

RECORD PACKET COPY

STATE OF CALIFORNIA—THE RESOURCES AGENCY

PETE WILSON, Governor

CALIFORNIA COASTAL COMMISSION

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

Filed: 9/1/95
49th Day: 10/20/95
180th Day: 2/28/96
Staff: CAREY **BK**
Staff Report: 4/1/96
Hearing Date: 5/7-10/96
Comm. Action on Findings:



STAFF REPORT: REVISED FINDINGS

TH16a

APPLICATION NO.: 5-90-277A

APPLICANT: Verna Harrah

AGENT: Robert Flick

PROJECT LOCATION: 33064 Pacific Coast Highway, City of Malibu, Los Angeles County

DESCRIPTION OF ORIGINAL PROJECT: Construction of a 17,620 sq. ft., 35 ft. high single family residence, 750 sq. ft. caretakers quarters, pool, tennis court, tennis pavillion, garden storage structure, septic system, bluff restoration, and 15,436 cu. yds. of grading (9,419 cu. yds. cut and 6,017 cu. yds. fill) on a 7 acre parcel.

DESCRIPTION OF AMENDMENT: Amendment to: 1) modify open space deed restriction to reduce area devoted to open space and change the language to allow an existing path, drainage system, crib wall, and fence within open space area; 2) modify plans to include construction within bluff setback of gazebo with foundations and crib wall, and permitted pool and spa, placement of fence on bluff face, removal of unpermitted hardscape on existing path, and removal of unpermitted golf tee; and 3) revise grading plan to reflect as-built grading on the site.

COMMISSION ACTION: Approval with Conditions

DATE OF COMMISSION ACTION: October 12, 1995

COMMISSIONERS ON PREVAILING SIDE: Vargas, Areias, Doughty, Doo, Fleming, Giacomini, Glickfeld, Fowler, Staffel, Williams.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following revised findings in support of the Commission's action on October 12, 1995 approving with conditions the permit amendment.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants, subject to the conditions below, a permit 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 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 impacts on the environment within the meaning of the California Environmental Quality Act.

II. Special Conditions.

1. Modified Conservation and Open Space Deed Restriction.

Special Condition 4 of Permit 5-90-277 is hereby modified as described below. Prior to the issuance of the permit, the applicant as landowner shall execute and record a modified deed restriction, in a form and content acceptable to the Executive Director, which provides that the portion of the applicant's property generally depicted on Exhibit 11 will be precluded from future development and will be preserved for open space and habitat protection. The restriction shall restrict the applicant or successor in interest from any development including grading, landscaping, and vegetation removal, with the exception of the bluff restoration and revegetation approved by Permit 5-90-277. Maintenance of the fence, path and drainage system as depicted in Exhibit 5 shall be allowed in this area.

The restriction shall be recorded free of prior liens except for tax liens and free of encumbrances which the Executive Director determines may affect the interest being conveyed. The restriction shall run with the land, binding successors and assigns of the applicant or landowner.

This modified deed restriction shall supercede the Conservation and Open Space Easement previously recorded as Instrument 90-1421308 on August 15, 1990.

2. Bluff Revegetation.

Prior to issuance of the permit, the applicant shall submit, for the review and approval of the Executive Director, plans for the revegetation of the area disturbed by the golf tee. Plantings shall consist of native plant species suitable for coastal bluffs and shall not include non-indigenous plant species which tend to supplant native species.

3. Fence.

Prior to issuance of the permit, the applicant as landowner, shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which provides that the fence located on the bluff face is temporary only and must be removed either: 1) three years after Commission action on October 12, 1995; or 2) at such time as ownership of the property is transferred, whichever is sooner. If, at the end of three years the property has not been transferred, then the applicant shall have the right, before removing the fence, to request re-review upon proper application as to whether the fence shall be allowed to remain for a longer period of time. If the property is transferred, the successor in interest shall not have this right to re-review, but shall be required to remove the fence.

The restriction shall be recorded free of prior liens except for tax liens and free of encumbrances which the Executive Director determines may affect the interest being conveyed. The restriction shall run with the land, binding successors and assigns of the applicant or landowner.

4. Gazebo.

Prior to issuance of the permit, the applicant as landowner, shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which provides that no crib wall or any other type of future improvements or protective devices of any kind, whether on the bluff face or at the base of the bluff, shall be allowed to protect the gazebo. If the gazebo becomes subsequently imperiled by geologic instability, the applicant may apply for a coastal development permit to relocate the gazebo to a stable location at least 25 feet from the bluff edge as defined by Commission regulations at the time of such application.

The restriction shall be recorded free of prior liens except for tax liens and free of encumbrances which the Executive Director determines may affect the interest being conveyed. The restriction shall run with the land, binding successors and assigns of the applicant or landowner.

5. Condition Compliance.

All requirements specified in the foregoing conditions that the applicant is required to satisfy as a prerequisite to the issuance of this permit must be fulfilled within 90 days of Commission action adopting revised findings for this amendment. Failure to comply with this deadline or, such additional time as may be granted by the Executive Director for good cause, will result in the nullification of this permit approval.

6. Timing.

The applicant shall remove the golf tee, restore the grade of the bluff in the golf tee area and remove the concrete from the beach access path within 60 days of the issuance of the permit. Further, the applicant shall revegetate the golf tee area within 120 days of the issuance of this permit. The revegetation shall provide sufficient ground coverage or additional plantings may be required in the 96-97 rainy season.

III. Findings and Declarations.

The Commission hereby finds and declares:

A. Project Description.

The applicant proposes to amend Permit 5-90-277 (Harrah) to:

1. Modify the previously required open space deed restriction to reduce the area devoted to open space. This change is proposed to allow for the placement of a gazebo within the area (bluff face) previously required by the Commission to be retained in open space. The gazebo has been constructed without a coastal development permit.

2. Change the language of the open space deed restriction to allow for the maintenance of a drainage system, chain-link fence, and beach access pathway within the designated open space area. The drainage system and chain-link fence were constructed without a coastal development permit. The beach access pathway existed prior to the approval of Permit 5-90-277. However, in that application, the applicant proposed to recontour and restore the bluff face, including the removal of the path and revegetation of the entire bluff. Rather than removing the path, the applicant improved it with pavement without a coastal development permit.

3. Modify the site plan to include:

a. Construction of an approximately 1,600 sq. ft. gazebo, supporting foundations and cribwall within the previously approved bluff setback. The gazebo has already been constructed on an uncertified fill pad. The applicant's geologist and engineer have recommended deepened foundations and the construction of a crib wall on the bluff face to support the gazebo. The foundations and crib wall have not been constructed as yet.

b. Construction of the previously permitted pool and spa within the required bluff setback. The pool and spa were approved in the original permit to be setback 25 feet from the bluff edge. The pool and spa that were actually built are approximately five feet from the edge of the bluff.

c. Placement of a chain link fence approximately one-half of the way down the bluff face. The fence has already been placed on the face of the bluff without a coastal development permit.

d. Removal of unpermitted hardscape on the existing beach access pathway. As discussed above, the applicant originally proposed to remove the path. However, instead of being removed, the path was paved with concrete. The applicant now proposes to retain the path but remove the concrete surface.

e. Removal of an unpermitted golf tee from the bluff edge. This golf tee which consists of railroad ties placed as small retaining walls was constructed without a coastal development permit.

4. Modify the grading plan to reflect the as-built grading on the site. The grading actually carried out is not consistent with the grading plan approved by the Commission in the original permit. The changes are located on the bluff face and in the area of the gazebo pad.

This is an after-the-fact amendment application proposed to modify the previous approval to include work which did not comply with the permit for development on the project site. The aspects of the proposed amendment which are not after-the-fact are the proposed gazebo foundations, crib wall, removal of the golf tee, and removal of the path hardscape.

