

The Commonwealth of Massachusetts

No. 9951



Whereas,

Institute of Contemporary Art

of -- Boston --, in the County of -- Suffolk-- and Commonwealth aforesaid, has applied to the Department of Environmental Protection to --construct and maintain a four-story art museum with a gross floor area of approximately 60,000 square feet and associated vehicle circulation roadways, parking areas, and publicly accessible interior and exterior public areas; -----

and has submitted plans of the same; and whereas due notice of said application, and of the time and place fixed for a hearing thereon, has been given, as required by law, to the --Mayor and City Council-- of the --City-- of --Boston,-----

NOW, said Department, having heard all parties desiring to be heard, and having fully considered said application, hereby, subject to the approval of the Governor, authorizes and licenses the said

-- Institute of Contemporary Art--, subject to the provisions of the ninety-first chapter of the General Laws, and of all laws which are or may be in force applicable thereto, to --construct and maintain a four-story art museum with a gross floor area of approximately 60,000 and associated vehicle circulation roadways, parking areas, and publicly accessible interior and exterior public areas; -----

in and over filled tidelands of -- Boston Harbor -- in the -- City -- of -- Boston-- and in accordance with the locations shown and details indicated on the accompanying DEP License Plan No. 9951 (9 sheets).

The uses of structures and fill authorized hereby shall be limited to the following: Art museum open to the public, and associated educational, retail, restaurant, and maintenance activities, and exterior publicly accessible open space.

Fill, structures, and uses on site were authorized by the following licenses and legislative authorizations: Chapters 432, 450, and 461 of the Acts of 1869; Chapters 236 and 320 of the Acts of 1872; H&L License 229 (1874); Chapter 260 of the Acts of 1880; H&L License 555 (1880); Chapter 301 of the Acts of 1888; H&L License 2712 (1903); DPW License 647 (1926); DPW License 1681 (1935); DPW License 5554 (1969); and DPW License 5882 (1971).

This License is valid for a term of ninety-six (96) years from the date of issuance. By written request of the Licensee for a new amendment, the Department may grant a renewal for the term of years not to exceed that authorized in this License.

This License is subject to the following Special Conditions and Standard Conditions:

Special Condition 1: This License is issued in accordance with the Consolidated Written Determination (CWD) for the Fan Pier project, Waterways File No. W02-0404-N, issued on June 28, 2002, the City of Boston's South Boston Waterfront Municipal Harbor Plan as approved by the Secretary of the Executive Office of Environmental Affairs on December 6, 2000 and the Amendment approved on December 31, 2002 (together constituting the "Approved MHP"), and is subject to all relevant conditions of those documents.

Special Condition 2: Approximately 6,225 square feet of the ground floor of the museum shall be open to the general public, free of charge, during the museum's hours of operations. As shown on the final License plans, this area shall include the bookstore, lobby area with art and/or educational displays, atrium, and restrooms. In addition to the areas of the museum open to the public at no cost, the ground floor of the museum shall include a restaurant/café with a footprint of approximately 1,275 square feet which shall be open to the general public, and shall provide free public restrooms, not limited to its customers, during the hours of operation of the restaurant. Signage clearly visible from the entrances to the building shall note the availability of the free public restrooms and interior museum spaces.

Special Condition 3: As shown on the final license plans, the Licensee shall construct and maintain the following public open space facilities:

- a. A waterfront Harborwalk pathway with a minimum width of 12 feet clear of any obstructions including appropriate signage along the entire seaward portion of the site;
- b. A ground-level outdoor public area with an area of approximately 19,350 s.f. . Said figure includes the area of the Harborwalk, approximately 3,770 s.f. of the Grandstand seating structures and the exterior restaurant/café area.
- c. The Harborwalk signage described in Special Condition 3(a) shall be posted and maintained at the waterside entryways to the site from the adjacent Pier 4 and Fan Pier sites.
- d. A public boardwalk with a minimum clear dimension of 19'-6", inclusive of the Harborwalk identified in Special Condition 3(a) herein.
- e. Other signage and appropriate interpretive elements as may be identified in the approved Management and Maintenance Plan in Special Condition 5.

Special Condition 4: Pursuant to Section 4 of the CWD, the Licensee shall become a member in good standing of the Common Area Entity required to be established under the

CWD for the purpose of constructing, maintaining, and managing components of the publicly accessible areas required by the CWD.

Special Condition 5: Within 90 days of the issuance of a Certificate of Occupancy for the museum, the Licensee shall prepare a Management and Maintenance Plan that covers all of the publicly accessible interior spaces and exterior areas and amenities that are to be maintained by the Licensee. The Plan shall address maintenance and programming of public amenities, pathways, Harborwalk, interpretive elements, signage, exterior open space, and related amenities, including the proposed use of any exterior area for restaurant/café use, and any rules adopted pursuant to Special Conditions 8 and 9. The Plan shall be circulated to all commenters on the ICA License application for a 30 day comment period. Upon its approval by the Department, the Plan shall be enforceable through this license. The Department may approve changes to this plan, including changes arising from the Licensee's membership in the CAE.

Special Condition 6: Vehicular parking is prohibited within the Water-dependent Use Zone, as defined for this site in the Approved MHP and as shown on the final License plans.

Special Condition 7: All fill, structures, facilities, and landscaping to be licensed shall be maintained in good repair for the term of the License. With the prior written approval of the Department, the obligation to maintain all or portions of such fill, structures, and facilities may be assigned to another responsible party following License issuance. A written legal agreement between the parties requesting a transfer of said maintenance responsibility shall be submitted to the Department clearly identifying the area to be maintained and the associated Waterways License number, and stating that the maintenance responsibility shall run with the term of the License, that failure to maintain said area will result in a violation of the Waterways License, and any structural alterations or changes in use to said area are subject to prior review and approval by the Department.

Special Condition 8: The Licensee may adopt reasonable rules for use of the publicly accessible interior areas, subject to prior review and written approval by the Department as part of the Management and Maintenance Plan required in Special Condition 5, as are necessary for the protection of public health and safety and private property, and to ensure public use and enjoyment by minimizing conflicts between user groups. Said rules shall also describe anticipated uses/events at the building or within the exterior public space that will be closed to the public. The portions of the ground floor of the building that are required to be open to the public at no charge shall not be closed to the public during the normal business hours of the building, except as approved by the Department in accordance with this Special Condition. No amendment to said rules shall be made without prior written approval by the Department.

Special Condition 9: Exterior pathways, sidewalks, plazas, grandstand seating and other exterior spaces licensed herein shall be open to the public, at no charge, 24 hours a day subject to the applicable provisions of Conditions 5 and 8. The Licensee may adopt reasonable rules for use of these areas, subject to prior review and written approval by the Department as part of the Management and Maintenance Plan required in Special Condition 5, as are necessary for the protection of public health and safety and private property, and to ensure public use and enjoyment by minimizing conflicts between user groups. No amendment to said rules shall be made without prior written approval by the Department.

Special Condition 10: All activities for which a license or permit has been issued shall be completed within 5 years of the date of issuance of the License or permit. This period may be extended upon written request to the Department at least 60 days in advance of the deadline specified herein, and said approval shall not be unreasonably withheld.

Special Condition 11: No later than sixty (60) days after issuance of the Certificate of Occupancy for the building, but in any case no longer than 5 years after issuance of this License, the Licensee shall apply to the Department for a Certificate of Compliance pursuant to the Waterways Regulations, and provide the Department with an as-built plan stamped and signed by a registered professional engineer licensed to do business in the Commonwealth.

