

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA
3111 CAMINO DEL RIO NORTH, SUITE 200
SAN DIEGO, CA 92108-1725
(619) 521-8036



Staff: LJM-SD
Staff Report: 12/14/95
Hearing Date: 1/9-12/96

PERMIT AMENDMENT
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-82-67-A2 & 6-92-104-A

Applicant: Mazdaznan Elector Corp. Agent: Werner Von Gundell

Original Project

Descriptions: Development of a church facility and related agricultural activities that include access roads, 5 parking lots, a sanctuary building, main residence, farm tenant house, dormitory, vegetable and herb gardens, and orchards (#6-82-67). Subdivision of site into 6 single-family residential lots with one remainder lot and adjustment of recorded agricultural easement boundary (#6-92-104).

Lot Area	38.18 acres
Building Coverage	.44 acres (1%)
Pavement Coverage	3.25 acres (9%)
Landscape Coverage	2.70 acres (7%)
Unimproved Area	31.79 acres (83%)
Parking Spaces	123
Zoning	RR-1/R-3
Plan Designation	Residential (.51-1 dua/2.01-3 dua)

Amendment Description: Rescind a recorded deed restriction requiring an agricultural easement over a 10.5 acre portion of the site (#6-82-67) and delete Special Condition #3 pertaining to a revision to the boundary of the previously recorded agricultural easement (#6-92-104).

Site: 1701 Ariana Drive, adjacent to the southeast corner of Blue Heron Avenue and Swallowtail Road, Encinitas, San Diego County.
APN 254-201-01

STAFF NOTES:

Summary of Staff's Preliminary Recommendation:

The subject proposal is a request to amend two separate coastal development permits to remove a recorded agricultural easement required by the Commission under CDP #6-82-67 and delete a special condition required in CDP #6-92-104 which adjusted the boundary of the agricultural easement. Because both requests address the same easement, the amendment to both permits has been combined into one report.

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Staff has found the subject amendment request to be consistent with the certified City of Encinitas Local Coastal Program and is recommending approval of the proposed amendment for removal of the agricultural easement as it has been documented that agricultural use of the easement area is not viable for the property owner.

Substantive File Documents: Certified City of Encinitas Local Coastal Program (LCP); Previously Certified County of San Diego Local Coastal Program.

PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants an amendment to the permit, subject to the conditions below, on the grounds that the amended development, as conditioned, will be in conformity with the adopted Local Coastal Program, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Special Conditions.

The permit amendment is subject to the following conditions:

1. Prior Conditions of Approval. This amendment is to rescind the existing recorded agricultural easement required by CDP #6-82-67 and delete Special Condition #3 of CDP #6-92-104. All conditions of approval of the original permit Nos. 6-82-67 (as amended) and 6-92-104, not specifically modified herein, shall remain in full force and effect.

2. Extinguishment of Deed Restriction. Prior to the issuance of the permit amendment, the applicant shall record an Extinguishment of Deed Restriction document for the agricultural easement that was recorded against the subject property on March 5, 1985 (Recorded Document #85-072928), pursuant to the initial Commission approval of CDP #6-82-67 (as amended). Said document shall be in a form and content acceptable to the Executive Director.

III. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Amendment Description/History. In 1982, the Commission approved CDP #6-82-67 for the construction of a church facility that included a sanctuary building, a main residence, a dormitory (with 10 bedrooms and 6 one-bedroom apartments, kitchen and laundry facilities), and a farm tenant mobil home on a 38.18 acre vacant site located on Ariana Drive, adjacent to

the southeast corner of Blue Heron Avenue and Swallowtail Road in the City of Encinitas. In addition, parking lots to accommodate 123 parking spaces were also approved.

The Commission approved the development with several special conditions which included a requirement that the easternmost portion of the site (approximately 18 acres) be restricted from future development through the recordation of an open space deed restriction against the property, as it contains naturally vegetated steep slopes. In addition, an agricultural easement was required to be recorded over the western 13.5 acres of the site, limiting use of that portion of the site to agricultural and agricultural related uses.

In 1985, the Commission approved an amendment to that permit to allow the agricultural easement to be reduced in size to 10.5 acres to bring it into conformance with the agricultural policies of the newly certified County of San Diego Local Coastal Program (LCP). The conditions were satisfied, the permit was released and the development was constructed shortly thereafter.

