

# CITY OF KERMAN PLANNING COMMISSION

## AGENDA

### REGULAR MEETING

DATE: Monday, July 26, 2010

TIME: 6:30 p.m.

Location: City Council Chambers 850 S. Madera Avenue, Kerman, Ca

Planning Commissioners: Chairperson Robert Epperson, Mike Arabian, Robert Bandy, Paul Brar, Robert Felker, Michael Lopez, Kevin Nehring.

Materials related to an item on this agenda that are public documents and are submitted after distribution and posting of the agenda are available for public inspection in the Planning Department at 942 South Madera Avenue, Kerman, during normal business hours. Documents that are public documents provided by others during a meeting will be available at the same location during business hours after the meeting.

*Note: Individuals needing special assistance in order to participate should contact Olivia Pimentel, Planning Secretary at (559) 846-9386 for assistance prior to the meeting.*

Call to Order – Chairman, Robert D. Epperson

Roll Call – Secretary, Olivia Pimentel

Approval of Agenda

1. Approval of Minutes

Minutes of May 24, 2010 submitted approval

No meeting in June to submit

Request to Address Commission

*This portion of the meeting is reserved for members of the public to address the Commission on items of interest that are not on the Agenda and are within the subject matter jurisdiction of the Commission. **Speakers shall be limited to (3) three minutes.** It is requested that no comments be made during this period on items on the Agenda. Members of the public wishing to address the Commission on items on the Agenda should notify the Chairman when that Agenda item is called, and the Chairman will recognize your discussion at that time. It should be noted that the Commission is prohibited by law from taking any action on matters discussed that are not on the Agenda. Speakers are asked to please use the microphone, and provide their name and address.*

2. Presentation(s)

3. Public Hearing(s) / Meeting(s)

A. Conditional Use Permit No. 10-06, Actagro, LLC

As detailed in the attached report, staff received a request for a conditional use permit from Actagro, LLC to unload and load agricultural fertilizer products using approximately 470 feet of railroad track generally located south of California Avenue and east of Madera Avenue (just north of Kerman Ag Resources). Actagro is a manufacturer and marketer of specialty fertilizers and soil amendments used in the agriculture industry. The company is proposing to unload rail cars containing liquid super phosphoric acid and powder agrolig and transport the product by truck to

their manufacturing facility in Biola, CA. The company will also load their finished product (liquid nitrogen and phosphate fertilizer) on rail cars for shipment to customers.

4. Petitions, Resolutions

A. Extension request Conditional Use Permit No. 09-02, Kearney Palms III, Willow Partners

Staff received the attached formal extension request from Mr. Davis Slajchert of Willow Partners for Kearney Palms III (CUP No. 09-02). On July 27, 2009 the Planning Commission approved several entitlements (General Plan Amendment, Zone Change, Tentative Parcel Map and a Conditional Use Permit) for Kearney Palms III - a 44 unit senior apartment complex adjacent to the existing senior apartment complex on Kearney Blvd. Conditional Use Permit No. 09-02 will expire on July 27, 2010.

Mr. Slajchert has filed his request in a timely manner as required and explained that he is requesting an extension due to the delay in securing the needed tax credit financing for the development of this project.

Pursuant to Kerman Municipal Ordinance section 17.12.100, A conditional use permit may be renewed for an additional year or for a lesser or greater time period as may be specified; provided, that an application for renewal is filed with the planning commission prior to the expiration of the time period granted. The Planning Commission by resolution may approve, approve with conditions or deny an application for the renewal of a conditional use permit.

5. Administrative Reports

A. Status of Projects

Below is a brief status of ongoing projects:

1. Granada Commons (16 Apartment Units) - project is under construction and is expected to be completed by October of this year.

2. Helsem Terrace Remodel (40 Apartment Units) - the Housing Authorities is remodeling the existing 40 units located on east side of 9th and 'B' Streets. The improvements generally include plumbing, electrical, mechanical, roofing, exterior paint, landscaping, irrigation, new sidewalks and trash enclosures.

3. AutoZone (Kerman Crossings) - the contractor pulled building permits on July 22 for a new stand-alone auto parts store adjacent to the new CVS Pharmacy. They expect to begin construction as early as July 26.

4. Lucido Duplex - a new duplex was approved on an in-fill lot located at the south east corner of 6th and 'B' Streets. The owner (Samuel Lucido) expects to start on the duplex the first week of August. The owner also remodeled an existing unit on the site that has been vacant for decades.

5. Tract 5975 (10 Lot Subdivision) - the developer has completed installation of underground utilities and expects to begin vertical construction later this summer. Developer has advised that he has 5 homes pre-sold. The project is located on the south side of 'E' Street just west of Goldenrod Avenue.

6. Tract 5948 (136 Lot Subdivision) - Mitch Covington submitted a tentative tract map to subdivide 30 acres located just east of Bella Palma into 136 single-family lots. Approximately 20 acres is situated within the city limits and 10 acres lies outside the city's existing SOI. Thus, the project will

require a minor SOI amendment to include the 10 acres. Staff anticipates scheduling hearing in November/December.

7. Kearney Palms III (44 Senior Apartments) - the developer advised staff that the project received a perfect score in round one of the state tax credit allocation process but lost to a tie-breaker. The developer is optimistic that the project will receive an award of funding in round two. Notice of award of tax credits are expected in September.

