



DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

ACTION DATE: December 4, 2014

TO: Planning Commission

APPLICANT: Taj Chowdhury
11249 Montgomery Avenue
Granada Hills, CA 91344

CASE NO.: CUP-01018-2014

LOCATION: 5146 Kanan Road (Kanan Plaza)

REQUEST: Request for the Planning Commission to approve a Conditional Use Permit to allow the on-site sale of alcoholic beverages (Alcoholic Beverage Control license type 41) for an existing restaurant (Lal Mirch Indian Restaurant).

ENVIRONMENTAL DETERMINATION: Exempt from the California Environmental Quality Act (CEQA) per Section 15301 of the CEQA Guidelines

RECOMMENDATION: Staff recommends that the Planning Commission approve Conditional Use Permit Case No. CUP-01018-2014, subject to conditions, based on the findings of the attached draft Resolution.

ZONING DESIGNATION: CRS-FC (Commercial Retail Service – Freeway Corridor Overlay)

GENERAL PLAN DESIGNATION: CRS (Commercial Retail Service)

I. PROJECT DESCRIPTION AND BACKGROUND

On July 8, 2009, the City Council adopted an ordinance that requires an approval of a Conditional Use Permit from the Planning Commission for new on-sale and off-sale alcoholic beverage establishments, and changes to existing California Alcoholic Beverage Control (ABC) licenses.

Taj Choudhury from Lal Mirch Indian Restaurant has applied for a Conditional Use Permit to serve alcohol in his restaurant. The restaurant is located at 5146 Kanan Road, in the Kanan Plaza. Lal Mirch replaces a former tenant, Pizza Hut, and uses the same floor plan layout with no expansion of the eating area. The restaurant has been open since September 2014 without serving alcohol. The applicant currently seeks a Conditional Use Permit to serve beer and wine on-site. The applicant intends to obtain a Type 41 license (on-sale for beer and wine) from the California Alcoholic Beverage Control Department (ABC) which cannot be issued by ABC until the Conditional Use Permit request is approved by the City.

The Agoura Hills Municipal Code defines an “on-sale alcoholic beverage establishment as: “ any establishment wherein alcoholic beverages are sold, served, or given away to be consumed on the premises, and which has obtained or intends to obtain an alcoholic beverage control license type 40, 41, 42, 47, 48, 51, 52, 61, 63, and/or 75.”

The Type 41 license will allow the consumption of beer and wine only, on the premises, as long as the owners maintain the premises as a restaurant. In the event that tables are placed outside the tenant space, the business will be subject to ABC’s operational and design restrictions. Typically, ABC requires that the tables be separated from the pedestrian walkway to distinguish the restaurant space from the public space.

II. STAFF ANALYSIS

The City Council’s decision to initiate and approve the Alcoholic Beverage Establishment Ordinance was to achieve greater control over potential nuisance-type issues related to alcoholic beverage establishments, such as noise, particularly related to the proximity to residential areas, as well as overall safety issues, and any impacts related to the concentration of such businesses. The Conditional Use Permit allows for review by the Planning Commission and any appropriate conditions included on a case-by-case basis, following a public hearing. Accordingly, in addition to the findings currently required for approval of a Conditional Use Permit, the new Ordinance also requires the Planning Commission to make additional findings relative to alcohol beverage sales and service.

Lal Mirch currently occupies a free standing 2,000 square-foot building in the Kanan Plaza, located in a commercial corridor on the north side of the freeway, bordered by Canwood Street to the east and Kanan Road to the west. The closest developments to the Kanan Plaza include a high density residential development, Avalon Apartments, east of Canwood Street, an office complex west of Kanan Road, and a McDonald’s Restaurant to the south. The restaurant is open from 11:00 a.m. to 10:00 p.m. every day of the week. The applicant expects to maintain these hours in the future.

