

Attachment F
Land Conservation Contract
No. 83-26-5
(Commonly known as Ag Preserve and
Land Conservation Contract
No. 83-05)

Sea Mist Farms LLC
Desert Mist LLC
Desert Mist Farms LLC
PLN120746

BOARD OF SUPERVISORS

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RECORDED AT REQUEST OF

BOARD OF SUPERVISORS

LAND CONSERVATION CONTRACT

FEB 23 10 43 AM '83

THIS CONTRACT made and entered into this 28th day of February, 1983, by and between the COUNTY OF MONTEREY, a political subdivision of the State of California, hereinafter called "County" and Tom D. Bengard and Terry M. Bengard hereinafter called "Owner".

OFFICE OF RECORDER
COUNTY OF MONTEREY
STATE OF CALIFORNIA
NO FEE

WITNESSETH:

WHEREAS, Owner possesses certain real property located within the County of Monterey, State of California, which is presently devoted to the production of food and fibre and is described in Exhibit A attached hereto and made a part hereof; and

WHEREAS, the property is located in an agricultural preserve (No. 83-26-5) heretofore established by County by Resolution No. 83-26; and

WHEREAS, both Owner and County desire to limit the use of the property to agricultural and compatible uses;

NOW, THEREFORE, County and Owner agree as follows:

1. CONTRACT SUBJECT TO CALIFORNIA LAND CONSERVATION ACT OF 1965, AS AMENDED.

This contract is entered into pursuant to Chapter 7 (commencing with Section 51200) of Part 1, Division 1, Title 5 of the Government Code, which is known as the California Land Conservation Act of 1965, or as the Williamson Act. This contract is subject to all of the provisions of this act including any amendments thereto which may be enacted from time to time.

2. RESTRICTION ON USE OF PROPERTY.

During the term of this contract, and any and all renewals thereof, the property described in Exhibit A shall not be used by Owner, or Owner's successors in interest, for any purpose other than the production of food and fibre for commercial purposes and uses compatible thereto. A list of all such compatible uses is set forth in Exhibit B, attached hereto and by this reference incorporated herein. County, by uniform rule adopted by the Board of Supervisors of County, may from time to time during the term of this contract and all renewals thereof, add to the list of compatible uses which shall be uniform throughout the agricultural preserve in which the property in Exhibit A is located; provided, however, County may not during the term of this contract or any renewal thereof, without the prior written consent of Owner, remove any of the compatible uses for the subject property which are set forth in Exhibit B. The provisions of this contract and any uniform rule supplementing the list of compatible uses are not intended to limit or supersede the planning and zoning powers of County.

3. TERM OF CONTRACT.

This contract shall become effective on the 28th day of February, 1983, and shall remain in full force and effect for an initial term of twenty years. The initial term of twenty years shall be measured

commencing as of the first day of January next succeeding the date of execution. Each succeeding first day of January shall be deemed to be the annual renewal date of this contract. This contract shall be automatically renewed on each succeeding January 1 and one additional year shall be added automatically to the initial term unless notice of nonrenewal is given as provided in paragraph 4.

4. NOTICE OF NONRENEWAL.

(a) If either party desires in any year not to renew this contract, that party shall serve written notice of nonrenewal upon the other party in advance of the annual renewal date of this contract. Unless such written notice of nonrenewal is served by Owner at least 90 days prior to the renewal date, or by County at least 60 days prior to the renewal date, this contract shall be considered renewed as provided in paragraph 3 above.

(b) If either party serves written notice of nonrenewal in any year within the time limits of (a) above, this contract shall remain in effect for the balance of the period remaining since the original execution or the last renewal of this contract, as the case may be.

5. NO COMPENSATION.

Owner shall not receive any payment from County in consideration of the obligations imposed under this contract, it being recognized and agreed that the consideration for the execution of this contract is the substantial benefit to be derived therefrom, and the advantage that may accrue to Owner as a result of the effect upon the assessed value of the property on account of the restrictions on the use of the property contained herein.

6. SUCCESSORS IN INTEREST.

This contract and the restrictions imposed hereunder shall run with the property described in Exhibit A and shall be binding upon the heirs, executors, administrators, trustees, successors, and assigns of Owner. This contract shall also be transferred from County to any succeeding city or county acquiring jurisdiction over the property described in Exhibit A. On the completion of annexation proceedings by a city, that city shall succeed to all rights, duties and powers of the County under this contract for that portion of the property described in Exhibit A annexed to the city.

