



REPORT TO CITY OF VISALIA PLANNING COMMISSION

HEARING DATE: July 13, 2015

PROJECT PLANNER: Paul Scheibel, AICP, Principal Planner
Phone No.: (559) 713-4369

SUBJECT: Conditional Use Permit No. 2015-04: A request by DMM Faour (dba Red Island) to establish a business that includes retail sales, phone card sales, vaping products, computer work station rental, seasonal promotional sweepstakes, and for playing computer based games in the CR (Regional Retail Commercial) Zone District. The project site is located at 2917 South Mooney Boulevard (APN: 121-090-068)

STAFF RECOMMENDATION

Staff recommends opening the public hearing and denying Conditional Use Permit No. 2015-04, based upon the findings contained in Resolution No. 2015-11. Staff's recommendation is based on the conclusion that the requested uses include those that constitute illegal gambling per the Visalia Municipal Code and applicable State laws.

RECOMMENDED MOTION

I move to deny Conditional Use Permit No. 2015-04, based on the findings contained in Resolution No. 2015-11.

PROJECT DESCRIPTION

The applicant is requesting approval of a conditional use permit to allow a multi-use business within an approximately 1,600 sq.ft. suite of a 5,000 sq.ft. commercial building. The business offers several retail products, including phone card sales, vaping products, and internet activities, including rental of computer stations to walk-in customers. The operational statement states the computer stations are for internet access, internet telephone calls, electronic games of skill or chance, and as one of several access portals for participation in "seasonal sweepstakes". The operational floor plan devotes less than 20% of the floor area to display of retail items for sale. The sale of retail goods, phone cards, vaping products are all "Permitted" uses in the C-R zone. Approximately 80% of the floor space is devoted to 34 computer stations that are offered for rent to customers on a walk-in basis.

The site contains 15 on-site parking spaces. The parking assigned to each tenant within the site is proportionate with their leased space. As such the subject business is assigned 4.8 parking spaces, which is 32 percent of the 15 parking spaces on the site. The applicant has not provided evidence of a different assigned parking ratio as part of their lease agreement.

The business began operations at the subject address in October 2014. The City served a Code compliance notice to the operators that they were required to file and secure a Conditional Use Permit (CUP), and obtain the proper building permits for the tenant improvement associated with this lease space. Specifically, the City's notice required the operator to file for a CUP within 14 days. The applicant complied with the timeline for filing for the CUP as requested in the Code compliance notice.

A CUP is required to operate the business because it includes more than six computer terminals for customer rental use. By a previous Planning Commission determination (Appeal of the City Planner Determination requiring a Conditional Use Permit pursuant to Site Plan Review No. 2014-060, for the use/establishment of the Wonderland business), a business offering computer terminals for rent are similar to a Video Arcade for Zoning use purposes (Section 17.32.120 Video Machine Arcades of the Zoning Ordinance).

On three occasions (March 17, 2015, April 23, 2015, and June 12, 2015) during application completeness review, staff requested additional and clarifying materials to support the proponent's position that the "seasonal promotional sweepstakes" and any other online gaming activity are not classified as illegal gambling under California law (Please see Attachment 4). The applicant subsequently stated the promotional sweepstakes would end on March 31, 2015, but indicated that it may offer such seasonal promotional sweepstakes again in the future.(Please see attachment 5). The proponent also stated the business began offering "games of skill" in April, 2015.

On June 25, 2015, the California Supreme Court issued a decision in a *People ex rel. Green v. Grewal* involving several similar businesses in Bakersfield offering "seasonal promotional sweepstakes" operations exactly like those previously offered by the proponent (Please see Attachment 8). In *Grewal*, the California Supreme Court concluded that such seasonal sweepstakes are illegal gambling. Please see Attachments 4 and 5, where the proponent's description of its seasonal sweepstakes being conducted at the time of the proponent's correspondence essentially mirrors the description of the seasonal sweepstakes found to be illegal gambling by the California Supreme Court. Staff has determined that Red Island's business operation has, at least until March 31, 2015, been conducting illegal gambling operations. The applicant's most recent correspondence (May 12, 2015) indicates a desire to offer such illegal gambling activities sometime in the next 24 months. Further, the statements in the applicant's most recent correspondence that current gaming activities involve only "games of skill" that is exempt from state gambling laws are unsupported by the applicant's written statements and materials, and with staff's observation of the existing nature of the business. Consequently, the CUP application includes activities that are contrary to State law and the City's Municipal Code, including the Zoning Ordinance and Chapter 9.12 (Gambling), and therefore the CUP application should be denied.

BACKGROUND INFORMATION

General Plan Land Use Designation:	Regional Commercial
Zoning:	RC (Regional Commercial)
Surrounding Zoning and Land Use	North: Mix of retail businesses and services South: RC/ Mix of retail businesses and services East: RC/ Mix of retail businesses and services West: RC /Converted duplex for offices
Environmental Review:	Categorical Exemption No. 2015-39
Special Districts:	Design District A
Site Plan:	2015-025

RELATED PLANS & POLICIES

See separate Municipal Ordinance chapters pertaining to Conditional Use Permits and Gambling.

RELATED PROJECTS

June 9, 2014 - Appeal of the City Planner determination requiring a Conditional Use Permit pursuant to Site Plan Review No. 2014-060, for the use/establishment of the Wonderland business. The subject business was located at 3324 South Mooney Boulevard, in the RC Zone District. The Planning Commission upheld the City Planner determination to require a Conditional Use Permit for the Wonderland business pursuant to Section 17.32.120 of the Zoning Ordinance. The business offered computer terminals for rental use by patrons. The final determination was that a CUP is required because the use is most similar to a video arcade which requires a CUP for more than four such devices. The business subsequently closed without processing a CUP application.

PROJECT EVALUATION

The question of whether the seasonal sweepstakes or any other computer games offered at the Red Island business constitutes illegal gaming is elemental to the analysis of this CUP. The applicant contends that all the computer activities or online gaming conducted on the site is not gambling, as defined by the California Penal Code section 330b. However, in staff's determination, the recent Supreme Court decision is conclusive in this matter and is fully applicable to the CUP application. By their own statements, the applicant was offering these "seasonal sweepstakes" as an elemental component of their business from their opening (without CUP) in October 2014, through March 31, 2015. Indeed, the correspondence provided by the applicant on March 24, 2015, wherein the applicant's attorney describes Red Island's seasonal sweepstakes, and the description of the seasonal sweepstakes described by the California Supreme Court in *Grewal*, are essentially identical. Further, the applicant's subsequent statements that future electronic games to be offered are "games of skill" instead of games of chance, and therefore exempt from the above-referenced state statutes prohibiting gambling, are not substantiated.

In staff's conclusion, denying the CUP application as presented, is warranted from a Zoning aspect, and is essential for ensuring that the applicant's business activities at the site are conducted without the likelihood of nuisance impacts noted in this report, and as documented by the preponderance of evidence in the record including the applicant's history of engaging in illegal gambling and the resultant calls for service and nuisance complaints received since the business began operations at the subject site. Staff is unable to recommend conditions of approval that would adequately preclude the future likelihood that gambling activities would be conducted at the site by the applicant, given its history of doing just that, and that would also ameliorate the associated nuisance effects from those illegal activities occurring on the site, and to the detriment of the site and the surrounding area.

Nuisance Impacts: There have been 28 validated calls for police service at the Red Island business address since it began operations in October 2014 (9 in 2014 after October 1, 2014, and 19 between January 1, 2015, and June 8, 2015) (Please see Attachment 9). The calls for service generally relate to loitering and suspicious activities noted by neighboring businesses in regard to patrons of the Red Island business. The number and variety of calls for service are in sharp contrast to the two calls for service to the location in the two years prior to Red Island opening their business in October 2014.

Customer Transit and Parking Behaviors- The business presently has 34 computer terminal stations for use by customers. The business would thus be required to provide up to 34 parking spaces to satisfy customer parking needs. A justification of the adequacy of the parking provided for the use (five spaces) was requested in the City's incompleteness letter dated April 23, 2015. The applicant responded by stating that most of the customers arrive on foot or by bicycle, and consequently the business has adequate on-site parking relative to the use.

The applicant's response was somewhat accurate, relative to the use of the parking area immediately adjacent to the business. City staff visits to the site (most recent visit- June 9, 2015, 11:15 am) have consistently noted an average of 12 to 15 customers occupying computer terminal stations, but with the entire site parking lot vacant of customer automobiles. An average of three to five bicycles have been observed in the bicycle rack that is situated in front of the business. However, staff has also consistently observed customers transiting between the business and privately owned vehicles parked on Monte Vista Ave. to the north.

Accordingly, staff could not discern whether the majority of Red Island customers were arriving at the business on foot, or if customers were parking in other commercial parking lots in proximity to the Red Island site. Staff's observation is that customers tend to avoid parking their vehicles where they are associated with the business. In the past, this situation has led to conflicts due to acts of trespassing by customers of one business to the detriment of other businesses in the area.

Alternatives: If the Planning Commission determines that the CUP should be approved, staff recommends the following conditions be applied to the project approval. In addition, staff recommends that the hearing be continued to a date specific in order to amend the resolution to reflect conditional approval of CUP 2015-04.

"Nuisance Generation- A baseline of three or more validated police call outs within a twelve month period as the threshold for the activities occurring at the location shall constitute cause for action to abate a public nuisance, per VMC section 8.40.060:

8.40.060 Public Nuisances

- I. Any condition on a property which meets the following requirements:
 1. Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life and property; and
 2. Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

Actions to abate a public nuisance shall include revocation of the Conditional Use Permit, per Zoning Ordinance section 17.38.040 (Revocation)"

As noted above, there have been 28 validated calls for police service at the Red Island business address (2917 So. Mooney) since it began operations in October 2014 (9 call outs in 2014 after October 1, 2014, and 19 call outs between January 1, 2015, and June 8, 2015). This is in comparison with two calls for service at that address in 2012 and 2013. This condition will provide a degree of assurance that the City has put active measures in place to quickly and efficiently abate nuisance impacts that may be directly associated with the use, if the use is

entitled by the Planning Commission.

"On-site Parking- On-site parking shall be provided at a ratio of one parking space for each computer terminal station. Evidence of lease-allowed parking on the site in excess of the equal distribution of parking spaces per lease tenant, by leaseable tenant space, shall be in the form of a recorded lease modification document executed by the property landlord."

The business currently has 34 computer terminal stations for use by customers. The tenant suite is reported to be 1,590 sq.ft. in floor area of an approximately 5,000 sq.ft. commercial building. The site contains a total of 15 on-site parking spaces. Under typical shared use arrangements, the applicant's suite would have allocated use of five of the parking spaces.

The City's parking ordinance (VMC Chapter 17.34) does not have a specific parking ratio for an internet café. Consequently, the provisions of VMC section 17.34.020 G (Uses not specified) are applicable to the project. In determining an appropriate parking ratio for unspecified uses, the VMC section 17.34.020 G. requires the City to set a parking ratio that most closely matches a similar specified use. The Planning Commission has the discretion to approve, modify, or reject staff's application of 17.34.020(G) to the proposed use.

A justification of the adequacy of the parking provided for the use was requested in the incompleteness letter of April 23, 2015. A summary of the applicant's response is that most of the customers arrive to the business on foot or by bicycle, so off-street parking is not an issue. No further documented industry-wide or specific location details were provided by the applicant to justify this conclusion. City staff has been to the site and has been inside the business on several occasions since CUP 2015-04 was filed.

The most recent site visit was conducted on June 9, 2015 at 11:15 am. The site visits have consistently noted an average of 12 to 15 customers occupying computer terminal stations, with two to three business employees on duty. An average of three to five bicycles have been observed in the rack that is situated in front of the business. During these visits, staff has observed several customers transiting between the business and privately owned vehicles parked on Monte Vista Ave. to the north.

City staff has considered this issue, including the applicant's response. Staff's evaluation of the totality of evidence and circumstances leads to the recommendation that, if the project is approved, this condition be placed on the project. If approved, the number of computer stations to match the available off-street parking available to the business. This has been calculated to be **no more than six such computer stations to be available for customer use.**

Staff has determined that the use most closely matches that of a barber/beauty shop which requires two parking spaces per chair, except that only one parking space is to be required per customer computer station. The similarity of the two uses for parking purposes is that both business types are tied to dedicated customers who occupy a specific seat (as opposed to floor area or other criteria) for an extended period of time (up to one hour or more per visit).

Alternately, staff considered a restaurant parking ratio of one space per 100 square feet of floor area. Under this formula, the business suite (1,590 sq.ft.) parking requirements would exceed the parking available on the site- even excluding the balance of the commercial building.

Finally, staff could not discern a compelling zoning and land use explanation to substantiate the applicant's contention that the customers arrive to the business primarily on bicycles or on foot. This is particularly incongruous in that the business operating statement states that patrons must be at least 18 years old. This is in contrast to other youth oriented businesses where the preponderance of participating customers are below the legal driving age.

Preclusion of Future Forms of Illegal Gaming Activities- Staff believes the standard condition applied to all projects regarding compliance with all applicable local, state, and federal laws, in conjunction with the special condition pertaining to nuisance abatement that is discussed above, is sufficient to address this issue should the CUP be granted.

Environmental Review

The project would be statutorily exempt from CEQA if the project is denied. If the project is approved, the project would be categorically exempt per CEQA Guidelines section 15301.

RECOMMENDED FINDINGS

1. That the proposed project will be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity because evidence in the record conclusively demonstrates the business features illegal gaming activities as defined in a California Supreme Court decision issued on June 27, 2015. Further, continued operation of the business would result in adverse physical impacts on adjacent businesses.
2. That the proposed conditional use permit is inconsistent with the policies and intent of the General Plan, Municipal Code and Zoning Ordinance. Specifically, the project is in conflict with Chapter 9.12 (Gambling) and Zoning Ordinance Section 17.18.050 (Zoning Use Matrix) and Chapter 17.34 (Off-street Parking).

APPEAL INFORMATION

According to the City of Visalia Zoning Ordinance Section 17.02.145, an appeal to the City Council may be submitted within ten days following the date of a decision by the Planning Commission. An appeal with applicable fees shall be in writing and shall be filed with the City Clerk at 425 East Oak Avenue, Suite 301, Visalia, CA 93291. The appeal shall specify errors or abuses of discretion by the Planning Commission, or decisions not supported by the evidence in the record. The appeal form can be found on the city's website www.ci.visalia.ca.us or from the City Clerk.

Attachments:

1. Related Plans and Policies
2. Resolution
3. Application Operational Statement and Floor Plan
4. Application Incompleteness Correspondence and Applicant's Reply, dated March 17, 2015 and March 24, 2015
5. Application Incompleteness Correspondence and Applicant's Reply, dated April 23, 2015, and May 12, 2015
6. Application Completeness Correspondence, dated June 12, 2015

7. Site Plan Review Comments
8. California Supreme Court Decision- Grewal
9. Nuisance Report Summary

- Zoning Map
- Aerial Photo

Related Plans & Policies

MUNICIPAL CODE

Chapter 9.12 GAMBLING

Sections:

Article 1. Card Games

[9.12.010](#) Construction.

[9.12.020](#) Unlawful games.

[9.12.030](#) Exceptions.

Article 2. Lottery Tickets

[9.12.040](#) Possession unlawful.

Article 1. Card Games

[9.12.010](#) Construction.

No provision of this article shall be construed to prohibit any act made unlawful by any general law of the state of California but said article is intended to be supplemental thereto. (Prior code § 5045)

[9.12.020](#) Unlawful games.

A. **Gambling House Prohibited.** No person shall keep, conduct or maintain any house, room, apartment or place, used in whole or in part as a gambling house or place where any game is played, conducted, dealt, or carried on with cards, dice, dominoes or other devices, for money, checks, chips, credit, or any representative of value, in the result of which game chance is any determining factor, except as set forth in Section [9.12.030](#). The word "cards" as used in this article is not intended to and shall not include games known as bridge or whist.

B. **Permitting Use as a Gambling House.** No person shall knowingly permit any house, room, apartment or place owned by him or under his charge or control to be used in whole or in part as a gambling house or place of playing, conducting, dealing, or carrying on any game, played with cards, dice, dominoes, or other device, for money, checks, chips, credit or any representative of value, in the result of which game chance is any determining factor, except as set forth in Section [9.12.030](#).

C. **Betting.** No person shall deal, operate, attend, play or bet at or against any game, in the result of which game chance is any determining factor, which game is played, conducted, dealt or carried on with cards, dice, dominoes, or other device, for money, checks, chips, credit or any representative of value, in any house, room, apartment, or place, except as set forth in Section [9.12.030](#). (Prior code § 5046)

[9.12.030](#) Exceptions.

The following exceptions are made to the provisions of Section [9.12.020](#) and the subsections thereunder.

A. **Private Games.** Said provisions shall not apply to occasional private games, otherwise lawful, carried on for purely social purposes in a private home. Neither shall said provisions apply to otherwise lawful games, other than card games, conducted by a private group of customers, for the sole purpose of determining which member of said group shall pay for food, refreshments, or beverages, for immediate consumption by the group.

B. **Benevolent Organizations Licensed.** A license may be issued in the reasonable discretion of the chief of police to any incorporated or chartered fraternal, labor, nonprofit, benevolent or charitable organization, or to any religious association, which organization or association has been continuously carrying on within the city the activities of which it was organized for a period of not less than two years immediately preceding making application therefore. Said license shall authorize such organization or association to conduct a game room or rooms wherein games not in conflict with any state law may be played and conducted, incidental to the other activities of such organization, but in conformity with the provisions of this subsection. No advertising or advertising signs shall be permitted in connection with said operation. The licensee shall have a paid attendant on the premises at all times when games are in progress, and it shall be his duty to report to the licensee any violation of law.

C. **Members Only.** No such game shall be open to the public but shall be used only by the members of the respective organization or association licensed and shall be maintained in the building principally used by the licensee.

D. **Existing Card Rooms.** Any card room in the annexed area in operation pursuant to the provisions of the Ordinance Code of the county of Tulare for a period of one year prior to the effective date of annexation of the property to the city, shall be permitted to operate for a period of six months from the effective date of annexation; thereafter, the further operation of said card room by any persons shall be in violation of this section. (Prior code § 5047)

Master List Zone District		COMMERCIAL							OFFICE				INDUSTRIAL		
		C-C	C-N	C-SO	C-CM	C-R	C-DT	C-H	C-S	OG	PA	B-R-P	OC	I-L	I-H
288	RECREATION FACILITIES														
289 a	Athletic and Health Clubs (gymnasiums, fitness centers, racquet clubs)		C	C	C	C	C	C		C	C	C			
289 b	Athletic and Health Clubs (gymnasiums, fitness centers, racquet clubs) less than 5,000 sq. ft.	P	P	P	P	P	P	P	P	P	P	P		P	
290	Swimming Pools	C		C				C							
291	Private Libraries						P					C			
292	Athletic/Playing Fields							C							
293	Bowling Alleys			C	C	C	C	C							
294	Circus, Carnivals, Fairs & Festivals, Revivals/Assemblies			T	T	T	T		T			T		T	
295	Dance & Music Studios	P	P	P	P	P	P	P	P	P	P	P		P	
296	Martial Arts	P	P	P	P	P	P	P	P	P	P	P		P	
297	Golf Courses & Driving Ranges							C							
298	Miniature Golf Courses			C		C		C							
299	Ice & Roller Skating Rinks			C	C	C		C							
300	Pool Halls/Billiard Parlors		C	C	C	C	C								
301	Video Machines/Coin-Operated Games														

Master List Zone District		COMMERCIAL							OFFICE				INDUSTRIAL		
		C-C	C-N	C-SO	C-CM	C-R	C-DT	C-H	C-S	OG	PA	B-R-P	OC	I-L	I-H
302	- 1 to 4 machines	P	P	P	P	P	P	P				P			
303	- 5 or more machines	C	C	C	C	C	C	C							
304	Other Recreational Facilities			C	C	C	C	C	C			C		C	
304 b	Rifle and pistol range, indoor			C	C	C	C	C	C			C		C	C

Chapter 17.38

Conditional Use Permits

17.38.010 Purposes and powers

In certain zones conditional uses are permitted subject to the granting of a conditional use permit. Because of their unusual characteristics, conditional uses require special consideration so that they may be located properly with respect to the objectives of the zoning ordinance and with respect to their effects on surrounding properties. In order to achieve these purposes and thus give the zone use regulations the flexibility necessary to achieve the objectives of this title, the planning commission is empowered to grant or deny applications for conditional use permits and to impose reasonable conditions upon the granting of such permits. (Prior code § 7525)

17.38.030 Lapse of conditional use permit.

A conditional use permit shall lapse and shall become void twenty-four (24) months after the date on which it became effective, unless the conditions of the permit allowed a shorter or greater time limit, or unless prior to the expiration of twenty-four (24) months a building permit is issued by the city and construction is commenced and diligently pursued toward completion on the site which was the subject of the permit. A permit may be renewed for an additional period of one year; provided, that prior to the expiration of twenty-four (24) months from the date the permit originally became effective, an application for renewal is filed with the planning commission. The commission may grant or deny an application for renewal of a conditional use permit. In the case of a planned residential development, the recording of a final map and improvements thereto shall be deemed the same as a building permit in relation to this section. (Ord. 2001-13 § 4 (part), 2001: prior code § 7527)

17.38.040 Revocation.

Upon violation of any applicable provision of this title, or, if granted subject to a condition or conditions, upon failure to comply with the condition or conditions, a conditional use permit shall be suspended automatically. The planning commission shall hold a public hearing within sixty (60) days, in accordance with the procedure prescribed in Section 17.38.080, and if not satisfied that the regulation, general provision or condition is being complied with, may revoke the permit or take such action as may be necessary to insure compliance with the regulation, general provision or condition. Appeals of the decision of the planning commission may be made to the city council as provided in Section 17.38.120. (Prior code § 7528)

17.38.050 New application.

Following the denial of a conditional use permit application or the revocation of a conditional use permit, no application for a conditional use permit for the same or substantially the same conditional use on the same or substantially the same site shall be filed within one year from the date of denial or revocation of the permit unless such denial was a denial without prejudice by the planning commission or city council. (Prior code § 7530)

17.38.060 Conditional uses permit to run with the land.

A conditional use permit granted pursuant to the provisions of this chapter shall run with the land and shall continue to be valid upon a change of ownership of the site or structure which was the subject of the permit application subject to the provisions of Section 17.38.065. (Prior code § 7531)

17.38.065 Abandonment of conditional use permit.

If the use for which a conditional use permit was approved is discontinued for a period of one hundred eighty (180) days, the use shall be considered abandoned and any future use of the site as a conditional use will require the approval of a new conditional use permit.

17.38.110 Action by planning commission.

- A. The planning commission may grant an application for a conditional use permit as requested or in modified form, if, on the basis of the application and the evidence submitted, the commission makes the following findings:
 1. That the proposed location of the conditional use is in accordance with the objectives of the zoning ordinance and the purposes of the zone in which the site is located;
 2. That the proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.
- B. A conditional use permit may be revocable, may be granted for a limited time period, or may be granted subject to such conditions as the commission may prescribe. The commission may grant conditional approval for a permit subject to the effective date of a change of zone or other ordinance amendment.
- C. The commission may deny an application for a conditional use permit. (Prior code § 7536)\

17.38.120 Appeal to city council.

The decision of the City planning commission on a conditional use permit shall be subject to the appeal provisions of Section 17.02.145. (Prior code § 7537) (Ord. 2006-18 § 6, 2007)

17.38.130 Effective date of conditional use permit.

A conditional use permit shall become effective immediately when granted or affirmed by the council, or upon the sixth working day following the granting of the conditional use permit by the planning commission if no appeal has been filed. (Prior code § 7539)

Related Plans & Policies

MUNICIPAL CODE

Chapter 9.12 GAMBLING

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No provision of this article shall be construed to prohibit any act made unlawful by any general law of the state of California but said article is intended to be supplemental thereto. (Prior code § 5045)

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B. **Permitting Use as a Gambling House.** No person shall knowingly permit any house, room, apartment or place owned by him or under his charge or control to be used in whole or in part as a gambling house or place of playing, conducting, dealing, or carrying on any game, played with cards, dice, dominoes, or other device, for money, checks, chips, credit or any representative of value, in the result of which game chance is any determining factor, except as set forth in Section [9.12.030](#).