Subsequently, in 1992, the Commission approved CDP #6-92-104 for subdivision of the westernmost portion of the site (approximately 2.4 acres) into 6 single-family residential lots with one remainder lot of 35.78 acres. No changes were proposed to the existing church facilities. The project also included a revision to the boundary of the previously recorded agricultural easement to accommodate the residential lots. This permit was approved with special conditions which notified the applicant that grading and construction of residential structures would require future Commission review and that revised landscape plans would need to be submitted. In addition, a special condition was attached addressing the adjustment of the boundary of the agricultural easement. The conditions of this permit have not been satisfied and as such, the permit has yet not been released.

The applicant is requesting in this amendment that the previously recorded agricultural easement over 10.5 acres of the site be rescinded because agricultural use of the site is not a viable use for the property owner. To facilitate this request, the proposal involves amendments to both the above cited permits. First of all, the applicant is requesting to rescind the recorded agricultural easement required under CDP #6-82-67. In addition, because CDP #6-92-104 included a condition which adjusted the boundary of the agricultural easement and, because this permit, although not released, is still valid (it will expire on June 11, 1996), Special Condition #3 of the permit is proposed for deletion (ref. Notice of Intent for CDP #6-92-104 attached).

In order to accept an application for amendment to a previously approved coastal development permit, the Executive Director must determine that the proposed amendment would not lessen or avoid the intended effect of a partially approved or conditionally approved permit unless the applicant presents new information, which could not, with reasonable diligence, have been produced before the permit was granted. In this particular case, the applicant has presented as new information that the City has recently received certification from the Commission of its LCP, and the subject site has been

redesignated from Agricultural Cropland to low density residential; thus, the amendment request is accepted.

Although the City of Encinitas has a certified Local Coastal Program (LCP), because the subject request involves an amendment to coastal development permits previously issued by the Commission, the Commission has the review authority for the amendment request. However, the standard of review for the amendment is the certified City of Encinitas LCP.

2. Consistency With LCP Policies. The City of Encinitas understands the importance of agriculture to the City and the State economies. As such, the City's LCP contains several goals and policies addressing agriculture within the City's coastal zone. Specifically, Goal 11 on Page RM-23 of the LCP is applicable and states:

The City recognizes the important contribution of agricultural and horticultural land uses in the local economy and the emphasis of the need to maintain these activities.

In addition, while the above cited goal addresses the importance of agriculture in the City, Policy 12.2 on Page RM-24 of the City's LCP acknowledges that there are no "prime" agricultural lands located within the City of Encinitas Coastal Zone.

The subject site, prior to being developed with the church facility, was a vacant parcel of land. At the time of the original approval for the church facility, the subject site was within the jurisdiction of the unincorporated County of San Diego (the City did not incorporate until 1986) and was designated "Agricultural Cropland" (AC) in the County's certified LUP. Under the AC designation, the uses of right are agricultural and agricultural-related uses, with low density residential development permitted as well.

Pursuant to the County LCP, in order to develop a site under the AC designation, at least one-half of the land suitable for agriculture would need to be reserved permanently for agricultural use, with the number of dwelling units permitted on the remaining one-half not exceeding 2.8 times the total acreage of the site, exclusive of wetland areas. Essentially, this requirement was designed to allow single-family residential development to be concentrated on the site at higher densities in order to preserve agricultural land.

Although the site had not historically been utilized for farming, in approving the original permit for the church, the Commission required that a portion of the site be set aside for permanent agricultural use with recordation of an agricultural easement, consistent with the AC designated under the certified County of San Diego LUP (it is this easement that the applicant is now requesting be removed). In addition, and as stated previously, the Commission also required that the easternmost portion of the site, which is comprised of naturally vegetated steep slopes, be permanently protected from development through recordation of an open space deed restriction (approximately 18 acres).

Since the original approval of the church in 1982, the City of Encinitas incorporated and subsequently received approval by the Commission of its LCP in 1994. With the exception of the Encinitas Ranch area, almost all lands in the City which were historically farmed, have been converted to urban use or are planned for such conversion. In addition, because no prime soils exist within the City, again, with the exception of the Encinitas Ranch area, the City of Encinitas does not contain any areas designated for specific agricultural uses, but instead allows agricultural uses to occur in most zones with approval of a use permit.

