

## • CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA  
89 SOUTH CALIFORNIA ST., SUITE 200  
VENTURA, CA 93001  
(805) 585-1800

W9  
RECORD PACKET COPY

Application No: R-4-96-167

Staff: JLA-VNT

Staff Report: 8/21/03

Hearing Date: 9/10/03

**STAFF REPORT: REVOCATION REQUEST****APPLICANT:** Simon T**PROJECT LOCATION:** Swenson Drive, 600 feet west of Saddle Peak Road, (APN-4448-024-028), Santa Monica Mountains, Los Angeles County**PROJECT DESCRIPTION:** Subdivision of 17.9 acre lot into two parcels of 9.66 acres and 8.24 acres with 3,375 cubic yards of grading (2,850 cu. yds. cut, 525 cu. yds. fill) for the access road and building pads. No residences are proposed.**PERSON REQUESTING REVOCATION:** Roger Miller, 22210 Saddle Peak Road, Santa Monica Mountains, Los Angeles County.**SUBSTANTIVE FILE DOCUMENTS:** Coastal Development Permit 4-96-167

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**PROCEDURAL NOTE:** The California Code of Regulations, Title 14 Division 5.5, Section 13105 states that the grounds for the revocation of a coastal development permit are as follows:

Grounds for revocation of a permit shall be:

- a) *Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the Commission finds that accurate and complete information would have caused the Commission to require additional or different conditions on a permit or deny an application;*
- b) *Failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the Commission and could have caused the Commission to require additional or different conditions on a permit or deny an application. 14 Cal. Code of Regulations Section 13105.*

**APPLICANT'S CONTENTION:**

The request for revocation contends that grounds for revocation in Section 13105(a) exist because the applicant submitted inaccurate, erroneous or incomplete information to the Commission in the coastal development permit application. The contentions as to incorrect information include the following:

- 1) The applicant intentionally submitted erroneous information to the Commission in a letter that indicated a neighboring property owner would not grant a road easement over his property to the applicant's property (See Exhibit 1).

The request for revocation does not assert that grounds for revocation in Section 13105(b) exist.

**SUMMARY OF STAFF RECOMMENDATION**

Staff recommends that the Commission deny the request for revocation on the basis that no grounds exist for revocation under either Section 13105(a) or (b).

**MOTION:**     *I move that the Commission grant revocation of Coastal Development Permit 4-96-167.*

**STAFF RECOMMENDATION OF APPROVAL:**

Staff recommends a **NO** vote. Failure of this motion will result in denial of the request for revocation and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**STAFF RECOMMENDATION:**

The staff recommends that the Commission adopt the following resolution:

**I. Denial**

The Commission hereby denies the request for revocation of the Commission's decision on coastal development permit no. 4-96-167 on the grounds that there is no:

- (a) intentional inclusion of inaccurate, erroneous or incomplete information in connection with the coastal development permit application where the Commission finds that accurate and complete information would have caused the Commission to require additional or different conditions on the permit or deny the application;

- (b) failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the Commission and could have caused the Commission to require additional or different conditions on the permit or deny the application.

## **II. Findings and Declarations**

The Commission hereby finds and declares as follows

### **A. Project Description and Background**

On March 13, 1997 the Commission approved, with conditions, Coastal Development Permit 4-96-167 (Simon T) for the subdivision of a 17.9 acre parcel into two parcels and 3,375 cubic yards of grading (2,850 cu. yds. cut, 525 cu. yds. fill) for the construction of two building pads and improvements to an existing access road. The Commission granted one extension of the permit. The permit conditions were satisfied and the permit was issued on December 5, 1997.

Pursuant to its subdivision ordinances, the County authorized a waiver of the requirement of filing a final map for the subdivision in Tentative Map No. 21006. Accordingly, on February 29, 2000, a grant of Waiver and Certificate of Compliance was recorded for the subdivision. The grant of Waiver and Certificate of Compliance was recorded before the permit expired and therefore the permit was exercised before it expired.

The subject 17.9 acre property is located on Swenson Drive approximately 600 feet east of Saddle Peak Road in the Santa Monica Mountains. The property has an easement for access from Saddle Peak Road over Swenson Road, a private road that existed prior to the Coastal Act. In CDP 4-96-167, the Commission authorized grading for the necessary improvements to the access road on the property from Swenson Road to the proposed building sites.