B. Background.

In Permit 5-90-277 (Harrah), the Commission approved the construction of a 17,620 sq. ft., 35 ft. high single family residence, 750 sq. ft. caretakers quarters, pool, tennis court, tennis pavillion, garden storage structure, septic system, bluff restoration, and 15,436 cu. yds. of grading (9,419 cu. yds. cut and 6,017 cu. yds. fill) on a 7-acre bluff top parcel. The applicant further proposed to remove the foundations of a burned-out house on the face of the bluff and to restore the bluff face in the area of the former residence and in the area where there was an existing road which provided access to the beach below. The grading proposed included 5,630 cu. yds. (290 cu. yds. cut and 5,340 cu. yds. fill) for the bluff restoration. The permit was approved with special conditions relating to landscaping, geology, and geologic review sheet.

In January 1994, staff became aware that development had occurred on the site which was not consistent with the applicant's permit. This development, as discussed above, includes the gazebo, fence, drainage devices, pool and spa, golf tee, and grading modifications. All of the development which is inconsistent with the approved permit is located on the south side of the property, adjacent to or on the bluff.

C. Visual Resources/Geologic Stability/Environmentally Sensitive Habitats.

Coastal bluffs are complex areas which are a prominent visual element in beach areas, provide specialized habitat area, and are by their very nature geologically unstable. The following policies of the Coastal Act are applicable to development adjacent to bluff areas:

Section 30251 of the Coastal Act 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 subordinate to the character of its setting.

Section 30253 of the Coastal Act states, in 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.

Section 30240 of the Coastal Act states that:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The proposed project is located on a 7-acre blufftop lot which fronts Pacific Coast Highway. The Commission has previously approved (Permit 5-90-277) the construction of a single family residence and several accessory structures as described above.

1. Grading Plan Modifications.

Although the applicant carried out the permitted bluff reconstruction, the grading carried out was different from that approved by the Commission. Basically, the grading approved by the Commission for the bluff reconstruction involved filling the area where the old house foundations were located, filling a secondary pad area lower on the bluff, removing the existing road, and smoothing the contours to more reflect a natural bluff face. This work was to be located primarily on the eastern side of the property. The bluff on the western side of the property was in a more natural state.

The applicant proposes to amend the grading plan to reflect the grading that was actually carried out on the site. The changes to the grading are that the road down the bluff was not completely removed although the applicant's agent states that it was reduced in width, and the location of the edge of the bluff in the area of the burned-out house was moved further seaward, creating a pad area where the gazebo was constructed.

The road down the bluff was not removed, although the applicant indicates that it was made into a narrower path for pedestrian access to the beach. Additionally, the path was paved with concrete. The applicant now proposes to retain the path, but to remove the hardscape from it and place decomposed granite as a surface to the path. The path was part of a road to the beach that existed prior to the Commission's approval of the house permit. While the

Commission could not have found a new road or path down a bluff face consistent with the policies of the Coastal Act, the road existed prior to its review of the permit application. In fact, the applicant states that the road existed when the house on the site burned down in 1971. Since the road existed prior to the Coastal Act, the Commission did not compel the applicant to remove the road. The removal of the concrete from the path will actually reduce any impact to visual resources. As such, the Commission finds that the retention of the path and the removal of the hardscape from it is consistent with Section 30251 of the Coastal Act.

With regard to the change in the grading plan in the area of the burned-out house, while the bluff edge was located further seaward than in the original plans, this area was significantly disturbed in the past and the exact edge of the bluff prior to disturbance was difficult to determine. While the grading of the pad was not in compliance with the approved grading plan, the change to the plan will have no greater potential for impact to visual resources than the approved plan. Therefore, the Commission finds that the proposed modification to the grading plan is consistent with Section 30251.

2. Pool and Spa.

The applicant also proposes to modify the approved site plan to reflect the relocation of the pool and spa. In the original plan, the approved structure had a notched-in area in the center of the house. The approved pool and spa extended into this area and was to be set back 25 feet from the bluff edge. However, in this portion of the house, a porch was constructed and the pool and spa were shifted towards the bluff and reconfigured. The pool as currently existing is located 12 feet from the edge of the bluff and the pool decking is located 5 feet from the edge. The spa is located 15 feet from the bluff edge and the spa decking is located 6 feet from the edge. In a 7/17/95 memorandum, the consulting geologist determined that the pool and spa will be stable in their current locations, will be safe from erosion for at least 75 years, and will not contribute to bluff erosion, even though they had not been constructed 20 feet from the bluff consistent with the previous geologic recommendations. The pool and spa will not be visible from the beach below and as such, will not have any adverse impacts on visual resources. Therefore, the Commission finds that the proposed relocation of the pool and spa is consistent with Sections 30251 and 30253 of the Coastal Act. The Commission further finds that the pool and spa will not impact the ESHA area and are thus consistent with Section 30240 of the Coastal Act.

3. Golf Tee.

To the west of the pool and spa, the applicant proposes to remove an unpermitted golf tee. This improvement consists of railroad ties placed on three sides of the tee area which serve to retain fill and extend the tee over the edge of the bluff. This golf tee was not contemplated in the original permit approval. The applicant is now proposing to remove the tee completely, restore the grade of the bluff and revegetate the area. The removal of the tee will reduce any impact on visual resources. In order to ensure that the area is properly revegetated with plant species appropriate for coastal bluff areas, the Commission finds it necessary to require the applicant to submit revegetation plans. Therefore, the Commission finds that the removal of the golf tee, as conditioned, is consistent with Sections 30251 and 30253 of the Coastal Act.

4. Fence.

The applicant proposes to maintain an unpermitted chain-link fence which is located on the bluff face. This fence extends down the western property line and across the entire width of the bluff face, near the bottom of the bluff. The applicant's agent has indicated that the fence is necessary to provide security for the residents of the house. One of the occupants of the property is a partner in a company which has had three of its employees murdered recently. The applicant's agent states that the applicant was advised by the police to erect and maintain a security fence for protection. The applicant's agent also stated that if the fence were located at the top of the bluff, it would not provide as much security to the residents of the house. While the fence is visible from the beach, and bluffs are by their very nature erosional features upon which it is very difficult to assure stability for improvements, the Commission finds that the fence is, at this time, necessary for the security of the applicant and any other occupants of the existing residence. The Commission further finds that it is appropriate to allow the applicant to temporarily retain the existing fence in its present location for a period of three years or until such time as the property is sold. In order to ensure that the fence will be removed, the Commission finds it necessary to require the applicant to record a deed restriction stating that the fence will be removed in three years or when the property is sold, whichever is sooner. At the end of the three years, the applicant shall have the right to submit an application to have the Commission review the necessity of retaining the fence beyond that time. As conditioned, the Commission finds that the temporary placement of the fence is consistent with Sections 30240, 30251 and 30253 of the Coastal Act.

5. Gazebo.

The applicant additionally proposes to maintain an approximately 1,600 sq. ft. gazebo which is located on the bluff as reconstructed (discussed in Section B1 above). This gazebo consists of a concrete pad, concrete benches around the perimeter, a fire place, and overhead wood trellis cover. The gazebo is visible from the beach below.

The applicant proposes the addition of deepened foundations, removal and recompaction of loose fill on the reconstructed bluff face, and the construction of a crib wall approximately 30 feet long and 7 feet high at its highest point above grade. The proposed crib wall would be located near the eastern property line down slope from the gazebo pad. The geologist has concluded that if these improvements are made, the gazebo and slope will be stable. The report states that:

Provided our recommendations for a deepened gazebo foundation and support of slopes descending below the gazebo by the crib wall (east side) and re-grading (south side) are implemented, that structure will be safe from geologic hazards including landslide settlement and slippage. In addition, neither the re-grading of the slope, the construction of the crib wall, nor the location of the gazebo on the proposed deepened foundation, will adversely affect offsite property.

Although the project geologist and engineer have concluded that the gazebo and slope will be stable if their recommendations are followed which would be consistent with Section 30253 (1) of the Coastal Act, to allow such improvements to support the gazebo will result in the placement of a protective device that would substantially alter natural landforms along a bluff. Such construction is inconsistent with Section 30253 (2) of the Coastal Act.

