Agenda Item 7E

Approvals:
City Manager
Dept. Head
Attorney
Finance

AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: December 3, 2013

Department: Community Development/Planning Division
Prepared By: Sean Nicholas, Associate Planner

Subject: ***CONDITIONAL USE PERMIT 12-362, CULTURAL HERITAGE PERMIT 12-363, DISCRETIONARY SIGN PERMIT 13-082, MINOR EXCEPTION PERMIT 13-084, OUTDOOR DINING PERMIT 13-085, NORTH BEACH ROOFTOP GRILL AND BAR.***

Fiscal Impact: If approved, the City can expect to see increased sales tax from the restaurant use which will benefit the General Fund. If denied, there will be no fiscal impact as the site has been vacant for a number of years.

Summary: At the November 5, 2013 City Council meeting, the City Council continued this item to the December 3, 2013 meeting, at the request of the applicant. During discussion the City Council provided direction to the applicant that the parking issues should be addressed if the applicant were to expect support for the project.

From the Planning Commission and City Council discussions, two key issues have emerged. Noise impact has been of concern to nearby residents and was a point of discussion with the Planning Commission during their deliberations. Parking impacts, and solutions to mitigate those impacts, has also been a discussion item with the public, Planning Commission and City Council. The lack of specific solutions to the parking issues has created a great deal of uncertainty regarding the scope of the project.

Discussion: Overall, the general and preliminary policy direction of the City Council has been to promote business that will help revitalize the north El Camino Real area, but not at the expense of residential peace, quiet, and harmony. Lack of specifics regarding the scale of the project and where customer seating will be located (indoor versus outdoor), has led to uncertainty and concern. The applicant has said during public testimony that 170-200 seats were needed in order to have a successful business. However, the applicant has not been able to produce evidence that demonstrates how parking will be handled for that sized operation.

Noise impacts are closely related to scale of operation in many ways. Also, lack of specificity regarding seating locations and how many seats would be placed on the rooftop itself has led to concern and uncertainty. Therefore, staff is proposing three alternatives which better define scale of operation and where seats would be located throughout the proposed project.

Parking and Seating:
Option 1

Credits + 10 Parking Waivers	Total 101 seats	Rooftop 35 seats / 35%	Indoor 35 seats / 35%	Front Patio 10 seats / 10%	Side Patio 21 seats / 20%

Option 2

Credits + 10 Parking Waivers + 16 Offsite spaces	Total 181 seats	Rooftop 75 seats / 42%	Indoor 70 seats / 39%	Front Patio 10 seats / 6%	Side Patio 26 seats / 14%

Option 3

Credits + 10 Parking Waivers + 25 Offsite spaces	Total 226 seats	Rooftop 95 seats / 42%	Indoor 85 seats / 38%	Front Patio 15 seats / 7%	Side Patio 31 seats / 13%

Depending upon which option(s) are approved, physical floor area will be limited to accommodate the approved seating plan. Building permits will be conditioned upon approval of off-street parking agreements approved by the City Attorney and Community Development Director.

Noise:
Staff's original conditions were the standard and typical conditions concerning noise emanating from bars and restaurants. However, the public testimony highlighted several differences between the Rooftop project and other restaurants/bars in the community:

1) The outdoor rooftop portion is significantly larger than most of the other outdoor facilities that have been approved.

2) The outdoor portion is located on a rooftop rather than at ground level.

3) There is public testimony and evidence that indicates noise carries especially well, uphill and downwind (west to east) from this location.

NOTE: Fisherman's is the closest similar project, but Fisherman's is a unique site, located on the Pier, above the Surf Zone. Live entertainment is not permitted on the Fisherman's outdoor patios. Amplified music is allowed.

To address the public discussions/concerns regarding noise, the following conditions are proposed:

1) The outdoor rooftop patio shall close at 9:00 pm. Outdoor rooftop patio clean up activity shall be completed and must cease by 10:00 pm.

   NOTE: Noise complaints are prevalent in the summer months when businesses are operating and residential windows tend to be open. The 9:00 pm closure is after summer sunset, clean up shall be done by 10:00 pm.

2) The courtyard (side) patio shall close at 10:00 pm, clean up shall be completed and must cease by 11:00 pm.

3) The front patio shall close at 11:00 pm, clean up shall be completed and must cease by 12:00 am.

4) No live entertainment shall be permitted on the rooftop patio or any of the outdoor areas. Amplified sound shall be permitted that conforms to the City's Noise Ordinance during the approved operating hours. No disc jockeys are permitted on the rooftop patio or any of the outdoor areas.

5) Live entertainment shall be allowed inside the building until 12:00 am, subject to the standard conditions of approval (i.e. closed windows and doors, etc.).

The above discussion regarding total number of seats, locations of seats and noise mitigation conditions can be modified at the discretion of the City Council. For example, more or fewer waivers can be granted. Hours of operation to mitigate potential noise impacts of the Rooftop Grill could also be modified at the discretion of the City Council. Under Option 1 above, 35 seats suggested for indoor seating is consistent with the number of seats credited to the building for indoor seating, per code 17.72.060(C)(2). Option 2 suggests 181 seats, which is within the range that the applicant has stated he needs in order to be successful (i.e. 170 - 200 seats). Option 3 suggests a total number of seats of 226. 226 seats is the number of seats that can be allowed as a result of plumbing, bathroom and mechanical layouts that have been provided by the applicant. So, 226 seats is the upper limit of the total number of seats that could be allowed under this development proposal. The applicant has suggested that this project should be compared to how the Ole Hanson Beach Club, Casa Romantica, and Fisherman's projects have been handled. Staff does not agree that that comparison is valid. However, for purposes of discussion, attachment three (3) has been included with this report to provide basic information regarding seating, how parking has been handled and hours of operation of those three facilities. Information about several recently approved private restaurant/bar projects has also been included as Attachment three (3).

Recommended Action: STAFF RECOMMENDS THAT the City Council:

1) Approve the project specifying one or more of the scenarios discussed in this report with amended and modified conditions of approval that address the issues raised during the public hearing process. Additionally, direct staff to fill in the necessary information into the findings of the Resolution based on City Council action, and modify condition of approval nine accordingly.

2) Staff recommends that City Council approve a Discretionary Sign Permit for new signage for the project site.

Attachments:

1) City Council Resolution approving the CUP, CHP, and ODP, and denying the MEP, with the amended and modified conditions of approval
2) City Council Resolution approving the DSP
3) Information regarding various facilities in San Clemente
4) Planning Commission Staff Report and Minutes from April 3, 2013 (excerpted)
5) Design Review Subcommittee Staff Report and Minutes from July 10, 2013 (excerpted)
6) Planning Commission Staff Report and Minutes from July 17, 2013 (excerpted)
7) Planning Commission Staff Report and Minutes from August 7, 2013 (excerpted)
8) City Council Staff Report and Minutes from October 1, 2013 (excerpted)
9) City Council Staff Report from November 5, 2013 (excerpted)
10) Appeal letter from the applicant
11) Noise Studies prepared by the applicant
12) Parking study prepared by the applicant
13) Available on-street parking figure prepared by staff
14) Letters from the public

Plans and Sign Package

Notification: Notification of the public hearing was completed in accordance with both State Law and Municipal Code Requirements. Notice has also been provided to people who have submitted public testimony by email regarding this project.

ATTACHMENT 1

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, APPROVING CONDITIONAL USE PERMIT (CUP) 12-362, CULTURAL HERITAGE PERMIT 12-363, OUTDOOR DINING PERMIT (ODP) 13-085, AND DENYING MINOR EXCEPTION PERMIT (MEP) 13-084, NORTH BEACH ROOFTOP GRILL AND BAR, A REQUEST TO CONVERT A ONE-STORY COMMERCIAL BUILDING INTO A RESTAURANT WITH OPEN ROOF TOP DINING, FULL RANGE OF ALCOHOL SERVICE, AMPLIFIED SOUND, LIVE ENTERTAINMENT, OFF-SITE PARKING AGREEMENT, AND PARKING WAIVERS LOCATED AT 1509 NORTH EL CAMINO REAL

WHEREAS, on October 18, 2012, an application was submitted, and deemed complete on March 27, 2013, by David Gutierrez, 1509 North El Camino Real, San Clemente, CA, 92672, to allow the conversion of a one-story commercial building into a restaurant with open roof top dining, full range of alcohol service, amplified sound, live entertainment, off-site parking agreement, and parking waivers located at 1509 North El Camino Real, the legal description being Lot 9, of Block 2, of Tract 795, Assessor's Parcel Number 057-170-31; and

WHEREAS, on November 8, 2012, December 13, 2012, January 10, 2013, February 7, 2013, February 14, 2013, March 4, 2013, and March 14, 2013, the City's Development Management Team reviewed the application for compliance with the General Plan, Zoning Ordinance, and other applicable requirements; and

WHEREAS, on February 13, 2013 and March 27, 2013, the proposed project was reviewed by the Design Review Subcommittee which supported the design of the project; and

WHEREAS, on April 3, 2013, the Planning Commission of the City of San Clemente held a duly noticed public hearing on the subject application, and considered evidence presented by the applicant, City staff, and other interested parties, and continued the public hearing until May 8th; and

WHEREAS, on May 8, 2013, the Planning Commission of the City of San Clemente continued the public hearing until June 5, 2013; and

WHEREAS, on June 5, 2013, the Planning Commission of the City of San Clemente held a duly noticed public hearing on the subject application, and considered evidence presented by the applicant, City staff, and other interested parties, and the project was continued to June 19, 2013 at the request of the applicant; and

WHEREAS, on June 19, 2013, the Planning Commission of the City of San Clemente held a duly noticed public hearing on the subject application, and considered

evidence presented by the applicant, City staff, and other interested parties, and the project was continued to July 17, 2013 at the request of the applicant; and

WHEREAS, on July 17, 2013, the Planning Commission of the City of San Clemente held a duly noticed public hearing on the subject application, and considered evidence presented by the applicant, City staff, and other interested parties, and the Planning Commission directed staff to prepare a Resolution for a denial without prejudice for the CUP, CHP, MEP, and ODP components of the project; and

WHEREAS, on August 7, 2013, the Planning Commission of the City of San Clemente held a duly noticed public hearing on the subject application, and considered evidence presented by the applicant, City staff, and other interested parties, denied the CUP, CHP, MEP, and ODP components of the project without prejudice; and

WHEREAS, on August 19, 2013, the applicant appealed the denial to the City Council; and

WHEREAS, on October 1, 2013, the City Council of the City of San Clemente held a duly noticed public hearing on the subject application, and considered evidence presented by the applicant, City staff, and other interested parties, and requested additional information about the project and continued the public hearing to the regularly schedule City Council meeting of November 5, 2013; and

WHEREAS, on November 5, 2013, the City Council of the City of San Clemente held a duly noticed public hearing on the subject application, and considered evidence presented by the applicant, City staff, and other interested parties, and the applicant requested a continuance to December 3, 2013; and

WHEREAS, on December 3, 2013, the City Council of the City of San Clemente held a duly noticed public hearing on the subject application, and considered evidence presented by the applicant, City staff, and other interested parties.

WHEREAS, the Planning Division has completed an initial environmental assessment of the above matter in accordance with the California Environmental Quality Act (CEQA) and recommends that the City Council determine the project categorically exempt from CEQA pursuant to Guidelines Section 15303, as a Class 3 since the project involves the conversion of a small structure (less than 10,000 sq. ft.) from one use to another use where only minor exterior modification are made to the exterior and all necessary public services and facilities are available in an urban area which is not environmentally sensitive.

NOW THEREFORE, the City Council of the City of San Clemente hereby resolves as follows:

Section 1. The project is categorically exempt from CEQA Pursuant to Section 15303, as a Class 3 involves the conversion of a small structure (less than 10,000 sq.

ft.) from one use to another use where only minor exterior modification are made to the exterior and all necessary public services and facilities are available in an urban area which is not environmentally sensitive.

Section 2. With regard to Conditional Use Permit (CUP) 12-362, the City Council finds as follows:

A. The proposed use is permitted within the subject zone (C-2) pursuant to the approval of a Conditional Use Permit and, as conditioned, complies with all the applicable provisions of this title, the San Clemente General Plan and the purpose and intent of the zone in which the use is being proposed. The project is one of the first revitalization projects in the North Beach area, and supporting the potential for off-site parking, parking waivers, full range of alcohol sales, amplified sound, and live entertainment is consistent with the goals and objectives for North Beach in the General Plan and the C-2 zone. Additionally, the conditions of approval ensure that the use of the site does not exceed the parking available for the project as well as reducing the hours of operation of live entertainment/amplified sound for outdoor areas to minimize impact to surrounding businesses and residents.

B. The site is suitable for the type and intensity of use that is proposed in that the site is located within North Beach which has been identified in the General Plan to be an entertainment/restaurant hub for the community. The use of the various parking waivers, and off-site parking (as conditioned), and the alcohol request, and amplified sound and live entertainment will help promote the North Beach as a restaurant and entertainment hub as provided for in the General Plan. City Council is supportive of __ parking waivers for outdoor dining. Additionally, the conditions of approval ensure that the use of the site does not exceed the parking available for the project as well as reducing the hours of operation of live entertainment/amplified sound for outdoor areas to minimize impact to surrounding businesses and residents.

C. The proposed use will not be detrimental to the public health, safety or welfare, or materially injurious to properties and improvements in the vicinity in that there are other similar uses within the area (restaurant and entertainment facilities) and the project as conditioned will be consistent with those uses. City Council is supportive of granting up to __ parking waivers for outdoor dining , as conditioned, as the granting of such waivers improves the ability to use the site as a restaurant while at the same time will not overwhelm the on-street parking in the area. Additionally, the conditions of approval ensure that the use of the site does not exceed the

parking available for the project as well as reducing the hours of operation of live entertainment/amplified sound for outdoor areas to minimize impact to surrounding businesses and residents.

D. The proposed use will not negatively impact surrounding land uses in that the project has been conditioned to ensure that there is no impact to surrounding uses in areas including but not limited to noise and parking impacts. The improvements to the site will be in character with the neighborhood, and the hours of operation will be are similar to other approved facilities within North Beach and the City, and the outdoor areas have been conditioned to have reduced hours to not impact adjacent businesses and residential uses. Additionally, the conditions of approval ensure that the use of the site does not exceed the parking available for the project.

E. Public parking is available in close proximity to the restaurant in that there is some on-street parking within 300 feet of the project and City Council is conditionally supportive of up to __ parking waivers for outdoor dining. Additionally, the conditions of approval ensure that the use of the site does not exceed the parking available for the project.

F. Given the specific conditions of the site and the adjacent area, the waiver or modification of requirements will not result in inadequate parking in that there is sufficient on-street parking in close proximity of the project to conditionally approve up to __ parking waivers for outdoor dining. Additionally, the conditions of approval ensure that the use of the site does not exceed the parking available for the project.

Section 3. With regard to Cultural Heritage Permit (CHP) 12-363, the City Council finds as follows:

A. The architectural treatment of the project complies with the San Clemente General Plan in that the improvements have been designed to be consistent with the City's Design Guidelines and promote outdoor dining.

B. The architectural treatment of the project complies with the Zoning Ordinance in areas including, but not limited to, height, setback color, etc. in that the project meets all applicable Development standards and is consistent with the City's Design Guidelines.

C. The architectural treatment of the project complies with the architectural guidelines in the City's Design Guidelines in that the improvements

proposed are consistent with Spanish Colonial Revival architecture, are consistent with the City's Design Guidelines, and promote outdoor dining.

D. The general appearance of the proposal is in keeping with the character of the neighborhood in that the area is identified as an entertainment and restaurant hub for the community pursuant to the General Plan, and the improvements made will enhance the look of the facility as a restaurant and allow for revitalization of the site and area.

E. The proposal is not detrimental to the orderly and harmonious development of the City in that the proposed improvements are consistent with development standards, and as conditioned, will be consistent with the surrounding developments.

F. The proposed project/use preserves and strengthens the pedestrian-orientation of the district by adding outdoor dining opportunities both at street level and on the roof.

Section 4. With regard to Minor Exception Permit (MEP) 13-084, the City Council finds as follows:

A. The change of use will result in a deficit of more than 2 parking spaces for the use in that the proposed parking waivers requested will result in more than a two (2) parking space deficit for the project. The request for two waivers cannot be supported and thus are denied.

Section 5. With regard to Outdoor Dining Permit (ODP) 13-085, the City Council finds as follows:

A. The outdoor dining area contributes to the village/pedestrian ambiance of the City, in accordance with the City's General Plan in that the site is within the Pedestrian Overlay and the applicant is proposing a number of outdoor seats to contribute to the pedestrian atmosphere of North Beach.

B. The outdoor dining area complies with the standards of San Clemente Municipal Code Section 17.28.250, as conditioned, in that with the approval of the parking waivers the project will meet all applicable development standards and City Council is supportive of up to __ parking waivers for outdoor dining. Additionally, the conditions of approval ensure that the use of the site does not exceed the parking available for the project. The outdoor dining, as conditioned, will add to the pedestrian ambiance of streets and address potential compatibility or safety issues because the outdoor dining is visible from street level yet out of the right of

way and thus will not block access to businesses or to the sidewalk or street. The outdoor dining is also consistent with the C-2 districts height limit.

C. As conditioned, the Project will not create negative visual, noise, traffic, accessibility, or parking impacts. The conditions of approval ensure that the intensity of the use is tied to the amount of parking available and being provided. Moreover, conditions ensure that there will be no outdoor live entertainment and that the City's noise ordinance standards will be implemented. The above ensures that the waivers and outdoor dining will support the goals and objective of the General Plan and promote outdoor dining and enhance the Pedestrian Overlay District without creating negative visual, noise, traffic, accessibility, and parking impacts.

D. The outdoor dining facility complies with the required findings for the approval of for a Cultural Heritage Permit in that the site meets applicable development standards with the approval of the parking waivers and will be consistent with the goals and policies of the General Plan for North Beach

Section 6. The City Council of the City of San Clemente hereby approves CUP 12-362/CHP 12-363/ODP 13-085, and denies MEP 13-084, North Beach Rooftop Grill and Bar, subject to the above Findings, and the Conditions of Approval attached hereto as Exhibit 1.

Section 7. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

APPROVED, ADOPTED and SIGNED this _____ day of _____, 2013.

ATTEST:

_____
City Clerk of the City of
San Clemente, California

_____
Mayor of the City of San
Clemente, California

STATE OF CALIFORNIA)
COUNTY OF ORANGE) §
CITY OF SAN CLEMENTE)

I, JOANNE BAADE, City Clerk of the City of San Clemente, California, do hereby certify that Resolution No. _____ was adopted at a regular meeting of the City Council of the City of San Clemente held on the day of , , by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this _____ day of _____, _____.

_____
CITY CLERK of the City of
San Clemente, California

APPROVED AS TO FORM:

_____
City Attorney

7E-11

EXHIBIT 1

CONDITIONS OF APPROVAL*
CUP 12-362/CHP12-363/ODP 13-085
North Beach Rooftop Grill and Bar

1. The applicant or the property owner or other holder of the right to the development entitlement(s) or permit(s) approved by the City for the project, if different from the applicant (herein, collectively, the "Indemnitor") shall indemnify, defend, and hold harmless the City of San Clemente and its elected city council, its appointed boards, commissions, and committees, and its officials, employees, and agents (herein, collectively, the "Indemnitees") from and against any and all claims, liabilities, losses, fines, penalties, and expenses, including without limitation litigation expenses and attorney's fees, arising out of either (i) the City's approval of the project, including without limitation any judicial or administrative proceeding initiated or maintained by any person or entity challenging the validity or enforceability of any City permit or approval relating to the project, any condition of approval imposed by City on such permit or approval, and any finding or determination made and any other action taken by any of the Indemnitees in conjunction with such permit or approval, including without limitation any action taken pursuant to the California Environmental Quality Act ("CEQA"), or (ii) the acts, omissions, or operations of the Indemnitor and the directors, officers, members, partners, employees, agents, contractors, and subcontractors of each person or entity comprising the Indemnitor with respect to the ownership, planning, design, construction, and maintenance of the project and the property for which the project is being approved. The City shall notify the Indemnitor of any claim, lawsuit, or other judicial or administrative proceeding (herein, an "Action") within the scope of this indemnity obligation and request that the Indemnitor defend such Action with legal counsel reasonably satisfactory to the City. If the Indemnitor fails to so defend the Action, the City shall have the right but not the obligation to do so and, if it does, the Indemnitor shall promptly pay the City's full cost thereof. Notwithstanding the foregoing, the indemnity obligation under clause (ii) of the first sentence of this condition shall not apply to the extent the claim arises out of the willful misconduct or the sole active negligence of the City. *[Citation – City Attorney Legal Directive/City Council Approval June 1, 2010]*
(Plng.) _____

2. The owner or designee shall develop the approved project in conformance with the site plan, floor plans, elevations, and any other applicable submittals approved by the City Council on December 3, 2013.

   Any deviation from the above approved resolution and site plan and or other approved submittal shall require that the owner or designee submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the City Planner or designee. If the City Planner or

designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain the approval of the City Council.

(Plng.) _____

CUP 12-362/CHP 12-363/shall become null and void if the use is not commenced within three (3) years from the date of the approval thereof. Since the use requires the issuance of a building permit, the use shall not be deemed to have commenced until the date that the building permit is issued for the development. ODP 13-085 shall expire pursuant to SCMC 17.28.205 (F) at which point the applicant may request, in writing, a renewal of the permit on a yearly basis by the Community Development Director. If the original findings for ODP 13-085 cannot be made, the outdoor dining permit must be reviewed by the City Council. *[Citation - Section 17.12.150.A.1 and SCMC 17.28.205 (F) of the SCMC]*

(Plng.)____

A use shall be deemed to have lapsed, and CUP 12-362/CHP 12-363/ODP 13-085 shall be deemed to have expired, when a building permit has been issued and construction has not been completed and the building permit has expired in accordance with applicable sections of the California Building Code, as amended. *[Citation - Section 17.12.150.C.1 of the SCMC]* (Plng.)____

3. The owner or designee shall have the right to request an extension of CUP 12-362/CHP 12-363/ODP 13-085 if said request is made and filed with the Planning Division prior to the expiration date as set forth herein. The request shall be subject to review and approval by the final decision making authority that ultimately approved or conditionally approved the original application. *[Citation - Section 17.12.160 of the SCMC]*

(Plng.)____

4. Prior to issuance of the first building permit, the owner or designee shall submit for review and obtain approval of the City Planner/Building Official as applicable for plans indicating the following:

■ (Plng.)_____

A. New structures with stucco components shall match the existing structure in color and texture and bull-nosed corners and edges, including archways (applied during lathe), with no control/expansion joints. *[Citation – City of San Clemente Design Guidelines, November 1991]*

B. All metal details including railings and stair handrails shall be wrought iron.

C. All rooftop physical barriers that will be installed and will not be visible from the public right-of-way which will separate usable versus unusable portions of the rooftop patio.

5. Prior to the issuance of the first building permit, the owner or designee shall submit written consent to all of these imposed conditions to the Community Development Director or designee. The owner or designee understands that the resolution will be of no force or effect, nor shall permits be issued, unless such written consent is submitted to the City.

(Plng.) _____

6. Prior to the issuance of the first building permit, the applicant or designee shall include within the first four pages of the working drawings a list of all conditions of approval imposed by the final approval for the project. *[Citation – City Quality Assurance Program]* (Plng.) (Bldg.)_____

7. Prior to issuance of the first building permit, the applicant shall submit for approval of the building division and City Planner a lighting plan showing consistency with California Green Code requirements and ensure lighting will not be excessive on-site. Additionally, prior to issuance of building permit, the City Planner, or his designee, shall approve the design and scale of all decorative lighting.

(Plng.)_____

8. The applicant shall prepare for review and approval by the City's contract Landscape Architect a landscape and irrigation plan for the landscaping area along the front of the facility.

(Plng.)_____

9. Allowed seating shall be per the following condition as specified by the City Council:

Option 1

Credits	Total	Rooftop	Indoor	Front Patio	Side Patio
+ 10 Parking Waivers	101 seats	35 seats / 35%	35 seats / 35%	10 seats / 10%	21 seats / 20%

Option 2

Credits	Total	Rooftop	Indoor	Front Patio	Side Patio
+ 10 Parking Waivers + 16 Offsite spaces	181 seats	75 seats / 42%	70 seats / 39%	10 seats / 6%	26 seats / 14%

Option 3

Credits	Total	Rooftop	Indoor	Front Patio	Side Patio

+ 10 Parking Waivers + 25 Offsite spaces	226 seats	95 seats / 42%	85 seats / 38%	15 seats / 7%	31 seats / 13%

a. Based on the parking option approved by City Council, prior to issuance of the first building permit offsite parking spaces shall be secured by an agreement approved by the City Attorney and Community Development Director.

b. The square footage of areas of the establishment in which patrons are permitted shall be determined by the option for seating as approved by the City Council, and then reviewed and approved by the City's Building Official, or his designee, in accordance with the California Building Code Section 1004 so that the number of allowed patrons is limited by and to the amount of parking by right, waivers, and parking agreements ("Available Parking") provided. Prior to the issuance of Building Permits, the applicant shall submit plans to the Building Official identifying the areas available to patrons and the barriers to be installed to ensure the size and capacity of the public areas corresponds to the available parking and the seating option selected by City Council. The physical barriers shall not be visible from any public right of way.

■■ (Plng.)_____

Building

10. Separate building permit and plan review is required prior to commencing any construction. Detailed review for compliance with Building, Electrical, Plumbing, Mechanical, Energy, CALGreen, Fire, and Disabled Access Codes will need to be done prior to issuance of building permit.

(Bldg.)_____

11. Building permits shall not be issued unless the project complies with all applicable codes, ordinances, and statutes including, but not limited to the Zoning Ordinance, Grading Code, Transportation Demand Ordinance, Water Quality Ordinance, Title 24 of the California Code of Regulations as adopted by the City including, but not limited to the California Administrative, Building, Electrical, Plumbing, Mechanical, Energy, CALGreen, and Fire Codes. *[Citation - S.C.M.C. Title 8, Section 8.16; Fire Code, Title 15, Building and Construction, Sections 15.08, 15.12, 15.16, 15.20; Title 16, Subdivisions; & Title 17, Zoning]*

(Bldg.)_____

12. Prior to the issuance of the first building permit, the owner or designee shall pay all applicable development fees in effect at the time, which may include, but are

not limited to, Regional Circulation Financing and Phasing Program (RCFPP), park acquisition and development, water and sewer connection, drainage, Public Facility Construction transportation corridor, Avenida La Pata Supplemental Road Fee and school fees, etc. *[Citation - S.C.M.C. Title 15, Building and Construction, Sections 15.52, 15.56, 15.60, 15.64, 15.68, 15.72].* (Bldg.)_____

13. Prior to the Building Division's approval of the framing inspection, the owner or designee shall submit evidence to the satisfaction of the City Building Official or designee that a registered civil engineer that is licensed to do surveying or land surveyor has certified that the height of all structures are in conformance to the approved plans. *[Citation – No Specific Citation/City Council Approval June 1, 2010]* (Bldg.)_____

14. Prior to issuance of certificate of occupancy, the owner or designee shall demonstrate to the satisfaction of the City Building Official or designee that the project has been constructed in conformance with the approved sets of plans and all applicable, codes, ordinances, and standards. *[Citation – Appendix 1, Section 110 of the California Building Code]* (Bldg.)_____

Special Conditions

15. Prior to issuance of the first building permit, the applicant or designee shall provide occupant load calculations that correctly indicate the maximum number of occupants for exiting (per CBC section 1004) and minimum restroom fixtures (per CPC section 412, Table 4-1, and Table A). This number, however shall not act to increase the actual occupancy in excess of that allowed by Condition no. 9 above.

(Bldg)_____

16. Prior to issuance of the first building permit, the applicant or designee shall provide detailed occupancy/seating information shown consistently throughout the plans.

(Bldg)_____

Improvements

17. Prior to issuance of any permits, the owner or designee shall submit for review, and shall obtain the approval of the City Engineer or designee for frontage improvement plans, including but not limited to the following provisions: *[Citation – Section 15.36, 12.08.010, and 12.24.050 of the SCMC]*

■ (Eng.)_____

A. Per City Municipal Code Section 12.08.010 (A), when building permit valuations exceed $50,000, the owner or designee shall construct sidewalk along the property frontage. The existing drive approach along North El Camino Real shall be closed with full height curb and the sidewalk reconstructed for this area. The

applicant will be responsible for painting the curb frontage to the satisfaction of the City Engineer.

B. An Engineering Department Encroachment Permit will be required for all work in the public right-of-way. The frontage improvement plan shall include detailed topographic construction detail to show that current city standards are to be met.

NPDES

18. Prior to issuance of any permit, the owner shall demonstrate to the satisfaction of the City Engineer that the project meets all requirements of the Orange County National Pollutant Discharge Elimination System (NPDES) Storm Drain Program, and Federal, State, County and City guidelines and regulations, in order to control pollutant run-off. The owner shall submit for review, and shall obtain approval of the City Engineer for, plans for regulation and control of pollutant run-off by using Best Management Practices (BMP's). *[Citation – Section 13.40 of the SCMC]*

(Eng.)____

19. Prior to issuance of any permit, if required by the City Engineer, the owner may be required to include a covered trash enclosure on the project. The architectural design of the cover shall meet all requirements of the Planning Department. The structural plan check of the cover is to be reviewed and approved by the Building Department. Construction of the cover shall be complete prior to final release of the building permit and occupancy of the expanded building area. *[Citation – Section 13.40 of the SCMC]*

(Eng.)_____

20. Prior to issuance of any permit, the owner or designee shall submit for review a project binder containing the following documents: *[Citation – Section 13.40 of the SCMC]*

(Eng.)_____

A. If the site is determined to be a "Priority Project" (as defined by the Orange County Municipal Storm Water Permit available at http://www.waterboards.ca.gov/sandiego/programs/ocstormwater.html , at the time of permit issuance, a final Water Quality Management Plan (WQMP) must be recorded with the Orange County Recorder's Office and filed with the City. Site design plans shall incorporate all necessary WQMP requirements which are applicable at the time of permit issuance.

B. If a site is determined to be a "Non-Priority Project", a final Non Priority Project Checklist must be filed with the City.

Financial Security

7E-17

21. Prior to the issuance of any permits, the owner may be required to provide surety, improvement bonds, or irrevocable letters of credit for performance, labor and materials as determined by the City Engineer for 100% of each estimated public improvement cost plus a 10% contingency, as prepared by a registered civil engineer as required and approved by the City Attorney or the City Engineer, for each applicable public improvement item, including but not limited to the following: curbs, gutter, and/or sidewalks. *[Citation – Section 15.36 of the SCMC]*

(Eng.)_____

Operations

22. Live indoor entertainment and/or amplified sound shall end by 12:00 a.m. (midnight).

■■ (Plng.)_____

23. Operation of the roof top portion of the restaurant shall occur between 7:00 a.m. and shall close at 9:00 p.m. Outdoor rooftop patio clean up activity shall cease by 10:00 p.m. No live entertainment shall be permitted on the rooftop patio. Amplified sound shall be permitted on the rooftop patio only in a manner that conforms to the City's noise ordinance during the approved operating hours. No disc jockeys are permitted.

■■ (Plng.)_____

24. The operation of the outdoor side courtyard may occur between 7:00 a.m. and 10:00 p.m., and all cleanup activities shall cease by 11:00 p.m. Use of the front patio is permitted between 7:00 a.m. and 11:00 p.m. and all cleanup activities to cease by 12:00 a.m. (midnight). No live entertainment shall be permitted on the outdoor areas. Amplified sound shall be permitted on the outdoor areas only in a manner that conforms to the City's noise ordinance during the approved operating hours. No disc jockeys are permitted.

■■ (Plng.)_____

25. Prior to any live entertainment or amplified sound occurring onsite, the applicant shall develop a vestibule at the front entrance to avoid noise impacts from the project site.

■■ (Plng.)_____

26. Six months after operations begin, the project shall be re-evaluated by staff and the City Council to review the operations, impacts to on-street parking, and any issues related to noise. Another six months after this review, another evaluation shall be conducted for the same purposes.

■■ (Plng.)_____

27. If determined necessary to reduce noise impacts to adjacent uses, the applicant shall submit for City Planner approval the design of the temporary acoustical barrier for the rooftop patio.

7E-18

■■ (Plng.)_____

28. Prior to issuance of the first building permit, the applicant shall submit for City Planner approval bike rack design and the appropriate number of bike parking opportunities for the site.

■■ (Plng.)_____

29. Alcohol service indoors may occur between 7:00 a.m. and 12:00 a.m. (midnight) seven (7) days a week. Outdoor alcohol service on the rooftop patio may occur between 7:00 a.m. and 9:00 p.m. seven (7) days a week. Alcohol service on the side courtyard patio may occur between 7:00 a.m. and 10:00 p.m. seven (7) days a week. Alcohol service on the front patio may occur between 7:00 a.m. to 11:00 p.m. seven (7) days a week.

■■ (Plng.)_____

30. The owner or designee shall obey all rules, regulations and conditions imposed upon the project through, but not limited to, the Alcoholic Beverage Commission (ABC) and relevant State laws. Revocation of, or sale of said ABC license to another person at another location, shall render any City approved CUP for alcohol service at the subject property null and void. Prior to any sale of the ABC license, the owner or designee shall notify the Community Development Department of the sale. Violation of any provision of the ABC license or condition shall constitute grounds for the City to revoke any CUP for the service of Alcohol on the property. *[Citation – Division 9 (Alcoholic Beverages), Business and Professions Code, State of California]* (Plng.)_____

31. If for any reason City staff determines the amplified sound or live entertainment use is not in compliance with the conditions of approval or intent of the Zoning Code, the approval of amplified sound/live entertainment may be revoked and/or sent to City Council for modification.

■■ (Plng.)_____

32. The owner shall have a manager on the premises at all times during the hours of operation when live entertainment and/or amplified sound is occurring.

■ (Plng.)____

33. The property owner, applicant, or designee shall be responsible for immediately resolving any problems associated with the amplified sound or live entertainment and/or issues of concern raised by neighbors.

■■ (Plng.)_____

34. The owner or designee shall be responsible for closing, and keeping shut, all exterior windows, doors, and skylights when amplified sound and/or live entertainment and/or dancing is being conducted indoors at any time, with the exception of occasions doors are used to enter-and-exit the building.

■ (Plng.)_____

35. Owner or designee shall be responsible for ensuring that all employees receive "Responsible Alcoholic Beverage Service" training as offered through programs established by the Orange County Health Care Agency and Alcoholic Beverage Control of the State of California. Evidence of such training and the training records of all employees shall be maintained on-site during business hours, and made available for inspection upon request. *[Citation - Section 17.16.070.K of the of the SCMC]*

(Plng.)_____

36. The applicant shall have security be on site at all times while live entertainment or disc jockeys are performing/occurring, stationed at the front door, rear door, and within the building and patios as necessary. A minimum of one (1) security guard per 75 guests is required.

■■ (Sheriff)_____

* All Conditions of Approval are Standard, unless indicated as follows:

■ Denotes a modified Standard Condition of Approval

■ ■ Denotes a project-specific Condition of Approval

ATTACHMENT 2

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING DISCRETIONARY SIGN PERMIT (DSP) 13-082, NORTH BEACH ROOFTOP GRILL AND BAR SIGNAGE, A REQUEST FOR A NEW SIGN PACKAGE FOR A NEW RESTAURANT LOCATED AT 1509 NORTH EL CAMINO REAL

WHEREAS, on October 18, 2012, an application was submitted, and deemed complete on March 27, 2013, by David Gutierrez, 1509 North El Camino Real, San Clemente, CA, 92672, to allow the conversion of a one-story commercial building into a restaurant with open roof top dining, full range of alcohol service, amplified sound, live entertainment, off-site parking agreement, and parking waivers located at 1509 North El Camino Real, the legal description being Lot 9, of Block 2, of Tract 795, Assessor's Parcel Number 057-170-31; and

WHEREAS, on November 8, 2012, December 13, 2012, January 10, 2013, February 7, 2013, February 14, 2013, March 4, 2013, and March 14, 2013, the City's Development Management Team reviewed the application for compliance with the General Plan, Zoning Ordinance, and other applicable requirements; and

WHEREAS, the Planning Division has completed an initial environmental assessment of the above matter in accordance with the California Environmental Quality Act (CEQA) and subject to a statutory exemption from CEQA pursuant to CEQA Guidelines Section 15270 because CEQA does not apply to projects which a public agency rejects or disapproves; and

WHEREAS, on April 3, 2013, the Planning Commission of the City of San Clemente held a duly noticed public hearing on the subject application, and considered evidence presented by the applicant, City staff, and other interested parties, and continued the public hearing until May 8, 2013, and directed staff and the applicant to provide information regarding eight issues primarily concerning parking and noise; and

WHEREAS, on May 8, 2013, the Planning Commission of the City of San Clemente continued the public hearing until June 5, 2013; and

WHEREAS, on June 5, 2013, the Planning Commission of the City of San Clemente continued the public hearing until June 19, 2013; and

WHEREAS, on June 19, 2013, the Planning Commission of the City of San Clemente continued the public hearing until July 17, 2013; and

WHEREAS, on July 17, 2013, the Planning Commission of the City of San Clemente held a duly noticed public hearing on the subject application, and considered evidence presented by the applicant, City staff, and other interested parties, and determined that the required findings could not be made and directed staff to prepare a

resolution for denial without prejudice, but approved the Discretionary Sign Permit for new signage for the site; and

WHEREAS, on July 24, 2013, the Planning Commission of the City of San Clemente continued the public hearing until August 7, 2013; and

WHEREAS, on August 7, 2013, the Planning Commission of the City of San Clemente held a duly noticed public hearing on the subject application and considered evidence presented by the applicant, City staff, and other interested parties and denied without prejudice the CUP, CHP, MEP, and ODP; and

WHEREAS, on August 19, 2013, the applicant appealed the decision of the Planning Commission and requests the City Council to reconsider and approve the Discretionary entitlements associated with the North Beach Rooftop Grill and Bar; and

WHEREAS, on August 20, 2013, the City Council called up for their review the Discretionary Sign Permit application associated with the project so the whole development is reviewed together; and

WHEREAS, on October 1, 2013, the City Council of the City of San Clemente held a duly noticed public hearing on the subject application and considered evidence presented by the applicant, City staff, and other interested parties and continued the project to the regularly scheduled City Council meeting of November 5, 2013; and

WHEREAS, on November 5, 2013, the City Council of the City of San Clemente held a duly noticed public hearing on the subject application, and considered evidence presented by the applicant, City staff, and other interested parties, and the applicant requested a continuance to December 3, 2013; and

WHEREAS, on December 3, 2013, the City Council of the City of San Clemente held a duly noticed public hearing on the subject application, and considered evidence presented by the applicant, City staff, and other interested parties.

NOW THEREFORE, the City Council of the City of San Clemente hereby resolves as follows:

Section 1. The project is categorically exempt from CEQA Pursuant to Section 15301, as a Class 1 since this approval is just for a new sign package for the site CEQA allows for the required electrical and other improvements necessary to develop the signage.

