

PUBLIC HEARING

SUBJECT: REQUEST TO ESTABLISH A CONDITIONAL USE PERMIT (PRC 2013-022-C) TO ALLOW FOR THE SALE OF ALCOHOL WITHIN AN EXISTING RESTAURANT BUILDING WITH A SEPARATE BAR AREA (OAK PIT STEAKHOUSE) UNDER A TYPE 47 ALCOHOL LICENSE (BONA FIDE PUBLIC EATING PLACE) LOCATED AT 615 N. MAIN STREET

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT - PLANNING DIVISION

COMMENT: The applicant is requesting consideration of a Conditional Use Permit (PRC 2013-022-C) to allow for the sale of alcohol in conjunction with a restaurant that includes a separate bar area (Oak Pit Steakhouse). The alcohol license type is 47: for on-sale alcohol consumption within a bona fide public eating place. The existing building is located at 615 N. Main Street in the General and Service Commercial (CG) Zone.

The Oak Pit Steakhouse restaurant was established over 30 years ago under a municipal code which permitted the sale of alcohol as a "use by right" so long as the primary use was a "bona fide eating establishment". At that time, the code also allowed for a separate bar. In 1987, Ordinance 1393 was adopted, which required approval of a Conditional Use Permit for all new and modified on-sale licenses in the City. Chapter 301.03 of the Development Ordinance upholds the earlier ordinance and requires a Conditional Use Permit for any use involving the sale of alcoholic beverages under an on-sale or off-sale license. The building has been inactive for approximately eight (8) months. The Development Ordinance allows non-conforming uses, but deems them abandoned after the use has been vacated for a period of six (6) months (Section 308.10). The restaurant closed in August 2012, approximately eight (8) months ago. A Conditional Use Permit is now required to bring the alcohol component of the use into compliance.

The restaurant is a permitted use in the CG Zone, and the building is proposed to function as it did previously. The structure is considered a legal non-conforming structure until such time that structural alterations are proposed, pursuant to Section 308.03(b); as such, new public improvements and Development Ordinance requirements are limited. At such time that the restaurant proposes to expand its floor plan or change its use, certain public improvements including additional landscaping, equipment screening, and parking redesign would be required.

The Department of Alcoholic Beverage Control (ABC) has maintained the validity of a Type 47 alcohol license for the restaurant because it never expired and had not been cancelled. The alcohol license is currently pending transfer from the previous licensee to the Tule River Indian Tribe of California. Staff considers approval of the Conditional Use Permit for alcohol sales at this location is appropriate as it has been in place for decades and does not result in increased crime at or around the subject site.

DDP  
JAZZING

Appropriated/Funded N/A

CM J

Item No. 18

STAFF RECOMMENDATION:

That the Council approve Conditional Use Permit PRC 2013-022-C to allow for on-sale alcohol sales in conjunction with a restaurant use under a Type 47 license for a bona fide eating place, subject to conditions of approval.

ATTACHMENTS:

Complete Staff Report

STAFF REPORT

SUBJECT: REQUEST TO ESTABLISH A CONDITIONAL USE PERMIT (PRC 2013-022-C) TO ALLOW FOR THE SALE OF ALCOHOL WITHIN AN EXISTING RESTAURANT BUILDING WITH A SEPARATE BAR AREA (OAK PIT STEAKHOUSE) UNDER A TYPE 47 ALCOHOL LICENSE (BONA FIDE PUBLIC EATING PLACE) LOCATED AT 615 N. MAIN STREET

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT - PLANNING DIVISION

APPLICANT/AGENT:

Chris Sanders  
2012 Cricklewood Circle  
Porterville, CA 93257

Adrian Recendez, Tule River Tribe  
615 N. Main Street  
Porterville, CA 93257

PROJECT DESCRIPTION: The applicant is requesting consideration of a Conditional Use Permit (PRC 2013-022-C) to allow for the sale of alcohol in conjunction with a restaurant that includes a separate bar (Oak Pit Steakhouse). The alcohol license type is 47: for on-sale alcohol consumption within a bona fide public eating place. The existing building is located at 615 N. Main Street in the General and Service Commercial (CG) Zone.

SIZE OF PROJECT SITE: The restaurant is approximately 5,500 square feet, and the two parcels that comprise the restaurant location and parking lot total approximately 39,500 square feet.

GENERAL PLAN CLASSIFICATION: General & Service Commercial

ZONING CLASSIFICATION: CG (General & Service Commercial)

SURROUNDING ZONING AND LAND USES:

North: CG (Pioneer Plaza Commercial Center – multiple lease tenants)

West: CG (Commercial auto services)

South: RM-3/CG (Apartments and Commercial auto sales and service)

East: CG (Service Station/ Convenience market)

## ENVIRONMENTAL REVIEW:

Pursuant to "Existing Facilities" Exemption 15301 Class 1 of the CEQA Guidelines, the proposed project qualifies for a categorical exemption.

