

CALIFORNIA COASTAL COMMISSION

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

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Staff: MH *AA*
Staff Report: 9/5/05
Hearing Date: August 10, 2005
Commission Action:

**STAFF REPORT: PERMIT EXTENSION REQUEST**

APPLICATION NO.: 4-01-145-E2

APPLICANT: Patrick John Burke

PROJECT LOCATION: 5960 Cavalleri Road, City of Malibu (Los Angeles County)

PROJECT DESCRIPTION: Request for time extension on previously approved coastal development permit to construct a new 6,535 sq. ft., 24 ft. high, two story single family residence with 836 sq. ft. attached garage, new driveway, pool/spa, new septic system and 980 cu. yds. of grading (490 cu. yds. cut and 490 cu. yds. fill). A one year time extension on the permit (4-01-145-E1) was approved on May 13, 2004.

Original Permit No. 4-01-145

Original Permit Expiration Date: March 6, 2004

Permit Expiration Date Following Approval of Extension 4-01-145-E1: March 6, 2005

Permit Expiration Date Proposed: March 6, 2006

SUBSTANTIVE FILE DOCUMENTS: Letter from Lester Tobias dated May 8, 2005; letter from Elliot Dolin dated May 16, 2005; and letter from the City of Malibu dated April 28, 2005.

PROCEDURAL NOTE: The Commission's regulations require that permit extension requests shall be reported to the Commission if:

- 1) The Executive Director determines that due to changed circumstance the proposed development may not be consistent with the Coastal Act, or
- 2) Objection is made to the Executive Director's determination of consistency with the Coastal Act (14 C.C.R. Section 13169).

If three (3) Commissioners object to the extension on the grounds that the proposed development may not be consistent with the Coastal Act, the application shall be set for a full hearing as though it were a new application. If three objections are not received, the permit will be extended for an additional year. Thus, if this extension is granted, the extended permit will expire on March 6, 2006.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the extension be granted because there are no changed circumstances that have occurred since the approval of the subject coastal development permit which affect the project's consistency with the Coastal Act.

I. STAFF RECOMMENDATION:

Staff recommends that the Commission find no changed circumstances, which results in **approval** of the request for a one year extension of the permit:

MOTION: I move that the Commission grant a one-year extension to Coastal Development Permit no. 4-01-145 because there are no changed circumstances that affect the project's consistency with the Coastal Act.

STAFF RECOMMENDATION TO EXTEND PERMIT

Staff recommends a **YES** vote on the motion. Pursuant to Section 13169 of Title 14 of the California Code of Regulations, the extension request will be granted unless three Commissioners object to the extension of the permit. If three Commissioners object to the extension, the application will be scheduled for a full hearing as if it were a new application.

RESOLUTION TO EXTEND THE PERMIT

The Commission hereby grants the request to extend Coastal Development Permit No. 01-145 because there are no changed circumstances that affect the project's consistency with the Coastal Act.

II. STAFF ANALYSIS

A. PROJECT DESCRIPTION

The project site is located on Cavalleri Road just north of Pacific Coast Highway and east of Kanan Dume Road in an existing developed neighborhood in the City of Malibu. The subject property is a nearly rectangular parcel encompassing approximately 1.9 acres. The property is relatively flat to gently sloping and descends from Cavalleri Road towards Kanan Dume Road and a branch of Walnut Canyon Creek to the south, a designated blueline stream. The Walnut Canyon Creek riparian corridor is a designated disturbed sensitive resource area where it crosses Pacific Coast Highway to the south of the subject property. The proposed project site can be viewed from

various scenic resource areas, including a designated scenic highway and a public hiking and equestrian trail.

On March 6, 2002, the Commission approved Coastal Development Permit No. 4-01-145. The coastal permit was issued and returned signed by the applicant, Hassan Pascal Hessami, on February 26, 2003. The coastal development permit was for construction of a new 6,535 sq. ft., 24 ft. high, two story single family residence with 836 sq. ft. attached garage, new driveway, pool/spa, new septic system and 980 cu. yds. of grading (490 cu. yds. cut and 490 cu. yds. fill). The permit was approved with seven special conditions regarding (1) geologic recommendations, (2) drainage and polluted runoff control, (3) landscaping and erosion control, (4) wildfire waiver, (5) future improvements, (6) color restriction and (7) condition compliance, which were satisfied prior to issuance of the permit. In approving CDP 4-01-145, the Commission found the project to be in conformance with the Chapter Three policies of the Coastal Act.

