

Huntington Beach Planning Commission

2000 MAIN STREET

CALIFORNIA 92648

NOTICE OF FINAL CITY ACTION COASTAL DEVELOPMENT PERMIT NO. 10-012 APPEALABLE DEVELOPMENT

November 25, 2010

TO: South Coast Area Office
California Coastal Commission
Attn: Theresa Henry
200 Oceangate, 10th Floor
Long Beach, CA 90802-4302

CERTIFIED MAIL

APPLICANT: Susan Hamil, 19285 Brooktrail Lane, Huntington Beach, CA 92648

PROPERTY OWNER: John Gallagher, 388 East Ocean Boulevard, Long Beach, CA 90802

REQUEST: **CDP:** To establish a restaurant use with outdoor dining and live entertainment. **CUP:** To permit an approximately 3,500 sq. ft. indoor restaurant and 400 sq. ft. outdoor dining area with: alcohol sales and live entertainment consisting of amplified and non-amplified music.

LOCATION: 210 5th Street, 92648 (east side of 5th Street, between Olive Avenue and Walnut Avenue – Downtown)

PROJECT PLANNER: Ethan Edwards

COASTAL STATUS: APPEALABLE

DATE OF LOCAL APPEAL: November 9, 2010

EXPIRATION: November 24, 2010

The above application was acted upon by the Planning Commission of the City of Huntington Beach on November 9, 2010, and the request was **approved with findings and conditions of approval.**

Under the provisions of the Huntington Beach Zoning and Subdivision Ordinance, the action taken by the Planning Commission is the City's final action unless an appeal is filed to the City Clerk by the applicant or an aggrieved party. Said appeal must be in writing and must set forth in detail the actions and grounds by and upon which the applicant or interested party deems himself aggrieved.

As of November 24, 2010, there have been no appeals filed on the above entitlement.

The action by the City is final and all rights of appeal as defined in the California Code of Regulations 13573 and Subsection D of Section 245.24 of the Huntington Beach Zoning and Subdivision Ordinance have been exhausted.

If there are any questions, please contact Ethan Edwards at (714) 536-5561.

Kimberly De Coite, Administrative Secretary
Huntington Beach Planning Commission

Attachment: Notice of Local Action for Coastal Development Permit No. 10-012

UNITED STATES POSTAL SERVICE



RECEIVED

DEC 13


Dept. of Justice

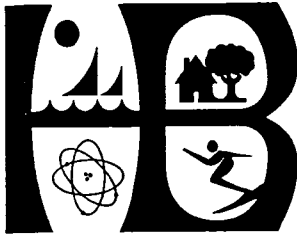
First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

City of Huntington Beach
2000 main Street
3rd Floor,
Huntington Beach, CA 92648

CDP 10-12 K.O.

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none">■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.■ Print your name and address on the reverse so that we can return the card to you.■ Attach this card to the back of the mailpiece, or on the front if space permits.		<p>A. Signature  <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) _____ C. Date of Delivery <u>12/2</u></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
1. Article Addressed to: South Coast Area Office California Coastal Comm. Attn: Theresa Henry 200 Ocean Gate, 10th Floor Long Beach, CA 90802-4302		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
2. Article Number (Transfer from service label)		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
		7009 0820 0001 7175 1561	



Huntington Beach Planning Commission

2000 MAIN STREET

CALIFORNIA 92648

NOTICE OF ACTION

November 10, 2010

Susan Hamil
19285 Brooktrail Lane
Huntington Beach, CA 92648

SUBJECT: COASTAL DEVELOPMENT PERMIT NO. 10-012 / CONDITIONAL USE PERMIT NO. 10-024 (LUGGATTI'S RESTAURANT WITH ALCOHOL AND ENTERTAINMENT)

APPLICANT: Susan Hamil, 19285 Brooktrail Lane, Huntington Beach, CA 92648

REQUEST: CDP: To establish a restaurant use with outdoor dining and live entertainment.
CUP: To permit an approximately 3,500 sq. ft. indoor restaurant and 400 sq. ft. outdoor dining area with: alcohol sales and live entertainment consisting of amplified and non-amplified music.