Date Environmental Document Distributed	Date Notice Published in Porterville Recorder	Date Notice Mailed to Property Owners within 300 feet of property
Categorically exempt from CEQA	April 25, 2013	April 25, 2013

## PROJECT/DESCRIPTION ANALYSIS:

The Oak Pit Steakhouse restaurant was established over 30 years ago under a municipal code which permitted the sale of alcohol as a "use by right" so long as the primary use was a "bona fide eating establishment". At that time, the code also allowed for a separate bar. In 1987, Ordinance 1393 was adopted, which required approval of a Conditional Use Permit for all new and modified on-sale licenses in the City. Chapter 301.03 of the Development Ordinance upholds the earlier ordinance and requires a Conditional Use Permit for any use involving the sale of alcoholic beverages under an on-sale or off-sale license. The building has been inactive for approximately eight (8) months. The Development Ordinance allows non-conforming uses, but deems them abandoned after the use has been vacated for a period of six (6) months (Section 308.10). The restaurant closed in August 2012, approximately eight (8) months ago. A Conditional Use Permit is now required to bring the alcohol component of the use into compliance.

The subject site is consistent with the General Plan Land Use and Zoning Designations of General and Services Commercial (CG). The CG designation is intended to provide for retail and service uses that meet local and regional demand. The proposed restaurant with alcohol sales would suit the purpose of the zone designation. The restaurant is a permitted use in the CG Zone, and alcohol sales may be permitted in that zone with a Conditional Use Permit. The building is proposed to function as it did previously. The structure is considered a legal non-conforming structure until such time that structural alterations are proposed, pursuant to Section 308.03(b); as such, new public improvements and Development Ordinance requirements are limited. At such time that the restaurant proposes to expand its floor plan or change its use, certain public improvements including additional landscaping, equipment screening, and parking redesign would be required.

The subject site is located in Census Tract 38.02, which allows a maximum of three (3) on-sale and four (4) off-sale alcohol licenses. However, possibly due to the age of the existing Type 47 alcohol license, the Department of Alcoholic Beverage Control (ABC) identifies the business within Census Tract 37, which allows a maximum of five (5) on-sale and five (5) off-sale alcohol licenses. Currently, there are seventeen (17) existing licenses in census tract 37, nine of which are on-sale. Of these licenses, nine (9) are for on-sale use; of those nine, six (6) are for beer and wine, and three (3) are for beer, wine, and distilled spirits (including the one held under the Oak Pit Steakhouse). Census tract 38.02 currently has nine (9) on-sale licenses and seven (7) off-sale licenses. ABC has maintained the validity of a Type 47 alcohol license for the restaurant because it never expired and had not been cancelled. The alcohol license is currently pending transfer from the previous licensee to the Tule River Indian Tribe of California. Staff has contacted ABC regarding the inconsistency of the Census Tract information, and ABC has noted that they will correct their records. In any event,

the Census Tract information, and ABC has noted that they will correct their records. In any event, both census tracts have an over-concentration of active licenses. However, staff would consider that approval of the Conditional Use Permit for alcohol sales at this location is appropriate as it has been in place for decades and does not result in increased crime at or around the subject site.

The Porterville Police Department has indicated that the only concern regarding the application for continued sales of alcohol is ensuring exterior lighting is sufficient to illuminate the associated parking lot and surrounding service area during business hours of darkness. The maintenance of existing lighting, or, if needed, the installation of additional security lighting on the exterior of the building and in the parking lot, must be sufficient to allow reasonable surveillance of the parking area to the satisfaction of the Porterville Police Department. A condition to this effect is included in the draft resolution.

