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CALIFORNIA COASTAL COMMISSION

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1000 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
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Filed: 9/21/00
49th Day: 11/9/00
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Staff: J. Johnson *ja*
Staff Report: 2/29/01
Hearing Date: 3/15/01
Commission Action:



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STAFF REPORT: PERMIT AMENDMENT

APPLICATION NO.: 4-98-329-A-1

APPLICANT: David and Linda Shaheen

AGENT: Steve Montoya, Schmitz and Associates

PROJECT LOCATION: 23940 & 23946 Malibu Road, City of Malibu, Los Angeles County

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Merge two adjacent, separate parcels (APN 4458-8-3 and 4458-8-4) into one parcel and construct a 1,275 sq. ft., two story, 26.5 ft. high addition (on lot presently identified as 23946 Malibu Road) to existing single family residence (on adjacent lot, 23940 Malibu Road). Addition includes garage, exercise room, decking and landscaping on caisson-supported raised platforms, and tie-in to existing septic system, with no grading, on beachfront lot.

DESCRIPTION OF AMENDMENT: Remove and replace existing concrete retaining wall, add a grade beam to support replacement retaining wall. The replacement retaining wall will be constructed in the same location and will not be located further seaward than existing retaining wall. This permit application is for a coastal permit amendment requested as a result of completing this project on an emergency basis.

Lot (two former lots are merged) area:

27,080 sq. ft.

Depth of Retaining Wall:

10 feet

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission approve the proposed project with one Special Condition addressing an applicant's assumption of risk. The applicant is requesting approval of an amendment to construct a replacement retaining wall approved on an emergency basis as Emergency Coastal Permit No. 4-00-159-G as authorized by the Executive Director on July 10, 2000. The applicant was constructing a Commission approved garage, exercise room, decking and landscaping on caisson-supported raised platforms with no grading on a former vacant lot now merged to the applicant's adjoining lot with an existing single family residence. During the construction of the

caissons for the platform, it was discovered that the existing retaining wall was undermined and erosional features creating a large void behind the wall existed along the Malibu road shoulder and the applicant's driveway. The emergency permit was requested to prevent the collapse of the wall, damage to utilities along Malibu Road and the applicant's driveway. The replacement retaining wall is located in the same location, is not located further seaward, and is supported on a grade beam. The proposed project, as conditioned, will be consistent with the applicable resource protection provisions of the Coastal Act.

LOCAL APPROVALS RECEIVED: City of Malibu Planning Department "Approval in Concept" dated August 9, 2000.

SUBSTANTIVE FILE DOCUMENTS: Coastal Permit No. 4-98-329, Shaheen; Coastal Permit No. 4-98-040, Shaheen; Coastal Emergency Permit No. 4-00-159-G, Shaheen; Coastal Permit No. 4-00-111, Kilb; State Lands Commission Letter Dated February 8, 1999 .

PROCEDURAL NOTE: The Commission's regulations provide for referral of permit amendment requests to the Commission if:

1. The Executive Director determines that the proposed amendment is a material change, or
2. Objection is made to the Executive Director's determination of immateriality, or
3. The proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material (14 Cal. Admin. Code Section 13166). The Executive Director has determined that this proposed amendment will be processed as a material amendment.

STAFF NOTE

Because this application was filed on September 21, 2000, the Commission is required under the Permit Streamlining Act to act on this application at the March 12- 16, 2001 Commission meeting. However, the applicant **may** request on ninety (90) day time extension to allow the Commission additional time for review. Since this request has not been made by the applicant, the Commission must act on this application at the March 12-16, 2001 meeting.

I. PERMIT AMENDMENT RECOMMENDATION OF APPROVAL

STAFF RECOMMENDATION:

MOTION: I move that the Commission approve proposed amendment to Coastal Development Permit No. 4-98-329-A-1 pursuant to the staff recommendation.

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit amendment 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 APPROVE THE PERMIT:

The Commission hereby approves the coastal development permit amendment on the ground that the development as amended and subject to conditions, will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit amendment complies with the California Environmental Quality Act because 1) feasible mitigation measures have been incorporated to substantially lessen any significant adverse visual effects of the amended development on the environment 2) there are no feasible alternatives that would substantially lessen any impacts of the amended development on the environment; and 3) the project, with the mitigation measures that are imposed, will have no significant adverse impacts on the environment.

II. CONDITIONS

STAFF NOTE: All Standard (No. 1-5) and Special Conditions (No. 1-5) attached to the original permit as amended (Exhibit A) shall remain in effect and are incorporated herein. The applicant has met these Special Conditions and the Coastal Permit has been issued. One new Special Condition, Number Six, is added as a result of this Amendment.

A. STANDARD CONDITIONS:

See Exhibit A for Standard Condition Numbers. 1 - 5

B. SPECIAL CONDITIONS:

See Exhibit A for Special Condition Numbers. 1 - 5

6. Assumption of Risk/Shoreline Protection (New)

- A. By acceptance of this permit, the applicant acknowledges and agrees to the following:
- (1) The applicant acknowledges and agrees that the site may be subject to hazards from waves, beach erosion, landslides, changes in groundwater levels, liquefaction, earthquake, landslide, flooding, and wildfire.
 - (2) The applicant acknowledges and agrees to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development.
 - (3) The applicant unconditionally waives any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards.
 - (4) The applicant agrees to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
 - (5) No shoreline protective device shall be constructed, now or in the future, for the purpose of protecting the development approved pursuant to coastal development permit (4-98-329-A-1) including, but not limited to, the retaining wall in the event that this structure is threatened with imminent damage or destruction from any natural hazards set forth in subpart (1) above.
- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition. The deed restriction shall include a legal description of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description, Location, and Background:

The applicant proposes to remove and construct a replacement concrete retaining wall, and a new grade beam to support the replacement retaining wall. As approved by Emergency Coastal Permit No. 4-00-159-G, the original design of the replacement retaining wall included four new caissons to support the new grade beam beneath the

retaining wall. During the final engineering review process, the applicant deleted the proposed four additional caissons, constructing only the replacement retaining wall and supporting grade beam. This revised design was possible because the original approved project for the caisson raised platform including four caissons adjoining the replacement retaining wall on the seaward side. The replacement retaining wall was physically joined to these caissons ((Exhibits 7 and 7a). The replacement retaining wall will be constructed in the same location and will not be located further seaward than existing retaining wall. This permit application is a coastal permit amendment requested as a result of completing this project. On July 10, 2000, the Executive Director approved Emergency Coastal Permit No. 4-00-159-G for the removal of the existing retaining wall and construction of a new replacement retaining wall (Exhibit 8). The project site is located on one merged parcel at 23940 and 23946 Malibu Road, on Malibu Beach in the City of Malibu, Los Angeles County (Exhibits 1- 7).

