STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER

PRELIMINARY DECISION

ADL 225943 Marian Beck D/B/A The Saltry, Inc.

Application for Lease
AS 38.05.075(c)

This Preliminary Decision (PD) is the initial determination on a proposed disposal of interest in State land and is subject to comments received during the public notice period. The public is invited to comment on this PD. The deadline for commenting is **5:00 PM on December 28, 2015**. Please see the Comments section on page 7 of this decision for details on how and where to send comments for consideration. Only the applicant and those who comment have the right to appeal the Final Finding and Decision (FFD).

Proposed Action:

The Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Southcentral Region Office (SCRO) has received a request from Marian Beck DBA The Saltry, Inc. (The Saltry) to lease a total of approximately 0.5 acre of land for 55 years in Halibut Cove on the southerly shore of West Ismailof Island. The location of the project area is further described as being within the SW¼ of Section 1, Township 7 South, Range 12 West, Seward Meridian. The Saltry is proposing to use this site for the continued operation of The Saltry restaurant and other associated commercial activities. These activities include: temporary employee housing cabins; a pottery studio and storage shed; dock storage; a floating dock used for the commercial transport of the Marine Vessel Danny J, a converted fishing boat transporting visitors to The Saltry restaurant and tours of the Halibut Cove area. In 2013 The Saltry requested that lease application ADL 231299 for the tidelands associated with the Halibut Cove Experience Art Gallery (Art Gallery) be included under the application for The Saltry ADL 225943. The Art gallery is located northeasterly along an inland boardwalk from the The Saltry complex and is considered a separate physical location but a part of the overall Saltry complex.

SCRO is considering the issuance of a 20-year tideland lease to The Saltry for the continued use, operation, and maintenance of The Saltry facilities and Art gallery, two parcel sites under one lease. If approved, SCRO would issue an Entry Authorization (EA) for completion of the survey and appraisal of the site prior to lease issuance.

Scope of Review:

The scope of this decision is to determine if it is the State's best interest to issue the proposed lease.

Authority:

This lease application is being adjudicated pursuant to AS 38.05.035(b)(1) Delegation of the Powers and Duties of the Director; AS 38.05.035(e) Written Findings; AS 38.05.075(c) Leasing Procedures Tidelands; and AS 38.05.945 Public Notice.

The authority to execute the PD, FFD, the EA, and the Lease has been delegated to the Regional Managers of DMLW.

Administrative Record:

Case file ADL 225943 constitutes the administrative record for The Saltry and Art gallery lease applications.
Case file ADL 231299 constituted the administrative record for The Halibut Cove Experience Gallery lease application prior to August 8, 2013 after which it was combined with ADL 225943.

Legal Description, Location, and Geographical Features:

The State land where this proposed lease site is located is described as follows:

- **Legal description**: SW ¼ Section 1, Township 7 South, Range 12 West, Seward Meridian
- **Geographical location**: Tidelands extending from the southerly shoreline of West Ismailof Island in Halibut Cove, Alaska
- **Approximate Lat/Long**: 59° 35' 45.098" N, 151° 14' 41.177" W
- **Area geographical features**: Rocky Tidelands
- **Existing surveys**: Plat No. 70-649, ADL 30128, showing approximate MHW
- **Municipality/Borough**: Kenai Peninsula Borough
- **Native Corporations/Federally Recognized Tribes**: within Cook Inlet Region, Inc. (CIRI) regional boundaries, not a federally recognized ANCSA Native village
- **Size:** 0.5 acre

Title:

A DNR Title Report (RPT-7939) issued on 05/27/2015 from DNR's Realty Services Section, states that the State of Alaska holds title to the subject tidelands under the Equal Footing Doctrine and the Tide and Submerged Lands Act of 1953.

Third Party Interests:

ADL 225947, Document No. 2014-00316-0 Homer Recording District, David T. Beck, Private non-exclusive 10' wide water outflow line easement.

Classification and Planning:

The project area is subject to the Kenai Area Plan, Region 9A, Management Unit 534: Halibut Cove Tidelands (map number 9A). The classification for this site is Wildlife Habitat and Public Recreation Land. The proposed leasehold is mainly used for tourism industries and managed in accordance with Alaska Department of Fish & Game (ADF&G) mandates; the proposed leasehold is consistent with these classifications.

Additionally, these sites are within the Kachemak Bay Critical Habitat Area, established 1974 through AS 16.20.590, and are subject to the ADF&G's Kachemak Bay and Fox River Flats Critical Habitat Areas Management Plan. The construction of both sites was done in compliance with ADF&G's Special Area Permit (SAP) stipulations, Permit No. FG 92-II-0749 issued on February 9, 1993 and the Department of Army Corps of Engineers, Permit No. 1-920677 Halibut Cove 13 issued on March 2, 1993.

Access:

These sites are accessed via sea faring boats and aircrafts which can tie up at The Saltry's floating docks or by small planes which can land on the private airstrip (with owner permission) located on East Ismailof Island. The upland access is private and owned by the applicant.

Access Along Navigable and Public Waters:
Nearly all shore and tidelands in the State of Alaska are subject to an Along easement (AS 38.05.127 and 11 AAC 51.045). The purpose of this easement is to uphold the constitutional right of the public to have free access to, and use of, the State's waterways. At the two (Saltry and Art Gallery) proposed leasehold parcels for ADL 225943, the State intends to reserve a 50' Along easement extending from Mean High Water seaward within the lease boundaries per 11 AAC 51.045(c)(1)(B)). The Along easement will be reserved and noted on the approved survey for the proposed lease.

Public Trust Doctrine:
Pursuant to AS 38.05.126 all authorizations for this site will be subject to the principals of the Public Trust Doctrine; specifically, the right of the public to use navigable waterways and the land beneath them for: navigation, commerce, fishing, hunting, protection of areas for ecological studies, and other purposes. These rights must be protected to the maximum extent practicable while allowing for the development of this project. As such, SCRO is reserving the right to grant other authorizations to the subject area consistent with the Public Trust Doctrine.

Agency Notice:
An Agency Review was conducted on 12/13/2011**.** The deadline for agency comments was 12/28/2011.
The following agencies were included in the review:

- DNR DMLW - Mining
- DNR DMLW - Water
- DNR Office of History and Archaeology/SHPO
- DNR Contract Administration
- DNR Division of Oil and Gas
- Department of Fish and Game - Habitat
- Department of Fish and Game - Wildlife Conservation
- Department of Environmental Conservation
- Department of Transportation and Public Facilities
- Kenai Peninsula Borough
- Kenai Peninsula Borough River Center
- United States Army Corp of Engineers
- Cook Inlet Region, Inc. (CIRI)

Two comments of No Objection were received during this review; one from the Department of Fish and Game, Division of Sport Fish, and one from DNR's Office of History and Archaeology.

No other comments were received.

Lease Discussion:
The Saltry restaurant was built in the fall of 1983 and opened its doors in April of 1984; the Halibut Cove Experience Art Gallery (Art Gallery) started in 1989. Both sites are located on privately owned uplands and extend onto State owned tidelands (the tidally influenced land below mean high water) on the southerly shore of West Ismailof Island. Commercially used structures are not considered by regulation, 11 AAC 96.020, to be a Generally Allowed Use of State land. As such any business interested in placing structures in State owned tidelands must obtain an authorization from the State. As these structures are beyond the purview of a permit or an easement, their occupation of State owned tidelands can only be authorized through a lease.

SCRO became aware that The Saltry restaurant was occupying State owned tidelands in 1991 when the Becks submitted their required As-built survey for the restaurant's outfall line easement, ADL 225947. The survey clearly showed that the pile supported structures and floating docks extended beyond the Becks upland property and onto the tidelands. SCRO informed the Becks that a tideland lease was required and they submitted an incomplete application (the Development Plan was not included) for the restaurant in August of 1992.

Over the years the Becks were contacted by the SCRO and informed that a complete Development Plan was required as part of the lease application and that they are responsible for back fees associated for use and occupancy of state tidelands. For a variety of reasons, the file was not advanced and no authorization was ever issued for The Saltry.

Contact with the Becks was re-established in the fall of 2011 and a Development Plan was completed and approved for The Saltry restaurant on December 7, 2011. While reviewing that plan it became apparent that the Halibut Cove Experience Art gallery was not located within the proposed lease boundary for The Saltry; it was a separate building and business and under a different business license. SCRO assigned the Art Gallery an independent case file number, ADL 231299 as the Becks indicated that they wanted a Public and Charitable type lease for the Art Gallery. The completed application and development plan for the Art Gallery, ADL 231299, was accepted on December 9, 2011.

During the 2012 adjudication of these two lease applications (ADL 225943 and 231299) Marian Beck inquired about whether or not these sites could be authorized under a permit. There is no specific statute or regulation that is used to determine the difference; it is left to DNR's discretion to analyze the project and determine an acceptable balance between what is in the best interest of the applicant, the public in general, and the State in particular. Permits are designed for small, temporary projects with limited investment which can be removed within 48 hours of notice. Permits do not give the applicant any property rights to the site and a permit can be terminated with or without cause. At both the Saltry restaurant and Art Gallery sites there is too much infrastructure, monetary investment, and permanence of the buildings to authorize them under a permit. Therefore, these sites must be authorized under a lease.

At this time, the most appropriate lease authorization type for both of these sites is AS 38.05.075(c). This statute grants a preference right to upland owners for the tidelands directly adjacent to their parcel so long as the tideland lease is necessary to facilitate transportation of goods to or from the upland parcel, the lease is compatible with the lands classification, and if the issuance of the tideland lease will not interfere with prior existing rights. As both The Saltry and Art Gallery use pile supported structures, boardwalks, and docks to bring people to the offered goods (art and food); and the dock is consistent with the lands classification of Public Recreation and Tourism-Dispersed Use; there are no other prior existing rights to these tidelands, the AS 38.05.075(c) authorization type is the most appropriate choice for this project.

In 2013 the Saltry requested the Art Gallery lease application, ADL 231299, be combined with Saltry, ADL 225943, since they were choosing not to seek a separate authorization as a Public and Charitable use with the Art Gallery. SCRO closed ADL 231299, the Art Gallery, and combined it with ADL 225943, the Saltry, on August 8, 2013 for adjudication. This created one lease application, ADL 225943, for adjudication with two parcels both part of the overall Saltry complex and on the southerly shore of West Ismailof Island. If in the future the Art Gallery qualifies for exemption from federal income tax, SCRO has the ability to issue a separate lease or amendment for the Art Gallery's parcel under the Public and Charitable Use statute, 38.05.810(b-d). This would be an administrative change only; the same stipulations outlined in this decision would still be applicable.