C. **Betting.** No person shall deal, operate, attend, play or bet at or against any game, in the result of which game chance is any determining factor, which game is played, conducted, dealt or carried on with cards, dice, dominoes, or other device, for money, checks, chips, credit or any representative of value, in any house, room, apartment, or place, except as set forth in Section [9.12.030](#). (Prior code § 5046)

[9.12.030](#) Exceptions.

The following exceptions are made to the provisions of Section [9.12.020](#) and the subsections thereunder.

A. **Private Games.** Said provisions shall not apply to occasional private games, otherwise lawful, carried on for purely social purposes in a private home. Neither shall said provisions apply to otherwise lawful games, other than card games, conducted by a private group of customers, for the sole purpose of determining which member of said group shall pay for food, refreshments, or beverages, for immediate consumption by the group.

B. **Benevolent Organizations Licensed.** A license may be issued in the reasonable discretion of the chief of police to any incorporated or chartered fraternal, labor, nonprofit, benevolent or charitable organization, or to any religious association, which organization or association has been continuously carrying on within the city the activities of which it was organized for a period of not less than two years immediately preceding making application therefore. Said license shall authorize such organization or association to conduct a game room or rooms wherein games not in conflict with any state law may be played and conducted, incidental to the other activities of such organization, but in conformity with the provisions of this subsection. No advertising or advertising signs shall be permitted in connection with said operation. The licensee shall have a paid attendant on the premises at all times when games are in progress, and it shall be his duty to report to the licensee any violation of law.

C. **Members Only.** No such game shall be open to the public but shall be used only by the members of the respective organization or association licensed and shall be maintained in the building principally used by the licensee.

D. **Existing Card Rooms.** Any card room in the annexed area in operation pursuant to the provisions of the Ordinance Code of the county of Tulare for a period of one year prior to the effective date of annexation of the property to the city, shall be permitted to operate for a period of six months from the effective date of annexation, thereafter, the further operation of said card room by any persons shall be in violation of this section. (Prior code § 5047)

Master List Zone District		COMMERCIAL								OFFICE				INDUSTRIAL	
		C-C	C-N	C-SO	C-CM	C-R	C-DT	C-H	C-S	OG	PA	B-R-P	OC	I-L	I-H
288	RECREATION FACILITIES														
289 a	Athletic and Health Clubs (gymnasiums, fitness centers, racquet clubs)		C	C	C	C	C	C		C	C	C			
289 b	Athletic and Health Clubs (gymnasiums, fitness centers, racquet clubs) less than 5,000 sq. ft.	P	P	P	P	P	P	P	P	P	P	P		P	
290	Swimming Pools	C		C				C							
291	Private Libraries						P					C			
292	Athletic/Playing Fields							C							
293	Bowling Alleys			C	C	C	C	C							
294	Circus, Carnivals, Fairs & Festivals, Revivals/Assemblies			T	T	T	T		T			T		T	
295	Dance & Music Studios	P	P	P	P	P	P	P	P	P	P	P		P	
296	Martial Arts	P	P	P	P	P	P	P	P	P	P	P		P	
297	Golf Courses & Driving Ranges							C							
298	Miniature Golf Courses			C		C		C							
299	Ice & Roller Skating Rinks			C	C	C		C							
300	Pool Halls/Billiard Parlors		C	C	C	C	C								
301	Video Machines/Coin-Operated Games														

Master List Zone District		COMMERCIAL								OFFICE				INDUSTRIAL	
		C-C	C-N	C-SO	C-CM	C-R	C-DT	C-H	C-S	OG	PA	B-R-P	OC	I-L	I-H
302	- 1 to 4 machines	P	P	P	P	P	P	P				P			
303	- 5 or more machines	C	C	C	C	C	C	C							
304	Other Recreational Facilities			C	C	C	C	C				C		C	
304 b	Rifle and pistol range, indoor			C	C	C	C	C	C			C		C	C

Chapter 17.38 Conditional Use Permits

17.38.010 Purposes and powers

In certain zones conditional uses are permitted subject to the granting of a conditional use permit. Because of their unusual characteristics, conditional uses require special consideration so that they may be located properly with respect to the objectives of the zoning ordinance and with respect to their effects on surrounding properties. In order to achieve these purposes and thus give the zone use regulations the flexibility necessary to achieve the objectives of this title, the planning commission is empowered to grant or deny applications for conditional use permits and to impose reasonable conditions upon the granting of such permits. (Prior code § 7525)

17.38.030 Lapse of conditional use permit.

A conditional use permit shall lapse and shall become void twenty-four (24) months after the date on which it became effective, unless the conditions of the permit allowed a shorter or greater time limit, or unless prior to the expiration of twenty-four (24) months a building permit is issued by the city and construction is commenced and diligently pursued toward completion on the site which was the subject of the permit. A permit may be renewed for an additional period of one year; provided, that prior to the expiration of twenty-four (24) months from the date the permit originally became effective, an application for renewal is filed with the planning commission. The commission may grant or deny an application for renewal of a conditional use permit. In the case of a planned residential development, the recording of a final map and improvements thereto shall be deemed the same as a building permit in relation to this section. (Ord. 2001-13 § 4 (part), 2001: prior code § 7527)

17.38.040 Revocation.

Upon violation of any applicable provision of this title, or, if granted subject to a condition or conditions, upon failure to comply with the condition or conditions, a conditional use permit shall be suspended automatically. The planning commission shall hold a public hearing within sixty (60) days, in accordance with the procedure prescribed in Section 17.38.080, and if not satisfied that the regulation, general provision or condition is being complied with, may revoke the permit or take such action as may be necessary to insure compliance with the regulation, general provision or condition. Appeals of the decision of the planning commission may be made to the city council as provided in Section 17.38.120. (Prior code § 7528)

17.38.050 New application.

Following the denial of a conditional use permit application or the revocation of a conditional use permit, no application for a conditional use permit for the same or substantially the same conditional use on the same or substantially the same site shall be filed within one year from the date of denial or revocation of the permit unless such denial was a denial without prejudice by the planning commission or city council. (Prior code § 7530)

17.38.060 Conditional uses permit to run with the land.

A conditional use permit granted pursuant to the provisions of this chapter shall run with the land and shall continue to be valid upon a change of ownership of the site or structure which was the subject of the permit application subject to the provisions of Section 17.38.065. (Prior code § 7531)

17.38.065 Abandonment of conditional use permit.

If the use for which a conditional use permit was approved is discontinued for a period of one hundred eighty (180) days, the use shall be considered abandoned and any future use of the site as a conditional use will require the approval of a new conditional use permit.

17.38.110 Action by planning commission.

- A. The planning commission may grant an application for a conditional use permit as requested or in modified form, if, on the basis of the application and the evidence submitted, the commission makes the following findings:
 1. That the proposed location of the conditional use is in accordance with the objectives of the zoning ordinance and the purposes of the zone in which the site is located;
 2. That the proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.
- B. A conditional use permit may be revocable, may be granted for a limited time period, or may be granted subject to such conditions as the commission may prescribe. The commission may grant conditional approval for a permit subject to the effective date of a change of zone or other ordinance amendment.
- C. The commission may deny an application for a conditional use permit. (Prior code § 7536)\

17.38.120 Appeal to city council.

The decision of the City planning commission on a conditional use permit shall be subject to the appeal provisions of Section 17.02.145. (Prior code § 7537) (Ord. 2006-18 § 6, 2007)

17.38.130 Effective date of conditional use permit.

A conditional use permit shall become effective immediately when granted or affirmed by the council, or upon the sixth working day following the granting of the conditional use permit by the planning commission if no appeal has been filed. (Prior code § 7539)

RESOLUTION NO. 2015-11

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF VISALIA DENYING CONDITIONAL USE PERMIT NO. 2015-04, A REQUEST BY DMM DAFOUR (DBA RED ISLAND) TO ESTABLISH A BUSINESS THAT INCLUDES RETAIL SALES, PHONE CARD SALES, VAPING PRODUCTS, COMPUTER WORK STATION RENTAL, SEASONAL PROMOTIONAL SWEEPSTAKES, AND PLAYING COMPUTER BASED GAMES OF SKILL, LOCATED AT 2917 SO. MOONEY BLVD., IN THE RC (REGIONAL RETAIL COMMERCIAL) ZONE DISTRICT (APN 121-090-068)

WHEREAS, Conditional Use Permit No. 2015-04, is a request by DMM Dafour (dba Red Island) to allow a multi-purpose business in the RC (Regional Retail Commercial) zone, located at 2917 So. Mooney Boulevard. (APN: 121-090-068); and

WHEREAS, the Planning Commission of the City of Visalia, after duly published notice did hold a public hearing before said Commission on July 13, 2015; and

WHEREAS, the Planning Commission of the City of Visalia finds the Conditional Use Permit No. 2015-04 to be subject to Chapter 17.38.110 of the Zoning Ordinance of the City of Visalia based on the evidence contained in the staff report and testimony presented at the public hearing; and

WHEREAS, the Planning Commission finds the project to be Categorically Exempt consistent with the California Environmental Quality Act (CEQA) and City of Visalia Environmental Guidelines.

NOW, THEREFORE, BE IT RESOLVED that the project is exempt from further environmental review pursuant to CEQA Section 15301.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Planning Commission of the City of Visalia makes the following specific findings based on the evidence presented:

1. That the proposed project will be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity because evidence in the record conclusively demonstrates the business features illegal gaming activities as defined in a California Supreme Court decision issued on June 27, 2015. Further, continued operation of the business would result in adverse physical impacts on adjacent businesses.
2. That the proposed conditional use permit is inconsistent with the policies and intent of the General Plan, Municipal Code and Zoning Ordinance. Specifically, the project is in conflict with Chapter 9.12 (Gambling) and Zoning Ordinance Section 17.18.050 (Zoning Use Matrix) and Chapter 17.34 (Off-street Parking).

BE IT FURTHER RESOLVED that the Planning Commission hereby denies the Conditional Use Permit on the real property here described in accordance with the provisions of Section 17.38.110 of the Ordinance Code of the City of Visalia.



CITY OF VISALIA
PLANNING DIVISION PERMIT
APPLICATION

M-REC 09086

PERMIT APPLICATION(S):

Check all permits being applied for with this application.

- CONDITIONAL USE PERMIT
- AMENDMENT TO EXISTING CUP
- ZONING VARIANCE/EXCEPTION
- NOISE VARIANCE
- CHANGE OF ZONE
- ANNEXATION
- LOT LINE ADJUSTMENT
- TENTATIVE PARCEL MAP
- TENTATIVE SUBDIVISION MAP
- GENERAL PLAN AMENDMENT
- SPECIFIC PLAN AMENDMENT

Staff Use Only

Project Number(s) _____

CUP 2015-04 _____

Reso# 2015-11 _____

Planning Commission _____

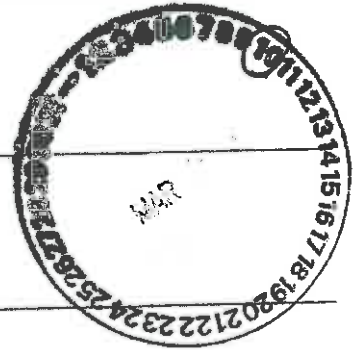
Date: _____

Name of Applicant:

DMM Four Inc d/b/a Red Island

Short title or name of proposed project:

Red Island



Summary description of the proposed project: The business's primary purpose is for the retail sale of products, including phone cards and accessories and vapor products. The business also offers computer workstation rental. The computers can also be used to reveal prize results in a seasonal promotional sweepstakes and for playing computer-based games of skills.

SITE:

Site Plan Review number(s) 2015-025

Date of SPR Committee review & precede authorization 2/25/2015

Address or nearest major street intersection: 2917 South Mooney Blvd, Visalia, CA 93277

APN(s) 121-090-068

Existing Zone Commercial Existing General Plan Land Use Designation _____



**CITY OF VISALIA
PLANNING DEPARTMENT
CONDITIONAL USE PERMIT (CUP)
SUPPLEMENTAL APPLICATION**

PROJECT DESCRIPTION

Describe Project And Listing Of All Components of the CUP (i.e. drive-through, private roads, modified residential standards PUD or PRD, etc.): The business's primary purpose is for the retail sale of products, including telephone calling cards and accessories and many products. The business also offers computer workstation rentals. The computers can also be used for revealing prize results in a seasonal promotional sweepstakes and for playing computer-based games of skill.

PROJECT DETAILS
(You may be required to provide a separate Operational Statement including the information below)

Gross Acreage 1.34 ACRES Net Acreage 0.24
 Building Area 1590 ft² No. of Parking Stalls 13
 Days of Operation Sunday through Saturday Hours of Operation 10am to 11 pm
 No. of Employees 3 Max Employees per Shift 2
 List All Outdoor Activities none

No. of Outdoor Vendors none Per Week _____ Per Day _____
 No. of Vehicles Used none
 No. of Vehicles Kept Onsite Overnight none

If Residential: Number of Single-Family Units n/a Number of Multi-Family Units _____
 Other Components _____
 Gross Density _____ Net Density _____
 Open Space _____ Acreage _____
 Recreation Facilities: Yes / No Specify _____

Modified Setbacks or Standards Requested: Yes / No Specify _____

PROVIDE THE FOLLOWING FOR ALL CUP PROJECTS

(Person Preparing Application Shall Place Initials On The Space Provided. Required Application Materials Not Included Will Result In Application Being Deemed INCOMPLETE.)

- 10 Copies of Site Plan (See Supplemental Information required For Site Plans)
- 1 Copy of Reduced Size Site Plan (8 1/2in. X 11in.)
- 10 Copies of Conceptual Building Elevations (See Supplemental Information Required For Building Elevations)
- 1 Copy of Reduced Size Conceptual Building Elevations (8 1/2in. X 11in.)
- 10 Copies of Floor Plans
- 1 Copy of Reduced Size Floor Plans (8 1/2in. X 11in.)
- 10 Copies of Preliminary Landscape Plans (Including Fencing and Wall Details)
- 1 Copy of Reduced Size Preliminary Landscape Plans (8 1/2in. X 11in.)
- 2 Copies of Site Plan Review Committee Review & Process Comments
- 1 Copy of Signage and/or Sign Program
- 2 Copies of Noise Study (If required by Site Plan Review Committee)
- 2 Copies of Traffic Impact Study (If required by Site Plan Review Committee)
- 1 Copy Of Trash Enclosure Details
- Electronic Files of all Exhibits (Adobe Acrobat, or similar format; PowerPoint or CD/DVD)



Douglas K. Jarzen
 MECHANICAL
 1540 S. GARDEN ST. #4
 SAN ANTONIO, TEXAS 78204
 210/348-0088 • Fax: 210/348-9799

DATE: 08/01/00	SCALE: AS SHOWN
PROJECT: 00-0000	NO. 00-0000
REVISION:	

CONDITIONAL USE PERMIT FOR RED ISLAND / DMM FACILITY INC.

2815 J. J. ROY BLVD.
 VICTORIA, CA. 95211

PROJECT: 00-0000, SCALE: AS SHOWN
 SHEET: 00-0000
FLOOR PLAN

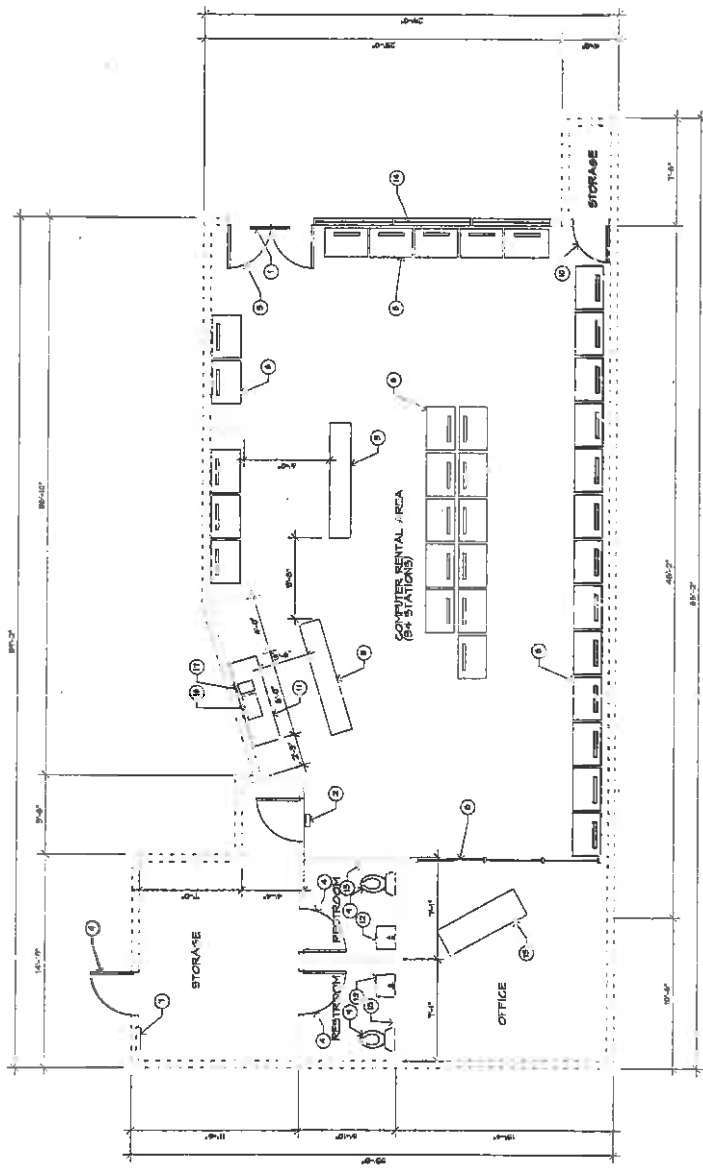
DATE: 08/01/00
 1/2

KEY NOTES

- 1) EXISTING WALL TO BE REMOVED IN CORRIDOR
- 2) EXISTING WALL TO BE REMOVED IN CORRIDOR
- 3) EXISTING WALL TO BE REMOVED IN CORRIDOR
- 4) EXISTING WALL TO BE REMOVED IN CORRIDOR
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- 19) EXISTING WALL TO BE REMOVED IN CORRIDOR
- 20) EXISTING WALL TO BE REMOVED IN CORRIDOR

WALL LEGEND

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- 19) EXISTING WALL
- 20) EXISTING WALL



EXISTING FLOOR PLAN



315 East Acequia Ave., Visalia, CA 93291

Tel: (559) 713-4359 Fax: (559) 713-4314

March 17, 2015

Saad Faour
DMM Faour Inc.
2917 S. Mooney Blvd
Visalia, CA 93277

RE: Conditional Use Permit # 2015-04 - Incomplete Application

Dear Sir,

Thank you for your application submittal of Conditional Use Permit No. 2015-04: a request by DMM Faour (dba Red Island) to establish a business that includes retail sales, phone card sales, vaping products, computer work station rental, seasonal promotional sweepstakes, and for playing computer based games of skill. The business is located at 2917 S. Mooney Blvd., in the RC (Regional Commercial) Zone District. (APN: 121-090-068) The following additional items and/or information are required in order to complete the application and must be submitted before a public hearing date can be set with the Planning Commission.

The following items are needed in order for the project application to be complete:

- Provide a detailed Operational Statement that fully explains each aspect of the activities included in the business. Include hours of operation, employees on site and their general duties.
- Seasonal Promotional Sweepstakes- Provide specific factual information that fully explains how this activity is different from a lottery or game of chance which would be in contravention of local, state and/or federal laws. Similarly, full explanation shall be provided to explain how the computer terminals used for customer access are not effectively gaming machines used to conduct wagering and/or games of chance requiring cash payment entry to play, and seeking cash payouts.
- Provide an overview of on-site security measures used at the business. Include procedures for screening customer behavior, loitering inside and outside of the business, safety for customers and employees in handling and securing cash.
- Provide a floor plan that precisely matches the current operating floor plan.
- Provide electronic versions of all materials and plans that have already been submitted or that are required by this correspondence.

If you have any questions concerning your application, please feel free to contact the Project Planner, Paul Scheibel at 559-713-4369.

Sincerely,

A handwritten signature in cursive script that reads "Susan Currier". The signature is written in black ink and has a fluid, connected style.

Susan Currier
Planning Assistant



RECEIVED
MAR 24 2015
COMM. DEVELOP.
CITY OF VISALIA

March 24, 2015

Sent Via Personal Delivery

City of Visalia Planning Division
315 E. Acequia Ave.
Visalia, CA 93291

**Re: DMM Faour INC d/b/a Red Island
Conditional Use Permit Application, #2015-04**

Dear Ms. Currier:

This firm represents DMM Faour INC d/b/a Red Island ("Red Island"). Thank you for your letter dated March 17, 2015, requesting additional information relating to Red Island's application for a conditional use permit. Per your request, below are explanations addressing each of the additional items you requested.

Operational Statement:

Red Island operates a retail business that sells various products, including telephone calling cards and accessories, and vapor products. The business also offers computer workstation rental for document creation, spreadsheet creation, email, and internet connection. The computers can also be used for revealing prize results in a seasonal promotional sweepstakes used to advertise and promote telephone calling card products, and for playing computer-based games of skill.

The store operates seven days a week between the hours of 10:00 a.m. and 11:00 p.m. It currently employs three employees. Two employees work inside the store, one on a morning shift and the other on an evening shift. These employees operate the cash register, help customers with product purchases, help customers operate the computers, and provide the fax and copy services. The third employee works mainly outside the store. His duties include ensuring that Red Island customers use only those parking spaces reserved for Red Island, preventing loitering, and monitoring customer behavior.

Since its opening, Red Island has averaged approximately 30 to 50 customers per day, with peak hours of operation between 6:00 p.m. and 8:00 p.m.

Red Island's Operations Comply With California Sweepstakes And Gaming Laws:

A. Red Island Runs A Seasonal Promotional Sweepstakes.

Red Island sells telephone calling cards, among other items. The calling card phone service is provided by a company called Phone-Sweeps, a distributor for Red Island. The prepaid telephone cards look like credit cards, and purchasers are registered by name, address and some form of identification. The back of the card contains a PIN number. To place a phone call, customers call an access number, provide the PIN number, and then dial their desired number. Phone-Sweeps' wholesale telephone service provider keeps track of the minutes used, and then invoices Phone-Sweeps for payment on a weekly basis. The cards are reusable.

Phone-Sweeps' main competitors are Verizon, AT&T, and other large national brands. To compete with the national brands, Phone-Sweeps cards offer a lower per minute phone rate (three cents per minute for domestic calls and five cents per minute for international calls) and the card has no hidden charges, such as maintenance and PIN fees or minimum calling times. Unlike Verizon and AT&T, whose calling card "minutes" typically expire after 90 days, Phone-Sweeps' minutes remain valid for one year. Red Island is currently promoting sales of their calling cards by means of a seasonal sweepstakes that allows customers and non-customers alike to win prizes. No purchase is necessary to enter the sweepstakes. Their business promotion is no different from that of McDonald's Monopoly and countless others. The sweepstakes period is between January 1, 2015 to March 31, 2015.

When customers purchase phone time, they receive entries into the sweepstakes commensurate with the amount of phone time – i.e., for every \$1.00 of phone time purchased a customer receives 100 sweepstakes entries. Noncustomers also receive sweepstakes points because no purchase is necessary to enter the sweepstakes. Persons over the age of 18 who enter Red Island can receive 100 free sweepstakes entries or points for that day. Additionally, noncustomers can receive free sweepstakes points by mailing in a request form. Prior to entering the sweepstakes, entrants are required to sign a form indicating the customer understand the sweepstakes rules which are posted at the store.

Entrants may enter the free sweepstakes by using their sweepstakes points in one of two ways. They can ask the sales clerk at the point of sale terminal to reveal the results of their sweepstakes entry. Alternatively, they can have the results revealed to them at one of the computer terminals provided at the store.

The customers' available phone time is not reduced by spent time on the computer terminals revealing the results of the sweepstakes entries, nor is telephone time reduced by any results or outcome of the sweepstakes. Thus, unlike a slot machine, where a person hazards a coin or something of value by placing it into a machine to win a prize, in a sweepstakes such as this one, a person hazards nothing of value. The person either purchases a product and voluntarily enters the sweepstakes or simply enters the sweepstakes for free. In trying to win a monetary prize by entering the sweepstakes the person hazards nothing of value and nothing of

value can be lost.