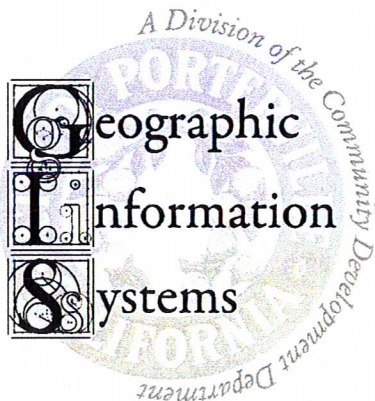
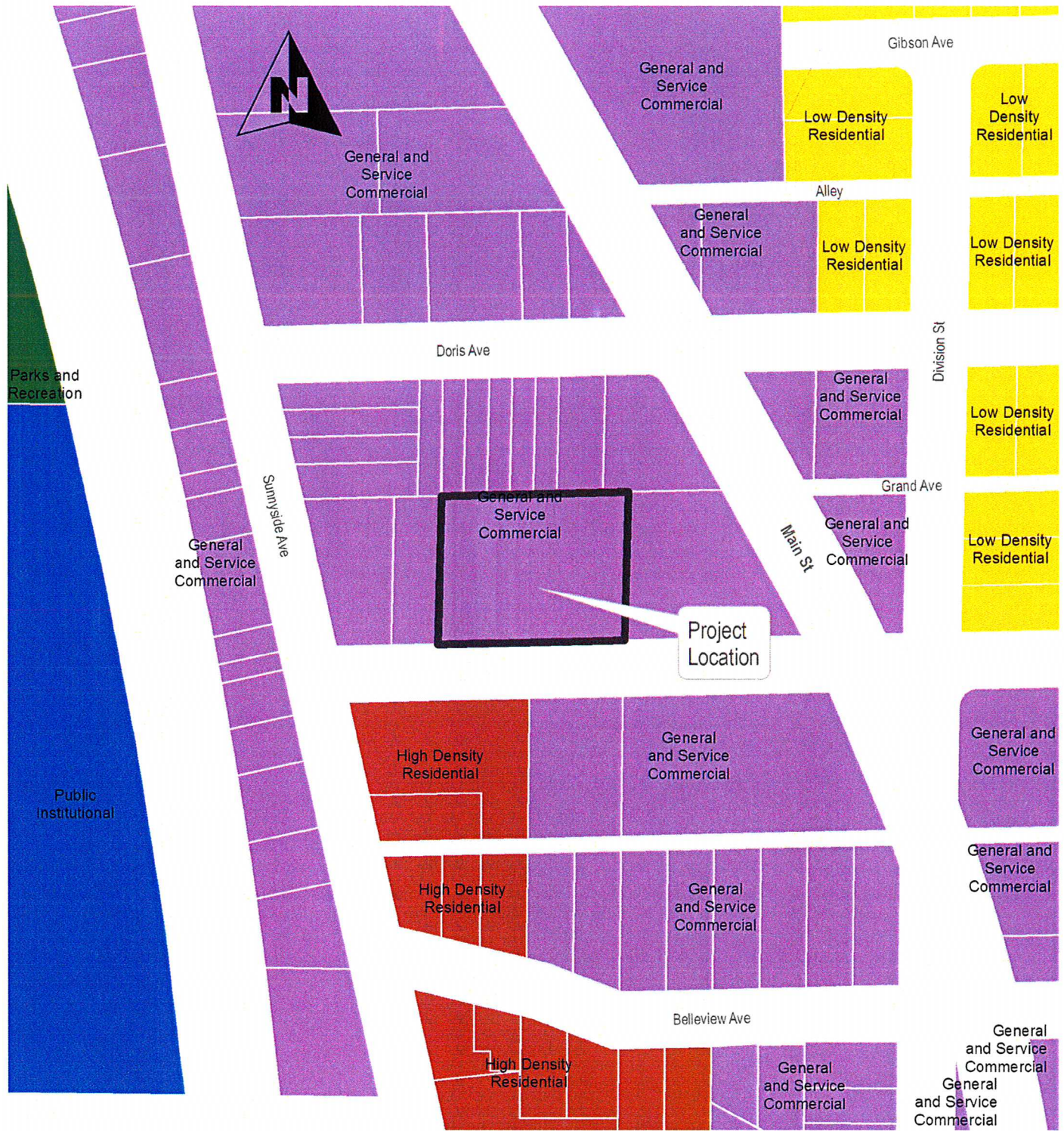
Under the regulations of the Business and Professions Code, whenever the ratio of off-sale licenses to population in a census tract exceeds the average ratio for the county, an "undue concentration" of licenses is determined to exist. In such circumstances, a letter of public convenience or necessity is required. In the case of the proposed project, the license was previously granted and is still recognized by the ABC and currently pending transfer to the Tule River Tribe unless the City Council determines that the over-concentration of licenses is undue and denies the Conditional Use Permit. The ABC would then not finalize the pending license transfer for use at the proposed location.

**RECOMMENDATION:** That the Council approve Conditional Use Permit PRC 2013-022-C to allow for on-sale alcohol sales in conjunction with a restaurant use under a Type 47 license for a bona fide eating place, subject to conditions of approval.

**ATTACHMENTS:**

1. Existing General Plan Land Use Map
2. Zoning Map
3. Census Tract 37 & 38.02 Map
4. Site Plan, interior layout, elevations and pictures of existing site
5. Relevant Sections of Porterville Development Ordinance
6. Draft Resolution

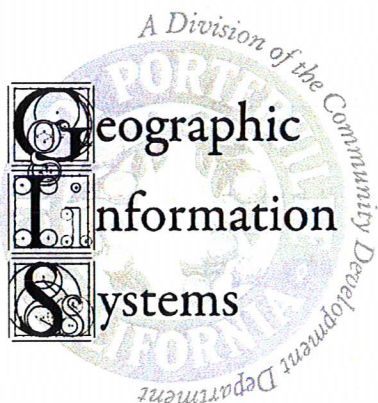




PRC 2013-022 - Oak Pit CUP  
615 N Main Street  
GPLU Map  
1" = 150 ft.

