

## CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400

Th 8c



## RECORD PACKET COPY

Date Filed: September 10, 2002  
49<sup>th</sup> Day: October 29, 2002  
180<sup>th</sup> Day: March 9, 2003  
Staff: KJB-SF  
Staff Report: September 26, 2002

## STAFF REPORT: REGULAR CALENDAR

APPLICATION FILE NO.: 2-01-029

APPLICANT: James & Peggy Lucas

PROJECT DESCRIPTION: Various improvements at Lucas Wharf consisting of: installation of four new wooden piles, construction of a 1,012-square-foot pile-supported deck addition to an existing restaurant, replacement of 606 square feet of pile-supported public boardwalk with 630 square feet of ramp and public walkway, construction of a windscreen, replacement of wooden deck with fiberglass composite decking, resurfacing decking west of main parking lot with concrete, construction of compressor cover/utility room and moveable scale room, extension of existing fish house, and installation of a PVC sheet piling bulkhead to reinforce an existing wooden bulkhead.

PROJECT LOCATION: 599 Coast Highway One, Bodega Bay, Sonoma County.  
(See Exhibit 1)  
APN 100-110-016, -017

SUBSTANTIVE FILE  
DOCUMENTS: Appendix A

## SUMMARY OF STAFF RECOMMENDATION

The applicant seeks after the fact authorization of various improvements at Lucas Wharf consisting of: installation of four new wooden piles, construction of a 1,012-square-foot pile

supported deck addition to an existing restaurant, removal of 606 square feet of pile-supported public boardwalk, construction of a windscreen, replacement of wooden deck with fiberglass composite decking, resurfacing decking west of main parking lot with concrete, construction of compressor cover/utility room, and construction of a moveable scale room. In addition to the after-the-fact improvements, the applicant proposes new development, consisting of an additional 630 square feet of ramp and public walkway to the previously constructed deck addition, an extension of the existing fish house, and the installation of a vinyl sheet piling seawall to replace the existing wooden bulkhead, which is in an advanced state of disrepair. The staff recommends approval of the proposed development with special conditions requiring the applicant to ensure exclusive public access free of charge to the extended deck and protection of coastal water quality and the marine environment from construction related debris and materials.

## 1.0 STAFF RECOMMENDATION

The staff recommends conditional approval of Coastal Development Permit Application No. 2-010-029.

**Motion:** *I move that the Commission approve Coastal Development Permit Application No. 2-01-029, subject to the conditions specified below.*

Staff recommends a YES vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

### Staff Recommendation of Approval

The staff recommends a YES vote. To pass the motion, a majority of the Commissioners present is required. Approval of the motion will result in the adoption of the following resolution and findings.

### Resolution

The Commission hereby **grants** coastal development permit No. 2-01-029, subject to the conditions below, for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

## 2.0 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. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. 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.
5. 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.

## 2.1 SPECIAL CONDITIONS

The Commission grants this permit subject to the following special conditions:

### 1. Public Access.

A. PRIOR TO ISSUANCE of the Coastal Development Permit, the applicant 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) not in any way extend beyond or otherwise increase the approximately 25-foot by 40-foot size of the permitted deck;
- (b) be a minimum of 60 inches wide (clear space);
- (c) be designed to meet the Americans with disabilities Act (ADA) Accessibility Guidelines for wheelchair access;
- (d) 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;
- (e) 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,
- (f) 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;
- (g) be exclusively available for public use without charge 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
- (h) not be gated, chained, or otherwise closed off during the time period when it is required to be available for exclusive public use free of charge.

- B. The permittee shall undertake development in accordance with the approved final plan. The permittee shall complete construction of the public access improvements required by Special Condition 1.A and shown on the approved final plan within 180 days from the issuance of this coastal development permit. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
- C. PRIOR TO ISSUANCE of the Coastal Development Permit, the applicant shall submit, for the review and approval of the Executive Director, evidence that: (1) the lease between the applicant and Sonoma County has been amended so that the public access requirements identified in subsection 1A above are described as requirements of the lease, and (2) such amended lease has been recorded so that it is a matter of public record.
2. Disposal of Removed Debris. No construction materials, debris, or waste shall be placed in Bodega Bay. All construction material, debris, and waste shall be removed from the site after project completion, and shall be legally disposed of outside the Coastal Zone consistent with the proposed project description.
3. Condition Compliance. **WITHIN 60 DAYS OF COMMISSION ACTION ON THIS CDP APPLICATION**, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in Special Conditions 1 and 2 hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act, resulting in the removal of the unpermitted deck and any other unpermitted work conducted at the project site.
4. Bulkhead Removal. If the Executive Director determines that based on newly available information, including but not limited to published scientific research, or a determination made by a regulatory agency, such as the U.S. Environmental Protection Agency, California Regional Water Quality Control Board, or California Department of Fish and Game, that chemicals contained in the approved bulkhead have the potential to cause significant adverse impacts to the biological productivity and the quality of coastal waters resulting in an inability to maintain optimum populations of marine organisms, or cause significant adverse impacts to human health, the permittee shall within 60 days of such determination submit an application to the Commission for a coastal development permit amendment to address such significant adverse impacts, which may require removal of the approved bulkhead and/or remediation of impacts attributable to the approved bulkhead.

5. Chemical Control. Wood treatment products and any other chemicals shall not enter waters of Bodega Bay under any circumstances. In-field treatment of wood shall occur on land only and is prohibited within 50 feet of coastal waters. Treatment products shall be applied with a brush rather than sprayed to minimize spread of chemicals, and shall consist only of products approved by the EPA for use in the field.
6. Bulkhead Maintenance.
  - A. PRIOR TO ISSUANCE of the permit, the applicant shall submit a Monitoring Plan, acceptable to the Executive Director. The permittee, and his successors in interest shall be responsible for carrying out all provisions of the Monitoring Plan for as long as the bulkhead remains. The monitoring plan, at a minimum, shall provide for:
    1. Regular inspections by a licensed engineer. These inspections shall be performed at least every 4 years for the first 12 years after the bulkhead has been installed, and at least every other year thereafter.
    2. The inspections shall examine the exposed subaerial and submarine portions of the bulkhead (to the mud line) for signs of weakness or possible failure, including, but not limited to cracking, bending, splitting, splintering, or flaking. All weak or potential failure areas should be marked on an as-built plan of the bulkhead, and there should be photographs and text to explain the nature and extent of each weakness.
    3. Inspection reports shall be prepared and conveyed to the Executive Director within 30 days of the inspection work. These reports shall provide information on and photographs from the date of the inspection, the name and qualifications of the person performing the inspection, and an overall assessment of the continued stability of the bulkhead. If the inspection identifies any areas where the bulkhead has been damaged, the permittee shall be responsible for applying for any necessary permits, and performing the work required in compliance with and in accordance with such permits.
  - B. In the event that any sections of the bulkhead are damaged or flaking, the permittee shall notify the Commission within 10 days; and in such event, within 30 days of such notification, submit to the Commission a complete application for any coastal development permit amendment necessary for the repair or replacement of the bulkhead.

## **2.0 FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares as follows:

### **3.1 Project Location**

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.

### **3.2 Background**

The most recent permits, 1-95-66 and 1-95-66-A, were for the construction of a 1,012-square-foot deck addition to the existing restaurant. This was to be accomplished by removing a 606-square-foot section of the pile-supported boardwalk, installing four wood piles in the intertidal area, and constructing the new deck on the new piles and the piles beneath the removed boardwalk.

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.

On March 11, 1998, the Commission approved the permit with conditions. The applicant was required to provide a continuous public accessway around the bayward perimeter of the deck, reserved for exclusive public access use.

A Permit Amendment, 1-95-66-A, was subsequently approved by the Commission on January 14, 1999. The amendment expanded the area of the deck by approximately 630 square feet. In addition to simply providing more deck space, another purpose of the deck addition was to vertically separate the required perimeter public access walkway from the level of the rest of the deck. Additional fill in the bay would not be required, as the proposed walkway would be attached to the rest of the deck in a manner that does not require more piles.

On September 26, 2001, the applicant contacted staff and informed staff that the County had questioned the applicant about unpermitted improvements constructed on the Lucas Wharf site. Questions were raised about these unpermitted improvements because the applicant had failed to satisfy the prior to issuance conditions of approval before expiration of the permit on January 14, 2001. These improvements consisted of the expansion of the dining deck area, construction of a concrete walkway and railings, placement of cooling covers at the end of the dock, remodeling of buildings over the water, and placement of large propane tanks on the wharf.

On December 18, 2001, the applicant submitted a coastal development permit application for after-the-fact authorization of the aforementioned improvements at the Lucas Warf site, along with new work consisting of an expansion of the existing fish house, and the replacement of 362 feet of dilapidated wooden bulkhead with PVC sheet piling bulkhead.

### 3.3 Project Description

The applicant requests after-the-fact authorization of the following development:

- construction of a 1,012-square-foot pile supported deck addition to an existing restaurant;
- placement of four one-foot diameter wood piles, which are visible below the left half of the dotted lines depicting the existing deck area as shown on Exhibit 5;
- replacement of 606 square feet of pile-supported public boardwalk with 630 square feet of ramp and public walkway;
- construction of a windscreen adjacent to the existing unpermitted decking;
- concrete surfacing installed over the unpermitted decking;
- new cement walkway in front of the parking lot;
- new safety railing;
- new scale room that replaced the old one that was dilapidated and torn down;
- compressor shed cover.

In addition, the applicant proposed to construct the following improvements to the existing restaurant/wharf.

- a 17-linear-foot wood frame horizontal extension to the existing fish house. This extension would match the current building's horizontal and vertical footprint, as well as the exterior finishing, as shown on Exhibit 10 (Building Elevation) and Exhibit 11 (East Elevation). The current temporary metal shed structure adjacent to the fish house would be removed to make room for the extension.
- replacement of the wooden bulkhead in the wharf area. The current bulkhead consists of horizontal and vertical wood planking attached to the existing vertical wood piling supporting the pier structures. As shown in Exhibit 12, the wood plank water barrier is dilapidated to the point of being almost nonexistent. Approximately 362 feet of bulkhead would be replaced along the northern, southern, and western pier structures, Exhibit 13.

### 3.4 Fill in Coastal Waters and Protection of Marine Resources

The Coastal Act defines fill as:

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

Coastal Act Section 30233 states:

*(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: ...*

*(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. [emphasis added.]*

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 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 new 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 new fill of open coastal waters.

Coastal Act Section 30233 prohibits fill in open coastal waters except where:

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

### **3.4.1 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 for exclusive public use free of charge around the bayward perimeter of the constructed deck, the current fill could qualify as a public recreational pier that provides public access and recreational opportunities.

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).

The applicant has stated that the constructed deck is available for use not only by restaurant and bar customers but also to anyone, without purchase of service. In other words, the applicant is allowing a shared use of the deck, with restaurant and bar customers and boardwalk passersby freely mixing. However, such passive permission does not guarantee the public's ability to use the deck for public access and recreation purposes and does not make the deck a public recreational pier. The deck is furnished with tables, chairs, and outdoor heaters. Restaurant customers are seated and served at these tables, and, as furnished, there is little space remaining on the deck for persons not seated at one of the tables (see Exhibit 15). As such, the deck has the appearance and character of an outdoor extension of the restaurant and not that of a public recreational pier. While the applicant has indicated that purchase of food or drinks is not required in order to use the deck, it is unlikely that most members of the public would assume this to be the case, since restaurant table service is not customarily provided in non-paying areas of public recreational piers.