Special Condition 12: The Licensee shall provide to the Department a copy of the Certificate of Occupancy for the building within fourteen (14) days of its issuance.

Special Condition 13: Any structural alteration, or change in use, from that explicitly authorized herein and contained on the final license plan, shall require the prior review of the Department to determine whether additional licensing is required pursuant to MGL Chapter 91, the Public Waterfront Act, 310 CMR 9.00, the Waterways Regulations, and any valid MHP governing this area.

Special Condition 14: The Licensee shall ensure that passive recreational use by the general public of the facilities required in this License is fully and safely allowed on the site pursuant to any Activity and Use Limitations (AULs) that may be adopted in full compliance with the Massachusetts Contingency Plan, 310 CMR 40.0000. Such passive recreational use shall include that associated with public open space use involving more than casual contact with the ground, including, but not limited to, walking, strolling, bicycling, picnicking, and sitting. The Licensee shall ensure that the on-site areas specified in this License as publicly accessible open spaces, are fully remediated to levels that will not impede or prohibit the public use of open space, including passive recreational use. Any AUL adopted by the Licensee shall fully allow for such public open space and passive recreational uses. Any interpretation regarding what uses are allowed under an AUL shall be decided by the Department's Bureau of Waste Site Cleanup (BWSC) in the Northeast Regional Office.

Special Condition 15: Prior to commencement of construction, the Licensee shall provide a construction period access plan that establishes reasonable rules and regulations for access to public areas during the construction period. The interim Harborwalk passing through the site shall be available for public passage subject to the construction period access plan that directs pedestrian passage around the site during all stages of construction and which Plan is on file at DEP.

Special Condition 16: The Applicant shall allow agents of the Department to enter the project site to verify compliance with the conditions of the Chapter 91 Licenses prior to the completion of individual sections of the project.

Special Condition 17: The Licensee shall submit to the Department (Waterways Regulation Program) periodic compliance inspection reports at least once every five (5) years from the date of License issuance detailing the Licensee's compliance with the Special and Standard Conditions of this License.

Special Condition 18: The License issued pursuant shall be subject to an annual compliance fee for nonwater-dependent uses pursuant to 310 CMR 4.00.

Special Condition 19: The exercise by the public of free on-foot passage in accordance with this CWD shall be considered a permitted use to which the limited liability provisions of M.G.L. Chapter 21, § 17c shall apply.

Please see page six (6) for the standard conditions to this license.

Duplicate of said plan, number 9951 is on file with the Department, and original of said plan accompanies this License, and is made a part hereof.

STANDARD WATERWAYS LICENSE CONDITIONS

1. Acceptance of this Waterways License shall constitute an agreement by the Licensee to conform with all terms and conditions stated herein.
 2. This License is granted upon the express condition that any and all other applicable authorizations necessitated due to the provisions hereof shall be secured by the Licensee prior to the commencement of any activity or use authorized pursuant to this License.
 3. Any change in use or any substantial structural alteration of any structure or fill authorized herein shall require the issuance by the Department of a new Waterways License in accordance with the provisions and procedures established in Chapter 91 of the Massachusetts General Laws. Any unauthorized substantial change in use or unauthorized substantial structural alteration of any structure or fill authorized herein shall render this Waterways License void.
 4. This Waterways License shall be revocable by the Department for noncompliance with the terms and conditions set forth herein. This License may be revoked after the Department has given written notice of the alleged noncompliance to the Licensee and those persons who have filed a written request for such notice with the Department and afforded them a reasonable opportunity to correct said noncompliance. Failure to correct said noncompliance after the issuance of a written notice by the Department shall render this Waterways License void and the Commonwealth may proceed to remove or cause removal of any structure or fill authorized herein at the expense of the Licensee, its successors and assigns as an unauthorized and unlawful structure and/or fill.
 5. The structures and/or fill authorized herein shall be maintained in good repair and in accordance with the terms and conditions stated herein and the details indicated on the accompanying license plans.
 6. Nothing in this Waterways License shall be construed as authorizing encroachment in, on or over property not owned or controlled by the Licensee, except with the written consent of the owner or owners thereof.
 7. This Waterways License is granted subject to all applicable Federal, State, County, and Municipal laws, ordinances and regulations including but not limited to a valid final Order of Conditions issued pursuant to the Wetlands Protection Act, G.L. Chapter 131, s.40.
 8. This Waterways License is granted upon the express condition that the use of the structures and/or fill authorized hereby shall be in strict conformance with all applicable requirements and authorizations of the DEP, Division of Water Pollution Control.
 9. This License authorizes structure(s) and/or fill on:
☐ Private Tidelands. In accordance with the public easement that exists by law on private tidelands, the licensee shall allow the public to use and to pass freely upon the area of the subject property lying between the high and low water marks, for the purposes of fishing, fowling, navigation, and the natural derivatives thereof.
☒ Commonwealth Tidelands. The Licensee shall not restrict the public's right to use and to pass freely, for any lawful purpose, upon lands lying seaward of the low water mark. Said lands are held in trust by the Commonwealth for the benefit of the public.
☐ a Great Pond of the Commonwealth. The Licensee shall not restrict the public's right to use and to pass freely upon lands lying seaward of the high water mark for any lawful purpose.
- No restriction on the exercise of these public rights shall be imposed unless otherwise expressly provided in this license.
10. Unless otherwise expressly provided by this License, the licensee shall not limit the hours of availability of any areas of the subject property designated for public passage, nor place any gates, fences, or other structures on such areas in a manner that would impede or discourage the free flow of pedestrian movement thereon.

The amount of tidewater displaced by the work hereby authorized has been ascertained by the Department, and compensation thereof has been made by the said -Institute of Contemporary Art— by paying into the treasury of the Commonwealth -- ten dollars and zero cents (\$10.00) -- for each cubic yard so displaced, being the amount hereby assessed by said Department (0.0 cubic yards x \$10.00 = \$0.00).

Nothing in this License shall be so construed as to impair the legal rights of any person.

This License shall be void unless the same and the accompanying plan are recorded within 60 days from the date hereof, in the Registry of Deeds for the County of Suffolk.

IN WITNESS WHEREAS, said Department of Environmental Protection have hereunto set their hands this 23rd day of April in the year two thousand and four.

Program Chief Bench

Program Director Kathleen Rensley

Department of
Environmental
Protection

Commissioner Robert J. Ruggie

THE COMMONWEALTH OF MASSACHUSETTS

This license is approved in consideration of the payment into the treasury of the Commonwealth by the said----- Institute of Contemporary Art ----- of the further sum of ---(\$0.00)--- the amount determined by the Governor as a just and equitable charge for rights and privileges hereby granted in the land of the Commonwealth.

BOSTON

Approved by the Governor.