Nonetheless, each new Owner who succeeds to ownership of the aforesaid property shall be obliged to execute a new contract identical to or more restrictive than this contract in order to perfect his rights under the Land Conservation Act.

7. DIVISION OF LAND.

The property described in Exhibit A shall not be divided without the written approval of the County first had and obtained. This contract is divisible in the event the property described in Exhibit A is divided. Owner agrees to submit any proposed division to County for its approval and County, if it approves said division, shall, as a condition of its approval of the division, require the execution by Owner of contract identical to this contract on each parcel created by the division. Owner agrees to execute such contract. The division of land under contract within an agricultural preserve will not be approved unless it can be reasonably established that there will be no loss in the production of food and fibre within the agricultural preserve from said division.

8. CONDEMNATION.

When any action in eminent domain for the condemnation of the fee title of any land described in Exhibit A is filed or when such land is acquired in lieu of eminent domain for a public improvement by a public agency or person, or whenever there is any such action or acquisition by the federal government, or any person, instrumentality or agency acting under authority or power of the federal government, this contract becomes null and void as to the land actually being condemned or so acquired as of the date the action is filed or so acquired.

9. CANCELLATION.

This contract may be cancelled by the mutual agreement of the parties hereto and the approval of the State of California in the manner provided in this paragraph. It is understood by the parties hereto that the existence of an opportunity for another use of the property shall not be sufficient reason for the cancellation of this contract. A potential alternative use of the property may be considered only if there is no proximate non-contracted land suitable for the use to which it is proposed that this property be put. The parties further understand that the uneconomic character of an existing agricultural use shall not be sufficient reason for cancellation of this contract, but may be considered only if there is no other reasonable or comparable agricultural use to which the land may be put.

(a) Upon the written request of Owner to cancel this contract, the Board of Supervisors of the County of Monterey may adopt a resolution consenting to such request. Prior to the adoption of a resolution consenting to the request of the landowner to cancel this contract, the Board of Supervisors of County shall hold a public hearing on the matter. Notice of the hearing shall be mailed to each and every owner of property under contract within the agricultural preserve in which the property described in Exhibit A is located, and shall be published pursuant to Section 6061 of the Government Code. If at the hearing, or prior thereto, the owners of 51 percent of the acreage under contract in the agricultural preserve protest the cancellation of this contract, the Board of Supervisors shall not consent to cancel this contract.

(b) If the Board of Supervisors adopts a resolution consenting to the request of Owner to cancel this contract, the parties shall request that the cancellation be approved by the State Director of Agriculture upon the recommendation of the State Board of Agriculture. The State Board of Agriculture may recommend and the State Director of Agriculture may approve the cancellation only if they find: (1) The cancellation is not inconsistent with the purposes of the California Land Conservation Act of 1965 as amended; and (2) the cancellation is in the public interest.

(c) The provisions of sub-paragraph (b) of this paragraph relating to the State Board of Agriculture and the Director of Agriculture shall be applicable only if both the State Board and the State Director consent to act as described herein. If either the State Board or the State Director fail or refuse to act within 60 days after being requested to do so, the Board of Supervisors of the County of Monterey shall act in the place and stead of the State Board and State Director and shall make all findings and decisions required by sub-paragraph (b).

(a) Prior to any action by the Board of Supervisors giving tentative approval to the cancellation of this contract, the County Assessor shall determine the full cash value of the land as though it were free of the contractual restrictions imposed by this contract. The Assessor shall multiply such value by the most recent county ratio announced pursuant to Section 401 of the Revenue and Taxation Code, and shall certify the product to the Board of Supervisors as the cancellation valuation of the land for the purpose of determining the cancellation fee. The Board of Supervisors shall thereafter and prior to giving tentative approval to the cancellation of this contract determine and certify to the County Auditor the amount of the cancellation fee which the Owner must pay the County Treasurer as deferred taxes upon cancellation. That fee shall be an amount equal to 50 percent of the cancellation value of the property; provided, however, if after the date this contract was initially entered into the publicly announced County ratio of assessed to full cash value is changed, the percentage payment shall be changed so no greater percent of full cash value will be paid than would have been paid had there been no change in ratio. It is agreed by the parties hereto that the publicly announced County ratio at the time this contract is executed is 25 percent of full cash value.