The Commission therefore finds that the deck as constructed does not ensure public access use so as to justify its characterization as a public recreational 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 free of charge, the Commission could find that the deck, in combination with the access opportunities provided by the existing boardwalk and south pier, would 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 30233(a)(4), the Commission attaches **Special Condition 1**, to require that final project plans provide for a continuous public accessway, reserved for exclusive public access use free of

charge, around the bayward perimeter of the proposed deck. **Special Condition 1** further requires that the accessway: (1) be a minimum of 60 inches wide (clear space); (2) be designed to meet the Americans with disabilities Act (ADA) Accessibility Guidelines for wheelchair access; (3) 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; (4) 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, (5) include a permanent sign, minimum size of 12 inches by 18 inches, which prominently conveys the exclusive availability of the accessway for public use free of charge and the hours which it shall be open for public use; (6) be available for exclusive public use daily (7 days a week) free of charge 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 (7) not be gated, chained, or otherwise closed off during the time period when it is required to be available for public use free of charge. **Special Condition 1** also requires the applicant to submit evidence to the Executive Director prior to issuance of the coastal development permit, that their lease of the subject property has been amended to reflect these above-referenced access requirements as a part of the lease and that this amended lease has been recorded so that it is a matter of public record. These requirements assure that the perimeter walkway would actually be used for public access purposes by ensuring the walkway will be (a) available for exclusive public use free of charge on a daily basis, (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. Therefore, the Commission finds that, as conditioned, the proposed development is an allowable use under Coastal Act Section 30233(a)(4).

### 3.4.2 Alternatives

Proposed development would involve approximately four square feet of new fill. 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 evaluated include: the use of the existing pier, a rooftop deck, and a full cantilevered deck. With regard to the existing pier, there is approximately 1,100-square-feet of open space area (slightly larger than the proposed deck) between the restaurant's northwest corner and the office and fish warehouse structures. This area is large enough to provide for the proposed improvements. However, this space is not available to provide for additional public access and recreational uses on the existing wharf decking because the space is used for vehicular access to the commercial fishing facilities on the wharf. Therefore, expanding the public access and recreational use of this existing area of the wharf deck would interfere with the commercial fishing uses of the wharf. As such, this is not a feasible alternative to the proposed development.

Both a rooftop deck and a cantilevered deck could provide additional space for both outdoor restaurant seating and public access and recreation uses at the Lucas Wharf site without filling tidelands. As such, the Commission must consider whether either of these designs comprises a less environmentally damaging feasible alternative to the proposed fill.

The applicant has indicated that both the rooftop and cantilevered deck alternatives would require substantial structural improvements to the existing restaurant and wharf, significantly increasing the cost of the project. Nevertheless, the applicant has not provided evidence demonstrating that the additional cost of these alternatives would render the project infeasible. As such, the Commission must consider whether the environmental benefits of either alternative would warrant the additional cost required to avoid the proposed fill.

As proposed, the project would result in four square feet of new fill. The tidelands area that would be affected by this fill consists of un-vegetated mudflats that do not support any sensitive species. Such habitat is neither rare nor especially sensitive and makes up the majority of the intertidal area of Bodega Bay. In addition, the rooftop deck alternative would have greater visual impacts than the project as proposed, and the cantilevered alternative would result in the same shading effects as the projects as proposed. Therefore, the Commission finds that there is no less environmentally damaging feasible alternative to the proposed project as conditioned.

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

### **3.4.3 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.

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 the direct displacement of the piles themselves as well as the indirect effects of shading would be offset by opportunities for new habitat that the four new pilings themselves provide. Benthic organisms would still inhabit the mudflat below the deck, 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 not be significantly affected. Therefore, the Commission finds that no additional

mitigation is necessary for the minimal displacement of habitat area resulting from the placement of the four new pilings.

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 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.

The proposed fish house extension, compressor shed cover, and new scale room will be located on the existing pile supported wharf structure, and no new fill is required for these structures. As such, the proposed fish house extension, compressor shed cover, and new scale room do not raise an issue of conformity with Coastal Act Section 30233.

The Commission therefore finds that, as conditioned, the proposed development is consistent with Section 30233 of the Coastal Act.

### 3.5 Public Access

#### Section 30210

*In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

#### Section 30211

*Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

#### Section 30213

*Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.*

*The commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.*

Public access has long been available at the Lucas Wharf complex. The proposed project with the perimeter public access walkway required by **Special Condition 1**, results in an increase in the wharf's public access and recreational opportunities. Specifically, the required 92 feet long public access walkway offsets the 38 feet long portion of boardwalk converted from public to

visitor serving (restaurant) use, in that the public would gain exclusive access to the perimeter of the deck at the water's edge without needing to be a paying customer of the restaurant. See Exhibit 16 (Accessway Floor Plan). 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.

The proposed 92 feet long public access walkway would enhance public access on the perimeter walkway because, with the walkway addition positioned 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 and for a total of 101 feet). Additionally, the new configuration, with the walkway 3 feet lower than the deck floor elevation, Exhibit 9 (Accessway Elevations), would improve public access by (1) providing vertical separation between the walkway and (2) providing a separate entrance to the walkway that does not require a gate. To ensure that the project is constructed according to these plans, **Special Condition 1** requires 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, Exhibits 9 and 16 (Accessway Elevations and Floor Plan). **Special Condition 1** also requires the applicant to submit evidence to the Executive Director, prior to issuance of the coastal development permit, that their lease of the subject property has been amended to reflect these above-referenced access requirements as a part of the lease and that this amended lease has been recorded so that it is a matter of public record.

Therefore, the Commission finds that, as conditioned, the proposed development is consistent with Coastal Act Sections 30210, 30211, and 30213.

### 3.6 Water Quality

Coastal Act Section 30230 states:

*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.*

Coastal Act Section 30231 states:

*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.*

### 3.6.1 Polyvinyl Chloride (PVC) Water Quality Impacts

The applicant proposes to replace an existing wooden bulkhead with PVC sheet piling. Commission staff has received comments related to concerns of the environmental and health impacts of the manufacturing and disposal of PVC. However, since neither manufacturing nor disposal of PVC is proposed under CDP Application 2-01-029, these issues are not before the Commission. Disposal of PVC or any other construction materials related to the proposed development within the Coastal Zone would require a coastal development permit, which would provide for Commission review of potential impacts of PVC disposal consistent with Chapter 3 of the Coastal Act.

In addition to concerns related to the production and disposal of PVC, Commission staff has received comments on potential water quality and human health impacts related to the use of PVC in the marine environment, which include the following:

- The proposed PVC sheet pile would leach and outgas toxic compounds into the marine environment that may cause significant adverse impacts to marine wildlife and the aquatic environment;
- Vinyl chloride monomer, trace component of PVC, would be released into the environment and cause impacts to human health; and
- The proposed PVC bulkhead would release dioxin if burned.<sup>1</sup>

### 3.6.1 PVC Leachates

PVC is comprised of chlorine, carbon, and hydrogen. To create PVC, mineral oil, natural gas and sodium chloride (salt) are manufactured into ethylene and chlorine, which are synthesized into vinyl chloride monomers (VCM) that are then polymerized to polyvinyl chloride (PVC). Once the PVC is created, additives are combined with the PVC to give the finished product desired qualities such as flexibility, strength, and color.

Individuals are concerned that the additives contained in the proposed PVC sheet pile would leach into marine waters and cause significant adverse impacts to human health, marine wildlife, and the aquatic environment. The comments received by Commission staff focused on two additives: (1) plasticizers, which are used to make PVC flexible and (2) stabilizers, which are used to extend the life of the PVC when it is exposed to heat or ultraviolet light and pigments are added for color. Specifically, the stabilizers and plasticizers of concern include the following:

| Plasticizers               | Stabilizers                           |
|----------------------------|---------------------------------------|
| Phthalates                 | Lead                                  |
| Bisphenol A                | Cadmium                               |
| Alkylphenols               | Organotins                            |
| Alkylphenol Polyethoxlanol | Derivatives of alkylphenol phosphates |

<sup>1</sup> Dioxin is a by-product whenever chlorine gas is used or chlorine-based organic chemicals are burned or processed under reactive conditions.

The proposed bulkhead would consist of a rigid PVC. Thus, it is logical to conclude that the proposed material does not contain plasticizers. Nevertheless, to ensure that this is the case, Commission staff contacted the manufacturer regarding the above listed plasticizers and was told that the PVC used in ShoreGuard™ does not contain any of the above listed plasticizers, nor does it contain the following stabilizers: lead, cadmium, and derivatives of alkylphenol phosphates (Kantola, pers. comm.) (Wisner 2002). Thus, the use of the aforementioned stabilizers and plasticizers in PVC is not before the Commission for review of consistency with the Chapter 3 policies of the Coastal Act as part of Coastal Development Permit Application No. 2-01-029.

The ShoreGuard™ material does contain organotin stabilizer compounds. Organotins are compounds which contain at least one bond between tin and carbon. There are three major types of tin stabilizers, which are distinguished by their respective alkyl groups: methyl, butyl, and octyl.

Clear distinctions must also be drawn between the tri-organotin compounds (which have three tin-carbon bonds) used as biocides and pesticides, and the mono- and di-organotin compounds, with one and two tin-carbon bonds, respectively, used in stabilizer, catalyst, and glass coating applications. Biocides are, by definition, toxic and tri-organotin compounds that can be a potent endocrine disruptor causing major damage to marine wildlife populations.<sup>2</sup> However, Tri-organotin compounds such as tributyltin (TBT) are not used as PVC stabilizers. Mono- and di-organotins, on the other hand, are much less toxic. In fact, certain mono- and di-organotins have been approved as PVC stabilizers for food contact throughout the world (State of California, Department of Housing and Community Development 1998).

Many of the comments on the project submitted raised concerns with the use of TBT. TBT proved to be a highly effective biocide in preventing the attachment and growth of fouling organisms such as barnacles and tube worms on the hulls of vessels. For this reason, it was widely used in the 1960s and 1970s as a paint additive in antifouling coatings on boats. TBT was initially believed to be toxic only to fouling organisms on the painted surface and the not an environmental risk. However, TBT was later found to cause imposex in mollusks as well as other adverse impacts to aquatic wildlife. In 1988, the United States passed the Organotin Antifouling Paint Control Act, which restricts the use of TBT-based marine antifouling paints to ships greater than 25 meters in length or those with aluminum hulls.

The comments submitted stated that the mono- and di-butyltin compounds used in PVC are contaminated with TBT. This is not the case. Mono- and di-butyltins can exist as PVC stabilizers themselves or as degradation products of TBT. As explained previously, TBT, a tri-organotin, is used either as a biocide or pesticide, and is therefore not a part of the PVC product proposed for use. According to the manufacturer, the organotin stabilizer compound used in the ShoreGuard™ material is at less than 1.0 percent of the chemical make-up of the PVC and is a 50/50 mixture of dimethyltin  $[(CH_3)_2Sn(SCH_2COOC_8H_{17})_2]$  and monomethyltin

---

<sup>2</sup> Endocrine disruptor is an exogenous agent that interferes with the synthesis, secretion, transport, binding, action, or elimination of natural hormones in the body which are responsible for the maintenance of homeostasis reproduction, development and/or behavior. Research is being done on the relationship between breast cancer and endocrine disruptors.

$[(CH_3)_3Sn(SCH_2COOC_8H_{17})_3]$  (Kantola 2002). It is therefore logical to conclude that neither mono-butyltins nor di-butyltins would be released to the environment either as TBT breakdown products or as a result of leaching stabilizer because TBT is not a part of the PVC product proposed for use. Since mono-butyltins, di-butyltins, and TBTs are not present in the proposed PVC material, there is no risk that they would leach into the marine environment as a result of the proposed development.

In addition to concerns raised with TBT, dibutyltins, and monobutyltins, Commission staff received general comments about the effects of organotins on human health and the marine environment, which include the following: (1) heavy metals such as organotins, resist environmental breakdown and have become global pollutants; (2) the immunotoxicity of some organotins in animals has raised concerns about organotin effects in humans; and (3) organotins can suppress immunity, disrupt the endocrine system, cause birth defects, damage liver, bionduct and pancreas, and may pose a threat to aquatic organisms.

