

CALIFORNIA COASTAL COMMISSION  
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Staff: Bill Van Beckum  
Staff Report: December 11, 1998  
Hearing Date: January 14, 1999  
Commission Action:

STAFF REPORT: REVISED FINDINGS

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 three sides of the deck.

DATE OF COMMISSION  
ACTION: March 11, 1998

COMMISSION ACTION: Approval with Conditions

COMMISSIONERS ON THE  
PREVAILING SIDE: Chairman Areias and Commissioners Allen, Brothers, Dettloff,  
Flemming, Johnson, Nava, Potter, Reilly, Staffel, Tuttle, and  
Wan.

SUBSTANTIVE FILE DOCUMENTS: Sonoma County Local Coastal Program

STAFF NOTES:

1. Procedure.

The Commission held a public hearing and acted on this project at the meeting of March 11, 1998. The written staff recommendation mailed prior to the hearing had recommended denial of the project. At the meeting, the Commission conditionally approved the project. As the Commission's action on the application differed from the written staff recommendation, the following revised findings have been prepared for the Commission's consideration as the needed findings to support its action. These findings reflect the action taken by the Commission at the meeting of March 11, 1998.

The Commission will hold a public hearing and vote on the revised findings at its January 14, 1999 meeting. The purpose of the hearing is to consider the adequacy of the revised findings in supporting the Commission's previous action rather than to reconsider the merits of the project or the appropriateness of the adopted conditions. Public testimony will be limited accordingly.

2. Related Permit Amendment Request.

At the January 14 meeting, the Commission also will be considering related Coastal Development Permit Amendment Request No. 1-95-66-A. The amendment request seeks to expand the area of the approved deck by approximately 630 square feet. A separate hearing on the amendment request will be held just after the Commission's consideration of the revised findings

3. 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 applied to the project is the Chapter 3 policies of the Coastal Act.

4. 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 "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."

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#### STAFF RECOMMENDATION

The staff recommends that the Commission adopt the revised findings in Section IV below in support of the Commission's action on March 11, 1998, approving the project with conditions. For reference, the adopted resolution of approval and special conditions precede the proposed revised findings.

(NOTE: Only those Commissioners on the prevailing side on the Commission's action on the permit on March 11, 1998 hearing are eligible to vote. See the list on Page 1.)

#### A. MOTION:

I move that the Commission adopt the revised findings to support the action taken on Coastal Development Permit Application No. 1-95-66.

#### B. STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a YES vote on the motion, which will result in adoption of the revised findings. The motion requires a majority vote of the members from the prevailing side present at the Commission's meeting, with at least 3 of the prevailing members present and voting. If the motion fails, the findings are postponed to a later meeting.

#### C. RESOLUTION TO ADOPT REVISED FINDINGS:

The Commission hereby adopts the following findings for 1-95-66 on the ground that the findings support the Commission's decision made on March 11, 1998 and accurately reflect the reasons for it.

## REVISED FINDINGS

For reference, the Commission's adopted resolution and conditions precede the proposed revised findings in support of the Commission's March 11, 1998 action.

### I. ADOPTED RESOLUTION OF APPROVAL

The Commission hereby grants a permit, subject to the conditions below, for the proposed development on the grounds that the development will be in conformity with the provisions of Chapter 3 of the Coastal Act of 1976, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