ATTACHMENT  
ITEM NO. |

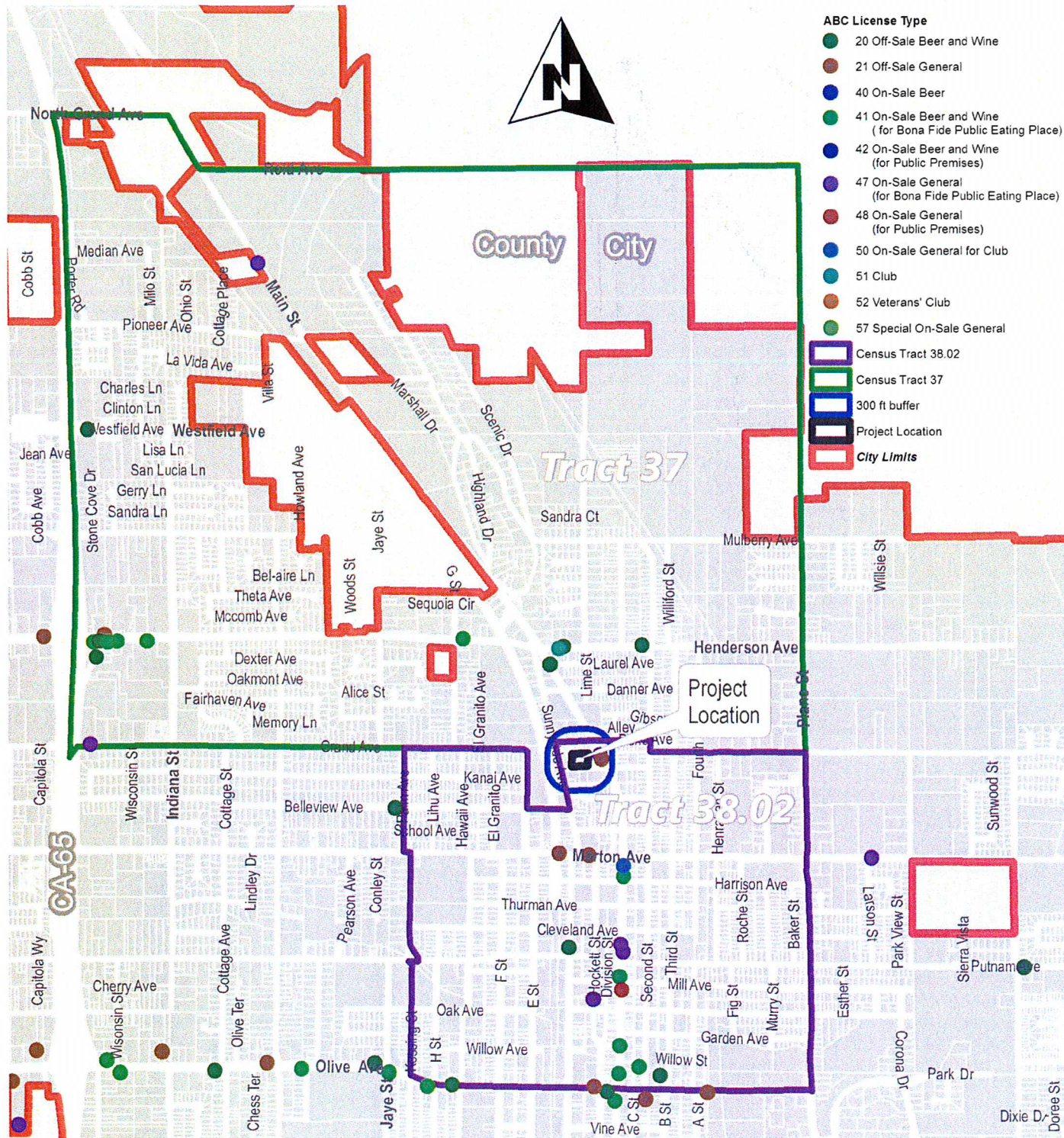




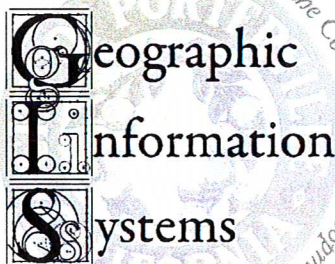
PRC 2013-022 - Oak Pit CUP  
615 N Main Street  
Zoning Map  
1" = 150 ft.