Lal Mirch replaces Pizza Hut which operated with a Type 41 license as well. Because Pizza Hut did not allow for a license transfer, the new business operator had to apply for a new license. Currently, two other tenants in the shopping center hold an ABC license, specifically the Liquor Chest (Type 21) and Sushi Raku Restaurant (Type 41). Since the Ordinance was adopted in 2009, the City has issued thirteen Conditional Use Permits for alcohol licenses. Twelve of the thirteen were for eating establishments and one was for an off-sale retail establishment (Trader

Joe's). The proposed CUP would be located in a Census Tract where seven establishments have alcoholic beverage control licenses, with four being eating establishments, two retail stores, and one hotel facility. A map of the existing facilities in the City with ABC issued licenses and City-issued Conditional Use Permits is attached to this report for the Commission's review.

Sensitive land uses in the vicinity include the high density residential development behind the shopping center east of Canwood Street. The restaurant is separated by one of the buildings in the shopping center and the Canwood Street right-of-way. Other potentially sensitive land uses include Chumash Park situated 800 feet from the Kanan Plaza when measured from birds-eye view, and Agoura High School, situated 1,900 feet away, when measured from birds-eye view, and both approximately three quarters of a mile driving distance from the applicant's restaurant which is in excess of the 500-foot radius zone. Locating these sensitive land uses is necessary when considering applications for alcoholic beverage licenses, which is one of the criteria also used by ABC in reviewing applications. Both the school and the park are located beyond the required minimum distance and there is no direct access from Kanan Plaza to either parcel. Additionally, Kanan Plaza is separated from the park and the school by a creek, an apartment complex, and an undeveloped hillside that is inaccessible to the public.

Staff is not aware of any complaints originating from neighboring residents regarding activity occurring at the restaurant while under previous ownership or regarding any other tenants activities at the shopping center. According to the Los Angeles County Sheriff Department, they have not experienced recent problems in the Kanan Plaza related to the consumption of alcoholic beverages and staff has not experienced problems with beer and wine consumption at this location. Based on the above analysis, staff finds the proposed request for the ABC license will not negatively impact surrounding tenant properties, or neighborhoods.

Staff also finds the proposed use to be consistent with the intent of the ordinance and with the findings. The proposed on-sale of alcoholic beverages will occur inside a restaurant that is allowed in the Commercial Retail Service (CRS-FC) zone. No retail sale of alcohol is allowed as part of the requested license. One other restaurant, in the Kanan Plaza, shares a similar license and with similar hours of operation. There is sufficient distance and development between the restaurant and residentially-zoned properties so as to not impact the public peace and safety of the neighborhood.

The proposed project consists of adding a Type 41 ABC license to an existing restaurant and no building addition is proposed. Also, no additional seating capacity is proposed and the existing on-site parking capacity has been determined to be adequate for the proposed project. As such, staff finds the proposed Conditional Use Permit application to be categorically exempt from the requirements of the California Environmental Quality Act as an existing facility, per CEQA Guidelines Section 15301, and no negative declaration or environmental impact report is required.

III. RECOMMENDATION

Based on the above mentioned findings, staff recommends that the Planning Commission approve Conditional Use Permit Case No. CUP-01018-2014, subject to conditions.

IV. ATTACHMENTS

- Draft Resolution and Conditions of Approval
- CUP Burden of Proof
- Vicinity/Zoning Map
- Reduced Plans
- Businesses with Approved Alcohol Beverage Licenses Map
- Photographs

CASE PLANNER: Valerie Darbouze, Associate Planner

DRAFT RESOLUTION NO. _____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF AGOURA HILLS, APPROVING CONDITIONAL USE PERMIT CASE NO. CUP-01018-2014 TO ALLOW THE ON-SITE SALE OF ALCOHOLIC BEVERAGES (TYPE 41 ABC LICENSE) FOR AN EXISTING RESTAURANT (LAL MIRCH INDIAN RESTAURANT); AND MAKING A FINDING OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

THE PLANNING COMMISSION OF THE CITY OF AGOURA HILLS DOES HEREBY RESOLVE, FIND, DETERMINE, AND ORDER AS FOLLOWS:

Section 1. An application was duly filed by Taj Chowdhury with respect to the property located at 5146 Kanan Road, (Assessor's Parcel No. 2048-011-003), requesting the approval of a Conditional Use Permit (Case No. CUP-01018-2014) to allow the on-site sale of alcoholic beverages (ABC License Type 41) at an existing restaurant. A public hearing to consider Case No. CUP-01018-2014 was duly held on December 4, 2014, at 6:30 p.m. in the Council Chambers of City Hall, 30001 Ladyface Court, Agoura Hills, California. Notice of the time, date, place and purpose of the aforesaid meeting was duly given and published as required by state law.

