

CALIFORNIA COASTAL COMMISSION

NORTH COAST AREA
 5 FREMONT, SUITE 2000
 SAN FRANCISCO, CA 94105-2219
 (415) 904-5260

W 22a ^{LSM}



Filed: June 18, 1997
 49th Day: Waived
 180th Day: December 15, 1997
 Staff: Bill Van Beckum
 Staff Report: August 22, 1997
 Hearing Date: September 10, 1997
 Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: **1-95-66**

APPLICANTS: **JAMES W. AND PEGGY N. LUCAS**

PROJECT LOCATION: 599 Coast Highway One, Bodega Bay, Sonoma County, APN 100-110-016, -017

PROJECT DESCRIPTION: Construct a 1,012-square-foot pile-supported deck addition to an existing restaurant by: (1) removing a 606-square-foot section of pile-supported boardwalk, (2) installing four wood piles in the intertidal area, (3) constructing on the new piles and the piles beneath the removed boardwalk a 1,012-square-foot deck addition, and (4) installing 7-foot-high wind-screen fencing on 2 sides of the deck.

PLAN/ZONING DESIGNATION: Recreation & Visitor Serving/CT (Tourist Commercial), CC (Coastal Combining)

LOCAL APPROVALS RECEIVED: Design Review, March 20, 1996; County of Sonoma CEQA Categorical Exemption, 5/15/97.

SUBSTANTIVE FILE DOCUMENTS: Sonoma County Local Coastal Program

SUMMARY OF STAFF RECOMMENDATION:

Major issues raised by the proposed project include fill in coastal waters, the protection of public access, and the protection of visual resources. Staff recommends **DENIAL** of the project because the project as proposed is inconsistent with Coastal Act provisions regarding these issues.

The proposed fill of coastal waters, in the form of the installation of four timber pilings to support a deck addition to a restaurant that is not coastal-dependent and that is only available to the public as paying customers, is inconsistent with Coastal Act marine resources policies because it is not a use for which fill of coastal waters may be considered pursuant to provisions of Coastal Act Section 30233(a). Furthermore, the project is not consistent with Section 30233 requirements that no fill project be approved if there is a feasible less environmentally damaging alternative.

1-95-66

JAMES W. AND PEGGY N. LUCAS

Page 2

The project is inconsistent with the public access policies of Coastal Act in that the proposed conversion of approximately 606 square feet of publicly used harbor-front boardwalk to private deck space is inconsistent with Coastal Act policies calling for public access opportunities to be maximized and the protection of the public's existing rights of access.

Finally, the project's proposed 7-foot-high fence on the east and south sides of the deck is inconsistent with Coastal Act Section 30251 requirements that development be designed to protect public coastal views. Although the subject project is a small one, the staff recommendation is based on the precedential effect that approval of the project could have by encouraging other non-essential or non-coastal-dependent uses on public tidelands in harbors and marinas elsewhere in the coastal zone.

STAFF NOTES:

1. Re-scheduled Hearing:

The application was originally scheduled for Commission consideration at the August Commission meeting. On August 6, 1997, about a week prior to the meeting, the applicants submitted a written request to postpone the hearing to the September Commission meeting. Additionally, the applicants, in response to the July 25, 1997 staff report, submitted a statement (see Exhibit 7) on August 12, 1997, concerning: a) the relation of the proposed deck to commercial fishing activities at Lucas Wharf, the project site; and, b) the provision of public access at Lucas Wharf. The attached findings include responses to the applicant's statement. Staff continues to recommend denial of the project for the reasons mentioned in the above summary of the staff recommendation.

2. Standard of Review:

The proposed project is located on the east shore of Bodega Harbor. Sonoma County has a certified LCP, but the project site is in tidal areas within the Commission's retained jurisdiction. Therefore, the standard of review that the Commission must apply to the project is the Chapter 3 policies of the Coastal Act.

3. Tidelands Lease:

Responsibility for management of tide and submerged lands below the mean high tide in Bodega Harbor was granted to the County by legislative grant in 1959 (Statutes 1959, Chapter 1064, as amended by Statute 1961, Chapter 799). The tidelands are administered by the Sonoma County Department of General Services. Although the 1981 lease agreement provisions do not require specific review of the deck project now proposed, according to Mr. Mike Wagner of the Department of General Services (March 25, 1996), County design review is required for the project. The County Design Review Committee approved the

1-95-66

JAMES W. AND PEGGY N. LUCAS

Page 3

project on March 20, 1996, with the single condition that the applicant "1. Consider lowering fence by 12-18 inches, if permitted by ABC (Department of Alcoholic Beverage Control)."

Tidelands leases are granted pursuant to state law and the public trust doctrine, but are not reviewed specifically for conformance to the Coastal Act. Thus, in deciding to grant the 1981 lease, which does not prohibit deck construction, the County did not make a specific determination that the deck addition is consistent with the Coastal Act. However, the tidelands lease agreement, which includes provisions and procedures relating to the construction of "improvements" on the leased premises, does require that the lessee (the applicants) comply with all federal, state and county laws "now existing or may hereafter ... concerning the use and safety of the premises."

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Denial.

The Commission hereby denies a permit for the proposed project on the grounds that the project, located between the sea and the first public road nearest the shoreline, is not in conformance with the provisions of Chapter 3 of the California Coastal Act of 1976.

II. Findings and Declarations.

The Commission hereby finds and declares as follows:

1. Site Description.

The one-acre subject site, Lucas Wharf, is located on the east shore of Bodega Harbor and west of and slightly downslope from Highway One in the town of Bodega Bay (Exhibits 1 and 2). Lucas Wharf is a commercial-fishing and restaurant complex which pre-dates the Coastal Act. Portions of the complex have been remodelled and expanded over the years, with Commission coastal development permits issued for such work on four occasions from 1976 through 1980 (Coastal Development Permits #813, #201-77, # 227-77, #162-80).

In addition to the 1-acre upland portion of the site, a portion of the Lucas Wharf complex, including the current project site adjacent to the restaurant, is located on leased tidelands administered through a legislative grant by the County of Sonoma. The leased tidelands area is coterminous with the Commission's area of original jurisdiction. Exhibit 3 (Wharf Site Plan) shows the "approximate ordinary high water mark" which delineates the inland extent of the tidelands. Except for the 76-space parking lot area between Highway One and the wharf complex, wharf development is located on the leased tidelands.

1-95-66

JAMES W. AND PEGGY N. LUCAS

Page 4

2. Project Description.

The proposed project, within the tidelands lease area of the site, is to remove a 606-square-foot section of pile-supported boardwalk, install four wood piles in an intertidal area, and construct, on the new piles and the piles beneath the removed boardwalk, a 1,012-square-foot deck addition to an existing restaurant. The project includes installation of 7-foot-high wind-screen fencing on the east (landward) side of the deck and the east half of the deck's south side. A lower, guard rail barrier, approximately 4 feet high, is proposed for the deck's west side and for the other half of the deck's south side. The south and west sides of the deck face the harbor. The deck's north side would abut and connect to the restaurant. See Exhibits 4-6. The coastal permit application states that, "The deck is needed to accommodate smokers and to provide an on-the-water experience to be out of doors observing a working fishermen's wharf. It is not a dining deck."

