

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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 Hearing Date:

RECORD PACKET COPY

STAFF REPORT: PERMIT AMENDMENT

APPLICATION NO.: 5-90-702-A6

APPLICANT: Sheldon Adelson **AGENT:** Jamie Harnish

PROJECT LOCATION: 23500 Malibu Colony Drive, City of Malibu (Los Angeles County)

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Demolition of an existing residence and construction of a 4,680 sq. ft. single family residence with detached garage, guest house, and attached tea house. (Please note: five amendments to this permit have previously been considered. Please see Section IV.A. below for a description of these amendments.)

DESCRIPTION OF AMENDMENT: Construct a lap pool between the single family dwelling and the seawall on a beachfront lot.

LOCAL APPROVALS RECEIVED: City of Malibu: Planning Department, Approval in Concept, dated 2-22-99; Department of Environmental Health, approval, dated February 12, 1999.

SUBSTANTIVE FILE DOCUMENTS: Certified Malibu/Santa Monica Mountains Land Use Plan, County of Los Angeles, 12/11/86; U.S. Army Corps of Engineers. Los Angeles District. Reconnaissance Study of the Malibu Coast. 1994; David C. Weiss, letter report ADE2.193.1, May 24, 1999; Leighton and Associates, Section 111 Statement, March 19, 1999.

SUMMARY OF STAFF RECOMMENDATION:

The proposal is for lap pool behind an existing shoreline protective work which was upgraded through a previous amendment to the coastal development permit. The proposal has been reviewed by both a geotechnical engineer and coastal engineer and found to be safe from hazards and not adversely affect adjacent property. Staff recommends approval of the project with special conditions of approval relating to: *conformance to geologic recommendations and assumption of risk.*

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,*
- 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.*

In this case, the proposed amendment will affect a permit condition required for the purpose of protecting a coastal resource. 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 13166.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions

The Commission hereby approves the amendment to the coastal development permit, on the grounds that as modified, the development 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 effects on the environment within the meaning of the California Environmental Quality Act.

II. Special Conditions

1. Plans Conforming to Geologic Recommendations

Prior to the issuance of a coastal development permit the applicant shall submit, for review and approval by the Executive Director, evidence of the geology and geotechnical consultants' review and approval of all project plans. All recommendations contained in the Leighton and Associates, Section 111 Statement, March 19, 1999 shall

be incorporated into all final design and construction including slabs, side walls, distance from building, and other specifications. All plans must be reviewed and approved by the consultants.

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 development permit.

2. Assumption of Risk

- A. By acceptance of this permit, the applicant acknowledges and agrees: (i) that the site may be subject to hazards from **erosion, storm waves, and flooding**; (ii) 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; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; (iv) 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; and (v) the applicant or successor in interest shall not be permitted to expand the existing seawall (permitted under coastal development permit 5-90-702-A2) further seaward than the permitted configuration if such expansion is proposed to protect the swimming pool permitted under coastal development permit 5-90-702-A6.
- 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.

3. Revised Plans

Prior to issuance of the Coastal Development Permit, the applicant shall submit revised plans deleting the stairway and outdoor shower deck which extends down to the beach from the seawall. No stairway, deck or landing shall be constructed providing access down to the beach without approval from the California Coastal Commission or its successor in interest.

NOTE: All standard and special conditions attached to the previously approved permit remain in effect to the extent not otherwise modified herein.

III. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description

The applicant requests approval for construction of a lap pool, behind an existing timber and rock seawall/bulkhead, on a beachfront lot seaward of the single family residence. The proposed pool is 7.5 feet wide and 23 feet long and will be encased by a retaining wall which is below grade level. The pool will be covered by a deck with stone surface and the deck will be mechanically retractable. When the pool is not in use the appearance will be that of a ground level stone patio. The pool will rest upon the sandy beach while the previously approved house, presently under construction, rests on caissons.

In November, 1990 the Commission approved on the subject property the demolition of an existing residence and construction of a new 4680 sq. ft. single family residence with detached garage and guest house and an attached tea house. The project was approved with conditions related to assumption of risk and geotechnical review of final design and construction plans. The permit was subsequently issued.

The permit was amended by an immaterial amendment on August 19, 1993 to raise the first floor elevation, make minor interior wall modifications, and lower and change the roof configuration. The permit was amended on August 17, 1994 to modify the existing rock revetment seaward of the timber bulkhead to add intermediate and filter rock below the existing cap rock seaward of the timber bulkhead. The permit was subject to conditions relative to assumption of risk, restriction of replacement rock to the existing footprint, condition compliance within thirty days, and construction responsibility and debris removal. The findings indicated that the improvements seaward of the timber bulkhead extended no further seaward than the original bulkhead constructed in 1983 and produced no further impacts on coastal access, so that a special condition relative to lateral access was not appropriate. The amendment was issued.