Mitt Romney
Governor

Notice of Appeal Rights:**Appeal Rights and Time Limits**

The following persons shall have the right to an adjudicatory hearing concerning this decision by the Department to grant or deny a license or permit: (a) an applicant who has demonstrated property rights in the lands in question, or which is a public agency; (b) any person aggrieved by the decision of the Department to grant a license or permit who has submitted written comments within the public comment period; (c) ten (10) residents of the Commonwealth, pursuant to M.G.L. c.30A, §10A, who have submitted written comments within the public comment period; (d) the municipal official in the affected municipality who has submitted written comments within the public comment period; (e) CZM, for any project in the coastal zone, if it has filed a notice of participation within the public comment period; and (f) DEM, for any project in an Ocean Sanctuary, if it has filed a notice of participation within the public comment period. To request an adjudicatory hearing, a Notice of Claim must be made in writing and sent by certified mail or hand delivery to the Department with the appropriate filing fee specified within 310 CMR 4.10 along with a DEP Fee Transmittal Form, within twenty-one (21) days of the date of issuance of this decision and addressed to:

Docket Clerk
Office of Administrative Appeals
Department of Environmental Protection
One Winter Street, 3rd Floor
Boston, MA 02108

A copy of the Notice of Claim must be sent at the same time by certified mail or hand delivery to the applicant, the municipal official of the city or town where the project is located, and the issuing office of the DEP at:

DEP Waterways Regulation Program
One Winter Street, 6th Floor
Boston, MA 02108

Contents of Hearing Request

Under 310 CMR 1.01(6)(b), the Notice of Claim must state clearly and concisely the facts that are the grounds for the request and the relief sought. Additionally, the request must state why the decision is not consistent with applicable laws and regulations.

Pursuant to 310 CMR 9.17(3), any Notice of Claim for an adjudicatory hearing must include the following information:

- (a) the DEP Waterways Application File Number;
- (b) the complete name, address, fax number and telephone number of the applicant;
- (c) the address of the project;
- (d) the complete name, address, fax number, and telephone number of the party filing the request and, if represented by counsel, the name, address, fax number, and phone number of the attorney;
- (e) if claiming to be a person aggrieved, the specific facts that demonstrate that the party satisfies the definition of "person aggrieved" found in 310 CMR 9.02;

- (f) a clear statement that a formal adjudicatory hearing is being requested;
- (g) a clear statement of the facts which are the grounds for the proceedings, the specific objections to the DEP's written decision, and the relief sought through the adjudicatory hearing, including specifically the changes desired in the final written decision; and
- (h) a statement that a copy of the request has been sent to: the applicant and the municipal official of the city or town where the project is located.

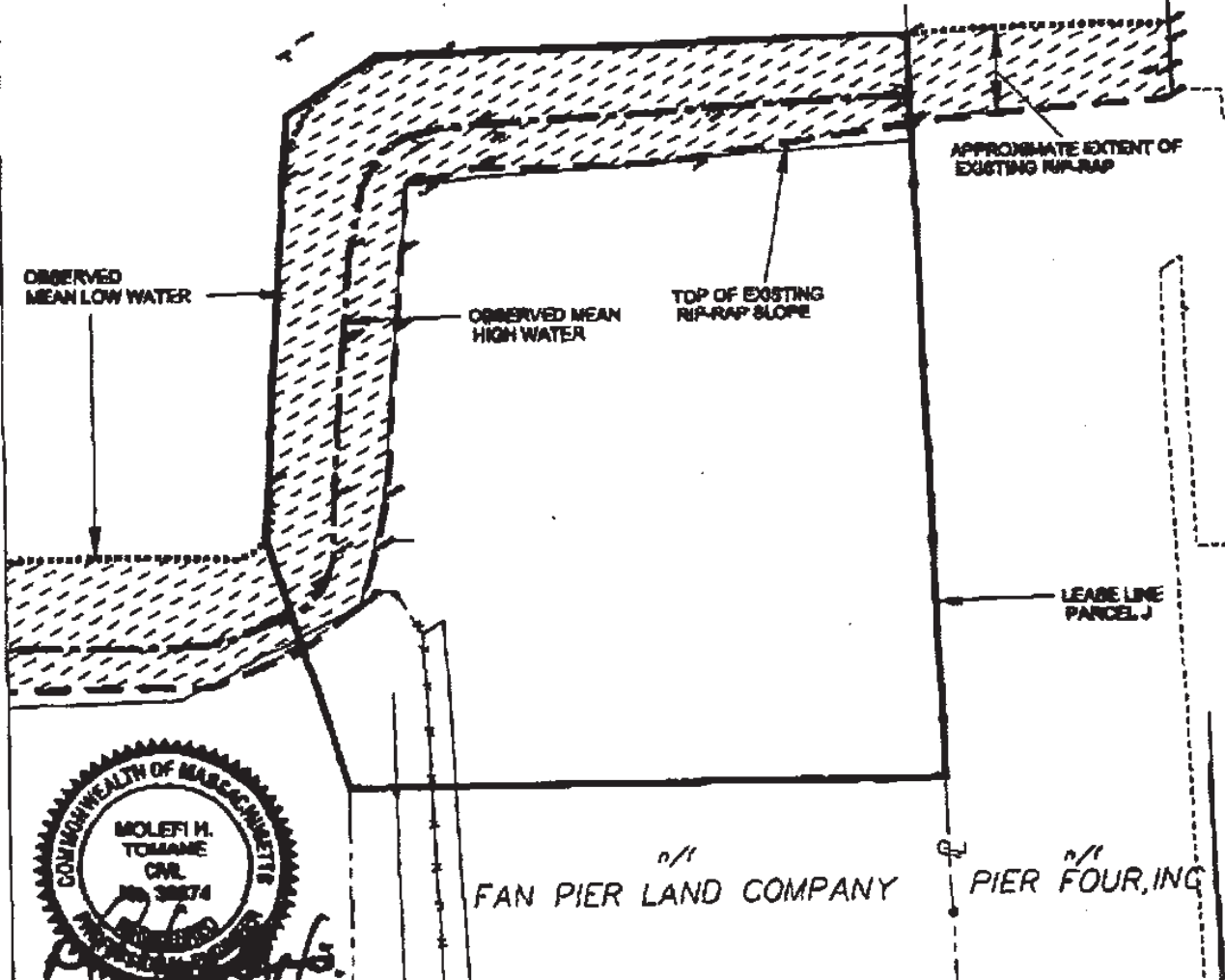
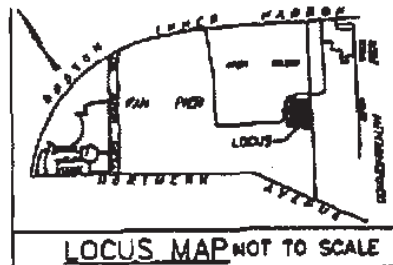
Filing Fee and Address

A copy of the Notice of Claim along with a DEP Fee Transmittal Form and a valid check payable to the Commonwealth of Massachusetts in the amount of one hundred dollars (\$100) must be mailed to:

Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 4062
Boston, Massachusetts 02211

The request will be dismissed if the filing fee is not paid, unless the appellant is exempt or is granted a waiver. The filing fee is not required if the appellant is a city or town (or municipal agency), county, or district of the Commonwealth of Massachusetts, or a municipal housing authority. The Department may waive the adjudicatory hearing filing fee pursuant to 310 CMR 4.06(2) for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file an affidavit setting forth the facts believed to support the claim of undue financial hardship together with the hearing request as provided above.