Additionally, Marian Beck brought issue to the Art Gallery's location and believes it may not extend onto State tidelands. The required lease survey will provide confirmation of its location and if it is determined to not extend

beyond the privately owned uplands then the Art Gallery location will no longer be considered a part of the lease and the rent may be adjusted accordingly.

A term length of 20-30 years is fairly standard for structures of this nature. In consideration of the 29 year commercial activity at the Saltry complex and the 23 year history of commercial activity at the Art gallery, SCRO believes that the start-up costs for both buildings have been amortized. In addition, the longevity of these businesses has created a "destination" for tourist and locals alike to visit. With these considerations in mind, SCRO has determined that a term length of 20 years is appropriate for both the Saltry and Art Gallery parcels under this authorization with the option to renew upon expiration if the lease is in good standing and determined to be in the best interests of the state.

The proposed lease will be subject to the terms of DMLW's standard lease document (available for review upon request) and any Special Stipulations based, in part, upon the following considerations.

Development Plan:
SCRO has accepted the Development Plans (DP) attached to this decision (Attachment A); the Saltry accepted December 7, 2011 and the Art Gallery accepted December 9, 2011. Should the proposed lease be granted, it is anticipated that the DP will need to be updated throughout the life of the lease as activities and/or infrastructure are added or subtracted. All updates must be approved, in writing, by SCRO before any construction, deconstruction, replacement of infrastructure, or change in activity will be permitted. SCRO reserves the right to require additional agency review and/or public notice for changes that are deemed by SCRO to be beyond the scope of this decision.

Hazardous Materials and Potential Contaminants:
No hazardous materials are known to be stored in the lease locations. The Saltry has an easement, ADL 225947, for their outfall line located within the lease area.

The use and storage of all hazardous substances must be done in accordance with existing Federal, State, and local laws. Debris (such as soil) contaminated with used motor oil, solvents, or other chemicals may be classified as a hazardous substance, and must be removed from the site and disposed of in accordance with State and Federal law.

Lease Performance Guaranty (bonding):
In accordance with AS 38.05.035, AS 38.05.860, and 11 AAC 96.060(a) Performance Guaranty, The Saltry will be required to submit two performance guaranties for the lease site.

- **$5,000 EA cash Penalty Bond:** This bond will serve as a default penalty to be forfeited, all or in part, if the applicant fails to submit the survey, appraisal, or other documentation necessary for the issuance of the Lease by the required due dates. After the survey and appraisal requirements have been satisfied this EA bond will be returned along with the issuance of the Lease.

- **$8,000 Performance Bond:** This bond will remain in place for the life the proposed Lease. The bond amount is based upon the level of development, amounts of hazardous material/substances on site, and the perceived liability to the State. This bond will be used to insure the applicant's compliance with the terms and conditions of the Lease issued for their project. This bond amount will be subject to periodic adjustments and may be adjusted upon approval of any amendments, assignments, reappraisals, changes in the DP, changes in the activities conducted, or changes in the performance of operations conducted on the authorized premises, and as a result of any violations to one or more of the authorizations associated with this project.

- **Reclamation Bond:** SCRO is reserving the right to require a reclamation bond due to noncompliance issues during the term of the Lease or near the end of the life of the project.

Insurance:
In accordance with 11 AAC 96.065, The Saltry will be required to submit proof of liability and worker's compensation insurance to SCRO, with the State of Alaska listed as a "NAMED" insured party. The Saltry will be responsible for maintaining such insurance throughout the term of the EA and the Lease.

Survey:
In accordance with AS 38.04.045, The Saltry must complete an Alaska Tideland Survey (ATS) according to the requirements and standards of the DMLW Survey section prior to lease issuance. The draft survey must be submitted for review to the Survey section within **one year** of issuance of the Survey Instructions. If the submitted survey is accepted by DMLW, the measurements identified will be used to accurately calculate the total acreage. The survey must depict the leased boundaries as two separate tracts, the Saltry complex and the Art Gallery, all improvements extending below Mean High Water including number of pilings, dock location and square footage, and buildings, and the 50-foot public Along easement extending below the Mean Water Line throughout each lease parcel.

Compensation/Appraisal:
In accordance with AS 38.05.840, State-owned land may only be leased if it has been appraised within two years before lease issuance. SCRO has coordinated with DNR's Appraisal Unit and The Saltry will be required to provide an appraisal of the parcels before the proposed Lease will be issued. Once the appraisal has been approved by DNR, the annual lease fee will be set at 8-12% of the fair market value of the proposed leasehold or $1,000 (minimum required by 11 AAC 58.410(b)), whichever is greater. Furthermore, in accordance with AS 38.05.105, the proposed EA and Lease will be subject to reappraisal at five-year intervals after the issuance of the proposed authorization.

Back Fees:
The Saltry restaurant has been commercially occupying State owned tidelands without proper State authorization for 30 years; the Art Gallery for 24 years. Based upon the original lease application, SCRO has the ability to collect back fees dating to 1993 for these sites. As part of the negotiations to resolve these files, SCRO has agreed to waive a portion of the back fees owed and settle to lease compensation fees dating back to 2006 at the minimum annual lease fee of $1,000. A total of $9,000 will settle back fees from 2006 to 2015 for the leasehold. All back fees will be required to be paid to the State prior to the issuance of the lease.

Entry Authorization:
SCRO is proposing to authorize The Saltry entry onto State land through the issuance of an Entry Authorization (EA) while they are completing the required survey and/or appraisal for the site. The proposed EA would be issued after the Final Finding and Decision goes into effect. The effective date of the EA will be the start of the Lease term.

Subleasing:
Subleasing is permissible through AS 38.05.095, if the proposed lease is approved. All potential subleases must first be approved in writing by SCRO. Depending on the activity of any potential subleases, SCRO is reserving the right to reevaluate the need for further agency review and/or public notice before making a determination on the appropriateness of the proposed sublease. Sublease compensation to the State will be determined by SCRO according to AS 38.05.073(m), under the authority of AS 38.05.075(a) Leasing Procedures. In any case, the sublease fee for commercial activities will not be less than 25% of the annual fee paid to The Saltry by the sublessee.

Assignment of Lease:
The proposed Lease, if issued, may be transferred or assigned to another individual or corporation only with written approval from the State of Alaska. A lease will not be assigned to an entity if that entity does not meet the statutory requirements of the lease; or if the lessee is considered not to be in "good standing" with this or any other agency authorization.

Reclamation:
In accordance with AS 38.05.090(b), all lessees must restore their leased sites to a "good and marketable condition" within a minimum of 120 days after the termination of their leases. What level of reclamation constitutes as being "good and marketable" is at the discretion of SCRO.

Public Notice of the Preliminary Decision:
Pursuant to AS 38.05.945, this Preliminary Decision will be advertised for a 30-day public comment period**,** starting on **November 27, 2015.** Courtesy notices will also be mailed or emailed to neighboring property owners, permit/lease holders, and other interested parties on **November 25, 2015.**

In addition, the post offices located near the site (**Fritz Creek**, **Homer, and Seldovia**) will be requested to post the notice per AS 38.05.945(b)(3)(B). The notice will also be posted on the Department's website located at dnr.alaska.gov/commis/pic/pubnotfrm.htm.

Comment(s):
This decision is subject to both public and agency comments and all comments received by the comment deadline will be addressed in the Final Finding and Decision**.** Only those who comment and the applicant have the right to appeal this decision**.**

Written comments about this project must be received in this office no later than 5:00 PM on December 28, 2015 to be considered.

To submit comments, please choose one of the following methods:

Postal:	Department of Natural Resources Division of Mining, Land and Water Southcentral Region Office ATTN: Brandon Tucker 550 West 7th Avenue, Suite 900C Anchorage, AK 99501-3577
Email:	brandon.tucker@alaska.gov
Fax:	(907) 269-8913

Questions about the lease portion of this project can be directed to Brandon Tucker at (907) 269-8549.

If public comments result in significant changes to the Preliminary Decision, additional public notice will be given. To be eligible to appeal the Final Finding and Decision, a person must provide written comments during the Preliminary Decision comment period per AS 38.05.035(i)-(m).

Signature page follows:

Recommendation:

DMLW has completed a review of the information provided by the applicant, examined the relevant land management documents, and has found that this project is consistent with all applicable statutes and regulations. This decision considers The Saltry's need for commercial docks (Saltry restaurant and Art Gallery) extending into State Tidelands, the economic benefit of the commercial activities to the lessee and the Halibut Cove community, and the State's need for regulation of permanent structures on State land.

11/24/15

Brandon Tucker, Natural Resource Specialist II — Date

Preliminary Decision:

It is the determination of the Division of Mining, Land and Water that it may be in the State's best interest to issue a lease under AS 38.05.075(c) for 20 years to The Saltry, as described above. This application shall now proceed to public notice.

11/24/15

Clark Cox, Regional Manager — Date
Southcentral Region Land Office, Division of Mining, Land and Water

Attachments

Attachment A – Development Plans
Attachment B – Location Maps
Attachment C – ADF&G's Special Area Permit (SAP) stipulations, Permit No. FG 92-II-0749
Attachment D – Department of Army Corps of Engineers, Permit No. 1-920677 Halibut Cove 13

Attachment A
Development Plans

Development/Operational Plan
ADL 225943 The Saltry Inc.

The Saltry is an Alaskan owned and operated waterfront restaurant located in Halibut Cove, Alaska, just 5.5miles East of Homer on the South shore of Kachemak Bay. The restaurant is known for a sense of time and place, artfully expressed old Alaska combined with seafood having an international-Asian flare. Sea food served in the restaurant is caught by local fishermen in Kachemak Bay, Cook Inlet and other parts of the Gulf of Alaska, processed on site, and then served hot and fresh to your table.

The Saltry Inc. was established by Marian and Dave Beck in 1983. They acquired a unique building, dubbed by locals as "The Flying Nun" to house their unique island eatery. A U-shaped dock was constructed adjacent to the family's uplands on West Ismailof Island in preparation for the Saltry's arrival. Moving day was chosen for its twenty-three foot tide, the highest of the season. When the tide was at its highest point, the barge was eased into the U-shaped opening. As the tide dropped, the empty barge eased down and away with the tide. Pilings were erected from the beach at low tide to brace the Saltry from underneath. If you look at the dock around the Saltry now, it's possible to see, how its final settling place is slightly askew.

The Saltry first opened its doors in April 1984. Eighty people arrived for the celebratory potluck, despite the howling blizzard of rain and snow. At its inception, the Saltry provided simply fare: drinks at the bar, hot chowder, fresh bread and cold appetizers-such as pickled fish- that are still on the menu today. Currently, the Saltry serves about 100 people daily during the summer (Memorial Day to Labor Day) dishing out gourmet food from a kitchen decidedly more sophisticated than in 1984. What hasn't changed is the incredibly beautiful setting of the Saltry, with its view of the mountains and glaciers from its perch above the water, and the desire to bring the freshest fish and oysters straight from Kachemak Bay to your table.