### **B. Grounds for Revocation**

#### **Coastal Act Section 13105(a)**

Pursuant to 14 California Code of Regulations (C.C.R.) Section 13108, the Commission has the discretion to grant or deny a request to revoke a coastal development permit if it finds that any of the grounds, as specified in 14 C.C.R. Section 13105 exist. 14 C.C.R. Section 13105 states, in part, that the grounds for revoking the permit shall be as follows: (1) that the permit application intentionally included inaccurate, erroneous or incomplete information where accurate and complete information would have caused the Commission to act differently; and (2) that there was a failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were

not otherwise made known to the Commission and could have caused the Commission to act differently.

The South Central Coast District office has received a written request for revocation of the subject Coastal Development Permit from Roger Miller who owns an adjacent vacant property to the northeast of the development site (Exhibit 1). The request for revocation is based on the grounds that the applicant intentionally submitted erroneous information to the Commission in a letter that indicated a neighboring property owner would not grant a road easement over his property to the applicant's property (Exhibit 2). The letter written by Mr. Simon T to Mr. Alan Block, the applicant's attorney indicates that the applicant contacted the neighboring property owner, a Mr. Edwards R. Frisble, regarding obtaining an easement for an access road to his property from Saddle Peak Road. The applicant states in the letter that, "Mr. Frisble has specifically and unequivocally advised me that he is not interested in providing my property with an easement, license, and/or other legal entity which could provide access to the subject property." Mr. Miller has submitted evidence indicating Mr. Frisble was not the owner of the adjacent property. He asserts that the applicant submitted this letter containing erroneous information to convince Commission staff that an alternative access road was not feasible over the neighboring property.

The revocation request does not suggest that the subject permit should be revoked on grounds that there was a failure to comply with the notice provisions of Section 13054. Therefore, the revocation request for the subject permit will only be discussed in relation to grounds of Section 13105(a). Grounds for revocation in 13105(a) contain three essential elements or tests which the Commission must consider:

- a. Did the application include inaccurate, erroneous or incomplete information relative to the coastal development permit?
- b. If the application included inaccurate, erroneous or incomplete information, was the inclusion intentional (emphasis added)?
- c. If the answer to a and b is yes, would accurate and complete information have caused the Commission to require additional or different conditions or deny the application?

Commission staff had requested the applicant explore the possibility of obtaining a road easement over a neighboring property for a possible alternative access road from Saddle Peak Road that would provide a shorter route over gently sloping terrain thereby minimizing grading necessary for an access road. The request for revocation asserts that the applicant intentionally submitted a letter from the applicant to his attorney indicating the neighboring property owner a Mr. Edwards Frisble was not interested in granting the applicant a road easement over his property to the applicant's property from Saddle Peak Road (Exhibit 2). Mr. Miller, the person seeking revocation of the permit, has submitted property deeds indicating Mr. Frisble was not the owner of the

property at the time and therefore asserts the information in the letter regarding a potential road easement was inaccurate.

The applicant's attorney, Mr. Alan Block, has submitted a letter in response to the revocation request (Exhibit 3). In this letter Mr. Block contends that Mr. Simon T contacted an individual whom he believed to be the owner of the adjacent 11 acre parcel, and/or the owner's representative. Mr. Simon T was advised that the owner of the adjacent property would not grant him an easement over the 11 acre parcel. Mr. T forwarded correspondence to Mr. Block, dated October 24, 1996, advising him of his inability to acquire an alternative access, which was thereafter forwarded to the Commission. The applicant has not produced any evidence that Mr. Frisble was the owner of the property and has not been able to locate Mr. Frisble. Therefore, the October 24, 1996 letter submitted to the Commission that asserts that the neighboring property owner would not grant a road easement over his property is inaccurate. Thus, the Commission finds that inaccurate information was included in the Coastal Development Permit application which represented that the neighboring property owner would not grant a road easement over the property.

The second test the Commission must consider in a revocation request is whether the applicant intentionally included inaccurate, erroneous or incomplete information. To prove the applicant intentionally submitted inaccurate or erroneous information is very difficult to prove in this case. The applicant claims that he believed that the person he contacted, Mr. Frisble, was either the owner or represented the owner of the neighboring property. It is plausible that the applicant did contact a Mr. Frisble who claimed to be the owner of the property. There is no evidence that the applicant did not in fact contact Mr. Frisble regarding access over the neighboring property, nor is there evidence that the applicant did not actually believe that Mr. Frisble was the owner or representative of the owner of the neighboring property. Therefore, no evidence has been submitted to establish that the applicant intentionally submitted inaccurate information. As such, the Commission finds that no evidence has been provided as part of the revocation request that illustrates that the applicant intentionally provided information that is inaccurate, erroneous, or incomplete with the application submittal for the subject Coastal Development Permit.

