

CALIFORNIA COASTAL COMMISSION

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



Filed: 04/17/98
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 Staff: SMB-VNT/*fe*
 Staff Report: 05-13-98
 Hearing Date: June 9, 1998
 Commission Action:

STAFF REPORT: REGULAR CALENDAR**APPLICATION NO.:** 4-97-255**APPLICANT:** Jack Malki and Amir Tahmasebi**AGENT:** Stephen Bacchetti**PROJECT LOCATION:** 5807 Busch Drive, City of Malibu; Los Angeles County**PROJECT DESCRIPTION:** The removal of a 30 inch diameter culvert, 8 foot wide concrete energy dissipater, and 3,500 cu. yd. of fill, and revegetation of the site.

Lot area:	3.0 acres
Project density:	1 du/ 3 ac. approved
Plan designation	1 du/ 2 ac

LOCAL APPROVALS RECEIVED: Approval-in-concept from the City of Malibu

SUBSTANTIVE FILE DOCUMENTS: Malibu/ Santa Monica Mountains Land Use Plan; Coastal Development Permit 5-90-533 (Tahmasebi); Coastal Development Permit 5-90-1113 (Tahmasebi); Emergency Permit 4-92-206-G (Tahmasebi); Coastal Development Permit 4-92-206 (Tahmasebi); Restoration Order 4-92-206RO (Tahmasebi); Coastal Development Permit 4-95-067 (Tahmasebi); Restoration Grading Plan by Stephen Bacchetti dated April 4, 1996; Restoration Planting Plan by Renee Ellis dated August 1, 1997.

SUMMARY OF STAFF RECOMMENDATION:

The applicant is proposing to remove an existing 30-inch diameter culvert, 8-foot wide concrete energy dissipater, and 3,500 cu. yd. of fill from the site. Also, the applicant proposes to revegetate all disturbed areas on the site with plant species native to the Malibu/ Santa Monica Mountains area. Staff recommends that the Commission approve the project with special conditions requiring the implementation of the revegetation plan, monitoring of the site, erosion control plans, removal of excavate materials, and condition compliance.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit, subject to the conditions below, for the proposed development on the grounds that the development, as conditioned, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local governments having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. 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 this permit is reported to the Commission. 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.

III. Special Conditions.

1. Implementation of the Restoration Grading and Revegetation Plans

The applicant shall implement the restoration grading and revegetation measures of the Restoration Grading Plan prepared by Stephen Bacchetti dated April 4, 1996 (Exhibit 3) and the Restoration Replanting Plan prepared by Renee Ellis dated August 1, 1997 (Exhibit 5) in accordance with such plans. The applicant shall remove the unpermitted fill and structures as shown on the Bacchetti Grading Plan (Exhibit 3), and complete implementation of the proposed Revegetation Plan within 60 days of the issuance of the coastal development permit. The Executive Director may grant additional time for good cause.

2. Restoration and Revegetation Monitoring and Maintenance Program

Prior to the issuance of the coastal development permit, the applicant shall submit for the review and written approval of the Executive Director, a five-year monitoring and maintenance program prepared by a qualified biologist or resource specialist to ensure the successful restoration and revegetation of the site. The plan shall include a maintenance criteria for weeding, replanting, and other mid-course correlations. The applicant shall implement the monitoring and maintenance measures in accordance with the approved plans.

The applicant shall submit to the Executive Director annual reports on the status of the restoration and revegetation program, prepared by a qualified restoration specialist or biologist with an expertise in restoration. These reports shall be submitted to the Executive Director no later than the first of May each year. The first report shall be required at the end of the 1998-1999 rainy season, but no later than May 1, 1999.

The annual report shall outline the successes and failures of the revegetation and restoration project and include recommendations for additional restoration measures if necessary. If the consulting biologist determines that additional or different plantings are required, the applicant shall be required to install such plantings by the beginning of the rainy season of that year (November 1). If at the completion of the fifth year of monitoring, the consulting specialist determines that the revegetation and restoration project has in part, or in whole, been unsuccessful the applicant shall be required to submit a revised supplemental program remedy those portions of the original program which were not successful. The revised or supplemental restoration program shall be processed as an amendment to the original coastal development permit.

3. Interim Erosion Control Plan and Post Construction Monitoring

Prior to the issuance of the coastal development permit the applicant/ landowner shall submit, for the review and written approval of the Executive Director, an interim erosion control plan for the areas disturbed by grading activities, prepared by a licensed contractor or engineer. These plans shall include interim post construction erosion control measures, such as sand bagging, silt fencing, jute netting or other best management practices, to minimize erosion until the native plant level is established.

The applicant shall implement the erosion control measures in accordance with the approved final interim erosion control plan.

The applicant shall have a licensed engineer examine the recreated drainage channel after the first rains following the completion of construction, and shall annually inspect the drainage channel after each rainy season for a period of 5 years. Following each inspection the engineer shall prepare a report for submission to the Executive Director by May 1 addressing the effectiveness of the recreated channel, any unforeseen erosion resulting from the reengineered channel, and any recommendations for repair or remediation of such erosion. Should the consulting engineer find any significant erosion has occurred within or downstream of the recreated channel, the applicant shall repair or remediate the erosion. Substantial alteration of the stream channel or construction of any velocity reducing structures shall require an amendment to this permit or a new coastal development permit.

4. Removal of Excavated Material

Prior to the issuance of the coastal development permit, the applicant shall provide, for the review and approval of the Executive Director, the location of the proposed disposal site for excavated fill. All excavated materials from the proposed project shall be removed from the subject site and disposed of at the approved disposal site. If the disposal site is located in the Coastal Zone, a coastal development permit shall be required.