### II. STANDARD CONDITIONS. See Attachment A.

### III. SPECIAL CONDITIONS.

#### 1. Revised Deck Plans

PRIOR TO ISSUANCE of the Coastal Development Permit, the applicants shall submit for Executive Director review and approval revised final project plans that provide for a continuous public accessway, reserved for exclusive public access use, around the bayward perimeter of the proposed deck, that incorporates the following criteria. The required accessway shall: (a) be made available in its entirety for public use on or before the commencement of any commercial use of the remainder of the new deck space; (b) not in any way extend beyond or otherwise increase the approximately 25-foot by 40-foot size of the permitted deck; (c) be a minimum of 60 inches wide (clear space); (d) be designed to meet the Americans with disabilities Act (ADA) Accessibility Guidelines for wheelchair access; (e) be separated from the deck beverage service area by a largely transparent "delineation barrier" of sufficient height and material to meet the requirements of the Department of Alcoholic Beverage Control (ABC) for separation of alcoholic beverage service areas from public use areas; (f) be designed so that architectural features or attached or non-attached fixtures do not encroach into the clear space of the accessway and do not obstruct public access, (g) include a permanent sign, minimum size of 12 inches by 18 inches, which prominently conveys the exclusive availability of the accessway for public use and the hours which it shall be open for public use; (h) be available for public use daily (7 days a week) during daylight hours (i.e., from sunrise to sunset times as routinely published in newspapers and in tide tables) and after sunset

when the restaurant is still open for business, and (i) not be gated, chained, or otherwise closed off during the time period when it is required to be available for public use.

The plans to be submitted shall include a site plan, cross sections, a public access sign plan, and other details as necessary to illustrate the proposed deck and show how the deck will conform to the requirements of this condition. The plans shall specifically include the design and specifications of any security features that may be provided for closing the accessway during other hours. The permittees shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. Proposed changes to the approved final plans shall not occur without a Coastal Commission-approved amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is required.

#### IV. 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 remodeled 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." 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.

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 an emergency exit gate built into the deck's south windscreen and connecting to the boardwalk by a "handicap accessible" 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 four 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:

*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 project authorized by Permit #227-77 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.

Section 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. (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.



a. Permissible 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. However, in open coastal waters other than wetlands, the placement of structural pilings for public recreational piers that provide public access and recreational opportunities is allowed under subsection 4 of Section 30233. With a requirement that a perimeter public access walkway be established around the bayward perimeter of the proposed deck, the proposed fill could qualify as a public recreational pier that provides public access and recreational opportunities.

As noted above, 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.

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.

The Lucas Wharf complex has developed into "a working fishermen's wharf," as described in the permit application, that includes public access and recreational opportunities. Wharf development north and northwest 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). Although 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, visitors generally do not gravitate to this "working area" of the complex, because the intensive activity occurring there generally blocks or inhibits access. The primary public access and recreation opportunities at the wharf complex are 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 (Exhibit 3).

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, either through the restaurant or up the boardwalk-connected ramp, 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 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 also 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 deck as proposed, even if available to the public, might actually be used only minimally by the non-paying public for public access and recreation purposes.

The Commission therefore finds that the deck as proposed would not result in sufficient public access use to justify its characterization as a "public recreational pier" that is as inviting and easily accessible as the wharf's existing boardwalk and south pier. However, with a modified configuration coupled with use and design limitations that would establish a perimeter walkway around the bayward sides of the deck that would be exclusively reserved and actually used for public access purposes, the Commission finds that the deck, in combination with the access opportunities provided by the existing boardwalk and south pier to which the deck would be added onto, would provide sufficient public access and recreation opportunities to qualify as a "public recreational pier" for which fill can be allowed pursuant to Section 30233(a)(4) of the Coastal Act.

Therefore, to ensure that the project, proposed to include public access and recreation opportunities, in fact functions as a "public recreational pier" consistent with the requirements of Section 20233(a)(4), the Commission attaches Special Condition No. 1, to require that final project plans provide for a continuous public accessway, reserved for exclusive public access use, around the bayward perimeter of the proposed deck. Special Condition No. 1 further requires that the accessway: (1) be made available in its entirety for public use on or before the commencement of any commercial use of the remainder of the new deck space; (2) be a minimum of 60 inches wide (clear space); (3) be designed to meet the Americans with disabilities Act (ADA) Accessibility Guidelines for wheelchair access; (4) be separated from the deck beverage service area by a largely transparent "delineation barrier" of sufficient height and material to meet the requirements of the Department of Alcoholic Beverage Control (ABC) for separation of alcoholic beverage service areas from public use areas; (5) be designed so that architectural features or attached or non-attached fixtures do not encroach into the clear space of the accessway and do not obstruct public access, (6) include a permanent sign, minimum size of 12 inches by 18 inches, which prominently conveys the exclusive availability of the accessway for public use and the hours which it shall be open for public use; (7) be available for public use daily (7 days a week) during daylight hours (i.e., from sunrise to sunset times as routinely published in newspapers and in tide tables) and after sunset when the restaurant is still open for

