

CALIFORNIA COASTAL COMMISSION

NORTH COAST AREA

FREMONT, SUITE 2000

SAN FRANCISCO, CA 94105-2219

(415) 904-5260

RSM



W 7a

Filed:	February 13, 1998
49th Day:	April 3, 1998
Staff:	Jo Ginsberg
Staff Report:	February 20, 1998
Hearing Date:	March 11, 1998
Commission Action:	

STAFF REPORT: APPEALSUBSTANTIAL ISSUE

LOCAL GOVERNMENT:	County of Mendocino
DECISION:	Approval with Conditions
APPEAL NO.:	A-1-MEN-98-17
APPLICANT:	DON AND MARGARET PERRY; HENRY AND MARGARET SMITH
PROJECT LOCATION:	28301 North Highway One, north of Fort Bragg, Mendocino County; APNs 069-010-20, 069-010-21, 069-010-22, 069-010-34, 069-010-35, 069-020-02, 069-020-05, 069-020-14, 069-050-06, 069-070-07, 069-070-11.
PROJECT DESCRIPTION:	Construction of a 20-unit visitor serving facility, including 20 guest units in seven separate structures, a lobby/meeting room/manager's quarters building, an employee utility building, 25 parking spaces, a sign, underground water tanks, wells, leach fields, driveway, and fence.
APPELLANT:	Friends of the Ten Mile; Mendocino Coastwatch; Mendo Lake Group Sierra Club
AGENTS:	Judith Vidaver, Roanne Withers, Ron Guenther
SUBSTANTIVE FILE DOCUMENTS:	Mendocino County Local Coastal Program; Mendocino County Coastal Development Permits No. CDU 8-97 and CDU 8-93.

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STAFF RECOMMENDATION:

The staff recommends that the Commission OPEN AND CONTINUE the public hearing to determine whether substantial issue exists with respect to the grounds on which the appeal has been filed for the following reasons:

Pursuant to Section 30621 of the Coastal Act, an appeal hearing must be set within 49 days from the date an appeal of a locally-issued coastal development permit is filed. The appeal on the above-described decision was filed on February 13, 1998. The 49th day falls on April 3, 1998. The only meeting within the 49 day period is March 10-13. In accordance with the California Code of Regulations, on February 17, 1998, staff requested all relevant documents and materials regarding the subject permit from the County, to enable staff to analyze the appeal and prepare a recommendation as to whether a substantial issue exists. The County permit file information had not been received as of the day of the final mailing of staff reports to the Commission and interested parties on items on the Commission's March meeting agenda. Thus, the requested information was not received in time for the staff to review the information for completeness or prepare a recommendation on the substantial issue question. Consistent with Section 13112 of the California Code of Regulations, since the Commission did not timely receive the requested documents and materials, the Commission must open and continue the hearing open until all relevant materials are received from the local government.

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15 FREMONT, SUITE 2000

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Filed:	June 18, 1997
49th Day:	August 6, 1997
180th day:	Waived
270th day:	March 15, 1998
Staff:	Bill Van Beckum
Staff Report:	February 20, 1998
Hearing Date:	March 11, 1998
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 public 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 a 4-foot to 7-foot-high glass and wood windscreen on 3 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 and the protection of public access. Staff recommends **DENIAL** of the project because the project as proposed is inconsistent with Coastal Act provisions regarding these issues.

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The proposed fill of coastal waters, in the form of the installation of four timber piles to support a deck addition to a restaurant, is inconsistent with Coastal Act marine resources policies because it is not a public recreational pier that is intended to provide or ensure public access and recreational opportunities for the non-paying public consistent with the provisions of Coastal Act Section 30233(a)(4). The proposed fill would also be inconsistent with Section 30233(a)(1) because the deck addition to a restaurant in no way qualifies as a coastal-dependent industrial or commercial fishing use. Furthermore, the project is also not consistent with Section 30233 requirements that no fill project be approved if there is a feasible less environmentally damaging alternative.

The project is also 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 restaurant deck space is inconsistent with Coastal Act policies which require public access opportunities to be protected and maximized.

Finally, although the subject project is not extensive, the staff recommendation of denial is also necessary to avoid the precedential effect that approval of the project would have by encouraging the fill of open coastal waters for other commercial or non-coastal-dependent industrial uses 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 1997 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. On September 8, 1997, the applicants again requested a postponement of the hearing to a date no later than March 18, 1998. Pursuant to Section 13085 of the Commission's regulations, an applicant is entitled to only one automatic postponement of a Commission hearing on an application; any additional postponements are at the discretion of the Commission. At the September 8, 1997 meeting, the Commission granted the second postponement.

2. Deadline for Commission Action.

Consistent with time limits established by Government Code Section 65952, the Commission must render a decision on this permit application at this hearing, and prior to March 15, 1998, the 270th day from the date the permit application was filed.