As a result of El Nino storm threats to an unstable beachfront residence and actual damage to a former timber bulkhead vertical return wall on an adjoining parcel, the applicant obtained in February 1998, an emergency coastal permit to demolish a dilapidated single family residence and garage and repair and extend a vertical bulkhead return wall on the applicants then adjoining parcel protecting the applicant's residence. A regular coastal permit (No. 4-98-040, Shaheen) was approved on September 10, 1998. The applicant now owning two adjoining parcels one with a residence, the other vacant, proposed to construct an accessory structure to their residence on the vacant lot. On May 11, 1999, the Commission approved Coastal Permit No. 4-98-329 to allow the applicant to merge two adjacent parcels into one parcel and construct a 1,275 sq. ft. two story, 26.5 foot high addition on the vacant parcel as an addition to the existing single family residence on the adjoining parcel. This addition included a garage, exercise room, decking and landscaping on caisson-supported raised platforms, and tie-in to an existing septic system with no grading. The caissons allow ocean waves to flow beneath the deck without the need for a shoreline protective device, except for the existing retaining wall located and the most landward portion of the subject site. During the construction of the caissons for the platform, it was discovered that the existing retaining wall supporting the road fill for Malibu Road was undermined and erosional features creating a large void behind the wall existed along the Malibu road shoulder and the applicant's driveway. The applicant requested an emergency permit to prevent the collapse of the wall, damage to utilities along Malibu Road and the applicant's driveway. The replacement retaining wall, constructed as a result of Emergency Coastal Permit No. 4-00-159-G, is located in the same location, is not located further seaward, and is supported on a new grade beam.

The project site is a beachfront lot on the south side of Malibu Road, about 1/3 mile west of Webb Way, in the City of Malibu, along a relatively narrow strip of Malibu Beach. On the eastern portion of the subject merged lot where the applicant's existing single family residence is located, a rock revetment exists extending well beyond the applicant's residence and seaward deck. Commission staff review in the past of this revetment concluded that the applicant obtained a coastal permit for this revetment in the mid 1980's. The offshore kelp beds beyond the applicant's property are also designed ESHA in the Los Angeles County Land Use Plan. The proposed project will not affect these ESHA areas.

B. Public Access and Seaward Encroachment

The Coastal Act mandates the provision of maximum public access and recreational opportunities along the coast. The Coastal Act contains several policies which address the issues of public access and recreation along the coast.

Coastal Act Section 30210 states that:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Coastal Act Section 30211 states that:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Coastal Act Section 30212(a) provides that:

Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources.**
- (2) adequate access exists nearby, or,**
- (3) agriculture would be adversely affected. Dedicated access shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.**

Coastal Act Section 30220 states that:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such use.

Coastal Act Section 30251 states that:

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 subordinated to the character of its setting.

Coastal Act Sections 30210 and 30211 mandate that maximum public access and recreational opportunities be provided and that development not interfere with the public's right to access the coast. Likewise, Section 30212 of the Coastal Act requires that adequate public access to the sea be provided to allow use of dry sand and rocky coastal beaches. The proposed project is a replacement project located as far landward as feasible landward of and beneath a caisson supported deck and structure. The applicant submitted a letter dated February 8, 1999 from the State Lands Commission for Application No. 4-98-329 indicating that the eastern portion of the subject merged lot includes an Irrevocable Offer to Dedicate Easement for Public Access executed in 1986 when the eastern portion of the lot was a separate lot (Exhibit 9). The easement is located between the interface of an existing rock revetment and the mean high tide line assuming some land exists between the mean high tide and the revetment. The easement acknowledges a ten foot privacy buffer seaward of the seaward edge of the approved residential structure and is restricted to pass and repass only when no other dry beach area is available for lateral public access. There are no easements executed for public lateral access on the western portion of this merged parcel.

The beaches of Malibu are extensively used by visitors of both local and regional origin and most planning studies indicate that attendance of recreational sites will continue to increase significantly over the coming years. The public has a right to use the shoreline under the public trust doctrine, the California Constitution and California common law. The Commission must protect those public rights by assuring that any proposed shoreline development does not interfere with or will only minimally interfere with those rights.

All projects requiring a coastal development permit must be reviewed for compliance with the public access and recreation provisions of Chapter 3 of the Coastal Act. Based on the access, recreation and development sections of the Coastal Act, the Commission has required public access to and along the shoreline in new development projects and has required design changes in other projects to reduce interference with access to and along the shoreline.

Coastal Act Section 30251 requires that visual qualities of coastal areas shall be considered and protected, landform alteration shall be minimized, and where feasible, degraded areas shall be enhanced and restored.

The applicant proposes to remove and construct a replacement concrete retaining wall, and a new grade beam to support replacement retaining wall. The replacement retaining wall will be constructed in the same location and will not be located further

seaward than existing retaining wall. This permit application is for a coastal permit amendment requested as a result of completing this project. The project site is located on one merged parcel at 23940 and 23946 Malibu Road, on Malibu Beach in the City of Malibu, Los Angeles County (Exhibits 1- 7).

As a means of controlling seaward encroachment of residential and related structures on the beach to ensure maximum access and recreational opportunities, protect public views and minimize wave hazards as required by Coastal Act Sections 30210, 30211, 30212(a), 30220, and 30251, the Commission has in past permit actions, developed the "stringline" policy to control the seaward extent of buildout. As applied to beachfront development, the stringline limits extension of a structure to a line drawn between the nearest corners of adjacent structures and limits decks to a similar line drawn between the nearest corner of adjacent structures, such as retaining walls or decks, and limits them to a similar line drawn between the nearest corners of the structures.

The Commission has applied this policy to numerous past permit actions involving infill on sandy beaches and found it to be an effective policy tool in preventing further encroachments onto sandy beaches. In addition, the Commission has found that restricting new development to structure stringlines is an effective means of controlling seaward encroachment to ensure maximum public access, to protect public views and scenic quality of the shoreline as required by the above noted Coastal Act Sections.

The proposed project does not invoke the restrictions of stringline policy because the proposed replacement retaining wall is located at the far landward portion of the lot and back of the beach. The purpose of the wall is to support the roadway shoulder of Malibu Road and the utilities located along this roadway. The retaining wall is designed to also protect the roadway against the occasional wave attack, as the wall is located within the wave uprush area. However, the retaining wall does not protect a septic system or other residentially related development. As a result, the potential impacts on coastal processes by replacing the existing retaining wall with one located in the same location with a deeper foundation on a new grade beam are the same. Therefore, the proposed replacement project will not create any adverse impacts on coastal processes, public access, or public coastal views to and along the coast. The project would not preclude public access to any presently existing vertical or lateral public access easement or access rights. Therefore, the Commission finds that condition to require lateral access is not appropriate and that the project, as proposed, is consistent with Coastal Act Sections 30210, 30211, 30212(a), 30220, and 30251.

C. Geologic Stability

Coastal Act Section 30253 states in part:

New development shall:

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

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

Section 30253 of the Coastal Act mandates that new development provide for geologic stability and integrity and minimize risks to life and property in areas of high geologic, flood, and fire hazard. The proposed development is located along the coast of the Santa Monica Mountain area, an area that is generally considered subject to an unusually high amount of natural hazards. Geologic hazards common to beachfront sites include landslides, and erosion and flooding from storm waves.

The Malibu coast has been subject to substantial damage as a result of storm and flood occurrences, geological failures and firestorms. Therefore, it is necessary to review the proposed project and project site against the area's known hazards. The proposed project involves the construction of a replacement retaining wall to protect the Malibu Road shoulder along the landward and western portion of the subject merged lot. The site is susceptible to flooding and/or wave damage from storm waves and storm surge conditions. Along the Malibu coast, significant damage has also occurred to coastal areas from high waves, storm surge and high tides. In the El Nino winter of 1997-98, storms triggered mudslides and landslides and caused significant damage along the coast.