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business, and (8) not be gated, chained, or otherwise closed off during the time period when it is required to be available for public use. These eight requirements will make it more likely that the perimeter walkway will actually be used for public access purposes by ensuring the walkway will be (a) available for public use at sufficient times to encourage its use, (b) large enough to allow for unobstructed pedestrian and wheel chair access, (c) sufficiently separated from the dining deck so that public access users are not inhibited to use the walkway due to the proximity of the smokers and diners, (d) sufficiently identified to encourage its use.

Special Condition No. 1 also requires that the perimeter public access walkway be contained on the size of the deck proposed by the applicants. The Commission finds that in attaching this requirement, it is the Commission's intention that no additional fill in coastal waters result from establishing the perimeter walkway.

The Commission therefore finds that, as conditioned, the proposed deck may be characterized as a "public recreational pier" for which fill can be allowed pursuant to Section 30233(a)(4) of the Coastal Act.

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 unvegetated mudflat, which may provide habitat for a variety of worms, mollusks, and other benthic organisms. The project site does not contain any sensitive aquatic plant species, such as eelgrass. 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, when taken into consideration with other similar small scale projects in intertidal areas, could contribute to cumulative impacts on intertidal habitat.

Coastal Act Section 30233 does not allow fill of coastal waters if there is a feasible, less environmentally damaging alternative to the project. Alternatives to the project as proposed must be considered before a finding can be made that a project satisfies this provision of Section 30233.

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

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." The deck would allow seating for about 60 people according to the County Design Review Committee staff report. Food and

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.

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. Even now, however, patrons of the restaurant of course may excuse themselves from their tables or the bar to step outside to smoke, either just outside the building's entranceway or onto the adjacent boardwalk just around the building's southeast corner. Smokers are faced with the same non-smoking restrictions at the other Bodega Bay's restaurants and bars. Thus, the project objective of "accommodating smokers" can be reasonably achieved by the "no project" alternative.

The "no project" alternative would not, however, achieve the project's other objective of providing "an on-the water experience to be out of doors observing a working fishermen's wharf." The only other bayside restaurant in Bodega Bay already provides an outdoor pedestrian and seating area at the water's edge for observing commercial fishing activities close-up and/or dining (on-premise take-out). The "no project" alternative is therefore not a feasible alternative with respect to meeting project objectives of providing a coastal dining experience already offered by the applicants' nearby wharf-restaurant competitor, or with respect to providing additional public access and recreation opportunities.

#### Re-Sited Deck.

Commission staff 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, both because of lack of wharf space and because of design/engineering and cost considerations. From further review of the Wharf Site Plan (Exhibit 3), the 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.

Although a rooftop deck would afford a bird's eye view not only of wharf and boat activity below but of Bodega Harbor beyond, the applicants have determined such a deck would not be structurally or economically feasible.

Cantilevered Deck.

If a deck were cantilevered from the boardwalk instead of relying on pilings for support, no structural improvements would be placed in submerged areas and thus no fill, as defined in the Coastal Act, would be placed in coastal waters. However, the applicant's architect has informed staff that a cantilevered deck, engineered to support the weight of 60 customers, tables and chairs, would not be economically feasible. Furthermore, the possible impacts from deck shading of benthic organism habitat would still occur, and this alternative would not be significantly less environmentally damaging.