The restaurant to which the deck would be added was constructed pursuant to Coastal Development Permit # 227-77 on July 20, 1978, which allowed the demolition of a 30-year-old (pre-Coastal Act) condemned restaurant and construction of a new restaurant to replace it with no net increase of pile-supported fill over the bay. This new restaurant (1-story and approximately 4,400-square-feet in size) is situated partly over land and partly over an active tidal area, atop 20-24 replacement piles that were also permitted by Permit # 227-77.

The restaurant's entrance is through its east side, which faces the parking lot. An 11-foot-wide and 205-foot-long boardwalk (2,255 square feet in size), supported by pilings in the intertidal area, runs along the shoreline south from the southeast corner of the restaurant. Half of the proposed deck addition would occupy part of the boardwalk, and the other half would be constructed atop 4 new timber pilings placed in adjacent open intertidal area. Exhibit 5 is a depiction by staff, on a photo submitted by the applicants, of the proposed deck's floor area. The piles exist but were installed without benefit of a coastal development permit. In addition to the new work proposed, the application seeks after-the-fact authorization for the piles, which are visible below the left half of the proposed deck as depicted on Exhibit 5.

Primary access to the deck would be through a new doorway opening installed in the restaurant's south wall, at its east end. Access to the deck from the parking lot would not be available because of the proposed 7-foot-high windscreen fence which would separate the deck from the boardwalk along the deck's east and south sides. Project plans show that the only access to the boardwalk from the deck would be through an "emergency exit with alarm," built into the deck's south windscreen and connecting to the boardwalk by a ramp.

3. Fill in Coastal Waters and Protection of Marine Resources.

The Coastal Act defines fill as including "earth or any other substance or material ... placed in a submerged area." The proposed project includes the

1-95-66

JAMES W. AND PEGGY N. LUCAS

Page 5

placement of fill in coastal waters in the form of new timber piles underneath the deck addition.

Sections 30233 of the Coastal Act addresses the placement of fill within coastal waters. Section 30233(a) provides as follows, in applicable part:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.

(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(7) Restoration purposes.

(8) Nature study, aquaculture, or similar resource dependent activities.

The above policy sets forth a number of different limitations on what fill projects may be allowed in coastal waters. For analysis purposes, the

1-95-66

JAMES W. AND PEGGY N. LUCAS

Page 6

limitations can be grouped into three general categories or tests. These tests are:

- a. that the purpose of the fill is for one of the eight uses allowed under Section 30233; and
- b. that the project has no feasible less environmentally damaging alternative; and
- c. that adequate mitigation measures to minimize the adverse impacts of the proposed project on habitat values have been provided.

The proposed project fails with regards to at least the first two of these tests, i.e., (a.) the project is not one of the eight allowable uses specified in Section 30233 (a), and (b.) the project has a feasible less environmentally damaging alternative.

a. Non-Allowable Use

The placement of fill for a restaurant deck is not a use specifically listed under Section 30233(a), as a use for which fill can be placed in coastal waters. Of the various uses listed under 30233(a), the uses that most closely relate to the proposed fill are 30233(a)(4), placement of pilings for public recreation piers that provide public access and public recreation opportunities, and 30233(a)(1), expanded coastal dependent industrial facilities, including commercial fishing facilities. However, as discussed below, the project does not qualify under either of these allowable uses for fill in coastal waters.

Public Recreation Pier.

The Commission has allowed pile-supported fill in tidal areas to support the construction of additional restaurant space, as part of a public recreational pier development, on at least on occasion. Coastal Development Permit No. 3-94-36 (Shake, City of Monterey) approved on February 9, 1995, authorized the construction of a 640-square-foot addition to the publicly owned City of Monterey Wharf No. 1, including five new piles and a 2-story 1,286-square-foot addition to an existing restaurant. In approving that permit, the Commission found:

In this instance, there is a public (i.e., City-owned) recreational pier which is open to the general public at no charge, and is lined with fish markets, seafood restaurants and tourist-oriented shops which together undeniably provide a certain type of recreational experience for thousands of visitors per day. A portion of the wharf is leased to the applicants for their existing restaurant business, as the City relies on its leaseholders to provide various services to the public as part of the Wharf No. 1 recreational experience.

1-95-66

JAMES W. AND PEGGY N. LUCAS

Page 7

Thus, the wharf is a publicly-owned recreational pier that provides public access and recreational opportunities. These recreational opportunities include visitor-serving commercial developments, such as applicant's Fisherman Grotto restaurant. Seafood restaurants are not considered coastal-dependent uses (i.e., they do not require a shoreline location in which to function); and, therefore, net over-water expansions of such use would not be allowable unless the special circumstances of Section 30233(a)(4) can be met. In this case, both the "public recreational pier" and "public access and recreational opportunities" criteria are met by the City's Wharf No. 1; accordingly, because the restaurant is integral to the recreational experience provided by the City's "Old Fisherman's Wharf," new structural pilings may be considered to support the restaurant expansion, if adverse impacts are mitigated and there is no feasible less environmentally damaging alternative (emphasis added).

Thus, the Commission has specifically found that net over-water expansions of restaurants are not allowable under Section 30233(a)(4) unless the restaurant is part of a "public recreational pier" that provides "public access and recreational opportunities." In the current application, the pile fill associated with the deck addition to the Lucas Wharf Restaurant does not qualify as an allowable use for fill under Section 30233(a)(4) because the Lucas Wharf upon which the restaurant is built is not a public recreational pier that provides the public with public access and recreational experiences, such as is provided by the assemblage of leaseholders at Monterey Wharf No. 1.

Pursuant to the "tidelands lease" agreement between the County of Sonoma and Lucas Wharf, Inc. (July 28, 1981), the applicants are leasing "premises" that consist of "certain real property (tide and submerged lands below mean high tide) ... together with a pier and the improvements constructed thereon." Thus, under the terms of the lease, the pier itself is considered to be owned by a public agency, the County of Sonoma. However, the fact that the pier or wharf may be owned by a public agency does not mean that the wharf is a "public recreational pier" as that term is used in Section 30233(a)(4) of the Coastal Act. Unlike Monterey Wharf No. 1, which is owned by the City of Monterey and leased to a great number of leaseholders providing recreational uses for the public, Lucas Wharf, Inc. is the sole lessee of the premises and the uses permitted by the lease are limited to "a fish receiving station, fish market, marine supply sales, coffee shop, restaurant, and warehouse." The lease also requires that public access from the parking lot to the harbor be available at the Lucas Wharf complex, but the wharf itself has in fact developed into "a working fishermen's wharf" as described in the permit application rather than into a public recreational pier.

