST ORDER

CEASE AND DESIST ORDER: CCC-97-CD-06

RELATED VIOLATION FILES: V-4-90-053 and V-4-96-020

PROPERTY LOCATION: 5958 Busch Drive
Malibu, Los Angeles County, CA 90264
APN 4467-028-034 (**Exhibit #1**)

PROPERTY DESCRIPTION: The property consists of a 3000 sq.ft. single family residence on a 0.36 acre lot approximately 1200 feet west of the streambed along Zuma Canyon. There are two Flood Hazard Areas (drainage courses) on the subject property. One runs along the western edge on the neighboring property and enters the subject property above the south-western corner to join the other drainage course located on the southern property boundary along Busch Drive. This course joins the streambed at Zuma Canyon near the intersection of Busch Drive and Rainsford Place, which eventually reaches the Pacific Ocean near Zuma Beach. (**Exhibit #1**)

PROPERTY OWNER: Michael Anthony Allen¹

VIOLATION DESCRIPTION: 1) Grading, removal of vegetation, filling, construction of retaining walls and installation of pipe/culvert in the drainage course; 2) Grading, filling and creation of a pad with horse corrals and fences; and 3) Installation of a concrete holding tank, without a coastal development permit (CDP) and in violation of the terms of a Commission permit.

¹ On February 7, 1996, Michael Allen became the sole owner of the property. Before that date Michael Allen and Mary Beth Allen owned the property jointly. For the sake of convenience, in this report, Michael Allen is referred as **Allen**.

I. SUMMARY

The subject violation consists of: a) failure to comply with a condition of a Commission issued permit in the coastal zone; and b) development without the benefit of a coastal development permit.

Allen has not responded to numerous requests by Commission staff to comply with the permit requirements of Section 30600 of the Coastal Act and terms of special condition 5 of CDP 5-89-612 (**Exhibit #2**), granted by the Commission on August 9, 1989. Special condition No. 5 required a deed restriction, free of all prior liens and encumbrances, be recorded for the assumption of risk by the property owner for the development. As Allen did not provide evidence of recordation free of all prior liens and encumbrances, he did not fully comply with the special condition No. 5 of CDP 5-89-612.

Allen also performed unpermitted work on his property which consists of: 1) vegetation removal, grading, excavation, placement of solid materials as fill, construction of retaining walls and installation of pipe, in the drainage course on the site; and 2) grading, filling, creation of a pad with horse corrals and fences, and installation of a concrete holding tank, on the site. Allen has not obtained Commission approval of a CDP for carrying out these projects.

In order to resolve these Coastal Act violations, Allen must obtain a regular coastal development permit for either removal of the unpermitted development and restoration of the site, or for after-the-fact authorization to allow retention of the development. Allen must also provide evidence of recordation of deed restriction, free of prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed.

CDP 4-92-202 (**Exhibit #3**) was not issued because Allen failed to comply with any of the special condition requirements of the permit.

The proposed order would require Allen to cease and desist from: 1) engaging in any further development at the property without first obtaining a coastal development permit; and 2) maintaining on the property development that violates either the permit requirements of the Coastal Act or the terms of any previously issued coastal development permit. The order specifically directs Allen to submit timely permit applications to the Commission, as required by Pub. Res. Code §30600(a), for either: 1) removal of the unpermitted development and restoration of the site; or 2) for after-the-fact authorization to allow retention of the development.

II. HEARING PROCEDURES

The procedure for a hearing on a proposed Cease and Desist Order is outlined in Section 13185 of the California Code of Regulations (CCR), Title 14, Division 5.5, Chapter 5, Subchapter 8. The Cease and Desist hearing procedure is similar in most respects to the procedures which the Commission has utilized for permit and LCP matters.

For a Cease and Desist hearing the Chair should announce the matter and request that all parties or their representatives identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair should also announce the right of any speaker to propose to the Commission, at any

time before the close of the hearing, any question(s) for any Commissioner, in his or her discretion, to ask of any other speaker. The Commission staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s), may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons, after which staff shall respond to the testimony and to any new evidence introduced.

The Commission should receive, consider and evaluate evidence according to the same standards which it uses in its other quasi-judicial proceedings, as specified in section 13186 of the CCR, incorporating by reference section 13065. After the Chair closes the hearing, the Commission may ask questions as part of its deliberations on the matter, including, if any Commissioner chooses, any question proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Cease and Desist order, either in the form recommended by staff or as amended by the Commission. The motion, per staff recommendation or as amended by the Commission, as the case may be, if approved by a majority of the Commission, would result in issuance of the order.

III. MOTION

Staff recommends adoption of the following motion:

I move that the Commission issue Cease and Desist Order No. CCC-97-CD-06 as proposed by staff.

Staff recommends a YES vote. An affirmative vote by a majority of the Commissioners present is necessary to pass the motion. Approval of the motion will result in the issuance of the Cease and Desist order contained in Section V, contained herein.

IV. PROPOSED FINDINGS

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

A. Background

On August 9, 1989, the Commission granted CDP 5-89-612 to Michael Allen to construct a 3000 sq. ft. single family dwelling with a 3-car garage, septic system and 2,200 cu. yds. of grading (200 cu. yds. cut and 2,000 cu. yds. fill) on a 0.36 acre lot. Special condition No. 5 of CDP 5-89-612 required a deed restriction, free of all prior liens and encumbrances, be recorded for the assumption of risk by the property owner for the development. On November 2, 1989, Allen recorded the deed restriction at the Los Angeles County Recorder's Office as Instrument No. 89-1770247, but did not provide evidence that he recorded a subordination agreement. As Allen did not provide evidence that he recorded the deed restriction free of all prior liens and encumbrances, he did not fully comply with the special condition No. 5 of CDP 5-89-612 and therefore with the Coastal Act.

On July 6, 1990, Commission staff confirmed that Allen had cleared all vegetation, graded, excavated, placed solid materials as fill and installed a pipe in the drainage course on the

property in violation of Section 30600 of the Coastal Act. On July 9, 1990, Commission staff telephoned Allen and told him to stop all work in the drainage course because he was in violation of Section 30600 of the Coastal Act. The same morning Commission staff from the South Coast Area office hand delivered the "Stop Work" notice to Mary Beth Allen, Michael Allen's wife and then co-owner. After few hours, Bob Haggstrom, Allens' neighbor to the west (5954 Busch Drive), telephoned the South Coast Area office and stated that Allen had continued to do work in the drainage course. In the afternoon Commission staff hand-delivered the "Stop Work" notice to Allen at his property. Michael Allen told staff that he would not stop work.

On November 11, 1990, Commission staff received from Allen an after-the fact CDP application (5-90-661) for the above development to "fill a large hole in the back yard" (installation of a culvert and 1,250 cu. yds. of grading [250 cu. yds. cut and 1,000 cu. yds. fill]). On February 7, 1991, the Commission denied CDP 5-90-661 due to excessive proposed grading and landform alteration.

On March 27, 1991, Commission staff received from Allen a CDP application (5-91-290) for the grading of a pad for a horse corral and fenced enclosure. The Executive Director determined that although the application proposed to change the use of the area, the development, namely filling in the ravine, remained the same as proposed in CDP 5-90-661. On April 8, 1991, the Executive Director rejected application CDP 5-91-290 pursuant to Section 13109 of the California Code of Regulations (CCR) which precludes re-application for a CDP for substantially the same development within six months of the Commission's action to deny or approve with conditions.

On June 14, 1991, Commission staff confirmed that Allen continued to perform work in the drainage course and hand-delivered another "Stop Work" notice to Allen at the site. On June 16, 1991, Shirley Slater, Allen's neighbor to the south (6022 Merritt Drive, corner of Busch and Merritt) telephoned Commission staff and stated that Allen had continued grading in the drainage course at his property.

On July 11, 1991, the State Attorney General's office, on behalf of the Commission, filed a complaint (No. BC032539) against the Allens in the Superior Court of Los Angeles County.

On October 24, 1991, Allen submitted to Commission staff a CDP application No. 5-91-745 for the installation of a culvert, filling of the drainage course and landscaping. On November 14, 1991, the Executive Director rejected this CDP application because it was incomplete and inconsistent with the Coastal Act.

On May 13, 1992, the Commission denied another CDP application No. 5-91-836, filed by Allen, for filling the drainage course (700 cu. yds.) and installation of a culvert due to excessive proposed grading and landform alteration which were also inconsistent with the Coastal Act.

On September 8, 1992, Allen submitted to Commission staff CDP application No. 4-92-202 for "culverting" and partial filling of backyard with 700 cu. yds. of grading and landscaping of backyard. On October 14, 1992, the Commission approved this application subject to conditions which limited grading to a maximum of 118 cubic yards and landscaping of the proposed area. The remainder of the unpermitted fill on site was to be removed and no structures with the exception of a culvert and 118 cu. yds. of fill were allowed within the drainage course. Special condition No. 5 of CDP 4-92-202 required Allen to comply with all the conditions before January 11, 1993. On March 1, 1993, Allen submitted landscaping plans pursuant to special

condition No. 1. As of October 13, 1994, the date of expiry of the permit, Allen had not complied with remainder of the special condition requirements for CDP 4-92-202.