8. Hacienda Heights (72 Apartment Units) - the developer advised staff that the project received a perfect score in round one of the state tax credit allocation process but lost to a tie-breaker. The developer has applied for round two of tax credits, but believes that the project has a much better chance next year with the possible commitment of HOME funds from the County of Fresno.

9. Walmart - staff is reviewing the 2nd Administrative Draft Environmental Impact Report for the proposed project. Staff anticipates completing its review by July 30. The Draft EIR is expected to be released for 45-day public review in late August. A public hearing on the Draft EIR will be scheduled mid-way through the 45-day public review period.

10. Madera/Jensen Avenue Roundabout - Caltrans held a public information meeting on June 22, 2010 regarding the proposed project. According to Caltrans, they intend to complete the EIR and approve the project in December 2010, begin construction in winter 2012, with project completion in the winter of 2013. They estimate the cost of the project at \$1.3 million.

11. Madera Avenue Rehabilitation - Caltrans is expected to begin work on Madera Avenue from California to Whitesbridge in September/October.

12. Kearney Blvd Reconstruction - the reconstruction and median in Kearney Blvd. from Madera Avenue to Del Norte Avenue is expected to begin construction in August/September.

13. KUSD East side Elementary School - According to KUSD officials, the new elementary school located on the northwest corner of Kearney Blvd. and Goldenrod Avenue is expected to begin construction in September/October.

#### Communications

##### A. Commissioners Comments

#### Adjournment

#### **AGENDA POSTING CERTIFICATION**

I, OLIVIA G. PIMENTEL, Planning Secretary for the City of Kerman, do hereby declare under penalty of perjury that I caused the above agenda to be posted at Kerman City Hall, 942 So. Madera Avenue, and at Kerman Community/Teen Center, 15101 Kearney Plaza, and emailed to interested parties, on the 22 day of July, 2010.

Olivia G. Pimentel  
Secretary to the Planning Commission

## MINUTES

### Kerman Planning Commission

#### REGULAR MEETING

Date: Monday, May 24, 2010

Time: 6:30 p.m.

Call to Order – Chairman, Robert D. Epperson called the meeting to order at 6:30p.m.

Roll Call – Secretary, Olivia Pimentel roll call results:

Present – Epperson, Bandy, Lopez, Arabian, Nehring, Brar

Absent – Felker (excused)

Approval of Agenda, Chairman Epperson moved to approved agenda as presented, consensus approved

1. Approval of Minutes, Chairman Epperson moved to approve minutes of April 26, 2010 as presented, consensus approved.

Request to Address Commission: None

2. Presentation(s) None

3. Public Hearing(s) / Meeting(s)

- A. Approve Conditional Use Permit 10-05, Ted Black to occupy an existing building for use as a church on the southeast corner of 'E' and 7th street

Staff received an application from Mr. & Mrs. Tod Black requesting to occupy a building to hold church services. The site is in a R-1 zone district which allows churches by way of conditional use permit. Staff reported that this site was previously approved for a tutorial center, by Annie Acosta that had a change in plans so she put the request on hold and rented the property to Mr. Black who is a pastor for a church. He wants to use the site for a church site a few times a week as noted in the staff report. The subject site is located at 14781 W. E Street in Kerman.

Staff also pointed out that this site was previously utilized by the Kerman Women's Club for several years as a social gathering place. The proposed church would be consistent and in line with the similar function of acting as a social gathering place of worship. Staff reported that because of the size of the site, a limitation was added as a condition of approval of 30 members as maximum occupancy.

Opened Public Hearing 6:40p.m.

Pastor Tod Black 1436 Burgundy St. addressed the Commission in support of his church, he has lived in Kerman for 10 years and would like to help his community. Several members of the church attended the meeting in support of the church site.

Closed Public Hearing 6:45p.m.

c/Nehring inquired about the occupancy permitted up to 30 and he noted the church expected to grow up to 60-80 members. Pastor Black stated that he would hold several separate services if needed and keep the maximum occupancy at any one time to 30 as required. If and when it outgrows this building he will look for another site more suitable. This was a temporary site.

C/Bandy recommended that the church ask the school district for use of parking space during the weekends to help with additional parking if needed.

C/ Nehring made a motion to approve Conditional Use Permit No. 10-05, Golden Vessel Ministries second C/Bandy.

Yes: Epperson, Bandy, Lopez, Arabian, Nehring, Brar  
Noes: None  
Absent: Felker  
Abstain: None

4. Petitions, Resolutions None

5. Administrative Reports

Staff gave an update on projects.

Rite Aide-grand opening held May 20. Signal Lights due by next week.

CVS Pharmacy-grand opening scheduled June 20.

Granada Commons 16 unit multi-family Apartments in construction now.

Walmart- Draft Environmental Report expected back in a few weeks with changes recommended by staff. Staff will review and after finalized, will then circulate and schedule for Planning Commission at a later date. C/Bandy asked if the EIR considered traffic, and the amount of improvements, staff responded that yes this was all included and being considered.

Auto Zone- they have submitted plans and ready to proceed once plan check is finalized.

RoundABOUTS- Caltrans has scheduled a public hearing for June 22, 2010 at 5p.m in the Community Teen Center to hear public comments on a proposed roundabout on intersection of Jensen and Madera Avenue. C/Epperson was concerned with the amount of potential traffic and in particular truck traffic.

