STATE OF CALIFORNIA—THE RESOURCES AGENCY ARNOLD SCHWARZENEGGER, *GOVERNOR*

CALIFORNIA COASTAL COMMISSION
NORTH CENTRAL COAST DISTRICT
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W-12c

Filed: November 3, 2003
49th Day: December 22, 2003
180th Day: May 1, 2004
Staff: SLB-SF
Staff Report: November 21, 2003
Hearing Date: December 10, 2003

STAFF REPORT: REGULAR CALENDAR

APPLICATION FILE NO: **2-03-009**

APPLICANT: **CHARLES DANA**

PROJECT DESCRIPTION: Repairs to a private wooden dock that includes removal of 60 feet of the dock, replacement of the decking and joists with ACZA treated Douglas fir, jacketing of 24 of 36 wooden piles with HDPE pipes and filling the space between the piles and pipes with concrete.

PROJECT LOCATION: 12916 Sir Francis Drake Blvd, Inverness, Marin County APN: 112-101-06 and 112-101-07

EXECUTIVE SUMMARY

The proposed development includes the repair of an existing, approximately 60-year old, private wooden dock in Tomales Bay and removal of an approximately 60-foot long portion of the dock. The applicant initiated this project without first obtaining a coastal development permit (CDP). At the direction of Commission Enforcement Staff, the applicant ceased work pending approval of a CDP application to complete the project. As such, this permit application seeks after-the-fact authorization for the portion of the project that is already completed.

Staff recommends approval of the proposed development with conditions regarding the use of wood treatment products and disposal of debris to protect the biological productivity and water quality of Tomales Bay and requiring abandoned creosote-treated pilings to be removed in their entirety.

1.0 STAFF RECOMMENDATION

The staff recommends conditional approval of Coastal Development Permit Application No. 2-03-009.

Motion: *I move that the Commission approve Coastal Development Permit Application No. 2-03-009, 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. 2-03-009, 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.

1.1 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.

1.2 Special Conditions

1. Disposal of Debris. All materials, debris, and equipment shall be removed from the site throughout the construction period on a daily basis. All materials and debris shall be disposed of outside of the Coastal Zone or in accordance with an approved coastal development permit.

2. Chemical Control. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall provide certification from the supplier for any lumber used for the approved development that is treated with ammonical copper zinc arsenate (ACZA) that the wood has been conditioned following treatment to minimize leaching of arsenic in accordance with the *Best Management Practices for the Use of Treated Wood in Aquatic Environments, July 1996,* and any revisions thereto, developed by the Western Wood Preservers Institute.

3. Pile Removal. All piles shall be removed in their entirety and shall not be cut at the mud line.

4. Condition Compliance. **Within 60 days of Commission action on this permit application,** or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to the issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

2.0 FINDINGS AND DECLARATIONS

The Commission hereby finds and declares as follows:

2.1 Project Location

The project site, located at 12916 Sir Francis Drake Blvd, Inverness, is on the southwest side of Tomales Bay in Inverness, Marin County (Exhibit 1). The parcels (APN: 112-101-06, 07) are bounded by Sir Francis Drake Boulevard to the southwest and northeast by Tomales Bay (Exhibit 2). The dock stands on the boundaries of the two parcels and extends 270 feet into the bay. The proposed development is partially located on tide and submerged lands, which are subject to a public trust easement. The applicant has received a lease from the State Lands Commission to carry out the project.

2.2 Project Description

The existing dock is 270 feet long and 6 feet wide and is supported by fourteen concrete piles and thirty-six wooden piles, which include twenty-four 6x6-inch square piles and twelve 12-inch diameter round piles (Exhibits 3 and 4). The existing dock is constructed of creosote-treated wooden piles and redwood decking. The existing dock was installed over 60 years ago, before the passage of the Coastal Initiative in 1972, and predates any coastal development permit requirements.

