

CALIFORNIACOASTALCOMMISSION

45FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885

**VIA CERTIFIED MAIL AND REGULAR MAIL**

April 25, 2016

A&G LLC
Rahim Amidi, Amidi Group
370 Convention Way
Redwood City, CA 94063
Certified Mail No. 7015 1730 0000 9497 3114

Dave Holland
Conservation Connection
P.O. Box 3324
Half Moon Bay, CA 94019
Certified Mail No. 7015 1730 0000 9497 3107

Subject: Notice of Intent to Commence Cease and Desist Order and Administrative Civil Penalties Proceedings and Notification of Intent to Record a Notice of Violation of the Coastal Act

Violation No.: V-2-11-008

Location: 8150 Cabrillo Highway, Montara, San Mateo County (APNs 036-046-050, 036-046-310, 036-046-380, 036-046-390, 036-046-400, and 036-046-998); and adjacent, publicly owned parcels (APNs 036-046-060 and 036-046-410).

Violation Description: Unpermitted development and development inconsistent with a coastal development permit, including, but not limited to: Non-compliance with CDP P-77-579, including use of the restaurant prior to 5:00 PM; construction of a 1,276 sq. ft. and a 850 sq. ft. patio addition to the restaurant; construction of a retaining wall, three raised masonry firepits on the patios, and glass windscreens; and placement of fill; all of which provide an increase in the capacity of the restaurant for restaurant patrons.

Dear Mr. Amidi and Mr. Holland:

The purpose of this letter is to notify you of my intent, as the Acting Executive Director of the California Coastal Commission ("Commission"), to commence proceedings for issuance of a Cease and Desist Order. This Cease and Desist Order will include measures necessary to resolve the violations of the California Coastal Act in the form of unpermitted development and development performed inconsistent with the requirements of Coastal Development Permit

("CDP") P-77-579. This letter also serves to notify you of my intent to record a Notice of Violation of the California Coastal Act against your property. Additionally, because the actions at issue violate the public access provisions of the Coastal Act, this letter also serves to provide further notification of my intent to commence proceedings for the Commission to impose an administrative civil penalty upon you.

The violations of the Coastal Act and CDP P-77-579, which are described further below, occurred on your property located at 8150 Cabrillo Highway, Montara, San Mateo County, (APNs 036-046-050, 036-046-310, 036-046-380, 036-046-390, 036-046-400, and 036-046-998), and adjacent, publicly owned parcels (APNs 036-046-060 and 036-046-410) (the "Property"). The unpermitted development and development inconsistent with a coastal development permit on the Property includes, but is not necessarily limited to: non-compliance with CDP P-77-579 including use of the restaurant prior to 5:00 PM; construction of a 1,276 sq. ft. and a 850 sq. ft. patio addition to the restaurant; construction of a retaining wall, three raised masonry firepits on the patios, and glass windscreens; and placement of fill; all of which provide an increase in the capacity of the restaurant for restaurant patrons; ("Unpermitted Development").

This letter is a required step in the ongoing enforcement process, designed to legally resolve the Coastal Act violations on the Property through an administrative hearing. However, please note that this letter in no way precludes our ability to resolve this matter amicably without the need of a contested hearing and potential litigation. We are open to discussing the consensual resolution of this matter through consent cease and desist orders ("Consent Orders"), which are similar to a settlement agreement, and provide you with an opportunity to resolve this matter consensually. Nonetheless, adoption of Consent Orders will still require a formal process and a Commission hearing, and the Commission's regulations provide for issuance of this formal notice letter as a first step in that process.

Background

As we have described in numerous previous letters, the California Coastal Act was enacted in 1976 to provide long-term protection of California's 1,100-mile coastline through implementation of a comprehensive planning and regulatory program that would manage conservation and development of coastal resources. The Coastal Act created the Commission to apply and enforce Coastal Act policies through its permit, enforcement, and other land use planning programs. These Coastal Act policies seek to provide maximum public access to the coastal zone, and to protect and restore scenic landscapes and coastal views, natural landforms, and sensitive habitats (such as riparian, coastal sage, oak woodlands, and chaparral habitats), among other things.