Today, there are 10 pile supported buildings which make up the Saltry complex. This is an all wood facility, built by ourselves. To varying degrees, portions of these structures are below mean high water. Overall, approximately two thirds of the complex could be within the tidelands, and the possibility exists that the employee cabins and the western board walk are fully on our privately owned uplands.

The structures that make up the Saltry complex are:

- Four 12' x 12' wood cabins each with a storage loft used for employee housing. The dock the cabins are sitting on is 70' x 20' length wise to the cliff. The longest piling is 12' and the shortest is 3'. *(Labeled #1 on the site drawing.)*

- The western board walk to the restaurant hugs the cliff and is 4' wide and 123' long. The longest piling is 13'6" and the shortest is 5'. (Not labeled on the site drawing.)

- The ware house/art studio is 32' x 24'. The longest piling is 18' and the shortest is 2'. *(Labeled #2 on the site drawing.)*

- The board walk between the warehouse/studio and the Saltry building is 96’ x 36’ with the longest piling being 20’ and the shortest 5’ 6”. *(Not labeled on the site drawing.)*
- On this section of the boardwalk exists:
    - An 8’ x 8’ generator shed, that also houses the restaurant’s fire pumps. (*Labeled #3 on the site drawing.)*
        - The generator has one 50 gallon fuel tank
    - A freezer/store room measuring 26’ x 8’ *(Labeled #4 on the site drawing.)*
    - Slightly in front of the store room is the 16’ x 24’ pottery studio where Marion produces the plates and other dishes used in the restaurant. This structure also contains a small laundry room and a loft. *(Labeled #5 on the site drawing.)*
    - Just to the east of the pottery studio is a 16’ x 16’ dry food storage and walk in cooler room. *(Labeled #6 on the site drawing.)*
- The Saltry kitchen is 16’ x 34’ with two 4’ x 8’ restrooms behind it. The dining room is 16’ x 24’ with a loft above. The loft is accessible from the top of cliff by stairs to a deck over the kitchen as well as stairs from the dock. *(Labeled #7 on the site drawing.)*
- The Salty dock is a shaped to fit the cliff, it is 70’ at the longest point and 12’ at the shortest; 81’ 6” long. The open part of the deck is mostly covered by a pavilion the hangs off the cliff by galvanized eye bolts secured by epoxy in the cliff. *(Labeled #12 on the site drawing.)*
- The eastern boardwalk from the Saltry to the corner is 63’ x 7’, having the longest piling 15’ and the shortest 9’ 6”. *(Labeled #11 on the site drawing.)*
- There are two floating docks in front of the Saltry. The main floating dock is 153’ x 8’. There is a smaller side dock measuring 48’ x 4’ for small skiffs. The floating docks are made of wood and are about 18” thick with tie up rails. The floating docks are secured by an anchor (6000lbs); they start approximately 40’ in front of the restaurant.
- A 50’ x 4’ aluminum ramp spans the distance between the Saltry and the floating docks. *(Labeled #9 on the site drawing.)*

This facility was built on the face of a cliff and within the tidelands of West Ismailof Island. The beach that rises steeply up to the cliff, it consists of boulders and mud and has an approximately 17.5 foot tidal range. There are stairs both from the Saltry restaurant and the warehouse/studio which lead to the privately owned uplands at the top of the cliff. Halibut Cove residence can access the facility from the eastern board walk as well as by the floating dock; the general public

can access the restaurant via the floating docks. At one time there may be 10 or so boats tied up on the floating docks and we do not charge any docking fees. Most visitors to the restaurant arrive on the 32 passenger ferry, the Danny J. The Saltry employs six operators and additional gardeners and sometimes additional bar tenders, during the summer. The restaurant buildings are shut down, for winter, eight and a half months, per year. The pottery studio, warehouse and docks are used by the Becks year round.

Electricity is provided by HEA from a transmission line on the uplands. A generator is located on the complex to provide power in the case of an outage. That generator is run off of a 50 gallon tank. Proper absorbent material is on hand in case of any spillage. The kitchen, bathrooms, pottery studio are plumbed and all waste water is disposed of through an ADEC approved outfall line which runs under the main floating dock, these systems are not in use for eight and a half months a year. All trash generated at the complex is collected and goes, every day, on the Danny J's morning run to Homer and is disposed of in an ADEC approved dumpster.

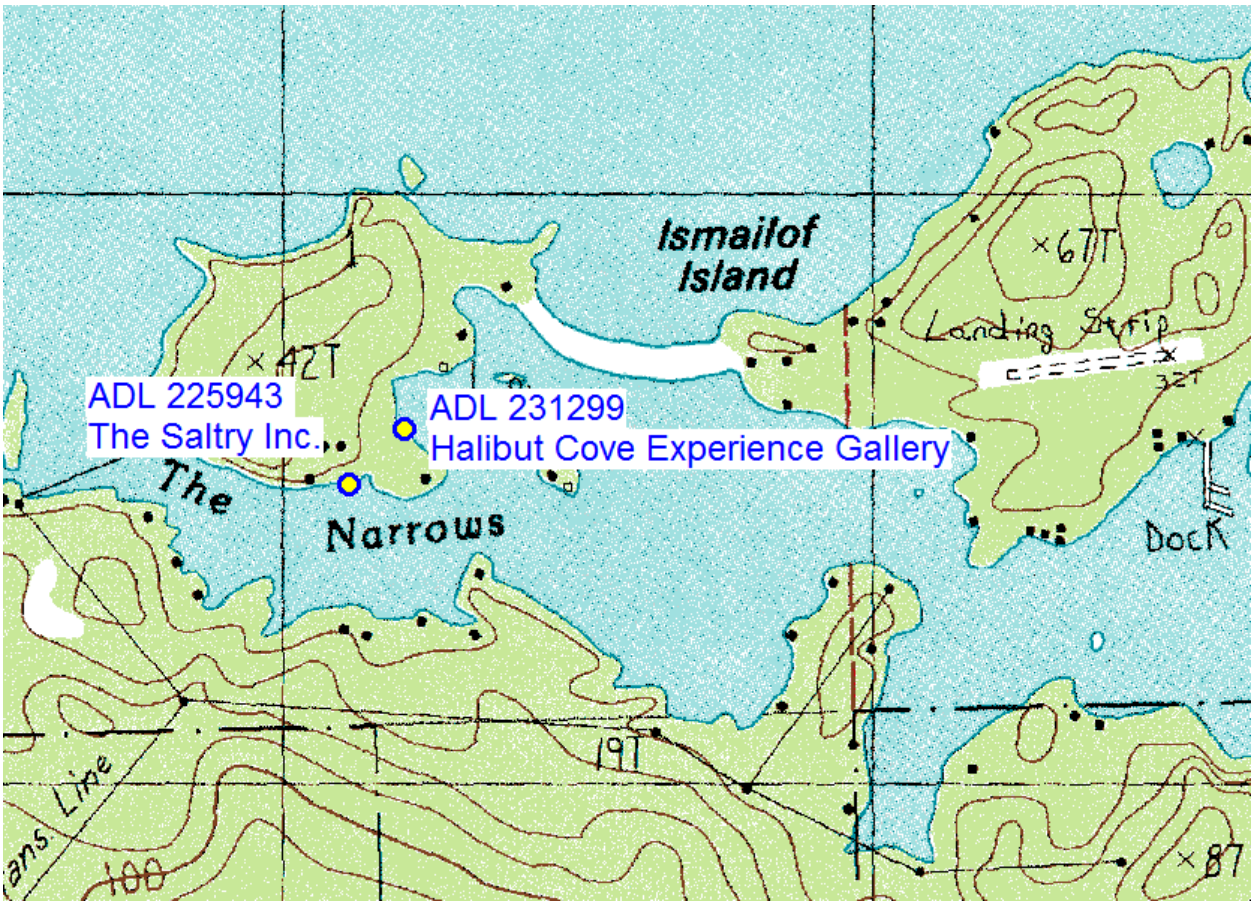
Narrative for the Halibut Cove's Experience Gallery

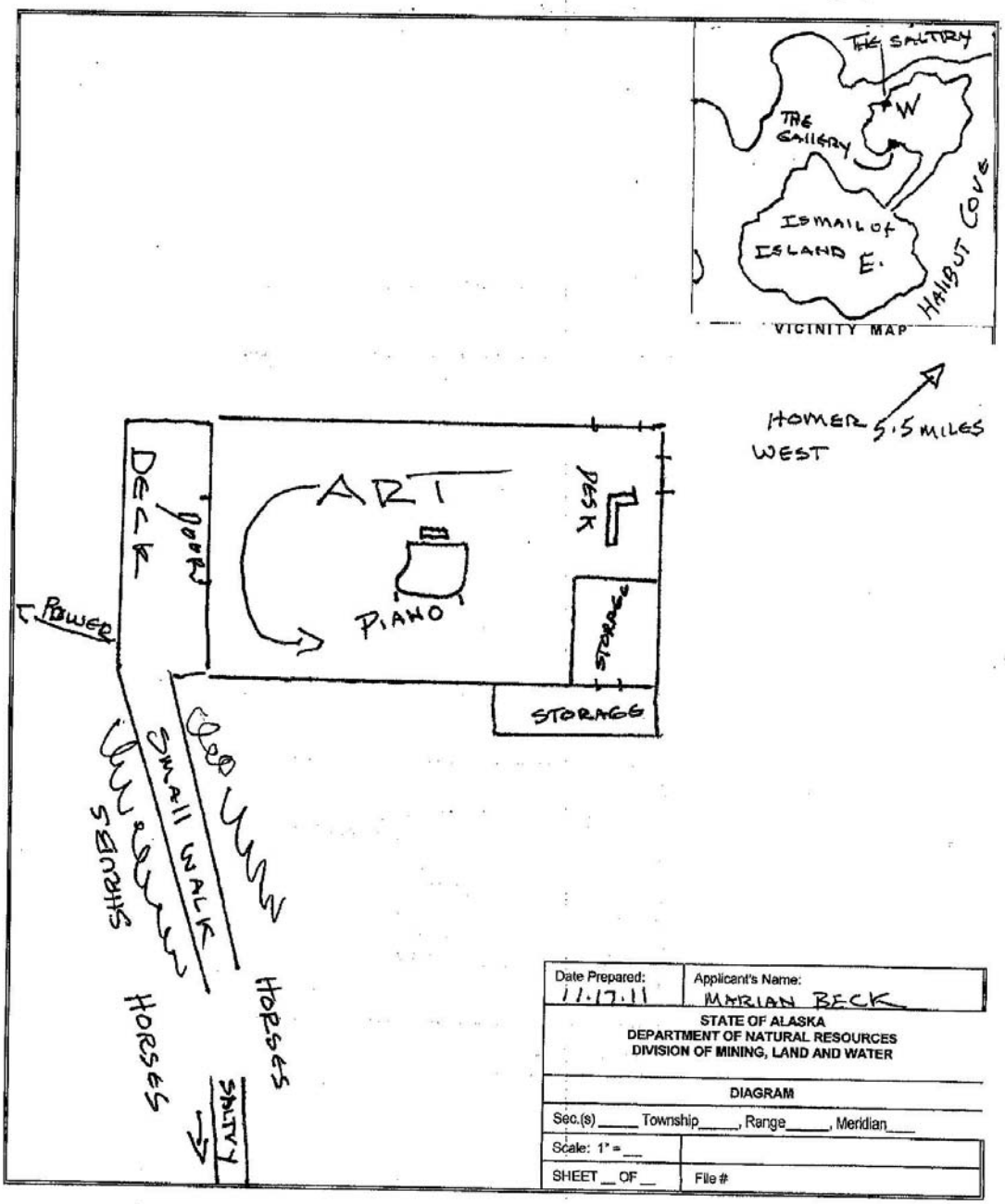
The Halibut Cove Experience Fine Art Gallery is located 6 miles across Kachemak Bay from Homer in the unique community of Halibut Cove. The beauty of this area has attracted a number of artists to settle here. Our gallery's mission is to advance the development of art in Halibut Cove by exhibiting the work of 18 local artists currently working in a variety of mediums. The gallery is open from Memorial weekend through Labor Day. We get approximately 8,000 visitors every summer and the gallery is staffed by some of the same artist whose work graces the gallery exhibits. Access to the waterfront gallery is obtained via the Saltry's boardwalk.