Studies published in the scientific literature show that low concentrations of organotins leach into water from rigid PVC pipes ((State of California, Department of Housing and Community Development 1998);(Sadiki and Williams 1999)). Thus, it is likely that some organotin compounds would leach from the proposed PVC bulkhead when exposed to marine waters. As such, the Commission must evaluate whether the proposed development would be carried out in a manner that would sustain the biological productivity and quality of coastal waters adequate to maintain healthy populations of all species of marine organisms and for the protection of human health as required by Coastal Act Sections 30230 and 30231.

The likelihood that some organotins would leach from the material does not necessarily render the proposed development inconsistent with Coastal Act Sections 30230 and 30231. Rather, the issue is whether leaching of organotins from the proposed bulkhead would cause the biological productivity and quality of coastal waters to become inadequate to maintain healthy populations of all species of marine organisms and/or to be hazardous to human health.

The Commission finds that the leaching of organotins into Bodega Bay as a result of the proposed development would not significantly affect the biological productivity and quality of coastal waters because:

- Organotins are not generally persistent in the environment as they are broken down rapidly through microbial activity;
- The mono- and di-organotins contained in PVC and the eventual breakdown product of inorganic tin are much less toxic than tri-organotins;
- The concentration of organotin compounds released to the lagoon would be substantially below the levels determined to be safe for drinking water and the levels shown to be toxic to aquatic organisms; and
- Extensive studies have found PVC products containing organotin compounds do not pose a significant risk to human health in such applications as drinking water pipes (State of California, Department of Housing and Community Development 1998).

Studies have shown that biological degradation of methyl-, butyl- and octyl-tin compounds occur in the aquatic environment. Specifically for mono- and di-methyltins (the stabilizers used in the



proposed bulkhead), their half lives, in the absence of methylating organisms to reverse the demethylation process, are estimated to be less than a few months (Maguire 1991). Other researchers have offered a half-life range of a few days to several weeks (ORTEP). These studies indicate that organotins do break down.

Acute toxicity data for organotin compounds are also available. A Canadian study has shown that concentrations of monomethyltin that inhibit 50% of growth (i.e.,  $EC_{50}$ ) of bacteria, yeasts, *D. magna* and some algae are generally greater than 1 mg/L. Some diatoms, however, are inhibited at concentrations as low as 0.08 mg/L. Nevertheless, the figure of 0.08 mg/L is still 67 times higher than the highest concentration of monomethyltin observed in water. Similarly,  $EC_{50}$  for dimethyltin is estimated at greater than 0.07 mg/L, and usually greater than 1 mg/L, depending on the target organisms. Again, the figure of 0.07 mg/L is about 150 times higher than the highest concentration of dimethyltin observed in water. It therefore appears that the mono- and di-methyltin compounds would not have acute toxic effects to aquatic organisms. It should be noted that this study had investigated findings from other researchers and monitoring results from harbors, marinas, and shipping channels in Canada and elsewhere. Similar toxicity results appear to hold true for mono- and di- butyltins and octyltins as well. Other studies support these conclusions ((Maguire 1991);(Walsh et.al. 1985);(ORTEP)).

In terms of potential chronic effects of organotins on the aquatic environment, a 1993-1994 study of water across Canada concluded that the 13 non-TBT organotin species found appeared to pose no acute or chronic hazards to fresh water or marine organisms (Chau et.al. 1997).

The State's Department of Housing and Community Development (HCD) published a *Draft EIR for CPVC Pipe Use for Potable Water Piping in Residential Buildings* in 1998. The draft EIR examined the potential human and environmental impacts associated with the use of CPVC for potable water piping. CPVC consists of long chains of vinyl chloride, to which chlorine is added. PVC is essentially the parent polymer of CPVC. CPVC is more resistant to chemical attack than PVC and does not soften until it reaches a higher temperature, and thus would be more suitable for use in potable water piping.

CPVC and PVC have been widely used for a variety of things in the existing environment. Some examples include toys, food storage plastics, water filter bodies and garden sprinkler pipe and irrigation pipe commonly used in landscape irrigation and production agriculture. The draft EIR recommended that CPVC be used for potable water piping in residential buildings as well. It had already been approved for that particular use in all of the other 49 states, and many foreign countries.

The National Sanitation Foundation (NSF), a not-for-profit, non-governmental organization, involved in standards development, product certification, education, and risk-management for public health and safety has tested and certified many of the common uses of PVC products. The Maximum Contaminant Levels (MCLs) established by USEPA and Cal DHS form the basis for NSF Standards for Drinking Water System Components Health Effects. The MCLs are levels at which no adverse human health impacts would be expected throughout a lifetime of exposure. The MCLs also incorporate a margin of safety. NSF generally uses 10% of the MCL, which provides an additional margin of safety. For contaminants for which there is no MCL, a risk

estimate [Maximum Allowable Level (MAL)] is calculated by NSF, following a standard risk assessment protocol developed in concert with the USEPA.

In laboratory experiments, organotins have been detected in water which has been in contact with CPVC pipe and fittings. Standards for organotins in drinking water have been established by NSF using the MAL approach: Short Term Exposure Level (STEL) of 100 µg/L and Maximum Drinking Water Level (MDWL) of 20 µg/L. The draft EIR stated that no studies found had organotin levels above either of these standards. NSF's extraction tests also yielded organotin concentrations lower than the established standards. It should be noted that these extraction tests were performed at elevated temperatures to actively induce leaching, and so the actual concentrations of organotins in drinking water would be lower than suggested by the test data. The draft EIR concluded that higher concentrations of organotins tended to be a transitory effect of new installations and were not significant. And, leaching occurred more readily in hot water than in cold. The report arrived at a similar "insignificant" determination for environmental impacts as a result of CPVC use (State of California, Department of Housing and Community Development 1998).

Based on the literature reviewed, the Commission also finds that the evidence does not support a determination that the PVC bulkhead proposed for use in the aquatic environment would be hazardous to human or ecological health. Organotins, the primary leachates of concern, constitute 1% of the PVC chemical make-up. Studies have shown that even though the leaching of organotins does occur, the leachates tend to break down quickly and do not accumulate to levels approaching the reported effective concentrations for the biological indicators used. Similarly, laboratory extraction tests, employing stringent conditions, on CPVC pipes have yielded leached organotin concentrations below even the conservative human health-based criteria. Therefore, even though organotins would leach from the proposed bulkhead, especially immediately upon installation, mitigating factors in the environment such as the constant flushing and dilution provided by the surrounding water and the fact that the bulkhead would not be subject to temperature extremes as the CPVC pipes used in the extraction tests help ensure that the resultant organotin concentrations in the receiving water would be low and not pose significant adverse impacts to either human or ecological health.

Therefore, the Commission finds that based on the current information available, the leaching of dimethyltin and monomethyltin from the proposed bulkhead would not cause significant adverse impacts to the biological productivity and quality of coastal waters consistent with Coastal Act Sections 30230 and 30231.

Although the Commission finds that the current scientific research demonstrates that significant adverse impacts to coastal waters would not result from organotin leachates, the potential exists that scientific research methods could advance and identify unanticipated harmful effects that would result in this development being inconsistent with Coastal Act Sections 30230 and 30231. Therefore, the Commission imposes **Special Condition 4**, which requires that if the Executive Director determines that based on newly available information, including but not limited to published scientific research, or a determination made by a regulatory agency, such as the U.S. Environmental Protection Agency, California Regional Water Quality Control Board, or California Department of Fish and Game, that chemicals

contained in the approved bulkhead have the potential to: (1) cause significant adverse impacts to the biological productivity and the quality of coastal waters resulting in an inability to maintain optimum populations of marine organisms, or (2) cause significant adverse impacts to human health, the permittee shall within 60 days of such determination submit an application to the Commission for a coastal development permit amendment to address such significant adverse impacts, which may require removal of the approved bulkhead and/or remediation of impacts attributable to the approved bulkhead.

### **3.6.3 Health Impacts of Vinyl Chloride Monomers (VCM)**

The concern has also been raised that vinyl chloride monomer (VCM), a trace component of PVC, would be released into the environment from the proposed bulkhead and cause impacts to human health. Public comments included information on VCM from a company called, TurnerToys™, which states, "VCM does not, theoretically, occur in PVC polymer produced with perfect quality control. However, this highly toxic and carcinogenic compound has been found to be a trace component of PVC. There have been reports of VCM detected in drinking water that has been standing for a period of time in PVC water pipe." TurnerToys™ also states, "the main risk of VCM, however, has been found to be primarily to workers in plants producing PVC or producing PVC resin from the VCM monomer; and also to people living close to such plants" (TurnerToys™). As stated above, the production of PVC is not part of the proposed development and therefore, not before the Commission for review of consistency with the Coastal Act.

However, the information from TurnerToys™ also states that "exposure hazard to users of PVC products is not theoretically inherent in the process, but in fact occurs due to inevitable lapses in production quality control and housekeeping" (TurnerToys™). Literature reviewed by staff indicates that exposure of the general public to VCM is considered very low, unless one lives near a PVC plant. These exposures are a result of direct emissions and effluents from the plastic industries. Average daily intake of vinyl chloride through inhalation by local residents ranges from trace amounts to 2,100 µg/day. The average daily intake of vinyl chloride by the remainder of the population, on the other hand, is minimal and essentially zero (NIH, NIEHS, NTP).

Sustained exposure to high concentrations of vinyl chloride during the manufacturing process causes angiosarcoma of the liver, with inhalation being the most likely route of exposure. Comments received by staff also included case studies on angiosarcoma of the hand for workers routinely exposed to pipes and cement containing PVC (Mohler et. al. 1998). In these latter cases, the individuals were exposed to years of routine dermal contact with the pipes and pipe shavings.

Any potential health risk posed by vinyl chloride would depend on both the chemical's toxicity and human's exposure to it. Users of Bodega Bay would in no way be subject to the same levels of vinyl chloride exposure as PVC workers. The amount of vinyl chloride uptake by individuals (used along with toxicity to estimate chronic health risks, both carcinogenic and non-carcinogenic) would depend primarily on three factors: (1) chemical concentration in the media that comes in contact with the receptors (i.e., air and water); (2) amount of media that is uptaken or comes in contact with the receptors; and (3) frequency and duration of uptake or contact. The PVC workers mentioned in the examples given either inhaled air with persistently high

concentration of vinyl chloride in an environment with limited circulation or handled PVC pipes, exposing their hands to direct skin contact with PVC materials. It can further be assumed that these workers were exposed to vinyl chloride for several hours per day and all the work-days in a year, and that kind of media contact was sustained for years of their lives.

In contrast, the amount of residual VCM on the proposed PVC bulkhead would be relatively small to begin with and would decrease over time. Based on the compound's volatility and low solubility, any VCMs released would most likely end up in the atmosphere and disperse, leaving an insignificant vinyl chloride concentration in the water. The water concentration would be further tempered by dilution with the large volume of water available. Vinyl chloride concentration in the air immediately above and around the proposed bulkhead would be low as well due to the very well circulated environment and certainly nowhere near the air concentration in a manufacturing facility. It is also safe to assume that the public would not experience the same level of continuous close contact with media containing vinyl chloride like in a work environment. The duration and frequency of vinyl chloride-polluted air uptake or water contact certainly would not approach several hours per day, 240 days per year (approximate number of work days per year), and several years during a lifetime.

In conclusion, based on the available information, the Commission finds that any vinyl chloride released from the proposed bulkhead would not result in either the frequency or level of exposure that have been shown to be harmful to human health.

