STATE OF CALIFORNIA - THE RESOURCES AGENCY

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

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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, and extension of existing fish house.

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

SUBSTANTIVE FILE DOCUMENTS: Permit Application Staff Report 1-95-66
Permit Application Staff Report 1-95-66-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. 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, along with wrapping the four creosote treated wood pilings with a Commission approved plastic material, and protection of coastal water quality and the marine environment from construction related debris and materials.

1.0 STAFF RECOMMENDATION

1.1 Motion

I move that the Commission approve Coastal Development Permit No. 2-01-029 pursuant to the staff recommendation.

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.

1.1 RESOLUTION

1.1 Resolution to Approve the Permit

The Commission hereby approves a coastal development permit 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. Creosote Pilings.

A. Within 90 days of issuance of permit, the permittee shall wrap the four creosote treated wood pilings authorized herein with a watertight protective plastic sleeve in a manner acceptable to the Executive Director as follows:

1. The material used shall be durable and a minimum of 60 mil thick.

2. All joints shall be sealed to prevent leakage.

3. Creosote shall be prevented from dripping over the top of the plastic wrapping either by sealing the tops of the pilings or by installing collars near the tops of each piling and above the elevation of the highest tide.

4. The plastic sleeves shall extend a minimum of 18 inches below the mudline.

B. The permittee shall maintain and repair the plastic sleeves as necessary to ensure that a watertight seal is maintained around the entire length of each piling to a minimum of depth of 18 inches below the mudline at all times for the life of the development. Failure to adequately maintain the pilings at all times in accordance with this requirement shall constitute a violation of this permit.

3. 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.

4. 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.

5. 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 Condition 1 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.

2.0 FINDINGS AND DECLARATIONS

The Commission hereby finds and declares as follows:

3.1 Project Location

The project 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 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 permit 1-95-66 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 matter 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.

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.

3.4 Fill in Coastal Waters

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 proposed fill could qualify as fill for 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 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 reserved and 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 approximate area that would be displaced by the installation of the four proposed piles is small, approximately four square feet. 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 additional 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 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 (Acessway 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, Exhibit 7 (Public Accessway).

The proposed 92-foot 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 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 both the east side and a 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.

3.7 Water Quality/Marine Resources

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.*

Construction related debris, wood treatment products and any other chemicals entering the waters of Bodega Bay could adversely affect water quality and marine resources. Therefore, **Special Condition 3** specifies that 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. **Special Condition 4** requires that 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. The Commission finds that these measures are adequate to prevent construction-related impacts to water quality and marine resources.

The applicant requests after-the-fact authorization for the installation of four creosote treated wooden pilings within submerged lands of Bodega Bay. Creosote is a petroleum hydrocarbon product that is known to leach from treated wood in aquatic environments and to cause significant adverse impacts to marine biological resources and water quality in conflict with Coastal Act Sections 30230 and 30231. The release of creosote into marine waters is also prohibited under the California Fish and Game Code. However, the Department of Fish and Game has determined that wrapping such pilings with plastic can prevent the release of creosote from treated pilings into marine waters. The Commission finds that wrapping the pilings with a protective material in a manner acceptable to the Department of Fish and Game would protect the biological productivity and quality of the waters of Bodega Bay from significant adverse impacts related to leaching of creosote. Therefore, **Special Condition 2** requires the applicant to wrap the four creosote treated wood pilings with a plastic material to prevent contact of creosote treated wood with marine waters and organisms. **Special Condition 2** further requires the applicant to maintain and repair the protective covering at all times for the life of the project to maintain an effective watertight seal around the pilings.

The Commission finds that, as conditioned to prevent construction-related water quality impacts and to prevent contact of the creosote treated pilings with marine waters, the proposed development is consistent with Coastal Act Sections 30230 and 30231.

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; (7) a compressor shed cover, and (8) the installation of four creosote treated wooden pilings. 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.

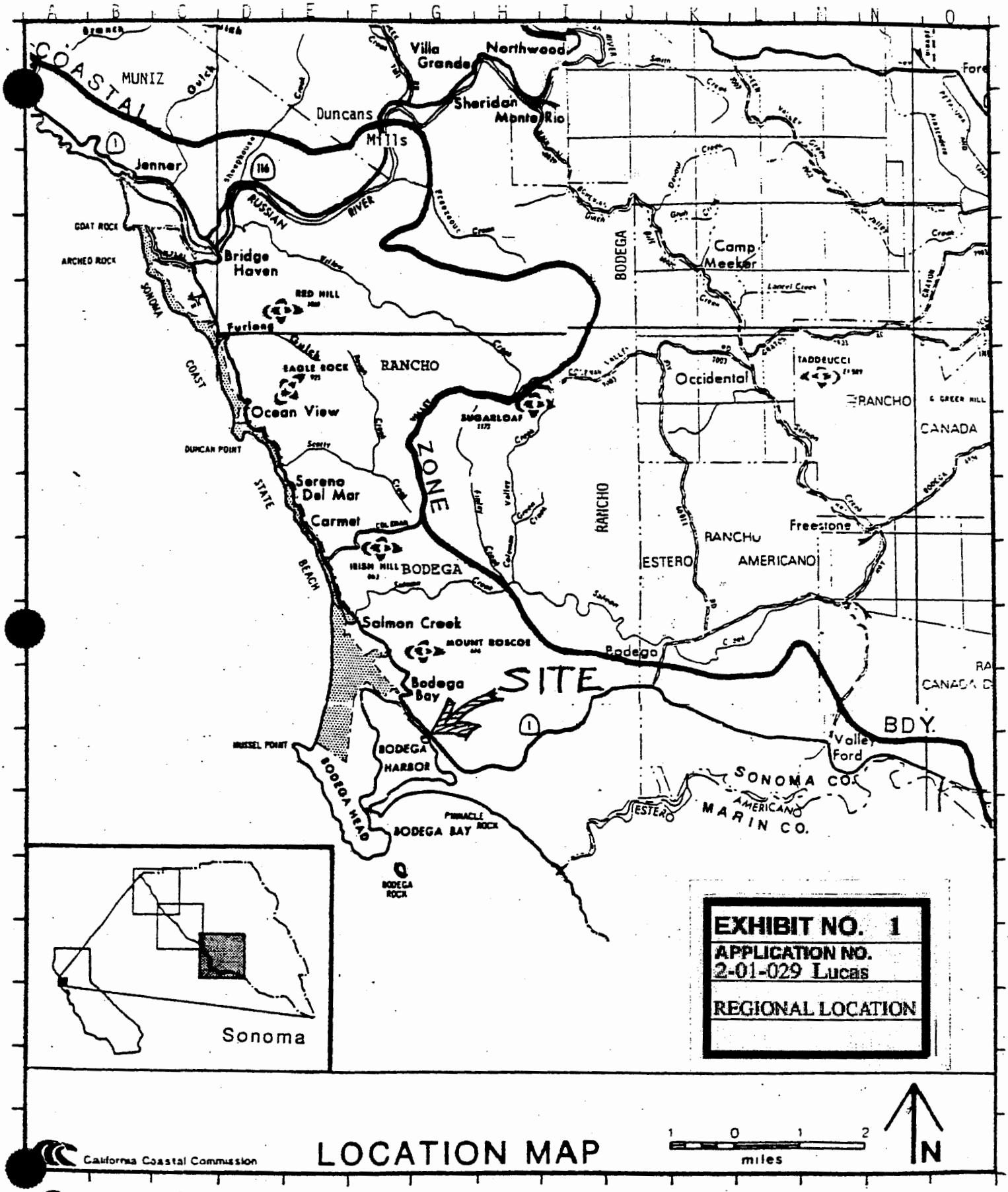
3.9 California Environmental Quality Act

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 approved 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.

