

**BAYVIEW 1, LLC, C/O Chris Henry
ENFORCEMENT CASE ER2021.080.00**

**PROPOSED CEASE AND DESIST AND CIVIL PENALTY ORDER
FOR TWO VIOLATIONS**

RACHEL COHEN, COASTAL PROGRAM ANALYST

MARCH 14, 2024

ITEM 5



OUTLINE

- Location of Violation
- History of Noncompliance
- Timeline of Events
- Violation Summary
- Respondent Defenses & Staff Rebuttals
- Staff Recommendation

VICINITY MAPS – 660 BRIDGEWAY BLVD, SAUSALITO, MARIN COUNTY



Exhibit A to Permit
M1979.088.00 showing
~1,558-square-foot Public
Access Area

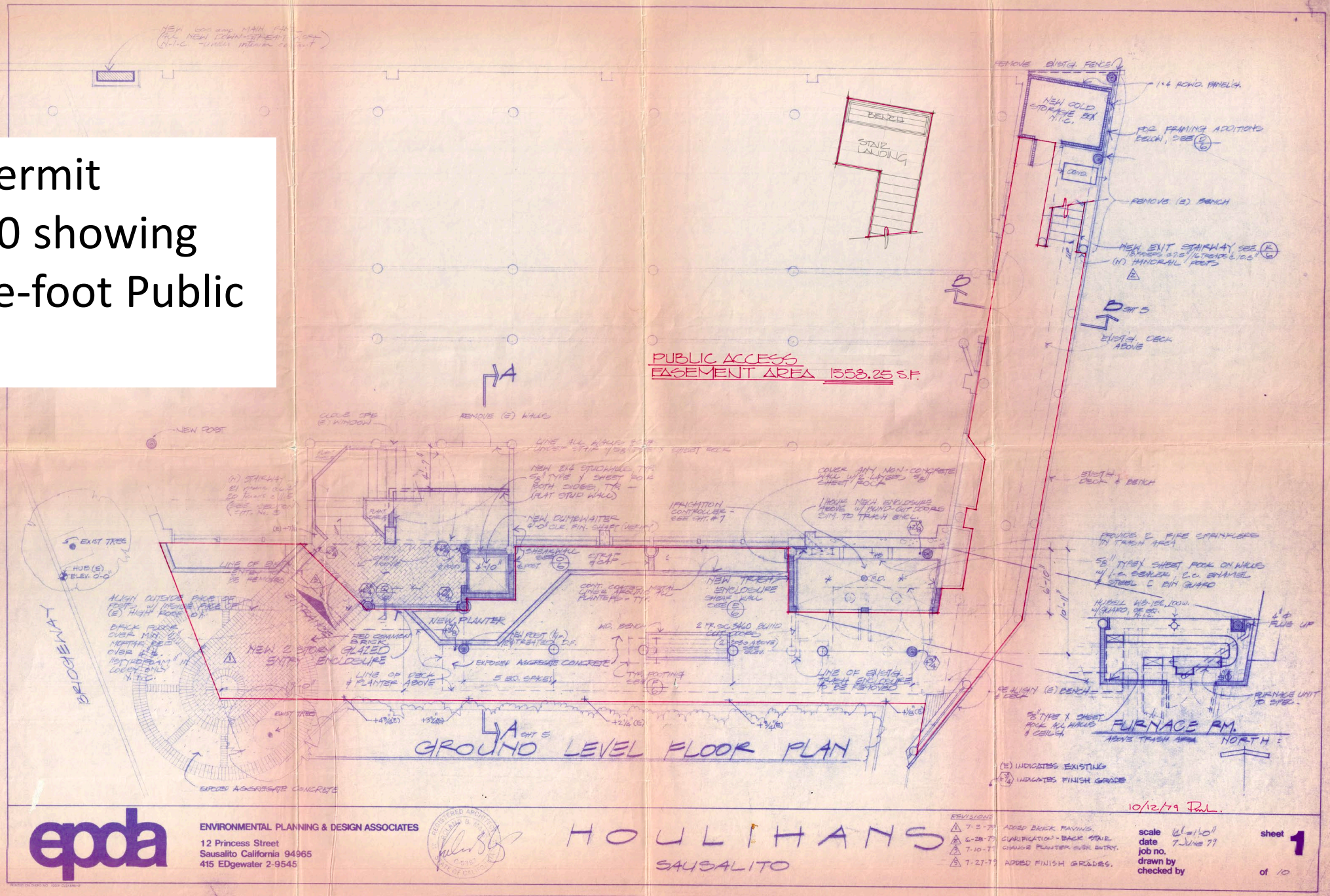
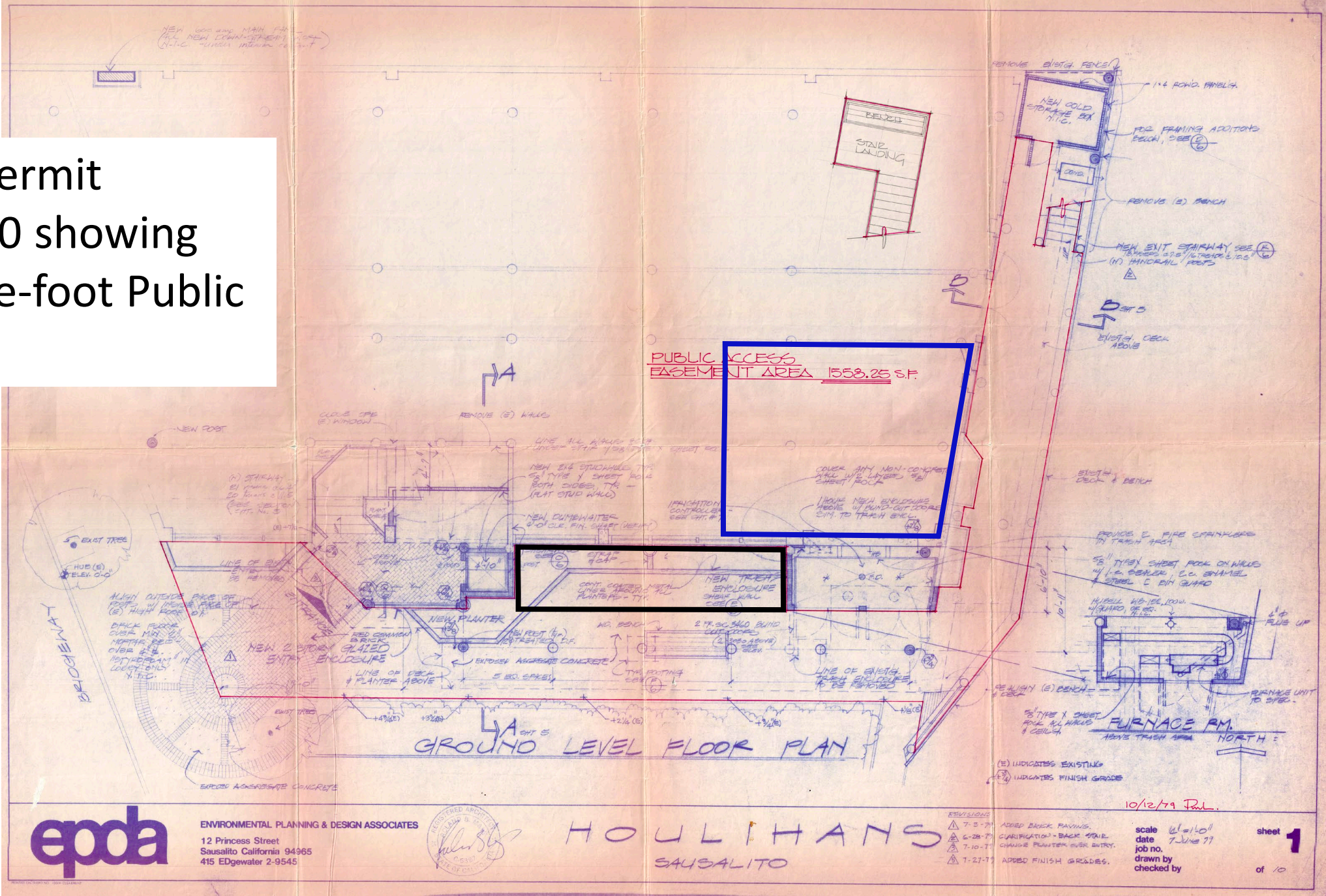