ATTACHMENT  
ITEM NO. 2





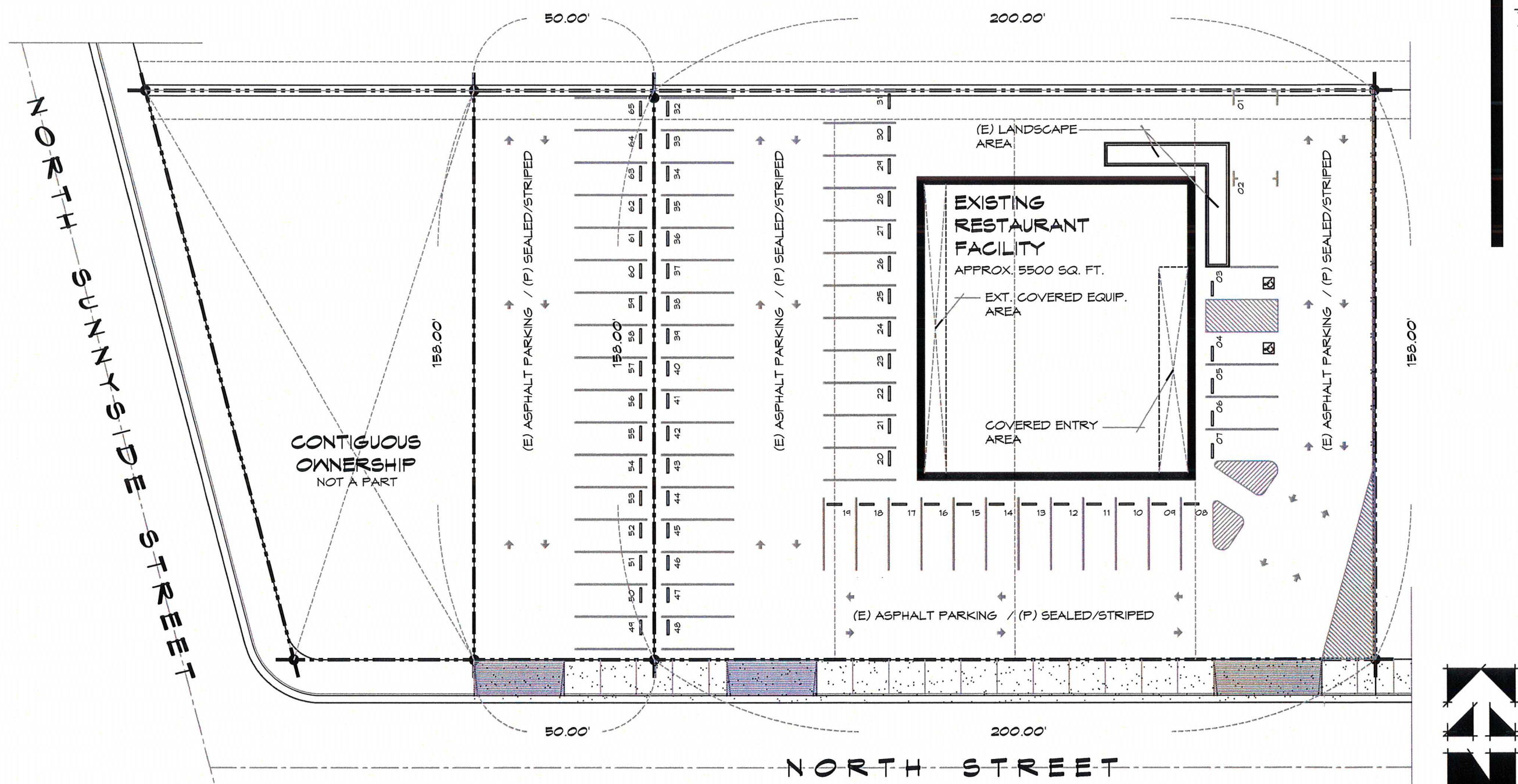
- ABC License Type**
- 20 Off-Sale Beer and Wine
  - 21 Off-Sale General
  - 40 On-Sale Beer
  - 41 On-Sale Beer and Wine (for Bona Fide Public Eating Place)
  - 42 On-Sale Beer and Wine (for Public Premises)
  - 47 On-Sale General (for Bona Fide Public Eating Place)
  - 48 On-Sale General (for Public Premises)
  - 50 On-Sale General for Club
  - 51 Club
  - 52 Veterans' Club
  - 57 Special On-Sale General
- Legend**
- Census Tract 38.02
  - Census Tract 37
  - 300 ft buffer
  - Project Location
  - City Limits



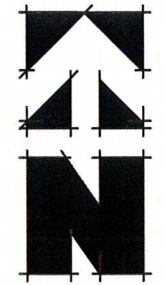
PRC 2013-022 - Oak Pit CUP  
615 N Main Street  
Census Tract 37 & 38.02 Map  
1" = 1,750 ft.