A fourth amendment application was never completed. A fifth amendment application received an immaterial amendment on January 22, 1997 for conversion of a loft into a third story and internal changes to the existing floor plan which result in the house design presently under construction. The construction was almost completed at the time of the staff site visit in late March.

The existing septic system is not affected by the proposed development and the project has been reviewed by the City Environmental Health Department relative to the relationship of proposed improvements to the septic system.

The project is located on Malibu Colony Road in a locked gate residential community. The area is built out with single family residences of which many have tea houses, decks, patios, and other improvements seaward of the residence. The seawalls, decks, tea houses and residences generally conform to string lines based on adjacent development. The timber and combination timber and rock bulkheads determine the alignment and seaward extent of development in this area. The beach is a retreating narrow sandy beach, as discussed below.

B. Hazards and Geologic Stability

1. Coastal Act and LCP Policies

Section 30253 of the Coastal Act states:

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.***

In addition to section 30253 of the Coastal Act, the certified Malibu/Santa Monica Mountains LUP contains several policies and standards regarding hazards and geologic stability. For example, Policy 147 suggests that development be evaluated for impacts on and from geologic hazards. Policy 153 suggests that no development should be sited closer to the sea than 10 ft. landward of the mean high tide line. These policies have been certified as consistent with the Coastal Act and used as guidance by the Commission in numerous past permit actions in evaluating a project's consistency with section 30253 of the Coastal Act.

2. Geologic Stability and Hazards

The Malibu Beach fronting the Malibu Colony residential area is a narrow section of the coast which has been heavily developed with single family homes. This beach is located between Amarrillo Beach and Malibu Point. Many of the existing residences along this Beach employ bulkheads or other forms of shoreline protection to protect residences and septic systems. Much of this existing development is exposed to recurring damage because of the absence of a sufficiently wide protective beach.

The U.S. Army Corps of Engineers, Los Angeles District, Reconnaissance Study of the Malibu Coast, 1994 identifies this beach as stable to slow erosion. In addition, the Shoreline Constraints Study by Moffatt and Nichol, Engineers dated June 30, 1992 also indicates that the subject beach is retreating at .25 to 1.5 feet per year. Based on the above information, the Commission concludes that the subject site is located on an eroding beach.

In this case, the applicant, under an earlier amendment, reconstructed the shoreline protection to increase the depth of the rock work seaward of the existing timber bulkhead to add intermediate and filter rock below the existing cap rock with no seaward expansion. The consulting coastal engineer (David C. Weiss) has determined that the revetment as reconstructed prevents undermining of the sheathing and will dissipate wave forces and prevent overtopping. Any overtopping debris will not damage the pool according to the coastal engineer. During the El Nino storm events of 1998, Weiss note that there was no overtopping or soil leached from behind the seawall. The coastal engineer found that the proposal protects the pool from any damage and, further, that the pool will not surcharge the bulkhead.

Although the geotechnical engineer consultant found the pool does not have to be supported on caissons, he recommends that certain less costly measures be implemented and has made recommendations regarding slabs, side walls, distance from building, and other specifications relative to the proposed structure. The geotechnical engineer then found that:

Provided that the recommendations in the referenced report (Leighton, 1998), and in the relevant prior reports, were implemented, it is Leighton's opinion that grading, and structures at the subject Adelson residential lot will be safe from landslide, settlement, or slippage, and will not adversely affect adjacent property.

Given the findings and recommendations of the consulting engineering geologists, the Commission finds that the development is consistent with Section 30253 of the Coastal Act so long as all recommendations regarding the proposed development are incorporated into the project plans. Therefore, the Commission finds it necessary to require the applicant to submit project plans that have been certified in writing by the

consulting engineering geologists as conforming to their recommendations, as noted in *special condition number one (1)* for the final project plans for the proposed project.

3. Waiver of Liability

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 subject project and project site against the area's known hazards. The subject project involves the construction of a pool seaward of a portion of the residence and behind a timber and rock bulkhead.