Section 2. Evidence, both written and oral, including the staff report and supporting documentation, was duly presented to and was considered by the Planning Commission at the aforesaid public hearing.

Section 3. Based on the evidence presented at the public hearing, including the staff report and oral and written testimony, the Planning Commission finds, pursuant to Section No. 9673.2.E of the Agoura Hills Zoning Ordinance that:

A. The proposed use, as conditioned, is consistent with the objectives of the Zoning Ordinance and the purposes of the district in which the use is located. The sale of alcoholic beverages will occur on site at an existing permitted restaurant within a retail center located in the Commercial Retail Center (CRS)-Freeway Corridor Overlay (FC) zone. The CRS-FC zone allows for restaurant uses, and the on-site consumption of alcoholic beverages is allowed pursuant to the approval of this Conditional Use Permit.

B. The proposed use, as conditioned, is compatible with the surrounding properties, and with the other uses in the retail center. The restaurant is within a free-standing building in a retail shopping center where retail, office and another restaurant use are permitted. Sufficient separation exists with potential sensitive uses in the vicinity of the site, including the residential development to the east and the office uses to the west of the retail center.

C. The proposed use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare. Pursuant to this Conditional Use Permit, alcoholic beverages are to be consumed indoors. The alcohol use will occur in conjunction with meals which will reduce potential public safety hazards related to the consumption of alcohol on-site.

D. The proposed use, as conditioned, will comply with each of the applicable provisions of the Zoning Ordinance. This permit allows for the on-site sale of alcoholic beverages at that location. The restaurant and consumption of alcohol on site is a permitted use in the CRS-FC zone, and the on-site consumption of alcohol is allowed pursuant to this Conditional Use Permit. No Variance request is considered as part of this application. Thus, the proposed use will comply with the Zoning Code.

E. The distance from other similar and like uses is sufficient to maintain the diversity of the community. The proposed on-sale of alcohol beverages at an existing restaurant increases the diversity of uses in the community. The request is subject to the Department of Alcoholic Beverage Control's final determination for concentration of licenses.

F. The proposed use is consistent with the goals, objectives and policies of the General Plan. The proposed use meets Goal No. LU-22 of the General Plan Land Use and Community Form Element, which is to provide for and encourage the development of a broad range of uses in Agoura Hills' commercial centers that reduce the need to travel to adjoining communities and that capture a greater share of local spending.

Section 4. Based on the evidence presented at the public hearing, including the staff report and oral and written testimony, the Planning Commission finds, pursuant to Section 9396.3 of the Agoura Hills Municipal Code, that:

A. The requested use at the proposed location will not adversely affect the use of a school, park, and playground within a 500-foot radius because these types of uses are located three-quarters of a mile away driving distance, north of the freeway. The closest residential use is screened by a two-story, retail building and separated by a public street, thereby minimizing traffic and noise impacts.

B. The requested use, as conditioned, at the proposed location is sufficiently buffered by private improvements from residentially zoned areas within the immediate vicinity so as not to adversely affect said areas. The free-standing restaurant is screened by a one and a two-story structure in the shopping center and separated by a public street from the residential development. The restaurant closes at 10:00 p.m., thereby minimizing noise impacts to surrounding tenants and properties.

C. No improvements are proposed to the exterior of the structure, therefore, no visual impacts are expected on the immediate neighborhoods, and the project will not cause blight or property deterioration, or substantially diminish or impair property values within the neighborhood. The sale and consumption of alcoholic beverages will occur indoors, within an

existing building which will remain compatible with the City's Architectural and Design Standards and Guidelines.

D. The upkeep and operating characteristics are compatible with and will not adversely affect the livability or appropriate development and use of abutting properties and the surrounding neighborhood. Minor interior changes have been approved by the Building and Safety prior to and will be subject to further review upon approval of the request. No consumption of alcohol within areas outside the establishment is approved with this permit. The on-site consumption of alcohol will not affect the use of abutting properties because the use is located a reasonable distance from the nearest residentially zoned parcel. The restaurant use will be held to the same operational standards as the remaining commercial establishments in the center, and subject to the City's nuisance laws.