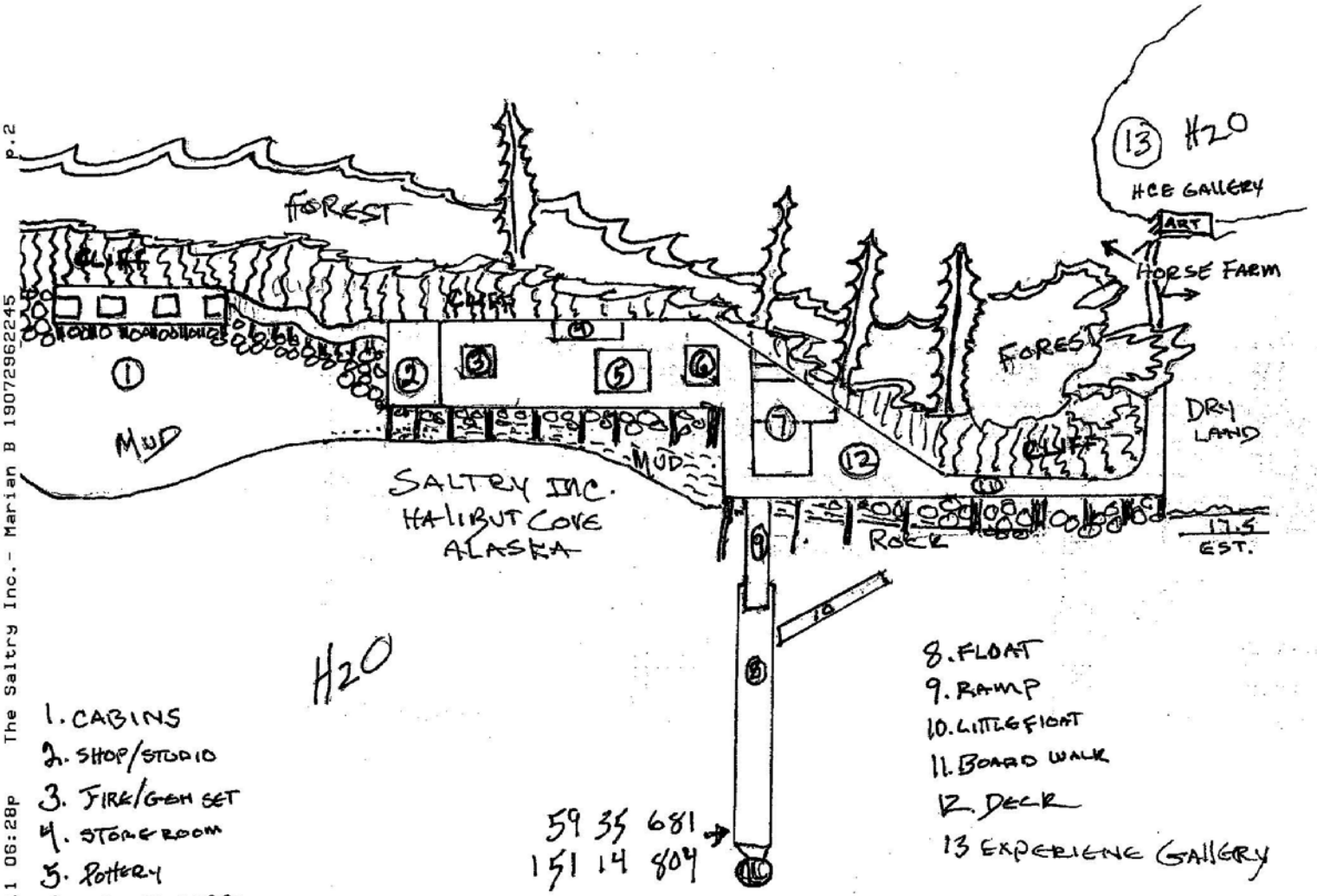
The art gallery building is a 24X32 foot pile supported warehouse/shop structure with an open floor plan inside which was built in 1989. In addition to being a place where local artists display and sell their artwork, this gallery serves as a community venue; hosting free concerts, talent shows, guest lecture series and the like. The business operates as a non-profit and sells only the art produced by Halibut Cove artists.

Electricity is provided by HEA from a transmission line on the uplands. There are no generators or fuel tanks associated with this site. In addition, the building is not plumbed nor does it have running water. Very little trash is generated at this site, but what is created is properly collected and ferried over to Homer for disposal in an ADEC approved dumpster.

Attachment B
Location Maps




THE SALTRY
W
THE GALLERY
ISMAIL OF ISLAND
E.
HALIBUT COVE
VICINITY MAP
HOMER 5.5 MILES WEST
ART
PIANO
DESK
STORAGE
STORAGE
DECK
DOOR
POWER
SMALL WALK
SHRUBS
HORSES
HORSES
SALTRY
Date Prepared: 11.17.11
Applicant's Name: MARIAN BECK
STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER
DIAGRAM
Sec.(s) ____ Township____, Range____, Meridian___
Scale: 1" = ___
SHEET __ OF __
File #


FOREST
CLIFF
CLIFF
MUD
MUD
SALTRY INC.
HALIBUT COVE
ALASKA
ROCK
FOREST
CLIFF
DRY LAND
13 H2O
ICE GALLERY
ART
HORSE FARM
17.5
EST.
H2O
59 35 681
151 14 804
1. CABINS
2. SHOP/STUDIO
3. FIRE/GEM SET
4. STORE ROOM
5. POTTERY
6. DRY STORAGE
7. SALTRY
8. FLOAT
9. RAMP
10. LITTLE FLOAT
11. BOARD WALK
12. DECK
13 EXPERIENCE GALLERY

Attachment C
Alaska Department of Fish and Game Special Area Permit

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF FISH AND GAME

333 RASPBERRY ROAD
ANCHORAGE, ALASKA 99518-1599
PHONE: (907) 344-0541

SPECIAL AREA PERMIT FG 92-II-0749

February 9, 1993

Mr. David T. Beck
P.O. Box 6410
Halibut Cove, AK 99603

Dear Mr. Beck:

Re: Docks, Pilings, and Boardwalks - Halibut Cove
Kachemak Bay Critical Habitat Area
(Section 1, T. 7 S., R. 12 W., S.M.)
(SID AK921124-08A; COE 1-920677, Halibut Cove 13)

Pursuant to AS 16.20.530 and 5 AAC 95, the Alaska Department of Fish and Game (ADF&G) has reviewed your proposal to retain two pile-supported docks with a connecting boardwalk and a ramp to a floating dock on Ismailof Island located in Section 1, Township 7 South, Range 12 West, Seward Meridian.

This project is located within the Kachemak Bay Critical Habitat Area (AS 16.20.590). The Kachemak Bay Critical Habitat Area was established in 1974 to protect habitat areas especially crucial to the perpetuation of fish and wildlife and to restrict all other uses not compatible with that primary purpose.

In accordance with AS 16.20.530 and 5 AAC 95, project approval is hereby given subject to the following stipulations:

1. The pile-supported dock and associated facilities shall be maintained, operated, and appurtenances placed in a manner and location that does not restrict free public access for commercial or recreational purposes within the Kachemak Bay Critical Habitat Area.

2. The permittee shall be responsible for the removal of all structures and associated material from the Kachemak Bay Critical Habitat Area should activities cease or be canceled. Such removal shall be accomplished within 90 days of cessation of activities.

3. There shall be no shore anchoring cables or other shore attachments to the floating facility.

4. Floating structures shall be located and secured with standard anchors in such a manner that grounding does not occur at any tidal stage.

For any activity which significantly deviates from the approved plan the permittee shall notify the ADF&G and obtain written approval in the form of a permit amendment prior to commencement of the activity. Any action taken by the permittee which increases the overall scope of the project or which negates, alters or minimizes the intent or effectiveness of any stipulation contained in this permit amendment will be considered a significant deviation from the approved plan. The final determination relative to the significance of any deviation and the need for a permit amendment is the responsibility of the ADF&G; therefore, it is recommended that the ADF&G be consulted immediately when a deviation from the approved plan is being considered.

This letter constitutes a permit issued under the authority of AS 16.20.530 and 5 AAC 95. A copy of this permit must be retained onsite and expires on December 31, 1993. Please be advised that this approval does not relieve you of the responsibility of securing other permits: state, federal, or local.

Pursuant to 6 AAC 80.010(b), the conditions of this permit are consistent with the Standards of the Alaska Coastal Management Program and the Kenai Peninsula Borough Coastal Management Program.

In addition to the penalties provided by law, this permit may be terminated or revoked for failure to comply with its provisions or failure to comply with applicable statutes and regulations. The department reserves the right to require mitigation measures to correct disruption to fish and game created by the project and which were a direct result of the failure to comply with this permit amendment or any applicable law.