The applicant proposes to repair the existing dock by replacing the joists and decking and jacketing twenty-six piles with HDPE (high density polyethylene) pipes. The applicant also proposes to remove 60 feet of decking permanently. ACZA (ammonical copper zinc arsenate) treated Douglas fir would be used to replace the decking and joists. After removal of the decking, twenty-four 12-inch diameter HDPE pipes would be used to wrap around the 6-inch square piles and two 18-inch diameter HDPE pipes will be used for the 12-inch round piles. The pipes will be pneumatically pushed into the mud to a depth of 4 or 5 feet below the mud

line. The space between the existing wooden pile and the pipe will be filled to the top with concrete (Exhibits 5-7).

An A-frame hydraulic lift on top of a 16x16-foot steel sectional barge would be used to install the HDPE pipes over the wooden piles. Spill containment equipment is positioned on the barge and all work would be performed during low tide. The project would take one to two weeks to complete.

Some of the proposed work has been completed without a coastal permit. The unpermitted activities includes replacement of 70 feet of decking and joists over the concrete piles closest to shore and removal of 60 feet of decking and joists from the seaward end of the dock.

2.3 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.*

The proposed project is a repair and maintenance project because it does not involve an addition to or enlargement of the existing dock 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 dock 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 of the underlying existing development with the Coastal Act.

2.4 Coastal Act Issues

2.4.1 Biological Resources

Coastal Act Section 30230 states:

> *Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

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 discharged and entrainment, controlling runoff, preventing depletion of ground water supplies and*

substantial interference with surface water flow, encouraging waster 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 1,000 species of invertebrates. In addition, sharks and rays spawn in the bay. The Bay also supports a significant agriculture 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.

Section 30230 states that marine resources, especially those areas and species of special biological significance, shall be maintained and where possible enhanced. Section 30231 protects the biological productivity and the quality of coastal waters, and wetlands. If debris, sediment, or other materials are introduced into Tomales Bay during the development process, development may significantly adversely impact sensitive habitat and water quality in the project area, inconsistent with Sections 30230 and 30231.

These significant adverse impacts of the proposed development can be avoided through mitigation measures. To prevent debris from remaining in the mudflats after low tide and being inundated with water, **Special Condition 1** requires all materials and debris to be removed from the bay mudflats on a daily basis, and requires disposal of all excavated materials outside of the Coastal Zone unless authorized under an approved coastal development permit.

In addition, the project involves the installation of pressure treated wood over submerged tidelands. The applicant proposes to use wood treated with ammonical copper zinc arsenate (ACZA). ACZA contains arsenic, a known human carcinogen that has been linked to nervous system damage and birth defects. The ACZA treated lumber is not proposed for residential use and humans would not have direct contact with the wood other than during installation; however, some leaching of the preservative from treated wood is expected to occur during the initial period of use. To increase leaching resistance of the active ingredients of various waterborne wood preservatives, including ACZA, proper chemical fixation must take place to render the toxic ingredients insoluble in water. The mechanism and requirements for these fixation reactions differ depending on the type of wood preservative. Some reactions occur very rapidly during pressure treatment while others may take days or even weeks to reach completion,

depending on post-treatment storage and processing conditions. If the treated wood is placed in service before these reactions are completed, the initial release of preservative into the environment may be many times greater than for wood that has been adequately conditioned.

In ammonical wood preservatives, the metals are solubilized by ammonia and become insoluble as the ammonia evaporates. Some of the metals appear to simply precipitate within the wood, while others react with the wood structure. Volatilization of ammonia appears to be a key factor in fixation with ammonical preservatives, and this can be accomplished through either air-drying or kiln drying, or a combination of the two. To minimize leaching of the ACZA ingredients, **Special Condition 2** requires the applicant provide certification from the supplier that the wood has been conditioned following treatment to minimize leaching of arsenic in accordance with the *Best Management Practices for the Use of Treated Wood in Aquatic Environments, July 1996,* and any revisions thereto, developed by the Western Wood Preservers Institute.

