

ZONING ADMINISTRATOR DECISION CONDITIONAL USE PERMIT



DECISION NO. 2014-23

HEARING DATE: November 17, 2014

DECISION DATE: December 5, 2014

FILE NO.: PCUP14-023

SUBJECT: A Conditional Use Permit to allow a Type 47 ABC License (On-Sale General for Bona Fide Public Eating Place) in conjunction with a proposed 4,625 square foot restaurant (Big Catch Seafood Restaurant), within a commercial shopping center, located at 765 North Milliken Avenue, Suite C & D, within the Urban Commercial land use designation of the Ontario Center Specific Plan.

STAFF

RECOMMENDATION: Approval Approval subject to conditions Denial

PART A: BACKGROUND & ANALYSIS

FRANK ZENG, (herein after referred to as "Applicant") has filed an application requesting Conditional Use Permit approval, File No. PCUP14-023, as described in the subject of this Decision (herein after referred to as "Application" or "Project").

(a) Project Setting: The project site occupies a 4,625 square foot space within a multi-tenant building located within the Ontario Home Center commercial shopping center that is comprised of six buildings totaling 128,300 square feet on 11.5 acres. The project site is located at 765 North Milliken Avenue, Suite C & D (**Exhibit A: Project Vicinity & Exhibit B: Project Site**). Existing land uses, General Plan and zoning designations, and specific plan land uses on and surrounding the project site are as follows:

	<i>Existing Land Use</i>	<i>General Plan Designation</i>	<i>Zoning Designation</i>	<i>Specific Plan Land Use</i>
<i>Site</i>	Urban Commercial	Mixed Use	Specific Plan – The Ontario Center	Urban Commercial
<i>North</i>	Gasoline Station	Mixed Use	Specific Plan – The Ontario Center	Urban Commercial
<i>South</i>	Gasoline Station	General Commercial	M3 – General Industrial District	N/A
<i>East</i>	Retail	Mixed Use	Specific Plan – Ontario Mills	Commercial / Office

Approved By: _____
Senior Planner

	<i>Existing Land Use</i>	<i>General Plan Designation</i>	<i>Zoning Designation</i>	<i>Specific Plan Land Use</i>
West	Retail – Motor Vehicles	Mixed Use	Specific Plan – The Ontario Center	Garden Commercial

(b) Project Analysis:

(1) Background — On October 23, 2013, a Conditional Use Permit (File No. PCUP13-025) was approved for the project site, for a Type 41 ABC License (On-Sale Beer and Wine for Bona Fide Public Eating Place), in conjunction with the Phoenix Chinese Restaurant which closed for business in July of 2014. The applicant is now requesting to change their Type 41 ABC License to a Type 47 ABC License (On-Sale General for Bona Fide Public Eating Place) in conjunction with The Big Catch Seafood restaurant. The Big Catch Seafood opened for business in late October 2014 and is operating with the Type 41 ABC License and the conditions of approval set forth in PCUP13-025. The current Type 41 ABC State License is set to expire on December 31, 2014 and current permitted hours of operation are from 11:00 a.m. to 10:00 p.m. The proposed Conditional Use Permit will extend hours of operation from 11:00 a.m. to 2:00 a.m. Monday through Sunday and last call will be at 1:15 a.m. The Big Catch Seafood has a secondary location in the City of Long Beach, California and operates with similar late business hours.

A Type 47 ABC license is defined by the State Department of ABC as a restaurant authorized to sell beer, wine and distilled spirits for consumption on the licenses premises and is required meet the following requirements:

- *Must operate and maintain the licensed premises as a bona fide eating place;*
- *Maintain suitable kitchen facilities;*
- *Must make actual and substantial sales of meals for consumption on the premises;*
and
- *Is allowed to have minors on the premises.*

The applicant is required to obtain issuance of their Type 47 ABC license from the California Department of ABC prior to serving any distilled spirits on site.

(2) Proposed Use — The 4,625 square foot restaurant is divided into three general areas: a 189 square foot bar area that has seating for 13 patrons; a 2,603 square foot dining area that has seating for 150 patrons; and a 1,833 square foot area that includes the kitchen/serving area, walk-in beer cooler, a separate walk-in cooler and freezer for food storage, office, restrooms and hallways (**Exhibit C: Floor Plan**). The alcoholic beverages are currently stored behind the bar area and within the walk-in beer cooler. The restaurant will also be operating with a total number of 10 employees during any given shift.

