

ZONING ADMINISTRATOR DECISION CONDITIONAL USE PERMIT



DECISION NO. 2013-01

HEARING DATE: 01/07/2013

DECISION DATE: 01/10/2013

FILE NO.: PCUP12-034

SUBJECT: A Conditional Use Permit modification (**File No. PCUP10-056**) to upgrade an existing alcoholic beverage license from a Type 40 (On-Sale Beer) to a Type 47 (On-Sale General for Bona Fide Public Eating Place) and to allow banquet services, in conjunction with the Whispering Lakes Golf Course, located at 2325 East Riverside Drive, within the OS (Open Space) zoning district.

STAFF

RECOMMENDATION: Approval Approval, subject to conditions Denial

PART A: BACKGROUND & ANALYSIS

DONOVAN BROS. GOLF, INC., herein after referred to as "the applicant," has filed an application requesting Conditional Use Permit approval, described as follows:

- (a) Project Description: A Conditional Use Permit modification (**File No. PCUP10-056**) to upgrade an existing alcoholic beverage license from a Type 40 (On-Sale Beer) to a Type 47 (On-Sale General for Bona Fide Public Eating Place) and to allow banquet services, in conjunction with the Whispering Lakes Golf Course, located at 2325 East Riverside Drive, within the OS (Open Space) zoning district.
- (b) TOP Policy Plan Land Use Map Designation: Open Space - Recreational
- (c) Zoning Designation: OS (Open Space)
- (d) Surrounding Zoning and Land Uses:

	<u>Zoning</u>	<u>Existing Land Use</u>
North:	Public Facility (PF)	Chino Basin Treatment Facility
South:	Specific Plan (Armstrong Ranch)	Agriculture
East:	Open Space (OS)	Westwind Park
West:	Single-Family Residential (R1)	Single-Family Detached Homes

(e) Site Area: 145 acres

(f) Assessor's Parcel No(s).: 0113-282-15

(g) Project Analysis: The Whispering Lakes Golf Course is bordered by the CA-60 Freeway on the north, Westwind Park on the east, Riverside Drive on the south, and a single-family detached housing tract on the west. The Golf Course has been in operation since 1956 and has operating hours of 6:00am to 8:00pm, daily (**Exhibit A: Aerial Map & Exhibit B: Aerial Photo**). The 18-hole course features 6,706 yards of golf and has a par of 72 (**Exhibit C: Course Map**).

The golf course featured the Royal Tahitian Lounge and pro-shop until December of 2010, when it was demolished as a result of the extensive repairs necessary to remain operational. A temporary modular building was erected, which functioned as the course administration and pro-shop. Whispering Lakes was approved for alcoholic beverage sales on March 7, 2011 (**Decision No. 2011-02**), under Conditional Use Permit **File No. PCUP10-056**. The CUP allows for alcoholic beverage sales, pursuant to a Type 40 (On-Sale Beer) license, within the temporary modular building. Since the approval of the Conditional Use Permit, a new and larger facility has been constructed (**Exhibit D: Site Plan**) to replace the temporary building. The dining area and pro-shop services have been moved into the new building, which is approximately 1,500 square feet in area. Outdoor seating areas have also been constructed, including a large patio area in front of the building and covered seating areas adjacent to the building, on the north. An enclosed barbeque area, located toward the back of the building, has also been constructed, to provide cooked food for the patrons.

The requested Conditional Use Permit is for the upgrade of an existing Type 40 (On-Sale Beer) license to a Type 47 (On-Sale General for Bona Fide Public Eating Place) license. The upgraded license requires that the facility function as a restaurant and provide prepared food in conjunction with the license. In addition to the upgraded license, the operator, Donovan Bros. Golf, Inc., is requesting to establish banquet services and live entertainment. It is intended that the outdoor seating areas will be utilized for larger gatherings, where food is either prepared on site or catered. Alcoholic beverage sales will remain exclusively on-site, in conjunction with the upgraded license. The types of live entertainment proposed includes small bands, DJs, and other entertainers, in support of the banquet facilities.

