

RESOLUTION NUMBER R-288717

ADOPTED ON MAY 27, 1997

WHEREAS, Frank Sipe appealed the decision of the Planning Commission in denying Conditional Use Permit ("CUP") No. 96-0076 submitted by Clem Abrams, Owner, and Texaco Refining and Marketing Inc., Permittee, to construct, operate and maintain an automobile service station and mini mart which would include fast food and the sale of beer and wine for off premise consumption on the property located at the southwest corner of Mira Mesa Boulevard and Viper Way, in the Mira Mesa Community Plan area, described as a Portion of Lot 42, Lusk Mira Mesa Business Park East 1, Unit 3, Map 11437, in the M-1B Industrial Zone; and

WHEREAS, on January 23, 1997, the Planning Commission of The City of San Diego certified Mitigated Negative Declaration No. 96-0161/96-0076, however, the Commission denied CUP No. 96-0076 pursuant to San Diego Municipal Code sections 101.0510 and 101.0515; and

WHEREAS, the matter was set for public hearing on May 27, 1997, and the Council reviewed and considered the Mitigated Negative Declaration and Conditional Use Permit No. 96-0076 pursuant to San Diego Municipal Code sections 101.0510 and 101.0515, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that this Council adopts the following findings with respect to Conditional Use Permit No. 96-0076:

**CONDITIONAL USE PERMIT FOR AUTOMOBILE SERVICE STATION:**

- A. THE PROPOSED USE WILL NOT ADVERSELY AFFECT THE NEIGHBORHOOD, THE GENERAL PLAN OR THE COMMUNITY PLAN,**

**AND, IF CONDUCTED IN CONFORMITY WITH THE CONDITIONS PROVIDED BY THE PERMIT, WILL NOT BE DETRIMENTAL TO THE HEALTH, SAFETY AND GENERAL WELFARE OF PERSONS RESIDING OR WORKING IN THE AREA.**

The Mira Mesa Community Plan does not specifically address automobile service station location or development. Gas station development in the City has been considered appropriate through the Conditional Use Permit process when a proposed station does not adversely affect existing or proposed uses in an area and the station meets or exceeds adopted development criteria. In this particular case, the proposed station would be located on a community plan designated major street. Service station development is often found on major streets. Site design meets or exceeds adopted automobile service station development regulations. Conditions of development and operation recommended for the permit include paleontological monitoring during grading for the service station and traffic improvement considerations to protect the health, safety and welfare of persons or properties in the area.

Therefore, the proposed use will not adversely affect the neighborhood, the General Plan or the Mira Mesa Community Plan, and, if conducted in conformity with the conditions provided by the permit, will not be detrimental to the health, safety and general welfare of persons residing or working in the area.

**B. THE PROPOSED USE WILL COMPLY WITH ALL THE RELEVANT REGULATIONS IN THIS CODE.**

The proposed development is consistent with Council adopted service station guidelines and complies with relevant criteria in the approved Planned Industrial Development Permit that applies to this property. Therefore, the proposed use would comply with all the relevant regulations in this code.

**CONDITIONAL USE PERMIT FOR BEER AND WINE SALES**

**A. THE PROPOSED USE IS CONSISTENT WITH THE POLICIES, GOALS AND OBJECTIVES OF THE APPLICABLE LAND USE PLAN OR LOCAL COASTAL PROGRAM; AND**

The Mira Mesa Community Plan recommends inclusion of support facilities in industrial parks to serve area employees. The mini-mart in providing for off-premises sale of beer and wine would be consistent with the policies, goals and objectives of the plan by providing this service.

Therefore, the proposed use is consistent with the policies, goals and objectives of the Progress Guide and General Plan and Mira Mesa Community Plan.

**B. THE PROPOSED USE WILL NOT BE DETRIMENTAL TO THE HEALTH, SAFETY AND GENERAL WELFARE OF PERSONS LIVING OR WORKING IN THE AREA; AND**

Recommendations made by the City of San Diego Police Department have been incorporated into the permit conditions with regard to the sale of beer and wine. These recommendations will be made to the Alcoholic Beverage Department. Therefore, the proposed use will not be detrimental to the health, safety and general welfare of persons living or working the area.

