

**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST AREA  
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Hearing Date: 4/12/01  
Commission Action:

**RECORD PACKET COPY****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. Coastal Permit Amendment No. 4-98-329-A-1 was approved March 15, 2001 to 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.

**DESCRIPTION OF AMENDMENT:** Construct three new caissons with grade beams, a replacement deck with glass railing, remove a stairway, and construct new stairway in more landward location.

**Lot (two former lots merged) area:**

**27,080 sq. ft.**

**SUMMARY OF STAFF RECOMMENDATION**

Staff recommends that the Commission **approve** the proposed project amendment with two Special Condition addressing an applicant's assumption of risk and condition compliance. The applicant is requesting approval of an amendment to construct three new caissons with grade beams, a replacement deck with glass railing, remove an "unpermitted" beach stairway, construct a new stairway in more landward location. The

eastern portion of this merged property includes a State Lands Commission accepted lateral public access easement. The proposed project, as conditioned, will be consistent with the coastal resource and hazard provisions of the Coastal Act.

**LOCAL APPROVALS RECEIVED:** City of Malibu Planning Department "Approval in Concept" dated 10/05/01.

**SUBSTANTIVE FILE DOCUMENTS:** Coastal Permit No. 4-98-329, and A-1, 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.

## **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-2 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. 1-7) and Special Conditions (No. 1-7) 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. Special Condition Numbers Eight and Nine are added as a result of this Amendment.

### A. SPECIAL CONDITIONS:

#### 8. Assumption of Risk/Shoreline Protection (Deed Restriction Amendment)

- 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 additional rock extending the existing rock revetment seaward 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-2) 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.

**9. CONDITION COMPLIANCE**

Within ninety (90) days of Commission action on this Coastal Development Permit application, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

**IV. Findings and Declarations**

The Commission hereby finds and declares:

**A. Project Description, Location, and History:**

The applicant proposes to construct three new caissons with grade beams, a replacement deck with glass railing, remove an "unpermitted" stairway, and construct a new beach stairway in more landward location no further seaward than the proposed deck. 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- 5). 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 seaward about 30 feet beyond the applicant's residence and deck. In 1995, Commission staff review of this revetment concluded that the applicant of the adjoining property to the east obtained a coastal permit for the adjoining revetment to the east and for the subject this revetment in 1984 (Coastal Permit No. 5-84-248, Coleman). In 1986, the Commission approved a new residence on the subject lot to replace a former residence destroyed by a fire in 1978 (Coastal Permit No. 5-86-458, Wax).

As a result of 1998 El Nino storm threats to an unstable beachfront residence on the then adjoining parcel to the west and actual damage to a former timber bulkhead vertical return wall, 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 to the east protecting the applicant's residence. A regular coastal permit (No. 4-98-040, Shaheen) was approved on September 10, 1998.

In 1998, the applicant owned the two adjoining parcels, one with a residence the other vacant; the applicant proposed to construct an accessory structure to the residence on the adjoining 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 at 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. In addition, the applicant received approval at the Commission's March 15, 2001 meeting for a regular Coastal Permit Amendment No. 4-98-329-A-1, for the replacement retaining wall including four new caissons to support the new grade beam beneath the retaining wall previously approved in Emergency Coastal Permit No. 4-00-159-G. The applicant requested to join this subject amendment to the application for Coastal Permit No. 4-98-329-A-1, however, the request was made prior to the applicant's obtaining local approval for this subject deck related amendment. In addition, Coastal Permit No. 4-98-329-A-1 raised different issues related to an emergency replacement retaining wall at the landward side of the western portion of this merged parcel as compared to the subject issues related to development on the seaward portion of this property. As a result, staff requested that the applicant file this amendment application separately from Coastal Permit No. 4-98-329-A-1.

The offshore kelp beds beyond the applicant's property are also designed ESHA on the Sensitive Environmental Resource Map 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 that 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 replaces an existing deck on the seaward side of a residence, construct new caissons with grade beams to support it, remove a portion of an existing stairway to the beach and construct a stairway in a more landward location along the eastern edge of the deck. The stairway is proposed to be located entirely landward of the seaward edge of the deck.