On November 30, 1992, the Allens entered into an agreement with the Commission, in settlement of the above-referenced litigation, which required him to pay a monetary settlement of \$7,000 in lieu of civil penalties, and to restore the drainage course by providing drainage in the gully. The agreement included statements that Allens' failure to comply with the agreement would entitle the Commission to proceed to court to obtain enforcement against the Allens, and the unsatisfied agreement could be deemed as a stipulated judgment under Section 664.6 of the Code of Civil Procedure that may be enforced by the court. As the agreement was not satisfied, the DAG filed a new complaint (Case No. BC 075962) to enforce the agreement. On October 19, 1993, as a result of the Allens' failure to respond to the complaint, a default judgment was entered requiring payment of \$9,195.59 (includes late charge, interest on unpaid principal, attorney's fees and Commission's costs) plus simple interest at 15% per annum on the unpaid balance of \$6,900 from September 1, 1993, until paid and compliance with the CDP has been achieved by Allen. On November 9, 1993, the DAG recorded an abstract of the judgment (No. 93 2196396) with the County of Los Angeles.

On July 4, 1996, Commission staff observed more unpermitted work had been performed on Allen's property. The unpermitted development consisted of: 1) filling the drainage course; 2) creation of a pad with horse corrals and fences on the filled area; 3) construction of retaining walls in the drainage course; and 4) placement of a concrete holding tank. These actions received no prior CDP approvals from the Commission and are also inconsistent with the Commission's past permit action on the property. On July 30, 1996, Commission staff sent a letter (**Exhibit #4**) through regular and certified mail to Allen notifying him of the violation. The letter sent by certified mail was returned "unclaimed" to the Commission's South Central Area office.

On August 21, 1996, the City of Malibu issued a "Stop Work" order to Allen for building code violations which also included some of the unpermitted work mentioned above. On August 26, 1996, Craig George, Senior Building Inspector, City of Malibu, sent a letter to Allen outlining the unresolved issues pertaining to Allen's property as discussed in their meeting of August 23, 1996.

On September 4, 1996, Commission staff sent, by regular and certified mail, a second notice to Allen similar to that sent on July 30, 1996. The second letter/notice sent by certified mail was returned to the Commission's South Central Area office as it was "refused". On September 9, 1996, Commission staff confirmed through a site visit the completion of the pad, horse corral, fence and retaining wall at Allen's property.

On March 21, 1997, Commission staff sent through regular and certified mail a letter (**Exhibit #5**) to Michael Allen notifying him of his continuing violations of the Coastal Act. On April 22, 1997, the certified letter was "refused" and returned to Commission staff by the post office.

On July 10, 1997, Commission staff sent Michael Allen, through regular and certified mail, a notice of intent to commence Cease and Desist order proceedings (**Exhibit # 6**) and a Statement

of Defense form. In the letter, Allen was asked to complete the Statement of Defense form and return it to Commission staff before August 11, 1997.²

Through several oral and written communications, which include, but are not limited to, letters dated July 30, 1996, September 4, 1996, and March 21, 1997, Commission staff has recommended that, in order to resolve the recent and earlier violations, Allen should:

1. Immediately stop all work on his property which does not have the benefit of a coastal development permit .
2. Submit to the South Central Area office at Ventura, a CDP application for the removal of all unpermitted developments on his site and restoration of the impacted drainage course or for after-the-fact authorization to allow retention of the development.
3. Pay the outstanding monetary settlement from the default judgment.

As of the date of this report Allen has not met any of the above requirements. Additionally, Allen has shown blatant disregard to oral and written notifications asking him to comply with the Coastal Act.

B. Staff Allegations

The staff alleges the following:

1. Michael Anthony Allen is the owner of the property located at 5958 Busch Drive, Malibu, Los Angeles County, CA 90264, APN 4467-028-034. The property is within the Commission's original permit jurisdiction as the City of Malibu does not have a certified Local Coastal Program (LCP), and does not issue coastal development permits.
2. Allen has undertaken development, as defined by Coastal Act §30106, which includes: 1) grading, removal of vegetation, filling, construction of retaining walls and installation of pipe/culvert in the drainage course; 2) grading, filling and creation of a pad with horse corrals and fences; and 3) installation of a concrete holding tank.
3. Allen has maintained on the property development, stated in section 2. above, which violate the permit requirements of Section 30600(a) of the Coastal Act and terms of special condition 5 of CDP 5-89-612 (**Exhibit #2**), granted by the Commission on August 9, 1989. In order to resolve these Coastal Act violations, Allen must obtain a regular coastal development permit for: either: 1) removal of the unpermitted development and restoration of the site; or 2) for after-the-fact authorization to allow retention of the development. Allen has not obtained Commission approval of a CDP to permit his development activities undertaken since the Commission conditionally approved CDP 5-89-612. Allen must also comply with condition No. 5 of CDP 5-89-612 by providing evidence that the deed restriction was recorded free of prior liens and encumbrances.

² Commission staff confirmed receipt of the Certified letter by virtue of Allen's signature on the "return receipt", which Commission staff received on August 18, 1997 (**Exhibit #6**).

4. Allen failed to comply with the special condition requirements of CDP 4-92-202 (**Exhibit #3**) granted by the Commission on October 14, 1992. CDP 4-92-202 has since expired due to Allen's failure to meet conditions.

C. Alleged Violator's Defense

As of the date of this report, and without excuse, Allen has not responded to staff's allegations as set forth in the July 10, 1997, Notice of Intent to commence Cease and Desist Order proceedings (**Exhibit #6**). Furthermore, Allen never requested an extension of the time limit for submittal of the statement of defense form (See Cal. Code of Regs., tit. 14, §13181(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"]).

The mandatory completion of the statement of defense has significant bearing to its purpose. (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"]). Allen has failed to avail himself of the opportunity afforded by the Statement of Defense form to inform the Commission which defenses he wishes the Commission to consider before making its decision on whether or not to issue a cease and desist order.³ The Commission should not be forced to guess which defenses Allen wants the Commission to consider. Section 13181(a) is specifically designed to serve this function of clarifying 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"]).

On October 7, 1997, Michael Allen telephoned Ravi Subramanian, staff member of the Commission's Statewide Enforcement Unit and left a message on the voice mail system. Allen requested a postponement of the hearing at Del Mar on October 9, 1997, because he was in Michigan and would not be able to arrive in time for the hearing. Subramanian telephoned Allen and asked him to submit his request in writing. Allen's written request for postponement was received the same day (**Exhibit #7**). Subramanian also told Allen that the hearing will be rescheduled to the meeting in Agoura Hills to be held between November 4th and 7th, 1997.

D. Impacts on Coastal Resources

³ The Statement of Defense Form has six sections of information that Allen 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 notice of intent that are denied by the respondent; 3) Facts or allegations contained in the cease and desist order or notice of intent of which the respondent has no personal knowledge; 4) Other facts which may exonerate or mitigate the respondent's possible responsibility or otherwise explain the respondent's relationship to the possible violation; 5) Any other information, statement, etc. that respondent desires to offer or make; and 6) Documents, exhibits, declarations under penalty of perjury or other materials that the respondent wants to have attached to the form.

Allen's property is located in an area subject to flooding and erosion. The property is located approximately 1200 feet west of the streambed along Zuma Canyon. There are two, approximately 20 feet wide, Flood Hazard Areas (drainage courses) located on the subject property. One runs along the western edge on the neighbor's property and enters the subject property above the south-western corner to join the other drainage course on the southern boundary along Busch Drive. This course joins the streambed at Zuma Canyon near the intersection of Busch Drive and Rainsford Place, and eventually reaches the Pacific Ocean near Zuma Beach.

Section 30253 of the Coastal Act, in relevant part, states:

...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 or 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 alter natural landforms ...

The geologic study⁴ dated March 7, 1980, by Eugene D. Michael, prepared for the subject property and an update prepared on June 2, 1988, reveal that the subject property received surface runoff from an area to the north of about two to three acres (87,120 - 1,30680 sq. ft.). According to the study, during the heavy storms in the late 70's several streams were observed to be entering the northernmost part of the drainage course at rates between 2 and 5 gallons per minute. The study further indicated that high groundwater levels were present in the area.

