

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

WHEREAS, James E. Kinsey, Sr., in reference to Orange River Centre, has properly filed an application for a rezoning from C-1 and AG-2 to Commercial Planned Development, to permit a commercial shopping and office center with a 150-room motel, not to exceed 45 feet in height above average grade, on 12.5 total acres of land.

NOTE: If approved, the Master Concept Plan (available for inspection at 1831 Hendry Street in Fort Myers) will deviate from the following Lee County Standards:

- (1) Deviation from the requirement that all commercial and industrial uses shall provide a continuous visual screen of at least 8 feet in height along any lot line abutting a residential use (Section 202.14.E.1.), to allow an opaque vegetative covered fence 8 feet in height;
- (2) Deviation from the required minimum setback between structures and the centerline of arterial street without a frontage road of one-half the right-of-way plus 25 feet (Section 202.18.B.2.a.), to allow one-half the right-of-way plus 20 feet;
- (3) Deviation from the minimum setback from a structure to a water body of 25 feet (Section 202.18.B.4.b.), to allow 0 feet for an architectural feature only;
- (4) Deviation from excavation depth for water retention from 12 feet (Section 509.B.), to the first confining layer;
- (5) Deviation from the required minimum water retention excavation setbacks to a street right-of-way of 150 feet (Section 509.C.4.), to allow 25 feet;
- (6) Deviation from the required minimum water retention excavation setbacks to a private property line of 50 feet (Section 509.C.4.), to allow 25 feet;
- (7) Deviation from the requirement that a 4-foot fence be placed around excavations for water retentions when located less than 100 feet from any property under separate ownership (Section 509.F.), to require no fencing;
- (8) Deviation from the required minimum intersection separation of 660 feet along arterial streets (DSO Section C.3.h.), to 435 feet and 525 feet.
- (9) Deviation from the requirement that the density of transient hotel/motel units be calculated at 1,700 square feet per unit (Section 514.B.4.), to permit the density of transient hotel/motel units to be calculated at 875 square feet per unit with a maximum of 150 units.

WHEREAS, the subject property is located on the southeast quadrant of I-75 and SR-80, bounded on the east by Orange River Boulevard, described more particularly as:

LEGAL DESCRIPTION: In Section 03, Township 44 South, Range 25 East, Lee County;

That portion of Lots 9 and 16, of Block 3, TERRY, TICE & VANDAWALKER'S SUBDIVISION, as recorded in Plat Book 1, page 46 of the public records of Lee County, Florida, described as follows:

Begin at the intersection of the center line of Orange River Boulevard and the West line of said Lots 9 and 16 (same being the Southwest corner of said Lot 16) and run North on the West line of Lots 9 and 16, 241 feet to the POINT OF BEGINNING of the property herein described;

THENCE continue North along the West line of said Lots 9 and 16, 759.14 feet to the Southerly right-of-way line of Palm Beach Boulevard;

THENCE N.58°48'03"E. along the said Southerly right-of-way line, 357.96 feet to its intersection with the Westerly right-of-way line of Boat Ways Road (50 foot right-of-way);

THENCE S.00°03'25"W. along said right-of-way line 942.61 feet;

THENCE S.89°37'55"W. and parallel to the South line of Lot 16, 305.26 feet to the POINT OF BEGINNING; together with that portion of an abandoned roadway lying between said Lots 9 and 16. Being in Section 03, Township 44 South, Range 25 East, Lee County Florida. 5.7 acres more or less.

AND

Lots 4, 5 and 8 1/2 together with those portions of abandoned roadways lying between said lots in Block 3, Terry, Tice and Vandawalker's Subdivision, according to the map or plat thereof on file and recorded in the Office of the Clerk of the Circuit Court recorded in plat Book 1, Page 46, excepting therefrom that portion described in order of taking recorded in O.R. Book 1123, Page 910, Public Records of Lee County, Florida. Also excepting therefrom that portion described in order of taking recorded in O.R. Book 1358, Page 2335, Public Records of Lee County, Florida. Less the Southerly 216 feet.

AND

Begin at the intersection of the North line of Orange River Boulevard and the East line of Lot 15, Terry, Tice & Vandawalker's Subdivision, according to plat thereof recorded in Plat Book 1, Page 46, of the Public Records of Lee County, Florida, THENCE run North at right angles to Orange River Boulevard, a distance of 459.7 feet to POINT OF BEGINNING of land herein described; THENCE West at right angles 73 feet; THENCE North at right angles 180 feet; THENCE East at right angles 73 feet; THENCE South at right angle 180 feet to POINT OF BEGINNING, less and except that part of said premises lying within I-75 corridor.