During the winter season, the proposed replacement retaining wall will protect the Malibu Road shoulder; it will not protect any residential structure or related development such as a septic system.

The Coastal Act recognizes that new development, such as the proposed replacement retaining wall, may involve the taking of some risk. Coastal Act policies require the Commission to establish the appropriate degree of risk acceptable for the proposed development and to determine who should assume the risk. When development in areas of identified hazards is proposed, the Commission considers the hazard associated with the project site and the potential cost to the public, as well as the individual's right to use his property. In fact, the applicant's former beach residence on this subject site was severely damaged in the 1998 El Nino winter storms.

As such, the Commission finds that due to the unforeseen possibility of wave attack, erosion, and flooding, the applicant shall assume these risks as a condition of approval. Because this risk of harm cannot be completely eliminated, Special Condition Number One requires the applicant to waive any claim of liability on the part of the Commission for damage to life or property which may occur as a result of the permitted development. The applicant's assumption of risk, when executed and recorded on the property deed, will show that the applicant is aware of and appreciated the nature of the hazards which exist on the site, and which may adversely affect the stability or safety of the proposed development.

The Commission finds that the project, as conditioned above, is consistent with Section 30253 of the Coastal Act.

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 Chapter 3 (commencing with Section 30200) and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with Chapter 3 (commencing with Section 30200). A denial of a coastal development permit on grounds it would prejudice the ability of the local government to prepare a local coastal program that is in conformity with Chapter 3 (commencing with Section 30200) shall be accompanied by a specific finding which sets forth the basis for that conclusion.

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, as conditioned, will be in conformity with the provisions of Chapter 3 of the Coastal Act. 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 for the Malibu/Santa Monica Mountain area 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 a Coastal Development Permit application to be supported by a finding showing the application, as conditioned, 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 effect which the activity would have on the environment.

The Commission finds that 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 and that there are no feasible alternatives that could lessen these significant adverse effects on the environment. Therefore, the proposed

project has been adequately mitigated and is consistent with CEQA and the policies of the Coastal Act.

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CALIFORNIA COASTAL COMMISSION

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



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Date: April 4, 2000

Permit Application No. 4-98-329

COASTAL DEVELOPMENT PERMIT

On May 11, 1999, the California Coastal Commission granted to Linda & David Shaheen, permit 4-98-329, subject to the attached Standard and Special Conditions, for development consisting of: Merge two adjacent, separate parcels (APN 4458-8-3 and 4458-8-4) into one parcel and construct a 1,275 sq. ft., two story, 26.5 ft. high addition (on lot presently identified as 23946 Malibu Road) to existing single family residence (on the adjacent lot, 23940 Malibu Road). Addition includes garage, exercise room, decking and landscaping on caisson-supported raised platforms, and tie-in to existing septic system, with no grading, on beachfront lot and is more specifically described in the application on file in the Commission offices.

The development is within the coastal zone in Los Angeles County at 23940 & 23946 Malibu Rd., Malibu.

Issued on behalf of the California Coastal Commission by,

PETER DOUGLAS
Executive Director

By: Melanie Hale
Coastal Program Analyst

ACKNOWLEDGMENT:

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4 which states in pertinent part, that: "A public entity is not liable for injury caused by the issuance. . . of any permit. . ." applies to the issuance of this permit.

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGEMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. 14 Cal. Admin. Code Section 13158(a).

4/10/00

Date

Permittee

A5: 8/95

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| EXHIBIT NO. A |
| APPLICATION NO. 4-98-329-A-1 |
| CDP Conditions |
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COASTAL DEVELOPMENT PERMIT

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STANDARD CONDITIONS:

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

SPECIAL CONDITIONS:

1. Future Development Deed Restriction

- A. This permit is only for the development described in coastal development permit 4-98-329. Accordingly, any future improvements to the permitted addition identified as a garage/exercise area with bathroom, shall require an additional coastal development permit from the Commission or from the successor in interest. If the applicants propose to add to or convert any portion of the subject structure approved pursuant to this coastal development permit for residential occupancy (such as the addition of or conversion to a bedroom or guest unit), in addition to all other applicable filing requirements, the applicant must submit a detailed seismic investigation of ground rupture potential due to active faulting in the immediate vicinity of the project. The seismic investigation shall be prepared by a qualified geotechnical consultant licensed in the State of California and the resultant report shall be approved as adequate by the Executive Director prior to filing such an application for further review.

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- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restrictions. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

2. Evidence of Lot Merger

In accordance with the applicant's proposal, prior to the issuance of Coastal Development Permit No. 4-98-329, the applicant shall submit evidence to the satisfaction of the Executive Director, that the adjacent parcels identified as 23940 and 23946 Malibu Road have been legally merged into one lot hereafter identified solely as 23940 Malibu Road.

3. Assumption of Risk/Shoreline Protection

Prior to the issuance of the coastal development permit, the applicants as landowners shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, incorporating all of the terms and conditions set forth and listed below. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required. The deed restriction shall provide that:

- a) the applicants acknowledge and agree that the site may be subject to hazards from waves, beach erosion, landslides, changes in groundwater levels, liquefaction, earthquake, and wildfire;
- b) the applicants acknowledge and agree to assume the risks to the applicants and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development;
- c) the applicants unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards;
- d) the applicants agree to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards;
- e) the applicants agree that any adverse impacts to property caused by the permitted project shall be fully the responsibility of the landowner;

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- f) neither the applicants nor any successor-in-interest shall construct any shoreline protective device(s) for any purpose of protecting any development approved pursuant to coastal development permit No. 4-98-329, including, but not limited to, elevated gardens/terraces, support caissons, garage/gym/bathroom structure, decks, driveways, walkways, or connections to septic system in the event that these structures are threatened with imminent damage or destruction from any natural hazards set forth in subpart (a) above.

4. Plans Conforming to Geologic Recommendations

All recommendations contained in the Soils and Engineering-Geologic Investigation for Proposed Studio/Gym and Garage, 23946 Malibu Road, Malibu, California, dated April 10, 1998, prepared by GeoSystems, shall be incorporated into the final project plans and designs. All plans must be reviewed and approved by the consultants. Prior to the issuance of the coastal development permit, the applicant shall submit, for review and approval of the Executive Director, evidence of the consultants' review and approval of all project plans. Such evidence shall include affixation of the consulting geologists' stamp and signature to the final project plans and designs.

The final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission relative to construction, grading and drainage. Any substantial changes in the proposed development approved by the Commission which may be required by the consultant shall require an amendment to the permit or a new coastal permit. The Executive Director shall determine whether required changes are "substantial."

5. Construction Responsibilities and Debris Removal

No stockpiling of construction materials or storage of equipment shall occur on the beach and no machinery will be allowed in the intertidal zone at any time. The permittee shall immediately remove from the beach area any and all debris that result from the construction activities.