Wharf development west of the restaurant and the retail fish market, both at the shoreline, consists of docking and hoist facilities, a wholesale fish house, freezers, an office and restrooms, and propane tanks (see Exhibit 3, Wharf Site Plan). With the exception of the restrooms, these developments are not of the types normally associated with public recreational piers. The

1-95-66

JAMES W. AND PEGGY N. LUCAS

Page 8

wharf does not provide significant public access and recreational opportunities. No gates currently bar access to the harbor through the commercial-fishing related structures and activities sited and taking place on the wharf, north and northwest of the restaurant, but such access is discouraged because of the applicants' concerns with public safety. Conflicts exist between public access use and commercial-fishing activities on the wharf because of the movement of equipment and the placement of fish processing containers in the wharf's open areas and fish landing activities at the wharf's edges. Passage is further constricted by the narrow spaces between some wharf buildings. Thus, unlike the Monterey Wharf situation, significant public recreation and access opportunities at Lucas Wharf are not located on the wharf. Public access is provided on the boardwalk adjacent to the restaurant and parking lot and on the 170-foot-long, unobstructed over-water pier extending west from the south end of the boardwalk, approximately 200 feet south of the restaurant. See Exhibit 3, Wharf Site Plan. However, these access areas are not located on the wharf where the restaurant fill is proposed.

Commercial Fishing Facilities.

The other use for fill in coastal waters allowed under Section 30233(a) that most closely relates to the proposed fill is 30233(a)(1), expanded coastal dependent industrial facilities, including commercial fishing facilities. However, the proposed pile-supported fill for the restaurant deck is not in any way related to, except as a location for observing, the commercial fishing facilities that occur on the wharf. Therefore, the proposed fill does not qualify under Section 30233(a)(1) as expanded coastal dependent industrial facilities, including commercial fishing facilities.

The restaurant to which the deck would be added was constructed subsequent to Commission authorization of Coastal Development Permit # 227-77 on July 20, 1978, which allowed the demolition of a 30-year old (pre-Coastal Act) condemned restaurant and construction of a new restaurant to replace it. This new restaurant (1-story and approximately 4,400-square-feet in size) is situated partly over land and partly over an active tidal area, atop 20-24 replacement pilings that were also permitted by Permit #227-77.

When the Commission approved the new restaurant project in 1978, it did not approve any net increase in fill and determined that the project was not subject to the use limitations of Section 30233 because the pilings it authorized for the new restaurant were replacement pilings. As stated in the Commission's findings for Permit #227-77:

The number of pilings required to support the structure will be approximately the same as the number originally there, that is, 20-24. No additional fill is anticipated.

The current application is unlike the Permit #227-77 project because it is for an expansion of restaurant space that does involve additional fill in an area

1-95-66

JAMES W. AND PEGGY N. LUCAS

Page 9

that was not earlier affected by the Section 30233 findings associated with Permit #227-77.

The applicants' correspondence to the Commission, dated August 12, 1997 (see Exhibit 7), describes the Lucas Wharf complex, in which the project site is located, as consisting of "three divisions from which (fishermen-harvested) products can be marketed; wholesale fisheries, retail seafood, and a seafood restaurant." The correspondence goes on to make the following points (paraphrased) to support the applicants' contention that the proposed deck pilings should be looked at as fill allowable for commercial fishing use:

1. All aspects of the Lucas Wharf business are inseparable from and dependent on the commercial fishing trade and should be considered part of the commercial fishing use;
2. The proposed deck will further the commercial fishing use of the site by promoting commercial fishing;
3. The deck will provide additional revenue for the business, and helping the business will help maintain the commercial fishing uses of the site.

As the applicants contend, the proposed deck may help promote the commercial fishing business conducted at the pier, by attracting more people to the site. Even so, however, the deck itself would not therefore become a commercial fishing use any more than would, for examples, a tourism office that highlights the commercial fishing history of the town, a grocery store that features locally caught fish, or an art gallery that displays paintings of fishing boats pulling in their catches. Furthermore, the specific use proposed for the deck, an outdoor bar service area, may have less direct promotional relationship to the fishing industry than some of the other business examples just listed.

Additionally, promotion of the wharf's commercial fishing activities does not necessarily have to be accomplished by filling coastal waters. There are other ways to accomplish the same goal. For instance, as noted in the "alternatives" discussion immediately below, there may be possibilities of establishing the deck on the top of the restaurant building. More simply, encouraging greater public access use of the wharf by installing public access signs that welcome people to the site, and that mark areas in the complex where they can observe commercial fishing activities close-up, could more directly serve the purpose of promoting support of commercial fishing than would the provision of increased bar space.

Lastly, the wharf complex already has a substantial restaurant and bar business that may adequately serve the intended purpose of drawing people to the site and making them more aware of commercial fishing. In any event, the fact that the deck may bring more revenue to a business which has a commercial fishing component does not make the deck itself a commercial fishing use to

1-95-66

JAMES W. AND PEGGY N. LUCAS

Page 10

which Coastal Act policies regarding eligibility for fill of coastal waters would apply.

Therefore, the Commission finds that the proposed fill of coastal waters, in the form of the installation of four timber pilings to support a deck addition, is inconsistent with Coastal Act marine resources policies because the addition is for a use that is not listed as an allowable use in Coastal Act Sec. 30233(a).

b. Alternatives

The area to receive actual fill is small, approximately four square feet, the approximate area that would be displaced by the installation of the four proposed pilings. The intertidal area where the pilings are proposed consists of unvegetated mudflat, which may provide habitat for a variety of worms, mollusks, and other benthic organisms. The project site does not contain any environmentally sensitive habitat areas (ESHAS), such as eelgrass beds. However, the construction of the 606-square-foot deck portion atop the four pilings (Exhibits 4 and 5) would permanently shade an equivalent area of intertidal habitat below it, potentially reducing the productivity of benthic habitat. While the Lucas project may be relatively small in and of itself, its approval could set a precedent as to how other such structures which fill intertidal areas are treated by the Commission. Thus, project approval could contribute to long-range cumulative impacts.

Coastal Act Section 30233 does not allow fill of coastal waters if there is a feasible, less environmentally damaging alternative to the project. No alternatives analysis was presented by the applicant that would demonstrate that the project has no feasible less environmentally damaging alternative. Nonetheless, alternatives to the project as proposed must be considered before a finding can be made that the project as proposed is the only feasible project that would accomplish project objectives.

Project alternatives identified and considered by staff include: no project; alternative siting (no new pilings) and full cantilever (no new pilings).

The no project alternative is a feasible, less environmentally damaging alternative, and alternative sites for the specific use proposed to be made of the new restaurant deck may also constitute feasible less environmentally damaging alternatives.

No Project Alternative.

The purpose of the project, as stated by the applicant, is to "accommodate smokers and to provide an on-the-water experience to be out of doors observing a working fishermen's wharf." Although the deck is not proposed for dining purposes, it would allow bar seating for about 60 people according to the County Design Review Committee staff report. Both non-alcoholic and alcoholic beverages would be available on the deck, which would be separated from the

1-95-66

JAMES W. AND PEGGY N. LUCAS

Page 11

adjacent publicly used boardwalk by a 7-foot-high fence (3 feet higher than required by the Department of Alcoholic Beverage Control).