PROPERTY OWNER: John Gallagher, 388 East Ocean Boulevard, Long Beach, CA 90802

LOCATION: 210 5th Street, 92648 (east side of 5th Street, between Olive Avenue and Walnut Avenue – Downtown)

DATE OF ACTION: November 9, 2010

On Tuesday, November 9, 2010 the Huntington Beach Planning Commission took action on your application, and your application was approved with findings and modified conditions of approval. Attached to this letter are the findings and conditions of approval.

Please be advised that the Planning Commission reviews the conceptual plan as a basic request for entitlement of the use applied for and there may be additional requirements prior to commencement of the project. It is recommended that you immediately pursue completion of the conditions of approval and address all requirements of the Huntington Beach Zoning and Subdivision Ordinance in order to expedite the processing/completion of your total application. The conceptual plan should not be construed as a precise plan, reflecting conformance to all Zoning and Subdivision Ordinance requirements.

Under the provisions of the Huntington Beach Zoning and Subdivision Ordinance, the action taken by the Planning Commission becomes final at the expiration of the appeal period unless an appeal is filed to the City Council. The notice of appeal shall include the name and address of the appellant, the decision being appealed, and the grounds for the appeal. Said appeal must be accompanied by a filing fee of One Thousand, Five Hundred Eighty-Seven Dollars (\$1,587.00) if the appeal is filed by a single family dwelling property owner appealing the decision on his own property and Three Thousand, Forty Five Dollars (\$3,045.00) if the appeal is filed by any other party. The appeal shall be submitted to the City Clerk within ten (10) working days of the date of the Planning Commission's

action. There is no fee for the appeal of a Coastal Development Permit to the California Coastal Commission.

In your case, the last day for filing an appeal and paying the filing fee is November 24, 2010, at 5:00 PM.

This project is in the appealable portion of the coastal zone. Action taken by the Planning Commission may be appealed directly to the Coastal Commission only if Title 14, Section 13573 of the California Administrative Code is applicable. Section 13573(a)(3) states that an appeal may be filed directly with the Coastal Commission if the appellant was denied the right of local appeal because local notice and hearing procedures for the development did not comply with the provisions of this article. If the above condition exists, an aggrieved person may file an appeal within ten (10) working days, pursuant to Section 30603 of the Public Resources Code, in writing to:

South Coast Area Office
California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4302
Attn: Theresa Henry
(562) 590-5071

The Coastal Commission review period will commence after the City appeal period has ended and no appeals have been filed. Applicants will be notified by the Coastal Commission as to the date of the conclusion of the Coastal Commission review. Applicants are advised not to begin construction prior to that date.

Provisions of the Huntington Beach Zoning and Subdivision Ordinance are such that any application becomes null and void one (1) year after final approval, unless actual construction has started.

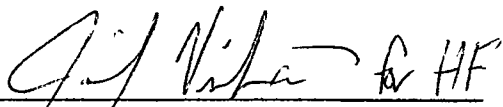
Excepting those actions commenced pursuant to the California Environmental Quality Act, you are hereby notified that you have 90 days to protest the imposition of the fees described in this Notice of Action. If you fail to file a written protest regarding any of the fees contained in this Notice, you will be legally barred from later challenging such action pursuant to *Government Code* §66020.

If you have any questions regarding this Notice of Action letter or the processing of your application, please contact Ethan Edwards, the project planner, at (714) 536-5561 or via email at Ethan.Edwards@surfcity-hb.org, or the Planning Department at (714) 536-5271.

Sincerely,

Scott Hess, Secretary
Planning Commission

By:

Handwritten signature of Herb Fauland in black ink, followed by the initials "HF".

Herb Fauland, Planning Manager

SH:HF:EE:kd

Attachment: Findings and Conditions of Approval – CDP No. 10-012 and CUP No. 10-024

c: Honorable Mayor and City Council
 Chair and Planning Commission
 Fred A. Wilson, City Administrator
 Scott Hess, Director of Planning and Building
 Bill Reardon, Division Chief/Fire Marshal
 Mike Vigliotta, Deputy City Attorney III
 Steve Bogart, Senior Civil Engineer
 Bill Grove, Inspection Manager
 Ethan Edwards, Associate Planner
 Property Owner
 Project File

ATTACHMENT NO. 1

FINDINGS AND CONDITIONS OF APPROVAL

FINDINGS FOR PROJECTS EXEMPT FROM CEQA:

The Planning Commission finds that the project will not have any significant effect on the environment and is Categorically Exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15301, Class 1—*Existing Facilities*, because the project involves a minor modification to the operation of the existing development involving negligible expansion of an existing use.