Although the project's coastal engineer attests that the seawall as reconstructed prevents undermining of the sheathing and will dissipate wave forces and prevent overtopping, and protect the proposed pool, the Commission notes that past occurrences have resulted in public costs (through low-interest loans) in the millions of dollars in the Malibu area alone. The amount of erosion resulting from a storm depends on the overall climatic conditions and varies widely from storm to storm.

Along the Malibu coast, significant damage has also occurred to coastal areas from high waves, storm surge and high tides. In the winter of 1977-78, storms triggered numerous mudslides and landslides and caused significant damage along the coast. The southerly and southwesterly facing beaches in the Malibu area were especially hard hit by waves passing through the open windows between offshore islands during the 1978 and 1980 storms. These waves broke against beaches, seawalls, and other structures, causing damages of between \$2.8 and \$4.75 million to private property alone.

The "El Nino" storms in 1982-83 caused additional damage to the Malibu coast, when high tides of over 7 feet were combined with surf between 6 and 15 feet. These storms caused over \$12.8 million in damage to structures in Los Angeles County, many located in Malibu. Due to the severity of the 1982-83 storm events, they have often been cited as an illustrative example of an extreme storm event and used as design criteria for shoreline protective structures. Storms in 1987-88, 1991-92, and 1997-1998 did not cause the far-reaching devastation of the 1982-83 storms, however, they too were very damaging in localized areas and could have been significantly worse except that the peak storm surge coincided with a low tide rather than a high tide.

During peak winter season storms, the proposed development will be subject to wave attack, flooding, and erosion hazards that in the past have caused significant damage to development along the California coast, including the Malibu coastal zone and the beach area nearby the subject property. The Coastal Act recognizes that new development, such as the construction of the proposed revetment and single family residence on a beach, 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.

In the case of this project, there has been a review by a qualified professional familiar with the project site and shoreline protective devices. Given the findings and recommendations of these reports, the Commission finds that the proposed development is consistent with Section 30253 of the Coastal Act because it has been designed to provide stability and structural integrity based on an analysis of beach erosion at the subject site.

Regardless, 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. Therefore, 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 two (2)* requires the applicant to waive any claim of liability against the Commission for damage to life or property which may occur as a result of the permitted development. The applicant's assumption of risk, when executed and recorded on the property deed, will also 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.

4. Stairway and Shower

The Commission notes that the project plans show a stairway and shower feature seaward of the proposed pool. While not a part of the project description as submitted by the applicant, the Commission must address such representation. Past permit experience has shown that such features have been built without benefit of a coastal permit and, also, when built raise issues relative to the shoreline protection and access policies of the Coastal Act. The potential stairway is seaward of the alignment of shoreline protective devices in the project area, The location of the stairway would potentially interfere with lateral access along the beach seaward of the existing shoreline protective device and introduce a development where it would be subject to wave action. Such a stairway may be subject to damage with resulting debris creating interference with use of the beach and raising a potential liability problem. In addition such development could create a need for further augmentation of shoreline protection contrary to the intent of the above *special condition two (2)*.

The Commission needs to inform the applicant that, because of these concerns, such development is not a part of the proposed development and cannot not take place without an approved for amendment to this permit. Therefore, condition 3 is necessary to ensure consistency with Sections 30210 and 30253 of the Coastal Act.

5. Summary

In summary, Section 30253 of the Coastal Act requires that new development minimize risk to life and property in areas of high geologic, flood and fire hazard, and assure stability and structural integrity. Beachfront development raises issues relative to a site's geologic stability. The Malibu shoreline has experienced coastal damage regularly from geologic instability induced by winter rains and heavy surf conditions. The Commission notes that the subject project will be designed to minimize risks to life and property and assure stability and structural integrity if conditioned as recommended. Therefore, the Commission finds that, as conditioned, the proposed development is consistent with sections 30253 of the Coastal Act.

C. Local Coastal Program

Section 30604 of the Coastal Act states that:

a) Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

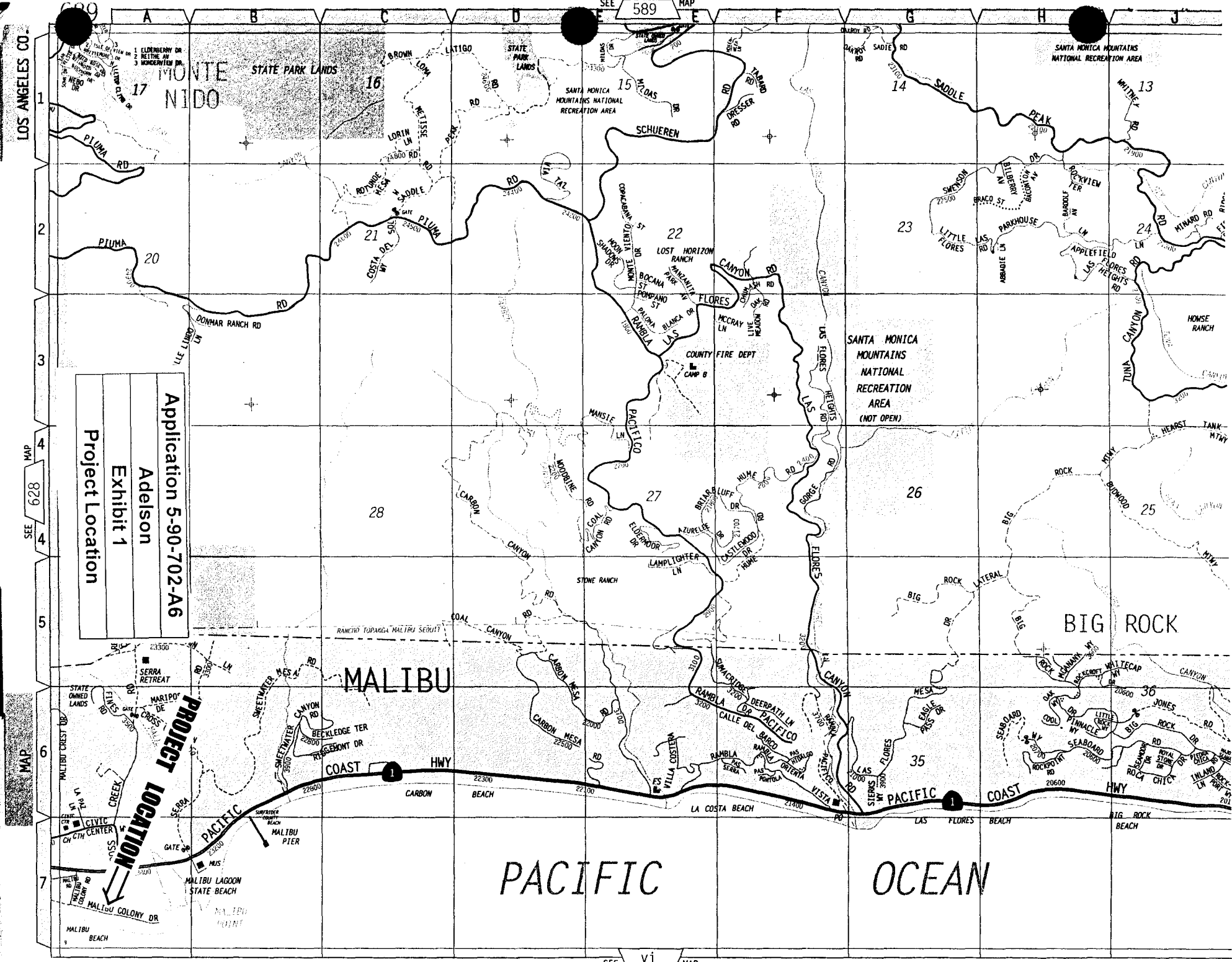
Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the project and accepted by the applicant. As conditioned, the proposed amendment 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 amendment, as conditioned, will not prejudice the City's ability to prepare a Local Coastal Program for Malibu which is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

D. CEQA

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit application to be supported by a finding showing 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)(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 may 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. Therefore, the proposed project, as conditioned, has been adequately mitigated and is determined to be consistent with CEQA and the policies of the Coastal Act.



LOS ANGELES CO.