5. Condition Compliance

Within 45 days of Commission action on this coastal development permit application, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

IV. Findings and Declarations:

A. Project Description and Background

The applicant is proposing to remove the existing unpermitted 30 inch diameter culvert, 8 foot wide energy dissipater, and 3,500 cu. yd. of fill; and restore the site to its pre-violation condition. Restoration of the site will include recontouring the slope to the natural topography, the removing all non-native species, and revegetating the disturbed area with plant species native to the Malibu/ Santa Monica area. The revegetation plan will provide 90% native cover of the disturbed areas within five (5) years. The applicant has submitted a Restoration Grading Plan by Stephen Bacchetti and a Restoration Planting Plan by Renee Ellis, which has been reviewed by the City of Malibu's biologist, and has received an "Approval-in-Concept" from the City of Malibu's planning

department (Exhibit 3 & 5). No additional grading beyond the removal of the unpermitted fill is proposed.

The 3.0-acre property is located on southwest descending slopes east of Trancas Canyon. The subject site extends 610 feet along Busch Drive, and 280 feet along Harvester Road (Exhibit 1,2). Elevations within the site range from approximately 288 feet to 205 feet above mean sea level and the maximum slope gradients on the site are 2:1. The subject site contains two drainage courses that drain into the Pacific Ocean at Zuma Beach. The drainage course located on the west property line is mapped as a blue line stream on the USGS geographic survey maps and was not directly disturbed by grading on site. The other drainage course, which is a tributary to blue line stream to the west, has been altered with the placement of the unpermitted culvert, concrete energy dissipater, and fill (Exhibit 3).

Prior to the placement of the unpermitted development, the drainage course began on the north east corner of the site and drained off-site into the canyon. Within the canyon ravine, the drainage course intersects with the blue line stream. There is also a small culvert under the intersection of Harvester Road and Busch Drive that drains onto the property. Because this area has been modified by development, there is no clearly defined drainage area on the property across from the applicants' property. Thus, it appears that the drainage course begins on the applicants' property and continues onto the adjacent southern property where it flows into the blue line stream.

There is significant erosion in the drainage course below the unpermitted grading and there has been an invasion of non-native plants both on and below the velocity reducing structure constructed in the drainage course (Exhibit 3). The unpermitted fill on site has been compacted; however, due to the steepness of the lot and the drainage patterns on site, a significant amount of erosion has occurred. Moreover, the current energy dissipater is ineffective in controlling water velocities. The concrete structure has increased the velocity of water flow on each side of the energy dissipater and, as a result, there is currently extensive erosion surrounding the dissipater.

In April of 1990, without the benefit of a coastal development permit, Mr. Tahmasebi installed the culvert and energy dissipater, and imported approximately 3,800 cubic yards of fill on site. The project was stopped by Commission enforcement staff prior to total compaction of the imported fill. In response to the violation notice by the Coastal Commission, Mr. Tahmasebi submitted coastal development permit application 5-90-533 for the importation of 9,000 cubic yards of dirt to fill the entire subject drainage course and install a culvert and energy dissipater. The purpose of this fill was to create an additional flat building pad for a single-family residence on the fill. The applicant was not, however, proposing to construct the residence at that time; only the grading. The Commission denied this permit in September of 1990 based on excessive grading and landform alteration. Subsequently, Mr. Tahmasebi submitted a new application, which reduced the amount of grading to 5,000 cubic yards. The height of the fill slope was not altered by this change in fill. Instead, the applicant was proposing to shorten and steepen the fill slope that leads to the blue line stream. The applicant also proposed to move the future building site to an alternative building site west of the proposed site and use the fill to create a backyard. The Commission denied this proposal (5-90-1113) in June of 1991.

On November 25, 1991, after the second denial by the Commission, the Commission sued Mr. Tahmasebi in Los Angeles Superior Court for violations of the Coastal Act (California Coastal Commission vs. Amir Tahmasebi: Case No. SC013548). On August 31, 1992, pursuant to a settlement agreement, the Superior Court entered judgment. The judgment required the applicant, among other things, to seek an emergency permit for the removal of any sediment in the blueline stream, for the restoration of the blueline stream as needed, and for the temporary stabilization and compaction of the fill stockpiled near the drainage area. This emergency permit, G4-92-206 (Tahmasebi), was granted to the applicant on November 23, 1992. The compaction of the fill was completed in January of 1993. The judgment also required that the applicant submit an application to the Commission for the work approved in the emergency permit and for a single-family residence. The judgment issued specifically provides that the Commission is not bound to approve the proposed development and may require changes to the proposal including an alternative site for the residence and/or any necessary restoration to bring the site into conformance with the Coastal Act (Exhibit 7).

Pursuant to the terms of the judgment, the applicant submitted coastal development permit application 4-92-206 (Tahmasebi) for the construction of a single-family residence, the installation of the culvert and a total of 6,300 cubic yards of grading. The Commission, in November of 1994, approved that portion of the development allowing for the residence with 2,500 cubic yards of recompaction with special conditions regarding the submittal of landscaping and fuel modification plans; drainage and erosion control plans; revised plans moving the residence and the septic system off the fill and to a more suitable location; the recordation of a future improvements deed restriction and a wild fire waiver of liability; and plans conforming to the geologist recommendations. The Commission, also, in the same permit application, denied that portion of the development which requested the placement of the culvert, energy dissipater, and 3,800 cubic yards of fill in a drainage course which leads directly to a blueline stream.

The applicant never satisfied the special conditions for that portion of the permit that was approved and as a result the permit has expired. The Commission followed the denial portion of the permit, at the same November 1994 hearing, with a restoration order [4-92-206RO (Tahmasebi)] requiring the applicant to submit, within 60 days of the issuance of the order, a coastal development permit application for the removal of the culvert, energy dissipater, and all fill and the restoration of the impacted area (Exhibit 6). Thus, the Commission determined that the culvert and fill were not in conformance with the Chapter Three policies of the Coastal Act, should therefore be removed, and the site restored to its pre-violation status.

Instead of complying with the Commission's issued restoration order which required the removal of the 3,800 cubic yards of fill, the culvert and the energy dissipater, the applicants applied for improvements to the unpermitted development at the base of the fill and culvert [CDP 4-95-067 (Tahmasebi)]. Specifically, the applicants proposed to improve an unpermitted culvert with improvements to the unpermitted energy dissipater, install rip-rap along the side and below the energy dissipater, and plant ground cover on the unpermitted fill slope above the culvert. The improvements to the energy dissipater included widening the dissipater from eight feet to approximately 20 feet, adding curbs

on the side, and adding velocity-reducing battens on the concrete face of the energy dissipater. The applicant was silent as to the removal of the fill and culvert. On October 12, 1995 the Commission voted unanimously to deny the project.