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
15. Deck Area – Showing seating
16. Public Accessway – Floor Plan



County of Sonoma

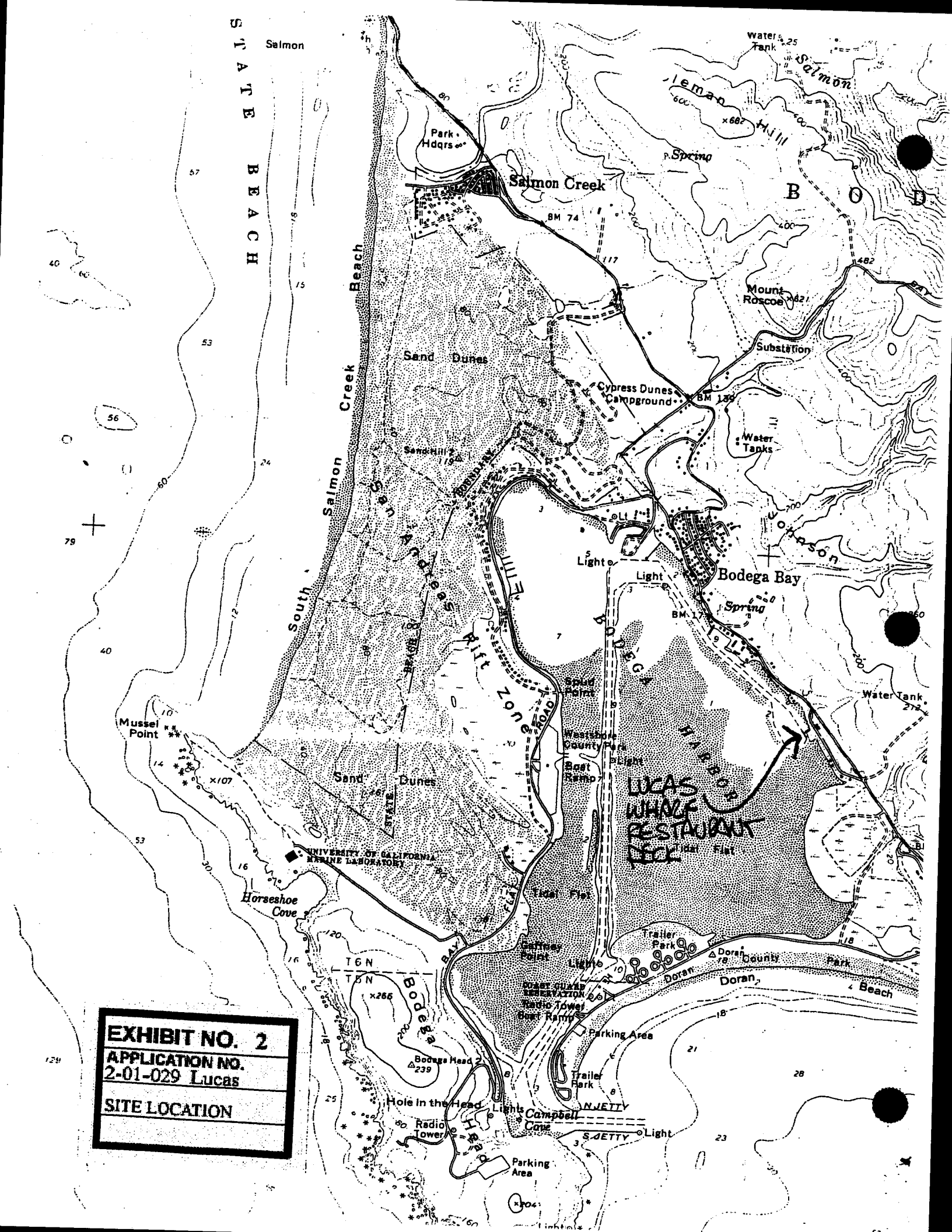


EXHIBIT NO. 2
APPLICATION NO. 2-01-029 Lucas