The third element or test the Commission must consider is if the applicant intentionally provided inaccurate, erroneous or incomplete information would accurate and complete information have caused the Commission to require additional or different conditions or deny the application? In this case, the Commission approved access over Swenson Road, a private road that existed prior to the Coastal Act, with only minor grading for the necessary improvements. Initially, staff had asked the applicant to explore an alternative route to access the proposed building sites from Saddle Peak Road. An alternative route from Saddle Peak road could have provided a shorter more direct route to the site. However, the applicant did not have any easement rights over the neighboring parcel for an access road from Saddle Peak Road. The existing "legal" ingress/egress access easement to the subject property is over Swenson Road which is a private road from Saddle Peak Road.

Commission staff in the initial analysis of the proposed development did not have evidence the existing road on the subject site off of Swenson Road was permitted or predated the Coastal Act. Therefore, staff had to analyze this development proposal as if the existing access road did not exist. Staff requested the applicant explore possible alternative routes to the proposed parcels. The October 24, 1996 letter indicating the neighboring property owner would not grant an easement was submitted in response to staff's request for a possible alternative access route to the subject site.

Commission staff subsequently determined that the existing access road to the proposed parcels and building sites predated the Coastal Act. Given this access road was a "legal" preexisting road and required only a moderate amount of grading the Commission determined this road could be improved consistent with the chapter three policies of the Coastal Act. The Commission further found that in this case improvement of the existing road to the proposed parcels was the environmentally preferred alternative.

Furthermore, the applicant's representatives contacted the true owner of the property at the time this permit was processed and this person indicated that he would not have granted a road easement over this property to the applicant (Exhibit 4). Therefore, to the extent that the applicant represented that an easement across the neighboring property is not available, this appears to be accurate.

Therefore, the Commission finds that although the information with respect to obtaining an easement on the adjacent parcel was not accurate it would not have resulted in additional conditions or different conditions or denial of the coastal development permit. Thus, even if the applicant had intentionally provided inaccurate information regarding the alternative access route, provision of accurate information regarding this issue would not have altered the Commission's decision on the coastal development permit.

For the reasons set forth above, the Commission finds that the grounds for revocation contained in Section 13105(a) are not satisfied, and as mentioned, the request for revocation does not assert that grounds for revocation of the subject permit exist in Section 13105(b). Therefore, the Commission finds that the revocation request should be denied on the basis that the grounds for revocation under Section 13105(a) or 13105(b) have not been satisfied.

19 SEPT. 2002

JACK AINSWORTH  
CALIF. COASTAL COMMISSION  
89 CALIF. ST  
VENTURA CA. 93001

RECEIVED

SEP. 19 2002

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

DEAR SIR

I WOULD LIKE TO REQUEST THE REVOCATION  
OF PERMIT NO. 4-96-167 APPLICANT  
SIMON T AKA SIMON T. AUSTEN

ARTICLE 16 § 13105 (a) INTENTIONAL  
INCLUSION OF ERRONEOUS INFORMATION  
IN CONNECTION WITH A COASTAL DEVELOPMENT  
PERMIT APPLICATION.

THE GROUNDS FOR REVOCATION ARE:  
APPLICANT INTENTIONAL INCLUSION OF  
INACCURATE INFORMATION, SPECIFICALLY  
LETTER OF 24 OCT. 1996 FROM  
SIMON T. TO MR. BLOCK FOR COASTAL  
COMMISSION STATING MR EDWARDS R.  
FRISBLE WAS OWNER OF 11 AC + WOULD  
NOT GIVE HIM A EASEMENT OVER THE 11 AC.  
PROPERTY.

THE TRUE OWNER OF 4438-33-57 = 11 AC.  
ARE B. FREISTUHLER AND M. SCHMIT, K KRAUSE  
SEE ENCLOSED DEEDS + LETTER

THANK YOU Roger Miller

Exhibit 1

R- 4-96-167

Revocation Request Letter



**BEASLEY BROADCAST GROUP**

**SIMON T**

President  
Chief Operating Officer

3033 Riviera Dr., Suite 200  
Naples, Florida 33940  
(813) 263-5000 • FAX (813) 263-8191

October 24, 1996

**RECEIVED**

SEP 19 2002

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

Alan Robert Block, Esq.  
1901 Avenue of the Stars, Suite 1901  
Los Angeles, CA 90067

Re: California Coastal Commission  
Application No. 4-96-167

17.9 acres fronting on Swenson Drive,  
600 feet east of Saddle Peak Rd., Malibu

Dear Mr. Block:

Pursuant to the request of the staff of the Coastal Commission, I have explored the possibility of acquiring alternate access to the subject property via Saddle Peak Road, through the vacant 11 acre parcel to the north owned by Mr. Edwards R. Frisble.