(3) Parking — The commercial center was developed with a surplus of 79 parking spaces and there are a total of 550 parking spaces available on site. The application does not include the elimination of any parking stalls and is consistent with the previously established restaurant use. Therefore, staff believes that the proposed use will not adversely affect the parking demand within the existing shopping center.

(4) ABC Concentrations — The California Department of Alcoholic Beverage Control (ABC) is the State entity responsible for granting, renewing, and the revocation of all ABC licenses. ABC determines how many on-sale and off-sale of alcoholic beverage license types should be issued per census tract, based upon their population. The project site is located within Census Tract 21.09 which is located entirely within the City of Ontario (**Exhibit D: Census Tract Map**) and is over concentrated and ABC currently allows 3 On-Sale Licenses, however there are currently 37 licenses issued within this census tract. Census Tract 21.09 encompasses the City's core entertainment district and includes The Ontario Mills Mall, Citizen's Business Bank Arena, several restaurants, movie theaters and several general commercial retailers. This location operates as a "Bona Fide Public Eating Place," and the Police Department does not object to allowing the Type 47 ABC License provided that all City and State Department of Alcohol Beverage Control rules, regulation and conditions are met and followed. In, addition the project site is not located in a high crime area, the property has no outstanding Building or Health Code Violations or Code Enforcement activity, and is properly maintained. Staff has placed specific conditions of approval for the ABC license to ensure the safe operation of the business.

(5) Land Use Compatibility — A Conditional Use Permit review is required to ensure the compatibility of adjacent uses by identifying potential nuisance activities and establishing measures for mitigation accordingly. The project site is located within the Ontario Home Center commercial shopping center and the surrounding businesses include: Hooters Restaurant which operates with a Type 47 ABC License; The Luxe Buffet operates with a Type 41 ABC License; Chevron Gas Station operates with a Type 20 ABC License; a Denny's restaurant with no alcoholic beverage sales; an indoor go kart racing facility; and four furniture stores (**Exhibit E: Site Photos & Surrounding Businesses**).

Staff believes that the recommended conditions of approval will sufficiently mitigate potential impacts associated with the proposed use. Additionally, the nearby businesses within and surrounding the shopping center will not be exposed to any impacts resulting from the alcoholic beverage sales and consumption beyond those that would normally be associated with any other use within the center and surrounding area.

(c) **Airport Land Use Compatibility Plan:** This project is located within the Airport Influence Area of Ontario International Airport (ONT) and was evaluated and found to be consistent with the policies and criteria of the Airport Land Use Compatibility Plan (ALUCP) for ONT. Any special conditions of approval associated with uses in close proximity to the airport are attached to this report.

- (d) **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 and are attached to this report.
- (e) **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.
- (f) **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 November 17, 2014, the Zoning Administrator of the City of Ontario conducted a duly noticed public hearing on the application, as follows:

- (a) Nathan Castillo, presented the staff report on the proposed use, indicating the staff recommendation of Approval, Subject to Conditions. Following staff's presentation, the Zoning Administrator opened the public hearing.
- (b) Frank Zeng, the applicant/representing the applicant, explained the business operation and spoke in favor of the application.
- (c) 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 finds as follows:

(1) The proposed location of the requested Conditional Use Permit, and the proposed conditions under which it will be operated or maintained, will be consistent with the Policy Plan component of The Ontario Plan and will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity. The proposed 4,625 square foot restaurant is located within the Urban Commercial land use designation of the Ontario Center Specific Plan zoning district.

(2) A full service restaurant with a Type 47 (On-Sale General Eating Place) ABC license is allowed upon approval of a Conditional Use Permit. The project has been conditioned so that the facility and use are operated in a manner that will not be detrimental to the health and safety of the surrounding community. In addition, the Police Department has also reviewed the application and they are in support of the application subject to the attached conditions of approval.

(3) The proposed location of the Conditional Use Permit is in accord with the objectives and purposes of the Ontario Development Code and the zoning designation within which the site is located. The use will be operated in accordance with Ontario Development Code and the use meets the objectives and purposes as required in the Ontario Center Specific Plan.