On March 16, 1998, as a result of the Commission's motion to enforce the stipulated judgment entered by the Court in California Coastal Commission v. Tahmasebi (Los Angeles Superior Court No. SC013548), the court ordered the Defendant to file a complete restoration coastal development permit application with the Commission within twenty (20) days of the issuance of the order (Exhibit 8). Based on Mr. Tahmasebi's unexcused failure to comply with the judgment, the court also granted the Commission's request for the imposition of \$15,000 in penalties and \$950 in attorney's fees pursuant to paragraph 12 and 13, respectively, of the judgment. On May 7, 1998, Mr. Tahmasebi appealed each provision of the court's order enforcing the judgment.

B. Grading and Environmentally Sensitive Resources

The Coastal Act policies, which pertain to the development standards of coastal resources, include the following:

Section 30231:

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 30240:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Section 30251:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal

areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Section 30253:

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 proposed project is located within a drainage course, which is a tributary to a blueline stream. Section 30251 of the Coastal Act mandates the minimization of landform alteration. Section 30240 of the Coastal Act calls for the preservation of areas adjacent to and within environmentally sensitive resource areas (ESHAs), and Section 30231 of the Coastal Act mandates that development minimize the alteration of natural streams and protect the biological productivity and quality of coastal waters. Finally, Section 30253 of the Coastal Act requires that new development shall neither create nor contribute to erosion, geologic instability, or destruction of the site or surrounding sites.

The subject site is located on the eastern portion of a descending canyon slope east of Trancas Canyon. Prior to the placement of unpermitted development, the site gradually sloped southwest into a ravine. At the corner of Harvester Road and Busch Drive began a natural drainage course that bisected the property and emptied into a blueline stream located in the ravine. In 1990, the drainage course on the property was leveled with the placement of unpermitted fill. The unpermitted fill and unpermitted structures altered the topography of the site from a steadily descending slope to a steep drop off that lead into the ravine. The unpermitted structures consisted of a concrete energy dissipater and a culvert placed under the fill. As a result of these structures, a large amount of erosion has occurred at the end of the culvert and around the energy dissipater, threatening both the blueline stream and the adjacent property.

Removal of Unpermitted Development

The placement of fill in the drainage course has adversely impacted the drainage course and the blue line stream by increasing erosion and siltation, and negatively affected the natural processes and functions of the drainage course. The existing fill above the culvert has altered the topography of the site from a sloping canyon to a steep drop that leads into the ravine. By increasing the steepness of the slope the water flow patterns

have caused an increase in the velocity of water runoff. The increase in water runoff has resulted in an increase in erosion both on the subject site and on the adjacent property. Erosion from the site has caused an increase in the amount of soil materials that flow into the drainage course, which has led to an increase of sedimentation in the drainage course and the blue line stream of which this drainage is a tributary.

The applicant is proposing to remove all existing unpermitted development including the culvert, energy dissipater, and the 3,500 cu. yd. of fill. In determining the consistency of the project with sections 30251, 30253 and 30240 of the Coastal Act, the Commission must address whether the restorative grading minimizes the landform alteration of the site, assures site stability, and whether any environmentally sensitive habitat areas are adversely affected by the removal of the fill and structures. The applicant has submitted grading plans, which have been reviewed and approved by a licensed engineer (Exhibit 3). The proposed grading will reconstruct the topography of the property to its natural contours and allow for a more natural drainage course. However, future erosion of the recreated channel and the adjacent channel is of concern given that the finished slope is proposed at a grade of 2:1 and that erosion is currently occurring immediately downstream of the existing velocity reducing structure. The proposed project plans submitted by the applicant do not include any measures for interim erosion control for the period between construction and adequate growth of sufficient ground cover to ensure site stability. These short-term erosion control measures would include sandbagging, silt fencing, jute netting and other types of geotextiles. Therefore, the Commission finds it is necessary to require the applicant to submit an interim erosion control plan as specified in special condition #3 in order to find the proposed project is consistent with Section 32053 of the Coastal Act.

In addition, the recreated channel will involve the recompaction of the soils at a slope of 2:1 and will increase water velocities within the new stream channel. If these run off velocities are not reduced, erosion of the recreated channel and adjacent blue line stream will occur. Revegetation of the channel in the long term should adequately reduce the velocity of runoff in the channel. However, to ensure the recreated channel design does not result in any additional erosion, the Commission finds it necessary to require post-construction monitoring of the new channel by a licensed engineer after the first rains following construction and annually for a period of five (5) years. If the engineer finds significant erosion occurring within the channel the applicant/ landowner shall be responsible for any repairs or restoration of the channel.

Furthermore, excavated materials left on the site can conceivably cause additional landform alterations. These materials could potentially run into the natural drainage course and the blue line stream causing additional sedimentation. Section 30231 of the Coastal Act requires that projects minimize alteration of natural streams. In order to guarantee that all excavated materials are removed from the site the Commission finds it essential that the applicant obtain the Executive Director's approval of the location of the disposal site prior to the issuance of the permit, as specified within Special Condition 4. If the disposal site is located in the Coastal Zone, a coastal development permit shall be required.

Revegetation

The placement of the culvert and fill removed native vegetation and opened the seed bank for numerous non-native invasive plants to grow. The applicant has submitted a Restoration Replanting Plan, prepared by Renee Ellis, a licensed landscape architect, dated August 1, 1997 which has been reviewed and approved by the City of Malibu's Planning Department (Exhibit 5). Within the area disturbed by the placement of unpermitted development, the applicant proposes to remove all exotic landscape plants and revegetate the area with native plants and trees. The plan proposes to revegetate the disturbed area with one gallon potted stock of trees, shrubs, and perennials. In reviewing the project for consistency with sections 30231, 30240, 30251 and 30253 of the Coastal Act, the Commission finds that restoration of the site will restore the native vegetation and minimize erosion and visual impacts created by the unpermitted development. The proposed project will also restore an altered drainage course and mitigate erosion hazards resulting from unpermitted development. By recreating the drainage channel the velocity of water run-off will be altered. Restoring the native plant species within that area will reduce the rate of water run-off, thus decreasing the risk of erosion and sedimentation to the blueline stream.