Exhibit A to Permit
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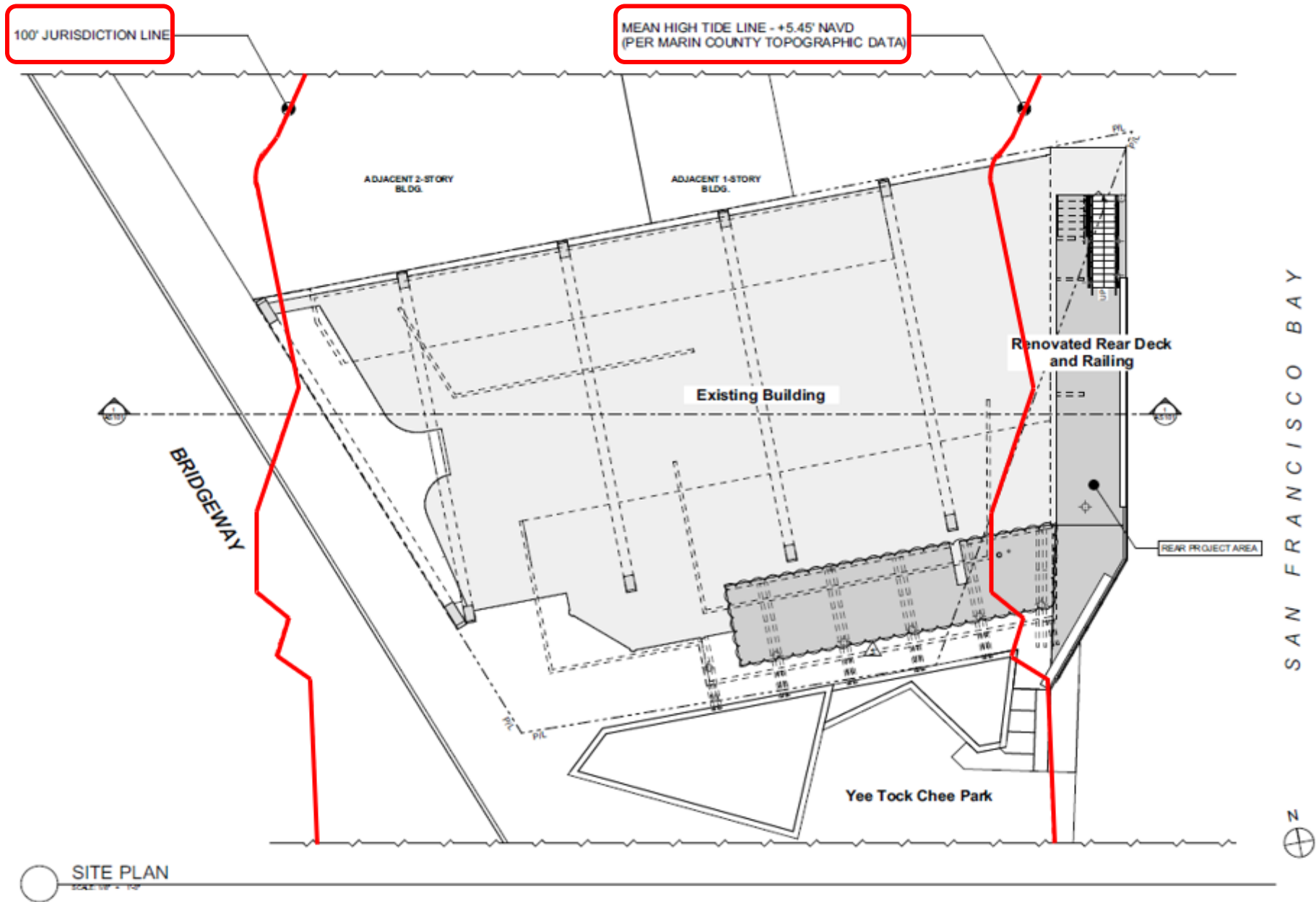