(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. The use will not generate a significant amount of new traffic nor overload the surrounding circulations system. In addition a sufficient amount of parking will be provided on site.

(5) The proposed Conditional Use Permit will comply with each of the applicable provisions of the Ontario Development Code and applicable municipal codes. The use is consistent with the uses allowed within the Urban Commercial land use designation of the Ontario Center Specific Plan.

(6) For On-Sale alcoholic beverage license types located within over concentrated census tracts (high density of alcoholic beverage sales locations as defined by the Alcoholic Beverage Control Act (commencing with Business and Professions Code

Section 23000 et Seq.), the Zoning Administrator hereby makes the following Public Convenience and Necessity (“PCN”) findings:

(i) The proposed retail alcohol license is not located within a high crime area, defined as an area characterized by a high ratio of Police Department calls for service to alcohol-related incidences, not to exceed 20 percent greater than the average number of alcohol-related incidences reported for the City as a whole. The application was reviewed by the Ontario Police Department and the project site is not located within a high crime area as it relates to alcohol related incidents. The use is consistent with the Urban Commercial land use designation within the Ontario Center Specific Plan and other similar uses in the area. The use will be providing a convenience for those individuals that would like to purchase alcoholic beverages when they dine in the restaurant. A public convenience and necessity letter will be prepared and sent to ABC.

(ii) The property/building/use has no outstanding Building or Health Code violations or Code Enforcement activity.

(iii) The site is properly maintained, including building improvements, landscaping, and lighting.

(c) 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 of the State CEQA Guidelines. Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination. The proposed use is located within an existing building and does not include any negligible building additions or operational changes and is therefore categorically exempt.

(d) The Zoning Administrator hereby finds and determines that the proposed project is located within the Airport Influence Area of Ontario International Airport (ONT) and was evaluated and found to be consistent with the policies and criteria of the Airport Land Use Compatibility Plan (ALUCP) for ONT.

(e) Based upon the findings and conclusions set forth in Parts A, B and C above, the Zoning Administrator hereby approves File No. PCUP14-023, 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 5th day of December, 2014.