Communications

A. Commissioners Comments, C/Brar inquired about the Mendota Prison and its impact on Kerman.

Adjournment C/Epperson adjourned meeting at 7:10p.m.

Minutes prepared by: Olivia Pimentel



# City of Kerman

*"Community Comes First"*

Actagro, LLC  
Conditional Use Permit No. 10-06

Planning & Development Services  
REPORT TO THE PLANNING COMMISSION

July 26, 2010

To: Planning Commission  
From: Luis Patlan, Director of Planning & Development Services  
Subject: Conditional Use Permit No. 10-06, Actagro, LLC for the use of 470 feet of railroad tract to transport inbound and outbound agricultural grade fertilizer

## Recommendation

Staff recommends that the Planning Commission conduct a public hearing and adopt Conditional Use Permit No. 10-06, Actagro, LLC, subject to conditions of approval contained in Resolution No. 10-09 (Exhibit 'A').

## Applicant

Actagro, LLC  
P.O. Box 309  
Biola, CA 93606

## Project Description

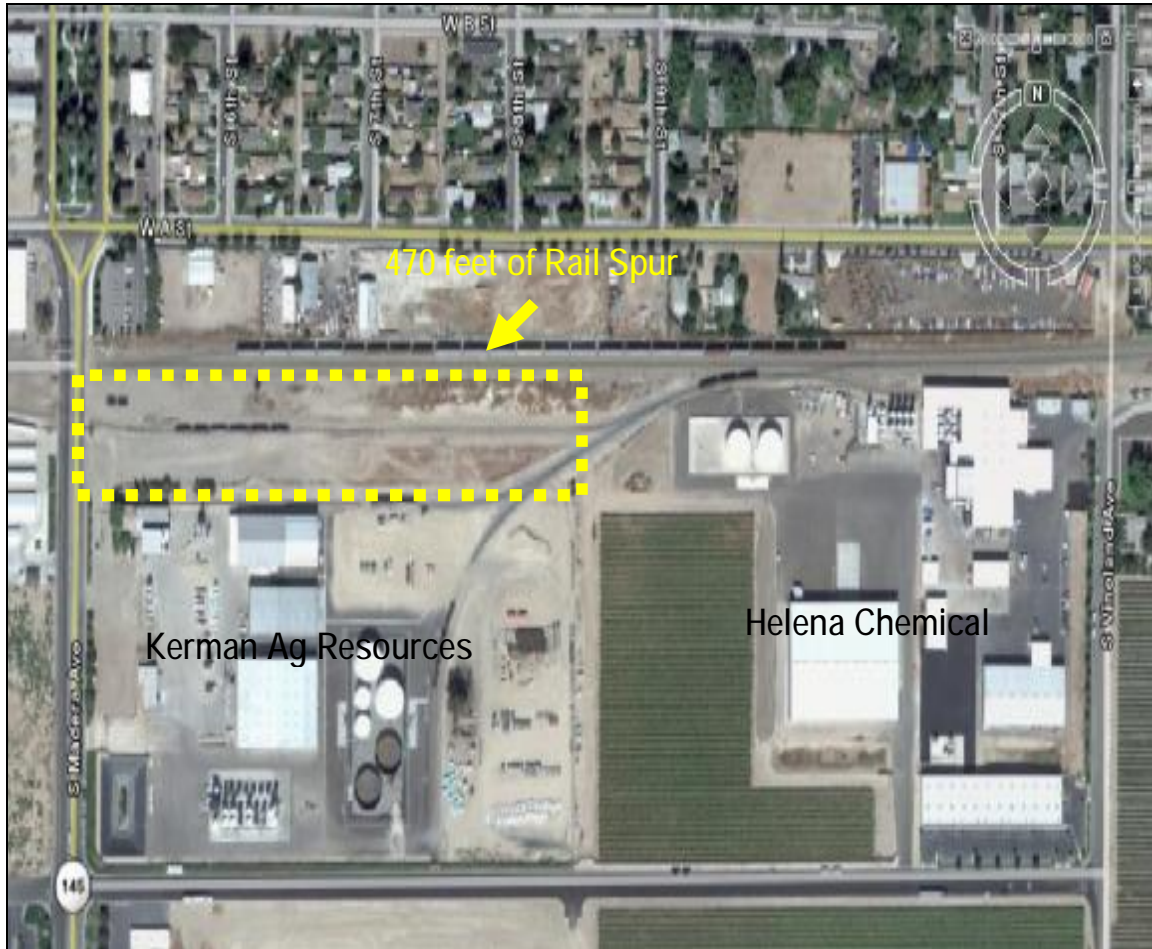
Actagro, LLC, is a manufacturer and marketer of specialty fertilizers and soil amendments used in the agriculture industry. The company's manufacturing facility is located at 4516 N. Howard Ave, Biola, California. Actagro has executed a lease agreement with San Joaquin Valley Railroad for 470 feet of Railroad track near Mile Post 193 in Kerman, California. The track is located just south of California Avenue and east of Madera Avenue (Figure 1). Actagro will be using this track to unload railcars of raw materials for use in their manufacturing process and to load empty railcars that they lease, with finished products, for shipment to their customers. Products will not be stored at the rail site, except for in the railcars.