The recipient of this permit (permittee) shall indemnify, save harmless, and defend the department, its agents, and its employees from any and all claims, actions or liabilities for injuries or damages sustained by any person or property arising directly or indirectly from permitted activities or the permittee's performance under this permit. However, this provision has no effect, if, but only if, the sole proximate cause of the injury is the department's negligence.

Pursuant to 5 AAC 95.920, an interested person may initiate an appeal of a decision made under this chapter in accordance with the

provisions of AS 44.62.330 - 44 62.630 by requesting a hearing under AS 44.62.370.

Sincerely,

Ron Somerville, Deputy Commissioner

gay a. muhlberg

By: Gay A. Muhlberg
Habitat Biologist
Region II
Habitat and Restoration Division
(907) 267-2284

cc: W. Bucher, ADF&G
D. Clausen, ADF&G
M. Weger, COE
M. Pearsall, KPB
F. Pillifant, OMB/DGC
R. Mills, FWP

Attachment D
Department of Army Corps of Engineers Permit

DEPARTMENT OF THE ARMY PERMIT

Permittee Mr. David T. Beck

Permit No. 1-920677, Halibut Cove 13

Issuing Office U. S. Army Engineer District, Alaska

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: After-the-fact retention of two docks with a connecting boardwalk, built on pilings, which contain a restaurant, a storage building, a pottery studio, a fish cleaning building, a warehouse, four employee cabins, and a ramp to an 8' X 185' floating boat dock, as well as a 3/4"-1" water line system from the mainland to West Ismailof Island.

All work will be performed in accordance with the attached plans, 12 sheets, undated.

Project Location: On the south shore of West Ismailof Island, Halibut Cove, Alaska, in Section 1, Township 7 S., Range 12 W., Seward Meridian.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on February 28, 1996. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.

2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

ENG FORM 1721, Nov 86 EDITION OF SEP 82 IS OBSOLETE. *(33 CFR 325 (Appendix A))*

1

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

Any wooden piles, timbers, or other materials used to repair, replace, improve, or expand the dock shall not be treated with pentachlorophenol. If materials are treated with creosote, the creosote shall be applied by a pressure treatment, not painted or soaked into the wood.

Special Information:

Any condition incorporated by reference into this permit by Special Condition or by General Condition 5, remains a condition of this permit unless expressly modified or deleted, in writing, by the District Engineer or his authorized representative.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

(X) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

( ) Section 404 of the Clean Water Act (33 U.S.C. 1344).

( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

David M. Beck Owner — 2/25/93

(PERMITTEE) AND TITLE — (DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

Mary A. Weger — March 2, 1993

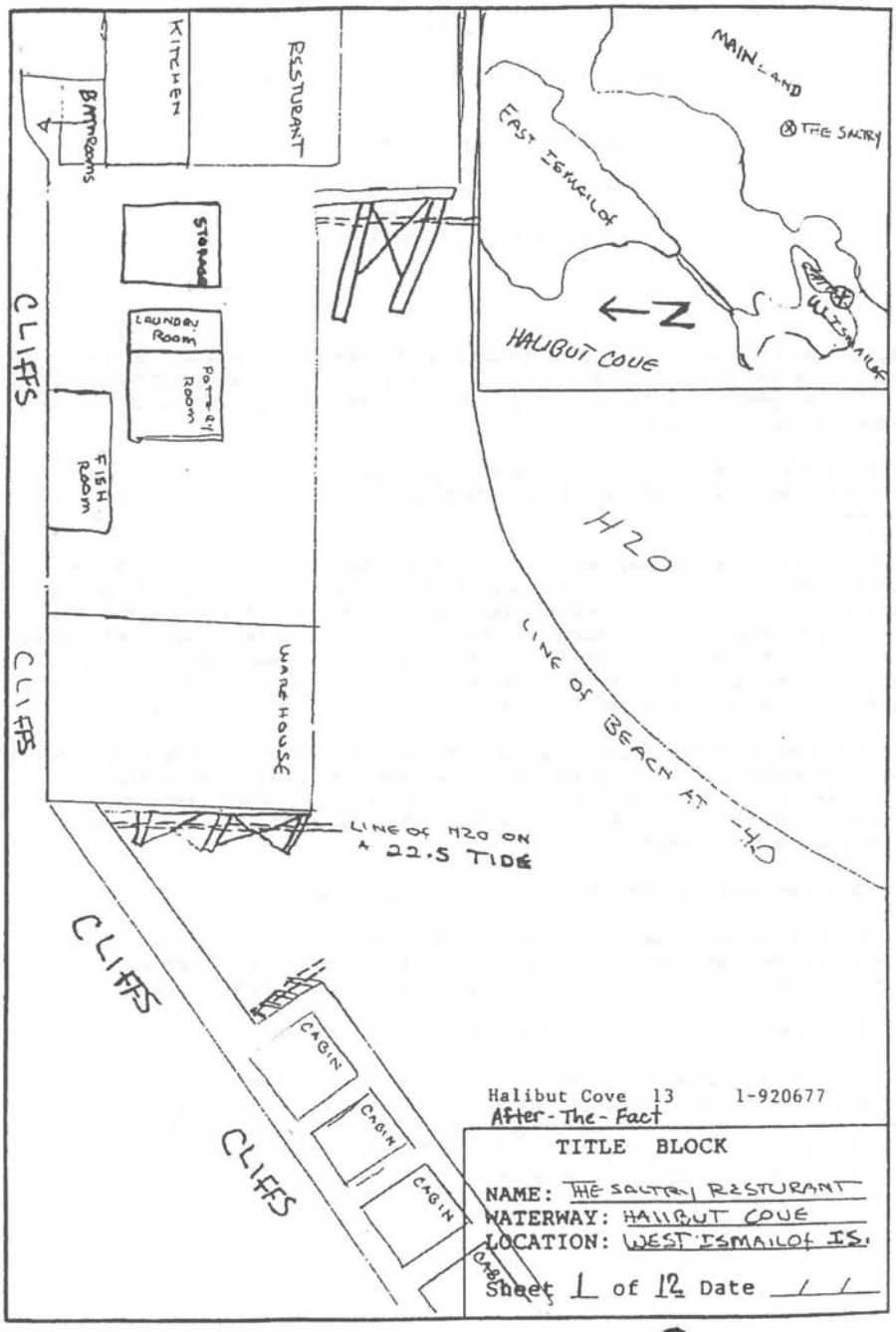
FOR: (DISTRICT ENGINEER) Colonel John W. Pierce — (DATE)

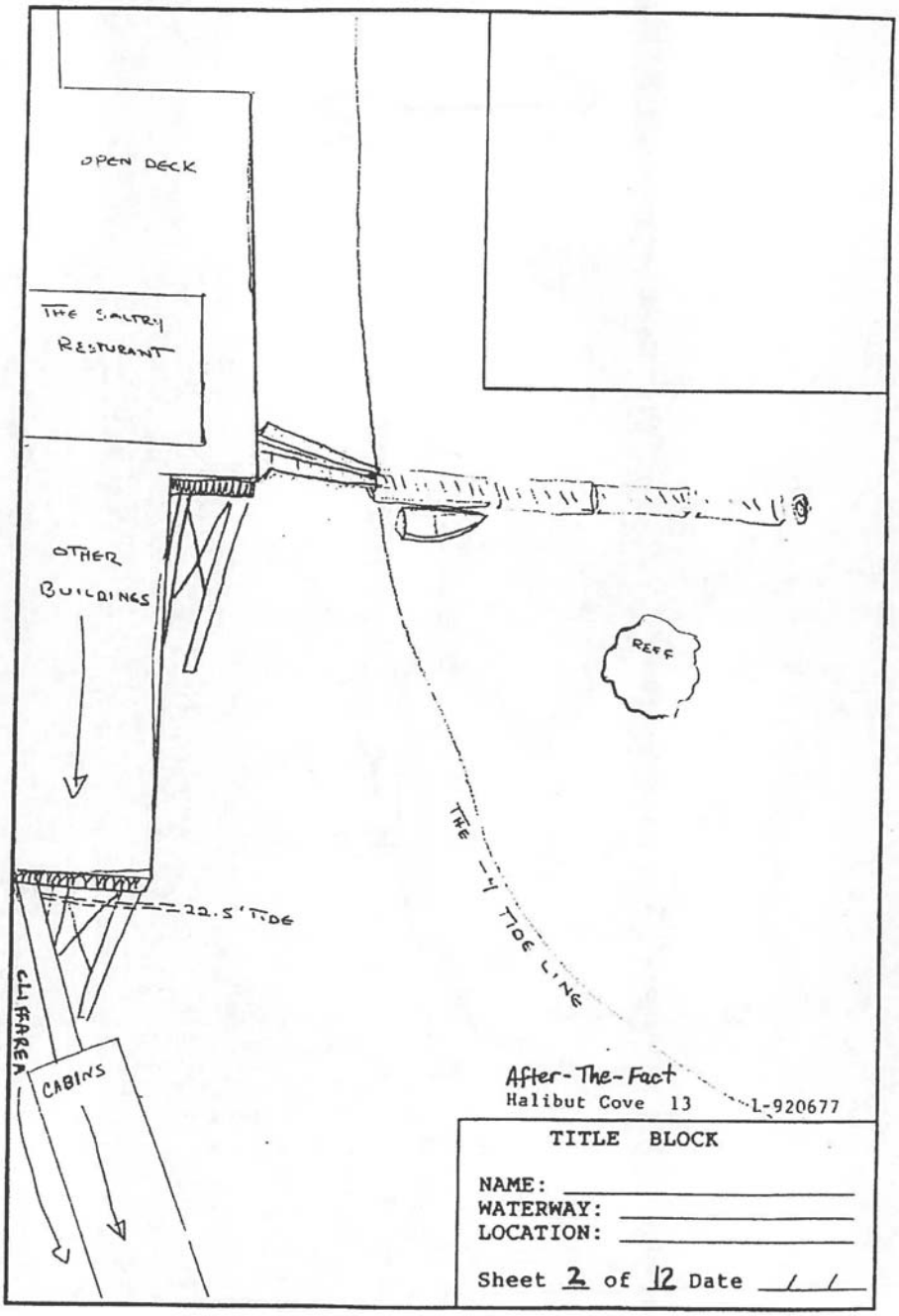
Mary A. Weger
Project Manager
Project Evaluation Section - North
Regulatory Branch