FINDINGS FOR APPROVAL – COASTAL DEVELOPMENT PERMIT NO. 10-012:

1. Coastal Development Permit No. 10-012 to permit the reestablishment of a visitor-serving commercial use within an existing building, conforms with the General Plan, including the Local Coastal Program land use designation of Downtown Specific Plan – District 5. The project is consistent with Coastal Element Land Use Policy C 3.2.3 to encourage the provision of a variety of visitor-serving commercial establishments within the Coastal Zone, including but not limited to, shops, restaurants, hotels and motels, and day spas. The proposed restaurant use will promote the utilization of an existing building and will reinforce the vicinity as a major visitor-serving commercial district within the Coastal Zone.
2. The project is consistent with the requirements of the CZ Overlay District, the base zoning district, as well as other applicable provisions of the Municipal Code. The proposed project is the reestablishment of a visitor-serving commercial use within an existing building.
3. At the time of occupancy the proposed development can be provided with infrastructure in a manner that is consistent with the Local Coastal Program. The proposed project is the reestablishment of a visitor-serving commercial use within an existing building in an urbanized area with direct access from an existing public street and with all necessary services and infrastructure available including water, sewer and electricity.
4. The development conforms with the public access and public recreation policies of Chapter 3 of the California Coastal Act. The project will not impede public access or impact public views to coastal resources. The proposed project is the reestablishment of a visitor-serving commercial use within an existing building.

FINDINGS FOR APPROVAL – CONDITIONAL USE PERMIT NO. 10-024:

1. Conditional Use Permit No. 10-024 to permit the establishment, maintenance, and operation of an approximately 3,500 sq. ft. indoor restaurant and 400 sq. ft. outdoor dining area with alcohol sales; and live entertainment consisting of amplified and non-amplified music within an existing building located within District 5 of the Downtown Specific Plan; will not be detrimental to the general welfare of persons working or residing in the vicinity or detrimental to the value of the property and improvements in the neighborhood. In addition, the project is consistent with the future development potential identified for the subject building in the Downtown Parking Master Plan; and, will comply with City Council Resolution No. 2010-05, standard conditions of approval for restaurants with alcohol and live entertainment in the Downtown.
2. The proposed restaurant with alcohol, live entertainment and outdoor dining will be compatible with surrounding uses because it is proposed in a Specific Plan area designated for mixed-use

pedestrian-oriented development. The restaurant is surrounded by commercial, office, and residential uses and therefore will be consistent with the existing land use pattern and compatible to its surroundings. The use will be required to comply with conditions of approval pertaining to alcohol service, live entertainment, and hours of operation to assure that any potential impacts to the surrounding properties are minimized. Live entertainment will be located within the restaurant and is primarily intended to enhance the dining experience for patrons and will not negatively impact adjacent properties. Additionally, the use is subject to noise regulations to further ensure compatibility with surrounding properties.

3. The proposed restaurant with alcohol, live entertainment and outdoor dining will comply with the provisions of the base district and other applicable provisions in Titles 20-25 of the Huntington Beach Zoning and Subdivision Ordinance and any specific condition required for the proposed use in the district in which it will be located. The proposed project as conditioned complies with the base district and other applicable provisions including parking. There is no physical expansion that includes additional floor area to the existing building as part of this request and the use will comply with all building occupancy/exiting requirements.
4. The granting of the conditional use permit will not adversely affect the General Plan. It is consistent with the Land Use Element designation of MV-F6-sp-pd (Mixed Use Vertical – 2.0 Max. Floor Area Ratio/ 25 Dwelling Units per Acre – Specific Plan Overlay – Pedestrian Overlay) on the subject property. In addition, it is consistent with the following goals and policies of the General Plan:

A. Land Use Element

Policy LU 7.1.1 Accommodate existing uses and new development in accordance with the Land Use and Density Schedules.