**C. THE PROPOSED USE IS CONSISTENT WITH THE PURPOSE AND INTENT OF THE ZONE; AND**

Service station development, including mini-marts and accessory fast food and the sale of beer and wine for off-premise consumption is permitted in the M-1B Zone pursuant to the issuance of a Conditional Use Permit. In this case, the City Council has determined that the proposed use is appropriate and is consistent with the purpose and intent of the zone.

**D. THE PROPOSED USE, AS MAY BE CONDITIONED, IS APPROPRIATE AT THIS LOCATION; AND**

Proposed development and operational conditions of the Conditional Use Permit would serve to make this an appropriate use at this location.

Therefore, the propose use, as conditioned, is appropriate at this location.

**E. THE PROPOSED USE WILL SERVE A PUBLIC CONVENIENCE OR NECESSITY.**

The off-premises sale of beer and wine would be located in an automobile service station mini-mart which will be safe, well lit and professionally managed by clerks who have received specific training concerning the sale of alcoholic beverages. This location would allow the industrial park employees, visitors and the general public the convenience of being able to do one-stop shopping for gasoline, groceries and beverages. Finally, the City of San Diego Police has recommended approval of the CUP for the sale of beer and wine for off-premise consumption.

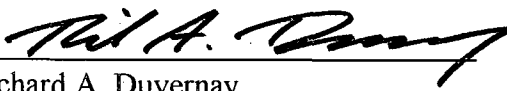
Therefore, the proposed use will serve a public convenience in that the gasoline station both in terms of its aesthetics and predicted mode of operation will provide a public convenience for customers who want to purchase food and beverage (including beer and wine) in a safe, secure and comfortable venue.

The above findings are supported by the minutes, maps, correspondence, testimony, and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED, that the appeal of Frank Sipe is granted, the decision of the Planning Commission in denying CUP No. 96-0076 is overruled, and Conditional Use Permit No. 96-0076 is hereby granted to Clem Abrams, Owner, and Texaco Refining and Marketing Inc., Permittee, under the terms and conditions set forth in the permit attached hereto and made a part hereof.

APPROVED: CASEY GWINN, City Attorney

By

  
Richard A. Duvernay  
Deputy City Attorney

RAD:lc  
06/03/97  
Or.Dept:Clerk  
R-97-1364  
Form=permitr.frm

RECORDING REQUESTED BY  
CITY OF SAN DIEGO  
DEVELOPMENT SERVICES

AND WHEN RECORDED MAIL TO  
PERMIT INTAKE  
MAIL STATION 501

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CITY COUNCIL  
CONDITIONAL USE PERMIT NO. 96-0076  
TEXACO STATION AT VIPER

This permit is granted by the City Council of the City of San Diego to CLEM ABRAMS, OWNER and TEXACO REFINING AND MARKETING INC., a Delaware Corporation, PERMITTEE, pursuant to Sections 101.0510 and 101.0515 of the Municipal Code of the City of San Diego.

Permission is hereby granted by the City Council of the City of San Diego to the referenced Owner/Permittee to construct, use and maintain an automobile service station and mini-mart which would provide the sale of food and the sale of beer and wine for off-premise consumption, in the Mira Mesa Community area legally described as a portion of Lot 42, Lusk Mira Mesa Business Park East I, Unit No. 3, Map 11437, in the M-1B zone.

1. This permit shall consist of the following facilities and/or site improvements as identified by size, dimension, quantity and location on the approved Exhibits "A," dated May 27, 1997, on file in the office of Development Services:
  - a) Canopy and 12 fuel pumps,
  - b) 3,308 square foot convenience store (mini-mart),
  - c) 18 parking spaces,
  - d) Landscaping, and
  - e) Signs.
2. This permit shall become effective on the date of approval by City Council.
3. No permit for the construction, occupancy or operation of any facility described in this permit shall be granted nor shall any activity authorized by this permit be conducted on the premises until:
  - a. The Permittee signs and returns the permit to Development Services; and
  - b. The permit is recorded by Development Services in the office of the San Diego County Recorder.