WHEREAS, the applicant has indicated the property's current STRAP numbers are: 03-44-25-01-00044.0000;

03-44-25-01-00045.0020; and

03-44-25-01-00046.0070; and

WHEREAS, proper authorization has been given to David M. Jones, Jr. & Associates, Inc., and Humphrey & Myers, P.A., by James E. Kinsey, Sr., trustee, the fee simple owner of the subject parcel, to act as agent to pursue this zoning application; and

WHEREAS, a public hearing was legally and properly advertised and held before the Lee County Hearing Examiner, with full consideration of all the evidence available; and

WHEREAS, the Lee County Hearing Examiner fully reviewed the matter in a public hearing held on August 1, 1989, September 6, 1989, and September 13, 1989; and

WHEREAS, a public hearing was legally and properly advertised and held before the Lee County Board of County Commissioners; and

WHEREAS, in the legislative process the Lee County Board of County Commissioners gave full and complete consideration to the recommendations of the staff, the Hearing Examiner, the documents on file with the county, and the testimony of all interested persons.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS, that the Board of County Commissioners does hereby APPROVE WITH CONDITIONS a rezoning from C-1 and AG-2 to Commercial Planned Development, subject to the following conditions:

- a. The development of this property shall be in accordance with the one-page Master Concept Plan entitled Orange River Centre, completed for Mr. James Kinsey, Kinsey Associates, Inc., Realtors, prepared by David M. Jones, Jr., and Associates, Plan dated March 7, 1989, revised June 22, 1989, and stamped received June 26, 1989, except as may be modified by the conditions herein. Approval of this request does not exempt the applicant from compliance with all development regulations, except as specifically approved herein.
- b. The maximum total floor area shall be limited to 100,000 square feet, of which no more than 40,000 square feet of retail use (those uses which must meet site location standards) shall be developed. The maximum allowable height shall be 45 feet above average grade or two habitable floors except that any motel constructed on the subject real estate may have one cupola or small decorative structure which shall not exceed 53 feet above average grade.
- c. The uses allowed on the portions of the Master Concept Plan designated as Tracts A, B, C and D are set out in the chart below with an "X" designating the specific use as allowed on the tract represented by that column of the chart (asterisks indicate uses not allowed to be developed on the two southernmost parcels in Tract D):

LAND USE	TRACT			
	'A'	'B'	'C'	'D'
Animal Clinic (df)		X	X	X
Animal Kennel (df)		X		X*
Automatic Teller Machines (ATM'S)	X	X		X*
Auto Parts Store, no installation or service	X	X		X*
Auto Repair and Service	X	X		X*
Group I				
Section 1001.02				

LAND USE	TRACT			
	'A'	'B'	'C'	'D'
Automobile Service Station, Limited	X	X		X*
Banks and Financial Establishments	X	X	X	X
All Groups				
Section 1001.03				
Bar or Cocktail Lounge (see condition d)		X		X*
Boat Parts Stores, no installation or service		X		X*
Broadcasting Studio		X	X	X
Commercial Radio and Television				
Section 547				
Business Services		X	X	X
Group I and II, All Categories				
Section 1001.05				
Car Wash (df)	X	X		X*
Cleaning and Maintenance Services		X		X
Section 1001.07				
Clothing Stores, General		X		X
Section 1001.08				
Clubs		X		X
Commercial, Fraternal, Membership Organization, Section 202.08				
Consumption on Premises - 2	X	X		X*
Section 202.03 (see condition d)				
Convenience Food and Beverage Stores (df)	X	X		
Day Care Center		X	X	X
Child and/or Adult				
Section 506(1)				
Drive-thru Facility	X	X		X*
For any permitted use				
Drugstore	X	X		X
Excavation	X	X	X	X
Water Retention				
Section 509				
Food Store	X	X	X	X*
Group I and II				
Section 1001.16				
Governmental Services	X	X	X	X
Standard Office Space				
Hardware Store (df)	X	X		X
Health Care Facility	X	X		X
Group III				
Sections 512 and 1001.20				
Hobby, Toy and Game Shops		X		X
Section 1001.21				
Hotel/Motel				X
Section 514, not on south 250' of Tract D				
Household/Office Furnishings	X	X		X
Group I and II				
Section 1001.22				
Insurance Companies	X		X	X
Section 1001.23				
Laundry or Dry Cleaning	X	X		X*
Group I				
Section 1001.24				
Lawn and Garden Supply Store (df)	X	X		X
Section 523				
Music Store (df)	X	X		X
Night Club (df)	X	X		X*
Non-store Retailers		X		X
All Groups				
Section 1001.30				