The applicant proposes to remove the deteriorated creosote-treated wooden pilings supporting the 60-foot section of the pier that is proposed to be removed. Creosote is produced by distillation of coal tar and contains polycyclic aromatic hydrocarbons (PAHs). PAHs are harmful to marine and aquatic organisms and can be released into the bay mudflats and surrounding waters through deterioration of the creosote-treated pilings and leaching. While removal of some of the creosote-treated wood associated with the pier from Tomales Bay would improve the biological productivity and quality of the bay, the applicant proposes to cut the pilings at the mud line rather than to remove the pilings in their entirety. As such, the remaining portions of the pilings would continue to deteriorate and to leach PAHs into the bay muds and waters of Tomales Bay in conflict with Coastal Act Sections 30230 and 30231. Therefore, **Special Condition 3** requires the permittee to remove the pilings in their entirety.

These measures would ensure that the proposed development would not significantly adversely affect Tomales Bay. Thus, the Commission finds that the proposed development, as conditioned, would protect and enhance the habitat resources of Tomales Bay, consistent with Coastal Act Policies 30230, 20231, and 30240(a).

2.4.2 Alleged Violation

In the spring of 2003, without benefit of a coastal permit, the applicants undertook development consisting of removal of a total of 130 feet of decking and joists from both ends of the dock and replacement of 70 feet of decking at the shore side of the dock.

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.

2.5 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 proposed project has been conditioned to be found consistent with the policies of the Coastal Act and to minimize or eliminate all significant adverse environmental effects. Mitigation measures have been imposed to prevent impacts to water quality and biological resources. 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.