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3. Changes to Proposed Development.

As originally proposed, the deck would have been available only to restaurant customers and would have been screened by an opaque (wood) fence. Staff recommended denial of the original proposal, partly because public coastal views would be blocked by the fence, and partly because a deck addition that would only be available to the restaurant's paying customers would be inconsistent with Coastal Act Section 30233(a) since the proposed fill is not for a public recreational pier that provides the general public with access and recreational opportunities. In addition, the deck would reduce overall public access by occupying an area currently devoted to a public access boardwalk.

Subsequent to their September 8 postponement request, the applicants submitted a revised project description, Exhibit 8, to make the restaurant deck "available (to the public) without purchase of service" and to change the design of the windscreen to include glass panels. This revised staff report addresses the project as amended by the applicants. Although the new windscreen design would keep public coastal views open, staff continues to recommend denial of the project because although the restaurant deck would be available to the public as well as to the restaurant's paying customers, it is not a public recreational pier that is intended to provide or ensure public access and recreation to the non-paying public. In addition, the revised deck addition to the restaurant does not qualify as a coastal-dependent industrial or commercial fishing use because it does not require a location on the shoreline to function and is neither an industrial nor commercial fishing use. Finally the revised proposal would still reduce existing boardwalk access that is exclusively reserved for public use.

4. 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.

5. 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 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)."

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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."

I. MOTION, STAFF RECOMMENDATION AND RESOLUTION

The staff recommends that the Commission adopt the following resolution:

Motion.

I move that the Commission approve Coastal Development Permit No. 1-95-66 subject to conditions.

Staff Recommendation Of Denial:

Staff recommends a **NO** vote and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution To Deny Permit:

The Commission hereby denies a coastal development 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. Granting of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

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 conterminous 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.

2. Project Description.

The wharf's restaurant is built partly over water atop piles in the harbor. 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 piles in the intertidal area, runs along the shoreline south from the southeast corner of the restaurant.

This proposal "to build a smoking and drinking deck on wooden piers," within the tidelands lease area of the site, would be accomplished by removing a 606-square-foot section of the pile-supported boardwalk, installing four wood piles in the intertidal area, and constructing, on the new piles and the piles beneath the removed boardwalk, a 1,012-square-foot deck addition to the existing restaurant. In other words, half of the proposed restaurant deck addition would occupy part of the existing public boardwalk, and the other half would be constructed atop four timber pilings placed in adjacent open intertidal area.

The restaurant to which the deck would be added was constructed pursuant to Coastal Development Permit # 227-77, approved 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 current 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 application also notes that, "The owners agree the deck is available without purchase of service." In other words, the applicants are proposing a shared use of the deck, with restaurant and bar customers and boardwalk passersby attracted to the deck freely mixing.

The proposed deck's north side would abut and connect to the restaurant near the restaurant's east end. The project includes installation of a 4-foot to 7-foot-high glass and wood windscreen on the other three sides of the deck. See Exhibits 4-6. The south and west sides of the proposed deck face the harbor, and its east side faces a sidewalk and the parking lot.

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The windscreen on the deck's east side is also proposed to satisfy Department of Alcoholic Beverage Control (ABC) requirements for a solid "delineation barrier" between alcoholic beverage service areas and public use areas, if the deck were built and subsequently approved by the ABC as an area into which the restaurant could in fact expand its alcoholic beverage sales. Upon consultation with the ABC, staff was informed that the ABC normally does not review proposals to expand, to additional space, the area in which a bar is licensed to serve alcohol until the space already exists. Thus, in the case of the proposed project, according to ABC staff (Andrew Gomez, 11/20/97), the applicants could not apply to ABC for a license to expand alcoholic beverage service to the deck until the deck was built, subsequent to issuance of a coastal development permit by the Commission and a building permit by the County of Sonoma.

Primary access to the deck would be through a new doorway opening installed in the restaurant's south wall. Project plans show that access to the boardwalk from the deck would be available only through a gate built into the deck's south windscreen and connecting to the boardwalk by a ramp. The gate, which would also serve as an emergency exit for deck users, would remain "open for pedestrian access during business hours" according to a notation on Exhibit 6 (South Elevation).

Exhibit 5 is a depiction by staff, on a photo submitted by the applicants, of the proposed deck's floor area. The four deck-supporting piles are in place 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.

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

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:

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

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.

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

The above policy sets forth a number of different limitations on what fill projects may be allowed in coastal waters. For analysis purposes, the 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 the first two of these tests: i.e., (a.) the project is not one of the eight allowable uses specified in Section 30233 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 only uses that have any relation to the proposed fill, at least as contended by the applicant, 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 any of the allowable uses for fill in coastal waters, including the allowable uses identified in Section 30233 (a)(4) and 30233 (a)(1).