(h) ABC License Concentrations: The California Department of Alcoholic Beverage Control (ABC) is the controlling State entity which grants, renews, and revokes all ABC licenses. ABC determines how many On-Sale and Off-Sale alcoholic beverage license types should be issued per Census Tract, based upon their populations. The Whispering Lakes Golf Course is located within Census Tract 18.09, which is located entirely within the City of Ontario. The Census Tract is generally bordered by the CA-60 Freeway on the north, Baker Avenue on the west, Riverside Drive on the south, and Archibald Avenue on the east. ABC has determined that Census Tract 18.09 can support 7 On-Sale ABC license types. As of December, 2012, the latest ABC report shows Census Tract 18.09 as having a total number of 3 active On-Sale licenses (Including Whispering Lakes Golf Course). The golf course will acquire a new Type 47

license and surrender their existing Type 40 license. As a result, the total number of licenses will not increase.

(i) Conditional Use Permit Modification: This Conditional Use Permit, **File No. PCUP12-034**, has been submitted as a request to modify the previously approved Conditional Use Permit, **File No. PCUP10-056, Decision No. 2011-02**. All previously applicable conditions of approval have been applied to this modification, in conjunction with new conditions for the expanded uses. As a result, the previous Conditional Use Permit will be nullified with the approval of this new Conditional Use Permit.

(j) Land Use Compatibility: The intent of a CUP application and review is to ensure that the proposed use will be operated in a manner consistent with all local regulations, and to ensure that the use will not be detrimental to the public health, safety, or welfare, or materially injurious to uses, properties or improvements in the vicinity. The City of Ontario's Development Code describes a CUP as the following: § Sec. 9-1.0900: *Purposes and Authorization* – Conditional Use Permits are required for land use classifications typically having unusual site development features or operating characteristics requiring special consideration so that they may be designed, located, and operated compatibly with uses on adjoining properties and in the surrounding area. Approval of a CUP first requires making certain findings, which show that the proposed use is consistent with all City of Ontario development codes, land uses and other applicable requirements. Additionally, the use must be compatible with the other surrounding uses; therefore, approving a CUP is discretionary in nature.

The Whispering Lakes Golf Course is located within the OS (Open Space) zoning district. Within this district, alcoholic beverage sales in conjunction with golf courses, is a conditionally permitted use. It is staff's belief that the recommended conditions of approval will sufficiently mitigate potential impacts associated with the proposed use. Additionally, businesses and residents within the surrounding area will not be exposed to any impacts resulting from the proposed use beyond those that would normally be associated with any other use similarly allowed within the OS (Open Space) zoning district.

(k) Departmental Review: Each City department has been provided the opportunity to review and comment on the subject application and recommend conditions of approval to be imposed upon the application. At the time of the Decision preparation, recommended conditions of approval were provided from Planning and Police Departments, and are attached to this report. The Planning Department supports the proposed use and requests that the Zoning Administrator impose each Department's recommended conditions of approval on the proposed use, which are designed to mitigate anticipated impacts related to the use.

(l) Public Notification: The subject application was advertised as a public hearing in at least one newspaper of general circulation in the City of Ontario (the Inland Valley Daily Bulletin newspaper). In addition, notices were mailed to all owners of real property located within 300 feet of the exterior boundaries of the property that is the subject of the hearing, as shown on the records of the County Assessor.

(m) Correspondence: As of the preparation of this Decision, Planning Department staff has not received any written or verbal communications from the owners of properties surrounding the project site or from the public in general, regarding the subject application.