RED Exhibit P



RED Exhibit P

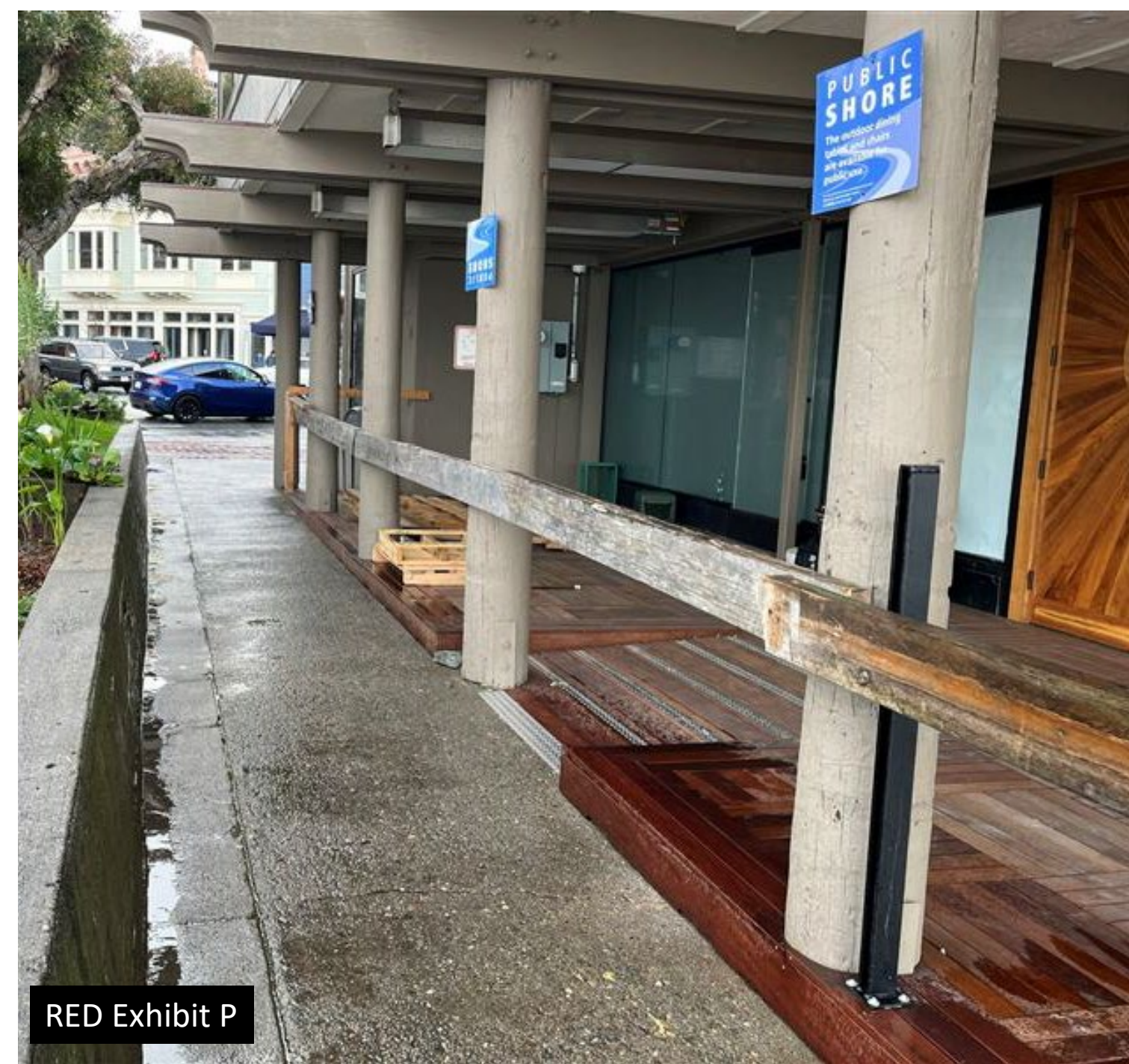


HISTORY OF NONCOMPLIANCE

- April 26, 2007: Mr. Henry took over ownership of the property and became responsible for compliance with Permit M1979.088.02.
- ER2010.040.00: Denial of access to the public access areas.
- ER2012.027.00: Failure to post public shore signage.
- ER2013.008.00: Denial of access to the public access areas.
- ER2014.002.00: Denial of access to the public access areas (fined \$100).
- ER2015.022.00: Denial of access to the public access areas (fined \$100).
- ER2015.048.00: Unauthorized placement of tables and chairs in public access area, failure to post adequate public shore signage.
- ER2016.013.00: Denial of access to the public access areas, unauthorized construction of new restaurant facility (fined \$21,000).
- ER2021.039.00: Unauthorized outdoor dining tables encroaching into public access.

TIMELINE OF EVENTS

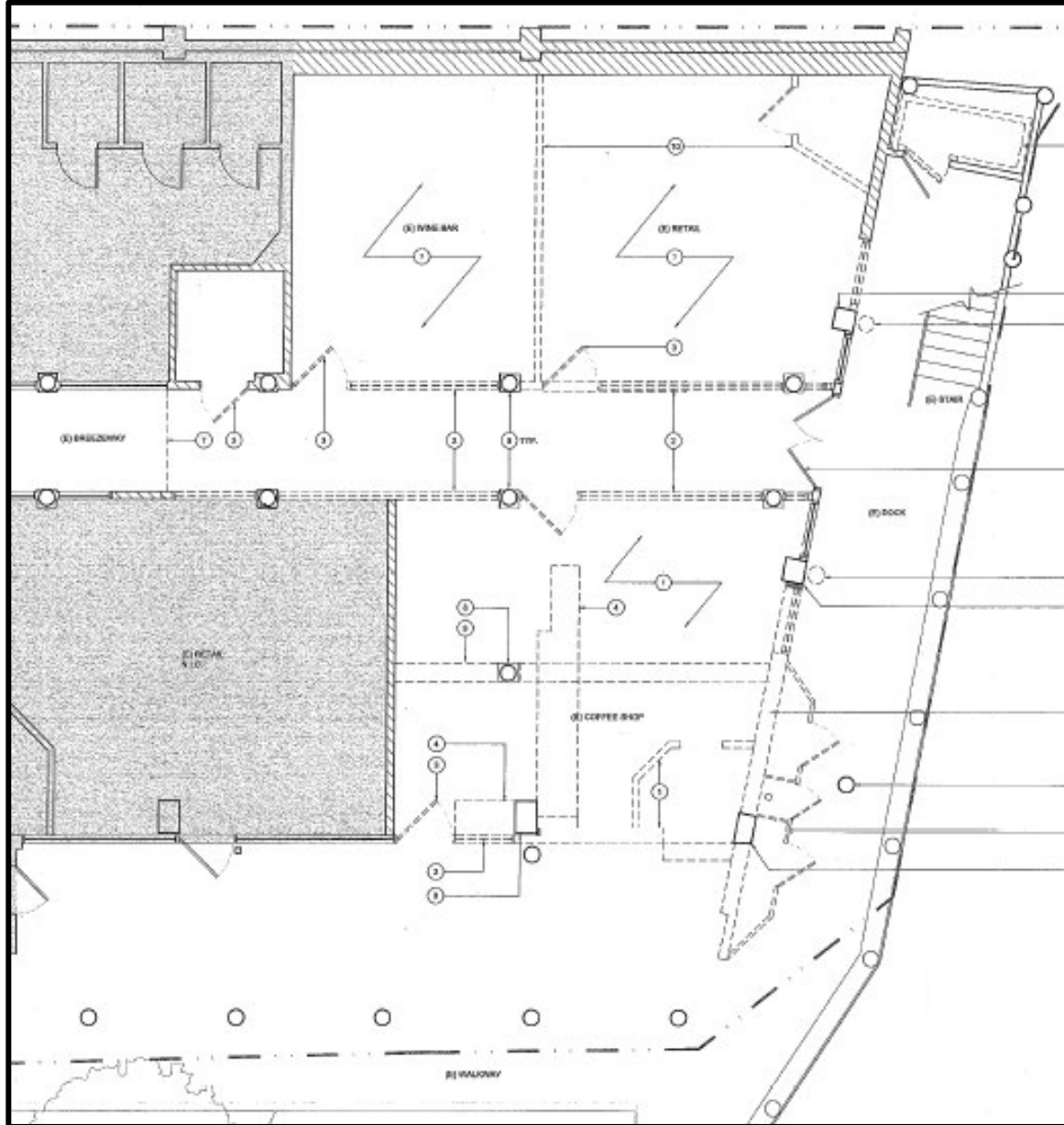
- August 2021: Staff received report that Respondent was obstructing public access pathway with plywood and tables. Staff opened enforcement case ER2021.080.00.
- September 2021: Enforcement staff mailed Notice of Violations initiating standardized fines.
- December 2021: Mr. Henry said public access remained obstructed.
- March 2022, December 2022, April 2023: Staff documented persistence of violations.
- December 2023: Member of public documented closure and privatization of public access space. Staff rescind opportunity to resolve case using standardized fines.
- January 2024: Staff mail Violation Report & Complaint for Administrative Civil Penalties. Mr. Henry confirms receipt and staff ask him to complete permit assignment (staff have not received).
- February 2024: Mr. Henry pledged to send documentation that public access area made compliant with permit. Mr. Henry submits permit application for deck fire repairs only. Plans show intent to privatize public access area for restaurant use.
- March 2024: Staff observe ongoing blockade of and storage in the public access area.