Permit History

As you know, in July 1977, the Commission approved, with five special conditions, Coastal Development Permit No. P-77-579 ("the CDP"), which authorized the remodel of an existing restaurant and motel to create a 189-seat restaurant/bar, parking lot improvements, and landscaping. In its approval, the Commission found that the 53-space parking area proposed on

the applicant's property was not sufficient to serve the approved seating capacity of the restaurant/bar, and specifically considered the issue of impacts that the restaurant would have on public access to the adjacent public beach. The Commission's approval of the CDP relied upon an agreement between the applicant, San Mateo County, and State Parks to allow restaurant patrons to park on State Parks property in the evenings, and for beach users to park on the restaurant's property during the day. The applicant proposed, and the Commission required, limited restaurant hours through Special Condition No. 2 of the CDP, which states: "In order to assure 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 Commission found that only as conditioned to ensure that public access was not impacted by the proposed restaurant could the proposed restaurant be found consistent with the Coastal Act.

Subsequent to that, a prior owner of the restaurant again raised the issue of parking. In May of 1981, the Commission denied a request for an amendment to CDP P-77-579 to allow day use of the restaurant on Sundays, commencing at 10 a.m. In its denial of the amendment application, the Commission found that daytime use of the restaurant would reduce the parking available to the public for beach access, would directly conflict with the original parking agreement with the County, and would be inconsistent with Sections 30210 and 30252 of the Coastal Act.

Issues with parking have continued over time, and Commission staff has repeatedly contacted the owners of the restaurant in an effort to resolve parking issues and ensure compliance with the permit condition, and to ensure public access. In response to a violation letter issued by Commission staff (see more details in the next section of this letter), on December 29, 2011, you submitted to Commission staff a CDP amendment application requesting to amend the CDP to allow installation of new outdoor lighting and to authorize, after-the-fact, the construction of two patios with areas of 1,276 sq. ft. and 850 sq. ft., respectively, and to erect parking signs. The amendment application has remained "incomplete" as the information necessary to bring the application to hearing has not been submitted.

In September 2014, the San Mateo County Planning Commission denied an application for an amendment to the County Use Permit to: 1) expand the hours of operation to allow brunch and lunch service on Fridays and weekends; 2) authorize after-the-fact unpermitted exterior lighting and patios at the restaurant; and 3) grade and install gravel on an existing gravel parking lot owned by State Parks.

On January 13, 2016, the San Mateo County Planning Commission considered an application for an amendment to the County Use Permit to authorize after-the-fact construction and use of the two unpermitted patios, and unanimously denied the amendment. This denial is currently being appealed to the San Mateo County Board of Supervisors. Therefore, in addition to lacking Coastal Act authorization, the unpermitted patios continue to lack required local authorizations.

Violation History

In April 2011, Commission staff became aware of violations on the Property, and sent you a letter notifying you of the violation of the Coastal Act and the CDP on your property. Since that time, Commission staff has attempted on numerous occasions to work with you to resolve the violations of the Coastal Act on your property, including by sending additional letters in November 2011, March 2012, December 2012, June 2013, April 2014, March 2015, and July 2015. Throughout these letters, and in the many phone calls, e-mails, and meetings over the past five years, my staff has informed you that the Unpermitted Development has been performed without the required CDP in violation of the Coastal Act and inconsistent with the CDP, and requested that you remove the physical items of Unpermitted Development and cease operating the restaurant during restricted hours and cease performing future unpermitted development. Unfortunately, as of the date of this letter, you have not removed the unpermitted items and have continued to violate the CDP and the Coastal Act. This has led to significant, ongoing impacts to coastal resources, including to public access, in violation of the Coastal Act.

In response to numerous requests from Commission staff that you comply with the authorized hours for the restaurant set by the CDP, on February 12, 2015, your counsel informed Jo Ginsberg, the enforcement analyst for the North Central District, that you would “cease all future activity prior to 5 pm.” However, despite this assertion, on July 22, 2015 you wrote a letter to San Mateo County stating that you would perform additional violations by opening the restaurant prior to 5 pm on four specific dates: September 7, September 12, October 3, and October 10, 2015. In that letter you also asserted that no other violations besides those dates would occur. However, despite your promises to Commission and County staff that the owners would not open the restaurant prior to the 5:00 pm opening time, Commission staff later discovered that you continued to open the restaurant before 5:00 pm, for example on August 29, 2015, September 26, 2015, March 13, 2016, and March 26, 2016. This occurred despite the fact that we have been requesting through numerous communications over the last five years that you discontinue this practice.