Public Recreation Pier That Provides Public Access and Recreation Opportunities.

As indicated above, the applicants have stated that the proposed deck would be available for use not only by restaurant and bar customers but to anyone, "without purchase of service." In other words, the applicants are proposing a shared use of the deck, with restaurant and bar customers and boardwalk passersby freely mixing. Such intentions, however, would not guarantee use of the deck for public access and recreation purposes and would not make the deck a public recreational pier. For example, if the deck were filled with paying customers it is unlikely that many of the customers would voluntarily relinquish their seats to passersby who have made their way to the deck hoping to settle down for a while to enjoy the view. Even at times when the deck is not filled with paying customers, passersby, especially if "under age," might

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feel inhibited by bar service activity evident on the deck and not venture from the boardwalk to the deck.

The presence of the bar service and fencing may cause the public access user to question whether he or she as a non-paying member of the public would really be welcome to use the deck for any length of time and would not be pressured to leave. In such circumstances many public access users would prefer not to risk being asked to leave and would simply choose not to use the deck. Furthermore, the smoking and drinking activity associated with the restaurant use of the deck may make the deck unappealing for many people who might otherwise be interested in using the deck for viewing, resting, or other public access purposes. As a result, the Commission finds that the proposed deck would be used only minimally by the non-paying public for public access purposes.

Because the actual use of the deck will be primarily for restaurant use with only minimal potential use by the non-paying public for public access purposes, the proposed use of the deck cannot be legitimately characterized as a "public recreational pier" for which fill can be allowed pursuant to Section 30233(a)(4) of the Coastal Act.

The Commission finds that the proposed deck is also not approvable as fill for a small restaurant addition to an existing public recreational pier development, with the existing pier being Lucas Wharf. The Commission has allowed pile-supported fill in tidal areas to support the construction of additional restaurant space, as part of an existing public recreational pier open to the general public at no charge. 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.

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

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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 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, in addition to the reasons provided in the discussion above, 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 that provides public access and recreational opportunities" as those terms are 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 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. This pier to the south could potentially be characterized as a public recreational pier. However, the proposed deck would not be added to this pier, it would be added to the Lucas Wharf pier to the north. Thus, the proposed use of the deck would not be for a small restaurant addition to an existing public recreational pier as the deck would not be added to any existing public recreation pier.

Coastal-Dependent Industrial Facilities Including Commercial Fishing Facilities.

The other use for fill in coastal waters allowed under Section 30233(a) that the applicants contend applies 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 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 a coastal-dependent industrial 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.

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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 coastal-dependent industrial or 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.

Coastal Act Section 30101 defines coastal-dependent to mean any development or use which requires a site on or adjacent to the sea to be able to function at all. The proposed fill, in the form of the installation of four timber piles to support a deck addition to a restaurant, can in no way be considered a coastal-dependent use because it does not require a shoreline location in which to function. Nor can the deck addition to the restaurant be considered either an industrial or commercial fishing use.

Further, promotion of the wharf's commercial fishing activities does not 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 coastal-dependent industrial or commercial fishing use to 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 piles 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 coastal-dependent industrial or commercial fishing use in Coastal Act Sec. 30233(a)(1).

b. Alternatives

The intertidal 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 piles. The area where the piles are proposed consists of

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unvegetated mudflat, which may provide habitat for a variety of worms, mollusks, and other benthic organisms. The project site does not contain any especially sensitive habitat, such as eelgrass beds. However, the construction of the 606-square-foot deck portion atop the four piles (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 served on the deck, which would be separated from the adjacent publicly used boardwalk by a 7-foot-high glass and wood windscreen. At this height, the windscreen is 3 feet higher than would be required by the Department of Alcoholic Beverage Control (ABC), to meet ABC requirements for a solid "delineation barrier" between alcoholic beverage service areas and public use areas.

Current ABC regulations do not allow alcoholic beverages to be taken outside the restaurant, and new state law, in effect since January 1, 1998, prohibits any smoking in bar and restaurant interior spaces. The no project alternative thus would not provide customers of the existing 96-seat restaurant a defined setting for smoking outdoors and/or enjoying outdoor beverage service while observing wharf activities. Even now, however, patrons of the restaurant 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

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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 outdoor seating for smokers would probably not discourage continued restaurant patronage by smokers who are faced with the same non-smoking restrictions inside any of Bodega Bay's restaurants and bars.

Thus, the restaurant is not at any competitive disadvantage with other bars and restaurants 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 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 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.

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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.

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. 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 does 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.

Rather than provide public access, 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, as follows. From the restaurant for a distance 38 feet to the south, the entire 11-foot width of boardwalk would be converted to

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decking. See Exhibits 3-5. A four-foot wide paved sidewalk that now separates the boardwalk from the parking lot would remain. The sidewalk would be separated from the deck by a 7-foot-high glass and wood windscreen (Exhibit 6, East Elevation). 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.

