



Ragghianti|Freitas LLP

Attorneys at Law

1101 5<sup>th</sup> Avenue, Suite 100  
San Rafael, CA 94901  
telephone 415.453.9433  
facsimile 415.453.8269  
www.rflawllp.com

Riley F. Hurd III  
rhurd@rflawllp.com

January 25, 2021

**Via E-Mail Only**

Thomas Lai  
Community Development Department  
County of Marin  
3501 Civic Center Drive, Room #308  
San Rafael, CA 94903

**Re: North Coast Land Holdings (P1490) -- New CUP required for educational use**

Dear Mr. Lai:

Our office continues to represent the Seminary Neighborhood Association in connection with North Coast Land Holdings' proposal to redevelop the old Seminary site. This letter is regarding a critical missing component of the application currently on file with the County.

**Specifically, if NCLH seeks an educational use at the property, a new CUP for that use is required.** The 1953 Use Permit allowing a self-contained seminary to operate at the property was superseded by the approval of a 1984 Master Plan for the site. When the Master Plan expired, so did the right to operate an educational use. Accordingly, in order for the current application to be complete, it must also include a request for a Use Permit for a school, and clearly describe the operational characteristics of said school such that there can be meaningful environmental review, as well as an informed consideration of the required CUP findings.

**Background**

The Golden Gate Baptist Theological Seminary ("GGBTS") bought the Strawberry property in September of 1953. In October of 1953, the GGBTS obtained an initial CUP from the County that allowed for a very specific use: **"a Theological Seminary and dormitories and other building incidental to such use."**



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## USE PERMIT

Under the provisions of Section 20 of Ord. No. 264, the Zoning Ordinance of the County of Marin, State of California.

A USE PERMIT is hereby granted authorizing Edward D. Landels  
(Name of person)  
to permit the construction of a Theological Seminary and dormitories and ~~xxx~~ other buildings incidental to such use, subject to the attached conditions.  
(Use of land, building or structure proposed to be conducted) dition.

The record for the CUP indicates that there were specific operational characteristics that were a part of the Seminary's application, and that a single initial condition of approval was also placed on the CUP.

On October 6, 1953, the Planning Director for the County wrote a staff report for the Board of Supervisors in advance of their consideration of the Seminary's Use Permit. This report set forth a set of six "general facts" regarding the application. In summary, the general facts about the application were as follows:

1. The property would be developed as a "self-contained unit."
2. A buffer of "recreational open land" would surround the entire property.
3. There would be approximately 1,000 students, and **all of the students would be housed on-site**. Married students would live in on-site apartments, and single students would live in on-site dorms.
4. The community supported the presence of a post-graduate institution.
5. The community liked that the school would pay its fair share to local service districts.
6. Further review of a development plan for the property would be needed to ensure an appropriate layout of buildings on the site.

The conclusion of the October 6, 1953, staff report noted that the Planning Commission voted to recommend that the Board of Supervisors approve the CUP "as above set forth," on the condition that the Seminary come back to the Commission for approval of a development plan for the property.



The Board of Supervisors then approved the application, **inclusive of its details regarding housing, open space, and enrollment**, and did impose the condition that “prior to any construction or improvement, the applicant shall secure the approval of the Marin County Planning Commission.”

After approval of the initial 1953 CUP, GGBTS spent years developing a campus plan and returning to the Planning Commission for what the minutes repeatedly describe as **“Reconsideration of Use Permit.”** The record is clear that many conditions beyond the sole original condition were added to the CUP over the years. For example, on July 29, 1957, a hearing was held regarding **“reconsideration of original use permit conditions.”** At this hearing, a condition regarding the construction of one of the residences on the Seminary property was amended (i.e. the condition **already existed**, so clearly more conditions were added **beyond** the first one). The CUP, and its conditions, evolved as the Campus Plan was developed, and new and different conditions were added.

On October 28, 1957, another use permit condition was amended regarding the dedication of West Seminary Drive. Even on April 3, 1958, the Planning Commission was holding a hearing for the GGBTS project labeled **“reconsideration of use permit conditions.”** Clearly, the original condition to the CUP that the applicants return to the Planning Commission for approval of their development plan led to a much more robust and evolved set of conditions and an ultimate CUP allowing for the construction of the project.

### Why does all of this matter?

Because, in the early 1980’s, GGBTS applied for a Master Plan for the entire property in order to allow for more development. The narrative in this Master Plan indicates that, at the time, GGBTS felt it had a vested right in its existing CUP, and therefore a Master Plan was not necessary for further development. However, the Master Plan itself states that **GGBTS ultimately decided not to try and rely on any allegedly remaining vested rights, and instead applied for, and fully participated in, the Master Plan process.** The Master Plan was eventually approved by the County Board of Supervisors in March of 1984.

Condition 19 of the Master Plan stated the following:

**“With the approval of this Master Plan, the previously approved 1959 Campus Plan Use Permit shall become null and void and of no further effect or benefit.”**



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The Master Plan is unequivocal that it became the governing entitlement document for the property, and that the CUP, as amended by the many hearings through 1959, was now null and void.

