

RED Exhibit A: Civil Penalty Order CCD2023.002.00

# San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190

State of California | Gavin Newsom – Governor | info@bcdc.ca.gov | www.bcdc.ca.gov

## **Commission Cease and Desist and Civil Penalty Order:**

CCD2023.002.00

## **Effective Date:**

[Pending Commission action, scheduled for  
Enforcement Committee consideration May 30, 2023]

## **Respondents:**

Seaplane Investment, LLC

## **To Seaplane Investment, LLC:**

### **I. Commission Cease and Desist Order**

Pursuant to Cal. Gov. Code § 66638, Seaplane Investment, LLC (“Respondent”) is hereby ordered to:

- A. Cease and desist from violating Permit 1973.014.04, Permit M1985.030.01 and the McAteer-Petris Act.
- B. By December 31, 2023, build and maintain the permit-required public access, and provide new public access in lieu of landscaping, pursuant to plans that generally conform with Order Exhibits 1, 2 and 3, to be submitted to staff no later than August 31, 2023, to be revised as necessary within thirty (30) days of receiving staff comments, and then have been approved by staff prior to undertaking the work, as follows:
  - a. Maintain the required Parepa Street public access that is frequently flooded and therefore severely eroded.
  - b. On Yolo Street from the termination of the shoreline pathway located within the dedicated public access area to the Sausalito-Mill Valley Bike Path located on Marin County property, stripe and maintain by restriping as often as necessary to maintain a clearly delineated public shoreline pathway, an 8-foot-wide accessible path of travel including an eight-foot-wide boardwalk connection as shown on the Interim Shoreline Access Improvements Plan in Order Exhibit 3.
  - c. Install a total of eight (8) public shore signs consisting of: five (5) Public Shore directional arrow signs on Bolinas (1), Parepa (1) and Yolo (1) Streets and back-to-back signs (2) visible from the Sausalito-Mill Valley Bike Path, and three (3) public shore signs.



- d. Permanently relocate accessible parking spaces to the west side of Bolinas Street as shown in the photographs in Order Exhibit 3.
  - e. In the grassy area southeast of the office building where maximum views of San Francisco Bay are available, install and maintain two accessible picnic tables on hardened surface pads that provide adequate maneuvering clearances with an accessible path of travel from the shoreline trail on Yolo Street to the tables.
- C. Within thirty (30) days of completion of the actions required by Section I.B.a through I.B.e and no later than January 31, 2024, submit a BCDC Notice of Completion that confirms the public access installation and maintenance work has been completed pursuant to staff-approved plans (<https://bcdc.ca.gov/forms/forms.html>).
- D. By June 30, 2024, remove the following non-public uses from the filled portions of Yolo Street and remove the unauthorized fill and uses from the Bay and/or 100-foot shoreline band, unless by December 31, 2023, an application deemed by staff to be filed as complete has been submitted to BCDC and a permit or permit amendment is obtained by March 31, 2024:
- a. On Yolo Street, all parking, all seaplanes, the seaplane fueling tank, and the approximately three-foot-high, elevated asphalt path to allow for pedestrian access during high tides;
  - b. On Block 164, both helicopter pads and the elevated asphalt walkways to and around them;
  - c. The entire seaplane docking system; and
  - d. The concrete and rebar seaplane launch ramp constructed in March 2022.
- E. By March 31, 2024, prepare and submit to BCDC staff for its review a sea level rise and shoreline flooding adaptation plan for the permit-required public access areas, all of which are subject to frequent shoreline flooding and tidal inundation, that is consistent with the SF Bay Plan policies including but not necessarily limited to those pertaining to Climate Change, Shoreline Protection and Public Access, and, within 12 months of its approval, implement this sea level rise and shoreline flooding adaptation plan.
- F. Fully comply with the Requirements of Sections II, IV, and V of this Cease and Desist and Civil Penalty Order (“Order”).

## **II. Civil Penalty Order**

Pursuant to Cal. Gov. Code § 66641.6, Respondents are hereby ordered to:

- A. Pay administrative civil liability of one hundred and eighty thousand dollars (\$180,000) to BCDC by cashier’s check made payable to the Bay Fill Clean-up and Abatement Fund

within thirty (30) days of issuance of this Order. The administrative civil liability consists of:

1. Thirty-thousand dollars (\$30,000) for the failure to provide all the required public access improvements consisting of public shore pathways, landscaping, signage, and a public access connection from the site to the County public access west of the site.
  2. Thirty-thousand dollars (\$30,000) for the failure to maintain the required public access improvements as required by Special Condition II.C.2 of Permit 1973.014.01.
  3. Thirty-thousand dollars (\$30,000) for using legally filled portions of Yolo Street designated to be used only for public access as per Special Condition II.D. Use of Solid Fill, of Permit 1973.014.01, for private uses such as parking, equipment storage, Seaplane storage, repair and maintenance, fuel tank, and asphalt path across Yolo Street.
  4. Thirty-thousand dollars (\$30,000) for placing unauthorized fill in San Francisco Bay and/or shoreline band consisting of a second helicopter landing pad (asphalt) and four walkways (also asphalt) on Block 164.
  5. Thirty-thousand dollars (\$30,000) for placing unauthorized fill in San Francisco Bay on at least three separate episodes consisting of expansion of an existing u-shaped floating dock, pilings, and relocating a fuel station.
  6. Thirty-thousand dollars (\$30,000) for placing unauthorized fill in San Francisco Bay consisting of excavation and fill to construct a new (and apparently expanded) concrete and rebar water access ramp in the Yolo Street right-of-way.
- B. If administrative civil liability is not paid within thirty (30) days of issuance of this Order the Executive Director is authorized to refer the matter to the Attorney General pursuant to Cal. Gov. Code § 66641.7(b), Cal. Gov. Code § 66641.5, and/or Cal. Gov. Code § 66641.

### **III. Findings**

#### **Factual Findings**

This Commission Cease and Desist and Civil Penalty Order is based on the findings set forth below. The enforcement record in support of these findings includes all documents cited herein and all documents identified at Cal. Code Regs. tit. 14, § 11370.

- A. Permit 1973.014.01, which applies to Marin County APN 052-247-01 (Block 164), was originally issued to Commodore Marina, LLC, on August 24, 1973. The originally authorized work was to have been completed by March 1, 1975. In the Bay, the amended permit authorizes fill placement for landscaped public access and landscaping to improve shoreline appearance, berm construction around the heliport

landing pad, and for an existing 11 houseboat marina. In the shoreline band, the permit authorizes placement of fill to raise the grade over 0.66 acres of the site, office building renovation, and 17 parking spaces. The permit has been amended three more times to allow completion of a single houseboat reconstruction project and relocation of two houseboats, on November 21, 2017 (Amendment Two), September 2, 2020 (Corrected Amendment Two), April 16, 2021 (Amendment Three) and January 25, 2022 (Amendment Four). Violation Report Exhibit 6A.

- B. On September 17, 1974, Marin County recorded a Notice of Restrictions to dedicate the public access satisfying what was at the time Special Condition II.B of Permit 1973.014.00 and which is now Special Condition II.C of Permit 1973.014.01. Violation Report Exhibit 6B.
- C. Permit M1985.030.01, which applies to Marin County APN 052-247-02 (Block 167), was originally issued to Commodore Helicopters, Inc., and Walter Landor on August 25, 1988, and amended once on December 28, 1989. In the Bay the permit authorizes repair of a tidal flap gate, and in the shoreline band it authorizes placement of 23 cubic yards of aggregate over a 640 square foot area to protect a helicopter landing pad from flooding, installation of a fuel storage tank and fuel containment area to meet safety standards, paving of a 1,400 square foot area and fill of a 2,370 square foot area with 88 cubic yards of fill. The authorization is entirely after-the-fact. Violation Report Exhibit 7.
- D. On or before December 2003, Respondent or a predecessor placed an unauthorized fuel tank in the Yolo Street right-of-way. Violation Report Exhibits 8 and 9.
- E. On or before September 2008, Respondent or a predecessor installed a second, unauthorized helicopter landing pad and four unauthorized walkways. Violation Report Exhibits 10 and 11.
- F. In 2011, 2017, and 2109 Respondent conducted three distinct, unauthorized dock expansion and/or repair activities.<sup>1</sup> Violation Report Exhibits 12, 13, 14, and 15.
- G. On December 12, 2019, BCDC received a report of possible violations at the site consisting of failure to provide the required public access and installation and use of unauthorized fill consisting of multiple dock expansions, a fuel tank and fueling lines seaplane repair and maintenance with no containment of possible contaminants. Violation Report Exhibit 17.

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<sup>1</sup> Respondent states that the work that occurred in 2017 was an emergency. A BCDC permit is required for emergency work. Respondent did not contact BCDC to provide pre-notification of this storm damage and their intent to conduct work in SF Bay.

