

CALIFORNIA COASTAL COMMISSION

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25 April 2011

A&G LLC
370 Convention Way
Redwood City, CA 94063-1405

RE: **Alleged Coastal Act Violation No. 2-11-008** (La Costanera), consisting of unpermitted development including changes to lighting and signage and the addition of an unpermitted patio with additional seating, located at 8150 Cabrillo Highway, Montara, San Mateo County, APN 036-046-050 and 036-046-400;
Coastal Permit No. P-77-579

Dear Sir or Madam:

I am writing concerning alleged Coastal Act violations at La Costanera Restaurant (the Restaurant), located at 8150 Cabrillo Highway in Montara, San Mateo County, consisting of the unpermitted addition of outdoor lighting and signage at the site. Further, there have been allegations of an unpermitted patio being installed for additional restaurant seating:

1. **Permit History.** As I have described in previous correspondence dated December 23, 2004 and April 14, 2010, 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 189-seat restaurant/bar, parking lot improvements, and landscaping. This permit required that, in order to assure adequate parking accommodations both for the restaurant and the adjacent public beach, hours of operation for the restaurant/bar be limited to that period between 5 p.m. and normal closing; that free, public access through the site to the adjacent public beach be maintained and improved; and that final plans for signs and lights to be erected on the site be submitted for staff review and approval.

In May of 1981, the Commission denied an amendment request to the Permit. The request was to allow day use of the Restaurant on Sundays, commencing at 10 a.m.; as noted above, the restaurant was previously approved for evening use only. The Commission found that day use of the restaurant would reduce the parking available to the public for beach access and would

directly conflict with the original parking agreement with the County, inconsistent with Section 30252 of the Coastal Act, which requires maintenance of public access to the coast by providing adequate parking facilities, and with Section 30210, which requires that development not interfere with the public's right of access to the sea.

In February of 1984, the County of San Mateo approved a Coastal Development Permit (CDP-83-67) and an amendment to a Use Permit (UP 20-77), authorizing the permittee to place riprap on 460 linear feet of ocean bluff, reconstruct parking lots, and install storm drainage in the parking lot of the existing restaurant at 8150 Cabrillo Highway. Use Permit Amendment Condition No. 6 states "*Hours of operation of the restaurant/bar shall be limited to that period between 5:00 p.m. and normal closing time.*"

In February 1987, the property owner at that time submitted to the Commission another amendment request seeking to restrict public access to the north parking lot with a sign and barrier until 5 p.m. so as to reserve that parking lot for guests only, and also seeking to open the restaurant at 10 a.m. on Sundays. The permit amendment request was renumbered as **Coastal Permit Amendment No. 3-87-59-A**. This application was subsequently withdrawn, apparently because an amendment to the County Use Permit to allow for the proposed increase in business hours was required before the Commission could act on the request, and no such amendment to the County Use Permit was ever approved.

2. **Alleged Coastal Act Violations.** It has been alleged that unpermitted development has taken place on the subject property, including the installation of new outdoor lighting; the erection of new signs in the parking lot (warning the public that any cars parked there after 5:00 p.m. will be towed); and the installation of a new patio for additional restaurant seating.

Pursuant to Section 30106 of the Coastal Act:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act...change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973.....(Emphasis added)

As such, the installation of new outdoor lighting, the installation of a new patio, and the erection of new signs in the parking lot ("placement or erection of any solid material of structure" and "change in the intensity of use of water, or of access thereto") on the subject property constitutes development under the Coastal Act.

Section 30600(a) of the Act requires that any person wishing to perform or undertake development in the coastal zone must first obtain a coastal development permit (CDP), in addition to any other permit required by law, before carrying out any development. Any development activity conducted in the coastal zone without a valid coastal development permit constitutes a violation of the Coastal Act. Thus, the installation of outdoor lighting, erection of new signs in the parking lot, and the installation of a new patio for additional seating is considered to be unpermitted development, constituting a Coastal Act violation.

Further, the above referenced unpermitted development is inconsistent with the terms and conditions of the Permit.

Section 13172 of the California Code of Regulations states that:

Violation of a permit or any term, condition, or provision of a permit is grounds for enforcement under this section and under Chapter 9 of the California Coastal Act of 1976.

Special Condition No. 4 of the Permit requires the submittal for staff review and approval final plans for all signs and lights to be erected on the site. Within the last year or so, new outdoor lighting, including "Christmas lights" on the roof, spotlights that illuminate the parking lots, and spotlights that shine on the surf, has been erected without benefit of a coastal permit. In addition, new free-standing signs restricting public parking have been erected in the parking lot without benefit of a coastal permit. These lights and signs were not initially approved by 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 beach, 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 reduce 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 requires that in order to secure adequate parking accommodations both for the restaurant and adjacent 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. The findings of the Permit indicate that the 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 for the adjacent state beach will use the restaurant parking lot during the day and overflow restaurant parking will use the adjacent beach parking lot in the evenings. 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, without also stating that the public may use the

parking lot prior to 5:00 and whenever the restaurant is not open, 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 are 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 more seating than 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.