SITE LOCATION

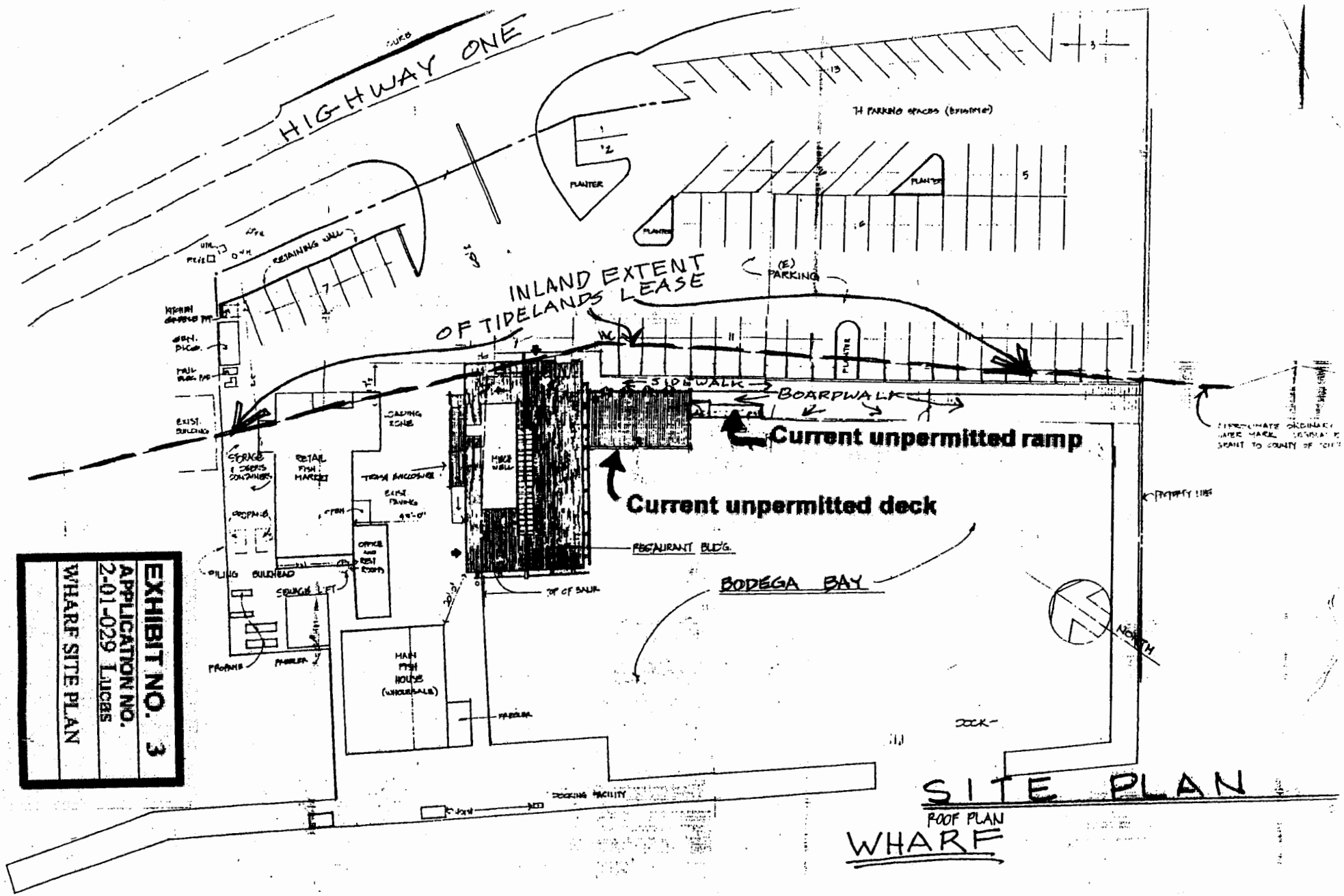


EXHIBIT NO. 3
APPLICATION NO.
2-01-029 LUCAS
WHARF SITE PLAN

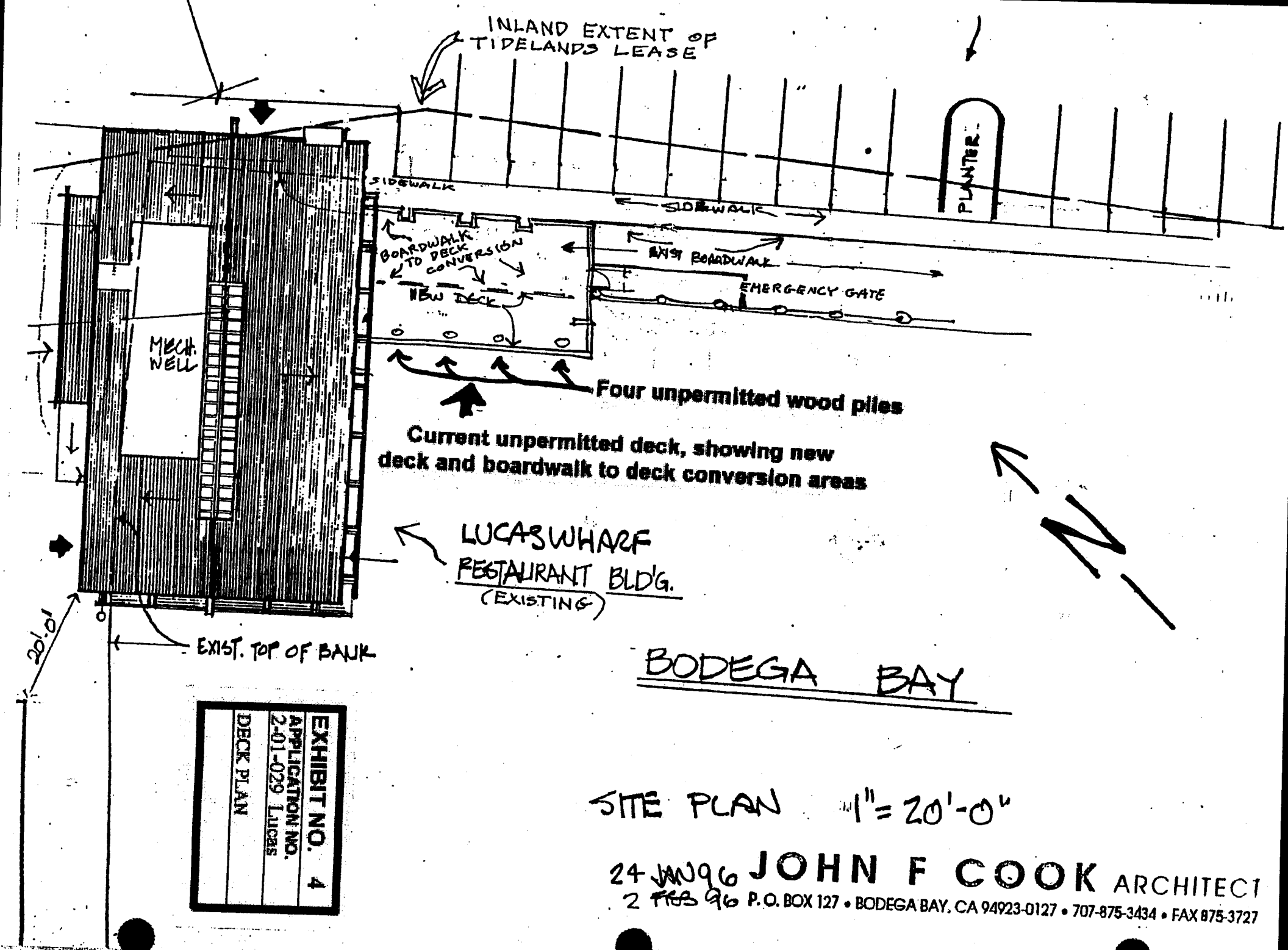


EXHIBIT NO. 4
APPLICATION NO. 2-01-029 Lucas
DECK PLAN

SITE PLAN 1" = 20'-0"