6. Sign Restrictions

No signs shall be posted on the property subject to this permit (and/or on immediately adjacent properties) which (a) explicitly or implicitly indicate that the portion of the beach on Assessor's Parcel Number (APN) 4458-8-4 (formerly APN 4458-8-3 and 4458-8-4, combined in accordance with the applicant's proposal and requirements of Special Condition 2), known as 23940 Malibu Road, Malibu, located seaward of the proposed project gardens, terraces and decks placed on a platform supported by caissons or seaward of the existing rock revetment is private or (b) contain similar messages that

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COASTAL DEVELOPMENT PERMIT

Page 5 of 5
Permit Application No. 4-98-329

attempt to prohibit public use of this portion of the beach. In no instance shall signs be posted which read "*Private Beach*" or "*Private Property*." The owner of the subject parcel may, however, place signs on the existing rock revetment solely for the purpose of warning the public not to walk or climb on the rock revetment as it may be hazardous to do so. In order to effectuate the above prohibition, and to ensure that the content of hazard warning signs proposed for placement on the revetment do not conflict with the restrictions otherwise set forth herein, the permittee is required to submit the content of any proposed signs to the Executive Director for review and approval prior to posting such signs.

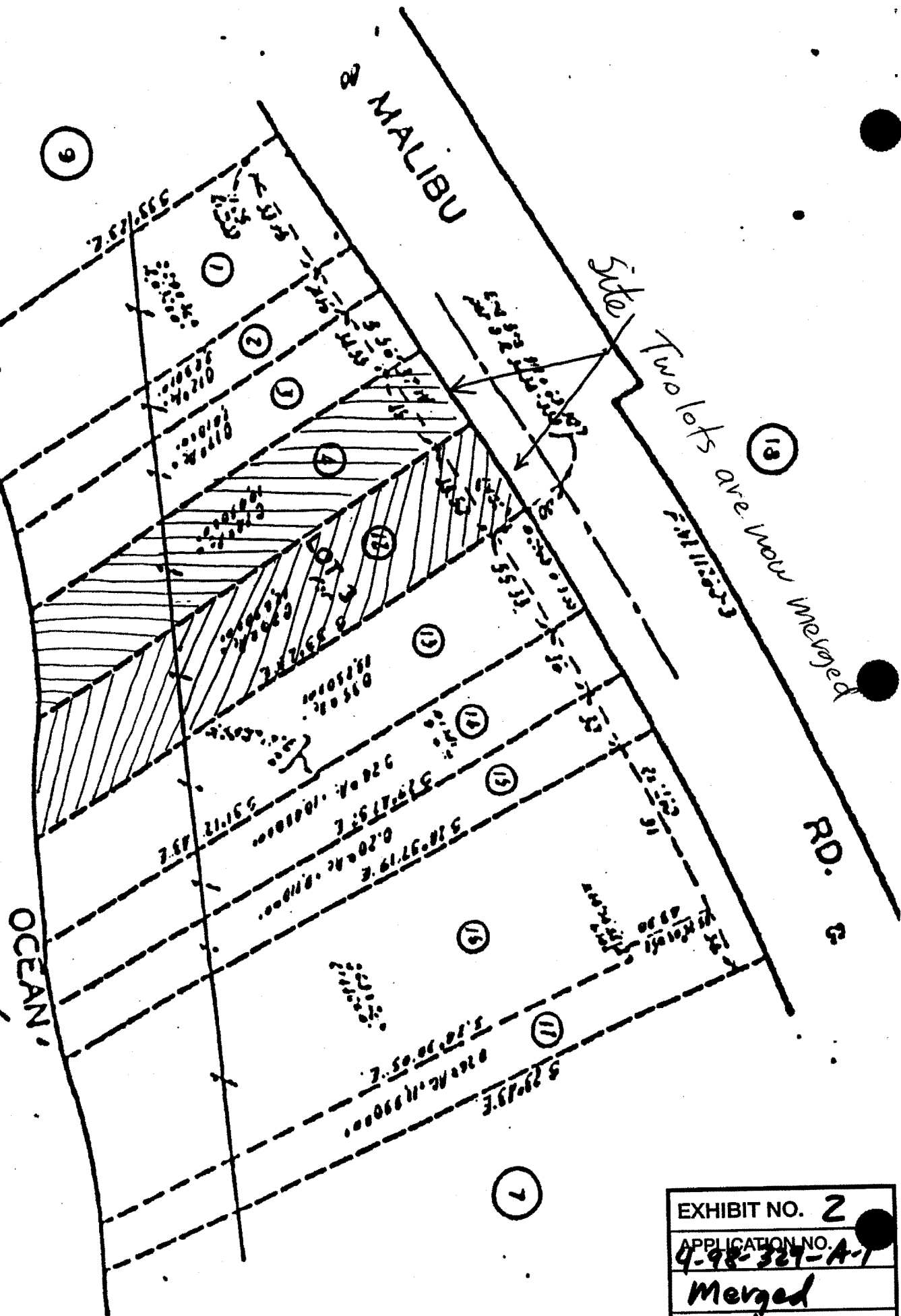
md

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|-----------------|--------------|
| EXHIBIT NO. | A |
| APPLICATION NO. | 4-98-329-A-1 |
| COP Conditions | |
| Pg 5 of 5 | |