The State owns tidelands, which are those lands below the Mean High Tide Line as it exists from time to time. By virtue of its admission into the Union, California became the owner of all tidelands and all lands lying beneath inland navigable waters. These lands are held in the State's sovereign capacity and are subject to the common law public trust. The public trust doctrine restricts uses of sovereign lands to public trust purposes, such as navigation, fisheries, commerce, public access, water oriented recreation, open space, and environmental protection. The public trust doctrine also severely limits the ability of the State to alienate these sovereign lands into private ownership and use free of the public trust. Consequently, the Commission must avoid decisions that improperly compromise public ownership and use of sovereign tidelands.

Where development is proposed that may impair public use and ownership of tidelands, the Commission must consider where the development will be located in relation to tidelands. The legal boundary between public tidelands and private uplands is relative to the ordinary high water mark. In California, where the shoreline has not been affected by fill or artificial accretion, the ordinary high water mark of tidelands is determined by locating the existing "mean high tide line." The mean high tide line is the intersection of the elevation of mean high tide with the shore profile. Where the shore is composed of sandy beach whose profile changes as a result of wave action, the location at which the elevation of mean high tide line intersects the shore is subject to change. The result is that the mean high tide line (and therefore the boundary) is an "ambulatory" or moving line that moves seaward through the process known as accretion and landward through the process known as erosion.

Consequently, the position of the mean high tide line fluctuates seasonally as high wave energy (usually but not necessarily) in the winter months causes the mean high tide line to move landward through erosion, and as milder wave conditions (generally associated with the summer) cause the mean high tide line to move seaward through accretion. In addition to ordinary seasonal changes, the location of the mean high tide line is affected by long term changes such as sea level rise and diminution of sand supply.

The applicant submitted a Coastal Engineering Report dated March 27, 1998 by David Weiss for Coastal Permit Application Number 4-98-329. This report indicates that the approved deck on the adjoining property to the west, now part of the subject merged parcel, is located about 50 feet landward of two survey Mean High Tidelines dated 1967 and 1969. The applicant proposes to construct the replacement deck along the same stringline between adjoining properties as the deck approved by Coastal Permit No. 4-98-329 located on the western portion of this merged property. Therefore, the proposed project will not directly affect public tidelands.

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 6). The easement has been accepted by the State Lands Commission in 1998 (Exhibit 7). The easement is located between the seaward edge of the deck and the mean high tide line with a ten foot wide privacy buffer seaward from the deck. The easement acknowledges this 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. During the portion of the year the beach is scoured and beach sand is eroded away, the existing permitted rock revetment is located up to about 30 feet seaward of the deck at a maximum elevation of about 15 feet above mean sea level. There are no easements executed for public lateral access on the western portion of this merged parcel nor for vertical public access.

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.

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. 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, 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 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 and deck 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 to replace the deck and replace a portion of the beach stairway in a more landward location will be located landward of the stringlines as drawn from the corners of decks and structures located on adjoining properties. Therefore, the proposed project, as conditioned, will not create any adverse impacts on coastal processes, public access, or public coastal views to and along the coast. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Coastal Act Sections 30210, 30211, 30212(a), 30220, 30251 and 30253.

### **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 replacement deck and stairway with new caissons and grade beams on the seaward portion of the property adjacent to the residence on the 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.

The proposed replacement deck supported on new caissons with grade beams and a stairway replacement to be located on the east seaward side of the residence landward of an existing rock revetment.

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 Eight 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. Violation**

Although development that has taken place prior to the filing of this permit application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Review of this permit does not constitute a waiver of any legal action with regard to any violation of the Coastal Act that may have occurred.