As such, the Commission finds that the applicant may not be permitted to place any type of protective devices, including the proposed crib wall, either on the bluff face or at the base of the bluff, to protect the gazebo. If the gazebo becomes subsequently imperiled by geologic instability, the applicant may apply for a coastal development permit to relocate the gazebo to a stable location at least 25 feet from the bluff edge. In order to ensure that the applicant and future owners are on notice that no protective devices shall be permitted, the Commission finds it necessary to require the applicant to record a deed restriction to that effect. The Commission finds that, as conditioned, the proposed gazebo is consistent with Sections 30240, 30251, and 30253 of the Coastal Act.

6. Modifications to Recorded Open Space Deed Restriction.

The applicant proposes two modifications to the open space and habitat protection deed restriction which was required by the Commission in the original approval. The first change is to reduce the area devoted to open space. The applicant states that the change is proposed to refine the area devoted to open space to more closely follow the exact location of the bluff face (Exhibit 11). The principal change to the map is located in the area of the previously existing burned-out house. As discussed above, the as-built grading resulted in the bluff edge being further seaward than the edge on the plan approved in Permit 5-90-277. The Commission recognizes that a bluff face may erode or otherwise change its dimensions over time. Since the Commission finds that those changes to the grading are consistent with Section 30251 of the Coastal Act, it is appropriate to modify the open space exhibit to reflect the bluff edge, in accordance with Commission definitions and regulations.

The applicant also proposes to modify the language of the deed restriction to allow for the path, existing drainage system, fence and "geologic work" within the open space area. As discussed above, the Commission finds that the path pre-dated the Coastal Act and the removal of the hardscape from the path will lessen impacts on visual resources. However, as also discussed above, the placement of any protective devices to maintain the gazebo are not consistent with Sections 30253 of the Coastal Act. As such, the Commission finds it appropriate to modify the language of the open space deed restriction to allow the existing path and drainage system to be located within the open space area. The revised condition is shown as special condition 1. The Commission finds that the proposed modification to the open space deed restriction, as shown in condition 1, is consistent with Sections 30240, 30251, and 30253 of the Coastal Act.

D. 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:

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.

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. 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. However, a conclusion that access may be mandated does not end the Commission's inquiry. As noted, Section 30210 imposes a duty on the Commission to administer the public access policies of the Coastal Act in a manner that is "consistent with ... the need to protect ... rights of private property owners..." The need to carefully review the potential impacts of a project when considering imposition of public access conditions was emphasized by the U.S. Supreme Court's decision in the case of Nollan vs. California Coastal Commission. In that case, the court ruled that the Commission may legitimately require a lateral access easement where the proposed development has either individual or cumulative impacts which substantially impede the

achievement of the State's legitimate interest in protecting access and where there is a connection, or nexus, between the impacts on access caused by the development and the easement the Commission is requiring to mitigate these impacts.

The Commission's experience in reviewing shoreline residential projects in Malibu indicates that individual and cumulative impacts on access of such projects can include among others, encroachment on lands subject to the public trusts thus physically excluding the public; interference with natural shoreline processes which are 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 and cause adverse impacts on public access such as above.

In the case of the proposed project, the proposed additions to the previously approved residence will be located at the top of or on the bluff face. No proposed development will extend onto the sandy beach below. As such, the proposed structure will not encroach onto or over tidelands or public trust lands and will not interfere with rights of access to sandy beach. No shoreline protective devices are proposed so the proposed project will not affect the availability of sand or beach area. As such, the proposed project will have no individual or cumulative impacts on public access.

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, and 30212.

E. Violation

Permit 5-90-277 was granted in June 1990. The permit was issued in September 1990. Staff became aware in January 1994 that there was development on the project site which was not in conformance with the approved permit for the site.

The applicant is proposing this amendment to resolve the ongoing violations on the site. The applicant has also proposed two mitigation measures. The first proposal involves the reconfiguration of an existing, deteriorated storm drain outfall. The second proposed measure is to remove decaying wood pilings present on the east side of the property at the base of the bluff. The Commission finds that neither of these proposed measures is appropriate mitigation for this development.

As discussed in the above sections, the grading plan modifications, relocation of the pool and spa, removal of the golf tee, removal of the path hardscape, fence, gazebo, and the changes to the open space deed restriction are consistent with the policies of the Coastal Act. However, the Commission finds that approval of this development does not totally resolve the outstanding violations on the site. The Commission finds that a monetary settlement of the applicant's potential liability under the Coastal Act is appropriate in this case.

Although development has taken place prior to submission 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.

F. Local Coastal Program

Section 30604(a) 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 coastal 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. On December 11, 1986, the Commission certified the Land Use Plan portion of the Malibu/Santa Monica Mountains Local Coastal Program. However, on March 28, 1991 the City of Malibu was legally incorporated. Therefore, the previously certified County of Los Angeles Malibu/Santa Monica Mountains LUP is no longer legally binding within the City of Malibu and is therefore, no longer used within the City as a guidance document.

The proposed development, as conditioned, will not create adverse impacts and is consistent with Chapter 3 policies of the Coastal Act. The Commission finds that approval of this project will not prejudice the ability of the City of Malibu to prepare a Local Coastal Program that is consistent with the policies of Chapter 3 of the Coastal Act, and is therefore consistent with Section 30604 (a) of the Coastal Act.

G. California Environmental Quality Act

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 by any conditions of approval, to be consistent with any 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 impact which the activity may have on the environment.

The proposed development would not cause significant, adverse environmental impacts which would not be adequately mitigated by the conditions imposed by the Commission. Therefore, the proposed project, as conditioned, is found consistent with CEQA and with the policies of the Coastal Act.

490206
SCALE
1" = 100'

5

PROJECT SITE

DECKER RD

3

4

PACIFIC COAST HWY. 2
S 10 245-4237
FM 1266-1 02-1684-342

FULLISS FRIEDMAN ENGINEERS INC. 1982-04-06

HWY. 2
S 10 245-4237
FM 1266-1 02-1684-342

73 18
1" = 100'