Section 2. With regard to Discretionary Sign Permit (DSP) 13-082, the Planning Commission finds as follows:

A) The design, including lighting, scale, length and materials, of the sign is consistent with the intent of the design elements of the General Plan and Design Guidelines in

which the sign is to be located in that the sign materials, appears handcrafted and will add a very unique look to the facility. The use of halo illumination is consistent with other signs approved recently, both inside and outside of the Architectural Overlay, and with the conditions of approval for finish, the signs will appear to be older and more consistent with the architecture.

B) The design, scale and materials of the sign harmonize with the architectural design and details of the building or site it serves in that the individual signs are utilized to advertise the site from various scales, whether it be the projecting sign advertising the sign from a greater distance, the monument sign be at a pedestrian scale, or the rear wall sign providing identification from Los Molinos and Los Obreros.

C) The design and scale of the sign is appropriate to the distance from which the sign is normally viewed in that all signage is appropriately scaled and located, for which the audience they are intending to advertise the use too.

D) The design and materials of the sign provide a contrast between the background and letters in that the signs are designed to be pin mounted painted letters to stand off the rustic metal box and halo illuminated.

E) A freestanding sign is included in the sign application, the design, scale or location of the building dictates the use of freestanding signs, rather than building-mounted signs in that the freestanding sign will provide the pedestrian scale signage from the sidewalk, and the other signage on the front of the building will be located towards the top of the structure and not on a pedestrian scale.

Section 3. The City Council of the City of San Clemente hereby approves DSP 13-082, North Beach Rooftop Grill and Bar Signage, subject to the above Findings, and the Conditions of Approval attached hereto as Exhibit 1.

Section 4. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

APPROVED, ADOPTED and SIGNED this _____ day of _____, 2013.

ATTEST:

_____
City Clerk of the City of
San Clemente, California

_____
Mayor of the City of San
Clemente, California

STATE OF CALIFORNIA)
COUNTY OF ORANGE) §
CITY OF SAN CLEMENTE)

7E-23

I, JOANNE BAADE, City Clerk of the City of San Clemente, California, do hereby certify that Resolution No. _____ was adopted at a regular meeting of the City Council of the City of San Clemente held on the day of , , by the following vote:

AYES:

NOES:

ABSENT:

_____
CITY CLERK of the City of
San Clemente, California

APPROVED AS TO FORM:

_____
City Attorney

7E-24

EXHIBIT 1

CONDITIONS OF APPROVAL*
DSP 13-082
North Beach Rooftop Grill and Bar Signage

1. The applicant or the property owner or other holder of the right to the development entitlement(s) or permit(s) approved by the City for the project, if different from the applicant (herein, collectively, the "Indemnitor") shall indemnify, defend, and hold harmless the City of San Clemente and its elected city council, its appointed boards, commissions, and committees, and its officials, employees, and agents (herein, collectively, the "Indemnitees") from and against any and all claims, liabilities, losses, fines, penalties, and expenses, including without limitation litigation expenses and attorney's fees, arising out of either (i) the City's approval of the project, including without limitation any judicial or administrative proceeding initiated or maintained by any person or entity challenging the validity or enforceability of any City permit or approval relating to the project, any condition of approval imposed by City on such permit or approval, and any finding or determination made and any other action taken by any of the Indemnitees in conjunction with such permit or approval, including without limitation any action taken pursuant to the California Environmental Quality Act ("CEQA"), or (ii) the acts, omissions, or operations of the Indemnitor and the directors, officers, members, partners, employees, agents, contractors, and subcontractors of each person or entity comprising the Indemnitor with respect to the ownership, planning, design, construction, and maintenance of the project and the property for which the project is being approved. The City shall notify the Indemnitor of any claim, lawsuit, or other judicial or administrative proceeding (herein, an "Action") within the scope of this indemnity obligation and request that the Indemnitor defend such Action with legal counsel reasonably satisfactory to the City. If the Indemnitor fails to so defend the Action, the City shall have the right but not the obligation to do so and, if it does, the Indemnitor shall promptly pay the City's full cost thereof. Notwithstanding the foregoing, the indemnity obligation under clause (ii) of the first sentence of this condition shall not apply to the extent the claim arises out of the willful misconduct or the sole active negligence of the City. *[Citation – City Attorney Legal Directive/City Council Approval June 1, 2010]*
(Plng.) _____

2. The owner or designee shall develop the approved project in conformance with the site plan, floor plans, elevations, and any other applicable submittals approved by the City Council on December 3, 2013.

   Any deviation from the above approved resolution and site plan and or other approved submittal shall require that the owner or designee submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the City Planner or designee. If the City Planner or designee

7E-25

determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain the approval of the Zoning Administrator. (Plng.) _____

DSP 13-082 shall become null and void if the use is not commenced within three (3) years from the date of the approval thereof. Since the use requires the issuance of a building permit, the use shall not be deemed to have commenced until the date that the building permit is issued for the development. *[Citation - Section 17.12.150.A.1 of the SCMC]* (Plng.)____

A use shall be deemed to have lapsed, and DSP 13-082shall be deemed to have expired, when a building permit has been issued and construction has not been completed and the building permit has expired in accordance with applicable sections of the California Building Code, as amended. *[Citation - Section 17.12.150.C.1 of the SCMC]* (Plng.)____

3. The owner or designee shall have the right to request an extension of DSP 13-082 if said request is made and filed with the Planning Division prior to the expiration date as set forth herein. The request shall be subject to review and approval by the final decision making authority that ultimately approved or conditionally approved the original application. *[Citation - Section 17.12.160 of the SCMC]* (Plng.)____

4. Prior to the issuance of building permits, the owner or designee shall submit written consent to all of these imposed conditions to the Community Development Director or designee. The owner or designee understands that the resolution will be of no force or effect, nor shall permits be issued, unless such written consent is submitted to the City. (Plng.) _____

5. Prior to the issuance of building permits, the applicant or designee shall include within the first four pages of the working drawings a list of all conditions of approval imposed by the final approval for the project. *[Citation – City Quality Assurance Program]* (Plng.) (Bldg.)_____

6. Separate building permit and plan review is required prior to commencing any construction. Detailed review for compliance with Building, Electrical, Plumbing, Mechanical, Energy, CALGreen, Fire, and Disabled Access Codes will need to be done prior to issuance of building permit.

(Bldg.)_____

7. Building permits shall not be issued unless the project complies with all applicable codes, ordinances, and statutes including, but not limited to the Zoning Ordinance, Grading Code, Transportation Demand Ordinance, Water Quality Ordinance, Title 24 of the California Code of Regulations as adopted by the City

including, but not limited to the California Administrative, Building, Electrical, Plumbing, Mechanical, Energy, CALGreen, and Fire Codes. *[Citation - S.C.M.C. Title 8, Section 8.16; Fire Code, Title 15, Building and Construction, Sections 15.08, 15.12, 15.16, 15.20; Title 16, Subdivisions; & Title 17, Zoning]*

(Bldg.)_____

8. Prior to the issuance of building permits, the owner or designee shall pay all applicable development fees in effect at the time, which may include, but are not limited to, Regional Circulation Financing and Phasing Program (RCFPP), park acquisition and development, water and sewer connection, drainage, Public Facility Construction transportation corridor, Avenida La Pata Supplemental Road Fee and school fees, etc. *[Citation - S.C.M.C. Title 15, Building and Construction, Sections 15.52, 15.56, 15.60, 15.64, 15.68, 15.72].*

(Bldg.)_____

9. Prior to issuance of certificate of occupancy, the owner or designee shall demonstrate to the satisfaction of the City Building Official or designee that the project has been constructed in conformance with the approved sets of plans and all applicable, codes, ordinances, and standards. *[Citation – Appendix 1, Section 110 of the California Building Code]*

(Bldg.)_____

10. The applicant shall submit and receive approval of an Administrative Sign Permit so staff can ensure that the signs installed are consistent with the Discretionary Sign Permit.

■(Plng.)_____

11. The sheet metal case which makes up the body of the three proposed signs shall be finished to have an earthy, organic, rustic look that would allow for patina so the signs would seem older than they are and be more consistent with the architecture of the building.

■ ■(Plng.) _____

12. All signs shall be halo illuminated behind stand off, pin mounted metal letters, painted the colors identified on the approved signage.

■ ■(Plng.) _____

13. The base of the monument sign shall be the same color as the sign face, but shall be stucco instead of sheet metal to differentiate between the structure of the sign and the sign face which counts towards signage for the site.

■ ■(Plng.) _____

* All Conditions of Approval are Standard, unless indicated as follows:

■ Denotes a modified Standard Condition of Approval

■ ■ Denotes a project-specific Condition of Approval

7E-27

Fisherman's

- Publicly owned property and privately operated-Operations began in 1983
- On a Historic Structure-City Pier added in 1996
- CDP #5-82-205-Addresses approval of a full range of alcohol for the facility
- City lease governs operations
- Hours of Operation
    - Restaurant (Winter)
        - Monday-Thursday 11:00am-9:30pm
        - Friday 11:00am-10:00pm
        - Saturday 8:00am-10:00pm
        - Sunday 8:00am-9:00pm
    - Restaurant (Summer)
        - Sunday-Thursday 8:00am-10:00pm
        - Friday and Saturday 8:00am-10:30pm
    - Bar (Winter)
        - Monday-Thursday 11:00am-11:30pm
        - Friday 11:00am-12:30am
        - Saturday 10:00am-12:30am
        - Sunday 10:00am-11:30pm
    - Bar (Summer)
        - Monday-Thursday 11:00am-12:30am
        - Friday 11:00am-1:00am
        - Saturday 10:00am-1:00am
        - Sunday 10:00am-12:00am
- Have outdoor speakers for background music and table availability (for restaurant)
- No live entertainment/other amplified sound than what is above
- Seating (as approved by Amended UP in 1998)
    - Indoor Bar and Restaurant-100 seats
    - Outdoor Bar and Restaurant-305 seats
- Parking (as approved by CCC through a CDP in 1982 and 1997)
    - CCC 1982 required 28 spaces in pier bowl parking lot (123 parking spaces in the lot)
    - CCC required 14 additional spaces for the deck expansion at Linda Lane Park (56 seats)
    - CCC required 22 additional spaces in pier bowl parking lot for restaurant addition, operational expansions, and concession stand expansion

Ole Hanson Beach Club

- Publicly owned and operated
- Historic structure built in the 1920s
- 175 people maximum for all upper areas, 50 people downstairs capacity
- Hours of operation for rentals 7 days a week 8:00am-11:00pm
- No outdoor noise is permitted, except for 15 minutes with wedding ceremony
    - If utilize outdoor sound for wedding ceremony, cannot use outdoor portions of the facility.

- Cannot sell alcohol, all alcohol must be free
    - Alcohol approved by CC Resolution 68-76 on June 2, 1976
- Requires only application for rental – through BP&R

Casa Romantica

- Publicly owned and operated
- Historic structure Publicly owned, privately operated by a non-profit
- Total number of patrons/seats-299
- 33 Parking spaces onsite; and 42 provided at Linda Lane Park for events of 132-299 patrons
- Alcohol approved pursuant to CUP 00-215
- No amplified sound permitted in the amphitheater, West Terrace, East Terrace, or Ocean Terrace:

- Amplified sound permitted only in Main Salon
- Acoustic string quartet or acoustic guitar has been permitted to be located just outside Main Salon (outdoors) for wedding processionals only, not amplified.
- Hours of Operation:
    - Cultural Center
        - Tuesday –Thursday 11:00am-4:00pm
        - Friday-Sunday 10:00am-2:00pm
    - Rentals
        - Weddings (for past year) Friday-Sunday Only 4:00pm-10:00pm (sound and alcohol stops), all clean up and people out of the facility by 11:00pm.
        - Monday-Thursday-Low scale rentals on occasion, typically business meetings or dinners

Casino San Clemente

- Privately owned and operated
- Historic Structure
- CUP 09-315, Resolution PC 09-042
- Hours of Operation for full range of alcohol/entertainment
    - 7 days a week 6:00am-2:00am
- Amplified Sound/Entertainment requirements:
    - All live entertainment/amplified sound shall be conducted indoors

7E-29

        - Received multiple SAPs for outdoor music
- Seats/Patrons approved:
    - Total: 384 seats/patrons
        - Main Dome: 229 seats/patrons (indoor)
        - Yacht Club/Café: 70 seats/patrons (indoor)
        - Patio of the Stars: 35 seats/patrons (outdoor)
        - Rock Garden: 50 seats/patrons (outdoor)
            - Received multiple SAPs for increased people in outdoor locations
- Parking
    - 7 parking spaces onsite (including accessible parking and path of travel)
    - 64 parking waivers for Historic Structure (historically used public off-street parking located in proximity)

Nick's

- Privately owned and operated
- CUP 08-314/CHP 08-315, CC Resolution 09-15
- Hours of operation for alcohol/live entertainment/amplified sound
    - 7:00am-12:00am (midnight), seven (7) days a week
- Seating/Patrons
    - 36 outdoor seats/patrons
    - 70 indoor seats/patrons
- Parking
    - 8 onsite parking spaces which were opened for public use
    - 2 offsite parking spaces through a parking agreement
    - Received 4 parking waivers through Downtown Parking Waiver Program for indoor seating
    - Received a 4 parking space exemptions for the additional outdoor seats based on public parking availability within close proximity and the pedestrian nature and orientation of the outdoor dining (located right on Avenida Del Mar)
    - TOTAL: 10 physical parking spaces provided for the project (8 onsite and open to public use)

Selma's

- Privately owned and operated
- MCUP 06-285/MCHP 06-286, PC Resolution 06-051
- Hours of Operation/Alcohol (Beer and Wine Only and with Food Service)
    - 11:00am-10:00pm, seven days a week
- Seating/Patrons
    - 16 outdoor seats/patrons
    - 55 indoor seats/patrons
- Parking
    - 11 parking spaces located behind the building (to ensure parking availability, and since property owner owns both lots that only partially

connect, a lot tie and access easement was recorded for the life of the restaurant)

South of Nick's

- Privately owned and operated
- Historic Structure
- CUP 11-093/MCHP 11-094, PC Resolution 11-011
- Hours of Operation/full range of alcohol
  - With food service 6:00am-12:00am (midnight), seven days a week
  - For just bar service 10:00am-12:00am (midnight), seven days a week
- No live entertainment approved
- Seats/Patrons
  - 235 indoor seats
  - No outdoor seating
- 40 off-street parking spaces provided between two lots

North Beach Rooftop

- Example scenarios:
  1) 35 seats indoor + 16 outdoor + 50 seats (from 10 space waiver) = 101 seats
  2) 101 seats + 80 additional seats (from 16 offsite parking spaces) = 181 seats
  3) 136 seats + 125 seats (from 25 offsite parking spaces) = 226 seats

- 226 is occupancy allowed with indicated bathroom configuration

- 226 seats maximum: Inside 38% seats 85
  Rooftop 42% seats 95
  Side patio 13% seats 31
  Front patio 7% seats 15

- Hours proposed by staff:
  - Rooftop service to customers: 9pm – clean up by 10pm
  - Side Patio service to customers: 10pm – clean up by 11pm
  - Front Patio service to customers: 11pm – clean up by midnight
  - Live entertainment – inside only: Over by midnight

ATTACHMENT 4

STAFF REPORT
SAN CLEMENTE PLANNING COMMISSION

Date: April 3, 2013

PLANNER: Sean Nicholas, Associate Planner

SUBJECT: Conditional Use Permit 12-362/Cultural Heritage Permit 12-363/Discretionary Sign Permit 13-082/Minor Exception Permit 13-084/Outdoor Dining Permit 13-085, North Beach Rooftop Grill and Bar, a request to consider a conversion of a one-story commercial building into a restaurant with an open roof top bar and grill with a full range of alcohol, live amplified music, an off-site parking agreement, parking waivers, and approve a new sign package. The project is located at 1509 North El Camino Real.

REQUIRED FINDINGS

Prior to approval of the proposed project, the below findings shall be made. The draft Resolution, provided as Attachment 1, and analysis section of this report provide an assessment of the project's compliance with these findings.

Conditional Use Permit, Section 17.16.060(F): to allow a full range of alcohol, amplified sound, waiver of required parking for outdoor seating and off-site parking agreement.

a. The proposed use is permitted within the subject zone pursuant to the approval of a Conditional Use Permit and complies with all the applicable provisions of this title, the San Clemente General Plan and the purpose and intent of the zone in which the use is being proposed;
b. The site is suitable for the type and intensity of use that is proposed;
c. The proposed use will not be detrimental to the public health, safety or welfare, or materially injurious to properties and improvements in the vicinity;
d. The proposed use will not negatively impact surrounding land uses;
e. For outdoor seating waivers, public parking is available in close proximity to the restaurant; and,
f. Given the specific conditions of the site and the adjacent area, the waiver or modification for outdoor dining parking requirements will not result in inadequate parking.

Cultural Heritage Permit, Section 17.16.060(F): to allow exterior improvements to a non-residential building within the architectural overlay.

a. The architectural treatment of the project complies with the San Clemente General Plan;
b. The architectural treatment of the project complies with the Zoning Ordinance including but not limited to height, setbacks, etc.;
c. The architectural treatment of the project complies with the architectural guidelines in the City's Design Guidelines;

d. The general appearance of the proposal is in keeping with the character of the neighborhood;
e. The proposal is not detrimental to the orderly and harmonious development of the City; and,
f. The proposed project will not have negative visual or physical impacts upon the historic structure.

Discretionary Sign Permit, Section 17.16.250(F): for new signage in the architectural overlay that exceeds 25 square feet and total signage which exceeds 64 square feet.

a. The design, including lighting, scale, length and materials, of the sign is consistent with the intent of the design elements of the General Plan and Design Guidelines in which the sign is to be located;
b. The design, scale and materials of the sign harmonize with the architectural design and details of the building or site it serves;
c. The design and scale of the sign is appropriate to the distance from which the sign is normally viewed;
d. The design and materials of the sign provide a contrast between the background and letters; and
e. If a freestanding sign is included in the sign application, the design, scale or location of the building dictates the use of freestanding signs, rather than building-mounted signs.

Minor Exception Permit, Section 17.16.090 (F), to allow the waiver of two parking spaces associated with a change of use.

a. The requested minor exception will not interfere with the purpose of the zone or the standards of the zone in which the property is located;
b. The neighboring properties will not be adversely affected as a result of the approval or conditional approval of the Minor Exception Permit; and,
c. The approval or conditional approval of the Minor Exception Permit will not be detrimental to the health, safety or welfare of the general public.

Outdoor Dining Permit, Section 17.28.205(E), to allow outdoor dining on private property,

a. The outdoor dining area contributes to the village/pedestrian ambiance of the City, in accordance with the City's General Plan;
b. The outdoor dining area complies with the standards of this section;
c. Any negative visual, noise, traffic, accessibility, and parking impacts associated with the outdoor dining area have been reduced to an acceptable level, as determined by the City; and,
d. The outdoor dining facility complies with the required findings for the approval of Architectural/Minor Architectural Permits or Cultural Heritage/Minor Cultural Heritage Permits.

BACKGROUND

The applicant is proposing to convert a single-story commercial building into a restaurant with an open roof top bar. The project site is 5,432 square feet with a 2,975 square foot, single-story building constructed in 1948. The bar is proposed to span the entire length of the building, resulting in 2,975 square feet of outdoor dining. The applicant is proposing to maintain the Spanish architecture and all exterior modifications would continue the existing style. The General Plan promotes North Beach to be an entertainment and restaurant hub for the community.

The following discretionary permits are required for the project:

1) Conditional Use Permit is required for an off-site parking agreement and the ability to offer a full range of alcoholic beverages.
2) Cultural Heritage Permit for additions and remodels within the Architectural Overlay.
3) Discretionary Sign Permit because of the total sign square footage proposed.
4) Minor Exception Permit allows for the waiver of parking spaces.
5) Outdoor Dining Permit for the seating on the roof, front patio, and outdoor paseo.

Surrounding land uses include The Elks Lodge to the east, a parking lot to the north, and commercial buildings to the south and west.

Development Management Team

The City's Development Management Team (DMT) reviewed the applicant's request, determined it meets requirements, and recommends Conditions of Approval to ensure code compliance. The recommended conditions are shown on Attachment 1, Exhibit A.

Noticing

Public notices were distributed and posted per City and State requirements. No public comments have been received to date.

PROJECT DESCRIPTION

The applicant, Dave Gutierrez, is proposing to remodel, and add on to a vacant building in North Beach. To establish a new restaurant with a full range of alcohol and amplified sound, the project includes making modifications to the structure to allow a roof-top restaurant and bar. The applicant is proposing several improvements to the roof including trellis and shade structures, a full service bar, gas fire pits, and an outdoor kitchen and pizza oven. Other than some minor roof structures (trellis and awnings to provide shade, and Orange County Health Department required enclosures of the bar area and kitchen), seating on the roof will be open and is considered outdoor. The applicant is also proposing additional outdoor seating within the paseo on the side of the building.

The building was built in 1948, and there is no on-site parking. Staff has included a section in the staff report on how seating and parking for the project is calculated, and the various parking waivers the applicant is requesting.

Development Standards

Table 1 outlines the project's consistency with the Zoning Ordinance development standards.

Table 1:
Development Standards

	Zoning Ordinance Requirements	Proposed
Maximum Building Height	33'	25'
Setbacks: • Front • Side Yard (towards Elks) • Side Yard (paseo) • Rear Yard	 0' 0' 0' 0'	 5' 3'-3" 9' 6'
Maximum Lot Coverage	100%	55%
Floor Area Ratio (F.A.R.)	.75	.55

Parking

The building was constructed in 1948, prior to the first parking standards in the Municipal Code, so no on-site parking exists. Because this is not an uncommon occurrence, Municipal Code Section 17.72.060(C)(2) allows for a facility with no parking, to establish a new use without providing required parking to avoid building vacancies. Vacant buildings that are nonconforming as to parking are allocated parking spaces based upon the least restrictive parking requirement. The least restrictive parking requirement per the Mixed Use standard is retail at one parking space per 400 square feet, crediting seven parking spaces to the building (2,975 square feet/400 square feet per parking space=7 parking spaces). Being that the proposal is to establish a restaurant, which requires one parking space per five seats, this means the applicant can have up to 35 seats based on seven credited parking spaces (7 parking spaces x 5 seats/ parking space). These seats can be located either indoor or outdoor.

To support outdoor dining throughout the community, a restaurant with 32 indoor seats or more can automatically have 16 outdoor seats (if physical space is available, which this project has) without the requirement of additional parking. There are a number of outdoor seating opportunities associated with this project, and with the additional 16 seats outdoors, the total seats allowed for the restaurant use is 51 seats.

7E-35

The applicant is requesting a Conditional Use Permit to allow off-site parking, within 300 feet. The off-site parking agreement is with the property owner of Bull Taco located at 1527 North El Camino Real. Based on approved seating for Bull Taco, there is an excess of six parking spaces on-site. The property owner of 1527 North El Camino Real has agreed to allow the applicant to utilize these six spaces for the proposed restaurant. These additional parking spaces result in 30 more seats for the project, for a total of 65 indoor/outdoor seats, and 16 outdoor seats. To open up more seating for the proposed restaurant, the applicant is going to continue to seek off-site parking opportunities with property owners within 300 feet of the site. As a Condition of Approval, staff will review all additional off-site parking agreements and ensure that the agreements are recorded with the County of Orange. The applicant will be allowed to expand the off-site parking until the total seats (indoor and outdoor) permitted reach 226. At that point, no additional seats, regardless of parking available, will be permitted.

Lastly, the applicant requests two different waivers for parking. The first is a request for a waiver of two parking spaces with the approval of a Minor Exception Permit. Pursuant to Municipal Code Section 17.64.125(B)(5), because the project is going from retail to a restaurant use, two parking spaces can be waived with the approval of a Minor Exception Permit. The second parking waiver is pursuant to Municipal Code Section 17.28.205(D)(6)(b) for outdoor seating only. Through the review process, the Planning Commission can waive parking requirements for outdoor dining. The applicant is requesting Planning Commission waive the parking requirement for 10 spaces. In total, between the two sets of parking space waivers in the Municipal Code, the applicant is requesting two parking space waivers to be used for indoor/outdoor seating and 10 parking spaces for outdoor seating. If approved, the total seating for the restaurant will be 75 indoor/outdoor seats and 66 outdoor seats, with a total of 131 seats. Table 2 is a summary of the parking calculation and seat count.

Table 2:
Parking and Seat Calculation

Parking Spaces (Credited/Waived/Existing)	Number of Seats (Indoor and Outdoor)
7 parking space credit (based on least restrictive commercial/retail use)	35 indoor or outdoor seats
0 parking spaces (for restaurants with over 32 indoor seats permitted, 16 outdoor seats allowed by right)	16 outdoor seats
6 parking spaces from off-site parking agreement	30 indoor or outdoor seats
2 parking space waivers (through approval of MEP for change of use)	10 indoor or outdoor seats
10 parking space waivers (for outdoor seating)	50 outdoor seats
TOTALS	
Indoor seats	**75**
Outdoor seats	**131 (if utilize all seats outside)**
Parking waivers	**12**

For the Planning Commission to approve the parking waivers, the primary finding that needs to be made is that public parking is available within close proximity of the project site. To address this issue, the applicant has completed a parking study of on street parking within 300 feet of the project site. This study was required to be performed during "typical San Clemente" weather (sunny and around 70 degrees Fahrenheit) and was completed for a two week period on a Thursday and Saturday at 12:00 p.m., 2:00 p.m., 6:00 p.m., and 8:00 p.m. These days and times were selected based on past parking studies peak occupancy times and recommendations from parking consultants. Staff has reviewed the surrounding area and determined that there are approximately 92 on street parking spaces available within 300 feet of the project site. Based on the parking study the peak utilization of the on street parking is at 12:00 p.m. on Thursday. At peak utilization 30 parking spaces were occupied, or 33% of available parking. This means 62 parking spaces were available within 300 feet, or 67% of parking spaces, at peak utilization. A summary table is provided as attachment 5, and parking maps will be available at the Planning Commission hearing.

Based on the availability of public parking in close proximity to the site, as well as the applicants continued efforts to provide off-street parking, staff is supportive of the proposed 12 parking waivers for the restaurant.

The applicant is the first in what will hopefully be a number of revitalization projects in North Beach. The goal is to create the restaurant/entertainment hub originally envisioned by Ole Hanson and specified in both the Current and Centennial General Plans. Similar to the beginnings of revitalization of Avenida Del Mar, the first applicants to begin the process of revitalization have the most opportunity to utilize parking waivers and other portions of the code to promote the vision of North Beach and revitalize vacant or underutilized properties. Similar to the progress made on Avenida Del Mar, it takes progressive projects to begin revitalization, and often times utilization of various portions of the Municipal Code, including parking waivers, that are available to staff and applicants are necessary to promote and aid the revitalization process.

Architecture

The building has a unique design which exhibits both Spanish and non-Spanish attributes. The modifications proposed for the project site are Spanish Colonial Revival in nature, consistent with the Architectural Overlay, and the requirements associated with a Cultural Heritage Permit. The structures proposed utilize materials called out in the City's Design Guidelines including wood trellises, canvas awnings, and pillars stuccoed and colored to match the building to provide both massing and visual interest to the support structures of the new roof elements. The applicant is also proposing outdoor seating at the front, side, and roof of the building, enhancing the pedestrian environment of the Architectural and Pedestrian Overlay, and all the new "roll up" windows will have dark brown trim around the glass to be consistent with the color palette recommended in the Design Guidelines.

Signage

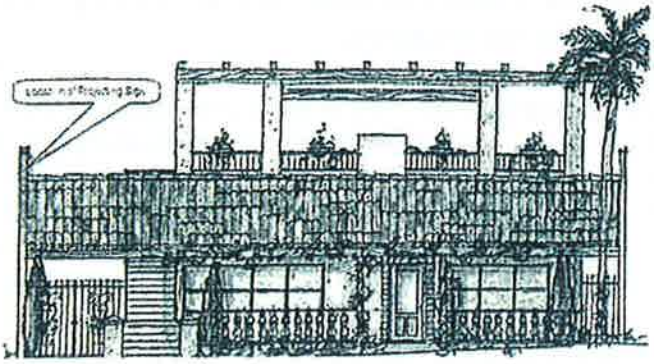
The applicant is proposing three signs:

1) A 63.40 square foot projecting sign on the building's El Camino Real façade (reduced based on DRSC recommendations);
2) A 12.25 square foot, six foot tall, monument sign on the El Camino Real frontage; and
3) A 6.25 square foot wall sign for the rear building facade facing Los Obrero Lane and Calle de Los Molinos.

Overall, the applicant is proposing 81.90 square feet of signage. Pursuant to the Municipal Code, the applicant is permitted to have 82 square feet of signage with the approval of a Discretionary Sign Permit.

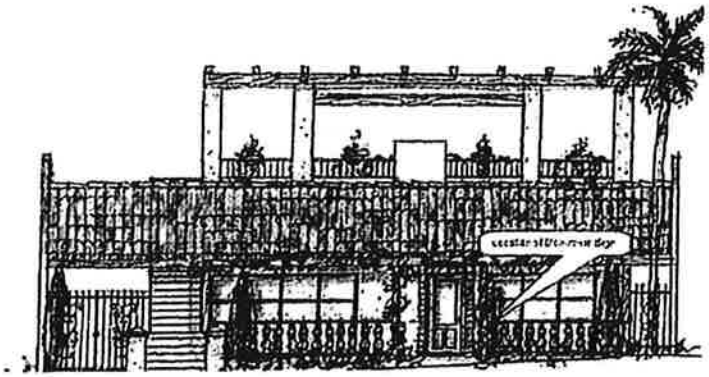
Here are the images of the proposed signage:

Projecting Sign



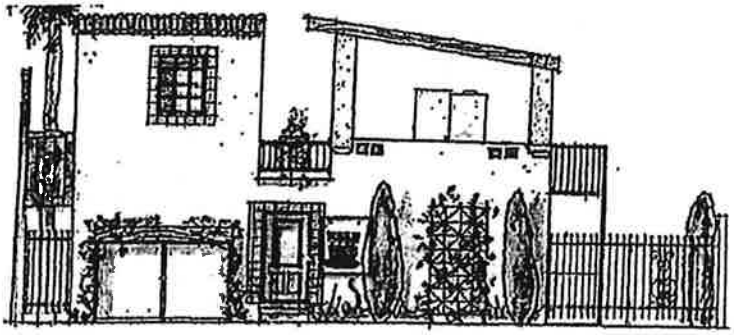
Façade facing El Camino Real

Monument Sign



Façade facing El Camino Real

Rear Wall Mounted Sign



Façade facing Los Obreros Lane and Calle De Los Molinos

Pursuant to Municipal Code Section 17.84.020(C), signs within the Architectural Overlay are to appear hand crafted in nature, and can only use neon with the approval of a Discretionary Sign Permit. The Municipal Code references materials such as wood or pin mounted metal letters, and the use of appropriate Spanish Colonial Revival materials to mount and support the signage. The applicant is proposing primarily metal signs with neon lighting.

The use of neon, and the way it is being implemented on the vintage-esque sign, is a handcrafted and unique look. Associated with the Design Guideline requirement of compatibility with the building, there is a history of neon signs along El Camino Real (Pacific Coast Highway) in 1940s San Clemente, and within the Architectural Overlay. For various reasons most, if not all, have been removed.

Signs that have been approved recently for Spanish architectural buildings, especially within the Architectural Overlay, have primarily been either sand blasted wood or hand painted with decorative goose neck lighting, or individual pin mounted metal letters and halo illumination.

The monument sign is proposed within a landscape area larger than the proposed 12.25 square feet along the El Camino Real frontage of the site. The base of the sign will be stuccoed and colored to match the building, and the sign itself will be metal. The rear wall sign will also be metal. Both the rear and monument sign will utilize external illumination.

The sign package was discussed at Design Review Subcommittee meeting on March 27, 2013, the summary of that discussion is presented below.

PROJECT ANALYSIS

Conditional Use Permit

The applicant is requesting a Conditional Use Permit for:

1) Full range of alcohol
2) Amplified sound
3) Off-site parking agreement
4) Outdoor seating parking waivers

As discussed above, staff is supportive of the off-site parking agreement, and 10 outdoor seating parking waivers. The applicant is requesting to serve alcohol from 6:00 a.m. until 2:00 a.m. Another facility in North Beach received approval for similar hours of operation for alcohol, and there are a few other establishments in the City that allow alcohol sales until 2:00 a.m. Though most restaurants/bars in the City stop selling alcohol at 12:00 a.m. Since there are other facilities with similar alcohol hours of operation, including within close proximity, staff is supportive of the request.

Staff is supportive of the amplified sound on the interior of the building, subject to the standard conditions of approval and best management practices. These practices implemented have been successful in not impacting surrounding uses. Similar with other applications that have requested amplified sound outside, staff is not supportive of amplified sound outdoors, but is supportive of non-amplified sound outdoors until 10:00 p.m. when all live entertainment outside must end. The applicant has indicated where on the roof the live entertainment may be located which will avoid impacting nearby residents along the El Camino Real corridor and above Los Molinos. If noise from live entertainment on the roof becomes a problem, a condition of approval has been added that live entertainment would no longer be permitted on the roof. Staff has consulted with both Orange County Sheriff and Code Compliance and both divisions have indicated no concerns regarding the alcohol and amplified sound/live entertainment uses.

Cultural Heritage Permit

The project requires a Cultural Heritage Permit for the exterior improvements to the building located within the Architectural Overlay of North Beach. The applicant is proposing several roof top additions, including new wood trellis and awning structures to provide shade, as well as enclosures for a roof top bar and kitchen facility. The structures will all have smooth white stucco columns to add mass to the structures to visually support the various structures. Wrought iron is also proposed for railings around the edge of the roof and stairwells.

Staff has reviewed the required findings for the Cultural Heritage Permit and determined that the materials and design proposed for the added additions are consistent with the recommendations in the City's Design Guidelines, will enhance the existing structure, and add to the North Beach Architectural and Pedestrian Environment.

Discretionary Sign Permit

The application requires a Discretionary Sign Permit for three reasons: 1) to allow signage over 25 square feet in the Architectural Overlay; 2) to allow over 64 square feet of signage for the site; and 3) to utilize neon for the illumination of the site. The applicant is proposing, and is permitted to have with a Discretionary Sign Permit, 82 square feet of signage based on the frontage of the façade on two public streets, they are proposing 81.9 square feet.

For the projecting sign, which is the largest sign, the applicant is proposing a metal sign with neon illumination. The use of neon, and the way it is being implemented on the vintage-esque sign, is a handcrafted and unique look. For the monument sign and rear wall sign the applicant is proposing to utilize a metal material, other than stucco for the base of the monument sign, to match the projecting sign. The applicant proposes utilizing some form of external illumination and not neon for the monument and rear wall sign.

Staff has reviewed the required findings necessary for a Discretionary Sign Permit and determined the amount of signage is appropriate as each sign serves a different purpose. The large projecting sign with neon is unique and vintage looking and will advertise the location from a distance along El Camino Real. The proposed monument sign is smaller and more on a pedestrian scale. The sign at the rear of the building is small and will serve as a site identifier for patrons parking on Los Molinos. The signage proposed is consistent with the building, is unique in appearance and character, and for those reasons consistent with the Municipal Code and City Design Guidelines, as well as applicable development standards.

Minor Exception Permit

The applicant is requesting that two parking spaces be waived to allow for additional indoor/outdoor seats for the proposed change of use. The two additional parking spaces waived will provide the applicant 10 either indoor or outdoor seats. The applicant has indicated that all seats are needed for the restaurant to succeed.

Staff has reviewed the requirements for the waiver, and based on the amount of public parking available within 300 feet of the site at peak utilization there are 62 parking spaces available, or 67% of parking on-street, staff is supportive of the waivers as there will not be a negative impact to surrounding businesses or public parking availability.

Outdoor Dining Permit

A large portion of the proposed project includes outdoor seating. Between the paseo, front patio, and the roof top facility, the outdoor dining is going to contribute substantially to the pedestrian character of North Beach. Consistent with the requirements for outdoor seating, the project will not impact the public right of way and all seating will be located on-site. Additionally, there will be no negative impact to surrounding uses as no live entertainment will be permitted on the roof after 10:00 p.m. consistent with other approvals for outdoor entertainment. The plans identify the location of the potential live entertainment, which will be directed away from residential development located behind the commercial structures on the otherside of El Camino Real.

Design Review Subcommittee

The Design Review Subcommittee (DRSC) reviewed the application on February 13, 2013 and March 27, 2013. DRSC supports the design and signage of the project. Table 3 is a summary of the discussion points from those meetings:

Table 3:

Design Review Subcommittee Discussion

DRSC DISCUSSION POINT	APPLICANT RESPONSE
The structures on the roof need to be modified to provide appropriate scale of the structures as well as proportionality of the building.	The applicant has modified the columns of the trellis structures to be smooth white stucco in order to provide visual mass and interest. There was discussion about possibly continuing the stucco to the edge of the parapet of the roof, instead of utilizing all wrought iron, but the applicant did not want to impact views from the roof.
The metal roll up doors need to be dark brown to be consistent with the Design Guidelines.	The applicant modified the plans as suggested.
Look at ways to improve the stairway at the front of the restaurant. In particular there was concern regarding the look of the stairway and exiting right onto the public right-of-way. Several design ideas were discussed to try to enhance the design of the stairs. Some ideas included trying to turn the stairs to open in to the paseo, design options to improve the look	The applicant added columns to the stairs to help the aesthetics.

of the stairs, and ways to reduce how far the stairs come out to the front façade.	
Use of neon and arrow on projecting sign was a concern.	While the Subcommittee members thought the sign was good, there were concerns that the design of the signage was not consistent with the building. In particular were concerns regarding the use of neon and the arrow feature pointing to the roof detracting from the architecture of the building.
The projecting wall sign should be reduced to meet both individual sign square footage and total site sign square footage requirements.	Applicant agreed to reduce the square footage by 3.5 square feet.

GENERAL PLAN CONSISTENCY

Table 4 summarizes how the proposed project is consistent with adopted policies outlined in the City of San Clemente General Plan:

Table 4:
General Plan Consistency

General Plan Policy	Consistency Finding
1.13.1 Accommodate neighborhood community and visitor serving commercial, mixed residential and commercial, and parking uses in accordance with Policies 1.12.1 through 1.12.4.	**Consistent.** This project will result in a vacant building establishing a new use and will provide for community and visitor serving commercial.
1.12.4 Encourage the development of outdoor dining and other similar uses which do not impede pedestrian use of the sidewalks	**Consistent.** Most of the seating for this project is outdoors and will create a unique dining environment in North Beach.

ENVIRONMENTAL REVIEW/COMPLIANCE (CEQA):

The Planning Division completed an initial environmental assessment of the project accordance with the California Environmental Quality Act (CEQA). Staff recommends the Planning Commission determine the project is categorically exempt per CEQA Guidelines Section 15301(e), as a Class 1

since the project will primarily be a change of use and allow for the required plumbing, electrical, and other improvements necessary to establish a restaurant.

ALTERNATIVES; IMPLICATIONS OF ALTERNATIVES

1. The Planning Commission can concur with staff and recommend approval of the proposed project.

   This action would result in the applicant being able to move forward with establishing a restaurant on the site with 75 indoor/outdoor seats and 56 outdoor seats, with a potential total of 131 outdoor seats on the roof. This will also allow the applicant to have neon signage within the Architectural Overlay.

