

CALIFORNIA COASTAL COMMISSION

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

**ITEM: Th-3b**

Filed: 8/10/98
 49th Day: 9/28/98
 180th Day: 2/06/99
 Staff: Hale-V *[Signature]*
 Staff Report: 8/13/98
 Hearing Date: Sept. 10, 1998
 Commission Action:

STAFF REPORT: CONSENT CALENDAR

APPLICATION NO.: 4-98-040

APPLICANT: David and Linda Shaheen Agent: Donald Schmitz

PROJECT LOCATION: 23940 and 23946 Malibu Road, City of Malibu; Los Angeles County.

PROJECT DESCRIPTION: This is a regular permit follow-up application for work undertaken pursuant to emergency permit 4-98-040-G, dated March 26, 1998, to: 1) Demolish a dilapidated, existing single family residence and garage on beachfront lot at 23946 Malibu Road (existing structure was in a state of advanced decay prior to El Nino storm season), and 2) Repair and extend wooden bulkhead return wall undermined by El Nino storm wave action, on adjacent parcel at 23940 Malibu Road.

LOCAL APPROVALS RECEIVED: Approval in Concept, City of Malibu Planning Department.

SUBSTANTIVE FILE DOCUMENTS: Coastal Engineering Report for 23946 Malibu Road, prepared by David C. Weiss, Structural Engineer & Assoc., Inc., dated March 27, 1998; July 5, 1998 supplemental information supplied by David C. Weiss; Emergency Coastal Development Permit 4-98-040-G (Shaheen).

SUMMARY/ STAFF RECOMMENDATION:

The demolition of a single family residence and the repair and extension of a bulkhead vertical return wall proposed pursuant to this permit request were authorized by the Executive Director under Emergency Permit 4-98-040-G last spring. The 1920s-vintage, dilapidated single family residence and garage at 23946 Malibu Rd. were demolished because potential debris impacts during the high surf conditions threatened the collapse of the structure's decayed support posts. The pattern of high surf conditions during the El Nino storm season heightened the concern for the safety of the occupants, and thus the residence was abandoned and approval for demolition sought

to prevent the accidental collapse of the residence before regular permit approvals could be processed.

In addition, the storm waves undermined the timber vertical return wall protecting the adjacent property at 23946 Malibu Road, also owned by the applicant. Left unrepaired, additional damage to the wall would have occurred, thus the applicant repaired and extended the return wall under the provisions of the same emergency permit. No addition to the existing rock seawall is proposed, and the new construction of the vertical return wall extends approximately 44 feet landward of the existing return wall.

Neither the demolition nor the return wall repair and extension would pose new impacts to coastal access or recreation, and if the permit is approved with the proposed conditions, would not adversely affect other coastal resources. Staff therefore recommends approval with special conditions to address: 1) Applicants' Assumption of Risk and 2) Construction Responsibilities and Debris Removal.

STAFF RECOMMENDATION:

I. Approval with Conditions.

The staff recommends that the Commission adopt the following resolution:

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 government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse effects 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 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 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 development during construction, 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. Assumption of Risk

Prior to permit issuance, applicants as land owners shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide that: (a) the applicant understands that the site may be subject to extraordinary hazards from liquefaction, storm waves, erosion or flooding and the applicant assumes the risks posed by development and occupancy of the site despite exposure to such hazards; (b) the applicant assumes the liability from such hazards; and (c) the applicants unconditionally waive any claim of liability against the California Coastal Commission and agrees to indemnify and hold harmless the California Coastal Commission, its officers, agents, and employees relative to the California Coastal Commission's approval of the project for any damage, whether to life or property, from such hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens which 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.

IV. Findings and Declarations

The Commission hereby finds and declares as follows:

A. Background; Project Description

Location

The project site is located on two adjoining oceanfront parcels at 23940 and 23946 Malibu Road, fronting Malibu Beach, in the City of Malibu, Los Angeles County. See Exhibits 1-3.

Emergency Authorization

As the result of El Nino storm wave threats to an unstable beachfront residence and actual damage to an existing timber bulkhead vertical return wall, the applicant sought, and on February 19, 1998 obtained, an emergency authorization to undertake the subject development (demolition of the dilapidated single family residence and garage; repair and extension of bulkhead vertical return wall) (CDP 4-98-040-G).