LAND USE	TRACT			
	'A'	'B'	'C'	'D'
Offices, Medical			X	X
Package Store (see condition d.)	X	X		X*
Section 202.03				
Paint, Glass, and Wallpaper Store (df)	X	X		X
Parks, Public and Private (df)		X	X	X
Group I				
Section 1001.32				
Personal Services		X	X	X
All Groups				
Section 1001.33				
Pet Shop (df)		X		X
Pharmacy (df)	X	X		X
Recreation, Commercial		X	X	X
Group II and IV				
Section 1001.38				
Recreation Facilities		X	X	X
Personal, Private, Public (df)				
Religious Facilities			X	X
Section 521				
Repair Shops		X		X
Group I and II				
Section 1001.40				
Restaurant, Fast Food (df)	X	X		X*
Restaurants, Standard	X	X		X*
All Groups				
Section 1001.44				
Schools, Commercial		X		X
Section 1001.45				
Self Service Fuel Pumps (df)				
Ancillary to a permitted use	X	X		
Self Service Fuel Pump Station (df)	X	X		
Signs	X	X	X	X
Provided same comply with the Lee County Sign Ordinance				
Social Services		X		X*
Group I				
Section 1001.46				
Specialty Retail Shop	X	X		X
Groups I, II, III and IV				
Section 1001.47				
Studios		X	X	X
Section 1001.49				
Used Merchandise Stores				
Groups I and II only				
Section 1001.54				
Variety Store (df)	X	X		X

- d. A bar or cocktail lounge and consumption on premises shall be allowed only in accordance with Section 202.03.D.1.a.1. of the Zoning Ordinance, as amended. Only one consumption on premises, one bar or cocktail lounge, and one package store shall be allowed on the real estate represented by the Master Concept Plan.
- e. The fronts of any building adjacent to Orange River Boulevard shall be oriented to face away from Orange River Boulevard.
- f. Utility transformers, waste and rubbish storage areas, loading docks and similar accessory equipment located within the area represented by the Master Concept Plan shall be screened from view.

- g. All structures shall be designed to be architecturally compatible with one another and landscaping arranged to compliment and tie together the designs among individual parcels. This condition shall be incorporated into all pertinent covenants and restrictions involved in the sale or lease of any portion of the subject property and incorporated in the rules, restrictions and covenants of any property owners or tenants association.
- h. A type "C" buffer shall be provided along all property lines abutting residential uses. The buffer shall include an eight (8) foot high fence and the number of trees and shrubs required for a type "D" buffer.
- i. The rezoning by approval of the Master Concept Plan does not certify or indicate in any way that this project's traffic impacts have been mitigated. Additional conditions to mitigate traffic impacts, including but not limited to additional left turn lanes on to S.R. 80, may be required before issuance of a local development order.
- j. The southerly driveway access to the East-West portion of Orange River Blvd shown on the Master Concept Plan shall be eliminated.
- k. The northernmost driveway or access point, shown on the Master Concept Plan as 435 feet from Palm Beach Boulevard, shall be constructed in a manner which allows departing vehicles to make only right turns and a median sufficient to prevent vehicles approaching S.R. 80 from the south from making left turns into this driveway or access point shall be installed at the Applicant's expense following design approval by Lee County DOT&E.
- l. There shall be no direct vehicular access from the real estate represented in the Master Concept Plan onto Orange River Boulevard except at those driveway access points shown on the approved Master Concept Plan. This condition shall be incorporated into all pertinent covenants and restrictions imposed on purchasers of any of the subject real estate and shall be known to and associated with any property owners or tenants association connected with the subject real estate.
- m. Public utility water service shall be required. Temporary septic tanks shall be allowed within this development upon proper application and approval by the appropriate permitting agencies provided that the permitted uses in the overall development do not produce or are not rated or considered to produce, in total, more than 5,000 gallons of sewage per day. Upon a determination by the appropriate agencies of Lee County that the 5,000 gallon per day standard has been met or exceeded, septic tank use shall be discontinued.
- n. The existing native vegetation along the western property line shall be preserved and a plan showing preservation of this vegetation shall be provided prior to final plan approval.
- o. Hurricane Mitigation

The following conditions with respect to hurricane impact mitigation shall be imposed on any hotel, motel or lodging facility constructed on any portion of the real estate represented by the approved Master Concept Plan:

1. The owner of the motel/hotel shall establish and maintain a written emergency plan that consists of appropriate procedures to be followed in the event of a hurricane emergency.