- H. On January 31, 2020, BCDC staff conducted an unscheduled site visit to Commodore Marina and Seaplane Adventures. During this site visit, staff observed that the boat docks did not comply with site plan located in the permit file. Staff learned that two pilings had been replaced and that the fueling station on the dock had been relocated from a pre-existing dock section to a location on the illegally expanded dock. Staff observed the absence of required public shore signs; a dumpster located in a required public access area; and severe shoreline erosion adjacent to the required public shoreline. Staff took site visit notes and photographs. Violation Report Exhibits 18A and 18B.
- I. On February 18, 2020, BCDC issued a notice to Respondent's predecessors in interest citing violations of BCDC Permits 1973.014.01 and M1985.030.01 and the McAteer-Petris Act. The letter requests the permittees to contact BCDC staff within 15 days. Violation Report Exhibit 19.
- J. On March 2, 2020, John Sharp, attorney from the Law Offices of John Sharp, contacted BCDC to state that he represented a predecessor in interest, and that they had only recently seen BCDC's letter. He requested that BCDC contact him to discuss a reasonable time for his clients to respond.
- K. Between March 2 and September 15, 2020, progress on resolving this enforcement action was delayed due to the onset of the COVID-19 pandemic. BCDC responded to Mr. Sharp, the parties engaged in a telephone call and both parties agreed to conduct research.
- L. On September 15, 2020, BCDC issued another letter to Respondent's predecessor in interest. The letter summarized the two permits' requirements, the violations of the permits and the McAteer-Petris Act identified at that time, and provided direction to correct the violations. The letter identified two violations at the site consisting of:
  - a. Multiple violations of Permit 1973.014.01, Special Condition II.C., Public Access, consisting of landscaping, pathway, and signage deficiencies; and
  - b. Multiple violations of Permit 1973.014.01, Special Condition II.D., Solid Fill, consisting of floating fill for Seaplane access docks, a fuel tank, seaplane storage, derelict fencing and docks and a water access ramp overlay made of Trex® boards<sup>2</sup>.

The letter requested the following additional information: A summary of other site development that may have occurred between permit issuances and the date of the letter; clarification of ownership of the Yolo Street right-of-way; preparation and

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<sup>2</sup> This structure was entirely removed and reconstructed by Respondents on March 14, 2022, without BCDC authorization, and is the subject of ECD2022.01.

submittal of a site survey to identify the location of the Bay (located at MHW 5.47 feet NAVD88) and the shoreline band; whether the flap gate was functional; and whether there were plans to pursue any fill or shoreline protection in light of the extensive erosion of the existing protective structures. The letter asked for a response within sixty days. Staff attached a copy of each amended permit to the letter. Violation Report Exhibit 20.

- M. On November 13, 2020, January 15, 2021, and June 15, 2021, Respondent's counsel submitted three letters with information regarding the site history, current site uses, an airport master record, and general responses to BCDC staff's allegations; but did not resolve any of the violations. On January 19, 2021, Respondent also submitted a surveyed metes and bounds map of the permit-required public access area described in the recorded legal instrument, responsive to one of staff's requests. Violation Report Exhibit 21, Attachment 3.
- N. On July 14, 2021, the parties conducted a virtual meeting. During the meeting, BCDC staff directed Respondent to submit a permit amendment application by August 30, 2021, so that staff could assess and potentially resolve the violations with an after-the-fact authorization of the unauthorized fill and uses that had occurred at the site. Staff also directed Respondent to provide a public access plan for review and approval and subsequent implementation by Respondent. Because BCDC cannot authorize fill on a third party's property without their consent, staff also directed Respondent to file a quiet title action for the Yolo Street right-of-way if it claimed title to it. Violation Report Exhibit 21, Attachment 2.
- O. On July 21, 2021, title for both parcels transferred from Commodore Marina LLC to Seaplane Investment LLC. Violation Report Exhibits 1 and 2.
- P. On August 25, 2021, Mr. Sharp informed staff that Respondent could not meet the August 30, 2021, deadline to submit a BCDC permit amendment application.
- Q. On September 3, 2021, to facilitate Respondent's compliance with the public access provisions of its permit, BCDC staff provided it with a proposed public access plan created using a metes and bounds map of the dedicated public access area. Violation Report Exhibit 21, Attachment 3 (see blue line and notes in yellow).
- R. Between July 14 and October 8, 2021, Respondent did not resolve any of the violations, nor did they submit a permit amendment application. On October 8, 2021, BCDC issued a letter to Shannon Sullivan, authorized representative for Seaplane Investment LLC, and Mr. Sharp, legal counsel to Seaplane Adventures, LLC, commencing standardized fines pursuant to BCDC Regulation 11386 for five violations:

- a. Violations 1 and 2. Two permit assignments necessary because of the title transfer;
  - b. Violation 3. Failing to complete houseboat renovations and relocation by the August 31, 2021, deadline authorized by BCDC Permit 1973.014.03;
  - c. Violation 4. The unauthorized placement of fill and uses consisting of installation of extensions to the Seaplane access docks, a Seaplane fueling tank, parking vehicles, and storing planes and a ramp overlay made of Trex boards in the Yolo Street right-of-way; and
  - d. Violation 5. The failure to comply with the public access requirements of the permit consisting of the failure to install and/or maintain landscaping, pathways, signage, and a connector pathway and to allow parking in a portion of the public access area. Violation Report Exhibit 21.
- S. On January 3, 2022, Lou Vasquez, Manager, Seaplane Investments LLC, executed two permit assignment forms for BCDC Permits 1793.014.01 and M1985.030.01, respectively, resolving Violations 1 and 2 as described on October 8, 2021. Violation Report Exhibit 22.
- T. On January 12, 2022, Mr. Sharp submitted a brief letter summarizing the site history and describing future use of the property.
- U. On January 25, 2022, Violation 3, the houseboat project, was resolved by the issuance of an after-the-fact and third extension of completion time through October 31, 2021. Violation Report Exhibit 6A.
- V. On February 28, 2022, Mr. Sharp submitted a letter to BCDC to which was attached an Abbreviated Regionwide Permit Application requesting permission to install and use existing boat docks, an existing seaplane launch ramp (composite lumber placed on grade) and an existing fuel tank, public access improvements, ADA parking and asphalt transitions along shoreline access path. The application included site plans and photographs. Violation Report Exhibit 23.
- W. On March 14, 2022, a member of the public notified BCDC that Seaplane Adventures was constructing new structures in the Bay. The report included clear, low tide images of the unauthorized excavation and fill placement work taking place in BCDC's Bay and/or shoreline band jurisdictions. A staff photograph of the completed project, dated April 22, 2022, is also included. Violation Report Exhibits 24A-E.
- X. On March 15, 2022, the Executive Director issued ECD2022.002.00 to Respondent to halt unauthorized work in BCDC's San Francisco Bay and shoreline band jurisdictions and require its removal and restoration of the site to its prior condition. Respondent undertook this unauthorized work less than one month after applying to BCDC for



related work. Violation Report Exhibit 25.

- Y. On March 30, BCDC staff responded to the application requesting the following information to enable it to be filed as complete: Confirmation of staff's summary of the project description and provision of the missing information; a survey of the BCDC jurisdiction and quantification of the fill to be placed therein; a set of project plans with details about what they should portray; an application processing fee; proof of legal interest for the private and public property, local approval from Marin County for the project including for the work in the Yolo Street ROW, other agency approvals such as from the RWQCB, a CEQA determination, a list of interested parties, a public access proposal, a flooding assessment, and information about whether and how fueling of Seaplanes is conducted to preclude adverse impacts to water quality. The letter also directed Seaplane Investment, LLC to post a public notice; that staff would not consider the recent unauthorized ramp construction project as part of this application; and that Seaplane Adventures must remove the unauthorized ramp work as required by ECD2022.011.00. Violation Report Exhibit 26.
- Z. On June 14, 2022, the Executive Director re-issued ECD2022.002.01 to Respondent. Violation Report Exhibit 27.
- AA. On July 14, 2022, Mr. Sharp submitted a letter that claims the property and operation is exempt from BCDC jurisdictions because it is regulated by the Federal Aviation Administration (FAA). Violation Report Exhibit 28.
- BB. Respondent has applied for and obtained two BCDC permits for the fill and uses at the property and taken assignment of these rights and obligations. Respondent has two valid BCDC Permits that have governed its activities for decades. Neither permit has ever been challenged or held to be preempted by federal law. None of the violations alleged here address the FAA's field of regulation.
- CC. Respondent filed a Statement of Defense (SOD) on September 2, 2022.
- DD. The required public access is severely eroded and frequently unusable due to tidal inundation and shoreline flooding, resulting in the requirements to: 1. Maintain the Parepa Street public access pursuant to a staff-approved plan no later than July 31, 2023 (Section I.B.a); and 2. By December 31, 2023, prepare and submit to BCDC staff for its review a sea level rise and shoreline flooding adaptation plan for the permit-required public access areas, all of which are subject to frequent shoreline flooding and tidal inundation, that is consistent with the SF Bay Plan policies including but not necessarily limited to those pertaining to Climate Change, Shoreline Protection and Public Access and, within 12 months of its approval, implement this sea level rise and shoreline flooding adaptation plan (Section I.E).