As you are aware, the subject 17.9 acre parcel only fronts the community owned private road, commonly referred to as Swenson Drive. Mr. Frisble's property, which fronts Saddle Peak Road is the only property with existing topography which could possibly provide alternate access from Saddle Peak Road to the subject property.

Mr. Frisble has specifically and unequivocally advised me that he is not interested in providing my property with an easement, license, and/or other legal entity which could provide access alternate access to the subject property.

Moreover, upon closer review, it does not appear that alternate access from Saddle Peak Road could provide adequate access to the property owned by Ms. Billie Tsien and Mr. Tod Williams whose property abuts the east property

Exhibit 2
R-4-96-167
Letter Addressing Easement

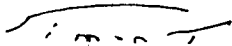


line of the subject parcel, and who have an easement, for ingress and egress over my property. I believe the 17.9 acre parcel is the only available access for the Tsien/Williams property. As such, even if Mr. Frisble was of a mind to provide an easement for access to the 17.9 acres, which he will not, said access could not provide access to the Tsien/Williams property.

Please relate these facts to the appropriate persons at the Coastal Commission, and advise them that it is not feasible for me to provide alternate access to the property via Saddle Peak Road.

Thank you for your courtesy and cooperation.

Sincerely,

A handwritten signature, likely of Simon T, consisting of a series of loops and a final horizontal stroke.

Simon T

LAW OFFICES

**ALAN ROBERT BLOCK**

A PROFESSIONAL CORPORATION

ALAN ROBERT BLOCK

OF COUNSEL  
MICHAEL N. FRIEDMAN

1901 AVENUE OF THE STARS, SUITE 1610  
**LOS ANGELES, CALIFORNIA 90067-6001**

E-MAIL [alanblock@pacbell.net](mailto:alanblock@pacbell.net)  
TELEPHONE (310) 552-3336  
TELEFAX (310) 552-1850

OF COUNSEL  
MOSS, LEVITT & MANDELL, LLP

October 31, 2002

**RECEIVED**

NOV 04 2002

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

VIA FAX AND US MAIL

Jack Ainsworth  
California Coastal Commission  
89 California Street  
Ventura, CA 93001

Re: CDP No. 4-96-167 (Simon T)

RESPONSE TO REQUEST FOR REVOCATION

Project Location: Swanson Drive, 600 East of Saddle  
Peak, Los Angeles County, Malibu

Project Description: Subdivision of 17.9 acre lot into  
two parcels of 9.66 acres and 8.24 acres with 3,375 cubic  
yards of grading (2,850 cu. yds. Cut, 525 cu. yds. fill)  
for the access road and building pads.

Dear Jack:

This office continues to represent the applicant, Simon T,  
with respect to the above referenced CDP and the recently  
submitted, and completely unfounded, request for revocation  
filed by Roger Miller.

A review of the applicable file documents, along with the  
enclosed letter from the Law Office of Lapin and Davis, will  
evidence that CDP No. 4-96-167 was approved by the Commission,  
based on the project's consistency with the Chapter 3 policies  
of the Coastal Act, and not upon the applicants "alleged"  
intentional submission of "inaccurate, erroneous or incomplete  
information" to the Commission.

**Exhibit 3**

**R-4-96-167**

**Applicant's Response to  
Revocation Request**

Jack Ainsworth

Re: Response to Revocation Request of CDP No. 4-96-167

October 31, 2002

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This office has been advised that Mr. Miller's request for revocation is based on the applicant's "alleged" submission of "inaccurate, erroneous or incomplete information" to the Commission in response to staff's request that the applicant explore the possibility of acquiring alternate access to the subject property via Saddle Peak Road, through the vacant 11 acres parcel to the north.

The fact is Simon T contacted an individual whom he believed to be the owner of the adjacent 11 acre parcel, and/or the owner's legal representative. Mr. T was advised that the owner of the adjacent property would not grant him an easement over the 11 acre parcel. Mr. T forwarded correspondence to my attention, dated October 24, 1996, advising me of his inability to acquire alternative access, which letter was thereafter forwarded to the Commission.

As stated above, the October 24, 1996 letter in question was only written by the applicant after his speaking with the individual whom he believed to be the owner or legal representative of the owner of the 11 acre parcel.

Title 14, California Code of Regulations, Section 13105 provides that the grounds for revocation of a Coastal Development Permit are limited to the "intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the commission finds that accurate and complete information would have caused the commission to require additional or different conditions on a permit or deny an application."