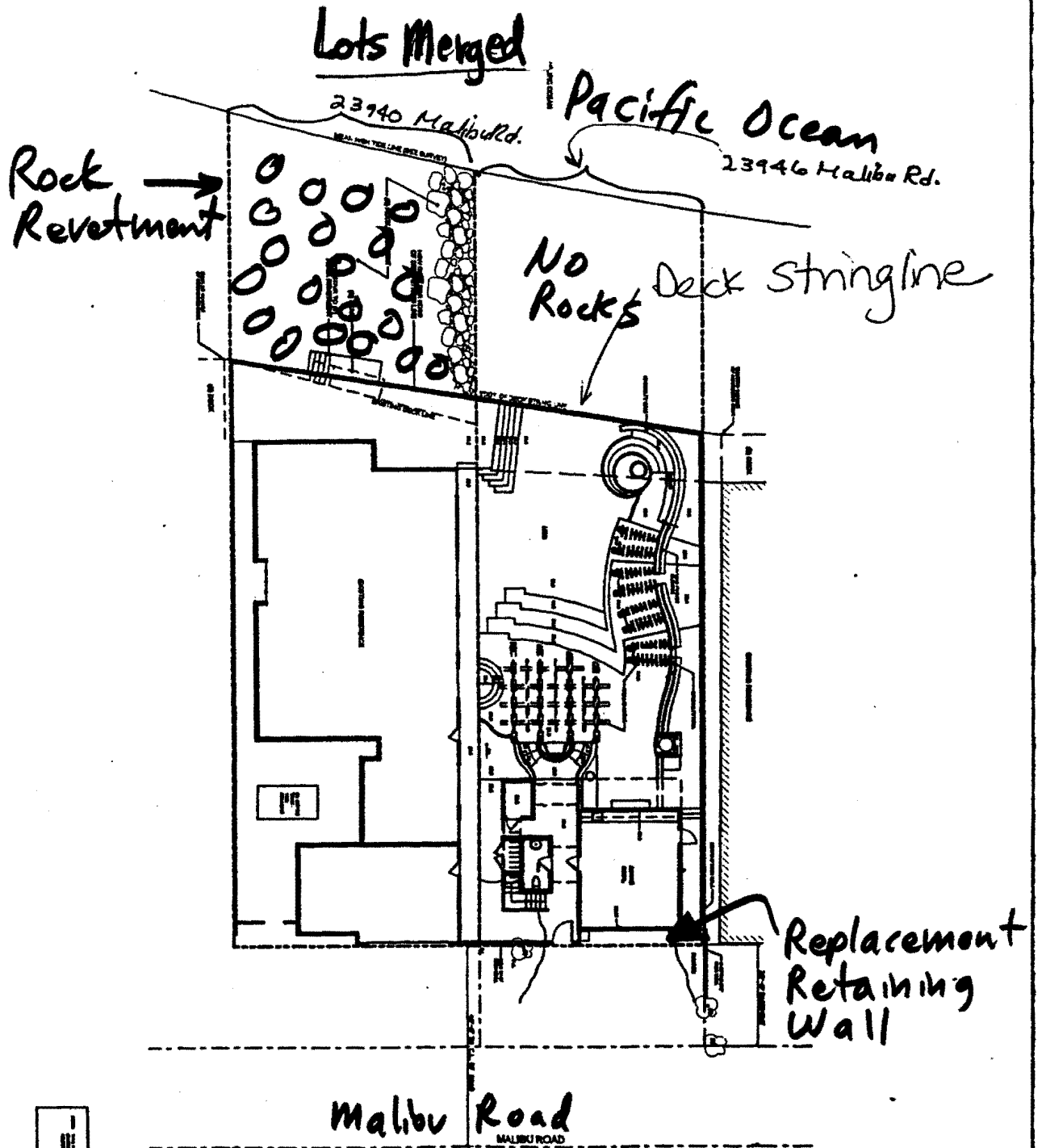
Project Site

LAND OF MATTHEW KELLER
IN THE RANCHO TOPANGA MALIBU SEQUIT

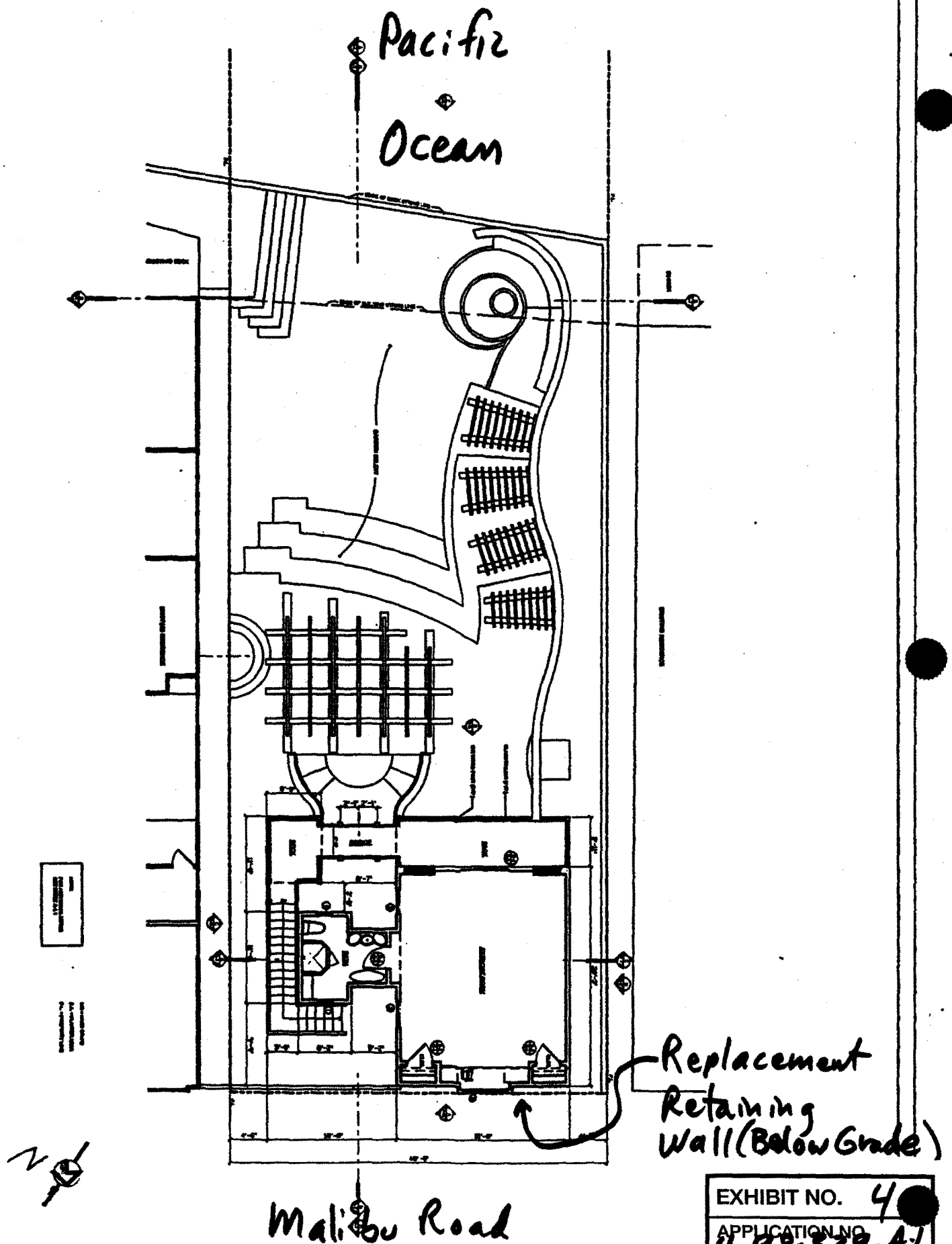
PACIFIC OCEAN
Mean High Tide Line per C.S. 0-7726 June 1969



| |
|------------------------------|
| EXHIBIT NO. 2 |
| APPLICATION NO. 9-98-327-A-1 |
| Merged |
| Lots |