The two unpermitted patios also remain on the property even after we notified you of the violation in 2011 and they continue to be used without authorization. Rather, since 2011, you have continued to benefit from the unauthorized patios while using them to serve restaurant patrons inconsistent with the CDP. Throughout this time, the patios have provided an expanded area for increased patron use of the restaurant, leading to impacts to public parking and public access.

Violations of the Coastal Act

Pursuant to Coastal Act Section 30600(a), any person wishing to perform or undertake development in the Coastal Zone must obtain a CDP in addition to any other permit required by law. The Coastal Act defines development in Section 30106, which states (in relevant parts):

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; ... grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land ...; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure ...

My staff has confirmed that activities constituting development were undertaken without a CDP and inconsistent with a previously issued CDP, on the Property, within the coastal zone, and subsequent to the enactment of the California Coastal Act. The development that occurred on the Property required authorization pursuant to the Coastal Act, but no such authorization was obtained. That development includes, but is not necessarily limited to: non-compliance with CDP P-77-579, including the use of the restaurant prior to 5:00 PM, in violation of Special Condition 2 of the permit; construction of a 1,276 sq. ft. and a 850 sq. ft. patio addition to the restaurant; construction of a retaining wall, three raised masonry firepits on the patios, and glass windscreens; and placement of fill; all of which provide an increase in the capacity of the restaurant for restaurant patrons.

Public Access Violations

In this case, the violations of the Coastal Act also include violations of the public access provisions of the Coastal Act. These provisions include, but are not necessarily limited to, Section 30210, which states in part that "maximum access ... and recreational opportunities shall be provided for all the people", Coastal Act Section 30211, which states in part, "Development shall not interfere with the public's right of access to the sea . . .", Coastal Act Section 30212, which states in part "Public access... shall be provided in new development projects..." and Coastal Act Section 30252, which states "The location and amount of new development should maintain and enhance public access to the coast by... providing adequate parking facilities...."

The Commission found, through the approval of CDP P-77-579 and the denial of the amendment to CDP P-77-579 that the limitation on restaurant hours, which was required by Special Condition 2 of CDP P-77-579, was necessary to ensure that the restaurant did not impact public access. However, the restaurant has repeatedly opened for business prior to the authorized hours, in violation of Special Condition 2, and inconsistent with the public access policies of the Coastal Act. This includes the opening of the restaurant at unauthorized hours on multiple dates.

Additionally, the restaurant has been expanded through the construction of a new 1,276 sq. ft. lower patio and a new 850 sq. ft. upper patio, increasing the total square footage of the restaurant by a total of 2,126 sq. ft. This expansion has increased the capacity of the restaurant for patrons of the restaurant and bar, including by increasing the area available for restaurant and bar use, by expanding the area for use as a waiting and lounge area and increasing the number of persons that can use those areas. Despite repeated requests from Commission and County staff to remove the unpermitted patios and cease their use, you have continued to regularly use the unpermitted patios for restaurant seating or as a waiting area, increasing the number of persons using the restaurant, and, correspondingly, increasing the parking demand and the resulting impacts to public access.

The Unpermitted Development has increased the parking demand for the restaurant without providing any additional parking facilities to meet the additional demand. Patrons of the restaurant share available parking spaces with members of the public using Montara State Beach. The additional parking demand for the restaurant caused by the Unpermitted Development has reduced the parking supply for public access to the beach. Access to the beach is very limited at this location and the impact from the Unpermitted Development has significantly impacted the public's ability to access the beach.

Thus, the violations of the Coastal Act are negatively impacting public access and are inconsistent with Coastal Act provisions that protect public access, including Sections 30210, 30211, 30212 and 30252.

Cease and Desist Order

The Commission's authority to issue Cease and Desist Orders is set forth in Section 30810 of the Coastal Act, which states, in part:

(a) If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist. The order may also be issued to enforce any requirements of a certified local coastal program or port master plan, or any requirements of this division which are subject to the jurisdiction of the certified program or plan, under any of the following circumstances: (1) The local government or port governing body requests the commission to assist with, or assume primary responsibility for, issuing a cease and desist order....

