

CALIFORNIA COASTAL COMMISSION

NORTH COAST AREA

FREMONT, SUITE 2000

SAN FRANCISCO, CA 94105-2219

(415) 904-5260

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Filed: June 24, 1998
49th Day: August 12, 1998
180th Day: December 21, 1998
Staff: Bill Van Beckum-NC
Staff Report: December 11, 1998
Hearing Date: January 14, 1999
Commission Action:

STAFF REPORT: PERMIT AMENDMENT

APPLICATION NO.: 1-95-66-A

APPLICANT: JAMES W. AND PEGGY N. LUCAS

PROJECT LOCATION: 599 Coast Highway One, Bodega Bay, Sonoma County,
APN 100-110-016, -017.DESCRIPTION OF PROJECT
PREVIOUSLY APPROVED:

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.

DESCRIPTION OF AMENDMENT: Add 630 square feet of ramp and public walkway to the previously approved deck addition.

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:

Staff recommends that the Commission approve the amendment request to modify an approved restaurant-addition deck with conditions. The amendment proposes to expand the area of the deck by approximately 630 square feet. In addition to simply providing more space, another purpose of the deck addition is to vertically separate the required perimeter public access walkway from the level of the rest of the deck. The amendment would not require any additional fill in the bay as the proposed separated walkway would be attached to the rest of the deck in a manner that does not require more piles. The principal issues raised by the amendment application are public access and the protection of marine resources and water quality.

The amended plan will improve upon, rather than lessen, public access opportunities created by the project's original approval, inasmuch as the proposed deck configuration (a) provides for vertical separation between the access walkway and the restaurant's outdoor service area, (b) provides additional length for the walkway, and (c) will enhance the public access user's enjoyment of the perimeter walkway.

Although the amended plan will permanently shade an additional 630 square feet of intertidal habitat area below it, the overall habitat values of the affected area will not be appreciably reduced, given that there is no aquatic vegetation in the affected area that would require sunlight to survive. Furthermore, the mudflat habitat will continue to be able to support benthic organisms, albeit possibly at a slightly reduced density. However, because of the additional construction resulting from the expansion, there is additional risk that construction debris could enter the intertidal zone and float into the marine environment. Staff is recommending that the Commission condition the project to require that all construction debris, including any floating debris, be removed from the site and properly disposed.

As conditioned, staff believes that the project is fully consistent with the Coastal Act.

STAFF NOTES

1. PROCEDURE AND BACKGROUND: Section 13166 of Title 14 of the California Code of Regulations states that the Executive Director shall reject an amendment request if it lessens or avoids the intent of the approved permit unless the applicant presents newly discovered material information, which he or she could not, with reasonable diligence, have discovered and produced before the permit was granted.

The proposed amendment adds 630 square feet to the overall size of the deck and changes the approved deck configuration by attaching the required walkway to the west and south edges of the deck, as an extension to the deck, rather than creating the walkway as a defined space within the confines of the deck, to retain sufficient space on the deck for restaurant use. The re-design is

necessary according to the applicants, in correspondence dated May 15, 1998, because, "The approval at the March commission of the Deck with the lower ramp within the foot print makes a commercial un-viable (sic) addition."

The Commission approved the restaurant-deck addition in March 1998. As a portion of the deck would be supported by four new timber piles, considered fill within coastal waters, the Commission's approval included one special condition, intended to ensure that the project, proposed to include public access and recreation opportunities, would in fact function as a "public recreational pier," one of eight specified uses for which fill may be allowed pursuant to can be consistent with the requirements of coastal Act Section 30233(a)(4). This condition, Special Condition No. 1, required that final project plans provide for a continuous public accessway, reserved for exclusive public use, along (but within) the bayward perimeter of the deck. The condition also included nine specific design criteria, requirements (a) thorough (i). The entire condition is attached to Exhibit 6 (Notice of Intent to Issue Permit). The originally submitted deck design is attached as Exhibit 5.