Although the applicants are proposing a shared use of the deck, with restaurant and bar customers and boardwalk passersby freely mixing, there are no assurances that use of the pier for public access and recreation would in fact be provided. As discussed above, for example, it is unlikely that many paying customers would voluntarily relinquish their deck seats to passersby looking for seats, and "under age" passersby might be hesitant to enter the deck with bar service evident.

Because the proposed project will diminish both the extent (approximately 27% of the boardwalk's total \pm 2,255-square-foot area) and quality of public access, without providing any new area for exclusive public access use as mitigation, the project is inconsistent with the public access policies of the Coastal Act calling for public access opportunities to be protected and maximized.

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 proposed for the east side, and portion of the south side, of the deck. On the deck's east side, along the sidewalk, the proposed windscreen consists of alternating wood and glass panels. The applicant has indicated to Commission staff that the proposed barrier along the sidewalk is needed to meet the ABC requirements for a "delineation barrier" to separate outdoor spaces where alcoholic beverages are sold and consumed from public walkways. On the deck's south side, half the length of the deck will be screened by 7-foot-high wood panels, and the other half by a lower wood guard rail with glass panel inserts. See Exhibit 6, East & South Elevations.

The design of the windscreen and railings would provide a degree of privacy and shelter for users of the deck while still allowing views across the deck to Bodega Harbor, from the adjacent sidewalk and boardwalk, from the parking lot, and from Highway One. Redwood lumber, weathered to match the restaurant building's siding, is proposed. The Commission therefore finds that the project as proposed is consistent with Coastal Act Section 30251 requirements

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that development be designed to protect public coastal views and be visually compatible with the character of the surrounding area.

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 a coastal-dependent industrial use and that does not ensure coastal access and recreation opportunities except to 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 also 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 protected and maximized.

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. Elevations
7. Correspondence from Applicants
8. Applicants' Revised Project Description