- EE. The permit and plans dating from 1973 (Order Exhibit 1) required landscaping that is not currently provided. Due to the frequency of tidal inundation and flooding and the resulting erosion, it is not feasible to require landscaping at this time. Therefore, in lieu of requiring the absent landscaping, Sections I.B.c and I.B.e require posting of new public shore signs and the installation and maintenance of two picnic tables accessible to persons with disabilities.
- FF. The SOD contains a “Photo Site Plan of 242 Redwood Highway, Mill Valley, CA 94941” that indicates that the u-shaped, existing seaplane dock has been repaired and, while this same plan contains no parallel note about the helicopter landing pad authorized in 1985, it has clearly also been repaired as its condition matches that of the new unauthorized pad and adjoining walkways (VR&C Exhibit 2 and Order Exhibit 3). The repairs to the u-shaped seaplane docks and to the once authorized landing pad occurred without BCDC authorization, therefore rendering both existing structures unauthorized unless and until Respondent applies for and receives retroactive approval for these unauthorized repairs. Therefore, Sections I.D.b and I.D.c of the Order require these once pre-existing structures to be removed by December 31, 2023, unless a filed application is submitted by June 30, 2022, and a permit or permit amendment is issued by September 30, 2022.
- GG. On October 7, 2022, Respondent Aaron Singer, John Sharp and BCDC staff Adrienne Klein, Matthew Trujillo and Brent Plater met to consider a possible settlement proposal from Respondent. Respondent offered to install the absent public access improvements and pay no fine. Staff requested that Respondent prepare and submit in writing a comprehensive proposal to address the six violations outlined in the VR&C. As of the date of mailing of the Recommended Enforcement Decision and Proposed Order on October 14, 2022, Respondent had not submitted a written settlement proposal.
- HH. As of May 19, 2023, the date of mailing of the Recommended Enforcement Decision to the Enforcement Committee<sup>3</sup>, Respondent has retained the unauthorized concrete ramp it has been twice ordered to remove by BCDC’s Executive Director;

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<sup>3</sup> This matter was originally scheduled to be heard by the Enforcement Committee on October 26, 2022, then rescheduled to November 16, 2022, and again rescheduled to December 21, 2022. Following staff’s initial request for an extension of the sixty (60) days to bring the matter forward to the Enforcement Committee to conduct settlement negotiations that failed, Respondent twice requested, and staff twice consented, to the two additional delays to accommodate health issues encountered by John Sharp, Respondent’s initial counsel in this matter. On December 7, 2022, Respondent’s current Counsel Jillian Blanchard requested another settlement conference. As of December 9, 2022, staff was willing to attempt another settlement conference prior to the December 21, 2022, hearing date for this matter. That hearing date was postponed to conduct settlement negotiations.

has not obtained staff approval of a plan to install the missing required public access and restore and maintain the existing, deteriorated, required public access; has not installed the missing required public access nor restored the existing, deteriorated, required public access; and on April 7, 2023, Respondent responded to staff's letter dated March 30, 2022.

### **Legal Findings**

- A. The Commission finds that Respondent has violated and is violating:
1. Special Condition II.C.2 of Permit 1973.014.01 for the failure to provide all the required public access improvements consisting of public shore pathways, landscaping, signage, and a public access connection from the site to the County public access west of the site;
  2. Special Condition II.C.2, Maintenance, of Permit 1973.014.01 for the failure to maintain the required public access improvements;
  3. Special Condition II.D, Use of Solid Fill, of Permit 1973.014.01, and Section 66632(a) of the McAteer-Petris Act for using legally filled portions of Block 167 and Yolo Street designated to be used only for public access for private uses such as parking, equipment storage, Seaplane storage, repair and maintenance, fuel tank, and asphalt path across Yolo Street;
  4. Section 66632(a) of the McAteer-Petris Act for placing unauthorized fill in San Francisco Bay and/or shoreline band consisting of a second helicopter landing pad (asphalt) and four walkways (also asphalt) on Block 164;
  5. Section 66632(a) of the McAteer-Petris Act for placing unauthorized fill in San Francisco Bay on at least three separate episodes consisting of expansion of an existing u-shaped floating dock, pilings, and relocating a fuel station;
  6. Section 66632(a) of the McAteer-Petris Act for placing unauthorized fill in San Francisco Bay consisting of excavation and fill to construct a new (and apparently expanded) concrete and rebar water access ramp in the Yolo Street right-of-way.
- B. Respondent's violations began on or about March 1, 1975, upon expiration of Permit 1973.014.01.
- C. The Commission finds that in this matter BCDC staff correctly identified six distinct violations.
- D. The Commission also finds that based on the factors provided by MPA Section 66641.9, a \$30,000 penalty for each of six violations is appropriate.
- E. Specifically, the Commission finds that the nature and extent of harm caused by the legal violations are extensive. The public has been deprived of the required public access for at least 909 days (approximately 2.5 years) between a staff site visit on January 31,

2020, and July 29, 2022, when staff mailed the Violation Report and Complaint to the Respondent. Respondent's business has benefitted from, and Bay resources may have been harmed by, Respondent's placement of fill in the Commission's jurisdiction in areas designated for public use, consisting of parking, equipment storage, Seaplane storage, repair and maintenance, fuel tank, and asphalt path across Yolo Street.

- F. The Commission finds that while some of the violations are susceptible to resolution, others have caused unknown impacts to the public for absent public access improvements and the occupation of public access areas with private improvements such as parking and equipment, and to the Bay resources for dock and ramp construction and possibly for the fuel tank, heliport pad and walkways.
- G. The Commission finds the cost to the state in pursuing this case since 2019 was high, and not only due to its duration. Staff has invested time researching the permit history; reviewing the materials submitted by Respondent and its predecessor; meeting with Respondent; directing Respondent in each communication on the actions to take to resolve the violations, including preparing a draft public access plan that Respondent failed to finalize and implement, reviewing Respondent's incomplete permit application; issuing a 35-day enforcement letter, all of which failed to result in resolution of the violations; issuing a Violation Report and Complaint; and if the Commission issues an order, monitoring Respondent's actions for compliance with its terms.
- H. The Commission finds that Respondent is culpable for the violation due to the failure to resolve the public access and fill violations between February 18, 2020, the date of issuance of the BCDC Initial Contact Letter, and July 29, 2022, the date of issuance of the Violation Report and Complaint. Respondent failed to file as complete, or even partially update the incomplete permit application, between March 30, 2022, the date of issuance of staff's letter of response to Respondent's regionwide permit application, and July 29, 2022, the date of issuance of the Violation Report and Complaint. On March 15, 2022, two weeks after submitting an application to BCDC requesting permission for the placement of fill in SF Bay and shoreline band that had been the subject of Enforcement Case ER2019.063.00, Respondent conducted new, unauthorized material extraction and fill placement that resulted in the construction of – or, in Respondent's terms, reconstruction of - a water access ramp, an activity that requires a Commission permit pursuant to Section 66632(a) of the McAteer-Petris Act.
- I. The Commission finds that Respondent's ability to pay is not in question as Respondent had sufficient assets to construct an unauthorized concrete ramp in San Francisco Bay in March 2022 and make other unauthorized improvements at the site.
- J. Based on these penalty factors the Commission finds that a \$1,500 penalty per day for the failure to provide all of the required public access improvements (public shore

pathways including a connection to the County public access to the west, landscaping and signage) is appropriate (Violation 1), an \$1,000 penalty per day for the failure to maintain the public access is appropriate (Violation 2), a \$2,000 penalty per day for using legal-filled portions of Block 167 and Yolo Street designated to be used only for public access for private uses (such as parking, equipment storage, Seaplane storage, repair and maintenance, fuel tank, and asphalt path across Yolo Street) is appropriate (Violation 3), an \$1,000 penalty per day for placing unauthorized fill in San Francisco Bay and/or shoreline band consisting of a second helicopter landing pad (asphalt) and four walkways (also asphalt) on Block 164 is appropriate (Violation 4), a \$1,000 penalty per day for Placing unauthorized fill in San Francisco Bay on at least three separate episodes consisting of expansion of an existing u-shaped floating dock, pilings, and relocating a fuel station is appropriate (Violation 5), and a \$2,000 penalty per day for placing unauthorized fill in San Francisco Bay consisting of excavation and fill to construct a new (and apparently expanded) concrete and rebar water access ramp in the Yolo Street right-of-way is appropriate (Violation 6).

- K. The Commission finds that Respondents have been responsible for: Violation 1 for 47 years since original permit expiration on March 1, 1975, and 909 days since a staff site visit on January 31, 2020; Violation 2 for 909 days since a staff site visit on January 31, 2020; Violation 3 for 19 years since 2003; Violation 4 for 14 years since 2008; Violation 5 for 11 years since 2011; and Violation 6 for 137 days since March 14, 2022. These time periods were calculated for the Violation Report and Complaint for Administrative Civil Liability, which was mailed to Respondent on July 29, 2022.
- L. The Commission thus finds that it is appropriate that six violations are subject to the maximum penalty allowed by the MPA: \$30,000 for each violation, for a total administrative civil liability of \$180,000.