On May 13, 2004, the Commission approved a request by Mr. Hessami for a one year extension on the permit (4-01-145-E1). An objection to the extension had been filed by Alan Robert Block on behalf of Elliot Dolan. In their approval of the extension on May 13, 2004, the Commission found that there were no changed circumstances that affected consistency of the development proposed in CDP 4-01-145 with the Coastal Act. On May 13, 2004 the Commission further denied a request for revocation of CDP 4-01-145 filed by Elliot Dolin.

In November 2004, Hassan Pascal Hessami sold the property at 5960 Cavalleri Road to Patrick John Burke. Mr. Burke submitted a request for a one year extension of permit 4-01-145 on February 9, 2005. The Executive Director determined that there are no changed circumstances affecting the proposed development's consistency with the Coastal Act. In response to the Notice of Extension Request for Coastal Development Permit dated May 3, 2005 and sent to all adjacent property owners, Commission staff received a letter of objection to the extension from Lester Tobias on May 10, 2005 (**Exhibit 1**). On May 18, 2005 Commission staff also received a second letter of objection to the extension by Elliot Dolan (**Exhibit 2**).

B. ANALYSIS OF OBJECTIONS TO EXTENSION REQUEST

Commission staff have received two letters objecting to the extension of CDP 4-01-145 from two neighbors of Patrick Burke, Lester Tobias (letter dated May 8, 2005) and Elliot Dolin (letter dated May 16, 2005). The objection letters are included as Exhibit 1 and 2 of this report. Mr. Tobias and Mr. Dolin's object to the permit extension for the following reasons: (1) The project never had a valid Approval in Concept at the local level; (2) The Approval in Concept from the City for the project has expired; (3) The applicant wishes to pursue a project different than that described in the originally issued coastal development permit; (4) The original applicant no longer holds an interest in the property; (5) The original applicant did not act in good faith to complete the project; and (6) The coastal review process has changed since the original approval of the permit. These issues are analyzed below.

Approval in Concept

Mr. Dolin asserts that the project "never had requisite approval at the local level prior to issuance of the Coastal Development Permit." Additionally, Mr. Tobias asserts that the project should not be granted an extension as the project no longer has a valid Approval in Concept from the City of Malibu.

In response, staff notes that the City of Malibu did issue an Approval-in-Concept for the proposed project. Plans stamped with an approval-in-concept by the City of Malibu dated July 18, 2001 were submitted as part of the underlying coastal permit application. The Commission approved the proposed project consistent with these plans on March 6, 2002. Thus, the original applicant had a valid approval in concept from the City when the Commission reviewed and approved the project. Independent of that, the Commission found, in approving the permit, that, as conditioned with seven special conditions mentioned above, the project is consistent with all relevant sections of the Coastal Act. The Commission further finds that expiration of the City's approval in concept does not constitute changed circumstances that affect the project's consistency with the Coastal Act.

Changes to Project

Mr. Dolin, in his objection letter, states that Patrick Burke intends on building a project with different square footage, height, grading, and design from that originally approved by the Commission. Patrick Burke, in conversations with Commission staff, has stated that he is considering revised designs for a smaller 18 ft.-high house. Commission staff, on July 6, 2005, informed Mr. Burke that these changes would not be considered to be in substantial conformance with the originally approved plans and that Mr. Burke would need to apply for a new coastal development permit from the City of Malibu if he wished to move forward with the revised plans. Mr. Burke responded that he understood that he would have to undergo this process for the revisions, but that he would still like to move forward with a request for extension of CDP 4-01-145 as originally approved by the Commission. The subject request is for a time extension on CDP 4-01-145 as originally described in the permit and on approved project plans.

Mr. Dolin, in his letter, also states that the City of Malibu issued a letter to Patrick Burke's representative, Jose Lujvidin, stating that the proposed revisions to the project are in substantial conformance with the originally approved coastal development permit. The letter dated April 28, 2005 (included as Exhibit 3) from Richard Mollica at the City of Malibu states "On April 6, 2005 the submitted plans were found to be in substantial conformance with the original approved plans." The letter makes no mention of the Coastal Act, the Commission, or the coastal development permit. Commission staff spoke to Richard Mollica, on June 9, 2005 and confirmed that the letter was referring to substantial conformance with the original City of Malibu plan check, not the originally issued coastal development permit. Mr. Mollica has been informed by Commission staff that any request for substantial conformance with a coastal development permit

issued by the Coastal Commission would require an official request to the Commission. No such request has been received to date by the Commission in regard to CDP 4-01-145. Further, Commission staff have subsequently spoken to both Mr. Burke and Mr. Dolin to clarify the intent of the April 28, 2005 letter and to inform them that the above referenced changes to the project would require a new CDP from the City of Malibu.