The no project alternative would not provide customers of the existing 96-seat restaurant a setting for observing wharf activities while enjoying outdoor beverage service. The restaurant does not allow patrons to smoke inside the building, as Sonoma County ordinances in effect in unincorporated areas such as Bodega Bay do not allow smoking inside restaurants and bars where the restaurant and bar areas share the same open interior space, such as is the case at the Lucas Wharf Restaurant & Bar. Currently, while alcoholic beverages may not be taken outside the restaurant, smokers of course may excuse themselves from their tables or the bar to step outside for a smoke, to either just outside the building's entranceway or onto the adjacent boardwalk just around the building's southeast corner. From the boardwalk approximately the same wharf view is available, to smokers or to anyone who wants an "on-the-water experience ... out of doors observing a working fishermen's wharf," that would be afforded from the proposed deck. In fact, since windows occupy the entire south and west walls of the building, the same wharf view is now available from inside the building. The main disadvantage of the no project alternative to the applicant is that additional seating for beverage service where patrons can also smoke would not be made available. However, the lack of seating for smokers would probably not discourage continued patronage by smokers who are faced with the same non-smoking restrictions inside any of Bodega Bay's restaurants having facilities similar to the applicants'. Furthermore, new state law, which will take effect on January 1, 1998, will prohibit smoking in all interior bars, not just those like the applicants' where smoking is now prohibited because it shares the same interior open space as the restaurant.

Thus, at that time, the restaurant will not be at any competitive disadvantage with other bars with regard to interior smoking. Under the no project alternative, the only remaining competitive disadvantage to Lucas Wharf restaurant would be with regard to other bars that might provide outdoor bar service where smoking could be allowed. However, staff has not been able to identify any places offering outdoor bar service along the edge of Bodega Harbor, where summer weather is often foggy and cold. Thus the restaurant is not at any significant competitive disadvantage by not having the outdoor bar service the proposed development would provide. The restaurant has operated successfully under continual family ownership since it opened in 1981. Eliminating the potential business from bar smokers by following the no project alternative should not affect the current popularity of the restaurant. Therefore, the Commission finds that the no project alternative is a feasible alternative, and as the alternative would result in no pile fill in and shading of the benthic environment, the alternative is less environmentally damaging.

Re-Sited Deck.

Staff has suggested to the applicants and the project architect that there may be alternative locations at the wharf complex that would provide similar

1-95-66

JAMES W. AND PEGGY N. LUCAS

Page 12

outdoor seating opportunities that would not involve any coastal waters fill, such as an extension from the restaurant's northwest corner onto the wharf itself, or a rooftop deck. The response to both suggestions was that such alternatives would not work, either because of lack of wharf space or because of design and cost considerations. From further review of the Wharf Site Plan (Exhibit 3), it does appear that wharf space is indeed a limiting factor. Although there is approximately an 1,100-square-foot open space area (slightly larger than the proposed deck) between the restaurant's northwest corner and the office and fish warehouse structures, that area is not free space suitable for outdoor seating because the space is utilized for vehicular access to the fish house.

With regards to a rooftop deck, however, it appears that it might be possible to design some sort of notched, open-air loft into the restaurant structure's peaked roof at the roof's west end. Such a deck would afford a bird's eye view not only of wharf and boat activity below but of Bodega Harbor beyond. Whether or not such a deck would be structurally or economically feasible would have to be determined by the applicants and their architect.

Cantilevered Deck.

If a deck were cantilevered from the boardwalk instead of relying on pilings for support, no fill of coastal waters would result. However, possible impacts from deck shading of benthic organism habitat would still be an issue that would need to be addressed. In any event, the applicant's architect has informed staff that a cantilevered deck, engineered to support the weight of 60 customers, would not be economically feasible.

Because the no project alternative (and possibly other alternatives) is a feasible, less environmentally damaging alternative to the project, the Commission finds that the project is not consistent with the requirement of Section 30233 that no fill project be approved if there is a feasible less environmentally damaging alternative.

4. Public Access.

Section 30210 of the Coastal Act requires that maximum public access and recreational opportunities be provided with new development. Section 30212 requires that access from the nearest public roadway to the shoreline be provided in new development projects except where it is inconsistent with public safety, military security, or protection of fragile coastal resources, or adequate access exists nearby. Section 30211 requires that development not interfere with the public's right to access gained by use or legislative authorization. In applying Sections 30210, 30211 and 30212, the Commission is also limited by the need to show that any denial of a permit application based on these sections, or any decision to grant a permit subject to special conditions requiring public access, is necessary to avoid or offset a project's adverse impact on existing or potential access.

1-95-66

JAMES W. AND PEGGY N. LUCAS

Page 13

The tidelands lease agreement between the County of Sonoma and the applicants requires that public access to the harbor be available at the Lucas Wharf complex. As noted above, although public access to the harbor is available at Lucas Wharf, the wharf proper does not provide as open and direct harbor access as do the boardwalk adjacent to the restaurant and parking lot and the 170-foot-long, unobstructed over-water pier extending west from the south end of the boardwalk, approximately 200 feet south of the restaurant. See Exhibit 3, Wharf Site Plan.

The proposed project would eliminate 606 square feet from the boardwalk, where it meets the restaurant, to accommodate the eastern half of the proposed deck and the emergency access ramp from the deck to the boardwalk. From the restaurant for a distance 38 feet to the south, the entire 11-foot width of boardwalk would be converted to decking. See Exhibits 3-5. A four-foot wide paved sidewalk that now separates the boardwalk from the parking lot would remain. For approximately another 26 feet south from the deck, the west half of the boardwalk would be converted to use for the emergency access ramp that would connect to the deck. See Exhibits 3 and 4.

The converted 606-square-foot area of the boardwalk would be available only to restaurant patrons because the portion converted to deck (418 square feet) would be separated from the rest of the boardwalk by the 7-foot-high windscreen/fence (also serving as a "delineation barrier" required by the Department of Alcoholic Beverage Control), proposed along the east and south sides of the deck, and because the ramp (188 square feet) would provide only emergency access use. The converted 606-square-foot area of boardwalk constitutes approximately 27% of the boardwalk's total 2,255-square-foot area. The public's enjoyment of the use of this portion of the boardwalk adjacent to the deck would thus be diminished. For example, the 7-foot high fence would greatly reduce the public access users' sense of open space as they walk by because they would not be able to see through it, and they would now be separated from the water where previously they were not. Furthermore, no new public access is proposed to compensate for the impacts of the project on public access.

Because the proposed project will diminish both the extent and quality of public access, without providing any new public access as mitigation, the project is inconsistent with the public access policies of the Coastal Act calling for public access opportunities to be maximized and the protection of the public's existing rights of access.

The applicants' correspondence to the Commission, dated August 12, 1997 (see Exhibit 7), asks the Commission "How much of the facility (the Lucas Wharf complex) is the Commission demanding we allow public access, and how much control are we allowed to enforce in particular areas at given times?" The applicant also raises concerns regarding public safety and liability issues. As noted above, public access to Bodega Harbor, consistent with the requirements of the tidelands lease agreement between the County of Sonoma and the applicants, is available through the wharf proper, along the boardwalk, and on the pier extending from, and perpendicular to, the south end of the

1-95-66

JAMES W. AND PEGGY N. LUCAS

Page 14

boardwalk. In denying the proposed project in part on public access grounds, the Commission notes that the denial is based on the fact that the proposed project would diminish public access opportunities without mitigating for the loss of public access, contrary to the public access policies of the Coastal Act, and not on the basis that the proposed project does not provide any additional public access.