FAN PIER COVE



NOTE: HISTORIC MLW AND HISTORIC MHW LINES LIE APPROXIMATELY 2,100 FT LANDWARD (WEST) OF SITE



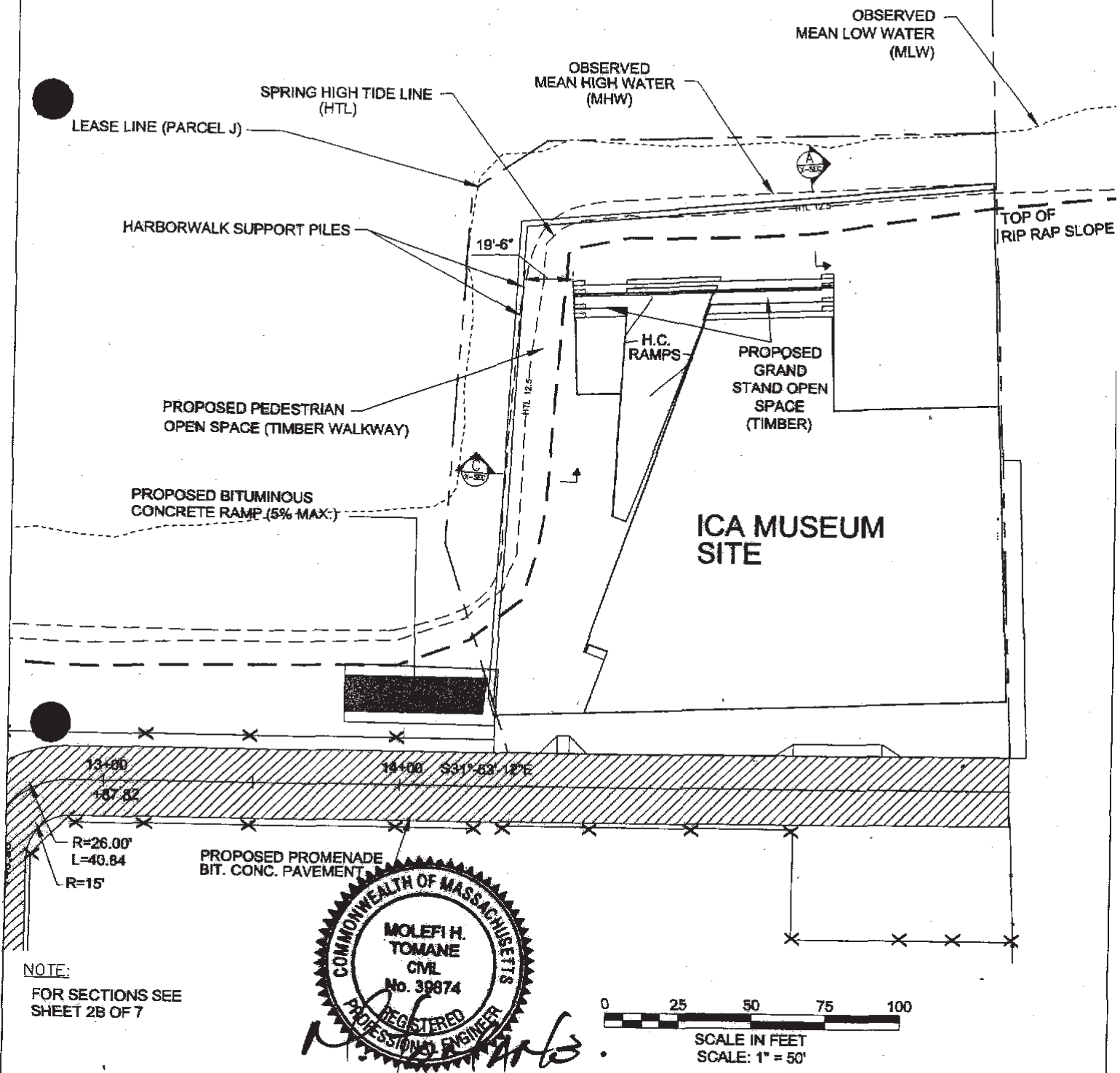
EXISTING CONDITIONS

PLANS ACCOMPANYING PETITION OF INSTITUTE OF CONTEMPORARY ART FAN PIER PARCEL J SOUTH BOSTON WATERFRONT BOSTON, MA

PLAN PREPARED BY: Parsons Brinckerhoff
MARCH 11, 2004
SHEET 1 OF 7

LICENSE PLAN NO. 9951
Approved by Department of Environmental Protection of Massachusetts
APR 21 2004
[Signature]

FAN PIER COVE



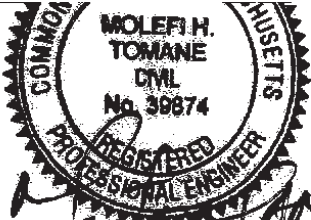
PROJECT SITE PLAN

PLANS ACCOMPANYING PETITION OF
INSTITUTE OF CONTEMPORARY ART
FAN PIER PARCEL J
SOUTH BOSTON WATERFRONT
BOSTON, MA

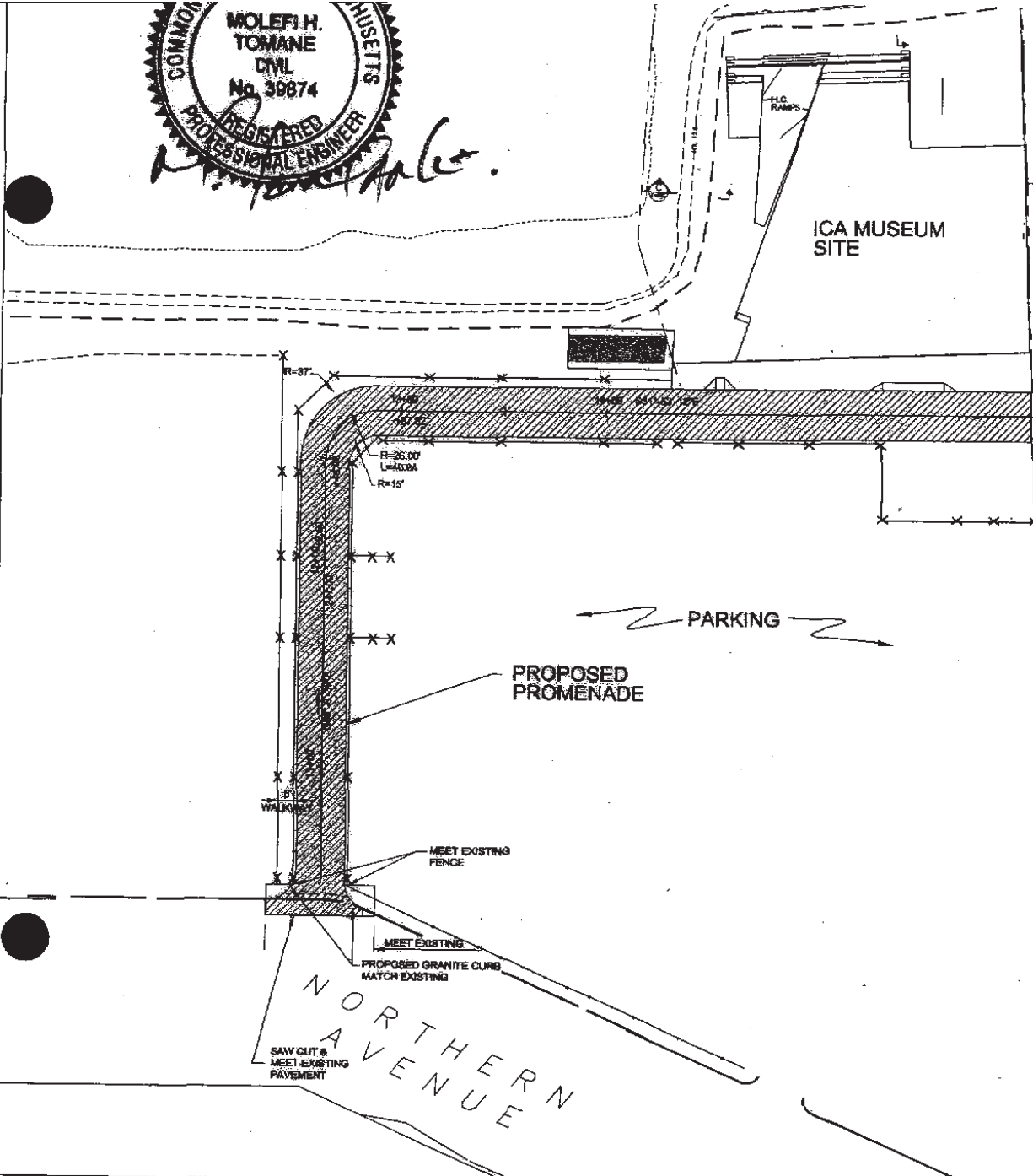
PLAN PREPARED BY: Parsons Brinckerhoff
MARCH 11, 2004
SHEET 2 OF 7