The Restorative Replanting Plan prepared by Renee Ellis includes a proposed five (5) year monitoring program. However, to ensure that the restoration plan is successful, and the monitoring plan is carried out the Commission requires the applicant to submit annual reports to the Executive Director, which shall include any recommendations for modifications to the project if the initial restoration efforts fail. The details of restoration and revegetating monitoring are outlined in Special Condition 2.

Furthermore, to ensure the property has proper drainage and erosion control during the early stages of vegetation growth, the Commission finds it necessary to require the applicant to submit an interim erosion control plan and post construction monitoring plan as specified in special condition 3. These plans must address those measures the applicant proposes to take to stabilize the site and minimize erosion while the revegetated plants are in the early growing stages. In order to guarantee that the recreated site will be stabilized and the restoration plan will reduce erosion and sedimentation into the stream, the Commission is requiring the applicant to monitor the site. A report shall be submitted to the Executive Director by May 1 every year for a period of 5 years, which describes the effectiveness of the restoration project and any recommendations for repair or remediation of erosion. Should the consulting engineer find any erosion occurring on site or downstream as a result of the project the applicant/ landowner shall be responsible to take proper measures such as restoration or repair of the channel in accordance with the engineer's recommendations.

Due to the adverse effects the existing unpermitted development is causing on the site and the surrounding properties, the Commission finds that this permit can only be approved with special conditions relating to the timing deadlines. Special Condition 5 requires the applicant to submit the required information to satisfy the prerequisite conditions of the permit within 45 days of the Commission's action on this permit. In addition, to ensue that this restoration project is carried out in a timely manner, the Commission finds it necessary to require the applicant to implement the Restoration

Replanting Plan within 60 days of the issuance of the permit as noted in Special Condition 1.

The Commission finds that by removing all unpermitted structures from the site including the culvert, energy dissipater, and fill the proposed project will restore the site to its natural condition and will minimize landform alteration, protect the quality of a blueline stream, and will not contribute to erosion of the site or surrounding area as required per sections 30231, 30240, 30251, and 30253 of the Coastal Act. In order to guarantee that the proposed project will be carried through in a timely manner the Commission recommends approval of the project with special conditions 1 and 5 which require the applicant to fulfill all special conditions within 45 days of the approval of the permit and implement the restoration and revegetation plan within 60 days of the issuance of the permit. In order to protect the site from additional landform alteration as required per section 30253 of the Coastal Act, Special Condition 4 requires the applicant to dispose of the excavated fill at an approved disposal site. In addition, Special Condition 2 requires a monitoring program for the restoration and revegetation of the site consistent with section 30231 of the Coastal Act which requires projects to minimize the effects of waste water discharges and entrainment, and minimize alteration of natural streams. Furthermore, Special Condition 3 requires an interim erosion control plan and post construction monitoring program to limit the amount of erosion and sedimentation that enters the drainage course and blueline stream as required under section 30240 of the Coastal Act. The Commission finds that only as conditioned will the proposed project be consistent with the Coastal Act.

C. Violation

Unpermitted development has taken place prior to submission of this permit application including the placement of a culvert, energy dissipater, and 3,500 cu. yd. of fill. The applicant is now proposing to remove all unpermitted development and restore and revegetate the canyon bluff. To ensure that the restoration project is carried out in a timely manner, Special Condition four (4) requires that the applicant satisfy all conditions of this permit which are prerequisite to the issuance of the permit within 45 days of the Commission action. In addition, Special Condition one (1) requires that the applicant implement the restoration plan within 60 days of the issuance of the permit.

Consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of the permit does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a Coastal permit.

D. Local Coastal Program

Section 30604 of the Coastal Act states that:

- a) *Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal,*

finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the project and accepted by the applicant. As conditioned, the proposed development will not create adverse impacts and is found to be consistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the proposed development as conditioned will not prejudice the City of Malibu's ability to prepare a Local Coastal Program which is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