The amendment proposal requires modification of requirement (b) of Special Condition No. 1, which specifies that the accessway required by the condition "not in any way extend beyond or otherwise increase the approximately 25-foot by 40-foot size of the permitted deck." It was the Commission's intent in requiring Special Condition No. 1 to assure that, by reserving a sufficient portion of the deck for exclusive public use, the deck fill would function as an integral expansion of the wharf complex's existing public access and recreation opportunities and thus qualify under Section 30233(a)(4) as an allowable use for fill in coastal waters. Because the proposed amendment would actually result in an increase in the public walkway's area, without any additional bay fill, the Executive Director has determined that the amendment request does not lessen or avoid this intent.

The proposed deck expansion is not inconsistent with the intent of Special Condition No. 1(b), to limit fill, in that the proposed expansion, supported entirely by trusses attached to existing pilings, will not require any additional pilings. The Commission originally had limited the walkway to the confines of the proposed deck so that, in the process of converting the deck's use to a purpose that would qualify under Section 30233(b)(4) as an allowable use for fill, the project would not result in any additional fill in coastal waters beyond the extent of fill proposed. The amendment was accepted for processing because it is consistent with this aim.

2. STANDARD OF REVIEW: The proposed project is located within the Commission's retained jurisdictional area. Therefore, the standard of review that the Commission must apply to the project is the Coastal Act.

3. RELATED AGENDA ITEM: At the January 14 meeting, the Commission also will be considering a related matter, the Revised Findings for Coastal Development Permit No. 1-95-66. A separate hearing on the revised findings will be held just prior to the Commission's consideration of this amendment request.
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I. MOTION, STAFF RECOMMENDATION AND RESOLUTION:

The staff recommends that the Commission adopt the following resolution:

1. Motion:

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

2. Staff Recommendation of Approval:

Staff recommends a YES vote, resulting in adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

3. Resolution to Approve Permit Amendment:

The Commission hereby approves the amendment to the coastal development permit, subject to the conditions below, on the grounds that the proposed development with the proposed amendment will be in conformity with the provisions of Chapter 3 of the California 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.

Special Condition No. 1 of the original permit is amended, as follows: -

(New language is underlined. Old language to be deleted is shown crossed out.)

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~~ be constructed in accordance with the design and specifications depicted in the plan and section views on project plan Sheet A.2, dated 13 May 1998 and prepared by John F. Cook, Architect; (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.

Special Condition No. 2 is a new condition.

2. Debris Removal

All construction debris shall be removed from the site and disposed of at a lawful disposal site. Any construction debris that enters the waters of Bodega Harbor shall be retrieved and lawfully disposed.

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).

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 an upland 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. The south end of the boardwalk connects to an unobstructed over-water pier extending 170 feet west.

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. Except for the 76-space parking lot area between Highway One and the wharf complex, wharf development is located on the leased tidelands.

2. Original Permit

The original project approved by the Commission in March 1998 was for construction of an over-water deck addition to the existing restaurant that included, within the deck's confines, a perimeter public access walkway. Construction is to be accomplished 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.

The deck's north side abuts and connects to the restaurant near the restaurant's east end. Primary access to the deck is through a new doorway opening installed in the restaurant's south wall near the restaurant's bar area. Access to the boardwalk from the deck would be available from the deck through an emergency exit gate built into the deck's south windscreen and connecting to the boardwalk by a ramp constructed over existing boardwalk space. Exhibit 5, the approved configuration, depicts how half of the proposed restaurant's deck addition would displace a portion of existing public boardwalk space, while the other half would be constructed atop the four timber pilings.

Since the four new timber pilings are considered fill within coastal waters, the Commission's approval included a special condition, intended to ensure that the project, proposed to include public access and recreation opportunities, would in fact function as a "public recreational pier," one of eight specified uses for which fill may be allowed pursuant to can be consistent with the requirements of coastal Act Section 30233(a)(4). This condition, Special Condition No. 1, required that final project plans provide for a continuous public accessway, reserved for exclusive public use, along (but within) the bayward perimeter of the deck.