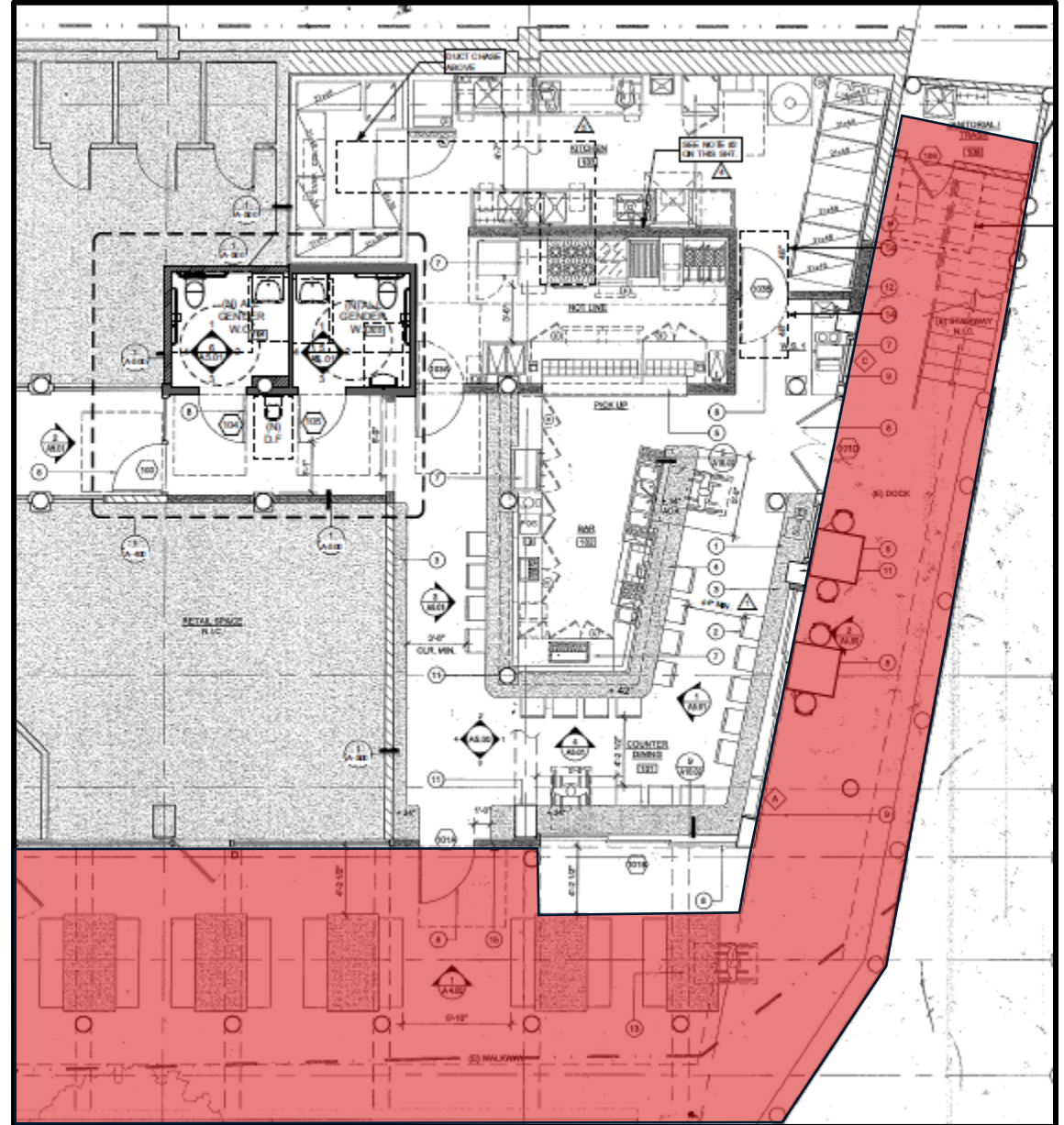
RED Exhibit P



Pre-construction Conditions



Post-construction Conditions



SUMMARY OF VIOLATIONS

1. Respondent violated and is violating the McAteer-Petris Act by conducting unauthorized redevelopment activities on the ground floor of the building, consisting of extensive redesign and reconstruction within BCDC bay and shoreline band jurisdictions.
2. Respondent violated and is violating Section II.A. of BCDC Permit M1979.088.02 by closing, blockading, and removing the required public access path and amenities, and intending to privatize the public access area for use as a new, expanded restaurant space.

ADMITTED ALLEGATIONS

- Respondent submitted Statement of Defense form on February 28, 2024.
- Respondent admits to owning the property subject to the complaint.
- Respondent admits he installed plywood and blocked access to the back deck area.
- Respondent admits that work was performed to the back deck.

RESPONDENT DEFENSE 1 OF 7

1. Respondent argues he received building permits from the City of Sausalito for the restaurant remodel work.

STAFF REBUTTAL

- Receiving a City of Sausalito building permit does not absolve Respondent from his responsibility to consult BCDC prior to performing work in BCDC jurisdiction, obtain BCDC approval for the restaurant remodel work, and comply with the McAteer-Petris Act.
- The separation and distinction between BCDC and the City of Sausalito's processes was explained to Mr. Henry in writing on September 22, 2021.

RESPONDENT DEFENSE 2 OF 7

2. Nobody mentioned anything to Mr. Henry about having to go through BCDC to get approval for the restaurant remodel work.

STAFF REBUTTAL

- BCDC explicitly and repeatedly informed Mr. Henry of the requirement to obtain BCDC approval for restaurant remodel work.
- It is solely Mr. Henry's responsibility to comply with the McAteer-Petris Act and the regulations applicable to his property.

RESPONDENT DEFENSE 3 OF 7

3. Nobody mentioned anything to Mr. Henry about having to go through BCDC to get approval for the fire restoration repair work.

STAFF REBUTTAL

- Staff emails on September 22, 2021 and December 6, 2021 include communications to Mr. Henry that he needed to supply BCDC with documentation of the Sausalito Fire Department's closure requirement, and remove the sheet of plywood that was blocking public access.
- It is solely Mr. Henry's responsibility to comply with the McAteer-Petris Act and the regulations applicable to his property.