The applicant has an "unpermitted" beach stairway seaward of the existing deck. The applicant proposes to remove the stairway and construct a new stairway in a more landward location. The Commission finds it necessary to require the applicant to fulfill

all of the Special Conditions as a prerequisite to the issuance of this permit, as required by Special Condition Number Nine within a reasonable period of time, within ninety (90) days of Commission action. Only as conditioned is the proposed development consistent with the Coastal Act.

**E. 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).

**F. 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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STANDARD CONDITIONS:

Exhibit A  
CDP 4-98-329 #A-1

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.
  - 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.

# Exhibit A

## 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;
- 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.

# Exhibit A

## 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 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 require to submit the content of any proposed signs to the Executive Director for review and approval prior to posting such signs.

# Exhibit A

## 7. 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.



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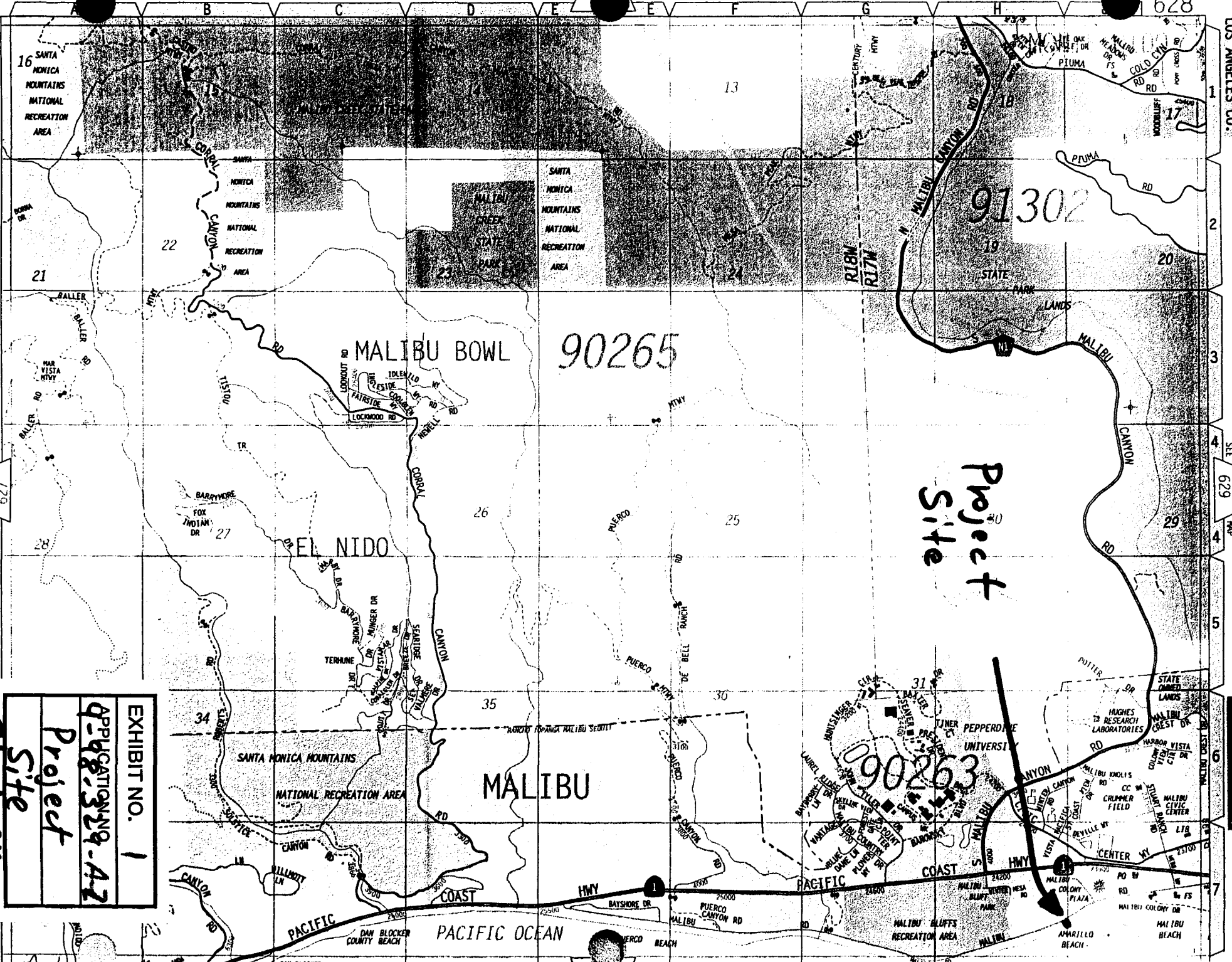
SEE MAP 627