The sweepstakes consists of a finite pool or batch of entries, exactly like McDonald's Monopoly and any other finite pool sweepstakes. The pools are created by a main server operated by the calling card distributor in Canada. The main server randomizes the entries in each pool, puts them into a set in sequential order, and then delivers the pool to the point of sale computer at Red Island's store. There is nothing Red Island or its customers can do to change the sequence or contents of the entries once they leave the server in Canada. When customers enter the computer sweepstakes by either requesting a clerk to reveal their winnings or by utilizing the computerized game display, they are simply receiving and obtaining the results of the next available entry or entries in sequence. Thus, the outcomes are predetermined solely by the sequential entries, not by how the customers play the games. Neither the customer nor the computers can change the result.

Likewise, the computers at the store do not contain a random number generator or any other way to randomize or alter the sequence of the entry results. The computer terminals are standard, off the shelf, Hewlett Packard computers.

B. Sweepstakes Are Legal Under California Law.

Sweepstakes or business promotions like Red Island's sweepstakes are legal in California and are regularly utilized by companies to increase sales. The difference between a legal sweepstakes and an illegal lottery is simple: so long as a sweepstakes, in addition to purchase of a genuine product, has a legitimate free method of entry, it is legal.

Under Regal Petroleum Gasoline Retailers v. Regal Petroleum Corp., 50 Cal. 2d 844 (1958), so long as there is a legitimate method of entry into the sweepstakes, the sweepstakes is legal. The Regal court explained there are three elements necessary to constitute a lottery: "(1) The disposition of property; (2) upon a contingency determined by chance; (3) *to a person who has paid valuable consideration for the chance of winning the prize, that is to say, one who has hazarded something of value upon the chance.*" Regal Petroleum, 50 Cal. 2d at 862 (original emphasis).

To constitute consideration within the definition of a lottery, there must be a valuable consideration paid or promise to be paid by the ticket holder. Id. Thus, so long as there is a legitimate free entry into the sweepstakes the consideration element is absent. Id. at 854-57. The fact that the business owner received a benefit in increased sales and patronage is not a consideration and is irrelevant. Id. at 854-57, 861; see also People v. Cardas, 137 Cal. App. Supp. 788 (1933); People v. Carpenter, 141 Cal. App. 2d 844 (1956) (giveaway was a legitimate business promotion as sweepstakes tickets were provided to theater attendees and non-attendees alike).

C. Red Island's Sweepstakes Does Not Violate California Gaming Laws.

Red Island's computers are not slot machines under California. In Trinkle v. Cal. State Lottery, 105 Cal. App. 4th 1401 (2003) ("Trinkle II") the Third District of California took up the

issue of whether the California State Lottery's use of electronic vending machines to dispose *Scratchers* lottery tickets was an illegal use of slot machines. The California Lottery provides *Scratchers* tickets for its electromagnetic device, a stand-alone device containing bins into which 100 to 250 tickets are loaded. A lottery employee loads the tickets into the bin in a sequential order. A purchaser can see which *Scratchers* game he is playing but cannot tell whether the visible ticket is a winning ticket. The tickets are dispensed sequentially according to how they were loaded into the bin. Winning is determined by scratching off the substance covering the symbols underneath. There are a finite number of *Scratchers* tickets available in one game, and each ticket has its own unique number.

Every *Scratchers* game has a predetermined number of winning tickets distributed through the "deal." Once loaded, each electromagnetic device dispenses a scratcher ticket for cash received. The stand-alone device does not have any ability to generate random numbers or symbols, or conduct any type of process of random selection. Instead, each predetermined winning ticket is dispensed in the order it was loaded into the device. Trinkle II, 105 Cal. App. 4th at 1403-05.

The Trinkle II court held that the mere use of electronic vending machines to dispense lottery tickets does not transform the lawful sale of lottery tickets into an unlawful use of slot machines where the machine injects no additional element of chance into the determination or distribution of the winning lottery ticket. Id. at 1405.

The court first looked at PC § 330b itself, which defines a slot machine as follows:

[any device] that is adapted . . . for use in such a way that, as a result of the insertion of any piece of money or coin or other object . . . such a machine or device is caused to operate or may be operated, and *by reason of any element of hazard or chance or other outcome of such operation unpredictable by him, the user may receive or become entitled to receive anything of value.*

Id., at 1409.

It then compared section 330b to section 330.1, which was enacted in the same Legislative session in 1950, with no conflict in the legislative history. Under that section, a slot machine is defined as:

[Any device that] may be used or operated in such a way that, as a result of the insertion of any piece of money or coin or other object such machine or device is caused to operate or may be operated or played, mechanically, electrically, automatically or manually, and by reason of any element of hazard or chance, the user may receive or become entitled to receive anything of value.

Id. at 1409, n.7.

Following its review of statutory and legislative history, the court found that the elements of a slot machine are (1) the insertion of money or other object which causes the machine to

operate; (2) the operation of the machine is unpredictable and governed by chance; and (3) by reason of the chance operation of the machine, the user may become entitled to receive a thing of value. Id. at 1410.

Relying on People ex rel. Lockyer v. Pac. Gaming Tech., 82 Cal. App. 4th 699, 703 (2000) and Trinkle v. Stroh, 60 Cal. App. 4th 771, 779-80 (1997) Trinkle had argued that the *Scratchers* machines meet all the elements of a slot machine because, by the insertion of money and purely by chance the user may receive or become entitled to receive money. Id. at 1410. The Trinkle II Court disagreed: “With respect to the element of chance, Penal Code section 330b states, ‘by reason of any element of hazard a chance or of other outcome of *such operations* unpredictable by him.’” Id. at 1410. “By using the words ‘such operations,’ the legislature linked the element a chance to the operation of the machine, requiring that the machine itself determine the element of chance and become the object of play.” Id. at 1410-11. “Without the element of chance *incorporated into the operation of the machine*, the machine is nothing more than a vending machine which dispenses merchandise for consideration.” Id. (emphasis added).

The Trinkle II court distinguished Pacific Gaming and Stroh because, it found, in both of those cases the courts had determined that the device in question constituted a slot machine under Section 330b because “chance and prize” were added to the machine itself. Id. at 1411. In both cases, the machines in question were found to be slot machines under the section because “the outcome was dependent upon the element of chance that was generated by the machines themselves.” Id. Conversely, *Scratchers* machines were found not to be slot machines because they do not have computer programs that generate random numbers or symbols, nor do they have any capability of conducting a process of random selection or any other kind of chance selection. Id.

Thus, in Trinkle II, the machines at issue sold scratchers tickets in the order that the ticket is stacked in the bin. The purchaser inserts the purchase price and receives the next ticket in line. The element of chance in a *Scratchers* game is essentially twofold, involving the printing of the winning tickets and the placement of those tickets in a predetermined sequence among the other tickets. ***The element of chance is built into the game at the time of manufacture – not at the time of purchase or play.*** Therefore, the operation of the machine does not in any way affect the game’s element of chance. The machine thus fails to satisfy the third prong of the definition of a slot machine.

The Trinkle II court further found that machines did not convert a lottery game into a house-banked game. “While lotteries are governed by chapter 9 of title 9 of the Penal Code, the provisions governing slot machines are found in chapter 10 of title 9, which governs gaming.” Id. at 1412. “Gaming is distinguished from lotteries by the nature of the betting. Id. “In a lottery, the operator has no interest in the outcome. The prize is fixed at the outset and distributed among the winners. By contrast, in gaming, the operator has an interest in the outcome because the operator must pay off all winners, while retaining the stakes hazarded by the losers.” Id.

The court thus concluded an illegal slot machine is “a house-banked game in which the machine dispenses coins, currency, or another thing of value to the winning player, giving the

operator an interest in the outcome.” Id. citing Hotel Employees & Restaurant Employees Int’l Union v. Davis, 21 Cal.4th 585, 604 (1999). The court found the machines “do not dispense coins, currency or any other thing of value other than the purchased *Scratchers* ticket for which the purchaser pays consideration.” Id. Therefore, the machines “do not convert what is otherwise a lawful lottery game where the operator has no interest in the outcome of the game, into a banked game in which the purchaser plays against the machine, making the owner of that machine an interested party.” Id. Thus, because the machines did not “in any way involve the element of chance and do not pit the player against the machine, they are not slot machines.” Id.

The legislative history behind Trinkle II’s interpretation supports the Third District’s reasoning. Indeed, it is no small moment that the Legislature amended Penal Code section 330b three times since Trinkle II was decided -- in September 2003, 2004, and 2010 -- and left its decision and analysis intact, signifying the Legislature’s approval of the Trinkle II analysis. “Where a statute has been construed by judicial decision and that construction is not altered by subsequent legislation, it must be presumed that the legislature is aware of the judicial construction and approves of it.” Wikoff v. Sup. Ct., 38 Cal. 3d 345, 353 (1985). There is a strong presumption that when the legislature reenacts the statute which has been judicially construed, it adopts the construction placed on the statute by the courts. Id.

Moreover, the California Supreme Court had an opportunity to overrule Trinkle II when the plaintiff there filed his petition for review, yet, the California Supreme Court denied that petition, *en banc*. Trinkle v. Cal. State Lottery, 2003 Cal. LEXIS 3383 (Cal. May 21, 2003). More recently, the California Supreme Court granted a petition for review and thereby nullified a case which rejected Trinkle II’s analysis of section 330b and stretched the definition of a slot machine to one that includes games such as the ones at issue here. People v. Grewal, 326 P.3d 977 (Cal. 2014).

More importantly, in amending California Business and Professions Code section 17539.1, the California legislature recognized that sweepstakes such as these are legal under the gaming laws:

Before the days of ubiquitous broadband Internet access via mobile cellular networks, an Internet café provided Internet access to the public, usually for a fee. These businesses usually provided snacks and drinks, hence the café in the name. Nowadays, many such businesses often promote the sale of their products (e.g., computer time, Internet access or telephone cards) by offering a sweepstakes giveaway that allows customers to ascertain their winnings, if any, by playing specialized game programs on the businesses’ own computer terminals. Often these programs simulate casino slot machines or other gambling games. As noted above, lotteries are illegal in California, except for the State Lottery. ***Sweepstakes or business promotions, on the other hand, are legal and are regularly utilized by companies to increase sales.*** Typical examples include McDonald’s Monopoly, Burger King’s “Be the King” sweepstakes, and the My Coke Rewards sweepstakes. ***Under California law, these sweepstakes and promotions are legal as long as there is a***

legitimate free method for customers and non-customers to enter the contest or sweepstakes. The differences between a contest or sweepstakes and an illegal lottery are that, in a lottery, there is a disposition of money or other property on a contingency determined by chance to a person who has paid money for the chance of winning a prize. As long as there is a legitimate free method of entry into the sweepstakes or promotion, the consideration element is absent, and the “sweepstakes” is not an illegal lottery. *According to the Senate Governmental Organization Committee, it appears that most Internet cafés are not operating illegal lotteries under California law.*

Proponents of this bill note that under the sweepstakes software systems used by Internet café operators on their computer networks and terminals, upon the payment of money (such as the purchase of Internet time or a phone card), patrons can activate computer sweepstakes games on the terminals and, based on “chance” or “other outcome of operation unpredictable by” the patron, win cash prizes.

Assem. Bill 1439, (Cal. 2014) at p. 3.

1. The Sweepstakes Does Not Violate Penal Code Section 330b.

Red Island’s sweepstakes, which promotes the sale of legitimate phone cards and offers a free method of entry, therefore constitute a legal sweepstakes under California law. As set forth below, using a computer for the promotion did not transform the legal sweepstakes into the illegal use of a slot machine.

The sweepstakes at issue here is patterned after the methodology approved in Trinkle II. The computer terminals, like the California Lottery’s electronic vending machines, are not slot machines because they do not have programs that generate random numbers or symbols, nor do they have any capability of conducting a process of random selection or any other kind of chance selection. The computers reveal a prize in the order the ticket is pre-loaded into the computer. The customer enters his pin and receives the next ticket in line. The element of chance in the game is twofold, involving the printing of the winning tickets and the placement of those tickets in a predetermined sequence among the other tickets. It is built into the game at the time of the manufacturer -- not at the time of purchase or play.

Each sweepstakes consists of a finite pool or batch of entries, exactly like McDonald’s *Monopoly* and any other finite pool sweepstakes. The pools are created by a main server operated by Phone Sweeps and located in Canada. The main server randomizes the entries in each pool, puts them into a set in sequential order, and then delivers the pool to the point of sale computer at the store. There is nothing Red Island or its customers can do to change the sequence or contents of the entries once they leave the server in Canada. When customers enter the computer sweepstakes by either requesting a clerk to reveal their winnings or by utilizing the

computerized game display, they are simply receiving and obtaining the results of the next available entry or entries in sequence. Thus, the outcomes are predetermined solely by the sequential entries, *not by how the customers play the games*. Neither the customer nor the computers can change the result.

Likewise, the computers at the store do not contain a random number generator or any other way to randomize or alter the sequence of the entry results. The computer terminals are standard, off the shelf, Hewlett Packard computers that do not constitute a slot machine under any interpretation of Trinkle II.

Moreover, far from trying to exploit a loophole, the sweepstakes is patterned to legally conform to statutes and case law that determined that such a method is permitted under California law. This is a time-honored method of doing business in California when allegations of illegal gambling are made. See Tibbets v. Van de Kamp, 222 Cal. App. 3d 389, 395-96 (1990) (holding that because Texas Hold'em utilized community cards, the game was distinct from Stud Poker and thus deemed a legal game); City of Bell Gardens v. County of Los Angeles, 231 Cal. App. 3d 1563, 1568-69 (1991) (the card game Pai Gow was an illegal "house banked" and "percentage" game until the card clubs made the players the bankers and charged a flat fee).

Also like the machines in Trinkle II, the computer games at issue give Red Island no interest in their outcome. Because the prizes are predetermined—fixed and distributed among the winners at the outset—Red Island has no interest in the outcome. Thus, the computers do not pit the player against the machine. They do not convert what is otherwise a lawful sweepstakes, where the operator has no interest in the outcome of the game, into a banked game in which the purchaser plays against the machine, making the owner of that machine an interested party. As such, the computer at issue do not constitute a slot machine under California Penal Code section 330b.

2. The Sweepstakes Does Not Violate Penal Code Section 330a.

California Penal Code section 330a defines a slot machine as:

[A]ny slot or card machine, contrivance, appliance or mechanical device, *upon the result of action of which money or other valuable thing is staked or hazarded*, and which is operated, or played, by placing or depositing therein any coins, checks, slugs, balls, or other articles or device, or in any other manner and by means whereof, or as a result of the operation of which any merchandise, money, representative or articles of value, checks, or tokens, redeemable in or exchangeable for money or any other thing of value, is won or lost, or taken from or obtained from the machine, *when the result of action or operation of the machine, contrivance, appliance, or mechanical device is dependent upon hazard or chance*.

Cal. Penal Code § 330a (emphasis added).

Thus under this section, a slot machine requires that something be hazarded, and that the result of the operation of the machine is dependent on hazard or chance. Neither of these elements is found in the computers here. First, as set forth above, the operation of the computers incorporate no element of chance.

Second, by buying a legitimate product, the phone cards, and by offering free sweepstakes tickets to anyone who wants to play, the sweepstakes players are not staking or offering any of their own money for the chance to win a prize. See Regal Petroleum, 50 Cal. 2d at 854-57. Indeed, the sweepstakes players playing on the computer terminals in the stores can only win money, they cannot lose money because they have not staked or hazarded any. As this element is absent where the prize is offered in the context of a legitimate business promotion, there can be no illegal slot machine.

3. The Sweepstakes Does Not Violate Penal Code Section 330.1.

California Penal Code section 330.1 defines a slot machine as a machine:

[T]hat is, or may be, used or operated in such a way that, *as a result of the insertion of any piece of money or coin or other object* the machine or device is caused to operate or may be operated or played, mechanically, electrically, automatically, or manually, and *by reason of any element of hazard or chance*, the user may receive or become entitled to receive anything of value.

Cal. Penal Code § 330.1(f) (emphasis added).

Thus, under this section, a slot machine is one that requires the insertion of money, coins, or other objects, and requires an element of chance in its operation. Both of these elements are absent from the computers at issue here. First, as set forth above, the computers incorporate no element of chance in their operation. Second, no money, coin or object can be inserted into the computers. As, such they do not meet the definition of a slot machine under this section.

D. The Sweepstakes Comply With California Business And Professions Code Section 17539.1.

Recognizing the legality of sweepstakes under the gaming laws, but desiring to place limits on them, the California legislature recently amended sweepstakes laws. Specifically, the current statute, which came into effect January 1, 2015, makes unlawful:

Using or offering for use any method intended to be used by a person interacting with an electronic video monitor to simulate gambling or play gambling-themed games in a business establishment that (A) directly or indirectly implements the predetermination of sweepstakes cash, cash-equivalent prizes, or other prizes of value, or (B) otherwise connects a sweepstakes player or participant with sweepstakes cash, cash-equivalent prizes, or other prizes of value.

Cal. Bus. & Prof. Code § 17539.1(a)(12). However, the statute carves out an exception for seasonal promotional sweepstakes:

This paragraph does not make unlawful game promotions or sweepstakes conducted by for-profit commercial entities on a limited and occasional basis as an advertising and marketing tool that are incidental to substantial bona fide sales of consumer products or services and that are not intended to provide a vehicle for the establishment of places of ongoing gambling or gaming.

Id.

In full compliance with this legislation and as explained in the sweepstakes rules posted throughout the store, Red Island is operating a seasonal sweepstakes that began on January 1, 2015 and will end March 31, 2015. This limited sweepstakes is used as an advertising and marketing tool incidental to substantial bona fide sales of its telephone calling cards. It is not intended to provide a vehicle for the establishment of ongoing gambling or gaming.

On Site Security Measures:

Red Island currently employs one employee whose sole responsibility is to monitor customer behavior. Any patron or other individual behaving inappropriately is promptly asked to leave the premises. The cashiers working inside the store are also trained to monitor such behavior and ask anyone acting inappropriately to leave. In addition, Red Island is currently in the process of interviewing private security guard companies and intends to provide a licensed security guard on the premises.

The store also utilizes security cameras to monitor the area immediately outside the store, as well as the inside of the store and the cash register. Employees are trained to deposit cash in the store safe as often as possible throughout the day.

March 24, 2015

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Floor Plans:

Enclosed is a floor plan that matches the current operating floor plan. Also enclosed is a CD containing this floor plan and all other materials that have previously been submitted to the City.

We are happy to meet with you and to provide you with any further information you need. Should you have any further questions, please do not hesitate to contact us. We look forward to hearing from you soon.

Sincerely,

A handwritten signature in black ink, appearing to read "Monica", written in a cursive style.

Monica Ramallo-Young



315 East Acequia Ave., Visalia, CA 93291

Tel: (559) 713-4359 Fax: (559) 713-4814

April 23, 2015

Saad Faour
DMM Faour Inc.
2917 S. Mooney Blvd
Visalia, CA 93277

RE: Conditional Use Permit # 2015-04 - Incomplete Application

Dear Sir,

Thank you for your application materials supplemental submittal of March 24, 2015, including the revised floor plan, and overview of on-site physical and cash security procedures. However, your application is determined to be incomplete for the following submittal deficiencies:

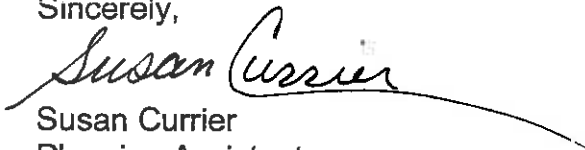
The Operational Statement from your attorney, Ms. Ramallo-Young provides responses to several previously missing application completeness items. However, the Operational Statement fails to adequately distinguish how the Seasonal Promotional Sweepstakes component of the proposed business differs from and does not constitute a gambling activity as defined by California law. The letter cites various case law and the recently enacted Assembly Bill 1439. However, the citations do not appear to be specific to the proposed business activity.

The City requests your responses to following specific items that were raised in the content of your letter of March 24th. Complete answers to these items are essential for the City to provide a thorough project description to the decision authority (Planning Commission) and to the general public. Further, answers to these questions may be essential in placing operational conditions of approval on the project:

- Please clarify the denomination value of a Sweepstakes entry is one cent ("-i.e., for every \$1.00 of phone time purchased a customer receives 100 sweepstakes entries.")
- Please clarify the exact quantity of sweepstakes entries noncustomers may receive. Further explain any limitations on the quantity or frequency noncustomers may receive sweepstake entries.
- Please explain the "seasonal" sweepstakes term. Further, the Operational Statement states the Sweepstakes ran from January 1, 2015 to March 31, 2015. Is there another sweepstake contest that replaced the sweepstakes that ended March 31st?

- Please provide a schedule of seasonal sweepstakes that confirmed or anticipated, including their individual durations over the next 24 month period.
- Please explain whether customers or noncustomers holding sweepstake entries are required to play the sweepstakes at the store location only.
- Are odds of winning information provided to entrants into the sweepstakes? If so, how is this information provided to entrant customers and prospective customers?
- How do entrants claim winning sweepstake prizes?
- Please explain if the sweepstakes allows only a single entry (equivalent value of one cent, per the Operational Statement), or if there are provisions for multiple simultaneous entries into a sweepstakes draw?
- Please explain how the parking available on the site is adequate for your business operation. The floor plan shows 33 computer terminal stations. Presumably, your business accommodates 33 or more customers at any given time, in addition to three employees on the site. The Operational Statement indicates that customers are provided access to the computer terminals to enter into the "sweepstakes drawings" in addition to being able to use the computer terminals for general internet access, and phone conversations. The site has 16 or fewer parking spaces that serve a 4938 square foot retail building. It is unclear how the portion of parking dedicated specifically to your suite, and to all of the businesses on the site can be adequate for the customer activities being provided by all of the components of your business.

Sincerely,

A handwritten signature in cursive script that reads "Susan Currier". The signature is written in black ink and is positioned above the typed name and title.

Susan Currier
Planning Assistant



MONICA RAMALLO-YOUNG ESQ.

May 12, 2015

COMM. DEVELOP.
CITY OF VISALIA
MAY 12 2015
RECEIVED

Sent Via U.S. Mail & Facsimile

City of Visalia Planning Division
315 E. Acequia Ave.
Visalia, CA 93291

**Re: DMM Faour INC d/b/a Red Island
Conditional Use Permit Application, #2015-04**

Dear Ms. Currier:

This firm represents DMM Faour INC d/b/a Red Island ("Red Island"). Thank you for your letter dated April 23, 2015, requesting additional information relating to Red Island's application for a conditional use permit. Per your request, below are explanations addressing each of your questions. I am also attaching a copy of the sweepstakes rules to help further clarify your concerns.

• Please clarify the denomination value of a Sweepstakes entry is one cent ("-i.e., for every \$1.00 of phone time purchased a customer receives 100 sweepstakes entries."):

In the seasonal promotional sweepstakes (which concluded March 31, 2015), customers receive one sweepstakes entry for each cent of phone time purchased. Persons over the age of 18 who enter Red Island can receive 100 free sweepstakes entries or points for that day. Additionally, noncustomers can receive free sweepstakes points by mailing in a request form. The entries themselves have no value. As an analogy, when one plays the McDonald's Monopoly sweepstakes, a customer may receive one sweepstakes entry with the purchase of french-fries. One would not say the value of a sweepstakes entry is equivalent to an order of french-fries or the cost of such order. The sweepstakes entry has no value (and can be obtained for free). It is just the customary number of entries given with that particular purchase.

May 12, 2015

Page 2

- **Please clarify the exact quantity of sweepstakes entries noncustomers may receive. Further explain any limitations on the quantity or frequency noncustomers may receive sweepstake entries.**

Per the seasonal sweepstakes rules, persons over the age of 18 who enter Red Island can receive 100 free sweepstakes entries or points a day. Additionally, noncustomers can receive free sweepstakes points by mailing in a request form. There is a limit of one mail-in request per stamped envelope.

- **Please explain the "seasonal" sweepstakes term. Further, the Operational Statement states the Sweepstakes ran from January 1, 2015 to March 31, 2015. Is there another sweepstake contest that replaced the sweepstakes that ended March 31?**

The sweepstakes described in my March 24, 2015, letter to you ran between January 1, 2015 and March 31, 2015. The sweepstakes is "seasonal" because it ran for a limited period of time. It has not been replaced with another sweepstakes contest. Rather, as of March 31, 2015, the computers can now be used to play games of skill. Please see below for a detailed explanation of these new games.