RESPONDENT DEFENSE 4 OF 7

4. Mr. Henry was directed by the City of Sausalito Building Department and the Fire Marshal to install plywood and block access to the deck as it was unsafe from the fire.

STAFF REBUTTAL

- The McAteer-Petris Act Section 66632(a) requires that any person must receive BCDC authorization before making any substantial use of any water, land, or structure within BCDC's jurisdiction. Despite BCDC having procedures in place to respond to instances when emergency work is required, Mr. Henry did not proactively inform BCDC about the fire and the need to close public access areas for emergency repairs prior to or just after the repairs occurred.
- The case history demonstrates that Mr. Henry should have known that he needed to inform BCDC about the closure of the public access area.
- This claim is not supported by any documentation.

RESPONDENT DEFENSE 5 OF 7

5. Mr. Henry went through the required channels of the historical, engineering, and building departments and was issued a permit.

STAFF REBUTTAL

- Mr. Henry did not go through all the required channels to receive approvals for the fire restoration and restaurant renovation work.
- The case history demonstrates that Mr. Henry should have known that he needed to inform BCDC about the closure of the public access area.
- Mr. Henry did not voluntarily apply to BCDC for a permit until he was subject to this enforcement action.

RESPONDENT DEFENSE 6 OF 7

6. Mr. Henry did not add any fill.

STAFF REBUTTAL

- While the deck footprint is the same, Mr. Henry expanded the restaurant space, removed permit required benches and trash containers from the public access area, and added raised wooden flooring, a standing bar, and new glass deck railing in the public access space, activities that requires BCDC approval per the McAteer-Petris Act Section 66632(a).
- Mr. Henry changed the use of the area by reducing public access and views, placing impediments within the public access space, and intends to privatize the public access area for restaurant use, activities that requires BCDC approval per the McAteer-Petris Act Section 66632(a).

RESPONDENT DEFENSE 7 OF 7

7. The administrative civil penalty would possibly bankrupt Respondent or put him out of business. Bayview 1, LLC employs many different people and they and their families rely on Respondent for their living.

STAFF REBUTTAL

- Appendix J of the Commission's regulations states that when the ability to pay or continue in business is raised as a defense, a violator shall submit factual information and supporting documentation to enable staff or the Commission to evaluate the violator's financial condition.
- No factual information or documentation was submitted to support this claim, so staff cannot consider this as a viable defense and respondent's ability to pay is not in question.

ADMINISTRATIVE CIVIL PENALTY

- BCDC staff have assessed factors as required by Appendix J.
- Gravity of harm: **moderate**.
- Extent of deviation from the statutory requirement to provide the permit-required public access and secure a permit or remove the unauthorized fill: **major**.
- Daily penalty per violation assessed for 937 days, during which time Respondent failed to take voluntary action to correct violations. Fines for each of the two violations are capped at \$30,000. Staff proposes a penalty amount of \$60,000.

RECOMMENDED ENFORCEMENT DECISION

Vote to recommend that the Commission authorizes the Executive Director to issue the proposed Cease and Desist and Civil Penalty Order No. CCD2024.001.00, which would order Respondent to:

1. Cease and desist from violating BCDC Permit M1979.088.02 and the McAteer-Petris Act;
2. Fully restore and maintain public access area within thirty (30) days of order issuance;
 - a. Reopen the entirety of the 1,558-square-foot public access area.
 - b. Return the permit-required benches and public trash containers to the public access area.
 - c. Remove tables, chairs, rubbish, materials, and municipal waste bins from public access area.
3. By December 31, 2024, obtain a permit (or permit amendment) for extensive ground floor restaurant redesign work that commenced in or around November 2016 and has continued to-date, as well as any work that was performed in the public access areas;
4. Complete a permit assignment for Permit M1979.088.02 within forty-five (45) days of Order issuance;
5. Cease and desist from any development of the ground floor restaurant space (formerly Il Piccolo Caffe and the adjacent wine bar and retail space) and do not conduct any business or other use of the space until a Commission permit that authorizes such use and fill placed therein is obtained.
6. Pay \$60,000 in administrative civil liability within thirty (30) days of Order issuance.