LICENSE PLAN NO. 9951

Approved by Department of Environmental Protection
Date: APR 29 2004



M. Tomane



NOTE:
FOR SECTIONS SEE
SHEET 2B OF 7

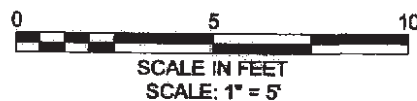
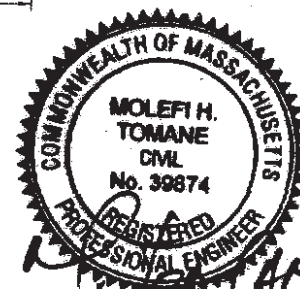
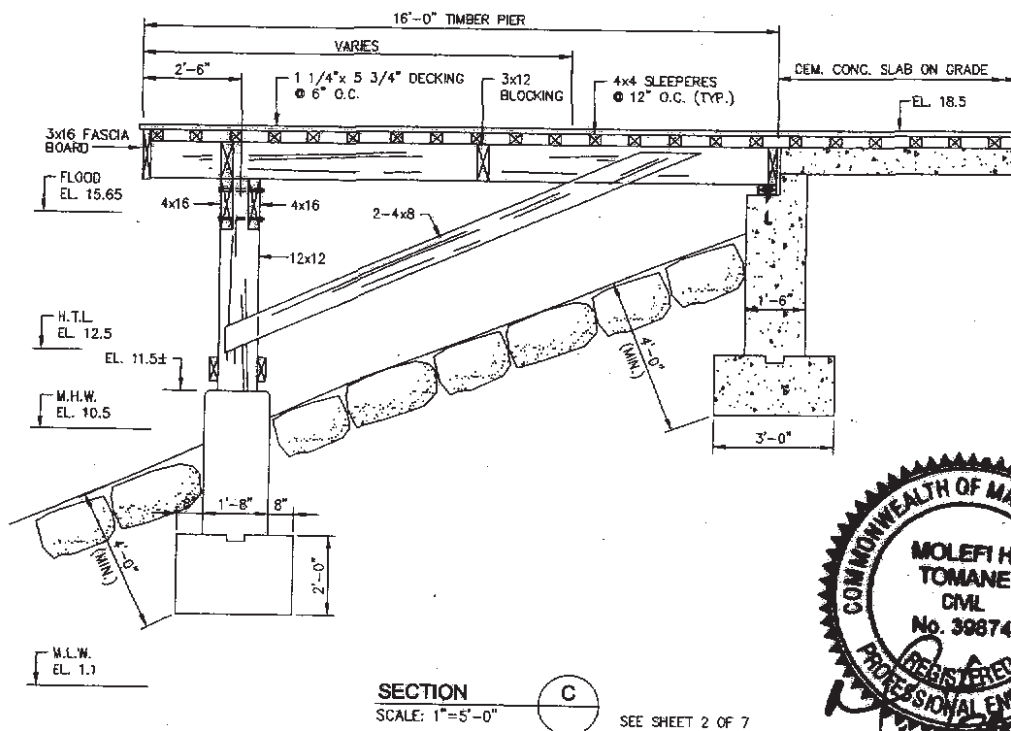
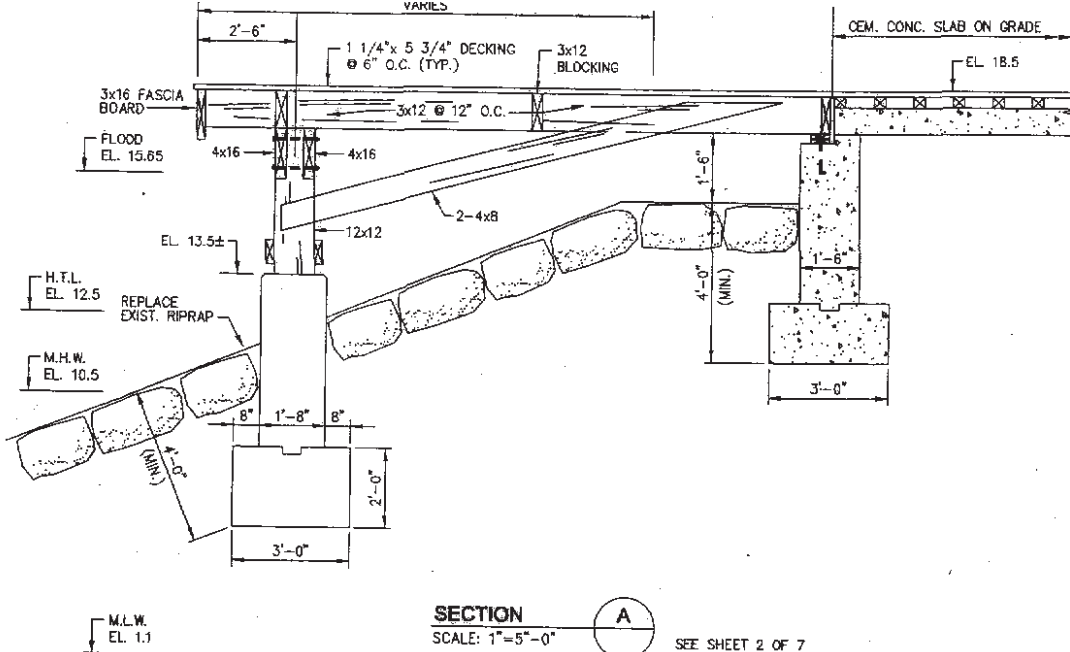
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INTERIM PARKING &
SITE ACCESS PLAN

PLANS ACCOMPANYING PETITION OF
INSTITUTE OF CONTEMPORARY ART
FAN PIER PARCEL J
SOUTH BOSTON WATERFRONT
BOSTON, MA

PREPARED BY: Parsons Brinckerhoff
MARCH 11, 2004
SHEET 2A OF 7

LICENSE PLAN NO. 9951
Approved by Department of Environmental Protection
Date: *APR 23 2004*