24 JAN 96
2 FEB 96

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

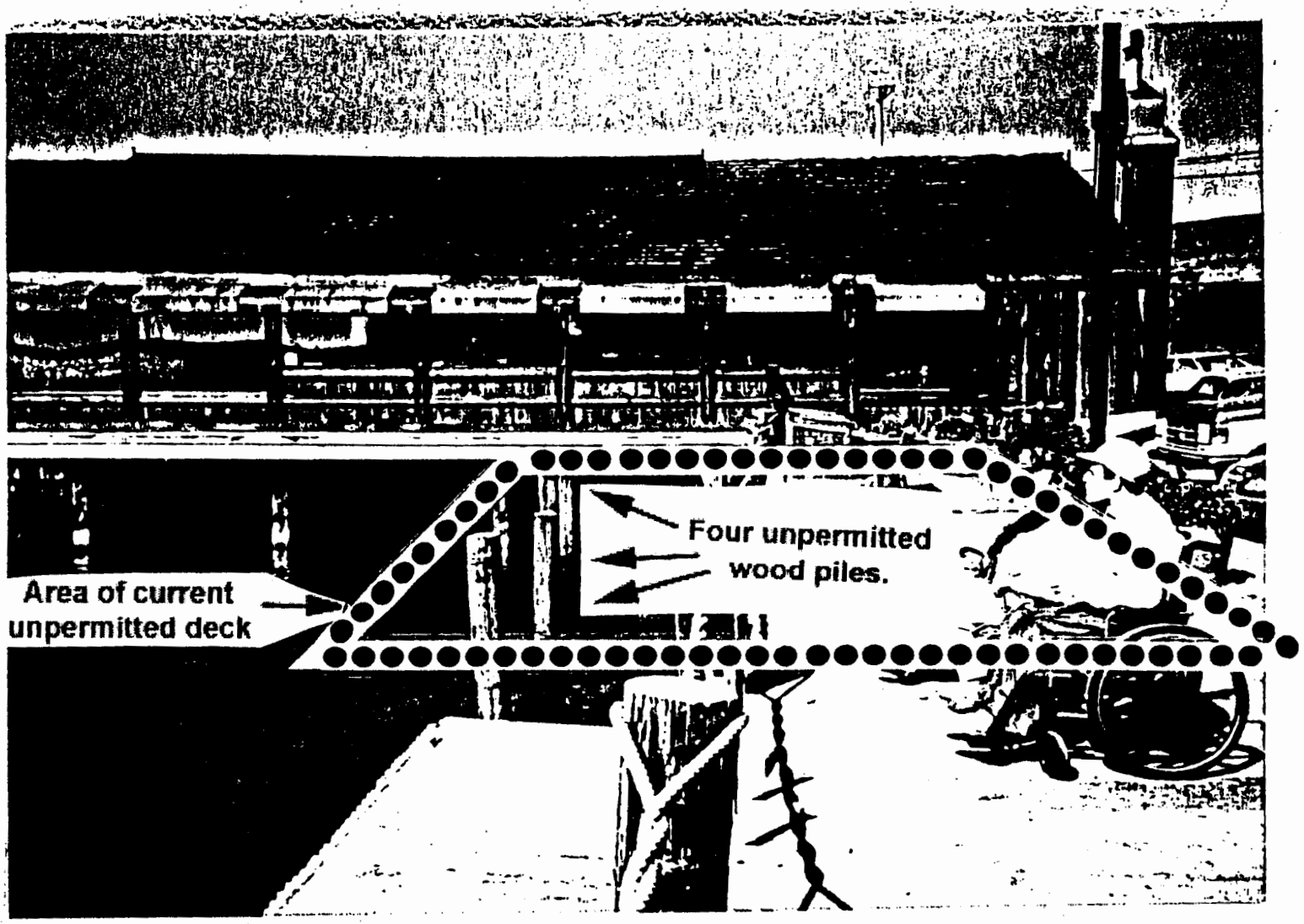


EXHIBIT NO. 5
APPLICATION NO.
2-01-029 Lucas