PART B: RECITALS

WHEREAS, the City of Ontario has received a request for Conditional Use Permit approval as described in Part A, above; and

WHEREAS, Ontario Municipal Code § 9-1.0405(f) provides that the Zoning Administrator has the responsibility and authority to review and act upon Conditional Use Permits for existing structures; and

WHEREAS, all members of the Development Advisory Board of the City of Ontario were provided the opportunity to review and comment on the requested Conditional Use Permit, and no comments were received opposing the proposed use; and

WHEREAS, on the 7th day of January 2013, the Zoning Administrator of the City of Ontario conducted a duly noticed public hearing on the application, as follows:

(a) John Earle Hildebrand III, *Associate Planner*, presented the staff report on the proposed use, indicating the staff recommendation of approval, subject to the attached conditions. Following staff's presentation, the Zoning Administrator opened the public hearing.

(b) Christine Smith, the applicant, explained the business operation and spoke in favor of the application. Mr. Murphy asked for clarification regarding the types of proposed banquets and live entertainment that will be offered at the golf course. Christine Smith stated that the intent was to primarily accommodate golf tournaments, as well as, wedding receptions, birthday parties, and similar types of events. She further stated that these are the types of typical events that her management company, Donovan Bros., accommodate at the other golf course facilities they run.

(c) Mr. Murphy asked for more information about where banquet services and live entertainment would be conducted. Corporal Fred Alvarez clarified the locations, stating that there is a large patio area attached to the front of the new pro-shop. Additionally, adjacent to the building on the north, is a larger area with covered seating. Both of these areas have been designated as locations for banquet services. Any large events outside of these areas would require Temporary Use Permit (TUP) approval.

(d) There being no one else to offer testimony regarding the application, the Zoning Administrator closed the public hearing.

WHEREAS, all legal prerequisites to the adoption of this Decision have occurred.

PART C: THE DECISION

NOW, THEREFORE, it is hereby found, determined and resolved by the Zoning Administrator of the City of Ontario as follows:

(a) All facts set forth in this Zoning Administrator Report and Decision are true and correct.

(b) Based upon the evidence presented to the Zoning Administrator during the above-referenced public hearing, the Zoning Administrator hereby concludes as follows:

(1) The proposed location of the Conditional Use Permit and the proposed conditions under which it will be operated or maintained will be consistent with the TOP Policy Plan and will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the vicinity. Alcoholic beverage sales, in conjunction with the Whispering Lakes Golf Course pro-shop, lies within the OS (Open Space) zoning district.

(2) Alcoholic beverage sales is allowed upon approval of a Conditional Use Permit. The project has been conditioned so that the use is operated in a manner that will not be detrimental to the health and safety of the surrounding community.

(3) The proposed location of the Conditional Use Permit is in accord with the objectives and purposes of the Ontario Development Code and zoning designation within which the site is located. The location of the alcoholic beverage sales and associated golf course, meets the objectives of the Ontario Development Code, Article 1: *Purposes and Objectives*.

(4) Traffic generated by the proposed Conditional Use Permit will not overload the capacity of the surrounding street system and will not create a hazard to public safety. No substantial amounts of new traffic will be created as a result of the use.

(5) The proposed Conditional Use Permit will comply with each of the applicable provisions of the Ontario Development Code and applicable municipal codes, including Article 9: *Conditional Use Permits*.

(c) The project site is located within the Airport Influence Area of Ontario International Airport and has been evaluated and is consistent with the policies and criteria set forth within the Airport Land Use Compatibility Plan.

(d) The Zoning Administrator hereby finds and determines that the project identified in this Decision is categorically exempt from the requirements of the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section § 15301 (Class 1 – Existing Facilities) of the State CEQA Guidelines.

(e) Based upon the findings and conclusions set forth in Parts A, B and C above, the Zoning Administrator hereby approves File No. PCUP12-034, subject to the conditions of approval attached hereto and incorporated herein by this reference.



APPROVED by the Zoning Administrator of the City of Ontario on this 10th day of January 2013.

A handwritten signature in black ink, appearing to read "Scott Murphy". The signature is written over a horizontal line.