E. The proposed hours of alcohol beverage sales, as conditioned, ensure that activities related to the project are compatible with the quiet enjoyment of the neighborhood. The on-site sale of alcoholic beverages in the restaurant will not extend beyond 10:00 p.m. every day of the week at the latest and, thus, will not interfere with the neighbors' quiet enjoyment of property.

F. The requested use will not contribute to an undue concentration of alcoholic beverage establishments in the area. The Kanan Plaza and its tenants are not considered a crime-contributing development and only one other establishment in the retail center provides on-site consumption of alcohol. Approval of this requested use will not create an undue concentration of alcohol beverage establishments.

G. The requested use is not located in a high-crime area, or where a disproportionate number of police calls occur.

Section 5. The project is exempt from the California Environmental Quality Act, as defined in CEQA Guidelines Section 15301 (Class 1) and does not require the adoption of an environmental impact report or negative declaration. The project consists of providing additional services in an existing establishment without the expansion of space.

Section 6. Based on the aforementioned findings, the Planning Commission hereby approves Case No. CUP-0108-2014, subject to the Conditions of Approval, which are attached hereto as Exhibit A and incorporated herein by this reference.

Section 7. The Secretary of the Planning Commission shall certify to the passage, approval, and adoption of this resolution, and shall cause this resolution and his certification to be entered in the Book of Resolutions of the Planning Commission of the City.

Draft Resolution No. ____

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PASSED, APPROVED, and ADOPTED this 4th day of December, 2014, by the following vote to wit:

AYES: (0)

NOES: (0)

ABSENT: (0)

ABSTAIN: (0)

Michael Justice, Chairperson

Doug Hooper, Secretary

CONDITIONS OF APPROVAL
(Case No. CUP-01018-2014)

STANDARD CONDITIONS

1. This decision, or any aspect of this decision, can be appealed to the City Council within fifteen (15) days from the date of Planning Commission action, subject to filing appropriate forms and related fees.
2. This action shall not be effective for any purpose until the applicants have agreed in writing that the applicants are aware of, and accept all, Conditions of Approval of this permit with the Department of Planning and Community Development. Any conditions on such acceptance or challenges, including the filing of legal action, relating to the permit or the conditions shall be treated as a failure to meet this Condition and shall nullify and void this permit.
3. Except as modified herein, the approval of this action is limited to and requires complete conformation to the Site and Floor Plans approved by the Planning Commission.
4. It is hereby declared to be the intent that if any provision of this Permit is held or declared to be invalid, the Permit shall be void and the privileges granted hereunder shall lapse.
5. It is further declared and made a Condition of this action that if any Condition herein is violated, the Permit shall be suspended and the privileges granted hereunder shall lapse; provided that the applicants have been given written notice to cease such violation and has failed to do so for a period of thirty (30) days.
6. All requirements of the Zoning Ordinance and of the specific zoning designation of the subject property must be complied with unless set forth in the Conditional Use Permit.
7. Unless this permit is used within two (2) years from the date of City approval, Case No. CUP-01018-2014 will expire. A written request for a one (1) year extension may be considered prior to the expiration date.

SPECIAL CONDITIONS

8. The applicants shall comply with all requirements of the California Department of Alcohol Beverage Control.
9. This permit shall be valid strictly for license type 41 as defined by the State Department of Alcohol Beverage Control.
10. The approved hours of operation are from 11:00 a.m. and 10:00 p.m. each day of the week.

11. No additional signage is made part of this approval.
12. Live entertainment is not permitted as part of this approval.
13. The Director of Planning and Community Development is authorized to prepare a letter of Public Necessity for this approval if required by the California Alcohol Beverage Control.
14. In accordance with Zoning Ordinance Section 9710, reconsideration of the Conditional Use Permit by the City shall be required when any of the following conditions of the business apply:
 - A. The establishment changes its type of retail liquor license with the Department of Alcoholic Beverage Control;
 - B. There is substantial modification to the mode or character of operation, including, but not limited to, any increase of 20 percent or more in the floor area devoted to alcohol sales, or 100 square feet, whichever is greater.
 - C. The establishment expands a customer service area primarily devoted to the service of alcohol and/or increases the number of customer seats primarily devoted to the service of alcohol.
 - D. The alcoholic beverage license has either been revoked or suspended for any period by ABC.