ATTACHMENT  
ITEM NO. 3





# SITE DEVELOPMENT PLAN



## CONDITIONAL USE PERMIT DOCUMENTS **THE OAK PIT PORTERVILLE**

615 NORTH MAIN STREET  
PORTERVILLE, CALIFORNIA 93257  
APN - 252-154-003, 004, 005

**CHRISTOPHER MORRIS SANDERS**

**CMS**

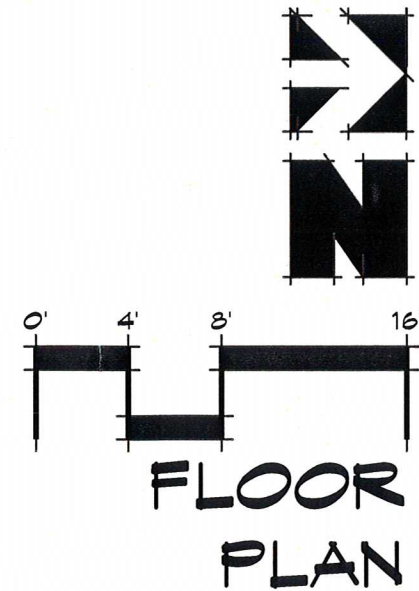
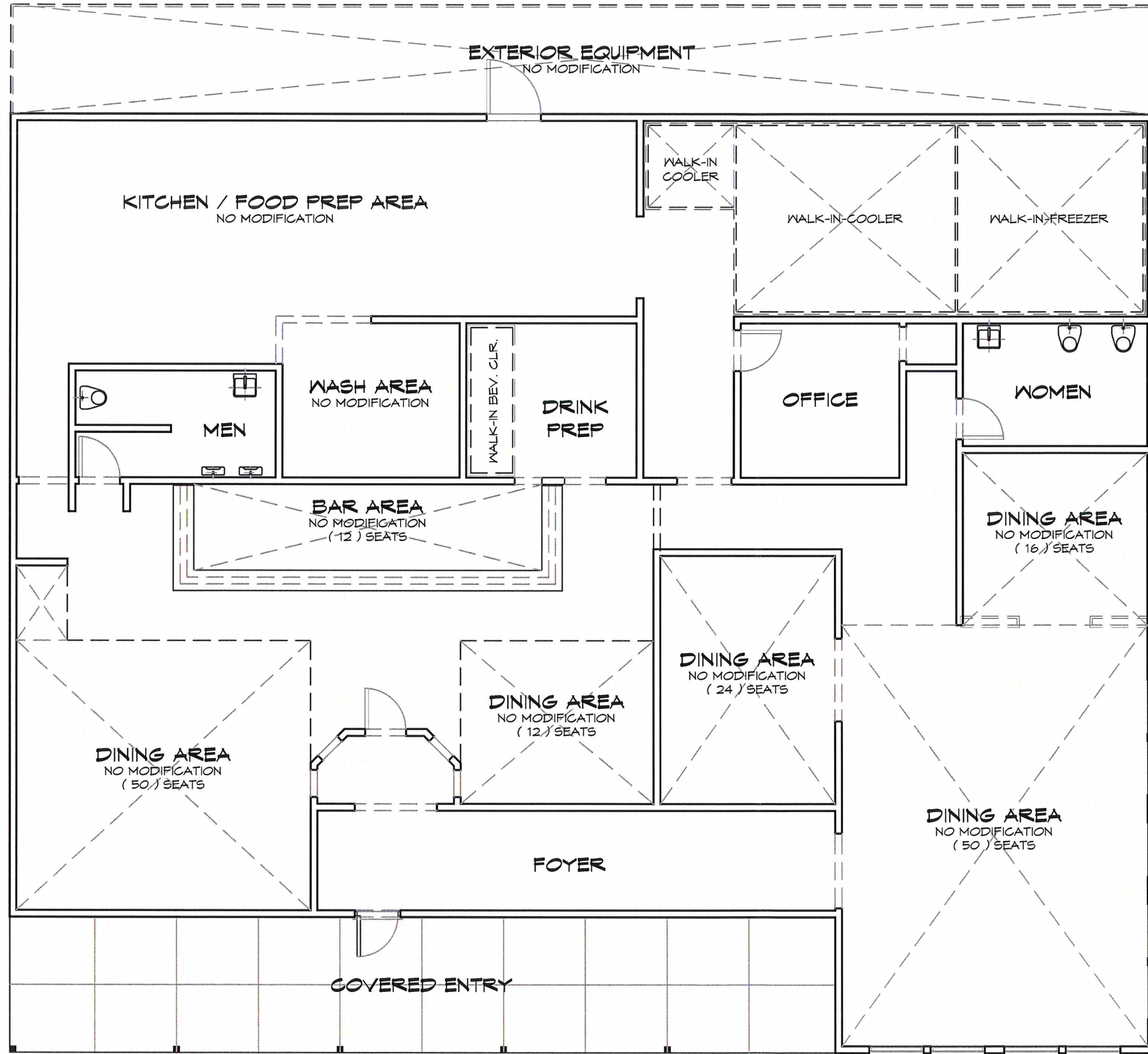
"SERVING OUR COMMUNITY FOR MORE THAN TWENTY YEARS" "JUST BUILD IT"

CONSTRUCTION MANAGEMENT / DEVELOPMENT CONSULTANT

"WITH ROOTS IN THE COMMUNITY FOR OVER 160 YEARS"

615 CHICKLEWATER CIRCLE  
PORTERVILLE, CALIFORNIA 93257  
CONTACT / MESSAGE: 1.559.359.1031  
EMAIL: CMSPLANS4U@HOTMAIL.COM





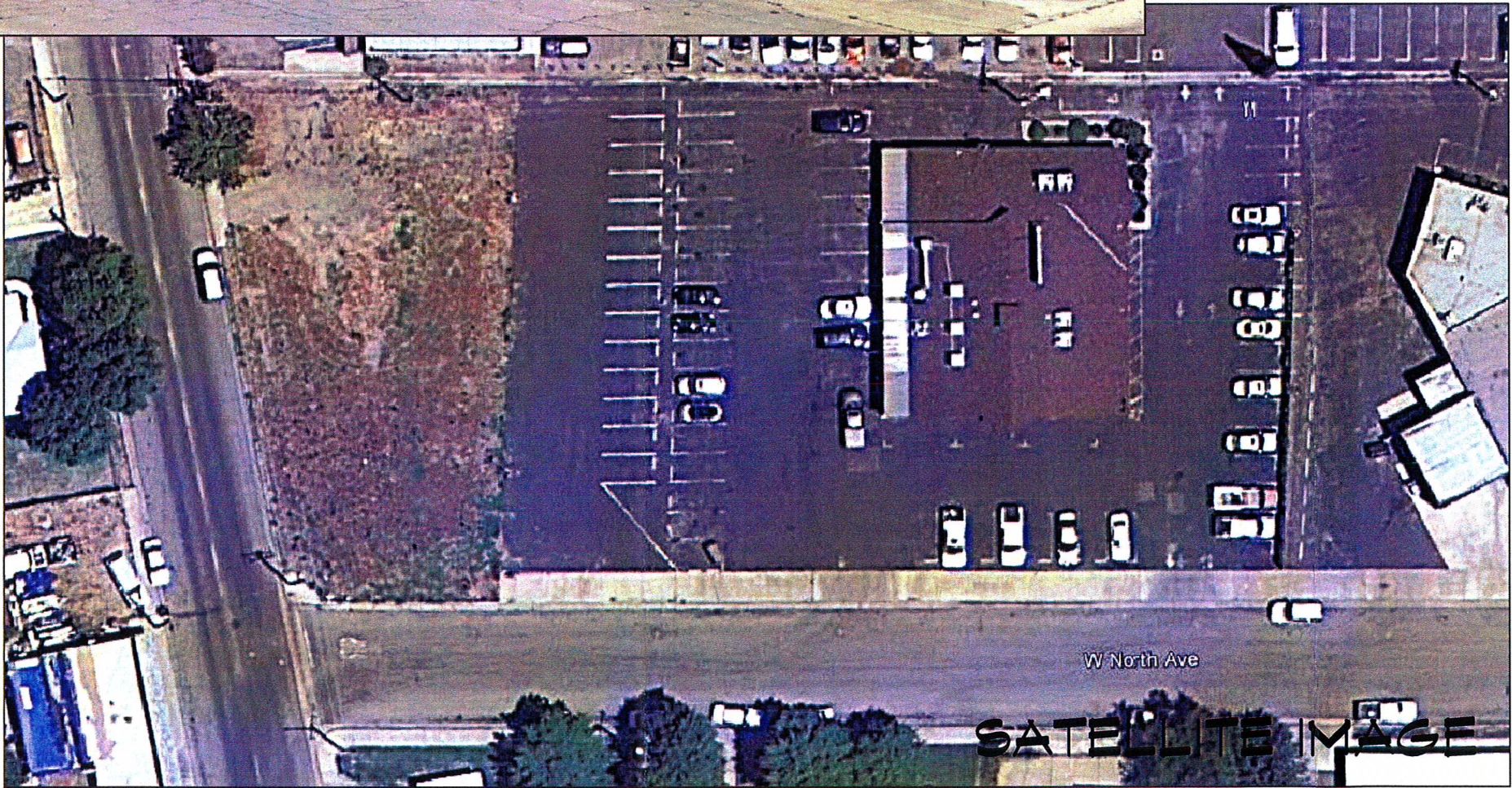
CONDITIONAL USE PERMIT DOCUMENTS  
**THE OAK PIT PORTERVILLE**  
615 NORTH MAIN STREET  
PORTERVILLE, CALIFORNIA 93257  
APN - 252-154-003, 004, 005