| |
|------------------------------------|
| EXHIBIT NO. 3 |
| APPLICATION NO. 4-98-329-A1 |
| Site Plan |



Malibu Road
Replacement
Retaining
Wall

SECTION A
Site Section

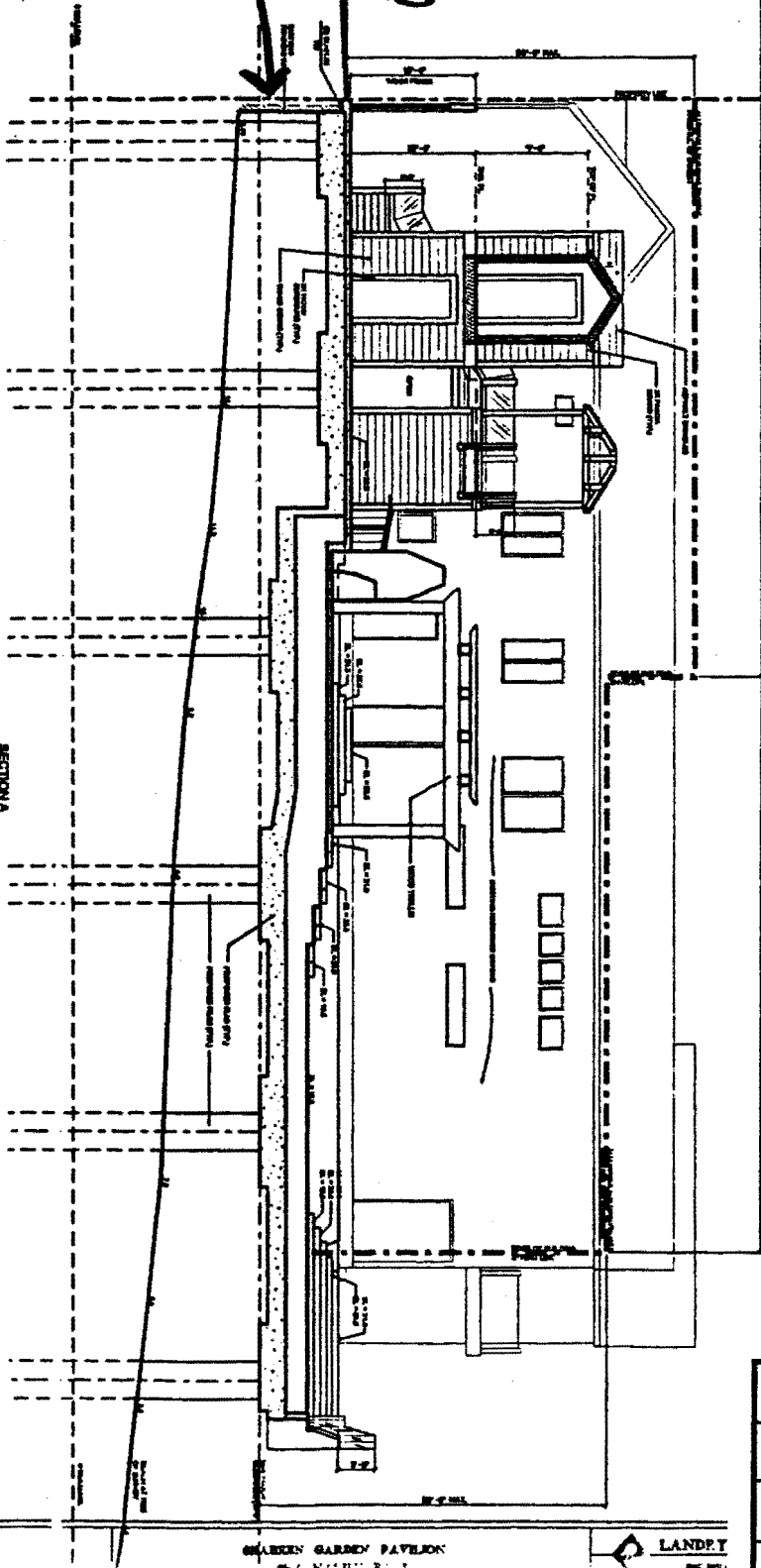


EXHIBIT NO. 5
APPLICATION NO. 4-98-329-A-1
Western Portion
Site Section

GREEN GARDEN PAVILION
2000 1000 1000

LANDPT
2000 1000 1000

Replacement
Retaining
Wall

West

ELEVATION D

Elevation

ELEVATION C

East Elevation

Replacement
Retaining
Wall

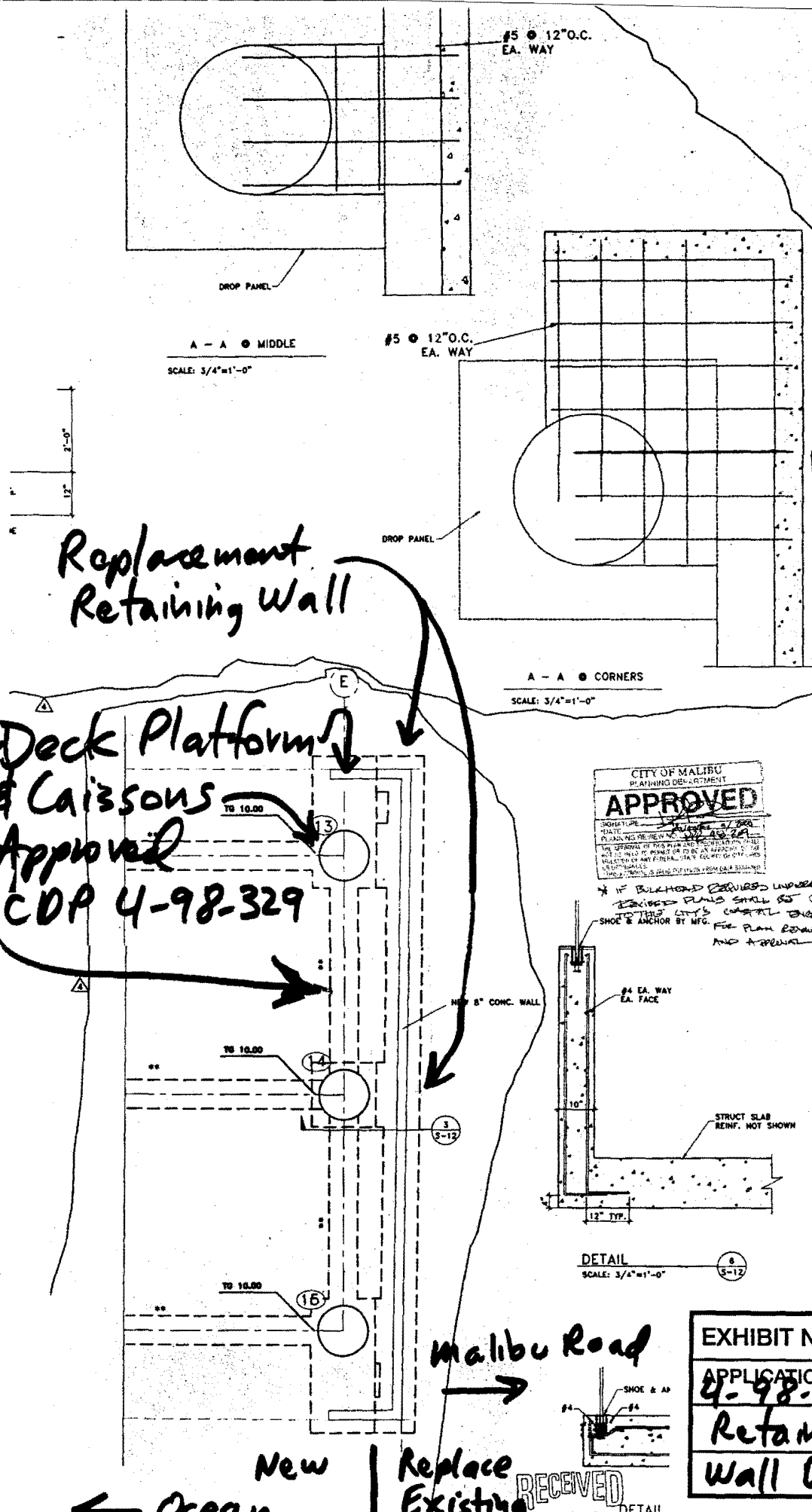
EXHIBIT NO. 6

APPLICATION NO. U-98-329-A-1

Western Portion
Elevations

SHARON GARDEN PAVILION
2nd FLOOR PLAN

LANDRY

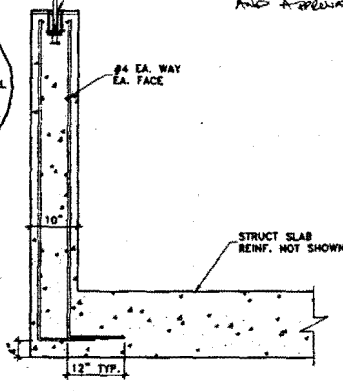


KNA ENGINEERING • STRUCTURAL CONSULTANTS
28720 ROADSIDE DRIVE SUITE 249 AGOURA HILLS, CA 91301 (818) 811-1111

SHAHEEN GARDEN PAVILION
23946 MALIBU ROAD
MALIBU, CALIFORNIA

CITY OF MALIBU
PLANNING DEPARTMENT
APPROVED
DATE: 7/26/00
PLANNING REVIEW NO. 4483
THE DEPARTMENT OF THIS PLAN AND SPECIFICATIONS SHALL BE REVIEWED BY THE CITY ENGINEER AND THE CITY PLANNING DEPARTMENT. IF ANY CHANGES ARE REQUIRED, THEY SHALL BE SUBMITTED TO THE CITY ENGINEER AND THE CITY PLANNING DEPARTMENT FOR REVIEW AND APPROVAL.