2. The owner of the motel/hotel will coordinate the development of said written emergency plan with the Lee County Department of Public Safety.

p. Emergency Medical Service

1. The applicant shall provide for the Emergency Medical Service impacts generated by the proposed development (must be in compliance with the EMS fire related impact fee ordinance).
2. At the completion of development construction or each phase thereof, a development representative shall contact Lee County Emergency Medical Service to discuss 1) the designation of emergency helicopter landing zone(s); and 2) the accessibility of the EMS unit.

q. Fire Protection

The applicant shall contact the respective fire protection district to discuss the proposed development in relation to the potential type, use and storage of hazardous materials which will be located on the premises.

Deviation (1) is hereby APPROVED as restricted in condition h.

Deviation (2) has been WITHDRAWN by the applicant.

Deviation (3) is hereby APPROVED for the following accessory structures only: decks, porches, cabanas, gazebos, and pedestrian bridges.

Deviation (4) is hereby APPROVED subject to the following condition:

The depth of the confining layer shall be established by the submittal of test borings from a registered engineer from the location of the proposed excavation prior to the approval of a final development order.

Deviation (5) is hereby APPROVED subject to the following condition:

No retention areas shall be placed within the existing or proposed rights-of-way pursuant to the Lee County Trafficways Map.

Deviation (6) is hereby APPROVED subject to the following condition:

The setback reduction is only allowed if there is a fence between the subject property and the property to the south and southwest (areas abutting single family homes).

Deviation (7) is hereby APPROVED.

Deviation (8) is hereby APPROVED subject to the following condition:

The northernmost access point, which would be located 435 feet from Palm Beach Boulevard, shall be allowed only with right turns in and out, and a median shall be developed subject to design approval by the Director of the Lee County Department of Transportation and Engineering.

Deviation (9) is hereby APPROVED subject to the condition that the transient hotel/motel be calculated at 995 square feet per unit or 44 units per acre. Only a maximum of 120 units shall be allowed to be developed on tract "D" (not on the south 250 feet of tract "D").

Site Plan 89-077 is attached hereto and incorporated herein by reference, as a reduced copy of the Master Concept Plan.

The following findings of fact were made in conjunction with this approval of Commercial Planned Development zoning:

- A. That the nature of commercial development in this area, the manner in which I-75 was constructed and the classification of this I-75 interchange as General Commercial in the Lee Plan created an island of commercial property which is not presently marketable without approval of a use or group of uses which accommodate I-75 travelers, and that these circumstances constitute changed or changing conditions which make the approval of this rezoning appropriate.
- B. That approval of the requested Commercial Planned Development will have a positive impact on the intent of the Zoning Ordinance in view of the land use category of the subject real estate and the practical need for moderate priced lodging facilities located where they will serve the traveling public.
- C. That the proposed use is consistent with the stated goals, objectives, policies and intent of the Lee Plan, as last amended.
- D. That the proposed Commercial Planned Development, subject to conditions and deviations, meets all of the performance and locational standards of the Lee Plan and of the Zoning Ordinance except for those deviations approved as part of this request.
- E. That the requested rezoning does not involve a change to a Future Urban Area category.
- F. That urban services are presently available at this location.
- G. That the requested rezoning to Commercial Planned Development, subject to conditions and deviations, is consistent with the densities, intensities and general uses set forth in the Lee Plan, as last amended.
- H. That the requested rezoning to Commercial Planned Development, subject to conditions and deviations, will be compatible with existing and planned land uses in the area. That, due to the classification of this area in the Lee Plan as a General Commercial Interchange, any potential incompatibility with the residential uses located across Orange River Boulevard is adequately addressed by Orange River Boulevard, which separates and buffers the proposed Commercial Planned Development, and the requirement that the buildings constructed abutting Orange River Boulevard have the front facing west further buffers the adjoining areas from traffic impacts and noise.
- I. That the requested rezoning to Commercial Planned Development, subject to conditions and deviations, will not cause damage, hazard or nuisance or other detriment to persons or property and will not place an undue burden on existing transportation services or on existing government services or facilities.
- J. That the requested rezoning to Commercial Planned Development, subject to conditions and deviations, will be in compliance with all applicable general zoning provisions and supplemental regulations pertaining to the requested use.