The two incoming products that would be unloaded from the railcars and transported to Actagro's manufacturing facility in Biola would be liquid Super Phosphoric Acid (SPA) and Agrolig. SPA is classified as a Hazardous Material that requires special handling. Agrolig is a dry black powder similar to coal and is classified as a Non-Hazardous Material. The finished products that they will ship out from the rail site are Non-Hazardous liquid nitrogen and phosphate solutions.

### Project Location

Figure 1 shows the location of the project site. The subject rail spur is approximately 470 feet in length and is located just south of California Avenue and east of Madera Avenue within the railroad right-of-way. The site has access from Madera Avenue. There are a total of three rail spurs in the area. One serves Kerman Agricultural Resources, the second serves Helena Chemical and the third is being used by Actagro.

Figure 1



**General Information**

**Site Location:** East of HWY 145 and south of California. Rail Road Property

**Existing Uses:** The site is located within the railroad right-of-way and is an active rail spur.

**General Plan Designation:** Industrial

**Zoning:** (M2), General Industry District

**Surrounding Uses & Zoning:**

Location	Existing Land Uses	General Plan Designations	Zone Districts
North	Vacant land, railroad tracks, service commercial	Service Commercial and General Industrial	M1 & CS
South	Railroad tracks, Agricultural Fertilizer Company	Heavy Industrial	M-2
East	Railroad tracks, Agricultural Fertilizer Company	Heavy Industrial	M-2
West	Storage facility	General Service	CS

**Discussion**

**General Plan/Zoning**

The 2007 General Plan Land Use Element designates the area around the subject site as General Industrial (M-2). The rail spur and the area used by Actagro is situated within the railroad right-of-way. According to the Kerman Municipal Code, the Zoning Ordinance applies to all the areas within the municipal boundaries of the city of Kerman whether owned, leased or operated by private persons, farms, corporations or organizations. Railroad property is not exempt from the provisions of the zoning ordinance. The proposed use involves the storage, use or production of hazardous materials and is permitted by way of a conditional use permit.

**Operation**

Actagro, LLC has utilized the rail spur since 2002. The company was not aware that a conditional use permit was required to conduct business in Kerman. They became aware of the City's requirements during lease negotiations with the railroad company. They have applied for a conditional use permit to correct the situation. To date, there have been no incidents or reports of any spills or other accidents involving the unloading and loading of their products.

As detailed in their operational statement attached to the Resolution as Exhibit 'A', the company recently renewed their lease with the San Joaquin Valley Railroad for continued use of the rail spur, along with 9 rail cars and some railroad right-of-way south of the rail spur for unloading in bound raw materials (Super Phosphoric Acid and Agrolig) and transporting finished products (liquid nitrogen and phosphate solutions) to their customers (photographs of site attached as Exhibit 'B').

#### Inbound Raw Materials

The two primary inbound raw materials that will be unloaded at the site and transported to their facility in Biola, CA are Super Phosphoric Acid and Agrolig. Super Phosphoric Acid (SPA) is classified as a non-flammable Hazardous Material that requires special handling. Actagro's employees are trained in handling this material and have extensive experience in unloading SPA from rail cars. SPA will be transferred by pump and portable air compressor from the railcars into a tanker trailer for delivery to the company facility in Biola, CA. Each railcar holds four tanker loads at approximately 50,000 lbs per load. The entire unloading process will be completed in one day. There will be an Actagro employee that stays at the rail site the entire time that loading occurs, until the railcar is completely loaded and/or secured. Actagro estimates that they will unload 85 railcars of SPA per calendar year. The company is permitted to transport SPA from the California Department of Transportation.

Agrolig is classified as a Non-Hazardous Material. Agrolig is a dry, black powder material similar to coal and is packaged in one-ton sealed tote bags that will arrive by boxcar. The Agrolig will be off loaded by forklift and transferred onto a flatbed trailer for delivery to the company's manufacturing facility in Biola, CA. Each boxcar requires four flatbed loads at approximately 50,000 lbs per load. They schedule unloading so that the boxcar will be completely unloaded in one day. Actagro estimates that they will unload 15 boxcars of Agrolig per calendar year.

#### Outbound Finished Product

Actagro blends the SPA and Agrolig at their manufacturing facility in Biola, CA to produce liquid nitrogen and phosphate fertilizer solutions that are classified as Non-Hazardous Materials. These liquid products will be trucked from their facility in Biola, CA to the site and loaded into railcars for final delivery to customers. It takes approximately four tanker trailers to fill one railcar. They will not store any products at the rail site. All products will be unloaded from the tanker trailers directly into the railcars. There will be an Actagro employee that stays at the rail site the entire time that loading occurs, until the railcar is completely loaded and/or secured. Actagro has 4 leased railcars that they try to turn around 4 times per year, for a total of 16 railcars per calendar year.

Actagro will not be adding any equipment, storage tanks, lighting or any other miscellaneous equipment to the site. The use of the location will be kept confined to loading and unloading railcars, in our designated space. The equipment that will be used for unloading and loading products include the following:

- § Diesel Truck
- § Flatbed Trailer or Tanker Trailer
- § One Ton Flatbed Truck
- § Portable Air Compressor

## Traffic Circulation

The diesel trucks (tanker/flatbed) will primarily use Madera Avenue (SR 145) to access the site. Inbound trucks will travel southbound on Madera Avenue from Biola, CA to the site and outbound trucks will travel northbound on Madera Avenue to Biola, CA. Approximately 85 railcars of raw material will be loaded and transported to Biola and approximately 16 railcars will loaded with finished product per calendar year. Each railcar takes up to four trucks to unload and load products for a total of 404 truck trips per calendar year.