2. The Planning Commission can, at its discretion, add, modify or delete provisions of the proposed project or conditions.

   The Planning Commission could determine that the hours of operation for the restaurant and bar to 2:00 a.m. is not consistent with other restaurant/bar facilities and require the sale of alcohol to end at 12:00 a.m. If the Planning Commission were to do this, the applicant may appeal this action to City Council.

   Planning Commission could also require different signage, reduced signage, or no neon for the development. If the Planning Commission were to do this, the applicant may appeal this action to City Council.

   The Planning Commission could also either support fewer or more parking waivers for outdoor seating. Either approving less or more waivers would impact the total seating for the restaurant and parking allowance for future uses. If the Planning Commission were to reduce the number of parking waivers, the applicant may appeal this action to City Council.

3. The Planning Commission can recommend denial of the proposed project.

   This action would result in the denial of the project and the applicant would not be able to move forward with the project. The applicant could appeal to the City Council.

CONCLUSION

As noted above, this is the first of what will be multiple projects in North Beach associated with the areas revitalization. The General Plan goal for North Beach is that it is the entertainment/restaurant hub of the community, and this project is consistent with those goals, as well as strengthens the pedestrian atmosphere. Similar to support of parking waivers on Avenida

Del Mar when revitalization began, staff is supportive of staff waivers in this situation as well to promote improvements in the District. The applicant has shown through a parking survey that sufficient on-street public parking exists, and that the waiver of the parking spaces will not create a shortage of parking. Staff is also supportive of the signage, as it adds a unique and custom look to the building. Staff is supportive of the project overall as the waivers are built into the Municipal Code to support revitalization, and the project in North Beach promotes the goals, objectives, and policies of the current General Plan and in the upcoming Centennial General Plan.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission approve CUP 12-362/CHP 12-363/DSP 13-082/SEP 13-083/MEP 13-084/ODP 13-085, North Beach Rooftop Grill and Bar, subject to the attached Resolution and Conditions of Approval.

These minutes were amended and approved at the Planning Commission meeting of 04-17-13.

MINUTES OF THE REGULAR MEETING OF THE CITY OF SAN CLEMENTE PLANNING COMMISSION

April 3, 2013 @ 7:09 p.m.
City Council Chambers
100 Avenida Presidio
San Clemente, CA 92672

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1. CALL TO ORDER

Chair Avera called the Regular Meeting of the Planning Commission of the City of San Clemente to order at 7:03 p.m.

2. PLEDGE OF ALLEGIANCE

Vice Chair Darden led the Pledge of Allegiance.

3. ROLL CALL

Commissioners Present:	Nesa Anderson, Barton Crandell, Michael Kaupp, and Jim Ruehlin; Vice Chair Julia Darden, Chairman Lew Avera
Commissioners Absent:	Chair pro Tem Donald Brown
Staff Present:	Jim Pechous, City Planner Sean Nicholas, Associate Planner Christopher Wright, Associate Planner Adam Atamian, Assistant Planner Zachary Ponsen, Senior Civil Engineer Ajit Thind, Assistant City Attorney Elleen White, Recording Secretary

4. SPECIAL ORDERS OF BUSINESS - None

5. MINUTES

A. Minutes from the Regular Study Session of March 20, 2013

IT WAS MOVED BY COMMISSIONER ANDERSON, SECONDED BY COMMISSIONER CRANDELL, AND CARRIED 4-0-2, WITH COMMISSIONER KAUPP AND VICE CHAIR DARDEN ABSTAINING, to receive and file the minutes of the Regular Study Session of March 20, 2013, as submitted by staff.

PROGRAM, AND FREEWAY ORIENTED SIGNAGE LOCATED AT 504 AVENIDA DE LA ESTRELLA, with the following revisions:

Page 10, staff shall revise Condition 4.B. to require the applicant use stucco that does not produce a sheen.

Page 11, no. 6 shall read as follows: "The applicant shall provide specifications that state wrought iron is proposed for the balcony in the arch of the tower and the design shall be traditional Spanish to be approved by the City Planner."

Page 19, add new condition no. 56 as follows: "Prior to issuance of the sign permit, the applicant shall submit to the City Planner for his review options for colors, intensity and glare of the monument price sign to improve the sign's compatibility with the architecture and site location as a City entryway."

[DECISION FINAL. SUBJECT TO APPEAL OR CALL UP BY COUNCIL]

D. **1509 North El Camino Real – Conditional Use Permit 12-362/Cultural Heritage Permit 12-363/Discretionary Sign Permit 13-082/Sign Exception Permit 13-083/Minor Exception Permit 13-084/Outdoor Dining Permit 13-085 – North Beach Rooftop Bar and Grill** (Nicholas)

A request to consider a conversion of a one-story commercial building into a restaurant with an open roof top bar and grill with a full range of alcohol, live amplified music, an off-site parking agreement, parking waivers for outdoor seating, and approve a new sign package which exceeds the allowed total sign area for the site. The project is located at 1509 North El Camino Real within the C2/MU-3 zoning designation. The legal description is Lot 9, of Block 2, of Tract 795, Assessor's Parcel Number 057-170-31.

Sean Nicholas, Associate Planner, narrated a PowerPoint Presentation entitled, "CUP 12-362/CHP 12-363/DSP 12-082/MEP 13-084/ODP 13-085, North Beach Rooftop Grill and Bar, dated April 3, 2013," and summarized the staff report. Staff recommended approval of the request as conditioned.

In response to questions from the Commissioners, Associate Planner Nicholas advised that the conditions related to sound attenuation are based on the sound study provided by the sound engineer.

Discussion ensued regarding sound issues, with several Commissions expressing concern that sound could travel farther than anticipated due to the site's topography and adjacent housing, mixed use structures may be negative affected by noise generated on the rooftop. Jim Pechous, City Planner, assured the Commissioners that code enforcement will respond to any reports of

nuisance, and the project is conditioned to allow staff to act in the event noise issues arise.

In response a concern expressed by Commissioner Crandell, City Planner Pechous advised that the City can ensure the restaurant owner does not add seats until additional parking is secured by doing inspections, imposing fines, and responding to calls.

Associate Planner Nicholas noted the business is allowed a maximum of 131 chairs. The occupancy for customers is then limited to 131 customers per the maximum chairs allowed. In addition, the parking agreements must be recorded on the property deed.

Dave Gutierrez, property owner, believes this project will increase vitality and invite activity to the area. He believes the roof top bar is a unique business for the area, which will encourage additional development at North Beach. His research indicates that patrons love outdoor seating when available. The theme is casual and relaxed, similar to a party at the beach. He noted neon lighting is used throughout the City and within code. He agreed that the business will not be successful until it finds additional parking, which is incentive enough that it be found. He agreed to install bike parking on site, potentially in the rear of the lot, if possible, and agreed to additional conditions that would require signage and/or literature on receipts to remind patrons where available parking is located. His sound engineer is not present to answer questions this evening, but he offered to provide the information requested at a later date.

Chair Avera opened the public hearing.

Written Communications:

Letters of support for the project from Bree Shapiro, Mikii Rathmann, and Sherman Dorsey, no cities of residence given; Eugene Gilbert, Elly Harris, Ed Winkelmann, Sue Winkelmann, Evan Christman, and Jonathan Peace, San Clemente residents.

Public Testimony:

Bill Koelzer, resident, lives in adjacent area, opposed allowing amplified sound on the rooftop; expressed concern regarding sufficient parking in the area to support the use.

Dr. Nagy Amin, resident and adjacent animal hospital owner, has been serving the community for 50 years. He is very concerned about the effects of the noise generated by this use on the dogs boarded on site. Dogs hear sounds almost 20

times better than humans, and smell almost 30 times better. Noise generated by this use will negatively impact the dogs and cause loud barking. He cannot sedate the dogs all night, and will not be able to keep them quiet with all the noise generated by the rooftop bar, which will irritate the neighbors. He has only enough parking for his clients, and even now loses business if his lot is full.

Paul Levitz, resident and welding shop owner, expressed concern with impacts on his lot caused by rooftop bar patrons looking for parking spots and potential security of his building. He suggested the applicant be required to fence off his and Dr. Amin's parking lot to ensure that none of the rooftop bar patrons park there.

Don Slater, resident, compared the proposed facility to the Ole Hanson Beach Club's outdoor facility operated by the City. In addition he noted the neon signage at the Villa Blanca does not bother him, even though his back balcony faces El Camino Real. Shutting his duel pane windows shuts out all sound from the street. He believes the proposed rooftop bar fits the vision of North Beach as an entertainment area, and is in keeping with the motto proposed for North Beach, "Enjoy North Beach, an easy place to be."

Gene Gilbert, resident, supported the project as proposed; noted using neon to increase safety; suggested sound mitigation can be accomplished through speaker placement, acoustic treatments, and bass traps.

Bill Hart, resident, supported the proposed project as a means for the area to grow organically, one business at a time. He noted many people offered to help revitalize the area when the original Lab project was voted down, but their promises of help never came to fruition. He finds the neon sign design artistic, original, eclectic, and effective to grab attention and help the business succeed.

Barbara Conn, resident, distributed a photo indicating how close this use is to hers and other residential units. When the adjacent property was Ragamuffins, they and their young children were woken up many nights by the noise generated by the bar. Every time the door is opened for egress, for smoking, etc. the noise increased. Windows get opened because it is too hot inside. She is not opposed to business growth in the area, but is concerned about the noise generated by the proposed use on her quality of life as well as her tenants'. Although there parking on street in front of her house, it is often used by patrons of the Casino since it opened and beachgoers all summer long.

Trevor Baird, Laguna Niguel resident, supported the proposed use as a fantastic addition to the area and catalyst for change. He referenced a similar use in Laguna Beach with 10:00 p.m. closure to satisfy the City's noise ordinance. He suggested prohibiting amplified music to bring the noise levels down and

suggested that shortage of parking would be the biggest issue to face the City. He is in the process of partnering with the Miramar Theater to restore it, and looks forward to dealing with City officials in the future.

Chair Avera closed the public hearing.

Commission Comments:

Commissioner Ruehlin stated that as a resident of North Beach, he has always known the City's vision of it as a visitor serving area, and knows the frustration of residents with empty buildings. Recent new uses such as the Casino and Rider's Club have started a renaissance into an entertainment area to walk or bike to. He is concerned about the sound generated by the proposed use, especially its effect on the animal hospital next door and potential for vandalism. Although he looks forward to businesses like this going in, he is concerned about its 2:00 a.m. closing. He endorses additional conditions, including one that would require review after 6 months to ensure no negative impacts on the community. He would also like to see how bike accommodation would be handled on site.

Commissioner Kaupp believes this is a great concept for a restaurant, but is sympathetic to those living nearby. He questioned if this is the right location for the concept, and does not support it as proposed. In addition, he questioned whether all the excess parking in the area should be allotted to this one use.

Chair Avera supported revitalization of the area but expressed concern about the noise generated by this use, especially on the animal hospital next door. He endorsed signage to help locate the building. Signage plans should go back to DRSC for additional review.

Commissioners Crandell does not support amplified sound on the rooftop because of negative impacts to adjacent residences and businesses. He also expressed concern that if adjacent businesses sell off their parking, they will be locked into agreements that make them unable to improve/expand their businesses. He would not want to approve the maximum amount of chairs until parking waivers are obtained, so there is no enforcement issue or necessary monitoring to ensure the business does not expand until the parking is secured. He would like to see some studies/suggestions to help mitigate the project's impact on the adjacent animal hospital, and is concerned about its impacts on the welding business. He would like to see some solutions proposed to mitigate potential negative impacts, and is not ready at this time to support or deny the project.

Commissioner Anderson endorsed the idea of the rooftop restaurant, including the building design and its signage. She is not overly concerned about parking because there is an abundance of street parking available at this time. She is concerned about the sound generated by this use and suggested the roof top portion should be closed at 10:00 p.m., whether or not music is present. She is concerned with the project's impact on the animal hospital because the dogs will bark and create a nuisance if a lot of people are around. She would like to see more thought given to how the noise issues would be resolved, and requested information from staff concerning outdoor/sound attenuation walls for existing outdoor establishments in town.

Vice Chair Darden is concerned about noise generated by the use. She suggested the City request a study similar to the noise studies from Caltrans, with receptors in different areas, and including tests to see decibel ratings. She would like to see a comprehensive study of the noise impacts similar to those regularly submitted, with acceptance levels calculated at the property lines. She is worried about the effect of this use on the neighbors, and would not like to see a noise problem develop similar to the one with Dwinnels and adjacent neighbors. She is concerned that the noise issues cannot be fixed and it will affect the viability of the business. She also has concerns about sign compatibility with the architectural overlay. In addition, a more accurate number of available parking in the area should be calculated.

City Planner Pechous summarized issues for consideration concerning this project:

1) Sound is the largest issue. The Commission needs additional information from the project's sound engineer, including looking at feasibility of a sound study with actual sound test and receptors to get a better sense of the effects of music from the rooftop. The sound engineer should be available for questions, and mitigation measures and other innovative approaches should be researched.

2) Strictly acoustical music or no music on the rooftop may be options. A vestibule at the entry door may help mitigate loud noise impacts.

3) A realistic count of the adjacent available parking, including distance between available parking and the subject site, should be submitted for consideration. Pedestrian movement, bike racks, and bike corral should be considered; also feasibility of linkages and easement to allow access through adjacent parking lots. A lighted crosswalk would increase safety, as well as improved street lighting. Commissioners also asked for an update on parking plans for the area.

Commissioners discussed continuing this agenda item with staff, and staff suggested the Commissioners continue the item to their first meeting in May, with additional continuation at that time if warranted.

IT WAS MOVED BY COMMISSIONER RUEHLIN SECONDED BY COMMISSIONER ANDERSON AND UNANIMOUSLY CARRIED TO CONTINUE 1509 NORTH EL CAMINO REAL – CONDITIONAL USE PERMIT 12-362/CULTURAL HERITAGE PERMIT 12-363/DISCRETIONARY SIGN PERMIT 13-082/SIGN EXCEPTION PERMIT 13-083/MINOR EXCEPTION PERMIT 13-084/OUTDOOR DINING PERMIT 13-085 – NORTH BEACH ROOFTOP BAR AND GRILL TO THE REGULAR MEETING OF MAY 8, 2013.

[ITEM CONTINUED. PLANNING COMMISSION DECISION PENDING.]

9. **NEW BUSINESS** - None

10. **OLD BUSINESS**- None

11. **REPORTS OF COMMISSIONERS/STAFF**

Included in the Commissioners' packets for their review:

A. Tentative Future Agenda
B. Staff Waiver 13-100, 4015 Calle Juno
C. Staff Waiver 13-103, 410 Corto Lane #17

12. **ADJOURNMENT**

IT WAS MOVED BY COMMISSIONER RUEHLIN, SECONDED BY COMMISSIONER KAUPP, AND UNANIMOUSLY CARRIED to adjourn at 11:25 p.m. to the regular Study Session to be held at 6:00 p.m. on April 17, 2013 in Council Chambers at City Hall located at 100 Avenida Presidio, San Clemente, CA.

Respectfully submitted,

_____

Lew Avera, Chair

Attest:

ATTACHMENT 5

Design Review Subcommittee (DRSC)

Meeting Date: July 10, 2013

PLANNER: Sean Nicholas, Associate Planner

SUBJECT: **Conditional Use Permit 12-362/Cultural Heritage Permit 12-363/Discretionary Sign Permit 13-082/Minor Exception Permit 13-084/Outdoor Dinning Permit 13-085, North Beach Rooftop Grill and Bar,** a request to convert a one-story commercial building into a restaurant with an uncovered roof top bar and grill, and new sign package. The project is located at 1509 North El Camino Real.

BACKGROUND:

The applicant is proposing to convert a single-story commercial building into a restaurant with an open roof top bar. The bar is proposed to span the entire length of the building, resulting in an addition of 2,975 square feet. The applicant is proposing to maintain the Spanish architecture and any exterior additions needed would continue the existing style. A request for a shared parking agreement and a license to serve beer, wine and distilled spirits is pending. The General Plan promotes North Beach to be an entertainment and restaurant hub for the community.

The project has already been brought to the Design Review Subcommittee (DRSC) for review of proposed building modifications and the previous sign package. This review focuses on the revised sign designs.

The applicant is proposing three signs:

1) A 63.36 square foot projecting sign on the building's El Camino Real façade;
2) A 10.5 square foot, six foot tall, monument sign on the El Camino Real frontage; and
3) A 7.25 square foot wall sign for the rear building facade facing Los Obreros Lane and Calle de Los Molinos.

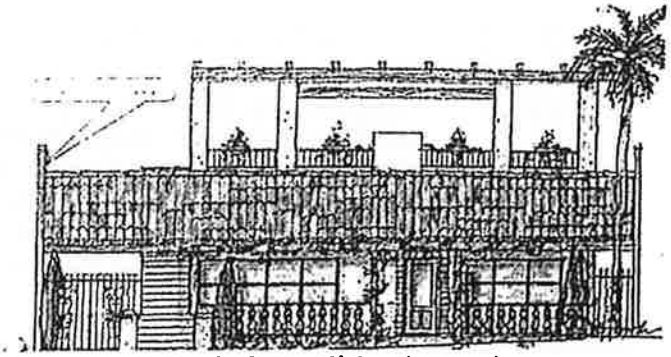
Overall the applicant is proposing 81.11 square feet of signage. Pursuant to the Municipal Code, the applicant is permitted to have 82 square feet of signage with the approval of a Discretionary Sign Permit.

ANALYSIS:

The last time DRSC reviewed the sign package, they did not support the design because of concerns with the use of neon, the arrow shaped projecting sign, and the overall signage incompatibility with the buildings Spanish architectural style. Here are the previous signage designs:

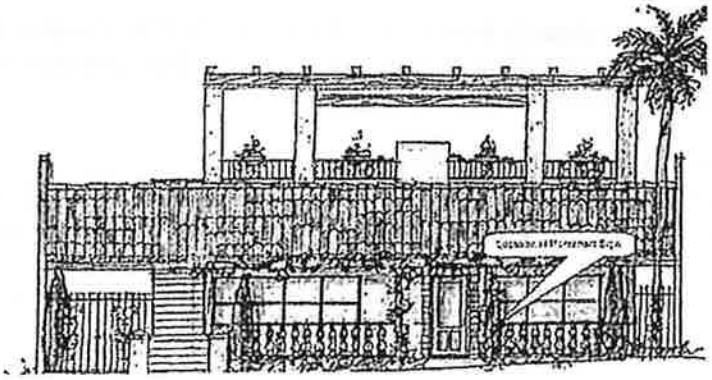
Figure 1- Previous Signage Proposed

Projecting Sign



Facde facing El Camino Real

Monument Sign



Façade facing El Camino Real

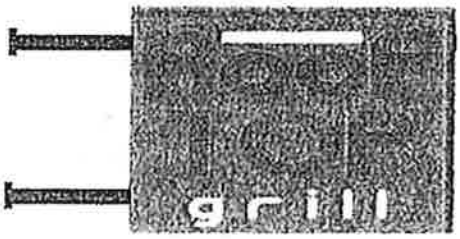
7E-54

Rear Wall Mounted Sign

In response to the concerns brought up at the previous DRSC meeting, the applicant has developed new signage for the site, as shown in Figure 2. The applicant is proposing the same type of signs but has changed the design from a route 66 look to a more contemporary design. Here are the sign designs (the locations for each sign is the same as shown above):

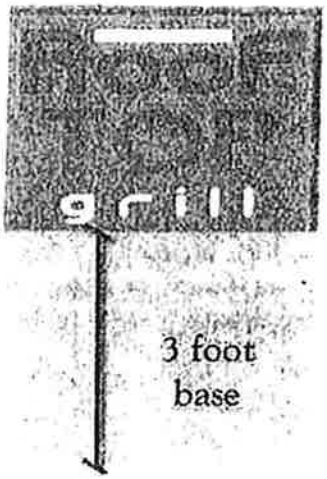
Figure 2: Proposed Signage

Projecting Sign



7E-55

Monument Sign



Rear Wall Mounted Sign

Signs that have been approved recently for Spanish architectural buildings, especially within the Architectural Overlay, have primarily been either sand blasted wood or hand painted, with decorative goose neck lighting or individual pin mounted metal letters and halo illumination. The applicant is proposing to use sheet metal outer shell with cutout letters, and then use a product called polytechglass to provide color in the cutouts and be internally illuminated. The proposed materials appear more industrial than those that have typically been submitted in the Architectural Overlay. However, the signs will be handmade and will be unique for the site and in that way consistent with the Architectural Overlay standards. Instead of utilizing neon for illumination the applicant is proposing internal LED lights which will illuminate the polytechglass of orange and white.

The monument sign is proposed within a landscape area. The sign area is 10.5 square feet, and the height of the sign face is three feet. The overall height of the sign structure is six feet, which includes the three foot tall base. The base stucco and color is proposed to match the building, and the sign materials will be the same sheet metal case with cutout polytechglass with internal LED illumination.

The rear wall sign will be of matching materials and illumination.

RECOMMENDATIONS:

Staff has reviewed the signs and is generally supportive of the design concept. Staff has the following recommendation to improve the sign package:

Projecting Wall Sign

1) **Connection to wall:** Any support structure for the signage should utilize materials consistent with the Spanish architecture of the building. Staff recommends a black wrought iron rods and appropriate fasteners be used for support of the projecting sign and tie the sign in with the Spanish style of the building.

CONCLUSION

The applicant has simplified the sign design and removed the use of neon for illumination. Staff supports the signage, and while of a modern and contemporary design, the signs will be unique and hand made for a handcrafted look. The use of cutout letters and colored glass with the internal illumination will give a unique look to the signs. Overall the signs will be made of high quality materials and will enhance the look of the site. Staff seeks the DRSC's comments and welcomes any additional recommendations.

Commissioner Darden stated she loves the materials, and she thinks this is important in bringing the structure design together. Though she still has some concerns, but that if the other Subcommittee members are supportive of the design, she would be as well.

Commissioner Kaupp stated that he is putting faith in the architect's vision and design abilities. He stated that he had been struggling with the juxtaposition of the addition with the design they are proposing, which can be interesting, or miss. But after hearing the architect's thought process and design method he is willing to support the project and allow it to move forward. He states the textures and materials will help the project.

Commissioner Crandell stated that this is a fun project and exercise. Will it impact the historic structure? Not any more than the original building, and with the increased landscaping in the front that will help. It is not a style you see often, so there is no precedence, but thinks it will look good when it's done.

Commissioner Kaupp asked the architect if they would bring in a Landscape Architect.

Ms, Aguilera said yes. We want to get out the hardscape and get some landscaping and pervious surface.

Commissioner Kaupp stated this is a great project for a Landscape architect as it will be important to balance the architecture and landscaping. It is an interesting project to work on.

C. Discretionary Sign Permit 13-082, North Beach Rooftop Bar and Grill (Nicholas)

A request to review the revised sign package for the North Beach Roof Top Grill project located at 1509 North El Camino Real.

Associate Planner Sean Nicholas presented the staff report.

Commissioner Kaupp asked about the proposed internal illumination of the signage and whether that was permitted in the Architectural Overlay.

Mr. Nicholas stated that it was not, and something else would need to be utilized.

The applicant, Dave Gutierrez, stated that he is ok with a few different lighting styles. In particular utilizing stand off painted metal letters and halo illuminated. Mr. Gutierrez stated that he wanted bring back a

simplified design that went away from the Route 66 look that they had previously submitted. He feels that the signs are now more reflective of the establishment they are trying to create.

Commissioner Darden expressed support of the halo lit illumination, and that she states the metal case with a finish with an organic, rustic, earthy, is essential to the design to fit with the architecture. Commissioner Darden also stated that she agreed with staff that the projecting sign poles should be solid wrought iron. Design of the wrought iron will be important as well.

City Planner Pechous stated that design choices of the wrought iron, as well as the connection to the building will aid with the overall compatibility between the Spanish building and signs.

Commissioner Crandell asked what "handmade" meant?

Commissioner Kaupp said it is difficult to define, similar to the idea of "Village Character, "but you know it when you see it.

Commissioner Darden stated that to her it means that it doesn't have a manufactured and mass produced quality to it. The materials are so important. That is why the finish on this metal is so important.

Mr. Pechous offered the idea of "craftsmen made," that it is a unique piece.

Commissioner Kaupp stated he is looking forward to the new codes and updated language as a result of the General Plan update. This will help to address these difficult issues and provide better tools that will help the review process.

to address these difficult tools to clarify these sensitive issues.

He also states that he agrees with Commissioner Darden that the images do look "cold" in their design, and the finish Ms. Darden recommended will help a lot.

The applicant also suggested to improve the overall look of the project that the base of the monument sign be painted to match the sign rather than the building.

DRSC all agreed that would look best so it was not floating on top of the base.

Commissioner Crandell agreed with everything that has been said and allowing staff to finalize the materials details.

Commissioner Kaupp asked if it was possible that Redmond Schwartz be consulted on the design. Staff indicated that they would see what could be done.

3. **ORAL AND WRITTEN COMMUNICATIONS**

None.

4. **ADJOURNMENT**

Adjourn to the Design Review Subcommittee meeting of July 24, 2013 at 10:00 a.m. in Conference Room A, Community Development Department, 910 Calle Negocio, Suite 100, San Clemente, CA 92673.

Respectfully submitted,

_____
Michael Kaupp, Chair

Attest:

_____
Cliff Jones

ATTACHMENT 6

STAFF REPORT
SAN CLEMENTE PLANNING COMMISSION

Date: July 17, 2013

PLANNER: Sean Nicholas, Associate Planner

SUBJECT: **Conditional Use Permit 12-362/Cultural Heritage Permit 12-363/Discretionary Sign Permit 13-082/Minor Exception Permit 13-084/Outdoor Dining Permit 13-085, North Beach Rooftop Grill and Bar,** a request to consider a conversion of a one-story commercial building into a restaurant with an open roof top bar and grill with a full range of alcohol, live amplified music, an off-site parking agreement, parking waivers, and approve a new sign package. The project is located at 1509 North El Camino Real.

BACKGROUND

The applicant is proposing to convert a single-story commercial building into a restaurant with an open roof top bar. The project site is 5,432 square feet with a 2,975 square foot, single-story building constructed in 1948. The roof top facility is proposed to span the entire length of the building, resulting in 2,975 square feet of outdoor dining. The applicant is proposing to maintain the Spanish architecture and all proposed exterior modifications are consistent with this style.

On April 3, 2013, the Planning Commission reviewed the proposed request and took public testimony. The Planning Commission Staff Report and Minutes from the April 3rd meeting have been included as Attachment four (4). Following the close of the public hearing there were several issues that were discussed that the Planning Commission wanted additional information about before making a decision on the project. Those issues are:

1) Walking distance from on-street parking to the project site and how that compares to distances from other public parking lots.
2) Information about safety crossing North El Camino Real.
3) How much on-street parking is available?
4) Noise concerns associated with compatibility with adjacent uses and residents who live above and around the project site.
5) Potential measures that can be taken to reduce noise on the roof.
6) Allowed occupancy versus physical occupancy.
7) Whether the roof top facility is permitted by the code.
8) Signage, in particular concerns about the design and use of neon.

The applicant has provided additional information and staff has completed research and analysis to address the eight questions and issues raised at the April 3rd Planning Commission meeting.

On June 5, 2013, the applicant requested the item be continued to the June 19th Planning Commission meeting. On June 19, 2013, the applicant requested another continuance to July 17th to allow an opportunity for additional sound analysis to be completed as well as to give the applicant an opportunity to take revised signage back to Design Review Subcommittee for review. The applicant has revised their request for hours of alcohol and amplified sound/live entertainment, provided information about consistency with General Plan noise requirements, and revised their signage to remove the neon component and simplify the design.

PROJECT ANALYSIS

Parking

1) *Walking distance from on-street parking to the project site and how that compares to distances from other public parking lots.*

In trying to determine parking spaces to include in the parking analysis, staff reviewed walking distances from different parking locations to the project site. The farthest parking space on Los Molinos, and still within a 300 foot radius from the project site is a walking distance of 1,250 feet away following the most direct path in the public right-of-way, and not trespassing through private property. This is just under a quarter mile (1,320 feet). In comparison, the farthest parking space in the Pier Bowl parking lot to the Fisherman's is 1,100 feet walking distance. Due to the distance and infeasibility of people legally walking to the end of Los Molinos and utilizing the alley and rear entrance, staff has determined that it is unrealistic to consider the Los Molinos on-street parking spaces in the parking analysis, unless a parking or access easement is recorded between the applicant and the Elk's Lodge. If the Elk's Lodge parking is made legally accessible to cross, it would reduce the walking distance to 503 linear feet from the farthest parking space to the project site.

For the parking on the west side of El Camino Real, the farthest parking spot, within a 300 foot radius from the project site, is a 1,300 foot walking distance. Again this calculation follows the public right-of-way and crosswalk at El Camino Real and Los Molinos. Due to the distance staff also concluded the parking in this area should not be included in the survey of available public parking and the assessment of potential parking waivers for the site.

For the parking on the east side of El Camino Real, the farthest parking spot, within a 300 foot radius from the project site, is a 332 foot walking distance. This distance is small because the parking is located on the same side of the street as the proposed use and people only need to get on the sidewalk and walk to the project site. Due to the ease of access and proximity to the project site, staff is supportive of utilizing the parking spaces on the east side of El Camino Real for parking for approving waivers.

2) Information about safety crossing North El Camino Real.

Tom Frank, the City's Traffic Engineer, reviewed the safety issue for people parking on the west side of El Camino Real and crossing El Camino Real. It was his recommendation that the City should not encourage parking on the west side of El Camino Real unless a traffic circle or signal was installed at Avenida Florencia, which would cost approximately $300,000. The City Traffic Engineer's assessment further supports excluding this parking pool from the parking waiver assessment.

3) How much on-street parking is available?

During the public hearing, there were questions on how much on-street parking opportunities there are within 300 feet of the project site when red curbs, driveway cuts, and reasonable walking distance are accounted for. Through staff's analysis of site conditions discussed above, staff determined that functionally only on-street parking on the east side of El Camino Real works for parking for this site. Additionally, as discussed above in question one, because of the walking distance between access to the site and the parking on Los Molinos, it was unrealistic to assume people would walk that distance and legally access the facility. Taking all of this into account, staff field measured the curb space available for parking (excluding red curbs and curb cuts) and determined there are 17 on-street parking spaces on the east side of El Camino Real. Attachment five (5) is a detailed map showing the locations of on-street parking spaces.

Parking Waiver Analysis

Pursuant to the applicants parking survey, peak utilization for the area is 12:00 pm on a weekday. However, for on-street parking on the east side of North El Camino Real peak utilization occurs at 6:00 pm on a weekday with a total of six of the 17 on-street spaces occupied. This 35% utilization rate reflects the current on-street parking demand generated by the existing uses.

Consistent with traffic engineering industry standards, 85% utilization is the maximum occupancy that can occur without traffic impacts. An 85% utilization of 17 on-street spaces equals 15 spaces. This means nine parking spaces are available at peak utilization without exceeding the 85% threshold. Utilization of anymore than nine spaces would potentially impact traffic circulation. The applicant is requesting 12 parking waivers; however, based on the analysis above staff is recommending the maximum of nine waivers be granted.

Recommendation

Condition of approval 14D has been added which allows the applicant to increase the number of parking waivers by three (additional 15 seats) if a pedestrian access easement across the Elk's Lodge parking lot can be acquired. As noted above, if legal access is granted through the parking lot then the on-street parking within 300 feet of the project site on Los Molinos is within about a 500 foot walking distance. The Los Molinos area has an

additional 36 on-street parking spaces within 300 feet of the project site. At peak utilization, 12:00 pm on a weekday, 28 on-street parking spaces are occupied, which is a 78% utilization rate. There are three available spaces before the peak utilization is 31 parking spaces which is the 85% threshold, thus the additional on-street parking is available at peak period of use.

In addition to vehicle parking, the applicant has included one bike rack parking on-site consistent with the standards of the draft Bicycle and Pedestrian Master Plan to promote alternative modes of transportation to the restaurant. A condition of approval has been added so staff will review the design of the bike racks and ensure an appropriate amount of bicycle parking is provided.

Based on this parking occupancy analysis, the following represents staff's revised parking waiver recommendation, and total number of seats for the development:

Table 1:
Parking and Seat Calculation

Parking Spaces (Credited/Waived/Existing)	Number of Seats (Indoor and Outdoor)
7 parking space credit (based on least restrictive commercial/retail use)	35 indoor or outdoor seats
0 parking spaces (for restaurants with over 32 indoor seats permitted, 16 outdoor seats allowed by right)	16 outdoor seats
6 parking spaces from off-site parking agreement	30 indoor or outdoor seats
2 parking space waivers (through approval of MEP for change of use)	10 indoor or outdoor seats
7 parking space waivers (for outdoor seating)	35 outdoor seats
TOTALS	
Indoor/Outdoor seats	**75**
Outdoor seats only	**51**
Parking waivers	**9 (based on parking occupancy analysis)**
Additional potential waivers	**3 (15 outdoor seats, COA 14D)**

Staff has also included a condition of approval which requires a six month and one year review from the beginning of operations. This will allow the operator to begin operation and give the applicant more time to secure off-site parking and potentially access agreements with the Elks Lodge to reduce legal walking distances. At that time, staff can re-analyze the parking situation, work with the applicant to get a new parking survey, and provide recommendations to the Planning Commission at each review concerning the status of parking availability and the potential of additional parking waivers.

Noise

4) Noise concerns associated with compatibility with adjacent uses and residents who live above and around the project site.

Following the previous meeting, the applicant expanded the acoustical study to address some of the comments raised at the April 3rd meeting (Attachment 6). In particular, receptors were set surrounding the project site that measured ambient noise as well as the increase of noise due to sound occurring both indoors and outdoors at a decibel level of 93. Based on that analysis, the sound engineer stated that the primary noise recorded was the traffic on North El Camino Real. At times where there was "minimal traffic" on North El Camino Real every off-site receptor was found to be less than the threshold of the noise ordinance, with the exception of the entrance of the Elks Lodge when noise was produced on the roof where the noise ordinance threshold is exceeded by .4 decibels. Recommendations presented below will reduce decibels below the noise thresholds.

There were also concerns regarding the adjacent animal hospital use and impacts to animals that are boarded there. There were comments made that a dog can hear between six and ten times louder than humans. The acoustic engineer states, and staff verified from other sources, that dogs do not hear louder, but they do hear a higher range of sound. Since the use will not generate high frequency sound, impacts to the dogs will not be greater than the impacts to humans. At the animal hospital it was determined that the noise generated from indoor sound will be just below the allowed maximum for commercials uses. The decibel readings at the animal hospital when the noise originated from the roof were less than the levels when generated indoors due to the source of the noise being above the animal hospital and the way noise disperses.

There is also a concern because the project site is located in a "bowl" that residents above the site would be more impacted by the sound traveling upwards. The applicant has presented information regarding expected sound levels at the residences on Redondel and found that the potential sound levels will be approximately 44 decibels. This is based on a calculation of sound intensity of 93 decibels at the project site, not on an actual field sound reading. Since the last public hearing, staff has received letters in opposition to the project from residents of Redondel on the basis of noise. Additionally, at Mirador and Reposo, the sound level was slightly higher at the higher elevation compared to Mirador and Florencia, 51.7 decibels versus 48.9 decibels. Both are below the allowed sound limit as specified in the noise ordinance. The applicant's Acoustic Engineer will be at the meeting to address questions from the Planning Commission.

At the June 4th City Council meeting, it was discussed that the General Plan Noise Element was not amended for consistency when the Municipal Code Noise Ordinance was updated. The Noise Ordinance states that residential properties cannot have a measured sound level greater than 55 decibels (60 decibels for the residential portions of mixed-use projects) at the property line. The determination of a violation has to do with the amount of time the sound is greater than 55/60 decibels and by how much. Meaning the louder something is, the shorter amount of time it would need to occur for it to be a violation. The

7E 65

General Plan policy addressing restaurants/bars states that noise levels emanating from the facility cannot be discernible from ambient noise levels at a distance of 50 feet from the establishment. Due to this, the City Attorney has indicated when evaluating projects through the discretionary process, the applicant must show compliance with the General Plan policy. Once the use is established, the Municipal Code Noise Ordinance is effective in terms of determining noise violations.

The applicant's Acoustic Engineer has shown through the noise study provided as Attachment 6, that if the project is approved, operations can occur in compliance with the Municipal Code. The applicant has also submitted an additional supplemental noise study regarding compliance with the General Plan Policy 14.8.1. In that assessment (Attachment 7) the Acoustic Engineer states:

> *Our recent field sound tests show the ambient noise, which is dominated by El Camino Real traffic, is 71-72 dBA (to occasionally over 95 dBA), while the proposed restaurant, plus remaining ambient sound is estimated to be below 58 dBA at the property line and 52 dBA at 50 feet from the property line. When two sound levels (El Camino Real and proposed restaurant) are read by a sound level meter that are more than 12 dBA different, the level will be the same as that of the higher sound reading. Therefore, the restaurant sound is not measurable due to the presence of much higher El Camino Real traffic noise which dominates.*

Based on this analysis, staff's position is that the applicant has made a reasonable assessment of the projects compliance with the General Plan policy as they have shown through field tests that the ambient noise of El Camino Real is greater than the sound produced at the site as measured 50 feet away. This combined with the operational analysis showing compliance with the Municipal Code, staff is supportive of the request for live entertainment/amplified sound with the reduced hours of operation, conditions of approval, and sound studies that have been provided by the applicant's Acoustic Engineer.

Staff has also included a condition of approval which requires a six month and one year review from the beginning of operations. This will allow the operator to begin operation and allow staff an opportunity to evaluate the use and its operations. If additional restrictions or other modifications are needed to further regulate sound, this can be done during the review public hearing.

5) *Potential measures that can be taken to reduce noise on the roof*

The Acoustic Engineer gave recommendations regarding the roof top sound which included incorporating sound proofing materials on the south end of the building (adjacent to the Elks Lodge) to reduce the amount of sound that will bounce off that building. Additionally, temporary sound attenuating structures should be installed during periods of acoustic live entertainment (no drums) on the roof to reduce the amount of sound emanating behind the performers and reducing further the "rebound" sound off the Elks

building. The sound attenuating structure is meant to be temporary and removable when live entertainment is not occurring.

Staff has again reviewed and re-evaluated other establishments with outdoor patios, and especially those associated with live entertainment/amplified sound, and found almost all of those establishments are required to end use of the outdoor areas by 10:00 pm, including at the Casino under normal operating conditions. The Fisherman's is an exception which operates the patio until midnight on the bar side, but has no live entertainment/amplified sound. City facilities, such as the Beach Club and Community Center, must be cleaned up and closed by 11:00 pm, which results in most events ending by 10:00 pm. The basis for this requirement is to ensure compatibility with surrounding land uses and residents, to allow businesses to operate and hopefully be successful, but to be mindful of neighbors and avoid conflicts.