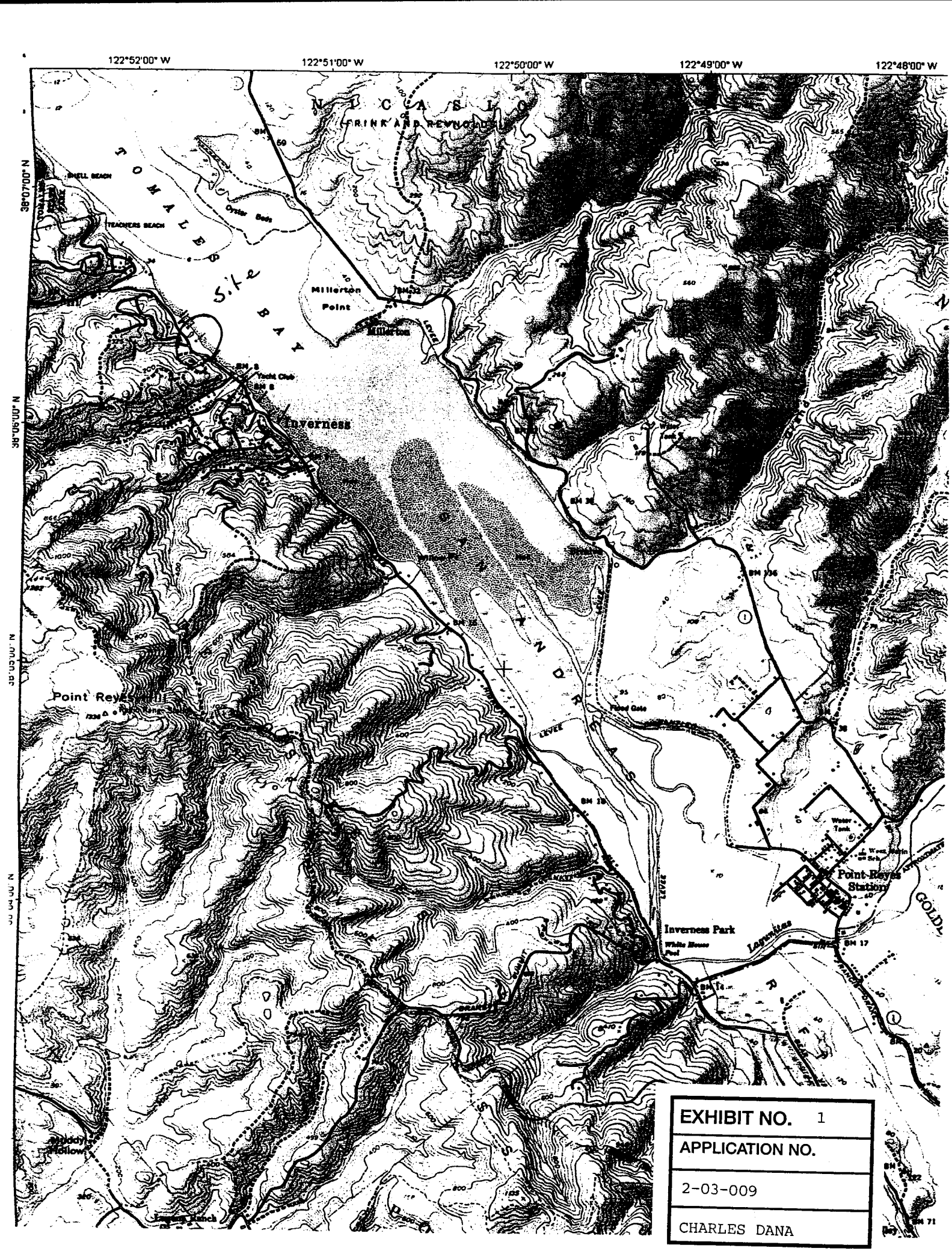