#### **IV. Terms**

- A. The Executive Director may grant an extension of time for demonstrated good cause to comply with any provision of this Order. The Executive Director shall inform the Enforcement Committee Chair and the Commissioners of any extensions that are granted under this provision.
- B. Seaplane Investment, LLC, must strictly conform to the express terms of this Order. Under Cal. Gov. Code § 66641, any person who intentionally or negligently violates any part of any cease-and-desist order issued by the Commission may be liable civilly in the sum of up to \$6,000 for each day in which such violations persist. In addition, upon the failure of any person to comply with any cease-and-desist order issued by the Commission and upon the request of the Commission, the Attorney General of the State of California may petition the superior court for the issuance of a preliminary or

permanent injunction, or both, restraining the person or persons from continuing any activity in violation of the cease-and-desist order.

- C. This Order does not affect any duties, rights, or obligations established under private agreements or by the laws and regulations of other public bodies.
- D. This Order does not constitute a recognition of property rights.
- E. This Order is effective upon issuance thereof.

## **V. Judicial Review**

- A. Under Cal. Gov. Code §§ 66639 & 66641.7(a), within thirty (30) days after service of a copy of a cease-and-desist order and civil penalty order issued by the Commission, an aggrieved party may file with the superior court a petition of writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure.

Executed at San Francisco, California, on behalf of the San Francisco Bay Conservation and Development Commission on the date first above written.

\_\_\_\_\_  
LAWRENCE J. GOLDZBAND, BCDC Executive Director

\_\_\_\_\_  
Date

LJG/bp/mm

### Order Exhibits:

- Order Exhibit 1. Plans from original permit application.
- Order Exhibit 2. Metes and bounds map of public access area.
- Order Exhibit 3. Extract from pending unfiled permit application submitted in March 2022 of Yolo Street public access proposal.

**Full Commission Motion and Action:**

Please check one of the four boxes indicating your decision, then sign and return the memorandum to BCDC Staff:

By a vote of \_\_ yeses, \_\_ noes, and \_\_ abstentions, the Commission concurs with the Enforcement Committee's Recommended Enforcement Decision and issues the proposed Cease and Desist and Civil Penalty Order.

By a vote of \_\_ yeses, \_\_ noes, and \_\_ abstentions, the Commission votes to dismiss this matter and declines to issue the proposed Cease and Desist and Civil Penalty Order for the reasons specified in the attached memorandum.

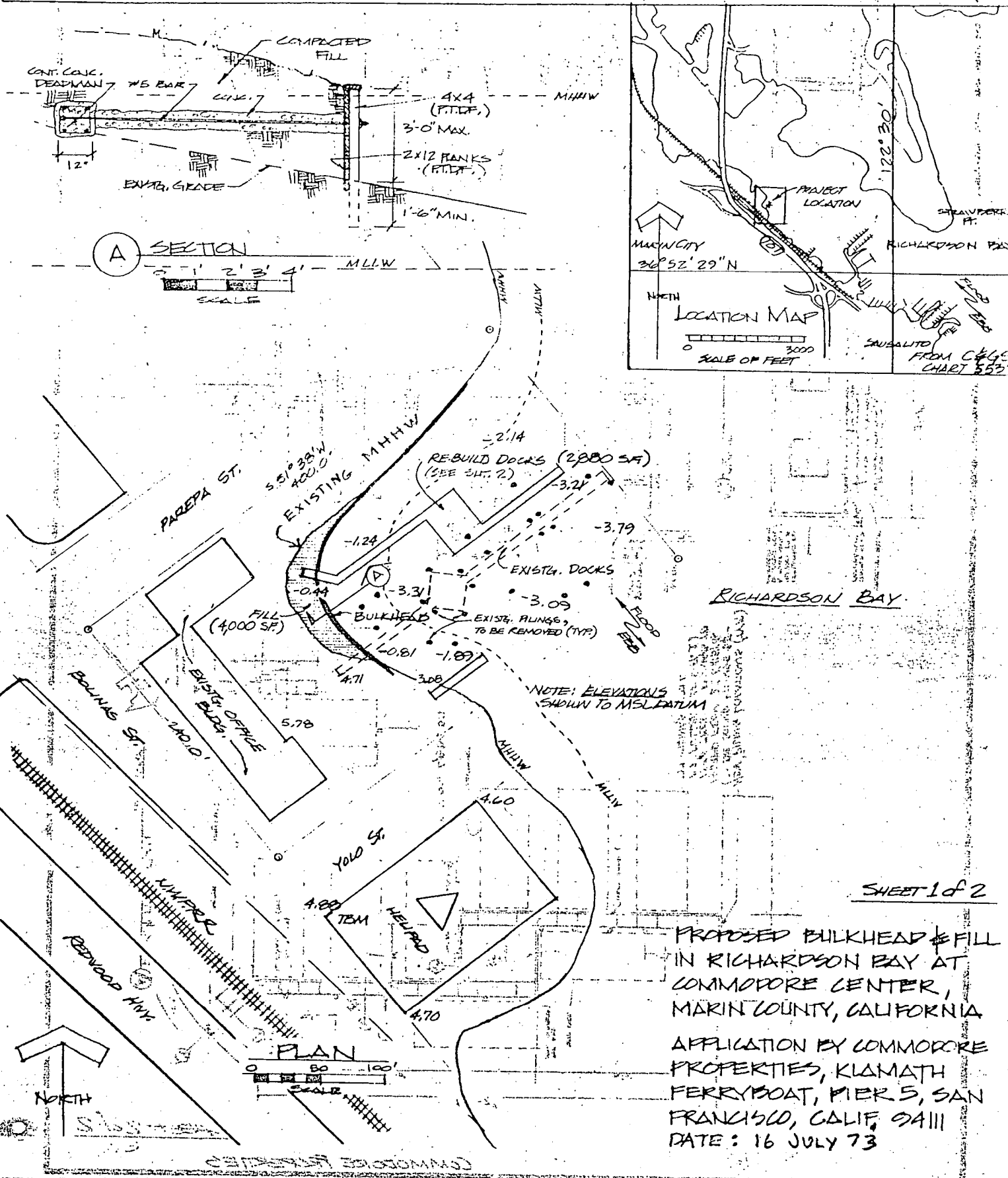
By a vote of \_\_ yeses, \_\_ noes, and \_\_ abstentions, the Commission votes to remand the matter back to the Enforcement Committee for further action for the reasons specified in the attached memorandum.

By a vote of \_\_ yeses, \_\_ noes, and \_\_ abstentions, the Commission rejects the Enforcement Committee's Recommended Enforcement Decision and decides to consider the entire matter de novo at the Commission meeting on \_\_\_\_\_.

\_\_\_\_\_  
Zachary Wasserman, Commission Chair  
San Francisco Bay Conservation and Development Commission

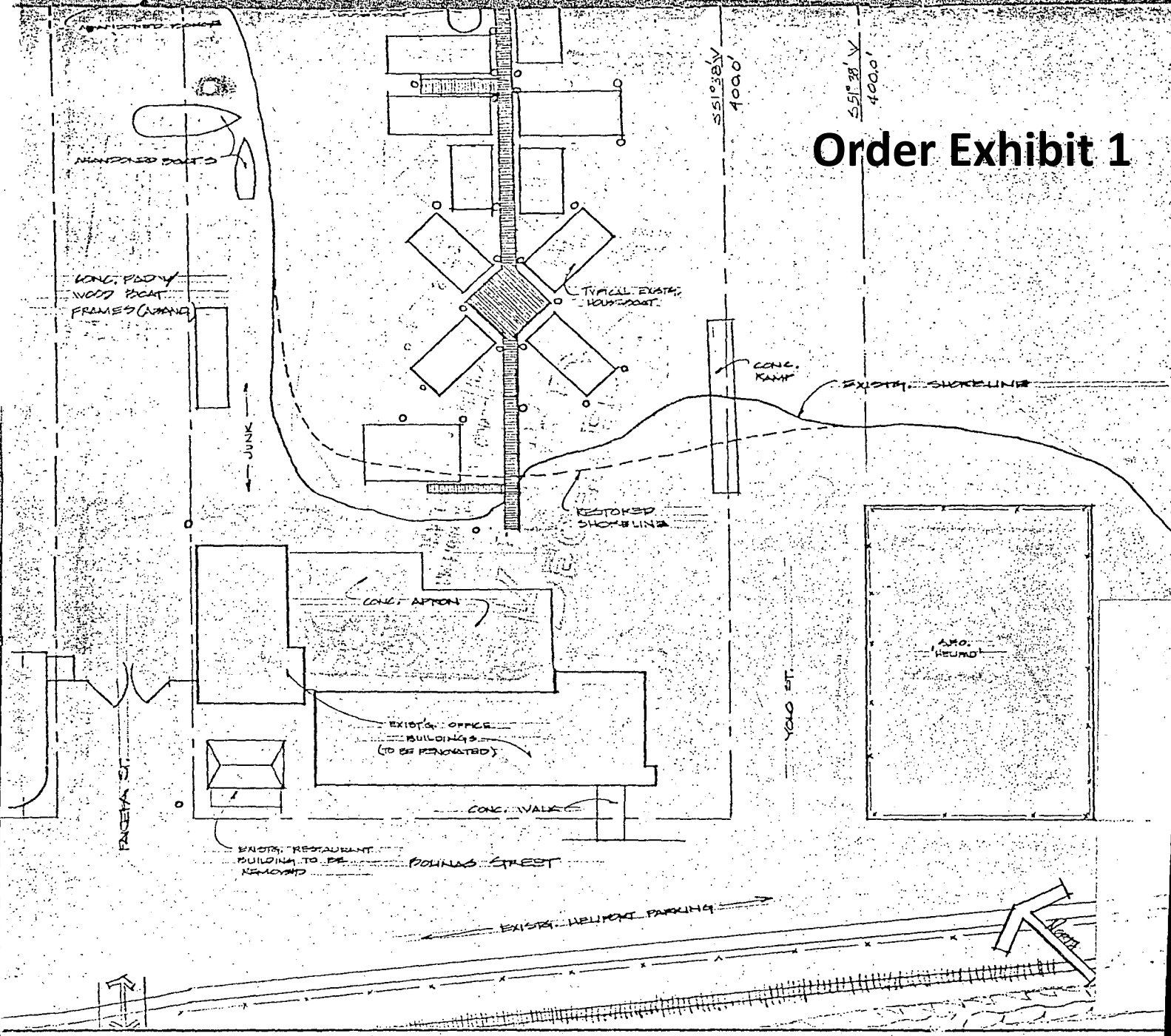
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# Order Exhibit 1