SEE MAP 628

MAP

SEE MAP vi

Application 5-90-702-A6
 Adelson
 Exhibit 1
 Project Location

MONTE NIDO

MALIBU

PACIFIC

OCEAN

589

SEE MAP vi

Application 5-90-702-A6
 Adelson
 Exhibit 1
 Project Location

MONTE NIDO

MALIBU

PACIFIC

OCEAN

589

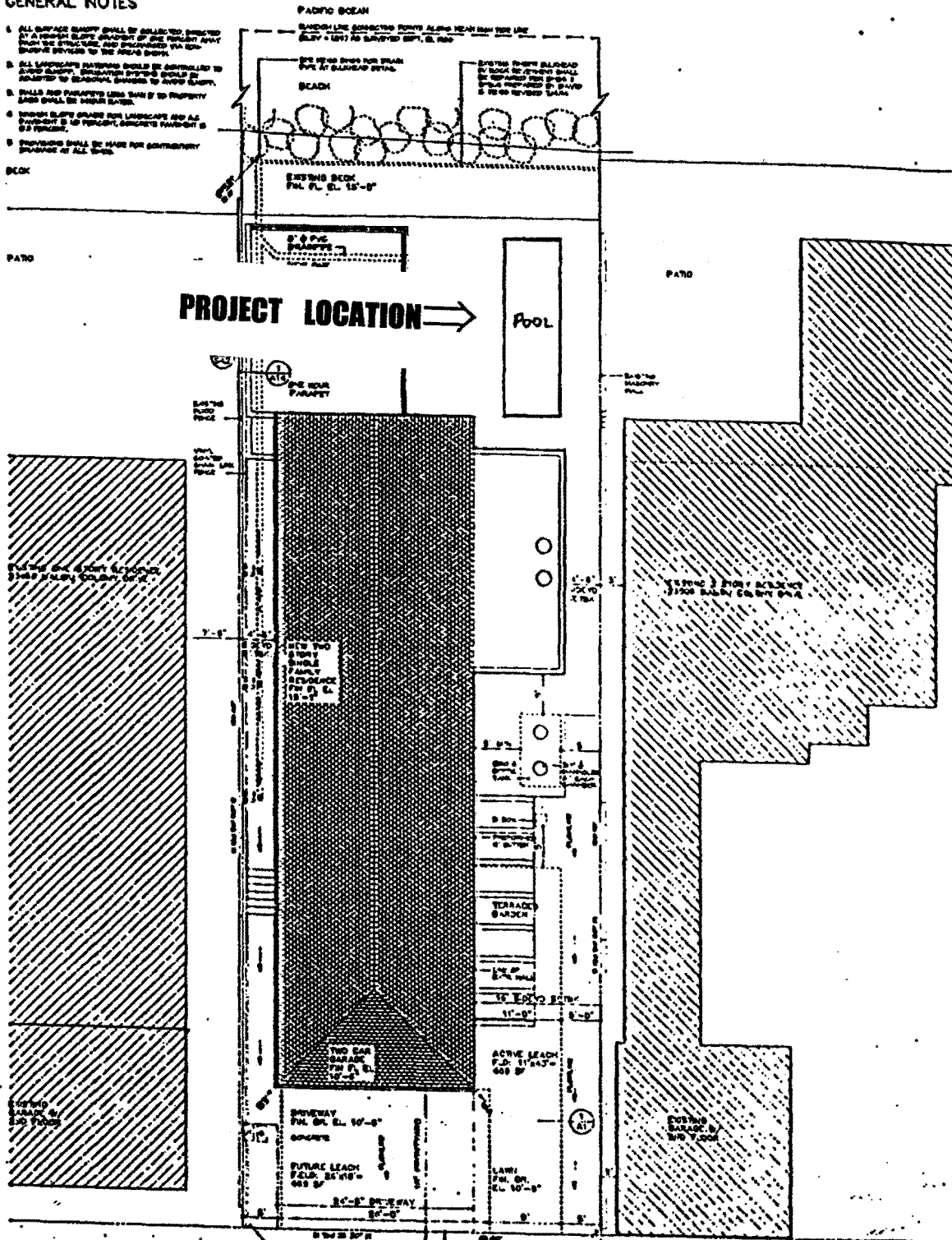
SEE MAP vi

GENERAL NOTES

1. ALL SURFACE DRAINAGE SHALL BE COLLECTED, CONVEYED AT A MINIMUM 4% SLOPE (MINIMUM OF ONE FOOT PER HUNDRED FEET) FROM THE STRUCTURE AND DISCHARGED VIA CONCRETE DRAINAGE TO THE ADECO DRAINAGE.
2. ALL LANDSCAPE PLANTINGS SHALL BE CONTROLLING TO AVOID SHADING. PLANTINGS SHOULD BE SELECTED TO COMPLEMENT THE ARCHITECTURE, SELECTED TO COMPLEMENT THE ARCHITECTURE, SELECTED TO COMPLEMENT THE ARCHITECTURE.
3. SHALL AND PARAPETS LESS THAN 6" TO PROPERTY LINE SHALL BE SHOWN LATER.
4. FINISH ELEVATION GRADE FOR LANDSCAPE AND ALL EXISTING & ADJACENT, SURFACE FINISHMENT IS TO BE SHOWN.
5. FINISHING SHALL BE MADE FOR GOVERNMENT INSPECTION AT ALL TIMES.