9843p/bvb/WANG

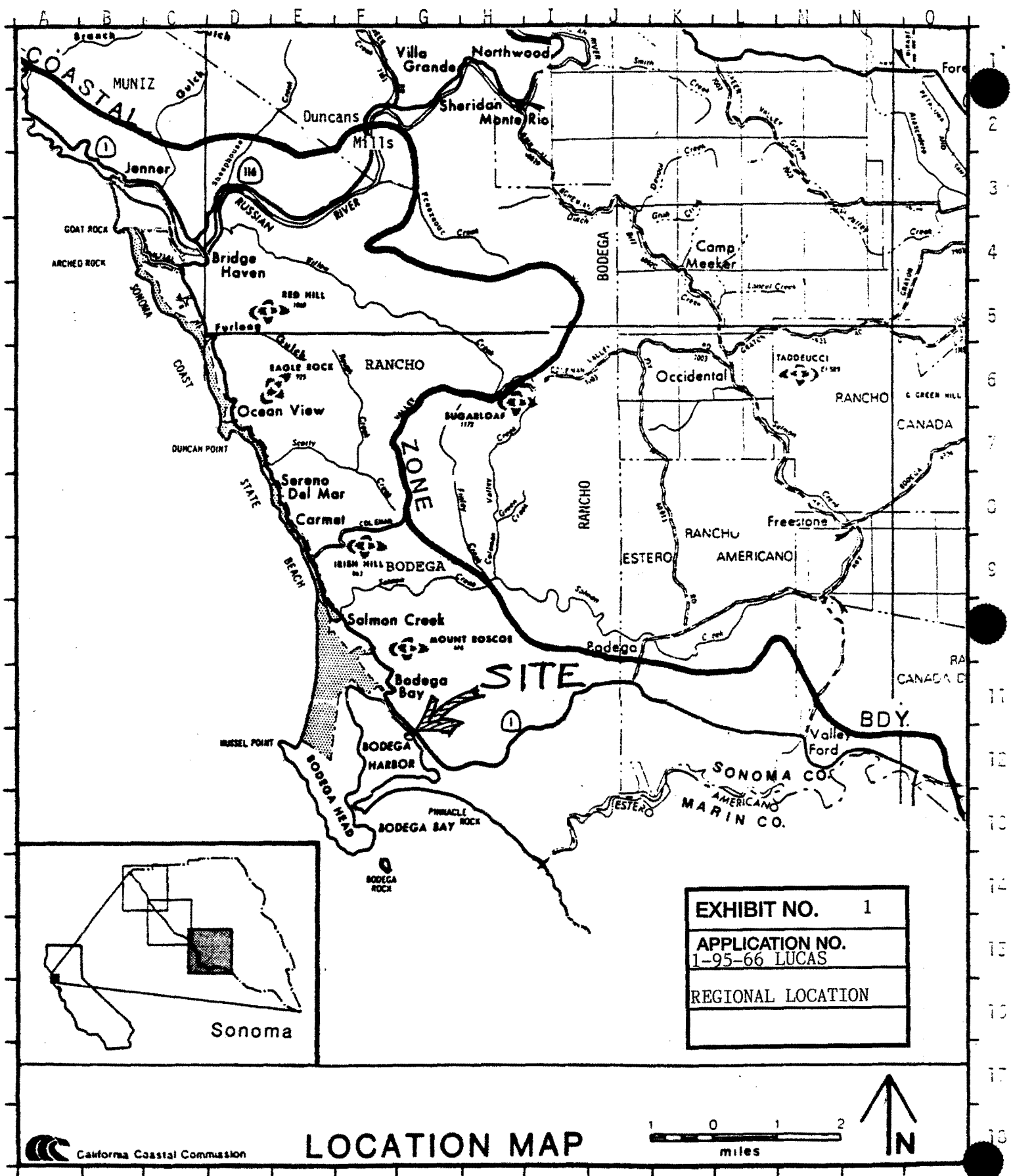
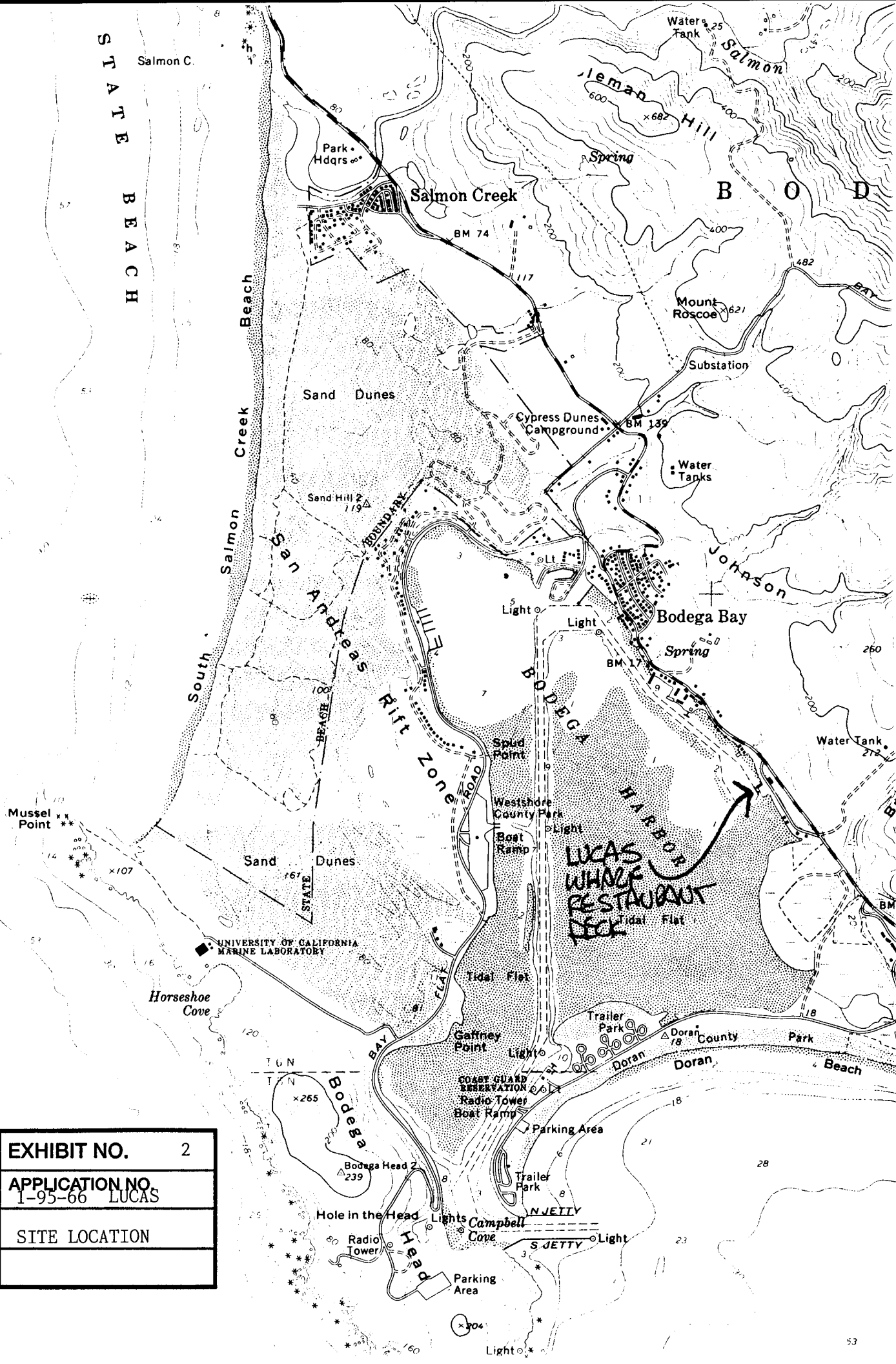