(b) If the State Board of Agriculture recommends that it is in the public interest to do so, and the State Director of Agriculture so finds, the Director may waive any such payment or any portion thereof, or may make such payment or portion thereof, contingent upon the future use made of the property and its economic return to Owner for a period of time not to exceed the unexpired term of the contract had it not been cancelled, provided: (i) the cancellation is caused by an involuntary transfer or change in the use which may be made of the property and the property is not immediately suitable; nor will be immediately used, for a purpose which produces a greater economic return to Owner; and (ii) County has recommended to the State Board of Agriculture that no such payment be required or that the deferment of such payment or portion thereof be allowed, and the Board of Supervisors has determined it is in the best interests of the public conservation of agricultural land and that such payment be either deferred or not required.

(c) The provisions of sub-paragraph (b) of this paragraph 10 relating to the State Board of Agriculture and the Director of Agriculture shall be applicable only if the State Board and the State Director both consent to act as described herein. If either the State Board or the State Director fail or refuse to act within 60 days after being requested to do so, the Board of Supervisors of the County of Monterey shall act in the place and stead of the State Board and the State Director and shall make all findings and decisions required by sub-paragraph (b).

(d) Owner shall make payment of the cancellation fee in full prior to the cancellation becoming effective.

11. NOTICES.

All notices required or permitted by this contract shall be given in writing and may be mailed or delivered in person. If mailed the address of Owner shall be the last known address on the assessment records of County, and County's address shall be In Care of Board of Supervisors, Courthouse, Salinas, California 93901, and deposit in the mail, postage prepaid, shall be deemed receipt thereof.

12. COSTS OF LITIGATION.

In case County shall, without any fault on its part, be made a party to any litigation commenced by or against Owner, then Owner shall and will pay all costs and reasonable attorneys' fees incurred by or imposed upon County by or in connection with such litigation, and Owner shall and will pay all costs and reasonable attorneys' fees which may be incurred or paid by County in enforcing the covenants and agreements of this contract.

13. ENFORCEMENT.

In the event of breach of this contract, including but not limited to: (1) incompatible use, or (2) failure of successors in interests to sign a contract similar to this one, or (3) failure to obtain the approval of the Board of Supervisors for a division of the land under contract, all the affected property under contract shall be reassessed at full cash value pursuant to Revenue and Taxation Code § 110.1.

However, such reassessment for the period encompassed by the breach shall not terminate the contract. Reassessment shall be in addition to the other remedies available to the County including, but not limited to, an action to enforce the contract by specific enforcement or injunction under Government Code § 51251.

If incompatible uses during the period of breach have diminished the ability of the property to contribute to the production of food and fibre on the lien date, the property shall be reassessed at full cash value.

The period of breach is the period commencing upon breach as set forth above, and ending upon cure of the breach. If the lien or assessment date falls within the period of the breach, all the property under this contract will be reassessed at full cash value pursuant to Revenue and Taxation Code § 110.1.

IN WITNESS WHEREOF the parties hereto have caused this contract to be executed: by Owner on February 11, 1983 and by County on February 22, 1983.

COUNTY OF MONTEREY

By William Peters
Chairperson, Board of Supervisors

STATE OF CALIFORNIA)
COUNTY OF MONTEREY) ss

On this 22nd day of February, 19 83; before me, ERNEST A. MAGGINI, County Clerk of the County of Monterey, and ex-officio Clerk of the Board of Supervisors and the Superior Court, in and for said County and State, personally appeared WILLIAM PETERS, known to me to be the Chairperson of said Board of Supervisors of the County of Monterey, and known to me to be the person who executed the within instrument on behalf of said political subdivision, and acknowledged to me that such County of Monterey executed the same.

ERNEST A. MAGGINI, County Clerk and ex-officio Clerk of the Board of Supervisors of Monterey County, State of California.

By Nancy Luperbill
Deputy

OWNER(S)

x Tom D. Bengard
Tom D. Bengard

x Terry M. Bengard
Terry M. Bengard

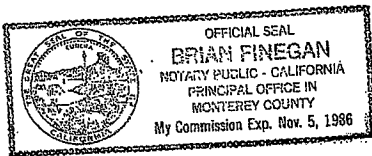
STATE OF CALIFORNIA,
County of MONTEREY } ss.

On this 11th day of February in the year one thousand nine hundred and 83 before me, the undersigned, a Notary Public in and for the

Monterey County of Monterey, State of California, residing therein, duly commissioned and sworn, personally appeared Ton D. Bengard and Terry M. Bengard

known to me to be the person^s whose name^s are subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal in the Monterey County of Monterey the day and year in this certificate first above written.



