

CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT
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49th Day: August 28, 2002
180th Day: January 6, 2002
Staff: SLB-SF
Staff Report: July 18, 2002
Hearing Date: August 9, 2002

STAFF REPORT: REGULAR CALENDAR

APPLICATION FILE NO.: 2-01-024

APPLICANTS: Anna and Kim Desenberg.

PROJECT DESCRIPTION: Repair and remodel of a boathouse, decking, railings, bathroom and kitchen.

PROJECT LOCATION: 12884 Sir Francis Drake Boulevard, Inverness, Marin County
APN 112-123-02

1.0 EXECUTIVE SUMMARY

The applicants seek after-the-fact authorization for the repair and remodel of a boathouse, bathroom, kitchen, 400 square feet of decking, and 45 feet of handrails. Commission staff recommends approval of the permit with conditions to mitigate impacts related to water quality.

2.0 STAFF RECOMMENDATION

The staff recommends conditional approval of Coastal Development Permit Application No. 2-01-024.

Motion: *I move that the Commission approve Coastal Development Permit Application No. 2-01-024, subject to the conditions specified below.*

Staff Recommendation of Approval

The staff recommends a YES vote. To pass the motion, a majority of the Commissioners present is required. Approval of the motion will result in the adoption of the following resolution and findings.

Resolution

The Coastal Commission hereby **grants** permit No. 2-01-024, subject to the conditions below, for the proposed development on the grounds that (1) the development is in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976 and (2) there are no feasible alternatives or feasible mitigation measures other than those specified in this permit that would

substantially lessen any significant adverse impact that the activity may have on the environment.

2.1 Standard Conditions

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

2.2 Special Conditions

1. Disposal of Removed Debris. No construction materials, debris, or waste shall be placed in Tomales Bay. All construction materials, debris, and waste shall be removed from the site after project completion, and shall be legally disposed of outside of the Coastal Zone consistent with the proposed project description.

3.0 FINDINGS AND DECLARATIONS

The Commission hereby finds and declares as follows:

3.1 Project Location

The project site, located at 12884 Sir Francis Drake Road, is on the southwest side of Tomales Bay in Inverness, Marin County (Exhibit 1, Regional Map & Exhibit 2, Vicinity Map). The parcel (APN: 112-123-02) is bounded by Sir Francis Drake to the south and extends northeast into the bay (Exhibit 3, Assessors Parcel Map). The parcel is located partially on the bank of the bay and partially over the bay. A seawall separates the bank from the bay. At high tide, the waterline abuts the seawall, inundating two thirds of the parcel with water. The portion of the property landward of the seawall is developed with stairs, decking, and a boathouse. A single-family residence elevated on pilings is located bayward of the seawall. The adjacent property to the southeast is developed with a single-family residence, and the adjacent property to the northwest is a vacant lot.

3.2 Project Description

The applicants request an after-the-fact permit for: (1) repair and remodel of a boathouse including the removal of dry rot damaged floor and roofing; (2) repair of 400 square feet of

dry rot damaged decking; (3) replacement of 45 square feet of hand railings; and (4) removal and repair of dry rot damaged floor and wall framings on the southeast corner of the residence (Exhibit 4, Site Plans and Elevations). To remove and repair the damaged wood, the applicants would use hand held tools and a table saw. All material and debris collected from the development would be collected and hauled away to Marin County sanitary district transfer station in San Rafael, California.

3.3 Permit Authority, Extraordinary Methods of Repair and Maintenance, Shoreline Protection Structures

Coastal Act Section 30610(d) generally exempts from Coastal Act permitting requirements the repair or maintenance of structures that does not result in an addition to, or enlargement or expansion of the structure being repaired or maintained. However, the Commission retains authority to review certain extraordinary methods of repair and maintenance of existing structures that involve a risk of substantial adverse environmental impact as enumerated in Section 13252 of the Commission regulations.

Section 30610 of the Coastal Act provides, in relevant part:

Notwithstanding any other provision of this division, no coastal development permit shall be required pursuant to this chapter for the following types of development and in the following areas: . . .