E. CEQA

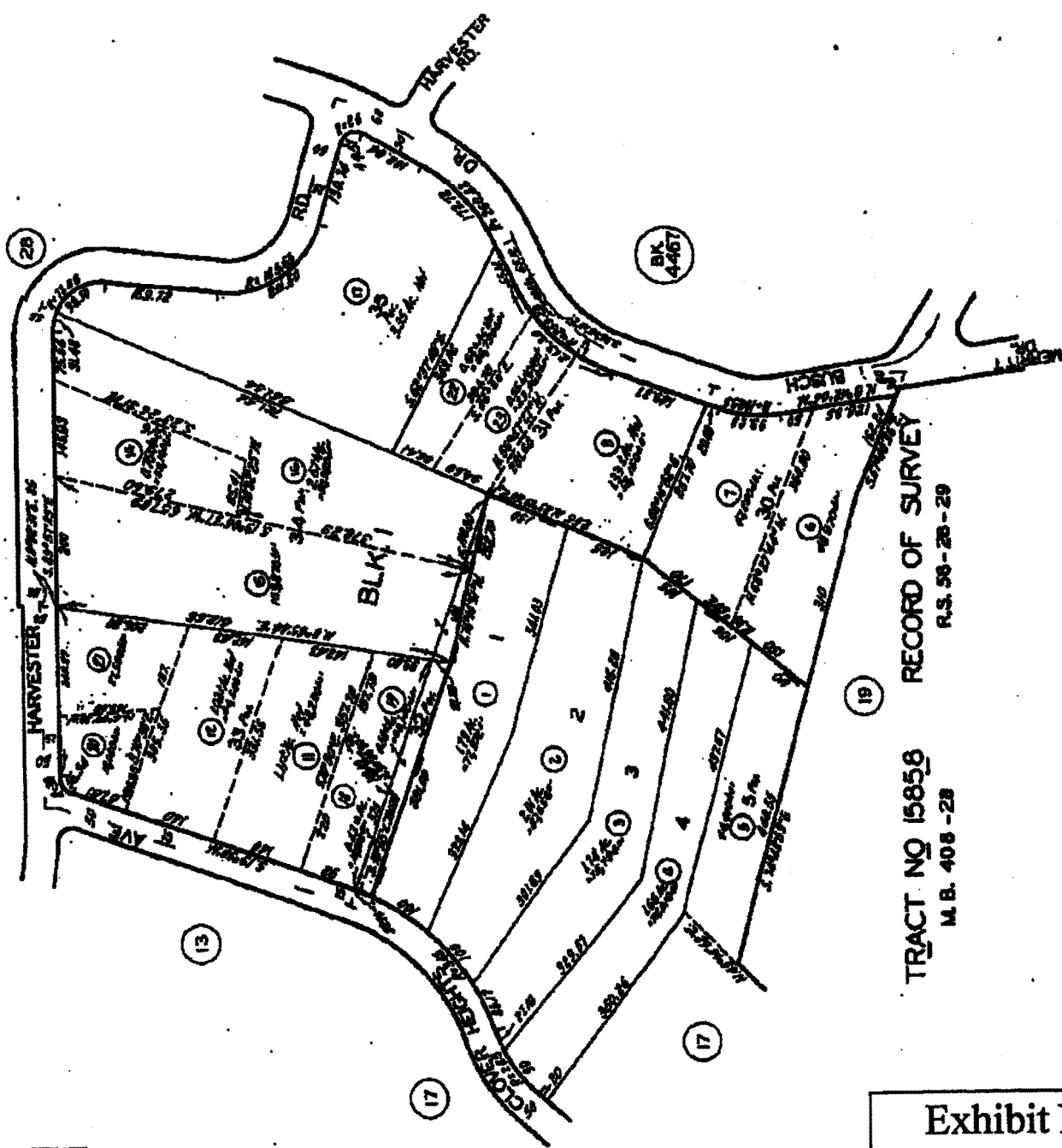
Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effects that the activity may have on the environment.

The proposed project, as conditioned will not have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project, as conditioned, has been adequately mitigated and is determined to be consistent with CEQA.

Reviewed
9-21-55
T.M.A.N.S.A.

4-7-65
67011
69021
70011
74003
38006

ASSESSOR'S MAP
COUNTY OF LOS ANGELES, CALIF.



4469	12
SCAL 1" = 150'	

1992

TRACT NO 15858
M.B. 405 - 28
RECORD OF SURVEY
R.S. 58-28-29

Exhibit No. 2
4-97-255
(Malki/Tahmasebi)
Parcel Map

PLANT LEGEND

SYMBOL	BOTANICAL NAME	COMMON NAME	REMARKS
⊙	ALBIZIA DISTACHYA	PLUME ALBIZIA	NATIVE
⊙	EUCALYPTUS GLOBULUS	BLUE GUM	NON-NATIVE
⊙	MALVA PARVIFLORA	CHEESEWOOD	NON-NATIVE
⊙	NICOTIANA GLAUCA	TREE TOBACCO	NON-NATIVE
⊙	PENNISETUM SETACEUM	FOUNTAIN GRASS	NON-NATIVE
□	BRASSICA PENNISSETUM VILLOSUM	MUSTARD FEATHERTOP, WHITE- FLOWERING FOUNTAIN GRASS	NON-NATIVE INVASIVE WEEDS
▨	PLICINUS COMMUNIS	LASTOR BEAN	NON-NATIVE POISONOUS
■	SACCHARIS PILLULARIS PRUNUS LYONII PRUNUS LAURINA MALVA PARVIFLORA NICOTIANA GLAUCA PENNISSETUM VILLOSUM	COYOTE BRUSH CATALINA CHERRY LAUREL SUMAC	NATIVE NATIVE NATIVE NON-NATIVE NON-NATIVE NON-NATIVE