## Fire

Staff and the applicant's representatives met with the fire department to discuss the operations, particularly the unloading and handling of Super Phosphoric Acid from the railcars at the site. The fire department's primary concern has to do with the possible accidental release of Super Phosphoric Acid. Pursuant to the fire code, the fire department is requiring that Actagro provide spill control and a secondary containment area where the unloading of hazardous material (Super Phosphoric Acid) from railcars is to be done. The secondary containment area shall have a capacity of not less than 110% of the largest container of hazardous material (SPA). The secondary containment area shall be provided with a liquid tight surface that is compatible with the material's being stored and/or transferred to prevent percolation into the ground and/or runoff onto adjoining properties. The fire department's requirements are included in the conditions of approval.

## Environmental Review

Pursuant to CEQA Guidelines Section 15301 the City of Kerman has determined that the following project is Categorically Exempt (Class 1 Existing Facilities); permitting of existing private facilities involving negligible or no expansion of use.

## Conclusion:

Actagro, LLC has been using the subject rail spur since 2002. The company is applying for a conditional use permit to comply with the city's zoning requirements for transporting/storage of hazardous material. To date, there have been no incidents or reports of any spills or other accidents involving the unloading and loading of the company's products. The conditional use permit provides for the continued use of the site by Actagro subject to conditions of approval.

## Attachments:

- A. Resolution No. 10-09, Approving Conditional Use Permit No.10-06, w/Exhibits
- B. Photographs of Site

## Attachment 'A'

### RESOLUTION NO. 10-09

#### A RESOLUTION OF THE KERMAN PLANNING COMMISSION APPROVING A CONDITIONAL USE PERMIT NO. 10-06, ACTAGRO, LLC

*WHEREAS*, the City of Kerman Planning Commission reviewed Conditional Use Permit No. 10-06, Actagro LLC for the proposed unloading of rail cars of raw materials and transporting to the main production plant located in Biola California consistent with the Kerman Zoning Ordinance; and

*WHEREAS*, said conditional use permit request was submitted by Actagro, LLC, 4516 N. Howard Avenue, Biola, Ca. 93606, and

*WHEREAS*, the proposed project is generally located at the south of California Avenue and east of Madera Avenue identified as 470 feet of Railroad's Track No. 6255501-A locate at or near Mile Post 192.7 railroad; and

*WHEREAS*, the above referenced project is considered Categorically Exempt per the requirements of the California Environmental Quality Act pursuant to Section (Class 1 Existing Facilities) permitting of existing private facilities involving negligible or no expansion of use; and

*WHEREAS*, the project and proposed uses will be consistent with the 2027 Kerman General Plan land use designation of General Industrial and the M-2 zoning district; and

*WHEREAS*, said Kerman Planning Commission as a result of its inspections, investigations and studies made in its behalf, has established that the best interests of the City of Kerman and of its residents would be served by conditionally approving Conditional Use Permit No. 10-06.

*NOW, THEREFORE, BE IT RESOLVED* that the Planning Commission, after considering all the evidence presented, determined the following findings were relevant in evaluating this project:

- 1. The project will be in compliance with all applicable provisions of the Zoning Ordinance and is consistent with the General Plan Land Use Designation of General Industrial and the proposed project, as conditioned will comply with the Development Standards of the M-2, General Industrial Zone District;*
- 2. The facilities, improvements and utilities, vehicular ingress, egress and internal circulation, location of buildings and services, walls and landscaping are so arranged that traffic congestion is avoided, pedestrian and vehicular safety are protected and there will be no unreasonable impact on surrounding properties;*
- 3. The Conditions of Approval for the proposed project reinforce General Plan policies and Zoning Ordinance property development standards to ensure that the public's health, safety and welfare are protected.*

*BE IT FURTHER RESOLVED* that the Planning Commission hereby approves Conditional Use Permit No.10-06, subject to the following conditions:

#### General Requirements

1. Conditional use permit No. 10-06 shall expire 12 months after its approval or conditional approval by the Planning Commission.
2. The applicant shall obtain a business license from the Planning & Development Services Department. For a business license application or for more information regarding business license, contact Monica Fonseca at (559) 846-6121.
3. The applicant shall conduct business at the site consistent with the Operational Statement dated May 10, 2010, and filed with the Kerman Planning and Development Services Department on June 23, 2010 (Exhibit 'A'). Any changes in the operations shall require the filing of an application for an amendment to the conditional use permit with the Kerman Planning and Development Services Department. The Planning Director shall refer the amendment to the Planning Commission for review and approval/denial.
4. The shipping, receiving or storing of railcars containing hazardous materials, as defined by the California Department of Transportation (the "DOT"), the applicant will comply with and abide by all DOT regulations as set forth out I 49 Code of Federal Regulations, Parts 100-199, inclusive, as amended from time to time, and provisions contained in applicable Circular's of the Bureau of Explosives, Associate of American Railroads, including any and all amendments and supplements thereto. If the Planning Director finds evidence that the applicant is not in compliance with DOT regulations, the Planning Director may refer the Conditional Use Permit to the Planning Commission for review. If, upon such review, the Commission finds non-compliance with state licensing requirements, the Commission may modify or revoke the use permit.
5. The applicant shall provide an eyewash facility and safety shower during unloading of hazardous material at all times consistent with applicable laws.
6. The applicant shall not store any hazardous material overnight on the track or within the railroad right-of-way subject to this conditional use permit.
7. If the conditions of approval have not been fulfilled or that the use or uses has or have resulted in a substantial adverse effect on the health, and/or general welfare of users of adjacent or proximate property, or have a substantial adverse impact on public facilities or services, the Planning Director may refer the Conditional Use Permit to the Planning Commission for review. The Commission may modify or revoke the use permit.
8. The developer/property owner shall be responsible for obtaining and complying with any applicable encroachment permits from the Public Works Department for any work performed within the public streets and other rights-of-ways.