# Order Exhibit 1



COMMODORE CENTER

Existing Conditions

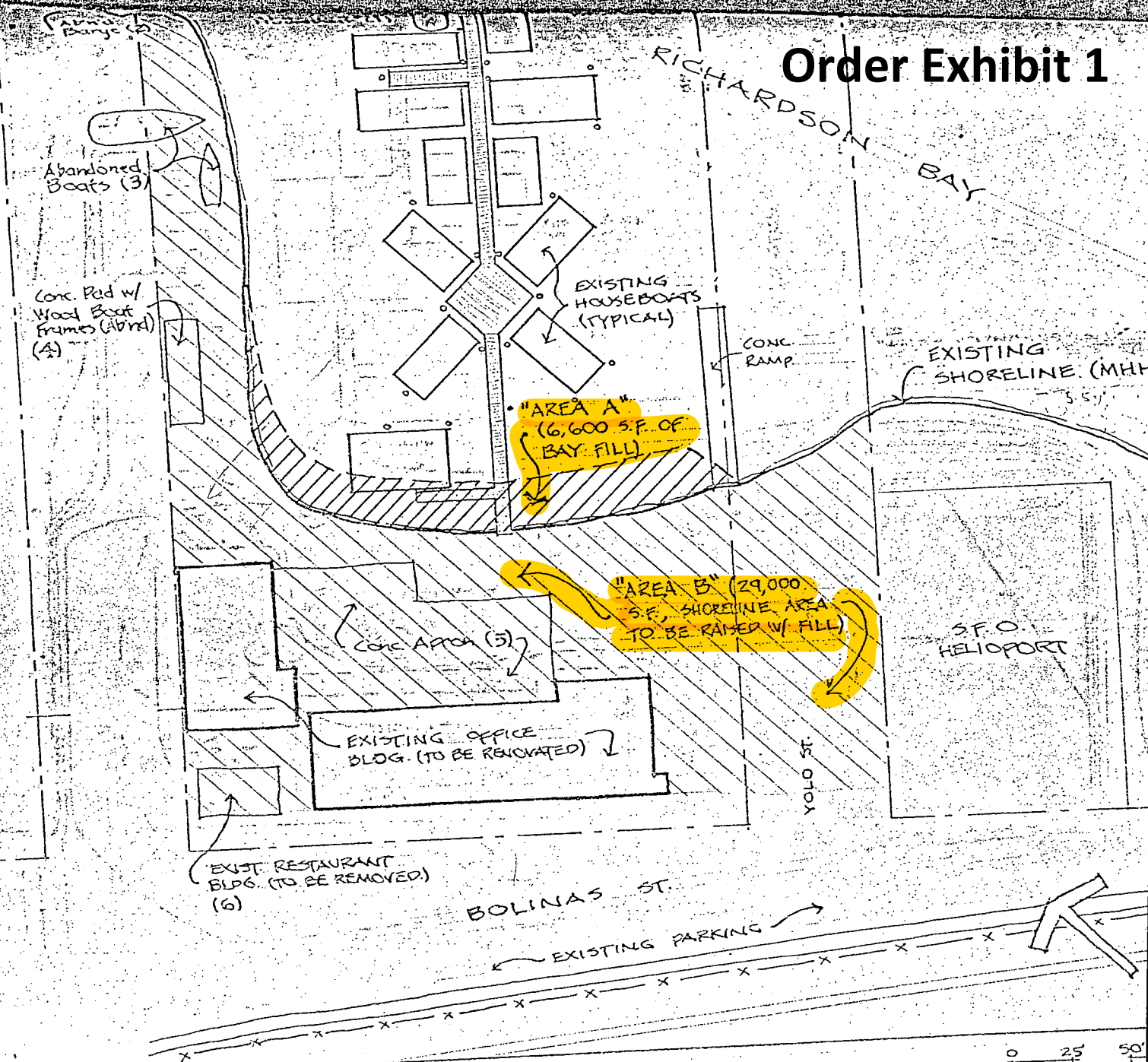
With approval of application, the following maintenance and upgrading will be performed:

1. Removal of abandoned hulks and debris
2. Removal of existing restaurant building
3. Demolition of concrete apron (now used for cars vans and boat hulks)
4. Reconstruction of marina floats

(Continued)  
Page 3 of 4

*William B. Harlembans*  
WILLIAM B. HARLEMBANS

# Order Exhibit 1



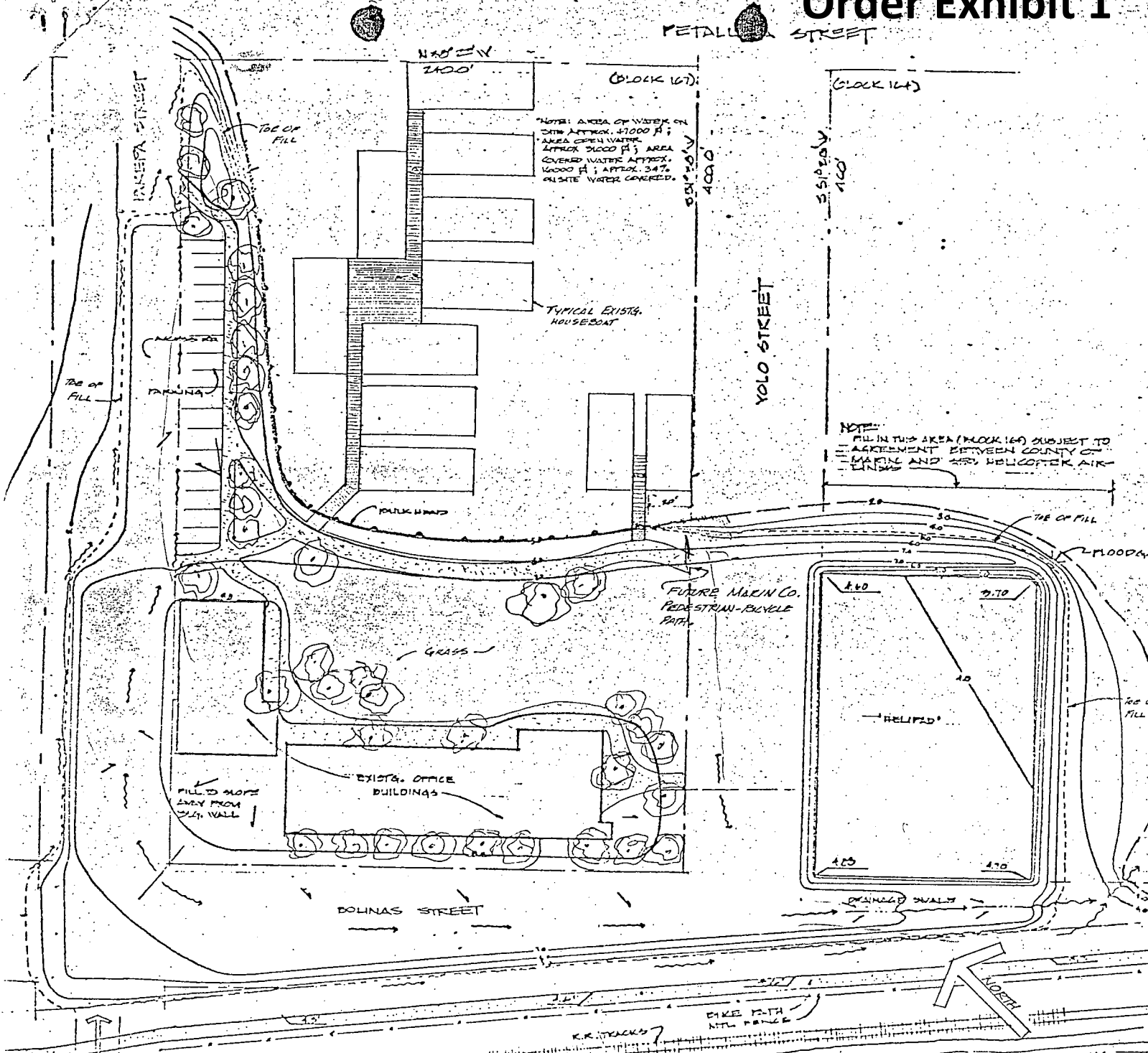
COMMODORE CENTER - Existing Conditions

With approval of application, the following improvements and upgrading will be performed.

