

CALIFORNIA COASTAL COMMISSION

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March 23, 2012

A&G LLC
 370 Convention Way
 Redwood City, CA 94063-1405
 ATTN: Hamid Rafiei

RE: La Costanera Restaurant located at 8150 Cabrillo Highway, Montara, San Mateo County
 (APNs 036-046-050, 035-046-400, 036-046-380, 036-046-390, and 036-046-310)

Dear Mr. Rafiei:

I am writing to commemorate our telephone discussion of March 6, 2012 in which you and Farhad Mortazavi, representing the property owners of the La Costanera site, spoke with Nick Dreher and me about resolution of the outstanding alleged Coastal Act violations that have occurred on the site and about the pending Coastal Development Permit (CDP) amendment application No. P-77-579-A that is being processed by Coastal Commission (Commission) permitting staff.

The alleged violations in question are as follows:

1. Unpermitted erection and use of lighting, including spotlights illuminating the beach and the parking lot, and holiday or "twinkle" lights on the roof of the restaurant;
2. Unpermitted construction of a patio and addition of patio seating;
3. Unpermitted erection of signs in the parking lot(s) restricting public use of the lot to restaurant customers and warning the public that any cars parked there after 5 p.m. will be towed;

Friday →
 photos
 lights
 front
 no signs

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- ✓ 4. Unpermitted restaurant use prior to 5 p.m. (serving of happy hour drinks beginning at 4 p.m.).

As I have described in previous correspondence sent to you dated December 23, 2004, April 14, 2010, April 25, 2011, and November 30, 2011, in July of 1977 the Coastal Commission approved with five special conditions **Coastal Permit No. P-77-579** (the Permit), authorizing the remodeling of an existing restaurant/motel to create a new 189-seat restaurant/bar, parking lot improvements, and landscaping.

Special Condition No. 4 of the Permit required the submittal for staff review and approval of final plans for all signs and lights to be erected on the site. As we have discussed, new outdoor lighting has been installed without benefit of a coastal permit, including holiday or "twinkle" lights on the roof, spotlights that illuminate the parking lot(s), and spotlights that shine on the surf. In addition, new free-standing signs restricting public parking were erected in the parking lot(s) without benefit of a coastal permit. These lights and signs were not initially approved by Commission staff pursuant to Special Condition No. 4 of the Permit, and, therefore, are inconsistent with the Permit. The findings of the Permit refer to the fact that the site, located on a blufftop immediately adjacent to the coast and ocean, is highly visible to travelers on Highway One, beach users, and from points in the urbanized portion of Montara, and discusses how the elimination of free-standing signs, among other things, on the site will aid in improving the appearance of the site and minimize the visual impact of commercial use of the property both from the beach and the highway. It is clear from these findings that the Commission considered the visual impact of the proposed development when making its decision to approve the restaurant in this highly scenic area.

Further, Special Condition No. 2 of the Permit required that in order to secure adequate parking accommodations both for the restaurant and adjacent State public beach, the hours of operation of the restaurant/bar shall be limited to that period between 5:00 p.m. and normal closing time, so that during peak beach usage, the public could utilize the parking lots to access the public beach below the restaurant. The State beach does not provide enough public parking for its users. The findings of the Permit indicate that the proposed 53-space parking area is somewhat inadequate to serve the approved seating capacity of the restaurant/bar (189 seats). The Commission approved the proposed project in part because the restaurant was to be a dinner house, open during the evenings only, and the findings state that "it is anticipated that overflow beach parking will use the restaurant lot during the day and overflow restaurant parking will use the adjacent beach parking in the evenings." Nowhere in the Permit does it state that beach users are not allowed to use the Restaurant parking lot after 5:00 p.m. The erection of signs within the restaurant parking lot stating "Customer Parking Only" and warning the public that cars parked in the parking lot after 5:00 will be towed is not consistent with the intent of the terms and conditions of the Permit, or with the spirit of the Permit, which authorized a shared parking arrangement. The erection of unpermitted free-standing sign(s) thus constitutes a violation of the Permit, and, therefore, of the Coastal Act.

In addition, Special Condition No. 3 states that free, public access through the site to the adjacent public beach shall be maintained and improved as per final plans to be submitted to staff for review and approval. Erection of signs that refer only to the towing of cars parked after 5:00 p.m. is likewise not consistent with the intent or spirit of the Permit.

Finally, it has been alleged that an unpermitted patio with additional seating was installed on the site. Installation of this patio, which provides for additional seating not initially authorized under the Permit, is inconsistent with the terms and conditions of the permit and therefore constitutes a violation of the Permit and, thus, of the Coastal Act.

During our recent telephone conversation, you indicated that the unpermitted signs have been removed, that the spotlights shining on the parking lot have been eliminated, and that the restaurant is no longer serving drinks prior to 5 p.m.