5. Visual Resources.

Section 30251 of the Coastal Act states that the scenic and visual qualities of coastal areas be considered and protected as a resource of public importance, and requires in applicable part that permitted development be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, and to be visually compatible with the character of surrounding areas.

The primary project impacts to coastal visual resources will result from construction of the 7-foot-high windscreen/fence proposed for the east and south sides of the deck. See Exhibit 6, Deck & Fence Elevations. The lower 5 feet of the fence would be constructed of redwood plywood, weathered to match the restaurant building's siding. The upper 2 feet of this solid fence would be continuous black vinyl covered wire trellis. The lower portion of the fence would include recessed planting pockets for evergreen coastal lilac vine trained to climb up and into the trellis.

On the deck's south and west sides, fencing would be lower, approximately 4-feet-high, and constructed of clear glass panels set in wood rails. Deck fencing would screen most parts of the deck from public view except from points along the boardwalk south of the deck and from the pier extending into the harbor from the south end of the boardwalk. Although it would not be high enough to block views from the highway of the open harbor beyond Lucas Wharf, the 7-foot-high fence along the boardwalk would block some views from the highway of water and boats within the Lucas Wharf complex. In addition, public views that now exist from the 38-foot-length of boardwalk and portion of the parking lot directly east of the deck project site would be completely blocked by the 7-foot-high fence. Some people currently use the parking lot on occasion as an area to view the harbor from their cars. See Exhibit 6, Elevations.

The applicant has indicated to Commission staff that the proposed barrier is needed to meet the requirements for a "delineation barrier" to separate outdoor spaces where alcoholic beverages are sold and consumed from public walkways. However, alternative barriers that would not create such visual impacts are available. According to the ABC staff, a barrier as low as four feet in height would meet the ABC requirements. Furthermore, such barriers can be constructed of any material or combination of materials, opaque or transparent, as long as they cannot physically be passed through. Thus, the lower glass panels proposed for the deck's west and south (portion) edges would satisfactorily meet the ABC requirements. However, although the proposed 7-foot-high fence is consistent with and even exceeds the ABC's minimum "delineation barrier" requirements, this fence as proposed is not

1-95-66

JAMES W. AND PEGGY N. LUCAS

Page 15

consistent with Coastal Act Section 30251 requirements that development be designed to protect public coastal views.

6. Alleged Violation

According to a recent "geotechnical consultation" report (Earth Science Consultants, January 25, 1997) that was submitted with this application, the four timber piles that are included in the application were actually installed approximately 13 years ago. The installation was made without benefit of a coastal development permit. Although timber pile development has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Denial of the permit does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

7. Conclusion

The proposed fill of coastal waters, in the form of the installation of four timber pilings to support a deck addition to a restaurant that is not coastal-dependent and that is only available to the public as paying customers, is inconsistent with Coastal Act marine resources policies because it is not a use for which fill of coastal waters may be considered pursuant to provisions of Coastal Act Section 30233(a). Furthermore, the project is not consistent with Section 30233 requirements that no fill project be approved if there is a feasible less environmentally damaging alternative.

The project is inconsistent with the public access policies of the Coastal Act in that the proposed conversion of approximately 606 square feet of publicly used harbor-front boardwalk to private deck space is inconsistent with Coastal Act policies calling for public access opportunities to be maximized and the protection of the public's existing rights of access.

Finally, the project's proposed 7-foot-high fence on the east and south sides of the deck is inconsistent with Coastal Act Section 30251 requirements that development be designed to protect public coastal views.

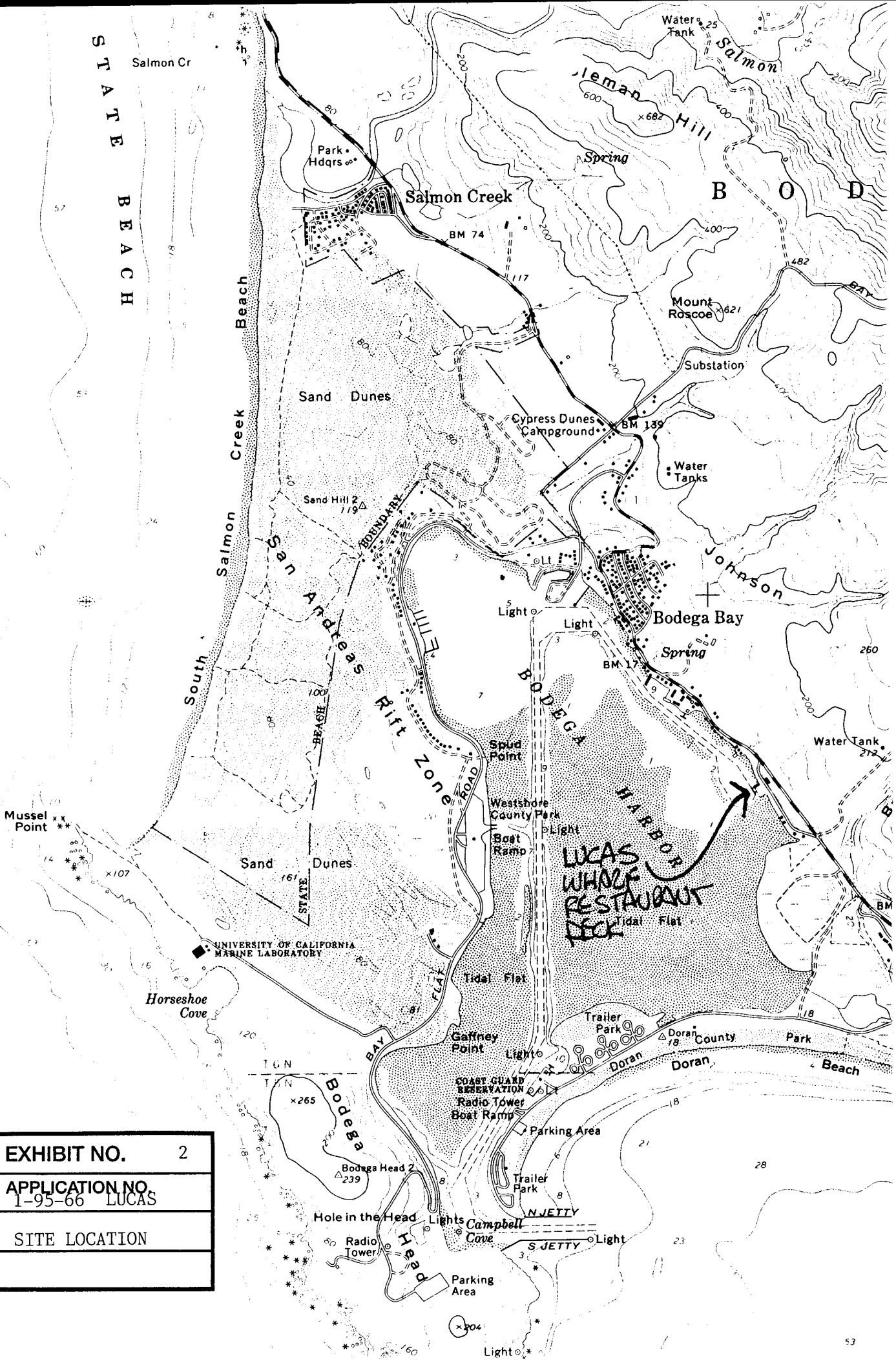
Therefore, the Commission denies the proposed development.