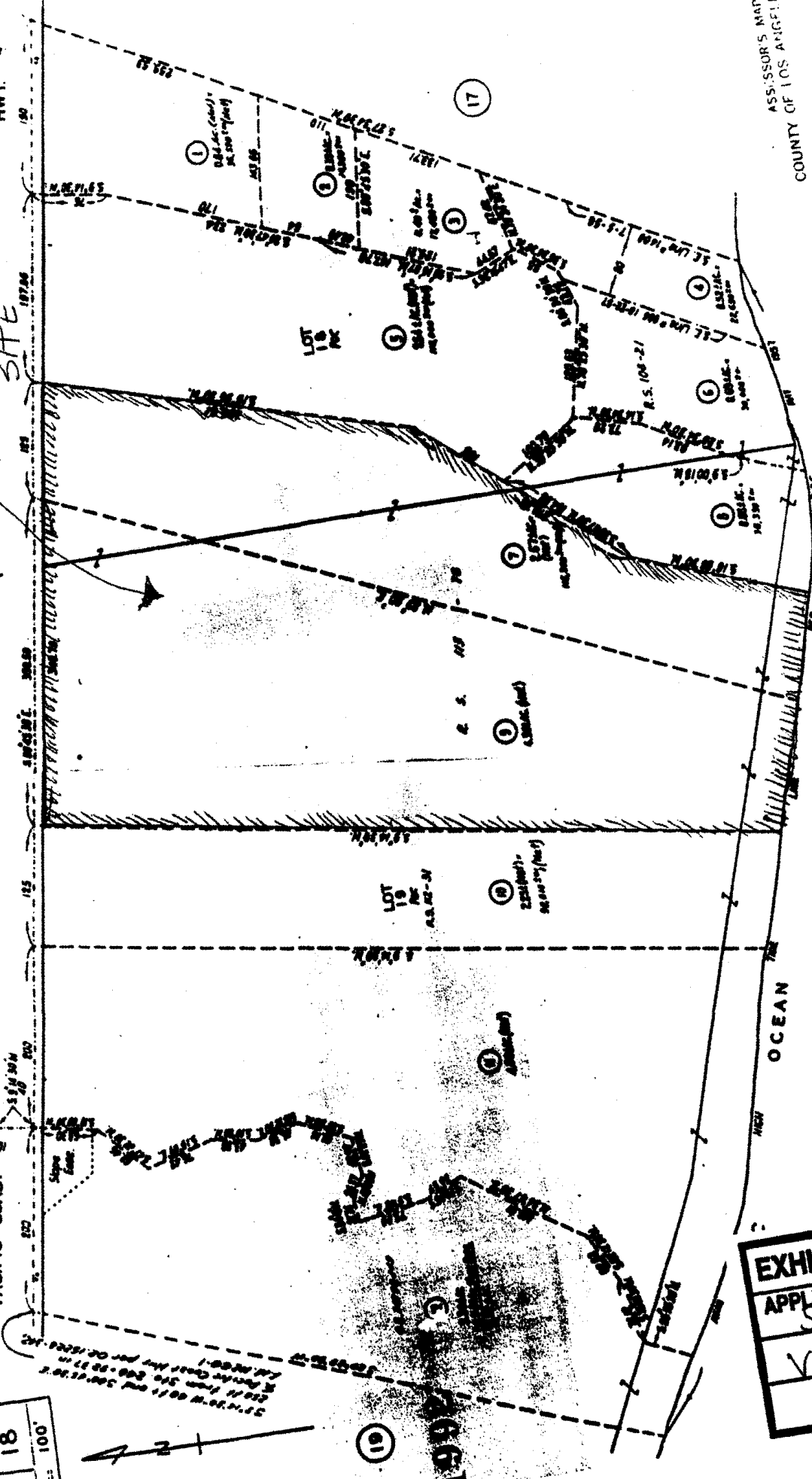


EXHIBIT NO. 2
 APPLICATION NO.
 S-50-277A
 VICINITY

LAND OF MATTHEW KELLER IN THE RANCHO
 TOPANCA MALIBU SEQUIT

ASSessor'S MAP
 COUNTY OF LOS ANGELES

SEE:

ATTACHMENT TO APPLICATION FOR AMENDMENT

Applicant: Ms. Verna Harrah
Property: 33064 Pacific Coast Highway
Malibu, California 90265
Dated: September 21, 1995
Permit No.: 5-90-277

RECEIVED
SEP 25 1995
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

A. Description of Proposed Amendments.

Applicant proposes to amend Coastal Development Permit No. 5-90-277 ("Permit") in the following respects:

1. Amendment of Landscaping Plan. To amend the landscaping plan referred to in special condition no. 1 of the Permit to provide for: (a) the revegetation of certain portions of the Property in the vicinity of the beach; (b) the removal of hardscape from and the resurfacing of an existing pathway with a permeable covering; (c) the placement of a small landscaped crib wall on a slope of the Property primarily facing the adjacent ravine along the easterly boundary; (d) the removal of certain railroad tie landscaping boundaries from and the restoration and revegetation of a portion of the bluff area of the Property near the westerly boundary; and (e) a fence across the bluff area of the Property, all as shown on the Landscaping Plan prepared by Cummings Curley Associates, Inc. dated June 16, 1995 attached hereto as Exhibit "A" and incorporated herein by reference ("Landscape Plan"); provided, however, that the precise location of the crib wall will be as shown in Exhibit "J", referenced below.

2. Amendment of Grading Plan. To amend the original grading plan approved by the Commission during its processing of the Permit, a copy of which is attached hereto as Exhibit "B" ("Original Grading Plan") to refine and conform the plan more closely to the natural terrain of the southerly portion of the Property, as more specifically shown on Exhibit "C-2" attached hereto and incorporated herein by reference ("Amended Grading Plan").

3. Amendment of Deed Restriction. To amend the Deed Restriction dated July 12, 1990 and recorded against the Property as Document No. 90-1421308 ("Original Deed Restriction"), using the form of Amendment of Deed Restriction attached hereto as Exhibit "D" and incorporated herein by reference, to refine the definition of the Protected Land contained in the Original Deed Restriction and to confirm that certain limited improvements may be placed and maintained within the Protected Land, as more particularly described on s

1066

EXHIBIT NO. 3
APPLICATION NO. 5-90-277A
Applicant's Proposal

Attachment to Amendment Application

Dated: September 21, 1995

Applicant: Ms. Verna Harrah

Permit No.: 5-90-277

Page: -2-

4. Amendment of Site Plan to Include Pool, Spa and Gazebo. To amend the site plan for the Property to allow a swimming pool, a whirlpool spa and a gazebo on the southerly portion of the Property, as more specifically located and shown on Exhibit "E" attached hereto and incorporated herein by reference.

5. Amendment of Permit and Related Documents for Consistency. To amend the Permit and all related documents as may otherwise be reasonably necessary to carry out the intent of the other amendments referred to herein.

B. Explanation of Proposed Amendments. To assist the Commission and its Staff in the evaluation of the proposed amendments, Applicant supplies the following explanation, as well as the "As-Built" Survey of the southerly portion of the Property attached hereto as Exhibit "F" and incorporated herein by reference.

1. Landscape Plan Amendment.

(a) The removal of the railroad tie landscaping boundary, the irrigation equipment and the revegetation work shown on the attached amended Landscape Plan will enhance the natural appearance of the portion of the Property in question, including certain areas that were planted at the time of construction of the original improvements covered by the Permit but that did not mature well. In compliance with the character of the area covered by the Landscape Plan, drought-resistant native vegetation will be used, and no irrigation system will be installed, maintained or allowed to remain within the area to be covered by the revegetation work.

(b) The replacement of the hardscape covering on the path shown on the Landscape Plan with the indicated permeable surface will create a more natural appearance while still serving to deter soil erosion and affording access to the beach, as discussed more fully below.

(c) The security enclosure fencing is necessary to help assure the security of the occupants of the Property. The fence is chainlink and partially covered with vegetation.

2. Grading Plan Amendment.

(a) The Original Grading Plan was approved fairly early in the development process, and was only intended to constitute a rough estimate of the grading to be done on the southerly portion of the Property.

2 of 6

EXHIBIT NO. 3
APPLICATION NO. 5-90-277A

Attachment to Amendment Application

Dated: September 21, 1995

Applicant: Ms. Verna Harrah

Permit No.: 5-90-277

Page: -3-

(b) As construction went forward, it was determined that the grading shown on the Amended Grading Plan would be more appropriate in that it would support the approved development of the proposed improvements on the Property while also maintaining a more natural contour of the bluff face and adjacent areas of the Property, thereby tending to preserve the natural aesthetic qualities of those areas. Exhibit "C-1" attached hereto and incorporated herein by reference shows an overlay comparison of the grading reflected on the Amended Grading Plan and the Original Grading Plan.

(c) In addition to refining the grading contours in the southerly portion of the Property, the Amended Grading Plan helps to refine the location and manner by which occupants of the Property will have access to the beach that comprises a portion of the Property.

i) The Amended Grading Plan shows the location of a small path from the 60 foot elevation level of the main portion of the Property down to sea level at the beach. The path is in the same location as a road that went from a residence formerly located on the Property (and that burned during the 1971 Malibu fire) down to the beach, but the path is substantially narrower and has much less aesthetic impact than the original road. In fact, the upper portion of the pre-existing road was eliminated and revegetated in accordance with the Original Grading Plan.

ii) The path is a necessary and appropriate way for the occupants of the Property safely to access the beach.

--The topography of the Property in the vicinity of the beach is sufficiently steep that some type of path or walkway must be provided to allow the occupants of the Property, particularly any mobility-impaired individuals, safe access to the beach.

--The Permit does not require Applicant to relinquish access to the beach. To the contrary, the Original Deed Restriction contemplates such access; paragraph 1 of the Original Deed Restriction specifies "private recreation" as one of the permitted uses of the Protected Land.

iii) The path shown on the Amended Grading Plan provides access from the upper elevation of the Property to the beach in an unintrusive manner, and at the same time affords access for maintenance purposes to the site drainage system that runs parallel to the path from the upper site elevation to the beach, which drainage system was required by the site and drainage plans for the Property approved by the Coastal Commission as part of the Permit.