The foregoing Resolution was adopted by the Lee County Board of County Commissioners upon a motion by Commissioner John Manning, and seconded by Commissioner Bill Fussell and, upon being put to a vote, the result was as follows:

John E. Manning	<u>aye</u>
Charles L. Bigelow, Jr.	<u>absent</u>
Ray Judah	<u>aye</u>
Bill Fussell	<u>aye</u>
Donald D. Slisher	<u>absent</u>

DULY PASSED AND ADOPTED this 27th day of November, A.D., 1989.

ATTEST:
CHARLIE GREEN, CLERK

BY: [Signature]
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: [Signature]
Chairman

Approved as to form by:

[Signature]
County Attorney's Office

FILED

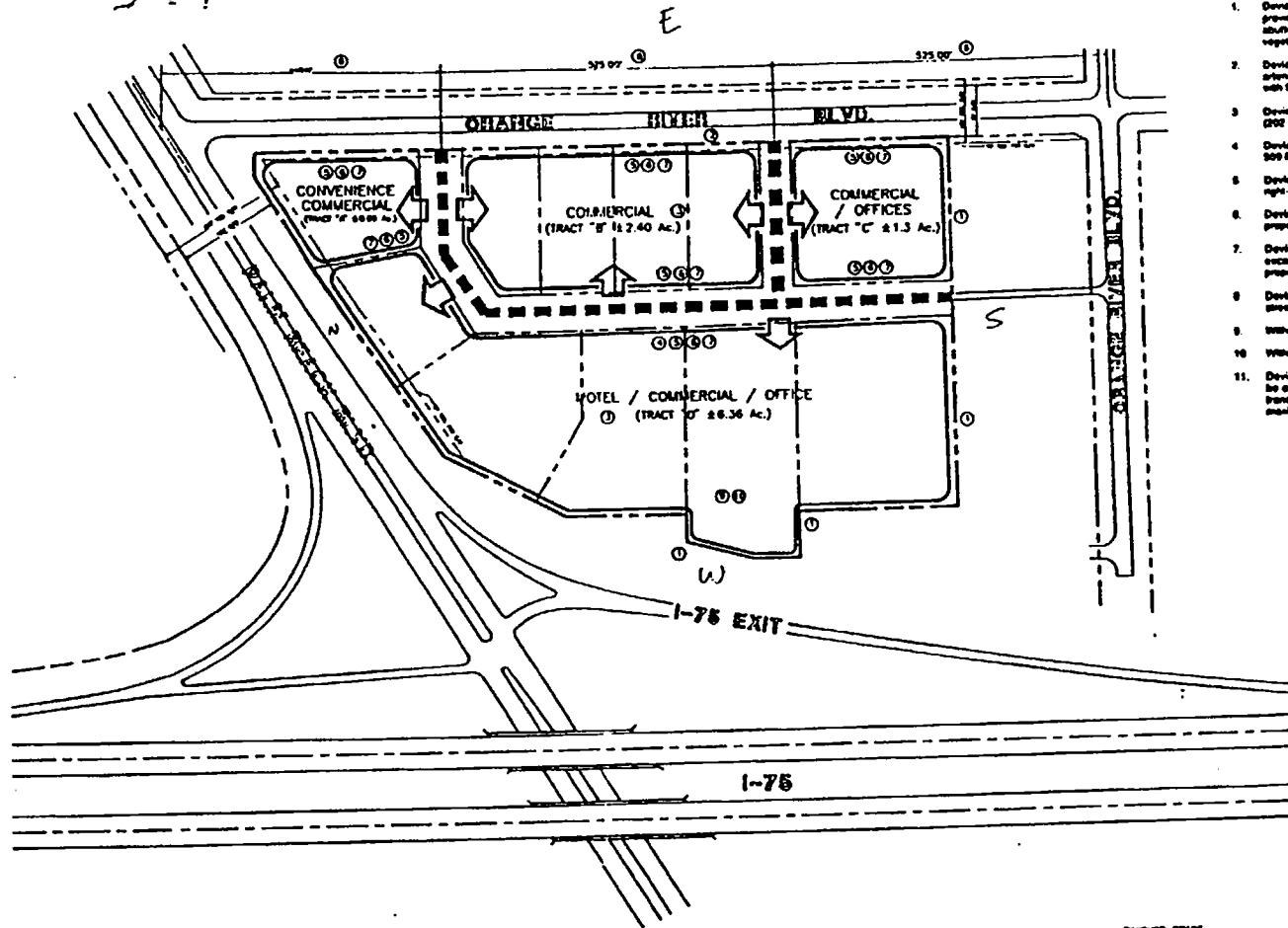
MAR 05 90

CLERK CIRCUIT COURT
BY [Signature] D.C.