EXHIBIT NO.	2
APPLICATION NO.	1-95-66 LUCAS
SITE LOCATION	



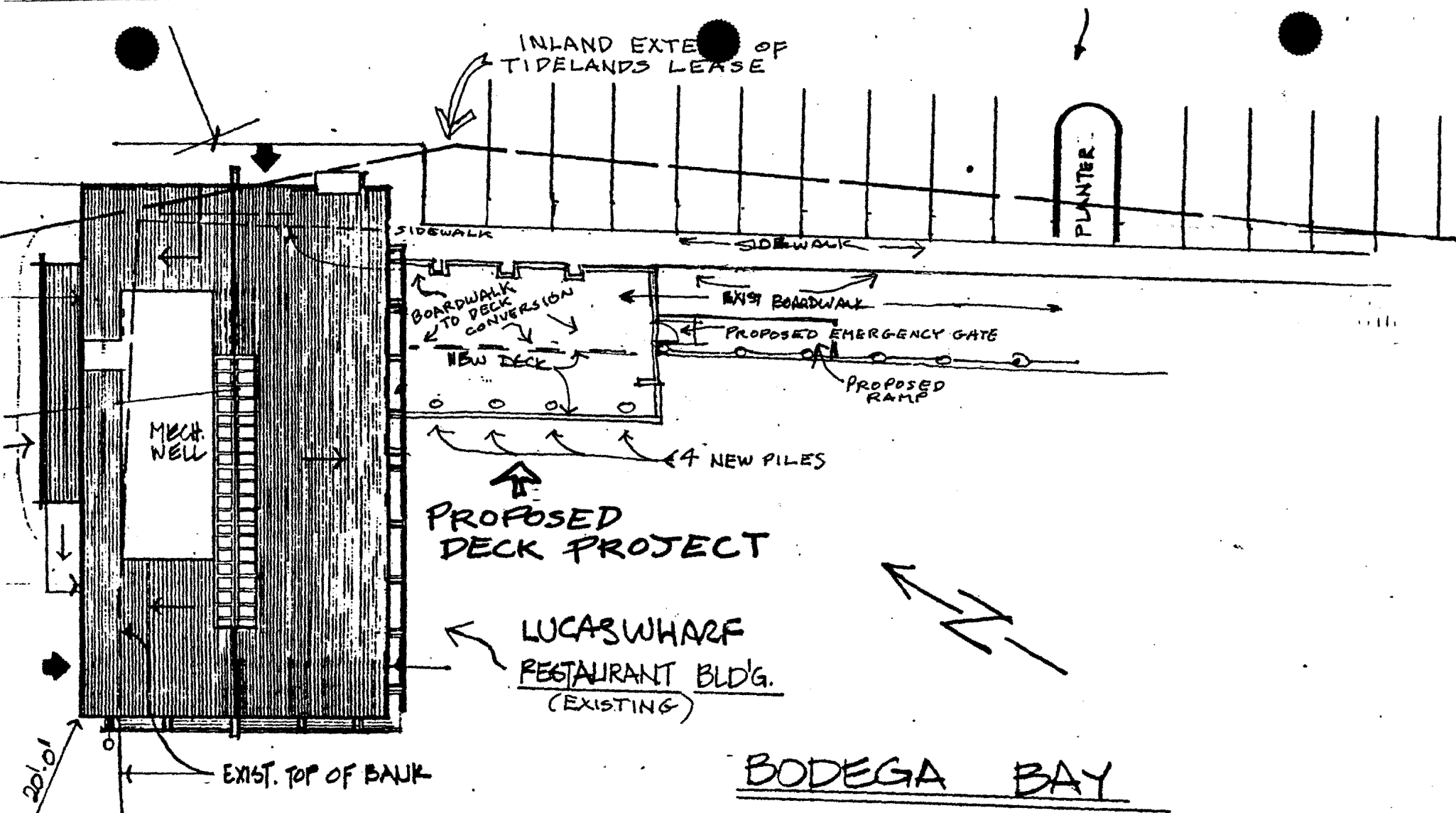


EXHIBIT NO.	4
APPLICATION NO.	1-95-66 LUCAS
DECK PLAN	

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

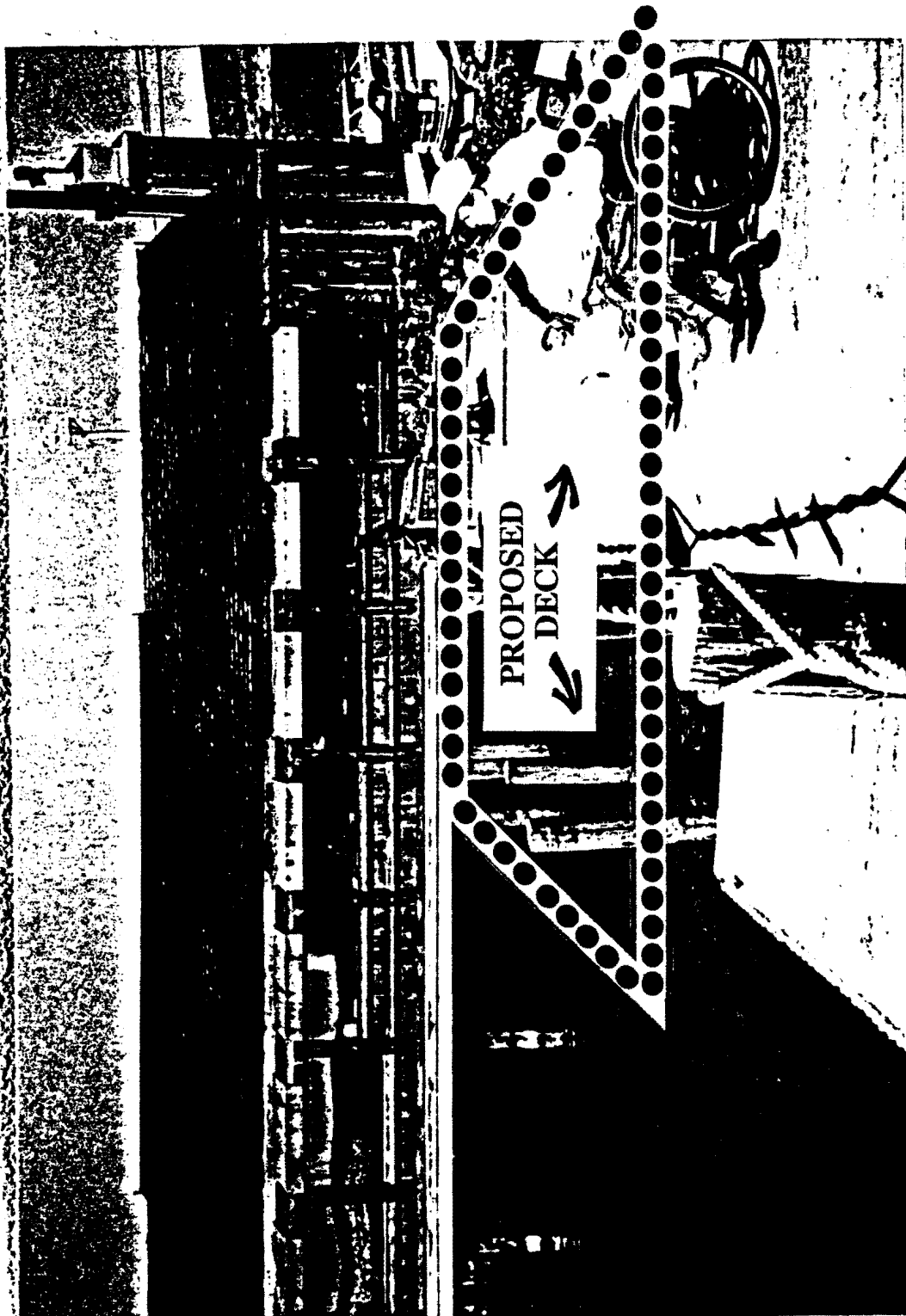


EXHIBIT NO. 5

APPLICATION NO.
1-95-66 LUCAS

DECK FLOOR
DEPICTION

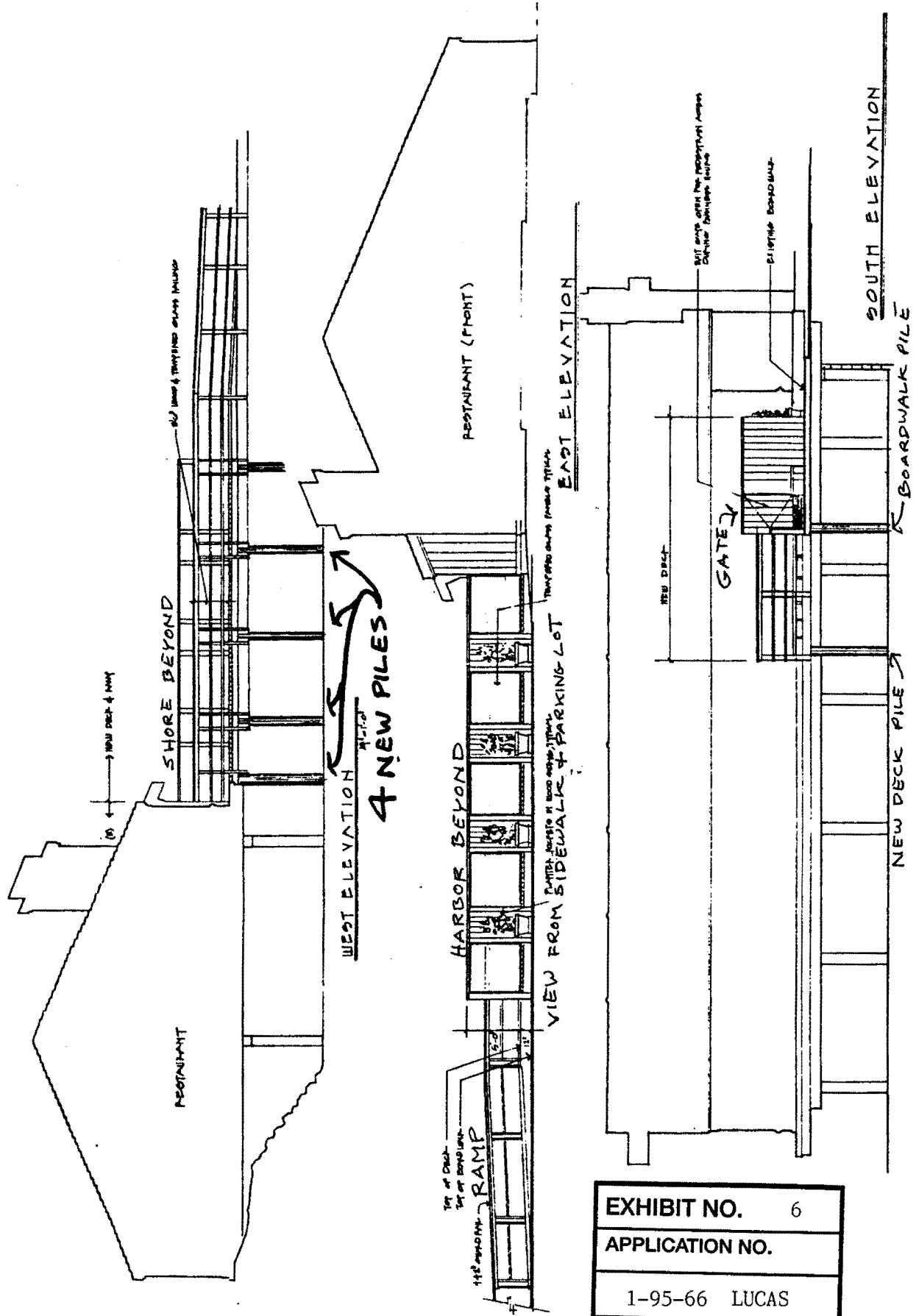


EXHIBIT NO.	6
APPLICATION NO.	
1-95-66	LUCAS
ELEVATIONS	



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.

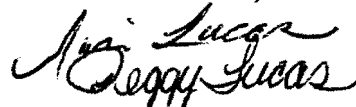
Lucas Wharf was developed entirely with private funds. The facility was purchased prior to the signing of the tidelands lease in 1981. Lucas Wharf allowed access even prior to the signing of the lease with Sonoma County.

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

October 30, 1997

