

CALIFORNIA COASTAL COMMISSION

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

RECORD PACKET COPY**Tu 16**

DATE: July 20, 2000

TO: COMMISSIONERS AND INTERESTED PARTIES

FROM: Peter Douglas, Executive Director
Chuck Damm, Senior Deputy Director
James Johnson, Coastal Program Analyst *jr*

SUBJECT: **Coastal Permit Number 4-99-164, Olson** Action at the Coastal Commission Meeting of August 8, 2000 to Vacate Prior Approval of Coastal Permit.

SUBSTANTIVE FILE DOCUMENTS: Staff Report for Project No. 4-99-164 dated 7/22/99; Coastal Development Permit No. 4-99-164, Olson; Topanga Association for a Scenic Community, et al. v. California Coastal Commission, et al. (Court of Appeal # B122513) Decision dated January 5, 2000.

On August 18, 1999, the California Coastal Commission granted to Marian Olson Coastal Development Permit No. 4-99-164, subject to standard and special conditions, for the construction of a 4,000 sq. ft. two story single family residence at 2737 Fabuco Road, Malibu, with four car garage, swimming pool, septic system, landscaping, extension of private road and water main improvements, and grading of about 1,352 cubic yards for the residence and access road. The Commission's approval of this coastal permit was challenged in a lawsuit. On January 5, 2000 the Court of Appeal ruled in favor of the petitioners, the Topanga Association for a Scenic Community, et al. Subsequently, the case was returned to the trial court, which has required the Commission to vacate its approval of Coastal Permit Number 4-99-164 (Exhibit A).

The Court of Appeal decision was not appealed. Accordingly, staff recommends that the Commission take action to vacate its August 18, 1999 decision approving Coastal Development Permit Number 4-99-164. The motions for this action are provided below.

I. MOTION AND RESOLUTION**A. Vacating Prior Commission Decision Approving Permit**

MOTION: *I move that the Commission vacate its August 18, 1999 decision approving Coastal Development Permit No. 4-99-164 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in vacating the approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO VACATE THE DECISION:

The Commission hereby vacates its August 18, 1999 decision approving Coastal Development Permit Number 4-99-164, in compliance with the decision of the court in Topanga Association for a Scenic Community, et al. vs. California Coastal Commission, et al.

II. FINDINGS AND DECLARATIONS

On August 18, 1999, the California Coastal Commission granted to Marion Olson Coastal Development Permit No. 4-99-164, subject to standard and special conditions, for the construction of a 4,000 sq. ft. two story single family residence at 2737 Fabuco Road, Malibu, with four car garage, swimming pool, septic system, landscaping, extension of private road and water main improvements, and grading of about 1,352 cubic yards for the residence and access road.

The Commission's approval of Coastal Development Permit Number 4-99-164 was challenged in a lawsuit. On January 5, 2000, the Court of Appeal ruled in favor of the petitioners. Subsequently, the case was returned to the trial court, which has required the Commission to vacate its approval of Coastal Development Permit Number 4-99-164 consistent with the action of the Court of Appeal (Exhibit A).

The Court of Appeal decision was not appealed. Accordingly, in order to comply with the legal rulings in the case, the Commission must formally vacate its prior approval of Coastal Development Permit Number 4-99-164. Therefore, the Commission hereby vacates its August 18, 1999 decision approving Coastal Development Permit Number 4-99-164.

NOTICE SENT TO:

ATTORNEY GENERAL
G. OVERTON, DEPUTY ATTORNEY GENERAL
300 SO. SPRING ST.
LOS ANGELES CA 90013

FILE STAMP
ORIGINAL FILED

JUL 05 2000

LOS ANGELES
SUPERIOR COURT

RECEIVED
JUL 2 0 2000
SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES

TOPANGA ASSN FOR A SCENIC COMMUNITY ET
Plaintiff(s),

VS.

CALIF COASTAL

Defendant(s).

CASE NUMBER

BC165640

NOTICE OF
ENTRY OF JUDGMENT

To the above named parties and to their attorneys of record:

You are hereby notified that judgment in the above-entitled matter was entered on: July 5, 2000.

JOHN A. CLARKE, Executive Officer/Clerk
of the Superior Court of California,
County of Los Angeles

S. BARRETT

By _____, Deputy

CERTIFICATE OF MAILING

I am over the age of 18 years and not a party to the within action. I am familiar with the Los Angeles Superior Court practice for collection and processing of correspondence and know that such correspondence is deposited with postage prepaid with the United States Postal Service the same day it is delivered to the mail room in the Los Angeles Superior Court. I declare under penalty of perjury under the laws of the State of California that I delivered a true copy of the above notice to the plaintiff/cross complainant or his attorney of record addressed as listed by placing the copy in a sealed envelope to the mail room of this court.

Dated: JUL 05 2000

JOHN A. CLARKE, Executive Officer/Clerk of the
Superior Court of California, County of Los Angeles

S. BARRETT
By _____, Deputy

EXHIBIT NO. A

APPLICATION NO.
9-99-164

Superior Court

Judgement Pg 1 of 5

RECEIVED

JUN 29 2000

FILED
LOS ANGELES SUPERIOR COURT

JUL 05 2000

JOHN A. CLARKE, CLERK

[Signature]
BY S. BARRETT, DEPUTY

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

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TOPANGA ASSOCIATION FOR A SCENIC)
COMMUNITY and TUNA UNITED)
NEIGHBORHOOD ASSOCIATION,)

CASE NO. BC165640)
[CONSOLIDATED WITH CASE NO.)
BC174565])

Petitioners/Plaintiffs,)

[REVISED PROPOSED] JUDGMENT)
ON REMAND FROM COURT OF)
APPEAL)

v.)
CALIFORNIA COASTAL COMMISSION)
and PETER M. DOUGLAS,)

Respondents.)