Barbara Millman
Zoning Administrator

Exhibit A: Project Vicinity



Exhibit B: Project Site

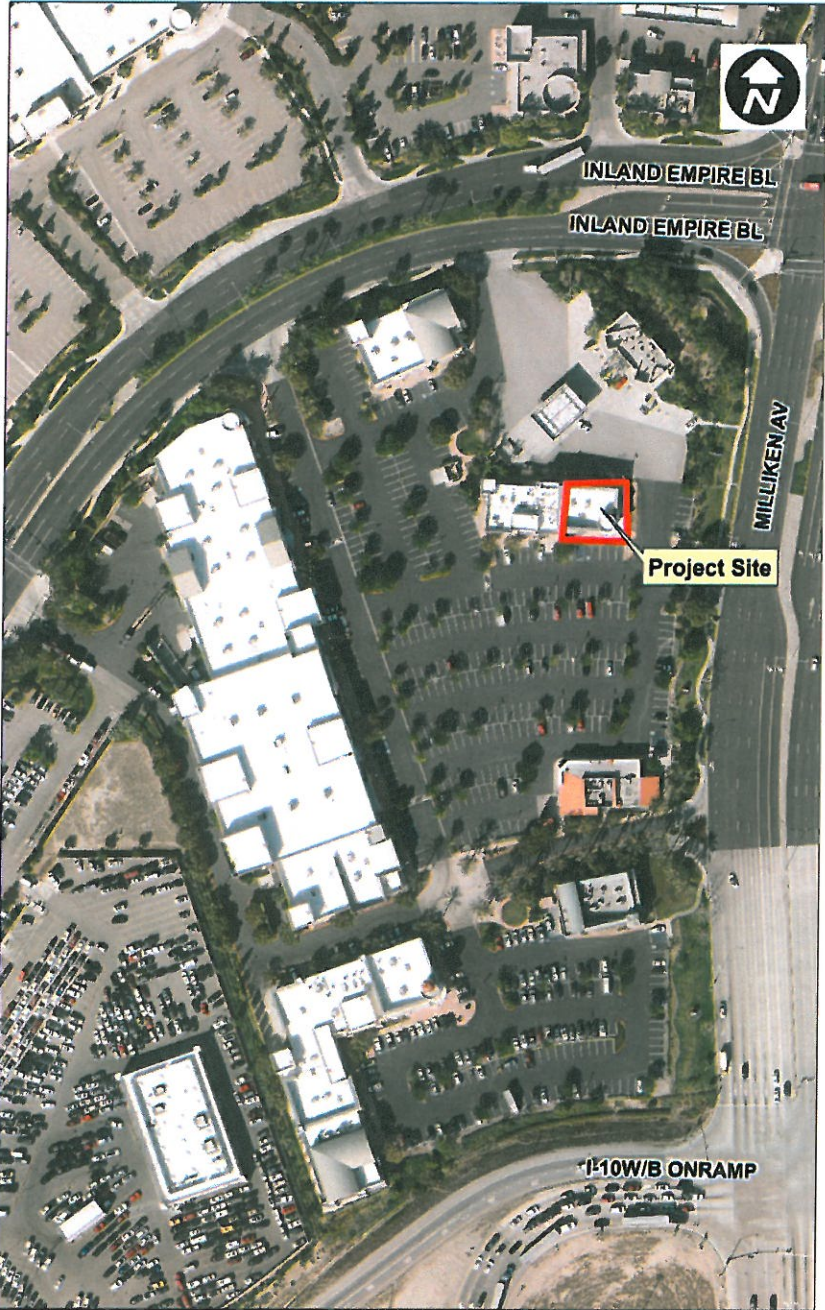