- **Please provide a schedule of seasonal sweepstakes that confirmed or anticipated, including their individual durations over the next 24-month period.**

Red Island has not scheduled any more seasonal sweepstakes at this time. However, it may run another similar sweepstakes for a similar time period within the next 24 months.

- **Please explain whether customers or noncustomers holding sweepstake entries are required to play the sweepstakes at the store location only.**

Entrants may enter the free sweepstakes by using their sweepstakes points in one of two ways. They can ask the sales clerk at the point of sale terminal to reveal the results of their sweepstakes entry. Entrants can also have the results revealed to them at one of the computer terminals provided at the store. Entrants cannot access the results of their sweepstakes any other way.

- **Are odds of winning information provided to entrants into the sweepstakes? If so, how is this information provided to entrant customers and prospective customers?**

The odds of winning and the number of winning and non-winning entries are posted inside the store.

- **How do entrants claim winning sweepstake prizes?**

Holders of sweepstakes winnings may redeem win credits at the store for applicable prizes. Cash prizes are paid to each customer upon presenting proof of sweepstakes winnings to the manager of the store.

May 12, 2015

Page 3

• **Please explain if the sweepstakes allows only a single entry (equivalent value of one cent, per the Operational Statement), or if there are provisions for multiple simultaneous entries into a sweepstakes draw?**

Regarding this question, please see the response to your first question. The sweepstakes points have no value. Customers can play (or choose to reveal the results of) as many entry points as they receive.

• **Please explain how the parking available on the site is adequate for your business operation.**

Most of Red Island's customers travel to the store on foot or by bicycle. The parking lot therefore provides enough parking for the few customers who travel by car. Moreover, the Red Island employee who works outside the store ensures that parking spaces are reserved for customers of the neighboring business.

Amusement Games of Skill

In April 2015, Red Island began offering customers amusement skill games. Customers pay to play these games just as they would pay to play other games such as pinball, skee-ball and video games such as Asteroids or Pacman. Like pinball and other similar games, the games at Red Island awards prizes based on the player's skill level.

The game theme is connected to a centrally managed game system that awards potential prizes from a structured finite pool of possible prize award amounts. The system consists of a local manager server and game terminal computers that players use to interact with the game. The participant selects a level of play and participates in the skill-based portion of the game.

Participants win prizes by successfully completing the skill game within the time allowed. The potential win available to the participant in any instance of the skill game is displayed and known to the participant before the game begins. A participant's actual win will depend on his or her performance in the skill game. Whether the participant wins or loses at a particular instance of game play is the product of a pure skill exercise. In the skill game, the participant's hand-eye co-ordination and dexterity will determine whether he or she wins more than the total potential prize, a percentage of the prize or no prize. The participant is given twenty-five seconds to complete the skill game.

The California Penal Code specifically exempts games of skill from the definition of illegal slot machines: "Pinball and other amusement machines or devices, which are predominantly games of skill, whether affording the opportunity of additional chances or free plays or not, are not included within the term slot machine or device." Cal. Penal Code § 330b(f); see also Cal. Penal Code §§ 330.5. The devices used at Red Island are predominantly games of skill as no prizes are awarded without the participant's use of skill. The games therefore fully comply with California gaming laws.

May 12, 2015

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We are happy to meet with you and to provide you with any further information you need. Should you have any further questions, please do not hesitate to contact us. We look forward to hearing from you soon.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Young', enclosed within a hand-drawn oval.

Monica Ramallo-Young

Attachment

Important Notice to all Patrons

This business establishment operates only in compliance with California Law. On January 1, 2015 the California General Assembly enacted Bill No. 1439 to restrict the use of certain video content in the conduct of sweepstakes. The new restriction is in California Business and Professions Code section 17539.1 and is effective January 1, 2015. The new law provides that the video content restriction does not apply to certain kinds of sweepstakes. One of the exceptions is in paragraph (a)(12) of the section. In effect, the restriction on video content does not apply to sweepstakes that are promotional, limited and occasional. The full text of this exception is the following:

Amendment 1 of the Bill states the following:

"This paragraph does not make unlawful game promotions or sweepstakes conducted by for-profit commercial entities on a limited and occasional basis as an advertising and marketing tool that are intended to promote bona fide sales of consumer products or services and that are not intended to create a venue for the establishment of places of ongoing gambling or gaming."

The important notice is to inform you that if you choose to participate in the game promotion it will only be available for a limited time, 90 days, (Start Date Jan. 1, 2015, End Date March 31, 2015). The promotion is being used as a marketing tool to encourage additional sales of our prepaid long distance calling card (a consumer product) only for the next 90 days.

Additionally, the establishment has added the sales of Electronics Cigarettes, and within the next 2 months will be adding the sale of additional products and services.

Should you have any questions, please state them in writing and leave your written inquiry with the Sponsor's Attendant at the point of sale.

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Saad Faour

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FOR PERSONS WHO ENTER THE TEL-CONNECT & INTER-CONNECT SWEEPSTAKES THESE RULES AND REGULATIONS GOVERN ALL ASPECTS OF PARTICIPATION AND AWARDING OF PRIZES.

"NO PURCHASE OR PAYMENT OF ANY KIND IS NECESSARY TO ENTER OR WIN THIS SWEEPSTAKES. A PURCHASE WILL NOT IMPROVE CHANCES OF WINNING."

1. Introduction: The Sweepstakes Prize Drawing ("Sweepstakes") is sponsored by D.M.M. FAOUR, INC. ("Sponsor"). A predetermined number of winners will be selected from a continuous sequential drawing from among all eligible entries received throughout the Sweepstakes Period. Odds of winning and the number of winning and non-winning entries are posted at the sponsor's point of sale in its store. The Sweepstakes is offered only at the sponsor's store during the sweepstakes period. Sweepstakes entries are awarded when purchasing long distance phone time on a Tel-Connect or Inter-Connect Phone Card. The number of entries awarded is commensurate to the amount of long distance phone time purchased. Sweepstakes entries are also awarded for free. (See below)

2. Sweepstakes Period: The Sweepstakes begins on January 1st, 2015 12:00 AM prevailing Pacific Time and ends the earlier of March 31st, 2015 at 11:59 PM prevailing Pacific Time or when all prizes are distributed ("Sweepstakes Period"). Any prizes not awarded upon completion of the Sweepstakes Period shall be cancelled and returned to the Sponsor.

3. Eligibility: The Sweepstakes is open only to legal residents of the United States who are at least of the age of majority as defined by the state of residence at the time of entry. Employees, officers and directors of Sponsor, as well as the immediate family (defined as parents, spouse, children, siblings and grandparents) and household members of each such employee, officer and director are not eligible to enter or win. Any prizes claimed by ineligible entrants shall not be awarded and will be forfeited to the Sponsor. By participating, entrant agrees to abide by these Official Rules and the decisions of the Sponsor, which are final and binding in all respects.

4. How to Enter FOR FREE (No Purchase Required): Complete by hand the entry form at the Sponsor's point of sale and present the completed form in person. All parts of the entry must be filled out correctly. Lost, late, incomplete, invalid, unintelligible, illegible, misdirected, or postage due entry forms or requests, that in the opinion of the Sponsor are machine-generated in whole or in part, entry forms submitted with correspondence or other extraneous material, and entry forms that are received through unauthorized channels are void. Void or invalid entry forms or requests will not be acknowledged. Only one (1) free entry will be provided per person per day (24 hours) Upon in-person presentation of a free-entry request. Duplicate entries will be voided. For additional entries, you must mail in a completed form in a postage paid envelope to the Sponsor along with a self-addressed envelope. All postings to the free entry form, the envelope and the return envelope must be hand written by the person requesting free entry. Limit of one request per complying stamped outer envelope. Non-complying free

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entry requests become the property of the Sponsor and will not be returned or acknowledged. In the event the Sponsor encounters technical or equipment failures such as telephone network lines failing, computer online systems failing, servers and/or provider services failure, or printing or human error in connection with the sweepstakes, the Sponsor will not be held responsible. Collection and handling of personally identifiable information will be in accordance to the Privacy Policy as separately posted in the Sponsor's store. Use of any automated system, facsimile or agent to submit entries is prohibited and will result in disqualification.

5. How to Play: All purchases of TEL-CONNECT or INTER-CONNECT Long Distance Phone Cards will receive sweepstakes entry points in an amount proportionate to the amount of long distance phone time purchased. The sweepstakes points have no value and can only be used to enter the sweepstakes games. Purchased phone time cannot be lost, traded, redeemed or exchanged for additional sweepstakes points and will only expire upon long distance phone use, including services and usage fees, or after 365 days from date of purchase. Any credits won by an entrant to the sweepstakes will be displayed to the entrant as Win Credits, separate from the free sweepstakes entries. Holders of sweepstakes winnings may redeem such Win Credits only at the Sponsor's store for the applicable prizes including cash or specific articles of merchandise as permitted by law. Cash prizes will be paid or credited to each customer upon presenting proof of sweepstakes winnings either to the manager of the Sponsor's store or validated by a computer located in the Sponsor's store.

6. Selection of Winners: The server at the Sponsor's store will sequentially select winning and non-winning tickets from the pool on a continuous basis from all eligible entries as they are received. Entrant must comply with all terms and conditions of these Official Rules, and winning is contingent upon fulfilling all requirements. Winner must sign and return to the Sponsor, a statement of eligibility and liability/publicity release in order to claim a prize if required by law. Winners may also be required to provide proof of identity satisfactory to enable the Sponsor to report winning prizes to the U.S. Internal Revenue Service.

7. Sweepstake Prizes: The exact prize amount depends on the ticket that is drawn from the pool. A list of prizes is posted in the Sponsor's store. No substitution, assignment or transfer of prize is permitted, except by the Sponsor; provided however that the sponsor reserves the right to substitute a prize with another prize of comparable or greater value. Winner is solely responsible for any and all applicable fees and taxes associated with prize receipt and use. Sponsor may withhold and report taxes as required law. All prizes must be claimed at the store in person by no later than close of business on the seventh day which next follows the end of the promotion disclosed in section 2 of these Official Rules or if earlier, close of business on the seventh day which next follows the Sponsor's early termination of the promotion. Entitlement to a prize will lapse in all cases of untimely claims.

8. Publicity: Except where prohibited, participation in the Sweepstakes constitutes winners consent to the Sponsor's use of winner's name, likeness, voice, opinions,

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Saad Faour

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hometown and state for promotional purposes in any media, worldwide, without further payment or consideration.

9. General Conditions: Sponsor reserves the right to cancel, suspend and/or modify the Sweepstakes if fraud, technical failures, malfunctions, or any other factor beyond Sponsor's reasonable control impairs the integrity of the Sweepstakes, as determined by Sponsor in its sole discretion. Sponsor reserves the right in its sole discretion to disqualify any individual it finds or suspects to be tampering with the entry process or the operation of the Sweepstakes or to be acting in violation of these Official Rules or in a disruptive manner. Sponsor's failure to enforce any term of these Official Rules shall not constitute a waiver of that provision. The Sweepstakes is not valid and is void where prohibited by law.

10. Release and Limitations of Liability: By participating in the Sweepstakes, Entrants agree to release and hold harmless the sponsor and the sponsor's, directors, employees, parent companies, independent contractors and agents (the "Released Parties") from and against any claim or cause of action arising out of participation in the Sweepstakes or receipt or use of any prize, including, but not limited to: (a) unauthorized human intervention in the Sweepstakes; (b) technical errors related to computers, servers, providers, or telephone or network lines; (c) printing errors; (d) errors in the administration of the Sweepstakes or the processing of entries; or (e) injury or damage to persons or property which may be caused, directly or indirectly, in whole or in part, from entrant's participation in the Sweepstakes or receipt of any prize. Entrant further agrees that in any cause of action, Sponsor's liability will be limited to any cost of entering and participating in the Sweepstakes, and in no event shall Sponsor be liable for attorney's fees. Entrant waives the right to claim any punitive, consequential, or indirect damages. Except where prohibited, entrant agrees that any and all disputes, claims and causes of action arising out of or connected with this Sweepstakes or any prize awarded shall be resolved under the laws of the state where the Phone Card was purchased or free entry provided, without respect to any conflict of law issues, and entrant agrees that such shall be resolved individually, without resort to any form of class action, and exclusively by the U.S. Federal and State Courts.

11. Data Collection: Sponsor collects personal information from you when you enter the Sweepstakes. The information collected is subject to the sponsor's Privacy Policy posted in the sponsor's store.

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. YOU FURTHER AGREE THAT THIS IS THE COMPLETE AND EXCLUSIVE AGREEMENT BETWEEN THE PARTIES.

Should you have any questions, please state them in writing and leave your written inquiry with the Sponsor's Attendant at the point of sale.

Dec 31 14 10:15a

Saad FAOUR

8183688852

p.5

DMM FAOUR, INC

RED ISLAND

2217 S. Michigan Blvd

Visalia, CA, 93277

(559) 798-1520

Please read and sign in order to participate in our Promotional Sweepstakes:

1. I understand the product I am purchasing is prepaid long distance phone time and/or other products and services available at this retail location, and the purpose of the sweepstakes promotion is ONLY to encourage and promote additional sales of these products and/or services.
2. I understand that there is NO PURCHASE NECESSARY to enter the promotion.
3. I understand that this promotion and the claiming of prizes are limited to a specific amount of time as listed on the Official Rules and that entitlement to a prize will lapse with untimely claims.
4. I understand that I cannot purchase sweepstakes entries, but rather receive entries with the purchase of prepaid long distance phone,time and/or other qualifying products and services; or I can request a "No purchase necessary sweepstakes entry" form to receive 100 free points per 24 hour period; or I may request entries by mail with no purchase necessary. See Sweepstakes Rules for full details.
5. I am at least 18 years of age.
6. I am a Us Citizen.
7. I understand that the prizes are predetermined and the purchase of said products and/or services does not increase my chances of being awarded a prize.

I AGREE TO THE ABOVE AND ALSO WITH THE OFFICIAL RULES AND REGULATIONS AS STIPULATED ON THE DISPLAY TERMINAL AND POSTED IN THIS RETAIL LOCATION:

First Name: _____ Last Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____

Signature: _____ Referred by: _____

YES!!! I'd like to receive special promotional information and offers!

Email: _____ Cell Phone: _____

Birthday: _____

By Providing my contact information I agree to receive special promotions and offers.

Signature: _____ Input by: _____



315 East Acequia Ave., Visalia, CA 93291

Tel: (559) 713-4359 Fax: (559) 713-4014

June 12, 2015

Saad Faour
DMM Faour Inc.
2917 S. Mooney Blvd
Visalia, CA 93277

Dear Mr. Faour,

Thank you for your application re-submittal materials for CUP 2015-04 that were received by the City on May 12, 2015. The application is determined to be complete and the public hearing before the Planning Commission has been set for Monday July 13, 2015.

Among the special conditions that will be recommended by staff if the Planning Commission approves the project are summarized as follows:

Nuisance Generation- It has been noted that there have been 28 validated calls for police service at the Red Island business address (2917 So. Mooney) since it began operations in October 2014 (9 in 2014 after October 1, 2014, and 19 between January 1, 2015, and June 8, 2015). This is in comparison with two calls for service at that address in 2012 and 2013. A condition is recommended to set a baseline of three or more validated police call outs within a twelve month period as the threshold for the activities occurring at the location that would constitute actions to abate a public nuisance, per VMC section 8.40.060:

8.40.060 Public Nuisances

- I. Any condition on a property which meets the following requirements:
 1. Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life and property; and
 2. Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

Please note that actions to abate a public nuisance could include revocation of the CUP, per Visalia Municipal Code Section 17.38.040.

Off-street Parking- The business proposes to have 33 computer terminal stations for use by customers. The tenant suite is reported to be 1,590 sq.ft. in floor area of an approximately 5,000 sq.ft. commercial building. The site contains a total of 15 on-site parking spaces. Under typical shared use arrangements, your suite would have allocated use of five of the parking spaces.

The City's parking ordinance (VMC Chapter 17.34) does not have a specific parking ratio for an internet café. Consequently, the provisions of VMC section 17.34.020 G (Uses not specified) are applicable to the project. In determining an appropriate parking ratio for unspecified uses, the VMC section 17.34.020 G. requires the City to set a parking ratio that most closely matches a similar specified use. The Planning Commission has the authority to approve, modify, or reject this special condition.

A justification of the adequacy of the parking provided for your use was requested in our incompleteness letter to you of April 23, 2015. A summary of your response is that most of your customers arrive to your business on foot or by bicycle, so off-street parking is not an issue. No further documented industry-wide or specific location details were provided by you to justify this conclusion. It is also City staff has been to the site and has been inside the business on several occasions since CUP 2015-04 was filed. The most recent site visit was conducted on June 9, 2015 at 11:15 am.

The site visits have consistently noted an average of 12 to 15 customers occupying computer terminal stations, with two to three business employees on duty. An average of three to five bicycles have been observed in the rack that is situated in front of the business. During these visits, staff has observed several customers transiting between the business and privately owned vehicles parked on Monte Vista Ave. to the north.

City staff has considered this issue, including your response in your completeness material submittals. Our evaluation of the totality of evidence and circumstances leads to our recommendation to the Planning Commission that, if the project is approved, a special condition be placed on the project to limit the number of computer stations to match the available off-street parking available to your business. This has been determined to be no more than six such computer stations to be available for customer use.

Staff has determined that the use most closely matches that of a barber/beauty shop which requires two parking spaces per chair, except that only one parking space is to be required per customer computer station. The similarity of the two uses for parking purposes is that both business types are tied to dedicated customers who occupy a specific seat (as opposed to floor area or other criteria) for an extended period of time (up to one hour or more per visit).

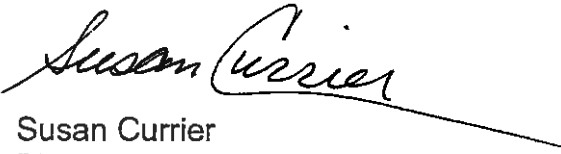
Alternately, staff considered a restaurant parking ratio of one space per 100 square feet of floor area. Under this formula, your suite (1,590 sq.ft.) parking requirements would exceed the parking available on the site- even excluding the balance of the commercial building. Finally, staff could not discern a compelling zoning and land use explanation to substantiate your contention that your customers arrive to your business primarily on bicycles or on foot. This is particularly unique in that your business operating statement states that patrons must be at least 18 years old. This is in contrast to other youth oriented businesses where the preponderance of participating customers are below the legal driving age.

If you object to these proposed special conditions or any other conditions prepared for the project, you have several options to address your concern or alternative proposal, summarized below:

1. Challenge the condition at the Planning Commission hearing.
2. File an Appeal of the condition to the City Council in the event the Planning Commission approves your project.

If you have any questions concerning your application, please feel free to contact the Project Planner, Paul Scheibel at 559-713-4369.

Sincerely,

A handwritten signature in cursive script that reads "Susan Currier". The signature is written in black ink and is positioned above the typed name and title.

Susan Currier
Planning Assistant



MEETING DATE 2/25/2015
SITE PLAN NO. 15-025
PARCEL MAP NO.
SUBDIVISION
LOT LINE ADJUSTMENT NO.

Enclosed for your review are the comments and decisions of the Site Plan Review committee. Please review all comments since they may impact your project.

RESUBMIT Major changes to your plans are required. Prior to accepting construction drawings for building permit, your project must return to the Site Plan Review Committee for review of the revised plans.

- During site plan design/policy concerns were identified, schedule a meeting with
- | | | |
|--------------------------------------|---|-------------------------------------|
| <input type="checkbox"/> Planning | <input type="checkbox"/> Engineering | |
| <input type="checkbox"/> Solid Waste | <input type="checkbox"/> Parks and Recreation | <input type="checkbox"/> Fire Dept. |

REVISE AND PROCEED (see below)

A revised plan addressing the Committee comments and revisions must be submitted for Off-Agenda Review and approval prior to submitting for building permits or discretionary actions.

Submit plans for a building permit between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday.

Your plans must be reviewed by:

- | | |
|---|--|
| <input type="checkbox"/> CITY COUNCIL | <input type="checkbox"/> REDEVELOPMENT |
| <input checked="" type="checkbox"/> PLANNING COMMISSION | <input type="checkbox"/> PARK/RECREATION |
| <input type="checkbox"/> HISTORIC PRESERVATION | <input type="checkbox"/> OTHER _____ |

ADDITIONAL COMMENTS This project requires a Conditional Use Permit

If you have any questions or comments, please call Jason Huckleberry at (559) 713-4259.



SITE PLAN REVIEW COMMENTS

Paul Bernal, Planning Division (559) 713-4025

Date: February 25, 2015

SITE PLAN NO: 2015-025
PROJECT TITLE: RED ISLAND
DESCRIPTION: CONDITIONAL USE PERMIT FOR AMUSEMENT GAMES IN 1,509 SF BUILDING ON 13,608 SF AREA (CR ZONED) (X) (DISTRICT A)
APPLICANT: DMM FAOUR INC - FAOUR SAAD
PROP. OWNER: LAMOURES INCORPORATED
LOCATION TITLE: 2917 S MOONEY BLVD
APN TITLE: 121-090-068
GENERAL PLAN: P-C-R (Planned Regional Retail Commercial)
EXISTING ZONING: P-C-R (Planned Regional Retail Commercial)

Planning Division Recommendation:

- Revise and Proceed
 Resubmit

Project Requirements

- Conditional Use Permit
- Building Permit
- Additional Information as Needed

PROJECT SPECIFIC INFORMATION: 02/25/2015

1. A Conditional Use Permit is required for this business due to the number of video machines proposed for this business. Based on the information provided by the applicant, a CUP is required pursuant to Section 17.32.120 Video Machine Arcades.
2. A Conditional Use Permit application with the appropriate materials and filing fees shall be submitted to the City of Visalia's Community Development Department within 14 days from today's date (02/25/2015).
3. A Tenant Improvement Building Permit is required for the proposed business.
4. Proposed signage shall comply with the Sign Standards for Design District "A".

Staff initial finding is that the proposed site plan IS CONSISTENT with the City General Plan. Because this project requires discretionary approval by the City Council and/or Planning Commission the final determination of consistency will be made by the Planning Commission and/or City Council.

Design District: "A" (See Chapter 17.24 For BRP Zoned Sites) [17.30.160]

Maximum Building Height: 50 Feet

Minimum Setbacks:

	Building	Landscaping
➤ Front (Building site)	20 Feet**	20 Feet** (only building)
➤ Front (Parking)	25 Feet**	25 Feet**
➤ Side	0 Feet	5 Feet*
➤ Street side on corner lot	25 Feet	25 Feet
➤ Side abutting residential zone	15 Feet	5 Feet
➤ Rear	0 Feet	5 Feet*
➤ Rear abutting residential zone	15 Feet	5 Feet

*(Except where building is on property line)

******(Reduce per Ordinance No. 2010-17, see Mooney Blvd. Corridor project)

Minimum Site Area: 5 acres

Parking: As prescribed in Chapter 17.34

Parking:

1. Parking shall be provided at one space per 300 square feet of gross floor area (see Zoning Ordinance Section 17.34.020).
2. 30% of the required parking stalls may be compact and shall be evenly distributed in the lot (Zoning Ordinance Section 17.34.030.I).
3. Provide handicapped space(s) (see Zoning Ordinance Section 17.34.030.H).
4. An 80 sq. ft. minimum landscape well is required every 10 contiguous parking stalls (Zoning Ordinance Section 17.34.040.D & 17.30.130.C).

The comments found on this document pertain to the site plan submitted for review on the above referenced date. Any changes made to the plan submitted must be submitted for additional review.

NOTE: Staff recommendations contained in this document are not to be considered support for a particular action or project unless otherwise stated in the comments.

Signature

A handwritten signature in black ink, appearing to be "J. B. [unclear]", written over a horizontal line.