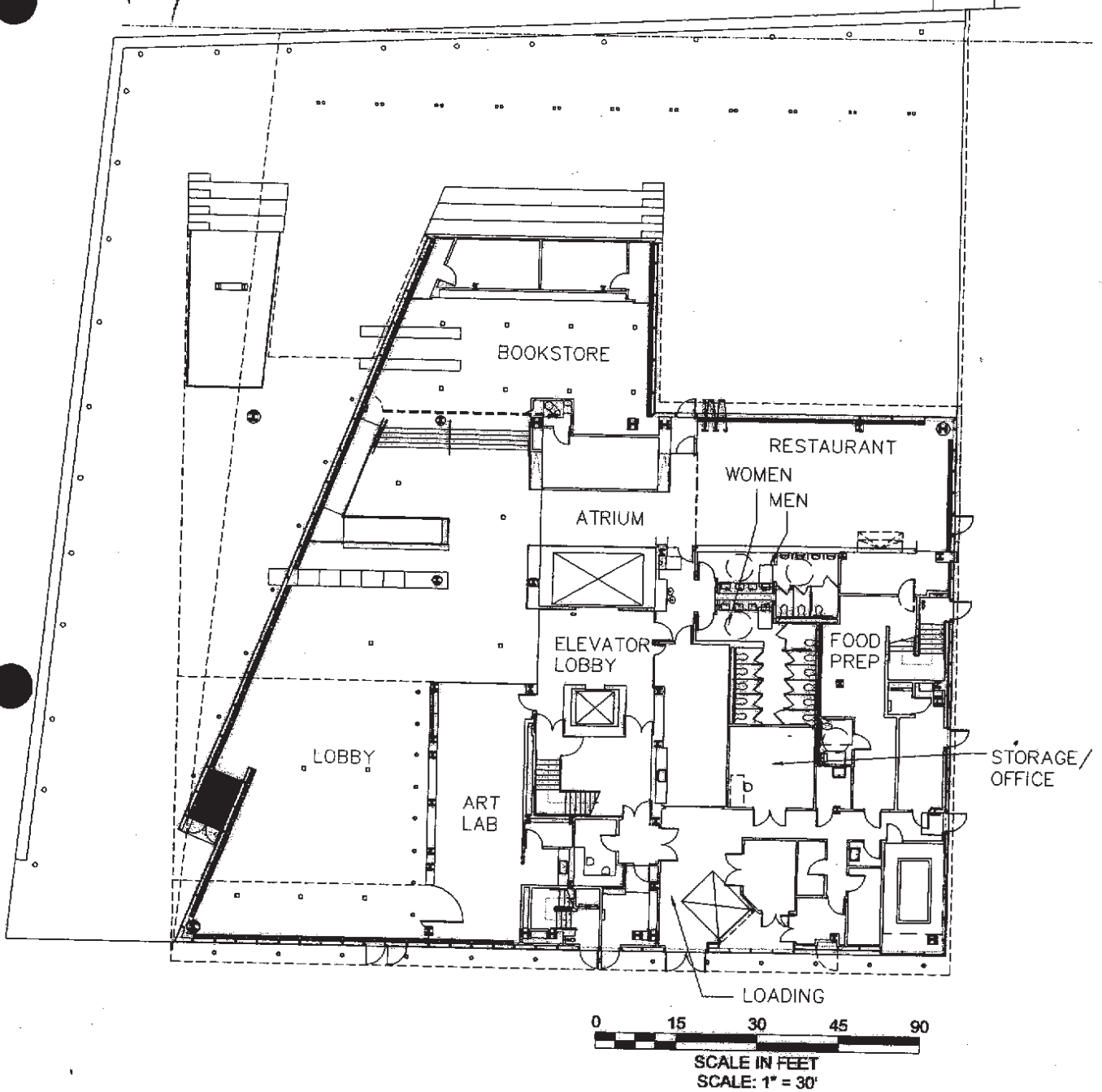
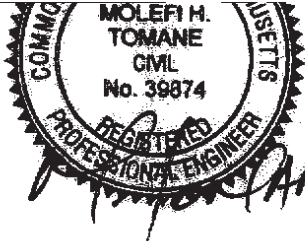


HARBORWALK STRUCTURE DETAILS

PLANS ACCOMPANYING PETITION OF
INSTITUTE OF CONTEMPORARY ART
ON PARCEL J
SOUTH BOSTON WATERFRONT
BOSTON, MA

PLAN PREPARED BY: Parsons Brinckerhoff
ARCH 11, 2004
SHEET 2B OF 7

LICENSE PLAN NO. 9951
Approved by Department of Environmental Protection
Date:

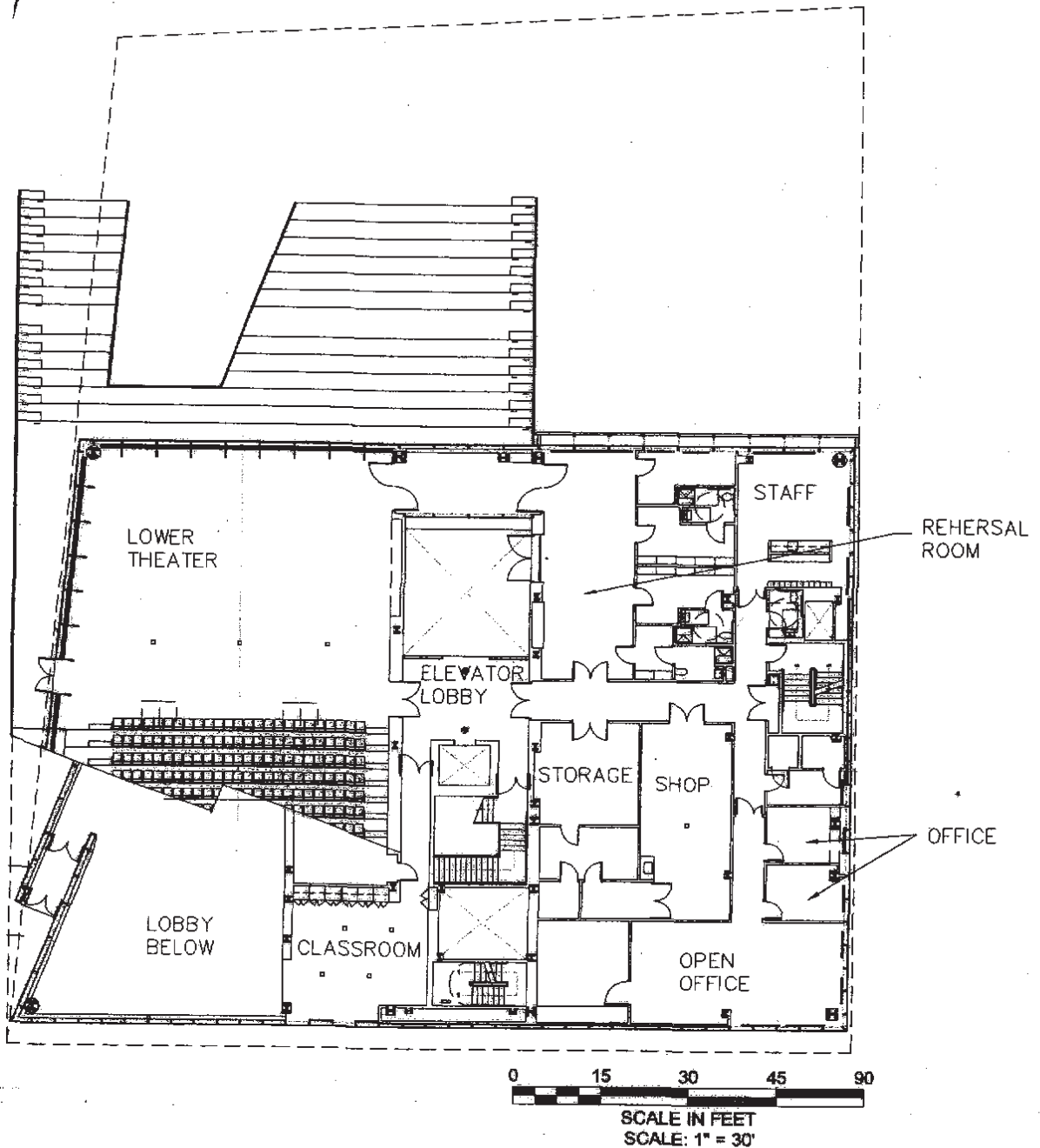


FIRST FLOOR PLAN

PLANS ACCOMPANYING PETITION OF
INSTITUTE OF CONTEMPORARY ART
FAN PIER PARCEL J
SOUTH BOSTON WATERFRONT
BOSTON, MA

PLAN PREPARED BY: Parsons Brinckerhoff
MARCH 11, 2004
SHEET 3 OF 7

LICENSE PLAN NO. 9951
Approved by Department of Environmental Protection
Date: APR 15 2004