_____)
Marian Olson,)

Real Party in)
Interest/Defendant.)

_____)
TOPANGA ASSOCIATION FOR A SCENIC)
COMMUNITY and TUNA UNITED)
NEIGHBORHOOD ASSOCIATION,)

CASE NO. BC174565)

EXHIBIT NO. A
APPLICATION NO. 4-99-164
Superior Court
Judgment pg 2 of 5

1 GERALD C. SAYLES, SHIRLEY A.)
2 SAYLES, TROLLOPE F. ANDERSON,)
3 and FRANCES S. ANDERSON,)
4 Real Parties in Interest/)
5 Defendants.)

6 A duly noticed status conference ordered by this Court after
7 remittitur of the appeal of petitioners Topanga Association for a
8 Scenic Community et al. from the judgment entered in the above-
9 captioned, consolidated cases on March 27, 1998 (Hon. Robert H.
10 O'Brien, Judge Presiding), was held in Department 85 of this Court,
11 on Friday, April 21, 2000 (Hon. Dzintra I. Janavs, Judge Presiding).

12 Petitioners appeared through their counsel of record, Law
13 Offices of Frank P. Angel, by Frank P. Angel. Respondents
14 California Coastal Commission et al. appeared through their counsel
15 of record, Bill Lockyer, Attorney General of the State of
16 California, by G.R. Overton, Deputy Attorney General. Real parties
17 in interest Marian Olson (Case No. BC165640) and Gerald C. Sayles et
18 al. (Case No. BC174565) appeared through their counsel of record,
19 Gaines & Stacey, by Sherman L. Stacey.

20 This Court having heard from the parties' counsel at the status
21 conference; having ordered petitioners' counsel to lodge in
22 Department 85 a proposed judgment no later than April 28, 2000;
23 having set deadlines and a hearing date (June 5, 2000, later
24 continued to June 29, 2000) for petitioners' counsel's motion for
25 private attorney general fees pursuant to Code of Civil Procedure
26 section 1021.5, and a motion announced by counsel for real parties
27 in interest, to sever Case No. BC165640 from Case No. BC174565;

JUDGMENT ON REMAND FROM COURT OF APPEAL - I

EXHIBIT NO. A
APPLICATION NO. 4-99-164
Superior Court
Judgment pg 3 of 5

1 having read and considered the appellate opinion and judgment filed
2 on January 5, 2000 (Case No. B122513 -- Second Appellate District,
3 Division Four), which ordered partial, but unqualified, reversal of
4 the judgment entered in this Court on March 27, 1998, on the ground
5 that respondent California Coastal Commission violated the
6 California Environmental Quality Act (CEQA) (Pub. Resources Code,
7 §21000 et seq.) by failing to respond in writing to written public
8 comments on each project application at issue, and by failing to
9 consider alternatives in its staff reports on each such application
10 (typed appellate opinion, pp. 2, 29-38); the Court of Appeal having
11 determined that an administrative board's failure to comply with
12 mandatory CEQA procedures calls for setting aside its challenged
13 action (*id.*, p. 38); and having also considered the parties' oral
14 and written arguments concerning the proposed judgment lodged by
15 petitioners, now THEREFORE,

16 THIS COURT ORDERS, ADJUDGES AND DECREES that a peremptory writ
17 of administrative mandamus issue from the Clerk of this Court,
18 pursuant to Code of Civil Procedure section 1094.5, subdivision (f):

19 1. Commanding the California Coastal Commission to set aside
20 its decisions approving coastal development permits for the
21 development of property of real party in interest Marian Olson,
22 located at 2737 South Fabuco Road (assessor's parcel no. 4448-7-94),
23 and of real parties in interest Gerald G. Sayles, Shirley A. Sayles,
24 Trollope R. Anderson and Frances S. Anderson, located at 20580 West
25 Boston Drive (assessor's parcel no. 4448-7-88);

26 2. Remanding the matter to the California Coastal Commission
27 and directing that should the real parties

ON REMAND FROM COURT OF APPEAL -

EXHIBIT NO. A
APPLICATION NO. 4-99-164
Superior Court
Judgement pg 4 of 5

1 to pursue the project(s), the Coastal Commission shall consider the
2 matter and take such further action as is specially enjoined upon it
3 by law and the decision of the Court of Appeal herein, provided,
4 however, that nothing in this judgment shall limit or control the
5 discretion legally vested in the California Coastal Commission; and
6 3. Commanding the California Coastal Commission to make and
7 file a return on or before August 31, 2000, to the peremptory writ
8 of administrative mandamus issued pursuant to this judgment to show
9 compliance with the writ.

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DATED: 7/5, 2000

Dzintra I. Janays
Dzintra I. Janays
Judge of the Superior Court

JUDGMENT ON REMAND FROM COURT OF APPEAL -

EXHIBIT NO. <i>A</i>
APPLICATION NO. <i>4-99-164</i>
<i>Superior Court</i>
<i>Judgment 19505</i>