Staff discussed these issues with the applicant, and the applicant has requested the following hours of operation. Consistent with City facilities, staff is supportive of the use of the roof top portion and side courtyard outdoor patio from 7:00 am until 10:00 pm, with all patrons and staff (including all clean up) to be out of those areas by 11:00 pm. Consistent with other facilities, and to reduce potential conflict and compatibility issues with adjacent uses and residents, staff is supportive of only acoustic live entertainment, with no drum sets, to be utilized on the roof, with the exception that sound from television sets and low level background music are permitted, but no disc jockeys are permitted. All sound on the roof must be kept below 93 decibels, with no live entertainment, music, or televisions allowed to begin before 7:00 am. The front patio of the proposed restaurant is subject to the same regulations regarding amplified sound/live entertainment, but the applicant can continue to utilize the front patio for people until 12:00 am, when all amplified sounds, live entertainment, and the sale of alcohol will end indoors. The reason for allowing this to occur is so people have a place to smoke on-site without gathering in the back alley or on the side patio adjacent to the animal hospital. Located under the covered patio, which will help reduce noise dispersion, and keep people away from the boarded animals, staff's position is this is the best location on-site for smokers.

For inside noise, full amplified sound can be permitted until 12:00 am consistent with other facilities. Though to avoid impacts to surrounding residents and uses, after 10:00 pm all doors and windows must be kept shut. Additionally, has been done in other facilities, a vestibule shall be incorporated into the front entrance to avoid excessive noise leakage after 10:00 pm from people entering and exiting the facility.

As was discussed previously, the condition of approval requiring a six month and one year review will allow staff the ability to evaluate operation of the roof top portion of the business and the noise the facility generates and make recommendations regarding if additional live entertainment/amplified sound on the roof would or would not be appropriate.

Occupancy

6) Allowed occupancy versus physical occupancy

As has been done as part of the discretionary approval for multiple other facilities including: churches, restaurants, and the Casino building, parking is often the limiting factor for the number of posted occupants. In this situation, approval of the project would grant a total of 126 seats. The applicant has the ability to increase this number by entering into additional off-site parking agreements. Also, at the six month and one year review, updated parking surveys and additional agreements may make additional parking waivers a possibility as well. The maximum occupancy, regardless of how many parking agreements and waivers are granted, is 226 due to the fixture limitation of the restrooms. As noted at the public hearing, there are enforcement tools that City staff has available to monitor and regulate uses and ensure that they are not in violation of their approvals including: daily fines, legal action, and ultimately revocation of the entitlements for alcohol, live entertainment, and the parking waivers. Staff discussed this issue with the Code Compliance Division and they state that this is a manageable situation. Staff is supportive of moving forward with this phased seating approach as it is consistent with other facilities throughout the community.

Roof Top Facility

7) Whether the roof top facility is permitted by the code

A question was raised following the Planning Commission meeting as to whether or not the facilities proposed for the roof top is permitted by the Code. Municipal Code Section 17.40.030 states that, all uses shall be conducted within an enclosed space. Though the Architectural Overlay (Municipal Code Section 17.56.020) and the Outdoor Dining Permit (Municipal Code Section 17.28.205) recognize this issue, but identify the need for outdoor facilities such as this that promote the pedestrian environment characteristic of vibrant places and the village/pedestrian environment. Further the City has approved multiple facilities both in downtown and in other areas of the community where outdoor dining is occurring. For that reason, staff's position is that the facilities proposed associated with the roof top promote the outdoor pedestrian environment and thus supported by the Architectural Overlay and Outdoor Dining Permit code sections. Staff also reviewed these applicable Municipal Code sections with the City Attorney, and they agreed with staff's assessment.

Signage

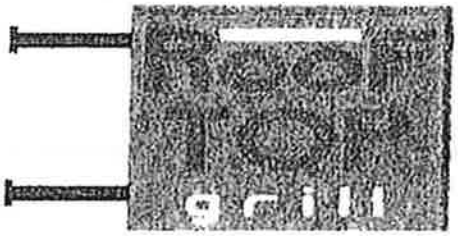
8) Signage, in particular concerns about the design and use of neon

The applicant has redesigned their sign package and has removed the use of neon as the method of illumination. The applicant has also scaled down the overall design of the signs, utilizing a more simple design. The applicant is proposing to use sheet metal outer shell with standoff metal letters in the colors noted on the plans, and will be halo illuminated.

The proposed materials appear more industrial than those that have typically been submitted in the Architectural Overlay. However, the signs will be handmade and will be unique for the site and in that way consistent with the Architectural Overlay standards.

Figure 1: Proposed Signage

Projecting Sign



Monument Sign

Rear Wall Mounted Sign

7E-69

DRSC reviewed the sign package on July 10th and requested the metal material for the sign box be finished to have an earthy, organic, rustic look that would allow for patina so the signs would seem older than they are. Additionally, DRSC was supportive of the pin mounted letters and the use of halo illumination. DRSC also stated they were supportive of the base of the monument sign being the same color as the sign, but be stucco to differentiate between the base and the sign face.

Staff has separated the Discretionary Sign Permit as a separate resolution if the Planning Commission wanted to approve the use, but allow additional time for further modifications to the sign package.

GENERAL PLAN CONSISTENCY

Table 4 summarizes how the proposed project is consistent with adopted policies outlined in the City of San Clemente General Plan:

Table 2:
General Plan Consistency

General Plan Policy	Consistency Finding
1.13.1 Accommodate neighborhood community and visitor serving commercial, mixed residential and commercial, and parking uses in accordance with Policies 1.12.1 through 1.12.4.	**Consistent.** This project will result in a vacant building establishing a new use and will provide for community and visitor serving commercial.
1.12.4 Encourage the development of outdoor dining and other similar uses which do not impede pedestrian use of the sidewalks	**Consistent.** Most of the seating for this project is outdoors and will create a unique dining environment in North Beach.
14.2.2 Require new commercial land uses to demonstrate that such new uses would not be directly responsible for causing ambient noise levels to exceed of 65 dB upon areas containing housing, schools, health care facilities, or other "noise sensitive" land uses.	**Consistent.** The Ambient noise of the area already exceeds 65 dB, and the project does not impact the ambient noise level as the sound level for the project was measured to be 52 dB at 50 feet from the project site where the ambient noise is approx. 71 dB.
14.8 Minimize the generation of excessive noise level impacts and/or spillover from entertainment and restaurant/bar establishments into adjacent residential or "noise sensitive" land uses.	**Consistent.** An Acoustical Engineer has provided documentation showing that the noise from the site will not increase ambient sound, and another acoustical study showing compliance with the requirements of the Municipal Code.

14.8.1 Require that noise levels emanating from entertainment and restaurant/bar uses not be discernible from ambient noise levels at a distance of fifty (50) feet from the establishment in which it is being conducted or within ten (10) feet of any dwelling unit (whichever is more restrictive).	**Consistent.** The applicant has provided a reasonable assessment of the ambient noise and that the project sound generation will be below that amount. This issue is discussed further in the noise portion of the Staff Report.
14.8.2 Require that entertainment and restaurant/bar uses take appropriate steps to control the activities of their patrons on-site, as well as within a reasonable and legally justified distance or proximity, to minimize potential noise-related impacts on adjacent residential neighborhoods.	**Consistent.** Standard conditions of approval have been included to regulate sound for the site, as well as restricting the type and time of live entertainment/amplified sound on-site. To ensure the operation does not negatively impact surrounding uses, staff has conditioned the project to require a 6 and 12 month review, at which time additional restrictions may be placed on the project if necessary.

ALTERNATIVES; IMPLICATIONS OF ALTERNATIVES

1. The Planning Commission can concur with staff and recommend approval of the proposed project.

   This action would result in the applicant being able to move forward with establishing a restaurant on the site with 75 indoor/outdoor seats and 51 outdoor seats, with a potential total of 126 outdoor seats on the roof until additional off-site parking agreements can be garnered, and/or an access easement is granted through the Elk's Lodge parking lot to open up reliable access to on-street parking on Los Molinos. This would limit the hours of operation on the roof top portion of the project including the types of live entertainment/amplified sound that can be conducted. This will also allow the applicant to have the sign package they have proposed.

2. The Planning Commission can, at its discretion, add, modify or delete provisions of the proposed project or conditions.

   The Planning Commission could determine that the sale of alcohol and/or acoustic live entertainment/amplified sound for the roof top portion of the restaurant can be extended beyond 10:00 pm or that it is not consistent or compatible with the surrounding uses and residents, and further restrict the use.

   The Planning Commission could also require the outdoor kitchen facility and/or the roof top bar to either be fully enclosed or removed if it is determined that it does not

add to the pedestrian environment consistent with the Architectural Overlay and Outdoor Dining provisions.

Planning Commission could continue the sign package to allow further discussion between the applicant and Design Review Subcommittee or require different signage, reduced signage, or no neon for the development.

The Planning Commission could also either support fewer or more parking waivers for outdoor seating. Either approving less or more waivers would impact the total seating for the restaurant and parking allowance for future uses.

3. The Planning Commission can recommend denial of the proposed project.

This action would result in the denial of the project and the applicant would not be able to move forward with the project. The applicant could appeal to the City Council.

CONCLUSION

The General Plan goal for North Beach is as an entertainment area of the community, and this project is consistent with those goals, as well as strengthens the pedestrian atmosphere. Also important is for new uses to fit in with the surrounding established commercial and residential uses. Similar to support of parking waivers on Avenida Del Mar when revitalization began, staff is supportive of parking waivers in this situation as well to promote improvements in the District. Based on further analysis of the reasonable use of on-street parking, and concerns about safety, functionality, and neighborhood fit, staff is recommending only counting the parking located on the east side of El Camino Real unless a pedestrian access easement is obtained which would make use of on-street parking on Los Molinos feasible. In regards to compatibility and fit, staff is supportive of the entertainment use of the project, with the added conditions of approval which limit hours and types of entertainment that can occur on the roof. Staff supports the signage, as it adds a unique and custom look to the building, and Design Review Subcommittee has reviewed the revised package, and with the comments addressed above, which have been added as conditions of approval, is supportive of the signage. Staff is supportive of the project overall as parking waivers are built into the Municipal Code to support revitalization, and the project, with the added conditions discussed in this staff report, is compatible with adjacent uses and residents, promotes the goals, objectives, and policies of the current General Plan and in the draft Centennial General Plan for the North Beach area.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission approve CUP 12-362/CHP 12-363/DSP 13-082/SEP 13-083/MEP 13-084/ODP 13-085, North Beach Rooftop Grill and Bar, subject to the attached Resolution and Conditions of Approval.

These minutes were amended and approved at the Planning Commission meeting of 08-07-13.

MINUTES OF THE ADJOURNED REGULAR MEETING OF THE CITY OF SAN CLEMENTE PLANNING COMMISSION

July 17, 2013 @ 6:00 p.m.
City Council Chambers
100 Avenida Presidio
San Clemente, CA 92672

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1. CALL TO ORDER

Chair Darden called the Adjourned Regular Meeting of the Planning Commission of the City of San Clemente to order at 6:00 p.m.

2. PLEDGE OF ALLEGIANCE

Commissioner Ward led the Pledge of Allegiance.

3. ROLL CALL

Commissioners Present:	Wayne Eggleston, Michael Kaupp, Jim Ruehlin and Kathleen Ward; Chair pro tem Barton Crandell, Vice Chair Donald Brown and Chair Julia Darden
Commissioners Absent:	None
Staff Present:	Jim Pechous, City Planner Jeff Hook, Principal Planner Sean Nicholas, Associate Planner Zachary Ponsen, Senior Civil Engineer Ajit Thind, Assistant City Attorney Eileen White, Recording Secretary

4. SPECIAL ORDERS OF BUSINESS- None

5. MINUTES

A. Minutes from the Planning Commission Adjourned Regular meeting of June 26, 2013

IT WAS MOVED BY VICE CHAIR BROWN, SECONDED BY COMMISSIONER KAUPP, AND CARRIED 5-0-2, WITH COMMISSIONER EGGLESTON AND COMMISSIONER WARD ABSTAINING, to receive and file the minutes of the Adjourned Regular Meeting of June 26, 2013, as submitted by staff.

7E-73

B. **Minutes from the Planning Commission Adjourned Regular meeting of July 3, 2013**

IT WAS MOVED BY COMMISSIONER KAUPP, SECONDED BY COMMISSIONER RUEHLIN, AND UNANIMOUSLY CARRIED to receive and file the minutes of the Adjourned Regular Meeting of July 3, 2013, as submitted by staff.

6. ORAL AND WRITTEN COMMUNICATION

Barry Baptiste, resident, announced that due to a recent legal decision on a civil lawsuit, he is now 99% owner of the company that controls the Miramar Theatre and speculated official documentation regarding ownership would be available soon; provided details of his family's association with the City of San Clemente; noted intent to start working with the City to plan the future of the Miramar Theatre site.

7. CONSENT CALENDAR - None

8. PUBLIC HEARING

A. **1509 North El Camino Real – Conditional Use Permit 12-362/Cultural Heritage Permit 12-363/Discretionary Sign Permit 13-082/Sign Exception Permit 13-083/Minor Exception Permit 13-084/Outdoor Dining Permit 13-085 – North Beach Rooftop Bar and Grill** (Nicholas) (continued from 06-19-13)

A request to consider a conversion of a one-story commercial building into a restaurant with an open roof top bar and grill with a full range of alcohol, live amplified music, an off-site parking agreement, parking waivers for outdoor seating, and approve a new sign package which exceeds the allowed total sign area for the site. The project is located at 1509 North El Camino Real within the C2/MU-3 zoning designation. The legal description is Lot 9, of Block 2, of Tract 795, Assessor's Parcel Number 057-170-31.

For the record, Commissioner Ward, Commissioner Eggleston, and Vice Chair Brown individually stated that although they were not present at the previous meeting when this project was first considered, they have watched video of the meeting and read the minutes.

Sean Nicholas, Associate Planner, narrated a PowerPoint Presentation entitled, North Beach Rooftop Bar and Grill, CUP 12-362/CHP 12-363/DSP 13-082/MEP 13-084/ODP 13-085, dated July 17, 2013." Staff recommended approval of the request subject to conditions. In response to questions, Mr. Nicholas described calculations used in the parking analysis; clarified that only parking spaces on the same side of the street

as the project were counted as available spaces for safety reasons; discussed conditions added to reduce noise impacts from the outdoor patio areas to adjacent uses including 10:00 p.m. closure, only non-amplified music, prohibition of drum sets, etc; advised that maximum capacity of project, both inside and outdoor dining, is 226 persons based on the number of bathroom fixtures; displayed proposed outdoor signage materials. He noted the project is conditioned that the applicant provide the shared parking agreements and obtain all necessary approvals before commencing business.

David Gutierrez, applicant, thanked staff with their assistance with his application and congratulated new and returning Commissioners for their appointments. He distributed a booklet to the Commissioners with illustrations of existing and proposed architectural elements, exterior elevations, and floor plans, as well as a zoning map, facility comparison listing, restaurant proposal, sound analysis results, and revised signage. He expressed disappointment that staff was unable to display his presentation because it was not submitted in advance of the deadline. He reviewed changes made to the project in response to Design Review Subcommittee input; advised Code Enforcement reported to him that there have been no sound violations on commercial buildings; listed closing times for several similar uses in the community including The Casino, Casa Romantica, Community Center, etc; compared the proposed restaurant ambiance with a casual backyard dinner party; noted the restaurant, which does not yet have a contracted operator, will be certified green and offer small artisan plates currently not offered within the City. He advised many perspective tenants are afraid of the City's CUP process, but a handful have said they will consider it if the CUP is awarded. With regard to the City's proposal to prohibit drums, he speculated that may be illegal, but cannot verify it at this time. In response to questions, he noted the owner of Bull Taco has indicated he may be willing to share parking spaces if this project is approved; advised his ADA consultant has advised him that no ADA parking is required on site because no parking at all is required on site due to parking credits from previous use.

In response to questions about the sound study, the applicant's sound engineer, noted the testing took place at 1:00 p.m., and adjacent business owners/residents were not informed in advance that sound testing would be taking place. He advised that other existing restaurants in town were tested during the evening and none were in compliance with City limits when tested. He noted that testing was not performed to determine the level of noise that would be generated with up to 126 people on the rooftop, in combination with noise generated from music playing both on the rooftop and in the restaurant, and sound from the patios. He believes traffic noise generated at 1:00 p.m. would be similar to traffic noise generated at 10:00 p.m.; noted loudest noise comes from trucks and motorcycles on the road; advised he would locate the musician or sound

generator in the northeast corner in order to have the least amount of impact on adjacent uses; described locations of the sound testing equipment and proposed locations of sound proofing materials.

Chair Darden opened the public hearing.

Written Communications:

Prior to this public hearing, 23 emails were received from members of the public; the emails were forwarded to the Planning Commission for their consideration.

Public Testimony:

Debbie Ferrari, resident, opposed loud noise creating negative impacts as she lives across the street from the project; requested sound testing performed in the evening when residents are home; asked for information regarding access for handicapped customers.

Bill Koelzer, resident, questioned whether the sound testing performed was adequate to accurately portray real life experiences. He noted a loud motorcycle can be heard for 5 blocks; advised that although a party at the Ole Hanson Beach Club only measures at 65 decibels, it can be very annoying for adjacent residents; noted yelling and loud laughter from a large group can easily exceed sound decibel limits.

William Conroy, resident, opposed the proposed project as it will negatively impact his quality of life as a North Beach resident; requested the Commission follow the City's Mission Statement and preserve and enhance the City's village atmosphere; asked the Commissioners to put themselves in North Beach residents' places and consider whether they would want this use in their own neighborhoods.

Don Slater, Arcadia resident and member of the North Beach Community Association, spoke as a private resident. He is able to tune out sound coming from the Beach Club and Casino, and believes the lively atmosphere is part of the ambiance at North Beach. He requested the Commission ensure that there is adequate parking for the use, and commented that the proposed restaurant will provide jobs for young people and entertainment for others. He believes the rooftop bar will provide visibility to enable the restaurant to survive.

Cole Mobley, resident, currently books entertainment for weekend nights for Zona's Restaurant in San Clemente. He has performed noise studies for Nicks and Beach Fire restaurants and noted most of the sound coming from the open air front does not travel beyond the mid 70's decibels range, which is quieter than the noise in the street. He described soundproofing methods they use to ensure sound does not travel from

Zona's, and noted that his restaurant closes at 11:30 p.m. 24 feet away from the restaurant, the noise from the parking lot, cinema, and other uses combined is louder than the music being generated by his restaurant.

Dr. Amin, resident, noted that he found the loud sound generated during the sound testing very disturbing and annoying and felt relief when it ended. He noted sound for dogs is 6 to 10 times louder than it is for humans, and that fireworks-associated noise can affect their systems, make them nervous, and cause heart attacks for up to a week afterwards. In addition to boarding healthy animals, they board sick, recovering from surgery, and medicated animals everyday, who will likely have problems with recovery if unable to rest due to noise impacts. He advised this is the first animal hospital in San Clemente, and it has been operating continuously for over 50 years.

Mary Jo Stackhouse, resident, lives in nearby condos. She has concerns about lack of parking in the area in addition to the noise generated by the proposed use. She recounted a recent gathering at the rooftop deck at the condo complex and noted many of her neighbors were disturbed when an off-color word was shouted from the top of the deck. Sound is louder and travels farther from rooftop decks. She often hears events at the Elks Club, which are usually over by 9:00 p.m. and do not occur every night. She is also concerned about noise from people as they walk along the street.

Chair Darden closed the public hearing.

During the ensuing discussion, the Commissioners, either individually or in agreement, provided the following commentary:

- Supported a restaurant as a good use for this site, but questioned the intensity proposed.
- Questioned whether rooftop machinery, including the kitchen hood and mechanical equipment, may use up a sizable amount of the rooftop space.
- Agreed that outdoor dining contributed to the vibrancy of Downtown, but questioned whether a rooftop bar, when it is located on the second story, would make the same type of contribution to North Beach.
- Established from staff that Redmond, Swartz, Mark and Associates no longer have a contract with the City to provide opinions on signage.
- Expressed reluctance to approve a project with so many hypothetical situations and unknowns.
- Expressed concern that the project will result in safety issues for both drivers and pedestrians due to the existing blind curve if

patrons elect to park on the other side of El Camino Real and jaywalk to the site.

- Expressed concern that this one use will use up all excess parking in the area and prevent other uses from being established.
- Expressed concern about noise from individual and/or combined raised voices which may be more intrusive than noise generated from musical instruments.
- Expressed concern that the sound studies were performed at 1:00 in the afternoon without notification to existing businesses/residents in the area.
- Noted if inside music is allowed, the building should be required to have dual paned windows that should be required to remain closed at all times music is playing.
- Expressed concern regarding negative impacts on animals in the adjacent animal hospital which has been in this location for over 50 years.
- Questioned some of the closing times listed on Mr. Gutierrez's comparison chart; noted the venues are required to close earlier than Mr. Gutierrez indicated.
- Suggested review after 3 months, in lieu improvements in exchange for the parking waivers, and/or lower decibel limits from 93 to 80 as potential mitigations that might help the project be approved.
- Expressed concern that early morning televised sporting events on the rooftop would be too intrusive for nearby residents.
- Suggested the applicant consider accepting a denial without prejudice, or tabling of project in lieu of outright denial of the project to allow time for him to work out unresolved issues such as need for ADA parking, rooftop equipment location, confirmed parking waivers, additional noise studies with advance notice to adjacent residents and businesses, etc.
- Questioned the results from the noise study indicating no noise impacts as they are not in line with real life experiences of noise impacts generated by parties, events, etc.
- Approved the Discretionary Sign Permit as proposed by the applicant.

Mr. Gutierrez commented that he preferred the Commission take action on the project this evening rather than continue or table it.

IT WAS MOVED BY COMMISSIONER KAUPP SECONDED BY CHAIR PRO TEM CRANDELL, AND UNANIMOUSLY CARRIED TO DIRECT STAFF TO WRITE A RESOLUTION FOR DENIAL OF THE PROJECT WITHOUT PREJUDICE.

IT WAS MOVED BY COMMISSIONER RUEHLIN, SECONDED BY VICE CHAIR BROWN AND UNANIMOUSLY CARRIED TO CONTINUE 1509

NORTH EL CAMINO REAL – CONDITIONAL USE PERMIT 12-362/CULTURAL HERITAGE PERMIT 12-363/MINOR EXCEPTION PERMIT 13-084/OUTDOOR DINING PERMIT 13-085 – NORTH BEACH ROOFTOP BAR AND GRILL TO THE MEETING OF JULY 24, 2013, TO ALLOW STAFF TO BRING BACK RESOLUTION FOR DENIAL WITHOUT PREJUDICE.

[ITEM CONTINUED. PLANNING COMMISSION DECISION PENDING.]

IT WAS MOVED BY COMMISSIONER KAUPP, SECONDED BY VICE CHAIR BROWN, AND UNANIMOUSLY CARRIED TO ADOPT RESOLUTION NO. PC 13-017, A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING DISCRETIONARY SIGN PERMIT (DSP) 13-082 NORTH BEACH ROOFTOP GRILL AND BAR, A REQUEST FOR NEW SIGNAGE ASSOCIATED WITH A NEW RESTAURANT AND BAR LOCATED AT 1509 NORTH EL CAMINO REAL.

[DECISION FINAL. SUBJECT TO APPEAL OR CALL UP BY COUNCIL]

B. **Public Hearing Draft Centennial General Plan** (Hook) (continued from 07-10-13)

Continued consideration of unresolved draft General Plan policy issues and the Draft Environmental Impact Report.

Jeff Hook, Principal Planner, briefly reviewed the staff report, requested the Commission provide input on unresolved issues/revised glossary items as identified in Table 1-Unresolved Issues/Remaining Changes.

Following discussion, the Commissioners provided direction as follows:

1. City Hall site – staff revision accepted with revision to change "Civic" (CVC) to "Residential, Medium-Density with Affordable Housing Overlay" (RM-AH).
2. New rental car businesses – Commissioners elected to allow new car rental businesses on El Camino Real if the new business is limited to an office use and with a limit of five (5) rental cars on site at any time.
3. Calle Lago site – staff recommendation accepted to allow the subject property to be revised to Light Industrial (LI) with a mixed use overlay.
4. Definitions of "Minor Remodel" and "Major Remodel" – staff revisions accepted.
5. Definitions of "View Corridor" and "Scenic Corridor" – staff revisions accepted with revision to second sentence: replace "enhancement and protection of public views" with "enhancement of public views"

ME-79

STAFF REPORT
SAN CLEMENTE PLANNING COMMISSION

Date: August 7, 2013

PLANNER: Sean Nicholas, Associate Planner

SUBJECT: **Conditional Use Permit 12-362/Cultural Heritage Permit 12-363/Minor Exception Permit 13-084/Outdoor Dining Permit 13-085, North Beach Rooftop Grill and Bar**, a request to consider a conversion of a one-story commercial building into a restaurant with an open roof top bar and grill with a full range of alcohol, live amplified music, an off-site parking agreement, and parking waivers. The project is located at 1509 North El Camino Real.

BACKGROUND

The applicant is proposing to convert a single-story commercial building into a restaurant with an open roof top bar. The project site is 5,432 square feet with a 2,975 square foot, single-story building constructed in 1948. The roof top facility is proposed to span the entire length of the building, resulting in 2,975 square feet of outdoor dining. The applicant is proposing to maintain the Spanish architecture and all proposed exterior modifications are consistent with this style.

On July 17, 2013, the Planning Commission directed staff to prepare a denial without prejudice resolution for the Conditional Use Permit, Cultural Heritage Permit, Minor Exception Permit, and Outdoor Dining Permit associated with the North Beach Rooftop Grill and Bar. Attachment one is the denial resolution based on the discussion and findings made by the Planning Commission.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission adopt the Resolution for denial without prejudice for CUP 12-362/CHP 12-363/MEP 13-084/ODP 13-085, North Beach Rooftop Grill and Bar.

These minutes were amended and approved at the Planning Commission meeting of 08-21-13.

MINUTES OF THE ADJOURNED REGULAR MEETING OF THE CITY OF SAN CLEMENTE PLANNING COMMISSION

August 7, 2013 @ 6:00 p.m.
City Council Chambers
100 Avenida Presidio
San Clemente, CA 92672

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1. CALL TO ORDER

Chair Darden called the Regular Meeting of the Planning Commission of the City of San Clemente to order at 6:01 p.m.

2. PLEDGE OF ALLEGIANCE

Commissioner Kaupp led the Pledge of Allegiance.

3. ROLL CALL

Commissioners Present:	Wayne Eggleston, Michael Kaupp, Jim Ruehlin and Kathleen Ward; Chair pro tem Barton Crandell, Vice Chair Donald Brown and Chair Julia Darden
Commissioners Absent:	None
Staff Present:	Jim Pechous, City Planner Jeff Hook, Principal Planner Sean Nicholas, Associate Planner Thomas Frank, Transportation Engineering Manager Ajit Thind, Assistant City Attorney Eileen White, Recording Secretary

4. SPECIAL ORDERS OF BUSINESS- None

5. MINUTES

A. Minutes from the Planning Commission Adjourned Regular meeting of July 10, 2013

IT WAS MOVED BY VICE CHAIR BROWN, SECONDED BY COMMISSIONER RUEHLIN, AND UNANIMOUSLY CARRIED to receive and file the minutes of the Adjourned Regular Meeting of July 10, 2013, with the following revision:

Page 4, second paragraph, replace "Commissioner Kaupp" with "Commissioner Brown"

B. **Minutes from the Planning Commission Adjourned Regular meeting of July 17, 2013**

IT WAS MOVED BY COMMISSIONER KAUPP, SECONDED BY CHAIR PRO TEM CRANDELL, AND UNANIMOUSLY CARRIED to receive and file the minutes of the Adjourned Regular Meeting of July 17, 2013, with the following revision:

Page 8, second paragraph from end of page, strike in its entirety "especially with regard...concerns."

C. **Minutes from the Planning Commission Adjourned Regular meeting of July 24, 2013**

IT WAS MOVED BY COMMISSIONER KAUPP, SECONDED BY COMMISSIONER RUEHLIN, AND UNANIMOUSLY CARRIED to receive and file the minutes of the Adjourned Regular Meeting of July 24, 2013, with the following revisions:

Page 6, last paragraph, replace "and carried...opposed" with "and carried 5-0-2, with Commissioner Eggleston and Commissioner Ward abstaining,"

Page 7, 9th paragraph, replace "uses for ...property" with "mitigation to prevent the property from becoming derelict."

Page 8, 2nd paragraph, insert "Hook" between "Mr." and "announced"

6. **ORAL AND WRITTEN COMMUNICATION**

Jeff Hook, Principal Planner, announced receipt of a letter with attachments, dated July 24, 2013, from The Loftin Firm LLP, Attorneys at Law, 5760 Fleet Street, Suite 110, Carlsbad, CA 92008, representing Capistrano Shores Mobile Home Park property owners, citing objections and recommended language changes to the General Plan. He recommended the Commission acknowledge receipt of the letter and attachments, which will become part of the public record. He added that the City does not believe the recommended changes are warranted and is not recommended the Commission make revisions to the General Plan in response. Staff is preparing a formal response to the letter.

7. **CONSENT CALENDAR** - None

8. **PUBLIC HEARING**

A. **1509 North El Camino Real – Conditional Use Permit 12-362/Cultural Heritage Permit 12-363/Minor Exception Permit 13-084/Outdoor**

Dining Permit 13-085 – North Beach Rooftop Bar and Grill (Nicholas) (continued from 07-24-13)

A request to consider a conversion of a one-story commercial building into a restaurant with an open roof top bar and grill with a full range of alcohol, live amplified music, an off-site parking agreement, and parking waivers for outdoor seating. The project is located at 1509 North El Camino Real within the C2/MU-3 zoning designation. The legal description is Lot 9, of Block 2, of Tract 795, Assessor's Parcel Number 057-170-31.

Sean Nicholas, Associate Planner, advised staff has prepared a resolution for denial of the project without prejudice in response to direction from the Commission at their July 17, 2013, meeting. Staff recommended the Commission adopt the resolution for denial without prejudice.

In response to a comment from Commissioner Eggleston, Associate Planner Nicholas explained that when staff reviewed the project as proposed it was interpreted by staff as being in compliance with the City's Codes. Staff found the rooftop dining as a component of the project which contributes to the pedestrian atmosphere and recommended approval. The Planning Commission, at its discretion, decided that the rooftop portion of the project was not an ancillary use, found the project not to be in compliance with the City's Codes, and staff used the Planning Commission's discussion at the previous meeting for the findings to deny the project.

Jim Pechous, City Planner, noted that many issues were not readily apparent at the onset of the public hearing process which was brought to light during public testimony and Commission discussion, which is part of the public hearing process. The information provided by the public lead to additional analysis and revisions to the project recommendations. In the end the Planning Commission did not support the project based on the information.

In regard to Commissioner Eggleston's concern regarding staff's representation of the outdoor dining section of the code, Commissioner Crandell expressed he did not think staff mislead the Commission and that the section of the code on outdoor dining is ambiguous.

Chair Darden opened the public hearing.

Paul Falk, resident, endorsed the Commission's decision to deny the project and commented that he believes the Commission did the applicant a service by denying the project because, as conditioned with so many necessary constraints, it would be difficult for the project to be successful. He questioned why concerns about the project were not shared with the applicant at the counter, saving much staff time, applicant effort, and funds. He commended Commissioner Kaupp and other Commissioners

for denying the project because they themselves would not want to live next door to it. This shows astute decision making abilities and wisdom.

Chair Darden closed the public hearing.

Jim Pechous, City Planner, advised that while staff was reviewing the project, they looked at General Plan goals and the City's intent to revitalize North Beach coupled with blight and high vacancy rates in the area. With that in mind, staff supported the initial application. The public testimony that came out during the review process shed a different light on the project. Staff went back and provided more detailed information for the Commissions consideration. The Commission took the additional information, applied City Codes using the additional information, and elected to deny the project.

IT WAS MOVED BY VICE CHAIR BROWN, SECONDED BY COMMISSIONER EGGLESTON, AND UNANIMOUSLY CARRIED TO ADOPT RESOLUTION NO. PC 13-016, A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN CLEMENTE, CALIFORNIA, DENYING WITHOUT PREJUDICE CONDITIONAL USE PERMIT (CUP) 12-362, CULTURAL HERITAGE PERMIT (CHP) 12-363, MINOR EXCEPTION PERMIT (MEP) 13-084, AND OUTDOOR DINING PERMIT (ODP) 13-085, NORTH BEACH ROOFTOP GRILL AND BAR, A REQUEST TO CONVERT A ONE-STORY COMMERCIAL BUILDING INTO A RESTAURANT WITH OPEN ROOF TOP DINING, FULL RANG OF ALCOHOL SERVICE, AMPLIFIED SOUND, LIVE ENTERTAINMENT, OFF-SITE PARKING AGREEMENT, AND PARKING WAIVERS LOCATED AT 1509 NORTH EL CAMINO REAL, with the following revision:

Page 3, last paragraph, replace "outdoor dining area" with "rooftop outdoor dining area as proposed"

[DECISION FINAL. SUBJECT TO APPEAL OR CALL UP BY COUNCIL]

B. <u>Public Hearing Draft Centennial General Plan</u> (Hook)

At this meeting, the Commission is expected to complete its review of 1) the Draft Environmental Impact Report (DEIR) for the Centennial General Plan, 2) the City Council Hearing Draft Centennial General Plan, 3) the Draft Strategic Implementation Program and 4) other General Plan-related documents. Based on its review, the Commission may adopt a resolution recommending City Council action on the Draft Centennial General Plan and Draft Environmental Impact Report, Draft Bicycle and Pedestrian Master Plan and the Draft Climate Action Plan.

The Draft Centennial General Plan was prepared by the City's consultant, The Planning Center DC&E, with extensive input received during over 60

AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: October 1, 2013

City Manager _____
Dept. Head _____
Attorney _____
Finance _____

Department: Community Development/Planning Division
Prepared By: Sean Nicholas, Associate Planner

Subject: ***CONDITIONAL USE PERMIT 12-362, CULTURAL HERITAGE PERMIT 12-363, DISCRETIONARY SIGN PERMIT 13-082, MINOR EXCEPTION PERMIT 13-084, OUTDOOR DINING PERMIT 13-085, NORTH BEACH ROOFTOP GRILL AND BAR.***

Fiscal Impact: If approved the City can expect to see increased sales tax from the restaurant use which will benefit the General Fund. If denied there would be no fiscal impact as the site has been vacant for a number of years.

Summary: The North Beach Rooftop Grill and Bar project is before the City Council because the applicant appealed the Planning Commission denial of the project. The project includes a request to convert a one-story commercial building into a restaurant with an open roof top bar and grill with a full range of alcohol, live amplified music, an off-site parking agreement, parking waivers and new signage. The project is located at 1509 North El Camino Real.

Background: This is an appeal of a Planning Commission denial of a proposal to develop a new restaurant with 75 indoor seats and 51 outdoor seats including: a roof top dining and bar facility, live/amplified sound indoors and live sound outdoors, off-site parking agreement (for six (6) parking spaces), parking waivers (for nine (9) parking spaces), and signage. Documentation for the off-site parking agreement has not been provided.

The applicant has been working to create a new use for the site as it has been vacant for some time. The Planning Commission denied the expanded restaurant use unanimously on August 7, 2013 primarily due to noise concerns, the lack of convenient and safe parking, and the amount of outdoor dining (especially on the roof). The Planning Commission approved the Discretionary Sign Permit on July 17, 2013 because the sign component met the required findings. The applicant appealed the Commission's denial to the City Council requesting that Council approve the proposed restaurant as presented to Planning Commission on July 17, 2013. City Council called up the approved sign package so the entire project will be reviewed together.

Discussion: Detailed analyses of the various components of the project, are provided in the Planning Commission staff reports (attachments five (5), seven (7), and eight (8)). The minutes for each of those meetings have been included after the respective st[illegible] report for City Council review.

On August 7, 2013, the Planning Commission adopted a resolution of denial without prejudice, based on discussion and findings made at the July 17, 2013 Planning Commission meeting. The primary components of the denial are noise concerns, a lack of physical parking, and the amount of outdoor seating, especially on the roof.

The applicant has submitted a letter, Attachment 9, which discusses their basis for the appeal. The applicant believes that the Planning Commission acted incorrectly in their denial. The main components of the letter highlight the applicant's belief that the project meets the findings of the General Plan and Municipal Code, and feels that denial of the project was not based on facts.

Staff received several letters regarding the project, which have been included as Attachment 13. The Planning Commission also received public input from surrounding property and business owners. Most letters and speakers were not in support of the project, but there were some residents and letters from other business owners in the community that were supportive of the restaurant use.

The Planning Commission indicated they may be supportive of a restaurant at the site if the applicant established parking agreements and the roof top dining was removed. Some of the Commissioners indicated potential support of the roof top component if it was scaled back. If the City Council were to uphold the Planning Commission denial without prejudice the applicant can reapply with a similar project but with modifications and does not need to wait a year pursuant to Municipal Code Section 17.12.170.

The signage proposed includes a 64 square foot projecting sign, a 10 square foot monument sign (per sign face) located in the front planter area, and a seven square foot wall mounted sign on the back of the building. Signs are shown in color on the Planning Commission Staff Report of July 17, 2013 (attachment 7) and are in the project plans provided. The Planning Commission approved the sign package because it meets the requirements of the Municipal Code and is consistent with the Design Guidelines. Part of the rationale for approving the signs despite denying the other aspects of the application is the applicant can, by right, establish a restaurant on the site with limited scope (no live/amplified music, no alcohol, and 35 indoor seats and 16 outdoor seats). The signage is submitted as a separate Resolution for City Council action should they want to approve the signage for the building without approving the expanded restaurant uses.

Recommended Action:

1) PLANNING COMMISSION RECOMMENDS THAT the City Council deny without prejudice the Conditional Use Permit, Cultural Heritage Permit, Minor Exception Permit, and Outdoor Dining Permit associated with the North Beach Rooftop Grill and Bar.

2) PLANNING COMMISSION RECOMMENDS THAT the City Council approve a Discretionary Sign Permit for new signage for the project site.

Notification: Notification of the public hearing was completed in accordance with both State Law and Municipal Code Requirements.

7E-86

ITEMS REMOVED FROM THE CONSENT CALENDAR FOR DISCUSSION

B(2). **Zoning Administrator Regular Meeting Minutes of September 18, 2013**

Council referenced the portion of the Zoning Administrator Regular Meeting Minutes of September 18, 2013 that related to San Clemente Sports Hall of Fame Tiles; requested that the Applicant's name on the minutes be corrected to reflect Tom Wicks and to include the organization he represented, i.e., either the Friends of the Beaches, Parks, and Recreation Foundation or the Beaches, Parks, and Recreation Commission.

With regard to the portion of the minutes relating to Nomad's Canteen, Council requested and received clarification relative to Condition No. 15 (relating to age restrictions for admission to Nomad's special events). Staff agreed to provide Council with a memo that further explains the subject issue. Additionally, Council requested that all persons who have expressed noise concerns with regard to Nomad's special events be provided with a calendar of events.

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER EVERT, CARRIED 5-0, to receive and file the Zoning Administrator Regular Meeting Minutes of September 18, 2013, with the understanding that the spelling of Tom Wicks' name will be corrected and that the minutes will be expanded to reflect the organization that Mr. Wicks represented.