In a letter (**Exhibit #8**) dated April 9, 1996, from John and Wendy Cary, Allen's neighbors to the east (5960 Busch Drive), to the Commission, they expressed concern about the work performed on Allen's property in blatant disregard to "Stop Work" orders, building/property laws and the effects on adjacent properties. According to the Carys, due to the work done by Allen on his property, a water pond, of approximately 1200 sq.ft. and 18 inches deep, is created on their property during the rains, and has a stench due to Allen's septic system/holding tank working improperly. Additionally, the Carys stated in their letter that due to Allen's work on his property the rains have damaged their fence and also damaged plants and fences of the Haggstroms, Allen's neighbor to the west (5954 Busch Drive).

Allen has undertaken development, which includes: 1) grading, removal of vegetation, filling, construction of retaining walls and installation of pipe/culvert in the drainage course, 2) grading, filling and creation of a pad with horse corrals and fences, and 3) installation of a concrete holding tank. The former two sections of unpermitted development activities have altered natural landforms and resulted in impacting natural drainage for surface runoff. These development activities have also created or exacerbated the erosional, geologic and flood hazards in the area. The foregoing impacts upon resources need to be evaluated, mitigated and either permitted or eliminated in a Commission CDP proceeding.

V. CEASE AND DESIST ORDER

Staff recommends that the Commission issue the following Cease and Desist Order:

⁴ Obtained from staff report for CDP 5-89-612.

Pursuant to its authority under Pub. Res. Code §30810, the California Coastal Commission hereby orders Michael Anthony Allen, 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 on 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 follows:

- A. Refrain from engaging in any development activity on the property without first obtaining a coastal development permit which authorizes such activity.
- B. (1) Within 60 days of the date of this order, allowing for extensions of the deadline by the Executive Director for good cause, submit for review and approval a complete coastal development permit application (including local approvals), as required by PRC §30600(a), to the Commission, for either: 1) removal of the development herein below specified and restoration of the site, or 2) for after-the-fact authorization to allow retention of the development. Within eight (8) months of the date of Commission action on the coastal development permit application, the work/restoration authorized by the permit shall be completed.

(2) Within 60 days of this order, allowing for extensions of the deadline by the Executive Director for good cause, comply with special condition No. 5 of CDP 5-89-612 by providing evidence that a deed restriction has been recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed.

(3) Within 120 days of the date of denial by the Commission, in whole or in part, of an application for after-the-fact authorization and retention of the development, submit a complete coastal development permit application for the removal of that portion of the development for which authorization has been denied and restoration of the property to its pre-violation state. Within eight (8) months of the date of Commission action on the coastal development permit application, the work/restoration authorized by the permit shall be completed.
- 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.

Person(s) subject to the Order

Michael Anthony Allen and his agents.

Identification of the Property

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

5958 Busch Drive, Malibu, Los Angeles County, CA 90264. APN 4467-028-034

Legal Authority

The property identified above in the preceding section is within the original permit jurisdiction of the Commission. Accordingly, the Commission is issuing this order, in part, pursuant to Pub. Res. Code §30810 (a).

Description of Unpermitted Development

1) grading, removal of vegetation, filling, construction of retaining walls and installation of pipe/culvert in a drainage course; 2) grading, filling and creation of a pad with horse corrals and fences; and 3) installation of a concrete holding tank.

Description of Violation of Terms of Previously Issued Permit

The property owner has not complied with the recording requirements of special condition 5. Assumption of Risk of CDP 5-89-612.
(CDP 4-92-202 was not issued because the property owner failed to meet the conditions of the said permit.)

Term of the Order

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

Findings

This order is issued on the basis of the findings adopted by the Commission on October 10, 1997, as set forth in the document entitled "Adopted findings for Cease and Desist Order No. CCC-97-CD-06".

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

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 Pub. Res. Code §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.

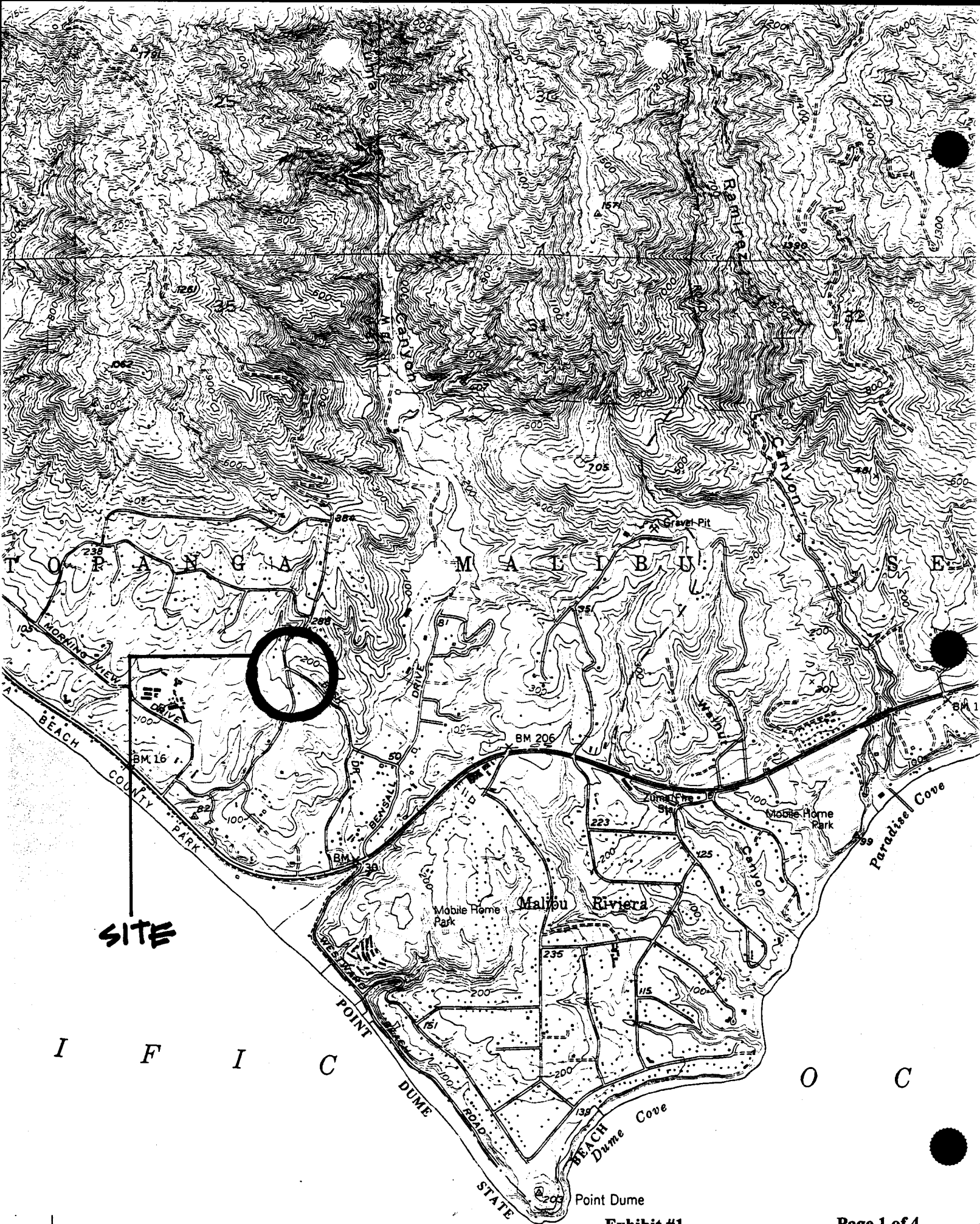
VI. MATTERS ALREADY PART OF THE RECORD

EXHIBITS

1. Location of the property.
2. Letter dated October 19, 1989, from Commission staff to Allen informing him of the coastal development permit (CDP) No. 5-89-612 granted on August 9, 1989.
3. Notice of Intent to issue permit dated October 20, 1992, for CDP No. 4-92-202 granted on October 14, 1992.
4. Notice of violation dated July 30, 1996, from Commission staff to Allen.
5. Notice of violation dated March 21, 1997, from Commission staff to Allen.
6. Notice of intent to commence Cease and Desist order proceedings dated July 10, 1997, from Commission staff to Michael Allen, and signed return receipt of certified mail.
7. Letter dated October 7, 1997, from Allen to Subramanian requesting postponement.
8. Letter dated April 9, 1996, from John and Wendy Cary to Commission staff.