1. Removal of abandoned hulks and debris
2. Removal of existing restaurant building
3. Demolition of concrete apron (To be used for cars vans and boat hulks)
4. Reconstruction of marina floats

EXHIBIT 2

# Order Exhibit 1



## COMMODORE CENTER

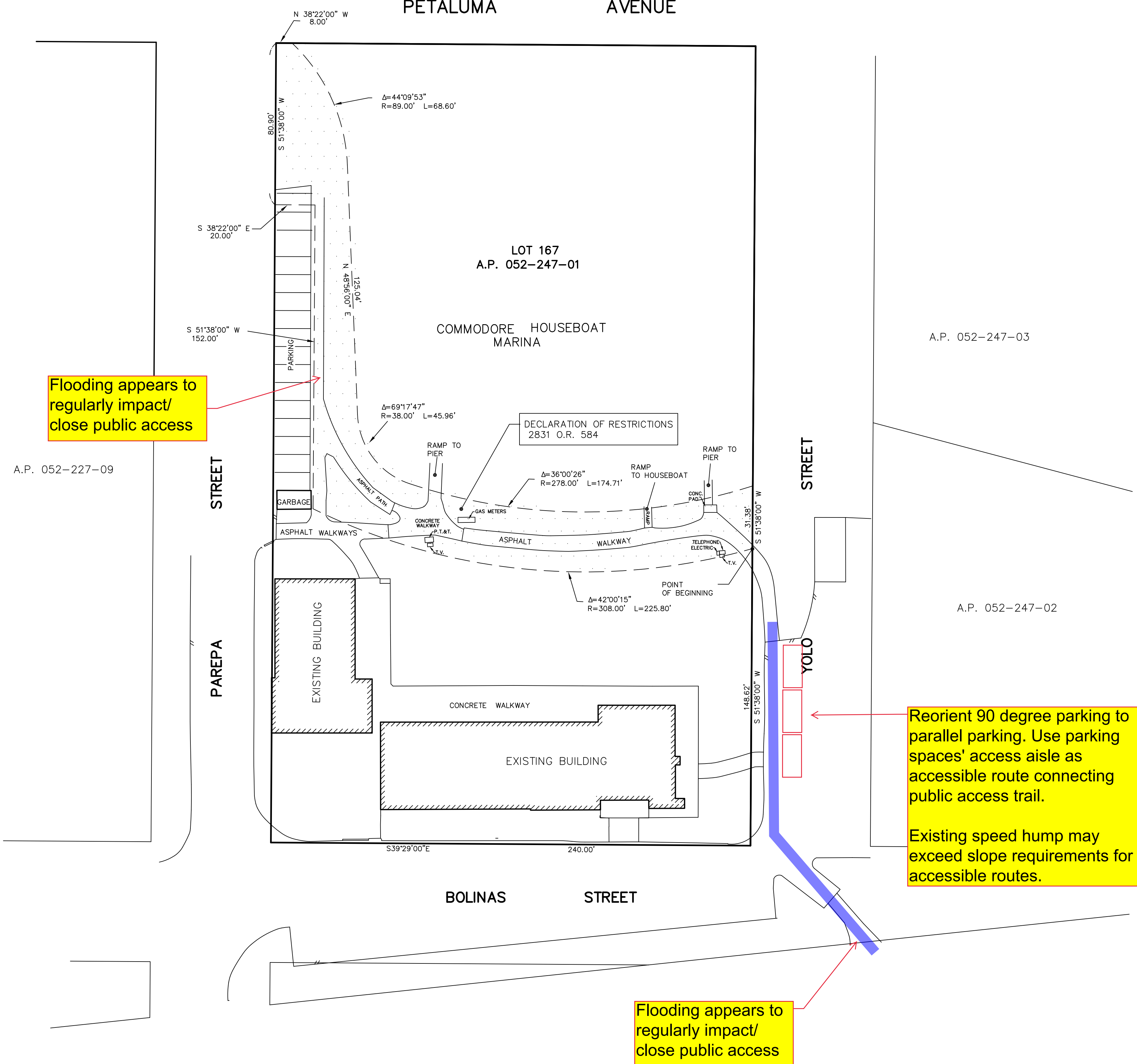
## Plan after Renovation

((Cont'd))

- 5- Restoration of shoreline and original grade to eliminate flooding of land areas
6. Realignment of marina floats and improvement of utility systems (6 pilings to be eliminated).
- 7- Installation of sewerage system for houseboats
8. Renovation of office buildings
- 9- Installation of landscaping and pedestrian bicycle path

# Order Exhibit 2

PETALUMA AVENUE



Flooding appears to regularly impact/ close public access

Reorient 90 degree parking to parallel parking. Use parking spaces' access aisle as accessible route connecting public access trail.

Existing speed hump may exceed slope requirements for accessible routes.

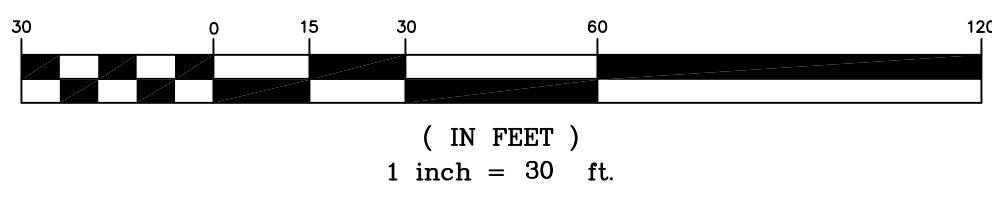
Flooding appears to regularly impact/ close public access