Exhibit C: Floor Plan

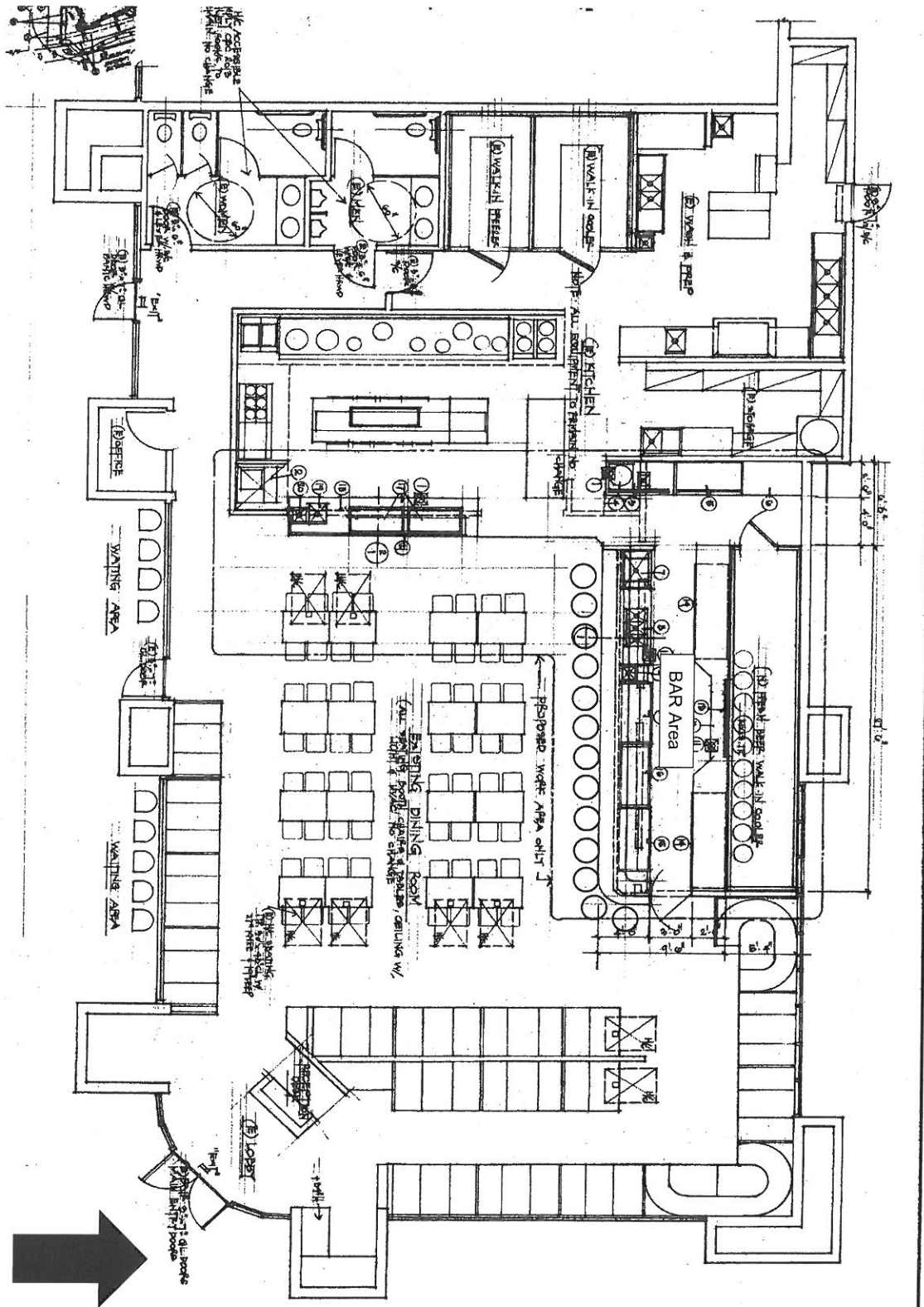


Exhibit D: Census Tract Map