OTHER DOCUMENTS

1. Deed Restriction recorded at L.A. County Recorder's office, on November 2, 1989, Instrument No. 89-1770247.
2. Initial violation report dated July 6, 1990.
3. Stop Work Notice/letter dated July 9, 1990.
4. CDP application No. 5-90-661 dated November 11, 1990.
5. Letter dated February 14, 1991, from Commission staff to Allen informing him of the denial of CDP application No. 5-90-661 on February 7, 1991,
6. CDP application No. 5-91-290 dated March 27, 1991.
7. Letter dated April 8, 1991, from Commission staff to Allen informing him of the return of CDP application No. 5-91-290
8. Coastal Act violation referral to the AG's office dated June 18, 1991 (On June 14, 1991, Commission staff confirmed Allen continuing to perform work. Record of conversation with Shirley Slater on June 16, 1991).
9. Complaint (No. BC032539) filed against Allen by the AG's office on July 11, 1991.
10. CDP application No. 5-91-745 dated October 24, 1991.
11. Letter dated November 14, 1991, from Commission staff to Allen informing him of the rejection of CDP application No. 5-91-745.
12. CDP application No. 5-91-836 filed on January 23, 1992.
13. Letter dated June 5, 1992, from Commission staff to Allen informing him of the denial of CDP application No. 5-91-836 on May 13, 1992,.
14. CDP application No. 4-92-202 dated September 8, 1992.
15. Agreement resolving litigation between the Allens and the Commission dated November 30, 1992.
16. Complaint (No. BC075962) filed against Allen by the AG's office on May 10, 1993.
17. Default judgement for Case No. BC075962 entered on October 19, 1993.
18. Abstract of judgement (Instrument No. 93 2196396) recorded on November 9, 1993.
19. Letter dated August 26, 1996, from Craig George, Senior Building Inspector, Malibu to Allen.
20. Letter dated September 4, 1996, from Commission staff to Allen, re: violation.
21. Notice of Intent to commence Cease and Desist Order proceedings dated July 10, 1997, and Statement of Defense from Commission staff to Allen.
22. Staff report for CDP 5-89-612.
23. Telephone log/note dated October 7, 1997, recording voice mail message from Allen.
24. Telephone log/note dated October 7, 1997, recording conversation with Allen.



SCALE 1:24,000

Exhibit #1
CCC-97-CD-06

Page 1 of 4
Michael Allen

SUBJECT PROPERTY INFORMATION

1) Property: 595 BUSCH DR, MALIBU CA 90265

APN: 4467-028-034

County: LOS ANGELES, CA

Census: 8004.02

Map Pg: 112-B6

New Pg: 667-D1

Phone:

Owner: ALLEN MICHAEL A

Tax Rate Area: 10853

Prop Tax: \$5,703.94

Delinq Tax Yr:

Exemptions:

Use: SFR

Total Value: \$510,684

Land Value: \$163,794

Imprv Value: \$346,890

Assd Yr: 1996

% Improved: 67%

Mail: 5958 BUSCH DR; MALIBU CA 90265

SALES INFORMATION

LAST SALE:

Transfer Date: 02/07/96

Sale Price/Type:

Document #:

Document Type:

1st TD/Type:

Finance:

Junior TD's:

Lender:

Seller:

Title Company:

Transfer Info:

PRIOR SALE:

09/20/88

\$145,000 FULL

1506289

GRANT DEED

\$75,000 SELLER FIN

IMPROVEMENTS

Bldg/Liv Area: 2,702

Units:

Bldgs:

Stories: 1

\$/SF:

Yrblt/Eff: 91

Total Rms:

Bedrms: 4

Baths(F/H): 4

Fireplace:

Pool:

Bsmt Area:

Construct:

Flooring:

Air Cond:

Heat Type: FORCED AIR

Quality: GOOD

Condition: GOOD

Style:

Other Rooms:

SITE INFORMATION

Improve Type:

Zoning: RA20000*LC

County Use: 0100

Bldg Class:

Flood Panel: 065043-0768C

Flood Zone: C, 11/15/85

Lot Size: A0.36

Lot Area: 15,990

Parking: GARAGE

Park Spaces: 3

Site Influence: OCEAN

Ground Lease:

Phys Chars: RAISED FOUNDATION;WOOD SIDING EXTERIOR;

Legal: L2/TR=PARCEL MAP AS PER BK 74 P 65-66 OF

Comments: WETBAR BON;LANDSCAPING

4467 28

SCALE 1" = 200'

35.000' - Pct. 20
- 1.000' - S. 20.000'
- 1.000' - P. 20.000'
77.200'

25.237' - Pct. 20
- 2.527' - S. 20.000'
10.400'

BK.
4469

SUBJECT
PROPERTY

PARCEL MAP
P.M. 74-65-66

PARCEL MAP
P.M. 70-14

PARCEL MAP
P.M. 37-63

RECORD OF SURVEY
R.S. 56-14-17

PARCEL MAP
P.M. 74-95

PARCEL MAP
P.M. 74-72

PARCEL MAP
P.M. 258-58-57

ASSESSOR'S MAP
COUNTY OF LOS ANGELES, CALIF.