(d) Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities; provided, however, that if the commission determines that certain extraordinary methods of repair and maintenance involve a risk of substantial adverse environmental impact, it shall, by regulation, require that a permit be obtained pursuant to this chapter. [Emphasis added]

Section 13252 of the Commission regulations provides, in relevant part:

(a) For purposes of Public Resources Code section 30610(d), the following extraordinary methods of repair and maintenance shall require a coastal development permit because they involve a risk of substantial adverse environmental impact:

(3) Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams that include:

(A) The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials;

(B) The presence, whether temporary or permanent, of mechanized equipment or construction materials.

All repair and maintenance activities governed by the above provisions shall be subject to the permit regulations promulgated pursuant to the Coastal Act, including but not

limited to the regulations governing administrative and emergency permits. The provisions of this section shall not be applicable to methods of repair and maintenance undertaken by the ports listed in Public Resources Code section 30700 unless so provided elsewhere in these regulations. The provisions of this section shall not be applicable to those activities specifically described in the document entitled Repair, Maintenance and Utility Hookups, adopted by the Commission on September 5, 1978 unless a proposed activity will have a risk of substantial adverse impact on public access, environmentally sensitive habitat area, wetlands, or public views to the ocean.

[Emphasis added]

The proposed project is a repair and maintenance project because it does not involve an addition to or enlargement of the boathouse, decking, railings, bathroom or kitchen which are being repaired. Although certain types of repair projects are exempt from CDP requirements, Section 13252 of the regulations requires a coastal development permit for extraordinary methods of repair and maintenance enumerated in the regulation. The proposed development involves repair to an existing boathouse, deck, and single-family residence that would involve the placement of construction materials and removal and placement of solid materials within 20 feet of coastal waters. The proposed repair project therefore requires a coastal development permit under Sections 13252(a)(1) of the Commission regulations.

In considering a permit application for a repair or maintenance project pursuant to the above-cited authority, the Commission reviews whether the proposed *method* of repair or maintenance is consistent with the Chapter 3 policies of the Coastal Act. The Commission's evaluation of such repair and maintenance projects does not extend to an evaluation of the conformity with the Coastal Act of the underlying existing development.

3.4 Coastal Act Issues

3.4.1 Water Quality

Coastal Act Section 30231 states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The proposed development is located on the shoreline and over the mudflats of Tomales Bay. Tomales Bay is within the Gulf of the Farallones National Marine Sanctuary, one of four national marine sanctuaries in California and one of thirteen in the nation. The Sanctuary was designated in 1981 to protect and manage the 1,255 square miles encompassing the Gulf of the Farallones, Bodega Bay, Tomales Bay, Drakes Bay, Bolinas Bay, Estero San Antonio, Estero de Americano, Duxbury Reef, and Bolinas Lagoon. The Marin LCP emphasizes the importance of Tomales Bay on many levels. It provides important habitat for birds, marine mammals and over

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1,000 species of invertebrates. In addition, sharks and rays spawn in the Bay. The Bay also supports a significant aquaculture industry.

Coastal Act Section 30231 requires that the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of groundwater supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Protecting the water quality and biological productivity of Tomales Bay is essential to preserving the Bay and the coastal resources it supports. Although none of the development is proposed in Tomales Bay, development would occur over the bay and adjacent to it. Removal of the damaged wood would generate dust and debris, which could degrade the water quality and biological productivity of Tomales Bay if they are allowed to enter the water, inconsistent with Section 30231 of the Coastal Act. Therefore, to prevent dust and debris from entering Tomales Bay, **Special Condition No. 1** prohibits the placement of any construction materials, debris or waste in the bay and requires the applicants to remove such materials from the project site after project completion.

Thus, as conditioned, the proposed development ensures that the proposed development would not significantly adversely affect the water quality and biological productivity of Tomales Bay. Therefore, the Commission finds that the proposed project is consistent with Section 30231 of the Coastal Act.