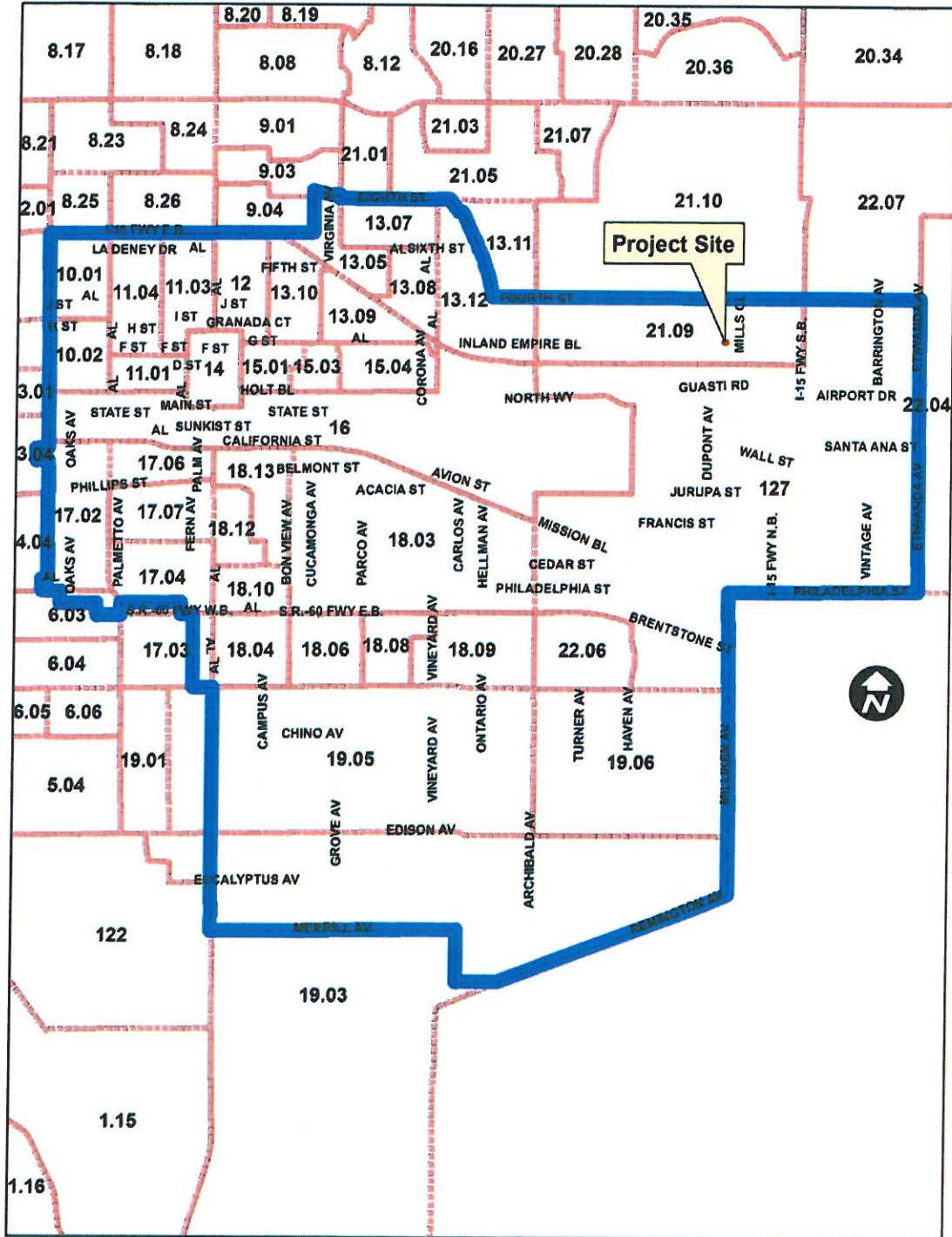
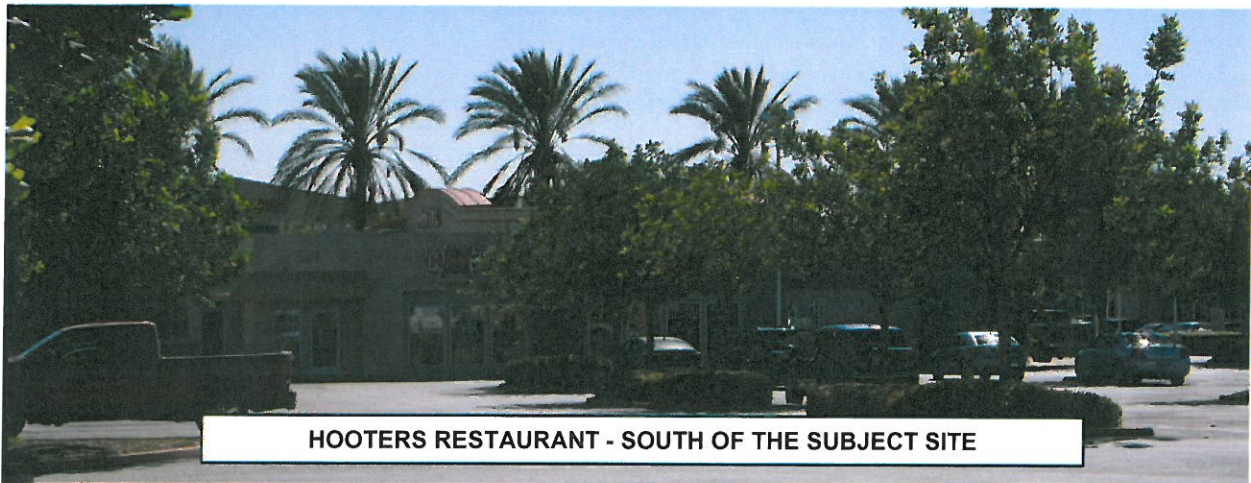
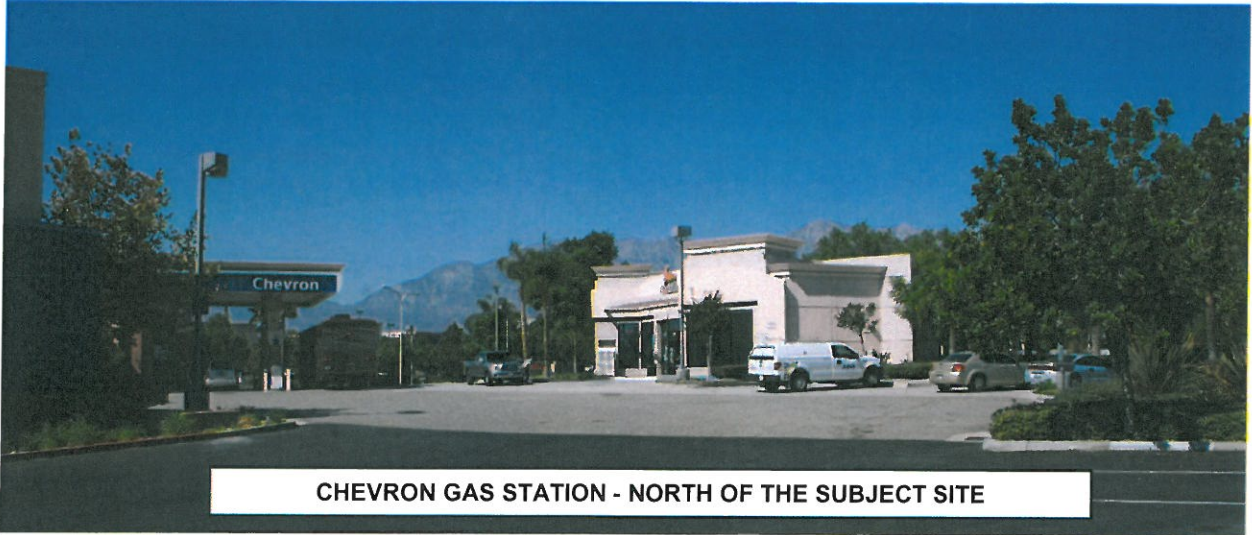