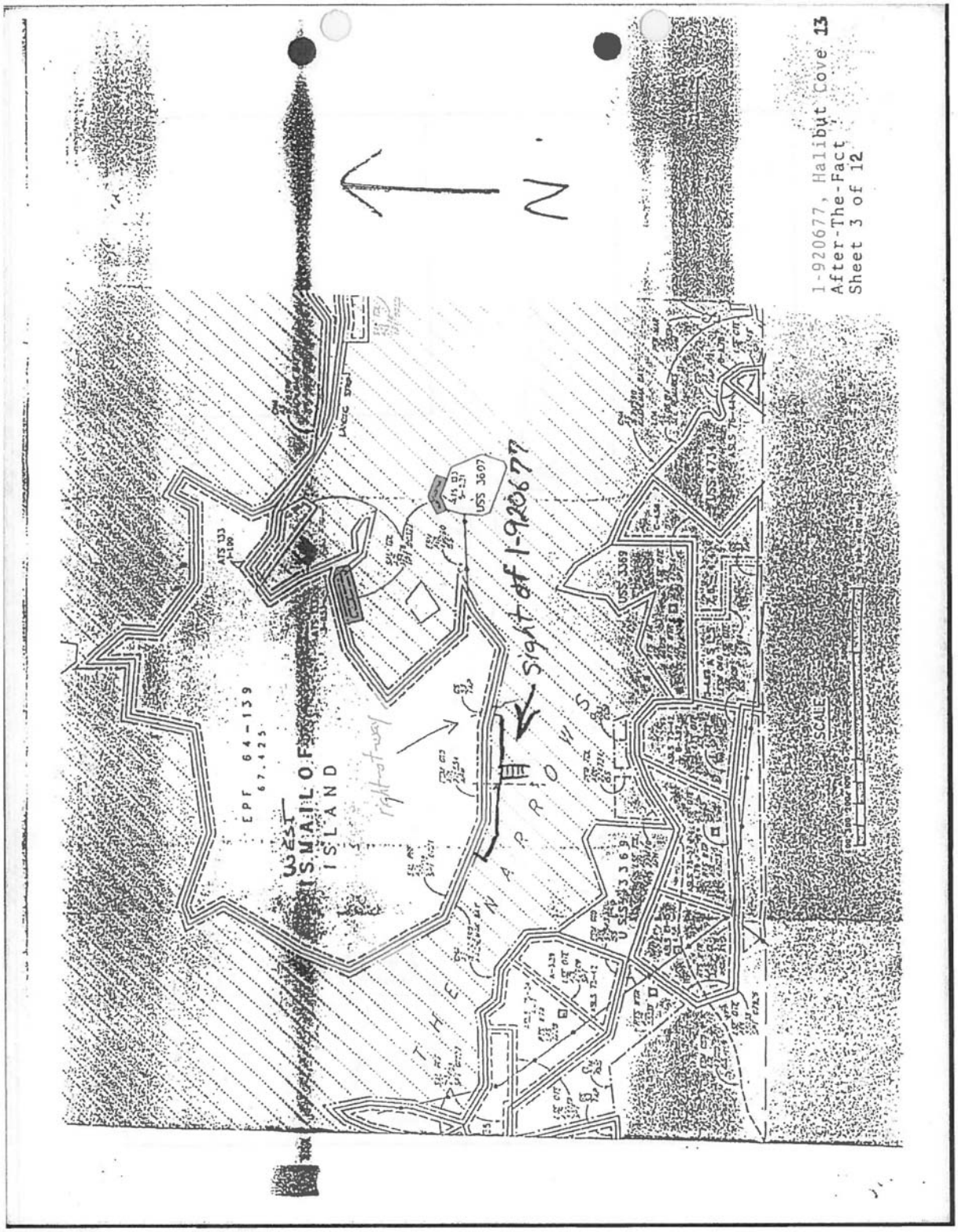
When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

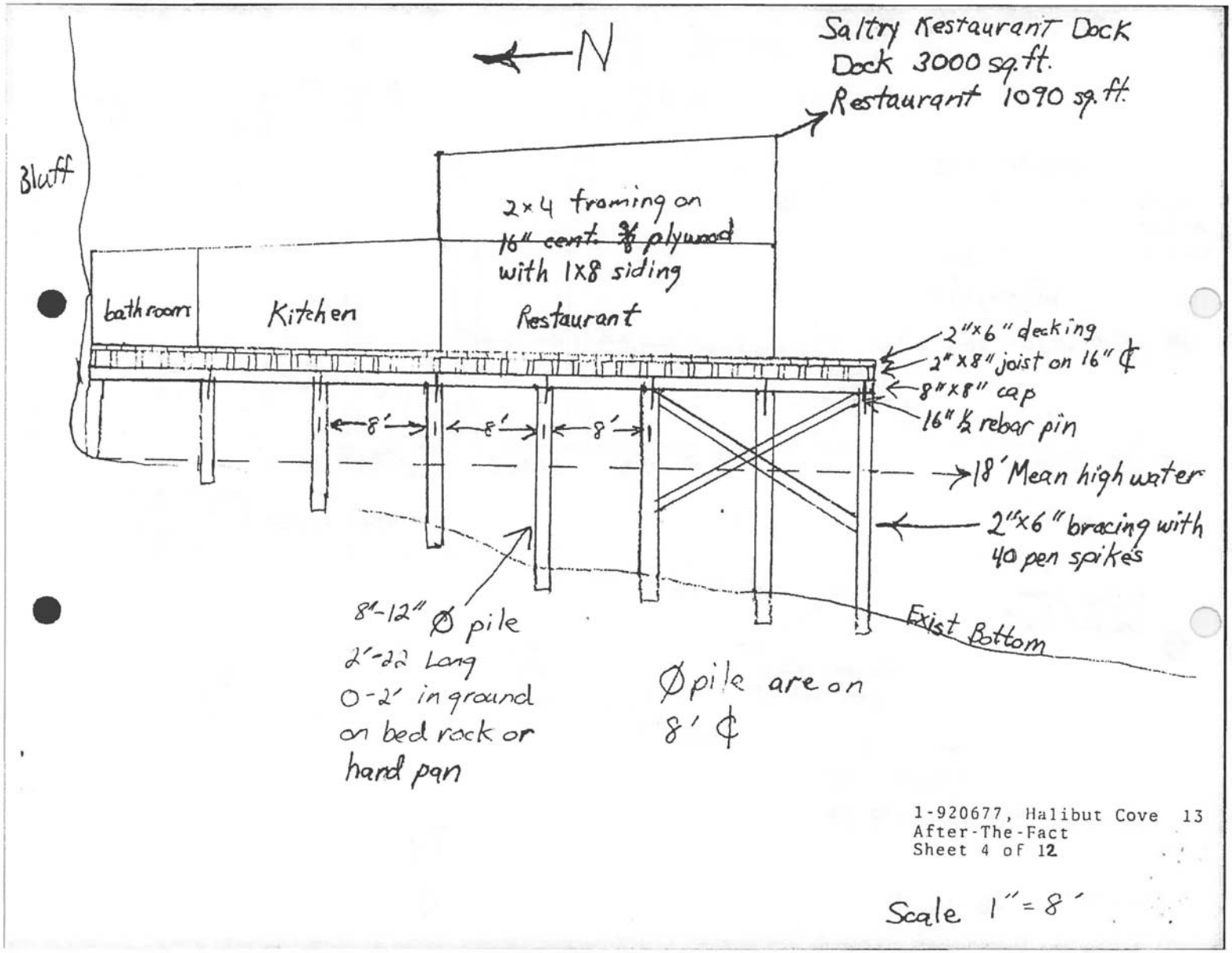
(TRANSFEREE) — (DATE)