However, when asked about this specific language, we were informed by County staff that the term “1959 Campus Plan Use Permit” was not referring to the use permit for the property, but instead to an approval for a roadway. Only recently have we actually been provided with the document that the County claimed was nullified by the Master Plan, and it simply is not, and cannot be, the referenced “1959 Campus Plan Use Permit.”

Instead, what the County provided was a document entitled “**Improvement Agreement Under Conditional Use Permit**.” Just as it sounds, this document is an improvement agreement by which the GGBTS agrees to dedicate and bond a roadway, which was a condition of its amended CUP. All throughout the Improvement Agreement there are specific references to the actual use permit that required the improvement agreement. Nearly all of the WHEREAS sections of the Improvement Agreement reference the Use Permit granted to GGBTS, and that the Improvement Agreement is being entered into as a condition of said use permit. Despite further requests, the County has failed/refused to provide the actual ultimate CUP referenced time and again in years of minutes.

It is unclear how or why the County would ever assert that an Improvement Agreement was somehow the document deemed null and void by the Master Plan, when the Master Plan so clearly states it is replacing a 1959 Campus Use Permit. Unfortunately/mysteriously, the staff report for the BOS meeting where the Master Plan was approved has gone missing from the County files. There are multiple examples countywide of Master Plans in the 80’s replacing Conditional Use Permits from the 50’s and 60’s. During this era, Master Plans were utilized as site-specific zoning, approving both uses and physical development. That’s exactly what happened here. If the County is unaware of these examples, we are happy to provide specific references.

GGBTS ended up obtaining quite a windfall from the Master Plan, including a significant amount of market rate housing, which was supposedly going to finance future school infrastructure. Of course, we now know that the market rate housing was built and sold, but the needed campus improvements were never made.



Ultimately, on December 12, 2017, after many extensions, the Master Plan for the Seminary expired. When the Plan expired, the property reverted back to its traditional RMP zoning designation, which, pursuant to Table 2-3 in Code Section 22.10.030, **only allows educational uses with a conditional use permit**. Accordingly, if NCLH seeks to establish a new academic use at the property, a new Master Use Permit is required.

### **What if the 1953 Use Permit Still Applies?**

It doesn't matter, **unless** NCLH is interested in running a self-contained seminary. While CUPs run with the land (unless nullified) -- "Subsequent owners of the land have no greater rights than those of the owner at the time the conditional use permit was issued." A use permit, "is both a grant of authority to use and a limitation on the authorized uses of the property." (*Sports Arenas Properties, Inc. v. City of San Diego* (1985) 40 Cal. 3d. 808, 815.) "Absence of conditions in the use permit does not mean that the permittee may make use of the property permitted neither by the use permit nor by the zoning ordinance without permit." (*Id.*) "A use permit "must be read in the light of the application for it, and when that is done, it is apparent that the terms of the permit are clear." (*Id.* at 815-16.)

Here, GGBTS applied for and was granted a CUP for a theological seminary and, pursuant to the cases cited above, the terms of the application as described by the Planning Director's report to the Board are tantamount to "conditions." Setting case law aside, it is clear that the terms of the application describe and control the use being approved. The applicant has stated *as nauseum* that they have a right to an enrollment level of 1,000 students. This number only comes from the project description, not from a particular condition. Specifically, the project description stated:

"There would be approximately 1,000 students, and **all of the students would be housed on-site**. Married students would live in on-site apartments, and single students would live in on-site dorms."

So, any assertion of a right to 1,000 students cannot ignore the words immediately following that number, which clearly required all students to be housed on site. One cannot cherry pick only the project specifications they desire, while ignoring other specifics that may be limiting.

The difference between the community impacts of a seminary, versus the impacts of other types of schools, cannot be understated. It was these very differences that played a central part in the granting of the CUP in the first place (the self-contained nature of the Seminary carried the day).



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Other types of school uses generate significantly more vehicle trips, noise, and other impacts, at a level far greater than the self-contained post-graduate institution contemplated in 1953. So, even if the voided CUP were somehow still valid, it would only allow for a theological seminary with on-campus housing, not any and every “school” type of use.

### Conclusion

In order for the current application to be complete, it must include a request for a Use Permit for a school, and clearly describe the operational characteristics of said school such that there can be a meaningful environmental review, as well as an informed consideration of the required CUP findings. The current failure to provide **any information whatsoever** about the new school use, which is central to the property, and most significant in its impact, leaves a gaping hole in the application. It is this total lack of data that caused the Seminary Neighborhood Association to appeal the decision to start an EIR. Despite requests from the Board of Supervisors, and assurances from planning staff, there has yet to be any description of the new school use the applicant seeks to entitle. The County needs to hit pause until this information is provided.

Any entitlement or EIR without a school CUP will be null and void, and subject to legal challenge. Accordingly, it seems best for all involved that the school be described and analyzed.

Thank you.

Very Truly Yours,

A handwritten signature in blue ink that reads "Riley F. Hurd III". The signature is written in a cursive style.

Riley F. Hurd III

CC: Seminary Neighborhood Association  
Supervisor Moulton-Peters  
Marin County Planning Commission  
Brian Washington  
Michelle Levenson  
Rachel Reid