7. PUBLIC HEARINGS

A. **North Beach Rooftop Grill and Bar – 1509 N. El Camino Real – Conditional Use Permit 12-362/Cultural Heritage Permit 12-363/Discretionary Sign Permit 13-082/Minor Exception Permit 13-084/Outdoor Dining Permit 13-085**

Public Hearing to consider an appeal of a Planning Commission denial of a conversion of a one-story commercial building into a restaurant with an open roof top bar and grill with a full range of alcohol, live and amplified music/sound, an off-site parking agreement, parking waivers for outdoor seating, and to consider approving a new sign package for the site. The project is located at 1509 North El Camino Real within the C2/MU-3 Zoning Designation. The legal description is Lot 9, of Block 2, of Tract 795, Assessor's Parcel Number 057-170-31.

City Attorney Goldfarb stated that the City received a letter from the Applicant on September 26, 2013 that suggested that the Elks Lodge might provide parking for the project; related that the letter from the Elks Lodge was equivocal and since parking for the project is a significant issue and part of the rationale behind the Planning Commission's decision to deny the project, Mr. Goldfarb advised that he sent a memo to Council recommending that the issue be deferred to allow time to obtain additional information concerning the letter; advised that staff has obtained the needed information and hence he is withdrawing his recommendation for deferral.

Council voiced concern with the magnitude of material that was provided to Council by the Applicant late yesterday, noting that sufficient time was not provided to enable the material to be reviewed.

Associate Planner Nicholas narrated a PowerPoint presentation entitled "North Beach Rooftop Bar and Grill"; stated that the City received a letter from the Elks Lodge today indicating that it does not support the project and will not be entering into a parking agreement with the Applicant; responded to Council inquiries.

Dave Gutierrez, Applicant, Rooftop Grill and Bar, narrated a PowerPoint presentation entitled "The Start of North Beach Pedestrian Village"; stated that the Elks Lodge provided a letter in June 2013 that offered off-site parking for the project; stated that he was in attendance at the Board meeting at which the parking offer was authorized; advised that he received a letter today that indicates that the parking offer is being rescinded; conveyed his intent to resolve the issue and pointed out that proposed Condition 14(c) allows the Applicant, until the time the restaurant is opened, to obtain an off-site parking arrangement; responded to Council inquiries. A hard copy of Mr. Gutierrez's PowerPoint is on file with the City Clerk.

Mayor Baker opened the Public Hearing.

Harold Book, Secretary, Elks Lodge, asserted that the June 24, 2013 letter relating to a possible off-site parking agreement was not approved by a majority of the Elks Lodge Board and consequently should be disregarded.

Steve Schwartz, San Clemente, spoke in favor of the project; expressed his desire to revitalize North Beach, adverting to the number of vacant properties in the area.

Cole Mobley, San Clemente, spoke in favor of the project; opined that most concerns relating to the project, especially those involving sound, can be managed to minimize complaints.

Miriam Slater, San Clemente, spoke in favor of the project and suggested that approval of the project will help revitalize North Beach.

Bill Koelzer, San Clemente, spoke in opposition to the project; distributed a photograph of a vehicle accident near the Avenida Animal Hospital; expressed concern that excessive noise could affect the adjacent veterinary clinic. A hard copy of the subject photograph is on file with the City Clerk.

Brad Malamud, San Clemente, spoke in favor of the project; opined that neither the Planning Commission, nor City Council, adequately cited any Code or Zoning regulation that justifies denying the project; encouraged Council to approve similar projects to foster the revitalization of North Beach.

Dave Walsh, San Clemente, spoke in opposition to the project; expressed concern relating to excessive noise; played an audio tape that was recorded 400' from a concert that took place at Bull Taco and compared it to the live entertainment proposed for the project.

There being no others desiring to speak to this issue, the Public Hearing was closed.

Council requested that the Applicant send future material to Associate Planner Nicholas for timely handling and distribution.

Following discussion, MOTION BY MAYOR PRO TEM BROWN, SECOND BY COUNCILMEMBER DONCHAK, CARRIED 4-1 (COUNCILMEMBER HAMM VOTING NOE), to re-open the Public Hearing and continue the Public Hearing to the Council Meeting of November 5, 2013. Staff is to respond to questions raised by Council in the Administrative Report for the November 5, 2013 Council Meeting.

B. **Introduction to the Draft Centennial General Plan, Draft Environmental Impact Report, Draft Bicycle and Pedestrian Master Plan, and Draft Climate Action Plan** (Continued from the Adjourned Regular Council Meeting of September 24, 2013)

Public Hearing concerning the Draft Centennial General Plan, Draft Environmental Impact Report, Draft Bicycle and Pedestrian Master Plan, and Draft Climate Action Plan.

City Clerk Baade announced that staff is requesting that the Public Hearing on this item be continued to a date to be determined by Council.

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER EVERT, CARRIED 5-0, to continue the Public Hearing to an Adjourned Regular Council Meeting to be held on October 8, 2013 at 5:00 p.m. in the City Hall Council Chambers.

AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: November 5, 2013

City Manager _____
Dept. Head _____
Attorney ____
Finance _____

Department: Community Development (Planning Division)
Prepared By: Sean Nicholas, Associate Planner

Subject: ***CONDITIONAL USE PERMIT 12-362, CULTURAL HERITAGE PERMIT 12-363, DISCRETIONARY SIGN PERMIT 13-082, MINOR EXCEPTION PERMIT 13-084, OUTDOOR DINING PERMIT 13-085, NORTH BEACH ROOFTOP GRILL AND BAR.***

Fiscal Impact: If approved the City can expect to see increased sales tax from the restaurant use which will benefit the General Fund. If denied there would be no fiscal impact as the site has been vacant for a number of years.

Summary: At the October 1, 2013 City Council meeting, the North Beach Rooftop Grill and Bar was presented to City Council. The item was subsequently continued until the meeting of November 5, 2013 because the Council had several questions they requested staff and the applicant to address. This report provides the requested information. In addition, staff discusses and recommends several modified conditions of approval which address significant issues that have been discussed in the public hearings and staff is recommending approval of the project with the added conditions.

Discussion: Overall, the general and preliminary policy direction is that the City should promote businesses that will help to revitalize the North El Camino Real area, but not at the expense of residential peace, quiet, and harmony. Based upon public input at the Planning Commission and City Council levels, and Council discussion, staff recommends conditional approval of the project; however, modifications, amendments, and new conditions of approval are proposed, in order to address issues that have been raised by the public, Planning Commission, and City Council. If the applicant agrees to the modified conditions of approval, staff believes that the findings for approval can be made. If the project is considered without the proposed staff modifications, and as proposed by the applicant, staff recommends denial without prejudice consistent with the Planning Commission recommendation.

Noise:
Staff's original conditions were the standard and typical conditions concerning noise emanating from bars and restaurants. However, the public testimony highlighted several differences between the Rooftop project and other restaurants/bars in the community:

1) The outdoor rooftop portion is significantly larger than most of the other outdoor facilities that have been approved.

2) The outdoor portion is located on a rooftop rather than at ground level.

3) There is public testimony and evidence that indicates noise carries especially well, uphill and downwind (west to east) from this location.

   NOTE: Fisherman's is the closest similar project, but Fisherman's is a unique site, located on the Pier, above the Surf Zone. Live entertainment is not permitted on the Fisherman's outdoor patios.

To address the public discussions/concerns regarding noise, the following conditions are proposed:

1) The outdoor rooftop patio shall close at 9:00 pm. Outdoor rooftop patio clean up activity shall be completed and must cease by 10:00 pm.

   NOTE: Noise complaints are prevalent in the summer months when businesses are operating and residential windows tend to be open. The 9:00 pm closure is after summer sunset, clean up shall be done by 10:00 pm.

2) The courtyard (side) patio shall close at 10:00 pm, clean up shall be completed and must cease by 11:00 pm.

3) The front patio shall close at 11:00 pm, clean up shall be completed and must cease by 12:00 am.

4) No live entertainment shall be permitted on the rooftop patio. Amplified sound shall be permitted that conforms to the City's noise ordinance during the approved operating hours. No disc jockeys are permitted on the rooftop patio.

5) Live entertainment shall be allowed inside the building until 12:00 am, subject to the standard conditions of approval (i.e. closed windows and doors, etc.).

Parking:

The applicant has stated that a viable business at this location needs about 200 seats. The applicant, "by right," has a credit for seven (7) parking spaces, pursuant to Municipal Code Section 17.72.060(C)(2)(a), which equals 35 indoor seats calculated at the zoning code standard of five (5) seats permitted per parking space provided). Pursuant to Municipal Code Section 17.28.205(D)(6)(a), restaurants with 32 indoor seats are permitted to have 16 outdoor seats without requiring any additional parking. This means that 51 seats (35 indoor seats and 16 outdoor seats) are permitted by right. Staff is also supportive of up to ten (10) discretionary parking waivers (contingent on discussion to follow) for outdoor dining seats consistent with Municipal Code Section 17.28.205(D)(6)(b), which results in an additional 50 seats. Reasonable arguments for more or fewer outdoor dining parking waivers could be made for the project. Ultimately, looking at similar revitalization projects, staff is recommending up to 10 outdoor dining parking waivers, providing the outdoor dining remains an accessory use to the indoor dining component as explained below.

It is clear that a major concern of residents and adjacent businesses was that an excessive number of people drinking on the roof could create a nuisance for t' area. Additionally, the Planning Commission expressed concerns that the rooftop patio and outdoor dining as a whole was becoming the primary use, rather than being accessory to the indoor restaurant. Municipal Code Section 17.28.205(D)(5)(a) restricts the outdoor dining to be accessory to the indoor use. In this particular situation, staff believes that it can support the conclusion that the outdoor dining remains an accessory use so long as the outdoor dining component has less than 50% of the seating. For this reason, staff recommends that outdoor rooftop occupancy be less than 50% of the entire restaurant occupancy. For instance, with the potential seat/patron count of 201, 100 seats/patrons utilizing outdoor dining is accessory to the 101 seats/patrons which would be required to be maintained indoors.

Based upon the advice of the City Attorney, the project is being conditioned so that the occupancy levels at the establishment, and the indoor/outdoor relationship, must be tied to the amount of available parking credited, waived or secured by agreement. Unless the physical area which the patrons may occupy is reduced to be consistent with the amount of available parking, experience suggests that the establishment will become a code enforcement problem, and a good neighbor problem, because patrons will, at times, "fill the usable space." Therefore staff recommends that a condition be added to ensure that the usable floor area (including open floor areas, kitchen, bar area, and fixed seating areas) shall be physically modified so that it can only accommodate the total number of patrons allowed, which is based upon t' parking spaces (including approved waiver spaces) provided. The square footage the areas available to patrons shall be determined in accordance with the California Building Code Section 1004. The applicant shall submit plans to the City's Building Official for the installation of the physical barriers necessary to ensure that potential occupancy is tied to the amount of parking provided (including approved waiver spaces). The approved physical barriers shall be installed to separate usable areas from non-habitable areas. The Building Official shall approve the design of all physical barriers. The physical barriers shall not be visible from the public right-of-way.

This is one of the first new projects in the North Beach area. The Plaza Del Mar Project (a catalyst project for revitalization of the 200 block of Del Mar) received 10 parking waivers as a revitalization incentive. Staff views the North Beach Rooftop project as being similar to the Plaza Del Mar revitalization project. Thus Staff believes the City can justify granting the Rooftop Bar a similar parking waiver incentives.

In order to strike a balance between the code requirements, public concerns and business goals of the applicant, the following conditions are recommended.

7E-92

Parking Conditions
Allowed seating shall be per the following conditions:

1)	Indoor	Outdoor
By Right	35 seats	16 seats
By Waiver (4 waivers)		18 seats
Subtotal	35 seats	34 seats

2) In order to maintain the accessory use status of the outdoor seating areas per Municipal Code Section 17.28.205 (D)(5)(a), for each additional parking waiver for outdoor seating allowed by Municipal Code Section 17.28.205(D)(6)(b), from waivers number 5 through 10, one offsite parking space shall be secured to ensure the outdoor dining remains an "accessory" use.

3) The offsite parking spaces shall be secured by an agreement approved by the City Attorney and the Community Development Director. The square footage of areas of the establishment in which patrons are permitted shall be determined by the City's Building Official in accordance with the California Building Code Section 1004 so that the number of allowed patrons is limited to the amount of parking by right, waivers, and parking agreements ("Available Parking") provided. Prior to the issuance of building permits, the applicant shall submit plans to the Building Official identifying the areas available to patrons and the barriers to be installed to ensure the size and capacity of the public areas corresponds to the Available Parking. The physical barriers shall not be visible from any public right of way.

4) If/when the applicant obtains offsite parking in conformance with SCMC Section 17.64.110, the applicant shall be permitted to reintroduce occupyable space by modifying the previously installed physical barriers in a manner acceptable to the City's Building Official. The applicant shall be permitted to add additional tables and chairs consistent with the additional amount of offsite parking obtained.

Staff also re-evaluated applicable Municipal Code Sections associated with the project and determined that staff could not support a Minor Exception Permit for two (2) parking space waivers for a change of use. The initial interpretation of Municipal Code Section 17.64.125(B)(5) was that the findings could be made, but when evaluating the project further, staff had concerns that the intensification of use of the site, and the amount of parking required will result in more than a deficit of two (2) parking spaces (a 2 space deficit could be granted by a Minor Exception Permit (MEP), but the applicant wants, and has said they need more additional seats than the 2 space MEP waiver would allow.)

Questions from City Council:

Staff and the applicant were asked several questions regarding the North Beach Rooftop project. City Council requested this information be provided in the Staff Report. The following is staff's response to those questions.

7E-93

1) What is the project as proposed by the applicant?
The applicant is proposing to convert a vacant building into a restaurant. T' building is 2,975 square feet. The applicant is proposing to have outdoor dinin in three (3) locations: 1) the courtyard (side patio) which is 1,200 square feet; 2) the front covered patio which is 400 square feet, and 3) on a new roof top area proposed to be 2,975 square feet. To do this the applicant is proposing several exterior modifications to the building including: several trellis structures to provide shade for the various seating areas; a full bar covered, outdoor kitchen, and pizza oven. All of those improvements are proposed on the rooftop patio only. New stairs adjacent to the side courtyard will lead from the El Camino Real public right-of-way to the rooftop portion of the project.

The applicant is requesting: a full range of alcohol be served in all indoor and outdoor locations. The service of alcohol be indoors 6:00 am to 12:00 am seven (7) days a week, and outdoor service of alcohol 7:00 am to 11:00 pm seven (7) days a week.

The applicant is also requesting live entertainment and amplified music onsite with outdoor live entertainment/amplified sound being permitted from 10:00 am to 10:00 pm seven (7) days a week, including drums, and the opportunity to have disc jockeys in all outdoor areas. The request also includes that TVs and amplified speakers be allowed to operate outdoors on the front patio and rooftop from 7:00 am to 11:00 pm, with the courtyard (side patio) be allowed 7:00 am to 10:00 pm. The applicant requests indoor live entertainment/amplified sou (including TVs, speakers, bands with drummers, and disc jockeys) from 7:00 a to 12:00 am.

The following is a breakdown of the applicant's parking/seat request:

Parking Spaces (Credited/Waived)	Number of Seats (indoor and outdoor)
7 parking space credits (based on least restrictive commercial/retail use)	35 indoor seats
0 parking spaces (for restaurants with over 32 indoor seats permitted, 16 outdoor seats allowed by right)	16 outdoor seats
2 parking space waivers (with approval of MEP for change of use)	10 indoor seats
10 parking space waivers (for outdoor dining)	50 outdoor seats
Parking Waivers Requested: 12	**60 seats**
Total Seats	**111 seats**

The applicant has proposed entering into an off-site parking agreement, but h not provided evidence that he has any off-site parking agreements tentativ approved or in place with any property owners within 300 feet of the project site.

7E-94

2) How many seats does the applicant feel they need for success, and whether there was flexibility in that number?
At the meeting the applicant, Dave Gutierrez, said the range of seats needed, as told to him by prospective restaurateurs, is 170-200. Staff asked the applicant again if there was flexibility in that number as requested by the Councilmember, and the applicant indicated no there was not and actually 200 seats are necessary.

3) What recourse does the City have if a wave of noise complaints comes in regarding the use as a whole and/or the entertainment aspects?
a) With recent changes to the Municipal Code, Code Compliance has the ability to cite businesses that are not operating according to the requirements of their approvals.

b) Conditions have been added to allow live entertainment indoors only.

c) Additionally, the standard conditions of approval have been added concerning all windows and doors to be kept shut during live entertainment/amplified sound events, a requirement to install a vestibule at the front entrance of the facility, and the additional restrictions proposed by staff as discussed above.

d) Conditions are proposed to shorten the hours of operation of the outdoor facilities.

Ultimately, if problems occur and continue without resolution, City Council can unilaterally modify or revoke the Conditional Use Permit.

4) How many citations/notices have been given to businesses about noise or operational related issues?
There have been 29 complaints associated with various issues of noise/live entertainment issues since 1999. No citations associated with noise have been issued by Code Compliance. Education and correction notices have achieved compliance.

5) Accessibility responsibility of the applicant regarding off-site improvements and the accessible path of travel off-site, who is responsible for accessible improvements of Los Obrero Lane (if necessary), and does this open the City up to any additional liability?
The Building Code requires that "accessible parking shall be located on the shortest accessible route of travel to an accessible pedestrian entrance of the parking facility". This is typically a very straightforward issue when the parking spaces are on the same lot as the building served.

Disabled parking is not proposed to cross Los Obreros Lane to the project site, and staff will not support a path of travel that will go through Los Obreros Lane. For that reason, there will be no additional liability to the City.

7E-96

The question on this project is where is the accessible pedestrian entrance of the parking facility for this separate parking lot? After meeting with the Public Wor Director and Building Official it was determined that:

> *Assuming off-site parking is secured in the Los Molinos Area, disabled parking spaces could be located adjacent to the public sidewalk along Calle de los Molinos then the accessible path of travel to the proposed restaurant would be along the public sidewalk, thus does not require improvements in Los Obreros Lane.*

6) There were questions concerning the accuracy of the applicant's sound study of other facilities in the community.
In particular, the question was related to the "Outdoor Sounds Comparison Table" presented in the applicant's handout at the October 1st public hearing, of the sound levels for various commercial facilities at various distances to residential uses. Reviewing the table provided and the applicant's presentation, these measurements appear to not represent actual measured events at these locations. The applicant's acoustical engineer assumed a noise level of 92dBa and determined what the sound level would reduce down to at various distances. The only actual measurements completed by the applicant's acoustic engineer and presented to staff were done in the May 15, 2013 sound study. None of the establishments indicated in the table in the handout are included in that sound study.

Based on this, an acoustical analysis would need to be completed by a acoustical consultant to verify any potential noise violations, but based on the information provided it cannot be assumed that any of the establishments are in violation of the Noise Ordinance.

7) Provide an analysis of the various parking code sections provided by the applicant and explain whether they are accurate or not. In particular what parking waivers are "by right" versus "discretionary."
This question is related to the "Parking and Seating calculation" table in the handout the applicant provided at the public hearing of October 1st. The following addresses each issue on that table/page.

The reference of seven (7) parking spaces credited to the use; this is accurate and consistent with the Non-Conforming Ordinance of the Municipal Code.

The applicant then references 16 outdoor seats allowed by right. This is also accurate; restaurant uses with 32 or more indoor seats are permitted 16 outdoor seats "by right."

Next the applicant references two (2) potential parking waivers with a change of use with the approval of a Minor Exception Permit. This is correct, but these waivers are not "by right" they are "discretionary," and City Council has to make the required findings (and support those findings with substantial evidence) approve these waivers. Staff has re-analyzed the findings, and as discussed

earlier in the report, is no longer supportive of these two (2) parking space waivers as staff does not believe that the first finding can be made as approval of the other outdoor dining waivers would result in a deficit of more than two (2) parking spaces. The required findings are:

A) The change of use will not result in a deficit of more than 2 parking spaces for the use; and

B) Public parking is available in close proximity to the use; and

C) Given the specific conditions of the site and the adjacent area, the waiver or modification of requirements will not result in inadequate parking; and

D) The requested minor exception will not interfere with the purpose of the zone or the standards of the zone in which the property is located; and

E) The neighboring properties will not be adversely affected as a result of the approval or conditional approval of the Minor Exception Permit; and

F) The approval or conditional approval of the Minor Exception Permit will not be detrimental to the health, safety or welfare of the general public.

Technically, an MEP waiver for 2 spaces could be granted if the project was limited to seats allowed by right (35+16=51) plus 2 spaces for 10 seats or 61 seats total. The Applicant, however, is requesting a quantity of additional seating that results in a parking deficit of more than 2 parking spaces.

The applicant then references 10 parking waivers for outdoor dining. These are also "discretionary" and not "by right." Staff is conditionally supportive of these waivers as explained earlier in this report. These findings must be made by City Council to approve these waivers:

A) Public parking is available in close proximity to the restaurant (true); and

B) Given the specific conditions of the site and the adjacent area, the waiver or modification of requirements will not result in inadequate parking (only true as conditioned); and

C) The proposed use is permitted within the subject zone pursuant to the approval of a Conditional Use Permit and complies with all the applicable provisions of this title, the San Clemente General Plan and the purpose and intent of the zone in which the use is being proposed (true); and

D) The site is suitable for the type and intensity of use that is proposed (only true as conditioned); and

E) The proposed use will not be detrimental to the public health, safety or welfare, or materially injurious to properties and improvements in the vicinity (only true as conditioned); and

F) The proposed use will not negatively impact surrounding land uses (only true as conditioned).

The applicant then references an off-site parking agreement for 14 spaces, which the applicant has not provided. There is no evidence that such an agreement is tentatively approved or in place.

7E-97

The applicant then references the total number of parking spaces associated with the project based on the applicant's request. The applicant references parking spaces are associated with his project (through parking credits, parking waivers, and off-site parking agreement), but again 14 of those parking spaces are off-site with no evidence the owner of that parking has agreed to permit its use.

The applicant then references that he is eligible for parking exemptions as well stating:

3. Municipal Code Section Table 17.28.205B, Outdoor Dining Permit, Section c, page 5 of 12.

"The above parking requirements for outdoor dining facilities that are located within the MU3-A and MU3-CB-A zones, may be exempted by the approval body required to review other aspects of the outdoor dining facility when the following findings are met:"

i. "Off-street parking is available within a block of the restaurant"

ii. "The outdoor dining facility contributes and enhances the village/pedestrian atmosphere of the Architectural Overlay District it is located in by incorporating paseos and/or plazas that are specifically designed for outdoor dining facilities;"

Applicant is providing both, off-street parking available within a block of the restaurant and incorporating paseo that is specifically designed for outdoor dining facilities, which by based findings is eligible to be exempted by the approval body required to review other aspects of the outdoor dining facility when the findings are met.

Unfortunately, the applicant does not accurately present the requirements for parking exemptions as Municipal Code Section 17.28.205(D)(6)(b)states (emphasis added to show the key difference):

c. The above parking requirements for outdoor dining facilities that are located within the MU3-A and MU3-CB-A zones, may be exempted by the approval body required to review other aspects of the outdoor dining facility when the following findings are met:

i. Off-street public parking is available within a block of the restaurant;

ii. The outdoor dining facility contributes and enhances the village/pedestrian atmosphere of the Architectural Overlay District it is located in by incorporating paseos and/or plazas that are specifically designed for outdoor dining facilities;

Because there are no off-street public parking lots within close proximity of the project site, this code section does not apply. The applicant was informed of this originally in February 2013 when parking waivers were originally discussed.

8) The applicant has a special condition that addresses the exit stairs being too close to the property line. This issue has been resolved through a redesign.
The applicant has decided to move his stairway over one foot to meet the requirement. The modification to the design of the project was reviewed by the Building Official who was satisfied that the project now met that particular requirement. That special condition of approval has been removed.

9) The applicant needs to provide definitive information regarding off-site parking agreements and where they are located.
As of the preparation of this staff report, no evidence of any off-site parking agreements have been submitted by the applicant.

10) What is the potential legal ramifications from the letter of the adjacent veterinarian?
The City Attorney has reviewed the letter and believes the City does not have any legal liability for approving the project as conditioned. The use is consistent with zoning, will be adequately parked based upon the parking requirements of

7E-98

the San Clemente Municipal Code and the proposed conditions of approval. Moreover, the City has eliminated the live entertainment on the rooftop, and imposed additional conditions to reduce the noise impacts of the project. While the project will not be wholly without any impact on its neighbors, those impacts are consistent with and within the range of impacts that would be expected of the types of uses permitted and conditionally permitted for by the applicable zoning for the property.

11) How and why does staff's and the applicant's parking study differ in terms of available on-street parking for parking waivers?
As a follow up to the April 3, 2013 Planning Commission meeting, staff and the applicant met on May 6, 2013, and discussed the various on-street parking areas surrounding the project, and what areas should be utilized for the parking analysis, to determine the amount of parking waivers staff could support. At that meeting staff and the applicant agreed, due to potential safety issues crossing North El Camino Real from the west side of the street, and the amount of money to make the necessary public safety improvements, that the west side of North El Camino Real would not be utilized.

Additionally, the Los Molinos on-street parking was determined not to be utilized as well because it would promote people illegally crossing private property. It was agreed that if a pedestrian access could be acquired to legally cross private property to access the project site then additional available parking in Los Molinos may then be utilized for potential outdoor dining parking waivers for the project. Since no agreement has been provided, pursuant to that discussion, Los Molinos Parking has not been utilized by staff.

Ultimately it was agreed that the most impacted and potentially used parking will be the on-street parking on the east side of North El Camino Real. Based on this, staff measured the amount of legal parking spaces that could fit on-street and determined that there is a total of 17 potential parking spaces.

12) Provide within the Staff Report the Municipal Code Sections for Planning Commission's denial.
   a. *The Planning Commission Resolution denying the application was based upon the Planning Commission's findings that the project was not consistent with the General Plan. The Planning Commission Resolution therefore cited various sections from the General Plan. Prior to the October 1, 2013, City Council Meeting, a revised resolution of denial was drafted for City Council use which included the Municipal Code Sections which corresponded to the Planning Commission's concerns. That resolution with the applicable Municipal Code Sections was presented to the City Council at the October 1, 2013 meeting.*

13) What is the legal status of Los Obreros Lane in the City?
Pursuant to the San Clemente Municipal Code Title 12, Los Obreros Lane is listed as a "through street," and is legally not an alley.

7E-99

14) What is the distance of the closest parking space at Linda Lane Park to the Fisherman's?
It is approximately 1,656 linear feet away utilizing the coastal trail.

Recommended Action:

1) STAFF RECOMMENDS THAT the City Council approve the project with the amended and modified conditions of approval that address the issues raised during the public hearing process.
2) STAFF RECOMMENDS THAT the City Council approve a Discretionary Sign Permit for new signage for the project site.

Notification: Notification of the public hearing was completed in accordance with both State Law and Municipal Code Requirements. Notice has also been provided to people w have submitted public testimony by email regarding this project.

ME-100

ATTACHMENT 10

Date: August 16, 2013
Re: Appeal of Planning Commissions Decision of Rooftop Grill – North Beach

Sean,

As applicant (October 2012) and property owner, this email will serve as my formal Appeal of the San Clemente Planning Commissions decision to deny the approval of Conditional Use Permit 12-362/Cultural Heritage Permit 12-363/Minor Exception Permit 13-084/Outdoor Dining Permit 13-085, for the proposed North Beach Rooftop Grill and Bar, located at 1509 N. El Camino Real, San Clemente, California.

This Appeal is based on facts but not limited to, that the City of San Clemente Planning Commission acted arbitrarily and capriciously as applied to the proposed project. The Planning Commissions denials were all illogically based on the assumptions that the proposed project had not met city General Plan Policy nor existing Municipal Code requirements. All Planning Commissioners (Planning Commission) ignored all existing specific ordinances, codes and laws as they applied to the subject property and had zero evidence of any such violations for any such findings of denial.

The city of San Clemente's Planning Commission act to preclude the Permitted Use of the subject property thus effectively "spot zoning" by restricting and giving lesser rights than the surrounding properties, including many publicly owned properties (13) by the city of San Clemente themselves. Those city's Planning Commission actions of exactions implicates irrational discriminatory treatment for such takings.

The Planning Commissioners ignored their own cities Planning Departments staff's reasoning for compliance and recommendation for approval and which seek to promote cooperation with property owners, specifically those in the North Beach area of San Clemente.

Sincerely Yours,
Mr. David G. Gutierrez
Applicant/Owner

From: Nicholas, Sean [mailto:Nicholas@san-clemente.org]
Sent: Thursday, August 15, 2013 2:02 PM
To: dgg@cottage.occoxmail.com
Subject: NB Rooftop Weekly email

Dave,

Just wanted to remind you that the deadline for you to appeal the project to City Council is Monday August 19th at 5:00 pm.

You need to submit a write up as to why you are appealing the project and the fee of $1,144.00.

Let me know if you have any questions.

Sean

Sean Nicholas
Associate Planner, City of San Clemente
Los Molinos Business District Liaison
Planning Division Intern Manager
(949) 361-6189
Nicholas@san-clemente.org
www.san-clemente.org

City of San Clemente

910 Calle Negocio, San Clemente, CA 92673
Office: (949) 361-6100

INVOICE / RECEIPT

Date: **8/19/2013**

Prepared By: **AMA**

Application Number: **PLN12-362**

Address: **1509 N El Camino Real**

Applicant: **David Gutierrez**

Owner: **David Gutierrez**

Contractor:

Project Description: **North Beach Rooftop Grill and Bar**

FEES DUE

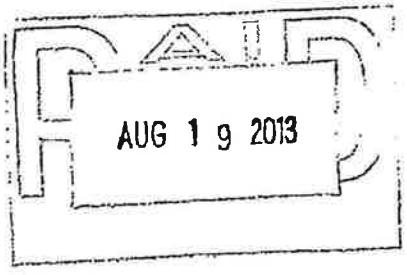
Project No.	Description	Account	Amount
PLN12-362	APPEAL		$1,118.00
PLN12-362	CONDITIONAL USE PERMIT DEPOSIT	001-000-34162-000-00000	$0.00
PLN12-362	IMAGING PLANNING	062-000-34142-000-00000	$26.00

TOTAL Fees Charged: **$1,144.00**

Payments Received: **$0.00**

Balance Due: **$1,144.00**

WHEN VALIDATED BELOW, THIS IS YOUR RECEIPT



7E-10B

ATTACHMENT 11

ACOUSTICAL ENGINEERING ANALYSIS

Rooftop Grill
1509 N. El Camino Real
North Beach
San Clemente, CA 92673

Prepared by:

Carl J. Yanchar
Yanchar Design & Consulting Group
26741 Portola Parkway, Suite 1E
Foothill Ranch, CA 92610
949-770-6601

May 15, 2013

Project No: 130329

7E-104

TABLE OF CONTENTS

7E-105

7E-106

1.0 Introduction

At the request of Cottage Development, Yanchar Design & Consulting Group (YDCG) has completed an Acoustical Engineering Analysis of the proposed Rooftop Grill at 1509 N. El Camino Real, San Clemente, California in the area commonly known as the "North Beach" district.

1.1 Project Description

The property is currently a vacant commercial building with stucco exterior and glass doors and windows. Adjacent properties are commercial and industrial with the exception of a mixed use commercial/residential development to the northwest. Interstate 5 is located less than ¾ mile to the east of the project site. The Elks Lodge building directly to the south is two stories in height with no exterior openings on its north side. Adjacent to the north is an animal hospital and boarding kennel.

The nearest residential use is the second floor of a mixed use property 157 feet to the northwest. The nearest solely residential property is approximately 260 feet to the west.

According to the San Clemente General Plan, the east side of El Camino Real to the 5 freeway is within the 65 dB noise contour region and the east side to the ocean is within the 60 dB noise contour.

The North Beach District is part of an Architectural and Pedestrian overlay fostering the development of entertainment, pedestrian friendly development. The proposed project consists of converting the existing structure to a restaurant with indoor and outdoor dining. Restaurant operations may include breakfast, lunch and dinner services.

1.2 Background

In an acoustical analysis prepared by Yanchar Design & Consulting Group (YDCG) dated April 2, 2013 it was calculated that a level of 93 dBA would be the maximum source level to meet the requirements of the San Clemente Municipal Code. Further evaluation of the potential noise impacts of the proposed operation of the restaurants was requested to include a simulation of the sound levels associated with effects of the clientele and music events.

Since it would be impractical to perform a simulation of the impact of a crowd of people in a similar environment at the project site, on April 20, 2013 measurements were made by YDCG at several operating San Clemente restaurants with outside seating and musical entertainment.

On April 25, 2013, measurements were performed at the project site and surrounding area by YDCG to obtain data which would include the effects of the local topography including the building shell (prior implementation of any improvements) and surrounding buildings, traffic noise from El Camino Real and other sources of sound such as air conditioners, air compressors, power tools, dogs and birds. Measurements were made at the project site and representative surrounding locations with and without music both inside the building as well as the rooftop.

This report will document those measurements, compare them to the restrictions of the San Clemente Municipal Code, and present suggested mitigations measures as may be necessary.

7E-107

2.0 Characteristics of Sound

Sound is technically described in terms of the loudness (amplitude) of the sound and frequency (pitch) of the sound. The standard unit of measurement of the loudness of sound is the decibel (dB). Decibels are based on the logarithmic scale. The logarithmic scale compresses the wide range of sound pressure levels to a more usable range of numbers in a manner similar to the Richter scale used to measure earthquakes. In terms of human response to noise, a sound10 dB higher than another is judged to be twice as loud; and 20 dB higher four times as loud; and so forth.

2.1 Sound Levels

Everyday sounds normally range in amplitude from 30 dB to over 100 dB. Sound levels decrease as a function of distance from the source as a result of wave divergence, atmospheric absorption, and ground attenuation. As the sound waveform travels away from the source, the sound energy is dispersed over a greater area, thereby dispersing the sound power of the wave. Sound dissipates exponentially with distance from the sound source.

For a single point source, sound levels decrease approximately 6 dB for each doubling of distance from the source. This drop-off rate is appropriate for sound generated by stationary sources.

If the sound is produced by a non-stationary line source, such as highway traffic or railroad operations, the sound decreases 3 dB for each doubling of distance in a hard site environment. Line source noise, when produced within a relatively flat environment with absorptive vegetation, decreases 4.5 dB for each doubling of distance from the source.

2.2 Pitch

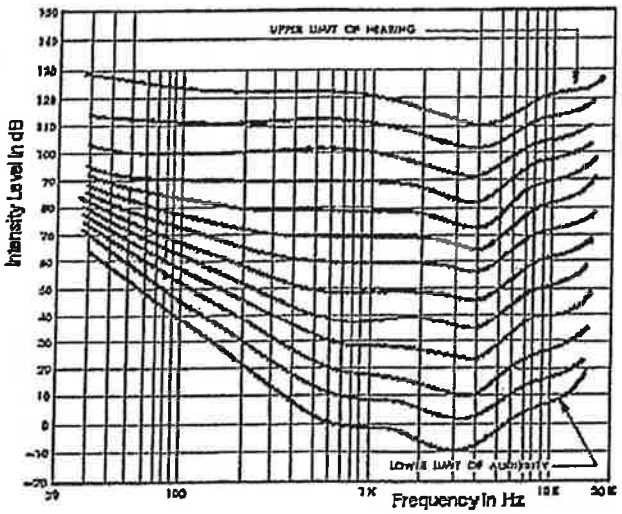
Sound is composed of a spectrum of frequencies ranging from 20 Hz or vibrations per second to 20,000 Hz or vibrations per second. A slow vibration (low frequency) in sound gives the sensation of a low note. A more rapid sound vibration (higher frequency) produces a higher note. This is analogous to our perception of light. Red light is produced at the low-frequency end of the light spectrum while violet light is produced at the high-frequency end of the light spectrum. A change in frequency of sound waves causes an audible response—a difference in pitch. A change in the frequency of a light wave causes a visual response—a difference in color.

White light is the name given to what the human eye sees when all the colors that make up the visible light spectrum are combined; the visible light spectrum is made up of red, orange, yellow, green, blue, indigo, and violet light, and these colors combined make white light or simply "light". Similarly, the range of audible frequencies from low bass to high treble frequencies combine to produce what we measure as "sound".

2.3 Relationship of Pitch and Amplitude

Our ears are not linear devices and what we experience as loudness varies with frequency. This relationship was originally studied by Fletcher and Munson at Bell labs in 1933 and is illustrated in Figure 1. The contours show that our ears are less responsive to bass frequencies, but that at higher sound levels, the response to these bass frequencies increases.

Figure 1
Fletcher Munson Contours



Because the human ear is not equally responsive to sound at all frequencies, a special frequency-dependent rating scale has been devised to relate noise to human response. The A-weighted decibel scale (dBA) performs this compensation by discriminating against frequencies in a manner approximating the response of the human ear. Noise levels are measured in terms of the "A-weighted decibel," abbreviated dBA. Table 6 in the appendix provides examples of various sounds and their typical A-weighted sound level.

2.4 Atmospheric Effects

Atmospheric absorption also influences the levels that are received by an observer. A greater distance traveled results in a greater influence and resultant fluctuations of the sound wave. The degree of absorption is a function of the frequency of the sound as well as the humidity and temperature of the air. Turbulence and gradients of wind, temperature, and humidity also play a role in determining the degree of attenuation. Intervening topography can also have a effect on the perceived sound levels.

3.0 Sound Assessment Metrics

The description, analysis, and reporting of sound levels is made difficult by the complexity of human response to sound and the myriad of metrics that have been developed for describing sound impacts. Each of these metrics attempts to quantify sound levels with respect to human response. Most of the metrics use the A-Weighted sound level to quantify sound impacts on humans. As previously identified, A-Weighting is a frequency weighting that accounts for human sensitivity to different frequencies.

ZE-109

Because sound levels can vary over a short period of time, a method for describing either the average character of the sound or the statistical behavior of the variations must be utilized. Most commonly, environmental sounds are described in terms of an average level that has the same acoustical energy as the summation of all the time-varying events. This energy-equivalent sound descriptor is called L_{eq}. The most common averaging period is hourly, but L_{eq} can describe any series of sound events of arbitrary duration.

The scientific instrument used to measure sound is the sound level meter. Sound level meters can accurately measure environmental sound levels to within about plus or minus 1 dBA. Various computer models are used to predict environmental sound levels from sources, such as roadways and airports. The accuracy of the models depends upon the distance the receptor is from the sound source. Close to the sound source, the models are accurate to within about plus or minus 1 to 2 dBA.

4.0 Regulatory Environment

The State of California and the City of San Clemente both have established regulatory criteria designed to guide compatible development in varying sound environments and protect existing uses from excessive sound increases. This sound assessment will address the following regulatory criteria: (1) the State CEQA Guidelines, Appendix G, (2) the State Building Code, and (3) the City of San Clemente General Plan Noise Element, and (4) the City of San Clemente Municipal Code.

4.1 State CEQA Guidelines

The California Environmental Quality Act (CEQA) addresses the following applicable questions to evaluate the significance of potential project impacts. Potential sound effects would be considered significant if the Project will result in:

1. Exposure of persons to or generation of noise levels in excess of standards established in the local General Plan or Noise Ordinance, or applicable standards of other agencies.