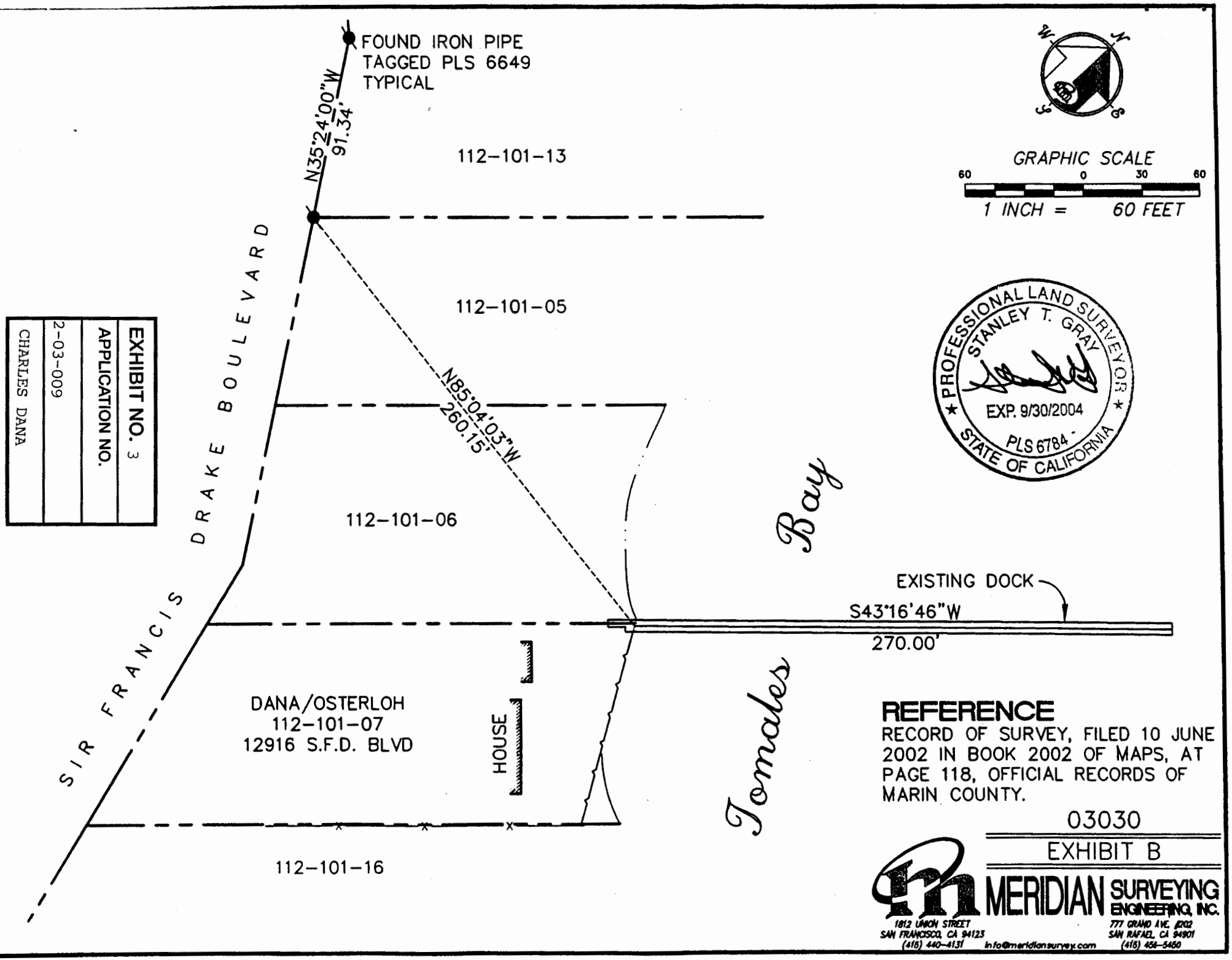