The residence and garage were demolished within the 30-day time limit authorized under the emergency permit, but construction delays prevented the timely completion of the vertical return wall repairs and extension. The applicant subsequently sought an extension of the emergency authorization. As the result, CDP 4-98-040-G was reissued by the Executive Director on March 26, 1998.

The applicants' agent has confirmed that all work authorized under both the original and the reissued emergency permit has been completed. In compliance with Condition 4 of the emergency permit approval, the applicant has timely submitted the pending application for a regular coastal development permit to have the emergency work considered permanent.

Demolition of Unsafe, Dilapidated Residence and Garage

The applicant has submitted a letter prepared on December 12, 1997 by David Weiss, president of David C. Weiss Structural Engineer & Associates, Inc. (Exhibit 4). The letter memorializes Mr. Weiss' telephone call on that date to the applicant's agent, Donald Schmitz, warning that the antiquated residence at 23946 Malibu Road was in danger of collapse due to the evident deterioration of key support posts combined with substandard underlying construction. Mr. Weiss warned that if floating debris during El Nino high tides should strike one of the building's decayed support structures, the house could collapse. The residence was subsequently abandoned.

Approximately two months after Mr. Weiss wrote the above-referenced letter, on February 17, 1998, the applicant sought an emergency permit to: a) demolish the single family residence and garage on the 23946 Malibu Road parcel, b) backfill eroded sand to protect the septic system (septic system is to remain), and c) repair and extend the bulkhead vertical return wall on the adjacent parcel. While the El Nino storm conditions heightened the threat that the old house might finally collapse, Mr. Weiss' letter emphasizes that decay caused by chronic lack of maintenance, combined with poor original construction quality, led to the conditions requiring emergency demolition. The threats posed by the El Nino storm season simply provided the final impetus for the remedial demolition undertaken by the applicant.

The applicant's agent has additionally confirmed that the residence and garage were in a state of advanced decay prior to the El Nino storm season, and has estimated that the now-demolished structures were of approximately 1920s vintage.¹

Repair and Extension of Bulkhead Vertical Return Wall

The applicant proposes to repair an existing timber bulkhead vertical return wall and to construct a 44-foot, 6-inch long, landward extension of the return wall. The wall would match the existing return wall height of 14 feet. The repairs are necessary because the existing return wall was undermined by wave overtopping and resultant erosion during last winter's El Nino high surf conditions. No seaward extension of the return wall is proposed, nor does the applicant propose the seaward expansion of the rock revetment previously approved by the Commission to protect the existing residence located on the 23940 Malibu Road parcel.

B. Public Access and Seaward Encroachment

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:

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 in new shoreline development projects, access to the shoreline and along the coast shall be provided except in specified circumstances, 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.

Finally, Section 30251 of the Coastal Act states that:

¹ Applicant's agent, Donald Schmitz, on request to Commission staff, August 6, 1998.

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.

Public Access Considerations for Beachfront Projects

The Commission has established a policy that all beachfront projects requiring a coastal development permit must be reviewed for compliance with the public access provisions of Chapter 3 of the Coastal Act. In past permit actions, 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. The major access issue in such permits is the occupation of sand area by a structure, in contradiction of Coastal Act policies 30210, 30211, and 30212.

Past Commission review of shoreline residential projects in Malibu has shown that individual and cumulative public access impacts of such projects can include encroachment on lands subject to the public trust (thus physically excluding the public); interference with the natural shoreline processes necessary to maintain publicly-owned tidelands and other public beach areas; overcrowding or congestion of such tideland or beach areas; and visual or psychological interference with the public's access to and the ability to use public tideland areas.

"Stringline" Policy--(control of seaward extent of buildout)

As a means of controlling seaward encroachment of residential structures on a beach to ensure maximum access, protect public views and minimize wave hazards as required by Coastal Act Sections 30210, 30211, 30251, and 30253, 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 corners of the adjacent decks.

The Commission has applied this policy to numerous past permits involving infill on sandy beaches and has 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 building and deck stringlines is an effective means of controlling seaward encroachment to ensure maximum public access as required by Sections 30210 and 30211 and to protect public views and the scenic quality of the shoreline as required by Section 30251 of the Coastal Act.