SEE MAP

628

LOS ANGELES CO.

SEE MAP 629



Shahen Project Site	EXHIBIT NO. 1
	APPLICATION NO. 08-329-A2

# SHAHEEN GARDEN PAVILION

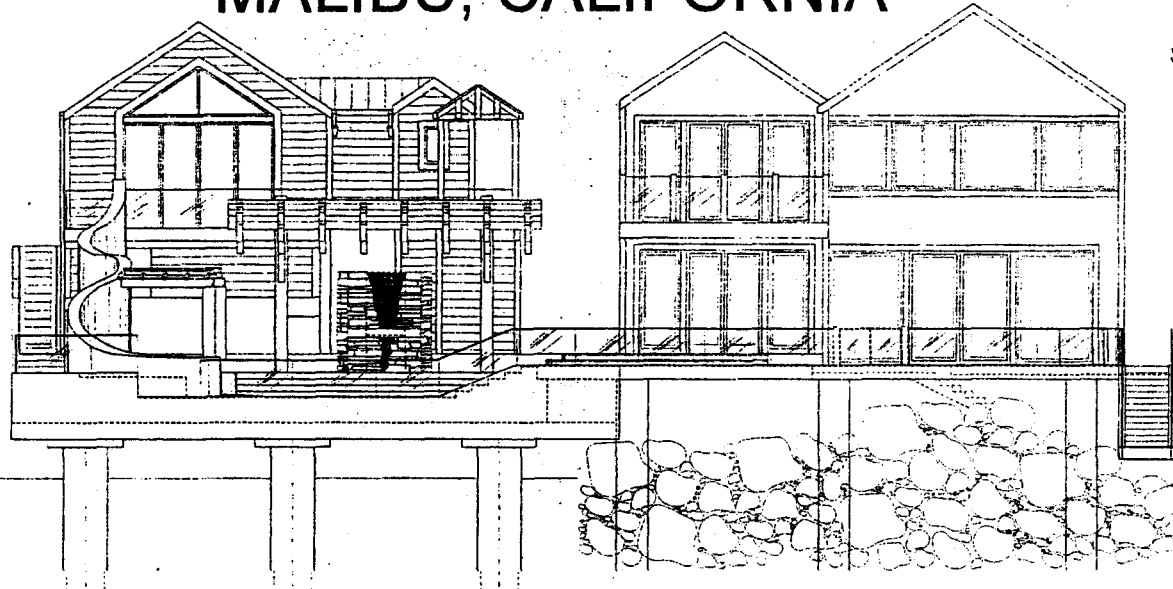
## 23946 W. MALIBU ROAD

### MALIBU, CALIFORNIA

# RECEIVED

MAR 21 2001

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT



#### PREPARED BY:

#### ARCHITECT:

**LANDRY DESIGN GROUP, INC.**  
RICHARD LANDRY, AIA  
11333 IOWA AVENUE  
LOS ANGELES, CA 90025  
PHONE: (310) 444-1404  
FAX: (310) 444-1405

#### LANDSCAPE ARCHITECT:

**GALPER / BALDON ASSOCIATES**  
723 OCEAN FRONT WALK  
VENICE, CA 90291  
PHONE: (310) 392-3982  
FAX: (310) 392-9858

#### CONTRACTOR:

**QUILLIN CONSTRUCTION**  
10481 SHERMAN WAY  
SUITE 175  
VAN NUYS, CA 91408  
TEL: (818) 781-8683  
FAX: (818) 781-3610