EXHIBIT NO.	1
APPLICATION NO.	
2-03-009	
CHARLES DANA	

EXHIBIT NO. 2
APPLICATION NO.
2-03-009
CHARLES DANA

Attachment D – Assessor's Parcel Map
Project: Tomales Bay Piling Replacement
Applicant: Charles Dana



REFERENCE

RECORD OF SURVEY, FILED 10 JUNE 2002 IN BOOK 2002 OF MAPS, AT PAGE 118, OFFICIAL RECORDS OF MARIN COUNTY.

03030

EXHIBIT B

MERIDIAN SURVEYING ENGINEERING, INC.
1812 UNION STREET
SAN FRANCISCO, CA 94123
(415) 440-4131
info@meridiansurvey.com
777 GRAND AVE. #202
SAN RAFAEL, CA 94901
(415) 456-5450

Attachment B – Plan View
Project: Tomales Bay Piling Replacement
Applicant: Charles Dana

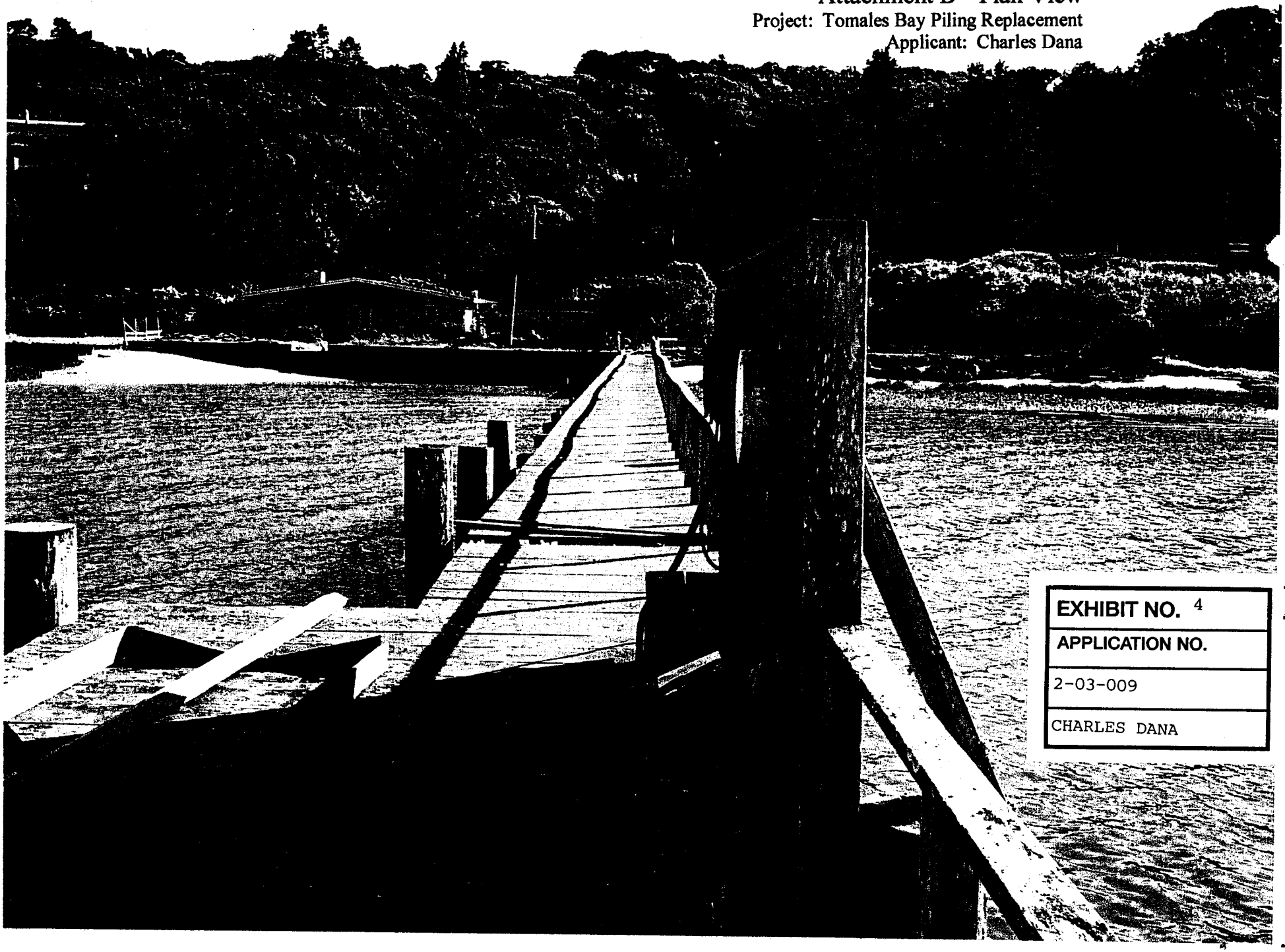
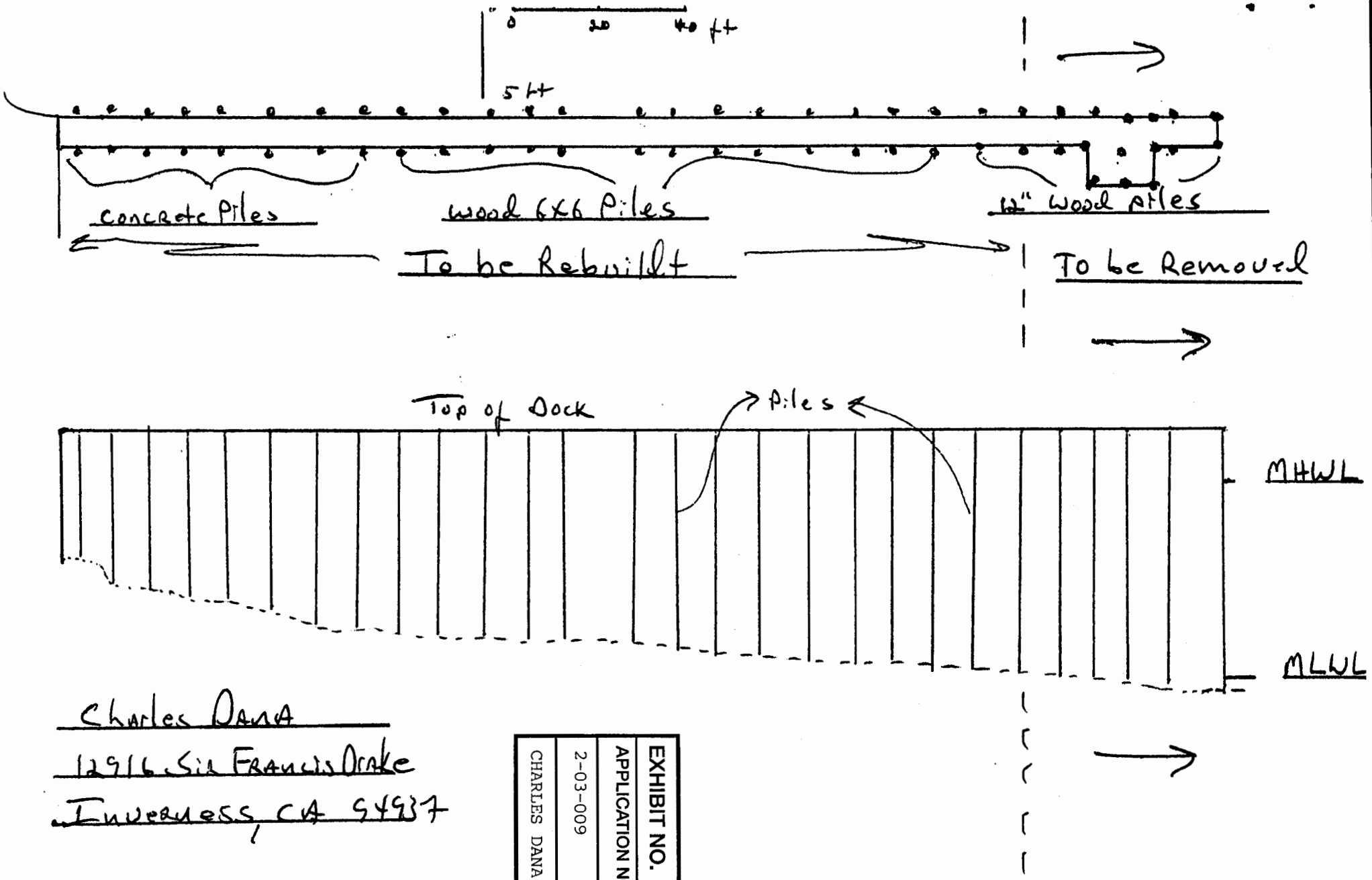