WOOD PILES
& DECK AREA

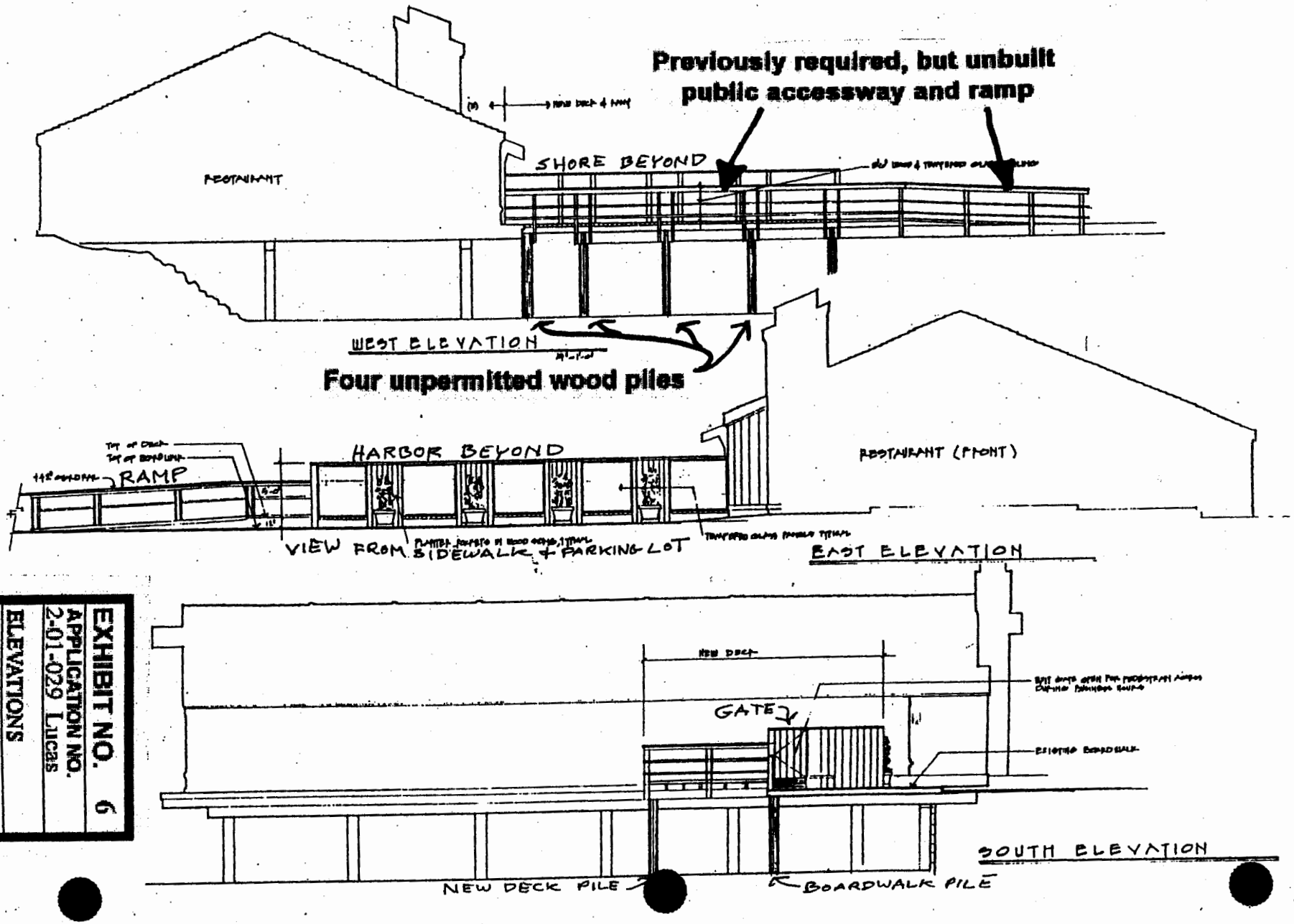
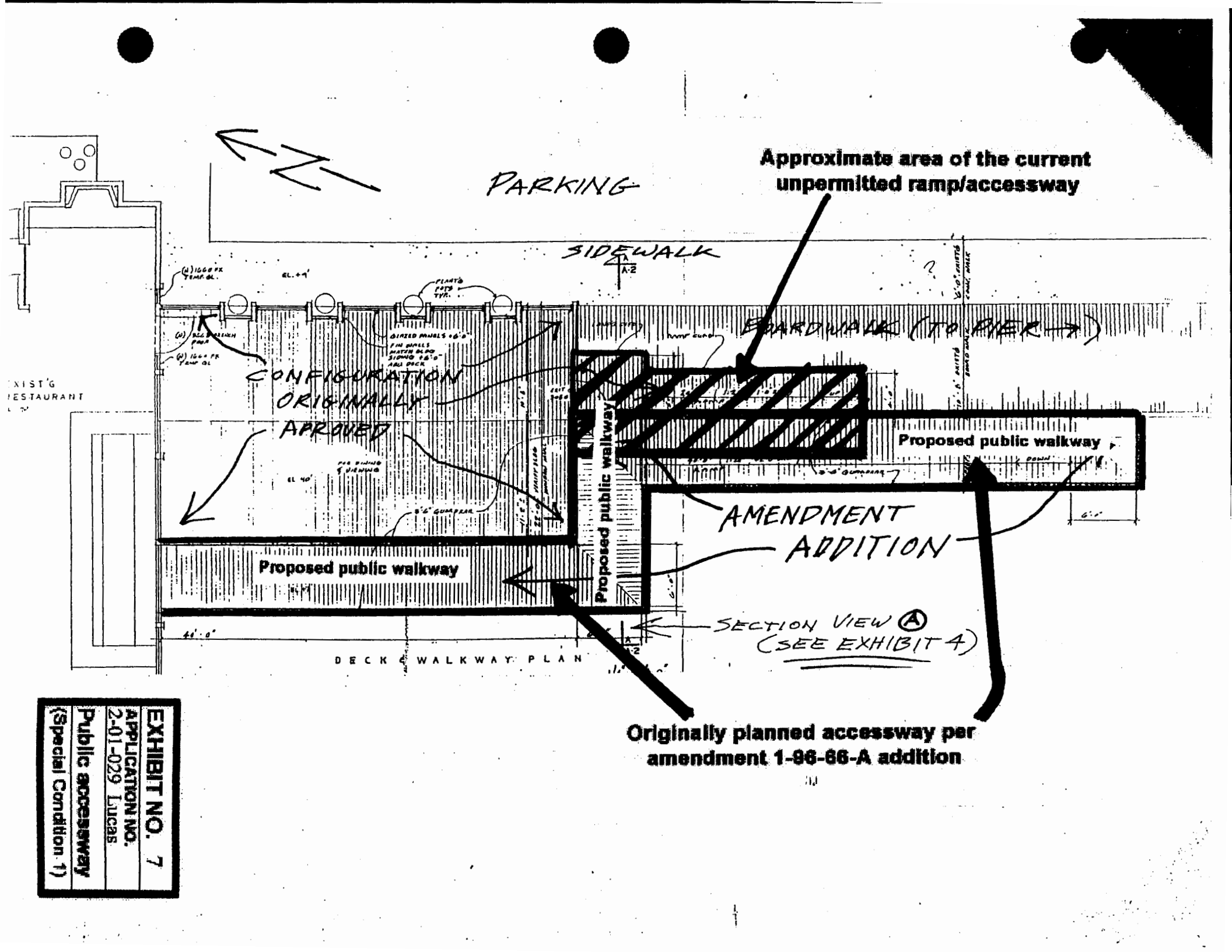
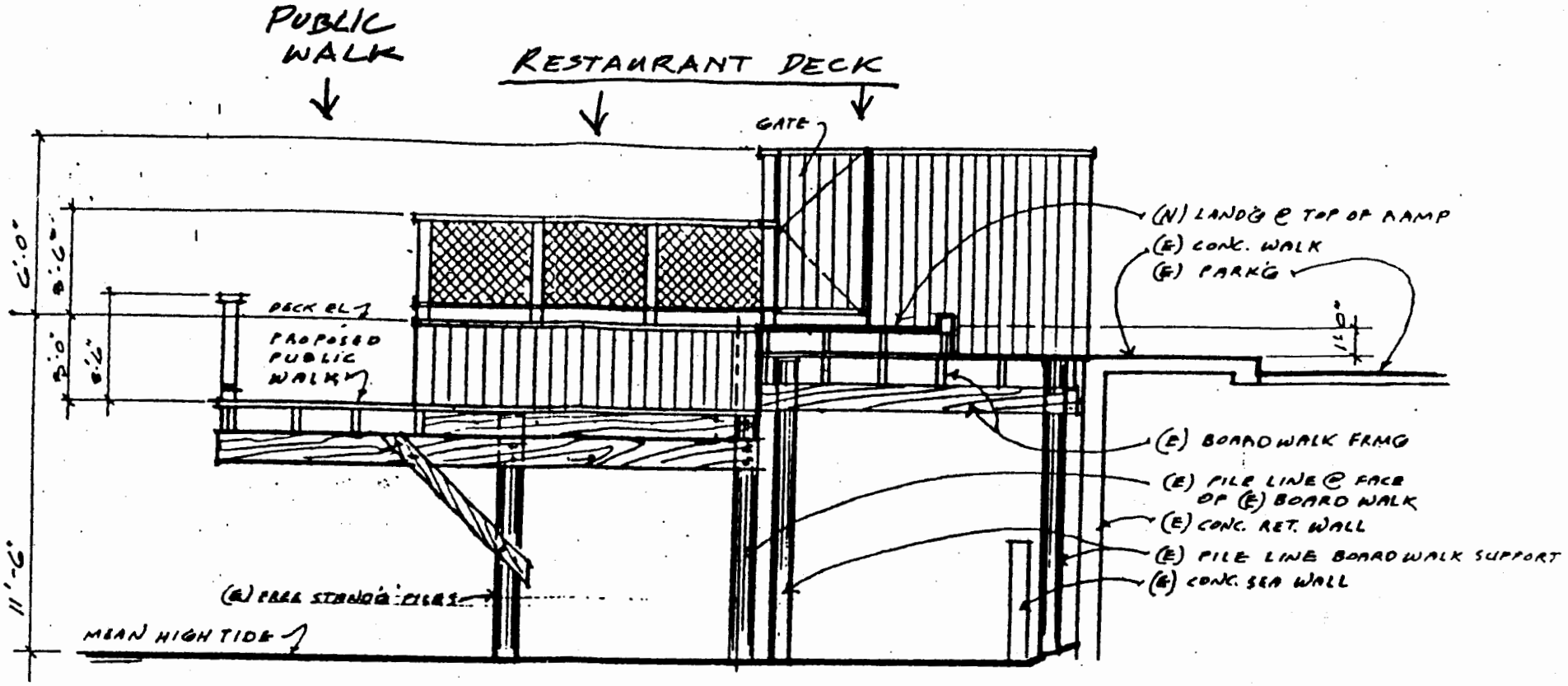