#### STRUCTURAL ENGINEER:

**KNA ENGINEERING**  
28720 ROADSIDE DRIVE SUITE 149  
AGOURA HILLS, CA 91301  
PHONE: (818) 888-2028  
FAX: (818) 888-1888

#### SOIL ENGINEER:

**GEOSYSTEMS**  
312 WESTERN AVE.  
GLENDALE, CA 91201-2836  
(818) 509-9533  
FAX: (818) 509-9134

#### LIGHTING DESIGN:

**MOODY RAVITZ HOLLINGSWORTH**  
14141 GOVELLO ST.  
SUITE 40  
VAN NUYS, CA 91405-1400  
(818) 788-3800  
FAX: (818) 788-3501

#### COASTAL ENGINEER:

**DCW - DAVID C. WEISS**  
22400 CLARREDON STREET  
SUITE 203  
WOODLAND HILLS, CA 91387  
(818) 224-3073

#### PROJECT INFORMATION:

#### LEGAL DESCRIPTION:

THAT PORTION OF LOT 3 OF LAND OF MATHEW KELLER  
IN THE RANCHO TOPANGA MALIBU SEQUIT, IN THE CITY  
OF MALIBU, COUNTY OF LOS ANGELES, STATE OF  
CALIFORNIA, AS PER RECORDERS FILED MAP NO. 534,  
IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY

#### DESCRIPTION

GARDEN PAVILION  
2 STORIES  
FIRE SPRINKLERS REQ.

TYPE OF CONSTRUCTION: M-N

OCCUPANCY: R-3

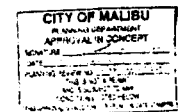
#### SQUARE FOOTAGE:

UPPER LEVEL	655 SQ. FT.
LOWER LEVEL	620 SQ. FT.
TOTAL	1,275 SQ. FT.

NEW DECK 684 SQ. FT.

#### SHEET INDEX

- COVER SHEET
- A-4.1 FIRST FLOOR - DECK - PLAN
- A-4.3 REAR ELEVATION
- S-1 STRUCTURAL GENERAL NOTES
- S-2 GENERAL NOTES
- S-3 FOUNDATION PLAN
- S-4 SECOND FLOOR FRAM\* 3 PLAN
- S-5 ROOF FRAMING PLAN
- S-6 DETAILS
- S-7 DETAILS
- S-8 FOUNDATION PLAN
- S-9 LONGITUDINAL REINFORCED LAYOUT PLAN
- S-10 TRANSVERSE REINFORCED LAYOUT PLAN
- S-11 CONCRETE DECK SECTIONS
- S-12 PILE SECTION & DETAILS
- S-13 EXISTING DECK RENOVATION PLAN AND DETAILS