(d) The Original Kowalewsky Report, the First Supplemental Kowalewsky Report, the Second Supplemental Kowalewsky Report and the MTC Engineering Report (all as defined below) all discuss the portion of the Property in the vicinity of the gazebo, and state that

9/95

EXHIBIT NO. 3
APPLICATION NO. 5-90-277A
3 of 6

Attachment to Amendment Application

Dated: September 21, 1995

Applicant: Ms. Verna Harrah

Permit No.: 5-90-277

Page: -4-

to properly support the gazebo, a small crib wall ("Crib Wall"), as shown on Exhibit "J" attached hereto and incorporated herein by reference ("Crib Wall Plans and Calculations"), should be constructed on the slope of the Property primarily facing the ravine and adjacent property. The Crib Wall would be landscaped as provided in the Landscape Plan. Such reports also recommend that the foundations of the gazebo be deepened to a depth of four feet ("Foundation Extension") and that certain loose fill soil on the slope south of the gazebo be removed and recompact (with the use of geofabrics, if necessary) to specified compaction levels ("Soil Compaction"). The Crib Wall, Foundation Extension and Soil Compaction, as described in the Crib Wall Plans and Specifications and said reports, are collectively referred to herein as the "Geological Work" and are specifically included as development work proposed for approval in this Application for Amendment.

3. Deed Restriction Amendment. The Amendment to Deed Restriction serves to refine the extent of the area defined as Protected Land in the original Deed Restriction and to clarify the definition of restricted improvements to confirm that the path, drainage system, fence and Geological Work may be performed, installed and maintained within the Protected Land.

(a) The drawing defining the Protected Land attached as Exhibit "B" to the Original Deed Restriction was intended to generally depict the bluff face, which is the area referred to in the Deed Restriction as the portion of the Property to be excluded from development. The original drawing was prepared early in the development process and did not specifically follow existing or anticipated grade contours.

(b) The amended drawing depicting the Protected Land that is attached to the Amendment to Deed Restriction as Exhibit "D-1" does take grade and elevation contours into account. It also more accurately depicts the true top of bluff in the southeast portion of the Property. The significant change in slope at the 55 foot elevation is clearly visible on Section C-C shown on Exhibit "C-2".

4. Site Plan Amendment re: Gazebo, Pool and Whirlpool Spa. The gazebo is a recreational structure that is not enclosed, that is located on essentially the same elevation as the main residence on the Property and is situated on the same pad location as a residence that previously was located on the Property and was lost in the 1971 Malibu fire. The gazebo is placed to allow the occupants of the Property a vantage point to enjoy the beach and ocean vistas available from the southerly portion of the Property. The gazebo would not be located within the Protected Land covered by the Deed Restriction, upon amendment thereof as provided herein. The gazebo location is consistent with sound geological and soils engineering practices, as shown by the report of Donald Kowalewsky dated September 19, 1994 attached hereto as Exhibit "G" ("Original Kowalewsky Report"), and will not result in any material visual impairment for the public from the beach or from Pacific Coast Highway, the closest public highway. The pool and whirlpool spa are situated at the same elevation as the main residence

EXHIBIT NO. 3
APPLICATION NO. 5-90-277A

4066

Attachment to Amendment Application
Dated: September 21, 1995
Applicant: Ms. Verna Harrah
Permit No.: 5-90-277
Page: -5-

in a location that is consistent with sound geological and soils engineering practices, as shown by the supplement to the Original Kowalewsky Report dated May 15, 1995 that is attached hereto as Exhibit "G-1" and incorporated herein by reference ("First Supplemental Kowalewsky Report") and the supplement to the Original Kowalewsky Report and First Supplemental Kowalewsky Report dated July 17, 1995 attached hereto as Exhibit "G-2" and incorporated herein by reference ("Second Supplemental Kowalewsky Report"). The report prepared by MTC Engineering, Inc. dated August 25, 1995, a copy of which is attached hereto as Exhibit "G-3" and incorporated herein by reference ("MTC Engineering Report") provides soils engineering support for the proposed Crib Wall design parameters.

5. Consistency With Surrounding Property. The stringline map attached hereto as Exhibit "H" and incorporated herein by reference ("Stringline Map") shows that the location of the main residence and the gazebo depicted on Exhibit "E" is much farther from the ocean than the existing residences and improvements located on the properties situated on either side of the Property. Also, the nature and character of the uses proposed for the southerly portion of the Property, as reflected in this Application for Amendment, are consistent with, and are in fact much less intrusive or noticeable than, the existing residential and related uses on the neighboring properties.

C. City Has Approved in Concept. The City of Malibu has given its approval in concept to the principal work proposed by this Application. A copy of the City's approval in concept is attached hereto as Exhibit "I" and incorporated herein by reference.

D. Mitigation Measures. Mrs. Harrah, the Applicant and owner of the Property, believes that the work and improvements proposed in this Amendment Application will not have any material impact or effect upon the aesthetic quality of the coastal bluff portion of the Property, and that any effect that may exist or occur certainly would be much less than the impact on the bluff that would result from the demolition of the gazebo. Nevertheless, if the Commission determines that said work and improvements would have an impact or effect upon the aesthetic quality of the bluff, Mrs. Harrah is prepared to undertake the mitigation measures described below and shown on Exhibit "E-1" attached hereto and incorporated herein by reference ("Mitigation Measures") and hereby presents the Mitigation Measures for consideration by the Commission. The Mitigation Measures are proposed with the belief and assumption that they would withstand nexus scrutiny, i.e., the Mitigation Measures have a sufficient relationship to the condition of the Property and are roughly proportional to the impact created by the work and improvements.

The Mitigation Measures are comprised of the work described in sections 1 and 2 below and would be performed in accordance with the terms and conditions set forth in section 2 below. 5 of 6

EXHIBIT NO. 3
APPLICATION NO. 5-90-277A

Attachment to Amendment Application

Dated: September 21, 1995

Applicant: Ms. Verna Harrah

Permit No.: 5-90-277

Page: -6-

1. Reconfigure Storm Drain Outfall. The deteriorating storm drain outfall (shown in the photograph attached hereto as Figure 1 on Exhibit "K" and incorporated herein by reference), which is located at the foot of the bluff on the westerly portion of the Property and which was constructed pursuant to requirements imposed by the County of Los Angeles, would be reconfigured, as follows:

Reduce the size of the concrete wall enclosing the storm drain outflow; and

Move some of the existing large rocks and cobbles from the easterly portion of the bottom of the bluff and redistribute them in front of the storm drain outflow to create a more natural appearance.

The foregoing work is not intended to constitute a revetment.

2. Remove Old Pilings. The decaying old useless wooden pilings (shown in the photograph attached hereto on Figures 2-1 and 2-2 on Exhibit "K" and incorporated herein by reference) located on the lower bluff near the easterly border of the property would be eliminated, as follows:

Remove all old wood pilings from the easterly portion of the lower bluff (or, if removal of certain pilings is not feasible, eliminate all above-grade portions of such pilings) and dispose of the pilings off-site; and

Redistribute existing large rocks and cobbles in the easterly portion of the beach and lower bluff to achieve a more natural appearance.

The foregoing work is not intended to constitute a revetment.

3. General Conditions Applicable to All Work. All work required to accomplish the foregoing Mitigation Measures would be performed in accordance with the following conditions:

- (a) The work would be accomplished at Owner's sole expense;
- (b) Owner would obtain all necessary building and other permits from the City of Malibu as expeditiously as reasonably possible;
- (c) The work would be performed by a licensed contractor of Owner's selection; and
- (d) The work would be completed within 90 days after the necessary permits by the City of Malibu.

9/95

6 of 6

EXHIBIT NO. 3
APPLICATION NO. 5-90-277A

47'-0"

JUN 14 1994

CITY OF MALIBU

BASED
~~PLANNING DEPARTMENT~~
 BEARING (TYP.) MALIBU
 PLANNING DEPARTMENT
 APPROVAL IN CONCEPT
 SIGNATURE *SV*
 DATE 10/24/94
 PLANNING REVIEW NO. *PER 74-79*
 LIMESTONE
 FIN. *11/93*
 EL. *57.00*
 THIS IS NOT A PERMIT
 AND IS SUBJECT TO ANY
 CONDITIONS LISTED BELOW
 *THIS APPROVAL IS VALID FOR 1 YRS FROM THE DATE STAMPED.