To justify the proposed amendment request, the applicant has stated that in compliance with the Commission required easement condition, the church established a citrus orchid and herb garden on the easement area. However, the operation has recently been discontinued because the church does not have the necessary expertise to manage the agricultural operation and to market the produce. The applicant has also stated that the 10.5 acre easement area is too small to (affordably) hire an on-site farm manager. In addition, the applicant has also indicated that the church has attempted to lease the land, but have not been able to secure an interested grower because potential lessees have stated that the useable land area of the easement is too small and the proximity to adjacent residential homes would limit the use of pesticides and fertilizers.

While the Commission can agree that the useable land area may be too small for a viable agricultural operation, the Commission does not agree that the proximity to adjacent residential units should affect the use of the agricultural easement area. There are many agricultural operations that can and do produce a viable crop in residential areas, with few, if any, conflicts related to fertilizers and pesticides.

To further justify the proposed amendment, that applicant has noted the recent land use change on the property south of the subject site. Adjacent and to the south of the subject site is the approximately 850 acre Encinitas Ranch, historically known as the Paul Ecke Ranch, which is the worlds' largest Poinsettia producer. The majority of the useable area of the ranch (non-wetland and non-steep slope areas) has historically been used for agricultural purposes, including the land directly south of the subject site. However, the Commission recently approved an amendment to the City's certified LCP to incorporate the Encinitas Ranch Specific Plan, which among other things, consolidated the area of agricultural production for the ranch. As approved by the Commission, no agricultural uses will occur adjacent to the subject site upon buildout of the plan; this area is approved for open space and residential development.

Although the subject site had historically not been farmed, the site did contain area and soils that were suitable for agricultural uses and thus 10.5 acres were required to be permanently reserved for such use by the Commission. In addition, one of the findings for approval of the original development by the Commission was that by requiring the western portion of the site to be retained for agricultural uses..."the permit can be found to be in

compliance with Section 30241(b) since the subject parcel would then serve to buffer the more intense agricultural use on the Ecke property to the south from the future residential development ... to the north." As the "more intense agricultural use" to the south will no longer be there, the agricultural easement proposed for removal is no longer necessary as a buffer.

Given that the existing agricultural easement area does not contain any prime soils, has not been historically utilized for agricultural purposes, is not needed to buffer adjacent residential uses from more intense agricultural operations, and has been documented to be not feasible for agricultural use by the property owner, the Commission finds that the proposed amendment to remove the agricultural easement can be supported.

However, to assure that the necessary documents to rescind the deed restriction are in a form and content that is acceptable, Special Condition #2 has been proposed. In addition, because the proposed amendment only pertains to the agricultural easement, Special Condition #1 has been proposed to notify the applicant that all conditions of approval of the original permits that are not specifically modified by this amendment, remain in full force and effect. Therefore, as conditioned, the Commission finds the proposed amendment to rescind the existing recorded agricultural easement (CDP #6-82-67) and delete Special Condition #3 (CDP #6-92-104), is consistent with the certified City of Encinitas Local Coastal Program.

(0763A)