SEP 13 2000

EXHIBIT NO. 2  
 APPLICATION FOR  
 SOUTH ELEV

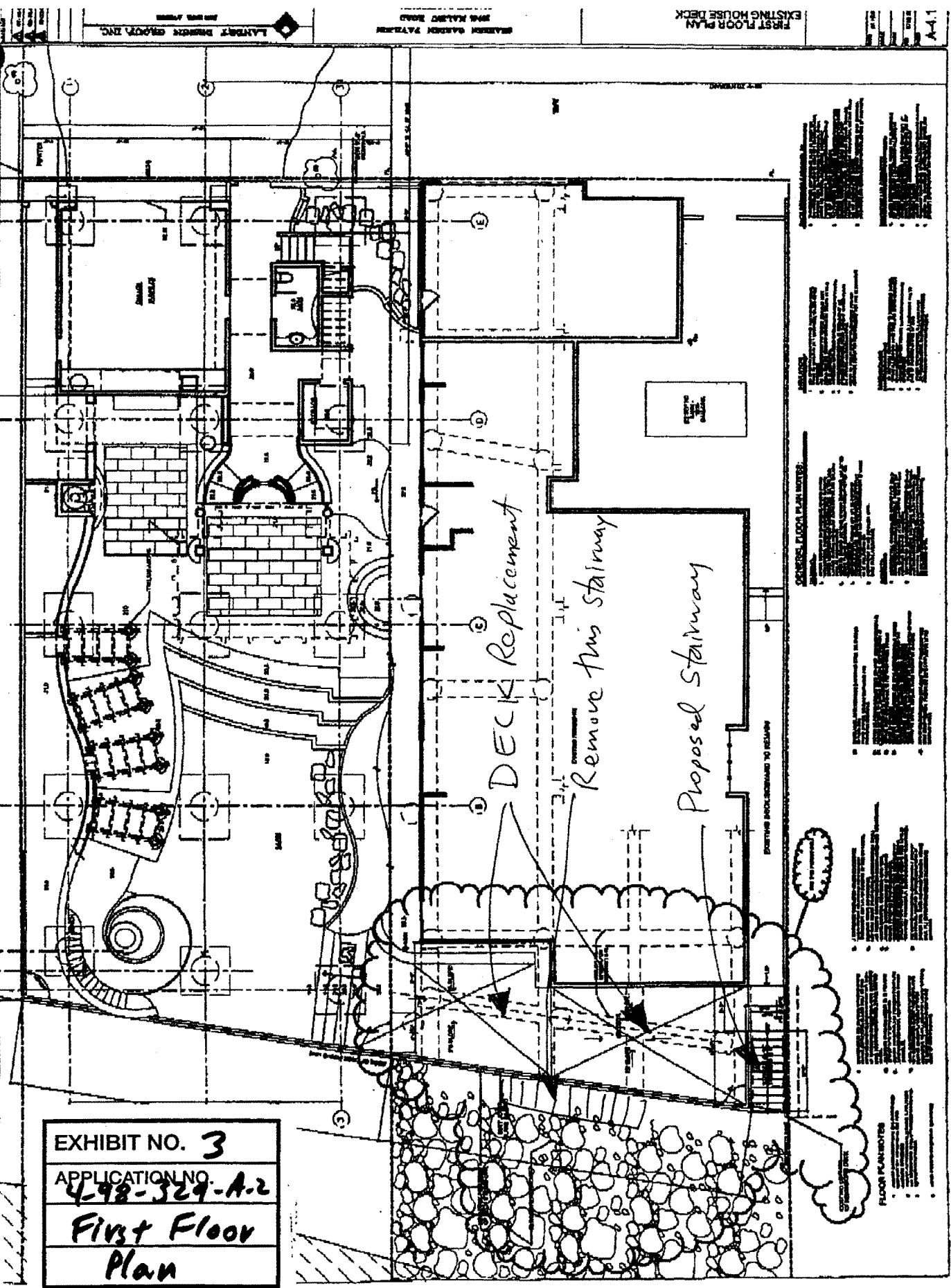


EXHIBIT NO. 3  
 APPLICATION NO.  
 4-98-329-A-2  
**First Floor**  
**Plan**

FIRST FLOOR PLAN  
 EXISTING HOUSE DECK

SHARON GARDEN PATRONS  
 3000 KALING ROAD

LAMBERT DESIGN GROUP, INC.  
 10000 100TH AVE

- GENERAL FLOOR PLAN NOTES:
- 1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
  - 2. ALL WALLS ARE 1/2" THICK UNLESS OTHERWISE NOTED.
  - 3. ALL DOORS ARE 36" WIDE UNLESS OTHERWISE NOTED.
  - 4. ALL WINDOWS ARE 60" WIDE UNLESS OTHERWISE NOTED.
  - 5. ALL STAIRS ARE 36" WIDE UNLESS OTHERWISE NOTED.
  - 6. ALL CEILING HEIGHTS ARE 8' UNLESS OTHERWISE NOTED.
  - 7. ALL FLOOR FINISHES ARE AS NOTED.
  - 8. ALL WALL FINISHES ARE AS NOTED.
  - 9. ALL PAINT IS TO BE IN ACCORDANCE WITH THE ARCHITECT'S SPECIFICATIONS.
  - 10. ALL ELECTRICAL AND MECHANICAL WORK IS TO BE IN ACCORDANCE WITH THE ARCHITECT'S SPECIFICATIONS.
- FLOOR FINISHES:
- 1. CARPET
  - 2. HARDWOOD
  - 3. TILE
  - 4. POLISHED CONCRETE
  - 5. GRANITE
  - 6. MARBLE
  - 7. LAMINATE
  - 8. VINYL
  - 9. RUBBER
  - 10. OTHER