Objective LU 7.1 Accommodate the development of a balance of land uses that (a) provides for the housing, commercial, employment, cultural, entertainment, and recreation needs of existing and future residents, (b) provides employment opportunities for residents of the City and surrounding subregion, (c) captures visitor and tourist activity, and (d) provides open space and aesthetic relief from urban development.

Goal LU 11 Achieve the development of projects that enable residents to live in proximity to their jobs, commercial services, and entertainment, and reduce the need for automobile use.

Policy LU 15.2.2 Require that uses in the Pedestrian Overlay District be sited and designed to enhance and stimulate pedestrian activity along the sidewalks. Assure that areas between building storefronts and public sidewalks are visually and physically accessible to pedestrians.

The proposed use will provide the reestablishment of a visitor-serving commercial use within the Downtown that is consistent with the Land Use and Density Schedules and is compatible with surrounding mix of uses. The site is located in a mixed-use district of the downtown area and within walking distance of several downtown-parking facilities as well as residential uses thus reducing the need for automobile use. The proposed outdoor dining will stimulate pedestrian activity along the public courtyard along the building's north elevation between the alleyway and 5th Street.

B. Coastal Element

Policy C 1.1.4: Where feasible, locate visitor-serving commercial uses in existing developed areas or at selected points of attraction for visitors.

Goal C 3: Provide a variety of recreational and visitor-serving commercial uses for a range of cost and market preferences

Policy C 3.2.3 Encourage the provision of a variety of visitor-serving commercial establishments within the Coastal Zone, including but not limited to, shops, restaurants, hotels and motels, and day spas.

The proposed restaurant use will promote the utilization of an existing building and will reinforce the vicinity as a major visitor-serving commercial district within the Coastal Zone.

CONDITIONS OF APPROVAL – COASTAL DEVELOPMENT PERMIT NO. 10-012/CONDITIONAL USE PERMIT NO. 10-024:

1. The site plan, floor plan, and elevation plan received and dated November 1, 2010, shall be the conceptually approved design.
2. The use shall comply with the following:
 - a. Hours of operation for indoor dining shall be limited to between 7:00 AM and 12:00 AM (midnight) everyday. **(Resolution No. 2010-05)**
 - b. A minimum of 70 percent of the net floor area of the establishment shall be designated as dining area excluding back of house areas (such as areas used for cooking, kitchen preparation, office, storage, and restrooms) and outdoor dining areas. **(Resolution No. 2010-05)**
 - c. The seating capacity at all times within the dining area, excluding outdoor dining areas, shall be able to accommodate a minimum of 100 people. **(Resolution No. 2010-05)**
 - d. Full food service menu items shall be served, a minimum, until thirty (30) minutes before posted or scheduled closing time, and cook and food server shall be on duty during these times. **(PD)**
 - e. Alcoholic drinks shall not be included in the price of admission to any establishment. **(Resolution No. 2010-05)**
 - f. There shall be no requirement for patrons to purchase a minimum number of alcoholic drinks. **(Resolution No. 2010-05)**
 - g. All alcohol shall remain on the establishment's premises, including within outdoor dining areas. **(Resolution No. 2010-05)**
 - h. An employee of the establishment must be present at all times in areas within the establishment where alcohol is served. **(Resolution No. 2010-05)**
 - i. Games or contests requiring the consumption of alcoholic beverages shall be prohibited. **(Resolution No. 2010-05)**
 - j. No outside promoters can be used under any circumstances. **(Resolution No. 2010-05)**
 - k. All exterior doors and windows shall be closed at all times during live entertainment. **(Resolution No. 2010-05)**