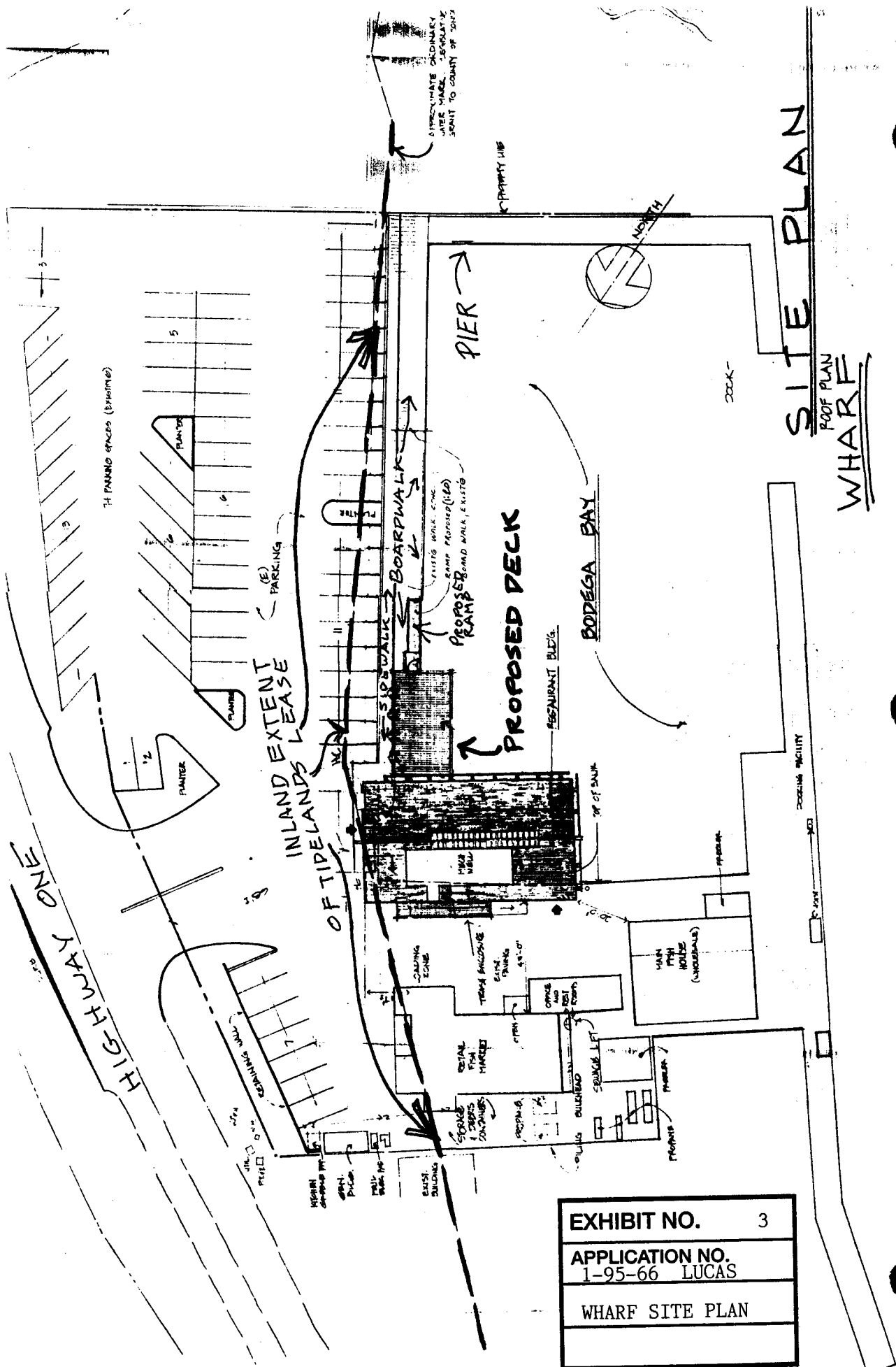
EXHIBITS:

1. Regional Location Map
2. Site Location Map
3. Wharf Site Plan
4. Deck Plan
5. Boardwalk Photo/Deck Floor Depiction
6. Deck/Fence Elevations
7. Correspondence from Applicants