Because there are no feasible less environmentally damaging alternatives to the project, the Commission finds that the project is consistent with the requirement of Section 30233 that no fill project be approved if there is a feasible less environmentally damaging alternative.

c. Adequate Mitigation Measures

The last of the three tests for assessing if a fill project is consistent with Section 30233 of the Coastal Act is whether adequate mitigation measures to minimize the adverse environmental impacts of the proposed project have been provided.

As stated above, 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 unvegetated mudflat, which may provide habitat for a variety of worms, mollusks, and other benthic organisms. The project site does not contain any sensitive plant species, such as eelgrass beds or marsh vegetation. 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.

The Commission finds that the adverse impact of the limited amount of bay fill on any invertebrates and benthic organisms that may be present at the project site through direct displacement by the piles themselves and shading would be offset by opportunities for new habitat that the four new pilings themselves would provide. Benthic organisms would still inhabit the mudflat below the deck, albeit at a reduced density, and the vertical surfaces of the four new pilings would provide additional habitat opportunities for marine species such as barnacles that attach to such surfaces. In this way, the overall habitat values of the area affected by the deck structure would be retained or enhanced. Therefore, the Commission finds that no additional mitigation is necessary for the minor displacement of habitat area by the four new pilings and the shading caused by the 606-square-foot deck portion to be constructed atop the piles.

The Commission thus finds that the project is an allowable use, that there is no feasible less environmentally damaging alternative, and that no mitigation is required for the minor impacts associated

with the new fill. Therefore, the Commission finds that the proposed development, as conditioned, is consistent with Section 30233 of the Coastal Act.

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.

The subject parcel, in the town of Bodega Bay, is located west of Highway One along Bodega Harbor. 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, public access to the harbor is available at Lucas Wharf, along 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.

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 decking. See Exhibits 3-5. Although a 4-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 the deck's proposed configuration and primary use would encourage use of the deck for public access and recreation. 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.

However, with the alternative configuration required by Special Condition No. 1, that requires the reservation of a portion of the deck for exclusive and signed public access use, the project would result in an increase in public access and recreational opportunities without the potential for problems arising from unrestricted mixed public and private use. The required configuration also would result in compensation for that portion of boardwalk converted from public to private (restaurant) use, in that the public would gain exclusive access to the perimeter of the deck at the water's edge, at a distance approximately 14-feet west of the boardwalk's existing bayward edge. Furthermore, since the condition requires that the designated public perimeter accessway include a portion of the deck's south (also bayward) edge, the required configuration results in an L-shaped walkway connecting to the existing boardwalk, with a gain of up to 9-feet in overall length over the 38-foot length of boardwalk being converted to restaurant use. The Commission therefore finds that the project, as conditioned, is consistent with the public access policies of Coastal Act Sections 30210, 30211, and 30212 requiring that public access opportunities 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. Where wood would be utilized in the design, 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 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. Approval 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. California Environmental Quality Act (CEQA).

Section 13096 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effects which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the policies of the Coastal Act that restrict the filling of coastal waters. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact, which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, can be found consistent with the requirements of the Coastal Act and to conform to CEQA.

For purposes of CEQA, the lead agency for the project is the County of Sonoma. On May 15, 1997, the County determined that the project was categorically exempt from CEQA requirements.