#### **3.6.4 PVC and Dioxins**

Another issue raised by the public is the hazards associated with fire and the burning of PVC. When chlorine-based organic chemicals are burned or produced under reactive conditions, dioxins are formed. Dioxins have been characterized by EPA as likely to be human carcinogens and are anticipated to increase the risk of cancer at background levels of exposure (USEPA PBT). As noted in the public comments received by the Commission, the United States is a signatory to the Persistent Organic Pollutants (POP) Treaty, which bans or severely restricts a group of 12 pesticides and industrial chemicals including dioxins. In addition, when vinyl burns, hydrochloric acid is released. Hydrochloric acid can cause severe burns to skin, eyes, and lungs. If the proposed bulkhead were to catch fire, it would potentially produce both dioxins and hydrochloric acid, releasing them into the air, and into the water, which would result in significant adverse impacts to the biological productivity and the quality of coastal waters, inconsistent with Coastal Act Section 30231. However, a report prepared by the Ministry of the Environment Denmark, titled *Environmental Aspects of PVC*, stated that the fire performance properties differ from rigid to flexible PVC and that rigid PVC is difficult to ignite and burns only with continuous addition of heat from another source (MED 1995). The proposed material is not only a rigid PVC, but would also be located primarily in water and buried in the sediment of the lagoon. Therefore, there is not significant risk that the proposed bulkhead would catch fire and release dioxins and hydrochloric acid into the air and water.

#### **3.6.5 Additional PVC Concerns**

In addition to the four main issues discussed above, Commission staff received various articles related to the health effects of chemical pollutants on humans and wildlife. An article titled, *Body of Evidence: The effects of chlorine on human health*, discusses in-depth the health effects of

organochlorines on humans and wildlife (Allsopp et. al. 1995). Organochlorines are chemicals that have at least one chlorine-carbon bond in their structure. Potential health impacts include reproductive and developmental effects, effects on the nervous system, immune system and the liver, and cancer. The article includes discussion on the many impacts of dioxins, an organochlorine by-product. As previously mentioned, dioxin is produced when chlorine-based organic chemicals are burned or produced under reactive conditions. In order for dioxins to be released into the environment from the proposed development, the PVC sheet piles would need to be burned. As discussed in Section 3.3.1.1(c), the risk of the proposed development catching fire is assumed to be minimal. Therefore, exposure of humans and wildlife to dioxins by the proposed development is unlikely.

Concerned individuals also stated that there are safer alternatives than the proposed material. However, unless PVC is shown to present an unmitigated significant adverse impact to coastal resources inconsistent with the provisions of the Coastal Act, the question of whether PVC is the safest feasible alternative does not raise an issue under the Coastal Act. Coastal Act Sections 30230 and 30231 only require that the proposed development maintain, enhance, and where feasible, restore marine resources and that development not adversely impact the biological productivity and quality of coastal waters. Similar to the question of safer alternatives, is the issue of the percentage of recycled PVC contained in the proposed material. Whether the proposed PVC material is produced from 100% post-consumer waste is not an issue under the Coastal Act unless the proportion of recycled versus virgin PVC contained in the sheet pile were shown to cause significant adverse impacts to biological productivity and quality of coastal waters.

### 3.7 Visual Resources

#### Section 30251

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

The primary project impacts to coastal visual resources would result from construction of the 7-foot-high windscreen on the east side, and portion of the south side, of the deck. On the deck's east side, along the sidewalk, the windscreen would consist of alternating wood and glass panels. The applicant has indicated to Commission staff that the 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 of the length of the deck would be screened by 7-foot-high wood panels, and the other half by a lower wood guard rail with chain link fencing. 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. The screen would be constructed with redwood lumber weathered to match the restaurant building's siding. 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.

The proposed fish house extension, compressor shed cover, and movable scale room are located on a part of the wharf pier that is situated well away from public viewing areas. The 17-linear-foot extension to the fish house would follow the present building's area footprint and roof line, as well as the exterior finishing, and is therefore compatible with the visual character of the existing wharf structures. The proposed compressor shed cover would be located behind the fish house structure, and therefore not visible except from the wharf itself. The scale room is simply an 8 by 10 foot skid mounted portable office structure, which is moved to its best possible use and location, depending upon the product being unloaded and the product season.

Both of these structures would be small and unobtrusive and would conform to the character of the existing commercial fishing facilities on the site. Therefore, the Commission finds that the proposed development is consistent with Coastal Act Section 30251.

### **3.8 Alleged Violation**

Sometime in 2001, without benefit of a coastal development permit, and after CDP 1-95-66-A had expired on January 14, 2001, the applicant undertook development consisting of (1) the construction of a 1,012-square-foot deck extension; (2) the removal of 606 square feet of public boardwalk; construction of (3) new concrete surfacing over the unpermitted decking; (4) a new safety railing; (5) a new scale room replacing the old one which was dilapidated and torn down; (6) a metal building fish house extension for live crab storage; and (7) a compressor shed cover. In November of 2001, the applicant applied for an after-the-fact authorization of the above-mentioned development.

Although development has taken place prior to the submission of this after-the-fact permit application, consideration of the application by the Commission has been based solely upon the policies of the LCP and public access and public recreation of Chapter 3 of the Coastal Act. Approval of the after-the-fact 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 site without a coastal development permit.

### **3.9 California Environmental Quality Act**

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 that would substantially lessen any significant adverse effects that the activity may have on the environment.

The Commission incorporates its preceding findings on consistency of the proposed project with the Coastal Act policies at this point as if set forth in full. The staff report addresses and responds to all public comments regarding potential significant adverse environmental effects of the project that were received prior to the preparation of the staff report. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impacts that the development may have on the environment. Therefore, the Commission finds that the proposed project has been conditioned to mitigate the identified impacts and can be found consistent with Coastal Act requirements to conform to CEQA.

## APPENDIX A

Allsopp, Michelle et.al. "Body of Evidence: the effects of chlorine on human health," May 1995.

Chau, Y.K. et al. "Occurrence of Organotin Compounds in the Canadian Aquatic Environment Five Years after the Regulation of Antifouling Uses of Tributyltin," *Water Quality Research Journal of Canada*, 32(3): 453-521, 1997.

Kantola, Barbara. Email to Sarah Borchelt, California Coastal Commission, regarding PolyOne Corporation Product - Geon E3360. September 17, 2002.

Maguire J. "Aquatic Environmental Aspects of Non-Pesticidal Organotin Compounds," *Water Poll. Res. J. Canada*, vol. 26, 243-360, 1991.

Ministry of the Environment, Denmark (MED) "Environmental Project No. 313: Environmental Aspects of PVC," 1995.

Mohler, D.G. et al. "Angiosarcoma of the Hand Associated with Chronic Exposure to Polyvinyl Chloride Pipes and Cement," *The Journal of Bone and Joint Surgery*, vol. 80-A, No. 9, September 1998.

Organotin Environmental Programme, ORTEP Association's Website  
(<http://www.ortepa.org/stabilizers/pages/environment.htm>)

National Institutes of Health, National Institute of Environmental Health Sciences, National Toxicology Program's Website  
([http://ntpserver.niehs.nih.gov/htdocs/ARC/ARC\\_KC/Vinyl\\_Chloride.html](http://ntpserver.niehs.nih.gov/htdocs/ARC/ARC_KC/Vinyl_Chloride.html)). "Known Carcinogen: Vinyl Chloride."

Sadiki, A.I., and D.T. Williams. "A Study on Organotin Levels in Canadian Waters Distributed Through PVC Pipes," *Chemosphere* 38, 1541-1548, 1999.

The State of California, Department of Housing and Community Development. "Draft Environmental Impact Report (EIR) for Chlorinated Polyvinyl Chloride (CPVC) Pipe Use for Potable Water Piping in Residential Buildings," June 1998.

TurnerToys™ Website (<[http://www.turnertoys.com/PVC\\_framepage1.htm](http://www.turnertoys.com/PVC_framepage1.htm)>) "OTHER HAZARDS: Dioxin Vinyl Chloride Monomer."

U.S. Environmental Protection Agency (USEPA) Persistent Bioaccumulative and Toxic (PBT) Chemical Program's Website <http://www.epa.gov/opptintr/pbt/dioxins.htm> "Dioxins and Furans."

Walsh G.E. et al. "Effects of Organotins on Growth and Survival of Two Marine Diatoms, *Skeletonema costatum* and *Thalassiosira pseudonana*," *Chemosphere* 14, 383-392, 1985.



Wisner, D'Lane. Email to Sarah Borchelt, California Coastal Commission, regarding Rigid Vinyl Questions. August 21, 2002.

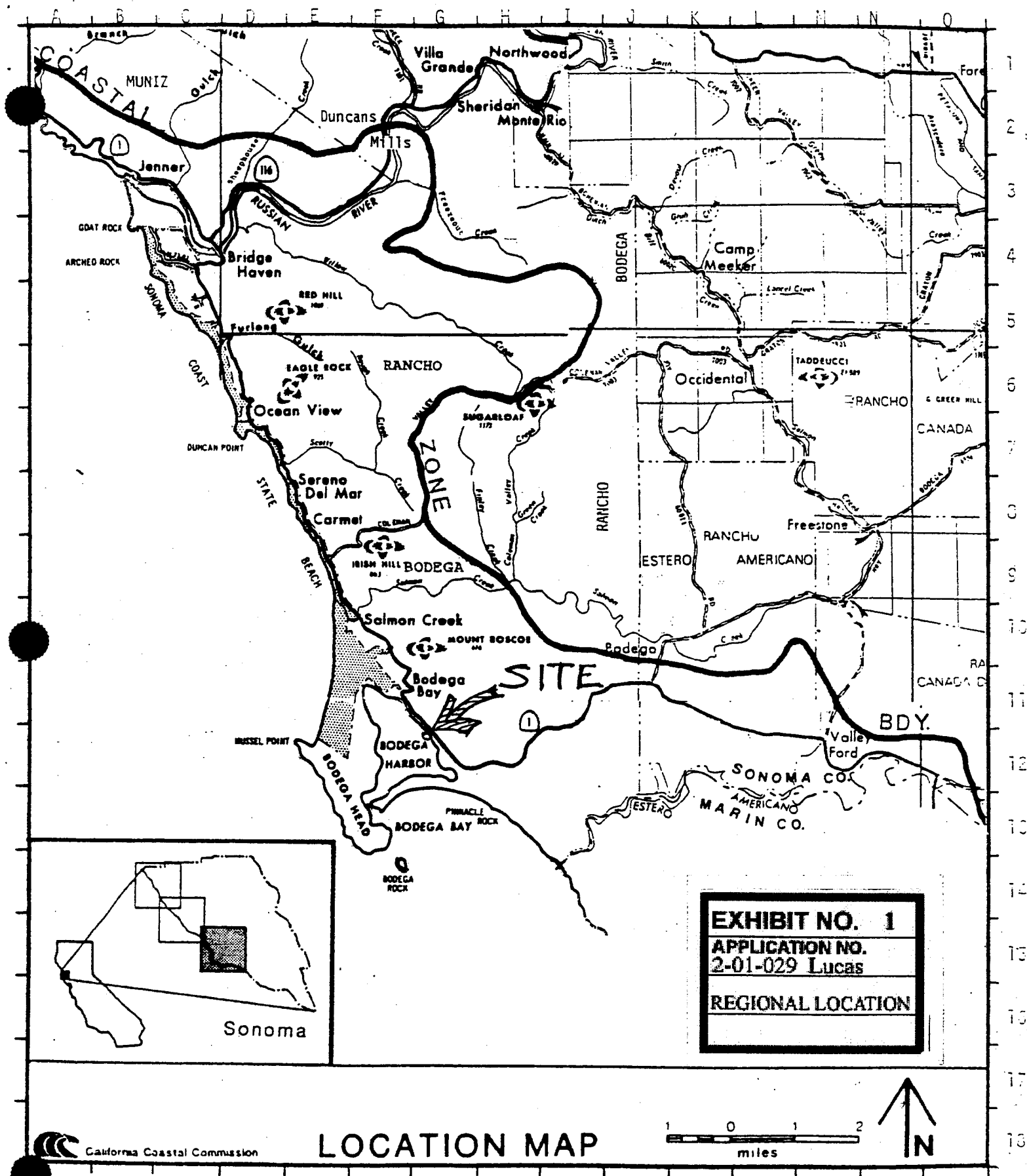
**Personal Communications:**

Barbara Kantola, PolyOne Corporation, September 18, 2002.