SUBJECT
SITE

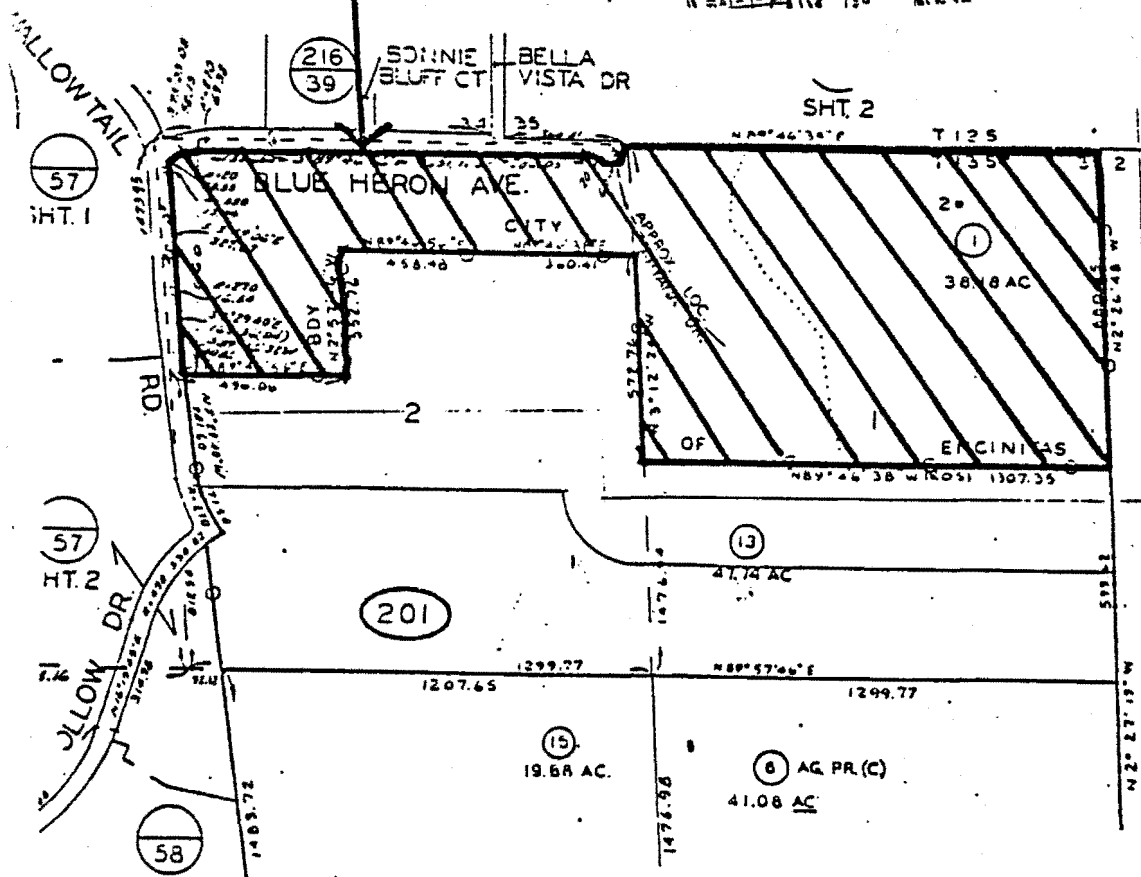