Consistency with Public Access Policies: Conclusion

The proposed project does not invoke the restrictions of the stringline policy because the proposed return wall construction will extend landward of the existing return wall footprint. Demolition activities clearly do not extend new development in a seaward direction, and thus, the proposed project has no potential to exceed the applicable stringline setback. The demolition of the existing single family residence and garage at 23946 Malibu Road and the repair and extension of the bulkhead vertical return wall on the adjacent lot at 23940 Malibu Road will not push the development envelope at either site further seaward. The project would not preclude public access to any presently existing vertical or lateral public access easements or rights or adversely affect public coastal views. For all of these reasons, the Commission finds that the project would have no individual or cumulative adverse impacts on public access. Therefore, the Commission finds that a condition to require lateral access is not appropriate and that the project, as proposed, is consistent with Coastal Act Sections 30210, 30211, 30212 and 30251.

B. Geologic Stability

Section 30253 of the Coastal Act states in pertinent part that 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.

Applicant's Assumption of Risk

The proposed development is located on oceanfront lots in the City of Malibu. The Malibu coast has historically been subject to substantial damage as the result of storm and flood occurrences--most recently, and perhaps most dramatically, during the past El Nino severe winter storm season that gave rise to the emergency permit requests underlying this application for subsequent regular permits.

The site is clearly susceptible to flooding and/or wave damage from storm waves, storm surges and high tides. Past occurrences have not only damaged the subject vertical return wall and threatened the aging residence formerly sited at the demolition location, but have caused property damage resulting in public costs through emergency responses and low-interest, publicly-subsidized reconstruction loans in the millions of dollars in Malibu alone from last year's storms.

In the winter of 1977--1978, storm-triggered mudslides and landslides caused extensive damage along the Malibu coast. According to the National Research Council, damage to Malibu beaches,

seawalls, and other structures during that season caused damages of as much as almost \$5 million to private property alone.

The El Nino storms recorded in 1982--1983 caused high tides of over 7 feet, which were combined with storm waves of up to 15 feet. These storms caused over \$12.8 million to structures in Los Angeles County, many located in Malibu. The severity of the 1982--1983 El Nino storm events are often used to illustrate the extreme storm event potential of the California--and in particular--Malibu--coast.

The 1998 El Nino storms also resulted in widespread damage to residences, public facilities and infrastructure along the Malibu Coast. The total damages and costs resulting from those storms are currently being assessed.

Thus, ample evidence exists that all oceanfront development in the Malibu area is subject to an unusually high degree of risk due to storm waves and surges, high surf conditions, erosion, and flooding. The proposed project is located on two ocean-fronting parcels at Malibu Beach, in Malibu. The portion of the project proposing demolition and disposal of the existing, antiquated single family residence and garage is not at risk of damage from wave attack, etc., for the obvious reason that no structure will remain. The return wall repair and extension, however, will continue to be subject to the high degree of risk posed by the hazards of oceanfront development in the future, as will the existing single family residence that the return wall helps to protect. The Coastal Act recognizes that development, such as the proposed repair and approximately 44 foot landward extension of the existing 14-foot high vertical return wall, even as designed and constructed to incorporate all recommendations of the consulting coastal engineer, may still involve the taking of some 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 the subject property.

The Commission finds that due to the possibility of liquefaction, storm waves, surges, erosion, and flooding, the applicant shall assume these risks as conditions of approval. Because this risk of harm cannot be completely eliminated, the Commission requires the applicant to waive any claim of liability against the Commission for damage to life or property which may occur as a result of the permitted development. The applicant's assumption of risk, as required by **Special Condition 1**, 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. This recordation is necessary for the proposed development even though a previous assumption of risk may have been recorded for the existing single family residence that is not proposed for demolition. It is necessary for the applicant to accept the additional risk that remains that the improved vertical return wall and the associated bulkhead may yet be subject to catastrophic upsets that the pending development will be inadequate to avert. Thus, it is necessary that the applicant acknowledge the continuing risk despite Commission approval of an upgrade protective device.