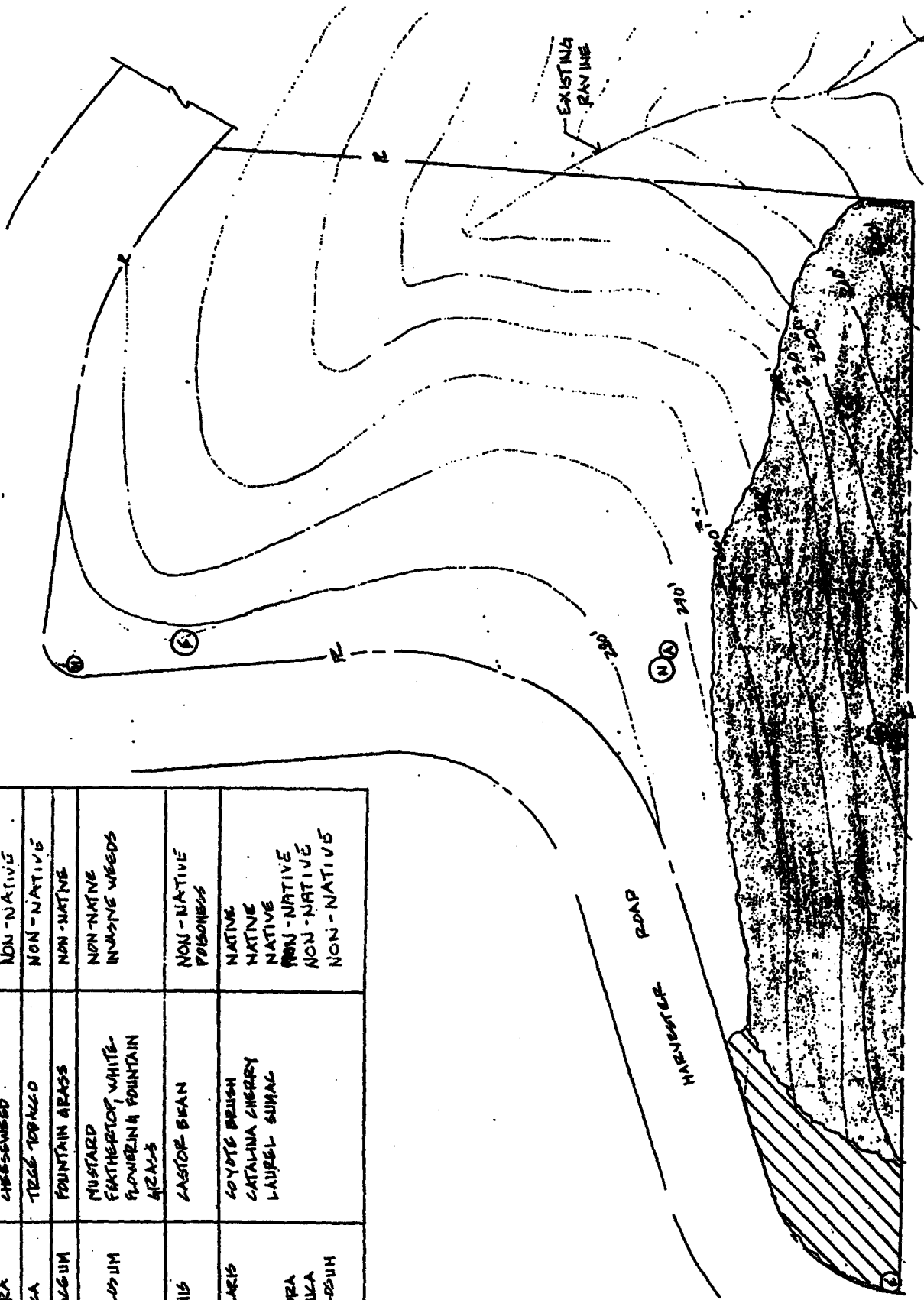


Exhibit No. 4
4-97-255
(Malki/Tahmasebi)
Existing Vegetation

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., 2ND FLOOR
VENTURA, CA 93001
(805) 641-0142

Staff: SPF-VNT
Staff Report: 10-26-94
Hearing Date: Nov 15-18, 1994
Commission Action:



STAFF REPORT: REGULAR CALENDAR
RESTORATION ORDER

WII

APPLICATION NO.: 4-92-206-RO

OWNER: Amir Tahmasebi

AGENT: Steven Bacchetti

RESTORATION LOCATION: 5807 Busch Drive, City of Malibu; Los Angeles County

RESTORATION DESCRIPTION: Removal of a culvert and 3,800 cubic yards of fill. Restoration of the drainage area including recontouring the slope to the natural topography and revegetation of all disturbed areas.

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permit Applications 64-92-206 (Tahmasebi) and 4-92-206 (Tahmasebi).

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission, as a non-exclusive enforcement remedy based on its partial denial of CDP 4-92-206 (Tahmasebi), approve the following restoration order because the development has occurred without the benefit of a coastal development permit, is inconsistent with landform alteration, environmentally sensitive habitat area and geologic stability policies of the Coastal Act, and it is causing continuing resource damage by increasing siltation of a blue-line stream, decreasing the habitat value of a blue-line stream and its tributary, and causing ongoing erosion of a tributary to a blue-line stream.

I. RESTORATION ORDER

Pursuant to its authority under California Public Resources Code Section 30826, the California Coastal Commission hereby orders Mr. Amir Tahmasebi, all of his agents, and any other persons acting in concert with the foregoing to fully comply with paragraphs A, B, and C as follows:

A. Restore the property (as further described below) to the condition it was in prior to the undertaking of the development activity (as further described below) in violation of the California Coastal Act of 1976. Specifically, the applicant shall remove the culvert, any drainage devices at the terminus of the culvert, and all fill within and adjacent to the drainage course; return the topography to its natural contours; and restore the vegetation to its

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Restoration Order

natural riparian and chaparral vegetation consistent with the adjacent downstream vegetation of the stream.

B. Within sixty days of the date of this order, the owner shall submit to the Commission, for its review and approval, a complete coastal development permit application for the removal of the culvert, and all fill within and adjacent to the drainage course, and restoration of the site to its pre-violation condition as described in Paragraph A above. The application shall include the following:

1. Detailed plans showing the removal of the culvert, any existing drainage devices at the end of the culvert and all fill. These plans shall specify the methods and techniques for removal of all unpermitted development, and an estimation as the time required to complete this portion of the project.

2. A restoration plan to return the topography to its natural contours and revegetate the area as it previously existed with riparian and chaparral plants consistent with the vegetation further downstream. The restoration plan shall include all of the following items:

- A. A preliminary biological survey of the site and the adjacent riparian areas with a description of the native habitat and a list of the existing trees, shrubs, and herbs associated with this habitat;

- B. Technical specifications for the implementation of the proposed plan including a schedule of activities, a final list of plant materials, and description of the methods to be used during implementation of the plan. The specifications shall require, to the greatest extent possible, that all biological materials used on the project site be of local origin; that is, that seeds, cuttings, salvaged plants, microorganisms, and top soil originate on site or from the nearest possible source that matches the site in climatic and biologic factors. The specifications shall also include maintenance criteria for weeding, re-planting and other mid-program corrections.

- C. A monitoring program detailing the proposed timelines for beginning work and completing the project. This report shall include further recommendations and requirements for additional restoration activities should the initial plan fail.

C. Fully comply with the terms and conditions of the above required coastal development permit as approved by the Commission.

II. IDENTIFICATION OF THE PROPERTY

The property which is the subject of this restoration order is described as follows:

5807 Busch Drive, City of Malibu; Los Angeles County
APN: 4469-012-017
Lot 35 of Block 1 of Tract 10853 in Los Angeles County

III. FINDINGS

This order is issued on the basis of the following findings adopted by the Commission on October 13, 1994:

1. Violation. On or about April 27, 1990, development consisting of the removal of vegetation, placement of a culvert and energy disapor, and the importation of fill in a drainage course which leads to a blueline stream, as further described in coastal Development Permit 4-92-206 (Tahmasebi), was performed at the subject property without the benefit of a coastal development permit. Completion of the compaction of fill was done under an emergency permit G4-92-206. The terms of the emergency permit required that the development be removed within five months of the issuance of the emergency permit if a regular coastal development permit is not sought for. In this case, the applicant submitted an application 16 months after the emergency permit was issued. Thus, for 11 months this site was in violation of the terms of the emergency permit.