← FIREPLACE

CAST-STONE COL'S
SUPPORTING WOOD
TRUSSES (TYP.)

RECEIVED

NOV 1 1994
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

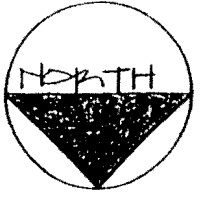


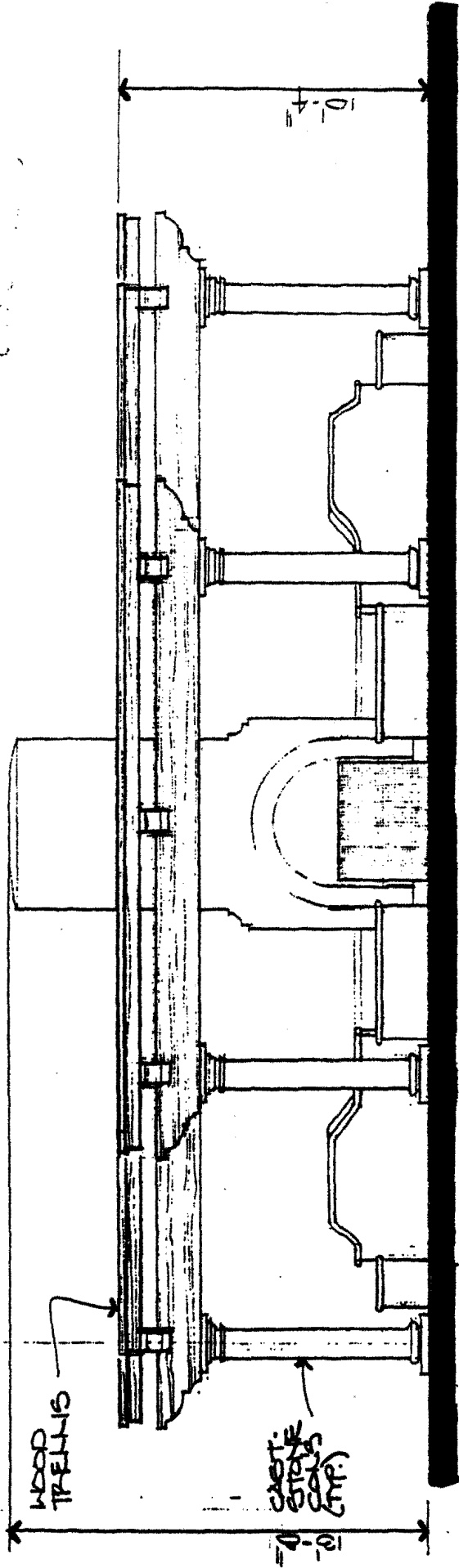
EXHIBIT NO. 6
APPLICATION NO. 5-50-2-79A
GAZEBO Floor PLAN

GAZEBO FLOOR PLAN

1224 X 4 RESIDENCE 33064 P.C.H. MALIBU, CA.

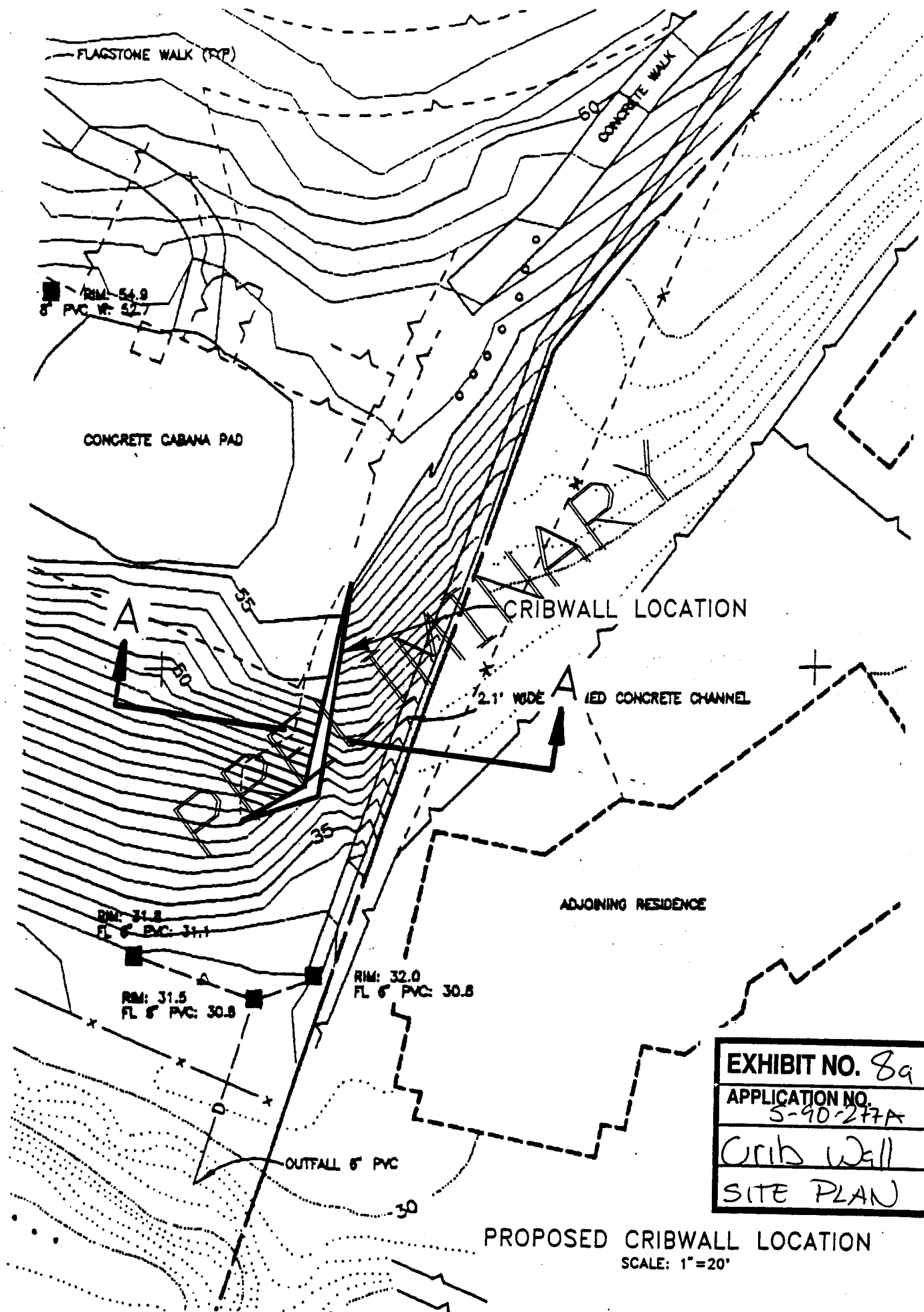
RECEIVED

JUN 14 1994



GAZEBO - WEST ELEVATION
HARRAH RESIDENCE 38004 P.C.H. MALIBU, CA.