EXHIBIT NO. 4
APPLICATION NO.
2-03-009
CHARLES DANA



Charles Dana
1216 Sir Francis Drake
Inverness, CA 94937

EXHIBIT NO. 5
APPLICATION NO.
2-03-009
CHARLES DANA

PROJECT TOP VIEW

CHARLES DANA

12916 SIR FRANCIS DRAKE

INVERNESS CA

DOCK REPAIR

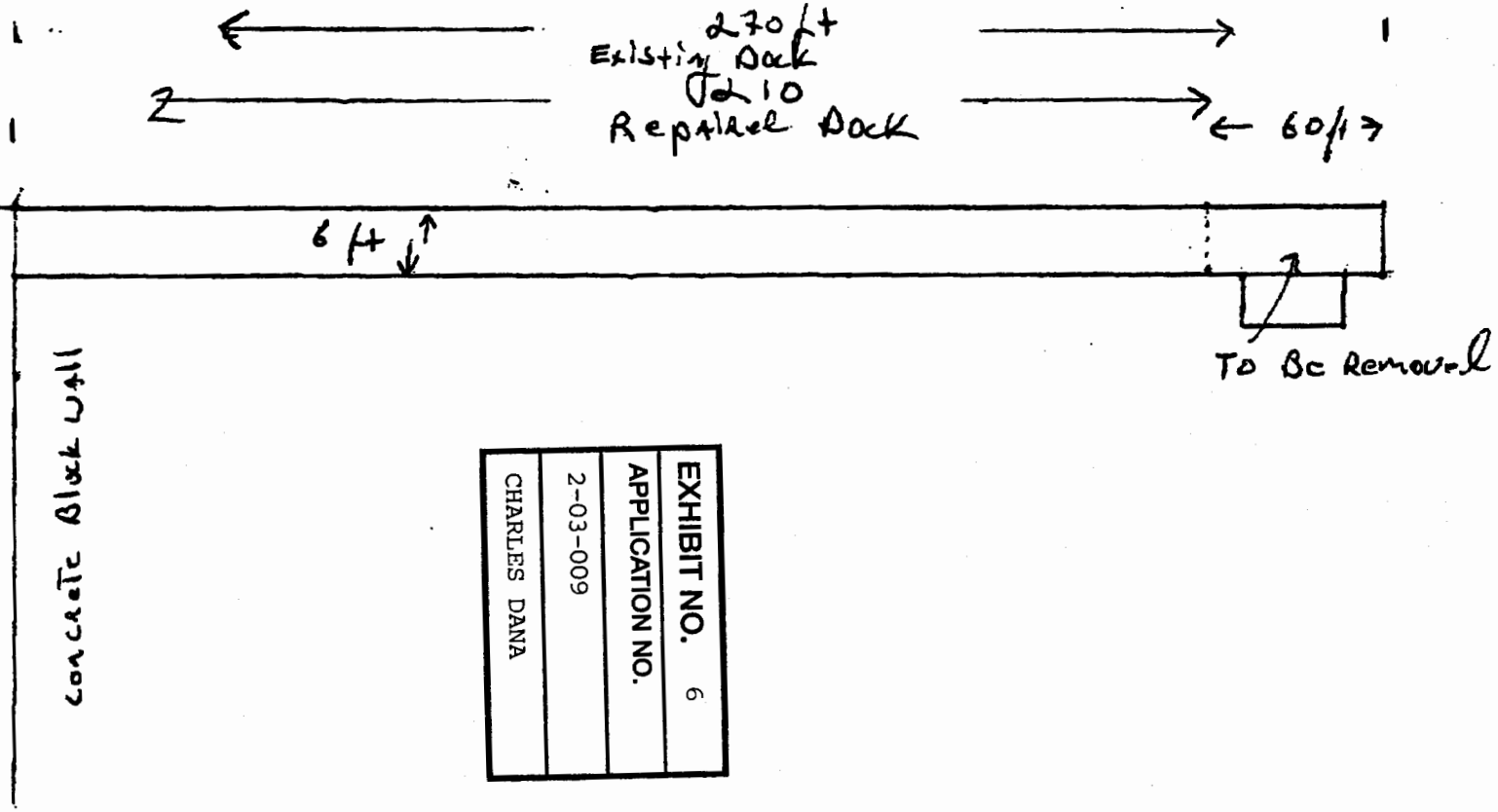
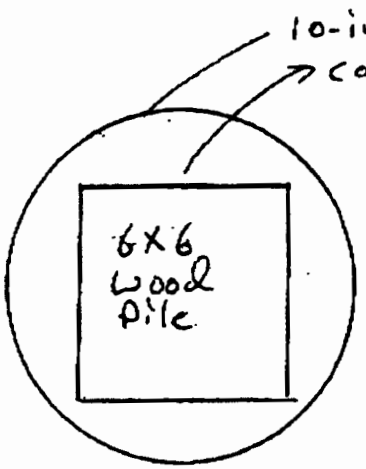
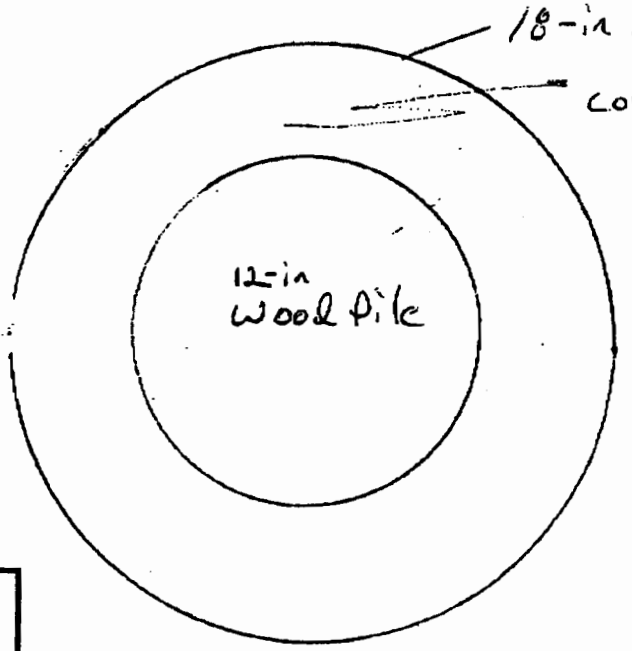


EXHIBIT NO.	6
APPLICATION NO.	2-03-009
CHARLES DANA	

12916 Sir Francis Drake Blvd.
Dock Repair
Pile Jacket Detail.
CHARLES DANA



6x6 Pile Jacket
NTS



Outer Two Piles
NTS

EXHIBIT NO. 7
APPLICATION NO. 2-03-009
CHARLES DANA