2. Coastal Act Consistency. The Commission hereby incorporates by reference the findings for the denial portion of the permit application for the construction of a single family residence and the retention of the culvert and fill contained in coastal development permit 4-92-206. As stated in said findings, the portion of the development consisting of the placement of a culvert and energy disapor, and the importation of fill is not in conformance with the Chapter 3 policies of the Coastal Act. The after-the-fact development is not required for the construction of the proposed residence. Furthermore, the after-the-fact development is not engineered properly to support a residence, and as such is not consistent with Section 30253 of the Coastal Act which requires that all new development shall assure stability and structural integrity and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area. The after-the-fact development was not properly designed to mitigate erosion of the tributary and siltation into the blueline stream. This action is not consistent with Section 30240 of the Coastal Act which mandates that development in areas adjacent to environmentally sensitive habitat areas be designed to prevent impacts which would significantly degrade such areas. Finally, the development is not consistent with Section 30251 which requires that the scenic and visual qualities of coastal areas be considered and protected as a resource of public importance, with the minimization of the alteration of natural land forms.

ORIGINAL FILED
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COUNTY CLERK

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

CALIFORNIA COASTAL COMMISSION,)	No. SC013548
)	
Plaintiff,)	JUDGMENT PURSUANT TO
)	STIPULATION OF THE PARTIES
v.)	
)	
AMIR TAHMASSEBI;)	
AND DOES 1-50, inclusive,)	
)	
Defendants.)	

Upon stipulation of Plaintiff CALIFORNIA COASTAL COMMISSION ("Plaintiff") and Defendant AMIR TAHMASSEBI ("Defendant"), and upon a finding by this Court of good cause, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment is entered in favor of Plaintiff as follows:

1. This judgment is entered pursuant to the stipulation of the parties to settle the above-captioned action involving disputed claims arising out of the alleged grading,

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(Malki/Tahmasebi)
Court Judgment
Case SC013548**

1 filling, pipe installation and vegetation removal engaged in by
2 Defendant in violation of the California Coastal Act of 1976
3 (Pub. Res. Code §§ 30000, et seq.) upon Defendant's lot located
4 at 5807 Busch Drive, Malibu, California 90265, in the County of
5 Los Angeles designated by the following Assessor's Parcel Number
6 (APN): 4469-012-017("Subject Parcel").

7 A. EMERGENCY COASTAL DEVELOPMENT PERMIT

8 2. Within ten (10) days from the entry of judgment,
9 Defendant shall submit to Plaintiff a complete emergency coastal
10 development permit ("Emergency CDP") application which shall
11 include a restoration plan, prepared by a qualified expert, to
12 perform the work necessary to remove any sedimentation in the
13 Blue Line ravine, resulting from Defendant's unpermitted
14 activities, to restore such ravine to its pre-violation
15 condition. The Emergency CDP application shall also include
16 proposed measures for the temporary stabilization and compaction
17 of the fill stockpiled near the ravine on the Subject Property.
18 Any permit that is issued shall be subject to reasonable terms
19 and conditions in order to ensure that such development or action
20 will be in accordance with the provisions of Division 20 of the
21 California Coastal Act.

22 3. Defendant shall complete restoration of the
23 Subject Parcel, pursuant to the Emergency CDP, to the
24 satisfaction of Plaintiff, within twenty (20) days from
25 Plaintiff's approval of Defendant's Emergency CDP application.
26 Within seven (7) days from the restoration of the Subject
27 Property, Defendant shall submit to Plaintiff a contractor's

1 report indicating that the restoration has been completed and
2 describing the manner in which such restoration was performed.

3 4. Upon receipt of the contractor's report, Plaintiff
4 shall be given access to the Subject Property to inspect the
5 quality of the restoration. If Plaintiff so desires, Defendant's
6 contractor shall be made available to Plaintiff to be present at
7 the inspection and/or to answer any questions concerning the
8 restoration. Should Plaintiff conclude that additional work is
9 necessary to complete the restoration process, Defendant shall
10 perform such work within thirty (30) days of receipt of
11 Plaintiff's written request to perform the additional work.

12 * 5. One (1) year after Plaintiff's approval of the
13 restoration work, Defendant shall either submit a report to
14 Plaintiff or allow Plaintiff access to the Subject Property so
15 that Plaintiff may be satisfied that such restoration was
16 successful. Should Plaintiff conclude that additional work is
17 necessary to complete the restoration process, Defendant shall
18 perform such work within thirty (30) days of receipt of
19 Plaintiff's written request to perform the additional work.

20 B. SINGLE FAMILY RESIDENCE AND LOCAL APPROVAL

21 6. Within thirty (30) days from the entry of
22 judgment, Defendant shall apply to the City of Malibu ("City")
23 for local approval of the proposed development, including the
24 proposed single family residence ("SFR"). Plaintiff shall
25 cooperate with Defendant and the City in the processing of
26 Defendant's application. If the City grants the application,
27 Defendant shall submit a permit application to Plaintiff within

1 contractor shall be made available to Plaintiff to be present at
2 the inspection and/or to answer any questions concerning the
3 restoration. Should Plaintiff conclude that additional work is
4 necessary to complete the restoration process, Defendant shall
5 perform such work within thirty (30) days of receipt of
6 Plaintiff's written request to perform the additional work.

7 10. One (1) year after Plaintiff's approval of the
8 restoration work, Defendant shall either submit a report to
9 Plaintiff or allow Plaintiff access to the Subject Property so
10 that Plaintiff may be satisfied that such restoration was
11 successful. Should Plaintiff conclude that additional work is
12 necessary to complete the restoration process, Defendant shall
13 perform such work within thirty (30) days of receipt of
14 Plaintiff's written request to perform the additional work.