9. Pursuant to Government Code Section 66474.9, the applicants (including any agent thereof) shall defend, indemnify, and hold harmless, the City of Kerman and its agents, officers and employees, from any claim, action, or proceeding against the City or its agents, officers or employees to attach, set aside, void, or annul the City's approval concerning this application, which action is brought within the time period provided for in Section 55499.37. The City will promptly notify the applicants of any such claim action or proceeding and cooperate fully in the defense.

#### Fire Department

10. The applicant shall provide for spill control and secondary containment for the unloading area of the hazardous material (Super Phosphoric Acid "SPA") from railcars as approved by the Fire Department. The secondary containment area shall have a capacity of not less than 110% of the largest container of hazardous materials. The secondary containment area shall be provided with a liquid tight surface that is compatible with the materials being stored and/or transferred pursuant to CFC Sec. 2704.4 Contact Mike Schmidt, Supervising Fire Prevention Inspector, by phone at (559) 621-4121 or by e-mail at Michael. [Schmidt@fresno.gov](mailto:Schmidt@fresno.gov) for more information regarding this requirement.
11. The plans for the secondary containment area shall also be submitted to the City Engineer for review and approval prior to commencement of any work on the site.
12. The applicant shall provide all necessary precautions to prevent release of hazardous materials (SPA) in any quantity into a sewer, storm drain, ditch, drainage canal, creek, stream, river, lake or tidal waterway or on the ground, sidewalk, street, highway or into the atmosphere pursuant to CFC Sec. 2703.3.
13. The applicant shall be responsible for an unauthorized discharge of hazardous materials and shall complete all actions necessary to remedy the effects of such unauthorized discharge, whether sudden or gradual, at no cost to the city. When deemed necessary by the fire code official, cleanup may be initiated by the fire department or by an authorized individual firm. Costs associated with such cleanup shall be borne by the owner, operator or other person responsible for the unauthorized discharge pursuant to CFC Sec. 2703.3.1.4.
14. The applicant shall remove or otherwise control vegetation adjacent to the rail spur or within the railroad right-of-way subject to this conditional use permit so that it does not constitute a fire hazard or public nuisance.

#### END OF CONDITIONS

#### Exhibits

- A. Operational Statement

*I HEREBY CERTIFY* that the foregoing is a full, true, and correct copy of a Resolution duly and regularly approved by the Kerman Planning Commission for the City of Kerman, California.

\_\_\_\_\_  
Director  
Planning & Development

\_\_\_\_\_  
Date

\_\_\_\_\_  
Applicant  
Actagro, LLC

\_\_\_\_\_  
Date

## Exhibit 'A'

### Operational Plan Actagro, LLC

May 10, 2010

Actagro, LLC is a manufacturer and marketer of specialty fertilizers and soil amendments used in the agriculture industry. Our finished products are Non-Hazardous liquid nitrogen and phosphate solutions. Our manufacturing facility is located at 4516 N. Howard Ave, Biola, California.

Actagro has executed a lease agreement with San Joaquin Valley Railroad for 470 feet of Railroad track near Mile Post 193 in Kerman, California. The track is located just south of California Avenue and east of Madera Avenue.

Actagro will be using this track to unload railcars of raw materials for use in our manufacturing process and to load empty railcars that we lease, with our finished products, for shipment to our customers. Products will not be stored at the rail site, except for in the railcars.

The two incoming products that would be unloaded from the railcars and transported to our manufacturing facility would be liquid Super Phosphoric Acid (SPA) and Agrolig, a dry, mined leonardite ore.

SPA is classified as a Hazardous Material that requires special handling. Our employees are fully trained in the handling of this product. Our employees have multiple years of experience in the following process. SPA will be transferred by pump and portable air compressor from the railcars into our tanker trailer for delivery to Biola. Each railcar holds four tanker loads at approximately 50,000 lbs per load. The entire unloading process will be completed in one day. There will be an Actagro employee that stays at the rail site for the entire duration of the unloading process or until the car is secured. Provided proper transfer procedures are followed, there will be no loss of products to the surrounding area. Railcars are immediately released back to the SJVR once the process is complete. We estimate we will unload 85 railcars of SPA per calendar year.