3.4.2 Alleged Violation

Sometime in 2001, without benefit of a coastal permit, the applicants undertook development consisting of (1) the repair and remodel of a boathouse including the removal of floor and roofing damaged by dry rot; (2) the repair of 400 square feet of deteriorated decking due to dry rot; (3) replacement of 45 square feet of hand railings; and (4) removal and repair of dry rot damaged floor and wall framings on the southeast corner of the residence (Exhibit 5, Site Photographs). In September of 2001, the applicants applied for after-the-fact authorization of the above-mentioned development.

Although development has taken place prior to submission of this permit amendment application, consideration of the application by the Commission has been based solely upon the policies of the LCP and the public access and public recreation policies of Chapter 3 of the Coastal Act. Approval of the permit amendment does not constitute a waiver of any legal action with regard to the alleged violation, nor does it constitute an admission as to the legality of any development undertaken on the site without a coastal permit.

3.5 California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications 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 effects, which the activity may have on the environment.

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. The staff report addresses and responds to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. The proposed project has been conditioned to be found consistent with the policies of the Coastal Act and to minimize all adverse environmental effects. Mitigation measures have been imposed to prevent introduction debris into Tomales Bay. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impacts, which the development may have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with Coastal Act requirements to conform to CEQA.

EXHIBITS:

1. Regional map
2. Vicinity map
3. Assessors Parcel Map
4. Site plans and elevations
5. Site Photographs

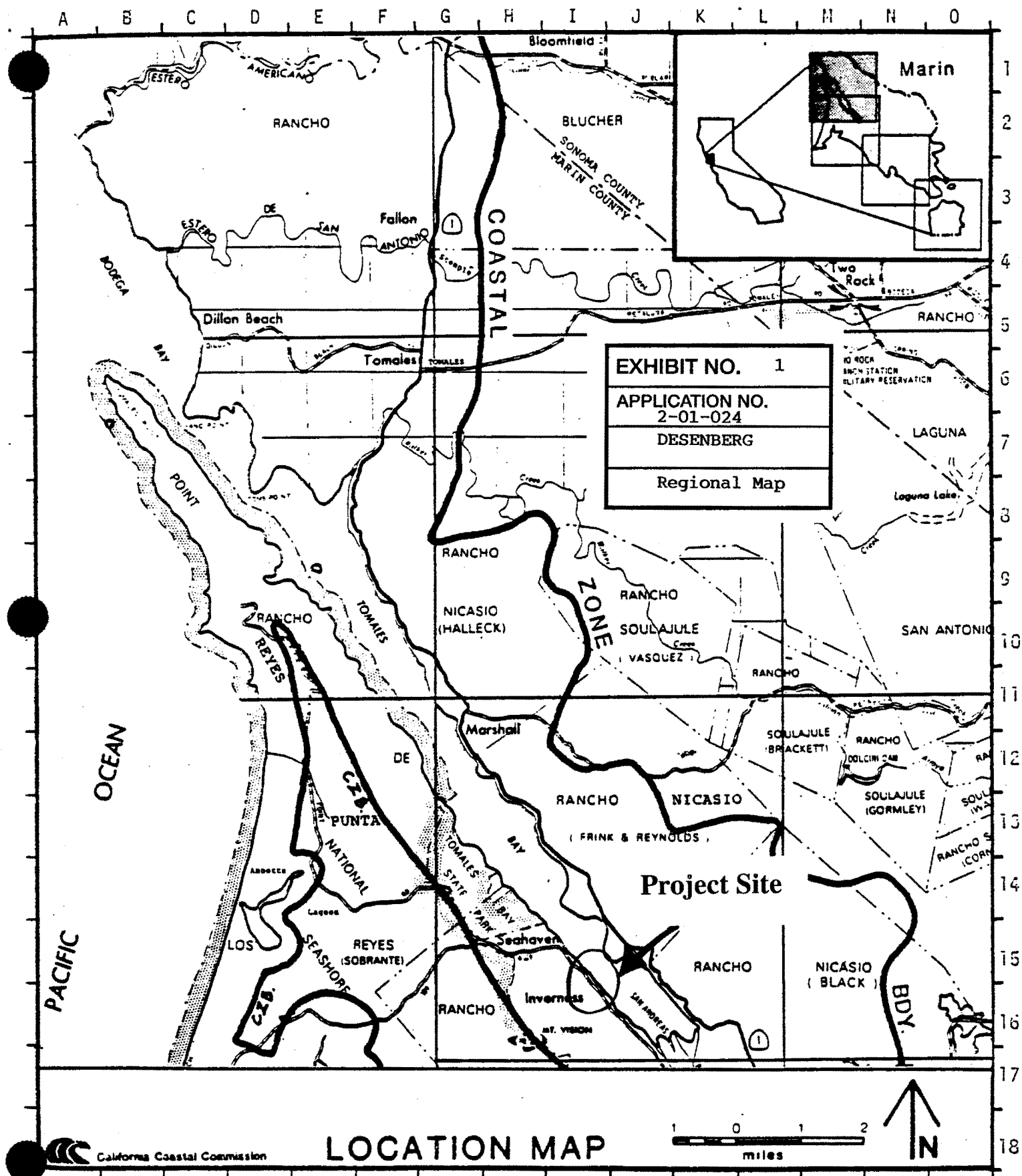