3. Proposed Amendment

The proposed amendment changes the approved deck configuration by attaching the required walkway to the west and south edges of the deck, as an extension from the deck, rather than creating the walkway as a defined space within the confines of the deck. The walkway would be constructed by the addition of 630 square feet of additional deck and connecting ramp as depicted in Exhibit 3, Plan View and Exhibit 4, Section View (both exhibits are from project plan Sheet A.2, dated 13 May 1998 and prepared by John F. Cook, Architect).

No additional fill is necessary for the construction of the walkway and ramp. As shown in the section view, the walkway and ramp will be supported by trusses attached to the pilings that support the deck and boardwalk, and the walkway will be constructed 3 feet lower than the deck floor elevation.

4. Fill in Coastal Waters

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.

Coastal Act Section 30108.2 defines "fill" as follows:

"Fill" means earth or any other substance or material, including pilings placed for the purposes of erecting structures thereon, placed in a submerged area.

The originally approved restaurant deck project included the placement of four timber piles, as supports for the proposed deck. The Commission's approval included one

special condition, intended to ensure that the project, proposed to include public access and recreation opportunities, would in fact function as a "public recreational pier," one of eight specified uses for which fill may be allowed consistent with Coastal Act Section 30233(a)(4).

No additional fill would result from the proposed amendment. As shown in the "section" view for the amendment (Exhibit 4), the proposed walkway and ramp addition to the approved deck will be supported by trusses attached to the pilings that support the deck and boardwalk, and the walkway will be constructed 3 feet lower than the deck floor elevation. As the amendment therefore will not result in any additional structural elements being placed in a submerged area, the amendment request does not involve any additional fill as defined by the Coastal Act.

5. Water Quality Protection

Coastal Act Section 30230 provides that:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 provides that:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The originally approved restaurant deck will be situated atop four piles in an intertidal area on the east shore of Bodega Harbor. Construction of the 630-square-foot walkway and ramp deck extension thus will permanently shade an equivalent area of intertidal mudflat habitat area below it. The overall habitat values of the affected area will not be appreciably reduced, however, given that there is no aquatic vegetation, such as

eelgrass, in the affected area that would rely on sunlight for photosynthesis. Furthermore, although the mudflat habitat underneath the expanded deck will continue to be able to support benthic organisms, albeit possibly at a slightly reduced density, the piles approved under the original permit will compensate for any reductions in habitat values by providing new habitat for barnacles and certain other organisms.

Because of the additional construction resulting from the proposed deck extension, however, there is additional risk associated with project construction that construction debris could enter the intertidal zone and float into the marine environment. To reduce the chances for potentially environmentally damaging materials or hazardous materials entering the harbor, the Commission attaches Special Condition No. 2, requiring that all construction debris, including any floating debris, be removed from the site and properly disposed.

The Commission finds that the proposed project, as conditioned, will not adversely affect the quality of coastal waters. Therefore, the Commission finds that the proposed project is consistent with Sections 30230 and 30231 of the Coastal Act.

6. Public Access

Section 30210 requires in applicable part that maximum public access and recreational opportunities be provided when consistent with public safety, private property rights, and natural resource protection. Section 30211 requires in applicable part that development not interfere with the public's right of access to the sea where acquired through use (i.e., potential prescriptive rights or rights of implied dedication). Section 30212 requires in applicable part that public access from the nearest public roadway to the shoreline and along the coast be provided in new development projects, except in certain instances, such as when adequate access exists nearby or when the provision of public access would be inconsistent with public safety.

In applying Sections 30210, 30211, and 30212, the Commission is limited by the need to show that any denial of a permit application based on those 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.

