

**CALIFORNIA COASTAL COMMISSION**

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2 219  
VOICE (415) 904-5 200  
FAX (4 15) 904-5 400  
TDD (415) 597-5885



**SENT BY REGULAR AND CERTIFIED MAIL**  
**Certification No. 7006 2760 0005 5883 6924**

December 5, 2012

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

Violation File: V-2-11-008 (La Costanera)

Location: 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:

On March 6, 2012, 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, but is still incomplete.

As noted in my last letter of March 23, 2012, 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;

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 dated December 23, 2004; April 14, 2010; April 25, 2011; November 30, 2011; and March 23, 2012, 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 Montara State Beach and the adjacent ocean. The unpermitted erection of such lighting constitutes a Coastal Act violation.

In addition, new free-standing signs restricting public parking were erected in the parking lot(s) without benefit of a coastal permit. The 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.

#### **Status of Coastal Act Violation Resolution**

My March 23, 2012 letter requested that you do certain things by specified dates in order to continue to avoid formal enforcement proceedings. You were to:

1. Submit to Nick Dreher by April 16, 2012 a revised project description for the pending CDP amendment application **No. P-77-579-A**.
2. Include in the CDP amendment application a request for after-the-fact authorization for construction of the patio and additional patio seating, and if the patio seating will replace equivalent existing restaurant seating, so indicate, and include plans for the patio and any other materials relating to its construction and proposed use.
3. Confirm in writing that all lights have been removed or will remain 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.

You did not comply with any of the requests made in my March 23, 2012 letter. Additionally, staff visited the site recently and confirmed that the spotlights on the exterior of the restaurant are still being used, despite our request that you cease using them until and unless you receive Coastal Commission authorization for their use.

We must also 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. To ensure that the public is aware of the availability of free parking in the restaurant parking lot, it would be appropriate to erect signage that so indicates.

At such time as you complete your CDP amendment application, and Commission staff reviews your CDP amendment application, staff will make an assessment as to whether any proposed lights and/or signs and/or changes to the current hours of operation are appropriate and consistent with the resource policies of the Coastal Act and the County's certified Local Coastal Program (LCP), and will make a recommendation to the Commission. Until you have obtained a CDP amendment allowing and authorizing exterior lights or signs concerning parking, they may not be present on the site. Further, until such time as the Commission authorizes any changes to the existing hours of use, the restaurant may not serve food or drinks prior to 5 p.m.

Concerning the unpermitted patio, you indicated during our March 6, 2012 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 the restaurant development on the site, any proposed changes to the existing Coastal Commission-approved development that affects or is affected by any terms or conditions of the original 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. You may need to obtain from the County an assortment of permits including a building or use permit, but you must submit a CDP amendment to the Commission to authorize after-the-fact the patio addition. Commission staff will need to review and analyze whether such a patio addition is appropriate, and will make a recommendation to the Commission.

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

1. Remove at once all unpermitted lighting from the site, including holiday lights and spotlights that shine on the parking lot and on Montara State beach and adjacent ocean;
2. Confirm in writing and provide photographic evidence by **January 7, 2013** that all unpermitted lighting has been removed from the site; that all unpermitted signs have been removed from the site--specifically, signage limiting public use of the parking lot; and that the restaurant/bar is not open for business or serving drinks prior to 5 p.m.;
3. Submit to Nick Dreher by **January 7, 2013** 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. Also include in the revised project description a request to erect appropriate parking signage that indicates that free public parking for beach use is available at all times in the restaurant parking lot; and

4. If, after you have removed all unpermitted lighting, you wish to erect spotlights or holiday lights on the site, you may include in your revised project description a request for such lighting.

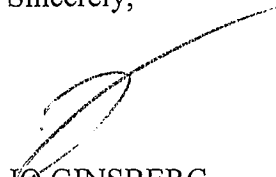
Please note that Enforcement staff cannot predict whether the Commission will accept all aspects of your CDP amendment application as appropriate for filing, what the staff recommendation will be, or whether the Commission will approve your CDP amendment application.

We are aware that you are still 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 and when you obtain a Use Permit amendment for these changes, you should then submit to Commission staff a new request to amend the Permit to include these changes.

As I have said previously, Commission enforcement staff would prefer to work with you to resolve the outstanding alleged Coastal Act violations administratively; however, your continued failures to meet the cited deadlines may result in our elevating this violation to our Statewide Enforcement Unit for appropriate formal enforcement action by the Commission. If you have questions regarding this letter or any enforcement issues, please contact me at **415-904-5269**. If you have questions concerning completion of the CDP application, please contact **Nick Dreher** at [Nicholas.dreher@coastal.ca.gov](mailto:Nicholas.dreher@coastal.ca.gov).

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