Scott Murphy
Deputy Zoning Administrator

EXHIBITS

Exhibit A: Aerial Map

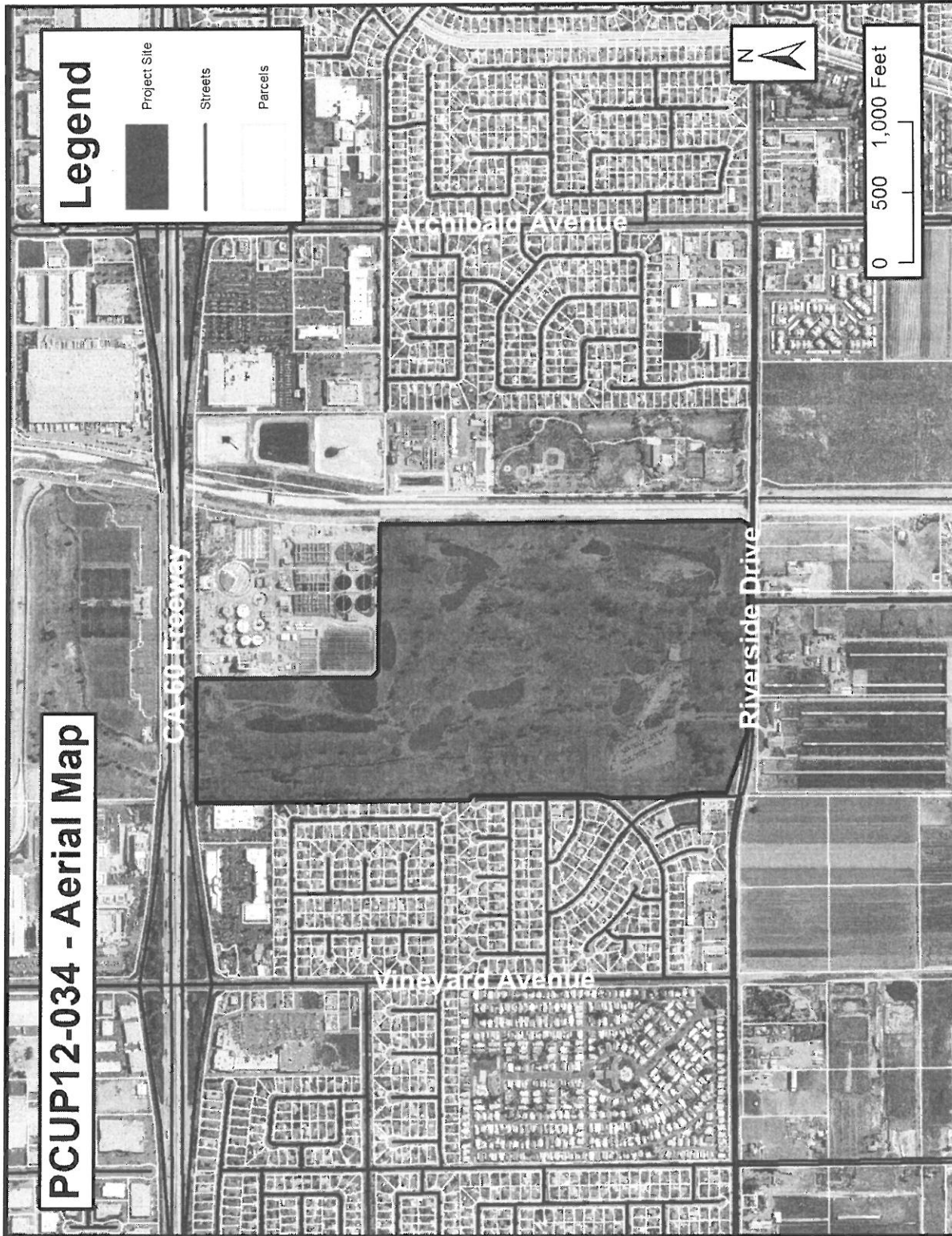
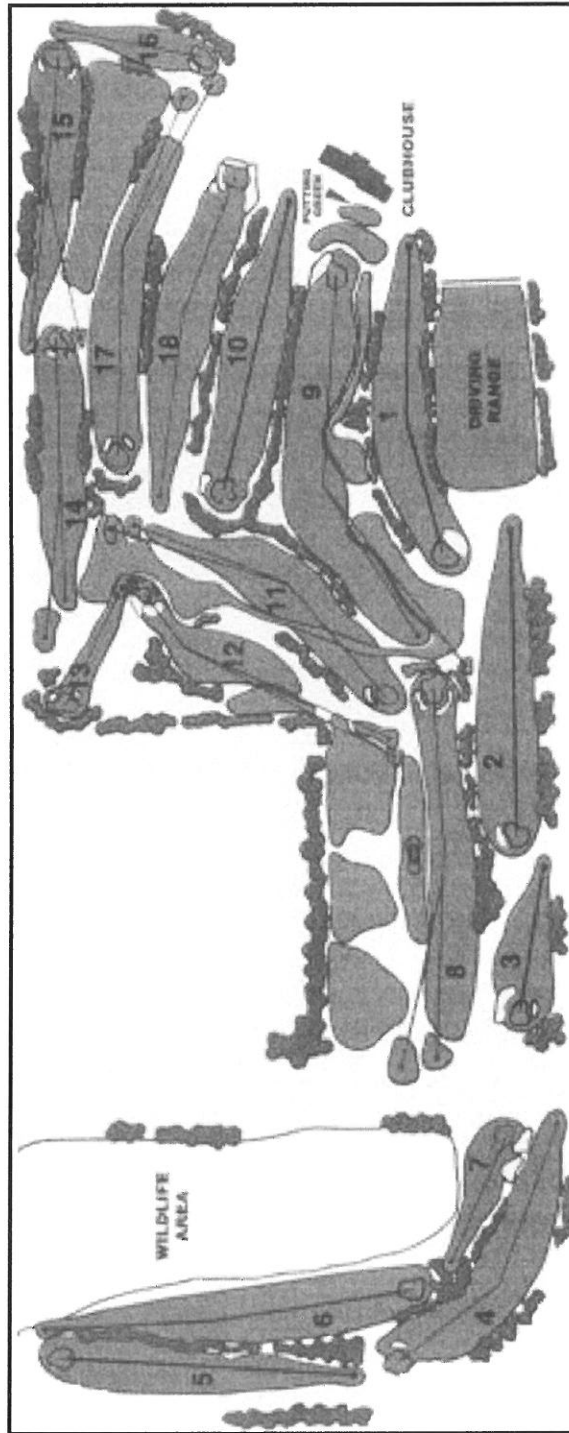