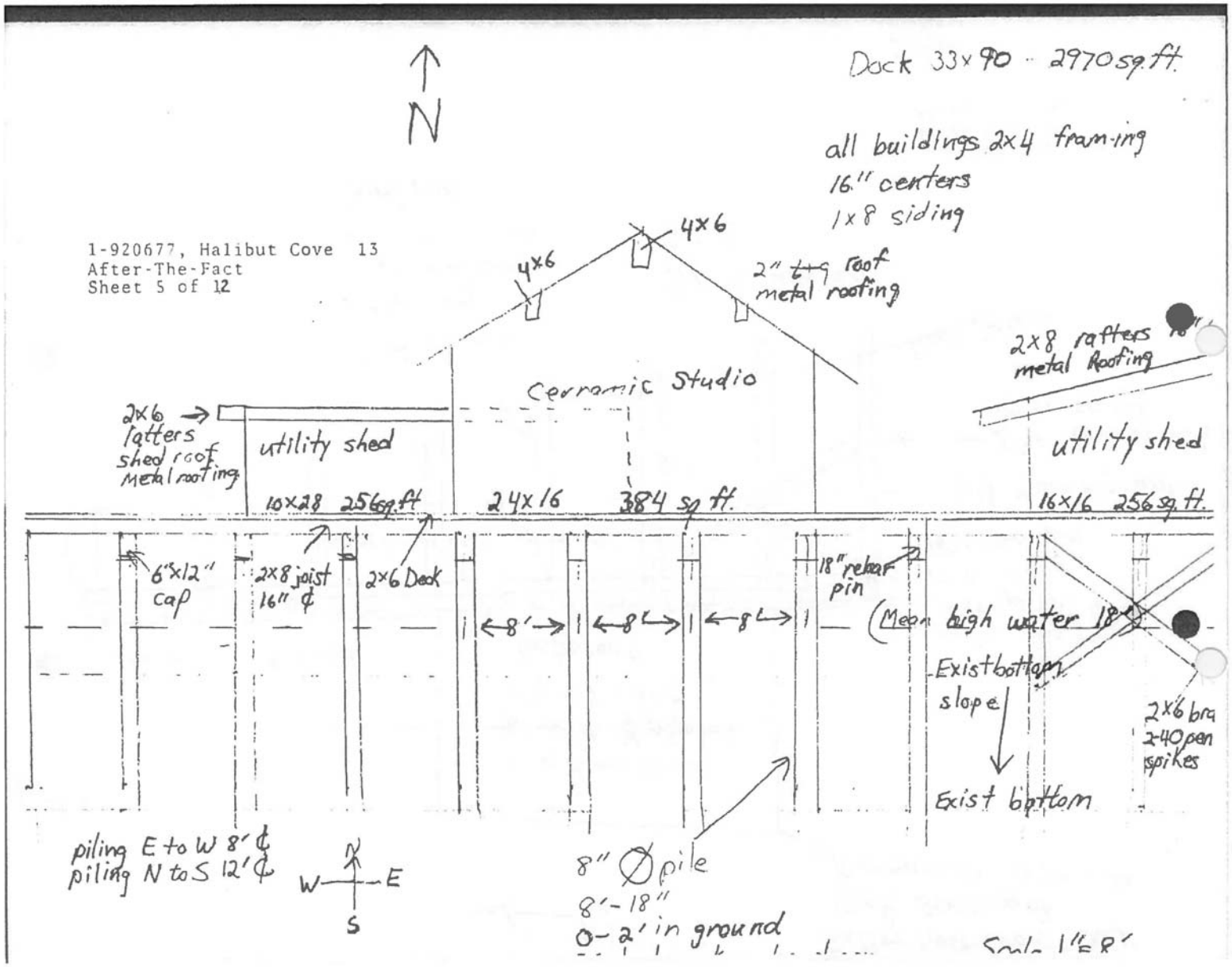
☆U.S. GOVERNMENT PRINTING OFFICE: 1986 — 717-425

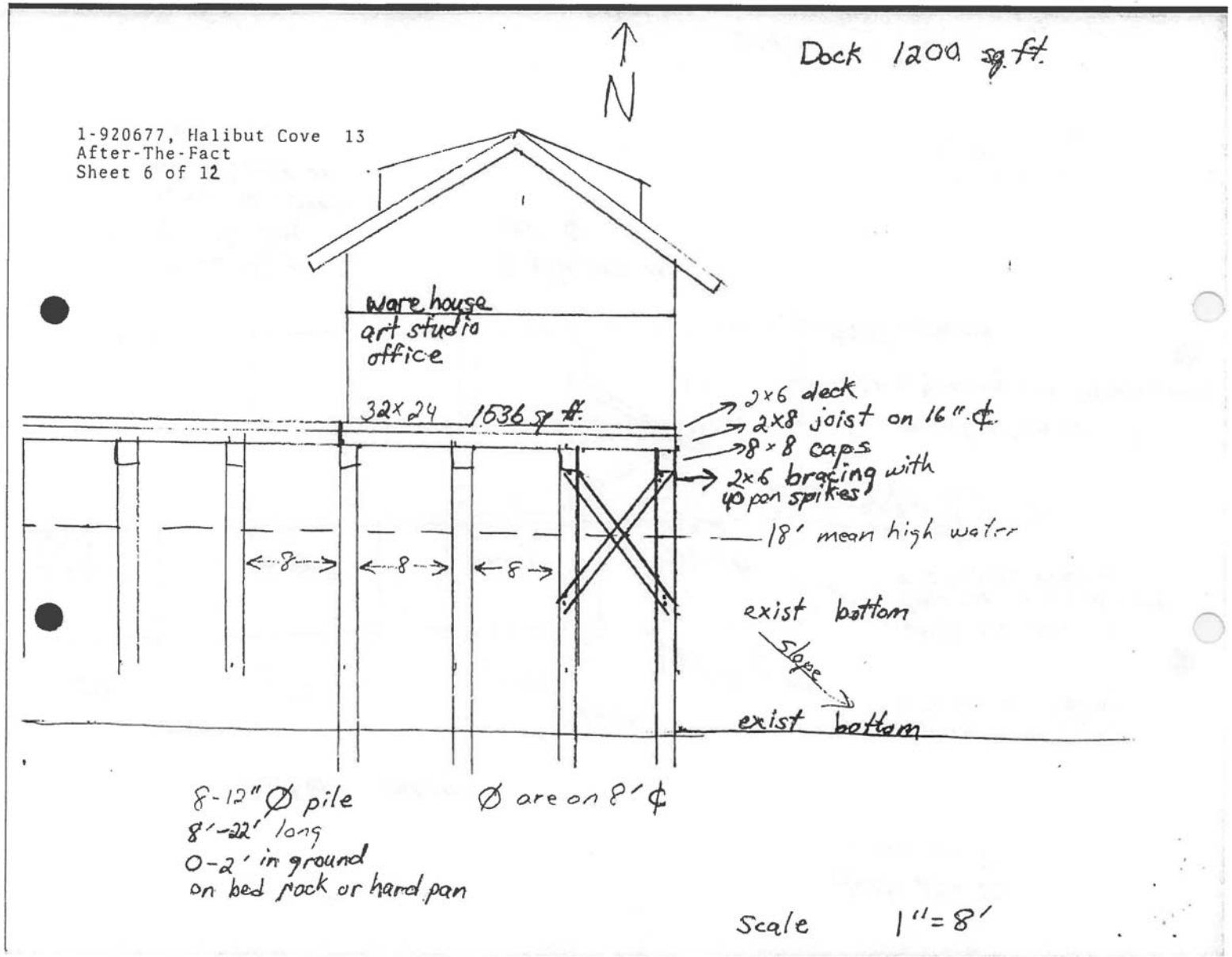

MAIN LAND
THE SALTRY
EAST ISMAILOF
HALIBUT COVE
WEST ISMAILOF
N
KITCHEN
RESTURANT
BATHROOMS
STORAGE
LAUNDRY ROOM
POTTERY ROOM
FISH ROOM
WAREHOUSE
CLIFFS
CLIFFS
CLIFFS
CLIFFS
H2O
LINE OF BEACH AT -4.0
LINE OF H2O ON + 22.5 TIDE
CABIN
CABIN
CABIN
CABIN
Halibut Cove 13 1-920677
After-The-Fact
TITLE BLOCK
NAME: THE SALTRY RESTURANT
WATERWAY: HALIBUT COVE
LOCATION: WEST ISMAILOF IS.
Sheet 1 of 12 Date / /


OPEN DECK
THE SALTRY RESTURANT
OTHER BUILDINGS
REEF
THE 1:1 TIDE LINE
22.5' TIDE
CLEARED AREA
CABINS
After-The-Fact
Halibut Cove 13
L-920677
TITLE BLOCK
NAME:
WATERWAY:
LOCATION:
Sheet 2 of 12 Date / /


1-920677, Halibut Cove 13
After-The-Fact
Sheet 3 of 12
N
SCALE
WEST SMALL OF ISLAND
THE NARROWS
EPF 64-139
67.425
USS 3607
USS 3369
USS 4734
Sight of 1-920677
right-of-way

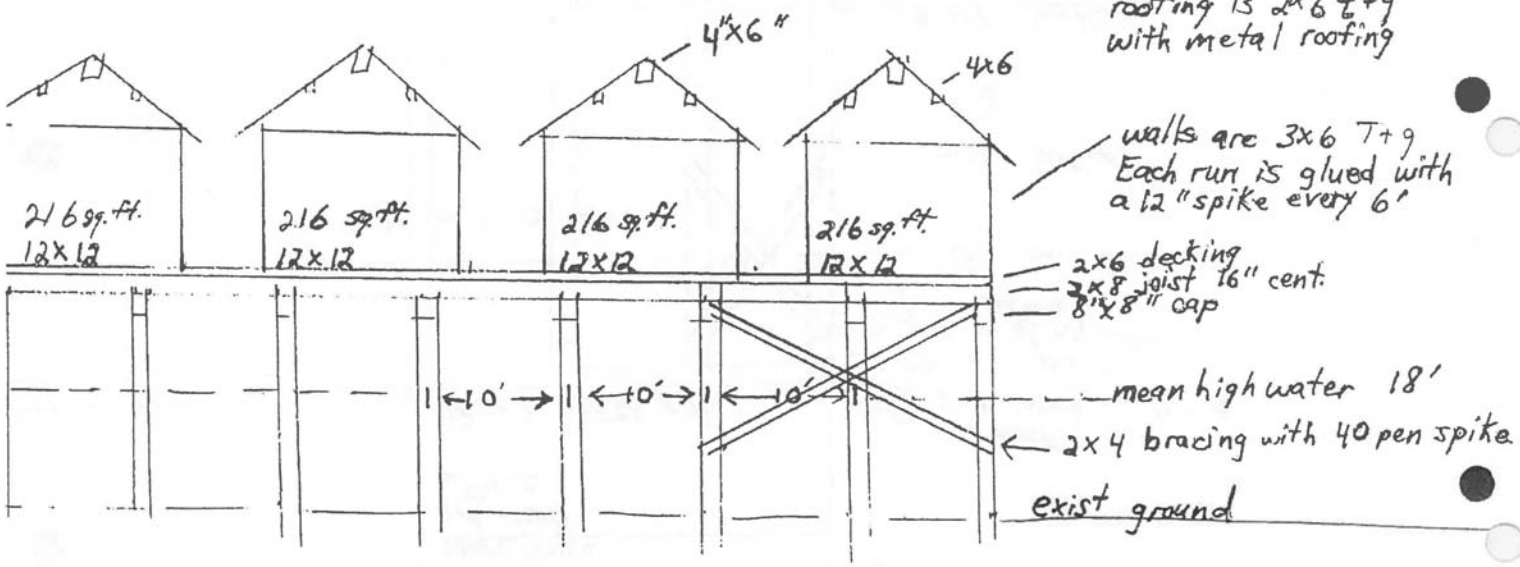

N
Saltry Restaurant Dock
Dock 3000 sq.ft.
Restaurant 1090 sq.ft.
Bluff
2x4 framing on
16" cent. ⅜ plywood
with 1x8 siding
bathroom
Kitchen
Restaurant
2"x6" decking
2"x8" joist on 16" ℄
8"x8" cap
16" ½ rebar pin
8'
8'
8'
18' Mean high water
2"x6" bracing with
40 pen spikes
Exist Bottom
8"-12" Ø pile
2'-22 Long
0-2' in ground
on bed rock or
hard pan
Ø pile are on
8' ℄
1-920677, Halibut Cove 13
After-The-Fact
Sheet 4 of 12
Scale 1" = 8'


1-920677, Halibut Cove 13
After-The-Fact
Sheet 5 of 12
N
Dock 33x90 - 2970 sq.ft.
all buildings 2x4 framing
16" centers
1x8 siding
4x6
4x6
2" ~~t+g~~ roof
metal roofing
Ceramic Studio
2x6 rafters
shed roof
Metal roofing
utility shed
10x28 256 sq.ft
24x16 384 sq ft.
2x8 rafters
metal Roofing
utility shed
16x16 256 sq.ft.
6"x12" cap
2x8 joist 16" ¢
2x6 Deck
8'
8'
8'
18" rebar pin
(Mean high water 18'
Exist bottom slope
Exist bottom
2x6 bra
2-40 pen spikes
piling E to W 8' ¢
piling N to S 12' ¢
W
E
S
8" Ø pile
8'-18"
0-2' in ground
Scale 1"=8'


Dock 1200 sq. ft.
N
1-920677, Halibut Cove 13
After-The-Fact
Sheet 6 of 12
ware house
art studio
office
32x24 1536 sq ft.
2x6 deck
2x8 joist on 16" ¢
8 x 8 caps
2x6 bracing with
40 pan spikes
18' mean high water
8
8
8
exist bottom
Slope
exist bottom
8-12" Ø pile
8'-22' long
0-2' in ground
on bed rock or hard pan
Ø are on 8' ¢
Scale 1" = 8'

dock 20x70
1400 sq. ft.