* IF BULKHEAD BEHINDS IMPROVED
BRIDGE PILING SHALL BE PROVIDED
TO THIS CITY'S CIVIL ENGINEER
SHOE & ANCHOR BY MFG. FOR PLAN REVIEW
AND APPROVAL.



SHEET TITLE: PILE SECTION & DETAILS

| DATE | REVISIONS | REMARKS |
|---------|-----------|-----------------------------|
| 1/14/00 | 1 | G.B. ELEV. REV. DETAIL 4483 |
| 7/7/00 | 2 | REV. RET. WALL |
| 7/26/00 | 3 | |

REGISTERED PROFESSIONAL ENGINEER
MAYN KARAGHIZIAN
NO. 4040885

EXHIBIT NO. 7
APPLICATION NO. 4-98-329-A-1
Retaining Wall Details

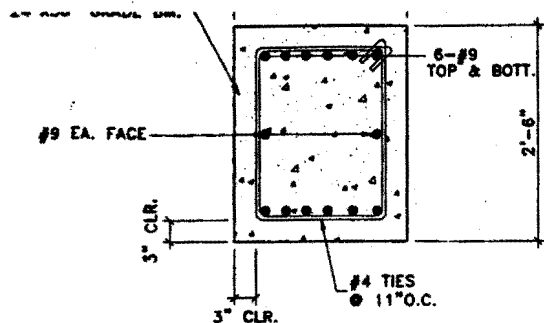
New Ocean | Replace Existing Malibu Road

PARTIAL FOUNDATION PLAN

RECEIVED
AUG 22 2000
CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT
4-98-329-A1
DETAIL 3-12
SCALE: 3/4"=1'-0"

SHEET
S-12

VARIES

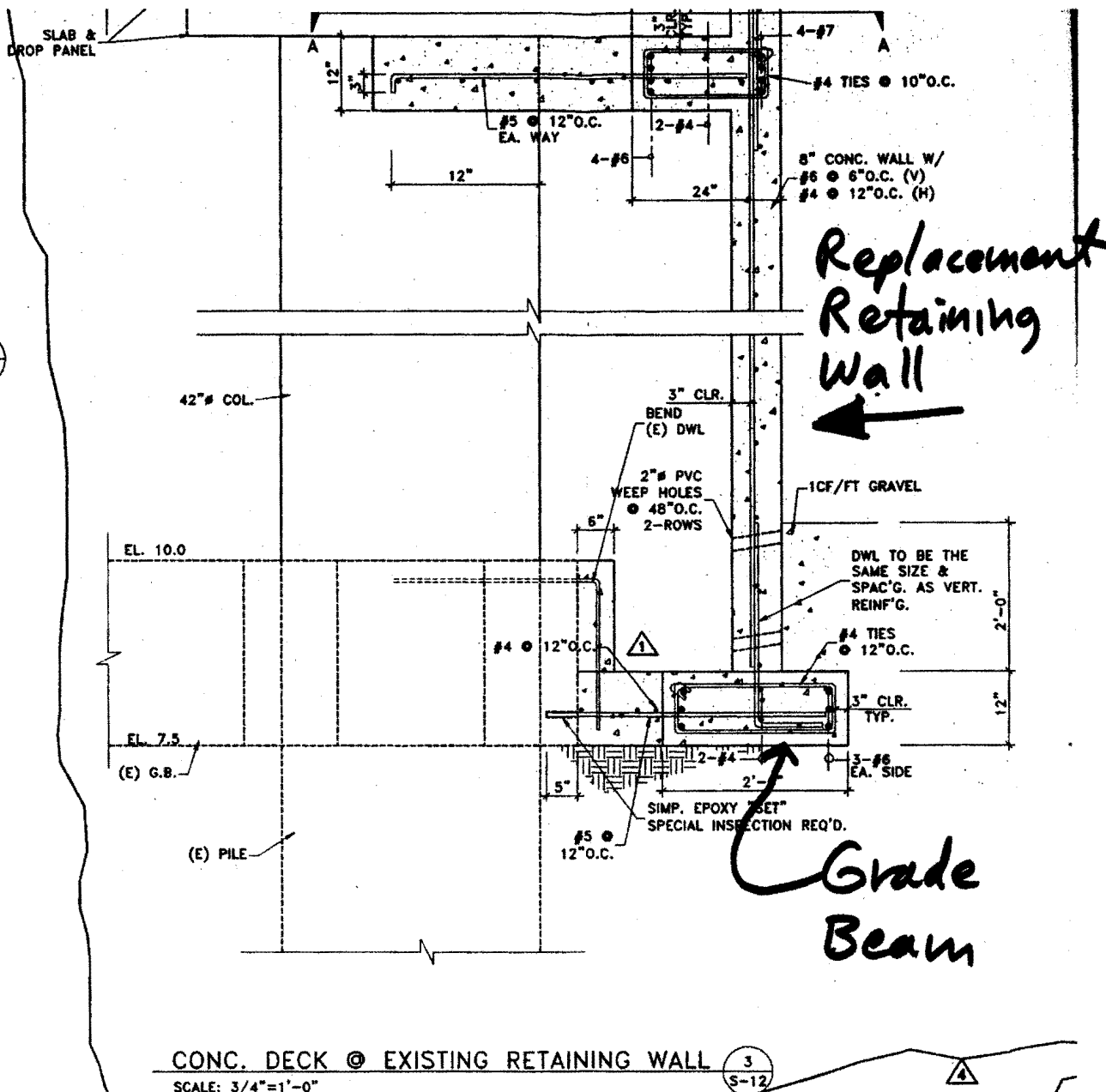
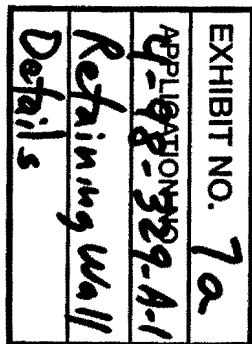


TYP. GRADE BEAM SECTION 2
S-12

| REBAR NO. | LAP LENGTH (MIN.) |
|-----------|-------------------|
| #4 | 21" |
| #5 | 26" |
| #6 | 31" |
| #7 | 46" |
| #8 | 57" |
| #9 | 59" |
| #10 | 66" |
| #11 | 73" |

NOTE: ALL REINFORCEMENT SHALL BE EPOXY COATED GRADE 60.