Exhibit B: *Aerial Photo*



Exhibit C: Course Map



**DEPARTMENT ADVISORY BOARD
COMMENTS, CONDITIONS AND RECOMMENDATIONS**

DATE: 01/07/2013

FILE NO.: PCUP12-034

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The subject application has been reviewed by each agency/department listed below. A copy of each agency/department recommendation and comments are available for review in the Planning Department project file. Conditions of approval have been recommended by those agencies/departments marked below and are attached.

- PLANNING
- ENGINEERING
- UTILITIES/SOLID WASTE
- PUBLIC FACILITIES

- BUILDING

- POLICE
- FIRE
- REDEVELOPMENT AGENCY
- HOUSING & NEIGHBORHOOD
REVITALIZATION
- OTHER: _____

CONDITIONS OF APPROVAL

DATE: 01/07/2013

FILE NO.: PCUP12-034

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1.0 GENERAL REQUIREMENTS

- 1.1 Failure to maintain compliance with the herein-listed conditions of approval shall be deemed just cause for revocation of conditional use permit approval.
- 1.2 The use shall be operated in full conformance with the description and requirements of the Conditional Use Permit on file with the City. Any variations from, or changes in, the approved use (i.e., increase in hours/days of operation, expansion or intensification of use, etc.), must first be reviewed and approved by the Zoning Administrator prior to commencement of the change.
- 1.3 The approved use is subject to all conditions, requirements and recommendations from all other affected departments/agencies, provided on the attached reports/memorandums.
- 1.4 A copy of the herein-listed conditions of approval shall be maintained on the subject premises at all times.
- 1.5 The Planning Department may, from time to time, conduct a review of the approved use to ascertain compliance with the herein-stated conditions of approval. Any noncompliance with the conditions of approval shall be immediately referred to the Zoning Administrator for possible action.
- 1.6 Approval of this Conditional Use Permit allows for the upgrade of a Type 40 (On-Sale Beer) ABC license to a Type 47 (On-Sale General for Bona Fide Public Eating Place) ABC license, as well as banquet and live entertainment services.

- 1.7 This Conditional Use Permit, **File No. PCUP12-034**, has been submitted as a request to modify the previously approved Conditional Use Permit, **File No. PCUP10-056, Decision No. 2011-02**. All previously applicable conditions of approval have been applied to this modification, in conjunction with new conditions for the expanded uses. As a result, the previous Conditional Use Permit is hereby nullified upon approval of this new Conditional Use Permit.

2.0 SITE LIGHTING

- 2.1 Site lighting shall be reviewed and approved by the Planning Department and Police Department prior to the issuance of building/electrical permits.
- 2.2 Exterior lighting shall be arranged or shielded in such a manner as to contain direct illumination on the parking area and avoid glare on any adjoining site.

3.0 ALCOHOLIC BEVERAGE SALES

- 3.1 The business shall be operated in strict compliance with the rules, regulations and orders of the State of California Department of Alcoholic Beverage Control. Failure to comply with this requirement shall be deemed just cause for revocation of conditional use permit approval.
- 3.2 One (1) year following commencement of the approved use, the Planning Department shall conduct a review of the approved use and shall prepare for Zoning Administrator consideration, a status report identifying impacts associated with the use and any non-compliance with the conditions of approval. In addition, such status report shall contain a police report regarding calls for service to the subject premises during the prior one (1) year period. Nothing herein shall modify or limit the City's ability to regulate the business or modify or revoke the permit upon the City's determination that the business is being operated in a manner adverse to the public health, safety and welfare.
- 3.3 Signs shall comply with all City of Ontario sign regulations. No more than 25% of the total window area shall bear advertising or signs of any sort. Window signs shall be placed and maintained in a manner so that there is clear and unobstructed view of the interior of the premises from the building exterior.
- 3.4 The rear doors shall be kept closed at all times during the operation of the premises, except in case of emergency or to permit deliveries.
- 3.5 In the event that security problems occur as a result of the approved subject use and at the request of the Police Department, the permittee, at

his/her own expense, shall provide a California licensed, uniformed security guard(s) on the subject premises, during such hours and in such number as requested by the Police Department.

- 3.6 The licensee shall attend a LEAD (Licensee Education on Alcohol and Drugs) training secession sponsored by the State of California Department of Alcoholic Beverage Control, within six (6) months of commencement of the approved use.
- 3.7 A clearly legible copy of the herein-listed conditions of approval shall be posted at all times at a prominent place in the interior of the premises.
- 3.8 Once the upgraded Type 47 ABC license is in effect, the previous Type 40 ABC license is required to be surrendered.