Exhibit E: Site Photos & Surrounding Businesses







**PLANNING DEPARTMENT
CONDITIONS OF APPROVAL**

File No(s). PCUP14-023

Date: November 17, 2014

Project Description: A Conditional Use Permit to allow a Type 47 ABC License (On-Sale General for Bona Fide Public Eating Place) in conjunction with a proposed 4,625 square foot restaurant (Big Catch Seafood Restaurant), within a commercial shopping center, located at 765 North Milliken Avenue, Suite C & D, within the Urban Commercial land use designation of the Ontario Center Specific Plan (APN: 0210-211-43) **Submitted By: Stanley Szeto**

Reviewed by: Nathan Castillo, Planning Intern
Phone: (909) 395-2036; **Fax:** (909) 395-2420

CONDITIONS OF APPROVAL

The above-described Development Plan application shall comply with the following conditions of approval:

1.1 Alcoholic Beverage Sales—General.

(a) No upgrade/change of an alcoholic beverage license type may occur until a minimum one-year of operations under the approved license type has occurred.

(b) 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.

(c) Coinciding with the annual Police Department inspection, 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.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

(h) 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.

(i) Live entertainment shall be prohibited. Any future request for live entertainment shall require conditional use permit approval by the Zoning Administrator. Karaoke, DJs, live musical acts, and other similar forms of entertainment, are considered live entertainment.

(j) Amplified prerecorded music may be permitted; however, the sound emitted from the premises shall not be audible outside the walls of the business establishment.

(k) Electronic arcade and amusement games shall be prohibited on-site, unless specifically permitted by the Police Department and shown on the approved site plan.

1.2 Alcoholic Beverage Sales—Restaurants.

(a) 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.

(b) 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.

(c) No alcoholic beverage shall be consumed outside of the enclosed building, except within the approved outdoor eating area, which has been designed so as to be adequately separated from direct public access.

1.3 Environmental Review.

(a) The proposed project is categorically exempt from environmental review in accordance with Section 15301 of the California Environmental Quality Act Guidelines.

1.4 Additional Fees.

(a) Within 5 days following final application approval, the Notice of Determination (NOD), Notice of Exemption (NOE), filing fee shall be provided to the Planning Department. The fee shall be paid by check, made payable to the "Clerk of the Board", which will be forwarded to the San Bernardino County Clerk of the Board of Supervisors, along with all applicable environmental forms/notices, pursuant to the requirements of the California Environmental Quality Act (CEQA). Failure to provide said fee within the time specified may result in the 30-day statute of limitations for the filing of a CEQA lawsuit being extended to 180 days.