Other

Mr. Tobias further asserts, in his letter to the Commission, that the time extension for the permit be denied as Mr. Burke was not the original applicant and the original applicant did not act in good faith to complete the project. Following issuance of CDP 4-01-145 in 2003, Hassan Pascal Hessami sold the subject property to Patrick John Burke. Commission staff have reviewed the grant deed recorded for this transfer and found the deed to be valid. CDP 4-01-145 is a valid permit for development at 5960 Cavalleri Road in Malibu, despite any changes in ownership of the property. The Commission finds that changes in ownership does not constitute a changed circumstance that affects the project's consistency with the Coastal Act. Further, the Commission finds that there is not evidence that the development has not been pursued in a diligent manner.

Mr. Tobias further asserts that the extension request for CDP 4-01-145 should not be granted as the coastal review process has changed in the City of Malibu following certification of the City of Malibu Local Coastal Program. Coastal Development Permits, though, are reviewed with respect to the coastal review process, criteria, and regulations valid at the time of approval. Changes in the coastal review process in the City of Malibu, therefore, do not constitute changed circumstances to the subject property or project that would affect the project's consistency with the Coastal Act.

Staff investigations have identified no other possible changed circumstances. There have been no other changes to the proposed project or the project site which would cause the Commission to find the project inconsistent with the Coastal Act. The proposed project is consistent with the Coastal Act. Accordingly, the Commission finds that there are no changed circumstances present, which have occurred since the project's approval that affect the project's consistency with the Coastal Act. Therefore, the Commission grants a one year extension of the coastal development permit 4-01-145.

RECORDED

MAY 10 2005

ARCHITECTURE
TOBIAS
Vision • Experience • Commitment

COASTAL COMMISSION
SOUTH CENTRAL DISTRICT

8 May, 2005

California Coastal Commission
89 South California Street, Suite 200
Ventura, CA 93001

Re: 5960 Cavalleri Road Permit # 4-01-145-E2

To the California Coastal Commission

I received the "Notice of Extension Request for Coastal Development Permit" regarding the above referenced property, and am formally objecting to the issuance of the extension.

I believe that this project does not warrant an extension due to the following facts:

1. THE COASTAL REVIEW PROCESS HAS CHANGED SINCE THE ORIGINAL GRANTING OF THE PERMIT.

The project is now in clear view from the Kanan Dume Scenic View Corridor. It's design and siting should be reviewed with greater scrutiny than at the time of its original submittal, which was approximately 5 years ago. The Commission should NOT grant an extension for a project that, under this newly adopted and enforced LIP, would require review under a different set of criteria.

2. THE ORIGINAL APPLICANT NO LONGER HOLDS AN INTEREST IN THE PROPERTY.

The applicant, Patrick John Burke, recently bought this parcel on the risk that he could "fast track" his new design, obtain this extension, and circumvent the more responsible plan review to which all other new applicants in the City of Malibu must comply.

3. THE ORIGINAL APPLICANT NEVER ACTED IN GOOD FAITH TO COMPLETE THE PROJECT.

The original applicant, Pascal Hassemi, obtained the original coastal permit and put the parcel up for sale. The only reason an extension is necessary is due to the time it took him to sell the parcel. NO GOOD FAITH ATTEMPT TO ACTUALLY CONSTRUCT THE APPROVED HOUSE WAS MADE. While clearly Mr. Hassemi was entitled to the original approval during its period of validity, there is no good reason to extend this approval to A NEW APPLICANT, FOR A NEW PROJECT.

Exhibit 1

CDP 4-01-145-E2

**Objection Letter
from Lester Tobias**

Lester Tobias

Architect A.I.A.

22223 Pacific Coast Hwy

Malibu, Ca 90265

(310) 317-0507 Voice

(310) 317-4507 Fax

4. THE ORIGINAL APPROVAL-IN-CONCEPT FROM THE CITY OF MALIBU EXPIRED OVER 2 YEARS AGO.


This project has not had a valid Approval-In-Concept from the City of Malibu for the past 2 years. Mr. Hassemi and Mr. Burke were well aware of this.