3. **Enforcement Remedies.** The Coastal Act contains enforcement remedies for Coastal Act violations. Coastal Act section 30809 states that if the Executive Director determines that any person has undertaken, or is threatening to undertake, any activity that may require a permit from the Coastal Commission without first securing a permit, the Executive Director may issue an order directing that person to cease and desist. Coastal Act section 30810 states that the Coastal Commission may also issue a cease and desist order. A cease and desist order may be subject to terms and conditions that are necessary to ensure compliance with the Coastal Act. Moreover, Section 30811 authorizes the Commission to order restoration of a site where development occurred without a coastal development permit from the Commission, is inconsistent with the Coastal Act, and is causing continuing resource damage. Finally, the Executive Director is authorized, after providing notice and the opportunity for a hearing as provided for in Section 30812 of the Coastal Act, to record a Notice of Violation against the subject property.

In addition, Section 30820(a) provides for civil liability to be imposed on any person who performs or undertakes development without a coastal development permit and/or that is inconsistent with any coastal development permit previously issued by the Commission in an amount that shall not exceed \$30,000 and shall not be less than \$500. Section 30820(b) provides that additional civil liability may be imposed on any person who performs or undertakes development without a coastal development permit and/or that is inconsistent with any coastal development permit previously issued by the Commission when the person intentionally and knowingly performs or undertakes such development, in an amount not less than \$1,000 and not more than \$15,000 per day for each day in which the violation persists. Section 30821.6 provides that a violation of either a cease and desist order or a restoration order can result in civil fines of up to \$6,000 for each day in which the violation persists. Section 30822 provides for exemplary damages in cases of knowing and intentional violations of the Coastal Act.

4. **Resolution of Alleged Coastal Act Violations.** To begin resolution of the alleged Coastal Act violations, you should submit to Ruby Pap of our North Central District Planning

Office, by May 25, 2011, a CDP application that seeks after-the-fact authorization of the unpermitted outdoor lighting, signage, and patio area. I have enclosed a Permit Amendment application for your use. You may contact Ruby Pap at 415-904-5260 to discuss permit amendment application filing requirements.

Failure to meet the deadline noted above may result in more formal action by the Commission to resolve this Coastal Act violation. The formal action could include a civil lawsuit, recording a Notice of Violation on your property, the issuance of an Executive Cease and Desist Order or Commission Cease and Desist and/or Restoration Order, and/or imposition of monetary penalties, pursuant to Coastal Act sections 30803, 30805, 30809, 30810, 30811, 30812, 30820, 30821.6, and 30822, as noted above.

Please also note that subsequent to obtaining an amendment to the County Use Permit, you are free to submit a coastal permit amendment request seeking to change the hours of operation of the restaurant or change the public access or parking requirements. However, it is possible that such an amendment request might not be accepted for filing, pursuant to Section 13166 of our Administration Regulations. Section 13166(a)(1) states:

An application for an amendment shall be rejected if, in the opinion of the executive director, the proposed amendment would lessen or avoid the intended effect of a partially approved or conditioned permit unless the applicant presents newly discovered material information, which he could not, with reasonable diligence, have discovered and produced before the permit was granted.

Further, should an application for an amendment to expand the hours of operation for the restaurant be accepted for filing, it is possible that staff would not recommend approval of such a change. The hours of operation of the Restaurant were limited by the original coastal permit to ensure that the public would have adequate beach parking, and a change of those hours may adversely affect public parking and beach access.

As noted in our previous correspondence, we understand that you are seeking to amend your County Use Permit to allow expanded hours of operation at the restaurant, and that you are pursuing some alternative parking arrangement with State Parks. Should the County approve your amendment request for expanded hours of operation, you will then need to submit to the Coastal Commission a coastal permit amendment application, seeking to amend the Permit.

Please note that staff cannot guarantee that your amendment application will be accepted for filing and further cannot guarantee a recommendation of approval of any existing unpermitted development simply because you submit an application requesting approval. A recommendation by staff for after-the-fact approval of the existing unpermitted outdoor lighting, signage, and patio can be made only if the unpermitted development is found to be consistent with the coastal resource policies of Chapter 3 of the California Coastal Act, and with the policies of the County's certified LCP.

5. Permit Fees. Section 13055 of the Commission's Administrative Regulations addresses the schedule of filing fees for processing permit applications. Subsection (a) (7)(d) provides that fees for an after-the-fact (ATF) permit application shall be five times the normal amount specified in the regulations, unless such added increase is reduced by the Executive Director when it is determined that either the ATF permit application can be processed by staff without significant additional review time (as compared to the time required for the processing of a regular permit), or the owner did not undertake the development for which the owner is seeking the ATF permit. The regulations further specify that in no case shall such reduced fees be less than double the regular amount. Once it is determined what sort of CDP amendment is required, Commission staff will determine the appropriate permit fee.

If you have any questions about the alleged Coastal Act violations, you may contact me at **415-904-5269**.

Thank you for your cooperation.

Sincerely,



JO GINSBERG
Enforcement Analyst

Enclosure

cc: Ruby Pap, CCC, North Central District Manager
Linda Locklin, CCC, Coastal Access Program Manager
Nicholas Dreher, CCC, Coastal Program Analyst
Dave Holbrook, San Mateo County, Senior Planner
Camille Leung, San Mateo County Planner