Project Description: LUCAS WHARF RESTAURANT DECK

This proposal is to build a smoking and drinking Deck on wooden piers in place in the harbor that support four hundred (400) lineal feet of public access Boardwalk and on another row of four (4) existing wooden piers. This proposal is to build a 25' x 40" wooden Deck twelve (12) inches above the existing Boardwalk at the Restaurant level. This proposed Deck replaces one half of the Boardwalk for forty (40) feet of the four hundred (400) feet of existing Boardwalk at a higher level with seating and chairs. Access from the Boardwalk will be through the Restaurant or directly from the Boardwalk on a handicap accessible ramp and through an open (during business hours) gate. The Owners agree the Deck is available without purchase of service. The ABC will require a "no alcohol beyond this point": sign at Boardwalk access point. The ABC also requires a perimeter separation along the forty (40) feet, paralleling the Boardwalk. This will be with a tempered clear glass rail forty eight (48) inches high with four landscape pockets twenty-four (24) inches wide).

This working fish processing wharf, tourist and local resident serving Deli and Restaurant are an inter-dependent arena. Ocean products are processed and sold across on-site counters as well as off-site. Tourists see the entire process from the Boardwalk and windows and from this proposed Deck.

Some economy generated is returned to the ocean fishers directly. This fourteen (14) year history of a fisherman and tourist service family owned business proposes this expansion of a variation on the coastal experience.

EXHIBIT NO.	8
APPLICATION NO.	1-95-66 LUCAS
REVISED PROJECT DESCRIPTION	