The unpermitted development described in this letter required Coastal Act authorization because it clearly constitutes "development" within the definition of Coastal Act Section 30106 and was not otherwise exempt from Coastal Act permitting requirements, and that any such development would have needed a CDP amendment from the Commission. Additionally, these activities are inconsistent with a CDP previously issued by the Commission. The County has also requested that the Commission take the lead on enforcement regarding the Coastal Act violation. Thus, both criteria of Section 30810(a) of the Coastal Act have been satisfied.

Section 30810(b) of the Coastal Act also states that a Cease and Desist Order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act, including removal of any unpermitted development. The proposed Cease and Desist Order will therefore direct you to, among other potential actions: 1) remove unpermitted items of development; 2) cease and desist from maintaining any development on your property not authorized pursuant to the Coastal Act; 3) cease and desist from engaging in any further development on your property unless authorized pursuant to the Coastal Act; and 4) take all steps, as identified, necessary to comply with the Coastal Act, including the removal of

the unpermitted development from the Property, and necessary to ensure full compliance with CDP P-77-579.

The procedures for the issuance of these Cease and Desist Orders are described in Sections 13180 through 13188 of the Commission's regulations, which are codified in Title 14 of the California Code of Regulations.

Notification of Intent to Record a Notice of Violation of the Coastal Act

The Coastal Act contains a provision for recording notice against real property of the existence of a Coastal Act violation on the property. Such notice is important so that potential purchasers of the property are made aware that a violation of the Coastal Act has occurred on the property. In our letter dated July 13, 2015, in accordance with Coastal Act Section 30812(g), we notified you of the potential for the recordation of a Notice of Violation against your property.

The Executive Director of the Commission may record a Notice of Violation against the title to the property pursuant to Section 30812, after providing notice and the opportunity for a hearing. Section 30812 provides, in part:

(a) Whenever the executive director of the commission has determined, based on substantial evidence, that real property has been developed in violation of this division, the executive director may cause a notification of intention to record a notice of violation to be mailed...to the owner of the real property at issue...

(b)... The notification shall state that if, within 20 days of mailing of the notification, the owner of the real property at issue fails to inform the executive director of the owner's objection to recording the notice of violation, the executive director shall record the notice of violation in the office of each county recorder where all or part of the property is located.

(c) If the owner submits a timely objection to the proposed filing of the notice of violation, a public hearing shall be held . . . at which the owner may present evidence to the commission why the notice of violation should not be recorded. . . .

(d) If, after the commission has completed its hearing and the owner has been given the opportunity to present evidence, the commission finds that, based on substantial evidence, a violation has occurred, the executive director shall record the notice of violation...

In many instances of cooperation, property owners have agreed to stipulate to the recordation of a Notice of Violation while working with the Commission to resolve the violations through mutual agreement. Should you choose to object to the recording of a Notice of Violation and wish to present evidence to the Coastal Commission at a public hearing on the issue of whether a violation has occurred, you must specifically object, in writing, within 20 calendar days of the postmarked mailing of this notification. The objection should be sent to the attention of John Del Arroz at the Commission's headquarters office (the address is provided above in the letterhead), and received

no later than May 15, 2016. Please include the evidence you wish to present to the Commission in your written response and identify any issues you would like us to consider. If recorded as provided for under Section 30812(b), the Notice of Violation will become part of the chain of title of the Property and will be subject to review by potential buyers. This notice is intended to put other parties on notice of the status of the property and to avoid unnecessary confusion. The Notice of Violation will be rescinded once the violations are resolved.

Administrative Civil Penalties, Civil Liability, and Exemplary Damages

Under Section 30821 of the Coastal Act, in cases involving violations of the public access provisions of the Coastal Act, the Commission is authorized to impose administrative civil penalties by a majority vote of the Commissioners present at a public hearing. In this case, as described above, there are multiple violations of the public access provisions of the Coastal Act; therefore the criteria triggering Section 30821 have been satisfied. The penalties imposed may be in an amount up to \$11,250, for each violation, for each day the violation has persisted or is persisting, for up to five (5) years. If a person fails to pay an administrative penalty imposed by the Commission, under 30821(e) the Commission may record a lien on that person's property in the amount of the assessed penalty. This lien shall be equal in force, effect, and priority to a judgment lien.