Recommendations of the Coastal Engineer:

The applicant has submitted plans dated February 25, 1998, prepared by David C. Weiss, Structural Engineer & Associates, for the emergency repair and landward extension of an existing timber bulkhead vertical return wall at 23940 Malibu Road. The applicant's consulting coastal engineer states that the repairs and extension, if undertaken according to the plans designed by the consultant, would be adequate to repair the storm damage caused by wave overtopping and resultant undermining of the wall. Moreover, the consultant states that the landward extension of the wall will reduce similar damage in the future by more effectively reducing the potential for wave overtopping.

In addition, the applicant has submitted a coastal engineering report dated January 2, 1998, for development at 23946 Malibu Road (the demolition site) prepared by Mr. Weiss, the applicant's consulting coastal engineer. The report addresses hazards in the general area and included wave uprush calculations, etc. The applicant is not proposing to construct the residence and appurtenant structures evaluated in that report under the present application; should the applicant submit such a proposal in the future, it would be considered by the Commission on its own merits, in accordance with Coastal Act policies, and without prejudice as to the Commission's consideration of the proposed demolition of the existing structures on the site.

The applicant's agent has confirmed that the emergency repairs and landward vertical return wall construction were completed as designed by the structural engineer within the timelines set forth in the emergency permit authorized by the Executive Director. Therefore, the proposed development, as submitted, is consistent with the requirements of Coastal Act Section 30253 that require the assurance of the structural integrity of proposed development.

The Commission finds, for the reasons set forth above, that if conditioned pursuant to **Special Condition 1**, the proposed development is consistent with Section 30253 of the Coastal Act.

C. 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).

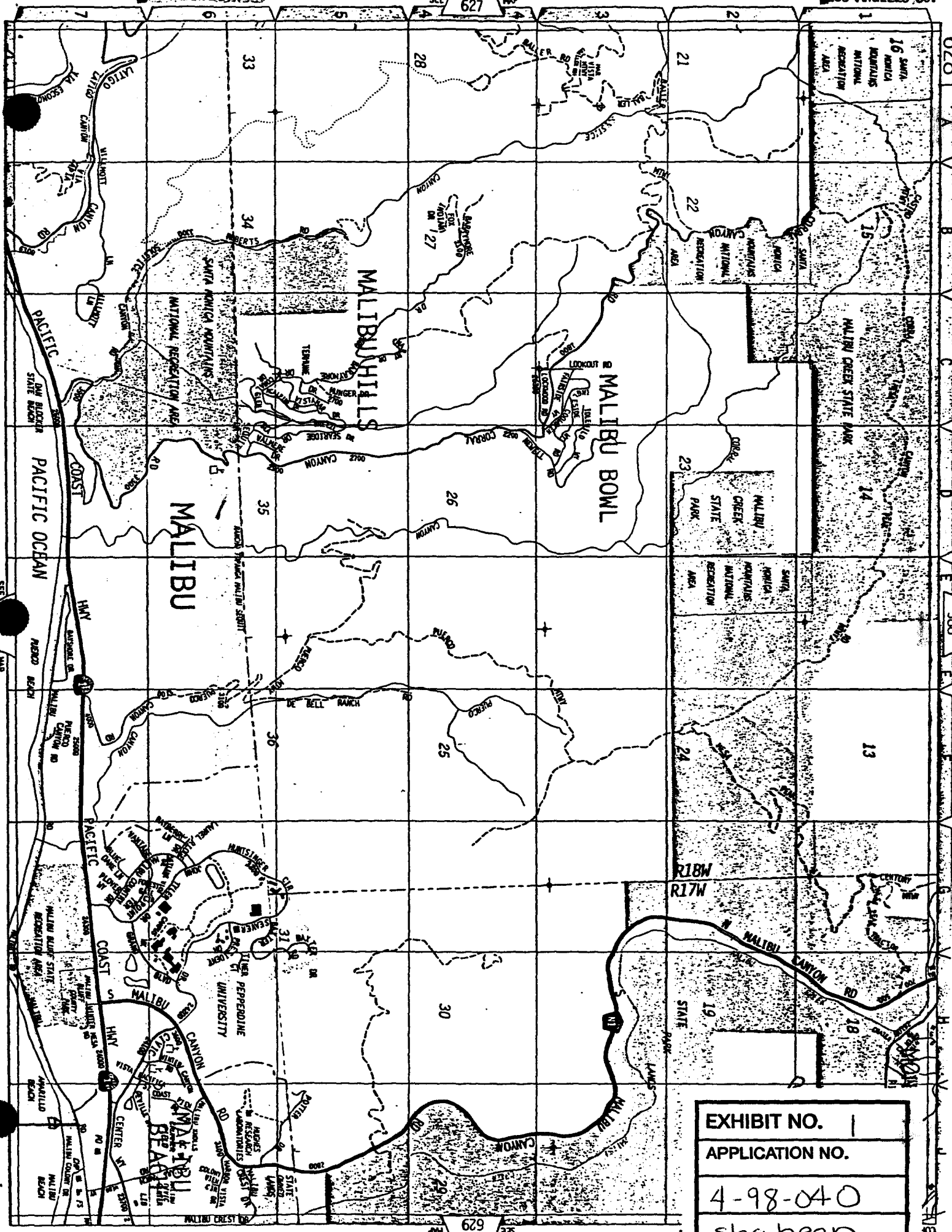
Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The preceding sections 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 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).