CODE
10853

FOR PREV. ASSMT. SEE:
4467-28

Exhibit #1
CCC-97-CD-06

Page 3 of 4
Michael Allen

1994

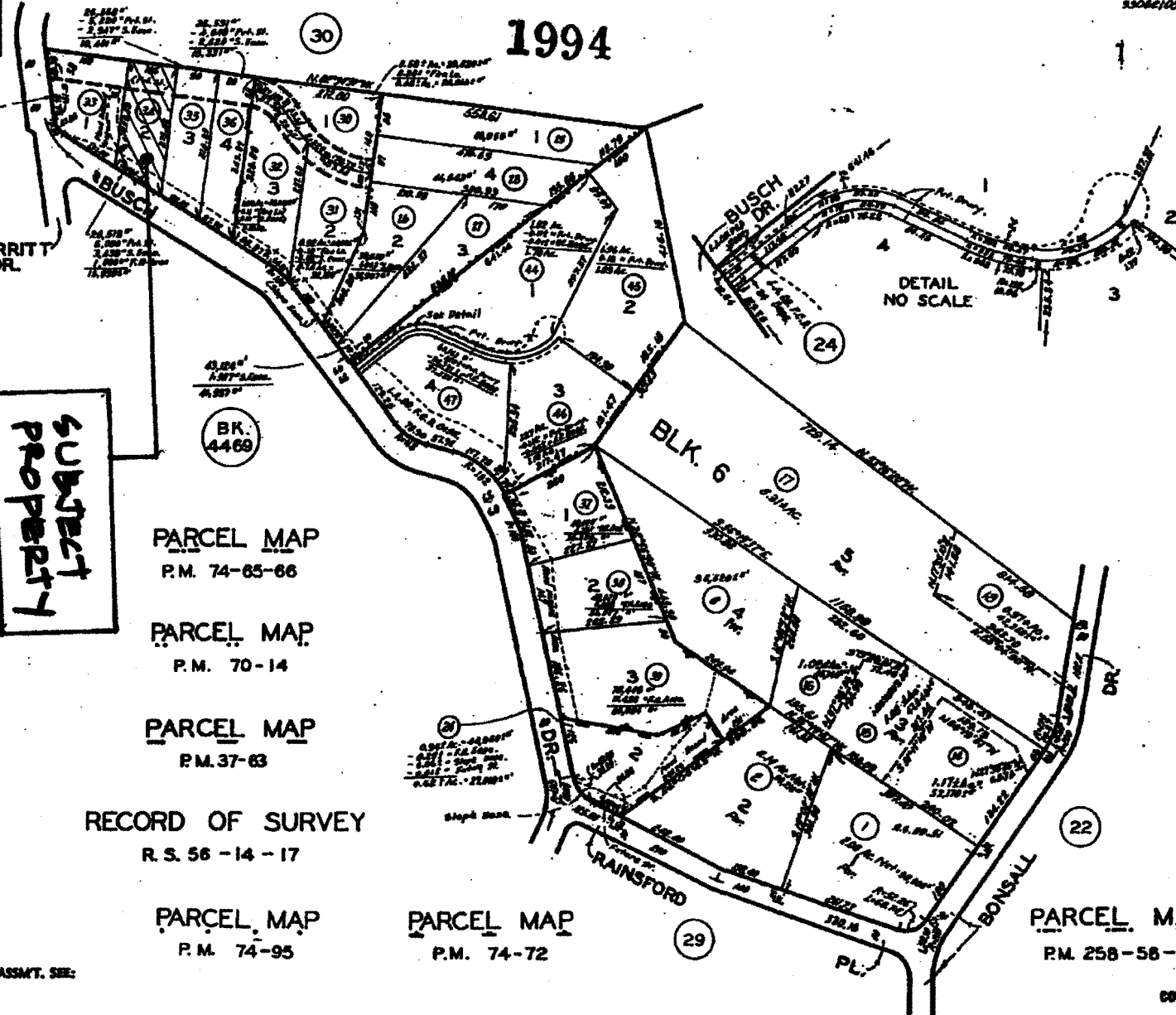
33066103073004-07 9-14-65

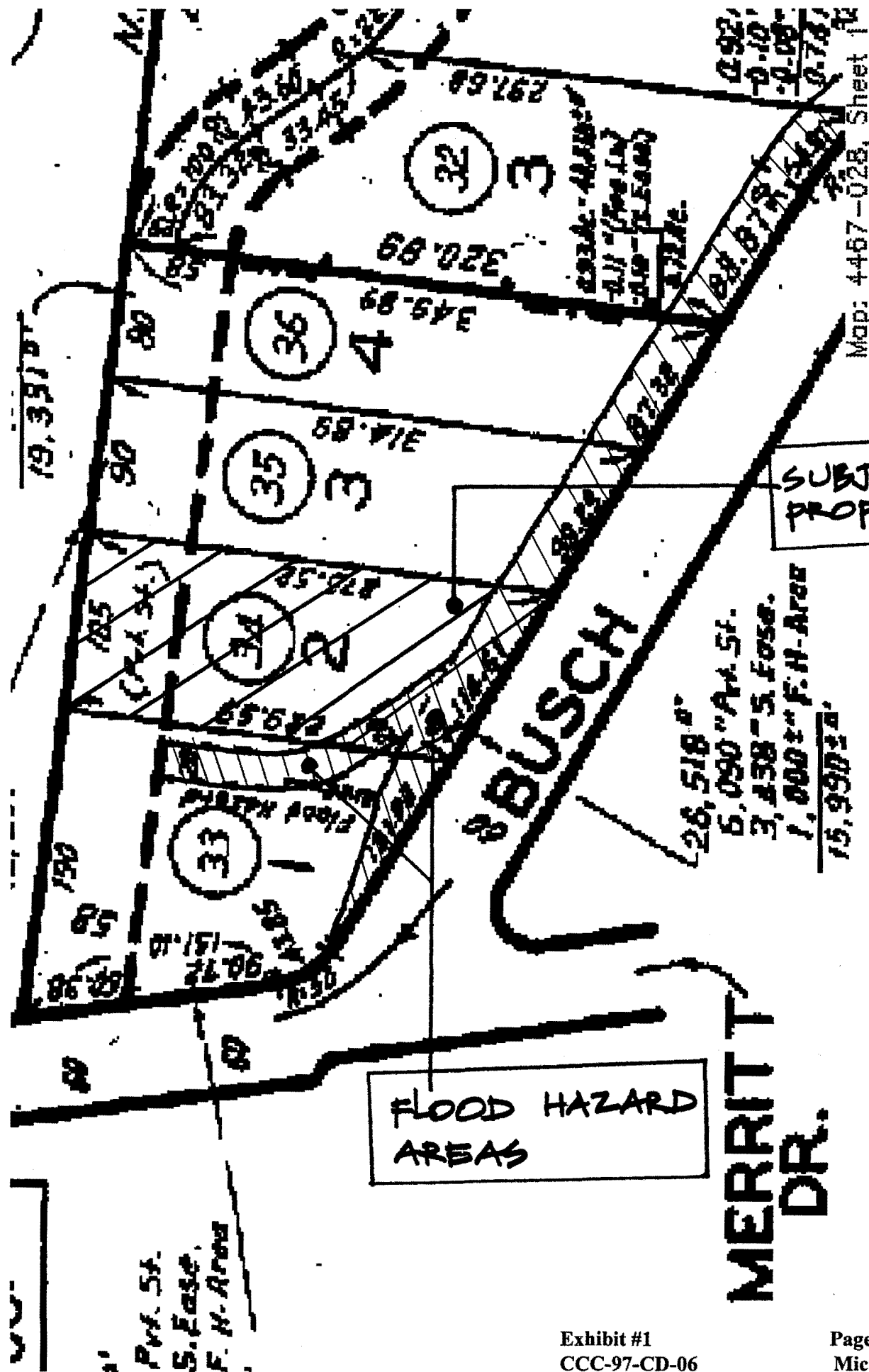
KEYMAP
3-5-61
1-10-65

681115109
68123
690122
720214
730628
750906102
750117
76082104
761100
761104-06-04
77011504
770328
770104101
8001040001-07
800104
810002

1 94

DETAIL
NO SCALE





Map: 4467-02B, Sheet 12

SUBJECT PROPERTY

FLOOD HAZARD AREAS

MERRITT DR.

26,518'
6,090' A.A. St.
3,838' S. Fose.
1,000' F.H. Area
15,990'±

Pvt. St.
S. Fose.
F. H. Area

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
245 WEST BROADWAY, SUITE 380
LONG BEACH, CA 90802
(213) 590-3071



October 19, 1989

Mr. Michael Allen
5958 Busch Drive
Malibu, CA

Subject: Coastal Development Permit #5-89-612

Dear Mr. Allen:

Please find attached, your Coastal Development Permit #5-89-612. We are releasing this permit based on the information you gave me in our telephone conversation of yesterday. You indicated that our Legal Department has informed you by phone about two weeks ago that the deed restrictions pertaining to future improvements and assumption of risk have already been recorded but because of the recent earthquake in San Francisco, we are unable to verify this.

Under the circumstances, we are now issuing you the permit to enable you to resume construction of your house; subject however to confirmation by our Legal Department in San Francisco, which we hope would be in operation by next week. Should it be the case that the deed restrictions haven't been recorded, we will have to put a stop work order on your project.

Sincerely,

A handwritten signature in cursive script that reads "Charles Damm".

Charles Damm
Director
South Coast District

Attached: a/s

23380/tm1

CALIFORNIA COASTAL COMMISSION

COAST AREA
1ST BROADWAY, SUITE 380
LOS ANGELES, CA 90802
(213) 70-5071

Page 1 of 4
Date: August 16, 1989
Permit Application No. 5-89-612

NOTICE OF INTENT TO ISSUE PERMIT

On August 9, 1989, the California Coastal Commission granted to MICHAEL ALLEN Permit 5-89-612, subject to the attached conditions, for development consisting of

Construct a 32-foot high, 3000 sq. ft. single family dwelling with a 3-car garage and septic system on a .71 acre lot. Proposed development involves 2,200 cubic yards of grading (200 cubic yards cut and 2000 cubic yards fill).

more specifically described in the application file in the Commission offices.

The development is within the coastal zone in Los Angeles County at 5958 Busch, Malibu, CA.

The actual development permit is being held in the Commission office until fulfillment of the Special Conditions 1 - 5, imposed by the Commission. Once these conditions have been fulfilled, the permit will be issued. For your information, all the imposed conditions are attached.

Issued on behalf of the California Coastal Commission on August 16, 1989.

RECEIVED
AUG 21 1989

PETER DOUGLAS
Executive Director

By: Teresa A. Logan

Title: Staff Analyst

CALIFORNIA
COASTAL COMMISSION
SOUTH COAST DISTRICT

ACKNOWLEDGMENT:

The undersigned permittee acknowledges receipt of this notice of the California Coastal Commission determination on Permit No. 5-89-612, and fully understands its contents, including all conditions imposed.

8/17/89
Date

[Signature]
Permittee

Please sign and return one copy of this form to the Commission office at the above address.

NOTICE OF INTENT TO ISSUE PERMIT

Permit Application No. Page 2 of 4
5-89-612

TANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS:

1. Landscaping:

Prior to the transmittal of the coastal development permit, the applicant shall submit a revised landscaping plan prepared by a licensed landscape architect for review and approval by the Executive Director. The plans shall incorporate the following criteria:

- (a) All graded areas on the subject site shall be planted and maintained for erosion control and visual enhancement purposes. To minimize the need for irrigation and to screen or soften the visual impact of development all landscaping shall consist primarily of native, drought resistant plants as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended Native Plant Species for Landscaping Wildland Corridors in the Santa Monica Mountains, dated November 23, 1988.

Invasive, non-indigenous plant species which tend to supplant native species shall not be used.

- (b) Cut and fill slopes shall be stabilized with planting at the completion of final grading. Planting should be of native species using accepted planting procedures, consistent with fire safety requirements. Such planting shall be adequate to provide 90 percent coverage within 90 days and shall be repeated, if necessary, to provide such coverage. This requirement shall apply to all disturbed soils.
- (c) The banks of the gully shall be replanted with riparian vegetation similar to that which exists along the undisturbed portions of the gully. Such planting shall be adequate to provide 90 percent coverage within 90 days and shall be repeated, if necessary, to provide such coverage. This requirement shall apply to all disturbed soils.
- (d) Vegetation within 30 feet of the proposed house may be removed to mineral earth, vegetation within a 100' radius of the main structure may be selectively thinned in order to reduce fire hazard. However, such thinning shall only occur in accordance with an approved long-term fuel modification plan submitted pursuant to this special condition. The fuel modification plan shall include details regarding the types, sizes and location of plant materials to be removed, and how often thinning is to occur.

2. Grading:

Prior to the transmittal of the Coastal Development Permit, the applicant shall submit a revised grading plan showing the removal of the debris from the on-site gully. Applicant shall indicate the location of the disposal site. If the site is within the Coastal Zone, a Coastal Development Permit must first be obtained before disposal of debris. The debris removal shall be completed within 90 days of Commission action.