2. A substantial permanent increase in ambient noise levels in the Project vicinity above levels existing without the Project.

3. A substantial temporary or periodic increase in ambient noise levels in the Project vicinity above levels existing without the Project.

CEQA does not define the sound level increase that is considered substantial. Typically, an increase in the sound level of 3 dB or greater at sound-sensitive receptors would be considered significant when projected sound levels would exceed those considered satisfactory for the affected land use.

4.2 California State Building Code

The California State Building Code only addresses noise intrusion into multi-family housing. This is regulated by Appendix Chapter 12, Section 1208, Sound Transmission Control of the 2010 California Building Code. Interior noise levels attributable to exterior sources shall not exceed 45 dB_{DNL} in any habitable room. Residential structures to be located where the noise level exceeds 60 dB_{DNL} shall require an acoustical analysis showing that the proposed design will limit exterior noise to the prescribed allowable interior level.

The residential portion of the mixed use property at 1520 N. El Camino Real lies within the 60 dB_{DNL} noise contour. As part of the approval process for construction of the residences, mitigation measures were required to be employed to reduce the interior level due to exterior sources to 45 dB_{DNL}.

7E-110

4.3 City of San Clemente General Plan Noise Element

The City of San Clemente General Plan Noise Element sets forth implementing policies to guide the development of residential and commercial land uses. The following implementing policies would be applicable in the sound assessment:

1. Adopting and enforcing legally adequate noise regulations and guidelines.
2. Preventing and mitigating excessive noise exposure impacts on the community.
3. Minimizing traffic-generated noise impacts on "noise-sensitive" uses.
4. Reducing the encroachment of non-residential use noise impacts onto "noise sensitive uses".
5. Minimizing noise impacts in mixed-use structures.
6. Minimizing construction noise on adjacent uses.
7. Ensuring that adverse noise impacts among differing uses or tenants are prevented.
8. Minimizing spillover noise impacts from entertainment and restaurant/bar establishments onto "noise sensitive uses".
9. Minimizing noise impacts of rail transit on sensitive land uses is minimized.
10. Ensuring that a proper acoustical analysis of any potential significant noise generator is conducted.

The San Clemente General Plan section 14.6.G presents as an objective that noise levels emanating from entertainment and restaurant/bar establishments "not be discernible" from ambient noise levels at a distance of 50' from the establishment. Although "not discernible" is a somewhat subjective criterion, for purposes of this report we will assume that it can be interpreted as not contributing to the perceived ambient noise level, essentially 3 dBA below that level.

4.4 San Clemente Municipal Code

Section 8.48.050 of the San Clemente Municipal Code addresses the maximum permissible "ambient" noise levels in various zones, as follows:

Table 1
Exterior Noise Standards

Land Use	Allowable Exterior Noise Level	
	7:00 a.m. – 10:00 p.m.	10:00 p.m. – 7:00 a.m.
Residential	55 dBA	50 dBA
Residential portion of mixed use	60 dBA	50 dBA
Commercial	65 dBA	60 dBA*
Industrial	70 dBA	70 dBA*

*** Standard only applies if commercial, industrial or manufacturing buildings are occupied during these hours.**

7E-111

A. It shall be unlawful for any person at any location within the City to create any noise, or to allow the creation of any noise on property owned, leased, occupied, or otherwise controlled by such person, when the foregoing causes the noise level, when measured on any other property to exceed:

1. The noise standard for a cumulative period of more than thirty (30) minutes in any hour; or

2. The noise standard plus five (5) dB (A) for a cumulative period of more than fifteen (15) minutes in any hour; or

3. The noise standard plus ten (10) dB (A) for a cumulative period of more than five (5) minutes in any hour; or

4. The noise standard plus fifteen (15) dB (A) for a cumulative period of more than one (1) minute in any hour; or

5. The noise standard plus twenty (20) dB (A) for any period of time.

B. In the event the ambient noise level exceeds any of the five (5) noise limit categories above, the allowable noise level under said category shall be increased to reflect the ambient noise level.

C. If possible, the ambient noise shall be measured at the same location as the noise source measurement, with the alleged offending noise source inoperative. If for any reason the alleged offending noise source cannot be shut down, the ambient noise must be estimated by performing a measurement in the same general area of the source but at a sufficient distance such that the noise from the source is at least ten (10) dB below the ambient in order that only the ambient level be measured. If the difference between the ambient and the noise source is five (5) to ten (10) dB, then the level of the ambient itself can be reasonably determined by subtracting a one (1) decibel correction to account for the contribution of the source.

Section 8.48.060 sets the following interior noise standards for all residential property within the City.

Table 2
Interior Noise Standards

Land Use	Allowable Interior Noise Level	
	7:00 a.m. to 10:00 p.m.	10:00 p.m. to 7:00 a.m.
Residential, including residential portions of mixed-use.	50 dB (A)	40 dB (A)

A. It shall be unlawful for any person at any location within the incorporated area of the City to create any noise, or to allow the creation of any noise on property owned, leased, occupied, or otherwise controlled by such person, when the foregoing causes the noise level when measured within any residential dwelling unit to exceed:

7E-12

1. The interior ambient noise level plus five (5) dB (A) for a cumulative period of more than five (5) minutes in any hour; or

2. The interior ambient noise level plus ten (10) dB (A) for a cumulative period of more than one (1) minute in any hour; or

3. The interior ambient noise level plus fifteen (15) dB (A) for any period of time.

B. In the event the ambient noise level exceeds any of the three (3) noise limit categories above, the allowable noise level under said category shall be increased to reflect the ambient noise level.

Section 8.48.070 prohibits operating, playing or permitting the operation or playing of any radio, receiving set, television set, phonograph, drum, musical instrument, or similar device which produces or reproduces sound:

1. In such manner as to disturb the peace, quiet and comfort of a person of normal sensitiveness.

2. At any time with louder volume than is necessary to provide convenient hearing of the device by voluntary listeners located in the same room, vehicle or chamber as the device.

3. Between the hours of ten (10:00) p.m. and seven (7:00) a.m. in such a manner as to create a noise disturbance across a residential or commercial real property line or at any time to violate the provisions of Sections 8.48.050 and 8.48.060

Such restrictions shall not apply to use operating under a conditional use permit or exception as described in this chapter, provided said use is in compliance with any and all conditions imposed by the permit or exception.

Section 8.48.080 deals with amplified sound.

A. The use of amplified sound, including the electronically amplified sound of music, human voice, or other sound within a business, restaurant, bar or other commercial establishment is not permitted except under a conditional use permit (CUP) granted by the City Manager or authorized designee (the "permit authority").

B. In granting an application for a CUP, the permit authority shall consider the potential of such amplified sound to result in a violation of other provisions of this chapter, and shall establish amplifier settings and other limitations on the use of such amplified sound as conditions of approval. Such approval shall not consider the information content of the amplified sound (except as noted in item D.2 of this section), but only its noise level and resulting potential to violate other provisions of this chapter. Prior to issuance of a CUP, the permit authority shall solicit the comments and any recommendation of Police Services.

C. No CUP shall be issued that allows the use or operation of sound amplifying equipment in any residential zone or on residential property.

7E-113

D. Any CUP that allows the use or operation of sound amplifying equipment shall include, at a minimum, the following requirements:

1. Noise from such sound amplifying equipment shall comply with the noise standards of Sections 8.48.050 and 8.48.060 of this chapter, except that:

   i. The sound level meter used to obtain the noise measurements shall be configured to use the C-weighting network instead of the A-weighting network.

   ii. The noise standards identified in Sections 8.48.050 and 8.48.060 shall be denoted as "dB(C)" instead of "dB (A)".

   Submission of written proof by a qualified acoustical consultant that said sound amplifying equipment complies with these standards may be required by the permit authority.

2. Such sound amplifying equipment shall be used only for the producing of human speech or song or music and the speech or song shall not be profane, lewd, indecent, slanderous or of such character as to tend to incite riot or other public disorder nor shall such speech or song advocate disloyalty to or the overthrow of the government of the United States by arms or other unlawful means nor shall such speech or song urge any unlawful conduct or encourage or reasonably tend to encourage a breach of the public peace of the community.

E. In addition, the following should be considered and, where deemed appropriate by the permit authority, related conditions or limits should be included as part of the permit:

1. Hours and days of operation.

2. The potential for such sound amplifying equipment to interfere with or disturb the occupants of any hospital, sanitarium, school, church, courtroom, place of residence or public assemblage.

3. The construction of the building or structure, if any, in which sound amplifying equipment is to be located and the ability of said structure to contain noise.

4. Operational controls to be implemented during the use of sound amplifying equipment including, but not limited to, closing of doors and/or windows, security/administrative controls, etc.

5. Any other consideration deemed appropriate by the permit authority.

F. After the issuance of any CUP, the permit authority shall revoke such CUP if the sound amplifying equipment permitted to be used thereby is used or operated contrary to any of the provisions of this code.

7E-114

5.0 Amplified vs. Non Amplified Sound

Section 8.48.080 poses certain requirements for amplified sound but does not provide a definition. In some other jurisdictions "amplified sound" means any increase of sound above ambient noise levels by the use of electronic equipment. Others define amplified sound as sound that is amplified.

The City of San Clemente Code defines ambient sound as follows:

"Ambient noise level" shall mean the all-encompassing noise level associated with a given environment, being a composite of all sounds from all sources, excluding the alleged offensive noise, at the location and approximate time at which a comparison with the alleged offensive noise is to be made. The ambient noise shall be measured using the same weighting (e.g., A-weighting or C-weighting) required by this chapter for the measurement of the alleged offensive noise.

Amplified sound of a certain sound pressure level is no louder than non-amplified sound of the same sound pressure level just as the measured temperature in a space of heat produced by an electric heater is not any hotter than the temperature of the same space produced by a gas furnace.

Amplified sound has the potential for being perceived as louder than non-amplified sound but this is not always the case. A symphony orchestra is non-amplified but it can produce sound pressure levels comparable to a canon. In fact, a canon, a non-amplified instrument, is sometimes used in the performance of The 1812 Overture. A recording of a symphony orchestra is always amplified, but the loudness is controllable and is often reproduced at less than the original acoustic sound.

It is the magnitude of the sound pressure level that is of concern. Radios, televisions, telephones, even hearing aids utilize electronic amplification but are not always considered an annoyance because the amplitude is limited. Advances in technology have enabled drummers to use amplified electronic drums rather than conventional acoustic drums for practicing or even live performances because the sound levels can be controlled and limited to levels that are acceptable. As a by-product of amplification and reproduction with a loudspeaker, the directionality of the sound can be controlled, confining it to the audience area.

6.0 Perception of Sound by Humans and Dogs

6.1 Pitch

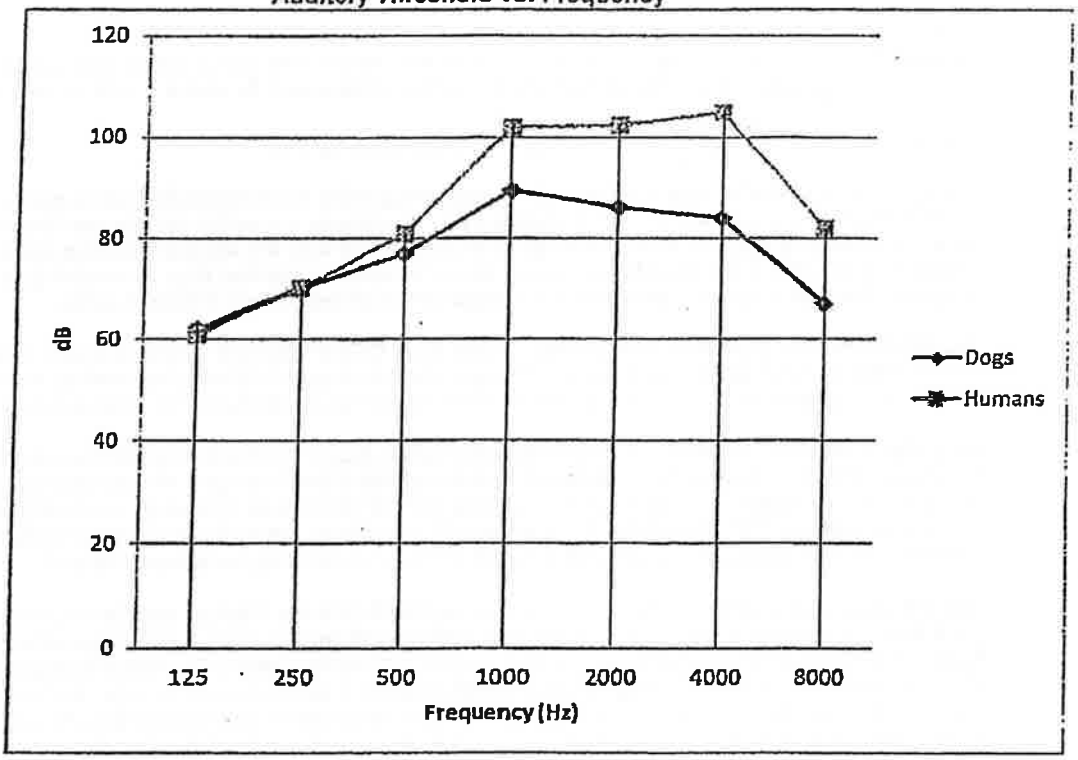
Humans can hear a maximum range of frequencies from 20-2000 Hz. The higher limit decreases with age. Dogs can hear a maximum range of 40-45,000 Hz which also diminishes with age. The frequency range of the human voice ranges in frequency from 300 to 3,400 Hz. For music, the range of the fundamental pitch is 27.5 Hz to 4,186 Hz. Most instruments produce a lesser range of frequencies. (See Table 8).

6.2 Loudness

As described in Section 2.3, the ear is not linearly responsive to loudness throughout the range of audible frequencies. This is also the case for dogs. Studies of the auditory threshold (the lowest intensity at which a sound may be heard) of dogs and humans show that both are equally responsive at the lower range of frequencies while dogs are slightly more than twice as responsive at frequencies above 4,000 Hz. This means that as dogs can hear higher frequencies that are at a lower level than humans and not that dogs hear the same sounds as twice as loud. This is illustrated in Figure 2.

7E-115

Figure 2
Auditory Threshold vs. Frequency



6.3 Music

According to the Universities Federation of Animal Welfare, listening to certain types of music may actually help with the welfare of dogs in animal shelters, as these types of music have soothing qualities. Classical music soothes and calms dogs. In fact; the Arizona Animal Welfare League plays classical music in the shelter to calm the dogs. The San Clemente City Animal Shelter also plays music. If there is an effect of pop music on dogs the effect is negligible. Studies and research have been based on other types of music since pop music has not proven to have an effect on dogs.

7.0 Effect of the Number of People

In evaluating the effect of people talking, laughing, etc. the concept of correlated and un-correlated sound comes into play. Sound is made up of periodic phenomena, repeating over a period of time. Phase refers to a particular value of time for any periodic function, i.e. it is the relationship between a reference point and the fractional part of the period through which the signal has advanced relative to the arbitrary origin.

7E-116

When combing sound sources of identical amplitude and phase the sound level of the combination is 6 dB higher than the individual sound. For sounds that are equal in amplitude but not identical in phase, the combined sound level increases by 3 dB. Because the amplitude of sounds produced by a crowd of people is usually not identical, the level increase is somewhat less than 3 dB for each doubling of the number of people.

A 3dBA increase in sound level is barely noticeable to the human ear. Most listeners do not report an increase in sound level until there is a 5 dB difference. Further, it takes a 10dB increase before the average listener hears twice the level of sound.

8.0 Exterior Sound Level Measurements

In evaluating the sound aspects of the proposed project, there are several different scenarios to consider; the enclosed portion of the proposed restaurant with and without the doors and windows closed and the proposed outdoor roof top area. In addition, there are two significant sources of sound to consider; the sound generated by the restaurant clientele at the maximum occupancy and the sound generated music, both inside the structure and on the rooftop.

8.1 Sound Produced by People

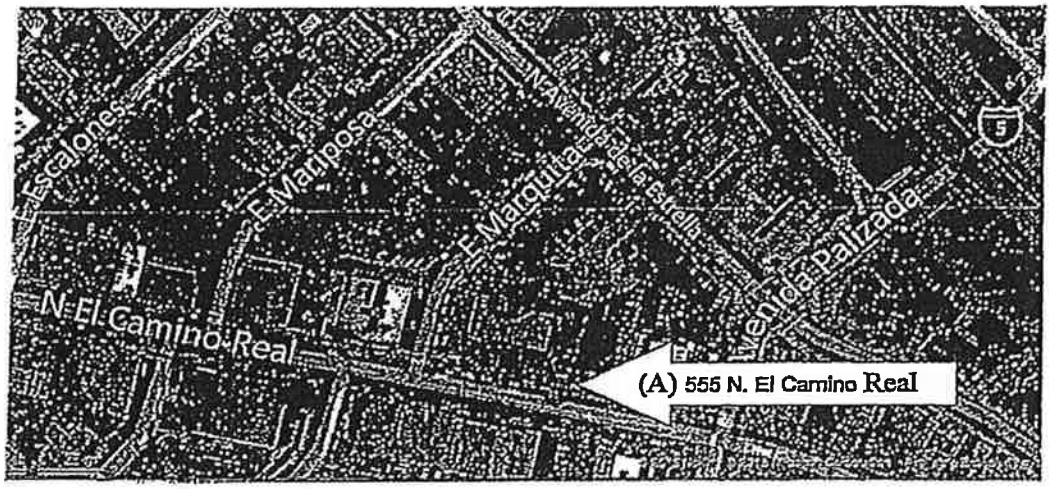
In order to evaluate the sound levels produced by an outside crowd, with and without music, measurements were made at several locations in San Clemente with outside seating similar to that proposed for proposed restaurant and live music inside. These measurements are summarized in Table 3.

Table 3
San Clemente Restaurant Sound Survey
Exterior Sound Levels

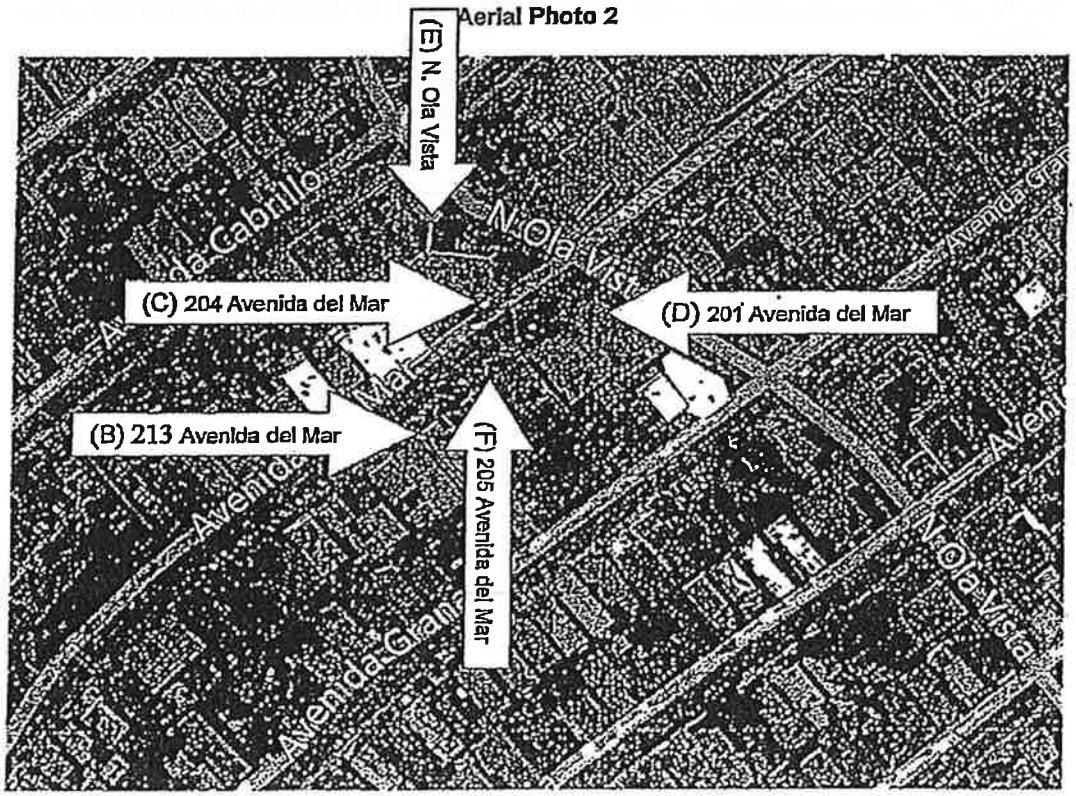
Aerial Key	Source	Measurement Location	Time	Type	Sound Level
A	Iva Lee	555 North El Camino Real	9:50 PM	Crowd	76.7
				Crowd and Music	80.0
B	Nick's	213 Avenida del Mar	10:55 PM	Crowd	68.2
C	Beachfire	204 Avenida del Mar	11:00 PM	Crowd and Music	81.0
D	The Shore	201 Avenida del Mar	10:20 PM	Crowd and Music Door Closed	85.0
				Crowd and Music Door Open	94.5
E	The Shore & Beachfire	N. Ola Vista 165 feet north of The Shore	11:10 PM	Music The Shore Door Closed	52.8
				Music The Shore Door Open	58.9
F	The Shore & Beachfire	205 Avenida del Mar	10:30 PM	Crowd and Music	66.2

7E-117

Aerial Photo 1



Aerial Photo 2



7E 118

Based on the sound produced by approximately 35 people measured at Nick's directly in front of the outside seating, it can be concluded that similar sound levels for 35 people would be expected at the proposed restaurant or approximately 68.2 dBA. The outside areas are similar, both with covered roofs and some lateral shielding.

Table 4 lists the calculated sound levels for other numbers of people at the west property line and at the SE corner of the mixed use property at 1520 N. El Camino Real. Due to attenuation by distance the sound level is attenuated to a level of 42.0 dBA or less, significantly below the ambient noise at any sound sensitive location in the vicinity and orders of magnitude below the requirements of the San Clemente Municipal Code.

Table 4
Estimated Sound Level Based On Number of People

People	Estimated Sound Level (dBA)	Estimated Level at Closest Residential Property (dBA)
35	68.2	33.8
50	69.7	35.3
75	71.5	37.1
100	72.8	38.4
200	75.8	41.4
226	76.4	42.0

8.2 Sound Produced by Music

With the exception of Nicks, the other restaurants surveyed featured live music of various popular genres such as blues, reggae, zydeco, and oldies rock performed by bands composed of electric guitar(s), electric bass, acoustic drums, amplified vocals, and other instruments as well as DJ's. Based upon the exterior measurements, it is estimated that the interior levels were on the order of 100-105 dBA. These are significantly higher than those that would be generated by the type of music anticipated at the proposed restaurant.

The music planned for the proposed restaurant is stated to be primarily acoustic based such as solo guitar or a jazz trio. It is intended to be background music rather than foreground. Background music refers to various styles of music intended to be passively listened to, played at a low volume and is not the main focus of an audience. The concept is to present a relaxed atmosphere as an accompaniment to dining not to provide an entertainment venue. No space allocated in the plans for the proposed restaurant for a stage, concert type sound system, dance floor or theatrical lighting.

In order to evaluate the levels produced by music sources, a simulation was conducted using recorded music generated by a loudspeaker inside the building and a second loudspeaker on the roof where potential live music sources would be placed. Table 5 summarizes the measurements when the source was inside the building. Table 6 summarizes the measurements with the source on the roof.

ME-119

The test signal used was pink noise, which is a random noise characterized by equal amplitude response per octave band of frequency from 20-20,000 HZ. This provides a uniform source for each measurement location.
The amplitude was calibrated at 93 dBA for each loudspeaker.

Table 4 and 5 indicate that along El Camino Real the traffic noise predominates. For this reason two conditions are reported in Tables 5 and 6, one where the traffic noise is at a maximum and one where there was a break in the traffic. The levels reported with minimum traffic include the effect of the music as well as all other ambient sounds. In the case of the measurements on the north side of the animal hospital, these levels were elevated due to the operation of several window mounted air conditioning units.

Table 5
Music Source Inside 1509 N. El Camino Real

Aerial Key	Measurement Location	Maximum Traffic	Minimum Traffic
	West Property Line	71.0	59.6
	Courtyard-Door Closed	61.1	58.1
	Courtyard-Door Open	68.4	67.5
	Front Patio-Front Door Closed	72.1	56.7
	Front Patio-Front Door Open	72.1	66.1
G	Los Obreros Lane-Louver Window Open	56.5	56.5
	Front Patio South Center @Elks Wall	71.1	59.6
	Animal Hospital-SW Corner	71.0	59.6
	Animal Hospital-NW Corner	70.9	55.0
	Animal Hospital-Property Line @ Front Door	70.9	52.3
	Animal Hospital-North Side Center	59.9	59.9
	Muffler Shop-SW Corner	72.1	54.5
H	1520 N. El Camino Real-SE Corner	70.7	52.5
J	1549 Calle Las Bolas-Rear Alley	57.6	49.3
K	Mirador & Florencia	56.7	48.9
L	Mirador & Reposo	56.6	51.7

7E-120

Aerial Photo 3

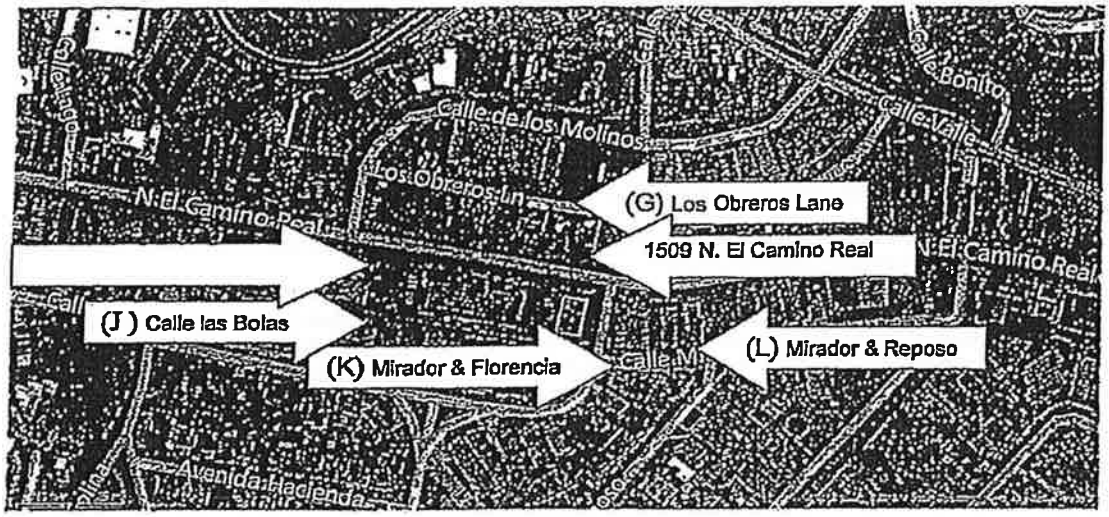


Table 6
Music Source on Roof of 1509 N. El Camino Real

Aerial Key	Measurement Location	Maximum Traffic	Minimum Traffic
	West Property Line	72.3	57.1
	Courtyard-Door Closed	65.8	64.5
	Courtyard-Door Open	65.8	64.5
	Front Patio-Front Door Closed	72.1	62.3
	Front Patio-Front Door Open	72.1	62.3
G	Los Obreros Lane-Louver Window Open	56.9	56.9
	Front Patio South Center @Elks Wall	72.1	65.4
	Animal Hospital-SW Corner	71.0	57.1
	Animal Hospital-NW Corner	70.9	53.8
	Animal Hospital-Property Line @ Front Door	70.9	54.4
	Animal Hospital-North Side Center	59.9	53.8
	Muffler Shop-SW Corner	72.1	51.1
H	1520 N. El Camino Real-SE Corner	71.6	52.7
J	1549 Calle Las Bolas-Rear Alley	57.6	49.1
K	Mirador & Florencia	80.0	48.7
L	Mirador & Reposo	56.6	51.5

7E 121

9.0 Analysis

Comparing the sound levels at each location as enumerated in Tables 5 and 6 for sound sources inside 1509 N. El Camino Real and on the roof, in almost every case the traffic noise is what is being measured. When traffic is at a minimum, the measurement reflects a combination of the music and all other ambient sounds.

9.1 Music Source Inside Building

In the case where the music source is inside the building, the sound levels meet the requirements of the San Clemente Municipal Code.

There are two cases where the measurements in the tables are above what is required: in the courtyard of the subject property 6 feet directly west of the loudspeaker location when the doors are open and on the front Patio when the front door is open. This was due to restrictions in the measurement location.

Measurements could not be made on the property directly to the north that could potentially be affected by this condition as prescribed in the San Clemente Municipal Code. The Code specifies the following:

"The location selected for measuring exterior noise levels shall be at any point on the affected property, including decks and balconies. The measurement microphone height shall be five (5) feet above the finished ground elevation or, in the case of a deck or balcony, above the finished floor level of the deck or balcony. The measurement microphone shall not be placed above or on top of a property line fence or wall. The microphone should typically not be placed within three (3) feet of any property line fence or wall, or within ten (10) feet of any other acoustically reflective surfaces; however, shorter distances may be utilized as necessary to provide a measurement of the worst-affected area of the property (such as a narrow side yard).

The northern courtyard is 14 feet wide. Since it was not physically possible to measure the sound level at the property line, it can be calculated that the sound would be attenuated to 60.1 dBA. The barrier attenuation provided by the wood fence at the property line would attenuate the sound further by a minimum of 6-8 dBA to an estimated level of 54-56 dBA. This would be in compliance with the San Clemente Municipal Code.

9.2 Music Source on Roof

When the music source is on the roof the results are similar, again do to the proximity of the sound source at the middle of the courtyard. In this case the property line wall provides no additional attenuation. However due to the increased distance, it can be calculated that the sound would be attenuated to a level of 55.7 dBA. This also is in compliance with the San Clemente Municipal Code.

9.3 Sounds from Adjacent Kennel

The animal kennel has rooftop mounted mechanical equipment that is not shielded and would provide a source of annoyance to proposed restaurant's customers. Measurements were not made of the sound level produced by the mechanical equipment but a typical 3-ton air conditioning compressor measures 72-76 dBA at three feet. Due to the proximity, it most likely exceeds the required noise level at the property line.

7E. 122

9.4 Conclusion

A maximum sound level of 93 dBA was originally calculated to be the maximum level that would be attenuated by distance to meet the requirements of the San Clemente Municipal Code. For the type of music proposed, it is extremely unlikely that these level would ever be attained or be appropriate. Levels in the range of 75-80 dBA would be more typical. In any case, the predicted levels are within the requirements of the San Clemente Municipal Code during the hours of 7 AM to 10 PM.

For the hours of 10 PM to 7AM, the maximum allowable level is exceeded by 2.7 dBA. To remain in compliance, the maximum allowable music source level should be reduced to 90 dBA.

Based upon the discussion in section 8.1, the level generated by 226 people is estimated to be 76.4 dBA. When two sound levels differ by more than 10 dB, the sound level of the combination is the same as the greater of the two.

10.0 Recommendations

Although these calculations and simulations provide an accurate estimate of the sound levels to be expected, many of the proposed upgrades and improvements will more than likely further reduce the propagated noise levels. The following recommendations are provided as additional measures to reduce the noise propagation to the nearby area, improve the interior and exterior acoustics of the space, and insure that the maximum allowable levels are met during operation:

1. Provide a copy of the Section 8.48 of the San Clemente Municipal Code as part of the contract with all musicians with acknowledgement of all potentially applicable fines.
2. Treat the south side of the rooftop with sound absorbing/diffusing materials to reduce the reflections off the adjacent Elks Lodge wall. The proposed stucco wall and cushioned seats may provide sufficient absorption and diffusion.
3. Re-evaluate the maximum sound level once all improvements are in place.
4. Provide a barrier behind the rooftop performance area to reduce the propagation to the north and northwest or extend the additional property line wall to shield the adjacent mechanical equipment as well as the music source.
5. Provide a sound level meter with warning light to be used by performers to insure that they limit their sound levels such that the requirements are met.

Respectfully submitted,

Yanchar Design & Consulting Group
Carl J. Yanchar
President

7E 123

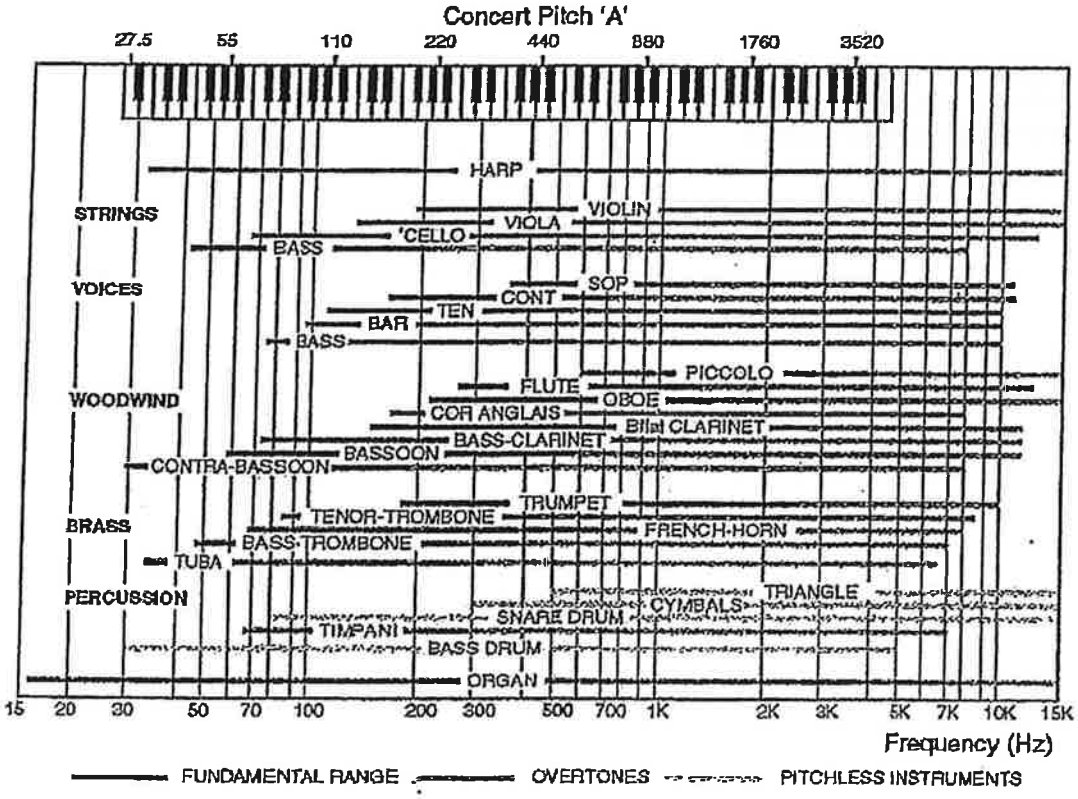
11.0 Appendix

Table 7
Definitions

Term	Definitions
Decibel, dB	A unit describing the amplitude of sound, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micropascals (20 micronewtons per square meter).
Frequency, Hz	The number of complete pressure fluctuations per second above and below atmospheric pressure.
A-Weighted Sound Level, dBA	The sound pressure level in decibels as measured on a sound level meter using the A-weighting filter network. The A-weighting filter de-emphasizes the very low and very high frequency components of the sound in a manner similar to the frequency response of the human ear and correlates well with subjective reactions to sound. All sound levels in this report are A-weighted.
L01, L10, L50, L90	The A-weighted sound levels that are exceeded 1%, 10%, 50%, and 90% of the time during the measurement period.
Equivalent Noise Level, Leq	The average A-weighted sound level during the measurement period.
Community Noise Equivalent Level, CNEL	The average A-weighted sound level during a 24-hour day, obtained after addition of 5 decibels in the evening from 7:00 pm to 10:00 pm and after addition of 10 decibels to sound levels in the night between 10:00 pm and 7:00 am.
Day/Night Noise Level, Ldn or DNL	The average A-weighted sound level during a 24-hour day, obtained after addition of 10 decibels to levels measured in the night between 10:00 pm and 7:00 am.
Lmax, Lmin	The maximum and minimum A-weighted sound level during the measurement period.
Ambient Noise Level	The composite of sound from all sources near and far. The normal or existing level of environmental noise at a given location.
Ambient Noise Level	The composite of sound from all sources near and far. The normal or existing level of environmental sound at a given location.

7E-104

Table 8
Frequency Range of Musical Instruments



ME-12S

ACOUSTICAL ENGINEERING ANALYSIS

Rooftop Grill & Bar
1509 N. El Camino Real
San Clemente, CA 92673

Prepared by:

Yanchar Design & Consulting Group
26741 Portola Parkway, Suite 1E
Foothill Ranch, CA 92610
949-770-6601

April 2, 2013

Project No: 130329

Original Acoustic Analysis

YE-126

At the request of Cottage Development, Yanchar Design & Consulting Group has completed an acoustical analysis of the proposed restaurant and bar at 1509 N. El Camino Real, San Clemente, CA.

The building is currently a vacant restaurant of Type V construction with primarily stucco exterior and several existing and proposed glass openings. Adjacent properties are essentially commercial and industrial with the exception of a mixed use commercial/residential development to the northwest.

The interior of the restaurant is approximately 42 inches below grade. The entire south wall is covered with stone veneer which is a sound diffusing surface

The Elks Club building directly to the south is two stories in height with no exterior openings on its north side. Adjacent to the north is a Type V building in use as an animal hospital.

The closest residential use is the second floor of a mixed use property 157 feet to the northwest. The nearest solely residential property is approximately 260 feet to the west. The east side of El Camino Real to the 5 freeway is within the 65 dB noise contour region and the east side to the ocean is within the 60 dB noise contour.

The San Clemente Municipal Code addresses the maximum permissible "ambient" noise levels in various zones, as follows:

Table 1

Land Use	Allowable Exterior Noise Level	
	7:00 a.m. -- 10:00 p.m.	10:00 p.m. -- 7:00 a.m.
Residential	55 dBA	50 dBA
Residential portion of mixed use	60 dBA	50 dBA
Commercial	65 dBA	60 dBA
Industrial	70 dBA	70 dBA

The San Clemente General Plan section 14.6.G presents as an objective that noise levels emanating from entertainment and restaurant/bar establishments "not be discernible" from ambient noise levels at a distance of 50' from the establishment. Although "not discernible" is a subjective criterion, for purposes of this report we will assume that it can be interpreted as not contributing to the measured ambient noise level, essentially 10 dBA below that level.

There are several scenarios to evaluate; the enclosed portion of the proposed restaurant with and without the windows closed and the proposed roof top area. In addition, there are two possible sources to consider; the sound generated by the restaurant clientele at the maximum occupancy and the sound generated by the potential of acoustic or amplified music.