4. This Conditional Use permit is granted for a period of twenty (20) years from May 27, 1997, at which time it will become null and void unless extended or a new application for a Conditional Use Permit is applied for and approved under the procedures in effect at that time. At such time as the Conditional Use Permit expires or ceases to be utilized, all buildings, equipment and underground tank will be removed from the site by the last owner/permittee of the use.
5. This permit must be used within 36 months after the effective date. Failure to utilize the permit within 36 months will automatically void the permit unless an extension of time has been granted as set forth in Section 111.1122 of the Municipal Code.
6. All grading shall conform to requirements of Sections 62.0401-62.043 of the City of San Diego Municipal Code in a manner satisfactory to the City Engineer. The drainage system proposed for this development, as shown on the site plan, is subject to approval by the City Engineer.
7. Paleontological Mitigation.

The plans and specifications for the Texaco facility Conditional Use Permit shall be reviewed by the Environmental Analysis Section (EAS) of Development Services prior to contract advertisement to ensure that the measures stated below are included.

- A. The applicant (Texaco Refining and Marketing, Inc.) shall provide a letter of verification to the Environmental Analysis Section of the Development Services Department stating that a qualified paleontologist has been retained to implement the monitoring program. A qualified paleontologist is defined as an individual with a PhD or MS degree in paleontology or geology who is a recognized expert in the application of paleontological procedures and techniques such as screen washing of materials and identification of fossil deposits.

A paleontological monitor may be retained to perform the on-site monitoring in place of the qualified paleontologist. A paleontological monitor is defined as an individual who has experience in the collection and salvage of fossil materials and who is working under the supervision of a qualified paleontologist.

- B. All persons involved in the paleontological monitoring of this project shall be approved by EAS at least 30 days prior to the preconstruction meeting.
- C. The qualified paleontologist shall attend the preconstruction meeting to consult with the excavation contractor. The paleontologist's duties shall include monitoring, salvaging, preparation of collected materials for storage at a scientific institution that houses paleontological collections, and

preparation of a monitoring results report. These duties are defined as follows:

a. Monitoring

The paleontologist or paleontological monitor shall be onsite to inspect for fossils only during the excavation for the underground gasoline tanks.

b. Salvaging

In the event that fossils are encountered, the paleontologist shall have the authority to divert or temporarily halt construction activities in the area of discovery to allow recovery of fossil remains in a timely fashion. Because of the potential for recovery of small fossil remains, it may be necessary to set up a screen-washing operation onsite.

The paleontologist shall contact EAS at the time of discovery. EAS must concur with the salvaging methods before construction activities are allowed to resume.

c. Fossil Preparation

Fossil remains shall be cleaned, sorted, repaired, catalogued, and then stored in a local qualified curation facility. A qualified curation facility is defined as a research institution with a permanent commitment to long-term care of paleontological collections, and with professional curatorial staff.

The qualified paleontologist shall be responsible for preparation of fossils to a point of identification, and submittal of a letter of acceptance from a local qualified curation facility. If the fossil collection is not accepted by a local qualified facility for reasons other than inadequate preparation of specimens, the project paleontologist shall contact EAS to suggest an alternative disposition of the collection.

d. Report Preparation

A monitoring results report with appropriate graphics (e.g., stratigraphy) summarizing the results (even if negative), analyses, and conclusions of the above program shall be prepared and submitted to EAS within three months following the termination of the paleontological monitoring program and prior to DSD's final inspection. Any discovered fossil sites shall be recorded at the San Diego Museum of Natural History.