Thus, even where there is an intentional inclusion of "inaccurate, erroneous or incomplete" information in connection with the processing of a CDP application, which there is not in this case, the Commission must deny a revocation request if it finds that accurate and complete information would not have caused the Commission to require additional or different conditions on the permit or deny the application.

It is Simon T's vigorous contention that if "inaccurate, erroneous or incomplete information" regarding CDP No. 4-96-167 was in fact given to the Commission, it clearly was not intentional. Moreover, even if we assume for purposes of

Jack Ainsworth

Re: Response to Revocation Request of CDP No. 4-96-167

October 31, 2002

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argument that the information submitted by Mr. T was "inaccurate, erroneous or incomplete", it is clear from the enclosed correspondence from Lapin and Davis, dated October 18, 2002, that the submission of accurate and complete information would have not caused the Commission to require different conditions or deny the application.

Said enclosed correspondence from Lapin and Davis contains the acknowledgment of Martin Schmitt, the former owner of the adjacent 11 acre parcel referred to in the correspondence of October 24, 1996, also commonly known as APN: 4438-033-057, to the effect that does not recall whether he was approached by Mr. T during the time period in question regarding his willingness to grant an easement over the 11 acre parcel for purposes of ingress and egress, but regardless of the same he specifically states that, even if was not contacted, he would not have granted an easement for ingress and egress across his property to Simon T. A copy of the Lapin and Davis letter of October 18, 2002, containing the acknowledgment of Mr. Schmitt, is attached hereto as Exhibit 1 and hereby incorporated by reference.

Thus, regardless of the matter, the fact remains that the true owner of the 11 acre parcel in 1996 would not have granted an easement to the applicant, and as such, even if "inaccurate, erroneous or incomplete" was intentionally submitted to the Commission, which it was not, the submission of accurate and complete information would not have not caused the Commission to require additional or different conditions on the permit or deny the application.

In light of the above, it is the strenuous position of Mr. T, that the pending request for revocation be deemed by the Executive Director to be patently frivolous and without merit, and that pursuant to Title 14, California Code of Regulations, Section 13106(a), said request should be summarily dismissed without the initiation of revocation proceedings.

Naturally, this office remains available to discuss any matter regarding this issue with you at your earliest convenience, if necessary.

Jack Ainsworth

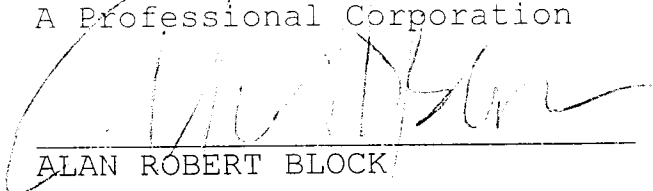
Re: Response to Revocation Request of CDP No. 4-96-167  
October 31, 2002

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Thank you for your continued courtesy, cooperation, and anticipated support.

Respectfully Submitted,

LAW OFFICES OF  
ALAN ROBERT BLOCK  
A Professional Corporation

  
\_\_\_\_\_  
ALAN ROBERT BLOCK

ARB:aw

enclosure

cc: Simon T  
Julia Davis, Esq.  
Joel Boxer, Esq.  
Michael Vignieri

LAW OFFICES  
**LAPIN & DAVIS, LLP**

9201 W. OLYMPIC BOULEVARD, SUITE 200  
BEVERLY HILLS, CALIFORNIA 90212  
TELEPHONE (310) 248-3200  
TELECOPIER (310) 248-3201

SENDER'S E-MAIL: jdavis@lapinlaw.com

October 18, 2002

Mr. Martin Schmitt  
20571 Cheney Drive  
Topanga, California 90290

Re: APN: 4438-033-057 (the "11 Acres")

Dear Martin:

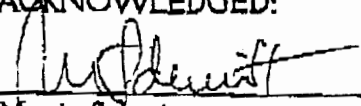
This is to confirm my communications with you this morning regarding the 11 Acres which you owned in 1996, specifically with respect to the question of whether or not you would have granted an easement for ingress and egress through your property to an adjacent property owner. You indicated that you may in fact have been approached during that time period with such a request, but that you did not recall; and, in any event, in every case you would not have granted such an easement.

If this is true, would you please simply acknowledge this by your signature below and fax this letter back to me. Again, thank you for your time in discussing this matter with me.

Very truly yours,

  
JULIA M. DAVIS

ACKNOWLEDGED:

  
Martin Schmitt

Malibu11AcresMSchmitt1018.wpd

Exhibit 4

CDP R-4-96-167

Letter Indicating Neighboring  
Property Owner Would Not  
Grant an Easement