7E 127

The maximum allowable levels from sources on the restaurant property for the most sensitive receptors are summarized in the following tables:

Table 2

Noise Level from Interior Sources in dBA		General Plan Recommendation	Maximum Allowable Source Level
50' from property line	Restaurant Windows Open	62	105
		Municipal Code Limit	
Mixed use residential 7A-10P	Restaurant Windows Open	60	106
Closest residential 7A-10P	Restaurant Windows Open	55	106
Mixed use residential 10P-7A	Restaurant Windows Open	50	96
Closest residential 10P-7A	Restaurant Windows Open	50	101

Table 3

Noise Level from Interior Sources in dBA		General Plan Recommendation	Maximum Allowable Source Level
50' from property line	Restaurant Windows Closed	62	117
		Municipal Code Limit	
Mixed use residential 7A-10P	Restaurant Windows Closed	60	118
Closest residential 7A-10P	Restaurant Windows Closed	55	117
Mixed use residential 10P-7A	Restaurant Windows Closed	50	108
Closest residential 10P-7A	Restaurant Windows Closed	50	113

Table 4

Noise Level from Exterior Sources in dBA		General Plan Recommendation	Maximum Allowable Source Level
50' from property line		62	93
		Municipal Code Limit	
Mixed use residential 7A-10P		60	94
Closest residential 7A-10P		55	94
Mixed use residential 10P-7A		50	84.5
Closest residential 10P-7A		50	89.5

7E 28

Noise generated by restaurant clientele can vary over a wide range. The maximum level to be encountered can be 90 dBA when the patrons are essentially shouting to be heard. Average levels are in the range of 78-82 dBA.

Estimated noise levels generated by the clientele within the restaurant will be below the requirements whether the windows are open or closed. After 10 PM, activities on the rooftop will also meet the requirements under typical circumstances. An exceptionally boisterous crowd could exceed the requirements at the closest point on the mixed use property.

There are no plans at this time for regularly scheduled music. Because of the limited space available, the most likely sources would be an occasional trio or DJ.

In the event that music is incorporated in the future, any source within the interior space could produce a level up to 106 dBA with the windows open during the hours of 7AM to 10 PM and 96 dBA during the hours of 10 PM to 7 AM and satisfy the requirements of the Municipal Code. With the windows closed, levels up 118 dBA from 7 AM to 10 PM and 108 dBA from 10 PM to 7 AM would be attenuated to permissible levels.

As currently proposed, the rooftop area could accommodate levels of up to 93 dBA from 7 AM to 10 PM and 84.5 dBA from 10 PM to 7 AM. Table 5, which follows, presents a comparison of some typical noise and music sources. With prudent administrative controls, the types of sources anticipated could be accommodated.

Respectfully submitted,

Yanchar Design & Consulting Group
Carl J. Yanchar
President

7E 129

Table 5
A Weighted Sound Levels of Common Sounds

Typical Sounds	Typical Music	SPL, dB	PERCEPTION OF SOUND
		150	
Chest wall vibrates, choking, giddiness			
Jet taking off, 25 meters		140	
Threshold of pain			
Artillery. 100 yards	Cannon (peaks)	130	
Pneumatic chipper			DEAFENING
Riveter, nearby		120	
Loud car horn, nearby	Very loud rock (peaks)		
	Very loud classical (peaks)	110	
Printing Press	Very load rock (avg.)		VERY LOUD
Inside N.Y. subway	Very loud classical (avg.)	100	
Police Whistle	Loud popular music		
Heavy truck	Loud classical music	90	
Vacuum Cleaner (10')	Moderately loud popular music		LOUD
Noisy traffic, corner	Moderately loud classical	80	
Noisy office	Soft popular music		
		70	
Business office	Soft classical music		MODERATE
Conversational speech		60	
Private office	Very soft music	50	
Background noise, city home			
		40	FAINT
Background noise, suburb			
Library		30	
Background, country night			
Whisper, leaves rustling		20	VERY FAINT
Good recording studio			
		10	
Threshold of hearing		0	THRESHOLD OF AUDIBILITY

NE 130

Yanchar Design & Consulting Group

May 29, 2013

Mr. David G. Gutierrez
Cottage Development
209 Ave. Del Mar Ste 204
San Clemente, CA 92672

Dave,

In open space, 93 dBA would be attenuated to 44.5 dBA at 800 feet distance.

In addition, there is considerable shielding from the Elks Lodge two story wall and most of the rear portion of the proposed Rooftop Grill. Even more shielding is provided by the numerous structures on Obreros Lane in the path to the concerned neighborhood, including a substantial concrete masonry wall shown in the attached pictures. All of this could easily add another 20+dBA of attenuation.

Of much more concern to that neighborhood should be Mulligan's Sports Bar at the corner of Calle Valle and Obreros Lane.

http://www.mulligansbarsanclemente.com/

They have 6 TV's and a jukebox and are open until 2A every day.

Regards,

Yanchar Design & Consulting Group
Carl J. Yanchar
President

26741 Portola Parkway 1E
Foothill Ranch, CA 92610
PH: 949.770.6601 FX: 949.770.6575

ME 13

Yanchar Design & Consulting Group

June 24, 2013

Mr. Sean Nicholas
City of San Clemente
910 Calle Negocio
San Clemente, CA 92673
Nicholas@san-clemente.org

RE: Sound Addendum Report Letter - Rooftop Grill Restaurant

Dear Mr. Nicholas,

This Sound Addendum Report Letter serves to advise you that my clients proposed project Rooftop Grill restaurant as designed and per my onsite field sound readings both onsite and the surrounding neighborhood of the subject property is compliant with both the existing Municipal Code and General Plan.

Section 14.8.1 of the San Clemente General Plan is an objective, to be implemented at some future time as suggested in I 14.17. This objective apparently was never implemented since it does not appear in the Municipal Code. If it were, the proposed project would still be in compliance with this policy.

Our recent field sound tests show the ambient noise, which is dominated by El Camino Real traffic, is 71-72 dBA (to occasionally over 95 dBA), while the proposed restaurant, plus remaining ambient sound is estimated to be below 58 dBA at the property line and 52 dBA at 50 feet from the property line.

When two sound levels (El Camino Real and proposed restaurant) are read by a sound level meter that are more than 12 dBA different , the level will be the same as that of the higher sound reading. Therefore, the restaurant sound is not measurable due to the presence of much higher El Camino Real traffic noise which dominates.

Sound Report - April 02, 2013
Sound Report (Field/Onsite) - Dated May 15, 2013
Sound Addendum Report Letter - Dated June 24, 2013

Regards,

26741 Portola Parkway 1E
Foothill Ranch, CA 92610
PH:949.770.6601 FX:949.770.6575

7E/32

Yanchar Design & Consulting Group
Carl J. Yanchar
President

ME-133

ATTACHMENT 12

7E-134

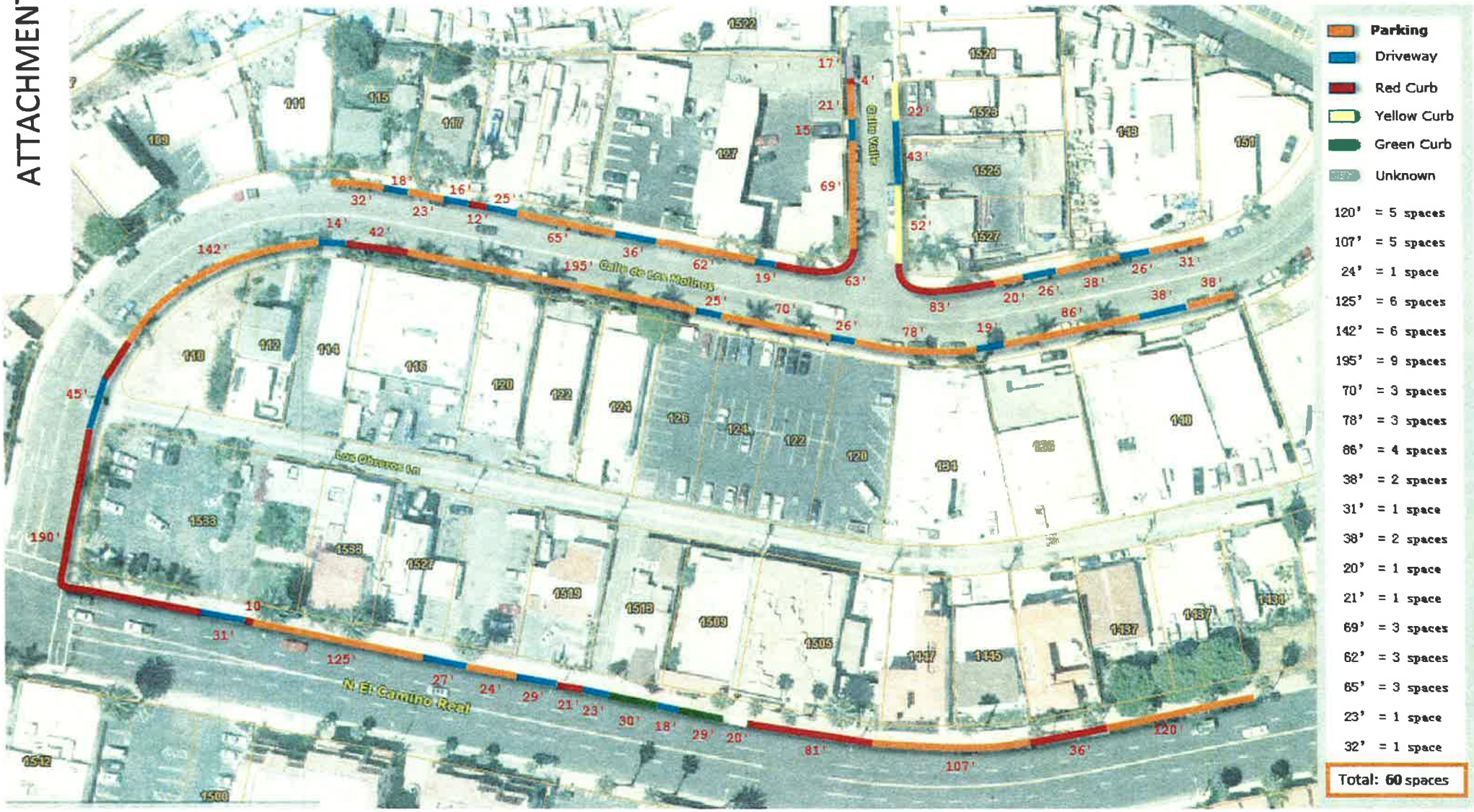
1509 Rooftop Off-street Parking Analysis 3 21 13

1509 Rooftop Grill - Off-Street Parking Analysis

Weather Temp.	Time Counted	Color Code Dots	Commercial East Parked	Residential West Parked	Available Total Parking	Percentage Actual Parked	Available Parking Spaces	Percentage Parking Available
			56	40	96	100.00%		
	3/14/2013 Thurs							
62	12:15	Lt. Blue	30	11	41	42.71%	55	57.29%
64	2:05	Orange	25	9	34	35.42%	62	64.58%
58	6:00	Yellow	28	8	36	37.50%	60	62.50%
	7:58	Blue	14	7	21	21.88%	75	78.13%
	Average:					34.38%		65.63%
	3/16/2013 Sat							
	12:00	Red	12	10	22	22.92%	74	77.08%
	2:00	Brown	12	6	18	18.75%	78	81.25%
	6:10	White	11	3	14	14.58%	82	85.42%
	8:00	Purple	10	2	12	12.50%	84	87.50%
	Average:					17.19%		82.81%
	3/21/2013 Thurs							
64	11:52	Lt. Blue	28	8	36	37.50%	60	62.50%
67	2:03	Orange	21	8	29	30.21%	67	69.79%
	6:03	Yellow	27	8	35	36.46%	61	63.54%
	8:06	Blue	14	7	21	21.88%	75	78.13%
	Average:					31.51%		68.49%
	3/23/2013 Sat							
	12:00	Red	10	10	20	20.83%	76	79.17%
64	2:00	Brown	12	5	17	17.71%	79	82.29%
65	6:05	White	10	3	13	13.54%	83	86.46%
	8:15	Purple	7	1	8	8.33%	88	91.67%
	Average:					15.10%		84.90%
Total Average Available Parking Spaces:								75.46%

ATTACHMENT 13

1E 136



ATTACHMENT 14

Maune, Kimberly

From: Rogers, Kathy
Sent: Monday, June 03, 2013 1:01 PM
To: Maune, Kimberly
Subject: FW: 1509 North El Camino Real proposal

From: meifromca@aol.com [mailto:meifromca@aol.com]
Sent: Monday, June 03, 2013 12:41 PM
To: pechousel@san-clemente.org; CityHall Mail
Subject: 1509 North El Camino Real proposal

To whom it may concern,

My husband and I have a weekend house/ Retirement home on Boca de La Playa. We purchased this house in 2010 and had to do a major construction which is almost done and now we can call it our home. We love the quietness and family oriented feel of North Beach . However the homeless people are appearing from everywhere over the last year which is a big concern to us for they are using the Ole Hanson Building to sleep on top and charge their cell phones and actually us the bushes there as toilets. Now to hear that there also will be a restaurant/bar/nightclub with loud music that last till 2:00 AM in the moring and drunk people roaming around our residential street. My husband and I are outraged by this and we definitely will vote NO to this proposal. NO NO NO.

Sincerely:

Reinier Hoogenraad

Gila Hoogenraad

111 Boca de la Playa
San Clement, Ca 92672

7E 137

Maune, Kimberly

From: Rogers, Kathy
Sent: Tuesday, June 04, 2013 10:15 AM
To: Maune, Kimberly
Subject: FW: Rooftop Bar Proposal Comment To Bill Koelzer

From: Sri K [mailto:kskk02@gmail.com]
Sent: Tuesday, June 04, 2013 10:09 AM
To: Pechous, Jim; CityHall Mail
Subject: Rooftop Bar Proposal Comment To Bill Koelzer

Hi,
I submitted my comment on patch at the below link:

http://sanclemente.patch.com/groups/editors-picks/p/some-north-beach-residents-organize-against-rooftop-bar-proposal

If you can provide feedback to my comments, I may be better educated and have a different opinion. FYI - I am personally invested (>1.4M) into San Clemente real estate so I have vested interest in seeing San Clemente progress forward to become a very progressive, modern city that attracts high quality tourists and professionals, while still maintaining a traditional beach town feel. Below is my comment:

Bill, lets first talk about goals for north beach and then figure out whether this is the best way to achieve the goal w' the least cost. FYI - I own and live property on de la grulla in north beach. I own another property on ave domingue in South Beach.

1. We need to improve the business conditions on north beach. Having a high quality bar/restaurant will attract higher end clientele and improve the business environment for all. Bull Taco was a great addition that we should continue to build upon.

2. El camino real needs to be the business street and provides a mix of different businesses that then allows visitors and residents the "san clemente experience". Del Mar provides this, but it would be great to have el camino north beach have this as well. Who knows, 20 years from now, this might be the laguna beach of the south. This would help all businesses along the street and bring in new investment.

Now, lets talk about your reasons as to why you feel this move is not achieving the prior stated goals:

1. Potential diminishing property prices. This have very little to do with businesses on el camino real. In fact, the income properties on the street might benefit from higher quality restaurant/bar combinations. Many younger professionals desire a location that is close to bars/restaurants.

2. The vet hospital is very small and has negligible affect on the south beach economic and tourist experience.

3. THe noise level though high, is only during a very short time window - Friday/Saturday and for 10pm - 2am perhaps. The impact of the noise to the outside world can be minimized by design construction as well. I would definitely encourage us to look into this.

Look, Bill, there is no perfect solution. We need to improve south beach el camino real really badly and the best way to do that is to encourage investors to put money in. San Clemente has so much untapped potential vs. all the other beach cities. We should all work together on slowly realizing this potential.

sri

ME 138

Maune, Kimberly

m: Rogers, Kathy
Sent: Tuesday, June 04, 2013 11:06 AM
To: Maune, Kimberly; Gee, Denise
Subject: FW: Proposed restaurant/deck bar at 1509 El Camino Real

From: James Najera [mailto:jamesnajera@firstteam.com]
Sent: Tuesday, June 04, 2013 10:46 AM
To: Pechous, Jim; CityHall Mail
Subject: Re: Proposed restaurant/deck bar at 1509 El Camino Real

Dear Mr. Pechous,
Yesterday I received the notice of public hearing for the CUP at 1509 N. El Camino Real. I am disappointed that the hearing is scheduled for 4pm on a weekday. I understand that planning commissioners are volunteers, but the hearings should not be scheduled before 6pm. I imagine for many residents/owners meetings at 4pm require some time off - whether paid or not. It simply isn't possible in my case to make this meeting with such short notice and during a time frame commonly accepted as the workday.
Please consider scheduling public hearings in the evenings to allow residents and owners to participate.
Thank you for your consideration.
Jim

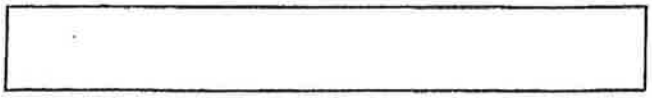
Fri, May 31, 2013 at 10:26 AM, James Najera <jamesnajera@firstteam.com> wrote:
To: jpechous; San Clemente CIty Manager

I own a home on Avenida Florencia, near El Camino Real. I lease this property to a small family. The proposal of developing the the property at 1509 El Camino Real into a restaurant and rooftop bar/club with live music is concerning. I am supportive of developing new retail and restaurant expansion in North Beach such as the Bull Taco, but a rooftop bar/club so close to our residential neighborhood is problematic. The late night noise, parking congestion on our streets and potential crime associated with late night patrons will overwhelm our serene community.
Please do not approve the rooftop/bar/nightclub component of this proposal and please require restaurant parking on site - our neighborhood cannot absorb the additional congestion.
Thank you,

Jim Najera, MBA
Realtor
First Team Real Estate
DRE 01906227

Direct Office: (714) 481-8575
Mobile/Text: (323) 533-5466
ail: jamesnajera@firstteam.com
bsite: https://jimnajera.com/

ME 139



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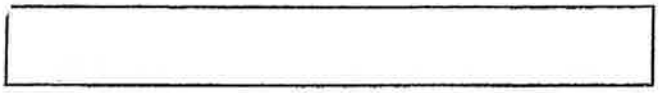
--
Jim Najera, MBA
Realtor
First Team Real Estate
DRE 01906227

Direct Office: (714) 481-8575
Mobile/Text: (323) 533-5466
Email: jamesnajera@firstteam.com
Website: https://jimnajera.com/



Our company accepts no liability for the content of this email, or for the consequences of any actions taken on the basis of the information provided, unless that information is subsequently confirmed in writing. Any views or opinions presented in this email are solely those of the author and do not necessarily represent those of the company.

7E 140

Maune, Kimberly

From: Gee, Denise
Sent: Tuesday, June 04, 2013 2:09 PM
To: Maune, Kimberly
Subject: FW: Rooftop Bar & Grill

From: Barbara Conn [mailto:bjconn1@cox.net]
Sent: Tuesday, June 04, 2013 12:29 PM
To: Planning Mail
Subject: Rooftop Bar & Grill

Dear Planning Commission Members:

First, I want to thank you for your service. I appreciate your dedication and sincerity in helping keep San Clemente a wonderful place in which to live. I know that, sometimes, you probably would rather stay at home and relax, but you're willing to give up that time for us.

As I mentioned in my comments to you in April, I have concerns about noise from the proposed rooftop bar and grill. I spoke with Dave Gutierrez yesterday, and we went over the proposed conditions from city staff.

I'm hoping that with these changes, the impact on our neighborhood will be negligible, so I am willing to support this project, and look forward to the six-month review once the place is up and running.

Thanks, again, for your service, and I hope that, together, we can make North Beach a vibrant area while maintaining serene neighborhoods.

Sincerely,

Barbara Conn

130 Avenida Florencia

7E,14

Maune, Kimberly

From: Gee, Denise
Sent: Tuesday, June 04, 2013 2:09 PM
To: Maune, Kimberly
Subject: FW: Roof Top Bar and Grill

From: fausto@faustorelis.com [mailto:fausto@faustorelis.com]
Sent: Tuesday, June 04, 2013 12:47 PM
To: Planning Mail
Subject: Roof Top Bar and Grill

I am in support of the Roof Top Bar and Grill in San Clemente.

Sincerely;

Fausto Relis
Realty One Group, Inc
23811 Aliso Creek Road, Suite #181
Laguna Niguel, CA 92677
Cell 949-257-7512
Fax 949-361-0059
DRE #01897319
Website http://www.faustorelis.com

7E 14.2

Maune, Kimberly

From: Gee, Denise
Sent: Tuesday, June 04, 2013 2:09 PM
To: Maune, Kimberly
Subject: FW: Roof top deck

From: DMoch82566@aol.com [mailto:DMoch82566@aol.com]
Sent: Tuesday, June 04, 2013 12:57 PM
To: Planning Mail
Subject: Roof top deck

Dear commissioner:

I have known Mr. David Guiterrez for many years. He is of the utmost integrity and more importantly, any building project or real estate projected associated with him, will be without doubt, of the highest standard. I encourage you to support his current project at 1509 PCH as North Beach really needs some business appeal.

Stephen Schwartz
216 Ave La Cuesta
San Clemente, CA

7E 143

Maune, Kimberly

From: Gee, Denise
Sent: Tuesday, June 04, 2013 2:09 PM
To: Maune, Kimberly
Subject: FW: 1509 PCH GUTIERREZ PROJECT

From: DMoch82566@aol.com [mailto:DMoch82566@aol.com]
Sent: Tuesday, June 04, 2013 1:00 PM
To: Planning Mail
Subject: 1509 PCH GUTIERREZ PROJECT

To whom it may concern:

I fully support the proposed rooftop restaurant proposed by David Gutierrez. North Beach needs more appealing choices fro food and entertainment. I encourage you to support this project.

yours truly,

Steve Schwartz

7E 14f

Maune, Kimberly

ım:	Gee, Denise
ɔent:	Tuesday, June 04, 2013 2:08 PM
To:	Maune, Kimberly
Subject:	FW: To Lewis Avera; Re: 1509 N. El Camino Real, San Clemente

From: Joe Faris [mailto:joefaris@cox.net]
Sent: Tuesday, June 04, 2013 1:45 PM
To: Planning Mail
Subject: To Lewis Avera; Re: 1509 N. El Camino Real, San Clemente

Hi Mr. Avera, I'd like to express my support for the Roof Top Grill that the council is considering for a CUP. I believe North Beach needs a project like this to assist in driving improvement in that area of town. I've been a San Clemente resident for 13 years and would love to see the northern gateway to our beautiful city improved and revitalized.

Thank you for your consideration.

Joe Faris

KJF Partners Inc.
Cell: 949-275-5038
ce: 949-492-5400
rax: 949-492-5450

TE 145

Maune, Kimberly

From: Gee, Denise
Sent: Tuesday, June 04, 2013 2:08 PM
To: Maune, Kimberly
Subject: FW: ECR Restaurant

From: Rey Harju [mailto:fpinfo@fieldpiece.com]
Sent: Tuesday, June 04, 2013 1:54 PM
To: Planning Mail
Subject: ECR Restaurant

Lewis—

I'm speaking strictly personally as a resident of North Beach and NOT as a board member of the North Beach Community Association. This is NOT something the NBCA wants to get involved in.

I live across the street from the Casino and the Ole Hansen Beach Club. Sometimes there are two weddings going on at once. We like the activity and the energy of those parties. Yes, sometimes we can hear the music. No, it never bother us. No even when they have the music outdoors.

We had more problems with the neighbor who used to throw parties on their balcony next door, and with the big boom-boxes in cars, but hey, it's the BEACH. We didn't move to the beach for peace and quiet.

The more vacant buildings that can be filled in North Beach with vibrant activities, the better. Specifically, all the restaurants will benefit with the addition of another good restaurant.

Parking is a problem, but it's not fixed by restricting businesses. The city needs to address parking as a separate issue. That's a problem all over North Beach, but it can't be solved by restricting use of the currently existing buildings.

It's a little hard for me to understand a complaint of noise coming from the other side of ECR, when ECR itself contributes mightily to the noise in that area.

You have your regulations and restrictions. If Dave has met those, it sure seems that would be enough.

--Rey Harju
North Beach Resident

7E-146

Maune, Kimberly

From: Nicholas, Sean
Sent: Tuesday, June 04, 2013 2:22 PM
To: Gee, Denise
Subject: FW: Rooftop Grill Proposal--North Beach

Can you add this to the list and forward them all to Pech and Kim as well. Kim has been printing them out so I can place the at the dais.

Thanks,
Sean

Sean Nicholas
Associate Planner
Los Molinos and El Camino Real Automotive Business Liaison
City of San Clemente
Office (949) 361-6189, Fax (949) 366-4750
Nicholas@san-clemente.org
www.san-clemente.org

From: Mark McGuire [mailto:mrmcguirelaw@cox.net]
Sent: Tuesday, June 04, 2013 2:07 PM
To: Nicholas, Sean
Subject: Rooftop Grill Proposal--North Beach

Hi Sean.

I am a San Clemente resident and, along with several other San Clemente residents, an owner of property and a business in North Beach not too far from the proposed rooftop grill project. I Just finished reviewing your staff report and the materials attached to this agenda item. I think you and others on the City staff have done a very good job of evaluating the proposal, separating fact from fiction in terms of criticisms but also attempting to address legitimate concerns raised by the nearest residents.

If done right, this project could be a great addition to San Clemente and the North Beach area in particular. I believe the owner, also a longtime San Clemente resident, is committed to doing the project the right way. More importantly, however, I think you have conditioned the project to ensure it is undertaken the right way and to review it even after approval to ensure it remains an asset not a problem to the area.

I support it!

Mark McGuire

P.S. Would you kindly include in the PC packets or place copies of this with other correspondence delivered at the dais? Thanks.

7E147

Maune, Kimberly

From: Rogers, Kathy
Sent: Tuesday, June 04, 2013 2:40 PM
To: Maune, Kimberly; Gee, Denise
Subject: FW: 1509 North El Camino Real

From: Mary Jo Stackhouse [mailto:mj@teamstackhouse.com]
Sent: Tuesday, June 04, 2013 2:31 PM
To: CityHall Mail
Subject: 1509 North El Camino Real

I received some information in the mail that there is a proposal to permit a restaurant/bar/night club at 1509 North El Camino Real. I purchased 1503 Calle Mirador, Unit A her in North Beach a little over two years ago. As a home owner ,in this neighborhood, I would like to see more development in the area but not what has been described in the letter as having a roof top bar with live music and parking in the neighborhood streets. I love living in the neighborhood but feel very strongly that the project that is described in the letter would significantly lower our homes' values and also make it impossible to have quiet enjoyment of my own space. With real estate finally making a come back I would hate to see this bar go in and have a negative effect on the prices in this area. I certainly would not have purchased my home if this project had been in place when I purchased my home.

Please let me know where and what time the planning meeting is occuring as I would like to attend and make my feelings known publicly.

Best regards,

Mary Jo Stackhouse
Realtor
Keller Williams Realty
949.400.3152
mjstackhouse@cox.net
DRE#01305746

7E 1/8

Maune, Kimberly

m: Pechous, Jim
Sent: Tuesday, June 04, 2013 3:08 PM
To: Nicholas, Sean; Maune, Kimberly
Subject: Re: 1509 N. El Camino Real

Please forward

Sent from my Sprint phone

Paul & Shy Falk <surfknit@flash.net> wrote:

Please forward this e-mail to the Planning Commissioners as I will be unable to attend the June 5th meeting, regarding this proposal.

After reviewing the latest staff report regarding this proposal, I am still opposed to this project, with regards to two issues;

1. Outside, roof-top entertainment.

2. Lack of required parking.

arding outside rooftop entertainment. Regardless of the sound studies, etc., this proposal is simply not compatible with the surrounding residences and existing businesses. The residents should expect peace and quiet after hours. We currently have noise prohibitions against live or amplified music to protect residents expectations. Why is it any more realistic to now approve live and amplified music for a business adjacent to residents homes? This proposal in short, says it's alright for a business to exceed noise ordinances even though such activity is not permitted for residents; and for good reason; peace and quiet!

Rooftop entertainment should only be approved if the owners close in the rooftop to capture noise. At the very least, approval for rooftop entertainment should only be approved for non-amplified music, which, would totally solve the problem of escaping noise, and, permit the owner to continue entertainment at any hour after 10pm since the noise would be minimal.

The entire issue of entertainment is questioned when amplification comes in the proposal. Eliminate the amplification and the issue becomes mute and the business owner is happy, and, residents won't hear the music.

With regards to the lack of parking, I'm concerned Staff is setting themselves and any future business owners future proposals in North Beach, in a position where future business prospects will expect the same treatment; that of, trying to squeeze/approve any business proposal into the North Beach area, simply for the sake of improving North Beach.

Not only is this proposal to big for the area and lacking parking, to approve such a request can also lead to dooming the business, as this seems like Staff is trying to fit this business and all of it's proposals into this small lequate area.

.ie parking plan proposal is inadequate for this site by any stretch of the imagination. We are already struggling with parking congestion in many parts of town. Let's not get off on the wrong foot in North Beach

7E149

and squeeze projects into inadequate building spaces.

To assure success for the business owner, the City, and it's residents, we need to thoroughly resolve both mentioned issues, not simply rely on studies of what may or may not work.

Common sense can resolve both of the mentioned issues. Downsize the number of seats to be compatible with available parking, and, permit only non-amplified music outside. To ignore doing so makes this proposed project far to big to work, and, not acceptable to surrounding residents who already reside in this area and should not be subjected to outside entertainment from any business.

North Beach may be a bit different in terms of how it is developed in the future, however, current residents should not have to compromise their peace and quiet. In this case, the residents were here before this business proposal, and, their peace and quiet should not be compromised.

Solve the noise problem and lack of parking issues and you will have developed a plan that will lead to a successful business. To ignore these issues and approve the proposal is not, in my opinion, an example of successful planning.

Thank you,

P.A. Falk
40 Year Resident on Calle Redondel

7E 150

Maune, Kimberly

n:	Mike Clavin <mikekc18@gmail.com>
Sent:	Tuesday, June 04, 2013 7:12 PM
To:	Planning Mail
Subject:	North Beach project— Roof Top Grill

Don,
I have been a San Clemente resident for 26 years and like all of us have seen tremendous changes over the years. I would just like you to know that I'm all for a new restaurant (Roof Top Grill) in the North Beach area because it is still an area that has lagged behind the likes of Del Mar and Pier revitalization. I look forward to enjoying and supporting another SC restaurant .
Sincerely,
Mike Clavin

7E151

Maune, Kimberly

From: Dr. Nadine Levinson <nadinelevinson@gmail.com>
Sent: Tuesday, June 04, 2013 8:24 PM
To: Planning Mail
Subject: RE: In favor of the CUP for 1509 N. El Camino Real, San Clemente (North Beach)

Dear Mr. Lewis Avera,

Please accept this letter as a letter in favor of allowing the conditional use permit for the 1509 N. El Camino Property. We need more quality restaurants, and especially a family restaurant. I think that San Clemente would really benefit from this addition. Please approve the proposal.

Sincerely,
Dr. Nadine A. Levinson

Dr. Nadine Levinson
PEP Co-Managing Director
35131 Beach Road
Capistrano Beach, CA 92624
C: 949 573-7500; O: 949 496-1067; F: 949 496-0723
www.p-e-p.org
nadinelevinson@gmail.com

From: Dr. Nadine Levinson [mailto:nadinelevinson@gmail.com]
Sent: Tuesday, June 04, 2013 8:20 PM
To: 'planning@san-clemente.org'
Subject: In favor of the CUP for 1509 N. El Camino Real, San Clemente (North Beach)

Dear Don Brown,

I am a resident of Beach Road and spend a lot of time (and money) in San Clemente. I very much support the application to remodel the
1509 N. El Camino Real, San Clemente (North Beach) into a family Roof Top Grill. This is a wonderful idea and is a win-win for the city, the residents, and those of us in the outlying areas.

We need more quality family restaurants.

Most Sincerely,
Dr. Nadine A. Levinson

Dr. Nadine Levinson
PEP Co-Managing Director
35131 Beach Road
Capistrano Beach, CA 92624
C: 949 573-7500; O: 949 496-1067; F: 949 496-0723
www.p-e-p.org
nadinelevinson@gmail.com

7E 153

Maune, Kimberly

,m:	jdlifeguard@cox.net
Sent:	Tuesday, June 04, 2013 10:03 PM
To:	Planning Mail
Subject:	Rooftop project

Dear Mr. Brown,
I am a resident of San Clemente. I have heard a lot of chatter about this project in North Beach. Most of the negative chatter has boiled down to 'great idea, but not in my backyard'. So, does this mean that no projects should ever be approved because they will all be in someone's back yard? In my humble opinion, if a project meets the requirements that the city government requires, then the 'not in my backyard' argument should not be considered a valid reason to deny or delay a project.

Sherman Dorsey

7E 153

Maune, Kimberly

From: jdlifeguard@cox.net
Sent: Tuesday, June 04, 2013 10:16 PM
To: Planning Mail
Subject: 1509 N El Camino Real Project

Dear Mr. Avera,

I am a resident of San Clemente and I am looking forward to this project arriving in the North Beach area. It is much easier to get to and park in than downtown and the pier bowl area. Please support this project! I can't wait for it to open!

Sherman Dorsey

7E 154

Maune, Kimberly

m:	john carpenter <jcarpenter1@cox.net>
Sent:	Tuesday, June 04, 2013 11:12 PM
To:	Planning Mail
Subject:	Lewis Avera/Roof Top Grill

Mr. Lewis Avera
San Clement Planning Commission

Dear Lewis,

I would like to offer my support for the proposed Roof Top Grill at 1509 N. El Camino Real, San Clemente.
I think it would be a nice addition to our city, and help start developing North Beach.

Thank you for your consideration,

John Carpenter,
San Clemente resident (19 years)

7E/55

Maune, Kimberly

From: dgutierrez1@cox.net
Sent: Tuesday, June 04, 2013 11:24 PM
To: Planning Mail
Subject: Attention; Mr. Lewis Avera- Roof Top Grill

==========
Date: Tue, 4 Jun 2013 23:17:51 -0700
From: <dgutierrez1@cox.net>
To: planning@san-clemente.org
Subject: Attention; Mr. Lewis Avera- Roof Top Grill

APPROVED THIS GREAT PROJECT - San Clemente is a wonderful beach side city, My husband and I have lived here for 26 years and raised 4 children here. Since our first drive from the top of N. El Camino Real, we always wondered when this North Beach area would be fixed up. Many of our friends and family visiting San Clemente have asked this same question. San Clemente has a wonderful opportunity to start this North Beach area on the right track with the beginning of a wonderful Roof Top Grill! I am in full support of this beautiful restaurant, It will be an amazing beginning to beautify our North Beach area! I urge our planning commission members to approve this project, I know I will definitely be visiting this restaurant with our family for breakfast, lunch, dinner and of course dessert after a movie! Thank you, Michele Lynn Gutierrez

PE 15c

Maune, Kimberly

m:	Cynthia Sieloff O <cynthiasieloff@cox.net>
Sent:	Wednesday, June 05, 2013 6:53 AM
To:	Planning Mail
Subject:	Rooftop terrace

Hello!
We think this is a terrific project and much needed in this part of San Clemente!

Warm regards,
Cynthia Sieloff
Breakwater Events at Aventura
949. 244.7920
Cynthiasieloff@cox.net

7E 15.7

Maune, Kimberly

From: Rogers, Kathy
Sent: Wednesday, June 05, 2013 8:10 AM
To: Maune, Kimberly
Subject: FW: Restaurant/nightclub/bar at 1509 North El Camino Real

Good morning ☺

From: Brocknau [mailto:brocknau@aol.com]
Sent: Wednesday, June 05, 2013 8:05 AM
To: Pechous, Jim; CityHall Mail
Subject: Fwd: Restaurant/nightclub/bar at 1509 North El Camino Real

-----Original Message-----
From: Brocknau <brocknau@aol.com>
To: brocknau <brocknau@aol.com>
Sent: Tue, Jun 4, 2013 10:39 pm
Subject: Restaurant/nightclub/bar at 1509 North El Camino Real

Jim,

After the public's rejection of the proposal to build a disaster in the North Beach parking lot, we have the feeling of "here we go again" with a proposal that is completely inappropriate for the area. If it were a restaurant that would close at 10 P.M. it would be another matter.To have a bar with outside music at all hours just isn't acceptable.

We now have a bar in the area (Knuckleheads) which at times is a neighborhood nuisance with intoxicated patrons wandering around the neighborhood talking as if they were the only folks in the area.. That's from 12:30 AM to whenever. Not sleep inducing to say the least.

A restaurant with no music could be acceptable under proper management. And then there's the parking problem. Right in my front yard. No thanks.

Ed and Barbara Brocknau

ME 158

Maune, Kimberly

m:	sldorsey@cox.net
Sent:	Wednesday, June 05, 2013 10:32 AM
To:	Planning Mail
Subject:	Rooftop project

Dear Mr. Avera,

Please help approve this project! It will be a great addition to North Beach. I am confident that the parameters that the city requires of all of the projects that have been built in town will be followed in this project. I am anxious for its opening!!
Sherman Dorsey
Resident of San Clemente

7E 159

Maune, Kimberly

From:	sldorsey@cox.net
Sent:	Wednesday, June 05, 2013 10:37 AM
To:	Planning Mail
Subject:	North Beach project

To all of the planning commissioners,

Th

is is looking like a great project for this lovely town! It will be so nice to have somewhere to go that is not the crowded pier bowl and Avenida Del Mar. Please support this issue!

Sherman Dorsey
Resident of San Clemente

7E 16D

Maune, Kimberly

,m:	sldorsey@cox.net
Sent:	Wednesday, June 05, 2013 10:42 AM
To:	Planning Mail
Subject:	1509 N. El Camino Real

Dear Ms. Darden, Mr. Brown, Ms. Anderson, Mr.Kaupp, Mr. Crandell and Mr Ruehlin

Please help approve this project! It will be a great addition to North Beach. I am confident that the parameters that the city requires of all of the projects that have been built in town will be followed in this project. I am anxious for its opening!!

Sherman Dorsey
Resident of San Clemente

TE 161

ORANGE COUNTY SOCIETY FOR THE
PREVENTION OF CRUELTY TO ANIMALS
PO Box 6507 HUNTINGTON BEACH CA 92615
Telephone: (714) 964-4445 Facsimile: (714) 964-4449
www.orangecountyspca.org

June 4, 2013

Mr. Jim Pechous
City Planner
910 Calle Negocio
San Clemente, CA 92673

Dear Mr. Pechous:

We understand that the Planning Commission for the City of San Clemente is holding a meeting on June 5, 2013 to discuss the approval of a license for a new business in San Clemente. The Orange County Society for the Prevention of Cruelty to Animals is confident that the City of San Clemente will take into consideration the impact any new establishment will have on the welfare of their citizens and animals in their community.

Sincerely,

Tracy Roberts

Tracy Roberts
President

cc: Mayor Bob Baker

RECEIVED
JUN - 5 2013
SAN CLEMENTE
PLANNING DIVISION

TE162

Maune, Kimberly

m: signs by creations unlimited <signsbycreations@sbcglobal.net>
Sent: Wednesday, June 05, 2013 12:50 PM
To: Planning Mail

Hi Lewis,

I would like to show my support for a new dining experience here in North Beach. As a business owner in North Beach, my employees and I would welcome another local choice for our dining pleasure.