- Gates on access roads shall be a minimum width of 20 feet and shall comply with the following:
2013 CFC D103.5
- Typical chain and lock shall be the type that can be cut with a common bolt cutter, or the developer may opt to provide a Knox Box key lock system.
 - Gates shall be of the swinging or sliding type.
 - Gates shall allow manual operation by one person. (power outages)
 - Gates shall be maintained in an operative condition at all times.
 - Electric gates shall be equipped with a means of opening the gate by fire department personnel for emergency access. (Note: Knox boxes shall be ordered using an approved application that can be found at Fire Administration Office located at 707 W. Acequia Ave. Please allow adequate time for shipping and installation.)
- In any and all new One- or two-family dwellings residential developments regardless of the number of units, street width shall be a minimum of 36 feet form curb to curb to allow fire department access and to permit parking on both sides of the street. A minimum of 20 feet shall be provided for developments that don't allow parking on the streets. *2013 CFC D107.2*

Fire Protection Systems:

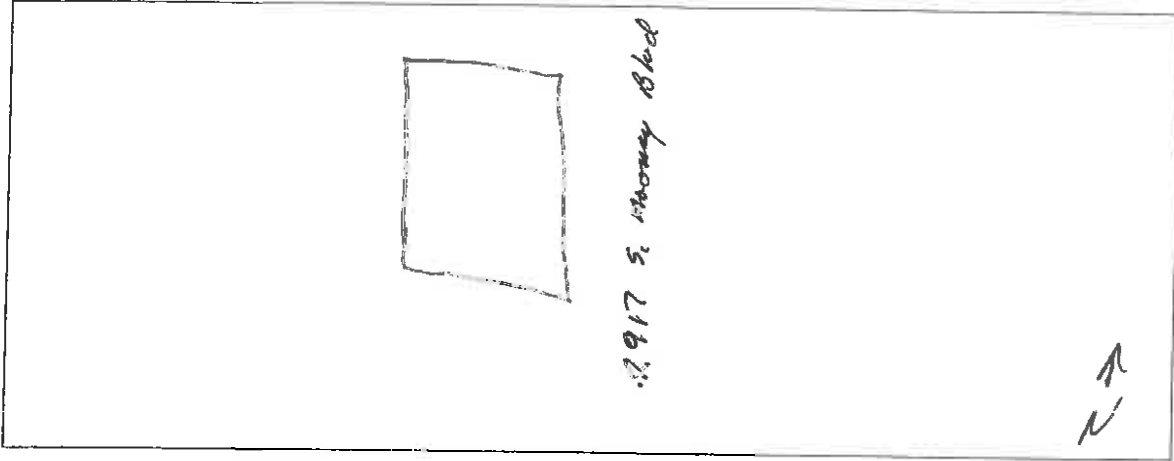
- An automatic fire sprinkler system will be required for this building. Also a fire hydrant is required within 50 feet of the Fire Department Connection (FDC). *2013 CFC 903 and Visalia Municipal Code 16.36.120(7)*
- Commercial cooking appliances and domestic cooking appliances used for commercial purposes that produces grease laden vapors shall be provided with a Type 1 Hood, in accordance with the California Mechanical Code, and an automatic fire extinguishing system. *2013 CFC 904.11 & 609.2*

Special Comments:

-


Kurtis A. Brown
Assistant Fire Marshal

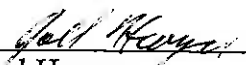
SITE PLAN REVIEW COMMENTS



COMMENTS: See Below None

- Please plot and protect all Valley Oak Trees.
- Landscape along parkway to be planted by developer and maintained by a maintenance district.
- All drainage from curb and gutter along streets to be connected to storm drain system.
- All trees planted in street right-of-way to be approved by the Public Works Superintendent of Parks.
- Tie-ins to existing infrastructure may require a bore. Check with the Public Works Department prior to any street cut.

Other Comments: _____


Joel Hooyer
Parks and Urban Forestry Supervisor
559 713-4295 Fax 559 713-4818

Email: jhooyer@ci.visalia.ca.us

CITY OF VISALIA
SOLID WASTE DIVISION
336 N. BEN MADDOX
VISALIA CA. 93291
713 - 4500

SITE PLAN NO: SPR15025
PROJECT TITLE: RED ISLAND
DESCRIPTION: CONDITIONAL USE PERMIT FOR AMUSEMENT
GAMES IN 1,509 SF BUILDING ON 13,608 SF AREA
(CR ZONED) (X) (DISTRICT A)
APPLICANT: DMM FAOUR INC - FAOUR SAAD
PROP OWNER: LAMOURES INCORPORATED
LOCATION: 2917 S MOONEY BLVD
APN(S): 121-090-068

COMMERCIAL BIN SERVICE

- No comments.
- Same comments as as
- Revisions required prior to submitting final plans. See comments below.
- Resubmittal required. See comments below.
- Customer responsible for all cardboard and other bulky recyclables to be broken down
be fore disposing of in recycle containers.
- ALL refuse enclosures must be R-3 or R-4
- Customer must provide combination or keys for access to locked gates/bins
- Type of refuse service not indicated.
- Location of bin enclosure not acceptable. See comments below.
- Bin enclosure not to city standards double.
- Inadequate number of bins to provide sufficient service. See comments below.
- Drive approach too narrow for refuse trucks access. See comments below.
- Area not adequate for allowing refuse truck turning radius of :
Commercial (X) 50 ft. outside 36 ft. inside; Residential () 35 ft. outside, 20 ft. inside.
- Paved areas should be engineered to withstand a 55,000 lb. refuse truck.
- Bin enclosure gates are required
- Hammerhead turnaround must be built per city standards.
- Cul - de - sac must be built per city standards.
- Bin enclosures are for city refuse containers only. Grease drums or any other
items are not allowed to be stored inside bin enclosures.
- Area in front of refuse enclosure must be marked off indicating no parking
- Enclosure will have to be designed and located for a STAB service (DIRECT ACCESS)
- Customer will be required to roll container out to curb for service.
- Must be a concrete slab in front of enclosure as per city standards

The width of the enclosure by ten(10) feet, minimum of six(6) inches in depth.

Roll off compactor's must have a clearance of 3 feet from any wall on both sides and there must be a minimum of 53 feet clearance in front of the compactor to allow the truck enough room to provide service.

Bin enclosure gates must open 180 degrees and also hinges must be mounted in front of post see page 2 for instructions

EXISTING REFUSE SERVICE AND ENCLOSURE OK.

Javier Hernandez, Solid Waste Front Load Supervisor 713-4338

SITE PLAN REVIEW COMMENTS

CITY OF VISALIA TRAFFIC SAFETY DIVISION

February 25, 2015

ITEM NO:	2
SITE PLAN NO:	SPR15025
PROJECT TITLE:	FED ISLAND
DESCRIPTION:	CONDITIONAL USE PERMIT FOR AMUSEMENT GAMES IN 1,505 SF BUILDING ON 13,000 SF AREA (ZONED) (A) (DISTRICT A)
APPLICANT:	DM FACUL INC - FACUL SAAD
PROP. OWNER:	LAMOURE INCORPORATED
LOCATION:	5917 S MOONEY BLVD
APN(S):	121-020-035

THE TRAFFIC DIVISION WILL PROHIBIT ON-STREET PARKING AS DEEMED NECESSARY

- No Comments
- See Previous Site Plan Comments
- Install Street Light(s) per City Standards.
- Install Street Name Blades at Locations.
- Install Stop Signs at Locations.
- Construct parking per City Standards PK-1 through PK-4.
- Construct drive approach per City Standards.
- Traffic Impact Analysis required.

Additional Comments:

•



Leslie Blair

**BUILDING/DEVELOPMENT PLAN
REQUIREMENTS
ENGINEERING DIVISION**

- Jason Huckleberry 713-4259
- Adrian Rubalcaba 713-4271

ITEM NO: <u>1</u>	DATE: <u>FEBRUARY 25, 2015</u>
SITE PLAN NO.:	15-025
PROJECT TITLE:	RED ISLAND
DESCRIPTION:	CONDITIONAL USE PERMIT FOR AMUSEMENT GAMES IN 1,509 SF BUILDING ON 13,608 SF AREA (CR ZONED) (X) (DISTRICT A)
APPLICANT:	DMM FAOUR INC - FAOUR SAAD
PROP OWNER:	LAMOURES INCORPORATED
LOCATION:	2917 S MOONEY BLVD
APN:	121-090-068

SITE PLAN REVIEW COMMENTS

- REQUIREMENTS (indicated by checked boxes)
- Install curb return with ramp, with _____ radius;
- Install curb; gutter
- Drive approach size: Use radius return;
- Sidewalk: _____ width; parkway width at _____
- Repair and/or replace any sidewalk across the public street frontage(s) of the subject site that has become uneven, cracked or damaged and may constitute a tripping hazard.
- Replace any curb and gutter across the public street frontage(s) of the subject site that has become uneven and has created areas where water can stand.
- Right-of-way dedication required. A title report is required for verification of ownership.
- Deed required prior to issuing building permit;
- City Encroachment Permit Required.
Insurance certificate with general & auto liability (\$1 million each) and workers compensation (\$1 million), valid business license, and appropriate contractor's license must be on file with the City, and valid Underground Service Alert # provided prior to issuing the permit. Contact Encroachment Tech. at 713-4414.
- CalTrans Encroachment Permit required. CalTrans comments required prior to issuing building permit. Contacts: David Deel (Planning) 488-4088;
- Landscape & Lighting District/Home Owners Association required prior to approval of Final Map. Landscape & Lighting District will maintain common area landscaping, street lights, street trees and local streets as applicable. Submit completed Landscape and Lighting District application and filing fee a min. of 75 days before approval of Final Map.
- Landscape & irrigation improvement plans to be submitted for each phase. Landscape plans will need to comply with the City's street tree ordinance. The locations of street trees near intersections will need to comply with Plate SD-1 of the City improvement standards. A street tree and landscape master plan for all phases of the subdivision will need to be submitted with the initial phase to assist City staff in the formation of the landscape and lighting assessment district.
- Grading & Drainage plan required. If the project is phased, then a master plan is required for the entire project area that shall include pipe network sizing and grades and street grades. Prepared by registered civil engineer or project architect. All elevations shall be based on the City's benchmark network. Storm run-off from the project shall be handled as follows: a) directed to the City's existing storm drainage system; b) directed to a permanent on-site basin; or c) directed to a temporary on-site basin is required until a connection with adequate capacity is available to the City's storm drainage system. On-site basin: _____ : _____ maximum side slopes, perimeter fencing required, provide access ramp to bottom for maintenance.
- Grading permit is required for clearing and earthwork performed prior to issuance of the building permit.
- Show finish elevations. (Minimum slopes: A.C. pavement = 1%, Concrete pavement = 0.25%. Curb & Gutter = .020%, V-gutter = 0.25%)
- Show adjacent property grade elevations. A retaining wall will be required for grade differences greater than 0.5 feet at the property line.
- All public streets within the project limits and across the project frontage shall be improved to their full width, subject to available right of way, in accordance with City policies, standards and specifications.
- Traffic indexes per city standards:

- Install street striping as required by the City Engineer.
- Install landscape curbing (typical at parking lot planters).
- Minimum paving section for parking: 2" asphalt concrete paving over 4" Class 2 Agg. Base, or 4" concrete pavement over 2" sand.
- Design Paving section to traffic index of 5.0 min. for solid waste truck travel path.
- Provide "R" value tests: each at
- Written comments required from ditch company Contacts: James Silva 747-1177 for Modoc, Persian, Watson, Oakes, Flemming, Evans Ditch and Peoples Ditch; Jerry Hill 686-3425 for Tulare Irrigation Canal, Packwood and Cameron Creeks; Bruce George 747-5601 for Mill Creek and St. John's River.
- Access required on ditch bank, 15' minimum Provide wide riparian dedication from top of bank.
- Show Oak trees with drip lines and adjacent grade elevations. Protect Oak trees during construction in accordance with City requirements.
- A permit is required to remove oak trees. Contact Joel Hooyer at 713-4295 for an Oak tree evaluation or permit to remove. A pre-construction conference is required.
- Relocate existing utility poles and/or facilities.
- Underground all existing overhead utilities within the project limits. Existing overhead electrical lines over 50kV shall be exempt from undergrounding.
- Subject to existing Reimbursement Agreement to reimburse prior developer:
- Fugitive dust will be controlled in accordance with the applicable rules of San Joaquin Valley Air District's Regulation VIII. Copies of any required permits will be provided to the City.
- If the project requires discretionary approval from the City, it may be subject to the San Joaquin Valley Air District's Rule 9510 Indirect Source Review per the rule's applicability criteria. A copy of the approved AIA application will be provided to the City.
- If the project meets the one acre of disturbance criteria of the State's Storm Water Program, then coverage under General Permit Order 2009-0009-DWQ is required and a Storm Water Pollution Prevention Plan (SWPPP) is needed. A copy of the approved permit and the SWPPP will be provided to the City.
- Comply with prior comments. Resubmit with additional information. Redesign required.

Additional Comments:

- 1. Proposed retail sales in existing retail building will require a building permit per Building Dept. requirements. Plan check and inspection fees will apply.**
- 2. The building permit shall indicate existing accessible stall(s) to be used and location and dimensions. Existing accessible stall signage and paint scheme shall comply with current ADA & City standards.**
- 3. Refer to Planning Dept. for further conditions and CUP processes.**

SUMMARY OF APPLICABLE DEVELOPMENT IMPACT FEES

Site Plan No: 15-025
Date: 2/25/2015

**Summary of applicable Development Impact Fees to be collected at the time of building permit:
(Preliminary estimate only! Final fees will be based on the development fee schedule in effect at the time of building permit issuance.)**

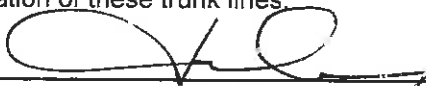
(Fee Schedule Date:8/15/2014)
(Project type for fee rates:RETAIL)

Existing uses may qualify for credits on Development Impact Fees.

<u>FEE ITEM</u>	<u>FEE RATE</u>
<input type="checkbox"/> Groundwater Overdraft Mitigation Fee	
<input type="checkbox"/> Transportation Impact Fee	
<input type="checkbox"/> Trunk Line Capacity Fee	
<input type="checkbox"/> Sewer Front Foot Fee	
<input type="checkbox"/> Storm Drain Acq/Dev Fee	
<input type="checkbox"/> Park Acq/Dev Fee	
<input type="checkbox"/> Northeast Specific Plan Fees	
<input type="checkbox"/> Waterways Acquisition Fee	
<input type="checkbox"/> Public Safety Impact Fee: Police	
<input type="checkbox"/> Public Safety Impact Fee: Fire	
<input type="checkbox"/> Public Facility Impact Fee	
<input type="checkbox"/> Parking In-Lieu	

Reimbursement:

- 1.) No reimbursement shall be made except as provided in a written reimbursement agreement between the City and the developer entered into prior to commencement of construction of the subject facilities.
- 2.) Reimbursement is available for the development of arterial/collector streets as shown in the City's Circulation Element and funded in the City's transportation impact fee program. The developer will be reimbursed for construction costs and right of way dedications as outlined in Municipal Code Section 16.44. Reimbursement unit costs will be subject to those unit costs utilized as the basis for the transportation impact fee.
- 3.) Reimbursement is available for the construction of storm drain trunk lines and sanitary sewer trunk lines shown in the City's Storm Water Master Plan and Sanitary Sewer System Master Plan. The developer will be reimbursed for construction costs associated with the installation of these trunk lines.



Jason Huckleberry

City of Visalia
Building: Site Plan
Review Comments

SITE PLAN NO: SPR15025
PROJECT TITLE: RED ISLAND
DESCRIPTION: CONDITIONAL USE PERMIT FOR AMUSEMENT GAMES IN 1,509 SF BUILDING ON 13,608 SF AREA (CR ZONED) (X) (DISTRICT A)
APPLICANT: DMM FAOUR INC - FAOUR SAAD
PROP OWNER: LAMOURES INCORPORATED
LOCATION: 2917 S MOONEY BLVD
APN(S): 121-090-068

NOTE: These are general comments and DO NOT constitute a complete plan check for your specific project
Please refer to the applicable California Codes & local ordinance for additional requirements.

- Business Tax Certification is required. *For information call (559) 713-4326*
- A building permit will be required. *For information call (559) 713-4444*
- Submit 4 sets of professionally prepared plans and 2 sets of calculations. (Small Tenant Improvements)
- Submit 4 sets of plans prepared by an architect or engineer. Must comply with 2013 California Building Cod Sec. 2308 for conventional light-frame construction or submit 2 sets of engineered calculations.
- Indicate abandoned wells, septic systems and excavations on construction plans.
- You are responsible to ensure compliance with the following checked items:**
- Meet State and Federal requirements for accessibility for persons with disabilities.
- A path of travel, parking, common area and public right of way must comply with requirements for access for persons with disabilities.
- Multi family units shall be accessible or adaptable for persons with disabilities.
- Maintain sound transmission control between units minimum of 50 STC.
- Maintain fire-resistive requirements at property lines.
- A demolition permit & deposit is required. *For information call (559) 713-4444*
- Obtain required clearance from San Joaquin Valley Air Pollution Board. Prior to am demolition work
For information call (661) 392-5500
- Location of cashier must provide clear view of gas pump island
- Pians must be approved by the Tulare County Health Department. *For information call (559) 624-7400*
- Project is located in flood zone _____ * Hazardous materials report.
- Arrange for an on-site inspection. (Fee for inspection \$151.90) *For information call (559) 713-4444*
- School Development fees. Commercial \$0.54 per square foot. Residential \$3.48 per square foot.
- Existing address must be changed to be consistent with city address. *For information call (559) 713-4320*
- Acceptable as submitted
- No comments
- See previous comments dated: _____

Special comments: _____

G. FERBERO Date: 2-24-15
Signature

City of Visalia
Police Department
303 S. Johnson St.
Visalia, Ca. 93292
(559) 713-4370

ITEM NO: 1 DATE: February 25, 2015
SITE PLAN NO: SPR15025
PROJECT TITLE: RED ISLAND
DESCRIPTION: CONDITIONAL USE PERMIT FOR AMUSEMENT
GAMES IN 1,509 SF BUILDING ON 13,608 SF AREA
(CR ZONED) (X) (DISTRICT A)
APPLICANT: DMM FAOUR INC - FAOUR SAAD
PROP OWNER: LAMOURES INCORPORATED
LOCATION: 2917 S MOONEY BLVD
APN(S): 121-090-068

Site Plan Review Comments

- No Comment at this time.
- Request opportunity to comment or make recommendations as to safety issues as plans are developed.
- Public Safety Impact fee:
Ordinance No. 2001-11 Chapter 16.48 of Title 16 of the Visalia Municipal Code
Effective date - August 17, 2001

Impact fees shall be imposed by the City pursuant to this Ordinance as a condition of or in conjunction with the approval of a development project. "New Development or Development Project" means any new building, structure or improvement of any parcels of land, upon which no like building, structure of improvement previously existed. *Refer to Engineering Site Plan comments for fee estimation.

- Not enough information provided. Please provide additional information pertaining to:

- Territorial Reinforcement: Define property lines (private/public space).

- Access Controlled / Restricted etc:

- Lighting Concerns:

- Landscaping Concerns:

- Traffic Concerns:

- Surveillance Issues:

- Line of Sight Issues:

- Other Concerns: BWINESS IS ILLEGAL UNDER BWS & PROF. 17539.1
BWINTER L98 / STEVE PHILLIPS L4

ITEM NO: 1

DATE: February 25, 2015



Site Plan Review Comments For:

Visalia Fire Department

Kurtis A. Brown,

Fire Marshal

707 W Acequia

Visalia, CA 93291

559-713-4261 *office*

559-713-4808 *fax*

SITE PLAN NO:

SPR15025

PROJECT TITLE:

RED ISLAND

DESCRIPTION:

CONDITIONAL USE PERMIT FOR AMUSEMENT
GAMES IN 1,500 SF BUILDING ON 13,608 SF AREA
(CR ZONED) (X) (DISTRICT A)

APPLICANT:

DMM FAOUR INC - FAOUR SAAD

PROP OWNER:

LAMOURES INCORPORATED

LOCATION:

2917 S. MOONEY BLVD

APN(S):

121-090-068

The following comments are applicable when checked:

- The Site Plan Review comments are issued as general overview of your project. With further details, additional requirements will be enforced at the Plan Review stage. Please refer to the 2013 California Fire Code (CFC), 2013 California Building Codes (CBC) and City of Visalia Municipal Codes.
- All fire detection, alarm, and extinguishing systems in existing buildings shall be maintained in an operative condition at all times and shall be replaced or repaired where defective. If building has been vacant for a significant amount of time, the fire detection, alarm, and or extinguishing systems may need to be evaluated by a licensed professional. *2013 CFC 901.6*
- No fire protection items required for parcel map or lot line adjustment; however, any future projects will be subject to fire & life safety requirements including fire protection.
- More information is needed before a Site Plan Review can be conducted. Please submit plans with more detail. Please include information on

General:

- Address numbers must be placed on the exterior of the building in such a position as to be clearly and plainly visible from the street. Numbers will be at least four inches (4") high and shall be of a color to contrast with their background. If multiple addresses served are by a common driveway, the range of numbers shall be posted at the roadway/driveway. *2013 CFC 505.1*
- A Knox Box key lock system is required. Where access to or within a structure or an area is restricted because of secured openings (doors and/or gates) or for fire-fighting purposes, a key box is to be installed in an approved location. (Note: Knox boxes shall be ordered using an approved application that can be found at Fire Administration Office located at 707 W. Acequia Ave. Please allow adequate time for shipping and installation.) *2013 CFC 506.1*
- All hardware on exit doors shall comply with Chapter 10 of the 2013 California Fire Code. This includes all locks, latches, dolt locks, and panic and fire exit hardware.
- Provide Illuminated exit signs and emergency lighting through-out building. *2013 CFC 1011*
- When portion of the building are built upon a property line or in close proximity to another structure the exterior wall shall be constructed as to comply *2013 California Building Code Table 508.4 and Table 602.*

- Commercial dumpsters with 1.5 cubic yards or more shall not be stored or placed within 5 feet of combustible walls, openings, or a combustible roof cave line except when protected by a fire sprinkler system. *2013 CFC 304.3.3*
- If your business handles hazardous material in amounts that exceed the Maximum Allowable Quantities listed on *Table 5003.1.1(1), 5003.1.1(2), 5003.1.1(3) and 5003.1.1(4) of the 2013 California Fire Code*, you are required to submit an emergency response plan to the Tulare County Health Department. Also you shall indicate the quantities on your building plans and prior to the building final inspection a copy of your emergency response plan and Safety Data Sheets shall be submitted to the Visalia Fire Department.

Water Supply:

- Construction and demolition sites shall have an approved water supply for fire protection, either temporary or permanent, and shall be made available as soon as combustible material arrives on the site. *2013 CFC 3312*
- No additional fire hydrants are required for this project; however, additional fire hydrants may be required for any future development.
- There is/are fire hydrants required for this project. (See marked plans for fire hydrant locations.)
- Fire hydrant spacing shall comply with the following requirements:
 The exact location of fire hydrants and final decision as to the number of fire hydrants shall be at the discretion of the fire marshal, fire chief and/or their designee. *Visalia Municipal Code 16.36.120 & 16.36.120(8)*
 - Single-family residential developments shall be provided with fire hydrants every six hundred (600) lineal feet of residential frontage. In isolated developments, no less than two (2) fire hydrants shall be provided.
 - Multi-family, zero lot line clearance, mobile home park or condominium developments shall be provided with fire hydrants every four hundred (400) lineal feet of frontage. In isolated developments, no less than two (2) fire hydrants shall be provided.
 - Multi-family or condominium developments with one hundred (100) percent coverage fire sprinkler systems shall be provided with fire hydrants every six (600) lineal feet of frontage. In isolated developments, no less than two (2) fire hydrants shall be provided.
 - Commercial or industrial developments shall be provided with fire hydrants every three hundred (300) lineal feet of frontage. In isolated developments, no less than two (2) fire hydrants shall be provided.
 - Commercial or industrial developments with one hundred (100) percent coverage fire sprinkler systems shall be provided with fire hydrants every five hundred (500) lineal feet of frontage. In isolated developments, no less than two (2) fire hydrants shall be provided.
- When any portion of a building is in excess of one hundred fifty (150) feet from a water supply on a public street there shall be provided on site fire hydrants and water mains capable of supplying the required fire flow. *Visalia Municipal Code 16.36.120(6)*

Emergency Access:

- A construction access road is required and shall be a minimum of 20 feet wide. The road shall be an all-weather driving surface accessible prior to and during construction. The access road shall be capable of holding 75,000 pound piece of fire apparatus, and shall provide access to within 100 feet of temporary or permanent fire department connections. *2013 CFC 3310*
- Buildings or portions of buildings or facilities with a vertical distance between the grade plans and the highest roof surface exceed 30 feet shall provide an approved fire apparatus access roads capable of accommodating fire department aerial apparatus. Access roads shall have a minimum unobstructed width of 26 feet, exclusive of shoulders. Access routes shall be located within a minimum of 15 feet and maximum of 30 feet from the building, and shall be positioned parallel to one entire side of the building. *2013 CFC D105*
- A fire apparatus access roads shall be provide and must comply with the CFC and extend to within 150 of all portions of the facility and all portions of the exterior walls of the first story of the building as measured by an approved route around the exterior of the building or facility. Minimum turning radius for emergency fire apparatus shall be 20 feet inside radius and 43 feet outside radius. *2013 CFC 503.1.1*
- Fire apparatus access roads in excess of 150 feet and dead end shall be provided with a turnaround. Length 151-500 feet shall be a minimum of 20 feet in width and have a 120 foot Hammerhead, 60-foot "Y" or 96-Foot diameter Cul-de-sac in accordance with Figure D103.1 of the 2013 CFC. Length 501-750 feet shall be 26 feet in width and have a 120 foot Hammerhead, 60-foot "Y" or 96-Foot diameter Cul-de-sac in accordance with Figure D103.1 of the 2013 CFC.