Standard Conditions

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

1-95-66

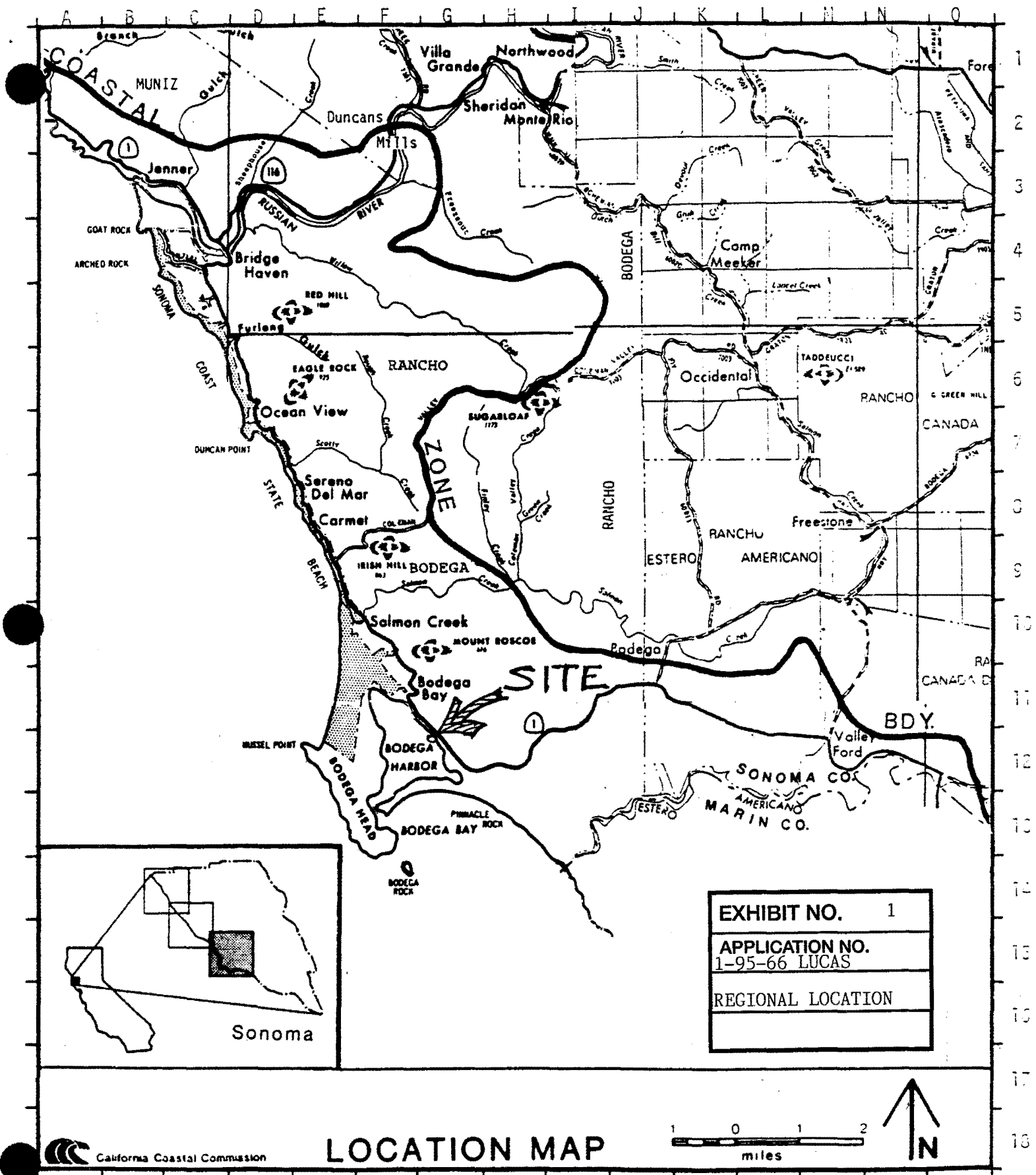
JAMES W. and PEGGY N. LUCAS