Public access has long been available at the Lucas Wharf complex. The project as originally approved, with the perimeter public access walkway required by Special Condition No.1 (Exhibit 6), results in an increase in the wharf's public access and recreational opportunities. Specifically, the required public access walkway compensates for that portion of boardwalk converted from public to private (restaurant) use, in that the public gains exclusive access to the perimeter of the deck at the water's 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 proposed amendment will actually enhance the perimeter walkway required by Special Condition No.1 because, with the walkway addition positioned even further bayward on the deck's west and south sides, an additional 6 feet of exposure is gained along the deck's south side (beyond the 9-foot gain noted above). Additionally, the new configuration, that has the walkway constructed 3 feet lower than the deck floor elevation (Exhibit 4), also will improve public access in that (1) the vertical separation will make use of the walkway more enjoyable to the public as the public will have more visual separation from the diners, and (2) there can now be a separate entrance to the walkway that does not require a gate. The separate entrance will also benefit the restaurant by providing additional security for the restaurant's deck furniture. To ensure that the project is constructed according to these revised plans, the Commission's approval includes a revision to Special Condition No.1, whereby subsection (b) of the condition is revised to specify that the accessway shall "be constructed in accordance with the design and specifications depicted in the plan and section views on project plan Sheet A.2, dated 13 May 98 and prepared by John F. Cook, Architect."

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.

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 impact which the activity may have on the environment.

The proposed amendment has been conditioned to be found consistent with the policies of the Coastal Act and to minimize all adverse environmental effects. Mitigation

measures have been imposed requiring all construction debris, including any floating debris, be removed from the site and properly disposed.

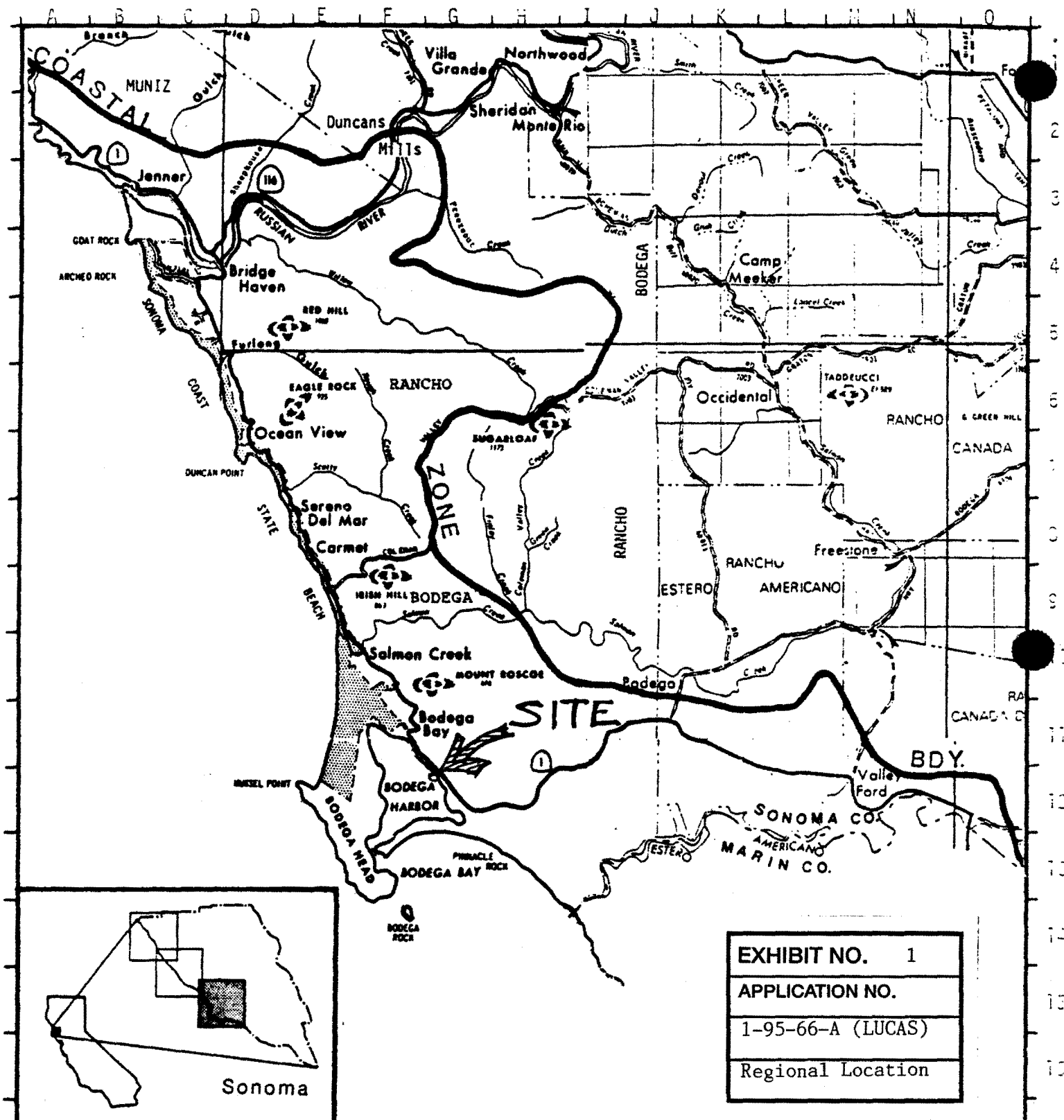
As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact, which the activity may have on the environment. Therefore, the Commission finds that the proposed amendment, as conditioned to mitigate the identified impacts, can be found consistent with Coastal Act requirements to conform to CEQA.