END

**CONDITIONAL USE PERMIT
BURDEN OF PROOF FORM**

In addition to the information required in the application, the applicant shall substantiate to the satisfaction of the Planning Commission, the following facts;

A. That the requested use at the location proposed will not:

1. Adversely affect the health, peace, comfort or welfare of persons residing or working in the surrounding area, or
2. Be materially detrimental to the use, enjoyment or valuation of property of other persons located in the vicinity of the site, or
3. Jeopardize, endanger or otherwise constitute a menace to the public health, safety or general welfare because;

THE FOLLOWING SUMMARY PERTAINS TO ALL THREE QUESTIONS
1-3 ABOVE. WE ARE TAKING OVER EXISTING LOCATION WHICH
ALREADY HAD A LICENSE. THE PIZZA HUT BEFORE US.
WE ARE A FAMILY ORIENTED DINE IN RESTAURANT. THIS
IS A WINE AND BEER LICENSE. WE SERVE WINE AND BEER
WITH FOOD. THERE IS ^{SEATING} NO BAR AND HARD LIQUOR.
MOST OF OUR CUSTOMER ARE FAMILY ORIENTED AND BRING
THEIR KIDS TO THE FACILITY. THERE IS NO OUTSIDE
DRINKING AND WE CLOSE OUR LOCATION AT 10PM EVERY NIGHT.
WE ALREADY HAVE LICENSE IN OTHER LOCATION SO WE
ARE EXPERIENCED IN DEALING WITH CUSTOMER. ALSO
THIS IS AN EXISTING LOCATION PIZZA HUT WHICH HAD
A WINE AND BEER ~~AND~~ LICENSE.

B. That the proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this Ordinance, or as is otherwise required in order to integrate said use with the uses in the surrounding area because:

WE ARE TAKING OVER AN EXISTING LOCATION AS IS. WE ARE NOT CHANGING ANYTHING TO OUTSIDE. WE ONLY REMODELED INSIDE. WE ARE APPROVED WITH ABC AND WE ARE FULLY TRAINED TO DEAL WITH ANY SITUATION.

OUR PLAN IS ALREADY APPROVED WITH CITY OF AUBURN HILLS FOR PARKING.

WE SERVE WINE & BEER AND HARD LIQUOR. THERE'S NO DRINKING OUTSIDE ALSO THERE IS NO SEATING BAR. ALCOHOL IS SERVED IN MODERATION WITH FOOD.

AS PART OF THE TL REQUIREMENT WE WERE ASKED TO HAVE A VAN ACCESS PARKING, PER ADA COMPLIANCE. NO OTHER IMPROVEMENTS WERE REQUIRED.

C. That the proposed site is adequately served:

1. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate, and
2. By other public or private service facilities as are required because:

OUR CUSTOMER ONLY SUNK WINE AND BEER
WITH FOOD. WE ARE OK WITH LOCAL SHERIFF
AND FIRE DEPARTMENT WE DO NOT NEED ANY
SPECIAL SERVICES.