Page 18

**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

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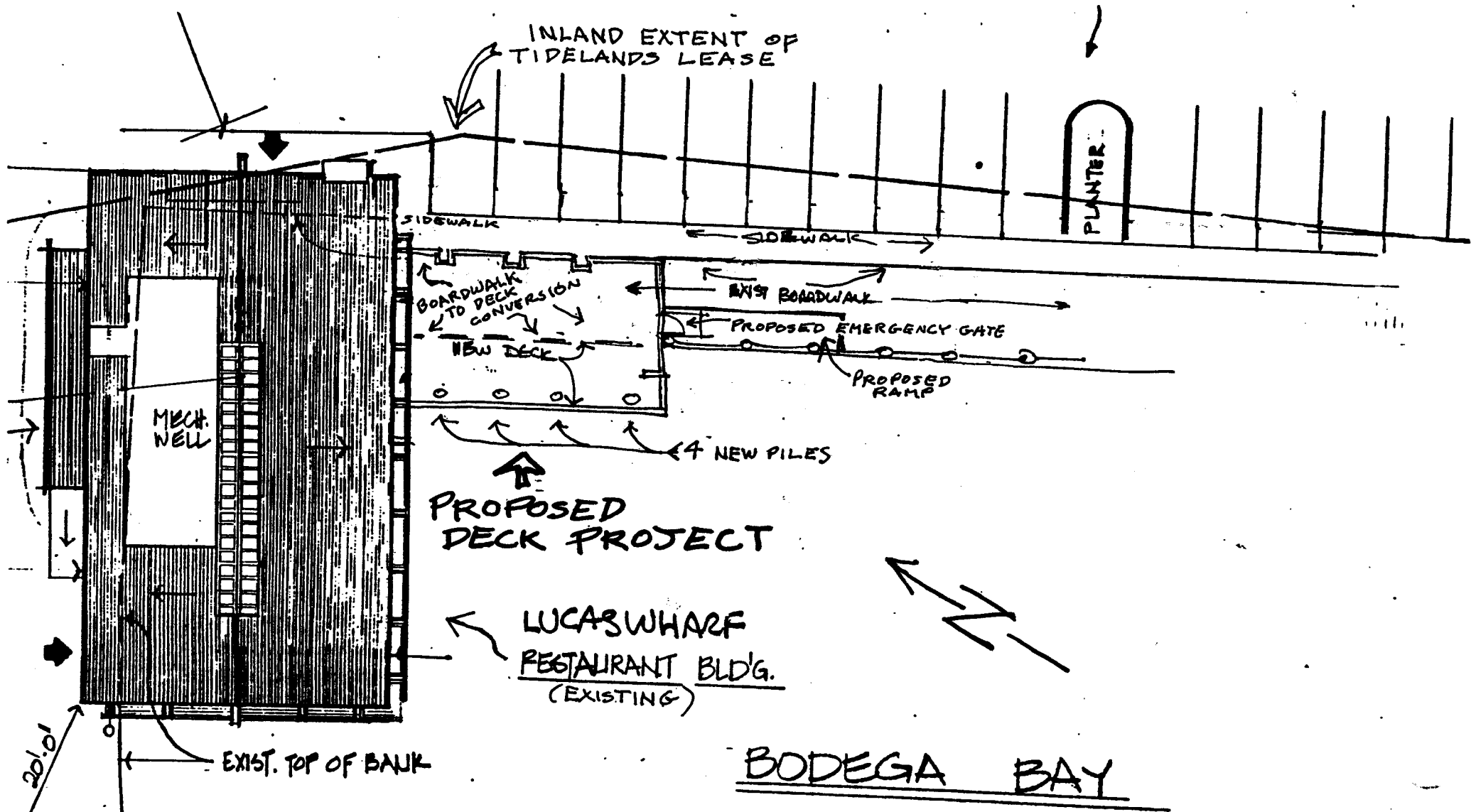