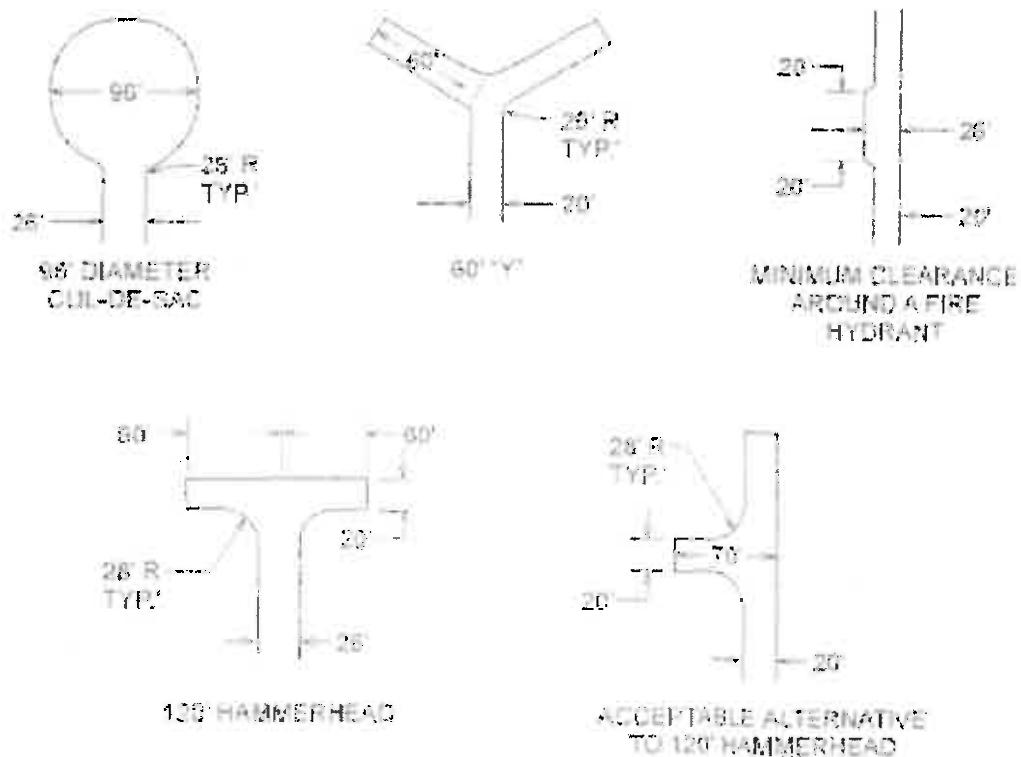


FIGURE D103.1
DEAD-END FIRE APPARATUS ACCESS ROAD TURNAROUND

IN THE SUPREME COURT OF CALIFORNIA

THE PEOPLE ex rel. LINDA GREEN, as)	
DISTRICT ATTORNEY, etc.,)	S217896, S217979
)	
Plaintiff and Respondent,)	
)	Ct.App. 5 F065450
v.)	
)	
KIRNPAL GREWAL,)	Kern County
)	Super. Ct. Nos. CV-276959,
Defendant and Appellant.)	CV-276958, CV-276961,
)	CV-276603, CV-276962
[And four other cases.*])	(Consolidated)
_____)	

Slot machines, sometimes called “one-armed bandits” (although younger users might wonder why), have long been outlawed in California. Under review are devices that resemble traditional casino-style slot machines in some ways and offer users the chance to win sweepstakes prizes. Because they employ modern technology, the devices differ from traditional slot machines in some ways. We must decide whether the devices come within the statutory definition of a “slot

* *People ex rel. Green v. Walker* (No. F065451); *People ex rel. Green v. Stidman* (No. F065689); *People ex rel. Green v. Nasser* (No. F066645); *People ex rel. Green v. Elmalih* (No. F066646).

machine or device” in Penal Code section 330b.¹ We conclude they do and affirm the judgments of the Court of Appeal, which reached the same conclusion.

I. FACTS AND PROCEDURAL HISTORY

These facts are taken largely from the Court of Appeal opinions authored by Justice Kane.

In these cases, which we have consolidated for argument and this opinion, the People of the State of California, by and through the District Attorney of Kern County, filed civil actions against defendants Kirnpal Grewal, John C. Stidman, Phillip Ernest Walker, Kamal Kenny Nasser, and Ghassan Elmalih, operators of Internet cafés in Kern County. Three distinct, albeit similar, devices operated at several Internet café businesses are at issue here. We will first describe the businesses and devices as they existed at the time of the hearings in the superior court, then the procedural background.

A. The A to Z Café; the OZ Internet Café and Hub

Defendant Kirnpal Grewal owned the A to Z Café, and defendant Phillip Ernest Walker owned the OZ Internet Café and Hub (the OZ), both in Bakersfield. The record shows, and the parties agree, that Grewal’s business operated a sweepstakes system essentially identical to that of the OZ. Accordingly, we will discuss the OZ’s system.

Among other products, the OZ sold computer and Internet time (hereafter, Internet time) on computer terminals on its premises. The OZ promoted the sale of Internet time and other products with a sweepstakes giveaway implemented

¹ All further statutory citations will be to the Penal Code unless otherwise indicated. As will be seen, section 330b refers to a “slot machine or device.” However, we will sometimes refer to what the section proscribes as simply a slot machine.

through a software system that a company known as Figure Eight Software provided. Participants in the sweepstakes had the chance to win cash prizes varying from small amounts to a top prize of \$10,000 as set forth in the sweepstakes' odds tables.

OZ customers could purchase Internet time for \$10 per hour. When a customer purchased Internet time, an employee assigned the customer a personal identification number (PIN). The employee created an account by which the customer could access the computers and Internet as well as play sweepstakes computer games. Customers were not charged for Internet time while they were playing the computer sweepstakes games. At the time of purchase, the customer received 100 "sweepstakes points" for each dollar spent. Walker stated that "[c]ustomers purchase product[s] consisting mostly of computer and Internet time at competitive prices and receive free sweepstake points in addition to the product purchased." Additionally, a customer might receive 100 free sweepstakes points every day that the customer came into the OZ, and first-time customers received 500 additional sweepstakes points. These sweepstakes points could be "used to draw the next available sequential entry from a sweepstake contest pool." This could be done and the result revealed in one of three ways: (1) asking an OZ employee to reveal a result, (2) pushing an instant reveal button at the computer station, or (3) playing computer sweepstakes games at the computer terminals that appeared similar to common games of chance.

The sweepstakes rules provided that no purchase was necessary to enter the sweepstakes. According to Walker, noncustomers could obtain free sweepstakes entries by asking an employee at the OZ or by mailing in a request.

According to Walker, to access the computers, customers had to sign a "Computer Time Purchase Agreement" form. On the form, the customers had to acknowledge that they understood the following matters before using the OZ

computers: (1) that they were purchasing computer time and (2) the sweepstakes computer games were “not gambling,” but were a “promotional game” in which all winners were predetermined. On the form, the customers affirmed that they understood “[t]he games have no [e]ffect on the outcome of the prizes won,” but were merely an “entertaining way to reveal [their] prizes and [they] could have them instantly revealed and would have the same result.”

Walker’s declaration explained what happened when a customer used the sweepstakes computer game: “If a customer utilizes the pseudo-interactive entertaining reveal interface the customer can encounter some games that have appearances similar to common games of chance.” However, before any “spinning wheels or cards” appeared on the screen, “the sweepstakes entry has already been drawn sequentially from a pool of entries and is predetermined. There is no random component to the apparent action of the images in the interface even though it simulates interactivity. Instead, the images will display a result that matches the amount of any prize revealed in the entries. [Citation.] ¶¶ As told to the customer in the rules and in disclaimers, the pseudo-interactive interface does not ‘automatically’ or ‘randomly’ utilize any play to obtain a result.”

Walker also described in greater detail the operation of the software system the OZ used to run the sweepstakes. His declaration stated that under that software system, the issue of whether customers had won a cash prize was determined when their entries were drawn from a sweepstakes pool. Each such entry had a previously assigned cash prize of zero or greater. Entries were drawn sequentially from one of 32 sweepstakes pools (also called “multiple finite deals of entries”) that the software company created. The software company prearranged the entries in each pool in a set order or sequence, and the OZ had no control over that order or sequence or the corresponding results. Access to a

particular sweepstakes pool was determined by how many points customers chose to use (or bet) at any one time. Each pool had its own prizes and its own separate sequence of entry results. When customers selected a sweepstakes pool, the software system assigned them the next available entry result in that pool, in sequence. At that point, the result was established and could not be affected by the computer game play, which merely revealed the established result. Walker stated that a specific sequential entry would yield the same result regardless of the method the customers used to draw and reveal it.

B. I Zone Internet Café

Defendant John C. Stidman owned the I Zone Internet Café (I Zone) in Bakersfield. Among other products, I Zone sold Internet time to the public for \$20 per hour, which customers could use on computer terminals located on the I Zone premises. To promote the sale of Internet time and its other products, I Zone offered a sweepstakes to customers when they made a purchase. Noncustomers might also enter the sweepstakes; that is, no purchase was necessary to enter. To enter a sweepstakes without purchasing Internet time or other products, a person could receive up to four free entries from the cashier each day on request. Four additional entries were available by mailing a form with a self-addressed, stamped envelope. A company known as Capital Bingo provided a computer software system that effectuated the sweepstakes.

Under the software system, a purchaser of Internet time or other products at I Zone received sweepstakes points for each dollar spent. A customer also received sweepstakes points for the first purchase of the day and for being a new customer. The customer received a white plastic card with a magnetic strip, which an I Zone employee activated at the register. A customer swiping the card at an open computer terminal was given the option of using the Internet function or

playing sweepstakes computer games. If the customer chose the games, the time playing them did not reduce the Internet time available. Both options were touch-screen operated and did not require a keyboard or mouse.

In playing the sweepstakes computer games, I Zone customers used their sweepstakes points in selected increments (simulating bets) on games with names such as Buck Lucky, Tropical Treasures, or Baby Bucks. According to the I Zone sweepstakes rules, each increment level available for play “represents a separate sweepstakes.” Gambling-themed games resembling slot machines were prominently displayed on the I Zone terminals. According to a detective investigating the business, “[i]t appeared the subjects were playing casino-style slot machine games on the computers. . . . The audible sounds were that of casino-style slot machines.” The detective noted that on one occasion, no one was on the Internet, but instead “all the people using the computer terminals were playing the sweepstakes games.” Participants in the sweepstakes had a chance to win cash prizes ranging from small amounts to a top prize of \$3,000.

In contending the sweepstakes games were not slot machines, Stidman presented evidence and argument regarding how they functioned. His position was that the computer sweepstakes games were merely an entertaining way for customers to reveal a sweepstakes result. A customer could also reveal a sweepstakes result by other means, such as by using a special function on the computer terminal or by asking an I Zone employee at the register to print out a result on paper. As Stidman described it, “[e]ach time a customer reveals the results of a sweepstakes entry, [regardless of the means used], the next available sweepstakes entry in the ‘stack’ is revealed,” in sequence, from a prearranged stack of entries. The “next available sweepstakes entry” contains a predetermined result that would be the same regardless of which method was used to reveal it. Thus, when the customer engaged the sweepstakes computer games, the outcome

was determined by the particular sweepstakes entry that was being revealed at that time, not by the workings of the game itself. That is, the game simply revealed the predetermined result of the next sequential sweepstakes entry.

Stidman provided further documentary evidence of how I Zone's software system conducted the sweepstakes. This evidence indicated there were three distinct servers: (1) the "Management Terminal," (2) the "Point of Sale Terminal," and (3) the "Internet Terminal." As Stidman's counsel summarized in the trial court, "It is at the Management Terminal where all sweepstakes entries are produced and arranged. Each batch of sweepstakes entries has a finite number of entries and a finite number of winners and losers. Once a batch of sweepstakes entries is produced at the Management Terminal, it is 'stacked' . . . and then transferred to the Point of Sale Terminal in exactly the same order as when it left the Management Terminal. Each time a customer reveals the results of a sweepstakes entry, either at the Internet Terminal or at the Point of Sale, the next available sweepstakes entry in the 'stack' is revealed. In other words, the Internet Terminal simply acts as a reader and displays the results of the next sequential sweepstakes entry in the stack as it was originally arranged and transferred from the Management Terminal — it is never the object of play. In fact, exactly the same results [are displayed] for a specified sweepstakes entry whether the customer chooses to have the results displayed in paper format at the Point of Sale Terminal or in electronic format at an Internet Terminal." Stidman's evidence indicated that neither the Point of Sale Terminal nor the Internet Terminal had a random number generator and could not be "the object of play," since those servers could not influence or alter the result of a particular sweepstakes entry, but merely displayed that result.

C. Fun Zone Internet Café; Happy Land

Defendant Kamal Kenny Nasser owned stores called the Fun Zone Internet Café, and defendant Ghassan Elmalih owned a store called Happy Land. The stores sold, among other things, Tel-Connect and Inter-Connect prepaid telephone cards. Defendants Nasser and Elmalih promoted the sale of telephone cards at their stores by offering sweepstakes to their customers. Phone-Sweeps, LLC (Phone-Sweeps), a company based near Toronto, Canada, furnished the Tel-Connect and Inter-Connect telephone cards. Phone-Sweeps also provided the computer software system that operated defendants' sweepstakes programs, including the computer sweepstakes games.

When customers purchased telephone cards or more time on their existing cards, they received 100 sweepstakes points for each dollar spent on prepaid telephone time. Thus, a customer purchasing \$20 in telephone time would receive 2,000 sweepstakes points with the purchase. Noncustomers could receive sweepstakes points; that is, no purchase was necessary to enter. Persons over the age of 18 who entered defendants' stores could receive 100 free sweepstakes entries or points for that day. Additionally, free points could be received by mailing in a request form.

Customers could use their points by playing sweepstakes computer games on the terminals provided on the premises. Time spent on the terminals playing the computer sweepstakes games did not reduce the customers' available telephone time. Initially, customers gained access to the computer sweepstakes games by swiping their telephone card into an electronic card reader at the computer terminal. More recently, customers manually entered the account number shown on the back of the telephone card at the terminal keyboard.

Once the computer sweepstakes games were displayed, the customer was presented with a number of slot machine-style games activated by a touch screen.

The customers selected, based on available increments (such as 25, 50, or 100), how many points to use at one time. The customer either lost the points played, or was awarded additional points (called “winning points”), which the system tracked and displayed on the screen. If the customer finished with a positive number of winning points, the points were redeemable at one dollar per 100 points at the register. For example, 2,400 winning points would result in a cash prize of \$24. According to an odds table, within each pool of entries there were entry results that ranged from \$0.01 to \$4,200 (based on redeemable points won). Customers not wishing to play the sweepstakes games could ask the cashier to do a “Quick Redeem” at the register to reveal an immediate result.

The system used to operate the sweepstakes program and computer sweepstakes games was an integrated system that formed a network of computers and servers. The main Phone-Sweeps server was located in Canada and was electronically connected to the servers in Nasser’s and Elmalih’s places of business. The server used in each place of business was, in turn, electronically connected to each of the numerous computer terminals that the customers used at that place of business to play the computer sweepstakes games.

Each sweepstakes consisted of a finite pool or batch of entries. Depending on the size of the retail store, the number of entries in a sweepstakes pool could be as high as 65 million. The Phone-Sweeps main server in Canada created the pools. The main server randomized the entries in each pool, put them into a set sequential order, and then delivered the pool in that sequential order to the “Point of Sale” computer (or server) in the stores. Neither Nasser nor Elmalih, nor their customers could change the sequence or contents (i.e., results) of the entries. The main server in Canada could detect when the pool in any particular store was nearing the end, and then it created a new pool, in the same manner, and delivered it to the Point of Sale computer (or server).

Customers playing the computer sweepstakes games simply received and obtained the results of the next available entry or entries, in sequence. Thus, the outcomes were predetermined by sequential entries, not by how the customers played the games. Customers could not impact the result that was determined by the next available entry. Additionally, neither the sweepstakes servers (i.e., the Point of Sale computers) nor the terminals where the computer sweepstakes games were played contained a random number generator or any other way to randomize or alter the sequence of the entry results.

There was evidence that over a one-year period, customers actually used 31 to 32 percent of the total telephone time that Phone-Sweeps sold through its licensees.

D. Procedural Background

In May and June 2012, the Kern County District Attorney's Office filed on behalf of the People separate civil actions against each of the five defendants. The complaints alleged that the defendants had violated antigambling provisions of the Penal Code in operating their respective businesses and sought injunctive and other relief under Business and Professions Code section 17200. The pleadings cited provisions relating to unlawful lotteries (§ 319) and unlawful slot machines or gambling devices (§§ 330a, 330b, 330.1). The superior court held evidentiary hearings on the People's motions for preliminary injunctions. It granted preliminary injunctions prohibiting each defendant, pending further order of the court, "from operating any business that includes any type of 'sweepstakes,' 'slot machines,' or 'lottery' feature." It entered formal written orders granting the preliminary injunctions against Grewal, Stidman, and Walker on August 1, 2012, and against Nasser and Elmalih on November 26, 2012.

Each defendant appealed separately from the preliminary injunction. The Court of Appeal consolidated the appeals of Grewal, Stidman, and Walker, and, separately, the appeals of Nasser and Elmalih. In two separate opinions, the Court of Appeal affirmed the trial court orders. In each matter, it found the sweepstakes operations were illegal slot machines under section 330b. We granted each of the defendants' petitions for review. After the briefing was complete, we consolidated the two appeals for purposes of oral argument and opinion.

II. DISCUSSION

The sweepstakes operations at issue here were similar to each other, although they varied in some respects. In each instance, the business sold a product (either Internet time or telephone cards) and, along with the product, provided the opportunity to play sweepstakes games, with the possibility of winning substantial cash prizes. Customers could also receive a limited number of free sweepstakes entries per day or could receive more by mailing in a request form. The customer had the option of either obtaining an instant sweepstakes result or playing games at a computer terminal to reveal the result. To begin playing the sweepstakes games, the customer would swipe a magnetic card or enter a number at a computer terminal. Those choosing to play the games had a choice of games resembling slot machines or casino-style games. The sweepstakes operation was an integrated whole, with an outside company supplying the software to operate the game. The outside company's software, which was connected to the computer terminals at the business, predetermined the result of each game. Neither employees at the business nor the customers themselves had any control over the outcome. The games themselves merely revealed the predetermined result; they had no influence on that result.

The district attorney alleged that each of the sweepstakes operations violated several antigambling provisions, including three that concern slot

machines. (§§ 330a, 330b, 330.1.) The definitions of slot machines in these provisions are similar but not identical. (*Hotel Employees & Restaurant Employees Internat. Union v. Davis*. (1999) 21 Cal.4th 585, 593-594; *People ex rel. Lockyer v. Pacific Gaming Technologies* (2000) 82 Cal.App.4th 699, 703, fn. 6 (*Pacific Gaming Technologies*)).) The Court of Appeal focused on section 330b, finding it “[a]rguably the broadest of the three.” It found that the operations at issue here were illegal slot machines under that section. Defendants challenge that finding in this court. Accordingly, the only provision before us on review is section 330b, and we will also focus on that section.

Section 330b, subdivision (a), makes it unlawful to possess “any slot machine or device, as defined in this section.”² Subdivision (d) of that section provides the definition: “For purposes of this section, ‘slot machine or device’ means a machine, apparatus, or device that is adapted, or may readily be converted, for use in a way that, as a result of the insertion of any piece of money or coin or other object, or by any other means, the machine or device is caused to operate or may be operated, and by reason of any element of hazard or chance or

² In its entirety, section 330b, subdivision (a), provides: “It is unlawful for any person to manufacture, repair, own, store, possess, sell, rent, lease, let on shares, lend or give away, transport, or expose for sale or lease, or to offer to repair, sell, rent, lease, let on shares, lend or give away, or permit the operation, placement, maintenance, or keeping of, in any place, room, space, or building owned, leased, or occupied, managed, or controlled by that person, any slot machine or device, as defined in this section.

“It is unlawful for any person to make or to permit the making of an agreement with another person regarding any slot machine or device, by which the user of the slot machine or device, as a result of the element of hazard or chance or other unpredictable outcome, may become entitled to receive money, credit, allowance, or other thing of value or additional chance or right to use the slot machine or device, or to receive any check, slug, token, or memorandum entitling the holder to receive money, credit, allowance, or other thing of value.”

of other outcome of operation unpredictable to him or her, the user may receive or become entitled to receive any piece of money, credit, allowance, or thing of value, or additional chance or right to use the slot machine or device, or any check, slug, token, or memorandum, whether of value or otherwise, which may be exchanged for any money, credit, allowance, or thing of value, or which may be given in trade, irrespective of whether it may, apart from any element of hazard or chance or unpredictable outcome of operation, also sell, deliver, or present some merchandise, indication of weight, entertainment, or other thing of value.”

(§ 330b, subd. (d).)

We must decide whether the defendants’ sweepstakes operations come within this definition. We are not the first court to grapple with this definition in recent years. Numerous courts have found devices similar to the ones here to be slot machines under this definition.

As the Court of Appeal summarized in *Grewal* below: “California courts have found section 330b to prohibit a variety of devices where prizes may be won based on chance. In *People ex rel. Lockyer v. Pacific Gaming Technologies*, *supra*, 82 Cal.App.4th 699, a vending machine that dispensed telephone cards for \$1 included a ‘sweepstakes’ feature with audio-visual displays resembling a slot machine. When customers purchased a phone card for \$1, they were given a chance to win a cash prize of up to \$100. A ‘preset computer program’ determined the results. (*Id.* at pp. 701-702.) The Court of Appeal held the vending machine was a prohibited slot machine under the plain language of section 330b, because ‘[b]y the insertion of money and purely by chance (without any skill whatsoever), the user may receive or become entitled to receive money.’ (*Pacific Gaming Technologies*, at p. 703.) Similarly, in *Trinkle v. Stroh* [(1997)] 60 Cal.App.4th 771, a jukebox that dispensed four songs for \$1 was found to be a prohibited slot machine or device under section 330b because the operators also

received a chance to win a cash jackpot. (*Id.* at pp. 779-781; see *Score Family Fun Center, Inc. v. County of San Diego* (1990) 225 Cal.App.3d 1217, 1221-1223 [holding that an arcade video game that simulated card games violated § 330 because operators could, as a matter of chance, win free games or extended play].)”

A recent federal case applying California law to an Internet sweepstakes game provides another example. (*Lucky Bob’s Internet Café, LLC v. California Department of Justice* (S.D. Cal., May 1, 2013, No. 11-CV-148 BEN (JMA)) 2013 U.S. Dist. LEXIS 62470, 2013 WL 1849270 (*Lucky Bob’s*)). *Lucky Bob’s* facts were similar to those of this case in many respects.