**Exhibits**

1. Regional Location
2. Site Location
3. Wharf Site Plan
4. Deck Plan
5. Wood piles & Deck area
6. Elevations
7. Public Accessway
8. Public Accessway – View to North
9. Public Accessway – Elevations
10. Fish House Extension – Floor Plan
11. Fish House Extension – Exterior Elevation
12. Existing Bulkhead – Showing disrepair
13. Bulkhead Replacement Work – Showing sections
14. Vinyl Bulkhead – Installation Cross-section
15. Deck Area – Showing seating
16. Public Accessway – Floor Plan





California Coastal Commission

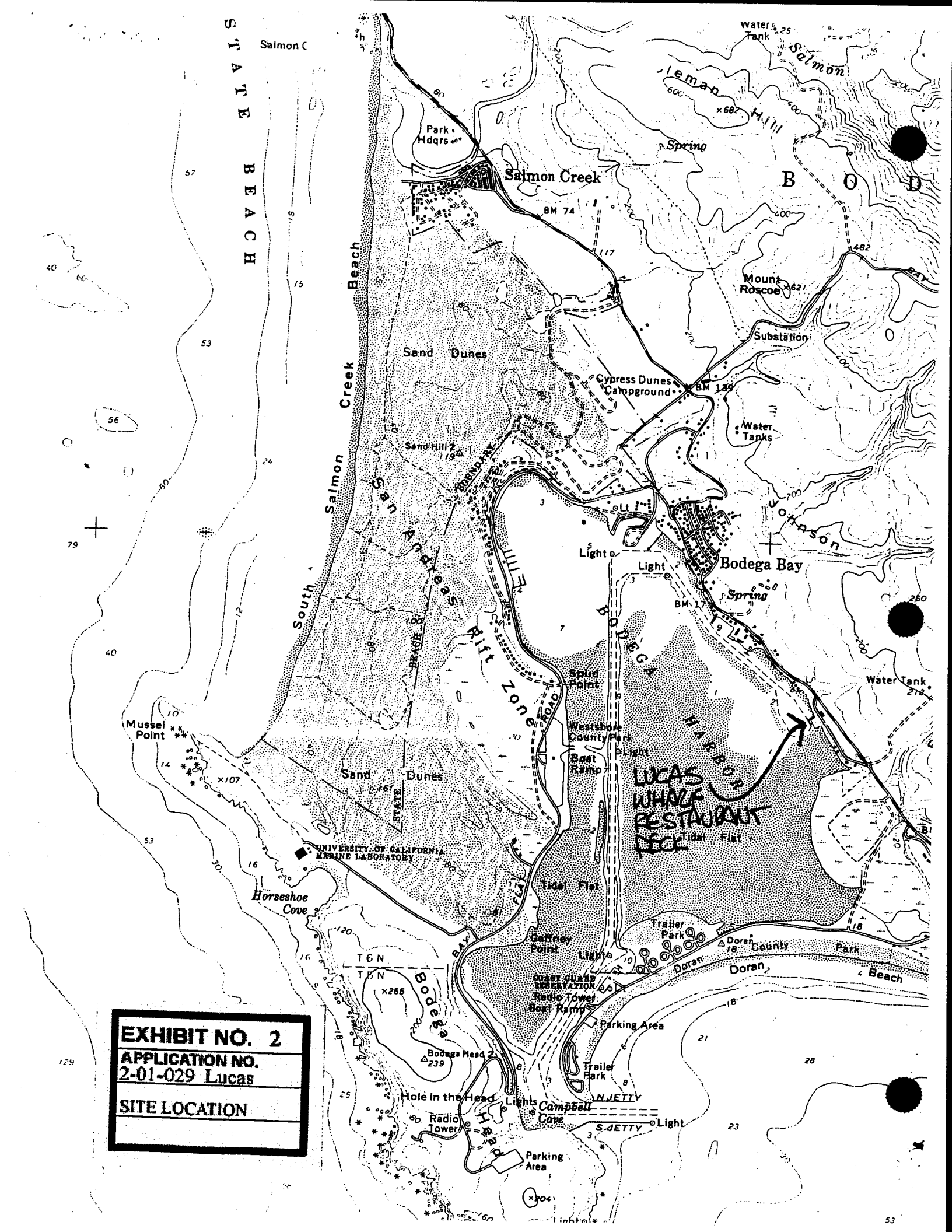
LOCATION MAP

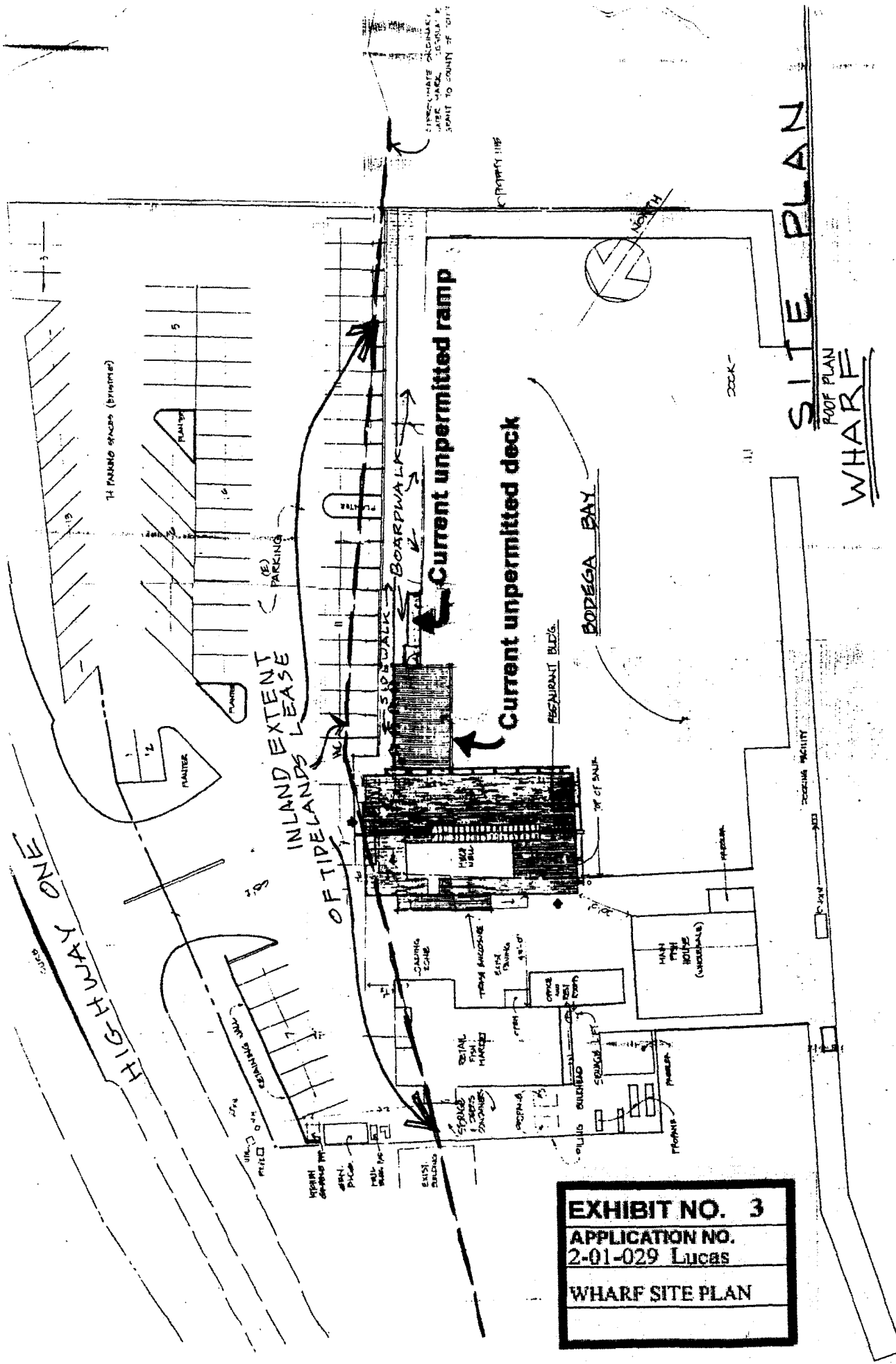
1 0 1 2  
miles



County of Sonoma

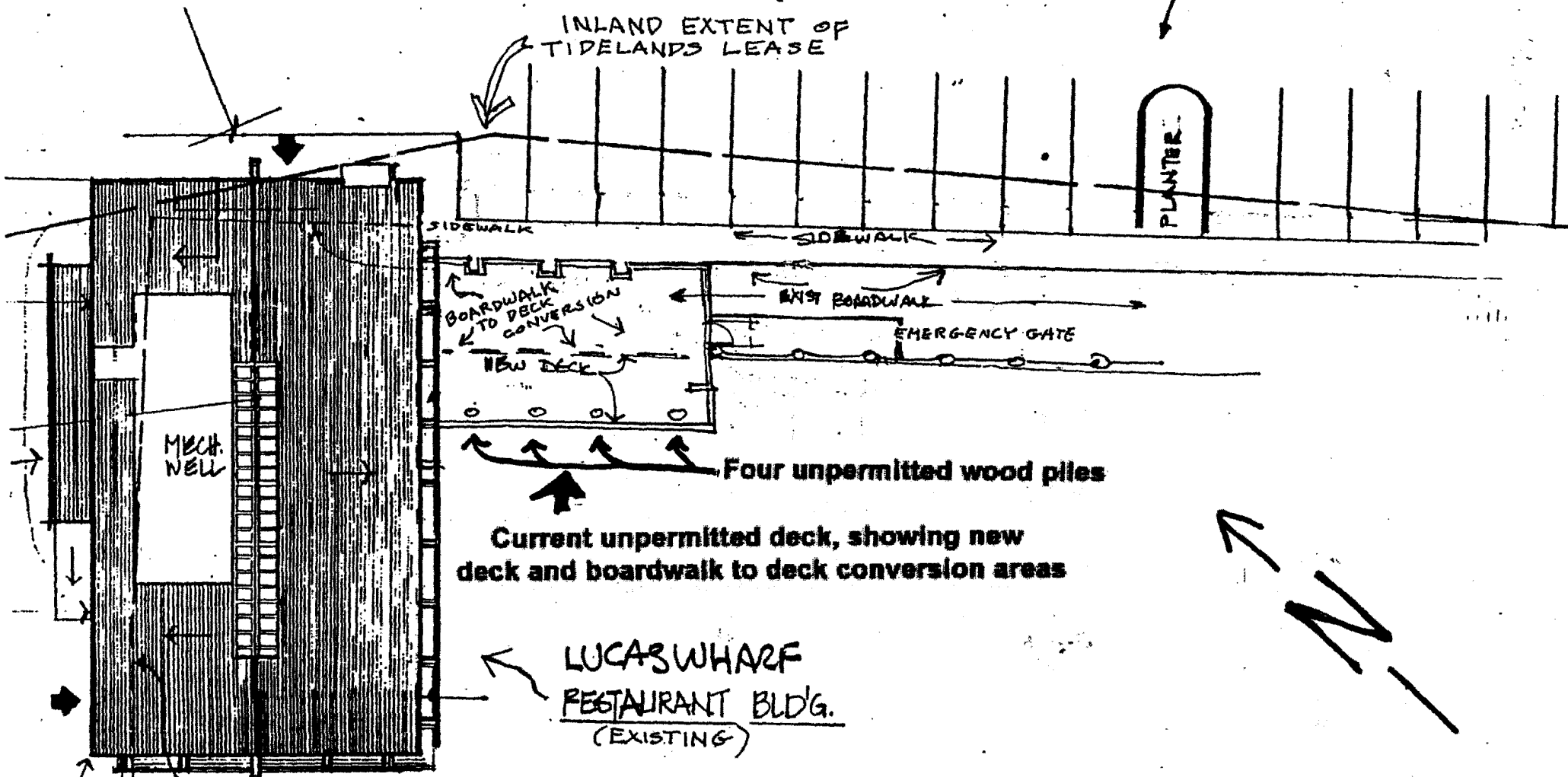
Sheet 3 of 3





**SITE PLAN**  
**WHARF**

**EXHIBIT NO. 3**  
**APPLICATION NO.**  
**2-01-029 Lucas**  
**WHARF SITE PLAN**



20'-0"  
← EXIST. TOP OF BANK

LUCAS WHARF  
RESTAURANT BLD'G.  
(EXISTING)