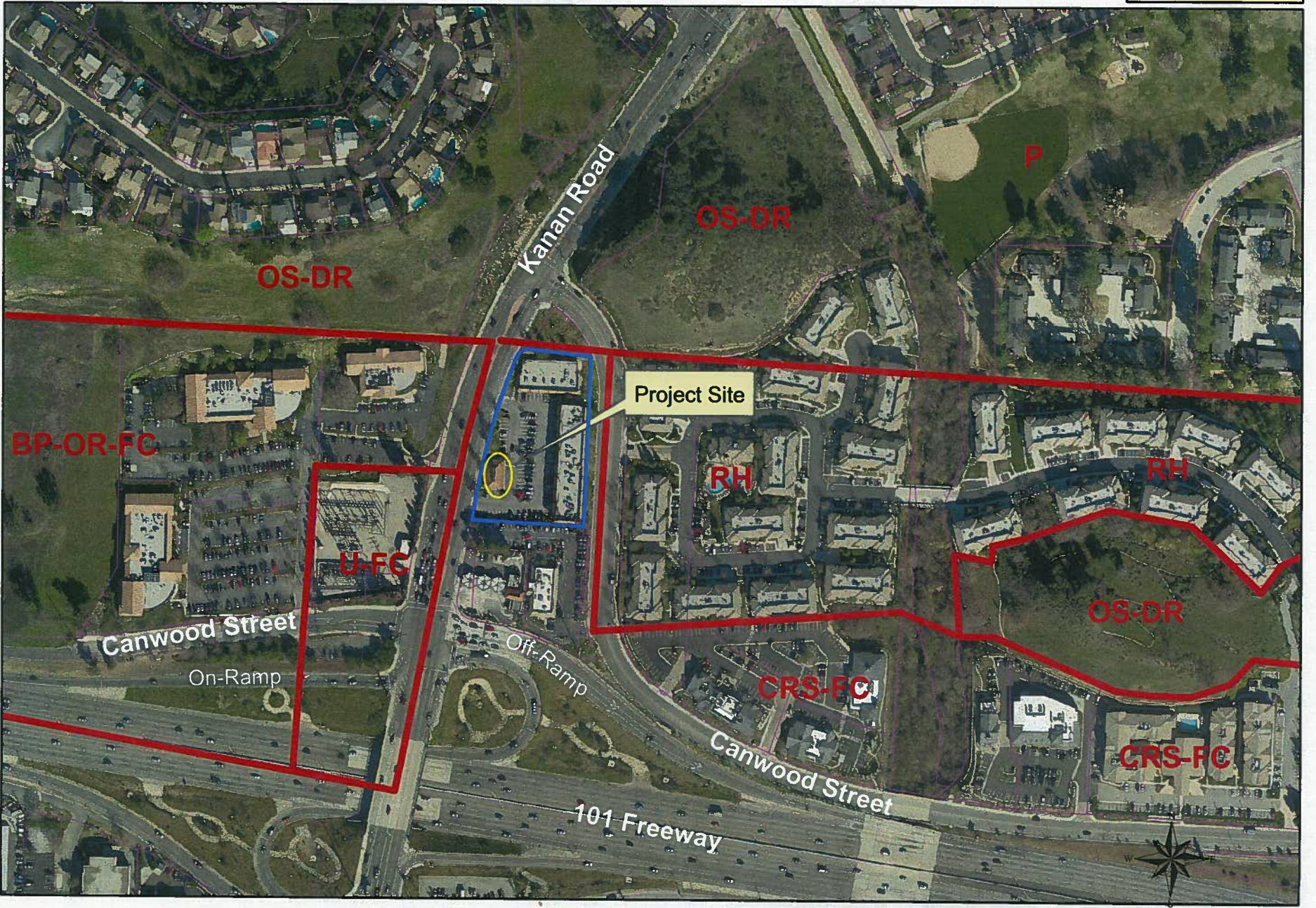
IT IS AN EXISTING LOCATION THAT
WAS ALREADY SERVING WINE AND BEER.