- l. All amplified entertainment conducted by a performer shall be confined indoors at all times. **(Resolution No. 2010-05)**
 - m. No entertainment shall be audible beyond 50 feet of the business in any direction. **(Resolution No. 2010-05)**
 - n. All areas of the business that are accessible to patrons shall be illuminated to make easily discernible the appearance and conduct of all people in the business. **(Resolution No. 2010-05)**
 - o. All provisions of the entertainment permit required by section 5.44 of the Huntington Beach Municipal Code shall continue to apply. **(Resolution No. 2010-05)**
 - p. Prior to the sale of alcoholic beverages, a copy of the Alcoholic Beverage Control Board (ABC) license, along with any special conditions imposed by the ABC, shall be submitted to the Planning Department for the file. Any conditions that are more restrictive than those set forth in this approval shall be adhered to.
 - q. Prior to commencing live entertainment activities, a copy of an approved Entertainment Permit, as issued by the Business License Department, shall be submitted to the Planning and Building Department.
 - r. Only the uses described in the project narrative shall be permitted.
3. The outdoor dining shall comply with the following:
- a. Hours of operation shall be limited to between 7:00 AM and 11:00 PM everyday.
 - b. Only establishments that are established as a "Bona fide public eating place", as defined by Section 23038 of Alcoholic Beverage Control Act, shall be permitted to serve alcoholic beverages outdoor in accordance with Section 4.2.33 of the Downtown Specific Plan. **(PD)**
 - c. Establishments which serve alcoholic beverages outdoors shall provide a physical barrier 36 inches in height surrounding the outdoor dining area and designed in a manner that will prohibit passing of alcohol through the barrier. **(PD)**
 - d. Barriers located on private property in accordance with Section 4.2.33 of the Downtown Specific Plan as required for serving alcohol outdoors shall be permanently installed. Barriers located on public property as required for serving alcohol outdoors shall be designed to be removable in the event that is deemed necessary. **(PD)**
 - e. Restaurant management shall be responsible for running and operating the outdoor dining area. **(PD)**
 - f. Outdoor dining areas shall be continuously supervised by management or employees of the establishment. Food establishments serving alcoholic beverages shall have a supervisor on site at all times. Behavior that disturbs customers or passerby's shall not be tolerated and constitutes a violation of these provisions. **(PD)**
 - g. No servers shall be permitted to serve any food or beverage item from the outside the barriers as required by Section 4.2.33 of the Downtown Specific Plan. **(PD)**
 - h. Outdoor dining patios are for sit down and beverage service only; no stand up, walk-up or pick-up service shall be permitted. **(PD)**
 - i. No signs shall be placed on or secured to any barrier advertising the serving or availability of alcohol. **(PD)**

4. The Director of Planning and Building ensures that all conditions of approval herein are complied with. The Director of Planning and Building shall be notified in writing if any changes to cart and kiosk operations are proposed as a result of the ongoing operation and oversight of the use.
5. The development services departments and divisions (Building & Safety, Fire, Planning and Public Works) shall be responsible for ensuring compliance with all applicable code requirements and conditions of approval. The Director of Planning and Building may approve minor amendments to plans and/or conditions of approval as appropriate based on changed circumstances, new information or other relevant factors. Any proposed plan/project revisions shall be called out on the plan sets submitted for building permits. Permits shall not be issued until the Development Services Departments have reviewed and approved the proposed changes for conformance with the intent of the Planning Commission's action. If the proposed changes are of a substantial nature, an amendment to the original entitlement reviewed by the Planning Commission may be required pursuant to the provisions of HBZSO Section 241.18.
6. CDP No. 10-012/CUP No. 10-024 shall become null and void unless exercised within two years of the date of final approval or such extension of time as may be granted by the Director pursuant to a written request submitted to the Planning and Building Department a minimum 30 days prior to the expiration date.
7. Incorporating sustainable or "green" building practices into the design of the proposed structures and associated site improvements is highly encouraged. Sustainable building practices may include (but are not limited to) those recommended by the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) Program certification (<http://www.usgbc.org/DisplayPage.aspx?CategoryID=19>) or Build It Green's Green Building Guidelines and Rating Systems (<http://www.builditgreen.org/index.cfm?fuseaction=guidelines>).

INDEMNIFICATION AND HOLD HARMLESS CONDITION:

The owner of the property which is the subject of this project and the project applicant if different from the property owner, and each of their heirs, successors and assigns, shall defend, indemnify and hold harmless the City of Huntington Beach and its agents, officers, and employees from any claim, action or proceedings, liability cost, including attorney's fees and costs against the City or its agents, officers or employees, to attack, set aside, void or annul any approval of the City, including but not limited to any approval granted by the City Council, Planning Commission, or Design Review Board concerning this project. The City shall promptly notify the applicant of any claim, action or proceeding and should cooperate fully in the defense thereof.