8. No building permit will be issued until the Parcel Map for TM 96-0161 has been recorded (Environmental Mitigation).

9. Prior to the issuance of any building permits, the applicant shall relinquish to the City, the abutter's rights of access to Mira Mesa Boulevard adjacent to this site and westerly of the signalized driveway (and its widening) satisfactory to the City Engineer.
10. The permittee shall install fire hydrants at locations satisfactory to the Fire Department, the Water utilities Director, and the City Engineer. If more than two (2) fire hydrants and/or thirty (30) Equivalent Dwelling Units (EDUs) are located on a dead-end main, then a dual-fed system shall be installed.
11. Prior to issuance of any building permits, complete building construction documents (including plans and/or detailed specifications) and complete landscape construction documents including plans, details and specifications (including a permanent automatic irrigation system unless otherwise approved) shall be submitted to the City of San Diego for approval. The plans shall be in substantial conformity to the approved Exhibits "A," dated May 27, 1997, and shall show the location of all fire hydrants. The drive-thru food service lane shall be eliminated and that land area be replaced with landscape and hardscape satisfactory to the City Manager.
12. No change, modifications or alternations shall be made unless appropriate applications or amendment of this permit shall have been granted.
13. Prior to the issuance of a Certificate of Occupancy, landscaping shall be installed and all required landscape inspections obtained.
14. Prior to the issuance of a Certificate of Occupancy, all improvements included on TM 96-0161 related to the traffic generated by the Texaco facility must be installed and operational, satisfactory to the City Engineer.
15. The Owner or operator shall be responsible for maintenance of the landscape identified on the approved Exhibit "A," Landscape Concept Plan. All approved landscape shall be maintained in a disease, weed and litter-free condition at all times and shall not be modified or altered unless this permit has been amended. Modifications, such as severely pruning or "topping," is not allowed unless specifically noted in this permit.
16. If any existing or proposed landscape (including pavement, hardscape, landscape features, etc.) indicated on the approved plans is damaged or removed during demolition, construction or at any time after issuance of any permit or occupancy certificate, it shall be repaired and/or replaced in kind and equivalent size per the approved plans within 30 days by the Permittee. The replacement size of plant material after three years shall be the equivalent size of that plant at the time of removal (the largest size commercially available and/or an increased number) to the satisfaction of the City Manager.



17. Prior to building occupancy, the applicant shall conform to Section 62.0203 of the Municipal Code, "Public Improvement Subject to Desuetude or Damage." If repair or replacement of such public improvement is required, the owner shall obtain the required permits for work in the public right-of-way, satisfactory to the permit-issuing authority.
18. Racks for four bikes shall be maintained at all times.
19. Prior to the issuance of any building permits, the Permittee shall ensure that building address numbers are visible and legible from the street (UFC 10.208).
20. All trash and refuse for pick-up shall be stored within an area enclosed by a wall at least six feet in height. Wall material shall match the exterior of the main building. Doors to the area shall be closable and constructed of solid materials. Refuse shall not be visible from outside the enclosed area.
21. In addition to the trash receptacle listed in condition 19 above, the owner or operator shall provide trash receptacles inside and outside the premises including adjacent public sidewalks and areas under the control of the owner or operator, conveniently located for use by patrons. A minimum of one 13-gallon trash receptacle shall be located inside the premises, and a minimum of one 32-gallon trash receptacle shall be located outside the premises, and at least one additional 32-gallon trash receptacle shall be conveniently and legally located in the parking areas under the control of the owner or operator.
22. Outdoor lighting shall conform to city regulations. They may be mounted only to buildings, walls, or on free-standing posts not to exceed a height of 14 feet. All fixtures and lenses should be so designed and field-adjusted as to direct light only onto the premises from which it emanates. Energy conservation is encouraged.
23. Illumination shall be provided on the exterior of the premises including adjacent public sidewalks and areas under control of the owner or operator during all hours of darkness while the mini-mart is open for business. The illumination shall be adequate for law enforcement personnel to identify persons standing in those areas. The minimum level of illumination of the premises shall be 0.4 foot candles per square foot.
24. The exterior of the premises, including adjacent public sidewalks and areas under the control of the owner or operator shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter and debris. The owner or operator shall eliminate graffiti within forty-eight (48) hours of application.
25. No more than thirty-three percent (33%) of the square footage of the windows and transparent doors of the premises may bear advertising or signs of any sort, and all advertising and signage are placed and

- maintained in a manner that ensures that law enforcement personnel have a clear and unobstructed view of the interior of the outlet.
26. The total surface of signage pertaining to or referencing alcoholic sales or beverage which is visible from the public right-of-way do not exceed six hundred thirty square inches (630 sq. in.).
  27. The owner or operator shall not provide pool or billiard table, foosball or pinball games, arcade style video or electronic games, or coin operated amusement devices on the premises.
  28. The owner or operator shall not permit the placing of exterior public pay phones that permit incoming calls on the premises including adjacent public sidewalks and areas under the control of the owner or operator.
  29. The mini-market shall be listed with a business address and telephone number in the Pacific Bell/San Diego telephone directory or other similarly distributed directory.
  30. The requirements of the County Health Department and the City of San Diego Fire Department for storage of all hazardous materials, including underground chemical storage, shall be met at all times.
  31. All signs shall comply with Division 11 of the Municipal Code or the underlying zone, whichever is more restrictive. Sign permits shall be obtained prior to the installation of any signs on this property.
  32. Pennants, portable signs or banners shall not be permitted on the premises.
  33. The fuel pump islands and the convenience store may operate 24 hours a day
  34. The owner or operator shall post a prominent, permanent sign or signs stating "No loitering, consumption or open alcoholic beverage containers are allowed inside the premises, in the parking area, or in the public sidewalks adjacent to the premises." The "no loitering" shall be enforced by the owner or operator.
  35. Eighteen parking spaces, including one handicapped space, shall be maintained on site at all time.
  36. Signaling devices to alert station attendants to entering vehicles shall be located and adjusted so as to cause no noise disturbances to adjoining properties.
  37. When operations are discontinued at an automobile service station for a period approaching 24 months, the Permittee of the permit has the following options:
    - a. Apprise Development Services that the Conditional Use Permit should be rescinded. In this case, all buildings and structures not conforming with the underlying zone, including underground tanks, shall be removed.