3. Future Improvements:

Prior to the transmittal of the Coastal Development Permit, applicant shall record a deed restriction, in a form and content acceptable to the Executive Director, which provides that coastal Development Permit 5-89-612 is for the approved development only, and that any future development as defined in Public Resources Code, Section 30106 will require a new Coastal Development Permit from the Coastal Commission or its successor agency.

4. Conformance to Geologic Recommendations:

All recommendations contained in the geologic and soils exploration studies enumerated below shall be incorporated into all final design and construction including foundations, grading, septic system and drainage and all plans must be reviewed and approved by the consultants prior to commencement of development. Prior to transmittal of the Coastal Development Permit, the applicant shall submit evidence to the Executive Director of the consultant's review and approval of all final design and construction plans.

- (a) Geologic report, dated 3/7/80 and updated on 6/2/88 by Eugene Michaels;

(b) Soils Exploration Study, dated 7/30/79 and updated on September 9, 1988 and 11/22/88 by Pacific Materials Laboratory, Inc.;

(c) Final Compaction Report, dated 3/7/89, by West Coast Soils.

5. Assumption of Risk:

Prior to the transmittal of the coastal Development Permit, the applicant as landowner, shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from flooding and soil erosion and the (b) applicant hereby waives any future claims of liability against the commission or its successors in interest for damage from flooding and erosion. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed.

*The documents needed to comply with Conditions 1 - 5 will be sent to you from our San Francisco Office AFTER the Commission meeting. When you receive the documents, if you have any questions, please contact the Legal Department at (415) 543-8555.

15440:TL/gf

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
145 W. BROADWAY, STE. 380
P.O. BOX 1450
LONG BEACH, CA 90802-4416
(310) 590-5071

Page 1 of 3

Date: October 20, 1992

Permit Application No. 4-92-202

NOTICE OF INTENT TO ISSUE PERMIT

On October 14, 1992, the California Coastal Commission granted to MICHAEL AND MARYBETH ALLEN Permit 4-92-202, subject to the attached conditions, for development consisting of:

Culverting and partial filling of a drainage course with 118 cubic yards of grading (118 cu. yds. fill, 0 cu. yds. cut), and landscaping of the proposed area.

more specifically described in the application file in the Commission offices.

The development is within the coastal zone in Los Angeles County at 5958 Busch Drive, City of Malibu.

The actual development permit is being held in the Commission office until fulfillment of the Special Conditions imposed by the Commission. Once these conditions have been fulfilled, the permit will be issued. For your information, all the imposed conditions are attached.

Issued on behalf of the California Coastal Commission on October 14, 1992.

PETER DOUGLAS
Executive Director

By: Title: Staff AnalystACKNOWLEDGMENT:

The undersigned permittee acknowledges receipt of this notice of the California Coastal Commission determination on Permit No. 4-92-202, and fully understands its contents, including all conditions imposed.

Date_____
Permittee

Please sign and return one copy of this form to the Commission office at the above address.

NOTICE OF INTENT TO ISSUE PERMIT

Permit Application No. Page 2 of 4-92-202

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS:

1. Landscaping Plans

Prior to the issuance of the permit, the applicant shall submit, for the review and approval for the Executive Director, landscaping plans which specify the types, locations, and amounts of plants to be used. The applicant shall use a mixture of seeds and plants to increase the potential for a successful revegetation. All graded areas on the subject site shall be planted and maintained for erosion control and visual enhancement purposes. All landscaping shall consist primarily of native, drought resistant plants as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended Native Plant Species for Landscaping Wildland Corridors in the Santa Monica Mountains, dated November 23, 1988. Invasive, non-indigenous plant species which tend to supplant native species shall not be used.

2. Removal of Excessive Fill

The applicant agrees to remove all excess fill materials in the ravine at the present time. Prior to issuance of the Coastal Development Permit, the applicant shall submit to the Executive Director, the location of the proposed dump site for the excess fill material. Should the dump site be located in the Coastal Zone, a permit shall be required. A total of no more than 118 cubic yards of fill may be in the ravine at the completion of grading.

3. Timing of Completion of Work

The applicant agrees to implement the landscaping and erosion plan, and complete the grading within 90 days of the issuance of the permit. Within this ninety days, all excessive fill shall be removed from the site. Landscaping shall be sufficient to provide 90 percent coverage within 90 days of the completion of grading, and shall be repeated if coverage is not sufficient.

4. Future Development:

Prior to the issuance of the coastal development permit, the applicant shall execute and record a document, in a form and content acceptable to the Executive Director, stating that the subject permit is only for the development described in the Coastal Development Permit No. 4-92-202; and that any future improvements to the property, including but not limited to clearing of vegetation and grading, will require a permit from the Coastal Commission or its successor agency. Clearing of vegetation within 100 feet of structures as required by Los Angeles County for fire protection is permitted. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens.

5. Condition Compliance

All requirements specified in the foregoing conditions that the applicant is required to satisfy as prerequisites to the issuance of this permit must be met within 90 days of Commission action. Failure to comply with the requirements within the time period specified, or within such additional time as may be granted by the Executive Director for good cause, will terminate this permit.

AFTER YOU HAVE SIGNED AND RETURNED THE DUPLICATE COPY YOU WILL BE RECEIVING THE LEGAL FORMS TO COMPLETE (WITH INSTRUCTIONS) FROM THE SAN FRANCISCO OFFICE. WHEN YOU RECEIVE THE DOCUMENTS IF YOU HAVE ANY QUESTIONS, PLEASE CALL THE LEGAL DEPARTMENT AT (415) 904-5200.

SF:tn
6471E

CALIFORNIA COASTAL COMMISSION

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

CERTIFIED MAIL

July 30, 1996

Michael Allen
5959 Busch Drive
Malibu, CA. 90265

Violation File Number: V-4-MAL-96-020

Property Address: 5959 Busch Drive, City of Malibu; Los Angeles County

Unpermitted Development: Streambed alteration including the installation of a culvert, a concrete tank, fill, a retaining wall and fencing.

Dear Mr. Allen:

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. As you are aware from past permit and enforcement action, 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....

You should be aware from past permit and enforcement action that 1) your site is within the coastal zone; 2) the work you performed as noted above is development as defined by Section 30106 of the Coastal Act; and 3) any development performed within the drainage course portion of your site must first receive a coastal development permit. Coastal Development Permit Number 5-89-612 for the construction of your residence included a special condition

requiring the recordation of a future improvements deed restriction. That deed restriction states that any additional work, including additions or improvements to your lot or residence, requires a new coastal development permit.

In June of 1990 our enforcement staff first contacted you regarding the filling of this drainage course. Upon receipt of our letter you stopped work on your site and applied for a permit to fill in the ravine. This permit application, 5-90-661, was denied by the Commission. The Commission then denied CDP application 5-91-836, also for the filling of the drainage course. After entering into a settlement agreement with the Commission which required the payment of a monetary settlement in lieu of civil penalties, and restoration of the drainage course, you submitted coastal development permit application 4-92-202. The Commission approved this application with a maximum of 118 cubic yards of grading. The remainder of the fill on site was to be removed. No structures, with the exception of a culvert and 118 cubic yards of fill were allowed within the drainage course.

You have not met the conditions set forth in the settlement agreement resulting in a default judgement. You have also gone forward and completely filled in the drainage course without first obtaining a coastal development permit from the Commission. You have placed developments on the pad you created and constructed a wall in the drainage course. None of these actions have been approved by the Commission. None of these actions are consistent with the Commission's past permit action on this site, or with the Chapter Three policies of the Coastal Act. We consider these actions to be knowing and intentional violations of the Chapter Three policies of the Coastal Act.

We are obligated to inform you that 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.

The only way to resolve this matter is to:

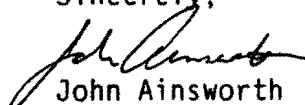
- 1) immediately stop all work on your site which has not been approved under an issued coastal development permit;
- 2) submit to our office no later than August 30, 1996 an application for the removal of all unpermitted developments on your site and restoration of the impacted drainage course; and
- 3) pay the outstanding monetary settlement from the previous settlement agreement.

As coastal development permit 4-92-202 is now expired, you may include in this application a request to do the work originally envisioned in 4-92-202. Please note that your application must be complete and include all necessary attachments as noted in the application form, including, but not limited to, detailed plans showing all development in the drainage course which is to be removed and detailed restoration plans. If we do not receive an application by this date or if your application is incomplete upon submittal we will immediately refer this matter to the Attorney General's office for appropriate legal action.

As a final note, we are obligated to remind you that 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.

Please contact Susan Friend at our office with questions regarding this matter.