This fact is further complicated in that Malibu no longer has a separate planning and coastal review process. The original project was approved based on the assumption that 2 approvals were needed (City of Malibu Planning AND California Coastal Commission). Mr. Burke cannot receive a substantial conformance from the City of Malibu for an expired approval, for, according to the recently issued Zoning Code Interpretation #2, Substantial Conformance is for **APPROVED** Plans, not expired approvals. And, if no Planning Approval exists, how can the Coastal Commission extend an approval, which was originally legally based on the project obtaining prior approval from the City of Malibu?

The reason I am objecting to this extension is that I want to see a better footprint location for this parcel. The original architect literally plopped a McMansion spec house onto the portion of the site that would require the least amount of effort and thought on his part. The only reason that the new applicant wants to utilize the existing footprint is because he thinks he will get his house built faster.

The California Coastal Commission, and the City of Malibu have gone to great lengths and spent hundreds of thousands, if not millions of dollars to ensure that potential projects are given careful consideration to all aspects of the site during the initial design process. To allow a poorly sited project, with expired approvals, to continue, when no compelling reason to do so exists, would be a dereliction of the duties of the Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "Lester Tobias", with a stylized flourish at the end.

Lester Tobias

Elliott Dolin
8222 Melrose Ave., Suite 202
Los Angeles, CA 90046

RECEIVED

MAY 18 2005

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

May 16, 2005

California Coastal Commission
South Central Coast District
89 South California Street, Suite 200
Ventura, CA 93001

Via Facsimile (805) 641-1732 & US Mail

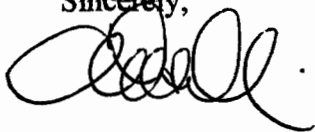
Re: Permit No: 4-01-145-E2
5960 Cavalleri Road, Malibu, CA

To Whom It May Concern:

This shall constitute my formal objection to a time extension on a previously approved CDP for a proposal to construct a new 6,535 sq. ft., 24 ft. high, two story single family residence at 5960 Cavalleri Rd., Malibu, CA. The project that was originally approved no longer exists, aside from the fact that it never had requisite approval at the local level prior to issuance of the CDP. It is my understanding that the actual project being contemplated by the new applicant (the previous applicant was a speculator who sold the project after an attempt to secure entitlements) is substantially different. I am puzzled as to why the applicant would not have gone on record to amend the application to reflect the actual project. Furthermore, I was informed by the applicant that his request for your office to issue a ruling of substantial conformance for another variation of the project was previously denied by Jack Ainsworth.

I have recently been informed that the City of Malibu granted the applicant a ruling of substantial conformance on April 6, 2005 for the new project. However, if you review the project as represented to the City of Malibu, you will note that the square footage, height, grading and the addition of a new basement constitute material differences from that which is described in the Notice Of Extension Request For Coastal Development Permit dated May 3, 2005. If the Commission elects to proceed with the granting of an extension of this CDP, then, at a minimum, they should require that the applicant amend his application to reflect that which he has represented to the City of Malibu.

Sincerely,



Elliott Dolin

Exhibit 2

CDP 4-01-145-E2

Objection Letter
from Elliot Dolin



City of Malibu

23815 Stuart Ranch Road Malibu, California 90265-4861
Phone (310) 456-2489 Fax (310) 456-7650 www.ci.malibu.ca.us

April 28, 2005

Jose Iujvidin
21235 Pacific Coast Highway
Malibu, CA 90265

**Re: Pre-Application Determination No: 05-001
5960 Cavalleri Drive**

Dear Mr. Iujvidin:

On January 5, 2005 the pre-application listed above was submitted to the City of Malibu Planning Division for processing. The request was for a substantial conformance determination.

This determination will allow for the construction of a new 4,780 square foot, 18 feet high single-family residence with a 999 square foot basement. This determination will also allow for a new driveway, new septic system, pool/spa and 980 cubic yards of grading (490 cubic yards cut and 490 cubic yards fill).

On April 6, 2005 the submitted plans were found to be in substantial conformance with the original approved plans. Please prepare all of the required architectural drawings for submission to the Planning Division. Additionally the project will also be referred to any applicable agencies.

If you have any questions regarding this matter, do not hesitate to contact me: Richard Mollica, Contract Planner at (310) 456-2489, extension 346 or at rmollica@ci.malibu.ca.us.

Sincerely,

Richard Mollica
Richard Mollica
Contract Planner

**Exhibit 3
CDP 4-01-145-E2
Letter from City of
Malibu to
Applicant's
Representative**