Restaurants

- 3.9 The establishment shall be operated as a “bona fide public eating place” as defined by Business and Professions Code § 23038. The restaurant shall contain full kitchen facilities for the cooking of an assortment of foods required for ordinary meals. The kitchen shall be open for the serving of meals to guests during all hours the establishment is open. The establishment shall provide an assortment of foods commonly ordered at various hours of the day. The service of sandwiches or salads shall not be deemed in compliance with this requirement.
- 3.10 The sale of alcoholic beverages shall be incidental to the sale of food. The quarterly gross sales of alcoholic beverages shall be less than 50% of the restaurants total sales, which includes all food, and alcoholic and non-alcoholic beverages. The owner of the establishment, upon request, shall provide the City of Ontario with an audited report of the sales ratio of food and non-alcoholic beverages to alcoholic beverages.

4.0 LIVE ENTERTAINMENT

- 4.1 The patio area in front of the pro-shop, as well as the covered seating area to the north of the pro-shop, are designated banquet and live entertainment areas. Events outside of the designated areas, require Temporary Use Permit (TUP) approval, prior to the event taking place.

5.0 ENVIRONMENTAL REVIEW

- 5.1 The proposed project is categorically exempt from the requirements of the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section § 15301 (Class 1 – Existing Facilities) of the State CEQA Guidelines.

- 5.2 The applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void or annul any approval of the City of Ontario, whether by its City Council, Planning Commission or other authorized board or officer. The City of Ontario shall promptly notify the applicant of any such claim, action or proceeding, and the City of Ontario shall cooperate fully in the defense.



CITY OF ONTARIO POLICE DEPARTMENT MEMORANDUM



TO: John Hildebrand, Associate Planner

FROM: Officer Fred Alvarez, ABC Grant Coordinator

DATE: December 19, 2012

SUBJECT: FILE NO. PCUP12-034– Whispering Lakes Golf Course
2325 East Riverside Drive

The Police Department is placing the following conditions:

ALCOHOL SERVING/ GENERAL CONDITIONS:

1. Hours of alcohol sales and service will be 6:00 A.M. to 2:00 A.M. daily. Last call for alcohol will be made at 1:15 A.M.
2. No alcohol sales or service to minors.
3. No sales or service to intoxicated patrons.
4. No self serve alcohol displays are allowed.
5. The club staff are only permitted behind the bar area.
6. Packaged food products must be available for sale at all times.
7. No smoking inside of establishment is permitted.
8. No live entertainment is allowed.
9. No narcotic sales or usage on the premises at any time.
10. All employees/staff engaged in serving alcohol beverages must be 21 years of age or older.
11. Food sales and service must be available for sale at all times. A menu will be submitted for review.
12. The applicant shall be responsible for maintaining premises free of graffiti to the premises over which the applicant has control, and shall be responsible for its

removal within 72 hours of its appearance or upon notice of its appearance to the applicant.

13. No loitering shall be permitted on any property adjacent to the licensed premise, which is under the control of the applicant, and signs must be posted.
14. All hallways must be kept clear from merchandise, storage, and patrons blocking pathway.
15. Restrooms must be kept free of graffiti.
16. A Code of Conduct will be required and posted at all public entrances of the establishment.
17. Lighting within the establishment must be kept at a reasonable level as determined by city officials
18. The parking lot lighting must provide adequate lighting from dusk to dawn.
19. No pool tables or amusement games permitted inside establishment.
20. Applicant, security and all employees serving alcohol must attend an Alcohol Beverage Control (ABC) L.E.A.D. training class or a certified responsible beverage service class, which has been approved by ABC and Ontario Police Department, within three months of this dated conditional use permit. Proof of re-certification is required every 3 years.
21. A no trespass letter will be on file with the Police Department.