EXHIBIT NO. 2

APPLICATION NO.

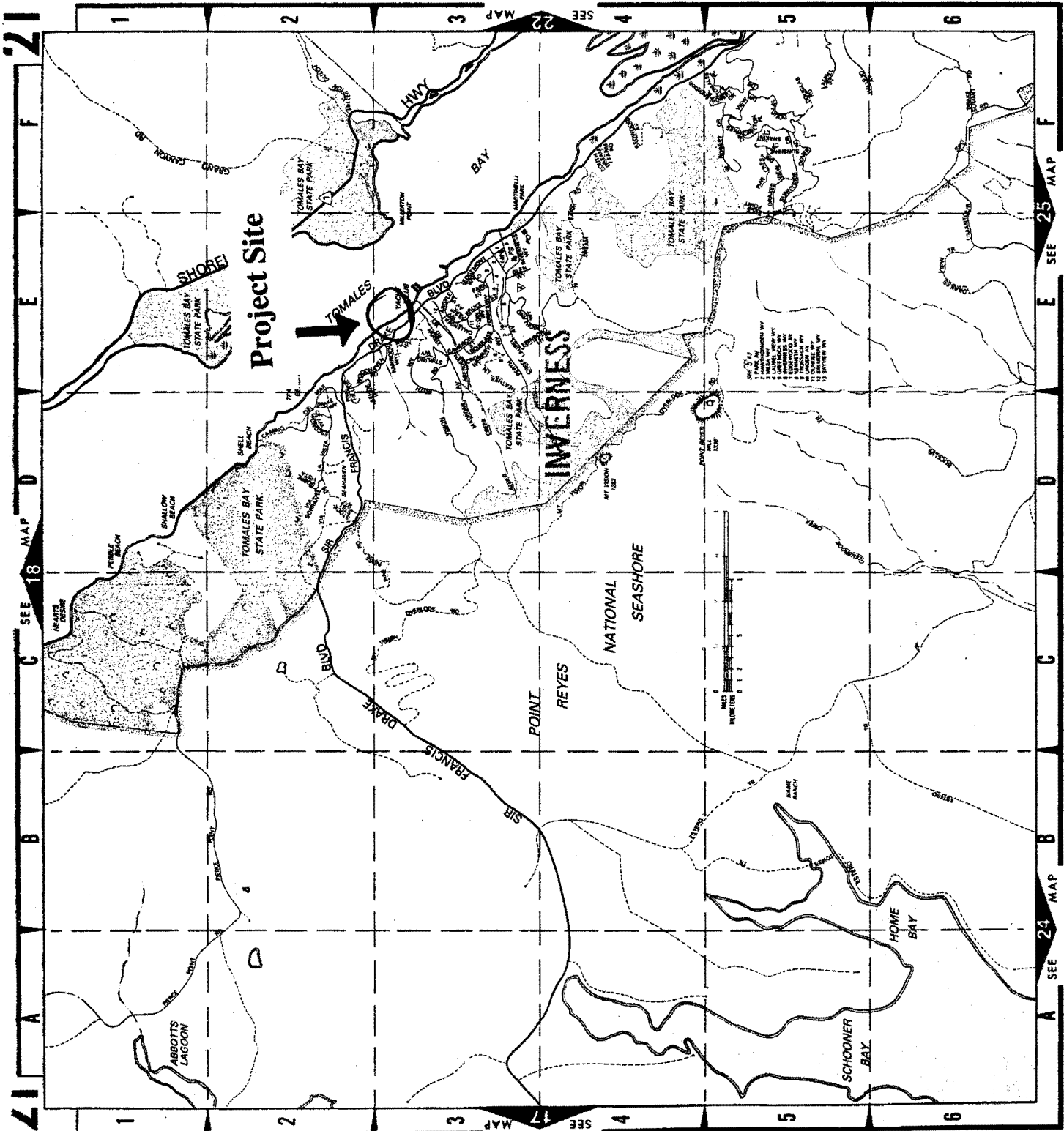
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Vicinity Map