EXHIBIT NO. 7
APPLICATION NO. 5-90-277A
GAZEBO ELEVATION



FLAGSTONE WALK (TYP)

50
CONCRETE WALK

RIM: 54.9
6" PVC: 52.7

CONCRETE CABANA PAD

CRIBWALL LOCATION

2.1' WIDE LINED CONCRETE CHANNEL

ADJOINING RESIDENCE

RIM: 31.8
FL 6" PVC: 31.1

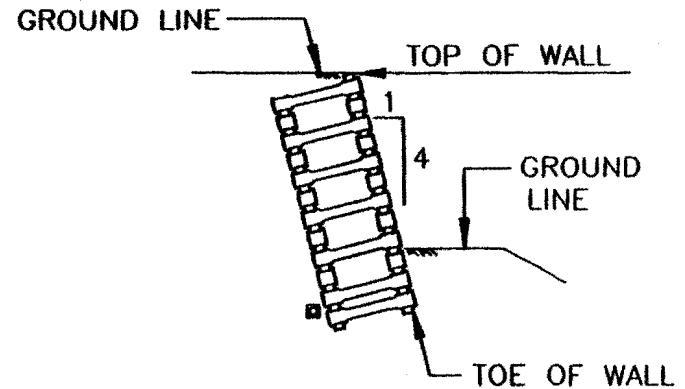
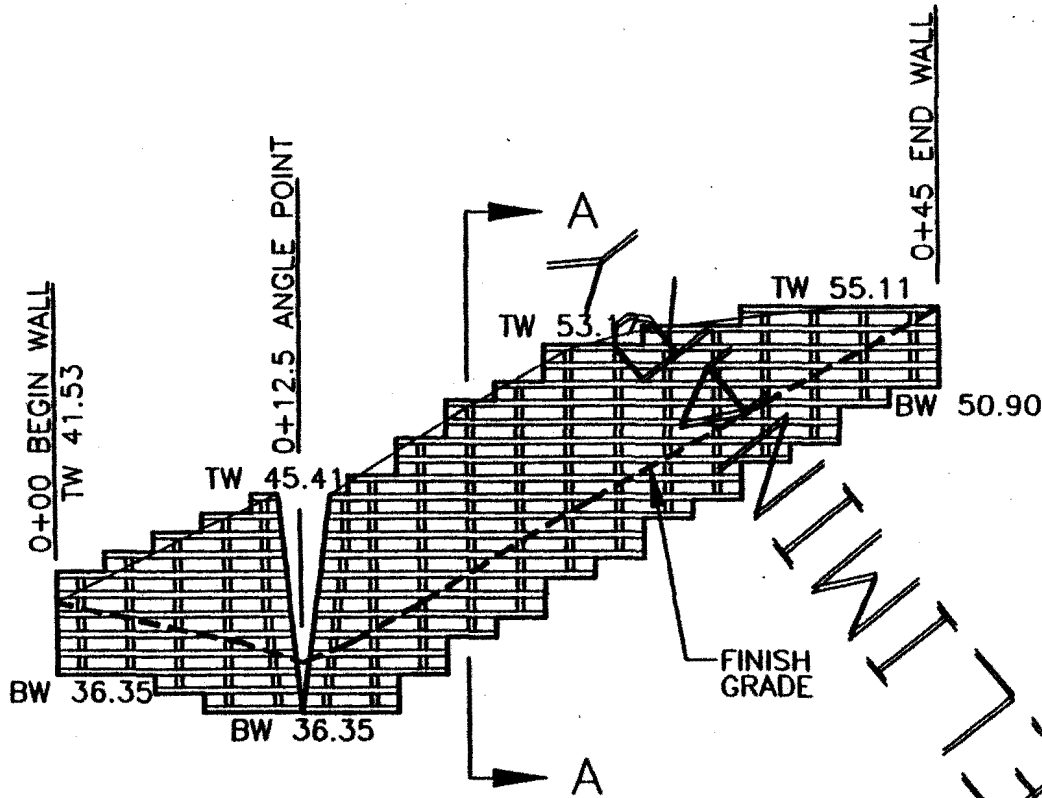
RIM: 31.5
FL 6" PVC: 30.8

RIM: 32.0
FL 6" PVC: 30.8

OUTFALL 6" PVC

EXHIBIT NO. 8a
APPLICATION NO. S-90-277A
Crib Wall
SITE PLAN

PROPOSED CRIBWALL LOCATION
SCALE: 1"=20'



SECTION A-A
SCALE: 1" = 10'

CRIBWALL PROFILE
SCALE: HORIZ. AND VERT. 1" = 10'

PROFILE NOTES:

1. HORIZONTAL STEP INCREMENT = 2.50'
2. VERTICAL STEP INCREMENT = 0.97'
3. BW ELEVATION IS ELEVATION AT BOTTOM OF BOTTOM STRETCHER.
4. TW ELEVATION IS ELEVATION AT TOP OF TOP STRETCHER.
5. PROFILES ARE APPROXIMATE AND MAY REQUIRE ADJUSTMENT BASED UPON ACTUAL FIELD CONDITIONS AT TIME OF CONSTRUCTION.