EXHIBIT NO. 6
APPLICATION NO.
2-01-029 Lucas
ELEVATIONS

JOHN F COOK ARCHITECT
ASSOCIATE DOUGLAS GAY ARCHITECT

LUCAS WHARF - DECK ADDITION


PARKING
SIDEWALK
Approximate area of the current unpermitted ramp/accessway
BOARDWALK (TO PIER)
CONFIGURATION ORIGINALLY APPROVED
Proposed public walkway
Proposed public walkway
Proposed public walkway
AMENDMENT ADDITION
SECTION VIEW (A) (SEE EXHIBIT 4)
DECK & WALKWAY PLAN
Originally planned accessway per amendment 1-96-66-A addition
EXHIBIT NO. 7
APPLICATION NO. 2-01-029 Lucas
Public accessway (Special Condition 1)



(A) SECTION

VIEW TO NORTH

EXHIBIT NO. 8
APPLICATION NO.
2-01-029 Lucas
Public accessway
View to North

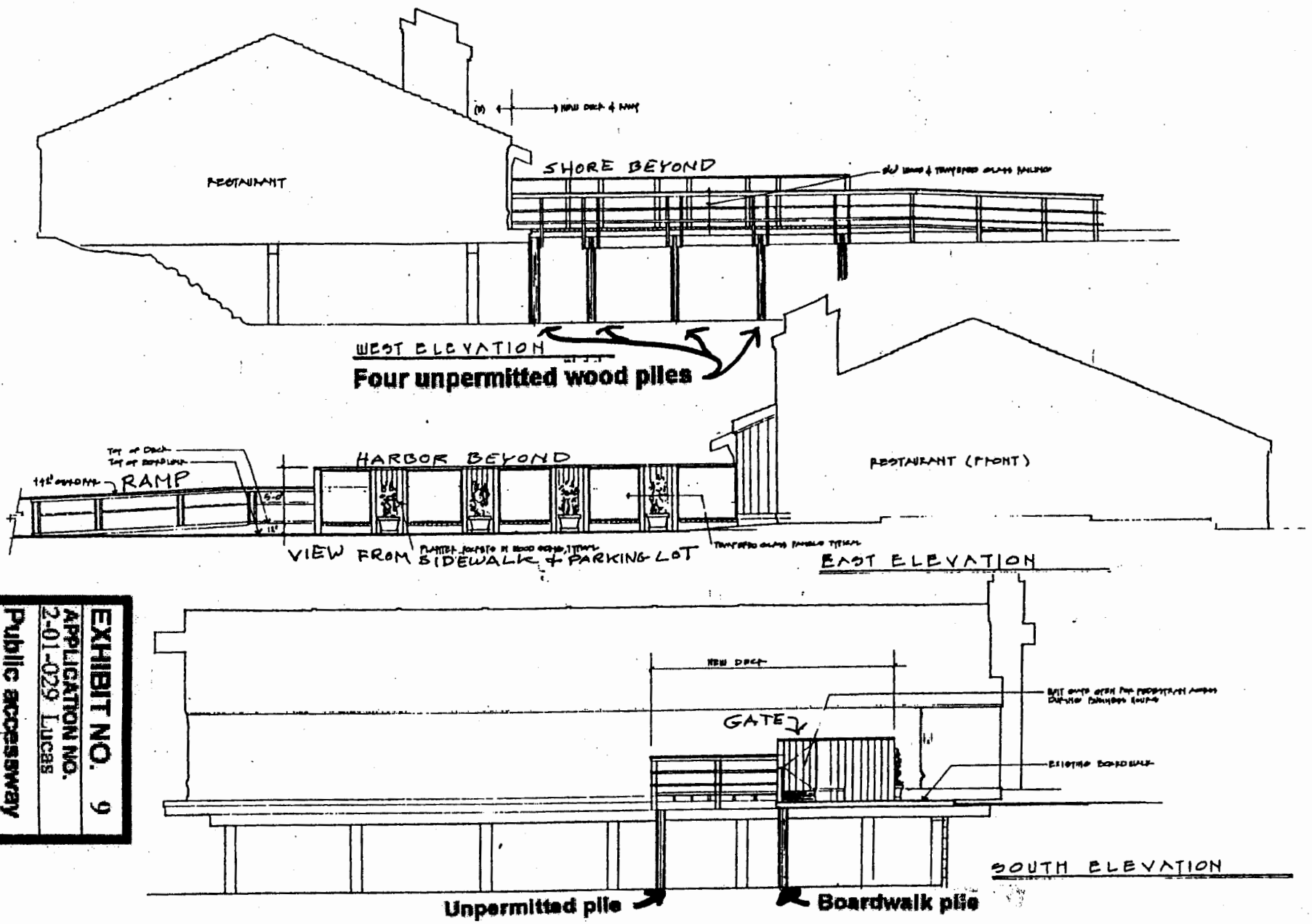
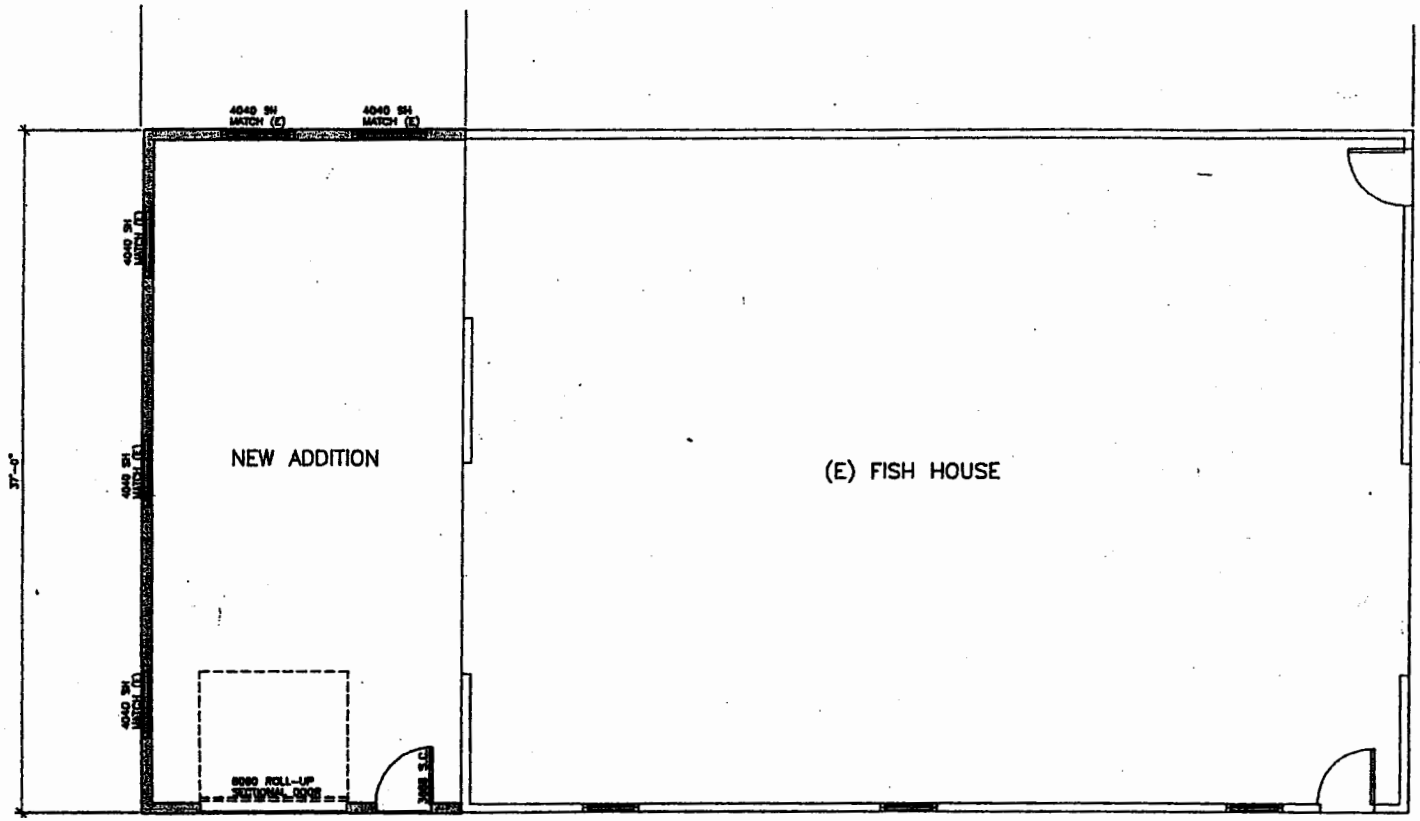