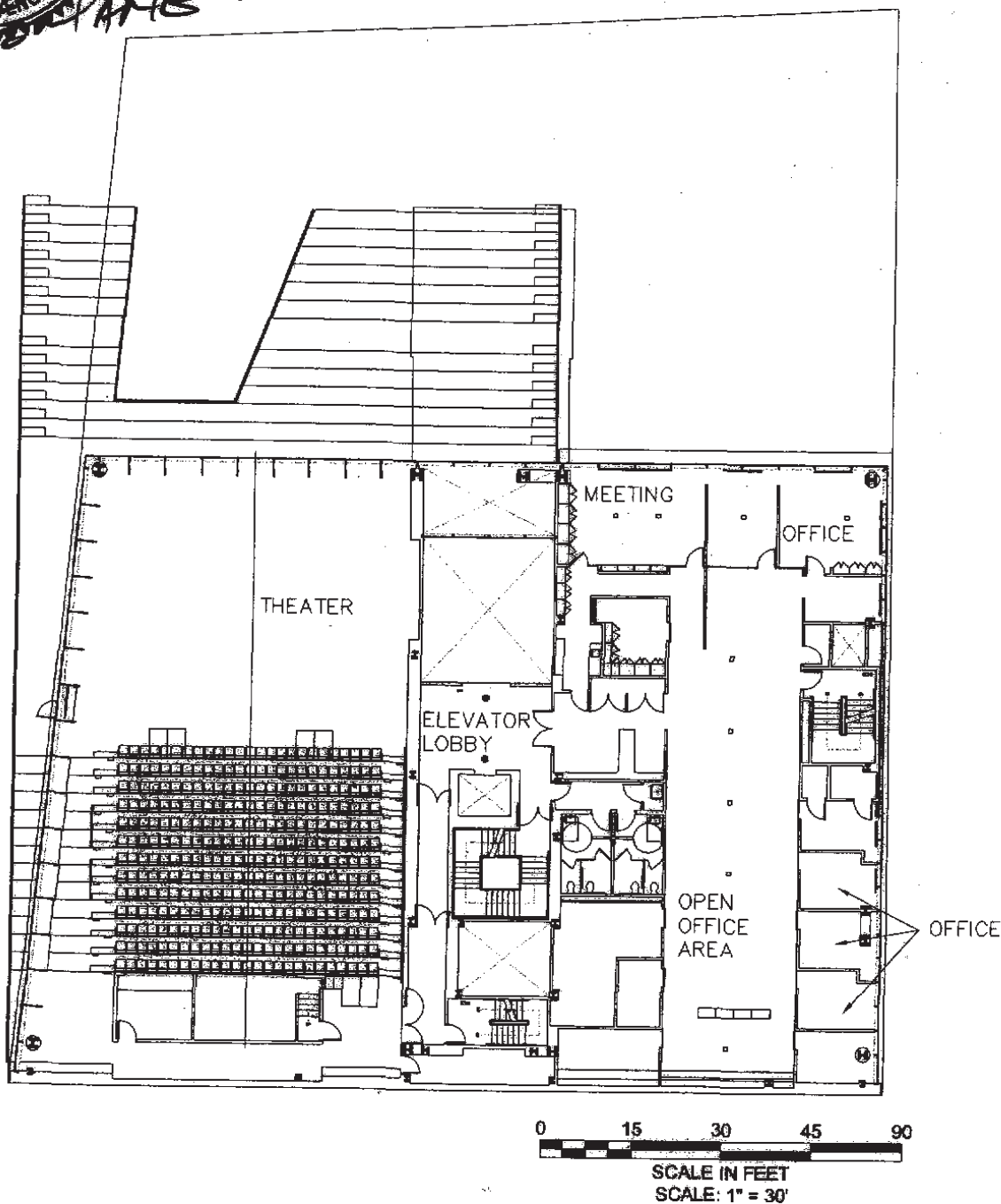
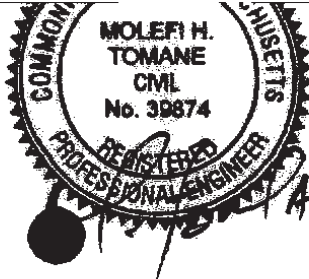


SECOND FLOOR PLAN

PLANS ACCOMPANYING PETITION OF
INSTITUTE OF CONTEMPORARY ART
FAN PIER PARCEL J
SOUTH BOSTON WATERFRONT
BOSTON, MA

PLAN PREPARED BY: Parsons Brinckerhoff
MARCH 11, 2004
SHEET 4 OF 7

LICENSE PLAN NO. 9951
Approved by Department of Environmental Protection
Date: APR 23 2004

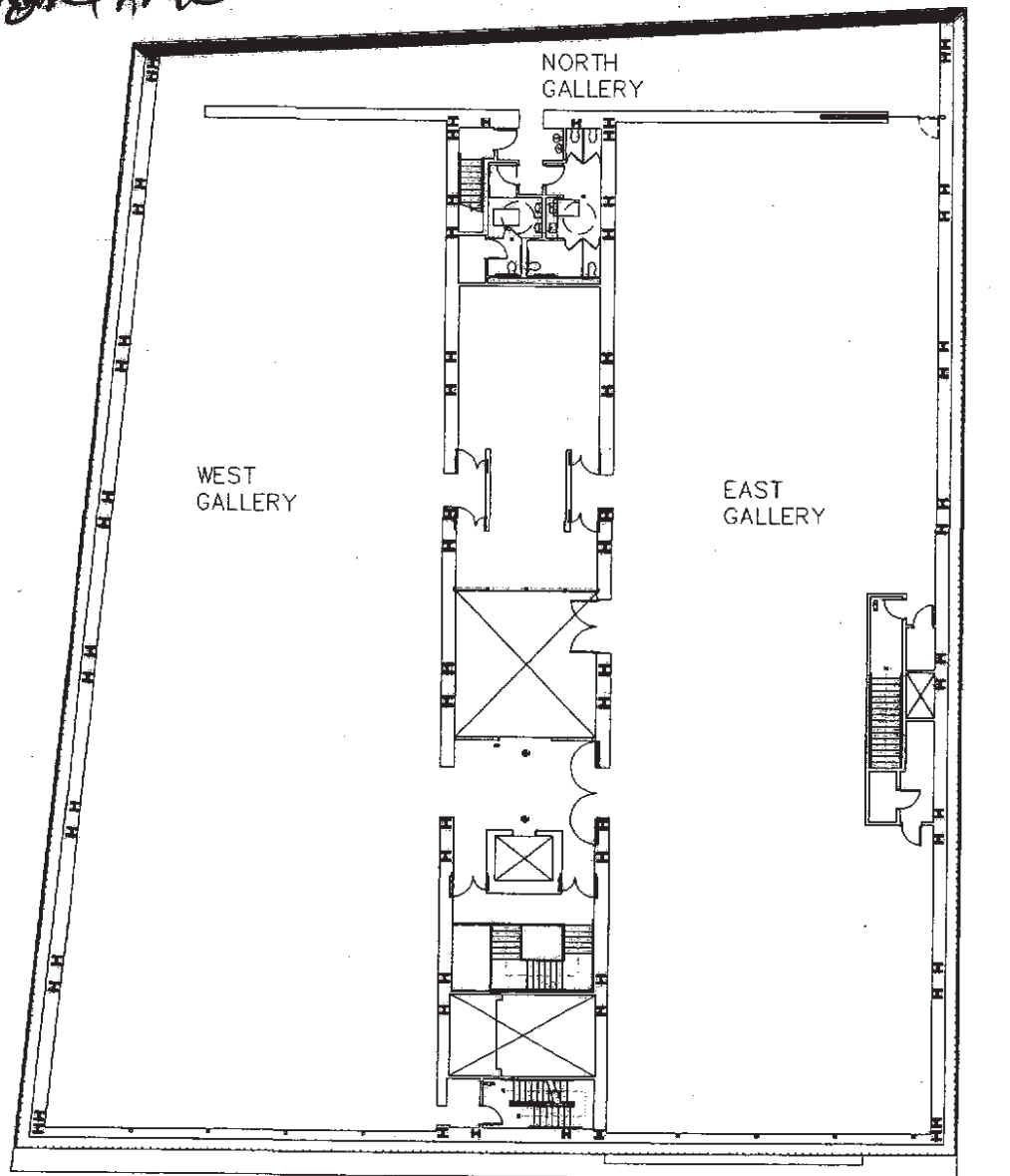
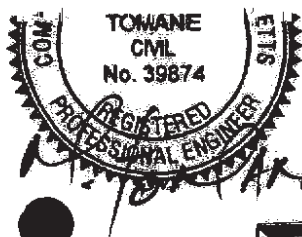