**CHRISTOPHER MORRIS SANDERS**  
CMS  
"SERVING OUR COMMUNITY FOR MORE THAN TWENTY YEARS" "JUST BUILD IT"  
CONSTRUCTION MANAGEMENT / DEVELOPMENT CONSULTANT  
"WITH ROOTS IN THE COMMUNITY FOR OVER 160 YEARS"  
3015 CRICKLEWOOD CIRCLE  
PORTERVILLE, CALIFORNIA 93257  
CONTACT / MESSAGE: 1.558.359.1031  
E-MAIL: CMSPLANS@HOTMAIL.COM





NORTHEAST EXTERIOR VIEW



SATELLITE IMAGE

CHRISTOPHER MORRIS SANDERS

"SERVING OUR COMMUNITY FOR MORE THAN TWENTY YEARS" "JUST BUILD IT"

CONSTRUCTION MANAGEMENT / DEVELOPMENT CONSULTANT

"WITH ROOTS IN THE COMMUNITY FOR OVER 160 YEARS"

2012 CRICKLEWOOD CIRCLE  
PORTERVILLE, CALIFORNIA 93257  
CONTACT: 509.444.1001  
EMAIL: CMSPANS@HOTMAIL.COM

CONDITIONAL USE PERMIT DOCUMENTS

**THE OAK PIT PORTERVILLE**

615 NORTH MAIN STREET  
PORTERVILLE, CALIFORNIA 93257  
APN - 252-154-003, 004, 005



## Porterville Development Ordinance

### 301.03 Alcoholic Beverage Sales

*Conditional Use Permit approval is required for any use involving the sale of alcoholic beverages under an on-sale or off-sale license.*

- (a) **Liquor Stores.** Liquor Stores and other off-sale establishments that dedicate more than twenty-five (25) percent of the sale floor to sales of alcoholic beverages for off-premises consumption, but excluding full-service grocery stores, shall be located, developed, and operated in compliance with the following standards:
  - (1) **Location.** In all areas outside the Downtown Districts, such establishment shall be located a minimum of five hundred (500) feet from any other such establishment or any educational, religious, or cultural institution or public parks. The five hundred (500) foot separation requirement does not apply in the Downtown Districts.
  - (2) **Litter.** Trash receptacles shall be provided by entrances and exits from the building.
  - (3) **Pay Telephones and Vending Machines.** External pay telephones and vending machines are prohibited.

### 308.10 Abandonment of Nonconforming Uses

*No nonconforming use may be resumed, reestablished, reopened or replaced by any other nonconforming use after it has been abandoned or vacated for a period of six (6) months, except as provided for in this section.* The nonconforming use of a legally established structure may be reestablished if the City Council approves a Conditional Use Permit after making all the following findings in addition to any other required findings. As a condition of approving the resumption of such nonconforming use, the Council may impose a time limit on its duration if necessary in order to make the required findings.

- (a) The structure cannot be used for any conforming use because of its original design or because of legal structural changes made for a previous nonconforming use;
- (b) The structure can be reasonably expected to remain in active use for a period of twenty (20) years without requiring repairs or maintenance in excess of fifty (50) percent of the replacement cost of the structure, as defined in this chapter, within any five (5) year period; and

The continuation of the use or structure will not be incompatible with or detrimental to surrounding conforming uses.