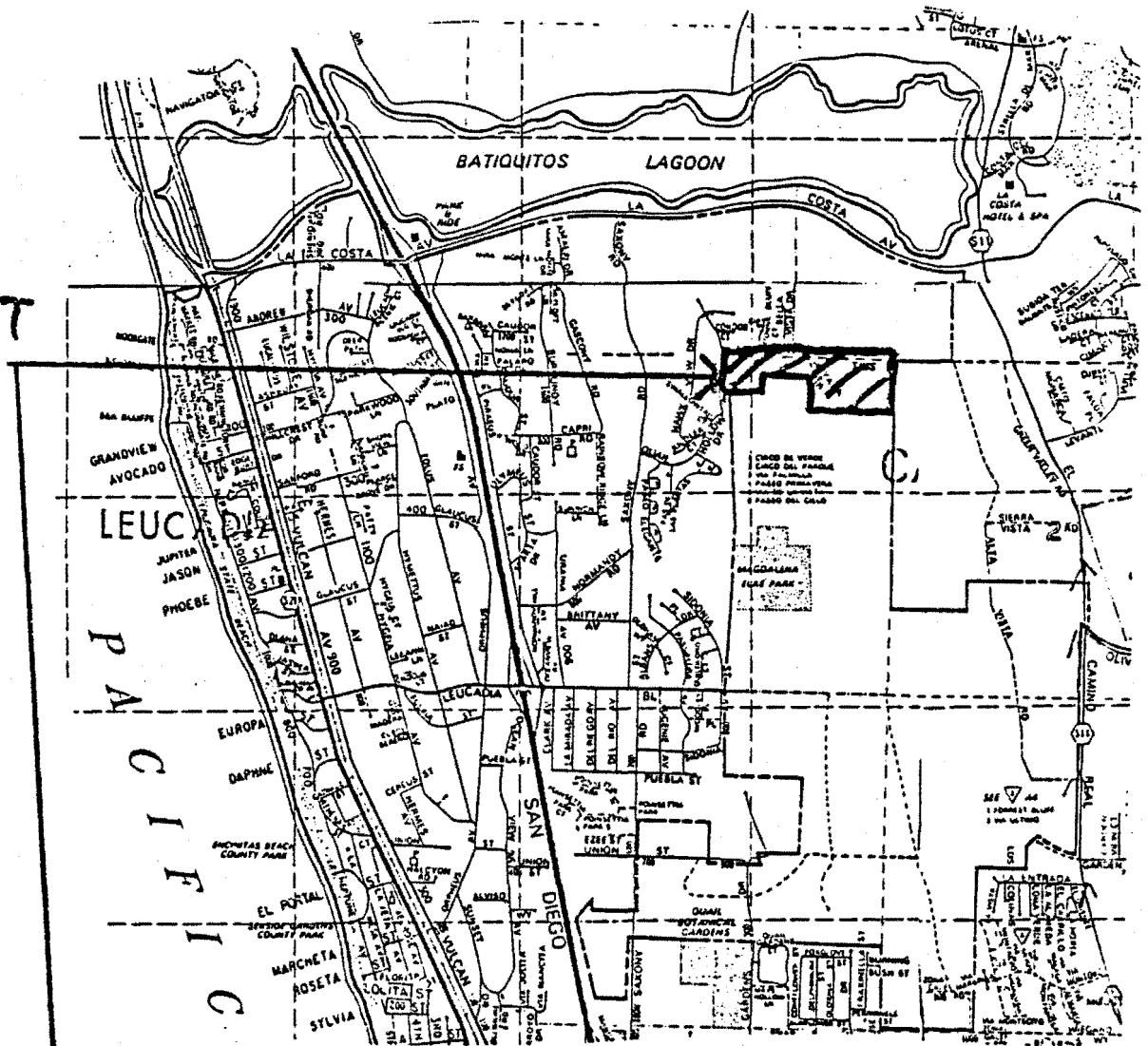
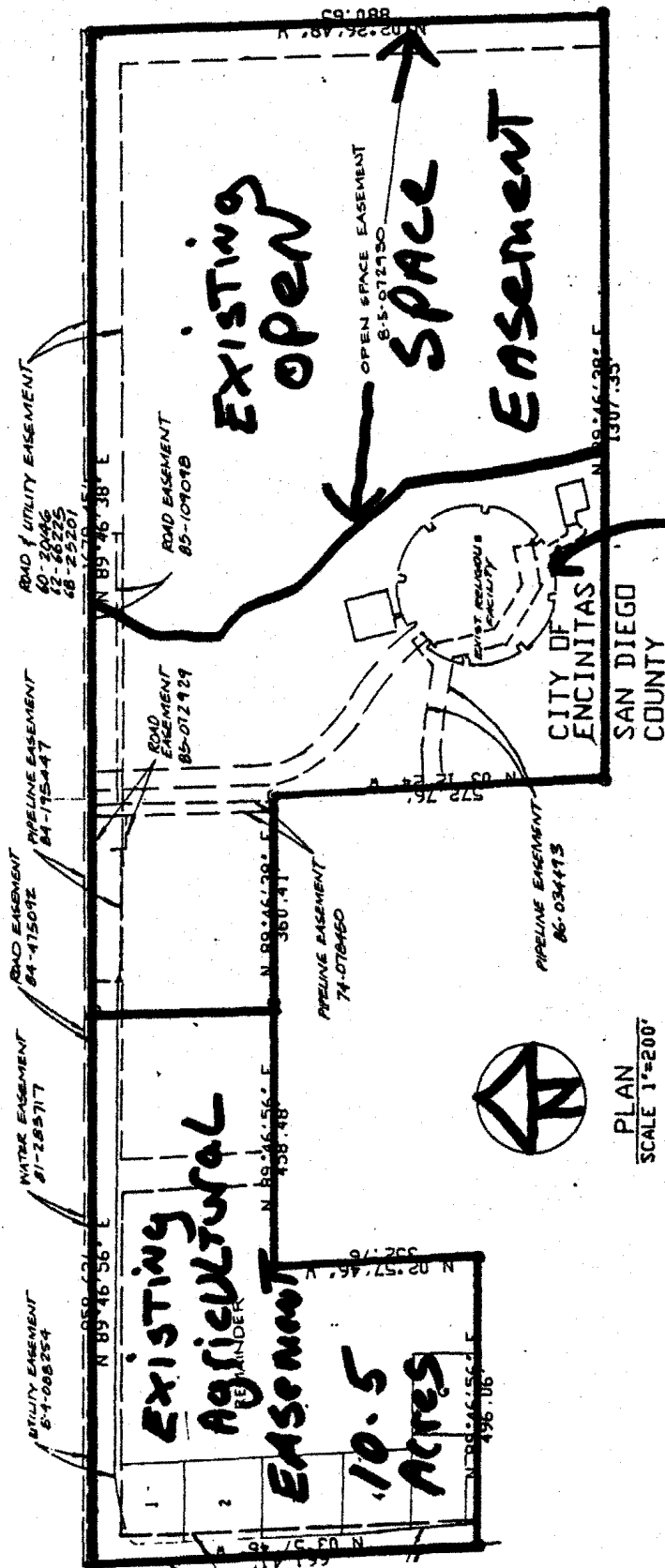