- b. Redevelop the property as a service station through an amended Conditional Use Permit, as set forth in Municipal Code Section 103.0300.
- c. Resume use as a service station under the existing Conditional Use Permit.

If none of the above options is taken by the Permittee, and operations remain discontinued beyond the twenty-fourth month, the City may initiate proceedings to rescind the permit and abate the nonconforming structures.

- 38. In the event that the gasoline sales service facility is abandoned or vacated for a continuous period of two years (24 months), the property owner shall cause to have all structures, buildings, signs, and accessory uses related to the gasoline service station and other potentially hazardous conditions removed from the premises. Underground fuel storage tanks shall also be removed from the premises or capped satisfactory to the Fire Department.
- 39. The property included within this permit shall be used only for the purposes and under the terms and conditions set forth in this permit unless authorized by the City Manager or the permit has been revoked by the City of San Diego.
- 40. This permit may be canceled or revoked if there is a material breach or default in any of the conditions of this permit. Cancellation or revocation may be instituted by the City of San Diego or Permittee.
- 41. This permit is a covenant running with the subject property and shall be binding upon the Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this permit and all referenced documents.
- 42. All of the conditions contained in this permit have been considered and have been determined to be necessary in order to make the findings required for this discretionary permit. It is the intent of the City that the holder of this permit be required to comply with each and every condition in order to be afforded special rights which the holder of this permit is obtaining as a result of this permit. It is the intent of the City that the owner of the property which is the subject of the permit either utilize the property for any use allowed under the zoning and other restrictions which apply to the property or, in the alternative, that the owner of the property be allowed the special and extraordinary right conveyed by this permit, but only if the owner complies with all the conditions of this permit.

In the event that any condition of this permit, on a legal challenge by the Owner/Permittee of this permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable or unreasonable, this permit shall be void. However, in such event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition back to the discretionary body which approved the permit for a determination by that

body as to whether all of the findings necessary for the issuance of the permit can still be made in the absence of the "invalid" condition(s). Such hearing shall have the absolute right to approve, disapprove or modify the proposed permit and the condition(s) contained therein.

43. Construction and operation of the approved use shall comply at all times with the regulations of this or any other governmental agencies.
44. This development may be subject to impact fees, as established by the City Council, at the time of issuance of building permits.
45. A copy of this permit shall be posted on the premises of the service station at all time and be available for viewing by any person or persons who may desire to see the document.
46. No wine shall be sold in containers of less than 750 milliliters nor shall any malt beverage products be sold in less than six-pack quantities per sale.
47. No wine shall be sold with an alcoholic content greater than fifteen percent (15%) by volume.
48. Quarterly gross sales of alcoholic beverages shall not exceed twenty percent (20%) the quarterly gross sales of the establishment.

Passed and adopted by the Council of The City of San Diego on May 27, 1997, by Resolution No. R-288717.

AUTHENTICATED BY THE CITY MANAGER

By \_\_\_\_\_

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**The undersigned Permittee**, by execution hereof, agrees to each and every condition of this Permit and promises to perform each and every obligation of Permittee hereunder.

**CLEM ABRAMS**  
Owner

By \_\_\_\_\_

**TEXACO REFINING AND MARKETING INC.**  
a Delaware corporation  
Permittee

By \_\_\_\_\_

**NOTE: Notary acknowledgments  
must be attached per Civil Code  
section 1180 et seq.  
06/03/97**