EXHIBIT NO.	4
APPLICATION NO.	1-95-66 LUCAS
DECK PLAN	

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

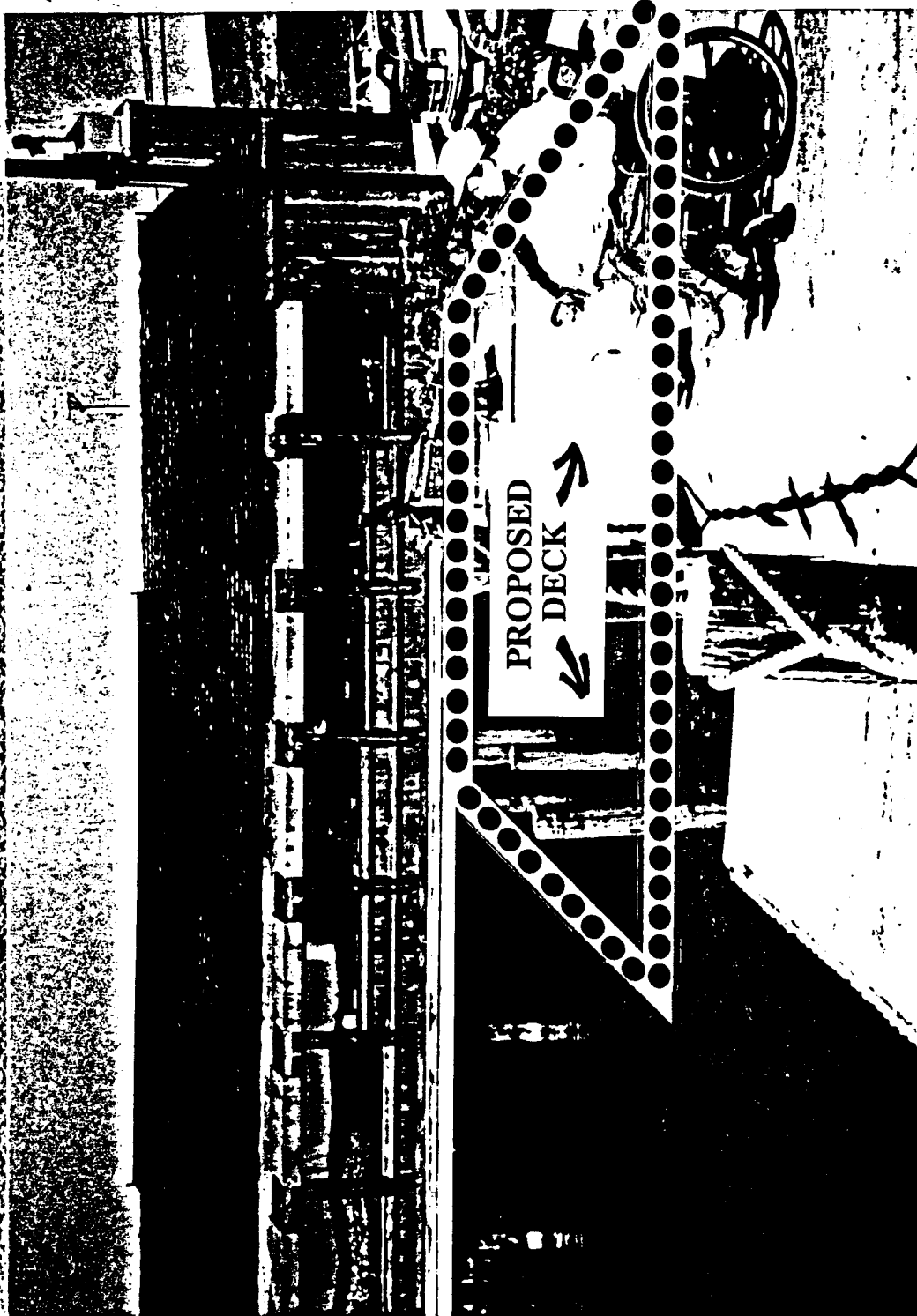


EXHIBIT NO. 5

APPLICATION NO.  
1-95-66 LUCAS

DECK FLOOR  
DEPICTION





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.

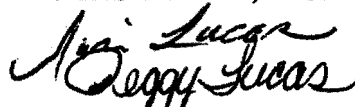
Lucas Wharf was developed entirely with private funds. The facility was purchased prior to the signing of the tidelands lease in 1981. Lucas Wharf allowed access even prior to the signing of the lease with Sonoma County.

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

file  
D DEC C: CCC  
C: BWNEL

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	