EXHIBIT NO. 8b
APPLICATION NO. 5-50-237A
Crib Wall Profile

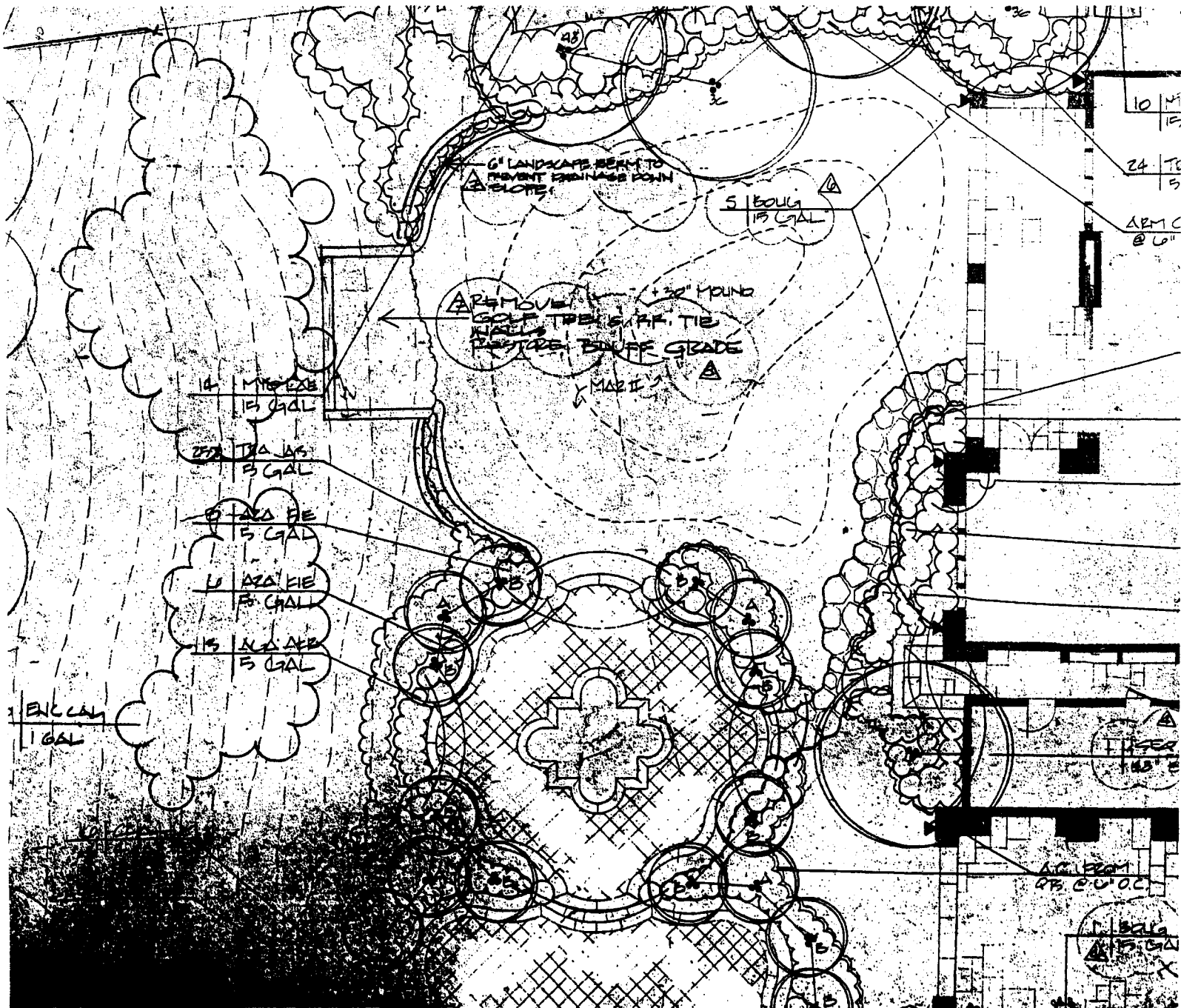


EXHIBIT NO. 9
APPLICATION NO. 5-90-277A
Golf tee
Detail

PACIFIC OCEAN

LIMITS OF LINE DEMARCATING ELEV. 1.85' AS OBSERVED ON MAY 8, 1989

A

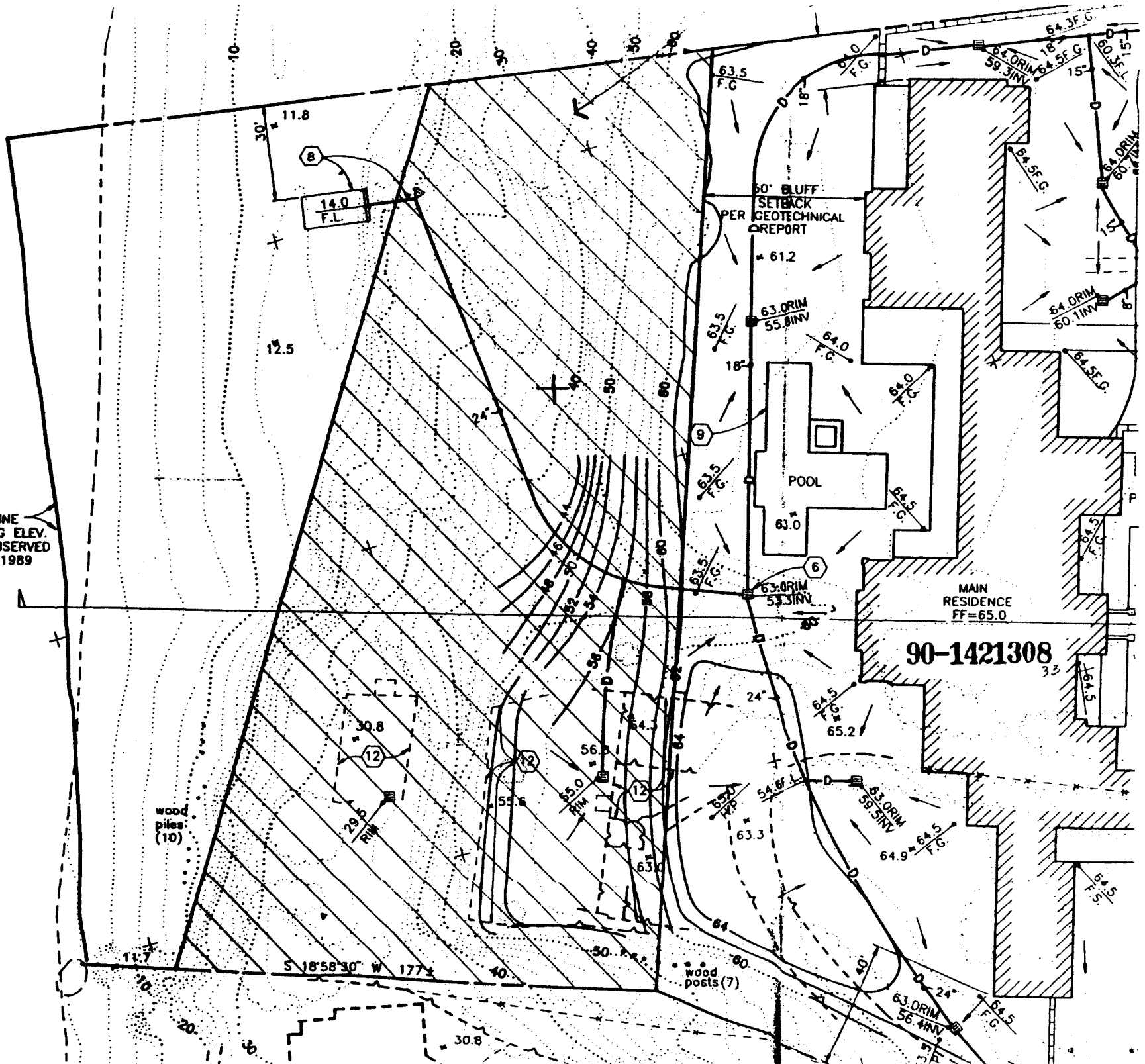
90-1421308²

EXHIBIT NO. 10

APPLICATION NO. S-50-223A

Recorded

Open Space Area



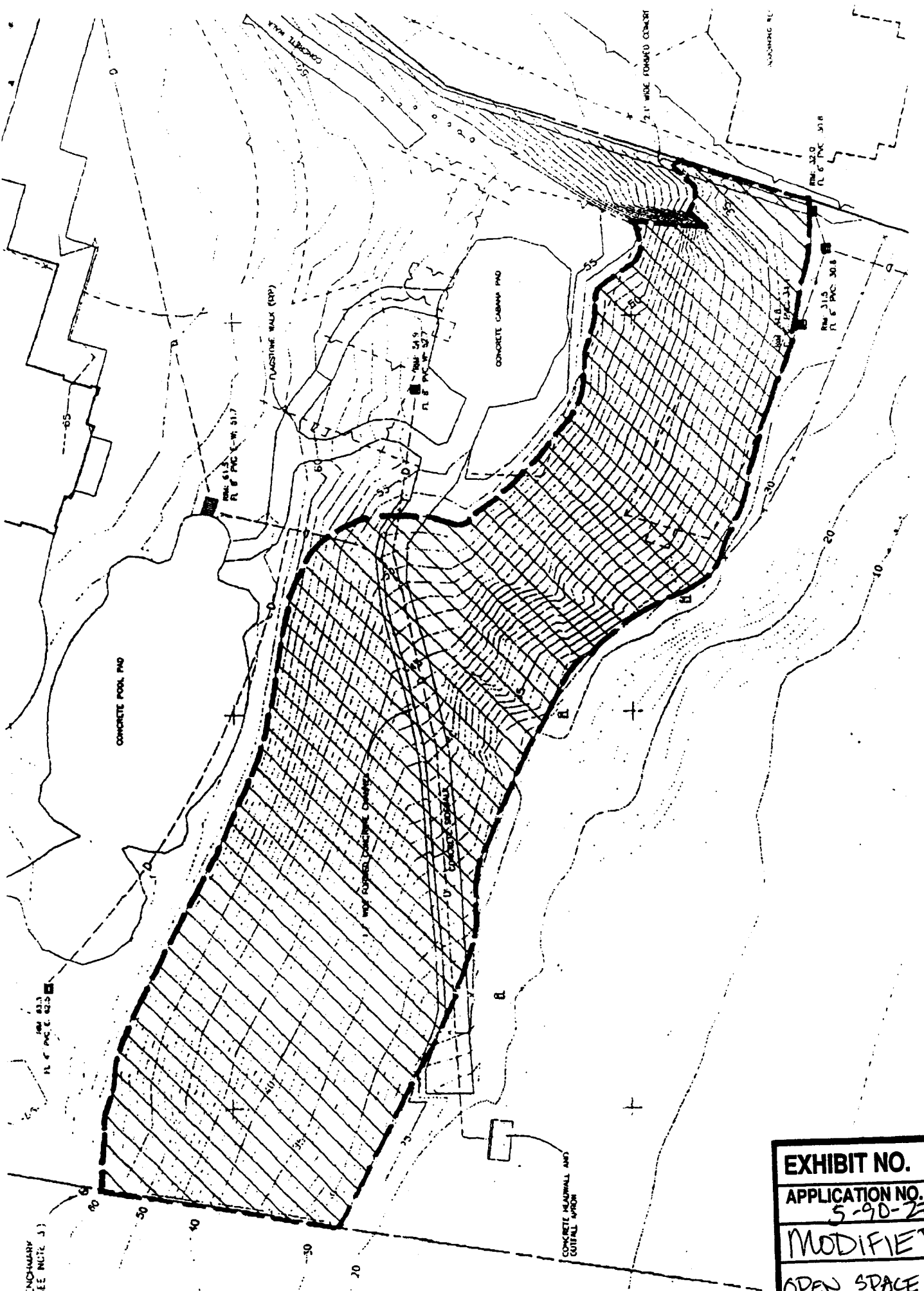


EXHIBIT "D1"

EXHIBIT NO. 11
APPLICATION NO. 5-90-277A
MODIFIED
OPEN SPACE AREA