THIRD FLOOR PLAN

PLANS ACCOMPANYING PETITION OF
INSTITUTE OF CONTEMPORARY ART
FAN PIER PARCEL J
SOUTH BOSTON WATERFRONT
BOSTON, MA

PLAN PREPARED BY: Parsons Brinckerhoff
MARCH 11, 2004
SHEET 5 OF 7

LICENSE PLAN NO. 9951
Approved by Department of Environmental Protection
Date: APR 23 2004



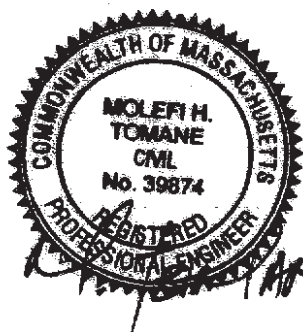
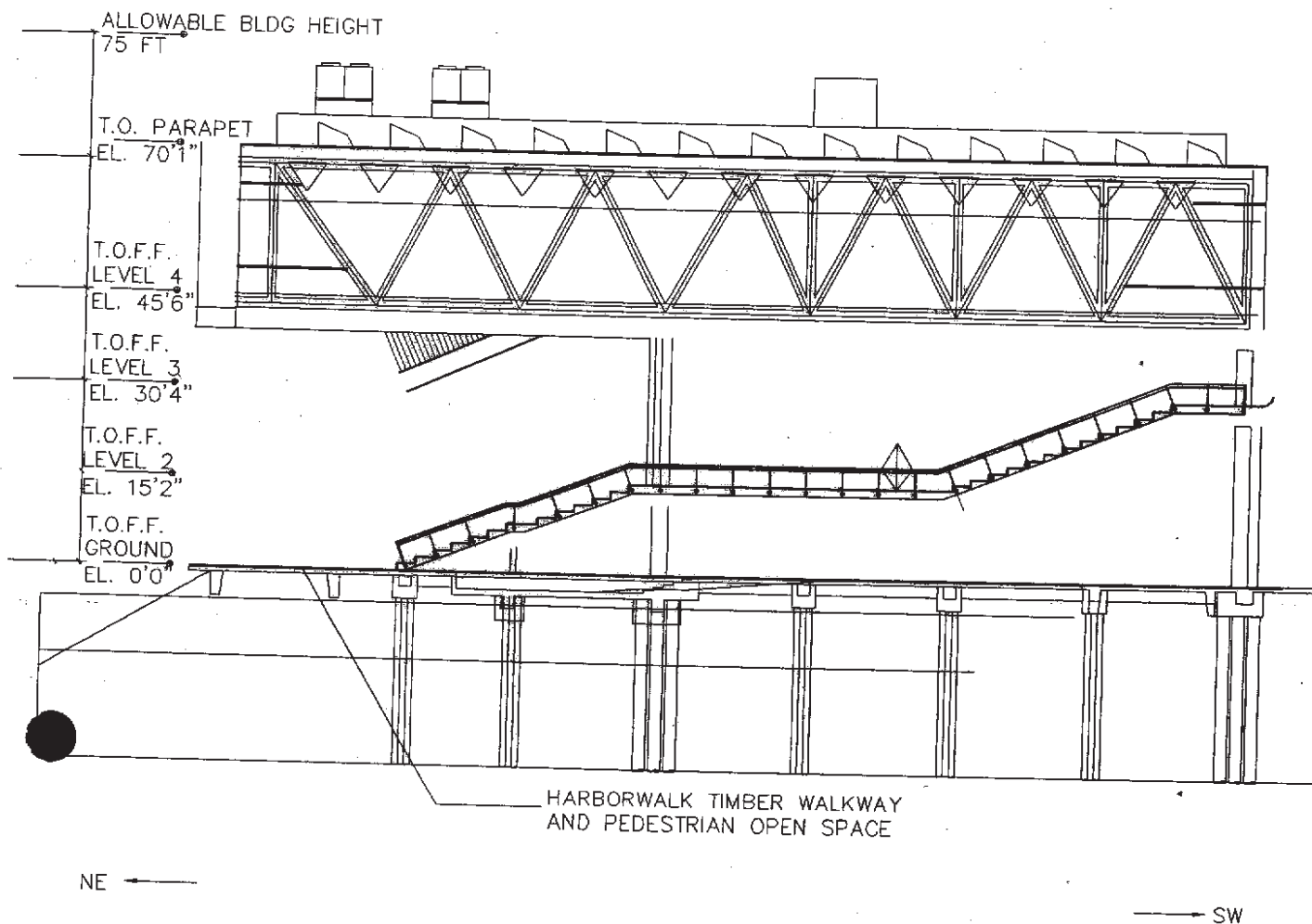
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SCALE: 1" = 30'

FOURTH FLOOR PLAN

PLANS ACCOMPANYING PETITION OF
INSTITUTE OF CONTEMPORARY ART
PIER PARCEL J
SOUTH BOSTON WATERFRONT
BOSTON, MA

PLAN PREPARED BY: Parsons Brinckerhoff
MARCH 11, 2004
SHEET 6 OF 7

LICENSE PLAN NO. 9951
Approved by Department of Environmental Protection
Date: APR 23 2004



WEST ELEVATION

PLANS ACCOMPANYING PETITION OF
INSTITUTE OF CONTEMPORARY ART
TAN PIER PARCEL J
SOUTH BOSTON WATERFRONT
BOSTON, MA

PLAN PREPARED BY: Parsons Brinckerhoff
MARCH 11, 2004
SHEET 7 OF 7

LICENSE PLAN NO. 9951
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Date: APR 29 2004