BODEGA BAY

|                                   |
|-----------------------------------|
| EXHIBIT NO. 4                     |
| APPLICATION NO.<br>2-01-029 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

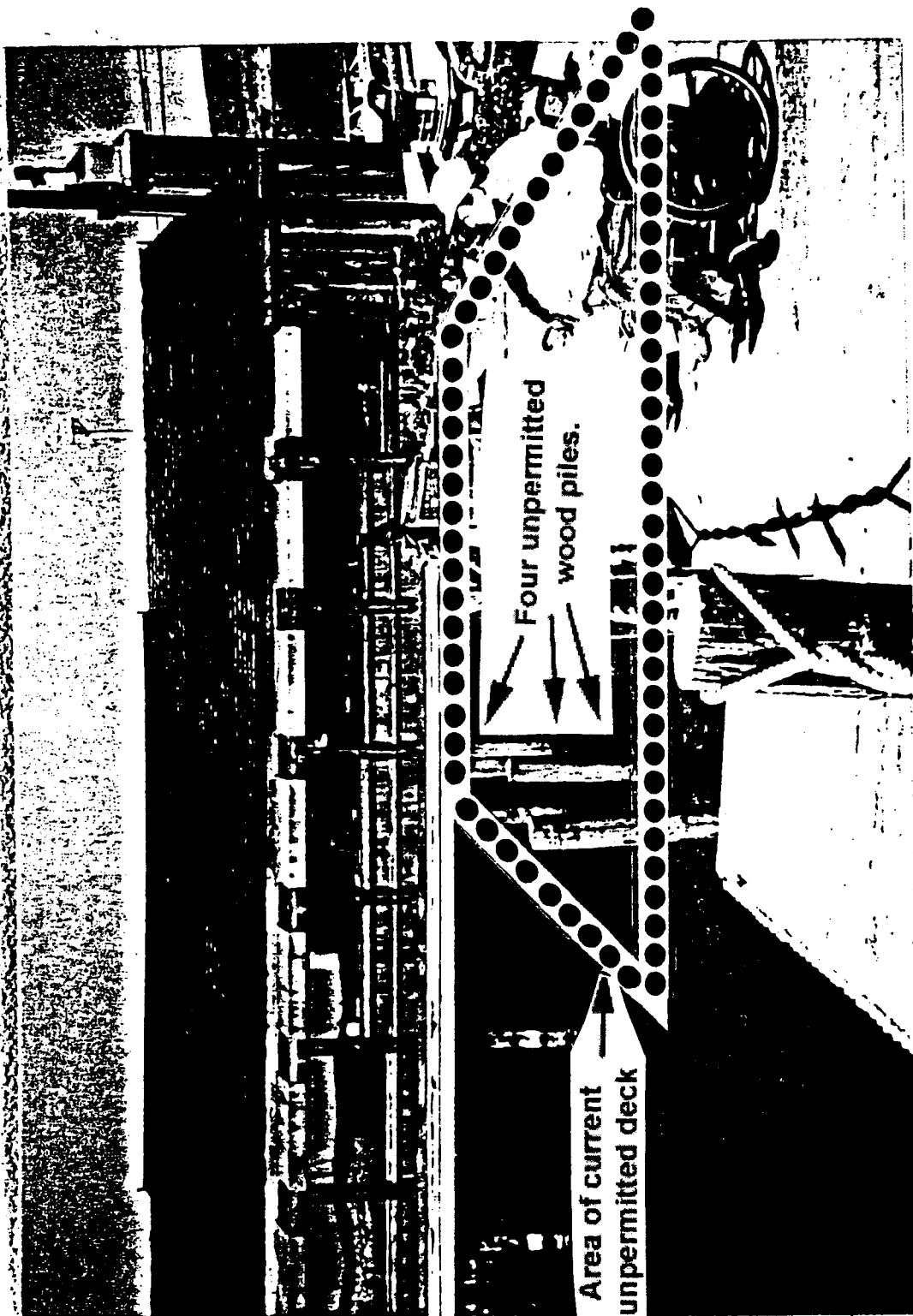
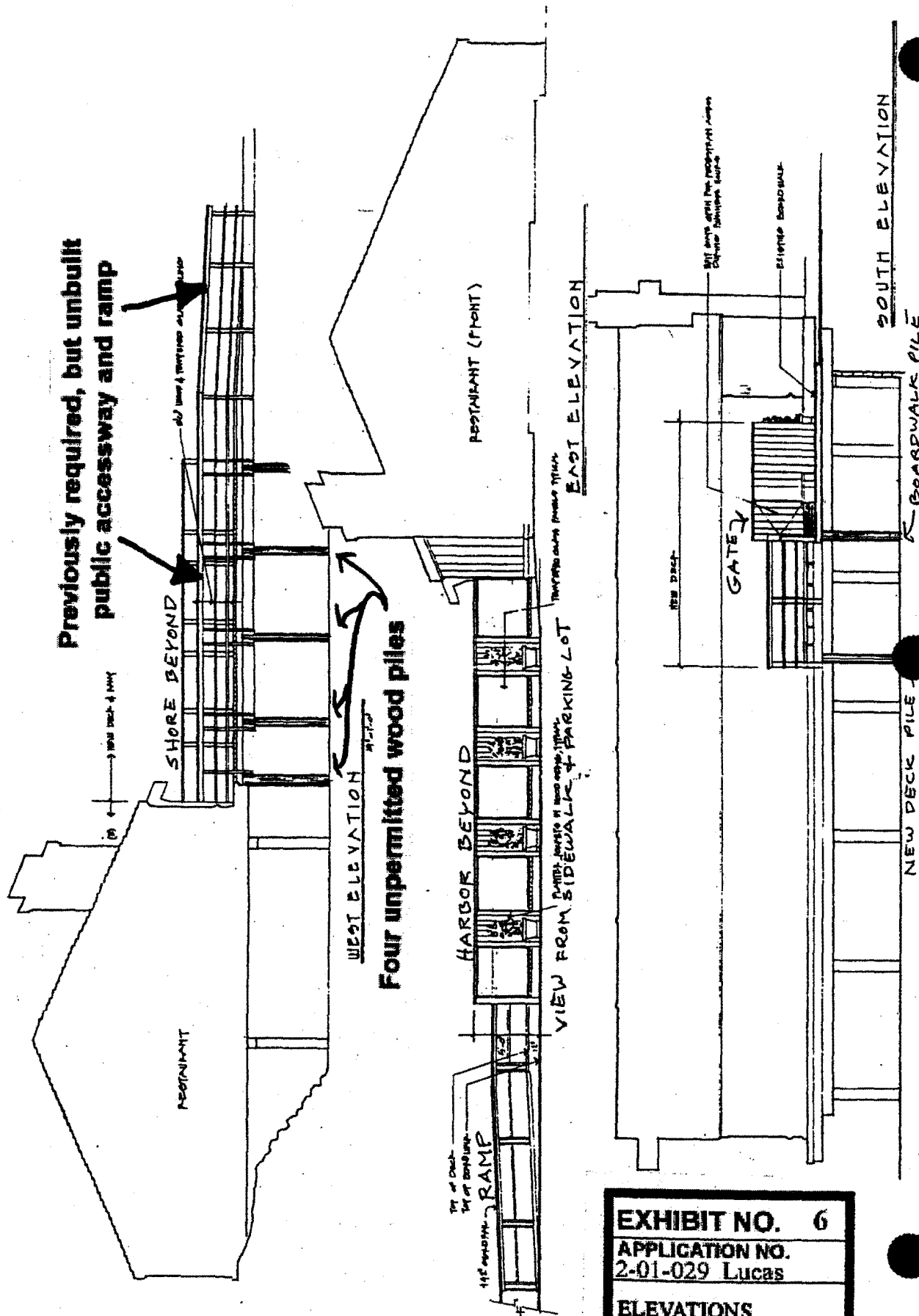