EXHIBITS:

1. Regional Location Map
2. Site Location Map
3. Amendment Plan View
4. Amendment Section View
5. Original Deck Plan
6. Original Conditions (Notice of Intent to Issue Permit)

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.

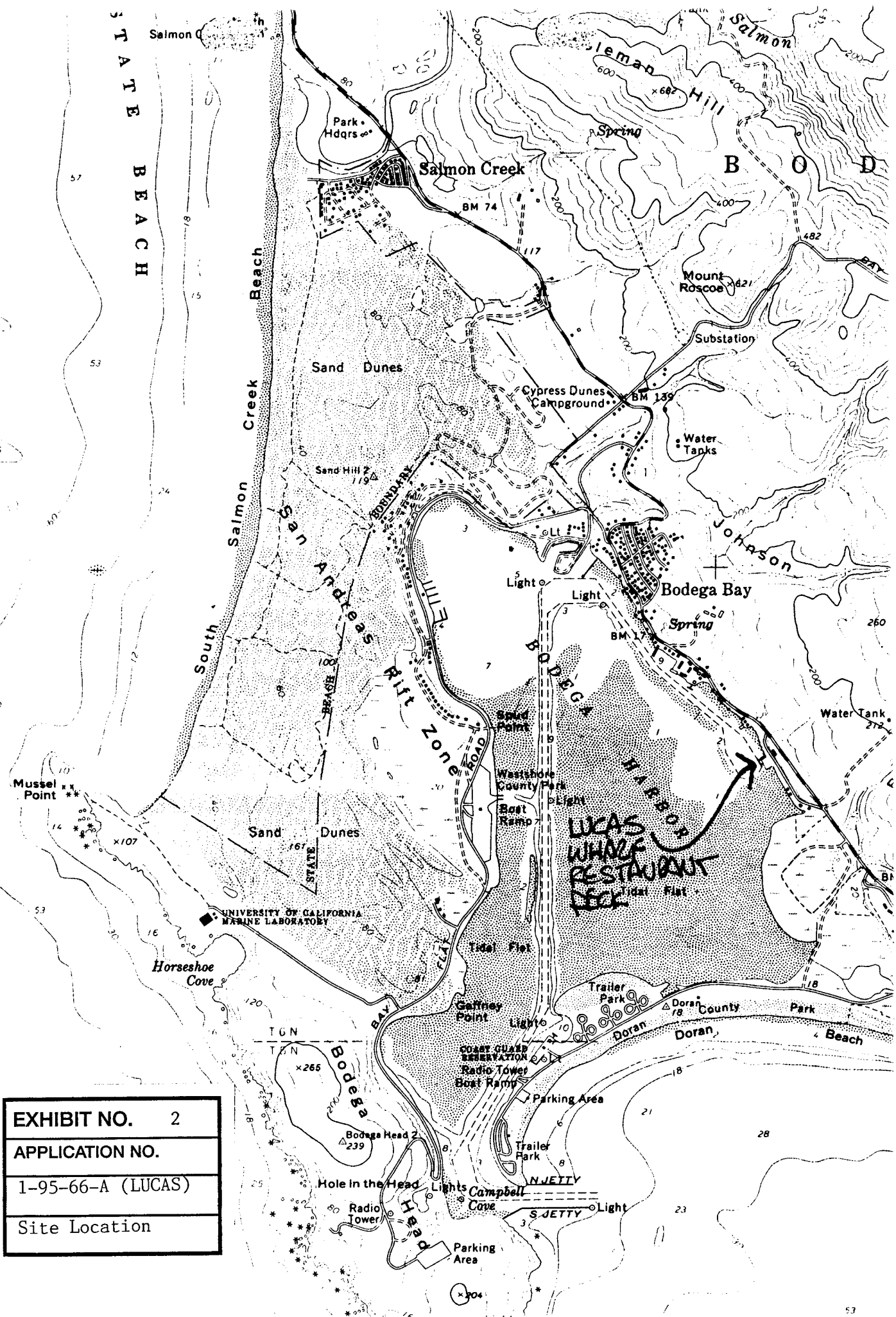


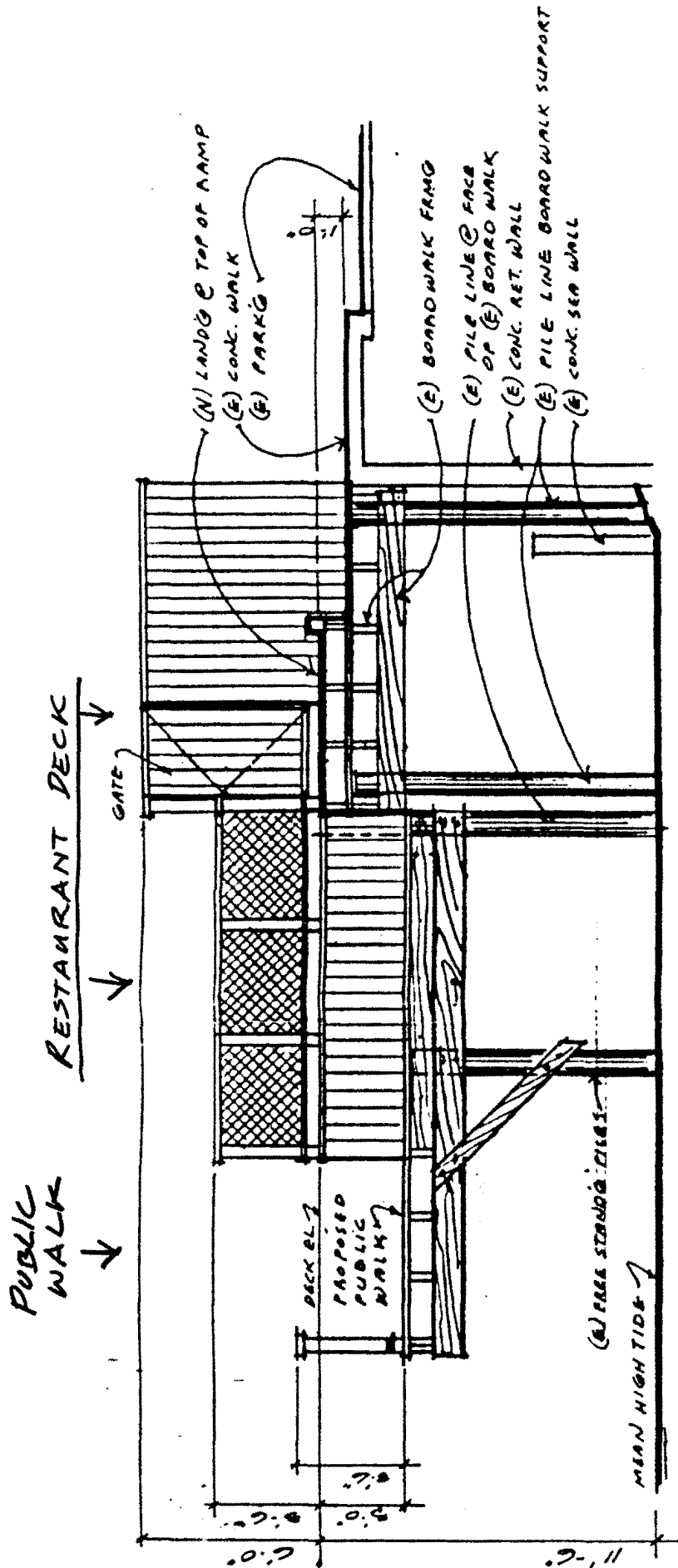
California Coastal Commission

LOCATION MAP



EXHIBIT NO.	2
APPLICATION NO.	
1-95-66-A (LUCAS)	
Site Location	





A SECTION A - VIEW TO NORTH

EXHIBIT NO.	4
APPLICATION NO.	1-95-66-A (LUCAS)
Amendment Section	

CALIFORNIA COASTAL COMMISSION

NORTH COAST AREA

45 FREMONT, SUITE 2000

SAN FRANCISCO, CA 94105-2219

(415) 904-5260

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Date: March 20, 1998

Permit Application No. 1-95-66

NOTICE OF INTENT TO ISSUE PERMIT

On March 11, 1998, by a vote of 12 to 0, the California Coastal Commission granted to **JAMES W. AND PEGGY N. LUCAS** Permit **1-95-66**, subject to the attached conditions, for development consisting of

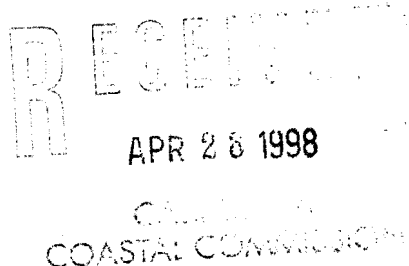