BEDROCK



Replacement
Retaining
Wall
←

Grade Beam

CONC. DECK @ EXISTING RETAINING WALL

CALIFORNIA COASTAL COMMISSION

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

**EMERGENCY PERMIT**

July 10, 2000

Permit No.: 4-00-159-G

Applicants: David Linda Shaheen

Project Location: 23940 Malibu Road, Malibu (Los Angeles County)

Work Proposed: Remove and replace existing concrete retaining wall, add four new caissons and a grade beam to support replacement retaining wall. The replacement retaining wall will be constructed in same location and will not be located further seaward than existing retaining wall. Backfill earthen void area along Malibu Road shoulder and beneath existing driveway to garage at 23940 Malibu Road to existing grade.

This letter constitutes approval of the emergency work you or your representative has requested to be done at the location listed above. I understand from your information and our site inspection that an unexpected occurrence in the form of erosion of the earthen support for an existing retaining wall, Malibu Road shoulder and a driveway requires immediate action to prevent or mitigate loss or damage to life, health, property or essential public services. 14 Cal. Admin. Code Section 13009. The Executive Director hereby finds that:

(a) An emergency exists which requires action more quickly than permitted by the procedures for administrative or ordinary permits and the development can and will be completed within 30 days unless otherwise specified by the terms of the permit;

(b) Public comment on the proposed emergency action has been reviewed if time allows; and

(c) As conditioned the work proposed would be consistent with the requirements of the California Coastal Act of 1976.

The work is hereby approved, subject to the conditions listed on the reverse.

Very Truly Yours,

Peter M. Douglas
Executive Director

Handwritten signature: m. Douglas
By: Chuck Damm
Title: Senior Deputy Director

| |
|------------------------------|
| EXHIBIT NO. 8 |
| APPLICATION NO. 4-98-329-A-1 |
| Emergency |
| Permit P910f2 |

CONDITIONS OF APPROVAL:

1. The enclosed form must be signed by the property owner and returned to our office within 15 days.
2. Only that work specifically described above and for the specific property listed above is authorized. Any additional work requires separate authorization from the Executive Director.
3. The work authorized by this permit must be completed within 30 days of the date of this permit.
4. Within 60 days of the date of this permit, the permittee shall apply for an amendment to coastal development permit number 4-98-329 to have the emergency work be considered permanent. If no such application is received, the emergency work shall be removed in its entirety within 150 days of the date of this permit unless waived by the Director.
5. In exercising this permit the applicant agrees to hold the California Coastal Commission harmless from any liabilities for damage to public or private properties or personal injury that may result from the project.
6. This permit does not obviate the need to obtain necessary authorizations and/or permits from other agencies.
7. All backfill materials shall be imported from an off-site source and in no case shall material from the sandy beach area or creek bed be used for any construction activity.

IMPORTANT

Condition #4 indicates that the emergency work is considered to be temporary work done in an emergency situation. If the property owner wishes to have the emergency work become a permanent development, a coastal permit must be obtained. A regular permit would be subject to all of the provisions of the California Coastal Act and may be conditioned accordingly. These conditions may include provisions for public access (such as an offer to dedicate an easement) and/or a requirement that a deed restriction be placed on the property assuming liability for damages incurred from storm waves.

If you have any questions about the provisions of this emergency permit, please call the Commission Area office.

Enclosures: 1) Acceptance Form; 2) Permit Amendment Application Form

cc: Local Planning Department

File: c:\np\permits\emergency\4-98-329-g\subans

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| EXHIBIT NO. 8 |
| APPLICATION NO. 4-98-329-A1 |
| Emergency |
| Permit pg 2 of 2 |

CALIFORNIA STATE LANDS COMMISSION

100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202



ROBERT C. HIGHT, Executive Officer

California Relay Service From TDD Phone 1-800-735-2922
from Voice Phone 1-800-735-2929

Contact Phone: (916) 574-1892
Contact FAX: (916) 574-1925

February 8, 1999

File Ref: SD 99-01-04.7

Mr. Donald W. Schmitz Jr.
Schmitz & Associates
29395 Agoura Road, Suite 205
Agoura Hills, CA 91301

Dear Mr. Schmitz:

| |
|------------------------------|
| EXHIBIT NO. 9 |
| APPLICATION NO. 4-98-329-A-1 |
| State Lands |
| Commission |

SUBJECT: Coastal Development Project Review for Reconstruction of An Ancillary Structure at 23946 Malibu Road, Appurtenant to an Existing Single Family Residence at 23940 Malibu Road, Malibu **Pg 1 of 2**

This is in response to your request on behalf of your clients, David and Linda Shaheen, for a determination by the California State Lands Commission (CSLC) whether it asserts a sovereign title interest in the property that the subject project will occupy and whether it asserts that the project will intrude into an area that is subject to the public easement in navigable waters.

The facts pertaining to your clients' project, as we understand them, are these:

Your clients are proposing to develop a residential building that will replace the demolished house at 23946 Malibu Road in the Puerco/Amarillo Beach area of Malibu. The previous house suffered extensive storm damage during the 1997-98 winter storms and, under Emergency Permit 4-98-040-G, was demolished and removed. The new development, consisting of an additional garage, exercise room, garden pavilion and deck, will be an expansion of the adjacent house at 23940 Malibu Road. The City of Malibu is requiring that the two lots be merged into one parcel before the development proceeds. From the December 3, 1998 plans prepared by the Landry Design Group, Inc., it appears that the new deck will be in conformance with the string lines established by the decks on either side. To the east, there are numerous residences. To the west, the five immediately adjacent lots are developed. Westerly of that development, the lots are primarily undeveloped.

Our files indicate that this property is subject to an Irrevocable Offer to Dedicate Public Access Easement recorded as Document 86-1587471, Official Records of Los Angeles County, and executed on October 30, 1986 by the then property owner, Robert

L. Miller. That easement provides for lateral public access and passive recreational use along the shoreline, seaward of this property. The easement acknowledged a ten foot privacy buffer seaward of the seaward edge of the approved residential structure. The privacy buffer is restricted to pass and repass only, and is available only when no other dry beach areas are available for lateral public access. The easement also states that the remaining area between the interface of the revetment and sand and mean high tide line is for passive recreation. This assumes some such land exists between the mean high tide line and the revetment. The easement also states that "... the mean high water line and the interface of the sand and the revetment is understood to be ambulatory from day to day." It does not appear that the development of a residential building as proposed will interfere with this easement.

We do not at this time have sufficient information to determine whether this project intrudes upon state sovereign lands or interferes with other public rights. Development of information sufficient to make such a determination would be expensive and time-consuming. Given the limited resources of this agency and the circumstances set forth above, we do not think such an expenditure of time, effort and money is warranted in this situation, at this time.

Finally, our files indicate that by letter dated June 8, 1998, we provided a determination of interest with regard to the demolition and timber return wall repairs performed under the above referenced emergency permit. That letter acknowledged the existence of a rock revetment in front of 23940 Malibu Road and stated that CSLC staff had no record of reviewing plans for this rock revetment. With regard to the existing rock revetment, we reserve the right to comment to the CCC and take any other appropriate action involving future assertion of state ownership or public rights on the property. Should it be determined in the future that a portion of the existing revetment involves state property, a lease or removal may be required.

If you have any questions, please contact Jane E. Smith, Public Land Management Specialist, at (916) 574-1892.

Sincerely,


Robert L. Lynch, Chief
Division of Land Management

cc: Craig Ewing, City of Malibu

| |
|------------------------------|
| EXHIBIT NO. 9 |
| APPLICATION NO. 9-98-329-A-1 |
| State Lands |
| Commission |

page 2 of 2