Sincerely,


John Ainsworth
Enforcement Supervisor


Susan Friend
Enforcement Officer

encl: CDP Application, Waiver of Legal Argument

cc: Nancy Cave: Coastal Commission Statewide Enforcement Supervisor
G.R. Overton: Attorney General's Office

SPF:JLA/1066V

CALIFORNIA COASTAL COMMISSION

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

**REGULAR AND CERTIFIED MAIL** (Article No. P 121 002 821)

March 21, 1997

Michael Anthony Allen
P.O.Box 6447
Malibu, CA 90264-6447

Violation File No.: V-4-96-020
Property Address: 5958-59 Busch Drive, Malibu, CA 90265
Unpermitted Development: Streambed alteration by installation of a culvert, concrete tank, fill, retaining wall and fencing.

Dear Mr. Allen:

This letter is to inform you that the Coastal Commission's Statewide Enforcement Unit has reviewed the above referenced Violation File concerning the unauthorized development activities on your property in Malibu.

On July 30, 1996 Susan Friend, Enforcement Officer of our South Central Office sent a letter to you notifying you of the violations. The letter was returned with the envelope opened. On September 4, 1996 she sent a second letter to you by certified and regular mail. The certified letter was 'refused' and returned to us. We are unable to ascertain whether you received the letter sent by regular mail, as the letter was not returned and you did not respond to either letter as requested.

This letter serves to notify you of the violations of the Coastal Act due to unpermitted activities which have been undertaken on your property, located within the coastal zone and undertaken without a coastal development permit. As you are aware from past permit and enforcement action, Section 30600(a) of the Coastal Act states that in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person wishing to perform or undertake any development in the coastal zone must obtain a coastal development permit. "Development" under Section 30106 of the Coastal Act is defined as follows:

"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 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 use 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 harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations ...

As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

The following past permit and enforcement actions pertain to your property:

The Commission issued Coastal Development Permit No. 5-89-612 for the construction of a single family residence. This permit included a special condition requiring the recordation of a deed restriction for any future improvements. The deed restriction states that any additional work, including additions and improvements to your lot or residence, requires a new coastal development permit.

In June 1990, Commission enforcement staff first contacted you regarding the unpermitted filling of a drainage course. After receipt of our letter you applied for a permit to fill the ravine. This permit application, no. 5-90-661, was denied by the Commission. A second permit application, no. 5-91-836, for filling of the drainage course was also denied by the Commission. After entering into a settlement agreement with the Commission which required the payment of a monetary settlement in lieu of civil penalties and partial restoration of the drainage course, you submitted coastal development permit application No. 4-92-202. The Commission approved this application with a maximum of 118 cubic yards of grading. The remainder of the fill on site was to be removed and no structures with the exception of a culvert and 118 cu. yds. of fill were allowed within the drainage course.

Through these past permit and enforcement actions you should be aware that:

1. Your property is within the coastal zone.
2. The work performed as noted above is "development" as defined by Section 30106 of the Coastal Act.
3. Any development on your property as per the definition noted above requires a coastal development permit pursuant to Section 30600(a) of the Coastal Act.

As of the date of this letter you have not met the conditions set forth in the settlement agreement and performed additional unpermitted work on your property. Your actions include, but are not limited to, the filling of the drainage course, creation of a pad with horse corrals on the filled area, construction of retaining walls in the drainage course and placement of a concrete holding tank. None of these actions received prior approvals from the Commission and are inconsistent with the Commission's past permit actions on this property.

Sections 30803 and 30805 of the Coastal Act authorize the Commission to initiate legal actions to seek injunctive relief and civil penalties in response to any violation of the Coastal Act. Section 30820(a) of the Coastal Act states that any person who violates any provision of the Coastal Act may be subject to a penalty not to exceed \$30,000. 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 \$1,000 and not more than \$15,000 for each day in which the violation persists.

To resolve this matter you should:


1. Immediately stop all work on your site which has not been approved under a coastal development permit .
2. Submit to our South Central Coast office at Ventura, an application for the removal of all unpermitted developments on your site and restoration of the impacted drainage course.
3. Pay the outstanding monetary settlement from the previous settlement agreement.

The application for a coastal development permit must be complete and include all necessary attachments as noted in the application form, including, but not limited to, detailed plans showing all development which was performed without a coastal development permit and proposed restoration plans. If the three conditions mentioned above are not complied with by April 19, 1997, you may be served a Cease and Desist Order or be sued in court. Coastal Act section 30809 states that if the executive director determines that any person has undertaken, or is threatening to undertake, any activity that may require a permit from the Coastal Commission without first securing a permit, the executive director may issue an order directing that person to cease and desist. Coastal Act section states that the Coastal Commission may also issue a cease and desist order. A cease and desist order may be subject to terms and conditions that are necessary to avoid irreparable injury to the area or to ensure compliance with the Coastal Act. A violation of a cease and desist order can result in civil fines of up to \$6,000 for each day in which the violation persists.

Finally, should you choose for the Commission staff not to refer the file to the Attorney General's office for the commencement of legal action and are willing to resolve the matter administratively, pending Commission consideration of your permit application, please sign the attached waiver of legal argument and return the signed original to me before April 7, 1997.

If you have any questions you can contact me at (415) 904-5295.

Sincerely,



Ravi Subramanian
Coastal Program Analyst
Statewide Enforcement

encl: CDP application, Waiver of Legal Argument

cc: Nancy Cave, Supervisor, Statewide Enforcement, Coastal Co
G.R. Overton, Deputy Attorney General, Department of Justi

P 121 002 821

US Postal Service	
Receipt for Certified Mail	
No Insurance Coverage Provided.	
Do not use for International Mail (See reverse)	
Sent to	Michael Anthony Allen
Street & Number	P.O. Box 6447
Post Office, State, & ZIP Code	Malibu, CA 90264-6447
Postage	\$ 1.61
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 & Addressee's Address	
TOTAL Postage & Fees	\$ 3.21

300 April 1995

CALIFORNIA COASTAL COMMISSION

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

**REGULAR AND CERTIFIED MAIL (Article No. P 121 002 819)**

July 10, 1997

Michael Anthony Allen
PO Box 6447
Malibu, CA 90264-6447

**SUBJECT: Notice of intent to commence Cease and Desist Order proceedings;
Coastal Act Violation File No. V-4-96-020**

Dear Mr. Allen:

This letter is to notify you of the intent of the California Coastal Commission to commence Cease and Desist Order proceedings as a result of unauthorized coastal development activities on your property (APN # 4467-028-034) at 5958-59 Busch Drive in Malibu.

The above referenced violation of the California Coastal Act pertains to development and other conduct which is inconsistent with the special condition requirements of Coastal Development Permits (CDP) No. 5-89-612. The conditionally approved CDP 5-89-612 was for the construction of a 3000 sq.ft. single family dwelling with a 3 car garage, septic system and involved 2,200 cu. yds. of grading (200 cu.yds. cut and 2000 cu.yds. fill).

Special condition No.5 of CDP 5-89-612 required the recordation of a deed restriction for any future improvements. The deed restriction, recorded at the Los Angeles County Recorder's Office (Instrument No. 89-1770247) on November 2, 1989, states that any future development as defined in Public Resources Code (PRC) § 30106, requires a new CDP. The special condition for permit No. 5-89-612 also required the deed restriction to be recorded free of all prior liens or encumbrances. Your then "trustee", Charter Pacific Bank, signed a subordination agreement acknowledging the deed restriction on September 18, 1989. But you did not get the subordination agreement recorded, thereby not fully complying with the special condition requirements of CDP 5-89-612 and therefore with the Coastal Act's permitting authority.

By telephone conversation on July 9, 1990, Commission enforcement staff requested that you halt work on all development inconsistent with special conditions of CDP 5-89-612, namely, 1) grading in the drainage course, 2) installation of pipe and 3) removal of vegetation in the drainage course. On November 11, 1990, Commission staff filed a CDP application received from you to "to fill a large hole in the backyard". On February 2, 1991, the Commission denied this permit application, No. 5-90-661, due to excessive grading and landform alteration being proposed by the project. The Executive Director rejected a subsequent permit application, No. 5-91-290, pursuant to Section 13109 of the California Code of Regulations which precludes re-

application for a CDP for substantially the same development/work within six months of the Commission's action to deny or approve with conditions.

On July 11, 1991, the State Attorney General's office, on behalf of the Coastal Commission, filed a complaint (No. BC032539) against you in the Superior Court of Los Angeles County. On September 18, 1991, you entered into an agreement with the Commission staff and the Deputy Attorney General, to apply for a CDP to restore the site, place a culvert and do minor grading. Commission staff rejected CDP application No. 5-91-745 submitted by you because it was incomplete and inconsistent with the agreement of September 18, 1991. The Commission also denied CDP application No. 5-91-836, for filling the drainage course and installation of a culvert because it was inconsistent with the Coastal Act. On November 14, 1992, after entering into a settlement agreement¹ with the Commission, which required you to pay a monetary settlement in lieu of civil penalties, and to partially restore the drainage course. To carry out the partial restoration, you submitted CDP application No. 4-92-202. The Commission approved this application, limiting allowed grading to a maximum of 118 cubic yards of grading. The remainder of the unpermitted fill on site was to be removed and no structures with the exception of a culvert and 118 cu. yds. of fill were allowed within the drainage course. You failed to comply with the special condition requirements for CDP 4-92-202 by January 11, 1993, resulting in the termination of the permit and a violation of the agreement between you and the Commission staff.