Thank you,
Andy
Signs by Creations Unlimited
1323 Calle Valle
San Clemente, Ca 92672
949 492-7337

ZE 1-03

Maune, Kimberly

From: David A Cole (Yahoo Acct) <visdream@yahoo.com>
Sent: Wednesday, June 05, 2013 2:09 PM
To: Planning Mail
Cc: jmember@dardenlentz.com; Nesa Anderson; Michael Kaupp; Bart Crandell; Jim Ruehlin
Subject: CUP Hearing on 1509 N. El Camino Real, San Clemente

Dear Planning Commission Members:

I understand that you are having a hearing today on a C.U.P. for the Roof Top Grill at 1509 N. El Camino Real. I know, the applicant, David G. Gutierrez, well and have "sat on both sides of the table" in business with him over the past 30 years. He is a long-time San Clemente resident who cares a great deal about his community, and the City as a whole. He is engaged and involved, but perhaps most importantly, he's honest and professional. His restaurant will be a stepping stone to improving a part of town that needs a boost now, and Mr. Gutierrez will do it right.

Please vote to approve the C.U.P and please put support this project for the good of the City.

Sincerely,

David A. Cole, Esq.

P.S., Planning Dept., please forward a copy of this email to Commissioners Brown and Avera.

Law Office of David A. Cole
120 Morrissey Blvd. #2340
Santa Cruz, CA 95063-2340

DAC@DavidColeLaw.com
(O) 831-435-3745
(C) 310-283-8313

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TE 164

Maune, Kimberly

From: Kate Maule <kmaule@invensure.net>
Sent: Wednesday, June 05, 2013 3:47 PM
To: Kate Maule
Subject: Regarding 1509 N. El Camino Real, roof top grill

Good afternoon,

I'd like to take a moment to convey my show of support to a building remodel at the above captioned address. As someone who frequently visits the North Beach area and enjoys what it currently has to offer, I'm excited about this new project. The area has much to offer and having a roof top grill is another plus. The weather is pleasant in the evening and what better way to spend it than to be outside enjoying it on a roof top patio with good friends and good food.

I hope you will consider the application of Mr. David Gutierrez for this remodel.

Thank you.

Sent by Kate Maule on Behalf of Mr. Robert Parent

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The Smart Way to Insure!™
Invensure Insurance Brokers, Inc.
91 Cowan, Irvine, CA 92614

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7E 65

Maune, Kimberly

From: Maryanne Phillips <maphillips8@gmail.com>
Sent: Wednesday, June 05, 2013 3:02 PM
To: Planning Mail
Subject: Conditional Use Permit to remodel a building at 1509 N. El Camino Real, San Clemente (North Beach) into a family Roof Top Grill.

I support and favor this remodel. It compliments the theme and atmosphere of San Clemente

Respectfully,
Maryanne Phillips
Remax Coastal Homes
118 S El Camino Real
San Clemente
Owner/Broker
949.289.5072

7E166

Maune, Kimberly

m:	Nicholas, Sean
Sent:	Monday, June 17, 2013 8:00 AM
To:	Maune, Kimberly
Subject:	FW: North Beach Rooftop Bar and Grill

For the list

Sean Nicholas
Associate Planner
Los Molinos and El Camino Real Automotive Business Liaison City of San Clemente Office (949) 361-6189, Fax (949) 366-4750 Nicholas@san-clemente.org www.san-clemente.org

-----Original Message-----
From: Sharon Lea [mailto:slea2875@cox.net]
Sent: Saturday, June 15, 2013 10:05 AM
To: Nicholas, Sean
Subject: North Beach Rooftop Bar and Grill

As a condo owner at 123 Avenida Florencia I am opposed to a bar with outdoor music so close to a residential area. This project would negatively impact our neighborhood with loud music, lack of parking, and late night traffic. I have 6 young grandkids that often spend the night and the noise would affect them negatively. I am also worried about the effect on property values in his neighborhood. I strongly advise you to deny this project. Thank you, Sharon Lea

ME 167

Maune, Kimberly

From: Rogers, Kathy
Sent: Tuesday, June 18, 2013 9:49 AM
To: Maune, Kimberly
Subject: FW: Planning Commissioners Meeting 6/19

From: Penny Dove [mailto:pennydovez3@cox.net]
Sent: Monday, June 17, 2013 3:33 PM
To: CityHall Mail
Subject: Planning Commissioners Meeting 6/19

I am a resident of San Clemente and unable to attend the Planning Commissions meeting on the 19th. I am against the approval of this roof top bar and grill. I have been to Avenida Animal Hospital on El Camino multiple times over the past 10 years, next door to this proposed Bar and GRill. As the parking is already difficult on the street and the few spaces at the Animal Hospital, I feel that approval for the bar and grill would further impact in a negative way the patronage of the Veterinary Hospital. Also, the foreseeable noise level would affect the tranquil setting necessary for boarding of animals and those recuperating from surgeries.

There is a blind spot coming down El Camino at the said Hospital site and crossing the street is already hazardous. With future Bar & Grill patrons drinking and driving, this presents another issue that I am sure the City does not want to have. Just remembering the sad event on PCH at Camino Capistrano, with the 2 women run down on their bicycles; the impact on their lives and their families and the City of Dana Point having to p millions of dollars.

Dr. Nagy Amin bought this practice a few years ago and has devoted his life to it. He has made capitol improvements to the building to grow his practice. He recently moved his family from Fountain Valley and has invested them as well into the city. I do not see how a roof top Bar and Grill in the heart of commercial buildings, adjacent to several residential areas as well, could have any positive impact on the community.

Thank you

http://san-clemente.org/sc/Meetings/PlanCom/Packets/Download/OldPackets/06-19-13/005%20Item%208B%20North%20Beach%20Rooftop%20Bar%20and%20Grill.pdf

7E 168

Maune, Kimberly

From: Nicholas, Sean
Sent: Friday, July 12, 2013 1:06 PM
To: Andrew Laubach
Cc: Maune, Kimberly
Subject: RE: North Beach Rooftop Bar and Grill

Mr. Laubach,

I appreciate you taking the time to write us. I will make sure your correspondence is given to the Planning Commission for their consideration.

Thank you again,

Sean Nicholas
Associate Planner
Los Molinos and El Camino Real Automotive Business Liaison
City of San Clemente
Office (949) 361-6189, Fax (949) 366-4750
Nicholas@san-clemente.org
www.san-clemente.org

From: andy.laubach@gmail.com [mailto:andy.laubach@gmail.com] **On Behalf Of** Andrew Laubach
Sent: Friday, July 12, 2013 1:04 PM
Nicholas, Sean
Subject: North Beach Rooftop Bar and Grill

Dear Mr. Nicholas,

I am one of the the owners of the mixed use retail/residential project known as Venetian Village located at 1520 El Camino Real, San Clemente, CA. We are extremely concerned about the proposed North Beach Rooftop Bar and Grill to be located in close proximity to our project. Our concerns primarily relate to noise, parking and potential alcohol related disturbances caused by the proposed night club. Our property management company has spoken with the residents of the 16 residential units and 6 retail units and have found virtual unanimous opposition to the project. As landlord's, we are concerned about providing a place of quiet enjoyment for our residence and we believe that the proposed North Beach Rooftop Bar and Grill will make the Venetian Village project a less attractive place for residents to live and work. As such, we strongly oppose approving this project.

Unfortunately, I am out of town for the public hearing July 17, 2013, but would be happy to meet and further discuss our concerns with Planning Commission or City Planners at a later date.

Thank you for considering our concerns in this matter.

Andrew C. Laubach
v Offices of Andrew C. Laubach
3 Calle Magdalena, #100
ncinitas, CA 92024

ME 169

Maune, Kimberly

Subject: RE: 1509 N El Camino Real - rooftop bar

From: L. Vanden [mailto:oakrabbit@gmail.com]
Sent: Friday, July 12, 2013 11:12 PM
To: pechousi@san-clemente.org; Planning Mail
Subject: 1509 N El Camino Real - rooftop bar

Dear Sirs,

Living in San Clemente is a-kin to living in Paradise.

That being said, Paradise doesn't include an open air rooftop bar with amplified rock band blasting. The hills in San Clemente tend to carry the noise - and I also want to agree that the location per the Animal Hospital is abuse. I cannot be at the meeing on Wednesday, but this is especially important to all older residents especially.

Please let them open in other location - more in downtown where it is expected and the tenants know what they are in for.
Yours, ~Lyni Vanden - Proud Resident of San Clemente

7E 170

Maune, Kimberly

From: Rogers, Kathy
Sent: Monday, July 15, 2013 8:09 AM
To: Maune, Kimberly
Subject: FW: ATTN: Jim Pechous

From: roberta [mailto:r.smigel@gmail.com]
Sent: Saturday, July 13, 2013 6:50 AM
To: CityHall Mail
Subject: ATTN: Jim Pechous

Dear Mr. Pechous,

I am a homeowner in North Beach who works full time and cannot attend planning commission meetings. Therefore, I am writing to you to say that after living 9 years here, I am very opposed to the possibility of turning our QUIET North Beach into a place where we can hear bands playing at night.

My windows are always open. At night the sound carries. It carries the beautiful blowing of train whistles and ocean waves. In the summer, we are blessed with cool evenings and no need for air conditioning if we keep our windows open.

I really don't want to hear the thump of a drum. We have laws so we don't have to hear dogs barking after a certain decent time...but you'll allow for this?

If this moves forward, I can assume all the calls the police will receive for the disturbing noise. I'll be one of them.

Please vote against this.

Respectfully yours,
Roberta L. Smigel
205 Avenida de la Grulla
San Clemente, CA
949.481.4055

7E 171

Maune, Kimberly

From: Pechous, Jim
Sent: Monday, July 15, 2013 8:46 AM
To: Maune, Kimberly
Cc: Planning Commission
Subject: FW: Stop nightclub at 1509 El Camino Real

-----Original Message-----
From: Laurie Doctor [mailto:drdermatology1@yahoo.com]
Sent: Sunday, July 14, 2013 2:22 PM
To: Pechous, Jim
Subject: Stop nightclub at 1509 El Camino Real

Dear Mr Pechousj,

We oppose approval of a nightclub with an open air rooftop bar in our neighborhood. We live in a quiet condominium at 1509 Buena Vista where we enjoy quiet evenings. Approval of this nightclub with outdoor drinking would disturb local residents and should not happen. It is unfair to residents to adversely change the nature of the existing neighborhood.

Sincerely yours,
David Buxbaum and Laurie Woll
1509 Buena Vista
San Clemente, Ca 92672

Sent from my iPad

7E 1/72

Maune, Kimberly

m:	Pechous, Jim
Sent:	Monday, July 15, 2013 8:46 AM
To:	Maune, Kimberly
Cc:	Planning Commission
Subject:	FW: 1509 North El Camino Real

-----Original Message-----
From: Dave Walsh [mailto:lidave1@cox.net]
Sent: Sunday, July 14, 2013 2:34 PM
To: Pechous, Jim
Subject: 1509 North El Camino Real

Mr. Pechous,

I understand that the Planning Commission is considering the application for a restaurant with a nightly rooftop band on North Camino Real in San Clemente. I and my neighbors along the bluff overlooking the restaurant are asking that you deny the permit on the basis of the noise abatement regulations in residential neighborhoods. I am sure by now you are informed about the folks that live in and around the area, such as the new office condos right across the street and the owners in the neighborhoods running from the alley behind the office/ condo complex down towards the ocean, and, of course, us above on the bluff along Del Reposo and Calle Mirador.

Next to the building in question is the Elks lodge where bands play on occasion. The ic generated there is loud enough to penetrate into our living room with the doors and windows closed. Based on this experience, having a restaurant with a live outdoor band on the rooftop would be would be very difficult to tolerate. You might feel the same as we do if you found such a restaurant in your own neighborhood. A new restaurant in North Beach would be enjoyable and wonderful if it were more low key.

Thank you for reading this mail with our thoughts into the minutes of the meeting for the record and your thoughtful consideration in dealing fairly with this matter.

Sincerely,

David and Cherie Walsh
Concerned Home Owners

103 Avenida Del Reposo
San Clemente, CA 92672
(949) 290 9206

7E 173

Maune, Kimberly

From: Pechous, Jim
Sent: Monday, July 15, 2013 4:32 PM
To: Maune, Kimberly
Cc: Planning Commission
Subject: FW: Open Air Rooftop Bar

-----Original Message-----
From: Barbara Miller [mailto:bjmnellie@aol.com]
Sent: Monday, July 15, 2013 12:28 PM
To: Pechous, Jim
Subject: Open Air Rooftop Bar

This is regarding 1509 North El Camino Real and the request to allow a rooftop bar at that location.

I live in the neighborhood and, from all I've heard, I'm against it. While I understand that the amplified music will stop at a reasonable hour, there is still the conversation noise that will be going on until the place closes. Additionally I'm concerned about the existing veterinary business adjacent to the property in question and the negative effect the amplified noise will have on the boarders. Not to mention the parking issues with people strolling around looking for their cars after having left a rooftop bar at closing. I don't think they'll stroll quietly.

I'm just not convinced we need this sort of business in North Beach. And the mere fact that the bar owner took this item off the June 5th agenda for a future 4PM hearing time, suggest he's not ethical or trustworthy in any way.

Barbara Miller
1520 Buena Vista #3
San Clemente

Sent from my iPad.

7E 174

Maune, Kimberly

From:	Pete Jensen <peteinsul@aol.com>
Sent:	Tuesday, July 16, 2013 6:48 PM
To:	Planning Mail
Cc:	Michael Kaupp; Bart Crandell; Jim Ruehlin; jmember@dardenlentz.com; DGG@COTTAGE.OCCOXMAIL.COM
Subject:	Rooftop Grill

Dear Planning Commission,
I have lived in San Clemente since 1985 with my wife and we have raised our children here, Over the years I have been involved with the Boys and Girls Club, AYSO, Indian Guides and Indian Princesses, SCHS Athletics and Drama and feel that what Dave is proposing for San Clemente would be perfect for North Beach.

I was hoping to be able to attend the planning commission meeting tomorrow night but was called out on business to Albuquerque and just wanted to let you know how wonderful it would be to have a new and well planned restaurant for North Beach. The area needs to be spruced up and what Dave has planned and from what I have seen from his plans this project would be a great addition. I hope you will give this strong consideration as he is willing to provide North Beach with an excellent business and nice upgrade to an area of our City that could use some new life.

Peter B. Jensen
24 Via La Mission
San Clemente, CA 92672
949-366-0208

PE 175

Maune, Kimberly

From: David Reenders <dreenders@cox.net>
Sent: Tuesday, July 16, 2013 9:42 PM
To: Planning Mail
Cc: dgg@cottage.occoxmail.com; jmember@dardenlentz.com; Michael Kaupp; Bart Crandell; Jim Ruehlin; CityHall Mail
Subject: Rooftop Grill!!

Categories: Red Category

Dear members of the planning commission, I have lived in San Clemente for most of my life. My wife and I have raised our children here, and we have owned a business in SC for 33 years. After living in 'southwest' SC for 26 years, we have lived in the 'north' part of town for the past 7 years. We have been encouraged by some entrepreneurial efforts to enhance and beautify the environment and business community here. It takes courage and foresight to attempt these projects.

Unfortunately, the North Beach project was not approved, so the area remains an unattractive, non business friendly environment. We drive along the blighted hills and broken PVC pipes of Marblehead, the UHaul parking lot, the 'Reclamation Plant' Street (I thought all roads were supposed to have Spanish names), the abandoned Miramar and bowling alley buildings, used car lots and 7-11.

The proposed effort to open a "Rooftop Grill" is and exciting idea to help establish another unique venue in town for residents and visitors to enjoy. Other new businesses seem to be prospering in the area (Riders Club, Bull Tacos). Mr. Gutierrez has enhanced many other projects in town and I'm sure he will do a superb job of establishing a quality boost to the often ignored north end of San Clemente. I applaud his community efforts.

Thank you for your consideration of this needed new project.

David Reenders

7E 17b

Vlaune, Kimberly

,m: Elly Harris, Harcourts Distinctive Coast Properties <ellysellssc@cox.net>
Sent: Wednesday, July 17, 2013 6:04 AM
To: Planning Mail
Subject: Rooftop Bar and Grill

Categories: Red Category

Dear Planning Commissioners,

I am writing in support of the Rooftop Bar and Grill - I know this project will be before the planning commission tonight. North Beach is on the verge of making slow but steady progress on filling vacant buildings and bringing life back to this neglected neighborhood and this project will be the catalyst to positive change.

I own a home in North Beach and can't wait to walk over to the restaurant for lunch or dinner. I have reviewed the project in detail and feel like this is the perfect project for our neighborhood. I am absolutely not concerned about any noise from the project, especially since it sits in a commercially zoned area where other bars and restaurants reside.

I urge you to approve with urgency this project. Don't stop the positive change in North Beach - be ,t of the solution!

Elly Harris, Realtor
Harcourts Distinctive Coast Properties
(949) 412-2170
EllySellsSC@cox.net
www.SanClemente-Homes.com
License Number 01335031

7E 1177

Maune, Kimberly

From:	Julian Phillips <jlphillips17@gmail.com>
Sent:	Wednesday, July 17, 2013 8:35 AM
To:	Planning Mail
Cc:	Dave Gutierrez
Subject:	Rooftop Grill

Dear City of San Clemente Planning Commission,

As a long term resident of San Clemente, I am writing to voice my support for the development of the "Rooftop Grill" project in North Beach. Not only will the addition of this establishment significantly improve the restaurant offering of San Clemente and further draw tourists and out of town consumers to the city, but it will do so in an area of San Clemente that is in dire need of gentrification. This venture will be a valuable asset to our community because the Rooftop Grill will undoubtedly promote healthy business activity and raise the bar for dining and entertainment options in our city.

Sincerely,

Julian Phillips

7E 178

Maune, Kimberly

,m:	Rey Harju <fpinfo@fieldpiece.com>
Sent:	Wednesday, July 17, 2013 9:28 AM
To:	Planning Mail
Cc:	Dave Gutierrez; Jan Harju; Brick Bailey; Elly Harris, Harcourts Distinctive Coast Properties; Don Slater; Gene Gilbert
Subject:	ECR Rooftop Gill

To: Mike Kaupp, Bart Crandell, Julia Darden, Jim Ruehlin, Don Brown, Kathleen Ward, Wayne Eggleston

North Beach needs the kind of investment Dave Gutierrez is trying to make in his property on ECR. This kind of investment benefits the community as a whole and should be encouraged. Noll Surfboards, Pattersen, the shop next to Pattersen, the Kahuna Grill on the sand. All have invested heavily in NB. We need to encourage this.

We already have a hot dog place, a hamburger place, a taco place, but we need more restaurants that provide a higher end dining experience.

Downtown seemed to take off when Nick's was opened. Then it really blossomed when South of Nick's went in. Both are the best of the best. Now it's hard to find a parking space in downtown.

We moved to the beach six years ago. We love seeing the weddings at the OHBC and the Casino and the all ·sic and general commotion that goes along with it all. We love watching the people go to and from the ..ach, the occasional roar of a motorcycle, the train (we can do without the horn), and the thousand road bike riders that go by on a weekend. I mean, we live at the BEACH! If we wanted peace and quiet, we would have moved somewhere else.

At lunch one day a couple months ago, I was counting the number of people I had talked to in North Beach that morning, between my fellow surfers, my neighbors, and others on my walks to and from the beach, with a midway stop at the coffee shop. I had had a short talk with 12 people. That was before noon. THAT's what living at the beach is all about.

Having a nice sit-down restaurant with a view within walking distance just adds to the North Beach experience. We have very, very few restaurants in San Clemente with a view of our most precious asset, the ocean. We can use more. Especially in North Beach.

--Rey Harju, resident, North Beach

7E 179

Maune, Kimberly

From: Jim Kobayashi <jkobayashi@hammesco.com>
Sent: Wednesday, July 17, 2013 10:52 AM
To: Planning Mail
Cc: 'dgg@cottage.occoxmail.com'
Subject: Rooftop Grill

To: Mike Kaupp, Bart Crandell, Julia Darden, Jim Ruehlin, Don Brown, Kathleen Ward, Wayne Eggleston

Dear Planning Commissioners:

I am a 20 year resident of San Clemente and work as a healthcare real estate developer. I have always been perplexed by the lack of attention that North Beach area of our city gets. I am in favor of the proposed Rooftop Grill restaurant as it will improve and repurpose a building in the North Beach area, bring more foot traffic to the retailers located nearby, provide an alternative to the Del Mar restaurants (with their lack of parking) and finally provide a nice open air rooftop venue where my friends and family can enjoy good food and our famous San Clemente weather near the beach.

I ask you to support the Rooftop Grill development as I do.

Regards,

Jim Kobayashi

Jim Kobayashi, Development Manager
Hammes Company
2 Park Plaza, Suite 600
Irvine, CA 92614
Office: 949.705.0900 | Cell: 714.397.1487 | Fax: 949.705.0901
jkobayashi@hammesco.com | vCard | www.hammesco.com

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7E 180

Maune, Kimberly

m:	Steve James <stevejames@gotmilk.com>
Sent:	Wednesday, July 17, 2013 11:01 AM
To:	Planning Mail
Cc:	David Gutierrez
Subject:	Rooftop grill

Dear planners and city council:

I am writing in support of David Gutierrez and his rooftop grill. David is a very responsible business person and the project seems like it would become a popular destination in San Clemente.

Yours truly,

Steve James
2052 Via Teca
San Clemente CA 92673

Sent from my iPhone

(pls excuse my thumbs)

7E 181

Maune, Kimberly

From: Rick@franksinsurance.com
Sent: Wednesday, July 17, 2013 11:21 AM
To: Planning Mail
Cc: dgg@cottage.occoxmail.com
Subject: Rooftop Grill Restaurant

Dear members of the planning commission

I'm in support of the proposed Rooftop Grill that is currently being considered. The North Beach area is in need of new energy to this overlooked part of San Clemente. Mr. Guiterrez has always brought innovative ideas to the city and maintains his properties to the highest level.

The new surge of restaurant's in San Clemente should not be limited to the "T Zone". The current establishments look as if they are at maximum capacity and a new venue I'm sure would be welcomed by all.

Sincerely,

Rick Franks
Franks & Associates Insurance, Inc.
800-637-2657
www.franksinsurance.com

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7E 182

Maune, Kimberly

From: jhwilson@cox.net
Sent: Wednesday, July 17, 2013 11:41 AM
To: Planning Mail
Cc: Dave G. Gutierrez; alicewilson@cox.net
Subject: Proposed "Rooftop Grill" Restaurant, San Clemente - North Beach

To: 1.Mike Kaupp 2. Bart Crandell 3. Julia Darden 4. Jim Ruehlin 5. Don Brown 6. Kathleen Ward 7. Wayne Eggleston

Planning Commission:

We strongly support the subject proposed project, and feel that it would be a much needed environment plus for North beach. We have been proud san Clemente residents since 1988, and have often said that SC North Beach needs to be enhanced, especially the old dilapidated movie theater. This project, if successful, will be a step in the right direction. We must disclose that we live in Cyprus Cove and know the developer well, but that too is a plus instead of a minus. We have seen Dave Guiterrez build and sell or lease one successful commercial real estate project after another since 1988, and know that the business plan for this project is well thought out and very detailed. We wish there were more entrepreneurs who would risk their own capital to improve our North Beach area.

We should also disclose that Jim is a USNA 65 classmate of Don Brown's, but Don was Marine Air, and Jim was navy submarine, so he will retain a neutral to hostile, unbiased position to any recommendation made by a former submariner.

Respectfully Submitted,

Jim & Alice

MS Alice B. Wilson & Dr. James Wilson
Jove Sciences, Inc.
949-366-6554

7E183

Maune, Kimberly

From: Maune, Kimberly
Sent: Wednesday, July 17, 2013 12:47 PM
To: Bart Crandell; Don Brown; Donald Brown; G. Wayne Eggleston; jruehlin@gmail.com; Julia Darden; Kathleen M. Ward; Michael Kaupp (mwkaupp@cox.net)
Cc: Pechous, Jim
Subject: FW: Tonight's Meeting

From: Luanne Bragg [mailto:luannebragg@hotmail.com]
Sent: Wednesday, July 17, 2013 12:31 PM
To: Planning Mail
Subject: Tonight's Meeting

Re: The Rooftop Grill & Bar

When you meet tonight to discuss the pros and cons of the eatery, please...PLEASE...consider the following.

SIX off-street parking spaces, for a 126-seat restaurant!!! Have you checked the on-street parking in North Beach lately? It is already congested. Day and night!!! Please do not allow this plan to go through.

NOISE. As you all know, noises are made worse in our heavy sea-air atmosphere. Walk around in evenings and you can hear conversations taking place inside homes and apartments. Sound travels differently here by the coast. We who live in North Beach are already impacted by loud motorcycles going throughout our stree When there is an event at the Casino and/or the Ole Hanson Beach Club, we hear the music, crowd noise and MC announcements. When Doheny State Beach has musical events we hear all of that sound, heavy bass and all. In other words, we are already impacted by loud noise and we sure don't need more of it created by OUTSIDE GET TOGETHERS. People at bars, grills and restaurants want to have fun and fun usually includes laughter, and loud conversations, especially as the visitors enjoy adult beverages and the evenings get long.

THE ANIMALS NEXT DOOR. Yes, I can differentiate between the needs/wants of humans vis a vis animals, but the veterinarian's business next door to the proposed eatery is an established entity and the animals that are recovering from illnesses and/or being boarded for other reasons deserve their peace and quiet.

I understand the desire for the city to improve the North Beach area. I have lived here since 1977 and have seen all the good things and not-so-good things take place in our little part of the wonderful City of San Clemente and feel blessed to be living in a place I visited annually since 1957.

To encourage a business to expose North Beach residents to even more noise pollution is a travesty that you can prevent. Please consider the above objections and rule against having an OUTDOOR DINING AREA.

Thank you for your consideration to my thoughts,

Luanne Bragg
Resident on Avenida Del Reposo

7E 184

Maune, Kimberly

From: John Gemma <JGemma@gemmasys.com>
Sent: Wednesday, July 17, 2013 12:45 PM
To: Planning Mail
Cc: dgg@cottage.occoxmail.com
Subject: RE: ROOFTOP GRILL 1509 North El Camino Real (North Beach)

To whom it may concern,

I am a 24 year San Clemente resident and business/commercial property owner. I am writing to express my enthusiastic support for the 'Rooftop Grill' project that will be discussed at this evening's (July 17) public hearing. I think it would be an excellent addition to the North Beach area, and I look forward to patronizing the establishment for breakfast.

- John Gemma
949 492-1521

CC: Mike Kaupp
Bart Crandell
Julia Darden
Jim Ruehlin
Don Brown
Kathleen Ward
Wayne Eggleston

Dave Gutierrez

ME 185

Maune, Kimberly

From:	Nancy Hanna <nancyhanna4re@yahoo.com>
Sent:	Wednesday, July 17, 2013 12:53 PM
To:	dgg@cottage.occoxmail.com
Cc:	imember@dardenlentz.com; Planning Mail; Nesa Anderson; Michael Kaupp; bcrandell@pekarekcrandall.com; Jim Ruehlin
Subject:	Re: Rooftop Grille

Hi,

I am writing this email in support of the proposed Rooftop Grille in North Beach. I think it would be a nice, and much needed addition to the community and open the door for other establishments in the very neglected North beach Area. San Clemente has been growing quite a bit over the past few years, but the North Beach area seems to have been forgotten. I feel that a Rooftop Grille is just what the community needs and could possibly do for the North Beach area, what Beach Fire did for the street of Del Mar, 10 years ago, adding more value to the overall area.

Thank you,

Nancy Hanna

Nancy Hanna
Realtor #01467252
ReMax Coastal Homes
118 S. El Camino Real
San Clemente, Ca. 92672
949-466-1660 cell
www.NancyHanna.com

7E/186

Maune, Kimberly

·m:	john carpenter <jcarpenter1@cox.net>
Sent:	Wednesday, July 17, 2013 1:18 PM
To:	Planning Mail
Cc:	Dave Gutierrez
Subject:	Fw: Roof Top Grill

Dear Members of the
San Clemente Planning Commission:

Mike Kaupp
Bart Crandell
Julia Darden
Jim Ruehlin
Don Brown
Kathleen Ward
Wayne Eggleston

I would like to offer my support for the proposed "Rooftop Grill" Resturanti, San Clemente - North Beach.
I think it would be a nice addition to our city, and help start developing North Beach.

..nk you for your consideration,

John Carpenter,
San Clemente resident (19 years)

cc. Dave Gutierrez

7E187

Maune, Kimberly

From: Mike Clavin <mikekc18@gmail.com>
Sent: Wednesday, July 17, 2013 1:27 PM
To: Planning Mail; Jim Ruehlin
Subject: Roof Top Bar and Grill

Dear Sir/Madam,
as a long time resident of San Clemente I just wanted to say that I'm in favor of the new restaurant in north beach area. Current business and development in that area has been stagnant and it needs new entrepreneurs to revitalize and spur growth.
Regards,
Mike Clavin
SC resident-- 26 years

7E188

Maune, Kimberly

m:	signs by creations unlimited <signsbycreations@sbcglobal.net>
Sent:	Wednesday, July 17, 2013 1:50 PM
To:	Planning Mail
Subject:	Roof Top Grill

Please approve the Rooftop Grill. This project is a great design and will enhance the vitality of the North Beach Area

cc:

1. Mike Kaupp
2. Bart Crandell
3. Julia Darden
4. Jim Ruehlin
5. Don Brown
6. Kathleen Ward
7. Wayne Eggleston

Signs by Creations Unlimited
1323 Calle Valle
San Clemente, Ca 92672
949 492-7337

ME 189

Maune, Kimberly

From: Dr. Nadine Levinson <nadinelevinson@gmail.com>
Sent: Wednesday, July 17, 2013 2:18 PM
To: Bart Crandell; Jim Ruehlin; Michael Kaupp
Cc: Planning Mail; 'Dave Gutierrez'
Subject: RE: In favor of the CUP for 1509 N. El Camino Real, San Clemente (North Beach)

Importance: High

To the San Clemente Planning Commissioner
Please CC: Mike Kaupp

2. Bart Crandell
3. Julia Darden
4. Jim Ruehlin
5. Don Brown
6. Kathleen Ward
7. Wayne Eggleston

cc. Dave Gutierrez dgg@cottage.occoxmail.com

RE: In favor of a CUP for 1509 N. El Camino Real Roof Top Grill Project

Last month I wrote an email to each esteemed member of the Planning Commission. I also planned to come to the Planning Committee Meeting to discuss my strong support for issuing a CUP for the Roof top Grill Project. But as you know, the hearing was postponed. I cannot come this evening to speak as it is my anniversary.

I am a resident of Beach Road and spend a lot of time (and money) in San Clemente. I very much support the application to remodel the 1509 N. El Camino Real, San Clemente (North Beach) into a family Roof Top Grill. I have seen some of the plans and I am quite sure this will be a well executed project. David Gutierrez only does competent and well run projects with his creative energy and passion.

My family has been in the restaurant business (Tortilla Flats, Laguna Beach, Irvine, MV Lake) for years. We well know that having good and interesting restaurants is a wonderful idea and is a win-win for the city of San Clemente, the residents, and those in the outlying areas.

We need more quality family restaurants. I urge you to approve this CUP.

Most Sincerely,
Dr. Nadine A. Levinson

Dr. Nadine Levinson
35131 Beach Road
Capistrano Beach, CA 92624
C: 949 573-7500; O: 949 496-1067; F: 949 496-0723
www.p-e-p.org
nadinelevinson@gmail.com

7E 190

Maune, Kimberly

From: Pechous, Jim
Sent: Wednesday, July 17, 2013 3:15 PM
To: Planning Commission
Cc: Maune, Kimberly; Nicholas, Sean
Subject: FW: 1502 N. El Camino Real Niteclub/Bar/Restaurant

From: Brocknau [mailto:brocknau@aol.com]
Sent: Wednesday, July 17, 2013 3:12 PM
To: Pechous, Jim
Subject: Fwd: 1502 N. El Camino Real Niteclub/Bar/Restaurant

Jim,

Due to our inability to attend tonight's Planning Commission meeting, we are sending you this follow up to our email of 4 June 2013

In most cases we would encourage any new business opening in the North Beach area, However. there are certain limits. Any business in the North Beach area that has as many negative aspects as the proposed rooftop bar/restaurant has against it should be discouraged.

Negative aspects such as parking Parking is always a problem near the beach. The parking available in the immediate area will be on the streets in the surrounding neighborhoods. This is a problem now with the local residents. Off street parking here is at a premium. The available parking in the area is on or across El Camino Real. Persons leaving a bar after midnight, perhaps a little tipsy, crossing El Camino Real is not a safe situation for drivers or pedestrians.

Then there is the noise factor. An open air rooftop restaurant with music at all hours is not acceptable. The sound will travel up the Avenida Florencia mini canyon bouncing off the homes creating one hell of a disturbance. Believe us, we know about the sound traveling up a mini canyon. We live here. Any evening partying now by neighbors is bad enough.

Perhaps a restaurant at that location without the outside entertainment would be acceptable but we doubt it.

It's just not a good idea.

Ed and Barbara Brocknau

7E191

Maune, Kimberly

From:	Robert Mignogna <robertmignogna@cox.net>
Sent:	Wednesday, July 17, 2013 4:18 PM
To:	Planning Mail
Cc:	Dave Gutierrez
Subject:	Proposed "Rooftop Grill" Restaurant

Dear Planning Commissioners,

Please be advised that I am in full support of the project titled "Rooftop Grill" Restaurant in North Beach, San Clemente.

I hope that each of you agrees.

Regards,

Bob Mignogna
3 Puerto Morant
San Clemente CA 92672
949 584 2093

7E 192

Maune, Kimberly

m:	Dennis Grimes <resultsrealtor@sbcglobal.net>
Sent:	Wednesday, July 17, 2013 4:21 PM
To:	Planning Mail
Subject:	supp0ort of Gutierrez rooftop restaurant

My mother and I owned a restaurant in north beach for years until it closed several years ago. I feel that north beach needs another restaurant.

Dennis R. Grimes, g.r.i
Realty ONE Group
DRE # 00876623
Direct (949) 291-3535
resultsrealtor@sbcglobal.net
www.dennisgrimesrealty.com

7E 193

Maune, Kimberly

From: Cole Mobley <cole.mobley@gmail.com>
Sent: Wednesday, July 17, 2013 5:09 PM
To: Planning Mail
Subject: Roof Top Grill - 1509 N. El Camino Real - Letter of Support

San Clemente Planning Commissioner's :

Mike Kaupp, Bart Crandell, Julia Darden, Jim Ruehlin, Don Brown, Kathleen Ward, Wayne Eggleston

I am writing this letter to express my opinions with regards to the proposed "Roof Top – Grill & Bar" which is to be located at 1509 N. El Camino Real in the North Beach area of San Clemente. I think this project would be a great success in helping to revitalize the North Beach area.

Having examined in detail much of what is planned for this venue, which is striving to provide a unique dining and festive entertainment experience not only for the citizens of North Beach but for all San Clemente citizens.

This concept experience as shown to me, includes not only a downstairs restaurant and small lounge, but also an upstairs roof top open air seating and dining area with fire pits, a fireplace and even semi private cabana style seating areas. Enhancing all this is a full service kitchen which will support both levels and an upstairs outdoor cooking area for grilling and oven cooking specific menu items.

Objections I have heard regarding this venue have dealt with noise, parking and signage. All of which I think can be easily dealt with.

Having personally performed sound meter tests at many of San Clemente's other public and private venues, the primarily commercial location of the proposed Roof Top Grill even with entertainment should not present a problem. Their distance is far greater to any residential premises than any other similar venue within San Clemente. Even the city is building an 18 unit low income housing complex that is less than 100 feet from Nomads which has entertainment on occasion. Even Casa Romantica, the Golf Course, the Casino area and numerous other venues I could cite are closer to residential properties and produce more noise than the Roof Top Grill venue will be creating.

I am aware that located next door to the proposed Roof Top Grill there exists an animal hospital. However, I rarely hear dogs barking at the facility even when I have walked through their driveway from the street to the alleyway. Contrary to most people's belief, dogs like music and many kennels play music to sooth and calm the animals down. In fact in history,

7E 194

their have been several dogs that have been awarded British Nobility Titles for their ability to ndicate which musician or singer happened to be performing off key. Wolves in the wild in .t howl at different frequencies actually creating their own chorus. The type of music that the Roof Top Grill desires is more along the Jazz, Rhythm and Blues, light POP variety. They are striving to be a mainstream family and middle end establishment with class, not an Acid Rock Beer Bar. There are plenty of those near the Avenida Del Mar Triangle. The goal is to be a full service dining and relaxed entertainment venue.

Regarding parking other similar venues within the city are likewise short on parking and visitors don't seem to have a problem at parking on local streets or semi distant parking lots and walking several blocks to their destination. Personally, I think the city has been lax at not creating more additional parking in the North Beach area. If we want North Beach to become a vibrant and utilized area then the city has to start stepping up to the plate and providing the necessary support that economic development requires. Instead were wasting millions of dollars on a proposed Ole Hanson Beach Club remodel which has gotten totally out of control, delayed and appears to have extensive cost overrun proposals way beyond the original purpose and remodel. All while preventing the usage of the facility by the citizens of San Clemente.

Signage for a business is critical. It has to be distinctive, eye catching, readable both day and ·ight, visible so that customers can easily find the location and its message has to be short .ough to get the point across in the few seconds a passing motorist has to view the signage. I personally find the signage in many parts of San Clemente to be so invisible that it is hard to find the location of the place you're trying to locate or visit. If a customer can't find your business then they are very likely to go elsewhere and that often means outside of San Clemente and thus a loss of sales tax dollars. We should be doing all that is possible to aid businesses in their signage needs.

The North Beach area is going to change, especially with the coming development of the Outlet Center and the Marble Head Residential area. Sure, groups can fight this change, but it is going to happen within the next several years.

Presently, I fully support the proposed Roof Top Grill at the 1509 North El Camino Real location as shown to me. I have confidence that the developer Dave Gutierrez and his partners will provide the city with an outstanding and uniquely new dining and entertainment venue with can be the beginning of a revitalization of the North Beach area.

Respectfully,

Cole Mobley
hnical Services Manager
)na's Italian American Cuisine
San Clemente Resident

ME 195

Maune, Kimberly

From: Gary Ward <savelowers@gmail.com>
Sent: Wednesday, July 17, 2013 5:38 PM
To: Planning Mail
Cc: Dave Gutierrez
Subject: GUTIERREZ - Rooftop Grill & Bar Proposal Recommendation

To Whom It May Concern:

I wanted to send you an email regarding Dave Gutierrez and the project he is propsing to you. I have known Dave for over 25 years. We raised our kids together in the community and have participated in the local San Clemente events and gatherings over the years. As a top Real Estate producer, I am very familiar with all of the properties that he owns, especially those on Avenida Del Mar. They are all well maintained and he is a great property owner. I am sure that he will do well in this new venture and that he will be successful. Please feel free to call me for any further comments or questions.

Sincerely,

--
Gary Ward
Century 21 OMA
(c) 949-355-4426
(e) savelowers@gmail.com
garywardproperties.com

7E 196