9528p/bvb/WANG

EXHIBIT NO.	2
APPLICATION NO.	1-95-66 LUCAS
SITE LOCATION	





WHARF
 ROOF PLAN
SITE PLAN

EXHIBIT NO.	3
APPLICATION NO.	1-95-66 LUCAS
WHARF SITE PLAN	

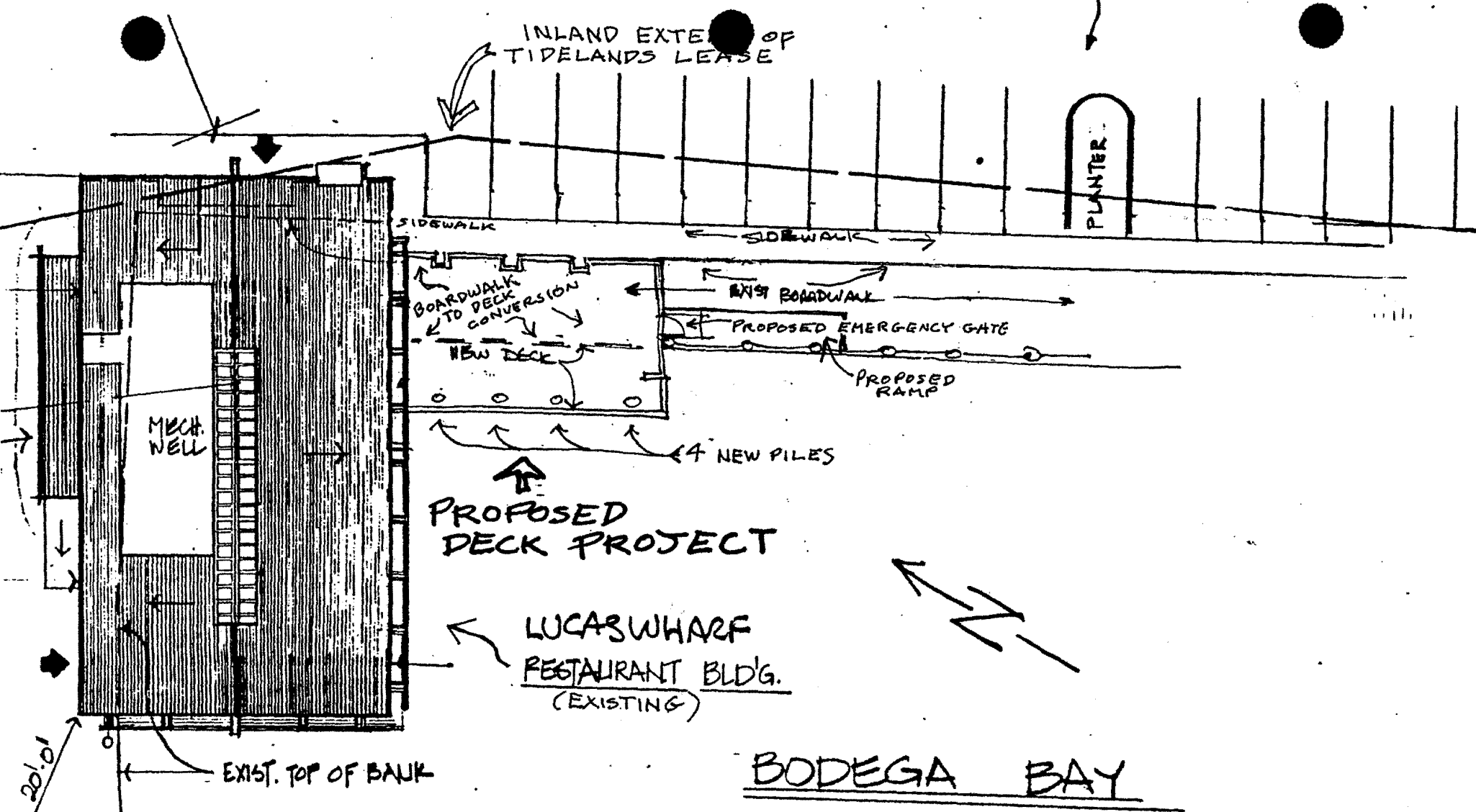


EXHIBIT NO.	4
APPLICATION NO.	1-95-66 LUCAS
DECK PLAN	

SITE PLAN

1" = 20'-0"