Workers cabins



roofing is 2x6 t+g
with metal roofing

walls are 3x6 T+g
Each run is glued with
a 12" spike every 6'

2x6 decking
3x8 joist 16" cent.
8"x8" cap

mean high water 18'

2x4 bracing with 40 pen spike

exist ground

8"-12" Ø pile
8'-16' long
0-2' in ground
on bed rock or
hard pan

Ø pile are on
10' ¢

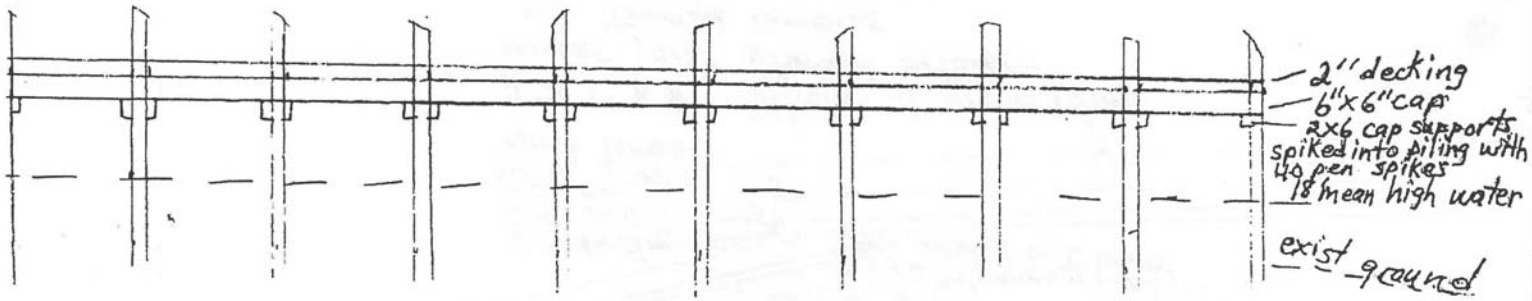
1-920677, Halibut Cove 13
After-The-Fact
Sheet 7 of 12

Scale 1" = 10'

1-920677, Halibut Cove 13
After-The-Fact
Sheet 8 of 12

N

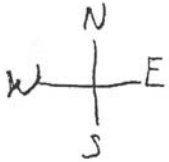
Board walk
114 ft. x 4 ft.
456 sq. ft.



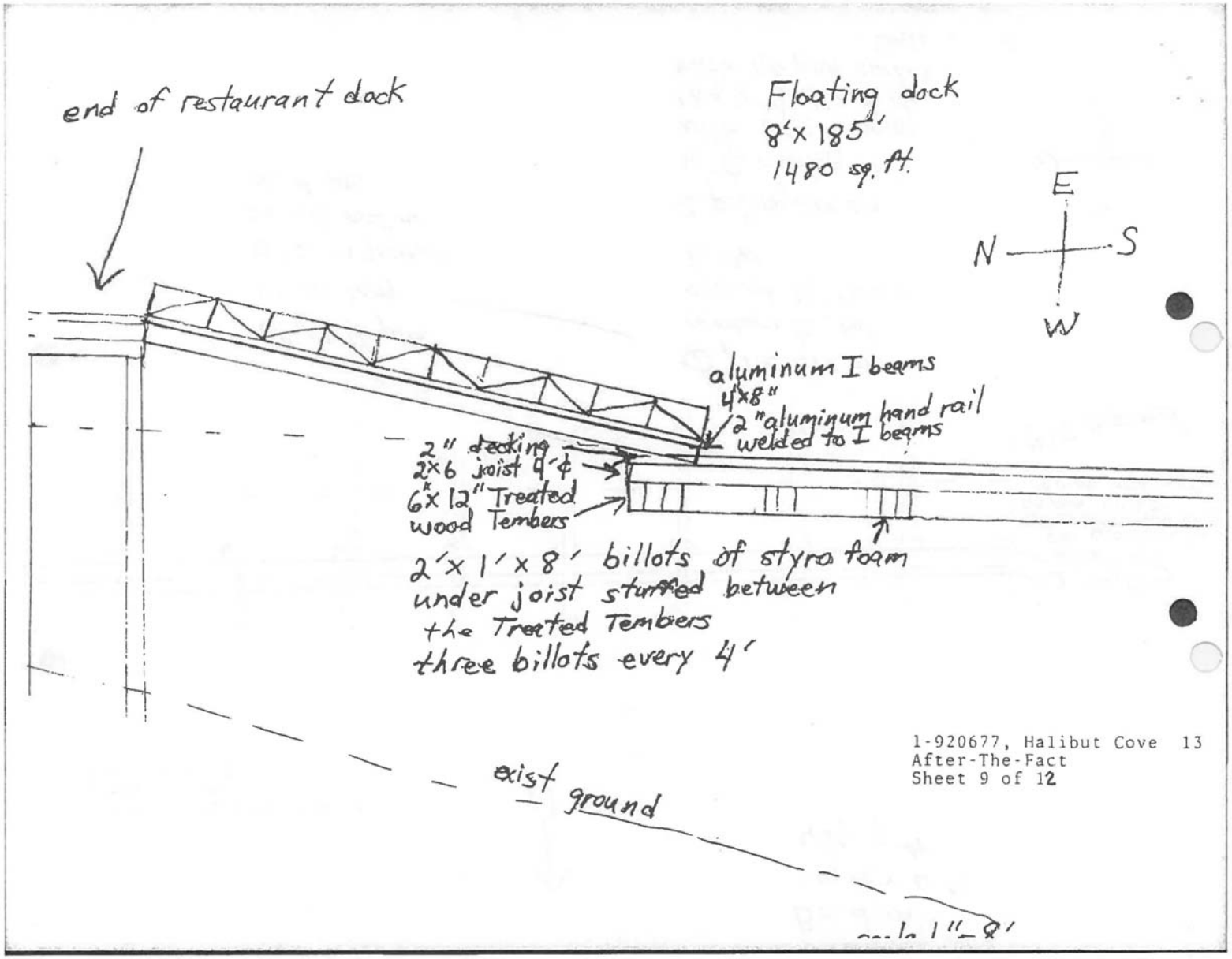
6"-4" Ø pile
5'-14' Long
0'-2' in ground
on bed rock or
hard pan

Ø pile are on
random ℄, but
around 12' runing
E-W

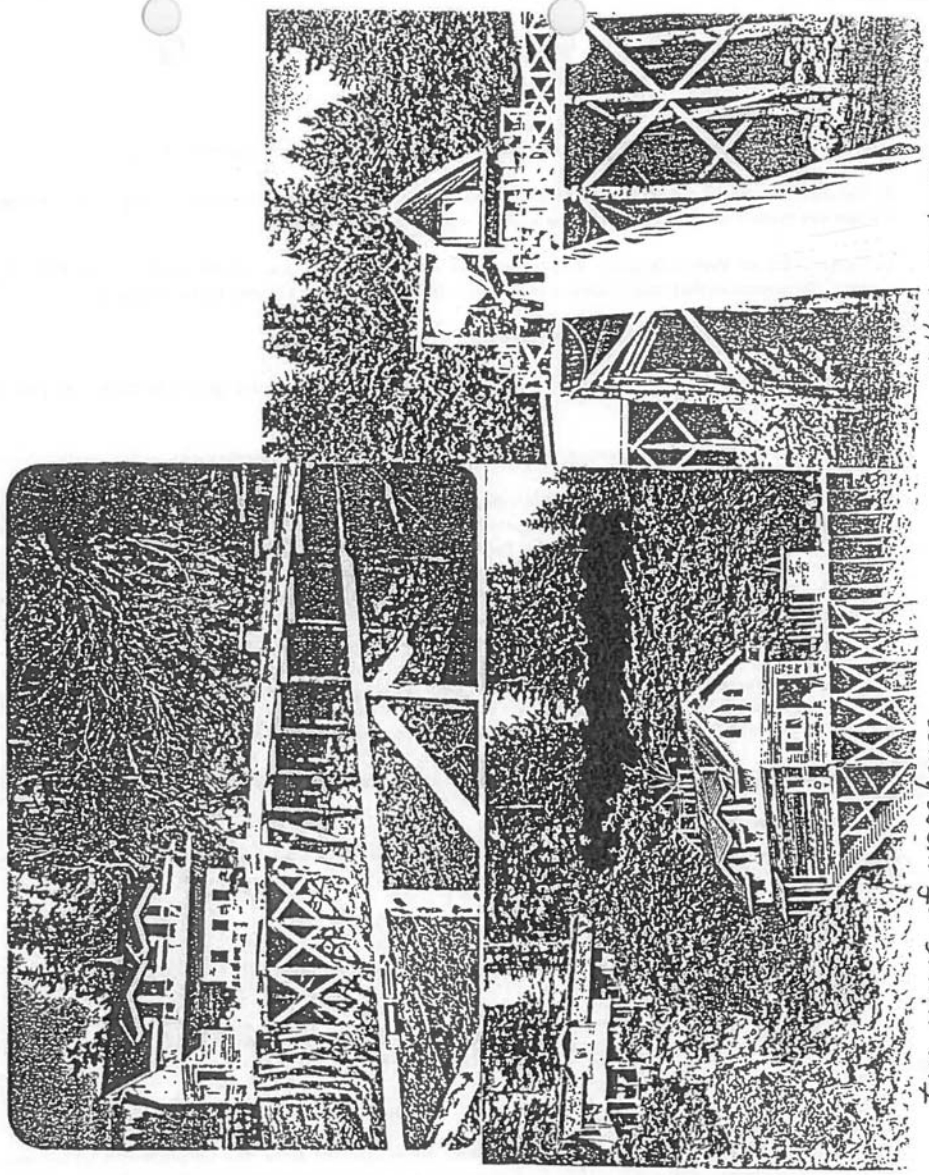
Ø piling are on
4' ℄ running N-S
with 2x4 bracing
the 4' ℄ direction
with 40 pen spikes



Scale 1'-12'


end of restaurant dock
Floating dock
8'x 185'
1480 sq. ft.
E
N
S
W
aluminum I beams
4"x8"
2" aluminum hand rail
welded to I beams
2" decking
2x6 joist 9'¢
6"x 12" Treated
wood Tembers
2'x 1'x 8' billots of styro foam
under joist stuffed between
the Treated Tembers
three billots every 4'
exist ground
1-920677, Halibut Cove 13
After-The-Fact
Sheet 9 of 12

1-920677, Halibut Cove 15
After-The-Fact
Sheet 10 of 12



two views of warehouse

salty restaurant