SCHEDULE OF USES

LAND USE	TYPE	AREA
1. Single-Family Detached	1	
2. Single-Family Attached	2	
3. Two-Family Detached	3	
4. Two-Family Attached	4	
5. Multi-Family Detached	5	
6. Multi-Family Attached	6	
7. Commercial/Industrial	7	
8. Office	8	
9. Retail	9	
10. Restaurant	10	
11. Entertainment	11	
12. Public Use	12	
13. Institutional	13	
14. Cemetery	14	
15. Open Space	15	
16. Agricultural	16	
17. Forest	17	
18. Wetlands	18	
19. Water	19	
20. Air	20	
21. Noise	21	
22. Light	22	
23. Heat	23	
24. Vibration	24	
25. Electromagnetic Interference	25	
26. Radio Frequency Interference	26	
27. Other	27	

STAFF 1



SCHEDULE OF DEVIATION

- Deviation from the requirement that all commercial and industrial uses shall provide a continuous visual screen of at least 8 feet in height along any lot line abutting a residential use (202 14 E, 1 and also Table C-2), to allow an opaque vegetative covered fence 8 feet in height;
- Deviation from the minimum setback between structures and the centerline of arterial street without frontage road of 1/2 the right-of-way plus 40' (plus 25' if a with frontage road) (202 10 B 2.4), to 1/2 the right-of-way plus 25 feet;
- Deviation from the minimum setback from a structure to a water body of 25 feet (202 10 B 4.1), to 0 feet for an architectural feature only, e.g. wooden dock;
- Deviation from excavation depth for water retention from 12 feet (Section 509 B), to the confining layer;
- Deviation from the minimum water retention excavation setbacks to a street right-of-way of 150 feet (500 C.4) to 25 feet;
- Deviation from the minimum water retention excavation setbacks to a private property line of 30 feet (500 C.4) to 25 feet;
- Deviation from the requirement that 0.4-foot trees be placed around excavations for water retention when located less than 100 feet from any property under separate ownership (500 F), to require no landscaping;
- Deviation from the minimum intersection separation of 600 feet along arterial streets (202 Section C.3 b.1), to a 420 foot and a 525 foot;
- Withdrawn;
- Withdrawn;
- Deviation from the requirement that the density of transient hotel/motel units to be calculated at 1,700 square feet per unit (514.3 A.1), to permit the density of transient hotel/motel units to be calculated at 875 square feet per unit with a maximum of 150 units;

SITE DATA

LAND USE	TYPE	ACREAGE
1. Commercial/Office Area	A	11.6 Acres
2. Hotel/Transient	B	10.4 Acres
3. Total Site Area		22.0 Acres

GENERAL NOTES

- Maximum building height is 40' above grade for all buildings with the exception of a church. If a church is constructed, the maximum height of the building shall not exceed 40', however, a height may be 10' above grade.
- The density of transient hotel/motel units shall be determined by the number of units per acre. The density shall be determined by the number of units per acre. The density shall be determined by the number of units per acre.
- The proposed and proposed 1/2" buffer shall be shown on right-of-way along arterial streets. The buffer shall be shown on right-of-way along arterial streets and the number of trees and shrubs required for a 10' buffer.
- The lot lines shown on the Master Concept Plan are intended to show the preliminary arrangement of parcels within the project. Final lot arrangements shall be presented as the final site plan. The final site plan shall be submitted to the Planning Department for review.
- Proposed, shown but for a single building per lot, however, the density of buildings may be placed on a single lot in accordance with applicable codes.



APPROVED

Master Concept Plan
Site Plan # 81-277 (1st L.R.)
Subject to conditions in Resolution 2-82-77
Zoning Code # 22-2-1-1001

SCALE: 1" = 100' - 0"
0 50 100 200 300
DATE: 12-12-88



PREPARED FOR
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(813) 324-1207

ORANGE RIVER CENTRE

REVISION	DATE	MAP-H
SUBJECT RESPONSE	03-07-89	
SUBJECT RESPONSE	06-22-89	

MASTER CONCEPT PLAN