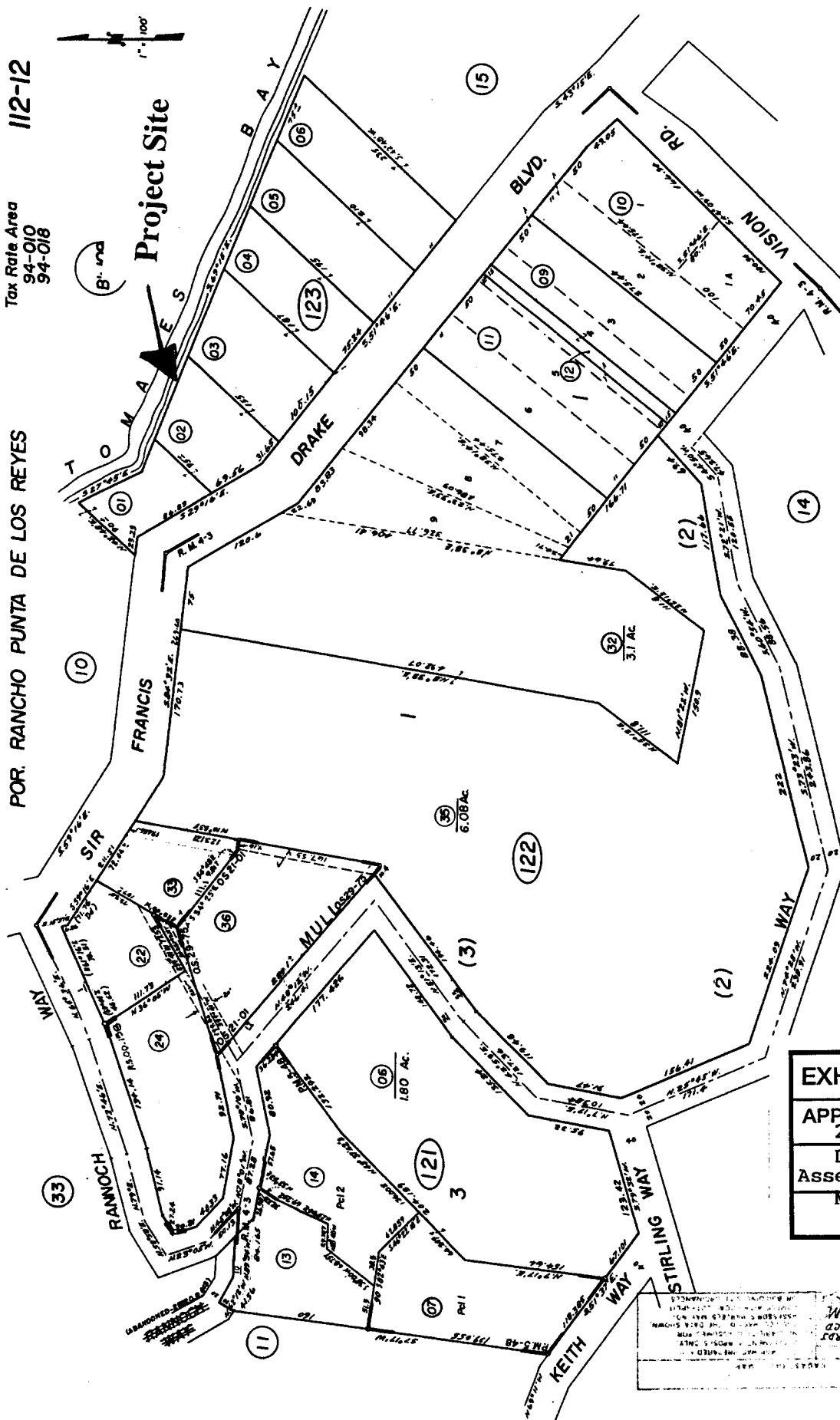
MARIN CO

DETAIL



112-12
Tax Rate Area
94-010
94-018

POR. RANCHO PUNTA DE LOS REYES



Assessor's Map Bk.112 -Pg.12
County of Marin, Calif.

Map of Inverness Sub.2, RM. Bk.4 -Pg.3

NOTE—Assessor's Block Numbers Shown in Ellipses.