The Coastal Act also includes a number of other penalty provisions that may still be applicable. Section 30820(a)(1) provides for civil liability to be imposed on any person who performs or undertakes development without a CDP and/or that is inconsistent with any CDP previously issued by the Commission in an amount that shall not exceed \$30,000 and shall not be less than \$500 for each instance of development that is in violation of the Coastal Act. Section 30820(b) provides that additional civil liability may be imposed on any person who performs or undertakes development without a CDP and/or that is inconsistent with any CDP previously issued by the Commission when the person intentionally and knowingly performs or undertakes such development. Civil liability under Section 30820(b) shall be imposed in an amount not less than \$1,000 per day and not more than \$15,000 per day, for each violation and for each day in which each violation persists. Section 30821.6 also provides that a violation of a Cease and Desist Order of the Commission can result in civil liabilities of up to \$6,000 for each day in which the violation persists. Lastly, Section 30822 provides for additional exemplary damages for intentional and knowing violations of the Coastal Act or a Commission Cease and Desist Order.

Response Procedure

In accordance with Sections 13181(a) of the Commission's Regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this notice of intent to commence Cease and Desist Order proceedings and Administrative Civil Penalties Proceedings by completing the enclosed Statement of Defense (SOD) form. The completed SOD form, including identification of issues and materials for Commission consideration, and documents and issues that you would like the Commission to consider, must be returned to the Commission's San Francisco office, directed to the attention of John Del Arroz, no later than May 15, 2016. However, should this

matter be resolved via a Consent Order agreement, a statement of defense form would not be necessary.

Resolution

As discussed above, this notice letter does not preclude the parties from still reaching a cooperative resolution. We remain willing to resolve this matter amicably and without the need for a contested hearing and would like to work with you to achieve that end. The Consent Order process provides an opportunity to resolve these issues through mutual agreement. While requiring compliance with the Coastal Act and the CDP, Consent Orders give you additional input into the process and timing of the removal of the unpermitted development and could potentially allow you to negotiate a penalty amount with the Commission staff to resolve your civil liability. Consent Orders would provide for a permanent resolution of this matter and thereby resolve the complete violation without any further formal legal action.

If you are interested in discussing the possibility of agreeing to Consent Orders, please contact John Del Arroz, Statewide Enforcement Analyst, no later than May 2, 2016 at (415) 904-5220 or at the address of the Commission's San Francisco office on the letterhead above. Again, should we settle this matter, you do not need to expend the time and resources to fill out and return the SOD form mentioned above in this letter.

Sincerely,



John Ainsworth
Acting Executive Director

cc:

Lisa Haage, Chief of Enforcement
Aaron McLendon, Deputy Chief of Enforcement
John Del Arroz, Statewide Enforcement Analyst
Alex Helperin, Senior Staff Counsel
Chris Spohrer, District Services Manager, California Department of Parks and Recreation
Steve Monowitz, San Mateo County Planning

Enclosures:

Statement of Defense Form for Cease and Desist Order and Administrative Civil Penalties

CALIFORNIA COASTAL COMMISSION

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

**STATEMENT OF DEFENSE FORM**

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, (FURTHER) ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU. IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE YOU COMPLETE THIS FORM OR OTHERWISE CONTACT THE COMMISSION ENFORCEMENT STAFF.

This form is accompanied by a notice of intent to initiate cease and desist order, and administrative civil penalties proceedings before the commission. This document indicates that you are or may be responsible for or in some way involved in either a violation of the commission's laws or a commission permit. The document summarizes what the (possible) violation involves, who is or may be responsible for it, where and when it (may have) occurred, and other pertinent information concerning the (possible) violation.

This form requires you to respond to the (alleged) facts contained in the document, to raise any affirmative defenses that you believe apply, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the (possible) violation or may mitigate your responsibility. This form also requires you to enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps, drawings, etc. and written declarations under penalty of perjury that you want the commission to consider as part of this enforcement hearing.

You should complete the form (please use additional pages if necessary) and return it **no later than May 15, 2016** to the Commission's enforcement staff at the following address:

**John Del Arroz
45 Fremont St.
Suite 2000
San Francisco, CA 94105**

If you have any questions, please contact **John Del Arroz** at **(415) 904-5272**.