DECK

PATIO



GRADING NOTES

1. EXPORT 304 CUBIC YARDS OF CUTTINGS FROM CASSON DRAINAGE.
2. EXPORT 318 CUBIC YARDS OF CLEAN SOIL FOR FINISH GRADE.

RECEIVED

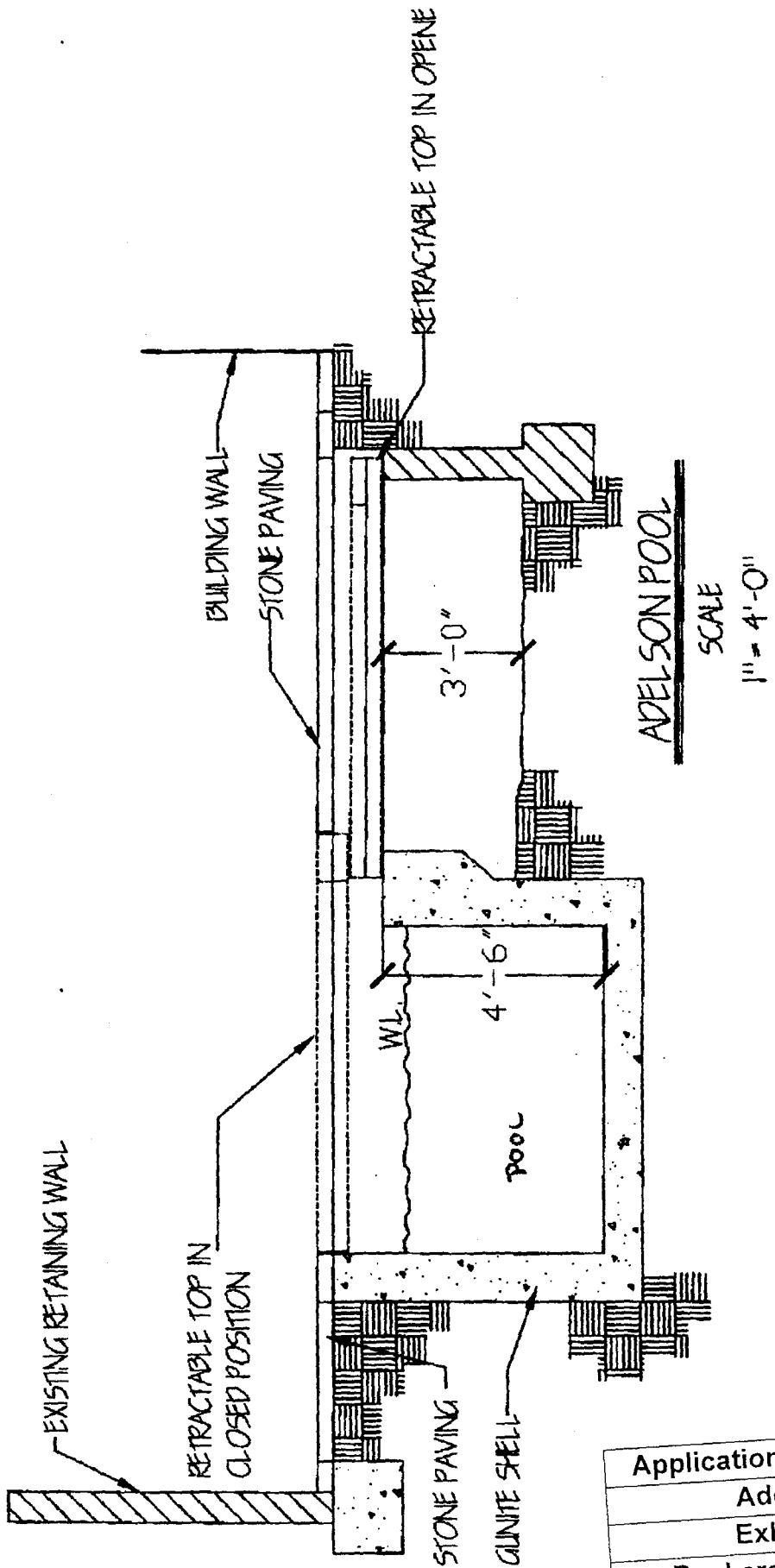


FEB 26 1990

1" = 20'

Application 5-90-702-A6
Adelson
Exhibit 2
Site Plan

COASTAL CO
SOUTH CENTRAL



Application 5-90-702-A6
Adelson
Exhibit 3
Pool cross section