\*Italics added for emphasis



RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE  
CONTAINING FINDINGS AND CONDITIONS IN SUPPORT OF APPROVAL OF  
CONDITIONAL USE PERMIT PRC 2013-022-C TO ALLOW THE SALE OF ALCOHOL  
UNDER A TYPE 47 (GENERAL FOR BONA FIDE EATING PLACE) LICENSE FOR A  
RESTAURANT WITH A SEPARATE BAR (OAK PIT STEAKHOUSE) LOCATED AT  
615 NORTH MAIN STREET

WHEREAS: The City Council of the City of Porterville, at its regularly scheduled meeting of May 7, 2013, conducted a public hearing to consider Conditional Use Permit PRC 2013-022-C to allow the sale of alcohol under a Type 47 (General for Bona Fide Eating Place) license for a restaurant with a separate bar permitting the sale of beer, wine, and distilled spirits at 615 N. Main Street; and

WHEREAS: The City Council received testimony from all interested parties relative to said Conditional Use Permit; and

WHEREAS: The City Council made the following findings:

1. That the proposed project is consistent with the General Plan Land Use and Zoning designations for the site - General & Service Commercial (CG).

The CG designation is intended to provide for retail and service uses that meet local and regional demand. The proposed restaurant with alcohol sales would suit the purpose of the zone designation. The restaurant is a permitted use in the CG Zone, and alcohol sales may be permitted in that zone with a Conditional Use Permit. The existing building previously functioned as a restaurant with a separate bar serving beer, wine, and distilled spirits. In August of 2012, the business license was cancelled, the restaurant ceased its operation and the non-conforming use (alcohol sales) was abandoned.

2. That the proposed location of the project and the conditions under which it will be operated or maintained will not be detrimental to the public health, safety, welfare, or materially injurious to properties or improvements in the vicinity.

Conditions of approval are included herein to ensure adequate development standards are met. Further, all land owners within the City of Porterville are held to performance standards identified in Chapter 307 of the Development Ordinance. Specifically, Section 307.03 of the Ordinance states "Land or buildings shall not be used or occupied in a manner creating any dangerous, injurious, or noxious fire, explosive, or other hazard; noise, vibration, smoke, dust, odor, or form of air pollution; heat, cold, dampness, electrical or other disturbance; glare, refuse, or wastes; or other substances, conditions, or elements which would substantially adversely affect the surrounding area."

3. The subject site is located in Census Tract 38.02 which allows a maximum of three (3) on-sale alcohol licenses. Currently, there are nine (9), including the existing on-sale of beer and wine license at 615 North Main Street. Under the regulations of the California Business and Professions Code Section 23958.4, whenever the ratio of on-

**ATTACHMENT**  
**ITEM NO. 6**

sale licenses to population in a census tract exceeds the average ratio for the county, an "undue concentration" of licenses is determined to exist. In such circumstances, no additional licenses may be granted by the ABC unless the City Council determines that there is a public convenience or necessity in the community for the (subject) alcoholic beverage licensed establishment. The ABC recognizes the existing license and is in the process of transferring to the new holder contingent upon approval of a CUP by the City Council. A letter of Public Convenience or Necessity will not be required by the Department of Alcoholic Beverage Control.

4. This project is Categorically Exempt pursuant to CEQA Guidelines §15301- Existing Facilities: use of an existing structure involving no expansion beyond existing capacity.

NOW, THEREFORE, BE IT RESOLVED: That the City Council of the City of Porterville does hereby approve Conditional Use Permit PRC 2013-022-C subject to the following conditions:

1. The developer/applicant shall ensure that exterior lighting is sufficient to illuminate the associated parking lot and surrounding service area during business hours of darkness. The maintenance of existing lighting, or if needed, the installation of additional security lighting on the exterior of the building and in the parking lot, must be sufficient to allow reasonable surveillance of the parking area to the satisfaction of the Porterville Police Department.
2. No alcohol advertising shall be displayed on the outside of the proposed building.
3. Any future change in operation which substantially alters the conditions or nature of the subject business will require approval by the City Council if such modification involves the sale of alcoholic beverages.
4. That the consumption of alcoholic beverages shall be prohibited off-site and outside the building.
5. Upon approval of the Conditional Use Permit, any future violations of regulations of the codes relating to the sales or consumption of alcohol, and/or excessive service calls by the Police Department resulting from the sales of alcohol will result in revocation of the Conditional Use Permit.
6. At all times, the facility shall be operated and maintained to comply with State Laws, the City of Porterville Zoning Ordinance, adopted Building Codes and all other applicable laws and ordinances.
7. The trash enclosure shall be utilized as intended. When trash is not being picked up, the trash bin shall be placed within the enclosure to provide safety for vehicle circulation within the parking lot.
8. Unless an extension of time is granted by the City Council, the Conditional Use Permit shall expire one (1) year after the date of approval if the on-sale Type 47 Alcohol License for General Bona Fide Eating Place is not active or actively pursued. The alcohol license permits sale of beer, wine and distilled spirits in conjunction with the serving of meals and the separate bar.



PASSED, APPROVED AND ADOPTED this 7th day of May, 2013.

---

Virginia R. Gurrola, Mayor

ATTEST:

John Lollis, City Clerk

By \_\_\_\_\_

Patrice Hildreth, Chief Deputy City Clerk