15 D. PAYMENT OF CIVIL FINE

16 11. Defendant shall pay Plaintiff a total of
17 \$15,000.00 in civil penalties and such payment shall be made in
18 the manner prescribed in this paragraph. Within thirty (30) days
19 of the entry of this judgment, Defendant shall deliver to the
20 Office of the Attorney General, 300 South Spring Street, Fifth
21 Floor, Los Angeles, California 90013, attention Daniel A. Olivas,
22 a certified or cashier's check in the amount of five thousand
23 dollars (\$5,000.00), made out to: "State of California, Violation
24 Remediation Account, Coastal Conservancy Fund." A second payment
25 of five thousand dollars (\$5,000.00) shall be made in the same
26 manner thirty (30) days after the first payment is made to
27 Plaintiff. A third payment of five thousand dollars (\$5,000.00)

1 shall be made in the same manner thirty (30) days after the
2 second payment is made to Plaintiff.

3 E. OTHER TERMS

4 12. Should Defendant violate any deadline set by this
5 judgment, a penalty may be imposed upon Defendant in the amount
6 of one thousand dollars (\$1,000.00) for each day Defendant is in
7 violation of such deadline. Before any such penalty is imposed,
8 Plaintiff shall give Defendant ten (10) days written notice (by
9 certified mail, return receipt requested) of Plaintiff's intent
10 to enforce this penalty provision. If at the end of such ten
11 (10) days Defendant is still in violation of this judgment,
12 Plaintiff may enforce this penalty provision. Defendant shall
13 pay Plaintiff such penalty within seven (7) days of receipt of
14 Plaintiff's written notice (by certified mail, return receipt
15 requested) to enforce this penalty provision. Payment of the
16 penalty shall be made in the manner prescribed above at paragraph
17 11 and shall be computed from the first day Defendant stood in
18 violation of the judgment. Payment of such penalty shall not
19 relieve Defendant of his duties under this judgment. Defendant
20 shall not be liable for any penalty as described in this
21 paragraph if failure to perform pursuant to this judgment was the
22 result of no fault of Defendant but was the result of an Act of
23 God or *force majeure*.

24 13. Should either party be required to enforce any
25 part of this judgment, the prevailing party shall be entitled to
26 its costs including reasonable attorneys' fees expended in such
27 enforcement proceeding.

1 14. This Court has jurisdiction over the subject
2 matter of and the parties to this litigation.

3 15. This judgment is final and settles all causes of
4 action alleged in the complaint.

5 16. None of the provisions herein shall constitute
6 evidence or an admission of liability on the part of Defendant.

7 17. Plaintiff and Defendant shall bear their
8 respective attorneys' fees and costs incurred in this litigation.

9 18. Plaintiff and Defendant waive any statement of
10 decision and all rights of appeal from this judgment.

11 19. This judgment may be assigned to or by a judge,
12 commissioner or judge pro tem of the Superior Court for the
13 County of Los Angeles.

14 20. The Court retains jurisdiction for the purpose of
15 enabling either party to apply to the Court for any further
16 orders or directions as may be necessary and appropriate for this

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1 judgment's construction, execution, modification, and enforcement
2 of compliance.

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4 THE CLERK IS ORDERED TO ENTER THIS JUDGMENT.

5
6 DATE: AUG 31 1992

7
8 IRVING A. SHAW
9 JUDGE OF THE SUPERIOR COURT

10
11 FORM OF JUDGMENT APPROVED BY:

12 DATE: 6/15, 1992

13 DANIEL E. LUNGREN, Attorney General
14 of the State of California
15 JAN S. STEVENS,
16 Assistant Attorney General
17 DANIEL A. OLIVAS,
18 Deputy Attorney General

Daniel A. Olivas

19 DANIEL A. OLIVAS
20 Attorneys for Plaintiff
21 CALIFORNIA COASTAL COMMISSION

22 DATE: 7/28, 1992

23 C. SAMUEL BLICK, ESQ.
C. Samuel Blick

24 C. SAMUEL BLICK, ESQ.
25 Attorney for Defendant
26 AMIR TAHMASSEBI
27

DANIEL E. LUNGREN
Attorney General

State of California
DEPARTMENT OF JUSTICE



300 SOUTH SPRING STREET, SUITE 5212
LOS ANGELES, CA 90013
(213) 897-2000

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(213) 897-2705

March 25, 1998

Thomas M. Banks, Esq.
1211 4th Street, Suite 200
Santa Monica, CA 90401-1338

RE: California Coastal Commission v. Tahmassebi
(Los Angeles Superior Court No. SC013548)

Dear Mr. Banks:

As you know, yesterday we finally received a copy of the order granting the Coastal Commission's motion for enforcement of the judgment. We have served you with a copy the same day we received it. The order is dated March 16, 1998. The Commission's motion explicitly delineated the following elements:

- "1. Within twenty (20) days of the issuance of this order, Defendant shall file with the Coastal Commission a complete restoration application which the Coastal Commission will hear as soon as practicable." (Motion for Enforcement of Judgment filed January 23, 1998 ("Motion") at p. 5, lines 21-24);
- "2. After the Coastal Commission hears Defendant's restoration application and votes thereon, Defendant shall comply with all deadlines and conditions set by the Coastal Commission." (Motion at p. 5, lines 25-27); and
- "3. Pursuant to paragraph 12 of the judgment, Defendant is liable for a \$1,000 penalty for each day he is in violation of the judgment. The Court accepts the Coastal Commission's request to cap the penalty at \$15,000 at this time though the record would support the imposition of a much higher penalty. Defendant shall make payment of this penalty

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Case SC013548

Thomas M. Banks, Esq.

March 25, 1998

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within thirty (30) days of this order in the manner prescribed at paragraph 11 and 12 of the judgment." (Motion at p. 7, lines 15-22).

The motion also explicitly requested an award of reasonable attorneys' fees in the amount of \$950.00. (Motion at p. 7, lines 25-26.)

If you have any questions, please feel free to call me. I look forward to your client's compliance with the Court's order.

Sincerely,

DANIEL E. LUNGREN
Attorney General



DANIEL A. OLIVAS
Deputy Attorney General

cc: Ms. Nancy Cave