24 JAN 96 JOHN F COOK ARCHITECT
 2 FEB 96 P.O. BOX 127 • BODEGA BAY, CA 94923-0127 • 707-875-3434 • FAX 875-3727

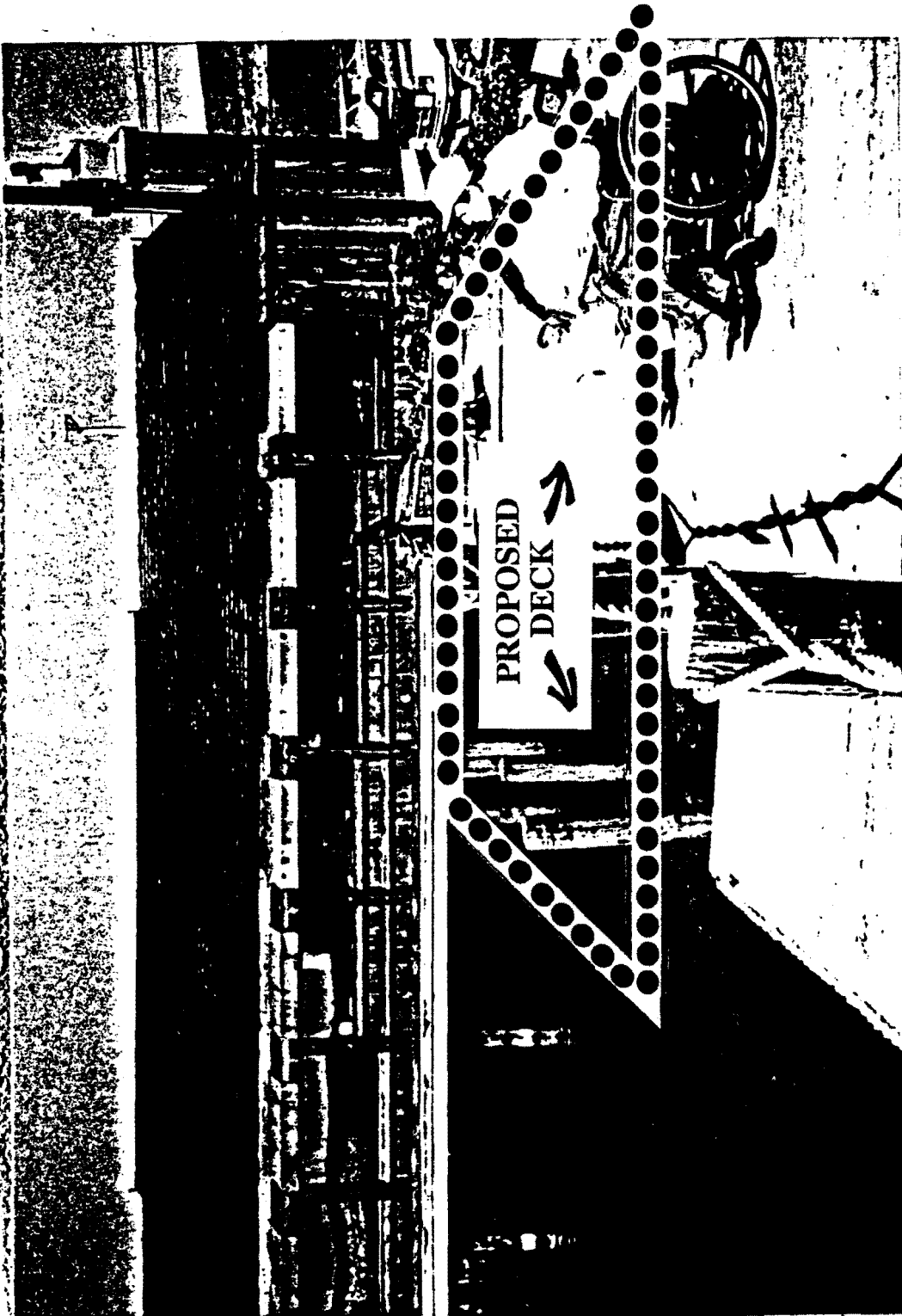


EXHIBIT NO. 5

APPLICATION NO.
1-95-66 LUCAS

DECK FLOOR
DEPICTION

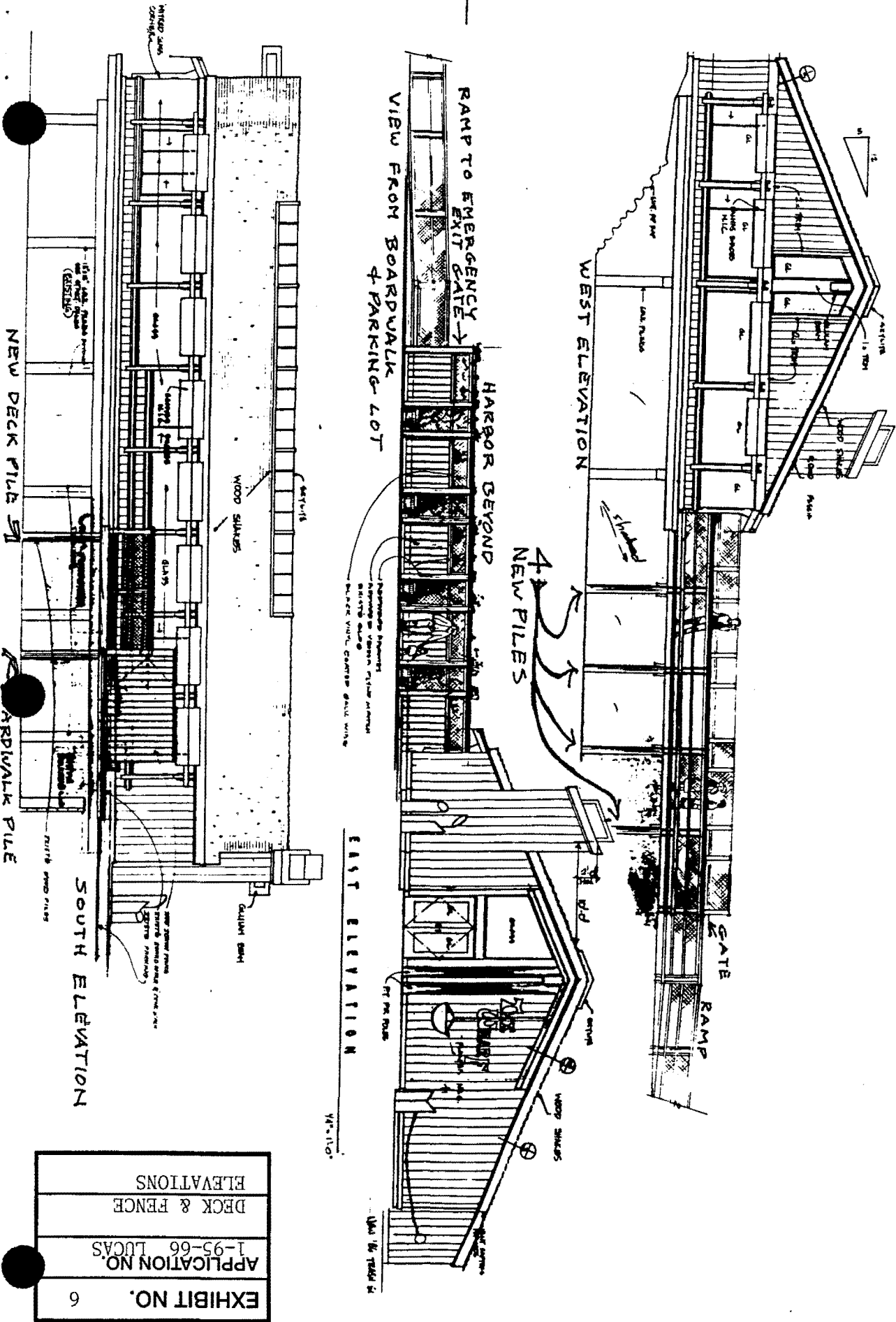


EXHIBIT NO. 6
 APPLICATION NO. 1-95-66 LUCAS
 DECK & FENCE ELEVATIONS



RECEIVED
AUG 19 1997

CALIFORNIA
COASTAL COMMISSION

August 12, 1997

California Coastal Commission
North Coast Area
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Attention: Bill Van Beckum

Re: Staff Report for Deck Addition at Lucas Wharf
Located at 595 Hwy. I, Bodega Bay, California

EXHIBIT NO.	7
APPLICATION NO.	1-95-66 LUCAS
Correspondence from applicants	

Dear Mr. Beckum:

The Lucas Wharf complex is a direct outlet for a variety of products harvested by Bodega Bay fishermen. The complex consists of three divisions from which products can be marketed; wholesale fisheries, retail seafood, and a seafood restaurant. All of these divisions specialize in the fresh products delivered to Lucas Wharf by boat. There are approximately 300 commercially licensed vessels presiding in Bodega Bay and another 200 transient vessels. The bulk of the products delivered consist of salmon, crab, and fin fish.

Facilities such as Lucas Wharf are greatly needed for the survival of a commercial fishing industry in Bodega Bay. Lucas Wharf deals in a variety of aspects in which to market the products delivered by the local fleet; some of which are overseas trade, local wholesale distribution, statewide distribution of live and cooked crab, and smoked and cured product (salmon and albacore). The Lucas Wharf complex is operated to accommodate anyone whom may visit the facility; from a major overseas broker, crab or shrimp sandwich customer, fish and chip customer, a fine dining experience in the seafood restaurant, to a father and son carrying fishing rods who choose to catch their own meal on the wharf's some 650 lineal feet of which we offer public access. The experience the public has access to at Lucas Wharf is unique. To see a vessel arrive at the wharf, deliver the catch, and realize that the catch is readily available in the fresh sea food market, the restaurant or wholesale to the public is quite unique, and responsible for the success of Lucas Wharf.

To be of the opinion that one could separate one of the divisions as separate and non-dependent on the commercial fishing trade is ridiculous. If this opinion was maintained, one of the above visitors to Lucas Wharf would be denied his or her desire of use of the facility.

As owners, James and Peggy Lucas, we are proud of the quality in diversity of services offered at our facility. We offer everything from a five star dining experience to helping a six year old catch his or

California Coastal Commission
North Coast Area
Attention: Bill Van Beckum
August 12, 1997

her first fish from our wharf. Any addition which would facilitate an increased public awareness of the top quality products produced and delivered in Bodega Bay will not only enhance profits at Lucas Wharf, but will also be of great economic benefit to the fishermen. We feel the deck will help in sales of local products at the wharf, which in turn, will increase our purchasing power. Therefore, everybody wins - public, fishing industry, local economy, Lucas Wharf.

At the present time, there are only two facilities in Bodega Bay that can accomplish the above mentioned services, Lucas Wharf and The Tides. In the past five years, three major west coast buyers have stopped doing business in Bodega Bay. The need for expansion of facilities such as Lucas Wharf is vital for the survival of the commercial fishing industry. The industry is in trouble largely due to lack of domestic exposure to market our local products.

A deck at Lucas Wharf restaurant will help achieve this goal. A warehouse addition is in the permit process at the present time, and hopefully will come before the commission for approval in the near future.

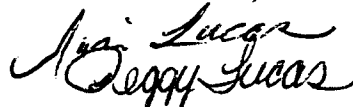
Lucas Wharf was developed entirely with private funds. The facility was purchased prior to the signing of the tidelands lease in 1981. Lucas Wharf allowed access even prior to the signing of the lease with Sonoma County.

My questions to the Commission are two-fold. How much of the facility is the Commission demanding we allow public access, and how much control are we allowed to enforce in particular areas at given times? Our concern for public safety on the premises is a major concern for liability. Lucas Wharf allows more public access than any state or county park on the coast. We maintain liability insurance on the grounds, the docks and the public restrooms entirely at our own expense. It is quite evident that controls must be enforced to protect Lucas Wharf from liability exposure at certain times in certain areas. Without such control, the facility would be uninsurable. If uninsurable, it would automatically be inoperable. Liability insurance is one of the many demands made by Sonoma County in the tidelands lease, of which the county is co-insured at the expense of Lucas Wharf.

We hope this statement will shed some light on some of the concerns addressed in the staff report prepared by Mr. Van Beckum. If there are any questions or concerns to be addressed concerning this permit application, we will be glad to discuss and solve them.

Very truly yours,

LUCAS WHARF, INC.



James and Peggy Lucas