CITY OF ONTARIO
MEMORANDUM
“Excellence Through Teamwork”

TO: Lorena Mejia, Planner

FROM: Steven Munoz, Police Corporal

DATE: September 18, 2014

SUBJECT: PCUP14-023 – Big Catch Seafood
765 N. MILLIKEN AVENUE, #C-D, ONTARIO, CA 91764

This location has applied for a type 47 On-Sale General Eating Place license located within Census Tract No. 21.09. According to the Department of Alcohol Beverage Control (ABC), three on-sale licenses are allowed within this tract, and there are currently thirty-two. This location operates as a “Bona Fide Public Eating Place,” and the Police Department does not object to allowing the license. The location must follow all Department of Alcohol Beverage Control rules, regulations and conditions. In addition, the following conditions of approval shall be imposed by the Police Department:

1. No alcohol will be sold within 45 minutes of the closing time, and not later than 01:15AM.
2. Food service will be available at all times that alcohol is sold.
3. No sales to minors.
4. No sales to obviously intoxicated patrons.
5. No alcoholic beverages are to be sold or removed from the establishment for outside consumption.
6. No Smoking inside of establishment is permitted, including electronic nicotine delivery devices.
7. There will be no narcotic sales or usage on the premises at any time.
8. No live entertainment is permitted, including Karaoke.

9. No arcade video game machines will be allowed in the premises.
10. No pool tables or amusement games permitted inside establishment.
11. Applicant and all employees must attend an Alcohol Beverage Control (ABC) L.E.A.D.'s training class or a certified responsible beverage service class, which has been approved by ABC and Ontario Police Department, within six months of this dated conditional use permit. Proof of re-certification is required every 3 years. New employees must attend the training class within three months of their hire date. This training is offered free of charge through the Ontario Police Department.
12. Back door must be alarmed and closed at all times except for deliveries.
13. Lighting within the restaurant must be kept at a reasonable level for safe movement of patrons.
14. Address to establishment must be illuminated for easy identification by safety personnel.
15. The parking lot of the premises shall be equipped with a maintained lighting device capable of providing a minimum of one-foot candle of light at ground level from dusk to dawn.
16. All hallways must be kept clear from merchandise, storage, and patrons blocking pathway.
17. Graffiti abatement by the business owner/licensee, or management shall be immediate and on-going on the premises, but in no event shall graffiti be allowed unabated on the premises for more than 72 hours. Abatement shall take the form of removal, or shall be covered/painted over with a color reasonably matching the color of the existing building, structure, or other surface being abated. Additionally, the business owner/licensee, or management shall notify the City within 24 hours at (909) 395-2626 (graffiti hotline) of any graffiti elsewhere on the property not under the business owner/licensee's or management control so that it may be abated by the property owner and/or the City's graffiti team.
18. No loitering shall be permitted on any property adjacent to the licensed premise, which is under the control of the applicant.
19. The restaurant manager shall be qualified per ABC rules. Anyone to whom a licensee delegates discretionary power to organize, direct, carry on, or control operations of the licensed business is presumed to be the manager of the business.
(Business and Professions Code Section 23788.5, Rules 57.5 and 57.6)

20. 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, or the intent of this action.
21. A copy of the listed conditions of approval must be posted with your ABC license at all times in a prominent place in the interior of the premises.
22. The Ontario Police Department and the Ontario Planning Department will conduct an inspection before the restaurant will be allowed to sell alcoholic beverages with the conditional use permit.
23. 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.)
24. The Police Department will conduct a review in six months to determine whether additional conditions will be needed.

CITY OF ONTARIO
LANDSCAPE PLANNING DIVISION
 303 East "B" Street, Ontario, CA 91764

CONDITIONS OF APPROVAL	
Sign Off	
<i>Carolyn Bell</i> Carolyn Bell, Sr. Landscape Planner	10/2/14 Date

Reviewer's Name: Carolyn Bell, Sr. Landscape Planner	Phone: (909) 395-2237
D.A.B. File No.: PCUP14-023	Case Planner: Lorena Mejia
Project Name and Location: Big Catch Seafood 765 N Milliken Ave	
Applicant/Representative: Stanley Szeto 879 W Ashhiya Rd Montebello, CA 90640	
<input checked="" type="checkbox"/>	A Preliminary Site Plan (dated 9/8/14) meets the Standard Conditions for New Development and has been approved with the consideration that the following conditions below be met upon submittal of the landscape construction documents.
<input type="checkbox"/>	A Preliminary Landscape Plan (dated) has not been approved. Corrections noted below are required prior to Preliminary Landscape Plan approval.
CORRECTIONS REQUIRED	

1. Show and call out durable metal or concrete benches, groups of large concrete or ceramic planters with evergreen shrubs or small trees and trash/ ash receptacles in the outdoor waiting area to improve the appearance.