END

City of Agoura Hills

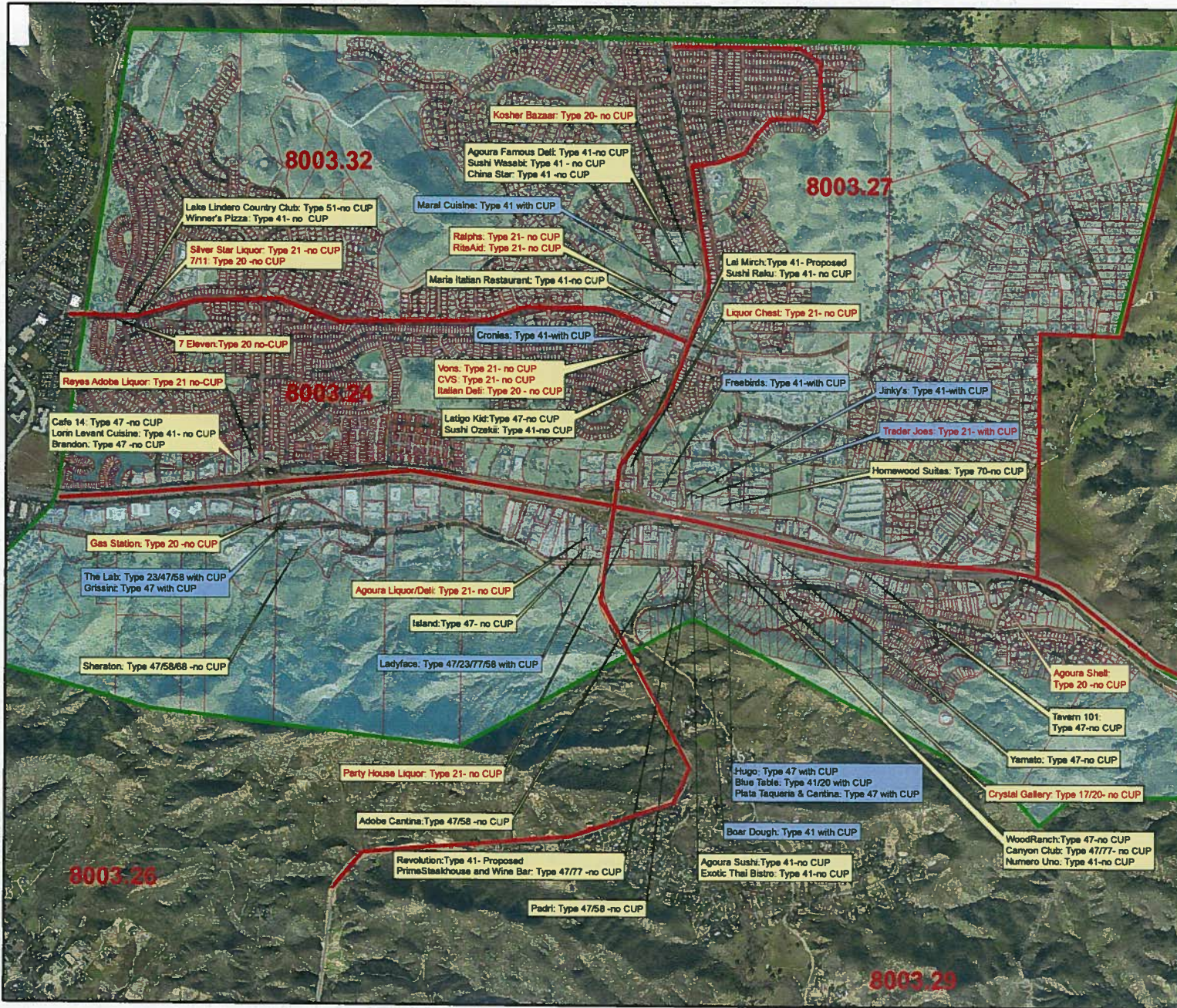
CONDITIONAL USE PERMIT CASE NO. 14-CUP-011

Vicinity/Zoning
Map



0 125 250 500 750 1,000 Feet

City of Agoura Hills ABC Issued Licenses City Issued CUPs as of October 2014 (Per 7/09 Ordinance)



City Issued CUPs:

Trader Joes:	09-CUP-006
Ladyface Ale:	09-CUP-008
Grissini:	09-CUP-009
Hugo:	10-CUP-005
Jinky's:	10-CUP-007
The Lab:	11-CUP-001
Freebirds:	12-CUP-003
Rio de Brazil:	12-CUP-004 exp.
Blue Table:	12-CUP-005
Maral Cuisine:	13-CUP-001
Latigo Kid:	13-CUP-006
Boar Dough:	13-CUP-008
Cronies:	14-CUP-002

Census Tract Number/Boundary

WITH CUPs

- On-Sale Licenses
- Off-Sale Licenses

WITHOUT CUPs

- On-Sale Licenses
- Off-Sale Licenses