Assessor's Parcel Numbers Shown in Circles.

EXHIBIT NO. 3

APPLICATION NO.
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DESENBERG
Assessors Parcel
Map

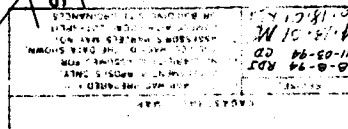
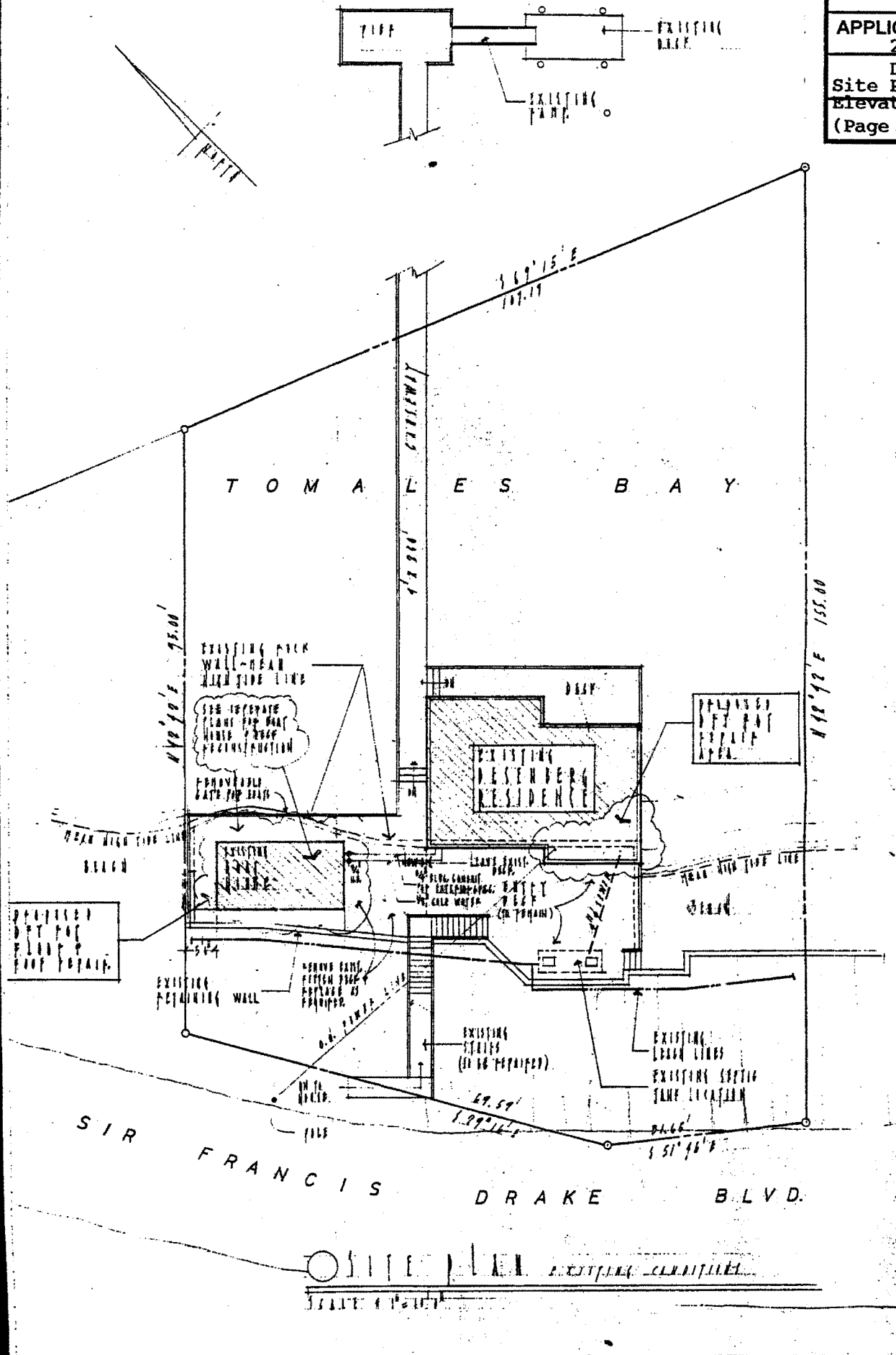