Since February 10, 1994, Commission staff and members of the public have observed additional unpermitted work being performed on your property. The unauthorized development on your property consists of: 1) filling of the drainage course, 2) creation of a pad with horse corrals and fences on the filled area, 3) construction of retaining walls in the drainage course, and 4) placement of a concrete holding tank. These actions received no prior approvals from the Commission and are inconsistent with the Commission's past permit action on this property. Through several oral and written communications, which include, but are not limited to letters dated July 30, 1996, September 4, 1996, and March 21, 1997, Commission staff has recommended that, in order to resolve these recent and earlier violations, you should:

1. Immediately stop all work on your site which does not have the benefit of a coastal development permit.
2. Submit to our South Central Coast office at Ventura, an application for the removal of all unpermitted developments on your site and restoration of the impacted drainage course.
3. Pay the outstanding monetary settlement from the default judgment.


As of the date of this letter you have not met any of the above requirements. As the Commission staff has not received a CDP application after requesting one from you since 1993, staff has decided to commence a proceeding to request the Commission to issue a Cease and Desist Order pursuant to Coastal Act Section 30810. This order would require you to cease and desist from engaging in any further development activity at the subject property without first obtaining a Coastal Development Permit to authorize such activity. The order would also prevent you from

¹ As the agreement was not satisfied, a default judgment was entered on October 21, 1993, for \$9,195.59 plus simple interest at 15% per annum on the unpaid balance of \$6,900 from September 1, 1993, until paid. On November 8, 1993, the DAG recorded with the County of Los Angeles an abstract of the judgment which required not only monetary payments, but also compliance with the CDP.

continuing to maintain any current development at the property that is in violation of previously issued permit(s) or the Coastal Act.

In accordance with the Commission regulations, you have the opportunity to respond to the staff's allegations as set forth in this notice by completing the enclosed Statement of Defense form. California Code of Regulations, Title 14, Section 13181(a) requires the return of a completed Notice of Defense. **The completed Statement of Defense form must be received by this office no later than August 11, 1997.** Should you have any questions, please contact Ravi Subramanian at (415) 904-5295.

Sincerely,


Ralph Faust
Chief Counsel

encl.: Statement of Defense form

cc (without enclosure):

Susan Friend, Enforcement Officer, South Central Coast Area Office, Coastal Commission
John Ainsworth, Enforcement Supervisor, South Central Coast Area Office, Coastal Commission
Nancy Cave, Supervisor, Statewide Enforcement Program, Coastal Commission
G.R. Overton, Deputy Attorney General, Land Law Section, Department of Justice

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- 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):

- 1. ☐ Addressee's Address
- 2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:
Michael Allen
P. O. Box 6447

MALIBU, CA 90264-6447

4a. Article Number
P 121 002 819

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

7. Date of Delivery

5. Received By: (Print Name)

6. Signature: (Addressee or Agent)

X

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

Thank you for using Return Receipt Service.

P 121 002 819

US Postal Service

Receipt for Certified Mail

No Insurance Coverage Provided.

Do not use for International Mail (See reverse)

Sent to Michael Anthony Allen

Street & Number
P. O. Box 6447

Post Office, State, & ZIP Code
MALIBU, CA 90264-6447

Postage \$ 2.75

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, & Addressee's Address

TOTAL Postage & Fees \$ 2.75

3800, April 1995

Exhibit #6

CCC-97-CD-06

Page 3 of 7
Michael Allen

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 (please use additional pages if necessary) and return it no later than **August 11, 1997** to the Commission's enforcement staff at the following address:

**Ravi Subramanian, Legal Division,
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105**

If you have any questions, please contact **Ravi Subramanian** at (415) 904-5295.

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):

Michael Anthony Allen
July 10, 1997

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

3. Facts or allegations contained in the cease and desist order or notice of intent of which you have no personal knowledge (with specific reference to paragraph number in such document):

Michael Anthony Allen
July 10, 1997

4. Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any document(s), photograph(s), map(s), letter(s), or other evidence that you believe is/are relevant, please identify it/them by name, date, type, and any other identifying information and provide the original(s) or (a) copy(ies) if you can:

5. Any other information, statement, etc. that you want to offer or make:

Michael Anthony Allen
July 10, 1997

6. Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to this form to support your answers or that you want to be made part of the administrative record for this enforcement proceeding (Please list in chronological order by date, author, and title, and enclose a copy with this completed form):

To: California Coastal Commission

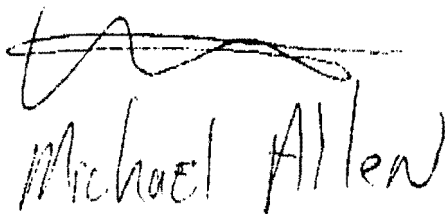
From: Michael Allen

Date: Oct. 6 1997

RE: Postpone hearing.

To Ravi Subramanion

As per our phone conversation I am requesting a postponement unit the November hearing. I am in Detroit at this time and have just received notice today and cannot make this hearing.



Michael Allen

John S. Cary
Wendy Cary
5960 Busch Drive
Malibu, California 90265

April 4, 1996

California Coastal Commission
89 South California Street
Ventura, California 93001

Attn: Susan Friend

RE: 5958 Busch Drive, Malibu, CA 90265

Dear Susan,

I've been somewhat remiss in sending this letter to you after our conversation regarding Michael Allen at the above address. I had planned on doing it this weekend, but as I looked out the window I saw a crew working on the retaining wall in direct violation of yours and the City of Malibu's stop order. I am amazed at his total contempt for the laws that govern building and other individual's property.

My concerns regarding the permit violations and the work in the creek bed are a matter of record and have been stated at numerous coastal hearings regarding the property. His blatant disregard for the properties adjacent to his parcel is also a matter of record.

What concerns me is the work that has been done with the culvert. There are four areas; 1. The culvert was put in at an elevation higher than approved in the permit by approximately five(5) feet. 2. The inlet is three(3) feet above our property elevation. 3. The fill in the creek is several hundred yards more than approved. 4. The retaining wall is being done without a permit and does not meet minimum requirements.

The excess dirt and high inlet has created a problem on our property. When it rains a pond develops in that area approximately 30' x 40' and 1 1/2' deep. If he completes the retaining ring around the inlet the pond will be approximately 3' deep. I see several problems with the pond. (1) We have a lot of young kids in the neighborhood who have played in the pond and I have had to ask them not to. My fear is that a child may fall into the pond and drown. (2) The pond stays there long enough to where we have mosquitoes and since his septic is not working properly the pond develops a distinct aroma. (3) I am unable to do anything now on that part of the property and my fence has fallen down because of the high water level.

RECEIVED

APR - 9 1996

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

John S. Cary
Wendy Cary
5960 Busch Drive
Malibu, California 90265

I have replaced it once and unless the problem is corrected will probably have to replace it again. The inlet opening should be placed below our property level as required in the original permit.

On the south side of the property where the retaining wall is being built there are several problems. I asked the Haggstroms, who own the property to the south, to write a letter detailing the damage to their property. As they are going through a very complicated divorce they declined to do so at this time. Wendie Haggstrom volunteered to let us have the pictures she took showing before, during and after the damage. If you would like these pictures I would be more than happy to get you copies. The majority of the damage to their property occurred when the fill was eroded by the rains last year. They lost their fence and many of their plants. A temporary fence has been put up and to all our surprise Allen has paid for it. What concerns the Haggstroms is the retaining wall. Mr. Allen has created a situation by not complying with the original permit which necessitates some type of retaining wall. Mr. Allen does not have a permit for a retaining wall. If necessary Mr. Allen needs to comply with the original terms of the permit. If this requires tearing out the work done, then it must be done. They feel the inadequate footings are a bomb waiting to go off. In other words, the wall falling on their property and destroying the fence and damaging their children's playhouse.

I also have many pictures taken showing the damage, many of which have been shown at Coastal Commission hearings. They are available for you at any time.

Our desire is that the work be done correctly and through proper channels. Our request to the Coastal Commission is that Mr. Allen be forced to comply with the specifications of the original permit. This may necessitate an independent engineering study and removal of the work already completed. The Cary family and the Haggstrom family would obviously like to make sure that any improvements Mr. Allen makes to his backyard do not impinge upon or affect their property in a negative manner. We are concerned for our safety and want to make sure that the work Mr. Allen does on his property does not materially affect ours in a negative way. If that requires Michael Allen to completely redo the work then he should be required to do so and under strict supervision, considering his past performance.

Very truly yours,