We must stress again that unless and until a CDP amendment is approved by the Commission that changes the terms and conditions of the Permit, the public is allowed to park in the restaurant parking lot at any time with no restrictions, as the parking lot is to be shared by beachgoers and restaurant patrons, pursuant to the terms and conditions of the Permit. Further, as you know, the Permit requires that in order to assure adequate parking both for users of the beach and users of the restaurant, that restaurant hours be limited to 5 p.m. until closing time. Please confirm in writing that the unpermitted signs have been removed and also that the restaurant is not open for business or serving drinks prior to 5 p.m.

Concerning the unpermitted lighting, please remove or keep turned off all spotlights illuminating the parking lot and the surf, and the rooftop "twinkle" lights at the subject site, and indicate in writing that you have done so. At such time as Commission staff reviews your CDP amendment application, staff will make an assessment as to whether these lights are appropriate and consistent with the visual resource policies of the Coastal Act and the County's certified Local Coastal Program (LCP), and will make a recommendation to the Commission. Until such time as a CDP amendment authorizes these lights, they may not be used. Should the Commission deny your request for after-the-fact authorization of these lights, they will need to be removed.

Concerning the unpermitted patio, you indicated during our telephone conversation that the County had issued a permit for the construction of a patio, so you considered it to be authorized. It was not clear to me whether the County issued a coastal permit or a building permit for the patio, but in any case, because there is a Commission CDP in place that authorized development on the site, any proposed changes to the existing development that affects or is affected by any terms or conditions of the CDP must be brought before the Commission. The construction of a new patio with additional seating is a change to the approved project that must be authorized by the Commission through a CDP amendment. The additional seating could further impact the availability of parking, an issue of prime concern at the time the original project was approved. In addition, the construction of the patio seaward of the existing permitted restaurant closer to the bluff edge could further impact the bluff stability. The County may process a building permit or

use permit, if appropriate, but it is the Coastal Commission that has the authority for issuing a CDP or CDP amendment in this case. Commission staff will need to review and analyze whether such a patio addition is appropriate, and will make a recommendation to the Commission. Should the Commission deny your request for after-the-fact authorization of the patio and/or patio seating, the patio will need to be removed.

To begin resolution of the outstanding Coastal Act violations on the site, please take the following steps:

1. Submit to Nick Dreher by April 16, 2012 a revised project description for the pending CDP amendment application No. P-77-579-A that includes a request for after-the-fact authorization for construction of the patio and additional patio seating. If the patio seating will replace equivalent existing restaurant seating, please so indicate. Please include plans for the patio and any other materials relating to its construction and proposed use.
2. Include in the revised project description a request for after-the-fact authorization of all existing, unpermitted lighting (e.g., spotlights and rooftop "twinkle lights"). Please submit by April 16, 2012.
3. Confirm in writing by April 16, 2012 that all of the outdoor spotlights and twinkle lights have either been removed or turned off, that the signage limiting public use of the parking lot has been removed, and that the restaurant/bar is not open for business or serving drinks prior to 5 p.m.

Please note that Enforcement staff cannot predict what the staff recommendation will be or whether the Commission will approve your CDP application.

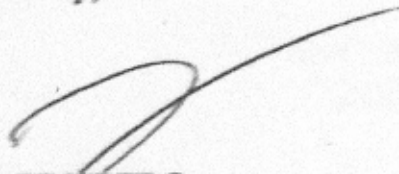
We are aware that you are currently pursuing with the County a Use Permit amendment to expand the hours of use of the restaurant, and to develop additional parking for public beach use in the undeveloped State Park land located to the north of the subject property to replace public beach use of the south restaurant parking lot, which would then be reserved for restaurant patrons some portion of the day. If a Use Permit amendment is obtained from the County for these changes, you should then submit to Commission staff a new request to amend the Permit to include these changes. Please note that we cannot guarantee that staff will recommend approval of such proposed changes. At such time as an amendment request for these changes is submitted, staff will look carefully at such things as whether the proposed new location is appropriate for public parking; whether new spaces would be equivalent in number and quality to the spaces currently available to the public; whether beach access from the proposed new parking lot would be as convenient to the public as what is currently available in the restaurant parking lot(s); if an appropriate method of controlling who uses the new parking lot is proposed to ensure that the public would have full use of the lot, etc.

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If you have any questions concerning enforcement issues, please call me at 415-904-5269. If you have any questions about your CDP application, please call Nick Dreher at 415-904-525

Thank you for your cooperation.

Sincerely,



JO GINSBERG
Enforcement Analyst

cc: Farhad Mortazavi
Michael McCracken
Shu Dai
Nicholas Dreher, CCC, Permit Analyst
Madeline Cavalier, CCC, District Manager
Linda Locklin, CCC, Coastal Access Program Coordinator
Nancy Cave, Supervisor, CCC Enforcement Program
Dave Holbrook, San Mateo County Senior Planner
Camille Leung, San Mateo County Planner