A.P. 052-227-09

A.P. 052-247-03

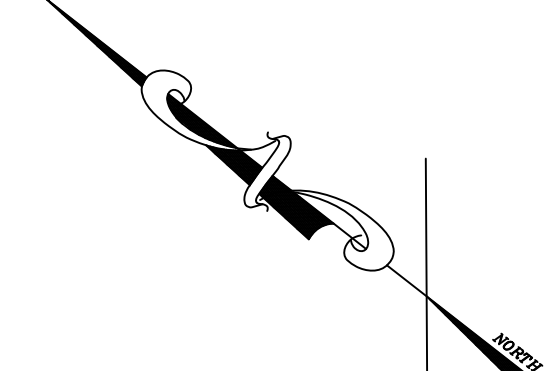
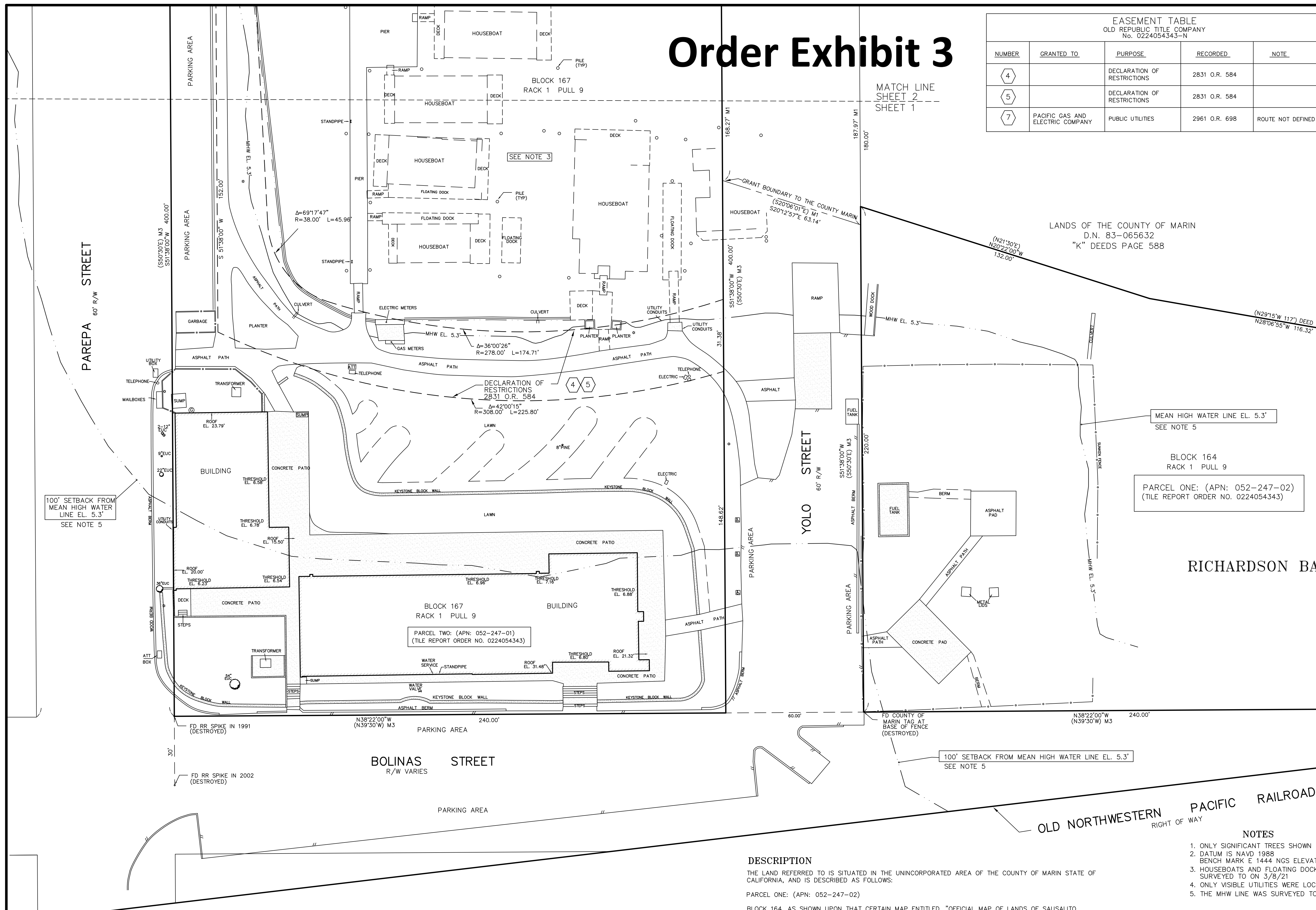
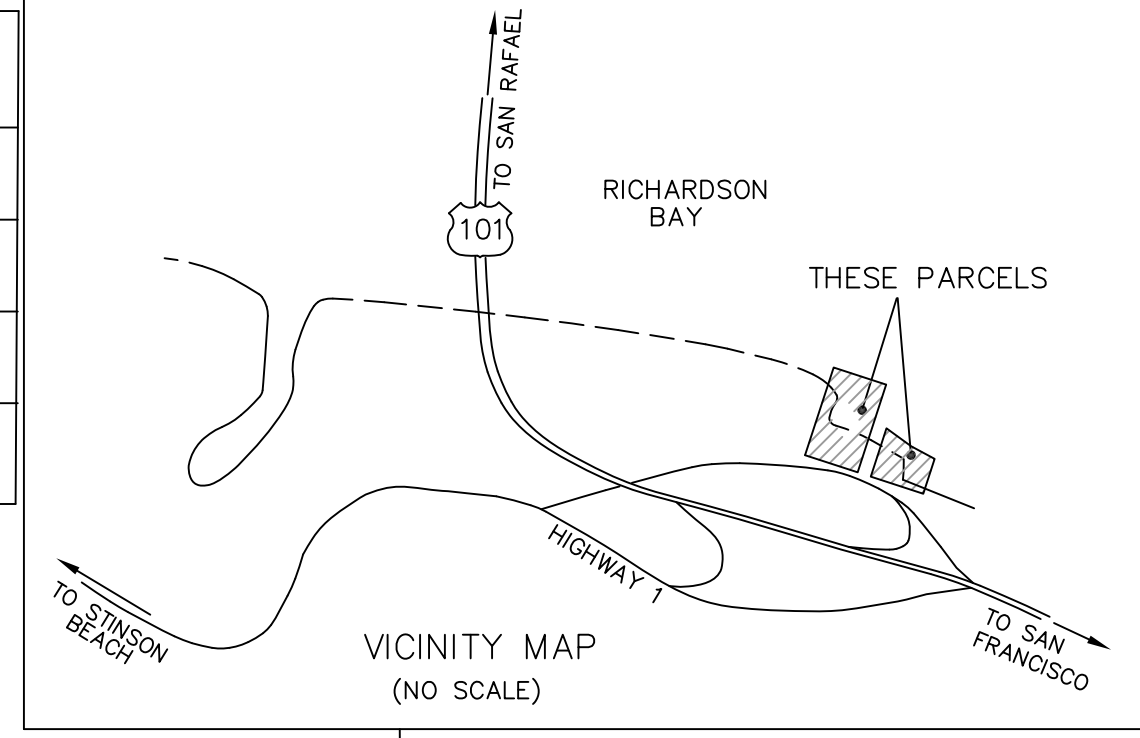
A.P. 052-247-02

GRAPHIC SCALE



# Order Exhibit 3

EASEMENT TABLE OLD REPUBLIC TITLE COMPANY No. 0224054343-N				
NUMBER	GRANTED TO	PURPOSE	RECORDED	NOTE
4		DECLARATION OF RESTRICTIONS	2831 O.R. 584	
5		DECLARATION OF RESTRICTIONS	2831 O.R. 584	
7	PACIFIC GAS AND ELECTRIC COMPANY	PUBLIC UTILITIES	2961 O.R. 698	ROUTE NOT DEFINED



SHASTA STREET

### MAP LEGEND

- M1 SUPPLEMENTARY PLAT OF THE GRANT TO THE COUNTY OF MARIN PARCEL "A", CHAPTER 497, STATUTES OF 1959 VICINITY OF COYOTE CANAL MARIN COUNTY, CALIFORNIA
- M2 HOOL & LOCKETT JOB NO. 2532 1966 & REVISED 1971
- M3 RACK 1 PULL 9

### LEGEND

- TREE (AS INDICATED)
- 104.8' TOP OF WALL ELEVATION
- CONCRETE
- GRADE BREAK
- x WIRE FENCE
- o WOOD FENCE
- /// EDGE OF PAVEMENT
- △ SURVEY CONTROL POINT
- ⊕ JOINT POLE
- CONCRETE WALL
- ROCK WALL
- ROCK BORDER
- ⊗ ELECTRIC / GAS METER
- OL OVERHEAD LINES
- ☆ LIGHT
- HANDICAP

### NOTES

1. ONLY SIGNIFICANT TREES SHOWN
2. DATUM IS NAVD 1988
3. BENCH MARK E 1444 NGS ELEVATION 12.84 FEET
4. HOUSEBOATS AND FLOATING DOCKS WERE SURVEYED TO ON 3/8/21
5. ONLY VISIBLE UTILITIES WERE LOCATED
6. THE MHW LINE WAS SURVEYED TO ON 3/8/21

### DESCRIPTION

THE LAND REFERRED TO IS SITUATED IN THE UNINCORPORATED AREA OF THE COUNTY OF MARIN STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE: (APN: 052-247-02)

BLOCK 164, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "OFFICIAL MAP OF LANDS OF SAUSALITO LAND AND FERRY COMPANY", RECORDED APRIL 26, 1869 IN RACK 1 OF MAPS, AT PULL 9, IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF MARIN, STATE OF CALIFORNIA.

EXCEPTING THEREFROM THAT PORTION CONVEYED BY BENJ. F. WASHINGTON, RODMOND GIBBONS AND L.L. BULLOCK, A BOARD OF TIDE LAND COMMISSIONERS, TO THOMAS RYAN, RECORDED MAY 26, 1871 IN BOOK 'K' OF DEEDS AT PAGE 588.

ALSO EXCEPTING THEREFROM ANY PORTION THEREOF INCLUDED IN THE RIGHT OF WAY OF THE NORTHWESTERN PACIFIC RAILROAD.

PARCEL TWO: (APN: 052-247-01)

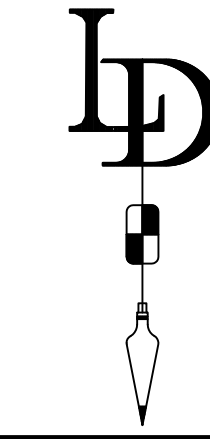
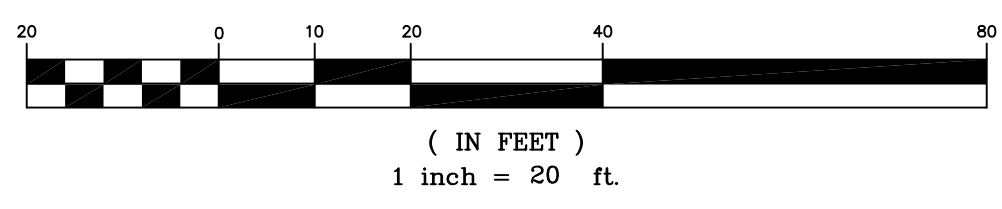
BLOCK 167, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "OFFICIAL MAP OF LANDS OF SAUSALITO LAND AND FERRY COMPANY", RECORDED APRIL 26, 1869 IN RACK 1 OF MAPS, AT PULL 9, IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF MARIN, STATE OF CALIFORNIA.