EXHIBIT NO. 9
APPLICATION NO.
2-01-029 Lucas
Public accessway
ELEVATIONS

LUCAS WHARF - DECK ADDITION

JOHN F COOK ARCHITECT
ASSOCIATE DOUGLAS RAY ARCHITECT
P.O. Box 127, Bodega Bay, CA 94923 707.875.3434



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

N

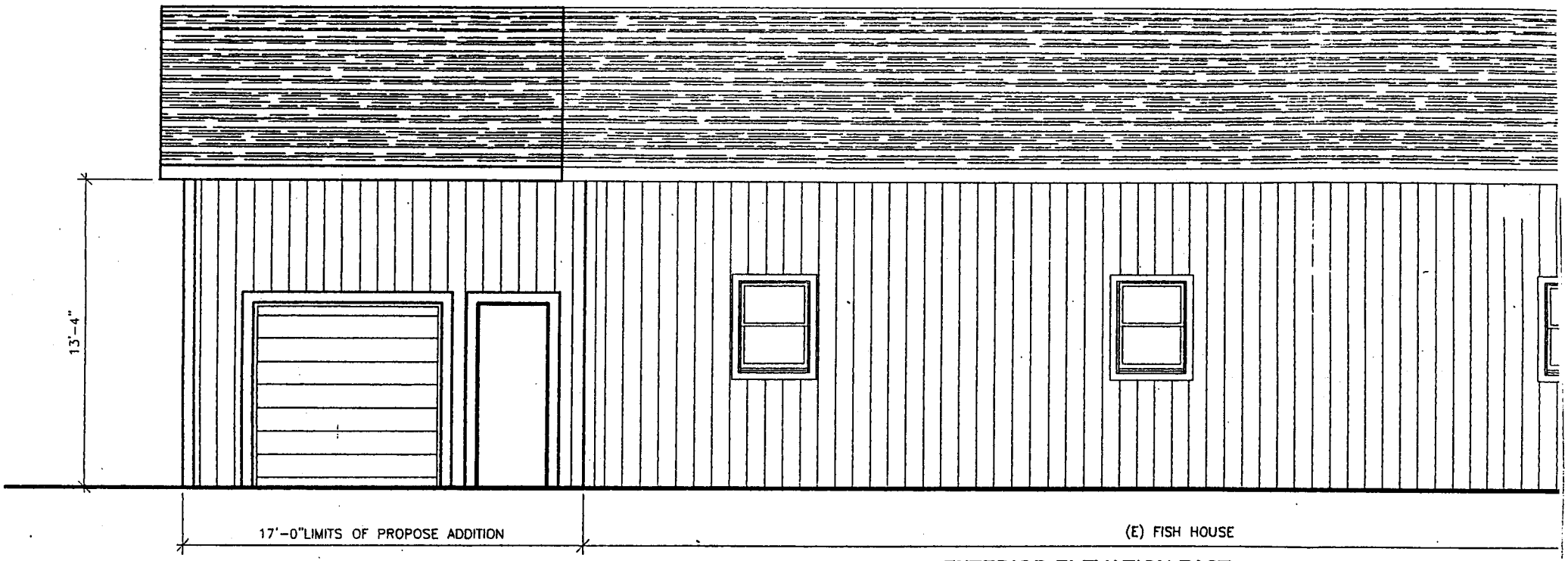
REVISIONS			
No.	By	Date	

Subject to revision until permit is issued.

PRINTED FOR:
- ☐ Preliminary Review
- ☐ Bidding Purposes
- ☐ Permit
- ☐ Construction

CORTEZ & ASSOCIATES
BUILDING DESIGNER
DESIGN - PLANNING - DRAFTING
403 PETALUMA AVE. SEBASTOPOL, CA. 95472 707 823-6429

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



2 / A-1 EXTERIOR ELEVATION EAST
1/4" = 1'-0"

SHEET NUMBER	A-1
OF 1 SHEET	
JOB#	LW-4-01
SCALE:	AS NOTED
DRAWN:	CORTEZ C.
DATE:	7-31-02
SHEET TITLE:	EXTERIOR ELEVATION
JOB NAME:	LUCAS WHARF FISH HOUSE HWY 1 BODEGA BAY, CA.