Agrolig is classified as a Non-Hazardous Material. Agrolig is a dry, black powder material similar to coal and is packaged in one-ton sealed tote bags that will arrive by boxcar. The Agrolig will be off loaded by forklift and transferred onto a flatbed trailer for delivery to our manufacturing facility in Biola. Each boxcar requires four flatbed loads at approximately 50,000 lbs per load. We schedule unloading so that the boxcar will be completely unloaded in one day. There will be an Actagro employee that stays at the rail site the entire time that unloading occurs, until the boxcar is completely unloaded and/or secured. Provided proper transfer procedures are followed there will be no loss of products to the surrounding area. Railcars are immediately released back to the SJVR once the process is complete. We estimate we will unload 15 boxcars of Agrolig per calendar year.

Actagro manufactures liquid nitrogen and phosphate fertilizer solutions that are classified as Non-Hazardous Materials. These liquid products will be pumped out of tanker trailers into railcars for final delivery to our customers. It takes approximately four tanker trailers to fill one railcar. We will not store any

products at the rail site; all products will be unloaded from the tanker trailers directly into the railcars. There will be an Actagro employee that stays at the rail site the entire time that loading occurs, until the railcar is completely loaded and/or secured. Provided proper transfer procedures are followed, there will be no loss of products to the surrounding area. Railcars are immediately released back to the SJVR once the process is complete. We have 4 leased railcars that we try to turn around 4 times per year, for a total of 16 railcars per calendar year.

All products being transferred to or from the rail spur will be immediately loaded or unloaded to or from the railcars and will not be stored at the site. Actagro will not be adding any equipment, storage tanks, lighting or any other miscellaneous equipment to the site. Our use of the location will be kept confined to loading and unloading railcars, in our designated space.

The equipment that will be used consists of the following:

- Diesel Truck
- Flatbed Trailer or Tanker Trailer
- One Ton Flatbed Truck
- Portable Air Compressor

Following are a few pictures of the Railroad site we will be using. Please contact Kirsten Burrows at 559-843-2700 or via email at [burrows@actagro.com](mailto:burrows@actagro.com) should you have any questions.

## Attachment 'B'

### Photographs of Rail Spur and Loading Area



Picture 1 – Looking North West



Picture 1 – Looking East



Picture 3 – Looking West



# City of Kerman

*"Community Comes First"*

Extension Request  
Conditional Use Permit No. 09-02  
(Kearney Palms III)

PLANNING & DEVELOPMENT SERVICES  
REPORT TO THE KERMAN PLANNING COMMISSION  
July 26, 2010

To: Kerman Planning Commission  
From: Luis Patlan, Director of Planning and Development  
Subject: Extension Request – Conditional Use Permit 09-02 (Kearney Palms III)

## Recommendation:

Staff recommends that the Planning Commission adopts Resolution No. 10-10 approving a twelve-month extension of time for Conditional Use Permit No. 09-02, Kearney Palms III/Willow Partners, LLC.

## Background:

The Planning Commission initially approved Conditional Use Permit 09-02 on July 27, 2009 for 44-unit senior apartment project located at the NEC of 9<sup>th</sup> Street and Monterey Avenue CUP 09-02 will expire on July 27, 2010. As such, Mr. Davis Slajchert representing Willow Partners submitted a formal request for an extension of CUP 09-02.

## Discussion

The applicant, Mr. Davis Slajchert of Willow Partners LLC., submitted a letter dated June 16, 2010 requesting an additional 12-month extension of time for Conditional Use Permit 09-02 (copy of letter enclosed herein as Attachment 'A'). As noted in the letter, the applicant is requesting more time in order to secure the tax credit funding for the construction of the final phase of Kearney Palms seniors community. The applicant advised staff that the proposed project was not awarded tax credits in the first round of funding. Mr. Slajchert is hopeful that the project would be awarded tax credits in round two which begins in July 2.

## Conclusion and Recommendation

Staff has reviewed the request and has determined that it is consistent with the requirements of the Zoning Ordinance and that no changes to the originally approved conditions are being recommended. Staff is recommending that the Planning Commission adopts Resolution No. 10-10 (Attachment 'B') approving a 12-month extension of time for CUP 09-02.

### Alternate Action

The Planning Commission may choose to adopt resolution no. 10-10 denying the extension request and revoking Conditional Use Permit 09-02.

### Appeal:

The action of the Planning Commission is final unless an appeal is filed with the City Council pursuant to Chapter 17.22 of the City of Kerman Municipal Code within ten (10) working days after the day on which the decision was made.

### Attachments:

*'A' - Letter from Mr. Davis Slajchert dated June 16, 2010*

*'B' – Resolution No. 10-10, approving a One Year (12 months) Extension for CUP No. 09-02*

*'C' – Resolution No. 10-10, denying extension and revoking CUP No. 09-02*

Attachment 'A'



310 N. WESTLAKE BOULEVARD  
SUITE 210  
WESTLAKE VILLAGE, CA  
91362  
TEL: 805.379.8555  
FAX: 805.379.8556

June 16, 2010

Mr. Luis Patlan  
Director  
Planning and Development Services  
City of Kerman  
942 S. Madera Avenue  
Kerman, Ca. 93630

**Re: Planning approvals extension request for the Kearney Palms III**

Dear Mr. Patlan,

Please accept this letter as our formal request for a 12 month extension of the planning approvals for the Kearney Palms III senior apartment project. In July of 2009 the planning commission approved the project. Later in the year we had hoped to receive tax credit financing for the development. However due to the competitive nature of the tax credit program we are still working on securing our funding for this final phase of the Kearney Palms seniors community.