## 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 1-800-735-2925

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

February 8, 1999

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

Dear Mr. Schmitz:

**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

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

RECEIVED  
FEB 16 1999  
File Ref: SD 99-01-04.7  
CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

EXHIBIT NO. 6
APPLICATION NO. 4-98-329-A-2
State Lands
Letter 19102

February 8, 1999

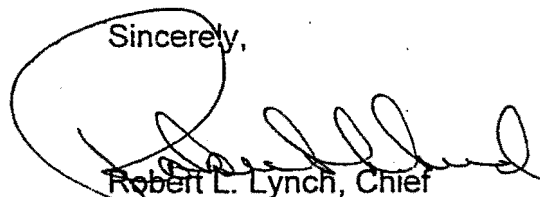
L. Miller. That easement provides for lateral public access and passive recreational use along the shoreline, seaward of this property. The easement acknowledged a ten foot privacy buffer seaward of the seaward edge of the approved residential structure. The privacy buffer is restricted to pass and repass 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. 6
APPLICATION NO. 4-98-329-A-2
State Lands
Letter pg 2 of 2

98-1227325

RECORDED AT THE REQUEST OF  
AND WHEN RECORDED MAIL TO:  
STATE OF CALIFORNIA  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 945105-2219  
Attention: Legal Division

RECORDED/FILED IN OFFICIAL RECORDS  
RECORDER'S OFFICE  
LOS ANGELES COUNTY  
CALIFORNIA  
8:04 AM JUL 20 1998

STATE OF CALIFORNIA  
OFFICIAL BUSINESS  
Document entitled to free recordation  
pursuant to Government Code Section 27383

FREE X

SPACE ABOVE THIS LINE FOR RECORDER'S USE

NO TAX DUE -0-  
SLC No. AD 306  
Escrow No. -0-

A.P.N. 4458-0008-0012  
23940 Malibu Road

3

**CERTIFICATE OF ACCEPTANCE**

Government Code 27281

This is to certify that the State of California, acting by and through the State Lands Commission, a Public Agency of the State of California, hereby accepts any and all right, title and interest in real property conveyed by the Offer to Dedicate Public Access Easement, dated October 30, 1986, recorded November 17, 1986, as Document No. 86-1587471, Official Records of Los Angeles County, from Robert L. Miller to the State of California.

The interest in real property conveyed by the offer is accepted in trust for the people of the State. Acceptance is made of that interest which can be legally conveyed and is not intended to define boundaries or accept interests or rights in lands which are already the property of the State or people of California.

This Acceptance and consent to recording of the Acceptance is executed by and on behalf of the State of California by the State Lands Commission, acting pursuant to law, as approved and authorized by its Calendar/Minute Item No. C 74 of its public meeting on February 12, 1997, by its duly authorized undersigned officer.

State Lands Commission

Dated: March 26, 1998

By: Robert C. Hight  
ROBERT C. HIGHT  
Executive Officer

ACKNOWLEDGMENT BY CALIFORNIA COASTAL COMMISSION

This is to certify that the State Lands Commission is a public agency acceptable to the Executive Director of the California Coastal Commission to be Grantee Dedicate referenced above.

Dated: 7/7/98

By: John Bowers  
John Bowers, Staff Co

EXHIBIT NO. 7  
APPLICATION NO. 9-98-329-A  
SLC Access  
Acceptance