D. 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 that the application, as conditioned by any conditions of approval, is consistent with the applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) 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 which 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 consistent with CEQA and the policies of the Coastal Act.



PROJECT SITE

Cross Section of vertical return wall 23940 Malibu Rd.

4x12 T&G PRESSURE-TREATED VERTICAL SHEATHING

6x8 PRESSURE TREATED HORIZONTAL WHALER (INSIDE AND OUTSIDE
TYPICAL AT TOP AND BOTTOM.

1" ϕ (GRADE 150) DYWIDAG THREADBAR (DOCK
PROTECTION SYSTEM) @ 10' O.C. WHALER TO C
(SEE NOTES FOR TIEBACK ANCHORS)

Deadman Anch.

ADD 2 #6 (24" LONG)
@ TIEBACK ANCHORS

18" WIDE GRAVEL
SECTION

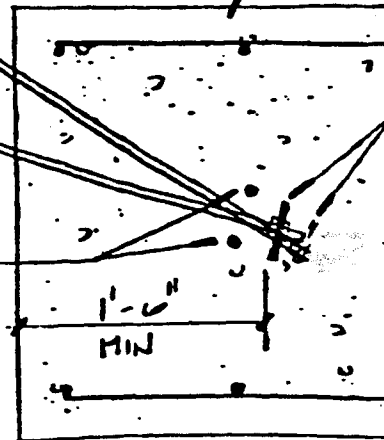


EXHIBIT NO. 2b
APPLICATION NO.
4-98-040
shaheen

December 12, 1997

Mr. Don Schmitz
The Land & Water Company
29395 Agoura Road
Suite 205
Agoura Hills, CA 91301

Subject: Shaheen Property
23946 Malibu Road
Malibu, CA

Our Job Number: SHA13.197

FILE COPY

Dear Don,

This letter is to memorialize our telephone conversation of a few minutes ago wherein I recommended that you contact the Shaheens and tell them to have the occupants of the house on the subject property vacate the premises. This afternoon I had reason to visit the lot immediately to the west. While on that site, I took note of the fact that the posts supporting the front (ocean side) of the house on the subject property are in a greatly deteriorated condition. At the southeast corner, the post is rotted at least half through; in the southwest corner the supporting post consist of nothing more than pieces of post bolted together in a "hodgepodge" manner. This same condition also occurs at some of the posts toward the street side of the house.

It is bad enough that these posts are inadequate to support the vertical loads for which this structure should be designed; however, the most immediate danger is from floating debris. We are now in a season of high tides when large waves are more likely to attack the site. If, during a period of heavy surf a piece of debris such as a floating log or piece of a timber pile is thrown against those substandard posts, they will assuredly break, causing the building to collapse. For this reason I strongly recommend that the owner have the tenants vacate the property immediately.

I am faxing this note to you per our telephone conversation, because it is my understanding that the owners of the property are presently out of town and you know how to reach them. Thank you for your consideration of this matter.

Very truly yours



David C. Weiss
President
S.E. 1867

EXHIBIT NO. 3
APPLICATION NO.
4-98-040
Shaheen