EXHIBIT NO. 1
APPLICATION NO.
6-87-61-A2
6-92-104-A
VICINITY MAPS
California Coastal Commission



Existing church
facility

EXHIBIT NO.2
APPLICATION NO.
6-82-67-A2
6-92-104-A
Site Plan
California Coastal Commission

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA
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SAN DIEGO, CA 92108-1725
(619) 521-8036

Date July 30, 1992Application No. 6-92-104Page 1 of 3NOTICE OF INTENT TO ISSUE PERMIT**FILE COPY**

On June 11, 1992, the California Coastal Commission approved the application of Mazdaznan Elector Corp., subject to the attached standard and special conditions, for the development described below:

Description: Subdivision of an approximately 38 acre site into 6 single-family residential lots with one remainder lot. Two existing church buildings, one manse and a mobile home will remain on the proposed remainder lot; Project also includes a revision to the boundary of an existing agricultural easement.

Lot Area	38.18 acres
Building Coverage	.44 acres (1%)
Pavement Coverage	3.25 acres (9%)
Landscape Coverage	2.70 acres (7%)
Unimproved Area	31.79 acres (83%)
Parking Spaces	123
Zoning	R-3
Plan Designation	Residential (2.01-3 dua)
Project density	2.5 dua

Site: 1701 Ariana Way, Encinitas, San Diego County. APN 254-201-01

The permit will be held in the San Diego District Office of the Commission, pending fulfillment of Special Conditions 2 & 3. When these conditions have been satisfied, the permit will be issued.

CHARLES DAMM
DISTRICT DIRECTOR
BY

EXHIBIT NO. 3

APPLICATION NO.

6-92-104-AOriginal NOI

California Coastal Commission

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgement. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS:

The permit is subject to the following conditions:

1. Future Development. This permit is for a 6 lot subdivision for future planned residential development only. All other development proposals for the site including, but not limited to, grading and the construction of residential units, shall require review and approval of the Coastal Commission, or its successor in interest, under a separate coastal development permit or an amendment to this permit.

SPECIAL CONDITIONS, continued:

2. Final Revised Landscape Plans. Prior to the issuance of the coastal development permit, the applicant shall submit a detailed revised landscape plan for the area around the existing farm worker mobile home that indicates the type, size, extent and location of all plant materials, the proposed irrigation system and other landscape features. Said plans shall indicate that the landscaping shall not exceed 5,000 sq. ft. of area around the farm worker mobile home for the provision of trees, lawn and private garden area. Said plans shall also include detailed scaled drawings that depict the location of the existing driveway that serves the farm worker mobile home and shall be submitted to, reviewed and approved in writing by the Executive Director.

3. Agricultural Easement. Prior to issuance of the coastal development permit, the applicant shall record a restriction against the subject property, free of all prior liens and encumbrances, except for tax liens, and binding on the permittee's successors in interest and any subsequent purchasers of any portion of the real property. The restriction shall limit the uses within the "agricultural easement" to agricultural and agricultural-related uses and shall prohibit the construction of structures within the area, except for the existing farm labor mobilehome and herb and vegetable garden processing facilities in the area shown on the attached Exhibit #4 and generally described as the west/central portions of the site. The recorded document shall indicate this document supercedes the previously recorded document as it applies to the agricultural easement only (ref. Recorded Document #85-072928, date of recording March 5, 1985) and shall include legal descriptions of both the applicant's entire parcel(s) and the restricted area, and shall be in a form and content acceptable to the Executive Director. Evidence of recordation of such restriction shall be subject to the review and written approval of the Executive Director.