Construct a 1,012-square-foot pile-supported deck addition to an existing restaurant by: (1) removing a 606-square-foot section of pile-supported public boardwalk, (2) installing four wood piles in the intertidal area, (3) constructing on the new piles and the piles beneath the removed boardwalk a 1,012-square-foot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

more specifically described in the application file in the Commission offices.

The development is within the coastal zone in Sonoma County at 599 Coast Highway One, Bodega Bay, Sonoma County, APN 100-110-016, -017.

The actual development permit is being held in the Commission office until fulfillment of the Special Condition 1, imposed by the Commission. Once these conditions have been fulfilled, the permit will be issued. For your information, all the imposed conditions are attached.

Issued on behalf of the California Coastal Commission on March 11, 1998.



PETER DOUGLAS
Executive Director

By: BILL VAN BECKUM

Title: Coastal Planner

ACKNOWLEDGMENT:

The undersigned permittee acknowledges receipt of this notice of the California Coastal Commission determination on Permit No. 1-95-66, and fully understands its contents, including all conditions imposed.

3-25-98

Date

Peggy Lucas

Permittee

Please sign and return one copy of this form to the Commission address.

A5: 4/88

EXHIBIT NO. 6

APPLICATION NO.

1-95-66-A (LUCAS)

Original Conditions
(Page 1 of 3)

NOTICE OF INTENT TO ISSUE PERMIT

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Permit Application No. 1-95-66

STANDARD CONDITIONS:

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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 or 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 project during its development, 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.

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

NOTICE OF INTENT TO ISSUE PERMIT

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Permit Application No. 1-95-66

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.

/mem
9830p