As the *Lucky Bob’s* court described it, “Customers were given 100 entries to the Sweepstakes for every \$1 of purchased internet time. [Citation.] In addition, each customer was entitled to 100 free entries for every 24-hour period. [Citation.] Customers were also able to mail a request for \$1 worth of sweepstakes entries to World Touch Gaming, but this option was never used. [Citation.] [¶] Purchased internet time was loaded onto a player card, which the customer swiped into an electronic card reader located at an assigned computer terminal. [Citation.] The user would then select a method for revealing his winnings from the monitor located at the terminal. First, a customer could immediately reveal whether he won a prize. [Citation.] Second, a customer could play one of the seventeen casino-style games, then reveal whether he had won a prize at the end of the game. [Citation.] Many of these casino-style games are commonly associated with slot machines. [Citation.] [¶] Plaintiffs’ equipment operated a sweepstakes gaming system that was manufactured and licensed by World Touch Gaming, Inc. [Citation.] The World Touch Gaming system predetermined prize outcomes based upon chance as set forth in predefined odds tables for the gaming system, prior to when customers revealed their game entries

on player terminals. [Citation.] Based upon the odds tables, a game's overall financial outcome would be set at the time the pool of outcomes was generated. [Citation.] The system would then sequentially assign entries to patrons from the pool. [Citation.] Playing the casino-type games could not change the game entries' prize values." (*Lucky Bob's*, *supra*, 2013 U.S. Dist. LEXIS 62470 at pp. *2-*3, 2013 WL 1849270, at p. *1.)

The cash prizes in *Lucky Bob's* ranged from 10 cents to \$3,000. The players did not use most of the Internet time they purchased. "At Lucky Bob's, a total of \$1,225,055 was spent for 204,176 hours of internet time and 97.375% of the total purchased internet time was unused." (*Lucky Bob's*, *supra*, 2013 U.S. Dist. LEXIS 62470 at p. *3, 2013 WL 1849270, at p. *2.)

Relying heavily on *Pacific Gaming Technologies*, *supra*, 82 Cal.App.4th 699, the *Lucky Bob's* court found the device at issue to be an illegal slot machine under section 330b. (*Lucky Bob's*, *supra*, 2013 U.S. Dist. LEXIS 62470 at pp. *6-*10, 2013 WL 1849270, at pp. *2-*4.)

In finding the devices at issue here to be slot machines, the Court of Appeal relied primarily on section 330b, subdivision (d)'s plain language. Doing so was appropriate, because the language the Legislature chooses best indicates its intent. (*People v. Cook* (2015) 60 Cal.4th 922, 935.) We agree with the Court of Appeal's application of the statutory language to the facts.

As the Court of Appeal discussed in the *Grewal* opinion, "The first element specified in the statute is that '*as a result of the insertion of any piece of money or coin or other object, or by any other means, the machine or device is caused to operate or may be operated . . .*' (§ 330b, subd. (d), italics added.) Defendants argue that this element is lacking because no coin or similar object was inserted into a slot by customers at the computer terminal to cause the sweepstakes computer games to operate. We reject that argument. Here, the insertion of a PIN

[or, in *Nasser*, an account number] or the swiping of a magnetic card at the computer terminal in order to activate or access the sweepstakes games and thereby use points received upon paying money at the register (ostensibly to purchase a product) plainly came within the broad scope of the statute. The statute expressly includes the catchall phrase ‘*by any other means.*’ (§ 300b, subd. (d), italics added.) Even though a coin, money or object (e.g., a token) was not inserted into a slot, the games were commenced *by other means* analogous thereto which effectively accomplished the same result and, therefore, this element is satisfied.

“The second element of a ‘slot machine or device’ articulated in section 330b is that ‘*by reason of any element of hazard or chance or of other outcome of operation unpredictable by him or her, the user may receive or become entitled to receive any . . . money . . . or thing of value*’ (§ 330b, subd. (d), italics added.) This language describes the so-called chance element — that is, the requirement that any potential to win a prize must be based on hazard, chance or other outcome of operation unpredictable to the user of the machine or device.

“Here, it is clear that defendants’ customers may become entitled to win prizes under the software systems implementing defendants’ computer sweepstakes games based on ‘hazard or chance or of other outcome of operation unpredictable’ to the user. (§ 330b, subd. (d).) That is, we agree with the People that the chance element is satisfied. Under California gambling law, ‘ “[c]hance” means that ‘winning and losing depend on luck and fortune rather than, or at least more than, judgment and skill.’ (*Hotel Employees & Restaurant Employees Internat. Union v. Davis, supra*, 21 Cal.4th at p. 592.) Since customers playing defendants’ computer sweepstakes games can exert no influence over the outcome of their sweepstakes entries by means of skill, judgment or how well they play the

game, it follows that we are dealing with systems that are based on chance or luck.” (Fn. omitted.)

In arguing their devices are not slot machines, defendants rely primarily on *Trinkle v. California State Lottery* (2003) 105 Cal.App.4th 1401 (*State Lottery*). That case involved a claim that the California State Lottery’s “use of electronic vending machines to dispense SCRATCHERS lottery tickets is an illegal use of slot machines.” (*Id.* at p. 1403.) The game of Scratchers is a lottery that the California State Lottery is specifically permitted to operate. (See *Western Telcon, Inc. v. California State Lottery* (1996) 13 Cal.4th 475, 481-482, 495.) The California State Lottery sells the Scratchers lottery tickets in stores, sometimes using vending machines to do so. (*State Lottery*, at pp. 1403-1405.)

The Court of Appeal in *State Lottery*, *supra*, 105 Cal.App.4th 1401, reached what the Court of Appeal in *Grewal* aptly described as the “unsurprising conclusion that a vending machine that simply dispenses California State Lottery tickets in the sequential order that they were loaded into the machine is not an unlawful slot machine.” That conclusion was undoubtedly correct. The tickets themselves were part of a lottery, itself a game of chance. But the California State Lottery is permitted to operate the lottery. Selling the tickets in vending machines, rather than from a sales clerk behind a counter, did not make the process an additional game of chance.

The Legislature has specifically authorized the California State Lottery to dispense lottery tickets in vending machines. (Gov. Code, § 8880.335.) That section, however, authorizes using vending machines only if “neither the operation or functioning of the ticket dispenser nor the operation or functioning of any component, subcomponent, part, chip, or program of the ticket dispenser, *or of any device in direct or indirect communication with the ticket dispenser*, may affect the probability that a ticket that is dispensed will have a prize value other than a

null prize value.” (*Id.*, subd. (b), italics added.) In other words, the Legislature authorized lottery ticket vending machines, but not machines integrated into a system that, taken as a whole, operates to determine winners and losers. Defendants here are doing something beyond what the California State Lottery is permitted.

Thus, *State Lottery, supra*, 105 Cal.App.4th 1401, is distinguishable from this case. Defendants, however, latch onto certain language in *State Lottery* that, they argue, makes their devices lawful. The *State Lottery* court described one of the statutory elements as being that “the operation of the machine is unpredictable and governed by chance” (*State Lottery*, at p. 1410, italics added.) It is unclear how significant the point is to this case, but as the Court of Appeal in *Grewal* noted, “section 330b, subdivision (d), refers to *chance* ‘or’ *unpredictable* outcome.” “[U]se of the word ‘or’ in a statute indicates an intention to use it disjunctively so as to designate alternative or separate categories.” (*White v. County of Sacramento* (1982) 31 Cal.3d 676, 680.)

More significantly, *State Lottery* has language indicating that, for a device to be a slot machine, the machine the customers operate must itself generate the element of chance at the time of operation, somewhat like the spinning wheels of the original mechanical slot machines. (*State Lottery, supra*, 105 Cal.App.4th at pp. 1411-1412.) Defendants argue that their devices are not slot machines because the machines the customers operate to obtain the result do not themselves generate the element of chance at the time of operation. The element of chance has already been generated, and customers playing the games merely receive the next result in a previously arranged, sequential order.

The Court of Appeal in *Grewal* disagreed with the suggestion (unnecessary to *State Lottery*’s holding) that the computer terminal which customers use to play the sweepstakes games must itself generate the chance or unpredictable outcome

at the time the customer plays the game. “Section 330b only requires that prizes may be won ‘by reason of any element of hazard or chance or of other outcome of operation unpredictable by him or her’ (§ 330b, subd. (d).) Under this broad wording, if the entries are arranged in a particular order beforehand, rather than rearranged each time the game is played, it will still suffice. Either way, the next sequential entry/result that is dealt out by the software system will be, from the perspective of the player, by ‘chance or of other outcome of operation unpredictable by him or her’ (*Ibid.*) [¶] . . . The mere fact that winnings are based on a predetermined sequence of results programmed into the software system, rather than on a randomly spinning wheel (or the like), does not change the nature and character of devices herein, which as integrated systems function as slot machines.” (Fns. omitted.)

The Court of Appeal “treat[ed] each defendant’s complex of networked terminals, software gaming programs and computer servers as a single, integrated system. Under section 330b, subdivision (d), an unlawful ‘ “slot machine or device” ’ is not limited to an isolated or stand-alone piece of physical hardware, but broadly includes ‘a machine, *apparatus*, or device that is *adapted*’ for use as a slot machine or device. (*Italics added.*) As defined in dictionaries, the ordinary meaning for the term ‘apparatus’ includes ‘a group or combination of instruments, machinery, tools, or materials having a particular function’ (Random House Webster’s College Dict. (1992) p. 66), as well as ‘[t]he totality of means by which a designated function is performed or a specific task executed’ (Webster’s II New College Dict. (2005 (3d ed.) p. 54). Here, each defendant’s system of gaming software, servers and computer terminals plainly operated together as a single apparatus. (§ 330b, subd. (d).) While it is true that the end terminals or computer monitors used by patrons — if considered in isolation — may not intrinsically or standing alone contain all the elements of a slot machine, in each case they are part

of an integrated system or apparatus wherein the various parts or components work together so as to operate in a manner that *does* constitute an unlawful slot machine or device.”³

We agree. Indeed, a contrary view would mean that, again to quote the Court of Appeal, “even a casino-style slot machine would be legal as long as it was operated by a computer system that had previously arranged the sequence of entry results in a fixed order. Such a computer system might conceivably frontload hundreds of millions of discrete entry results into a predetermined sequence. A customer using that device would be surprised to learn that merely because there is a preset sequence, he is not playing a game of chance.” The Legislature cannot have intended and, more importantly, section 330b’s language does not permit, the conclusion that a business in California may lawfully operate traditional Las Vegas-style slot machines — with spinning wheels and everything else one associates with slot machines — merely by inserting into them software created elsewhere that presets the results. As the Court of Appeal aptly analogized, “whether a deck of cards was shuffled the day before, or at the moment the player sits down at the table and places a bet, it is still a matter of chance whether the ace of spades is the next card dealt.”

From all this, and as applicable here, we think the core elements of section 330b, subdivision (d), can be distilled as follows: A device that (1) rewards purchasers of usable products, including but not limited to, telephone and Internet time, with sweepstakes points, and (2) allows those purchasers to redeem their

³ We note that under some circumstances slot machines may be seized and ultimately disposed of. (§ 330.3.) Section 330.3 does not cross-reference section 330b, subdivision (d)’s definition of a slot machine. We express no opinion on the separate question of to what extent the integrated components of a slot machine under section 330b may be subject to seizure under section 330.3.

sweepstakes points by playing games that award cash or other prizes of value, is a slot machine, where that device, (3) standing alone or used in conjunction with other electronic or mechanical components, (4) when operated by insertion of a PIN, account number, or magnetic card, or by any other means, (5) awards cash or other prizes of value to users, or entitles those users to such cash or other prizes of value, and (6) does so by arranging or prearranging winning sweepstakes entries in a manner that is unpredictable to the user.

Pacific Gaming Technologies, supra, 82 Cal.App.4th 699, supports this conclusion. As the Court of Appeal in *Grewal* explained, in *Pacific Gaming Technologies*, “ ‘[a] preset computer program determine[d] the results of the sweepstakes.’ (*Id.* at p. 702.) The machine or device in that case (a ‘VendaTel’ that distributed a telephone card to each customer while entering them in a chance to win a prize) had a ‘ “10 percent payout structure” ’ where it would ‘pay[] out \$500 in prizes for every \$5,000 paid into the machine’ with ‘ “predetermined winners” spread out over a period of time.’ (*Id.* at p. 702, fn. 4.) Under those facts, the Court of Appeal held that the users of the device became entitled to receive cash prizes ‘*purely by chance* (without any skill whatsoever).’ (*Id.* at p. 703, italics added.) The same is true here. Even if the sequence of entries has been electronically frontloaded into defendants’ integrated system, patrons win cash prizes based upon ‘hazard or chance or of other outcome of operation unpredictable by [the patron]’ in violation of section 330b, subdivision (d).” The court in *Lucky Bob’s, supra*, 2013 U.S. Dist. LEXIS 62470, 2013 WL 1849270, reached a similar conclusion.

Defendants argue that the devices are not slot machines because the element of consideration is lacking. Again, we agree with the Court of Appeal’s response to this argument. “We find the argument unpersuasive. Unlike section 319 (regarding lotteries), section 330b does not directly specify that consideration

is an element. Therefore, it would seem that as long as the express statutory elements of section 330b are satisfied, no separate showing of consideration is needed. In other words, to the extent that consideration is a factor under section 330b, it is simply subsumed by the existing statutory elements. Since those elements were shown here, nothing more was required. (*Trinkle v. Stroh, supra*, 60 Cal.App.4th at pp. 780-781.) Other cases have essentially followed this approach by concluding that even if consideration is necessary in slot machine cases, its existence will be found where a connection exists between purchasing a product from a vending machine or device and being given chances to win a prize. (*Id.* at pp. 781-782; *People ex rel. Lockyer v. Pacific Gaming Technologies, supra*, 82 Cal.App.4th at pp. 705-706.) ‘ “Once the element[s] of chance [and prize]” ’ are added to a vending machine or device, it is reasonable to assume that ‘ “people are no longer paying just for the product regardless of the value given that product by the vender.” ’ (*Trinkle v. Stroh, supra*, at p. 782; accord, *People ex rel. Lockyer v. Pacific Gaming Technologies, supra*, at pp. 704-707.) That is the case here as well, since points are given to play the computer sweepstakes games on defendants’ terminals based on dollars spent in purchasing products — that is, the elements of chance and prize are added to the purchase.”

“[T]his construction reflects the Legislature’s recognition ‘that once the elements of chance and prize are added to a vending machine, the consideration paid from the player-purchaser’s perspective is no longer solely for the product.’ [¶] . . . An otherwise illegal machine does not become legal merely because it plays music, gives a person’s weight, vends food, etc.” (*Trinkle v. Stroh, supra*, 60 Cal.App.4th at p. 782 [quoting the trial court in that case].)

Defendants Nasser and Elmalih argue the systems do not operate by hazard or chance or some other unpredictable operation because users have the option of obtaining an immediate result without playing any of the computer games. This

circumstance does not negate the elements that make the computer games illegal slot machines. The fact that users need not swipe a card or enter a number into the computer terminal and then play a casino-style game in order to obtain a result, does not make the system any less of a slot machine when they do swipe the card or enter the number and do play the casino-style game. When the user, by some means (here swiping a card or entering a number), causes the machine to operate, and then plays a game to learn the outcome, which is governed by chance, the user is playing a slot machine.

Two additional circumstances in this case tend to confirm that defendants were actually conducting gambling enterprises of the type section 330b is intended to control. First, although a device need not generate a random outcome at the time of play, we think it significant that these systems are *specifically designed* to cultivate the impression that the user may receive a reward “by reason of any element of hazard or chance or of other outcome of operation unpredictable by him or her.” (§ 330b, subd. (d).) In contrast, a lottery ticket vending machine is transparent insofar as the design itself conveys to the customer that the dispenser has nothing to do with the chance element. A customer can watch the next ticket fall from its holder, a straightforward proposition imbued with no particular suspense; the appearance of chance comes into play only once the lottery ticket is in hand. This distinction would seem to track the central policy rationale for categorizing defendants’ systems as slot machines. They are attempts to recreate the sensation of playing with a device that itself generates the chance element.

Second, it is clear defendants’ customers were not merely buying the product that made them eligible to play the sweepstakes games — Internet or telephone time — but also, and perhaps primarily, the sweepstakes games. In *Lucky Bob’s*, the record showed that most of the Internet time ostensibly sold was never used. (*Lucky Bob’s*, *supra*, 2013 U.S. Dist. LEXIS 62470 at p. *3, 2013 WL

1849270, at p. *2.) The record here is not as clear, but at least sometimes, customers who ostensibly bought Internet time seemed to spend more time playing the games than using the Internet. The evidence shows that customers who ostensibly bought telephone cards never used some two-thirds of the purchased telephone time. It is true, as defendants argue, that the businesses offered a limited number of sweepstakes entries for no charge. But the customers were nonetheless clearly paying, at least in part, and, it appears, in large part, for the opportunity to play the casino-style sweepstakes games and win cash prizes. Or, as the People put it, defendants' "sweepstakes are actual games of chance played for money by patrons to win cash prizes."

Defendants make various other arguments against finding the devices to be slot machines. They argue the Court of Appeal violated principles of stare decisis in not following *State Lottery, supra*, 105 Cal.App.4th 1401. But nothing about stare decisis prevents courts from fairly distinguishing cases. *State Lottery* is entirely distinguishable. Indeed, the various cases finding similar devices to be slot machines, which we are following, are closer on point.

Defendants claim they had insufficient notice that their devices would be deemed slot machines. They argue the so-called rule of lenity, "whereby courts must resolve doubts as to the meaning of a statute in a criminal defendant's favor" (*People v. Avery* (2002) 27 Cal.4th 49, 57), mandates a finding that the devices are legal. The rule of lenity exists to ensure that people have adequate notice of the law's requirements. But the rule applies only when two reasonable interpretations of a penal statute stand in relative equipoise. "[A]lthough true ambiguities are resolved in a defendant's favor, an appellate court should not strain to interpret a penal statute in defendant's favor if it can fairly discern a contrary legislative intent." (*Id.* at p. 58.) Here, there is no relative equipoise. We can fairly discern

the Legislature's intent. The devices at issue clearly come within section 330b, subdivision (d)'s definition of a slot machine.

Defendants also argue that any ruling that their devices are slot machines would be “ ‘an unforeseeable judicial enlargement of’ ” a criminal statute that may only be applied prospectively. (*People v. Whitmer* (2014) 59 Cal.4th 733, 742.) But all that we are reviewing at this time is the trial court's issuance of the preliminary injunctions. An injunction operates in the future; it “is aimed at preventing future conduct — conduct after the issuance of the injunction.” (*Cal-Dak Co. v. Sav-On Drugs, Inc.* (1953) 40 Cal.2d 492, 496.) We express no view on what other remedy, if any, might be appropriate in this case.

Defendants also argue that the Legislature's inaction signals its approval of *State Lottery*, *supra*, 105 Cal.App.4th 1401. They note that the Legislature has amended section 330b multiple times since that decision but has not overruled it. “In some circumstances, legislative inaction might indicate legislative approval of a judicial decision.” (*People v. Whitmer, supra*, 59 Cal.4th at p. 741.) It is unclear how this concept would apply here because the Legislature has overruled neither *State Lottery*, which is distinguishable, nor any of the cases finding devices similar to the ones here to be illegal slot machines. For purposes of discussion, we may assume that the Legislature's failure to overrule *State Lottery* might indicate its approval of that case's holding. But that holding was that the California State Lottery may sell lottery tickets in vending machines. The Legislature's inaction does not signal approval of all of the analysis leading to that holding, and certainly not approval of defendants' view of how that analysis applies to this case.

Defendants assert that the devices here have features in common with sweepstakes operated by national companies like Coca-Cola and McDonalds, and that a holding that the devices here are illegal slot machines would mean those and similar sweepstakes are also illegal slot machines. How similar the devices here

are to other sweepstakes, and whether other sweepstakes would meet all of the elements set forth in section 330b, subdivision (d), is beyond the scope of this case. Such questions would have to be decided in a case in which someone claims some other sweepstakes system is an illegal slot machine. Like a New Mexico court confronted with a similar argument, “we will not substitute our sufficiency of the evidence analysis with an evaluation of the numerous other sweepstakes-type promotions conducted in New Mexico [or California] by other national companies who are not defendants in this proceeding.” (*State v. Vento* (N.M.App. 2102) 286 P.3d 627, 634.)

The parties also note that, during the pendency of this case, the Legislature amended Business and Professions Code section 17539.1 in a way that appears to prohibit sweepstakes games like those of this case. (Stats. 2014, ch. 592, § 1, chaptering Assem. Bill No. 1439 (2013-2104 Reg. Sess.))⁴ The meaning and application of this amendment is beyond the scope of this opinion. But its existence does not make this matter moot; we are deciding whether the trial court

⁴ As amended, Business and Professions Code section 17539.1, subd. (a)(12), prohibits: “Using or offering for use any method intended to be used by a person interacting with an electronic video monitor to simulate gambling or play gambling-themed games in a business establishment that (A) directly or indirectly implements the predetermination of sweepstakes cash, cash-equivalent prizes, or other prizes of value, or (B) otherwise connects a sweepstakes player or participant with sweepstakes cash, cash-equivalent prizes, or other prizes of value. For the purposes of this paragraph, ‘business establishment’ means a business that has any financial interest in the conduct of the sweepstakes or the sale of the products or services being promoted by the sweepstakes at its physical location. This paragraph does not make unlawful game promotions or sweepstakes conducted by for-profit commercial entities on a limited and occasional basis as an advertising and marketing tool that are incidental to substantial bona fide sales of consumer products or services and that are not intended to provide a vehicle for the establishment of places of ongoing gambling or gaming.”

properly issued a preliminary injunction after finding the devices to be illegal slot machines under section 330b.

Defendants contend, however, that the recent legislation supports the argument that their devices are not unlawful slot machines under section 330b. They cite committee reports expressing the belief that currently the devices might not be prohibited. For example, one report states, “As long as there is a legitimate free method of entry into the sweepstakes or promotion, the consideration element is absent, and the ‘sweepstakes’ is not an illegal lottery. According to the Senate Governmental Organization Committee, it appears that most Internet cafés are not operating illegal lotteries under California law.” (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 1439 (2013-2014 Reg. Sess.) as amended Aug. 21, 2014, p. 3.)

Aside from the fact that this and similar committee reports refer to illegal lotteries and not illegal slot machines, at most they indicate a *belief* that devices like those of this case might not currently be prohibited, and they suggest the Legislature amended Business and Professions Code section 17539.1 to ensure that at least they would be unlawful in the future. The reports do not, and cannot, restrict our interpretation of section 330b. The judicial, not legislative, branch interprets statutes, and a legislative belief regarding the meaning of earlier legislation has little weight. (*People v. Cruz* (1996) 13 Cal.4th 764, 780-781.) Nothing in the Legislature’s recent action prevents us from applying section 330b’s plain language.

III. CONCLUSION

We affirm the judgments of the Court of Appeal.

CHIN, J.

WE CONCUR:

CANTIL-SAKAUYE, C. J.

WERDEGAR, J.

CORRIGAN, J.

LIU, J.

CUÉLLAR, J.

KRUGER, J.

See next page for addresses and telephone numbers for counsel who argued in Supreme Court.

Name of Opinion People v. Grewal and People v. Nasser

Unpublished Opinion NP opn. filed 3/10/14 – 6th Dist. (Nasser)

Original Appeal

Original Proceeding

Review Granted XXX 224 Cal.App.4th 527 (Grewal)

Rehearing Granted

Opinion No. S217896 & S217979

Date Filed: June 25, 2015

Court: Superior

County: Kern

Judge: William D. Palmer

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Tracy Robertshaw

From: Jessica Yunt
 Sent: Tuesday, June 09, 2015 12:28 PM
 To: Tracy Robertshaw
 Cc: Brian Winter
 Subject: RE: 2917 s Mooney BLVD

January 1, 2012 through today.