Enclosed is a check for \$150.00 to cover the administrative costs associated with this request. Thank you for your help in moving this project forward. I look forward to the day when we can begin construction.

Warmest Regards,

Davis Slajchert  
WP Kearney Palms III Senior Apartments

Attachment 'B'

RESOLUTION 10-10

BEFORE THE PLANNING COMMISSION  
CITY OF KERMAN, STATE OF CALIFORNIA

A RESOLUTION APPROVING A TWELVE-MONTH EXTENSION OF TIME FOR  
CONDITIONAL USE PERMIT No. 09-02  
(Kearney Palms III, Willow Partners LLC)

WHEREAS, at a regular meeting of the Planning Commission of the City of Kerman (the "Planning Commission") duly called and held on July 26, 2010, at 6:30p.m., it was moved by Commission member \_\_\_\_\_ and second by Commission member \_\_\_\_\_ and carried that the following resolution be adopted:

WHEREAS, on July 27, 2009 the Planning Commission approved Conditional Use Permit 09-02 to include the development of a 44 unit senior's apartment on the NEC of Ninth Street and Monterey Avenue; and

WHEREAS, Conditional Use Permit No. 09-02, is set to expire on July 27, 2010, and on June 16, 2010, prior to the expiration date the applicant, Mr. Davis Slajchert, submitted a written request for a twelve-month extension of time prior to the expiration of CUP 09-02 consistent with Section 17.12.100 of the Zoning Ordinance; and

WHEREAS, the request for an additional extension of time does not propose any changes in the scope of the project and no changes in circumstances have been identified that would affect the project; and

WHEREAS, the Planning Commission of the City of Kerman considered the extension request at its regular meeting of July 27, 2010 and considered the staff report, all accompanying information, and testimony received from the applicant and other interested parties.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Kerman:

1. Hereby approves a twelve-month extension of time for CUP 09-02 to July 27, 2011 as requested by the applicant.
2. The granting of a time extension for CUP 09-02 is not likely to be detrimental to the health, safety, peace, comfort, morals or general welfare of the neighborhood or the City.
3. No change has occurred in the circumstances or in the factual basis on which approval was made since the date of the original approval, which results in the inability to make findings of approval for the extension consistent with those originally made.
4. All of the conditions of approval originally approved for Conditional Use Permit 09-02 shall remain unchanged.

Passed and adopted at a regular meeting of the Kerman Planning Commission held on July 26, 2010, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED BY:

\_\_\_\_\_  
Chairman, Robert D. Epperson

\_\_\_\_\_  
Date

\_\_\_\_\_  
Secretary, Olivia Pimentel

\_\_\_\_\_  
Date

Attachment 'C'

RESOLUTION NO. 10-10  
BEFORE THE PLANNING COMMISSION  
CITY OF KERMAN, STATE OF CALIFORNIA

A RESOLUTION DENYING AND REVOKING  
CONDITIONAL USE PERMIT No. 09-02 (Kearney Palms III, Willow Partners LLC.)

WHEREAS, at a regular meeting of the Planning Commission of the City of Kerman (the "Planning Commission") duly called and held on July 26, 2010, at 6:30p.m., it was moved by Commission member \_\_\_\_\_ and second by Commission member \_\_\_\_\_ and carried that the following resolution be adopted:

WHEREAS, on July 27, 2009 the Planning Commission approved Conditional Use Permit 09-02 to include the development of a 44 unit senior's apartment on the NEC of Ninth Street and Monterey Avenue; and

WHEREAS, Conditional Use Permit No. 09-02, is set to expire on July 27, 2010, and on June 16, 2010, prior to the expiration date the applicant, Mr. Davis Slajchert, submitted a written request for a twelve-month extension of time prior to the expiration of CUP 09-02 consistent with Section 17.12.100 of the Zoning Ordinance; and

WHEREAS, the request for an additional extension of time does not propose any changes in the scope of the project and no changes in circumstances have been identified that would affect the project; and

WHEREAS, the Planning Commission of the City of Kerman considered the extension request at its regular meeting of July 26, 2010, and considered the staff report, all accompanying information, and testimony received from the applicant and other interested parties.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Kerman, base on public testimony received and based on its own independent judgment, does hereby deny the request for time extension and revokes Conditional Use Permit 09-02, based on the following:

1. The Planning Commission originally approved Conditional Use Permit 09-02 on July 27, 2009 for development of the project.
2. The applicant has failed to commence the project as authorized in the Conditional Use Permit 09-02 within the time provided by the initial approval of CUP 09-02 by the Planning Commission.
3. The applicant has failed to provide any evidence or verification to the satisfaction of the Planning Commission that the project will move forward within the time requested by the extension.

4. The Planning Commission hereby denies the extension of time and revokes Conditional Use Permit 09-02 Pursuant to section 17.12.120 of the Kerman Municipal Ordinance effective July 27, 2010.

Passed and adopted at a special meeting of the Kerman Planning Commission held on July 26, 2010, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED BY:

\_\_\_\_\_  
Chairman, Robert D. Epperson

\_\_\_\_\_  
Date

\_\_\_\_\_  
Secretary, Olivia Pimentel

\_\_\_\_\_  
Date