GOLF COURSE ALCOHOL CONDITIONS:

1. No alcohol is allowed outside of the golf course boundaries.
2. All alcohol beverages from portable carts and concession stands will be served in aluminum can containers. Bottle alcohol beverages are prohibited.
3. Alcoholic beverages may be served from mobile vending carts that must be operated by an employee who is 21 years of age or over. Non-alcoholic beverages must also be available.
4. Only alcoholic beverages, which are obtained through the course concession or portable carts, may be taken onto or consumed while on the golf course property.
5. No personal coolers may be taken on the golf course.
6. All sales of alcoholic beverages in the general spectator seating areas shall be made only from concession stands and portable stands as needed and shall not be sold, served or delivered to customers by individual ambulatory vendors, more commonly known as "hawkers".

PARKING LOT ALCOHOL CONDITIONS:

1. Alcohol beverages are not allowed in the parking lot areas, unless a TUP (Temporary Use Permit) has been processed by the Planning Department and conditioned by the Ontario Police Department.
2. The parking lot of the premises shall be equipped with lighting of sufficient power to illuminate and make easily discernible the appearance and conduct of all persons on or about the parking lot.

OUTDOOR EVENT CONDITIONS:

1. Location of outdoor events must be designated on an outdoor floor plan.
2. During an outdoor event no more than (2) portable carts will be allowed to serve beer, wine, and (or) distilled spirits. The location of the portable carts will only be allowed in specific designated area of the outdoor floor plan submitted by the applicant. Alcoholic beverages must be served by a staff member.
3. No self serve alcohol displays are allowed.
4. Glass or plastic bottle beer may be sold from any alcohol serving location, but are subject to be discontinued if the police department determines such containers have caused a safety hazard to patrons.
5. Businesses that include a combination of live entertainment (disc jockey or bands) and dancing shall be required to provide a minimum of two security guards at the event and two armed security guards in the parking lot area. Ontario Police officers may be used in-lieu of security guards.
6. In the event security problems occur as a result of the use, the Police Department may request a public hearing before the Zoning Administrator to consider modifications to the security including, but not limited to, additional security guards, additional hours for security guards, and replacement of security guards with Ontario Police officers. The public hearing process shall be conducted in accordance with the requirements of the City's Development Code.
7. A Code of Conduct will be required to be used and posted at all public entrances of the establishment. Code of Conduct will include a dress code and shall be utilized on nights of entertainment and special events.
8. During events with entertainment wristbands will be issued to patrons 21 and over after being checked for bone fide identification.
9. Ontario Police Officers have the right to limit or reduce the occupancy inside the establishment, if situations arise that may compromise the safety of patrons and

the officer. Any additional police resources requested to bring peace in the establishment may be charged to the business owner.

10. Security personnel will be required to follow Ontario Municipal Code Article 6, Title 3, Section 3-1.601-621 (security regulations).

The Ontario Police Department and the Ontario Planning Department will conduct an inspection before the opening of the golf course with the conditional use permit. Alcoholic beverages must be at the location for the inspection to occur. The sales of alcoholic beverages will not be allowed until the inspection has been completed and all alcohol related conditions have been met.

The Police Department will conduct a review in six months to determine whether additional conditions are needed.

A copy of the listed conditions of approval must be posted with the ABC license at all times in a prominent place in the interior of the premises. Alcohol serving portable carts must have a copy posted along with all signage required by the Department of Alcoholic and Beverage Control.

If alcohol related crimes at this location are higher than other similar establishments in the overall City during any quarter, the CUP will automatically be referred to the Zoning Administrator for review and re-conditioning or revocation of the permit. The Police Department may, at their sole discretion, request a revocation hearing if they determine that the establishment is being operated in violation of this CUP or has violated the laws of the State or City are the intent of this action.

Any special event outside the scope of the Conditional Use Permit will require a TUP (Temporary Use Permit) which will be processed by the Planning Department and conditioned by the Ontario Police Department. (For example a radio station promotion held at the restaurant, or an outdoor event with alcoholic beverages would be a special event requiring Police or security personnel, but a community service organization breakfast meeting would not be considered a special event and therefore would not require additional security.)

If you have any questions please call Officer Alvarez at (909) 395-2845.