### CERTIFICATION

TO: \_\_\_\_\_  
THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2021 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/NSPS LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDES ITEMS 2 & 3 OF TABLE A THEREOF. THE FIELDWORK WAS COMPLETED ON APRIL 3, 2021.

DATE OF PLAT OR MAP: MAY 3, 2021  
LAWRENCE P. DOYLE, PLS 4694 DATED: \_\_\_\_\_

### GRAPHIC SCALE



© 2021  
THIS DRAWING IS THE PROPERTY OF LAWRENCE P. DOYLE LAND SURVEYOR/CIVIL ENGINEER AND MAY NOT BE DUPLICATED OR USED WITHOUT PERMISSION

<b>ALTA / ACSM</b>	
240-242 REDWOOD HWY / A.P. 052-247-01,02 SAUSALITO MARIN COUNTY CALIFORNIA	
SCALE: 1" = 16'	DRAWN BY:
DATE: 5/3/21	SHEET 1 OF 2
<b>LAWRENCE P. DOYLE</b>	
LAND SURVEYOR/CIVIL ENGINEER	
100 HELENS LANE MILL VALLEY, CA 94941 (415) 388-9585	
DRAWING NO. 2916	

REMOVE & RELOCATE EXISTING SIGNS & WHEEL STOPS

ASPHALT TRANSITION, 8' W X 16' L  
2" EDGE GRIND, CONFORM TO EXISTING  
5% MAX. SLOPE, 2% MAX CROSS SLOPE

148.62'

SHORELINE ACCESS PATH

2' WIDE ASPHALT FEATHERING STRIP, BOTH SIDES

EXISTING ELEVATED ASPHALT PATH APPX. 3" HIGH

YOLO STRE

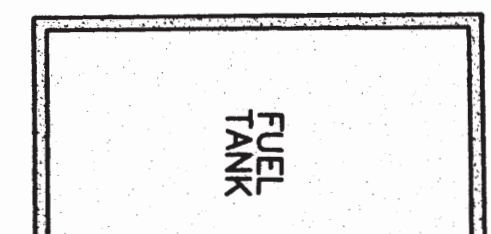
60' R/W

S51°38'00"V  
(S50°30'E)

PARKING AREA

ASPHALT BERM

22



NEW PAVEMENT MARKING TO RECONFIGURE 3 PARKING SPACES TO 2 ACCESSIBLE PARKING SPACES

9' X 18'

8' X 18' ACCESS ISLE

9' X 18'

ASPHALT BERM

60.00'

BCDC SHORELINE ACCESS SIGN

ASPHALT CONFORM TO PATH

BOARDWALK

FREE FLOW UNDER BOARDWALK

ASPHALT CONFORM TO BIKE PATH

FD COUN MARIN 1 BASE OF (DESTRO

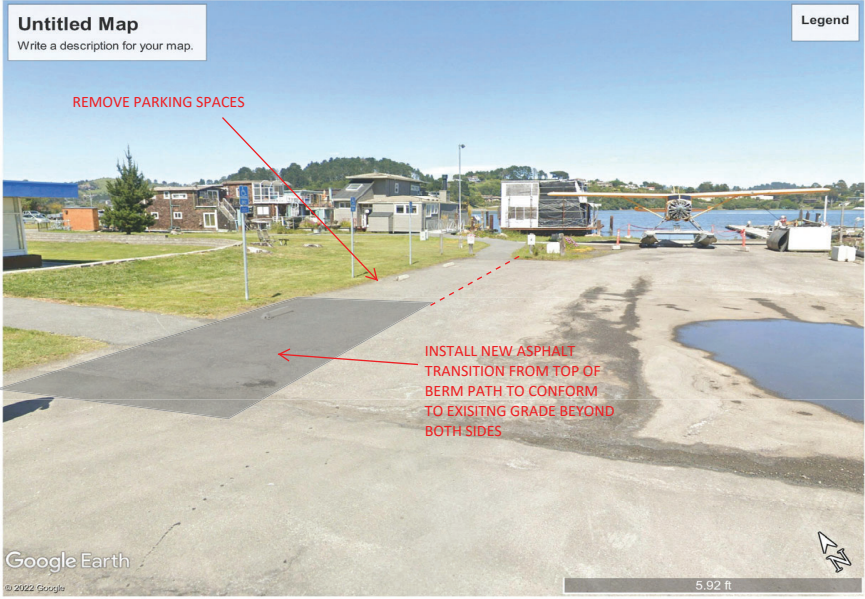
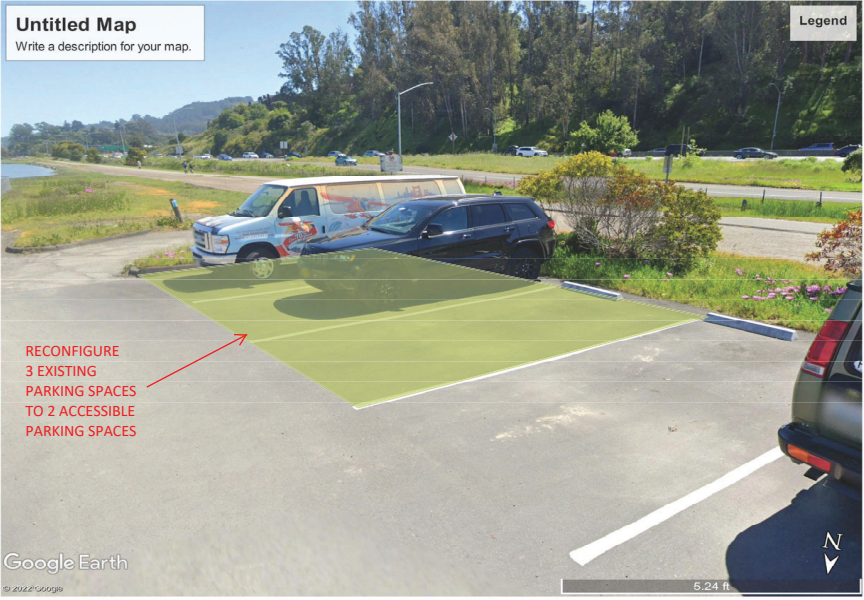
ASPHALT PATH

ASPHALT PATH

INTERIM SHORELINE ACCESS IMPROVEMENTS PLAN

RELOCATED SIGNAGE & WHEEL STOPS

# Order Exhibit 3



INTERIM BCDC ACCESS IMPROVEMENTS ANNOTATED PHOTOS





# Order Exhibit 3



- ① EXISTING MULTI-USE ASPHALT PATH
- ② NEW ADA PARKING SPACES
- ③ SHORELINE ACCESS PATH
- ④ NEW BOARDWALK WITH ASPHALT TRANSITIONS TO EXISTING GRADES
- ⑤ NEW POLE-MOUNTED SHORELINE ACCESS SIGNAGE
- ⑥ NEW ASPHALT TRANSITION RAMP
- ⑦ SEE "INTERIM SHORELINE ACCESS IMPROVEMENTS PLAN" FOR MORE DETAILS
- ⑧ REMOVE EXISTING PARKING SPACES
- ⑨ EXISTING PARKING SPACES TO REMAIN
- ⑩ EXISTING 10'-8" L x 5'-4" W x 4'-0" H ABOVE SURFACE CONCRETE FUEL TANK TO REMAIN
- ⑪ EXISTING FUEL TANK IN CONCRETE CONTAINMENT BCDC PERMIT M1985-030-01
- ⑫ THIS DOCK HAS BEEN REMOVED
- ⑬ 20' W x 35' L RAMP CONSISTING OF 2X6 "TREX" BOARDS ON GRADE
- ⑭ EXISTING BAOT DOCK ADDITIONS TO THE EXISTING SEAPLANE DOCK TO REMAIN
- ⑮ THIS HOUSEBOAT HAS BEEN MOVED TO THE POSITION INDICATED BY DOTTED LINE, 1973.014.03
- ⑯ EXISTING SEAPLANE DOCK TO REMAIN (REPAIRED)
- ⑰ SEAPLANE PARKING & REPAIR AREA

GRAPHIC SCALE 240 ft

PHOTO SITE PLAN OF 242 REDWOOD HIGHWAY, MILL VALELY, CA 94941

Google Earth

Imagery Date: 6/10/2019 37°52'47.95" N 122°30'52.60" W elev 0 ft eye alt 1038 ft

# Order Exhibit 3



- ① EXISTING MULTI-USE ASPHALT PATH
- ② NEW ADA PARKING SPACES
- ③ SHORELINE ACCESS PATH
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