EXHIBIT NO. 11
APPLICATION NO.
2-01-029 Lucas
Fishhouse Extension
Exterior Elevation

Lucas Wharf – Deck area, showing seating

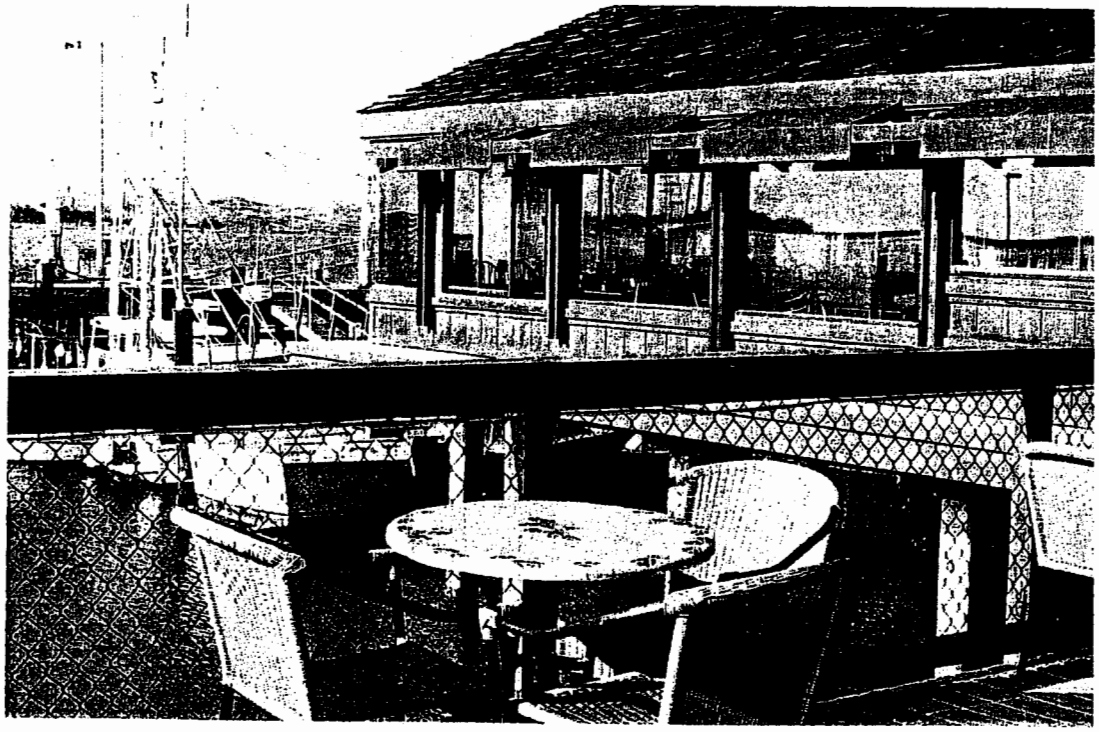


EXHIBIT NO. 15
APPLICATION NO.
2-01-029 Lucas
Deck Area
Showing seating

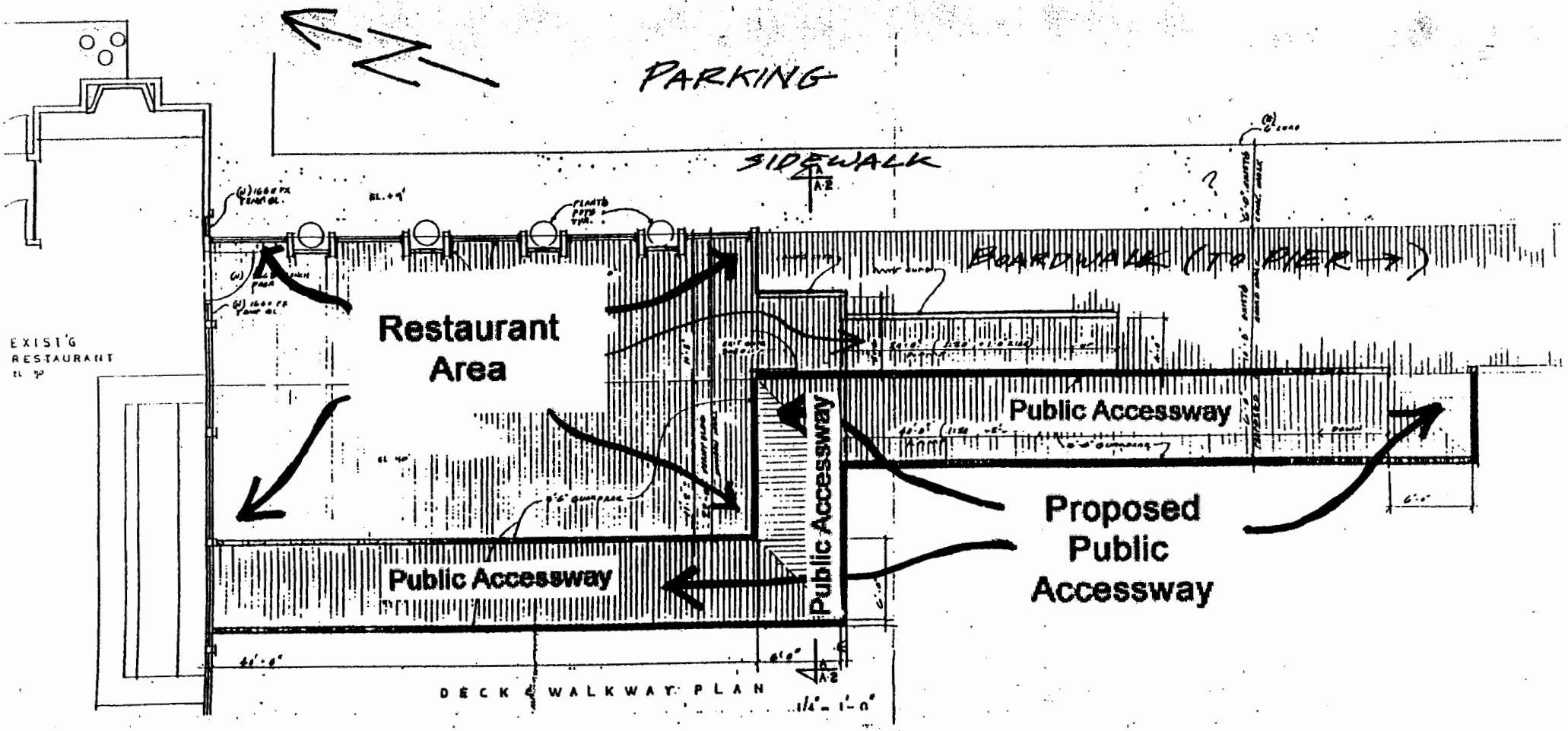


EXHIBIT NO. 16
APPLICATION NO.
2-01-029 Lucas
Public Accessway
Floor Plan