EXHIBIT NO. 5

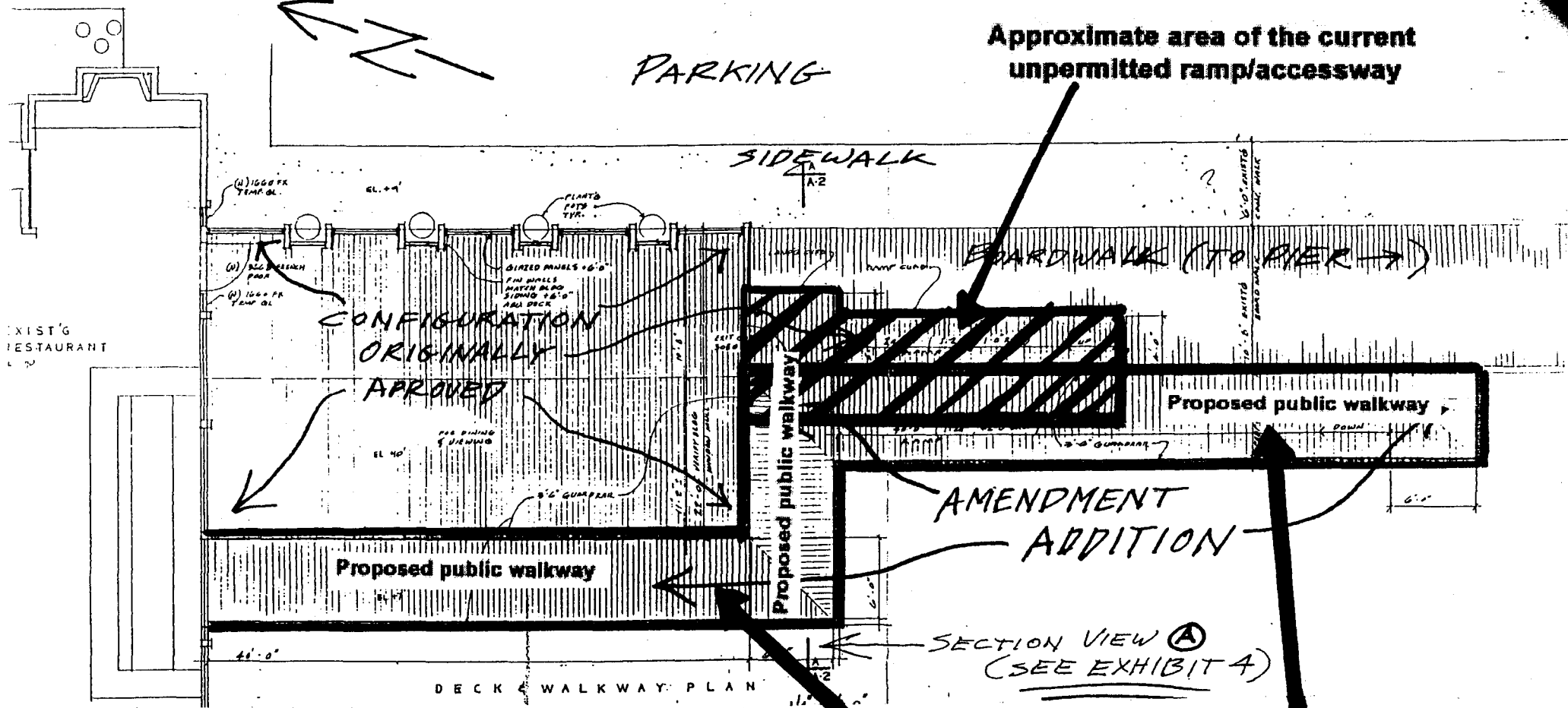
APPLICATION NO.  
2-01-029 Lucas

WOOD PILES  
& DECK AREA



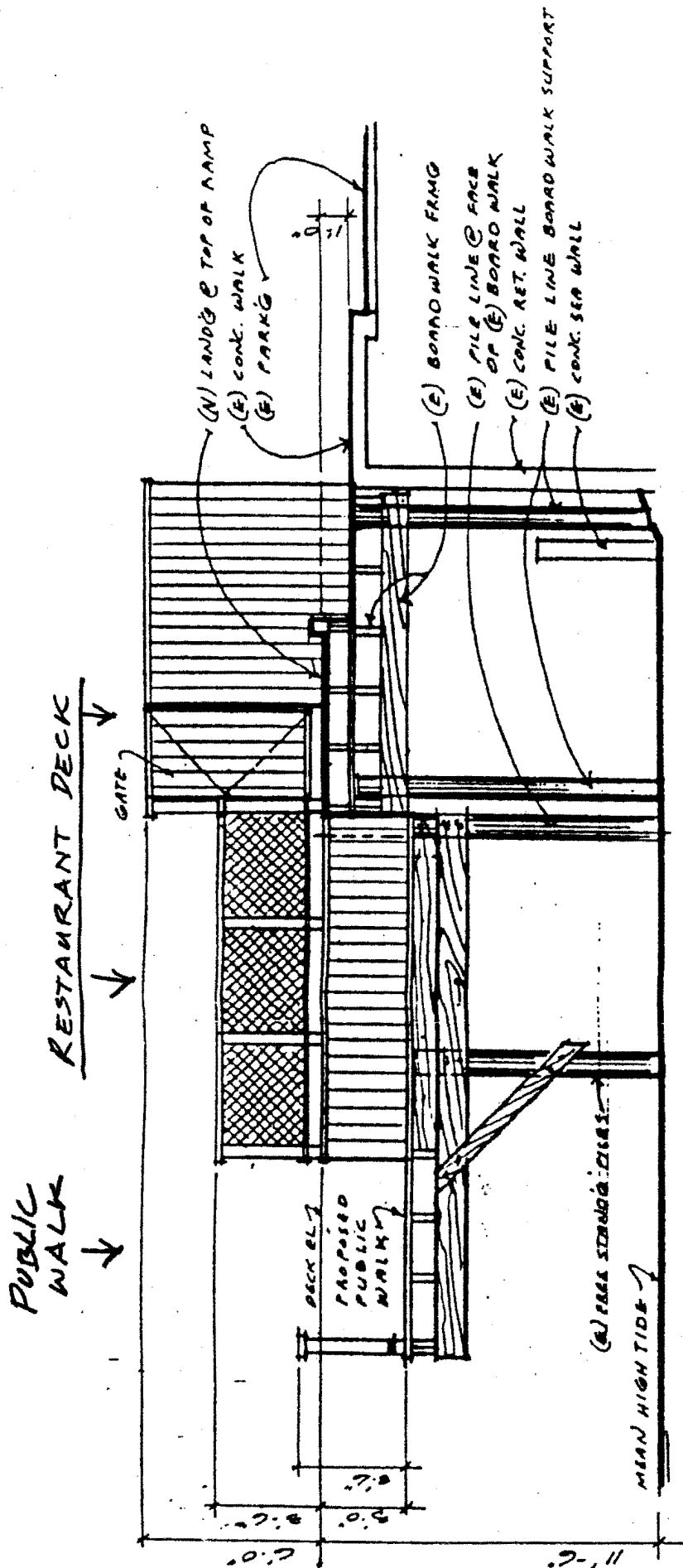
**EXHIBIT NO. 6**  
**APPLICATION NO.**  
**2-01-029 Lucas**  
**ELEVATIONS**





Originally planned accessway per  
amendment 1-96-66-A addition

**EXHIBIT NO. 7**  
APPLICATION NO.  
2-01-029 Lucas  
**Public accessway**  
(Special Condition 1)

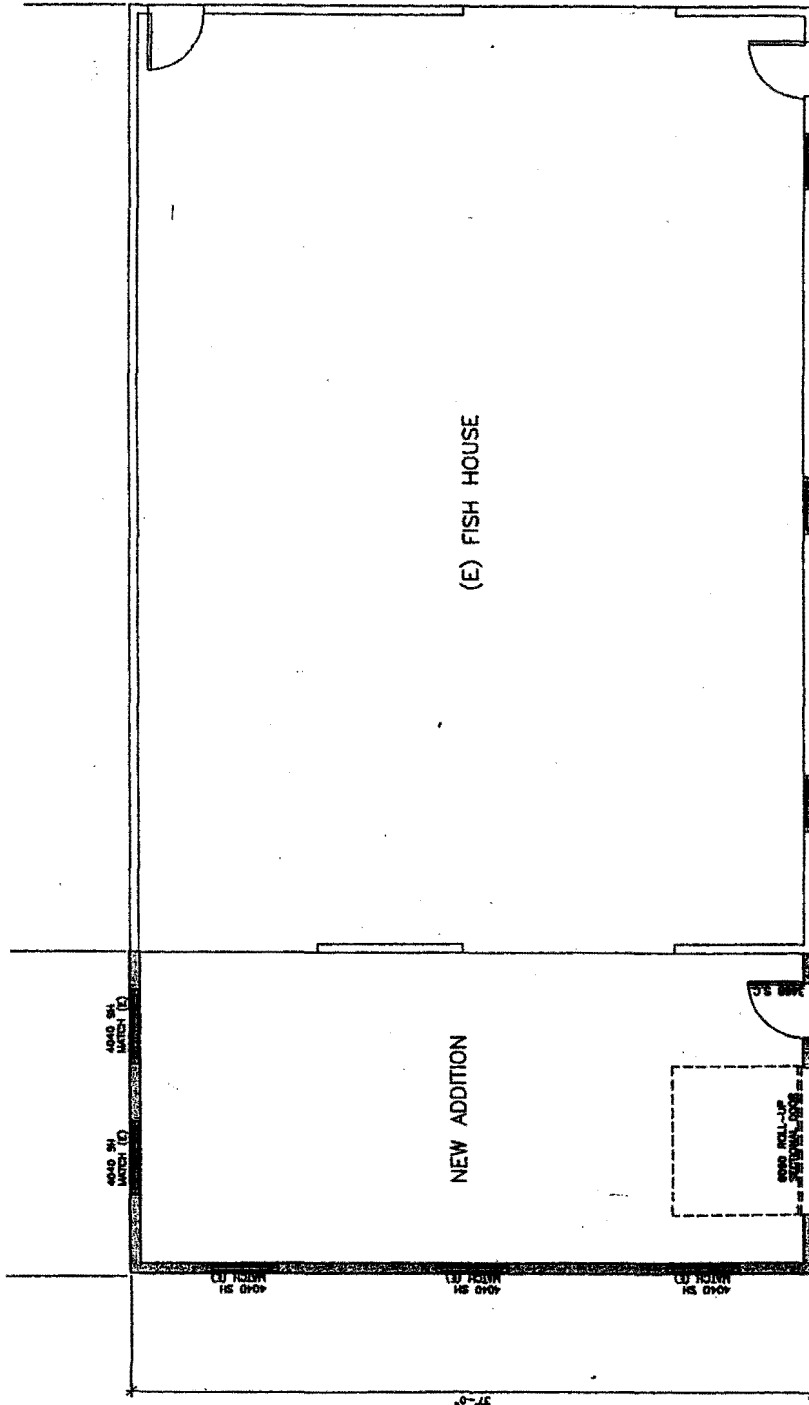


SECTION A  
VIEW TO NORTH

|  |
|--|
| <b>EXHIBIT NO. 8</b>                     |
| <b>APPLICATION NO.</b><br>2-01-029 Lucas |
| <b>Public accessway</b>                  |
| <b>View to North</b>                     |



↑ N



FLOOR PLAN  
1/8" = 1'-0"

EXHIBIT NO. 10  
APPLICATION NO.  
2-01-029 Lucas  
Fishhouse Extension  
Floor Plan

CORTEZ & ASSOCIATES

BUILDING DESIGNER

DESIGN - PLANNING - DRAFTING

403 PETALUMA AVE. SEBASTOPOL, CA. 95472 707 823-6429

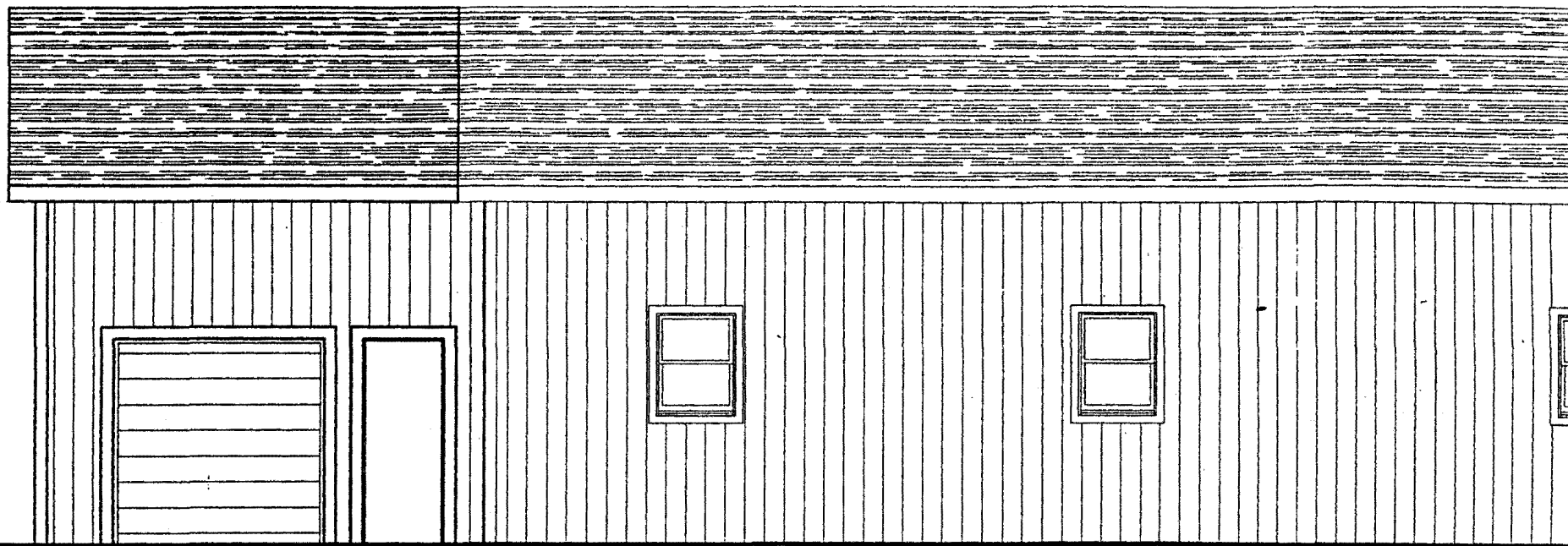
Subject to revision until permit is issued.