EXHIBIT NO. 4

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DESENBERG
Site Plans and
Elevations

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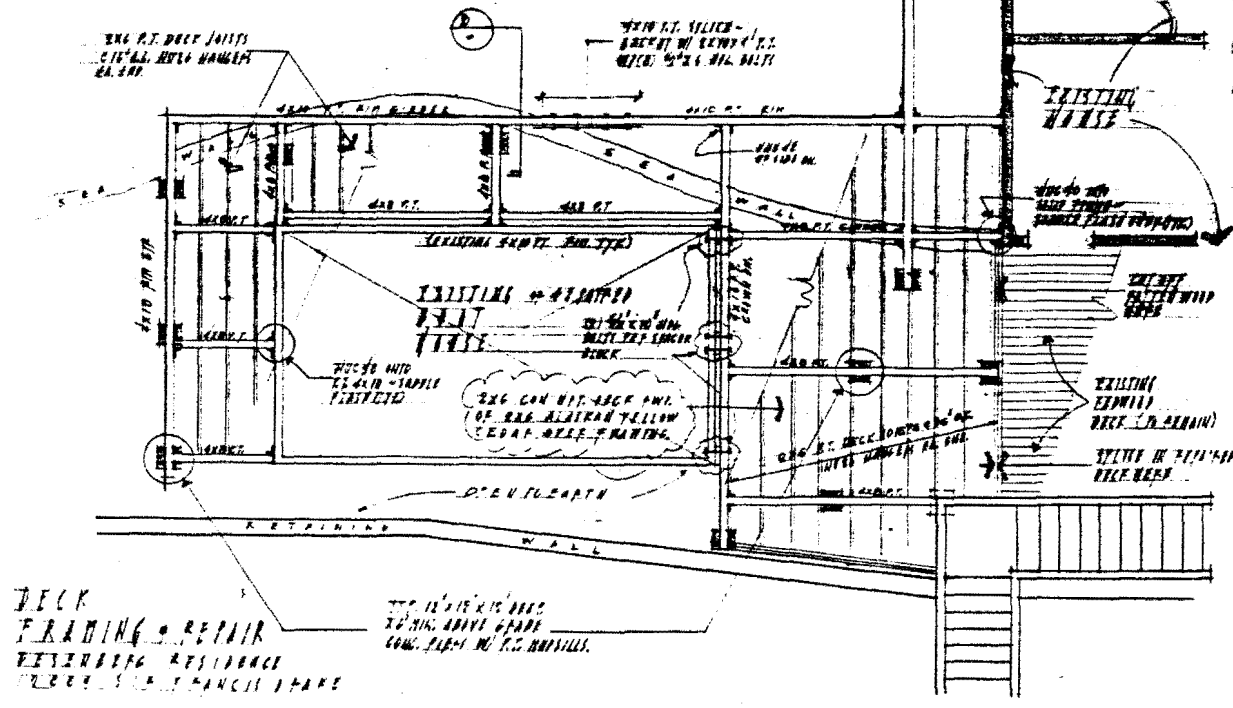
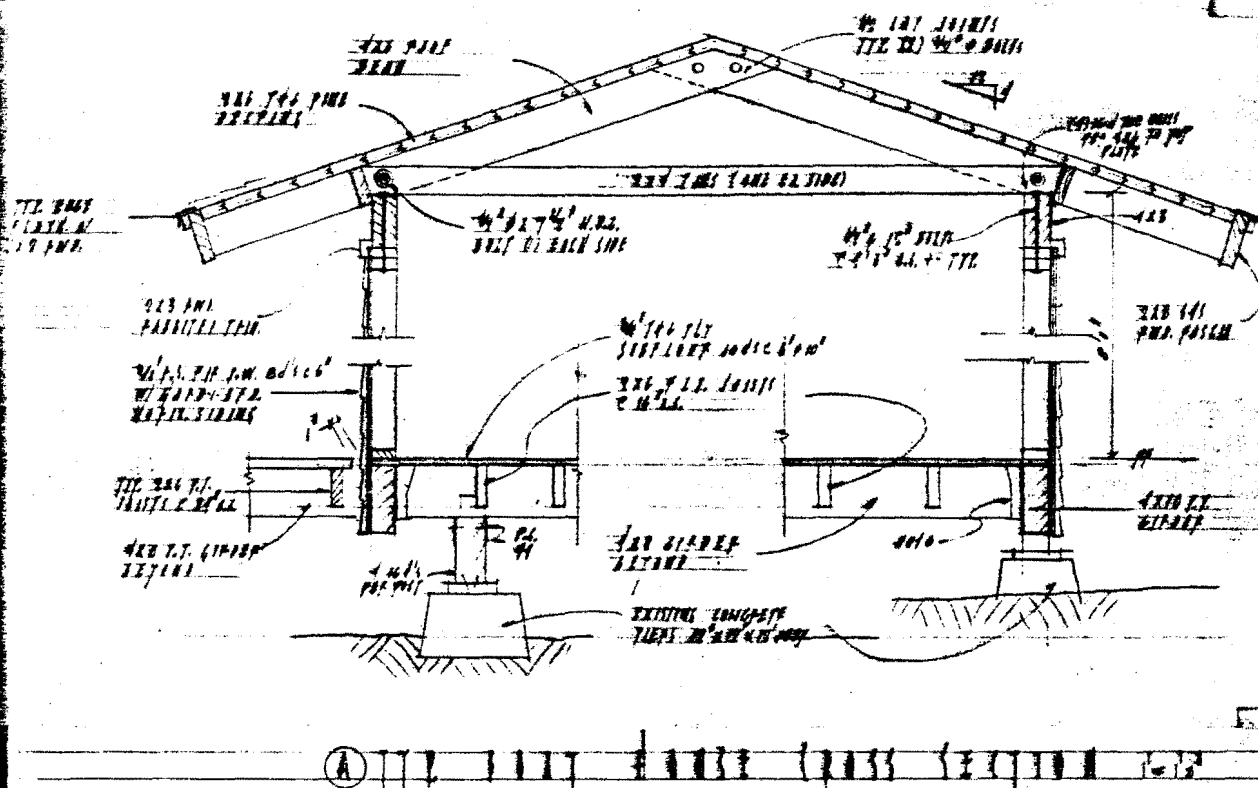


EXHIBIT NO. 5

APPLICATION NO.
2-01-024

DESEMBERG

Site Photographs



Boathouse



Boathouse