Brian Finegan
Notary Public in and for the Monterey County of Monterey State of California.
My Commission Expires November 5, 1986

Lot 6 of the Partition of the Tract of 5927 acres, more or less, of the Rancho Buena Esperanza formerly owned by Adelaid E. Spence, now deceased, and beginning at a white post 4 inches square marked K. 8 standing in the railroad fence 50 feet from the center of the track of the Southern Pacific Railroad; thence parallel with and 50 feet from the center of said Railroad track, S 39° 50' E., 33.08 chains to a post marked "H.2;" thence S. 50° 10' W., 70 chains to a post marked "H.3"; thence S. 39° 50' E., 8.60 chains to a point in the Salinas River from which a witness post on the top of the right bank of said river marked "H.4" bears N. 39° 51' W., 3.38 chains; thence S. 30° W. 22.15 chains to post marked K. 4 upon the boundary of the Rancho Buena Esperanza, as patented; thence along same, N. 60° W., 20 chains to a post marked "11"; thence S. 73° 15' W., 57 chains to a post marked "12"; thence N. 59° 30' W., 34 chains to a post marked "13G" and "BV"; thence leaving said Rancho boundary, N. 59° 15' E., 56.56 chains, (at 11.57 chains a witness post on line) to a post marked "02"; thence N. 58° 10' E., 106.73 chains to the place of beginning. Containing 610.82 acres of land, more or less, and being the same parcel of land described as Lot 6 in that certain deed dated November 5, 1883, from Mariano Malarin, as Trustee & Co., to Rodolfo Belisario Spence, of record in Book 8 of Deeds, at page 35 in the office of the County Recorder of County of Monterey, and being the same tract of land conveyed by Rodolfo Belisario Spence and Mary T. Spence, his wife, to Lou G. Hare, by deed dated June 1, 1912, recorded in Book 125 of Deeds, at page 110, Monterey County Records.

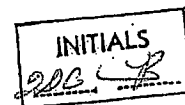
EXCEPTING AND RESERVING THEREFROM the following:

Being a portion of that certain 610.82 acre parcel of land referred to as Parcel IV in that certain deed dated July 13, 1971 from the Bank of America to Michael John Myers and recorded on September 3, 1971 on Reel 724 at page 106 therein, Official Records of Monterey County, California, and being more particularly described as follows:

Beginning in the northerly boundary of said 610.82 acre parcel of land, from which point of beginning the northeasterly corner of said parcel bears N. 58° 18' 15" E., 1700.02 feet distant, thence from said point of beginning parallel to and 20 feet southeasterly from the centerline of Somavia Road (57.00 feet wide at this point) and along the northerly boundary of said Parcel

- (1) S. 58° 18' 15" W., 500.00 feet to a point; thence departing from said northerly boundary
- (2) S. 31° 54' 45" E., 500.00 feet to a point; thence
- (3) N. 58° 18' 15" E., 500.00 feet to a point; thence
- (4) N. 31° 54' 45" W., 500.00 feet to the true point of beginning.

A.P. NO. 137-041-28



E X H I B I T "B"

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LAND CONSERVATION AGREEMENT

COMPATIBLE USES

The following is a list of land uses determined to be compatible with the agricultural use of the land subject to this agreement:

1. The drying, packing or other processing of an agricultural commodity usually performed on the premises where it is produced but not including slaughter houses, fertilizer yards, bone yards or plants for the reduction of animal or vegetable matter.
2. Structures necessary and incidental to the agricultural use of the land.
3. Single family dwellings incidental to the agricultural use of the land for the residence of the owner, and the family of the owner.
Single family dwellings incidental to the agricultural use of the land for the residence of the lessee of the land and the family of the lessee.
4. Dwellings for persons employed by owner or lessee in the agricultural use of the land.
5. An aircraft landing strip incidental to the agricultural use of the land.
6. The erection, construction, alteration or maintenance of gas, electric, water or communication utility facilities.
7. The erection, construction, alteration or maintenance of radio, television or microwave antennas, transmitters and related facilities.
8. Public or private hunting of wildlife or fishing.
9. Public or private hunting clubs and accessory structures.
10. Public or private rifle and pistol practice range, trap or skeet field, archery range or other similar use.
11. Public or private riding or hiking trails.
12. Removal of natural materials.

END OF DOCUMENT