PRINTED FOR:

- ☐ Preliminary Review
- ☐ Bidding Purposes
- ☐ Permit
- ☐ Construction

REVISIONS

| No. | By | Date |
|-----|----|------|
|     |    |      |



17'-0" LIMITS OF PROPOSED ADDITION

(E) FISH HOUSE

2  
A-1

EXTERIOR ELEVATION EAST

1/4" = 1'-0"

|  |                 |                    |                     |                  |   |  |
|--|-----------------|--------------------|---------------------|------------------|---|--|
| SHEET NUMBER<br><b>A-1</b><br>OF 1 SHEET | JOB#<br>LW-4-01 | SCALE:<br>AS NOTED | DRAWN:<br>CORTIZ C. | DATE:<br>7-31-02 | SHEET TITLE:<br><b>EXTERIOR ELEVATION</b> | JOB NAME:<br><b>LUCAS WHARF<br/>FISH HOUSE (E)</b><br><br><b>HWY 1<br/>BODEGA BAY, CA.</b> |
|  |                 |                    |                     |                  |   |  |

**EXHIBIT NO. 11**

**APPLICATION NO.  
2-01-029 Lucas**

**Fishhouse Extension  
Exterior Elevation**



**EXHIBIT NO. 12**

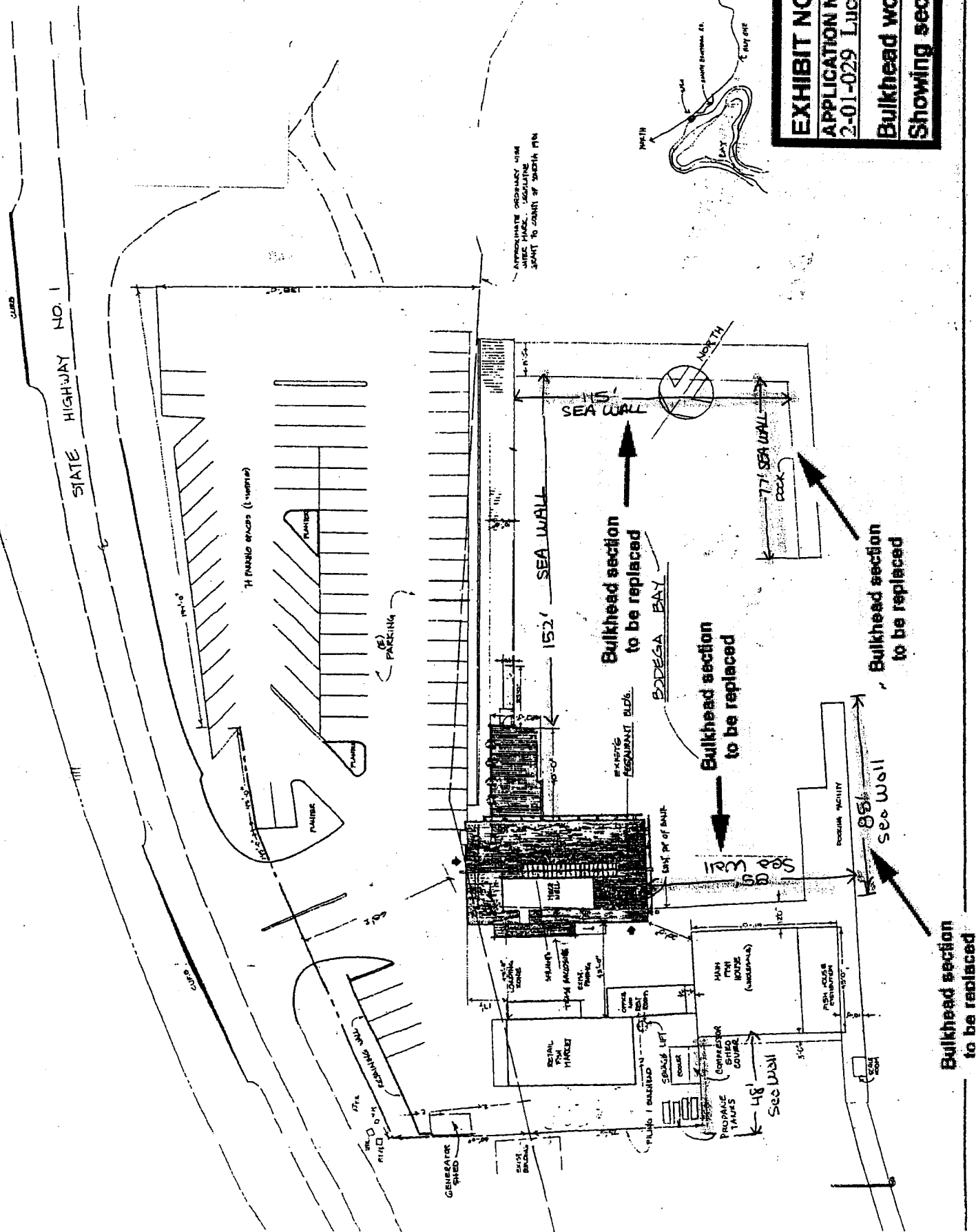
**APPLICATION NO.**

**2-01-029 Lucas**

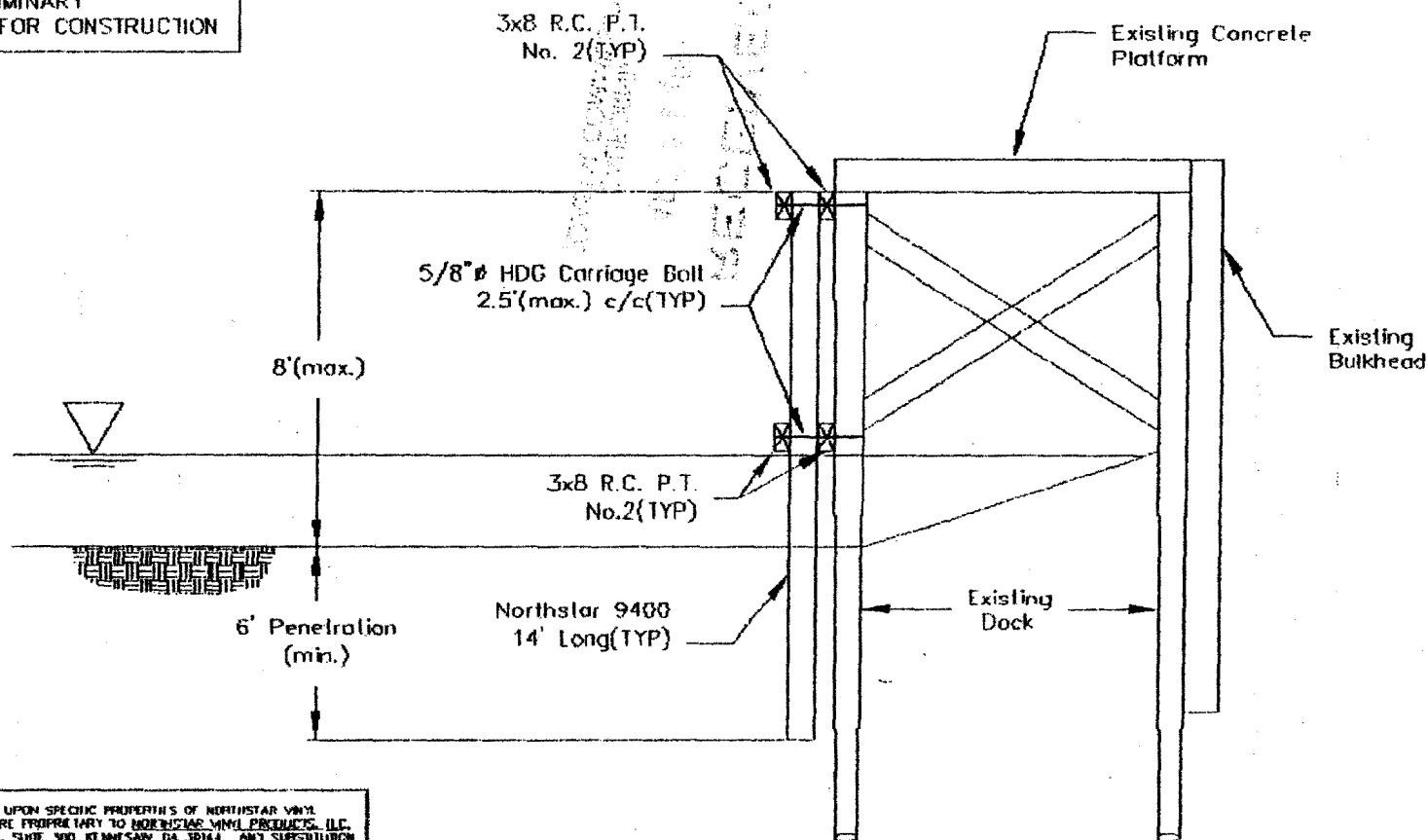
**Existing bulkhead**

**Showing disrepair**

## Showing sections



PRELIMINARY  
NOT FOR CONSTRUCTION



THIS DESIGN IS BASED UPON SPECIFIC PROPERTIES OF NORTHSTAR VINYL SHEET PILING WHICH ARE PROPRIETARY TO HORIZON VINYL PRODUCTS, LLC. 775 TOWN PARK DRIVE, SUITE 300, KENNESAW, GA 30144. ANY SUBSTITUTION OF THE SPECIFIED PRODUCTS WILL INVALIDATE THIS DESIGN. THIS DRAWING IS BEING FURNISHED FOR USE ON THIS SPECIFIC PROJECT ONLY. ANY PARTY ACCEPTING THIS DOCUMENT DOES SO IN CONFIDENCE AND AGREES THAT IT SHALL NOT BE DUPLICATED WHOLE OR IN PART, NOR DISCLOSED TO OTHERS WITHOUT THE CONSENT OF NORTHSTAR VINYL PRODUCTS, LLC.



TYPICAL SECTION

LUCAS WHARF  
SEAWALL  
SEBASTOPOL, CA  
James Lucas

EXHIBIT NO. 14

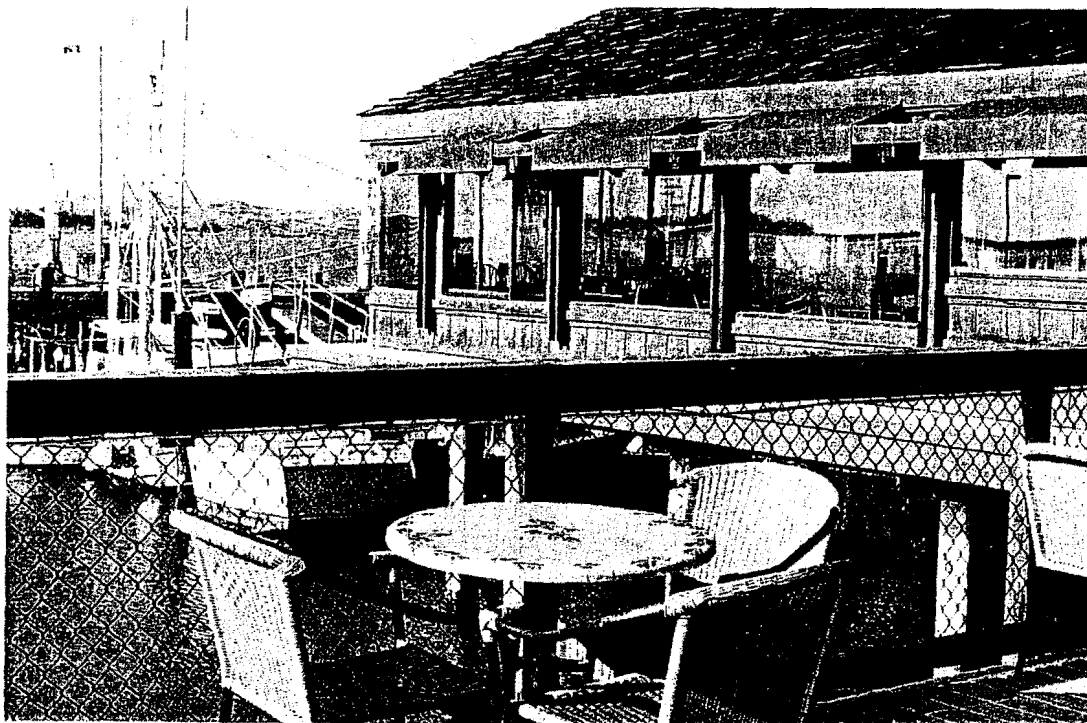
APPLICATION NO.  
2-01-029 Lucas

Vinyl bulkhead

Installation X-section



Lucas Wharf — Deck area, showing seating



**EXHIBIT NO. 15**

APPLICATION NO.  
2-01-029 Lucas

Deck Area

Showing seating