Search Results

Total records = 21

Inc. Date	Inc Time	Incident #	Call Type	Location	RD	DR Number	Primary Unit	Dispo Code
2015/05/07	11:01	15029550	4150	2917 S MOONEY BLVD ; RED ISLAND	8011		A145	01
2015/05/10	08:11	15029789	OTHER	2917 S MOONEY BLVD	8011	15002292	T332	02
2015/04/29	15:07	15033440	SUBV CR	2917 S MOONEY BLVD ; DIV 1	8011	15005771	A274	19
2015/04/24	10:21	15030072	911	2917 S MOONEY BLVD	8011		A257	01
2015/04/20	02:05	15043914	689PCS	2917 S MOONEY RED ISLAND			A77	07
2015/03/29	00:59	15036982	SNOTFR	2917 S MOONEY BLVD	8011		A246	57
2015/03/20	18:11	15015114	4150	2917 S MOONEY BLVD	8011		A77	01
2015/01/16	14:30	15007000	SUSPCF	2917 S MOONEY BLVD	8011		A51	01
2015/01/15	00:00	15007000	SELFINT	2917 S MOONEY BLVD (RED ISLAND) SUB ATMP	8011		A057	01
2015/01/15	12:09	15006999	687DULO	2917 S MOONEY BLVD	8011	15000851	C39	02
2015/01/09	14:00	15005127	SELFINT	2917 S MOONEY ISL			C26	57
2015/01/07	01:00	15002301	SUBPFR	2917 S MOONEY BLVD	8011		A220	01
2015/01/02	18:37	15001034	6150	2917 S MOONEY BLVD ; RED ISLAND	8011		A038	57
2014/12/27	17:22	14142163	480BUL	2917 S MOONEY BLVD ; RED ISLAND	8011			04
2014/12/17	21:18	14138201	4150	2917 S MOONEY BLVD ; RED ISLAND	8011		A294	01
2014/12/14	09:08	14138789	EXHILPAT	2917 S MOONEY BLVD ; RED ISLAND	8011		A044	18
2014/12/14	18:28	14138802	TRANSN	2917 S MOONEY BLVD ; RED ISLAND	8011		A264	01
2014/12/01	15:29	14138020	SELFINT	2917 S MOONEY BLVD	8011		C40	08
2014/07/19	08:28	14128911	487DULO	2917 S MOONEY BLVD ; RED ISLAND	8011	14013940	A028	02
2014/01/29	15:07	14125123	SUBPFR	2917 S MOONEY BLVD	8011		A145	NO
2014/01/24	10:50	14117823	SUSPCF	2917 S MOONEY BLVD ; A145	8011		A145	57

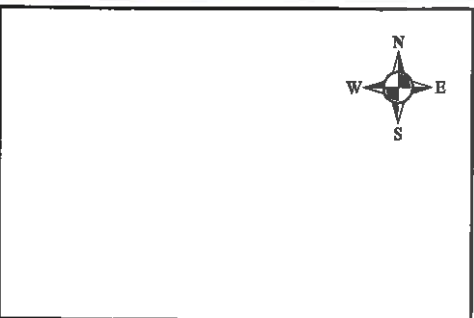
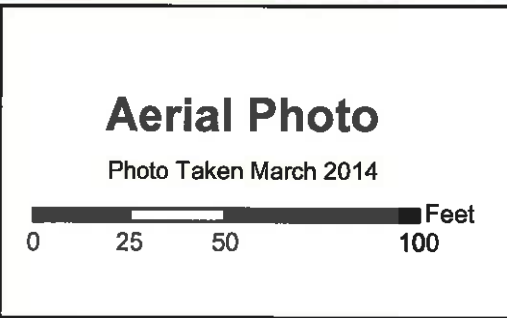
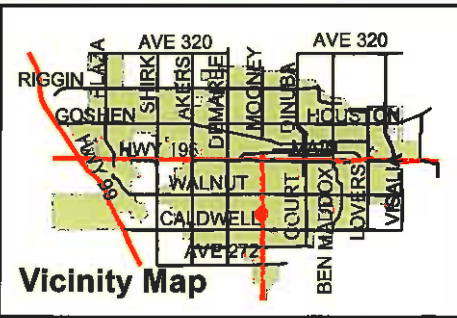
Search Results

Total records = 13

Inc. Date	Inc Time	Incident #	Call Type	Location	RD	DR Number	Primary Unit	Dispo Code
2015/05/12	12:24	15052292	4150	2909 S MOONEY BLVD @ TOUCH OF ROSES	8011		A219	57
2015/05/09	04:28	15057500	489PFR00	2909 S MOONEY BLVD @ TOUCH OF ROSES	8011	15006158	A207	19
2015/04/21	21:00	15044920	SUSPCF	2909 S MOONEY BLVD @ TOUCH OF ROSES	8011		A77	01
2015/02/11	21:08	15030058	911	2909 S MOONEY BLVD @ TOUCH OF ROSES	8011			00
2015/03/08	11:38	15015857	FOUNDPRD	2909 S MOONEY BLVD @ TOUCH OF ROSES	8011	15016005	C39	02
2015/02/20	17:29	15010414	SUSPCF	2909 S MOONEY BLVD @ TOUCH OF ROSES	8011		A208	01
2014/11/11	03:24	14120089	487DULO	2909 S MOONEY BLVD @ TOUCH OF ROSES	8011			FO
2014/08/27	13:22	14088204	AMBPU	2909 S MOONEY BLVD @ TOUCH OF ROSES	8011		A142	18
2014/05/01	11:35	14048001	TRANSN	2909 S MOONEY BLVD @ TOUCH OF ROSES	8011		A145	08
2014/04/21	10:30	14054202	487DULO	2909 S MOONEY BLVD @ TOUCH OF ROSES	8011	14002948	C39	02
2013/10/08	00:02	13108959	FOUNDPRD	2909 S MOONEY BLVD @ TOUCH OF ROSES	8011		A04	57
2010/01/20	12:54	10089617	NSFO	2909 S MOONEY BLVD @ TOUCH OF ROSES	8011		T400	08

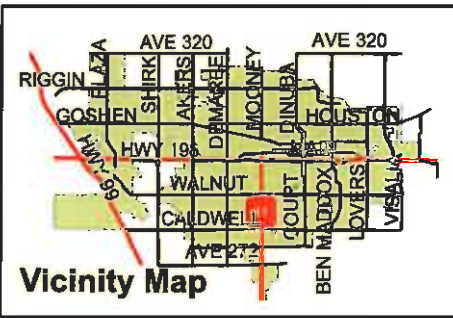
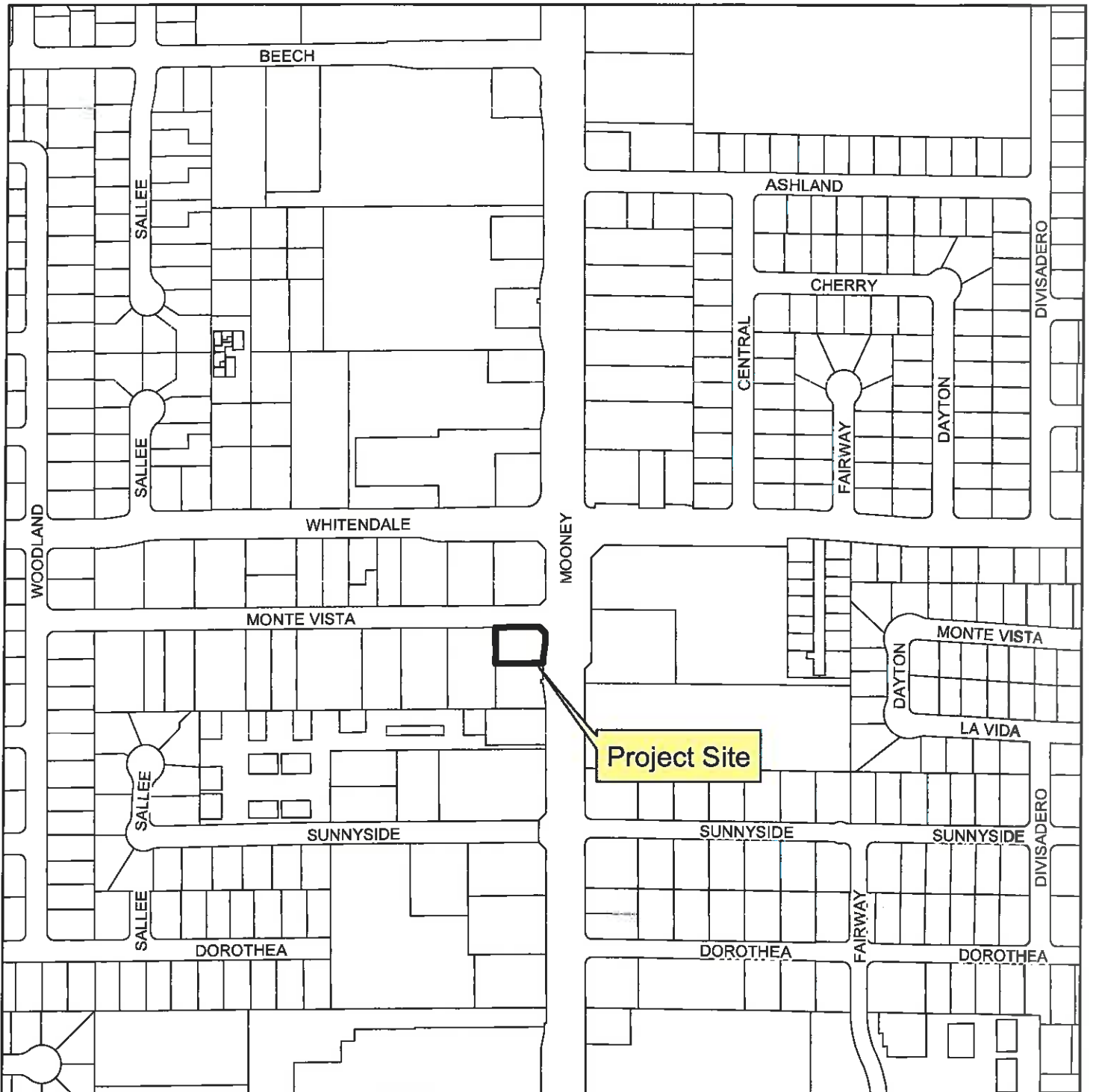
Conditional Use Permit No. 2015-04

The business is located at 2917 So. Mooney Blvd., in the C-R (Regional Commercial) Zone District. (APN:121-090-068)




Conditional Use Permit No. 2015-04

The business is located at 2917 So. Mooney Blvd., in the C-R (Regional Commercial) Zone District. (APN:121-090-068)



Location Map



- WATERWAYS
 - + RAILROADS
 - CITY LIMITS
 - PARCELS
- 

City of Visalia

Memo



To: Members, City Council
Members, Planning Commission

From: Josh McDonnell, AICP. *JM*

CC: Mike Olmos, Leslie Caviglia, Chris Young

Date: July 13, 2015

Re: Status Report on General Plan Buildout

Attached please find the quarterly report that updates the City's progress towards developing its Tier I boundary established in the General Plan. The reports are updated through the quarter ending June 30, 2015. Included are four reports that summarize development activity by land use category: residential, commercial, regional retail, and industrial.

These reports shall be updated and provided to the Council and Commission on a quarterly basis. Please contact me at 713-4364 or josh.mcdonnell@ci.visalia.ca.us with any questions or comments.

**General Plan Policy LU-P-21: Tier I Tally
Residential Permits Issued Since April 1, 2010**

<u>SINGLE-FAMILY</u>	2010	2011	2012	2013	2014	2015	
January		10	12	22	27	20	
February		15	8	23	26	47	
March		17	14	30	26	53	
April	31	13	23	34	51	67	
May	44	30	13	18	26	30	
June	29	18	28	34	31	45	
July	20	22	28	38	51		
August	7	19	55	53	42		
September	12	10	21	26	29		
October	10	18	17	57	45		
November	22	20	23	34	18		
December	41	77	10	60	43		
TOTAL	216	269	252	429	415	262	1,843

<u>MULTI-FAMILY</u>	2010	2011	2012	2013	2014	2015	
January		0	0	0	0	0	
February		0	0	0	0	4	
March		2	0	0	0	10	
April	0	0	0	0	0	6	
May	0	0	0	0	0	6	
June	0	0	0	0	0	8	
July	0	0	0	0	0		
August	0	8	0	0	4		
September	2	0	0	0	4		
October	0	0	0	0	4		
November	0	0	0	0	4		
December	0	0	0	0	4		
TOTAL	2	10	0	0	20	34	66

	<u>Permits</u>	<u>Percent</u>
Total Units Required in Tier I	5,850	
Total SFR	1,843	
<u>Total MFR</u>	<u>66</u>	
Total Permits Issued	1,909	32.63%
Total Permits Remaining in Tier I	3,941	67.37%

	04/01/2015	07/01/2015
Total permits issued since 4/1/2010	1,747	1,909
Total years since 4/1/2010	5.00	5.25
Average permits / month through tally date	29	30
Estimated years to reach Tier II Boundary based on average permits issued through tally date	11.74	10.84

California Department of Finance	45,736
Housing Unit Estimate for Visalia, 1/1/2015	

General Plan Policy LU-P-21: Tier I Tally
 Permits for Commercial Space (sq. ft.) Issued Since April 1, 2010

	2010	2011	2012	2013	2014	2015	
January	-	-	12,950	-	-	-	
February	-	4,986	8,000	-	-	-	
March	-	-	5,440	3,320	3,320	-	
April	-	-	-	56,734	2,023	-	
May	7,470	3,700	-	-	72,278	18,901	
June	-	-	-	1,950	-	-	
July	1,914	13,800	-	-	7,660	-	
August	22,000	-	3,477	6,035	-	-	
September	-	3,148	3,143	11,200	13,054	-	
October	1,500	12,922	-	1,056	-	-	
November	27,338	-	-	-	202,200	-	
December	-	6,900	-	-	3,038	-	
TOTAL	60,222	45,456	33,010	80,295	303,573	18,901	541,457

	<u>Square Feet</u>	<u>Percent</u>
Total Area Required in Tier I	960,000	
Total Sq. Ft. Issued	541,457	56.40%
Total Sq. Ft. Remaining in Tier I	418,543	43.60%

	04/01/2010	07/01/2015
Total sq. ft. issued since 4/1/2010	522,556	541,457
Total Years since 4/1/2010	5.00	5.25
Average sq. ft. / year through tally date	104,511	103,135
Estimated Years to Reach Tier II Boundary based on average permits issued through tally date	4.19	4.06

Permit	Date Issued	No. Street	Project	Sq. Ft.	Land Use Type
B092878	05/18/2010	1326 Center, W	Office Conversion	1,413	O
B092805	05/27/2010	131 Tamarack, S	Gerges Medical Clinic	6,057	O ALTCOM
B083048	07/22/2010	1308 Center, W	L & M Transportation	1,914	O
B100913	08/06/2010	1925 Dinuba, N	DD's Discount	22,000	CMU
B101243	10/04/2010	1310 Ben Maddox, N	O'Reilly's Auto Parts [addition]	1,500	CMU
B100854	11/10/2010	406 Main, E	Main Street Promenade	27,338	DMU ALTCOM
B101815	02/07/2011	221 Caldwell, E	Tuscan Plaza	4,986	CMU
B101949	05/12/2011	345 Caldwell, E	Derrell's Mini Storage [addition]	3,700	CMU
B101948	07/20/2011	345 Caldwell, E	Derrell's Mini Storage [addition]	4,200	CMU
B101950	07/20/2011	345 Caldwell, E	Derrell's Mini Storage [addition]	4,800	CMU
B101951	07/20/2011	345 Caldwell, E	Derrell's Mini Storage [addition]	4,800	CMU
B102429	09/16/2011	2421 Dinuba, N	Taco Bell	3,148	CMU
B111026	10/06/2011	720 Demaree, S	Bl. Quality Meats	5,585	CMU
B110540	10/06/2011	1325 Center, W	Office Conversion	1,388	O
B110906	10/18/2011	1208 Mooney, S	Surf Thru Car Wash	11,534	CMU ALTCOM
B111080	12/15/2011	555 Lovers, S	Sierra Mini Storage [addition]	3,000	CMU
B111081	12/15/2011	555 Lovers, S	Sierra Mini Storage [addition]	3,900	CMU
B111082	01/26/2012	555 Lovers, S	Sierra Mini Storage [addition]	3,800	CMU
B111084	01/26/2012	555 Lovers, S	Sierra Mini Storage [addition]	3,600	CMU
B111085	01/26/2012	555 Lovers, S	Sierra Mini Storage [addition]	2,850	CMU
B111086	01/26/2012	555 Lovers, S	Sierra Mini Storage [addition]	2,700	CMU
B112412	02/06/2012	345 Caldwell, E	Derrell's Mini Storage [addition]	3,800	CMU
B112413	02/06/2012	345 Caldwell, E	Derrell's Mini Storage [addition]	4,200	CMU
B111743	03/05/2012	3610 Packwood, W	Sequoia Imaging	4,000	O
B120185	03/16/2012	1300 Center, W	Office Conversion	1,440	O
B121877	08/22/2012	2402 Main, W	Office Conversion	1,521	O
B120887	08/27/2012	5430 Cypress, W	Subway	1,956	CMU
B120695	09/04/2012	628 Houston, W	Office Conversion	719	O
B112525	09/05/2012	4345 Noble, W	Chuck E. Cheese [addition]	2,424	CMU ALTCOM

General Plan Policy LU-P-21: Tier I Tally
Permits for Commercial Space (sq. ft.) Issued Since April 1, 2010

B122640	03/06/2013	1580 Noble, E	Wendy's	2,396	CMU	ALTCOM
B122495	04/17/2013	401 School, E	Family Health Care Network	34,607	DMU	
B130392	04/23/2013	3040 Dinuba, N	TJ Maxx	22,127	CMU	
B130442	06/12/2013	2222 Main, E	Shell building	1,950	CS	
B130788	08/20/2013	1337 Lovers, S	Sequoia Orthopedic	6,035	O	
B131633	09/27/2013	1140 Ben Maddox, S	Shell building	11,200	CMU	
B131428	10/31/2013	409 Church, N	Office Conversion	1,056	DMU	
B133363	03/28/2014	1300 Mineral King, E	Shop Building	3,320	CS	ALTCOM
B132828	04/11/2014	603 Roosevelt, E	Metal building	2,023	CMU	
B133106	05/13/2014	210 Tipton, N	Imagine U	16,126	CS	
B132792	05/22/2014	1727 Mineral King, E	Redwood Veterinary Hospital	1,895	CS	
B140564	05/28/2014	3000 Mooney, S	Mor Furniture For Less	36,098	CMU	ALTCOM
B140570	05/28/2014	3010 Mooney, S	Mor Furniture For Less	18,159	CMU	
B133286	07/01/2014	2342 Sunnyside, W	Shell building	3,900	O	
B133288	07/01/2014	2318 Sunnyside, W	Shell building	3,760	O	
B132396	09/17/2014	3206 Dinuba, N	Orchard Walk shell building	10,032	CMU	
B132451	09/17/2014	3216 Dinuba, N	Orchard Walk shell building	3,022	CMU	
B132254	11/13/2014	3705 Connelly, W	Derrell's Mini Storage	800	CMU	
B132256	11/13/2014	3705 Connelly, W	Derrell's Mini Storage	201,400	CMU	
B142639	12/08/2014	218 West, N	Office Conversion	1,662	DMU	
B140344	12/09/2014	1400 Noble, E	Wienerschnitzel	1,376	CMU	ALTCOM
B150208	05/14/2015	231 Caldwell, E	Shell building	7,670	CMU	
B150569	05/26/2015	2950 Mooney, S	Two retail & two restaurant pads	11,231	CMU	

General Plan Policy LU-P-21: Tier I Tally
Permits for Industrial Space (sq. ft.) Issued Since April 1, 2010

	2010	2011	2012	2013	2014	2015	
January		-	-	-	9,910	12,250	
February		-	7,500	-	-	-	
March		500,499	-	-	-	-	
April	8,100	-	14,350	-	-	19,200	
May	-	-	-	24,780	-	-	
June	-	-	-	-	-	-	
July	4,901	5,965	-	-	30,240	-	
August	-	11,634	-	-	22,994	-	
September	-	-	-	-	-	-	
October	-	-	3,600	-	-	-	
November	-	109,577	-	-	-	-	
December	-	-	-	-	-	-	
TOTAL	13,001	627,675	25,450	24,780	63,144	31,450	785,500

Permit	Date Issued	No. Street	Project	Sq. Ft.
B100095	04/29/2010	635 Plaza, N	Warehouse building	3,200
B100418	04/29/2010	2000 Plaza, N	Cal Dairies storage building	4,900
B101049	07/01/2010	720 Gateway, N	Shell building	4,901
B102620	03/24/2011	8711 Riggan, W	VWR	500,499
B110448	07/01/2011	9940 Nicholas, W	Air Sun Inc	5,965
B110412	08/18/2011	10526 Grove, W	Dix Machine Shop	11,634
B111014	11/18/2011	1111 Miller Park, N	Perfection Pet Foods Phase I	109,577
B112283	02/21/2012	2000 Plaza, N	Cal Dairies warehouse add'n	7,500
B112415	04/06/2012	1104 Nevada, N	Pace International	10,150
B112456	04/19/2012	1111 Miller Park, N	Perf. Pet Foods building shell	4,200
B121261	10/18/2012	1515 Shirk, N	Lake Irrigation	3,600
B130667	05/08/2013	1111 Miller Park, N	Perf. Pet Foods pack&storage bl	24,780
B132774	01/08/2014	9706 Nicholas, W	Shell building	4,955
B132775	01/08/2014	9730 Nicholas, W	Shell building	4,955
B122045	07/09/2014	8027 Sunnyview, W	Mainland Warehouse	30,240
B141226	08/19/2014	2000 Plaza, N	Cal Dairies evaporator bldg.	22,994
B142397	01/23/2015	7043 Pershing, W	Shell building	12,250
B142177	04/28/2015	8929 Goshen, W	Storage building	19,200

	<u>Square Feet</u>	<u>Percent</u>
Total Area Required in Tier I	2,800,000	
Total Sq. Ft. Issued	785,500	28.05%
Total Sq. Ft. Remaining in Tier I	2,014,500	71.95%

	04/01/2015	07/01/2015
Total sq. ft. issued since 4/1/2010	766,300	785,500
Total Years since 4/1/2010	5.00	5.25
Average sq. ft. / year through tally date	153,260	149,619
Estimated Years to Reach Tier II Boundary based on average permits issued through tally date	13.27	13.46

Estimate of Total Visalia Industrial Space as of 2010	15,000,000
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Source: Existing Conditions Report, October 2010. Page 3-33.

General Plan Policy LU-P-21: Tier I Tally
 Permits for Regional Commercial Space (sq. ft.) Issued Since April 1, 2010

	2010	2011	2012	2013	2014	2015	
January		-	-	-	-	-	
February		-	-	-	-	-	
March		-	14,674	-	-	-	
April	-	6,269	-	-	2,973	-	
May	-	-	-	-	-	-	
June	-	-	-	-	-	-	
July	-	-	-	-	-	-	
August	-	-	-	-	-	-	
September	-	-	-	17,204	-	-	
October	-	-	-	-	-	-	
November	-	-	-	4,984	-	-	
December	-	-	-	-	-	-	
TOTAL	-	6,269	14,674	22,188	2,973	-	46,104

Permit	Date Issued	No. Street	Project	Sq. Ft.
B110282	04/26/2011	4125 Mooney, S	Buffalo Wild Wings	6,269
B120360	03/20/2012	3637 Mooney, S	Dick's Sporting Goods [addition]	14,674
B131114	09/18/2013	3921 Mooney, S	America's Tire	9,051
B131008	09/19/2013	4021 Mooney, S	Wet Seal	8,153
B131004	11/06/2013	4129 Mooney, S	Packwood Creek shell building	4,984
B140059	04/17/2014	3704 Mooney, S	El Pollo Loco	2,973

	Square Feet	Percent
Total Area Required in Tier I	922,383	
Total Sq. Ft. Issued	46,104	5.00%
Total Sq. Ft. Remaining in Tier I	876,279	95.00%

	04/01/2015	07/01/2015
Total sq. ft. issued since 4/1/2010	46,104	46,104
Total Years since 4/1/2010	5.00	5.25
Average sq. ft. / year through tally date	9,221	8,782
Estimated Years to Reach Tier II Boundary based on average permits issued through tally date	95.03	99.78

Estimate of Total Visalia Regional Comm. Space as of 2012	2,200,000
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Source: Visalia Regional Commercial Land Use Report, July 2012. Page 6.